

**Definitive Map Review  
Parish of Cheriton Fitzpaine**

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 modification orders be made to:

- (a) modify the Definitive Map and Statement to add a continuation to Footpath No. 6, Cheriton Fitzpaine between points A and E so that the path connects to the county road (A3072) as shown on drawing number HTM/PROW/12/77 (Suggestion 1);
- (b) modify the Definitive Map and Statement to add a continuation to Footpath No. 14, Cheriton Fitzpaine between points A and C so that the path connects to the county road at Coleman's as shown on drawing number HTM/PROW/12/78a (Suggestion 2).

**1. Summary**

The report examines the routes referred to as Suggestions 1 and 2 arising out of the Definitive Map Review in the Parish of Cheriton Fitzpaine 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 fourteen routes, all footpaths, to be included on the definitive map. Two of the footpaths were considered to be private. In 1952 five more routes were added by the parish council, three footpaths, a bridleway and a RUPP (road used as public path). The RUPP was already a county road and therefore sixteen rights of way were shown on the draft definitive map. Initial objections to Footpath No. 17 were subsequently withdrawn and so all sixteen routes were included on the confirmed definitive map and statement for Cheriton Fitzpaine in the Crediton Rural District Council area in 1958.

In response to the review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in 1968, the Parish Council advised that there are no public rights of way to be added to the map as it now stands. In May 1970 the County Council wrote proposing that Footpath No. 6 be extended along the public accommodation road to the county road and that Footpath No. 14 presumably continues along Cotton Lane northwards and/or southwards to the county road at each end. Would the owners agree? The parish council advised that neither path was used by the public.

Under the uncompleted review initiated in 1977, the Parish Council proposed the addition of four paths to be shown as public rights of way, including the proposed extensions of Footpaths Nos. 6 and 14, the deletion of Footpaths Nos. 10, 11, 12, 15 and 5 and the diversion of Footpaths Nos. 8 and 9. The Limited Special Review of Roads Used as Public Paths (RUPPs), carried out in the 1970s, did not affect Cheriton Fitzpaine.

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

Mid Devon District Council Public Path Diversion Order 1978 Footpath No. 8, Cheriton Fitzpaine.

Mid Devon District Council Public Path Diversion Order 1978 Footpath No.14, Cheriton Fitzpaine.

Mid Devon District Council Public Path Diversion Order 1993 Footpath No. 17, Cheriton Fitzpaine and No. 29, Shobrooke.

The previous Definitive Map review was initially opened in Cheriton Fitzpaine with a parish public meeting held in March 1997 and a consultation map of the same two suggestions was published in September 1998. Consultations were undertaken with landowners and other parties but a committee report on the proposed changes was not completed at that time. The review was reopened with a parish public meeting in April 2012. No additional changes to those proposed in 1998 to the definitive map have been made by the parish council following the opening meeting.

### **3. Consultations**

General consultations have been carried out with the following results:

County Councillor Michael Lee	-	no response
Mid Devon District Council	-	no response
Cheriton Fitzpaine Parish Council	-	replied re both suggestions
Cadbury Parish Meeting	-	replied re suggestion 1
Stockleigh Pomeroy Parish Meeting	-	no response
British Horse Society	-	no response
Country Landowners' Association	-	no response
National Farmers' Union	-	no response
Open Spaces Society	-	no response
Ramblers' Association	-	replied re both suggestions
Trail Riders' Fellowship	-	no response
Cyclists Touring Club	-	no response
Devon Green Lanes	-	replied re both suggestions

### **4. 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.

### **5. Sustainability Considerations**

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

### **6. 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.

## 7. Equality Considerations

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

## 8. Legal Considerations

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

## 9. Risk Management Considerations

No risks have been identified.

## 10. Public Health Impact

Amendments to the Definitive Map will contribute to the County Council's health and well being agenda.

## 11. Options/Alternatives

The County Council has a statutory duty to undertake a review of the Definitive Map and Statement under the Wildlife & Countryside Act 1981 and is undertaking this duty through the parish by parish review across the county.

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

Local Government Act 1972: List of Background Papers

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

tw040213pra  
sc/cr/dmr cheriton fitzpain  
03 hq 130213

## Appendix I To HTM/13/11

### Suggestion 1

Proposed continuation of Footpath No. 6, Cheriton Fitzpaine eastwards along the route of the old lane, north of Lower Burrow Coombe and then south eastwards past Higher Burrowcombe to the county road (A3072) opposite Scratchface Lane, northeast of Windmill Plantation. (SS 8868 0554 to SS 8968 0524) between points A and E as shown on drawing no. HTM/PROW/12/77.

This suggestion is included as the recorded section of Footpath No. 6, Cheriton Fitzpaine is a cul de sac path and there is no apparent reason for the path to be so. The continuation was raised by the County Council in 1968, was proposed by the Parish Council in the uncompleted Devon County Council 1977 review and supported by the Parish Council in the 1997 review. The continuation would resolve the anomaly of the Public Footpath not connecting with another recorded public right of way or county road.

**Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement to add a continuation to Footpath No. 6, Cheriton Fitzpaine between points A and E so that the path connects to the county road (A3072) as shown on drawing number HTM/PROW/12/77 (Suggestion 1).**

#### 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 of 1968 it was noticed by the County Council that Footpath No. 6, Cheriton Fitzpaine at the eastern end, joins a public accommodation road leading to the county road at Windwhistle. It seemed that the right of way should be extended along the public accommodation road to the county road. The Parish Council did not consider it worth pursuing the matter at that time as the path was never used by the public. However, in the 1977 review the Parish Council proposed four paths for inclusion on the definitive map which included the path described from Luccombe Water to Windmill Plantation. This describes the route of Footpath No.6 and the continuation along the lane to the county road A3072.

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

The proposed continuation of Footpath No. 6, Cheriton Fitzpaine starts at the boundary hedge of a pasture field. The route passes into the old lane and follows a headland track eastwards with a grass/earth surface, the south side hedge having been removed. The route then passes through a field gate into a defined lane running along the ridge, with hedge banks on both sides. The route continues eastwards along the ridge, past the track southwards to Lower Burrow Coombe and through a field gate across the lane. The route then follows a section of the lane that has been improved with stone until it goes through a field gate, bears south eastwards and along the field headland to another field gate leading onto a defined hardcore track. The path continues south eastwards along a hardcore/concrete/tarmac widened lane/track, above Higher Burrow Coombe, to join the county road A3072, opposite Scratchface Lane, an unsurfaced, unclassified road, on the border with Cadbury parish. The length of the additional section of footpath proposed being approximately 1,100 metres.

Photographs of the route taken in March 2012 are included in the backing papers.

## **4. Consultations**

The following responses were received.

Cheriton Fitzpaine Parish Council confirmed that they supported both suggestions and would be happy for the changes to go ahead.

Cadbury Parish Meeting advised that although they decided not to make any representations as a parish, attendees were invited to express their personal views to the clerk after the meeting. Several did so and whilst they did not know what impact the proposal may have on the landowner, on the basis that this minimal (because it follows an existing track) or can be mitigated, those who expressed views were supportive of the suggested footpath extension.

The representative of the Devon Ramblers advised that they completely support the proposal.

Devon Green Lanes Group advised that they unanimously support the proposal that the proposed routes are public rights of way but further believe that the whole length of the lane is a public right of way with either bridleway or more likely restricted byway status. The claim is supported by the result of the public inquiries into several public accommodation roads in Morchard Bishop parish, the Tithe Map, OS maps and that there is no evidence of the lane ever being stopped-up or diverted. The evidence submitted by the Group is included in the backing papers.

Mrs Guscott, interested in adjacent land to the proposed extension and a walker, advised that she had no objections to the modification/extension of the footpath as long as it remains as a footpath and is never regraded to byways allowing 4x4 users and other motorised users.

## **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.

### **Cassini Maps**

These are modern reproductions of the original 1" to a mile OS maps published in 1809, 1899 & 1919.

#### **Old Series 1809**

The lane from Ford to the county road east of Higher Boro Comb is shown as a defined lane in a similar way to the now county roads west of Ford. From the lane there is a section of lane to Welcoombe and to Henbere north of Welcoombe.

#### **Revised New Series 1899**

The lane from Ford to the county road near Burrowcoombe is depicted as an 'unmetalled road'. The connecting county roads are shown as First, second and third class roads.

#### **Popular Edition 1919**

The lane is depicted as part as a two lined lane and part as a solid single line which would correspond to a road under 13' wide, indifferent or bad winding road and minor roads and in a similar way to the access tracks to Lower & Higher Burrow Coombe.

#### **OS 1st Edition 25" to a mile 1880-1890**

The section of lane running east from where Footpath No. 6 joins the lane is shown as a defined lane, with several large hedgerow tress along its length to the county road. There are four bench marks along the lane and no gates shown across the route. The lane has its own apportionment numbers of 173 in the east end, with an area of 0.777 acres; and number 309 and area 2.038 acres for the west end at Welcoombe and East Forde. The route of footpath No. 6 is shown as a double pecked line labelled FP.

#### **OS One inch series Sheet 176 Exeter 1946, 1957-58 & 1967**

In 1946 the lane is shown as a defined white lane, described as Minor Roads in towns, Drives and Unmetalled Roads. In 1957-58 the section of lane north of Wellcoombe east to the county road is depicted by a dashed line described as Footpaths and Tracks in the key. In 1967 the route of the lane is depicted by a dashed line, described as a Path in the key; from the east end of the recorded section of Footpath No. 6 (Public Rights of Way now shown on OS maps) eastwards to the county road. No path or track being depicted for the section of the lane from west of Welcoombe to the junction with Footpath No. 6, Cheriton Fitzpaine.

#### **OS Post War Mapping 1:2,500 scale 1970**

The section of lane running east from the junction with Footpath No. 6 is shown as a defined lane with hedge on both sides apart from two sections north east and east of Higher Burrowcombe where a length of the north east hedge and southern hedge has been removed and those sections included within the adjacent fields. The remainder of the lane is now numbered 7854 and 1839 with areas 1.84 and 0.45 acres. A solid line possibly depicting a gate is shown at the east end of the lane by the county road.

## **6. Cheriton Fitzpaine Tithe Map 1838**

Footpath No. 6, Cheriton Fitzpaine is not shown on the map. The lane from Ford to Higher Burrow Coombe is shown as a defined lane throughout its length. The lane is numbered in three places, near to Ford, north of Wellcoombe and east of Lower Burrow Coombe. Although difficult

to read, two of the apportionment numbers on the lane, believed to be 1840 and 1830 or 1838 are listed in the apportionment under the heading for Roads and Waste. No owner or occupier information is included for the Roads and Waste but this may be because as no tithes were due to be paid on roads and waste it didn't matter whether they were publicly or privately owned.

## **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.

Footpath No. 6, Cheriton Fitzpaine and the proposed extension along the lane cross land within or adjacent to the hereditaments numbered 6, 13, 22, 39 and 62. The lane itself appears excluded from the adjacent hereditaments as the colouring either stops at the field edge hedge or where the hereditament includes land either side of the lane, the colouring breaks where the coloured line encircling that hereditament crosses the lane.

Number 6 was Lower Burrowcombe, owned and occupied by Thomas Arcscott. There is no reference to the lane and the boundary colouring stops on the south side of the lane.

Number 13 was Wellcoombe, owned by Ferguson Davie estate and occupied by Frederick Taverner. The boundary colouring stops at the south side boundary hedge of the lane.

Number 22 relates to Higher Burrow Coombe, owned by Charles Fursdon and occupied by George Langworthy. The boundary colouring breaks where it crosses the lane south west of Grue (Grew) Copse. The description refers to a bad approach to the farm although at this date the main access to the property appeared to be via the track running south from the buildings to the main road.

Footpath No. 6, Cheriton Fitzpaine crosses land within hereditament number 39 Landboat Farm, owned by William Hamilton and occupied by William Burrow. Under the page 1 heading it refers to 'alleged rights of way' and under the particulars and description on page 2 it refers to 'Rights of way to Stockadon & public footpath'. An allowance of £2 x 25 = £50 is given and transferred to Public Rights of Way or User on page 4. The recorded Footpath Nos 4, 5 & 6, Cheriton Fitzpaine are on land within the holding and a track labelled 'FP' is also shown going to Stockadon from the road leading from the village. It is unknown whether the £50 allowance refers to one or all of the above mentioned footpaths.

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

In the Cheriton Fitzpaine parish council submissions in September 1950, Footpath No. 6 was surveyed by Messrs G Hartnell, F Wreford and W Cheriton. Whether the path required in future was answered 'Doubtful', the grounds for believing the path to be public were 'regarded as such within living memory' and the path was repaired in the past by 'owners of adjoining land'. The path was walked by a rural district council surveyor on 21 February 1951 and the form was ticked that the route was a public footpath and accommodation road. He described the right of way 'this path starts about 400 yards north of East Ford cross, road No. 641 across 2 pasture fields to join accommodation road which joins the Crediton Tiverton road at Windwhistle No B3214'.

The county surveyor amended the path general description prepared by the parish council to read 'Entered by a field gate at Lucombe about 400 yards north of East Ford Cross, across two pasture fields and exit into a Public Accommodation Road leading to Lower Burrow Coombe farm over a stile. (Two stiles in good condition. Path throughout in reasonable order). The definitive

map statement for Footpath No. 6, Cheriton Fitzpaine reads 'Starts at Lucombe Hill, about 400 yards North of East Ford Cross on County Road (No. 641) entry by fieldgate, and proceeds east across two pasture fields until joins the Public Accommodation Road, leading to B.3214 at Windwhistle'.

On the maps completed by the parish council the route of Footpath No. 6 was shown crossing three fields, with the position of the two stiles shown by 's' and the path shown stopping at the lane by the bench mark 534.3. The county council then appear to have annotated the lane 'Accomm Rd ?Public or Private' The path was included on the draft map and no objections were received to the path's inclusion in the draft or provisional definitive maps and the path was subsequently recorded as Footpath No. 6, Cheriton Fitzpaine on the definitive map.

In the Instructions issued by the County Council at the time of the Parish Survey, it clearly stated that lanes considered to be a public accommodation road were not to be shown on the definitive map. This meant that public footpaths joining the lanes called public accommodation roads were usually shown as stopping at the lane whereas public footpaths running along lanes called or considered to be private accommodation roads would be shown on the definitive map as running along those lanes.

## **9. Devon County Council Uncompleted Reviews of 1968, 1977 and 1997**

Prior to the 1968 review, the County Council had made a file note on Footpath No. 6 as follows 'Map and description do not agree. By description it only crosses 2 pasture fields before joining public accommodation road leading to B 3216 at Windwhistle. Is this PAR used by public by vehicles & not much by adjoining owners?'

Letters (no copies on file) were sent to the parish council on 26 June & 26 August 1968 and the parish clerk replied on 8 October 'The Parish Council have studied the map in detail & have instructed me to state that there are no public rights of way to be added to the map as it now stands.'

The County Council wrote in May 1970 stating 'Footpath 6 at the eastern end joins a public accommodation road leading to the County road B.3214 at Windwhistle. It seems that the right of way should be extended along the public accommodation road to the County road. Would the owners agree to this?'

The Parish Council clerk replied 'I am instructed to inform you that my council consider that both of the footpaths you mention (Footpaths No 6 & 14) are Roads of convenience to the owners of the land through which they pass. I am asked to point out that some years ago the owner of Higher Burrowcombe, obstructed path number 6 and despite the fact that my Council took the matter up at the time with both the Crediton and the Devon County Council, the footpath is still blocked. My Council can see no point in pursuing the matter as this path is never used by the public and as far as they can see is never likely to be.'

The County Council wrote to the Crediton Rural District Council asking if they had any record of the complaint as they did not. No reply seems to have been received from the District Council.

Following a parish meeting held in March 1978, as part of the 1977 review, the Parish Council suggested that four additional paths should be shown on the Definitive Map which included the path described 'From Luccombe Water to Windmill Plantation'. This would describe the route of Footpath No. 6 and the proposed continuation to the county road by Windmill Plantation.



The letter issued by the County Solicitor to introduce the 1977 review of the definitive map included a schedule which also made reference to public accommodation roads and advised that 'these were a very unusual sort of road and none was shown on the original Definitive Map. In Devon the term is used to define a road over which the public has complete freedom of access but which the landowner rather than the County Council is liable to maintain'.

In the 1997 review two proposals for change were made, proposal 1 being the variation of particulars of Footpath No. 6 for which a correction was proposed to extend the footpath to the main road at Windmill Plantation. The consultation map of suggestions for change was circulated at that time and some responses were received from landowners.

## **10. Crediton Highway Board, Vestry and Parish Council Minutes**

The Vestry minutes from 1832 to 1920, the Crediton Highway Board Minutes from 1864 to 1895 and Parish Council minutes from 1947 to 1981 are held at the Devon Heritage Centre. The Parish Council minutes from March 2003 are held by the parish clerk and the other years' minutes appear to have been lost.

### *Vestry Minutes*

The notice of a Vestry meeting to be held on 18 July 1870 advised that the meeting was for the purpose of ....'and also to take into consideration an application to put the Road leading from East Ford to Higher Burrow Coombe in repair'. The minutes written below the copy notice did not make any reference as to what decision was taken with regard to the road. However, it appears that the matter was to be raised at the request of the Crediton District Highway Board.

### Crediton District Highway Board Minutes

In April 1870 Messrs Arscott (tenant of Lower Burrowcoombe Farm), Easterbrook (tenant of Wellcoombe Farm), Cockram (tenant of Higher Burrowcoombe) and others complained to the Crediton District Highway Board at the state of the road leading from the Tiverton Turnpike at Burrow Coombe Fir Plantation to Ford in Cheriton Fitzpaine. The District Surveyor inspected and reported to the next meeting that the road was miry, rutty and much overhung with bushes. Mr Cockram had attended and alleged that the Parish was liable to repair the road. It was resolved that the matter be deferred to the next meeting. The Waywarden of the Parish undertaking to take the sense of the parishioners in Vestry upon it in the interim.

In May 1870 Mr Turner had written a letter relative to the bad state of the road leading from Burrowcoombe Firs to Ford. Mr Hattin the Waywarden of Cheriton Fitzpaine submitted a document signed by three Justices of the Peace for the Division of Crediton of 28 March 1838, which was read to the Board and from which it appeared that at that time in the opinion of the Magistrates that Mrs Fursdon as owner of Burrow Coombe was bound to repair so much of the Public Road leading from Ford to the Tiverton Road as passed through the estate at Burrow Coombe, but they recommended after Mrs Fursdon had put the road into a through state of repair to the satisfaction of a competent surveyor that the inhabitants of Cheriton Fitzpaine should take upon themselves the future repair of it. It was ordered that the district Surveyor do give the parties liable to repair it notice to put it in proper condition.

Notices were served and following receipt of letters from Messrs Stone & Follett, Solicitors, Exeter on behalf of Mrs Fursdon, it was requested that the last letter received be referred to the parishioners in Vestry. In September 1870 it was reported that the parishioners would not undertake the maintenance and repair of this road. Ordered that the surveyor do inform Messrs Stone & Follett accordingly.

Complaints of the state of this road were also made to the Highway Board in June 1891 and January 1892. The 1892 minutes imply that Mrs Fursdon had previously put this portion of the road in order and Mr Pitt, owner of Ford Farm and the agent of Sir John Davie, owner of Welcombe Farm were now told to attend to the repair of the said road.

### Parish Council Minutes

There are some references to either Footpath No. 6, Cheriton Fitzpaine a right of way that would appear to describe Footpath No. 6 and the proposed continuation.

22 October 1962

Right of Way from Burrowcombe to Cadbury. It was reported that this was blocked by the owner of Higher Burrowcombe. It was proposed Mr Milden, seconded Mr Hartnell that the Clerk should have a tactful word with Mrs Coles to find out if she was disputing the right of way and if necessary to take action.

11 March 1963

Arising from the Minutes. The Chairman (Mr E J Yeandle) reported that the Right of Way dispute had been resolved by the Rural District Council.

12 December 1967

Right of Way. After some discussion it was decided on the motion of W H Baker, seconded by G G Hartnell that no further action be taken regarding the right of way at Burrowcombe.

18 May 1970

Rights of Way. A letter from the Clerk to the Devon County Council concerning two footpaths, No 6 and No 14 on the definitive map was discussed. It was agreed that it would be difficult to enforce these Rights of Way which were really Roads of Convenience to the owners of property nearby. It was decided that the Clerk should point this out in a reply to the DCC.

## **11. Auction Particulars for Sale of Welcombe Farm 1920 & 1932**

Welcombe Farm was included in the sale of a portion of the Creedy Estate in September 1920 as Lot 16. The land included within the holding at that time was all south of the lane and the lane was uncoloured and not included as part of the holding. The particulars included details of a shilling a year payable to a Mr Luxton as acknowledgement for a gateway leading into the farm between Ordnance number 290 and 291. The details did not include any reference to a right of way along the lane, presumably required to access the farm, from East Ford or Higher Burrowcombe.

It appears that the farm was not sold in 1920 and was offered for auction again in June 1932. Welcombe was then tenanted by James Wreford on a yearly tenancy. The clause regarding the annual payment for the gateway was included, although now payable to Mr Isaacs; but again no reference was included regarding a right of way along the lane to access the property.

## **12. Aerial Photography**

1946-1949, 1999, 2006-2007 and 2011 aerial photography

The aerial photograph from 1946-1949 records the lane as a defined doubled hedged lane from the county road at East Ford to the A3072 at Windmill Plantation. The hedges have been trimmed and the surface of the lane is visible between points A to E.

By 1999 the hedges on both sides of the lane west of Wellcombe have been removed and part of the lane incorporated into the field and north of Wellcombe, the hedge on the south side has been removed. Between points A and C the hedges have not been trimmed and the surface of the lane is not visible through the trees. Between points C and E one side of the hedge, north of Higher Burrow Coombe, has been removed and the remaining hedge trimmed.

In 2006-2007 and 2011 the lane remains hidden by the hedgerow trees east of point A to point C whilst between points D and E the lane now appears hedged on both sides.

### **13. Land Registry**

The section of lane halfway between points A and B to point C is unregistered. Wellcombe Farm which includes the first section of lane to be used by the extended footpath is unregistered. The boundary for Lower Burrow Coombe, which is registered, is the southern hedge of the lane and for Dunscombe, the boundary of their land is the northern hedge of the lane.

Between points C and E the route of the lane was registered in November 2002 under a Title Possessory, rather than as a Title Absolute and described as land at Higher Burrowcombe. The top north west section of the lane recorded in this title was removed and registered as 'Land adjoining Grew Copse' under the new title DN617057, also as a Title Possessory as part of Lower Burrow Coombe, in November 2011.

### **14. User Evidence**

No user evidence has been received since publication of the consultation on the suggested change in 2012.

### **15. Landowner Evidence**

All the landowners/occupiers adjoining the possible continuation of the footpath were contacted and informed of the proposed change to Footpath No. 6, Cheriton Fitzpaine.

Mr Yeandle of Wellcombe Farm had responded in 1998 and 2012 and had also spoken to the officer in March 2005. The continuation of the footpath would pass along the headland of his one arable field, the southern hedge having been removed from point A eastwards to the field boundary. They bought the farm in 1971, do not consider the way to be public and have not been aware of members of the public using the way. In his telephone call of 2005 Mr Yeandle had mentioned allowing people to walk past Wellcombe Farm eastwards to connect with Footpath No. 6.

Mr C A Kekwick also replied in 1998 and 2012 and has owned Lower Burrow Coombe since 1984. His land adjoins the section of lane from between points A and B to two thirds between points B and C. They have very occasionally seen people using the way and since 1998 have mentioned that there is no right of way to someone using the route. In a covering letter Mr Kekwick asks that two points are considered: 1, with the spread of the disease to Ash trees, and there are many close to and along the proposed pathway; perhaps it may be worth delaying any decision until further information is known about the disease and how to contain it and 2, he is unclear as to who is responsible for the public liability over a right of way as he doesn't consider his policy would cover unknown walkers and asks for advice on this point.

Mr D Fox from Dunscombe Farm replied, and his land borders the northern side of the lane between points A and C. The proposed extension would not cross his land but in a telephone

conversation he expressed concern at dogs accessing his fields from the extended footpath although agreed it seems logical for the footpath to connect to the road.

Mr Mason of East Forde does not own land crossed or adjacent to the proposed continuation but considers the lane a public road or byway open to all traffic based on his research in the old road archive in Exeter that he completed in the 1990s.

Mr Carr of Orchard Hayes has owned the land crossed by the recorded section of Footpath No. 6, Cheriton Fitzpaine since 1931. He has considered the way to be public all his life although has only seen irregular use of the footpath. He was under the impression that after crossing the first field the footpath ran on the Wellcoombe side of the hedge up to point A as it comes to a dead end in his copse.

As of 10 January 2013 no response had been received from Mr Bolt at Higher Burrow Coombe, the landowner from points C to E, in 2012 or in 1998.

## **16. Rebuttal Evidence**

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

## **17. Discussion**

Footpath No. 6, Cheriton Fitzpaine is an anomaly as there is no logical reason for the footpath to terminate at the end of the third field. It is not a view point or any other place of public interest. The use of the lane to continue to the Crediton/Tiverton road would be a practical route from Cheriton Fitzpaine village towards Cadbury.

The continuation of Footpath No. 6 to the county road is supported by Cheriton Fitzpaine Parish Council, some members of Cadbury Parish Meeting, Devon Ramblers and a local resident/walker. The Devon Green Lanes Group also supported the continuation but also advised that there is sufficient evidence to show that the complete route of the old lane from Ford to the Crediton/Tiverton road should be recorded as a public right of way, possibly a restricted byway, as other lanes called Public Accommodation Roads in Morchard Bishop parish have now been recorded as restricted byways through the Definitive Map Modification Order process.

To recommend that the continuation of Footpath No. 6, Cheriton Fitzpaine be added to the definitive map it is necessary to show that a public right of way subsists or is alleged to subsist at common law. Rights of way, with some exceptions, come into existence because they have been dedicated to the public by the owners of the land over which they run. If there is no evidence of an express dedication, an implication of dedication may be shown if there is evidence from which it may be inferred that a landowner has dedicated a highway at some time and that the public has accepted the dedication. Evidence of use by the public will usually show acceptance of the right of way and user and documentary evidence can indicate the status.

The early OS and Cassini Map reproductions of the OS maps record a defined lane running from Forde to the county road opposite Scratchface Lane. The OS 25" late 19<sup>th</sup> century map records bench marks along the lane and no gates across the route. When the parish survey was completed for the Definitive Map in the 1950s, the lane appeared to have existed throughout but from the early to mid 1960s, hedges on one or both sides of parts of the lane had been removed.

In the Tithe Map of 1838 the lane is shown in a manner similar to what are now county roads, and the apportionment number included in the list of Roads and Waste.

The Finance Act map shows the lane excluded from the adjacent hereditaments in a similar manner to county roads and this can be indicative of the lane being considered to be public at that time. The field book entry for the hereditament crossed by Footpath No. 6 includes an allowance of £50 for public rights of way although the land crossed by Footpath Nos 4 and 5, Cheriton Fitzpaine is also included in the same hereditament.

These maps confirm the physical existence of the lane that would be the continuation of Footpath No. 6 since 1809 and that it appears to have been an ungated through route that would have been available for the public to use. The Tithe map and Finance Act plans record the lane in a similar manner to county roads and the presence of Footpath No. 6 was recorded on the 1880 OS map and was possibly acknowledged as a public right of way in the Finance Act field book.

In the Parish Survey of Public Rights of Way in 1950, Footpath No. 6 was included and although the parish commented it was doubtful that the path would be needed in the future, they advised that it was believed to be public as regarded as such within living memory. The survey completed by the district surveyor ticked both public footpath and accommodation road on his survey form and described the route as continuing to the Crediton/Tiverton road at Windwhistle No B3214. The County Surveyor's description of the route advised that the path crossed two pasture fields and exited into a Public Accommodation Road leading to Lower Burrow Coombe over a stile. This was later changed as the definitive map statement states '.. proceeds east across two pasture fields until it joins the Public Accommodation Road, leading to B3214 at Windwhistle'.

It appears that the District Surveyor may have confused matters in referring to Windwhistle in his route description as Windwhistle describes an area of wood that is adjacent to the Crediton/Tiverton road but Windwhistle Copse is directly south of Lower Burrow Coombe and it is Windmill Plantation that lies south of the lane between Higher Burrow Coombe and the Crediton/Tiverton Road, opposite Scratchface Lane. The County Surveyor's changes could describe a route that on entering the lane from the east end of Footpath No. 6 did continue south to Windwhistle. However, it appears that as this could be misleading, the final definitive map statement was changed to remove a reference to Lower Burrow Coombe but still left a reference to Windwhistle. The two sections of wood/copse are adjacent and run along the north west boundary of the Crediton/Tiverton road, between the entrances to Higher Burrow Coombe and Lower Burrow Coombe, so it may be that the term Windwhistle was used to refer to all the area of wood to include that area that is now called Windmill Plantation. In the OS map of 1889-90 though the two were separate areas of woodland. The logical route would be to continue pass Higher Burrow Coombe as this would be a route towards Cadbury from Cheriton Fitzpaine village.

As part of the 1968 review the County Council wrote to the Parish Council in 1970 and suggested that the right of way should be extended along the public accommodation road to the county road. The clerk advised that the path is blocked, was never used by the public and not likely to be.

In the 1977 review the Parish Council proposed the addition of a public right of way from Luccombe Water to Windmill Plantation, which described the route of Footpath No. 6 and the proposed continuation to the county road.

In April 1870 a complaint had been made to the Crediton District Highway Board by the tenants of Higher & Lower Burrowcoombe and Wellcoombe Farms at the state of the road. The district surveyor inspected the road and this would indicate that the lane was considered to have some public status although one of the complainants alleged the parish was liable to repair the road.

In May 1870 a complaint was made again and the Waywarden produced a document which indicated it was the responsibilities of the adjoining landowners to repair the road. This would be consistent with the later definition of a Public Accommodation Road from 1977. It appears that

following representations from the landowner's solicitors about repairing the road, the matter was referred to Vestry and the parishioners would not undertake the maintenance and repair of this road. Later minutes imply that Mr Fursdon did repair his portion around Burrow Coombe and eleven years later it was the west end of the lane around Ford and Wellcoombe needed repair.

The Highway Board minutes indicate that the lane was accepted as having some public rights although the exact nature is not mentioned. Complaints were made by others as well as by the tenants of farms along the lane indicating that it was used by the general public.

The blocked right of way at Burrowcoombe was raised at the Parish Council in October 1962 and it appears that by March 1963 the dispute had been resolved by the Rural District Council. These entries and one in 1967 indicate that the Parish Council accepted that there was a right of way at Burrowcoombe as they did not deny that the route was a right of way. However, it appears the councillors were not too bothered about whether it was obstructed or not; as also shown by their reply to the County Council in 1970. The fact that questions were asked at the Parish Council Meeting though does indicate that the route was been used by the public at those times.

The auction particulars for Wellcoombe Farm in 1920 and 1932 did not include reference to the farm having a private right of access along the lane to access the farm so it could be that the lane was considered to have public rights along it.

The aerial photography from 1946-49 show the lane hedges as being kept trimmed. The lane between points C and E is registered to Lower and Higher Burrow Coombe farms as a Title Possessory. This indicates that the lane was not included within the original deeds to the properties and a possessory title is granted where a landowner can show that they have had possession of the land for a number of years but cannot show ownership. As the lane was not included in the title deeds for the properties the lane passed through, this could indicate that the lane was considered to be public. The remainder of the lane between points A and C is unregistered.

Mr Yeandle of Wellcombe Farm had not been aware of people using a continuation of the footpath but as there is no stile or gateway present at point A, if walkers wish to continue towards the Crediton/Tiverton road it is possible that they entered the lane further on towards point B, where both sides of the hedges still remained.

Mr Kekwick of Lower Burrow Coombe has seen occasional people using the proposed continuation and since 1998 has told someone that that there is no right of way. His other concerns regarding the Ash tree disease and liability for walkers using the route are reasonable but not relevant to the evidence to be considered regarding the existence or otherwise of a public right of way along the route.

Mr Carr who owns the land crossed by the recorded section of Footpath No. 6, Cheriton Fitzpaine considers the way to be public but has only seen irregular use of the footpath.

The apparent error/omission of Footpath No. 6, Cheriton Fitzpaine being recorded to start and finish on a county road is an anomaly. It is considered that when the footpath survey was completed in 1950 it was the Parish Council's opinion that the public using the footpath then joined the lane and continued along it to the county road. The evidence reviewed indicates that the lane was considered to be a public accommodation road, a type of road that was used by the public but maintained by adjacent landowners. The proposed continuation of the footpath is along the eastern end of the lane from point A to point E on the plan and it is considered that the documentary evidence is sufficient, when taken together as a whole to show, on the balance of

probabilities, that a public footpath can be reasonably alleged to subsist along this section of the lane.

The Devon Green Lanes Group consider that the evidence calling the lane a Public Accommodation Road is sufficient to support the whole length of lane from Forde to the county road to be a restricted byway, having been a general purpose public highway. Although the evidence is similar to the routes in Morchard Bishop that were Public Accommodation Roads, that are now recorded on the definitive map as a restricted byways, there was additional evidence for those routes; such as the inclusion of the lanes in the list of roads to be taken over by the County Council in 1944 and evidence of use by the public of those lanes. Where the evidence only showed public money being spent on a footbridge on a route, that lane was confirmed as a public footpath. It is therefore considered that the evidence discovered to date is insufficient to recommend the recording of the whole length of the lane as a public right of way at this time.

## **18. Conclusion**

It is considered that the evidence is sufficient to show that at some time in the past a public right of way, considered to be at least a public footpath, has been dedicated along the section of the old lane between points A and E at common law and that the right of way has been accepted by the public.

It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement to add a continuation of Footpath No. 6, Cheriton Fitzpaine between points A and E so that the path connects to the county road (A3072) as shown on drawing number HTM/PROW/12/77.

### **Suggestion 2:**

Proposed continuation of Footpath No. 14, Cheriton Fitzpaine northwards along Cotton Lane, past Cotton Farm, to the county road opposite Coombe Lane and east of Coleman's (SS 8871 0790 to SS 8888 0836) between points A and C as shown on drawing no. HTM/PROW/12/78a.

This suggestion is included as the recorded section of Footpath No. 14, Cheriton Fitzpaine is a cul de sac path and there is no apparent reason for the path to be so. The continuation was raised by the County Council in 1968, was proposed by the Parish Council in the uncompleted Devon County Council 1977 review and supported by the Parish Council in the 1997 review. The continuation would resolve the anomaly of the Public Footpath not connecting with another recorded public right of way or county road.

**Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement to add a continuation to Footpath No. 14, Cheriton Fitzpaine between points A and C so that the path connects to the county road as shown on drawing number HTM/PROW/12/78a.**

### **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 of 1968 it was noticed that by the County Council that Footpath No. 14, Cheriton Fitzpaine ends at Cotton lane – not a county road what is it? The County Council wrote to the Parish Council presuming that the public right of way continues along Cotton Lane to the county road. The Parish Council did not consider it worth pursuing the matter at that time as the path was never used by the public. However, in the 1977 review the Parish Council proposed four paths for inclusion on the definitive map which included the path described from Ball Hill to Peach Hayne & Cotton & Coleman Cottages. This describes the route of Footpath No. 14 from the county road at Ball Hill and the continuation proposed along Cotton Lane to the county road at Coleman's.

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

The proposed continuation of Footpath No. 14, Cheriton Fitzpaine starts at the junction with Cotton Lane south of Cotton Farm and proceeds generally northwards along the route of the old lane, past Cotton Farm to the county road, east of Coleman's. The surface is initially earth/grass and then improved hardened surface from the farm entrance to the county road. The length of the additional section of footpath proposed being approximately 510 metres.

Photographs of the route taken in March 2012 are included in the backing papers.

## **4. Consultations**

The following responses were received.

Cheriton Fitzpaine Parish Council confirmed that they supported both suggestions and would be happy for the changes to go ahead.

The representative of the Devon Ramblers advised that they completely support the proposal.



Devon Green Lanes Group advised that they unanimously support the proposal that the proposed routes are public rights of way but further believe that the whole length of Cotton Lane is a public right of way with either bridleway or more likely restricted byway status. The claim is supported by the result of the public inquiries into several public accommodation roads in Morchard Bishop parish, the Tithe map, OS maps and that there is no evidence of the lane ever being stopped-up or diverted. The evidence submitted by the Group is included in the backing papers.

Mrs Guscott, interested in adjacent land to the proposed extension and a walker, advised that she had no objections to the modification/extension of the footpath as long as it remains as a footpath and is never regraded to byways allowing 4x4 users and other motorised users.

## **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.

### **Cassini Maps**

These are modern reproductions of the original 1" to a mile OS maps published in 1809, 1899 & 1919.

#### **Old Series 1809**

Cotton lane is shown as a defined lane in a similar manner to current county roads. Cotton Farm is called Col Hayne and the main access to Peach Hayne would appear to be from the southern end of the lane.

#### **Revised New Series 1899**

Cotton Lane is depicted as an unmetalled road. The county roads at Coleman's and Ball Hill are recorded as second class roads and Cotton Farm is now called Cotton. There is a lane shown from Ball Hill to Peach Hayne. The southern end of Cotton Lane leads into the yard at Hayne.

#### **Popular Edition 1919**

The lane is depicted as a solid single line from Coleman's to Great Hayne which would correspond to a road under 13' wide, indifferent or bad winding road and minor roads.

#### **OS 1st Edition 25" to a mile 1880-1890**

The section of Cotton Lane running north from where Footpath No. 14 joins the lane is shown as a defined lane, with several large hedgerow tress along its length to the county road. There is a bench mark shown at Cotton Farm and in the lane north of the farm. A pecked line at the junction with Cotton Lane and the county road at Coleman's is possibly a change of surface rather than a gate. The lane has its own apportionment numbers of 1164, area 0.097, for the northern section and number 797, area 1.21, for the section south of Cotton Farm. The route of Footpath No. 14 is shown as a double pecked line labelled FP from Peach Hayne to Cotton Lane.

#### **OS One inch series Sheet 176 Exeter 1946, 1957-58 & 1967**

In 1946 Cotton Lane is shown as a defined white lane, running north to south pass Cotton and through Hayne farms, described as Minor Roads in towns, Drives and Unmetalled Roads. In 1957-58 only the north and south sections of Cotton Lane are shown as a white lane, unfenced on one side in the northern section; described as Minor Roads in towns, Drives and Unmetalled Roads. In 1967 Footpath No. 14, Cheriton Fitzpaine is shown on the map (Public Rights of Way now shown on OS maps) connecting to the northern section of Cotton Lane at 'Cottons'. The other end of Cotton Lane is only depicted for a short section southwards from the farm yard at Hayne to the county road.

OS Post War Mapping 1:2,500 scale 1970

The section of Cotton Lane running north from where Footpath No. 14 joins the lane is shown as a defined lane although the western boundary of the lane north of the farm to the county road is pecked, indicating an unfenced or not hedged boundary. A line across the lane closer to the road indicates a gate. This section of lane is included in the apportionment number of the adjacent field, 7724, the middle section is included within the farm yard and buildings, numbered 7500 and the southern section of Cotton Lane numbered 7368.

## **6. Cheriton Fitzpaine Tithe Map 1838**

Footpath No. 14, Cheriton Fitzpaine is not shown on the map. Cotton Lane from Ford is shown as a defined lane from the county road at Coleman's to the north side of the yard at Great Hayne. The lane is numbered north of Great Hayne, 1829, as is the section of lane south of Great Hayne farmyard. This number is included in the list in the apportionment under the heading for Roads and Waste. No owner or occupier information is included for the Roads and Waste but this may be because as no tithes were due to be paid on roads and waste it didn't matter whether they were publicly or privately owned. Cotton Farm was owned and occupied by George Luxton.

## **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.

Footpath No. 14, Cheriton Fitzpaine and the proposed extension along the Cotton Lane lie within or adjacent to land within the hereditaments numbered 32, 50 & 63.

Hereditament number 32 is Cotton Farm which also includes number 33, Coleman's Cottages. The farm of about 64 acres was owned and occupied by E M B Short. There is no break in the colouring around the boundary of the hereditament where the colouring crosses Cotton Lane south of the farm. The colouring does break where it crosses Coombe Lane and the county road north and west of Coleman's Cottages. Under the heading for Fixed Charges, Easements, Common Rights and Restrictions is noted 'Footpath'. An allowance of £25 is given for the footpath although on page four of the field book this is recorded under Restrictions rather than Public Rights of Way or User. Footpath No 14 was shown as a footpath on the maps used for the plans as well as a footpath from Cotton Lane north west to Higher Holn, west of Coleman's. Coleman's Cottage was occupied by Mark Bonding.

Great Hayne Farm, owned by Mr E Arcscott of Sampford Courtney and occupied by James Yeadley, E Woodbury & E M B Short was hereditament number 50. On page two is noted 'Public footpath £2 x 25 = £50' which is carried forward to the Public Rights of Way or User item on page four. No recorded public footpaths currently cross the land included within the hereditament but there are two paths shown on the 2<sup>nd</sup> Edition OS 25" map used for the plans which the surveyor may have been considering.

Hereditament number 63 included part of Holes near village and Peach Hayne, owned and occupied by Mr Tuckett. Under the heading for Fixed Charges, Easements, Common Rights and Restrictions is noted 'footpath across part of Peach Hayne. Page two of the field book records Footpath across no. 800, 781 & 779 and these are the two fields between Ball Hill and Peach Hayne, the farm access being along headland tracks through the two fields at this time and the field north of the farm buildings to the stream with a foot bridge. The route being that part of Footpath No. 14, Cheriton Fitzpaine that crosses Peach Hayne farmland. An allowance of £25 was given for the footpath.

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

In the Cheriton Fitzpaine parish council submissions in September 1950, Footpath No.14 was surveyed by Messrs M Paddon, F Pike, F Mildon and W Cheriton and described as 'Peach Hayne to Cotton Lane near Cotton Farm Good Path Field gates in excellent order'. Whether the path required in future was answered 'Yes', the grounds for believing the path to be public were 'right of way from time immemorial' and the path was repaired in the past by 'occupants of adjoining land'. The path was walked by a rural district council surveyor on 21 February 1951 and the form was ticked that the route was a public footpath and accommodation road. He described the right of way from the reverse direction as 'this path starts about halfway from *Comans?* Cross & Hayne Cross accommodation road & across 3 pasture fields to Peach Hayne & accommodation road to join Ball Hill road No. 641'.

The county surveyor's notes amended the path description to 'FP NO. 14 Ball Hill – Cotton Lane Starts from the county road at Ball Hill about 150 yards north of Ball Farm, along a Private Accommodation Road (not repairable by the inhabitants at large) to Peach Hayne, then across three pasture fields until it joins Cotton Lane'.

On the maps completed by the parish council at the time of their survey, Footpath No. 14 was only shown for the section between Peach Hayne and Cotton Lane crossing the three fields along the pecked line printed on the map and labelled FP. The county council have then annotated the lane from the county road to Peach Hayne '? Private Accomm Rd (to be marked) and a pencil line was added to the map along the lane leading to Peach Hayne and numbered 14. Cotton Lane was labelled 'Public Accomm Rd' and the line of the footpath was not extended along Cotton Lane. The path was included on the draft map and no objections were received to the path's inclusion in the draft or provisional definitive maps and the path was subsequently recorded as Footpath No. 14, Cheriton Fitzpaine on the definitive map.

In the Instructions issued by the County Council at the time of the Parish Survey, it clearly stated that lanes considered to be a public accommodation road were not to be shown on the definitive map and if marked will generally have to be deleted from the Survey. This meant that public footpaths joining the lanes called public accommodation roads were usually shown as stopping at the lane whereas public footpaths running along lanes called or considered to be private accommodation roads would be shown on the definitive map as running along those lanes as was the case with the County Council adding the section of Footpath No. 14 to the map prepared by the Parish Council.

## **9. Devon County Council Uncompleted Reviews of 1968, 1977 and 1997**

Prior to the 1968 review, the County Council had made a file note 'FP 14 ends at Cotton Lane – not CR What is it?'

Letters (no copies on file) were sent to the parish council on 26 June & 26 August 1968 and the parish clerk replied on 8 October 'The Parish Council have studied the map in detail & have instructed me to state that there are no public rights of way to be added to the map as it now stands.'

The County Council wrote in May 1970 stating 'Footpath 14. This path ends at Cotton Lane which is not a public highway. The public right of way presumably continues along Cotton Lane northwards and/or southwards to the County road at each end. Would the owners agree?'

The Parish Council clerk replied 'I am instructed to inform you that my council consider that both of the footpaths you mention (Footpaths No 6 & 14) are Roads of convenience to the owners of the land through which they pass. I am asked to point out that some years ago the owner of Higher Burrowcombe, obstructed path number 6 and despite the fact that my Council took the matter up at the time with both the Crediton and the Devon County Council, the footpath is still blocked. My Council can see no point in pursuing the matter as this path is never used by the public and as far as they can see is never likely to be. The same applies to footpath number 14.'

The County Council wrote to the Crediton Rural District Council asking if they had any record of the complaint as they did not. No reply seems to have been received from the District Council.

Following a parish meeting held in March 1978, as part of the 1977 review, the Parish Council suggested that four additional paths should be shown on the Definitive Map which included the path described 'From Ball Hill to Peach Hayne & Cotton & Coleman's Cottages'. This would describe the route of the recorded section of Footpath No. 14 and the proposed continuation northwards to the county road at Coleman's Cottages.

The letter issued by the County Solicitor to introduce the 1977 review of the definitive map included a schedule which also made reference to public accommodation roads and advised that 'these were a very unusual sort of road and none was shown on the original Definitive Map. In Devon the term is used to define a road over which the public has complete freedom of access but which the landowner rather than the County Council is liable to maintain'.

In the 1997 review two proposals for change were made, proposal 2 being the variation of particulars of Footpath No. 14 for which a correction was proposed to extend the footpath to the main road at Coleman's Cottages. The consultation map of suggestions for change was circulated at that time and some responses were received from landowners.

## **10. Vestry and Parish Council Minutes**

The Vestry minutes from 1832 to 1920 and Parish Council minutes from 1947 to 1981 are held at the Devon Heritage Centre. The Parish Council minutes from March 2003 are held by the parish clerk and the other years' minutes appear to have been lost.

### **Vestry Minutes**

There was no reference in these minutes to Footpath No, 14 or Cotton Lane.

### **Parish Council Minutes.**

There are some references to either Footpath No. 14, Cheriton Fitzpaine or a right of way that would appear to describe Footpath No. 14 and/or the proposed continuation.

### **18 May 1970**

Rights of Way. A letter from the Clerk to the Devon County Council concerning two footpaths, No 6 and No 14 on the definitive map was discussed. It was agreed that it would be difficult to enforce these Rights of Way which were really Roads of Convenience to the owners of property nearby. It was decided that the Clerk should point this out in a reply to the DCC.

### **20 May 1975**

Matters Arising Rights of Way The Clerk read correspondence from the county engineer asking him to write to the landowners concerned with Footpath No. 11 and Footpath No. 14. This prompted a long discussion as to the responsibilities of the Parish Council re footpaths and it was finally decided to instruct the Clerk to ascertain the legal position and to report at the next meeting.

11 June 1975

Matters Arising - Rights of Way The Clerk reported that he had written to the to the DCC for a decision on the legal position re Rights of Way and was awaiting a reply.

15 July 1975

Matters Arising - Rights of Way The Clerk read letters from the DCC engineers and from Devon Association of Parish Councils explaining that the Parish Council was not legally responsible for Rights of Way this being the prerogative of the Highway Authority. The Clerk was now empowered to write to the landowners concerned re Footpath 11 and Footpath 14 as requested by the county engineer requesting that paths be put in order, emphasising their responsibilities under section 134 of Highways Act 1959.

16 September 1975

Matters Arising – Rights of Way Footpaths 11 & 14. The County Footpath warden had visited the landowners concerned, Messrs Tonkin and Legge of Venn and Cotton Farms and had reached agreement with them as to maintenance. Mr Tonkin was present and said he was quite satisfied with the outcome.

19 May 1977

Correspondence – Rights of Way The Clerk had received the Definitive map from the district engineer and this would be available in the Post Office if requested. He would acquaint the District Engineer re the routing of Footpath No. 14 which had been agreed on.

14 June 1977

Matters Arising – Rights of Way A letter from the District Engineers dated 24 May 1977 was considered. The persons concerned with Footpaths 8, 9 & 14 had received letters from him. Mr A R Paddon Footpath 14 reported that he was satisfied.

20 September 1977

Matters Arising Rights of Way Letter received from the District Engineer re Footpaths 8 & 14. Agreed to endorse action to reroute these paths.

3 March 1978

Correspondence Diversion of Footpaths 8 & 14 – diversion applications made to the Tiverton District Council solicitor.

## **11. Aerial Photography**

1946-1949, 1999, 2006-2007 and 2011 aerial photography

The aerial photograph from 1946-1949 shows a defined lane running south from Coleman's, with larger hedgerow trees in the section south from Cotton Farm.

By 1999 part of the lane south of Cotton Farm has had one side hedge removed and part of the lane northwards to Coleman's is obscured by the large trees on the east side boundary.

In 2006-2007 and 2011 the section of Cotton Lane north to the county road at Coleman's can be seen as a surfaced track. One side of the hedge is visible along the lane south of Cotton Farm.

## **12. Land Registry**

The section of Cotton Lane running north for 670 metres from the stream south of Cotton Farm to the end of the registered section by Colemans is included in the registered title for Cotton Farm. The top northernmost 26 metre section of Cotton Lane by the county road at Colemans, is unregistered and not registered to Cotton Farm or Colemans. The title for Cotton Farm does not make any reference to a right of way for the property over this unregistered section of the lane.

The section of Cotton Lane running south for 360 metres from the stream south of Cotton Farm to just north of the farm yard at Great Hayne is not included in the title for Great Hayne, who own the fields on the east side of Cotton Lane. However, as Peach Hayne is not registered, it is not possible to know if this section of lane is or is not included within that land belonging to Peach Hayne on the western boundary of the lane.

## **13. User Evidence**

A local resident, Mr Butt, advised that he had lived in the parish for 55 years and that vehicles had used the track referred to as Cotton Lane up until the mid 1960s. The lane continues through from Coombe Lane to Hayne Cross and is a byway (open to all traffic).

No user evidence forms have been received during the review.

## **14. Landowner Evidence**

All the landowners and occupiers adjoining the recorded footpath and proposed continuation were contacted and informed of the proposed change to Footpath No. 14, Cheriton Fitzpaine.

Mr R J Legge of Cotton Farm responded in 1998 but no response was received to the current consultation. In 1998 Mr Legge advised that he believed the way to be a footpath for 40 years and would see about one person a year. He had never stopped anyone or erected notices.

Mr S J Paddon of Peach Hayne Farm also replied in 1998, confirmed that the proposed continuation did not cross his land and provided no further information. No response was received this time.

No response was received from the owner/occupier of Coleman's.

## **15. Rebuttal Evidence**

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

## **16. Discussion**

Footpath No. 14, Cheriton Fitzpaine is an anomaly as there is no logical reason for the footpath to terminate where it does as it does not lead to a view point or any other place of public interest. As the footpath bears north east after leaving Peach Hayne Farm, it would seem logical that the original users of the footpath continued northwards along Cotton Lane, rather than south along Cotton Lane to Great Hayne.

The continuation of Footpath No. 14 to the county road is supported by Cheriton Fitzpaine Parish Council, Devon Ramblers and a local resident/ walker. The Devon Green Lanes Group also supported the continuation but also advised that there is sufficient evidence to show that the complete length of Cotton Lane should be recorded as a public right of way, possibly a restricted

byway, as other lanes called Public Accommodation Roads in Morchard Bishop parish have now been recorded as restricted byways through the Definitive Map Modification Order process.

To recommend that the continuation of Footpath No. 14, Cheriton Fitzpaine be added to the definitive map it is necessary to show that a public right of way subsists or is alleged to subsist at common law. Rights of way, with some exceptions, come into existence because they have been dedicated to the public by the owners of the land over which they run. If there is no evidence of an express dedication, an implication of dedication may be shown if there is evidence from which it may be inferred that a landowner has dedicated a highway at some time and that the public has accepted the dedication. Evidence of use by the public will usually show acceptance of the right of way and user and documentary evidence can indicate the status.

The early OS and Cassini Map reproductions of the OS maps record Cotton Lane as a defined lane running from Coleman's to Great Hayne. The OS 25" late 19<sup>th</sup> century map records a bench mark along the lane and the route appears ungated where it joins the county road at Coleman's. When the parish survey was completed for the Definitive Map in the 1950s, the lane appeared to have existed throughout but from shortly thereafter it appears that one side of the hedge was removed on the section south of Cotton and by 1970 the west side of the hedge between Cotton Farm and Coleman's Cottages had also been removed.

In the Tithe Map of 1838 Cotton Lane is shown in a manner similar to what are now county roads, and the apportionment number of the lane is included in the list of Roads and Waste.

The Finance Act map colouring does not break across Cotton Lane as it does at the county roads. The field book entry for Cotton Farm includes an allowance of £25 for a 'footpath' but it is not known if this is for the part of the recorded section of Footpath No. 14 across the two fields at Cotton Farm, for another footpath shown on the OS 1910 base map from Cotton to Higher Holn or for Cotton Lane itself. The hereditament for Peach Hayne Farm records a footpath in the ordnance numbers that are crossed by Footpath No. 14, Cheriton Fitzpaine.

These maps confirm the physical existence of the lane that would be the continuation of Footpath No. 14 since at least 1809 and that it initially appears to have been an ungated through route that would have been available for the public to use. The Tithe Map records Cotton Lane in a similar manner to present day county roads. The presence of Footpath No. 14 was recorded on the 1880 OS 1<sup>st</sup> edition map and was acknowledged as a public right of way in the Finance Act field book for Peach Hayne and probably Cotton Farm.

In the Parish Survey of Public Rights of Way in 1950, Footpath No. 14 was included and the parish advised that it was believed to be a right of way from time immemorial. The map completed by the parish only recorded the footpath across the three fields between Peach Hayne Farm and Cotton Lane and the county council added the path to the access lane leading to the Peach Hayne which was called a private accommodation road in the path statement. Cotton Lane was annotated as a public accommodation road on the map but not described as such in the path statement and Footpath No. 14 was not recorded along the lane.

As part of the 1968 review the County Council wrote to the Parish Council in 1970 and suggested that the right of way should be extended along Cotton Lane to the county road. The clerk responding in connection with Footpath No. 6, Cheriton Fitzpaine replied that this footpath was never used by the public and advised that the same applied to number 14.

In May 1975 the Parish Council received correspondence from the county engineer regarding Footpath No. 14 although the content is not known. However, on receiving advice from the County Council and DAPC, the clerk wrote to the landowner concerned with Footpath No. 14 and

requested that the path be put in order. At the next meeting it was reported that agreement had been reached with Mr Legge as to maintenance but it is not known if this refers to the section of Footpath No. 14 across the fields at Cotton Farm or Cotton Lane. The correspondence received in 1977 appears to relate to the subsequent diversion of Footpath No. 14 at Peach Hayne.

In the 1977 review the Parish Council proposed the addition of a public right of way from Ball Hill to Peach Hayne & Cotton & Coleman's Cottages, which describes the route of Footpath No. 14 and the proposed continuation to the county road via Cotton Lane.

The aerial photography from 1946-49 show Cotton Lane with the hedges trimmed on the proposed continuation section of the lane. The lane between points A and just south of point C is registered to Cotton Farm although the final 25 metres of Cotton Lane to its junction with the county road are unregistered.

Mr Legge of Cotton Farm, the landowner of the land crossed by the proposed extension did not reply to the recent consultation but responded in 1998 and advised that he believed the way to be a footpath for over 40 years and saw occasional walkers.

The apparent error/omission of Footpath No. 14, Cheriton Fitzpaine being recorded to start and finish on a county road is an anomaly. It is considered that when the footpath survey was completed in 1950 it was the Parish Council's opinion that the public using the footpath then joined the lane and continued along it to the county road. The evidence reviewed indicates that the lane was considered to be a public accommodation road, a type of road that was used by the public but maintained by adjacent landowners. The proposed continuation of the footpath is to proceed north along Cotton Lane, from points A to C on the plan and it is considered that the documentary evidence is sufficient, when taken together as a whole, on the balance of probabilities, to show that a public footpath can be reasonably alleged to subsist along this section of the lane.

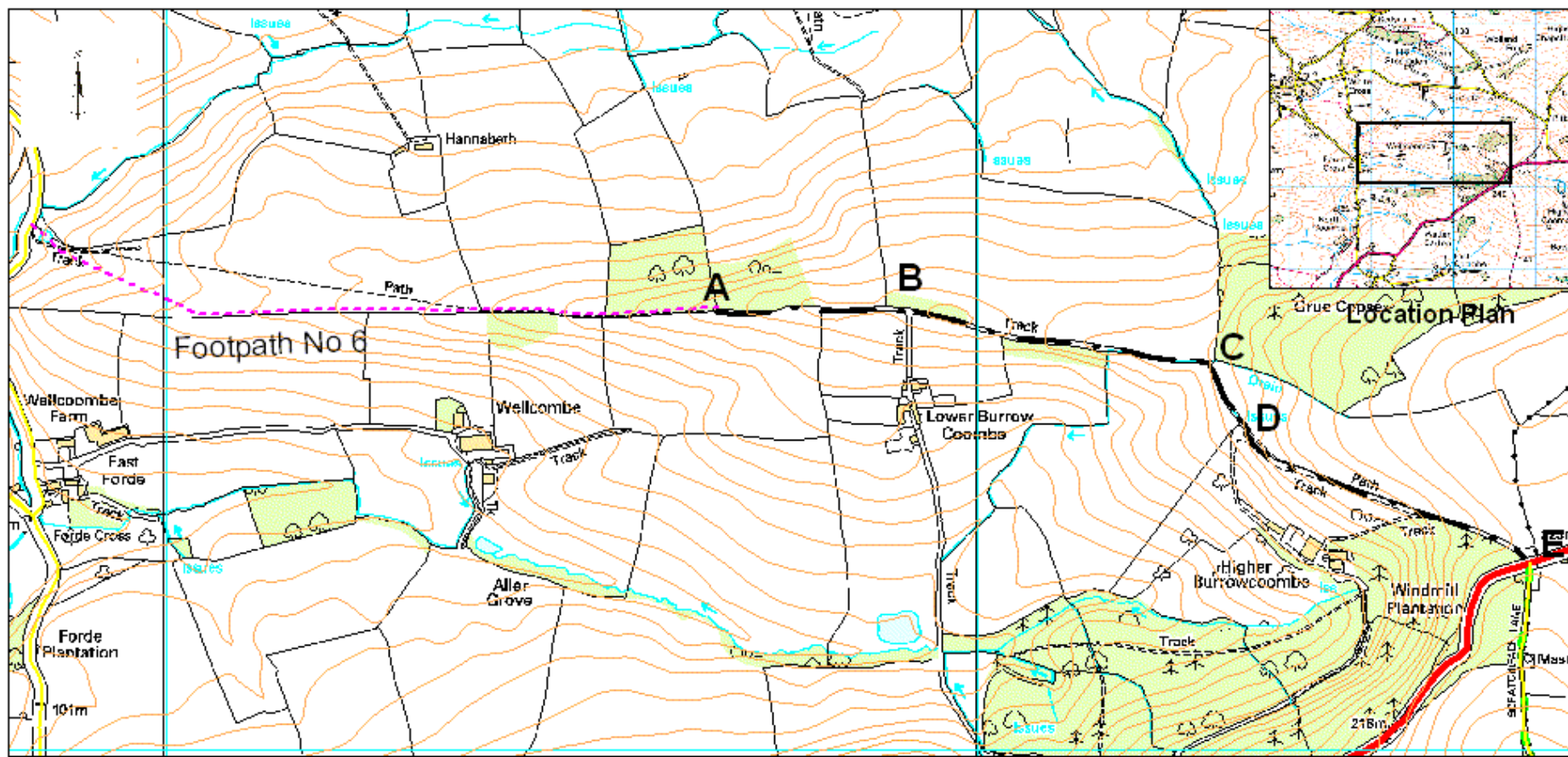
The Devon Green Lanes Group consider that the evidence calling the lane a Public Accommodation Road is sufficient to support the whole length of lane from Great Hayne north to the county road at Coleman's to be a restricted byway, having been a general purpose public highway. Although the evidence is similar to the routes in Morchard Bishop that were Public Accommodation Roads, that are now recorded on the definitive map as a restricted byways, there was additional evidence for those routes; such as the inclusion of the lanes in the list of roads to be taken over by the County Council in 1944 and evidence of use by the public of those lanes. Where the evidence only showed public money being spent on a footbridge on a route, that lane was only confirmed as a public footpath. It is therefore considered that the evidence discovered to date is insufficient to recommend the recording of the whole length of the lane as a public right of way at this time.

## **17. Conclusion**

It is considered that the evidence is sufficient to show that at some time in the past a public right of way, considered to be at least a public footpath, has been dedicated at common law along the section of Cotton Lane from the junction with the recorded section of Footpath No. 14, Cheriton Fitzpaine northwards to the county road at Coleman's.

It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement to add a continuation of Footpath No. 14, Cheriton Fitzpaine between points A and C so that the path connects to the county road at Coleman's as shown on drawing number HTM/PROW/12/78a





Map Ref: SS 8705 8805 8905

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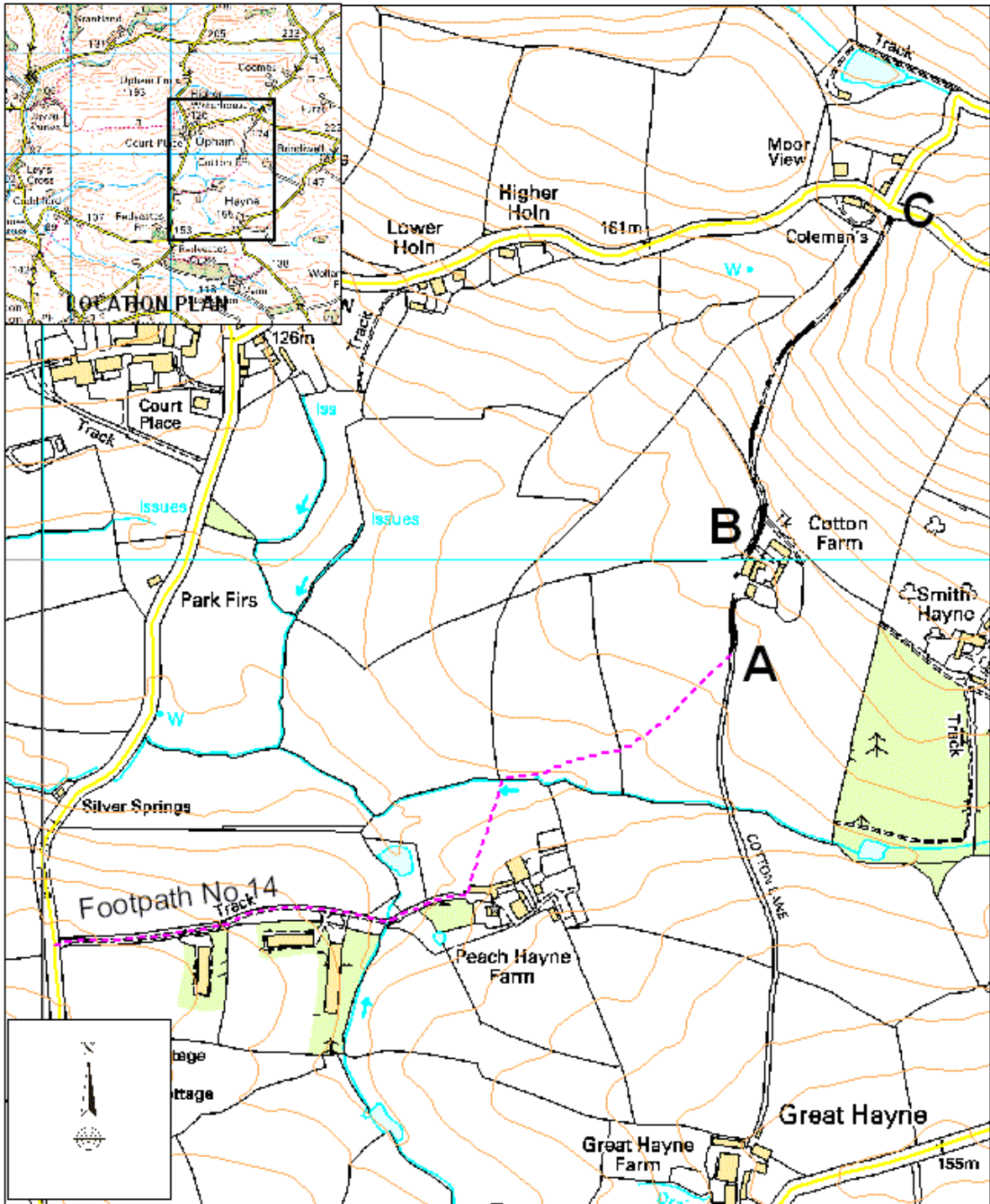
**DEVON COUNTY COUNCIL  
DEFINITIVE MAP REVIEW - CHERITON FITZPAINE  
SUGGESTION 1 - FOOTPATH NO 6  
CONTINUATION OF FOOTPATH TO COUNTY ROAD**

drawing number	HTM/PROW/12/77
date	Sept 2012
scale	1:7,500 (at A4)
drawn by	TW

<u>Notation</u>	Proposed Addition of Footpath	existing public footpaths
	Footpath No. 6 A - B - C - D - E	(approx 1100 metres)
	Continuation	

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





Map Ref SS 8807, 8808

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**DEVON COUNTY COUNCIL**  
**DEFINITIVE MAP REVIEW - CHERITON FITZPAINE**  
**SUGGESTION NO 2 - FOOTPATH NO 14**  
**CONTINUATION OF FOOTPATH TO COUNTY ROAD**

drawing number HTM/PROW/12/78a  
 date Sept 2012  
 scale 1:6,000 at A4  
 drawn by TW

Notation Proposed Addition of Footpath  
 Footpath No. 14 A - B - C (510 metres approx) **— · —**  
 Continuation Existing Public Footpaths **- - -**

**Devon**   
 County Council  
**Lester Willmington**  
 HEAD OF HIGHWAYS & TRAFFIC MANAGEMENT