

**Definitive Map Review
Parish of Buckerell (Part 1)**

Report of the Chief Officer for Highways, Infrastructure Development and Waste

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

Recommendation: It is recommended that no Modification Orders be made in respect of:

- (a) Proposal 2 for amending the definitive line of Footpath No. 4 in Buckerell parish, but access is made available to use on the route as recorded; and**
- (b) Proposal 3 for the claimed addition of a footpath from the road east of Buckerell village and through the Deer Park Hotel grounds to the road near Weston village.**

1. Summary

This report examines two of three proposals arising out of the Definitive Map Review in the parish of Buckerell in East Devon district. It concerns the investigation of whether a public footpath was recorded on the wrong line of a path, shown on older maps crossing a field in the parish, and a claim to add a footpath based on historical evidence.

2. Introduction

The original survey by Buckerell Parish Meeting in May 1951 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of 19 footpaths submitted to the County Council. Comments were added on behalf of Honiton Rural District Council in August 1951. Fourteen of the routes surveyed were said to be private and not public, or not used by the public and not maintained by the Parish Meeting. Some of them were also described as service or accommodation paths and for farm use only, or not used and no longer required, suggesting that those should be withdrawn. The remaining five paths were all said to be used by the public, with four of them continuing on routes proposed for recording in the adjoining parishes of Awliscombe, Gittisham and Feniton. Those five footpaths were recorded for consultations at the Draft Map stage in 1957 and included on the Provisional Map. All of them were recorded on the Definitive Map, considered as having existed from the relevant date of 1 September 1957.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced suggestions on behalf of the Parish Council in 1978 proposing the deletion of Footpaths 4 and 15. No additional supporting evidence was submitted and the proposed deletion of both footpaths was not followed up. The main reason put forward for deleting Footpath No. 15 was the lack of a replacement footbridge over the River Otter for it to cross the parish boundary onto its continuation as Footpath No. 2 in Gittisham. Replacement of the bridge was considered then to be a waste of money as the footpath was said not to be used, but the footbridge is recorded as having been replaced 10 years later.

A Public Path Order extinguishing part of Footpath No. 15 at its northern end was made in 1983, although confirmation of the Order was withdrawn and a second Extinguishment Order for the same section of the footpath was made in 1989. That Order was confirmed in 1990, but it left the footpath without a connection to a public highway and ending at Orchard's Lane in Buckerell village, which was not then recorded as a public road or a public right of way.

Following a report to the County Council's Amenities and Countryside Committee in December 1988 on a claim by Buckerell Parish Council, a Modification Order was made in 1990 to record Orchard's Lane as a public footpath. It was objected to on the basis that the lane should have been recorded with higher rights and the Order was confirmed by an Inspector in 1991 after a public inquiry, modified to record it as Byway Open to All Traffic (BOAT) No. 20.

In January 1992, one of the objectors submitted formal applications to upgrade both the recorded Footpath No. 15 from Orchard's Lane to the River Otter and its continuation as Footpath No. 2 in Gittisham leading to the A30 as BOATs. There was no supporting documentary evidence with the applications, but the applicant referred to the evidence that had been considered at the public inquiry in 1990 resulting in the upgrade of Orchard's Lane. That evidence was considered to apply more widely to the rest of both routes recorded as footpaths leading to and beyond the River Otter to the A30.

Separate reports on the applications were presented to the then Public Rights of Way Sub-Committee in June 1992. The report for Footpath No. 15 recommended that part of the route should be upgraded to BOAT. That was for a short section of about 45 metres from the end of Orchard's Lane recorded with that status as a result of the public inquiry, but only to connect with the end of Cabbage Lane, a cul-de-sac section of maintainable highway running between properties from the minor public road in the village. The evidence was considered not sufficient for upgrading the rest of Footpath No. 15 as far as the River Otter, or its continuation as Footpath No. 2 in Gittisham to the A30, which was recommended in the separate report.

The minutes of the meeting record a resolution to upgrade only that part of the footpath to BOAT, with no action to be taken for the rest of the footpath, although no Order was made. Accordingly, a Modification Order will need to be made as a result of this review in the parish on the basis of the formal resolution made in 1992 for upgrading that short section of the footpath. Copies of the report and minutes from that Sub-Committee meeting are included in the backing papers for this report. A Public Path Order diverting part of the route of Footpath No. 2 in Gittisham from the footbridge over the River Otter leading to the A30 was made around the same time, which was confirmed in 1994.

After improvements had been proposed for the A30, other claims were also made in 1992 that several routes in Buckerell and Gittisham parishes not recorded on the Definitive Map could be affected by alterations with the construction of the line of a new road in the area as proposed then. It was claimed that the routes should be investigated for recording as public rights of way in advance of the alterations. A report was presented to a meeting of the Public Rights of Way Sub-Committee in September 1992 on the investigation of historical evidence for several routes in both parishes, some of them crossing the existing A30 and the line of the new road as proposed. A copy of that report is also included in the backing papers for this report.

The recommendation in the report noted that the proposed alterations to the A30 in the area of both parishes did not appear to affect any potentially valid claims for additions to the Definitive Map. The conclusions from investigation of the historical evidence for the routes were that for several of them, some crossing the old A30 and the proposed line of the new road, it was not considered to provide the basis for valid proposals or claims. Three of the

routes claimed were considered then to have a prima facie case for further investigation as part of the review for Buckerell and Gittisham parishes. One of them is included in the Appendix to this report as Proposal 3 and others will be considered in subsequent reports for both parishes.

The following additional Orders from diversions to footpaths have been made and will require the making of a Legal Event Modification Order for recording on a revised Definitive Map in due course:

- (a) Highways Act 1980, East Devon District Council, (Footpath No. 15 Buckerell), Public Path Extinguishment Order 1989; and
- (b) Highways Act 1980, Devon County Council (Footpath Nos. 18, Buckerell & 7, Feniton), Public Path Diversion Order 2007;

The current number of recorded public rights of way in the parish is five footpaths and one Byway Open to All Traffic. Some of the informal claims made originally on behalf of the Ramblers in 1992, as repeated in February 2017 and including a route crossing from part of the adjoining parish of Gittisham, are being picked up for further consideration as proposals in the current review process for both parishes.

3. Background

The current Review was started with a public meeting in November 2016. There was further correspondence with the Parish Council, when no further proposals were put forward to add to those from the claims made in 1992.

4. Proposals

Please refer to the Appendix to this report.

5. Consultations

General consultations on the applications were carried out in May 2017 with the following results:

County Councillor Philip Twiss	-	supports Proposal 2, but not the claims for the other proposals;
East Devon District Council	-	no comment;
Buckerell Parish Council	-	support the landowner's views on Proposal 2, but not the claims for the other proposals;
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
ACU/TRF	-	no comment;
British Horse Society	-	no comment;
Cyclists' Touring Club	-	no comment;
Ramblers	-	no view on Proposal 2 and support the other proposals from their own claims.

Specific responses, including from the owners of the land affected, are detailed in the Appendix to this report and included in the background papers.

6. Financial Considerations

Financial implications are not a relevant consideration to be taken into account under the provision of the Wildlife and Countryside Act 1981. The Authority's costs associated with Modification Orders, including Schedule 14 appeals, the making of Orders and subsequent determinations, are met from the general public rights of way budget in fulfilling our statutory duties.

7. Legal Considerations

The implications/consequences of the recommendation have been taken into account in preparing the report.

8. Risk Management Considerations

No risks have been identified.

9. Equality, Environmental Impact and Public Health Considerations

Equality, environmental impact or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

10. Conclusion

It is recommended that no Modification Orders be made in respect of Proposals 2 and 3 in Buckerell parish, as the evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendations are discussed in the Appendix to this report. The remaining proposal for other routes claimed originally in 1992 crossing the parish boundary from Gittisham into adjoining parts of Buckerell, will be included in a further report to complete the review process in the parish.

11. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to progress the parish-by-parish review in the East Devon district area.

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Electoral Division: Feniton & Honiton

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2008 to date	NSC/DMR/BUCK

ns111017pra

sc/cr/DMR Parish of Buckerell part 1

04 261017

Basis of Claims

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 (3)(c) enables the Definitive Map and Statement 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; and
- (iii) that 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 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.

Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public. That can be either expressly, with evidence of the dedication having since been lost, or by implication in having not objected to the use of the way by the public, the landowner is presumed to have acquiesced, with the public having accepted that dedication by continuing to use it.

1. **Proposal 2: Proposed amendment of Footpath No. 4, by correction of the recorded line from between points F–G to points F–H. shown on drawing number HIW/PROW/17/022**

Recommendation: It is recommended that no Modification Order be made in respect of Buckerell Proposal 2 for amending the recorded line of Footpath No. 4, but access is made available to use on the definitive route.

1.1 Description

- 1.1.1 The recorded line of the route for Footpath No. 4 starts from the minor road leading into Buckerell village, opposite the entrance to Treaslake Farm near a bridge over a stream (point G). It runs from a hedge in the corner of a field where there is an old overgrown gate, generally northwestwards across the field. Current access onto the footpath, though, is from just over 50 metres further along the road opposite the entrance to Glebe Farm, with a stile alongside a field gate, from where the path is signed (point H).
- 1.1.2 The line of the route used from the stile crosses the field to meet the recorded definitive line at a field gate in a hedge, with a stile alongside it (point F). From there, the route used follows the recorded line turning generally westwards across a field to a stile in the hedge alongside a minor road leading northwards from Buckerell village, opposite a row of houses near Splatthayes and the entrance to Jenirens Farm.

1.2 The Definitive Map process

1.2.1 Parish survey and map

The route was included in the survey of paths on behalf of Buckerell Parish Meeting in May 1951 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 4 "... leading from the Honiton road by Treaslake to Splatts". The grounds for believing it to be public were noted as "Always used by the public to get from Glebe to Curscombe", which is across the parish boundary in Feniton.

- 1.2.2 The route identified continued on Footpath No. 18 in Buckerell, crossing fields to the parish boundary and onto Footpath No. 7 in Feniton. It originally led to the road near Curscombe Farm but diverted later to a point further away along the road. Those footpaths were also included from the respective Parish surveys at the Draft and Provisional map stages that led to them all being recorded on the Definitive Map.

- 1.2.3 The map used for the Buckerell Parish Meeting's survey shows the line of path No. 4 drawn from the corner of the field, which went on to be as it was recorded on the Definitive Map. It is shown on both maps following the dashed line of a path not labelled 'F.P.' recorded by Ordnance Survey as crossing the field. The line of another path that was labelled 'F.P.' is shown on the map connecting to it on the route now available, used and signed. It suggests that there may have been a discrepancy in the path that was chosen to be recorded as the line of the public footpath from the road.

1.2.4 Definitive Statement

The Definitive Statement describes the route of Footpath No. 4 as starting at the road "30 yards south west of Treaslake" and crossing the fields to end at the road "opposite Splatts". That matches the distance to the start of the footpath as recorded, rather than for the path as used just over 50 metres further along the road.

1.3 Documentary Evidence

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

No lines of paths are shown on any parts of this route crossing the land between the roads from near Treaslake on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths.

1.3.2 Later 19th century historical mapping: Buckerell Tithe Map 1845 & Apportionment 1842; Ordnance Survey 25"/mile late 1880s

Some later maps at larger scales show the route in more detail. The Tithe Map for Buckerell parish dated 1845 does not show the line of any path crossing the fields between the roads from near Treaslake. There is no reference to any path in the Apportionment or in the names of the fields on the route. Tithe Maps do not usually show footpaths and bridleways, so the older records do not help to provide any evidence showing which line of a path on the route may have existed at that time to be recorded later as a public footpath.

1.3.3 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1887 shows the lines of two paths with double-dashed lines from the road crossing the field, with the path on the used route labelled 'F.P.' The path on the recorded line is not labelled and shown running alongside a hedge, now removed with others to make the five smaller fields on the whole route of the footpath into two large fields. The Revised New Series smaller-scale map for the area from the later 19th century does not show the lines of any paths on the whole route.

1.3.4 Later historical mapping, from early 20th century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1st edition map. Copies of the same later maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation. The specific details of the records from that process relating to this route were not consulted as the question is about its line crossing the field and not whether the whole route should have been recorded as a public footpath.

1.3.5 Later Ordnance Survey mapping and Bartholomew's maps

Most smaller scale maps from the earlier 20th century, particularly Ordnance Survey and Bartholomew's map editions, do not show the line of any path on this route. Some later editions between 1937 to 1960, submitted in connection with other claims in the parish, do not show it. Copies from the 1946 and 1960 editions show it only on the route as recorded to the corner of the field, with a dashed line as a path and not marked 'F.P.'

1.3.6 Later Ordnance Survey 'A' edition larger-scale mapping from 1960, around the time that the Definitive Map was being drawn up, does not show the line of any path or track on the route as recorded, but on the line as used and signed now, labelled 'F.P.' in the second field. The map also shows that the first single field was then larger, with the hedge dividing it into two smaller fields and followed originally by the recorded line having been removed at some time before that date.

1.3.7 Aerial photography

Earlier aerial photography from 1946–9 shows the fields still divided by hedges then, with worn lines perhaps suggesting use of the footpath route as recorded and no worn line on the route currently used and signed. Later aerial photography between 1999–2000 and 2006–7 shows the two enlarged fields with hedges removed, but does not show the worn lines of any path or track crossing the fields on either route as recorded or as available and used.

1.4 **Definitive Map Reviews and Consultations**

1.4.1 There have been no previous suggestions put forward that this route should be considered for amendment in earlier review processes that were started but not completed. The proposal for the possible amendment of the footpath was included in the consultations on the basis of discrepancies in the documentation for the process of recording it, in relation to the historical mapping and its current availability, signing and use. The responses included views from the landowner affected disagreeing with its amendment as proposed and from Buckerell Parish Council, who supported those views against the proposal.

1.5 **User Evidence**

1.5.1 No supporting evidence of claimed use was considered for this proposal with the route known to have been used on foot as available and signed, but no evidence was submitted for any earlier or more recent use of the line of the route as recorded.

1.6 **Landowner Evidence**

1.6.1 The owner of the land crossed by the whole route of the footpath completed a landowner evidence form in response to the consultations on this proposal. He indicated that he had owned the first field crossed by the lines of the recorded and used routes only since 2010 and the second field crossed by the continuation of the definitive route, as used, since 1985.

1.6.2 He did not dispute the recording of the route as a public footpath, saying that when he bought the first field in 2010 the stile was at point H for the current route being used by walkers. However, he believed that the stile should be at point G for the start of the route as recorded and he wanted it to be moved there for the line of the footpath to remain as shown on the Definitive Map between points F–G. On that basis he was, therefore, objecting to the proposal for an amendment of the line of the route to between points F–H.

1.7 **Discussion**

1.7.1 There has been no formal application or any claim that the line of this recorded footpath route should be amended. It was identified in preparations for the review process as a possible anomaly, with the footpath being accessible, signed and used on a different route from the definitive line of the path as recorded. No record has been found of an official Order for a formal diversion of the footpath, or of any clear indication when the access to it was made available and signed from its current start at point H rather than from its recorded start at point G.

- 1.7.2 The showing of two paths on the ground across the field in the older Ordnance Survey maps used for the process of surveying routes for recording as public rights of way in the parish suggested that it may have been recorded then on the wrong line of an existing path. It was included in the consultations on the basis of a prima facie case for a proposed possible amendment to correct the discrepancy between the recorded and used routes, if the evidence indicated that it had been recorded wrongly.
- 1.7.3 Earlier historical maps, particularly at smaller scales, do not show the line of any path or paths on the route. Some of the later large-scale mapping shows the lines of both paths up to the edition used for the Parish Meeting survey in 1951, one labelled 'F.P.', although that was nearly 50 years old by then and out of date. A later edition from 1960 during the time that the Definitive Map was being drawn up shows only the line of the path as used and signed, but not the other path on the route indicated for the survey and recorded as the definitive line. It also shows that the line of a hedge followed by the path shown on earlier maps had been removed before that date to make a larger field, which aerial photography records as still there in the later 1940s.
- 1.7.4 However, two later small-scale map editions also from around that time show only the path on the recorded line of the definitive route to the corner of the field by the road and no line of a path on the route as used. It means that the historical mapping does not indicate conclusively whether the route of the footpath may have been wrongly recorded on the definitive line, rather than the other path shown in some earlier editions and as now used and signed.
- 1.7.5 The Parish Meeting survey of the path in 1951 described it as leading from the road "... by Treaslake ...", which is nearer to the start of the recorded definitive route as shown on the survey map, although also indicating that it was always used by the public to get "... from Glebe ...", which is opposite the start of the used path. No record has been found of what information was used to put together the Definitive Statement, which describes the footpath starting from the road "... 30 yards south west of Treaslake ...". That distance corresponds more accurately with the start of the definitive route, where there are the remains of an old gate in the hedge, rather than the start of the route as signed and used with a stile next to another gate into the same field just over 50 metres further down the road.
- 1.7.6 No detailed record has been found of how or when the decision was made to put in the stile and a signpost at that location. Parish Council minutes record that the gap in the hedge at the Treaslake end of Footpath No. 4 was reported in September 1988 to be overgrown. The landowner then did not remember any stiles but said that there may have been bars in the hedge, agreeing to have stiles and signs provided. The line of the path was said not to be defined, with the field boundary hedges reported to have been removed and the fields having been ploughed.
- 1.7.7 Stiles ordered were reported not to have been delivered by early 1989, but it suggests that one might have been put in on the current line at some time perhaps soon after then, by agreement with the previous landowner and without considering the need for any formal diversion. The current landowner does not agree with the footpath being used and signed on that route, preferring that the recorded definitive line should be made available for the public to use. He indicated that it would also help with improving access for agricultural vehicles into the field using the existing gateway opposite Glebe Farm.

1.8 Conclusion

- 1.8.1 The combination of the footpath being signed and made available for public use now on an alternative line of a path, which had been shown on older maps to have existed before and up to the time of the Parish Meeting survey, was taken to suggest that there may have been a mistake in recording it on the Definitive Map. However, further consideration of historical mapping with other evidence from details in the process leading to its being recorded and following consultations do not support that suggestion.
- 1.8.2 There was no further evidence in support from local knowledge as a result of the consultations, but views were expressed by the current landowner and on behalf of the Parish Council against any possible proposed amendment. Accordingly, it suggests that the footpath was not recorded wrongly and the recommendation is, therefore, that no Order be made for Buckerell Proposal 2 to amend the recorded line of Footpath No. 4, but access is made available to use on the definitive route.

2. **Proposal 3: Claimed addition of footpath from minor road east of Buckerell village and through the Deer Park Hotel grounds to minor road near Weston village, points I–J shown on drawing number HIW/PROW/17/023**

Recommendation: It is recommended that no Modification Order be made in respect of Buckerell Proposal 3 for the claimed addition of a footpath.

2.1 Description

- 2.1.1 The route for this claim starts at the minor road leading to Buckerell village from Weston, south west of Glebe Farm (point I), running southeastwards initially through what is now the garden between houses and continuing across fields. It turns generally eastwards to continue through the grounds of the Deer Park Hotel and fields of Deer Park Farm, then further across fields and through a gateway to end at the entrance to Westcroft (point J), on the same minor road near Weston village.

2.2 The Definitive Map process

- 2.2.1 Part of this route as claimed was included in the survey of paths on behalf of Buckerell Parish Meeting in 1951 to put forward for recording as a public right of way. It was with others on the Deer Park estate, leading to Oakfield House and Nod Lodge that were all noted as being private, so were not included at the Draft and Provisional map stages for recording on the Definitive Map.

2.3 Documentary Evidence

- 2.3.1 Early historical documents: late 18th century – Quarter Sessions records and map 1797

The claim by the Ramblers for this route is based mainly on Quarter Sessions documents with a map from near the end of the 18th century. They were in connection with an Order for a diversion proposed in 1797 on parts of the route as claimed now crossing what was then the Deer Park estate. The documents were considered initially for the report to the Public Rights of Way Sub-Committee in 1992 on the possible effects of proposed improvements to the A30 near Honiton on unrecorded routes, although indicating that they would not affect this route.

- 2.3.2 The report considered then that a claim based on those documents appeared to be better founded than others investigated at the same time. However, it advised that the exact route on the map should be checked before making any formal application as what was shown differed in several places from the claim as put forward then. This repeat of the claim informally by the Ramblers is based on copies of the documents and map, with an additional transcript of the Order for the diversion as proposed and a copy of a later Ordnance Survey map showing the whole route as claimed now. That includes parts of the old and proposed new paths through Deer Park shown on the 1797 map with its continuation, for an amendment to the original informal claim and with additional reference to an attached copy of the 1992 report.
- 2.3.3 The Quarter Sessions documents are an Order dated the 18th of September 1797 for a diversion proposed for parts of a footpath, signed and sealed by two Justices of the Peace, with the consent of the landowner also signed and sealed, and a plan of the "New proposed Foot Paths leading thro' the Barton of Deer Park". The plan was noted as having been "inrolled" on the 3rd October for the Michaelmas Sessions of 1797.
- 2.3.4 The Order reports that the Justices had viewed part of the footpath in Deer Park at a Special Sessions and found that it "... may be diverted and turned so as to make the same more commodious to the public ..." and "... a course proposed for the new Footpath in lieu thereof ...". It describes the lengths of the old and new sections of path, referring to the annexed plan and the consent of the landowner, recording that they "... do hereby order that the said Footpath be diverted and turned through the Lands aforesaid".
- 2.3.5 The plan is dated the 16th of September and is described by its surveyors as relating to the "New proposed Foot Paths", having measured and surveyed the original paths and "... also measured and laid out on this Plan the Out Line of a proposed New Foot Path in lieu of either of the former". The written consent of the landowner is signed and sealed, dated the same as the Order, referring to the footpath as "... intended to be diverted and turned ...", agreeing to the "... making and continuing such new Footpath through my said Lands".
- 2.3.6 The plan shows fields on the Deer Park estate and parts of adjoining lands with the names of their owners, showing the lines of roads and tracks with paths labelled to indicate the sections of the old routes and the proposed new routes. The sections of road are as existing now, coloured ochre and labelled as from Buckerell, to Awliscombe and to Honiton. Access tracks from the road to and beyond the house at Deer Park are shown in the same way as the roads.
- 2.3.7 The lines of the paths are shown mainly with double-dashed lines and coloured ochre, labelled as "Old Foot Path" on parts of the claimed route and on another connecting route from the road nearby crossing other fields that is not included in this claim. Parts of the path leading to the Deer Park house and on the access track beyond it are labelled as "Old Path claimed". A path is shown partly continuing into land immediately beyond the Deer Park fields as "To Weston Village &c.", but with no detail of field boundaries or the route of any further continuation. The routes for the proposed diversion around the house are coloured red and labelled "New Path", "Proposed New Path" or "Proposed New Foot Path".

2.3.8 Other Quarter Sessions records: Sessions Order Books 1792–1802, 1802–12 and 1812–18

As noted on the plan, the Quarter Sessions Order Book including the Michaelmas General Sessions of 1797, held at Exeter Castle on the 3rd October, records that the Order for diverting “a road in Buckerell” was certified as having been “returned to and inrolled in this Court pursuant to the Act of Parliament”. The relevant Act referred to for the process then of diverting or stopping-up highways, which included footpaths, was an earlier equivalent of the Highways Act from 1773 (13 Geo III c.78).

2.3.9 Provisions under the Act for such diversions then were that, from a viewing by two Justices of the route proposed to be diverted and the new route, and with the consent of the landowner in writing, an Order made by them for the diversion to take place was lawful. Further provisions allowed anyone “injured or aggrieved” by such an Order to make a complaint, giving 10 days’ notice in writing of such an Appeal, to the next Sessions or the following one if there was not sufficient time for that notice.

2.3.10 The Court was required to hear and determine such an Appeal, if made and if none was made it could confirm the Order. That would be considered as:

“binding and conclusive to all Persons whomsoever; and the new Highway, Bridleway or Footway, so to be appropriated and set out, shall be, and for ever after continue a Publick Highway, Bridleway or Footway, to all Intents and Purposes whatsoever”.

2.3.11 However, further to that, no “Stoppage of such Footway” could be made until:

“such new Highways, Bridleway or Footway shall be completed and put into good Condition and Repair”, and so Certified by Two Justices of the Peace, upon View thereof; which Certificate shall be returned to the Clerk of the Peace, and by him inrolled amongst the Records of the said Court of Quarter Sessions.”

It would only be: “from and after such Certificate, such old Highways, Bridleway or Footway shall and may be stopped up”, recording as well that the land and soil had been made the property of the landowner.

2.3.12 Following enrolment of this Order, with the plan and the landowner’s consent, no record has been found in the Quarter Sessions Order Books soon after that date or later of any Appeal against it that would need to have been considered at a subsequent Sessions. In addition and significantly, no recorded entries have been found either for any enrolment at a later Sessions of a Certificate by Justices for the completion of putting the new routes for a diversion of the footpath into good condition and repair, or stopping up the old ones, to indicate that as a result the Court had subsequently confirmed the Order for diverting it.

2.3.13 Early 19th century – Ordnance Survey, Surveyors’ Drawings 1806-7 and 1st edition 1”/mile map 1809 and later (Old Series); Greenwood’s map 1827; map of the Deer Park estate, Buckerell 1837

Most parts of this claimed route are not shown crossing the land between the road near Weston and Buckerell villages on any of the earlier maps at smaller scales, which do not usually show the lines of footpaths. Some parts of the sections of the access tracks leading to the house on the Deer Park estate are shown as on the 1797 map.

- 2.3.14 A map of the Deer Park estate from 1837 does not show any paths on the lines of the old or proposed diversion routes from 1797. It shows only the solid lines of tracks and dashed lines on parts of what had been proposed 40 years earlier for the new diverted routes to follow along them. A track across the main field connects to another entrance track to Nod and Oakfield House from the road to Weston village, labelled 'to Honiton', as drives to Deer Park House crossing the lawn and parkland.
- 2.3.15 Later 19th century historical mapping: Buckerell Tithe Map 1845 & Apportionment 1842; Conveyance of land for School 1850; Ordnance Survey 25"/mile late 1880s
Some later maps at larger scales show the claimed route, or parts of it, in more detail. The Tithe Map for Buckerell parish dated 1845 shows the Deer Park access tracks, but does not show the line of any paths crossing the fields between the road near Weston and Buckerell villages. There is no specific reference in the Apportionment to any path in the names and descriptions of the fields on the claimed route.
- 2.3.16 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, with no lines of paths or unenclosed tracks shown crossing fields in other parts of the parish. A conveyance from 1850 of land on the Deer Park estate in Higher Broad Park, identified from the Tithe Map, was made under legislation from 1841 to provide a site for the school. The conveyance indicated that the buildings had already been built before then, but does not include any reference to the land being subject to a public right of way at that time. It refers to including "all Easements" belonging to or connected with the land for the school, which are likely to have been only for private rights of access rather than any wider public rights.
- 2.3.17 The Tithe Map records, with other maps and documents from the earlier 19th century do not, therefore, provide any supporting evidence that the whole of the claimed route may have existed then to have been considered as a public footpath.
- 2.3.18 The Ordnance Survey 25" to a mile 1st edition map surveyed in 1887–8 shows sections of a path with double-dashed lines labelled 'F.P.' following alongside hedges and crossing fields on parts of the route as claimed. From its start on the road at point I, it is shown passing between buildings labelled as a school. Parts of it crossing the Deer Park estate are shown only on parts of the old route for the 1797 diversion and not on the proposed new route, although showing the lines of the access tracks or drives that parts of it were proposed then to follow. The main access track is shown continuing to the house from the road passing the buildings of Deer Park Farm.
- 2.3.19 Other parts of what were considered as the old footpaths in 1797 are not shown, including the connecting route crossing fields from further along the road not in this claim. The lines of other paths and tracks, some labelled 'F.P.', are shown in the grounds near the Deer Park house, including a connection to what is now the main access track to the hotel from the road near Weston village passing Nod Lodge. The continuation on the route as claimed is shown passing what is now the site of the former Oakfield House and crossing fields to the same road at point J. The Revised New Series smaller-scale map for the area from the later 19th century shows only the sections of access tracks on parts of the claimed route, as in earlier editions, but not the lines of any paths connecting them to form a continuous route as claimed.

2.3.20 Later historical mapping, from early 20th century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later Ordnance Survey 2nd edition 25" to the mile map revised in 1903 shows the claimed route in the same way as in the 1st edition map. The location of a footbridge labelled 'F.B.' is shown on the section of path from the school across the fields leading to Deer Park where it crosses a stream. No copies from those later maps used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation were submitted with this claim. A copy from one of the maps submitted for another claimed route in the area shows part of it and details from others were obtained from National Archives, with copies from other documents in the process.

2.3.21 The maps show the claimed route to have been included in eight defined and numbered hereditaments, or assessment areas of land, for: the School and Mistress' House (106); Glebe Farm (62); Orchard Farm (84); Deerpark Farm (50); Deerpark (38); Rendels Field (49); the garden and ruins of Oakfield House, (36) and; part of Elmfield Farm (55). Copies of the Field Books for those hereditaments with details of the assessments for the farms were not included with the claim, but were also obtained from National Archives.

2.3.22 They do not record any deductions in respect of Public Rights of Way or User affecting the value of the land crossed by any parts of the route as claimed, or by any parts of the other footpath routes shown on the 1797 Diversion Order plan. The only such deductions include those for Glebe Farm and Treaslake Farm, which are for fields crossed by paths that are now recorded as the nearby public footpaths numbered 4 and 13 in Buckerell, or for land elsewhere in the parish not on this claimed route. No deductions for Public Rights of Way or User that could be connected with any parts of the claimed route were recorded for those hereditaments in the overall Valuation Book for the parish.

2.3.23 Details in the Field Books of 'Charges, Easements and Restrictions' affecting the value of the land on some sections of the route show that parts of it had private rights of way or access for the owners or occupiers of adjoining land, with deductions recorded in the Field Books as 'Easements'. The Finance Act records indicate, therefore, that no parts of the route were considered to carry any public right of way at the time. Some parts of it were recorded as only having additional private rights of way or access for users other than the owners or occupiers, including on paths crossing land or on sections of tracks, which were identified with specific reference to their Ordnance Survey parcel numbers.

2.3.24 Parish and Rural District Council records: early to mid-20th century

Buckerell Parish Meeting minutes from March 1905 include a report by the Chairman about the condition of the "footpath leading from Buckerell village to Deer Park". It was agreed that a Committee should be appointed to examine the condition of the footpath, with the path leading to Curscombe, recorded later as what are now Footpaths 4 and 18. The minutes of a meeting the following November report that a precept was drawn on the Overseers to be paid for work done on repairing "footpaths, bridges, gates, stiles &c", as ordered by the Committee appointed in March but not identifying whether any of those repairs had been on this claimed route.

2.3.25 A Parish meeting was held in November 1933 to provide Honiton Rural District Council with details of "footpaths and public rights of way" in the parish. That will have been in connection with earlier procedures for identifying and recording public rights of way under the Rights of Way Act 1932. Several paths in the parish were

discussed and it was agreed that the Chairman would examine the Ordnance Survey map with the Clerk to the Rural District Council.

- 2.3.26 Six paths were listed, four of which are now those recorded as the public footpaths in the parish, with the path numbered “6. Buckerell to Deerpark”, the first section on the start of the route as claimed. No documents in Rural District Council records have been found from that time including those details. Other Parish Meeting minute entries throughout the period refer to repairs needed on other paths now recorded as public footpaths, particularly for the footbridge over the River Otter.
- 2.3.27 In other matters, it was noted in June 1945 that there was a proposal to close Buckerell Church School at the start of the claimed route. In June 1950, a year before the Parish survey to record public rights of way for the Definitive Map, with further discussions about repairs to the River Otter footbridge and a question about whether the stiles and paths were necessary, it was noted that the path to Deer Park was one of two not recognised by the Parish. It was also recorded that if the old school, probably closed already by that date, was not sold by private treaty it would be put up for auction. The Parish survey the following year did not include that first section of the route as claimed leading to Deer Park.
- 2.3.28 Later Ordnance Survey mapping and Bartholomew’s maps
Most smaller scale maps from the earlier 20th century, particularly Ordnance Survey and Bartholomew’s map editions, do not show the line of any path on this route, but only the access tracks leading to the Deer Park house on parts of it. Most later editions up to 1960, submitted in connection with other claims in the parish, do not show it. Copies from the 1937 and 1946 editions show it only on the start of the route as claimed with a dashed line as a path and not marked ‘F.P.’, leading to the grounds of Deer Park house, but with no continuation further towards the road near Weston shown beyond the access tracks or driveways in the grounds and parkland.
- 2.3.29 Later Ordnance Survey ‘A’ edition larger-scale mapping from 1960, around the time that the Definitive Map was being drawn up, does not show the lines of any paths on parts of the claimed route crossing fields. It shows only the lines of the access tracks and drives leading to what was shown then to be the Deer Park Hotel, with other tracks or paths in the grounds, some of which are on or near parts of the route as claimed.
- 2.3.30 The showing of the claimed route on some early and later maps records its physical existence as paths or parts of tracks at those times until more recently. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well. Only the Quarter Sessions documents suggest that some parts of it may have had the reputation of being considered as a public footpath in the later 18th century.
- 2.3.31 Aerial photography
Earlier aerial photography from 1946–9 shows what may be the line of a path leading from the road through the fields towards Deer Park house, with the lines of the access tracks to it crossing the grounds and parkland. No line of any path is shown beyond the Deer Park grounds crossing the fields to the road near Weston. Later editions between 1999–2000 and 2007 show some parts of the Deer Park access tracks, but no worn lines of any path or track crossing the fields connecting to them on the rest of the route as claimed.

2.4 Definitive Map Reviews and Consultations

- 2.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes that were started but not completed. The claimed footpath was included in the consultations in May 2017 on the basis of the claim made earlier that year. The responses included objections on behalf of the affected landowners, with the Parish Council and local County Councillor, with support only from the Ramblers having made the claim.

2.5 User Evidence

- 2.5.1 No supporting evidence of claimed use was submitted with this claim for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

2.6 Landowner and Rebuttal Evidence

- 2.6.1 The owner of Deer Park Farm on the claimed route responded to the consultations and completed a landowner evidence form. He indicated that the claimed route crossed his land, which had been in his ownership for 50 years and he had always believed that it was not public. He had not seen or been aware of the public using the route, had not required people to ask permission when using it, as the route as claimed was impassable and nobody would attempt it.
- 2.6.2 He had not turned back or stopped anyone from using the claimed route, had not obstructed it and had not put up notices to say that it was not public, or made a Section 31 deposit to show lack of intention to dedicate. He reported that there were no gates on the route which may have been locked. In additional information, he said that it cannot have been used for at least 100 years because of growth in the hedgerows on the route as alleged.
- 2.6.3 He had never known anyone using or attempting to use it, as it was impassable because of the hedgerow growth. With the hedge growth and bank similar 50 years ago, he considered that it must have been there in the 18th century at the time of the 1797 diversion order from the basis for the claim. He noted that the path claimed differed in places from the diversion order and considered that there was no evidence to support the claim for the route. With the Ramblers having the burden of proof, he believed that the standard of proof required was 'beyond reasonable doubt' rather than the 'balance of probabilities'. He also referred to copies of an abstract of title from his deeds dated 1924, with documents from the original conveyances showing various footpaths but not the one claimed.
- 2.6.4 The owners of land affected by another of the claims in Buckerell completed an evidence form relating mainly to that claim, but indicated that they also owned the field crossed by the start of this claimed route leading from the road towards the Deer Park Hotel. Most of the detailed information in response to the questions in the form, but submitted separately, was in relation to the other claim. However, they indicated that they owned the field crossed by this claimed route behind where they live and it had never been used by anyone for access, as it was not visible and not marked on an old map.
- 2.6.5 None of the other owners of land or property on the route completed evidence forms, but several responded to the consultations and a solicitor acting on behalf of some of them submitted a letter in response after seeing details of the evidence supporting the claim. He indicated that his clients opposed the claim strongly and they were

determined to resist it as far as was required, with research into the history and circumstances of the route as alleged. They reserved their rights to make any further detailed submissions.

- 2.6.6 Although requiring further research into the evidence, he commented on what had been submitted in support of the claim, with the 1797 Order suggesting the existence of a footpath at that time that may have been diverted, although with doubt as to whether it was implemented. With the possibility of any further Order with a different outcome, he considered that it would need to be considered alongside all other available evidence.
- 2.6.7 In the other evidence from Ordnance Survey maps, he referred to the general acceptance that being shown on them is no indication of its status but only of its existence on the ground. With the claimed route not shown on some of them, or partly and not for its whole length, he considered it significant that if it really did exist in 1797 and thereafter, it would have been shown on map editions from the 19th century and subsequently.
- 2.6.8 He referred as well to the lack of user evidence adduced in support of the claim, indicating that his clients say that there is no evidence of public use of the claimed route and no indication of the route being used. With the path not considered in the Definitive Map process from the early 1950s, he suggested that if it had been thought to exist in those years it would have been claimed.

2.7 Discussion – Statute and Common Law

2.7.1 Statute (Section 31, Highways Act 1980)

There has been no formal application to record this claimed route as a public footpath, with no challenge to its use and no event for calling any use of it by the public into question such as notices, or any obstruction to prevent its use. No user evidence has been submitted for investigating in connection with any previous claim connected with the parish review process and none has come forward as part of the current review process, including after the consultations.

- 2.7.2 If there had been any formal application, challenge or obstruction, it could be used for investigating in accordance with the test for statutory dedication under Section 31 of the Highways Act 1980, taking into account any evidence of use and of the landowner's lack of intention to dedicate. However, with no evidence of use submitted to support the claimed addition or later, there is none during any 20-year period before the date of the Ramblers' letter with the informal claim, if that did provide a date for calling its use into question, to consider whether any statutory presumption of dedication has arisen from use by the public.
- 2.7.3 With no event or date that can be specified for calling use of the route into question, no formal application and no evidence of use submitted, it can only be considered in relation to a test under common law. That involves historical and documentary evidence submitted with the claim, with other evidence from which any earlier use could be inferred and with reference to landowner evidence.

2.7.4 Common Law

Considering the informal claim in relation to common law requires taking into account the historical documentary evidence submitted and other historic maps and evidence discovered, but without being able to consider any evidence of claimed actual use by the public. The earliest historical evidence is from the 1797 Quarter Sessions records submitted by the Ramblers as the main basis of support for its claim. The plan with

the Order proposing to divert parts of the paths shown as crossing the Deer Park estate at that time shows the lines of what were considered then to be old footpaths and proposed new paths for their diversion, with other sections and another path not affected.

- 2.7.5 On their own, the records could perhaps be considered as strong prima facie evidence in support of the claim that public rights subsist on the routes shown on the plan, or could be reasonably alleged to subsist either on them all or only the sections proposed to be diverted. The documents include the landowner's signed and sealed consent to the proposed diversion of the paths crossing his land. That could be taken as evidence of his acceptance at that time that they had been dedicated as public for the proposed diversion, which was specified as being to make them "more commodious to the public". However, that could only be for the sections crossing his own land, which is identified specifically as outlined in the plan, labelling the adjoining lands with the names of other landowners. Those lands are crossed by other connecting sections of paths, one not included in the claim and the start of its continuation labelled as being to Weston village.
- 2.7.6 Nothing has been submitted or discovered that could be taken to provide the same level of evidence for acceptance by those landowners of any dedication of those sections as public for the rest of the route as claimed, or for the other path not included in the claim. Further, there is no evidence to show that any continuation of the route to Weston village was on the same line as that claimed from being shown on later maps.
- 2.7.7 Much more significantly, though, the documents as submitted do not themselves provide evidence that all parts of the required procedures for the whole process of diverting the footpath as proposed were completed, as specified by the legislation at that time. The requirements of the equivalent of the Highways Act from 1773 included the Order being enrolled at the Quarter Sessions, which would then consider any appeal against it. If there was no appeal, or if one was made and considered at a subsequent Sessions but dismissed, the Order had to be confirmed, with a Justices' Certificate of completion for the new route and stopping up the old one, both of which were required to be enrolled at the Sessions. That was to complete the process legally and make the new diverted route a public footpath, with the surface of the old route then being exchanged with the Surveyors of Highways and becoming the property of the landowner.
- 2.7.8 The documents submitted are only the Order proposing to divert parts of the path, with a plan and the consent of the landowner. From other evidence discovered and considered, particularly the Quarter Sessions Order Books from that period, they were enrolled at the next meeting of the Sessions, as required. However, no record has been found from the records of subsequent meetings either of any appeal needed to be considered, or of the Certificate required for completion of the procedure to fulfil the requirements of the legislation for the diverted path to be considered as public. The Quarter Sessions Order Books record that other proposed diversions of highways – roads, bridleways and footpaths – in other Devon parishes were enrolled in the same way, but they indicate that appeals were considered and Certificates of completion were enrolled in some cases to show that the requirements of the legislation had been fulfilled.
- 2.7.9 There was no further requirement then for any equivalent of today's wider consultations, with the Orders to be advertised by notices on site, in a local newspaper and fixed to the church door. Those were brought in by a later Highways Act in 1815 and taken forward to be included in the 1835 Highways Act. It means that

the main evidence submitted for the claim, although raising an initial possibility of being strong evidence for dedication and landowner's acceptance that parts of the route were public crossing the then Deer Park estate in 1797, its weight is reduced substantially. On its own, therefore, it cannot be taken as sufficient to reach the evidential threshold of being reasonable to allege that the route as claimed, or even any parts of it shown in the Order, should be recorded as a public footpath. However, there is also no additional weight provided to support it when considered in conjunction with other historical map and documentary evidence discovered.

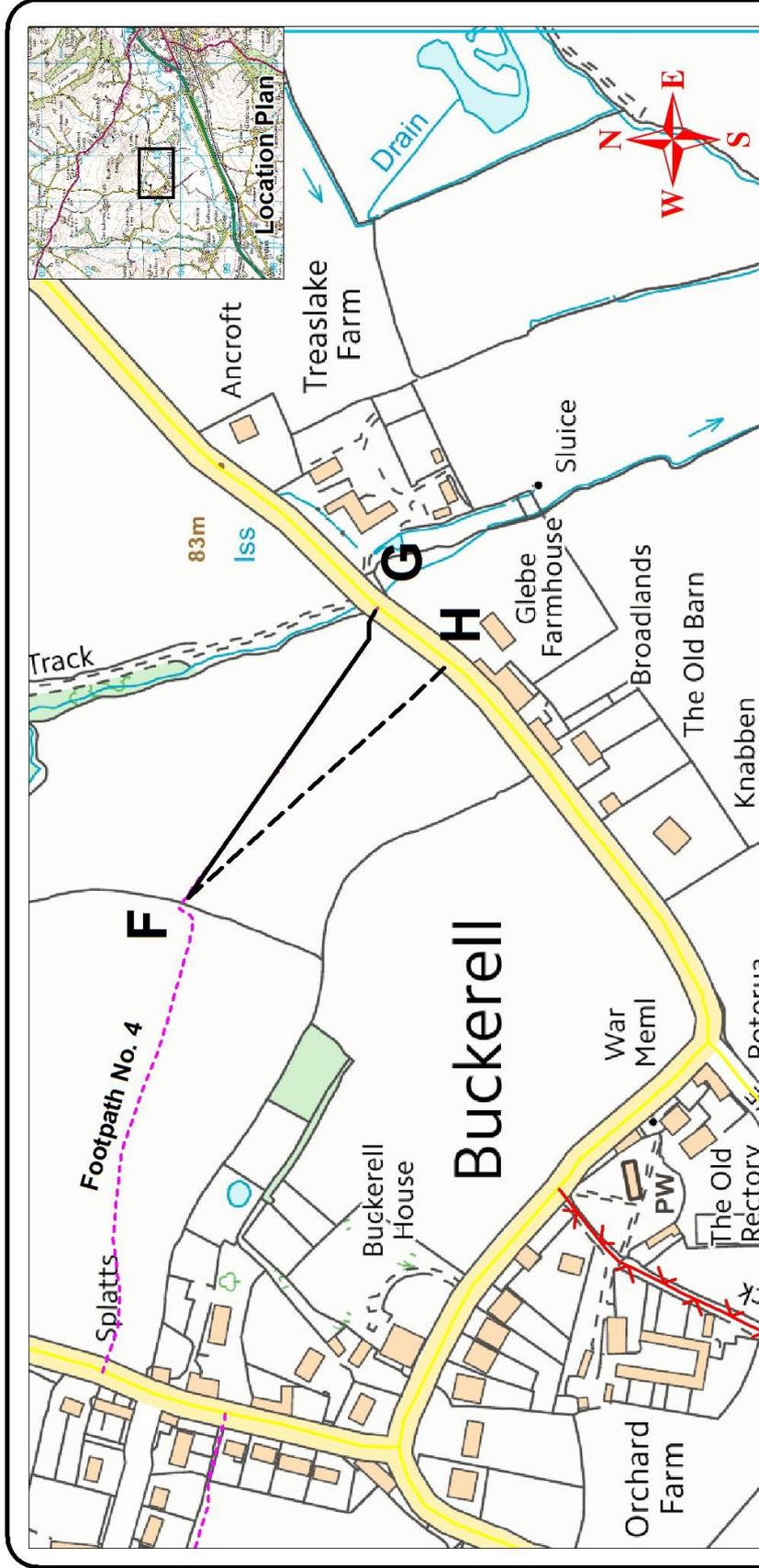
- 2.7.10 Maps from the first half of the 19th century show only parts of the claimed route as paths or tracks crossing the Deer Park estate and connecting to others leading to it, but not the connecting paths beyond it from Buckerell and to Weston. Later map editions show those connecting paths, marked 'F.P.', leading from Buckerell and to Weston only at larger scales, connected by tracks and paths on the Deer Park estate, although without any indication that any of them could have been taken together to form one continuous route, or that it was considered then to be a public right of way.
- 2.7.11 Finance Act records from the early 20th century indicate that no parts of the route as claimed were considered then to carry public rights, with no deductions in the assessment process for any of the land or fields in hereditaments crossed by it. Some parts of it were recorded specifically as having deductions only for private rights of access, particularly for the section between the Deer Park estate and Weston. Most later maps at smaller scales also show only parts of the claimed route as paths or tracks crossing the Deer Park estate and connecting to others leading to it, but not the connecting paths. Only two editions show the start of the route as claimed with a dashed line as a path and not marked 'F.P.', leading to Deer Park, but with no continuation beyond it to the road near Weston. Parish records from the early 20th century include a reference to the condition of a path from Buckerell to Deer Park being considered with another one now recorded as a public footpath, with subsequent payments for repairs but no clear detail to show that it may have been the subject of any maintenance using public money from the precept.
- 2.7.12 It may have been as shown on the later maps and included in the list of paths to be considered with the Rural District Council for recording under the Rights of Way Act 1932. However, the Parish records also indicate that by 1950, probably after the school had been closed, it was one of two paths reported specifically not to be public. Only part of it was included by the Parish Meeting in its survey the following year for recording public rights of way, but it was noted specifically as being private and did not go forward to the Draft and Provisional map stages for recording on the Definitive Map.
- 2.7.13 In the 2017 consultations, the Clerk to the Parish Council reported that one of Buckerell's oldest residents remembered a footpath from between the Old Barn and the village school, now the site of a house and garden, which went through the fields towards the Deer Park Hotel. She said that it used to have kissing gates and had gradually stopped being used after the school was closed. That may again have been on the line of a path shown in some of the maps from around that time. However, its use could have been only in connection with the school, as there is no evidence for any continuation beyond Deer Park at that time to suggest that it may have been used on the whole route as claimed to Weston village and by the wider public. The land for the school was conveyed by the owner of Deer Park House with all easements, which will have included private rights of access and may have continued to provide a link between them on that basis, but not for any wider public rights or beyond it towards Weston.

2.7.14 No other more significant historic maps or references in historical documentary records have been submitted or discovered to add more substantial weight to any suggestion that the route had the reputation of being a public footpath in the past, or more recently. No claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, either by or on behalf of Buckerell Parish Council.

2.7.15 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or an inference that it had the reputation of being available and used by the public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any such dedication and used it at any time in the past on foot, or have continued to use it on that basis more recently or up to the present.

2.8 Conclusion

2.8.1 From this assessment of the evidence submitted with the claim as made, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support any claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the informal claim made for Buckerell Proposal 3.



map ref: SY 1200-1400/1299-1499

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DEVON COUNTY COUNCIL

**Definitive Map Review, Buckerell parish
Informal Consultations, Proposal 2:
Proposed amendment of Footpath No. 4**

<u>Notation</u>	Footpath to be deleted F-G		Existing footpaths	
	Footpath to be added F-H		Existing byway	

drawing number HIW/PROW/17/022

date Apr 2017

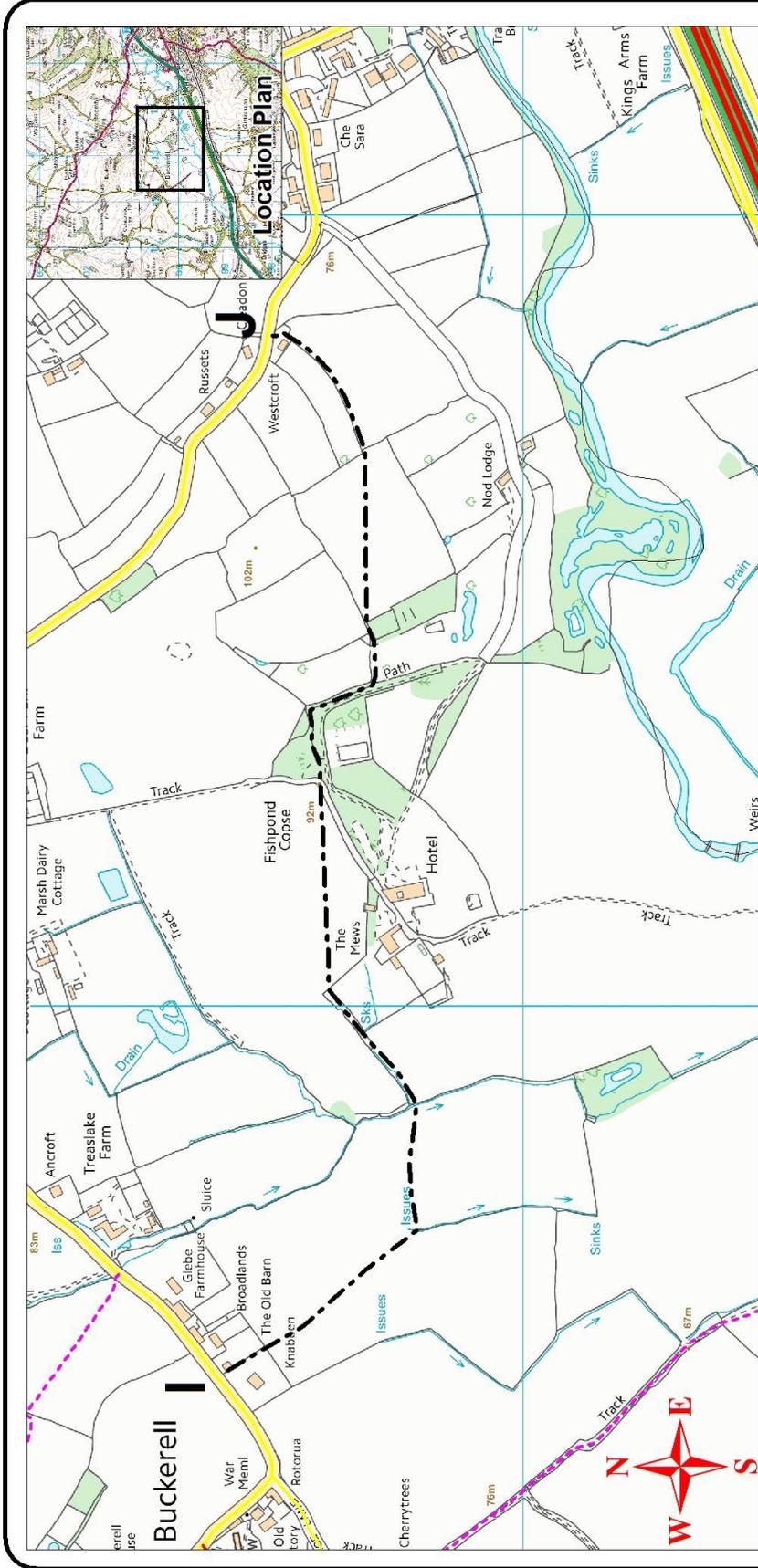
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drawn by NSC

Meg Booth

ACTING HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT
AND WASTE





map ref: SY 1200-1400/1299-1499

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date Apr 2017

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DEVON COUNTY COUNCIL
Definitive Map Review, Buckerell parish
Informal Consultations, Proposal 3:
Claimed public footpath

Meg Booth
 ACTING HEAD OF HIGHWAYS, INFRASTRUCTURE DEVELOPMENT
 AND WASTE



 - - - - -

Claimed footpath I-J (1,600 metres)
 Existing footpaths

Notation