

CET/23/49

Public Rights of Way Committee
13 July 2023

Definitive Map Review Parish of Newton Poppleford & Harpford (Part 2)

Report of the Director of Climate Change, Environment and Transport

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

1) Recommendation

Recommendation: It is recommended that a Modification Order be made in respect of part of Proposal 3, as shown between points E and G on the plan CCET/PROW/23/33.

2) Introduction

This report examines a claimed footpath between High Street and School Lane in Newton Poppleford. A Schedule 14 application claiming this route was received following the opening of the parish review, although the affected landowners had not been served notice and so only part of the application process has been completed. The evidence submitted with the application is strong, and so the claim was put forward for consultation during the parish review.

3) Background

This is the second report for the Definitive Map Review for Newton Poppleford and Harpford parish. The background to the review in Newton Poppleford and Harpford was discussed in the first report of 9 March 2023.

4) Proposals

Please refer to the appendix to this report.

5) Consultations

General consultations have been carried out with the following results:

County Councillor Jess Bailey	- no comment;
East Devon District Council	- no comment;
Newton Poppleford & Harpford Parish Council	- supportive
Country Land and Business Association	- no comment;
National Farmers' Union	- no comment;
Trail Riders' Fellowship/ACU	- no comment;
British Horse Society	- no comment;

Cycling UK	- no comment;
Ramblers	- no comment
Byways & Bridleways Trust	- no comment;
4 Wheel vehicle Users	- no comment;
Open Spaces Society	- no comment.

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

6) 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.

7) Legal Considerations

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

8) Risk Management Considerations

No risks have been identified.

9) Equality, Environmental Impact (including Climate Change) and Public Health Considerations

Equality, environmental impact (including climate change) and public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

10) Conclusion

It is recommended that a Modification Order be made in respect of part of Proposal 3 as shown between points E and G on the plan CCET/PROW/23/33.

11) 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 East Devon area.

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Division: Otter Valley

Local Government Act 1972: List of background papers

Background Paper - Correspondence file: Newton Poppleford

Date - 2000-date

File Reference - TCG/DMR/NPOPP

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Appendix 1 to CET/23/49

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.

The Wildlife and Countryside Act 1981, Section 53(5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

Section 69 of the Natural Environment and Rural Communities Act 2006 (NERC) amended the Highways Act 1980, to clarify that a Schedule 14 application for a Definitive Map Modification Order is, of itself, sufficient to bring a right of way into

question for the purposes of Section 31(2) of the Highways Act 1980, from the date that it was made.

Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes certain rights of way for mechanically propelled vehicles except for the circumstances set out in sub-sections 2 to 8. The main exceptions are that:

- (a) it is a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles;
- (b) it was shown on the List of Streets;
- (c) it was expressly created for mechanically propelled vehicles;
- (d) it was created by the construction of a road intended to be used by such vehicles;
- (e) it was created by virtue of use by such vehicles before 1 December 1930.

Proposal 3: Claimed footpath between High Street and School Lane, through car park, points E-F on proposal map CCET/PROW/22/86.
Grid Ref: SY 085897 – SY 086896

Recommendation: It is recommended that a Modification Order be made in respect of part of Proposal 3 as shown between points E and G on the plan CCET/PROW/23/33.

1.1 Background

- 1.1.1 Following a public meeting to open the Definitive Map Review in the parish in March 2022, the initial part of a Schedule 14 application was received from Mr Swan (the parish Footpath Warden) dated 20 June 2022 claiming a public footpath from High Street to the East Devon District Council School Lane car park. The application was accompanied by 20 user evidence forms. The affected landowners had not been served notice of the application, meaning that it was not fully made, but it was put forward for informal consultation as one of three proposals in the parish, two of which were dealt with at the previous Committee. Examination of the user evidence forms suggested that some people had continued through the EDDC car park to re-join the public highway at School Lane. As a result, the extended route (shown on plan CCET/PROW/22/86) was consulted on rather than the initial route indicated on Mr Swan's Schedule 14 application. The route is currently unrecorded, and the Neighbourhood Highways Officer has confirmed that DCC have never maintained it.

1.2 Description of the Route

- 1.2.1 The claimed route starts at High Street at an area known as The Green (point E on plan CCET/PROW/22/86) and proceeds southwards along a tarmacked path between the church and cemetery to the EDDC car park. It then turns eastwards and passes through the car park and along the access road to meet School Lane at point F. The total length of the claimed route is approximately 130 metres. There are metal staggered barriers on the route where it is crossed by the path between the entrance to the church and the cemetery. There is also a metal handrail alongside the path between the church and the car park, along with a 'no cycles' sign and a directional sign containing the words 'public footpath to village'. A DCC streetlight is situated

on the claimed route near the entrance to the church.



Point E looking south
Looking north from car park



Point F looking east towards car park

1.3 Documentary Evidence

1.3.1 Aylesbeare Tithe Map 1842 & Apportionment 1844

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. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of 'public roads and waste'.

1.3.2 The Aylesbeare Tithe Map, produced in 1842, shows a path leading off the High Street and heading south past the church to plot 1166, an orchard owned by William Tilke. Roads were coloured yellow but not identified in the Apportionment as public and included those which were obviously public, as well as others more likely to have been private tracks for access to fields and some not now existing. The path leading past the church that corresponds with the northern part of the claimed route is coloured yellow.

1.3.3 Historical mapping –19th and early 20th century: Ordnance Survey (OS)

Early historical maps at smaller scales are not capable of depicting the claimed route due to the scale. The first OS map showing the area in any detail is the 25" map published in 1889, which shows a small section of path or alleyway beside the church, leading to an orchard located on what is now the car park and cemetery. There are gates indicated by lines across either end. It is not coloured yellow in the same manner as the road network is.

1.3.4 The 25" Second Edition map from 1904 shows the same section of path as that shown in the previous edition but now with an extension to the west to a plot marked as a graveyard. The 1934 edition shows a similar picture but with a small expansion of the cemetery.

1.3.5 Later historical mapping at larger scales: OS A Series 1948 -1964

OS 1:25,000 'A' Series mapping from 1948-1964 provides little information on the claimed route itself but does depict the development of the area to some degree. The 1948 and 1958 editions show School Lane before the construction of the council housing on the western side. The 1964 edition shows a row of council houses built to the south of the existing row of terraced houses on the western side of School Lane, with no access road into the car park. The area where the car park is now situated is still shown as an orchard in the 1964 edition, with nothing to indicate a path across it.

1.3.6 Aerial Photography 1946-2015

Aerial photography from 1946 shows very little detail due to the poor quality of the image. It is possible to make out the church and possibly the alleyway forming the northern section of the claimed route. However, this is by no

means clear. There is a dark area corresponding to the orchard and School Lane is depicted in the same way as in the contemporary OS mapping.

- 1.3.7 More modern aerial photography from 1999-2015 offers little information as it shows the claimed route as it exists today. The surface is clearly tarmacked throughout this period and the surface does not appear to change (other than the car park being re-lined). The DCC streetlight is visible in the images from 2006 onwards.
- 1.3.8 Highway maintenance records/Handover maps/List of Streets
Highway maintenance records from the 1920s and used through to the 1970s, often called handover maps, show that the application route was not at that time considered to be maintainable at public expense. The claimed route is left uncoloured and there are no notes or annotations relating to it. These maps did not show footpaths and bridleways, only public roads.
- 1.3.9 The very northern end of the claimed route is recorded on the List of Streets, which is the current record of highways maintainable at public expense kept by Devon County Council. Approximately 10 metres of the route falls within the recorded area of HMPE, in an area that includes the small green space containing the war memorial, known as The Green. According to the annotation on the map, this was added to the List of Streets on 28 April 1983. The rest of the claimed route is not recorded as HMPE.

1.4 Newton Poppleford & Harpford Parish Council minutes

- 1.4.1 Minutes of Newton Poppleford & Harpford Parish Council meetings contain several references to the claimed route, as well as building a picture of the development of the land over which it runs. Minutes from 1967 show that the parish council was in correspondence with St Thomas Rural District Council over the site for a proposed car park, with the current location being put forward in 1968. The RDC had the land valued in 1969 and the car park was constructed following the sale. At the same time, the parish council suggested the car park as a site for public toilets, which appear to have been constructed at the same time as the car park or shortly afterwards (they were certainly up and running in 1973). In 1972 a Doctors Surgery was first proposed for the village. The minutes detail how the project progressed through to planning permission being granted in 1983 and it officially opening in 1984. Minutes from the meeting on 10 March 1983 show that it was agreed that *'a footpath from the Church to the site had to be provided'* which appears to relate to the pedestrian walkway running along the western side of the car park. The houses on Roberts Way were constructed following the granting of planning permission in 1982, with access through the car park from School Lane.
- 1.4.2 Other references concerning infrastructure and management of the path are found in the minutes. An entry on 1 November 1973 records that the no cycling sign was broken and in need of repair on the 'footpath from car park to The Green'. At this meeting it was also agreed that *'Councillor G R Compton obtain a quotation for the erection of triple barriers at the lower end*

of the path by the Church gate' due to complaints of cycling and horse-riding. A quote for a barrier was supplied at the next meeting, and a couple of months later, on 14 February 1974, it was recorded that the barriers had been delivered by the supplier.

- 1.4.3 On the 11 July 1974 it was recorded that the Clerk was to ask East Devon District Council for dog fouling signs on the path between the car park and The Green. Later, on 18 March 1976 it was recorded that the Public Health and Technical Services Officers of EDDC were investigating reports of dog-fouling on the path.
- 1.4.4 On 27 July 1978, under an entry titled '*car park, School Lane*', it was reported that there were '*stinging nettles behind the toilets and garages and excess grass along the paths*' and that the Clerk was to ask Mr Retter (the parish handyman) to deal with them. A further entry on 1 March 1991 states that the Clerk will deal with reports of litter on the path and the need for regular cleaning. However, it does not state that the handyman is to be instructed so could mean that the matter will be passed to EDDC.
- 1.4.5 Minutes from 10th November 1992 record a request from the local Womens' Institute to erect a handrail on the path '*from St Lukes Church to the car park on the western side*' to commemorate the 40th anniversary of the coronation of Queen Elizabeth II. The parish council approved of the idea and suggested that the W.I. contact EDDC. This handrail and the associated commemorative plaque are still in situ and run from the entrance to the cemetery to the former Doctors Surgery.

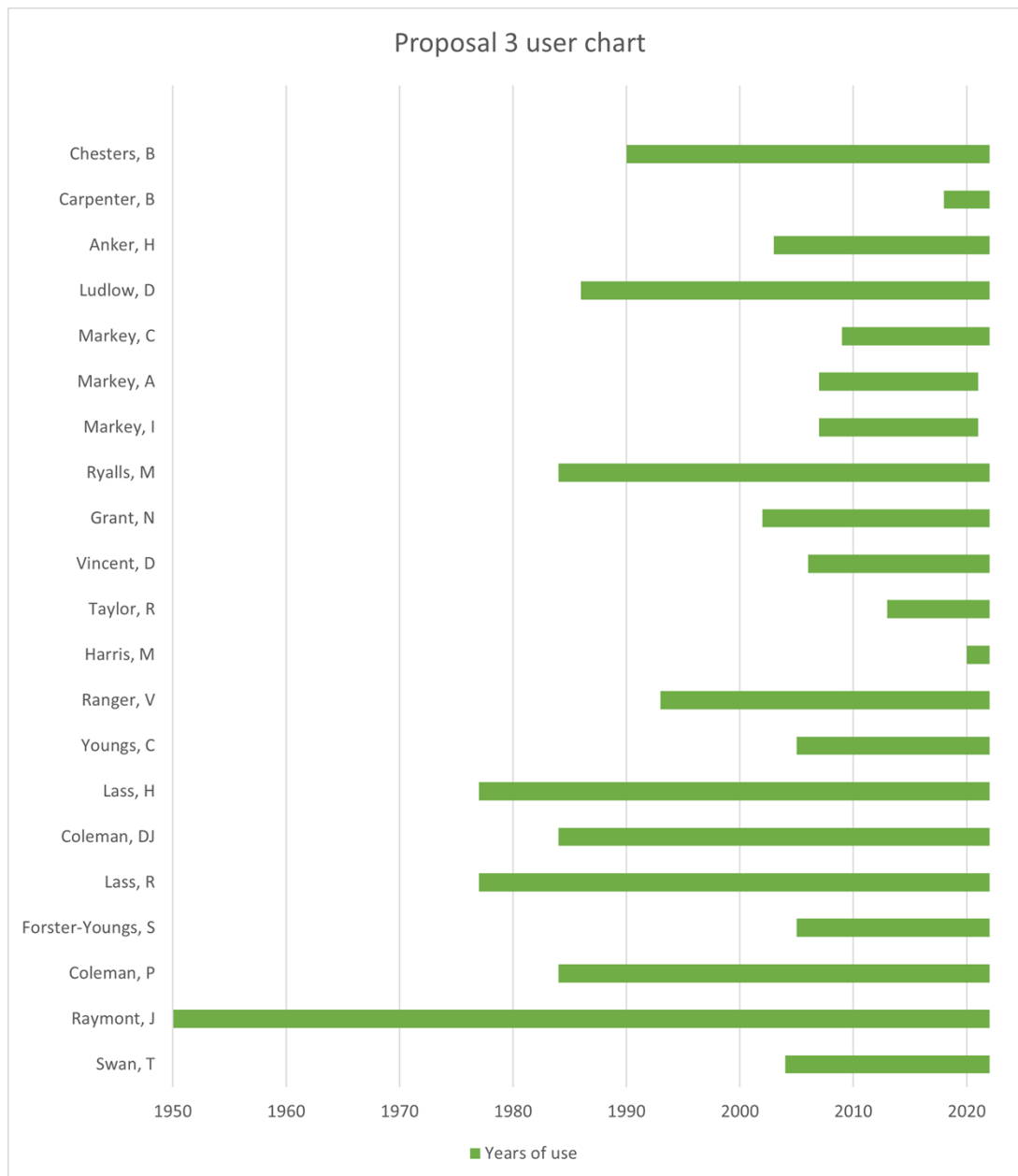
1.5 Definitive Map process

- 1.5.1 Original Definitive Map process
The application route was not put forward by Harpford Parish Council for inclusion on the Definitive Map in the 1950s.
- 1.5.2 Devon County Council uncompleted reviews of 1970 and 1977
Likewise, the application route was not put forward for consideration during the incomplete reviews of the Definitive Map in the 1960s and 1970s.

1.6 User Evidence

- 1.6.1 20 user evidence forms were submitted with the application, with one additional form being received during informal consultation. Of the 21 users who submitted forms, all of them claimed use on foot. One of the users also claims to have used the route on a bicycle, though only occasionally. Many of the users refer to the path being well-used and busy, which was the main reason that they believed it to be a public footpath. Three users also state that the signage was the reason that they believed it to be public.
- 1.6.2 The user evidence covers the period from 1950-2022 (see chart below) and there is no suggestion that it has ever been interrupted or stopped. Staggered barriers are located on the route and numerous users mention

these, inferring that they were intended to prevent bicycles but allow use on foot.



- 1.6.3 Ten of the users have used the application route for more than 20 years (eight of these in excess of 30). The mean average length of use is 25 years.
- 1.6.4 Frequency of use varies between users, as would be expected: ten users state use weekly, three users daily (or more than once a day), four claim monthly use and the remaining three claim use once or twice a year or less.
- 1.6.5 None of the users state that they have ever sought or received permission to use the application route. Lass provides some interesting additional information with his user evidence form as he has been the Churchwarden for more than 20 years and lived in the village since 1977. He refers to the 'footway' being created for access to the graveyard when it was expanded,

which is shown on the OS First Edition 25" map of 1889. He refers to the plot of land south of the church being sold to St Thomas Rural District Council 'at some time before WW2' and that 'at some time in the 1950s, the management of the graveyard was passed to the District Council, along with more of the Glebe Land.... The RDC built more council houses in School Lane and extended the cemetery to its present extent.' He continues: 'The area now a car park was I think used by the housing builders. When the RDC formalised the car park, they surfaced the path down to the cemetery gate to link with the old path onto Church Green.'

- 1.6.6 The original application was only for the section of path between High Street and the EDDC car park. However, six of the user evidence forms refer to use of the route by people accessing the primary school on School Lane (the reason why the consultation plan was extended). Taylor states that her use of the claimed route could be as high as four times per day due to dropping off and collecting her children from school. Several users refer to it being a path to the church and cemetery, as well as the former Doctors Surgery located in the southeast corner of the car park. Users also consistently refer to the route being used to access the car park itself and the public toilets, with one user mentioning the 'village noticeboards' on the route.
- 1.6.7 As to why they used the route, twelve of the users state for pleasure (dog-walking being a common theme). Ten users also state they used it for business, with particular reference to visiting shops and/or the Doctors Surgery. Four users explicitly state they used it to access the school.

1.7 Signage and infrastructure

- 1.7.1 There are several items of signage and infrastructure on the route that may be suggestive of public rights. Of significant note is the large directional sign located in the car park and pointing north along the claimed route towards the High Street. It contains the words '*public footpath to village*' and appears to be of some age judging by the poor condition. It is not clear who erected this sign but it is situated in the EDDC car park and can be presumed to have been installed by them, or at least with their permission.



- 1.7.2 Also located in a similar position to the above sign is a short post containing a circular no cycling sign and a commemorative plaque, both referred to in the Parish Council minutes (discussed above). Across the claimed route near the entrance to the cemetery and church is a metal staggered barrier. Also present is an EDDC dog bin, a very old dog-fouling disc sign (possibly dating to 1974 as described in the PC minutes) and a wooden sign stating 'N.POP LINK TO E.D.W' which also has an East Devon Way waymarker attached to it.
- 1.7.3 Also present on the claimed route near the entrance to the cemetery and church is a DCC lighting column. There is also one located in the EDDC car park near School Lane. It is not known how these came to be situated on land that is not HMPE and not owned by DCC.
- 1.7.4 Two parish/community noticeboards are located on the claimed route – one near point E and one on the side of the garage block south of the church hall.

1.8 Landowner and rebuttal evidence

- 1.8.1 East Devon District Council were identified with the Land Registry as owning the car park and alleyway section of the claimed route. Some of the northern section of the claimed route is unregistered, possibly being owned by the Church. Both landowners were consulted, along with the Church Green Cottages who appear to have access rights over the claimed route to reach the rear of their properties. Approximately 10 metres of the claimed route at point E falls within the extent of the HMPE recorded on the List of Streets and it can therefore be presumed that public rights exist on this section.
- 1.8.2 None of the landowners consulted formally responded. EDDC queried whether the proposed route would impact upon the use of the car park but supplied no further information relevant to the claim.

1.9 Discussion

- 1.9.1 Statute (Section 31 Highways Act 1980)
Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged. The Schedule 14 application, (although not fully made), was submitted during the Parish Definitive Map Review and not in response to any specific action taken by a landowner to obstruct or prevent access to it from a particular date. There is no evidence of any actions by a landowner having called into question use of the route at a specific time for consideration under statute law.

1.9.2 Common Law

The only other basis for its possible consideration as a public highway is if there was any other significant supporting evidence from which a dedication of the route can be presumed or inferred under common law. At Common Law, evidence of dedication by the landowner(s) can be express or implied and an implication of dedication may be shown 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.

1.9.3 Historical mapping suggests the northern part of the claimed route has physically existed since at least the mid-19th century when it formed access to the church and Glebe land. However, the historic mapping does not indicate what rights this path may have held. Likewise, there is no other evidence to support the existence, or otherwise, of public rights at this early stage.

1.9.4 The claimed route was not proposed for inclusion during the original Definitive Map process. At the time of the parish survey in 1950 the claimed route did not physically exist in its entirety as the car park and associated access onto School Lane had not been constructed. The route was not put forward by the parish council during subsequent uncompleted reviews in the 1970s. As such, the Definitive Map process and reviews provide little evidence either for or against public rights on the application route.

1.9.5 The available user evidence suggests that the public have used the route since the construction of the car park in the late 1960s, particularly the section between the car park and The Green. None of the users refer to seeing any signs suggesting that use was permissive or under licence, nor did they mention use being challenged or the route restricted or obstructed at any time. There is a possibility that use may have been by right as permission was implied for people to access the car park. However, users state that they used the route for multiple purposes – to access the car park, former Doctors Surgery, toilets, church and cemetery, as well as cutting all the way through to School Lane and the primary school. The presence of the sign stating '*public footpath to village*' also adds weight to use of the route from the car park to High Street being as of right. Even if the wording of this sign was unintentional, there is no doubting that the message it conveys to anyone using the route is that they are using a public footpath. As such, the user evidence suggests that even if there may have been some limited and specific use by right, there were many decades of use as of right by the public at large.

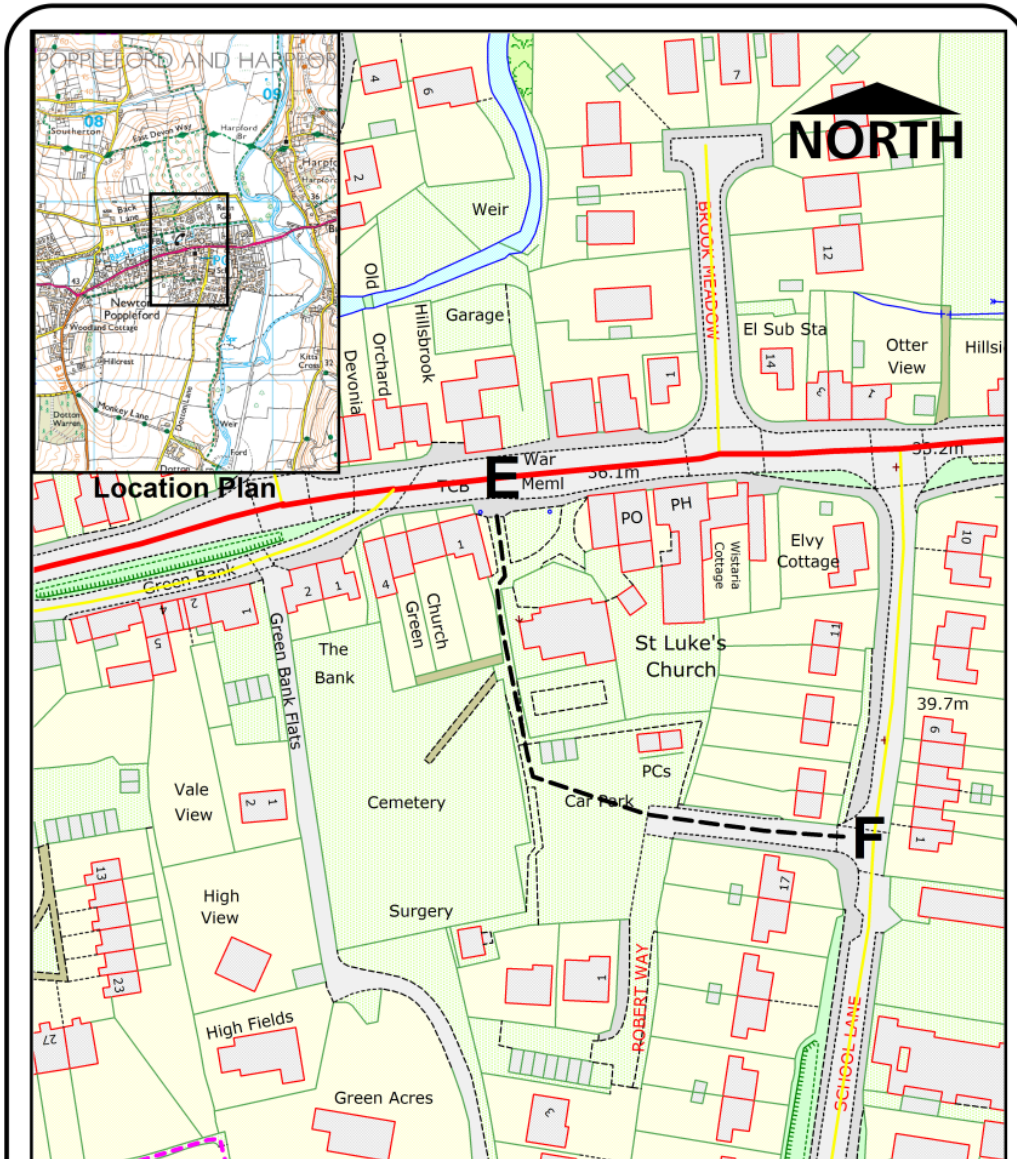
1.9.6 The Parish Council minutes provide an outline of the development of the land over which the proposal route runs. Though the minutes do not record the parish council explicitly referring to the route as a public right of way, the fact that they spent public money on installing anti-cycling barriers on it suggests that they considered it to have some sort of public status. They took an active interest in the path over several decades, attempting to

resolve issues such as dog-fouling and employing their handyman in keeping the area tidy. They also insisted on the path being re-surfaced when the former Doctors Surgery was constructed.

- 1.9.7 The evidence is strong for the enclosed section of the proposal route between The Green and the car park; however, it is less so for the rest of the proposal route through the car park to join School Lane. While there has undoubtedly been public use on this section only six of the twenty users who completed evidence forms referred to such use. Use of this section is not accompanied by corroborating evidence in the form of signage infrastructure or parish council minutes in the way the enclosed section is. No further user evidence was forthcoming during consultation to help establish an exact route through the car park that the public used, if indeed there was a set route. As such, although there is sufficient evidence to support dedication at common law for the claimed route between The Green and the School Lane car park, there is insufficient evidence to show dedication along the rest of the route through the car park itself and on to join School Lane.
- 1.9.8 With the evidence only supporting dedication of the section marked E to G of the claimed route, there arises the issue of it not terminating on a public highway. However, it is legally acceptable for a PROW to terminate at a 'point of interest' and the School Lane car park would qualify as such. It is a public car park (free to use), with public toilets situated in them (the toilets are managed by the parish council) and also a community noticeboard and until last year a Doctors Surgery.

1.10 Conclusion

- 1.10.1 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered sufficient to support the claim that public rights subsist on the balance of probabilities on the northern part of the proposal route between the car park and The Green (with approximately the first 10m already recorded as HMPE). Accordingly, the recommendation is that an Order be made to record a Footpath in respect of this proposal as shown on the plan CCET/PROW/23/33.
- 1.10.2 Members should note that if the route is added to the Definitive Map as a public footpath, it will be more appropriate for the path to be inspected and maintained as a linking footway due to the path being tarmacked and in an urban area. As referenced at 1.1.1., the Neighbourhood Highway Officer has been consulted on this proposal.



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DEVON COUNTY COUNCIL

Newton Poppleford & Harpford

Definitive Map Review

Proposal 3: Claimed Footpath from High Street to
School Lane through car park

Drawing number: CCET/PROW/22/86

Date: Sep 2022

Scale: 1:1,250 @A4

Drawn by: TCG

Notation

Claimed
footpath

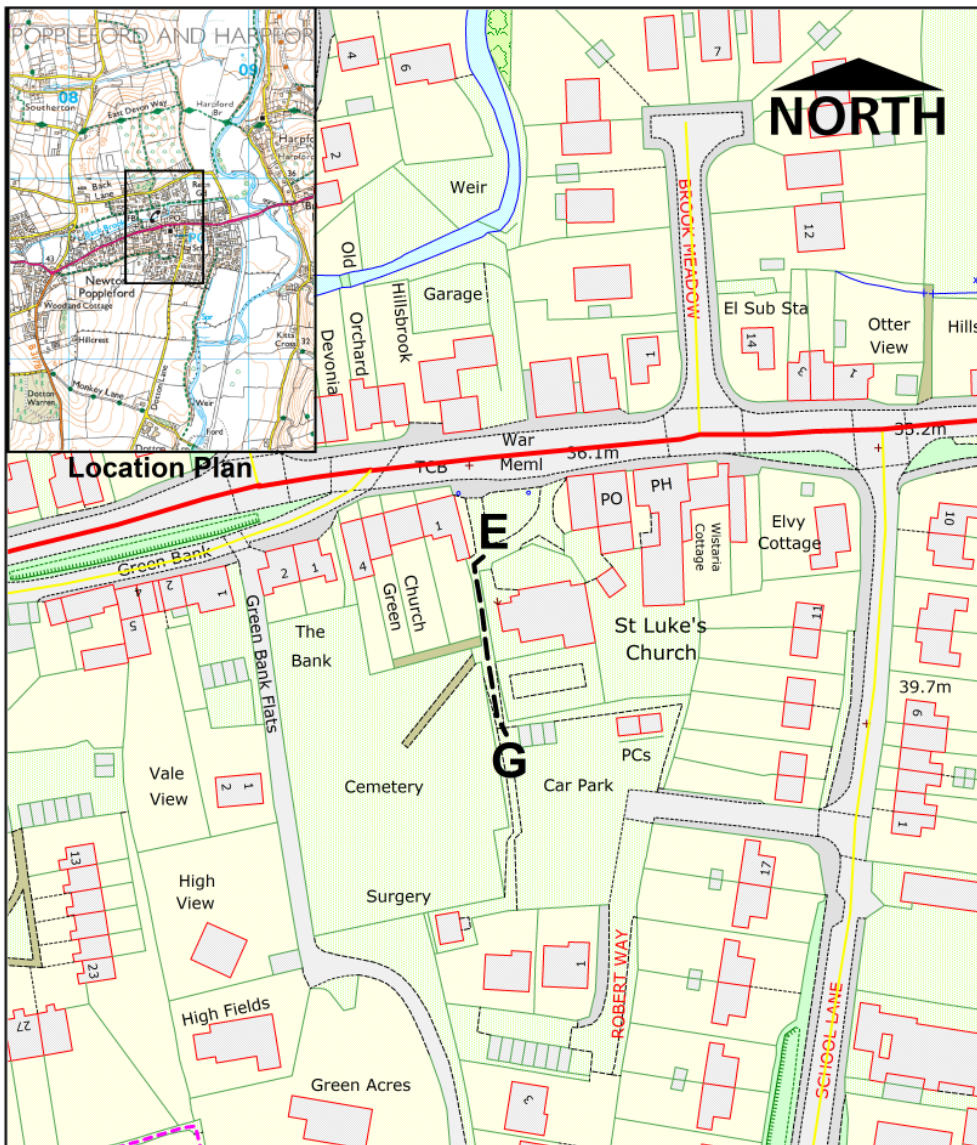


(130m)

Meg Booth

Director of Climate Change, Environment and Transport





Grid ref: SY 085897/ SY 085896

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DEVON COUNTY COUNCIL
Newton Poppleford & Harpford
Definitive Map Review
Proposal 3: Recommended route for Order

Drawing number: CCET/PROW/23/33
Date: June 2023
Scale: 1:1,250 @A4
Drawn by: TCG

Notation Footpath - - - - - (40m)

Meg Booth

Director of Climate Change, Environment and Transport

