

CET/23/95

Public Rights of Way Committee
23 November 2023

Proposed Diversion: Footpath No. 2, Bere Ferrers

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 a Public Path Diversion and Definitive Map & Statement Modification Order be made to divert Footpath No. 2, Bere Ferrers from the lines A – B, to the line A - C - D – E, as shown on drawing no. CCET/PROW/23/77; and that if there are no objections, or if such objections are made and subsequently withdrawn, it be confirmed as an unopposed order.

2) Summary

This report examines an application by respective landowners to divert part of a public footpath in the parish of Bere Ferrers. The proposed diversion will support the applicants land management improvements, including for wildlife and heritage value, as well as improving their privacy. In addition, the proposal will address historic anomalies relating to path alignment. The current proposal is shown on plan no. CCET/PROW/23/77.

3) Background

Bere Ferrers Footpath No. 2 was initially included on the original Definitive Map and Statement as a pre-existing public highway following assessment by the Parish Council in the 1950s.

Tavistock Rural District Council Diversion Order, 1972

In 1971, an application was made to divert the western end of the footpath across Parsonage Farm. Mr Gill, the landowner at the eastern end at that time (at Shutcombe Farm) also expressed a desire to divert the footpath over his land. The purpose of this diversion was to *'provide for efficient use of the land and a shorter or more commodious path'*. Mr Gill wished to divert the footpath to a point north of his farm building.

A site meeting was carried out involving the relevant parties, including the Bere Ferrers Parish Council. The former Tavistock Rural District Council subsequently

made a Diversion Order on the 13th April 1972. This was confirmed as an unopposed Order on the 11th April 1973, and came into force on the 12th July 1973.

Recent History of the Footpath

Although exact dates are not known, it is evident that approximately 30 years ago, a former landowner of Shutecombe Farm, encouraged and/or redirected the public to walk an alternative route to the alignment as set out in the 1972 Order – probably due to their farming practices and moving fences around for grazing compartments. This unofficial diversion of the footpath was not subject to challenge by the Parish Council and/or members of the public, and generally seemed to have been accepted by path users.

A former Public Rights of Way Warden for the area did become aware of changes in the route, and subsequently liaised with the landowner indicating that they should formally apply to divert the footpath from its definitive alignment to the used alignment. The landowner at that time did not complete the required application process, and a formal diversion was not progressed. As the landowner and path users were seemingly content with the walked route, this situation was not considered to be a significant issue, and follow up action was not prioritised.

Circumstances changed when the land was split into different parcels and sold into separate ownership. In 2022, two parcels of land were sold in 2 lots, each purchased by a different party.

With regards to Bere Ferrers Footpath No. 2, the alignment of the eastern section of the footpath (as set out within the 1972 Order) was predominantly within land purchased by the owners of Barn Cottage. However, the alternative, unofficially diverted, walked alignment for this part of the footpath was within the field to the north, purchased by a different party.

The new landowner of the lot through which the unofficial, walked route ran, had seemingly not been aware of the situation on the ground, and this would not have been identified through land searches. They were unwilling for unofficial diversion of the footpath to continue and required that the path follow the definitive alignment (as set out within the 1972 Order).

Due to the length of time since the 1972 Order alignment had been walked, the former path had become overgrown, with trees establishing along the route. The new landowner for this plot was seemingly unaware of the path (although the alignment will have been recorded within relevant searches). Consequently, it is not straight forward to simply revert to the alignment as set out within the 1972 Order.

Added complexity is that the alignment set out within the 1972 Order plan contains some inaccuracies when compared with the topography (most probably as a result of being hand drawn at that time). The line on the Order plan is very straight - whilst the main furniture is noted (stile and gate), the path alignment is not fully accurate.

Temporary Permissive Alignment

Given the above situation was not of the current landowners making, and issues relating to the historic complexities regarding alignment of the footpath, officers have adopted a sensitive approach to enforcement. This directly accords with Devon County Council policy and national guidance (issued by Defra) with a focus on negotiation where landowners are willing to work cooperatively.

Defra Guidance is that *“Local highway authorities should try to secure the removal of obstructions by approaching those responsible and seeking their cooperation. Formal measures should be used where dialogue fails....”* (Ref. Removal of obstructions from highways: enforcement of local highway authorities duty to prevent obstructions on rights of way Notes to accompany Statutory Instrument 2004 No. 370). This is also included in Devon County Council Policy M1D of the Rights of Way Improvement Plan 2012 (currently being reviewed) which sets out that *“Enforcement procedures will be used to assert and protect the rights of the public where goodwill and cooperation have failed.”*

As an interim measure, and in order to ensure that unobstructed public access is maintained, a temporary permissive alignment was agreed and opened up in March 2023. This is very close to the alignment set out in the 1972 Order, and broadly similar to the historic unofficial diversion route – albeit, within the same landownership as the definitive alignment for this location

Path users and the Bere Ferrers Parish Council generally appear happy with this permissive route. Whilst concerns have been raised by the neighbouring landowner, no other concerns or complaints have been raised regarding suitability of this permissive route.

The Current Diversion Proposal

A number of options have been considered in discussion with relevant landowners. These include considering reinstatement of the alignment as set out in the 1972 Order and applying to divert the footpath onto an alternative alignment.

It has become clear that the new landowner for the plot where the unofficial route ran is unlikely to support a diversion should this require additional sections of the path crossing their land. Accordingly, efforts have focused on formalising a route within land in the same ownership as the 1972 Order alignment.

This permissive alignment has subsequently been put forward by the relevant landowners as the application route for diversion of the definitive line.

This proposal has been subject to informal consultation.

The Diversion Proposal Objection

A single objection has been received from a neighbouring landowner.

Their land is adjacent to the proposed diversion route, but includes a short section

immediately west of point A (approximately 8 metre length) of the definitive alignment, which is not changed by this proposal.

To summarise the main concerns raised:

- i. That that the proposed diversion will lead to a path that is longer than the route set out within the 1972 Order. Added to this, the available width may be narrower and less convenient when compared to the current legal route. They suggest that the proposal negatively impacts accessibility for walkers with mobility issues since the route climbs a steeper gradient, and has steps and roots on it. They suggest that this is in contrast to the current legal route which is wider, flatter and more accessible. They state that the current walked/permissive route is inferior.
- ii. Proximity of Point D to the access point and ownership of land to the north. On a similar point, concern has been raised regarding accuracy of the access at point A on the map. The suggestion is that this access point should be the same distance out from the southern boundary as the old stile.
- iii. That the proposal would negatively impact on privacy and security, and would also impact on intended use and associated measures such as fencing for grazing.

A suggestion has been put forward (by the neighbouring landowner) for an alternative alignment (within the land owned by the applicants), but this is not supported by the applicants.

With regards to the points raised:

They state that the proposal route is longer, narrower, and less convenient. The proposal route is only approximately 15 metres longer than the alignment from the 1972 Order, and is a little bit shorter than the previous walked, unofficial diversion (as used between the 1990s and 2022). The width of the proposal route is predominantly 2 metres (and at least 1.5 metres), and works are planned to improve the current nature of the proposal route as part of the Order process. The 1972 Order identifies a narrower width of 4ft (1.2m).

The proposal route between D – E follows an access track connecting to the unclassified county road at the south eastern end of the footpath. This has been used since the 1990s as part of the unofficial diversion route. A couple of steps are in place between C – D, with the majority of this section being reasonably level. The current steps are small and shallow, and do not provide an obstruction but rather an assistance to users. A – C is mostly flat, with a small gradient north east of point A. As stated above, works are planned to bring the proposal route to a higher standard.

The definitive alignment (from the 1972 Order) has not been in use for several decades. Reinstatement of this path requires significant tree and scrub clearance, negotiating uneven ground and either negotiating a hedge bank or field gate.

It should be noted that since 1972, users at the western end of Bere Ferrers Footpath No. 2 have accessed the footpath from the county road by means of a wooden ladder stile, and the footpath south west of point A is steep.

If progressed, the proposed diversion will not negate the ability for the neighbouring landowner to carry out livestock fencing works on their land. This would not be on the path alignment, and would be of a similar land use to that carried out by the previous owner.

Information collated to date indicates that the proposed diversion is within land owned by the applicants. More detailed, technical assessments are being carried out to ensure that this is correct.

No other objections have been received to the informal consultation. Bere Ferrers Parish Council are supportive, and no objection has been received from the Ramblers or any other statutory consultee.

4) Highway Considerations

The section 119 of the Highways Act 1980 sets out the criteria for making and confirming a public path diversion order. They are:

Section 119(1):

Whether it is in the interests of the owner, lessee or the occupier of land crossed by the path or way, or of the public that the path or way should be diverted.

The application to divert the path has been made by the landowner as the definitive line of the footpath runs through an extension of their garden, passes and overlooks the back of the house, and the digitised line then continues through a long-established car port/store. It passes the house approximately 10 metres at its closest point.

It is understood that this alignment has not been used since the 1990s, with the public using an unofficial diversion which passed through the field above the property. Previous attempts to formally divert onto this alignment with the previous landowners were not progressed.

The landowners would like to make better use of their extended garden, including to enhance wildlife and historic value. They believe that walkers would not like using the currently unusable and slightly erroneous definitive alignment. Regularising the route as per the 1972 Order would act to split the garden into two parts.

From a Highway Authority officer perspective, it is believed that this test is met.

Whilst there is no requirement that a path diversion must also be in the interest of the public, the public will also benefit from the proposal. More accessible pedestrian gates compliant with BS5709:2018 will be installed at Points A and D.

Section 119(2):

That an altered termination is on the same highway or a highway connected to it, and that it is substantially as convenient to the public.

The proposed diversion will not alter the point of termination to that which has been in use.

Section 119(6):

Whether it is expedient to confirm the order having regard to:

Whether the path or way will not be substantially less convenient to the public.

This generally addresses issues of length, gradient, difficulty of using the proposed route, surface and safety. The new route will be 8.8% longer than the current unusable definitive alignment, but is of a similar, slightly shorter length than the unofficial diversion route used between the 1990s and 2022. The gradients on the definitive alignment, unofficial diversion, and current proposal are similar, and there are steeper gradients on other sections of the definitive alignment which are not being diverted. There is a grassy/earthy surface on both the definitive and proposal routes, with a length of the stoney/earth shared access also on the proposed route. The shared access roadway will only be used by the properties with associated access rights.

It is considered that these general requirements will be met.

And having regard to:

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

This deals with issues such as views, noise (e.g. adjacent to a road), proximity of other routes. Both routes provide some, but limited views of the surrounding countryside, though the proposal route is further away from Shutecombe Barn Cottage itself, giving a more relaxed and less intrusive view of the property. The diversion will have a minimal effect on the overall length of the footpath and is not considered to adversely affect the public enjoyment of the route 'as a whole'. The proposal does, however, take the new path further away from Shutecombe Barn Cottage and improves enjoyment of the way, by being less intrusive, being on a similar alignment to that in use between the 1990s and 2022, as the definitive alignment passes 10 metres to the rear of the property. The proposal route offers glimpses across the Tamar Valley (within an Area of Outstanding Natural Beauty) towards the river.

(b). the effect of the coming into operation of the Order on land served by the existing right of way;

No other land is served by the existing right of way.

(c). the effect of the new public right of way on the land over which it is created (or land held with it;)

The new way passes around the edge of the extended garden and part of an access track in the ownership of the applicants and will not affect other land.

Any material provision in Rights of Way Improvement Plan.

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.

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.

5) Other Considerations

The applicants have indicated that the application has been made to improve their own privacy and to enable them to make better use of their extended garden which is split in two by the definitive alignment, but to also improve the use and enjoyment of the path by the public, along a similar alignment to the unofficial diversion route which is no longer available.

The processing of diversion order applications is a discretionary power of the County Council. If the decision is taken not to proceed with an order, the landowners have no right of appeal.

6) Strategic Plan

The proposal is compatible with a number of strategic priorities.

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

The County Council has waived the charges for the diversion order process, as it will resolve an historic anomaly. The diversion route, if approved, will not increase annual revenue budget spend on maintaining this public rights of way.

8) Legal Considerations

Section 4 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

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

11) Risk Management Considerations

If it is not feasible to progress an Order to divert this footpath, Devon County Council may be required to pursue more extensive, formal enforcement action to reinstate the alignment as set out within the 1972 Order.

12) Reasons for Recommendation/Alternate Options Considered

The application is considered to meet the relevant legal tests and Devon County Council policy.

13) Conclusion

The application is considered to meet the requisite legal tests for the making and confirmation of a Public Path Order to divert the footpath and is in accordance with County Council policies.

Works, including fencing and waymarking will be required for the new path, and the Order will not come into effect until these have been carried out to the County Council's standards.

It is recommended that an Order be made and published.

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Division: Tavistock Rural

Local Government Act 1972: List of background papers

Background Paper: Correspondence file

Date: 2022-

File Reference: PROW/BF/FP2D

cg071123pra

sc/cr/Proposed Diversion Footpath No 2 Bere Ferrers

04 151123

Looking East to Point D



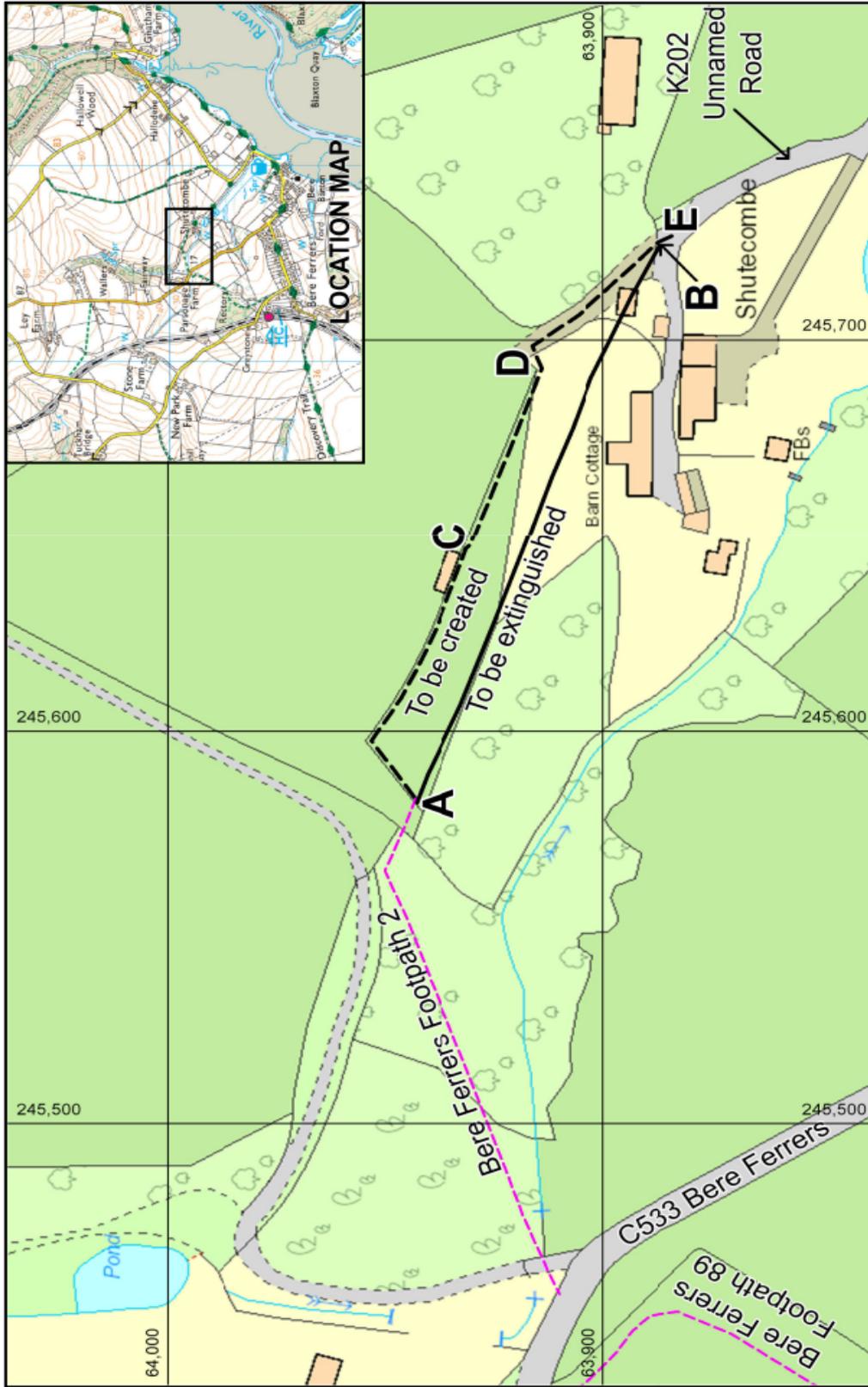
Looking North Westwards Towards Point D



Looking North from Point A



Diversion Proposal (as per informal consultation)



Map Reference SX4563 Grid 100m Contains Ordnance Survey data. © Crown copyright and database rights 2023. 100019783.

NOTATION

-  Existing public footpaths
-  To be extinguished (A-B) approx 155m
-  To be created (A-C-D-B-E) approx 170m

**DEVON COUNTY COUNCIL
PUBLIC PATH DIVERSION AND
DEFINITIVE MAP & STATEMENT
MODIFICATION ORDER 2023
FOOTPATH No. 2, BERE FERRERS**

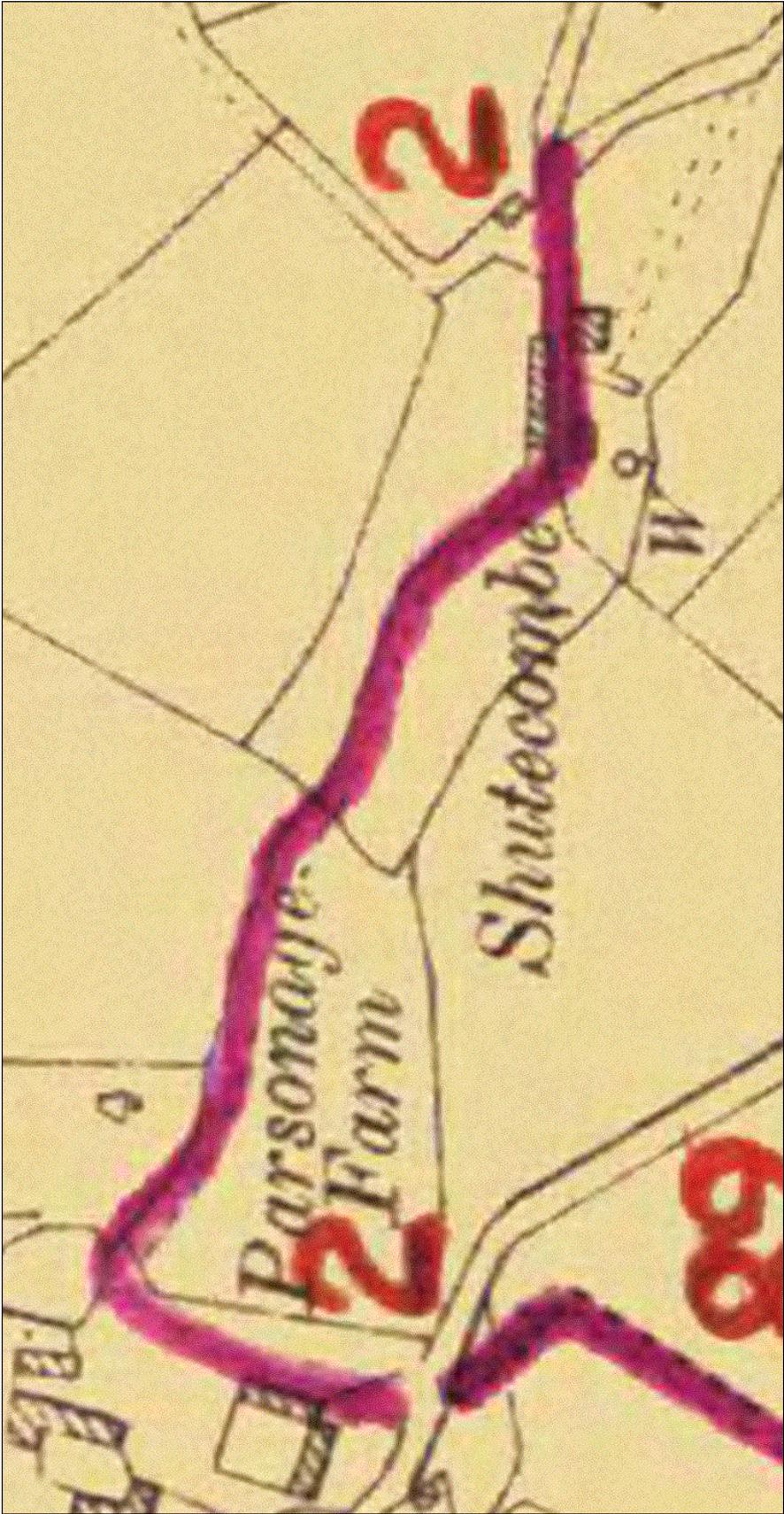
Devon
County Council

NORTH

Drawing No. CCET/PROW/23/177
Date August 2023
Scale 1:1250 at A4
Drawn by SCG

Meg Booth
DIRECTOR OF CLIMATE CHANGE,
ENVIRONMENT AND TRANSPORT

Original Definitive Map



Tavistock Rural District Council Diversion Order, 1972

