

**Definitive Map Review
Parishes of Trentishoe**

Report of the Chief Officer for Highways, Infrastructure 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 no Modification Orders be made in respect of Proposals 4 and 5.

1. Introduction

This report examines two proposals arising from the Definitive Map Review in Trentishoe.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 12 footpaths and 3 bridleways, which were recorded on the Definitive Map and Statement with a relevant date of 1st September 1957.

The review of the Definitive Map, under s.33 of the 1949 Act, which commenced in the late 1960s but was never completed, produced a number of proposals for change to the Definitive Map at that time. The Limited Special Review of RUPP's, carried out in the 1970s, did not affect the parish.

No previous orders and agreements have been made and confirmed in the parish: The current Review was started in 2011. A joint informal consultation with Kentisbury parish was carried out on a number of proposals in 2017 for modification of the Definitive Map and Statement.

This is the parish report for the Definitive Map Review in the parish of Trentishoe.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Andrea Davis	– no comment
North Devon Council	– no comment
Kentisbury & Trentishoe Parish Council	– comments included on specific proposals
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment

Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment
Cycle UK	– no comment

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 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 have been taken into account.

9. Conclusion

It is recommended that no Modification Orders be made to modify the Definitive Map and Statement in respect of Proposals 4 and 5.

Should any further valid 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 North Devon area.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence Files	Current	DMR/TRENTISHOE

cg280519pra
sc/cr/DMR Trentishoe
03 210619

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 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.

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 4: Proposed upgrade of Footpath No. 7 to bridleway, as shown between points P – Y – X – R – S on plan HCW/PROW/17/36.

Recommendation: That no Modification Order be made in respect of Proposal 4.

1.1 Background

1.1.1 The proposal route was included in the consultation with the support of the Parish Meeting, following up on its proposal from the uncompleted 1978 review.

1.2 Description of the Route

1.2.1 The proposal route starts at the county road east of the hamlet of Dean at point P. It proceeds eastwards and turning north eastwards then northwards along Footpath No. 7, Dean Wood Lane, to point Y, through Dean Wood and past Higher Cott near point X to meet Footpath No. 9 at point R. It continues northwards to meet uOCR 301 at point S, northeast of Woodend Cottage.

1.3 Documentary Evidence

1.3.1 Ordnance Survey Draft Drawings, 1804

1.3.1.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: *'The representation on this map of a road, track or footpath is no evidence of a right of way'*.

1.3.1.2 Part of the proposal route is shown on Sheet 31 on the 1804 Draft Drawings 2" to 1 mile mapping between points P – Y – X – R.

1.3.2 Cary's Map, 1821

1.3.2.1 Besides the Ordnance Survey, Cary was the leading map publisher in the 19th century. He maintained a high standard of maps, using actual trigonometric surveys and other up-to-date source materials, including parliamentary documents, which was reflected by his employment to survey the 9,000 miles of turnpike roads in 1794.

1.3.2.2 Part of the proposal route is shown for a short distance northward from the county road at Dean, point P along what is known as Dean Wood Lane to point Y. It is not shown from where the route enters Dean Wood.

1.3.3 Greenwood's Map, 1827

1.3.3.1 These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate.

1.3.3.2 Most of the proposal route is shown between the county road at Dean, point P and point R via points Y (Dean Wood Lane) and X at Cot, now Higher Cott, and the junction with Footpath No. 9 in Mill Wood.

1.3.4 Trentishoe Tithe Map and Apportionment, 1841-2

1.3.4.1 Tithe Maps were drawn up under statutory procedures laid down by the Tithe

Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of '*public roads and waste*'.

1.3.4.2 The Trentishoe tithe map is a second class map, surveyed at a scale of 3 chains to 1" by G. P. Williams, who did a number of tithe surveys in Devon. Being second class, it is considered only to be a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.

1.3.4.3 The proposal route is shown as a coloured road between the county road east of Dean and Cott/Higher Cott, points P and X, via point Y (Dean Wood Lane).

1.3.5 Ordnance Survey mapping, 1809 onwards

1.3.5.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: '*The representation on this map of a road, track or footpath is no evidence of a right of way*'.

1.3.5.2 The proposal route is shown on the 1809 Old Series 1" to 1 mile mapping between the county road at Dean, point P and the junction of the route with Footpath No. 9, point R, via points Y (Dean Wood Lane) and X at Cot, now Higher Cott.

1.3.5.3 On the later 1st Edition 25" scale mapping of 1889, the whole of the proposal route is shown as a partially enclosed lane, sometimes open to the surrounding woodland.

1.3.5.4 The 2nd Edition of 1904 and Post War A Edition of 1975 shows the whole of the proposal route in a similar manner as the 1st Edition.

1.3.6 Trentishoe Vestry minutes, 1862-94

1.3.6.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by elected Surveyors of Highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended.

1.3.6.2 The Vestry appears to have only met twice a year and its surviving records give little information on the business transacted, except the appointment of officers. There is no information regarding any of the parish highways.

1.3.7 British Newspaper Archive, 1824 onwards

- 1.3.7.1 This is a digital database of scans of newspapers across the country. It includes local newspapers such as the Exeter Flying Post and the North Devon Journal, except for the years 1825-6 which have not survived. The newspapers included reports on the proceedings of the Magistrates Petty Sessions, Quarter Sessions and Assizes, along with those of the various district Highway Boards and Vestry's.
- 1.3.7.2 There are no references to the proposal route.

1.3.8 Trentishoe Parish Meeting Minutes, 1894-1979

- 1.3.8.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain. Trentishoe had a Parish Meeting as it was too small to have a Parish Council until 1979 when it joined with Kentisbury Parish Council.
- 1.3.8.2 It has not been possible to discover any of the Parish Meeting records.

1.3.9 Barnstaple Rural District Council Minutes, 1893-1974

- 1.3.9.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.
- 1.3.9.2 There are no references to the proposal route.

1.3.10 Ordnance Survey Name Books, 1903

- 1.3.10.1 These Ordnance Survey records contain information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features.
- 1.3.10.2 Part of the proposal route known as '*Dean Wood Lane*' northwards from point P is described as '*a lane extending from the district road a short distance east of Dean to [the] south end of Dean Wood*' at point Y. The entry was confirmed by the District Surveyor.

1.3.11 Bartholomew's 2" to 1 mile mapping, 1903

- 1.3.11.1 These maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, Footpaths and Bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The half-inch small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.

1.3.11.2 The whole of the proposal route between points P – Y – X – R is shown as a passable indifferent road. Such roads were considered '*inferior and not to be recommended to cyclists*'. Most of the roads in Trentishoe parish were included in this category.

1.3.12 Finance Act, 1909-10

1.3.12.1 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 route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

1.3.12.2 The whole of the proposal route is included within hereditaments: 1 – Middle Dean and 5 – Mill Wood, owned by Captain Chichester from Hampshire, 3 – Higher Dean, owned by Colonel E St John Griffiths, again from Hampshire, and 22 – Lower Dean, owned by Mr JR Reed. There are no deductions for Public Right of Way or User.

1.3.13 Aerial Photography, 1946 onwards

1.3.13.1 The proposal route is visible where it runs along Dean Wood Lane, a distance of approximately 300 metres north eastwards from the county road at point P to point Y, while the remainder is obscured by the woodland.

1.3.14 Definitive Map Parish Survey, 1950s

1.3.14.1 The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.

1.3.14.2 The proposal route is included in the Parish Survey as Footpath 7. It was described as a '*CRF*' (carriageway mainly used as a footpath) with 3 field gates by the Parish Meeting representative, Mr CH Bray. The description was expanded by the County Surveyor, who gave it the status of '*footpath*'.

1.3.15 Definitive Map records, 1970s

1.3.15.1 In response to the incomplete Definitive Review of the 1970s, the Trentishoe Parish Meeting representative, Mr JB Candy, proposed several amendments to the Definitive Map and Statement including the changing the status of Footpath No. 7 to bridleway. He stated that '*always in the past this had been known and used as a bridleway*'. It was added by Mr Duddon that '*the route and use as described...would be agreeable to the National Park Authority, and also desirable from a policy point of view*'.

1.3.16 Definitive Map and Statement, 1957

1.3.16.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.

1.3.16.2 The Definitive Statement for Trentishoe Footpath No. 7 is described as running from *'its junction with the unclassified county road 225 yards due east of Dean continuing along a private accommodation road (not repairable by the inhabitants at large), Dean Wood Lane, in a north-easterly direction then northwards through Dean Wood passing Higher Cott on the right, through Mill Wood to join the unclassified county road 70 yards south of Trentishoe Mill'*.

1.3.17 Kentisbury and Trentishoe Parish Council Minutes, 1979 onwards

1.3.17.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain. Trentishoe had a Parish Meeting as it was too small to have a Parish Council until 1979 when it joined with Kentisbury Parish Council.

1.3.17.2 There are no references to the proposal route.

1.3.18 Route Photographs, 2017

1.3.18.1 Site photographs of the proposal route between points P – Y – X – R – S show that it is open and available.

1.3.18.2 It appears that there has been a pedestrian gate adjacent to the field gate at the northern boundary of Higher Cott/Cott, but is no longer in situ, as is a field gate at the southern boundary. There are currently 'no horse riding' waymarks at the boundaries, but it is not known how long these have been in situ. From here northwards, there is evidence of 2 and 4 wheel vehicular use, but it is not known whether this has been public or private.

1.3.18.3 Additionally, next to the dilapidated field gate at point S is a stile.

1.3.18.4 At the time of the site visit, there were no signs of equestrian use.

1.3.19 Land Registry, 2017

1.3.19.1 The land is registered to 3 different owners. There is no information relevant to the proposal route.

1.4 User Evidence

1.4.1 No user evidence has been received in support of the proposal.

1.5 Landowner Evidence

1.5.1 Two landowners responded to the informal consultation regarding the proposal route.

1.5.2 Mr and Mrs Eames of Lower Dean Farm have owned land adjacent to the proposal route for 19 years and believe it to be a bridleway. They have seen members of the public using the route, but have not detailed how they were using it. They have not erected any notices or stopped people using the route.

1.5.3 Mr and Mrs Savage of Little Swincombe Farmhouse purchased Higher Cott in 2017.

They acknowledge the use of the proposal by horse riders. They would support the proposal if improvements were made to the route.

1.6 Informal Consultation Responses

1.6.1 The Parish Council have no objection in principle, though they did feel that the surface would need to be upgraded to be suitable for horses.

1.6.2 The Ramblers have no objection to the proposal.

1.6.3 The BHS Access and Bridleways Officer for North Devon supports the proposal.

1.7 Discussion

1.7.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the proposal has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, that Footpath No. 7 exists.

1.7.2 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, higher rights may still be proven to 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.

1.7.3 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the proposal route's partial physical existence and availability since at least 1804 as shown on the Ordnance Survey draft drawings. The section between points P – Y – X – R is shown in a similar manner to other recorded public highways, though only the section between points P – Y was acknowledged by the District Surveyor in the Ordnance Survey Name Books.

1.7.4 On the early mapping of the Ordnance Survey Draft Drawings, Cary's and Greenwood's, between 1804 and 1827, part of the proposal route is depicted as part of the parish highway network between the points P – Y – X – R. The whole route is not shown until the Ordnance Survey 25" 1st Edition mapping of 1889, and subsequently the Bartholomew's mapping.

1.7.5 The Trentishoe Vestry met only twice a year and those records surviving give no detail on the business transacted and consequently no insight into parish affairs. Its successor, the Trentishoe Parish Meeting has no surviving records have not been discovered.

1.7.6 The representative of Trentishoe Parish Meeting, Mr Bray, surveyed the proposal route in 1950 as a CRF, a carriageway mainly used as a footpath, which appears to support the Ordnance Survey Object Name Book entry for Dean Wood Lane between points P and Y. The claimed status was amended to footpath by the County Surveyor and was agreed by the Trentishoe Parish Meeting in May 1957.

1.7.7 However, Mr Candy, the Trentishoe Parish Meeting representative in 1978 made the current proposal, to which the current joint Parish Council has no objection. He stated that the route had *'always in the past this had been known and used as a bridleway'*.

1.7.8 Current landowners believe the route to be a bridleway, and one acknowledges use by horse riders. However, no direct evidence has been received from any horse riders and therefore use of the route 'as of right' as a bridleway cannot be demonstrated.

1.8 Conclusion

1.8.1 On consideration of all the available evidence the documentary evidence suggests that the route may have been considered historically as a carriageway, which has been available to the public, between the points P – Y – X – R – S. It has been open and available since that time to the public at least on foot, though it appears to have had the reputation of at least a bridleway.

1.8.2 However, the historical documentary evidence coupled with the lack of user evidence, when taken as a whole is considered insufficient to show that the proposal route has a higher status than that of a public footpath, as already shown on the Definitive Map and Statement. It suggests that the route has been available to users other than walkers, but it is considered insufficient to demonstrate on the balance of probabilities that equestrian rights exist.

1.8.3 The evidence is therefore considered to be insufficient under Common Law to demonstrate that a public highway higher than footpath status exists between points P – Y – X – R – S.

1.8.4 It is therefore recommended that no Modification Order should be made to upgrade Trentishoe Footpath No. 7 to a bridleway.

2. Proposal 5: Proposed addition of a bridleway and part upgrade of Footpath no. 3 to bridleway, as shown between points X – Y – Z on plan HCW/PROW/17/37.

Recommendation: That no Modification Order be made in respect of Proposal 5.

2.1 Background

2.1.1 The proposal route was included in the consultation with the support of the Kentisbury and Trentishoe Parish Council, following up on its proposal from the incomplete review in 1978.

2.2 Description of the Route

2.2.1 The proposal route starts at the county road south of the Glass Box on the northeast side of Trentishoe at point X and proceeds south eastwards across the Down to meet Footpath No. 3, known as Ladies Mile, at point Y. It turns southwards and proceeds along Footpath No. 3 for a short distance to meet the county road at Trentishoe Manor at point Z. Trentishoe Down is both registered common and open access land.

2.3. Documentary Evidence

2.3.1 Trentishoe Tithe Map and Apportionment, 1841-2

2.3.1.1 Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of

errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of '*public roads and waste*'.

2.3.1.2 The Trentishoe tithe map is a second class map, surveyed at a scale of 3 chains to 1" by G. P. Williams, who did a number of tithe surveys in Devon. Being second class, it is considered only to be a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.

2.3.1.3 The proposal route is not shown across Trentishoe Down. The land was owned by Mrs Amelia Griffiths. A county road is shown along with several footpaths/bridleways crossing the Down, one of which follows part of the alignment of Footpath No. 3.

2.3.2 Ordnance Survey mapping, 1809 onwards

2.3.2.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: '*The representation on this map of a road, track or footpath is no evidence of a right of way*'.

2.3.2.2 The proposal route is not shown on the 1809 Old Series 1" to 1 mile. The only route shown across Trentishoe Down is the recorded county road.

2.3.2.3 On the later 1st Edition 25" scale mapping of 1889, the southern half of the proposal across Trentishoe Down is shown as a double dashed track.

2.3.2.4 The 2nd Edition of 1904 shows the northern half of the proposal across Trentishoe Down is shown as a double dashed track.

2.3.2.5 The Post War A Edition of 1975 shows the northern half of the proposal across Trentishoe Down is shown as a double dashed track.

2.3.3 Trentishoe Vestry minutes, 19th century

2.3.3.1 Prior to the formation of District Highway Boards in the early 1860s and the later Rural District Councils (1894) the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by elected Surveyors of Highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended.

2.3.3.2 These records give little information on individual routes in the parish, and there is no mention of the proposal route.

2.3.4 Trentishoe Parish Meeting Minutes, 1894-1979

- 2.3.4.1 The Minutes provide information about the management of the route and the Meeting's views regarding the public highways in the parish. A public body such as a Parish Meeting had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 2.3.4.2 It has not been possible to discover any of the Parish Meeting records.

2.3.5 Barnstaple Rural District Council Minutes, 1893-1974

- 2.3.5.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived. Trentishoe had a Parish Meeting as it was too small to have a Parish Council until 1979 when it joined with Kentisbury Parish Council.
- 2.3.5.2 It has not been possible to discover any of the Parish Meeting records.

2.3.6 Finance Act, 1909-10

- 2.3.6.1 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 route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.
- 2.3.6.2 The proposal route is included within hereditament 33 – Trentishoe Down, owned by Colonel Griffiths and 8 – Rhydda Bank, also owned by the Colonel. There is a deduction for rights of common worth £400 (£31,269 (2017)), but none for Public Rights of Way or User, despite the inclusion of the county road, R604 between Trentishoe Manor, formerly Rhydda Bank, and Rhydda Bank Cross.

2.3.7 Aerial Photography, 1946 onwards

- 2.3.7.1 There is a route visible along the proposal alignment, particularly the section from point X, near the Glass Box.

2.3.8 Definitive Map Parish Survey, 1950s

- 2.3.8.1 The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.
- 2.3.8.2 Part of the proposal route was included in the Parish Survey as part of Footpath No. 3 from Rhydda Bank Lane to the Main Road (through Trentishoe parish), known as Lady's Mile.

2.3.9 Definitive Map records, 1970s

2.3.9.1 In response to the incomplete Definitive Review of the 1970s, the Trentishoe Parish Meeting representative, Mr JB Candy of Wood End Farm, proposed that a bridleway be recorded from The Glassbox on Trentishoe Down to Trentishoe Manor (formerly known as Rhydda Bank), which included upgrading a short section of Footpath No. 3.

2.3.10 Definitive Map and Statement, 1957

2.3.10.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.

2.3.10.2 The Definitive Statement for Trentishoe Footpath No. 3 describes the route as running from the *'the unclassified county road 100 yards north-east of Rhydda Bank and continues in a north-north-easterly direction along the east side of Trentishoe Down then northwards across county road 516 to join the unclassified county road 650 yards south-west of South Dean Corner. Also, a spur from south-west of Smallacombe Enclosure in a south-east by east direction to the unclassified county road at its junction with Footpath No. 5 at the south end of South Dean Oaks'*.

2.3.11 Kentisbury and Trentishoe Parish Council Minutes, 1979 onwards

2.3.11.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain. Trentishoe had a Parish Meeting as it was too small to have a Parish Council until 1979 when it joined with Kentisbury Parish Council.

2.3.11.2 There are no references to the proposal route.

2.3.12 Route Photographs, 2017

2.3.12.1 Site photographs of the proposal route between points X – Y – VZ show that it is open and available.

2.3.13 Land Registry, 2017

2.3.13.1 The land is registered to the National Trust who have owned Trentishoe Down since 1974.

2.4 User Evidence

2.4.1 A user evidence form was received for the proposal in 1978 completed by the Parish Meeting representative, Mr Candy. His statement was taken by Mrs Pickles at a Parish Meeting. He had known the proposal route for 40 years and used it continuously since 1949 to go between Holdstone Down and Trentishoe Manor (formerly Rhydda Bank). He doesn't specify how he used it. He stated that many visitors used this route because of its scenic beauty.

2.5 Landowner Evidence

- 2.5.1 Only 1 landowner responded to the informal consultation regarding the proposal route.
- 2.5.2 Mr Pickles of Tattiscombe is a commoner on Trentishoe Down. He states that the National Trust has allowed walkers on the proposal route.

2.6 Informal Consultation Responses

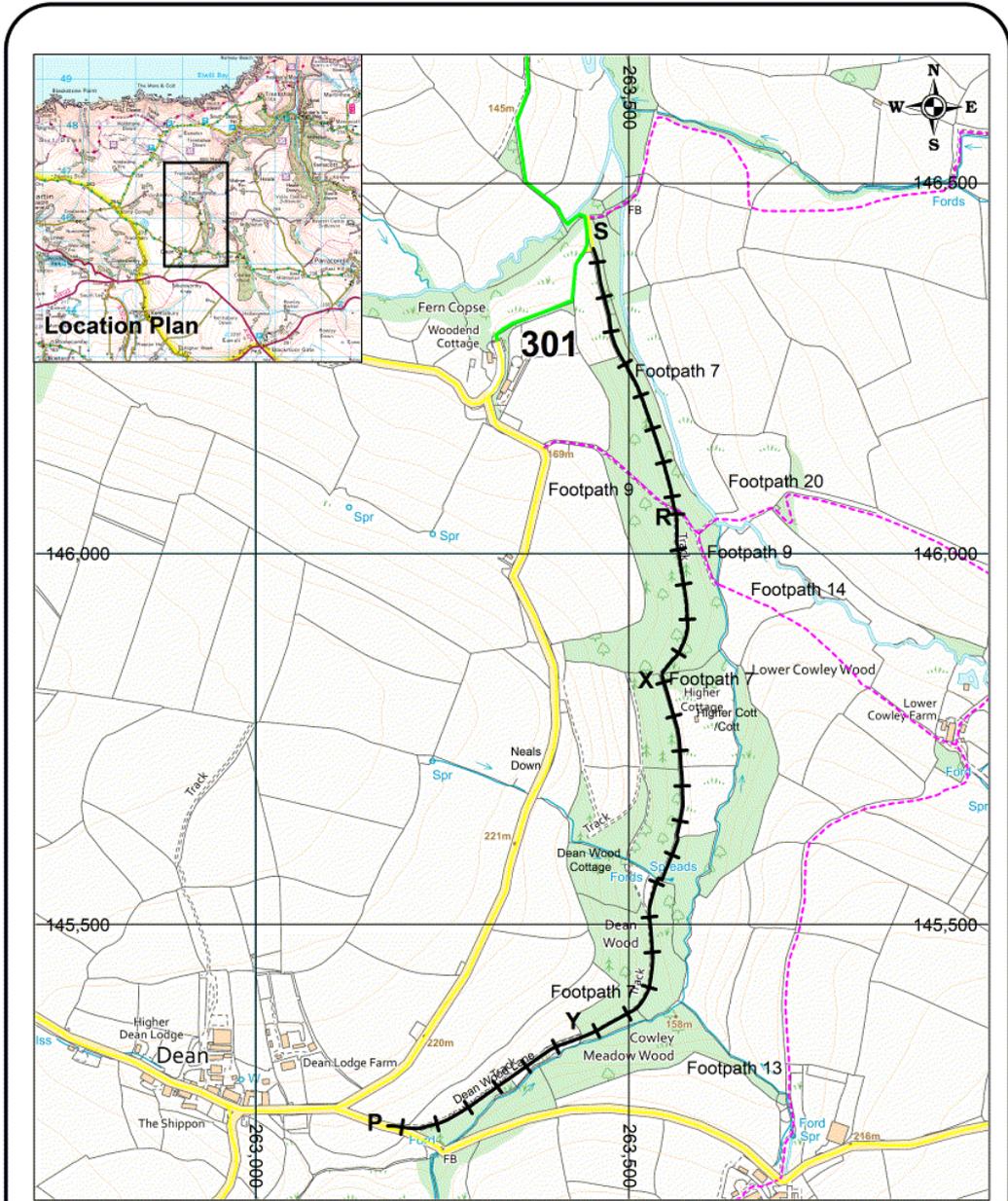
- 2.6.1 The Kentisbury and Trentishoe Parish Council have no objection in principle, though they did think that as the eastern end was particularly steep, it was not suitable for horses.

2.7 Discussion

- 2.7.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the proposal route has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, that Footpath No. 3 exists.
- 2.7.2 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route may still be proven to exist as a public right of way 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.
- 2.7.3 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the proposal route's physical existence since at least 1889 as shown on the Ordnance Survey large scale mapping.
- 2.7.4 The proposal route does not appear on any mapping until the Ordnance Survey 25" mapping, with different sections shown on different editions, though a route can be consistently seen on the aerial photography dating from the 1940s.
- 2.7.5 There are no references to the route through surviving local authority records, and no deduction for Public Right of Way or User in the Finance Act records, though there is a deduction for a Right of Common.
- 2.7.6 The user evidence received was submitted in 1978 and detail knowledge of the proposal route since 1938 and use between 1949 and 1978. No response was received from the landowner, the National Trust, who have owned Trentishoe Down since 1974. A Commoner on Trentishoe Down, Mr Pickles said he was aware of the public being allowed to use the route on foot by the current landowner. However, as Trentishoe Down is now open access land, under the Countryside and Rights of Way Act 2000, the public have a general right of access across it on foot.
- 2.7.7 The Kentisbury and Trentishoe Parish Council thought that the proposal route could be unsuitable as a bridleway approaching point Y heading eastwards because of the steepness of the terrain. However, such issues cannot be taken into consideration as to whether a public right of way and of what status exists on the proposal route.

2.8 Conclusion

- 2.8.1 On consideration of all the available evidence the documentary and user evidence demonstrates that the proposal route across Trentishoe Down between points X – Y – Z is likely to have physically existed since at least 1889. It has been open and available since that time to the public at least on foot and horse.
- 2.8.2 The historical documentary and user evidence when taken as a whole is considered insufficient to show that it is reasonably alleged that a public right of way exists or that a highway of a particular description should be shown as a highway of a different description in the Definitive Map and Statement. Though the evidence suggests that the route has been available and used in the past by walkers and horse riders, it is considered insufficient to demonstrate that equestrian rights exist.
- 2.8.3 The evidence is therefore considered to be insufficient under Common Law to demonstrate that a public right of way exists between points X – Y or higher than footpath status exists between points Y – Z.
- 2.8.4 It is therefore recommended that no Modification Order should be made to add a public right of way across Trentishoe Down or to upgrade part of Trentishoe Footpath No. 3 to a bridleway.



map ref: SS 6345 & 6346

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Devon County Council
Definitive Map Review - Kentisbury & Trentishoe
Proposal 4: Proposed upgrade of Trentishoe Footpath
No. 7 to bridleway

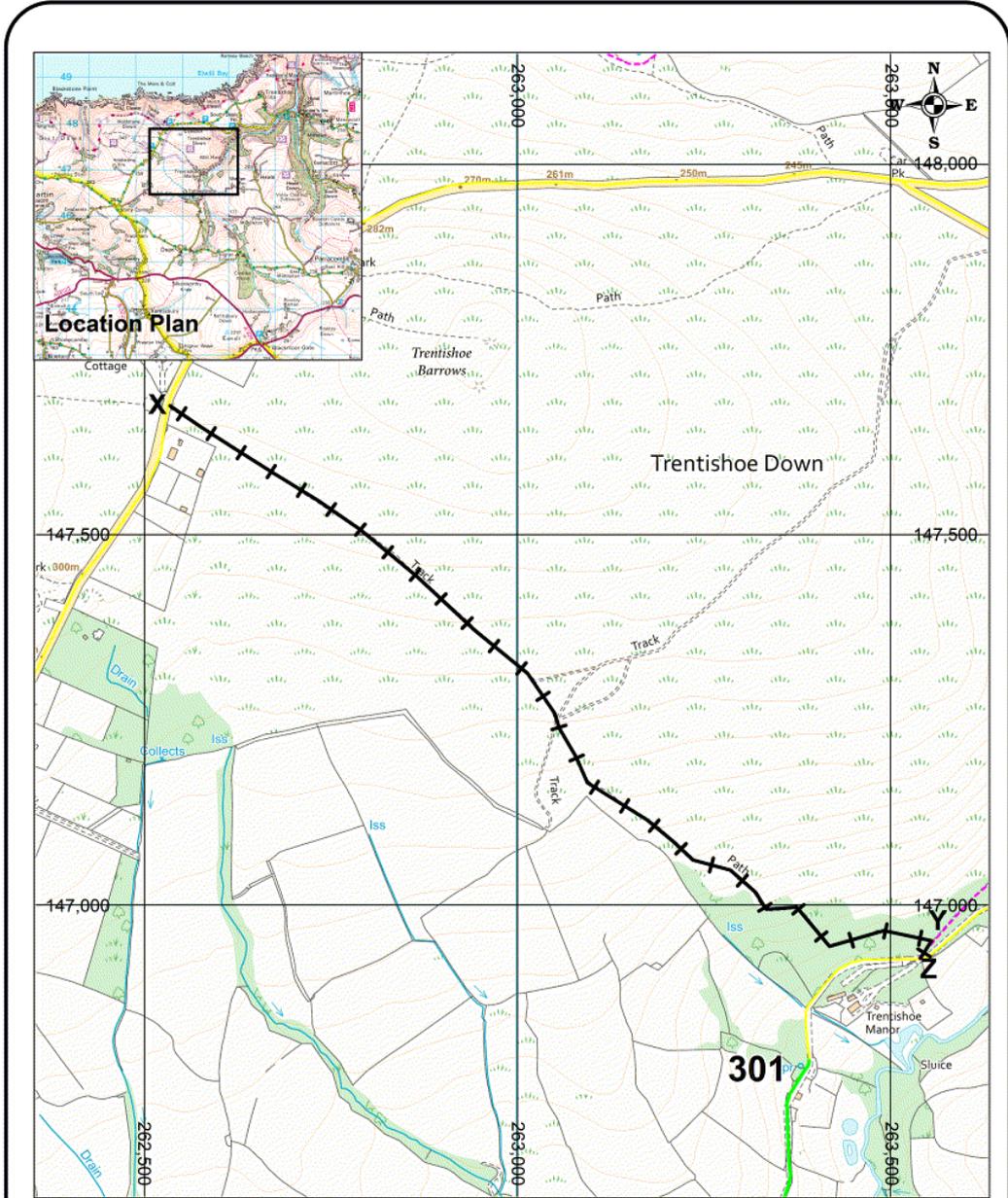
drawing number HIW/PROW/17/36
 date June 2017
 scale 1:7,500
 drawn by CLG

Notation
 Proposed upgrade of Trentishoe Footpath No. 7 to bridleway
 P - Y - X - R - S (approx 1,457 m) ————

Existing footpaths - - - - -

Meg Booth
 Chief Officer
 for Highways,
 Infrastructure Development & Waste





map ref: SS 6247 & 6346

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Devon County Council
Definitive Map Review - Kentisbury & Trentishoe
Proposal 5: Proposed addition of a bridleway across
Trentishoe Down & upgrade of part of Trentishoe
Footpath No. 3

drawing number HIW/PROW/17/37
 date June 2017
 scale 1:7,500
 drawn by CLG

Notation

Proposed addition	X - Y (approx 1,323 m)	+++++
Proposed upgrade	Y - Z (approx 29 m)	+++++
Existing footpaths		-----

Meg Booth
 Chief Officer
 for Highways,
 Infrastructure Development & Waste

