

**Definitive Map Review 2007–2009  
Parish of Barnstaple**

Report of the Deputy Executive Director of Environment, Economy and Culture

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

**Recommendations: It is recommended that:**

- (a) No Modification Orders be made in respect of:**
  - (i) Route 1, Schedule 14 application to record a Byway Open to All Traffic between points A–B shown on drawing number EEC/PROW/09/27, but the planning authorities be requested to secure public access on foot and bicycles as part of proposed development;**
  - (ii) Route 2, claimed footpath between points C–D shown on drawing number EEC/PROW/09/28, but the route be added to the list of maintainable highways as an adjoining footway; and**
  - (iii) Routes 4, 5, 6, 7, 8, 9, & 10, but consideration be given to recording them as public footpaths by Creation Agreements, or Creation Orders where landowners cannot be identified; and**
  
- (b) A Modification Order be made in respect of Route 3, to record on the Definitive Map and Statement a footpath between points E–F shown on drawing number EEC/PROW/09/29.**

## **1. Summary**

The report examines suggestions arising out of the Definitive Map Review in the town of Barnstaple and its surrounding former Borough area considered as a parish.

## **2. Background**

The original survey by the Borough Council in the 1950s under s.27 of the National Parks and Access to the Countryside Act of 1949 put forward 19 footpaths in the Barnstaple Borough area. Two of the paths were omitted, as one was a county road continuing beyond the Borough boundary and the other was outside the Borough and included in a survey by the adjoining Parish Council. Another was amended later to bridleway and the Definitive Map and Statement for Barnstaple Rural District, with a relevant date of 1 September 1957, recorded 16 footpaths and one bridleway in Barnstaple.

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 submitted by Barnstaple Town Council in 1978 for recording or amending several routes that have been kept on file. No supporting evidence was submitted and they have not all been included in the current review as there was insufficient evidence to establish a prima facie case. The other proposals are considered in the Appendix to this report.

One footpath (No. 4) was stopped up by the Barnstaple Petty Sessions in 1972, with other alterations and additional public rights of way recorded since then, so that there are currently 26 footpaths and one bridleway recorded in Barnstaple. The following additional Orders have been made, which will require the making of a Legal Event Modification Order for recording on a new reviewed Definitive Map:

- (a) The Stopping up of Highways (County of Devon) (No.1) Order 1961, Footpath No. 12;
- (b) The Stopping up of Highways (County of Devon) (No.1) Order 1962, Footpath No. 15;
- (c) The Stopping up of Highways (County of Devon) (No.7) Order 1964, Footpath No. 1;
- (d) The diversion of Highways (County of Devon) (No.5) Order 1968, Footpath No. 12;
- (e) Barnstaple Petty Sessional Division Magistrates Court Order 1972 stopping up Footpath No. 12;
- (f) Barnstaple Petty Sessional Division Magistrates Court Order 1972 stopping up Footpath No 4;
- (g) The Devon County Council and North Devon District Council Public Footpath Creation and Dedication Agreement 1980, Footpath No. 26, at Raleigh;
- (h) The Devon County Council and North Devon District Council Public Footpath Creation and Dedication Agreement 1982, Footpath No. 29 and the Tarka Trail cycleway;
- (i) The Devon County Council (Footpath No. 1 Raleigh, Barnstaple) Public Path Extinguishment Order 1983;
- (j) Barnstaple Petty Sessional Division Magistrates Court Order 1985, stopping up creating Footpath No. 25;
- (k) The North Devon District Council (Path No. 11 Anchor Wood Bank) Public Path Diversion Order 1985;
- (l) The Devon County Council (Footpath between St. Georges Road and Lower Raleigh Road) Public Path Diversion Order 1987, creating Footpath No. 31;
- (m) The Stopping up of Highways (County of Devon) (No. SW 5) Order 1988, stopping up creating Footpath No. 24;
- (n) The Devon County Council and North Devon District Council Public Footpath Creation and Dedication Agreement 1989, Footpath Nos. 27 & 28 also as cycleways;
- (o) The North Devon District Council (Garden Court, Queen Street, Barnstaple) Public Path Diversion Order 1992, diverting and creating Footpath No. 30;
- (p) The Devon County Council and North Devon District Council Public Footpath Creation and Dedication Agreement 2002, dedicating Footpath Nos. 32 & 33 and cycleway;

- (q) The North Devon District Council (Rolle Quay Barnstaple Footpath No.12) Diversion Order 2006; and
- (r) The Devon County Council (Footpath No. 34, Barnstaple) Public Path Creation Order 2007.

### 3. Review & Consultations

The current Review was started in October 2007 with a public meeting in Barnstaple. At the meeting, reference was made to suggestions for unrecorded routes that had already been submitted previously and kept on file. Other issues concerning recorded footpaths were identified, some of which were included in the consultations and are referred to in the Appendix. A claim by a formal Schedule 14 application had been made in 2001 for the addition of a Byway Open to All Traffic, which has also been kept on file and is considered now under the review process as Route 1 in the Appendix.

Following the meeting, further suggestions were submitted for other unrecorded routes and with a limited number of evidence forms but not in connection with any formal claims or applications. They were considered to be insufficient to represent a prima facie case for further investigation and were not included in consultations. A recorded cul-de-sac footpath ending at the parish boundary with Pilton West with no continuation was investigated in the review for that parish. It was reported to this committee in 2006 that there was insufficient evidence for the existence of a continuing footpath. Other unrecorded routes included some that had been identified from queries about their status, particularly Route 10. One had been closed off by a fence preventing its use on foot and led to a claim that it should be recorded as a public right of way with user evidence submitted, which is considered as Route 3.

Other routes in the consultations were for the proposed diversion and proposed extinguishments of existing recorded footpaths that had been affected by developments. The review process provided an opportunity to include them in the consultations as Routes 11, 12 and 13. The procedures required to resolve problems with them resulting from planning and development processes will be dealt with under delegated powers.

General public consultations on the Review concerning all 13 routes identified were carried out in August 2009 and advertised in the local press. Responses to the consultations were as follows:

- |                                 |   |  |
|---------------------------------|---|--|
| County Councillor Haywood       | - | responded in support of Routes 3 and 10;   |
| County Councillor Greenslade    | - | responded in connection with Route 10;   |
| North Devon Council             | - | responded with information about their ownership in connection with several routes;                            |
| Barnstaple Town Council         | - | responded with information about their ownership in connection with several routes;                            |
| ACU/TRF                         | - | responded with queries about routes not included in the consultations;   |
| Byways and Bridleways Trust     | - | no comment;  |
| Country Landowners' Association | - | no comment;  |
| National Farmers' Union         | - | no comment;  |
| Open Spaces Society             | - | no comment;  |
| Ramblers' Association           | - | responded in support of Routes 1, 2, 3 and the proposed diversion of Route 11, with evidence only for Route 2. |

#### **4. Conclusion**

The recommendations are for a Modification Order to be made in respect of Route 3, with no Modification Order to be made in respect of Route 1, but to make sure that the provision of public pedestrian and cycle access along the route is achieved successfully in a planned development. Also, no Modification Orders to be made in respect of Routes 2, 4, 5, 6, 7, 8, 9 and 10 but to include Route 2 on the list of maintainable highways as an adjoining footway. For the other routes, it will be possible to investigate recording public footpaths by Creation or Dedication Agreements with landowners, or Creation Orders, with powers under delegated authority. Details concerning the recommendations are 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 with sufficient supporting evidence it would seem sensible for it to be determined promptly rather than deferred.

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

To progress the parish-by-parish review of the Definitive Map in North Devon.

#### **6. Legal Considerations**

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

#### **7. Carbon Impact Considerations**

There are no considerations.

#### **8. Equality Considerations**

There are no considerations.

Ian Harrison

### **Electoral Divisions: Barnstaple North, and Barnstaple 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	2000 to date	DMR/BARN/2000/Parish File

nc081009pra  
sc/dmr 07-09 parish of Barnstaple  
3 hq 301009

## Background to the Suggested Changes

### 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, ... ;

The 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 Schedule 14 of the Act.

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 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 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.

1. **Route 1, Schedule 14 application to record a Byway Open to All Traffic from Pottington Road to the Tarka Trail and slipway on the River Taw estuary, between points A–B shown on drawing number EEC/PROW/09/27.**

Recommendation: It is recommended that no Modification Order be made in respect of Route 1 for addition of the claimed Byway Open to All Traffic to the Definitive Map, but the planning authorities be requested to secure public access on foot and bicycles as part of proposed development.

## **1.1 Background and Description of the Route**

In 2000, evidence forms were submitted for a claimed route from the end of a slipway at Rolle Quay on the bank of the River Yeo to a swing bridge on the Tarka Trail footpath and cycleway created on the old Barnstaple to Ilfracombe railway line alongside the River Taw estuary. There had been development of the foreshore at the slipway involving land previously owned by the County Council and used as a depot, part of which had been sold to the District Council. It had raised concerns that access along the bank and the tidal foreshore to the Tarka Trail would be lost as a result of the development. The evidence was held on file, but was considered not sufficient for a prima facie case to investigate further.

A subsequent query later that year was made about a nearby route running between industrial buildings and the Barnstaple Rugby Club to the Tarka Trail further west of the swing bridge. A petition signed by 10 people was submitted in support of their claimed use of the route unrestricted for 20 years. It resulted from concerns that other development in the area of a car park for the rugby club would prevent access from Pottington Road and Mill Road to the Tarka Trail. A sign saying 'No Public Right of Way' had been put up at the entrance to the route from the road. As a result, a formal Schedule 14 application was submitted with two user evidence forms, which were kept on file for consideration when the review process had reached Barnstaple.

The path is a surfaced track enclosed by fences, walls and buildings, with no fencing or gates across it starting from the corner of Pottington Road and Mill Road (point A), near the entrance to the rugby club car park. The track continues between the rugby club and buildings used as a small industrial estate and through a car parking area, ending on the Tarka Trail cycleway (point B) opposite a slipway leading down onto the foreshore of the River Taw estuary near the new Barnstaple road bridge. The industrial buildings were used for several businesses, some connected with cars and motorcycles, but which are now empty and are reported to have been damaged by a fire. That area has been the subject of a planning application for a proposed large residential housing development and, more recently, a bollard has been put in at the start of the route, apparently to prevent vehicular access but allowing continued use on foot and bicycle. The claimed route has been used as an agreed permissive alternative route for the Tarka Trail on foot and bicycle for when the swing bridge across the River Yeo is being operated.

## **1.2 The Definitive Map and Statement, Historical and Recent Maps and Aerial Photography**

The route was not included with those surveyed originally by the Borough Council in the 1950s for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement. It is not shown on the County Council's earlier and current record of maintainable highways.

Early maps at smaller scales do not record footpaths or bridleways, particularly in built-up areas and do not show the route in any detail. Those include the Ordnance Survey 1<sup>st</sup> edition map, published in 1809 and later with revisions, the later Greenwood's map of 1827 based on the early Ordnance Survey map, as well as later small scale Ordnance Survey and Bartholomew's editions. Later maps at larger scales, such as the Tithe Map of 1842 and the Ordnance Survey 25" to a mile 1<sup>st</sup> and 2<sup>nd</sup> editions of the later 1880s and early 1900s, show the route in more detail. The Tithe Map shows the route leading down to the shore of the Taw estuary before the railway line had been built, as a continuation of Pottington Road from a crossroads with a toll house on the turnpike road from Braunton. It is shown coloured in the same way as all roads, but they were not numbered and identified as public or parish roads and included those which were obviously public as well as others which were more likely to have been private access to land and some not now existing.

Deposited Railway Plans for the Barnstaple–Ilfracombe railway scheme proposed in 1869 on the line that was built records the claimed route as an Occupation Road with a saw pit and shed. Its owners and lessees were named, with its occupiers identified as a company. There was no reference to any involvement of the Surveyors of Highways to suggest that it may have been considered then to be public right of way or road with more than private rights of access to adjoining properties and the Taw estuary.

The map used for the Finance Act 1910 records shows the route excluded from adjoining land to the north, but not indicating clearly whether it was included with land to the south. It is inconclusive as to whether its exclusion could suggest that it might have been considered to have any public status then, as other more obvious public roads in the area are also shown not excluded.

Later large-scale Ordnance Survey maps show it on the same route, by then crossing the railway line onto the slipway. Older historical mapping records its physical existence on the ground from the 1840s as a route providing access to adjoining land and the estuary shore, but there is no indication that it may have been considered then to be a road or right of way with any public status.

Aerial photography from 1946–9 indicates that it was still then an open unsurfaced track and more recent Ordnance Survey mapping from 1957 and 1964 shows the route in the same way as in previous maps, but indicating a level crossing over the railway line onto the slipway. A solid line across the end of the route from the road indicates that it may have been closed off by a gate at that time, but was also shown as being there in the 1880s. More recent aerial photography from 1999–2007 shows that the route has remained open on its current line as a surfaced track.

### **1.3 Definitive Map Reviews and Consultations**

There was no suggestion in the previous uncompleted reviews that the route should be considered for recording as a public right of way, until the application in 2001. It appears to have arisen then due to concerns that the development of the rugby club car park would lead to the route becoming unavailable for use, with the sign put up saying that it was not a public right of way. The claimed addition was included in the consultations on the basis of the application and evidence submitted in 2001. It received no specific responses and there was no comment on behalf of any of the user groups or adjoining landowners.

### **1.4 User Evidence**

The application was made by five local residents, but only two of them also completed user evidence forms. No additional forms were received as a result of the consultations. Both of them had used the claimed route on foot, one in a vehicle as well and the other also on a bicycle. The main basis for their belief was that they had always lived nearby and used the route regularly for a long time.

The claimed use was from the 1930s and for over 20 years regularly, described as varying from twice a week to once a month or 10 times a year, or 'often' and more in the Summer. They used the route going to the Tarka Trail and the estuary from Pottington Road for pleasure and had never been stopped or turned back when using it, or told that it was not public. They had not been given permission to use the route, or were tenants or had worked for an owner and had any private right to use it. They said that there was no stile on the route, with one referring to gates to the railway line that had always been locked. They reported having seen the sign saying that it was not a public right of way recently and

believed that the owner must have been aware of the public were using the route to have put that notice up.

## **1.5 Landowner Evidence**

Following the consultations, no completed landowner evidence forms were returned by any of the owners of properties adjoining the route on both sides and there was no correspondence received from or on behalf of the owners.

## **1.6 Summary and Conclusions – Dedication under Statute and Common Law**

### **Statute law**

The application for the route to be recorded as a Byway Open to All Traffic in 2001 was apparently made in response to a particular event acting as a challenge to its use, or as the result of an action taken by an adjoining landowner to deter access to it from a specific date. In this case, it is the notice saying 'No Public Right of Way' reported to have been put up in Autumn 2000, said to have been in October. There is, therefore, evidence of an action by a landowner having called into question its use at a specific time for consideration under statute law.

Section 69 of the Natural Environment and Rural Communities Act 2006 has clarified the position on a formal Schedule 14 application for a definitive map modification order being, of itself, sufficient to bring a right of way into question for the purposes of section 31(2) of the Highways Act 1980. It would provide the date of an event that can be taken as calling the public's right to use a route into question, but only if there are no more significant earlier events or actions having done so at a specific earlier time that may have led to or resulted in the application being made. There is evidence of a previous action in this case to provide an earlier date for consideration of the user evidence under statute law. It means that the period for considering evidence of use by the public is the 20 years from 1980 to the date of the notice in 2000.

For the evidence of use by the public during that period, there is only a minimal amount relating to use on foot and bicycle, as well as in a vehicle, from two forms submitted with the application. The petition claiming unrestricted use of the route for 20 years by 10 people does not provide sufficient detail relating to how and when they used it to represent any significant further evidence of actual use for consideration. The evidence of use submitted by only two people is, therefore, considered insufficient to support the recording of the route as a public right of way by presumption of dedication from use under statute law, even for the lowest possible threshold to meet the test of being reasonable to allege that it subsists. There is, therefore, no need to consider whether there were actions taken by the landowners during that period to provide evidence of any lack of intention to dedicate the route as a public right of way.

### **Common law**

Considering the application in relation to common law requires taking into account the historical and other documentary evidence submitted or discovered, with the evidence of use. Historical and more recent mapping shows only that the route existed as a track from the turnpike road and later continuing from the corner of Pottington and Mill Road to and across the railway line onto the slipway to the estuary. Later Ordnance Survey and other mapping with aerial photography shows only that the track has continued to exist after the railway line was closed and used for the creation of the Tarka Trail cycleway and footpath, up to the present.

No other more significant historical maps or references in historical documentary material have been found to indicate more specifically that the route may have had the reputation of

being a public road or public right of way in the past or more recently. Considering the historical mapping and other evidence, with the very limited evidence of public use, dedication at common law as a public right of way of any kind on the claimed route cannot be inferred. The evidence does not support the claim that there is any historical basis to the route being considered as public, or having the reputation of being available for use by the public. There is no evidence that earlier landowners intended to dedicate it as a public right of way, or that the public accepted any dedication and used it on that basis. Its current use as an alternative route for the Tarka Trail has been on an accepted permissive basis.

It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is not considered reasonable to allege that a public right of way of any status subsists on the route. From consideration under statute and common law the evidence is, therefore, insufficient to support making an Order in respect of the application. Accordingly, the recommendation is that no Modification Order be made to record the claimed route as a Byway Open to All Traffic.

The route has been part of an accepted permissive alternative route for the Tarka Trail and there is proposed to be provision for pedestrian and cycling access in the planned development of the adjoining land. Therefore, an addition to the recommendation is that the planning authorities be requested to secure public access on foot and bicycles as part of proposed development.

- 2. Routes 2, 4, 5, 6, 7, 8, 9 and 10, unrecorded routes between points C–D shown on drawing number EEC/PROW/09/28; G–H and J–K shown on drawing number EEC/PROW/09/30; L–M, L–N, N–O and P–Q shown on drawing number EEC/PROW/09/31; and R–S shown on drawing number EEC/PROW/09/32.**

Recommendation: It is recommended that no Modification Orders be made in respect of Routes 2, 4, 5, 6, 7, 8, 9 and 10 for adding them as public rights of way to the Definitive Map. Route 2 should be added to the list of maintainable highways as an adjoining footway and consideration be given to recording the other routes as public footpaths by Creation Agreements, or Creation Orders where landowners cannot be identified, under delegated powers.

## **2.1 Background and Description of the Routes**

Several routes in various parts of Barnstaple had been identified since the late 1960s, mainly by the Town Council, as not being recorded as public rights of way. Details of suggestions that their public status should be considered for recording put forward from earlier review processes which were not completed were kept on file. Some of those appear to have been made in response to the perceived threat that they may have been lost then through proposed building as part of planned developments in the town. No user evidence was submitted in support of the suggestions, which were not all put forward as stronger claims then or later and no other more formal applications were made in respect of any of the routes.

More unrecorded routes were identified as part of preparations for the current review or from queries and have been included with some of those suggested previously. Others had either been resolved subsequently under planning procedures and were no longer relevant for the current review process, or were considered not to have a prima facie case for further investigation.

## **Route 2 – Pilton**

This is a narrow unsurfaced path called the 'Gravel Top' footpath, alongside and above the level of the road from Pilton north of Barnstaple. It is reached by steps continuing from the end of a modern footway beside the road, Mear Top (point C), running between trees and a wall alongside a field, passing through an old iron kissing gate onto the start of a footway (point D) which continues alongside the road, Westaway Plain, into an area of residential housing.

## **Routes 4 & 5 – Raleigh**

Route 4 is a surfaced track continuing from a road to a club and residential housing estates from St. George's Road in Raleigh (point G), which is used for vehicular access to other properties and ending at an old mill converted to a house (point H). It continues as Footpath No. 31, created from the diversion in 1987 of an unrecorded footpath previously crossing a bridge over the River Yeo onto a new footbridge leading to the road at Raleigh Meadow in a residential housing estate. Footpath No. 34, which was added by a Creation Order in 2007, runs on a path along the north bank of the river and under the footbridge.

Route 5 continues from a footway on the road opposite the end of Footpath No. 31 (point J), along a tarmac path with a bollard to prevent vehicular access. It runs between residential properties with streetlights and ends on Higher Raleigh Road (point K), where it is signposted although not recorded as a public footpath. Footpath No. 26, created in 1980 on part of the route of Footpath No. 1 after it had been extinguished in 1964 for the development of North Devon Hospital, continues from the opposite side of the road.

## **Routes 6, 7, 8 & 9 – Rock Park**

These are all in the southern area of Rock Park. Route 6 is a short missing link into the park from the end of Footpath 5 in the adjoining parish of Tawstock along the River Taw flood bank recorded at the parish boundary (point M) under the railway bridge now carrying a cycleway over the river. The path continues through a kissing gate to connect with the corner of Footpath 33 (point L), created in 2002 on the main path in the park alongside the river, South Walk, with permissive cycle access to connect with other recorded cycleways in the area.

Route 7 is a short length of a path from the same corner of Footpath 33 (point L) leading onto steps running up the railway embankment onto the cycleway across the railway bridge (point N). The cycleway runs down a ramp onto Footpath 33 in the park, to connect with other recorded cycleways. Route 8 continues from the end of Route 7 (point N) at the cycleway, through a kissing gate and follows the trackbed of the old railway line between trees along the top of the embankment on the southern boundary of the park. It descends steps built into the end of the embankment (point O) onto Bridleway 6, which continues from Ladies Mile running along the eastern boundary of Rock Park and connecting with the cycleway network.

Route 9 is a section of surfaced path running from Footpath 33 and the cycleway (point P) between trees around the southeastern corner of Rock Park, connecting with other unrecorded paths and ending at Bridleway 6 on Ladies Mile (point Q).

## **Route 10 – Newport**

This is a narrow lane, Prospect Place, which runs between buildings from Newport Road (point R) and is named with a sign identifying it as a footpath to Park Lane. It has a cobbled and tarmac surface providing vehicular access to several adjoining properties and garages, with street lighting. It continues as a much narrower lane with a rougher surface running between properties to end on the road at Park Lane (point S). Until recently there was a wooden fence post with a metal bar gate locked to prevent vehicular access from the Park Lane end, but leaving a gap that allowed access on foot.

## 2.2 The Definitive Map and Statement, Historical and Recent Maps and Aerial Photography

None of the routes were included with those surveyed originally by the Borough Council in the 1950s for putting forward as public rights of way and they are not recorded on the Definitive Map and Statement. Most of them are not shown on the County Council's earlier and current record of maintainable highways, but Route 2 is shown on earlier records from before 1974 for Barnstaple Borough as included within the area of liability for maintenance of the road.

Early maps do not show the routes, particularly at smaller scales, although they do not all record footpaths or bridleways at such a small scale and particularly in built-up areas. Those include the Ordnance Survey surveyors' drawings of 1804–5 and the original 1<sup>st</sup> edition 1" to the mile map on which they were based, published in 1809, with the later Greenwood's map of 1827 based on them, as well as later small scale Ordnance Survey and Bartholomew's editions.

Later maps at larger scales show some of the routes in more detail. Tithe Maps from the 1840s for their respective areas of Pilton, Barnstaple and the Borough of Newport, then in the parish of Bishops Tawton, do not show all of them. Route 2 is not shown separately alongside the road, with Route 4 indicated as being the end of the access road to the mill on the River Yeo and no continuation beyond across the river and onto the line of Route 5. Routes 6, 7, 8 and 9 are not shown, as the area had not been developed as Rock Park and the railway lines had not been built. Route 10 is shown as a lane open to the roads at each end, enclosed and with adjoining properties. Routes 4 and 10 are shown coloured in the same way as all roads. However, they were not labelled as public and included those which are now recorded as public as well as others which were more likely to have been private access to properties or adjoining land and some not now existing.

Ordnance Survey 25" to a mile 1<sup>st</sup> and 2<sup>nd</sup> map editions of the later 1880s and early 1900s show the areas built up and developed later, including with the railway lines. Route 2 is shown alongside the road, but braced with the adjoining field to suggest that it was considered to be included within the land. Route 4 is shown as part of the access road to the mill, crossing the previous bridge over the river and continuing as a track on the line of Route 5 passing Raleigh Cottages to the site of another mill. Routes 6 and 9 are shown as the lines of paths, with others in Rock Park and no indication of a path on Route 7 leading up the embankment to the railway line running along it on Route 8. Route 10 is shown in the same way as on the Tithe Map, open to Newport Road and leading the properties but with a line across the Park Lane end suggesting that it was closed off then, perhaps with a gate.

The maps used for the Finance Act 1910 records show Route 2 as part of the road excluded from the adjoining land. It suggests that the path might have been considered by then to be part of the public road, with the network of other public roads in the area also shown excluded. Routes 4 and 5 are shown excluded from adjoining land and properties as a continuous route to the mill and crossing the river, in the same way as other public roads, suggesting that they may have then been considered to be public. Routes 6 and 9 are shown not excluded from the area of Rock Park, in the same way as all paths within other parts of the park, suggesting that they were considered to be available for the public to use. Routes 7 and 8 were then still on land that was part of the operational railway line on the embankment excluded from adjoining land. Route 10 is shown excluded from adjoining land and properties between the two roads, which are shown in the same way suggesting that it may have then been considered to be public.

Aerial photography from 1946–9 shows Route 2 as a narrow worn path running between hedges alongside the road. Route 4 is shown as the continuation of a surfaced and hedged

track leading towards the mill and for access into adjoining land, with Route 5 continuing across the river as a narrow hedged track running past Raleigh Cottages to Higher Raleigh Road. Routes 6 and 9 are shown as paths connecting with others in the area of Rock Park, with no indication of a path on Route 7 and the railway line still then running on Route 8. Route 10 is shown as an open surfaced lane connecting the two roads. It adds supporting evidence for Routes 2, 4, 5, 6, 9 and 10 only as being open and available for use by the public at that time, with no indication of Routes 7 and 8 which were then on the embankment and railway line.

Various later Ordnance Survey mapping editions from between 1957, 1964, 1971 and 1987 show Route 2 in the same way as on more recent and current maps as a separate enclosed path running alongside the road, continuing from the footway on Mear Top onto the footway on Westaway Plain and labelled 'F.P.' in 1957. Routes 4 and 5 are shown in the same way as in earlier editions as a track leading to and across the river by a footbridge, continuing as a track to the mill on Higher Raleigh Road labelled as 'disused' in 1957. More recent maps show changes to the road layout in the area, with housing development and the removal of the footbridge connecting the routes and the diversion of the linking track onto a replacement bridge to create Footpath No. 31. Routes 6 and 9 are shown in 1957 and 1973 in the same way as in earlier editions, with no indication of Route 7 onto the embankment and Route 8 along the line of the railway, which had been closed by the date of the later editions. Route 10 is shown in 1957 and 1964 in the same way as in previous editions as an enclosed lane, named as Prospect Place and closed off at Park Lane suggesting that there was still a gate at that end up to that date.

More recent aerial photography from 1999–2007 does not provide any additional supporting evidence for Route 2, showing only the growth of vegetation alongside the path. It confirms that Route 4 has remained on the line of the track to the mill with the further housing development in the area and continuing on the line of Footpath No. 31 to cross the new footbridge over the river. Increased vegetation growth has also taken place alongside Route 5. Route 6 is shown to have remained as an open link between recorded footpaths, with Route 7 established onto the embankment and increased vegetation growth alongside Route 8 on the disused railway line and Route 9 in Rock Park. Route 10 is shown as having remained as an open surfaced lane connecting the two roads.

### **2.3 Definitive Map Reviews and Consultations**

There were suggestions in the previous uncompleted reviews only for Routes 2, 4 and 5 to be considered for recording as public rights of way, with the others identified as unrecorded routes in the current review process. They were all included in the consultations on the basis of the previous suggestions, or from identification as unrecorded routes that appeared to be used currently by the public and queries about status. There were no specific responses, apart from the Ramblers' Association in support of Route 2 with a minimal amount of supporting user evidence and from adjoining landowners on Routes 4, 5 and 10.

### **2.4 User Evidence**

There was no user evidence submitted in support of the earlier suggestions for any of the unrecorded routes and only a few evidence forms have been received in the current review, for Routes 2 and 10. Four people said that they had used Route 2 for more than 20 years, with two reporting longer use since the 1950s and 1970s. They had all used it on foot either for pleasure, walking the dog and visiting friends or the hospital, or for work. The frequency of their use was from nearly every day and once a month, to three or four times a year and negligible use. They reported that they had never been stopped or turned back and there were no signs to say that the path was not public or they should not use it. There was a gate on the path that had never been locked, with a seat alongside for people using it. They had

always considered the path to be public and had seen other people using it, including comments that members of their family had used it previously as a safe route on what had once been the main road from Shirwell.

Only two user evidence forms were submitted for Route 10, one relating to use only between 1949–57 and the other from 1950 to the present. Both of them reported use mainly when younger for going to and from the Park Grammar School, which has had an entrance in Park Lane since the 1950s, with only one indicating later use. No user evidence was submitted for any of the other unrecorded routes in the current review, or as a result of the consultations.

## **2.5 Landowner Evidence**

From the consultations, landowner evidence was submitted only by two owners of properties adjoining Routes 4 and 5 and by some of the owners on Route 10. The tenant of a property on Route 5 reported that adjoining houses were owned by a housing association and other land on Route 4 was reported to be owned by North Devon Council, neither of which provided any evidence. The owners who responded believed Routes 4 and 5 to be public, as footpaths and were aware that the public had been using them on foot regularly during their ownership, which was for less than 10 years. Both indicated that they did not own any part of the routes, but had not turned anyone back or stopped people from using them, except for safety reasons during building work on Route 4. They had not put up notices or signs stating that the routes were not public, had not put up gates, stiles or other obstructions, referring to bollards on Route 5 to prevent use by motor vehicles.

Landowner evidence forms were submitted by several owners of properties on and near Route 10, some of them with additional information relating to other aspects of their knowledge of and attitudes to its use. Some of the owners of adjoining properties at the Park Lane end indicated that part of the route was included in their ownership. They were aware of it being used, mainly by children going to and from the school and referred to their concerns from experiences of criminal activity, vandalism, graffiti and litter resulting from its use. They had not stopped anyone from using it, but referred to notices put up to say that it was private, reporting that there had been a locked barrier. That had been removed and they were planning to put up another gate to prevent any use, to keep it as a private lane. The owner on the other side of the route provided information relating to its use by the public, which she believed should continue and not be prevented by any barrier. North Devon Council indicated that it owned a section of the route from the Newport Road end, but did not provide any further evidence relating to its ownership or status.

No landowner evidence was submitted for the other routes, some of which were believed to be owned by Barnstaple Town Council and North Devon Council, particularly in the Rock Park area.

## **2.6 Summary and Conclusions**

The suggestions that these routes should be recorded as public rights of way were not made by formal applications, or as the result of any actions taken by landowners to obstruct or prevent access to and use of them from any specific date. They have been identified previously and more recently as not recorded as public, but not in response to any specific or significant event that may have called their use into question. There were no reports from anyone using them about obstruction preventing their use or seeing any signs or notices saying that they should not use them.

There is, therefore, no evidence of any significant actions by a landowner having called into question use of the routes at any specific time for consideration of user evidence under statute law. Ownership of most of the routes appears not to be registered, except part of

Route 10 and for some there may be no owner to challenge their use and to show that they did not intend to dedicate them as public rights of way. There is no user evidence for most of the routes, so that they can only be considered in relation to common law, in conjunction with historical and other documentary evidence with evidence of use, where available.

There is support from older historical maps and more recent mapping only to show that some of the routes, or parts of them, have existed since at least the middle of the 19<sup>th</sup> century, particularly Routes 4 and 10. Others appear to have resulted from development and building in various parts of the town from later in the 19<sup>th</sup> century onwards for Route 2, the rest of Route 4 and its previous continuation onto Route 5, with Route 6 and Route 9 in Rock Park. Routes 7 and 8 have only existed since after the closure of the railway line. Some of the evidence suggests that the earlier routes may have been considered to be public and have been available for use since then, but no more significant historical evidence in support of public status has been found.

There is no direct evidence of use for most of the routes continuing to the present, apart from a minimal amount for Route 2 and Route 10, from which use can be assessed as to whether it is sufficient to suggest that the owners were aware of it and to indicate that they may have acquiesced. An intention to dedicate cannot, therefore, be inferred from the earlier period and more recently that the routes may have been accepted as public and used on that basis. There is only anecdotal and reported evidence of their reputation for previous and continuing use by the public, but no more substantial and actual evidence of use has been submitted.

Considering the user evidence in conjunction with all of the other evidence, including historical and landowner evidence, dedication at common law with a status of footpath cannot be inferred for any of the routes. There is insufficient evidence to suggest that the landowners intended to dedicate the routes as public rights of way and that the public accepted the dedication and have used them on that basis. It is in the light of this assessment of the evidence submitted, in conjunction with the historical evidence and all other evidence available that it is not considered reasonable to allege that a public right of way subsists on any of the routes.

From consideration under common law there is, therefore, no sufficient basis for making Orders in respect of any of the routes to record them as public rights of way. Accordingly, the recommendation is that no Modification Orders should be made adding the routes to the Definitive Map. However, the evidence does indicate that Route 2 has been considered previously as included within the boundaries of the adjoining road for maintenance purposes, although not currently shown on the current records of maintainable highways. It is reported to have been inspected by Area Highways staff and maintained, so the additional recommendation is that Route 2 should be included on the current records of maintainable highways as an adjoining footway. That would clarify its status as a public route which has been available for use historically and appears to have continued to be used by the public on foot up to the present.

In the absence of sufficient evidence for the other routes, the additional recommendation is that consideration be given to recording the other routes as public footpaths by Creation Agreements, or Creation Orders where landowners cannot be identified, under delegated powers.

**3. Route 3, claimed footpath on Rock Park Terrace, from Newport Road to Ladies' Mile, Rock Park, between points E–F shown on drawing number EEC/PROW/09/29**

Recommendation: It is recommended that a Modification Order be made in respect of Route 3 for the addition of the claimed footpath to the Definitive Map.

**3.1 Background and Description of the Route**

In 2007, before the review process had been started in Barnstaple, it was reported that a fence had been put up across the entrance to a road running in front of a row of five houses on Rock Park Terrace, which was said to be preventing its use by the public on foot. The claimed route starts from the junction of Newport Road and Victoria Road (point E), running between the houses and Rock Park Lodge, ending at the Ladies' Mile (point F). Rock Park Terrace is a surfaced road with no footway or pavement, with decorative pillars and lamp-posts and bollards at point E where the wire mesh construction fence has been put up. The fence was said to have been put up by the owner of the adjoining property No. 1 Rock Park Terrace at the entrance. The road is open from the Rock Park end for vehicular access and parking outside the houses.

The report was followed up sometime later after local publicity by further queries, with a request for evidence forms relating to use by the public. Completed forms were submitted without a formal application for it to be recorded as a public right of way, with further evidence forms requested and submitted later. The route was included in the consultations as a claimed public right of way that had been deliberately obstructed.

**3.2 The Definitive Map and Statement, Historical and Recent Maps and Aerial Photography**

The claimed route was not included with those surveyed originally by the Borough Council in the 1950s for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement. It is not shown on the County Council's earlier and current records of maintainable highways.

Early maps do not show the route, particularly at smaller scales, including the Ordnance Survey surveyors' drawings of 1804-5 and the original 1<sup>st</sup> edition 1" to the mile map on which they were based, published in 1809, with the later Greenwood's map of 1827 based on them, as well as later small scale Ordnance Survey and Bartholomew's editions. The Tithe Map of 1841 does not show the route, as Rock Park Terrace had not been built and the area of Rock Park had not yet been developed at that date.

Other later maps at larger scales, particularly the Ordnance Survey 25" to a mile 1<sup>st</sup> and 2<sup>nd</sup> editions of the later 1880s and early 1900s show the area as developed later. Rock Park Terrace is shown as open to the roads at each end, between the houses and the Lodge, which had been built by then as part of Rock Park. The maps used for the Finance Act 1910 records show the whole width of Rock Park Terrace excluded from the adjoining properties, suggesting that it might have been considered by then to be part of the public road network, with the other roads now recorded as public in the area also shown excluded.

Aerial photography from 1946–9 shows the route with the same surface as connecting roads and remaining open to them at both ends, suggesting that there was no obstruction to vehicular or pedestrian use. Later Ordnance Survey mapping editions from 1957 and 1964 show the route, named as Park Terrace and in the same way as on more earlier, recent and current maps, with no indication that it may have been closed at either end by that date.

More recent aerial photography from 1999–2007 shows the route remaining open at the Rock Park end, but indicating that the bollards had been installed before that time at the Newport Road end to prevent access by vehicular traffic, but which will not have prevented pedestrian use.

### **3.3 Definitive Map Reviews and Consultations**

The claim that the route should be recorded as a public footpath was put forward during the current review process and included in the consultations on the basis of the supporting evidence submitted following its obstruction. It received specific responses from several adjoining property owners, the local County Councillor and support from the Ramblers' Association who had no further supporting evidence.

### **3.4 User Evidence**

Ten completed user evidence forms had been submitted, mainly with accompanying maps to show the route used, following requests connected with the claim and before the consultations. A further seven forms without maps completed previously, were submitted later with one other form during the consultations, so that there is evidence of claimed use by a total of 18 people to consider. One of the forms is from a current resident of Rock Park Terrace and another is from a former resident of Rock Park Lodge, whose use can be interpreted as private rather than as the wider public, to make it a total of 16 users.

All of the users reported that they had used the route on foot, with three of them saying that they had also used it on a bicycle as well and two also in a vehicle, before the bollards had been put in to stop vehicular traffic. Where specified, half of them believed the route to be a public footpath, with several considering that it was a Byway Open to All Traffic or a restricted byway. The main basis for their belief was that it had always been used by the public, or known and remembered as being used and had never been blocked. Others referred to it as a made up road, or originally a road until it was changed to a footpath when the bollards were put in, but used by residents for access to their properties and parking.

The earliest claimed use was from 1936/7 by two people, with use by five or six people during the 1940s, by eight or nine people during the 1950s and by from 12 to 16 people since the 1960s until it was blocked in 2007. One did not specify any dates of use and two reported having used it 'all my life' or 'for 50 years'. The specified frequency of use varied from three or four times a year from the 1990s, 12 times or more a year or monthly between the 1940s and the 1970s and up to more than 350 times a year or daily, particularly from the 1930s through to the 1970s. Several did not specify frequency and referred to using it 'several', 'many' and 'various' times a year, or 'often'. Almost all of the users indicated that they had used the route for pleasure, with some using it for work or business, for visiting and shopping, or to use other facilities such as the post box and health centre.

Almost all of them had used the claimed route between the Newport area and other parts of Barnstaple, to and from the park and other places nearby in the Rock Park area. None reported ever having been stopped or turned back when using the route, or being told that they should not use it, until being prevented when the fence was put up. Most of the users believed that the owner must have been aware of the public using the route as it had always been in use. None reported that they had been given permission to use the route, although one had been a tenant at Rock Park Lodge when working for its owner and another was a Rock Park Terrace resident, which will have given them private rights to use it.

None of the users reported that there were any stiles or gates on the route, with some referring only to notices about parking for residents. Most of them indicated that the only obstruction other than the bollards to prevent vehicular access some time ago was the

present fence, which some of them believed had been put up without authority or planning permission.

### **3.5 Landowner and Rebuttal Evidence**

From the consultations, landowner evidence forms were submitted by the owners of four properties on Rock Park Terrace, one of whom owned two of the houses. One had also filled in a user evidence form and believed the route to be public, as a Byway Open to All Traffic. She was aware that the public had been using it daily at all times during her ownership, which was for nearly 40 years and her knowledge of it for 50 years. She indicated that she owned to the centre of the route adjoining her property, but had not turned anyone back or stopped people from using it. She had not put up notices or signs stating that it was not public, or any obstructions to prevent people using it.

The other owners believed that the route was not public and said that they had bought their properties between five and seven years ago on the basis that it was not a public right of way. They indicated that there had been no use since 2007 and before that during their ownership only occasional use by people missing other easily accessible alternative access to Rock Park. They referred to problems with damage and disturbance, especially at night, leading them to challenge its use by telling users that it was not public. They said that signs had been put up at each end of the route by agreement stating that it was a private road with private parking spaces, with the bollards put up many years ago to stop vehicles and the fence had been put more recently to block the entrance completely.

### **3.6 Summary and Conclusions – Dedication under Statute Law**

The claim for the route to be recorded as a public right of way was made as the result of an action taken by an adjoining landowner that had obstructed or prevented use of the route from a date that cannot be specified, but which was reported to have been in August 2007. There is, therefore, evidence of a significant action having called into question use of the route at a particular time for consideration of the user evidence under statute law for the period of 20 years from 1987 to 2007.

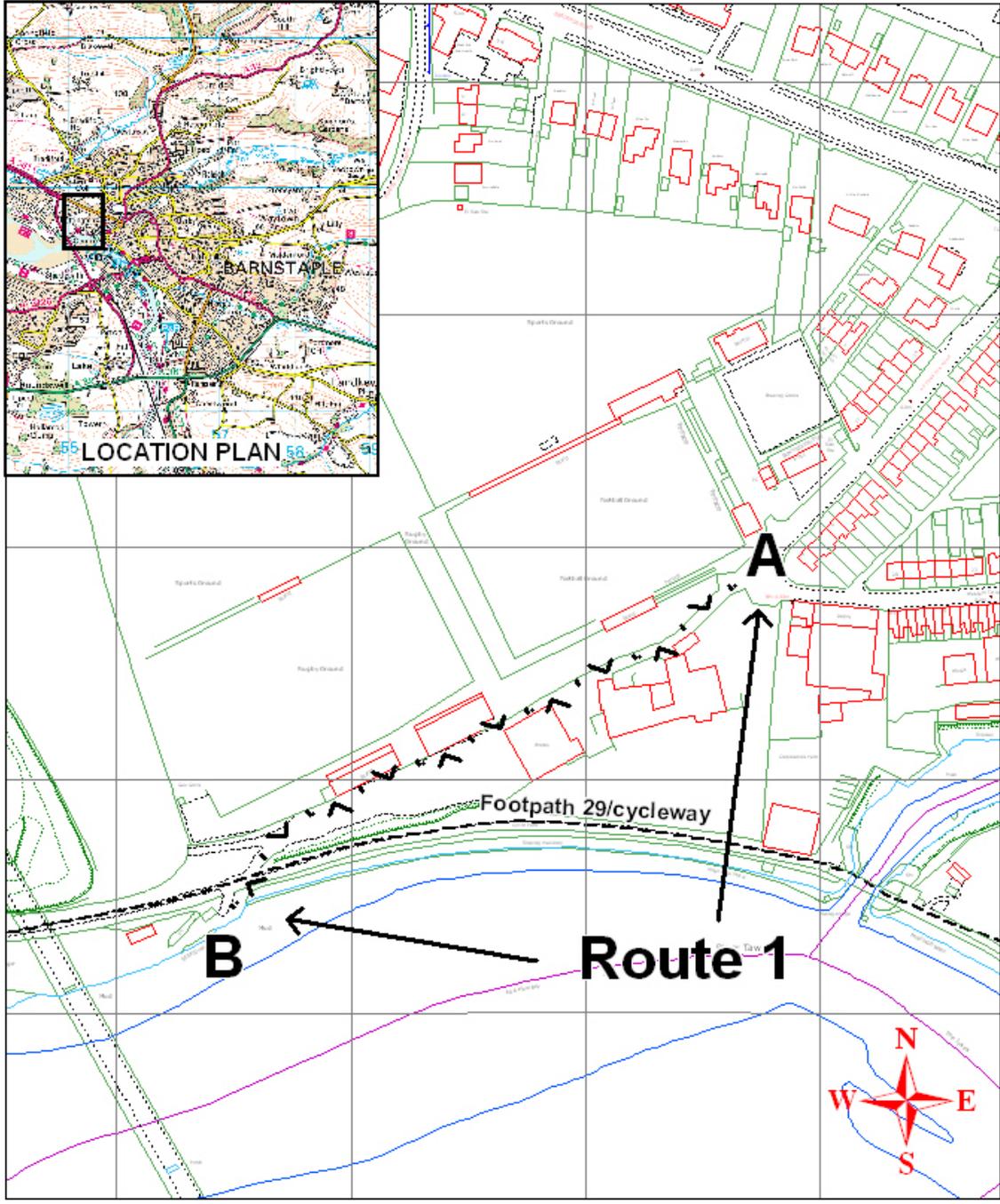
Considering evidence of use by the public during that period, there were forms submitted relating to use by 18 people in support of the claim. One was from a current owner of an adjoining property and another from a former resident, which also related to use of the route before the period in consideration, both of which cannot be taken into account. There is, therefore, evidence of use by 16 people to consider for the 20 year period. The date of the earliest user evidence submitted is from the 1930s, with up to 10 people having said that they used the route until the 1980s before the start of that period. Since then and for the 20 years from 1987 there is evidence of use by up to 15 or 16 people. Only a minimal amount of that was said to have been for visiting adjoining properties. The reported frequency of the use is sufficient to indicate that the adjoining landowners must have been aware of it and none of the users said that they had been given permission to use it.

Examination of the evidence suggests that use of the claimed route is clear in representing use by enough people, as the wider public and as of right, for the required 20 years to be considered sufficient to support the recording of the route as a public footpath by presumption of dedication from use. In rebuttal, there is no evidence of any significant actions taken by the landowners during that period to indicate any lack of intention to dedicate the route as a public right of way. No people using the route reported having been stopped, turned back or told that the route was not public, or said that they had otherwise been prevented from using it until the fence was put up. Ownership of the adjoining property where the fence has been put up is not registered as including any part of the claimed route, although it may be presumed to extend to the centre but not across the whole route

adjoining the Rock Park Lodge. There is no indication that the fence was put up across that part of the route with the authority or agreement of Rock Park Lodge's owners, Barnstaple Town Council, or any evidence that they also did not intend it be used by the public.

The adjoining owners reported that notices were put up during their ownership of up to seven years, but only to say that it was a private road and relating to parking. That can be interpreted as aimed at preventing vehicular access rather than use on foot. It does not fulfil the specific requirement that evidence of any lack of intention by a landowner to dedicate a route as public should be clear and overt in bringing it to the public's attention within the required 20 year period for it to be sufficient to negate the acquisition of public rights. There is no evidence of more significant actions taken by any of the other adjoining owners.

It is in the light of this assessment of the evidence submitted, in conjunction with the historical evidence and all other evidence available, that it is considered reasonable to allege that a public right of way subsists on the route with the status of a footpath. From consideration under statute 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 be made adding the claimed route to the Definitive Map and Statement as a footpath.



map ref **SS5543/5544**

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**Devon County Council**  
**Definitive Map Review, Barnstaple**  
**Informal Consultations, Route 1:**  
**Claimed Byway Open to All Traffic**

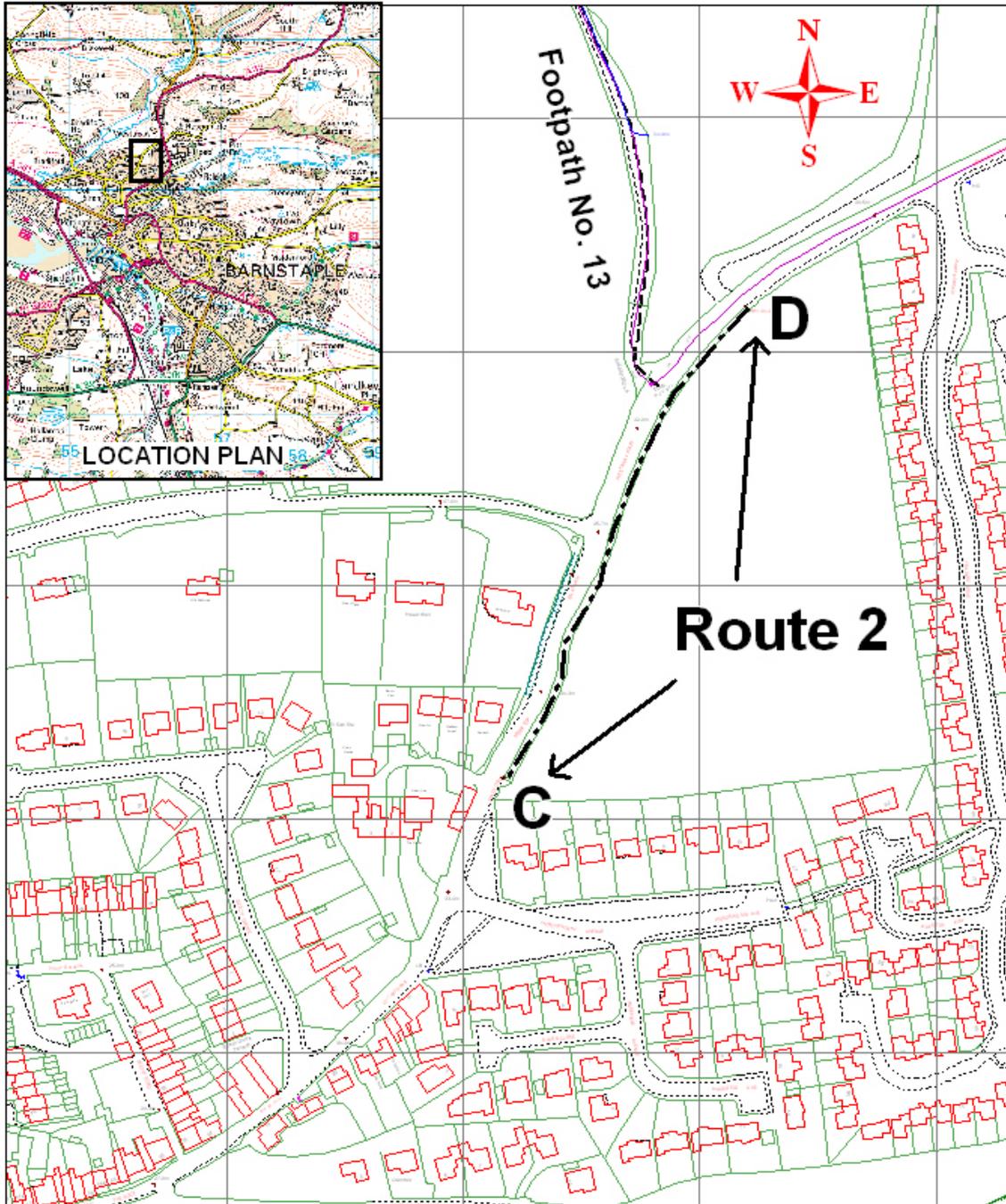
drawing number	EEC/PROW/09/27
date	Mar 09
scale	1:2500
drawn by	NSC

Notation

Claimed route, A - B	
Existing footpath/Tarka Trail cycleway	

**Edward Chorlton**  
 COUNTY ENVIRONMENT,  
 ECONOMY & CULTURE DIRECTOR





map ref **SS5534/5634**

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**Devon County Council  
Definitive Map Review, Barnstaple  
Informal Consultations, Route 2:  
Unrecorded footpath, Mear Top**

drawing number EEC/PROW/09/28

date Mar 09

scale 1:2500

drawn by NSC

Notation

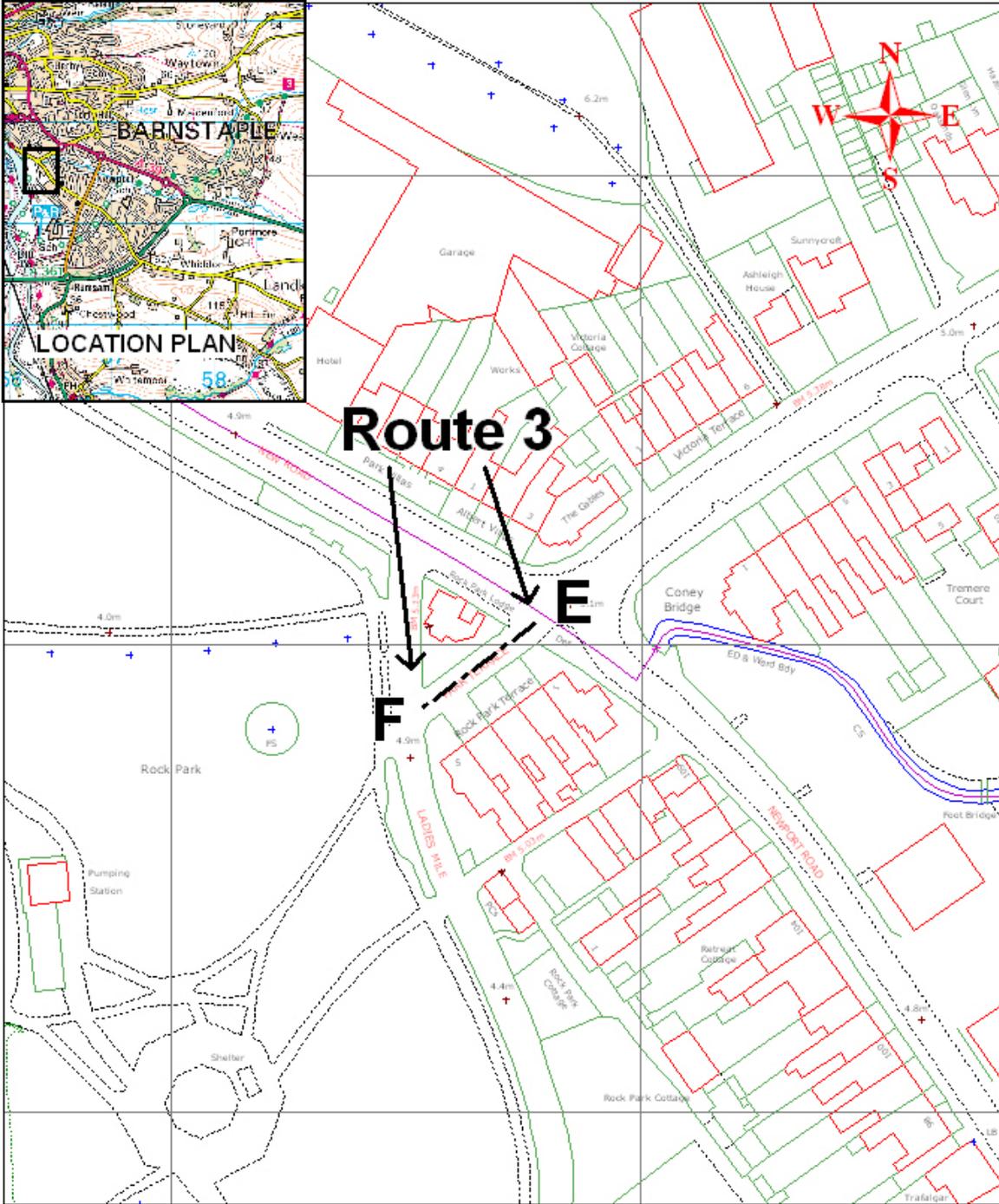
**Unrecorded route, C - D**      

**Existing footpath - Shearford Lane**      

**Edward Chorlton**

COUNTY ENVIRONMENT,  
ECONOMY & CULTURE DIRECTOR





map ref **SS5632**

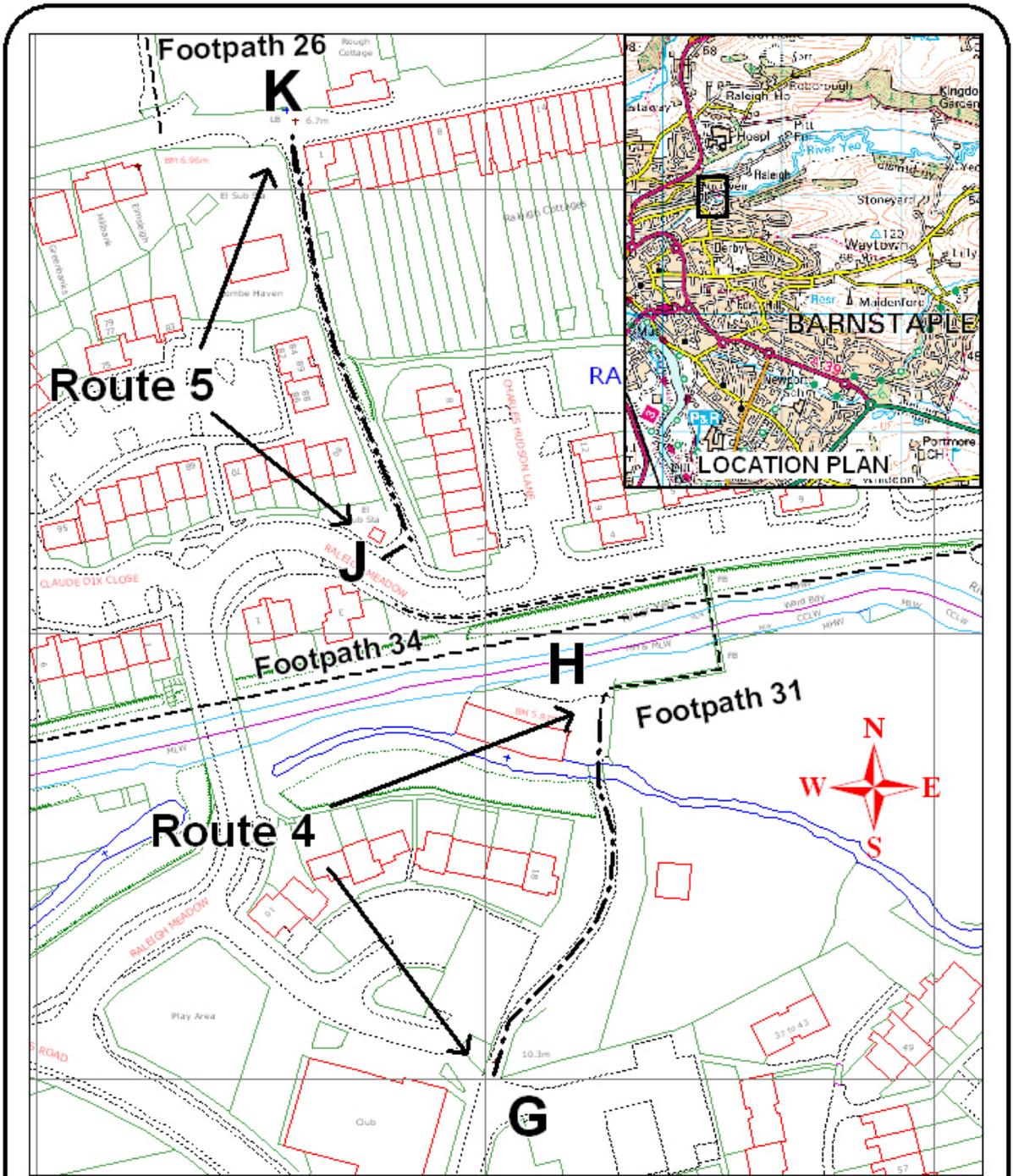
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<p><b>Devon County Council</b>  <b>Definitive Map Review, Barnstaple</b>  <b>Informal Consultations, Route 3:</b>  <b>Claimed Footpath, Rock Park Terrace</b></p>	<p>drawing number <u>EEC/PROW/09/29</u></p>
	<p>date <u>Mar 09</u></p> <p>scale <u>1:1250</u></p> <p>drawn by <u>NSC</u></p>

Notation  
**Claimed route, E - F**      **-----**

**Edward Chorlton**  
 COUNTY ENVIRONMENT,  
 ECONOMY & CULTURE DIRECTOR





map ref **SS5633/5634**

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**Devon County Council**  
**Definitive Map Review, Barnstaple**  
**Informal Consultations, Routes 4 & 5**  
**Unrecorded footpaths, Raleigh**

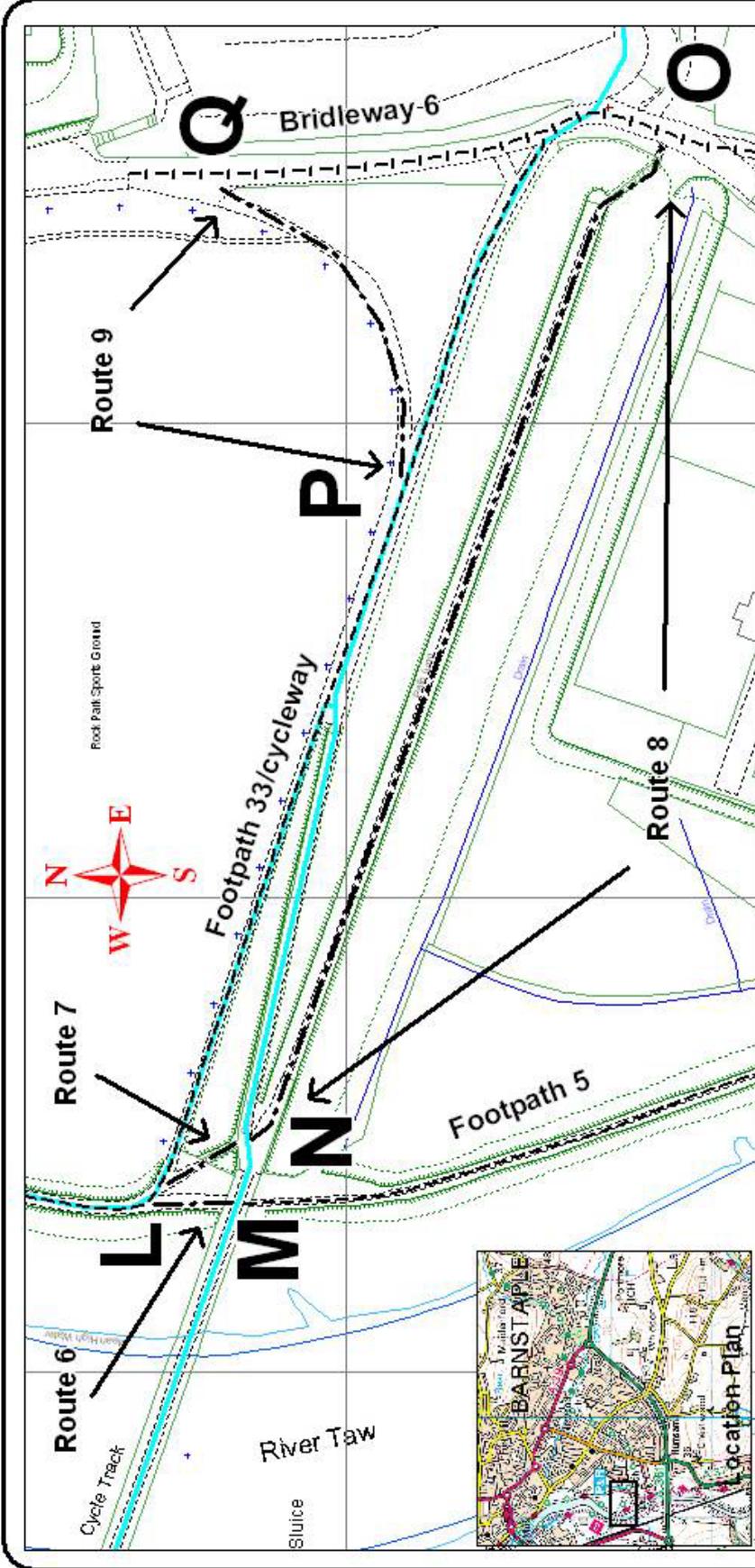
drawing number	EEC/PROW/09/30
date	Mar 09
scale	1:2500
drawn by	NSC

Notation

<b>Unrecorded routes, G - H &amp; J - K</b>	— · — · — · — · — · — · — ·
<b>Existing footpaths</b>	— — — — —

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map ref. SS5531/5631

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**DEVON COUNTY COUNCIL**  
**Definitive Map Review, Barnstaple - Informal Consultations**  
**Routes 6, 7, 8 & 9 - Unrecorded footpaths, Rock Park**

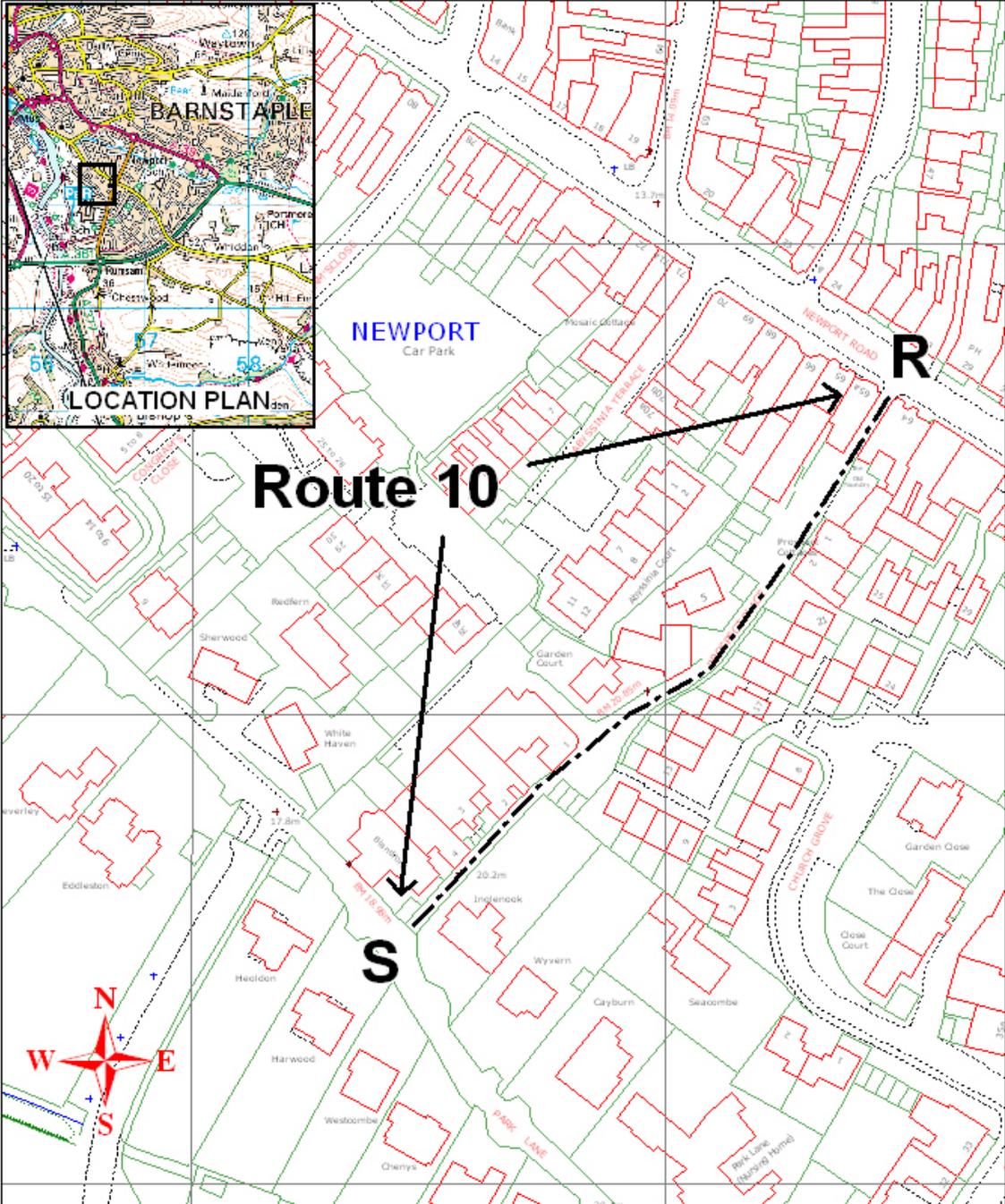
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 date Mar 09  
 scale 1:1250  
 drawn by NSC

**Edward Chorlton**  
 COUNTY COUNCIL  
 DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

Notation

Unrecorded routes - L-M, L-N, N-O, P-O ———— Existing cycleway  
 Existing footpath - - - - -  
 Existing bridleway - | - | - | -





map ref **SS5632**

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**Devon County Council**  
**Definitive Map Review, Barnstaple**  
**Informal Consultations, Route 10:**  
**Unrecorded footpath, Prospect Place**

drawing number EEC/PROW/09/32

date Mar 09

scale 1:1250

drawn by NSC

Notation

**Unrecorded route, R - S**



**Edward Chorlton**

COUNTY ENVIRONMENT,  
 ECONOMY & CULTURE DIRECTOR

