

# Item 4(a)(iii)

HTM/12/38  
Public Rights of Way Committee  
21 June 2012

## **Definitive Map Review Parish of Poughill**

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) an Order be made to modify the Definitive Map and Statement to vary the particulars of Footpath No. 2, Poughill to confirm that the route of the footpath continues along Bulland Lane to the county road as described in the Statement, A - B as shown on drawing number HTM/PROW/12/12 (Suggestion 2);
- (b) no Order be made to modify the Definitive Map and Statement to delete Footpath No. 4, Poughill A – B – C – D – E as shown on drawing number HTM/PROW/12/13 (Suggestion 3) but that consideration be given to diverting the section C – D – E so that it does not pass through Cleaves farmyard and connects with a county road.

### **1. Summary**

The report examines the routes referred to as Suggestions 2 and 3 arising out of the Definitive Map Review in the Parish of Poughill in Mid Devon.

### **2. Background**

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in September 1950, proposed 6 footpaths for consideration as public rights of way. The northern section of Footpath No. 6 was deleted as this was shown running along an unsurfaced county road and 6 footpaths were included on the draft and provisional maps. As no objections to their inclusion or comments regarding omissions appear to have been received, the 6 footpaths were recorded on the Definitive Map and Statement for Poughill 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 Council (Poughill became a parish council in 1967) advised that the definitive map was considered correct and nothing to add or delete.

Under the uncompleted review initiated in 1977, the Parish Meeting proposed that Footpath No. 3 be deleted due to non-use over very considerable period of time. Footpath No. 3, Poughill was subsequently extinguished by Public Path Order in 1980. The Limited Special Review of Roads Used as Public Paths (RUPPS), carried out in the 1970s, did not affect Poughill.

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

Mid Devon District Council (Footpath No. 3, Poughill) Extinguishment Order 1990.

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The last Definitive Map review was initially opened in Poughill with a parish public meeting held in September 1997 but was not progressed further at that time. The review was reopened with a parish public meeting in September 2011. No additional changes to the definitive map have been proposed by the parish council following the opening meeting.

### **3. Proposal**

Please refer to the Appendix to this report.

### **4. Consultations**

General consultations have been carried out with the following results:

County Councillor Michael Lee	-	no response
Mid Devon District Council	-	no response
Poughill Parish Council	-	replied re suggestion 3
Cruwys Morchard Parish Council	-	replied re suggestion 3
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	-	replied re all suggestions
Trail Riders' Fellowship	-	no response
Cyclists Touring Club	-	no response
Devon Green Lanes	-	no response

### **5. Financial Considerations**

The cost of making any Orders or works required to the public rights of way discussed will be funded by the Public Rights of Way general budget.

### **6. Sustainability Considerations**

The recommendations, if agreed, will improve the rights of way network in Poughill parish.

### **7. Carbon Impact Considerations**

Use of rights of way is considered to be of neutral and positive impact when used as an alternative to journeys by motorised vehicles.

### **8. Equality Considerations**

Where any structures may be required on rights of way, the policy of gap, gate, gate, stile will be followed to improve the accessibility of the network.

### **9. Legal Considerations**

The lawful implications/consequences of the recommendations have been considered and taken into account in the preparation of this report.

### **10. Risk Management Considerations**

No risks have been identified.

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## 11. Discussion/Conclusion

Suggestions 2 and 3 are considered in detail in the Appendix to the report. It is recommended that:

- (a) a Modification Order be made to modify the Definitive Map and Statement to vary the particulars of Footpath No. 2, Poughill to confirm that the route of the footpath continues along Bulland Lane to the county road as described in the Statement A - B and as shown on drawing number HTM/PROW/12/12 (Suggestion 2);
- (b) no Modification Order be made to modify the Definitive Map and Statement to delete Footpath No. 4, Poughill A – B – C – D – E as shown on drawing number HTM/PROW/12/13 and consideration be given to diverting the section C – D – E so that it connects with a county road (Suggestion 3).

Suggestion 1 of the Definitive Map review concerned the diversion of Footpath No. 1, Poughill and will be considered under delegated authority.

## 12. 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

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List of Background Papers	Date	File Ref.
DMR/Correspondence File	1997 to date	DMR/Poughill

tw300512pra  
sc/cr/DMR Poughill  
02 080612

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## Appendix I To HTM/12/38

Suggestion 2: Proposed variation of particulars of Footpath No 2, Poughill to amend the definitive map by adding a section of footpath to correspond with the path definitive statement which states that after crossing the field north westwards from the Congregational Chapele to Bulland Lane (GR SS 8529 0892) the footpath continues along Bulland Lane to the county road leading to Greenhill Cross (GR SS 8532 0899).

**Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement to vary the particulars of Footpath No. 2, Poughill to confirm that the route of the footpath continues along Bulland Lane to the county road as described in the Statement, points A - B and as shown on drawing number HTM/PROW/12/12.**

### 1. Basis of Claim

Common Law presumes that at some time in the past the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

The Highways Act 1980, Section 31 (1) states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

The Highways Act 1980, Section 32 states that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan, or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

Wildlife and Countryside Act 1981, Section 53[3][c] enables the Definitive Map to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows –

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

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

### 2. Background

In the uncompleted County Council review started in 1997 it was noticed that part of Footpath No. 2, Poughill had been omitted in error from the Definitive Map. The Definitive Statement for Footpath No. 2, Poughill describes the footpath as going through a field gate into Bulland lane and along that lane until it joins the unclassified county road leading to

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Greenhill Cross; however, on the Definitive Map the path is shown as terminating when it reaches Bulland Lane.

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

The footpath starts from the county road at the entrance to the Poughill Congregational Chapel and proceeds west and enters a pasture field. It continues north west across the field to Bulland Lane (point A) and then turns north north east along the lane to rejoin the county road west of Greenhill Cross (point B).

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

### **4. Consultations**

The Ramblers' Association local representative advised that he had no comments to make other than that what was proposed seemed logical.

### **5. Ordnance Survey and Other Maps**

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

OS 2nd Edition 25" to a mile 1905

The map shows a double pecked line labelled F.P. across the pasture field number 363, from the chapel to Bulland Lane along the line of the recorded public footpath. The section of Bulland Lane proposed for addition to the Definitive Map appears un gated from where the recorded footpath meets the lane to where it joins the county road.

OS Post War Mapping 1:1,000 scale 1971

A double pecked line labelled path is shown across the field between the chapel and Bulland Lane, now numbered 3289, along the line of the recorded public footpath. Bulland Lane appears to be un gated from the junction with the path to the county road.

### **6. Poughill Tithe Map 1840**

On the Poughill Tithe Map of 1840 the field crossed by Footpath No. 2, Poughill was apportionment number 232, part of the hereditament 'Moors' owned by the Trustees of the will of Mrs Pincombe, occupied by Mary Ann Trude and described as meadow. The section of Bulland Lane between points A and B is under apportionment number 302, described as house & front, owned and occupied by George Sharland.

There is no indication on the map of a path across the field crossed by Footpath No. 2, Poughill. Bulland Lane is shown tinted in the same manner as other roads which are public today and also other roads/lanes leading to fields/farms. Bulland Lane has not been given an apportionment number or included in a hereditament.

### **7. Finance Act 1910**

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920.

The field crossed by the footpath is included in hereditament number 157, Village Farm owned by the Trustees of the Pyncombe Charity and occupied by Samuel Trude. On page 1 of the field book under the heading Fixed Charges, Easements, Common Rights and

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Restrictions it states '*I am not aware of any other than certain footpaths over land but whether they are Public rights of way I am unable to say more*'. In a different pen and writing underneath it says '*Right of way across ord. nos 326, 328, 331, 293 and 292, also over 375*.' Field numbers 326, 328, 334, 293 & 292 refer to the lane Summerwell Lane and four adjoining fields going east of Greenhill Cross pass a building named Lower Place (no longer in existence) to the stream at the parish boundary. Ordnance number 375 refers to the section of Bulland Lane west of the buildings.

The field crossed by Footpath No. 2, Poughill is Ordnance number 363, the section of Bulland Lane between points A and B included within Ordnance number 368. Neither of these numbers are referred to in the field book. Page 2 of the field book records *Public Rights of Way £5 x 25 yp = £125* but does not specify which Ordnance numbers it refers to. The figure of £125 is carried forward to the deduction heading 'Public Rights of Way or User' on page 4.

The northwest end of Bulland Lane does not appear to be included in the adjacent hereditaments although part of lane crossed by the footpath may be included in hereditament number 157 as above.

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

In the Poughill parish meeting submissions in September 1950 Footpath No. 2 was surveyed by Mr Lancells (vice Chairman), Mr Pike and Mr Manning. The form stated gates at each end repairable by occupiers of field, one grass field. A surveyor of the Crediton District Council walked the path in February 1951 and described the right of way '*Between Poughill & Green Hill Cross road Class III No 48 entrance by Chapel & cross a pasture field to Bulland Lane*'.

The county surveyor amended the statement to that as recorded on the Definitive Map which states '*Starts from field gate at north side of Congregational Chapel, on the County Road (No. 48) and proceeds north-west across a pasture field to a field gate into Bulland Lane (not repairable by the inhabitants at large) and along that lane until joins the Unclassified County Road leading to Greenhill Cross*'. The path was included in the draft and provisional maps and included on the Definitive Map but the map only shows the footpath across the field to Bulland Lane and not along the lane to the county road.

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

No suggestions for any changes to Footpath No. 2 were made by the parish council under either of these two uncompleted reviews. It would appear that the anomaly was not noticed by the County Council in either of the reviews.

### **10. Vestry and Parish Meeting Minutes 1851 to 1967**

The Vestry and Parish Meeting minutes from 1838 to 1967 are held at the Devon Record Office. The minutes from 1967 when the parish became a parish council appear to have been lost. The vestry minutes from 1838 to 1851 are in a very poor condition and unfit for production.

In June 1950 a committee was formed to meet and discuss the footpaths in the district (for adding to the Definitive Map). In October 1964 a meeting was called following receipt of two communications, one being a letter from Devon County Council relating to the maintenance of footpaths. As from 3 August 1964 the County Council became liable for damage caused to persons using a highway and due to the failure of the authority to repair. The Council ask if the parish meeting is willing to arrange an inspection of all footpaths at least once a year, and to report damage or obstruction. With the help of a map, all six footpaths were identified.

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The Chairman (Mr E Shore) offered to make the first inspection, this was agreed to. In March 1965 it was reported that Mr Shore had walked the parish footpaths and would be sending his report to the clerk at CRDC.

### **11. Aerial Photography**

The 1946 and 2006-2007 aerial photography may seem to show evidence of a worn path across the field along the line of the right of way.

### **12. Land Registry**

Land Registry records do not include the section of Bulland Lane between points A – B within the adjacent titles of Village Farm and Mount Pleasant and this section of lane would appear to be unregistered. There are no references to any private rights of way along Bulland Lane in the properties titles.

### **13. User Evidence**

No user evidence has been received as the route is a recorded public right of way. It is understood that walkers have been using Bulland Lane as part of Footpath No. 2, Poughill to access the county road at Greenhill Cross.

### **14. Landowner Evidence**

All the landowners/occupiers adjoining the footpath were contacted and informed of the proposed change to Footpath No. 2, Poughill.

Mrs Skinner, representative of the Congregational Chapel telephoned to advise that the proposed change would not affect the chapel.

Hole and Pugsley solicitors replied on behalf of their client Miss B White who owns the field crossed by the footpath. Their client noted that the footpath ends after crossing the field so in effect walkers would have to turn around and return whence they came. Within the deeds there is a statutory declaration made in 1997 which indicates that Bulland Lane may be an ancient highway or accommodation road not maintainable at public expense. The lane is not included in any conveyance of Village Farm and there is no reference in the conveyances to any rights of way over that lane.

They advised that in the 1950s there were discussions about the council taking over the road as a highway repairable by the public at large but this was never completed. On the assumption that the lane is an ancient highway or accommodation road, then as such it is presumably a public footpath. Miss White does however; question whether it would be more sensible to redirect Footpath No. 2 so that it runs along the road rather than across her field and via Bulland Lane.

Mr & Mrs Merton have resided at Mount Pleasant for fourteen years and they do not consider Bulland Lane to be public since the council declined ownership. They have seen occasional walkers and have been told that Footpath No. 2 was originally for residents of the properties along Bulland Lane to go across the fields, also using Footpath No. 1, to Poughill church.

Mr Discombe of 2 Village Farmhouse advises that he has considered Bulland Lane to be public for twenty five years and sees walkers rarely.

No other responses were received.

### 15. Rebuttal Evidence

No other evidence in rebuttal of the suggested change was received.

### 16. Discussion

The OS maps of 1905 and 1971 support the existence of Footpath No. 2, Poughill as a track marked FP and path respectively is shown across the field along the line of the footpath. The maps do not however give any indication of the path's status as a public or private footpath.

The Tithe Map does not show a path across the field but does show Bulland Lane tinted and without an apportionment number in the manner of county roads, which may indicate that it was considered to be public at that time, despite just leading to the farms and fields. However, other cul de sac lanes in the parish that just lead to fields or farms are also shown tinted and not apportioned and it appears that the unproductive roads and lanes were recorded in the same manner as county roads on this tithe map.

The Finance Act field books do not record a public right of way across the field by the chapel. The north eastern end of Bulland Lane crossed by the footpaths does not appear to be included in adjacent hereditaments.

The section of Bulland Lane between points A and B is not included in the adjacent titles of Mount Pleasant or Village Farm and does not appear to be registered. As the title registers for these two properties do not include any reference to a private right of way over the lane, the owners could be understood to be using public rights to access their properties.

In the Definitive Map Statement Bulland Lane is described as not being repairable by the inhabitants at large. This description was used to describe roads not maintainable at public expense and often was used when roads were called public or private accommodation roads. In the preparation of the definitive map for the Crediton Rural District Council it was common for rights of way to not be shown on the Definitive Map along public accommodation roads but they were shown on the map when the road/lane/drive was described as a private accommodation road. Bulland Lane is not a through lane, leading to the farm and as access to adjacent fields only and is considered to be more of a private accommodation road rather than a public one.

The description compiled by the Crediton Rural District Surveyor refers to the path being between Poughill and Green Hill Cross Road, but states 'entrance by Chapel & cross a pasture field to Bulland Lane'. The Definitive Map Statement, understood to have been written by the County Surveyor specifically refers the footpath entering Bulland Lane via a gate and along that lane until it joins the unclassified county road leading to Greenhill Cross.

The apparent error/omission of Footpath No. 2, Poughill being recorded along Bulland Lane was not apparently noticed by the Parish Council in earlier reviews, or when they started undertaking regular inspections of the parish footpaths in 1964 or by the County Council. However, although parish councils were sent copy maps with the rights of ways recorded on the Definitive Map shown on them for the councillors/parishioners to look at, in the file correspondence there is no reference about copies of the path statements being sent as well. It was understood from local residents at the Poughill parish opening meeting that Bulland Lane had received some maintenance by the council in the past and Miss White's solicitors advise that there were discussions about the council taking over the lane in the 1950s. It may be therefore be that on looking at the map of public rights of way in the parish; as Bulland Lane was possibly believed by the parish councillors and parishioners to have



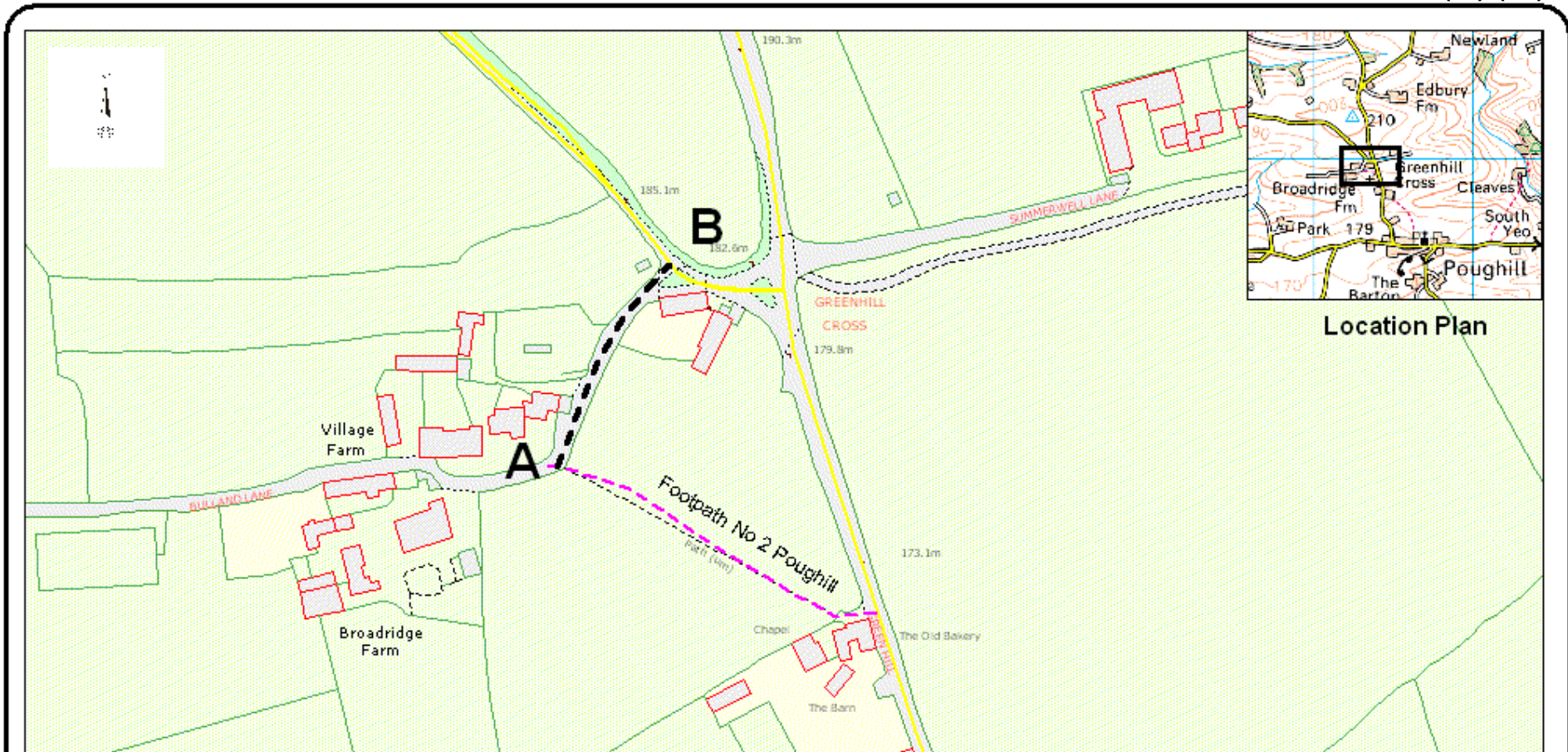
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some rights of public access, the 'missing' section of Footpath No. 2, Poughill was not noticed

It is considered that the intention was for Footpath No. 2, Poughill to continue along Bulland Lane to the county road leading to Greenhill Cross as described in the path statement. Accordingly the omission of the section of Footpath No. 2, Poughill being shown on the Definitive Map between points A and B is considered to be a drafting error. This can be corrected through the making of a Definitive Map modification order for the variation of particulars for Footpath No. 2, Poughill.

### **17. Conclusion**

It is therefore recommended a Modification Order be made to modify the Definitive Map and Statement to vary the particulars of Footpath No. 2, Poughill to confirm that the route of the footpath continues along Bulland Lane to the county road near Greenhill Cross as described in the Statement, the section A - B and as shown on drawing number HTM/PROW/12/12.



map ref: SS 8508

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**DEVON COUNTY COUNCIL  
DEFINITIVE MAP REVIEW - POUGHILL  
SUGGESTION 2 - VARIATION OF PARTICULARS  
FOOTPATH NO. 2 POUGHILL**

drawing number HTM/PROW/12/12  
 date Feb 2012  
 scale 1:2,000 (at A4)  
 drawn by TW

Notation  
 Footpath No. 2 To be added A - B - - - - - (approx 80 metres)  
 existing public footpaths - - - - -

**Lester Willmington**  
 Head of Highways & Traffic Management

**Devon**  
 County Council

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**Suggestion 3 Proposed deletion of Footpath No. 4. Poughill from the county road at South Yeo Hill (point A) to the parish boundary with Cruwys Morchard (point E).**

**Recommendation: It is recommended that no Modification Order be made to delete Footpath No. 4, Poughill from the Definitive Map but that consideration be given to diverting (with landowners' agreement) the section C – D – E so that it does not pass through Cleaves farmyard and connects with a county road.**

### **1. Background**

The suggestion is included as the continuation of this footpath in Cruwys Morchard parish was questioned by the County Council during the County's uncompleted definitive map review of 1968. When asked, Poughill Parish Council advised that the path was now only in use as far as Cleaves Farm. The County Council then suggested that as the path did not go to a view point or join a county road, it would seem the whole path was wrongly recorded if only used by persons having business at Cleaves and Yedbury Cottages. In May 1970 the Poughill Parish Council confirmed that the footpath should be deleted as it is now only used as a private footpath to Cleaves.

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

Footpath No. 4, Poughill starts from the county road west of South Yeo Farm (point A) and proceeds northwards along a field headland before passing through a gate (point B) and continuing north eastwards across a field, over a stile and through another field to a gate to the entrance drive for Cleaves (point C). The path turns northwards through the farm yard at Cleaves, across the stream (point D) and continues northwards beside to the stream to the parish boundary with Cruwys Morchard (point E).

Photographs of the route from the parish boundary to the old Yedbury Mill are included in the backing papers.

### **3. Consultations**

Poughill Parish Council unanimously agreed that they would prefer not to delete Footpath No. 4 if this is possible. They would appreciate the path being diverted/extended to meet with a nearby county road.

Cruwys Morchard Parish Council advised that as this matter was not brought up at their parish review, they have no view on the matter and will be happy to leave the decision to Devon County Council, Poughill Parish and any landowners affected.

The Ramblers' Association local representative advised that although suggestion 3 on the face of it is logical if you look into the history a little more investigation may be worthwhile. "Why did the path stop at the parish boundary? He understood that it originally went to Yedbury Mill. He asked why the continuation of the Poughill path was not recorded by Cruwys Morchard parish in the 1950s and suggested possibly because the mill had ceased to exist by then and the path stopped at the mill. However, if it went beyond why was it not recorded? If Cruwys Morchard did not bother to record any paths leading to the mill, could this be investigated and possibly reinstated. It would be a shame to lose a path."

## 4. Documentary Evidence

### Tithe Maps & Apportionments

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

Footpath No. 4 crosses the holdings of Cleaves, owned and occupied William Strong and South Yeo owner Reverend John Bradford, occupier Sarah Trude. No evidence of any path/track along the line of Footpath No. 4 is shown on the map and none of the seven apportionments crossed by the path refer to a path or footpath in name or state of cultivation.

Cruwys Morchard Tithe Map 1839

The section of Footpath No. 4, Poughill as described in the statement from the parish boundary to Yedbury Mill is across the holding of Yeadbury Mill, owned by Thomas Beedell and occupied by Thomas Thorn. The area around the buildings is included in apportionment number 2045 described as House, curtilage and lane. The section of lane leading to Taylor's Hill is number 2035, called waste and described as timber and waste. No evidence of any path or track is shown from point E to the mill.

It is relatively unusual to see 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 1<sup>st</sup> 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.

The first section of the footpath (point A to halfway to point C) was across land (ordnance numbers 419 and 406) being part of hereditament number 163, South Yeo owned by Robert Bradford of Hertfordshire and occupied by Frederick Trude. Under the heading of Particulars, description and notes made on inspection is written '*there are no rights of way across the farm*'. No deduction is made for Public Rights of Way on page 4.

The remainder of the footpath was across land (ordnance numbers 407, 408, 354 & 338) being part of hereditament number 166, Cleaves and Tuckey Mill (in Cheriton Fitzpaine parish) owned by William Hurdle of Topsham and also occupied by Frederick Trude. No reference to or any allowance for a public right of way is included in the field book.

Yedbury Mill in Cruwys Morchard parish is included under hereditament 23 described as Higher Yedbury Farm including Tithing House and Mill. The plan of the buildings describes the Mill with three bedrooms of cob and thatch, a barn and linnhay of stone and corrugated iron and a shippen and piggery both stone and thatch. The occupiers were A Bowden and Sidney Boundy. Page 1 refers to

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3 or 4 footpaths across fields but no details are provided. An allowance of £48 is made for Public Rights of Way.

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

The survey form for Footpath No. 4, Poughill does not record the name of the person who completed the survey but a detailed description is given of 'Path No 4 leading to Cleaves & Yeadbury Mill'. The description includes details of a stile at the Parish and Rural District boundary and notes that all gates and stiles have been repaired by occupiers of land. The path was walked by Mr S Pike of the Crediton Rural District Council on 14 February 1951.

At the County Council it was queried whether the path continuation was continued into Cruwys Morchard parish and confirmed not included by Cruwys Morchard. The County Surveyor wrote to the Divisional Surveyor Crediton in July 1952 about the footpath which was not delineated on the Ordnance map for the greater part of its length and that a question had arisen as to whether it is possible to use this footpath as far as Yeadbury Mill, in view of the fact that a stream has to be crossed at the parish boundary and no footbridge has been marked on the Ordnance map at that point.

The Divisional Surveyor replied that he "had approached Mr Pike who had carried out the survey originally and he advised that this footpath is used quite extensively by people living at Yeadbury Mill and also by school children as a short cut to Poughill. This had been the position since Mr Pike was a school boy. The section which connects with Taylor's Hill from the parish boundary is, strictly speaking in the Tiverton Division. It would appear therefore that this is a Public Footpath and should be included in the survey. PS A plank serves as a footpath which has proved satisfactory in the past."

The County Surveyor's recommendation was that as per the memo received from the Divisional Road Surveyor this should be included even though Cruwys Morchard has not included their portion. Include on draft map.

Footpath No. 4, Poughill was included on the draft and provisional Definitive Maps and there is no record of any objections or representations been received to its inclusion.

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

The continuation of the footpath in Cruwys Morchard parish was questioned by the County Council during the County's uncompleted Definitive Map review of 1968. Poughill Parish Council advised that the path was now only in use as far as Cleaves Farm, it originally went to Yeadbury cottages but these are now derelict and there was not an outlet of the footpath beyond this point. It had now ceased to be used at all and the portion beyond Cleaves could now be deleted. The County Council then suggested to the Parish Council that as the path does not go to a view point or join a county road, it would seem the whole path was wrongly recorded if only used by persons having business at Cleaves and Yeadbury Cottages.

In May 1970 the Parish Council wrote confirming that the path should now be deleted. It led originally only to Cleaves Farm and Yeadbury Cottages and since the demolition of the latter some years ago, it is now only used as a private footpath to Cleaves.

In the 1977 review the only correspondence, a letter from the County Council to a landowner, refers to the extinguishment of Footpath No. 3, Poughill.

### **7. County Council Correspondence**

In August 1987 a letter was received by one of the County Council's solicitors from the Principal Engineer Mid Devon District Council asking if Footpath No. 4, Poughill should be continued on the map as per the path statement and could a length of public footpath from the site of Yeadbury Mill to

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Taylor's Hill have been omitted, in which case what procedure should be followed to establish the missing length of path.

A reply was sent in November from Mr Curry on behalf of the county solicitors, summarising the information contained in the files from the 1950s initial survey and 1968 review correspondence. Mr Curry surmises that on the basis of the file correspondence it would seem that the path only ever went as far as the mill. He concludes by agreeing that this was something that could be dealt with under the review of the Definitive Map.

In August 1988 a letter was received from the parish clerk requesting that all the footpaths in Poughill be extinguished as they 'no longer exist'. The letter was forwarded to Mid Devon District Council (who processed Public Path Orders in Mid Devon at that time) for attention and they replied that this action would arouse the furore of many interested parties (ramblers etc). The parish clerk was advised that preliminary consultations by Mid Devon indicate such action would be heavily opposed and there are other appropriate methods of dealing with any problems on these paths.

There was no further correspondence until the parish review was initially opened in 1997. Following the opening meeting and subsequent discussion by the parish council, the clerk wrote that Footpath No. 4 is not a public footpath but a private path going from Yeo Hill to Cleaves Farm and no further, identified as such on the deeds for South Yeo Farm.

### **8. Poughill Vestry and Parish Meeting Minutes 1851 to 1967**

The Vestry and Parish Meeting minutes from 1838 to 1967 are held at the Devon Record Office. The minutes from 1967 when the parish became a parish council appear to have been lost. The vestry minutes from 1838 to 1851 are in a very poor condition and unfit for production.

In March 1929 the minutes record a letter being received from Mr Rice of Yedbury Mill complaining of the state of the footpaths through Cleaves farm-yard. Mr A? (Andrews?) was asked to keep it as clean as possible for the benefit of the children going to school.

In June 1950 a committee was formed to meet and discuss the footpaths in the district (for adding to the Definitive Map). In October 1964 a meeting was called following receipt of two communications, one being a letter from Devon County Council relating to the maintenance of footpaths. As from 3 August 1964 the County Council became liable for damage caused to persons using a highway and due to the failure of the authority to repair. The Council ask if the parish meeting is willing to arrange an inspection of all footpaths at least once a year, and to report damage or obstruction. With the help of a map, all six footpaths were identified. The Chairman (Mr E Shore) offered to make the first inspection, this was agreed to. In March 1965 it was reported that Mr Shore had walked the parish footpaths and would be sending his report to the clerk at CRDC.

### **9. Aerial Photography**

The 1946 aerial photography does not show evidence of a path across the fields to Cleaves from South Yeo Hill but does show the presence of buildings at Yedbury Mill and a lane leading to these buildings from the northwest. By the 2006-2007 photograph there is hardly any evidence remaining of buildings or lane at Yedbury Mill.

### **10. Land Registry**

The registered title for Cleaves refers to a granted right of way at all times for agricultural purposes to pass and repass over the land coloured yellow on the plan. The land coloured yellow is across the south east corner of the land belonging to Yedbury Mill and then along the lane leading to Taylor's Hill. The lane is unregistered and is not included in the registered titles of the adjoining holdings. The title also refers to a notice entered under rule 254 that the proprietor claims the land has the benefit of

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a right of way over the land of the access drive/lane leading to Cleaves from the county road near South Yeo. The section of this drive/lane that does not belong to Cleaves is also unregistered and not included in the registered titles of the adjacent holdings. No reference is made to any other rights of way.

The registered title for Yedbury Mill includes a notice entered under rule 254 that the registered proprietor has the benefit of a right of way over the track leading to Taylor's Hill and refers to the deed giving a right of access to Cleaves across the holding. No reference is made to any other rights of way.

The registered title for South Yeo farm does not include any references to any rights of way over the fields crossed by Footpath No. 4, although the parish clerk advised that the path was identified as a private path in the deeds of South Yeo Farm in 1997.

### **11. Poughill School Records & Local Residents**

Poughill School records from the 19<sup>th</sup> century include a list of children in a drawing examination in 1897. One of these children was Robert Baker; a Robert Baker of the correct age is recorded as living at Cleaves in the 1891 census. Other children in the same list can be found living in and around Poughill. Some of the children on a list in 1891 can also be found in the 1891 census living around Poughill and Cheriton Fitzpaine.

Mrs Bulled who attended Poughill School in the 1930s remembers children walking to school from Cleaves.

Mr Don Gibbons attended Poughill School from 1934 to 1943. His mother was the village postmistress from 1940 until 1964. He is unable to remember any children coming from Cleaves or Yedbury. When his mother and the postman Mr Harold Pike delivered the mail they would go to Cleaves via South Yeo Farm and weather being suitable would return via Footpath No. 4.

### **11. User Evidence**

No user evidence forms have been received in respect of use of Footpath No. 4, Poughill as recorded or in respect of any continuation to the county road.

### **12. Landowner Evidence**

The three landowners, including Yedbury Mill, whose land is crossed by Footpath No. 4, Poughill were contacted.

Mr Henton had owned Cleaves since 2002 and is aware of the public footpath. He sees members of the public once/twice a year on average and few people wandering vaguely aware there is a F.P. somewhere. He advises that Bill Dart who used to live in Yedbury Cottages and Mr & Mrs Hill who lived at Cleaves 1930-1984 told him the path was just theirs and postman's route to and from Poughill.

Graham Withers solicitors replied on behalf of Lord de Clifford, the owner of the land on which Yedbury Mill stood. They advised that Lord de Clifford purchased the land in 1997. They would support the proposed deletion and the view that this was included in error when the Definitive Map was prepared in the 1950s. Within the deeds to the land there is a specific deed of grant dated from 1985 in favour of Cleaves for them to use the track leading to the mill and if this was a public right of way the deed of grant would not have been required. The grant does show that there was no public right of way from Yedbury Mill to the public highway. Had there been a public right of way along this track then Footpath No. 4 may possibly have extended in that direction but it clearly never did and does appear to have been shown on the definitive map by mistake.

No response was received from South Yeo Farm.

### 13. Rebuttal Evidence

Following publication of the consultation on the suggestions a local resident contacted the council and advised that he would wish to raise an objection to the proposed deletion of the footpath. The vast majority of the path from the road near South Yeo is used as far as Cleaves and once at Cleaves one can walk along the lane leading to Cleaves and back to the road. He and his wife have used the path numerous times and know of at least two other people in the village that use the path. He would raise no objection to discontinuing the small part running from Cleaves to the derelict (Yedbury Mill) cottages.

### 14. Discussion

The footpath, described as going to Yedbury Mill was proposed by the parish council in 1950. The lack of a continuation in Cruwys Morchard in Tiverton Rural District Council, whether the path was used by the public and how the stream was crossed, was questioned at the time. On the basis of the reply from the Crediton Divisional Surveyor, the path was included in the draft and provisional definitive maps and no objections were received.

Following correspondence between the County and Parish councils during the 1968 review, the County Council suggested that the path may have been wrongly recorded on the Definitive Map. The Parish Council confirmed that this was the case as the footpath led originally only to Cleaves Farm and Yedbury Cottages and since the demolition of the latter it was now only used as a private path to Cleaves Farm.

Lord de Clifford advised that the right of way granted to Cleaves would not be necessary across the Yedbury Mill land if the way was already a public right of way. However, the deed granted in 1985 refers to a right of way for agricultural purposes, presumably with tractors and other vehicles or machinery or livestock and any public right of way is alleged to be a footpath only. It is also unusual for any public rights of way to be recorded on deeds or under titles at land registry.

The OS maps, Tithe Maps and Finance Act records do not make any reference to a public footpath over the route of Footpath No. 4, Poughill and the field book record for South Yeo states that '*there are no rights of way across the farm*'.

The entry in the parish meeting minutes of 1929 and comments made in the divisional Surveyors memo of 1952 indicate that the path was considered to be a public right of way at those times and used by children going to school. It is not known though whether this was just children from Cleaves or Yedbury or from elsewhere.

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 1<sup>st</sup> and 2<sup>nd</sup> 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 then or have been in existence at that time. The footpath would appear to have been in use by 1929 when a complaint was made to the Parish Meeting about the state of the farmyard at Cleaves

It would seem that in later years once Yedbury Mill and the cottages were abandoned the path was then mainly used by residents at Cleaves going to Poughill and by the postman. A public footpath does not however, become a private footpath if it ceases to be used by the general public and a Public Path Extinguishment Order can be made if a footpath is no longer needed for public use. Mid Devon District Council advised in 1998 that extinguishment of paths in the parish would be objected



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to, when this was requested by the parish council and responses to the current review consultation indicate the footpath is in use today.

The test for a Modification Order for the deletion of a public right of way from the definitive map, is that sufficient 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.

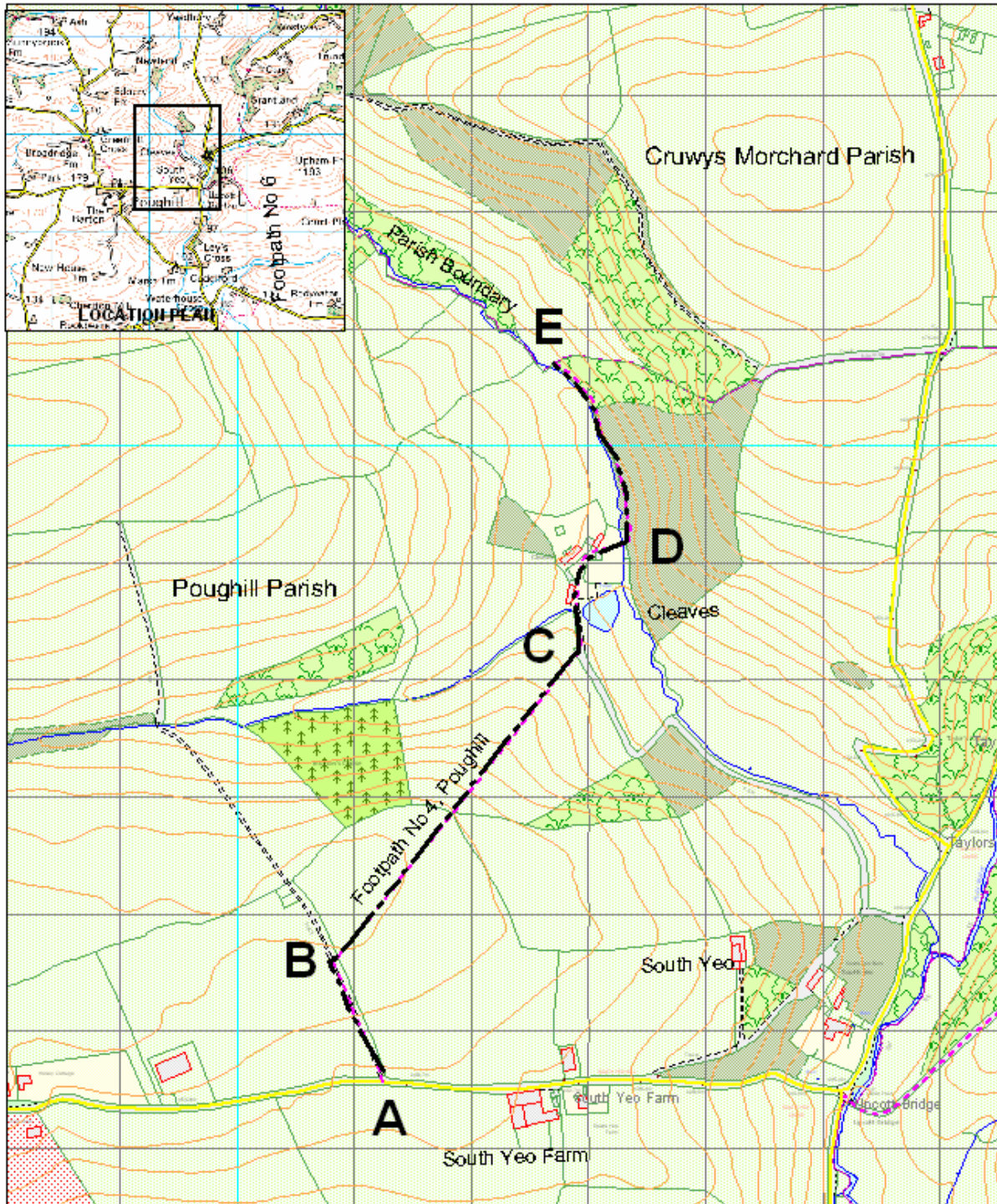
There is no evidence to support that a mistake was made in the preparation of the definitive map and it can be presumed that all the correct stages were followed in the process. As time goes on it is very difficult to discover/produce sufficient evidence to overcome the presumption that the path was added correctly, that the correct procedures were followed and the path was not included on the definitive map in error. The footpath as recorded does not lead to a county road, but the destination of the footpath at Yedbury Mill, as described in the statement, could have been considered a point of public interest.

No additional or new evidence has been submitted or received in support of the deletion and the footpath would appear to have been correctly recorded as a public footpath on the Definitive Map in 1958.

As the Definitive Map Statement records the footpath continuing to Yedbury Mill, a modification order could be made to extend the path to the site of the old mill. However, this would still be a cul de sac path and an alternative option is suggested to divert the northern section of the footpath (with the agreement of the affected landowners) so that it connects to the county road and removes the footpath from the farm yard at Cleaves.

### **15. Conclusion**

Footpath No. 4, Poughill is considered to have been correctly recorded on the Definitive Map. Although its use as a public footpath may have been restricted to a limited portion of the public for some years, it does not cease to be a public footpath, 'once a highway, always a highway'. In the absence of sufficient evidence to the contrary, it is therefore recommended that no modification order be made to delete Footpath No. 4, Poughill from the Definitive Map.



Map Ref: SS 8608 8609

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**DEVON COUNTY COUNCIL  
DEFINITIVE MAP REVIEW - POUGHILL  
SUGGESTION 3 - PROPOSED DELETION  
FOOTPATH NO. 4, POUGHILL**

drawing number	HTM/PROW/12/13
date	Feb 2012
scale	1:5,000 at A4
drawn by	TW

Notation To be deleted Footpath No 4

A - B - C - D - E (740 metres approx)

Existing Public Footpaths



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

