

**Definitive Map Review 2011-2012  
Parish of Newton and Noss (Part 2)**

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.***

**Recommendations: It is recommended that:**

- (a) Modification Orders be made to modify the Definitive Map and Statement by:**
- (i) adding a public footpath (suggestion 14) between the points N1 – O1 –x, as shown on drawing number EEC/PROW/11/47a;**
  - (ii) adding a public footpath (suggestion 18) between the points U1 – V1 as shown on drawing number EEC/PROW/11/50;**
  - (iii) adding a public footpath (suggestion 19) between the points C1 – D1 as shown on drawing number EEC/PROW/11/45;**
- (b) It be noted that a Legal Event Modification Order be made under delegated powers in respect of Suggestion 5.**

**1. Summary**

This report examines four suggestions arising from Definitive Map Review in the Parish of Newton and Noss in the District of South Hams. Seven suggestions (numbered 1, 2, 3, 4, 6, 8 and 9) were previously reported to the November 2011 Committee. The remaining ten suggestions will be referred to a subsequent Committee meeting.

**2. Background**

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 31 footpaths and 1 bridleway in Newton and Noss, which were recorded on the Definitive Map and Statement, published December 1961 with a relevant date of 11 October 1954.

The review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the late 1960s but was never completed, produced a number of proposals for change to the Definitive Map at that time, three of which are discussed in this report.

The Limited Special Review of RUPPs, carried out in the 1970s, did not affect the parish.

The following Agreements and Orders have been made:

Stopping-up of Highways (Devon) (No. 1) Order 1956 in respect of Footpath No. 1, Newton & Noss.

Creation Agreement 1956 for alternative route of Footpath No. 1, Newton & Noss.

Creation Agreement 1971 in respect of Footpath No. 40, Newton & Noss (SWCP).

South Hams District Council (Footpath No. 28, Newton & Noss) Public Path Diversion Order 1988.

Devon County Council (Footpath No. 18, Newton & Noss) Definitive Map Modification Order 1989.

Devon County Council (Footpath No. 41, Newton & Noss) Definitive Map Modification Order 1990.

Devon County Council (Footpath No. 11, Newton & Noss) Public Path Diversion Order 1990.

Devon County Council (Footpath No. 4, Newton & Noss) Public Path Diversion Order 1992.

Legal Event Modification Orders will be made for these amendments in due course.

### **3. Review**

The current Review began in January 2011 with a public meeting held in the WI Community Hall in Newton Ferrers. Sixteen routes proposed for addition to the Definitive Map were put forward by Newton and Noss Parish Council, and a number of other anomalies were picked up during inspections of existing paths in the parish. A full public consultation was carried out in April 2011, on 21 suggestions for modifying the Definitive Map and Statement.

The responses from councils and user/landowner groups were as follows:

County Councillor William Mumford	-	endorses suggested modifications
South Hams District Council	-	no comment on these four suggestions
Newton & Noss Parish Council	-	support all the suggestions
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Devon Green Lanes Group	-	no comment
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers	-	no comment
Trail Riders' Fellowship	-	no comment

### **4. Conclusion**

It is recommended that Orders be made in respect of suggestions 5, 14, 18 and 19.

Should any further valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

### **5. Financial Considerations**

There are no implications.

### **6. Sustainability Considerations**

There are no implications.

## **7. Carbon Impact Considerations**

There are no implications.

## **8. Equality Considerations**

There are no implications.

## **9. Legal Considerations**

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

## **10. Risk Management Considerations**

There are no implications.

## **11. Reasons for Recommendation/Alternate Options Considered**

To progress the parish by parish review of the Definitive Map in the South Hams district area.

Lester Willmington  
Head of Highways and Traffic Management

## **Electoral Division: Yealmpton**

### Local Government Act 1972: List of Background Papers

Contact for enquiries: Helen Clayton

Room No: AGB Lucombe House

Tel No: 01392 382602

Background Paper	Date	File Ref.
Correspondence File	2010 to date	DMR/Newton and Noss

hc220512pra  
sc/cr/dmr Newton and noss part 2  
03 hq 080612

## **Background**

### **A. Basis of Claims**

The Wildlife and Countryside Act 1981, Section 53 (5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

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.

The Wildlife & Countryside Act 1981, Section 53[3] [a] [ii] enables the Definitive Map to be modified following the occurrence of an event whereby a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description.

The Wildlife and Countryside Act 1981, Section 53[3] [c] enables the Definitive Map and Statement 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.

The Wildlife and Countryside Act 1981, Section 56[1] states that 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 14: Addition of a public footpath from the B3186 Parsonage Road running between the W.I. Hall and The Green and adjacent to Court Road.**

Addition of a public footpath from the B3186 Parsonage Road, running between the WI Hall and The Green and continuing adjacent to Court Road, as shown between points N1 – O1 – P1 on drawing number EEC/PROW/11/47a.

**Recommendation: That a Modification Order be made to add a public footpath to the Definitive Map and Statement between points N1 – O1 - x, but that no order be made in respect of x – P1, rather that it be noted that this section is already recorded on the highway records as highway maintainable at public expense and regarded as roadside verge.**

## **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. It is identified as Parish Path I – WI Hall.

## **2. Description of the Route**

The route starts at point N1, as shown on drawing number EEC/PROW/11/47a, on the B3186 Parsonage Road in Newton Ferrers. It proceeds south southwestwards for approximately 45 metres along a defined, surfaced pathway between the Women's Institute Hall and The Green to Point O1. Stone posts are situated centrally at each end of this section. The path then continues across the entrance to Briar Hill Farm to point x, where it continues along a built up pathway adjacent to Court Road to point P1, nearly opposite Footpath No. 6 and Holy Cross Church. It is bounded on the northern side by a stone boundary wall, through which a couple of properties have access via pedestrian gates. This section has a gravel, earth and grass surface. A street name plate for Court Road is located on it.

## **3. Documentary Evidence**

### **3.1 Ordnance Survey Maps**

The 1<sup>st</sup> Edition 25" OS map, published 1895, shows the section O1 – N1 as a defined pathway adjacent to the Green and open to the road at each end. Section x – P1 is defined by a pecked line at the edge of the road, which indicates a change of surface. The adjoining property boundary is shown as a solid line, which indicates a feature such as a wall, fence or hedge. The area which is now the entrance to Briar Hill Farm (points O1 – x) is indistinguishable from the road.

The 2<sup>nd</sup> Edition 25", published 1904-06, as 1<sup>st</sup> Edition.

The 1:2500 A Edition post-war OS mapping, published 1950, as earlier mapping.

### **3.2 Compilation of the Definitive Map, 1950**

For compilation of the Definitive Map Newton and Noss Parish Council put the section N1 – O1 forward for inclusion as a public footpath, shown as No. 12 on the submission map. It is described as:

*Path adjoining The Green, Parsonage Road and Women's Institute Hall. Open Path, entrances Stone Pillars 2 No. 1 No. each end. Condition Tarmacadam Surfacing good.*

The Parish Council gives the grounds for believing the path to be public as 'Path publicly maintained and adjoining highway'.

Under the Parish Council's description the County Surveyor has written:

*Omit*

*CS Comments*

*1) The DRS [Divisional Road Surveyor] reports this path is part of the highway – it must not be included in the Draft Map.*

### **3.3 Highway Handover Map and Mileage Book c. 1949 onwards**

The highway handover maps were compiled for each highway divisional area when the responsibility for maintaining unclassified county roads, delegated to the Rural District Councils since 1929, was handed back to the County Council. They are a record of those highways considered to be maintainable at public expense at that time.

The path between the WI Hall and the green is coloured as the B3186, Parsonage Road. The actual carriageway on the other side of the green is not coloured.

### **3.4 Newton and Noss Parish Council Minutes**

In November 1936 the Parish Council discussed the path between the Green and Women's Institute Hall, which it was felt required attention. Estimates for repair were considered and it was resolved that further tenders be invited for tar and gravel and that the Works Committee get the works done provided that the cost did not exceed £12.

In October 1937 it was thought that the work to repair the path by WI Hall could be done better and cheaper by the Highway Authorities whilst they were tarring roads in the area. It was resolved to write and ask the Surveyor.

In June 1947, when it was resolved by the Parish Council that the District Surveyor be approached with a request that when labour and plant was available the path between the Green and the WI Hall should be sealed with chippings and tar sprayed and that the Parish Council would bear any necessary charge.

In February 1948 it was again proposed that the path between the Green and the WI Hall be resurfaced. Part of it had recently been dug up by telephone contractors and the Highway Surveyor proposed to measure the area affected so that cost could be apportioned and a claim made against the contractor. The Parish Council would inform the latter of the position. In March 1948 the Divisional Surveyor confirmed that the work would be carried out and the costs apportioned to enable a claim to be made.

In April 1948 it was reported that surfacing works had been carried out but that cars and lorries were driving onto the path. It was resolved that the Works Committee be asked to look at ways of preventing this and given power to act as soon as possible to prevent damage being caused. In May and June 1948 it was reported that posts were necessary at the top and bottom of the path between the Green and the WI Hall and that tenders were being obtained respectively.

In September 1964 the ownership of the path was raised but that there was no information as yet.

In November 1964 the Parish Council resolved to accept the offer of the Rural District Council to sweep the path by the Green for the sum of £2 per annum.

In July 1966 the minutes report the dangerous surface at the entrance to Briar Hill Farm and the public right of way adjacent to the Green. It was resolved that the clerk write to Mr Hosford seeking if he claimed ownership and if so his liability. In September it was reported that Mr Hosford was claiming ownership of the frontage near the Green. Clerk to reiterate liability.

Subsequent minutes between December 1966 and March 1967 refer to the issue of street lighting at the bottom of the public footpath adjacent to the Green.

In April 1967 it was reported that in view of the public anxiety the Parish Council would endeavour to have the path at the Green placed on the Definitive Map at the quinquennial review.

In November 1973 the condition of the footway at Briar Hill Farm was raised. A parishioner had fallen due to unsatisfactory surfacing. Members stated previous attempts by DCC at resurfacing had been frustrated by farmer who claimed ownership. Resolved that DCC be asked to acquire this part of footway to enable surfacing to take place. In January 1974 a reminder was to be sent to DCC regarding surfacing the entrance to Briar Hill Farm.

In February 1974 it was reported that Mr Hosford had received a letter from DCC concerning surfacing of the footway and he was in the process of carrying out the works required. It was resolved that DCC be informed that the footway extended some 30 yards into Court Road and that Mr Hosford's proposals be clarified.

In December 2003 it was reported that a new access from Briar Hill Farm had been made onto Court Road to serve a property development and that there was concern over the safety of pedestrians on the gravel that had been laid in the entrance. It was reported that the path was not on the Definitive Map but that it had been used for generations, and that the Council would contact the owners of Briar Hill Farm to request a meeting to discuss reinstatement proposals.

In October 2004 it was reported that Mr Lister was aware of the public right of way over his property and that he would seek guidance from DCC before constructing and surfacing entrance to new house.

### **3.5 Parish Council Correspondence**

In January 1967 Newton & Noss Parish Council wrote to the Plympton St Mary Rural District Council requesting definition of the extent of the right of way that runs from the bus stop above the green, past the Women's Institute and joins Court Road by the entrance to Briar Hill Farm. The Parish Council stated that they understood it was their responsibility between the stone pillars, but found that it was not recorded on the schedule of rights of way or marked on the Definitive Map. Their query concerned a rough triangle of land between the pillars at the south end of the path and Court Road, whose responsibility it was to maintain and to what standard.

The Divisional Surveyor of the RDC replied in July 1967 that he had authority to negotiate with the owner and try to resolve the question of ownership adjoining Briar Hill Farm and subject to a satisfactory solution would arrange for the area to be resurfaced.

**3.6 Plympton St Mary Rural District Council Minutes**

The minutes of a meeting of the War Emergency Committee on 26 March 1941 record a letter received from Newton and Noss Parish Council regarding the condition of the path at Newton Green, alleged to have been damaged by the Electricity Department. It was resolved that the matter be referred to the Electrical Engineer for attention.

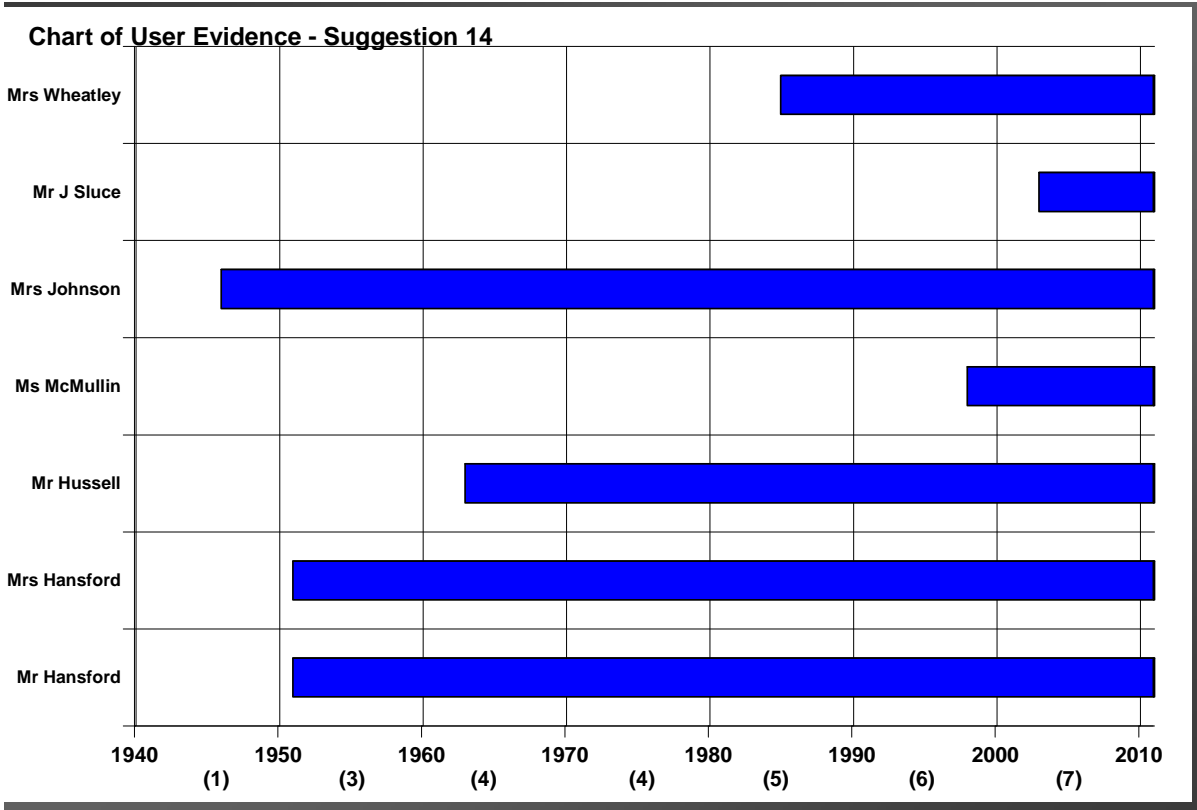
**3.7 Highway Records**

From point x, west of the entrance to Briar Hill Farm, to point P1 the route is recorded on the County Council's records of highways maintainable at public expense within the extent of Court Road. The area in front of the entrance to Briar Hill Farm (O1 – x) and the section between the WI Hall and the green (N1 – O1) is not recorded.

**4. User Evidence**

Newton and Noss Parish Council submitted seven user evidence forms in support of their proposal for the addition of this path. No further forms were received during the consultation but significant public use of the route has been observed on site. The user evidence is summarised in the chart below.

The user evidence forms demonstrate regular use of the route by the public since the mid 1940s. Use has been very regular and frequent, ranging from monthly to daily, as a route to and from school, work and the bus stop. None of the users report any restrictions or anything to indicate that it was not public.





## **5. Landowner Evidence**

The land crossed by the route is not registered with the District Land Registry but adjoining landowners were contacted for their evidence and views during the consultation process.

Newton and Noss Parish Council completed a Landowner Evidence Form in respect of The Green, which has been in Parish Council ownership for over 55 years. They comment that the path is in heavy daily use by members of the public.

The president of the Newton and Noss Women's Institute completed a form in respect of the adjoining WI Hall, which has been in their ownership since 1921. She also comments that the path is in daily use by the public.

## **6. Discussion**

The section N1 – O1 between the WI Hall and the Green has been shown on Ordnance Survey mapping as a defined pathway, approximately 2 metres wide, since the 1<sup>st</sup> Edition 25" of the 1890s. Newton and Noss Parish Council has taken responsibility for maintaining this section since at least the 1930s, often asking the highway authority to carry out repairs or resurfacing at the Parish Council's expense.

The Parish Council have consistently regarded N1 – O1 as a public footpath, putting it forward for inclusion on the Definitive Map in 1950. It was omitted from the Draft Map by the County Surveyor on the belief that it was part of the highway. This is likely to have stemmed from an inspection of the highway handover map, which shows the narrow path coloured as the route of the B3186, instead of the carriageway. It can only be concluded that this was a drafting error. The width of the path and the stone pillars at either end would have precluded vehicular use and it is inconceivable that it could have been the B3186. Previous Parish Council minutes also confirm that maintenance was considered to be the responsibility of the Parish Council, and not the highway authority. However, as a result of this error, the path was omitted from the Definitive Map. The omission was realised in 1967, when the Parish Council resolved to have it added at the next review.

The path has continued to be extensively used by the public on foot without let or hindrance, and is regarded by the adjoining landowners as a public right of way. It is considered that sufficient evidence exists to show that a public right of way not presently shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist.

The continuation from O1 is a different matter. There is no defined path over the area in front of the entrance to Briar Hill Farm, between points O1 – x, and historic Ordnance Survey mapping shows this area as indistinguishable from the road. The condition and responsibility for this area was first raised by the Parish Council in 1966, when the adjoining landowner claimed ownership. His ownership appears to have been accepted by the Parish and County Councils, although the County Council did attempt to negotiate for the area to be resurfaced. The matter has been raised by the Parish Council on subsequent occasions, with any works seemingly being carried out by the landowner. It is not shown on the County's highway records as highway maintainable at public expense. The landowner appears to have carried out repairs to the surface at the Parish Council's request.

Between points x – P1 the path is shown on Ordnance Survey mapping by a pecked line adjacent to the road to indicate a change of surface, consistent with the depiction of a roadside verge. The land is not registered with the District Land Registry and it is shown on the County's highway records as within the boundaries of the maintainable highway. There are no maintenance records for this section but it would appear to be roadside verge.

Section x – P1 is extensively used by the public on foot and it would almost certainly meet the tests for presumed dedication. However, it does not meet the definition of a public footpath within the meaning of the Wildlife and Countryside Act 1981, namely, a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road.

## **7. Conclusion**

It is recommended therefore, that a Modification Order be made to add a footpath to the Definitive Map between points N1 – O1 – x, as shown on drawing number EEC/PROW/11/47a, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed. It is recommended that no Modification Order be made in respect of the route between points x – P1, but that it be noted that this section is already recorded on the highway records as highway maintainable at public expense and may be considered roadside verge.

### **Suggestion 18: Addition of a public footpath from the county road Middlecombe Lane, north of the property known as Middlecombe to the county road, south of the property known as Clevemoor**

Addition of a public footpath from the county road Middlecombe Lane along a defined path, known as Kennel Lane, to the county road leading to Netton, south of the property known as Clevemoor, as shown between points U1 – V1 on drawing number EEC/PROW/11/50.

### **Recommendation: That a Modification Order be made to add a footpath to the Definitive Map and Statement between points U1 – V1.**

## **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. It is identified as Parish Path Q – Kennel Lane.

## **2. Description of the Route**

The route starts at point U1, as shown on drawing number EEC/PROW/11/50, at the county road Middlecombe Lane, north of the property known as Middlecombe. It proceeds southeastwards along a defined track, known as Kennel Lane, for approximately 165 metres between property boundaries to point V1 at the county road leading to Netton, south of the property known as Clevemoor. It has an earth, stone and grass surface.

## **3. Documentary Evidence**

### **3.1 Ordnance Survey Maps**

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years. The route is shown on the 1784 – 1786 Draft Drawings and all subsequent maps as a through route.

The Draft Drawings show the entire route. It is shown fenced/hedged on both sides. A cluster of buildings are shown at both ends, with Middlecombe named. Another route is shown at right angles to it, along the southern boundary of the property now known as Revelstoke House.

1<sup>st</sup> Edition 1 inch to a mile map (Cassini Reproductions Sheets 201 Plymouth & Launceston and 202 Torbay & South Dartmoor) first published in 1809-1813 and in the 1860s with revisions, shows the route as per the Draft Drawings.

The 1<sup>st</sup> Edition 25", published 1895, again shows the route bounded on both sides, with open junctions to the known public highways at each end and joining another route at right angles along the southern boundary of Revelstoke Rectory (now known as Revelstoke House). A small building is shown at the junction of the two routes. Middlecombe is marked but no buildings are shown at the southern end of the route (point V1).

The 2<sup>nd</sup> Edition 25", published 1904-1906, shows the route as the 1<sup>st</sup> Edition but with shading on one side. From 1884 to 1912 it was OS mapping convention to mark the first and second class public roads with solid lines, with one side shaded.

The 1:2500 A Edition post-war OS mapping, published 1950, shows the route defined in the same way as earlier mapping. The property now known as Clevemoor is shown in the triangle of land north of the route at its eastern end.

### **3.2 Parish Council Minutes**

The route was within Revelstoke parish until 1935 when it was transferred to the newly formed parish of Newton and Noss.

On 10<sup>th</sup> March 1931 it is reported in Revelstoke Parish Minutes that the path from Middlecombe to the road by the Rectory should stand over until some complaint was made.

17<sup>th</sup> October 1991 it was reported that Kennel Lane required attention and would be considered at the November meeting.

On 21<sup>st</sup> November 1991 Newton and Noss Parish Council resolved that Kennel Lane be added to the list of non-definitive paths.

On 17<sup>th</sup> September 1998 it was reported that Kennel Lane was overgrown.

On 19<sup>th</sup> July 2001 it was resolved a letter would be sent to the landowner requesting hedge cutting on Kennel Lane. On 20<sup>th</sup> September 2001 it was reported that as the ownership of the adjacent land was uncertain no letter had been sent.

### **3.3 Plympton St Mary Rural District Council Highway Purposes Committee**

At a meeting of 9<sup>th</sup> May 1902 a letter was read from a Mr Gill as to the condition of Kenal Hill, Revelstoke. It was resolved that Mr Crocker (Surveyor) bring up a report and estimate at the next meeting of the cost of putting the same in order.

At the following meeting of 20<sup>th</sup> June 1902 Mr Crocker reported that the cost of repairing Kennett Hill would be £18. It was resolved that the work be proceeded with at a cost not exceeding £18.

### **3.4 Revelstoke Tithe Map and Apportionment 1841**

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Public roads were not titheable. In the Devon Record Office leaflet on Rights of Ways Records it states under Tithe Maps and Apportionments that where a track is

numbered on the map and listed with the holdings of a private individual, it was regarded as of essentially private character. It is possible that the private character referred to maintenance rather than use. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.

The route is shown as a defined route, open to the roads at either end. It is un-numbered.

### **3.5 Finance Act 1909-1910**

The Finance Act provided for the levying of tax (Increment Value Duty) on the increase in site value of land between its valuation as at 30 April 1909 and, broadly speaking, its subsequent sale of value. The system for calculating the assessable site value allowed for deductions for, among other things, the amount by which the gross value would be diminished if the land were sold subject to public rights of way. The Act required all land to be valued, but routes shown on the base plans which correspond to known public highways, usually vehicular, are not normally shown as included in the hereditaments, i.e. they will be shown uncoloured and unnumbered. So if a route is shown external to any numbered hereditament, there is a strong indication that it was considered a public highway, normally but not necessarily vehicular as footpaths and bridleways were usually dealt with by deductions. However, there may be other reasons to explain its exclusion.

The claimed route is shown entirely excluded from surrounding hereditaments in the same manner as most known public highways today.

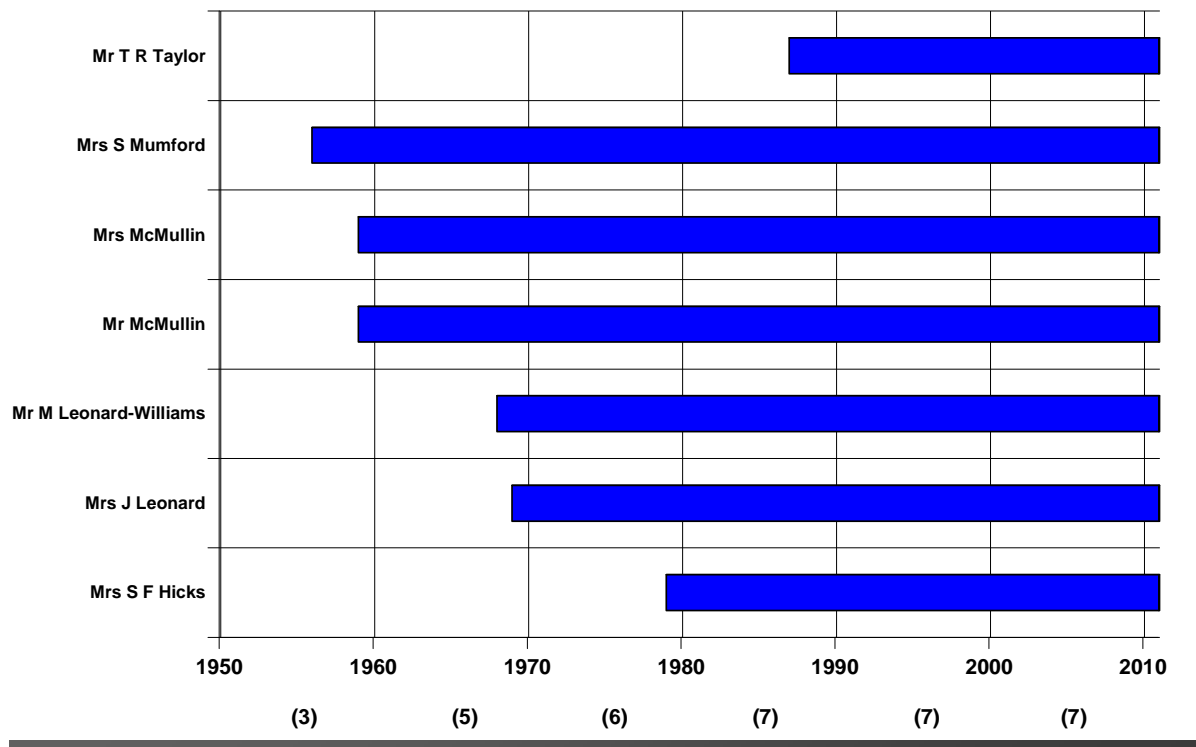
Middlecombe is recorded in the accompanying Field Book as hereditament 343 and includes the small building on the opposite side of the route. The property is described as cottage, kennels and garden. The land adjoining the most part of the route is shown as belonging to Rowden Farm. The use of bracing symbols shows that the route is not included within the hereditament (no. 422).

## **4. User Evidence**

Newton and Noss Parish Council submitted six user evidence forms, demonstrating use by seven people, in support of their proposal for the addition of this path. No further forms were received during the consultation but use by the public is evident on the ground, e.g. footprints. The user evidence is summarised in the chart below.

The user evidence forms demonstrate regular and frequent use of the route by the public since the mid 1950s. Most users comment that it is well used. Use has been regular and frequent, ranging from monthly to daily, for dog walking and generally as part of a recreational walk. One has used it on a mountain bike. None of the users report being stopped or turned-back or told that the route was not public. One user comments that the owner lives by the route and has never challenged anyone. The only obstruction referred to was a parked car in the past but that it was temporary and not a problem.

**Chart of User Evidence - Suggestion 18**



## **5 Landowner Evidence**

The land crossed by the route is not registered with the District Land Registry therefore adjoining landowners were contacted as part of the consultation process.

One Landowner Evidence Form has been received from Mr Eason who owns Cleve Moor adjoining the eastern end of the route on its northern side. He believes the route to be a public bridleway and, since acquiring the property in 2005, has seen occasional walkers and horse riders. He believes he owns up to the middle of the route and Middlecombe owns to the middle on their side.

## **6 Discussion**

Map evidence shows that the route has physically existed as a defined route since the late 1700s, as evidenced by the Ordnance Survey Draft Drawings.

The claim for the route to be recorded as a public footpath was not submitted as the result of any action taken by a landowner that had obstructed or prevented access to and use of the route from a specific date. There is no evidence of any actions having called into question use of the route for consideration of the user evidence under statute law. It is therefore to be examined in relation to common law, in conjunction with historical and other documentary evidence.

Map evidence shows that the route has been physically open and available since the late 1700s. Ordnance Survey mapping provides evidence of the physical existence of the route over time but not of status. OS maps do not however, show any evidence that the route was gated.

The Tithe Map evidence shows the route with an open junction to the public road at the northern end and it is not numbered and identified with the holdings of any private individual. This is consistent with the depiction of other public roads at that time. The 1910 Finance Act also shows the route excluded from the hereditaments, which strongly suggests that it was considered a public highway at that time, although it does not confirm level of status.

The Rural District Council records show that the Council carried out repairs to a route named as Kenal or Kennett Hill. It is clear that the Council were referring to the same route in each instance, but it cannot be said with any degree of certainty that it is the claimed route, Kennel Lane.

No more significant references in historical documents have been found to indicate more specifically that it may have had the reputation of being a public road in the past or more recently. In particular, there is no indication of any public expenditure on it in the past, other than the above mentioned reference to Kenal/Kennett Lane, or responsibility for its maintenance. The route has not been shown on the past and current records of maintainable highways to suggest that it may have been considered as a public road more recently.

The adjoining landowner who responded believes the route to be public, and has not stopped anyone using the route or said it was not public. The Parish Council has clearly considered the route to be a public path and has ensured that it is kept open and clear. The adjoining landowner has observed use by walkers, horses and one user provides evidence of use on a bicycle. However the most use is consistent with that of a public right of way on foot. No action has been taken to prevent any public use of the route.

As there has been no event which would act as a calling into question of the public's rights, it is not possible to consider the evidence under section 31 of the Highways Act 1980 and the 20 year period required for presumed dedication does not apply.

Considering the user evidence in conjunction with all other evidence, dedication at common law with a status of at least footpath can be implied. Mapping evidence suggests that the route has been available since at least the late 1700s, which has allowed continued use. The evidence suggests that, at some time in the past, the landowner intended to dedicate the route as a public right of way and that the public accepted the dedication and used it on that basis.

## **7. Conclusion**

It is recommended therefore, that a Modification Order be made to add a footpath to the Definitive Map between points U1 – V1, as shown on drawing number EEC/PROW/11/50, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

### **Suggestion 19: Addition of a public footpath from Footpath No. 2 along a defined path, known locally as Donkey Path, to Riverside Road East.**

Addition of a public footpath from Footpath No. 2, along a defined path known as Donkey Path to Riverside Road East, as shown between points C1 – D1 on drawing number EEC/PROW/11/45.

**Recommendation: That a Modification Order be made to add a footpath to the Definitive Map and Statement between points C1 – D1.**

## **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. It is identified as Parish Path R – Donkey Path.

## **2. Description of the Route**

The route starts at point C1, as shown on drawing number EEC/PROW/11/45, at Footpath No. 2, between properties 4 and 5, Church Park, an unadopted road. It proceeds southwards along a narrow pathway between hedges and fences, turning eastwards then southwards again to point D1 on Riverside Road East, adjacent to Derry's Cottage. For the most part the route has an earth surface. The lower section has a concrete surface.

## **3. Documentary Evidence**

### **3.1 Ordnance Survey Maps**

The 1<sup>st</sup> and 2<sup>nd</sup> Edition 25" Maps of the 1880s and early 1900s respectively, show that Church Park has not been built and Footpath No. 2 crossed fields. There is no indication of the claimed route at this point. Buildings are shown in the location of Derry's and Slipway Cottages but no defined route is marked.

The route is first shown as a defined feature on the 1:2500 A Edition post-war OS mapping, published in 1951, following the development of Church Park. The route is shown on its current alignment as a through route between Church Park and Riverside Road East. It is noted as FP, indicating that it appeared to the surveyor to be a route used on foot.

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence.

### **3.2 RAF Aerial Photography 1947-1949**

The quality of the photography is poor but it shows that the adjoining properties on Church Park have been built by this time, and it is just possible to make out the path boundaries at the northern end. The southern end is obscured by shadows.

### **3.2 Earlier Uncompleted Reviews of Definitive Map**

In 1969, the Parish Council surveyed and submitted to the County Council a schedule of additions or amendments to the Definitive Map for the Review of the Map, as required under section 33 of the National Parks and Access to the Countryside Act 1949 and section 31 of the Countryside Act 1968. The list of paths to be added to the Definitive Map included the route identified as path R. It is described as follows:

*Narrow path leaves Church Park passing South between Fernleigh and Marysteps turns east at right angle and shortly after again south at right angle following the boundary of Eastfield and so on to Riverside Road East.*

In April 1978 Newton and Noss Parish Council again put forward a list of paths to be added to the Definitive Map, including this route, identified as path R.

### 3.3 Parish Council Minutes

The route is brought up by the Newton and Noss Parish Council on numerous occasions.

The first reference in the Parish Council minutes is at a meeting on the Council on 18<sup>th</sup> June 1959 when overhanging vegetation on the path between Church Park and Riverside Road was raised. The clerk was directed to write to the adjoining landowners, asking for their cooperation in the matter, to 'avoid future annoyance and inconvenience to users of the path'.

On 16<sup>th</sup> July 1959 in response to letters from Mr Farleigh and Mr Derry regarding the ownership of the path between Riverside Road and Church Park. Councillor Douch undertook to supply a tracing to the clerk, the latter to contact Devon County Council to have the omissions instated. On 17<sup>th</sup> September 1959 the clerk was to acknowledge letters and mention it is the intention of the Council to have the footpath in question put on the map.

On 20<sup>th</sup> July 1961, regarding Pathfield Church Park – Riverside Road, it was resolved to write and thank Mrs Shobrook for her effort in pruning the overhanging foliage, also assuring her that it is a Public Right of Way and that application has been made to have same on the Definitive Map. It was further resolved to request other landowners to prune their hedges which overhang this length of path.

The next reference is at a meeting on 21<sup>st</sup> July 1977, when a parishioner raised the question of maintenance. Members were advised that although it was one which the Council hoped to have placed on the Definitive Map it was not currently a right of way, and therefore the Parish Council had no responsibility for its upkeep. At the meeting of 22<sup>nd</sup> September 1977 it was reported that the same parishioner was seeking further information as to the ownership of the path. It was resolved that they be advised that the Council was not aware of the ownership but believed that it was owned by the frontagers.

On 19<sup>th</sup> October 1978, following a complaint regarding the overgrown state of the footpath, it was resolved that Commander Ferguson and Mrs Carr be requested to cut back the hedges at this point.

On 20<sup>th</sup> September 1984 it was reported that the owner of Derry Cottage wished the council to construct a step onto the footpath, and it was agreed the Newton Works Committee would examine this.

On 19<sup>th</sup> September 1985 it was agreed that the County Engineer and Mr Sayers be informed of the Council's concern regarding the state of the right of way at Derry's Cottage. At the next meeting it was reported that the Chairman and County Councillor Sayers would examine the problem at Derry's Cottage and report back. On 21<sup>st</sup> November 1985 it was reported that the County Council were examining ways of funding the necessary repairs. Then, on 19<sup>th</sup> December, it was reported that the County Council had arranged for repairs to the retaining wall by Derry's Cottage.

On 19<sup>th</sup> November 1987 it was reported that the path from Marysteps to Derry's Cottage was now clear. A letter was also read from the neighbouring landowner stating that the path was very dangerous and suggesting either closure of putting in steps and a warning notice. It was agreed to write pointing out that it is the adjoining landowners responsibility to trim his own hedges and clear away the parings.

It was reported on 21<sup>st</sup> January 1993 that estimates had been invited to tidy the three steps at the Church Park end and to create three further steps below. On 18<sup>th</sup> March 1993 it was



resolved to accept Mr Leonard's revised estimate to provide concrete steps. On 15<sup>th</sup> April 1993 it was reported that steps had been finished.

16<sup>th</sup> February 1995 a letter from Mr Derry asked whether the Parish Council planned to install long steps at the Riverside end as he considered the path to be hazardous.

18<sup>th</sup> May 1995 Mr Derry's informed the Council of his intention to improve the lower end and asked whether this would be acceptable and if the Council would continue to accept liability. It was resolved that as the path had been used by building contractors over several months the Council might consider undertaking improvement works if Mr Derry and his neighbour agreed to contribute to costs. It was reported in July 1995 that Mr Derry had offered £50 towards improvement to the bottom steps. Mr Studd did not wish to contribute but asked that the owners of Marysteps and Fernleigh should trim their overgrown hedges. Resolved that the clerk would write to the householders.

On 21<sup>st</sup> March 1996 it was resolved to ask the Heritage Coast Service for advice in improving Riverside Road end. On 20<sup>th</sup> June it was reported that Heritage Coast suggested 12-16 steps were needed plus more at the left hand bend. It had also been observed that it was too narrow along its length due to overgrown hedges. 18<sup>th</sup> July 1996 it was resolved to invite tenders. The clerk would submit costing to the Heritage Coast Service for financial assistance. It was thought a contribution from the Derry family would be offered.

Between September 1996 and January 1997 it was reported that works had been carried out to construct steps.

On 20<sup>th</sup> February 1997 it was reported that a contribution had been received from Mrs Chambers of Derry's Cottage and a similar sum from Mr Derry was awaited. However, a letter from Mr Studd of Slipway Cottage had been received requesting removal of the steps because he was unable to use his motorized wheelbarrow. He suggested a concrete ramp should be constructed instead. He supplied a copy of his deeds dating from 1913 which he considered proved his claim to a right of way "for all purposes... at all times". It was resolved to advise Mr Studd that legal advice would be sought.

On 20<sup>th</sup> March 1997 it was reported that Mr Studd had offered to contribute to cost of a ramp. Clerk to ask for a copy of the deed for inspection.

The following minutes for 1997 reported Mr Studd's demand that the steps be removed and, subsequently, in October 1997 it was reported that the steps had been removed.

On 18<sup>th</sup> December 1997 Mr Studd informed the Council that he would not be able to use the path in its present state when he undertook planned improvements to his property.

On 15<sup>th</sup> January 1998 it was reported that Mr and Mrs Derry were unhappy with the standard of the lower section of the path and wanted improvements made. It was resolved that a letter be sent to Mr and Mrs Derry that in view of the costs already incurred by the Parish Council to install and subsequently remove the steps the councillors felt unable to consider further works/expenditure.

Further minutes in 1998 refer to discussions about handrails and the possibility of improvement to the slope at the lower end of the path.

On 16<sup>th</sup> April 1998 it was reported that Mrs Chambers had requested permission to lay a concrete ramp on the lower section of the path at no expense to the Parish Council. It was resolved to ask for evidence that users of the path were in agreement, full details of the

surface and assurance that the Parish Council would not be responsible for future maintenance.

Further discussion ensued in 1999 regarding the lower end of the path, proposals for improvements to the surface and hand rails. Adjoining landowners were also requested to keep the path clear from overhanging vegetation.

17<sup>th</sup> June 1999 Mr Taylor had inspected with Mr Shepherd letter to the adjoining owners to request that the path be kept clear. A site meeting was arranged to discuss whether posts and rope at lower end needed for safety.

On 18<sup>th</sup> November 1999 it was reported that the owner of Mary Steps had agreed to remove brambles and would consider how the bottom hedge could be cut back. Mr Dunsford of Riverhaven had no objection to installation of handrail but Mr Studd had several concerns, particularly that his deeds stated path should be 4'6" wide. It was resolved to arrange a site meeting with Mr Dunsford initially and inform Mr Studd.

On 16<sup>th</sup> December 1999 following a site meeting with adjoining landowners it was agreed that a handrail would be useful and should be installed nearest Riverhaven's boundary but a clear path width of 4'6" should be maintained. Surfacing with concrete would not be an option due to the slope of the ground but the feasibility of central steps and side ramps to accommodate Mr Studd's motorised wheelbarrow would be investigated. It was thought in principle the landowners would be prepared to make a financial contribution.

18<sup>th</sup> January 2000 Mr Studd confirmed that his motorised wheelbarrow had one front wheel so central steps could not be pursued.

16<sup>th</sup> March 2000 a further request for an owner to cut hedge was reported.

On 18<sup>th</sup> May 2000 it was reported that Mr Studd was still willing to contribute to improving the path. Mr Tubb would arrange to cut the overgrown vegetation.

On 15<sup>th</sup> March 2001 the clerk confirmed that the house deeds of Slipway Cottage stipulated a right of way 4'6" wide. Mr Tubb would discuss problems of handrail provision with Mr and Mrs Derry.

On 12<sup>th</sup> December 2002 it was minuted that Mr Derry and Mr Studd had agreed in principle to make a financial contribution to improvement works and Mr Studd was preparing a specification. Coast and Countryside would contribute a third, to a maximum of £150.

The minutes of 2003 report on proposals for surfacing the lower section of the path with concrete.

On 13<sup>th</sup> March 2003 it was reported that no local contractors interested in tendering. It was agreed that a letter would be sent to Mr Derry and Mr Studd to suggest they make the necessary arrangements to upgrade the path in consultation and with contribution from the Parish Council.

There are also further requests to landowners to pare hedges and that the Parish Council would make arrangements if necessary with costs to be reimbursed from the landowners. It was also resolved to ask Mr Derry and Mr Studd for their proposals for improving the surface at the lower end.

At the meeting of 10<sup>th</sup> October 2003 it was reported that in Mr Studd's absence Mr Derry had asked the Parish Council to take control of the maintenance work. It was resolved that

councillors would meet with Mr Derry to consider Mr Studd's specification. The clerk would request the County Council's advice re the placing of a sign warning of unsatisfactory surface. It was agreed that closing the path was not an option.

13<sup>th</sup> November 2003 County Solicitor advised that a temporary warning sign be placed at the top of the path and had agreed the wording. Mr Studd's specification had been circulated as a basis for discussion but a date for a site meeting had not been arranged.

11<sup>th</sup> December 2003 the Chairman and Clerk would meet Mr Studd to discuss his specification. It was reported at the meeting of 12<sup>th</sup> February 2004 that at the site meeting the Chairman stressed the Parish Council's concern for the width of the footpath (2'6") and not the width of the private right of way (4'6").

8<sup>th</sup> January 2004 it was reported that Garden Services had covered a large tree root to minimise public safety risk. The southern boundary of Marysteps had slipped and narrowed the path so the owner had been asked to consider whether stones soil could be removed to restore some of the lost width. The owners of Derry's Cottage and Riverhaven had been asked to ensure that their hedges did not encroach over the boundary. Mr Studd would cut his boundary hedge in the spring and he had cleared weeds from the path between the lower steps and his gate which had made a significant improvement.

On 14<sup>th</sup> December 2006, a request had been made for improvement to the path. It was reported that the most satisfactory solution to the steep gradient would be steps but Mr Studd's agreement would be required.

On 8<sup>th</sup> February 2007 a site meeting held with the owners was discussed. It was agreed that surface improvements were needed in the interests of public safety. Landowners had offered funding in principle. A further meeting was required. Detailed proposals for surface improvements were discussed at the subsequent meetings and it was proposed to lay a concrete ramp. Minutes of January 2008 show that the works had been carried out. A contribution to costs would not be required from landowner provided they paid for a handrail, which would be attached to private property and designed for their particular needs.

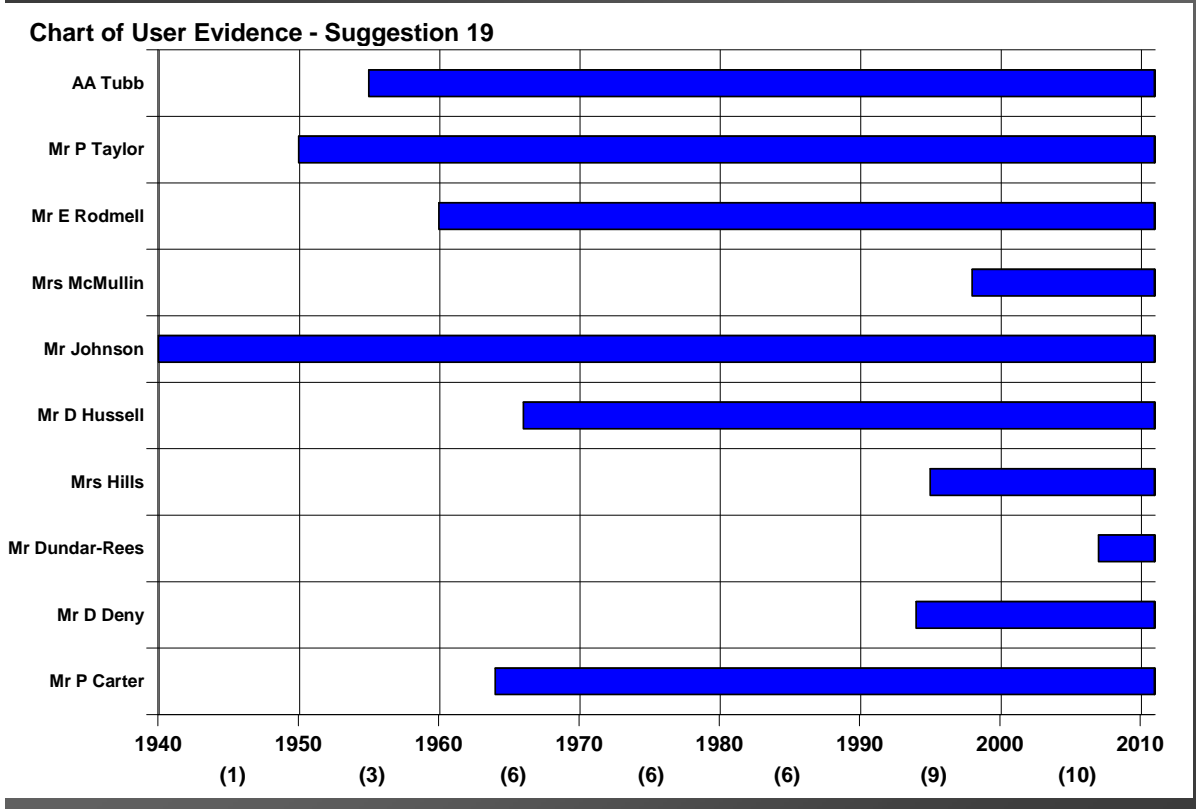
In 2008 the provision of handrails were discussed and agreed.

Further minutes show that the Parish Council continued to ensure the overhanging vegetation was cut by landowners.

#### **4. User Evidence**

Newton and Noss Parish Council submitted ten user evidence forms in support of their proposal for the addition of this path. No further forms were received during the consultation but use by the public has been observed. The user evidence is summarised in the chart below.

The user evidence forms demonstrate regular and frequent use of the route by the public since 1940. Most users comment that it is well used. Use has been regular and frequent, ranging from monthly to daily, as a short-cut, for dog walking and generally as part of a recreational walk. None of the users report being stopped or turned-back or told that the route was not public.



**5. Landowner Evidence**

The land crossed by the route is not registered with the District Land Registry therefore adjoining landowners were contacted as part of the consultation process.

Mr Studd of Slipway Cottage completed a landowner Evidence Form and also sent email correspondence in advance of the consultation. He has owned his property for 41 years and believes the path to be designated public footpath by custom. He has observed foot traffic occasionally as a short cut, mainly by neighbouring properties. He has never stopped or challenged anyone using the route, or told anyone that it was not public.

In his supporting correspondence Mr Studd states that his property has the benefit of a right of way for all purposes over the lower section of the route. He has a mini motorised hydraulic vehicle which he occasionally uses to bring heavy items to his property – there being no alternative vehicular access. He requests that if the path is recorded and a footpath sign erected that it does not reduce the 3ft 6in width of his right of way.

He adds that he is pleased to continue to co-operate in keeping the section of path free from vegetation etc. and adds that the width of the section to the north of his property is curtailed by encroachment of hedges.

A Landowner Evidence Form has also been received from Mrs Chambers of 1 Derry's Cottage. She does not consider the path to be over her property and has provided no further information.

**6. Discussion**

Aerial photography and map evidence shows that the route has physically existed since at least the late 1940s.

It was omitted from the Definitive Map and the omission was noted by the Parish Council in 1956. Parish minutes show that the Parish Council considered it to be an existing public footpath at that time, and have consistently regarded it as such since. They have requested adjoining landowners to keep it clear of vegetation and the landowners have accepted that responsibility. There is no evidence that any landowner has disputed the Parish Council's assertion that it is public, or that they have taken any action to prevent public use.

There has been a great deal of discussion and some conflict concerning maintenance of the path at the lower end. However, the landowners did not at any time dispute public rights on foot or object to the Parish Council's wish to improve the path – they merely sought to assert their own private rights of access over that part of the path. The matter appears to have resolved to the satisfaction of all parties.

Two users comment that the path was originally used to take goods from a barn or warehouse (now Derry's Cottage) to Parsonage Farm, hence the name 'donkey path' and is therefore likely to have been in existence for hundreds of years. There is no further evidence to support this. However, it would appear that the path was deliberately set out or left when adjoining properties were developed.

The evidence shows that the path has been used freely and without challenge for 70 years.

The adjoining landowners have co-operated with the Parish Council over maintenance of the path and accept that it is used by the public on foot. Mr Studd's main concern is that his private right of access should not be curtailed if the route is recorded on the Definitive Map as a public footpath. Mr Studd has a right of way for all purposes, i.e. including vehicular, whereas public rights claimed are on foot only. Private and public rights regularly co-exist and Mr Studd's private rights will not be affected if the route is recorded as a public footpath.

As there has been no event which would act as a calling into question of the public's rights, it not possible to consider the evidence under section 31 of the Highways Act 1980 and the 20 year period required for presumed dedication does not apply. However, use of the route has been such that it would appear rights have been acquired under Common Law.

## **7. Conclusion**

It is recommended therefore, that a Modification Order be made to add a footpath to the Definitive Map between points C1 – D1, as shown on drawing number EEC/PROW/11/45, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

### **Suggestion 5: Part Deletion of Footpath Nos. 1 & 2 as now adopted road & footway**

Deletion of those parts of Footpath Nos. 1 and 2 which now run along the footway of Yealm View Road and part of Church Park Road, as shown between points W – X and Y – Z respectively on drawing number EEC/PROW/11/45.

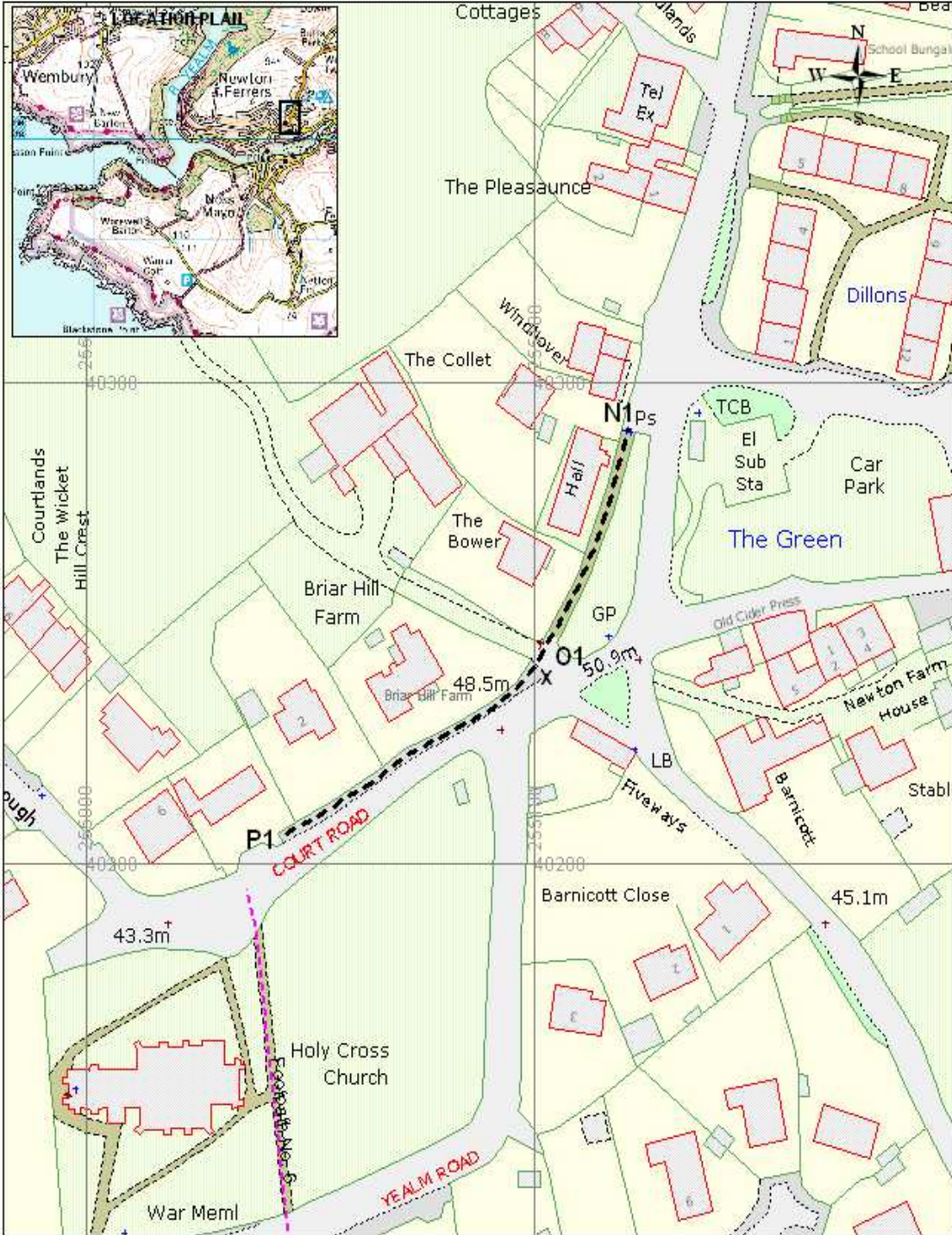
**Recommendation: That it be noted that a Legal Event Modification Order be made under delegated powers to amend the Definitive Map in respect of Footpath Nos. 1 and 2 by deleting from it the sections between points W – X and Y – Z.**

## **1. Summary**

Footpaths Nos 1 and 2 originally ran across fields but during the development of the Crown Yealm Estate in the 1950s Footpath No. 1 was diverted to follow the footway of Yealm View

Road and Footpath No. 2 incorporated into Church Park Road, both then private estate roads. Yealm View Road and the eastern end of Church Park Road were subsequently adopted by the County Council, on 15 January 1968, as unclassified roads.

It is therefore recommended that it be noted a legal event modification order will be made under delegated powers to delete those section of the footpaths from the definitive map, as they no longer meet the definition of public footpaths required to be shown thereon.



map ref **SX 5548**

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**DEFINITIVE MAP REVIEW:  
PARISH OF NEWTON & NOSS  
SUGGESTION 14: FOOTPATH ADDITION**

drawing number EEC/PROW/11/47a

date April 2011

scale 1:1250

drawn by HFC

Notation

Existing footpaths -----

To be added

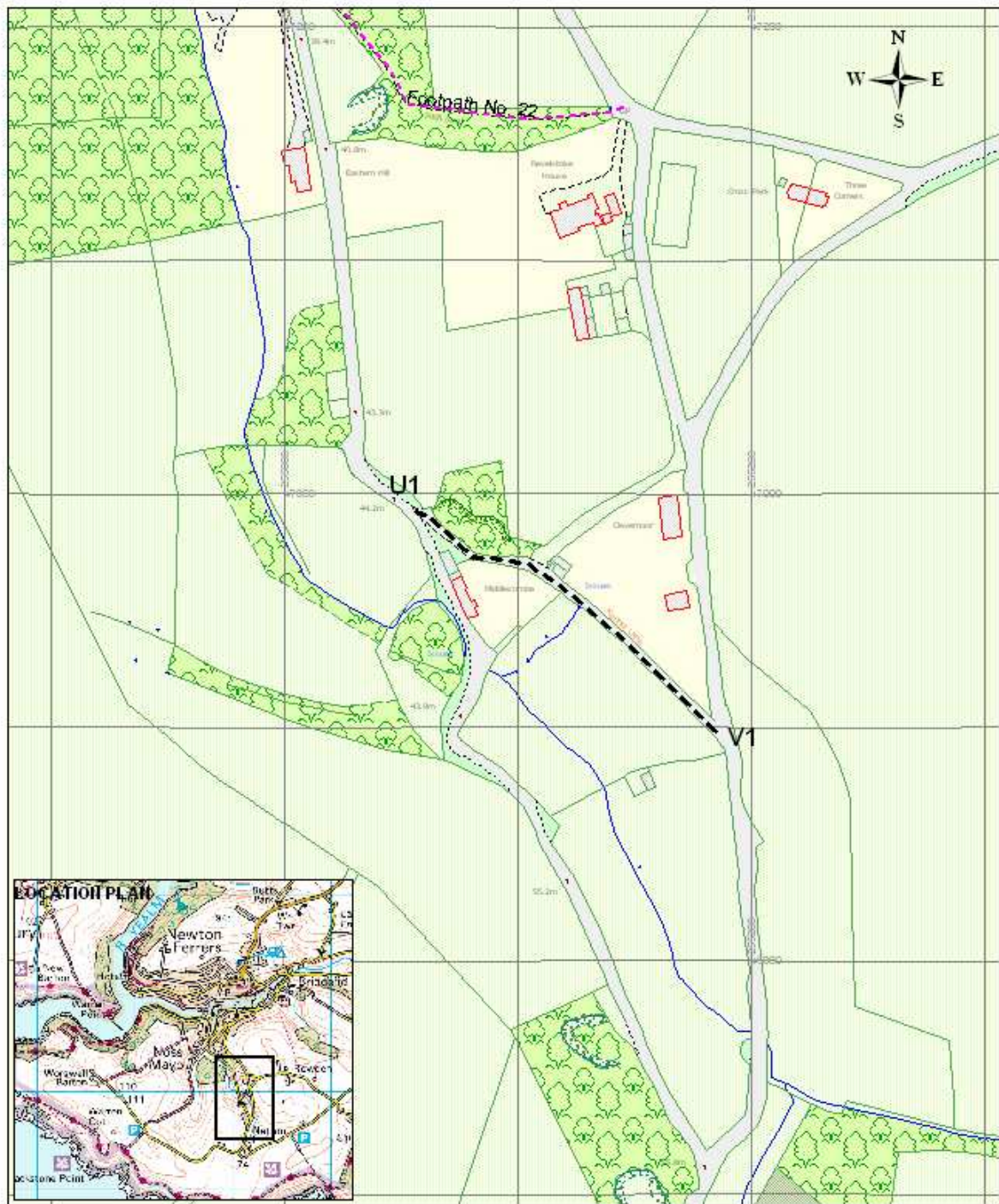
Suggestion 14: N1 - O1 - x - P1 ----- (approx 120 m)

**Ian Harrison**

DEPUTY EXECUTIVE DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE







map ref **SX 5546**

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**DEFINITIVE MAP REVIEW:  
PARISH OF NEWTON & NOSS  
SUGGESTION 18: FOOTPATH ADDITION**

Notation

Existing footpaths - - - - -

To be added

Suggestion 18: U1 - V1 - - - - - (approx 165 m)

drawing number EEC/PROW/11/50

date April 2011

scale 1:2500

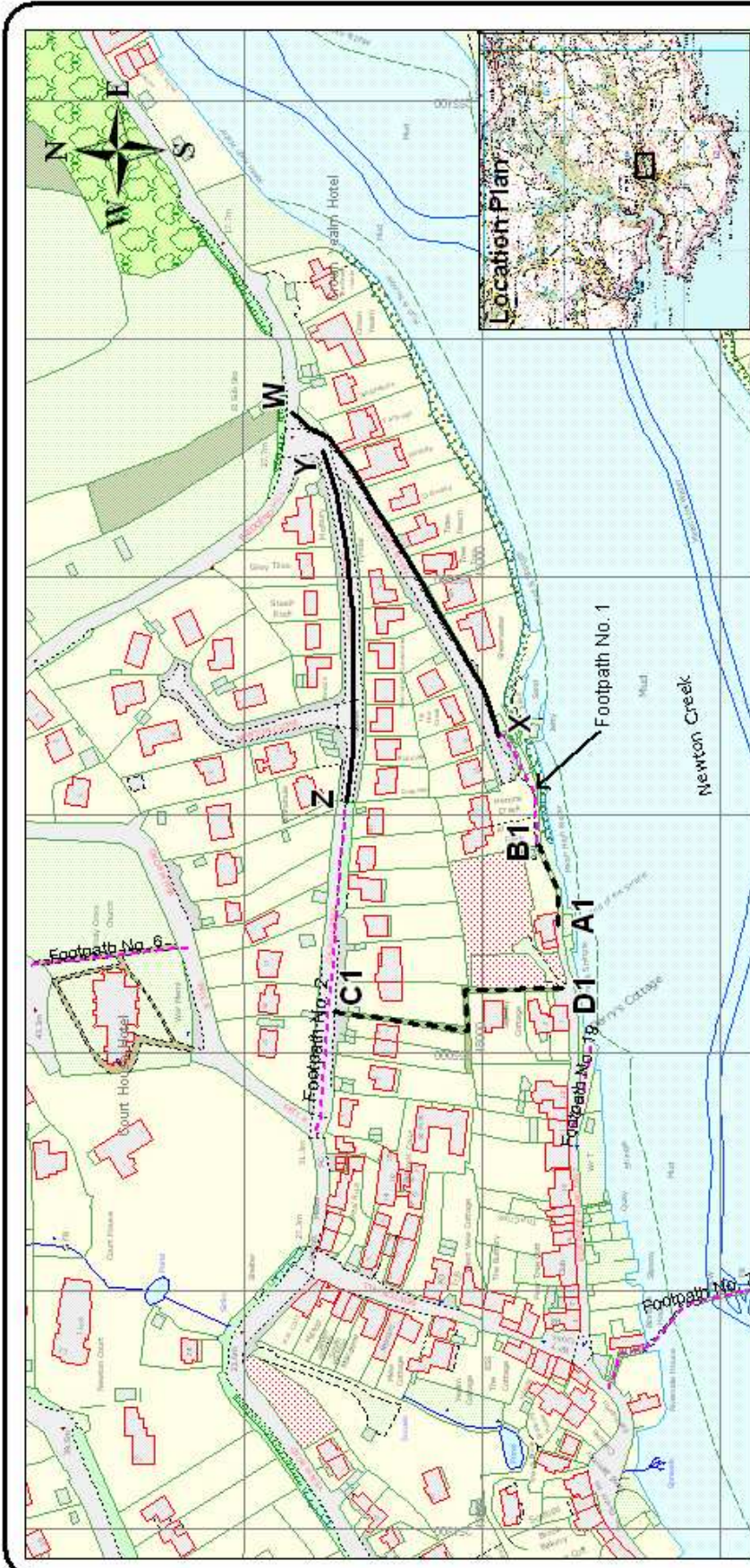
drawn by HFC

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& CULTURE







map ref. **SX 5547 - 5548**

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**DEFINITIVE MAP REVIEW: PARISH OF NEWTON & NOOS  
SUGGESTION 5: AMENDMENT OF FOOTPATH NOS. 1 & 2  
& SUGGESTIONS 6 & 19: FOOTPATH ADDITIONS**

drawing number EEC/PROW/11/45  
date April 2011  
scale 1:2500  
drawn by HFC

Notation	
Existing footpaths	-----
To be deleted	-----
To be added	-----
Suggestion 5: W - X & Y - Z	----- (approx 163 m) ----- (approx 149 m)
Suggestion 6:	----- (approx 36 m)
Suggestion 19:	----- (approx 117 m)

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