

CET/23/92

Public Rights of Way Committee
23 November 2023

Definitive Map Review Parish of Aylesbeare

Report of the Director of Climate Change, Environment & Transport

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

1) Recommendation

It is recommended that no Modification Order be made in respect of Proposal 1 or Proposal 2.

2) Introduction

This report examines two proposals arising from the Definitive Map Review in the parish of Aylesbeare.

3) Background

The original survey by Harpford Parish Council (as it was then called) in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of 34 routes submitted to the County Council. After several amendments and revisions during the draft and provisional stages, 26 footpaths and 1 bridleway were recorded on the Definitive Map and Statement with a relevant date of 17th May 1966.

The Limited Special Review of RUPPs, which commenced in 1971, did not affect this parish. The general review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1977 produced several proposals for changes, one of which is considered in this report, the rest were for deletion of paths and which were not considered valid.

The following orders have been made and confirmed:

East Devon District Council (Footpath No. 17, Aylesbeare) Public Path Diversion Order 1981

Devon County Council (Footpath No. 7, Aylesbeare) Public Path Diversion Order 1986

Devon County Council (Footpath No. 2, Aylesbeare) Public Path Diversion Order 1992

Devon County Council (Footpath No. 12, Aylesbeare) Public Path Diversion Order 2000

Devon County Council (Footpath Nos. 16 & 17, Aylesbeare) Public Path Diversion and Definitive Map & Statement Modification Order 2012

Devon County Council (Footpath No. 4, Aylesbeare) Public Path Diversion and Definitive Map & Statement Modification Order 2013

The current review began in December 2022 with a public meeting in the parish.

4) Proposals

Please refer to the appendix to this report.

5) Consultations

General consultations have been carried out with the following results:

County Councillor Jess Bailey	- no comment;
East Devon District Council	- no comment;
Aylesbeare Parish Council	- support both proposals in principle - comments included in background papers
Rockbeare Parish Council	- no comment;
Country Land and Business Association	- no comment;
National Farmers' Union	- no comment;
Trail Riders' Fellowship/ACU	- no comment;
British Horse Society	- no comment;
Cycling UK	- no comment;
Ramblers	- no comment;
Byways & Bridleways Trust	- no comment;
Open Spaces Society	- no comment;

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

6) 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.

7) Legal Considerations

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

8) Risk Management Considerations

No risks have been identified.

9) 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.

10) Conclusion

It is recommended that no Modification Order be made in respect of Proposals 1 and 2.

11) 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

Background Paper Correspondence file: Aylesbeare

Date: 2000-date

File Reference: TCG/DMR/AYLESBEARE

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Appendix I to CET/23/92

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:

Proposed addition of a public Bridleway from the B3180 following Aylesbeare Footpath 11 to Manor Farm and then along Houndbeare Lane to meet the county road Quarter Mile Lane at Marsh Green. Points A-B-C-D-E-F on the proposal map CCET/PROW/23/22.

Grid Ref: SY 054918 – SY 041935

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

1.1 Background

1.1.1 In March 1978, during an uncompleted general review of the Definitive Map, Aylesbeare Parish Council submitted a form proposing the addition of a bridleway from the B3180 to Marsh Green via Manor Farm. A map showing the claimed route was also submitted, along with seven user evidence forms.

1.2 Description of the Route

1.2.1 The claimed route starts at the junction with the County Road B3180 (point A on map CCET/PROW/22/22) and follows the current Footpath 11 in a north westerly direction, passing to the north of Manor Farm (point B). It then turns more to the north and heads through Moor Plantation (up until this point the route passes over registered common land) to cross the County Road C93 (point C). It then continues in a north north-westerly direction along Houndbeare Lane (the first 120m of which is recorded as highway maintainable at public expense (HMPE) on the List of Streets), passing the junction with Withy Bed Lane at point D (this is the junction with proposal 2). It follows the enclosed lane, turning sharply westwards approximately 110m south of Great Houndbeare Farm, and continues to its junction with the County Road C306, Quarter Mile Lane in Marsh Green at point F. The section between E-F is in Rockbeare parish.



Point A (Junction of Footpath 11 and B3181)



Point C looking south – is now completely overgrown.



Point F

1.3 Documentary Evidence

1.3.1 Quarter Sessions bundles, 1754

Extensive records from the Devon Quarter Sessions relating to highway matters are held at the Devon Records Office. At the Easter 1754 Sessions, it was recorded that the parish of Aylesbeare had received a suspended fine for failure to repair the highway between the parish church and 'Houndbeer Corner'. It is not known where 'Houndbeer Corner' is located and in any case the road in question is not the claimed route. However, the name of Houndbeare was clearly well-known enough to be included as a place of reference on the highway at this early date.

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

The Ordnance Survey Drawings produced in 1806-7 show some sections of the claimed route. The section between A-B is shown as an unenclosed road across the common at Aylesbeare Hill. The section between C-D is shown as an enclosed road, as is the section between Great Houndbeare Farm and point F at Marsh Green. The sections not mentioned are not shown at all.

1.3.3 The 1" First Edition map of 1809 shows the claimed route in a similar manner to the Surveyor's Drawings. Both of these early OS maps were produced well before the disclaimer concerning public rights of way was introduced in 1889. It can therefore be argued that routes shown on them may have held some sort of public status or reputation at the time they were produced.

- 1.3.4 Greenwoods Map of 1827 shows the claimed route in much the same manner as the OS Drawings, of which they are believed to have been largely copied from.
- 1.3.5 Later historical mapping at smaller scales: OS 1" editions 1892-1972, Bartholomew's Mapping 1903-1943
OS 1" maps from the late-19th century continue to show the claimed route. A-B is shown as an unenclosed (or partially unenclosed) unmetalled road, while between B-C, it is not shown at all. Between C-F, the route is shown on the 1892 edition as a third-class road, though there appear to be gates at point D and at Great Houndbeare Farm indicated by solid lines across it. From the 1898 edition the stretch between point C and Great Houndbeare Farm is shown only as an unmetalled road, later as a '*minor road in towns, drive or track*'.
- 1.3.6 The section between points B-C is only shown on the OS 1" mapping from 1933 onwards. The gate indicated on the earlier edition near Great Houndbeare Farm also appears in later editions, from 1960 onwards. The fact that the stretch between points C-F is shown as an unmetalled road on the 1919 edition and as a metalled road or track from 1933 onwards suggests that at some point between these two editions it was surfaced.
- 1.3.7 The claimed route is partially shown on all the Bartholomew's editions. These commercial maps were produced for the benefit of '*tourists and cyclists*' and were widely available to the public. Sections A-B and C-F are shown as uncoloured roads, which are classed as '*inferior roads*' that are not recommended for cyclists.
- 1.3.8 Later historical mapping at larger scales: OS 25" editions 1888-1961, OS 6" editions 1889-1944
OS mapping from 1889 onwards, both 6"-to-the-mile and 25"-to-the-mile, all show the claimed route in a similar manner. The 6" editions all show the section between points A-C as a double-pecked line, consistent with a footpath and labelled as such on the 1889 edition. Only the very end of this section, before it reaches point C, is shown as a track. Interestingly, what is now the B3180 main road is also shown as a double-pecked line, far more akin to a footpath than a road. The remaining section between points C-F is shown as an enclosed track, named as Houndbeare Lane, and with solid lines across it at point D and at Great Houndbeare Farm, usually taken to indicate gates or similar obstructions.
- 1.3.9 The 25" First Edition 1889 map shows the claimed route from point A-B as a double-pecked line, as per the 6" maps. From B-C it is shown as a much narrower double-pecked line and is marked FP. Both the B3180 and the smaller C93 are shown as yellow roads. The remaining route from C-F is shown as a tree-lined enclosed lane, with gates in the same position as shown in the 6" editions. The 25" Second Edition map shows the claimed route in much the same manner, the main difference being that from A-C it is shown as per a footpath.
- 1.3.10 Ordnance Survey Name Books, 1903
These Ordnance Survey records were produced in conjunction with the Ordnance Survey mapping, and information on named routes may be found in

the relevant Object Name Books, which provided details of the authorities for named features. Such records can provide supporting evidence of the existence and status of routes.

- 1.3.11 There is an entry for Houndbeare Lane, which states: '*applies to a lane starting at a point 6 chains NE of Marsh Farm to Aylesbeare Common.*' The person stated as giving authority for the mode of spelling is Mr Chard, who is listed as a '*Road Foreman*'.
- 1.3.12 Aylesbeare Tithe Map & Apportionment 1839; Rockbeare Tithe Map & Apportionment 1844; Woodbury Tithe Map & 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 '*roads and waste*'.
- 1.3.13 The Aylesbeare Tithe Map, produced in 1839, shows the claimed route between points A-B and C-D as a road coloured yellow. There is no path shown between B-C as this is shown as a plot of '*common*'. 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.
- 1.3.14 The Woodbury Tithe map shows the claimed route from approximately point D-E. The section is numbered 2255 in the apportionment, listed as a '*lane*' of 1 acre, 1 rood and 28 perches in size. It is separated into two distinct plots by the lane/driveway to Great Houndbeare Farm, though both are numbered 2255. It is owned by a Sarah Cornish but it is not clear what, or if, any tithes were payable on it. '*Roads and waste*' are listed in the apportionment but are not given a number.
- 1.3.15 The Rockbeare Tithe Map, produced in 1844, shows the claimed route between points E-F. It is numbered 643 and is listed in the apportionment as a '*lane*' owned by the Reverend John Elliott and occupied by Philip Tuck. It is stated as being of 2 roods and 38 perches in size but is not liable for any tithes.
- 1.3.16 Finance Act 1910 plans and field books
The Ordnance Survey 25" Second Edition 1904 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 claimed route to have been partly included within surrounding hereditaments (assessment areas of land). Only between points C-D and E-F is the claimed route excluded from surrounding hereditaments.

- 1.3.17 Where the claimed route is included within hereditaments there are no deductions recorded for public rights of way. Great Houndbeare Farm (plot 47) includes the section D-E and it is of particular note that there are no deductions recorded here. Plots 12 and 13 are adjacent to the claimed route but do not include it within their hereditaments and do not refer to it in the field book entries.
- 1.3.18 Parish Council and Vestry minute books – parishes of Aylesbeare, Rockbeare and Woodbury
The claimed route falls within the parishes of Aylesbeare and Rockbeare, with a small section previously included within the parish of Woodbury in the 19th century.
- 1.3.19 Minutes from Aylesbeare Parish Council meetings are held at the Devon Records Office. Entries are recorded showing that the PC participated in drawing up a map of paths for the Rights of Way Act in 1934 but no details of routes were included. Similarly, the minutes document the Definitive Map process but the claimed route is not mentioned. The only reference to '*Houndbeare Lane*' or similar appears in 1936-7 when a drain at the junction of Great Houndbeare Lane and the Aylesbeare-Tipton road was found to be damaged and was repaired. However, this is located at point C which is currently recorded as HMPE and so has no relevance to this claim.
- 1.3.20 St Thomas Rural District Council records, including Highways Board minutes 1878-1974
Records from St Thomas Rural District Council, including Highways Board minute books, are held at the Devon Records Office. These records have been checked and no references to the claimed route have been found. Though they mostly concentrate on the main roads within the district, there are occasional references to more minor/unclassified public roads in other parishes.
- 1.3.21 Aerial Photography 1946-2015
Aerial photography from 1946 shows the claimed route in some detail. Between points A-B it is visible first as a worn track across open ground and then following the surfaced drive of Manor Farm. Between points B-C it is visible as an enclosed, though unsurfaced track, the surface apparently being mostly grassed. From point C, the route is clearly well-surfaced and enclosed by hedges and trees until it turns west. The well-surfaced section continues to Great Houndbeare Farm, suggesting that this property may have been associated with it. From here the route continues as an enclosed track, possibly partially surfaced, until it meets the county road Quarter Mile Lane at point F.
- 1.3.22 More modern aerial photography from 1999-2015 is mostly consistent. Although the first section between points A-B is not visible at all in 1999, it is shown throughout the rest of the period as a clearly-visible wide track across the open common land. The section that passes along the driveway of Manor Farm is obscured by heavy tree cover but the line is distinguishable. The claimed route between points B-C is shown as an increasingly overgrown tree-lined strip or track, with the surface not visible. From point C to Great Houndbeare Farm is visible throughout this period as a well surfaced track, though partially obscured by the hedges/trees alongside.

1.3.23 Between points E-F the surface is visible in 1999 as a pale brown colour between neatly cut hedges. By 2006-7 it is clearly grassed over, though the hedges remain neatly cut. This section appears to become more overgrown up to 2015, with the hedges widening and the lane becoming narrower.

1.3.24 Highway maintenance records/Handover maps/List of Streets

Highway maintenance records from the 1920s and used through to the 1970s, often called handover maps, show that the vast majority of the claimed route was not at that time considered to be maintainable at public expense. The claimed route is left uncoloured and there are no notes or annotations relating to it. These maps did not show footpaths and bridleways, only public roads. The only section of the route shown to be recorded as highway maintainable at public expense is the section between points C-D which is still recorded as such today.

1.3.25 The claimed route, other than the short section from points C-D, is not recorded on the List of Streets, which is the current record of highways maintainable at public expense kept by Devon County Council.

1.4 Definitive Map process

1.4.1 Original Definitive Map process

The application route was not put forward by Aylesbeare or Rockbeare Parish Councils for inclusion on the Definitive Map in the 1950s.

1.4.2 Devon County Council reviews of 1970 and 1977

The claimed route was put forward for consideration during the uncompleted review of the Definitive Map in 1977. Aylesbeare Parish Council submitted a form proposing the route be added as a bridleway, along with seven user evidence forms which are discussed below.

1.5 User Evidence

1.5.1 7 user evidence forms were submitted by Aylesbeare Parish Council in 1978 along with their proposal form during the uncompleted review. A further 5 forms were received during informal consultation, making a total of 12.

1.5.2 The period of user runs from 1921 – 2005, though the period from the mid-1950s until the early 1980s is where the bulk of the use occurred. Only one user (Turl, W) claims to have used the route prior to 1953; only two users claim use of the route after 1984.

1.5.3 The seven forms submitted in 1978 were all completed and signed by the users but were also signed by S Turl (Parish Council Chairman) as the person who took the statement (excluding his own form). All seven forms claim that the route is a bridleway. Six of the forms state that they used the route for riding/on horseback, the remaining form does not state a type of use. On the question of how many times a year they have used the route, five of the users state 'several', while one states 'once or twice' and one leaves it blank. Three of the users state that there was a gate on the route (two say 'at the end of

Houndbeare Lane, the other '*near Great Houndbeare Farm*') but the others state that there was not. None of the users refer to any signs or notices being present on the route. W Turl states that he was either working for, or a tenant of, an owner or occupier of land crossed by the route, but he does not provide further details.

- 1.5.4 The five users who submitted evidence during the informal consultation period completed modern user evidence forms and so have provided more info than the earlier users (for ease, they shall be referred to as the 'modern users'). C Murray is the daughter of W Murray who submitted a form in 1978. All five of the modern users claim the route to be a bridleway, with four of them specifically claiming to have used the route on horseback and Turnbull also claiming use on foot and bicycle. Frequency of use varies from weekly (C Ratcliffe, P Ratcliffe) to every few months (Wakely-Stoyle). The period of use covered by the modern users is 1956-2005, though only Turnbull and F Ratcliffe claim use after the mid-1980s.
- 1.5.5 Some of the modern users provide some additional information. While none of them refer to there being any signs or notices on the claimed route, several mention the presence of gates, specifically at the point where it passes Great Houndbeare Farm.
- 1.5.6 Only one of the users (Wakely-Stoyle) state that they have ever sought or received permission to use the claimed route. However, no further details are given, and it does not appear that direct explicit permission was either sought or received.
- 1.5.7 Turnbull states that there were two gates on the claimed route and marks their location on the plan - the gate near the entrance to Great Houndbeare Farm, which was mentioned by other users, and a gate between points E-F. The latter gate is stated to have been erected and locked by Mr Davey of Marsh Farm around 2005. It is stated that this gate prevented use of this section of the claimed route.

1.6 Landowner and rebuttal evidence

- 1.6.1 Nine landowners were identified with the Land Registry as owning land adjacent to the application route, or sections of the claimed route itself, and were consulted.
- 1.6.2 Mr P Davey returned a landowner evidence form confirming his ownership of a section of the claimed route between points E-F. He states his family have owned the land since 1955 and does not believe that the claimed route is a public right of way. He states that he has seen people using the claimed route but '*not in the last 19 years*'. He states that he has turned back people using the lane on off-road motorbikes. He states that he installed locked gates across the claimed route in 2004 to prevent motorcycles using it. It is stated that permission was given to people to use the route, but this relates to a deed of grant for a water supply pipe and associated private access, rather than any permission being given to members of the public.

- 1.6.3 Mr P Clarke returned a landowner evidence form as owner of the land between points A-C, which is partly already recorded as a public footpath and the registered common between A-B. Mr Clarke states that he has owned the land since 1980 and has never seen anyone using the route (assumed to refer to the section between points B-C), nor ever turned anyone back or done anything to make the route impassable. He provides some additional information about the section between points B-C through Moor Plantation, in that a storm twenty years ago brought down several trees across the route, making it impassable. Trees have since then self-seeded along the track and it is now part of the plantation.
- 1.6.4 Miss Parsons returned a landowner evidence form relating to Proposal 2 but also provided some information relating to this proposal. She states that *'Houndbears Lane is owned by Devon County Council and other third parties'* and that she has *'a right of access over the entirety of it and various accesses off it'* into her fields. She states that to her knowledge there has been no use of the claimed route adjacent to her land by the public, only by fellow landowners for agricultural purposes.

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 claim was made during the uncompleted Definitive Map Review in 1978 and not in response to any specific action taken by a landowner to obstruct or prevent access to it at that time. There is evidence of actions by a landowner having called into question use of the route in 2004 by erecting locked gates for consideration under statute law. There is also evidence to suggest that the section of the claimed route between points B-C became impassable around the same time, though due to natural processes, in this case, a storm bringing down trees. Therefore, it seems that 2004 can be used as the date of calling into question for the purposes of determining statutory dedication, though the accuracy of this date is not wholly satisfactory. The relevant period will therefore be 1984-2004.

- 1.7.2 Though there was earlier use of the claimed route, only two users claimed use during the relevant period. It appears that they believed they were using the claimed route as of right and there is no evidence to suggest any signs or locked gates prevented use during the relevant period. However, two users are not representative of the public at large and so the test for statutory dedication has not been met.

1.7.3 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.

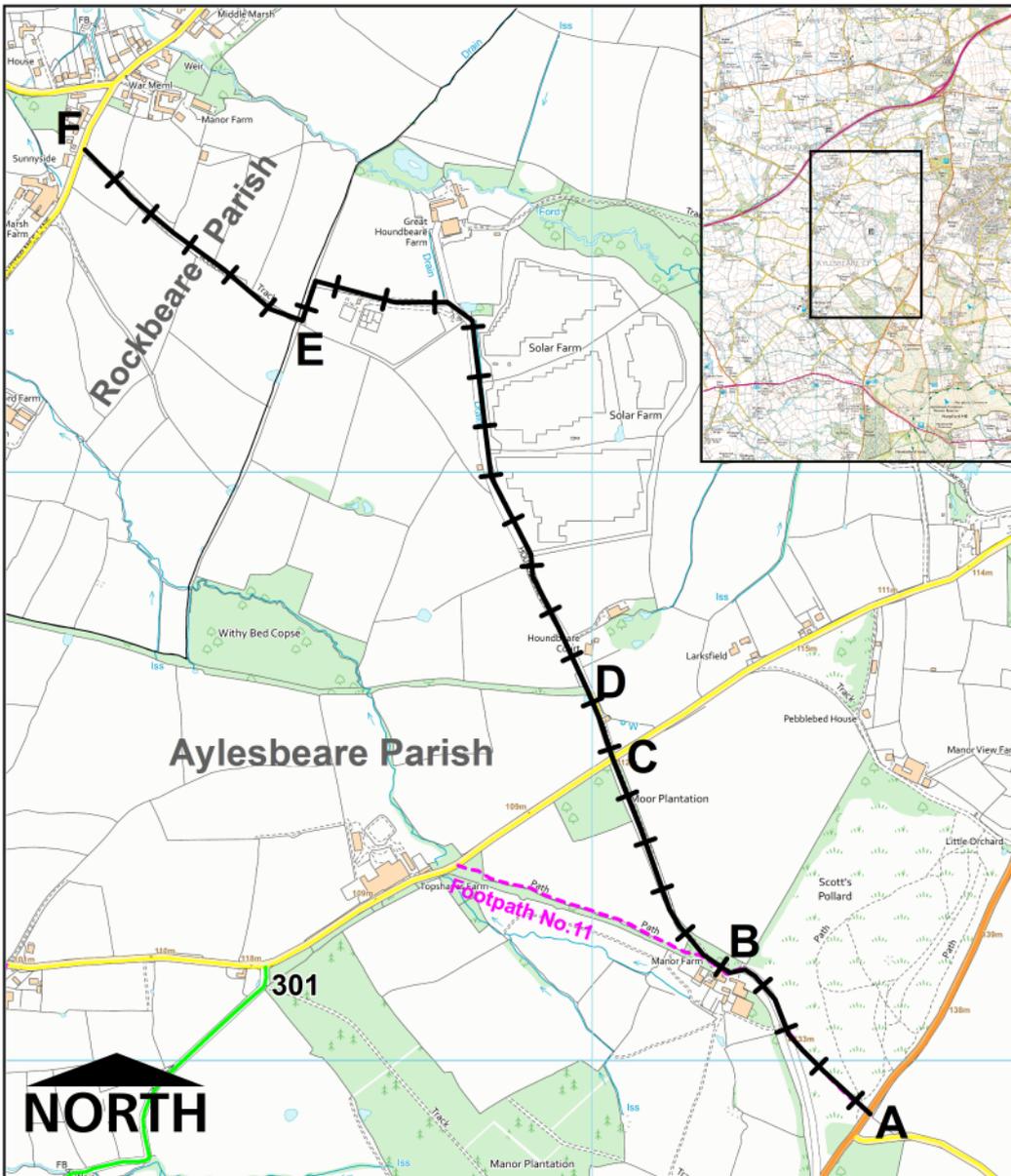
- 1.7.4 Historical mapping shows that the claimed route has physically existed since at least the early part of the 19th century. The OS Drawings, 1st First Edition and Tithe Maps suggest that much of the claimed route may have formed part of the local road network during this period. However, there is no further documentary evidence to substantiate or elaborate on this. Historic highway maintenance records show that the application route was not considered then to be highway maintainable at public expense, other than the short section between C-D which is already recorded as highway maintainable at public expense (HMPE). Finance Act plans and field books show the section between points E-F as being excluded from surrounding hereditaments, but the rest of the claimed route is included within hereditaments and no deductions were made for public rights of way. The OS Object Name Books suggest that the route may have held some sort of public status but are not conclusive in any way.
- 1.7.5 The fact that the claimed route was not proposed for inclusion during the original Definitive Map process suggests that at this time it was not considered to be public by the Parish Council. However, there is no evidence to suggest why it was not included and it may simply have been overlooked. As such, the Definitive Map process provides little evidence either for or against public rights on the claimed route.
- 1.7.6 The route was claimed by Aylesbeare Parish Council during the 1978 review, and so it can be assumed that they considered it to be public when doing so. However, this review was not completed, and the only evidence presented at this time were the seven user evidence forms.
- 1.7.7 The available user evidence suggests that there has been some public use of the route, up to approximately 2004-5 when the gate was erected and locked between points E-F. Although one user claims use since the 1920s, the bulk of the use occurred between the mid-1950s until the early 1980s. There is general consensus amongst the users that the landowner would have been aware of this public use. Conversely, frequency of use was not high and the landowners who returned evidence forms do not claim to have seen much public use. There is no evidence, either provided by users or landowners, to suggest that any landowners ever took any actions to challenge public use on horseback or foot prior to 2004. It therefore appears that what use there was can be considered to have been as of right.
- 1.7.8 There are however some problems with the user evidence. The forms submitted in 1978 appear to have been collected by one person and as a result are rather formulaic. They also do not provide much additional information beyond yes/no answers and as such cannot be attributed as much evidential weight as the modern forms. The modern forms, while providing more detailed information on the use of the route, do not build a picture of the claimed route being well-used by the public at large. While the route is undoubtedly rural, it is

not particularly remote and a higher number of users, particularly on foot, would be expected.

- 1.7.9 The evidence suggests that the route (at least in parts) may have held some sort of public status historically and was used by the public for several decades until it was blocked in 2004. However, the historic documentary evidence is not strong enough to raise more than a suggestion of public rights, and the user evidence is not of a quantity, nor use of a frequency, to be strong enough to demonstrate acceptance of a dedication by the public at large. It does not appear that any landowners took any action prior to 2004 that would rebut a claim, but nor does it appear that they witnessed much use of the route by the public; the small amount of user evidence corroborates this.

1.8 Conclusion

- 1.8.1 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights subsist on the balance of probabilities. Accordingly, the recommendation is that no Order be made in respect of this proposal.



Grid ref: SY 054918 - SY 041935

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DEVON COUNTY COUNCIL
Aylesbeare - Definitive Map Review
 Proposal 1: Claimed public Bridleway from the B3180 following Aylesbeare Footpath 11 to Manor Farm and then along Houndbeare Lane to meet the county road Quarter Mile Lane at Marsh Green, Points A-B-C-D-E-F

Drawing number: CCET/PROW/22/22

Date: March 2023

Scale: 1:10,000 @A4

Drawn by: TCG

Claimed Bridleway ———— (2410m)

Existing Footpaths - - - - -

Unclassified County Road ————

Meg Booth

Director of Climate Change, Environment and Transport



**Proposal 2: Proposed addition of public Footpath along Withy Bed Lane, between Houndbeare Lane and Quarter Mile Lane, points D-G on proposal map CCET/PROW/22/23.
Grid Ref: SY 049926 – SY 038927**

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

2.1 Background

2.1.1 In 2021, Aylesbeare Parish Council contacted the Devon County Council Public Rights of Way team to enquire about the possibility of creating a footpath along Withy Bed Lane. The intention was to provide a green off-road route for pedestrians to access Aylesbeare Common and was part of discussions concerning a proposed solar development on nearby land. There was some anecdotal evidence of recent use of the route by the public on foot. Initial investigations highlighted that there was some evidence (Tithe Maps, Finance Act 1910 plans and Ordnance Survey Name Books) that the route may have held some public status historically and so it was decided to include it as a proposal in the forthcoming parish review.

2.2 Description of the Route

- 2.2.1 The route starts at point D on plan CCET/PROW/22/23, at the end of the recorded HMPE (and also the junction with proposal 1). It proceeds in a westerly direction along a wide but enclosed lane for approximately 220m. This section is still used for agricultural access to adjacent fields. At this point the route becomes very overgrown and is then crossed by a small stream. It continues westwards to the south of Withy Bed Copse until it meets the county road Quarter Mile Lane at point G. Although overgrown, the adjacent banks are visible for much of this section and in places there is a narrow worn path that weaves through it. Several sections are very waterlogged.
- 2.2.2 At point F, a South West Water (SWW) temporary pumping station is currently in situ that completely obstructs the route. SWW responded to consultation and confirmed that they are intending to make the pumping station permanent but that they would be willing to accommodate a public footpath through the site should the claim be successful.



Point D



Point G looking east, showing the SWW temporary pumping station.

2.3 Documentary Evidence

2.3.1 Early historical mapping – 18th century - early 19th century: Donn's Map of Devon 1765; Ordnance Survey, Surveyors' Drawings 1806-7; Cassini 1st edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

Donn's Map of Devon, produced in 1765, does not show the claimed route. However, it does show a crossroad on the road from Aylesbeare to Tipton cross that corresponds with the short stub of HMPE that exists today leading up to the claimed route. Early historic mapping suggests that this crossroad may have only been able to represent the claimed route as the branch to Great Houndbeare is not shown until the Tithe Maps in the late 1830s. Although this does not allude to any public or private status, it does suggest that the claimed route physically existed at this time and was possibly considered part of the public road network.

- 2.3.2 Ordnance Survey Drawings produced in 1806-7 show the entirety of the claimed route. These maps generally do not show footpaths, only roads/tracks. It is perhaps noteworthy that the continuation from point D to Great Houndbeare (part of proposal 1) is not shown on this map, with the farm being accessed from Marsh Green via Great Houndbeare Lane. As such, the claimed route is the sole link between the HMPE (points C-D of Proposal 1) and the county road at Quarter Mile Cross (point G). There are no properties/buildings shown adjacent to the claimed route on this map, nor in any other later maps.
- 2.3.3 The 1" First Edition map of 1809 shows the claimed route in the same manner as the earlier OS Drawings. Both of these early OS maps were produced well before the disclaimer concerning public rights of way was introduced in 1889. It can therefore be argued that routes shown on them may have held some sort of public status or reputation at the time they were produced, though limited weight can be attached to them.
- 2.3.4 Greenwoods Map of 1827 shows the claimed route in much the same manner as the OS Drawings, of which they are believed to have been largely copied from.
- 2.3.5 Later historical mapping at smaller scales: OS 1" editions 1892-1972, Bartholomew's Mapping 1903-1943
OS 1" mapping from 1892-1946 consistently shows the claimed route as an enclosed unmetalled road. The 1892 edition shows a solid line (presumably a gate) across the driveway leading down to Great Houndbeare Farm at point D. There is no such line across the claimed route at this junction.
- 2.3.6 The later editions (1960-1972) show two short sections of white road/track at either end of the claimed route, with the middle section shown as a dashed line that simply denotes '*path*'. From the 1967 edition the dashed line denoting path is a distinct category, with public rights of way now being shown following publication of Definitive Maps.
- 2.3.7 Like Proposal 1, the claimed route is shown on all of the Bartholomew's editions. These commercial maps were produced for the benefit of '*tourists and cyclists*' and were widely available to the public. The claimed route is shown as an uncoloured road, which are classed as '*inferior roads*' that are not recommended for cyclists.
- 2.3.8 Aylesbeare Tithe Map & Apportionment 1839; Rockbeare Tithe Map & Apportionment 1844
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*'.

- 2.3.9 The Aylesbeare Tithe Map, produced in 1839, shows the claimed route as an uncoloured road. The majority of the roads shown on this tithe map are coloured yellow. 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.
- 2.3.10 The western half of the claimed route is shown on the Rockbeare Tithe Map, produced in 1844. It is shown in a similar way to other roads that appear to be public; it is not numbered in the apportionment, though unusually there is no category recorded for roads and waste. Some lanes (such as Houndbeare Lane, which is part of proposal 1) are numbered and listed in the apportionment but are not recorded as subject to tithes.
- 1.4.3 Later historical mapping at larger scales: OS 25" editions 1888-1961, OS 6" editions 1889, 1906, 1944
The OS 25" First Edition 1888 map shows the claimed route as an enclosed tree-lined track. There are no man-made barriers or obstructions indicated on the route, though there are springs/streams marked at several points across it. The route is named Withy Bed Lane on this map. The route is shown in much the same manner on the 25" Second Edition 1904 map, the only real difference being that a guide post is marked at Quarter Mile Cross (point G).
- 2.3.11 Later OS 25" mapping continues to show the claimed route as a track/road, though unnamed, and from 1961 onwards it is also annotated with FP.
- 2.3.12 OS 6" mapping shows the claimed route in a similar manner to the 25" editions, though as expected not in such detail. It is named as Withy Bed Lane in all three editions, and no obstructions are shown along the route. The 1944 6" edition also has a guide post annotated at point G where the route meets the county road Quarter Mile Lane.
- 2.3.13 Ordnance Survey Name Books, 1903
These Ordnance Survey records were produced in conjunction with the Ordnance Survey mapping and information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features. Such records can provide supporting evidence of the existence and status of routes.
- 2.3.14 There is an entry for Withy Bed Lane, which states: '*applies to a lane extending from S. end of Quarter Mile Lane to Houndbeare Lane.*' The person stated as giving authority for the mode of spelling is Mr Chard, who is listed as a '*Road Foreman*'.
- 2.3.15 Finance Act 1910, plans and field books
The OS 25" Second Edition 1904 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. Field book entries for surrounding hereditaments do not refer to the claimed route.

2.3.16 Parish Council and Vestry minute books – parishes of Aylesbeare, Rockbeare
While the parish council records from both Aylesbeare and Rockbeare (though only a short section of the claimed route falls within the latter parish) record brief details of the original Definitive Map process and subsequent reviews, there are no entries relating to the claimed route.

2.3.17 Minutes from 1934 show that Aylesbeare purchased maps to comply with the Rights of Way Act 1932, upon which footpaths were marked and checked by the chairman. However, no details of these survive.

2.3.18 Similarly, in 1944 Aylesbeare Parish Council communicated with St Thomas Rural District Council concerning accommodation roads and '*unnecessary highways*', with parishes being consulted on plans to stop up minor roads no longer required or suitable to be publicly maintained. However, no details of individual roads are mentioned.

2.3.19 St Thomas Rural District Council records, including Highways Board minutes 1878-1974

Records from St Thomas Rural District Council, including Highways Board minute books, are held at the Devon Records Office. These records have been checked and, like Proposal 1, no references to the claimed route have been found. Though they mostly concentrate on the main roads within the district there are occasional references to more minor/unclassified public roads in other parishes.

2.3.20 Highway maintenance records/Handover maps

Highway maintenance records from the 1920s and used through to the 1970s, often called handover maps, show that the claimed route was not at that time considered to be maintainable at public expense. The claimed 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.

2.3.21 List of Streets

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

2.3.22 Definitive Map process

The claimed route was not put forward for inclusion on the Definitive Map by either Aylesbeare or Rockbeare Parish Councils during the original Definitive Map process started in 1950.

2.3.23 Devon County Council reviews of 1970 and 1977

The claimed route was not put forward for inclusion on the Definitive Map during either of the uncompleted reviews.

2.3.24 Aerial photography

Aerial photography from 1946 shows the claimed route and some details can be gleaned. The section from point D until Withy Bed Copse is clearly flanked by hedges and trees but the surface (apparently unmetalled) of the enclosed lane is partially visible. A similar picture is visible where the route passes south of Withy Bed Copse but the northern side is more obscured by tree cover. The

western end of the route near point G is also flanked on both sides by hedges and there are fewer trees. The available width here appears to be approximately 3-4 metres, possibly more.

- 2.3.25 Modern aerial photography from 1999-2015 is of little help. All but the very eastern end (which is still used for agricultural access to adjacent fields) is hidden by extensive tree growth. While hedges are glimpsed in a few small places in 1999, by the end of this period they are only visible at the very eastern end.

2.4 User Evidence

- 2.4.1 During informal consultation, three people submitted user evidence forms, all of whom also submitted forms for Proposal 1.
- 2.4.2 S Wakely-Stoyle states that she used the route on horseback every few months from 1970 until approximately 1983 when it became too overgrown to be usable. She states that it has always been her understanding that the route was public, and that her mother also held this view, along with the Foxwell and Larcombe families who lived in the parish. She states that she never sought or was given permission to use the route, was never stopped or turned back and did not know who the landowner was.
- 2.4.3 P Ratcliffe states that she used the claimed route on horseback several times between approximately 1967 and 1982 as part of a circular route that included Proposal 1. She states that the *'track was difficult in wet weather so I rarely took my children this way.'*
- 2.4.4 F Ratcliffe (daughter of P Ratcliffe) states that she used the claimed route on both foot and horseback between 1971-1982 when she was a child. She states that she knows many people who used the claimed route over the years but that many of them have since died. She writes that: *'there were always locals walking and riding these lanes.'*
- 2.4.5 As well as the three user evidence forms, three additional people emailed in support of the proposal and claimed that they had used the route. However, despite being sent user evidence forms, they did not submit them and so the information that they provided cannot be given as much weight as those who returned forms. Their emails refer to their own use of the claimed route as well as other locals walking and riding along it. One claims to have worked at Otterdene stables in the 1980s and that they regularly took customers along the claimed route (as well as Proposal 1). One states that they got permission from the farmer to use the claimed route, so obviously this cannot be considered use as of right.

2.5 Landowner and rebuttal evidence

- 2.5.1 Six landowners were identified as owning land adjacent to the claimed route, which is itself unregistered. All six adjacent landowners were consulted, with one returning a landowner evidence form.

2.5.2 S Parsons returned a comprehensive submission, including a landowner evidence form and detailed plan. She owns the land to the north of the claimed route from point D to the western edge of Withy Bed Copse; she also owns a small parcel of land to the south of the claimed route near point D. She states that she has owned the land for 30 years but that it has been owned by her family since the 1920s. She does not believe it to be a public right of way and states that it has only ever been used by herself and one other landowner for access, and never by the public. She has never been asked, nor given, anyone permission to use the route. She states that there has been a barrier in place across the claimed route at two points approximately 180m and 200m west of point D, consisting of a post and rail fence and two gates tied together, which have been in place throughout her 30 years ownership. She also mentions that a string has been in place across the route at point D at times when moving livestock. She states that the route is extremely wet and overgrown and impassable in places, plus lists concerns about dogs, trespassing and disturbance of wildlife should the route become a public right of way.

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.

2.6.2 Landowner evidence suggests that the claimed route has had a post and rail fence across it for around 30 years (1993), though this date is only approximate. This would certainly act as a calling into question of the route. However, the user evidence available does not cover the whole of the twenty year period prior to this and so the test for statutory dedication has not been met.

2.6.3 Common Law

The only other basis for its possible consideration as 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 and that the public has accepted the dedication.

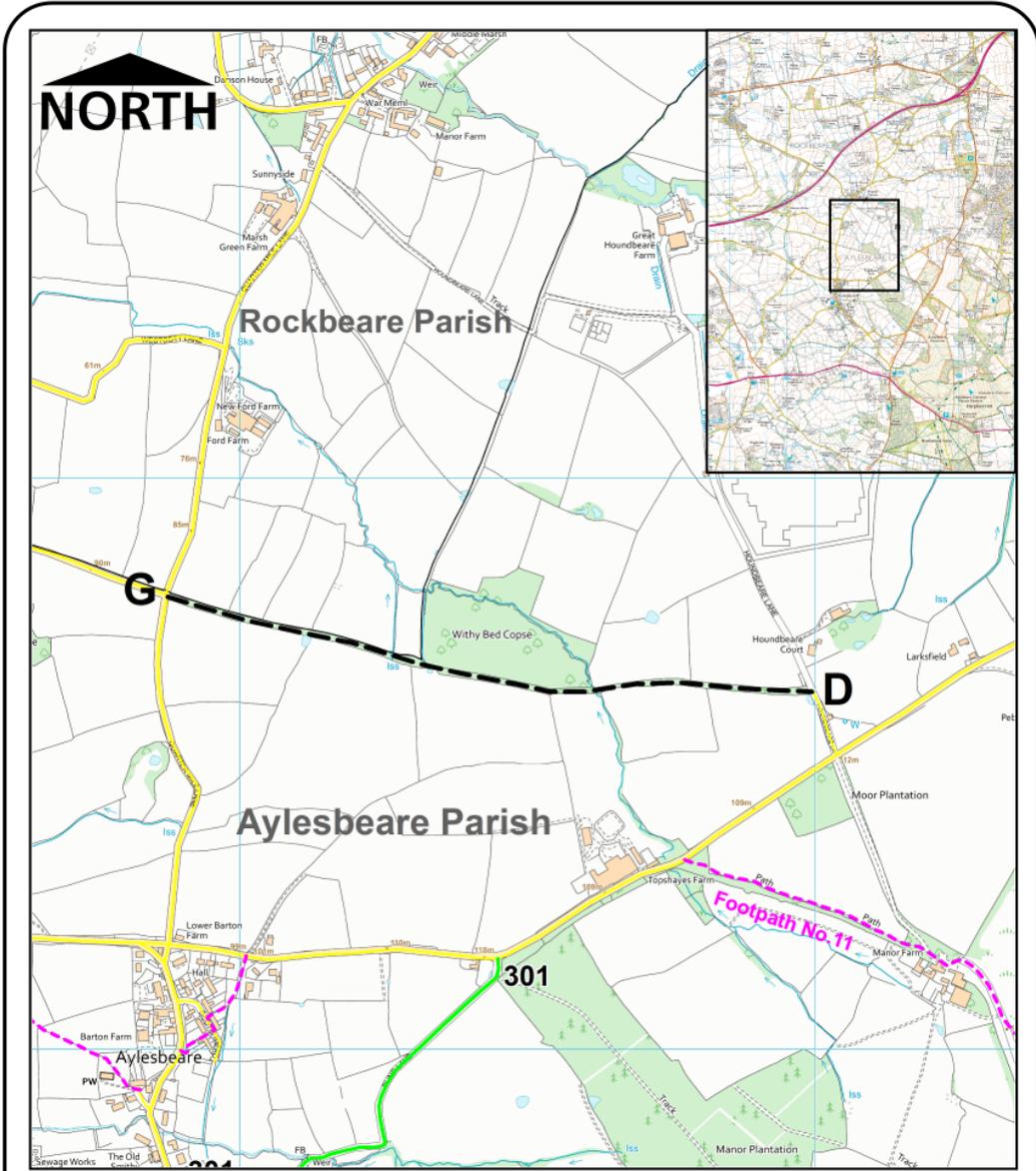
2.6.4 The historical mapping suggests that the route has physically existed since at least 1765 when it appeared partially shown on Donn's Map of Devon. The earlier maps, particularly the OS Surveyor's Drawings and 1" First Edition, were produced long before the OS disclaimer was introduced and can be considered to largely portray the public road network. As such, while they are not conclusive in any way, they can be considered to support the claimed route having some sort of public status or reputation at this time.

- 2.6.5 The two tithe maps that show sections of the claimed route do not provide strong evidence of public rights as they were not produced for this purpose. The Aylesbeare tithe map does not show the claimed route coloured yellow in the way that most of the road network is, which could be interpreted as indicating that it was not considered to be a public highway; conversely, it is not numbered and so does not appear subject to tithes, which could suggest that it was considered public. The section that is shown on the Rockbeare tithe map is not numbered, unlike other similar routes such as Houndbeare Lane; however, although these are numbered, they are not subject to tithes in the apportionment. As such, the tithe maps are of little help in building a picture of public rights along the claimed route at the time they were produced. They provide a confused and contradictory picture and, if anything, are slightly more supportive of the route not being considered public during the mid-19th century.
- 2.6.6 Later historical OS mapping from the late 19th – early 20th centuries continued to show the claimed route and does not depict it to be obstructed or gated, though the natural features (stream and springs) that currently render the route difficult to use are shown from 1889 onwards. While these maps do not provide any evidence of public rights, they do support the contention that the route was open and available for use at that time. The presence of the claimed route on Bartholomew's mapping could be construed as evidence of public reputation, though this does not help establish status.
- 2.6.7 The OS Object Name Book entry for Withy Bed Lane simply states that it is a '*lane*'. The entry was signed off by Mr Chard, the '*Road Foreman*' and so it is to be presumed that he would have had sound knowledge of the status of Withy Bed Lane. The mere fact that he has been deemed to have authority suggests the route may have been considered public. The fact that it is not noted as being a second- or third-class road suggests that if it did have any public status, it would have only been a minor parish road. It is not clear from the Name Book exactly whether the term '*lane*' itself implies any degree of public status or reputation or refers to a private lane or accommodation road.
- 2.6.8 The claimed route is excluded from surrounding hereditaments throughout on the Finance Act 1910 map, a likely indication that it was considered a public highway of at least bridleway status, though the status of highways or P_{RoW} were not a primary concern of the process.
- 2.6.9 The absence of any references to the claimed route in parish records, particularly as it is named route (Withy Bed Lane), is noteworthy. The absence of references to Withy Bed Lane in the parish records does not mean that the Vestry/Parish Council did not consider it to be public. However, it is perhaps slightly surprising that a public highway, albeit unsurfaced, would escape mention over the course of a century. As such, the parish records are slightly more suggestive of the claimed route not holding any public status.
- 2.6.10 The highway records also suggest that relevant highway authorities since the 1920s have not considered the claimed route to be a public road. However, these records do not generally include footpaths or bridleways and so the fact that the claimed route is not shown does not mean that lesser public rights were not present.

- 2.6.11 Landowner evidence suggests that the claimed route has been physically obstructed, including by a post and rail fence, since the early 1990s, though there is no evidence to suggest any actions to rebut public use prior to this.
- 2.6.12 In the absence of any conclusive documentary evidence, the claim would require direct evidence of use by the public in order for common law dedication to be inferred. However, the user evidence available is limited in quantity, does not cover a long period and is not reflective of use by the public at large. As such, although there is some evidence to suggest that the claimed route may once have held some sort of public status or reputation, when taken as a whole it is insufficient to support an inference of dedication under common law.

2.7 Conclusion

- 2.7.1 In the absence of sufficient user evidence of public rights during the relevant period, their existence cannot be considered under Section 31 Highways Act 1980. Under Common Law, the documentary evidence shows that the route has physically existed at least since the mid-18th century and may well have held some sort of public status or reputation up to the early 20th century. However, none of the documents are conclusive, several are rather conflicting, and none help clarify the status that the route may have held. As the documentary evidence is not strong enough by itself, evidence of use by the public as of right would be needed to demonstrate an inference of dedication at common law; in this respect the claim falls short due to the lack of user evidence.
- 2.7.2 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights subsist on the balance of probabilities. It is therefore recommended that no Modification Order be made in respect of this proposal.



Grid ref: SY 049926 - SY 038927

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DEVON COUNTY COUNCIL
Aylesbears - Definitive Map Review

Proposal 2: Proposed addition of public Footpath along Withy Bed Lane, between Houndbears Lane and Quarter Mile Lane, Points D-G.

Drawing number: CCET/PROW/22/23

Date: March 2023

Scale: 1:10,000 @A4

Drawn by: TCG

Claimed Bridleway - - - - - (1120m)

Existing Footpaths - - - - -

Unclassified County Road - - - - -



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