



## Order Decision

Hearing held on 15 August 2017

**by Mark Yates BA(Hons) MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 26 October 2017**

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### **Order Ref: FPS/J1155/7/115**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Devon County Council (Footpath Nos. 16, 17, 18, 19 and 20, Combe Raleigh and No.5, Awliscombe) Definitive Map Modification Order 2016.
- The Order was made by Devon County Council ("the Council") on 10 June 2016 and proposes to modify the definitive map and statement by the addition of six footpaths in the parishes of Combe Raleigh and Awliscombe, as detailed in the Order Map and Schedule.
- There were three objections and two representations outstanding at the commencement of the hearing.

**Summary of Decision: The Order is proposed for confirmation (in connection with Combe Raleigh Footpath No. 20) subject to modifications set out below in the Formal Decision.**

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### **Procedural Matters**

1. I held a hearing into the Order on 15 August 2017 at Awliscombe Parish Hall. I visited the sites of the routes included in the Order on 14 and 15 August 2017. None of the parties present considered that there was a need to undertake an accompanied visit to view any of the Order routes.
  2. All of the points referred to below correspond to those delineated on the Order Map. The claimed routes ("CRs") of the footpaths are as follows:
    - CR1 is located between points A-B-C and is recorded in the Order as Combe Raleigh Footpath No. 16.
    - CR2 is located between points B-D-E-F and is recorded in the Order as Combe Raleigh Footpath No. 17.
    - CR3 is located between points G-H-E-I and is recorded in the Order as Awliscombe Footpath No. 5 and Combe Raleigh Footpath No. 18.
    - CR4 is located between points D-J and is recorded in the Order as Combe Raleigh Footpath No. 19.
    - CR5 is located between points K-L and is recorded in the Order as Combe Raleigh Footpath No. 20.
  3. The Council was directed to make the Order following successful appeals by the applicant (Mrs Kimbell) to the Secretary of State for Environment, Food and Rural Affairs in accordance with Schedule 14 to the 1981 Act. At the hearing, the Council adopted a neutral stance and the case in support was made by Mrs Kimbell on behalf of the local group of the Ramblers'. One of the objections
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- was submitted by Mr Carr on behalf of six landowners<sup>1</sup> affected by the Order. A few additional people spoke in support or opposition to the Order.
4. I have considered the points made in relation to the Inspectors decisions at the Schedule 14 stage. Nonetheless, I am not bound by the appeal decisions which addressed the issue of whether an Order should be made. In particular, I have had the benefit of receiving further evidence and hearing oral submissions as well as visiting the locations of the CRs.
  5. I note the concerns expressed by Mr M. Groombridge at the hearing; however, it is common for notices and Orders to not refer to proposed rights of way. It is my role to consider whether the Order before me should be confirmed. A number of issues have also been raised that are not relevant to my decision, which include the impact of recording these routes as public footpaths and the costs involved. This applies irrespective of any alleged breach of human rights as it is not possible to interpret the 1981 Act in a way that it is compatible with the Convention rights.
  6. Mr Steenman-Clark confirmed on behalf of the Council that all of the statutory requirements were undertaken, in accordance with Schedule 15 to the 1981 Act, when the Order was made. There has been a change in ownership of the property now known as St Isidore Farm, which appears to have occurred shortly after the Order was made. However, an objection has been pursued by the new landowner and no prejudice is apparent from the details provided.
  7. Although Mr Carr had some reservations regarding the matter proceeding by way of a hearing, he did not request that a public inquiry be held. I am satisfied that I can reach my decision on the basis of the information provided to the hearing.

### **Main Issues**

8. The Order is made under Section 53(2)(b) of the 1981 Act and relies on the occurrence of events specified in Section 53(3)(c)(i) of the Act. Therefore, I need to determine in each case whether the discovered evidence shows that a right of way which is not shown in the map and statement subsists. The burden of proof to be applied is the balance of probabilities.
9. The case in support relies upon various historical maps and documents rather than evidence of recent public use. In considering the above test, I shall assess whether the documentary evidence is sufficient to infer the dedication of public rights of way of a particular status at some point in the past. In doing so I need to have regard to the evidence and submissions in respect of the issues of settled and church land.
10. Section 32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.

### **Reasons**

11. There are a number of pieces of documentary evidence that are common to more than one of the CRs. The same applies for the issues involving settled and church land. It therefore seems appropriate to briefly address these

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<sup>1</sup> Mr Furnival, Mr Rosewell, Mr Sherwood, Mr and Mrs Young, Mr Board and Mr Groombridge

documents and the weight that may be attached to them along with the issues of settled and church land before addressing the evidence for each CR.

### ***The Greenwood map***

12. The 1827 Greenwood map of Devon shows two types of roads, namely turnpike roads and cross roads. It is accepted that this map was based upon an original survey. Mr Carr also draws attention to the advert for the earlier Greenwood map of Yorkshire making reference to its depiction of public and private roads.
13. I accept that the representation of a route as a cross road may be supportive of it forming part of the local road network bearing in mind that this map was sold to the public. However, there is nothing to suggest that any investigation was undertaken into the status of the routes shown. It is therefore likely that some private roads would have been included on the Greenwood map. In my view, the representation of a route on this commercial map will not by itself carry a significant degree of evidential weight.

### ***Tithe documents***

14. The Tithe Commutation Act 1836 provided for the conversion of tithes into fixed money rents. The fact that highways were incidental to the tithe process will usually serve to limit the evidential weight of tithe maps. For instance, the exclusion of a route from the tithed parcels of land could be indicative of a public or private road as both would have impacted upon the productivity of the land being assessed. Nonetheless, in some circumstances, tithe documents can provide useful supporting evidence when determining the status of a route.

### ***Ordnance Survey ("OS") maps***

15. OS maps are usually taken to be a reliable indication of the physical features present on the date of the survey. The annotation "FP" appears on large scale OS maps from 1883 and arose from an instruction to surveyors which stated '*the object of... "F.P. being that the public may not mistake them for roads traversable by horses or wheeled traffic"*'. From 1888 OS maps have carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way. Whilst there is some conflicting guidance from the OS during the latter part of the nineteenth century and early part of the twentieth century, I take the view that OS maps provide no confirmation regarding the status of the paths and tracks shown on them.

### ***Finance Act documents***

16. The 1910 Finance Act was concerned with assessing various values in relation to land in order that a tax could be levied on the increase in the site value of land between its valuation as at 30 April 1909 and generally any sale or other transaction involving the land in question. The Act provided for certain deductions to be made in terms of the value of the land. Information regarding landownership is contained in the valuation book entries provided. However, none of the original 'Form 4s' that would have been completed on behalf of the landowner are available.
17. Copies have been provided of field book entries arising from the Finance Act that document deductions in the value of particular hereditaments delineated on the record plans provided. I consider that a deduction for "*Public Rights of Way or User*" in a field book is likely to refer to either a public right of way or

some other form of public right, such as for recreation. I would expect the stated public rights to normally be distinguished from any private rights attached to the land with the latter being specifically recorded under the heading of easements. However, it cannot be determined that the information recorded in the field books came specifically from the landowner in the absence of the original 'Form 4'. An issue may also arise in identifying the route for which a deduction is recorded in the field book. These matters will impact on the weight that can be ascribed to the field book entries.

18. The exclusion of a route from the surrounding hereditaments on a record plan can provide a good indication of highway status, probably vehicular as footpaths and bridleways were usually dealt with by way of deductions in the accompanying field books. However, there may be other reasons for its exclusion.
19. Finally it should be borne in mind that the existence of highways was incidental to the Finance Act.

### ***Ministry of Transport ("MOT") road maps***

20. The MOT road maps were published jointly with the OS. Although the maps clearly defined the Class I and II roads in the area, I note that a general disclaimer appeared on these maps. This states "*The representation on this map of a Road, Track or Footpath is no evidence of the existence of a right of way*". Further, I do not find that the correspondence provided by Mrs Kimbell adds any significant value to these maps. In my view, the MOT maps will be of comparable value to OS maps in determining the status of the CRs.

### ***Parish minutes***

21. The minutes from parish meetings may provide useful information in relation to the reputation of particular routes. Reference is particularly made to minutes of 1913-14 and 1934 for Combe Raleigh Parish Meeting.
22. It was agreed at the parish meeting of 10 April 1913 that a small committee be formed to compile a schedule of public footpaths in the parish. The committee was to be empowered to arrange for minor repairs to be undertaken to those paths the parish meeting were liable. A schedule was presented to the annual parish meeting on 24 March 1914. The inclusion of a path in this list should be given some weight in support of it having the reputation of a public footpath bearing in mind that the schedule was presented to the parishioners at the annual parish meeting.
23. A minute from the meeting of 9 February 1934 records that a request had been made by the Honiton Rural District Council for information on public rights of way for the purpose of the Rights of Way Act 1932. Whilst it is apparent that the list of footpaths produced in 1934 was not simply a reproduction of the 1914 schedule, some reliance was placed on the earlier document. I therefore consider that less weight should be attached to the list of footpaths produced in 1934.

### ***The definitive map process***

24. The process to compile the original definitive map for the area commenced in the 1950s. Parishes compiled survey forms and maps showing the potential ways for inclusion on the draft definitive map. Some of the CRs were initially claimed but were not subsequently put forward for inclusion on the draft map.

25. It is possible that an error occurred in respect of the non-inclusion of particular routes in the definitive map and statement. Further, certain parish councils may have been less willing to pursue the claimed public rights of way at the time. However, there was a process set out for the compilation of definitive maps. This involved the relevant local authorities and provided an opportunity for objections to be made to the exclusion of ways from the draft map. The conclusion I reach from the non-inclusion of particular routes from the draft map is that the evidence at the time was not considered sufficient for them to be recorded as public rights of way. It also appears to me that the statutory process under the 1949 Act should be given greater weight than the schedule compiled in 1914.
26. The point made by Mrs Kimbell regarding the numbering of paths in Combe Raleigh appears to be directed at the Council rather than being relied upon to any significant extent in support of the CRs having public status.

***Settled land***

27. The case in support of each CR relies upon an inference being drawn from the documentary evidence of the dedication of a public footpath at some point in the past. However, dedication can only arise under common law where there is a landowner with the capacity to dedicate a public right of way.
28. Settlement was a means of protecting the ownership of land for future generations. The land would typically pass to the eldest son as a tenant for life. Therefore, he only had a life interest and was not free to dispose of the land or grant rights over it without the agreement of the other interested parties or unless specific provision was made in the trust deed. Mr Carr has provided details of periods when parcels of land crossed by the CRs were held in strict settlements by two estates (the Combe Raleigh and Tracey Estates).
29. The Combe Raleigh Estate is stated to have been in settlement between 1824 and 1920. In support, a transcript has been provided of the 1824 will of the Reverend James Barnard. A 1920 map shows the extent of the Combe Raleigh Estate prior to its release. Further, the field books produced in relation to the Finance Act outline that the ownership of particular hereditaments resided with a tenant for life. There is nothing to suggest that a resettlement in 1870 served as a significant break in terms of the land being settled. On balance, I accept from the information provided that the land identified by Mr Carr for the Combe Raleigh Estate was in settlement between 1824 and 1920.
30. Mr Carr submits that the Tracey Estate was in settlement between 1898 and 1956. A conveyance of 1858 shows land held by the estate at the time. It is also apparent that additional land was purchased from the Combe Raleigh Estate in 1925. A 1944 deed provides support for the Tracey Estate having been in settlement from 1898. It is apparent that this settlement was dissolved in 1956. Again, I accept on balance that particular parcels owned by the Tracey Estate were settled from 1898 and additional parcels came under the ownership of the estate in 1925.
31. It is apparent from the above that there were periods when it is likely that there was no landowner with the capacity to dedicate a public right of way over particular parcels of land owned by the two estates.

### **Church land**

32. An area of land crossed by two of the CRs was in the ownership of the Church of England until 1957. The tithe apportionment for Combe Raleigh also records the extent of the land owned by the church in 1841. I do not find the transcript from the history guide to provide any clear indication regarding the extent of the land owned by the church prior to the tithe apportionment. Mr Carr relies on advice by the General Synod Legal Advisory Commission on the issue of dedication of rights of way over church land. It is submitted that church property is vested in the incumbent in their corporate capacity but the incumbent is not the outright owner. The incumbent's position is viewed as being equivalent to that of a tenant for life.
33. The document relied upon was produced on behalf of the Church of England and is not independent advice. I accept that the ownership of the church and churchyard may well vest with the incumbent such as the vicar or rector. However, I am not convinced it has been shown that this issue will relate to all of the land in the Church of England's ownership. Therefore, I am reluctant to find that a public right of way could not have been dedicated over the relevant parcels of land in this case.

### **The consideration of the evidence in relation to the CRs**

#### **CR1**

34. The A-B section is shown by way of solid lines on the 1806 OS surveyor's drawings. This is also the case with the 1809 OS Old Series map. Whilst Mrs Kimbell points to this section being depicted in a similar way to other known public roads, the feature shown continues through an area of woodland (Combe Wood) where it terminated. Further support for the existence of the A-B section is found on the Greenwood map. However, it again provides no indication of the CR beyond point B.
35. The A-B section is shown by way of solid lines on the Combe Raleigh tithe map of 1841. This section appears to be outside of the tithed parcels of land on each side. The majority of the remainder of the CR is shown by way of pecked lines. However, no continuation is shown through parcel 408. The section represented by pecked lines predominantly, or wholly, comprises of parcel 410a, which is recorded in the accompanying apportionment as a private road to Woodhayne. Mrs Kimbell draws attention to the private road passing either side of parcel 405, which is described in the apportionment as "*Path Field*".
36. As Mrs Kimbell points out public footpaths can proceed over private roads. Further, I accept that the potential gate at point A would not prevent the CR from being a highway. However, the tithe documents are only supportive of a proportion of the CR being a private road to Woodhayne. I do not find the reference to the "*Path Field*" to be indicative of any public right of way over it. The tithe documents provide no positive evidence in favour of the existence of public rights over the CR.
37. The second edition<sup>2</sup> large scale OS map shows the A-B section by way of solid lines and the continuation to Woodhayne Farm by pecked lines. In terms of the section through the farmyard, it cannot be determined that a route continued through the yard. Whilst Mrs Kimbell says that it would not have been shown through the hardstanding of the farmyard, it could equally be

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<sup>2</sup> Revised in 1903 and published 1905

- because the route terminated at this point, as submitted by Mr Carr. There are lines which are indicative of the presence of boundaries but the continuation of the route beyond these points suggests some form of gate or stile was in place to provide access whether for private or public use.
38. I find the Finance Act map to be unclear regarding whether or not the A-B section lies within a particular hereditament. The remainder of the CR is located within hereditament 13. There is an entry in the field book which records a deduction of £75 for "*public rights of way or user*" through this hereditament. The field book also records that this deduction related to a right of way across various parcels, including those numbered 378a, 378, 380, 360 and 358, which correspond to the parcels on the OS base map crossed by the CR. This evidence provides some support for the existence of a public right of way over the CR.
39. The Combe Raleigh Parish Meeting list of footpaths of 1914 includes a path proceeding "*From Woodcot (Keepers Cottage) through Woodhayne over Rectory Field to Rectory Lane*". This route is described in the same manner in the list of 1934. These records are supportive of the CR, along with a section of recorded footpath<sup>3</sup>, being viewed at the time as a public footpath. However, the CR was not included on the parish survey map at the onset of the definitive map process. Although a minute from a parish meeting in 1946 refers to a decision to repair a stile on a footpath where it leaves the road to Woodhayne, it cannot be determined to any reasonable degree whether the reference corresponded to this CR.
40. A proportion of the CR is shown as part of the road to Woodhayne Farm on various small scale OS maps produced during the twentieth century. The route in its entirety is shown on the OS Provisional Edition map of 1948.
41. I am not satisfied that the evidence in support, which predominantly comprises of OS maps, Finance Act records and the parish council minutes, is sufficient on balance to show that a public footpath subsists over this CR. The land was also held in settlement by the Combe Raleigh Estate prior to the period when the whole of the CR is first evident. It is therefore likely that there was no landowner with the capacity to dedicate a right of way until after 1920.

#### CR2

42. I accept that I should have regard to the continuation of CR2 through to point A in light of my conclusion in relation to CR1. The evidence regarding the A-B section is set out above and I see no need to repeat it. An issue also arises in respect of the alignment of the route in the locality of point D. It is apparent that a section of the CR corresponds with an existing road known as Rectory Lane and this section of highway should not be recorded as a public footpath. However, my conclusion in paragraph 52 below means that there is no need for me to address further the alignment of the CR in the Order.
43. The CR is shown on the Second Edition OS map. It is depicted between points B-D-E-F by means of pecked lines and annotated "FP" in places. This route is distinct from the cul de sac shown through the woodland on the earlier maps.
44. The CR crosses hereditaments 13, 14, 8 and 58 on the Finance Act map. In respect of hereditament 13, a deduction of £75 is recorded in the field book for "*public rights of way or user*". Another entry records a right of way through

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<sup>3</sup> Combe Raleigh Footpath No.5

- particular parcels, which include those crossed by a proportion of the CR. However, no deduction is recorded through hereditament 14 (Rectory Wood).
45. In terms of hereditament 8, a deduction of £75 is recorded for "*public rights of way or user*" through particular parcels (311, 353 and 225). These parcels are not crossed by this CR. It is possible that an error occurred in relation to the reference to parcel 353, which is located in the middle of parcel 352, as asserted by Mrs Kimbell. However, this can only be a matter of speculation in the absence of corroborating evidence. The same applies to the calculations taken from the deductions specified in the field books. It should also be borne in mind that there are multiple routes shown within parcel 352.
46. A deduction was claimed for a right of way through parcels 260 and 264 which lie within hereditament 58. This deduction was for a restriction rather than public rights of way or user and means there is some doubt regarding whether it related to a public footpath. Further, there are other routes shown through parcels 260 and 264.
47. In light of the matters identified above in relation to the hereditaments crossed by the CR, I am not satisfied that the Finance Act documents can be taken to be supportive of the existence of a public footpath over the whole of the CR.
48. The Combe Raleigh Parish Meeting list of footpaths of 1914 includes a path proceeding "*From Keepers Cottage skirting Big Cover, across Rectory Lane, over Henley and Rectory field called Centry to Lane by Fletchers Cottage*". It is described in a similar manner in the list of 1934. These minutes are supportive of the CR being viewed at the time as a public footpath.
49. Two additional objectors (Mr Staff and Ms Salter) have provided a conveyance from 1931. The conveyance made provision for a private right of way over a short section of the track shown on the accompanying plan across Rectory Wood<sup>4</sup>. This would not prevent the track from being a public footpath as public and private rights of way may co-exist over the same route. Nor would a conveyance necessarily mention the existence of a public footpath over the land in question. Further, it is apparent that a section of the track now forms part of Rectory Lane. Nonetheless, it appears that the track shown on the conveyance plan does not connect directly with CR2. This issue is also applicable to CR4 in this location.
50. The CR was initially claimed during the original definitive map process. It is apparent that the route was claimed to comprise of two sections of footpath, namely from point B to Rectory Lane and from the other side of the lane to points E and F. There are other references to the path not being required or used. There is also the handwritten note which states "*This is not a public footpath*". The CR was not subsequently included on the draft definitive map.
51. The section to the north of point B is shown on the small scale OS maps of 1937 and 1946 under the "*Footpath or Bridleway*" category. This is also the case with the 1948 OS provisional map which shows the section to the north of Rectory Lane annotated "*FP*".
52. The A-B section is a feature of some antiquity. In terms of the remainder of the CR, the parish minutes are supportive of it having the reputation of a public footpath and it is depicted on particular OS maps. Despite being initially claimed, the route did not find its way onto the draft definitive map. Further,

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<sup>4</sup> This private right of way was extinguished in 1987

the Finance Act documents are not supportive of the whole of the CR being a public footpath. I am not convinced by the submission made in terms of the issue of church land. However, a proportion of the CR crossed land that was held in settlement by the Combe Raleigh Estate between 1824 and 1920. For these reasons I am not satisfied on balance that a public footpath subsists.

### CR3

53. The G-H section is shown outside of the tithed parcels of land on the Awliscombe tithe map of 1840. It is open ended at the parish boundary and annotated as leading to Combe Raleigh. The annotation of a route leading to a particular destination may provide some support for public status. Whilst the continuation of the CR is not shown on the Combe Raleigh tithe map, this may arise out of the unenclosed nature of this section of the route.
54. The CR is shown on the Second Edition OS map by way of a mixture of solid and pecked lines. The solid line shown at point G could potentially denote a gate and Mrs Kimbell states that an old gate existed at this location in 2007. A footbridge is shown over the watercourse at the parish boundary (point H) and the annotation "FP" is shown at points. The G-H section is also annotated as the "*Duck's Path*". In terms of the bench mark shown at point E, this cannot be taken to be indicative of public status.
55. It appears that the CR initially proceeds through hereditament 115 on the Finance Act map and no relevant deduction is recorded in the field book within this hereditament. Whilst the field book contains a reference to a footpath leading to Combe Raleigh, which is located near to the River Otter, it is likely that this path corresponds to the existing Footpath 5. The CR continues through hereditament 58 and the field book records a right of way through parcels 260 and 264. However, the deduction of £50 is recorded as a restriction. It is also apparent that another route (CR2) proceeded through these parcels. The CR then proceeds within hereditament 8 where a right of way is noted through parcels 311, 353 and 225 with a deduction of £75 for "*public rights of way or user*". Nonetheless, the issue outlined in paragraph 45 above applies to parcel 353 and the CR does not cross parcels 311 and 225.
56. The CR is listed as one of the footpaths within Combe Raleigh in 1914 and 1934. It is described in the 1914 list as commencing from "*Duck Path over Rectory Fields and Henley to the village*". Reference is made in a minute for Combe Raleigh Parish Meeting of March 1946 to the poor condition of paths with stiles being bound up by barbed wire. A later minute of May 1946 states that the chairman had informed the meeting that the barbed wire on the stile on the Duck's Path had been removed. This minute suggests that action was instigated by the parish meeting to have barbed wire removed from a stile on the CR and is supportive of the route being viewed as a public footpath at the time.
57. There is a reference in the Awliscombe Parish Council minutes of July 1913 to the need to repair the footpath leading towards Combe Raleigh. At the meeting in September it was reported that the work had been undertaken. The parish council approved and ordered that the bills be paid. However, Mr Carr points out that this reference could relate to Combe Raleigh Footpath 5 and its continuation in Awliscombe. He says the other references relate specifically to the Duck's Path.

58. It was reported to the parish council in April 1914 that the gate at the Awliscombe end of the Duck's Path was in a poor state of repair. The person who reported this matter was Mrs Weldon whose family owned the land crossed by a proportion of CR3. The Chairman is stated to have seen the gate and agreed that it was in a bad condition. It was proposed that an estimate be obtained for the repair of the gate.
59. A list was produced in 1933 regarding "*the only rights of way in general use at the present day*" and it included the Duck's Path. In August 1934 Major Weldon wrote to the rural district council saying that the path had been "*little frequented*" for a large number of years. He says the repairs would cost a considerable sum and the parish council would not be in a position to pay for it. A parish minute from February 1935 records that no money would be spent as the path is never used.
60. A minute from February 1942 records that the cost of the upkeep of stiles on the route from Awliscombe Church to Combe Raleigh was discussed by Awliscombe Parish Council. Mrs Kimbell states that this route includes the Duck's Path. At the next meeting it was reported that the costs were considered excessive and a closure order would be applied for as the path was rarely used. It was reported in the local press in May 1942 that the parish council applied for such an order but the rural district council did not proceed with an application due to the costs involved.
61. Combe Raleigh Parish Meeting included a section of the CR at the initial stage of the definitive map process. This claim was withdrawn in light of the matter not being pursued in the parish of Awliscombe. At the meeting of Awliscombe Parish Council in 1950 it was generally agreed that the Duck's Path should be closed as a public path as it was a church path. However, there is no evidence to show that the CR was extinguished in 1950.
62. The CR is shown on some of the twentieth century OS maps as a road within Awliscombe and a path over the remainder of the route. The 1948 OS provisional map shows the section within Combe Raleigh as a footpath or bridleway with the annotation "*FP*". Although not particularly clear, the CR appears to be shown on a 1930 reprint of an earlier MOT map of 1925. Mrs Kimbell acknowledges that it is not depicted on the 1923 MOT map.
63. The CR is consistently shown on the OS mapping outlined above. Whilst only the section within Awliscombe is represented on the tithe maps, there is an indication from the annotation that a route continued through to Combe Raleigh. The relevant parish minutes point on the whole to the CR having the reputation of a public footpath. In contrast, the Finance Act documents are not generally supportive of the CR having public status. Further, the information provided reveals that sections of the CR crossed land that was settled during the period covered by the documentary evidence. Having regard to the above, I do not find on balance that a public footpath subsists.

#### CR4

64. In light of the second issue outlined in paragraph 42 above, I take CR4 to commence on the northern side of Rectory Lane.
65. This CR is shown by dashed lines on the 1841 Combe Raleigh tithe map. However, there is nothing in the tithe apportionment to indicate whether it was a public or private route.

66. The CR is shown on the Second Edition OS map by way of pecked lines and annotated "FP" in places. There is also the annotation "FB" to denote a footbridge which appears at the watercourse between parcels 352 and 311. The CR is shown on the 1937 and 1946 OS maps and it is annotated "FP" on the 1948 OS provisional map.
67. It appears that the CR initially proceeds through hereditament 14 on the Finance Act map and no deduction is recorded through this hereditament in the field book. It continues within hereditament 8 and a deduction of £75 is recorded within this hereditament for "*public rights of way or user*". A right of way is noted elsewhere in the field book through parcels 311, 353 and 225. I have addressed the issue in relation to parcel 353 earlier in this decision. The CR is not located within parcels 353 or 225.
68. The Combe Raleigh Parish Meeting list of footpaths of 1914 includes a path proceeding "*From Rectory Lane across Henley & Barton home field to village*". It is described in a similar manner in the list of 1934. These minutes are supportive of the CR being viewed at the time as a public footpath.
69. The CR was initially claimed during the original definitive map process. There are references in the survey form to the path not being required or used. There is also the handwritten note which states "*This is not a public footpath*". The CR was not subsequently included on the draft definitive map.
70. The parish minutes are supportive of the CR having the reputation of a public footpath and it is depicted on particular OS maps. Despite being initially claimed, the route did not find its way onto the draft definitive map. Further, the Finance Act documents are not supportive of the whole of the CR being a public footpath. The CR also crossed land held in settlement by the Combe Raleigh Estate between 1824 and 1920. Overall I am not satisfied on balance that a public footpath subsists over this CR.

#### CR5

71. The CR is shown on the 1806 OS surveyor's drawings and 1809 OS map in the same way as the connecting public roads at points K and L. Whilst OS maps may not provide confirmation regarding the status of the routes shown, it is relevant to note that the CR and the present public road to the south of point L formed one continuous route. This public road is now viewed as a cul de sac which terminates at point L. Mr Carr accepts that these maps did not show footpaths.
72. Greenwood's map shows the CR linking with the public roads in the manner outlined above. In terms of the degree to which any analogy can be drawn with the depiction of routes as cross roads, no evidence has been provided to show that most of the routes shown in this manner are public as asserted by Mrs Kimbell. This would also apply to the earlier OS maps. Further support for the historical existence of the CR is found on the 1832 Cary map. This map again shows the CR as a link within the local road network.
73. A section of the CR from point K is shown on the 1841 Combe Raleigh tithe map excluded from the tithed parcels of land. The remainder of the CR is not shown on the tithe map where it crossed an area of common. What I cannot determine from the extract of the tithe map is whether the connecting road beyond point L is shown. Nonetheless, the fact that the earlier and later maps show a through route between points K and L suggests that the whole of the

- CR continued to exist despite it not being shown in its entirety on the tithe map.
74. An undated document titled "*Combe Raleigh Parish, Highways*" has been provided. Mrs Kimbell states that this is derived from the Honiton District Highways Board records and she believes that it probably dates from the latter part of the nineteenth century. She confirmed at the hearing that this is held with highway board records for parishes at the County Records Office. One of the routes listed is described under the sub-heading "*Other Highways in Parish*" as "*Combe Raleigh Church to level 828 on St Cyres 2200 yards*". Mrs Kimbell says that "828" equates to the numbered level shown on the large scale OS maps near point K. It is also accepted that this description encompasses the CR and the connecting section of road from point L to the church.
75. Whilst the above document consists of a single page and is undated, the information provided by Mrs Kimbell indicates that it was compiled to list the highways in the parish and formed part of the records held by the Honiton District Highways Board. Despite the limitations highlighted by Mr Carr, I take the view that this document should carry some weight in support of the CR being regarded by the highway authority as part of a highway through to Combe Raleigh Church.
76. The CR is shown on the Second Edition OS map by a combination of solid and pecked lines. Mrs Kimbell also refers to it being shown on the First Edition map from the 1880s. In terms of the Second Edition map provided, the apparent presence of gates along the route would not prevent it from being a highway. Further, Mrs Kimbell draws attention to the lack of annotation to indicate that the route was a footpath or bridleway. This could suggest that it was available for use by wheeled vehicles.
77. The initial section of the CR is excluded from the surrounding hereditaments on the Finance Act map in a manner consistent with the depiction of a vehicular highway. The remainder of the route crosses hereditament 8 and in particular parcel 225. A deduction is recorded in the field book for "*public rights of way or user*" within this hereditament. Another reference refers to a right of way across particular parcels, including 225. These entries are supportive of a public right of way or user across parcel 225 and are distinct from the easement recorded in the field book for this hereditament.
78. The field book also contains a reference to "*parish road to St Cyres Hill*" under the heading "*Fixed Charges, Easements, Common Rights and Restrictions*". Mr Carr believes that this relates to the existing section of public road between the church and St Cyres' Hill. I find there to be some uncertainty regarding the extent to which the present road proceeds within this hereditament. Nonetheless, this reference potentially provides support for the CR being part of the parish road.
79. The CR is shown to varying degrees on the twentieth century OS maps. It is clearly shown in its entirety on OS maps produced during the 1930s and 1940s. The CR is also depicted on two editions of the MOT map from 1923 and 1930<sup>5</sup> and Bartholomew's map of 1960.
80. It is apparent that the CR has never being claimed by Combe Raleigh Parish Meeting as a public right of way. This could be because the route was

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<sup>5</sup> A reprint of the 1925 MOT map

considered at the time to be a vehicular highway, as suggested by Mrs Kimbell. However, there is no evidence to indicate that this was the case. There is a lack of evidence regarding the linking footpath stated to have been recorded in the Combe Raleigh Parish Meeting list of 1934. Nor has this path been found to be a public footpath.

81. The CR and the connecting public road are consistently shown on a variety of maps as comprising of one single through route. This evidence could be indicative of the CR forming part of the local road network and field book entries provide some support for a proportion of it being part of a parish road or potentially a public right of way. The Finance Act map shows the remainder of the route in a manner consistent with a highway, most probably vehicular in nature. This evidence is bolstered further by the inclusion of the CR in the list of highways in the parish.
82. The evidence is far from substantive in terms of its weight. However, in my view, it points to a greater extent to the CR being a section of ancient vehicular highway. Whilst I acknowledge that the earliest OS map by itself provides no confirmation of status, it clearly shows that the CR and the connecting public road existed by the onset of the nineteenth century and prior to the land being in settlement. I take the evidence as a whole to be supportive on balance of the CR being a vehicular highway. Further, the early map evidence is supportive of this route being part of the local public road network before the land was settled. In the circumstances, I am not satisfied it can be determined there was no landowner with the capacity to dedicate a highway at that time.
83. In light of the above, I conclude that the CR is a vehicular highway. However, the Natural Environment and Rural Communities Act 2006 has the effect of extinguishing unrecorded public rights of way for mechanically propelled vehicles unless one or more of the exemptions outlined in Section 67(2) or (3) of the Act is applicable. No such exemption is apparent to me in this case. Therefore, I conclude that the CR should be recorded as a restricted byway.

### **Conclusion**

84. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that the Order should be confirmed only in relation to the recording of CR5 as a restricted byway.

### **Formal Decision**

85. I propose to confirm the Order subject to the following modifications:

- Delete all references to the title of the Order and insert "*Devon County Council (Restricted Byway No. 20, Combe Raleigh) Definitive Map Modification Order 2016*".
- Delete the first, second, third, fourth and sixth descriptions in Parts I and II of the Order Schedule.
- Delete all references to "*footpath*" in relation to CR5 and insert "*restricted byway*".
- Delete the final line in the fifth description in Part I of the Order Schedule and insert "*The path is shown on the plan as a broken line with small arrowheads*".
- Remove CRs 1-4 from the Order Map.

- Show CR5 on the Order Map by way of the notation for a restricted byway and amend the map key accordingly.
86. Since the confirmed Order would show as a highway of one description a way which is shown as a highway of another description in the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Mark Yates*

**Inspector**

## **APPEARANCES**

### **Supporters:**

Mrs R. Kimbell	Representing the East Devon Group of the Ramblers'
Mr A. Kimbell	

### **Objectors:**

Mr R. Carr	Representing various interested landowners
Mr D. Staff	
Mr M. Groombridge	
Ms A. Lozinska	

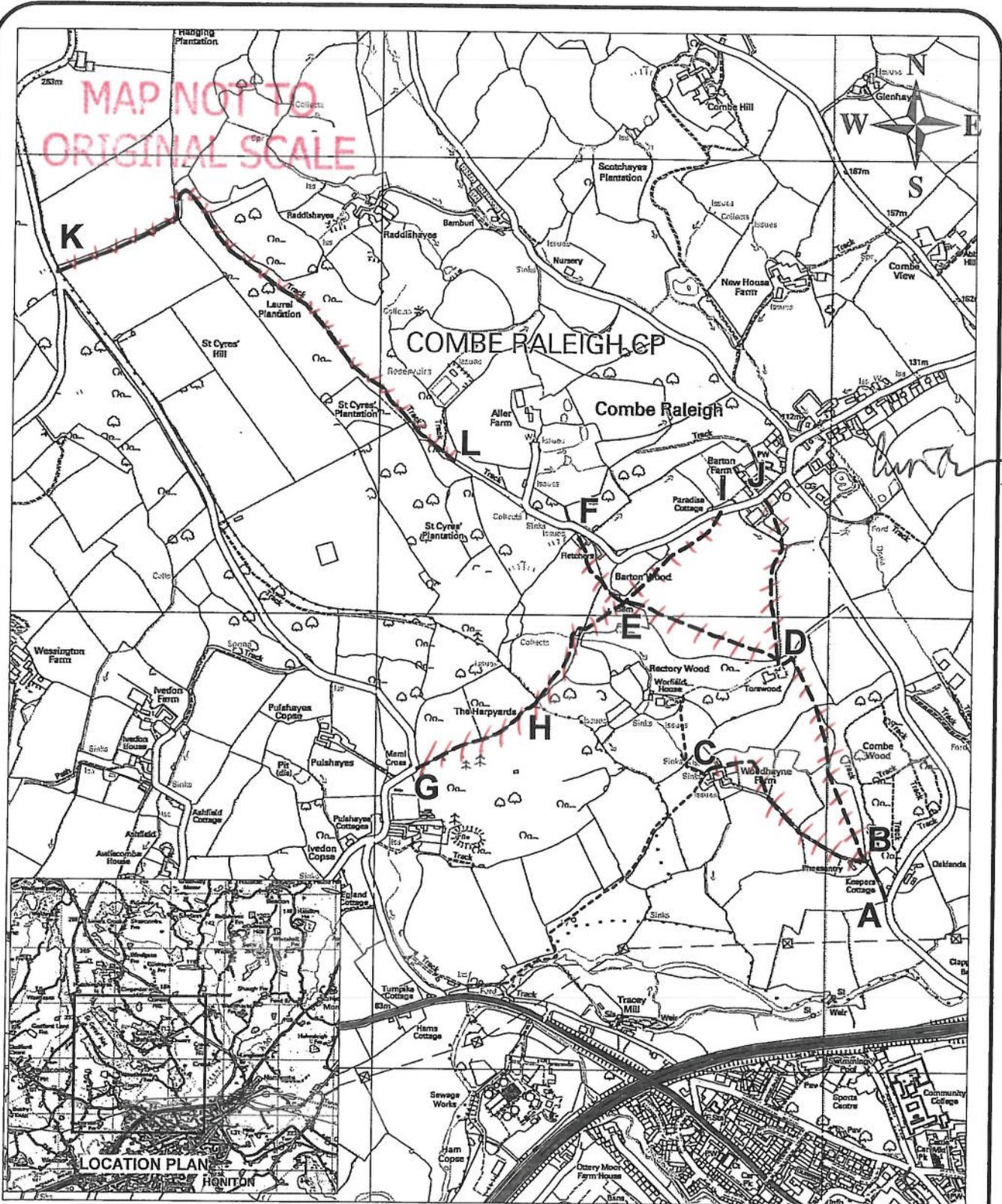
### **Interested Party:**

Mr N. Steenman-Clarke	Definitive Map Officer for the Council
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## **DOCUMENTS**

1. Measurements provided by Mr Carr
2. Statement from Ms Lozinska and Mr M. Groombridge
3. Statement from Mr A. Groombridge
4. Cary map extract
5. Closing submissions of Mr Carr

MAP NOT TO ORIGINAL SCALE



map ref ST1401-03/1501-03/1601-03

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**DEVON COUNTY COUNCIL**  
*Restricted By-Laws*  
**(Footpath Nos. 16, 17, 18, 19 and 20, Combe Raleigh and No. 5, Awliscombe)**  
**Definitive Map Modification Order 2016**

drawing number HCW/PROW/16/19  
 date Apr 2016  
 scale 1:12,500  
 drawn by NSC

**Notation**

*Restricted By-Laws*  
**Footpaths to be added**   
 (Combe Raleigh: No. 16 A-B-C; No. 17 B-D-E-F;  
 No. 18 H-E-I; No. 19 D-J; No. 20 K-L  
 Awliscombe: No. 5 G-H)  
**Existing footpaths** 

**David Whitton**

HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE

