

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

Report of the Head of Highways and Traffic Management

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

Recommendation: It is recommended that no Modification Orders be made to:

- (a) Delete Footpath No. 11, Woolfardisworthy from the definitive map (suggestion 4) as shown on drawing number HTM/PROW/11/88;**
- (b) Delete Footpath No. 29, Woolfardisworthy from the definitive map (suggestion 5) as shown on drawing number HTM/PROW/11/89;**
- (c) Upgrade Footpath Nos. 6, 7, 8 (part) & 10 (part) Woolfardisworthy to a bridleway (suggestion 6) as shown on drawing number HTM/PROW/11/73;**
- (d) Upgrade Footpath Nos 13, 16, & 17, Woolfardisworthy to a bridleway (suggestion 7) as shown on drawing number HTM/PROW/11/90.**

1. Summary

The report examines the routes referred to as Suggestions 4, 5, 6, and 7 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.

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 footpaths should be diverted out of farmyards.

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	-	commented on all 4 suggestions
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	-	commented on suggestions 3, 4 and 6
Trail Riders' Fellowship	-	no response
Cyclists Touring Club	-	no response
Devon Green Lanes	-	commented on all 4 suggestions

4. Conclusion

Suggestions 4, 5, 6 and 7 are considered in detail in the Appendix to the report. It is recommended:

Suggestions 1 and 3 of the definitive map review concern diversions of Footpaths Nos. 19 and 8 and will be considered under delegated authority. *Suggestion 8 concerned the extinguishment of part of Footpath No.22 via a Public Path Extinguishment Order which can also be considered under delegated authority.* A report on suggestion 2 was presented to the Public Rights of Way Committee in November 2011.

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

Room No: ABG

Tel No: 01392 382833

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

tw030212pra
sc/cr/DMR Woolfardisworthy
02 080212

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

Wildlife and Countryside Act 1981, Section 56[1] – the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein but without prejudice to any question whether the public had at that date any right of way other than those rights.

Suggestion 4: Deletion of Footpath No. 11 from West Emlett Lane near Berry Castle to the county road south of Tree Farm.

Recommendation: It is recommended that no modification order be made to delete Footpath No. 11, Woolfardisworthy from the definitive map.

1. Background

The deletion of Footpath No. 11 was one of the three proposals made for amendment of the definitive map by Woolfardisworthy Parish Meeting under the County wide uncompleted review of 1977. Two forms were completed for the proposed deletion of Footpath No. 11

from the definitive map by the two land owners whose land was crossed by the footpath at that time, Mrs A Evans and Mr C Burrow on 12 April 1978.

2. Description of the Route

The western end and a section in the middle of Footpath No. 11 was diverted by a Public Path Diversion Order in 1987 to move the path northwards away from the property known as Berry Castle Cottage and to move the cross field section of the footpath to the field edge. The currently recorded route starts from Footpath No. 6 on the lane known as West Emlett Lane (point A) and proceeds east across a stile and along a small lane and field edge to a further stile into Tree Copse. The path continues south eastwards and then southwards through Tree Copse before turning eastwards and across a stile into an arable field (Point C). The footpath follows the field headland eastwards and then north eastwards before crossing into another arable field and continues north eastwards along the headland to join the county road south east of Tree Farm on the Black Dog to Kennerleigh road.

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

3. Consultations

Woolfardisworthy Parish Meeting responded that everyone was in agreement for the footpath to remain open although it was not documented on the 1800's maps and originally was to service Berry Castle Cottage. Note badly needed repair to stile on route.

Devon Green Lanes Group objected to the proposed deletion as this footpath links to Footpath No. 12 on the other side of the road and makes a pleasant circular walk in the Black Dog area via Footpath No. 12 to connect to Footpath No. 13. It also connects via Footpath No. 12 with Footpaths Nos. 16, 17 and 19 to make a longer circular walk. Footpath No. 11 also has great variety going through woods and having views. Its deletion would be a loss to the public of an enjoyable walk. It was included on the original definitive map.

The Ramblers' Association local representative responded 'I am at a loss to appreciate the case for extinguishing Footpath No. 11 in total.'

4. Documentary Evidence

Tithe Maps & Apportionments

Woolfardisworthy (East) Tithe Map & Apportionment 1840 (date of copy held in DRO)
Footpath No 11 crosses land included in the holdings described as Berry Castle, Higher James's Tree and Lower James Tree. There is no indication of a track or path marked on the map that corresponds to Footpath No. 11 and no mention in the apportionment of a 'footpath' or right of way in any of the fields crossed by the footpath. It is relatively unusual to see cross field footpaths marked on Tithe maps.

Ordnance Survey and Other Maps

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

OS 1st and 2nd Edition 25" to a mile 1890 and 1905

On both editions of these large scale maps no track or line is shown along the route of the footpath as originally recorded on the definitive map in 1958.

OS Post War Mapping 1:2,500 scale 1971

No track or line that corresponds to the route of the footpath is shown on this map.

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.

Footpath No 11 crosses land included within hereditaments number 452, 453 and 411. Hereditament 452 refers to West Emlett Farm and the details describe the presence of a linhay and bullocks house in ordnance number 288 which the original route of footpath no 11 passed along two sides of. Under the heading of Fixed Charges, Easements, Common Rights and Restrictions is written *Occupation road & paths for persons going from and to farm but no public or other easement to my knowledge*. A short section of Footpath No. 11 crosses through the north end of hereditament number 453 which includes Berry Castle Cottage. No reference to any rights of way is made in the field book. The east end of the path through Higher Tree Copse and the land belonging to Higher Tree are included under hereditament 411. No reference to or an allowance for a public right of way is included in the field book.

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

Footpath No. 11, described as from Berry Castle to the main road, was surveyed by Mr F Salter, Chairman of the Parish Meeting and Captain Whitfield on 3 November 1950. The grounds for believing the path to be public were *Always used by public*. The route was walked by Mr Pearce of Crediton Rural District Council on 6 March 1951 and commented *gates and stiles in order, no stepping boards to stile*.

The county surveyor recommended include in draft map and there are no records of any objections or representations being received to the paths inclusion on the draft or provisional definitive maps.

6. Devon County Council Uncompleted Reviews of 1968 and 1977

Under the 1977 review the Parish Meeting requested deletion of the footpath. The evidence stated by Mrs Evans of West Emlett in support of the path's removal from the map was that *This path is not shown in our deeds and could serve no useful purpose since the construction of a road to Berry Castle Cottage*. The reason why this evidence was not produced when the original map was prepared was stated as *I did not own the property at that time*.

Mr Colin Burrow of Tree Farm stated on his form similar comments in *This path does not appear on our title deeds and We did not own the property when the map was drawn*. No additional evidence was forwarded in 1978 by Mrs Evans or Mr Burrow and the 1977 review was not taken further by the County Council.

7. Woolfardisworthy Parish Meeting Minutes

Only very limited minutes of the Woolfardisworthy Parish Meetings are available from January 2002 to the present. There are no references to Footpath No. 11 during that time.

8. User Evidence

The route is currently recorded as a public footpath on the definitive map and no user evidence forms have been received.

9. Landowner Evidence

Mr Christopher Burrow who owns the field adjacent to the road at the east end of the path (point D) responded via a landowner evidence form. He acknowledges the route as a public footpath and seen walkers three times in 14 years. No evidence has been forwarded in support of the path's deletion.

Mr Colin Burrow of Tree Farm and the land owner of the middle section of the footpath telephoned but did not complete a land owner evidence form. He advised the parish meeting determined that the footpath was to be retained and they agree with this decision.

No response was received from Mr Hill of Berry Castle Cottage.

10. Rebuttal Evidence

Following publication of the consultation on the suggestions some local residents and walkers contacted the council.

Mrs Beddowes of Black Dog advised she would be opposed to the closure of this path as it is a lovely walk through the woods and across the field with good views of the countryside.

L Rees of Black Dog wished to object to the closure of Footpath No. 11. Having recently moved to the area they enjoy this walk with woodlands and extremely fine views of the countryside.

Mr Bailey of Sandford wrote after completing a beautiful walk at Black Dog which included Footpath No. 11. They would be very disappointed if the path was deleted.

11. Discussion

To meet the test for a Modification Order to be made for the deletion of a public right of way from the definitive map, it is necessary to show that evidence has been discovered which (when considered with all other relevant evidence available to the authority) shows that the right of way was wrongly recorded.

Suggestion 4 – the deletion of Footpath No. 11, Woolfardisworthy was included within the consultation of suggestions for change in the parish, as the parish meeting had requested the deletion in Devon County Council's uncompleted review of 1977.

The evidence submitted by the landowners in 1978 in support of the deletion was that the footpath was not shown on their deeds and served no useful purpose. This evidence was not forthcoming when the definitive map was prepared in the 1950s as they did not own the land at that time.

It is very unusual for public rights of way to be recorded within property deeds as the rights usually included refer to private rights which can include private rights of way and easements, and very rarely make reference to public rights of way. Therefore the fact that a public footpath was not shown on the deeds does not mean it does not exist and this is not considered viable evidence to support the path being added to the definitive map in error.

The opinion that a footpath serves no useful purpose is also not evidence for the considered deletion of public right of way (but may be a consideration for a Public Path Extinguishment Order). Footpath No. 11 links to a county road and appears to be used as part of a circular route.

No new evidence has been submitted in support of the deletion and the current landowners accept the existence of the footpath.

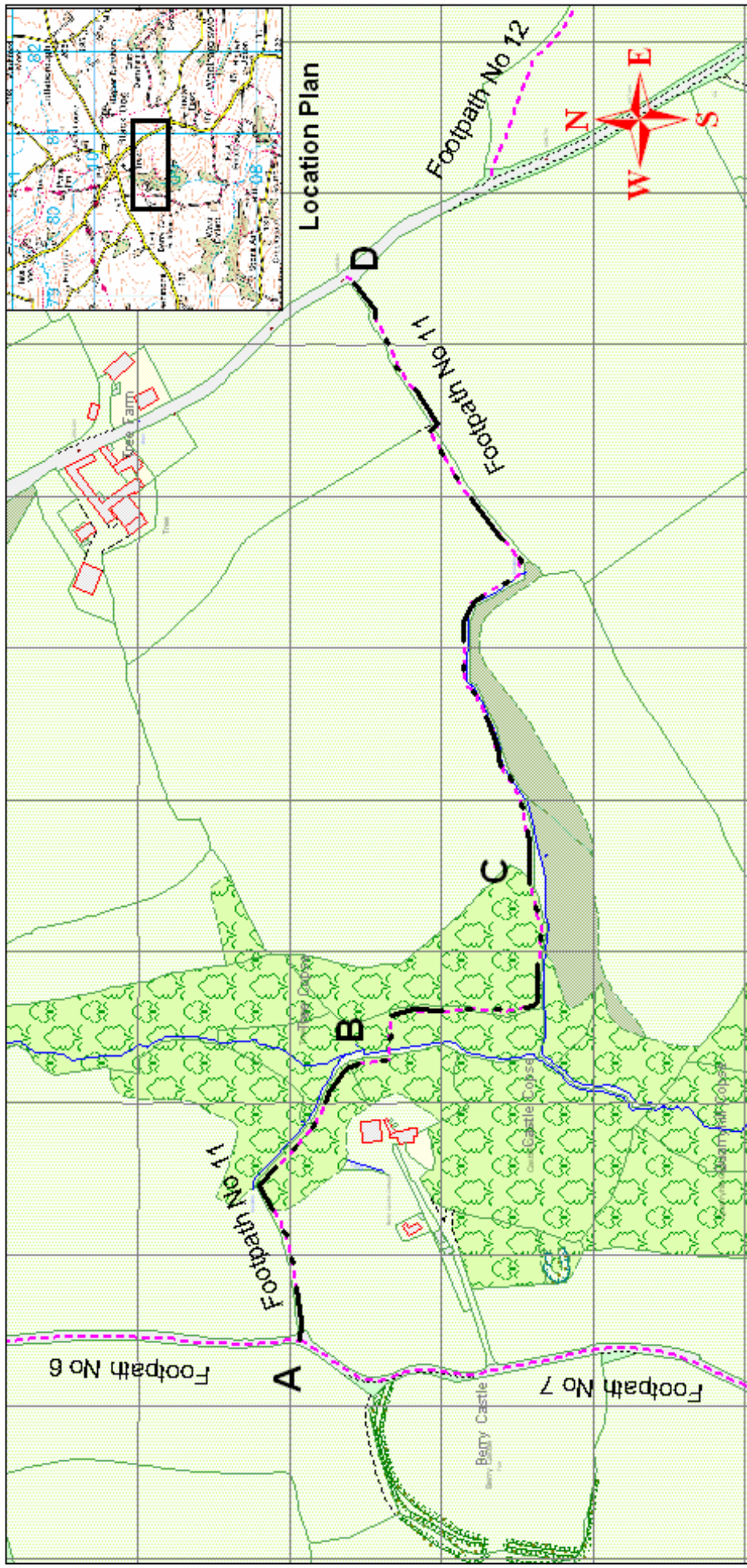
There is no evidence to support that a mistake was made in the preparation of the definitive map and it can be presumed that all the correct stages were followed in the process. As time goes on it is very difficult to discover/produce sufficient evidence to overcome the presumption that the path was added correctly, the correct procedures were followed and the path was not included on the definitive map in error.

The path was proposed by the parish meeting in 1950 and no objections or representations are understood to have been made to the inclusion of the footpath on the draft or provisional definitive maps. The footpath was not shown on the 1st and 2nd edition OS 25" to a mile maps or referred to in the Finance Act records but this does not mean the footpath cannot have come into use after the early 20th century even if it was not used before then. The parish survey states 'always used by public'.

12. Conclusion

The evidence submitted in support of the path's deletion in 1978 is considered insufficient to support the deletion of Footpath No. 11, Woolfardisworthy. No new or additional evidence has been submitted or discovered to override the presumption that Footpath No. 11 was correctly added to the definitive map.

It is therefore recommended that no modification order be made to delete Footpath No. 11, Woolfardisworthy from the definitive map.



Location Plan

map ref: **SS 8009**

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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - WOOLFARDISWORTHY
SUGGESTION 4 - PROPOSED DELETION OF
FOOTPATH NO. 11, WOOLFARDISWORTHY

drawing number **HTM/PROW/11/88**
 date **July 2011**
 scale **1:4,000 (at A4)**
 drawn by **TW**

Notation

Footpath No. 11, Woolfardisworthy
 Proposed Deletion of Footpath **A - B - C - D** (approx 900 metres)

Suggestion 5: Deletion of Footpath No. 29, Woolfardisworthy from the county road between Littleborough Cross and Woolfardisworthy Cross through Hudgery Farm to the parish boundary with Puddington and Footpath No. 6, Puddington.

Recommendations: It is recommended that no modification order be made to delete Footpath No. 29, Woolfardisworthy from the definitive map.

1. Background

The deletion of Footpath No. 29 was one of the three proposals made for amendment of the definitive map by Woolfardisworthy Parish Meeting under the County wide uncompleted review of 1977. One form was completed for the proposed deletion of Footpath No. 29 from the definitive map by one of the two land owners whose land was crossed by Footpath No. 29 at that time, Mr Tucker on 27 April 1978.

2. Description of the Route

The footpath starts from the county road between Littleborough Cross and Woolfardisworthy Cross and proceeds eastwards through Hudgery Farm yard and continues north eastwards across three fields to the parish boundary and joins Footpath No. 6, Puddington where it continues north eastwards to the county road south of Puddington Lodge.

3. Consultations

Woolfardisworthy Parish Meeting suggested that a diversion around the farmyard is more appropriate rather than a deletion.

Mr N Motson Footpaths Officer for Puddington Parish Council advised that the proposed deletion of Footpath No. 29, Woolfardisworthy was not favourably received by the parishioners. The footpath joins with Footpath Nos. 6, 7 and 10 Puddington to make circular walks. These routes use Footpath No. 29 and it continues to be a well known and much used path. There are several Puddingtonians who have lived in the village since before 1977 and they have confirmed that the route was in use in 1977 and well before.

Devon Green Lanes Group objected to the proposed deletion as it would create an anomaly because Footpath No. 6, Puddington would become a cul-de-sac footpath. These footpaths are part of an enjoyable round walk using Footpath Nos. 19, 24 and 27 Woolfardisworthy and No. 10, Puddington. Its deletion would be a loss to the public of a useful path.

The Ramblers' Association local representative responded that it was farcical to suggest that an observation made 34 years ago by a Parish Meeting remain relevant today. The site notice brought an immediate response from the Tiverton RA group as Footpath No. 29 is part of an important round walk in the Puddington area.

4. Documentary Evidence

Tithe Maps & Apportionments

Woolfardisworthy (East) Tithe Map & Apportionment 1840 (date of copy held in DRO)
Footpath No 29 crosses land included in the holdings described as Hudgery and Brinnywell (now called Brindifield). There is no indication on the map of a track or mark that would correspond to Footpath No. 29 and no mention in the apportionment of a 'path' or right of way in any of the fields crossed by the footpath. It is relatively unusual to see cross field footpaths marked on Tithe maps.

Ordnance Survey and Other Maps

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

OS 1st and 2nd Edition 25" to a mile 1880-1890 & 1905

A double peaked line is shown on both editions along the route of Footpath No. 29 and labelled F.P. The continuation of the track across the parish boundary follows a different route to Footpath No. 6, Puddington joining Pitt Lane north of the recorded route.

OS Post War Mapping 1:1,000 scale 1971

No track or path is shown on the map that corresponds to Footpath No. 29.

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.

Footpath No. 29 crosses hereditaments number 433 Hudgery and 5 (recorded in the adjacent parish of Washford Pyne) and Footpath No. 6 crosses hereditament number 53 in Puddington.

The field book for number 433 Hudgery states 'There is a right of way across ord nos. 444, 459 and 460. The field numbers correspond to the route of the currently recorded footpath and an allowance of £75 is given for the right of way.

A section of Footpath No. 29 crosses hereditament number 5 in Washford Pyne parish. No mention of or an allowance for a public right of way is included in the field book for that hereditament for Bridiville.

Under the entry for hereditament number 53 in Puddington the field book notes 'Right of Way from Puddington to Woolfardisworthy'. Page two refers to Public Right of way through ord nos. 258 and 274, which correspond to the fields crossed by Footpath No. 6, Puddington. An allowance of £25 is given for the right of way.

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

Footpath No. 29, described as from the Littleborough – Woolsery road to Puddington via Hudgery, was surveyed by Mr F Salter, Chairman of the Parish Meeting and Captain Whitfield on 2 November 1950. The grounds for believing the path to be public were *Always used by public*. The route was walked by Mr Pearce of Crediton Rural District Council on the 11 April 1951 and he commented *short cut to Puddington*.

The county surveyor amended the description of the definitive statement for the path to include that the path was obstructed at the parish boundary by barbed wire as reported by Puddington parish.

The county surveyor recommended that the path be included in the draft map and this was done after checking that the continuation was claimed in Puddington parish. There are no records of any objections or representations being received to the paths inclusion on the draft or provisional definitive maps.

6. Devon County Council Uncompleted Reviews of 1968 and 1977

Under the 1977 review the Parish Meeting requested deletion of the footpath. The evidence stated by Mr Tucker of Hudgery in support of the path's removal from the map was that *This path does not continue to any particular destination so does not serve any useful purpose.* The reason why this evidence was not produced when the original map was prepared was not stated.

No additional evidence was forwarded in 1978 by Mr Tucker or any other landowner and the 1977 review was not taken further by the County Council.

7. Woolfardisworthy Parish Meeting Minutes

Only very limited minutes of the Woolfardisworthy Parish Meetings are available from January 2002 to the present. There are no references to Footpath No. 29 during that time.

8. User Evidence

The route is currently recorded as a public footpath on the definitive map and no user evidence forms have been received.

9. Landowner Evidence

Mr Southwood had been the tenant at Hudgery for nearly twelve years but advised that Hudgery Farm had been in his wife's family for many years. He has rarely seen walkers on the path but sometimes has to redirect walkers who have strayed off the footpath. The path was closed during the Foot and Mouth epidemic of 2001. His father-in-law was born at Hudgery almost eighty years ago and believes that the footpath through the middle of the farm only became prominent in the 1950s and he has no recollection of anyone using it before then.

Mr Southwood would be pleased to see the path deleted from a bio security point of view and heath and safety perspective as the footpath runs along the main entrance to Hudgery and passes close to farm buildings with housed livestock. However, he appreciates that this alone may not be enough to have the footpath deleted so he would propose that the next best thing would be for the footpath route to be changed away from the farm buildings. This would be better for his business and a better option for walkers using the path.

No response was received from the other landowner whose land is crossed by Footpath No. 29.

10. Rebuttal Evidence

Following publication of the consultation on the suggestions some responses were received from local users.

Mr Partridge emailed to express his objection to this deletion as it would compound the lack of available footpaths within the general vicinity for walking and would cause the remaining part of the Footpath No. 6 in Puddington to have no benefit as it would not lead anywhere. As an alternative he suggested that the footpath is rerouted to avoid Hudgery Farm but to continue onto the county road at point A.

Mr & Mrs Beesley emailed to request that the footpath be retained. They and their visitors have used it recreationally on several occasions since May 2006. It is a convenient compact

circular route easily assessed by the population in Puddington and Littleborough. The Puddington parish section, Footpath No. 6, is in good condition and the footbridge crossing the stream at the parish boundary has recently been rebuilt and is quite sound. We are not aware of any current local desire to delete this path. The suggestion for deletion is very old and may not represent current views and attitudes to recreational footpaths and countryside access. The only negative is that it goes through a farm and can be muddy. It may be practical to have a small diversion round the farm which should improve this.

11. Discussion

To meet the test for a Modification Order to be made for the deletion of a public right of way from the definitive map, it is necessary to show that evidence has been discovered which (when considered with all other relevant evidence available to the authority) shows that the right of way was wrongly recorded.

Suggestion 5 – the deletion of Footpath No. 29, Woolfardisworthy was included within the consultation of suggestions for change in the parish, as the parish meeting had requested the deletion in Devon County Council's uncompleted review of 1977.

The evidence submitted by the landowner in 1978 in support of the deletion was that the footpath did not continue to any particular destination so served no useful purpose. No evidence to support of this statement or to support the path having been recorded in error was submitted and the review did not progress no further action or investigation was taken at that time.

The opinion that a footpath serves no useful purpose is also not evidence for the considered deletion of public right of way (but may be a consideration for a Public path Extinguishment Order). Footpath No. 29 continues after the crossing the parish boundary into Puddington parish where the footpath was also claimed by Puddington Parish Council in the 1950s and was described in the Woolfardisworthy survey form as being a short cut between Puddington and Woolfardisworthy.

No new evidence has been submitted in support of the deletion and although the current farmer at Hudgery would like the path deleted on bio security and heath and safety grounds, he accepts that this is not evidence to show that the path was incorrectly added to the definitive map.

There is no evidence to support that a mistake was made in the preparation of the definitive map and it can be presumed that all the correct stages were followed in the process. As time goes on it is very difficult to discover/produce sufficient evidence to overcome the presumption that the path was added correctly, the correct procedures were followed and the path was not included on the definitive map in error.

The path was proposed by the parish meeting in 1950 and no objections or representations are understood to have been made to the inclusion of the footpath on the draft or provisional definitive maps. The footpath appears to be shown on the 1st and 2nd edition OS 25" to a mile maps and the Finance Act records support the existence of a public footpath along the line of the current path as indicated by the corresponding field numbers recorded in the field book, and the allowance given for the existence of a public right of way.

Although no evidence of whether the path was correctly recorded or not, the footpath appears to be regularly used as part of a recreational circular walk in the area.

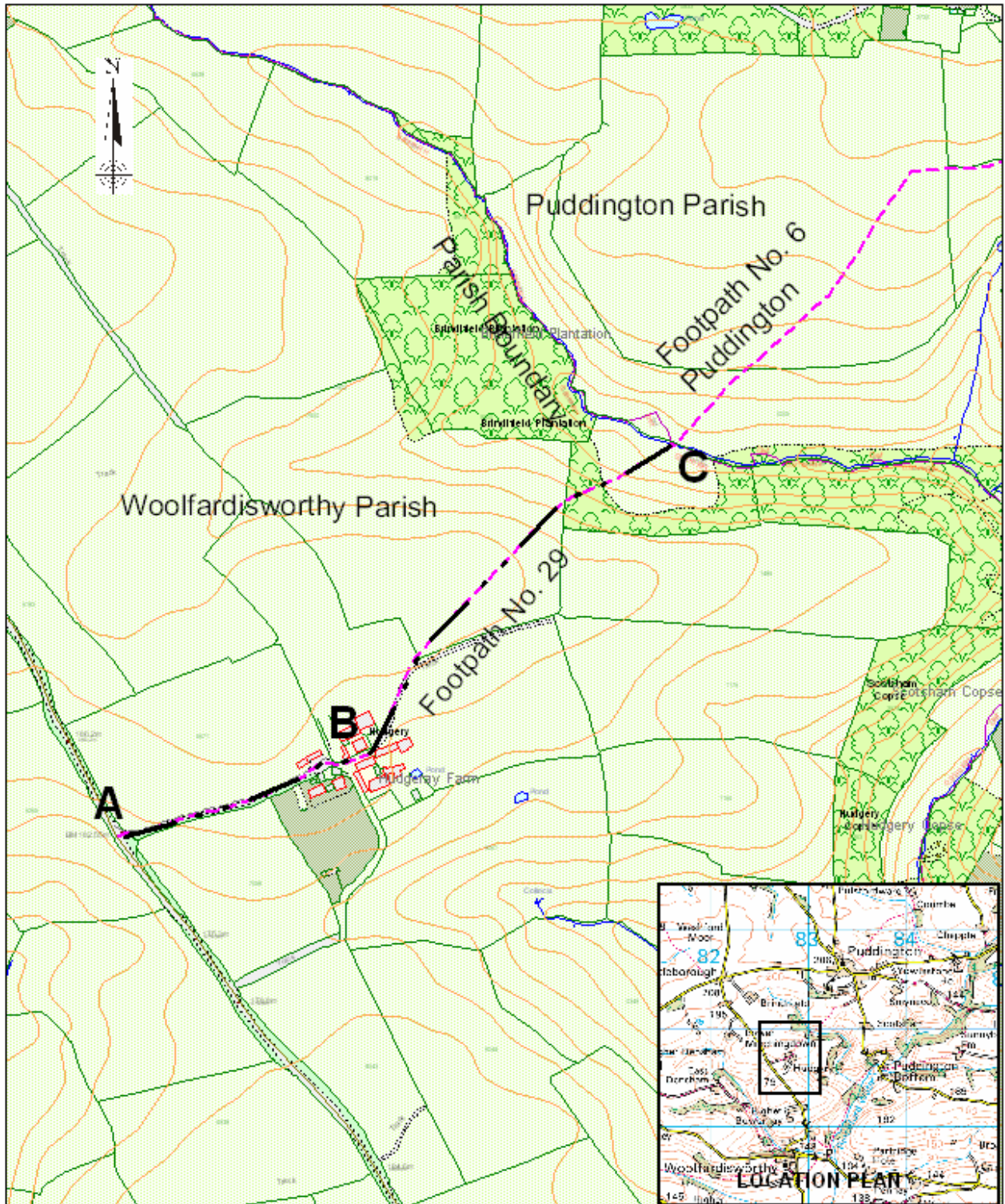
The farmer has requested diversion of the Footpath out of the farmyard at Hudgery and this was also suggested by some of the users who commented on the proposed deletion and the

Parish Meeting. The diversion of rights of way out of farmyards is also supported by Devon County Council and a meeting has been held with Mr Southwood to hopefully agree a suitable diversion route for the footpath. The required Public Path Diversion Order can be dealt with under delegated authority.

12. Conclusion

The evidence submitted in support of the path's deletion in 1978 is considered insufficient to support the deletion of Footpath No. 29, Woolfardisworthy. No new or additional evidence has been submitted or discovered to override the presumption that Footpath No. 29 was correctly added to the definitive map.

It is therefore recommended that no modification order be made to delete Footpath No. 29, Woolfardisworthy from the definitive map.



map ref SS 8209 8309

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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - WOOLSERY
SUGGESTION 5 - PROPOSED DELETION
FOOTPATH NO. 29, WOOLFARDISWORTHY

Notation To be deleted

Footpath No. 29 A - B - C  (610 metres approx)

drawing number	HTM/PROW/11/89
date	July 2011
scale	1:5,000 (at A4)
drawn by	TW

Lester Willmington
 HEAD OF HIGHWAYS & TRAFFIC MANAGEMENT



Suggestion 6: The Upgrading of Footpath Nos. 6, 7, 8 (part) & 10 (part) Woolfardisworthy to a bridleway along West Emlett Lane and Driveway

Recommendations: It is recommended that no modification order be made to Upgrade Footpath Nos. 6, 7, 8 (part) & 10 (part) Woolfardisworthy to a bridleway (suggestion 6) as shown on drawing number HTM/PROW/11/73.

1. Background

The proposed upgrading to a bridleway of a route along Footpath Nos. 6, 7, 8, (part) & 10 (part) along West Emlett Lane, past West Emlett Farm and along the driveway was included as a suggestion as a number of user evidence forms were received in 2008 from users who had used the route on horseback. Additionally a local rider had contacted the office in 2011 to complain of a locked gate across Footpath No. 10, Woolfardisworthy which prevented her from using the footpath on horseback.

3. Description of the Route

The route starts from the Black Dog to Kennerleigh county road south of Trindley Down (point A) and proceeds westwards along the green lane, known as West Emlett Lane and Footpath No. 8, before turning southwards to join Footpath No. 10 (point B). The route continues north westwards along the lane to West Emlett Farm (point E) and then turns north and follows the farm driveway (along Footpath No. 7 and then Footpath No. 6) past West Emlett Cottage and Berry Castle Fort to the Morchard Bishop to Black Dog county road (point G).

Photographs of sections of the route are included in the backing papers.

4. Consultations

Woolfardisworthy Parish Meeting responded that evidence was received from Mr C Burrow (88 years old) that this Driveway was not a road until the 1950s and did not even join the top road as a track until then. Hence the only path to Berry Cottage was a path. The meeting objected strongly and unanimously to this suggestion and it should be denied. Hence remain as a footpath only.

Devon Green Lanes Group advised that they understood that evidence of use by riders has come forward. The DGLG supports the route as a bridleway and the Group's secretary has herself ridden the route in the past. Some research has been carried out by the DGLG and this will be forthcoming.

The Ramblers' Association local representative commented from all the evidence available I believe that West Emlett Lane from Trindley Foot Hill through West Emlett and terminating at the County Road to Black Dog is a 'through route (road)'.

5. Documentary Evidence

Tithe Maps & Apportionments

Woolfardisworthy (East) Tithe Map & Apportionment 1840 (date of copy held in DRO)

The Tithe Map does not appear to differentiate between those roads which are public roads today and those lanes which just lead to farms or fields and which could be privately owned today. Most defined roads/lanes on the map are tinted yellow and this tinting extends along

West Emlett Lane from the east end (point A) to the end of the original lane just south of the entrance to West Emlett Cottage (about 100 metres north of point E). There is no evidence of any track or footpath north of this point, the lane ending at the entrance to a field.

Ordnance Survey and Other Maps

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

OS 1st and 2nd Edition 25" to a mile 1880s and 1904-6

Both editions of the large scale mapping show a clearly defined lane from the east end of the route to West Emlett Farm and then northwards to the boundary of West Emlett Cottage. North from that point a track is shown to the county road but only as a headland track initially on the west side of field number 340, then on the east side through field number 288 and then back on the west side through field number 287, to the county road.

OS Post War Mapping 1:2,500 scale 1971

This map shows construction of the enclosed driveway along the lines of the previous headland track, with new field hedges having been constructed to enclose the new driveway. The remainder of the southern section of the route is shown as a defined lane as it was on the OS 1st and 2nd edition 25" mapping.

Account Book of the Surveyor of Highways Woolfardisworthy 1769-1818 (Ref 452A/PS1)

An account book held at the Devon Record Office records a measurement of roads within the parish on 25 July 1810. That list does not include West Emlett Lane or any part of the suggested route to be upgraded. From 1769 the book includes details of the amounts paid to individuals and for the use of labour and horses for the carrying, digging, breaking and laying of stones on the parish highways and there are no references to West Emlett Lane.

OS Object Name Books

OS name book reference OS 35/1715 completed in October 1903, describes West Emlett Lane as *West Emlett Lane applies to a lane extending from West Emlett to the main road 8 chains S of Little Emlett*. The entry was signed for by Mr John Salter Occupier.

The OS name book reference OS 35/1747 completed in November 1903 describes West Emlett Lane as *An occupation Road extending from the main road from South Molton to Exeter to West Emlett*. The entry was signed for by Mr Salter, occupier.

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 sections of Footpath Nos. 6, 7, 8 (part) & 10 (part) Woolfardisworthy that are proposed to be upgraded to bridleway are included within hereditaments number 452 and 436.

The east end of the route between points A and C is included wholly within hereditament number 436 East Emlett, occupied by Mr Vicary and owned by Mr W Gamlin. The heading in the field book for Particulars, description and notes made on inspection includes the note *Public Right of way through ord nos 45, 46*. Field numbers 45 and 46 are to the west of the farm buildings and south of the proposed route. The current Footpath No. 23,

Woolfardisworthy passes across the two fields. There is no reference to any other public rights of way on the holding.

Hereditament 452 refers to West Emlett Farm and includes the land crossed by the route between points C to G, including the three fields crossed by the headland track that existed at that time between West Emlett Cottage and the county road. The farm was occupied by Mr J Salter and owned by Mr J Comyns Tucker of Morchard Bishop. Under the heading of Fixed Charges, Easements, Common Rights and Restrictions is written *Occupation road & paths for persons going from and to farm but no public or other easement to my knowledge*. No allowance is made for any public rights of way on the holding.

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

One survey form was completed for path numbers 6, 7, 8 and 9 described as from main road to Crookstock Road via Berry Castle, West Emlett Cottage, West Emlett Farm and Hoe Lake Copse. The survey was completed by Capt Whitfield and Mr Salter, Chairman of the Parish Meeting in November 1950. The form said yes to whether path required in future and always used by public in response to the grounds believing path to be public. On the survey map, the extension of Path No. 8 from Coppice Plantation along West Emlett Lane to the county road and the extension of Path No. 10 along east West Emlett Lane to West Emlett Farm, appear to have been added on to the parish survey map later by the County Council. Initially, it would seem, the Parish Meeting did not extend Path Nos 8 and 10 along West Emlett Lane.

The paths were inspected by Mr Pearce of Crediton Rural District Council in March 1951 who commented on the paths as follows:

No. 6 Good hard path in the first field, the path can be seen all the way in the second field to cottage.

No. 7 Hard path all the way, used a lot by tractors and cattle, very dirty.

No. 8 useful path, connects 2 accommodation roads.

The county surveyor's recommendation was to include all the paths on the draft map.

A separate survey form was completed for Footpath No. 10 described as from West Emlett Lane to Crookstock Lane in September 1950. Mr Pearce surveyed the path in March 1951 and described the route as a short cut for people living in West Emlett Farm. There is a note on the survey form *Portion near Emlett Hill Old Quarry footpath? Might it not be an Accommodation Road*. The county surveyor commented *NB Part of this path runs over an accommodation road, ? whether public or private, a Private Accommodation Road*. The recommendation was to include in draft map.

7. Devon County Council Uncompleted Reviews of 1968 and 1977

No suggestions for the deletions or additions of paths were put forward by the Parish Meeting in the 1968 review. In the 1977 review the Parish Meeting considered the Definitive Map as correct apart from the requested diversion of Footpath No. 8 from Coppice Plantation and along West Emlett Lane and the deletion of Footpaths 11 and 29. These proposals have been considered as suggestions number 3, 4 and 5 in the current definitive map review.

8. Woolfardisworthy Parish Meeting Minutes

Only very limited minutes of the Woolfardisworthy Parish Meetings are available from January 2002 to the present (November 2011). There are no references to the route or use of the route by horses or bicycles during that time.

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

The RAF1946-49 aerial photograph clearly shows the headland track along the east or west side of the hedges of the three fields north of West Emlett Cottage, before the current driveway along a hedged lane was constructed.

The 1999 and 2006-7 aerial photographs show the whole route as a defined lane following construction of the new drive north of West Emlett Cottage, now hedged on both sides of the lane.

10. HM Land Registry

The eastern section of West Emlett Lane between points A and approximately between points C and D does not appear to be included in any of the adjacent titles. The remainder of the route through West Emlett Farm and north to the county road is included in the title for West Emlett.

Land to the north side West Emlett Lane between points A and north of point B is included in the title DN391665. This register includes the clause that the land has the benefit of the right to pass and repass for all agricultural purposes with or without vehicles for the purpose of gaining access to and egress from the property over the lane tinted brown on the file plan. The lane tinted brown refers to the section of West Emlett Lane between points A and north of point B.

The section of the route from West Emlett Lane between points C and D is included within two titles for West Emlett Farm. Under DN265416 the register refers to the conveyance of Berry Castle Cottage in 1979 where the rights granted include the right to pass and repass at all times and with and without private motor vehicles for the enjoyment of the said property as a single private residence only over and along the farm lane for the purpose of gaining access to and egress from the said property to the public highway to the north. The register also refers to the conveyance of West Emlett Cottage in 1981 and the rights granted include the same clause as for Berry Castle Cottage but extends the right to use the lane from the road to the entrance to West Emlett Cottage; and the conveyance of land to the east of the lane at Baldpoll Hill Brake in 1981 which includes a right of way at all times and for all purposes with or without animals and vehicles over the farm access road between the points marked A and Z (from the county road to south of West Emlett Cottage).

The title DN540144 refers to the area of land known as Coppice Plantation (between points B and D). This wood is 'landlocked' in that it does not have any direct access to a public highway apart from via Footpath No. 8, Woolfardisworthy which borders part of the eastern side. The register does not refer to any right of access across the adjoining land for the owners.

11. User Evidence

A total of twenty five user evidence forms were received in 2008. Although most of the forms did not have individual maps attached and some had not specifically stated their period of use, the maps that the users had signed, indicated use of the suggested route on horseback for many years prior to 2008.

Most of the users who had submitted forms were contacted and asked to complete an individual map of the route they had used and the opportunity was also taken to ask for clarification/additional information where needed, on the basis of the information already provided. Mrs Stevenson was known to have died since 2008.

Nine users responded and forwarded signed maps of their route and one user's daughter-in-law advised that her father-in-law did not wish to be involved any more as he moved from Black Dog some years ago.

Mr Folland advised that he had used the route to travel through from one road to another whilst out hunting, so his evidence form was disregarded as use whilst hunting is always deemed to be with permission. Mrs Greenslade advised that she rode the route with the daughter-in-law of the owner, so this use would not be use as of right but considered as use with permission and the route shown on her map was also different to one under consideration. The period of use covered by the remaining seven users and Mrs Stevenson is as shown on the second chart of user evidence. This records use of the route on horseback between 1935 and 2008 with the majority of use in the 1980s. Apart from Mrs Hannaford who describes her frequency of use as a lot and Mrs Phillips as several, the frequency of use for the other users was between 3 to 8 times a year.

Mrs Hutchings and Miss Hutchings report finding the locked gate in 2008. Before moving from the area in 2008, Mrs Phillips advised that she was stopped at the farm, told by the farmer that the route was not a bridleway and didn't ride the route again. Mrs Rowcliffe reports being told by a person that the new owners were not happy with horses using the path and stopped using the path in 2007.

No user evidence form was received from the local rider who had contacted the County Council about the locked gate in 2011 as they had moved away and no longer wished to use the route.

12. Landowner Evidence

Mr & Mrs Curtis of West Emlett Farm have resided there since 1999 and responded with a letter detailing several reasons why the footpaths should not be upgraded to a bridleway. The reasons were:

There is no history of the footpaths having been used other than as a footpath. Since the new drive to the farm (from the Morchard Bishop/Black Dog road) was constructed in 1962 none of the owners of the farm have permitted the path to be used by horses. People seen on horses or bicycles have been stopped and advised the path is only a footpath. The gate east of the farm (between points D and E) has been locked for many years.

The route is not suitable for use as a bridleway as the drive is very steep and it is too narrow. It would be an inconvenience to the residents of West Emlett, West Emlett Cottage and Berry Castle Cottage due to increased use of the lane and nature of traffic.

The change would be detrimental to walkers using the route as it would cause damage to the surface.

Visibility is restricted where the lane joins the county road (at point G).

West Emlett is a working farm with tractors using the farmyard.

There is no public right of way currently recorded between points B and C so this section could not be upgraded and the consultation for creating a bridlepath has not been properly carried out.

Mr Curtis subsequently confirmed that the gate had been locked nearly all the time (near point D) since the first half of 2008 and not just since 2011 when it was reported to the County Council. Prior to then they had obstructed the route sporadically to stop vehicles passing which would also have prevented horses passing. Nobody had questioned the gate

being locked until the spring of 2011 when a lady came to the farmhouse and asked for the gate to be unlocked.

Mr & Mrs Brooks of West Emlett Cottage have resided there since 1992 and returned a completed land owner evidence form and covering letter. They are aware of the route being a footpath and are aware of use by local people and groups of walkers. They would be opposed to the upgrading as this would increase their maintenance obligations in cost and time. The way is narrow and steep with few passing places and would be slippery for horses' hooves. They work at home and have never heard or seen any horses in all the years.

No other responses were received from the other landowners/adjoining landowners.

13. Rebuttal Evidence

Mr Burrow, a long term resident of the parish and past Parish Meeting Chairman telephoned to discuss several routes. With regard to this suggestion he advised that he had always considered this just a footpath, the tracks are for private vehicle use only not for horses and he is not aware of any horse use.

14. Discussion

The test to consider whether a public right of way recorded as one status should be upgraded to a higher status is a slightly higher test to whether a route should be added as a public right of way to the definitive map. This means that there would need to be sufficient evidence to show that the higher rights, in this suggestion those of bridleway status, ought to be shown on the map.

The route as Footpath Nos 6, 7, 8 (part) & 10 (part), Woolfardisworthy was added to the definitive map in the 1950s, having been surveyed by the Chairman of the Parish Meeting Mr Slater, who is understood to have resided at West Emlett Farm at that time. The initial parish survey map did not include the footpaths running along West Emlett Lane. Queries were raised as to whether the lane was a public or private accommodation road and it would appear that after being confirmed as a private accommodation road, the footpaths were shown on the draft map along the lane as is the usual process for public rights of way running along private accommodation roads. There is no evidence of any objections or representations being made to their inclusion as footpaths on the draft or provisional definitive maps rather than as routes of a higher status. The Parish Meeting did not make any suggestions concerning the status of the footpaths in the uncompleted County reviews of 1968 and 1977.

The earlier mapping and aerial photography of 1946-49 confirm that the lane/drive that is Footpath No. 6 did not exist until after the 1950s. Prior to that date there was a headland track through the fields and Mr Pearce noted in 1951 that Footpath No. 6 was a good hard path in the first field.

The land registry title for Berry Castle and West Emlett Cottages includes a private right to use the lane with and without vehicles to access their properties. The east section of West Emlett Lane from point A to between points C and D does not appear to be included in any of the adjacent titles although in the Finance Act records this part of the lane was included in the hereditament for East Emlett Farm. The documentary evidence including the initial parish survey and name book references indicate that the lane has always been considered and had the status of a private lane.

Section 31 of the Highways Act 1980 provides that a public right of way, in this case a bridleway, may subsist if there is twenty years use by members of the public as of right, prior

to the calling into question of their use of the route (on horses/bicycles). The locked gate along the route was reported to the County Council in 2011 and this appeared to be the date of calling into question use of the route on horseback as walkers could use a stile at the side. The twenty year period would run from 1991 to 2011. As the user evidence received did not include use after 2008 and no additional user evidence forms were received, there would be insufficient evidence of use throughout the twenty year period 1991 to 2011. Also as Mr Curtis has advised that the gate was locked regularly from 2008, this would also be evidence of the landowner's lack of intention to dedicate use of the route by horses during the twenty year period.

However, several users reported finding the locked gate in 2008 which would bring forward the date of calling into question and therefore this would give a twenty period of 1998 to 2008. During this period Mrs Phillips reports being stopped by the farmer and told that the route was not a bridleway and Mrs Rowcliffe advises she was told by someone that the new owners were not happy with horses using the path prior to or in 2007. This would be evidence of lack of intention to dedicate during the twenty year period but following the House of Lords case of *Godmanchester v Drain* in 2007 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. A landowner telling an individual that the route was not a bridleway is not considered to be sufficiently clear and overt to the public as a whole to show a lack of intention to dedicate.

A total of eight user evidence forms were considered (where individual maps were received) and record use of the route on horseback between 1935 and 2008. It is necessary to have a reasonable number of users throughout the twenty year period and also to bear in mind the frequency of use. No those forms where the actual frequency of use is stated, the user evidence is considered insufficient to support a claim under Section 31 for the footpaths to be upgraded to a bridleway.

A claim for the upgrading of the footpaths to bridleways can also arise under common law if there is evidence of dedication by the landowners, which can be express or implied. An implication of dedication may be shown if there is evidence; documentary, user or a combination of both – from which it may be inferred that a landowner has dedicated a highway or a highway of a higher status than recorded at present; and the public has accepted the dedication.

That part of West Emlett lane in existence in 1840, was shown in a similar manner to county roads today on the Tithe Map as the lane was tinted and unnumbered. However, this Tithe map seemed to show most defined lanes within the parish tinted and unnumbered and this would not be considered as evidence of dedication. The Finance Act records of 1910 in respect of West Emlett Farm appears to contain evidence that the landowner had not dedicated any public rights at that time as the field book notes *Occupation road & paths for persons from and to farm but no public or other easement to my knowledge.*

The very limited parish minutes, other district or county minutes and other sources of documentary evidence do not contain any evidence of dedication as a bridleway and the current owners of West Emlett Farm have confirmed that they consider the route to be a footpath only. In the absence of any other evidence to show express or implied dedication by the landowners, it is not considered that a public bridleway ought to subsist at common law.

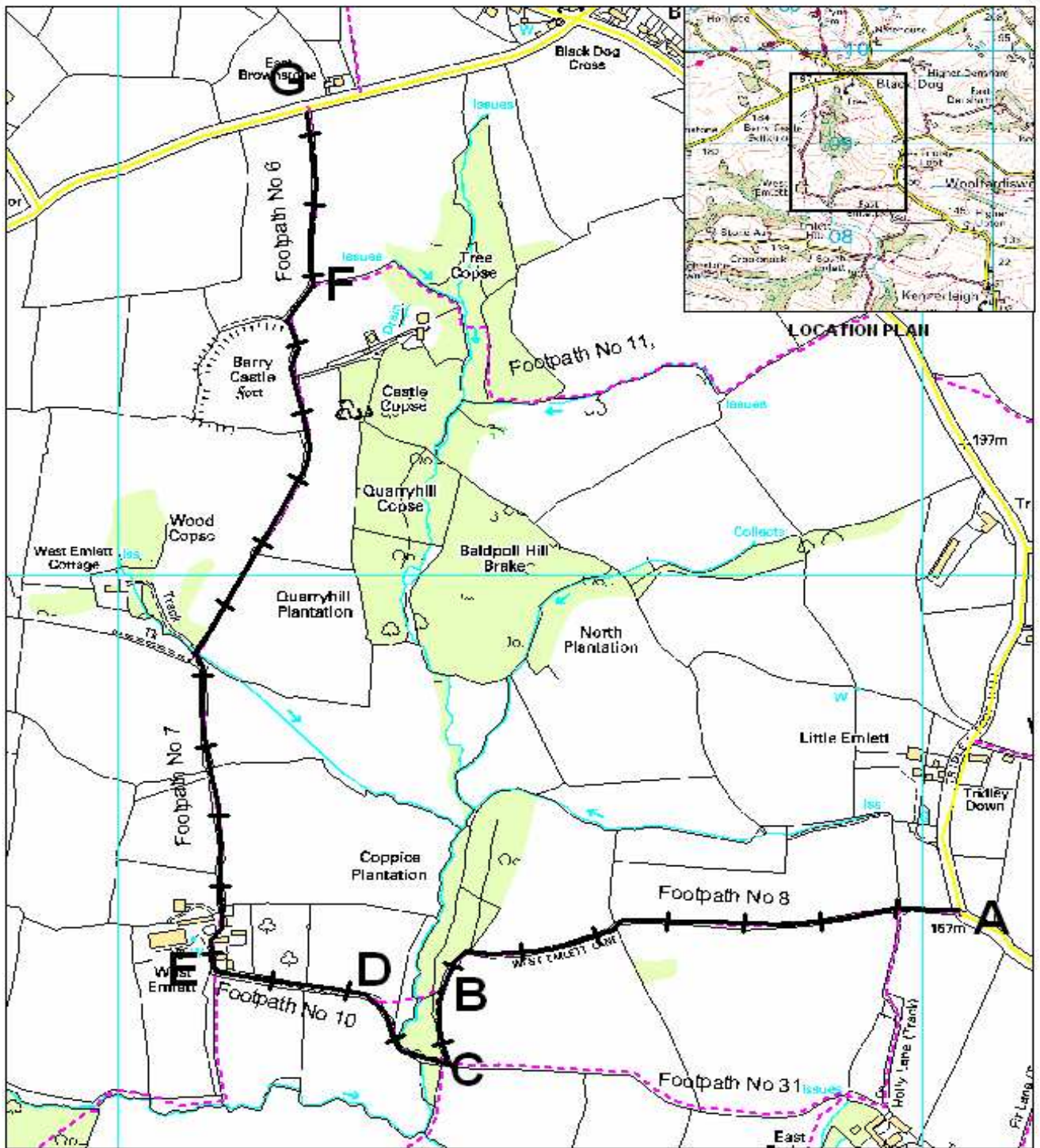
Conclusion

Under section 31 of the Highways Act 1980 there must be a clear calling into question proceeded by use of the public as of right for the preceding twenty years. The twenty year period is deemed to run from 1998 to 2008 but the number of users on the basis of the

evidence received is considered insufficient and a valid claim is not considered to arise by implied dedication under the Highways Act for the upgrading of the recorded footpaths to bridleways.

The evidence examined is also considered insufficient to show dedication of the higher status at common law.

It is therefore recommended that no modification order be made to Upgrade Footpath Nos. 6, 7, 8 (part) & 10 (part) Woolfardisworthy to a bridleway (suggestion 6) as shown on drawing number HTM/PROW/11/73.



map ref SS 8008, 8009, 8108

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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - WOOLFARDISWORTHY
SUGGESTION NO 6 - UPGRADE TO BRIDLEWAY
FOOTPATHS NOS. 6, 7, 8 (PART) AND 10 (PART)

drawing number	HTM/PROW/11/73
date	June 2011
scale	1:7,500 at A4
drawn by	TW

Notation To be upgraded to Public Bridleway
 Route A - B - C - D - E - F - G (570 metres approx) **-|-|-|-**
 Existing Public Footpaths **---**

Lester Willmington
 HEAD OF HIGHWAYS & TRAFFIC MANAGEMENT

Devon
 County Council

Suggestion 7: The upgrading of Footpath Nos. 13, 16 and 17, Woolfardisworthy to a bridleway along Densham Lane, past Little Densham and East Densham.

Recommendations: It is recommended that no modification order be made to upgrade Footpath Nos 13, 16, & 17, Woolfardisworthy to a bridleway (suggestion 7) as shown on drawing number HTM/PROW/11/90.

1. Background

The proposed upgrading to a bridleway of a route along Footpath Nos. 13, 16 and 17 along Densham Lane and then south to Little Densham and east past East Densham was included as a suggestion as a number of user evidence forms were received in 2008 from users who had used the route/s on horseback. An inspection of the footpaths in 2011, confirmed that prior to the erection of deer fencing and kissing gates across Footpath Nos 16 & 17, the routes could have been used by horses.

2. Description of the Route

Footpath No. 13 starts from the county road between Black Dog and Puddington at point A and proceeds east and then south along a defined lane known as Densham Lane and past the entrance to Higher Densham Farm. The route continues south across three fields to the junction with Footpath No. 16 at point B. From here there were two alternative routes. The first was to continue south past Little Densham along Footpath No. 13 and a defined lane to the county road between Woolfardisworthy and Tridley Foot Cross (point C). The second route continues east from point B along a defined lane (Footpath No. 16) to East Densham Farm (point D) before turning south east and continuing along a lane and through a copse and across the stream to point E. The route then continues on Footpath No. 17, across field headlands and along a short section of lane leading to the county road north west of Riverside Cross at Woolfardisworthy (point F).

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

3. Consultations

Woolfardisworthy Parish Meeting responded that they had no evidence of this ever being used as a bridleway and unanimously agreed that it should not be upgraded as a bridleway, in addition the footpath should be diverted around the farmyard.

Devon Green Lanes Group advised that they support the route as a bridleway and hope to carry out further research and would provide this at a later date.

4. Documentary Evidence

Tithe Maps & Apportionments

Woolfardisworthy (East) Tithe Map & Apportionment 1840 (date of copy held in DRO)

The Tithe Map does not appear to differentiate between those roads which are public roads today and those lanes which just lead to farms or fields and which could be privately owned today. Most defined roads/lanes on the map are tinted yellow whether they are public today or not.

The first part of Densham Lane (from point A) is shown as a headland track across a field before becoming an enclosed lane and continuing as a lane to south of Higher Densham before ending into a field. A further section of defined lane is shown west of Little Densham (between point C to just north of point B) and both these sections are tinted pale yellow in a similar manner to roads that are public today and are not numbered. Untinted sections of lane are shown to the west and south east of East Densham that would correspond to the current drive to the east and track south east of the farm yard. These sections lead into areas of the farm yard that are numbered. The lane to the west does not connect to the lane at Little Densham. The short section of lane west of point F is also shown and is uncoloured and unnumbered. There is no evidence of any track or path in the fields crossed by the route.

Ordnance Survey and Other Maps

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

OS 1st and 2nd Edition 25" to a mile 1880-90 & 1905

Both editions show the route via Little Densham A – B – C as following defined lane except for the section across the area called Densham Moor, north of point B. Similarly the route between points B and D to East Densham follows an enclosed lane except for the section across Densham Moor. The section of lane south east of East Densham is shown as it is today, between points D and E and a pecked line, indicating a path or track, is shown across the two compartments of trees, called Densham Plantation and Poor Close Copse, on the current line of Footpath No. 17; leading to the section of lane to point F at Woolfardisworthy Bridge. The farm now known as Higher Densham was called North Densham on these maps.

OS Post War Mapping 1:2,500 scale 1971

By 1971, the defined lane south from point A only extends to just south of Higher Densham and the route crosses three fields to point B, with no track shown across the fields. Sections B to C and B to D follow enclosed lanes. A track is shown across Densham Plantation but not in Poor Close Copse which is now in two compartments as the northern section is no longer wooded. The last section of lane to point F being shown as before.

Account Book of the Surveyor of Highways Woolfardisworthy 1769-1818 (Ref 452A/PS1)

An account book held at the Devon Record Office records a measurement of roads within the parish on 25 July 1810. That list does not include Densham Lane or any part of the suggested footpaths to be upgraded. From 1769 the book includes details of the amounts paid to individuals and for the use of labour and horses for the carrying, digging, breaking and laying of stones on the parish highways. On 7 September 1793 the book records 4 shillings and 6 pence being paid to Robert Hepper for 4 days to digging and breaking stones on Densham Road.

OS Object Name Books

The OS name book reference OS 35/1715 completed in October 1903 describes Densham Lane as *Applies to a private lane situated from Parish Road 19 chains NE of School* (the old Black Dog school) *to the NW corner of Densham Moor*. The entry was signed for by Mrs Mary Belworthy, owner.

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 route passed across land included in hereditaments number 422, 440 and 444. Most of route is included wholly within a hereditament, indicating that the land/lane was considered to be owned by or belong to the relevant holding. The short section of lane at the south east end of the route, leading to point F and described as a private accommodation road in the definitive statement; is excluded and not included in any of the adjacent hereditaments.

The northern section of the route from point A to the field gate north of point B, which follows the route of a defined lane, falls under hereditament number 422, North Densham. A farm of 112 acres owned by Mary Ann Belworthy and occupied by Mr Belworthy. Under Fixed Charges, Easements... the record refers to 'Footpath across farm' the next page states 'Public Right of Way through Ord Nos 222-250-213. These field numbers are to the east of the farmhouse and buildings and a track goes across the fields going towards the adjoining farm of Higher Minchendown. The track is not labelled FP on the OS 2nd Edition 25" mapping and as no allowance was recorded in the field book for Public Rights of Way or User it would appear that this path was not considered public. No reference is made to any right of way along the section of lane over which Footpath No. 13 passes.

East Densham was hereditament number 440, a farm of 179 acres which included Little Densham, owner George Harris of Exeter as Trustee and occupied by Mr Hammett. Under Fixed Charges, Easements etc the record states 'There is a footpath claimed to be a public footpath over part of property'. Page two says 'Public Right of way through Ord Nos 301-306-515-513-514-522 and an allowance of £120 was given for Public Rights of Way or User. The field numbers listed include the field south of the end of Densham Lane, the lane leading eastwards to East Densham, the farmyard and buildings, the lane south east of the farm and the field known as Densham Plantation, across which a track is shown that corresponds to the currently recorded route of Footpath No. 17, Woolfardisworthy.

The last field crossed by the footpath is part of hereditament number 444, the twelve acres of wood belonging to Woolfardisworthy Barton, owned and occupied by Mr Harris as before. The field book refers to a public right of way through Ord. Nos. 555 and 566. Field number 555 is the field called Poor Close Copse on the early twentieth century maps and through which Footpath No. 17 passes at the southeast end of the route. An allowance of £25 is given for public rights of way or user.

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

The survey form for path number 13, described as from Little Densham to the Black Dog – Puddington Road via Densham Lane; was completed by Capt Whitfield and Mr Salter, Chairman of the Parish Meeting in November 1950. The form did not say anything as to whether path required in future, but commented always used by public in response to the grounds believing path to be public.

The path was inspected by Mr Pearce of Crediton Rural District Council in March 1951 who commented that the path was *very soft and wet in the moors. Gate at the entrance of Densham Lane tied up with cord and barb wire on the top. 8" to 10" of water standing by this gate.*

The County Council's comments were *Both end portions of this route would appear to be accommodation roads to Little Densham and North Densham. Perhaps classification of remainder should be CRF (Carriage Road used as Footpath)*. Inquiries were made with the District Surveyor at Crediton and the District Surveyor advised in July 1951 that in respect of Path No 13 the Public have no right to take vehicles over this lane.

A Crediton Rural District sheet, undated, on queries on Maps and Schedules for Woolfardisworthy refers to Path No 13 and comments *Per Divisional Surveyor this is a Private Accommodation Road over which the Public have no right to take vehicles. ? Whether this is used normally as a Footpath or Bridleway – so that it can be properly documented.*

The County Surveyor's notes *NB per DRS letter 9 July 1951 this is a Private Accom Road CS Recommends - Include in Draft Map.*

One parish survey form was completed for Footpath Nos 16, 17 and 18, described as From Densham Lane to Woolserly – Poughill Road via East Densham & Densham Plantation by Mr Salter and Captain Whitfield in November 1950. The paths are stated as being always used by public and required in future. Mr Pearce inspected the paths in March and April 1951 and commented No. 16 – This is the main entrance to East Densham Farm, road maintained by the farmer and No. 17 – Very soft through the wood Densham Plantation.

Some notes on Preparation of Draft Map by the county surveyor, very hard to read, dated May 1952, refer to FPs 16, 17 & 18 and say DRS (District Rural Surveyor) to consult Chairman of Parish Meeting & Capt Whitfield who completed the survey in respect of these FPs. Obtain further evidence on their use by the public also if FP 17 & 18 are required in the future. They are not marked as FPs on 25" Ord map & neither is FP 16. The paths were not included in the Crediton Rural District Council parish queries.

Both the County Surveyor and Solicitor make comments on the survey forms, the former questioning whether the paths are private and whether both 17 and 18 are needed. The Solicitor notes that the Surveyor states all are private footpaths – not happy about this. Should have thought classification of first part of No. 16 would be Accommodation Road. Nos 17 and 18 may be private footpaths – need to check as P/C state public rights of way. The CS final recommendation was to Include on Draft Map.

6. Devon County Council Uncompleted Reviews of 1968 and 1977

No suggestions for the deletions or additions of paths were put forward by the Parish Meeting in the 1968 review. In the 1977 review the Parish Meeting considered the Definitive Map as correct apart from the requested diversion of Footpath No. 8 from Coppice Plantation and along West Emlett Lane and the deletion of Footpaths 11 and 29. These proposals have been considered as suggestions number 3, 4 and 5 in the current definitive map review.

7. Woolfardisworthy Parish Meeting Minutes

Only very limited minutes of the Woolfardisworthy Parish Meetings are available from January 2002 to the present (November 2011). There are no references to the route or use of the footpaths by horses or bicycles during that time.

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

The 1946-49 photograph shows a defined drive through to East Densham rather than the part lane and part track across Densham Moor of the OS 1st and 2nd Edition 25" mapping. On the later photographs the picture corresponds to the 1971 post war map, and the

2006-2007 photograph shows the deer fencing running west to east across the fields south of East Densham.

9. HM Land Registry

The property register for Higher Densham records the right at all times and for all purposes to pass over and along the roadway hatched black on the plan with or without horses, carts, motor or other vehicles laden or unladen and also to drive cattle and other beasts over the said roadway. The land hatched black refers to the lane called Densham lane at the northern end of Footpath No. 13.

Little Densham is not registered and it would appear that East Densham was only registered in 2004. The property register for East Densham includes the clause 'The registered proprietor claims that the land has the benefit of a right of vehicular and pedestrian access over the land tinted brown. The claim is supported by a statutory declaration dated March 2004'. The land tinted brown refers to the section of lane between points B and C at Little Densham.

The register for Woolserly Barton, owners of the field, Poor Close Copse, does not refer to any rights relating to access on the property.

10. User Evidence

A total of nineteen user evidence forms were received in 2008. Most of the forms did not have individual maps attached although the users had signed a copy maps showing both routes, from Higher Densham to Little Densham and the alternative route through East Densham to Woolserly Bridge. Some had not specifically stated when their use ended but overall the forms indicated use of the footpaths on horseback for many years prior to 2008.

Most of the users who had submitted forms were contacted and asked to complete an individual map of the route/s they had used and the opportunity was also taken to ask for clarification/additional information where needed, on the basis of the information already provided.

Four users responded and forwarded signed individual maps of their route and one user's daughter-in-law advised that her father-in-law did not wish to be involved any more as he moved from Black Dog some years ago. Mr Leach's evidence was included as he had signed an individual map in 2008.

Mrs Greenslade advised that she only used these routes when hunting and so her evidence form was disregarded as this is not use as of right.

Mr & Mrs Rowcliffe and Mrs Hutchings confirmed that they had used Footpath No. 13, from point A – B – C at Little Densham and not a the paths through East Densham. Mrs Rowcliffe advised that the last time she rode through she saw the landowners at Little Densham, who had recently sold East Densham; and was advised that the new owners at East Densham did not want people riding through, as one of the fields crossed by Footpath No. 13 between points A and B was owned by East Densham.

The users advised that Footpath No. 13 was used as a short cut and avoided going through Black Dog Cross and along the busier road.

The period of use covered by these users for both routes is as shown on the second chart of user evidence. The frequency of use where specified been 3-8 times a year.

11. Landowner Evidence

Mr M Cleverdon of Higher Densham confirmed that he and his father had owned the farm since 1950. He understands the way to be a public footpath only and sees walkers, though not often.

V & C Lott of Little Densham have owned the land for over 70 years. They believe the path to be a church path and have seen people using the way as a footpath. They report having turned back horse back riders but have not said when this was. Until recently they farmed East Densham for over 80 years and there were six gates along the route C – B – D – E – F. Gates had not been locked.

Mr Tucker has owned East Densham for 8 years and believes the way to be a public footpath and sees walkers once or twice a month. He told a lady on a horse that it was a footpath about six years ago (in 2005-6). A gate has been locked. A list of objections to the proposed upgrading of the footpath to a bridleway was sent and included the following points.

The footpath goes straight through the farmyard with large machinery working on a daily basis, and the track is difficult to maintain and use by horses would increase the problem. There would be an increased chance of animal born diseases if horses rode through the farm. Walkers can use a kissing gate in the new deer fence but horses would need an expensive and complicated gate to maintain the same level of security. Nobody has ridden down the footpath and the field section of the footpath would get very churned up by horses. A bridleway is likely to attract extra traffic from green laners, quad bikes, illegal travellers' sites etc.

Mr & Mrs Andrews of Woolserly Barton wrote to advise that they feel the suggestion is unnecessary; as far as they can recall it has never been used by horses. The cost to upgrade to a bridleway would surely be better spent on the upkeep of existing footpaths in Woolfardisworthy and surrounding areas.

Mr Dumper of Riverside has owned adjoining land to the north east of point F for 16 years. He believes the way to be a footpath and have noticed walkers about once a week. He advises that the section of the route going north west from point F is often under water and walkers have to deviate from the path to get past. He would be concerned that if the footpath is changed to a bridleway, horses and motorbikes will deviate and could cause more damage.

12. Rebuttal Evidence

Apart from the responses referred to above from landowners and consultees, no other evidence was received.

13. Discussion

Some of the landowners raised concerns that if the footpaths were to become bridleways there would be a risk if use by motorcycles or other vehicles. A bridleway can only be used by walkers, horse riders and cyclists and not by any motorised or other vehicles.

The test to consider whether a public right of way recorded as one status should be upgraded to a higher status is a slightly higher test as to whether a route should be added as a public right of way to the definitive map. This means that there would need to be sufficient evidence to show that the higher rights, in this suggestion those of bridleway status, ought to be shown on the Map.

Footpath Nos. 13, 16, & 17, Woolfardisworthy were added to the definitive map in the 1950s, having been surveyed by the Chairman of the Parish Meeting, Mr Slater. With respect to Footpath No.13 the County Council queried whether the end portions of the route (along the lanes at the north and south ends of the Footpath) were accommodation roads and should the remainder be classified as a CRF (carriage road used as footpath). The District Surveyor confirmed that the public have no right to take vehicles over this lane. The Divisional Survey appears to have queried whether the route was used as a footpath or bridleway but the final recommendation was to include on the draft map as a footpath.

One survey form was completed for Footpath Nos. 16, 17 & 18 and Mr Pearce of the District Council commented that Footpath No. 16 was the main drive to East Densham Farm, maintained by the owner. The County Surveyor requested further evidence of their use by the public and if Footpath Nos 17 & 18 were required in the future from Mr Salter & Captain Whitfield. The final recommendation was to include them on the draft map as footpaths.

There is no evidence of any objections or representations being made to their inclusion as footpaths on the draft or provisional definitive maps as routes of a higher status. The Parish Meeting did not make any suggestions concerning the status of the footpaths in the uncompleted County reviews of 1968 and 1977.

The earlier mapping confirms that the defined lane/drive all the way through to East Densham from Little Densham (Footpath No. 16) did not exist until after the 1910s. Prior to that date part was a track across Densham Moor and Mr Pearce noted in 1951 that Footpath No. 6 was a good hard path in the first field.

The land registry titles for Higher Densham and East Densham include references to a private right of way along the lanes at the north and south ends of Footpath No. 13 at Densham Lane and Little Densham respectively which is consistent with the lanes being considered private. All the land crossed by the footpaths was also included within a hereditament under the Finance Act plans except for the section of lane near point F on Footpath No.17.

The OS Name Book describes the north part of Footpath No.13 as a private lane and this and the other documentary evidence indicate that the sections of lane crossed by the footpath have mainly been considered to be and had the status of a private lane.

Section 31 of the Highways Act 1980 provides that a public right of way, in this case a bridleway, may subsist if there is twenty years use by members of the public as of right, prior to the calling into question of their use of the route (on horses/bicycles). The routes appear to have been useable by horses as there are no stiles on the footpaths and the user evidence supports use by horses. A cattle grid is situated on Footpath No.13 by Little Densham but there is a small gate to the side that could be used by horses or walkers. The deer fencing erected at East Densham Farm in about 2005-2006 would have prevented use with horses, unless the field gate was unlocked, as horses could not have used the kissing gates provided for walkers. The field gates in the deer fencing on Footpath No. 17 (at point E) are understood to have been kept locked.

The deer fencing and locked gate would amount to a calling into question of the use of Footpath Nos 16 and 17 and the twenty year period of use required to show deemed dedication would run from 1985-6 to 2005-6. On the basis of the user evidence forms received with individual maps, the number of users is insufficient to show reasonable use by the public as of right to support a presumption of dedication.

There does not appear to be any incident that could be considered a calling into question in respect of the use of Footpath No. 13 as a bridleway and accordingly it is not possible to consider whether deemed dedication has arisen under Section 31 of the Highways Act.

A claim for the upgrading of the footpaths to bridleways can also arise under common law if there is evidence of dedication by the landowners, which can be express or implied. An implication of dedication may be shown if there is evidence; documentary, user or a combination of both – from which it may be inferred that a landowner has dedicated a highway or a highway of a higher status than recorded at present; and the public has accepted the dedication.

The account book of the Surveyor of Highways in Woolfardisworthy records a sum of money being paid for the digging and breaking of stones on Densham Road in September 1793. It is not known whether this could be the same road as Densham Lane or whether the 'digging' could refer to 'digging up' or 'digging in' of stones on the road. The early 20th century OS maps do not show a quarry at Higher Densham so perhaps the latter was the situation. Public money was usually only spent on routes that were known to be public and the use of stone and name 'road' would indicate a route with a higher status than footpath. However, on its own this evidence would not be sufficient to show implied dedication by the landowner at common law.

Comments in the user evidence indicate that the previous landowners at East Densham did not mind some people using Footpath No. 13 on horseback, even if they had not given permission. The landowner at East Densham reports speaking to a horse rider at the farm about six years ago. Although it appears that the footpaths were used by occasional horse riders, the number of user evidence forms received with individual maps was very small. The user evidence is considered insufficient to support an implication of dedication by landowners for use of the footpaths as bridleways.

The very limited parish minutes, other district or county minutes and other sources of documentary evidence do not provide any further evidence of dedication of the routes as bridleways and the current landowners consider the routes to be footpaths only. In the absence of any other evidence to show express or implied dedication by the landowners, it is not considered that public bridleways ought to subsist at common law.

14. Conclusion

Under section 31 of the Highways Act 1980 there must be a clear calling into question proceeded by use of the public as of right for the preceding twenty years. The twenty year period is deemed to run from 1985-6 to 2005-6 in respect of Footpath Nos. 16 & 17, but the number of users is considered insufficient and a valid claim is not considered to arise by implied dedication under the Highways Act for the upgrading of the footpaths to bridleways. The evidence examined is also considered insufficient to show dedication of the higher status at common law.

It is therefore recommended that no modification order be made to upgrade Footpath Nos 13, 16, & 17, Woolfardisworthy to bridleways (suggestion 7) as shown on drawing number HTM/PROW/11/90.

