

**Definitive Map Review 2007/8
Parish of South Huish**

Report of the Executive Director for Environment, Economy and Culture

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

Recommendation: It is recommended that:

- (a) Modification Orders be made to modify the Definitive Map and Statement by:**
 - (i) adding a public footpath (Route 1) between points A – B as shown on drawing number ED/PROW/08/18;**
 - (ii) adding a public footpath (Route 5) between points L – M – N as shown on drawing number ED/PROW/08/21;**
- (b) no Modification Orders be made in respect of Routes 4 and 6 as shown on drawing numbers ED/PROW/08/20a and ED/PROW/08/21.**

1. Summary

This report examines suggestions arising out of the Definitive Map Review in the Parish of South Huish in the District of South Hams.

2. Review

The current Review began in November 2007 with a public meeting held in the parish hall. The review was advertised in the Kingsbridge Gazette and on village notice boards. Several suggestions put forward by the parish since the original Definitive Map was published have been picked up for consideration under the review. A previous report taken to the Public Rights of Way Committee in June 2008 examined the first two footpath proposals. This report examines the remaining three footpath proposals and one bridleway proposal.

Various public path diversion orders are required in the parish which will be dealt with separately under delegated powers.

General consultations have been carried out respect to the suggestions and the responses have been:

County Councillor Sir Simon Day	-	no comment
South Hams District Council	-	comments on routes 2 and 4
South Huish Parish Council	-	no comment
British Horse Society	-	support route 4
Byways and Bridleways Trust	-	no comment
Devon Green Lanes Group	-	comment on route 1
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	replied without comment or objection
Trail Riders' Fellowship	-	no comment

3. Conclusion

It is recommended that Modification Orders be made in respect of Routes 1 and 5 but that no Modification Orders be made in respect of Routes 4 and 6, as discussed in Appendix I to this report. There are no other recommendations to make concerning any further modifications. However, should any valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

4. Reason for Recommendation/Alternative Options Considered

To progress the parish by parish review of the Definitive Map in the South Hams.

5. Legal considerations

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

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Electoral Division: Thurlestone, Salcombe & Allington

Local Government Act 1972

List of Background Papers

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Background Paper	Date	File Ref.
General Correspondence File	1968 – present	DMR/South Huish

hb171008pra
sc/dmr/parish of south huish
2 hq 291008

Background

A. Basis of Claims

Wildlife and Countryside Act 1981, Section 53 (5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

Common Law presumes that at some time in the past the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

The Highways Act 1980, Section 31 (1) states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

The Wildlife and Countryside Act 1981, Section 53[3] [c] [i] 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.

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.

1. Route 1 – Claimed addition of a public footpath from Lower Road to Higher Road, Galmpton, South Huish.

Addition of a public footpath leading from the county road known locally as Lower Road to the county road known as Higher Road, Galmpton as shown on drawing number ED/PROW/08/18.

Recommendation: It is recommended that a Modification Order be made to add this route to the Definitive Map and Statement as a Public Footpath.

1.1 Background

The status of this route was queried in 2003 by the Parish Council, who had been maintaining it as a public footpath. On discovering that it was not recorded on the definitive map the Parish Council collected nine user evidence forms in respect of the route in preparation of the Parish Review.

1.2 Description of the Route

The route starts at the county road through Lower Galmpton at point A as shown on drawing number ED/PROW/08/18. It proceeds generally northwards along a defined track between the properties known as Mariners and Eddystone Rise. It continues generally northwards

along a grass path between hedgebanks to meet the county road at Higher Galmpton at point B, adjacent to the property known as Charnwood.

1.3 Map of Lands belonging to the Earl of Devon 1777

This ornate map, surveyed by George Lang, shows the lands lying in the parishes of Malborough and South Huish belonging to the Rt. Hon. W. Ld. Visct. Courtenay (Earl of Devon). Land and buildings not belonging to the estate are also identified with their ownership details. The claimed route is shown with double solid lines in the same manner as most roads which are now considered public. Such routes are described as 'High Roads' in the explanation to the map. The majority of land adjoining the claimed route is shown as belonging to the Earl of Devon, with gates providing access from the route. There are no gates shown at either end of the route.

1.4 Greenwoods one inch to the mile map of the County of Devon 1827

The route is shown as a cross-road.

1.5 South Huish Tithe Map 1842

The route is shown with double solid lines. A solid line is shown across its junction with the county road at the southern end (point A) but the route is open to the road at the northern end (point B). It is not numbered or listed with the landholdings of any private individual, as roads now recorded as private are shown.

1.6 Ordnance Survey Maps

The 1st Edition 1" to mile 1809 (with later revisions) and all subsequent OS mapping shows the route with double solid lines and open to the public highways at points A and B.

These maps do not provide evidence of status, merely evidence of the physical existence of the route over time.

1.7 1910 Finance Act

The 1910 Finance Act maps drawn up for a survey to ascertain the value of land for the purpose of taxation shows the route excluded from adjoining numbered hereditaments, or assessment areas of land. Its exclusion from adjoining land suggests that it may have been considered as a form of public road at the time, or at least a route carrying public rights but giving no indication of its status.

1.8 User Evidence

Nine user evidence forms have been received in respect of this route covering a period from 1945 to 2003 (when forms were completed) and with a frequency ranging from 3 or 4 times a year to daily. Users comment that it is in common usage and always considered to be public. No users report being prevented from using the route or seeing any notices indicating that it was not public.

1.9 Landowner Evidence

No landowner has been identified for the route. Adjoining landowners were consulted for their views.

Two adjoining landowners have responded to the consultation. Mrs Watts has lived at Mariners for 25 years. She considers the route to be public and has seen walkers and rambles using it. She has on occasion put up notices on the route regarding dog fouling. Mr Green has lived at Charnwood for four years. He believes the route to be a public footpath.

1.10 Rebuttal Evidence

No rebuttal evidence has been received.

1.11 Discussion

The claim for the route to be recorded as a public footpath was not submitted as the result of any action taken by a landowner that had obstructed or prevented access to and use of the route from a specific date. There is no evidence of any actions having called into question use of the route for consideration of the user evidence under statute law. It is therefore to be examined in relation to common law, in conjunction with historical and other documentary evidence.

Map evidence shows that the route has been physically available since the late 1700s.

George Lang's estate map of the Earl of Devon's lands shows the route in the same manner as most modern county roads, although there are a couple of exceptions where roads recorded as public today are not shown thus, and vice versa. However, the map is generally very accurate when compared with current mapping and is therefore good evidence that the claimed route was considered public at that time.

Greenwood's depiction of the route as a 'cross road' is usually good evidence that the route was considered a public road at that time. However, inspection of the map shows several private access tracks in the area similarly shown as cross roads. It does not therefore assist in clarifying whether routes shown were considered public or private, only that the route physically existed at the time of the survey.

Similarly, Ordnance Survey mapping provides evidence of the physical existence of the route over time but not of status. OS maps do not however, show any evidence that the route was gated.

The South Huish Tithe Map evidence is inconsistent with regards to the claimed route. It shows the route with an open junction to the public road at the northern end and it is not numbered and identified with the holdings of any private individual. This is consistent with the depiction of other public roads at that time. However, the map also shows a solid line across the junction at the southern end, which may indicate a gate, and is consistent with the depiction of private or cul-de-sac roads in the parish.

On the 1910 Finance Act plans the route is shown excluded from the hereditaments, so there is a strong possibility that it was considered a public highway, although it does not confirm level of status.

No more significant historical maps or references in historical documents have been found to indicate more specifically that it may have had the reputation of being a public road in the past or more recently. In particular, there is no indication of any public expenditure on it or responsibility for its maintenance. The route has not been shown on the past and current records of maintainable highways to suggest that it may have been considered as a public road more recently.

Evidence from the adjoining landowners and physical evidence on the ground suggests that use by the public, on foot, is greater than that indicated by the few user evidence forms received. The adjoining landowners believe the route to be public, and have not stopped anyone using the route or said it was not public. The Parish Council has, in recent years, clearly considered the route to be an important link in the parish and has ensured that it is kept open and clear of overhanging and surface vegetation. Use is consistent with that of a public right of way on foot. No action has been taken to prevent public use of the route.

Considering the user evidence in conjunction with all other evidence, dedication at common law with a status of at least footpath can therefore be implied. Mapping evidence suggests that the route has been available since at least the late 1700s, which has allowed continued use. The evidence suggests that, at some time in the past, the landowner intended to dedicate the route as a public right of way and that the public accepted the dedication and used it on that basis.

1.12 Conclusion

It is considered reasonable to allege that a public right of way subsists on the route with the status of at least a footpath. It is recommended, therefore, that an Order is made to record a public footpath on the Definitive Map and Statement, along line A – B, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

2. Route 4 – Claimed upgrading to bridleway of Footpath Nos. 10, 11 & 12, South Huish

Claimed upgrading of Footpath Nos. 10, 11 (part) and 12, South Huish to public bridleway, between Outer Hope and Thurlestone Sands, along the coastpath and along Beacon Lane, as shown on drawing number ED/PROW/08/20a.

Recommendation: It is recommended that no Modification Order be made to upgrade these footpaths to bridleway.

2.1 Background

The status of these footpaths was first queried by South Huish Parish Council in 1968, when Devon County Council commenced a general review of public rights of way in the parish. The Parish Council then considered that Footpath Nos. 10, 11, 12 and 12a were wrongly designated and that they should be shown as bridleways. The claimed upgrade of Footpath No. 12a was subsequently dropped but, in 1970, the Parish Council submitted five user evidence forms in respect of the upgrade of Footpath Nos. 10, 11 & 12. The review of public rights of way was abandoned and the claim remained on file until the current review.

2.2 Description of the Route

The route starts at Outer Hope at Point G as shown on drawing number ED/PROW/08/20a. It proceeds in a generally northerly direction along Footpath No. 11, South Huish to point H, where it continues in a northerly direction along Footpath No. 12, South Huish. The route then turns eastwards at point x to join the county road at New Barn, Thurlestone Sands, at point J. A spur also continues from point H in an easterly direction along Footpath No. 10, South Huish to join the county road known as Beacon Lane at point K. There is currently a flight of steps on the route near point G.

2.3 Earl of Devon Estate Plan 1777

The route H – x is shown, following the eastern loop of Footpath No. 11 at the southern end and continuing along the cliffs to Thurlestone Sands, across land all belonging to the Earl of Devon. It is shown by double pecked lines, described as 'Driving Roads' in the explanation panel. A number of gates are shown across the route. The spur H – K (Footpath No. 10) is also shown as a 'Driving Road', leading to the cliff from a gate at the end of the county road Beacon Lane. It is evidence that such routes were then considered suitable for wheeled traffic, but does not distinguish between public or private routes.

2.4 Ordnance Survey Maps

The 1st Edition 1" to mile 1809 (with later revisions) shows the southern section of the route G – H with double pecked lines, indicating an unenclosed track. Beacon Lane is shown with double solid lines. The northern section H – J is not shown.

The 1st and 2nd edition 25" maps (1884 – 1906) show most of the route G – x with double pecked lines and marked F.P. Instead of turning eastwards at point x to New Barn, the route at that time is shown continuing northeastwards along the cliffs to join Footpath No. 12a, South Huish, at Thurlestone Cottage, later known as Rock House. H – K is shown as a headland track, enclosed on one side only.

By 1952 the route is shown on its current alignment, turning eastwards at point x to point J. Again it is shown with double pecked lines marked F.P. Section H – K is shown as before.

These maps do not provide evidence of status, merely evidence of the physical existence of the route over time.

2.5 South Huish Tithe Map 1842

The tithe map shows the route G –x and continuing along the cliff to Thurlestone Sands on almost the same line as the claimed bridleway. It does however follow the eastern loop of Footpath No. 11 at the southern end, rather than the claimed cliff edge route. The route is shown with double pecked lines through a number of apportionments variously described as 'below the downs', 'a piece on the beacon', 'higher down' and 'waste below higher down' and all listed as arable land, the majority belonging to the Earl of Devon. The route of the claimed upgrade of Footpath No. 10 H – K is shown unenclosed, following the southern boundaries of apportionments 197 and 415, also listed as arable. The tithe map does not provide any evidence of the status of the route.

2.6 Parish Council Correspondence

In 1967 South Huish Parish Council queried the annual payment to South Huish Estates for the public use of the 'cliff road'. This had been agreed in 1910 as a result of the dangerous state of the cliffs near Thurlestone Rock. In correspondence between the Parish Council and the County Council in 1967, it was resolved that the Parish Council were no longer obliged to make the payment as the path had by that time been officially recorded on the Definitive Map as Footpath No. 12, South Huish. The agreement is evidence that, prior to 1954 (the relevant date of the Definitive Map), the landowner did not intend to dedicate the route as a public right of way but accepted it being recorded as a public footpath on the Definitive Map. It could be inferred that use of the footpath by horse riders would still have been by licence until the payments ceased in 1967.

In July 1985 the South Devon Heritage Coast Service contacted South Huish Parish Council regarding the use of Footpath Nos. 10, 11 and 12 by horses. The County Council were concerned by erosion of the coast path and wanted horse use stopped. The Parish Council responded that it had no objection to the coast path being restricted to walkers but asked that horses still be allowed to use Beacon Lane (Footpath No. 10) and turn south to Hope Cove, if prevented from turning north along the cliff. Between November 1985 and January 1986 letters were received by the Parish Council from two horse riders objecting to the obstruction of Beacon Lane by a stile and one from a parishioner claiming that it was depriving horse riders of their heritage. It was subsequently agreed with the South Devon Heritage Coast Service that the stile would be removed from Beacon Lane but that horse riders would be prevented from turning north along the cliff path.

2.7 User Evidence

Five user evidence forms were submitted in 1970 in support of the Parish Council's claim. Use covers a period from the early 1900s to 1970, when the forms were completed. All users believe the route to be public but do not specify what rights they considered the route to carry. Frequency varies from weekly to yearly. One user states that she used the route as a riding instructor. The other users do not specify how they used the route, although three refer to the route being used by horse riders and vehicles.

One user was a tenant on the land crossed by the route and would therefore have been exercising a private right when using it. Another used the route for coastguard duties and, as such, their use would not be considered public.

Three users refer to the route being diverted at the Thurlestone Sands end in the early 1900s, when the cliffs became dangerous. They mention that a notice was erected permitting the public to use a private road, x – J, as an alternative.

Two letters received by the Parish Council in 1985, following the erection of a stile on Footpath No. 10, also provide evidence of use of the route by horse riders. One stated that she had ridden the route for 45 years. Another had used it since she was a child.

2.8 Landowner Evidence

Landowners and adjoining landowners were contacted for their views. South Hams District Council own land crossed by part of the route at the southern end. They have concerns over suitability of the route for horses and bicycles and the potential conflict between users if the route is upgraded. They also comment that a flight of steps have been constructed at the lower end of Footpath No. 11.

2.9 Rebuttal Evidence

A wooden notice at point H prohibits use by horse riders and cyclists. It is not clear when this was erected but is likely to have been after the mid 1980s, when the issue of horses on the coast path was raised.

2.10 Discussion

The claim, in 1970, for Footpath Nos. 10, 11 and 12, South Huish to be upgraded to bridleways was submitted as part of an earlier, unfinished, review of the Definitive Map. It was not in response to any specific event acting as a challenge to use of the paths by horses and none of the users reported having been stopped or seeing signs or notices saying that they should not use it. The first significant event which could be considered as having challenged use of the route by horses appears to be the erection of a stile on Footpath No.

10 by the South Devon Heritage Coast Service in 1985, with the intention of preventing horses from using the coastpath.

For the purposes of considering the claim under the Highways Act 1980 therefore, the relevant statutory 20-year period is 1965-85.

The five user evidence forms submitted in support of the claim cover a period of use from the early 1900s to 1970, when the forms were completed. Correspondence in 1985-86 provides evidence of use by at least two horse riders continuing from 1970 but no further user evidence has been submitted as a result of the current Parish Review. The user evidence during the relevant 20-year period is not, therefore, considered sufficient to show presumed dedication under the Highways Act.

It is therefore necessary to consider the claim in relation to common law, in conjunction with historical and other documentary evidence.

The route has been consistently shown on historical maps as unenclosed track, with a later diversion at the northern end, on the line now recorded as Footpath Nos. 10, 11 and 12, South Huish. These maps do not provide evidence of public status, only the physical existence of the route over time. The route may have been used by wheeled traffic in the 1700s, though the use of the letters 'F.P.' on the later Ordnance Survey maps is commonly accepted to indicate the surveyor's view that the route was not usable by horses or wheeled traffic.

No historical evidence has been submitted or discovered which shows that the claimed route may have been incorrectly recorded as a footpath in the 1950s. There was no attempt to include the route on the Definitive Map as a bridleway at that time, nor were objections made to its being shown only as a footpath.

The Parish Council's claim was supported by five user evidence forms. Whilst several of those who completed user evidence forms referred to use of the paths by horses, only two provided evidence of actual use. Correspondence from the mid 1980s provides evidence of two further horse riders and again suggests that the route had a reputation of higher rights. However, some time has passed since the user evidence forms were completed in 1970 and it is not now possible to contact those users to clarify or test their evidence and verify that use was 'as of right'.

In the absence of further supporting information it is felt that there is insufficient evidence to justify making a modification order to upgrade Footpath Nos. 10, 11 and 12, South Huish.

2.11 Conclusion

It is therefore recommended that no Order be made.

3. Route 5 – Claimed addition of a public footpath to rear of Coastguard Cottages, Inner Hope

Addition of a footpath from the county road at Inner Hope, opposite Hope Beach House, via Coastguard Cottages to the county road adjacent to Spray Cottage, as shown on drawing number ED/PROW/08/21.

Recommendation: It is recommended that a Modification Order be made to add this route to the Definitive Map and Statement as a Public Footpath.

3.1 Background

In March 1994 South Huish Parish Council submitted nine user evidence forms, covering use by eleven people, in support of the claimed route. The evidence was held on file pending the start of the Parish Review. During the course of the review in 2008 the users were contacted for clarification of their use and one further user evidence form was received.

3.2 Description of the route

The route starts at the county road at Inner Hope at point L, opposite Hope Beach House, as shown on drawing number ED/PROW/08/21. It proceeds generally northeastwards along a pathway leading to the Coastguard Cottages. It continues generally northwards to the rear of the property Old Guard onto a track at point M, turning northwestwards along the track to join the county road at point N, adjacent to Spray Cottage.

3.3 Malborough Tithe Map

Until the Local Government reorganisation in 1974 Hope Cove was within Malborough Parish. The Malborough Tithe Map of 1841 does not show any part of the route or the Coastguard Cottages.

3.4 Ordnance Survey Maps

The 1st Edition 25" Ordnance Survey map (1884 – 1886) and all subsequent OS mapping shows the path leading to the Coastguard Cottages. The area to the rear of Old Guard is bounded from the track by a solid line, which may indicate a fence. The track itself leading from point M – N is shown with a solid line across adjacent to Spray Cottage, which may indicate a gate. The 2nd Edition 25" map (1904 – 1906) shows a solid line across the track further to the east, not on the line of the claimed footpath.

These maps do not provide evidence of status, merely evidence of the physical existence of the route over time.

3.5 User Evidence

Eleven user evidence forms have been submitted, detailing use by twelve people. Use covers a period from the early 1930s to present day, from two in the 1930s and five in the 1940s to ten between the 1960s and 1993. Three users have confirmed that their use has continued to the present. The frequency of use varies from 20 times a year, to many or numerous, to twice daily. Two users state that they used the route in bad weather or whenever the sea was over the sea wall. Three other users also comment that the path is necessary or the only safe route between Inner and Outer Hope when the sea is rough and breaking over the sea wall onto the road.

Four users refer to a gate at the lower end (point L) but that it was never locked. Another user, Mrs Rogers, states that there have been no gates since 1960. No users report seeing any notices on the route indicating that it was not public. No users report being stopped or turned back or told that the route was not public. Several comment that they saw the landowner, Mr Murray, when they were using the route and would speak with him.

One user, Mrs E Jarvis, states that she lived at the Coastguard Cottage from 1931. She would therefore have been exercising a private right of way and her use cannot be considered valid user evidence. Another user, Mrs Dunn, would have had to use part of the route to access her property along the track to the rear of the Coastguard Cottages and it is

therefore assumed that she also had a private right to use at least that part of the route. One user, Mrs K A Jarvis, refers to a sign at point L requesting vehicles not to obstruct entrance/exit.

3.6 Landowner Evidence/Rebuttal Evidence

Part of the claimed route, L – M and approximately 10 metres of the track between M – N, crosses land registered with the District Land Registry under title number DN385087 and owned by Mrs Bramley from Sussex. The land crossed by most of section M – N is not registered. Adjoining landowners and occupiers were contacted for their comments.

Mr Bramley completed a landowner evidence form. He states that the family has owned the land in question since the 1990s but has owned adjoining land since 1986. He believes that the path is private access to the former coastguard cottages and not a public right of way. He states that he has challenged persons using the path, pointing out that it was for those living at or visiting the properties, but that if people have asked if they could walk through he has said yes. He also states that he would point out a sign that used to be on the wall (by point L) stating that the path was for access to the coastguard cottages only. He adds that the sign disappeared sometime around 1992-93.

The owners of Nos. 1, 2 & 3 Coastguard Cottages also completed landowner evidence forms. All have a private right of way to their properties from point L. Mr Harris, the owner of No.1 adjoining part of the claimed route, has owned the property since early 2008. He does not believe the route to be a public right of way. Mrs White has owned No. 2 for 40 years. She believes the claimed route to be a public footpath and states that she has seen members of the public using the route very day. She states that there was a gate on the footbridge near point L but that it was never locked. Mrs Hart owns No. 3 Coastguard Cottages. She believes the route to be a public right of way and states that is she is not there very much she has seen infrequent use of N – L by the public. She also refers to a gate at point L and that she has never known it locked.

The owners of Spray Cottage, adjacent to the track between points M and N – Miss Beau, Mrs Gray and Mrs Gillard – also completed a landowner evidence form. They have owned the property for over 70 years and believe the claimed route to be a public footpath. They state that they have seen members of the public using the path every day.

3.7 Discussion

The claim in 1993 for the route to be recorded as a public footpath appears not to have been made in response to any specific event acting as a significant challenge to use of the route and none of the users reported having been stopped or seeing signs or notices saying that they should not use it. The current landowner reports a sign indicating that the route was for access to the Coastguard Cottages only, which was removed around 1992-93, but none of the users refer to it. Some of the users said that there was a gate on the route, which was not locked, but with no other obstruction that will have prevented use on foot.

There is, therefore, no evidence of any significant actions by the landowner having called into question use of the route at a specific time for consideration of the user evidence under statute law. It is, therefore, to be examined in relation to common law, in conjunction with historical and other documentary evidence.

The route appears to have been physically available since the late 1800s, although Ordnance Survey maps suggest that there may have been gates on it in the past. There is no other supporting documentary evidence relating to the route.

The date of the earliest user evidence submitted is from 1934. There is evidence of use by up to 13 people from then until 1993, when the claim was made, at a level that would be considered sufficient in relation to the statutory 20-year period, with later evidence indicating that use has continued uninterrupted since then up to the present day. The reported frequency of the use is sufficient to indicate that the landowner during the period before 1993 must have been aware of it and that they had acquiesced. Furthermore, several users state that they spoke to the landowner on occasions and that he did not stop them, or tell the route was not public, or that use of it was with his permission.

Use of the route by the public on a daily basis has also been observed by adjoining landowners so it is very unlikely that the previous landowner would not have been aware of such use.

The reference to a sign made by the current landowner is not substantiated or corroborated by evidence from the users. There are references to a gate at point L but that it was never found locked. There is no record of a Deposit and Statutory Dedication made under Section 31(6) of the Highways Act 1980, or earlier. An intention to dedicate can, therefore, be inferred as there is no evidence to the contrary in relation to the landowner from the earlier period and the public using the route have, therefore, accepted it as a footpath before 1993.

Considering the user evidence in conjunction with all of the other evidence dedication at common law with a status of footpath can therefore be implied. Mapping evidence suggests that the whole route has been available for use on foot since at least the late 1800s, which has allowed continued use. The evidence suggests that, prior to 1993, the landowner intended to dedicate the claimed route as a public footpath and that the public accepted the dedication and used it on that basis. It is in the light of this assessment of the evidence submitted that it is considered reasonable to allege that a public right of way subsists on the route with the status of a footpath.

3.8 Conclusion

From consideration under common law there would appear, therefore, to be a sufficient basis for making an Order in respect of the claim for the route to be recorded as a public footpath. Accordingly, the recommendation is that an Order is made to record a public footpath on the Definitive Map and Statement, along line L – M – N, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

4. Route 6 – Claimed addition of a public footpath to rear of Old Lifeboat House, Inner Hope

Claimed addition of a footpath from Footpath No. 20, South Huish, adjacent to the slipway, and around the rear of the Old Lifeboat House to main road at Inner Hope, as shown on drawing number ED/PROW/08/21.

Recommendation: It is recommended that no Modification Order be made to add this route to the Definitive Map and Statement as a Public Footpath.

4.1 Background

In July 1993 the clerk to South Huish Parish Council wrote to Devon County Council to ask whether a footpath existed behind the Old Lifeboat House in Inner Hope Cove. It was reported that the Lifeboat House had recently been sold, that fencing had been erected and that some locals felt it should still be a footpath to the rear of the property. Seven user evidence forms, covering use by ten people, were subsequently submitted in April 1994 in

support of the claimed route. The evidence was held on file pending the start of the Parish Review.

4.2 Description of the Route

The route starts on Footpath No. 20, South Huish adjacent to the slipway at point P as shown on drawing number ED/PROW/08/21. It proceeds generally southeastwards then northeastwards over land to the rear of the Old Lifeboat House to join the county road at Inner Hope at point Q, adjacent to May Villa.

4.3 Malborough Tithe Map

Until the Local Government reorganisation in 1974 Hope Cove was within Malborough Parish. The Malborough Tithe Map of 1841 shows a building in the approximate location of the Old Lifeboat House but does not show the route.

4.4 Ordnance Survey Maps

The 1st Edition 25" Ordnance Survey map (1884 – 1886) and all subsequent OS mapping shows the Lifeboat House. The open area to the rear of the Lifeboat House is distinguished from the road by a pecked line, which indicates a change of surface. There is no indication of a defined path on the ground.

These maps do not provide evidence of status, merely evidence of the physical existence of the route over time.

4.6 User Evidence

Seven user evidence forms have been submitted, detailing use by ten people. Use covers a period from the early 1930s to present day, from one user in the 1930s, four in the 1940s to eight from the 1960s to 1993. During the current review the users were contacted for clarification of their evidence and two, Mr and Mrs Pedrick, completed a further evidence form to confirm their use has continued to the present day. The frequency of use varies from 'whenever the weather was bad' to numerous and weekly. All state that they used the route for pleasure.

All users refer to gates being erected in approximately 1991 and that they were tied with rope but never locked. No users report seeing any notices on the route indicating that it was not public. Several state that they were seen using the route by landowners but do not report being stopped or turned back or told that the route was not public.

A letter in support of the claim was received from Mrs Rogers, in which she states that the route has been used for many years by coastguards and locals, especially when the sea is rough and comes to the boathouse door. She adds that her family used to own the lifeboat house.

One user, Mrs K Jarvis has used the claimed route since 1932. Her family owned the Lifeboat House until 1993 and therefore her use of the claimed route may be considered private.

4.7 Landowner Evidence/Rebuttal Evidence

The land crossed by the claimed route is registered with the District Land Registry under three titles. The registered owners have each completed landowner evidence forms.

Mr Brannan has owned the Old Lifeboat House, and a strip of land around the perimeter, since June 1993, and has lived locally for 40 years. On his landowner evidence form he states that he does not believe the claimed route to be a public right of way and has not known it used as such. He states that he has stopped people perhaps two or three times over the last 15 years but that they were walking into the property unknowingly and he indicated that it was private. He believes that there used to be a private property sign on the garage of Firtops. He comments that there have been gates at each end of the claimed route but that they were found unworkable for access, especially as there are three registered titles. He does on occasion obstruct the route with vehicles as he has loading rights at both ends of the building – he uses the building in connection with his fishing business. In a letter accompanying his evidence form he states that, in the past, the land behind the Lifeboat House was used by the then owners for storage of boats and crab pots. He also submitted information concerning the sale of the building in 1993, which he believes triggered the claim.

Mr Collins has owned the property, Hillside for the last eight years. His property includes part of the land behind the Lifeboat House crossed by the claimed route. He does not believe the route to be a public right of way. He states that nobody ever goes this way and that he has not required people to ask permission before using it or stopped anybody from doing so. He does acknowledge that people may have used the route many years ago before the gates were installed. He states that there was a private property sign on the garages when he bought the property and that the gates have been in place since the early 1990s.

Mr Lowe and Mrs Cheney have owned the property, Firtops and land at the southeastern end of the claimed route, for the last six years. They are not permanent residents but state that members of the family occupy the property for up to eight months a year. They do not consider the route to be a public right of way and have on a couple of occasions advised people that the carpark is not public.

The title deeds of all three properties contain a restrictive covenant in respect of the land crossed by the claimed route. The covenant prevents the erection of any building or other structure upon the land “as has heretofore been used for the storage of boats, motor cars and other vehicles”.

4.8 Discussion

The claim in 1993 for the route to be recorded as a public footpath appears not to have been made in response to any specific event acting as a significant challenge to use of the route and none of the users reported having been stopped or seeing signs or notices saying that they should not use it. It appears to have been triggered by the sale of the Old Lifeboat Station. Users report gates were erected on the route in approximately 1991 but they were not locked and do not appear to have had the effect of calling into question the use of the route. The current landowners report a sign in the past, which indicated that the land was private property but again this is not considered a sufficient challenge of the public's right to use the route

There is, therefore, no evidence of any significant actions having called into question use of the route at a specific time for consideration of the user evidence under statute law. It is, therefore, to be examined in relation to common law, in conjunction with historical and other documentary evidence.

Historical mapping from the late 1800s shows an open area to the rear of the Lifeboat House but does not provide evidence that a defined route was available at the time. There is no other supporting documentary evidence relating to the route and no evidence has been submitted to demonstrate the precise location of the route claimed by the users

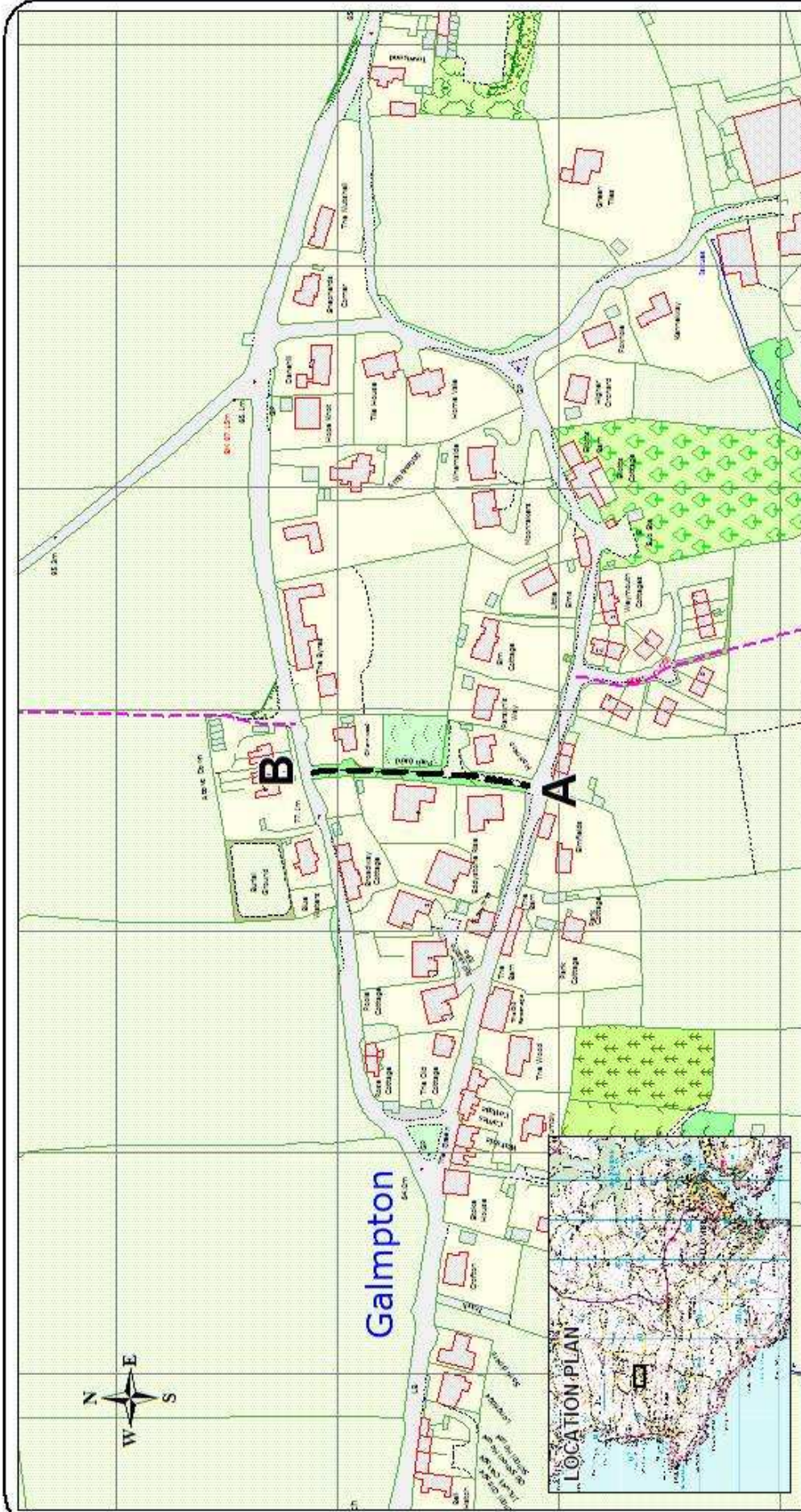
Evidence from the current landowners and their property deeds indicate that the area crossed by the claimed route has been used for the storage of boats, vehicles and fishing equipment and does not have the character to suggest that there is a definite way across it that would be available when not in use for storage, loading etc.

The date of the earliest user evidence submitted is from 1932 by Mrs K Jarvis, though her evidence may be considered with reservation as her family owned the Lifeboat House until 1993. There is evidence of use by three people from the 1940s but most use is by eight people from the 1960s to 1993, when the claim was made, with later evidence from two people indicating that use has continued since then up to the present day. The level and reported frequency of the use is not considered sufficiently open and conspicuous, particularly if during bad weather, to indicate that the landowner must have been aware of it and that they had acquiesced.

Considering the user evidence in conjunction with all of the other evidence dedication at common law with a status of footpath cannot therefore be implied.

3.8 Conclusion

It is therefore recommended that no Order be made.



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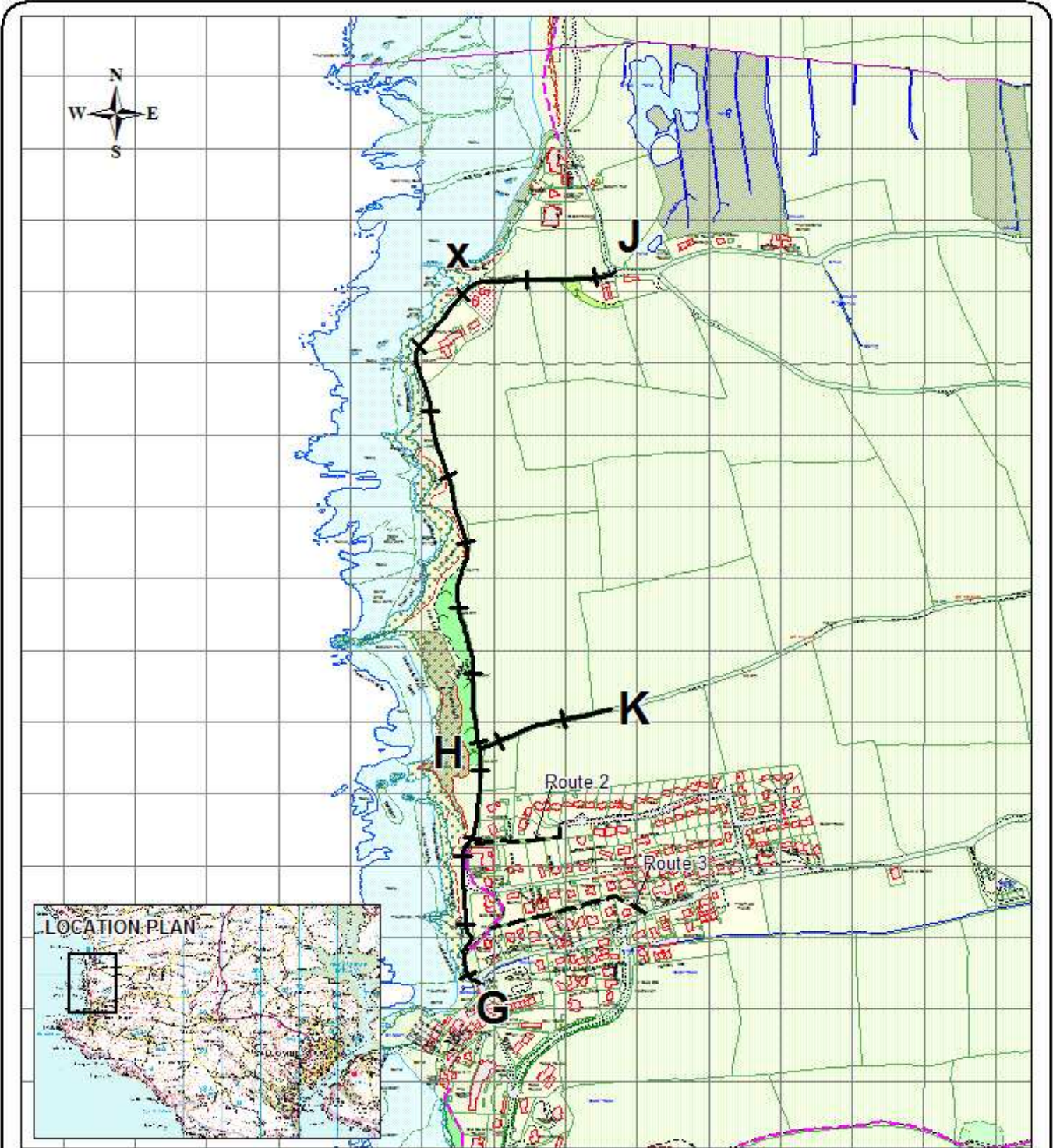
SOUTH HUISSH
DEFINITIVE MAP REVIEW - ROUTE 1
ADDITION OF A FOOTPATH FROM LOWER ROAD TO HIGHER ROAD, GALAMPTON

drawing number ED/PROW/08/18
 date Feb 2008
 scale 1:2500
 drawn by HFB

Notation

- Existing footpath
- Route 1: Claimed footpath A-B
- 100 metres approx





Grid ref SX 6740 - 6741

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**SOUTH HUISH
DEFINITIVE MAP REVIEW - ROUTE 4
CLAIMED UPGRADING TO BRIDLEWAY
FOOTPATH NOS 10, 11 & 12**

drawing number	ED/PROW/08/20a
date	Feb 2008
scale	1:7,500
drawn by	HFB

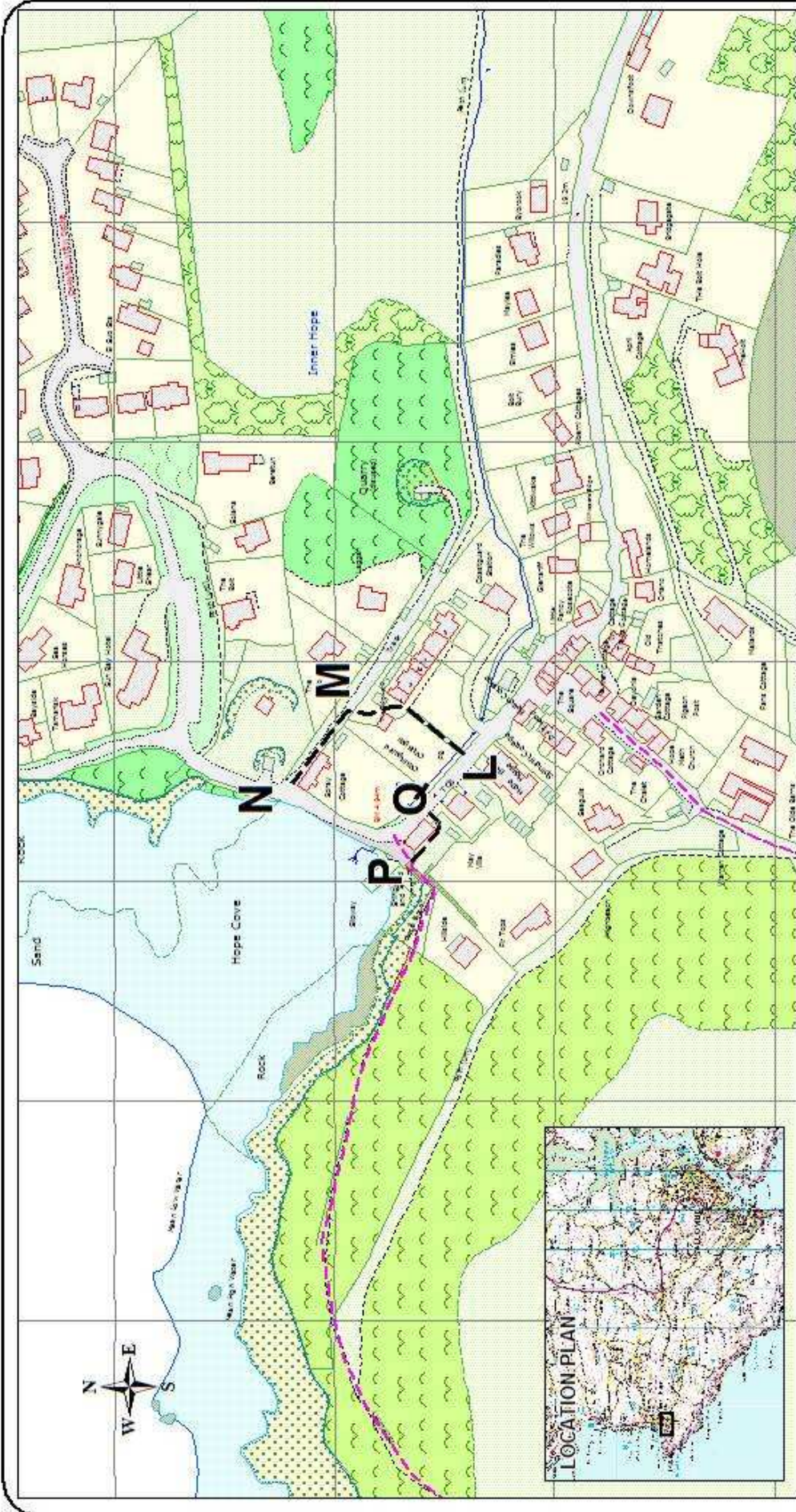
Notation

Existing footpath -----

Route 4: Claimed bridleway (upgrading existing footpaths) —|—|—| G - H - J & K - H
(1.4km approx)


Devon
 County Council

Edward Chorton
 DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE



Grid ref SX 6739

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drawing number ED/PROW/08/21
 date Feb 2008
 scale 1:2500
 drawn by HFB

SOUTH HUISH
DEFINITIVE MAP REVIEW - ROUTES 5 & 6
5: ADDITION OF A FOOTPATH TO REAR OF COASTGUARD COTTAGES
6: ADDITION OF A FOOTPATH TO REAR OF OLD LIFEBOAT STATION

- Notation**
- Existing footpath
 - Route 5: Claimed footpath L - M - N
 - Route 6: Claimed footpath P - Q
 - 100 metres approx
 - 30 metres approx