

**Definitive Map Review  
Parish of Woolfardisworthy (Mid Devon)**

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

Report of the Head of Highways and Traffic Management

**Recommendations:** It is recommended that a Modification Order be made to modify the Definitive Map and Statement to vary the particulars of Footpath No. 24, Woolfardisworthy to confirm that the correct route of the footpath should follow the line of A – B – C - D as shown on drawing number HTM/PROW/11/72 (Suggestion 2).

**1. Summary**

The report examines the route referred to as Suggestion 2 arising out of the Definitive Map Review in the Parish of Woolfardisworthy in Mid Devon, the parish also known as Woolfardisworthy East.

**2. Background**

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in November 1950, proposed 34 footpaths for consideration as public rights of way. Footpaths Nos 14, 15, 28 & 30 were considered to be private and 21 found to be a county road. Footpath No 35 was added to connect Footpath No 20 to the county road and 30 footpaths were included on the draft and provisional maps. As no objections to their inclusion or comments regarding omissions appear to have been received, all 30 footpaths were recorded on the Definitive Map and Statement for Woolfardisworthy published in the late 1950s.

In response to the review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1968, the parish meeting advised that there are no paths which should be deleted and there are none to be added. Under the uncompleted review initiated in 1977, the Parish Meeting proposed three changes to the definitive map concerning Footpaths No. 8, 11 and 29, considered as suggestion numbers 3, 4 and 5 in the current definitive map review, to be discussed in a separate report.

The Limited Special Review of Roads Used as Public Paths (RUPPS), carried out in the 1970s, did not affect Woolfardisworthy.

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

Mid Devon District Council (Footpath No. 11, Woolfardisworthy) Diversion Order 1987  
Mid Devon District Council (Footpath No. 19, Woolfardisworthy) Diversion Order 1996  
Devon County Council (Footpath No. 1, Woolfardisworthy) Diversion Order 2003  
Devon County Council (Restricted Byway No. 36, Woolfardisworthy) DMMO 2004  
Devon County Council (Footpaths No. 20 & 35, Woolfardisworthy) Diversion Order 2010

The last review was initially opened in Woolfardisworthy with a parish public meeting held in March 1998 but was not progressed further at that time. The review was reopened with a

parish public meeting in December 2010. No additional changes to the definitive map have been proposed by the parish council following the opening meeting apart from the suggestion that on the grounds of health, safety, disease control, theft deterrence and many other issues it is recommended and suggested that all farmyards be diverted around.

### **3. Consultations**

General consultations have been carried out with the following results:

County Councillor Michael Lee	-	no response
Mid Devon District Council	-	no response
Woolfardisworthy Parish Meeting	-	path should remain through yard
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 on this suggestion
Trail Riders' Fellowship	-	no response
Cyclists Touring Club	-	no response
Devon Green Lanes	-	no objection to the addition of B - C

### **4. Conclusion**

Suggestion 2 is considered in detail in the Appendix to the report. It is recommended that a Modification Order be made to modify the Definitive Map and Statement by varying the particulars of Footpath No. 24, Woolfardisworthy to confirm that the footpath should follow the line of A – B – C - D through Glebe Farm as shown on drawing number HTM/PROW/11/72.

Suggestions 1 and 3 of the definitive map review concern diversions of Footpaths Nos. 19 and 8 and will be considered under delegated authority. Reports on suggestions 4 to 8 will be brought to the next Public Rights of Way Committee meeting.

### **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.

Lester Willmington  
Head of Highways and Traffic Management

### **Electoral Division: Newton St Cyres & Sandford**

Local Government Act 1972

List of Background Papers

Contact for enquiries: Tania Weeks

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Background Paper	Date	File Ref.
Correspondence File	1997 to date	DMR/Wool

tw061011pra  
sc/cr/DMR parish of Woolfardisworthy  
02 hq 271011

## Appendix To HTM/11/19

Suggestion 2: Proposed variation of particulars to amend the line of Footpath No 24, Woolfardisworthy at Glebe Farm and The Old Rectory from a point on the county road (point A going east north eastwards through Glebe Farm yard to point D or from a point further south on the county road (point G) running north eastwards and then northwards through The Old Rectory to Glebe Farm yard (point D).

**Recommendations: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by varying the particulars of Footpath No. 24, Woolfardisworthy to confirm that the correct route of the footpath should follow the line of A – B – C - D through Glebe Farm as shown on drawing number HTM/PROW/11/72.**

### 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 –

[iii] that the particulars as proposed to be amended will be a correct record of the public's rights.

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 October 2002 the council was contacted by Mrs Thompson who had recently purchased Glebe Farm, Woolfardisworthy (renamed Footloose Farm during Mrs Thompson's ownership) regarding the correct position of Footpath No. 24, Woolfardisworthy where it passed through the farm yard.

Mrs Thompson had spoken to the previous owner of Glebe Farm, Mr Hutchings, who had previously owned both the farm and The Old Rectory. Mr Hutchings had advised that the signed route of the footpath through the farm yard was incorrect and that the correct line of the footpath passed through The Old Rectory grounds until it joins the track through the yard (point D). The definitive statement for Footpath No. 24, Woolfardisworthy supports this location of the path.

Mrs Thompson was informed that she would need to obtain evidence to support her claim that the line of the path on the definitive map was incorrect. The evidence would then be retained on file and the claim investigated once the definitive map review had reached Woolfardisworthy.

### **3. Description of the Route**

On the definitive map adopted for the Crediton Rural District Council area in 1958, the footpath is shown as starting at the entrance to the farm yard (point A) and follows the track east to point B but then turns and follows three sides of a square going south into The Old Rectory, then east, then north back into Glebe Farm (points E – F – C) before rejoining the track and continuing east towards the field gate. The route A – B – E – F – C – D as shown on the drawing number HTM/PROW/11/72.

The route that is signed and understood to have been used by the public for many years is straight through the farm yard following the track along A – B – C – D.

Mrs Thompson claimed that the footpath should follow the route shown as G to D, entering The Old Rectory grounds through an old hunting gate and going east north east past the house before turning north to join the track at Glebe Farm at point D.

Photographs of the route currently used by the public are included in the backing papers.

### **4. Consultations**

Woolfardisworthy Parish Meeting advised that they were unanimous that path route should remain as it is through yard, lane. Route A – B – C – D.

Devon Green Lanes Group advised that they have no objection to the addition between B and C and this is as it has always been walked. With regard to the proposed route in front of the Rectory the Group has no comment to make at present.

### **5. Evidence Submitted by Mrs Thompson**

A site meeting was held with Mrs Thompson in January 2003 and in support of her claim that the correct route of Footpath No. 24, Woolfardisworthy should be G – D Mrs Thompson subsequently submitted user evidence forms from the previous owner Mr E Hutchings and local residents Mr & Mrs Tapp. Mrs Thompson had also spoken to Mrs Johns, the owner of both properties in the 1950s when the definitive map was being prepared, but Mrs Johns had died by 2006.

Mr Hutchings had lived in The Old Rectory from 1961 to 1966, lived at Glebe Farm from 1979 to 1992 and farmed the land from 1961 to 1993. Mr Hutchings advised that the location of the footpath through the Old Rectory was marked on the map of the farm with the sale particulars in 1961 and that the route of the path was changed sometime after 1993. He stated that the route of the path marked in red (the definitive line) can never have been as it is impossible to walk. The hunting gates that Mr & Mrs Johns mention, one is still there at the entrance from the road but the other has been removed by Mr & Mrs Hayes (current owners of The Old Rectory).

Mr Hutchings advised that in about 1990 a young man came to him about going through the yard with the path. He told him that it would not work as he kept cattle in the yard and also pointed out the fact that the true line of the path went in front of the Old Rectory so the man said nothing would be done about it. He farmed there from 1961 to 1993 and sates that no one ever used the path. The map completed by Mr Hutchings shows the line of the footpath as going from G to D through The Old Rectory.

Mr Ronald Tapp (now deceased) completed his evidence form in 2003. He advised that he had used the path for the last sixty years for pleasure and work for various times a year. The path was in the wrong place now. The path has always gone through the Rectory and the gate onto the road is still in place. It should not go through Glebe Farm and it never did. The map shows the correct route. The map shows the route of the footpath from G to D.

Mrs Doreen Tapp (form completed in 2003) had also used the path for the last sixty years. The path was in the wrong place now. It is in the wrong place at the moment; see the map for the correct route. The map shows the route of the footpath from G to D.

The definitive statement for Footpath No. 24 says '*Starts from the Stockleigh English Road (No.585) and proceeds north-east, through the yard at the rear of The Rectory, then across three fields until it joins the Poughill road (No.609)*'. In response to the path statement Mrs Thompson advises that the Rectory used to have many farm buildings around what is now the front and on both the west and east sides of it. If the line of the footpath is a shown by Mr Hutchings then that would explain, with the farm buildings around The Rectory that some ambivalence about which is the rear could have come up. The front of The Rectory is and always has been to the west of the building therefore the line drawn by Mr Hutchings did indeed go to the rear of The Rectory and not as it would have been worded to the side of the Rectory.

Mrs Thompson further advises that the footpath as shown on the definitive map should go through a building into The Rectory and then rejoin Glebe Farm by the top gate that used to be at point D between the two properties. The line of the path from G to D is where the footpath has been in maps of the 1960s and Mr Hutchings refused to allow it to be redirected through the farm yard from 1979 to 1992. The original footpath at the rear of The Rectory was on a hard track where coach and horses used to turn.

## **6. 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 2nd Edition 25" to a mile 1905

A double row of pecked lines along the line of the recorded footpath is indicated on this large scale mapping and labelled F.P. These lines stop at the eastern boundary of the yard. There are pecked lines indicating paths or tracks around the Rectory but none of these are labelled F.P.

OS Post War Mapping 1:1,000 scale 1971

This map also shows a building across the route directly through the yard. A new building has been constructed in between two existing buildings across the line of the footpath between point B and point E.

## **7. 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.

The Rectory and outbuildings, including the buildings of what is now Glebe Farm and the two fields to the east of the buildings, were recorded as being part of hereditament number 404. The field book entry includes a detailed plan of the Rectory main house and all the outbuildings. The buildings that are depicted across the section of route B to C are labelled F and K and described as F – Tool House and K – Covered Way. The tool house is stated as being of timber, stone, cob and slate but under the covered way the record just refers to a slate roof.

## **8. Parish Survey under National Parks & Access to the Countryside Act 1949**

In the Woolfardisworthy parish meeting submissions in November 1950 Footpath No. 24 was surveyed by Mr Salter and Captain Whitfield described as from Woolfardisworthy to the Mill road and grounds for believing to be public were always used by public. Mr Pearce of the Crediton District Council walked the path in April 1951 and stated 'only a short cut to the Rectory'.

The County Surveyor noted that the path was marked F.P. on the 25" mapping, on the 6" map submitted by the parish the path was not linked up to the county road but terminates east of the Rectory. In April 1952 the County Surveyor wrote to the Divisional Surveyor advising that the 6" map sent in by the parish indicates a right of way extending from the county road no. 609 up to a point marked A on the tracing enclosed by the County Surveyor, but does not extend to the county road in Woolfardisworthy. He asked the Divisional Surveyor to investigate this and to show the actual line of the right of way from the Rectory on the tracing.

Mr Beer, the Divisional Surveyor, contacted Capt Whitfield who undertook the original survey for Footpath No. 24. Capt Whitfield advised that the footpath goes through the yard at the back, not in front. It is a good open path with hunting gates and the present owners Mr & Mrs Johns have no objection to the path. I would suggest that it is kept open.

The County Surveyor had to return the tracing to Mr Beer as he had omitted to mark on the tracing the exact line of the right of way but this was duly received with the line of the footpath marked in red ink on the line corresponding to a route from A – B – C – D. The line was drawn over the building shown on the map tracing.

Footpath No. 24, Woolfardisworthy was included on the draft and provisional definitive maps and in the absence of any representations was included on the final definitive map for Crediton Rural District Council published in February 1958. However, when drawing the line of the path on the definitive map (using the 2<sup>nd</sup> edition 6" to a mile OS mapping) the draughtsman drew the line of the path around a building that was shown across the route, turning south around the building and then north back onto to the drive (the route A – B – E – F – C – D instead of the direct route A – B – C – D).

## **9. Devon County Council Uncompleted Reviews of 1968 and 1977**

No suggestions for any changes to Footpath No. 24 were made by the parish meeting under these two uncompleted reviews.

## **10. Aerial Photographs, 1946-9, 1999-2000 & 2006-2007**

In the 1946 aerial photograph it does appear that there is a building across the yard but by 1999 and in subsequent years the building has gone and a route through the yard on a straight line is visible. The recorded line of the footpath (via points E and F) is now passing through a building and would appear unusable.

## **11. User Evidence**

No further user evidence has been received apart from the forms from Mr & Mrs Tapp submitted with Mrs Thompson's evidence and referred to above.

## **12. Landowner Evidence**

Mr and Mrs Hay have owned and resided at The Old Rectory for twenty two years. They have seen people using the footpath through Glebe Farm but are not aware of anyone ever trying to follow the route through their garden. They have spoken to local resident Mr Burrow, who is eighty eight years old and he has confirmed that for all his lifetime the footpath has run through the yard on the route A – B – C – D. Both Mr & Mrs Hay and their neighbour agree that the footpath should continue on a line A – B – C – D.

Mr and Reverend Marshall purchased Glebe Farm from Mrs Thompson in Summer 2010. They have observed walkers using the route A – B - C – D. The route shown B – E – F – C does not relate to reality and should be extinguished and section B to C designated. We are happy for people to use the path but the alignment needs to be changed, Section G to D should not be designated and is not in current use.

## **13. Rebuttal Evidence**

The Parish Meeting were unanimous that the path route should remain as it is through the yard/lane. Devon Green Lanes Group advised that the route B – C has always been walked.

## **14. Discussion**

The OS maps and aerial photography do not assist with determining the line of the path in the vicinity of the Rectory. The previous owner Mr Hutchings has advised that the path should go through the Rectory but also advises that no one used the footpath during his ownership.

The main part of Mrs Thompson's evidence to support the correct route of Footpath No. 24 being on the line G to D and not through the farm yard seems to be the description in the path statement that the path proceeds 'through the yard at the rear of the rectory'. Therefore, as the main front entrance door is on the west side of the Rectory, the rear would be the east side of the Rectory and not the north side where the path lies at present.

Although the entrance door lies on the west side, the main reception room windows look south and it is considered that most people when looking at the house as a whole would consider the south elevation to be the front of the house. Mr Pearce of the Crediton Rural District Council who walked the footpath in 1951 described the route as 'Leading off from road No 609 the main Poughill road, class III into the Rectory'. This was before the line of the path from the edge of the field east of the property had been clarified with the Divisional Surveyor and parish representative but could have described the route claimed by Mrs Thompson.

In the 1950s the Rectory and what is now Glebe Farm were one property and 'into the Rectory' could just mean into the property and not specifically towards the house rather than



the farm buildings. The footpath statement was amended to the current description by the county council. If someone was approaching the property from the east with the intention of calling at the house, then it is quite possible that they may have used a gate that is understood to have existed at point D to access the house. Use of this route from the east or use from the west side to visit the house would be use by deemed permission and not as of right and it is considered probable that when the Rectory was the home of the parish rector, there would have been regular visitors.

The exact line of the footpath through the Rectory was checked with the Rural District Council who in turned contacted Captain Whitfield in Woolfardisworthy parish; one of the parishioners who surveyed Footpath No. 24 originally. The route was confirmed as passing on the north side of the Rectory along the line A – B – C – D. This is the route which has been signed and used by the public for many years. This confirmation was obtained from the parish in the 1950s when the definitive map was being prepared. Together with the statement description referring to the yard at the rear of the Rectory, these are considered sufficient to confirm that the correct line of Footpath No. 24, Woolfardisworthy lies along the route A – B – C – D.

Although not evidence but from a purely practical view it would be more logical for the west end of the footpath to start/terminate at point A rather than point G, as this would link it with going to/from the church and Footpath No 19, Woolfardisworthy. Therefore, there is not considered to be sufficient evidence to indicate that the footpath should be modified to the line G to D through the Rectory garden.

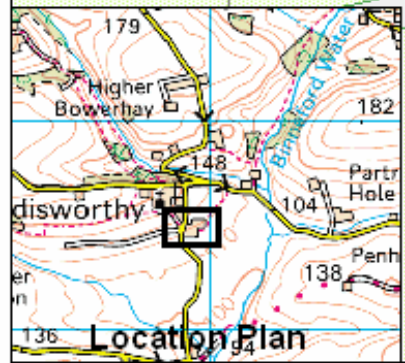
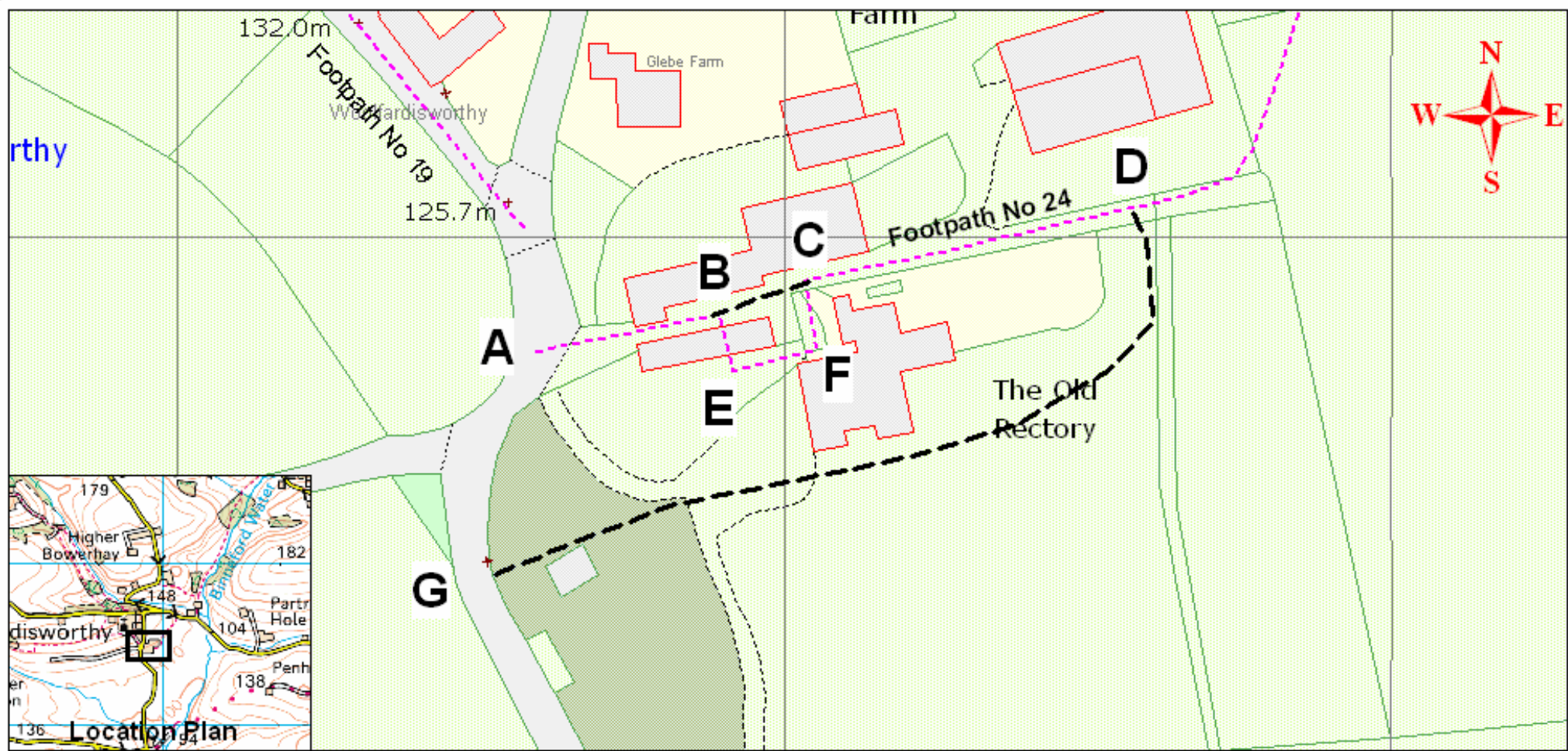
However, the route of the footpath currently recorded is along the line A – B – E – F – C – D. There is no information in the files to indicate why the definitive line on the map was drawn with the dog leg through points E and F. It could be that when drawing the line the draughtsman decided the path could not pass through the building and so drew the path around the building and through two solid lines (representing a wall/fence but within which there could be gates/doors for access). There are doors in the wall which now divides the Rectory from Glebe Farm and which date from when both properties were in the same ownership, but it is not known if the draughtsman conducted any enquires to ascertain if there were any doors at the points the path passed through the wall.

It is also unknown if any enquires were made as to whether the building across the line of the path had an archway or was open at ground floor level so that people could pass through. On the basis of the information in the Finance Act field book it would seem that this was in fact the case, as part of the building across the path is described as a covered way with just the roof construction described for that building. The Finance Act plans were prepared shortly after the publication of the 1905 second edition OS map. It would therefore appear to have been possible for the public to walk along the line A – B – C – D in the early 20<sup>th</sup> century.

The line of the footpath through points E and F is considered to be a drafting error and that the correct line of Footpath No. 24, Woolfardisworthy should be along the line A – B – C – D. This can be changed through the making of a definitive map modification order for the variation of particulars for the footpath.

## **15. Conclusion**

It is therefore recommended that a Modification Order be made in respect of Suggestion 2 to modify the Definitive Map and Statement by varying the particulars of Footpath No. 24, Woolfardisworthy to confirm that the correct route of the footpath should follow the line of A – B – C – D through Glebe Farm as shown on drawing number HTM/PROW/11/72.



map ref: SS 8208

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**DEVON COUNTY COUNCIL**  
**DEFINITIVE MAP REVIEW - WOOLFARDISWORTHY**  
**SUGGESTION 2 - POSSIBLE VARIATION OF PARTICULARS**  
**FOOTPATH NO. 24, WOOLFARDISWORTHY**

drawing number	HTM/PROW/11/72
date	June 2011
scale	1:1,000 (at A4)
drawn by	TW

Notation  
 Current Recorded Line on Definitive Map  
 A - B - E - F - C - D       (approx 120 metres)

Possible Variations  
 A - B - C - D       (approx 100 metres)  
 or G - D       (approx 140 metres)

**Lester Willmington**  
**HEAD OF HIGHWAYS & TRAFFIC MANAGEMENT**

