

Definitive Map Review Parish of Hockworthy

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

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

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

1. Introduction

The report examines the one proposal for change arising out of the Definitive Map Review in the Parish of Hockworthy (within Borden Gate Parish Council) in Mid Devon.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act 1949, completed in September 1950, initially proposed four routes for inclusion as public rights of way. After review by Tiverton Rural District Council and Devon County Council and the inclusion of a footpath connecting to Somerset; two footpaths and three bridleways were published on the draft definitive map in 15th April 1958. These five routes were subsequently recorded on the conclusive Definitive Map for Tiverton Rural District Council published on the 9th June 1964.

The Devon County Council county wide reviews of the Definitive Map under s.33 of the 1949 Act, commenced in 1968 and 1977 but were not completed. In the 1968 review Hockworthy parish proposed that Bridleway No. 3, Hockworthy should be continued down Redgate Lane to Durley, Beer Down Cottage and out to Wood End. In the 1977 review the parish proposed the addition of path from top of Redgate Lane to Beerdown Cottage.

The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

The following Order affecting the Definitive Map for Hockworthy has been made and confirmed since 1964:

Tiverton District Council Hockworthy Footpath No. 2, Public Path Diversion Order 1974.

A Legal Event Modification Order will be made for this change under delegated powers in due course.

The current Definitive Map Review was opened with a parish public meeting held at the Borden Gate Parish Council meeting in July 2018. Some user evidence was received following the meeting. The addition of a public bridleway along Redgate Lane was included as proposal 1 in the current Definitive Map Review for the parish.

The other two parishes within Borden Gate Parish Council (formed in 1974 as a collection of the Hockworthy, Huntsham and Clayhanger Parish Meetings) had no proposals for change and reports on those two parishes were presented to the Devon County Council's Public Rights of Way Committee in March 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 R Radford	-	no response
Mid Devon District Council	-	no response
Borden Gate Parish Council	-	response received
Uplowman Parish Council	-	response received
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
British Horse Society	-	no response
Ramblers' Association	-	response received
Trail Riders' Fellowship/ACU	-	no response
Devon Green Lanes Group	-	no response
British Driving Society	-	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 (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, been taken into account in the preparation of the report.

9. Conclusion

It is recommended that no Modification Order be made in respect of Proposal 1. 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: Willand & Uffculme

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
DMR/Correspondence File	2018 to date	DMR/Borden Gate - Hockworthy

tw070220pra
sc/cr/DMR Parish of Hockworthy
034 260220

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.

1. **Proposal 1 – Addition of a Public Bridleway along Redgate Lane from the county road south of Dare’s Down in Hockworthy parish to the county road at Wood End in Uplowman parish, between points A – B – C – D – E as shown on drawing number HIW/PROW/19/58.**

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

1.1 Background

- 1.1.1 A bridleway along Redgate Lane was claimed by Hockworthy Parish Council in both the Devon County Council uncompleted reviews of 1968 and 1977. No user evidence forms or other evidence was submitted at that time. The addition of a bridleway along the route had not been raised by Uplowman Parish Council during their Definitive Map Review in 2017/2018.
- 1.1.2 After the opening meeting some limited user evidence was received, and some documentary evidence discovered. This, together with the parish’s previous wish in both 1968 and 1977 to have the route recorded, was sufficient for the addition of a bridleway to be included in the current review as Proposal 1 for Hockworthy parish.

1.2 Description of the Route

- 1.2.1 The route starts at the county road running between Chimney Down at point A (ST0244 1894), south of Dare’s Down and opposite the western end of Bridleway No. 3 Hockworthy. The route proceeds westwards along a hedged lane called Redgate Lane past point B (ST0173 1888), at the entrance to Redwoods Farm. After point B the lane narrows and then becomes a very overgrown and sunken lane, continuing westerly to point C (ST0138 1888). From point C the route turns sharply southwards and continues along another section of overgrown sunken lane. There is a field gate across it south of point C, then at point D (ST0139 1864) it crosses a stream and the parish boundary with Uplowman. Continuing in Uplowman the route turns west south westwards, initially still along a double sided hedge banked lane, then a single sided hedge bank before passing through a field gate at point X and following a track along the edge of the woodland. The bridleway joins the county road at point E (ST0091 1844) just south east of Wood End.
- 1.2.2 The route has an improved stone surface from point A to the field gate west of point B. The surface then changes to one of loose, stone, earth and vegetation for the overgrown portion of the lane between west of point B to point D. Between points D and E the surface is of the lane and track through the woods is of earth with some stone. Photographs of the route in the reverse direction from E to A are included in the backing papers.

1.3 Consultations

- 1.3.1 Following their meeting in January 2020, the Borden Gate Parish Council clerk advised that it was minuted that “all are agreed that the Redgate bridle path should indeed be reinstated as it was used and appreciated by many local people”. Uplowman Parish Council advised that their Councillors had no comments to make on the proposal.

- 1.3.2 The local representative of the Ramblers Association advised that one of their members had walked the route but did not provide any additional information. They had no other comments and offered no objection to the proposal.
- 1.3.3 Two Hockworthy residents who had not used the route themselves responded to the consultation. One advised that horse riding friends used the route reasonably regularly 10-13 years ago before it became too overgrown. "As a local walker, runner and rider the addition of this public right of way would add substantially to the quality of the routes in the area. Looking at old maps and the general lay of the land, I am sure it was once a well-trodden/ridden path".
- 1.3.4 Another advised that as a resident in the parish for about 3 years he was unable to provide any evidence for the path's previous use as a public right of way, however it appears natural that it would have been so. The route would provide great benefit for walkers and riders in an area providing the "missing link" that would allow an approximately 9.5 km route almost completely off road.

1.4 Documentary Evidence

1.4.1 Ordnance Survey and Other Maps

- 1.4.1.1 The Ordnance Survey and other mapping does not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
- 1.4.1.2 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.
- 1.4.1.3 Old Series 1809: Redgate Lane is shown as a defined lane between points A and D in a similar manner to the county roads it joins. On the OS surveyors' drawings of 1802 that were prepared at a scale of 2" to the mile for publication of the first 1" series, Redgate Lane is also shown as double sided hedged lane between points A and D. South of point D the land is shown as an area of land called Beer Down. By the time of the Tithe Map some forty years later some enclosure and formation of fields in this area had occurred.
- 1.4.1.4 Revised New Series 1899-1900: On this edition Redgate Lane is shown as a defined lane to point D (Metalled Road: Third Class), the same as the county road it joins at point E and by pecked lines to point E. The word 'Smithy' is written in the location of Beer Down Cottage, west of point D.
- 1.4.1.5 Popular Edition 1919: On this edition Redgate Lane is shown by two solid lines very close together (Minor Roads) for the whole length, points A to E. The connecting county road at point E is shown as an Indifferent Road under 14' wide and the county road at point A as Other Road Fit for Ordinary Traffic.

1.4.1.6 Greenwoods 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.

1.4.1.7 The map shows Redgate lane as a 'cross road' and as it is today between point A and point D on the parish boundary. From point D the route shown continues southwards to join a lane to the south over Bere Down. Durdley is shown called Durdley and there are two separate lanes running northwards from Redgate Lane to Redwood Farm.

1.4.1.8 OS 1st & 2nd Edition 25" to a mile 1880-1890 & 1904-1906

Redgate Lane is depicted as a defined lane throughout its length to just west of Beer Down Cottage and with occasional mature hedgerow trees shown along the lane. The route is named Redgate Lane in two places, one in each parish. The western end of the lane is shown as an unfenced track. A footbridge is shown north of point E giving access to Redgate Lane from the north west with a ford shown at point E.

1.4.1.9 There are four bench marks shown along the lane between points A and C. The dashed lines across the end of the lane at point A are believed to indicate a change in surface between the lane and the county road. On the 2nd edition very little has changed from the earlier map. There are now only two bench marks between points A and C.

1.4.1.10 Bartholomew's Half Inch to the Mile Maps Sheet 35 North Devon 1903, 1921 & 1943

Bartholomew based their half-inch maps on more detailed Ordnance Survey mapping at one-inch to the mile and published at the half-inch scale from the 1890s to the 1970s. The maps were progressively revised and updated with new information and became Bartholomew's trademark series. Associated mainly with recreation, the maps were popular, influential and sold well, particularly with cyclists and tourists. The suggestions for revisions by the Cyclists Touring Club were acknowledged on the maps in the heydays of rambling and cycling. The maps contained the disclaimer 'The representation of a road or footpath is no evidence of the existence of a right of way'.

1.4.1.11 On the 1903 edition Redgate Lane is shown as an uncoloured double solid sided lane throughout its length and including the section through Uplowman parish and in the same manner as the now county road that it joins at point E. The key advises that 'The uncoloured roads are inferior and not to be recommended for cyclists'.

1.4.1.12 On the 1921 map Redgate Lane is again shown as solid sided uncoloured lane for the entire length and the key now says 'The uncoloured roads are inferior and not to be recommended'. This edition of the map refers to Motoring Roads and Indifferent roads as being passable for cyclists, presumably with the rise in car ownership (1,715,000 registered motor vehicles in the UK in 1926) and that the maps were now used by motorists as well as cyclists.

- 1.4.1.13 In the 1943 edition Redgate lane is once more shown as a solid sided lane throughout its length from point A to point E. The key for this map refers to the uncoloured routes as 'Other Roads & Tracks'. All three editions also show a lane running northwards from point B, through the site of Redwoods Farm and continuing northwards through Slantycombe Farm to re-join the now county road north of point A. This would be the route for which allowances were given in the Finance Act as a public road.
- 1.4.1.14 OS 1 inch to a mile maps of 1946, 1960 & 1966
On the 1946 edition Redgate Lane is shown as an uncoloured defined lane (Unmetalled Roads) between points A and west of D. The width of the lane reduces from point B to west of point D with the wider section corresponding to 'Roads under 14' metalling bad' and the narrower section as 'Unmetalled Roads'. The section through the woodland to point E is shown as an unfenced road. The connecting county roads are shown orange (Roads Under 14' metalling good) at point A and as the east end of Redgate Lane at point E.
- 1.4.1.15 In the 1960 edition Redgate Lane is shown as a defined uncoloured lane at the same width throughout the fenced/hedged section between points A to west of point D, which corresponds to Roads Under 14' metalling, Untarred. The unfenced section is shown by a pecked line, Paths and Tracks. The connecting county roads at point A are now coloured yellow as Roads Under 14' of Metalling, Tarred and white at point E, Unmetalled Roads.
- 1.4.1.16 The 1967 edition shows public rights of way as recorded on the Definitive Map at that time. Redgate Lane is shown as in the 1960 edition map with the connecting county road coloured yellow at point A as before. The county road, Morrells Lane to the north of point E is now also coloured yellow but the road at point E remains uncoloured. On all three editions a building is shown at Durley, although not named; but not at Beer Down Cottage.
- 1.4.1.17 OS Post War Mapping A Edition 1 : 2,500 1970
Redgate Lane is depicted as a defined double hedged lane between point A and west of point D to the edge of the woodland section in Uplowman parish. The lane is annotated 'Redgate Lane (Track)'. There are dashed lines across the track at points A and C and at the entrance track to Redwoods Farm, considered to represent a change in the surface of the lane. Durley is annotated on the map but there are no buildings shown at the site of Beer Down Cottage as on the earlier maps. The land through which Redgate lane passes east of point E is now shown as woodland.
- 1.4.1.18 OS 1:25,000 maps of Great Britain – Sheet ST01 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.

- 1.4.1.19 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads - Poor, or unmetalled'. Routes shown as a single pecked line or as two narrow solid lines, and labelled F.P. on the map and described as Footpaths only (no mention of Bridleways, RUPPs or ORPAs) in the key. 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'. The maps were published prior to publication of the conclusive Definitive Map for Mid Devon.
- 1.4.1.20 This map shows Redgate Lane as a defined uncoloured lane from point A to point E, corresponding to 'Other Roads - Poor, or unmetalled' and in a similar manner to the current county road that Redgate Lane joins at point E. The western section of Redgate Lane is shown as unfenced through the woodland in Uplowman parish.

1.4.2 Tithe Maps and Apportionments

- 1.4.2.1 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*'.
- 1.4.2.2 Hockworthy Tithe Map 1845 and Apportionment 1842.
The Hockworthy tithe map does not colour or shade the roads or lanes that are county roads of today and does not allocate numbers to these roads/lanes for the apportionment. Redgate lane is shown as a double solid sided lane throughout the length of the lane that lies within Hockworthy parish between points A and D, unshaded and not numbered. The section of lane running northwards from Redgate lane at point B and leading to the house and buildings at Redwoods Farm is numbered 299.
- 1.4.2.3 In the Tithe apportionment for Hockworthy, number 299 is included under the holding of Redwoods, total size 55 acres, owned and occupied by John Chave and called 'Redwoods Road', no state of cultivation mentioned and with an area of 19 poles. The area given would only relate to this short section of access lane running north of point B to Redwoods Farm and not to part of Redwood Lane.
- 1.4.2.4 Durley Farm, north of point C, is listed as a separate holding of 44 acres under the ownership of Arthur Buckmill and occupation of John Buckmill. The apportionment makes no reference to any road or lane in connection with the holding. Slantycombe Farm north of Redwoods was called Lammacombe or Sammacombe on the Tithe Map and number 270 was described as Road. Number 270 is the defined lane running north and then east from Slantycombe Farm to Chimney Down and is ordnance number 345 on the OS 25" 2nd edition.

1.4.2.5 Uplowman Tithe Map 1843 & Apportionment 1841

The Uplowman tithe map does not include any colouring or numbering on any roads or lanes whether those roads are now county roads or lanes such as Redgate Lane or only access lanes to fields/property.

1.4.2.6 On this Tithe map Redgate Lane is shown a double solid sided hedged/fenced lane south west of point D, at the parish boundary. For about one third of the length of the lane that is in Uplowman, it is shown as a one sided hedged/fence with other side unfenced for about a quarter of the length and about the remaining three fifths of the length as an unfenced/hedged track through what is now the woodland. The part unfenced and wholly unfenced sections of the lane cross apportionment number 61, included under the holding called Beer Down and described as 'Common' of 19 acres, owned by the Executors of Thomas Elworthy and occupied by Joanna Elworthy. The cottage and buildings as seen on the Tithe and early 20th century 25" OS maps, west of point D, called Beer Down Cottage is included as a separate holding of just over an acre under the heading of 'Part of Beer Down'. The property is owned by the Executors of Thomas Elworthy and Robert Redwood and occupied by Robert Redwood.

1.4.2.7 The land included in the apportionment holdings of Durley and Beer Down Cottage was lot 3 of Redwoods Farm in the sale of 2007. There are now no occupied dwellings at Durley or Beer Down Cottage.

1.4.3 **OS Boundary Book 1886** (Kew ref OS 26/2688)

1.4.3.1 The OS Boundary Book includes sketches showing the precise position of the parish boundary between two parishes. The page headed 'The boundary of Uplowman' shows Redgate Lane as a defined double sided solid boundary lane running both northwards from the parish boundary at point D into Hockworthy parish and west south westwards in Uplowman parish. The plan is annotated 'C.S.' just south of the parish boundary (point D) which refers to the parish boundary being 'centre of stream'.

1.4.4 **OS Name Books Early 20th Century**

1.4.4.1 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 or agent 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.

1.4.4.2 In the OS Name Book 1903 including Hockworthy parish (Kew Ref OS 35/1687) Redgate Lane is described as 'A road from Ford at NW Corner of Beer Down to junction of roads at SE Corner of Six Acres'. The entry was signed for by Mr Harry Cleave, agent, Estate Office, Huntsham. In the same Name Book the entries for Beer Down (land south of point B), Redwoods Farm and Dare's Plantation were also signed for by Mr Cleave.

1.4.5 Finance Act Plans and Field Books 1910

- 1.4.5.1 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 valuer/surveyor 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.
- 1.4.5.2 The allowance given was often on the basis of a figure such as £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.
- 1.4.5.3 On the Finance Act plan Redgate Lane is included with two hereditaments. From the northern field boundary west of point A to point X the lane is within number 4, Redwoods Farm and from point X to point E within number 327, Beerdown. The eastern end of the lane, west of point A, is excluded from any hereditament with the land to the north being within hereditament number 39 and the land to the south within number 15.
- 1.4.5.4 Hereditament number 4 in Hockworthy parish, Redwoods Farm, described as House, Buildings and Land was a holding of 127 acres owned by H L A Troyte (Huntsham Estate) and occupied by Joe Durman on a yearly tenancy. On the first page under the heading *Fixed Charges, Easements, Common Rights and Restrictions* is written 'Public Road'. On page 2 of the field book under *Particulars, description, and notes made on inspection* is written 'A mixed farm of medium quality land, well watered but with bad approach.' Under the heading *Charges, Easements, and Restrictions affecting market value of Fee Simple* is written 'Public Road in Ord Nos 355, £25'. The £25 referred to in page 2 is carried forward to page 4 under the heading *Public Rights of Way or User*.
- 1.4.5.5 Ordnance number 355 refers to a field crossed by a track that is part of Slantycombe Farm (north of Redwoods). The track joins into a lane leading to the north side of Redwoods Farm. This track across the field is not the claimed route. Although referred to as a public road, the track would appear to be for the benefit of Redwoods Farm only and would probably be accurately described as an easement rather than a public right of way or user.
- 1.4.5.6 Hereditament number 327, Beerdown (in the Sampford Peverell field books which includes Uplozman) is described as Land, House, Barn Stable of 305 acres was also owned by H Troyte and occupied by Joseph Sweet on a yearly tenancy. Under the heading of *Charges, Easements and Restrictions affecting market value of Fee Simple* on page 2 is written 'Easement over Ordnance no 7 for Occ of Beer Down Cottage say £10'. On page 4 of the

field book the £10 is entered under the heading of 'Easements'. Ordnance number 7 is the land crossed by Redgate Lane between point X and E.

1.4.6 Vestry Minutes

1.4.6.1 Hockworthy vestry minutes from 1883 to 1942 are held in the South West Heritage Centre (SWHC ref 3083 A/PV1). In March 1885 authority was given for the surveyor to have power to make contracts for drawing, hauling, quarrying and purchasing materials as necessary for the parish roads. Between 1884 and 1889 the amount spent on the parish roads annually varied between £66 and £97. In March 1892 and again in 1893 complaints were made about the standard of the roads in the west side of the parish. Within the minutes there were no specific references to Redgate Lane.

1.4.6.2 Uplowman vestry minutes from 1820 to 1882 are also held at the South West Heritage Centre (SWHC - ref 829 A/PV1). There are references to the waywardens of the highways and repairs to roads and bridges within the parish but no references were found naming Redgate Lane.

1.1.4.7 Records of the Troyte (Huntsham) Estate 1800s ref 1926 B/T/E/10

1.4.7.1 The South West Heritage Centre contains a number of documents deposited by the solicitors who acted for the estate in the 1800s. Reference no 3 in this collection includes documents relating to Redwoods Farm. A poster advertises that Redwood Farm of 55 acres was to be auctioned on 5 July 1864. It seems that the farm was not sold then, or was again for sale, as in February 1866 Charles Troyte, the current tenant for life of the estate, wrote to say that there was an estate called Redwoods now for sale and asked what money the Troyte trustees still had to buy land.

1.4.7.2 In March 1866 a Mr Wright was instructed by the Huntsham estate to prepare a valuation of Redwoods Estate. The plan attached to the valuation shows all the land included was north of Redgate Lane except for one field south of point B. Redgate Lane is shown on the plan as fined lane but is not numbered or included in the schedule of the property. The individual fields are listed and numbered as per the numbers given in the Hockworthy Tithe Map & Apportionment. The access lane north of point B to Redwoods is numbered 299 and described as 'Road (private)' on the valuation schedule.

1.4.7.3 In a covering letter for the valuation Mr Wright has written '*The roads in every direction by which it is approached are of the very worst description, rendering not only the conveyance of manure to, but the removal of the produce therefrom very expensive.*' The farm was purchased by the estate in May 1866 at £1,750.

1.4.7.4 Redwoods Farm together with Slantycombe Farm was subsequently let to Mr Edwin Goddard from 1877 on a yearly tenancy. In the schedule of the land in the tenancy document there is no reference to Redgate Lane in the schedule of land included in the tenancy. The access lane north of point B is again included as number 299 and called Road (private).

1.4.8 Parish Council and Parish Meeting Minutes

- 1.4.8.1 Minutes for the Hockworthy Parish Meeting (prior to the formation of Borden Gate Parish Council in 1976) are available at the SWHC for the period 1894 to 1947 (ref 4386 A/PX5). The parish meeting minutes from 1948 to 1976 had not been deposited. The minutes for Borden Gate Parish Council from 2007 to 2019 are held by the current parish clerk. The minutes from 2016 are available on the parish council website but the minutes from the formation of Borden Gate Parish Council in 1976 to 2006 have not been traced.
- 1.4.8.2 The Hockworthy Vestry minutes make reference to a discussion in March 1890 on metalling of roads, which were in a very bad state. In March 1892 and 1893 there were complaints re the standard of the roads in the west side of the parish but no roads were mentioned by name. When Hockworthy Parish Meeting was formed in 1894, Mr Goddard, the tenant at Redwoods Farm, was appointed an overseer. There are no references to Redgate Lane in either the Hockworthy Vestry or Parish Meeting minutes or the Borden Gate Parish Council minutes that were available to view.
- 1.4.8.3 The Uplowman Parish Council minute books covering the period 1894 to date are retained within the parish and the parish council minutes since January 2003 are also available on the parish council website. There were no references to Redgate Lane within the minutes.

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

- 1.4.9.1 The Parish Council survey of their public rights of way to be considered for inclusion on the Definitive map was undertaken in 1950 and the lane was not included as a proposal by either parish.
- 1.4.9.2 Path number 2 which proceeds south westward from the village centre to the county road near Luckleigh Farm includes under remarks '*an old "church path", formerly used by those living at South Staple & Redwoods Farm to reach Hockworthy Village and church on foot.*' This path was recorded as Footpath No. 2, Hockworthy. Path number 3 starts from the west end of Footpath No. 2 and under remarks is written '*This is a continuation of path No. 2 and runs from Luckless Cottage to the Staple Cross Uplowman road opposite the lane leading to Redwoods Farm. An old church path and bridle way.*' This path was recorded as Bridleway No. 3, Hockworthy and crossed some fields.
- 1.4.9.3 Uplowman Parish Council initially proposed 25 footpaths but no bridleways or roads used as public paths 'rups'. The instructions on surveying the public rights of way in the parish were headed 'Footpath Survey' and it was not uncommon for parishes to include only those routes within field boundaries and not those that ran along green lanes or fenced or hedged tracks in their surveys.
- 1.4.9.4 Neither parish included Redgate Lane within the 1950 survey of their parish.

1.4.10 Devon County Council Uncompleted Reviews of 1968 & 1977

- 1.4.10.1 In response to the 1968 review a letter was received from Captain Fellowes as Chairman of Hockworthy Parish Meeting and referring to a parish meeting held on 30th March to consider the letter dated 8th February from Devon County Council (letter from DCC not in file). The copy letter in the file is not dated or date stamped and the parish minutes were not available for the late 1960s. Captain Fellowes letter writes that *'it was decided as follows. 3. The meeting expressed a wish that the existing bridleway marked 3 on the map running from Luckless Cottage to the county road south of Daresdown, should be continued and shown as registered as a public right of way (bridleway) down Redgate Lane to Durley, Beer Down Cottage and out to Woodend, where it joins Morrells Lane. I have marked this in ink (4) on the map.'*
- 1.4.10.2 On the copy of the Definitive Map sent to the parish with the review letter the letter number 4 in blue ink has been written in four places along the section of Redgate Lane that lies within Hockworthy parish.
- 1.4.10.3 In a letter dated 4th July 1971 (in relation to the 1968 review) the clerk to Uplowman Parish Council advised the County Council that 'after inspecting the map enclosed with the letter it was agreed to confirm the Footpaths as shown thereon, with the exception of path numbered 1 which was closed in 1965'.
- 1.4.10.4 With regards to the Devon County Council review of 1977, the clerk of Borden Gate Parish Council (formed in 1974 as a collection of the Hockworthy, Huntsham and Clayhanger Parish Meetings) wrote to Devon County Council in April 1978. The clerk wrote 'With reference to your letter of the 9th November 1977, I return herewith the Parish Maps of Hockworthy and Huntsham together with the submissions complied by the two Chairmen of the Parish Meetings.' The yellow summary form provided by Devon County Council for Hockworthy had been pre typed with 'It is suggested that the following paths should be shown on the Definitive Map as public rights of way'. At number 2 it is written From: Top of Redgate Lane To: Beerdown Cottage. A copy of the blue form for a proposal for new entry of a right of way on map, with more information was not forwarded and no user evidence forms or any other evidence was supplied. No annotations were made to the copy of the Definitive Map supplied by the County Council.
- 1.4.10.5 For the 1977 review in Uplowman parish, a letter was received from the parish clerk in June 1978. The clerk had made a list of six suggestions for changes to the rights of way in the parish but these made no reference to Redgate Lane.
- 1.4.10.6 The 1968 and 1977 County wide reviews did not progress (apart from the Limited Special Review to reclassify RUPPs in the early 1970s) but the proposals and any evidence submitted by parish councils and parish meetings has been retained on file.

1.4.11 Aerial Photography RAF 1946-1949, 1999-2000, 2006-2007 & 2015

- 1.4.11.1 The 1946-1949 aerial photography is a little blurred although the route of Redgate Lane can be seen by the appearance of the line of trees in the hedgerows. The surface of the lane can only be seen in the section of lane northwards of point D and south westwards of point D through the woodland. Beer Down Cottage west of point D is visible together with buildings at Durley and Redwoods.
- 1.4.11.2 In 1999-2000 Redgate Lane is clearly visible as a hedged lane between points A and C with the hedges trimmed and the surface of the lane visible along this section. From point C southwards to point X the route of the lane can be seen by the width of the hedges bordering the lane. The lane is not visible through the woodland in Uplowman parish.
- 1.4.11.3 On the 2006-2007 photography the lane's hedges are neatly cut and the position of the lane and the surface in most parts is visible from point A to an entrance into the field on the western side of the lane south of point C. The remainder of the lane is hidden by the hedgerow trees and woodland at the south western end of the route. The farm was sold in 2007.
- 1.4.11.4 In 2015 the hedges are trimmed and surface visible to the field gate into a field to the south between points B and C. A track going across the lane from field to field can be seen south of point C. South of this point the hedgerow trees obscure the lane as does the woodland in Uplowman parish.

1.4.12 Land Registry

- 1.4.12.1 The land through which the majority of Redgate Lane passes, on the Hockworthy side between points A and X, appears to have been first registered following the farm sale in 2007. The eastern end of Redgate Lane between points A and B is registered to Redwoods Farm (called Lot 1 in the 2007 sale) under DN556688. The land to the west of points C to D, the field between points D and X together with the section of Redgate Lane between points B and C is registered under DN556743 (Lot 3 - the old Durley Farm and Beer Down Cottage). The land to the south of Redgate Lane between points A and C (Lot 2) is separately registered under DN556721. The one field north west of point A, part of Dare's Down, is registered as land adjoining Dare's Down Farm under DN440429.
- 1.4.12.2 The register of title for Durley/Beer Down Cottage makes no reference to any rights of access for the owners or occupiers of that land, over that part of Redgate Lane (west of point X or east of point B) that is not within the ownership of that title. Access over either end of Redgate Lane would be required to access the Durley land. The register of title for the Lot 2 land (south of Redgate Lane) makes no reference to any rights of access for the owners or occupiers of that land to use Redgate Lane to access their fields.
- 1.4.12.3 The western end of the route from point X to point E (wholly in Uplowman parish) is registered to DN566304 described as Woodland to the South of Grant's Copse Huntsham and owned by the Trustees of the Huntsham Estate. The land appears to have been first registered in 2008 and makes no reference to any rights of access along the section of Redgate Lane that passes through the woodland.

1.5 User Evidence

- 1.5.1 Five completed user evidence forms have been received. A member of the local Ramblers group had also walked the lane but no dates or other information were provided.
- 1.5.2 Of the user forms received Mr Bainbridge advised that he had used the route at least once a month from 1982 to 2000 as part of a circular horseback ride. He rode unopposed and the lane is part of a long route of tracks. There were gates at either end of the two grass fields and no obstructions. He had not obtained permission to use the route and had never been stopped or turned back. He believed the owner/occupier was aware the public were using the lane as the occupants of Redwoods Farm would see them sometimes. He had never seen any notices deterring use by the public.
- 1.5.3 Mrs Bainbridge had ridden the route about three times a year between 1981 and 2000 as part of a circular hack. People used the lane and the gates were never locked. She had never obtained permission to use the route and had not been stopped or turned back when using the route or told it was not public. She believed the owner/occupier was aware people were using the lane because people did. Under any additional information she had added 'overgrown at times in parts, had to dismount doing gates & wet at Woodend so rode in dry/summer time only'.
- 1.5.4 Mrs Webber advised that she had used Redgate Lane from 2007 once or twice a year and more in earlier years on horseback. The route is clearly a lane on maps. The lane's overgrown hedges would mean that she would divert along the field headlands. In response to the question about obtaining permission to use the route she had commented 'Hunt uses'. She has not been stopped or told the route was not public and was not sure if the owner/occupier was aware of the public using the path. She had not seen any notices.
- 1.5.5 Mr Hughes advised that when he first moved to Hockworthy in 2006 he regularly rode Redgate Lane about 10 times a year for about two years with no problems. He had not obtained permission to use the route or seen any notices. After about two years of using the route, the new owner of Redwoods Farm stopped him and said it was not for riding for anymore. He had been advised that it was a regular route for many riders in the area, which could be seen by the number of hoof tracks. It did become muddy in winter and became overgrown.
- 1.5.6 Mrs Hughes advised she rode Redgate lane regularly from 2006 to 2008 about 8 times a year as part of a circular horse ride. The route had brambles and mud. She had not obtained permission to use the route or seen any notices. On her last use of the route she was seen and told by the owner of Redwoods Farm that she had no right to ride there.

1.6 Landowner Evidence

- 1.6.1 The landowners and occupiers who owned/farmed land crossed by the proposal or had land adjacent to the proposal route were all contacted individually and advised of the proposal. They were invited to submit their comments and any other information they wished to add by way of a completed landowner evidence form or otherwise.

- 1.6.2 Mr & Mrs Rowe had moved to Dare's Down in the mid eighties and own the field adjoining the lane north westwards of point A. They were informed by local farmers and other local residents about the bridleway, part of which was from points A to E; with the bridleway continuing eastwards from point A to Hockworthy and continuing through Hurds Farm to Lea Farm and beyond. Since 1985 they have considered the lane to be a public bridleway which connects up with Bridleway No. 3. The route was used on a regular basis by numerous riders, a popular ride but not now used as much as it was. Mrs Rowe was never asked or stopped from using it. There were two gates en-route, not locked. On three occasions she had trimmed parts of the bridleway between points A and E to maintain the access to make it easier to negotiate for horses. With new occupants the lane has become impassable for horses.
- 1.6.3 Mr & Mrs M Chapple have farmed at Redwoods Farm since 2007. They do not consider the lane to be a public right of way as this was confirmed by a local search to Mid Devon District Council when the property was purchased. They have seen people using the route irregularly but not all of the route as it is impassable. For the passable part of the route they gave permission to a neighbour and daughter in 2013 and two other neighbours at a later date. The three or four people to whom permission was given to use the lane have not completed user evidence forms. Local hunts have permission to go across their land. On the approximate dates of 2009 - horse and rider; 2010 and 2106 - walker; 2015 - off road vehicles and 2017 - motorbikes they have stopped someone from using the way and told them that it was not public.
- 1.6.4 They erected the Private – No Public Right of Way sign at point X in 2015 and a paper sign at point A which subsequently deteriorated. The gate at point X was not locked but gates just south and east of point C were tied across the lane. Moveable sheep hurdles are usually across the lane at point B. Under additional information they advise that they could not walk all of the lane in 2007 due to undergrowth and branches. The section from west of point B to point D is completely inaccessible to horses and a walker would have to attempt to crawl through brambles, climb over 2 tied gates and climb over and under tree branches across the lane.
- 1.6.5 Mr & Mr M Chapple and Mr A Chapple as landowners of the section of Redgate Lane that lies within Hockworthy parish made a Section 31(6) deposit for their land including Redgate lane in December 2019. A Section 31(6) does not apply retrospectively.
- 1.6.6 No response to the consultation has been received from the Trustees of the Huntsham Estate or their agents in respect of their ownership of the section of the route through their woodland between points X and E.

1.7 Rebuttal Evidence

- 1.7.1 In June 2018 a sign saying 'Young Pheasants Please Keep Dogs on Leads Thank you Game & Countryside Enterprises Ltd' was noticed near point E at the start of the track alongside the woodland owned by the Trustees of Huntsham Estate. The company Game & Country Enterprises Ltd was incorporated in 2000 and dissolved in October 2011. They are understood to have leased land from the estate for pheasant rearing. The sign requests

that dogs are kept on leads near the pheasant pens which would indicate that they were aware of people using the track.

- 1.7.2 At point X, at the field gate separating the woodland owned by Huntsham Estates and the farmland owned by Redwoods Farm there is a sign (seen in June 2018) saying 'Private – No Public Right of Way' which was erected by Mr & Mrs Chapple in 2015. The gate was not locked. The sign would be better seen when travelling eastwards from point E towards point D but would probably be seen from the other direction when closing the field gate. No signs were visible elsewhere along Redgate Lane.

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 is considered to be a calling into question for the purposes of Section 31 but on this occasion no Schedule 14 application has been submitted. The proposal to add Redgate Lane as a bridleway was made by Hockworthy Parish Meeting, following the County Council's request for amendments to the Definitive Map in 1968 and 1977. This would not be sufficient to be a calling into question. There is evidence of users been stopped from about 2008 - 2009 (landowner and user evidence) and this and the erection of the 'Private – No Public Right of Way' sign in 2015 could be considered a sufficient act to call into question the public's use of the lane. Although there is some user evidence for the relevant period, this is not of sufficient quantity to show that a public bridleway can be deemed to have been dedicated under statute.

Common Law

- 1.8.3 A claim for a 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.
- 1.8.4 The documentary map evidence records the existence of Redgate Lane as currently, since at least the early 1800s as shown on the early 1" to a mile OS maps. On the 1809 Cassini 1" maps the lane is shown as similar in status to the adjoining county roads between points A and D. In 1899 and 1919 Redgate lane is shown as a through route between points A and E; as a 'Third Class Road' and 'Minor Road' respectively. The 1899 edition makes reference to a Smithy at Beer Down Cottage. The Greenwood's Map of 1825 is similar to the 1809 map.

- 1.8.5 The Hockworthy and Uplowman Tithe Maps did not colour roads or number the roads shown the map that are county roads today. On the Hockworthy map Redgate Lane was not numbered, although the access lane to Redwoods Farm was numbered and listed as Road in the Tithe Apportionment. The section of Redgate lane in Uplowman parish was also not numbered with the unfenced track through the woodland included in the apportionment number 61, described as Common. The properties at Durley and Beer Down Cottage had their own apportionment entries and Redwoods, Durley and Beer Down Cottage were separately owned and occupied at that time. All three would have used Redgate lane to access their properties.
- 1.8.6 On the OS 25" maps of 1880 and 1904 the lane is shown as a defined lane to point X and as an unfenced track west through the unimproved land. The lane is named with bench marks shown between points A and C. Dashed lines across the lane at point A could indicate a change in surface between the lane and the county road. A footbridge is recorded north of point E to give access to Redgate Lane from the north west with a ford at point E.
- 1.8.7 The Bartholomew's Half Inch Maps of 1903, 1921 and 1943 all show Redgate lane as a through route and as an uncoloured defined lane. The uncoloured road were classified as inferior and not recommended for cyclists (1903), not to be recommended (1921) and Other Roads & Tracks (1943).
- 1.8.8 The 1" OS maps of 1946, 1960 & 1967 continue to show the lane as through lane. In 1946 edition the section between points A and B is shown as a Road Under 14' of Metalling Bad with the remainder as an Unmetalled road. The later editions show the lane as an Unmetalled Road. Redgate Lane is shown as an 'other road – poor or unmetalled' on the larger scale OS map of 1961.
- 1.8.9 The map evidence shows that Redgate Lane has physically existed for many years and has been depicted as a through route during that time. The lane would have provided access to Redwoods Farm, Durley and Beer Down Cottage from either end. The way the lane was depicted in the mapping would indicate that it would have been available for the public to use. There was a ford and footbridge at point E in the early 1900s. The maps do not however, provide evidence as to status or whether the lane was ever publicly maintainable even if used by the public.
- 1.8.10 In the OS Name Book of 1904, Redgate lane is described as a 'Road' and not as a lane or occupation road. However, the description does not say parish road and the name and spelling of Redgate Lane is signed for by the Huntsham Estate agent. The Huntsham Estate are understood to have owned most of the land bordering Redgate Lane and a good part of the parish at that time. The description as a road though could indicate that the lane was more important than an access track to the three farms. Although the lane was considered to be owned/maintained by the estate, it could have been used by the public as part of the local highway network.
- 1.8.11 In the Finance Act plans of 1910, Redgate Lane is included within hereditaments number 4 Redwoods and 327 Beerdown, with a short section at the eastern end excluded. Hereditament number 4 included Redwoods, Durley and Beer Down Cottage within the one holding and owned by the Huntsham Estate. An allowance is made for a 'Public Road' within the hereditament but this for a track across a field north of Redwoods Farm and

would appear to be more of an easement for Redwoods Farm, to provide an alternative access to Redwoods apart from using Redgate Lane. The field book makes reference to the farm having 'a bad approach'. There is no reference to Redgate Lane in the Hockworthy field book and inclusion with the hereditament indicates that the lane was not considered a public road at the time. However, the route did not pass through the farm yard or cross fields within the Redwoods hereditament and would therefore not interfere or cause inconvenience to farming the holding. It is therefore not unusual that an allowance was not included for a public right of way along Redgate Lane even if one was considered to exist at that time.

- 1.8.12 In the hereditament for Beerdown an allowance is included for an easement over the land crossed by Redgate Lane for the benefit of Beer Down Cottage. There is no reference to any public right of way. An easement or private right of way is usually for all purposes with all types of traffic and which would include wheeled vehicles. The 1899 OS 1" map showed a Smithy at Beer Down Cottage. The fact that an allowance for an easement was included would indicate that the Uplowman section of Redgate Lane was also not considered a public highway at that time. It is however possible that the route was used by the public at a lesser status than that of public highway such as footpath or bridleway. As the route passed across common land at that time, it is also not unusual that no allowance was included for a public right of way even if one existed at that time.
- 1.8.13 In the valuation prepared for the Huntsham Estate in 1866, Redgate Lane was shown on the plan but was not numbered or included in the schedule of the holding. The access lane northwards to Redwoods Farm from point B was included and called a private road. A covering letter by the valuer referred to the roads in every direction by which Redwoods Farm was approached to be of the very worst description. The valuation would indicate that Redgate Lane was not considered to be part of Redwoods Farm at that time and was referred to as a road by the valuer. It seems that both sections of Redgate Lane, west and east of point B, were not in a good condition for farm traffic of the day.
- 1.8.14 Redwoods Farm was subsequently purchased by the estate and let to a Mr Goddard in 1877. Redgate Lane was not included as part of the tenancy at that time although the access lane north of point B was included.
- 1.8.15 The Vestry and Parish minute books that were available for both parishes do not make any reference to Redgate Lane.
- 1.8.16 In the parish survey of 1950 Hockworthy included three bridleways and a footpath. The bridleways proposed included sections across fields which could be why Redgate Lane, as a defined lane for the whole length in Hockworthy parish, was not proposed at that time. Footpath No. 2 and Bridleway No. 3 run from Hockworthy village westwards and Redgate Lane continues this route westwards across the parish. Uplowman Parish Council proposed twenty five footpaths for inclusion on their Definitive Map but did not include any bridleways or RUPPs.
- 1.8.17 In the Devon County Council uncompleted reviews of 1968 and 1977 Hockworthy Parish requested that Redgate Lane be added as a bridleway on both occasions. No user or other evidence in support of the edition was added at that time but the request would suggest that the lane was being

used by walkers and riders at those times and that its omission from the Definitive Map was noticed.

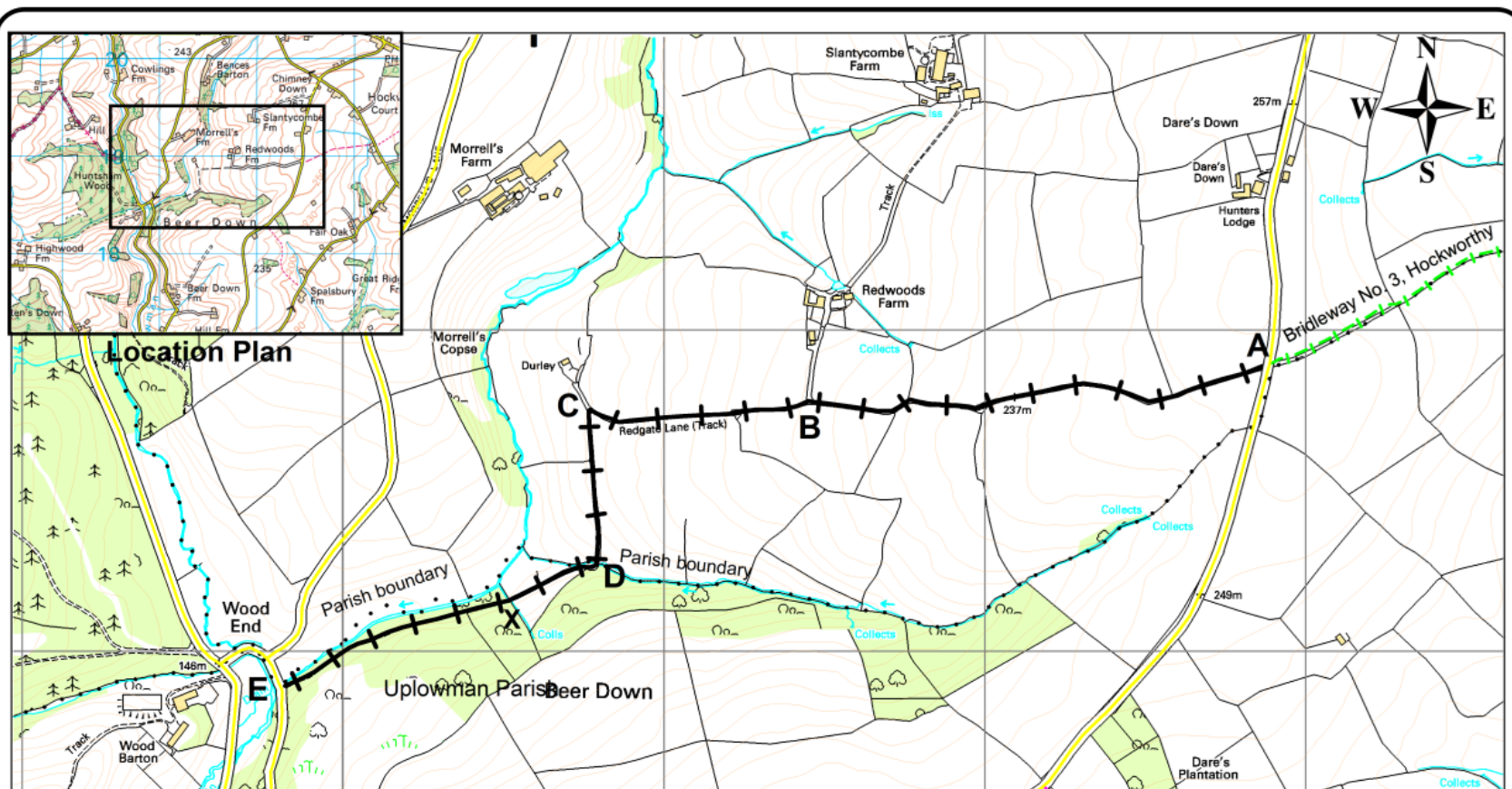
- 1.8.18 The section of Redgate Lane between points A and X appears to have been first registered at HM Land Registry in 2007 following the sale of Redwoods Farm. This section is registered under the separate titles for Redwoods Farm and Durley. The register for Durley makes no reference to the owner/occupier having any rights of access over that part of Redgate Lane that is not included within their title. Access would be needed west of point B or east of point X to get to the land included in that title. Similarly, the register for the land south of Redgate Lane also includes no rights of access along Redgate lane to access that property. As a private right of way or easement is not included, it is possible that one was considered unnecessary if there appeared to be public rights on the basis of the deeds and conveyances supplied for first registration, or it could have been an oversight by the conveyancer as the previous single holding was divided into three lots for sale.
- 1.8.19 The western end of the route in Uplowman, first registered in 2008, also makes no reference to any rights of access. The easement for Beer Down Cottage referred to in the Finance Act records of 1910 is not recorded on the title. This would indicate that no easement or private right of way was included in the documents supplied to HM Land Registry at first registration. Public rights of way are rarely included in registered titles.
- 1.8.20 The aerial photography from 1946 shows the buildings at Durley and Beer Down Cottage. The lane's surface is visible in Uplowman parish and north of point D. The main length of Redgate Lane is blurred but this would indicate that the hedges were not kept well trimmed at that time. The 2006-2007 photography shows the lane visible between points A and C showing that the hedges had been trimmed at this time. The more recent 2015 photograph show the hedges only trimmed to west of point B where farm vehicle access is required to the field gate.
- 1.8.21 The five user evidence forms received record use from 1981 to 2008. One user advised that their use had continued when a section of the lane became impassable, by use of the field headland which could be used to bypass the obstructed section. Three of the users had only used the route since 2006 however. Use was not frequent, the most being about once a month and users refer to the lane been muddy in winter and becoming obstructed with vegetation. The users did not report on seeing any signs to indicate the lane was not public and were not stopped or told it was not public until about 2008. None of the users are the same as those who have been given permission to use the route by the owners of Redwoods Farm.
- 1.8.22 The lane had also been used as a bridleway by an adjoining landowner at the east end of Redgate Lane, who was told it was public by local farmers and residents in the mid-1980s and advised that lane was used by numerous riders and a popular ride. She had previously trimmed parts of the lane to maintain access for horses but since the farm was sold the lane has become impassable for horses. This landowner would not be considered to have a private right along the lane to access their land, except for possibly a short section of the lane west of point A.

- 1.8.23 Redgate Lane was found to be overgrown between west of point B to point D in summer 2018 and though just about passable on foot could not have been used by horses in more recent times. The gates found were not locked.
- 1.8.24 The comments of the valuer in 1866 indicates that Redgate Lane was not well maintained at that time as the roads leading to Redwoods Farm were described as being of the 'very worst description'. Similarly, the Finance Act 1910 valuer, some fifty years later, describes the holding 'with bad approach'. The quantity of what would appear to be old road stone on parts of the overgrown section of Redgate Lane would indicate that the surface had been improved at some time in the past.
- 1.8.25 There is no documentary evidence to indicate that Redgate lane was ever maintained by the public purse as an all-purpose highway, or considered to be one, although the lane was not numbered or included in either apportionment in the two Tithe Maps of the 1840s. The inclusion of Redgate lane within hereditaments under the Finance Act 1910 would indicate that the lane was considered privately owned by that time. However, public rights of way can and often do run across private land.
- 1.8.26 Since their occupation of Redwoods Farm in 2007, the new owners have been aware of the use of the passable section of Redgate Lane on an irregular basis and have stopped riders, walkers, 4x4s and motorbikes between 2009 and 2017. The sign saying 'Private – No Public Right of Way' was erected on the boundary gate at point X in 2015 and a paper sign was erected at point A. They do not consider the lane to be public but have given permission to some local people to use the passable section of the route.
- 1.8.27 The comments of the users and a landowner indicate that Redgate Lane was used freely by walkers and riders until shortly after Redwoods Farm was sold in 2007. As a through-route connecting two county roads there was nothing to indicate to users that the lane was not public, until people were stopped when using the lane from about 2008 onwards. The sign at the west end of the route at point E, in different ownership, would indicate that there was accepted use by the public, as the tenants erected a sign asking users to keep dogs on leads. No response was received from the landowners for the section through the woodland between points X and E in Uplowman parish.
- 1.8.28 In response to the current consultation the Parish Council support the proposal and state that the Redgate bridle path should indeed be reinstated as it is used and appreciated by many local people.
- 1.8.29 The parish meeting and parish council's previous and current request support the lane having the reputation as a public right of way. It could be that the lane was not proposed in 1950 as the route did not cross any fields as did the other parish bridleways that were proposed in the parish survey. The user evidence and other comments received, relating to use of the route by the public, support that reputation. However, there is no more significant documentary evidence, such as maintenance at public expense, that shows the lane was considered to be a public right of way at that point in time. Similarly, the evidence discovered to date does not preclude the lane from being an unrecorded public right of way.

- 1.8.30 The matter is finely balanced. The route appears to have some reputation as a public right of way but there is very limited direct user evidence. Overall, when the documentary and user evidence available is taken together as a whole, it is considered insufficient to infer that a public right of way has been dedicated along the whole length of Redgate Lane at some time in the past, or that the public at large accepted that dedication. The test for dedication at Common Law is therefore not met.

1.9 Conclusion

- 1.9.1 It is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement for the addition of a Bridleway along Redgate Lane, in respect of Proposal 1.



Map Ref ST 0018 0118 0218 500m grid

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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - HOCKWORTHY
PROPOSAL NO 1 - ADDITION OF PUBLIC BRIDLEWAY ALONG REDGATE LANE

drawing number HIW/PROW/19/58

date Oct 2019

scale 1:9,000 at A4

drawn by TW

Notation

Proposed Addition of Public Bridleway A - B - C - D - E (approx 1860m) + + + + +

Existing Public Bridleway - - - - -

Meg Booth

Chief Officer for
Highways, Infrastructure
Development & Waste

Devon
County Council