

**Definitive Map Review
Parish of Sandford**

Report of the Head of Highways, Capital Development and Waste

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. 21, Sandford to confirm that the route of the footpath continues across Combe Lancey Lane to Footpath No. 22, Sandford A - B as shown on drawing number HTM/PROW/13/9 (Suggestion 1);
- (b) an Order be made to modify the Definitive Map and Statement to vary the particulars of Footpath No. 4, Sandford to confirm that the route of the footpath continues north westwards to connect with the county road at Lower New Buildings A – B – C as shown on drawing number HTM/PROW/13/10 (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 Sandford in Mid Devon. Suggestions 3 to 9 will be brought to a subsequent committee.

2. Background

The original parish survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in autumn 1950, proposed 43 footpaths for consideration as public rights of way. Footpath Nos. 11, 26, 27, 35 & 43 were deleted as these were considered to be private footpaths and 38 footpaths were therefore included on the draft and provisional maps. As no objections to their inclusion or comments regarding omissions appear to have been received, the 38 footpaths were recorded on the Definitive Map and Statement for Sandford published, as part of 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 after holding a parish meeting and considering the definitive map, no evidence was produced as to any change in the rights of way shown thereon.

In 1970-71 there was correspondence regarding the addition of a footpath at New Buildings. It was decided that this would be looked at in the next review (1977). Footpath No. 44, Sandford was subsequently added to the definitive map by modification order in 1990. The Limited Special Review of Roads Used as Public Paths (RUPPS), carried out in the 1970s, did not affect Sandford.

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

Mid Devon District Council (Footpath No. 17, Sandford) Diversion Order 1989
Mid Devon District Council (Footpaths No. 14 & 15, Sandford) Diversion Order 1992
Devon County Council (Footpath No. 44, Sandford) Modification Order 1990
Devon County Council (Footpath No 26, Sandford) Modification Order 2001
Devon County Council (Restricted Byway No. 45, Sandford) Modification Order 2004
Devon County Council (Footpath No. 20, Sandford) Diversion Order 2004

The last Definitive Map review was initially opened in Sandford in 1996 and a consultation map of proposals for change was published in March 1997 but was not progressed further at that time. The review was reopened with a parish public meeting in October 2012. The consultation map of 9 suggestions was published in April 2013, to include a number of routes proposed by a user group representative in 1997 and Schedule 14 applications made in 2005 by another user group.

3. Proposal

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results in respect of Suggestions 1 and 2 only.

County Councillor Cllr Michael Lee	-	no response to suggestions 1 and/or 2
County Councillor Cllr Margaret Squires	-	no response to suggestions 1 and/or 2
Mid Devon District Council	-	no response to suggestions 1 and/or 2
Sandford Parish Council	-	no response to suggestions 1 and/or 2
British Horse Society	-	no response to suggestions 1 and/or 2
Country Landowners' Association	-	no response to suggestions 1 and/or 2
National Farmers' Union	-	no response to suggestions 1 and/or 2
Ramblers' Association	-	no response to suggestions 1 and/or 2
Trail Riders' Fellowship	-	no response to suggestions 1 and/or 2
Devon Green Lanes Group	-	response received

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 Sandford 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, kissing 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.

11. Public Health Impact

Amendments to the Definitive Map will contribute to the County Council's Health and Well Being Agenda.

12. 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.

13. Reasons for Recommendation/Alternative Options Considered

To progress the parish by parish review of the Definitive Map in the Mid Devon.

David Whitton
Head of Highways, Capital Development and Waste

Electoral Division: Newton St Cyres & Sandford

Local Government Act 1972: List of Background Papers

Contact for enquiries: Tania Weeks

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Tel No: 01392 382833

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

tw280513pra
sc/cr/dmr sandford
02 060613

Appendix I To HCW/13/11

Suggestion 1 Proposed continuation of Footpath No. 21, Sandford to confirm that the footpath extends northwards across Combe Lancey Lane to join Footpath No. 22, Sandford (GR SS 8227 0146 to SS 8226 0146). This suggestion is included as on the Definitive Map published in 1958, the footpath is not recorded as passing across the lane between the two footpaths.

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement to vary the particulars of Footpath No. 21, Sandford to confirm that the route of the footpath continues across Combe Lancey Lane to connect with Footpath No. 22, Sandford A - B as shown on drawing number HTM/PROW/13/9.

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 1996 it was noticed that part of Footpath No. 21, Sandford had been omitted from the Definitive Map and Footpath Nos. 21, and 22, Sandford did not connect across Combe Lancey Lane. It is understood that walkers have crossed the lane when using the footpaths from south to north or vice versa since the path came

into existence and that this anomaly needed rectifying. Combe Lancey lane is a private access leading lane to Frogmire and Combe Lancey only and no evidence has been discovered or received to indicate that this is, has been or should be a public right of way.

3. Description of the Route

Footpath No. 21, Sandford approaches the lane across a pasture field from the south and walkers then go over a stile, across the surfaced lane and over a second stile into a pasture field crossed by Footpath No. 22, Sandford.

Photographs of the route across the lane are included in the backing papers.

4. Consultations

The following responses were received

Devon Green Lanes Group has no objection to the proposal. They mention that as the footpath was not recorded across the lane, this would seem to indicate that the lane itself was regarded at some time in the past as being public. Their response is therefore without any prejudice to the evidence of any higher rights along the lane which may come forward.

Mr Michael Elliot, a resident of Sandford, advised no objection to the proposal.

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 line of the recorded footpaths.

OS Post War Mapping 1:2:500 scale 1971

A doubled pecked line, labelled path, is shown along the route taken by walkers using Footpaths No. 21 and No. 22, Sandford.

6. Sandford Tithe Map 1839

On the Sandford Tithe Map the routes of Footpath Nos 21 and 22 are not shown. The fields crossed by the footpaths north and south of the lane are recorded as apportionment numbers 1382 and 1385, part of Frogmire Farm owned and occupied by Sir Humphrey Davie and described as pasture and arable fields. Combe Lancey Lane has two apportionments numbers, the west end 1381, part of Combe Lancey described as House, Gardens etc.; occupied by John Upham. The east end of the lane is numbered 1957, part of Frogmire Farm, described as 'lane' and state of cultivation 'road'.

It is relatively unusual to see footpaths marked on Tithe maps, although sometimes they may be mentioned in the apportionments.

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

In the Sandford parish meeting submissions of October 1950, one survey form was completed for both Footpath No. 21 and No. 22. The footpaths were surveyed by Mr Lane and Mr Madge, the parish clerk. The paths were described as being regularly used by the public and that tenant kept stiles in repair. The form remarked 'used chiefly in summer by Crediton people'. The parish's description of the route describes '...follows the hedge to Combe Lancey Lane which is entered by a stile. Crossing the lane the path enters a grass field by a hunting gate...'

On the map completed by the parish survey, the line to illustrate the route does cross Combe Lancey Lane, but the line marked on the conclusive Definitive Map of 1958 did not.

A surveyor of the Crediton District Council walked the path in February 1951 and described the two paths separately. The county surveyor subsequently amended the descriptions. The relevant section of the Definitive Map Statement for Footpath No. 21, Sandford reads '... then close to hedge of arable field to a stile leading on to Combe Lancey Lane to join Path No. 22. For Footpath No. 22, Sandford the statement reads 'Continuation of Path No. 21 across Lane, through hunting gate over footbridge, follows close to hedge of pasture field ...'.

8. Devon County Council Uncompleted Reviews of 1968, 1977 & 1996

No suggestions for any changes to Footpath No. 21 or Footpath No. 22 were made by the parish council under either of these two uncompleted reviews. In the 1996 review the suggestion was included as proposal 3.

9. Vestry and Parish Meeting Minutes 1828 - 1975

The Vestry Meeting minutes from 1828 - 1900 are held at the Devon Record Office.

The Parish Council minutes from 1896 – 1975 are held at the Devon record Office.

No reference to either Footpaths No. 21 or Footpath No. 22, Sandford or Combe Lancey Lane has been found in the minutes.

10. 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.

11. Land Registry

Land Registry records confirm that the section of lane crossed by the footpath is owned by Mr M & Mr F Maddock of Combe Lancey Farm.

12. 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 crossing Combe Lancey Lane from Footpath No.21, Sandford to Footpath No. 22, Sandford and vice versa since the routes were first used by the public.

13. Landowner Evidence

All the landowners/occupiers adjoining the footpath were contacted and informed of the proposed change to Footpath No. 21, Sandford.

Messrs Maddock of Combe Lancey replied that the link between Footpath Nos 21 and 22 is not unreasonable. They are however, concerned that walkers consider the lane to be a public right of way and they have previously stopped and spoken to users on the lane west and east of the small section of lane crossed by the footpath.

Mr Trick of Frogmire Farm advised seeing occasional walkers and commented that it should be made clear that Combe Lancey Lane is itself not a right of way – only allowed to cross from point A to Point B.

No other responses were received.

14. Rebuttal Evidence

No evidence in rebuttal of the suggested change was received.

15. Discussion

The path survey form completed by the Parish Council representatives in 1950 describes the footpath as crossing the lane and on the map the lines drawn along the route for the footpaths is shown across the lane. The footpaths were described as having been in regular use by the public in the 1950s and the route of the footpaths is shown on the OS edition 25” second edition mapping of 1905. It is considered that since their first use the footpaths have always been used and connected by crossing the lane.

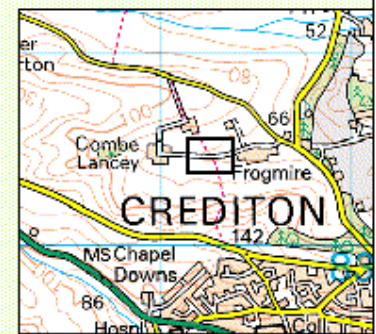
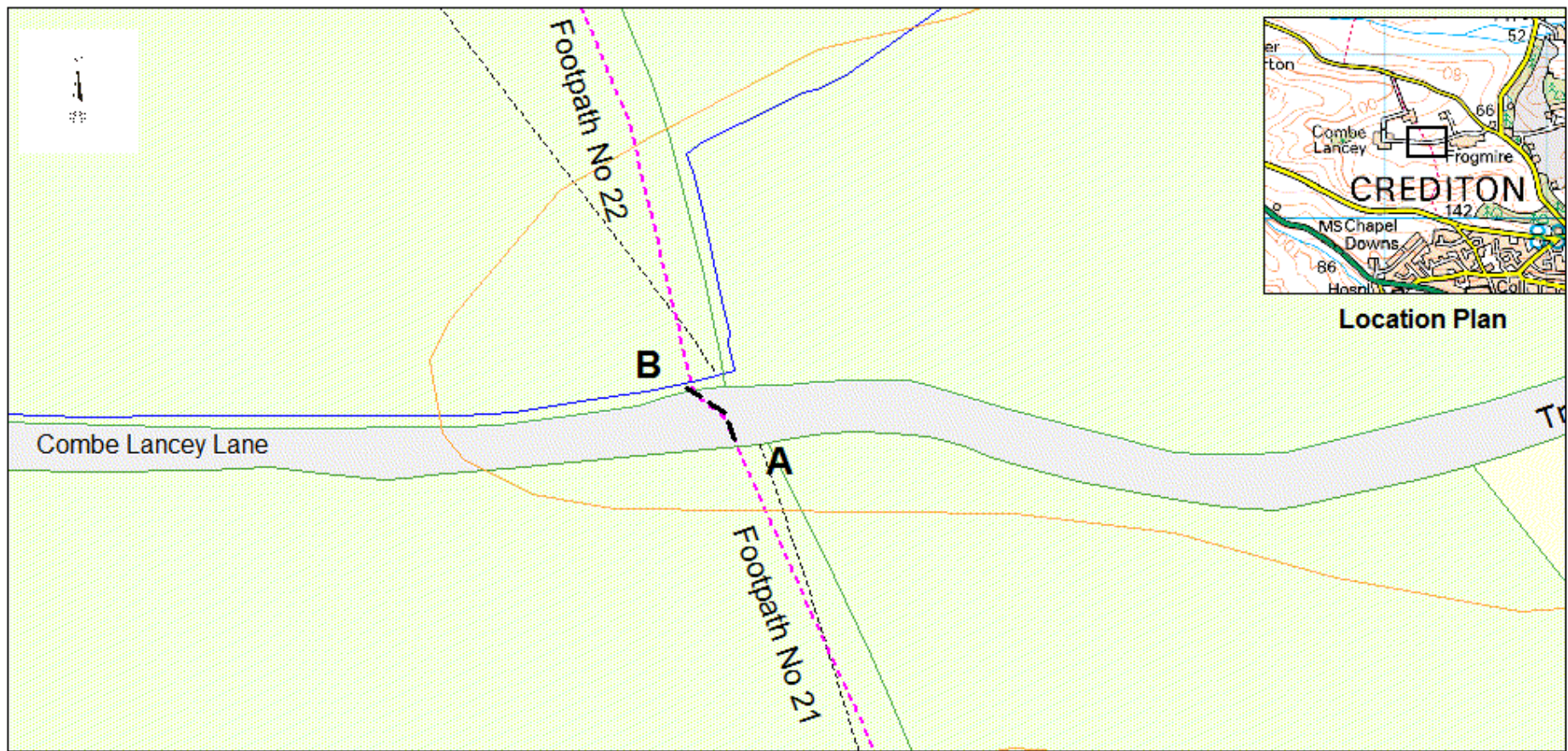
The route of the footpaths is shown on the 1905 and 1971 large scale OS mapping and on both maps the pecked lines do not extend across Combe Lancey Lane.

The failure of the definitive map to show the footpath extending across the lane is considered to be a drafting error in the preparation of the Map, possibly due to the draftsman colouring the definitive map in a similar style to the OS maps, as these did not show the pecked lines of the footpath/path continuing across the lane. The statement for Footpath No. 22, Sandford refers to that footpath being a continuation of Footpath No, 21, Sandford across the lane. The line of a public right of way on the Definitive Map should be shown along the whole length of the right of way and therefore the anomaly should be resolved by correcting this mistake to extend Footpath No. 21, Sandford across the lane.

No evidence has been discovered or received to support Combe Lancey Lane itself being a public right of way apart from the section proposed that links the two recorded footpaths across the lane.

16. Conclusion

It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement to vary the particulars of Footpath No. 21, Sandford to confirm that the footpath extends northwards across Combe Lancey Lane to join Footpath No. 22, Sandford.



Location Plan

Map Ref: SS 8201

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DEVON COUNTY COUNCIL DEFINITIVE MAP REVIEW - SANDFORD
SUGGESTION 1 - FOOTPATH NO 21 (22)
CONTINUATION OF FOOTPATH 21 ACROSS COMBE LANCEY LANE
TO JOIN FOOTPATH NO 22

drawing number	HTM/PROW/13/9
date	Feb 2013
scale	1:750 (at A4)
drawn by	TW

Notation Continuation of Footpath No. 21 A - B (approx 9 metres) -----
 existing public footpaths - - - - -

Lester Willmington
 Head of Highways & Traffic Management



Suggestion 2 Proposed continuation of the west end of Footpath No. 4, Sandford, south west then north westwards for 125 metres to the end of the county road and the north eastern end of Footpath No. 44, Sandford at Lower Newbuildings (GR SS 7992 0357 to SS 7983 0364). Also the proposed diversion of the north end of Footpath No. 4 from a route 146 metres northwards to West Henstill Farm to a route 154 metres eastwards along the drive to the county road opposite the west end of Footpath No. 5, Sandford (from the line GR SS 8014 0371 to SS 8009 0385 to the line from SS 8014 0371 to SS 8028 0371). This suggestion is included as Footpath No. 4, Sandford does not currently connect to a county road at either end.

Recommendation: It is recommended that an Order be made to modify the Definitive Map and Statement to vary the particulars of Footpath No. 4, Sandford to confirm that the route of the footpath continues roughly north westwards to connect with the county road at Lower New Buildings points A – B – C as shown on drawing number HTM/PROW/13/10 (Suggestion 2). The diversion of the section of Footpath No. 4, Sandford at West Henstill, from points D to E to D to F, will be dealt with under delegated powers which will resolve the issue of connection to a public highway at that end of the path.

1. Background

The suggestion is included as Footpath No. 4, Sandford does not connect to a county road at either end. Public Rights of Way should either join or connect to another public highway which could be a road or a public right of way. The anomaly was noticed by the County Council in the 1968 uncompleted review.

2. Description of the Route

The proposed continuation (and the route currently used by the public) of Footpath No. 4, Sandford would mean that the path starts from the junction of the end of the county road at Lower New Buildings in Sandford and the north east end of Footpath No. 44, Sandford (point C). The footpath then follows a narrow lane south eastwards, set below the adjoining hedge banks. At the end of the lane (point B) the path bears generally north eastwards across fields to the private farm access drive to West Henstill. The current recorded route then proceeds northwards to west of the farm yard where it stops (point E) and is not connected to the highway. The route currently used by the public continues eastwards and follows the drive to the county road (points D to F).

Photographs of the section of route proposed to be added are included in the backing papers.

3. Consultations

The following responses were received.

Devon Green Lanes Group has no objection to the proposal but as for the previous suggestion this is without any prejudice should evidence of higher rights come forward along the section of lane. This comment would also apply to the proposed diversion of the east end of the route.

Mr Michael Elliot, a resident of Sandford, advised no objection to the proposal.

4. Documentary Evidence

Tithe Maps & Apportionments

Sandford Tithe Map & Apportionment

The route of the proposed continuation of Footpath No 4 is shown along a section of defined lane that ran from Lower New Buildings across to the county road leading to West Henstill. The lane has not been allocated a number and appears in a similar manner to other lanes that are now county roads.

Ordnance Survey and Other Maps

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

OS 1st Edition 25" to a mile 1890

This shows the old lane from New Buildings to Ridgeway's Cross as a defined lane with its own compartment number and area. The route of Footpath No. 4, Sandford is shown as a pecked double line labelled F.P.

OS Post War Mapping 1:2,500 scale 1971

By the 1971 mapping the majority of the northern side hedge of the lane had been removed and four fields on the north side of the lane incorporated into one. No line or track is shown on the map along the route crossed by Footpath No. 4, Sandford.

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

The survey form for Footpath No. 4, Sandford described as from West Henstill to Lower New Buildings was completed in 5th October 1950 after been surveyed by Mr Lane and Mr Madge. The form comments 'regularly used by the public' and 'very regularly used'. They described the route as starting at West Henstill Lane and later enters Lower New Buildings Lane by a field gate.

On the map completed by the parish the path is only shown coloured where the footpath crosses the fields between the lanes at New Buildings and West Henstill.

The path was walked by the rural district surveyor in February 1951 and the final statement for the footpath read 'Starts from New Buildings Lane, about 140 yards from Lower New Buildings, and proceeds north-west through field gate and close to hedge of an arable field and a pasture field to a field gate entering on to a private Accommodation Road (not repairable by the inhabitants at large) and along that road until it joins the end of the Unclassified County Road at West Henstill.

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

6. Devon County Council Uncompleted Reviews of 1968, 1977 & 1996

A County Council Sandford parish file note at the 1968 review noted that for Footpath No. 4, Sandford, neither end was a right of way. The note further commented 'West end of No. 4 incorrectly described. AMEND DESCRIPTION by deleting words "about 140 yards from Lower New Buildings" and inserting "at the end of the unclassified county road continuing along New Buildings Lane for about 140 yards". However, it seems that the required change was not raised with the parish council who advised that they had no evidence for any changes in the rights of way. The review was not completed by the County Council either and no changes were made to the Map or Statement at that time.

No reference to Footpath No. 4, Sandford was made by the County Council or Parish Council in the uncompleted 1977 review. In the 1996 review the suggestion was included as proposal 2.

7. Sandford Parish Meeting Minutes 1851 to 1967

The Parish Council minutes from 1896 – 1975 are held at the Devon record Office. There are some references in the Parish council Minutes between 1943 and 1955 that refer to a footpath or could be

different footpaths at New Buildings, although it is not clear whether they refer to Footpath Nos 3, 4 or 44 as these are all at New Buildings. The entries refer to repairing the footpaths, stiles and surfacing.

8. Aerial Photography

The 1946-1949 aerial photography shows the old lane in its entirety from New Buildings to Ridgeway's Cross, with the hedges trimmed. There does appear to be evidence of a track across the first field crossed by the footpath after leaving the lane. By 1999-2000 the lane has disappeared apart from the north western section leading from New Buildings to the start of the cross field section of Footpath No. 4, Sandford. The hedgerow trees on this section have grown much larger and obscure the lane's surface. In the later photograph from 2006-2007 the new access drive at West Henstill Farm has been constructed.

9. Land Registry

The section of lane from New Buildings to the west end of Footpath No. 4 is unregistered. The other land crossed by Footpath No. 4 and by the proposed diversion is part of West Henstill Farm owned by Mr C Hutchings.

10. User Evidence

No user evidence forms have been received in respect of use of Footpath No. 4, Sandford.

11. Landowner Evidence

The landowners and occupiers, whose land is crossed by or adjacent to Footpath No. 4, Sandford were contacted.

Mr & Mrs T Petherick of Hill View Farm, New Buildings have owned the land to the south west of the proposed continuation between points B and C for seven years. They consider the way to be a public footpath and see daily dog walkers.

Mr C Hutchings advised verbally that he had no objections to the proposed continuation of the footpath to New Buildings. He had thought that the footpath had already been diverted at West Henstill by the previous owner and Mr Hutchings was advised that he would be contacted separately in connection with the proposed diversion at the farm as this would be dealt with under delegated authority.

Ms J Conway of the converted barn at West Henstill, known as The Granary, advised that she had considered the proposed diverted section of Footpath No. 4 at West Henstill (from point D to Point E) to be a public footpath. In the four years she had lived there, walkers had been seen on a daily basis.

Mr S Shakespeare resides at Middle Henstill Cottages. He considers the way to be public and the path used by dog walkers and ramblers, approximately ten persons per month.

12. Rebuttal Evidence

No evidence in rebuttal of the suggestion was received.

13. Discussion

It was noticed by the County Council in the 1968 review that neither end of Footpath No. 4, Sandford connected with a county road. With regard to the western end it was suggested that the statement be amended to state that the path started at the end of the unclassified county road and went along the lane for 140 yards; rather than stating that the footpath started 140 yards from New Buildings where it

left the lane. This review was not completed and the anomaly was again noticed in the uncompleted 1996 review.

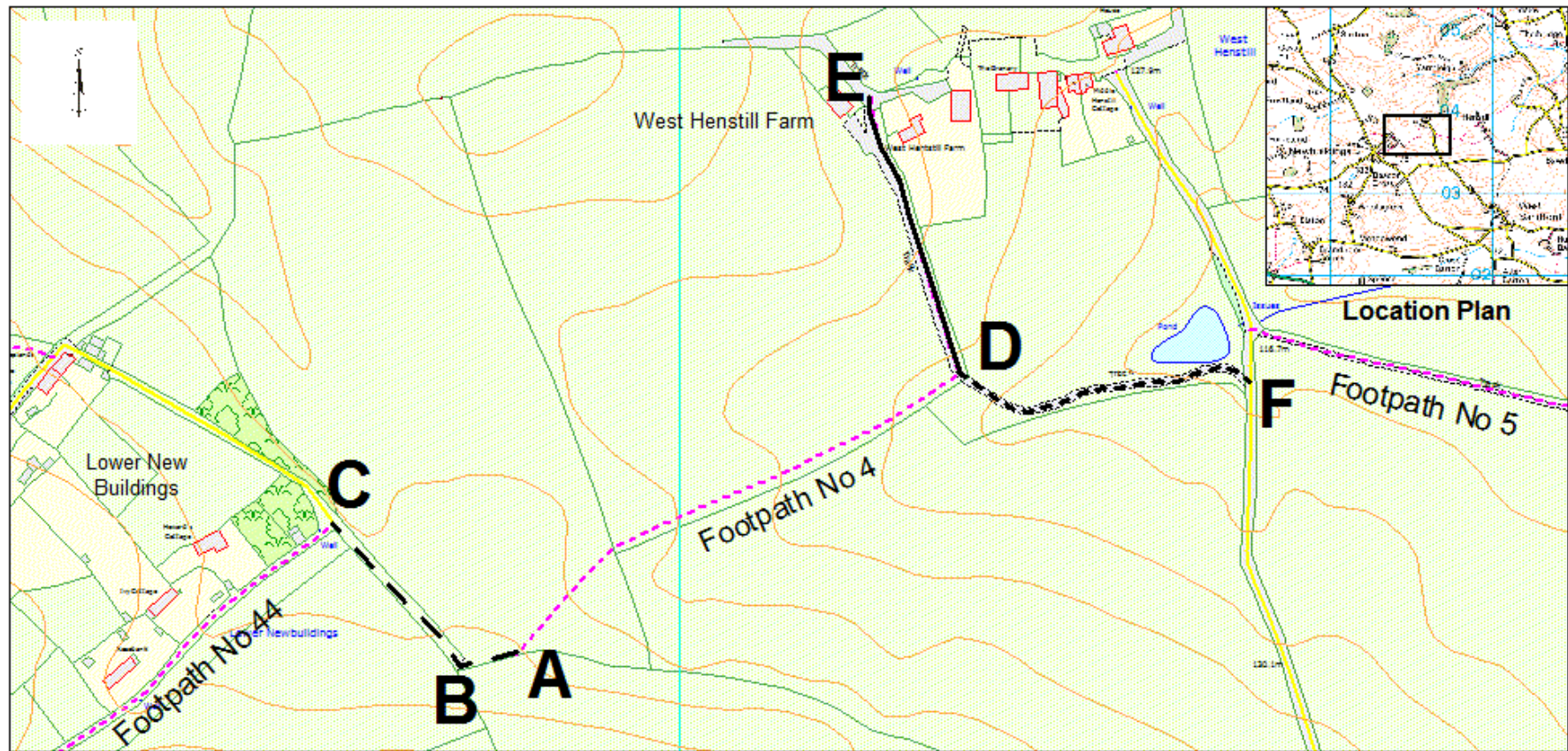
The path survey form describes the route as being from New Buildings to West Henstill and refers to the lanes at either end of the footpath as New Buildings Lane and West Henstill Lane. It appears that the parish councillors who completed the survey considered the two lanes (that were originally through lanes, as shown on the 1st Edition OS 25" map) to possibly have public rights as on the map and description of the route, they referred to the cross field section of the footpath only. The cross field section of the path being shown on the 2nd Edition 6" OS map used for the surveys. The lane at West Henstill is described as a private accommodation road and it was usual for public rights of way to be recorded along private accommodation roads whereas the instructions issued to the district councils specifically advised they should not be shown on public accommodation roads. The path statement refers to the route running along the lane to the county road at West Henstill but this section was not recorded on the map. New Buildings lane is not described as either a private or public accommodation road.

The path is understood to have been in regular use for many years and the lane accepted by the adjacent landowners to be part of the footpath, and advised to be in regular use today. There is no logical reason for the footpath to terminate at the edge of the field and public rights of way should connect with a county road or another public right of way.

The absence of a connection with the county road at both ends of the footpath is an anomaly and it is considered that an error was made, initially on the parish map; that was not corrected at that time and subsequently carried forward to the Definitive Map. The section of footpath along New Buildings Lane is believed to have been dedicated as a public footpath at the same time as the remainder of the footpath. This anomaly should be corrected and the path statement amended as suggested by the County Council in 1968.

14. Conclusion

It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement to vary the particulars of Footpath No. 4, Sandford to confirm that the footpath continues north westwards along the old lane, to join the end of the county road at New Buildings and Footpath No. 44, Sandford. The proposed diversion of the east end of Footpath No. 4, Sandford will be undertaken with a Public Path Order under delegated powers.



Map Ref: SS 7903 8003

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - SANDFORD
SUGGESTION 2 - FOOTPATH NO 4**

CONTINUATION OF FOOTPATH TO COUNTY ROAD & PROPOSED DIVERSION

drawing number HTM/PROW/13/10
 date Feb 2013
 scale 1:3,000 (at A4)
 drawn by TW

Notation Addition to Footpath No. 4 A - B - C (approx 125 metres) **— — —**
 Proposed Diversion
 To be Extinguished D - E (Appx 146 m) **———** To be Created D - F (Appx 154 m) **- - -**
 Existing public footpaths **-----**

Lester Willmington 
 Head of Highways & Traffic Management