

Schedule 14 Application

Addition of public footpath through fields from Shadycombe Road to Gould Road, Batson Creek in the parish of Salcombe

Report of the Chief Officer for 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 Map and Statement by adding a public footpath between points A – D – E – F and B – C as shown on drawing number HIW/PROW/17/55.

1. Summary

This report examines a Schedule 14 Application made in February 2017 for the addition of a public footpath from Shadycombe Road to Gould Road, Batson Creek, in the parish of Salcombe.

The Definitive Map Review for the parish of Salcombe was completed in 2003. The application would normally have been deferred until the Review has been completed for the whole county, in line with the County Council's Statement of Priorities for keeping the Definitive Map and Statement up-to-date. However, the claim has been made in response to the blocking of the route with padlocked gates and notices. There is a risk of the claimed route being lost through development; therefore, the application has been brought forward for investigation in line with current policies.

During the course of examining the User Evidence Forms (UEFs) and accompanying maps, it has become apparent that a number of additional paths have also been used. This report therefore deals with all potential claims on the land, which are described in the appendix.

The evidence provided in relation to the application is discussed in the appendix to this report. It is considered sufficient to show that a public footpath subsists, or is reasonably alleged to subsist, over the route A – D – E – F – B - C. It is therefore recommended that, an Order be made to add a public footpath to the Definitive Map and Statement, as shown between points A – D – E – F and B – C on drawing number HIW/PROW/17/55.

2. Proposal

Please refer to the Appendix to this report.

3. Consultations

General consultations have been carried out with the following results:

County Councillor Rufus Gilbert	-	no comment;
South Hams District Council	-	no comment;
Salcombe Town Council	-	support the footpath;

Country Land and Business Association	-	no comment:
National Farmers' Union	-	no comment;
TRF	-	no comment;
British Horse Society	-	no comment;
Devon Green Lanes Group	-	no comment;
Ramblers	-	no comment.

4. 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.

5. Legal Considerations

The implications/consequences of the recommendation have been taken into account in preparing the report.

6. Risk Management Considerations

No risks have been identified.

7. Equality, Environmental Impact and Public Health Considerations

Equality, environmental impact or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

8. Conclusion

It is recommended that an Order be made to modify the Definitive Map and Statement by adding a public footpath between points A – D – E – F and B – C as shown on drawing number HIW/PROW/17/55.

In addition, it is recommended that no Orders be made in respect of the other routes discussed.

9. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to determine the Schedule 14 application and to keep the Definitive Map and Statement under continuous review.

Meg Booth
Chief Officer Highways, Infrastructure Development and Waste

Electoral Division: Salcombe

Local Government Act 1972: List of Background Papers

Contact for enquiries: Emily Spurway

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Tel No: (01392) 383000

Background Paper	Date	File Ref.
Correspondence File	2016 to date	ES/DMR/Salcombe

es111017pra
sc/cr/sch 14 Batson Creek in the parish of Salcombe
03 301017

A. Basis of Claims

The Wildlife and Countryside Act 1981, Section 56(1) states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein, but without prejudice to any question, whether the public had at that date any right of way other than those rights.

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

The Wildlife and Countryside Act 1981, Section 53 (3)(c) enables the Definitive Map and Statement 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; and
- (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

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.

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.

Common Law presumes that a public right of way subsists if, 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.

Application made under Schedule 14 of the Wildlife and Countryside Act 1981 for the addition of a public footpath from Shadycombe Road, across fields to Footpath No.2, Salcombe, continuing to Gould Road, Batson Creek Salcombe, in the parish of Salcombe as shown on drawing no. HIW/PROW/17/55.

Recommendation: It is recommended that a Modification Order be made to add a public footpath over the line A – D – E – F and B – C.

1. Background

- 1.1 The Schedule 14 Application seeks the addition of a public footpath from the county road Shadycombe Road, across three fields to join Footpath No. 2 Salcombe on the eastern edge of the fields above Batson Creek. The claimed path then continues from Footpath No.2 down a track to join the public highway, Gould Road, adjacent to the car park at Batson Creek. These fields are locally known as “the Crofts” or “Croft fields”.
- 1.2 Salcombe Town Council submitted an application in March 2017 in response to the padlocking of the gates and the placing of notices at the Shadycombe Road entrance and notices at the junction with Footpath No.2 Salcombe in August 2016.
- 1.3 Whilst checking the Schedule 14 Application it was noted that the applicant, Salcombe Town Council, had omitted to specify to the landowners what type of public right of way was being claimed. To that end, the County Council requested that Salcombe Town Council resubmit Form B, the Notice of Application to the landowners clarifying what they were intending to claim. This was duly done in March 2017 and the Town Council submitted a certificate to this effect to the County Council.
- 1.4 In examining the User Evidence forms, it became apparent that a number of other paths had also appeared to have been used by the public in the fields known as the Crofts. This report will therefore address these routes at the same time.

2 Description of the routes

- 2.1 The routes described below are shown on plan HIW/PROW/17/55.
- 2.2 Existing recorded route
- 2.3 Footpath No 2, Salcombe continues from the end of Croft Road and follows the contour above Gould Road and is part of the South West Coast path.
- 2.4 Claimed route from Shadycombe Lane to Gould Road (A – D – E – F – B – C)
- 2.5 The route starts from the county road Shadycombe Road at point A. It goes through a gate and follows the southern side of the hedge boundary in an easterly direction across the field to a gap at point D. From this point, the path continues in an east south easterly direction, diagonally across another field to a gateway made of stone in the hedge at point E. From this point, the route, as noted following a site visit, continues eastwards, downhill passing on the south side of a tree in the remains of an old hedge to meet Footpath No. 2 Salcombe at point F. From this point, the route continues north on Footpath No. 2 for approximately 5m to point B and then turns south east, downhill along a worn earth and stone track to Gould Road at point C. This is shown on the attached plan.

2.6 Additional routes

2.7 Circular route from the claimed route (D – h – E – k – j – D).

2.8 Route from Shadycombe Road (g – h – i) north of the claimed path. Point g is an adjacent gateway above point A and this path runs north east through the fields and then arcs southwards to point h. From point h, the route continues on the eastern side of the hedge to point i where it meets Footpath No. 2.

2.9 Another route (A – D – h – B) identified also starts at Shadycombe Road and continues through the gate at A and continues along the line (A – D – h – B)

3. **Documentary Evidence**

3.1 Aerial photography 1999 – 2000

This shows some evidence of tracks through the fields.

3.2 Aerial photography 2005 – 2006 shows there are clear worn paths through the fields along the line claimed in the Schedule 14 Application, A – D – E – F – B and from g – h – E – k – j – D.

3.3 Aerial photography 2006 – 2007 shows clear worn paths through the fields, including the claimed line A – D – E – F – B and from g – h – E – k – j – D – h making a loop.

3.4 Google Street view August 2016 shows new gates, chained and padlocked, on Shadycombe Road at points A and g.

Aerial photo 2006-07





Gates at Shadycombe Road – site photo 28-9-17. Right hand gate currently not locked.

4. User Evidence

- 4.1 Twenty User Evidence Forms (UEFs) have been submitted in support of the Schedule 14 Application from Shadycombe Road, through the fields known as the Crofts to Footpath No. 2 Salcombe and Gould Road at Batson Creek.
- 4.2 All twenty user evidence forms show frequent use of the fields known as the Crofts spanning 66 years. All of the evidence of use is on foot and none of the walkers have been stopped or challenged on the routes until August 2016. In addition, all of the 20 users say that there were no notices or signs along the route and none of the gates were locked until August 2016.
- 4.3 Two user evidence forms indicate that the route walked is the current Footpath No.2, Salcombe, which is also part of the South West Coast path. One other evidence form describes use of a route, g – h – i, to the north of the claimed Schedule 14 Application and they have not walked on any paths in common with the claim. The use of the northern route was frequent, twice a week and unchallenged over a period of 16 years. However, these three evidence forms have not been considered as part of the User Evidence as a whole as they do not relate to any part of the claimed route.
- 4.4 The seventeen relevant User Evidence forms all show long and frequent use of the claimed route and parts of the claimed route over the Croft fields.
- 4.5 Ten user evidence forms submitted relate to use of the whole route claimed, A – D – E – F – B – C. The earliest use dates from 1985 to 2016, 31 years, with varying frequency of twice a year to fifty plus and many times per week.
- 4.6 Eight of the ten walkers, have used the route for between 19 – 31 years and two of the ten have used over a period of 5 and 6 years. All of these walkers consider the route to be a footpath, as it is well established with a clear worn track through use from the top to the bottom of the hill. One walker has included some copies of

photographs she took of the notices placed on the path, around 26 – 28th August 2016 and of the worn path itself.

- 4.7 The users state that they have used the claimed path for walking from Shadycombe Road to Batson Creek, Gould Road.
- 4.8 All of the walkers say that there were gates at the top of the field at Shadycombe Road, but that they were never locked until August 2016. In addition, all of the users say there were no notices before August 2016. One walker describes the notices as saying “Private Land” and were placed at either end of the path. She also mentions that the top of the gates had been extended with planks and barbed wire to prevent people climbing over them.
- 4.9 Another local walker who has used the claimed path since 1998 enlarges on the actions taken on Shadycombe Road. She states “The gates are now locked with chains & padlocks and have an additional section at the top to deter anyone from climbing them. Any holes between the gateposts & the hedge are blocked off to ensure that no one can squeeze through”.
- 4.10 One walker who has used the path since 1989 said that notices were put up in August/September 2016 saying “Private – No thoroughfare. In addition, signs saying “Public Footpath” with arrows were placed at the bottom of the path pointing to the established footpath (Point F, where the claim meets Footpath No. 2 Salcombe) at the same time. In reply to question 10.c on the evidence form, Do you believe the owner or occupier was aware the public was using the path? She replies “yes” Because notices say “No Public Way” on gates”.
- 4.11 Other user evidence forms show that they have used the claimed route in combination with other paths.
- 4.12 Two of these users (the Bains) have said they have walked a circular route, from Shadycombe to Batson Creek, which is marked on their map in conjunction with the claimed path. Mr & Mrs Bain have walked the paths since 1999; 17 years. In the last 5 years, they have used it approximately 200 times a year, to Batson Creek and the boat park. They describe their walk as starting from Shadycombe, over Croft Fields to Batson Creek. They state that there were no locked gates or notices on the route until August 2016.
- 4.13 Following a site visit to the fields on 28th September 2017, the reporting officer identified that the route marked on Mr & Mrs Bain’s maps appears to be drawn one field to the south too low from what is described on their evidence forms, which is largely consistent with the claimed route. They seem to have mistaken Footpath No. 5 Salcombe for the track through the copse that exits onto Shadycombe road directly opposite the gate at point A. The fields opposite Footpath No. 5 are about 7ft above the road level and therefore would not be accessible. They appear to have mis-transcribed their walking route onto the map. Further, there are no visible or trampled routes to the very south of the fields below points k and j. From their description and map they would appear to have walked the claimed route together with the line between E – k – j – D.

The aerial photo 2006 – 07 would support this.

- 4.14 Mrs Goldsworthy describes the route she has used for 66 years as from Shadycombe Road to the boat yard, in a circle once or twice a week. She says that the gates at Shadycombe Road were unlocked until recently, last autumn, and then barred and

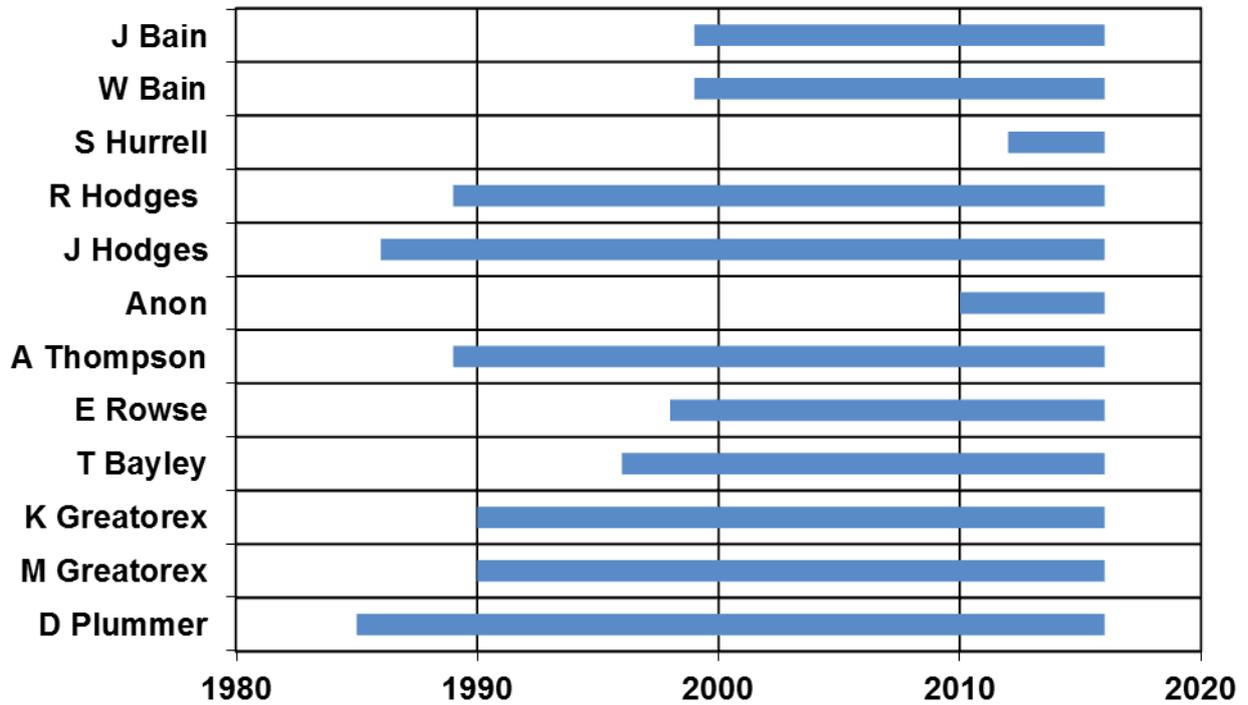
locked and extended in height. She thought that the owner would have been aware of the path being used as it was regularly used by all walkers from Lower & Higher Batson. The route marked on Mrs Goldsworthy's map is A – j – k – E – F.

- 4.15 Mr Pearce has used the route from Shadycombe Road to Footpath No. 2 Salcombe since 1975. He marks his route on his plan following the line A – j – k – E – F. He said that he has used it 5 times a year, but since 2011, 2 or 3 times per week in the summer. He states the path has always been open and well-trodden and that the gates were never locked, until recently.
- 4.16 Ms Roberts evidence demonstrates that she has also used the claimed route A – D and E – F – B – C in conjunction with other connecting paths, g – h – E and A – D – j – k – E since 1990 regularly to autumn 2016. Ms Roberts says in the last five years, she has used the routes “200 times a year”. Ms Roberts says there are several paths running across the site, which she called Croft Hills. In the additional information section, Ms Roberts adds; “It has been used by walkers for years and that must be obvious to the owners. Usually the grass and weeds are left to grow and they can easily reach four foot high but there are clear pathways running across the fields. Please do not allow anything to spoil this beautiful area that has been enjoyed by so many for so long”.
- 4.17 Another walker used the line A – D – E to access their field above Croft Road. In addition, she says that they have walked through the fields to the north of the claimed route, g – h – E, making a loop to enjoy the views. She indicates that she has walked these paths from 1994 – November 2016, and used it more frequently, once a week since 2001. On her accompanying plan, this walker says, “The route marked in red [the claimed route] is the traditional route to the boat park and one which we took occasionally”.
- 4.18 Mrs Newman describes the route as a footpath from Shadycombe Road to Batson Creek edge footpath. She has used it for 30 years from 1986 – 2016, weekly or more as a circular walk for pleasure. She says the route was used regularly by many people as it links to the path by the cemetery and to Batson. She adds that it was always open, no gate or private sign until August 2016. In addition to her plan, Mrs Newman adds; “The path by Mayfield was disused for a long time due to broken steps (or removed steps) so everyone walked through the plantation instead, then across the road, down through the fields & joined the path along Batson Creek”. The route marked on her map is from A – D across the field to h and seemingly through the field north of the claimed line to point B.
- 4.19 All of the user evidence states that the routes have been open and freely used for well over 30 years. None of the walkers have asked to use the route or been given permission by the landowner. They all say that the tracks were obviously well trodden and easy to see. They all considered that the landowners could plainly see that people were walking to Batson Creek through the fields as it was in constant use multiple times per day.
- 4.20 In response to question 10.b. on the User Evidence form “Were you ever told by an owner or tenant of the land crossed by the route, or anyone in their employment that it was not public?” All of the 17 user evidence forms said “No”.

None of the walkers had seen any notices on the gates or in the fields, nor had the gates been locked prior to August 2016.

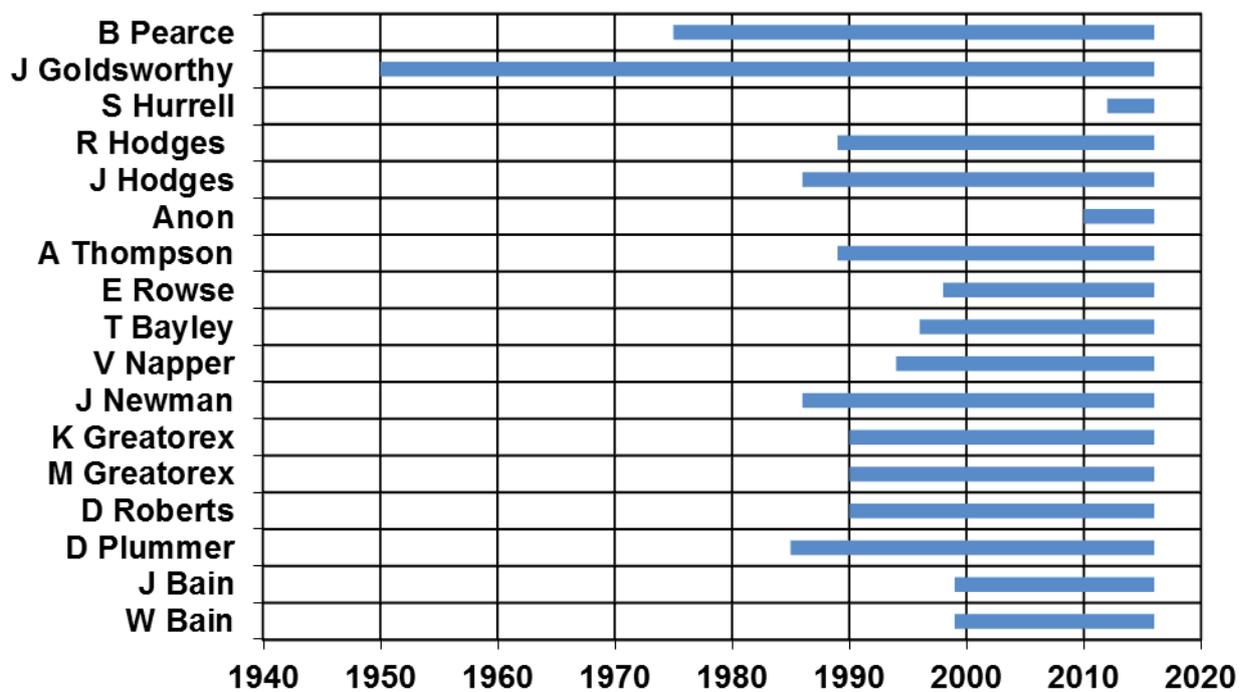
4.21 Chart summarising 12 User Evidence Forms in respect of the claimed route between points A – D – E – F – B – C.

Chart of User Evidence - Schedule 14 Application - Shadycombe Road, Salcombe



4.22 Chart summarising 17 User Evidence Forms for claimed route in whole and in part with other paths through fields.

Chart of User Evidence - Shadycombe Road, Salcombe



5. Landowner Evidence

- 5.1 Framptons, Chartered Town Planning Consultants have submitted landowner evidence on behalf of their Clients Mr. J. Smith and Mr C. Smith. Messrs Smith have owned the fields for the past 15 years. They do not believe the route to be a public right of way and object to the Town Council's application.
- 5.2 Their rebuttal evidence includes a Landowner Evidence Form (Form F) a plan showing the extent of their landownership and relevant gates, three photographs showing locked gates and signage, plus a covering letter. Their full response is included in the background papers to this report and is summarised below.
- 5.3 The landowners submit that the public has not gained "as of right" a public footpath from Shadycombe Road to Gould Road, Batson Creek". They continue: "The function of a gate is two-fold, firstly in providing a means of enclosure to a field for the purpose of containing livestock, and secondly to announce to the 'wider world' that entry onto the land is restricted. The existence of a gate is a clear demarcation as to the extent of the public highway. (Shadycombe Road and Gould Road) and that as of right the public do not have access beyond this boundary".
- 5.4 They also suggest that the existence of the gates is a sufficient pronouncement of the limit of access for the public, to the highway boundary, and that a gate is similar to a notice in that it is informing the public that access through the gate is not available to the public.
- 5.5 On the Landowner Evidence submitted on behalf of Messrs Smith, in response to Question 6 "Have you, or has anyone on your behalf, ever turned back or stopped anyone from using the way" *If yes, please give details and appropriate dates.* They answered "Yes" and "Messrs Smith have advised members of the public that were using 'the way' that the land is private and directed them to the definitive footpath" No dates of these actions have been provided.
- 5.6 Question 7 on the forms asks; "Have you, or someone on your behalf, ever told anyone using the way that is was not public? *If yes, please give details and appropriate dates.* Answered "Yes" and "Messrs Smith have informed members of the public using 'the way' that no public right of way existed and turned them back from continuing journey across the land". No dates have been included.
- 5.7 In reply to question 8. Have you ever erected notices or signs stating that the way was not public?
a. "yes - 28th August 2016"
b. State whether those notices were defaced or destroyed:
"Defaced in early September 2016"
- 5.8 The landowners question why this claim was not put forward by Salcombe Town Council as part of the Definitive Map review undertaken between 1999 – 2003.

They submit that "The underlying purpose of the Review was to establish on a comprehensive basis, any claims 'as of right' for public rights of way within the parish of Salcombe. It is illuminating that no member of the public – despite the focus of the review – made a claim that a route between Shadycombe Road and Gould Road had been established".

- 5.9 They continue: "It is submitted that the absence of any claim made in response to the consultation exercise undertaken during 1999 – 2003 provides evidential support to its position of the landowners that the public has not acquired 'as of right', a right of

way on foot across this land. A 20 year period of uninterrupted use has not been established in the period since the undertaking of the review”.

- 5.10 In summing up their opposition to the claimed path they state; “It is submitted that the specific actions of the previous landowner to erect gates on Shadycombe Road and Gould Road established a boundary for members of the public in precluding access to this parcel of land. During the period of ownership by Messrs Smith, where persons have been observed crossing the land, they have been informed that no rights of access subsist. No intention had been made by the owners for a presumed dedication of a right of way within common law or as now claimed by statute law”.

6. Discussion

6.1 Statute (Section 31, Highways Act 1980)

- 6.1.1 Section 31 (1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public ‘as of right’ and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- 6.1.2 The Landowner Evidence states that new gates were erected at the entrance to the fields on Shadycombe Road on 28th August 2016. These gates had wooden planks fixed to the top to prevent people climbing over. At some point, barbed wire has been added over and above the planks. In addition, notices saying ‘Private Property’ were placed in the fields off Shadycombe Road, set back from the gateway. Both gates were padlocked. The action of erecting the gates and the extra work to prevent people from climbing over them, plus padlocking the gates, effectively called the route into question and prompted the Schedule 14 Application. The relevant period for consideration of user evidence and whether a presumption of dedication under statute has arisen is therefore August 1996 to August 2016.
- 6.1.3 Salcombe Town Council have based their application on public use, supported by 20 User Evidence forms from local walkers. The Schedule 14 Application was made as the route is not legally recorded and the Town Council and local walkers are concerned that the route may be lost due to permanent closure and potential development.
- 6.1.4 The user evidence submitted shows regular and uninterrupted use of the fields known as the Crofts, well in excess of 20 years. On closer examination of the evidence, three forms were discounted, as they do not include any part of the claimed route.
- 6.1.5 The user evidence forms show continual use of the claimed route, A – D – E – F – B – C, from 1985. Seven walkers have used this line for in excess of 20 years and three have used the route between 6 – 18 years. Their use is consistent, frequent and uninterrupted prior to August 2016.
- 6.1.6 Other user evidence forms show use of parts of the claimed route in conjunction with other routes through the fields. Two of these, Mrs Goldsworthy and Mr Pearce, have some of the longest use, from 1950 and 1975, of part of the claimed route. Starting from the gate from Shadycombe Road, at point A they then show that they walked diagonally through the fields using points via points j – k, to rejoin the claimed route at point E and continue to F – C – B. This is evidence of use of part of the claimed route for over sixty years, on foot for pleasure. Neither have been stopped, turned back or had obtained permission to use the paths.

- 6.1.7 Similarly, Mrs Newman and Ms Roberts have used parts of the claimed route for 30 and 26 years respectively, weekly or more from Shadycombe Road to Batson Creek edge path. Their use is longstanding and very frequent. Both walkers are consistent in the fact that there have been no locked gates or notices along the route during that period until August 2016.
- 6.1.8 The combination of the user evidence from 1950 to 2016 demonstrates that walkers have walked over the claimed route for a considerable period of time 'as of right', that is without force, permission or secrecy. The amount of use of the claimed route A – D – E – F – B – C is considered to be adequate to satisfy the requirements of section 31 of the Highways Act 1980 in that the route has been enjoyed by the public as of right, without interruption for a full period of twenty years, and thereby raises a presumption of dedication.
- 6.1.9 Although the evidence forms submitted also demonstrate use of other paths in conjunction with the claimed route from Shadycombe Road to Batson Creek, as circular routes, or to enjoy the views, such use is insufficient to raise a presumption of dedication in respect of any other route.
- 6.1.10 To counter a presumption of dedication of the claimed route at Statute, there must be sufficient evidence that the landowner had no intention to dedicate during the relevant period, i.e. August 1996 to August 2016.
- 6.1.11 In rebuttal, the landowners, Messrs Smith, say that when they met members of the public using the routes through the fields, the walkers were advised that the land was private and redirected to the coast path, thereby demonstrating a lack of intention to dedicate the way to the public. No dates for these actions have been provided and it is not clear whether this was a one-off visit in August 2016 or at other times. However, it is submitted that this was likely to have occurred in August 2016 as they indicate on their landowner evidence form that they have seen members of the public using the way during August 2016. In any event, any such challenge is likely to have been very limited. To be effective, a challenge must clearly and overtly communicate to users of the way that it was not public. None of the users who have completed forms report being stopped from using the route or being told that the claimed route was not public, either in person or by notices on the route, at any time until August 2016.
- 6.1.12 There is no evidence that signs have ever been erected on the route stating that the way was not public before August 2016. In their rebuttal evidence, the landowners state that they erected signs in August 2016 and that these were defaced in September 2016. It is accepted that the action of erecting these signs, together with the locking and barring of gates at Shadycombe Road, had the effect of calling the public's use of the way into question. The relevant period of use is twenty years retrospectively from the date of this action. Therefore, these notices cannot be considered evidence of lack of intention to dedicate during that time. Further, the wording 'Private Property' would not be considered sufficient to make it obvious to the public that there was no public right of way as most public rights of way cross private land.
- 6.1.13 Messrs Smith have owned the fields for 15 years, since 2001, and the action of erecting notices and locking of gates erected in August 2016 appear to be the first overt action to challenge the public's use and access to the routes across the fields.

- 6.1.14 The landowners contend that the erection of gates on Shadycombe Road and Gould Road by the previous landowner established a boundary for members of the public in precluding access to this parcel of land. They state that the function of a gate is two-fold, firstly in providing means of enclosure to a field for the purpose of containing livestock, and secondly to announce to the 'wider world' that entry onto the land is restricted. Further, that the existence of gates is a sufficient pronouncement of the limit of access for the public, that a gate is similar to a notice in that it is informing the public that access through the gate is not available to the public. On their landowner evidence form, they acknowledge that the gates were not locked, nor had they taken any action to obstruct the way prior to August 2016.
- 6.1.15 Case law has established that for an action to be sufficient to show no intention to dedicate a way to the public, a landowner must clearly communicate that lack of intention to users of the way. Methods used include notices stating 'no public right of way' or a locked gate. An unlocked gate, the usual purpose of which is for stock control, and without any notice stating that the way is not public, is not considered sufficient evidence that the landowner had no intention to dedicate a way to the public.
- 6.1.16 Included in their rebuttal evidence, the landowners submit that this path was not included in the parish review for Salcombe carried out in 1999 – 2003. They suggest that as no evidence of public use or a claim put forward following the consultation exercise, this is evidence to support the position of the landowners at that time, that the public had not acquired a right of way over these fields "as of right".
- 6.1.17 This is an interesting comment. It would appear that during the review of Salcombe Parish in 1999, the path was already used as of right and had been for many years before this date. This fact is supported by the information contained in the user evidence forms submitted with the schedule 14 application. As the use of the route through the fields had not been challenged, the public continued to use it openly and freely without permission. The evidence forms also indicate that the gates that were in place were not locked nor were there any signs to state that there was not a public right of way across the fields. Several other paths have also been claimed in the parish since the Definitive Map Review was carried out in Salcombe, either because use has been challenged in the subsequent years and/or it has been brought to light that such routes were omitted during the Review. This is not unusual in parishes where the Review has been carried out.
- 6.1.18 The Definitive Map and Statement are conclusive evidence of those rights recorded within them, however it is not exclusive to those rights that are yet to be recorded.

6.2 Common Law

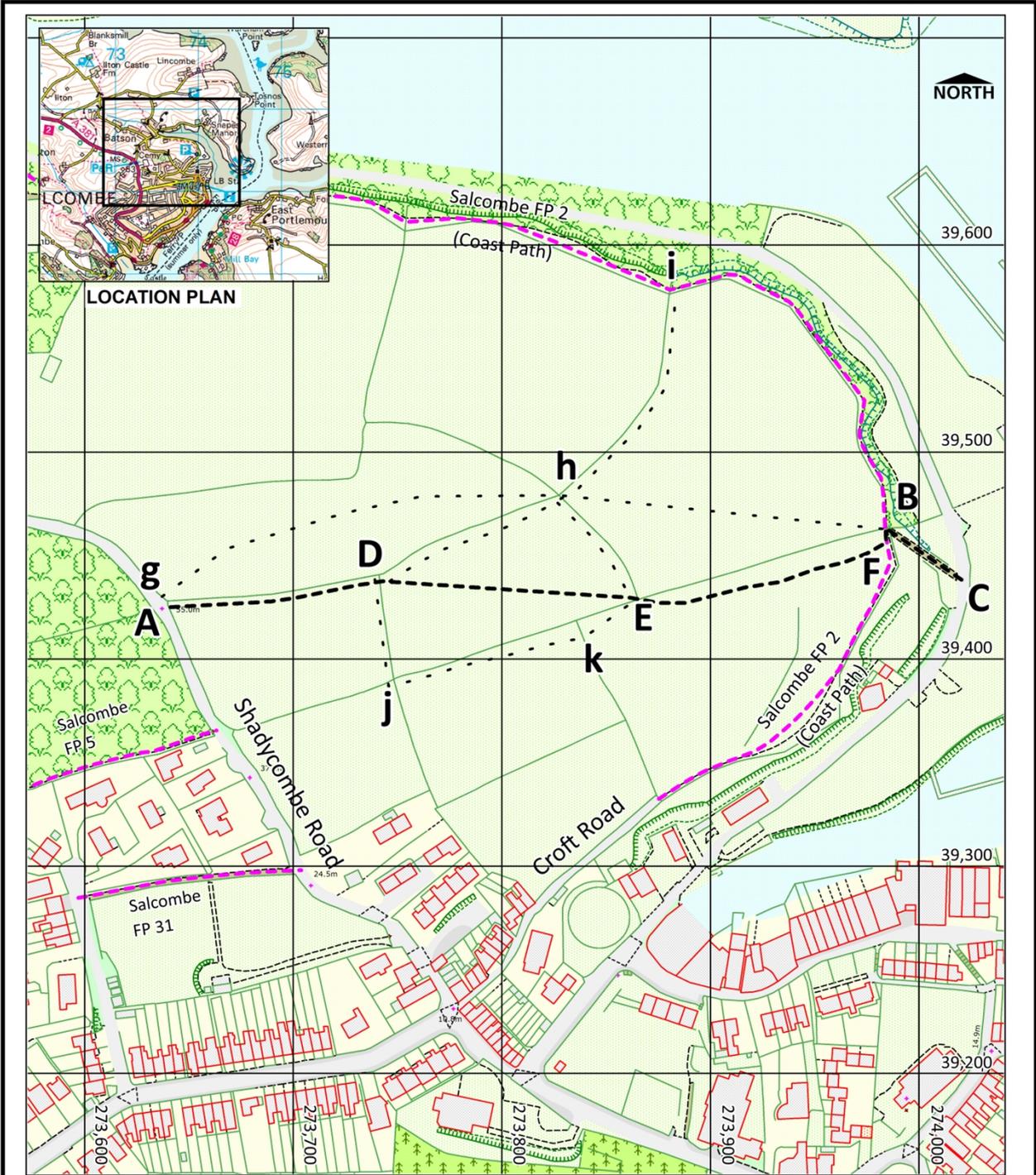
- 6.2.1 In addition to the presumption of dedication which arises under Statute, Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.
- 6.2.2 Equally, a shorter period of time combined with high frequency use can be considered as implied dedication, by the landowner at some time in the past, under common law if such use was so open and notorious that a landowner could have been aware of it. Given the intense use of the claimed path since at least 1985, it is considered, on the balance of probabilities, that common law dedication of the route

has taken place. The fact that the gates were not locked prior to August 2016 suggests acquiescence and acknowledgement by the landowner that the public were using them to access the fields.

- 6.2.3 Aerial photography consistently supports the notoriety and reputation of the claimed path and other paths within Croft fields that are much worn. Photographs submitted with user evidence forms show that paths are well trodden, worn down to earth and are clearly visible. This was still obvious and can be seen in the photographs taken on the 28th September 2017.
- 6.2.4 Also noted on the site visit, was the fact that the path is still being used, as evident by well trampled grass and two walkers and their dog using the claimed route. The notices at the Shadycombe Road and Batson Creek end, on Footpath No. 2, have all gone.

7. Conclusion

- 7.1 In considering and evaluating the user evidence forms submitted in relation to the claimed and additional routes, used in combination with each other, it is considered on the balance of probabilities that a right of way which is not shown on the Definitive Map and Statement subsist or is reasonably alleged to subsist on the basis of statutory dedication and at common law.
- 7.2 It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a public footpath between points A – D – E – F and B – C as shown on plan No. HIW/PROW/17/55, and if there are no objections to the Order, or if such objections are subsequently withdrawn that it be confirmed, but that no orders be made in respect of other routes discussed.



LOCATION PLAN



Map Ref **SX 736 394**

Grid 100m

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DEVON COUNTY COUNCIL
SCHEDULE 14 APPLICATION - COMMITTEE PLAN
SHADYCOMBE ROAD TO GOULD ROAD - SALCOMBE

Notation

- Existing public footpaths - - - - -
- Proposed addition A - D - E - F - B - C (approx 400 metres) - - - - -
- Other used paths

drawing no. HIW/PROW/17/55
 date Oct 2017
 scale 1:2,500 at A4
 drawn by ES



CHIEF OFFICER FOR HIGHWAYS
 INFRASTRUCTURE DEVELOPMENT AND WASTE