

**Definitive Map Review 2018-2019
Parish of Bampton (part 2)**

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

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

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding Restricted Byways between points Y - X - W and points X - G - Z as shown on drawing number HIW/PROW/19/012a (Proposals 4 & 5 Bampton).

1. Introduction

The report examines two connecting routes, referred to as Proposals 4 and 5, arising out of the Definitive Map Review in the Parish of Bampton in Mid Devon. Reports on Proposals 1 – 3 were presented at the Devon Public Rights of Way Committee Meeting on 4 July 2019.

2. Background

The Background for the Definitive Map Review in the parish of Bampton was set out in Committee report HIW/19/58 of 4 July 2019.

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 proposals considered in this report

County Councillor Cllr Colthorpe	-	no response
Mid Devon District Council	-	no response
Bampton Town Council	-	supports proposals
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
British Horse Society	-	no response
Ramblers' Association	-	support proposals
Trail Riders' Fellowship	-	no response
Devon Green Lanes Group	-	no response
Cycle UK	-	no response

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

5. Financial Considerations

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

6. Legal Considerations

The implications/consequences of the recommendation(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 (including Climate Change) and Public Health Considerations

Equality, environmental impact (including climate change) and public health implications have, where appropriate under the provisions of the relevant legislation, have 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 adding Restricted Byways between points Y – X – W and X – G – Z as shown on drawing number HIW/PROW/19/012a (Proposals 4 and 5). Should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

10. Reasons for Recommendations

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

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.

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. **Proposals 4 and 5: the addition of bridleways, as shown between points Y – X - W (proposal 5) and X – G – Z (proposal 4) on drawing number HIW/PROW/19/012a.**

Recommendation: It is recommended that an Order be made for the addition of two Restricted Byways in respect of Proposals 4 and 5.

1. Background

- 1.1 Proposal 3 considered at the previous committee in the Bampton Definitive Review concerned a Schedule 14 application for the upgrading of Bridleway No. 25, Bampton. After reviewing initial evidence for that application and speaking to the Bampton Parish Paths Partnership (P3) representatives it became apparent that two lanes running north north westwards and north north eastwards from Bampton Down Cross on Bridleway No. 25, Bampton to the county roads at Giffords and Dowhills Farms were also being used by the public as part of the local network. The northern end of the lane (Y) to Dowhills was recorded as a short section of unclassified county road but the remaining section and the lane to Giffords (Z) did not have any recorded status. The existence or otherwise of public rights of way along the routes was deemed to warrant investigation and the two lanes were included as Proposals 4 and 5 in the Bampton review.

2. Description of the Routes

- 2.1 The route referred to as Proposal 5 starts from point W (GR SS 9943 2117) at the northern end of the county road known as Bampton Down Road, at its junction with Bridleway No. 25, Bampton, at Bampton Down Cross. It proceeds along a defined lane/track in a north northwesterly direction to point X (SS9943 2117) before turning north north eastwards and continuing downhill to point Y (SS 9947 2110), at the south end of the unsurfaced unclassified county road number 304 Bampton, which continues towards Dowhills Farm. The surface of the proposed route is generally of earth, grass and stone, and it has a length of 540 metres.
- 2.2 The lane referred to as Proposal 4 starts from point X (GR SS9943 2117) on Proposal 5, 80 metres north northwest from Bampton Down Cross, and proceeds downhill in a north northwesterly direction along a defined lane/track, passing point G, for 470 metres to the county road at Giffords Farm at point Z (SS9920 2157). The surface of the proposed route is mostly earth with some stone underneath, with the middle portion of the lane suffering from some erosion from water and vehicular use. Photographs of both proposals are included in the backing papers.

3. Documentary Evidence

3.1 Ordnance Survey and Other Maps

- 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.
- 3.1.2 Cassini Historical Maps 1809 – 1900 Sheet 181 Minehead & Brendon Hills
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.

- 3.1.3 Old Series 1809: On this edition proposal 4 is shown in a similar position to the present day, leading from Giffords south southeast to Bampton Down Cross and shown as a defined lane. The southern section of proposal number 5 is shown as existing across the moor/common called Bampton Down but the northern end diverges east north east towards to join the county road south east of Dowhills. A lane running south from Dowhills (Dewhill on this map) goes to the edge of the common and appears to connect with proposal 5. There is no road/lane between Gifford and Dowhills and to access one from the other, the shortest route would be via proposals 4 and 5 and Bampton Down Cross at point W. The sections of the two proposals across Bampton Down are shown as unfenced.
- 3.1.4 The OS surveyors' drawings of 1802 are the preliminary survey work for the OS 1 inch first edition/old series of 1809. These show a lane from Dowhills with a spur branching north eastwards and the other branch of the lane continuing to Bampton Down Cross at point W. A defined lane is also shown from Giffords Farm to Bampton Down Cross. Both lanes are shown as unfenced across Bampton Down.
- 3.1.5 Revised New Series 1899-1900: By the time this map was published the new road to Huntsham had been constructed, which was south of the original road and passed adjacent to the southern boundary of Dowhills Farm buildings. A short section of lane has been made going from Giffords north to the new road, west of Dowhills. This is the current county road layout. Proposal 5 is now only shown on its current alignment between Dowhills and Bampton Down Cross. Both proposal routes are shown as fenced lanes with solid boundary lines. Proposal 4 is coloured white as is the county road to the west of Giffords towards Bampton (Metalled Roads: Third Class) whereas proposal 5; the new road to Huntsham and the road from Bampton Down Cross to Huntsham are coloured orange (Metalled Roads: Second Class).
- 3.1.6 Popular Edition 1919: Both proposals and the road from Bampton Down Cross to Huntsham are now shown as uncoloured defined lanes (Roads under 14' wide – Indifferent or bad winding road).
- 3.1.7 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 turnpike roads with a bold line on one side of the road or as cross roads. The road layout was somewhat different at the northern end of points Z and Y in that there is no connecting road shown between Gifford and Dowhills (spelt Dewhill on this map) (as per the OS 1809 map) and the road to the south of Dowhills running from west to east is also not shown. This road, the new road to Huntsham, was constructed later, by the Huntsham Estate in the 1850s and was subsequently taken over by the parish as a highway maintainable at public expense. The old road is now Bridleway No. 4 Bampton.
- 3.1.8 Bampton Down Road between Huntsham and Bampton Down Cross (point W) and both proposals 4 and 5 are shown on the Greenwoods map as cross roads and in a similar style to the other county roads they connect to. Both proposals would be a route to Huntsham from Bampton, with proposal 4 by Gifford being the shorter route.

- 3.1.9 OS 1st Edition 25" to a mile 1880-1890
The road layout is now as per the present day, with a road connecting Giffords and Dowhills and both proposals shown as defined lanes from Giffords and Dowhills to Bampton Down Cross. The lanes have solid lines along their boundaries. An area of Bampton Down that lies between the two routes and to the west of proposal 4 is now shown as fields within compartment numbers 429, 507 and 508. Proposal 4 has its own compartment number 506 with an area of 0.981 acre. Proposal 5 is numbered 509, area of 1.287 acres. The area of Bampton Down to the east of proposal 5 is depicted as being Moor, Furze and Brushwood and Brushes on this mapping. There are two bench marks shown on proposal 5. There are no solid lines across either proposal to indicate gates across the route. The pecked line at point Z, at where the county road 304 joins the metalled county road at Dowhills and at point X probably indicate a change in surface.
- 3.1.10 OS 1 inch to a mile maps of 1946, 1960 & 1965
On the 1946 edition the routes are shown as uncoloured defined double-sided lanes and corresponding to 'Roads under 14' metalling – Bad'. The new road to Huntsham that passes on the southern boundary of Dowhills Farm is shown coloured orange 'Roads under 14' Metalling. Good'. Bampton Down Road running southeast from Bampton Down Cross (point W) to Huntsham village is shown in the same manner as the two proposals.
- 3.1.11 In the 1960 edition the routes are now shown by the narrower double-sided white lane (Minor Roads in towns, Drives and Unmetalled Roads) as is the section of now county road going west from Giffords. Bampton Down Road is shown as the wider white lane (Roads under 14' metalling Untarred). The new road to Huntsham is now shown in yellow (Roads 14' of metalling and over). On the 1967 edition the two proposals and Bampton Down Road are shown as in 1960 edition. The road between Giffords and the new road to Huntsham is now coloured yellow (Roads under 14' metalling Tarred). Bridleway No. 25, Bampton running west to east across Bampton Down is shown as a RUPP as it had been recorded on the Definitive Map by that time.
- 3.1.12 OS Post War Mapping A Edition 2500 1970
Both routes are shown as defined lanes along their entire length and labelled track on the map. No bench marks are now shown along the proposal 5. The lanes continue to have their own compartment numbers, proposal 4 is number 2931 at 0.9 acres and proposal 5 number 6044 at 1.36 acres. The pecked lines at points W, X and Z are deemed to represent a change in surface.
- 3.1.13 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.
- 3.1.14 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'.

- 3.1.15 Sheet SS92 published in 1950 shows the two proposals as defined uncoloured lanes in the similar manner to the county roads they connect to at points W and Z and in the same manner as the unclassified section of road north of point Y. The uncoloured lanes are described as 'Poor, or unmetalled Other Roads'. No lines, indicating any gates or barriers, are shown across the lanes or at either end.

3.2 Tithe Maps and Apportionments

- 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*'.

3.2.2 Bampton Tithe Map & Apportionment 1844

On the Bampton Tithe Map only the northern section of the proposal 4 leading south from Giffords (point Z to point G) is shown as a defined lane. Running south from Dowhills, it is only the section of unclassified county road north of point Y that is shown. South of point G and point Y the maps shows an area of open land without the later field boundaries. The north end of Bampton Down Road from Huntsham is shown at the bottom edge of the map (point W and the parish boundary with Huntsham). This large area of 119 acres is called Bampton Down with no description of cultivation stated. The landowner was the Reverend Troyte and the occupier William Stone.

- 3.2.3 There was no road connecting Giffords and Dowhills as at present. Dowhills farmyard has the apportionment number 1100 described as House, homestead, road, garden and orchard. The landowner was the Reverend Edward Troyte and the occupier John Henson. Giffords was owned by the Reverend Thomas Judboald and occupied by Thomas Davy. The lane to Giffords from the west and the section continuing south of point Z is not numbered.

3.3 Bampton Road Tender Notice April 1901

- 3.3.1 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 descriptions would appear to describe the roads/routes or at least the northern ends of the proposals depending on whether the length extended to the parish boundary at Bampton Down Cross (point W) or just to the end of the hedged section of proposal 4 and the end of the unclassified county road, to the boundary of the old common land at points G and Y.
- 3.3.2 Although by the 1880s the lanes are shown with solid hedges/fenced boundaries with the common land only at the southern end of the proposals near point X and southwards. This would indicate that at least parts of the routes were maintained by Bampton rate payers at that time. Historically, the parish would likely only

maintain the northern ends of the lanes, as shown on the Tithe, 1st edition OS 1" and Greenwoods maps, to the edge of Bampton Down, as the routes across there in the early 1800s were unfenced and would not have been cropped so the route used across the common land could vary with ground conditions and vegetation.

3.4 OS Name Books Early 20th Century

3.4.1 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.

3.4.2 The lanes of proposals 4 and 5 are not named on the OS 25" maps and so would not appear in a name book. In the OS name book reference OS 35/1651 prepared in 1903 Bampton Down Cross was described as 'A cross roads on Bampton Down about 20 chains S.E. of Giffords'. The authority for the spelling was Mr Mildon, District Surveyor Ash Thomas, Tiverton. A cross roads would indicate that Bampton Down Road was not considered a cul-de-sac road. In the same name book Bampton Down was described 'as an extent of private common shown by band of colour SE of Giffords' which would indicate the type of land it was at that time. This entry was signed for by Mr Cleeve as agent for the Troyte Estate, Huntsham.

3.4.3 In the OS name book reference OS 35/1649 of 1903 Bampton Down is also described as a private common and signed for by Mr Cleeve as above. In the book reference OS 35/1687 Bampton Down Road is described as extending from junction of roads about ½ mile west of Huntsham Barton to junction of roads NW of Old Parsonage. This entry was signed for by Mr Mildon and also indicates that Bampton Down Road was not considered a cul-de-sac road at point W on the parish boundary.

3.5 Finance Act Plans and Field Books 1910

3.5.1 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.

3.5.2 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.

3.5.3 Proposal 5 from point Y to point X lies within hereditament number 343 as does the section of unclassified county road north of point Y. The colouring for the boundary

of the hereditament breaks at point X where it crosses the route. The southern end of proposal 5 between points X and W is bordered by hereditament number 361, as above, on the west and by 343 on the east side.

- 3.5.4 Hereditament number 343 is Dowhills Farm of 268 acres, owned by Hugh Troyte (Huntsham Estate) and occupied by James Hewson. 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 at Dowhills. However, the reference to the 'right of way over lane' could apply to two different lanes that lie within the hereditament. Bridleway No. 4, Bampton being one lane to the north west of the farmstead and the other one being the lane which runs south from Dowhills (the unclassified county road and proposal 5) to the junction with the county road at Bampton Down Cross. The hereditament included land on both sides of this lane.
- 3.5.5 Proposal 4 is within hereditament number 352 for most of the route with the south eastern end approaching point X lying between and not included within hereditaments 352 and 361. The colouring breaks across the lane in hereditament 352 where the hereditament boundary crosses the lane. Hereditament number 352 was Giffords Farm of 170 acres owned by Hugh Troyte and occupied by William Coles. The field book entry makes no reference to any rights of way or easements.
- 3.5.6 Hereditament number 361 adjoins the south western side of proposal 4 in the area west of point X and was described as Bampton Down, agricultural land, area of 23 acres owned by Mr Troyte and recently occupied by Mr Webber. On the first page under Fixed Charges, Easements, Common Rights and Restrictions is written 'a road adjoining Bampton Down'. This could be referring to Bridleway No. 25, Bampton running along the southern boundary of the hereditament or to the sections of proposals 4 and 5 along the north eastern boundary. An allowance of £10 is given for a R/o/w on page two, which is carried forward to the page four heading for Public Rights of Way or User. This allowance could be for the pecked line labelled B.R. shown on the OS 25" mapping used for the Finance Act plans that runs within the hereditament and parallel to Bridleway No. 25, Bampton to Bampton Down Cross. This route is not recorded as a public right of way on the definitive map.

3.6 Vestry, Urban District, Parish and Town Council Meeting Minutes

- 3.6.1 Bampton was an Urban District Council from 1894 to 1935, a Parish Council between 1935 and from 1974 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 to be useful 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 within the minute books. No parish minutes or draft minutes from 1894 to 1900 were found. Vestry minutes are available for the period 1763 – 1881.

- 3.6.2 In the Vestry minutes of March 1862 it was reported that the roads tender is up for renewal again. 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. Details of this tender were included in paragraph 3.3.
- 3.6.3 In the draft minute book for the Bampton Urban District Council Meeting of 13th January 1920 it was noted 'Road Giffords to Bampton Down badly washed requires about 40 yards ballast'. This meeting was reported on in the East Devon Herald of 20 January. The report included that 'the Surveyor was given permission to place 40 yards of ballast on the Bampton Down road, near Gifford's Farm.'
- 3.6.4 The newspaper report of the Annual Meeting of Bampton UDC in March 1924 included the heading Road Maintenance. Mr Moore, a councillor, moved a resolution that the Council should stop maintaining the road through Dipford Court. The public made very little use of this road; it appeared a waste of money for the Council to maintain same. Councillor Penwarden asked the Council not to be in any hurry in arriving at a definitive decision. He thought they should take a comprehensive view of the whole parish, for in his opinion there were other roads which could be brought under the same category. He thought that many miles of roads could be taken off and that a considerable saving could be made. It was eventually agreed that the surveyor should present at the next meeting a statement showing the whole of such roads with their mileage.
- 3.6.5 At the next month's meeting on 22 April 1924 the newspaper reported under the heading Road Closure Proposals that in accordance with a resolution at the last meeting of the Council, the Surveyor presented a list of roads which he considered unnecessary to maintain. A total of seven roads were listed including Huntsham to Bampton Down (11 chains 37 lengths (228 metres)), lane by Dowhills Farm (9 chains 79 lengths (197m)) and lane near Giffords House towards Bampton Down (10 chains (201m)). The total length of all the roads mentioned was 1 mile and 7.5 furlongs. In the draft minute book for this meeting the roads were described as Bampton Down Road, Dowhills and Giffords to Huntsham, which would describe the two proposal routes and the section of road north of Dowhills Farm. After various comments had been made by Councillors including; whether any metal had been put on these roads; that the roads were let for another two years and that it would cost more to close the roads than they would save; it was decided to ask the Surveyor to report at the next meeting on how much has been spent on these roads.
- 3.6.6 At the meeting on 13 May 1924 the Surveyor reported that the amounts expended during the last three years ending March last were Bampton Down Road (part) £1 16s. 10d; lane by Dowhills Farm £1 11s. 8d. and Giffords Lane (part) £5 2s. 6d. The Surveyor commented that generally speaking only manual labour was involved. Cllr Penwarden said that if nothing was done to the roads it was an argument in favour of the Council's ceasing to be liable for their upkeep. Cllr Seward said that there was a wrong impression abroad that they intended to close the roads. They did not propose to close the roads. All they proposed was that they should cease to maintain them. The Chairman said that farmers had come to him and said it was the most unfair suggestion the Council had discussed. If the Council decided not to maintain certain of the roads it would mean that they would be virtually closed and would be no good to anybody. If the Council ceased to maintain the roads, they would be practically impassable. Cllr Weston moved and Cllr Hill seconded that the report be allowed to lie on the table, which was agreed. There were no further reports on this matter in subsequent meetings.

- 3.6.7 In July 1929 Bampton UDC discussed the Local Government Act of 1929 and that all classified and unclassified roads were placed under the control of the County Council after March 31, 1930. The Chairman proposed that application be made for the delegation of powers over all roads in the Bampton Urban District. Bampton remained an Urban District Council until 1935.
- 3.6.8 In a newspaper report of a meeting of Bampton UDC on the 19th June 1934 under the heading Gifford's Lane (could be referring to proposal 4) it was reported that 'The Surveyor stated that one or two of the district roads needed attention. Gifford's Lane was in a deplorable condition. He suggested the men still remaining on part time work should be re-instated to full time work to carry out the job. The river could be cleaned out and the material obtained used for the work. The matter was left to the Surveyor's discretion'.
- 3.6.9 Next month, in July 1934 under the heading Road Work the newspaper advised that 'The Surveyor also reported that as instructed at the last meeting of the Council, all the Council's employees had been reinstated too full time. The bed of the river Batherum had been cleaned out and a considerable quantity of the gravel removed had been used on the district roads'. The report did not list the roads.
- 3.6.10 In October 1944 Tiverton Rural District Council asked the parish for details of any accommodation roads that the now Bampton Parish Council would like to be taken over and maintained at public expense and of existing roads which were regarded as unnecessary. The Council proposed four roads for adoption which did not include proposals 4 or 5, with there being no unnecessary roads in the Parish. Roads in the parish would have included the county road running north of point Y that was already recorded as a county road.
- 3.6.11 In April 1946 (prior to the parish survey for preparation for the Definitive Map) 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. Proposals 4 and 5 were not included in the list.
- 3.6.12 At the parish council meeting on 22 April 1947 under the heading Giffords Lane, it was recorded that 'Mr Vicary having referred to the bad state of the road between Wick and Giffords Farms it was resolved to request the District County Surveyor to have it put in proper order.' That meeting also resolved 'to request that the private road between Giffords Farm and the Bampton-Huntsham main road be taken over by the County Council and maintained as a public highway'. This was the lane between point Z and the county road west of Dowhills that was not publicly maintained at that time.
- 3.6.13 At the parish council meeting on 24th June 1947 it was reported that a letter received from the District County Surveyor said that he was arranging for Giffords Lane to be tidied up and for certain repairs to be carried out. A letter had also been received from the County Surveyor saying that the piece of private road between Giffords Farm and the Bampton to Huntsham main road (point Z to west of Dowhills as mentioned above) has been added to his list of accommodation roads, the question of taking over of which, is now being considered by the County Council.

- 3.6.14 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. The paths in the list did not include proposals 4 or 5.
- 3.6.15 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.
- 3.6.16 In October 2004 the West Somerset Ramblers Association wrote to Bampton Town Council suggesting improvements to the footpath network in the parish. It is believed this letter was prompted by the Devon County Council's preparation of a Rights of Way Improvement Plan for the County as required for in the CROW Act 2000. User groups such as the Ramblers Association would have been aware of the plan's preparation. One of the suggestions in the letter was that the two lanes, described as proposals 4 and 5 in the current review, should be added to the Definitive Map as public rights of way. The letter was raised at a Bampton Town Council meeting in February 2005 under the open forum section and the minutes recorded that 'As requested by BTC, comments and recommendations were presented relating to additions to the footpath network that had been suggested by the RA. Action Clerk.' The minutes do not include what the comments and recommendations were.

3.7 British Newspaper Archive (on line)

- 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. Apart from references to the meetings of the Bampton Borough Council no reports relating to either proposal were found.

3.8 Devon County Council Handover Roads Records 1947

- 3.8.1 The Local Government Act 1929 gave County Councils increased powers as the ultimate highway authority for all roads in the county. Devon County Council acquired the additional responsibility for all the non-main roads previously in charge of the rural district councils. Urban District Councils & Rural District Councils continued to be responsible for the unclassified roads in their area. On the handover map the northern continuation of proposal 5 currently recorded as a county road is coloured blue (unclassified roads) and numbered 1990. The lanes proposed as proposals 4 and 5 are not coloured on the handover map.
- 3.8.2 The 'new' road between Bampton and Huntsham is coloured yellow, numbered 30. At Giffords Farm the road is coloured blue, numbered 1986 from point Z westwards. The now county road from point Z northwards to the Huntsham road is not coloured. Bampton Parish Council subsequently requested that this section of road be taken over as publicly maintained highway in 1947.

3.8.3 In the Mileage of Unclassified Roads register for Tiverton district road 1990 is described as 'From UC 1981 North of Dowhills Farm with spur south of Class III 30 (240 yards towards Bampton Down Cross)'. Mileage is 0.24 and under the remarks column is written 'cul-de-sac'. The distance of 240 yards equates to 220 metres, which is the distance from the county road at Dowhills to point Y.

3.8.4 In the register road number 1986 running westwards from point Z, is described as 'From Class III 74 (west of Sparkhayne) East via Week to road junction East of Giffords Farm'. The mileage was 1.42, amended to 1.36 with cul-de-sac under remarks. The end of the road is described as 'road junction' which would seem to indicate that the road joined other roads although the continuation of the lane from point Z northwards to the county road was not a publicly maintained road at that time.

3.8.5 Both sections of roads are noted as cul-de-sacs, but the lanes continue and are not dead ends as it would be if it was a section of county road leading to one farm only as is fairly common in Devon. The term cul-de-sac is considered to refer to the fact that maintenance of the highway ceased at a certain point as the lanes did physically exist to connect with another county road at point W on the parish boundary.

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

3.9.1 The survey of paths in 1950 to be included on the new definitive map in Bampton was undertaken by Messrs A Seward, W Gregory, J Yeo, D Vicary, F Webber, R Tonkin and L Burnett. Neither of proposals 4 or 5 were included in the list of paths proposed to be included.

3.10 Devon County Council Uncompleted Reviews of 1968 & 1977

3.10.1 The Parish Council in 1968 and Town Council in 1977 did not make any proposals for the addition of either of the two lanes in these uncompleted reviews.

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

3.11.1 On the 1946-1949 aerial photography, the southern two thirds of proposal 4 is a lane with the hedges neat and the surface of the lane visible except for the blurred photography near point X. There are hedgerow trees near Giffords Farm. Except for the section with blurred photography, the whole of proposal 5 is visible with neat trimmed hedges and a visible lane between.

3.11.2 In 1999-2000 the surface of the lane for proposal 4 is now hidden by hedgerow trees. The northern two thirds of proposal 5 is clearly visible still although some additional tree planting east of points X and W have obscured the southern section of the route. In the most recent aerial photography, some of proposal 4 is visible in the centre section and the surface of proposal 5 is clearer with the west side hedge appearing less prominent.

3.12 Land Registry

3.12.1 The whole of proposal 4 and the southern end of proposal 5 are included within title number DN564598 described as Bampton Down, understood to be owned by Huntsham Estate Trustees and appears to have been first registered in 2008. The remainder of proposal 5 including the section of the unclassified county road is

registered under title DN566698, Huntsham Barton with the same ownership details and year of first registration recorded. Neither of the title registers makes any reference to any rights of way or otherwise with respect to the sections of proposals 4 and 5 included within the titles.

3.13 Other Consultation Responses

- 3.13.1 A trustee of the Bampton Heritage and Visitor Centre, who are in the course of updating and reprinting the booklet of local walks called 'Bampton Bounds', commented that they would greatly value the addition of the two bridleways detailed as proposals 4 and 5 in the consultation notice.
- 3.13.2 Several local residents had contacted the County Council in response to the Definitive Map Review consultation for the parish. One of these commented that they would welcome the proposal to add two additional bridleways (proposals 4 and 5) but did not give any evidence of use.

4. User Evidence

- 4.1 A number of user evidence forms were received for both proposals with most of the users having used both routes. With regards to proposal 5, eleven user evidence forms were received. The forms covered a period of use dating from 1983 to the present time (2019). Six of the users had used the route on foot, three on horseback and on foot and two users on foot, horseback and when cycling. The frequency of use ranged from ten times a year to maybe once a year. None of the users had ever obtained permission to use the route or reported of being stopped or turned back. Users considered the lane to be a bridleway or restricted byway.
- 4.2 Reasons for believing the route to be public included 'It has been used by locals since we moved here in 1993', 'it is regularly used by many people', 'have not been told otherwise' and 'proper track – never been questioned'. As well as the user evidence forms, an email was also received confirming use of the route on foot and horse from 1979.
- 4.3 With regards to proposal 4, eleven user evidence forms and one email advising of use were also received, although one user had only used the route once, on foot, in 2001. As for proposal 5, use was on foot, horseback or with a bicycle and dated from 1983 to 2019 with frequency (apart from the one time user) being from once a year to ten plus times a year. Reasons for believing to be public were as for proposal 5 and none of the users advised of having permission or being stopped or turned back when using the lane.
- 4.4 A tracking application called Strava (app) is used by runners, cyclists and walkers to log their routes taken and their distance and speed when walking, running or cycling. Using information uploaded by users, Strava publishes 'heat maps' of the routes used by their subscribers. A copy of the heat map for the Bampton area viewed in July 2019 showed that both proposals 4 and 5 had been used by Strava users with walkers/runners tending to use proposal 5 more than proposal 4, although cyclists had used both routes with about the same frequency. The various colours used on the heat map corresponding to the frequency of use by the app users. Although the identity and number of these users is not known, it is considered more likely that people operating Strava would have been doing so whilst undertaking leisure activities as opposed to using the routes in the course of their work or other business activities.

5 Landowner Evidence

- 5.1 The landowners/occupiers who owned land crossed by or adjacent to the two proposals together with those at Dowhills and Giffords Farms were contacted individually and advised of the proposals. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 5.2 Ms Kaye of Giffords responded but as the proposal did not cross or adjoin her land no comments were made.
- 5.3 An email was received from Savills, advising that they act for the Huntsham Estate, but no additional response or comments were received. No responses were received from the other landowners, occupiers or named trustees contacted in respect of this route.

6. Rebuttal Evidence

- 6.1 Near the northern end of proposal 4 south of point Z, an old sign nailed to a tree on top of the west side hedge bank, now slipped and hanging vertically instead of horizontally, says 'Pheasants. Please keep dogs on leads. Thank you. Game & Country Enterprises Ltd'. In the woods to the east of proposal 4 there are some pheasant rearing pens that do not appear to have been used in recent years. The company Game & Country Enterprises Ltd was incorporated in 2000 and dissolved in October 2011. The sign does not refer to the lane being private or raise a question of public access but requests that dogs are kept on leads near the pheasant pens.

7 Discussion

Statute (Section 31 Highways Act 1980)

- 7.1 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. As there has not been a calling into question of the public's use of either proposal the proposals do not fall to be considered under statute.

Common Law

- 7.2 A claim for adding a 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 and that the public has accepted the dedication.
- 7.3 Greenwoods map 1825, the Tithe Map 1844 and 1st Edition 1" OS map 1809 all show both proposals in a similar manner to the surrounding lanes that are today county roads. At the time of these maps the shortest route to Huntsham from Bampton would have been via the roads eastwards from Bampton passing

Sparkhayne and Wick farms before turning southwards at Giffords (point Z) and using proposal 4 towards Bampton Down Cross (point W) and onto Huntsham. If travelling from Shillingford in the north of the parish or the northern parish of Morebath, the most direct route to Huntsham would have been via Dowhills Farm (and point Y) and then proposal 5 to Bampton Down Cross.

- 7.4 When the new road to Huntsham was constructed by the Huntsham Estate in Bampton parish in the mid-1850s it would appear this became the preferred route between Bampton to Huntsham, particularly in the 20th century following the development of motorised vehicles, as this was a wider, more level route and after adoption was maintained to a better standard as a 'main road'.
- 7.5 By publication of the OS 1" and 25" maps of the late 19th century both proposals are shown as defined hedged or fenced lanes throughout following the creation of fields within the section of Bampton Down Common between the two proposals. The section of lane connecting Giffords and Dowhills is now shown and this section of lane was adopted as maintainable highway in the 1940s. On the OS 25" 1st edition both proposals have separate compartment numbers and areas. On the OS 1" map in 1899 proposal 5 was a metalled road, second class with proposal 4 a metalled road third class but by the 1919 edition both proposals were now uncoloured lanes (roads under 14' wide – indifferent or bad winding road).
- 7.6 On the OS 1" maps of 1946 to 1965 the proposals are shown as roads under 14' metalling in 1946 and as unmetalled roads in 1960 and 1965. On the OS 1:25,000 map of 1950 both proposals are shown in a similar manner to the county roads they connect to at points W and Z and as other roads, poor or unmetalled in the map key. Overall the mapping evidence is consistent over time to show the two proposals in the manner of being public roads at the time of the maps' publication dates or at least routes that were available to and appeared to have been used by the public. The depiction of the proposals on the maps corresponds with the reduction of importance of the routes as access to Huntsham over time and consequently the reduced maintenance and condition of the lanes. Historically, the map evidence shows both proposals in a manner similar to what are now the public highways of today.
- 7.7 On the 1910 Finance Act proposal 5 from points Y to X together with the section of unclassified county road between point Y and Dowhills lie within hereditament number 343, with the colouring across the boundary breaking at point X. The field book for hereditament 343 includes an allowance of £24 for F.P. & r/o/w over lane. The lane reference could be to proposal 5 and the section of unclassified county road or to Bridleway No. 4, Bampton north west of Dowhills Farm.
- 7.8 With regard to proposal 4 the colouring breaks across the lane where the boundary of hereditament 352 crosses the lane. Hereditament number 361, adjacent to the south western side of proposal 4 includes a note re 'a road adjoining Bampton Down' which could refer to proposal 4 and 5 along the north eastern boundary of the hereditament or to Bridleway No. 25, Bampton running along the southern boundary. The breaking of the hereditament colouring across the boundaries is supportive that both lanes were considered to be public at that time. The reference to right of way over lane and public road could refer to the proposal routes and is also supportive of the routes' public status.
- 7.9 Bampton Vestry and then from 1894 Bampton Urban District Council (BUDC) were the authority responsible for the maintenance of the roads within the parish from prior to the available vestry minutes of 1763 until 1935. During the later half of the

19th century and early 20th century the Council would put out to tender for the upkeep of the parish main and other roads for a period of time. In the tender notice of 1901, the description of the sections of roads 'from Dowell's Farm to Bampton Down' in division 5 and of 'the Sparkhayne road by Gifford's Farm to Bampton Down' in division 4 of the list of roads included in the tender list, are considered to refer to proposals 5 and 4 respectively as these are the only lanes/tracks shown on any maps between the two farmsteads and Bampton Down. This is evidence that the two routes were maintained by the local ratepayers and at public expense at that time.

- 7.10 In the OS Name Book of 1901, Bampton Down Cross is described as a cross roads on Bampton Down and signed for by the District Surveyor. If only Bampton Down Road running southwards to Huntsham from Bampton Down Cross (point W) was considered to be a public road at that time; it is considered unlikely that Bampton Down Cross would be described as a cross roads. Bampton Down Road is also described as extending from junction of roads (point W) in an OS name book.
- 7.11 Additional references of public maintenance of proposal 4 are found in the parish minutes press reports of 1920 when it was reported that the road Giffords to Bampton Down as 'badly washed'. The parish Surveyor was given permission to place 40 yards of ballast on the Bampton Down Road, near Gifford's Farm. This description is considered to refer to proposal 4 as reference is made to Bampton Down.
- 7.12 After a councillor made a proposal in 1924 that Bampton Urban District Council (BUDC) should cease maintaining a particular parish road, it was considered that there were several other roads that could be considered at the same time. At subsequent meetings the parish Surveyor submitted a list of the recent cost spent on the roads that he considered unnecessary to maintain and their mileage. The seven roads proposed included the road described as Huntsham to Bampton Down or Bampton Down Road (part) (228 metres £1 16s 10d) and lane near Giffords House towards Bampton Down or Giffords Lane (part) (201 metres £5 2s 6d).
- 7.13 These descriptions are deemed to include the section of the unclassified county road between Dowhills and point Y (which is about 220 metres) and the northern end of proposal 4 between points G and Z (about 200 metres). The inclusion of the word 'part' in the descriptions of Bampton Down Road and Giffords Lane indicates that it was acknowledged at that time that the council did not maintain the whole length of these routes to the parish boundary with Huntsham. The length that was being maintained by the parish would correspond to the lengths that were as shown as hedged/fenced lanes on the Tithe Map 1844 and OS 1" 1st edition map of 1809-1900. This was the northern section of proposal 4 and the section of unclassified county road between Dowhills and point Y. The southern ends of proposal 4 and proposal 5 prior to the later 19th century, both crossed unenclosed common land as unfenced/unhedged tracks.
- 7.14 In June 1934 it was reported to the BUDC that Giffords Lane was in a deplorable condition. Although not named on any maps as Giffords Lane, the name could apply to proposal 4, although in 1947 parish minutes, the county road between Wick and Giffords Farm was referred to as Giffords Lane. If the publicly maintained road did not continue south of Giffords, it would seem unlikely that the council would spend money on maintaining what would have been a private access to Giffords Farm only. The continuation of the public highway north of Giffords (point Z) was not adopted until 1947.

- 7.15 In 1944, when the now Bampton Parish Council had the opportunity to list any roads considered unnecessary to the public, they did not propose any roads that should cease to be maintained in the parish.
- 7.16 The proposals were not included in the 1947 handed over records and the end of the unclassified roads west of point Z and south of point Y were noted as cul-de-sacs. However, the end of the road at point Z was described as a 'road junction' indicating that a road or roads did continue from that point.
- 7.17 The user evidence forms received in the consultation period for both proposals shows evidence by the public on foot, horseback and bicycle from 1983 to the present day. The frequency of use is fairly low as the maximum advised is ten plus times a year but overall the user evidence is sufficient to show reasonable use by the public to support the status of the proposals as public rights of way. No users reported been stopped or challenged during their use of the routes. The old sign on proposal 4 would indicate that the tenants, of the adjacent land for pheasant rearing at that time, were aware of use by the public as they requested dogs to be kept on leads.
- 7.18 No comments or evidence has been received from the landowners or current occupiers to indicate that the proposals are not considered to have public rights of way.
- 7.19 The addition of the two proposals as public bridleways is supported by the Town Council and the local Ramblers Association representative. The addition of the lanes as public rights of way was also proposed by the West Somerset Ramblers Association in 2004 as part of the Devon County Council's Rights of Way Improvement Plan consultation.
- 7.20 Overall the documentary evidence is considered to show that at some time in the past and by an unknown landowner, public rights of way have been dedicated over the two proposals at common law and acceptance of the public right of way is supported by the user evidence received.

8. Conclusion

- 8.1 In the absence of any calling into question of the public's use of the two proposals the existence of a public right of way cannot be considered under section 31 of the Highways Act 1980. The existence of public rights of way are therefore considered at common law. The user evidence supports bridleway status but overall the documentary evidence is considered to show that both proposals were considered to be and to some extent maintained, as all-purpose parish highways in the past. Therefore, higher rights than those of bridleway can be reasonably alleged to subsist.
- 8.2 The Natural Environment & Rural Communities Act of 2006 prevents the lanes being recorded as Byways Open to All Traffic and none of the exceptions to prevent extinguishment of rights for mechanically propelled vehicles are considered to apply. Private rights for motorised vehicles will continue as currently for landowners and occupiers.
- 8.3 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding Restricted Byways between points Y - X - W and points X - G - Z as shown on drawing number HIW/PROW/19/012a.

