

**Definitive Map Review
Parish of Thelbridge (part 1)**

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

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

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a public bridleway along Westcott Lane past Westcott Farm and over the River Dalch (parish boundary) to Bridleway No. 9, Washford Pyne at Wonham Farm between points A – B – C – D as shown on drawing number ED/PROW/09/73.

1. Summary

The report examines the route referred to as Suggestion 1 arising out of the Definitive Map Review in the Parish of Thelbridge in the district of Mid Devon.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in 1950, included 11 footpaths and 2 CRB (carriage road used as a bridleway) put forward by the parish council. One of the CRBs had recently been taken over by the County Council as a highway maintained at public expense and was deleted and 2 footpaths were omitted as considered to be private footpaths. The other CRB, was included as a footpath on the draft map. An additional footpath, not initially claimed by the parish council was later included to connect with a claimed footpath in the adjacent parish of Washford Pyne. A total of 11 footpaths were recorded on the Definitive Map and Statement for Thelbridge published in 1958.

The reviews of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, did not produce any suggestions for change. The Limited Special Review of Roads Used as Public Paths (RUPPS), carried out in the 1970s, did not affect this parish.

The following Orders affecting the Definitive Map for Thelbridge have been made and confirmed since 1958.

Mid Devon District Council (Footpath No. 4, Thelbridge) Public Path Diversion Order 1997
Devon County Council (Footpath No. 10, Thelbridge) Public Path Diversion Order 2006.

The review was opened in Thelbridge with a parish public meeting held on 11 February 2009. No changes to the definitive map were proposed by the parish council and after a review of some evidence received for changes, a consultation map was published in July 2009 with 4 suggestions for change. A report on suggestion 2 will be brought to the next committee meeting and suggestions 3 and 4 concerned the diversion of two sections of Footpath No. 6 which will be dealt with under delegated powers. The suggestion is to be considered at this committee meeting is suggestion 1 – Addition of a public bridleway from the county road between Doctor's Corner and Millbarn Cross south along Westcott Lane,

past Westcott farm and the River Dalch at the parish boundary to join Bridleway No. 9, Washford Pyne at Wonham Farm.

3. Consultations

General consultations have been carried out since with respect to these proposals and as at 1 October 2009 the responses have been:

County Councillor Michael Lee	-	no response
Mid Devon District Council	-	no response
Thelbridge Parish Council	-	comments on all suggestions
Washford Pyne Parish Council	-	no response
British Horse Society	-	no response
Byways and Bridleways Trust	-	no response
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
Open Spaces Society	-	no response
Ramblers' Association	-	no response
Trail Riders' Fellowship	-	evidence forwarded to Devon Green Lanes Group
Cyclists Touring Club	-	commented on all suggestions
Devon Green Lanes	-	commented on all suggestions

4 Conclusion

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a public bridleway (suggestion 1 – Westcott Lane) between points A – B – C - D as shown on drawing number ED/PROW/09/73.

5. Reason for Recommendation/Alternative Options Considered

To progress the review of the Definitive Map in Mid 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 implications.

8. Equality Considerations

There are no implications.

Ian Harrison

Electoral Division: Newton St. Cyres & Sandford

Local Government Act 1972

List of Background Papers

Contact for enquiries: Mike Jenkins

Room No: ABG

Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence File	2005 to date	DMR/THEL

tw191009pra
sc/parish of Thelbridge
2 hq 301009

Suggestion 1: addition of a Public Bridleway along Westcott Lane past Westcott Farm and over the River Dalch (parish boundary) to Bridleway No. 9, Washford Pyne at Wonham Farm between points A – B – C – D as shown on drawing number ED/PROW/09/73.

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1. Basis of Claim

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 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.

Wildlife and Countryside Act 1981, Section 53[3][c] enables the Definitive Map to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows –

[i] that 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] that a highway shown in the map and statement as a highway of a particular description ought to be there as a highway of a different description; or

[iii] that there is no public right of way over land shown in the map or statement as a highway of any description, or any other particulars contained in the map and statement require modification.

Wildlife and Countryside Act 1981, Section 56[1] – 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.

2. Background

A public right of way along Westcott Lane running from the county road between Doctor's Corner and Millbarn Cross was not claimed as one of the 11 footpaths and 2 CRBs surveyed in the parish in September 1950 and the route currently has no recorded status.

In March 2005 a local resident telephoned to ask about the status of a route used in the parish that corresponded to the route now being considered. A letter was sent in response advising that that route was not currently recorded as a public bridleway or other public right of way, but that it could be looked into when the ongoing Definitive Map review reached Thelbridge. Evidence of use as a public right of way (without permission, force or secrecy) would be needed for a minimum of twenty years.

In 2006 another local resident telephoned to advise that following the recent sale of the farm and buildings at Westcott the route through the farm and across the river had been obstructed and a hunting gate locked. The review was subsequently opened in Thelbridge at a parish public meeting in February 2009 and following receipt of a number of user evidence forms the route was included as suggestion 1 in the consultation map of suggestions for change.

3. Description of the Route

The route starts at the north end of Westcott Lane (point A), on the county road between Doctor's Corner and Millbarn Cross and follows a defined lane/drive bordered by hedge banks in a southerly direction for 680 metres to the farm buildings. It then continues south as a headland path across two arable fields before going along a section of a defined lane (now quite overgrown but useable on foot) for a further 660 metres and through a hunting gate to the River Dalch and the parish boundary. After crossing the river at a ford, the route continues as a headland path going briefly north east and then south easterly for 260 metres to meet Bridleway No. 9, Washford Pyne, north of Wonham Farm in the parish Washford Pyne. The section of drive to the farm yard is 3 – 4 metres wide with an improved surface. The section through the fields and lane has an earth/grass surface with some stones present. The river crossing at the ford has a gravel bed higher than the bed of the river either side and the final section to Wonham is across a grass field.

4. Consultations

Thelbridge Parish Council replied 'Thelbridge Parish Councillors agreed the suggestions for change items 3 and 4 but were unanimous in their disapproval of suggestions 1 and 2'.

No response was received from Washford Pyne Parish Council by 9 October 2009.

The Devon Green Lanes Group (DGLG) wrote supporting the suggestion for Westcott Lane. They advise that they believe the term Halter Path referred to in the Finance Act records indicates a route used for both led and ridden horses. There are references to a halter path being used by ridden horses in Colebrooke Parish Council minutes and the Crediton Rural District minutes.

The DGLG have forwarded copies of maps from different publishers dating from 1900s to 1972 which they advise shows Westcott Lane recorded as a through route throughout this time and depicted as other routes which are known to be public today. The maps are supporting evidence for the proposal.

No other responses or replies have been received.

5. Documentary Evidence

Witheridge Tithe Map & Apportionment 1837 & Washford Pyne Tithe Map & Apportionment 1839

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring generally indicates carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.

Both parishes had undertaken a communication of tithes into a rent charge payable to the rector in lieu of tithes. The southern section of Thelbridge parish south of the road from Thelbridge Cross to Nomansland including Westcott was included in the parish of Witheridge in 1837. The map has colouring on the roads that are now generally known as county roads. The apportionment shows that Westcott was owned by Richard Commins Esquire, occupied by William Elworthy and amounted to 199 acres. The current Westcott lane leading to the farm is not shown on the map. The area adjacent to and containing the house and buildings is numbered 1994 and 1995 and described as 'waste and curtilage' and 'house, curtilage and lane'.

The three fields between Westcott and the river, appear unaltered today and were called West Hill, Middle Hill and Lower Hill all described as arable. The short section of lane north of the stream is numbered 2024, described as lane and river but recorded under a separate holding totalling 7 acres, known as Stockparks, owned and occupied by Thomas Bragg. The holding also includes four fields east of the lane, described as arable, orchard and two as pasture and field number 2018, an area south of the river between the mill stream (the parish boundary in 1837) and the river (which is now the parish boundary).

Wonham is included in the map and apportionment for Washford Pyne owned and occupied by Thomas Bragg totalling 93 acres. On the Washford Pyne map, all lanes and roads appear coloured including what are now county roads and some routes which are now recorded as public bridleways or footpaths ie part of Bridleway No 1 and Footpath No 3, Washford Pyne.

A coloured route is shown in the field number 77, between the river and Wonham Farm and described as 'coppice' with state of cultivation 'coppice wood'. The lane leading to the farm buildings that is now a county road is numbered 98, included under Wonham and also coloured in the similar manner and described as 'Lane', state of cultivation 'coppice wood'.

Ordnance Survey and Other Maps

The Ordnance Survey and other mapping do not provide evidence of the status of a route but rather its physical existence over a number of years.

Christopher Greenwood's Map of the County of Devon 1827 Section SS71 Chawleigh & SS81 Rackenford.

A lane appears to be shown leading to a group of buildings called West... (*difficult to read*) although the line of the way shown appears to be further east than the current lane leading to the farm (consistent with Tithe Map of 1837).

Cassini Historical Maps are reproductions of the Ordnance Survey One-Inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Landranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919. The area in the vicinity of Westcott Lane/Wonham Farm

is found on the borders of three Map sheets 180 Barnstaple & Ilfracombe, 181 Minehead & Brendon Hills and 191 Okehampton & North Dartmoor.

Old Series (from sheets originally published in 1809)

The map shows a road/lane running north from 'Westcot' and partly unfenced to the river. No track or lane is shown continuing south to the river or across to Wonham. Wonham is not connected to the road between Washfordpyne and 'Black Boy' and access to Wonham is shown from Penford Mill to the south west or via a track north east through the woods to Washford Pyne. Routes that today would correspond to Footpath No. 3 and Bridleway No. 9 Washford Pyne.

Revised New Series (from sheets originally published in 1899-1900)

The northern section of the lane to Westcott Farm is depicted as it is today and in a similar manner to Unmetalled Roads. South of the farm a route is depicted as an unfenced, unmetalled road/lane for two thirds of the distance to the river and as a fenced/hedged road/lane to the river. On the Wonham side a road/lane is shown for the south most section prior to the junction to the current Bridleway No. 9, Washford Pyne. The now county road to Wonham from the Black Dog to Washford Pyne road (recorded as a second class road) is shown as an unmetalled road partially unfenced.

Popular Edition 1919 (from sheets first published in 1919)

The depictions of roads on this edition changed with a total of 9 categories of roads shown plus the inclusion of Bridle and Footpaths. Westcott Lane is shown as a road/lane that appears to be coloured corresponding to a minor road. South of the farm an uncoloured, dotted line (unfenced on dotted side) is shown leading to a section of what appears to be a coloured lane/road with solid sides which stops short of the river. The county road from Black Dog to Washford Pyne corresponds to an Other Road over 14' but this road is uncoloured, indicating a private road. The road leading to Wonham is shown with solid sides, under 14' wide and also uncoloured as are many other roads in the vicinity that are now county roads.

OS 1st Edition 25" to a mile 1880-1890

The map indicates a gate across the north end of Westcott Lane where it joins the county road. About half way along the lane/drive to Westcott, a double peaked line is shown indicating a visible track which continues along the lane past the farm buildings. The track continues along the headlands of field numbers 360 and 357 and the track has a separate compartment/field number of 356 which also includes the section of enclosed lane at the eastern boundary of field number 352, to an enclosed lane north of the river.

At the river Dalch there is a Ford and Footbridge shown on the map and the double peaked line is shown from the river bank across the field (number 83 of 1.022 acres) east of the crossing and through a gate continuing south east through what appears to be a lane, although wider than usual (ordnance number 87 0.811 acres) past coniferous trees. The lane opens out at the south end and the track shown joins another lane leading to Wonham Farm.

A similar double peaked track is shown through woodland north east from Wonham Farm along the route of what is now Bridleway No. 9, Washford Pyne.

OS 2nd Edition 25 inch to a mile 1904 -1906

The second edition mapping is similar to the first edition but does not shown individual trees. This edition was used for the Finance Act maps from 1910. The section north of the river is similar to the first edition although there is now a single peaked line along the headland, but still in the separate compartment number 356. The ford and footbridge are shown at the

river and a track is shown leading from the river and south east to Wonham. At Wonham a field hedge or fence has been removed from the south boundary of field number 86 and the field size has increased from 3.588 to 3.814. The trees in the wide lane from the river to Wonham are shown as being deciduous and conifers.

OS 1 inch to a mile 1946 Sheet 176 Exeter

The map shows a fenced, defined lane from the county road through Westcott to the river, shown as unfenced along the section through the fields. No track is shown between the river and Wonham.

OS 1 inch to a mile 1960 Sheet 176 Exeter

The map shows a fenced, defined lane from the county road through Westcott and part of the way to the river. No track is shown between the river and Wonham.

OS 1 inch to a mile 1967 Sheet 176 Exeter

The map shows a fenced, defined lane from the county road to just south of Westcott Farm. A dashed line is then shown continuing south across the river and appears to continue to Wonham. A dashed line meaning 'path' in the key. The map also shows in red dashed lines Bridleway No. 9 and Footpath No. 3 Washford Pyne at Wonham.

Bartholomew's Half-inch Maps 1955 Exmoor

The map shows a road/track from the north end of Westcott Lane past Westcott Farm, across the river and past Wonham as a continuous through route.

OS 1st Edition Post War A Edition 1:2,500

The mapping shows a double pecked track south from the county road to the farm, with gates across the lane at the county road junction and on the north side of the farm yard. A pecked line continues through the two headland fields south of the farm labelled track. The track in the two fields has now been included in the field numbers and the section of lane north of the river has been allocated an individual number. The river crossing is not annotated ford or footbridge. On the Wonham side the three compartments 83, 86 and lane 87 have been amalgamated into one field now numbered 1913. No track or path is shown across this field between the river and Bridleway No. 9. The recorded public rights of way Bridleway No. 9, Washford Pyne and Footpath No. 3, Washford Pyne are shown by double pecked lines labelled path.

Finance Act, 1909-10

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

Under Thelbridge parish Westcott Farm is included as hereditament number 99 which covers the land crossed by the suggestion from the county road to the river Dalch/parish boundary. The farm is occupied by W Blackford on a 14 year tenancy from 1896 and owned by W Barrons of Burnham as executors (for Mr Philip Pyle). On page 1 of the field book under the heading Fixed charges, Easements, Common Rights and Restrictions is written 'Footpath through Stourton to Marchweeke & Westcott Farm' and 'Halter Path through roadway to

Wonham'. On the second page under the heading Particulars, description, and notes made on inspection is included 'Public Rights of Way through Ord Nos 356 – 382 – 449'. Under the next heading Charges, Easements and Restrictions affecting market value of Fee Simple is included Public Right of Way £4 x 23 yp = £92 say £90. Ordnance numbers 356, 382 and 449 correspond to the southern section of the suggested route between the farm building and the stream, the area of the farm yard and buildings and the northern section of the route. In the schedule attached to the lease between The executors of Mr Pyle and Mr W J Blackford of August 1909, the compartments are named and cultivation described as:- 356 - Road and Road, 382 – Buildings & Little orchard and Buildings & Orchard and 449 – Road and Road.

In Washford Pyne parish Wonham Farm is hereditament number 1. The holding was occupied by P May on a 7 or 10 years tenancy at a rent of £90 but was later changed to now Crang and rent amended to £115 and owned by W Bragg of Whitechurch in Hants. The field book refers to 'Right of Way £1 x 25 = £25' on the second page but no ordnance numbers are included. An amount of £25 is included in the Deductions on the fourth page under the item 'Public Rights of Way or User'.

The yp refers to years purchase, a method of valuation used to convert a property's income flow (rent) into an appropriate capital sum on the basis that the capital value of a property is directly related to its income producing power. This method of valuation seems to be often used in Finance Act valuations. In this case the method is used to give a reduction; a possible loss on the rental value of the farm of £4 for the presence of the public right of way which amounts to a sum of £90 being allowed as a deduction. This method of valuation was also used for the farm as a whole and was calculated at £160 (the actual or estimated rent for the 208 acre farm in the field book being stated as £150) less £15 = £145 x 23 yp = £3,335.

OS Name Book 1903

OS name books were a record of correct spellings of the names of places that would appear on OS maps. The names would be signed as correct by the owner, occupier or by somebody signing in an official capacity such as the District Surveyor.

Westcott Lane is described as 'an occupation road extending from a point about ¼ mile NE Sommermoor Cross to Westcott'. The spelling for Westcott Lane and Westcott were both signed for by Mr W Blackford as occupier.

Parish Survey under National Parks & Access to the Countryside Act 1949

In Thelbridge, the paths for which forms were submitted, have been coloured blue on the map and numbered by the parish council. The maps are also annotated with pencil markings believed to be made by the county surveyor's office. Adjacent to Westcott Lane is an arrow and the writing '*? OMISSION Per Mr Cole this is not deemed to be a public right of way*'. Mr Cole and Mr Ayre were the parish councillors who completed the parish survey forms and Mr Cole, of Menchine Farm in the east of the parish near Nomansland, had been a member of the parish council since 1913, chairman from 1919 to 1956 and had died by April 1958. No route was shown along Westcott Lane on the draft definitive map for the parish.

One of the two CRBs (carriage road used as a bridleway) was included as number 7 on the list of paths and was surveyed by Mr Cole. The route was described as '*Commences opposite Westcott Lane and ends at Thelbridge-Witheridge Road*' and the grounds for believing the path to be public stated as '*used occasionally*'. After submission of the parish survey forms the proposed paths were inspected by Mr Pearce of the Rural District Council in February 1952 who commented on the form '*Very short cut to Witheridge, gates in order*'

and indicated the status to be a public footpath. The county surveyor has commented on the form 'Discuss with DRP. Is this a private or public accommodation road (marked CRB by P.C. No it is an arable field. Cs Recom – Include in Draft Map marked CRB by P.C. is this a cart track over field. Per Mr Cole a cart track'. The county solicitor's office then has annotated the top right of the form '? Marked CRB – Green (Unmetalled) Lane used as Bridleway, but DCC Surveyors says footpath. This footpath would only appear to be a short cut to Witheridge for anyone approaching from Westcott as from any other direction the route would not be a short cut.

No objection appears to have been made to the omission of the route through Westcott or the inclusion of Footpath No. 7 as only a footpath in the draft or provisional definitive maps for the parish.

In Washford Pyne parish, path number 9 was shown on the map ending at the lane running north west of Wonham. (now Bridleway No. 9) and path number 3 was shown as going from north of Pyne Farm to Wonham and then north west to the parish boundary south of Marchweeke Farm. No route was claimed north from Wonham Farm to the river Dalch and parish boundary and there does not appear to have been any objections to its omission from the map. When contacted by the County Council as part of the uncompleted 1968 county review of the definitive map, the Washford Pyne parish clerk, Mr Saunders, replied in December 1968 'In answer to your enquiry Survey of Public Rights of Way the enclosed ordnance Survey map to my knowledge seems to be correct as I know of no other footpaths or Bridleways in use'.

Thelbridge Parish Council Minutes & Parish Council Correspondence

There is a reference to the suggested route from 1913. Mr Blackford from Westcott joined the parish council in April 1913.

13 October 1913

Present Mr F Tucker (Chair), Mr E Cole, Mr J Harris junior, Mr W Blackford and Mr W Maunder. The above meeting was called to consider the question of repairing the Foot Bridge between Woodington Farm and Washford Pyne and also another Foot Bridge between Westcott Farm and Wonham Farm. After considerable discussion it proposed by Mr J Harris and seconded by Mr Maunder and unanimously resolved that no action be taken in the matter at present as the council did not consider they were legally liable for the repairs of these Bridges.

Mr Fisher, the owner/occupier of Woodington/Hele's Tenement was a member of the parish council at this time but not present at the above meeting.

The bridge between Heles Tenement (part of Woodington Farm) had been discussed on three previous occasions. In 1896 the council agreed that a letter be sent to Mr Fisher to say that a complaint had been made of the footbridges between Hele's tenement & Washford and to ask him to repair the same as the *(is y missing for they or is the word council missing)* considered it the duty of the occupier of the land on which the bridge is situated to do so, not the Parish Council (Carried). In December 1898 that a letter be sent to Mr Fisher's agent reporting the foot bridge at Hele's Tenement and in January 1903 A Parish Council meeting was held for the purpose of considering a complaint from the Rev Rodwell of Washford Pyne as to the bad state of a foot bridge between his parish and Thelbridge. It was proposed that a letter be written to the owner of Hele's tenement, requesting the said owners to act at once to put the path and footbridge in a proper state of repair.

On 9 May 1977 there was a reference to a number of accidents at the entrance to Westcott Farm.

The clerk was asked to write to the District Council regarding two danger points on local roads:

1. At the entrance to Westcott Farm, where there had been 6 accidents recently, fortunately without personal injury.

In December 1977 the parish council considered the map of public rights of way in the parish
9 December 1977 Parish Meeting 20 members present.

The clerk then showed a map of public footpaths and other public rights of way in the parish. This had been issued by the Devon County Council, which is reviewing the situation and asked to be notified of any errors, omissions, or other changes. No comments were made.

Note at end of minutes.

This meeting was called by Mr Hayes primarily to discuss Parish Hall matters and minutes were taken by him as Secretary of the Hall Committee. The minutes written here are not required and were taken because of a misunderstanding.

In August 1981 there was a reference to Footpaths & Bridleways No action was considered necessary ie No complaints, No closures etc.

The Parish Council do not support suggestion 1 becoming a public right of way.

Aerial Photographs, 1946-9, 1999-2000, 2005-6 & 2006-2007

The 1946 aerial photograph shows a clearly defined well maintained lane leading to the farm buildings. South of the farm the field hedges beside the route are as they are today. The lane north of the river is visible as a lane with hedges either side. The section across to Wonham is across the field as the western hedge of the lane shown on the 1906 mapping appears to have been removed by this time.

In 1999 the north section shows a clearly defined lane to the farm. The section of the lane north of the river cannot be seen as the hedgerow trees have not been kept trimmed. No visible tracks are present on the headland sections of the route.

In 2005-2006 the lane to the farm is clearly shown and the hedges kept trimmed on either side. A track is visible along the field headlands of the first two fields but the lane north of the river is hidden by trees.

In the most recent aerial photograph from 2006-2007 the lane leading to the farm has trimmed hedges and there is no track visible along the headlands or across the grass field to Wonham.

HM Land Registry

Records held by Land Registry confirm that the northern and section ends of the route on the north side of the river cross land owned by Mr & Mrs Mark Preece since March 2006 and the centre section by the farm buildings (now in course of conversion to a live/work unit) crosses land owned By Mr & Mrs P Kingsland since March 2006. Following purchase of their respective portions of the farm a deed of grant of right of way was entered into by Mr & Mrs Kingsland and Mr & Mrs Preece, the former giving Mr & Mrs Preece a full free and unimpeded right of way to the owners and occupiers of Westcott Farm along the section of lane owned by Mr & Mrs Kingsland for all purposes connected with the agricultural use of the property. The deed includes condition relating to reasonable use, compensation for damage during use, contribution to maintenance and to erect a gate at the southern end of the roadway (the boundary between Westcott Barn and Westcott farm.

The southern section in Washford Pyne parish crosses land owned by Mr R Rottenbury from 1993. Mr & Mrs Elston have owned the bungalow at Westcott adjoining the route since 2003, that portion of Westcott originally sold to Mr Hancock in 1978 for the construction of a

dwelling house and Mr M Perkins the farmhouse, east of the farm buildings, since January 2008.

In the conveyance between Mr W F J Blackford and Mr Hancock of September 1978 it states that the land passes to Mr Hancock together with the rights and easements set out in the first schedule. Clause 1 of the first schedule reads *'Full right and liberty in common with the vendor and all others entitled to a like right to pass and repass at all times and for all purposes connected with the agricultural or residential use of the property over and along the lane coloured Brown on Plan No. 1 and on the plan annexed hereto and numbered two ..'*

The land registry documents files with the title for Westcott also records the selling of Westcott to Mr W J Blackford in March 1919 by W Barrons & The Rev W French, An assent by F E Blackford and W T Blackford to F E Blackford in December 1934, an assent by Lloyds Bank Ltd in October 1970 to Mr W F J Blackford and probate of the will of W F J Blackford in December 2000.

Auction Particulars for the sale of Westcott Farm in 2006

In the pre auction enquiries for Westcott Farm, under Section 12 Rights of Way part (b) (i) and (ii) the solicitors/executors for Mr Blackford's estate and sellers of the farm, Mr I and Mr A Penny of Penny Veitch Solicitors replied *'It was thought that the lane leading away from the farm was a Public Footpath but the local search indicates that one has not been registered although the Sellers have no further information as they have not been in occupation of the property.'*

When contacted for more information as to the basis of this statement Mr Penny advised that they were unable to provide much in the way of information. The reason for the reply given to the enquiry was because they were uncertain as to the status of any third party rights possibly over the lane, which looked historically as though it could have connected into other paths at Wonham Farm. They were not aware of anybody ever having endeavoured to exercise rights of this nature but did not occupy the property.

6. User Evidence

A total of 28 user evidence forms have been received and the period and type of use is recorded on the chart of user evidence.

The user evidence forms recall use of the route from the 1930's (Mrs Ayre) to 2006/2007 when the hunting gate had been locked, signs erected and users challenged. Use was mainly on foot or horseback and with some members of the Gutteridge and Hutchings families reporting additional use on bicycle or with a vehicle. Prior to 2006/2007 no users report that route being obstructed, their use of the route challenged or seeing any signs to indicate that the way was not public. Several believe that the owner knew the public was using the way, had no objections and spoke to Mr Blackford when passing Westcott. The users believe the status of the path to be a byway, restricted byway (on more recent user forms) or bridleway and in response to the question 'Why do you think the path is public?' have made various comments such as 'it was used a lot then (in 1930s – 1950s)', 'local knowledge', 'known to be public', 'used by farmers for droving cattle & mill use', 'common knowledge' and 'always been used by public'.

Users record using the route occasionally, 2-3 times a year, a few times a year, frequently, several times, 10 + and often. The frequency of use is as may be expected for a route located in a rural area and only a couple of neighbouring properties. The use of the route as a circular ride/walk would mean a minimum walk of 4.2 km via Footpath No 3 and Footpath No 14 via Marchweeke Farm, although the footbridge on this footpath has been missing for

some years and there is no ford crossing, the alternative shortest route would be via Bridleway No 9 and Footpath no 6, a distance of 4.7 km or 5 km via Footpath No. 3, Bridleway No. 1 and road to Thelbridge Cross. For horse riders the shortest circular route would be 6.4 km via the county road from Wonham, Bridleway No. 1 and county road to Thelbridge Cross or 7.8 km via Bridleway No. 9 and the county roads past Henceford and Mill Barton.

Some users have mentioned the river crossing as an obstruction and this would be more difficult to cross on foot unless wearing wellingtons or similar boots during the winter or after heavy rainfall.

Most users do not report obtaining permission to use the route at Westcott apart from Mr Phillips says that he obtained permission from Mr Blackford who said it was a public track. Mr Mills advises that in response to question 8 b on the form, he was told to keep to the track because an old public road and always had permission from Bill (Mr Blackford). Mr Hutchings advises obtaining permission from W Blackford in the 1960s (courtesy) who said it was a public roadway as did Mrs Hutchings who comments the owner assured us it was a public byway. No users refer to having any permission from or been told the way was public by Mr Crang or Mr Rottenbury, the landowners at Wonham.

It was known locally that Mr Blackford permitted the local hunt to cross his land and questions raised as to whether use of the route was only by people as part of the hunt either on horseback or as foot followers. Users have been contacted and asked to clarify if their use was as part of the hunt as this would not count as use as of right but as use with permission. Responses have been received and those users who have hunted have confirmed that they have either not used the route when hunting or have confirmed that they had used the route in a personal pleasure capacity and not just when hunting.

Mr Hutchings rented fields on the east side of Westcott Farm between 2003 and sale of the farm in 2006. Any use by Mr Hutchings, his family and relatives, Mr & Mrs Gutteridge and family would not be considered use as of right during the period of the tenancy and use by these seven individuals has been excluded from 2003. Mr G Cox is understood to have rented part of the farm at a similar time and so his use from 2003 has also been excluded.

In conclusion, the user evidence forms received are considered to show use of the way as a public right of way as of right, that is without force, without secrecy and without permission.

In addition to the user evidence forms included in the chart, a number of user evidence forms were received from people who may not have used the route as a member of the public using a public right of way but had some knowledge of the route through knowing, working for or renting land from Mr Blackford, the previous owner of Westcott Farm or from residing locally or having local knowledge. Some forms referred to use for driving livestock, sheep shearing, being a school friend of Mr Blackford and for work including a post round. As these forms did not record an individual's use of the route as a public right of way, they have not been included with the user evidence forms mentioned above or included in the chart or summary. Some of those users were contacted for any comments they may wish to make regarding their knowledge of the route being used as a public right of way and advised as follows.

Mr A Friendship worked part time for Mr Blackford from 1981 until Mr Blackford retired. He advised "during all that time there I was there I never saw any members of the public or anyone else go through, there was no stile or a gate to Wonham Farm. I understood from Mr Blackford it was a right of way at one time".

Mr Derick Nott rented some land at Westcott Farm, fields on the north west side of the lane, from 1975 to 1988. He was not sure if the way was public but was aware of regular use by hikers/horses since 1975. He had seen hikers/walkers all year round – mostly summer weekly.

7. Landowner Evidence

Westcott Farm was tenanted by Mr Blackford in 1910 as recorded in the Finance Act field book and the freehold was purchased by the family in 1919. The farm then appears to have been in the same family until the death of Mr W F J Blackford in 2000. After his death the farm and estate was managed by his personal representatives and executors, Mr I Penny and Mr A Penny of Penny Veitch solicitors of Crediton.

Wonham Farm was also tenanted in 1910 and was purchased by Mr Crang in 1921 (sale particulars of 1993 advised farmed by the same family since 1912) whose son retired and sold Wonham in 1993 to the current owner Mr Rottenbury.

Landowners/occupiers and adjoining landowners/occupiers were contacted during the consultation stage and forwarded landowner evidence forms for completion. Mr & Mrs M A Preece (purchased Westcott Farm at a closed auction in March 2006), Mr & Mrs P Kingsland and Mr M Perkins have contacted Jonathon Cheal of Thring Townsend solicitors to respond on their behalf. Mr Cheal submitted a comprehensive and detailed submission and a full copy is included in the backing papers. The submission includes a detailed history of the ownership of Westcott Farm from 1837, details of tenancy agreements from 1909 and 1966, private rights of way and maintenance and comments on the user evidence forms received. Also included is an examination of the documentary evidence including the Tithe Map 1837, OS maps, Object Names Book 1904, Finance Act 1910, Handover map 1929, parish survey of rights of way in 1950, evidence relating to Wonham Farm and comments on an email sent to Mr & Mrs Kingsland in 2007 by the officer explaining how unrecorded public rights of way not recorded on the definitive map may exist.

“The objectors’ position in principle is that there are no public rights of way on Westcott Lane. With one single exception, there is no evidence whatever to indicate the existence of public rights of way on Westcott Lane, and much evidence to the contrary.

Evidence to the contrary

- The land crossed by the route has always been in private ownership, private occupation and tenancy
- The Object Names book states that the occupation road only went to Westcott
- Lack of through route (for example Tithe Map, the words ‘Westcott Lane’ on the OS map, the object Names Book occupation road ‘to Westcott’ and the inconsistencies between the way in which Westcott and Wonham were dealt with under the 1910 Finance Act and the Parish Claim)
- Existence of private rights and maintenance
- Lack of any claimed public right of way under the Parish Claim for Westcott Lane, whether originally in 1950 and/or on review in 1978
- Paucity of user evidence as of right (some private use, some permissive, some by trespass). What evidence there is, which could be said to amount to public use as of right, is predominantly on foot (but we question whether any such use actually arose)
- Questions as to capacity to dedicate, and lack of intention to dedicate
- Tenancy Agreement provisions and gates

The single exception: the only factor which could possibly point the existence of a public right of way is the questionable use of the expression ‘halter path’ in the Finance Act 1910

material. A 'halter path' is not a statutory or legally defined definition or term, and we submit that in any event it must be less than a public bridleway.

No order should be made and confirmed in relation to a public bridleway on Westcott Lane unless the evidence justified such a finding on the balance of probabilities. If despite our arguments to the contrary Devon County Council were minded to make a modification order of some status, it is a question of what status that would be. Not a byway or restricted byway, nor could it be a bridleway and a halter path is less than a bridleway and because there is no evidence at all of a halter path on Wonham Farm, and because the public user evidence is insufficient of itself to prove public bridleway use as of right.

Therefore, if Devon County Council were to recommend the making of a modification order of some type, it could only be of public footpath status on Westcott Lane, but the question that would then need to be asked is where the evidence lies of public use and dedication. It is our submission that no such evidence exists, or not sufficiently to make an Order."

Mr Kingsland also returned a completed land owner evidence form and confirmed that he does not consider Westcott lane to be a public right of way. He has seen members of the Hutchings and Gutteridge families using the route in 2006/2007 and these people were stopped and told the way was not public. Notices had been erected by their neighbour Simon Preece and Mr Kingsland had erected gates across the lane at the northern and southern boundaries of the land pertaining to Westcott Barn. They purchased the farm outbuildings adjacent to the route in 2006.

Mr Rottenbury confirmed that he had owned Wonham Farm for 16 years and only recalls seeing Mr Hutchings twice on horseback in those years and turning back two ladies on horseback approx 4-5 years ago. The hunt and hunt followers always asked for permission and the hunting gate on the Westcott side of the river was erected in 1994 with his permission for hunting use only and locked the last few years.

Mr Perkins advised that he had owned Westcott Farmhouse since early 2008 and purchased the property on the understanding that there was no right of way. He has commented that he believes the intent to develop the public right stems from a private right dispute over his and adjoining land. That private right is now settled and the public right ?? not be justified.

Mr & Mrs Elston of Westcott (Bungalow) advise they have owned the property since 2003 and have not considered the way to be public for 17 years. They have not been aware of anyone using the lane and have not requested anyone to ask permission, stopped or turned back anyone or told anyone the way was not public. There used to be a gate at the top of the lane.

The previous owner of Wonham Farm, Mr Eric Crang was contacted and advised in a telephone conversation that he had left Wonham about 15 years ago, having lived there since birth for 62 years. He believed his father moved to the farm in 1912 and that the hedge/bank on the west side of the lane that previously existed between the river and south of Wonham was removed during his father's occupation. He thought that a route from Westcott was rarely used although a lot of walkers had used the Two Moors Way along Bridleway No. 9, Washford Pyne (a regional walking route now also called the Coast to Coast walk from Ivybridge to Lynmouth) and they offered bed and breakfast at the farm for walkers. Mr Crang agreed that if you saw walkers or riders passing the farm buildings, you would not have known whether they had come via the existing recorded bridleway or footpath or possibly from across the river.

8. Rebuttal Evidence

Within their submission, Thring Townsend have also included statements from five local residents who state that they were not aware of Westcott Lane being considered as or used as a public right of way. A report was also obtained from Mr Woodwark (Amenity Horticulturist) giving his opinion that due to the overgrown condition of the section of lane north of the river crossing, the lane would not have been passable to horses for a number of years.

9. Discussion

The mapping evidence appears to show that a through route was available from the time of the OS 25" to a mile, 1st edition 1880-1890 and a track is depicted from the farm buildings to the stream on the current OS mapping. No obvious route to Westcott was shown on the Tithe map of 1837 and the present lane had been constructed after this date but by 1900 as shown on the OS mapping on and after that date. The maps viewed do not confirm the status of any roads or tracks shown.

To make a recommendation for the making of a Modification Order there must be sufficient evidence of presumed dedication to show that a public right of way can be reasonably alleged to subsist. The higher test on the balance of probabilities is applied when confirming an order and would be the test considered by an inspector if an order is made and objected to; or by the order making authority prior to confirmation of an order if no objections are received.

Under section 31 Highways Act 1980 there needs to be sufficient evidence to show

- That there has been uninterrupted use as of right by the public over a period of 20 years (the period of 20 years is counted back from the date on which the public's right was first brought into question)
- And during the 20 year period there is no evidence of a lack of intention to dedicate by the landowner (examples of this could be through notices clearly displayed on the way, an interruption of the public's use of the route or a deposit made by the landowner under section 31(6) of the Highways Act 1980)

At Common Law the evidence would need to be sufficient to show that during the relevant period

- The owner(s) of the land had the capacity to dedicate a public right of way,
- That there was express or implied dedication by the owner(s) and also
- That there is evidence of acceptance of the claimed right of way by the public

Following the sale of the farm to Mr & Mrs Preece and Mr & Mrs Kingsland, action was quickly taken to show that a route through the farm was not a public right of way and would be considered a clear calling into question of the public's right to use the route as a public right of way. Under section 31 there would therefore need to be sufficient evidence to show use by the public between 1986 and 2006.

The user evidence forms contain the statement requiring users to answer the questions as fully as possible and not to keep back any information. There is no reason to doubt that the forms received have not been completed accurately and honestly and the forms record uninterrupted use of the way by a reasonable number of people since the 1970s and by between 17 to 22 people during the years 1986 to 2006. Although it has been noted that some users have not used the way as of right throughout all their period of use, the number of users and nature of use supports the route being used as a public right of way before 2006. Use being mainly on foot and horseback would support bridleway status.

Use when hunting or use when a tenant of Westcott farm has not been included and use by the public when they believed the route to be a public right of way, would not be considered trespass.

Evidence of a lack of intention to dedicate during the twenty year period must be shown by the landowner or somebody acting on their behalf such as a tenant and no evidence has come forward that during that time, any actions or steps were taken by the landowners or anybody acting on their behalf to do so to show a lack of intention to dedicate. As mentioned by Mr Cheal in his submission at paragraphs 3.3 – 3.6 the tenancy agreement made between Mr F Blackford and Mr W Blackford in 1966 contained in clause 20 the requirement that the tenant was to prevent trespass over any part of the holding and not to allow any footpaths to be created; but would not be considered sufficient evidence of a lack of intention to dedicate following the House of Lords decision in *Godmanchester and Drain*. The tenancy agreement would also not have been in force after Mr W Blackford became the owner of Westcott Farm in 1970.

During the family's ownership Mr Blackford or the previous owners had not made a deposit under section 31(6) of the Highways Act 1980 to prevent new rights of way being claimed over the land and although deposits have now been made by the new owners, they do not apply respectively.

Mr Rottenbury advises seeing Mr Hutchings and telling two ladies on horseback who came across the river 4-5 years ago that the route was not public. This would be during the twenty year period although no users who completed forms have advised being stopped or turned back. Following the House of Lords judgement actions deemed sufficient to show lack of intention have to be overt and brought to the attention of the people using the route.

Thelbridge parish council did not put forward the route to be recorded on the definitive map as a public right of way in 1950. The omission was queried at District or County Council level and Mr Cole, the parish council chairman, was contacted and the parish survey map was noted 'per Mr Cole this is not deemed to be a public right of way'. Footpath No. 7, Thelbridge, which goes across a field opposite the north end of Westcott Lane, was subsequently recorded on the definitive map. This path was referred to as 'a useful shortcut' by Mr Pearce of the District Council in 1951, although it would only appear to be a short cut if coming from Westcott Lane but could well have been regularly and sufficiently used by the occupiers at Westcott and so was considered to have become a public right of way through this use.

In late 1977 the County Council commenced a review of the definitive map and forwarded copy maps to the parish council. The maps were examined at a parish council meeting on 9 December 1977 and the minutes report 'The clerk then showed a map of public footpaths and other public rights of way in the parish. This had been issued by the Devon County Council, which is reviewing the situation and asked to be notified of any errors, omissions, or other changes. No comments were made.

Although this indicates that the parish council did not consider the route to be a public right of way in 1950 or 1978, subsequent use by the public can lead to a way becoming public in the future. The user evidence records a number of users from the mid 1970s.

In addition to consideration under section 31, evidence of dedication under common law is also reviewed. The Finance Act 1910 field book for Westcott Farm records the compartment numbers through which the right of way passed (the information being presumably provided by and subject to challenge if though incorrect by the landowner or someone acting on his behalf such as his agent). This would indicate that the landowner accepted the way was public at that time and would appear to be evidence of dedication by the landowner.

Although an allowance was also given for the public rights of way in the hereditament of Wonham Farm, this could have been just for Footpath No. 3 and Bridleway No. 9 Washford Pyne (both claimed by the parish council in the 1950s and recorded on the definitive map) and would not be sufficient evidence of dedication.

The tenancy agreement of 1966 clearly indicates Mr Blackford's intention that he did not want any footpaths to be created but this would not be retrospective or apply to any rights of way that had already been dedicated by a previous landowner.

The footbridge over the River Dalch as recorded on the 1st and 2nd edition 25" to a mile mapping of 1880-1890 and 1906 was discussed at a parish council meeting in October 1913. The footbridge between Woodington Farm and Washford Pyne was also discussed at the same meeting. The council resolved that they were not legally liable for the repairs of the bridges. The footbridge between Woodington (Heles Tenement) and Washford Pyne was previously discussed in 1896, 1898 and 1903 when the parish council resolved to contact the owner/occupier to put the bridge into repair.

The interest and actions of the parish council would suggest that this footbridge was considered public at that time and the fact that the bridge between Westcott and Wonham was discussed at the same time may suggest that this footbridge was also used by the public. In 1913 the council decided they were not liable for the bridge and did not contact the owners/occupiers to undertake repairs. It has been stated that the ford and footbridge at the River Dalch were only for the benefit of Mr Bragg, the owner at Wonham Farm who also owned the four fields and section of lane across the river in 1837 until sold to Mr Pyle and becoming part of Westcott in 1897. It is however, possible that the ford and footbridge could have been used by members of the public as part of a through route from or to Westcott and it was these members of the public who brought the condition of the bridge to the parish council's attention in 1913. As the footbridge was no longer required by the farmer at Wonham to visit his land across the river, it is likely that no maintenance was undertaken to the footbridge after 1897.

Neither Washford Pyne nor Thelbridge Parish Councils claimed a public right of way along the route of the suggestion in the 1950s or at later reviews, which would suggest that they did not consider the route to be public or used by the public at those times.

In the pre auction enquiries in 2006 the sellers of Westcott Farm had advised that it was thought that 'that the lane leading away from the farm was a public footpath' and when contacted further advised that the reason for the reply was because they were uncertain as to the status of any third party rights possibly over the lane, which looked historically as though it could have connected into other paths at Wonham Farm. They were not aware of anybody ever having endeavoured to exercise rights of this nature but did not occupy the property.

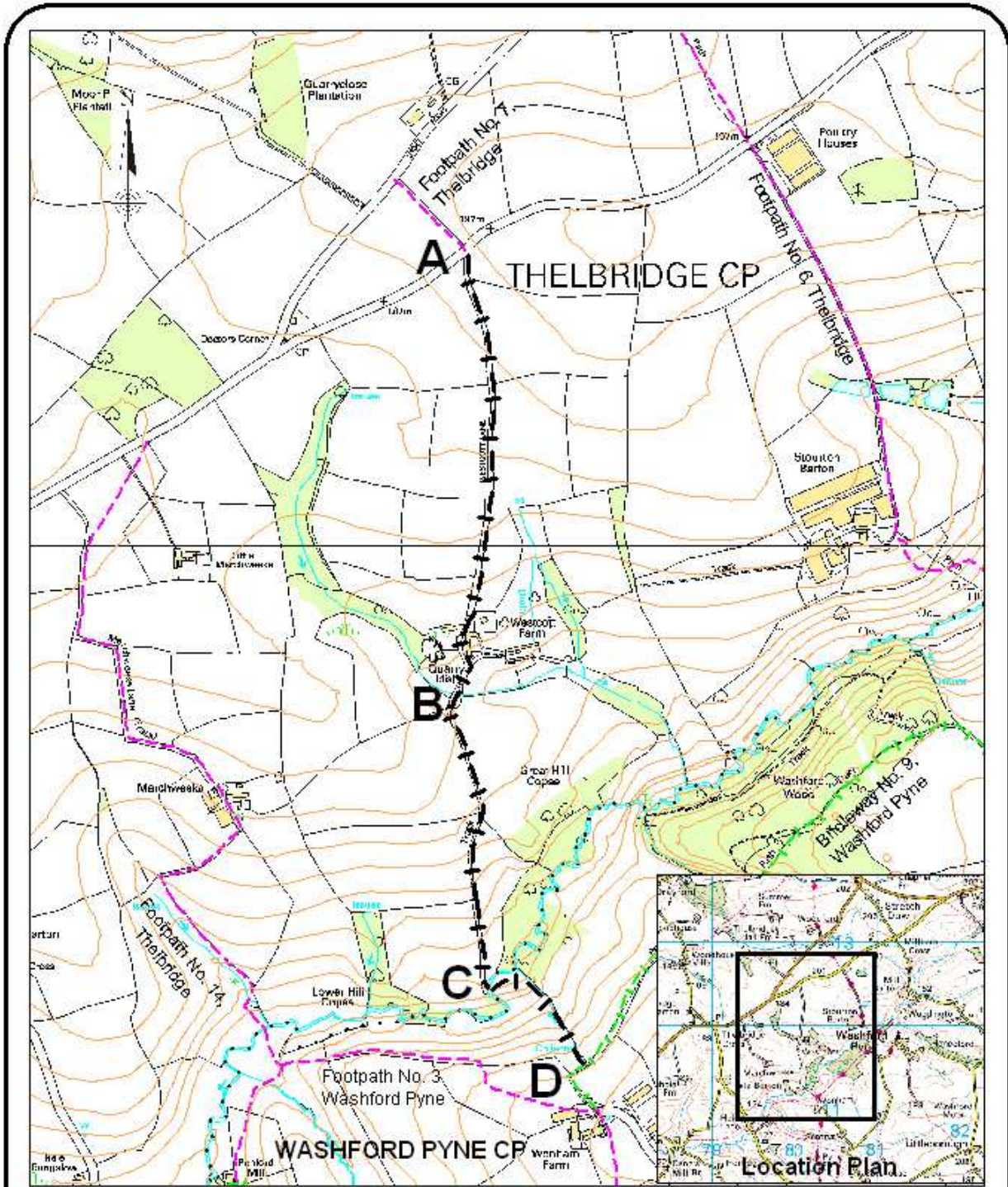
At common law it is necessary to show acceptance of the right of way by the user and this could be shown by the user evidence received.

10. Conclusion

There is evidence of use, predominantly on foot and horse, to show regular use of the route by the public as of right and believing the route to be a public right of way. In the absence of any evidence being discovered to show the landowner's lack of intention to dedicate during the twenty year period, (that would be considered sufficient following the House of Lords decision in *Godmanchester and Drain*); there appears to be sufficient evidence to show that a public right of way, namely a public bridleway, can reasonably be alleged to subsist under section 31 of the Highways Act 1980.

There is also some evidence (Finance Act) that a public right of way had previously been dedicated by a previous landowner at Westcott prior to 1910, and once dedicated by a landowner and accepted by the public, the right remains (once a highway, always a highway) unless removed under a legal process

When considered overall, the evidence examined is considered sufficient to recommend that a Modification Order be made to modify the Definitive Map and Statement by adding a Public Bridleway south along Westcott Lane (from the road between Doctor's Corner and Millbarn Cross) pass Westcott Farm and over the River Dalch (parish boundary) to Bridleway No. 9, Washford Pyne at Wonham Farm between points A – B – C – D as shown on drawing number ED/PROW/09/73.



map ref SS 8011, 8012

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - THELBRIDGE
SUGGESTION NO 1 - ADDITION OF
PUBLIC BRIDLEWAY - WESTCOTT LANE**

drawing number EEEC/PROW/09/73
 date Jul 2009
 scale 1:10,000 at A4
 drawn by TW

Notation To be added
 A - B - C - D Public Bridleway (1600 metres approx) **-|-|-**
 (Section C - D located in the parish of Washford Pyne)
 Existing Public Footpaths **- - - -** Public Bridleways **-|-|-**

Edward Chorlton
 DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

