

**Definitive Map Review 2012/14
Parish of Berrynarbor - Part Three**

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:

- (i) no Modification Order be made in respect of Proposal 5, as shown on drawing number HTM/PROW/14/3;**
- (ii) no Modification Order be made in respect of Proposal 6, as shown on drawing no. HTM/PROW/14/4.**

1. Summary

The report examines Proposals 5 & 6 which arose from the Definitive Map Review in the parish of Berrynarbor in North Devon District and is a continuation of the reports HCW/13/9 & HCW/13/67.

2. Background/Introduction

The original survey, under s. 27 of the National Parks and Access to the Countryside Act 1949, revealed nineteen footpaths and two bridleways in Berrynarbor, which were recorded on the Definitive Map and Statement, Barnstaple Rural District with the relevant date of 1 September 1957.

Other changes were noted in previous report.

3. Consultations

The current review began in March 2011 with a Public Meeting held in the in the Manor Hall attended by about 30 people.

Public consultations were carried out through January to March 2013 for the six proposals that were put forward following the parish meeting. The review and proposals were advertised around the parish, in the community shop, in the North Devon Journal and notices were placed at the ends of each proposal.

The responses were as follows:

County Councillor Andrea Davis	-	queried individual routes
North Devon District Council	-	no comment
Berrynarbor Parish Council	-	commented on individual routes
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Country Land & Business Association	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	no comment

Six valid proposals arose as a result of the consultation. Proposals 5 & 6 are considered in this report. These are the final set of proposal for Berrynarbor Parish.

4. Conclusion

It is recommended that no Order be made in respect of Proposals 5 and 6.

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

5. Financial Considerations

The implications/consequences of the recommendation have been taken into account in preparing the report. Financial implications are not a relevant consideration to be taken into account under the provision of the Wildlife and Countryside Act 1981. The Authority's costs associated with Modification Orders, including Schedule 14 appeals, the making of Orders and subsequent determinations, are met from the general public rights of way budget in fulfilling our statutory duties.

6. Sustainability Considerations

There are no implications.

7. Carbon Impact Considerations

There are no implications.

8. Equality Considerations

There are no implications.

9. Legal Considerations

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

10. Risk Management Considerations

There are no implications.

11. Public Health Impact

There are no implications

12. Options/Alternatives

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

13. Reasons for Recommendation/Alternate Options Considered

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

David Whitten
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Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence files	2012 - date	AS/DMR/BERRYNARBOR

as280114prw
sc/cr/dmr Berrynarbor part 3
03 hq 120214

Background to the Proposals

1. Basis of Claim

The Wildlife and Countryside Act 1981, Section 53 (2) (b) enables the surveying authority to make an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 15.

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.

Highway Act 1980 Section 31(6) States a landowner may deposit with the county council, a map and statement that indicates what way (if any) over the land he admits to having dedicated as highways, for a period of years. To the effect that *no additional way over the land* delineated on the said map has been dedicated as a highway since the date of the deposit. This is in law sufficient evidence to negate the intention of the owner or his successors in title to dedicate any such additional way as a highway.

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

(i) that a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

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

Proposal 5: Addition of a public bridleway from The Old Berrynarbor Road to the west of Goosewell looping through Northfield Wood to re-join the road near the bridge west of Grattons, as shown between points A-B-C-D on drawing no. HTM/PROW/14/3.

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 5.

1. Background

During the course of the Review in Berrynarbor in 2012, a group of horse riders contacted Devon County Council to enquire if the route of Proposal 5 was a public right of way. They were told it was not, and that user evidence would have to be gathered to show the public have acquired the rights to use the claimed route. Shortly afterwards, user evidence forms were submitted and the proposal included on the informal consultations map for the parish. This claim has been investigated as part of the Parish Review.

2. Description of Route

The route commences at point A on the Old Berrynarbor Road, west of Goosewell. There is a locked five bar gate set back from the road with a gap beside it. The route runs generally north-eastwards following the old carriage drive to Watermouth Castle on a mostly stone and earth track above Watermouth Castle Holiday Park, to point B. Here it parts from the historical drive on to a track in the woods above the Holiday Park and castle. It re-joins the old carriage drive at point C and turns southwards through what is now the additional car park for the castle and on south then south west. Approximately 30 metres north of the road there is a locked five bar gate with a gap beside it. The carriage drive crosses the county road on a private masonry bridge at point D where it re-joins the Old Berrynarbor Road to the west of Grattons.

3. Documentary Evidence

Ordnance Survey Mapping

The 1804 Surveyor drawings (the 1st topographical map survey) show, at a small scale of 2" to 1 mile, the whole area around Berrynarbor. This survey was a topographical survey showing the lie of the land. Its purpose was to record detail that the surveyor saw. It made no differentiation between public and private roads or land, only recording the topographical features of the ground.

The road network around Berrynarbor parish in 1804 was very different to today's road network. Many routes shown on this map are not public highways. A dotted track is shown from point A to point B. The original castle drive travels right through Watermouth Castle's court yard and then out on the castle access track at point C, with no apparent route above the castle in the woods, between points B and C.

Therefore the claimed route does not follow the historic Castle Drive.

1886-7 1st Edition OS map 25" to 1 mile, published 1891, shows the claimed route in the same way as described above, with no apparent route in the woods above the castle. Between points B and C.

The OS maps carried the disclaimer that the OS did not claim to show the status of any way shown.

1904-1906 2nd Edition OS map 25" to 1 mile, and subsequent OS maps show tracks have been developed in the wood land.

Tithe Map 1845

The purpose of the Tithe Map was to gather tithes for the church and the topographical information is incidental. The roads of the day were shown because this land was unproductive and therefore not titheable. This map showed the original layout of routes in the parish, which varies considerably from that of the maintained road network of today.

The claimed route is shown as a defined unproductive track throughout woodland (no route shown between B & C) in a similar manner to other routes in the parish, some of which are now publicly maintained and others which are private.

Therefore, apart from its topographical information, this Tithe Map has little to offer in the way of evidence of a public route.

Map of Land in the Parishes of Ilfracombe, East Down and Berrynarbor Devon. Property of AD Bassett Esq 1854.

This is a detailed large scale map of the Watermouth Estate property. It shows the parish in the same way as the Tithe Map shows the area, with tracks that are not public today.

Parish Council Minutes from 1894

From the inception of Parish Councils in 1894, they have kept detailed minute books that were audited by an independent auditor and kept in a way so as to prevent tampering with the contents. The Parish minutes often provide contemporaneous accounts of what happened in the parish. From 1896 Parish Council's had powers to improve roads and make them parish roads repairable by the inhabitants at large.

Berrynarbor Parish Council was diligent in its duties and kept excellent minute books of their quarterly meetings, dating from its first meeting on 4 December 1894. No mention of the claimed route appears to have been made in the parish council minutes.

4. User Evidence

Following the public meeting in March 2001, 20 user evidence forms were submitted. Eight for Proposal 5 alone and 12 more from horse riders who combined Proposals 5 & 6 as a continuous route. On the basis of the evidence provided by these forms, Proposal 5 was put on the Consultation Map.

However since the summer 2013, all but one evidence form has been withdrawn.

Ms K Hanousek, has ridden the claimed route on horseback for pleasure for a 10 year period between 2002 and 2012, 15 to 25 times a year. She comments, that there were locked gates to stop vehicles but with open horse access and an old notice, which she says was nearly un-readable, but might have been against dog walking. She comments she met other people walking and using the path.

On its own this remaining user evidence form, is unlikely to show that the public at large (not for example, merely for use of the inhabitants of a particular parish) have established the right to use the route of Proposal 5.

5. Site Observations

On the day of inspection a notice was observed at point A, that appeared to have fallen off a post or tree and was resting on the ground. It said "Property of Watermouth Cove Holiday Park Ltd. Access only with permission (In Writing)".

At points C and D there are notices saying "Watermouth Castle Estates Private No Access".

6. Historical Landowner information

The Bassett Family

The Bassett Family appear to have owned the manors of Berrynarbor and Umberleigh since about 1558. They had a seat at Heanton Punchardon and one at Watermouth Castle. The Watermouth Estate passed through the female heir of the family twice and was held until 1920 when some of the estate lands were sold off. The Castle remained with the family until 1945.

From the historical estate records, as seen above, the Bassett's owned many of the roads and tracks in the parish, except those laid out by statute, i.e. the Turnpike roads to the north and south of the parish. It can be seen from their account books and maps the vast areas of land and property owned by them and tenanted. The majority of the farms in the parish, the two mills and common lands were held by them, and labourers were paid to maintain their roads and tracks.

7. Landowner Evidence

The proposal passes over land which is registered with two owners.

Mr Haines, Watermouth Castle Estate

Mr Haines has owned the Estate since 1977, he has been aware of occasional dog walkers, and horse riders. On various occasions he has over the last 36 years advised people who have been found on site that it is not public and they require permission. Mr Haines first erected notices stating "Watermouth Castle Estates Private No Access" in 1977 on the three access points, and has renewed those notices on many occasions since, because some have been removed. There has always been a locked gate obstructing the route just south west of point D and the occasional tree when fallen or felled.

The action of locking the gates and putting up notices in 1977 therefore brought the route into question. Any twenty year period of use would have to be shown between 1957 and 1977. Maintaining these notices is evidence of lack of intention to dedicate since that time.

Mr Fry, Watermouth Cove Holiday Park Limited

Mr Fry owns the remaining section of woodland between points A and B. On 4 October 2006 he made a deposit using Section 31(6) of the Highway Act 1980. This had the effect of protecting the company's land against future right of way claims, as no additional rights of way over the land can be presumed to have been dedicated after that date. He also erected a locked gate and put notice on site saying "Property of Watermouth Cove Holiday Park Ltd. Access only with permission (In Writing)".

This deposit is sufficient evidence that the owner had no intention to dedicate any such additional way as a highway, therefore breaking any twenty year period of use in 2006.

8. Discussion

Highway Act 1980, Section 31 (1) evidence

It would appear Proposal 5 was brought into question in 1977 by Mr Haines of the Watermouth Castle Estate by the erection of notices to prohibit public access and by the locked gate. A position he has maintained by the replacement of missing notices and renewal of others.

In 2006 Mr Fry of Watermouth Cove Holiday Park Limit, also locked his gate and put up notices and made a Section 31(6) deposit to protect the land against future claims.

The relevant period for any users to demonstrate they had established a right of way would therefore be 1957 to 1977.

The gates and notices are evidence of lack of intention to dedicate rights subsequently. Furthermore the section 31(6) deposit in 2006 further breaks any claimed period.

One user evidence form remains for this claim, showing a 10 year period of use between 2002 and 2012. This post-dates the relevant period, and also fails because the sole user can only show four years evidence of use between 2002 and 2006. Therefore this is insufficient user evidence to show presumed dedication of a Public Bridleway over Proposal 5 under the Highways Act 1980.

Evaluation of the historical evidence and Discussion of Evidence at common law

The Bassett family had owned Berrynarbor and Watermouth Estate since about 1558. They were the landowners of the majority of the land and farms in the parish.

Historically the line of Proposal 5 followed the private drive into Watermouth Castle from the main road between Hele and Berrynarbor at point A. The claimed route deviates at point B away from the historic line.

The OS map was a topographical survey of the area. The Tithe Map has incidental information of the line of route, as its purpose was to levy the Tithe Tax. The route was shown because it was unproductive land and not taxable. The acreage of roads in a parish were added up and removed from the productive land, but it was not the intention of the map to show the status of the routes on it.

The Berrynarbor Parish Council minute books do not mention the claimed route and the Parish Council in the 1950s did not include the line of Proposal 5 as a public right of way of any class, when they drew up their submission for the Definitive Map.

Therefore, there is a lack of historical documentary evidence to show implied dedication of public rights over the route at some time in the past at common law. The locking of the gates, notices and deposit made using HA Section 31(6) is sufficient to show the intention of the landowners not to dedicate the bridleway claimed as Proposal 5 under statute.

9. Conclusion

On the basis of all the available evidence, considered under statute and common law, there is insufficient evidence to show that a right of way subsists or is reasonably alleged to subsist over the route of Proposal 5. It is therefore recommended that **no** Modification Order be

made to add a footpath between points A-B-C-D, as shown on drawing no. HTM/PROW/14/3.

Proposal 6: Addition of a public bridleway from the road to the west of Grattons, through Gratton Plantation to Oxenpark Lane at the junction with the access track to Hill Barton Farm, as shown between points E & F on drawing no. HTM/PROW/14/4.

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 6.

1. Background

During the course of the Review in Berrynarbor in 2012, a group of horse riders contacted Devon County Council to enquire if the route of Proposal 6 was a public right of way. They were told it was not, and that user evidence would have to be gathered to show the public have acquired the rights to use the claimed route. Shortly afterwards, user evidence forms were submitted and the proposal included on the informal consultations map for the parish. This claim has been investigated as part of the Parish Review.

2. Description of Route

The route commences at point E on the Old Berrynarbor Road, west of Grattons. The route follows the old carriage drive to Watermouth Castle on a mostly stone, earth and mud track in a Woodland strip known as Grattons Plantation. The claimed route terminates at the end of the access road to Hill Barton Farm, Oxenpark Lane junction at point F. The historic carriage drive terminated about 280 metres south at small building.

3. Documentary Evidence

Ordnance Survey Mapping

The 1804 Surveyor drawings (the 1st topographical map survey) show, at a small scale of 2" to 1 mile, the whole area around Berrynarbor. This survey was a topographical survey showing the lie of the land. Its purpose was to record detail that the surveyor saw. It made no differentiation between public and private roads or land only recording the topographical features of the ground.

The road network around Berrynarbor parish in 1804 was very different to today's road network. Many routes shown on this map are not public highways.

The claimed route is not shown.

The 1886-7 1st Edition OS map 25" to 1 mile, published 1891, shows the claimed route in Gratton Plantation. This map show milestones along the carriage drive to indicate the mileage to Watermouth Castle and the historic carriage drive terminated about 280 metres south of the claimed route at small building.

These maps carried the OS disclaimer that the OS did not claim to show the status of any way shown.

1904-1906 2nd Edition OS map 25" to 1 mile, and subsequent OS maps show the route in the same way.

Tithe Map 1845.

The purpose of the Tithe Map was to gather tithes for the church and the topographical information is incidental. The roads of the day were shown because this land was unproductive and therefore not titheable. This map showed the original layout of routes in the parish, which varies considerably from that of the maintained road network of today.

The claimed route is shown as a defined unproductive track throughout its length in a similar manner to other routes in the parish, some of which are now publicly maintained and others which are private.

Therefore, apart from its topographical information, this Tithe Map has little to offer in the way of evidence of a public route.

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This is a detailed large scale map of the Watermouth Estate property. It shows the parish in the same way as the Tithe Map shows the area, with tracks that are not public today.

Parish Council Minutes from 1894

From the inception of Parish Councils in 1894, they have kept detailed minute books that were audited by an independent auditor and kept in a way so as to prevent tampering with the contents. The Parish minutes often provide contemporaneous accounts of what happened in the parish. From 1896 Parish Council's had powers to improve roads and make them parish roads repairable by the inhabitants at large.

Berrynarbor Parish Council was diligent in its duties and kept excellent minute books of their quarterly meetings, dating from its first meeting on 4 December 1894.

No mention of the claimed route appears to have been made in the parish council minutes.

4. User Evidence

Following the public meeting in March 2001, thirteen user evidence forms were submitted. Twelve horse riders who combined Proposals 5 & 6 as a continuous route and one who just used proposal 6. On the basis of the evidence provided by these forms, Proposal 5 was put on the Consultation Map.

However since the summer 2013, all the evidence forms have been withdrawn.

5. Site Observations

On the day of inspection a new notice was observed at points E and F, which said "This is Not a Public Right of Way. This is a Permissive Path with access granted by the landowner, please stay on the path and use it at your own risk".

6. Historical Landowner information

The Bassett Family

The Bassett Family appear to have owned the manors of Berrynarbor and Umberleigh since about 1558. They had a seat at Heanton Punchardon and one at Watermouth Castle. The Watermouth Estate passed through the female heir of the family twice and was held until

1920 when some of the estate lands were sold off. The Castle remained with the family until 1945.

From the historical estate records, as seen above, the Bassett's owned many of the roads and tracks in the parish, except those laid out by statute, i.e. the Turnpike roads to the north and south of the parish. It can be seen from their account books and maps the vast areas of land and property owned by them and tenanted. The majority of the farms in the parish, the two mills and common lands were held by them, and labourers were paid to maintain their roads and tracks.

7. Landowner Evidence

The proposal passes over land which is registered with one owner.

Mrs V Black of Hill Barton

Has owned the Hill Barton Farm since 1983, inheriting it from her parents, who purchased the farm in 1948. She does not consider Proposal 6 to be a public right of way. She states, the track was constructed by the owners of Watermouth Castle during the mid-nineteenth century. The then owners of Watermouth Castle are reported to have owned the manor of Berrynarbor. The path was constructed, together with the route of Proposal 5, to provide access between Watermouth Castle and the higher land above Berrynarbor, including Hill Barton Farm over which the owners enjoyed shooting rights.

The Title deeds from 1947 of Hill Barton Farm reserves the private right of way (between point E & F) for the use of the owners of Watermouth Castle, Watermouth House and Watermouth Cottage. Mrs Black goes on to state, "There is therefore a private right of way along the full extent of Proposal 6 (and presumably along Proposal 5), which provides for extensive range of uses including cattle, carts, carriages, horses, motor vehicles and farm machinery. The reservation of access rights over the Path goes some way to explain why the Path is physically so well defined".

Mrs Black's solicitor says she has never dedicated, intended or deemed a public right of way along the path. She states the path was closed during Foot and Mouth outbreak and in July 2010 for 3 days and 2 days in August 2011 when the route was used by the All-Wheel Drive Club (AWDC) for a Rally, when signs were erected saying "track closed this weekend" and Marshalls were positioned at each end to stop other users.

During June 2012 Mrs Black erected the notices as referred to in section 5.

Mrs Black and her parents have verbally given various members of public permission to use the path. In particular she gave verbal permission to the local ramblers group. She states that she has received presents from some of the users which, in part, were given in acknowledgement of the permission they received.

She believes that it was not included on the Original Definitive Map because it was a private right of way.

Mrs Black also commented on the user evidence, which has since been withdrawn.

8. Discussion

Highway Act 1980, Section 31 (1) evidence

It would appear that Proposal 6 was brought into question in June 2012 by the notices erected by Mrs Black for the purpose of prohibiting public access.

The occasional use of the track by the AWDC for a rally and closure for safety reasons is unlikely to have called the route into question. For clarification the Foot and Mouth Outbreak in 2001 does not call the use of the route into question, as the ban was made for disease control purposes and not with the intention of calling the public's use into question.

However Mrs Black acknowledges that she has given some users permission to use the route.

The relevant period for any users to demonstrate they had established a right of way would therefore be 1992 to 2012. No user evidence during this period is present.

There is therefore no user evidence available to show presumed dedication of a Public Bridleway over Proposal 6 under the Highways Act 1980.

Evaluation of the historical evidence and Discussion of Evidence at common law

The Bassett family had owned Berrynarbor and Watermouth Estate since about 1558. They were the landowners of the majority of the land and farms in the parish.

Historically the line of Proposal 6 followed the private drive built by the owner of Watermouth Castle in the mid 1800's into Watermouth Castle from the gates south of point F. The claimed route follows part of the historic line.

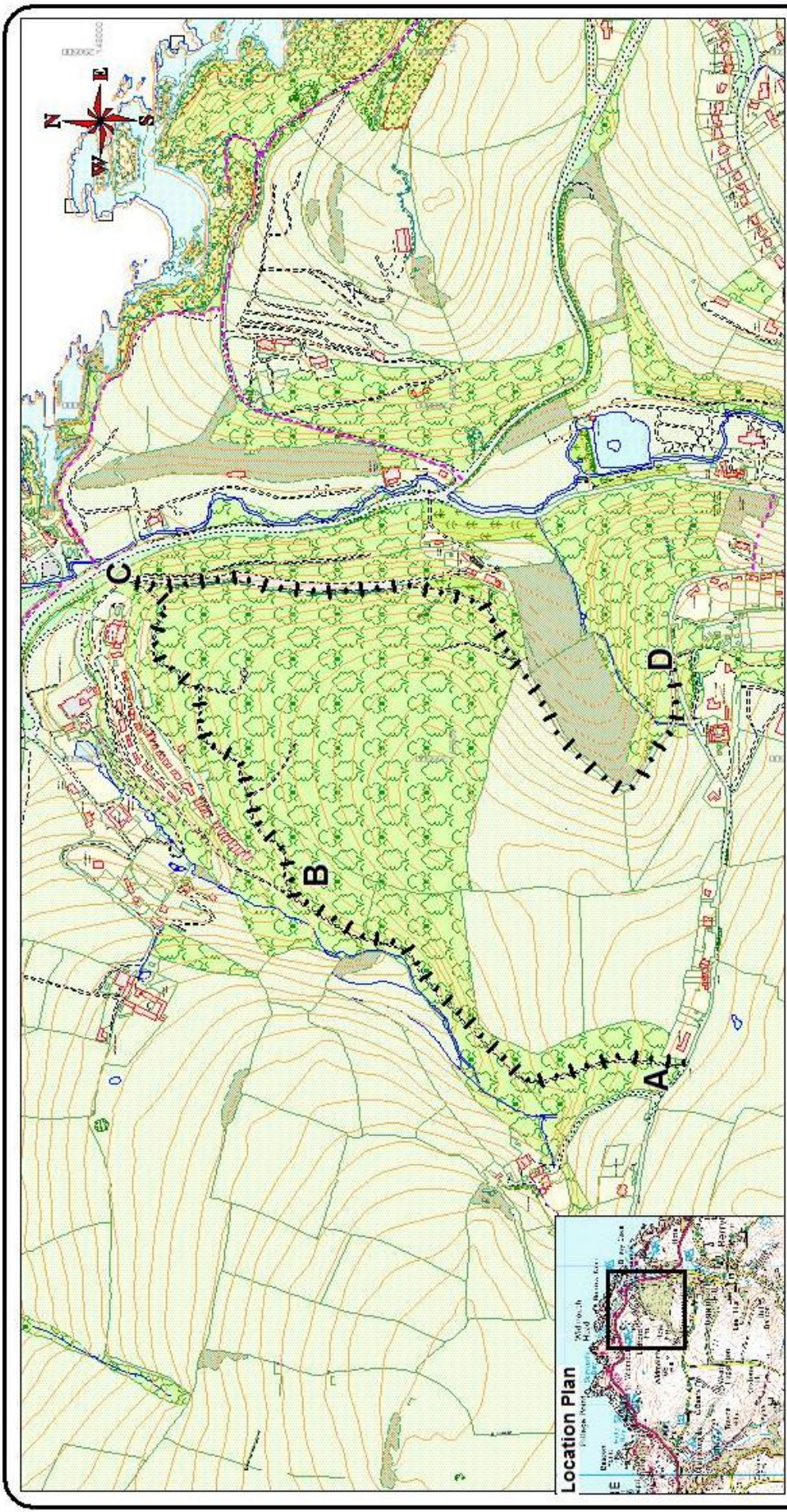
The OS map was a topographical survey of the area. The Tithe map has incidental information of the line of route, as its purpose was to levy the Tithe Tax, but it was not the intention of the map to show the status of the routes on it.

The Berrynarbor Parish Council minute books do not mention the claimed route and the Parish Council in the 1950s did not include the line of Proposal 6 as a public right of way of any class, when they drew up their submission for the Definitive Map.

Therefore, there is a lack of historical documentary evidence to show implied dedication of public rights over the route of Proposal 6 at some time in the past at common law.

9. Conclusion

On the basis of all the available evidence, considered under statute and common law, there is insufficient evidence to show that a right of way subsists or is reasonably alleged to subsist over the route of Proposal 6. It is therefore recommended that **no** Modification Order be made to add a footpath between points E&F, as shown on drawing no. HTM/PROW/14/4.



map ref: **SS5647**

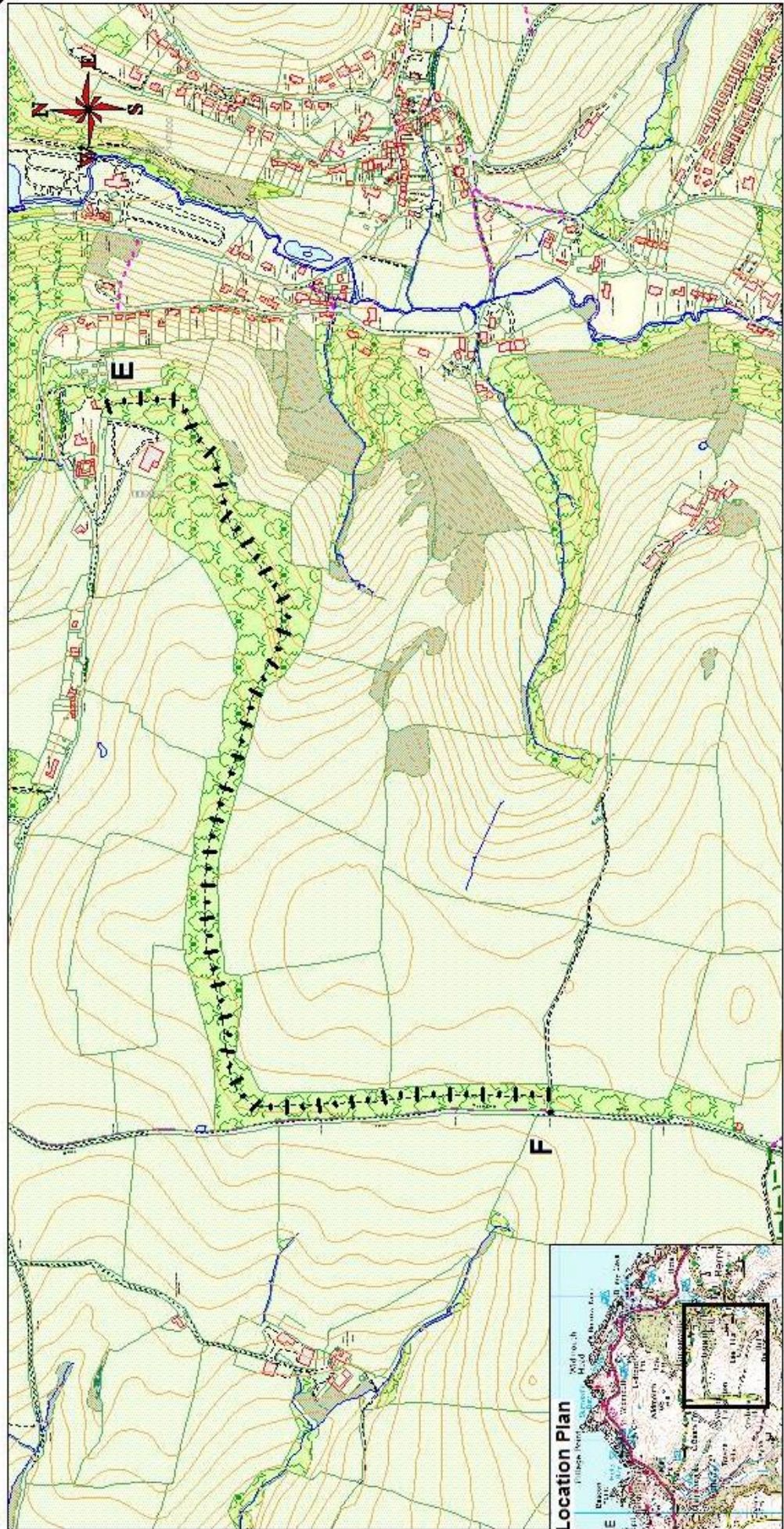
DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW
BERRYNARBOR PROPOSAL 5
Claimed Bridleway

drawing number **HTM/PROW/14/3**
 date **January 2014**
 scale **1:7,500 (at A4 only)**
 drawn by **AS**

Notation

A-B-C-D

Existing public footpath - - - - -



map ref. **SS5646**

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DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW
BERRYHARBOR PROPOSAL 6
Claimed Bridleway

drawing number **HTM/PROW/14/4**
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 scale **1:7,500 (at A4 only)**
 drawn by **AS**

Notation

E-F **••••••••••**

Existing public footpath **- - - - -**