

## **Definitive Map Review Parish of Talaton**

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**

This report examines one proposal arising out of the Definitive Map Review in the parish of Talaton in East Devon district.

### **2. Background**

The original survey by Talaton Parish Council in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced 8 footpaths and no bridleways submitted to the County Council. Two of the footpaths surveyed were withdrawn or omitted or described as not required. The remaining six were recorded for consultations at the Draft Map stage in 1957 and for the Provisional Map, then recorded on the original Definitive Map, with the relevant date of 1st September 1957.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced no requests to amend the Definitive Map.

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

The following orders have been made and confirmed:

East Devon District Council (Footpath No. 4, Talaton) Public Path Diversion Order 1980

Devon County Council (Footpath No. 7, Talaton) Public Path Diversion Order 2006

Devon County Council (Footpath No.2, Talaton) Public Path Diversion Order 2009

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

The current review began in July 2019 with a public meeting held in the Parish Hall, Talaton, which was advertised in the parish, in the local press and online.

### **3. Proposals**

Please refer to the Appendix to this report.

#### **4. Consultations**

General consultations on the applications were carried out in August to November 2019 with the following results:

County Councillor Ian Chubb	-	no comment;
East Devon District Council/AONB	-	no comment;
Talaton Parish Council	-	comments included in background papers
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
Trail Riders' Fellowship/ACU	-	no comment;
British Horse Society	-	no comment;
Cycling UK	-	no comment;
Ramblers	-	no comment;
Byways & Bridleways Trust	-	no comment;
4 Wheel vehicle Users	-	no comment;
Devon Green Lanes Group	-	no comment.

Specific responses, including from the owners of the land affected, 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 have been taken into account in preparing 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 or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

#### **9. Conclusion**

It is recommended that no Modification Order be made in respect of Proposal 1 as evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendation are discussed in the Appendix to this report.

Should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.



## 10. Reasons for Recommendations

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

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

### **Electoral Division: Whimble & Blackdown**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Thomas Green

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Tel No: (01392) 382856

Background Paper	Date	File Ref.
Correspondence File	2000 to date	TCG/DMR/TALATON

tg030220pra  
sc/cr/DMR Parish of Talaton  
05 260220

## **A. Basis of Claims**

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

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

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

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

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

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

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

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

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

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

**Proposal 1: Claimed Restricted Byway along lane known as Rosemary Lane or Moor Lane, between The Moor and Bittery Cross, points A-B on the proposal map**  
**HIW/PROW/19/56**

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

**1.1 Background**

- 1.1.1 The route was first brought to the attention of Devon County Council in June 2016 by Mr Chris Harwood of Moor Cottage, Talaton (a property adjacent to the route) asking if the route could be opened as a footpath as it was an historic track and was advised of the Definitive Map review process. The matter was discussed by Talaton Parish Council (of which Mr Harwood had previously been a member) in meetings in February and April 2018. As a result of this the route was put forward for informal consultation during the parish review.

**1.2 Description**

- 1.2.1 The proposed route starts at the end of the currently recorded highway maintainable at public expense (HMPE) at point A on the proposal plan, roughly level with the two properties Moor Cottage and Cobblers and at the far end of an area of registered village green called The Moor. The existing footpath 8 extends over the currently recorded HMPE near to point A. There is a marker stone beside the road at point A bearing the text 'DCC Bdy' which appears to have been installed by Devon County Council, but it is not known when. The route then heads in a generally north-east direction, passing between cottages before continuing as an enclosed track for approximately 465 metres (508 yards). Most of the route is unsurfaced and extremely overgrown to the point that it is currently impassable. It then joins the minor county road at point B on the proposal plan, near to Bittery Cross (supposedly the site where rebels loyal to the Duke of Monmouth were hanged after the rebellion in 1685). At this end the track has been blocked up with an earth bank and chain-link fence, installed by Devon County Council in the 1960s. The historic record suggests that the route has had several different names over time – Touchings Lane, Rosemary Lane, Moor Lane. This report will simply refer to it as the proposal route wherever possible to avoid unnecessary confusion caused by the etymology.



**Point A**



**Point B**



**The start of the currently recorded HMPE/FP8 at The Moor, looking up towards the start of the proposal route at Point A.**



**Extent of the registered Village Green at The Moor**



### 1.3 The Definitive Map Process

- 1.3.1 The proposal route was not included in the survey of paths on behalf of the Parish Council in 1950 put forward for recording as a public right of way on the Definitive Map.

### 1.4 Documentary Evidence

#### 1.4.1 Glebe Terriers, 1624 and 1680

Glebe terriers were returned, together with parish register transcripts, at the bishops' triennial visitations. They form a survey of the sources of the benefice income and give details of landholdings (including glebe houses), tithing rights, customs and modus (compositions for tithe), and surplice fees – essentially an audit of the running of church affairs within the parish. Terriers were compiled by church staff within the parish, and inspected and signed off by the Bishop, so can be considered to be reasonably accurate documents. Two sets of Terriers relating to the Parish of Talaton are held at the Devon Records Office. The Terriers are accompanied by a handwritten transcript of unknown date/provenance, but which appear to be accurate.

- 1.4.2 The Terrier of 1624 contains an inventory of glebe lands which includes the following: *'two closes of ground called Twychins containing five acres lyeing (words illegible) syde of a waye leading between Bittery Cross & Talaton Moor'*.

- 1.4.3 The Terrier of 1680 contains the listing: *'Then one field commonly called by ye name of Kicks Park, adjoining to a high way commonly called Touchings Lane, containing by estimation 4 acres of land, bounded within itself'*. Further down it lists a parcel of land as: *'Then one field commonly called by ye name of Touching adjoining to Touchings Lane = contains by estimation 5 acres of land all ye bounds belong to it.'*

- 1.4.4 A field called Great Tutching is listed on the Plan of Glebe Lands of c.1780 (discussed below) immediately to the south of the proposal route and next to another plot called Little Tutching. It is listed as being 5 acres in size. It is again recorded as Great Tutching on the Tithe Map and Apportionment of 1840 and listed as being 5 acres. It therefore seems almost certain that Touchings Lane is the proposal route, and credible to deduce that Twychins was an earlier form of the name. As such, the Terriers suggest that the proposal route existed at least as early as 1624 and that it may have had some sort of public reputation at that time.

#### 1.4.5 Donn's Map of Devon 1765

The north-east section of the proposal route at Bittery Cross is shown on Donn's Map of Devon of 1765 as a spur or 'cross road' branching off the road from Ottery St Mary to Cullompton just south of Bittery Cross.

#### 1.4.6 Map of Glebe Lands 1780s

The route is shown in detail on the Map of Glebe Lands belonging to the Parish of Tallaton, a particularly beautiful map commissioned circa 1780 by the Reverend Robert Palk Welland. It is coloured in the same manner as other roads in the parish that are now part of the public road network. No obstructions are shown on the route. The field names listed on this map correlate with those mentioned in the earlier Glebe Terriers, and also the later Tithe Map and Apportionment.

- 1.4.7 Surveyor's Drawings 1806-7  
The Ordnance Survey Drawings of 1806-7 show the proposal route in the same manner as other roads that are public today. The Moor is shown as part of Talaton Common and the proposal route joins this. There is no track or path shown running across The Moor to the unenclosed highway that would correspond with the current HMPE/Footpath 8.
- 1.4.8 Ordnance Survey first Edition One Inch 1809  
The proposal route is shown in the First Edition one inch to the mile map of 1809 in a very similar way to the Surveyor's Drawings, that is in the same way as other roads that are now public. The Moor is not shown in as much detail, but the proposal route appears to terminate there in the same manner as the earlier map.
- 1.4.9 Greenwood's Map 1827  
Greenwood's Map of 1827 shows the route in a similar way to the OS 1<sup>st</sup> Edition map, the only difference being that The Moor appears to be further east than on the OS map. The proposal route is shown in the same manner as other roads that are public today between the junction with Bittery Cross and where it meets Talaton Common/The Moor.
- 1.4.10 Talaton Tithe Map 1840 & Apportionment 1839  
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'.
- 1.4.11 The proposal route is shown on the Tithe Map for Talaton parish, produced in 1840, as an enclosed track on the same route as exists today. Roads were not labelled or identified in the Apportionment as public and included those which were obviously public, as well as others more likely to have been private tracks for access to fields and some not now existing. In this case the whole of the proposal route is shown excluded from titheable plots. No roads are coloured or shaded on this tithe map.
- 1.4.12 The field names of Twychin/Touching/Tutching referred to in the 17<sup>th</sup> century Glebe Terriers and Plan of Glebe Lands from 1780 appear again in the tithe Apportionment. Great Tutching, plot 378, is listed as exactly 5 acres in size which correlates exactly with the listing in the 1680 Glebe Terrier. There is also a 'Little Tutching', plot 375, that adjoins the proposal route.
- 1.4.13 Talaton Common Inclosure Award 1845  
The Inclosure Award of 1845 covers the area that at the time was known as Talaton Common, encompassing the small triangle of land that is now known as The Moor and which remains common land, having been registered under the Commons Registration Act 1965.
- 1.4.14 The very start of the western end of the proposal route, from point A, is shown on the Inclosure Award map, annotated as 'Rose Mary Lane'. The lane is shown continuing beyond a building that appears to be Moor Park Cottage/Bakers

Cottage/Cobblers, which marks the point where the current HMPE terminates and the proposal route begins at point A. The lane between here and the main road through Talaton appears to run on a more southerly route than the current HMPE which turns to the north-west. A '*private way or footpath*' terminates on Rose Mary Lane just west of the cottages at a point marked G on the Inclosure map. The other end of the private way terminates further north on the main road through Talaton at point F on the Inclosure Award plan, which is described in the award as '*the said Public Highway leading from Escot to Talaton*'. There is no description of the status of Rosemary Lane in the award, but the path between points F and G '*is to be used as an occupation way...for the occupiers of the several tenements in or near to the Lane called on the said map or plan Rosemary Lane.*'

- 1.4.15 The very start of the currently recorded HMPE section of Rosemary Lane at The Moor is shown on the plan for an intended new road from Sidmouth to Cullompton dated 1843. The road is coloured yellow and appears to be in the ownership of the parish waywardens, Francis Pyle and James Salla, according to the accompanying reference book. The rest of the lane extending over which the proposal route extends is not shown.
- 1.4.16 Plan of Lands Belonging to Reverend L.P. Welland c1890  
The proposal route is shown in the same manner as other roads that are public today on the plan of land belonging to the Reverend LP Welland, dated to approximately 1890.
- 1.4.17 Ordnance Survey 25" First Edition 1887  
Surveyed in 1887, the Ordnance Survey 25" to a mile 1<sup>st</sup> edition map shows the proposal route as an enclosed track, partly tree-lined, running from The Moor between cottages and then through fields to join the road south of Bittery Cross. The eastern end has a dashed line across it, the western end where it joins the common land at The Moor does not. There are no other obstructions or features annotated on the proposal route.
- 1.4.18 Ordnance Survey Revised New Series 1898-1900  
The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the proposal route as an unmetalled fenced road.
- 1.14.19 Ordnance Survey 25" Second Edition 1904; Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the proposal route in the same way as the 1<sup>st</sup> edition map at the same scale. There is again a dashed line across the eastern end of the route where it joins the road south of Bittery Cross, but not at the western end where it reached The Moor. The same later maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation, copies of which were submitted with the additional material for the applications. The map shows the proposal route to have been excluded from surrounding hereditaments (assessment areas of land) throughout.
- 1.4.20 The proposal route is adjacent to plots 4, 5, 6, 24, 26, 46 and 137. None of the field books for these plots record deductions for public rights of way. The entries for plots 5 and 6 contain sketch plans with the proposal route annotated simply as 'lane' with no further information about it.

- 1.4.21 Parish Council minutes  
Minutes of the Talaton Parish Council are held at the Devon Records Office and cover the period 1894-2008. They vary in quality and detail, with early entries being particularly brief.
- 1.4.22 Talaton Parish Council minutes in 1934 contain a list of what may have been considered then to be public footpaths in the parish. It appears to have been drawn up by the Parish Council in response to the provisions introduced by the Rights of Way Act 1932. The Act established the process for the statutory presumption of dedication of public rights of way that went on to be included in subsequent and current Highways Act provisions. It also introduced the procedure for landowners to show that they did not intend to dedicate additional public rights other than those that they agreed or admitted were public. No part of the proposal route appears in the 1934 list.
- 1.4.23 The minutes of the parish council meeting held on 26<sup>th</sup> March 1931 record that: *'Mr Pyle reported that the stile leading from the Park Field to the main road was in an unsatisfactory condition; also that rails had been placed across the road leading from the Moor to Bittery Cross, and the Chairman was asked to see the persons responsible for these matters and to request in the former case that the stile be made more convenient, and in the latter that the rails be removed.'* There is no further mention of any outcomes to this in subsequent minutes.
- 1.4.24 During the 1960s and 70s several entries mention issues relating to The Moor but mostly concerning fencing, car parking and landscaping. One entry dated 13<sup>th</sup> December 1971 refers to Rosemary Lane: *'A letter was read from Mr Wise referring to the barrier which Mr Ware had put across Rosemary Lane to hold back leaves, etc, during heavy rain. Mr Wise reported that this had been removed by new residents of Moor Park Cottage. The Clerk was asked to write to Mr Screeton about this and request that it be put back.'* It was then reported at the next meeting that the barrier had been put back.
- 1.4.25 Although references are made in the minutes to 'annual footpath inspections' having taken place there is never any reference to the proposal route, or in fact any specific paths.
- 1.4.26 Later Ordnance Survey mapping and Bartholomew's maps  
Maps at smaller scales from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey, and Bartholomew's map editions from 1910 to the later 1940s, show the proposal route as an uncoloured or white road. Bartholomew's explanatory notes states that *'the uncoloured roads are inferior and not to be recommended to cyclists'*. The depiction of the eastern end of the route appears to be inaccurate on all the editions of Bartholomew's mapping, joining the road running west from Bittery Cross towards the village rather than the road running south to Fairmile. The Ordnance Survey one-inch mapping from 1946 does not show the proposal route at all, nor does it show Footpath 8 or the currently recorded HMPE section of the lane. The 1960 one-inch map does show the currently recorded HMPE but not Footpath 8 or the proposal route.
- 1.4.27 Later Ordnance Survey 'A' edition larger-scale mapping from 1963, around the time that the Definitive Map was being drawn up, shows the proposal route as a fenced track with no obstructions and joining the highway at either end.

- 1.4.28 The showing of the proposal route on early and later maps records its physical existence at those times. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to also apply to earlier and other commercial maps.
- 1.4.29 Memoranda of Dedication 1966  
In 1966 two landowners either side of the eastern end of the proposal route dedicated strips of land beside the highway from Bittery Cross to Escot to Devon County Council as part of safety improvement works to the junction at Bittery Cross. The proposal route itself is not marked in red to indicate it being included in the dedication on either of the plans. No mention is made of the status of the proposal route in the documents. It appears that physical improvement works to the junction took place at about this time and that during these the end of the proposal route was blocked up with earth and a concrete post and wire fence erected across it. The fence is mentioned in the Memoranda of Dedication, but these documents do not suggest that it was intended to go across the route itself. They do not mention the earth bank at all. No further records of these works exist within Devon County Council.
- 1.4.30 Highway maintenance records/Handover maps  
Highway maintenance records from the 1960s and 1970s show that the proposal route was not at that time considered to be maintainable at public expense. The proposal route is left uncoloured and there are no notes or annotations relating to it. These maps did not show footpaths and bridleways, only public roads. The current HMPE is shown on these maps and is recorded in the mileage register as *'spur off B3176 (east side) South of Weeks Farm to single cottage, cul-de-sac, 0.05 miles.'*
- 1.4.31 Aerial photography  
Earlier RAF aerial photography from 1946–9 shows the proposal route lined with trees and hedge. From the cottages at The Moor the route appears to be enclosed between more formal hedges for a distance of approximately 60 metres where it runs between gardens before it reaches agricultural land.
- 1.4.32 More recent aerial photography from 1999-2000, 2006-7 and 2015-17 shows the proposal route in much the same way as those from the late 1940s but tree growth is heavier and the formal hedges flanking the route at the western end have been replaced by thicker tree and shrub growth. Depicted in these photos is a point midway up the proposal route where livestock appear to have been crossing the route between two adjacent fields. This is something mentioned by the landowner and is covered in the relevant section below.
- 1.4.33 British Newspaper Archives  
An article in the Western Times on 17<sup>th</sup> May 1919 reports on an Inquest held in Talaton on Reginald Samuel Woodley, who was killed in an accident on the junction of 'Moor-Lane'. It states: *'George Chas. Woodley, brother of the deceased, said Moor-lane (at the corner which the accident occurred) was between the Talaton Inn and the railway bridge, and ran off the Ottery road. There was a good deal of traffic in Moor-lane, which was a parish road.'* 'Moor-Lane' appears to refer to the road running from The Moor and may therefore refer to the proposal route that runs up to Bittery Cross. However, it may simply refer to the short stretch that is currently HMPE.

## **1.5 Definitive Map Reviews and Consultations**

- 1.5.1 The proposal route was not put forward for inclusion on the Definitive Map when the Parish Council carried out their survey in 1950.
- 1.5.2 A further review in 1971 was started but not completed. The proposal route was not mentioned by the Parish Council in correspondence with Devon County Council during this review.

## **1.6 User Evidence**

- 1.6.1 No user evidence forms have been submitted for this proposal route and anecdotally the route has not been used for several decades due to it being completely overgrown and impassable. Comments from Talaton Parish Council provide some anecdotal evidence of use but nothing more than this.

## **1.7 Landowner and rebuttal evidence**

- 1.7.1 The application route itself is unregistered. Landowners identified as owning land adjacent to the route were contacted with details of the proposal and asked to complete landowner evidence forms. Five landowners have completed evidence forms, with 3 of these confirming that they own land adjacent to the route. None has claimed to own the land across which the route itself passes, though it is to be presumed that landownership is to the centre of the lane.
- 1.7.2 Christopher Harwood of Moor Cottage completed a landowner evidence form. He states that he has owned Moor Cottage, and the strip of land adjoining the south of the proposal route for approximately 180 metres, for more than 40 years. He has not specified whether he believes the route to be public but does state that he has believed it to be a footpath for 40+ years. He states that he has never seen or been aware of members of the public using the route in that time and has never stopped or turned back anyone from using the route. He has never erected signs on the route.
- 1.7.3 Mr Harwood has provided some further information via email and also copies of an indenture relating to his property. The Indenture dates to 1831 and refers to 'Rosemary Lane', the description identifying it as the proposal route, but does not mention status. This appears to be the earliest use of the name Rosemary Lane.
- 1.7.4 Paul Chivers of Talaton House states that he and his wife Diana Mase have owned the land to the north of the proposal route for 15 years and he believes it to be a public footpath. He states he has seen members of the public using the way '*until relatively recently when the entrance to the footpath was blocked by public dumping.*' This may refer to the blocking up of the eastern end of the route in the 1960s during highway improvements at Bittery Cross. Mr Chivers has never required anyone to ask permission or stopped or turned back anyone from using the way. Likewise, he has never erected any notices or signs, or blocked or obstructed the way.
- 1.7.5 A landowner evidence form was also completed by Simon Spencer of Moor Lane House. Although Moor Lane House is not adjacent to the proposal route Mr Spencer was included in informal consultations as a landowner as the plot is unregistered and it was suspected that a connected unregistered area of land adjacent to the route was in the same ownership. As it turned out this was not the case, but Mr Spencer's evidence form and email provide some useful evidence.

Mr Spencer has stated that he has never stopped or turned anyone back, never seen the public using the route and never erected any signs or obstructed the route. In the email to which it was attached Mr Spencer implies that the lane was included in Parish Council footpath inspections: *I have been in the village since 1961. My father was on the Parish Council soon after we arrived. The Parish had annual footpath walks which he went on, and this lane was walked with increasing difficulty, as no maintenance was ever done on it to keep it open. The Lane had become virtually impassable so it was decided to close it and divert the footpath, to its current position. Not sure exactly when but I suspect this is achieved around 1965, and it has remained closed ever since, 54 years.* Concerns about flooding from surface water runoff from the lane are raised in the email, as are concerns about disturbing current wildlife habitat should it be reopened. Some photographs of flooding in 1976 were attached to the email.

1.7.6 Mrs Wendy Adams completed a landowner evidence form confirming ownership of the field to the south of the proposal route for 20 years (plus in family ownership since 1922). She also states that she was a tenant of land to the north of the central section of the proposal route but does not specify when or for how long. Mrs Adams states that she does not believe the route to be public, has never seen the public using the way or required anyone to ask permission. She has never stopped or turned back anyone from using the route or erected any notices or signs. She states that the route has been fenced off at two points to allow livestock to pass between the two parcels of land on either side of the lane, and that there have been unlocked gates at these locations. One of these crossing points is clearly visible in the 20<sup>th</sup> century aerial photography.

1.7.7 A landowner evidence form was submitted with only the second page completed, hence there are no details of who submitted it other than the signature. The signature appears to be C Richardson, which makes it likely that it is from Bakers Cottage. The form states that they have never stopped or turned back anyone from using the route, never told anyone that it is not public, never erected any notices or obstructed the route. In the further information section is written: *'Having had a house at the bottom of Rosemary Lane for 40 years it has almost always been running with water.'*

## **1.8 Discussion**

### **1.8.1 Statute (Section 31 Highways Act 1980)**

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. Although the physical blocking up of the route in the late 1960s could constitute such a challenge, there is a complete lack of user evidence (either in the relevant period or at any other time) to enable consideration under statute.

### **1.8.2 Common Law**

The only other basis for its possible consideration as a highway is if there was any other significant supporting evidence from which an earlier dedication of the route can be presumed or inferred under common law. At Common Law, evidence of dedication by the landowner can be express or implied and an implication of dedication may be shown 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.

- 1.8.3 The Glebe Terriers of 1624 and 1680, corroborated by later mapping and field name evidence, show that the route was in existence from that time. The reference to the route as a 'high way' in the 1680 Terrier suggests that it may have held some public status at that time. Whilst not conclusive or open to public scrutiny, the Terriers were compiled by people with local knowledge of the parish and audited by the Bishop and his staff, so can be assumed to hold a certain degree of evidential weight.
- 1.8.4 The two maps of glebe lands (c.1780 and c.1890) both show the proposal route in the same manner as other roads that are now part of the public road network. They do not provide any evidence of status but do give an indication that the route existed and was available for use at those times.
- 1.8.5 The tithe map provides evidence that the proposal route physically existed on the same line as it does today when it was drawn up in 1840. It does not provide conclusive evidence of status but the fact that the route is excluded from the titheable plots raises a possibility that the route was considered public at that time.
- 1.8.6 The Inclosure Award map of 1845 shows the very start of the proposal route and is the first time that use of the name Rosemary Lane appears in the historic record. However, the award does not relate to the proposal route itself and despite a reference to it by name it provides no evidence of status.
- 1.8.7 Ordnance Survey and Bartholomew's mapping records the physical existence of the proposal route from 1806 until the mid-20<sup>th</sup> century. Bartholomew's maps depict it as an inferior road, Ordnance Survey maps at a smaller scale depict it as an uncoloured road. Larger scale Ordnance Survey maps depict it as an enclosed track. While they confirm the physical existence of the route, they offer no evidence of status.
- 1.8.8 The proposal route is excluded from surrounding hereditaments on the Finance Act Map 1910, a likely indication that it was considered a public highway of at least bridleway status by those involved in the process.
- 1.8.9 The newspaper article in the Western Times in 1919 refers to 'Moor-Lane' as a 'parish road' in a report on a Coroner's Inquest. It is not entirely clear whether the Moor-Lane referred to meant the whole of the proposal route plus the HMPE at The Moor, or just the short section that is currently HMPE. Contemporary mapping suggests that the whole route was available for use – the OS Popular Edition One Inch maps show the whole route as a minor road. It is the first time the name Moor Lane appears in connection with the proposal route, leading to a degree of uncertainty about which road the article is talking about. However, from the description within the article, along with a complete lack of any other Moor Lane in the historic record of the parish, it can be said with a good degree of certainty that it refers to the route from The Moor to Bittery Cross encompassing the proposal route.
- 1.8.10 The route is not included in the list of public footpaths drawn up by Talaton Parish Council in 1934. There are several reasons why it may not have been included on this list: it may not have been considered to have any public rights over it at all; it may have been considered a road rather than a footpath; or it may simply have been omitted by mistake. The entry in the minutes in 1931 concerning the removal



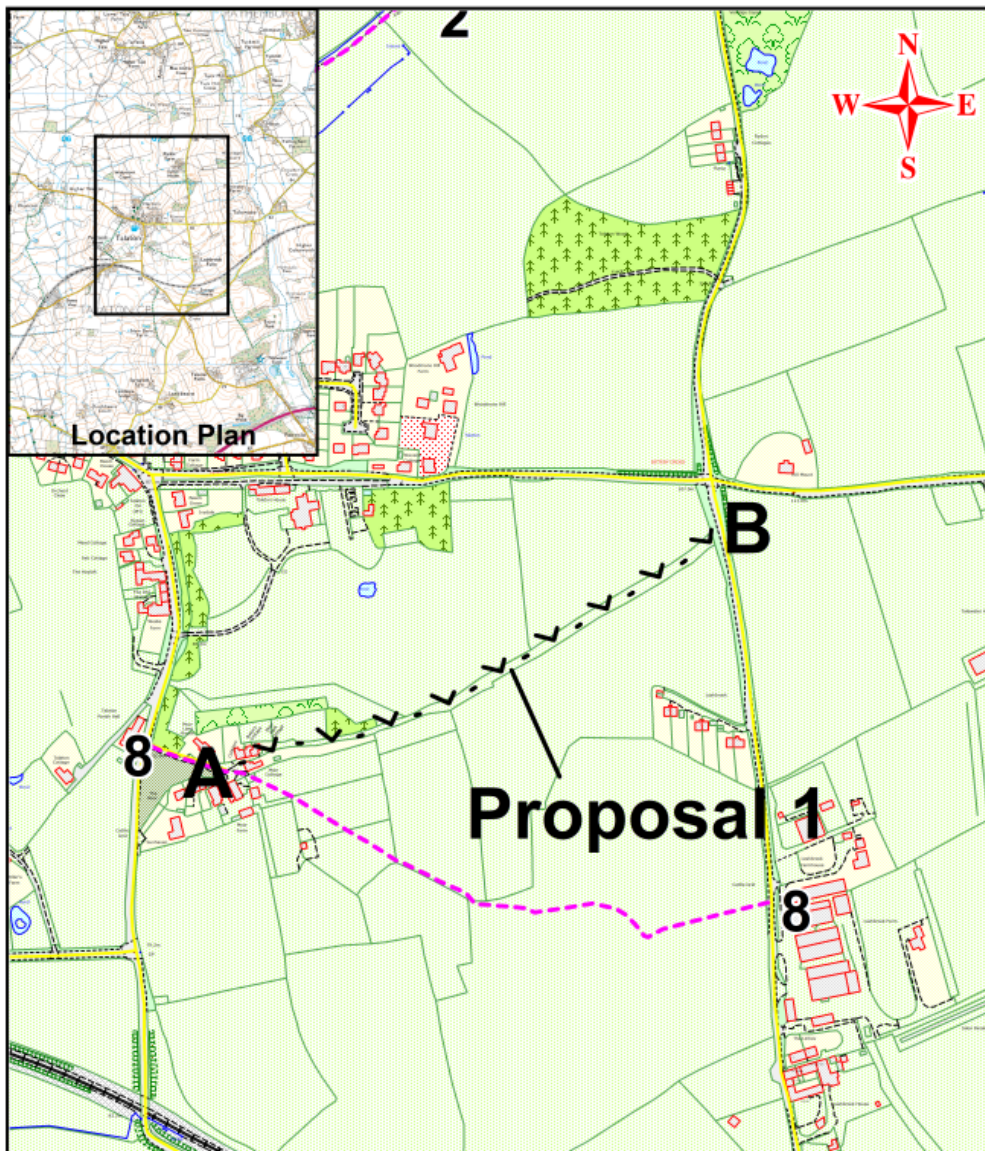
of a barrier across the lane suggest that the Parish Council considered the route to have some sort of public status. However, there is no further evidence of whether this was followed up or what status the Parish Council considered the route may have.

- 1.8.11 The proposal route was not included in the list of paths drawn up by Talaton Parish Council in 1950 during the original Definitive Map process. There were no objections to its omission at the time.
- 1.8.12 Further entries in the Parish Council minutes in the late 1960s mostly concern drainage and improvements to the common land at The Moor. The proposal route is mentioned merely because it was the source of much of the floodwater entering The Moor. The Parish Council requesting the removal of a leaf barrier placed across the route by a resident (who subsequently obeyed) suggests that they considered that they had some authority over the route. However, as before there is no mention of this being due to a highway status of any kind.
- 1.8.13 The dedication of land adjacent to the proposal route at Bittery Cross to Devon County Council in 1966 led to the route being physically obstructed with an earth bank and chain link fence, presumably as part of the improvement works at the cross roads. This strongly suggests that Devon County Council did not consider the route to be a highway of any description at that time. The route itself was not included in the plots of land dedicated but this is likely to reflect Land Registry boundaries rather than any indication of public ownership or rights.
- 1.8.14 Evidence provided by landowners is consistent but throws little light on there being any public status of the proposal route, mostly due to the length of time that the route has been out of use. It is interesting to note that Mr Spencer remembers his father walking the route while on the Parish Council annual footpath walks. These walks are noted in the Parish Council minutes but unfortunately no list of paths is included. None of the landowners appear to have used the route themselves (other than crossing it) and only one claims to have seen anyone else using the route. Likewise, none have taken any steps to prevent or dissuade the public from using the route.
- 1.8.15 No direct user evidence has been forthcoming, which is not surprising since the route was physically blocked at point B in the late 1960s and has been completely overgrown in recent times. As such there is no direct evidence that the public has accepted a dedication. Whilst anecdotally a few people did use the route historically there is no evidence available to indicate on what basis this use occurred or to what extent or frequency. This anecdotal evidence is not substantial or detailed enough to provide evidence that the public had accepted a dedication in the past.

## **1.9 Conclusion**

- 1.9.1 In the absence of any direct user evidence of public rights, their existence cannot be considered under Section 31 Highways Act 1980. Under common law, the documentary evidence shows that the route has physically existed since at least the early 17<sup>th</sup> century. Whilst no single piece is conclusive, the documentary evidence indicates that the route may have had had some sort of public status. Whilst no single piece is conclusive, the documentary evidence taken together is suggestive and plentiful. However, without any evidence of the public having accepted an implied dedication the proposal falls short of the requirements needed to meet the test for dedication under common law.

- 1.9.2 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that any public rights subsist on the balance of probabilities. Accordingly, the recommendation is that no Order be made to record a Restricted Byway in respect of Proposal 1.



Map ref: SY 0692 9930/SY 0734 9949

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**DEVON COUNTY COUNCIL**  
Definitive Map Review, Talaton parish  
Informal Consultations, Proposal 1:  
Claimed Restricted Byway, Rosemary/Moor Lane

Drawing number: HIW/PROW/19/56

Date: 01/08/2019

Scale: 1:5,000

Drawn by: TCG

**Notation** Proposed Restricted Byway - - - - - (465m)  
Existing Footpath - - - - -

**Meg Booth**

CHIEF OFFICER FOR HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE

