

**Definitive Map Review  
Parish of Ottery St Mary – Part 1**

Report of the Director of Climate Change, Environment and Transport

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

**Recommendation: It is recommended that:**

- (a) a Modification Order be made to record a Footpath in respect of Proposal 3; and**
- (b) that no Modification Order be made in respect of Proposals 1, 2, 4 and 5.**

**1. Introduction**

This report examines five proposals arising from the Definitive Map Review in the parish of Ottery St Mary. Six proposals were put forward for informal consultation, but one has required additional research/consultation and will be presented at a subsequent meeting.

**2. Background**

The original survey by Ottery St Mary Urban District Council (OSMUDC) in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of 96 routes submitted to the County Council. OSMUDC conducted the survey differently to most parish councils, using their Surveyor, reporting to their Highways and Works Committee, who produced an inventory rather than submitting survey forms. After several amendments and revisions during the draft and provisional stages, 69 footpaths, 12 bridleways and three RUPPs were recorded on the Definitive Map and Statement with a relevant date of 17 May 1966.

The Devon County Council Limited Special Review of RUPPs, which commenced in 1971, led to the three recorded in the parish being redesignated as bridleways, two of which are subject to Schedule 14 applications by the Trail Riders' Fellowship and are included in this report. The general review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1977 produced several proposals for changes, though almost exclusively for deletion of paths and which were not considered valid.

The following orders have subsequently been made and confirmed:

Footpath 23 - Stopping Up of Highways (County of Devon No. 4) Order 1961

Footpath 23 – Diversion of Highways (County of Devon No. 6) Order 1965

Footpath 70 – Diversion of (Highways County of Devon No. 1) Order 1965

Highways Act 1959 s. 108, Magistrates' Court Stopping-up Order, part of Landscore Lane, reserving a bridleway 1977 (numbered 6 in Gittisham, also affecting Ottery St. Mary)

County of Devon (Ottery St Mary Public Footpath No. 48) Path Diversion Order 1981

Devon County Council (Ottery St Mary Footpath No. 22) Public Path Diversion Order 1980

Devon County Council (Ottery St Mary Footpath No. 20) Public Path Diversion Order 1982

East Devon District Council (Ottery St Mary Footpath No. 38) Public Path Diversion Order 1985

East Devon District Council (Ottery St Mary Footpath No. 87) Public Path Extinguishment Order 1986

Devon County Council (Ottery St Mary Footpath No. 85) Public Path Diversion Order 1988

Devon County Council (Ottery St Mary Footpath No. 24a) Public Path Diversion Order 1991

Devon County Council (Ottery St Mary Footpath No. 93) Public Path Diversion Order 1991

Devon County Council (Ottery St Mary Footpath No. 95) Public Path Diversion Order 1992

East Devon District Council (Ottery St Mary Footpath No. 25 part) Public Path Diversion Order 1995

Devon County Council Petty Sessional Division of Honiton (Stopping Up and Diversion of Bridleway No. 61) 1995

Devon County Council (Ottery St Mary Footpath No. 30) Public Path Diversion Order 1994

Devon County Council (Ottery St Mary Footpath Nos. 24, 46, 66, 71 & 75) Public Path Diversion Order 1996

Devon County Council (Ottery St Mary Footpath No. 1) Public Path Diversion Order 1996

Devon County Council (Ottery St Mary Footpath No. 23) Public Path Diversion Order 1996

Devon County Council (Ottery St Mary Footpath No. 48) Public Path Diversion Order 1994

Devon County Council (Ottery St Mary Footpath No. 8) Public Path Diversion Order 1997

Devon County Council (Ottery St Mary Footpath No. 96) Public Path Extinguishment Order 1998

Devon County Council (Ottery St Mary Footpath No. 96) Public Path Creation Order 1998

Ottery St Mary (Ottery St Mary Footpath Nos. 1 & 93) Side Road Orders 2000

Ottery St Mary (Ottery St Mary Footpath Nos. 6 & 7) Side Road Orders 2000

Devon County Council (Ottery St Mary Footpath Nos. 7, 86 & 92) Public Path Extinguishment Order 2000

Devon County Council (Ottery St Mary Footpath Nos. 6 & 7) Public Path Diversion Order 2000

Devon County Council (Ottery St Mary Footpath No. 87) Public Path Diversion Order 1998

Devon County Council (Ottery St Mary Footpath No. 25) Public Path Diversion Order 2000

Devon County Council (Ottery St Mary Footpath Nos. 97 & 98) Public Path Creation Agreement 2004

Devon County Council (Ottery St Mary Footpath Nos. 6 & 7) Public Path diversion Order 2004

Devon County Council (Ottery St Mary Footpath Nos. 7, 86 & 92) Public Path Extinguishment Order 2004

Devon County Council (Ottery St Mary Footpath No. 24) Public Path Diversion Order 2006

Devon County Council (Ottery St Mary Footpath No. 47) Public Path Diversion Order 2007

Devon County Council (Ottery St Mary Footpath No. 2) Public Path Diversion Order 2009

Devon County Council (Ottery St Mary Footpath No. 90) Public Path Diversion and Definitive Map Modification Order 2012

## Devon County Council (Ottery St Mary Footpath No. 50) Public Path Creation and Definitive Map Modification Order 2012

Where required, Legal Event Modification Orders will be made for these changes under delegated powers after the completion of the countywide parish review.

The current review began in October 2021 with a public meeting in the parish.

### **3. Proposals**

Please refer to the appendix to this report.

### **4. Consultations**

General consultations have been carried out with the following results:

County Councillor Jess Bailey	- comments included in background papers;
East Devon District Council	- no comment;
Ottery St Mary Town 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	- comments included in background papers;
Byways & Bridleways Trust	- no comment;
4 Wheel vehicle Users	- no comment;
Open Spaces Society	- no comment;

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

### **5. Financial Considerations**

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

### **6. Legal Considerations**

The implications/consequences of the recommendations 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 a Modification Order be made in respect of Proposal 3, but that no Modification Orders be made in respect of Proposals 1, 2, 4 and 5.

## **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 area.

Meg Booth  
Director of Climate Change, Environment and Transport

### **Electoral Division: Otter Valley**

#### Local Government Act 1972: List of Background Papers

Contact for enquiries: Thomas Green

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<b>Background Paper</b>	<b>Date</b>	<b>File Ref.</b>
Correspondence file: Ottery St Mary	2000-date	TCG/DMR/OSM

tg111022pra  
sc/cr/DMR Parish of Ottery St Mary Part 1  
03 251022

**A. Basis of Claim**

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

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

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

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

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

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

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

Section 69 of the Natural Environment and Rural Communities Act 2006 (NERC) amended the Highways Act 1980, to clarify that a Schedule 14 application for a Definitive Map Modification Order is, of itself, sufficient to bring a right of way into

question for the purposes of Section 31(2) of the Highways Act 1980, from the date that it was made.

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

- (a) it is a way whose main 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: Schedule 14 Application (made after January 2005 by the Trail Riders Fellowship – see additional notes below) to upgrade Bridleway No. 9, Landscore Lane, to Byway Open to All Traffic, points A-B-C on the proposal map HIW/PROW/22/02. Grid Ref: SY0456 9737 – SY0465 9738.**

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

## **Background**

- 1.1.1 In November 2005 the Trail Riders' Fellowship (TRF) submitted a Schedule 14 application to the County Council for the upgrading of Bridleway No. 9, Ottery St Mary to a Byway Open to All Traffic (BOAT), supported by maps as documentary evidence and six user evidence forms. This was one of a number of Schedule 14 applications made by local representatives of the TRF in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20th January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006. This application did not meet the deadline for preservation of vehicular rights, nor is it considered to meet any of the NERC Act exceptions by which a BOAT can be recorded. Should the route be found to have vehicular rights it can only be recorded as a Restricted Byway.
- 1.1.2 During the Limited Special Review carried out by Devon County Council in 1978 Ottery St Mary Urban District Council requested that RUPP No. 9 be re-designated as a footpath.
- 1.1.3 Objections were received to the proposal to redesignate RUPP No.9 as a footpath on the grounds that it should be a bridleway. The matter was referred to the Secretary of State (along with multiple other routes in Devon) and an Inspector appointed to determine it upheld the objection. RUPP No.9 was subsequently reclassified as Bridleway No.9.

## **1.2 Description of the Route**

- 1.2.1 The application route starts at the County Road B3177, Alfington Road, near Beaumont Cottages, point A on plan HIW/PROW/22/02, and proceeds in a south easterly direction crossing two fields before joining the enclosed section of Landscore Lane. It passes between Landscore Cottage and Shermans Farm and meets the junction with Gittisham Footpath No. 5 opposite Houstains House, point B. It then continues on to join the county road at point C. The length of the route is approximately 1780m.



Point A looking north, where the route passes unenclosed through fields.



Photo taken from near point C, looking north-west towards point B

## Documentary Evidence

### 1.3.1 Quarter Sessions records, 1749

A presentment against the parish of Ottery St Mary was made at the Quarter Session at Epiphany 1749. The presentment is for the non-repair of two miles of highway between '*Launchcore Lane*' and Ottery St Mary. Launchcore is likely an earlier etymological version of Landscore. The distance between the current northern end of the application route and Ottery St Mary is indeed almost exactly 2 miles, adding weight to Launchcore and Landscore being one and the same. Although the presentment itself does not directly relate to the application route, it does provide evidence that the route physically existed in 1749.

### 1.3.2 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and Cassini 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

Early historical maps at smaller scales, particularly the Ordnance Survey drawings and 1<sup>st</sup> edition map, all show the application route in almost the same manner as it exists today, the only exception being that it is shown as enclosed throughout. The lane is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public, or no longer existing.

1.3.3 It is also shown similarly on Greenwood's 1827 map, believed to have been mainly copied from earlier Ordnance Survey map editions.

### 1.3.4 Ottery St Mary and Gittisham Tithe Maps and Apportionments

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

1.3.5 The route is shown on the Tithe Map for Gittisham parish, produced in 1838, 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 application route is shown to physically exist on the same line as it does today. Roads are coloured yellow on this tithe map but are not numbered. They are also not referenced in the apportionment.

1.3.6 The route is also shown on the Tithe Map for Ottery St Mary parish, produced in 1843, depicting the route in an almost identical manner to the Gittisham Tithe Map. 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 application route is shown to physically exist as it does today. Roads are coloured yellow on this tithe map but are not numbered. They are also not referenced in the apportionment.

- 1.3.7 Ordnance Survey 25" to a mile 1<sup>st</sup> edition map  
Surveyed in 1887, this map shows all of the application route as an enclosed track, named as Landscore Lane. The boundary between Ottery St Mary and Gittisham is marked by a dotted line down the middle of the lane. A solid line is shown across the route near Sherman's Farm, probably indicating a gate or similar obstruction.
- 1.3.8 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; 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 claimed route in the same way as in the 1<sup>st</sup> edition map, though the cottage near point B appears to have been demolished. 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 application route to have been excluded from surrounding hereditaments (assessment areas of land) throughout.
- 1.3.9 Ordnance Survey 1" to the mile maps, 1809 -1967  
Earlier 1" to the mile maps show the application route as an enclosed unmetalled road, it last being depicted thus at this scale in the 1946 edition. Subsequent maps show the section between point A and Shermans Farm as a 'path' or 'Footpath or Track', with the southernmost section still as an enclosed unmetalled road. While earlier OS mapping does tend to show the public road network, this is not always the case, and after the late 1880s all their maps carried a disclaimer to this point. As such, although early OS maps may suggest a degree of public reputation they are in no way conclusive and of limited evidential weight. However, they do provide evidence of the physical existence and nature of the route.
- 1.3.10 Bartholomew's Maps, 1902, 1923, 1943  
These commercial maps were produced for the benefit of '*tourists and cyclists*' and were widely available to the public. All three editions show the claimed 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*'. All the maps contain the disclaimer that '*the representation of a road or footpath is no evidence of a right of way*' and so are not evidence of the existence of public rights. However, to a limited degree they do suggest the route may have had some public reputation.
- 1.3.11 Ottery St Mary Urban District Council minutes  
Minutes from the end of the nineteenth century shed some light on the application route. The first entry dated 14<sup>th</sup> February 1895 notes that a

letter had been received from the Clerk to Gittisham Parish Council. It was carried that the surveyor be requested to put Landscore Lane in order on the section *'leading from the High Road to Fenny Bridges which belonged to the District'* so long as Gittisham Parish council undertook to do likewise to their section. It should be noted that this appears to refer to the section of lane that is now recorded as Gittisham Bridleway No. 6, suggesting that it had higher rights than are currently recorded. However, this section of lane was legally stopped-up in 1977, with the reservation of bridleway rights, hence it becoming Gittisham Bridleway No.6.

- 1.3.12 At the meeting on 9<sup>th</sup> May 1895 a letter was read from Gittisham Parish Council that as Landscore Lane had never been repaired by them they would not be contributing to any repairs. It was moved by the Chairman that *'notwithstanding the attitude taken by Gittisham Parish Council this Council do repair that part belonging to them'*. The Clerk was requested to write again to Gittisham, pressing them to do their part.
- 1.3.13 At the meeting on 4<sup>th</sup> July 1895 the surveyor reported that *'Landscore Lane had been put in order for vehicular traffic'* and that it was carried that the clerk write again to Gittisham Parish Council requesting them to do likewise to that part within their jurisdiction.
- 1.3.14 At the meeting on 1<sup>st</sup> October 1896 *'a letter was read from Mrs Wilmington complaining of the state of Landscore Lane and asking that steps be taken to put it in order and the hedges trimmed'*. After discussion it was moved that the Surveyor be instructed to give an estimate as to the cost of *'making a footpath on the Ottery side of the Lane'* and that a sub-committee be formed to enquire into the matter. It was seconded, but then agreed that the matter be deferred until the next meeting to allow the Clerk to *'produce any evidence he could to throw light on the matter'*.
- 1.3.15 At the following meeting on 5<sup>th</sup> November 1896 the matter was discussed. The Clerk *'produced two maps showing the position of the road and after the same had been examined along with the Ordnance map it was decided that the road was not wholly within the parish of Ottery'*. Mr Franks (a councillor) stated that there was *'a right of way from Houstins through his land issuing at Rock Court'*. It was then carried that the Clerk write to Mrs Wilmington stating that as there is a right of way in existence the Council do not consider it necessary to put Landscore Lane in repair at present.
- 1.3.16 At further letter from Mrs Wilmington was read at the meeting on 4<sup>th</sup> March 1897 which her bailiff attended in support of her grievance. She threatened to withhold payment of her rates unless Landscore Lane was made passable. The Chairman said that it appeared that the road was in two parishes, the boundary being in the centre of the road. The minutes record that *'as far as he could ascertain the road had never been repaired by any parish'* and that Gittisham should be approached before any action taken. Mr Reade considered the road a disgrace and thought the complaint a justifiable one but *'other members were of the opinion that the matter was one for the owners of land adjoining the road to deal with and not for the*

*council*. It was decided that the Clerk should write to Honiton Rural District Council and ascertain whether they would join Ottery in making the road good. It was also decided that the Clerk should write to Mr Franks asking him what his authority was for stating that there was no right of way through his land (having previously appeared to say there was).

- 1.3.17 At the meeting on 31<sup>st</sup> March 1897 the Clerk read a reply from Honiton Rural District Council stating that as the road was not repairable by them they would not be offering any assistance. A letter from Mr Franks was also read, stating that he had only given a tenant a private right of way across his land so they could get to church and that he was happy to give Mrs Wilmington the same right. Members decided this was acceptable and resolved to let the matter drop.
- 1.3.18 At the next meeting on 3<sup>rd</sup> February 1898 another letter from Mrs Wilmington was read, again complaining of the state of Landscore Lane. The Clerk was instructed to reply to her that the UDC had nothing further to add to the previous discussion.
- 1.3.19 At the meeting on 2<sup>nd</sup> November 1899 it was reported that the sub-committee formed to investigate the issues at Landscore Lane had met with representatives of Gittisham Parish Council in their perambulation of their parish boundaries. However, *'when they came to Landscore Lane boundary it was impossible to agree.'* Gittisham Parish Council insisted that the boundary was on the eastern side of the lane and Ottery insisted it was in the middle of the lane. No agreement was reached.
- 1.3.20 Unfortunately, later minute books from the Highways and Streets Committee have not survived and full council minutes do not shed any further light on the application route. Similarly, older Vestry minutes do not mention Landscore Lane.
- 1.3.21 Gittisham Parish Council minutes  
Minutes of Gittisham Parish Council meetings covering the period 1894-1976 are held in the Devon Heritage Centre. The minutes from the late 19<sup>th</sup> century mirror those of Ottery St Mary UDC with regards to the dispute over Landscore Lane. Gittisham Parish Council were adamant that they did not consider Landscore Lane to be a parish road and had never spent any money repairing it as such. It is noteworthy that at the meeting on 7<sup>th</sup> February 1895 it was recorded that their view was based on *'careful consideration and inquiries into documents dating back to 1812'*.
- 1.3.22 British Newspaper Archives  
Two articles containing the name Landscore Lane appear in the British Newspaper Archives, both in the Western Times. The first, dated 24<sup>th</sup> September 1895 and reporting on council meetings discussed in the previous paragraph, reports that both Honiton Rural District Council and Ottery St Mary Urban District Council had declined to undertake the requested repairs to Landscore Lane. The second article, dated 3<sup>rd</sup> October 1896, reports on the similar (unresolved) dispute over who should

undertake repairs, referring to Ottery St Mary UDC having repaired the lower section of the lane the previous year (presumably the current Gittisham Bridleway No.6). Although they are not strong evidence in themselves, being second-hand reports of council meetings, they are evidence that the route had some degree of reputation amongst the wider public, though not necessarily that it was a public route. They also appear to accurately reflect the council meetings as recorded in the OSMUDC minutes.

#### 1.3.23 List of Streets

The application route is not recorded as highway maintainable at public expense on the List of Streets.

#### 1.3.24 Highway maintenance records/Handover maps

Highway maintenance handover maps from the 1920s-1970s show that the application route was not at that time considered to be maintainable at public expense. The application 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.

#### 1.3.25 Aerial photography

Photography from 1946 shows the application route in much the same manner as it exists today. The route is mostly enclosed with hedges and is partially tree-lined, particularly the northern section. The route appears unenclosed on the western side where it crosses two fields at the very northern end. Although the image quality is rather poor, there does not appear to be a visible defined path across these two fields on the line of the application route. The surface is visible at the southern end, but it is not possible to distinguish what it consists of.

- 1.3.26 Modern aerial photography from 1999-2015 shows the route in much the same way as the 1946 photography but the image quality is far better and shows a greater level of detail. This is particularly relevant at the very northern end where the route is unenclosed across the two fields before meeting the county road near Alfington. As in 1946, there does not appear to be a well-defined track across the two fields where the application route passes. On all the modern aerial photography it is just possible to distinguish a trodden path across the two fields, but it appears consistent with pedestrian use rather than any sort of vehicular track (public or otherwise).

### **1.4 Definitive Map process**

- 1.4.1 The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 was undertaken by Ottery St Mary Urban District Council under the supervision of surveyor, Mr Charles Glover. Unlike the survey forms used by parish councils, Ottery St Mary UDC compiled an inventory of paths proposed for inclusion. Several copies of draft lists exist, culminating in a draft inventory containing 96 paths, each with a reference number (which later would become path numbers), approximate length,

brief location details and brief description. The typed inventory does not refer to status of routes but some handwritten notes alongside entries sometimes do. The application route is numbered 9 and has a note written alongside the description which reads: '*Landscape Lane is this a Green Lane if so R.U.P.P.*' The word yes is written over the top of this, along with a tick.

- 1.4.2 Several modifications to routes were made by Ottery St Mary UDC during the draft and provisional stages of the process but none related to the application route. Two copies of what appear to be a draft list of statements exist but unfortunately are not complete and the entries 7-21 are missing. However, the application route went on to be recorded as RUPP No.9, Ottery St Mary on the Definitive Map in May 1966.
- 1.4.3 Devon County Council reviews of 1968 and 1977  
In 1971 the County Council commenced a Limited Special Review of the Definitive Map, under the Countryside Act 1968, which required all RUPPs to be reclassified as either a byway open to all traffic, bridleway or footpath. The County Council wrote to Ottery St Mary in February 1971 requesting them to put forward any proposed changes. The UDC's Holdings, Highways, Works and Buildings Committee considered the matter at a meeting on 24<sup>th</sup> June 1971 and resolved to redesignate RUPP No.9 as a footpath. A further entry resolves '*that the roads understood to be designated District Roads shall be reclassified as Bridleways*'. It gives a short list of named roads but does not include Landscape Lane. Further correspondence in April 1972 confirms the UDC's decision to redesignate RUPP No.9 as a footpath.
- 1.4.4 Following the publication of the draft Revision Map and Statement in November 1973, a letter objecting to the redesignation of RUPP No. 9 was submitted by the Devon Bridleways Association. The letter includes five numbered reasons behind the objection, the first being that the route has been used by the general public as a bridleway for upwards of twenty years without obstruction or objection. The other reasons relate to the suitability of the route, unsuitability of the road network for riders, and the unfairness of excluding riders.
- 1.4.5 An Inspector was appointed by the Secretary of State for the Environment to determine multiple objections and representations to the draft revised map, including RUPP No. 9. A local inquiry was held on 6<sup>th</sup> and 7<sup>th</sup> September 1977 in Exeter. The Inspector noted that the route was unsuitable for any type of motor vehicle traffic, being overgrown, poorly surfaced and crossing fields. He writes: '*There is no evidence of vehicular use; the presence of the adjacent roads does not suggest that there is a need for such use. I conclude that no vehicular right of way exists.*' He recommended that the route should be classified as a bridleway. This subsequently took place in April 1981.

## 1.5 User Evidence

- 1.5.1 Six user evidence forms were received with the Schedule 14 Application completed in 2005 and covering a period in excess of 20 years. However, any user evidence involving motorised vehicles dating from 1977 or later, when the route was recorded as a public bridleway, would be unlawful (under the Road Traffic Acts of 1930 and 1988), unless with the permission of the landowner. Following the passing of the Natural Environment & Rural Communities Act in 2006, motor vehicle user evidence can no longer be used as evidence to support the creation or upgrading of a public right of way to a byway open to all traffic.
- 1.5.2 Discounting the evidence of use on vehicle, some additional information regarding the route was recorded on these forms. Five of the users state that there were gates on the route, though one does note that it was unlocked. None of the users were ever challenged when using the route or saw any signs indicating that vehicles were prohibited. Several of the motorcycle users mention the lane being very overgrown at times and a struggle to ride through.
- 1.5.3 Two additional user evidence forms were received during informal consultation. Mr Haynes states that he used the application route 'every few months' from 2019-2022, both for pleasure and occasionally leading a walking group. He believes that the route is a bridleway but does not provide much information to throw any light on wider use of the route. He is adamantly opposed to the proposed upgrade, mostly due to the damage, nuisance and dangers that he believes trail bikes and vehicles would cause.
- 1.5.4 Mr Bebbler states that he has also use the route 'every few months' since 2013, both on foot and bicycle and believes it to be a bridleway. He states that the route is heavily overgrown in summer and that it prevented him from using the route, as did cows in the field at the northern end. He writes that despite the lane having fallen into disrepair, 'it is still used by walkers and cyclists (evidenced by footprints and tyre tracks)'. He does not mention any vehicular use being evident and is strongly against the proposed upgrade on the grounds of safety for walkers and cyclists.
- 1.5.5 Several comments have been received by members of the public, all strongly objecting to the proposed upgrading of the route. The theme of all the objections is the potential nuisance and danger that motorised vehicles would cause to walkers and horse riders, along with the physical unsuitability of the lane for vehicular traffic and potential damage that they may cause to the surface. It is perhaps notable that none of the objectors refer to motorised vehicle use on the application route itself but refer to existing problems on nearby uUCRs.

## **1.6 Landowner and rebuttal evidence**

- 1.6.1 The application route itself is unregistered, though a caution against first registration has been registered with the Land Registry by the owner of Landscores Cottage. Two landowners own land adjacent to the route, one of them being the Combe Estate who responded to the informal consultation.
- 1.6.2 The Combe Estate returned a landowner evidence form accompanied by a letter detailing their objection to the proposed upgrade. It is stated that the land has been in freehold ownership by the family of the current owner Mr Richard Marker for circa 400 years. The form states that they believe the route to be a bridleway based on the fact it is shown as such on the Definitive Map and is sign-posted as a bridleway on the ground. They have never locked any gates or obstructed the route, nor have they ever given, or been asked for, permission to use the route. Their objection to the proposed upgrade is based on the potential damage that would be caused to the route if motor vehicles used it.

## **1.7 Discussion**

- 1.7.1 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. This application was made in advance of new legislation and not in response to any event acting as a significant challenge to use of the claimed route. It did not result from any specific action taken by a landowner to obstruct or prevent access to it from a particular date. There is no clear evidence of any actions by a landowner having called into question use of the route at a specific time for consideration under statute law.
- 1.7.2 The Schedule 14 application for the upgrading of Bridleway No. 9, Ottery St Mary to a Byway Open to All Traffic made by the Trail Riders Fellowship in 2005 may therefore be taken as providing the date of an event that can be taken to have called the public's right to use a route into question. The period for consideration under statute is therefore 20 years, from November 1985 to the date of the application in November 2005.
- 1.7.3 Evidence of use by the public during that period to support the claimed upgrade is forms relating to use on motorcycles by six people. However, as any evidence of use with mechanically vehicles dating from 1981 or later, when the route was recorded as a public bridleway, would be unlawful (unless with the permission of the landowner), it cannot give rise to a public right of way under Section 31. Other evidence of use submitted during

informal consultation supports the route's existing recorded status as a bridleway.

1.7.4 Common Law

The only other basis for its possible consideration as a vehicular highway is if there was any other significant supporting evidence from which an earlier dedication of the route as such can be presumed or inferred 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 if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.

1.7.5 Greenwoods 1825 map, along with the 1806 OS Surveyor's Drawings and 1809 1<sup>st</sup> Edition 1" map, all show the application route in a similar manner to surrounding lanes that are today county roads. The Quarter Session record suggest that the application route physically existed at least as far back as 1749. Although of limited evidential weight, these early maps do raise the possibility that the application route may have formed part of the public road network in the early 19<sup>th</sup> century.

1.7.6 The two tithe maps provide evidence that the application route physically existed on the same line as it does today when they were drawn up in 1838 and 1843. It does not provide conclusive evidence of status but the fact that the route is excluded from the titheable plots raises the possibility that the route was considered to be public at that time.

1.7.7 Later Ordnance Survey and Bartholomew's mapping records the physical existence of the application route on the same route from 1806 until the present day. 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, naming it as Landscore Lane. The presence of the application route on Bartholomew's mapping could be construed as evidence of public reputation, though this does not help establish status. Later OS mapping provides no evidence as to the status of the route. Unfortunately, the Object Name Book for the parish has not survived.

1.7.8 The application 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, though the status of highways or PRow were not a primary concern of the process.

1.7.9 The minutes of the Ottery St Mary UDC meetings at the end of the nineteenth century offer some evidence that the route held public rights at that time. The UDC clearly believed that what is now Gittisham BR6 was a vehicular highway at that time and that they spent public money repairing it. Although this section was legally stopped-up with the reservation of bridleway rights, there is a case to be made that it forms an extension of the application route. The UDC certainly refer to both sections as Landscore

Lane. However, when it comes to the application route itself the minutes are not so clear. Ottery St Mary UDC appeared to consider the route to be a parish road for which they were jointly responsible with Gittisham Parish Council. The refusal of the latter to take any responsibility for the lane appears to have made Ottery UDC question their belief. As the UDC decided to let the matter drop and take no action with regard repairs it casts some doubt on the validity of their initial position. The fact that Gittisham Parish Council record that they researched documents dating back to 1812 suggests that their opinion was well-considered. Overall, the two sets of council minutes are not particularly helpful in establishing the status of the application route.

1.7.10 During the Definitive Map process the application route was put forward for inclusion by Ottery St Mary UDC as a RUPP. No objections were received and it ended up as a RUPP on the Definitive Map. During the Limited Special Review, which commenced in 1971 and required the reclassification of RUPPS under the Countryside Act 1968, the application route was proposed for redesignation as a footpath by the UDC. Following the publication of the draft Revision Map and Statement in November 1973, an objection was received from the Devon Bridleways Association on the grounds that the route had been used as a bridleway for over 20 years. At the resulting Inquiry the Inspector found there to be '*no evidence of vehicular use*' and that the route was unsuitable for such traffic due to its overgrown state and poor surface. Since reclassification there has been no evidence of lawful public vehicular use of the lane. Although rather sparse, the lawful user evidence and comments from the public during informal consultation have not suggested that unlawful vehicular use has been taking place on the route.

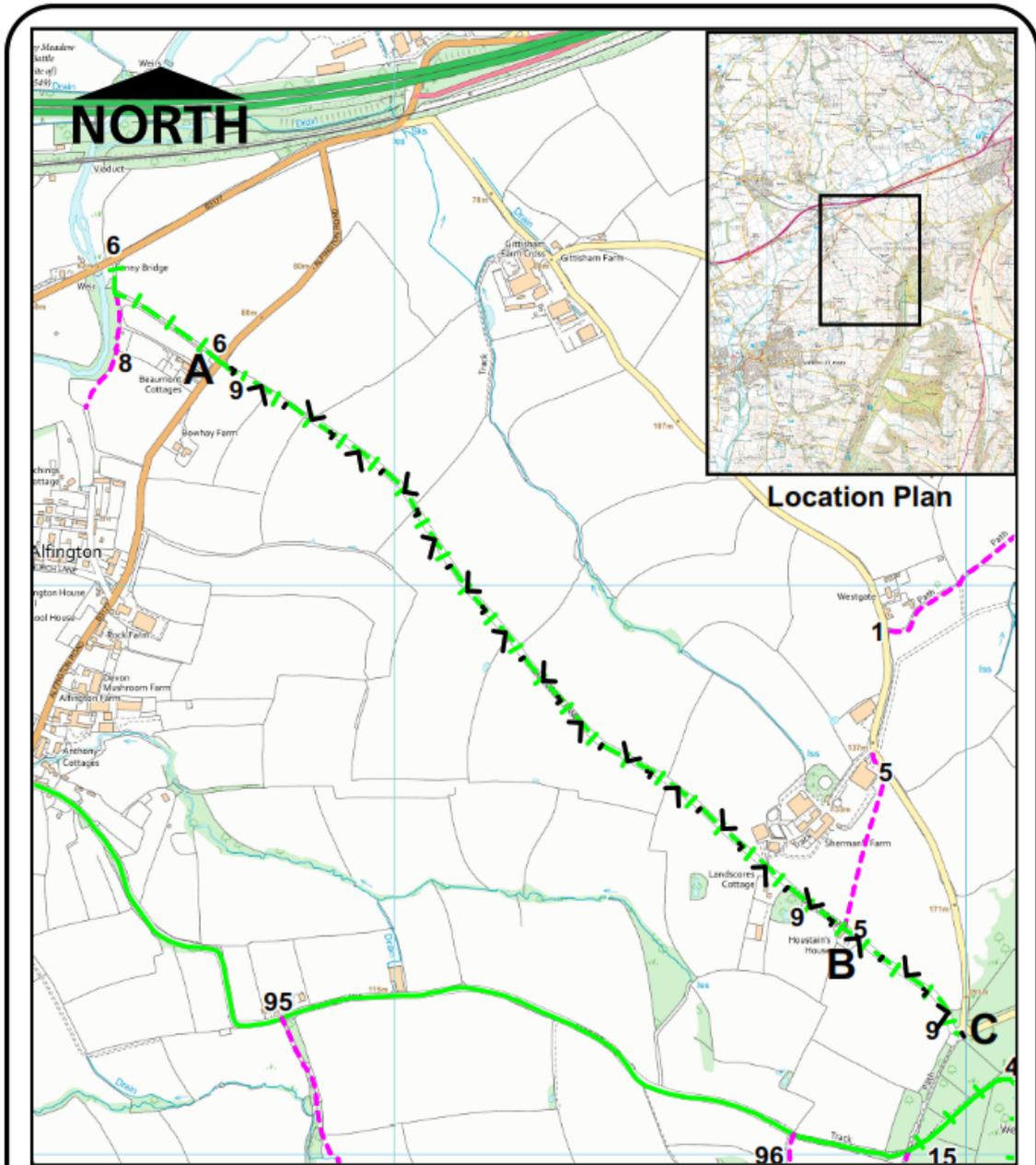
1.7.11 While the documentary evidence raises the possibility of higher rights existing on the application route, there is no evidence to conclusively suggest vehicular rights existed or that the public accepted a dedication at any point in the past. The user evidence submitted with the application cannot be considered as it was unlawful use; the small amount of user evidence forthcoming during informal consultation relates to foot and bicycle use. Evidence from the reclassification process likewise reflects use consistent with a bridleway, hence the Inspector's decision to reclassify it as such.

## **1.8 Conclusion**

1.8.1 In the absence of sufficient, lawful, user evidence of higher rights, their existence cannot be considered under Section 31 Highways Act 1980. Lawful user and landowner evidence collected during informal consultations are all consistent with the route's current recorded status as bridleway. Under Common Law, the documentary evidence shows that the route has physically existed since at least the mid-18<sup>th</sup> century. The Urban District Council Minutes, Tithe Maps and Finance Act Map all raise the possibility that the route may have had higher rights, but no more conclusive evidence has been found to substantiate this. No direct lawful evidence, either

historic or more modern, has been found to show public vehicular use of the route.

- 1.8.2 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that higher rights subsist on the balance of probabilities. Accordingly, the recommendation is that no Order be made to upgrade Bridleway No.9, Ottery St Mary to either a Byway Open to All Traffic or a Restricted Byway in respect of the application for Proposal 1.



Map ref: SY1170 9838 – SY1298 9721

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**DEVON COUNTY COUNCIL**  
**Definitive Map Review, Ottery St Mary parish**  
**Informal Consultations, Proposal 1:**  
**Claimed upgrade of Bridleway No.9 to Byway**  
**Open to All Traffic**

**Drawing number: HIW/PROW/22/02**

**Date: Jan 2022**

**Scale: 1:10,000**

**Drawn by: TCG**

**Notation**

Claimed Byway  
 Open to All Traffic  (1780m)



**Meg Booth**

CHIEF OFFICER FOR HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE

**Proposal 2: Schedule 14 Application (made after January 2005 by the Trail Riders Fellowship – see additional notes below) to upgrade Bridleway No. 62, to Byway Open to All Traffic, points D-E on proposal map HIW/PROW/21/03. Grid Ref: SY1097 9239 – SY1115 9234.**

**Recommendation: It is recommended that no Modification Order be made in respect of Proposal 2.**

## **2.1 Background**

2.1.1 In November 2005 the Trail Riders Fellowship submitted a Schedule 14 Application to the County Council for the upgrading of Bridleway No. 62, Ottery St Mary to a Byway Open to All Traffic (BOAT), supported by maps as documentary evidence and three user evidence forms. This was one of a number of Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20th January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006. This application did not meet the deadline for preservation of vehicular rights, nor is it considered to meet any of the NERC Act exceptions by which a BOAT can be recorded. Should the route be found to have vehicular rights it can only be recorded as a Restricted Byway.

2.1.2 During the Limited Special Review carried out by Devon County Council in the 1970s Ottery St Mary Urban District Council (UDC) requested that Road Used as a Public Path (RUPP) No. 62 be re-designated as a Byway Open to All Traffic. This was questioned by the County Council due to the route being described as a '*bridle path*' by the UDC in the original Definitive Map survey process (despite being proposed by them as a RUPP). The County Surveyor recommended that the route be redesignated as a bridleway rather than a BOAT and the UDC accepted this, with the route subsequently being recorded as a public bridleway.

## **2.2 Description of the Route**

2.2.1 The route starts at the county road, Coombe Lane, point D on plan HIW/PROW/22/03, and proceeds in an east south easterly direction along the enclosed lane to meet the county road, East Hill Road, at point E. The length of the route is approximately 190m. The surface consists mostly of rough stone/gravel.



Photo taken from Point D looking east.



Photo taken from Point E looking west.

## 2.3 Documentary Evidence

### 2.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and Cassini 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

Early historical maps at smaller scales, particularly the 1<sup>st</sup> edition map, all show the application route in much the same manner as it exists today as an enclosed track/lane. The only slight difference is the Ordnance Survey Drawings which depicts the route rather strangely, with a solid line down the middle of the route. The lane is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public, or no longer existing.

### 2.3.2 Ottery St Mary Tithe Map and Apportionment

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'.

2.3.3 The route is shown on the Tithe Map for Ottery St Mary parish, produced in 1843, depicting the route in the same manner as it 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 application route is shown to physically exist in the same manner as it does today. Roads are coloured yellow on this tithe map but are not numbered. They are also not referenced in the apportionment.

### 2.3.4 Ordnance Survey 25" to a mile 1<sup>st</sup> and 2<sup>nd</sup> edition maps

Surveyed in 1887, the 1<sup>st</sup> Edition map shows all of the application route as an enclosed track coloured yellow, with no obstructions on the route. The 2<sup>nd</sup> Edition map, revised in 1903, shows the application route in the same manner though no roads are coloured on this edition.

### 2.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; 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 claimed route in the same way as in the 1<sup>st</sup> edition map. 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 application route to have been excluded from surrounding hereditaments (assessment areas of land) throughout.

- 2.3.6 Ordnance Survey 1" to the mile maps, 1809 -1967  
The 1898 1" to the mile map shows the application route as an enclosed second class road. The 1946 edition shows it as an unmetalled road. Subsequent 1" maps from the 1960s also show it as an unmetalled road.
- 2.3.7 Bartholomew's Maps, 1902, 1923, 1943  
All three editions show the claimed 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*'. All Bartholomew's maps contain the disclaimer that '*the representation of a road or footpath is no evidence of a right of way*' and so are not evidence of the existence of public rights. However, to a limited degree they do suggest the route may have had some public reputation.
- 2.3.8 Highway maintenance records/Handover maps  
Highway maintenance records from the 1920s and used through to the 1970s, often called handover maps, show that the application route was not at that time considered to be maintainable at public expense. The application 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.
- 2.3.9 List of Streets  
The application route is not recorded as highway maintainable at public expense on the List of Streets. A dashed black line has been drawn on the LoS mapping and numbered 62, which denotes the bridleway as currently recorded on the Definitive Map.
- 2.3.10 Definitive Map process  
The application route appears on the inventories of paths drawn up by the UDC. '*From east end of Coombe Road by Claypits Farm – east – ends at East Hill Road*' is recorded as the description on one list. A more comprehensive typed list drawn up by the UDC lists it as path number 62 and gives the location as '*From East Hill Road to Coombe Road opposite Claypitts Farm*' with a length of 200 yards. The description is somewhat contradictory: '*E. to W. Bridle Path. Rough cart track leading from district road to Claypitts Farm.*' The entry has been annotated in pencil with the word RUPP pointing to the words Bridle Path and the words '*east end Coombe Road (District Road) near Claypits Farm*' added at the end of the description.
- 2.3.11 A typed list that appears to be a draft copy of statements contains the information that would eventually be recorded on the final statement for RUPP No.62. It lists as '*From East Hill Road to Coombe Road. R.U.P.P. Starts at Eastern end of Coombe Road by Claypits Farm and proceeds in an easterly direction for 200 yds. To end at East Hill Road. (District Road).*' It was subsequently recorded as a RUPP on the Definitive Map, with no objections being received.

### 2.3.12 Devon County Council reviews of 1971 and 1977

In 1971 the County Council commenced a Limited Special Review of the Definitive Map, under the Countryside Act 1968, which required all RUPPs to be reclassified as either a byway open to all traffic (BOAT), bridleway or footpath. The County Council wrote to the UDC in March 1971 and received a reply indicating that they wished RUPP No. 62 to be reclassified as a BOAT.

2.3.13 In April 1972 the County Surveyor wrote to the UDC recommending that RUPP No. 62 be redesignated as a bridleway due to it being described as a 'bridle path' by the UDC in the original Definitive Map survey process. The UDC considered this recommendation and confirmed their acceptance of it in July 1972, with the route subsequently being recorded as a bridleway. No objections were received.

### 2.3.14 Aerial photography

Aerial photographs from 1946 show the application route as an enclosed track with neat well-defined hedges on either side. The surface is mostly obscured by shadow from the hedges.

2.3.15 Photography from 1999-2000 still shows the application route as a track enclosed by hedges, with several mature trees along it. Photography from 2006, 2010 and 2015 show how the hedges have been left unmanaged and the route has gradually become tree-lined rather than hedge-lined, and the surface is now obscured from view.

## **2.4 User Evidence**

2.4.1 Three user evidence forms were received with the Schedule 14 Application completed in 2005 and covering a period in excess of 20 years. However, any user evidence dating from 1977 or later, when the route was recorded as a public bridleway, would be unlawful (under the Road Traffic Acts of 1930 and 1988), unless with the permission of the landowner. Following the passing of the Natural Environment & Rural Communities Act in 2006, motor vehicle user evidence can no longer be used as evidence to support the creation or upgrading of a public right of way to a byway open to all traffic.

2.4.2 The three user evidence forms submitted with the application do not provide much additional information. None of the three users report there being any obstructions or notices on the route, though they all mention there being tyre marks present from other motorcycles.

2.4.3 Two additional user evidence forms were received during informal consultation. The forms record use on foot, horseback and bicycle from 2003-2022 and both users believe the application route to be a bridleway. Neither form provides any suggestion that the route holds higher rights than bridleway.

## **2.5 Landowner and rebuttal evidence**

- 2.5.1 The application route itself is unregistered. Four landowners were identified as owning land adjacent to the application route and were consulted on the proposal. None of the landowners have returned landowner evidence forms or submitted any comments or evidence relating to the proposal.

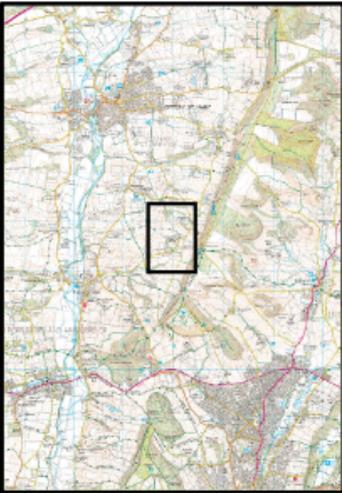
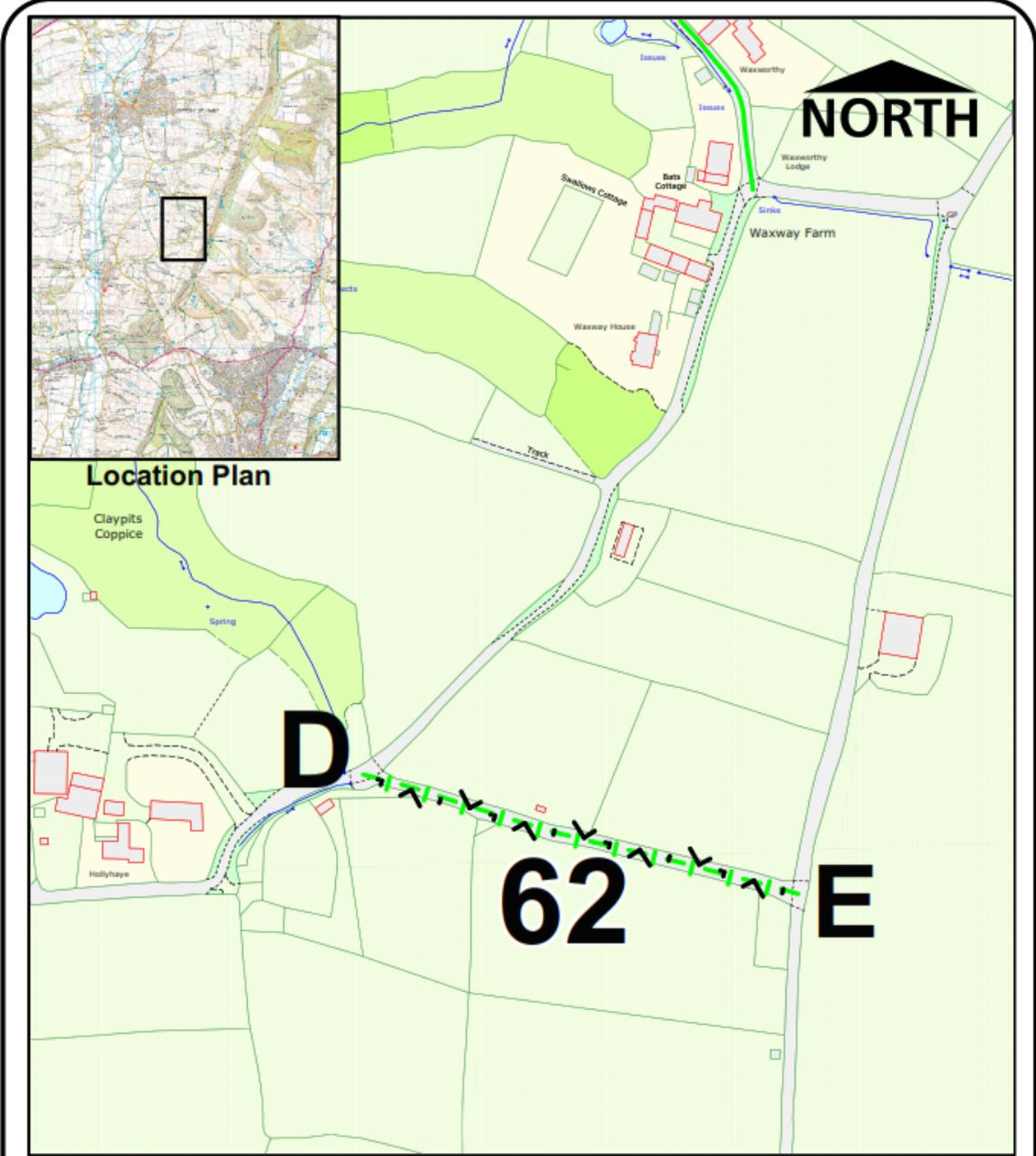
## **2.6 Discussion**

- 2.6.1 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. This application was made in advance of new legislation and not in response to any event acting as a significant challenge to use of the claimed route. It did not result from any specific action taken by a landowner to obstruct or prevent access to it from a particular date. There is no evidence of any actions by a landowner having called into question use of the route at a specific time for consideration under statute law.
- 2.6.2 The Schedule 14 application for the upgrading of Bridleway No. 62, Ottery St Mary to a Byway Open to All Traffic made by the Trail Riders Fellowship in 2005 may therefore be taken as providing the date of an event that can be taken to have called the public's right to use a route into question. The period for consideration under statute is therefore 20 years from November 1985 to the date of the application in November 2005.
- 2.6.3 Evidence of use by the public during that period to support the claimed upgrade consists of four user evidence forms relating to use on motorcycles. However, as any evidence of use with mechanically vehicles dating from 1977 or later, when the route was recorded as a public bridleway, would be unlawful (unless with the permission of the landowner), it cannot give rise to a public right of way under Section 31. Other evidence of use submitted supports the route's existing recorded status as a bridleway.
- 2.6.4 Common Law  
The only other basis for its possible consideration as a vehicular highway is if there was any other significant supporting evidence from which an earlier dedication of the route as such can be presumed or inferred 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 if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.

- 2.6.5 Greenwoods 1825 map, along with the 1806 OS Surveyor's Drawings and 1809 1<sup>st</sup> Edition 1" map, all show the application route in a similar manner to surrounding lanes many of which are today county roads. Although of very limited evidential weight, these early maps do raise the possibility that the application route may have formed part of the public road network in the early 19<sup>th</sup> century.
- 2.6.6 The tithe map provides evidence that the application route physically existed on the same line as it does today when it was drawn up in 1843. 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 to be public at that time. Likewise, the fact that the application route was excluded from surrounding hereditaments on the 1910 Finance Act plans raises the possibility that it was considered to be a public highway at that time.
- 2.6.7 The inclusion of the route on the Definitive Map as a RUPP suggests the application route may have been considered to hold higher rights at that time, though not necessarily motorised. However, the UDC described the route as both a '*bridle path*' and a '*cart track*' during the survey process and at no point are vehicular rights mentioned in any correspondence. It is also clear that when the chance to reclassify the route was presented in the 1970s both DCC and the UDC were content that it be reclassified as a bridleway. It must be assumed that no evidence of higher rights were available to either authority at that time. No conclusive evidence of higher rights has been found since.

## **2.7 Conclusion**

- 2.7.1 In the absence of sufficient, lawful, user evidence of higher 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 19<sup>th</sup> century. The Tithe Map, Finance Act Map and the Definitive Map process (and subsequent reclassification) both raise the possibility that the route may have had higher rights. However, no more conclusive evidence has been found to substantiate if (or what) higher rights may have existed. Though sparse, the modern user evidence received is supportive of the route being a bridleway.
- 2.7.2 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that higher rights subsist on the balance of probabilities. It is therefore recommended that no modification Order be made in respect of this proposal.



**Location Plan**

Map ref: SY1097 9239 – SY1115 9234

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**DEVON COUNTY COUNCIL**  
**Definitive Map Review, Ottery St Mary parish**  
**Informal Consultations, Proposal 2:**  
**Claimed upgrade of Bridleway No. 62 to Byway**  
**Open to All Traffic**

**Drawing number: HIW/PROW/22/03**  
**Date: Jan 2022**  
**Scale: 1:2,500**  
**Drawn by: TCG**

**Notation**

Existing Bridleway	
Claimed Byway Open to All Traffic	 (190m)

**Meg Booth**  
 CHIEF OFFICER FOR HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE



**Proposal 3: Claimed footpath forming missing link between Footpath No. 64 and unsurfaced Unclassified County Road at Hollow Head Cross, points F-G on proposal map HIW/PROW/22/04.**

**Grid Ref: SY1119 9157 – SY1121 9156**

**Recommendation: It is recommended that a Modification Order be made to record a footpath in respect of Proposal 2.**

### **3.1 Background**

3.1.1 During preparations for the parish review it was noticed that there was a missing link on the Definitive Map between Footpath No. 64 and the uUCR at Hollow Head Cross. While the Definitive Statement for Footpath No. 64 states that it terminates at Hollow Head Cross, the Definitive Map shows it to terminate approximately 25 metres to the west.

### **3.2 Description of the Route**

3.2.1 The route starts at the junction of footpath Nos. 64 and 80, approximately 25 metres west of Hollow Head Cross, point F on plan HIW/PROW/22/04. It proceeds uphill in an east south easterly direction along a sunken track for approximately 25 metres to meet the unclassified county road at Hollow Head Cross at point G. At point G is a DCC sign indicating no motorised vehicles except agricultural access are allowed on the route.



Photo taken from Point G. The finger post at point F is in the distance.

### 3.3 Documentary Evidence

#### 3.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and Cassini 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

Early historical maps at smaller scales, all show the route in much the same physical manner as it exists today as an enclosed track/lane. The lane is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing.

#### 3.3.2 Ottery St Mary Tithe Map and Apportionment

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

3.3.3 The Tithe Map for Ottery St Mary parish, produced in 1843, depicts the route in the same manner as it 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 route is shown to physically exist in the same manner as it does today. Roads are coloured yellow on this tithe map but are not numbered. They are also not referenced in the apportionment.

#### 3.3.4 Ordnance Survey 25" to a mile 1<sup>st</sup> and 2<sup>nd</sup> edition maps

Surveyed in 1887, the 1<sup>st</sup> Edition map shows all of the route as an enclosed track, with no obstructions on the route. The 2<sup>nd</sup> Edition map, revised in 1903, shows the application route in the same manner.

#### 3.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; 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 route in the same way as in the 1<sup>st</sup> edition map. 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 route to have been excluded from surrounding hereditaments (assessment areas of land) throughout.

#### 3.3.6 Twentieth century mapping - Ordnance Survey and Bartholomew's Maps

Later Ordnance Survey maps continue to show the route in the same manner, though the later one-inch maps show the route depicted in the

category of 'footpaths and tracks.' Bartholomew's Maps do not show the route in much detail due to the scale but all depict the route as uncoloured '*inferior*' roads '*not to be recommended to cyclists*'.

3.3.7 List of Streets/Highway maintenance records

The route is not shown as highway maintainable at public expense on the List of Streets. It is also not shown as a public road on older highway maintenance records and handover maps.

3.3.8 Definitive Map process and subsequent reviews

Both Footpath No.64 and Footpath No.80 were put forward for inclusion on the Definitive Map by Ottery St Mary UDC as public footpaths. During the survey process both were described as passing along '*cart tracks*' and this term was used in the final definitive statements for both footpaths. Despite the use of the term '*cart track*', neither route was proposed with any higher rights than footpath and there appears to have been no discussion or dispute about this.

3.3.9 Both the survey map and subsequent Definitive Map are at a scale that makes it difficult to accurately depict the junction at Hollow Head Cross. This is further compounded by the parish boundary dog-legging and passing across Hollow Head Cross, marked in black pen on the UDC survey map. Both maps show Footpaths 64 and 80 as terminating just to the north of Hollow Head Cross, it being more pronounced on the final Definitive Map.

3.3.10 Footpaths 64 and 80 were briefly proposed to be upgraded to bridleways by the UDC during a subsequent incomplete review in the 1970s. However, there is no record for the reasons why they proposed this and there was no evidence produced of bridleway rights existing on these footpaths.

3.3.11 Aerial photography

Aerial photography is of limited use. Tree cover obscures the claimed route in both the 1946 photographs and modern ones.

### **3.4 User Evidence**

3.4.1 The Definitive Statements for Footpath Nos. 64 and 80 both state that they terminate at Hollow Head Cross. The claimed route that forms the short missing link passes through a sunken lane and there is no alternative route. As such, it is impossible for anyone walking up the hill along either Footpath 64 or 80 to meet the uUCR (a popular recreational route, part of the Coleridge Link) without passing along the claimed route. It is therefore safe to state that the claimed route has been used on foot at least since the Definitive Map was drawn up and presumably much earlier.

3.4.2 During informal consultation two user evidence forms were received. Mr Chesters states that he has used the route on foot (both walking and running), monthly, since 1990. The second form was from Mrs Kimbell, the local Ramblers representative, who has completed the form on behalf of the

organisation. She documents group walks undertaken on an approximately annual basis since 2005 and notes that the claimed route is included in the Coleridge Link path, a project supported by DCC among others. Neither of the two forms suggests anything other than use on foot and both are suggestive of other members of the public using the route.

### **3.5 Landowner Evidence**

- 3.5.1 The claimed route is unregistered, though the adjacent plots are both registered with the Land Registry. The owners have been consulted but no responses have been received.

### **3.6 Rebuttal Evidence**

- 3.6.1 There is no evidence to suggest any rebuttal to the claimed route. The presence of the DCC no vehicles sign at point G may be taken as a rebuttal of any public vehicular rights, but conversely it suggests that non-vehicular use is permitted. However, there has been no other suggestion that the claimed route has any higher rights than footpath.

### **3.7 Discussion**

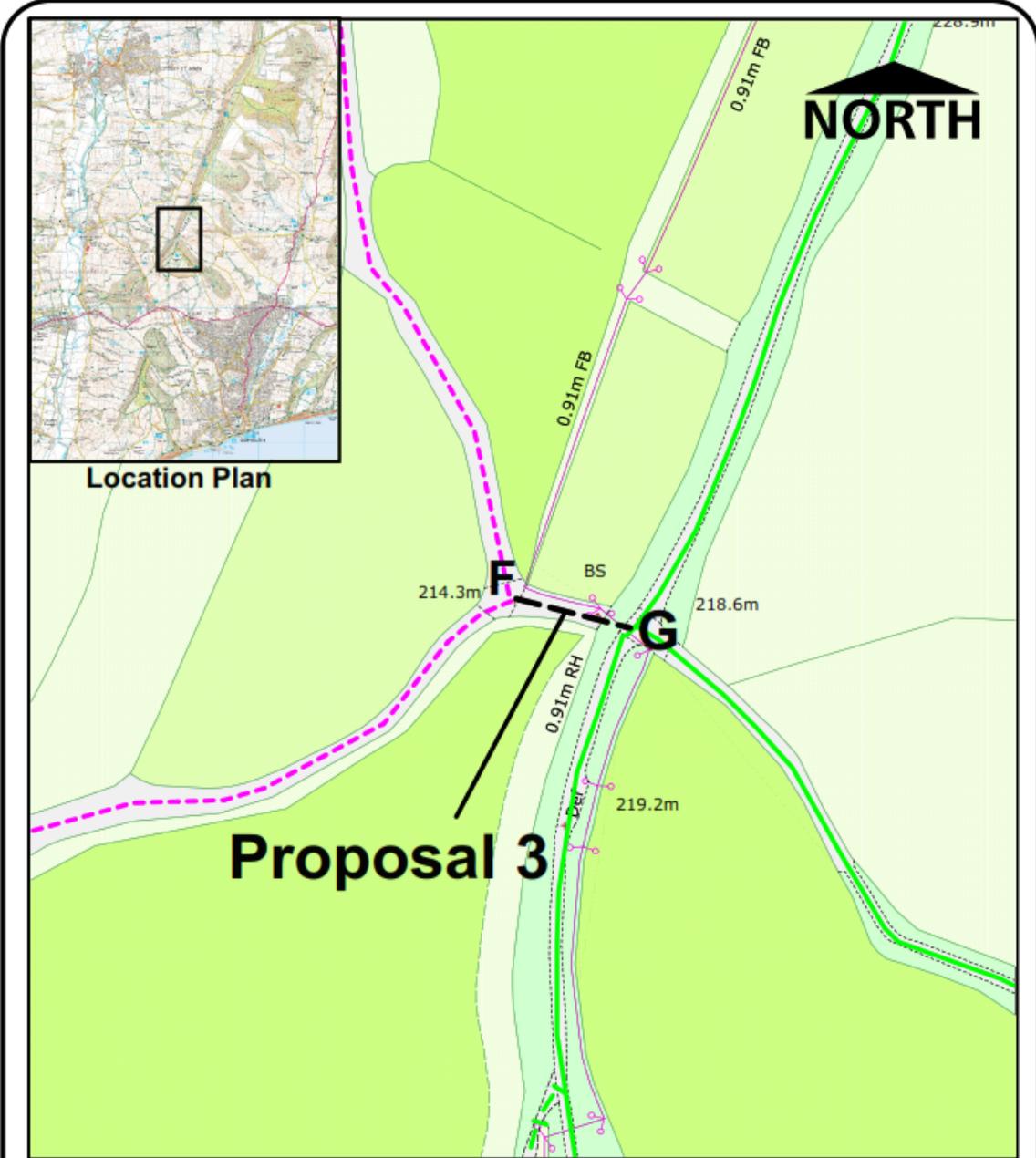
- 3.7.1 As the public's right to use the claimed route has not been challenged or called into question it cannot be considered under Section 31 Highways Act 1980. Under Common Law, the documentary evidence shows that the route has physically existed since at least the early 19<sup>th</sup> century. The Tithe Map and Finance Act Map both raise the possibility that the route had some sort of public status. The Definitive Map process supports the claim that the route is a public footpath and that the missing section on the map is likely an administrative error. Although direct user evidence is sparse, it is clear that the public have been using the route for decades as a link between the existing Footpaths Nos. 64 and 80 and the uUCR at Hollow Head Cross. No evidence has been found to rebut the claim and it is reasonable to assume that the claimed route has largely been presumed to be a public footpath by both landowners, the public and local authorities.
- 3.7.2 The unusual nature of the junction at Hollow Head Cross is perhaps one reason for the confused recording of public rights of way in the area. The claimed route forms part of a four way crossroads, with the recorded Footpaths 64 and 80 joined to it in a T-junction, making 5 routes that converge on it in total. It is certainly a possibility that the whole area encompassing the convergence of these five routes was considered to be Hollow Head Cross by the UDC when conducting their survey, particularly if it was desk-based as the mapping used was not at a useful scale. However, on the ground the two parts of the junction are clearly separate, with the unsurfaced roads at Hollow Head Cross being separated from the two footpaths by the distinct sunken track that forms the claimed route. Taking all the evidence into account it seems almost inconceivable that the claimed route was not intended to be a public footpath linking into

Footpaths 64 and 80. In any event, it has certainly been used as such ever since the Definitive Map was drawn up and likely much longer.

- 3.7.3 The evidence when taken as a whole is therefore supportive of implied dedication at common law having occurred, with landowners making no objection to use of the claimed route by the public on foot at least since the Definitive Map was drawn up and it in all probability considerably longer.

### **3.8 Conclusion**

- 3.8.1 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered sufficient to support the claim that public rights subsist on the balance of probabilities. Accordingly, the recommendation is that an Order be made to record a Footpath in respect of this application.
- 3.8.2 It is therefore recommended that an Order be made to record a Footpath in respect of Proposal 3 and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



Map ref: SY1119 9157 – SY 1121 9156

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**DEVON COUNTY COUNCIL**  
 Definitive Map Review, Ottery St Mary parish  
 Informal Consultations, Proposal 3:  
 Claimed Footpath, forming missing link between  
 Footpath No. 64 and unclassified County Road

Drawing number: HIW/PROW/22/04  
 Date: Jan 2022  
 Scale: 1:1,250  
 Drawn by: TCG

Notation	
Existing Footpath	(28m)
Unsurfaced Unclassified County Road	
Claimed Footpath	(28m)

**Meg Booth**  
 CHIEF OFFICER FOR HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE



**Proposal 4: Claimed footpath along track (sometimes known as Rill Lane or Rill Path) between unsurfaced Unclassified County Road at Rill and County Road at East Hill Strips, points H-I on proposal map HIW/PROW/22/05.  
Grid Ref: SY1219 9460 – SY1232 9422**

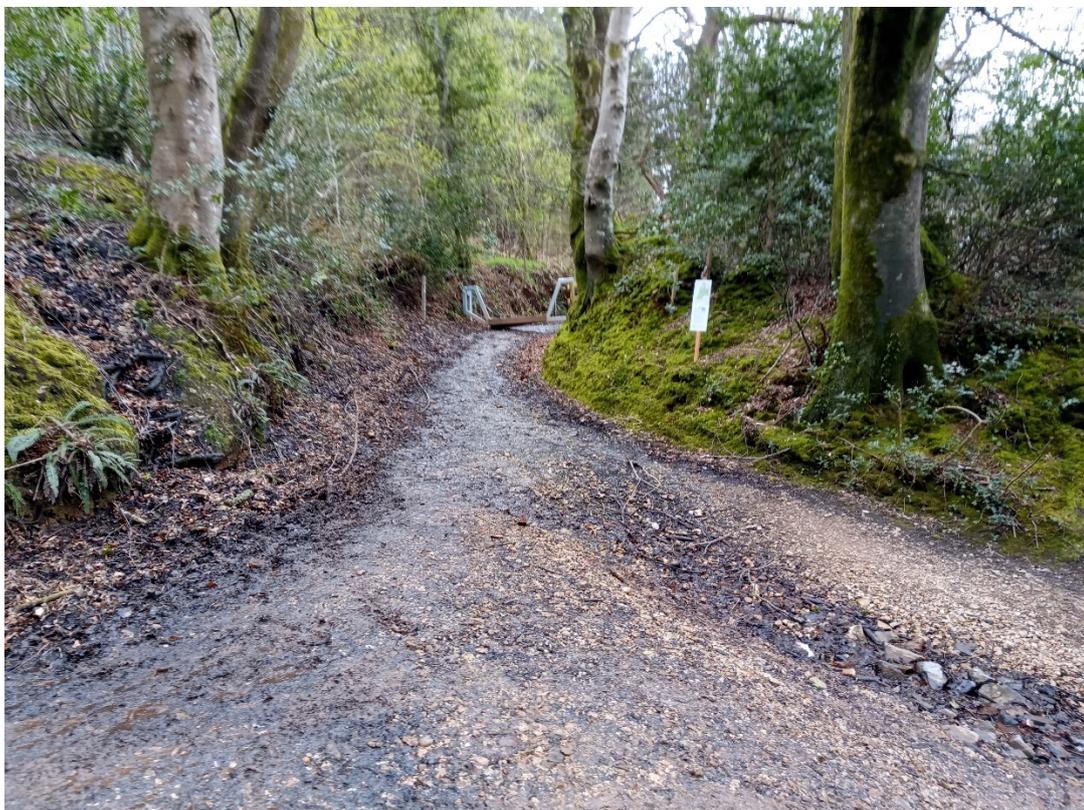
**Recommendation: It is recommended that no Modification Order be made in respect of Proposal 4.**

## **4.1 Background**

4.1.1 Following the opening meeting that started the parish review, several members of the public contacted DCC to say they had used the route known as Rill Lane or Rill Path for many years. The Ramblers also reported that they had used the route for many years and that horse friendly anti-vehicle gates had been installed in recent years, suggesting the landowner encouraged pedestrian use. As such the route was put forward for informal consultation, with the support of the Town Council.

## **4.2 Description of the Route**

4.2.1 The route begins at the unsurfaced unclassified County Road at point H on proposal map HIW/PROW/22/05. It proceeds in a south-south-easterly direction uphill along a roughly gravelled track between Lee's Plantation and Cleeve's Plantation for approximately 360 metres. It then proceeds in an east-south easterly direction across a gravelled area used as a car park and joins the County Road at point I.



Point H looking south, taken from junction with uCR.



Horse-friendly vehicle barrier and 'leaky dams' midway along claimed route.

### 4.3 Documentary Evidence

#### 4.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and Cassini 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

Early historical maps at smaller scales, all show the route in much the same physical manner as it exists today as an enclosed track/lane. The lane is shown in the same way as many of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing.

#### 4.3.2 Ottery St Mary Tithe Map and Apportionment

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'.

4.3.3 The Tithe Map for Ottery St Mary parish, produced in 1843, depicts the route largely in the same manner as it 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 bulk of the route is shown to physically exist in the same manner as it does today. The only difference is the very southern end which is shown on the tithe map as a large plot, number 1593, recorded as a Common belonging to Sir John Kennaway. Roads are coloured yellow on this tithe map but are not numbered. They are also not referenced in the apportionment. It is possible that the claimed route formed an access route to the common land on the top of the hill, though this does not necessarily suggest any public status.

#### 4.3.4 Ordnance Survey 25" to a mile 1<sup>st</sup> and 2<sup>nd</sup> edition maps

Surveyed in 1887, the 1<sup>st</sup> Edition map shows the claimed route as a partially enclosed track, coloured yellow, with no obstructions on the route. A Guide Post is shown at the cross roads where the claimed route meets the county road at point I. The 2<sup>nd</sup> Edition map, revised in 1903, shows the application route in the same manner but no roads are coloured on this edition. The Guide Post is still marked at the same location.

#### 4.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile maps, revised in 1903, were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation. The map shows the route to have been excluded from surrounding hereditaments (assessment areas of land) throughout. This is a good indication that the route was considered to be a public highway of at least bridleway status at that time.

#### 4.3.6 Twentieth century mapping - Ordnance Survey and Bartholomew's Maps

Later Ordnance Survey maps continue to show the route in the same manner, as an 'unmetalled road'. Bartholomew's Maps do not show the route in much detail due to the scale but all depict the route as an uncoloured '*inferior*' road '*not to be recommended to cyclists*'. Bartholomew's maps all contain a disclaimer and so do not offer any direct

evidence of public rights. However, they can be taken as indicating the route had a degree of public reputation.

4.3.7 Ottery St Mary Urban District Council minutes

The following entry is included in the minutes of the meeting of the Urban District Council on 6<sup>th</sup> December 1900: '*With reference to the fencing regime at the top of Rill Path Mr Cripps proposed that the Highways Committee meet and inspect and report at next meeting – Mr A E Salter seconded. Carried.*'

4.3.8 The following entry was made in the minutes of the meeting on 3<sup>rd</sup> January 1901: '*Mr Pope then addressed the Council with reference to the alteration of the Committee Meeting called at Rill Path and expressed his opinion that it was unnecessary to place any railing. Mr Luxton and Mr Cripps also spoke on the same subject and were in favour of leaving it as it was. After discussion Mr Luxton proposed that the matter be allowed to drop. Mr Baker seconded. Carried.*'

4.3.9 No further reference to Rill Path or Rill Lane is found in the minute books. It cannot be said with certainty that the Rill Path mentioned in the minutes is the claimed route, as it could easily refer to the other routes leading from Rill up to the East Hill Strips, all of which are now uUCRs. However, the fact that members of the public still refer to the claimed route as Rill Path today suggests that there is a good chance that the minutes do refer to it.

4.3.10 Definitive Map process and subsequent reviews

The claimed route was not included in the list of routes drawn up by OSMUDC during the original survey conducted in the 1950s. It was not included on provisional, draft or final Definitive Maps, nor was it proposed during subsequent uncompleted reviews during the 1970s.

4.3.11 List of Streets/Highway maintenance records/handover maps

Highway maintenance records from the 1920s and used through to the 1970s (referred to as handover maps) show roads that were at that time considered to be maintainable at public expense. They do not show footpaths and bridleways, only roads. The claimed route is not shown coloured in as a part of the road network, which suggests it was not considered then to be a public road. There are no notes or annotations relating to the application route in either of these maps. Similarly, the route is not shown on the List of Streets.

4.3.12 Aerial photography

Aerial photography from 1946 shows the claimed route quite clearly as a partially unenclosed track across scrubby open ground with limited tree cover. The northern section is more enclosed and the surface less visible. The southern section where it joins the road on the top of East Hill Strips appears less well-defined/surfaced.

4.3.13 More modern aerial photography from 1999-2015 shows the area heavily wooded. The claimed route is just visible but only as a slight change in the

tree cover. The surface itself is not visible except at the very southern end which in recent decades has been used as a parking area.

4.3.14 Land Registry documents

The claimed route itself is unregistered. Deeds relating to adjacent plots do not provide any information relating to any public rights that may exist along the route.

4.3.15 Furze Brook Natural Flood Management Project 2018-21

A project run by Devon Wildlife Trust between 2018 and 2021 is summarised in a report published in March 2021. The report is not hugely detailed but does offer some information about the different stages of the project. Its aim was to improve the flood management in the upper catchment of the Furze Brook and the project area encompasses the whole of the claimed route. The project was funded by DCC and the Environment Agency and project partners included the East Devon AONB, Forestry Commission and Natural England. Landowners were also included in the project. Of note is the reference to one of the landowners being the East Hill Trust, described in the report as *'a consortium of local farmers who collectively own most of the woodland in the project area'*.

4.3.16 Page 24 of the report is titled *'Woodland track'* and relates to the claimed route. Under the section *'how was the work selected?'* it is answered *'local ground conditions, land ownership and rights of way were assessed as part of process.'* Under the *'how you selected where'* section are a list of bullet points. These include: *'discussion with landowning trust and landowners'; 'statutory RoW were excluded'* and *'collaboration with DCC highways team'*. Included in the list of stakeholders on this page are *'DCC highways and RoW team'*, Forestry England, East Hill Trust and simply *'landowners'*. A section titled *'how did this differ from the plan?'* include the entry: *'Local water supplies, gas pipeline and RoW hugely affected choices available on the ground'*.

4.3.17 A section titled *'Risks or issues faced'* gives a further list of bullet points which include: *'Historical use of 4x4s'*, *'historical public access'* and *'multi-user site'*.

4.3.18 A map included in the report shows the claimed route and the location of works undertaken during the project. Much of the route is shaded purple to denote *'woodland renaturalisation'*. Also present are the locations of the three horse-friendly vehicle barriers as well as a *'leaky dam'* at the northern end of the route and several points marked *'sediment/erosion management'*. Several photos of the claimed route and the works done to it are included in the report.

## 4.4 User Evidence

4.4.1 Eight user evidence forms were returned during informal consultation, which included one form completed on behalf of the Ramblers, and cover

use from 1971 until the present. Three of the forms record use on foot only, four on both foot and horseback and one on horseback only.

- 4.4.2 Only two of the users have used the route for long periods. J Cobbledick states that she has used the path weekly to monthly on horseback, from 1971 until 2022. She states that the route has always followed the same path, she has never been challenged or noticed anything that suggested the route was not public. She also states that many other people use the route.
- 4.4.3 B Chesters records use on a monthly basis on foot since 1991. Like Cobbledick, Chesters has never been stopped or challenged and never seen anything to suggest that the route is not public. He notes that gates have been installed that appear to encourage use on foot and that the landowner is aware of such use. He also states that the route is well-used by many other people.
- 4.4.4 The remaining users all record shorter periods of use, covering the period from 2013-2022. They record similar observations to the two users above – none have been challenged or seen anything to suggest the route is not public. They all refer to the route being well-used by others (on foot, horse and bicycle) and being a very convenient route between public highways, specifically offering a traffic free route up to the existing network of uUCRs and PRoW on East Hill Strips. The only user who refers to there being any signs or notices is Oates, who in answer to that question states: *'Unsure. I think I remember a green sign but not sure what it said.'*
- 4.4.5 Rosemary Kimbell, the Ramblers representative for the East Devon Group, submitted two user evidence forms. The first is submitted on behalf of the Ramblers organisation and states that it has been completed with the agreement of four other members. It records a list of twelve group walks that incorporated the claimed route during the years 2003-2017. The form records that they never came across any reason to suggest that the route wasn't public and saw other members of the public using it on foot, horseback and bicycle.
- 4.4.6 Rosemary Kimbell's second form records her use of the claimed route in a personal capacity between 2020-2022. She states that she used the route on foot on a monthly basis, beginning to do so during the first lockdown in April 2020. She refers to other people using the route and the presence of horse-friendly barriers at intervals along the route. She also refers to historic maps that show the route as a 'road' and the East Devon AONB flood management project that encompassed the route.

#### **4.5 Landowner Evidence**

- 4.5.1 Three registered plots of land adjacent to the route were identified and the owners consulted. The main landowner effected by the route appears to be a group of three men, possibly known as the East Hill Trust, who own the freehold to the land either side of the majority of the route. This land is

leased to Forestry England, who have responded to the proposal but merely to state that they have no opinion on any rights that may or may not exist on the claimed route. They do however state that during the flood management project it was never intended to prevent pedestrian access along the route, only vehicular.

## **4.6 Rebuttal Evidence**

4.6.1 There is no evidence to suggest that any signs or notices that challenge public use have been erected on the route. Likewise, there is no evidence of the route being obstructed other than to motorised traffic. The erection of the horse-friendly vehicle barriers during the 2018 flood management project suggests that use of the route on foot and horseback has been catered for by the landowners and stakeholders involved. As the status of the route was checked with DCC during the project and determined not to be a PRow, it raises the possibility that the landowner therefore believed they were giving permission for the public to use the route on foot or horseback.

## **4.7 Discussion**

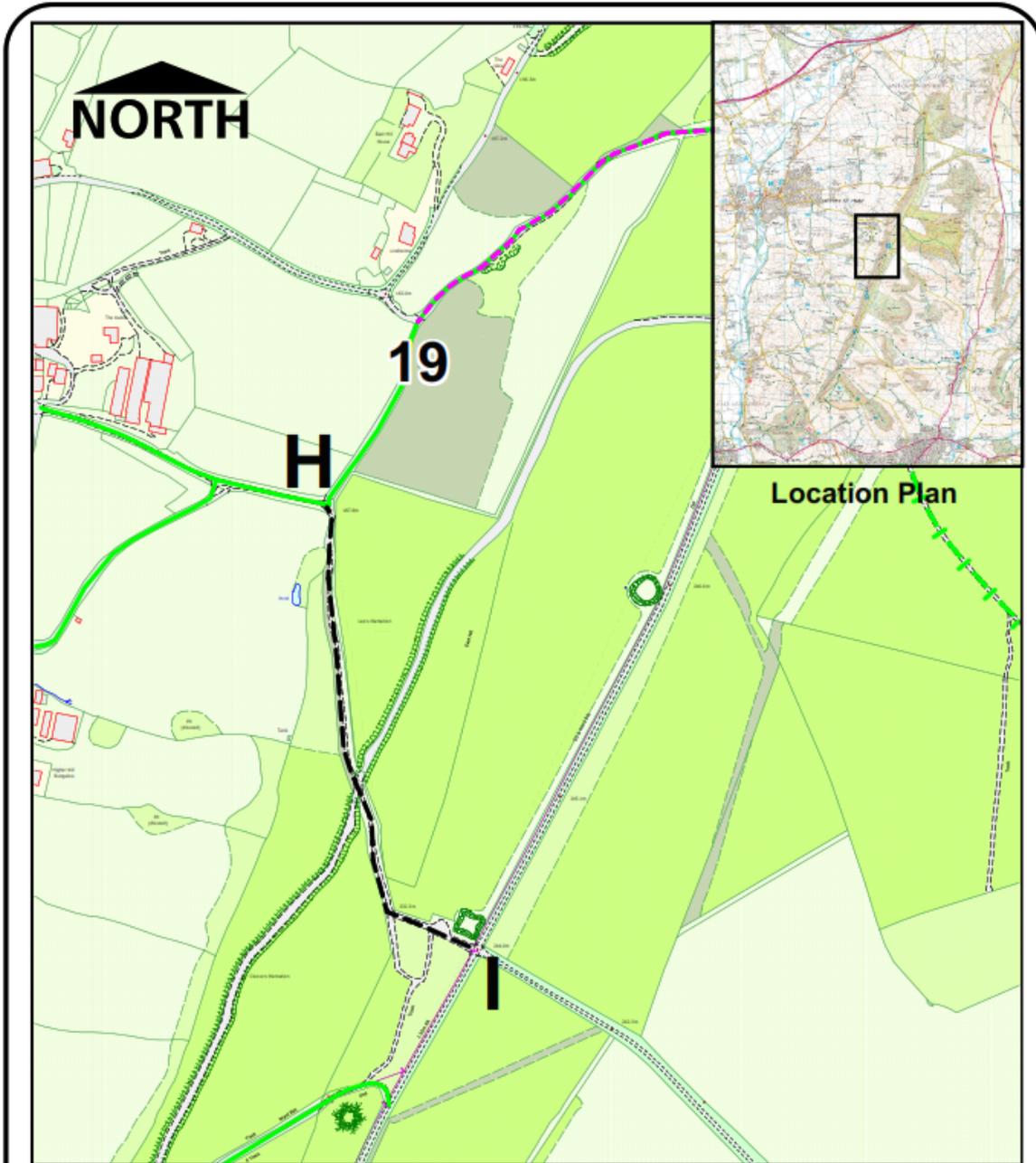
4.7.1 As the public's right to use the claimed route has not been challenged or overtly called into question it doesn't readily meet the criteria for consideration under Section 31 Highways Act 1980. Under Common Law, the documentary evidence shows that the route has physically existed since at least the early 19<sup>th</sup> century. The Surveyor's Drawings, Greenwoods Map and Bartholomew's Maps all raise the possibility that the claimed route was part of the public road network, though their evidential weight is limited. The Tithe Map and Finance Act Map both provide a good indication of highway status, most likely of vehicular nature, at the time they were produced. It seems illogical that the claimed route should sit within the existing network of county roads and uUCRs and not also be public; however, this is not evidence in itself. The presence of a guide post marked OS mapping from the late 19<sup>th</sup> and early 20<sup>th</sup> century at the cross roads at the end of the claimed route (point I) seems logical only if the claimed route formed a public road leading to Ottery St Mary. Again, the fact that this appears logical is not evidence of a public right subsisting. Many PRow, along with many private tracks, are far from logically located. It is also possible that the guide post shown on the OS mapping did not show the claimed route as a public road, or even that it signed it as private.

4.7.2 The claimed route was not included on the Definitive Map or proposed for inclusion during subsequent uncompleted reviews. However, the fact that it was not put forward for inclusion on the Definitive Map does not necessarily mean that public rights do not exist. The fact that the route may have been considered to be a public road in the preceding decades may account for it not being included, though this is countered by the fact that the UDC may simply have not considered the route to have any public rights.

- 4.7.3 Without conclusive evidence of express dedication, for dedication to have occurred under common law would require evidence from which it could be inferred that a landowner had dedicated the route and that the public had accepted the dedication. The historic evidence alone is not strong enough for dedication to be inferred. It does not appear that a landowner has demonstrated a lack of intention to dedicate in recent decades; if anything, it could be said that the horse-friendly vehicle barriers show encouragement of horse-riders and pedestrians and certainly acknowledgement that they were using the route. However, it must also be considered that the horse-friendly anti-vehicle barriers were installed as part of a publicly-funded and delivered flood management project and that the landowners were likely given the impression that the route was not a public right of way, raising the possibility that use could be considered permissive from 2018. Overall, it is not clear whether in recent years use of the claimed route by the public was knowingly tolerated by the landowner or not.
- 4.7.4 Another key requirement for dedication under common law is for the public at large to have accepted the dedication. The user evidence received during consultation amounts to eight forms. The nature of the use appears to have been as of right and consistent with bridleway status. Nevertheless, the volume of forms is rather low for a route that is situated in an area popular with recreational users and with a parking area situated at one end. It is also situated close to a livery and offers horse riders a route up onto East Hill Strips. Therefore, it is difficult to claim that the user evidence is representative of the public at large.

## **4.8 Conclusion**

- 4.8.1 Though the historical documentary evidence raises the possibility that the claimed route was part of the historic public road network, no more conclusive evidence has been found to substantiate this. There is no evidence of a landowner challenging public use of the route, though the 2018 Flood Management Project appears to have led them to believe that it was not a public right of way, after which use may not be as of right. Though there is some evidence of use by the public, as of right, in the last 50 years prior to 2018, it is not of a quantity sufficiently representative of the public at large to suggest that any dedication has been accepted. It is possible that more user evidence may come forward in future, in which case a Schedule 14 application could be made, but at the present time the evidence overall is considered insufficient to show that a public right of way subsists along the claimed route.
- 4.8.2 It is therefore recommended that no Modification Order be made in respect of Proposal 4.



Map ref: SY1219 9460 – SY1232 9422

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**DEVON COUNTY COUNCIL**  
 Definitive Map Review, Ottery St Mary parish  
 Informal Consultations, Proposal 4:  
 Claimed footpath between Rill and East Hill

Drawing number: HIW/PROW/22/05  
 Date: Jan 2022  
 Scale: 1:5,000  
 Drawn by: TCG

**Notation**  
 Claimed footpath    - - - - -    (440m)

**Devon** County Council   
 Meg Booth  
 CHIEF OFFICER FOR HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE

**Proposal 5: Claimed Restricted Byway at Metcombe, points J-K on proposal map HIW/PROW/22/06.**

**Grid Ref: SY0800 9197 – SY0831 9192**

**Recommendation: It is recommended that no Modification Order be made in respect of Proposal 5.**

**5.1 Background**

5.1.1 The claimed route is not recorded as a public right of way of any status, nor as a vehicular highway. During preparations for the parish review it was noticed that the claimed route is depicted on modern Ordnance Survey mapping as an 'Other Route with Public Access' (ORPA). This OS category has no legal status but is usually used to depict routes that are unsurfaced public roads, usually vehicular. Further preliminary investigations found that the route was also recorded on a handover map, raising the possibility that it has previously formed part of the highway network. It is currently open and available for use by the public.

**5.2 Description of the Route**

5.2.1 The route begins at the county road, point J on proposal map HIW/PROW/22/06, and proceeds in an east south-easterly direction to meet the Category 12 road at point K. The route is approximately 310 metres in length, the majority of it is roughly surfaced with stone though varying in quality, the eastern end being tarmaced where it is used as vehicular access for Metcombe Vale House and Metcombe Barton.



Point J looking east.



Point K looking west.

### 5.3 Documentary Evidence

#### 5.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and Cassini 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

Early historical maps at smaller scales, all show the route in much the same physical manner as it exists today as an enclosed track/lane. The lane is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing.

#### 5.3.2 Ottery St Mary Tithe Map and Apportionment

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'.

#### 5.3.3 The Tithe Map for Ottery St Mary parish, produced in 1843, depicts the route largely in the same manner as it 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 bulk of the route is shown to physically exist in the same manner as it does today. Roads are coloured yellow on this tithe map but are not numbered. They are also not referenced in the apportionment.

#### 5.3.4 Ordnance Survey 25" to a mile 1<sup>st</sup> and 2<sup>nd</sup> edition maps

Surveyed in 1887, the 1<sup>st</sup> Edition map shows all of the route as a partially enclosed track, coloured yellow. A dotted line is depicted across the eastern end of the route where it meets the recorded unsurfaced county road at point K. The 2<sup>nd</sup> Edition map, revised in 1903, shows the application route in the same manner but no roads are coloured on this edition. A ford and footbridge are shown where the brook currently flows under the county road near to point J. Likewise, a ford and footbridge is shown where the existing unsurfaced county road crosses the brook just south of point K. When these maps were surveyed the claimed route did not offer vehicles a route to bypass the fording of the brook.

#### 5.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile maps, revised in 1903, were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation. The map shows the route to have been excluded from surrounding hereditaments (assessment areas of land) throughout.

#### 5.3.6 Twentieth century mapping - Ordnance Survey and Bartholomew's Maps

Later Ordnance Survey maps continue to show the route in the same manner, as an 'unmetalled road' or 'track'. Bartholomew's Maps do not show much detail due to the scale, but all appear to depict the claimed route. The 1903 and 1921 editions depict it as an uncoloured '*inferior*' road '*not to be recommended to cyclists*'. The 1943 edition shows it coloured yellow, denoting an '*other good road*'. Perhaps of some note is the fact that all the Bartholomew's maps show the claimed route as forming the main road through Metcombe towards West Hill and do not show the section that is now the main road located to the south. However, due to the scale some caution must be used with this statement.

5.3.7 Later Ordnance Survey mapping at larger scales show the claimed route in much the same manner as in earlier editions, being depicted similarly to other minor public roads as well as private tracks. The ford on the county road near point J is shown on the 1949 edition but not any later. The 1961 B Series Major Roads Revision depicts the current county road to the south as a dashed red line denoting a 'main road' and the claimed route uncoloured.

5.3.8 Similarly, later small-scale Ordnance Survey mapping also shows the route as a '*minor road in towns, drive or track (unmetalled)*' along with the county road to the south being coloured yellow as a '*road – 14ft of metalling or*

over – tarred'. From the 1990s the claimed route is shown with green dots, denoting it as an 'other route with public access' (ORPA).

#### 5.3.9 Definitive Map process and subsequent reviews

The claimed route was not included in the list of routes drawn up by OSMUDC during the original survey conducted in the 1950s. It was not included on provisional, draft or final Definitive Maps, nor was it proposed during subsequent uncompleted reviews during the 1960s and 1970s.

#### 5.3.10 List of Streets/handover maps

The claimed route is not shown on the List of Streets. Highway maintenance handover maps from 1929-1947 (when responsibility for highways changed with local government reorganisations) show roads that were at that time considered to be maintainable at public expense. They do not show footpaths and bridleways, only roads. The claimed route is shown coloured yellow as a part of the road network on the handover map from c.1929, which suggests it was considered then to be a public road. However, another later handover map, dating from the reorganisation of local government in the late 1940s, shows the claimed route as uncoloured and so suggests that the route was not considered to be a public road. There are no notes or annotations relating to the claimed route in either of these maps. Both handover maps show the uUCR to the south of Metcombe as a yellow county road, whereas the current main road between Venn Ottery and Tipton St John is shown as a uUCR. Though not related to the claimed route, it does suggest that the classification of public roads in the vicinity of Metcombe has been somewhat fluid in the past.

#### 5.3.11 Land Registry documents

The claimed route itself is unregistered. Deeds relating to adjacent plots do not provide any information relating to any public rights that may exist along the route. Deeds to Metcombe Vale House record a right of way over the eastern section of the claimed route to allow access to the property, though this is a private right and not a public one.

#### 5.3.12 Aerial photography

Aerial photography from 1946-2015 shows the claimed route consistently in the same manner, as an enclosed track with varying levels of hedge and tree growth alongside, with access points into the fields to the north. The 1946 photography is the most insightful; the claimed route is visible in much the same manner as it exists today as a rough track. The road through Metcombe situated to the south of the claimed route is clearly now the main vehicular route through the hamlet. The ford near to point J appears to have been bridged and the surface appears very good and wide.

#### 5.3.13 Aerial photography from this century

Aerial photography from this century continues to show the claimed route in good detail. Though there is some tree cover near point J it appears that the route is open and available, with no obstructions visible. Google Streetview likewise shows the route to have been open and available.

## **5.4 User Evidence**

- 5.4.1 No user evidence forms have been received during informal consultations. Landowner evidence forms refer to use of the route by members of the public and are discussed below.

## **5.5 Landowner Evidence**

- 5.5.1 Nine properties/plots were identified adjacent to the claimed route and owners of each were sent details of the proposal, along with landowner evidence forms to return. Two forms were received during the consultation period. Mr West and Mrs Macdonald of Northfield Cottage state that they have owned their property since 2008 and believe the route to be a public right of way. They state that *'it's freely used by walkers, riders, farmers and to access neighbours'* and go on to state that they have seen *'occasional use by walkers, riders, farm vehicles'*. Mr West and Mrs Macdonald state that they have never obstructed the route, erected any signs or required permission from anyone, or been asked permission to use the route.
- 5.5.2 Terence Riordan states that he is the owner of Metcombe Vale House, though has stated N/A under the dates of ownership/occupation. Land Registry deeds show that he registered the property in his name in 1989. He states that he believes the claimed route to be a public right of way, though the reason he gives for this belief is that the route provides the only access to two dwellings and agricultural fields. Mr Riordan states that he has seen people using the claimed route, stating: *'daily access to dwellings by occupants plus postman, etc. Also occasional agricultural vehicles and walkers, horseriders and motorbikes'*. Mr Riordan states that he has never obstructed the route, erected any signs or required permission from anyone, or been asked permission to use the route. He notes that the farmer cuts the hedge on the northern side of the claimed route on an annual basis. Under further information, Mr Riordan states his concern that the recording of the route as a restricted byway would mean residents could not access their property in motor vehicles. However, this would not be the case as they would be exercising a private right that would exist alongside any public one.

## **5.6 Rebuttal Evidence**

- 5.6.1 No evidence has been discovered to suggest that any landowners have taken any action to challenge the use of the route by the public.

## **5.7 Discussion**

- 5.7.1 As the public's right to use the claimed route has not been challenged or called into question it doesn't readily meet the criteria for consideration under Section 31 Highways Act 1980. Under Common Law, the documentary evidence shows that the route has physically existed since at least the early 19<sup>th</sup> century. The Surveyor's Drawings, Greenwoods Map and Bartholomew's Maps all raise the possibility that the claimed route was

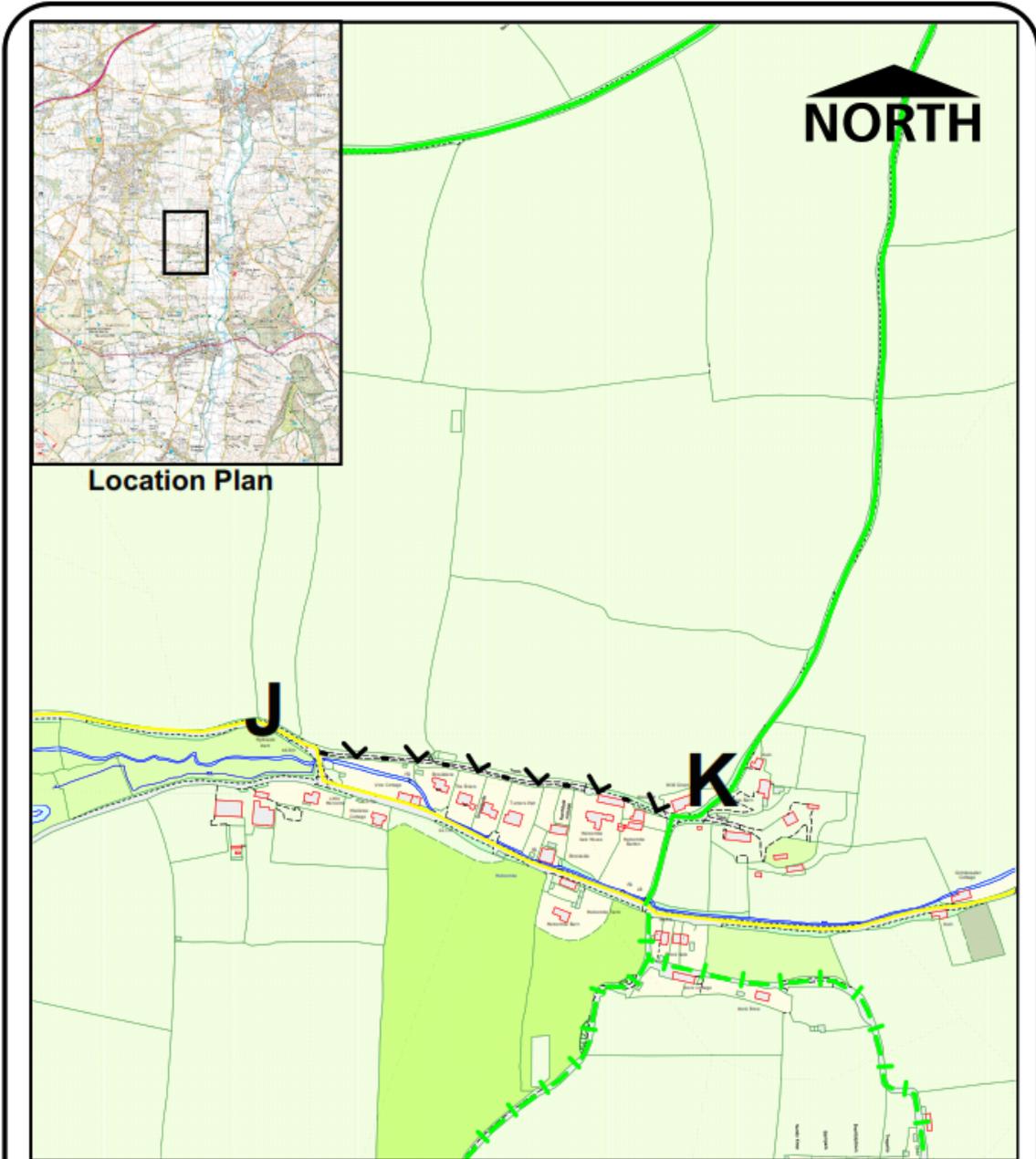
part of the public road network, though their evidential weight is limited. The Tithe Map and particularly the Finance Act plans show the claimed route excluded from titheable plots/surrounding hereditaments. These provide a good indication of highway status, most likely of vehicular nature, at the time they were produced.

- 5.7.2 The handover map from c.1929 shows the claimed route included as part of the Class III public road numbered 93. This can be considered strong evidence that the route was a public vehicular highway at that time. However, the later handover map from the late 1940s shows the route uncoloured and so suggests the opposite. Both of the handover maps show the main road from Venn Ottery to Tipton St John as being on what is now uUCR 302 and Ottery St Mary Bridleway No.72, with what is now the main road being considered a uUCR. Aerial photos from 1946 further confuse things by showing the current Venn Ottery to Tipton road as clearly being the main route at that time; likewise, they show the claimed route as clearly being secondary in nature (in a physical sense at least) to the current main road through Metcombe. This confusing (and contradictory) picture suggests that the classification of the road network in this area evolved during the period from the 1920s into the 1940s. It is certainly possible that the claimed route formed part of the main road through Metcombe historically but was superseded by the current road to the south (the major obstacle of the ford had been bridged by the time the aerial photos were taken in 1946) and Bartholomew's mapping supports this. However, the fact that the two handover maps show the claimed route differently rather diminishes their evidential weight and requires them to be treated with a degree of caution as it is possible that they contain inaccuracies.
- 5.7.3 The claimed route was not included on the Definitive Map or proposed for inclusion during subsequent uncompleted reviews. However, the fact that it was not put forward for inclusion on the Definitive Map does not mean that public rights do not exist. The fact that the route may have been considered to be a public road in the preceding decades may account for it not being included in this case.
- 5.7.4 Without conclusive evidence of express dedication, for dedication to have occurred at common law it must be shown that it can be inferred and that the public have accepted it. No user evidence forms have been submitted. Two landowners report that they have seen the public using the route on foot, bicycle, horseback and motorcycle, though seven other effected landowners did not respond during consultation. The fact that the claimed route has been shown as an ORPA on modern OS mapping, along with it being open and available for use, makes it likely that there has been some public use. However, without direct user evidence it cannot be determined exactly what the extent and nature of any use has been.
- 5.7.5 There is, therefore, some documentary and anecdotal evidence to support the subsistence, at Common Law, of a public right of way over the claimed route. However, with the absence of direct user evidence to show

acceptance by the public, of a right of way of any particular status, the evidence overall is considered insufficient to show that a public right of way subsists or is reasonably alleged to subsist.

## **5.8 Conclusion**

- 5.8.1 On balance, though it is clear that private rights of access exist along the claimed route, the same cannot be said of public rights. It is therefore recommended that no modification Order be made in respect of proposal 5.



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**DEVON COUNTY COUNCIL**  
 Definitive Map Review, Ottery St Mary parish  
 Informal Consultations, Proposal 5:  
 Claimed Restricted Byway at Metcombe

Drawing number: HIW/PROW/22/06  
 Date: Jan 2022  
 Scale: 1:5,000  
 Drawn by: TCG

Notation	
Existing Bridleway	
Unsurfaced Unclassified County Road	
Claimed Restricted Byway	(310m)

**Meg Booth**  
 CHIEF OFFICER FOR HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE

