

CET/25/24

Public Rights of Way Committee
6 March 2025

Definitive Map Review 2020 to date Parish of Loxbeare

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.

1) Recommendation

It is recommended that:

- (a) a Modification Order be made to modify the Definitive Map and Statement for the upgrading of Bridleway No. 6, Loxbeare to a Restricted Byway (not a BOAT) between points A - B as shown on plan number CCET/PROW/25/01 (Proposal 1); and that
- (b) a Public Path Extinguishment and Definitive Map & Statement Modification Order be made to extinguish Footpath No. 1, Loxbeare and Footpath No. 11, Washfield D - E - F, as shown on drawing number CCET/PROW/24/32 (Proposal 2).

2) Background

This report examines the two proposals arising out of the Definitive Map Review in the Parish of Loxbeare in Mid Devon.

The original parish survey under s.27 of the National Parks and Access to the Countryside Act 1949, as completed in 1950, initially proposed 11 routes for consideration as public rights of way. After review by Tiverton Rural District Council and Devon County Council and publication of the draft and provisional maps, 10 routes were recorded on the conclusive Definitive Map for Tiverton Rural District Council in June 1964.

No suggestions were made by the parish for changes to the public rights of way in the uncompleted Devon County reviews of 1968 and 1977. The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

The following orders affecting the Definitive Map for Loxbeare have been made and confirmed since 1964.

Devon County Council Public Path Diversion Order 2007 Footpath No. 8, Loxbeare

Devon County Council Public Path Diversion Order 2008 Bridleway No. 2, Loxbeare

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

The current review was opened with a parish public meeting in April 2024 held at the village hall. The meeting had been arranged with the village Hall committee as there is no Parish Meeting Chairman in position at the present time. The consultation map of 2 proposals for change was published in November 2024 and included one Schedule 14 application made in 2006 by the Trail Riders Fellowship for the upgrading of Bridleway No. 6, Loxbeare to a Byway Open to All Traffic (BOAT). The other proposal was received from the village hall committee for the extinguishment of Footpath No. 1, Loxbeare and Footpath No. 11, Washfield which crosses a three lane section of the A361 (North Devon Link Road). An alternative route via the local county roads being available.

3) Proposals

Please refer to the appendix to this report.

4) Options/Alternatives

The recommendations in this report are in accordance with the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review. The details considered in making the recommendations are set out within the appendix to this report.

5) Consultations and Representations

General public consultations have been carried out with the following results in respect of the proposals considered in this report:

County Councillor Chesterton	-	no comment
Mid Devon District Council	-	no comment
Loxbeare Parish Meeting	-	no current Chairman
Washfield Parish Council	-	agree with Proposal 2
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
British Horse Society (Devon)	-	no comment
Ramblers' Association (Devon)	-	no comment
Ramblers' Association (Tiverton)	-	response summarised in the appendix
Trail Riders' Fellowship	-	no comment
Cycling UK (Devon)	-	no comment

6) Strategic Plan

The Council's Plan 2021 – 2025, <https://www.devon.gov.uk/strategic-plan/>, has, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

At a strategic level, public rights of way are of great importance to:

- connecting people and places (including Active Travel),
- the local economy (with the network providing essential infrastructure in support of recreation, leisure, and tourism),
- carbon reduction, biodiversity, landscape, and heritage (particularly provision for non-car based travel, contribution to climate change avoidance and mitigation measures, and as a key component of green infrastructure), and
- physical and mental health and wellbeing (with benefits directly attributable to exercising outdoors and contact with nature).

Directly relevant priorities set out within the Devon Strategic Plan include:

- Responding to the climate emergency, especially ‘more opportunities for cycling and walking’, and ‘encourage sustainable lifestyles’.
- Supporting recovery and growth, especially ‘maintain, and where necessary, improve our highway network’ and ‘improve sustainable transport options’.
- Improve health and wellbeing, especially ‘give people greater opportunities for walking and cycling to increase their physical activity’.
- Supporting people and communities, especially ‘enable a range of transport options, including public transport’.

7) 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.

8) Legal Considerations

The implications/consequences of the recommendation(s) have been taken into account in the preparation of the report. A summary of the legal basis is set out in the Appendix at Section A.

Should Modification and/or Public Path Orders be made, these will be publicised, with opportunity for representations and objections to be submitted. If no representations or objections are duly made to the Order, or if any so made are withdrawn, Devon County Council may confirm the Order. If any representations and objections which have been duly made and not withdrawn, the Order will be submitted to the Secretary of State for Environment, Food and Rural Affairs (through the Planning Inspectorate) for determination.

9) Environmental Impact Considerations (including Climate Change, Sustainability and Socio-economic)

Environmental impact (including climate change sustainability and socio-economic) implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report. No impacts have been identified.

10) Equality Considerations

Where relevant, in coming to a decision, the Equality Act 2010 Public Sector Equality Duty requires decision makers to give due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding in relation to the protected characteristics (age, disability, gender reassignment, marriage and civil partnership (for employment), pregnancy and maternity, race/ethnicity, religion or belief, sex and sexual orientation).

A decision maker may also consider other relevant factors such as caring responsibilities, rural isolation or socio-economic disadvantage.

Equality impacts have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report. No impacts have been identified.

11) Risk Management Considerations

No risks have been identified.

12) Summary/Reasons for Recommendations

It is recommended that a Modification Order be made to modify the Definitive Map and Statement for the upgrading Bridleway No. 6, Loxbeare to a Restricted Byway (not a BOAT) between points A – B as shown on plan number CCET/PROW/25/01 and that a Public Path Extinguishment and Definitive Map & Statement Modification Order be made to extinguish Footpath No. 1, Loxbeare and Footpath No. 11, Washfield D - E - F, as shown on drawing number CCET/PROW/24/32.

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

This is in accordance with the County Council's statutory duty under the Wildlife & Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to progress the parish by parish review in the Mid Devon District Council area.

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Division: Tiverton West

Local Government Act 1972: List of background papers

Background Paper: DMR/Correspondence File

Date: 2020 to date

File Reference: DMR/Loxbeare

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Appendix to CET/25/24

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 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.

Extinguishment of rights for mechanically propelled vehicles also does not apply if, before the relevant date (20th January 2005), a proposal was made under section 53(5) of the Wildlife and Countryside Act 1981, or such a proposal was determined by a surveying authority, for an order to modify the definitive map and statement as to show a BOAT.

The judgement in the case of R. (on the proposal of Winchester College) v Hampshire County Council (2008) however, found that for such exceptions to be relevant the proposal must fully comply with the requirements of paragraph 1 of Schedule 14 to Wildlife and Countryside Act 1981. It is appropriate therefore firstly to determine whether or not the claimed vehicular rights subsist and, secondly, whether or not any exceptions apply; if vehicular rights subsist but the exceptions are not engaged then the appropriate status is restricted byway. Such claims may also be considered for a lower status.

Proposal 1 – Schedule 14 Application for the Upgrading of Bridleway No. 6, Loxbeare to a Byway Open to All Traffic (BOAT)

This is a Schedule 14 Application for the upgrading of Bridleway No. 6, Loxbeare to a Byway Open to All Traffic. The bridleway runs from the county road (point A) to Beacondown Cross (point B) (GR SS 9166 1345 to SS 9215 1368).

Recommendation: It is recommended that an Order be made to modify the Definitive Map and Statement for the upgrading of Bridleway No. 6, Loxbeare to a Restricted Byway (not a BOAT) between points A and B as shown on drawing number CCET/PROW/25/01 (Proposal 1).

1. Background

- 1.1 In November 2005 the Trail Riders Fellowship submitted a Schedule 14 Application to the County Council for the upgrading of Bridleway No. 6, Loxbeare (which is the western end of Ridge Lane) to a Byway Open to All Traffic (BOAT), supported by documentary evidence only. This was one of several 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.
- 1.2 This application was made after 20th January 2005 and was also not compliant with the regulations, as notice of the application had not been served on the landowners. However, as the Schedule 14 application had been received, the proposal was included in the parish review as made, for the upgrading of a recorded bridleway to a BOAT. As there are very limited exemptions in which vehicle rights may be preserved it would be likely that, subject to sufficient evidence, the route could only be upgraded to a restricted byway.

2. Description of the Route

- 2.1 The route starts at the county road known as Tombstone Lane south east of Merrymead at point A (GR SS 9166 1345) and proceeds north eastwards along the defined hedged lane that is the western end of a lane known as Ridge Lane to Beacondown Cross at point B (GR SS 9215 1368).
- 2.2 The total length of the bridleway is approximately 550 metres with a mud and grass surface with some stone as evidence of a previously improved surface in some sections. The lane is called Ridge Lane on the OS 25" 1st Edition map and subsequent OS maps.



Point A looking north eastwards



Point B looking south westwards

- 2.3 The section of Ridge Lane running eastwards from Beacondown Cross and the lane running southwards from Beacondown Cross currently also have no recorded status, in that they are not county roads or public rights of way. These sections of lane will be considered in the Tiverton Definitive Map Review with the Tiverton review informal consultation to be published later this year.

3. Consultations

- 3.1 Loxbeare parish is a parish meeting and not a parish council. There is no parish meeting Chairman at the present time and so no response was received from the parish.
- 3.2 The local representative of the Ramblers Association, the Tiverton Area Footpath Officer, advised that he does not have any specific objections to the proposal. There may be concerns regarding damage to the surface by motorbikes, quad bikes, or if a number of vehicles using the lane at the same time as a group of walkers but not sufficient to objection. No other responses were received apart from those as mentioned below.

4.1 Ordnance Survey and Other Maps

- 4.1.1 The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.
- 4.1.2 OS 1 inch to a mile Sheet XXI Published 1809
The bridleway is shown as a defined lane with two solid lines each side and in a similar manner to the entire length of Ridge Lane, the two lanes that connect at Beacondown Cross and routes that are now county roads in the vicinity. Bunkersland is called Bunckham on this edition.
- 4.1.3 Greenwood's Map of Roads 1825
These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. They were published in 1825 at a scale of one inch to the mile and date between the 1st edition OS maps and Tithe Maps published in the mid

19th century. Roads were shown as either turn pike roads with a bold line on one side of the road or as cross roads. Ridge Lane is shown on the map as a cross road including the section that is recorded as Bridleway No. 6, Loxbeare. The alignment of the bridleway is not as straight as it was by the early 20th century. Greenwoods Map shows the parish boundary north of that section of lane, indicating the bridleway was in Tiverton parish.

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

On the first edition the route is depicted as a defined lane throughout its entire length with mature hedgerow trees shown in the adjoining hedges. This section of the lane has its own compartment number of 2152a with an area of 0.83 acres. The parish/municipal boundary with Tiverton runs within the lane with the annotation '3ft R.H.', meaning 3 feet from the right hand boundary.

On the second edition the bridleway is again shown as a defined lane with the same compartment number and area. The parish boundary is also shown as running within the lane at '3ft R.H.'.

4.1.5 OS 1 inch to a mile maps of 1946, 1960 & 1965

On the 1946 edition the route is shown as an uncoloured narrow defined double-sided narrow lane and corresponding to 'Minor Roads in towns, Drives and Unmetalled Roads'. The parish boundary is shown as running along the lane.

4.1.6 On the 1960 edition the route is shown along the lane as a track, although partly obscured by the writing for Bunkersland. The 1967 edition shows the lane having the symbol for a public bridleway running along that section of Ridge Lane, as public rights of way as recorded on the Definitive Map are shown on this edition of the OS map.

4.1.7 OS Post War Mapping A Edition 2500 1970

The bridleway is shown as a defined lane. The entire length of the lane extending eastwards is named Ridge Lane on the two separate map sheets that the route covers. There are two separate compartment numbers 5589 at 0.72 acres and 7829 1.15 acres.

4.1.8 OS 1:25,000 maps of Great Britain – Sheet 21/60 SS92 1962

The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one-inch to the mile (1:63,360) maps.

4.1.9 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. Some routes are shown as pecked and

dashed lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

- 4.1.10 Sheet SS91 published in 1962 shows the route as a defined uncoloured lane in the similar manner to minor county roads in the vicinity and described in the key as 'Poor, or unmetalled Other Roads'. The parish boundary is shown as running along the northern boundary of the lane.

4.2 Tithe Maps and Apportionments

- 4.2.1 Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not tithe able. 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*'.

4.2.2 Calverleigh Tithe Map 1839 & Apportionment 1838

The bridleway is shown on the Calverleigh Tithe map as in the 1830s Loxbeare and Calverleigh were still two separate parishes. The parishes were amalgamated about 1894 following an Act of Parliament of March 1885. On the Calverleigh Tithe Map the route is shown colour washed in the manner of what are now county roads in the vicinity. The lane is not numbered and is also on the current alignment by this date. The apportionment summary includes the heading Roads and Waste not herebefore included 3 acres 2 rods and 12 perches which would include all roads within the parish.

4.2.3 Tiverton Clare Tithe Map 1842 & Apportionment 1841

The section of Ridge Lane that the bridleway runs along is also shown on the Tithe Map for the Clare district of Tiverton. On this map the lane is coloured blue to depict the parish boundary but is also numbered 2127. In the Tithe apportionment, number 2127 is included with the property known as Bunker's Land, owned and occupied by William Baker, described as 'Road' with no state of cultivation and with an area of 1 rodd and 15 perches.

4.3 OS Name Books Early 20th Century

- 4.3.1 The OS name books gave the definitions of features, houses, rivers, places, lanes printed on the large scale (6" and 25") OS maps first published in the late 19th century. The definitions were typically authorised by the owner where an object (say a farmhouse or

gentleman's residence) was privately owned and by the district overseer/surveyor or someone in a public position where they were in public ownership.

4.3.2 OS Name Book 1904 Loxbeare Kew Ref OS 35/1717

In the OS Name book Ridge Lane is described as 'A public road extending from the main road about 1 mile W of Tiverton to Tombstone Lane' and signed for by J Siddalls, Borough Surveyor Tiverton. This description covers the whole length of Ridge Lane including the section currently recorded as Bridleway No. 6, Loxbeare.

4.4 Finance Act Plans and Field Books 1910

4.4.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

4.4.2 Bridleway No. 6, Loxbeare is excluded from the adjacent hereditaments as is the entire length of Ridge Lane.

4.5 Loxbeare Vestry Minutes 1858 – 1961 (1558A-6/PV1)

4.5.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by locally elected Surveyors of Highways. Vestry minutes for Loxbeare from 1858 to 1961 are held by the South West Heritage Centre. There were no references to the route in the Loxbeare vestry minutes.

4.5.2 However, until 1894 Loxbeare and Calverleigh were separate parishes and the location of Bridleway No. 6, Loxbeare would have fallen into Calverleigh parish. No records of any vestry minutes for Calverleigh were found.

4.6 Parish Meeting Minutes 1894 to date

4.6.1 Loxbeare is a parish meeting but at the present time there is no Parish Meeting Chairman. No records of any parish meeting minutes were traced.

4.7 British Newspaper Archive (on line)

4.7.1 No reports relating to Ridge Lane were found in the digital archives of those newspapers that have been digitised to date.

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

4.8.1 The parish survey forms for the parish were completed in July 1950 by Brigadier General L Butler, Lt Colonel W Amory (Chairman of the Parish Meeting) and Mr R Chown. Path number 6 was described as a 'CRB from Beacon Down Cross (end of No 5 BR) S W along lane between banks for about 700 yards and out to Tombstone Lane. The grounds for believing the path to be public was 'local evidence'. Although parish submissions initially included the designations CRF (carriage road used as a footpath) and CRB (carriage road used as a bridleway) in addition to footpaths and bridleways, Devon County Council subsequently only used the designations of footpath, bridleway and road used as a public path (RUPP) only on the Definitive Map.

4.8.2 At a meeting with a representative of Tiverton Rural District Council and the Chairman of the Parish Meeting on 1st November 1957 to agree the paths for the parish, path number 6 was amended from a CRB to a bridleway. Path number 5 was the lane running northwards from Beacondown Cross to Calverleigh Church. This was omitted from the Definitive Map as it was already recorded as an unclassified county road.

4.8.3 There were no objections to the route's inclusion on the draft or provisional definitive maps as a bridleway and the route was recorded as Bridleway No. 6, Loxbeare on the conclusive Tiverton Rural District Definitive Map published in June 1964. The Definitive Map statement reads 'The path is a Bridleway. It starts at Beacon Down Cross at the southern end of the Unclassified County road at the Borough boundary and continues along the lane which forms the boundary passing Bunkersland on the north-west side to end at Tombstone Lane, a District Road, north of Ducksmoor Plantations'.

4.9 Devon County Council Reviews of 1968, 1971 & 1977

4.9.1 No proposals for any changes were made by the Parish in the 1968 or 1977 uncompleted Devon county reviews. The limited special review of 1971 for the reclassification of RUPPs (Roads used as public paths) did not affect this parish.

4.10 Aerial Photography RAF 1946-1949, 1999-2000, 2006-2007 & 2015-2017

4.10.1 On the 1946-1949 aerial photography, the route of the way can be seen as a defined hedged lane with the surface of the lane visible in places and the same colour as the county road at point A. Some

substantial trees are visible in the hedges and these obscure the centre portion of the bridleway.

4.10.2 In 1999-2000 the line of the route is defined by the hedges and hedgerow trees with part of the surface visible at the western half of the lane. The 2006-2007 photography shows a similar situation as does the most recent 2015 aerial photograph, although more of the surface is visible along the length of the lane.

4.11 Land Registry

4.11.1 Ridge Lane is unregistered with HM Land Registry for its entire length. The land on both sides is registered.

4.12 Trails Riders Fellowship Schedule 14 Application

4.12.1 The application made by the Trail Riders Fellowship included reference to documentary evidence in support of their claim. This included the Tithe Maps of Calverleigh and Tiverton Clare, where they advised that the route is depicted in the same way as other roads that are public today; Greenwoods Map where the route is shown as a cross road and the Finance Act where the lane is excluded at the southern end.

4.12.2 The application also made reference to the judge's summing up in the case *Eyre v New Forest Highway Board* 1892. They say this supports the contention that a road known to be public prior to 1835 would still be public to this day in the absence of a stopping up order even if it had never been publicly maintained at all since then and also that there is little point in a cul de sac road unless it leads to a place of special interest. Hence there must be a presumption that the higher status prevails over the whole length of the route.

4.12.3 The current Devon representative of the TRF was advised that the application was been considered as part of the Definitive Map Review in Loxbeare, but no response has been received.

4.13 Section 31(6) Deposit

4.13.1 The land on the northern side of Bridleway No. 6, Loxbeare is subject to a 31(6) deposit in favour of the landowner Sir I Heathcoat Amory of Knightshayes Estate. The first statement and declaration was made in 2009, which expired in 2019. A further statement and declaration was made in 2023/2024 which will expire in 2044. The land included within the deposit does not include the lane.

5. User Evidence

5.1 No user evidence forms were received with the Schedule 14 Application and no user evidence forms were received during the consultation stage in respect of the proposal.

6 Landowner Evidence

- 6.1 The two landowners who own land adjacent to Bridleway No. 6, Loxbeare were contacted individually and advised of the proposal. They were invited to submit their comments and information by way of a completed landowner evidence form or otherwise.
- 6.2 Mr Tidball of Bunkersland confirmed that he owned the land to the south of the lane and advised that he paid for one side to be trimmed every year. No other comments were made.
- 6.3 Mr I Amory returned a completed land owner evidence form as landowner of the northern side of the land since 1950. He advised that the lane had always been used as a bridleway and was frequently used on horseback and on foot. Mr Amory advised that he had turned away motorcycles trying to use the lane when met by chance. They have cleared fallen trees and maintained field access gateways. Under other information Mr Amory has added 'We have always regarded the use of the lane to be a popular bridleway. We have from time to time turned away motorcycles trying to use this lane as it is narrow and high sided making it unsuitable for vehicular use.'

7. Other Consultation Responses Received

- 7.1 Three other responses were received in respect of the proposal to upgrade Bridleway No. 6, Loxbeare to a Byway Open to All Traffic. Mr W Amory registered his objection to the upgrade of the bridleway and advised that the existing bridleway is great for horses. However, it has high banks either side and if a nervous horse met a motorised vehicle, he thinks it would likely cause panic and would be very dangerous. It is a lovely, peaceful part of the countryside, increasingly rare nowadays and would be a travesty if this were changed.
- 7.2 Mr B Amory emailed to register his objection to the proposal to upgrade to a BOAT. He commented that the bridleway is very narrow with high hedges and barely wide enough for a vehicle. It is certainly not wide enough to allow other users of the bridleway – walkers, cyclists or horse riders to pass by an oncoming vehicle. Converting it to allow joyriders and off-road vehicles would be a serious risk to the safety of horses, cyclists, walkers and dogs.
- 7.3 Mr & Mrs Pugsley emailed to advise that they are extremely concerned that the bridleways from the Rackenford road (the east end of Ridge Lane in Tiverton parish) up Ridge Lane to Tombstone Lane (county road at point A) will become a leisure facility for groups of riders on their quad bikes or scramble bikes. These bridleways are used daily by many local horse riders including children and dog walkers. The stretch in question from Beacondown Cross to Tombstone Lane is totally unsuitable for mechanically propelled vehicles which will be a significant danger to walkers, riders, animals and wildlife. They feel very strongly that the proposal should not be passed on this bridleway.

8 Discussion

Statute (Section 31 Highways Act 1980)

- 8.1 Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 8.2 A Schedule 14 application for the upgrading of Bridleway No. 6, Loxbeare to a Byway Open to All Traffic was made by the Trial Riders Fellowship in 2005. The TRF had only included documentary evidence in support of their claim. The application made by the TRF in 2005 could be considered sufficient to be the required calling into question under section 31 of the Highways Act 1980 for the upgrading. However, as no user evidence was submitted the schedule 14 application for the upgrading does not fall for consideration under Section 31.

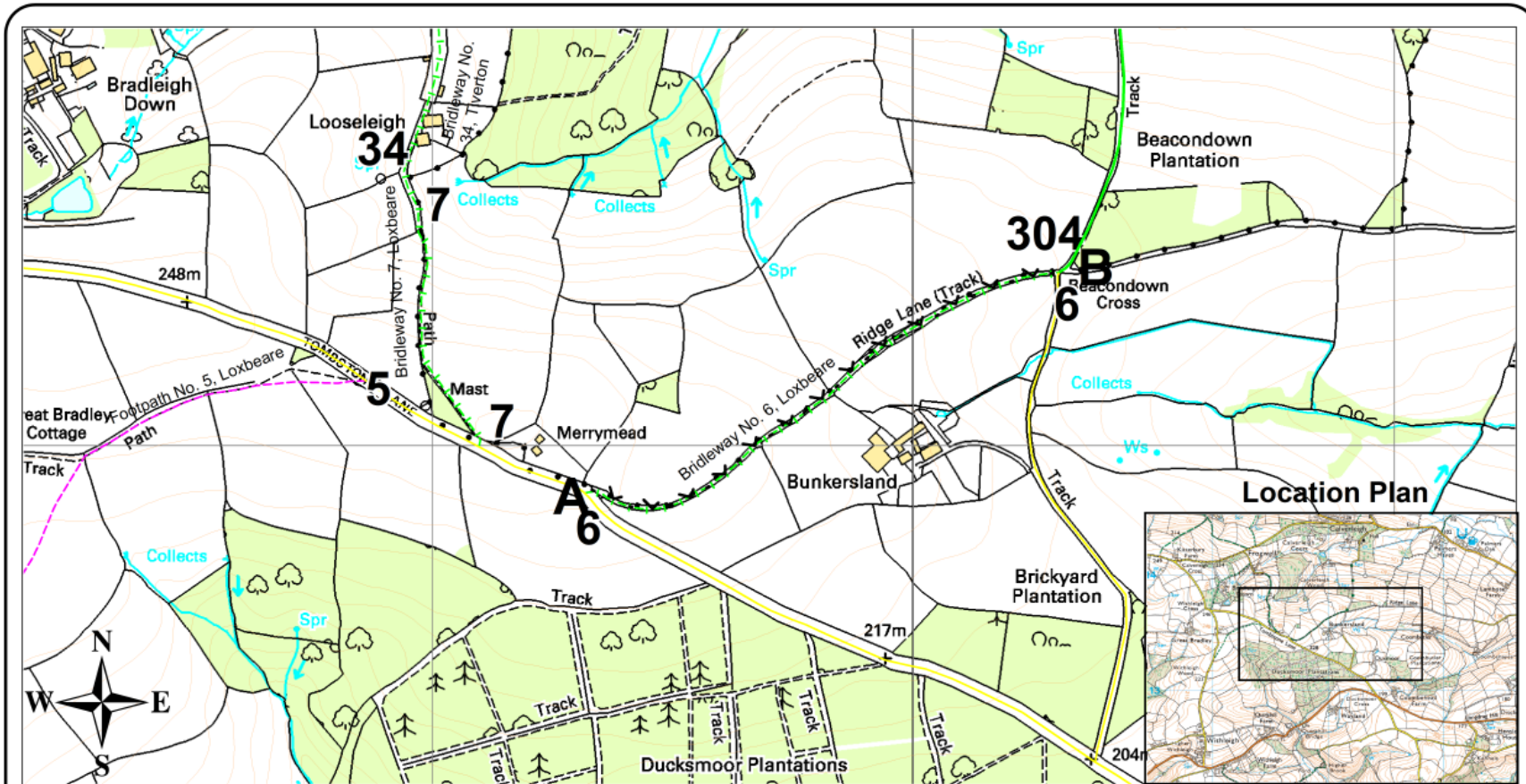
Common Law

- 8.3 A claim for a right of way or for upgrading an existing public right of way may also be considered under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway of the higher status and that the public has accepted the dedication.
- 8.4 The route was initially proposed as a public right of way when the parish prepared. In the 1950 Parish survey the route was initially proposed as a CRB) carriage road used as a bridleway) and amended to a bridleway. There were no objections to that section of Ridge Lane's inclusion in the draft or provisional Definitive Maps for Loxbeare parish as a bridleway and the route has been recorded on the Definitive Map as a bridleway since 1964.
- 8.5 Greenwoods map 1825 and 1st Edition 1" OS map 1809 all show the physical existence of the lane since at least the early 1800s and in a similar manner to the surrounding lanes that are today county roads. The Tiverton Clare Tithe Map includes the lane as a road. The OS Name Book describes Ridge Lane as 'a road' signed for by the District Surveyor. The lane is excluded from the adjoining hereditaments in the Finance Act 1910 plans. These records all indicate that the lane was considered to be a parish highway at that time.

- 8.6 The current HM Land Registry records support the lane being considered public as it is not included in the adjoining registered land.
- 8.7 No user evidence was received from the TRF with the application and no other user evidence has been received. One landowner responded to the consultation and advised that they would not wish to see the bridleway upgraded to a byway open to all traffic (BOAT). Other local residents sent emails making objections to the proposed upgrading to a BOAT as they would not want motorised vehicles using the lane.
- 8.8 On the basis of the evidence discovered, it is reasonable to presume that Ridge Lane was an all purpose highway of the time. However, the NERC Act of 2006 has now prevented the recording of new routes for motorised vehicles except in very limited circumstances. None of the limited exemptions are considered to apply or have been claimed to apply on this occasion which means that the bridleway cannot be upgraded to a BOAT. Accordingly, the proposal to upgrade to a restricted byway will not result in a right for the path to be publicly available for use by motorised traffic.

9. Conclusion

- 9.1 In the absence of sufficient user evidence, the existence of higher rights cannot be considered under section 31 of the Highways Act 1980. At common law the available documentary evidence is considered sufficient to show that Ridge Lane had been an all-purpose parish highway and therefore that higher rights than those of a bridleway can be reasonably alleged to subsist.
- 9.2 The NERC Act 2006 prevents the lane being recorded as a Byway Open to All Traffic as none of the exemptions are deemed to apply. It is therefore recommended that an Order be made to modify the Definitive Map and Statement for the upgrading of Bridleway No. 6, Loxbeare to a Restricted Byway, and not a Byway Open to All Traffic, as shown on drawing number CCET/PROW/25/1.



Map Ref SS 9113 9213 500m grid

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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW INFORMAL CONSULTATIONS - LOXBARE
PROPOSAL NO 1 SCH 14 APPLICATION PROPOSED UPGRADING OF
BRIDLEWAY NO. 6, LOXBARE TO BYWAY OPEN TO ALL TRAFFIC

drawing number CCET/PROW/25/01
 date JAN 25
 scale 1:6,000
 drawn by TW

Notation

Proposed upgrade of Bridleway No. 6 to Restricted Byway A - B (approx 550m) - - - - -
 Existing footpath - - - - - Existing bridleway - - - - - Unsurfaced County Road - - - - -

Meg Booth

Director Climate
 Change, Environment &
 Transport



Proposal 2 – Diversion of Footpath No. 1, Loxbeare and Footpath No. 11, Washfield to a route using adjacent unclassified county roads.

This proposal was made by the Loxbeare Village Hall Committee, who had expressed concerns at the safety of the footpath now that the public had to cross three lanes of the very busy A361 (North Devon link road) when using this footpath. An alternative route using the local quiet unclassified county roads is available to use.

Recommendation: It is recommended that a Public Path Extinguishment and Definitive Map & Statement Modification Order be made to extinguish Footpath No. 1, Loxbeare and Footpath No. 11, Washfield D - E - F, as shown on drawing number CCET/PROW/24/32.

1. Background

- 1.1 The Parish Public Meeting to open the Definitive Map Review in Loxbeare was arranged through the Village Hall Committee as there is currently no Parish Meeting Chairman in post. At the public meeting held in the village hall, comments were made that Footpath No. 1, Loxbeare and Footpath No. 11, Washfield was considered dangerous to use and not used by local people due to the crossing of the A361. There was an alternative route using the county road going eastwards which passes under the A361 and then north westwards along Long Lane, a county road, to the northern point of Footpath No. 11, Washfield. At a subsequent meeting of the Village Hall Committee, it was agreed to propose and support the diversion of the public footpath as a proposal in the Definitive Map Review for the parish.
- 1.2 The diversion of Footpath No. 1, Loxbeare and Footpath No. 11, Washfield was subsequently included as Proposal 2 in the informal consultations for the Definitive map Review in Loxbeare published in November 2024. Notice of the review was circulated to the usual consultees, placed in a local newspaper and with notices placed at either end of the footpath. As the alternative diversion route would be along unclassified county roads that already carry public rights of way on foot, the proposal would in effect be for the extinguishment of the footpath as no creation of new public footpaths is required or proposed.

2. Description of the Footpath

- 2.1 Footpath No. 1, Loxbeare and Footpath No.11, Washfield are recorded in the Definitive Map and Statement with a relevant date of June 1964. Footpath No. 1, Loxbeare starts from the county road by Highgate Cottage at point D and proceeds northwards along the field headland before crossing a boundary fence and continuing northwards across a grass field to the parish boundary with Washfield at point E. The length of the Loxbeare footpath is 190 metres. The Definitive Map Statement for Footpath No. 1, Loxbeare reads 'The path is a footpath. It starts at the Loxbeare/Washfield Parish boundary (Footpath No. 11) north of the

Church and continues across one field in a southerly direction to end at the Unclassified County road east of the Church’.

2.2 Footpath No. 11, Washfield starts from the parish boundary with Loxbeare and northern end of Footpath No. 1, Loxbeare at point E and proceeds north north westwards across a grass field, over a hedgerow stile, highway verge and across three lanes of the A361 (North Devon Link Road opened in the 1980s). The footpath continues across highway verge and through a small area of scrubby copse and over two stiles to the unclassified county road know as Long Lane at point F. The length of the Washfield footpath is 230 metres. The Definitive Map Statement for Footpath No. 11, Washfield reads ‘Footpath starts at Long Lane an unclassified County Road, mid way between Buttermoor and Great Haydon, across a field in a south-easterly direction to the parish boundary with Loxbeare and continues southwards to Highgate as Footpath No. 1, Loxbeare’.

2.3 With the construction of the North Devon Link Road in the 1980s, no consideration appears to have been given to the diversion or extinguishment of the public footpath when the route of the new road was laid out, as there was with those public rights of way that crossed the new dual carriageway between junction 27 of the M5 and Tiverton. It would seem that at that time it was considered acceptable for walkers to cross the link road at grade, even though it was three lanes wide at that point. The current line of Footpath No.1, Loxbeare and Footpath No. 11, Washfield is the same as that recorded on the Definitive Map in 1964.



Point D looking northwards



Field hedge stile south side of NDLR



NDLR from south side



Point F from Long Lane

3. The Proposal for Extinguishment

- 3.1 The proposal from the Loxbeare Village Committee was for the closure of the public footpath from the county road across two fields and the A361 to the county road known as Long Lane, as it was felt that nobody used the footpath as it was too dangerous crossing the busy three lane section of the North Devon Link Road. A safer alternative route would be to use the county road eastwards, passing under the A361 to Buttermoor Cross and then turning north eastwards along Long Lane to meet the northern terminus of the footpath.
- 3.2 The county roads to be used as the alternative route are both unclassified county roads, used by local traffic and agricultural vehicles. The visibility is considered good and with sufficient space or verges along most of the way for vehicles to pass any pedestrians they may meet. The alternative route is longer at about 1,120 metres compared to approximately 420 metres length of the footpath, although the gradient is less. Due to the limited number of houses in that area of the parish it is considered likely that most walkers using the footpath would be using that path as part of a longer walk in the area. From point D it would be about 230 metres along the road to Bridleway No. 2 and Footpath No. 11, Loxbeare and from point F it would be about 690 metres along the road to join Footpath No. 1, Washfield or 1640 metres to join Footpath No. 5, Washfield.

4. Consultations

- 4.1 The landowners and adjacent landowners at Highgate Cottage were informed of the proposal together with the usual local user group representatives and Washfield Parish Council.
- 4.2 Mr A Heywood of Loxbeare Barton responded by returning a copy of the proposal plan marked to show that land between point D and the northern field boundary on the southern side of the A361 was in his ownership. He supported the recommendation to close the route and provide the alternative route D – G – F.
- 4.3 The land between the county road Long Lane at point F and the field boundary on the southern side of the A361 now belongs to Devon County Council. The land was originally purchased by National Highways for the creation of the new North Devon Link Road. The road was downgraded from trunk road status in 2002 and responsibility for the A361 has now passed to Devon County Council. The Neighbourhood Highway Officer for Loxbeare/Washfield was advised of the proposal and responded to say that she fully supports the proposal, it is so overgrown and no obvious place to go once you've crossed.
- 4.4 The proposal was discussed at the meeting of Washfield Parish Council on 20th November 2024. The draft minutes from that meeting recorded under item 49/11/24 Footpaths b) Definitive Map Review Loxbeare – Consultation on Proposal 2 – Diversion of Footpath No. 1, Loxbeare & Footpath No. 11, Washfield from across fields and the A361 to a route

using the county road and Long Lane. Councillors had no objections and were in favour of the proposal.

- 4.5 The local representative of the Ramblers Association replied by email. He advised that he wondered whether there was an opportunity to erect signs at either end of the aforementioned footpaths warning walkers about crossing the A361 rather than removing the footpaths. Also perhaps the signs could mention the alternative route (diversion) which could provide a safer choice for walkers but is a longer distance. He clearly understands that crossing a busy three lane highway is risky but wonders whether there should be a choice for walkers. However, he would not strongly object to the proposal for a diversion.

5. Highway Considerations

- 5.1 Section 118 of the Highways Act 1980 sets out the criteria for making and confirming a Public Path Extinguishment Order. The relevant parts of the Act would be.
- 5.2 Section 118(1). Where it appears to a council as respects a footpath in their area that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and confirmed as an unopposed order, extinguish the public right of way over the path. If objections are received to a Public Path Order it has to be submitted to the Planning Inspectorate acting on behalf of the Secretary of State for Defra.
- 5.3 Section 118(2). The council (or Secretary of State) shall not confirm a public path extinguishment order as an unopposed order unless they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to them that the path would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have respects land served by the path.
- 5.4 Section 118 (6A). The considerations to which a council (or Secretary of State) are to have regard in determining whether or not to confirm such an order, include any material provision of a rights of way improvement plan prepared by any local highway authority.

6. Devon County Council Rights of Way Improvement Plan

- 6.1 Under the heading Legal Status – Public Path Orders Section A15 Extinguishment of a public right of way says this will be given consideration where requisite legal tests are met. However, this will not be a high priority, and may require that the applicant meets monitoring costs to show that the route is not needed for public use; and the route is physically available to the public, signposted and/or waymarked throughout the monitoring period.

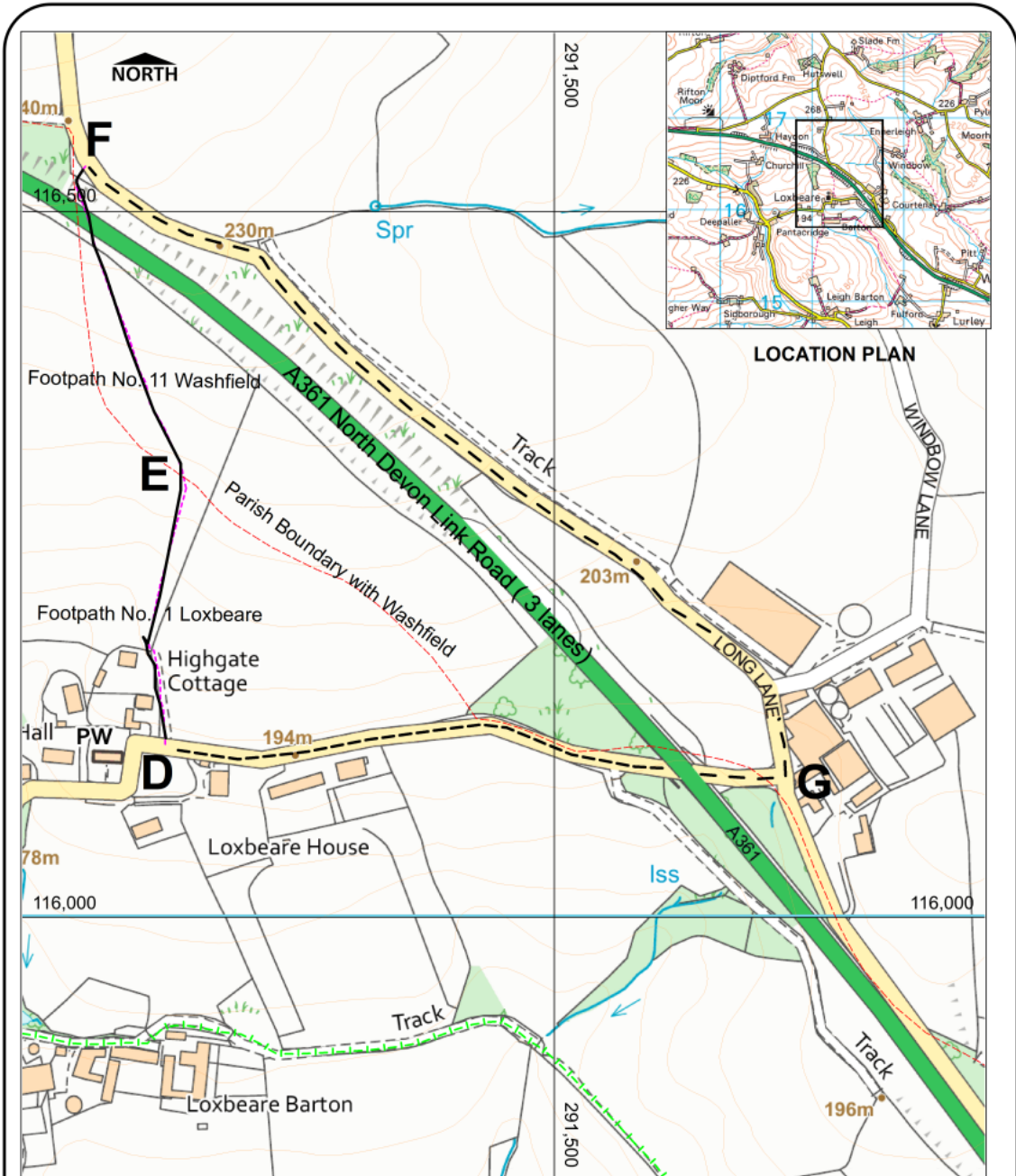
- 6.2 Under the section headed Management and Safety, section B24 Objective - Safety (Roads) refers to improve safety for non-vehicular users, including along and when crossing roads. Section B27 policy refers to work with National Highways and other agencies to identify and implement improvements for vulnerable road users on and crossing trunk and other busy roads. Section B28 says to Undertake safety analysis of key rights of way that connect to busy roads. This will be prioritised in conjunction with potential route management strategies for promoted trails.
- 6.3 As set out in section 5 above, it is considered that the relevant legal tests are met; and it is also considered that the alternative (D-G-F) provides a more suitable route for walkers.

7. Reasons for Recommendation

- 7.1 Footpath No. 1, Loxbeare and Footpath No. 11, Washfield lie on the same alignment as when the footpath was first recorded on the Definitive Map in 1964. The northern end of the footpath is now bisected by three lanes of the A361, a very busy road with traffic travelling at high speeds. Although no accidents or injuries to pedestrians are known to have occurred it is probable that this is because the crossing is deemed to be too dangerous and walkers have retraced their steps. The proposed alternative route along the local county roads is considered to provide a safer suitable alternative, despite the additional length.
- 7.2 No objections have been received to the proposed closure of the footpath and the proposal has been supported by Washfield Parish Council, the landowners and Loxbeare Village Hall Committee who are representing the parish in the absence of a Parish Meeting Chairman. The local Ramblers representative would prefer to see the footpath remain open but with signage at either end to warn users of the road crossing and the availability of the alternative route but advised that they would not strongly object to the diversion.

8. Conclusion

- 8.1 It is considered that the availability of the alternative route means there are sufficient grounds to meet the legal tests to be considered for making a Public Path Extinguishment Order. Therefore, it is recommended that an Order should be made to extinguish Footpath No. 1, Loxbeare and Footpath No. 11 Washfield from the lines D – E - F, as shown on drawing number CCET/PROW/24/32.



Map Ref SS 9116 500m grid

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - LOXBEARE
CONSULTATION ON PROPOSAL NO 2 -
DIVERSION OF FOOTPATH NO 1 LOXBEARE &
FOOTPATH NO 11 WASHFIELD**

drawing number CCET/PROW/24/32
date SEPT 2024
scale 1:4,000 at A4
drawn by TW

Notation

- Footpath to be extinguished D - E - F (420 metres approx) ———
- Alternative route for footpath D - G - F (1120 metres approx) - - - - -
- Existing Public Footpath - - - - - Existing Public Bridleway - - - - -

Meg Booth

DIRECTOR CLIMATE CHANGE,
ENVIRONMENT AND TRANSPORT

