



## Order Decision

Site visit made on 21 November 2019

**by Rory Cridland LLB(Hons), Solicitor**

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

**Decision date: 19 December 2019**

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### **Order Ref: ROW/3220610**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Devon County Council (Bridleway No. 174, Sidmouth) Definitive Map Modification Order 2014.
- The Order is dated 3 November 2014 and proposes to modify the Definitive Map and Statement for the area by adding a public bridleway as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding when Devon County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.**

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### **Procedural Matters**

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I carried out an unaccompanied site visit on 21 November 2019.

### **The Main Issue**

2. The main issue is whether the discovery of evidence, when considered with all other relevant evidence, is sufficient to show that a right of way which is not shown in the map and statement subsists.

### **Reasons**

3. The Order route ("the route") commences on Chelson Lane, (point C on the Order plan) and proceeds in an east north east then eastwards direction, uphill for around 250 metres to join the minor county road at Point D. Although part of the route has a tarmacked surface suitable for motorised vehicles, the majority of it does not. Instead, its surface consists of a mixture of gravel, stone and earth that has clearly been worn into the ground over many years with visible evidence of recent use by tractors and larger vehicles.
4. There is general agreement between the main parties that the route has public rights. The Council, having assessed the evidence, judged that it was sufficient to show dedication of a public bridleway at common law. However, while the existence of public rights on foot and horseback is not disputed, two of the objections to the Order allege that vehicular rights extend some distance further north along Chelson Lane to the end of the tarmacked surface. This is

accepted by the Council who have requested that I modify the Order to remove the section of the route affected.

5. The third objection is made on the basis that the entire route already benefits from public rights for mechanically propelled vehicles (MPV's). It is argued that those rights have been saved by the exceptions provided by sections 67(2)(a) and (b) of the Natural Environment and Rural Communities Act 2006 (NERC) and that, consequently, the Order should not be confirmed<sup>1</sup>.
6. Section 67(1) of NERC extinguishes public rights of way for mechanically propelled vehicles other than in a limited number of defined circumstances. These include where (a) it is over a way whose main use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles and (b) that immediately before commencement it was not shown on the definitive map and statement but was shown in the list of streets<sup>2</sup> (LOS).
7. In relation to (a), it is clear from the various maps produced that the route has been in existence on the ground from the early nineteenth century up to the present day. It connects to a highway at either end and the evidence indicates that it has been open and accessible to the public and changed little throughout this period. However, although the maps provide some support for the existence of a route, they shed little light on its status. While I note the route is shown as a service road on the Devon County Council Cycling Map, in the absence of further evidence to establish that map's provenance, the weight that I can afford to it is limited. As a result, while I accept that the evidence indicates that the route has been in existence on the ground for a considerable period of time, I am not persuaded that it adds materially to the evidence in favour of the existence of public vehicular rights<sup>3</sup>.
8. Furthermore, the user evidence, while not extensive, indicates use on both horseback and foot for more than 50 years. In contrast, there is little direct user evidence of public vehicular use. While I acknowledge there is some indirect evidence from the landowners of use by tractors and 4x4's<sup>4</sup>, there is nothing to indicate the extent of such use or whether it was by members of the public as opposed to private individuals seeking to access the field entrances further along the route.
9. Similarly, while I note the details provided from the Devon Group of the Trail Riders Fellowship run logs show some use by its members, in the 5 years preceding the commencement of NERC, only 2 runs were recorded. Although I accept that this indicates there may have been some public use with MPV's, it is not, in itself, sufficient to show that this was the main use.
10. Overall, I am not persuaded that there is sufficient evidence to demonstrate that the main use by the public in the 5 years ending with commencement was with MPV's. As such, I find that the criteria set out in section 67(2)(a) has not been met.
11. Turning then to (b), the southern part of Chelson Lane is shown on the LOS as a minor county road and has been since the early 1970's. However, at the time

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<sup>1</sup> or alternatively it should be modified to record a Byway Open to All Traffic.

<sup>2</sup> required to be kept under section 36(6) of the Highways Act 1980.

<sup>3</sup> whether for MPV's or otherwise

<sup>4</sup> which would accord with my own on-site observations.

of making the Order the Council considered that this did not extend over the entire length of the tarmacked section. The Council now accepts that this was incorrect and that the whole of the tarmacked part of Chelson Lane benefits from vehicular rights and forms part of the minor county road. Furthermore, they accept that this part of the route was on the LOS at the date of commencement. It follows that this part of the route falls within the exemption set out in section 67(2)(b).

12. Nevertheless, the unsurfaced part of the route is not shown on the LOS. It does not appear on earlier records of highways maintainable at the public expense and does not feature on the handover map of 1974. While it is clear from the extract of the current LOS that the route was, at some time, shown as extending along the full length of Chelson Lane, for reasons unknown, part of it was subsequently removed by the application of correction fluid. There is no robust evidence which would explain why it was removed in this way, by whom or when. However, I have seen nothing which would lead me to conclude that the necessary procedures for its removal were not followed and, in the absence of such, I apply the presumption of regularity and consider it reasonable to conclude that they were.
13. It follows that, notwithstanding the ambiguity around the removal of the unsurfaced part of Chelson Lane from the LOS, there is no clear evidence which would indicate that it was on the LOS at the date of commencement. A lack of evidence is not evidence in itself and as such, I do not consider the exemption set out in section 67(2)(b) can be relied upon here.
14. Consequently, while I accept that the tarmacked part of Chelson Lane was on the LOS at the date of commencement and falls within the exemption set out in section 67(2)(b), I do not consider that the exemptions in sections 67(2)(a) or (b) can be relied upon for the unsurfaced part of the route. Furthermore, I am not persuaded that the evidence before me indicates that any part of the Order route would fall within the definition of a restricted byway.

### **Other Matters**

15. In reaching my decision, I have taken into account the various other matters raised in the objections including claims that the route is in public ownership, the position of drainage assets and the existence of surfaced and paved sections at either end of the route. However, these do not provide evidence of the status of any public rights or alter the conclusions I have reached above.

### **Conclusion**

16. None of the objections seek to challenge the Council's contention that the unsurfaced part of the route benefits from public rights of way on foot and horseback. Based on the evidence before me, I have no reason to conclude otherwise. Furthermore, I have found above that the exemptions set out in section 67(2)(a) and (b) of NERC do not apply and that there is insufficient evidence to indicate that any part of the route should be recorded as a restricted byway.
17. However, I have also found that the tarmacked part of the route was on the LOS at the date of commencement and falls within the exemption set out in section 67(2)(b) of NERC. Nevertheless, the Council accepts that the tarmacked section of the route forms part of the minor county road network

and has proposed that the order be modified to remove this section. I agree with this proposed course of action.

18. Accordingly, for the reasons set out above and having had regard to all other matters raised, I conclude that the Order should be confirmed subject to the modifications set out in the Formal Decision below.

### **Formal Decision**

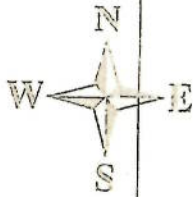
19. I propose to confirm the Order with the following modifications:

- The Order plan shall be modified as follows:
  - an additional reference point, point C1, shall be inserted into the Order plan at the end of the surfaced part of Chelson Lane near to the entrance to Voggis Hill Farm;
  - the broken black line with cross bars shown between point C and the end of the surfaced part of Chelson Lane (indicated by the newly inserted point C1) shall be deleted.
  - the notation shall be amended to read 'Bridleway to be added C1-D (190 metres)'
- Part 1 of the Schedule shall be modified as follows:
  - in line 3 of paragraph 1, the words 'point C' shall be amended to read 'point C1'
  - in line 1 of paragraph 2 the words '250 metres' shall be amended to read '190 metres';
  - in line 2 of paragraph 2, the words 'the surfaced width of the lane and' shall be removed.
- Part 2 of the Schedule shall be modified as follows:
  - in line 4 of paragraph 1 the words '250 metres' shall be amended to read '190 metres';
  - the final sentence in lines 6, 7 and 8 shall be deleted.

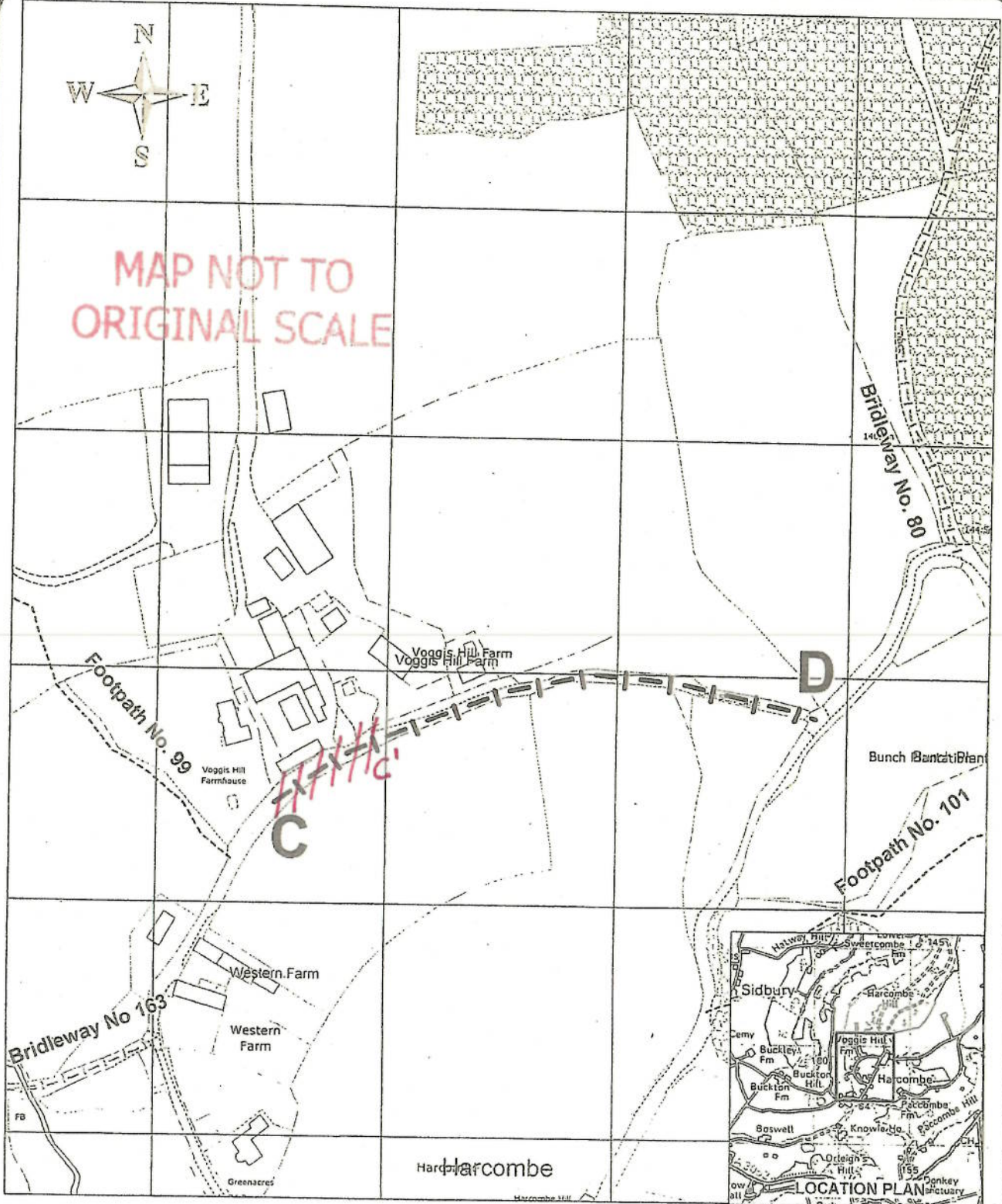
20. As the confirmed Order would not show a way in the Order as submitted, I am required by virtue of paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Rory Cridland*

INSPECTOR



MAP NOT TO ORIGINAL SCALE



map ref SY1591/1590

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**DEVON COUNTY COUNCIL**  
**Bridleway No. 174, Sidmouth)**  
**Definitive Map Modification Order 2014**

drawing number HCW/PROW/14/99  
 date Aug 2014  
 scale 1:2500  
 drawn by NSC

Notation

- Bridleway to be added *A-B (250 metres)*
- Existing footpaths
- Existing bridleways

David Whitton  
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE

