

**Definitive Map Review
Parish of Thelbridge (part 2)**

Report of the Executive Director of Environment, Economy and Culture

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

Recommendation: It is recommended that no Modification Order be made in respect of Suggestion 2 – Somerwell Lane.

1. Summary

The report examines the route referred to as Suggestion 2 arising out of the Definitive Map Review in the Parish of Thelbridge.

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 Thelbridge.

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 1 was brought to the last 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 2 – Addition of a public bridleway from the county road known as Drayford Road in the parish of Witheridge (point A), going south past Coombe House, then south west along Somerwell Lane to the parish boundary (point B), and proceeding south east and east as a headland path to north of Summer Farm (point

C), then continuing east across four fields to the county road (B3042) between Witheridge & Thelbridge Cross (point D) or continuing south past Summer Farm, then east and south to the county road (B3042) by Summer View bungalow (point F).

3. Consultations

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

County Councillor Michael Lee	-	no response
County Councillor Jeremy Yabsley	-	commented on the suggestion
Mid Devon District Council	-	no response
Thelbridge Parish Council	-	comments on all suggestions
Witheridge Parish Council	-	commented on the suggestion
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	-	no response
Devon Green Lanes	-	commented on the suggestion

4. Conclusion

It is recommended that no Modification Order be made to modify the Definitive Map and Statement by adding a public bridleway (suggestion 2 – Somerwell Lane) between points A – B – C - D or between A – B – C – E – F as shown on drawing number ED/PROW/09/83.

The Definitive Map review for the parish of Thelbridge has now been completed. Should any valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than be deferred.

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.

Chris McCarthy

Electoral Division: Newton St Cyres & Sandford and South Molton Rural

Local Government Act 1972: List of Background Papers

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

tw050210pra
sc/thelbridge
2 hq 110210

**Appendix I
To EEC/10/35/HQ**

Suggestion 2: addition of a Public Bridleway from the Witheridge to East Worlington road in Witheridge parish, south past Coombe House along Somerwell Lane to north of Summer Farm (Higher Somerwell) and then dividing into two routes going east and south to the Thelbridge Cross to Witheridge road (B3042) between points A –B – C – D and/or between points A –B - C – E – F as shown on drawing number ED/PROW/09/83.

Recommendation: It is recommended that no Modification Order be made in respect of Suggestion 2 – Somerwell Lane

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 the old Somerwell Lane from Coombe House and in the vicinity of Summer Farm was not claimed as one of the 11 footpaths and 2 CRBs surveyed in

Thelbridge by the parish in September 1950. Neither was it claimed by Witheridge as one of the 19 paths surveyed by the parish in October 1950 or subsequently or during later reviews and the route is not recorded on the Definitive Map apart from the first 130 metres to Coombe House which also follows the route of Footpath No.19, Witheridge.

Prior to the review been opened in Thelbridge, the process by which unrecorded public rights of way may be added to the Definitive Map had been explained to a local resident who advised that they considered there were several 'old byways' in Thelbridge and surrounding parishes. 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 and examination of the Finance Act records for Thelbridge parish, that recorded a public right of way in fields crossed by the alleged way, the route was included as suggestion 2 in the consultation map of suggestions for change.

3. Description of the Route

The route starts on the county road between Witheridge and East Worlington known as Drayford Road (Point A) and follows a defined drive to Cannington Farm/Coombe House (the first section being the route of Footpath No. 19, Witheridge), in a southerly direction for 130 metres and passes through a field gate. The way continues south, east of Coombe House and then south west and south along a hedged lane for 320 metres to the end of the lane, barbed wire fence and the parish boundary (Point B). The way continues south as a headland path, the hedge having been removed in one field, then south and east along the headland of the next field for 500 metres to Point C. From here the route continues east as a headland path across five fields, the hedges having been removed from the last three fields, for 800 metres to the county road (B3042) between Witheridge and Thelbridge Cross (Point D). From point C an alternative way continues south past Summer Farm, between farm buildings and along the headland concrete drive for 400 metres to Point E and continues east and then south along the drive and over two cattle grids for 520 metres to the county road (B3042) by Summer View (Point F).

The surface of the way is a concrete drive to Coombe House and then grass/earth in the lane past Coombe House and grass/earth from Point B – C – D. South of Summer Farm the way follows the concrete driveway to the county road.

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'.

Witheridge Parish Council clerk wrote to advise, following consideration at a parish council meeting, that there is hearsay locally that Somerwell Lane in Witheridge Parish has been used by both foot and horse traffic. The clerk was advised that evidence of use or otherwise is required and nothing further has been received from the parish council.

Cllr Yabsley (South Molton Rural) advised that he believed the hedges at Summer Farm south of Coombe House were removed in the late 1980s earlier 1990s as he was working at Cannington Farm at that time. The green lane was passable up to that time, assessed from Coombe House but would not have been heavily used. He understood it was the old post route to Thelbridge.

The Devon Green Lanes Group (DGLG) wrote supporting the suggestion 2. They have forwarded copies of maps from different publishers dating from 1900s to 1972 which they advise shows the routes recorded as a through route throughout this time and depicted as

other routes which are known to be public today. The Group believes that these maps are supporting evidence for the proposal.

No other responses or replies have been received.

5. Documentary Evidence

Witheridge Tithe Map & Apportionment 1837 & Thelbridge Tithe Map & Apportionment 1844

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 can indicate 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 Witheridge map has colouring on the roads that are now generally known as county roads.

Witheridge Tithe Map

The map depicts the northern section of the route (point A to point B) as it is today and the section of lane is included in apportionment number 1063 together with the house described as House Offices. The lane is uncoloured.

Thelbridge Tithe Map

The section of lane north of Woodford (west of point D) is recorded under apportionment number 397 described as Lane, state of cultivation Road . A lane (also not coloured) is shown going south from Higher Somerwell and appears to be included in apportionment number 335 described as House, Homestead, Gardens & Roads but does not continue south to the county road. Under Lower Summerwell, apportionment number 312, lying north of Lower Summerwell is described as Moor and Roadway, cultivation pasture but does not correspond to the suggested route.

Ordnance Survey and Other Maps

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

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

The map records the two sections of lane south of point B and west of point D that have since been removed. A pecked line track is shown along the parts of the route that pass along the field headlands.

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

The second edition mapping is similar to the first edition but does not show individual trees. This edition was used for the Finance Act maps from 1910.

OS 1 inch to a mile 1960 Sheet 176 Exeter & Sheet 175 Okehampton

The drive to Summer Farm (Somerwell on the map) point F to point C, is shown with a pecked line on one side indicating one side without a permanent boundary such as a hedge. A defined lane running west from point D is shown which changes to a track unfenced on one side to west of point C. The section of the route running north to point B is shown as a dashed line (Footpaths and Tracks, which could include hedged lanes that were shown in

this manner). Footpaths No. 5 and 6, Thelbridge are shown in the same way. Public rights of way recorded on the definitive map were included on OS maps from 1967 editions.

Bartholomew's Half-inch Maps 1955 Exmoor & 1975 North Devon 1:100,000

A defined lane depicting an apparent through route is shown for the route through Summer Farm and north of Woodford to Coombe House.

OS 1st Edition Post War A Edition 1:10,000

The hedges have been removed on one side of the two sections of lane and the drive from the road to Summer Farm (called Higher Somerwell) is shown. No track is shown south of point B to the farm or west to point D.

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.

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.

The field book entry for Higher Somerwell, number 21 occupier R Hooper owner Mr Knight Bruce of Crediton, states public right of way through ord nos 312, 453, 305, 322, 340, 341, 342, 343, 613 – fields crossed by the recorded Footpath No. 4, Thelbridge and Footpath No. 7 Thelbridge (field 453) and also ordnance numbers 344, 612, 611, 560, 315, 586 & 556. These other fields do not have any recorded public rights of way passing across them but are all crossed by the route of suggestion 2 (from the field with point C to point F).

On the second page under the heading for 'Charges, Easements and Restrictions affecting market value of Fee Simple' is written Public Rights of Way £7 x 22 yp = £154 say £150. The figure of £150 being carried forward to page 4 in the line for Public Rights of Way or User.

Woodford Farm is hereditament number 28, occupied by Mr Ford, owner Mr Pullen and no public rights of way through any ordnance numbers are noted although the recorded Footpath No. 5, Thelbridge passes across 6 ordnance numbers in the hereditament.

Coombe House is hereditament number 21 in Witheridge parish, occupied by Mary Cutcliffe and owned by George Cutcliffe as trustee, and no public rights of way are noted on the field book. Footpath No. 19, Witheridge passes through the hereditament.

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.

In the OS Name Book for Witheridge & Thelbridge of 1903 Somerwell Lane was described as a lane extending from road about 20 chains (402m) southwest of (*unreadable*), westwards for about 30 chains (603m). The name signing for the correct spelling and description is Mr R Hooper, occupier who also signed for Higher Somerwell as occupier.

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

In Thelbridge parish no paths relating to the route/s considered as suggestion 2 were put forward by the parish as part of the parish survey of paths to be included in the definitive map. No objection appears to have been made to the omission of the route/s in the draft or provisional definitive maps for Thelbridge parish.

In Witheridge parish, Footpath No. 19, Witheridge from the county road north of Coombe House (point A) goes south for 130 metres then turns east through Cannington to meet Footpath No. 2, Witheridge south west of Witheridge was included by the parish and included on the definitive map. No path was shown continuing south past Coombe House and along the track called Somerwell Lane to the parish boundary with Witheridge.

Thelbridge Parish Council Minutes & Parish Council Correspondence

There is no reference to a route along Somerwell Lane or a route going through or near Summer Farm in the parish council minutes between 1894 and 2003. In reviewing the rights of way in the parish for the uncompleted 1969 and 1977 Devon County Council reviews, no suggestions were made regarding the routes of suggestion 2.

Witheridge Parish Council Minutes & Parish Council Correspondence

In July 1945 the parish council agreed to pay for 4 stiles, one to be between Mr Cox's fields on the path leading from Cannington to Somer (believed to relate to Footpath no. 2, Witheridge/Footpath No. 4, Thelbridge).

The parish council meeting of 19th September 1950 records 17 footpaths marked on schedules and a subsequent parish meeting on 10th October 1950 confirmed the list of the 19 footpaths being put forward by the parish including Footpath No. 19, Witheridge from Footpath No. 2 through Cannington and past Coombe House to the Drayford road.

In March 1971 a report was given by a member of the footpaths working party explaining how the paths had been walked, the condition of each being reported and after a council representative had marked all sites for posts the working party had obtained voluntary labour to fix them. With regard to the County Council's Rights of Way Survey, Mr Usmar offered to obtain more information about the letter and a parish meeting would be held.

In April 1971 the council held a special meeting to reply to the Devon County Council's Public Rights of Way survey in order that roads used as public paths can be clarified. The parish council decided that (a) there are no byways open to all traffic, (b) there are no bridleways (c) all footpaths as shown on the definitive map shall remain as such.

In July 1971, it was reported that a working party had examined all footpaths on the map and Mr Usmar had written a detailed report and survey. Four more councillors to be added to the working party to meet the divisional surveyor.

The County Council commenced a review (uncompleted) in 1977 and in April 1978, the parish clerk confirmed that all the footpaths had been walked and public meeting held. The map was retained because of a footpath involving Rowden and the Grendons and the

landowner had requested a diversion of Footpath No. 8 but no other changes were requested by the parish council.

In May 1980, a teenage local rider made a request to the council for the provision of paths where horses could be ridden with safety away from roads. The council accepted that there were no bridleways in Witheridge parish.

Devon County Council's current Definitive Map Review was opened in Witheridge in December 1989 and it was reported to the Public Rights of Way committee in November 1990; that to date there were no valid proposals for modifying the Definitive Map in Witheridge.

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

In 1946 the hedged sections of lane (now removed) south of point B and east of point D can be seen together with the lane north of point B and the drive to Summer Farm. By 1999 the hedges have been removed.

Aerial photographs from the National Monument Archive taken in 1971 confirm that the hedges of both sections of Somerwell Lane had been removed by then. In 2006-7 no obvious track can be seen in the 4 fields east of point D or south of point B.

HM Land Registry

Title numbers DN558777 Lower Cannington Farm and DN313116 Coombe House both record the private right of way at all times and for all purposes over and along the private road forming part of Coombe Farm for the benefit of Lower Cannington Farm to access a field. This refers to the section of the route where it leaves the driveway to Cannington Farm and runs south for about 50 metres to a field entrance.

6. User Evidence

A number of user evidence forms were initially received. Most of the users had not completed individual maps to accompany their forms and as there were two possible routes and as the landowners maintained that any use on horseback was in connection with the hunt, users were written to and forwarded an additional questionnaire for completion and a unmarked map of the area to show the route used by them personally. Other user evidence forms were received at a later date with completed individual maps.

Subsequently 6 users' evidence was withdrawn and not considered to be use as of right as they had only used the route whilst hunting, would have been deemed to have had permission (visiting friends or working at the farm) or had not used the route in question.

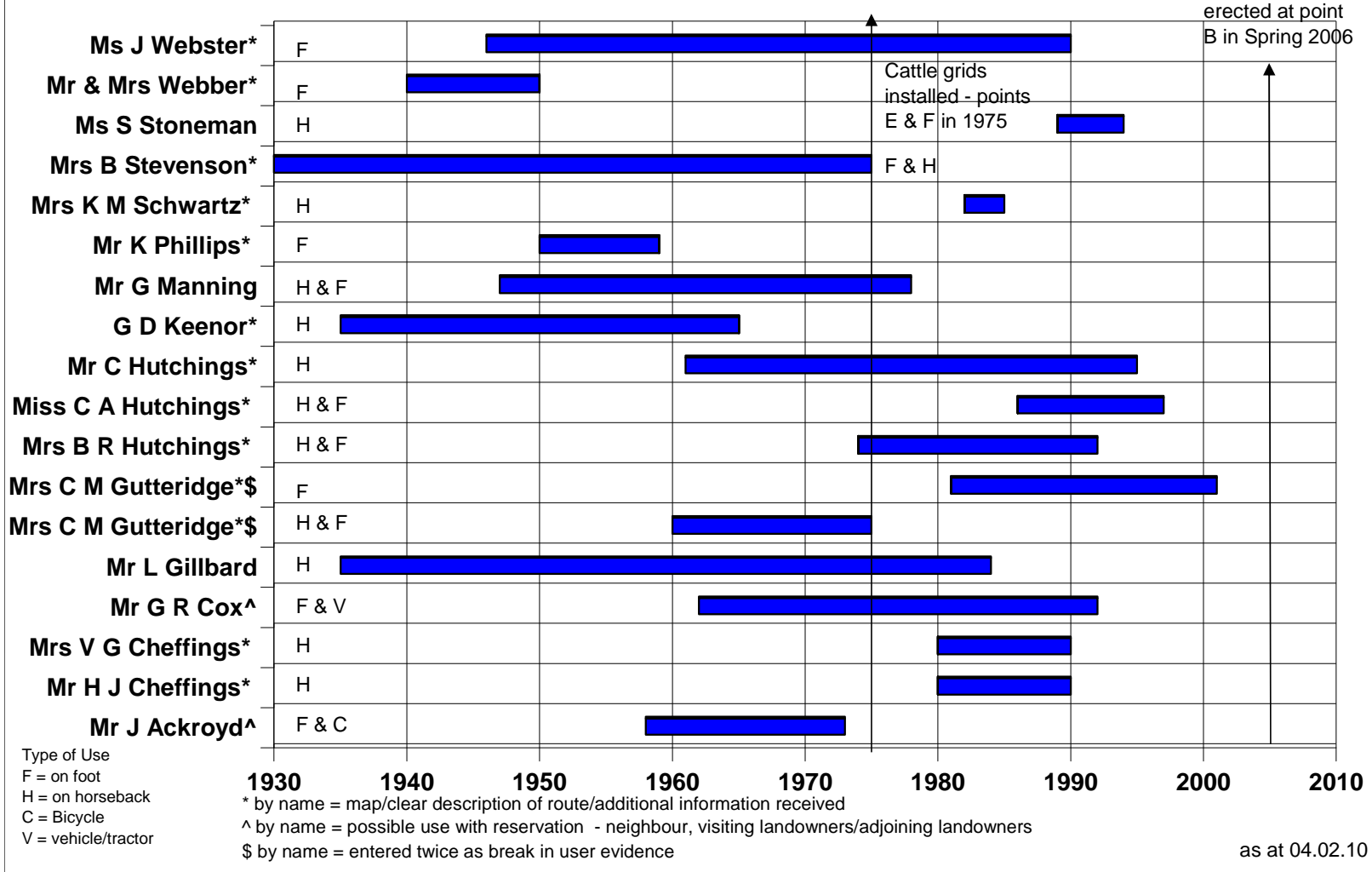
Some of the users were adjoining landowners and describe using the route to visit an adjoining landowner or advise that owners were branch of family. These user evidence forms would be considered with reservation.

From the descriptions of the route used and maps completed it became apparent that very few people had used the route in connection with the section from point C to point D north of Woodford Farm. No users advised only using the route from A – B – C – D. The user evidence forms included in the chart therefore refer to use of the route from the Thelbridge to Witheridge road near Doctor's Corner, past Summer Farm and on to the Witheridge/Drayford road by Coombe House only, A – B – C – E – F.

The chart of user evidence summarises the period and type of use from a total of 18 people. The period of use covered by the forms is from 1930 (Mrs Stevenson) to the present (Mrs Gutteridge). Use was generally on foot and/or horse back. Most users refer to gates along the route (not locked) and frequency is from only a few times a year, now and again, occasionally through to once to twice a week, frequently and daily. The more frequent use was generally in the period prior to 1970. The greatest number of users was in the 1970s and 1980s and there is little use of the route since the early 1990s when Mr Forbes purchased Coombe House. No users report been turned back or stopped or been given permission by the landowners and believed the route to be a public right of way.

Most describe that use was for pleasure. Some users mention pleasure and work and although use in connection with work would not be use 'as of right', if the route was also used for pleasure on different occasions then this would be. No reference is made of the two cattle grids (installed in 1975) on the drive to Summer Farm or of the electric fences used in the summer grazing season. These would not obstruct use on foot and when the electric fencing was not in use, horse riders are understood to have used the route by bypassing the cattle grids. The construction of the stock fence at point B in Spring 2006 would have been a permanent obstruction to users on foot and horseback.

Chart of User Evidence for Suggestion 2 - Somerwell (Summer) Lane



7. Landowner Evidence

The land crossed by suggestion 2 is owned by three landowners, point A to the parish boundary, Mr A Forbes of Coombe House, point B to and the southern route to point F by Mrs C Pledge at Summer Farm and the three fields west of point D by Mr R Hayes at Woodford Farm. The three landowners had instructed Foot Anstey solicitors to act on their behalf and a detailed submission including statements from the landowners and other parties has been received. A copy of the submission is included in the backing papers with the copy landowner evidence forms received.

Mr Forbes has lived at Coombe House since his purchase of the property in February 1992. During his occupation he has landscaped the grounds adjoining the section of the route running west to the parish boundary and has consequently spent many hours in the garden adjoining the route. During his occupation he has never noticed anyone using the route, apart from the 3 occasions mentioned in his statement of two walkers who strayed from Footpath No. 19 and the Tiverton Fox Hounds. The surface of the lane along the east and south of his house is mown grass, fairly wet in the winter and had this been used by horses, evidence of their passing would be visible.

The boundary between his and Mrs Pledge's land had been overgrown with brambles and there was an electric fence when the field was being grazed. Since 2006 there has been a fence of two strands of barbed wire, making the route impassable to horses.

In late 1992 the then chairman of Witheridge Parish Council, Peggy Miles, approached Mr Forbes to ask for permission to use his section of the lane for a public footpath to make a circular route from Witheridge using Footpath No 19, Witheridge, Footpath No. 4, Thelbridge and Footpath No. 2, Thelbridge. Mr Forbes declined as the footpath would pass very close to his house on two sides and would compromise the house's privacy, security and amenity. He did not know if Mr Cole at Summer Farm had also been approached.

Mrs Pledge purchased Summer Farm in December 2003 and was aware of the existence of Footpath No. 4, Thelbridge across the farm. However, she has never seen anyone on foot or horseback using the route of suggestion 2.

Mr Hayes' family initially tenanted Woodford Farm from 1911 and purchased the farm in 1920. Since that time the use of the lane running from Summer Farm to the road (points C to D) was only as a private right of way for Summer Farm and for use by Woodford Farm. In about 1958 use of the lane by Mr Cole of Summer Farm ceased and subsequently in the early 1960s the hedges were removed from one side of the lane in the three fields. A gate was initially placed in the boundary hedge between Summer Farm and Woodford Farm but as this was never used it became overgrown and was replaced by timber rails in the mid 1970s, which were replaced in 2003.

Electric fencing has been used in the fields crossed by the route since 1974 and the only time hoof prints have been seen is after the hunt passed through. He sees people using Footpath No. 5, Thelbridge which comes south across Woodford from Witheridge, but has never seen anyone using a route to the west along the old lane.

Previous landowners of the land crossed by the route have also forwarded letters and statements of their time in occupation.

Mr Stanley Hayes (Mr R Hayes' father) advised that the lane between Woodford and Summer was a back lane for Summer and not a public path. About 50 years ago the lane became too narrow for tractors and trailers and the hedge was removed on one side and gate erected on the boundary. In all his time at Woodford, he had never seen any member of the public going through Summer Lane to the road.

Mr Sutcliffe lived at Coombe House between 1973 and 1983 and during all the years he had known Coombe House, there has not been a right of way passed the property up Summer Lane.

Mr & Mrs Delaney have lived at the Old Stables adjoining the northern most section of the route between the county road and Coombe House since 1992. They have not seen the route used by horses and would have heard them on the concrete drive and have not noticed any walkers going south pass Coombe House.

Mr H D Cole and his family had farmed Summer Farm from 1919 until 2003 when most of the farm was sold to Mrs Pledge. He has lived and worked on the farm for 61 years and currently reside at the end of the route by point F. The farm was always known as Summer Farm and during his ownership he has never been aware of a public right of way through Summer Farm to the Drayford road.

In 1967 the hedges in the field south of point B and in field 615 (between points C and D) were removed. Crops have been grown close to the field headlands and there has never been any evidence of anyone walking or riding the route. When grazed, electric fences were used in the fields and no complaints made. In the early 1970s, gates were installed to create sheep pens and a dip, adjacent to the route, just east of Summer Farm outbuildings. Cattle grids across the route were installed in two places, at point F and east of point E, in 1975 and when electric fences were erected in the fields adjacent to the lane during the grazing season, a horse could not have got through. The front of the farm house and rear of the bungalow by the county road, both look out on the farm drive and anyone using the lane would have been seen.

Mrs Kingdom, Mr Cole's sister, lived at Summer Farm from her birth in 1945 until 1968. Whilst living at the farm she was never aware that there was a public bridleway/footpath of any description through the farm.

Mrs S Hayes lived at Woodford Farm from 1986 to 2007 and was never aware of the claimed 'common knowledge' of a bridleway to Summer Farm. She did not see anyone use this route on horseback or on foot.

Mr C Tucker worked for Mr Hayes from 1992 – 2004. Rails blocked the route totally throughout this time and he replaced the rails in 2003.

Mr G Beer has lived in the area from 1952 to 1984 and his father and grand father worked for the Hayes family. He was aware that Summer Far had a private right of way over the lane but it was rarely used by the Cole family. He can never remember seeing anyone on foot or horseback, whether before or after the field hedges were taken out.

Mr D Hawkins has been contracting for Mr Hayes for the past 25 years. In this time he was not aware of any person riding or walking across the land in question. There are rails in place between the two fields that a horse and rider would not have been able to pass through.

8. Rebuttal Evidence

Statements have been received from other local people, past employees and neighbours concerning the alleged public right of way.

Mr C Harris has lived in Thelbridge all his life since 1945. He has known Summer Farm for at least 40 years and was never aware of anyone using a bridleway over the land. He never saw anyone there on a horse except when hunting. Since 1992 he has worked for 1 day a week for Mr Forbes in the garden and during that time he has never seen any member of the public either on foot or horseback in the grounds of Coombe House, including Summer Lane.

Professor and Mrs Partridge have often visited Mr Forbes since 1992. They have never seen a member of the public anywhere when at neither Coombe House nor any evidence on the ground of horses having used the route.

Mr D Pin lived in the bungalow at the end of the lane from 1972 to 2003. Apart from Mr L Gillbard he had never seen anyone go by on a horse or go pass when he was working in the fields.

Mr Hannaford has lived in the area for approximately 20 years and to his knowledge there has never been a bridleway through Coombe Farm, Summer Farm, or Woodford Farm nor has he seen anyone riding through.

Mr Luton has lived in Witheridge for 40 years and to the best of his knowledge there has never been a public bridleway across Summerwell Farm.

9. Discussion

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

Evidence of the public's use of the route is collected by way of user evidence forms. 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 considered have not been completed accurately and honestly and individually completed maps and additional information and clarification has been obtained from users. The forms record use of the way by a number of people since the 1930s until the present, although the most recent use is understood to be use of part of the route only. Use being mainly on foot and horseback would support bridleway status.

Use of the public must be 'as of right' that is without force, without secrecy and without permission and with the public believing the route to be a public right of way. Those individuals whose use was only as part of the hunt, to visit or work at one of the farms along the route or whose use would not be considered to be as of right have not been included. Forms have also not been included if the way used was not along the route specified in the plan or start and end dates of use have not been stated.

Under section 31 of the Highways Act the period of twenty years use is counted back from the date of the public's use of the way is called into question. This may be by way of a locked gate being erected, noticed been placed stating the route is not a public right of way or similar or some other obstruction. The action considered to be the calling into question must be an overt action and apparent to users of the route. The erection of the stock fence at point B in 2006 would be sufficient to be considered a calling into question but there is insufficient evidence of use in the period 1986 to 2006 to imply presumed dedication. The installation of the cattle grid near point E in 1975, as a permanent feature would also have called the use of the route on horse back into question (the electric fences were not permanent and the cattle grid at point F had a field gate adjacent to it). There is user evidence on horseback after this date and it is understood users bypassed the cattle grid by crossing over the fields. There is again insufficient evidence of use on horse back from 1955 to 1975 to imply presumed dedication.

The erection of rails between points C and D in the mid 1970s could also be considered a calling into question of that section of the route but there is insufficient evidence of use of this section of the route in the period of twenty years before.

The user evidence is insufficient to show that there has been uninterrupted use as of right by the public over a period of 20 years from either date on which the public's right could be considered to have been brought into question to form a valid claim under section 31 of the Highways Act 1980.

In the absence of a valid claim being deemed to arise under Section 31 of the Highways Act 1980, evidence of dedication under common law is also considered. The Finance Act 1910 field book for Summerwell 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 at that time or been aware of earlier dedication. No allowances for public rights of way across Coombe Farm or Woodford Farm were given in the Finance Act field books for those hereditaments.

Neither Witheridge nor Thelbridge Parish Councils claimed a public right of way along the route of the suggestion in the 1950s or at later reviews when they had the opportunity to do so and which would suggest that they did not consider the route to be public or used by the public at those times. There appears to have been no objections made to the omission of the route from the draft or provisional definitive maps and no other evidence to support the dedication of the way by the landowners.

The map evidence shows a through route would have been available to users and the user evidence supports use of the route by members of the public and would show acceptance of such dedication by the landowner; however, the evidence of dedication by the landowner must be sufficient.

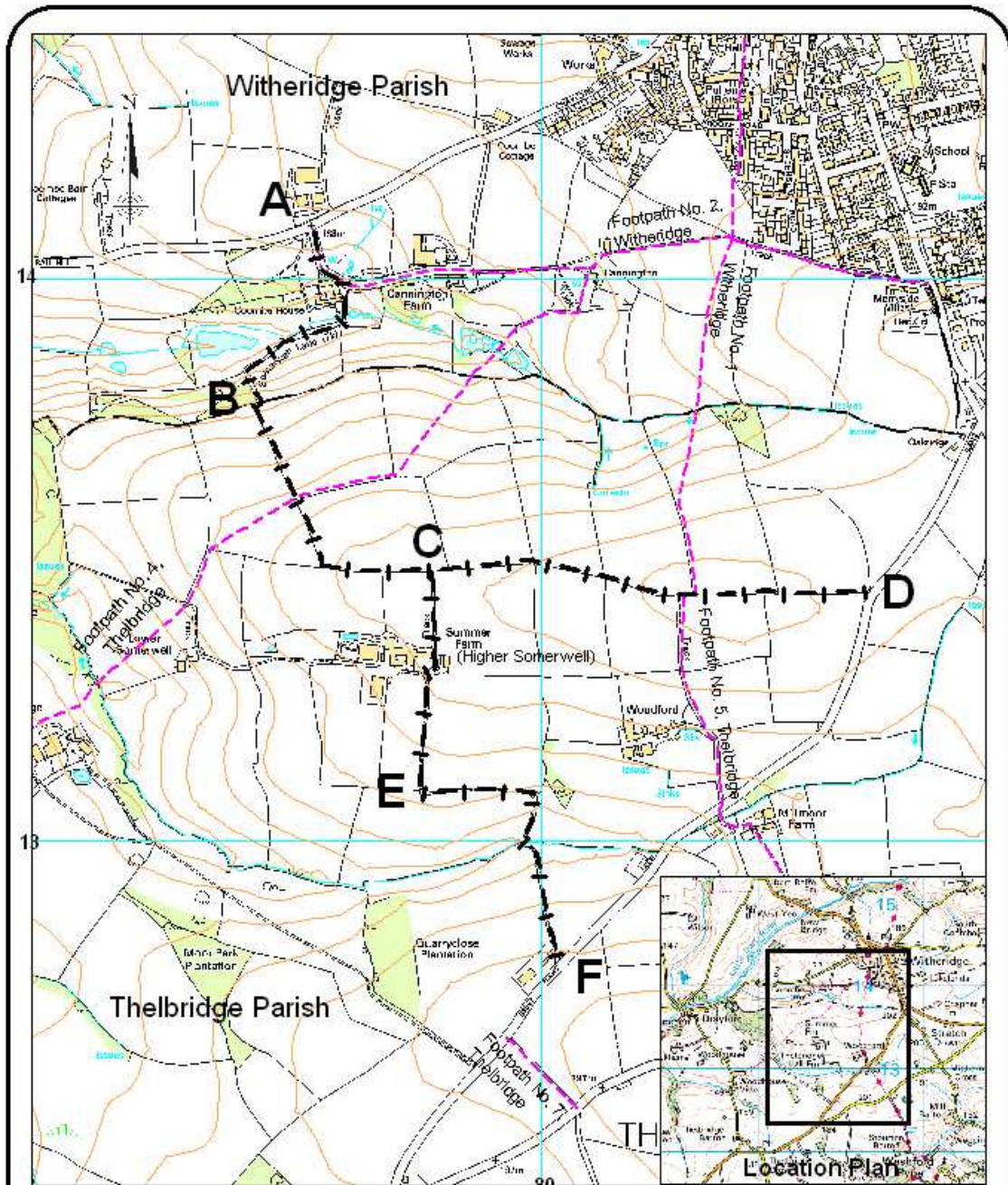
10. Conclusion

Under section 31 of the Highways Act 1980 there must be a clear calling into question preceded by use of the way for twenty years by the public as of right. If the cattle grids of 1975 and barbed wire fence of 2006 could be considered a calling into question, there is however, insufficient evidence to show regular use of the route by the public as of right, for a period of twenty years prior to the calling into question. It is not therefore considered that a public bridleway or public footpath on either route can reasonably be alleged to subsist under section 31 of the Highways Act 1980.

There is some evidence (Finance Act 1910) that a public right of way may have been previously dedicated by a previous landowner at Somerwell prior to 1910, in respect of the route past Summer Farm and south to the county road (from points B – C – E – F). The Finance Act records do not record a public right of way across the fields crossed by the route at Coombe or Woodford and this evidence is not consistent for the whole route.

For a claim to be considered at common law, there must be evidence that there was express or implied dedication by the landowner(s) and in the absence of such evidence that would be considered sufficient, it is not reasonable to allege that a public right of way subsists at common law.

When considered overall, the evidence examined is insufficient to recommend that a Modification Order be made to modify the Definitive Map and Statement by adding a Public Bridleway or Public Footpath from the Witheridge to East Worlington road in Witheridge parish, south past Coombe House along Somerwell Lane to north of Summer Farm (Higher Somerwell) and then either going east and south to the Thelbridge Cross to Witheridge road (B3042) between points A – B – C – D and/or between points A – B – C – E – F as shown on drawing number ED/PROW/09/83.



map ref SS 7912, 7913, 7914, 8012, 8013

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - THELBRIDGE
SUGGESTION NO 2 - ADDITION OF
PUBLIC BRIDLEWAY - SOMERWELL LANE**



drawing number ED/PROV/09/83

date Jul 2009

scale 1:10,000 at A4

drawn by TW

Notation To be added

A - B - C - D Public Bridleway (1750 metres approx) 
C - E - F Public Bridleway (950 metres approx) 

Section A - B in Witheridge Parish Existing Public Footpaths 

Edward Chorlton

DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

