

**Definitive Map Review 2019  
Parish of Oakford**

Report of the Chief Officer of Highways, Infrastructure Development and Waste

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

**Recommendation:** It is recommended that a Modification Order be made to modify the Definitive Statement by deleting the section describing the route of Footpath No. 6, Oakford between points A – B as shown on drawing number HIW/PROW/19/40 (proposal 1).

**1. Introduction**

The report examines the only proposal arising out of the Definitive Map Review in the parish of Oakford, in Mid Devon.

**2. Background**

The original parish survey, under s.27 of the National Parks and Access to the Countryside Act 1949 completed in the Autumn of 1950, initially proposed 12 routes (10 footpaths and 2 bridleways) for consideration as public rights of way. After review by Tiverton District Rural Council and Devon County Council and publication of the draft and provisional maps, all 12 routes were recorded on the conclusive Definitive Map for Tiverton District Council published in June 1964.

In the Devon County Council uncompleted review of 1968, the parish suggested that the lane to Lower Westcott should be a county road. The DCC surveyor did not agree and no change was made.

The County Council's Limited Special Review of Roads Used as Public Paths (RUPPS), carried out in the 1970s did not affect Oakford parish.

During the Devon County Council uncompleted review of 1977, it was suggested that the wording be amended of the statement for Footpath No. 2, Oakford at Westcott. No action was taken at that time and the path statements will be reviewed when the Definitive Map is consolidated on completion of the Definitive Map Review across the county.

The following Orders have been made and confirmed in the Parish since 1964.

Mid Devon District Council Footpath No. 8 Public Path Diversion Order 1977  
Mid Devon District Council Footpath No. 4 Public Path Diversion Order 1999  
Mid Devon District Council Footpath No. 11 Public Path Diversion Order 1999  
Devon County Council Footpath No. 5a Public Path Diversion Order 2006

Legal Event Modification Orders will be made for these changes under delegated powers in due course.

The current review was opened with a parish public meeting in April 2019 held as part of the annual Parish Meeting in the village hall at Oakford, which was well attended by parishioners and councillors. The consultation map with the one proposal for change in respect of the anomaly found in respect of Footpath No. 6 was published in August 2019.

### **3. Proposals**

During a review of the parish records prior to the opening meeting it was noticed that an anomaly existed with respect to Footpath No. 6, Oakford. The path statement for this footpath described an additional section of the footpath that was not shown on the Definitive Map. This anomaly was therefore a proposal for investigation under the review in the parish.

No other valid proposals for consideration under the definitive map review were received from parishioners or members of the public. The definitive map review consultation map for Oakford was accordingly published with the one proposal for change in respect of the anomaly between the map and statement for Footpath No. 6, Oakford.

### **4. Consultations**

Public consultation for the Definitive Map Review in the parish was carried out in August and September 2019. The review was advertised in the Oakford newsletter, in a local newspaper and on and in the vicinity of Footpath No. 6, Oakford. General consultations have been carried out with the following results in respect of the proposal considered in this report.

The responses were as follows:-

County Councillor P Colthorpe	-	no comment
Mid Devon District Council	-	no comment
Oakford Parish Council	-	consider map correct
British Horse Society	-	no comment
Devon Green Lanes Group	-	no comment
Ramblers' Association	-	no objection
Trail Riders' Fellowship	-	no comment
Cycling UK	-	no comment

No further proposals were received during the period of consultation with the Parish Council, public or local user group representatives.

### **5. Financial Considerations**

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

### **6. Legal Considerations**

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

### **7. Risk Management Considerations**

No risks have been identified.

## **8. Equality, Environmental Impact and Public Health Considerations**

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

## **9. Conclusion**

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by modifying the path statement in respect of Footpath No. 6, Oakford. Should any further valid claims 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 Recommendation**

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

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

## **Electoral Division: Tiverton West**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Tania Weeks

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Background Paper	Date	File Ref.
DMR/Correspondence File	2018 to date	DMR/Oakford

tw141019pra  
sc/cr/DMR Parish of Oakford  
02 041119

**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.

## Proposal 1: Proposed Variation of particulars for Footpath No. 6, Oakford

**Recommendation: It is recommended that a Modification Order be made to modify the Definitive Statement by deleting the section describing the route of Footpath No. 6, Oakford between points A – B as shown on drawing number HIW/PROW/19/40.**

### 1 Background

- 1.1 The Definitive Map Statement for Footpath No. 6, Oakford describes the path as *'It starts at Crosspark Hill, Class III County road, and proceeds in a north-easterly direction to Greenslades thence northwards across one field to join the Unclassified County road, High Way. **Starts again on the opposite side of the road, continuing north-east passing on the eastern side of Upcott to end at the Class I County road A.361, east of the entrance to Upcott Farm**'.*
- 1.2 However, on the Definitive Map only the first section of the path is shown between Crosspark Hill and the road known as High Way or High Way Lane. The second part of the footpath, in bold above, is not shown on the Definitive Map. This is an anomaly and the footpath was accordingly included as a proposal for change when the Definitive Map Review commenced in Oakford.

### 2 Description of the Route

- 2.1 The first part of the footpath that is shown on the Definitive Map starts on Crosspark Hill just north of the village centre and north of Cross Park house and proceeds north eastwards along a stoned track, which is also the access track to Greenslade Cottages. Just before the cottages the route bears northwards, goes through a field gate and continues northwards uphill across a field to another field gate and to the county road known as High Way.
- 2.2 The section of footpath that is not recorded on the map but described in the statement starts on the county road known as High Way opposite the field gate at point A and proceeds north eastwards across a paddock and field to point B, on the now B3227 county road and east of the old entrance (which is now considerably grown in and unused) to Upcott Farm.
- 2.3 The total length of the section described in the statement but not shown on the map is about 296 metres. The route has a surface with a small section of concrete drive just north of point A and of earth/grass for the rest of the route across the paddock and field.

### 3 Consultation Responses

- 3.1 Oakford Parish Council advised that they support the removal of the additional section of footpath described in the path statement and consider that the map is correct as it is.
- 3.2 The Tiverton Footpaths Officer for the Ramblers Association advised that they did not have any objections to the proposal. The Oakford P3 (DCC Public Paths Partnership) representative advised that he was not aware of anyone who can say that they ever walked this route.

## 4 Documentary Evidence

### 4.1 Ordnance Survey and Other Maps

The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.

### 4.2 OS 1st Edition 25" to a mile 1880-1890

This large scale mapping shows a double pecked line along the route of the southern section of footpath, that is shown on the definitive map. The pecked line is labelled F.P. No pecked line is shown across the fields between points A and B. An unfenced track is now shown to Upcott Farm buildings from point A and a line across the end of this track at point A would indicate the presence of a gate.

### 4.3 OS 1:25,000 maps of Great Britain – Sheet 21/92 SS92 Published 1950

The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps and published in limited colour between 1937-1961. By 1956 it covered 80% of Great Britain, everywhere apart from the Scottish Highlands and Islands. The series is useful for showing rural and urban areas in much greater detail than the standard one-inch to the mile (1:63,360) maps.

4.4 Minor roads, lanes and private drives/access lanes are all shown as white uncoloured roads/lanes described as 'Other Roads, Poor, or unmetalled'. The conclusive Definitive Map had not been published when this map was published. This edition was however, published in 1950, which was the year that the parish survey of paths was completed by the parish council. Some routes are shown as pecked and dashed lines labelled F.P. and B.R. and some as two narrow solid lines. The map contains the standard OS disclaimer 'The representation of any other roads, tracks or paths is no evidence of the existence of a right of way'.

4.5 The map shows a pecked line along the section of the now recorded Footpath No. 6, Oakford that is shown on the Definitive Map which is labelled F.P. No line or other mark is shown on the map along the route of the section of footpath described in the statement (points A to B) and not shown on the map.

### 4.6 OS Post War Mapping 1:2,500 Scale 1970

On this map a double pecked track is shown along the first part of Footpath No. 6 between Crosspark Hill and Greenslades Cottages. No other tracks or paths are shown for the section of Footpath No. 6 from Greenslades to High Way Lane or along the route of the missing section of footpath from point A to point B.

### 4.7 Oakford Tithe Map 1840 and Apportionment 1841

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.

4.8 On the Oakford Tithe Map the fields layout for the southern section of the footpath that is recorded on the map is the same as the present day. The building of the nowadays Greenslade Cottages is shown and described as house, barn, Courtlage and garden. No track is shown on the map either leading to the buildings or along the line of the current public footpath. The two fields are pasture and meadow in the apportionment with no reference to a footpath.

4.9 In respect of the unmapped northern extension to the footpath, the house and building at Upcott are generally as at present. There is no track shown to Upcott to the south and the main entrance would appear to be the lane running north east from the buildings to the main road. The un-mapped section of Footpath No. 6 would pass across field numbers 1201 and 1203, both arable. There is no line shown on the map between the field 1201 and the road at point A, indicating that there was not a gate or other barrier here. There is no track shown across the fields and no reference to a footpath in the apportionment.

4.10 Finance Act Plans and Field Books 1910

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a defined lane/road is not included within any hereditament there is a possibility that it was considered a public highway, as it had not been claimed as belonging to an adjoining landowners' holding, but there may be other reasons for its exclusion. If public rights of way were believed to cross their land, landowners could bring this to the attention of the valuers/surveyors and the hereditament (holding) could be given an allowance for the public right of way, which would then be deducted from the total value of the hereditament.

4.11 Both parts of Footpath No. 6 included in the map statement would be on land included within hereditament number 36; Upcott Farm, 175 acres owned by J Daniel and occupied by C Summers. The 2<sup>nd</sup> Edition OS 25" to a mile maps used for the survey include a double pecked line labelled F.P. along the line of the southern section of Footpath No. 6 by Greenslades cottages. No pecked or other line is shown on the northern un-mapped section. The field book refers to 'Footpath Ord No. 835. 10/- x 35. £13' Ordnance (field) number 835 is to the west of Upcott Farm buildings and the map does show a double pecked line labelled F.P. along the field's eastern headland. This path is now recorded as part of Footpath No. 5a, Oakford. No further allowances have been given for public rights of way or user in the field book for Upcott.

4.12 Oakford Vestry and Parish Council Minutes

Oakford Vestry minutes for the period 1844 to 1889 and Oakford Parish Council Minutes for the period 1894 to 1971 are held at the Devon Heritage Centre. Mr C Summers senior and junior (of Upcott Farm) were members of the parish council between 1894 to 1940 and 1935 to 1949 respectively. The minutes show that the parish council were aware of public rights of way and had maintained footbridges in the parish on paths that were subsequently included on the Definitive Map.

4.13 In 1946 a Mr Kemp asked the Parish Council's help in making a list of Church paths, Postman's' paths in the parish. Reverend Kelly put forward a list of church paths which was accepted by members present. A list of the paths was not included within the minutes. In September 1950 a meeting was held to discuss the footpaths and the Chairman brought the maps showing what rights of way would be claimed by the parish council. Arrangements were also made to walk the final paths to be claimed. A list of the paths was not included in the minutes.

4.14 In December 1953 a letter was received from Somerset County Council regarding paths between Oakford and Brushford (bordering the north of Oakford parish) not claimed by Oakford parish council. The letter referred to a path number 6 but this related to the Brushford parish claimed number 6 and not the footpath number 6

claimed by Oakford. In October 1957 it was reported that the chairman, Mr Dascombe, and clerk had met with the assistant secretary for the Devon County Footpath Association at Oakford. The suggested paths had been accepted. In June 1964 it was reported that the rights of way footpath map was now on deposit and in March 1971 that apart from a reference to Westcott Lane (in the west of the parish), the meeting was satisfied with the registered footpaths as shown on the map.

- 4.15 Within the vestry and parish council minute books viewed no references have been found relating to a footpath at or near to Upcott Farm.
- 4.16 Parish Survey under National Parks and Access to the Countryside Act 1949  
The original parish survey, under s. 27 of the National Parks and Access to the Countryside Act 1949, was undertaken by Messrs W Boundy, H Dascombe, T Folland, G Nott & J Thorne in 1950 with the survey forms completed by the parish clerk in October 1950.
- 4.17 Footpath No. 6, Oakford was surveyed by Mr J Thorne. The survey form noted 'Whether likely to be disputed' was answered 'No'; 'Whether path required in future' was answered 'Yes'; 'Grounds for believing path to be public' was answered 'Path is used everyday by the public' and 'Who has repaired path in past' was answered 'Mr Summers Upcott Farm'. On the remarks section of the survey form was written 'As this path is used everyday by the people who live at Greenslades the path is excellent. Whenever repairs are required the owner of the property at Greenslades carries it out. Greenslades being the farm cottages belonging to Upcott Farm'.
- 4.18 The General Description of the path on the front of the form was 'From Crosspark to Greenslades, to High Way Lane, To Upcott Farm'. The County Surveyors remarks and queries were 'as per Path No 1'. These were 'Information Required. 1) Status of Path (whether F.P., Bridleway or Road used a Public Path) and 2) Further description of the route, query types of fields crossed & gates, stiles or footbridges along it & private accommodation roads crossed by path).
- 4.19 On the parish survey map that was completed by the parish council together with the survey forms, the section of Footpath No. 6, Oakford that is recorded on the Definitive Map is shown as a blue solid line from Cross Park Hill to the county road called High Way via Greenslades. A solid blue line continues from the road High Way to the buildings of Upcott Farm but no further. A dashed purple line is shown across the field south east of Upcott, from points A to B. Next to this purple dashed line is written in pencil 'Pte'. The writing is in the same hand as the County Surveyor's notes on the parish survey forms and understood to have been added to the parish map after it had been returned to the County Council. The note is an abbreviation for the word 'private'.
- 4.20 Within the parish survey papers held at county hall there is a blue sheet of paper with notes in pencil on each of the paths proposed by the parish. The handwriting appears to be that of the County Surveyor. For path 6 is written ' From UC Road (High Way) to Upcott Farm is there a R.O.W. thro to A361 if not cancel path (northern section) and add new length to (*m stone?*) A361. Next to the writing is a purple tick in the same colour as the dashed line shown on the parish survey map. Also next to the last sentence starting 'if not ...' is a pencil box with the word 'Pte' written in it.
- 4.21 The type list of path statements for Oakford included in the survey file describes the route of Footpath No. 6, Oakford as per the current statement. The list is not headed by a paragraph 'As agreed with the parish clerk on ...' or dated as is common on

other similar types of lists of parish path statements for other parishes in the Tiverton Rural District Council area.

- 4.22 The draft Definitive Map and Statement would have been forwarded to the parish council in April 1958 and the provisional map in June 1963. The path statements were sent to the parish council together with the parish map showing the rights of way proposed. It would appear that the omission from the draft and provisional maps of the additional section of Footpath No. 6 described in the statement was not noticed by the parish nor by any officers in the district or county councils. The Definitive map was accordingly published in June 1964 including the additional section of footpath on the statement for Footpath No. 6 Oakford.
- 4.23 Devon County Uncompleted Reviews of 1968 & 1977  
In May 1971 the parish council wrote that a parish meeting was held on 18<sup>th</sup> March. The minutes recorded that as no roads used as public paths were shown on the map question 1 did not apply. With regard to question 2 the council advised that no bridleways or footpaths should be re-designated with the exception of Footpath 2 which should be shown as a county road to Lower Westcott.
- 4.24 In the review of 1977, the parish council advised that the statement of Footpath No. 2, Oakford required slight re-wording and proposed an alternative. No other proposals were made.
- 4.25 Aerial Photography 1946 – 2015  
On the 1946 aerial photography a track can be seen from Crosspark Hill across to Greenslade Cottages and from the cottages north to the county road, known as High Way, south of point A. No signs of any track can be seen across the two fields between points A and B and there is also no sign of any gap in the hedge at the point a user would have had to go through the hedge to reach point B. The new entrance track to Upcott from point A is clearly visible as is the hedged lane access running north east from Upcott. The surface of this lane is visible and south eastern hedge neatly trimmed.
- 4.26 By the 1999 photograph the paddock has been fenced adjacent to the buildings at Upcott. There is a visible track across the field from point A but this goes to the farm building now constructed south west of point B and does not follow a line between points A and B. The entrance track to Upcott by point A appears ungated. On the lane entrance to Upcott near point B, the hedgerow trees have grown and the lane surface cannot be seen.
- 4.27 Land Registry  
The unmapped section of the footpath from Point A to Point B is registered to Mrs Summers of Crosspark and Mr & Mrs Rolfe of Jasmine Cottage. The property register for Jasmine Cottage includes reference to covenants included within the conveyance of Upcott Farm in January 1991. One of the covenants states 'within three months from the date hereof to erect a gate at point E on plan number 1 and thereafter to maintain same'. Point E on the title plan is located just north of point A on the proposal plan.
- 4.28 The property register for land at Upcott Farm (the remainder of the land crossed by the proposal, points A to B) includes reference to the conveyance dated January 1991. This includes a right of way for all times for all purposes over the land comprising a section of the southern entrance driveway to Upcott Farm. This refers to the southern section of driveway north of point A. The conveyance also includes for the erection of a gate within three months at point E on plan 1. The plan attached

to the conveyance notes ' Point E: New gate to be provided by vendor for his own use to provide access to OS 1482 – Right of way to be reserved over section of drive.'

- 4.29 Nether title register make any reference to any private or public rights of access over the route of the proposal.

## **5 User Evidence**

- 5.1 There has been no evidence found to indicate any use by the public of the unmapped section of the footpath and no user evidence has been received. No other reports have been received of any use by the public.

## **6 Landowner Evidence**

- 6.1 The two landowners who owned the land crossed by the section of path between points A and B were contacted, informed of the proposal and asked for any comments or evidence relating to the anomaly.
- 6.2 Mr & Mrs Rolfe own the paddock crossed by the proposal which adjoins their cottage at Upcott. They have owned and resided at the cottage for nine years and have never seen or being aware of anyone trying to walk across the field. They do not believe the way to be public. During their ownership no gates or stiles have existed in their paddock boundary fences to permit use along the proposed route.
- 6.3 Mrs Summers owns the field crossed by the route point A to point B which was formally part of Upcott Farm and purchased by her father-in-law in 1926 as the current tenant. Mrs Summers moved to Upcott Farm on her marriage in 1951. Mrs Summers is aware of the section of Footpath No. 6, Oakford as shown by the dashed line on the plan and had always understood that it ended at the county road High Way. Throughout her time at Upcott Farm and latterly at a property in the village she is not aware of anybody trying to walk or of walking the route A to B or of claiming the route to be a public footpath. She commented that no one had ever used it or tried to use it and does not believe the route shown on the plan to be a public right of way
- 6.4 Mrs Summers also advised that it was only in 1991, when the Upcott Farmhouse, buildings and land to the northwest of the farm was sold away, that a gateway was created at point B on the plan. The new gateway was required as they needed access to the land they still owned and farmed across the B3227, north of point B. Prior to then the only access to the B3227 from Upcott Farm was by using the old lane between the farm and the road. There is also no gate near point A to permit access to the field.
- 6.5 Mrs Summers' daughter had also contacted the Council to advise that her mother, sister or herself can ever remember there being a footpath as shown on the plan between points A and B. There was never a gate, stile or any other entrance through the hedge at point A until the farmhouse and that entrance drive from High Way was sold off in 1991. A new gateway was then constructed to give access to the field. As there was no entrance enabling access this could not have been the start of any footpath into the field. Her grandfather purchased Upcott Farm in 1926 and having looked at the maps and searches from that time there is no evidence that there was ever a footpath as marked on your map.

## 7 Rebuttal Evidence

- 7.1 No other evidence apart from that included in this report has been received either in favour of the additional section of the footpath being added to the map or for the additional section within the statement to be deleted.

## 8 Discussion

- 8.1 A claim for a public right of way can arise through use by the public under section 31 of the Highways Act 1980, if twenty years use can be shown after the public's use of the route is called into question. A claim for a right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication. A public right of way can also be deleted from the map if there is evidence to show that a mistake was made, at the time the path was added to the definitive map and that the path or way was never a public right of way.
- 8.2 A route described on the statement but not shown on the final Definitive Map is an anomaly and as such amounts to an event under s.53 (3)(c)(iii) of the Wildlife and Countryside Act, 1981, that particulars contained in the map and statement require modification to resolve the differences between the map and statement.
- 8.3 In *R (Norfolk CC) v Secretary of State for the Environment, Food and Rural Affairs* (2005) it was said that in the event of a discrepancy between the map and statement, the matter was to be determined by reference to the evidence presented, with neither the map nor statement having precedence with regard to the weight to be attached to the information on each.
- 8.4 In the latter case of *Kotarski v Secretary of State for the Environment, Food & Rural Affairs and Devon County Council* (2010) the judge, Simon J, concluded 'that the weight to be given to the statement in the absence of depiction of the route on the definitive map was a matter for the Inspector.' The Inspector had considered the weight to be attached to the evidence. The judge also stated that 'Notwithstanding a divergence between them, both the definitive map and the definitive statement are capable of being relevant evidence as to the existence or non-existence of the right of way in a review'.
- 8.5 In dismissing the third ground of the *Kotarski* appeal Simon J said 'The precondition for the exercise of the statutory power of review is the discovery of evidence which (when considered with all other relevant evidence) shows that particulars contained in the map and statement require modification. The discovery that there is a divergence between the two is plainly the discovery of such evidence, and it is unnecessary that it should be characterised as *new evidence*.' In his view it was sufficient that the Council had recently discovered that there was a divergence between the map and statement to bring the case with s 53(3)(c)(iii).
- 8.6 It is therefore necessary to consider all the available evidence to determine whether it is the map or the statement that needs amending. The maps reviewed do not include any reference to a track or path along the line of the missing section of footpath between points A and B. The larger scale OS 25" map of 1880-1890 and OS 1:25,000 map published 1950 both show a pecked line along the route of the section of Footpath No. 6 shown on the definitive map but nothing in respect of the additional section. Although maps do not indicate the status of tracks/lines shown on them, the

absence of any pecked line or track indicates that there was no visible indication on the ground of a track or path across the fields between points A and B. The Finance Act field book refers to a footpath in a numbered field which is not crossed by either the mapped or unmapped section of Footpath No. 6 and so does not support the existence of a footpath between points A and B.

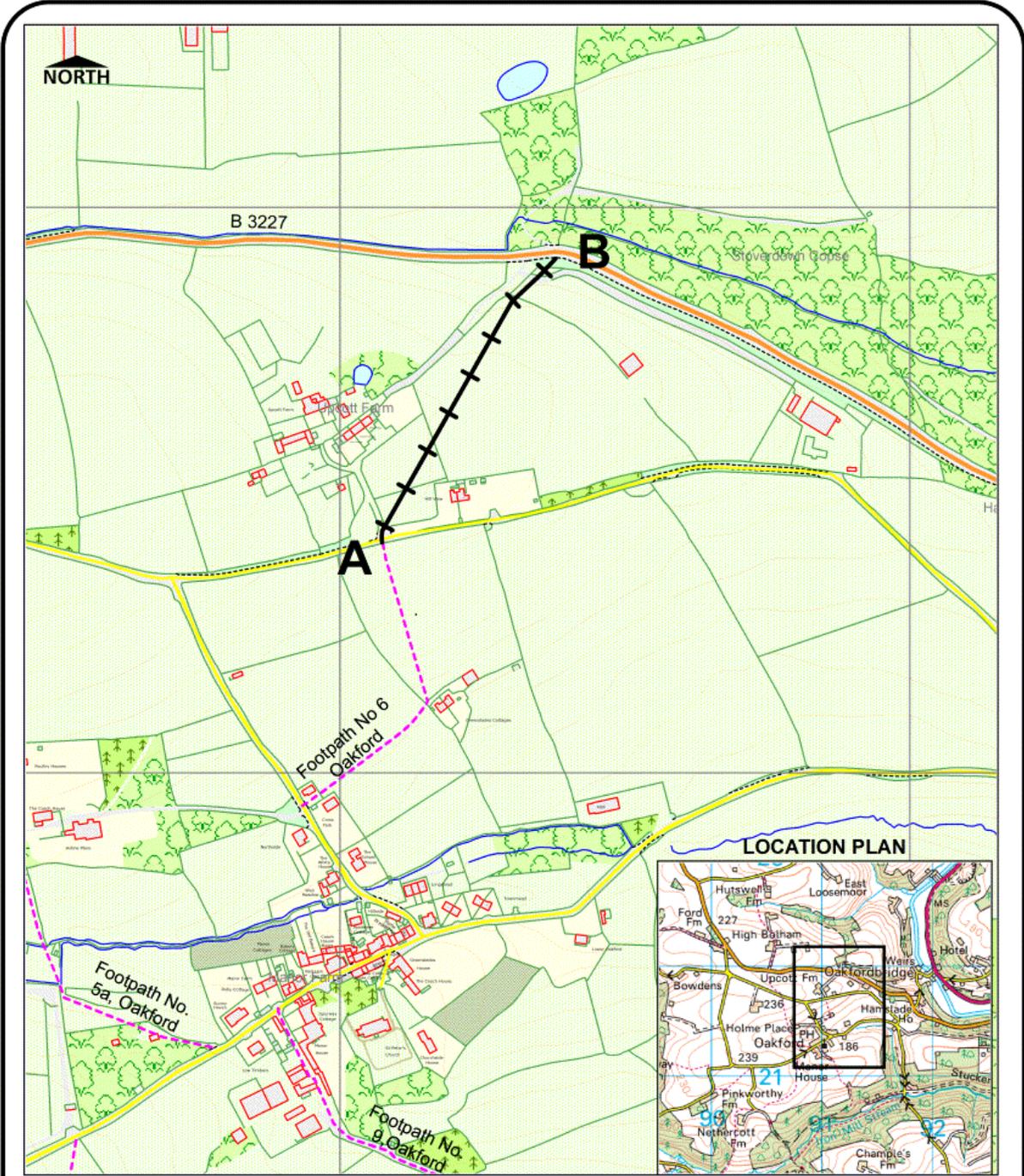
- 8.7 The Vestry and Parish Council minutes indicate that the parish was aware of public rights of way before the definitive map was compiled. The minutes do not contain any reference to footpaths or rights of way at Upcott Farm. The minutes indicate that the proper procedures were followed in the preparation of the parish survey in 1950 but do not include any reference to individual paths. The parish survey map submitted by the parish council in 1950 recorded path number 6 from Crosspark Hill to High Way and then along the entrance drive to Upcott Farm only and not continuing to the county road (now B3227 was A361). The route was described as 'From Crosspark to Greenslades, to High Way Lane to Upcott Farm'.
- 8.8 It would appear that once the survey forms and maps had been received at the offices of the County Council and/or District Council that the section of the path shown on the map between High Way Lane and Upcott Farm was considered to be private. This was to be expected as this section of path only went to a farm and did not connect to a county road or other public right of way. The section was accordingly deleted and not included as part of Footpath No. 6. However, the surveyor's notes on the paths proposed by the parish include 'is there a ROW thro to A361'. In deciding that the section of path to Upcott Farm is private the surveyor has drawn on the parish survey map the route between points A and B as an alternative route between High Way lane and the A361/B3227. The path statement for Footpath No. 6 then appears to have been written to include this additional section of footpath that was not included by the parish council on their survey map.
- 8.9 The parish council minutes refer to a meeting between the chairman, clerk and assistant secretary of the Devon County Footpath Association but it is not known whether they would have had both maps and statements to consider/review at that meeting. Path statements would have been sent with the draft and provisional definitive maps in 1958 and 1963, but the parish minutes do not indicate whether the availability of these for inspection was widely advertised. By 1950 a member of the Summers family from Upcott Farm was not on the parish council.
- 8.10 The Summers family are believed to have been in occupation of Upcott from before 1894 (when Mr Summers was on the parish council) and definitely from 1910 (Finance Act field book). Mrs C Summers had moved to Upcott Farm in 1951 and both her and her daughters have confirmed that whilst they are aware of the footpath from Crosspark to Greenslades to High Way Lane they have never known a footpath across their fields from High Way Lane to the B3227 (points A to B). They have never seen anyone trying to walk along the proposed route and advise that until recently there was no gate to access the field at point A or a gate near point B to access the main road. This is supported by the conveyance dated January 1991 which requires the vendor (Mr Summers) to erect a gate just north of point A within three months of the sale. Aerial photography from 1946 and later also shows the absence of a gap in the field hedge between points A and B.
- 8.11 Mr & Mrs Rolfe have occupied Jasmine Cottage since 2010 and the paddock fencing between points A and B can be seen on the 1999 aerial photography. They have never seen anyone trying to walk along the proposal route. No user evidence has been received in support of the section between points A and B and there is no evidence to show that this route has ever been used by the public. The Parish

Council and parish P3 representative have never considered the proposal route to be a public right of way or used by the public.

- 8.12 There is no documentary evidence to support the existence of a public right of way between points A and B either in the past or in more recent times. The reason why the additional section of Footpath No. 6, Oakford was added to the survey map and described in the statement by the County Council is not known but it is considered to be an error made in the 1950s that was not discovered until the current review. The anomaly of the divergence between the map and the statement is considered as the discovery of new evidence for the purposes of falling within s 53(3)(c)(iii) of the Wildlife & Countryside Act 1981.

## **9 Conclusion**

- 9.1 The evidence when taken as a whole is not considered to support the subsistence of a public right of way, namely a public footpath, along the unmapped section of Footpath No. 6 from the county road known as High Way Lane to the B3227. On this basis the Statement for the Footpath No. 6, Oakford is considered to be incorrect and requires modification to correct the current anomaly between the Definitive Map and Definitive Statement for this public right of way.
- 9.2 It is therefore recommended that a Modification Order be made to modify the Definitive Statement by deleting the section describing the route of Footpath No. 6, Oakford between points A and B as shown on drawing number HIW/PROW/19/40 (proposal 1).



Map Ref SS 9121 500m grid

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**DEVON COUNTY COUNCIL  
DEFINITIVE MAP REVIEW - OAKFORD  
PROPOSAL NO 1  
PROPOSED VARIATION OF PARTICULARS  
FOOTPATH NO. 6, OAKFORD**

drawing number HIW/PROW/19/40  
 date Jul 2019  
 scale 1:5,000 at A4  
 drawn by TW

**Notation**

Proposed Variation of Particulars A - B (296 metres approx)   
 Existing Public Footpath 

**Meg Booth**  
 CHIEF OFFICER HIGHWAYS,  
 INFRASTRUCTURE DEVELOPMENT AND WASTE

