

**Definitive Map Review 2009  
Parish of Thurlestone**

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.***

**Recommendation: It is recommended that:**

- (a) Modification Orders be made to modify the Definitive Map and Statement by:**
- (i) varying the particulars of Footpath No. 13, Thurlestone (suggestion 1) to record the footpath on the Map between points A – B as shown on drawing no. EEC/PROW/09/78, and as described in the Definitive Statement;**
  - (ii) varying the particulars of Footpath No. 4, Thurlestone (suggestion 3) to record the footpath on the Map between points E – F as shown on drawing no. EEC/PROW/09/80, and as described in the Statement;**
  - (iii) adding a public footpath (suggestion 4) between points E – G – H – J as shown on drawing no. EEC/PROW/09/80;**
- (b) No Modification Order be made in respect of suggestion 5.**

**1. Summary**

The report examines four suggestions arising from the Definitive Map Review in the Parish of Thurlestone in the District of South Hams.

**2. Background**

The original survey under s.27 of the National Parks and Access to the Countryside Act 1949 revealed 16 footpaths, one bridleway and two Roads Used as Public Paths (RUPPs) in Thurlestone, which were recorded on the Definitive Map and Statement with a relevant date of 1 December 1954.

The review of the Definitive Map, under s.33 of the 1949 Act, which commenced in the 1970s but was never completed, produced two proposals for change to the Definitive Map at that time. These are discussed in this report as suggestions 4 & 5.

The Limited Special Review of RUPPs, carried out in the 1970s, had the effect of reclassifying RUPP No. 7, Thurlestone as a public footpath and deleting RUPP No. 15, which was considered to be an Unclassified County Road.

The following Orders have been made and confirmed:

Devon County Council (Footpath No. 10, Thurlestone) (Part) Public Path Extinguishment Order 1989.

Devon County Council (Footpath No. 16, Thurlestone) Definitive Map Modification Order 1990.

Devon County Council (Footpath No. 17, Thurlestone) Public Path Diversion Order 1992.

Devon County Council (Footpath No. 11, Thurlestone & Footpath No. 2, Churchstow) Public Path Diversion Order 1993.

Legal Event Modification Orders will be made in due course.

### **3. Review**

The current Review began in April 2009 with a public meeting held in the parish hall. Several suggestions put forward by Thurlestone Parish Council since the Definitive Map was published in 1958 have been picked up for consideration under this Review. A full public consultation was carried out in July and was advertised in the parish notice boards, and in the Kingsbridge Gazette.

The responses were:

County Councillor Sir Simon Day	-	supports Yarmer Estate on suggestion 5.
South Hams District Council	-	no comment.
Thurlestone Parish Council	-	no objections.
British Horse Society	-	no comment.
Byways and Bridleways Trust	-	no comment.
Devon Green Lanes Group	-	no comment.
Country Landowners' Association	-	no comment.
National Farmers' Union	-	no comment.
Open Spaces Society	-	no comment.
Ramblers' Association	-	no comment.
Trail Riders' Fellowship	-	no comment.

### **4. Conclusion**

It is recommended that Modification Orders be made in respect of suggestions 1, 3 and 4 as discussed in the Appendix to this report. It is also noted that an Extinguishment Order be made under delegated powers in respect of part of Footpath No. 10, Thurlestone (suggestion 2). A report on the remaining suggestion 6 will be brought to the next Committee.

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

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

### **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 implications.

### **8. Equality Considerations**

There are no implications

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Local Government Act 1972

List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file	1977 to date	DMR/Thurlestone

hb230909pra  
sc/dmr 2009 thurlestone  
4 hq 301009

## Background

### A. Basis of Claims

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 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;
- (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or
- (iii) there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

The 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. Suggestion 1 – Varying the particulars of Footpath No. 13, Thurlestone

Alteration of currently recorded Definitive line of Footpath No. 13, Thurlestone to reflect the Definitive Statement, as shown in drawing number EEC/PROW/09/78.

**Recommendation: It is recommended that a Modification Order be made to vary the particulars of Footpath No. 13, Thurlestone on the Definitive Map to correctly show the footpath as it is described in the Definitive Statement.**

#### 1.1 Background

The Definitive Statement for Footpath No. 13, Thurlestone states that “*The path is a Footpath. It starts at its junction with County Road No.83 on the corner by the entrance to Clanacombe and proceeds along a Private Accommodation Road (not repairable by the inhabitants at large) for a distance of 90 yards (approx.), along hedge of arable field Ord. No.54 into a small wood, across stream and along a Private Accommodation Road (not repairable by the inhabitants at large) to Worthy Farm and its junction with Bridleway No.12.*” The route currently recorded on the Definitive Map meets the access road to Worthy Farm

but is not shown continuing to Bridleway No. 12, Thurlestone, approximately 25 metres to the east northeast.

## 1.2 Description of the Route

The route starts at its junction with the County Road on the corner by the entrance to Clanacombe, and proceeds generally north eastwards to Bridleway No. 12 at Worthy Farm. Section, A – B as shown on drawing number EEC/PROW/09/78, should be added to the Definitive Map to indicate the route as recorded in the Definitive Statement. It runs along the access road Worthy Farm and connects with Bridleway No. 12.

## 1.3 Documentary Evidence

### Definitive Map and Statement

The Definitive Statement makes it clear that the route joins Bridleway No. 12, Thurlestone.

### Thurlestone Parish Council Submission for the Definitive Map

On their map to accompany the schedule of routes for inclusion on the Definitive Map, Thurlestone Parish Council clearly marked the path as connecting with Bridleway No. 12.

## 1.4 Rebuttal Evidence

No rebuttal evidence has been received.

## 1.5 Discussion

There is no provision in statute for deciding whether, in the case of conflict, the map or statement takes precedence. However, where a route does not appear on the definitive map, the fact that it is included on the statement could be adduced as evidence in support for a modification order to add the route to the definitive map.

The description given in the Definitive Statement is precise regarding the junction of this footpath at Bridleway No. 12 and it appears that there was simply a clerical error with regard to recording the small section at Worthy Farm on the Definitive Map itself.

## 1.6 Conclusion

It is recommended therefore, that a Modification Order be made to vary the particulars of the Definitive Map to correctly show the public footpath continuing between points A-B, as shown on drawing number EEC/PROW/09/79.

## 2. Suggestion 3 – Varying the particulars of Footpath No. 4, Thurlestone

Alteration of currently recorded Definitive line of Footpath No. 4, Thurlestone to reflect the Definitive Statement, as shown in drawing number EEC/PROW/09/80.

**Recommendation: It is recommended that a Modification Order be made to vary the particulars of Footpath No. 4, Thurlestone on the Definitive Map to correctly show the footpath as it is described in the Definitive Statement.**

## 2.1 Background

The Definitive Statement for Footpath No. 4, Thurlestone states that “*The path is a Footpath. It starts at its junction with County Road No.83 by the Sloop Inn, Bantham and proceeds southwards across Ord. Nos. 426 and 427, through kissing gate and runs parallel to the*

*marshes for a distance of 100 yards (approx.), turns across marsh, over footbridge, across Buckland Stream, over stile across field known as Ragmoor Hill, Ord. No.375, over stile across field Ord. No.366 (ploughed for 100 yards throughout living memory). It continues over stile, along by side of Golf Links, over stile and across field (ploughed for 200 yards approx., throughout living memory) Ord. No.364, through gate, across pasture field Ord. No.330 and through field gate onto a Private Accommodation Road (not repairable by the inhabitants at large) south west of the church to join with County Road No.39 in Thurlestone village.”* The route currently recorded on the Definitive Map is not shown joining the county road as described.

This discrepancy was noted by the County Council during an earlier review in the late 1960s and early 1970s, when it was decided that map be amended. That review was never completed and the issue remained outstanding until the current review.

## **2.2 Description of the Route**

The route starts at Bantham, by the Sloop Inn, and proceeds generally south south eastwards across fields and along a private access road west of the church, then turns eastwards to join the county road in the village on the corner by the war memorial. This east-west section, between points E – F as shown on drawing number EEC/PROW/09/80 runs over a private road believed to be owned by the parish council. It is not recorded on the County Council’s list of highways maintainable at public expense.

## **2.3 Documentary Evidence**

### Definitive Map and Statement

The Definitive Statement makes it clear that the route joins County Road No. 39.

### Highway Records

The extent of the County Road (No. 39) is shown on current and earlier highway records. E – F is not included.

### Thurlestone Parish Council Submission for the Definitive Map

The initial Parish Council claim states that the footpath runs “...along a Private Accommodation road (not repairable by the inhabitants at large) at back of church until it joins the County Road (No 264).” The parish council appear to have used different road numbering but, from the annotated map they submitted, the road referred to as No. 264 is the same as that shown on the County Council’s records as No. 39.

## **2.4 Rebuttal Evidence**

No rebuttal evidence has been received.

## **2.5 Discussion**

There is no provision in statute for deciding whether, in the case of conflict, the map or statement takes precedence. However, where a route does not appear on the definitive map, the fact that it is included on the statement could be adduced as evidence in support for a modification order to add the route to the definitive map.

The description given in the Definitive Statement is precise regarding the junction of this footpath at the County Road and it appears that there was simply a clerical error with regard to recording the small section by the war memorial on the Definitive Map itself.

## 2.6 Conclusion

It is recommended therefore, that a Modification Order be made to vary the particulars of the Definitive Map to correctly show the public footpath continuing between points E-F, as shown on drawing number EEC/PROW/09/80.

### 3. Suggestion 4 – Addition of a public footpath from Footpath No. 4, Thurlestone to Footpath No. 3, Thurlestone

Addition of a public footpath from Footpath No. 4 to Footpath No. 3, part of the south west coast path, between points E – G – H – J, as shown on drawing number EEC/PROW/09/80.

**Recommendation: It is recommended that a Modification Order be made to add this route to the Definitive Map as a public footpath.**

### 3.1 Background

The status of this route was first raised in 1977 when a locked gate was erected between point H and the golf course boundary. There followed considerable discussion and user evidence forms were submitted to the County Area Secretary. The gate was subsequently removed and in 1978, during a general review of the definitive map, Thurlestone Parish Council submitted a proposal to add a public footpath from Eddystone Road, across the golf course to Broadsands and Footpath No. 3. The review was not completed and the matter remained outstanding. It was again raised in 1989 when the Parish Council asked whether the footpath had yet been shown on the Definitive Map as a public right of way. The County Council was at that time dealing with an application for another path elsewhere on the golf course but it was considered appropriate that the Eddystone Road – Broadsands path could better be picked up in the parish-by-parish review.

The path claimed by the Parish Council in 1978 is described as starting from Eddystone Road/Ilbert Road. However, these roads are within the privately owned Yarmer Estate and are not currently recorded as public highways. The route which is now under consideration has therefore been extended along Eddystone Road to where it meets Footpath No. 4, Thurlestone.

### 3.2 Description of the Route

The route starts at Footpath No. 4, Thurlestone at Point E as shown on drawing number EEC/PROW/09/80. It proceeds generally westwards along the private road, Eddystone Road, via Point G to the junction of Eddystone Road and Ilbert Road at Point H. The route continues generally westwards along a path between the boundaries of the properties Thorpe Arnold and Albemar, then through a cycle barrier onto Thurlestone golf course, which it then crosses in a west north westerly direction to join Footpath No. 3 at point J, near a green hut.

The route is signed with a wooden finger post from Footpath No. 4 at Point E as "Footpath to Beach and Coast Path". It is also signed with a wooden finger post from Point H and again where it enters the golf course as "Public Footpath Link to Coast Path". Across the golf course the route is demarcated by black and white posts, to which public footpath waymarks have been affixed.

There is a gate at the entrance to Eddystone Road, which could be closed to vehicles. A gap adjacent to it provides pedestrian access at all times. Signs read "Private - no Parking" and "Please keep dogs on leads and clean up after them."

### **3.3. Ordnance Survey Mapping**

The 2<sup>nd</sup> Edition 25 inch Ordnance Survey map, circa 1907, shows that the Yarmer Estate had not been developed by this time and the golf course not extended to its current boundaries. The area is shown as farmland and no path defined along the line of the route.

The post war A edition mapping, published in 1952, shows by that time the Yarmer Estate was largely developed. Ilbert Road and the eastern end of Eddystone Road had been constructed. A path marked "FP" shown on the present alignment of the route, along the northern boundary of the last property on Ilbert Road, and leading to the edge of the golf course.

The post war B edition mapping, published in 1968, shows Eddystone Road has been constructed by that time. A defined path is shown continuing to the golf course boundary on the present line of the route.

### **3.4 Correspondence – 1977**

There is considerable correspondence concerning the route, dating from 1977, held on Thurlestone Parish Council and Devon County Council files.

In April 1977 Thurlestone Golf Club wrote to the Parish Council informing them of their intention to close the route at the top of Ilbert Road for the period mid-July until mid-September, for the purpose of controlling summer visitors. In response the Clerk to the Parish Council stated that it was very much an established right of way and that the Council would be unlikely to accede to its closure. The Parish Council then wrote to Devon County Council on 2 May 1977 for advice and requesting a ruling on any right that the Club might have in imposing such a closure against the wishes of the parish.

On 26 May 1977 Thurlestone Parish Council advised the Golf Club that, at the recent meeting of the Council, it was unanimously decided that the proposed closure of the route would not be acceptable to parishioners, that it had been in constant use by parishioners for a very great number of years and that it was an established right of way to Broadsands.

In response, on 27 June 1977 the Golf Club contended that there was no public right of way from the top of Ilbert Road across to Broadsands, no such path having been shown on the Definitive Map.

In July and August 1977 a great deal of correspondence followed, between the Parish and County Councils and the Golf Club (all copied in full in the background papers to this report).

On 22 August thirty-two user evidence forms were submitted to the County Council Area Secretary. In an acknowledgement letter of 25 August the Area Secretary gave his view that the statements constituted conclusive evidence of a public right of way and that he would be writing to the Club to confirm this and require that they discontinue the practice of obstructing the footpath.

On 23 September the Area Secretary wrote to the Golf Club requesting written confirmation that the Club accept the footpath is recognised as a public right of way. Also, that the Council appreciated the sort of inconvenience associated with the use of the path on occasions and that they would be pleased to give the Club all reasonable assistance in the matter of way-marking.

On 26 September, in a letter to the Area Secretary, the Parish Council wrote that if the Club did not respond, the only answer would be formal application for the path to be placed on the Definitive Map. In response the Area Secretary hoped that the Club would react in a responsible way and assumed that the Parish Council would do whatever it considers necessary to protect this and any other paths at the time of the review of the Definitive Map.

On 29 November 1977 the Area Secretary wrote to the Parish Council to advise that *“the Golf Club were disposed to accept that there is a public footpath from the end of Eddystone Road “going broadly speaking west to Broadsands”.*” The letter also indicated that a meeting was to be held at the Club on 8 December to agree the exact course of the path.

### **3.5 General Review of the Definitive Map – 1978, not completed**

Under the General Review of the Definitive Map, initiated in the parish of Thurlestone in 1978, the Parish Council submitted a proposal form for the Eddystone Road/Ilbert Road to Broadsands path. It describes the route as running *“From the end of Eddystone Road where it meets Ilbert Road and thence down the footpath between houses and across the golf course to Broadsands and the Coastal Footpath No. 3.”* The proposal form states: *“The footpath was the subject of protracted correspondence between the Area Secretary (Mr L.V. Rallison) and Thurlestone Golf Club after it had been obstructed by the Golf Club in 1977. Following the submission of 40 Declaration Form the matter was resolved and your Footpath Warden Waymarked the route of the path. A further 10 forms are available and were not required. The 40 forms mentioned are held by the Area Secretary.”*

### **3.6 Correspondence 1989 – 2003**

On 6 November 1989 Thurlestone Parish Council wrote to the County Council to ask if the route had yet been shown on the Definitive Map as a public right of way, referring to the earlier correspondence on the matter.

In response the County Council confused it with a different route across the golf course, then subject of a formal application and appeal to the Secretary of State. General correspondence then followed to clarify the route and, on 29 March 1990, the County Solicitor advised that it could better be picked up in the comprehensive parish-by-parish review.

In 2003 Thurlestone Golf Club, in response to a request from the Parish Council, agreed to replace the existing stile onto the course with some form of gate to make access easier but to also restrict cyclists.

### **3.7 User Evidence**

Due to the length of time which has passed and local government reorganisation, the forty user evidence forms referred to in part 3.5 cannot be tracked down. However, a number of other user evidence forms were held on file by the Parish Council, some collected subsequently in advance of the parish-by-parish review. These forms are discussed here.

In total thirty-four user evidence forms have been received, relating to use by thirty-five people. Seven user evidence forms were completed in 1977, five forms were completed in 1995 and a further twenty-two forms, relating to use by twenty-three people, were completed in 1998.

The earliest use reported, of a path from the village to Broadsands, dates from 1915 although this would have been prior to the construction of Eddystone Road as it is today, and the user refers to a gate through a field at that time then over a stile onto the golf course. Most use covers a period from the 1950s through to 1977 or the late 1990s when the forms were completed. The frequency of use varies from several times a year to once or twice each day.

The evidence was collected in relation to only part of the route, from Eddystone Road across the golf course. Most users however, were not residents of the estate and would have been continuing to the village along Eddystone Road, which has no recorded public rights. Only ten users were residents of the Yarmer Estate during the period of use and would have had a private right over Eddystone Road itself.

The vast majority of users refer to a stile giving access from the Yarmer Estate onto the golf course. Those who completed evidence in 1977 also report the locked gate, erected by the golf club in the summer of that year, blocking the stile access.

Several users report a notice stating "*private property*" erected on the golf course in around 1976 or 1977. Most refer to other notices on the golf course asking walkers to keep to the path and/or to follow the white posts and to be aware of flying golf balls. Many comment that the owners must have been aware of public use due to the frequency and the fact that they had erected the notices and waymarks.

### **3.8 Landowner/Rebuttal Evidence**

A meeting was held with the Directors of the Yarmer Estate (Thurlestone) Ltd and County Councillor Sir Simon Day to discuss this, and another route (suggestion 5) affecting the estate, and they have subsequently written a letter to confirm their views. Accordingly, the company accepts that there has been for many years a signposted route along Eddystone Road joining with the path across the golf course to meet with the coastal footpath.

Three other residents of the estate have also responded in respect of this route and one of these has completed a Landowner Evidence Form. They acknowledge that the public have free and uninterrupted use of the route on foot but that there is no public right to drive or park on the estate roads. They also comment that Yarmer Estate employ someone to close the gate into the estate to prevent unauthorised traffic on bank holidays. One landowner believes it to be a permissive path. They have no objection to anyone on foot using Eddystone Road but object to cyclists.

One resident objects to any attempt to change ownership of the route and expresses concern that any change to the current situation would incur additional maintenance costs to the residents. Although such points cannot be taken into consideration in determining what public rights subsist, recording the route on the definitive map as a public footpath would not affect ownership or any private rights over the route. Devon County Council would be responsible for maintaining the surface of the route to a standard suitable for use as a public footpath only.

The current Secretary/Manager of Thurlestone Golf Club, Terry Gibbons, has also written in response to the consultation and completed a Landowner Evidence Form on behalf of the golf club. He states that the club do not believe the route to be public, although they are aware of members of the public using the route on a regular basis, and have not required people to ask permission before using the route. He states that the golf club has stopped people, but not for some years, and have told walkers the route was not public on various occasions when they wander from the designated path.

With regards to notices, Mr Gibbons states that the club have put private notices on this path where it enters their property and that there used to be a gate locked once per annum. The Golf Club are opposed to the addition of another route across the golf course and have concerns regarding changes to coastal access legislation.

### **3.9 Discussion**

From user and mapping evidence a route appears to have physically existed along Eddystone Road and across the golf course to Broadsands since Eddystone Road was developed in the early-mid 1950s. Prior to the full construction of Eddystone Road, use of a path from point H across the golf course to Broadsands appears to have been in conjunction with a cross-field path along the general line of the route or via Ilbert Road.

Use of the route was called into question in the summer of 1977 by the erection of a locked gate between point H and the golf course boundary, blocking access to a stile. This action by the Golf Club, primarily to control summer visitors, triggered the collection by the Parish Council of user evidence forms at the time to show that a public right of way had been

established. Many of the forms submitted to the County Council at that time cannot be traced but a number are available, having been retained by the Parish Council or collected at a later date.

Most users refer to a stile at the golf course boundary but none report any obstruction on the route prior to 1977. Several users report “private” or “private property” notices on the golf course at around that time but no other signs indicating that the path was not public. After 1977 users report that the path across the golf course was marked by white posts and signs asked walkers to keep to the path.

User evidence submitted shows regular, consistent and apparent uninterrupted use of the route for the twenty year period prior to 1977 by between eleven and twenty-six users, whose use appears to be as of right, that is without force, secrecy or permission. This use is considered to be adequate to satisfy the requirements of section 31 of the Highways Act 1980.

The presumption that the path had been dedicated to the public could be contradicted by evidence to show that the landowner never intended to dedicate the way. However, during the twenty years prior to July 1977, there does not appear to have been any evidence to show any lack of intention to dedicate. The present Club Secretary is opposed to the path being recorded as public but does acknowledge regular public use. The signs on the golf course also ask walkers to keep to the ‘public footpath’ and are therefore further acceptance of public use and perceived status.

In 1977, following a brief dispute, the route therefore appears to have been accepted as a public footpath by the Golf Club. This is evidenced by file correspondence, waymark posts and signs erected by the Club, and the replacement of the stile with a cycle barrier. Regular and consistent use of the route by the public has continued to the present day and is acknowledged by the Estate and Golf Club.

Wooden public footpath fingerpost signs, erected by the South Devon Heritage Coast Team in the 1980s, at both ends of Eddystone Road and at the edge of the golf course have not been challenged by either the Yarmer Estate or the Golf Club.

### **3.10 Conclusion**

It is considered that sufficient evidence exists to show that a public right of way not presently shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist.

Therefore, it is recommended that a Modification Order be made adding a public footpath between points E-G-H-J (Suggestion 4), as shown on drawing number EEC/PROW/09/80.

#### **4. Suggestion 5 – Addition of a public footpath from Eddystone Road (Suggestion 4) to Footpath No. 16, Thurlestone**

Addition of a public footpath from Eddystone Road (Suggestion 4) to Footpath No. 16, Thurlestone, between points G – K - L, as shown on drawing number EEC/PROW/09/80.

**Recommendation: It is recommended that no Modification Order be made in respect of this suggestion.**

#### **4.1 Background**

This route was proposed by Thurlestone Parish Council during a general review of the Definitive Map in the late 1970s. The review was never completed and the claim remained outstanding until it was picked up during the current parish-by-parish review.

## 4.2 Description of the Route

The route starts at Eddystone Road (Suggestion 4) at point G, as shown on drawing number EEC/PROW/09/80. It proceeds south south eastwards along a defined path to Warren Road at point K, then continues southwards again along defined path, across Ilbert Road to a gate at point L leading onto Thurlestone Golf Course and Footpath No. 16, Thurlestone.

The path is defined by adjoining property boundaries. It is approximately 1.5 – 2 metres wide and has a grass and gravel surface.

## 4.3 Ordnance Survey Mapping

The 2<sup>nd</sup> Edition 25 inch Ordnance Survey map, circa 1907, shows that the Yarmer Estate has not been developed by this time. The area is shown as farmland and no defined path is shown on the line of the route.

The post war A edition mapping, published in 1952, shows by that time the Yarmer Estate was largely developed. Ilbert Road and the eastern end of Warren Road had been constructed. A path marked “FP” is shown on the present alignment of the route, between Warren Road and Ilbert Road and marked “CT” for cart-track between Ilbert Road and Footpath No. 16.

The post war B edition mapping, published in 1968, shows the entire length of the route physically in existence by this time and marked “path”.

## 4.4 General Review of the Definitive Map – 1978, not completed

Under the General Review of the Definitive Map, initiated in the parish of Thurlestone in 1978, the Parish Council submitted a proposal form for the route, described as *“the existing footpath leading from Eddystone Road at “A” to Ilbert Road at “B” and thence to point “C” linking onto Footpath No. 16 which leads to Yarmer Beach. The route is now marked with a dotted line on the enclosed map”*. The map referred to is not available but from the description it is clear that this is the path now being considered. Five user evidence forms accompanied the proposal form and these are discussed at 4.5.

## 4.5 User Evidence

Five user evidence forms were submitted for this claim in 1978. No further user evidence has been received since or during the current review.

Use covers a period from 1939 until 1978, when the forms were completed. Frequency of use varies from several times a year to daily.

Two of the users were residents of the Yarmer Estate and would therefore have had a private right to use the roads and paths within the estate. Their evidence cannot therefore be considered as valid public user.

Of the remaining three forms, one relates to use of the upper part of the path leading from Eddystone Road to Ilbert Road. One user refers to a notice in Eddystone Road stating *“Public Footpath”*. It is possible that this is one of the signs relating to Suggestion 4. Another user refers to a notice stating *“To the beach”*. The location of the notice is given as “point B” but there is no map or description given for this point. One user also refers to a gate leading onto the golf course.

## 4.6 Landowner/Rebuttal Evidence

The Directors of the Yarmer Estate object to the addition of a public footpath over this route. They state that the path affords pedestrian access for residents between properties on the estate and is a convenience to the owners of the properties. They also state reasons of

safety and security which, although understandable concerns, are not issues which can be considered relevant for the purposes of determining whether public rights have already been established.

Four other residents of the estate have also responded in respect of this route. Three of these have completed a Landowner Evidence Form, although one only to state that they do not own the land crossed by the route but that it was always used as a footpath. One adjoining owner states that they believe the path to be public, used regularly and another that they do not believe the route to be public.

#### **4.7 Discussion**

The claim in 1978 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.

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.

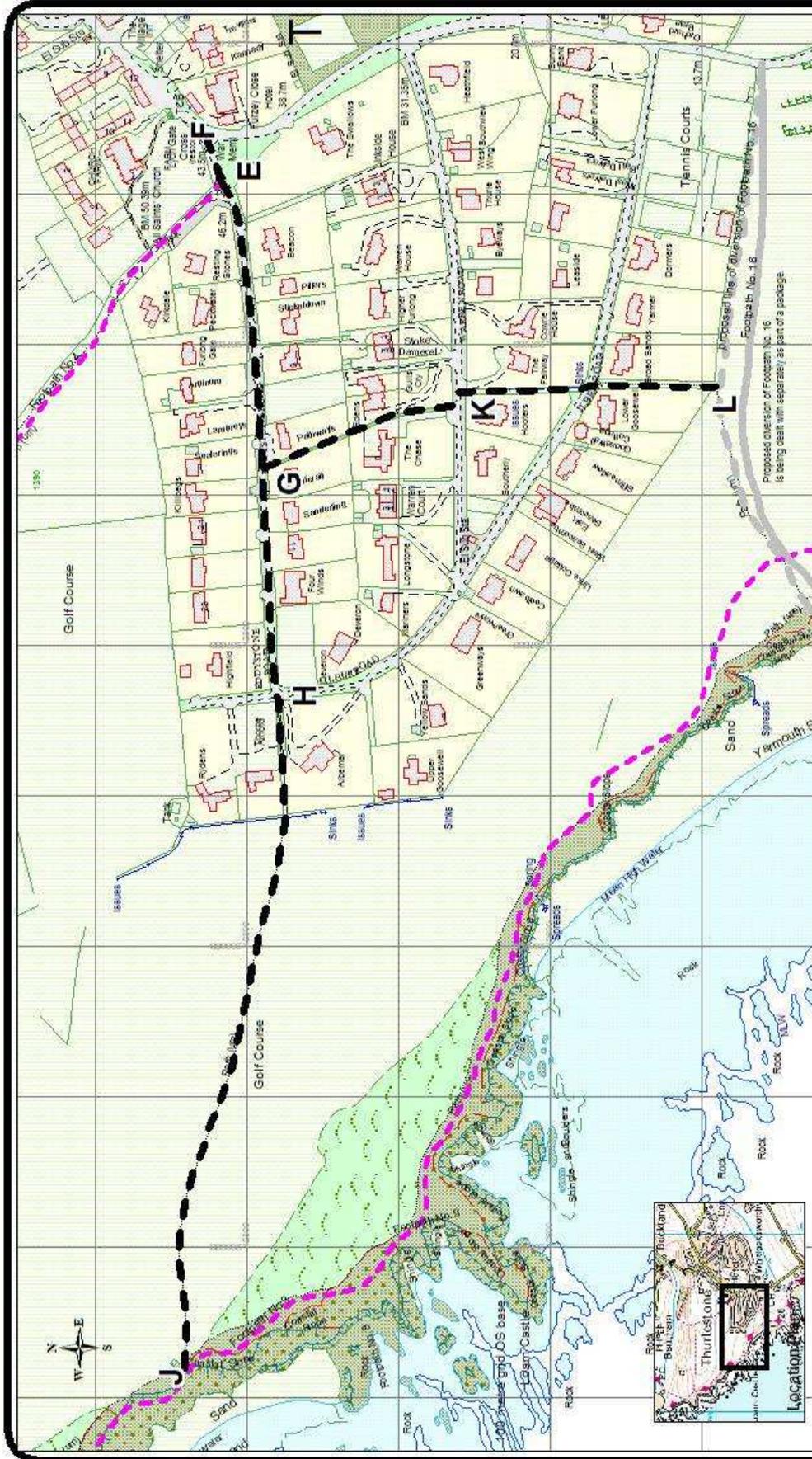
Historical mapping shows the southern part of the route has been physically available since at least the early 1950s and the entire route by at least the mid 1960s. The depiction of the route on Ordnance Survey mapping however, does not provide evidence of status.

The user evidence available is very limited, with use from only three people considered valid public use. This is not considered sufficient for dedication of a public footpath at common law to be implied.

#### **4.8 Conclusion**

It is therefore recommended that no Order be made.





map ref: SX 6642 - 6742

**THURLESTONE DEFINITIVE MAP REVIEW**

- SUGGESTION 3: VARIATION OF PARTICULARS OF FOOTPATH NO. 4, THURLESTONE (AMENDMENT OF DEFINITIVE MAP TO AGREE WITH DEFINITIVE STATEMENT)
- SUGGESTION 4: ADDITION OF PUBLIC FOOTPATH ALONG EDDYSTONE ROAD TO FOOTPATH NO. 3 THURLESTONE
- SUGGESTION 5: ADDITION OF PUBLIC FOOTPATH FROM EDDYSTONE ROAD TO FOOTPATH NO. 16, THURLESTONE

**Notation**

	Existing footpath
	To be added
	Suggestion 3: Footpath No. 4, Thurlestone
	Suggestion 4: Footpath addition
	Suggestion 5: Footpath addition

-  E - F (30m approx)
-  E - G - H - J (800m approx)
-  G - K - L (315m approx)

drawing number: EEC/PROV/09/80  
 date: July 2009  
 scale: 1:2500 (at A3 only)  
 drawn by: HFB



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