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| **Order Decision** |
| Inquiry opened on 15 June 2021 |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 13 October 2021** |

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| **Order Ref:** **ROW/3238626** |
| * 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 (Bridleway No. 48, East Down & Bridleway No. 48, Marwood) Definitive Map Modification Order 2017. |
| * The Order was made by Devon County Council (“the Council”) on 6 June 2017 and proposes to add a bridleway to the definitive map and statement, as detailed in the Order Map and Schedule. |
| * There were two objections to the Order outstanding at the commencement of the inquiry. |
| **Summary of Decision:** **The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.** |
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Preliminary Matters

1. In light of the Covid 19 pandemic, the public inquiry into the Order was held as a blended event on 15-16 and 28 June 2021 using the Microsoft Teams platform. Provision was also made for people to give their evidence by way of a laptop stationed at the Pyne Arms, East Down. I undertook an unaccompanied visit to the site and surrounding area on 13 June 2021. None of the parties considered that a further visit to the site was required.
2. One of the objectors raised concerns with the Planning Inspectorate regarding the holding of virtual public inquiries. However, when this matter was explored at the inquiry, no party alleged that any prejudice had arisen from it being a blended event.
3. An application for an award of costs was made at the inquiry and this will be the subject of a separate decision.

**Main Issues**

1. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the discovered evidence shows on the balance of probabilities that a public right of way subsists.
2. In essence, it needs to be determined on balance whether the evidence is supportive of the dedication of a public right of way over the route claimed (“the claimed route”) under common law or statute. Reliance is placed by the Council on various historical documents in support of the common law dedication of a bridleway at some point in the past. This documentary evidence is supported by evidence of use during the twentieth century.
3. Section 32 of the Highways Act 1980 (“the 1980 Act”) 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.
4. None of the exemptions found in Section 67(2) or (3) of the Natural Environment and Rural Communities Act 2006 are stated to be applicable in this case. This means that any public right of way for mechanically propelled vehicles is extinguished. Therefore, if public vehicular rights are shown to subsist over the claimed route it should be recorded as a restricted byway.

**Background and Procedural Matters**

1. The claimed route commences from Bowden Corner where there are now public roads going south eastwards (Rookbear Lane), north westwards towards Indicott and eastwards towards Ashelford. A historical private road to the north has no apparent relevance to this case. The claimed route proceeds westwards across the area known as Hewish[[1]](#footnote-2) Down and terminates at the road known as Claw Lane/Whitefield Hill.
2. An Order was made by the Council in 2000 to add the claimed route to the definitive map and statement. The subsequent decision of the Inspector appointed by the Secretary of State was quashed by the High Court. It was accepted that it was contrary to the principles of natural justiceto reject Mr Berry’s assertion that he owned land crossed by the route without giving him the opportunity to address the concerns of the Inspector and comment on any evidence on this matter.
3. A second Order was considered by another Inspector following a public inquiry held on 4-5 February 2004. Her final decision to confirm the Order was again subject to a challenge in the High Court and was quashed in light of the conclusion that the dedication of a right of way had occurred in accordance with Section 31 of the 1980 Act[[2]](#footnote-3). The Inspector also considered the availabledocumentary evidence and concluded that it was suggestive of the existence of public rights. However, the absence of details at the time from an Inclosure Award weakened her ability to rely on this evidence to determine the nature of these public rights. She reached no conclusion on whether the user evidence was supportive of the dedication of a public right of way under common law.
4. An application, dated 19 February 2006, was subsequently made to record the claimed route as a byway open to all traffic. The Council duly considered this application and resolved to make the present Order to add a bridleway to the map and statement. A number of points have been made by the objectors in relation to the Council’s decision-making process in accordance with Schedule 14 of the 1981 Act. However, the matter for me to determine at the Schedule 15 stage is whether the Order should be confirmed. The Council confirms that the procedural requirements of Schedule 15 have been properly undertaken in respect of the Order. It was open to the objectors to challenge the Council’s decision at the Schedule 14 stage. I also note that certain points were made before the second Inspector regarding the Council’s decision to make an Order and her refusal to consider these matters was endorsed by the judge in *Berry[[3]](#footnote-4)*.
5. I also see no merit in the assertion made in one of the objections that there is a fundamental flaw with the Order. The solid line shown onthe Order Mapwhere the claimed route meets with Claw Lane/Whitefield Hill clearly arises from the depiction of the connecting road on the Ordnance Survey base map used by the Council. It is not asserted that a gate existed at this point and no such limitation is recorded in the Order.
6. The objectors’ question whether there has been the discovery of evidence to warrant a modification under Section 53(3)(c)(i) of the 1981 Act. In response, the Council has listed the additional documents discovered following the decision of the second Inspector. They also draw attention to the judgment in the *Mayhew* case[[4]](#footnote-5)where it was held that this process is concerned with the finding out of some information which was not previously known to the surveying authority.It is apparent from the details provided that there has been the discovery of some new evidence which warrants consideration in conjunction with the previously considered evidence. The Council’s main witness (Ms Gatrell) addressed at the inquiry particular matters of concern raised by the second Inspector in relation to the documentary evidence available at the time.
7. I made it clear in a letter to the parties in advance of the inquiry that they needed to provide all the evidence they wish to rely on in relation to the determination of this Order. At the inquiry I reminded the parties that it may be the case that written material or documents presented to the previous inquiry have not been made available to me. The parties were again invited to provide any material they considered relevant. This action was taken to prevent any prejudice arising from the failure to consider material that could potentially be relevant to my decision. I have noted above the issue that arose from the first Inspector’s decision.
8. I also sought the views of the parties on whether it would be appropriate to consider if dedication could have arisen more recently under Section 31 of the 1980 Act. Whilst the second Inspector’s decision was quashed on this matter, the *Berry* judgment came before the decision of the House of Lords in the *Godmanchester* case[[5]](#footnote-6). It is apparent from reading *Godmanchester[[6]](#footnote-7)* that there is symmetry between acts that are sufficient to bring the status of a way into question and those that constitute a lack of intention to dedicate a way. This matter could mean that an earlier period is available for consideration to the period assessed by the previous Inspector for the purpose of statutory dedication.
9. The parties at the inquiry focussed on the documentary and user evidence in the context of common law dedication. Therefore, it is appropriate to address this issue before giving any consideration to statutory dedication.

**Reasons**

***Consideration of the documentary evidence***

1. The 1804-05 Ordnance Survey (“OS”) draft drawings show various roads in the locality by way of solid or pecked lines. I take this to be representative of the roads being enclosed by boundary features or unenclosed respectively. One of the unenclosed roads is shown on a similar alignment to the claimed route. The relevant features are more clearly shown on the 1809 OS map.
2. The early OS maps show the position prior to the enclosure of land in the locality. Leaving aside for the moment the concerns of the objections regarding the alignment of the relevant road, it is shown linking with current public roads at each end. This road is broadly shown as the direct continuation of Rookbear Lane and was the only link in the immediate road network through to Claw Lane. It is apparent that Claw Lane and Whitefield Hill historically connected with the Coombe Martin and Barnstaple turnpike roads. Additionally, Rookbear Lane previously continued southwards to link with a network of roads, which in turn connected with a road to Ashelford.
3. These OS maps assist in identifying the physical features present when the land was surveyed, but they do not distinguish between the public and private roads. Nonetheless, the relevant road is shown as a through route linking with recognised public roads. It was in fact indistinguishable from Rookbear Lane. Whilst the evidential weight of the OS maps will be limited, they provide support for this road historically being part of the local public road network.
4. Land to the east of the claimed route was subjected to the enclosure process by way of the 1811 Race Ground & Churchill Downs Inclosure Act and Award of 1823. It is apparent that the local Act incorporated particular provisions of the Inclosure Consolidation Act 1801 (“the 1801 Act”). The map with the award shows a section of road coloured yellow, which extends westwards for a short distance from the newly awarded public road leading directly from Bowden Corner to Ashelford Gate. The overlaying exercise undertaken by the Council reveals that this road broadly corresponds with a short section of the claimed route. As with the early OS maps, no alternative road is shown through to Claw Lane.
5. The Council believes that Rookbear Lane was set out in the award as a public carriage road. However, the transcript of the award reveals that three public roads were awarded, and it appears to me that Rookbear Lane was not one of the described roads. In contrast, a private road was set out from Bowden Corner, which proceeded in a southerly direction to Rookbear Gate. It therefore seems to me that the Inclosure Commissioners were only making provision for Rookbear Lane to be a private road.
6. The land crossed by the claimed route was not part of the enclosure process, but the route was the direct continuation of an awarded public road. There is no annotation in terms of the section shown. Nonetheless, when considered with the earlier OS mapping and the Cary map addressed below, this document is highly persuasive of the route being part of the local public road network at the time of the award. Furthermore, my interpretation of the award in respect of Rookbear Lane would add further support for the claimed route being a highway. It is unlikely that the Inclosure Commissioners would have made provision for the awarded public road from Ashelford Gate to terminate at Bowden Corner unless it connected with a highway or a place of public resort. The only other road in existence at the time was the one across Hewish Down in the locality of the claimed route.
7. As the claimed route pre-dated the enclosure process and lay outside of the provisions of the award, the statutory widths for roads prescribed by the 1801 Act have no bearing on the route. It follows that I do not consider the much later Parracombe Common Inclosure Award, which was referred to by the Council, to be relevant to this case.
8. A parochial road is shown on the Cary map of 1821, which generally corresponds to the alignment of the relevant road recorded on the earlier OS maps. This map shows the landscape prior to the enclosure process and again the road broadly corresponds with the claimed route and was the only east-west route at the time across Hewish Down.
9. It is also apparent that the Greenwood map of 1827 shows the pre-enclosure road network. In terms of the road across Hewish Down, this is shown in a much more general way than on the OS and Cary maps. It is represented as an unenclosed crossroad. Additionally, an alternative route going northwards of the present Bowden Corner, which is now a public road, is shown for the first time leading towards Indicott Cross. This could indicate that this road came into existence at some point following the 1823 Inclosure Award as an alternative way to Claw Lane.
10. Both the Cary and Greenwood maps show a road running near to the claimed route, which formed a through route between known public roads. These maps again provide support for this feature being part of the local road network. However, when taken in isolation, they carry only limited evidential weight.
11. It is the Council’s position that the apparent differences between the alignment of the claimed route and the relevant road shown on the early maps arise from different surveying techniques and that they fall within a reasonable level of tolerance. These differences are most noticeable at the western end of the road shown. In support of the Council’s position, Ms Gatrell has undertaken a comparison exercise involving the overlaying of the OS drawing with other historical and modern OS mapping. This exercise shows a limited difference between the alignment of the relevant feature on the early historical maps and the claimed route.
12. There may have been some changes to the exact alignment of the route over time given that it originally passed over unenclosed land. As noted above, there appears to be a variation towards the western end of the route. However, some weight should be given to Ms Gatrell’s evidence on this issue. Her evidence is supportive of the claimed route broadly corresponding to the road shown on the early OS and Bryant maps. I take the Greenwood map to provide further support for the existence of particular features but do not view it to have the same accuracy as the other early maps.
13. The objectors draw attention to the Devon hedging adjacent to the claimed route. These are substantive features and are found alongside many lanes and roads in Devon, but they provide no guide to status. No evidence has been provided to indicate when these particular features were first put in place. The earliest map to show the route enclosed is the large-scale OS map of 1889 (see paragraph 35 below). It may be the case that they were put in place when land at Hewish Down was enclosed during the latter part of the nineteenth century.
14. Whilst it is apparent that the East Down and Marwood tithe maps produced during the 1840s do not show the claimed route, the other mapping sources clearly record this feature. The Council points to this issue also being applicable to a public road nearby. It can be presumed that the land crossed by the unenclosed road shown on the earlier and later maps crossed land which had some value in relation to the payment of tithes, but this would not necessarily be indicative of private status. Given the purpose of these documents was to identify the tithed parcels of land, they do not really assist in the determination of the status of the claimed route in this case.
15. A series of newspaper reports involving the local highway board have been provided. The Council believes a report of 31 January 1867 relates to the present road between Bowden Corner and Indicott Cross. However, I note that reference is made to the relevant road being located within the parish of Marwood rather than East Down. This report dealt with the erection of fencing and the width of the road. A report of 14 March 1867 contains a reference to a diversion at Hewish Down and the Council’s view is that this could only relate to a diversion proposal involving the claimed route. The Council also draws attention to a reference to old paths across Hewish Down in a report of 13 March 1869.
16. I have some doubts regarding the extent to which these reports relate to the claimed route or the road to Indicott Cross. It is only possible that the report of 14 March 1867 involved a proposed diversion of the claimed route. Nonetheless, the Council has undertaken extensive research of the Quarter Sessions records and there is no evidence in support of an Order being made to divert or stop up the claimed route. This indicates that any public rights which did exist over the route have not been extinguished. If the claimed route was a historical highway, the creation of the road to Indicott Cross is likely to have had an impact over time on use of the route.
17. There is a reference in a newspaper report of 29 August 1872 to a road adjoining a portion of Hewish Down being in a poor condition. This is believed to relate to the road to Indicott Cross. The clerk was instructed to write to the adjacent landowner to request that the road was repaired. It is reported on 10 October 1872 that a further request was made to the landowner to repair the road. Details provided by the Council are supportive of a proportion of the highways in the area being historically repaired by adjacent landowners rather than the relevant highway body, known as ‘*ratione tenurae’*. These extracts are supportive of the road to Indicott Cross being viewed at that time as having public status. However, they provide no evidence in relation to the status of the claimed route.
18. Hewish Down was the subject of an enclosure application of 24 March 1870 and a provisional Order was made on 22 December 1870. This proposal is included in the Inclosure Commissioners’ reports of 1871-76. There is no evidence to suggest that this proposal received formal approval. Whilst it is apparent that land at Hewish Down was enclosed, there is nothing to show that this matter had any bearing on the claimed route. As outlined above, there is no evidence to indicate that any public road in this locality was stopped up and the claimed route has continued to exist as a physical feature.
19. The claimed route is shown on the large-scale OS map of 1889. Aside from the western end, it is shown enclosed on both sides. The presence of a bold line on one side of the route may be indicative of it having a metalled surface, but it is not necessarily reflective of public status. A guidepost is depicted at Bowden Corner and the 1903 OS object name book describes Bowden Corner as “*crossroads*”. The route is shown in a similar way on other OS maps of 1904 and 1961. I do not consider that much weight can be placed on these documents. Nonetheless, clearly the OS surveyor viewed Bowden Corner to comprise of crossroads. One limb of these crossroads would have been the claimed route. In respect of the lack of a guidepost at the western end, there was only a discretionary power for guideposts to be erected where two or more ways met. There will clearly be cases where it was not considered necessary to erect a guidepost at a particular junction.
20. The claimed route is also shown on the Bartholomew’s maps of 1924 and 1932 as an “*inferior road not recommended for cyclists*”. The depiction of a road on these maps is again not necessarily indicative of public status and there is a disclaimer on them to that effect. This description suggests the route was not in a particularly good state of repair. However, it does not indicate that the claimed route was impassable for vehicular traffic. I also note that there are some current public roads that were shown under the same category.
21. Aside from a short section near to its western end the claimed route is clearly shown excluded from the surrounding hereditaments on the record plan produced in connection with the 1910 Finance Act. In terms of the western end, the Council draws attention to the hereditament boundaries stopping on either side of the claimed route to respect the route in the same manner as the connecting public road. The depiction of the route on the Finance Act map in this way provides a good indication of highway status, most likely of a vehicular nature as footpaths and bridleways were usually dealt with by way of deductions in the accompanying field books.
22. The absence of the claimed route from the local authority handover records (1929-47) reveals that it was not viewed as being maintained at public expense. It does not confirm whether the route was a highway. As outlined above, there were roads in the area that were historically maintained ratione tenurae. Further, the failure to claim the route when the definitive map was first compiled does not impact upon any unrecorded public rights that might exist. The same would be true of any omission of a footpath or bridleway from the records held in connection with the Rights of Way Act 1932. There is nothing to indicate that the documents presently under consideration were assessed when the definitive map was originally produced.

***The user evidence***

1. Forty-seven user evidence forms (“UEFs”) have been submitted on behalf of forty-eight people in support of use of the claimed route. The majority of these forms were completed prior to the 2004 public inquiry. These forms provide personal evidence of use dating back to the 1930s in the case of Mr M. Fry, but the evidence generally relates to use during the latter part of the twentieth century. Six people gave oral evidence at the inquiry in relation to use of the claimed route and two people provided some brief written information regarding their use of the route. It is also apparent that a number of people gave evidence on this matter at the previous inquiry.
2. The previous Inspector commented on the evidence presented at the 2004 public inquiry and this information may provide some assistance in resolving factual matters. However, I am mindful that I did not hear this live evidence and accordingly I am reluctant to give too much weight to the assessment of the evidence by the previous Inspector.
3. The user evidence is supportive of use of the route prior to the making of the first Order by pedestrians, cyclists, horse riders and motor vehicles. Given the remote location of the claimed route, I find the level of use outlined in the user evidence to be significant. None of the users report that their use of the route was interrupted by the temporary fencing mentioned by Mr Berry in relation to the moving of livestock.
4. It is apparent from the previous Inspectors’ decision that Mr R. Fry and his family had an interest in Honeywell prior to its sale to Mr Berry’s father in 1970. I also note that Mr Berry’s mother was the daughter of Mr S. Fry.Accordingly, there is a strong possibility that the use by Mr M. Fry was of a permissive nature. Mr Berry has provided details of other people and riding stables who it is alleged had permission. In some cases, a distinction can be drawn between permission given to a wider body such as the local hunt and the use on other occasions by individuals. This was most evident from Mrs Turner’s evidence at the inquiry. She was clear that she had received no permission to use the route as an individual.
5. Mr Berry asserts that permission was given to certain parties such as Mr Irwin and Mr Bowden for access in connection with farming activities. Whilst I treat the evidence of use by these parties with caution, it is unclear whether this permission extended to use for other purposes. For instance, Mr Irwin’s permissive use is stated to have related to the first 100 metres of the route from its western end in order to access fields. In terms of the lateMr J. Baxter senior, he was clearly a friend of Mr Berry’s father and as such his use of the route is unlikely to have been challenged. Overall, it appears to me that there is the real possibility that some of the use by neighbours was tolerated rather than being the subject of any form of permission from members of the Berry family. Nonetheless, even by taking a cautious approach, there remains evidence of a significant amount of use of the claimed route until this use clearly became contentious (see below).
6. It was accepted by the previous Inspector that a sign erected in around July 1999 at the western end of the claimed route, containing the wording “*Honeywell Private Road*”, served to challenge use of the route. Although its position may not have made it readily seen by all users. There is also some doubt regarding whether it applied to pedestrian and equestrian users given that a private road may co-exist with a public right of way. Nonetheless, Mr Berry deposited a statement and plan followed by a statutory declaration in accordance with Section 31(6) of 1980 Act in January 1999, which would have been sufficient to demonstrate that there was no intention to dedicate a public right of way. The same cannot be necessarily said to apply to the evidence form completed by Mr Berry on 21 December 1998. In light of the Section 31(6) deposited documents, it is not necessary to consider any later action that could have served to deter people from using the route.
7. In terms of the sign initially erected in 1970, which was worded “*Honeywell Farm Private*”, I do not consider that such wording by itself would be sufficient to demonstrate to members of the public using the route that no right of way existed. It only really indicates that land in this locality was private and public rights of way invariably pass over private land.Likewise, ‘*Private*’ signage erected adjacent to the claimed route would not in my view challenge users of the route. These signs could apply to the land beyond the claimed route. Mr Berry’s assertion that he challenged some members of the public is not on the whole borne out by the user evidence. The exception is Mr Irwin who acknowledged that he had been informed that the route was private. Although Mr Berry did complain to Mr J. Baxter senior regarding the use by his sons of an old car, this arose more from the impact this action had on his cattle.
8. On the issue of landownership and capacity to dedicate, it is worth noting that the Council’s case relies to a significant extent on the documentary evidence. For instance, the issue raised regarding a mortgage involving land owned by the Berry family only needs to be addressed if consideration is given to whether dedication occurred at some point after the acquisition of the land crossed by the claimed route. It is apparent that Mr Berry acquired land which encompasses the western portion of the route in 1989. Honeywell Farm and other land to the south of the claimed route were purchased in 1970 and 2002 respectively.

***Conclusions***

1. The early map evidence shows the claimed route broadly corresponding with a road of some antiquity. I take this evidence as providing some support for the route forming part of the local highway network. Whilst the evidential weight of the individual maps will be limited, it is apparent that the route was originally a direct continuation of Rookbear Lane and the only route across Hewish Down. Following the enclosure of the adjacent land, the claimed route served as a continuation of the awarded public carriage road from Ashelford Gate. In this context, weight should be placed on the setting out of the carriage road in the award and the depiction of it continuing via the claimed route. When taken together this evidence is persuasive of the claimed route being an integral part of the local public road network.
2. It is apparent that an alternative road later came into existence from Bowden Corner which linked with Claw Lane at Indicott Cross. However,despite extensive research, the Council has been unable to find any evidence in support of the stopping up or diversion of the claimed route. Whilst this could mean that no public rights were considered to exist, the early evidence provides support for the claimed route being a historical public road.
3. At some stage substantive Devon hedging was constructed adjacent to the route. This may have occurred in relation to the enclosure of the surrounding land. However, there is no evidence of any formal process being completed for the enclosure of the remainder of Hewish Down. Nor is there anything to suggest that it impacted on the status of the route.
4. The Finance Act evidence is strongly supportive of the claimed route being regarded as a vehicular highway. In terms of the remaining pieces of documentary evidence I find that they provide only limited value or are neutral regarding the status of the route.
5. The documentary evidence when taken as a whole is supportive of the claimed route being part of the historical public road network. Whilst the evidence in support may not be substantial, there is a lack of evidence of any note that points to the route historically being regarded as a private road. Therefore, when applying the balance of probabilities test to the documentary evidence, I consider that it falls in favour of a conclusion that a right of way subsists. I also find that the evidence is indicative of the route being a historical public road rather than a bridleway.
6. I have found above that the documentary evidence is supportive of the claimed route being a historical public road. This evidence is sufficient to infer the dedication of a vehicular highway at some point in the past and well before any of the land in this locality was purchased by the Berry family. In terms of the public use, prior to the point when action was taken to challenge such use, this more recent evidence would be wholly consistent with the existence of a vehicular highway. This means there is no need for me to consider whether the user evidence by itself is supportive of the dedication of a public right of way under common law or statute.
7. Given the position outlined in paragraph 7 above, I conclude that the claimed route should be recorded in the definitive map and statement as a restricted byway.

**Overall Conclusion**

1. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed subject to modifications that require advertising.

**Formal Decision**

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

* Delete all references to “*bridleway*” and insert“*restricted byway”*.
* Delete the last sentence from each description in Part I of the Order Schedule.
* Include the notation for a restricted byway on the Order Map rather than the notation for a bridleway and amend the map key accordingly.

1. Since the confirmed Order would show as a highway of one description a way which is shown in the Order as a highway of another description 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

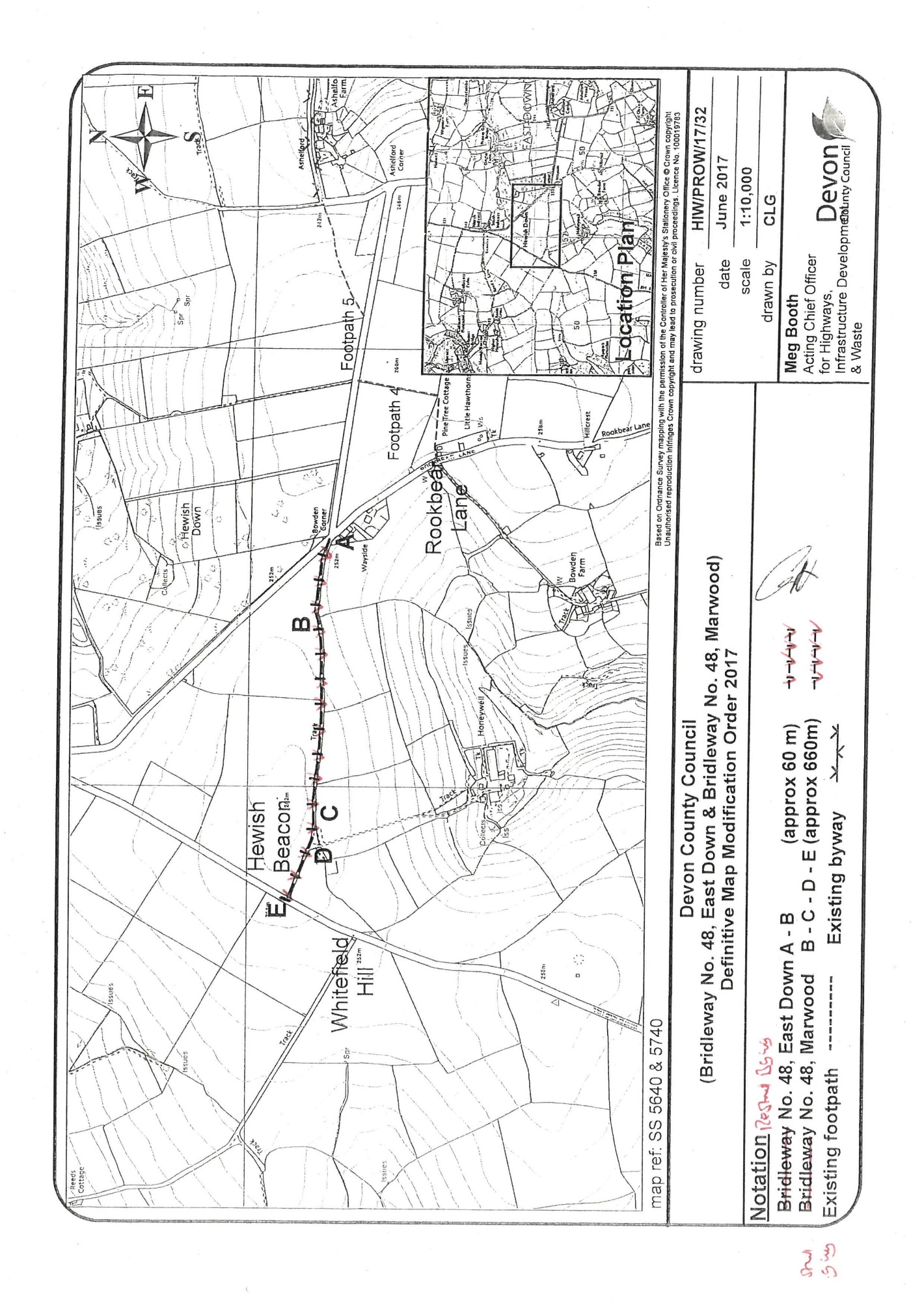
**Inspector**

**APPEARANCES**

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| **For the Council:** | |
| Mr P. Wadsley  He called:  Ms C. Gatrell  Mr R. Baxter  Mrs R. Baxter  Mrs J. Turner  Mr S. Dunham  Mrs J. Dunham  **Additional Supporter**  Ms C. Lethaby  **The Objectors:** | Counsel appearing on behalf of the Council  Public Rights of Way Officer |
| Mrs M. Masters  Mr A. Dunlop  He called: | |
| Mr R. Berry |  |
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**DOCUMENTS TENDERED AT THE INQUIRY**

1. Statement of Mrs S.L. Berry of 17 August 2006
2. Statement of Mr W. Rice of 16 August 2006
3. Email from Mr J. Ware of 21 May 2021
4. Opening statement on behalf of the Council and authorities cited
5. User evidence form completed by Mrs Turner
6. Email from Mr K. Browning of 15 June 2021
7. Email from Mr J. Ware of 11 June 2021
8. Site photographs supplied by Mr Dunlop
9. Overlay comparison of the Inclosure Award map with modern mapping
10. Digital extracts of the Finance Act map
11. Submission by Mr Berry to the Planning Inspectorate of 18 March 2001
12. Map showing location of turnpike roads in the area
13. Documents relating to the Parracombe Common Inclosure Award
14. Closing submissions on behalf of Mr Berry
15. Closing submissions for the Council
16. Costs application for Mr Berry
17. The Council’s response to the application for costs



1. Sometimes referred to as Huish Down [↑](#footnote-ref-2)
2. *Berry v Secretary of State for Environment Food and Rural Affairs, Devon County Council [2006]* EWHC 2498 [Admin] (“*Berry*”) [↑](#footnote-ref-3)
3. See paragraph 11 of the judgment [↑](#footnote-ref-4)
4. *Mayhew v Secretary of State for the Environment [1992]* 65 P&CR 344 [↑](#footnote-ref-5)
5. *Godmanchester Town Council and Drain v Secretary of State for Environment, Food and Rural Affairs [2007]* UKHL 28 [↑](#footnote-ref-6)
6. As outlined in paragraph 37 of the judgment [↑](#footnote-ref-7)