

## **Application for Diversion of Footpath No. 39, Newton Abbot**

Report of the Director of Environment, Economy and Culture

***Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.***

**Recommendation:** It is recommended that Members inspect the existing and proposed routes prior to deciding whether to make the order applied for, the better to assess in particular the convenience of the new route and the effect the proposed diversion would have on enjoyment by the public of the route as a whole.

### **1. Summary**

This report stems from an application by a landowner to divert a footpath on the outskirts of Newton Abbot, as shown on drawing ED/PROW/07/100. The proposal has generated much support, but also much opposition from local residents.

### **2. Background**

Footpath No. 39 lies on the eastern edge of the town of Newton Abbot, and traverses the length of a thin strip of woodland. The path has links at one end with St. Marychurch Road, Aller Brake Road and Milber Pine Walk (Footpath No. 40), and at the other with Milber Lane (Bridleway No. 8, Coffinswell). The strip of woodland is defined on the south west by rear boundary fences of properties in Fern Road and Plantation Close, between two of which is an adopted pathway; and on the north east by a tree bank forming one side of a triangular area of public woodland formerly known as Three Corner Plantation, and now called Ben Stedham's Wood.

The Pine Walk and parts of St. Marychurch Road are of Roman origin, Milber Lane is part of an ancient trade route that may date from the Bronze Age, and these ways cross near Milber Down Camp which is an Iron Age Hill Fort; otherwise for many centuries the area was open downland, and likely over time to have been traversed by various tracks. There is a belief that the monks of Torre Abbey used Footpath 39 in medieval times, but the most that can reliably be said is that the path was in existence by the late 19<sup>th</sup> Century, and originated as a short cut across the angle between St. Marychurch Road and Milber Lane.

The path is thus shown by a double line of dashes on the 1<sup>st</sup> Edition O.S. 1:2,500 scale map of the 1880s, lying within the area of rough grazing called Aller Park Brake a few yards out from the curving boundary bank of Three Corner Plantation which dates from the early 19<sup>th</sup> Century. Later editions show that by 1905 a fence had been placed on the Brake side of the path, such that the route traversed a strip of open ground over 12 metres wide in places, and that this arrangement persisted in 1938. The fence was of iron in three straight sections and was removed during the War, whereby the path reverted to being open to the Brake; as appears on 1956 mapping, which also shows invasive tree growth on both sides of the path.

These O.S. maps all show the path on the same alignment, and as being around 2 metres wide; and there seems little doubt that line is the one intended to be depicted on the Definitive Map, albeit the O.S. base used was the 1:10,560 scale 1938 corrected edition, and too small to show any feature within the defined strip. It is not known when the path was first used by the public, but it is stated in 1957 to have been so used for many years. Such use may well have increased following the opening of Three Corner Plantation to the public in 1938 by its then owner as a memorial to his father (Ben Stedham), and there remain today points where persons cross the boundary bank, in particular opposite the adopted pathway to Fern Road.

Residential development of the western parts of Aller Park Brake had commenced by this stage, and extended to the north eastern part through the 1960s and 70s. The land traversed by the path was acquired by a developer with adjacent parts of the Brake, and again became fenced thereby re-creating a defined strip. The new fencing was not on the precise line of the old, and the strip as it existed until very recently was mostly 10 – 15 metres wide with the recorded line of path running more or less down its centre. The line on the ground however appears from this time onwards to have moved to one side or other, due to incursions of vegetation on the official line and treading down of vegetation at the side of the strip when sections of new fencing were being erected.

### **3. Application**

It remains the case that the recorded line is that applicable when considering a diversion under s. 119 of the Highways Act 1980, and such an order is now sought. The strip of land was acquired from its developer owners, and registered in the name of Mr S Mainwaring who lives in one of the adjoining properties in Fern Road. His application is dated 12 September 2007, in which he describes himself as a Director of Three Corner Plantation Limited and the path to be located at Three Corner Plantation adjacent to Ben Stedham's Wood. An accompanying report confirms that name is given to the strip, but the application plan makes clear that the proposal does not intrude on the adjoining public woodland formerly (and more appropriately) so known.

The applicant wishes to move the recorded line of the path from the centre to the north eastern edge of the strip, a move that would have advantages in terms of privacy and security for his premises, and his application is supported by other local residents who perceive similar advantages. It is rare for an application made by a landowner not to be in his interests, and there seems no doubt that this application meets that requirement of s. 119. Letters received in support of the application are included in the backing papers.

It is also a requirement that the route shall not be substantially less convenient to the public in consequence of the diversion. Problems can thus arise where a new route is appreciably longer than an existing one, or traverses more difficult ground. In the present case where the new route lies within the same woodland area, parallel and close to the existing path and of the same length and with the same terminal points as that path, the only issue in respect of the established topography is proximity of the boundary bank of Ben Stedham's Wood.

The topography has recently been altered however by erection of a 1.8 metres high fence along the south western side of the new route, and this feature combined with the proximity of the boundary bank means that natural obstructions are less easily avoided. It should be borne in mind that the path lies close to residential areas and adjoins public woodland, such that its convenience to less able persons and those with accompaniments such as push chairs is of the more relevance.

The new fencing is also of concern in respect of the other main consideration to be given when deciding whether or not it is expedient to make an order, namely the effect that the diversion would have on public enjoyment of the route as a whole. It is on this issue that opponents of the application have been most vociferous, and on which it is felt least easy to form a judgement without seeing the situation on the ground. Members will appreciate the difficulty through perusal of the many written representations on the matter, which are in addition to responses to the standard consultations detailed below.

### **4. Consultations**

Councillor Hook was consulted as local Member, and also contacted by residents aware of the application through press coverage of the Town Council's discussion on the matter. His response of 7 November 2007 transmits a summary of those residents' views, with copies of a petition and letters he received. Not all comments are pertinent, but those that are relate to the perceived inconvenience and unenjoyable nature of the proposed new route.

Teignbridge District Council was consulted as a local authority, and has an additional interest as owner of Ben Stedham's Wood. Its response of 30 November 2007 was transmitted by its Head of Policy & Heritage, who appended his report to the relevant portfolio holder and notification of her decision. The view expressed is that the Council opposes the application as detrimental to walkers' enjoyment.

Newton Abbot Town Council was consulted, and discussed the matter at its Planning Committee on 13 November whose proceedings were transmitted by the Town Clerk. The resolution was that, provided access is maintained to the adopted pathway to Fern Road and into Ben Stedham's Wood, the proposed route maintains the rights that exist and no objection was made. Two members voted against this resolution. It should be mentioned that there is no recorded highway connection between the existing path and the end of the adopted pathway referred to.

The Ramblers' Association was consulted, and a letter dated 29 October 2007 received from its South Devon Group Footpaths Officer. The view expressed is that the proposal appears to fail when judged against the criteria of enjoyment and convenience. The only other responses were from statutory undertakers South West Water and Western Power Distribution, which have no objections.

## **5. Reasons for Recommendation/Alternative Options Considered**

It is concluded that a decision on the merits of the application will principally turn on assessment of the convenience of the new route and effect of the diversion on enjoyment of the route as a whole, and that views received thereon are so numerous and differ so widely as to render a site inspection in the company of all interested parties desirable. The alternative course of reaching a determination from paperwork and the limited verbal input permitted at a committee meeting would almost certainly disappoint both sides.

## **6. Legal Considerations**

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

Edward Chorlton

### **Electoral Division: Newton Abbot South**

Local Government Act 1972

List of Background Papers

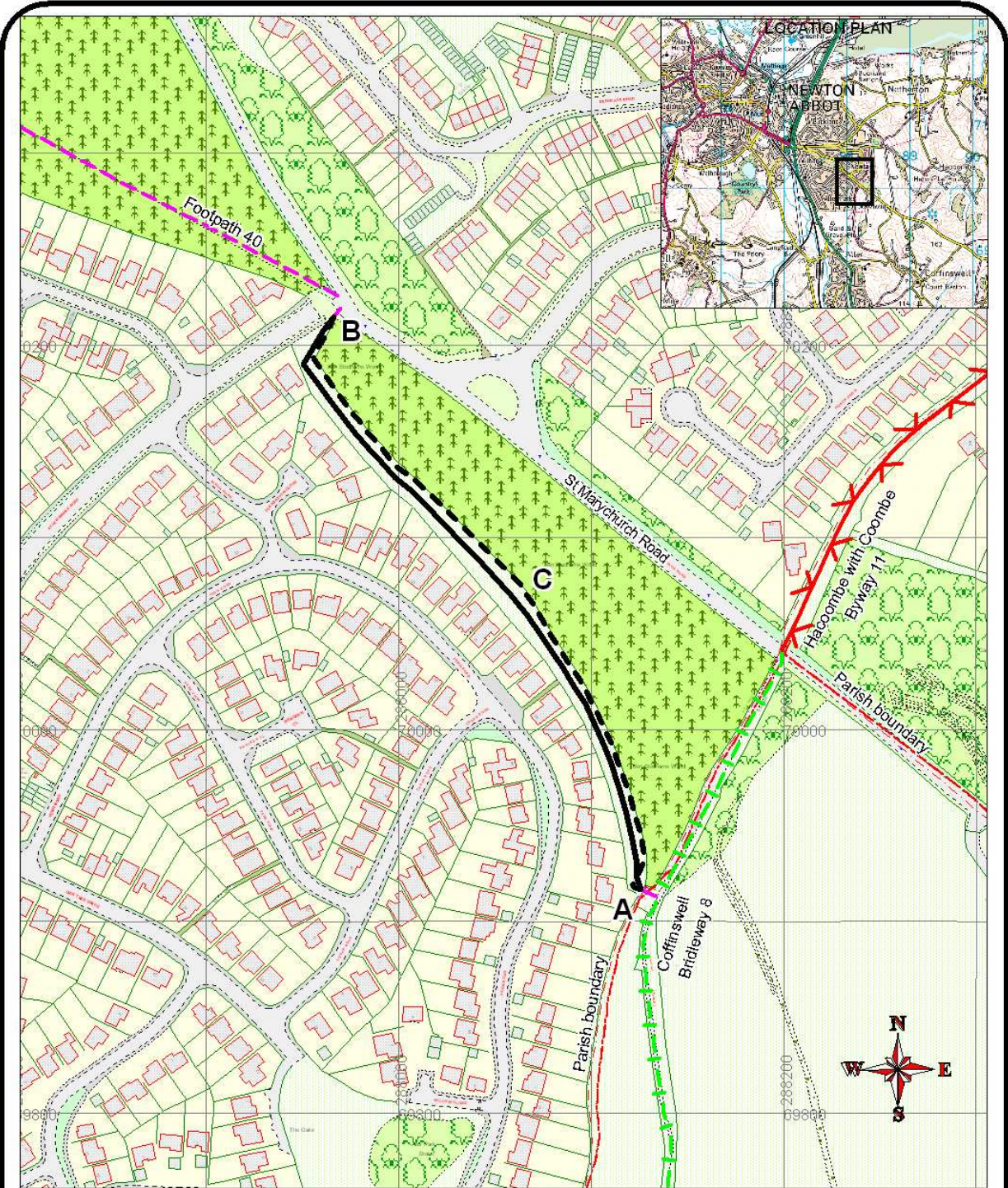
Contact for enquiries: Mike Jenkins

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Background Paper	Date	File Ref.
Correspondence File	2007-2008	F(24)NE

mm040208pra  
sc/diversion fp 39  
4 hq 260208



map ref SX 8870

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**DEVON COUNTY COUNCIL**  
**FOOTPATH No. 39, NEWTON ABBOT**  
**APPLICATION FOR DIVERSION**

drawing number ED/PROW/07/100  
 date Sept 2007  
 scale 1:2500  
 drawn by PY/SM

Notation

	To be extinguished	To be created
Footpath 39	A - B (355 metres)	A - C - B (360 metres approx)

**Edward Chorlton**

DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

