

**Definitive Map Review
Parish of Washford Pyne**

Report of the 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 no Modification Order be made to modify the Definitive Map and Statement by adding a public footpath or public bridleway between points A – B – C - D – E or between A – B – F – D – E or between A – G – F – D - E as shown on drawing number EEC/PROW/10/88.

1. Summary

The report examines the route referred to as Suggestion 1 arising out of the Definitive Map Review in the Parish of Washford Pyne.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in September 1950, included 13 routes, comprising 10 footpaths, 1 hunting path and 2 CRFs (carriage road used as footpath) put forward by the parish council. After consultation with the District Surveyor the 2 CRFs and hunting path in Washford Wood were considered to be bridleways and the spur north to the parish boundary from the hunting path in Washford Wood was deleted. A total of 10 footpaths and 3 bridleways were included on the draft and provisional maps and as no objections to their inclusion or omissions appear to have been received, these were recorded on the Definitive Map and Statement for Washford Pyne 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 Washford Pyne.

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

Devon County Council (Footpath No. 3, Washford Pyne) Public Path Diversion Order 1993;
Mid Devon District Council (Bridleway No. 1, Washford Pyne) Public Path Diversion Order 1997;
Devon County Council (Footpath No. 4, Washford Pyne) Public Path Diversion Order 2005;
Devon County Council (Footpath Nos. 5, 6 & 7, Washford Pyne) Public Path Diversion Order 2006.

The review was opened in Washford Pyne with a parish public meeting held on 11 June 2009. No changes to the definitive map were proposed by the parish council. In 2007 a gate had been locked and sign erected in a field behind the parish church at Washford Pyne and this action prompted two local residents to contact the County Council as they believed this path was a public right of way. This route was included on the consultation map

published in April 2010 as the one suggestion for change. The suggestion is for the addition of a Public Footpath from Footpath No. 13, Washford Pyne by the Old Rectory (point A) to Mill Bridge (point E) in Thelbridge Parish.

3. Consultations

General consultations have been carried out with the following results:

| | | |
|---------------------------------|---|---|
| County Councillor Michael Lee | - | no response |
| Mid Devon District Council | - | no response |
| Washford Pyne Parish Council | - | no response |
| Thelbridge Parish Council | - | raise no objections to the modifications suggested that lie within Thelbridge Parish Council boundary |
| 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 | - | no response |
| Cyclists Touring Club | - | no response |
| Devon Green Lanes | - | no response |

4. Conclusion

It is recommended that no Modification Order be made to modify the Definitive Map and Statement by adding a public footpath or a public bridleway between points A – B – C - D – E or between A – B – F – D – E or between A – G – F – D - E as shown on drawing number EEC/PROW/10/88.

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

5. Financial Considerations

There are no implications.

6. Sustainability Considerations

There are no implications.

7. Carbon Impact Considerations

There are no implications.

8. Equality Considerations

There are no implications

9. Legal Considerations

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

10. Risk Management Considerations

There are no implications.

11. Reasons for Recommendation/Alternate Options Considered

To progress the parish by parish review of the Definitive Map in the Mid Devon area.

Chris McCarthy

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 | 2007 to date | DMR/WP |

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sc/washford parish
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Suggestion 1: addition of a Public Footpath (three alternative routes had been used) from east of the Old Rectory, Washford Pyne to Mill Bridge (in Thelbridge parish)

Route A (the historic route) – from east of the Old Rectory (point A) this route goes north east across two fields and across Henceford Brook (and the parish boundary) (point B), then north north eastwards through fields and up the hill and past a ruined building (Hele's Tenement/Old Heles) (point C). It then continues north westwards and north eastwards to point D and follows the track through the field north eastwards to the county road at Mill Bridge (point E).

Route B (the more recently used route) goes from point A to the stream at point B but then proceeds north westwards along the west side of the stream in Washford Pyne parish, crossing the stream by point F into Thelbridge parish and continuing north north west and then north eastwards to join the track at point D and rejoin Route A.

Route C (used by horse riders) from point A continues to follow the route of Footpath No. 13, Washford Pyne north westwards into the copse (point G) and then turns north east through the copse and across a field to the steam crossing used by Route 2 (point F) and continues along Route 2 to Mill Bridge

The three routes are all shown on drawing number EEC/PROW/10/88.

Recommendation: It is recommended that no Modification Order be made in respect of Suggestion 1 – Addition of Public Footpath from Footpath No, 13, Washford Pyne east of the Old Rectory to the county road at Mill Bridge (in Thelbridge Parish) along any of the three routes.

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

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 across the fields north of the church to the parish boundary was not claimed as one of the routes surveyed in Washford Pyne by the parish in September 1950. Neither was it claimed by Thelbridge as one of their paths also surveyed in September 1950 nor claimed subsequently or during later reviews by either parish.

Prior to the review being opened in Washford Pyne, two local residents of Washford Pyne had contacted Devon County Council in 2007 regarding their use of a path they believed to be public from Washford Pyne to Mill Bridge in Thelbridge following the locking of a gate and erection of a sign stating 'No Access' in the field behind the church. The residents completed user evidence forms. Subsequent examination of the Finance Act records for Thelbridge during the Thelbridge DMR had recorded a 'public right of way' across numbered specified fields at Woodington in Thelbridge parish and the field numbers stated corresponded to a footpath shown on the OS maps of that time. This was considered sufficient evidence to warrant inclusion of the route as a suggestion for further investigation under the definitive map review in Washford Pyne.

3. Description of the Route

From the user evidence forms received in 2007 it was evident that 2 different routes had been used over the years. The first route (Route A the historic route) starts from Footpath No. 13, Washford Pyne by the Old Rectory (point A), and proceeds north eastwards across two fields for 200 metres and across Henceford Brook at point B (parish boundary), then 340 metres north north eastwards through fields and up the hill and past a ruined building at point C, and continues north westwards then north eastwards to point D, then along a track for 250 metres through a field north eastwards to the county road at Mill Bridge at point E.

Route B (the more recently used route) goes from point A to the stream at point B but then proceeds north westwards along the west side of the stream in Washford Pyne parish, crossing the stream and parish boundary at a hunting gate at point F into Thelbridge parish and continuing north north westwards and then north eastwards to join the track at point D and rejoin Route A.

On receipt of completed individual maps from users it became apparent that horse riders had used an alternative route (Route C – horse riders route) continuing north westwards along Footpath No. 13, Washford Pyne from point A then turning north eastwards at point G, through a copse and across a field to the stream crossing at point F, and then continuing as Route B.

All three routes are as shown on drawing number EEC/PROW/10/88.

Photos of the route are included in the backing papers.

4. Consultations

Washford Pyne Parish Council made no comment to the suggestion.

Thelbridge Parish Council responded and advised 'Thelbridge Parish Councillors raise no objections to the modifications suggested that lie within the Thelbridge Parish Council boundary'.

No other responses or replies have been received.

5. Documentary Evidence

Washford Pyne Tithe Map & Apportionment 1839 & Witheridge Tithe Map & Apportionment 18

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. In the 1830s this part of Thelbridge was still within the parish of Witheridge and did not become part of Thelbridge parish until 1885.

Witheridge and Washford Pyne parish had undertaken a commutation of tithes into a rent charge payable to the rector in 1837 and 1839 respectively.

Washford Pyne Tithe Map 1839

The land crossed by Route A in Washford Pyne parish was recorded as field numbers 280 and 282 owned by the Reverend Comyns Tucker and occupied by Peter Pudmore. On the Tithe map a pecked line is shown across both fields in a position that corresponds to the footpath shown on the late 19th/early 20th century large scale maps.

Witheridge Tithe Map 1837

Heles Tenement comprised a holding of some 18 acres recorded as being owned and occupied by John Bidgood. No evidence of a footpath is shown on this map. Woodington was also owned by John Bidgood but was occupied by John Cole.

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 1889

A pecked line annotated 'FP' is shown running north east across field numbers 38 and 31 on the Washford Pyne side to the stream with a footbridge. The pecked line continues through the fields in Thelbridge parish and past 'Old Hele's' (also known as Heles Tenement) in a line that corresponds to Route A.

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

On the 2nd edition the pecked line is shown in the same position, annotated 'FP' on both sides of the stream along the line of Route A. Stepping stones are recorded at the stream parish boundary.

OS 1 inch to a mile 1946 Sheet 164 Minehead – Suggested footpath not shown. Although before the definitive map the key shows footpaths and bridle paths were depicted on this edition of the 1" OS maps by a pecked line.

OS 1 inch to a mile 1960 Sheet 176 Exeter – Suggested footpath not shown, Footpath No. 13. Washford Pyne and other rights of way recorded on the definitive map were included in this edition of the 1 inch maps for the first time.

OS 1 inch to a mile 1967 Sheet 176 Exeter – Suggested footpath not shown.

OS 1st Edition Post War A Edition 1:2500 1970-1971

A close together doubled peck line labelled 'path' is shown from the Old Rectory across the stream to the one remaining outbuilding of Old Heles. After passing Old Heles the pecked lines are spaced slightly apart and labelled 'track' running to the county road at Mill Bridge. The path and track shown corresponds to Route A.

Finance Act 1910

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 allowance given was often on the basis of a figure such as a £1 times 25 yp. 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.

Hereditament number 91 in Thelbridge parish includes the land crossed by all three routes in Thelbridge parish. The holding is described as Woodington and Old Heles Farms of 109 acres, owned by Evelyn Heseline of London and occupied by Mr Fisher. Under the heading Fixed Charges, Easements, Common rights and Restrictions is written Public Right of Way through Ord. nos. 467 – 437 – 436 – 432 – 409. On the next page under the heading Charges, Easements and Restrictions affecting market value of Fee Simple is P.R. of W. £4 x 25yp = £100. This figure of £100 is entered under deductions for Public Rights of Way or User on page 4 of the field book entries. The ordnance numbers on the holding quoted correspond to the fields crossed by the footpath depicted on the OS 1st and 2nd edition 25" to mile maps of 1880-1890 and 1904-1906 and considered as Route A. The separate cottage (Old Heles) is described as vacant and very dilapidated.

Hereditament number 30 is in respect of one field, ordnance number 31, on the western side of the parish boundary in Washford Pyne parish (field east of point B). The field was owned by the Rector and occupied by Mr Fisher. The Particulars, description and notes made on inspection state 'A Pasture field ord no 31 2 acres with Church path across'. Charges, Easements include Right of way £1 x 25yp = 25. The sum of £25 carried forward to the 4th page under deductions for Public Rights of Way or User.

The field north of the church yard in Washford Pyne is included under hereditament number 28 Home Glebe land of 17 acres owned and occupied by the Rector at Washford Pyne Rectory. The field book includes under Charges, Restrictions etc 'Right of Way £1 x 25 = £25' and the sum of £25 is entered under deductions for Public Rights of Way or User. The Valuer covering Washford Pyne parish has not listed the ordnance numbers crossed by the right of way as the valuer for Woodington in Thelbridge parish had done. The land included within hereditament number 28 also includes land crossed by the recorded Footpath No. 13, Washford Pyne.

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

In Washford Pyne and Thelbridge parishes no paths relating to the route considered as suggestion 1 were put forward by either 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 either parish.

Washford Pyne Vestry Minutes 1833-1846

In July 1838 the minutes' record It was also agreed that the proprietor of Penfield be allowed to put a proper pale gate in lieu of bars on the north side of the church yard to prevent persons walking that way except on Sundays. The OS maps of 1889, 1904-06 and 1970-71 all show a path in the churchyard running north from entrance of the church across the church yard to enter the field, 18 metres east of point A.

Washford Pyne Parish Council Minutes

The Washford Pyne Parish Council minutes are available for the period 1894-to date but with periods of time when no meetings appear to have been held. There are no specific references in the minutes to the suggested footpath. The minutes record in March 1954 County Plan Field Paths – The Map covering field paths in Washford Pyne had been received and it was proposed to have this on view to the public for about six weeks at Black Dog Inn and 6 weeks at the Post Office Black Dog. This referred to the Draft Definitive Map for the Crediton Rural District Council, which was sent out to the parish to be displayed where it may be seen by the parishioners. As previously advised, the omission of the suggested footpath was not raised at that time.

Thelbridge Parish Council Minutes

Within the Thelbridge Parish Council minutes there are several references to the suggested path in the Thelbridge Parish Council minutes as follows:

30th November 1896

Mr May proposed and seconded by Mr Mitchell 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 (council?) considered it the duty of the occupier of the land on which the bridge is situated to do so, not the Parish Council (Carried).

4th December 1896

The clerk was instructed to write to the Rector of Washford Pyne stating that this council is of opinion from information they have received that through the Gateway at Mill Bridge is the direct pathway to Washford. The stile adjoining having been erected by the occupier of the farm for his own convenience he having at the time closed the Gateway.

1st December 1898

That a letter be sent to Mr Fisher's agent reporting the foot bridge at Heles Tenement.

14th 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. After full consideration it was proposed by Mr Hill and seconded by Mr Loosemoore that Mr Rodwell's letter be acknowledged, also that a letter be written to the owner of Hele's Tenement with a copy of Mr Rodwell's letter, requesting the said owners to act at once to put the path and footbridge in a proper state of repair.

13th October 1913

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.

Crediton Rural District Council Minutes

17th January 1903

Thelbridge

A letter was read from the Clerk to the Thelbridge Parish Council enquiring who was liable for the Repair of a Footbridge not adjoining a Highway but over which is a public path between the Parish of Thelbridge and Washford Pyne.

The Clerk was instructed to reply that it was a Parish Council matter.

From the actions taken by Thelbridge Parish Council it seems that the council did consider the route to be public and wrote to Mr Fisher/his agent on three separate occasions regarding repairs to the footbridge in 1896, 1898 & 1903. However, after they had been advised by the Crediton Rural District Council in January 1903 that the Parish Council were liable for the repair of a footbridge on a public path; it seems that when the bridge was referred to the parish council again in 1913, the council resolved that no action be taken as the parish council did not consider that they were legally liable for the repair of the bridge. On the 2nd Edition 25" to a mile mapping published 1906-1910, the footbridge shown on the 1st edition map of 1889, had been replaced by stepping stones.

Manor of Washford Pyne Sale Catalogue and Plans September 1919

The manor of Washford Pyne was sold by auction in Exeter on 19th September 1919. The manor did not include the land crossed by the route but on the plan showing the lands included within the lot for Washford Barton, south of the route, the fields crossed by the claimed footpath in Washford Pyne parish are included and a pecked line annotated 'F.P.' is shown along the line of the historic path.

The plan was reproduced from the OS mapping (probably the OS 2nd edition 1906-1910 6 inches to a mile) and the inclusion of the line and 'F.P.' was probably copied from the mapping and included as it was close to lot 4. The current Footpath No. 3, Washford Pyne shown on the OS 6" 2nd edition map at Wonham is not shown on the sale plan (Wonham not included in the manor) but Footpath No. 6, Washford Pyne is and ran along the other side of the boundary hedge to lot no 2 Pyne Farm.

Census Records 1891, 1901 & 1911

In 1891 Woodington was occupied by Mathew Fisher his wife Maria and 6 children aged between 6 and 21 years old. Heles Tenement was occupied by William Lead.....(unreadable), an employed gardener, his wife Elizabeth and 3 children 12 – 28 years old.

In 1901 Mr & Mrs Fisher, 3 children and 1 servant occupied Woodington and Heles Tenement was occupied by Emma Rolle a widow and her 5 children aged from 7 months to 12 years old.

In 1911, Mr & Mrs Fisher, 3 children and 2 servants were at Woodington. The Finance Act records from 1910 for Woodington include Old Heles Farm within the hereditament and describe the cottage (probably Heles Tenement) as vacant and very dilapidated.

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

The photographs show the land crossed by the suggested route but there is no visible evidence along the line of the route apart from the farm track on the Thelbridge side.

HM Land Registry/Landowners

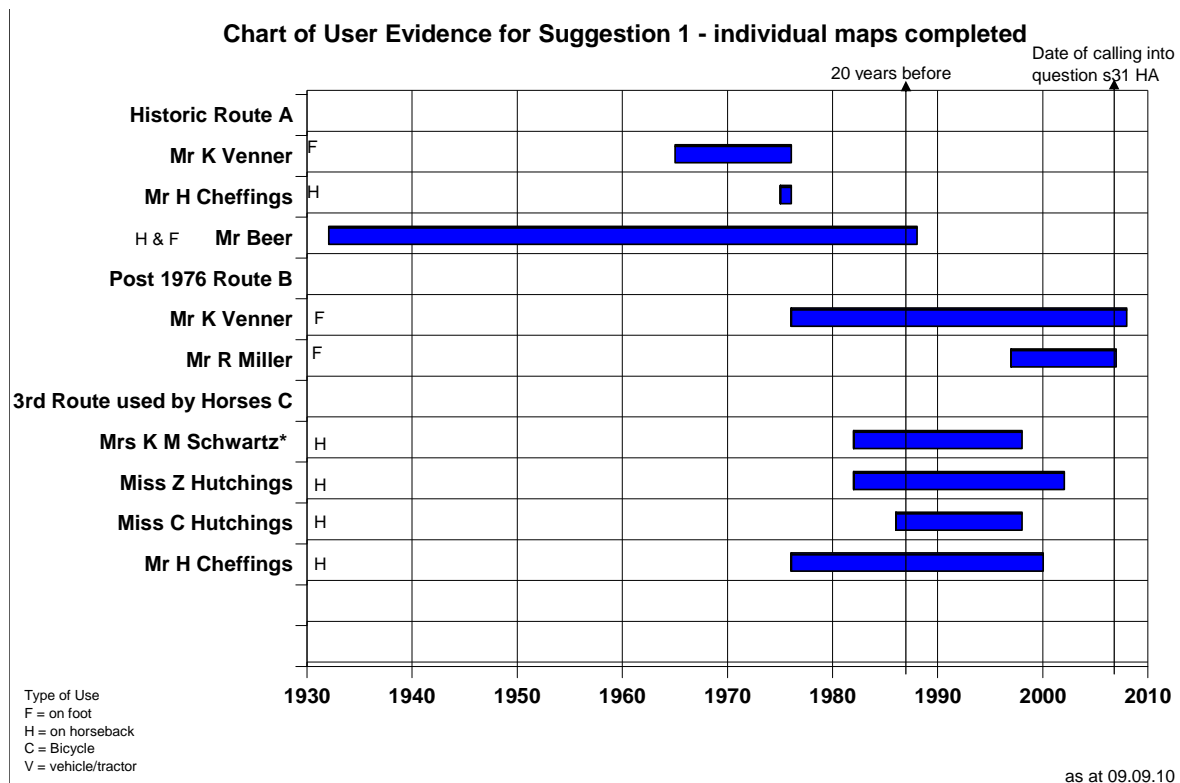
The land crossed by the route on the Washford Pyne side of the stream has been owned by Mrs P Lamont & Mr J Lamont since January 2009. The land was previously owned by Mr Seddon and prior to that Mr Wreford.

The land crossed by the route in Thelbridge parish was formerly part of the holding known as Heles Tenement/Old Heles but was part of Woodington Farm by 1910. The former Heles Tenement land is not registered but is owned by Mr T and Mrs U Venner at Woodington Farm.

6. User Evidence

Two user evidence forms were initially received in 2007 from two residents in Washford Pyne who were using the path up to 2007 when the gate and sign were erected. One form confirmed that Route A had been used until the mid 1970s and since that date Route 2 was used. A number of other user evidence forms were also received, mostly completed in 2008 and most of the users had not completed individual maps to accompany their forms. As there were initially two possible routes and as the landowners at Woodington maintained that any use on horseback was in connection with the hunt, these 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. Some of these maps when returned indicated that a third route had been used, Route C.

Some of the users responded advising that their use was only when hunting or they wished to withdraw their evidence and these users have not been included for consideration. Three of the user evidence forms submitted were from members of the Wreford family who owned the land on the Washford Pyne side between 1960 and 2002. These forms have not been included in the chart of user evidence as their use of part of the route owned by the family would be considered to be permissive and their evidence is considered under landowner evidence.



The chart of user evidence summarises the period and type of use from those users who completed individual maps for the route they had used. Route A was used until the mid 1970s (believed to be 1976) and two users record use of this route for a number of years prior to then. After the mid 70s Route B came into use following the installation of a new hunting gate at point F (although Route A would have remained useable on foot) and there are two users between 1976 and 2008. Four horse riders record using Route C between the late 1970s to 2002. Three of these users are the daughters of the neighbouring farm and Mr Venner at Woodington considers they had permissive access as neighbours, particularly after a cross country event for horse riders was held across both farms and afterwards the daughters would continue to use the jump erected in the river when riding across Woodington Farm on their way to or from home.

7. Landowner Evidence

The land crossed by the suggestion is currently owned by two landowners, Mrs Lamont on the Washford Pyne side and Mr Venner of Woodington Farm in Thelbridge who both completed landowner evidence forms.

Mrs Lamont, who does not live locally, completed purchase of the land in January 2009. She does not believe the route to be a public right of way but in response to the question have you seen or been aware of members of the public using the way has advised local people only, very seldom. She has not stopped anyone or required people to ask permission. She was aware of a gate locked by the previous owner, Mr Seddon, and believes there was a dispute between him and the residents at Washford Pyne. Mrs Lamont's ownership would be after the calling into question of the locked gate in 2007 and use of Route A, the historic route.

In a telephone conversation Mrs Lamont advised that if a right of way was found to subsist then she would prefer Route A as the other route would cross all three of her fields.

Prior to Mrs Lamont the land was owned by Mr Seddon from Easter 2007- end of 2008 and who locked the gate at the field boundary between points A and B and put up a sign in the field behind the church in the summer of 2007. Within that field is an old sign attached a gate lying in the hedge which says 'No Access beyond this point'. When the land was advertised for sale in autumn 2008, the selling agents were contacted and advised that their client had previously discussed this unrecorded right of way with Mr Jeffcoat (the public rights of way warden for the area), so he may hold information that could be of use to you. Their client had, however, advised them that it was unlikely that this right of way was regularly used. Unfortunately Mr Seddon has not been traced to obtain any further information.

Between 2002 and 2007 the land was owned by two other separate owners who have also not been traced for additional information.

The land was owned by Mr Wreford from 1960-2002 and Mrs Wreford and other members of the family had completed user evidence forms. As relatives of the landowner at that time their use of the section of the route on the land owned or occupied by their relative would usually be considered to be by deemed permission and not as of right, but this would not apply to their use of the section of the route across their neighbours land and could be use as of right. The forms indicate that the Wreford family considered that a public right of way did exist across the land in their ownership and continuing into Thelbridge parish. Mrs Wreford had not completed a landowner evidence form but had confirmed in a telephone conversation that her late husband had considered the route to be public and that it was used by walkers and riders. They did not stop anyone and had not given anyone permission.

Mr Venner of Woodington Farm on the Thelbridge side has owned and farmed the holding which includes the land included within Heles Tenement or Old Heles since 1975 although the family are related to Mr Fisher who was recorded as farming at Woodington and Heles Tenement in 1910 (Finance Act records). He does not consider the way to have ever been used as a public right of way and has never seen any public use the route in 35 years. They have never seen anyone to stop or tell it is not public as they have not seen anyone. The hunting gate at point F was erected in the 1970s for hunting purposes and the original hunting gate at point B was closed off by Mr Wreford after he enlarged the stream to water his livestock in the drought (believed to be the dry summer of 1976) and the hunting gate that was there was not replaced.

A letter with additional information was also enclosed and states that historically a private church path existed for the use of the occupiers of Heles Tenement to Washford Pyne church via point B. The track from point E to point D was made to service the quarry belonging to Woodington (shown as pond on plan). The hunting gate at point F was constructed by Mr Venner to allow private access to the three local hunts and at no point was public access allowed onto Woodington at point F. Copies of the user evidence forms received were requested and comments on the individual users were made in a supplementary letter which also raised concerns about safety, poaching, insurance implications and tapeworm infection in cattle if the route was to become a public right of way.

Hunting rights across the land at Woodington are leased by the Badgworthy Land Company Ltd of Barnstaple. A landowner evidence form was sent but no response has been received.

8. Rebuttal Evidence

No other evidence has been received in rebuttal of the suggestion from any other interested parties apart from the landowner evidence referred to above.

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.

For dedication 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

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, who had been given permission or were related to the landowner or any users whose use would not be considered to be as of right have not been included.

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.

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.

In summer 2007 Mr Seddon, owner of the land in Washford Pyne locked a gate and put up a sign believed to say 'No access beyond this point' or other wording in such terms. This was noticed by two users of the route who then contacted the County Council public rights of way section as they considered the way was a public right of way. This was a clear calling into question and the twenty year period under section 31 of the Highways Act would run from 1987 to 2007. The route used by walkers during this time would appear to be Route B. There is no evidence of any calling into question in respect of Route A or Route C and these routes can only be considered under common law.

Under a section 31 claim there must be evidence of use by a reasonable number of the public during the twenty years period, from 1987 to 2007. The user evidence submitted for Route B is insufficient and no valid claims are deemed to arise for any of the routes under section 31 of the Highways Act 1980.

In respect of Route A only (the historic route) there is some documentary evidence to support the consideration of a right of way subsisting at common law. The Finance Act 1910 field book for Woodington Farm records the compartment numbers through which the right of way passed (the information being presumably provided by and subject to challenge if thought 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 or that the landowner had been aware of earlier dedication.

The hereditament comprising the one field on the west side of the parish boundary is described as 'Church path' but an allowance for a public right of way has been given. The path would have no doubt been used to access the church at Washford Pyne but inclusion of an allowance for public rights of way would suggest the path was a public footpath that went to the church but not used solely for church access. Today there is no access from the field to the church yard on the north side but the vestry minutes of 1838 and 1st and 2nd edition OS maps indicate that there was an access from the field to the church yard in the past. In 1838 the proprietor of Penfield was allowed to put a proper pale gate in lieu of bars on the north side of the church yard to prevent persons walking that way except on Sundays. This would suggest that people were using the path across the field on other days and were perhaps walking through the church yard as a small short cut, rather than continuing to point A and walking around the church yard.

Complaints about the footbridge across the Henceford Brook on the parish boundary were made to Thelbridge Parish Council in November 1896, December 1898, January 1903 and October 1913. On the first three occasions the parish council were to contact Mr Fisher (occupier)/agent/owner to ask for the bridge to be repaired. After the footbridge was raised at the parish council in 1903 it appears to have been raised at the Crediton Rural District Council three days later as it was reported that the clerk of Thelbridge parish Council had written asking who was liable for the repair of a footbridge not adjoining a highway but over which is a public path between Thelbridge and Washford Pyne. The Crediton Rural District Council responded that it was a Parish Council Matter. As no names of farms or individuals are mentioned in the report in the CRDC minutes it is not possible to definitely say the letter refers to the footbridge on the route. However, as it was only 3 days after the footbridge was discussed at the Thelbridge Parish Council meeting and it refers to a path between the parish of Thelbridge and Washford Pyne it would seem likely that it was referring to the same footbridge.

It does not seem that the footbridge was repaired in 1903 as when the OS 2nd Edition 25" to a mile map was published in 1904-1906, the footbridge shown on the first edition had been replaced by stepping stones. In October 1913 when the footbridge was again raised at Thelbridge parish Council, the parish council 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 the bridge. There is no evidence that the parish council of either parish spent any public money on the footbridge or path or that the owner/tenant had repaired the footbridge when they were asked to do so by the parish council.

It is likely that the occupiers of Heles Tenement and Woodington used the path to get to Washford Pyne Church (on 6 November 1924 a Mr & Mrs Fisher were mentioned in a newspaper article reporting on the ordination of the Revered Whitehead at Washford Pyne). However, as the census returns and Finance Act records indicate that Heles Tenement was vacant and dilapidated in 1910, it could be that other members of the public were also using the path in 1913 when the question of repairing the footbridge was again raised at a Thelbridge Parish Council meeting.

The question of the route of the pathway through the gateway at Mill Bridge was raised at Thelbridge Parish Council in December 1896 would also indicate that people other than those from Woodington (who would presumably have walked directly eastwards across their fields to the parish boundary if going to church) and Heles Tenement were using the path. The query had been raised by the Rector of Washford Pyne (the complaint in 1903 raised by a different rector) who was presumably concerned to make sure that those of his congregation who lived in Thelbridge parish could attend his church and also that he could attend on those who lived in the adjacent parish.

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.

A path shown on a map would indicate that a path physically existed at that time but the inclusion on an OS map does not confirm that the path whether the path was public or private at that time. The Ordnance Survey 'Instructions to Field Examiners' issued in 1884 are contradictory and the inclusion of a path may indicate that the path shown was used by the public but the inclusion on an OS map can really only show that a path physically existed at that time.

Under common law there is no evidence to indicate that the landowners of Washford Pyne (the Rector at that time) or at Heles Tenement/Woodington, prior to the purchase of the farm by Mr Fisher after 1910, did not have the capacity to dedicate a public right of way.

The limited user evidence received in respect of Route A and complaints made to Thelbridge Parish Council provide some evidence of the route being a public footpath. There is limited use on horseback of Route A but this is not sufficient or supported by any documentary evidence to support any higher rights.

At common law it is necessary to show that there was express or implied dedication by the landowner/s. Although there is evidence to support that the way may have been used as a public footpath, particularly in the period 1896 – 1913, or even from 1838 (Vestry minutes) and with limited use by local residents continuing to the present time, there is no evidence to confirm that the existence of the footpath was dedicated or accepted by all the landowners (apart from possibly the Finance Act deductions) and it would seem that the footbridge was not repaired by either the parish council or the landowner/occupier after 1903. The evidence as to whether a public right of way subsists needs to be considered in its totality and overall and on the balance of probabilities it is considered insufficient to show express or implied dedication of a public footpath by the landowners along Route A at common law.

There is also insufficient evidence of dedication by the landowner/s to support a claim for a footpath or bridleway along either Route B or Route C or for any higher rights along Route A at common law.

10. Conclusion

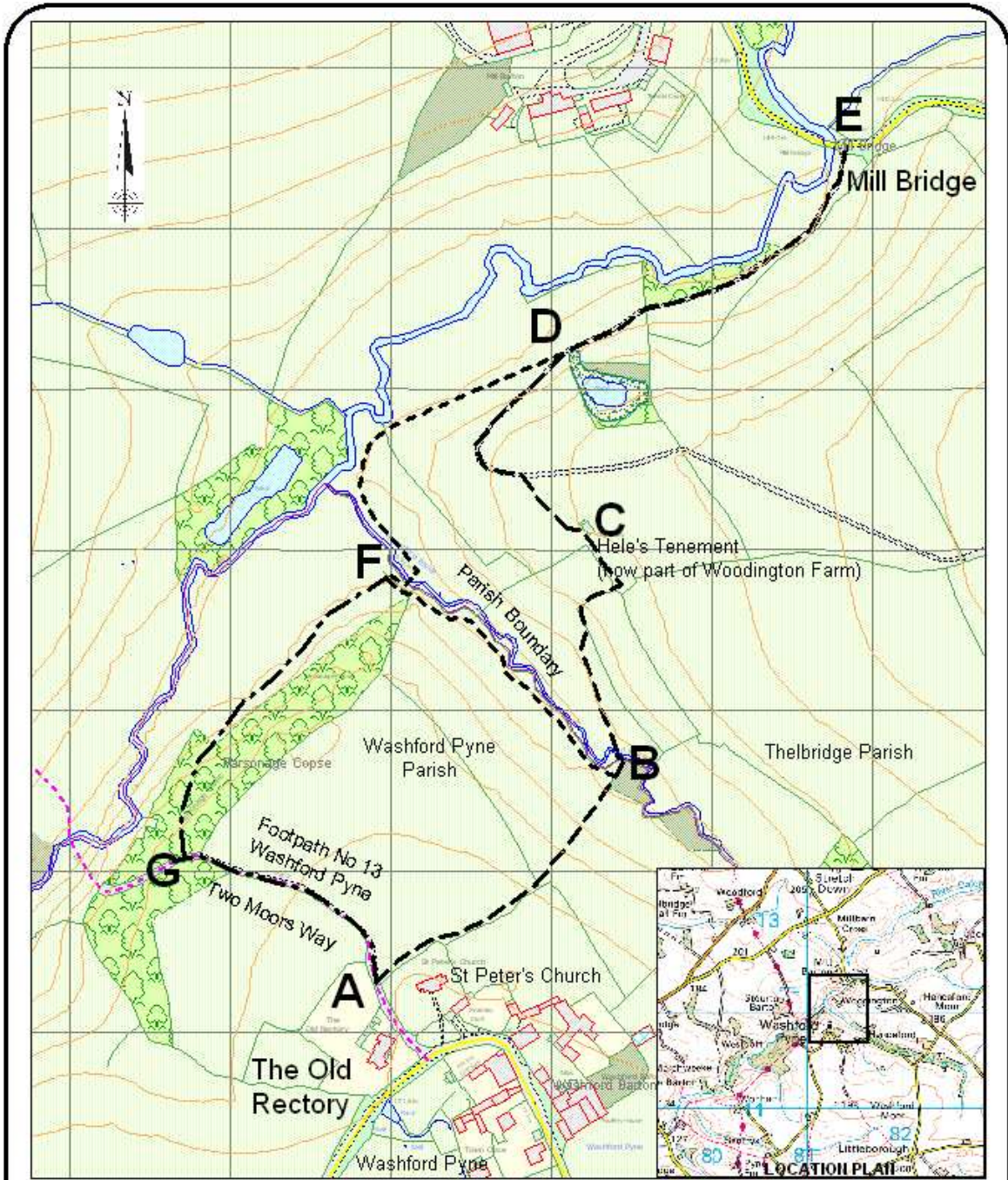
Under section 31 of the Highways Act 1980 there must be a clear calling into question preceded by use of the way for twenty years by the public as of right. The actions of Mr Seddon in putting up the gate and sign in 2007 would be a calling into question as his actions were sufficient to cause the users to contact the Public Rights of Way section to ask if the way was a recorded public right of way.

The twenty year period would therefore run from 1987 to 2007. The total number of users is considered insufficient to fulfil the requirements of section 31 and a valid claim is not considered to arise by implied dedication under the Highways Act 1980.

There is no evidence of any calling into question in respect of Route B or Route C to enable a claim for either of these two routes to be considered under section 31.

To consider whether a claim arises at common law, there must be evidence that there was express or implied dedication by the landowner(s), the landowner had the capacity to dedicate a public right of way and there is evidence of acceptance of the right of way by the public.

When considered overall, the evidence examined is deemed insufficient at common law on the balance of probabilities to recommend that a Modification Order be made to modify the Definitive Map and Statement by adding a Public Footpath from Footpath No, 13, Washford Pyne, east of the Old Rectory to Mill Bridge in Thelbridge parish along Routes A, B or C as shown on drawing number EEC/PROW/10/88.



map ref **SS 8111/8112**

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - WASHFORD PYNE
SUGGESTION NO 1 - ADDITION OF FOOTPATH
OLD RECTORY TO MILL BRIDGE**

drawing number EEC/PROW/10/88
date Sept 2010
scale 1:3,500 at A4
drawn by TW

Notation To be added Public Footpath

- A. Historic Route A - B - C - D - E (790 metres approx)
- B Recently used Route A - B - F - D - E (860 metres approx)
- C Horseriders route A - G - F - D - E (870 metres approx)

Chris McCarthy

EXECUTIVE DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

