

CET/24/12

Public Rights of Way Committee
7 March 2024

Proposed Diversion: Footpath No.13, Thurlestone (part)

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

It is recommended that no Public Path Diversion and Definitive Map & Statement Modification Order is made in relation to divert Footpath No. 13, Thurlestone (part) from the lines A – B – C to the line A - D - C, as shown on drawing no. CCET/PROW/24/09.

2) Summary

This report examines an application by Luscombe Maye Land Agents on behalf of their clients at Worthy, Bantham, to divert part of a Footpath No.13, Thurlestone. The proposed diversion would divert walkers away from a newly developed barn which has replaced an old farm shed and for privacy to their client's house. The proposal route is shown on plan no. CCET/PROW/24/09

The application was submitted in accordance with s119 of the Highways Act 1980 on 26 February 2021 along with a supporting letter from the Agents. The proposal was subject to an informal consultation process in July – August 2023, which includes the parish council, local ward member, statutory undertakers, and representative user groups.

3) Background

Footpath No.13, Thurlestone is recorded in the Definitive Map and Statement with a relevant date of 1st December 1954. The footpath starts from the county road next to the entrance to Clanacombe and proceeds along a hedged lane into a field and continues along the western hedge line, through a gap and follows a track on the eastern hedge line of a large field and passed a small quarry. The footpath continues into the next field following the eastern hedge line and then follows the line of an old track, which is flat and easily recognisable across the contours of the steep field heading north northeast down towards the stream, over a stile into the field below Worthy House. The path continues in the field, along the bottom of the contours to a culvert over the stream and to a gate. The gate is at point A on the plan CCET/PROW/24/09. From the gate at point A the footpath continues in a defined lane with a traditional stone wall on the left and an avenue of chestnut trees to the right. This section of the footpath is described in the Definitive Map Statement as going "along a Private Accommodation Road (not repairable by the inhabitants at

large) to Worthy Farm and its junction with B.R. No.12". The surface of the footpath from A – B on plan CCET/PROW/24/09 is mostly earth, but partially paved with stone and the upper section towards point B is shale and short grass. The gradient from point A up to point B is steady and a comfortable walk.

Footpath No.13 is approximately 1.1 kilometres in length.

In 2010, Footpath No.13 was the subject of a Definitive Map Modification Order to add a short section of footpath by Worthy House point B – C, to Bridleway No.12 Thurlestone. This was due to a gap on the map from Footpath13 to its junction with Bridleway No.12 Thurlestone and highly likely the result of a historical change in the road layout at Worthy.

To assist the background information, two extracts from the Thurlestone Tithe Map 1840 have been included below to add context of the whole route, and its layout at Worthy.

4) The Diversion Proposal

4.1 Landowner Application

The Application to divert the footpath was made by A.M.Burden, Land Agent for Luscombe Maye, on behalf of the landowners of Worthy, Bantham in the parish of Thurlestone and submitted to the county council in February 2021.

The diversion proposed by the applicants is to divert the path from its junction with Bridleway No.12, Thurlestone from point C on plan CCET/PROW/24/09, behind the new shed/barn along the eastern boundary of a field down to the stream at point D and then west to join the original section of the path, to cross the stream.

Extracts from the land agents accompanying letter date 26 February 2021 state;
"The proposed diversion will result in the footpath running along the eastern boundary of Worthy with the new parkland fencing on the eastern site and the open field to the west. It will then meet the stream to the south where it will run to the west and then join the original route of the footpath where it crosses the stream and lead into the neighbours' land."

The land agent continues;

"The other benefits relating to this location are that the current route that runs from the yard area to the north of the agricultural building comprises a dilapidated lane where the trees and tree roots have become overgrown, surface water has eroded the surface and the whole route therefore needs assistance from an arborist, stone waller and digger driver to manage the trees, foot up the bank and repair the stone walls. It is hoped that you will agree that the new route, avoiding crossing the yard where vehicles manoeuvre, will be better for users of the footpath as well as providing a relief to the Applicants."

The diversion application was accompanied by two plans indicating the line of the proposed diversion with a red dashed line. (At the end of the report.)

No details were included of what the landowners intend to do with the existing line of

trees adjacent to the proposed diversion line, on the upper section of the field, which are growing inside of the current wire fencing.

As part of the rebuilding and refurbishment of Worthy, a Temporary Traffic Regulation Order (TTRO) has been in place on a short section of path from C – B for safety reasons whilst building works are carried out. The temporary diversion takes the user from point C along a gravelled path around and in front of the new wooden barn and back to the line of Footpath No.13 just south of point B. This temporary diversion is signed in two places with a large red and white sign stating, “Footpath Diversion.”

5) Objections/Representations to the proposed diversion

The parish council have been supportive of the planning application at Worthy. However, objections have been raised by local representatives of the parish council (who are also regular walkers of the public rights of way in their area, including this path), with regards to the path diversion proposal.

In response to a request from the Agent, two representatives from Thurlestone Parish Council met with the Amanda Burden (land agent) on 6th October 2023 at Worthy Farm (one of whom is also Parish Chair).

One Councillor comments that they “... met Amanda Burden out of courtesy on site following her request to discuss our objections again on site. However, she was unable to present any good reasons for me to change my opinion that any diversion to Footpath 13 at Worthy Farm Bantham would be wrong. I confirmed this to Amanda at the end of that meeting reconfirming my opinions that this was an unnecessary diversion and would actually remove one of the most commodious and unique stretches of Footpath 13. A section which currently offers a valuable glimpse into past country life on this well-trodden footpath.....This proposed diversion is non-essential, and if allowed would remove a unique section of Footpath 13, a section which greatly enhances the enjoyment of this part of our countryside and creates a real link with its past and our consequent enjoyment of this piece of our countryside”.

They add; “Our discussions with Amanda were good but did not allay our concerns about removing this ancient and unique stretch of the footpath by diverting around what we both feel is an important and unique part of Footpath 13. We felt the proposed diversion to be less commodious than the original footpath and would change the character of that part of the walk” and “We confirmed with Amanda at the end of our meeting that our concerns and objections to the diversion of the path still remain.”

The parish Chair recalls:

“At this courtesy site meeting Amanda repeated the reasoning behind proposed resetting position.

Having once again understood the reasoning I REPEATED MY OBJECTION TO PROPOSAL ...Based on the non-essential nature of proposal plus my firmly held belief that these ancient paths following the established well used tracks meandering through the original terrain are vital to our countryside experiences in nature.”

6) Highway Considerations

Highway Act 1980

The section 119 of the Highways Act 1980 sets out the criteria for making and confirming a public path diversion order. Landowners and their agents can apply to the Highway Authority under this section of the Act to seek a diversion of a public right of way. The council may, subject to the criteria set out below, decide if it is expedient or not, to divert the line of a public right of way recorded in the Definitive Map & Statement.

Section 119(2) of the Act:

A public path diversion order shall not alter a point of termination of the path or way

- a) if that point is not on a highway or
- b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.

Section 119(6):

Requires that the new path or way will not be substantially less convenient to the public as a result of the diversion.

And having regard to:

S 119 (6) (a). the effect that the diversion would have on public enjoyment of the path as a whole;

Highways Act s130 (1)

“It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority...”

Site visits to Worthy

Public Rights of Way Officers have made two site visits to the proposed diversion at Worthy.

In April 2023, two officers met with the site manager to walk the line of the proposed diversion, and the temporary diversion on the stone path in front of the new barn. The line of the temporary diversion started from Bridleway No.12 Thurlestone and passed to the front of the new barn in between tall Heras fencing and then back onto the existing line of Footpath No.13. south of point B.

On the line of the proposed diversion, they walked downhill over a rough pasture field towards the stream. There was no indication at that time of replacing the fencing to the east with a “parkland” fence as suggested by the land agent. There was no thought or indication how they proposed to manage the trees currently planted next to the existing fence and over hanging any potential path. The site manager explained the new path would be down the side of the field, which would be planted as an orchard and then continue along the bottom of the field parallel to the stream to re-join the existing footpath near point A. It was discussed with the site manager that a path parallel to the stream would become very wet, plus, users had to walk against

the gradient of the contours. It was suggested that any new path would be drier if moved further into the field.

The existing line of the footpath was walked from point A towards B. There is a traditional stone wall on the left of the path which has broken in places causing the odd stone to fall onto the footpath. This was not a problem to walk over. Further up the path towards point B, the wall is in good condition and a lovely example of a South Hams stone wall. There was no issue underfoot. The eastern side of the track has a slight bank with mature chestnut trees and there is no intrusion from root growth. The surface of the track is likely to have been paved with stone in the past and towards the top, the surface was shale and short grass.

The track is far from “delapidated” as suggested by the land agent in her letter (26/2/21) and requires some attention to the boundaries by the landowner. This section point A – B, is the ancient track as depicted on the Thurlestone Tithe Map of 1840 and is a moderate gradient and certainly not as steep as the proposed diversion.

The second site visit was made on a wet day in February 2024. Footpath No.13 was walked in its entirety, from the county road near Clanacombe to the southwest of Worthy.

From point A, the old lane continues towards point B over the same surface as described above. The lane is not eroded by surface water, it is not overgrown by trees or tree roots and was easy to walk and drier underfoot than anywhere else. There was no water running down the footpath.

The line of the proposed diversion was also walked again from the stream at point A along the bottom of the field to point D. This line was unpleasant to walk as it cut across the contours slope of the field, the field is rough pasture and has already been planted with trees. In addition, there is an inspection hatch or pit cover in the grass that could impact on the proposed route. From point D – C, the proposed line continued over rough pasture and up a substantially steeper gradient than the current line of Footpath 13.

There is currently a field gate on the boundary of the property near Point A, adjacent to the culvert over the stream which is tied shut. There is a stile adjacent to the gate, which is not on the line of the definitive path and should be removed and the gate made openable in line with the councils’ easy-to-use criteria of the inspection regime.

With regards to the vehicular movements and the current line of the public footpath, none were observed. The new barn is used for storing materials and is not in constant use. It should be noted that the current line of Footpath 13 and the proposed diverted line, both join Bridleway No.12 at point C on the plan. Bridleway No.12 exits the property to the north via the private drive to Worthy and thus is already exposed to vehicular activity. Due consideration to the safety of the public user by vehicles and drivers along this bridleway should already be observed for current walkers, horse riders or cyclists. Therefore, vehicular traffic is not a new factor to consider in relation to the existence of any of the current public rights of way in or around Worthy.

The County Council's relevant policies state:

- LP1A** The making of diversion orders which are in the interests of the users and/or landowners will be supported. Examples of diversions in the interest of the public are those which achieve:
- i. a direct improvement in road safety for users; or
 - ii. a direct improvement in provision of a circular route, or provide access to a national route, regional route, attraction or viewpoint.

None of LP1A are relevant to the diversion.

- LP1B** Applications will be supported which seek to divert paths away from:
- i. residential buildings to improve privacy; and
 - ii. working farmyards and farm buildings for safety reasons.

There is a small element of improving privacy as mentioned as “a relief to the Applicants” as mentioned by the land agent, however the proposed diversion route must be as, or, more commodious and easy to use for the public as set out in HA 119 (6).

Strategic Plan

At the strategic level, public rights of way and access are of significant importance to:

- connecting people and places (including Active Travel),
- the local economy (with the network providing essential infrastructure in support of recreation, leisure, and tourism),
- carbon reduction, biodiversity, landscape, and heritage (particularly provision for non-car based travel, contribution to climate change avoidance and mitigation measures, and as a key component of green infrastructure), and
- physical and mental health and wellbeing (with benefits directly attributable to exercising outdoors and contact with nature).

Directly relevant priorities set out within the Devon Strategic Plan include:

Responding to the climate emergency, especially:

- More opportunities for cycling and walking – including active travel,
- Helping wildlife and landscapes to recover,

Supporting recovery and growth, especially:

- Maintain, and where necessary, improve our highway network and improve sustainable transport options,

Improve health and wellbeing, especially:

- Give people greater opportunities for walking and cycling to increase their physical activity.

7) Financial Considerations

There are likely to be new or additional cost implications arising from maintenance requirements for the proposed alignment change.

8) Legal Considerations

Section 6 above refers.

9) Environmental Impact Considerations (Including Climate Change, Sustainability and Socio-economic)

Implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

10) Equality Considerations

This report has been prepared with s.149 of the Equality Act 2010 in mind. As illustrated by the foregoing sections of this report, the proposed diversion is less easy to use for members of the public than the existing definitive line of Footpath No.13, Thurlestone at Worthy.

11) Risk Management Considerations

No risks have been identified.

12) Reasons for Recommendation

Any new route proposed to replace an existing public right of way must be as good, or better than currently exists. The new proposed route must be as commodious and easy to use, thus not being substantially less convenient to the public user.

The information to date strongly suggests that there remains local user opposition to the proposed diversion route at Worthy, including that the route is less commodious and substantially less convenient to the public, and will have a negative impact on public enjoyment. Investigations and site visits by officers indicate that there is substantive merit to the objections raised during the informal consultation stage, with no material benefit to the public arising from this diversion proposal for part of Footpath No.13, Thurlestone.

It is therefore considered that; this proposal does not meet the requisite tests as set out under s.119 of the Highways Act 1980.

13) Conclusion

The application is considered insufficient in meeting the legal tests to be applied for making a Public Path Order. Therefore, no Order should be made to divert Footpath No. 13, Thurlestone (part) from the lines A – B – C to the line A - D - C, as shown on drawing no. CCET/PROW/24/09.

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Division: Salcombe

Local Government Act 1972: List of background papers

Background Paper - Correspondence file

Date - 2021

File Reference - PROW/Public Path Orders/Case Files/South Hams/Thurlestone

Contact for enquiries:

Name: Emily Spurway/Rachel Dixon

Telephone: 01392 383240

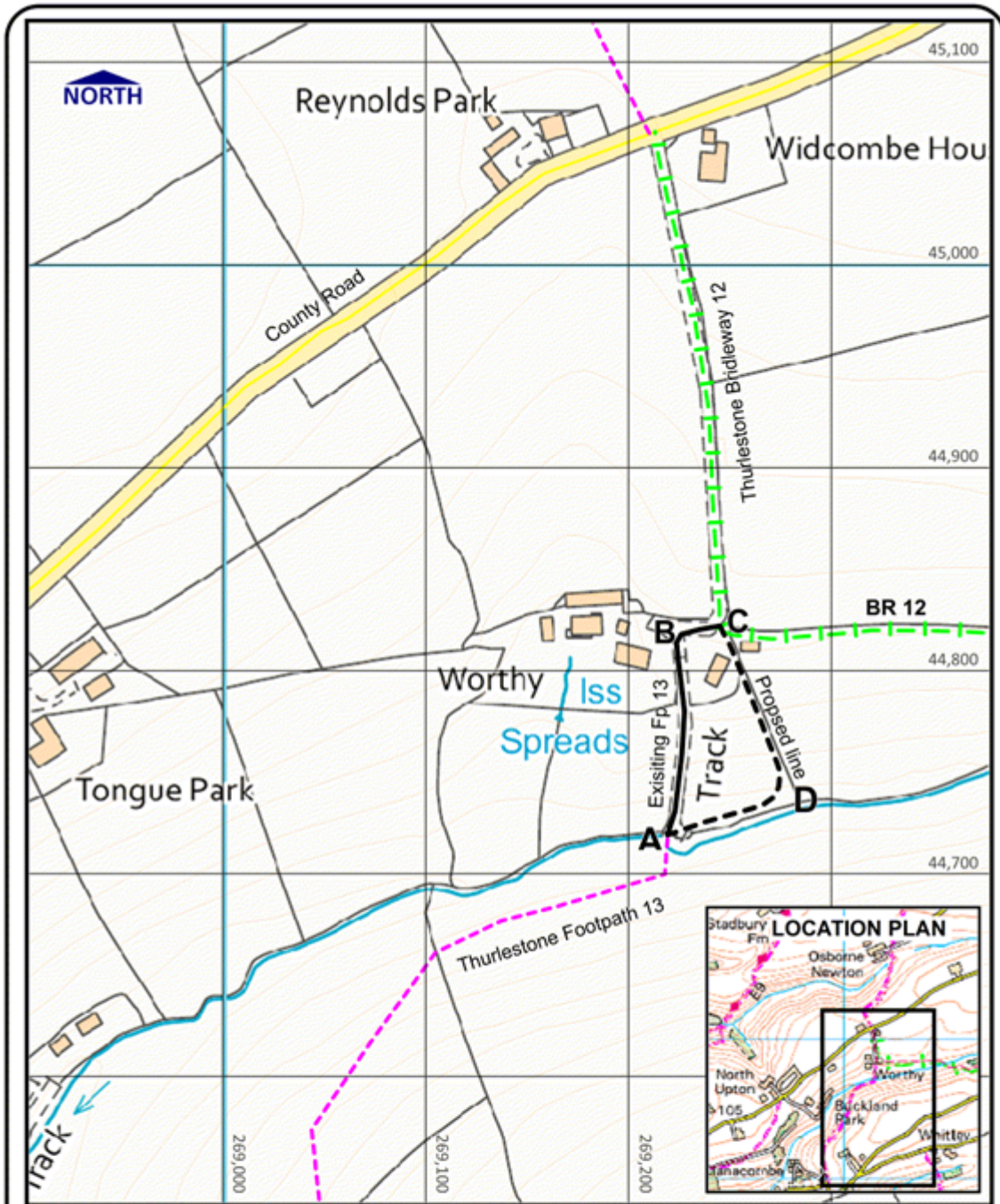
Address: Great Moor House, Bittern Road, Sowton, Exeter, EX2 7NL

es260224pra

sc/cr/Proposed Diversion Footpath No.13 Thurlestone

03 270224

Diversion Proposal Plan



Map ref. SX 692 447

100 metre grid

Contains Ordnance Survey data. © Crown copyright and database rights 2024. 100019783

DEVON COUNTY COUNCIL
PROPOSED PUBLIC PATH DIVERSION
FOOTPATH NO. 13, THURLESTONE (PART)

drawing no. CCET/PROW/24/09
date February 2024
scale 1:2500
drawn by RD

Notation

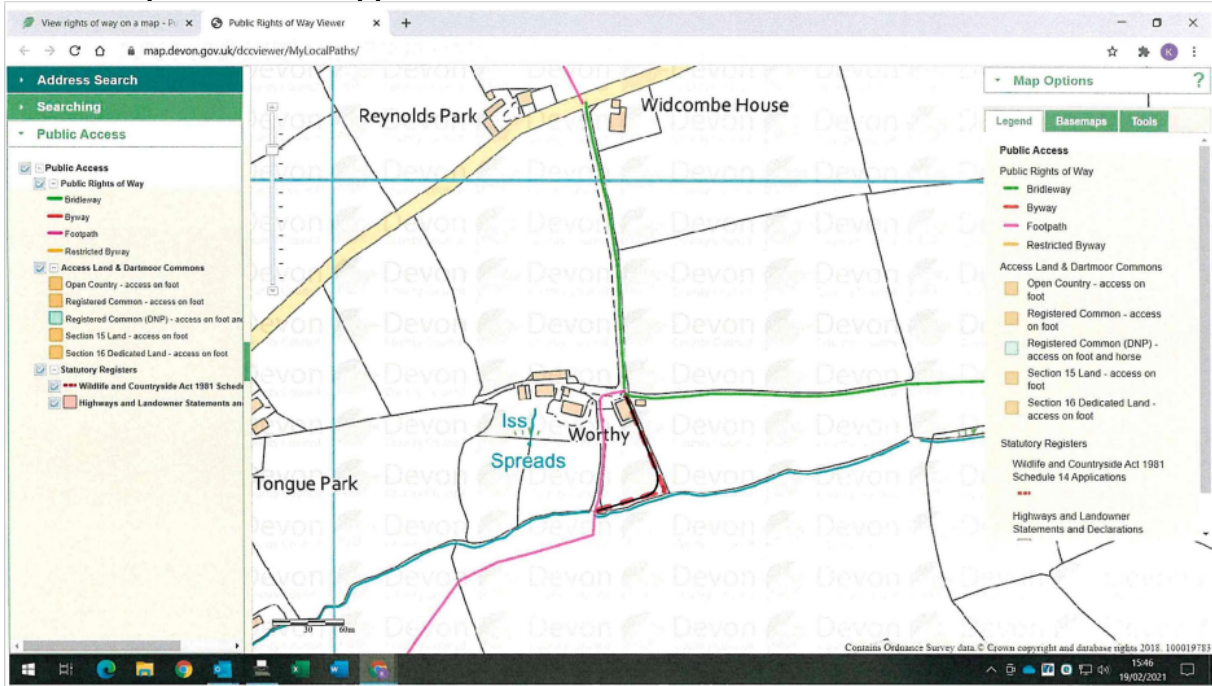
— Footpath 13 A - B - C
 - - - Proposed Route A - D - C

— | — | Bridleway
 - - - Existing footpaths

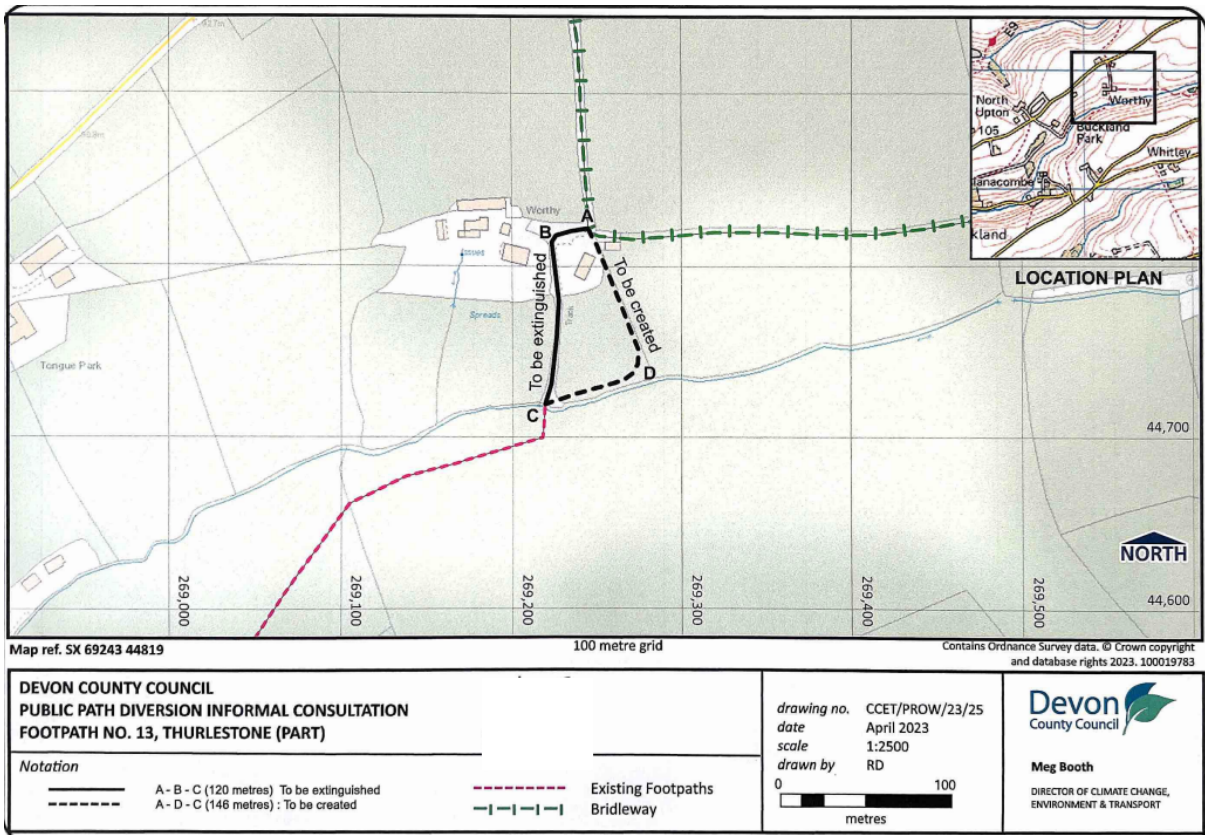
Meg Booth
 DIRECTOR OF CLIMATE CHANGE,
 ENVIRONMENT & TRANSPORT



Diversion plan from the applicants



Formal redacted diversion plan from the applicant



Existing Route

Walking from point A towards point B as per DCC plan (well defined track and a good surface)



Looking at gate at point A





Towards point B and temporary diversion

Stone wall along existing Fp13



Point B marks the fingerpost for FP13 Thurlestone and end of the lane

Finger post at point C junction with Bridleway No.12 Thurlestone and new barn



Proposed Route

Walking From A towards point D on DCC plan



Looking across the field walker going from point D – C



Unknown cover in between point A – D



Tithe Map Extracts

- Tithe Apportionment Transcription [PDF](#), [CSV](#)



Thurlestone Tithe Map 1840
Worthy and the associated paths



Thurlestone Tithe Map 1840