

**Definitive Map Review
Parish of Chawleigh (part 3)**

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.

Recommendation: It is recommended that:

- (a) A Modification Order be made to modify the Definitive Statement by deleting the section describing the route of Footpath No. 12, Chawleigh between points A – B – C – D - E as shown on drawing number HCW/PROW/14/20a (Proposal 3); and**
- (b) A Modification Order be made to modify the Definitive Map by adding the section of Footpath No 14, Chawleigh between points A – B and C - D - E - F as shown on drawing number HCW/PROW/14/21a (Proposal 4).**

1. Introduction

This Chawleigh report examines the remaining two proposals arising from the Definitive Map Review in the parish of Chawleigh. Proposals 2 and 5 were previously considered at the Public Rights of Way Committee in June 2014 and proposals 1 and 7 at the Public Rights of Way Committee in November 2014. Proposal 6 concerns a proposed extinguishment by way of a Public Path Order and will be dealt with under delegated powers.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 23 paths submitted by the parish council which included 5 bridleways, described as 'wheal paths' and 18 footpaths. Footpath No 16 was considered to be private and Nos 11 & 13 were deleted after objections were made to their inclusion in the draft map. A total of 5 bridleways and 15 footpaths were recorded on the Definitive Map and Statement with a relevant date of 25 February 1958 for the Crediton Rural District Council.

The County Council's Limited Special Review of RUPPs (Roads Used as Public Paths) did not affect Chawleigh Parish.

Other changes were noted in the first report for the parish in June 2014.

A Definitive Map review was initially opened in Chawleigh January 1998 but the review did not progress further apart from a Definitive Map Modification Order for Footpath No. 18 Chawleigh. The current review began with a parish meeting held on 2 September 2013 and the consultation map of seven suggestions for change was published at the end of February 2014.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results in respect of Proposals 3 and/or 4 only.

County Councillor Margaret Squires	-	no specific response to proposals 3 and/or 4
Mid Devon District Council	-	no response to proposals 3 and/or 4
Chawleigh Parish Council	-	support adding both sections of path
Chulmleigh Parish Council	-	support adding path section in proposal 4
British Horse Society	-	no response to proposals 3 and/or 4
Country Landowners' Association	-	no response to proposals 3 and/or 4
National Farmers' Union	-	no response to proposals 3 and/or 4
Ramblers' Association	-	no objections to proposals
Trail Riders' Fellowship	-	no response to proposals 3 and/or 4
Devon Green Lanes Group	-	no response to proposals 3 and/or 4

Specific responses are detailed in the appendix to this report and included in the background papers.

5. Financial Considerations

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. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

Equality, environmental impact or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

9. Conclusion

It is recommended that Modification Orders be made in respect of Proposals 3 and 4. Should any further claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

10. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to progress the parish by parish review in the Mid Devon District area.

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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	1998 to date	DMR/Chawleigh

tw280115pra
sc/cr/DMR chawleigh part 3
04 160215

A. Basis of Claim

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.

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

The Wildlife 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 that:

- (i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
- (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- (iii) there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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

1. Proposal 3: Proposed variation of particulars for Footpath No. 12, Chawleigh

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Statement by deleting the section describing the route of Footpath No. 12, Chawleigh between points A - B - C - D - E as shown on drawing number HCW/PROW/14/20a (Proposal 3).

1.1 Background

1.1.1 The Definitive Map Statement for Footpath No. 12, Chawleigh describes the path as **'Starts from James Week – Unclassified County Road, and proceeds south-west along entranceway to James Week Cottage, through the garden and follows close to field hedge, along track through cover, crosses the Unclassified County Road, to a gate at south side of James Week Plantation, crosses an arable field, then follows a track through Upcott Wood, until it joins the Eggesford – Chawleigh Road (B3042) opposite entrance to Nethercott Farm and Path No. 10'**.

1.1.2 However, on the Definitive Map only the second part of the route is recorded, the first section from James Week Lane, (in bold text at 1.1.1), to where the path crosses the unclassified county road is not recorded. This is an anomaly and the route was accordingly included as a proposal for change when the current Definitive Map Review commenced.

1.2 Description of the Route

1.2.1 The section of the footpath that is not recorded on the Definitive Map starts at Point A on the county road known as James Week lane and proceeds south south east along the entrance drive to James Week Cottages. At the end of the drive, point C, (obstructed by a fence) the path would pass through a garden and into a paddock with poly tunnels. It then passes into and goes across a pasture field south west of Oakwood before passing through a field gate onto a track and proceeds eastwards to join the county road running between Chawleigh Week Cross and Ford Moor Cross at point E.

1.2.2 Footpath No. 12, Chawleigh as recorded on the Definitive Map starts about 150 metres southwards along the county road and the path proceeds south westwards through a pasture field towards Upcott Wood.

1.2.3 The total length of the section described in the Statement but not recorded on the Map is approximately 240 metres. The route has a hardened surface along the entrance drive and earth/grass through the garden/paddock/field and an improved surface along the track.

1.3 Consultation Responses

1.3.1 Chawleigh Parish Council had advised the proposed changes were looked over in depth and Councillors unanimously agreed to the changes going ahead. With the proposed alterations to footpaths 12 and 14 'it was agreed the best solution would be to get these new sections marked properly (proposals 3 & 4) on the map rather than changing the map statement'.

1.3.2 The Crediton Footpaths Officer for the Ramblers Association advised that they would not have any objections to the proposed changes as laid out in the schedule.

1.4 Documentary Evidence

1.4.1 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.

1.4.2 OS 1st Edition 25" to a mile 1880-1890 & 2nd Edition 1910

On both editions there is a pecked line, annotated 'F.P.' shown from the end of the driveway to the cottages (point C) running south east across the land to the county road south of Chawleigh Week Cross (point E). A similar pecked line is also shown across the field on the line of the mapped section of Footpath No. 12, Chawleigh.

1.4.3 OS Post War Mapping 1:2:500 scale 1956

A double pecked line labelled 'F.P.' is shown as on the OS 25" 1st and 2nd edition maps.

1.4.4 Tithe Maps and Apportionments

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown.

1.4.5 Chawleigh Tithe Map 1839 & Apportionment 1849

The Chawleigh Tithe map shows a defined lane/track on the north east side of the buildings at James Week and the lane would appear to be on the route of the unmapped section of Footpath No. 12, Chawleigh between two roads. The numbers are very faint on the map and generally difficult to read although it looks as though the centre of the lane is numbered 1240. In the apportionment this number falls under the property James Week owned by the Newton Fellowes family and occupied by Edmund Ford, described as Houses, Garden and Road.

1.4.6 Finance Act Plans and Field Books 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. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

1.4.7 The majority of the unmapped section fell within hereditament number 219, James Week described as small holding and three cottages owned by Lord Portsmouth and occupied by T Davey, W Bater and J Cornall. No reference to or an allowance for public rights of way was made in the field book. The OS 2nd edition 25" to a mile base mapping using for the plans shows a pecked line annotated 'F.P' along the field headland section of the route from points C to point E.

- 1.4.8 The east end of the unmapped section fell under hereditament 53 described as woods & land in hand, owned and occupied by Lord Portsmouth. No reference to or an allowance for rights of way was made.
- 1.4.9 The field crossed by the section of Footpath No. 12, Chawleigh that is recorded on the Definitive Map is included in hereditament number 76; described as land, with an area of 16 acres. The land was also owned by Lord Portsmouth and occupied by I Phillips. The field book refers to a Right of Way for which an allowance of £12 has been made. The field number crossed by the right of way is not stated. The map shows a double pecked line labelled 'F.P.' across the larger field and on the line that Footpath No. 12, Chawleigh is currently recorded.
- 1.4.10 Estate Sale of Earl of Portsmouth Estate 1913 (DHC Ref 1182M/Z/3)
A catalogue for an auction in July 1913 of the estate as a whole included details of estate property to be sold which included as Lot 24 the smallholding of 44 acres in the vicinity of James Week including the fields crossed by the mapped section of Footpath No.12, Chawleigh. The tenant was Isaac Phillips on an annual Lady Day tenancy at £33 10s per annum. No reference to any right of way was referred to in the catalogue description.
- 1.4.11 Cottages and village properties included within the estate sale included, under OS compartment reference part 137 listed, James Week cottages with the names of the three tenants as Thomas Davey, William Bater and John Cornall paying rent of £5, £6 and £5 respectively. The estate was sold as a whole in October 1913 to Mr John Green from Chesterfield.
- 1.4.12 Parish Survey under National Parks and Access to the Countryside Act 1949
Footpath No. 12, Chawleigh was initially included on the parish survey form as path number 12 and described as 'Off road at Nethercott Farm through Upcott Wood on to Road to St James Week Cottages'. The path had been surveyed in September 1950 and was stated not likely to be disputed as being required in the future. On the map completed by the parish the numbers of the paths claimed by the parish are written next to the routes but they did not colour or otherwise annotate the line of the proposed path. They wrote the number of the proposal near the beginning and end of the route and along the route. For the unmapped section of Footpath No. 12, Chawleigh there is one number '12' shown, north west of point E. On the section of the footpath currently shown on the map, there is a number 12 shown across the field section and at the south east end of the path by the county road.
- 1.4.13 The district Surveyor, Mr A Pearce, walked the route in February 1951 and described the route as a public footpath No 12 Chawleigh Starting at James Week unc road, through the garden to field on to the cover, cross the road unc, on to James Week Plantation, cross the fields to Upcott Wood in Nethercott. Gates, stiles and stepping boards in order. Mr Pearce's description was amended by the county surveyor but the first part of the statement describing the section under consideration (points A to E) was not changed.
- 1.4.14 On the map completed by the parish council the map is annotated (12) on the track marked FP across the field at Oakwood, across the field between James Week Plantation and Upcott Wood and at the south west end of Upcott Wood by the county road.
- 1.4.15 The County Council's note on the surveyor's comments were 'O.K.' and the path was included on the Draft Definitive Map which was published in February 1954 and available on deposit for consultation from 19 February to 25 June 1954. The draft

Definitive Map for Chawleigh was returned by the parish clerk and only shows the southern section of the footpath coloured on the map as recorded currently on the Definitive Map.

- 1.4.16 In the Crediton Rural District Council file there is a sheet headed Discrepancies in the Crediton Draft Map listing the parishes in the District with queries. Under Chawleigh it states Path 12 plotted incorrectly. It should continue from the U.C.R north westwards to join the U.C.R. James Week Lane by James Week. However the only correspondence found in the file relates to the deletion of Footpaths No. 11, 13 & 24 from the Draft Map following receipt of objections. These proposed changes to the Draft Map were published on 27 January 1956.
- 1.4.17 A later List of Discrepancies in the Crediton Draft Map dated 26 November 1956 has under Chawleigh Parish, Paths 12, 14, and 18 outstanding but there was no other correspondence in these files to indicate that any action was taken with regard to these discrepancies. It would therefore appear that no changes were made to these three footpaths between the draft and provisional maps.
- 1.4.18 A letter from the Clerk of the County Council to the County Surveyor dated 13 February 1957 refers to the publication of the Provisional Maps and Statements for the Crediton Urban and Rural Districts. The letter refers to enclosing a schedule of the names and addresses of persons to whom the Parish maps and statements have to be sent. The County Surveyor was asked to arrange for the Parish Maps and Statements, together with a completed covering letter and the enclosures referred to therein, to be sent to the persons named in the Schedule.
- 1.4.19 The Notice of publication for the provisional maps of 28 February advised that 'At any time before 30 March, 1957, the owner, lessee or occupier of any land on which the map shows a public path, may apply to quarter sessions for a declaration that, inter alia, there was no public right of way over the land on 30 November, 1953.' Although copies of the path statements were sent to the Parish Council with the provisional map, the Notice refers to 'the owner, lessee or occupier of any land on which the map shows a public path' and did not make a specific reference to the path statement.
- 1.4.20 The final Definitive Map for the Crediton Rural District Council was published on the 25 February 1958 and copies of the maps and statements were again forwarded to the parish councils and meetings in the district. No changes to Footpath No. 12, Chawleigh as recorded on the map or as described in the statement had been made.
- 1.4.21 Devon County Uncompleted Reviews of 1968, 1977 & 1998
No reference to the anomaly Footpath No. 12, Chawleigh appears to have been made by the Parish Council or County Council during the 1968 review. Following notification of the 1977 review, a Parish Meeting was held to discuss the rights of way but no amendments were suggested in respect of Footpath No. 12, Chawleigh. The anomaly was also not referred to by the County Council.
- 1.4.22 When the 1998 review was opened the anomaly was noticed and referred to the Parish Council for their comments on whether they considered the map or the statement as being correct. No response was received from the Parish Council regarding Footpath No. 12, Chawleigh at that time.

1.4.23 The Chawleigh Vestry Minutes and Parish Council Minutes

The minutes do not include any references to a footpath at James Week cottages but the Parish Council minutes on 26 May 1994 refer to 'Mr Lyddon James Week plans in for 6 tunnels'.

1.4.24 Aerial Photography

On the 1946, 1999-2000, 2006-2007 and 2011 aerial photography there is no evidence of a visible track along the line of the unmapped section of the footpath.

1.4.25 Land Registry

The land crossed by the unmapped section of the footpath falls under land in three separate ownerships and it would appear that a small section between points B and C may be unregistered. The first section (points A to B) along the entrance driveway to the fence is registered to 3 James Week, the second section (points C to D) is registered to 1 James Week and the pasture field and track (points D to E) is registered to Oakwood. It is not known when the three cottages were sold off separately although all three cottages appear to have been sold together in August 1966. The conveyance giving right to take water from a well on the adjoining property together with any rights or easements hitherto enjoyed or which would have been enjoyed had the property hereby conveyed and the adjoining property been in separate ownerships.

1.4.26 The property register for 1 James Week under the same conveyance also refers to 'a right of way in common with others entitled to the like right at all times and for all purposes with or without motor cars and other vehicles through over and along the entrance road and way leading to the said property from James Week Lane and coloured brown on the said plan and together also with a right of way in common as aforesaid on foot only through over and along the foot-path coloured green on the said plan subject to such right of way as may exist over the path or track delineated by double dotted lines on the said plan'. On the conveyance plan the entrance driveway is coloured brown but it is difficult to see any green colouring although a short section of blue gives access from the back (south side) of the cottage to the driveway. No reference to a line coloured blue is referred to in the register. The conveyance plan appears to have been hand drawn and a double pecked line is shown across the field behind the cottages as shown on the OS 25" and on the route of the unmapped section of Footpath No. 12, Chawleigh.

1.5 User Evidence

1.5.1 No user evidence has been received.

1.6 Landowner Evidence

1.6.1 All of the landowners and adjoining occupiers were contacted and informed of the proposal.

1.6.2 Mr R Puttick has owned 3 James Week which includes the access track to the cottages between points A and B since 2008. He does not believe the way to be public and has not been aware of members of the public using the way. He has not required people to ask permission, turned back or stopped anyone, told someone it was not public or erected any notices or signs stating the way was not public. He has not obstructed the way and advises that the path was not shown on any recent maps when we purchased No 3 James Week.

- 1.6.3 Mr L Cunliffe has owned 2 James Week since 2012 and the route passes adjacent to his outbuilding east of the path between point B and point C. He does not believe the way to be public and was informed by the previous owner that path was used only by residents of James Week. No one has ever used or attempted to use the path, which is redundant and not signposted. He has not turned back or stopped anyone, told someone it was not public or erected any notices or signs stating the way was not public. Mr Cunliffe advised he was informed that the reason the path was never recorded on a definitive map was because it was restricted for use for residents of James Week Cottages.
- 1.6.4 No 1 James Week has been owned by Mrs Ashcroft since 1987 and includes the section points C to D which passes through the cottages garden. Her son has responded on her behalf and advises that they do not believe the way to be public since their ownership of the property and from previous owner. They have not been aware of the public using the path and there is no access due to long established hedgerows on the north, east and south side of the garden. They have not required people to ask permission, turned back or stopped anyone, told someone it was not public or erected any notices or signs stating the way was not public. The path is obstructed as hedgerows were long established prior to purchase. No one in the family was aware of this path as the garden was enclosed on three sides marked 1, 2, 3 on map (attached to landowner evidence form) by long established hedgerows.
- 1.6.5 Ms H Johnson has owned the holding Oakwood since 1999 which includes the section of path across the field and along the short track to the county road. She does not believe the path to be public and was unaware of its existence. She has not turned back or stopped anyone, told someone it was not public or erected any notices or signs stating the way was not public. The way is obstructed as James Week and Oakwood are two different properties and stock fencing and garden fencing divide the properties exactly dividing the way as stated in the route description. On the copy statement forwarded to Ms Johnson she has stated with regard to the section under consideration 'This part of the footpath does not exist except in the description (and news to me!) and does not 'go' anywhere. There are currently 2 x gates, 1 stock fence, 1 boundary hedge and a sizeable muck heap in the way! I would suggest it is removed from the description'.

1.7 Rebuttal Evidence

- 1.7.1 No rebuttal evidence has been received.

1.8 Discussion

- 1.8.1 A claim for a public right of way can arise through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication. A public right of way can also be deleted from the map if there is evidence to show that a mistake was made, at the time the path was added to the definitive map and that the path or way was never a public right of way.
- 1.8.2 A route described on the statement but not shown on the final Definitive Map is an anomaly and as such amounts to an event under s.53 (3)(c)(iii) of the Wildlife and

Countryside Act, 1981, that particulars contained in the map and statement require modification to resolve the differences between the map and statement.

- 1.8.3 In R (Norfolk CC) v Secretary of State for the Environment, Food and Rural Affairs (2005) it was said that in the event of a discrepancy between the map and statement, the matter was to be determined by reference to the evidence presented, with neither the map nor statement having precedence with regard to the weight to be attached to the information on each.
- 1.8.4 It is therefore necessary to look at all the available evidence to determine whether it is the map or the statement that needs amending. At the time of the Tithe Map it does appear that there was a defined lane running in the vicinity of the unmapped section of the footpath, along the north east side of the cottages but that this had gone by the end of the 20th century. Changes had also been made to the adjacent field boundaries. The large scale 1st and 2nd Edition OS maps and the Post War map of 1956 all record a track labelled 'F.P.' from the end of the drive but the standard disclaimer advises the inclusion of a route does not mean that the route was public.
- 1.8.5 No allowance was given for a right of way in the Finance Act returns of 1910 for the unmapped section of Footpath No. 12, Chawleigh although the mapped section of the Footpath across the field south of James Week Plantation into Nethercott fell under a hereditament for which an allowance of £12 had been given.
- 1.8.6 The Portsmouth Estate sale catalogue confirmed that in 1913 the land and outbuildings at James Week and the three cottages were occupied by four different individuals but all owned by Lord Portsmouth. It would therefore seem logical for the tenants of the cottages to have the right to use the footpath across the field, which although occupied by somebody else, belonged to the same landowner.
- 1.8.7 The Land Registry titles advise that the three cottages were sold off separately after 1966 as there is reference to a conveyance of this date when the three cottages were all sold by Mr Edward Luxton to Joseph and Eva Grice. The register for No 1 James Week refers to a right of way granted along the driveway and also a right on foot along the footpath coloured green, but this would appear to refer to a short section coloured blue along the back (south) side of the cottage to the drive.
- 1.8.8 The original parish council survey form described the path as running to James Week Cottages rather than James Week Lane, which could indicate that the initial opinion was that the path just went to the cottages. It was the district surveyor who reversed the route description and described the path as starting from James Week Lane. This change would be expected as all public rights of way would usually start and finish on a public highway.
- 1.8.9 The anomaly between the map and the statement was noticed at the draft map stage in 1956 but it appears that nothing was done to change either the statement or the map. Copies of both the map and statements were sent to the Parish Clerks for both the Draft and Provisional stages of the Definitive Map. No changes were made and the Definitive Map was published with the anomaly as at present. No reference was made to the anomaly in the County's 1968 and 1977 reviews although it was noticed in the 1988 review.
- 1.8.10 The distance to the county road from James Week Cottages to the county road at Point E is 197 metres walking south from the cottages using the unmapped section of Footpath No. 12, Chawleigh. The alternative route going north along the drive to James Week Lane and then east and south down the county road to point E would

be 336 metres. As the route across the field is over 50% shorter than going by the road it would seem logical for occupiers of the cottages who wished to travel southwards would use this route as a shortcut if permitted to do so.

- 1.8.11 It is considered more likely that an occupier at James Week Cottages would use the un mapped section, as for walkers coming from Chawleigh Week Lane, it would be a shorter route to continue walking along the road towards Ford Moor Cross at the A377 than to use the footpath. For walkers coming from Chawleigh Week Mill Cross at the west end of James Week Lane it would be shorter and easier to walk along the A377 (880 Metres) (before the A377 was a busy road) to Ford Mill Cross rather than walking uphill along James Week Lane and then down the hill to Ford Moor Cross (1160 metres) or by using the unmapped section of Footpath No. 12, Chawleigh (1110 metres).
- 1.8.12 No user evidence forms have been received and the route is currently blocked with a garden fence at point C and hedge bank and muck heap at point D. There is no evidence that the route has been used by the public.
- 1.8.13 The landowners have advised that they have never seen the route being used and that it has been blocked a long time by hedges and fencing. Mr Cunliffe, the most recent owner since 2012, advised he was informed that the reason the path was never recorded on a definitive map was because it was restricted for use for residents of James Week Cottages.
- 1.8.14 There is no one piece of available evidence that is considered to support the unmapped section of Footpath No. 12, Chawleigh being a public footpath. The evidence that is available, mainly that of the Parish Council's initial submission for the footpath in 1950 and ownership history of the land, would indicate that the route was one that was more likely used by the residents of James Week Cottages rather than the public at large.

1.9 Conclusion

- 1.9.1 The evidence when taken as a whole is not considered to support the subsistence of a public right of way, namely a public footpath, along the unmapped section of Footpath No. 12, Chawleigh from James Week Lane to the county road running south from Chawleigh Week Cross. On this basis the Statement for the Footpath No. 12, Chawleigh is considered to be incorrect and requires modification to correct the current anomaly between the Definitive Map and Statement for this public right of way.
- 1.9.2 It is therefore recommended that a Modification Order be made to modify the Definitive Statement by deleting the section describing the route of Footpath No. 12, Chawleigh between points A and E as shown on drawing number HCW/PROW/14/20a (Proposal 3).

2 Proposal 4: Proposed variation of particulars for Footpath No. 14, Chawleigh

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map by adding the section of Footpath No 14, Chawleigh between points A – B and C - D - E - F as shown on drawing number HCW/PROW/14/21a (Proposal 4).

2.1 Background

2.1.1 The Definitive Map Statement for Footpath No. 14, Chawleigh describes the path as ***'Starts from the County Road (No.470) at Chulmleigh Bridge and proceeds west across fields adjoining Little Dart River, to the Unclassified County Road at Rock Bridge, leaves that road 130 yards further south, thence across two fields close to river, along Chawleigh Week Lane (not repairable by the inhabitants at large) then crosses the Barnstaple Road (A.377) through fieldgate at Lower Linhay through an arable field, passes under Railway, then follows close to bank of the River Taw to the Parish Boundary at Aller Marsh Clapper Footbridge, where it joins Path No. 3 in Wembworthy Parish'***.

2.1.2 However, on the Definitive Map only the part of the route going westwards from the A377 towards Wembworthy parish *'.... through fieldgate at Lower Linhay through an arable field, passes under Railway, then follows close to bank of the River Taw to the Parish Boundary at Aller Marsh Clapper Footbridge, where it joins Path No. 3 in Wembworthy Parish'*.... is shown on the Definitive Map. The long section from Chulmleigh Bridge eastwards to the A377, (in bold text at 2.1.1), is not recorded on the map (points A - B and C - F). This is an anomaly and the route was accordingly included as a proposal for change when the current Definitive Map review commenced.

2.2 Description of the Route

2.2.1 The section of the footpath that is not recorded on the Definitive Map starts at point A at the county road south of Chulmleigh Bridge. The path proceeds eastwards for about 810 metres across a pasture field adjacent to the Little Dart River to the unclassified county road known as Chawleigh Week Hill at point B. The path then continues southwards up Chawleigh Week Hill for 120 metres before entering another pasture field at point C and continuing eastwards across a pasture field and then across the slope of a steep field to the gateway at point E. The path then joins and continues along Chawleigh Week Lane to the A377 opposite Lower Linhay at point F. The second section of path from C to F is about 1,080 metres.

2.2.2 The total length of the two sections of footpath not included on the Definitive Map is 1,890 metres. The route has a surface of earth/grass across the fields with an improved stone surface along Chawleigh Week Hill and Chawleigh Week Lane. Photographs of the route are included in the backing papers.

2.3 Consultation Responses

2.3.1 Chawleigh Parish Council had advised the proposed changes were looked over in depth and Councillors unanimously agreed to the changes going ahead. With the proposed alterations to footpaths 12 and 14 'it was agreed the best solution would be to get these new sections marked properly on the map rather than changing the map statement'.

- 2.3.2 The Crediton Footpaths Officer for the Ramblers Association advised that they would not have any objections to the proposed changes as laid out in the schedule.
- 2.3.3 Chulmleigh Parish Council advised ‘the Parish Council considered this at the September meeting and support the continued inclusion of Footpath 14 and requested the Definitive Map reflect its existence’.
- 2.3.4 Mr Woodhead, a resident of Chulmleigh, wrote to advise that he has ‘frequently walked the footpath No 14 from Chulmleigh Bridge to Rock Bridge and beyond to the A377 via Chawleigh Week, as the access at point C on your map is at present obstructed. The part between Chulmleigh Bridge and Rock Bridge is particularly well used by both residents and visitors’. Mr Woodhead subsequently submitted a user evidence form.

2.4 Documentary Evidence

2.4.1 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.

2.4.2 Cassini Historic Maps 1809 – 1919 Okehampton & North Dartmoor

These are reproductions of the Ordnance Survey One-inch maps enlarged and rescaled to a scale of 1:50,000 (to match current OS Land Ranger maps) published in 2007. They reproduce the Old Series from 1809, the Revised New Series from 1899-1900 and the Popular Edition from 1919.

2.4.3 Old Series 1809. Chawleigh Week Lane (spelt Chawley Week) is shown as a defined lane in a similar manner to adjacent lanes that are now county roads such as James Week Lane and Darkey Lane, running east from Chawleigh Week Cross. The west end of Chawleigh Week Lane is on a different alignment and continues westwards across the Little Dart River before turning south westwards to join the main road at a cross roads. This meant it would have been possible to travel towards Wembworthy and west of the River Taw without travelling on the Turnpike road. A additional section of lane is shown connecting Chawleigh Week Lane with James Week Lane, but the road stopped up at the quarter sessions in 1826 is not shown. The clapper bridge at the bottom of Chawleigh Week Hill is shown as is the mill at Chulmleigh Bridge, point A.

2.4.4 Revised New Series 1899-1900. Some one hundred years later and after construction of the railway line and Chawleigh Week Lane is now shown on its current alignment. Chawleigh Week Lane and Hill and Rock Hill are shown uncoloured but the depiction of the lanes would appear to correspond to Third Class Metalled Roads rather than Unmetalled Roads. The A377, James Week Lane and Darkey Lane are now coloured and Second Class roads. The Ford at the bottom of Chawleigh Week Hill is named but not the mill at Chulmleigh Bridge. West of the A377 a pecked line is shown along the line of Footpath No. 14, Chawleigh representing Footpaths. No footpath is shown in the fields between Chulmleigh Bridge and Chawleigh Week Hill (points A – B).

2.4.5 Popular Edition 1919. The section of lane from Chawleigh Week Cross, Chawleigh Week Hill and Rock Hill to Chulmleigh are shown as a clear lane but uncoloured, Roads under 14’ wide, indifferent or bad winding road. From the junction with Chawleigh Week Hill, Chawleigh Week Lane is shown as a ‘Minor Road’. A pecked line ‘Bridle & Footpaths’ is again shown west of the main road along the current line of Footpath No. 14, Chawleigh. The ford is named crossing the Little Dart River.

2.4.6 OS 1st Edition 25" to a mile 1880-1890 & 2nd Edition 1904-06

On both editions a pecked line labelled 'F.P.' is shown across three fields between Chulmleigh Bridge and Chawleigh Week Hill (section A – B). The track shown is further southwards than on the modern map and the bridge and ford are shown at the crossing of the Little Dart River at the bottom (north end) of Chawleigh Week Lane. A double pecked line labelled 'F.P.' is also shown across the two fields between points C to E. Chawleigh Week Lane is shown as a defined hedged lane. Both maps show a gate across Chawleigh Week Lane, just before the lane turns southwards to the A377. On the second edition a solid lane, possibly representing a gate, is located along the lane west of Chawleigh Week Farm.

2.4.7 On both editions there is a double pecked line, labelled 'F.P.' on the 1st edition and 'Foot Path' on the 2nd edition, on the line of the section of footpath already shown on the Definitive Map west of the A377. The Aller Marsh Clapper (foot bridge) is shown on both maps.

2.4.8 OS 1 inch to a mile maps of 1946, 1960 & 1965 Sheet 175 Okehampton

On all three editions Chawleigh Week Lane is shown on the current alignment as a defined lane. In the 1946 edition Chawleigh Week Hill and Rock Hill are shown coloured 'Road under 14' metalling Good' and Chawleigh Week Lane is shown uncoloured and narrower 'Unmetalled Road'. The ford at the Little Dart River is shown. A pecked line 'Footpaths and Bridlepaths' going west from the end of Chawleigh Week Lane across the A377 is shown along the line of Footpath No. 14, Chawleigh towards the River Taw.

2.4.9 By 1960 both Chawleigh Week Hill and Chawleigh Week Lane are uncoloured 'Under 14' of Metalling Untarred or Unmetalled Roads'. The ford is not shown and there is no pecked line across the railway line west of the A377. The 1965 edition of the OS maps included Public Rights of Way and the section of Footpath No. 14, Chawleigh west of the A377 is shown as a red pecked line 'Public Path Footpath (right of way on foot)'. Chawleigh Week Lane and Hill are both uncoloured lanes 'Roads under 14' of Metalling Untarred' or 'Track Unmetalled'.

2.4.10 OS Post War 1:2500 A Edition 1956 & B edition 1975

In 1956 a double pecked line labelled 'F.P.' is shown crossing the three fields (section A to B) as in the earlier mapping but in the 1975 edition the western fields have been merged and a double pecked line labelled 'Path (um)' is shown on an alignment further northwards and close to the river. On the next section of the route from C to E, both editions show a double pecked line on the same alignment as the older mapping, labelled 'F.P.' in 1956 and 'Path (um)' in 1975. The two gates are still shown across Chawleigh Week Lane.

2.4.11 On the recorded section of Footpath No. 14, Chawleigh a double pecked line is shown, labelled 'F.P.' on the section south west of Lower Linhay and 'Foot Path' on the section south west of the railway line in 1956 and the Aller Marsh footbridge is shown. In 1975 no path is depicted across the fields south westwards from Lower Linhay and there is no bridge across the River Taw.

2.4.12 Application to Quarter Sessions – Stopping Up Road 1826 (DHC ref QS/113A/49/1)

A notice was published in the Exeter Flying Post stating that on 28 August 1826, an Order was signed by the Honourable Newton Fellowes and Robert Tanner, Clerk, two of his Majesty's Justices of the Peace in and for the County of Devon, for stopping up a useless Highway within the parish of Chawleigh, leading from Chawleigh Week Mills to a certain place called Kingsland Gate, in the said Parish.

The Order was to be lodged with the Clerk of the Peace, at the General Quarter Sessions of the Peace, to be held at the Castle of Exeter on 17 October and be confirmed and inrolled, unless upon an Appeal against the same be then made, it will be otherwise determined.

2.4.13 The plan shows the road to be stopped up running from Chawleigh Week Mill (now called Week Mill Farm on the proposal plan) in a north eastwards direction for about 460 metres before joining Chawleigh Week Lane at a place called Kingsland Gate, which was about 160 metres north westwards from the junction of Chawleigh Week Lane and Chawleigh Week Hill (approximately where a small building is shown on the brow of the hill). The road to be stopped up is labelled 'Very Hilly Road' and the plan annotated with point A at Chawleigh Week Mill, point B at Kingsland Gate, point C at the junction of Chawleigh Week Lane and Hill and point D at Chawleigh Week Cross and distances given in furlongs and poles between the points. The continuation of Chawleigh Week Lane north westwards from Kingsland Gate is labelled 'From Dinniford'. The distances between the points (after converting to metric) are A to C 624 metres, A to D 604 metres and C to D 282 metres. If travelling from the Mill to Chulmleigh via Chawleigh Week Hill, the proposed alternative route using James Week Lane would be some 262 metres longer.

2.4.14 It is understood that no objections were made to the Order and by the OS 1st edition 25" mapping of 1880-1890 there is no reference to Kingsland Gate or a place called Dinniford and the only remaining sign of the road would appear to be a double pecked line along the headland of the two fields at the south west end of the old road.

2.4.15 Tithe Maps and Apportionments

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown.

2.4.16 Chawleigh Tithe Map 1839 & Apportionment 1849

The numbering on the Tithe Map is very faint and difficult to read. Between points A and B on the plan the land adjacent to the river comprised three fields which appear to have the apportionment numbers 1325, 1326, 1327 and 1329. Chawleigh Week includes 1325 Clapperham, 1326 Middle Marsh and 1327 Amsoms Marsh. Apportionment number 1322 is described as Houses, Garden and Road but the map is too faint to see the number. Chawleigh Week Lane is depicted as a defined lane meeting the A377 opposite Lower Linhay and the map also shows the lane continuing north westwards towards the River Dart. Chawleigh Week Lane appears to be numbered 1680, this number is not included in the apportionment list for Chawleigh Week. Number 1322 in the apportionment was described as Houses, Gardens and Road with no tithe payable. As the purpose of the survey, map and apportionment was to obtain a titheable value on the land, non titheable items such as buildings and roads were sometimes included together.

2.4.17 Railway Company Deposited Plans 1844, 1845, 1850 & 1905

Before the construction of a major undertaking such as railways, major roads and canals plans of the undertaking had to be deposited with the appropriate public authorities. Often several different companies would prepare their own plans for the same project. This was usually followed by a Private Act of Parliament then being passed for the plans accepted for the building of the railway or other undertaking. In

junction with the plans, Books of Reference were also prepared detailing the owner, occupier and description of land included with the proposed limit of deviation for the proposed railway or canal. In 1845 the railway mania resulted in a huge number of competing schemes being proposed in Parliament, which arranged for a Railway Commission led by Lord Dalhousie to review competing proposals and recommend a selected scheme for each area. The Exeter to Barnstaple rail line was built by the North Devon Railway (formerly the Taw Vale Extension Company), opened in 1854 and was taken over by London & South Western Railway in 1870 and converted to standard gauge.

2.4.18 North Devon Railway 1844 (DHC QS/DP/167)

The plan shows the end of Chawleigh Week Lane and its junction with the A377 but as it is outside the limit of deviation the lane is not numbered.

2.4.19 Taw Vale Extension 1845 (DHC QS/DP/193)

It is understood these were the plans approved for the construction of the line from Crediton to Barnstaple. The west end of Chawleigh Week Lane is just outside the limit of deviation and so not numbered or included in the book of reference, although the lane is shown joining the Turnpike road (now A377) constructed along the valley road in 1830. The part of Footpath No. 12, Chawleigh that is recorded on the Definitive Map crosses fields numbered 3 and 4, described as Arable and Arable, Waste and Rough Timber, owned by Newton Fellowes and occupier by Jeffery Sanders. The road stopped up in 1826 is shown on the plan numbered 20 and described as Occupation Road owned and occupied by Newton Fellowes, Samuel Quantick and Henry Searle.

2.4.20 Great Western Railway Branch 1845 (DHC QS/DP/198)

An alternative company's plans show the west end of Chawleigh Week Lane joining the A377 but also continuing as a lane to the River Dart. Chawleigh Week Lane is not numbered as it is outside the limit of deviation. The fields crossed by Footpath No. 12, Chawleigh south west of Lower Linhay are numbered 127 and 130, described as Marsh & Linhay and Marsh, both owned by Newton Fellowes and occupied by Jeffery Sanders.

2.4.21 Taw Vale Railway 1850 (DHC QS/DP/214)

These plans recorded changes to the original line proposed in the 1845 plans and show the line actually built. Only the sections of the line where changes were to be made were shown. No changes were made to the section of line crossed by Footpath No. 12, Chawleigh but the line at Chawleigh Week Mill was moved south westwards so that it was very close to the mill buildings. James Week Lane and the road stopped up in 1826 are shown, numbered 154 and 140 and described as Parish Road, owner Surveyor of Highways and Occupation Road leading to Mill, owner Newton Fellowes occupier Edmund Ford.

2.4.22 London & South Western Railway 1905 (DHC QS/DP/648)

These plans are understood to have been prepared for the proposed dualling of the line between Umberleigh and Coleford. The plan shows the section of Footpath No. 12, Chawleigh that is shown on the Definitive Map, either side of the railway line and west of the A377. The line of the footpath appears to be shown by a double pecked line. The field south west of the line is numbered 4 and described in the book of reference as Field, occupation crossing and footpath owned by the Earl of Portsmouth and occupier Thomas Sanders & The Chawleigh Parish Council.

2.4.23 OS Boundary Sketch Map 1886 (PRO Reference OS 27/1157)

The OS sketch map of the parishes of Chawleigh, Lapford & Nymet Rowland shows roads in the vicinity of Chawleigh Week Cross. Chawleigh Week Lane is shown continuing westwards from the junction with Chawleigh Week Hill but not shown continuing to connect with the A377.

2.4.24 The OS Object Name Books 1903-1904 (PRO reference OS 35/1706)

The OS name books gave the definitions of features such as houses, rivers, places, lanes printed on the large scale OS maps. The definitions were typically authorised by the owner where an object (say a farmhouse or gentleman's residence) was privately owned and by the district overseer/surveyor or someone in a public position where they were in public ownership.

2.4.25 Chawleigh Week Lane appears to have been referred to twice in the OS Object name Book for sheet 42 NE. On page 34, entry completed in May and June 1904 Chawleigh Week Lane is described as 'applies to a lane extending from junction of roads on N side of Lower Linhay to Chawleigh Week'. The entry on the page and in the summary list at the back is signed for by Mr L E Sharland, District Surveyor Copplestone. On page 41 there is another entry completed May and June 1904 where Chawleigh Week Lane is described as 'A ~~An~~ old road extending from 1st Class road near Lower Linhay to Chawleigh Week'. The entry was again signed for by Mr L E Sharland, District Surveyor Copplestone.

2.4.26 Estate Sale Plan for Earl of Portsmouth 1908 (DHC Ref 62/9/Z/Box/2/55)

The catalogue for the 1908 auction of some 2,700 acres of farms, land and woodlands by the Earl of Portsmouth included as Lot 1 Chawleigh Week Farm, 249 acres. In the plan for the farm, Chawleigh Week Lane was coloured in the same manner as the buildings and land and included in the list of land/property included within the lot under the plan numbers (being the OS compartment numbers) 71 and 52 and described as road. In comparison Chawleigh Week Hill as an unclassified county road is coloured orange on the plan as are the other county roads of today.

2.4.27 No reference to any public or private rights of way was mentioned in the description of the lot. The mapping used for the plan appears to be the OS 25th to a mile 2nd Edition but some annotations that are on the OS map have not been copied onto the sale plan. These include the wording 'Liable to Floods' in field number 39 between the Little Dart river and the west end of Chawleigh Week Lane and the initials 'F.P.' adjacent to the double pecked lines in fields numbered 74 (the line of the route between points C – D) and in field 12 (the middle field between points A – B).

2.4.28 Finance Act Plans and Field Books 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. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament. The valuation of the land/buildings was usually based on capitalisation of the rental value of the property and the same method was used for allowances for rights of ways or easements.

2.4.29 Chawleigh Week Farm was included as hereditament number 110, the owner and occupier being Frank Ford, Cleavehanger, Wembworthy. The field book notes the sale of the farm in July 1908 for £5,000 and also records 'Rights of Way £2 x 25 yp = £50'. No compartment numbers for the fields crossed by the rights of way are given and the £50 allowance is carried forward to the heading for Public Rights of Way or User on page 4 of the field book.

2.4.30 Western Times Newspaper 1938

An article in the Western Times on Friday 26 August 1938 gave details of an accident involving Mr William Clarke, a 22 year old gardener from West Worlington. Mr Clarke was seriously injured when he was cycling down Chawleigh Week Lane and at the junction with the main Barnstaple – Exeter road was involved in a collision with a car driven by Mr Macqueen of Harrow in Middlesex.

2.4.31 Vestry Minutes

The Vestry minutes did not appear to mention a footpath relating to the line of Footpath No. 14, Chawleigh although in 1859 it was reported that Rock Bridge had washed away in floods, Chulmleigh to pay half of the repair costs. On 25 April 1860 the minutes record 'That the road at the foot of Chawleigh Week Hill from the lower gate of the hill fields leading to the new bridge be repaired'.

2.4.32 Parish Council Minutes

The Parish Council minutes are held by the Clerk from 1894 and there are some references relevant to Footpath No. 14, Chawleigh. The text in brackets is provided as additional information to the entry in the minutes.

16 March 1898 The following accounts were presented, examined and passed and payment order to made

To Horse Labour drawing stones for repairing footpaths	5 6
To Breaking Stones	4 0
To Spreading Stones	1 2

Thomas Sanders at Chawleigh Week

(Thomas Sanders, Farmer and Auctioneer was the tenant of Chawleigh Week Farm at that time)

15 Jan 1906 South Western Railway. The plans and sections with the book of reference relative to the proposed doubling of the London & South Western Railway as far as this parish is concerned were laid before the Council. No opposition.

22 Oct 1959. A letter was read from the Chulmleigh Parish Council asking whether the Chawleigh Parish Council were considering the idea of putting up a warning notice at the Pool in the River Dart near Chulmleigh Bridge, where the recent tragic accident occurred.

Members agreed that a notice should be erected there and the clerk was asked to ask Chulmleigh P Council if they would care to co-operate in its erection.

(The tragic accident was the death of a local girl Jennifer Mortimer, who had drowned in part of the Little Dart River that was used for swimming. As it understood the river was accessed across the fields from Chulmleigh Bridge or Chawleigh Week Lane, the access to the river was in Chawleigh parish).

9 Jan 1960 Road at Chawleigh Week

It was decided that the Clerk should complain to the Rural Council as to the very bad state of the road from Chawleigh Week Farm to Dartridge. (This would correspond to the unsealed section of Chawleigh Hill and Rock Hill).

25 Mar 1960 Road at Chawleigh Week

The Clerk reported that a part of the road had now been repaired.

29 Mar 1979 Rock Bridge to CWeek. The clerk instructed to get in touch with Mr Blake (CRDC Divisional Surveyor) about this item and petition.

10 May 1979 Rock Bridge to C.Week. Clerk instructed to send a copy to Mrs Mitchell, Chawleigh Week of letter received from Devon C Council. Also, Mr Tucker proposed, Mrs Hill seconded the clerk reply to the County's letter asking them to clean up the road and make it walkable.

11 Jun 1979 Rock Bridge. Letter read from Mr Davison who stated work will be carried out down by bridge and road leading to it.

19 Jul 1979 Rock Bridge. A letter was read from Mrs Mitchell C.Week who thanked us for seeing to this work being carried out. Clerk instructed to write to Devon County Council asking them to clear the road yearly from C.Week to Rock Bridge.

30 Aug 1979 Rock Hill. Letter received from DCC to say Rock Hill to have an annual tidy up.

11 Dec 1980 Chawleigh Week. A letter was read from Mrs Mitchell complaining over the state of the road along Station Hill and road leading to Rock Bridge, also asking for salt heaps. Clerk instructed to write to Devon CC about these complaints

12 Mar 1981 Highway Matters. The clerk read a letter from Mrs W Mitchell, Chawleigh Week expressing thanks for the cleaning of roads and delivering salt around that area.

15 Dec 1983 Broken Warning Sign - Clerk explained the sign was put on our side of the river and erected by Mr Fred Clarke in Mr F Webber's field. Clerk to try and find someone whose responsibility it would be to erect the new danger sign.

8 Mar 1984 Danger Sign. Clerk again to get in touch about sign for Mr Webber's field Chulmleigh Bridge.

13 Nov 1986 Missing foot bridge, F/P No. 14. Aller Marsh Clapper. Councillor Mr Tucker will look into this matter and report back to clerk.

8 Jan 1987 Missing foot bridge. Clerk to inform Devon County Council the local farmer cannot ever remember a foot bridge over the river at the place stated in letter.

4 Oct 1990 Parish Council were asked for comments re Footpaths & Bridleways extending into Chawleigh Parish 4 present.

A review of the Definitive Map of F/paths B/ways & Byways is about to start for the whole of Devon – commencing with Chulmleigh parish. After a fruitful discussion both parish councils agreed to the following:-

a) Woodhouse to the new Bridge

- b) Rock Hill to Chulmleigh Bridge – at the moment the Farmer informed persons it was not a public foot path.
- c) Stone Barton

The above three paths were put to Chawleigh Parish Council Mr Hill proposed Mr Andrews seconded all in favour of the three proposals

8 Nov 1990 F/Paths & B/ways Again details were discussed regarding footpaths and bridleways in the parish. From Chulmleigh PC a letter from the clerk was read stating 1) that footpath no 18 will be retained 2) that we will apply for B/Way No 6 to be extended when the review comes to Chawleigh 3) Unlisted Chulmleigh Bridge to Rock Hill – this item needs careful consideration & discussion before agreement – if any, would be reached.

22 Jan 1998 Mr Martyn (DCC PROW officer) attended for discussion Review of the Definitive Map Mr Martyn gave a long talk & discussion re all the paths in the parish – some not completed as requested by the Parish Council many years ago such as B/Way No 6 – Chulmleigh.

Gerald Webbers Chulmleigh Bridge The Parish Council and others established many years ago the footpath in Gerald's field had been dropped. However, Mr Webber made it known he no longer wanted owners & dogs walking in the field as gates had been left opened. The courtesy of walking be removed.

2.4.33 Parish Survey under National Parks and Access to the Countryside Act 1949

The survey form for path no 14 was signed by the parish clerk, Mr C P Webber in September 1950. The form indicated that the path was unlikely to be disputed and was required in the future. The description of the path was 'Start at Aller Marsh Clapper, over Railway to Main Road to Chawleigh Week Lane and Rock Bridge through marshes to Chulmleigh Bridge.'

2.4.34 The County Surveyor made notes on the form as follows

- 1) Divisional Rural Surveyor to check the amended description on attached form
- 2) Is Chawleigh Week lane a Public Accommodation
- 3) Back of Form not completed
- 4) Description of Fields not given

CS Recommends – Include in Draft Map

The pencilled notes at the top of the form noting 'Large portions of this path seem to be either Accommodation Road or Unclassified Road'.

2.4.35 On the map completed by the Parish Council the parish had written the number '14' in brackets (as they had done with all their paths) along the line of the path marked in the fields Between Aller Marsh Bridge and the A377 (points G to F) and in the fields between Chawleigh Week Lane (Rock Hill) and Chulmleigh Bridge (points A to B). However, for the section between the A377 and Chawleigh Week Lane, they had written the numbers along Chawleigh Week Lane to the farm and then north (down) Chawleigh Week Hill, rather than through the field between (points C to E).

2.4.36 The path was walked by Mr A Pearce, of the Crediton Rural District Council, on the 6 February 1951 who wrote the description of the path as 'Starting from Chulmleigh Bridge, Ill Class road 470 through the fields to Rock Bridge to unc road to Chawleigh Week Lane to main road A3777 by Linhay cross the road under the railway to boundary near Rashleigh Mill'. The path was stated as being a Public Footpath and under general comments stated 'Path used by Chulmleigh public, gates and stiles in order'.

- 2.4.37 Mr Pearce's statement was subsequently amended to the following statement for the path. Footpath No. 14 Chulmleigh Bridge – Aller Marsh Clapper Footbridge (over River Taw). Starting from Chulmleigh Bridge on Class 3 Road (No 470) through the fields to the unclassified County Road at Rock Bridge. Leaves the County Road about 130 yds further south thence across two fields then along Chawleigh Week Lane (not repairable by the inhabitants at large) thence across the Barnstaple main road (A377) at Lower Linhay then under the Railway to the Parish Boundary at Aller Marsh Clapper (FB) where it joins Footpath No ... in Wembworthy Parish. (NB The ..?.. has been omitted by Wembworthy PC).
- 2.4.38 The County Council's note on the surveyor's comments was 'O.K.' (although with a note that portions of the path seem to be either Accommodation Road or Unclassified Road) and the path was included on the Draft Definitive Map which was published in February 1954 and available on deposit for consultation from 19 February to 25 June 1954. The draft Definitive Map for Chawleigh was returned by the parish clerk and only shows the western section (west of the A377) of the footpath coloured on the map as recorded currently on the Definitive Map.
- 2.4.39 In the Crediton Rural District Council files there is a sheet head Discrepancies in the Crediton Draft Map. Under the parish of Chawleigh it includes 'Path 14 Portion running from County Road 470 Chulmleigh Bridge westwards to the U.C.R., Chawleigh Week Hill and from there to the Barnstaple Road, A.377 by Lower Linhay has not been plotted on the map.' However the only correspondence found in the file relates to the deletion of Footpaths No. 11, 13 & 24 from the Draft Map following receipt of objections. These proposed changes to the Draft Map were published on 27 January 1956.
- 2.4.40 A later List of Discrepancies in the Crediton Draft Map dated 26 November 1956 has under Chawleigh Parish, Paths 12, 14, and 18 outstanding but there was no other correspondence in these files to indicate that any action was taken with regard to these discrepancies. Although the missing section of Footpath No. 14 was noticed, there is no details of what, if any, action was taken and the missing section of footpath did not appear on the provisional or definitive maps.
- 2.4.41 A letter from the Clerk of the County Council to the County Surveyor dated 13 February 1957 refers to the publication of the Provisional Maps and Statements for the Crediton Urban and Rural Districts. The letter refers to enclosing a schedule of the names and addresses of persons to whom the Parish maps and statements have to be sent. The County Surveyor was asked to arrange for the Parish Maps and Statements, together with a completed covering letter and the enclosures referred to therein, to be sent to the persons named in the Schedule.
- 2.4.42 The Notice of publication for the provisional maps of 28 February 1957 advised that 'At any time before 30 March, 1957, the owner, lessee or occupier of any land on which the map shows a public path, may apply to quarter sessions for a declaration that, inter alia, there was no public right of way over the land on 30th November, 1953.' Although copies of the path statements were sent to the Parish Council with the provisional map, the Notice refers to 'the owner, lessee or occupier of any land on which the map shows a public path' and did not make a specific reference to the path statement.
- 2.4.43 The Definitive Map for the Crediton Rural District Council was published on 25 February 1958 and copies of the maps and statements were again forwarded to the parish councils and meetings in the district. No changes to Footpath No. 14,

Chawleigh as recorded on the map or as described in the statement appear to have been made.

2.4.44 The Definitive Map statement for the path, read as follows 'Starts from the County Road (No.470) at Chulmleigh Bridge and proceeds west across fields adjoining Little Dart River, to the Unclassified County Road at Rock Bridge, leaves that road 130 yards further south, thence across two fields close to river, along Chawleigh Week Lane (not repairable by the inhabitants at large) then crosses the Barnstaple Road (A.377) through fieldgate at Lower Linhay through an arable field, passes under Railway, then follows close to bank of the River Taw to the Parish Boundary at Aller Marsh Clapper Footbridge, where it joins Path No. 3 in Wembworthy Parish'.

2.4.45 Correspondence with County, District or Parish Council

In January 1969, the Parish Clerk, following the holding of a parish meeting in connection with the 1968 review, wrote to the County Council. Under the heading 'Pedestrian & Railway Crossings' the letter stated 'The Parish Meeting asked about the padlocked gates where right-of-way for pedestrians pass over the railway line, Path No. 14'. In the reply sent by the County Council in November 1969, no reference was made to Footpath No. 14, Chawleigh.

2.4.46 In March 1989 Mr Quarman, from the engineer's department of Mid Devon District Council, wrote to Devon County Council to advise that an anomaly has recently come to his notice on Footpath No. 14, Chawleigh. He advised that on examining the Definitive Map it is noticed that the path proceeds in a westerly direction from Lower Linhay whereas the Statement suggests that the starting point is a considerable distance further east at Chulmleigh Bridge. He asked for assistance with this problem.

2.4.47 The County Council's Mr Curry from the legal department responded and advised that from the original papers it is apparent that the then Parish Council envisaged that Footpath 14 would be recorded as described in the Definitive Statement. There is no ruling as to whether the map or statement takes precedence. In this instance though it is apparent that the map is wrong and the statement is an accurate reflection of the Parish Council's wishes. Accordingly it might be as well to publish a Modification Order to take account of that, rather than to wait for the review to reach Mid Devon. Mr Curry asked Mr Quarman for a few more details re

- i) Is the path walkable between A377 and Chulmleigh Bridge
- ii) Is it used or are there any objections made to that use or to the path being shown on the Definitive Map
- iii) Is it signposted at all
- iv) Is there any evidence of higher status over Chawleigh Week Lane
- v) Can you give details of the path's physical condition at the moment

2.4.48 Mr Quarman responded to the questions as follows in June 1989.

- i) He cannot comment if the path is walkable as the landowner refused to allow him to walk the line of the path
- ii) He understood that the general public do use the path but the landowner objects to the inclusion of the path on the Definitive Map
- iii) There are no signposts
- iv) He had no evidence of a higher status for Chawleigh Week Lane
- v) He understands that the path is very wet in places

He advised that he had endeavoured to obtain information from the Parish Council without success.

- 2.4.49 Mr Curry replied that although he previously said the map is inaccurate, further evidence of use than the wording of the statement will probably be needed to support any Modification Order that might be made, given the objections of the landowner.
- 2.4.50 Mr Quarman replied advising that he felt the landowner would say that there is no path and people use it with permission. He also commented that it was his feeling that the path should not be included on the map and the statement should be amended accordingly. In conclusion of the correspondence Mr Curry suggested that the matter waits until the Parish review reaches Chawleigh.
- 2.4.51 In February 1995 a letter was received from Mr Burgess of Exmouth enquiring about the missing bridge at Aller Marsh, at the west end of Footpath No.14, Chawleigh at the Chawleigh/Wembworthy parish boundary. On reading a copy of the Definitive map statement for the footpath, Mr Burgess commented on the discrepancy between the map and the statement.
- 2.4.52 Devon County Uncompleted Reviews of 1968, 1977 & 1998
No reference to the anomaly Footpath No. 14, Chawleigh appears to have been made by the Parish Council or County Council during the 1968 review. Following notification of the 1977 review, a Parish Meeting was held to discuss the rights of way but no amendments were suggested in respect of Footpath No. 14, Chawleigh. The anomaly was also not referred to by the County Council.
- 2.4.53 When the 1998 review was opened the anomaly of Footpath No. 14, Chawleigh was noticed and referred to the Parish Council in January 1998 with queries on other rights of way in the parish, for their comments on whether they considered the map or the statement as being correct. A response was received from the Parish Council in April 1998 but no comments were made regarding Footpath No. 14, Chawleigh. The Parish Council minute of 22 January 1998 confirms that the footpath was discussed at a parish council meeting.
- 2.4.54 Chulmleigh Parish Definitive Map Review 1990
The review in Chulmleigh Parish (located in North Devon District Council area) opened in 1990 and following a meeting with Chulmleigh Parish Council the clerk wrote to the County Council advising that the Council had unanimously approved the following motions:- 1) We consult with Chawleigh P. C on c) whether the track between Rock Hill and Chulmleigh Bridge should be made a public right of way. This would be the section between points A and B on the committee plan.
- 2.4.55 A subsequent copy letter from the clerk to Chulmleigh Parish Council to Chawleigh Parish Council said 'Please convey our thanks to your Parish Council for taking time in meeting us last night, to discuss our neighbouring footpaths. As I understand it, the following resolutions were agreed:- 3) Any decision on the unlisted footpath between the bottom of Rock Hill and Chulmleigh Bridge is deferred so you can negotiate with the landowner. We look forward to receiving your decision in due course.'
- 2.5.56 There is no reference to any subsequent correspondence between the two parish councils or with the County Council regarding this path. However, in the Chulmleigh DMR file were seven user evidence forms completed by Chulmleigh residents, between October 1991 and January 1996, in which the users refer to their use of the section A to B, Rock Bridge to Chulmleigh Bridge or vice versa. The earliest form refers to use from 1928, with most users continuing to use the route at the time of completion. It would appear that the forms were to be kept on file pending the reviewing opening in Chawleigh parish.

2.4.57 Chulmleigh Short History and Walk Around Guide 1986, 1990 & 1996

A small guide book to Chulmleigh was written by Mr Jack Mair and Richard Bass in 1986 and updated editions were published in 1990 and 1996. In the paragraph about number 28 on the map in the book, Chulmleigh Primary School, the author refers to walking down Chulmleigh Hill, the 'new' road to Chulmleigh made in 1825 to provide a less steep gradient for stagecoaches. At Chulmleigh Bridge he advises there once was a mill (medieval) and concludes the paragraph by saying 'You can walk back to Rock Hill through the field'.

2.4.58 In the 1990 and 1996 editions, number 28 on the map is described as the Chulmleigh Old Girls School and the last sentence in the paragraph is the same as in the earlier edition and says 'You can walk back to Rock Hill through the field'.

2.4.59 Aerial Photography 1946, 1999-2000, 2006-2007 and 2011

In the 1946 photography Chawleigh Week Lane shows as a clear lane with trimmed hedges and the three separate fields in the section between Chulmleigh Bridge and Rock Hill (points A and B). In the later editions the lane continues to be clearly defined and open and the riverside path is one large field. No track is visible through the field on the line of the path.

2.4.60 HM Land Registry

The sections of Footpath No. 14, Chawleigh that are not recorded on the Definitive Map both pass over land that is in the sole ownership of Mr Gerald Webber of Chawleigh Week Farm. Mr Webber also owns the land crossed by the mapped section of Footpath No. 14, Chawleigh on the west side of the A377 between points F and G. It appears that the land was first registered in 2008 but the farm was purchased by Mr Webber's parents in 1932.

2.5 **User Evidence**

2.5.1 A total of twelve user evidence forms have been received, the majority are in respect of use of the section of path from the county road by Chulmleigh Bridge (point A) to the county road known as Chawleigh Week Hill (point B). Many of the users refer to point B as Rock Hill or Rock Hill Bridge, although Rock Hill is actually the county road that starts on the other side of the Little Dart River and proceeds northwards up a steep hill to Chulmleigh. The bridge is called Chawleigh Week Clapper (FB) on current mapping.

2.5.2 Seven user forms were submitted in late 1991 and early 1992 from Chulmleigh residents and their completion appears to have been prompted when the Definitive Map Review was opened in Chulmleigh parish in 1990. The status of the footpath from Chulmleigh Bridge to Chawleigh Week Lane (Rock Hill) was questioned but as the path lies wholly in Chawleigh parish it was not considered in the Chulmleigh review, although most of the users would appear to be from Chulmleigh. A further five user evidence forms have been received following the opening of the 2014 Definitive Map Review in Chawleigh parish and publication of the public consultation.

2.5.3 The user forms received in 1991/1992 (23 years ago now) did not have any maps attached but all seven users refer to the path from Rock Bridge to Chulmleigh Bridge or vice versa. The forms were received from residents whose ages ranged from 57 to 72 years at the time of completion and so would be 80 to 95 years of age now if still with us.

- 2.5.4 Mrs Joan Cox of Chulmleigh believed the path to be public based on usage and had used the path 2 or 3 times a week since 1952 to the present (1991) for pleasure on foot. She advised of stiles at either end of the path and one in the middle. There was a gate in the hedge – now removed, she has not advised of seeing any notices. Under any obstructions Mrs Cox refers to a wire fence across field. She advised the owner to be Mr Webber and advised that she had never obtained permission to use the route, being stopped or turned back or being told that the route was not public or seen notices such as 'Private' or 'This is not a Right of Way'. She believed the owner or occupier was aware the public was using the way as could see people walking.
- 2.5.5 Dr J Cox of Chulmleigh, a family doctor, believed the path to be public based on usage and OS maps. He had used the path since 1952 to 1991, 2 to 3 times a week for pleasure on foot. He comments that the way is marked differently on different OS maps ie across meadow or alongside river. He refers to the stiles at each end and gates in hedges across field, since removed. He has not advised of seeing any notices and refers to a wire fence across field. He advised the owner to be Mr Webber and advised that he had never obtained permission to use the route, being stopped or turned back being told that the route was not public or seen notices such as 'Private' or 'This is not a Right of Way'. He believed the owner or occupier was aware the public was using the way as people were seen to be walking by him. Under further particulars, Dr Cox advised 'although this F.P. is in Chawleigh Parish it is walked almost exclusively by Chulmleigh people. It may be part of an old Millers route from Colleton to Park Mill'.
- 2.5.6 Jean Garrity of Chulmleigh, believed the path to be public as it has been in use ever since they first came to Chulmleigh in 1964. It has always been used by local people. She had used the path in most years since 1964 several to frequently times a year by herself and her three children, for pleasure on foot. She mentions a stile beside Chulmleigh Bridge, gates unlocked and refers to seeing a notice that said 'Dangerous to Swim in River'. She knew Mr Webber was the owner and advised that she had never been stopped or turned back or being told that the route was not public or seen notices such as 'Private' or 'This is not a Right of Way'. Ms Garrity did not answer the question about permission. She believed the owner or occupier was aware the public was using the way because the public always used it. Under further particulars she advises 'The path originally ran through two fields but the dividing hedge was levelled a few years ago by the farmer'. Ms Garrity is still living in Chulmleigh and in a recent telephone conversation confirmed her use and said that there used to be a lot of people walking there, now not so many.
- 2.5.7 Mrs Greenslade of Chulmleigh had believed the path to be public because everybody used it and she had considered it public all her life (since 1919). She used the path from 1928 to 1955, once a week as a child and occasionally as an adult. She refers to stiles at Rock Bridge, Chulmleigh Bridge and over the hedge in the field near the river and a gate on the hedge across the field near the woods. She does not mention any notices or obstructions and knew the owners were the Webbers of Chawleigh Week and advised that she had never obtained permission to use the route, being stopped or turned back or being told that the route was not public or seen notices such as 'Private' or 'This is not a Right of Way'. She believed the owner or occupier was aware the public was using the way as they knew everyone walked it. In further particulars Mrs Greenslade advised 'I have lived here all my life and have always known it as a right of way'.
- 2.5.8 Mr and Mrs Marsh had completed separate user evidence forms but most of the information was similar. They both believed the path to be public for thirty years.

They had used the path from 1962 to 1992 for pleasure on foot. There were stiles at Rock Hill Bridge and Chulmleigh Bridge and a gate (Mr M - tied with binder twine). They did not know who owned the land but advised that they had never obtained permission to use the route, being stopped or turned back or told that the route was not public or seen notices such as 'Private' or 'This is not a Right of Way'.

- 2.5.9 Mrs Stenger from Chulmleigh believed the way to be public always due to common usage and maps. From 1961 Mrs Stenger used the path several times a year and from 1984 onwards the use was almost daily. The use was for pleasure and on foot. The path is described as running across meadow through gate no longer there. There were three stiles along the river, no longer there one gate in middle of marsh, no longer there. No notices or obstructions. She knew the owner was Mr Webber and believed he was aware the public was using the path as he was often working in the fields when people walked through. Mrs Stenger advised that she had never obtained permission to use the route, being stopped or turned back or being told that the route was not public or seen notices such as 'Private' or 'This is not a Right of Way'.
- 2.5.10 Mrs Stenger still lives in Chulmleigh and in a recent telephone call advised that she had continued to use the path after 1991 to the present time but only very occasionally now. She used the path daily when she had a dog. Mrs Stenger also advised that they had rented fishing rights along that section of river, although she could not remember when or for how long and so would have had permission to use the field to access the river bank for fishing.
- 2.5.11 The five user forms completed in 2014 were also from residents of Chulmleigh and included Mr Matthew Brady. Mr Brady advised that he had used the path from Chawleigh Week Clapper Bridge and Chulmleigh Bridge from 1986 (when he was six years old) about 40 or so times a year for pleasure on foot. He thought the path was public due to sign and stile. There were stiles either end by both bridges, no gates or notices. Both stiles blocked by wooden posts and barbed wire. He had never obtained permission to use the route, never been stopped or turned back, told it was not public or seen notices such as 'Private' or 'This is not a Right of Way'. He believed the owner was aware the public was using the path as 'it's used by a lot of people'.
- 2.5.12 Mr & Mrs Brady completed a joint form and had used the path from Chulmleigh Bridge to Rock Hill Bridge from 1954 to 2014 ten times a year for a circular pleasure walk. They believed the path public through many years of use and mentioned the path being diverted between 1965 and 1970. They answered yes to stiles and gates and unknown to notices. They had never obtained permission to use the route, never been stopped or turned back, told it was not public or seen notices such as 'Private' or 'This is not a Right of Way'. In a subsequent telephone conversation Mr Brady advised that lots of people use the path. The gate is always locked at the Chulmleigh Bridge end but unlocked at Rock Bridge end if there are no cattle in the field. He was at primary school when the girl drowned in the bathing pool in the river. The local children stopped swimming there then and a small sign was put up saying 'Dangerous Bathing' but the path was not stopped and people still used it. The centre of the field would hold water after flooding and he thinks this may have been why people started walking closer to the river.
- 2.5.13 Mr Hookins had used the path from Chulmleigh Hill Bridge to Rock Hill Bridge twelve times a year from 2002 to 2014 for pleasure on foot. He believed it to be public as it is marked on OS map. There are gates but no obstructions or stiles. He had never

obtained permission to use the route, been stopped or turned back, told it was not public or seen notices such as 'Private' or 'This is not a Right of Way'.

- 2.5.14 Mrs Preece had used the path from Chulmleigh Hill Bridge to Rock Hill bridge fifty times a year from 1972 to 2014 for pleasure on foot. She believed the path to be public as it always has been. She refers to one stile when there was a hedge and gates at Chulmleigh Hill end locked. She had never obtained permission to use the route, been stopped or turned back, told it was not public or seen notices such as 'Private' or 'This is not a Right of Way'. In additional information Mrs Preece wrote 'This route has always been used to make a circular walk via Rock Hill or Chulmleigh Hill – the field has changed in that it was divided into 3 fields but now the hedges have been removed. This field floods badly.
- 2.5.15 Mr Woodhead completed two user evidence forms; the first on the 4th October was in respect of his use from Chawleigh Week to the A377 along Chawleigh Week Lane. He had used this route from 2008 to 2013 approximately 6 times a year for pleasure on foot. He believed the path to be public as links with other rights of way, no deterrence. There were no locked gates or stiles or notices. With regard to obstructions Mr Woodhead advised 'the path between Chawleigh Week Hill and Chawleigh Week Lane is obstructed. I have consequently used the track beginning at Chawleigh Week'. He believes the owner was aware the public were using the path as seen by farm staff. He has not seen anyone else on that part of the path (west of Chawleigh Week Hill) except farm staff (he assumes) using tractors.
- 2.5.16 The second form was completed on the 24th October 2014 and covered the use of the route from Chulmleigh Bridge to Rock Bridge six to eight times a year between 2008 and 2013 for pleasure on foot. He believed the path to be public due to local knowledge and observed other users. The gate at Chulmleigh Bridge end is locked, at Rock Bridge end unlocked. He had never obtained permission to use the route, been stopped or turned back, told it was not public or seen notices such as 'Private' or 'This is not a Right of Way'. He does not know if the landowner was aware that people were using the path.

2.6 Landowner Evidence

- 2.6.1 Mr Webber, the sole landowner, was notified of the proposal and although a completed land owner evidence form was not received, a meeting was held with the officer and a written statement submitted.
- 2.6.2 Mr Webber (born in 1944) advised that Chawleigh Week was purchased by his parents in 1932. The only footpath on the farm was from the A377 Lower Linhay to Aller Marsh footbridge, the footbridge was destroyed by the floods in spring 1947.
- 2.6.3 In about 1989 Mr Webber was in Linhay field (west side of the A377) when he was approached by a footpath officer and asked if many people used the footpath as the officer was investigating whether to rebuild the bridge. Mr Webber said that he was the first walker he had seen and the officer said that it would be uneconomic to rebuild the bridge and he would close the footpath.
- 2.6.4 In 1984 Mr Webber inherited Chawleigh Week and erected signs at each end of Rock Bridge Marsh saying 'This Land is Private Property and there is no Public Access'. The signs were vandalised. The gates were kept locked at both ends of the field and at the west end of Chawleigh Week Lane.

- 2.6.5 He stated that Public Footpaths cause considerable problems for livestock farmers and they will look to Devon County Council for compensation if they have stock condemned at slaughter because of C.Ovis or other parasitic diseases from dogs. Dog bins must be installed and emptied regularly by Devon County Council. Part of the path also passes through dense bracken (points C to D) with the risk of Lyme's disease from ticks. If an electric fence next to the path is not acceptable, he would expect the Council to provide a secure sheep netting and wire stock fence in replacement.
- 2.6.6 In a telephone call and during the meeting Mr Webber advised that Chulmleigh Boys School held a cross country run each year and the head teacher would always ask permission. The junior school head would also ask permission to take the children on nature walks. People would swim in a section of the river but a young girl was drowned when Mr Webber was seven. He removed the last hedge in the fields adjacent to the river some years ago as there was a corner area where cattle could get trapped by rising flood water.
- 2.6.7 On the west end of Footpath No. 14, Chawleigh, to the west of the A377, his occupation crossing was moved towards Eggesford to give seventeen second visibility. The gates on their crossing are kept locked since a bullock got onto the railway line. The footpath was not an underpass (path statement refers to footpath passing under railway) there were concrete posts that had footpath signs and L & SWR 'Beware of Trains' signs.
- 2.6.8 About twenty years ago the railway erected fencing (timber posts with sheep netting and 4 strands of barbed wire about 5' (1.5 m) high) across the line of the footpath, his crossing is in a different place. This fencing has obstructed the footpath since then.

2.7 Rebuttal Evidence

- 2.7.1 Apart from the landowner, Mr Webber, no other rebuttal evidence has been received.

2.8 Other Correspondence

- 2.8.1 In December 2014 an email was received from a walker regarding Footpath No. 14 and asking 'Does this path still exist? There is no signing where it leaves the A377 and the gates for the railway crossing are padlocked. We had walked down the track from Chawleigh Week and climbed a padlocked gate to reach the A377'. The author subsequently confirmed that they had not used Chawleigh Week Lane before. The padlocked railway crossing is Mr Webber's crossing and the footpath crossing is now no longer apparent and obstructed by the railway fencing. The footpath is not signed from the A377 as the bridge is missing over the River Taw.

2.9 Discussion

- 2.9.1 A claim for a public right of way can arise through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication. A public right of way can also be deleted from the map if there is

evidence to show that a mistake was made, at the time the path was added to the definitive map and that the path or way was never a public right of way.

- 2.9.2 A route described on the path statement but not shown on the final Definitive Map is an anomaly and as such amounts to an event under s.53 (3)(c)(iii) of the Wildlife and Countryside Act, 1981, that particulars contained in the map and statement require modification to resolve the differences between the map and statement.
- 2.9.3 In *R (Norfolk CC) v Secretary of State for the Environment, Food and Rural Affairs* (2005) it was said that in the event of a discrepancy between the map and statement, the matter was to be determined by reference to the evidence presented, with neither the map nor statement having precedence with regard to the weight to be attached to the information on each. It is therefore necessary to look at all the available evidence to determine whether it is the map or the statement that needs amending.
- 2.9.4 Chawleigh Week Lane has been depicted as a defined lane for over 200 years. In 1809 the west end of the lane went towards the river but by the Tithe Map of 1839 there was a connection to the A377 opposite Lower Linhay. By the 1st edition of the OS 25" to a mile, only the section of lane leading to the A377 rather than to the Little Dart River was shown.
- 2.9.5 The application to the Quarter Sessions was necessary in 1826 to stop up a road that was considered to be a public highway at that time. As this road started part way along Chawleigh Week Lane it would imply that Chawleigh Week Lane must also have been considered a public highway as people would have passed along it to access the stopped up road. In the Tithe Map the Chawleigh Week Lane was numbered and as the number was not included in the apportionment for Chawleigh Week this would indicate that the lane was not part of the holding but apportionment number 1680 was not included in the list of numbers described as Roads and Rivers at the end of the apportionment.
- 2.9.6 In the Cassini maps of 1899-1900 Chawleigh Week Lane and Chawleigh Week Hill are depicted in a similar manner (third class roads) but by the 1919 edition there is a differentiation shown between Chawleigh Week Hill and Rock Hill (now unclassified county roads) and Chawleigh Week Lane. In the mid-20th century OS 1" maps Chawleigh Week Lane is shown as a lower status than Chawleigh Week Hill and Rock Hill in 1946 but depicted as a similar status in 1960 and 1965.
- 2.9.7 In the OS object name books of 1903, Chawleigh Week Lane was described in two separate entries as 'a lane' and 'a road', the 'an old' part having been crossed out from the latter description. Both entries were signed for by Mr Sharland, the local District Surveyor, which would indicate that due to Mr Sharland's interest there was some public use of the lane at that time.
- 2.9.8 The estate sale plan of 1908 shows Chawleigh Week Lane coloured in the same manner (shaded green) as the land and buildings included within the lot. The OS compartment numbers were used to identify and name the various fields and the lane was described as a road. Chawleigh Week Hill and Rock Hill were coloured orange as were other county roads. The estate plan would indicate that Chawleigh Week Lane was deemed to be part of the holding but the description of road does not indicate this meant a road used by the public or a private road used for the farm only, but it was called road rather than lane. Annotations have been removed from the OS mapping used for the sale plan namely 'Liable to floods' and two 'F.P.' on the fields crossed by the section of Footpath No. 14, Chawleigh not currently shown on the Definitive Map. It is not known whether these were removed/not copied because

the path was not considered to be a public footpath or as 'Liable to floods' was also been removed, were the agents trying to improve the potential sale price of the farm.

- 2.9.9 In the Finance Act Plans of around 1910 all of the land that now belongs to Mr Webber and is crossed by Footpath No. 14, Chawleigh, including Chawleigh Week Lane, is included within the hereditament. An allowance of £50 is given for Public Rights of Way and although the field numbers are not given, on the OS 25" 2nd edition mapping used for the plans, two pecked lines labelled 'F.P.' are shown across the fields between Chulmleigh Bridge and Chawleigh Week Lane. The farm was occupied by the owner (bought at auction two or so years before) and it would appear that the footpath was acknowledged by him as an allowance was claimed. No other recorded public rights of way exist on the holding part from Footpath No. 14, Chawleigh.
- 2.9.10 In the London & South Western Railways plans of 1905 for the proposed dualling of the railway (referred to in the estate sale catalogue of 1908), the field crossed by Footpath No. 14 west of the A377 is described as 'Field, occupation crossing and footpath' with occupier as Thomas Sanders & Chawleigh Parish Council'. This would indicate that the footpath was recognised in 1905. This section of the footpath (currently shown on the Definitive Map) was also shown as a footpath on the Cassini map of 1899 and 1919 and OS 1" map of 1946 before public rights of way were shown on OS maps which could indicate it was of some importance, there may have been a clear track suggesting it was well used at that time. The path was not shown on the 1960 OS 1" indicating it was not visible to the surveyors then, although this would also be after the bridge over the River Taw, on the parish boundary, may have been washed away, which Mr Webber advised happened in 1947. The footpath when used with Chawleigh Week Lane, Chawleigh Week Hill and Rock Hill would have provided a route to Chulmleigh town or to the mill by Chulmleigh Bridge for residents of Wembworthy parish.
- 2.9.11 The Western Times newspaper article would suggest that Mr Clarke was using Chawleigh Week Lane on his bicycle in 1938 but it is not known whether this was as a member of the public or whether he had been given permission by the landowner at that time.
- 2.9.12 The Vestry and Parish Council minutes make reference to repairs been needed to Rock Bridge (Chawleigh Week Hill Clapper) and Chawleigh Week Hill on a number of occasions. In 1898 the tenant of Chawleigh Week, Mr Sanders, was paid some money for repairing footpaths but it is not known if the footpaths were on his farm. In 1906 the Parish Council had the opportunity to examine the plans and book of reference for the railway line dualling and could have commented on the reference to footpath for field numbered 4 if they considered it incorrect.
- 2.9.13 In October 1958 Chulmleigh Parish Council approached Chawleigh Council about putting up a notice at the pool in the River Dart where the tragic accident had occurred. Chawleigh Parish Council agreed that a notice should be erected. Mrs Garrity who completed a user evidence form in 1991/1992 and used the path from Chulmleigh Bridge to Rock Hill from 1964 advised seeing a notice 'Dangerous to Swim in River'. In December 1983 an item headed Broken Warning Sign referred to the sign erected on the Chawleigh side of the river by Mr Clarke in Mr Webber's field. The matter was again raised in March 1984. It is understood that the area of river used for bathing was accessed on the Chawleigh side of the river by walking along the path between Chulmleigh Bridge and Rock Hill and that the sign was erected adjacent to the part of the river. It appears that the public were continuing to use the

path and the signs were erected near the river pool to stop people swimming in the river rather than using the path.

- 2.9.14 In November 1986 the missing foot bridge at Aller Marsh, over the River Taw was raised and in January 1987 it was reported that the local farmer cannot ever remember a foot bridge over the river. Mr Webber advised that the bridge was washed away by icebergs in the thaw and floods of 1947. However, as a bridge was shown in situ on the OS Post War mapping of 1956 and the missing footbridge was not mentioned by the Parish Survey or the district surveyor in their path descriptions of 1950/51, it is considered probable that a replacement bridge was erected after 1947. Although by the OS Post War mapping of 1975, this bridge also appears to have gone and the bridge was stated to have been missing for many years prior to 1987, when raised at a Parish Council meeting.
- 2.9.15 In October 1990, when the Definitive Map Review had opened in Chulmleigh Parish, Chawleigh Parish Council were asked for comments on four footpaths and bridleways extending into Chawleigh; item b) was Rock Hill to Chulmleigh Bridge and it was stated that at the moment the farmer informed persons it was not a public path. A joint meeting was held with the two parishes and afterwards a letter was received from Chulmleigh Parish stating that 'Any decision on the unlisted footpath between the bottom of Rock Hill and Chulmleigh Bridge is deferred so you can negotiate with the land owner. We look forward to receiving your decision in due course'.
- 2.9.16 It appears that Chulmleigh Parish Council were of the opinion that the path was a public right of way and it is understood that the path was probably mainly used by Chulmleigh residents rather than Chawleigh parishioners. As people continued to use the path as they had been doing, it would not appear that Chulmleigh Parish ever chased Chawleigh for a decision. A history and walk around guide for Chulmleigh was published in 1986 and reprinted in 1990 and 1996. All three editions refer to walking down Chulmleigh Bridge, the site of an old (medieval) mill and say that 'you can walk back to Rock Hill through the field'. It would appear that no objections were made to this comment and so no changes were made in the subsequent later editions.
- 2.9.17 Following the review opening in Chawleigh in 1998 the anomaly with Footpath No. 14, Chawleigh was raised by the County Council and the minutes recorded that the Parish Council and others had established many years ago the footpath in Gerald's field had been dropped. Mr Webber had made it known that he no longer wanted owners and dogs walking in the field as gates had been left open.
- 2.9.18 The Parish Survey form was completed in 1950 and the path description went from Aller Marsh Clapper to Chulmleigh Bridge. On the survey map the parish had indicated the path going entirely along Chawleigh Week Lane between the A377 and Rock Hill and not through the two fields between Chawleigh Week Lane and Chawleigh Week Hill as described by the district surveyor. The surveyor appears to have followed the line of path shown on the 1910 mapping used for the surveys and his description, although amended, was the basis for the Definitive Map Statement. The County Council commented that portions of the path appeared to be an Accommodation or Unclassified Road and if Chawleigh Week Lane was considered to be a Public Accommodation Road at the time (a road maintained by the adjacent landowners (possibly privately owned) but over which the public have complete freedom of access - Devon County Council definition in 1977) then it would explain why the path was not shown as going along Chawleigh Week Lane.

- 2.9.19 In March 1989 the Mid Devon District Council footpath officer, Mr Quarman, noticed the missing section from the Definitive Map and raised it with the County Council. The initial response was that the unmapped section should be added but when it was reported that the landowner would probably object to the inclusion, although Mr Quarman understood that people did use the path, it was decided to leave it until the review reached Chawleigh. The missing bridge at Aller Marsh and discrepancy between the map and the statement was also noticed by Mr Burgess, a walker, in 1995.
- 2.9.20 The user evidence received (for the section from Chulmleigh Bridge to Rock Hill) confirms that the path was mainly used by Chulmleigh residents and the forms completed in 1991/92 record use from 1928 to 1991/92 by seven people. Mrs Stenger had not referred to being given permission to use the route in her user evidence form but in a telephone conversation in 2015 advised that they had rented fishing rights along the river for some years and would have had permission to use the field to access the fishing. A further five user evidence forms were received in 2014 and confirm use from 1954 to 2014. The older users refer to use before the internal hedge was removed in the 1980s and with there being stiles at either end to enter and leave the field. Two users refer to signs saying 'Dangerous to swim in river' and 'Dangerous Bathing', which is believed could have been the same sign although the Parish Council minutes confirm the sign was replaced in 1984.
- 2.9.21 Only one user evidence form (used six times a year from 2008 to 2013) and one email enquiry (used once in December 2014) have been received concerning use of the un mapped section of footpath from Chawleigh Week Hill to the A377. Both users walked along Chawleigh Week Lane rather than through the field. The bridge is missing at Aller Marsh and so a user would, for most of the year, be unable to continue into Wembworthy parish. The footpath crossing across the railway has also been blocked by fencing for several years and Mr Webber's own crossing is kept locked.
- 2.9.22 Mr Webber, the landowner has lived at Chawleigh Week Farm all his life and only acknowledges the footpath from the A377 at Lower Linhay to the River Taw on the Wembworthy Parish Boundary. This footpath did not go under the railway line as stated in the statement but there had been signs on the footpath crossing saying 'Beware of Trains'. Mr Webber erected signs at Chulmleigh Bridge and Rock Hill in 1984 saying that 'This land is Private Property and there is no Public Access', but the signs were vandalised and do not appear to have been replaced. Gates are kept locked to prevent stock from getting onto the road or railway line.
- 2.9.23 Several of the users refer to seeing the farmer when using the path and it would appear that Mr Webber was aware that the public were using the path. When the matter was raised in the 1998 review the minutes recorded that 'the Parish Council and others established many years ago the footpath in Gerald's field had been dropped. However, Mr Webber made it known he no longer wanted owners & dogs walking in the field as gates had been left opened. The courtesy of walking be removed.' Use by the public seems to have continued as shown by the user evidence forms despite the gate at Chulmleigh Bridge being locked and the gate at Rock Bridge locked when cattle were in the field.
- 2.9.24 The section of Footpath No. 14, Chawleigh that runs from Chulmleigh Bridge to the A377 that is not shown on the Definitive Map is clearly described in the Definitive Map Statement but this is not sufficient evidence on its own of the path being a public right of way and it is necessary to consider all the available evidence. The existence of the section of Footpath No. 14, Chawleigh running west from the A377

and to the parish boundary with Wembworthy is not in doubt and the presence of this footpath is supported by evidence from the OS Maps (footpath shown on maps although not stated as being public or private), Railway Plan reference book of 1905 and possibly the Finance Act field book 1910. The footpath crossing the railway has been blocked for several years and the bridge missing across the River Taw for considerably longer.

- 2.9.25 The user evidence received records regular use of the section from Chulmleigh Bridge to Rock Hill (points A – B) by the public from 1928 to the present day. This is before the preparation of the Definitive Map in the 1950s. A F.P. is shown crossing the fields on the late 19th and early 20th century and 1956 OS 25” mapping, and although this does not mean that the path is public it does show that a physical path was observed on the ground. The presence of a Public Right of Way or Ways on Chawleigh Week Farm is also supported by the £50 allowance granted for Public Rights of Way in the Finance Act field book. The older maps show the path going across in a straight line from points A to B but the OS 1975 and current mapping records a pecked line further north and following the south side of the river bank.
- 2.9.26 Following the tragic accident in the 1950s, a sign was understood to have put up at the bathing pool area rather than at the ends of the footpath which would indicate people continued to use the path. The status of the route was questioned by Chulmleigh Parish Council during their Definitive Map Review of 1990 as the route was used by Chulmleigh residents and people reading the Chulmleigh guide book, published 1986, 1990 & 1996, were informed they could walk through the field. User evidence refers to accessing the path by stiles in earlier years and later through gates.
- 2.9.27 Mr Webber advised that he placed signs at the ends of this path in 1984 but these were not replaced when they were vandalised and it would appear that the gates were locked to keep stock in, as gates had been left open previously. At the Chulmleigh Bridge end it is currently possible to access the field by wooden railings. The Parish Council Minutes indicate that Chawleigh councillors were aware of the existence of the footpath but as it was used by Chulmleigh residents; it appears that when the path’s use was raised their decision was to leave it as it was. The signs, locked gates and reference to people having permission are examples of a lack of intention to dedicate by the landowner but it would appear that the lack of intention had not been perceived by the users, as use had continued. It is also considered that the documentary and earlier user evidence is considered sufficient to show that a public footpath had already come into existence at common law prior to these indications being made. It is also possible that the riverside route (points A to B) may have also come into existence as a public footpath through twenty years use by the public if use was prior to the removal of the stiles and/or locked gates, as use before this would be use ‘as of right’.
- 2.9.28 There is only one user evidence form in respect of use along Chawleigh Week Lane. The earlier documentary evidence, namely the Quarter Sessions Stopping Up Order (road to be stopped up accessed from Chawleigh Week Lane) and OS Object Name Book, (name signed for by District Surveyor), would support the lane having had some public status. There is however, no evidence of public money being spent on the lane as there is with Chawleigh Week Hill (an unclassified county road) and in the Portsmouth estate sale of 1908 the lane was sold as being part of Chawleigh Week Farm. A public accommodation road was considered to be a road available for the public, that was maintained by the adjoining landowners and public rights of way passing along public accommodation roads were not to be shown on the Definitive Map. This could indicate why the section between points E and F was not shown on

the Definitive Map but there is no correspondence or other documentation to indicate why the section of the footpath from points A to B and C to E was not included. The discrepancy was noticed by the Crediton Rural District Council after publication of the draft Definitive Map but there is no evidence as to what enquiries were made or why no changes were made to the provisional and final Definitive Map.

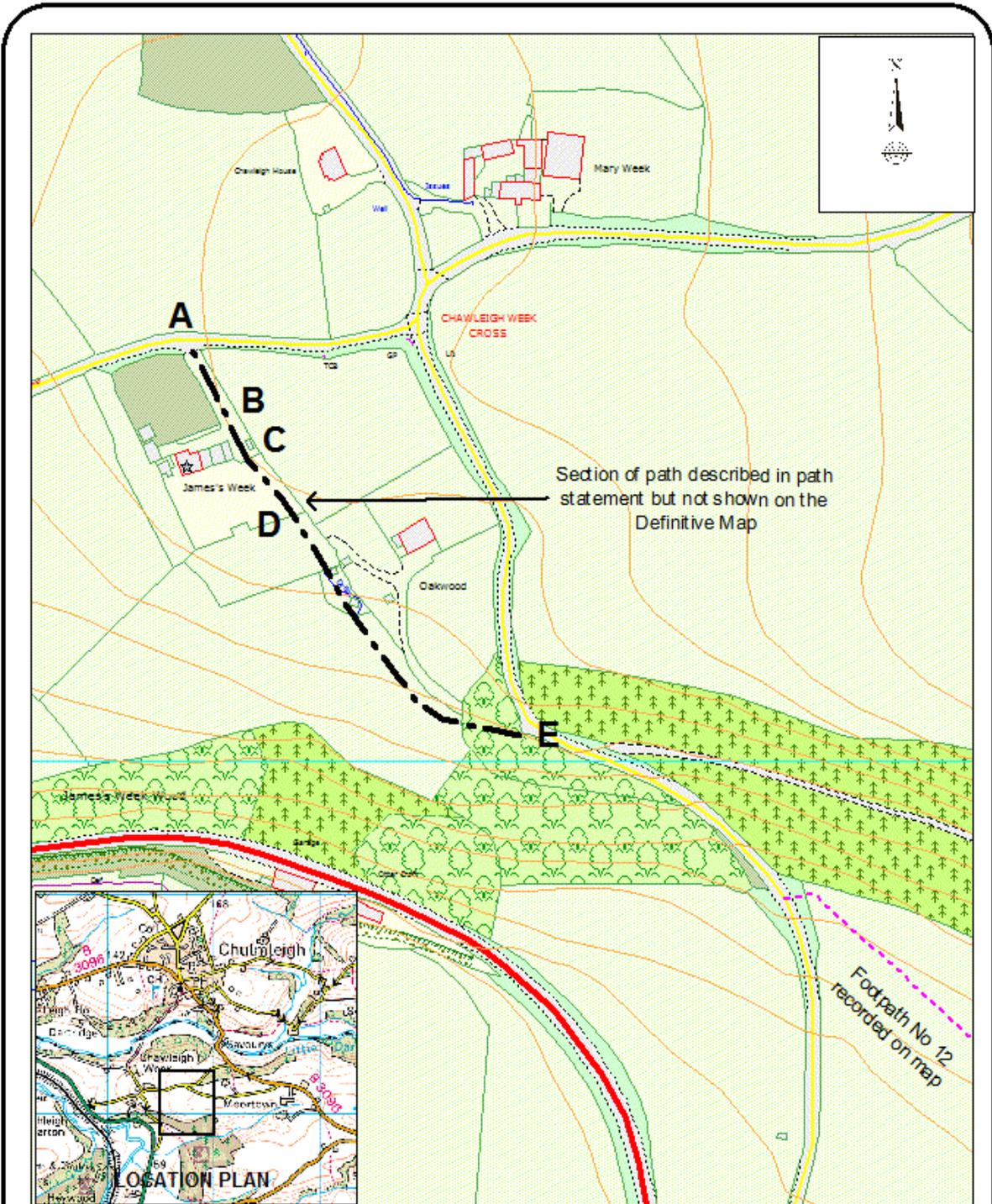
2.9.29 The continuation of the footpath from the A377 eastwards to Chulmleigh, via Rock Hill or via Chulmleigh Bridge (a less steep route) would appear logical and would have avoided using the Turnpike road to get to Chulmleigh. The route was described for the full length in the Chawleigh Parish survey of 1950 and marked on the map they completed with their forms. Chawleigh Parish Council and Chulmleigh Parish Council both support the map being amended to show the section of footpath described in the path statement.

2.9.30 The landowner's actions to indicate a lack of intention to dedicate are considered inadequate (following the decision of Godmanchester) and in any event appear to have occurred after the footpath had already come into existence. A public right of way may also have come into existence through long use of the riverside section (points A – B) under section 31(1) of the Highways Act. The available evidence is considered sufficient to suggest that Chawleigh Week Lane should be recorded as a footpath and not of any higher right.

2.10 Conclusion

2.10.1 The evidence when taken as a whole is considered to support the subsistence of a public right of way, namely a Public Footpath, at common law along the unmapped section of Footpath No. 14, Chawleigh running from Chulmleigh Bridge to Chawleigh Week Hill and then from Chawleigh Week Hill to the A377. The Definitive Map for Footpath No. 14, Chawleigh is considered to be incorrect and requires modification to correct the anomaly between the Definitive Map and Statement for this public right of way.

2.10.2 It is therefore recommended that a Modification Order be made to modify the Definitive Map by adding the sections of Footpath No 14, Chawleigh between points A – B and C - D - E - F as shown on drawing number HCW/PROW/14/21a (Proposal 4).



Map Ref **SS 6813**

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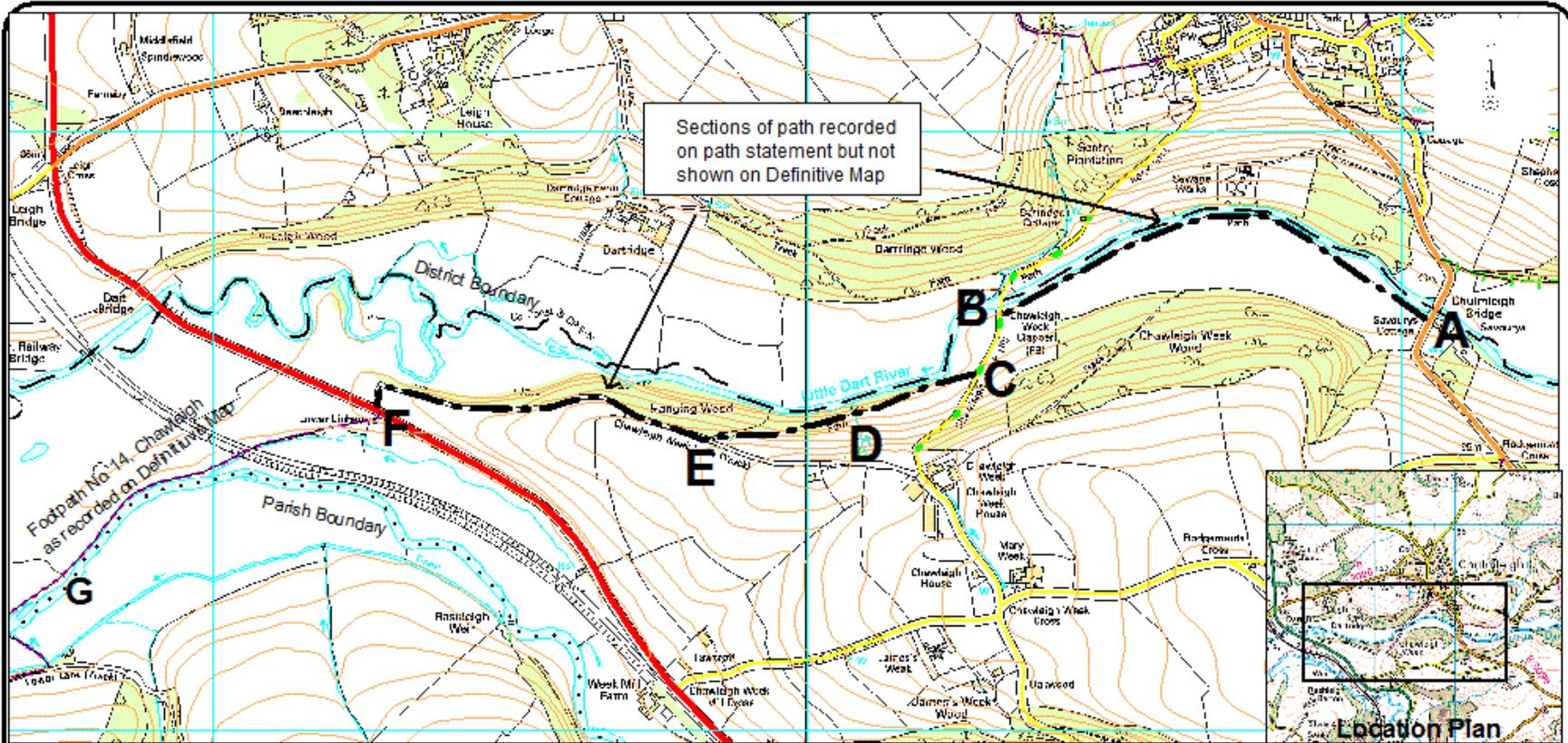
**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - CHAWLEIGH
PROPOSAL NO 3 - FOOTPATH NO 12 CHAWLEIGH
VARIATION OF PARTICULARS**

drawing number HCW/PROW/14/20a
 date Dec 2014
 scale 1:2,500 at A4
 drawn by TW

Notation Removal of Description from
 Definitive Map Statement - - - - -
 A - E (240 metres approx)
 Section of Footpath No 12 recorded
 on Definitive Map - - - - -

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE





Map Ref: SS 6713 6813 6913

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**DEVON COUNTY COUNCIL
DEFINITIVE MAP REVIEW - CHAWLEIGH
PROPOSAL 4 - FOOTPATH NO 14 CHAWLEIGH
VARIATION OF PARTICULARS**

drawing number **HCW/PROW/14/21a**
date **Jan 2015**
scale **1:10,000 (at A4)**
drawn by **TW**

Notation

Addition of Public Footpath to Definitive Map A - B & C - D - E - F (approx 810 and 1080 metres) **-----**
Existing Section of FP No 14 recorded on map **-----**

David Whitton
Head of Highways, Capital Development & Waste

