

Definitive Map Review Parish of Puddington

Report of the Executive Director of Environment, Economy and Culture

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

Recommendations: It is recommended that:

- (a) a Modification Order be made to modify the Definitive Map and Statement by adding a public bridleway between points A – B – C – D as shown on drawing number ED/PROW/10/95. (Suggestion 1);**
- (b) no Modification Order be made to modify the Definitive Map and Statement by adding a public bridleway between points E – F – G as shown on drawing number ED/PROW/10/96 (Suggestion 2).**

1. Summary

The report examines the routes referred to as Suggestion 1 and Suggestion 2 arising out of the Definitive Map Review in the Parish of Puddington.

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 12 routes, all footpaths put forward by the parish council. After consultation with the District Surveyor and County Surveyors 6 paths were considered to be private paths and not included on the Draft Definitive Map. A total of 6 footpaths 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 Puddington published in 1958.

The reviews of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1968, produced no comments and the uncompleted review initiated in 1977, produced 5 suggestions for change. The 2 suggestions for the diversion of parts of Footpaths Nos 1 and 2, Puddington were completed by Mid Devon District Council in 1979. Suggestion B was the addition of a bridleway from Penn Coppice to Buckford, included as suggestion 1 in the current review. The Limited Special Review of Roads Used as Public Paths (RUPPS), carried out in the 1970s, did not affect Puddington.

The following Orders affecting the Definitive Map for Puddington have been made and confirmed since 1958:

Mid Devon District Council (Footpath No. 1, Puddington) Public Path Diversion Order 1979;
Mid Devon District Council (Footpath No. 2, Puddington) Public Path Diversion Order 1979.

The review was opened in Puddington with a parish public meeting held on 6 July 2010. No changes to the definitive map were proposed by the parish council.

3. Consultations

General consultations have been carried out with the following results:

County Councillor Michael Lee	-	does not support suggestion 2
Mid Devon District Council	-	no response
Cruwys Morchard Parish Council	-	no comments/objections on Suggestion 1
Puddington Parish Council	-	fully support Suggestion 1 - do not support Suggestion 2
Thelbridge Parish Council	-	no objections to Suggestion 2
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	-	support the suggestions
Cyclists Touring Club	-	no response
Devon Green Lanes	-	supports both suggestions as bridleways

4. Conclusion

The suggestions are considered in detail in the Appendix to the report. It is recommended that:

- (a) A Modification Order be made to modify the Definitive Map and Statement by adding a public bridleway between points A – B – C – D as shown on drawing number EEC/PROW/10/95 and;
- (b) No Modification Order be made to modify the Definitive Map & Statement by adding a public bridleway between points E – F – G as shown on drawing number EEC/PROW/10/96.

The Definitive Map review for the parish of Puddington 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

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Background Paper	Date	File Ref.
Correspondence File	2010 to date	DMR/PUD

tw010211pra
sc/cr/dmr puddington
03 hq 150211

**Appendix
To EEC/11/30/HQ**

Suggestion 1: addition of a Public Bridleway from Penn Coppice (in Cruwys Morchard parish) southwards to Buckford Lane

Recommendation: It is recommended that a Modification Order be made in respect of Suggestion 1 – Addition of Public Bridleway from Penn Coppice (in Cruwys Morchard parish) southwards to Buckford 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 ...

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 bridleway or road used as a public path along the route was claimed by the Parish Council in 1978 as one of their suggested changes to be made when the county wide review of the Definitive Map was opened in November 1977. The Parish Council was asked to submit user evidence and eight completed forms were submitted to the County Council in 1978 and have remained on file following abandonment of the 1977 review.

As a route claimed by the Parish Council in an earlier review the addition of a bridleway was included in the consultation map and schedule as Suggestion 1.

3. Description of the Route

The route starts from the Puddington to Pennymoor county road at Penn Coppice, east of Brookvalley Cottage (point A) in Cruwys Morchard parish and follows a defined track up hill south westwards and then southwards for about 240 metres, across the parish boundary into Puddington parish and across a stream and through a gate (point B). The way continues south along a track for a further 190 metres and passes through a gate and across a stream (point C). It then follows the track for 140 metres bearing south south-westwards downhill and through a gate to join the unsurfaced unclassified county road known as Buckford Lane and opposite the northern end of Public Footpath No. 10, Puddington (point D). The way has a width of 2-4 metres and a surface of mainly earth and grass.

The route is as shown on drawing number ED/PROW/10/95 and photographs of the route are included in the backing papers.

4. Consultations

Cruwys Morchard Parish Council advised that the Parish Council has no comments/objections on the proposed suggestion 1 change on the map.

Puddington Parish Council advised that they fully support Suggestion 1 as this has been used for sometime by Parishioners.

The Trail Riders Fellowship advised that based on the depiction of the route on Bacons Map of 1905 and other early small scale maps as a through road; they would support the suggestion as a bridleway if there isn't sufficient evidence to show it to be a restricted byway.

No other responses or replies have been received.

5. Documentary Evidence

Tithe Maps and Apportionments

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 routes shown. Puddington and Cruwys Morchard parish had undertaken their commutation of tithes into a rent charge in 1838 and 1839 respectively.

Puddington Tithe Map 1838

The mid section of the route is recorded under 274 called The Bottom, occupation Course Pasture. A fenced/hedged lane/track (solid lines) is shown for about $\frac{3}{4}$ of the way through the field. A pecked lane/track (unfenced) is shown along the route in the south section through number 281, part of Glebe land called Pisteridge Furze, owned by The Reverend David Llewelyn, occupier William Martin.

Cruwys Morchard Tithe Map 1839

The northern section falls within number 1784a, part of Fork owned Thomas Commins occupied by John Tidbould, called Penn Meadow with occupation pasture. No track is shown.

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 1" to a mile – Cassini Reproductions Sheet 191 Okehampton
Old Series 1809

No track or lane is shown corresponding to the suggestion.

Revised New Series 1900 & Popular Edition 1919

The track does appear to be shown between points B and D and possibly between points A and B.

OS 1st Edition 25" to a mile 1889 and OS 2nd Edition 25 inch to a mile 1904 -1906

A pecked line is shown corresponding with the section of the track from points A to B. South of point B, a defined lane is shown for the remainder of the route to point D apart from just south of point B where the lane changes to an unfenced/enclosed track and branches off northwest towards Yowlstone House. The map shows the stream crossing the way at points B and C but appears ungated at either end.

OS 1 inch to a mile 1946 Sheet 164 Minehead

Part of the route is shown as a defined lane.

OS 1 inch to a mile 1960 Sheet 176 Exeter

The whole route is shown by a long dashed line representing 'Footpaths and Tracks'.

OS 1 inch to a mile 1967 Sheet 176 Exeter – Public rights of way recorded on the definitive map were included in this edition of the 1 inch maps for the first time in red ink. The whole route is shown by a black dashed line representing a 'path'.

OS 1st Edition Post War A Edition 1:2,500 1971

The northern section of the route between points A and C is shown by a pecked line close to a solid line labelled 'path'. The section from C to D is shown as a lane labelled 'track'.

Bacons Cycling and Motoring Map 1905

A defined lane, similar to minor roads in the locality is shown along the route of the suggestion.

Bartholomew National Map Series 1:100,000 North Devon 1975

A defined lane is shown by two solid lines indicating a through route.

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.

The north section of the route between points A and B is included under hereditament number 59, Forke Farm in Cruwys Morchard parish, totalling 172 acres owned by F Stoneman Snapper of Ilfracombe and occupied by W Frankpitt. The field book does not include any reference to or deduction for rights of way.

The mid section of the route falls under hereditament number 12, Yowlestone, 119 acres owned by Mary Eastwood of Gowlestone, Littleham and occupied by John Wensley. The field book refers to a Public Right of Way through field numbers 315, 318 and 319, which would be a route from the county road south through the buildings at Yowlestone and then east along a lane and then south east along a track shown on the map to a ford/footbridge across the stream to join the suggestion on the track numbered 336. No reference is made to any other rights of way in the hereditament.

The south section of the suggestion between points C and D is included under hereditament number 36, Glebe Lands and Buckford totalling 63 acres owned by Walter Edwards of Puddington Rectory and occupied by Robert Lake. The field book refers to one right of way through Easter Close and Barton Meadow (field numbers 175 & 206) which corresponds to the recorded Footpath No.1, Puddington and does not refer to any other rights of way.

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

In Puddington and Cruwys Morchard parishes no path relating to the route were put forward by either parish as part of the initial parish survey of paths to be included in the definitive map.

On the Puddington Parish Meeting submission form for Footpath No. 10 (the recorded footpath running south from Buckford Lane, opposite point D) the Parish Meeting indicated this was a private footpath as did Mr Pearce who inspected the route on behalf of the Crediton District Council in February 1951, although the District Surveyor advised re Path No. 10 *I think this could be regarded as a public right of way although I have shown it as being private only.*

The County Surveyor annotated the form *?extension to Uncl. CRd @ Yowlestone*. A pencil note under the *?extension* which appears to refer to the suggested extension says *Not required*. The revised description for the footpath pinned to the front of the sheet describes the footpath finishing at the unclassified road between Puddington and Poughill (Buckford Lane).

On the original Parish Submission forms submitted by Puddington Parish Meeting; the question *Grounds for believing path to be public* was answered *None* for eleven out of the twelve paths submitted. Six paths were considered to be public and added to the Definitive Map.

A meeting was held with Mr Roberts of the County Council, the Divisional Road Surveyor, Mr Beer and Squadron Leader Offord, the Chairman of Puddington Parish Meeting in July 1952.

Following this meeting Mr Roberts wrote to Sqn Ldr Offord with a list of outstanding points on which the Council would like to have the decision of the Parish Meeting. Point 4) referred to Footpath No. 10 – Puddington Bottom – Wood – Ash Copse and stated *A useful link up would be provided between the two County Roads, from Ash Copse, thence along an accommodation road to Yowlestone Farm where it joins the County Road at that point, which I consider should be included in the Survey, and I should be glad to be informed whether the Parish Meeting claim that a right of way exists over that accommodation road, and across the field and footbridge over the stream.*

Sqn Ldr Offord replied in January 1953 and advised *No clear indication could be obtained as to whether this F.P. had been used within living memory but it was thought it may have been a postman's path many years ago.* The answer does not make it clear whether he was referring to Footpath No. 10 or the link suggested by Mr Roberts to Yowlestone that corresponds to suggestion 1, and there is no subsequent correspondence on the file. The OS sheet referred to in the letters is also missing.

Footpath No. 10, Puddington was added to the Definitive Map but an extension to Yowlestone (corresponding to suggestion 1) was not included in the draft or provisional Definitive maps and no objections appear to have been made to the inclusion of Footpath No. 10 or the omission of that route for either parish.

Devon County Council Uncompleted Reviews of 1968 and 1977

The Parish Meeting made no suggestions for change in 1968. In the 1977 review a public meeting was held in March 1978 following which the Parish Council proposed five suggestions for change. Item number B) was *On the Puddington/Pennymoor road starting in Penn Coppice and continuing down to the farm road by Ash Copse, is an old established public right of way, and this should be marked either as a 'Road Used as Public Path' or as a Bridle path. On the definitive map there is nothing, although the track is clearly marked on the Ordnance Survey.*

Mr Gash of the County Council requested the Parish Council to complete a blue form 'Proposal for new entry of a Right of Way on Map' and to arrange for the completion of user evidence forms, five to six reliable witnesses would be sufficient. The Parish Council were also advised that a Road used as Public path would be open to vehicles or motor cycles. The Parish Council submitted the completed blue form requesting a bridleway and eight user evidence forms in June 1978. The covering letter from the Chairman advised *All the old established villages have known this particular path and used it. I can easily attach further forms but thought that the attached would suffice.*

The suspension of the 1977 County review was notified to the Parish Council in November 1980.

Correspondence with Devon County Council

In March 1980 Puddington Parish Council had contacted Mid Devon District Council regarding the signing of the footpaths in their parish and included the prospective bridleway. They envisaged a signpost each side of the road at Buckford (*one for Footpath No. 10, Puddington and one for the bridleway*). Mid Devon District Council contacted Mr Gash at Devon County Council and he advised that whilst the claim the County Council had received for a bridleway seemed a candidate with good credentials, until it was formally recognised it would be tempting providence to signpost it.

Puddington Parish Meeting and Puddington Parish Council Minutes

The Puddington Parish Meeting minutes are available for the period 1894 – 1965 and for Puddington Parish Council from 1975 to 2010. Within the minutes there are several references to suggestion 1 as summarised below.

3 February 1976

The Chairman reported that he had been approached by two people in connection with the blocking of bridleways through the Yowlstone property. Mr Rowcliffe produced a map showing public footpaths but no bridleways. He had been asked to have pro-formas completed by local residents. Mrs Frazer said that Mr Yarde-Buller should be approached re Yowlstone. After discussion on approach roads and undesignated roads, Chairman to contact Mr Yarde-Buller and other long-standing residents.

11 January 1977

On the question of footpaths, it was stated that the bridlepath on Mr Trick's land was blocked by barbed wire at both ends, and that while this bridle path was shown on the official map in Exeter, no bridle paths were shown on the map held in Puddington.

8 March 1977

With regard to the bridle path on Mr Trick's land, it had been discovered that one end of it was not in Puddington. Col Croysdale had been asked to contact him about the barbed wire.

10 January 1978

Definitive Map

The Chairman read letters from Devon County Council.

Resolved that the bridle-path passing through Yowlstone and other land, be correctly marked on the new Definitive map.

14 March 1978

Definitive Map

The various points made during the Parish Meeting were considered and it was resolved that the following points be raised with the County Council:-

(b) On the Puddington/Pennymoor road, starting in Penn Coppice and continuing down to the farm road by Ash Copse is an old established right of way, and this should be marked, either as a 'Road used as a Public path' or as a bridle-path.

9 May 1978

18/5 Matters Arising from the Minutes

(a) Definitive Map The Chairman read the letter from the Devon County Council and it was resolved that the recommendation outlined in the letter from County Hall RG/6/209 dated 27 April 1978 be accepted in full. *The letter from Mr Gash responded to the five suggestions made by the Parish Council as part of the review and with respect to the claimed bridleway said 'If the Parish Council considers this right of way as eligible for inclusion on the new Map the best course would be to describe just what is wanted on a blue form and to arrange for the completion of supporting evidence on some buff forms: generally speaking, I should say five or six reliable witnesses would be sufficient, especially if there are other users in reserve. The only real difference between a road used as a public path and a bridleway is that the former is open to all traffic and it may be that the thought of motor cyclists will colour the Parish Council's eventual decision'.*

11 July 1978

Matters Arising

19/3 a) Definitive Map Devon County Council have been sent the formal request for the 'Yowlstone' bridle-path, supported by 8 witness forms.

13 March 1980

29/7 Footpath Signposts

It was decided to ask for signposts to be erected by Mid Devon District Council at several points including

Footpath to Buckford: One footpath sign and one bridleway sign.

11 May 1980

Matters Arising

Footpath Signposts (minute 29/7)

It was understood that the proposed bridleway between Buckford and Yowlestone could not be signposted until formally declared to be such.

Annual Parish Meeting May 1980 Chairman's Report

Footpaths

Thanks to goodwill on the part of the majority of the landowners concerned, we have been able to maintain the existing footpaths, and one bridlepath, with two minor (except to their owners) diversions.

Annual Parish Meeting 12 April 1983

2. Matters Arising from the Minutes

It was reported that since the closure of the unofficial tip on the road to Pennymoor the entrance to the adjacent bridlepath was being used as a tip and had become an eyesore. It was agreed that the Parish Council would ask the District Council to take action to prevent this illegal tipping.

Cruwys Morchard Parish Council Minutes

There are no references to the route in the Cruwys Morchard Parish Council minutes in the period 1894 to November 1970 and November 1976 to June 1979.

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

Due to the presence of the mature trees adjacent to the route, the track/path is not visible on the aerial photography.

HM Land Registry/Landowners

The northern end of the route between points A and B lies on land occupied by Lord Churston and owned by the Churston Barony Settlement Trustees.

The southern end between points C and D crosses land not registered but owned by Mr Gillbard of Ash Farm, Puddington

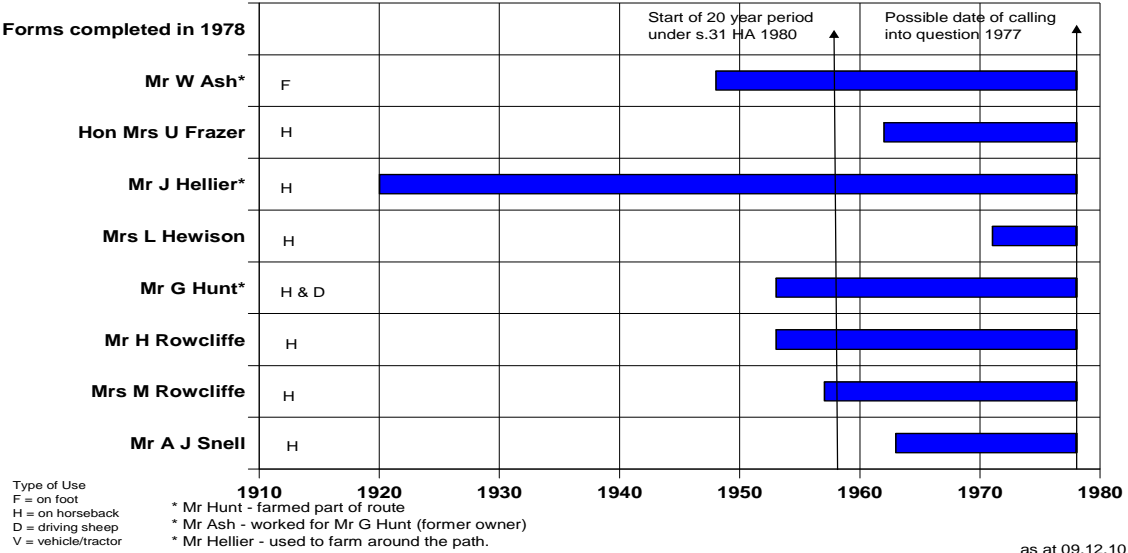
6. User Evidence

Eight user evidence forms were submitted in support of the request for the bridleway made by the parish Council in 1978. The parish Council advised in their covering letter that *All the old established villages have known this particular path and used it. I can easily obtain further forms but thought that the attached would suffice.* The period and type of use by these users is summarised in the chart. The user evidence collected in 1978 shows use by foot and horseback from before 1930 with most of the use recorded between the mid 1950s and 1978 when the forms were completed. Three of the users either farmed or worked for the farmer of part of the route but whether they used the route before or afterwards is not known. All say they have either known or regarded the way to be public. The forms appear to have been collected from longstanding residents and included the Parish Council's Chairman's wife.

The user forms refer to the gates being recently installed approximately 1/3 and 2/3 along the route (at points B and C on the plan) and two (older) users refer to gates at either end (points A and D). Mrs Hewison refers to the entrance on the Puddington/Pennymoor road blocked by barbed wire, but does not say when (Barbed wire across route reported to Parish Council in January 1977) and gate not hanging at Buckford end. Mr Rowcliffe refers to an obstruction at Buckford but does not say what or when. Mrs Rowcliffe (different address) refers to occasional closing at Puddington/Pennymoor road end with barbed wire and gate at other end tied across gateway. Two other users refer to obstruction at Buckford end.

Only three of these users from 1978 are still with us today and two were contacted where their new addresses were known. Mrs U Fraser (now Mrs U Rowcliffe) advised in a telephone conversation that she stopped using the route in about 1978 as she used it when accompanying her youngest daughter who liked to ride. She wasn't sure whether they had permission from Mr Yarde-Buller and had not come across barbed wire across the route. It was a Mrs Frazer who suggested contacting Mr Yarde-Buller when the path was discussed at a parish council meeting in February 1976.

Chart of User Evidence for Suggestion 1 - Puddington DMR



7. Landowner Evidence

The land crossed by the section of the route between points A and B has been occupied by Lord Churston (as life tenant of the Churston Barony Settlement Trust) since 1988 (23 years) and the section between points B and C since 1973 (38 years). (Precise dates confirmed subsequent to receipt of the landowner evidence form). His lordship considers the way to be a bridlepath and has been aware of local walkers, riders and hunt using the way. He has no objection to the bridlepath for walking, riding and cycling but no motorised vehicles. A locked gate at point A was erected in about 2006 after a number of vehicles used the track and drove over and damaged a large number of rhododendrons. The gate was installed in such a way that a horse rider or walker can get round it and is unlocked by appointment e.g. if the local hunt wants to pass through.

Mr P Michelmore FRICS has confirmed that title to the land between points A and C is vested in the Trustees of the Churston Barony Settlement for whom he acts as agent. They have never considered the way to be public and although they have seen or being aware of members of the public using the way, such use has been intermittent, limited and in any event permissive. People have been required to ask Lord Churston permission from time to

time as necessary and it is understood Lord Churston has turned back someone and told someone the way was not public.

Mr Michelmore is to clarify whether any notices or signs have been erected. The gate erected at point A by Lord Churston is locked and obstructs the way. (*The gate obstructs the way to motor vehicles but has a small gap to the side for walkers or riders.*)

The southern section of the route between points C and D has been owned by Mr Malcolm Gillbard of Ash Farm since 1971 (40 years). He does not consider the way to be public. He has been aware of the public using the way for walking for 20/30 years and has given two ladies permission to walk his track. He bought the land free of a bridleway or footpath.

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

The route was not claimed by either Puddington or Cruwys Morchard parishes in the 1950 footpath survey. It appears that the question of a northwards continuation of Footpath No. 10, Puddington was raised by the District Surveyor and discussed at a meeting with the Chairman of the Parish Meeting Squadron Leader Offord, Divisional Road Surveyor and Mr Roberts of the County Council. An unclear reply was received from the Chairman six months later and no extension was included in the draft definitive map for Puddington.

Puddington Parish Council did claim the route as a bridleway in the subsequently uncompleted County Council review of the Definitive Map in 1977 and user evidence forms were submitted for use mainly on horseback by local residents since 1930 and mostly from the 1950s. Puddington Parish Council fully support the claim as the way has been used for sometime by Parishioners. The references in the parish Council minutes indicate that the Parish has thought of the route in a similar manner to the recorded footpaths and they requested the route be signed with Footpath No.10 in March 1980 and referred to the bridleway again in April 1983. Cruwys Morchard Parish Council has no comments/objections on the proposed suggestion.

The Tithe Map for Puddington and other mapping indicates the presence of a way between points B and D since 1838 and a route all the way through has been shown on the 25" to a mile OS first and second editions and on the OS one inch maps since 1960.

The Finance Act plans and field books for the three hereditaments crossed by the route do not give an allowance for the route for a public right of way but they do refer to a public footpath through Yowlestone which leads to the route south of point B. There is nothing to indicate a point of interest at that point and it would seem that the right of way mentioned led to the track used by the route.

The Parish Council minutes refer to bridleways through Yowlestone been blocked in 1976 and obstructed by barbed wire in 1977. The barbed wire was also mentioned by some of the user evidence forms completed in 1978. The presence of the barbed wire or other obstruction does not seem to have stopped continued use of the route to this day and it may be that the wire was there in an agricultural capacity rather than to stop use of the way by the public. The two gates that appear to have been installed at Points B and C in the late 1970s (as mentioned in some user evidence forms) may have been to replace the temporary barbed wire.

Lord Churston, landowner of the section between points A and C is happy for the route to be recorded as a bridleway but not for motor vehicles and erected a locked gate at point A to stop vehicles, but with a gap for walkers and horse riders to pass by. Mr Gillbard has owned the land between points C and D for 40 years and has been aware of the public walking the route and has given two ladies permission and does not consider the way to be public.

The blocking of the bridleway in 1976 or the presence of the wire in 1977 could be considered a calling into question. It appears that the obstruction was temporary as the route was in use again in 1978 when the Parish Council requested the bridlepath to be added to the Definitive Map in the 1977 review. The period of twenty years use would run from or 1956 to 1976 or from 1957 to 1977 with between five and eight users during that time. Three of the eight users either occupied or worked for an occupier of part of the land crossed by the route and as these three are now deceased, it is not possible to ascertain whether this coincided with any of their use of the route as a public right of way between 1957 and 1977. All three do however state that they have known or regarded the way as public, saying *all my life or yes*.

The locked gate, erected at point A in 2006, would be a clear calling into question for any motorised vehicles using the way, but as horse riders, cyclists and walkers can still pass it would not be a calling into question for bridleway use. No user evidence in support of higher rights has been received, although the older user evidence forms did not ask by what means a route was used, only for what purpose. No further user evidence forms have been received during the recent public consultation for the suggestion.

There does not appear to be any evidence of actions taken by or on behalf of the landowners that would be considered as sufficient to show a lack of intention to dedicate during the twenty years from 1956 to 1977. When the first obstruction was raised in 1976, Mrs Frazer suggested that Mr Yarde-Buller (now Lord Churston) be contacted but the minutes do not say whether the other two landowners were contacted; Mr Trick of Forke Farm in Cruwys Morchard who owned the section between points A to C (prior to Lord Churston buying the land in 1988) or Mr Gillbard of Ash Farm with respect to the section C to D.

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 number of user evidence forms received in 1978 is considered sufficient to fulfil the requirements of section 31 even allowing that three of the users may have been using the route in connection with their employment or tenancy of part of the route. There is not considered to be sufficient evidence of the landowners' lack of intention to dedicate during the twenty-year period. Public use continued after the reported obstructions.

Following the 2007 House of Lords decision in the case of *Godmanchester & Drain*, it was held that the landowners' lack of intention to dedicate has to be very clear and overt to the general public using the route and users continued to use the route after the reported obstructions in 1976/77.

To consider whether a claim may also exist 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. Lord Churston, as life tenant, is considered to have the capacity to dedicate a public bridleway (by way of s. 52 of the Settled Land Act 1925) although the trustees have confirmed that they do not wish to do so but would be happy for the route to remain available to local users as a permissive bridleway. Although aware of the public's use of the route Mr Gillbard appears to have taken no action to show the public that the route was not public.

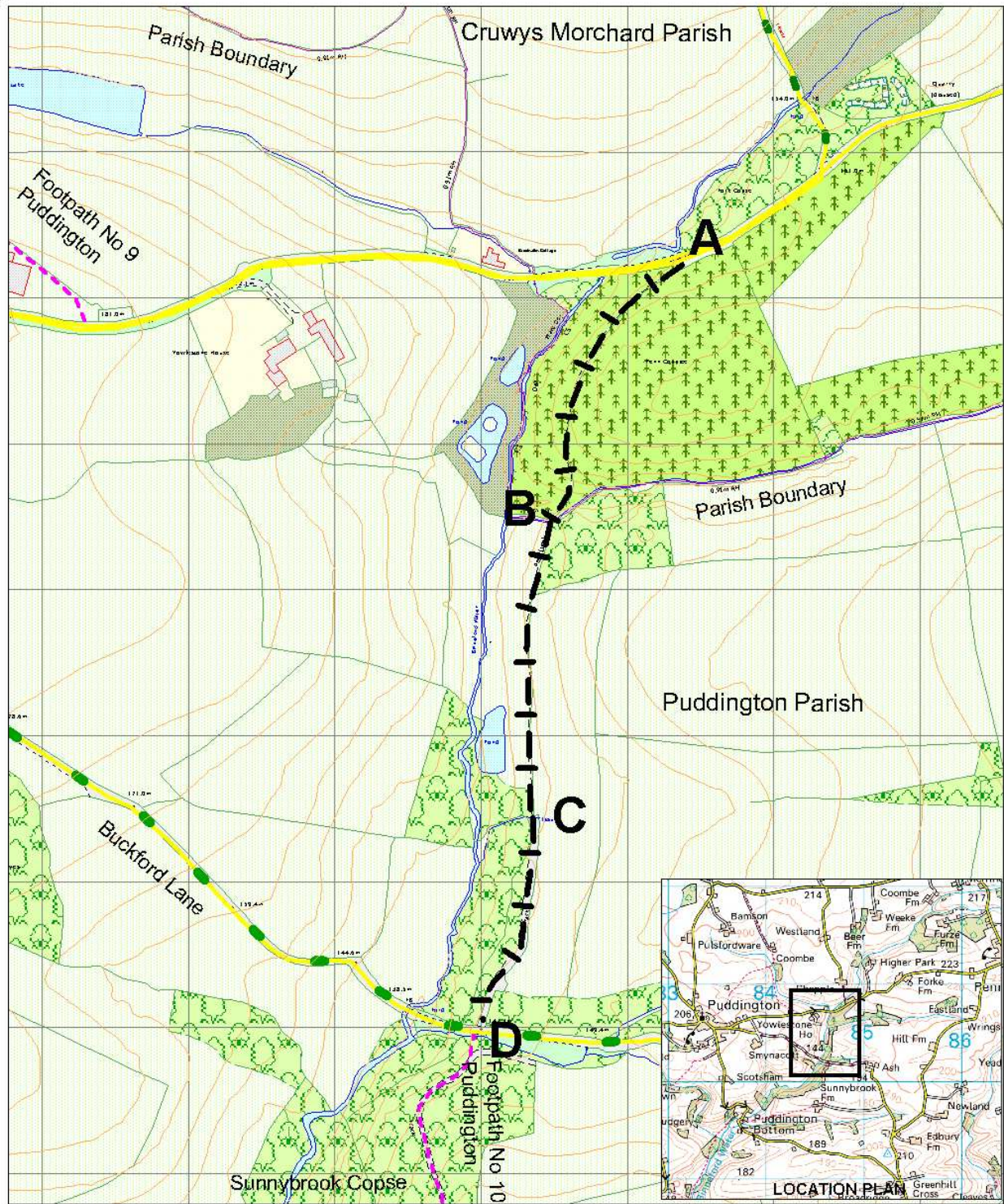
The offer of a permissive path by the Trustees of the land crossed by part of the way (points A to C) is appreciated but where there is evidence that a right of way can be reasonably alleged to subsist the usual recommendation would be for a modification order to be made.

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. A twenty-year period is deemed to run from 1956/57 to 1976/77 and the user evidence collected in 1978 is considered sufficient to support the claim under section 31 of the Highways Act.

It is also considered that there is sufficient evidence of implied dedication by the landowners and use by the public to show that a public right of way can be reasonably said to subsist at common law.

It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a Public Bridleway as shown on drawing number ED/PROW/10/95.



map ref SS 8410


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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - PUDDINGTON
SUGGESTION NO 1 - CLAIMED BRIDLEWAY
PENN COPPICE TO BUCKFORD LANE (FP10)

drawing number EEC/PROW/10/95
 date Oct 2010
 scale 1:4,000 at A4
 drawn by TW

Notation To be added Public Bridleway

Route A - B - C - D (570 metres approx) 

Unsurfaced unclassified county road 

Chris McCarthy



EXECUTIVE DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

Suggestion 2: addition of a Public Bridleway from Twenty Acres westwards to Henceford Moor (in Thelbridge parish)

Recommendation: It is recommended that no Modification Order be made in respect of Suggestion 2 – Addition of Public Bridleway from Twenty Acres westwards to the county road between Henceford Cross and Nomansland (part in Thelbridge parish)

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

In September 1987 a member of Puddington Parish Council contacted Devon County Council regarding the track from Twenty Acres to Henceford Moor as Mr & Mrs Folland, the adjoining landowners, were asking who is responsible for the track, the County Council or Mid Devon District Council. Following the opening of the Definitive Map Review in Thelbridge a number of user evidence forms were received for Thelbridge parish which included a route used by horse riders across to Twenty Acres in Puddington Parish as described as Suggestion 2. There were also references in the Puddington Parish Council minutes in the 1990s asking for the route to be registered as a public right of way. This warranted the addition of a bridleway from Twenty Acres to Henceford Moor to be included as suggestion 2 in the Definitive Map Review of Puddington.

3. Description of the Route

The route starts from the bend in the county road north of Twenty Acres at point E and proceeds north west and then west south-westwards along a green lane, hedged on both sides for 470 metres to the end of the lane and a gate at the parish boundary (point F). The way then continues west southwestwards initially along a field headland and then across the field, through a gate before turning north and going through another gate for 310 metres to join the county road between Henceford Cross and Nomansland at point G. The way is approximately 780 metres long with a width of about 7 metres along the lane, 3 metres along the headland and 2 metres across the field. The surface is generally of earth and grass with some stone along the lane.

The route is as shown on drawing number ED/PROW/10/96 and photographs of the route are included in the backing papers.

4. Consultations

Puddington Parish Council advised that they do not support this suggestion, as they have not been approached by any of their Parishioners to suggest that the route has been historically used or is presently used as a bridleway or even a footpath. Their investigations have led them to understand that anybody using the track has done so only with the landowners' permission and has not been considered a 'right of way' in any shape or form.

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

The Trail Riders Fellowship advised that based on the depiction of the route on Bacons Map of 1905 and other early small scale maps as a through road; they would support the suggestion as a bridleway if there isn't sufficient evidence to show it to be a restricted byway.

No other responses or replies have been received.

5. Documentary Evidence

Tithe Maps and Apportionments

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 routes shown. Puddington and Witheridge parish (this part of Thelbridge was still in Witheridge in 1830s) had undertaken their commutation of tithes into a rent charge in 1838 and 1837 respectively.

Puddington Tithe Map 1838

The current lane from points E to F is not shown with this section of the route in Puddington falling in field number 32, 17 acres, described as Partiss Whale Moor occupation Course Pasture owned by Charles Helman, occupier John Waller.

Witheridge Tithe Map 1837

The west section of the route would pass across field numbered 2209 called Great Moor occupied as Pasture owned by Robert Mildom occupier William Stevens.

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 1" to a mile – Cassini Reproductions Sheet 181 Minehead
Old Series 1809

No track or lane is shown corresponding to the suggestion.

Revised New Series 1900 & Popular Edition 1919

The lane between points E and F is shown together with a track across the field from points F to G.

OS 1st Edition 25" to a mile 1889 and OS 2nd Edition 25 inch to a mile 1904 -1906

The lane between points E and F is shown as it is today. A double peaked line believed to represent a track is shown along the line of the route between points F and G across field number 716 27.839 acres depicted as furze and rough pasture. In the second edition the field south of 716 has been improved as no vegetation is depicted on the map.

OS 1 inch to a mile 1946 Sheet 164 Minehead

The existing lane between points E and F is clearly shown together with a track marked across the field at Henceford Moor between points F and G.

OS 1 inch to a mile 1960 Sheet 176 Exeter

The section between points E and F is shown as a defined lane and the section between points F and G is shown by a long dashed line representing 'Footpaths and Tracks'.

OS 1 inch to a mile 1967 Sheet 176 Exeter – Public rights of way recorded on the definitive map were included in this edition of the 1 inch maps for the first time in red ink.

The whole length of the route from points E to G is shown by a black dashed line representing a 'path'.

OS 1st Edition Post War A Edition 1:2,500 1970-1971

The lane is shown as on the 1st and 2nd edition 25" to a mile maps. The section between points F and G crosses two fields but no track is shown. The western field appears to have been improved although the centre section is shown as rough pasture.

Bacons Cycling and Motoring Map 1905

A defined lane, similar to minor roads in the locality is shown along the route of the suggestion.

Bartholomew National Map Series 1:100,000 North Devon 1975

A defined lane is shown by two solid lines for the whole length of the route indicating a through route.

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.

The east section of lane between points E and F is included under hereditament number 25 Pultisware & Raddiford, totalling 200 acres, owned by Thomas Lake of Tiverton and occupied by John Hellier. The field book includes reference to a footpath across 2 fields at Raddiford, field numbers 134 and 154 but does not make any reference to the lane.

The west section of the route across the field between points F and G is included under hereditament number 101 (Thelbridge parish) Henceford, totalling 237 acres owned by Mr Riche of Tiverton and occupied by George Matthews. The field book refers to a Public Right of Way through field number 716 only, the field between points F and G, and includes a £20 deduction for Public Rights of Way or Users.

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

In Puddington and Thelbridge parishes no path relating to the route considered as Suggestion 2 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.

No claims were submitted by either parish council during the uncompleted reviews of 1968 and 1977.

Correspondence with Devon County Council

On the 17th September 1987 Mr Drew wrote to the County Council saying I am returning your set of application forms as I do not require them, I have a new definitive map which shows that the track as ... (word unreadable as hole pinched through). Mr & Mrs Folland would like to know who is responsible for the track, Devon County Council or Mid Devon Council. I have been having words with them as they are thinking of tearing this track up.

Mr Curry for the County Solicitor replied enclosing a copy of the Definitive Map, which he asked Mr Drew to annotate with the track in question and return, which he duly did. On 9th November Mr Curry replied advising that the path shown is not shown on the Definitive Map and would Mr Drew wish to make an application under the Wildlife & Countryside Act to have the track recorded.

Mr Drew telephoned the County Council in November 1987 on receipt of the letter and advised that owner of lane wishes to take it back into the fields. Owner of field is happy for lane to come into his land and acknowledges existence of a footpath over his field (Mr Hare). Although many of the older residents have told Mr Drew of their use of the path, none, apparently, are prepared to complete any forms to that effect. Mr Drew was advised that without such evidence it would be difficult to do anything to help. Mr Drew was going to try and get forms filled and parish council involved.

Puddington Parish Council Minutes

The Puddington Parish Meeting minutes are available for the period 1894 – 1965 and for Puddington Parish Council from 1975 to 2010. Within the minutes there are some references to discussions on rights of way and later to suggestion 2 as below.

11 July 1983

54/7 Footpaths and Bridleways

..... Mr Drew informed the Council that from conversations with local farmers he believed he had identified footpaths additional to those shown on the definitive map.

12 March 1990

AOB 4) Public Footpaths

Mr D Drew mentioned that he is in contact with Devon County Council regarding footpaths and their registration, and that he will continue his collaboration with them on this question. The Parish Council offered its assistance should it be required.

10 January 1994

AOB h) Registration of Footpath – Mr Drew requested that the footpath from the green lane next to Twenty Acres through to Henceford Moor be registered. Councillor Trayhurn agreed to do this.

5 September 1995

127/7 Members of the Public

a) Mr Drew then questioned whether the footpath at Twenty Acres had been registered. Councillor Rowcliffe stated that, as far as he was aware, this was a green lane and the responsibility of MDDC. It was proposed that we write to Richard Spurway asking him to clarify the matter. (*Richard Spurway was the MDDC Rights of Way warden*)

7 November 1995

128/3 Matters Arising

c) Footpath – Mrs Haynes asked whether any contact had been made with Mr Spurway concerning the footpath at Twenty Acres. The Chairman then explained that as he was aware of communication between Mr Drew and Mr Spurway but as Mr Drew was not in attendance at this meeting no further information could be supplied. This matter would be carried forward to the next meeting.

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

The lane between points E and F is clearly visible on all three photographs and has not changed in the preceding 50 years. A track between points F and G appears to be visible on the 1946 photograph and also on the 2006 photograph, although the track is south of the headland and appears to have been made by agricultural vehicles.

HM Land Registry/Landowners

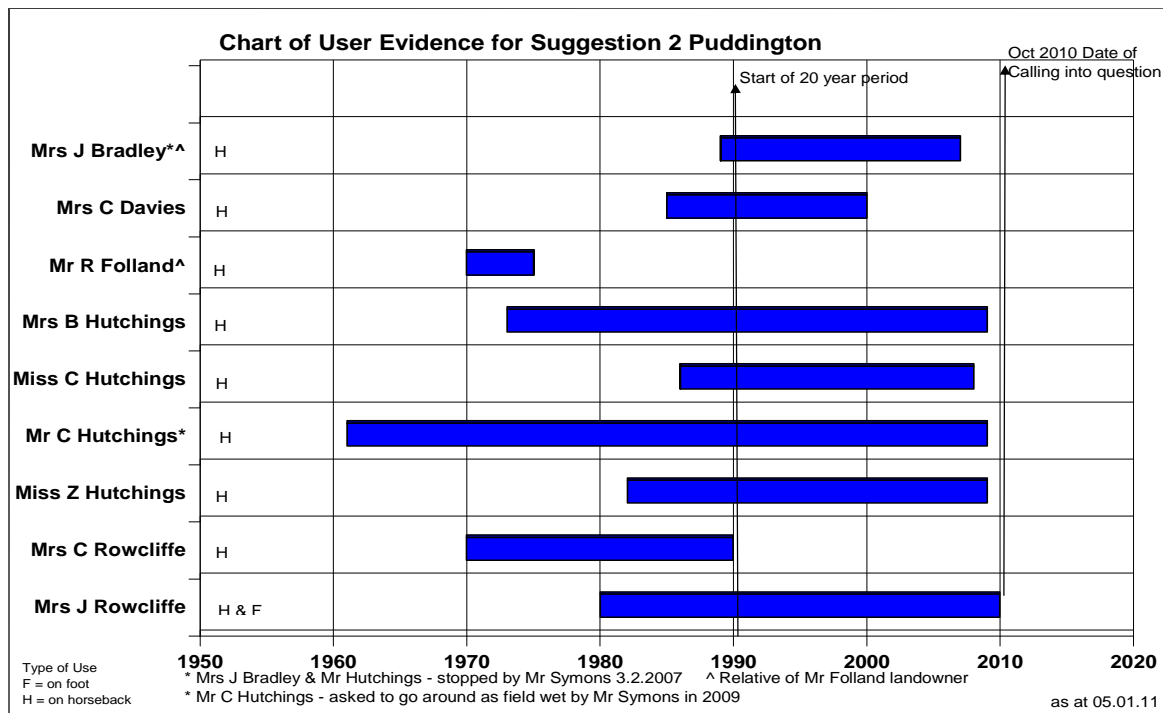
The west end of the route follows a defined lane not registered at HM Land Registry. The land north of the lane and part of the land south of the lane are registered as part of Twenty Acres, owned by Mr S A Folland and Mrs J Folland.

The east end crosses land forming part of Higher Henceford Farm, owned by Mr P and Mrs L Symons.

6. User Evidence

Several user evidence forms were received in connection with the review in Thelbridge where a number of users had also used suggestion 2 as part of a longer route. These users were contacted and a total of nine user evidence forms were received in respect of use of the way between points E to G only. The chart of user evidence summarises the period and type of use from those received. All had used the route on horseback and one user had also used the route on foot. The use dates from 1962 to 2010 and the frequency ranged from 5 times a year to more than 30 times. The use is stated to be as of right, ie without force, secrecy or permission.

None of the users refer to having permission to use the route and refer to gates being unlocked. They believed the route to be a bridleway based on being used by others beforehand; assuming it was; no one objecting to its use and family and local knowledge. Mrs Bradley refers to being stopped by Mr Symons in February 2007 and stopped using the route. Mr Hutchings refers to being asked to go around in 2009 and Mr Symons states that he was also with Mrs Bradley when she was stopped in 2007. Three of the users had stopped using the route by 2003 when Mr & Mrs Symons purchased Higher Henceford farm.



7. Landowner Evidence

Mr S Folland has owned the fields adjoining the lane crossed by the east end of the route for 39 years. He does not consider the way to be public and has only allowed the hunt, friends and family to use the lane. In 1987 they requested Mr Drew to ask permission to use the way and in Summer 2010 stopped/turned back a girl rider, and Mr Folland's daughter had turned back some walkers. The gate at point E was erected in 1987 and was locked in October 2010 when a notice was also erected at point E saying 'No unauthorised persons'. In 1987 Mid Devon District Council confirmed that they did not own the lane after Mr Drew complained about the gate erected at the end of the lane at point E. The users Mrs J Bradley and Mr R Folland are the niece and brother of Mr S Folland.

Mr & Mrs Symons purchased Higher Henceford Farm in March 2003 and do not consider the way to be public. They have noticed occasional hoof prints but cannot see the land from the house. People have asked for permission to cross the field and have been refused; only the hunt is allowed to cross when the field is dry enough. Mr Symons stopped Mr C Hutchings and Mrs J Bradley in February 2007 and three other local riders have been told not to use the route in 2006 and Summer 2008. These were also asked to tell other local riders who might have gone through.

They widened the gateway at point F in 2006 where the gateway was overgrown and gate difficult to open, to use the whole route for agricultural vehicle access to land east of Twenty Acres, but haven't obstructed the route as it is used for agricultural purposes.

After publication of the consultation map for Puddington in October 2010 they locked the gate at point G and put up a sign saying '*Private No right of way*'.

Mr C Hare owned the land crossed by the route between points F and G for 40 years prior to 2003. They did not believe the way to be public, had not been aware of people using the way or stopped anyone using the way. Gates were not locked and they had never erected any notices or signs stating that the way was not public.

8. Rebuttal Evidence

Mrs U Rowcliff of Bamson Farm, Puddington has lived in Puddington since 1962 and wrote to advise that to the best of her knowledge the lane that went through Woodscombe Farm (footpath 12) and exited onto the Nomansland, Henceford Cross Road was always used by both horse riders and walkers; originally to get to the blacksmith at Nomansland. It seems totally unnecessary to create another bridle path to exit onto the same road within about half a mile of the exit of Footpath 12.

9. Discussion

This route was not claimed by either Puddington or Thelbridge parishes in the original Footpath Survey completed in 1950 or in either of the subsequent incompleting County reviews of 1968 and 1977. Puddington Parish Council does not support the suggestion and Thelbridge Parish Councillors advised that they raise no objections to the modifications suggested that lie within the Thelbridge Parish Council boundary. The Trail Riders Fellowship advises that if there is insufficient evidence to support the route as a restricted byway they would support bridleway.

The Tithe map confirms that the lane section of the route between points E and F did not exist in 1838 but had been constructed and the layout changed of adjoining fields by 1890 as shown on the OS 1st Edition 25" to a mile. On the 1st and 2nd editions of 1890 and 1906 a track is also shown across Henceford Moor to point G. The track is not labelled *FP* although OS surveyors' instructions indicate that *FP* was to be used to show routes that were unsuitable for horses or carts. A through route was also shown on the 1905 Bacons Map and on OS mapping over the years, although no track is shown across Henceford Moor on the 1971 post war mapping.

The Ordnance Survey and other mapping do not provide evidence of the status of a route or way but can be evidence of its physical existence over a number of years and would indicate that the route would have been available to the public since the mid to late 19th century.

The Finance Act Field Book for Henceford refers to a public right of way through the field between points F and G and an allowance of £20 has been given. As information about rights of way was understood to have been provided by the landowner, this would indicate

that a public right of way was deemed to subsist across that land at that time. The section of lane between points E and F was part of Pultisware Farm. No reference is made to a right of way along the lane, although the shading breaks across the lane at point E in a similar manner to the adjacent county roads.

There are no references to the route in Thelbridge Parish Council minutes. In Puddington, Mr Drew requested that the route be added to the definitive map at a Parish Council meeting in 1994. In September 1995 Mr Drew and then Mrs Hayes in November 1995 again asked if this had been done. As Mr Drew was not present in November 1995 the matter was to be carried forward to the next meeting but there were no further references in the minutes.

Mr Drew had had previous correspondence with Devon County Council concerning the route in 1987 and although he considered it to be a right of way and was aware of other local residents using the route, he was unable to obtain user evidence to support a formal application under Schedule 14.

A total of nine user evidence forms and maps were received. The use recorded use on horseback and foot between 1962 and 2010. Two of the users were stopped in 2007 and one again in 2009. Four of the users are from the same family and two are related to one of the landowners.

Neither of the current landowners, nor previous owner of Henceford, considers the way to be public. Mr & Mrs Symons (points F to G) have stopped and told users that the way was not public. In October they put up a sign saying 'Private No Right of Way' and locked the gate at point G. Mr Folland does not consider the lane to be a public right of way and was told by Mid Devon Council that the lane did not belong to the Council and as owners of the adjoining fields; the lane would be Mr Folland's responsibility for maintenance. He has told people that the lane was not public and required Mr Drew to ask permission in 1987. It would appear that following the gate being erected at point E in 1987, Mr Drew contacted Devon County Council about adding the route to the Definitive Map.

To recommend that an Order be made it is necessary that there is sufficient evidence to show that a public right of way can be reasonably alleged to subsist. A public right of way arises through the dedication of the way by the landowner and acceptance of the right of way by the public. Section 31 of the Highways Act 1980 clarified the situation at common law by stating that if there has been uninterrupted use as of right by the public over a period of 20 years (the period of 20 years being counted back from the date on which the public's right to use the way 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, the way is deemed to be dedicated as a public right of way. Following the 2007 House of Lords decision in the case of *Godmanchester & Drain*, it was held that the landowners' lack of intention to dedicate has to be very clear and overt to the general public using the route.

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 by the landowner or any users whose use would not be considered to be as of right would not be considered to be a member of the public.

Following the publication of the consultation map for Puddington in October 2010, the locking of the gate and erection of the notice saying 'Private No Right of Way' at point G is considered to be a clear calling into question. Under section 31 the twenty-year period would run from 1990 to 2010. There are seven users recorded in 1990 but only one continues through to 2010 and this user was told not to use the way in Summer 2008. One of the users

was a relative of one landowner and stopped by the other landowner in 2007. Three of the users are related to a user who was stopped in 2009 and also in 2007.

Although stopping or telling users that the way is not public does show a landowner's lack of intention to dedicate, it would not be considered sufficiently overt to inform the general public or other users of the route. However, it is necessary for the way to have been used by a reasonable number of members of the public throughout the twenty-year period. The user evidence received is not considered to show sufficient use by the public throughout the period 1990 to 2010.

The actions of Mr Drew in enquiring as to the status of the route with the County Council and Parish Council in 1987 and 1994 and with Mr Folland, one of the landowners are not considered to be sufficient actions to have brought the public's use of the way into question. A valid claim is not considered to arise under section 31 of the Highways Act 1980.

Dedication of a right of way can also arise at common law where there is express or implied dedication by a landowner who has the capacity to dedicate and there is evidence of acceptance of the right of way by the public.

The Finance Act field book information indicates that the landowner considered the way across the field between points F and G to have been public at that time and the mapping indicates that a route was available to the public. However, the Finance Act information for part of the route on its own would not be sufficient to show sufficient dedication. In the absence of any other evidence to show express or implied dedication by the landowners, it is considered a public right of way cannot be said to reasonably subsist at common law.

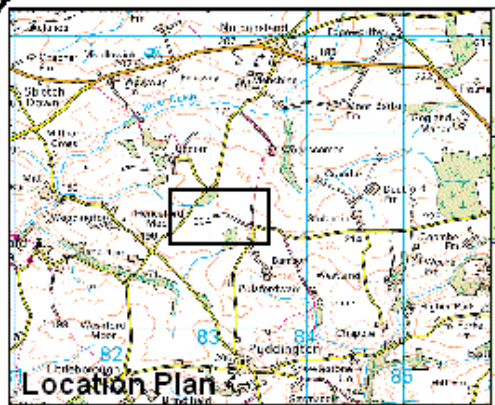
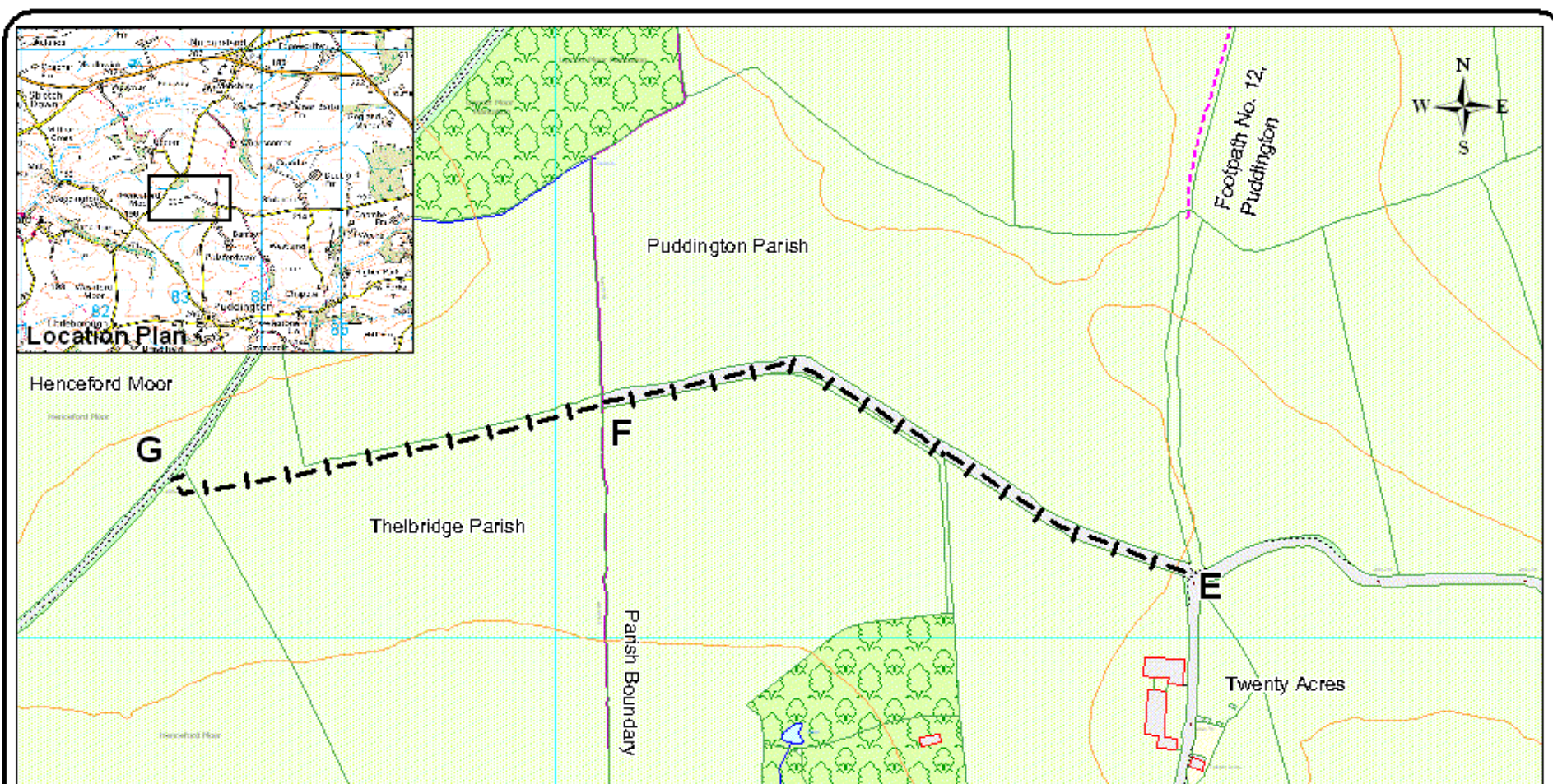
10. Conclusion

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 twenty-year period would therefore run from 1990 to 2010. 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.

For a claim to arise 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 also deemed insufficient to show such dedication at common law. It is therefore recommended that no Modification Order be made to modify the Definitive Map and Statement by adding a Public Bridleway as shown on drawing number ED/PROW/10/96.



map ref: SS 8212/8312

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - PUDDINGTON
SUGGESTION 2 - ADDITION OF BRIDLEWAY
TWENTY ACRES TO HENCEFORD MOOR**

drawing number EEC/PROW/10/96
 date Oct 2010
 scale 1:4,000 at A4
 drawn by TW

Notation Suggestion 2: To be added Public Bridleway
 Route E - F - G (780 metres approx) **-|-|-|-|**
 Existing footpath **-----**

Devon
County Council 
 Chris McCarthy
 EXECUTIVE DIRECTOR ENVIRONMENT,
 ECONOMY & CULTURE