



**Report to the Chief Executive,
Devon County Council**

By Mr R F Shercliff

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372

Date: 4 April 2005

**An Inspector appointed by the Chief Executive,
Devon County Council**

**Report
into the Disputed Routing
of
Footpath 52 Kingswear
in the vicinity of
Old Mill Farm, Galmpton**

Dates of the Hearing: 15 and 16 February 2005

Reference: SKC/A1615

CASE DETAILS

- The precise route over the ground taken by a length of the definitive Footpath 52 Kingswear, in the vicinity of Old Mill Farm, Galmpton is disputed.
- A non-statutory public hearing was instituted by the Devon County Council for the purpose of hearing objections and representations regarding the dispute.
- There were 29 objections from 31 objectors to the route of the path claimed by the landowners at the commencement of the hearing.
- The purpose of this report is to advise the Surveying Authority of the precise route taken by this public right of way which is shown in the definitive map and statement.

Summary of Conclusion: In the vicinity of Old Mill Farm, Galmpton, FP 52 runs over the route depicted in red on the plan at Appendix E.

1. PREAMBLE

- 1.1. I have been appointed to make a recommendation to the Devon County Council as to where precisely on the ground the route of public footpath 52 Kingswear runs in the vicinity of the property known as Galmpton Mill¹.
- 1.2. The path is shown in the definitive map and statement for the area, and the precise line of an approximately 30 metres stretch of it is uncertain.
- 1.3. I held a public hearing to consider all available evidence relevant to the location on the ground of the path in question in The Village Institute, Galmpton, Devon on Tuesday and Wednesday, 15 and 16 February 2005. I made an unaccompanied site visit on Monday, 14 February and a further inspection of the land and its surrounding area on Wednesday, 16 February after the hearing, accompanied by representatives of all parties to the dispute.
- 1.4. The nature of the dispute is that on the one hand, the owners of the land over which the stretch in question runs believe its physical line runs along the beach² outside the immediate curtilage of their property; while on the

¹ The property in question has been known variously as Galmpton Mill, Mill Farm and Old Mill Farm, Galmpton.

² In discussions at the hearing, the term *foreshore* was loosely used when referring to the various path routes. In this report, I restrict use of this word to its legally understood meaning, namely that portion of land which lies between high and low watermarks at ordinary tides. Otherwise I refer to the stretch of land between the mean high water mark and the bank of the creek as the *beach*.

other, recent path users claim it runs over a metalled stretch inside the immediate curtilage.

- 1.5. The Open Spaces Society, the Ramblers' Association, and a total of 62 residents, not all of whom live in the locality, object to the landowners' assertion. The landowners were represented at the hearing, as was the Devon County Council. Seven objectors and two interested parties also appeared at the proceedings which were attended by a total of 57 people.
- 1.6. The landowners' case is founded mainly upon documentary evidence, whereas the objectors assert they had used or known about their claimed line from before the relevant date of the definitive map. The County Council took a largely neutral stance.
- 1.7. This report contains a brief description of the disputed routes of the path, the gist of the cases presented, and my conclusions and recommendation. Lists of appearances, documents, plans and photographs are attached.

2. PROCEDURAL MATTERS

- 2.1. This being a non-statutory hearing there were no prescribed procedures. Nevertheless, at the hearing it was claimed by the Open Spaces Society first, that *under schedule 5 to the regulations, that notices must be displayed not less than 42 days from the first publication, should still apply (sic); secondly, that non-descript notices were placed on site 28 January, only for a period of 18 days; and thirdly, that there was no information in the notices to the proposals to be considered (sic).*
- 2.2. Devon County Council made no response to these claims.

Conclusion

- 2.3. With regard to the first claim, The Society has not specified to which regulations the recited Schedule 5 refers. If what is meant is the Definitive Maps and Statements Regulations 1993³, its Schedule 5 merely prescribes the form of notice for a modification or reclassification order, neither of which are relevant to these proceedings.
- 2.4. With regard to the second claim, no statutory requirements govern these proceedings. In any event, I am convinced, if by nothing other than the 30 evidence forms submitted in April and May 2003 to two active objectors, or by the 30 letters handed in at the hearing, that all with an interest in the dispute had ample opportunity to make their views known. I have received no complaints that anyone had been disadvantaged prior to or during the hearing.

³ Statutory Instrument 1993 No. 12.

- 2.5. My conclusion in the preceding paragraph also applies to the third claim. It was apparent to me that the dispute was widely known in the local area, and there appeared to be no doubt over the purpose of the hearing.

3. DESCRIPTION OF THE ROUTE

- 3.1. Footpath 52 starts on the county road which connects the village of Galmpton with the ferry across the River Dart to Dittisham⁴. The path runs northwards through Lower Greenway Farm as far as a disused limekiln by the beach to the south of Galmpton Creek⁵. At this point it turns eastwards to follow a route along the beach running parallel with the curved riverbank as far as the property now known as Old Mill Farm. The path terminates at its northern end on an unclassified county road called Mill Lane abeam the northernmost corner of the northernmost of the buildings⁶ forming Old Mill Farm (not counting the boathouse on the beach a little further north again).
- 3.2. The disputed length is that section of the path which runs in the vicinity of Old Mill Farm. It may best be seen at Appendix D⁷. At position A-X is the northern end of FP 52.
- 3.2.1. The route claimed by the landowners runs from point A, down a flight of 10 steps relatively recently cut into the bank, and then along the level beach on the seaward side of the bank above the mean high water mark as far as point D by the disused limekiln. This alignment I shall call Route Option 1.
- 3.2.2. The route claimed by some objectors to be the correct one runs southwards from A-X for 17 metres or thereabouts down the metalled track as far as the southern end of the aforementioned granary. From here it turns sharply to the west to pass through a gap in the vegetation, just short of a Devon stone gatepost at point C, to meet the beach. From this point it passes over the same ground on the beach as that described in the previous paragraph. This alignment I shall call Route Option 2.
- 3.2.3. A third route, claimed by other objectors to be the correct one, continues generally southwards along the metalled track past C-B to exit the immediate curtilage of Old Mill Farm through a fence (recently removed) at point Y, thence to follow the undisputed route along the beach. The distance between A-X

⁴ The whole length of FP52 may best be seen on the digital plan prepared by DCC for the landowners at page 0012 in Pre-Hearing Document 1.5. It is attached as Appendix C. It should be noted that this does not purport to be a copy, extract or expansion of the definitive map.

⁵ Local residents commonly agreed the limekiln probably ceased functioning in the 1870s, but possibly as late as 1882 or thereabouts.

⁶ Sometimes called the granary.

⁷ Appendix D is the plan attached to a 1980 Highways Act Section 143 notice served on the landowners by DCC on 4 April 2003, further annotated by the landowners' solicitors on 28 April 2003.

and Y is about 30 metres. This route I shall call Route Option 3.

4 THE CASE FOR THE LANDOWNERS

The material points were:

Background

- 4.1. Mr and Mrs Chaston (the landowners) took possession of Old Mill Farm in September 2000 in the full knowledge that FP 52 ran in its vicinity. A short while later, believing the definitive map to show the path to be routed along the back of the beach above the mean high water mark, they set about securing their property by fencing it from those areas available for public use. To achieve this they cut a set of steps into the bank by point A, close to which they moved an existing DCC waymark; re-erected a pair of gates between points C and B⁸ equipped with a *Private* sign on its northern face; and repaired the fence at point Y such that whatever gap there may have been was then filled in. Some months later they erected a gate across the end of the unclassified county road between points A and X⁹.
- 4.2. The landowners' view of the correctness of their interpretation of the definitive map with regard to the precise route of FP 52 was strengthened when advice and assistance from the South Hams Coast and Countryside Service confirmed that their proposals for securing their property whilst maintaining public access to the definitive path were satisfactory. It was further strengthened after being informed by several local residents that they (the residents) remembered having to clamber down the bank at point A where the steps were then to be cut.
- 4.3. Nevertheless, other path users took a different view, namely that the route to which they had become accustomed, rightly or wrongly, had been unlawfully blocked; they took the matter up with the County Council. Council officers reconsidered the evidence then available to them and in due course came to the view that, contrary to whatever may have been said to the landowners on earlier occasions, the definitive route ran through the curtilage of Old Mill Farm. Public passage was thus unlawfully blocked by the landowners' actions, and officers, acting under delegated authority, served a Section 143¹⁰ notice requiring the new gates to be removed and the boundary at point Y to be opened up. This was done in May 2003.
- 4.4. The landowners sought counsel's opinion, and it became clear from the pre-hearing correspondence between the parties that they had become

⁸ Referred to in correspondence and at the hearing as the *Old Gates*.

⁹ Referred to in correspondence and at the hearing as the *New Gate*.

¹⁰ Of the Highways Act 1980.

set on a pursuit, by means of judicial review, of what they believed to be the erroneous serving, and subsequent enforcement by the County Council, of the Section 143 notice. In May 2004, the Council's Public Rights of Way Committee in turn resolved to institute a non-statutory hearing from which to receive a recommendation as to the precise location of the disputed length of the footpath.

Occupation of Old Mill Farm

4.5. From the late 1930s the owners and/or occupiers of Old Mill Farm had been:

from: 29 September 1937	Waddeton Estates Company,
22 September 1944	Messrs K J Mendl and A S Hamilton,
1 May 1951	Mr E L Wildy,
2 May 1972	Mrs Mary Plews,
7 October 1985	Mr R A, Mrs S M, Mr R H and Mr T P Duncan,
3 October 2000	Mr R and Mrs K Chaston.

Historical Evidence

1839 Tithe Map

4.6. The Churston Ferrers tithe map¹¹ showed a defined, unbounded track between (Lower) Greenway Farm and the limekiln on the south bank of Galmpton Creek. There were no other physical tracks or paths in the immediate area although the map did show both the seaward extremity of the land between the limekiln and what is now Old Mill Farm, and the mean high water mark. Between the two there was a parallel sided area running from the limekiln as far as what is now Mill Lane. Mill Lane descended southward towards Old Mill Farm, but stopped well short of it.

4.7. The landowners claimed this map showed the origins of the present FP 52 and supported their contention that there was no evidence of it having traversed the curtilage of their property, that is to say there was no route of any description running inland along the riverbank. Nor did Mill Lane penetrate as far as, let alone further than, the line A-X.

1869 Conveyance

4.8. In 1869, the foreshore between high and low water marks of Galmpton Creek, and the bed of the Creek below the low watermark, were conveyed from the Duchy of Cornwall to the then owner of the adjacent lands. The

¹¹ The area of FP 52 was formerly in the civil parish of Churston Ferrers. Between the relevant date of the definitive map and today, this changed to the civil parish of Kingswear.

latter encompassed all the land over which FP 52 now runs. The conveyance plan depicted the edge of the land by a solid line and showed two parallel dashed lines to seaward. The southern end of Mill Lane remained in the same position as shown on the earlier tithe map.

1882 Sale Plan

4.9. This colour washed plan attached to the 1882 conveyance of the Greenway and Galmpton Estates showed in more detail first, the southern end of Mill Lane terminating at a gate or wall slightly to the north of A-X; secondly, the track running north from Lower Greenway Farm terminating at, or close to, the limekiln; and thirdly, four and in some cases five lines to seaward of the riverbank. The landowners said first, that this plan, which was similar to the 1st Edition OS map, showed that in the late 19th Century there was a way down Mill Lane as far as Old Mill Farm, at which point the highway then gave onto the beach. Secondly, they said there was no track of any description through the curtilage of Old Mill Farm, nor between Old Mill Farm and the limekiln. And thirdly, they said the lines to seaward of the riverbank must all have represented tidal states rather than have delineated a path or track because they all continued, unbroken, well beyond either end of the route in question.

c1885: 1st Edition OS Map

4.10. The document submitted to the hearing was a composite made from two adjoining maps dated 1885 and 1889 respectively; it was claimed to be based on the same survey conducted in the early 1880s. Plot identification numbers were similar to those on the 1882 sale plan. There were however some discrepancies between the two documents. The limekiln was now labelled Old Limekiln; there seemed to be a track on the beach running eastwards from the northern end of the path up from Lower Greenway Farm, but only as far as plot 355. The landowners asserted that this map again showed that in the late 19th Century there was both a gate across the end of Mill Lane and no track or path through, or in the vicinity of, Old Mill Farm.

1905 2nd Edition OS Map

4.11. The array of buildings on the site of Old Mill Farm were then shown very much as they exist today, including the boathouse, and excluding the gig house¹². Fields had been renumbered, and Galmpton Mill appeared still to be functioning as a corn mill.

1937 Conveyance

4.12. The illustrative plan attached to the 1937 conveyance of the Greenway Estate was based on the 1905 2nd Edition OS map. Mill Lane was shown and it had a gate or wall across it approximately level with the northern

¹² For an explanation of the gig house see paragraph 8.8.

end of the boathouse. This feature did not appear on the digital reproduction of the 1905 map at page 0006 of the pre-hearing dossier. Within the conveyance there was no mention of any public right of way.

c 1930s/1940s Handover of Highways

4.13. The original of this document, said by Devon County Council to be based on the 1905 2nd Edition OS map, was not available. A 2002 digital plan, overlaid with relevant information¹³, showed the extent of Mill Lane maintained at public expense. This terminated at A-X, indicating that at some stage between 1905, when there was an obstruction across Mill Lane level with the boathouse, and 2002 the appropriate highway authorities had accepted maintenance responsibility as far as the curtilage of Old Mill Farm, but no further.

The Definitive Map

4.14. The relevant date of the definitive map was 21 November 1955. It appeared, by reference to the bench mark south of Galmpton Mill and to the naming of the Mill itself, to be based on a 6" version of the 1905 2nd Edition OS map, rather than on any later edition. Path 2¹⁴ had been overlaid in red by hand, though between points A and D it was not possible to discern its precise line. The landowners pointed out that the map did not therefore negate their claim that the line of FP 52 followed Route Option 1.

The Definitive Statement

4.15. The definitive statement read as follows:

From: Greenway/Galmpton Road

To: The end of the Unclassified County Road by Galmpton Mill

The path is a footpath. It starts at Greenway/Galmpton Road, County Road No. 13, 140 yards east of the drive to Lower Greenway and proceeds northwards following the boundary hedge of Ord. No. 445 on to a Private Accommodation Road (not repairable by the inhabitants at large), by Lower Greenway Farm and continues through Ord. Nos. 439 and 433 on to a Private Accommodation Road (not repairable by the inhabitants at large) running parallel with the foreshore, which it follows to join the end of the Unclassified County Road by Galmpton Mill. (Stile and kissing gate on route).

4.16. The landowners said the first mention of *accommodation road* must have referred to that section of FP 52, running from Greenway/Galmpton Road northwards into Lower Greenway Farm, which followed the boundary

¹³ Which may be seen on page 0018 of the pre-hearing dossier.

¹⁴ The path in question was originally designated FP 2 Churston Ferrers.

hedge of Ord. No. 445. The field number, boundary hedge and accommodation road could all be seen on the map attached to the 1937 conveyance.

- 4.17. The second mention of *accommodation road* must have referred to the stretch of FP 52 running northwards along the marked path passing through Ord. Nos. 433 and 439 up to the riverbank by the old limekiln.
- 4.18. The only credible reading of the final clause of the one sentence comprising the definitive statement was that, having arrived at the riverbank, the route of FP 52 then ran parallel with the foreshore all the way to the end of Mill Lane, which all agreed lay at point A-X. This clause could not be taken as having referred to an accommodation road between the old limekiln and Galmpton Mill; there was no evidence that such ever existed, and no evidence of any need for one.

Statutory Declarations

- 4.19. Outwith the matter in hand, there had been a lengthy process concerning the registration of land held with Old Mill Farm, during the course of which statutory declarations had been made by successive owners and occupiers.

4.19.1. Mr E L Wildy, on 5 May 1972, declared that since 1 May 1951 he had treated the land (over which Options 1, 2 and 3 for the route of FP 52 would each run) as belonging to, and within the boundaries of, Galmpton Mill, and that he had been in sole and undisturbed occupation of that land without any adverse claim whatsoever.

4.19.2. Mrs Mary Plews, on 23 September 1986 declared likewise for her period of ownership and occupation.

4.19.3. Mrs B Crewdson, sister of the then late Mrs Plews, on 28 April 2004, declared as follows:

that immediately prior to 2 May 1972 she saw that entry to Galmpton Mill was through a closed pair of wooden gates (in position C-B);

that during her sister's occupation there were many occasions on which she and her husband stayed at Galmpton Mill, during all of which care was taken to keep the gates closed at all times;

that her sister never permitted members of the general public to pass through and beyond the gates, recalling her sister stating that that accorded with the position taken by her predecessor, Mr Wildy, who had advised her to keep the gates closed at all times;

that her sister had never suggested that her right to keep those gates closed had ever been challenged, about which she would have been sensitive because her security and quiet enjoyment would have been compromised by any public use of her land beyond them.

4.19.4. Mr P E F Crewdson, husband of Mrs B Crewdson in the above sub paragraph, on 28 April 2004 declared that he supported his wife's declaration. He also declared that, to make it plain to visitors from outside the area that they were not permitted through the gates, he affixed a 'NO ENTRY' sign on them during the summer of 1972¹⁵. He further declared that there was an old footpath sign directing walkers onto the beach through a gap in the hedge immediately north of the stone post at point C which was already in place when Mrs Plews bought the property.

4.19.5. Mr R A Duncan, on 5 May 2004, declared as follows:

that (at position C-B) there were a pair of old gates which had been erected before 1972. They were equipped with a 'Private' sign and were kept closed;

that in 1989 he erected a fence (between points C and Y);¹⁶

that in the mid 1980s DCC erected a standard sign directing the public through a gap in the hedge and then onto the foreshore, a route always followed by the public since at least 1985;

that prior to the mid 1980s an old sign had been attached to the stone pillar which also directed the public through the gap in the hedge and on to the foreshore;

that during his occupation of the property the route of the public footpath did not run through any part of Galmpton Mill.

4.20. These statutory declarations amounted to the principal evidence, though not the whole of it, supporting the landowners' rebuttal of the objectors' claims of long usage of Route Option 3.

Other Evidence

User Comments

4.21. Between 7 April and 10 June 2003 the landowners kept a log for path users to record their frequency of use and their assessment of the

¹⁵ This statutory declaration contained a photograph of a 'NO ENTRY' sign fixed on the north face of the closed gates.

¹⁶ The full extent of this fence can be seen in a contemporary photograph in Hearing Document 18.

convenience or otherwise of the steps cut into the bank at point A. Ninety two users each declared the steps caused them no inconvenience. One local resident said: "It was nice to see the path where it originally was".

- 4.22. In a letter to the County Council in September 2001, the landowners reported a regular path user having stated that he remembered clambering down the bank at point A as a young boy. A further letter in December 2002¹⁷ spoke of them being advised by several local residents that they too had clambered down the bank at this point.
- 4.23. From when the fence between points C and Y was put into full repair (in about 1989) there had been no complaints from path users until user forms were distributed by the principal objectors (see paragraph 5.1 below) in 2003.
- 4.24. This evidence was claimed by the landowners to indicate that the path not only must have, but did, earlier run along Route Option 1, and that even by today's criteria it could not be said that the bank would have been a barrier to public use of that route as a footpath.

Coast & Countryside Service

- 4.25. The South Hams Coast & Countryside Service assisted Devon County Council with the management and maintenance of public rights of way in the South Hams District. In 2001 this Service actively assisted the landowners with advice and encouragement over the matter of cutting in the steps at point A, and with the re-positioning of the footpath waymark¹⁸. This, said the landowners, indicated that, in the minds of those closely associated with public footpaths in the area, FP 52 started at point A and therefore ran over Route Option 1. That this was in the minds of the Coast & Countryside Service was expressly stated in a letter dated 14 November 2001 to a third party which spoke of the landowner seeking to realign the path to its historical position¹⁹, a position in which two Countryside Service officers independently believed the steps should be.

5. THE CASE FOR THE OBJECTORS

The material points were:

Introduction

- 5.1. Apart from on four historical documents, the objectors' case was principally based on the user evidence submitted on forms, given at the hearing, and presented in letters handed to the hearing. The forms were distributed, and the letters collected, by two of the objectors, one of

¹⁷ Pre-hearing Document 1.5, page 0029.

¹⁸ Pre-hearing Document 1.5, page 0014.

¹⁹ Pre-hearing Document 1.5, page 0016.

whom lived nearby, and these I have considered as the principal objectors.

Historical Evidence

1905 2nd Edition OS Map

- 5.2. One objector claimed that the 1905 2nd Edition OS map depicted the right of way running from Galmpton Creek through OS plot numbers 365 and 366, then on to 437 as far as the old limekiln, thence as a footpath to Lower Greenway Road.

1939 OS Map

- 5.3. Mill Lane was shown continuing without hindrance down through Old Mill Farm.

1944 Sale Particulars

- 5.4. A large scale plan attached to the 1944 sale particulars was overlaid on the 1905 2nd Edition OS map. There was an accompanying photograph of Galmpton Mill taken from a point on the beach seemingly just to the east of the old limekiln. The objectors pointed out that in the schedule of Lot 4 Galmpton Mill, plot number 437 was omitted from the particulars of sale. They said this omission from the sale offer of the adjoining land meant it must have been a public highway. They also said that the photograph showed the Devon stone gatepost at point C was not present in 1944. Finally they said the photograph showed what they claimed to be the route of FP 52 passing along the beach and up the hill on a wide track immediately by the granary, that is to say along Route Option 3.

1954 OS Map

- 5.5. Referring to the statutory claim by Mrs Crewdson inferring that Mr Wildy had kept the gates at point C-B closed at all times, the objectors pointed out there was no indication of any obstruction at point C-B on the 1954 OS map.

The Definitive Statement

- 5.6. The objectors took the definitive statement to mean that after passing through Lower Greenway Farm the route of FP 52 continued on a private accommodation road running parallel with the foreshore. They submitted that because this section ran on a road with public rights it was natural that it should have had no interruption before reaching Mill Lane, a county highway. It could not therefore have taken Route Option 1.

User Evidence

User Evidence Forms

- 5.7. An unadorned copy of the plan attached to Devon County Council's April 2003 Section 143 notice was distributed by the principal objectors among local residents, and to some living further afield. Thirty one were returned by witnesses claiming to have used one or other of the route options, of whom eleven expressly claimed to have used Option 3 from the early 1950s at least.

Letters Handed to the Hearing

- 5.8. Of the twenty seven letters handed in to the hearing, twenty six claimed use of Route Options 2 or 3 in recent times, many on horseback and some, by inference, with vehicles. Several referred to the adverse effect of the steps on the path's use by horse riders and by the disabled, and one suggested that the beach between points A and C was often under water.
- 5.9. One correspondent, a former local resident who had previously completed a user form, averred that the route in the early 1950s had no gates or obstructions, and was widely used by all classes of traffic to reach the beach and to proceed onwards to the old limekiln.
- 5.10. A second local resident, who had also completed a user form, spoke of his sister working at Old Mill Farm in the 1950s and 1960s. He used to walk in front of Old Mill Farm and continued at the back of the piggeries. He recalled that in the 1960s gates were erected at the bottom of the hill to prevent cars from going onto the property to turn round, but that one gate remained open to permit the passage of pedestrians.
- 5.11. The objectors claimed the totality of this evidence overcame that of the landowners by showing as a matter of historical fact that Route Option 3 had come to be regarded as the line along which FP 52 ran.

Further Submissions at the Hearing

- 5.12. A witness who had walked the route since 1958 claimed the gates at point C-B had always been open until recent times, and that the fence between points C and Y had originally been erected in the early 1960s, but nevertheless had not prevented walkers from climbing through it.

Other Submissions by the Principal Objectors

- 5.13. The father of one rented the land of Old Mill Farm until 1972. Her family took cattle, sheep and horses past Mill Farm in front of the house, including onto the beach to collect seaweed and wash off the horses. Others accompanied them. This added to the evidence of public use of Route Option 3. She also pointed out that the Land Registry

documentation referred to the land having the benefit of a right of way with animals and vehicles.

- 5.14. The other principal objector pointed out first, the gap in the hedge at point C was not wide enough for the passage of horses, even less of carts or vehicles; thus Route Option 2 could not have been the one used by the public. Secondly in recent times he had never found both the gates at point C-B closed at the same time. Thirdly, by means of a post hearing submission, he rebutted the landowners' assertion that it would have been dangerous for him to have climbed over the fence at point Y, saying that in effect users either stepped over or ducked under the rail.

6. REBUTTAL BY THE LANDOWNERS

The material points were:

1944 Sale Particulars

- 6.1. The landowners claimed that this photograph clearly showed first, the high tide mark; and secondly that no accommodation road existed in 1944. This latter had great weight because the photograph was the closest document in time to the preparation of the definitive map, and therefore was of most help when determining where the public would have walked in the 1940s and 1950s. There simply was no evidence of a discernible track between the old limekiln and Old Mill Farm.

Definitive Statement

- 6.2. The objectors' interpretation of the definitive statement, namely that its second mention of a private accommodation road related to the stretch between points D and A-X, could not have been correct. This was because, as the 1944 sale particulars showed, there was nothing along that line which could reasonably be said to have been a road of any description, and no indication there was ever a bridge over the stream flowing across it south of point Y. There was no evidence of any use of this stretch, largely along the beach, by carts.

Map Evidence

- 6.3. Where maps showed lines to seaward of the riverbank, these represented the Mean High Water Mark, which was why they continued to the east and west of Old Mill Farm.

Tides

- 6.4. It was commonplace for the tide to interrupt use of a footpath running across a beach.

Private Rights

- 6.5. Title deeds and Land Registry documents, in which were mentioned rights to pass and repass with vehicles over a specified area of land, referred to

private rights granted to a specific party by the title holder of the land over which the right had been granted.

User Evidence

- 6.6. It was accepted by all parties that the large scale plans of the area in question which formed the basis for the user evidence forms were distributed by the principal objectors.²⁰ But this did not happen until well after the landowners erected the gates and cut the steps at Point A, nor indeed until after the Section 143 notice had been served on the landowners by the Devon County Council. Until the principal objectors began their work, there had been no complaints about the path to the Local Highway Authority.
- 6.7. Many of the evidence forms appeared to show the line marked on the map in a different coloured ink and by a different hand to the one writing the narrative. Furthermore, the line marked on the map invariably went through point Y: it was accepted by all parties that, when the forms were dated, point Y was blocked with a fence.²¹
- 6.8. The route claimed to have been used by these witnesses was not available from 1989 (when the fence was erected by the then landowner) to June 2003 (when it was removed by the County Council).
- 6.9. One witness subsequently withdrew her form and three others expressly stated they did not draw the lines themselves.
- 6.10. One of the principal objectors stated in his 2002 letter²² that he had walked Route Option 2 but in his user evidence form, submitted eighteen months later, changed his claim to Route Option 3, despite having acknowledged the presence of a fence between points C and Y since 1989.
- 6.11. Despite the fence at point Y having been in place from 1989 to 2003, there had been no recorded challenges from users.
- 6.12. The claim that the gates between C and B were always left open was inconsistent with Mr Crewdson's statutory declaration that he erected a NO ENTRY sign on them in 1972.
- 6.13. By means of a post-hearing statutory declaration a previous landowner declared:
 - 6.13.1. he repaired and re-painted the gates at point C-B in 1985; they were then already equipped with a NO ENTRY sign. After 1988 he kept them closed for as much of the time as was practicable;

²⁰ Pre-hearing Document 1.5 page 0089.

²¹ Pre-hearing Document 1.5 page 0101.

²² Pre-hearing Document 1.5 page 0019.

-
- 6.13.2. that he did not permit the public to pass through those gates;
- 6.13.3. that between 1986 and 1989 the local footpaths authority, when repairing the stile and wall at the old limekiln, had erected a new finger-post at point C;
- 6.13.4. that nobody had ever queried his erection of the fence between points C and Y, or claimed a right of way through the gates at C-B.
- 6.14. This landowner refuted the principal objector's claim to have climbed over the fence at point Y; he never saw that occur, and asserted it would have involved considerable risk because the rails were not properly held to the posts, this to allow the landowner to trundle his boat to the beach. He also stated he had never seen anyone drive a car to the beach as claimed by one objector.²³

7. THE CASE FOR THE INTERESTED PARTIES

The material points were:

- 7.1. The National Trust, landowner of Lower Greenway Farm through which the southern stretch of FP 52 passed, stated that of those members of the public consulted, some remember the length in dispute running along Route Option 1: others along Route Option 2.
- 7.2. A frequent user of the beach at all times of the year and in all weathers stated that until recently he accessed the beach at Point C, but since the steps were cut into the bank at point A he now used them, suffering no inconvenience.
- 7.3. Devon County Council considered that the issue may be decided by whatever the parish surveyors encountered on the ground in the early 1950s. If, as seemed likely from the 1954 OS map, there were no gates at that time between points C and B, and if, as seemed likely because it was not erected until Mr Duncan's time at Old Mill Farm, there was no fence between points C and Y, then route Option 3 would have been available to walk; and this appeared to accord with the photograph attached to the 1944 sale particulars.

²³ Post hearing Submission 25.

8. CONCLUSIONS

- 8.1. Bearing in mind the submissions and representations I have reported, I have reached the following conclusions, reference being given to earlier paragraphs where appropriate. Throughout my deliberations I have used the balance of probability as the level of proof to be applied.

Introduction

- 8.2. It seems to me that the matter may best be determined first, by examining whether or not there has been a historic public right over the way in question (by which I mean a public right in existence before the definitive map was compiled); secondly by scrutinising closely that which is depicted on the definitive map and written in the definitive statement; and thirdly, should these steps be insufficiently helpful, then by going behind the evidence to try to see what was most likely to have been in the mind of the map and statement's compilers as these documents progressed through the various stages prescribed by the National Parks and Access to the Countryside Act 1949.
- 8.3. With regard to this last step, evidence from those who claimed to have used the path from before 1955²⁴ is important: that of path use since 1955 is less so, unless it can be taken as corroborating or strengthening the evidence of those who knew the path at the time the definitive map went through its due processes.
- 8.4. Some witnesses spoke of use of the path on horseback, implying that a route other than one suitable for horses cannot be the definitive one. This is not so. The public has rights over FP 52 no higher than rights on foot. I must go no further than to satisfy myself that the route I determine to be the correct one would have been useable, and used, by walkers in the years immediately prior to 1955.
- 8.5. Since occupying Old Mill Farm, the present landowners were encouraged by the South Hams Coast and Countryside Service to believe that Route Option 1 was in fact the definitive route. This may or may not have been so, but the South Hams' action could have been no more than advisory: it was not authoritative. It may be helpfully relevant when trying to get into the minds of the definitive map's compilers, but of itself it does not amount to an unerring statement of the route's line [4.2][4.25].

Evidence of Historic Rights

Early 19th Century

- 8.6. The 1839 tithe map gives the first clue, and it is a strong clue, about the limekiln. The crossfield track leading from it southwards to (Lower)

²⁴ The relevant date of the definitive map.

Greenway Farm and thence onto what is now Greenway Road appears to be the route to and from it; there is nothing connecting it to Galampton Corn Mill. With regard to the approach to the latter from the north, people, animals or carts proceeding down Mill Lane had the choice of carrying straight on, in which case they would have passed between the land and the mean high water mark, or turning into the curtilage of Old Mill Farm. From this I conclude there is no evidence of a public way of any description through Old Mill Farm in the early 19th Century [4.7].

Mid 19th Century

8.7. Thirty years later, although there is no key to the 1869 conveyance plan, bearing in mind the plan's purpose it seems likely that its two dashed lines do represent the high and low water marks in the vicinity of Old Mill Farm, because they are both to seaward of the riverbank. There is still no evidence of any connection between the Mill and the limekiln [4.8].

Late 19th Century

8.8. Moving on to the 1880s, I agree the depiction of the lines to seaward on the 1882 sale plan, extending as they do well beyond either end of the route in question, means they were more likely to have represented tidal states than a path or track. Furthermore I note that if one were to continue south from the southern end of Mill Lane one would immediately encounter a building, situated immediately to the west of the granary. One objector, though she had hitherto not walked the route, spoke of this as being a gig house and, noting its position on shore in a mill yard, I take it that gig more likely referred to a light horse drawn carriage than to a ship's boat. The positioning of this building astride Route Options 2 and 3 adds to the impression of no public path through the then Galampton Mill, a view reinforced by the fact that, poor as its quality is, the near contemporaneous 1st Edition OS map also shows this building, as well as another obstruction across the then southern end of Mill Lane [4.9][6.3].

8.9. At the hearing the County Council's witness challenged the accuracy of the 1882 plan when he opined that it showed Mill Lane terminating at a point where we know the bank is steep; but in my view this is entirely consistent with the evidence so far, namely that Mill Lane served Galampton Mill and went no further [4.9].

8.10. The OS map shows that by the early 1880s the limekiln had become disused. The track running south from it to Lower Greenway Farm and beyond continues to be shown, but so far there is still no track or path between it and Galampton Mill. I can think of no reason why there should have been one (see paragraph 8.16 below) [4.10].

Turn of the Century

8.11. With the Mill shown apparently still operating, but with no gig house, the 1905 map, though far from conclusive, does show a form of connection between the southern end of Mill Lane and the northern end of the track

by the old limekiln. Whether or not what is shown can reasonably be taken as a track cannot readily be determined from the quality of the reproduction available to the hearing [4.11][5.2].

Mid 20th Century

- 8.12. I deal with the 1930s/1940s handover of highways evidence in the context of the position of the southern end of Mill Lane in paragraph 8.15 below. With regard to other mid 20th Century documents, the 1939 edition OS map repeats that which is shown on the 1905 edition. This I can, and must, take as evidence that in the first part of the 20th Century, as now, the track or road forming Mill Lane extended down into Old Mill Farm, a fact which is not disputed. I am not though able to draw any conclusions from these maps with regard to public rights. This is because, if I were to be satisfied that the stretch extending into Old Mill Farm was publicly maintained, then I would reasonably conclude that the public had a right to use it. But as I show in paragraph 8.15 this was not the case and therefore I cannot so conclude [5.3].
- 8.13. On the other hand, the 1937 conveyance plan is the only non-digitised copy of the 1905 OS base map available to the hearing. It shows an obstruction across Mill Lane, by the boathouse, in a position asserted by one member of the public on the accompanied site visit to be where the original southern end of the public highway was thought to be. Although the absence of any rights of way in the conveyance's *Particulars of Incumbrances* supports the view that there therefore was no public right over what is now FP 52, I believe only little weight should be attached to this silence [4.12].
- 8.14. From the 1944 sale particulars I am able to draw the following conclusions.
- 8.14.1. First, with regard to the absence of plot 437 from the particulars, this number refers to the parallel sided strip of land to seaward of plot 434, the latter being 5.173 acres (2.09 hectares) of grassland. In the absence of any other explanation I take this to mean that the parallel sided strip No 437 must run along the beach between the bank and the foreshore. The reason for its absence from the particulars seems to me to be because that parcel of land comes under the auspices of the preceding sentence, which reads: *The Foreshore is reserved*. If I am to take this plot's absence to be read as the objectors ask I would need evidence of a public highway in that location at that time. Not only do I not have such evidence but that which I do have points towards the nearest public highway (Mill Lane) going no further than Point A-X (paragraph 8.15) [5.4].
- 8.14.2. I agree with the landowners' inference about the position of the high tide mark, because this accords not only with what I saw on the accompanied site visit (which took place very shortly

after high water at Galmpton on 16 February 2005), but also with the markings on various maps from 1839 onwards [6.3].

8.14.3. With regard to the conflicting claims from the two sides concerning what features the photograph does or does not show along the beach, I must make my own interpretation, and it is this.

8.14.3.1. There is space between the high water mark and the walls on the riverbank for walkers to pass and repass, but no evidence of a prepared surface. There is no fence between points C and Y. Close to point C, there is what was described to me on the accompanied site visit as a dung pit, but no Devon stone gatepost, and no gates between C and B. At point C there are two routes confronting a walker: one could either proceed straight on along the beach to seaward of the dung pit and up the bank before arriving at the boathouse; or one could veer to the right and proceed up the hill immediately in front of the granary [**Hearing Document 7**].

8.14.4. From this I conclude the photograph shows there was no road south of point Y, and that all three route options were available for a walker to use [5.4][6.1].

Mill Lane

8.15. There is sufficient evidence available to satisfy me about the precise extent of Mill Lane. Despite the possibility that it might once have terminated by the boathouse (paragraph 8.13), the County Council adduced at the hearing that highway handover records showed its southern end to stretch as far as point A-X, and furthermore, a pre-hearing plan drawn up by the Council and sent to one of the principal objectors²⁵ confirms this as being the extent of highway maintained at public expense. I take this as very strong evidence, which has not been refuted, that this is the position of *...the end of the Unclassified County Road by Galmpton Mill...* referred to in the definitive statement (see paragraph 4.15) [4.13].

Summary of Historic Evidence

8.16. From the evidence considered so far, I believe there to be considerable certainty that since before 1839 there has been a recognised track running southwards from the limekiln to Lower Greenway Farm and on to the network of highways in the local area. I believe with equal certainty there has not been anything which could amount to a way of any

²⁵ Pre-hearing document 1.5, page 0018.

description between the limekiln and Galmpton Mill, or latterly Old Mill Farm. As for any likely need for these two locations to be connected, at one there was once a limekiln, and at the other a mill. No explanation has been advanced as to why a corn mill needs lime, or why a limekiln needs corn. By the time the mill had become a farm, the limekiln had long ceased to function.

- 8.17. With regard to whether or not it was possible to travel from the limekiln to Mill Lane, it seems from the evidence that a passage has always been possible by a route running along the beach then up the bank at point A to join the public highway. While the gig house was there it was probably not possible to pass between points Y and A-X, or indeed between C-B and A-X, though this alternative would have become available from about 1905 albeit possibly with an obstruction across the southern end of Mill Lane itself. By this date the limekiln had ceased operating [4.10-4.12][4.24][Footnote 5].

Conclusion with regard to historic rights

- 8.18. There is no historic evidence of a public right of way of any description between the (old) limekiln and Mill Lane, whether created by a statute such as an Inclosure Award, or which, after long public user, could reasonably be considered to have been dedicated under the provisions of the Common Law.

The Definitive Map

- 8.19. Regardless of the fact that there had probably been no earlier dedication of public rights between the old limekiln and Mill Lane, the 1949 National Parks and Access to the Countryside Act permitted the parish to claim a right which, if the claim passed the rigorous acceptance procedures, would record the right on the new definitive map for the area. This would amount to a legal event which, from the map's relevant date, would grant the public a right to pass and repass (in this case on foot only) for evermore.
- 8.20. The first stage of this procedure was for the parish surveyors to determine the precise stretch over which such rights were to be claimed; but without the benefit of the original claim I have no means of determining where the surveyors thought this route ran. The objectors have pointed out that the 1954 OS map shows there was no obstruction at point C-B, but all I can infer from that is that Route Option 3, as well as Options 1 and 2, was available at the time of the survey. I therefore agree with the County Council that Route Option 3 would have been available, but so also would the other route options. In this regard there is some evidence, slight as it undoubtedly is, that within the local highway authority's corporate memory there existed some belief that Route Option 1 was the correct route. Evidence of those who used the route from *before* the definitive map was drawn up would normally be helpful, but there is little if any such evidence upon which it would be safe to rely (see my conclusion in paragraph 8.38 below) [4.25].

- 8.21. The definitive map's compilation process passed through several stages, the important ones in this case being the publication of a draft map, and subsequently that of a provisional map. Everyone had a right to object to what was shown and to what was not shown on the draft map, and these objections were heard by a person who decided whether a modification to the draft map was appropriate. There were then opportunities for the public to object to any proposed modification or to appeal against any refusal to modify the draft map.
- 8.22. After that process had been completed, the draft map with its modifications became the provisional map, and it was once again published, this time allowing for any owner, lessee or occupier of land affected by a right of way to apply to the Crown Court for a declaration that at the relevant date there was no right of way over the land in question.
- 8.23. Mr Wildy has declared that the land was his, so he could have applied to the Crown Court if he was not content with whatever the parish had claimed as a right of way through his land. We have evidence by means of statutory declarations that Mr Wildy, when he sold Old Mill Farm to Mrs Plews, advised her to keep the gates at point C-B closed at all times. Although I can reasonably place only a small amount of weight on this evidence, it does seem to me that an owner who erected gates across a route and kept them closed, was unlikely a little earlier to have accepted the same route as a public footpath. I therefore think it unlikely, albeit not impossible, that the successful parish claim could have been for Route Option 3 [4.19.1, 4.19.3][7.3].

The Definitive Statement

- 8.24. Section 56(1)(e) of the Wildlife and Countryside Act 1981 is the authority for the status of the definitive statement. The Act provides that a definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent

...the map is conclusive evidence, as at any date, as to a highway shown thereon, any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position and width thereof at that date, and any particulars so contained as to the limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions...

In this case these words simply mean that what is written in the definitive statement is to be taken as conclusive evidence of the position of the path in question.

- 8.25. I have recorded what it says in the definitive statement in paragraph 4.15 above. Before placing my interpretation upon the statement, which in my view was written with considerable particularity, it may be helpful to

remember that terms appearing in a legal document are terms known to the law. In England and Wales, *foreshore* is legally taken to refer to that portion of land which lies between the high and low water marks at ordinary tides²⁶.

8.26. In my view it then becomes a simple matter to determine what the definitive statement has recorded with regard to the position of the public right of way shown on the definitive map, and it is this.

8.27. Referring to the plans at Appendices C and D:

8.27.1. The Statement's heading describes the footpath as running from *Greenway/Galmpton Road to the end of the Unclassified County Road by Galmpton Mill*.

This is unambiguous; the northern end of FP 52 is at the southern end of Mill Lane, that is to say point A-X.

8.27.2. *The path is a footpath.*

There are no public rights along it on horseback, or on a bicycle, or in a carriage, or in a motor vehicle of any description.

8.27.3. *It starts at Greenway/Galmpton Road, County Road No. 13, 140 yards east of the drive to Lower Greenway and proceeds northwards following the boundary hedge of Ord. No. 445...*

The southern stretch of footpath starts at a point on the county road and follows a headland route immediately to the west of the boundary of field 445 (7515 on Appendix C).

8.27.4. *...on to a Private Accommodation Road (not repairable by the inhabitants at large), by Lower Greenway Farm...*

The next stretch passes through Lower Greenway Farm over the surface of the private accommodation road in that location.

8.27.5. *...and continues through Ord. Nos. 439 and 433 on to a Private Accommodation Road (not repairable by the inhabitants at large)...*

It then passes over the long established track between Lower Greenway Farm and the old limekiln (the accommodation road) which runs first, on a headland route along the eastern side of field 439 (un-numbered in Appendix C); and then on a cross field route through field 433 (0136 in Appendix C).

²⁶ 39 Halsbury's Laws 557-559.

8.27.6. *...running parallel with the foreshore which it follows ...*

After reaching the old limekiln (point D in Appendix D) the next stretch takes a route parallel with the foreshore. This must mean along a line of undefined width between the riverbank and the foreshore, running parallel with the latter.

8.27.7. *... to join the end of the Unclassified County Road by Galmpton Mill...*

The route continues to run parallel with the foreshore, until it needs to deviate from such a line in order to join the end of Mill Lane at point A-X. Having settled the end of the unclassified county road by Galmpton Mill as being at point A-X, there is in my view no other reasonable reading of these specific terms. To interpret them as anything else would either require the southern end of Mill Lane to be at point C-B, or even point Y; or it would require different words to explain that the path deviated from running parallel with the foreshore onto a different line at some stage before it reached the end of the unclassified county road.

8.27.8. *(Stile and kissing gate on route).*

So as not to be classed as obstructions, any such limitations to the public's movement along the route were required to be set out in the definitive statement [4.15-4.18][5.6][6.2].

Summary of the Definitive Map and Statement

8.28. There has been no suggestion from any party to these proceedings that the particulars written in the definitive statement conflict in any way with the accuracy of the route shown on the definitive map. The matter for resolution is solely that of clarity.

8.29. Apart from its conclusiveness as evidence of a public right of way the definitive map as a document is of no further help in this instance. But going behind the map's compilation process does expose some evidence that the line of PF 52 was unlikely to have been successfully claimed over Route Option 3.

8.30. The definitive statement expresses, in particular terms, where the route of FP 52 was deemed to run.

Conclusion

8.31. From the very specific words in the definitive statement, the use of which allows me to place significant weight upon this document as evidence of the precise line of the path in question, I conclude that unless there is other evidence of sufficient weight to defeat it then this document shows

the public right claimed in the early 1950s was one on foot along Route Option 1.

User Evidence

8.32. To persuade me I have arrived at the wrong conclusion I would need evidence from those who knew the path at the time that it was not Route Option 1 but one of the other routes along which the public were then in the habit of passing and re-passing. I have therefore examined very closely indeed all the written submissions to the hearing as well as the evidence adduced at it.

User Evidence Forms

8.33. Of the thirty one forms sent in by users, eleven expressly claimed use of the path at the time the definitive map was being compiled. It is only evidence from those witnesses which I can take as supporting or detracting from the outcome of the contemporaneous parish claim for a public right of way. This is because, in November 1955 (the relevant date of the definitive map), the precise right and its precise route had by then been settled, even if it is now being disputed. If after 1955 another route was taken by some walkers without the permission of the relevant landowner such action would have amounted to trespass. This also applies to use of any of the three route options on horseback or in, or on, a motor vehicle; all of such use would have been trespass simply because there are no public bridleways or public byways in the area of concern. Whether or not any of this trespass could, in the fullness of time, ripen into a Common Law right or into a statutory right under the provisions of Section 31 of the Highways Act 1980, can only be determined through the normal definitive map modification process under the provisions of Section 53 of the Wildlife and Countryside Act 1981. This is a matter to be dealt with by means other than this hearing or in this report [5.7-5.11].

8.34. After very careful study of those eleven evidence forms I note that:

8.34.1. Eight, and arguably one more, have lines marked on their plan using a different pen with different coloured ink to the signed script on the back.

8.34.2. A tenth form had no line of claimed use marked on it. In any event at the material time, the father of this claimant rented the land in question and so her use would have been permissive.

8.34.3. One of those eleven witnesses submitted to the hearing a photocopy of the form originally sent in on his behalf, on which he states he did not mark the line and was not asked to do so.

8.34.4. All eleven of these witnesses claim to have walked or ridden Route Option 3, yet from 1989 there had, until enforcement of the Section 143 notice, been a fence across this route, about

which there had been no complaints until very recently
[6.7][6.11][Hearing Documents 13 and 14].

8.35. From this simple analysis I am driven to conclude that I have little, if any, relevant evidence I may reasonably take as supporting the objectors' claim that at the time of the definitive map's compilation there was a right of way over Route Option 3. I realize this conclusion very considerably reduces any weight I might otherwise have been able to place on these evidence forms, and so I have therefore looked further, and equally closely, at the remaining forms to see if these inconsistencies may have been just a few isolated cases, notwithstanding the remaining forms are not directly relevant to my determination of the precise line of the path in question.

8.35.1. First, some witnesses speak of no longer being able to use Route Options 2 or 3 to ride their horses onto the beach. Wherever the definitive route lies, the public have no rights along it other than on foot.

8.35.2. Secondly, two months after her form was sent in to the County Council one witness writes²⁷:

"...I have also learned that on the map that was sent to you, a line has been drawn in it to depict a route through this fence onto the beach. I would like to point out that I did not draw this line or refer to that route in my comments.....My husband...also wrote on the back of a map and the above applies to him as well."

This is consistent with at least ten of these additional forms having a line drawn on their map in a colour different to that of the hand which wrote and signed the comments.

8.35.3. Thirdly, one witness later withdrew her form.

8.35.4. Fourthly, in at least one form, there is a strong inference that the writer believed their right to use the 'foreshore' was under threat **[6.7,6.9].**

8.36. From this further analysis it seems to me that these documents, whether or not they are relevant, are equally unreliable, and do nothing to overcome my impression that the eleven which are relevant should not be used as credible evidence to persuade me I am wrong in my determination of the precise meaning of the definitive map and statement.

8.37. Doubt was cast on the forms' reliability from as early as 19 May 2003²⁸. In my view the issue of their authenticity could have been settled either

²⁷ Pre-hearing Document 1.5 page 0098.

²⁸ Pre-hearing Document 1.5 page 0087, 0090, 0108, and 0123.

by the principal objectors or by the witnesses concerned during the course of the hearing. Apart from the principal objectors (who were silent on the matter), none of the thirty one witnesses appeared at the hearing, and of those witnesses whose forms had apparently been tampered with only one attended it.

Conclusion with regard to the evidence forms.

8.38. There is little, if any, of the user evidence collected and submitted by the principal objectors which is of sufficient weight to overcome my determination of the line of FP 52, and none at all that I can reasonably take as supporting Route Option 3.

Letters Handed to the Hearing

8.39. As with the user evidence forms, letters claiming use of any route since 1955, no matter by what means, are not relevant to my determination. However, the claim of a former local resident who said there were no gates or obstructions in the early 1950s and who said he then used Route Option 3 is good evidence to be weighed in the balance in favour of this line. I must place less weight however on the claim by a second local resident. With family working at Old Mill Farm, use by him should more properly be classified as permissive use [5.8-5.10].

Conclusions with regard to the letters

8.40. I can and do take one of the twenty seven letters as evidence weighing against the conclusion I reached in paragraph 8.31 above: the others are of no help. Even so, the weight attached to this letter must itself be counterbalanced by the evidence of those who recall clambering down the bank at point A or who recall the path running to the beach at that point [4.21,4.22].

Other User Evidence

8.41. For the reason I give in paragraph 8.33 above, none of the evidence or argument I report in paragraphs 5.12 to 5.14 bears on my determination. Similarly, there is no need to consider those statutory declarations or landowners' submissions which amount to rebuttals of claimed recent use of Route Options 2 or 3 [5.12-5.14][6.13].

Other Matters

Private Rights

8.42. A notice in the Copy of Register Entries against Title Number DN186456 refers to a claim by the registered proprietor in December 1985 that the land has the benefit of a right of way with or without animals and/or vehicles. This amounts to a claim (which being a claim, is rebuttable) of these private rights, regardless of ownership of the land. It does not refer

to any public rights there may or may not be over that parcel of land, so has no bearing on the outcome of my determination [5.13][6.5].

Land Registration

8.43. Through the evidence, both written and adduced at the hearing, there ran a thread of doubt over the title to some of the land in question. The matter before me is one of existing public rights, and these do or do not exist over the route shown in the definitive map and statement regardless of who owns the soil over which they pass. Ownership of the land, whether or not such ownership may be disputed in another place, is not relevant to my determination of the precise interpretation of that which is shown in the definitive map and specified in the definitive statement [4.19].

Use by Bicycles and Horses

8.44. Whether or not use of part of the land in question by horses and vehicles will be permitted by the landowner to ripen into a case for modifying the definitive map to show these higher rights, is not a matter under consideration in this instance. Trespass on horseback or in vehicles, whether over the definitive line or over another line, does not contribute one way or the other to determining where the definitive line lies [5.8,5.9][6.14].

Effect of Tides

8.45. It is accepted by all parties that the landward limit of the foreshore, governed as it is by the extent of ordinary high tides, provides for an adequate width of beach along which pedestrians may pass and repass. That this area may from time to time be covered by extraordinary tides, for example those occurring at equinoctial mean high water springs, does not mean that public rights are lost or cannot exist [5.8][6.4].

Disability Discrimination Act

8.46. Should the matter under consideration concern a new public right, whether by creation or diversion, the provisions of the Disability Discrimination Act would indeed need to be heeded. But this is not so in this instance. I am to determine where the right provided for under the terms of the 1949 National Parks and Access to the Countryside Act precisely lies, and on this the Disability Discrimination Act does not bear [4.21][5.8].

Summary

8.47. There is no evidence of any statutory creation of public rights of any description by means such as an inclosure award over any part of the order route. Neither is there any evidence before me of such rights, either having been expressly dedicated or which could amount to a

Common Law presumption of dedication following a period of long public user.

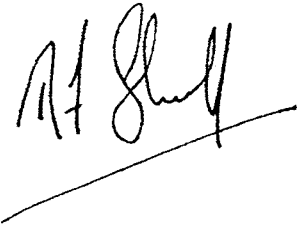
- 8.48. On 21 November 1955 a public footpath along the whole of what is now designated FP 52 was legally created by virtue of it being shown in the definitive map and statement for the area. By reference to the map's compilation process there is a slight inference that the route of FP 52, which begins and ends on county roads, ran outside the curtilage of Old Mill Farm.
- 8.49. With regard to the precise line of the disputed stretch, its northern point of termination is specified in the definitive statement as being the southern end of Mill Lane. From good local highway authority evidence this has been shown to be point A-X on the plan at Appendix D.
- 8.50. The definitive statement is conclusive evidence of the position of the path in question, and from my close study of it I conclude it provides for a public footpath running over Route Option 1, which I illustrate in red on the plan at Appendix E.
- 8.51. One witness claimed he used Route Option 3 in the early 1950s, and this weighs against my interpretation of the evidence shown in the definitive map and statement. However, the weight I can place on this witness' letter must be eroded by similar weight I am bound to place on the reports of those who recalled clambering down the bank at point A and of those who remembered the path running along the beach at that point. This evenly balanced state of affairs falls a long way short of convincing me I could have incorrectly read the definitive statement.

Conclusion

- 8.52. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that on the balance of probabilities the precise line of FP 52 in the vicinity of Old Mill Farm starts at the southern end of Mill Lane, and then runs down the river bank onto the beach, from where it runs south and westwards between the river bank and the foreshore as far as the stile by the old limekiln. From this point onwards, its line is not disputed.

9. RECOMMENDATION

- 9.1. I recommend the Chief Executive of Devon County Council takes note of the above conclusion with regard to the precise route taken by FP 52 in the vicinity of Old Mill Farm, Galampton which is depicted in red on the plan at Appendix E.

A handwritten signature in black ink, appearing to read 'R F Shercliff', written over a horizontal line.

R F Shercliff
Inspector

Appendix A**APPEARANCES****For the Landowners**

Mr M Edwards of Counsel:
instructed by Windeatts Solicitors
19 High Street, Totnes, Devon TQ9 5NW

He called:

Mr R Chaston Old Mill Farm, Galmpton, Brixham TQ5 0ER

For Devon County Council

Mr S K C Clarey Solicitor, Devon County Council

He called:

Mr M J Jenkins Public Rights of Way Manager, Devon County Council

Objectors***Principal Objectors***

Mr H Newcombe Whiddon Farm, Ashwater
Beaworthy, Devon EX21 5EP

Mrs S Brown Hunters Wood Cottage, Greenway
Galmpton, Brixham TQ5 0ES

Other Objectors

Cllr J Hawkins The Chalet, Church Hill, Kingswear, Dartmouth TQ6 0BX
(Chairman, Kingswear Parish Council)
(Member for Dartmouth, South Hams District Council)
(Member for Kingswear, Devon County Council)

Mrs J Mazumdar Craven Tor, 24 Langdon Fields
Galmpton, Brixham TQ5 0PJ

Mr P Heale Applebrook, Galmpton Farm Close
Galmpton, Brixham TQ5 0NP

Mr J Risdon Clare Cottage, 48 Stoke Gabriel Road
Galmpton, Brixham TQ5 0NQ

Mr R Lovell Chy Lowen, Heath Road, Brixham TQ5 9BH
(representing the Open Spaces Society)

Interested Parties

Miss R Brown Property Manager, The National Trust
Greenway, Churston Ferrers, Brixham TQ5 0ES

Mr Bailey 5 Deep Dene Close, Brixham TQ5 0DZ

Appendix B**DOCUMENTS PLANS AND PHOTOGRAPHS****Pre-Hearing Documents**

1. Dossier produced by Devon County Council consisting of:
 - 1.1. Report dated 11 May 2004 to Devon County Council's Public Rights of Way Committee.
 - 1.2. The definitive map and statement.
 - 1.3. Extracts from the 1905 and 1954 Ordnance Survey maps.
 - 1.4. Photographs of part of the disputed route.
 - 1.5. Bundle of correspondence between the parties.
 - 1.6. Land Registry entries for Title Number DN 186456.

Documents Produced at the Hearing

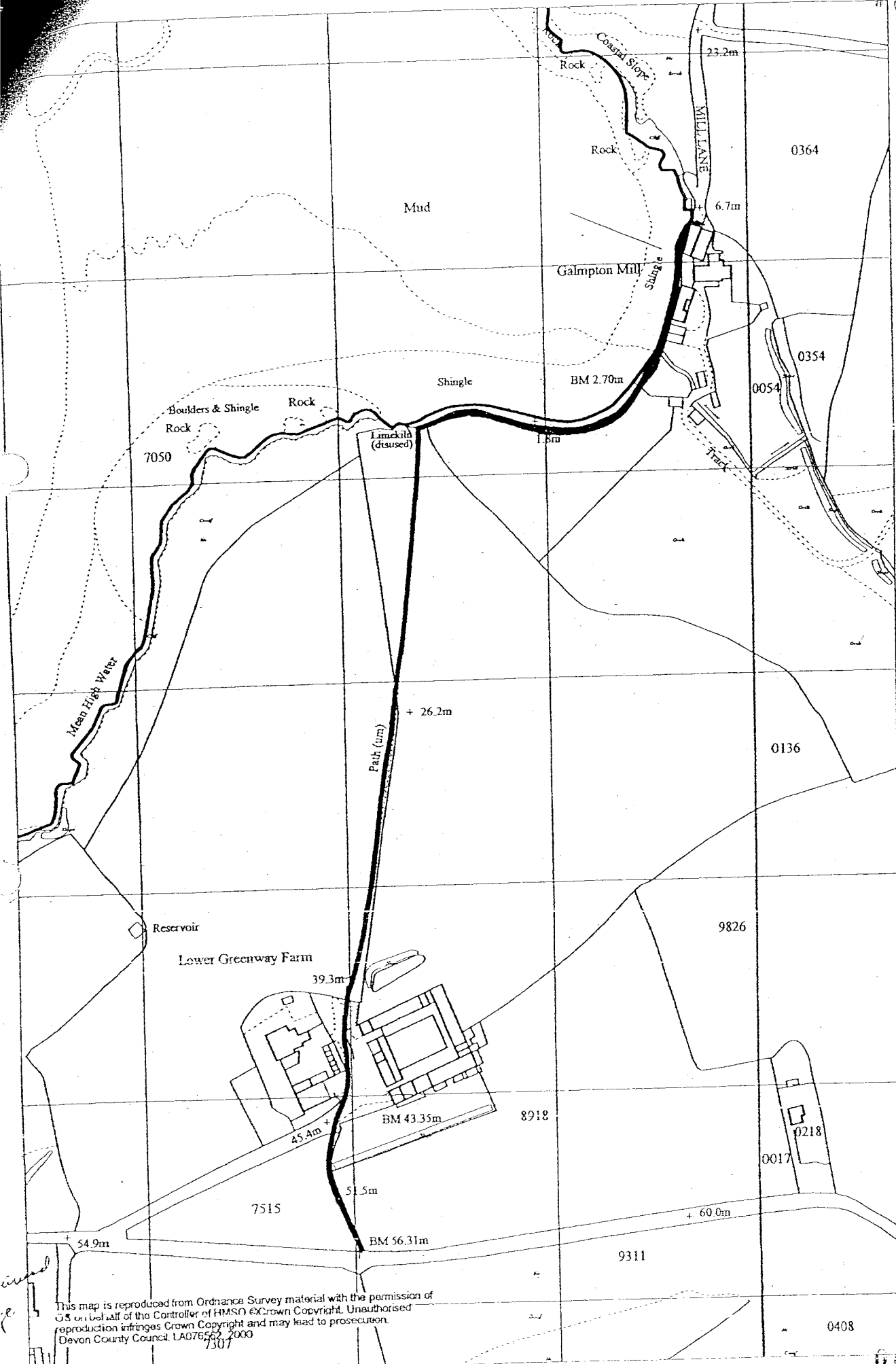
2. A total of 27 letters handed in from members of the public.
3. Churston Ferrers Parish Tithe Map dated 1839.
4. Composite extract from two 1885 1st Edition OS maps.
5. Copy of the 1882 sale plan for the Greenway and Galmpton Estates (filed with item 9 - Abstract of Title).
6. 1939 large scale OS map (studied by all parties at the hearing and retained by Mr Risdon).
7. Photograph of Galmpton Mill, Lot 4, extracted from item 8 - 1944 Sale particulars.
8. Extract from 1944 Sale Particulars of part of the Greenway Estate, including attached plan.
9. Abstract of Title to the Greenway and Galmpton Estates dated 1937.
10. Copy of 1937 Conveyance of the Greenway Estate, together with attached plan.
11. Devon County Council's letter dated 14 March 2003 to Mr Chaston.

-
12. Mr Rennells' hand-written compliments slip to Mr Chasten dated 1 August (2001), together with attachments.
 13. Original copies of evidence forms and plans contained within item 1.5.
 14. Corrected version of Mr Jackson's evidence form.
 15. Open Spaces Society letter dated 15 February 2005.
 16. Ramblers' Association letter dated 14 February 2005.
 17. Statutory Declarations by:
 - 17.1. Mr E L Wildy dated 5 May 1972.
 - 17.2. Mrs M Plews dated 23 September 1986.
 - 17.3. Mr P E F Crewdson dated 28 April 2004.
 - 17.4. Mrs B Crewdson dated 28 April 2004.
 - 17.5. Mr R A Duncan dated 5 May 2004.
 18. Exchange of letters between Mr R A Duncan and his solicitors dated 20 and 23 February 1989.
 19. Digitised map of the disputed route produced by Mr S Malec, Devon County Council and used at his meeting with Mr Chaston in January 2002.
 20. Copy of the conveyance of foreshore and creek bed from the Duchy of Cornwall to George Luttrell on 23 March 1869, together with integral plan.
 21. Copy of user comments produced by Mr Chaston.
 22. Mr Edwards' closing statement.
 23. Attendance lists for 15 and 16 February 2005.

Post-hearing Submissions

24. Statutory Declaration by Mr R A Duncan dated 25 February 2005.
25. Undated letter from Mr R A Duncan to the Hearing.
26. Mr Edwards' note dated 14 March 2005, with enclosure (legal submission).
27. Mr Newcombe's letter dated 15 March 2005 (response to items 24 and 25 above).

28. Mrs Brown's letter dated 16 March 2005 (response to items 24 and 25 above).
29. Mr Heale's letter dated 18 March 2005, together with enclosures (response to items 24 and 25 above).
30. Open Spaces Society letter dated 21 March 2005 (response to items 24 and 25 above).

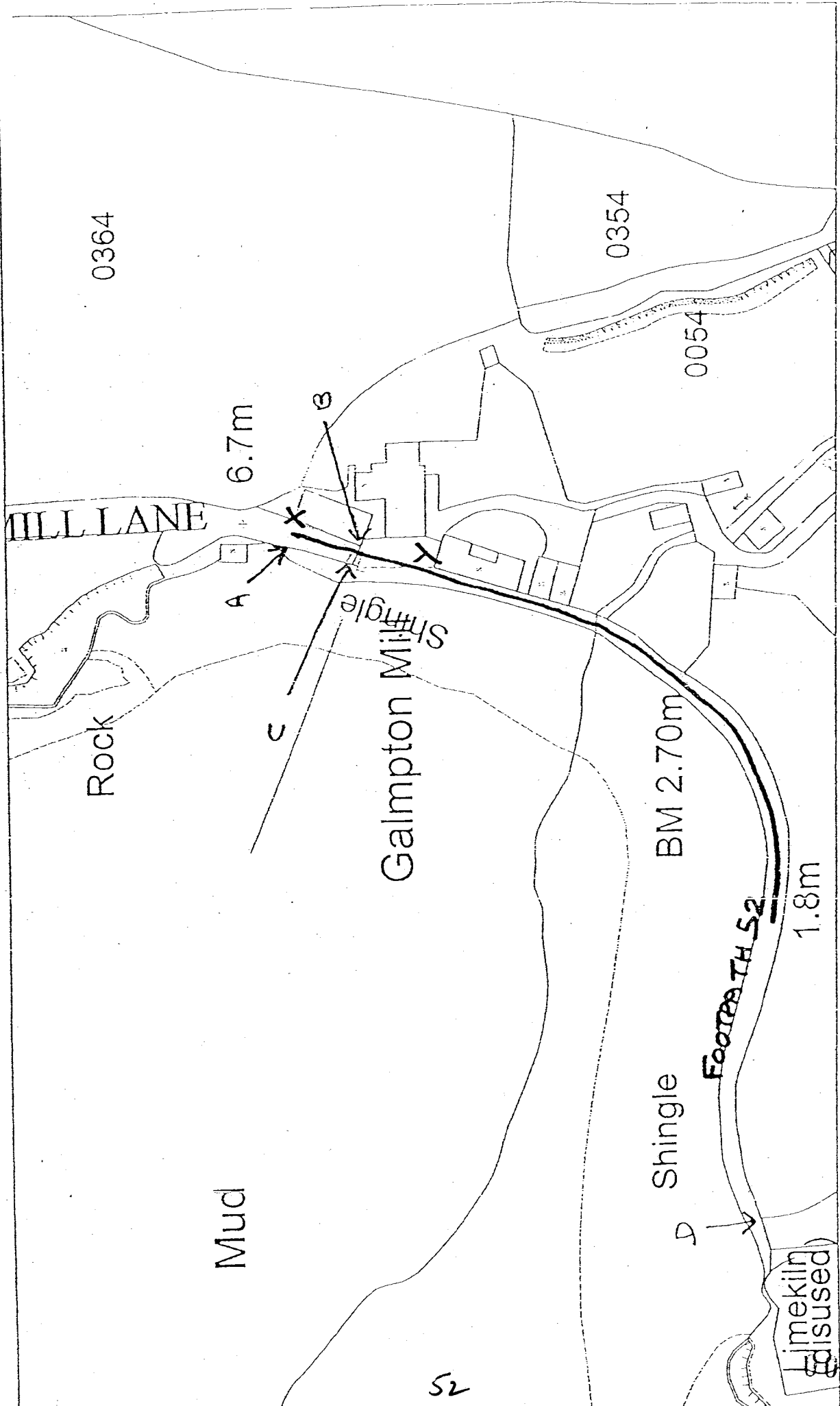


This map is reproduced from Ordnance Survey material with the permission of OS on behalf of the Controller of HMSO © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution.
 Devon County Council LA076532 2000

Scale 1:2,500

50 m

51



S2

A route of F.P. 52 Kingseawater

Mud

Rock

Galmpton Mill

Shingle

MILL LANE

6.7m

0364

0354

0054

BM 2.70m

Shingle

1.8m

Limekiln
(disused)

This line represents
the river bank

This line represents
mean high water
ordinary



39 Stoke Gabriel Road

Galampton,

Brixham

DEVON TAGS OFFICE

Tel: 01803 845689.

Appendix 2

CS/05/21

union clarey
sevon county council

county Hall

Topsham Road

Exeter EX2 7ED

15th June 05.

Dear Sir,

Several weeks ago a meeting was held in the village institute at Galampton concerning the storm that has built up over the right of way down Mill Lane and on to the beach at Mill Creek near Galampton (Brixham).

I am writing to you as advised to try and throw some light on the situation.

In the 1950's and 1960's my Grandfather Ralph Bowden Hall and followed by my uncle R. B. Hall and were tenant farmers on this land which was owned by Mr and Mrs Widdy. I lived with my Grandparents at that time during which I was a pupil at Galampton Primary School. I spent much time helping and working in the fields at Mill Farm.

Back then and during subsequent ownership
the lane gave way through a wooden gate
with direct access onto the beach. During this
period fishermen would drive directly onto
the beach to dig for bait and there was
then light vehicular and horse traffic for
various purposes. By driving onto the
beach the lane was left clear of obstruction
allowing clear access for the owners to
their house.

Furthermore, during the period when old
mill farm was farmed by my relatives the
my practical access with farm equipment
to the bottom field which butts up against
the beach was down the lane drive along
the beach for 100 yards and then in through
the gate — the gate is still there but no
longer used.

At some point during the present the end
of the lane has been blocked off with a
post and rail fence — although I don't know
exactly when. Vehicular access is now denied
and pedestrians are obliged to slip off

the side of the of the road and down a short bank which is no due hardship, I appreciate.

The point I would like to make, aside from the pedestrian right of way is the one of continued future access to the fields by so-called 'traffic' that cannot walk down the steps or through the hedge.

In the future if the land was ever sold separately from the house or a new owner decided to rent the bottom fields out, similar access along the beach would be crucial, at present it is denied.

Without having looked into this issue properly I am not aware of a law denying vehicular or four legged access onto the beach and therefore is it not unlawful to erect a fence denying the potential or future use - this right?

I gather the present land owner hired an inspector to verify his position that there had never been a right of way post his purchase. Somebody at the meeting hinted that there was collusion on this issue. Evidently,

and I cannot verify this) both parties
had been at naval college together. If
so, there would seem to be a conflict
of interest.

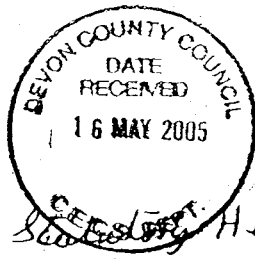
In finishing off, all I can say as
someone that knows this area well, is,
that as a boy #1 participated in tractor,
and Power, sheep and cattle transport (in
either driven or herded) along the beach
and up the lane.

Rights of way are generally put in place
for good reason and unless it has this one
as been rescinded for some good reason
in the public interest, I think it important
that it stays in place.

Yours faithfully,

Mark Sidgeman.
(Mark Sidgeman)

Mr Simon Blasey
County Solicitor
County Hall
Exeter



Whiddon
Greenway Road
Galmpton
Brixham
TQ5 0LT
7-5-05

Foot path 52 Non Statutory Hearing Report

To whom it may concern.

The Inspector for the above Hearing was Mr. R.F. Sherdoff, who states on Appendix B that there was 27 letters, past in the first morning by the public. There was no LOG made, which I thought was very UNPROFESSIONAL. In the ¼ hour mid morning break the people present were allowed to read the letters, which was alright in the main, but as there was no LOG some could have gone astray.

A very large percentage of those present were not allowed to present their local life time knowledge of the route of Foot path 52 (some in their 80's), the Inspector saying he has not got to that part of the Hearing or as already past that issue, let The Council for the Bhaslon's go on and on filling up the time, on information from the Bhaslon's, who have only lived here for about 4½ years.

I have been on the Council for 33 years and I know from experience that Devon County Council can not police the foot paths over the vast County of Devon, so they depend on the likes of myself and others to inform them of any unofficial diversion etc.

Mrs Pook who is in her 80's showed the Inspector a photo of Galmpton Mill (Lot 4) and a map of the Greenway Estate Sale of 1944, which clearly shows the Accommodation Road O.S. 437 from the old Lime kiln to Galmpton Mill and going straight through to O.S. 366, but the Inspector did not consider that in his report.

On the Wednesday morning the summing up took place. Mr Mike Jenkins P.C.C. Public Rights of Way Manager showed me what he had prepared for it before the summing up started.

The Council for the Bhaslon's presented his lengthy summing up, then the Inspector asked myself to sum up, but never gave MR Jenkin a chance to present his.

The Inspector's report is some what based on the summing up presented by The Council for the Bhaslon's, rather than local lifetime knowledge and records of Devon County Council.

Since the Hearing I have been given some photos of the 1930's by the Bocker family who was born at Salampton Mill whose parents Farmed there from 1929-1944, and have told me that there was no deviation of the public footpath, as the D.C.C. maps show or any obstruction.

Option 3 is the original route and Option 2 by the 1965 photo was not possible, as there was no gap between hedge and stone pillar, and Option 1 has only been in existence for 4 years

photos enclosed

Salampton Mill looking North showing dung pit by Mill Lane

" " " East " " " " " "

" " showing Granary & Dung pit and no stone pillar

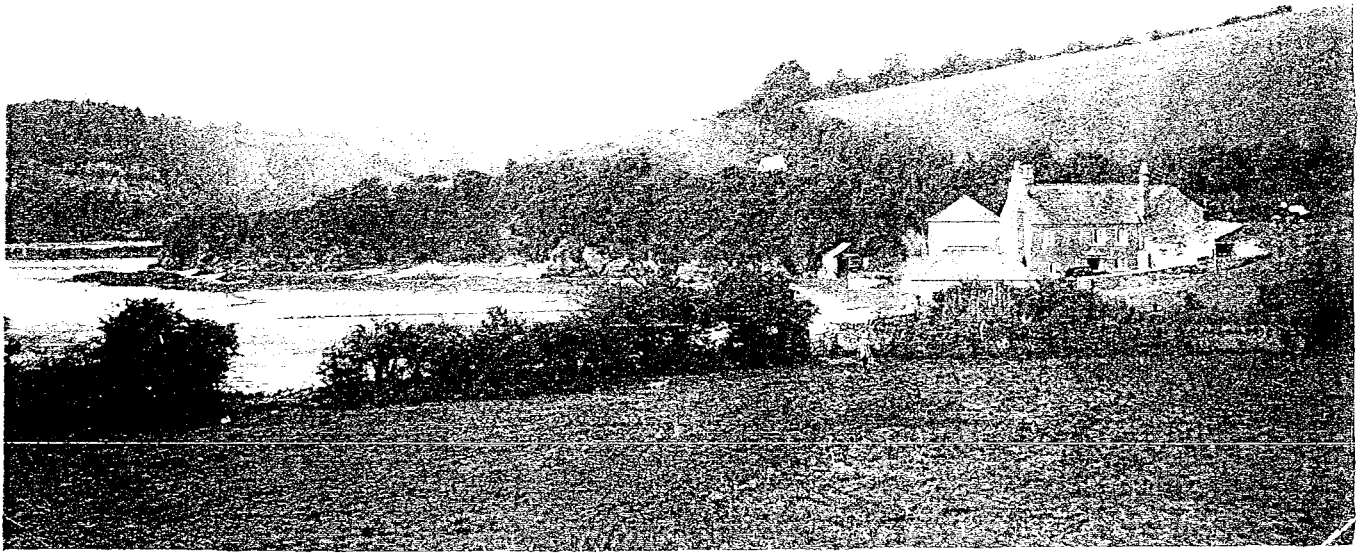
} 1930's

Stone pillar, no gap behind against hedge 1965

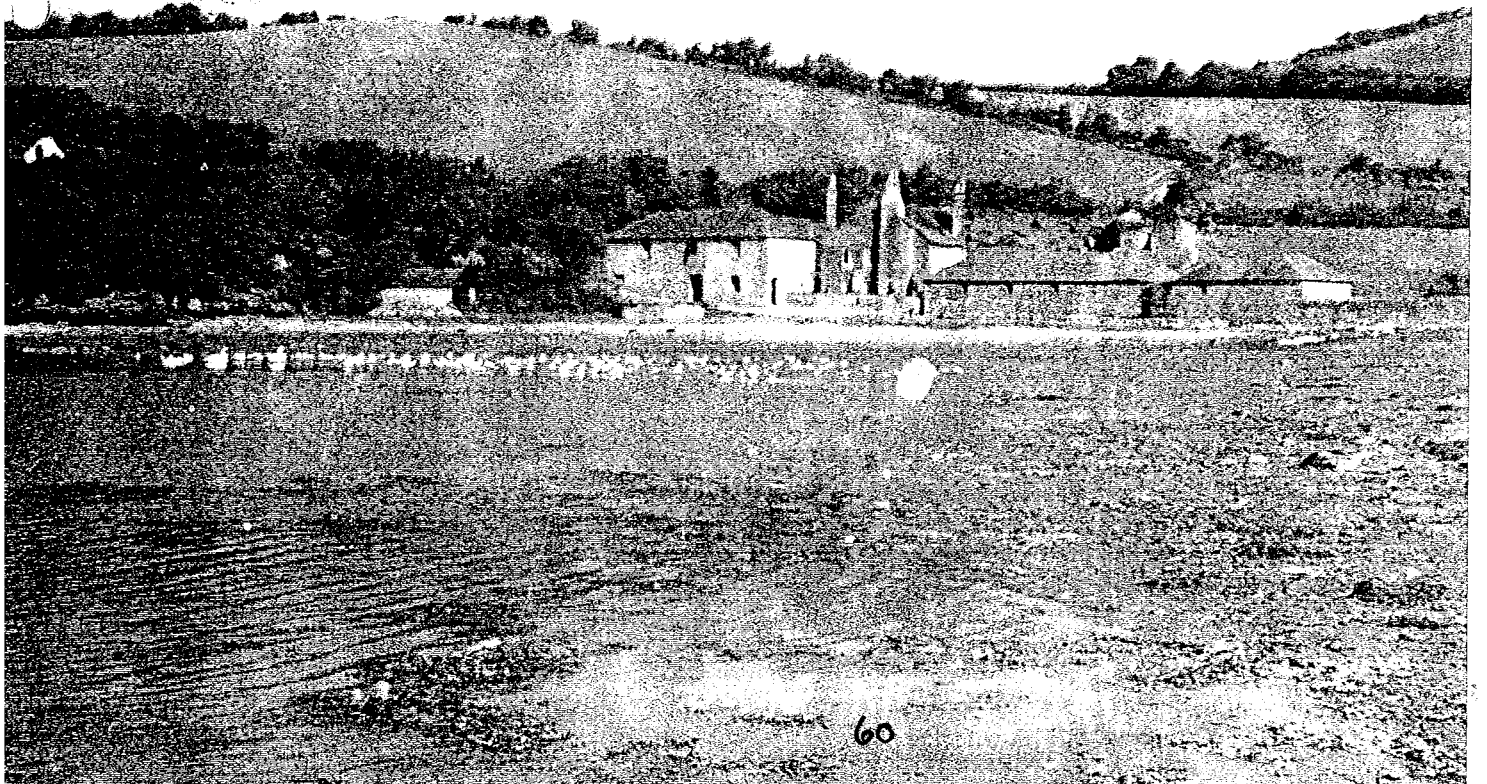
Mrs Pook's map & photo 1944

Hector Newcombe

Old photos do not lie



1930's





1938

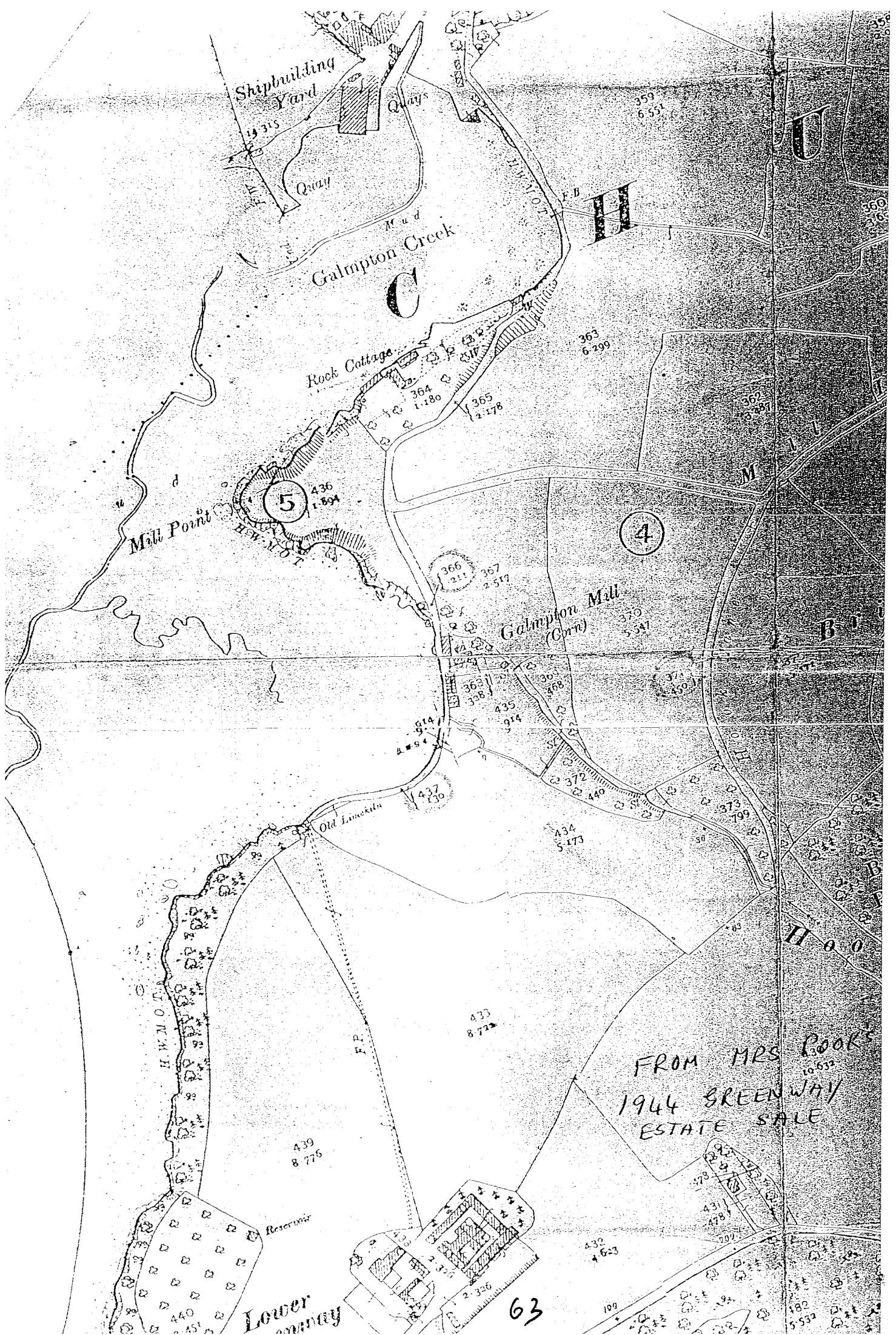
4



61



NEARLY SHOWING Galimpton Mill. Lot 4
ACCOMMODATION ROAD
S. 437 AROUND FORESHORE 1944
THEN O.S. 366



Lower Greenway

63

FROM MRS ROOKE'S
1944 GREENWAY
ESTATE SALE

Kingswear Parish Council



Mr S K C Clarey
County Solicitor
Devon County Council
County Hall
Exeter EX1 1AZ

4 May 2005

Dear Mr Clarey,

Report into the disputed routing of Footpath 52, Kingswear in the vicinity of Old Mill Farm, Galmpton

Kingswear Parish Council wishes to object to the conclusions of the Inspector on the following grounds:

- 1 The enquiry was grossly unbalanced with the land owners employing a barrister and the objectors having no selected spokes persons. The Inspector chose two of the objectors as "principal objectors". Although the two people, both elderly farmers, had conducted some research into the history of Footpath 52, and have considerable local knowledge, one being a fifth generation resident, they had no experience or training in leading the presentation of a case at an enquiry nor were they expecting or planning to do so. The Inspector offered them no assistance against professional opposition.
- 2 A large number of those attending were expecting to be allowed to give verbal evidence but the Inspector allowed only four to do so. Since the objectors' case was largely based on local knowledge this severely limited the ability of the objections to be heard.
- 3 There were several complaints from the floor about the way the inquiry was being conducted, mainly over the refusal of the Inspector to hear other evidence. Paragraph 2.4 of the Report does not fairly reflect this widely held disquiet.
- 4 Paragraphs 4.14 to 4.18 refer to the production of the Definitive Map establishing Footpath 52 as a public right of way. Reference is made to a "Private Accommodation Road (not repairable by the inhabitants at large) running parallel with the foreshore". However in paragraph 4.18 the Inspector states that "This clause could not be taken as having referred to an accommodation road between the old limekiln and Galmpton Mill; there is no evidence that such ever existed, and no evidence of any need for one." This sweeping statement is so at odds with other evidence that it requires further justification which is missing. If the Private Accommodation Road does not follow this route along the foreshore then what route does it follow parallel to the foreshore?
- 5 Paragraph 4.19 quotes letters from previous land owners which generally favour Mr Chaston. However it is not unknown for landowners to try to obstruct rights of way and attempt to divert them away from their property. The statements could also support a claim that landowners have a history of trying to obstruct rights of way. The statements are also consistent with this situation and it would be natural for them to support the present land owner. "*They would say that wouldn't they*".
- 6 The same section also quotes a gate being placed at C – B, see map. The existence of a gate across a path does not indicate that a right of way does not exist, it is a frequent occurrence. However it does indicate that at least two of the previous owners permitted the public to at least follow Route Option 2.
- 7 Paragraph 4.22 is one of several examples where there is an unsupported claim from an unnamed source which amounts to little more than hearsay. There was no possibility of

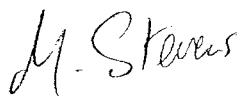
questioning the original statement maker or the circumstances surrounding the "evidence" that the statement is claimed to represent. It must be questioned whether a steep bank where a young boy has to clamber down could be the route of a registered public footpath. It is only recently that steps have been constructed at this point.

- 8 In paragraph 5.1 it is understood that the forms referred to were produced by the County Council two years ago and sent to one of the "principal objectors" for handing on to others who may wish to give evidence at the hearing. On one side of the form there was space for a written statement and on the other a map on which to indicate the claimed true route of the right of way. The forms were returned to the County Council at that time.
- 9 Of the 27 forms handed in 26 claimed Route Option 2 or 3 to be the true path and 11 specifically indicated Option 3. It would appear that none supported Option 1. Most, if not all, of the forms were completed by people with long term local user knowledge of the actual route.
- 10 Section 6 relates to the rebuttal by the landowners of the case put by the objectors. It is noted that there was not a similar section in the Report for the rebuttal of the landowner's case by the objectors. The "principal objectors" claim that they were not offered the opportunity and the Inspector's report does not indicate that he did. In the interest of fairness and balance he could have taken on a questioning role on their behalf.
- 11 The owners attempted to suggest in paragraph 6.7 that the forms had been tampered with, a claim hotly denied by the principal objectors. Accepting that the forms had been falsified would have the effect of removing the substantial evidence in support of Option 3. Paragraph 6.9 reports that one witness subsequently withdrew her form. Was she subject to undue pressure to submit the form in the first place or subject to pressure to withdraw the form after submission?
- 12 A County Council representative was questioned on the witness forms. It is understood that he agreed that one or two of the maps may have been touched up but the great majority had not. In any case the written statements clearly indicated Route Option 3 as being the true route.
- 13 Para. 8.8 refers to the 1882 sale plan on which is shown a gig house "astride Route Options 2 and 3". All the maps of that period available to us indicate no such building which would have also blocked access to the farm house. A local resident of long standing has identified the buildings, see the enclosed plan. The gig house is off the line of any of the three Route Options and not blocking any. This error on the part of the Inspector is of great significance since he uses it to dismiss both Route Options 2 and 3 as the true path.
- 14 The 1882 sale document includes "At Galmpton Quay there are two large quarries of building and limestone." "The limestone is used by the principal tenants on the Estate for lime-burning ...". The OS map of the time shows several apparently working quarries in Galmpton to the north of Old Mill Farm. Others are shown as "old quarries". It is inconceivable that the lime would have been taken to the lime kiln via Lower Greenway Farm and not along the much shorter and less hilly route along the foreshore past Old Mill Farm in the same ownership. The 1905 OS map clearly shows Mill Lane extending beyond the farm along the foreshore to the lime kiln while the same map shows the route from Lower Greenway Farm merely as a footpath. Photographs taken in the 1930s and in 1944 also clearly show this track following Route Option 3 without any intervening gate, fence or "steep bank".
- 15 The Inspector, in paragraph 8.10 referring to the 1882 sale map, claims that it shows the lime kiln to be disused. He goes on to state that "that there is still no track or path between it and Galmpton Mill. However inspection of the OS map of the time shows

that the route is marked. He goes on to state that "I can think of no reason why there should have been one." Statement 14 above shows a very strong reason.

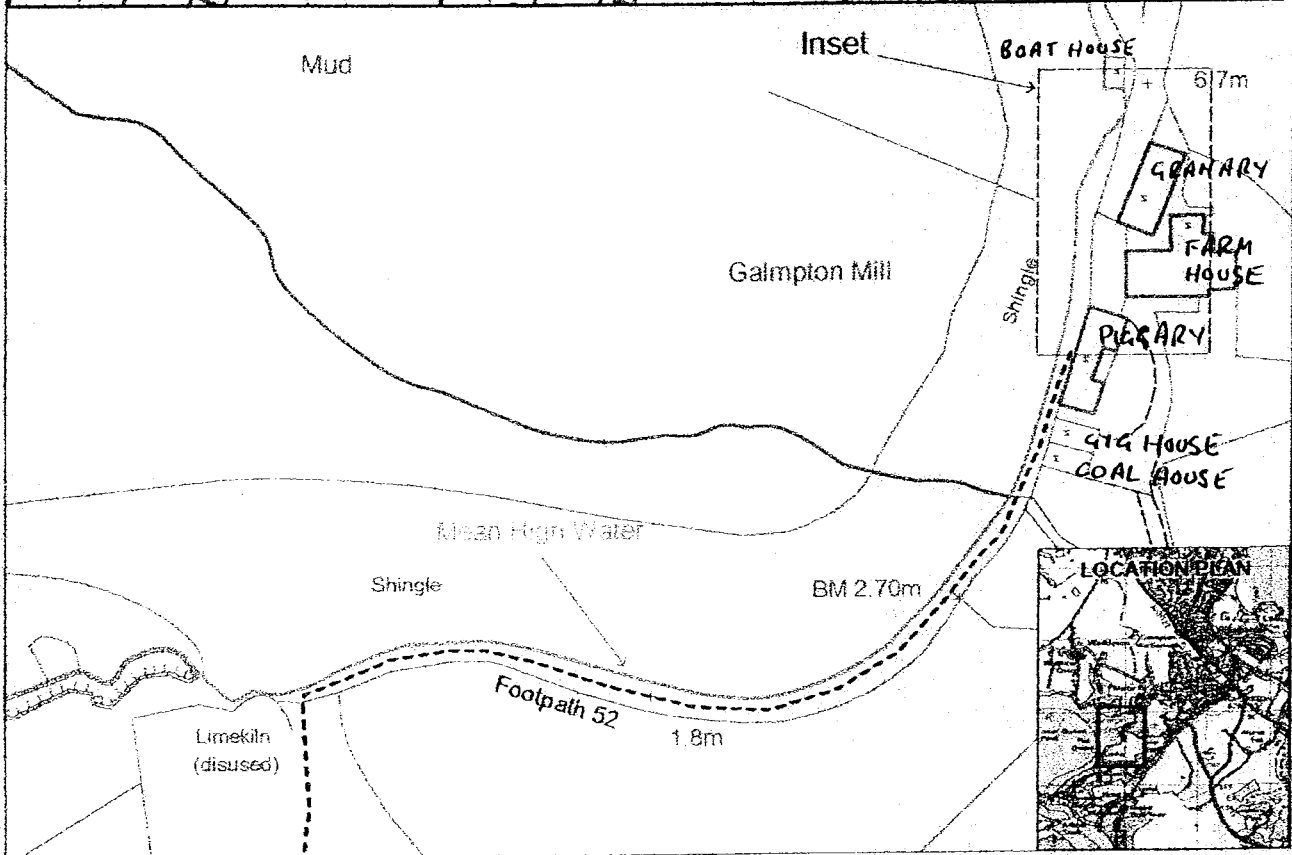
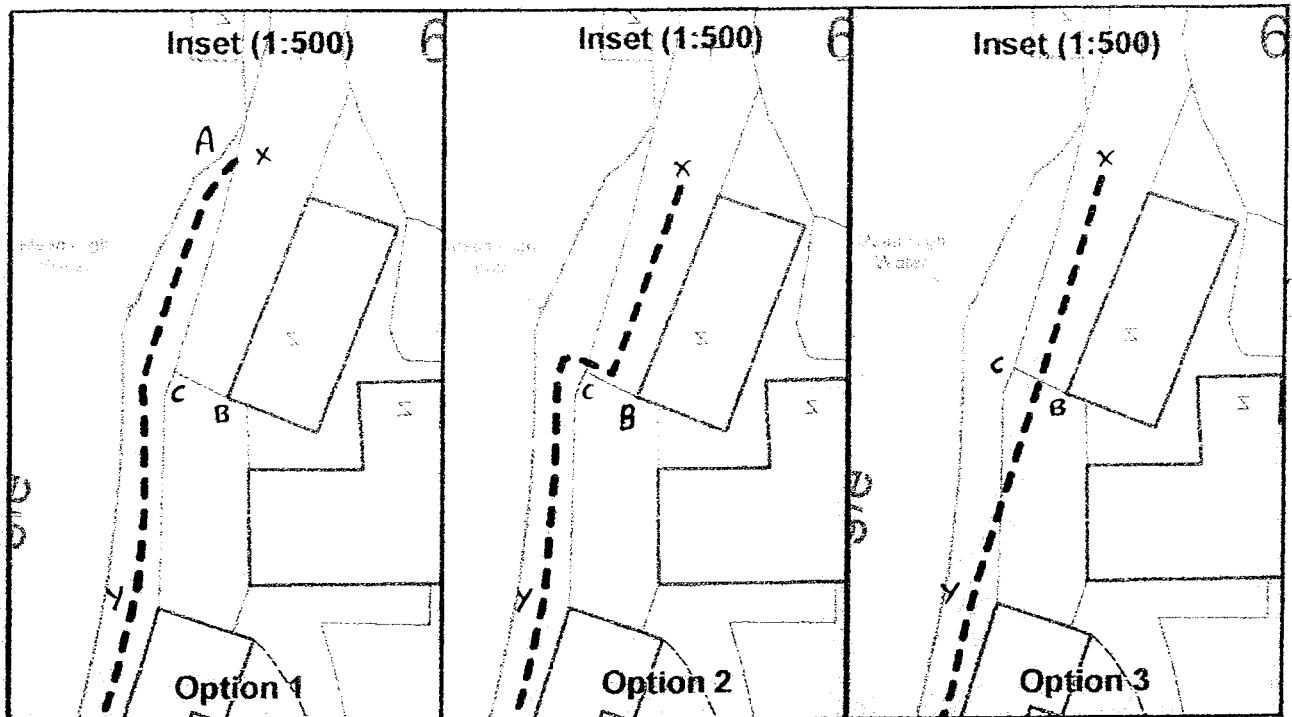
- 16 In paragraph 8.13 the Inspector refers to "an obstruction across Mill Lane, by the boathouse". If he is referring to the gig house then it has already been shown that he is mistaken in his location of this building. However there is another boathouse to the north of the granary which is clearly well to the west of Mill Lane and offers no obstruction.
- 17 The Inspector casts doubt on the authenticity of the witness forms, paragraph 8.37 with the inference that the principal witnesses had some involvement. They strongly deny this. The claim was not tested as "none of the thirty one witnesses appeared at the meeting". This may have been because many members of the public were refused to opportunity to give evidence and left the hearing early – see 2 above.
- 18 The owner's barrister was permitted to sum up at the end of the hearing. He passed a written version of his summing up to the Inspector. A copy was not offered to the "principal objectors" or to the County Council. It is claimed that the Inspector's report includes much of this summing-up material. The "principal objectors" were also offered the opportunity to sum up but had not anticipated this, had not prepared any notes and were unable to benefit. The whole hearing was biased against the supporters of Route Option 3 and in favour of the owner of Old Mill farm and his professional advocate.
- 19 We can only conclude that the Inspector is in error in recommending the true route to be that of Option 1. He did this by mistaking the location of the gig house and stating that it obstructs Option 3 when it does not and dismissing practically all of the forms which overwhelmingly support Option 3 as being "tampered with" which is denied.
- 20 There is strong circumstantial evidence that lime from quarries in Galmpton would have been taken along the foreshore passed Old Mill Farm to the lime kiln. This route is shown clearly on the OS maps of the time as an extension to Mill Lane even though the publicly maintained section might stop at Old Mill Farm. Horses and carts could only have taken Route Option 3. Photographs taken in 1930 and 1944 clearly show Route Option 3 as the route being used.
- 21 It is accepted that the above would indicate that the route is a bridleway or byway whereas it is registered as a footpath. However it is inconceivable that a footpath would have followed a more difficult route than the cart-track.
- 22 No other conclusion can be reasonably drawn other than that the course of Footpath 52 is Option 3.

Yours sincerely,



Michael C Stevens.
Clerk to the Council

3, Orchard Terrace,
Lower Contour Road
Kingswear,
DARTMOUTH. TQ6 0AW



Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. OS Licence No. 1000197

**FOOTPATH No. 52, KINGSWEAR
NON STATUTORY HEARING
INSPECTOR'S REPORT OPTIONS**

drawing number	ED/PROW/05/66
date	April 2005
scale	1:1250
drawn by	SC

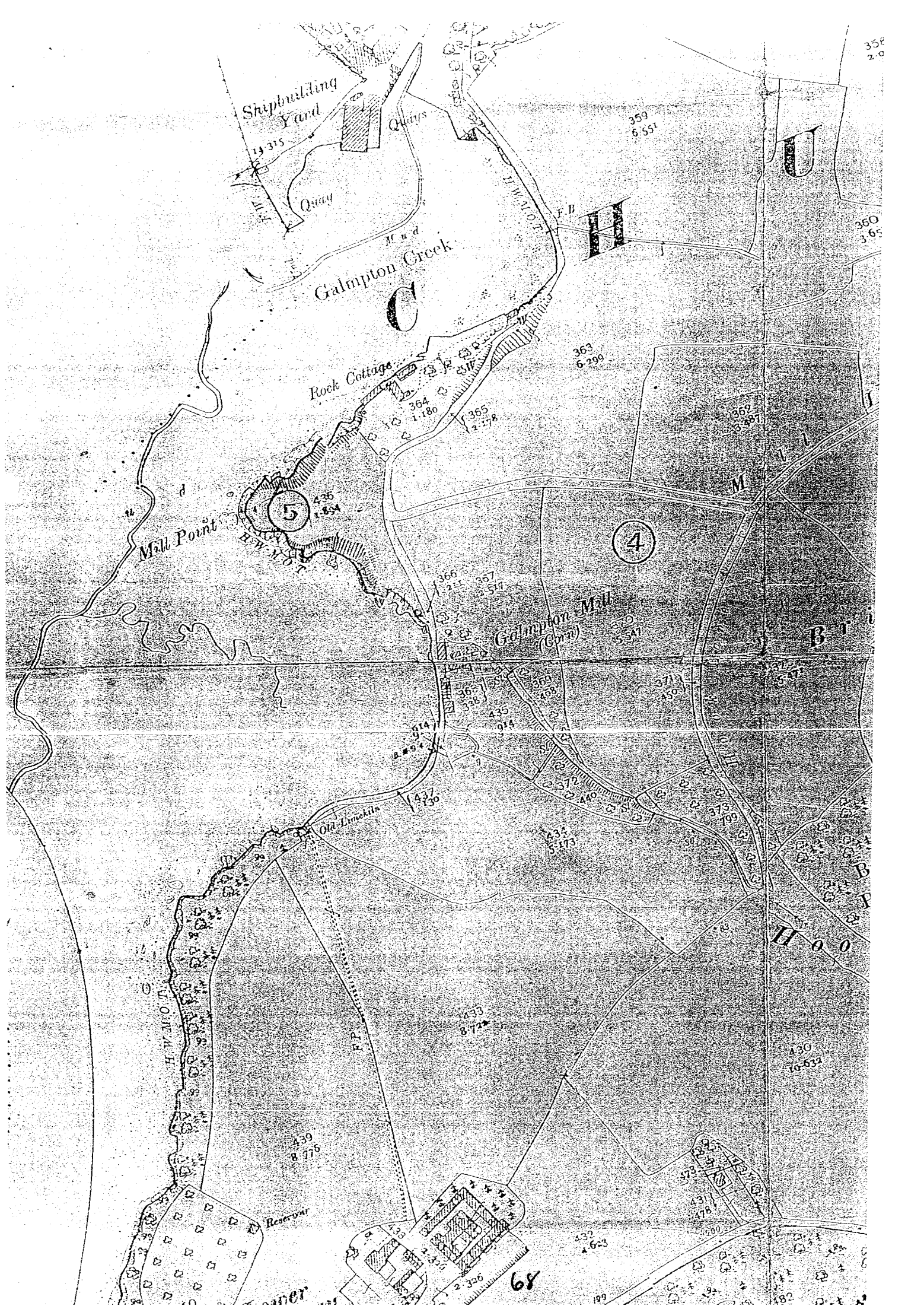
Notation

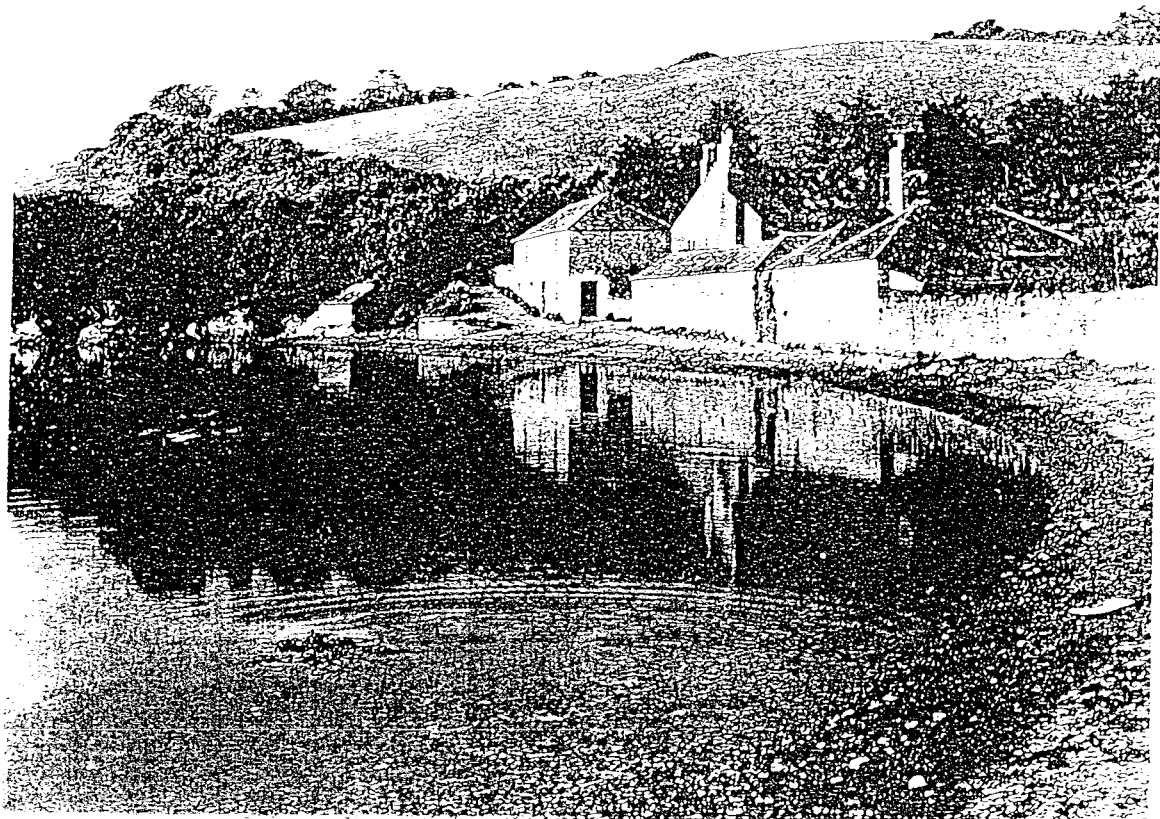
Footpath No. 52 -----

Edward Chorlton

COUNTY ENVIRONMENT DIRECTOR



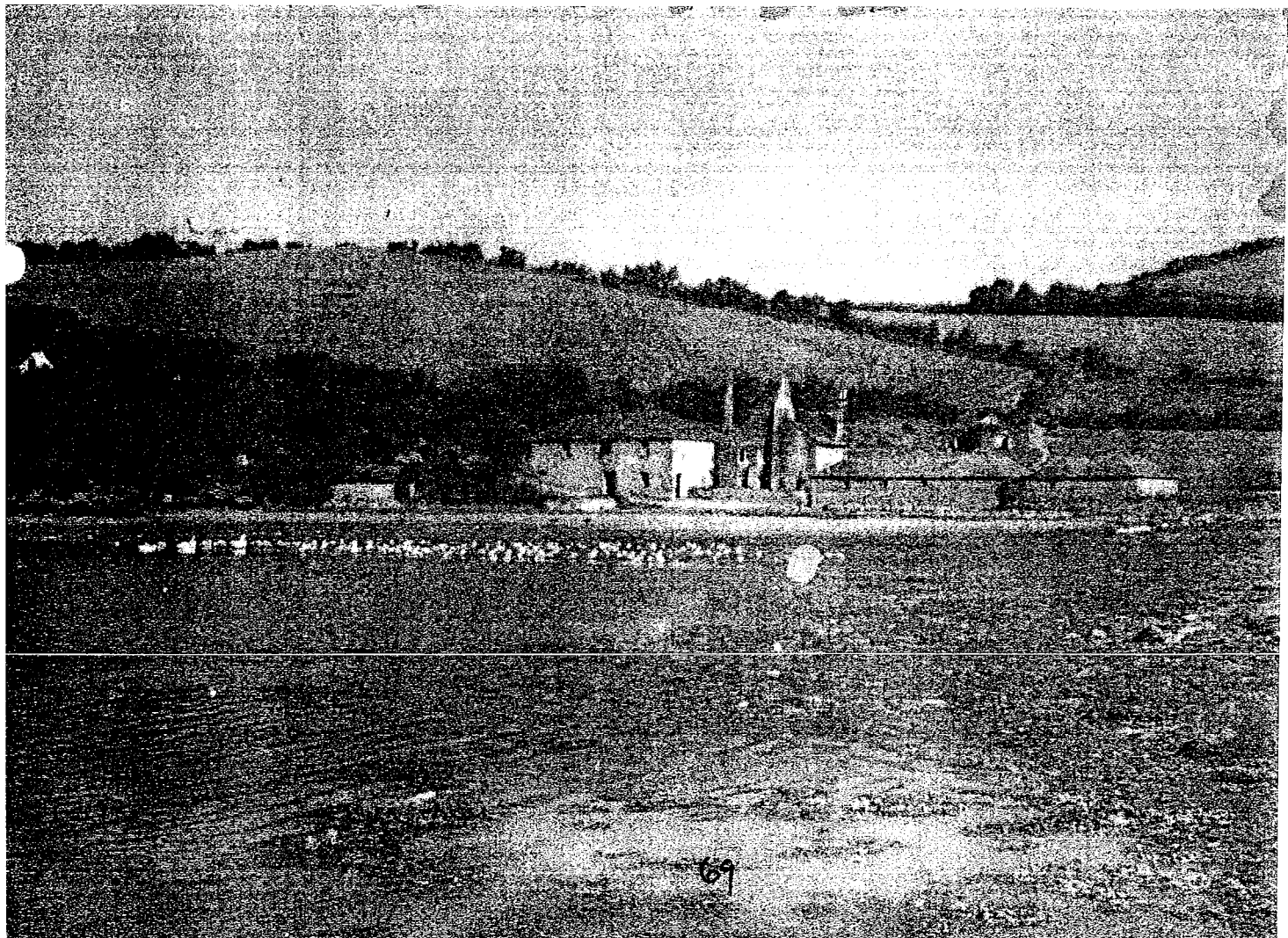




1944

Galimpton Mill. Lot 4

1930s



SRC

Re: Footpath 52 (Mill Lane)



Mrs Susanna Boot
Honeysuckle Cottage
37 Greenway Road
Galmpton
Nr Brixham
TQ5 0LZ

01803 846274 Home

30th April 2005

Dear Sir

I am writing reference the proposed limitation of access on Mill Lane, Nr Galmpton.

Firstly I would like to say that I attended the last meeting at Galmpton village hall to discuss and air my views on the proposed scheme only to be very disappointed.

It was the first time that I and a number of other people had attended a meeting of this type and was totally unaware that in order to have our say your name had to be registered before the start of the meeting. Because we were unaware of this necessity and it was not explained beforehand these people, including myself, had to stay silent when their opinions and views would have been, I'm sure, very constructive for the meeting. Because of this I do feel that the meeting was a little unfair.

I feel very strongly about the proposed "Closure," because that's what it is! of Mill Lane. I have been using this lane since 1970 to gain access to the little beach at the bottom of the lane, as did my mother. Many times have I walked, cycled or ridden on horse down Mill Lane with no problems at all in order to gain access to the beach.

I grew up in this area and regularly as young girls we would take our horses down to the waters edge and peacefully walk the length of the small beach. This is something I still enjoy now with my husband and children but for how long? My children take their bikes down to the beach, as I use to and my husband enjoys taking the dog for walks and regularly goes to the little beach. It would be a great shame if this type of access were lost.

The steps that have been provided to allow access to the beach a totally inadequate. I have friends with young children who have found it difficult when we have tried these steps to get up and down safely and I would have thought it would be almost impossible for an elderly person. The gate, that is proposed to be locked, does not allow access to the beach with cycles or horses and therefore will stop activities that have been going on for years and years. I also find it difficult to understand how it is possible for someone to decide to put up a gate and lock it over what is after all a public highway.

I find it totally unacceptable and incredibly sad knowing that not only my family but many more people will lose something that countless generations before have enjoyed and had easy and safe access to.

Yours Sincerely

A handwritten signature in cursive script that reads "S. Boot".

Susanna Boot

8 Greenway Park

Galimpton

Brixham

TQ5 0NA

3 May 2005



Dear Sir,

Re: Footpath 52 Kingswear in the vicinity of Old Mill Farm, Galimpton.

In respect of the routing issues surrounding the above footpath/right of way I have been a permanent resident in Galimpton village since 1985 and a regular user of the access afforded by the footpath since that time by walking, running routes and to facilitate use of my boat on the River Dart moorings nearby.

My daughter and friends used the access to exercise their ponies in the Mill Creek waters.

I possess Ordnance Survey map dated 1906 "Devonshire Sheet CXXVIII.1" scale 25.3 inches to 1 mile which appears to me to clearly show the route in question as suffering no restriction or obstruction from Mill Lane across the front of Galimpton Mill and onwards towards the lime kiln, further the H.W.M.O.T. line is shown with clear delineation of a route above that line, there is no suggestion of any deviation down a bank whatsoever (in respect of any access/right of way), the map therefore shows a public access to "the piggery" (local name) hereafter onto the beach to the lime kiln (running adjacent to "the piggery" wall)

In conjunction with the above I have had sight, albeit briefly of the Inspector's report (ref. SKC/A1615) and disagree with its conclusion at para. 8.52 wherein the Inspector asserts "on the balance of probabilities" that the precise line of FP 52 ends at the southern end of Mill Lane and runs down the river bank onto the beach, the map I refer to above gives no indication that Mill Lane ends as stated in para 8.5

The contour is shown i.e. continuance along to the lime Kiln.

In respect of the reference to Disability Discrimination Act para 8.46, I make the following observation, at the current time footpath 52 affords access to any disabled person who choose to use it, it has to be viewed therefore as a retrograde step to create an access down a bank thereby denying those persons access to what is the only public access to the river bank a) for the village and b) for several miles on the east bank area.

yours faithfully
Bourdy
(Brian Bourdy)

Mr Simon Clarey
DCC Solicitor
County Hall
Topsham Road
Exeter
EX2 4QD



30 April 2005.

Dear Sir,

Please find enclosed a copy of the letter I wrote to the Public Meeting held in Galampton Village Hall on the subject of the right of way at Galampton Mill.

I hope this letter will be noted at any subsequent hearing.

Yours sincerely,

A handwritten signature in black ink, appearing to read "C.J. Jackson". The signature is fluid and cursive.

C.J. Jackson
Milton Farm
111 Milton Street
Brixham
Devon
TQ5 0AS

TO WHOM IT MAY CONCERN.

20 April 2005.

I lived at Lower Greenway farm cottage for the first 22 years of my life (1944 to 1966) with my parents and sister and am very familiar with the Mill Lane area. In the 1950's the lane was not only access to the Mill it was access to the beach. There were no gates, no steps, no obstructions or animosity. The lane was widely used as part of the foot path which led to the Greenway Road via Lower Greenway Farm. It was used by locals from Galampton on route to various fishing spots along the river bank, horse riders used it and ramblers and small boys out birds nesting. My father drove his old pick up truck down to collect seaweed and we children walked it on our "short cut" to Galampton. In fact the volume of traffic was very similar as that of today.

Previous to my generation the lane was access to the Lime Kiln as well as to the commercially run Mill and prior to that was on the lower route to Greenway House via a now disused track.

The point I make is that Mill Lane is not a private drive to "The Mill" but a well used route to the river and beyond and has always been that way. Personally I may not use it many more times and neither will many of those opposing change. The bottom line however is that my grandchildren hopefully will, and their grandchildren in the future, and THAT is what this is all about.

Mr Christopher Jackson
Milton Farm
111 Milton Street
Brixham
Devon
TQ5 0AS

Mr. K. Clarey,
County Solicitor
Devon County Hall
Topsham Road,
Exeter. EX2 4XD



18 Greenway Road,
Galmpton
Brixham TQ5 0LR

May
6 April 2005

Dear Sir

Footpath 52 Galmpton Creek Ref FKC/1615

I wish to make an objection to what I regard as the diversion of the footpath and provision of new steps.

I attended the enquiry held in the Village Institute, Galmpton in February. It would seem to resident of only eighteen years that there has never been a clearly defined foot path in living memory. From time to time and on some occasions previous owners of Mill Farm have put gates across the accommodation road.

I believe that the Inspector has found in favour of the present owner of the property closing off access to the foreshore and diverting the footpath. The new steps are not environmentally friendly or safe and difficult to negotiate if one has any form of disability.

The small step beside the pillar (1965 I understand) made access to the foreshore easy and as far as I can see did not compromise the privacy of the owners of Mill Farm. Maybe it would have been better had this matter thought about before the purchase of the property.

I would hope that the steps are taken away , the "polite "notices removed and what would seem an easy and natural way onto the foreshore beside the pillar could be made the official footpath.

Yours sincerely

Margaret M. Packer .

Margaret Packer (Mrs).

Regarding
Footpath
52,
Galimpton
Mill

36^B, Stoke Gabriel Rd
Galimpton
Nr Brixham
S. DEVON
TQ5 ON Q

Dear Mr Blaney,

I have already
written once, but we have been
asked to do so again.

This is to state I have walked
the footpath on the road, straight
in front of Galimpton Mill, from the
time of moving here in 1957.
usually we went on up the field and
came out by Jackson's Farm.

I've done it continuously ^{with} ~~we~~
either friends or family ever
since, at least once a year.

Enclosing also a letter from my
son. yours sincerely.
Mr J. Grant

Footpath 52.

To those attending a meeting regarding the right of way past Galmpton Mill.

Mr Nigel Grant
12 Stoke Gabriel Road
Galmpton
Nr Brixham
Devon
TQ5 0NQ

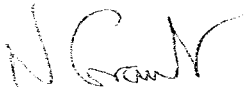
To whom it may concern,

I am disturbed to hear that there is a dispute over right of way access past Galmpton Mill. As my family have lived in the village of Galmpton since February 1957, with my mother's relatives for generations from Stoke Gabriel & my Grandfathers from an old Brixham fishing family. We have used this access as a family to enjoy freely the beauty of the River Dart for generations. Through childhood at Galmpton Primary School to adulthood friends & myself also have used this path with its right of way on many numerous occasions.

I am against any change to my given right of access to this right of way & would also like to take this opportunity to point out that is clearly shown a footpath on ordnance survey maps, which are readily available to anybody, of which our visitors to this area of which we have financial assistance to our many hospitality centres (bed & breakfast etc). I have printed two copies that have been access by digital mapping one in closer detail for those who cannot see that it is clearly designated as a right of way.

It is easily be seen to any local by the level of the deposited seaweed that the new proposed detour would render the footpath access, inaccessible for the majority of high tides. Even limited knowledge of tidal effect would deem this reroute as impractical. The access would also deteriorate would the well-known effect of global warming take place, which will take effect and the increase of the tide heights as a know side effect. It should also be assumed that when the property was purchased the access for right of way was clearly known to the purchaser before & during the transfer of deeds.

Yours truly,



Nigel Grant

Simon Clarey

From: Joan Mazumdar [JoanMazumdar@craventor.freemove.co.uk]
Sent: 04 May 2005 19:55
To: sclarey@devon.gov.uk
Subject: Footpath 52 Kingswear

Dear Mr Clarey

I dropped in my letter and enclosures for your perusal this afternoon at County Hall: 4th May.

I had not intended to re-read my letter but have just done so and noticed a typing error on my part and although I had mentioned the photograph in colour as arriving to you from another source I find I referred to it as an enclosure with my letter at another point.

1. I did not enclose the photograph, though I have a black and white colour, knowing you have a better copy.
2. The typing error - just one of those things! - occurs on page 7 para. 5 re. the Easement and the explanation. 'The legal right....or to 'present' should of course read **prevent**. A stupid slip as it gives quite a different meaning if not corrected. As a lawyer I am sure you know the correct legal interpretation but someone else reading my letter may not!

Would you therefore mind appending a print out of this e.mail to my letter.

Thank you so much.

Yours sincerely
Joan Mazumdar. (Mrs.B.N.)

Mrs. B. N. Mazumdar
"Craven Tor"
24 Langdon Fields
Galmpton
Devon TQ5 0PJ
Telephone: (01803) 844442

3 May, 2005

For the attention of:
Mr. S. K. C. Clarey
The County Solicitor
Devon County Council
County hall
Topsham Road
Exeter
Devon
EX2 4QD

Dear Sir

Re: Footpath 52, Kingswear and the Report on the Hearing by The Inspector.

I am in receipt of your letter dated 7th April 2005 received on the 9th April 2005. I do wish to make representations on the Inspector's Report, containing his Recommendation¹ which are as follows.

Conclusion p.2. of his Report

2.4 May I at the outset say that contrary to the Inspector's remark: "...that all with an interest in the dispute had ample opportunity to make their views known, ..." it is certainly not true in my case. I came to the knowledge of this Hearing and the reason for it only two days before it took place.² And completely unaware found myself taking part. I had not expected that; I thought I might be given the opportunity to ask the odd question as one from the audience. Now that I have digested the Inspector's Report and had time to collate many more facts and papers, I find I do not agree with him in, what I consider, important aspects of the 'Disputed Routing of Footpath 52 Kingswear'.

I have found over many years that local history is very important. It helped me when T.B.C. said there was no mining in Galmpton, therefore no subsidence due to it. Undertaking research I found there had been iron ore mined, though the adits were by then hidden. A mine of historical knowledge from villagers who had lived here all their lives, with parents grandparents, and great grandparents before them, produced evidence to assist my claim. Though not personally involved on this occasion, the same applied recently when a villager died of drowning. Again local history came into play. At first this is either derided or deliberately not listened to, in these cases finance became involved.

So I listen very carefully to unbiased historical evidence.

Comment:

The background: Within a letter³ the current owners of Old Mill Farm have had a "...planning application obtained as a result of which this building will be an integral part of the house".

¹ P.1. Preamble: 1.1.

² Upon which my letter to Devon C.C. was based.

³ Letter from the current owner to a Mr Halliday 7 December 2002. (stamped 0029 in the Inspector's Report)

(referred to as the old barn and old granary in common parlance, effectively the building at the foot of Mill Lane forming part of the Old Mill Farm complex.) And within the letter is described land between his buildings and Mill Lane forming part of his private property which the Inspector, in his Report and recommendation to Devon C.C., supports.

The Inspector's Report

The Inspector takes the "The definitive statement as **conclusive evidence** of the position of the path.⁴ in question, .." i.e. Route Option 1⁵.

And at **Conclusion**⁶ "I conclude that on the balance of probabilities the precise line of FP52 in the vicinity of Old Mill Farm starts at the southern end of Mill Lane, and then runs down the river bank onto the beach...Route Option 1 of the disputed line of the footpath 52.

I view the balance of probabilities differently. To clarify that I find I need to elaborate to some extent.

I stated at the Hearing and do still, that I have not walked this route, so come to the facts via maps and statements, supported by local history, with an objective eye. I am not emotionally involved. With a background of Chairing Galmpton Residents' Association in the past I am ready to help as much as I can when asked.

Refer 8.27.

The Inspector takes Appendix C FP2 as the definitive map.(0012) OS. Devon C.C. LAO76562 2000. The black line has been so heavily scored over the footpath, that it is difficult to define, however to see the FP clearly marked one needs to refer to map 0006 1905⁷. One can see where the footpath crosses along the line (fence) between fields 439⁸ and 433⁹ There is a stile at this point to get over the stock fence, I am reliably informed.

I cannot see any sign of **a track** on the definite map or on that of 1905 which can be taken as an accommodation **road** through the fields. I would have thought that a road would have some stability to it as by definition it needs to take some weight. As far as I know there is no evidence to support this across the fields.

Which brings me to the definitive statement and where I read it differently from the inspector.

The Definitive Statement. ps. 7 & 8.

The Inspector has taken this as **conclusive evidence** of the route of Footpath 52¹⁰

Page 7. The following paragraphs appear to be an interpretation that the landowners have made: **4.16, 4.17 and 4.18** and which the Inspector accepts.

Having read and re-read the Definitive Statement. I can do nothing else, grammatically speaking, but come to the conclusion that the accommodation roads are only **at**: Lower Greenway Farm, **and parallel with** the foreshore.

⁴ 8.50 page 28

⁵ 3.2.1 page 3

⁶ 8.52 page 28

⁷ OSCAR LAO76562 2002, 006 attached to: document Greenway Estate Sale 22nd Sept. 1944

⁸ though 439 is not on either of the maps one has to assume it is west of 433. See. 8.27.5.

⁹ The single black line on map 0006 and on the definitive map, 0012 appendix C. running from Upper Greenway Farm to the west of the lime kiln.

¹⁰ 8.50 p. 28 of his report.

I find it difficult to follow an alternative reasoning. I certainly understand how it is arrived at. The interpretation of the Infinitive Statement, appears to have helped him come to his **Conclusion** page 28. 8.52. "Having regard to these and all other matters raised at the hearing, **I conclude on the balance of possibilities**"

Page 21. 8.25 and 8.26 through. The Inspector's determination of the Definitive Statement. The footpath after leaving Greenway/Galmpton Road, County Road No. 13, 140 yards east of the drive to Lower Greenway Farm proceeds following the boundary hedge of Ord. No 445 **on to an accommodation road by** Lower Greenway Farm. (8.27.4.)

The **next stretch** (of the path) passes **through** Lower Greenway Farm over the surface of the accommodation road in **that location**. (the farm) and (the path) **continues** (through fields 439 and 433) **on to a private accommodation road** which runs to the kiln.

But the Statement does not say this: It says the path ...is following the boundary hedge on to a private accommodation road **by** Lower Greenway Farm and continues through the fields, 439 and 433 **on to a private accommodation road running parallel** with the shore..

Where does the **path** continuing through fields 439 and 433 **meet another accommodation road** to run on? It cannot start at the farm because the Inspector states that the **path runs by and on the accommodation road in that location**. (of the farm.)The **path continues on to a private accommodation road**. Appendix C FP2 indicates one continuous line from the main road, through the farm down to the lime kiln, where are these breaks indicated? The only certainty is: '**Path**' on Appendix C. FP2, and '**F.P**' on OS Galmpton Mill Map 1905.(0006 OSCAR)

(8.27.5) ..and the path continues on to a private accommodation road passing through fields 439 via a cross field route through field 433 (appendix C)¹¹

He goes on to state: 'It then passes over the long established **track** between Lower Greenway Farm and the old lime kiln (the accommodation road)....But that is clearly defined in the Galmpton Mill - 1905 (0006 OSCAR)¹² map as a footpath, **not a track**, which continues north to the Lower Greenway Farm.

When does an accommodation **road**, become a **footpath** and a **track** combined? The maps indicate only FP¹³; Path¹⁴ Track¹⁵ (see next paragraph.)

The footpath - **FP**- is well illustrated in map Galmpton Mill -1905 - (0006 OSCAR). A road would need some hard core or rubble of some sort, certainly something that would take weight. Compare this with OS map FP2 Appendix C. which illustrates **a track** running from inside The Mill Farm up through the orchards¹⁶: 434,, 372, into373 (1905 map for numbers).

To express The Definitive Statement as I see it: for clarity I exclude (not repairable by the inhabitants at large). At issue is **The path**, which is a footpath.

4.15.

*The **path** is a footpath. It (the path) starts at Greenway/Galmpton Road, County Road*

¹¹ Where the footpath crosses between fields 439 and 434 there is a stile I am informed.

¹² Map 0006 included in Sale notice 22nd September, 1944

¹³ Map 0006 Galmpton Mill, OS 1905 and H.M.Land Registry DN186456

¹⁴ Appendix C FP2.

¹⁵ Appendix C FP2 at Old Mill Farm: Galmpton Mill on the map.

¹⁶ **Orch** is seen quite clearly with a magnifying glass. And Galmpton had many orchards, they were cider orchards.

No. 13, 140 yards east of the drive to Lower Greenway and proceeds (the path) northwards following the boundary hedge of Ord. No. 445 **on to** a private Accommodation Road **by** Lower Greenway Farm and (the path) continues through Ord. Nos. 439 and 433 **on to** a Private Accommodation Road running parallel with the foreshore, which it (the path) follows to join the end of the Unclassified County Road by Galmpton Mill. (Stile and kissing gate on route).

To try to take another grammatical meaning, alterations need to be made.

The **path** is a footpath. It starts at Greenway/Galmpton Road, County Road No. 13, 140 yards east of the drive to Lower Greenway and proceeds northwards **following** the boundary hedge of Ord. No. 445 **on to** a Private Accommodation Road by Lower Greenway Farm which (road and path) continues through Ord. Nos. 439 and 433 on to a Private Accommodation Road running parallel with the foreshore to join the end of the Unclassified County road by Galmpton Mill (Stile and kissing gate on route) 'and' appears as '**which**'

Whichever way one reads it, it appears a Private Accommodation Road is running parallel with the foreshore.

close!
I enclose a copy map which I find useful in my study to help me establish the historical route and use of Path52 from the bottom of Old Mill Lane to the disused lime kiln.

1. From the top of Port Hill, (Galmpton) is a defined FP (footpath) leading down into Galmpton Quay, this definition corresponds to the FP from the Lime Kiln to Lower Greenway Farm (which is not depicted) but lies between the end of the footpath and the 'drive' to the farm. However map DN186456 H.M.Land Registry¹⁷ would show the complete FP from the old lime kiln to Lower Greenway Farm.

2. Turning off Stoke Road runs **Kiln Road** which passes Galmpton Quay to where it joins Mill Lane at the bifurcation. Mill Lane then runs down to Old Mill Farm. (The Water Mill) both of the same width.

3. The **width** of Mill Lane continues past the granary (old barn) at Old Mill Farm to where it reaches the piggery (bank of the creek); at that point what the inspector refers to as The Beach¹⁸ runs along to the kiln. The 'beach' being that stretch of land between the mean high water mark and the bank of the creek: and the shoreline, that area of land which lies between high and low watermarks at (ordinary) high tide.

4. That area of beach is well illustrated in the colour photograph (which I understand has been sent to Devon C.C.) from the 1944 Sale catalogue it beautifully illustrates the slope down past the granary to the level plane of land as it passes the piggery wall.

5. Not until we reach Appendix E is a defined route of FP52 given: Option 1. The top of the map represents the footpath with a **line and horizontal stripes** = route of FP 52 Kingswear.

It is extraordinary to see between: 'This line represents the river bank' and 'This line represents mean high water ordinary', the **defined footpath**, (illustrated with crossed horizontal lines) adjoining the mean high water ordinary line, **leaving a gap between it and the river bank.** Certainly any logic would expect the path to be marked as directly adjoining

¹⁷ Attached to the Sale notice 22nd September 1944.

¹⁸ Inspector's Report Footnote 2 page 1.

the river bank where there is a stone wall; seen in the photograph previously mentioned (enclosed), from whence it slopes up to the foot of Mill Lane, and that area is quite firm I am assured.

Coming to 4.18, Page 8. 'This clause could not be taken as having referred to an accommodation road between the old lime kiln and Galmpton Mill; there was no evidence that such ever existed, and no evidence of any need for one.'

- It has been stated in the Infinitive Statement that from Lower Greenway Farm an accommodation road existed along which a foot path ran.
- Therefore if as an interpretation of the Infinitive Statement an accommodation road ran from the lime kiln, parallel to the beach, up to Mill Lane then along its length would run the footpath.
- To expand **on a need** for an accommodation road taking this route we need to go back to the Sale Notice of The Greenway Estate, 1882. I quote from my copy:¹⁹

at) p.3 On the Estate are large quarries of hard building stone. Of which most of the buildings on the property are built and good limestone with various kilns, very valuable for agricultural purposes.

at) p.3. The Estate. Para: "Let to first-class Tenants....the whole of village of Galmpton (with a trifling exception) including the Manor Inn²⁰ and Smithy in the Village, the shipbuilding Yard with (New) Dwelling House and Premises at Galmpton Quay²¹ on the River Dart as well as the Water Corn Mill with House and Homestead at Galmpton Creek (page 12) other farms etc.....

at) p.6. At Galmpton Quay there are: **Two large quarries of building and limestone.** From which the stone was obtained for the erection of the principal buildings on the Estate. The limestone is used by the **principal tenants** on the estate for lime-burning, without payment, and there are several kilns which are used for this purpose.²²

At this period in the history of the Estate horses and carts were in use for hauling material. With the road from Galmpton quay being named Kiln Road, it suggests - on the lines of possibility - that lime stone was transported from the quay along Kiln Road down to Mill Farm, from there via an accommodation road (running parallel with the foreshore) proceeded past the farm along to the kiln for burning, for use by the farm. Lime would not be burnt near the farm where there are cattle etc. as it could burn them. Further more the lime was free to tenant farmers. The Tennant farmers along the route of the beach were entitled to take and burn lime too at the kiln for their use.

There are kilns at Greenway House, and various other places in the area including Galmpton Quay near the quarries, where it is possible that lime was also crushed into lime powder for mortar purposes etc. Also for 'painting' - white-washing buildings. Burnt lime was used to wash down the inside of various buildings on a farm to disinfect. Cow sheds in particular etc. Also kitchens etc..

There is a stile at the stone wall where FP52 from Upper Greenway Farm meets the accommodation road at the lime kiln. It could be reasonably assumed that the farmer from Lower Greenway Farm having to collect the lime from the kiln on the foreshore side, might have encountered difficulties. And there is a steep climb up to the farm too. In view of the

¹⁹ Relevant pages copied and enclosed.

²⁰ Page 13, built in 1869.

²¹ Page 12, At Galmpton Quay.

²² Refer page 3 again.

kilns in the Greenway House grounds, as a tenant farmer one would have expected that he would have got his lime from there.

Lime stone could so easily have been collected from Galmpton Quay to be delivered by river to Greenway Quay. It is so close to the Lower Greenway Farm and the Greenway House Grounds etc. etc. where there are kilns that it would make more sense for the lime to be got there.

As the property (Mill Farm) might have been sold, or still tenanted, during the 1882 Sale of the Greenway Estates, it would be natural that the Estate would protect the passage for the purpose of the tenant farmers to get to their fields along the beach past Old Mill Farm. Galmpton Farm had a lease for 14 years from 1870²³ Several properties had leases. There were no motorised vehicles used in those days. Horses and carts were used. Neither would the Estate have expected walkers using the footpath for work purposes, to clamber up and down a bank at A! They just continued past the farm buildings.

Never by any stretch of imagination could vehicles access the accommodation road where the new steps are built. In fact the photograph would establish a slope from Mill Lane well past the granary taking the carts to a flat plane in a straight line near the piggery.

The Sale Notice of The Greenway and Galmpton Estate, 1882 specifies at 17: General Remarks:-

The Property is sold subject to all legal Rights of Way (if any) **or other easements**, that exist.

I would respectfully suggest that the accommodation road running along (the beach) and parallel with the foreshore could certainly be classed as an easement: Legal - the right to use something, especially land, not one's own.

Years ago there was no public transport: people took the line of least resistance via footpaths, crossing fields and over stiles. Locally, from the top of Port Hill to Galmpton Quay that path would carry on down Kiln Road to the bifurcation at Mill Lane, carrying on down Mill Lane past Mill Farm using the accommodation road, Option 3, and then up to Lower Greenway Farm via the footpath.

And now I have to come to local history.

Taking as the correct route of the foot path 52 as commencing at A where the new steps have been placed (Route Option 1), the inspector defines 'trespass' over the disputed route onto the beach and foreshore between X and Y, Appendix D, by people using vehicles, horses and on foot.

Yet vehicles have for decades, and local history has it the farm at Galmpton, taken horses and carts, along Kiln Road from Galmpton quay proceeding down Mill Lane onto the beach to get to fields they tenanted. (Horses and carts were being used by farmers past 1944 until they were able to buy tractors around the 1950s.) This would be in line with an accommodation route to and from the kiln. Kiln Road was used this way even by motorised vehicles for access to the fields until between the 1960s and 1970s when there was a land slip on the Cliff Cottage side of Kiln Road, narrowing it, making it unfit for vehicles to navigate since when it has deteriorated.

²³ Pages 8 & 9 The Greenway & Galmpton Estate notice of Sale: 1882.

These country roads were narrow. They still exist to and between farms in this part of Devon even now with grass growing in the middle of the road or lane because of their infrequent use except by farmers: I have walked and driven along several, through farms, in between the buildings, with no let or hindrance because **all** vehicles and pedestrians have a right of way due to the use of these roads over centuries.

Looking back to the 1800s. It is a bit fanciful to suggest that tenant farmers near Galmpton Quay would be expected to reach their stock and fields **beyond** Old Mill Farm on the shoreline route by taking their horses and carts all the way through Galmpton out to Greenway and then down Mill Lane to get to the fields, when there was a direct route on their doorstep via Kiln Road and the bottom of Mill Lane past the Old Mill. What was the point? Carts from Greenway via Old Mill Lane would have needed braking all the way down! It was not possible to get to their fields from Mill Lane en route from Greenway.

I refer back to the 1882 Notice of Sale, The Greenway & Galmpton Estate, page 12. 'Galmpton Corn Mill and Land. The Mill, built of Stone and Slate, contains 2 pairs of Stones, driven by an Over-Shot Wheel, about 19 ft in diameter.' The mill was still operating even at 1882

That would suggest two uses to the beach route from Mill Lane via Option 3: one to carry lime stone for burning at the kiln and the other for tenant farmers to get to the fields. No farmer who has ever used a horse and cart on an incline or slope would attempt it without a form of braking. Usually there was a horse tethered to the cart, and a lead horse led by the farmer, or a farm hand. To get onto the beach at Old Farm Mill they would follow a straight line to the lowest level of the beach at Y. They would not turn off a slope sideways onto the beach, I am told it would be dangerous.

So here we have two points to dwell on. The route of path 52 follows an accommodation road along the beach for use by horses and carts for the carriage of lime stone to the kiln and also for use by tenant farmers to get to fields beyond the Mill buildings. This route perhaps an Easement by the Estate²⁴. 'The legal right to use something, especially land, not one's own, or to present its owner making an inconvenient use of it.' The route being from the bottom of Mill Lane; X taking a direct route to Y (option 3) where it followed the beach to the kiln.

And of course there is a long history of walkers joining the beach down the slope past the Granary at either C/B or ²⁵Y. The former if they were staying on the beach and the latter if they were carrying on to walk further afield up to Lower Greenway Farm.

Late 19th Century²⁶ The Gig House.

The Inspector states: 'One objector, though she had hitherto not walked the route, spoke of this as being a gig house and, noting its position **on shore in a mill yard**, I take that gig more likely referred to a light horse drawn carriage than to a ship's boat.' I am sure I did not note **its position on shore in a mill yard it does not make sense**. He does not say that I mentioned gig as being a boat, which I did. What I now know, see Maps 0007 OS1954 and 0006 1905 as the small semi circle on the beach was the stone surround to the dung heap, which I understand Devon C.C. will be receiving from another source.

²⁴ Page 17 1882 Sale particulars Greenway & Galmpton Estate. The Property is sold subject to all legal Rights of Way (if any) or other easements, that may exist.

²⁵ Appendix D. map.

²⁶ P. 17 Inspector's Report. 8.8

The Boat House: it was by deed handed over to the Duncans during their ownership by the present owners of the foreshore to whom it belonged. Refer HM Land Registry Title Number: DN186456 page 2. Para. 5. (18 June 1999)

Asked to study very old atlases/maps 'out of the blue' needing a magnifying glass, which was very little help - one 'map' housing the Mill Farm on its edge - and with just a few minutes to absorb all this, it is possible I thought what I now know to have been a dung heap might have been a Gig House. I had never studied such material before...

Now, having had time to go through all the notices of various farms and buildings, I find in The Greenway & Galmpton Estate 1882 Notice of Sale, all Gig houses are contained **within** the farm premises. To exemplify this: at page 12 describing **Galmpton Corn Mill** and Land, 'Two New Ranges of **Outbuildings** built of Stone and slate, viz:- **Gig House**, 4 Piggeries, Coal House, etc; also Cow Houses for 4 Cows, Stable for 3 Horses, Root House, Cart shed ..and various enclosures of land etc...' I agree with the Inspector that 'Gig' would refer to a light horse-drawn carriage: generally open with two wheels. If the map went back in time, which from their fragile state and delicacy they did, then the Gig house was new in 1882.

To conclude:

Statutory declarations: page 8

4.19.1. Mr E. L. Wildy declares that since 1 May 1951 he had "**treated**" the land over which options 1, 2, and 3 for the route of FP 52 would each run as belonging to, and within the boundaries of, Galmpton Mill..... I find the use of the word 'treat' interesting. It suggests that he didn't know, by lack of any adverse claim, whether the land was in the boundaries of Galmpton Mill or not.

Refer Greenway Estate Part of Sale: 22nd September 1944. Annex F.

HM Land Registry. Title Number: DN186456 A: Property Register

Mr Duncan occupied Old Mill Farm at 7 October 1985²⁷ at 20 December 1985 (at 4) 'Notice entered in pursuance of Rule 154 of the Land Registration Rules 1925 on 20 December 1985, that the registered proprietor claims that the land has the benefit of a right of way by day or night with or without vehicles and with or without animals over the land shown tinted brown on the filed plan.' This could be interpreted as advising his successors in Title to a right of way of which he was knowledgeable. Or it could also be he was 'Claiming' a right of way for himself to avoid historic use of Option 3 of the land, as he tried to block the route which people ignored.

Refer: 0029 A letter from Mr. Robert Chaston 7 December 2002, in which he states: Tony Duncan, was unconcerned at members of the public making their way across his property to the beach' That can only be answered by those people who knew Mr Duncan and regularly used the route Options 2 and 3. Statements supplied to Devon C.C.

Letters from The County Solicitor Devon C.C.:²⁸

29th April 2003, and 12 May 2003 to Windeatts Solicitors acting for the Owner of The Old Mill.

It is stated quite clearly by the County's Legal Dept., that the true route should be: Option 3 as at²⁹.

With the subsequent S.143 Notice. S.143 Highways Act 1980 - Footpath 52 Kingswear.

Noted is: 'It is of course still open to your client to seek a formal diversion of the route under S.119 Highways Act 1980'

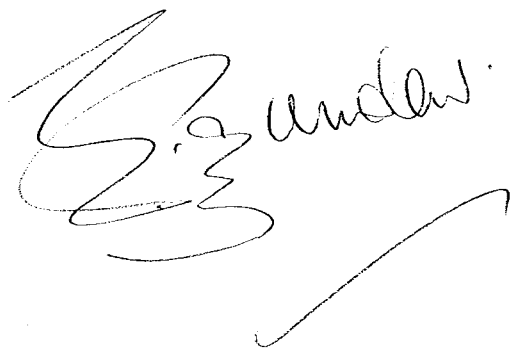
²⁷ page 5 of Inspector's Report

²⁸ Part Sale Greenway Estate 22nd September 1944.

²⁹ Page 3. 3.2.3. Inspector's report.

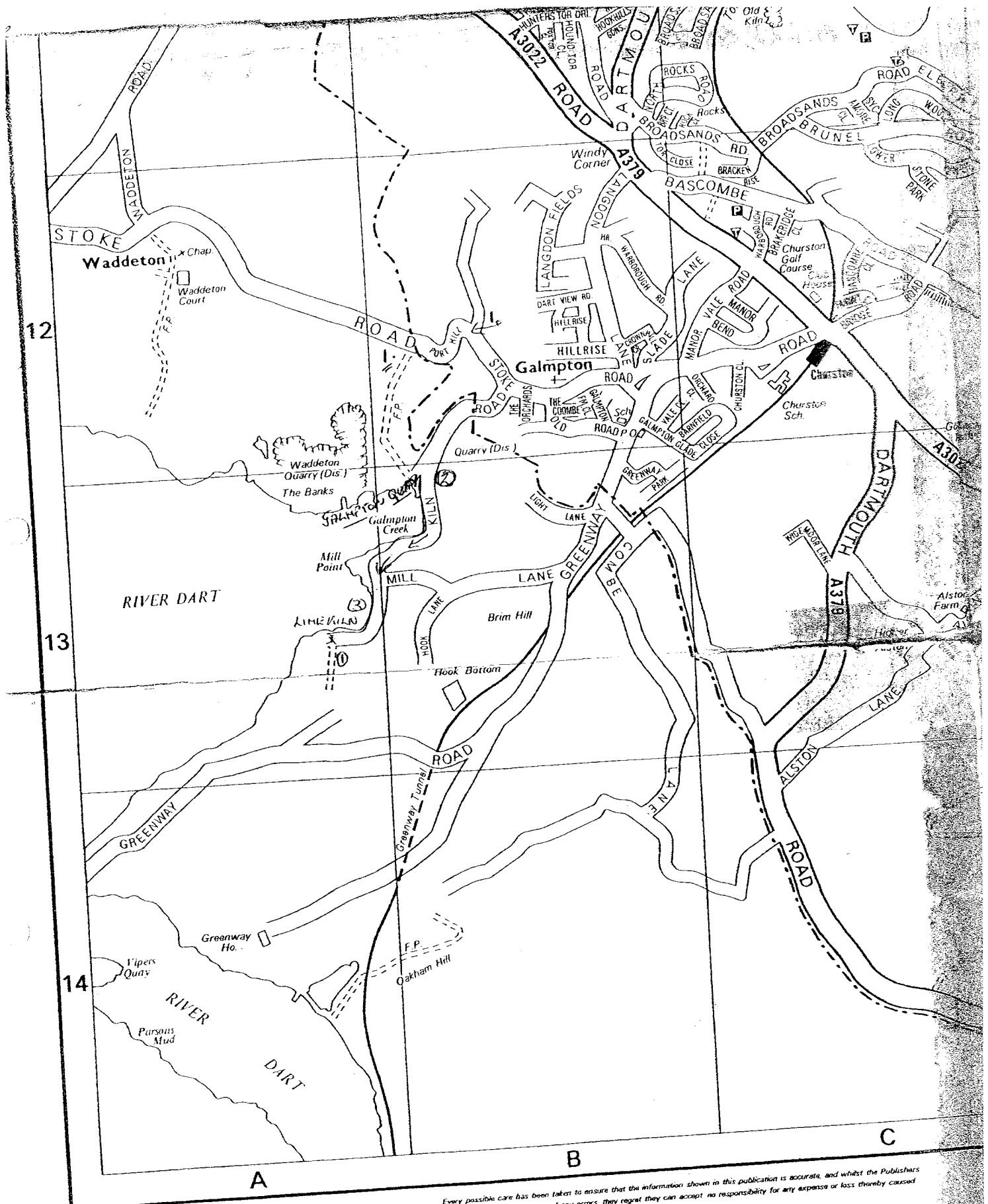
Finally, I have no pecuniary or other interest involved in the matter, excepting to complete that which was undertaken by me when first approached. I regret the length of this letter, unfortunately needed to express my personal conclusion.

Yours faithfully,

A handwritten signature in cursive script, appearing to read "E. J. Andrew". The signature is written in black ink and is positioned above a long, sweeping horizontal flourish.

Enclosures:

1. The Greenway & Galmpton Estate 1882 Sale particulars.
Photocopies of pages referred to: 3, 6, 8, 9, 12 13 and 17
2. Copy map Torbay A-Z depicting Galmpton. Showing Kiln Road, running from Stoke Road, Galmpton, via Galmpton Quay, down to the bifurcation at Mill Lane, which Lane continues to Old Mill Farm; where the 'road' runs over the beach to the Lime Kiln at which the footpath to Lower Greenway Farm is illustrated.



© COPYRIGHT

Every possible care has been taken to ensure that the information shown in this publication is accurate, and whilst the Publishers would be grateful to learn of any errors, they regret they can accept no responsibility for any expense or loss thereby caused.

Map 10000 88

SRC

32. Barnfield Close

Galington

Brixham

Devon

Ref Footpath 52
Mill Farm
Galington



TQ5 0WY

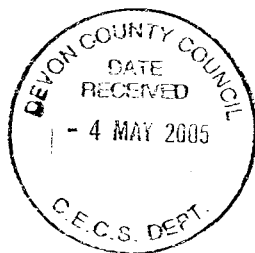
2-5-05

Dear Sir

After the 2nd world war finished:
with my Parents us children we walked
down Path 52 Pass the Pigs Houses on to
the beach to have a Picnic, Play Games
and when the tide was out we
then scraped for cockles in the mud
flats.

Yours faithfully
R. Suscombe

Driftwood
Wood Lane
Kingswear
Dartmouth
TQ6 0DP



3rd May '05

Mr Clary
County Solicitor
Devon County Council
Topsham Road
Exeter

Dear Mr Clary

Re. The Non-Statutory Hearing on FP 52, Galampton Mill, by Mr Shercliff. April '05

I am writing to object to a. the conduct of the non-statutory hearing on FP 52
and b. to the interpretation of the definitive map 4.15.

- a. Mr Shercliff opened the meeting by giving an outline of the procedure, and then asked of those present who wished to speak on either side to identify themselves, and the names were recorded. This took about 15 minutes. Towards the end of this time a number of people arrived (late), and during the next 10 or 15 minutes some of the late arrivals tried to speak and offer opinions. The chairman became very formal at this point and told the latecomers in no uncertain terms that they had missed their chance to get onto the speakers list, and that was that! On hearing that they would not be allowed to speak, a significant number of people got up and walked out saying it was a waste of time if they couldn't contribute. In terms of natural justice, and in view of the fact that this was supposed to be a relatively informal hearing I think the chairman was rude and heavy-handed, and should have allowed the latecomers to join the speakers' list.

- b. As the evidence from the 2 sides appears somewhat conflicting, the chairman placed great importance on the interpretation of the Definitve Statement (in conjunction with the definitive map), and in my view he misinterprets much of this!

I will use 3 different fonts to clarify my view:

1. THE DEFINITIVE STATEMENT
2. *Mr. Shercliff's interpretation*
3. My interpretation

Page 22. Para. 8.27.5 "ON TO A PRIVATE ACCOMODATION ROAD (NOT REPAIRABLE BY THE INHABITANTS AT LARGE) BY LOWER GREENWAY FARM", *the next stretch passes through Lower Greenway Farm over the surface of the private accommodation road in that location.....* I agree, "AND CONTINUES THROUGH ORDNANCE 439 AND 433 ONTO A PRIVATE ACCOMODATION ROAD (NOT REPAIRABLE BY THE INHABITANTS AT LARGE) RUNNING PARALLEL TO THE FORE SHORE WHICH IT FOLLOWS TO JOIN THE END OF THE UNCLASSIFIED COUNTY ROAD BY GALMPTON MILL". *It then passes over the long established track between Lower Greenway Farm and the old limekiln (the accommodation road) which runs first, on the headland route along the eastern side of field 439 (un-numbered in appendix C), and then on a cross field route thro' field 433 (0136 in appendix C).*

As the definitive statement states, the path down from Lower Greenway to the Lime Kiln goes "on to" the P.A.R. (and not on), and that the P.A.R. is parallel to the foreshore, I would suggest the P.A.R. begins at the Lime Kiln and goes parallel to the foreshore from D to AX, (on appendix D), to the end of the county road by Galmpton Mill.

The Inspector goes to considerable lengths to make light of the R.O.W. between the old Lime Kiln and Galmpton Mill. (see 4.18, 8.11, 8.16, 8.17, 8.18, / 8.27,-3,-4,-5,-6 and 7) and if his interpretation of this part of FP 52 is wrong, I believe it throws into question a large part of his interpretation of the rest of FP 52.

Yours sincerely



Dr. B. C. Tulloch
Chair of Planning, Kingswear Parish Council



Warkosa Lodge
Stade Lane,
Colampton,
Nr. Buxton.
1st May 2005

Dear Mr. Clary,
re. Mill Lane, Colampton

I attended a meeting at Colampton Village Institute on Wednesday 27th April. My family has lived in the village since 1965 and I currently represent the Church and Colampton Ward on Turkey Village Council. (I served as Mayor of Turkey 2003 - 2004).

Approximately forty villagers attended this meeting, called by Councillor Jonathan Howkins to consider the matter of the pathway / access to the 'beach' at Colampton on the River Dart.

I requested that those present who had

used direct access from Mill Lane onto the Beach, prior to 1988, should raise their hands - some twenty of those present did so. Most of those present were known to me personally and I cannot think of any reason why they would not respond truthfully. (The remainder were those who have only ^{more} recently moved into the village).

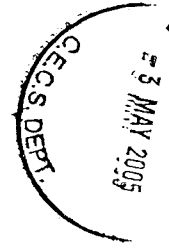
For my own part, I can certainly recall crossing the 'Beach' directly from Mill Lane on one occasion, although I cannot recall exactly when this was.

I hope that this information is helpful to you and I hope that it will be possible to re-establish direct access from Mill Lane onto the Beach.

Yours truly,

Nick Bye (Landlord)

Hoodown House,
KINGSWEAR,
Dartmouth TQ6 0AZ.



Tel : 01803 752248

E Mail : Richard.Parkes3@bopenworld.com

28 April 2005

S.K.C. Clarey Esq.,
Devon County Council,
County Hall,
Topsham Road,
EXETER EX2 4 QD.

Dear Mr. Clarey,

FOOTPATH 52, KINGSWEAR

I have studied the inspector's report on the disputed routing of Footpath 52, within Kingswear Parish, and last night I attended a meeting in Galmpton at which this path was discussed. **I must agree with the inspector's comments and Recommendation** from my own experience of this path in the past. Incidentally the map handed out at the meeting (copy attached) is unlike that produced by the Inspector and attached to his report at Appendix D.

In 1987 I was elected to the Kingswear Parish Council representing Hillhead Ward in which I still live. I was given certain responsibilities for footpaths within the Ward, and I walked most of the paths to the West of the A 379 road, within the Parish. We wished to create a new footpath on the West side of Waterhead Creek, so that residents who rented dinghy moorings on the Creek had legal access to their craft. As a result of this I made contact with a lady who worked on Footpaths at Devon County Council. I regret that I have forgotten her name, but I did know that she was getting married and would move away shortly. Incidentally we decided that my proposed footpath alongside the Creek was not a viable idea. However I had made a useful contact at Exeter.

In May 1988 I was elected as Chairman of Kingswear Parish Council and remained in that position until I retired in late 1996. The Council had decided that the inspection of all footpaths in the Parish was necessary, to determine safety factors and adequate sign posting. We had also been told of a long term DCC interest in establishing a "Round the Peninsular" footpath to link the Dart with Torbay within the peninsular on which Kingswear, Galmpton and Brixham stand. That Summer I walked the most significant paths, some with my Vice Chairman, the late George Cordery, others with councillors of Hillhead Ward.

We had been told that the Galmpton Creek – Greenway footpath might be contentious, so the next time that the lady from DCC was in the area we invited her to join two of my colleagues to determine the route of Footpath 52. We were joined by two Parish Councillors, the late Colonel Stephen Love and the late Mr. George Philip. We drove to Galmpton Creek where three of us left the car, which was driven by George Philip to the Lower Greenway Farm area, and he walked from there to Galmpton Mill (Old Mill Farm) to join us there, and we eventually rejoined the car at Greenway.

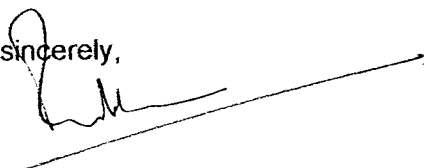
Our route past the Boat Yard and Cliff Cottage was not disputed and we joined Mill Lane where there was a sign saying "No Turning Beyond this Point". I recorded all our findings in a Stationery Office notebook, which I subsequently lost, but found recently at the bottom of a cupboard at home. My pencil notes of this part of the Path show that we walked down the hill from the Mill Lane junction, where we met Mr and Mrs Duncan. They showed us the slope from their gate on to the river bank and the hand painted sign which read "Footpath to Greenway Ferry →". I made a note at the time that the slope was not steep but could be slippery in Winter. We saw the stone gate post on our right and the grassy area opposite the front door where people could have walked on to the river bank. Because there was a very adequate access to the river bank outside the property's boundary, we suggested to Mr Duncan that a light fence on the grass bank would deter casual walkers. He did say that some friends had ponies and liked to ride that way, so we suggested that one length of fence could be detachable, so that "permissive" riders could pass. This was done in 1989. Beyond that point the foot path route is not in question, although local people have talked about driving cars and carts. This is presumably without foundation as we are considering a Public Footpath, not a bridle way or a road.

We asked Mr Duncan about reference to the public footpath through the grounds in the search documents when he bought the house. He said that there had been no such reference and he would not have bought a house if he thought that there was a footpath through his garden and past the drawing room windows.

We did discuss this route with the South Hams Coast and Countryside Service, whose ranger lived in Kingswear at that time, and had done a lot of work on FP 52. He confirmed our understanding of the correct route.

In retrospect, many years later I am convinced that we saw a perfectly acceptable route outside the boundary of the property, and having been back there recently to look at the disputed route, I would find the route from AX to the river bank very acceptable.

Yours sincerely,



RICHARD B. PARKES

Mr Simon Clarey,
DCC solicitor,
County Hall,
Topsham Road,
Exeter,
Devon
EX2 4QD



44, Greenway Road,
Galmpton,
Brixham,
Devon
TQ5 0LZ

28th April 2005

About: Footpath 52 – Galmpton

Dear Mr Clarey,

I have lived in Galmpton since 1984. I have always enjoyed walking in the surrounding countryside and on the local beaches. I'd like to state that I have been a regular user of Footpath 52 since 1984.

As a family, we have regularly walked along Footpath 52. In the early 1990's, we especially valued Footpath 52; we could gain easy access to the beach with our children using our "old-fashioned" heavy pushchair. With our young family, we could walk to this beach from our house without needing to use the car. This made a quick break easy to take. We often took breakfast on to the beach on Sundays throughout the year.

I hope this statement of continued use of Footpath 52 in Galmpton will help DCC in their forthcoming decision.

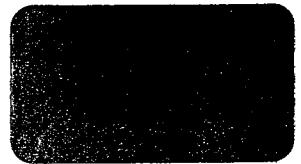
Yours faithfully,

A handwritten signature in cursive script that reads "Stuart Miller".

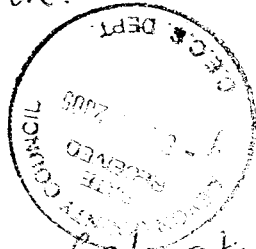
Stuart Miller

SF FOOTPATH 52 @ GALMPTON MILL

TO THE ATTENTION OF DCC SOLICITOR.



29.04.05



Dear MR Clare,

We have lived in Galmpton since July 1959 and since that time we have used the footpath on a regular basis dog walking and with family and friends.

Access was down Mill Lane across the forecourt of GALMPTON Mill directly onto the beach, to continue either beyond the lime kiln or up the fields to LA Greenway Farm.

In the 1970's we occasionally held BBQ's on the beach by the boat house - using the car all the way down to the beach. For 39 yrs we used the path directly onto the beach with either my own children + later grandchildren in a pushchair especially in the summer months when the local beaches were crowded.

Then in approx 1998, Mr DUNCAN the then owner of Galmpton Mill put a barricade across the beach side of the forecourt + opened a gap in the hedge just before the 5 barbed gate post. This enabled access with a pushchair with a little difficulty.

However since the present owner has moved the opening higher up the road, which involves steps + a sharp bend, it is almost impossible to negotiate a pushchair with a small child in it down the steps and not easy for pedestrians who are less able bodied to gain access to the foreshore.

My husband + I feel quite strongly that the original access via the courtyard (or at least the opening near the gate post) should be reinstated, as that was the original public right of way.

Yours sincerely

97

M. M. i



19 Greenway Park,
Galmpton
Nr. Brixham
TQ5 0NA.

Dear Sir,

Although I am not a true local, I was first here during the war when my father was stationed at Kingsweers & have many happy memories. I moved, with my family, to Paignton in 1972 where we had a bakery business. Two of our children attended Galmpton school & I first started walking the area of the creek & the footpath 52 to Galmpton Hill when my daughter had her pony in about 1981. I have walked this area regularly since with my dogs.

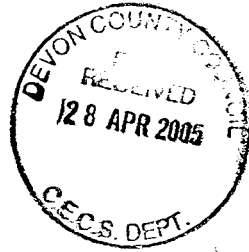
I have now been an actual resident in Galmpton for 13 years & I feel very strongly about this issue.

Yours faithfully
Margaret R Lowe

MARGARET R. LOWE (Mrs)

High Dolphin,
Dittisham,
Nr Dartmouth.
Devon

TQ6 0HR.
26-04-2005



Ms. Simon Clarey,
Chief County Solicitor,
County Hall,
Topsham Road,
Exeter.

EX2 40D

Re: Right of way at Mill Farm, Galampton, Nr. Brixham.

Dear Sir,

I understand that the present owners of Mill Farm R.A. Chaston and K. Chaston are saying there has never been a public right of way across the shore line in front of Mill Farm.

Well, I was born in Galampton on 31-03-1934. My Father, who was a retired Bank Manager, used to take me for walks all around Galampton and the surrounding country side. One of our favourite walks was down Mill Lane, past Mill Farm, over the stream and on to the lime kiln. On the way back we used to have a picnic and skip stones before returning home via Mill Lane. In my teens and early Twenties I used to ride ponies along the same public right of way.

Walking from Galampton (99) on Footpath 52, Kingswear, the other day I noticed some changes.

Before reaching Galampton Mill Farm a flight of steps lead on to the fore shore, and a few yards further on in Mill Lane a stone pillar with hangings has been erected and a five bar wooden gate is alongside. And on the fore shore outside Mill Farm there is a wooden fence, presumably to keep people away from their property.

It seems to me that the present owners of Mill Farm, Galampton are trying to set a precedent, hoping to divert the public right of way - away from the path in front of their property.

I sincerely hope this will not come to fruition, the original right of way should be retained.

Yours sincerely,

F. Mary Quick.

MARY QUICK.

Maiden name: Simpson.

27th April 2005
Mr Simon Clousey
Chief County Solicitor
County Hall
Tops Ham Road
EXETER EX2 4OD

High Dolphen
Dittisham
Nr Dartmouth
Devon TQ6 0HR



Dear Sir,

RE: Right of way at Mill Farm Galmpton Brixham Devon

I understand that the present owners of Galmpton mill Farm are claiming that there has never been a right of way (Track 52) alongside their property.

I am writing to dispute this claim.

My first walk from Greenway Quay to Galmpton Creek was in 1942 via Greenway Farm — Galmpton Mill Farm.

I worked as an apprentice in the North side Boat yard for 4½ years.

Subsequently I worked in the South side Boat yard from 1957 — 1970 and walked No 52 Track on many occasions Track 52 was not altered in 1970.

On most days we went by boat from Dittisham to Galmpton and back, but walked Track 52 when a gale was blowing or the tides were low.

Recently I walked from Galmpton Creek to Galmpton Mill Farm and found a flight of steps leading from Track 52 to the beach, with a diversion sign diverting the Track onto the beach. Further on a stone pillar has been erected with gate hangings.

In later years the Pillar and hangings could cause a precedent to be set, further on a wood fence has been built obviously to keep anyone away from their property.

I hope all these obstructions can be removed making the Track as it was in years past.

Yours sincerely,

E.W. Quick.

E.W. QUICK



Chairman RODNEY LEGG Charity no 214753 General Secretary KATE ASHBROOK
Ronald Lovell. 'Local correspondent for Torbay'.
Chy Lowen. Heath Road. Brixham. Devon. TQ5 9BH.
Tel: 01803 856941

25 April 2005

Mr. SKC Clarey
County Solicitor Department
Devon County Council
County Hall
Topsham Road
Exeter
Devon
EX2 4QD



Dear Mr Clarey

Re: The Disputed Routing of Footpath 52 Kingswear in the vicinity of Old Mill Farm, Galmpton. Reference: SCK/A1615.

In reference to the report of Mr. R F Shercliff. Inspector appointed by the Chief Executive, Devon County Council.

Page 1. Case Details. The precise route over the ground taken by a length of the definitive footpath 52 Kingswear, in the vicinity of Old Mill Farm, Galmpton is disputed. Upon attending the non- statutory hearing and reading the content of the report, it is more weighted in establishing wither there was a track running from Old Mill Farm to the Lime Kiln, in establishing the route of the footpath 52.

A non-statutory public hearing N/A.

Objectors. N/A.

The purpose of this report N/A.

1 Preamble

1.1.N/A

1.2.The definitive map and statement of the area, and evidence of continual usage by the public with well-established marking of usage is in line with the definitive route.

1.3 N/A

1.4. The owner of the land did not acquire the property until 2000, therefore this must be treated as and assumption on his part, and therefore not treated as supportive evidence.

1.5. The two professional organisations have witnessed the definitive route, for a period exceeding 1958, witnessing on occasions it being illegally blocked by the owners of Old Mill Farm, which in its self has not been a deterrent as the obstruction across the route joining the piggery was identified as a broken stile, which at that time

25A Bell Street, Henley-on-Thames, Oxon RG9 2BA
tel: 01491 573535 fax: 01491 573051 e-mail: hq@oss.org.uk website: www.oss.org.uk

102

as very many stiles were broken at time it having no significance. On most occasions the two wooden struts were found dislodged from there supports.

1.6. The landowner had no knowledge of the definitive route, and therefore what was on paper cannot be accepted as evidence of what happened on the ground.

1.7. N/A.

2. Procedural Matters.

2.1. This is the only legislation that applies to both inquiries and non-statutory hearings, and as an act of parliament it therefore must apply.

2.2. Devon County Council should have fulfilled this act. The DCC legal officer present informed me that he had released them to the Parish Council in good time. The Wildlife and Countryside Act 1981. Schedule 15:Procedures in connection with certain orders under Part III. (5) Sub-paragraph (2)(b) and (c) and where applicable, sub-paragraph (4) shall be complied with not less than 42 days before the expiration of the specified in the notice. As a notice was supplied and posted it should have fulfilled that criteria, as there is no other specification for notices within the Wildlife and Countryside Act 1981.

Conclusion

2.3. Reference was made to the Wildlife and Countryside Act 1981, above 2. 2.

2.4. This action put a limitation on circulation, informing only to those persons within the Galmpton Area. Walkers from Torbay or other Devon Areas, were isolated in as much as being put in a position of not being aware of the action being taken, whereby they most probably used the route on more occasions than locals as part of organised walks. It has always been an agreement that DCC would instruct both the Open Spaces Society and Ramblers' Association, relating to all footpath matters; on this occasion neither were informed.

2.5. The comment "It was apparent to me that the dispute was widely known in the local area". This is a Definitive Footpath for the benefit of all walkers, I myself was made aware of it nine days prior the hearing, and the Ramblers' Association seven days before the hearing, resulting in either of us consulting our membership, in obtaining background information in making our decision. So why was Mr. Shercliff able to make this statement, what evidence did he have or produced to support this claim?

2.5. On receipt of Mr. Shercliff report, 28 days is not sufficient to examine the content, and research evidence. To date the Ramblers' Association Footpath Officer for Torbay has not been notified.

3. Description Of The Route

3.1 N/A

3.2 1. The landowner introduced the ten steps after 2000 when he took up residence of the Old Mill, blocking and illegally diverting footpath 52 Kingswear.

3.2.2. Attached is a letter from Mr. J. Milne 7 Greenway Road. Galmpton. He has become an expert on Lime Kilns in the Torbay Area. Who states "The Duncans, we think, closed the gate and made the original side opening which was barely wide enough for a push chair". See Appendix 001.

3.2.2. The Devon stone gatepost within its construction and part of the mortar used has the date 1965 inscribed. Therefore the blockage and illegal diversion took place after that year. Mr. Shercliff witnessed this inscription but has not referred to it.

3.2.2. *The Appendix 002. Photograph taken in 1965. The lady was a tenant in the Granary. It shows the pillar, with no route to the left, there is no fence between the beach and the metalled track, and the gates are in an opened position, as there is no alternative route.*

3.2.2. Mr. Milne states in his letter that Mr. Duncan was the person who was the first to illegally block the footpath 52 Kingswear, which would be after 1985, when he owned Galmpton Mill.

3.2.2. I used the route from 1958 coming off the metalled or entering the metalled track, never having to deviate, well after 1958 clambering over on a minimum of occasions what I considered to be a broken stile, the gate would be there but it had no significant that it escaped my memory.

3.2.3 How is Mr. Shercliff able to state that the fence with two poorly constructed struts was “recently removed”? its not been there for many years. This is the route that I have used since 1958, also I have led an organised walk for The South Devon Ramblers’ which will be on record, leaving the beach onto the metalled road.

3.2.3. It must be on record when the definitive route as shown on the O/S, was registered and could have not been illegally diverted until after 1965.this would be the defined route for more than twenty years.

The Case For The Landowners.

4.1. Mr. Mrs. Chaston would have known the route of the FP 52, through their solicitor and the O/S maps. The term used by Mr. Shercliff “ran in its vicinity”, does not apply. Only a fool of a solicitor would have missed this. Mr. Shercliff does note, but does not state that the action taken by Mr. Chaston was an illegal blockage of the definitive route.

4.2. The South Hams Coast and Countryside, along with the Torbay Coast and Countryside, which I have had dealing with, in order to be helpful have been illogical in their wisdom to please. (if necessary I will submit evidence to support this claim.).

4.2. Yes several local residents that they remembered having to clamber down the bank at point A. I would dispute this as the photograph presented at the non-statutory hearing from the sales catalogue of 1943/44, **Appendix 003** It was agreed that it showed the bank to be too steep to ascend, no route at that position, and a clear route adjacent to Galmpton Mill. Also when the black gates were locked Mr. Duncan made a narrow path to the left of the pillar at that point to the beach.

4.3. The Council were perfectly within their powers to unblock the illegal blockage, as the actions mentioned above, contravened the Highways Act.

4.4. The non-statutory hearing has not been the right route to follow, as I have not had sufficient time to investigate my case.

Occupation of Old Mill Farm.

4.5. N/A.

Historical Evidence.

4.6. I have a number of Tithe Maps, which do not show footpaths or tracks as with this, many taken from the Greenwood Maps that also do not show footpaths or tracks.

4.7. Right the map did no show that there was no evidence of it having traversed the curtilage of their property, that is to say there was no route of any description running inland along the riverbank. The Tithe Map just shows to scale the land of the Old Mill and perimeters around his land are in most cases not too scale or can be considered accurate. The O/S map clearly shows the route and Old Mill Farm to scale.

1869. Conveyance.

4.8 There are many lanes and tracks within Devon and Cornwall who are susceptible to flooding, in gales or spring tide.

1882. Sale Plan.

4.9. The landowner moved into Old Mill Farm in September 2000, he uses the words "they said" several times, but he has no evidence to support these claims, under the circumstances cannot be consider as a true evaluation of the map.

c1885: 1st Edition OS Map.

4.10. The landowner asserted that this map again showed that in the late 19th Century there was both a gate across the end of Mill Lane and no track or path through, or in the vicinity of, Old Mill Farm. Is it a gate shown on the map? If so, was it placed there to keep livestock in? If so, was the gate locked, or did it have the same effect as a stile or kissing gate?.

1905 2nd Edition OS Map.

4.6. N/A.

1937 Conveyance.

4.12. The gate would be at the entrance as for most farms, to keep animals in, if it was a wall how would the owner enter and exit the farm

c1930s/1940s Handover of Highways.

4.13. N/A

The Definitive Map

4.14 This route would have been used for many years prior to be given definitive status. The landowner was only able to make an observation, as the route had been used for many years exciding the twenty years necessary for definitive inclusion, and from the date of 1965 on the pillar, when did the illegal blockage commenced?

The Definitive Statement.

4.15. N/A.

4.16. N/A

4.17. N/A

4.18. Evidence was given at the non-statutory enquiry of those persons that had used FP52 Kingswear, in a number of cases prior to it receiving definitive status, which shows it clearly on the O/S map. Why then did the owners of Old Mill Farm permit this as the definitive inclusion to the definitive maps? If it was not the well used route? Surely they would have not permitted such action.

Statutory Declarations.

4.19. N/A

4.19.1. In 1951, the metalled track at the end of Mill Lane was unregistered HMLR, and given Definitive Status in 1955. As the Pillar was not erected until 1965, I see no evidence but that in 4.19.1; 4.19.2; 4.19.3; 4.19.4. and 4.19.5. only that those persons took the law into their own hands and were illegally aiding and abetting the blockage of a Public Footpath. Their statements are inconsistent, and are not therefore factual.

Other Evidence.

Users Comments.

4.21. When the landowner kept a log for path users to record their frequency of use. Did those persons sign a declaration to support this claim? One local resident said: "It was nice to see the path where it originally was". With the black gates and fence removed. He offered no evidence at the non-statutory hearing to support this claim.

4.22. I use to clamber down diversions from tracks and footpaths as a boy, doing what boys do, swinging on trees, walking through streams, jumping in puddles, short cutting footpaths, climbing up and down banks where the footpath loops, and taking short cuts through fields.

4.23. The repairs were carried in 1987, due to a storm which brought down much of the wall running parallel to the footpath along Galmpton/Mill Creek, at that time what remained of the track disappeared, in many cases they were sculptured stones, as shown in the 1943/44 sales catalogue.

4.23. Appendix 003. From the sales catalogue of Galmpton Mill 1943/44, the enlargement clearly shows the track when examining the enlarged print on the right, which would naturally have shale and seaweed on, as I should not imagine this would hinder the horse and cart, or ever got cleared.

4.23. Appendix 004. The Map 0006. Greenway Estate Sale of 1944. (Map 1905.) Clearly shows a track running from the Old Lime Kiln to and adjacent to Galmpton Mill onto Mill Lane.

4.24. His motive is to divert the footpath away from his front door, and if the same process were to be suggested in many Devon Villages, where passing 'B' roads have the same width as the metalled road/track in front of Old Mill Farm, the DCC would have major problems. Outsiders moving to Devon or the South West should accept the culture and nature of the environment.

Coast & Countryside Service.

4.25. The Coast & Countryside Services has no authority to assist in such matters. They are at present trying diverting well-established route at Berry Head, Brixham. Locals have used these tracks for many years and are just ignoring them, by passing through hedging and knocking down fences, which is costly and spoiling the environment.

5. The Case For The Objectors.

The material points were:

Introduction.

5.1. Because of DCC failing to follow correct procedures, circulation of statement forms were circulated to only those people of Galmpton.

Historical Evidence.

1905 2nd Edition OS Map.

5.2. **Appendix 004.** Has shown this to be correct.

1939. OS Map.

5.3. The 1905 Map was upgraded in 1939.

1944 Sale Particular.

5.4. See **Appendix 003/004.**

1954 OS Map.

5.5. How could the gates be kept closed in 1954, when there was no pillar to attach them too. Also Mrs. Crewdson does not state the word 'locked', so if there was a gate there it could be opened and walked through.

The Definitive Statement.

5.6. Yes, because they had used it, and photograph **Appendix 002** shows no hindrance or illegal blockage at that stage. **Appendix 003** the photocopy of the 1943/44 proposed sale, shows a track along the beach, and tracks are used for walking upon. **Appendix 004** the 1906 O/S Map clearly shows a track from the Old Lime Kiln to Galmpton Mill.

User Evidence

User Evidence Forms.

5.7. Because of what had taken place in the past, illegal blocking, illegal diversions, this is quite understandable. You will also have people who are friends of the

landowner who could possibly support him. I have witnessed such action with another footpath, and when evidence was produced to the contrary they fell by the wayside.

5.8. Many horse riders had expressed that their families had used the beach for many generations, having a direct route whereby the illegal diversions had prevented them from doing so. I have witnessed them on the beach on many occasions.

5.9. The Appendices 002, 003, and 004 fully support this claim.

5.10. This gate because it was not locked did not constitute an illegal blockage, as most farms had unlocked gate, even on right of ways.

5.11. Appendix 001,002, and 003 fully supports this.

Further Submissions at the Hearing.

5.12. This is my statement which does not read correctly. Mr. Shercliff has distorted it, I have therefore included the original letter Appendix 005, which does not refer to the 1960's. After many years of experience dealing with footpath matters, at this stage I am identifying a 'bias'.

5.13. Quite easy to do so because Appendix 002, shows a clear route, and Mr. Milnes letter Appendix 001, shows that the blockage took place by Mr. Duncan in 1985 or 1988. I cannot find any evidence of it being illegally blocked at any other time.

5.14. This was an illegal blockage.

6. Rebuttal By The Landowners.

The material points were:

1944 Sale Particulars.

6.1. But Appendix 003, clearly shows a track along the beach, passing adjacent to Galmpton Mill unobtrusive. Appendix 004. 1905 O/S Map clearly shows a track from the Old Lime Kiln to Galmpton Mill.

Definitive Statement.

6.2. Appendices 003/004 clearly show a track edging the beach from the Lime Kiln to Galmpton Mill.

Map Evidence.

6.3. N/A.

Tides

6.4. N/A

Private Rights

6.5 N/A

User Evidence.

6.6. This was due to the fact that the illegal blockages were inconsistent, the two ill fitted planks of wood joining the fence to the piggery seemed to have a permanent fixture on the ground or hedge, the gates were not locked and at most time left open as Appendix 002 shows. It only became a permanent blockage when the current

owner erected a five bar gate across the end of the 'C' road, and introduced a illegal diversionary ten step track to the beach.

6.7. This fence seemed to have a permanent life on the ground, as it was erected it was downed. I think the owners from Mr. Duncan's time gave up. Other users use to climb through it.

6.8. I used it many times from 1989 to 2003, without any problem whatsoever. If the two bar fence was there I stepped over it finding the gates not to be a problem, as from my knowledge the owners had given up and accepted the right of way. The obstruction was many more permanent by the present owner after 2000, which from the passage it suggest 2003, it was removed by the council.

6.9. If the forms were sent to DCC, this is an internal matter. In the case when persons are confronted with officialdom they will naturally panic, and withdraw forms. I have a case whereby Torbay Council states that a definitive footpath was close in the early 1960's, diverted and would you then consider withdrawing your objection, twenty two persons did, where solid evidence now shows it to be used in 1971 and illegally blocked in the later part of 1970's.

6.10. Yes, I did the same used route 'Y', the two planks were no problem, almost found thrown in the hedge or on the ground.

6.11. It was never what I considered a blockage due to the treatment it received.

6.12. The blockage took place initially for a short period in 1985. This is a discrepancy in who created the initial blockage was it Mr. Crewdson's or Mr. Duncan? this evidence cannot be substantiated, and therefore must be dismissed.

6.13. N/A

6.13.1. Was that until a Walker or Rambler Open them?.

6.13.2. How could he stop them if he had no control over there usage. If he did so he was illegally blocking a Public Footpath, with a penalty of £5000.

6.13.3. Can he prove that statement, if not it is not acceptable evidence.

6.13.4. Nobody queried his erection of two ill fitted planks of wood at point 'Y', as the spent most of there time in the hedge or on the ground.

7. The Case For The Interested Parties.

The material points were:

7.1. This comment is acceptable as from 1985 to 2005 there were up to four illegal diversions, which would have confused most persons who were not familiar with the legislation.

7.2 N/A

7.3. The evidence within the report and I gather from the people of Galmpton. Mr. Duncan was the person that introduced the illegal blockages in 1988.

4. Conclusions.

8.1. Probability cannot be accepted as conclusive evidence.

Introduction.

8.2. The 1905 O/S clearly shows a footpath through the Greenway Estate, to the Old Lime Kiln, the Track along the Beach to Mill Lane. From one road to another. Mr. Shercliff has offered no conclusive evidence but speculation.

8.3. This evidence should be accepted, as it cannot be refuted.

8.4. They spoke of the route from the Stables in Galampton, down Mill Lane to the beach, as it was a metalled route, even though a public footpath, they were able to use it. None of them stated the route through the Greenway Estate.

8.5. In my dealing with the Coast and Countryside Service, they have been more than willing to please. I think the word is courteous.

Evidence of Historic Rights.

Early 19th Century.

8.6. A number of the early maps (1839) were taken from the Greenwood Maps, which did not show either lanes (tracks) or footpaths. These were not examined to establish the origin of the maps presented. But the 1905 O/S Maps clearly shows a route from Greenwood Road to Mill Lane.

Mid 19th Century.

8.7. Is this applicable in establishing the definitive route of Footpath 52 Kingswear?.

Late 19th Century.

8.8. N/A.

8.9. The 1905 O/S map **Appendix 004**, and the enlarged photocopy **Appendix 003** clearly shows a track, which ran from the entrance into Mill Lane to the Old Lime Kiln.

8.10. As for 8.9.

Turn Of The Century.

8.11. I beg to differ!.

Mid 20th Century.

8.12. Mr. Shercliff before coming to any of these decisions should have consulted more legible maps (i.e. O/S 1905) If he was a subordinate, presenting this evidence, he would have been instructed to do so. It was given the status of definitive in 1955, usually from evidence of usage by the public.

8.13. My 1905 O/S Map shows no boathouse across Mill Lane the junction up the slope shows a gate, which would be a natural thing to expect when entering a farm area.

8.14. N/A.

8.14.1. N/A.

8.14.2. What effect does this have in defining a Public Right of Way. What happens when a river floods it banks, lowlands footpath become waterlogged?

8.14.3. 1. N/A.

Mill Lane.

8.15. N/A.

Summary of Historic Evidence.

8.16. His he stating that **Appendices 003 and 004** are incorrect, when previously Mr. Shercliff found it difficult because of the eligibility of 1905 map he could not

Assess if there was a track or not.

8.17. The photograph **Appendix 002** shows that there was no illegal blockage in the area of 'Y', in 1965, showing that the illegal blockage took place by Mr. Duncan in 1985.

Conclusion with regard to historic rights.

8.18. That is not to say that there weren't, this has been a definitive route since 1955, therefore dedicated from some form of historical evidence.

The Definitive Map.

8.19. See Appendices 003 and 004.

8.20. N/A.

8.21. N/A.

8.22. N/A

8.23. The Pillar was erected in 1965, the photograph **Appendix 002**, shows no blockage.

The Definitive Statement.

8.24. N/A.

8.25. N/A

8.26. This also must include the total years of usage by the public exceeding a period of twenty years.

8.27.1. N/A.

8.27.2. But evidence was proven that horses used the metalled track to the beach, proving that the route incorrectly used was a footpath and not a bridle path. But, if they had access along this route so did walkers and cyclist. Why did the landowner not bring this to the attention of misuse to DCC.

8.27.3. N/A.

8.27.4. N/A

8.27.5. N/A.

8.27.6. N/A

8.27.7. So far in this report Mr. Shercliff has not in any imagination given evidence to define at what stage that footpath 52 Kingswear, enters the metalled road, the **Appendix 002**. 1965 photograph clearly shows clear access from the beach running the metalled track adjacent to Galampton Mill. Mr. Shercliff 6.33.1. others state within the report that it was Mr. Duncan after 1985, placed the fence from the pillar of 1965 between the metalled track and the beach, trying without success to extend it to the piggery at point 'Y', it also states "after 1988 he kept them closed for as much of the time as was practicable". He never mentioned locked which therefore permitted the public access. This gave the public a continuous definitive route of 53 years, without obstruction.

8.27.8. N/A

Summary of the Definitive Map and Statement.

8.28. The Definitive Map and O/S 1905, 1939 and Explorer OL20, South Devon. Brixham to Newton Ferrers clearly shows the footpath from the beach entering the

metalled road at point 'Y' and until its illegal blockage and illegal diversion for a period of 53 years. There is nothing in the report up to this stage stating that it was illegally blocked or illegally diverted even in 1988.

8.29. This statement is surpassed by the fact that persons had access to this route prior to its inclusion onto the Definitive Maps in 1955, and over 53 years of continual use, without a question of illegal blockage or illegal diversion, that can be proven until it was illegally blocked and DCC had the blockage removed. The illegal obstruction at point 'Y', was found either on the floor or hedge.

8.30. But the route was used since officially from 1955, and only blocked or diverted illegally.

Conclusion

8.31. The route that was claimed in 1955, without objection from the landowner of Galmpton Mill, has been used in line with the Definitive Map and O/S 1905, 1939 and Explorer OL20 and in 48 years it has not been refuted.

User Evidence.

8.32. When the footpath 52 Kingswear, was illegally blocked or illegally diverted most people would have accepted it as the norm. If you were to approach the Ramblers' Association they would confirm that their members are very bad at bringing to the attention of footpath officers any problems, and until recently most footpaths were not maintained, only at a time of crisis.

User Evidence Forms.

8.33. There is no evidence to support any claims made within this section. If persons started to use the route that Footpath 52 Kingswear took, it must have been with the landowner's permission, and after 20 years of continual use, it would receive Definitive status, if this was not the case, I feel sure the landowner would have taken action when it was muted. To state they were "Trespassing" has no foundation.

8.34. 8.34.1; 8.34.2; 8.34.3; 8.34.4. Not able to comment.

8.35. Unable to comment.

8.35.1. But it proves there was a link for even horses at point 'Y' to the beach unhindered, giving it public access.

8.35.2. I have witnessed this on a number of occasions some have been genuine and others a set up. The other footpath I am investigating there were eight such statements, fortunately Brixham UDC. Committee minutes proved their statement to be incorrect, and all but one withdrew their statements, this person unfortunately wrote another letter completely contradicting the first letter.

8.35.3. That happens quite often 'lack of bottle'.

8.35.4. N/A

8.36. Most Council and from my knowledge, even DCC ask for a minimum of six forms. What is totally illegal about the action that DCC took, they did not as agreed inform the Open Spaces Society or the Ramblers' Association, this would have produced a much greater response. Also the people of Galmpton lost out because they

initially should have involved the two professional bodies, they got no help what so ever from DCC. with a non-statutory hearing. Both the Open Spaces Society and the Ramblers' Association are unable ascertain what this means from any form of legislation. I feel the people of Galampton were set up.

8.37. No comment.

Conclusion with regard to the evidence forms.

8.38. No comment.

Letters Handed to the Hearing.

8.39. No comment.

Conclusions with regard to the letters.

8.40. No comment.

8.41. No comment

Other Matters.

Private Rights.

8.42. Prove was provided that since its inclusion on the Definitive Maps in 1955, all manner of persons has used it.

8.43. N/A

Use by Bicycles and Horse.

8.44. But they were able to use it without hindrance.

Effect of Tides.

8.45. Makes a walk more interesting.

Disability Discrimination Act.

8.46. Mr. Shercliff is not qualified to make such a statement. I showed the route from Mill Lane to Galampton Creek to a qualified social worker, who is now completely a further Phd in this field, and Mr. Shercliff's statement. Her reply "balderdash".

Summary

8.47. Only out of dedication and usage for well over a period of 50 years.

8.48. Supported by O/S Maps 1905, 1939, Explorer OL20, and over 50 years of public use, which suggests from its historical use whether to the Old Lime Kiln, Farmers collecting Seaweed, or persons walking through the Greenway Estate or Mill Lane to the beach, which is a DCC 'C' road surely that is how footpaths derived?

8.49. This is ambiguous all footpaths run through owned land, but the footpaths are owned by the public, and after 50 years this definitive route it belongs to the public, and as footpaths do they run from road to road. In **Appendix 002**, the photograph shows the route runs from point 'Y' to Mill Lane unhindered, also **Appendix 003**, the enlarged photocopy shows the track and an unhindered route to the left Galmpton Farm. **Appendix 004**, shows a complete link from Greenway Road to Mill Lane. It was only extended to 'A' when the current owner put in a set of ten steps, five bar gate across the track at the end of Mill Lane and moved the way marker.

8.50. The evidence presented at the non statutory hearing, does not prove that to be inclusive enough for Mr. Shercliff to make this conclusion. This also proves his case to be totally incorrect in Appendices 002;003; and 004.

8.51. Was this witness impartial or bias, to what cause?

Conclusion

8.52. The **Appendix 002**, 1965 photograph shows this not to be the case, **Appendix 003** the enlarge photocopy shows this not to be the case, **Appendix 004** the O/S Map 1905 shows this not to be the case. It was agreed that Mr. Duncan at one stage in 1988 locked the gate, put up a fence, and placed the footpath, the way marker around the left of the pillar from the beach. The present owner introduced the ten steps after 2000.

9. Recommendation.

9.1. Mr. Shercliff has not proved his case.

Conclusion

1. If the Open Spaces Society were informed of the Non-Statutory Hearing, at the time it was first muted it would have not become involved and would have instructed the people of Galmpton not to become involved. It should have been either an 'inquiry' or 'hearing' in line with the legislation.
2. The Galmpton Group should have sought professional help from either of the two professional associations from day one. They required professional guidance.
3. DCC have let down very badly the people of Galmpton by not recommending that they involve the two professional association, failing to give the people of Galmpton a clear understanding of what this non statutory hearing could lead too, and failing to advise relating to the statement forms 8.34; 8.35.
4. Under 8.46 where Mr. Shercliff is not qualified to make a decision on such matters, DCC should direct the people of Galmpton on locating professional persons with the expertise to advise them on Disability usage.
5. Upon reading Mr. Shercliff's Report I cannot identify the evidence that justifies his decision.
6. When this route was given Definitive status in 1955, if it did not qualify for such a status, why did Mr. E L Wildy the owner of Galmpton Mill permit its inclusion onto the Definitive Maps?
7. The **Appendix 002** clearly shows that in 1965, it was still the Definitive Route, with no diversion around the left of the pillar, will no fencing to channel walkers.

8. *Appendix 003 the photocopy enlargement from the sales catalogue of 1943/44 clearly shows a track continuing to Mill Lane, without any restriction.*
9. *Mr. Shercliff in his report identified as with Mr. Milne and others that Mr. Duncan illegally diverted the footpath after 1985/88, from the beach to left of the pillar giving walkers a period of 30 years of walking a definitive route as portrayed on both the definitive and Ordnance Survey Maps since 1906, 1939 and the current Explore OL20 O/S maps,*
10. *The Open Spaces Society as with the Ramblers' Association condemns the action of DCC in not informing them of this Non-Statutory Hearing, that it is and has been so the norm for many years. I had 9 days notice prior to the hearing, unable to advise the people of Galmpton and 28 days to reply to Mr. Shercliff's Report, which much of the evidence I am receiving would have been obtained prior, and in fact there is further evidence in the pipe line, that will not make this reply.*
11. *If DCC diverts the footpath in line with Mr. Shercliff's report, I have recommended the engagement of a solicitor by the people of Galmpton, who will be assisted by the professional know how of the Open Spaces Society.*

Ronald S K Lovell
25 April 2005

Would appreciate a receipt.

FILE REF: SKC/A1615 APPENDIX 001.

Ronald Lovell. 'Local correspondent for Torbay'.
Chy Lowen. Heath Road. Brixham. Devon. TQ5 9BH.
Tel: 01803 856941

Mr. J. Milne
7 Greenaway Road
Galmpton
Devon.

12 April 2005

Dear Mr. Milne

I am a member of the Brixham Methodist Church mens group, but because of illness I missed your talk, the subject Lime Kilns. My friend and walking partner Ron Burrington was able to inform me of much of it, which I was sorry to miss.

I am calling on you if I may for some help, obtaining your telephone number and address through Mr. Alan Nichols. The advice I seek is in response to Government Inspectors Report, relating to the Definitive Footpath 52 Kingswear. This is from the Old Mill Farm to the Old Lime Kiln, at Lower Greenway Farm.

I was only informed of the hearing seven days prior to the event, which only gave me a minimum of time to prepare, which is my experience of this route since 1958, remembering of which the case is built upon a track that ran from Old Mill Farm to the Lime Kiln. The present owner, who moved there in 2000 from away, employed a barrister to prove the track does not exist.

In 1958 elements of the track had been removed, and after the storm of 1987, thereabout or soon after it seemed to disappear completely. This was part of my evidence for the hearing on the 15/16 February 2005. At a later date a past owner of the Old Mill Farm, due to him being on holiday at the time, made a statement stating that Devon Council Workmen in either 1986 or 1988, made repairs to the wall from the Old Mill Farm to the Lime Kiln, and it is quite possible that the rest of the track at that time was tidied away.

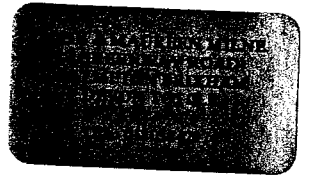
If the owner wins this will redirect the footpath, limiting its use to walkers only, where in the past local horse riders have used the beach area, and even people with prams. Could you please assist me to establish if there was a track, from information you have collected, statements in published books, photographs even from published books, or maps.

I must respond prior to the 4 May 2005, I have enclosed s.a.e. for your reply. Thank you.

Yours sincerely

Ron Lovell

FILE REF: SKC/A1615 APPENDIX
001



13/09/05

Dear Mr Lovell

Thank you for your letter received yesterday.

The dime kiln - Sorry you missed my talk. I have been asked to give the same talk to, I think, "The University of the Third Age" at Brixham Rugby Club at 2pm 14/6/05

If you are interested the secretary is Mrs. Hamill, tel. 853892 who I expect will be happy for you to attend.

Hill Creek - I am on the committee of Salutation - Chaston Local History Group and we have discussed the problem several times and our chairman John Risdon spoke at its enquiry.

I personally have nothing recorded in writing or photographs which are relevant. We have lived here - in this house - since 1959 and remember taking our own children - and later - grandchildren - down to the beach.

Originally as far as we remember the gate across the entrance was normally open but formally closed occasionally, to deny a right of way. The Durcans, we think, closed the gate and made the original side opening which was barely wide enough for a push chair.

117

We cannot recall any time when the way to the kiln was

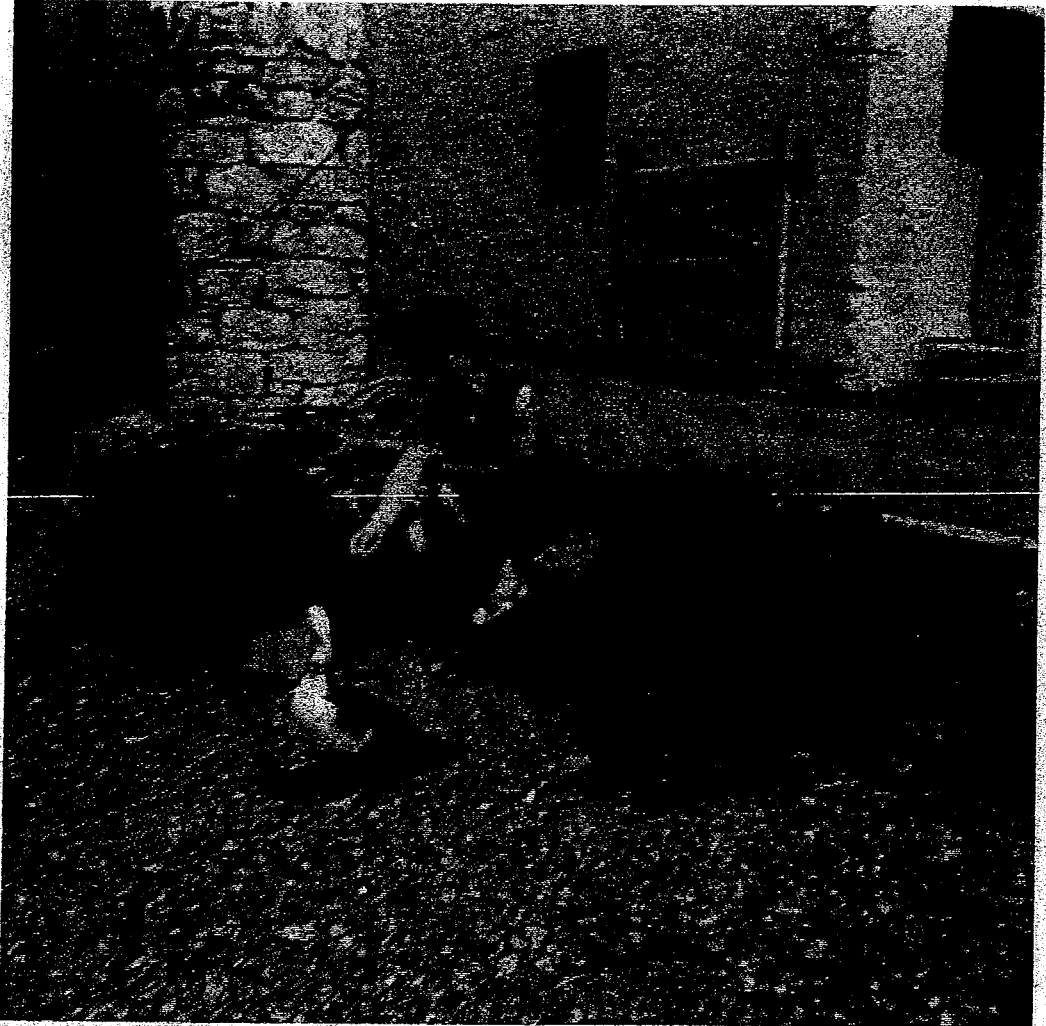
along the top of the beach and was covered by a high spring tide.

We do not remember that the wall behind the beach was
ever moved though it was indeed partly repaired.

Saying that I cannot provide any "ammunition" for
you but good luck.

Your Sincerely
John Milnes

FILE REF. SKC/A1615 APPENDIX 002.



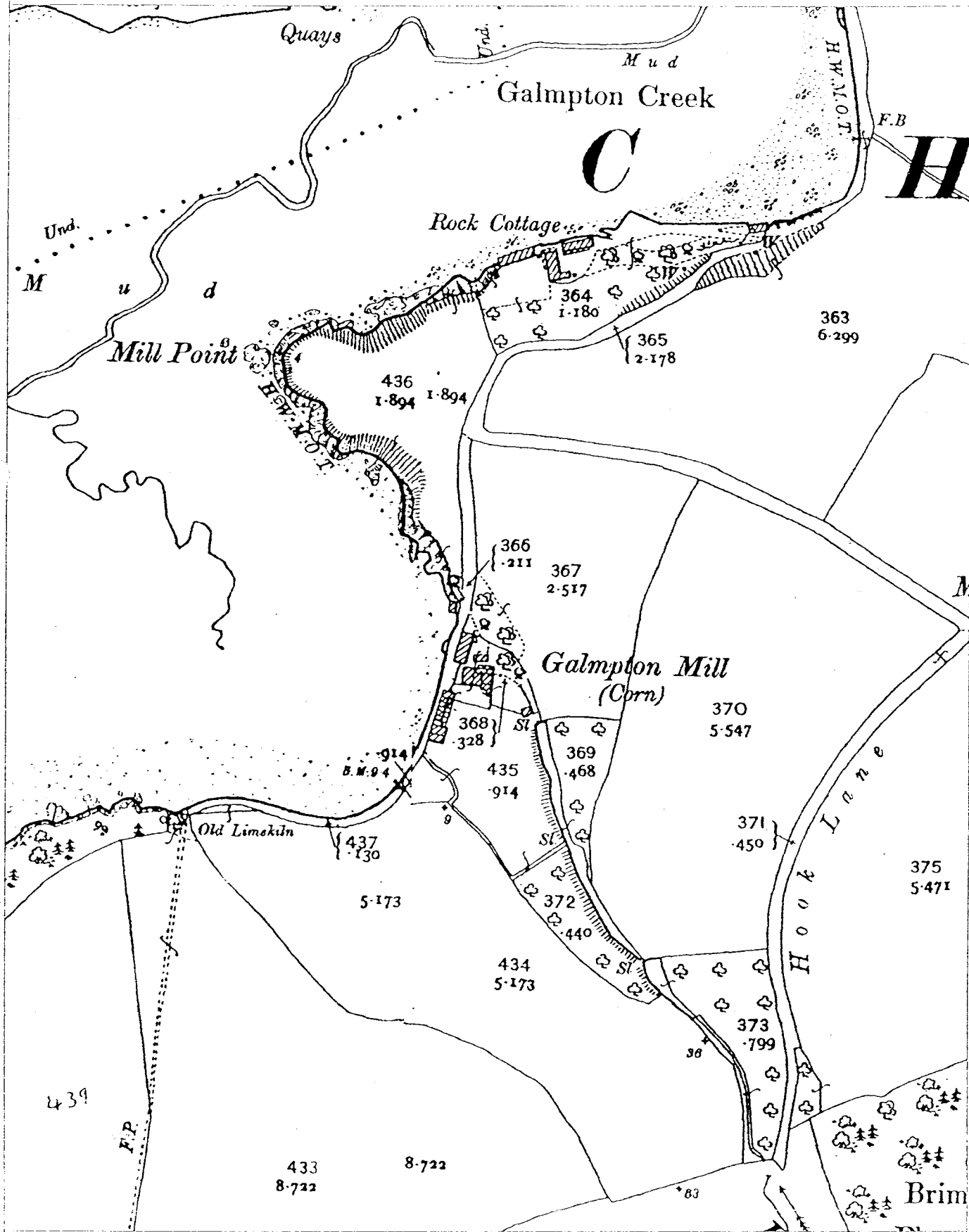
DATE BACK OF PHOTOGRAPH

FILE REF: SKC/A1615 APPENDIX 003.

X



Galimpton Mill. Lot 4



Scale 1:2500

100m

Based upon OSCAR with the permission of the controller or Her Majesty's Stationery Office. © Crown copyright. License No. LA076562 2002

FILE REF: SKC/A1615 APPENDIX 004

0006

FILE REF: SKC/A1615 APPENDIX 005

Ronald Lovell. 'Local correspondent for Torbay'.
Chy Lowen. Heath Road. Brixham. Devon. TQ5 9BH.
Tel: 01803 856941

15 February 2005

To whom it may concern.

Footpath 52 Kingswear.

Notice of Non-Statutory Hearing.

The concern of the Society is that we were unable to find any form of legislation governing a Notice of Non-Statutory Hearing, also that under schedule 5 to the regulations, that notices must be displayed not less than 42 days from the first publication, should still apply.

The non-descript notices were placed on site 28 January, only for a period of 18 days. It is also normal procedure for DCC to inform the persons designated by both the Open Spaces Society and Ramblers' Association of such action. If this was carried out there is no information in the notices to the proposals to be considered.

This footpath was probably a commercial footpath from A to B, but for very many years it has only been used for leisure pursuits, I myself have led two walks, one of six miles and one of ten miles for the South Devon Ramblers' Association.

In the past the owner of Old Mill Farm, has 'interrupted' the footpath 52, on land that he does not own by placing fencing across the route as blockage and placing a five bar gate across the public highways as a further blockage, and redirected the route without the authority to do so.

When approaching the Lime Kiln and Beach area from the Tannery, the footpath along the beach to the boundary of the pig shed of Old Mill Farm, has eroded from the early 1950's and completely disappearing in the storm of 1987. I am fully aware that this is considered an act of god, and DCC under the legislation are not bound to reinstate this section of the footpath.

But no effort has been shown to walkers in improving the highway, to make this section a more safe or leisure surface for this well walked footpath.

The route runs along the boundary walls at the bottom of descending fields, draining onto the footpath making with the fine shale very difficult and unfriendly to walkers.

This is enhanced with the deposits of wet and slippery seaweed and any form of rubbish that the tides brings in up to the boundary wall. In all the years that I have walked this footpath I have never witnessed it being cleared.

.2.

To extend this footpath approximately another thirty two metres further along the beach would not be to the benefit of walkers who use it for leisure purposes, to what benefit, it enters a public highway, some distance from the front door of Old Mill Cottages, where a large percentage of houses owners in Devon, because of the nature of the area such as the South West have their front doors opening onto pavements or even narrow roads, people moving into the area from other parts of the country must accept this as the norm and take on board, or are we now entering a era of re-directing pavements or even roads.

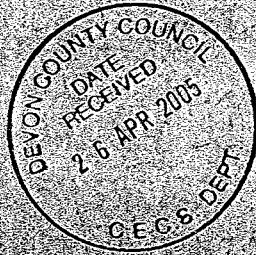
The owner of Old Mill Cottage was fully aware that the footpath was there when he purchased the Farm. If however it is DCC intension to improve by repairing this part of the footpath, then consideration could be given to this diversion at a future time.

Thank you

Yours sincerely

Ron Lovell

Phone No. 01803 844298



Hunters Wood Cottage,

Greenway,

Galmpton,

Nr. Braham,

S. Devon,

TLS 068

17/4/2005

Dear Mr Clancy,

I am writing in absolute disgust regarding the public hearing of foot path 52, the majority of the people attending the meeting were older Galmpton village people of 60 yrs upwards who were born here and used the right of way all these years, they expected to put their hands up and be heard, but they were very suddenly gagged, so most of them walked out in disgust, even the DCC officer with all these genuine evidence were not allowed there say

The part of foot path 52 in dispute, is nothing what so ever to do with the National Trust ownership, why was she allowed to speak at all, after only being

have a few years, and the locals
shut up, the people who know
what is right, and the correct right
of way and historical rights

One other point why was the
meeting closed on February 16th, and
then a few people were sent
a sworn affidavit on 25th February
2005 to be answered before his
final reply, this is unbelievable
it also has discrepancies in
it, which should be looked into.

Please find enclosed photo's
of Hill Farm and area taken in
the 1930's

1 Mill Farm + Poteshore

2 Barn for hay straw on top
standing for 6 cows and 2 horses
ground floor (Now called Granary)

Dung pit opposite

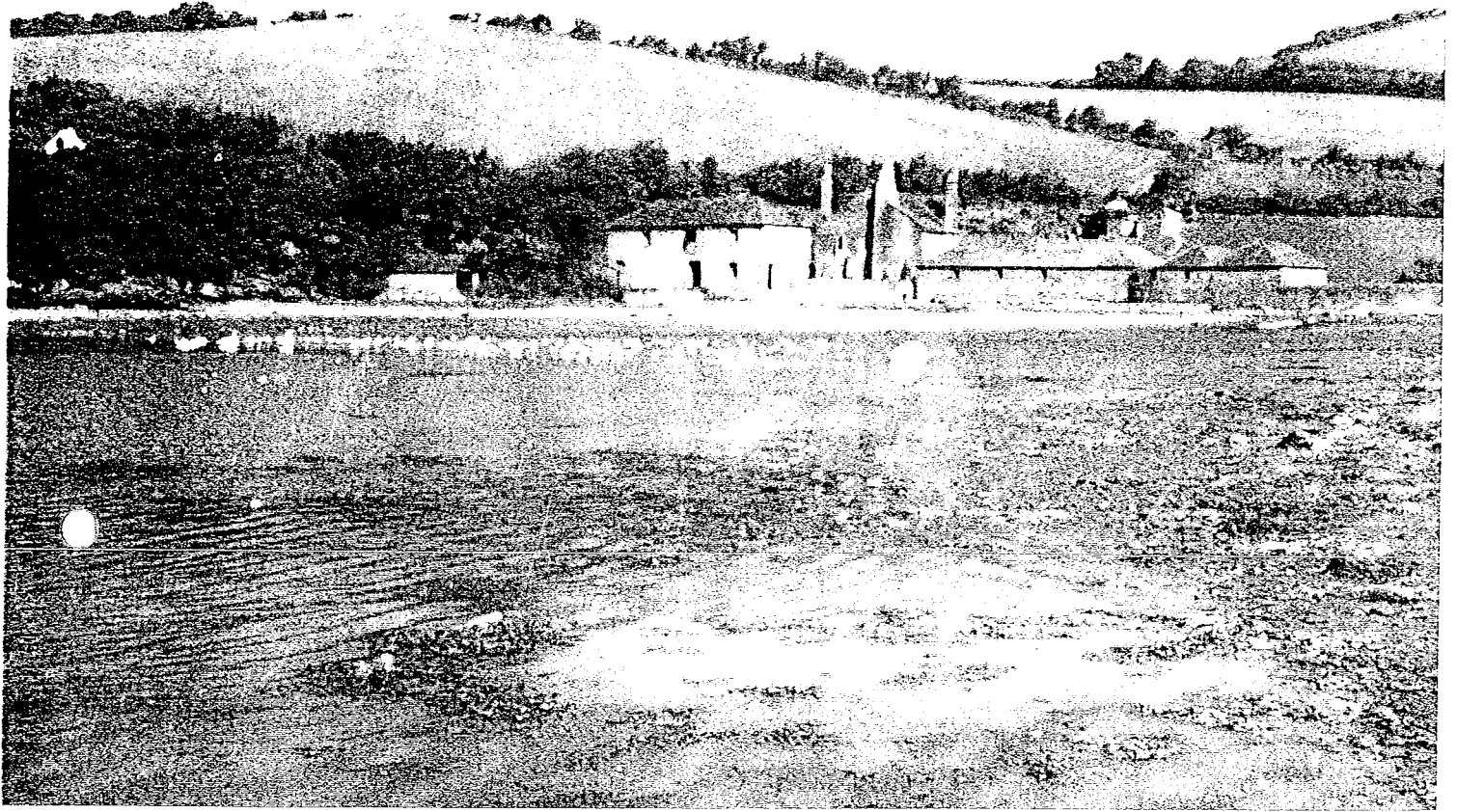
3 Old car coming away from fore
shore Hill Lane not turned

4 Man on horse coming down Hill
Lane

Yours Sincerely
Sally Brown

P.S. You already have
the 1944 photo

①



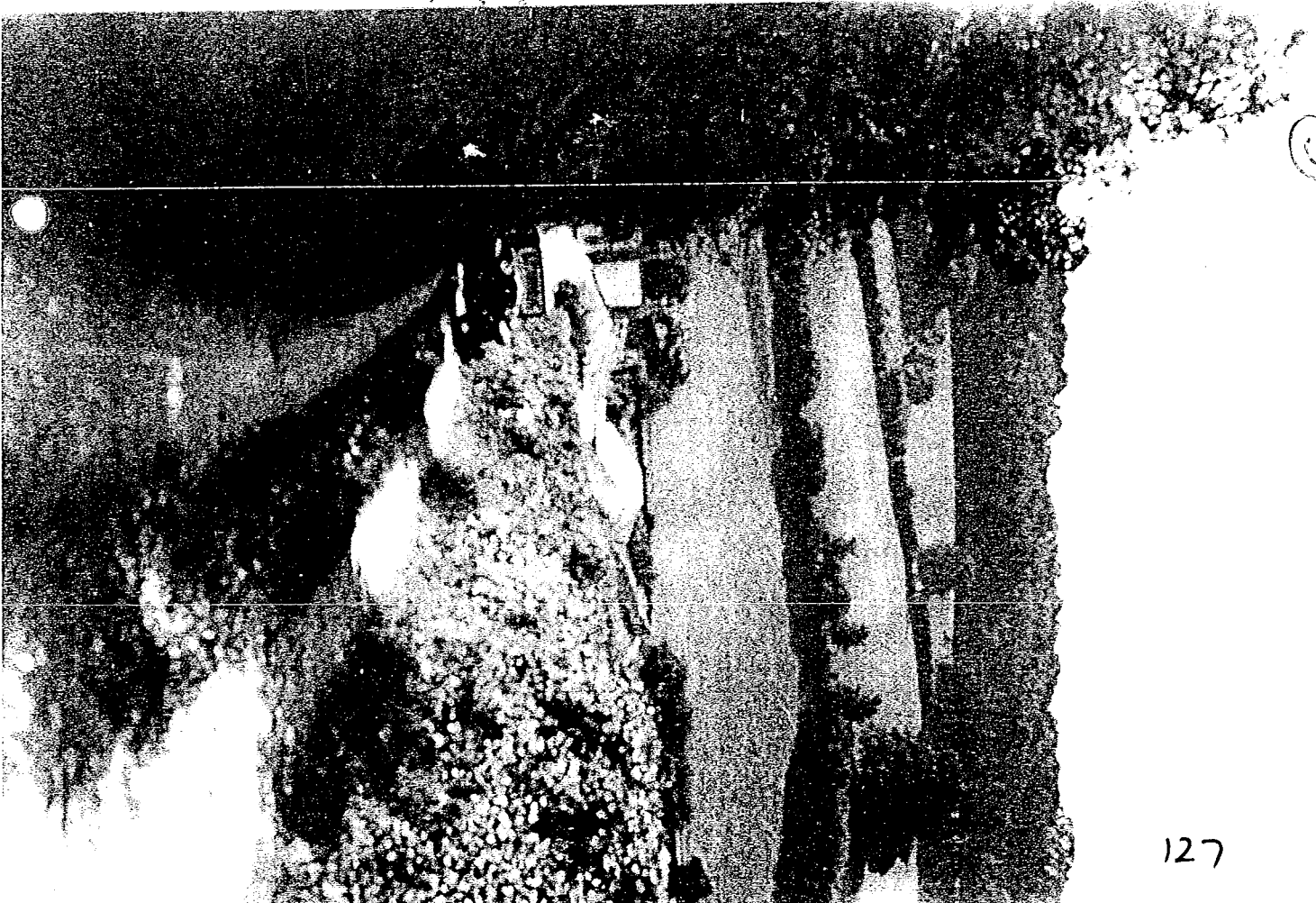
②



126



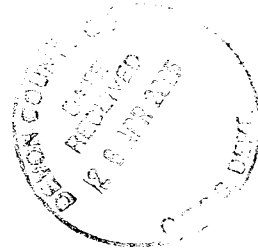
(7)



(8)

**38 Greenway Road,
Galmpton,
Brixham,
Devon.
TQ5 0LZ.**

Mr. Simon Clarey,
D.C.C. Solicitor,
County Hall,
Topsham Road,
Exeter,
EX2 4QD.



23rd April, 2005.

Dear Mr. Clarey,

Ref: Foot Path 52 Hearing Galmpton 15-16th February 2005.

As a resident in Galmpton for the past 43 years I attended the hearing at Galmpton Village Hall on 15th-16th February 2005. I wish to express my concern at the way the meeting was conducted. How could I or others have known what issues were going to be discussed or if we wanted to express our concerns before anyone spoke.

I was appalled that the villagers were not given a fair hearing, as one lady protested about the line of questioning which was completely alien and personal to the matter in hand and was told to sit down. I and my family have used the footpath in question for many years and never in the past has anyone questioned this right of way to us. Surely people who buy properties in rural areas check such details as to boundaries and rights of way etc. before they purchase. I would like to see the next meeting conducted in a less rigid fashion allowing all those present to have a say as the meeting progresses.

Yours sincerely

Gordon Preston

Mr. Gordon Preston.

Tel: 01626-863788

7, Hoopern Terrace,
DAWLISH Ex7 9NH
25.4.05

Dear Sir,

Re: The footpath at Galampton Hill

The photocopy I have of this delightful walk came as a slap in the face when I saw the gate barring entry to the beach.

The diversion is ugly and selfish, it is changing what has been there for ever.

How are the horse-riders going to have their summer evening swim, which is a very pleasant country scene to locals and visitors.

Did these people not see the footpath before they purchased ?

I was born at Greenway Lodge - spent a lot of my youth at Galampton Mill with my Uncle, Aunt and two cousins who were born there.

We shared times with campers, canoeists, picnickners, walkers and family.

There was a gate from the inner wall of the pig sty across to the garden wall which was there to stop cattle going on to the beach and would not have affected the public.

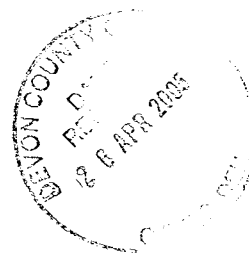
I truly hope that when all this is resolved we will get our original footpath for everyone to enjoy again.

Yours sincerely

(Mrs P.A.Ledbrooke)

P.A. Ledbrooke

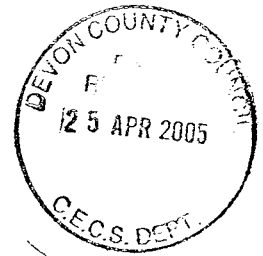
Mr Simon Clarey,
D.C.C. Solicitor,
County Hall,
Topsham Road,
EXETER, Devon.
EX2 4QD.



"ROSE COTTAGE"
2, THE BOUNDINGS,
GACMPTON,
BORITHAM
TQ5 0NS
23rd April 2005

REF FOOT PATH 52
HEARING AT
GALMPTON 15-16 FEB.
2005

MR. SIMON CLARKE,
D.E.C. SOLICITOR,
COUNTY HALL,
TOPSHAM RD,
EXETER.



Dear Sir,

I attended the hearing
on Tuesday 15th February 2005 re-
garding the footpath 52.

Many people from the village
attended, but left soon afterwards
when they discovered how unpleasant
the proceedings were and they could
not speak without evidence.

Yours sincerely,

38 The Walk
Hengoed
Mid Glamorgan
CF82 7AH

20th April 2005



Mr S Clarey
Devon County Council Solicitor
County Hall
Topsham Road
EXETER
EX2 4QD

Dear Mr Clarey

Re: Footpath 52

I am writing to you about the right of way dispute over what I believe is officially footpath 52. I know it as the path that goes in front of the house known as the "Mill" on the shore of the river Dart near Galmpton.

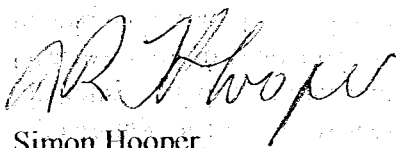
Apparantly the current owner of The Mill disputes people's right to walk in front of his house. This is a matter that concerns me greatly as my family have farmed at Greenway for 65 years and I have been going there for over 40 years. In all this time, people have used the road down to The Mill and walked along the shore to the pathfield that goes through my uncles farm.

On summer days in the past, I have seen the beach in front of the Mill used by a number of people from Galmpton, and when the tide was up, they used to swim from that beach.. Until the present owner, there has never been an issue of right of way, it has always been accepted that one exists and, as I have said, it was frequently used.

The position regarding the footpath must, (or should), have been made clear to the owner when purchasing the property. To block full access from the road to the beach, or to interfere with people's passage past the house now, seems grossly unfair and wrong.

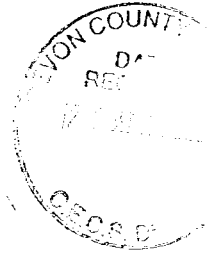
As you will gather from this I am no legal expert but I hope that my letter will add some weight to the argument in favour of a continued, unimpeded, right of way along this footpath.

Yours sincerely,


Simon Hooper.

20th April 2005

Blue Haze
3, Summerland Avenue
DAWLISH
Devon
EX7 9LR



Mr. Simon Clarey
Chief County Solicitor
County Hall
Topsham Road
EXETER
EX2 4OD

Re: Right of way at Mill Farm, Galmpton, Nr. Brixham, Devon

Dear Sir,

It has come to my notice that the present owners of Mill Farm are claiming that there has never been a right of way across the shoreline of the said property, a fact which I strongly dispute. I have photographs clearly showing the footpath in front of the buildings.

My parents lived at Mill Farm from 1929 – 1944 where I was born in 1931. During the years we lived there the right of way was used by the general public all the time. The workmen that worked in Galmpton shipyard and who lived in Dittisham used the path daily from Greenway Farm down across two fields, over the stile by the lime kiln, along the path in front of the farm buildings up the hill and down into the shipyard. The postman also used it on a regular basis, and when one of the stepping stones on the stile was broken the council workmen formed an entrance through the wall to give access to the path also on spring tides and rough weather the council workmen used to come and clear the path of debris. There were never any gates or barriers and people used to ride their horses across the beach and picnic on the shoreline. When cars came into being people used to park on the beach and walk to Greenway.

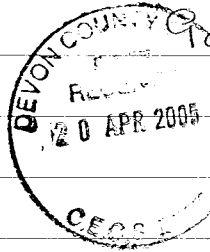
I also have used this right of way for years since leaving Galmpton and on one occasion in the 1970's I was challenged by the then owner who said we were on private property, but when we pointed out the line of the public right of way he agreed and we have used on numerous occasions since.

I feel very strongly that these public rights of way should be retained.

Yours sincerely

R.F. CROCKER.

DCC SOLICITOR
COUNTY HALL



11. Hulse

Galampton

Brixton

T95 OPR

16/4/05

Dear Sir

I am writing to you with regard to the Hearing held at Galampton on 15th/16 Feb about Footpath 52.

This was advertised in the Village stating that anyone interested could attend,

When we got there we were told it was an informal hearing but the owner of Mill Farm was there with a Barrister, who turned the meeting into a court room.

2.

atmosphere,

Many of us local people who have used this for well over 60 years (without any problem) were not allowed to speak. If we made any comment we were told to be quiet.

In my opinion I and other villagers there, in a Sham and I for left in disgust.

I thought we lived a Democracy !!

Yours faithfully
S. Tolcher

20 Pomeroy Avenue
BRIXHAM
Devon
TQ5 8PN

Mr S. Clarey
Devon County Council Solicitor
County Hall
Topsham Road
EXETER
Devon
EX2 4QD



Dear Mr Clarey

I am writing with regard to the hearing held at Galmpton Village Hall on 15-16th February 2005, ref Footpath 52.

I, and many local residents attended the hearing expecting to be able to voice our concerns at the proposed change to the footpath at Galmpton Mill, and to make it known that I have walked that footpath, immediately in front of Galmpton Mill Farm for more than 60 years. My mother, who is now 91 years of age, walked it for many years before that, having moved to the Parish at the age of 11 years. As children we spent many hours gathering cockles, and picnicking on the beach.

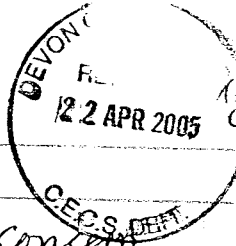
The "informal" hearing turned out to be far from that, the owner of Mill Farm arriving with a Barrister who created a courtroom atmosphere, questioning one elderly gentleman quite brutally. When local residents protested at his "unpleasant" treatment they were told they had no right to speak. Many walked out in disgust.

Surely no-one attending what was advertised as an informal hearing would be prepared for this. I feel that the local residents were not given a fair hearing.

Yours sincerely

Mrs Geraldine Maunder

Foot Path 52



To whom it may concern

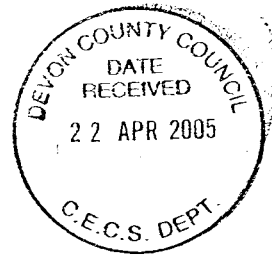
"Galmsptn Farmhouse"
Galmsptn
Brischam
TQ5 ONP

Dear Mr Simon Clavey

Because of my age and the fact that I lived at "Waddel's Barn Farm", from 1929 to 1942 - I was asked to attend the hearing at Galmsptn on 15th 16th Feb 2005 as I have maps & catalogue of the "Greenway Estate" Sale 1944. The maps & sale catalogue show very clearly the direction of the public footpath - Many of the people concerned now have copies & my family have public footpaths. I only attended the meeting on the two mornings and found it extremely unruly.

Yours sincerely
D Poole

Mr SIMON CLAREY
DCC Solicitor
County Hall
Topsham Rd
Exeter
EX2 4QD
20 April 2005



Dear Sir,

With reference to the Meeting at Galampton Village Hall in February on the subject of the right of way at Galampton Mill. I wrote a letter for inclusion at the meeting, making clear the situation at the Mill during the 1950's and 1960's.

Not being able to attend in person I have to rely on those who were there to report on the proceedings. The impression I got is that it was a one sided affair with little opportunity for locals to have their say. I have not received an acknowledgement of my letter so I would like to be reassured that no decision has been decided upon as yet and that there will be a further chance for everyone to make their point.

Yours Sincerely,

A handwritten signature in black ink, appearing to be "C.J. Jackson". The signature is fluid and cursive, with a long horizontal stroke at the end.

C.J. Jackson
Milton Farm
111 Milton Street
Brixham
Devon
TQ5 0AS



19 Greenway Park,
Yalmpston
Buxham
Devon T&S ONA
15 April '05

Dear Sir,

On 15 + 16 February 2005, I attended a hearing in Yalmpston regarding a disputed footpath 52. There was an extremely large turnout, filling the village institute, but sadly, it was a complete shambles! It was run in a non-democratic way, with only Ms. Brown from the National Trust being able to say very much - the disputed path is not on or near National Trust land. The inhabitants of the village & the Ramblers Association were not allowed to speak & many left the meeting extremely frustrated.

Yours Sincerely,
Margaret R Lowe

19-4-05



32 Banfield Close
Gallopier
Brixham
Devon

TOS 01/

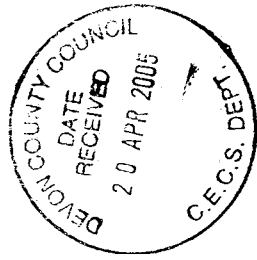
Dear Sir

I am writing to complain about the
tone of the recent hearing about
foot path 52 at Gallopier Village Hall
on Feb 15 16 2005. Most of the
people were gagged and those that
spoke were cross examined more
like a trial than a hearing.

Yours faithfully
R. Suscombe

18 Galmpton Glade
Galmpton
Nr Buxham
Devon

TQ5 0LW
18.4.05



Mr. S. Clancy,
Occ Solicitor,
County Hall,
Topsnam Road,
Exeter,
Devon EX2 4QD

Dear Sir

Re: Footpath 52 Hearing at
Galmpton 15-16 Feb 2005

To gether with a large number of

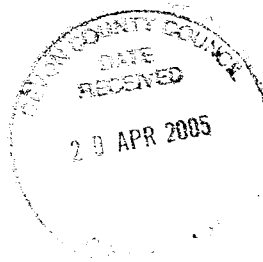
people I attended the said hearing
& was greatly disappointed at the
way it was conducted,
I was under the impression
together with a large majority
of people attending that it was
to be a general hearing/enquiry
where views could be put forward
by the community of Galmpton,
It was seen the people of
Galmpton that have enjoyed access
to the said footpath without
hurdance in the past & feel
that it should have been them
to have had a fairer say in the
proceedings in putting forward their
views & experiences in their
use of the path in question,
There seemed to be more emphasis

on procedure & protocol in the
conveying out of the hearing than
the views of the community & people
felt that they were spoken down to.
by the Superintendent,

I hope the final outcome of
the hearing will be in favour
of the people of Galveston who
have enjoyed access over the sand
path for so many years in the past.

Yours sincerely
J. March (Mrs)

12 Stoke Gabriel Road
Galmpton
Brixham
Devon
TQ5 0NQ
18 April 2005
Mr Nigel Grant



Mr Simon Clarey
D.C.C. Solicitor
County Hall
Topsham Road
Exeter
EX2 4QZ

Dear Mr Simon Clarey,

I am writing to you following my attendance of a meeting to discuss the public right of way past Galmpton Mill footpath 52 on the 15 & 16 February 2005. I along with many local people took time out from my work, to attend what I thought would be open discussion about the footpath being illegally diverted along the beach & up some newly illegally created steps. The chair did in my opinion not carry out the meeting very professionally. He allowed false declaration of the state of the tide being at, as was stated an average of the level expected during the year, when anyone with access to a local tide time table would easily see that it was in fact 0.5 metres or eighteen inches below the normal that could be expected. This would not allow a fair understanding of the effects of the tide on the new proposed route to be seen. He also allowed totally irrelevant questioning of one of the speakers continually referring to the fact that the speaker was not local as if that had any relevance to the points being put forward & when this was pointed out from the floor the person was told that they should have registered at the start if they wanted to have a say. At the first break I left the meeting in disgust at the way that it was being handled in such a highhanded way.

This footpath has been in constant use for generations in its existing form & the facts are that lime had been taken from the kilns nearby. The road would have been used & intended upon its creation to facilitate the carrying of the lime and used by the local farmers for their livestock. At no time did anyone explain while I was there how they would have moved the lime from the new foreshore route vertically up eight foot in height to the roadway, load up the carts they would use if they did not have right of way to the roadway at foreshore level. I know that previous generations were fit but that is pushing cruelty to the limit.

As this is the first public meeting that I have attended, I would have expected it to be carried out professionally but was greatly let down. I would ask you to consider a proper & full public enquiry before allowing this travesty of justice to take place and permission of the change of route to be allowed.

Sincerely yours,

A handwritten signature in black ink that appears to read "N Grant".

Nigel Grant

Mrs D Hales
3 Churston Close
Galampton
Brixham
Devon TQ5 0LP

18th April 2005



Att: Mr Simon Clarey
D.C.C. Solicitor

Dear Sir,

Re:Foot Path 52 Hearing at Galampton on 15-16th February 2005.

After attending the above hearing I would like to take this opportunity to let you know my disquiet by the atmosphere whipped up by the acting QC.

His tone and manner towards some during cross examination led one to believe this was a criminal investigation instead of an informal hearing. At one point a support witness was held up to public ridicule, totally uncalled for, which lowered the tone of the proceedings even further.

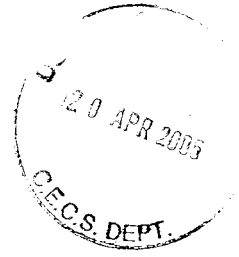
No intervention from the inspector was forthcoming. Only when protests from the public domain eventually arose did the inspector speak out, but not directed to the QC however, which all speaks for its self.

This was the worst hearing I have ever attended.

Your sincerely

D.C.C.
County Hall
Topsham Road
Exeter
Devon EX2 4QD

3, The Yeolands
Stoke Gabriel
Totnes



11 April, 2005

Mr. Clarey
D.C.C. Solicitor
County Hall
Exeter

Dear Mr. Clarey

Myself and my late husband were first employed by Mr. & Mrs. Wildy in the winter of 1962 and moved to Worcestershire with them when they left in 1972.

All the time we were in residence there, the public right of way was straight down the hill, past Mill granary and Farm House and straight on around the foreshore and this was the only access.

The reason this is typed is due to myself having had a stroke in my right arm.

Yours sincerely,

A handwritten signature in black ink, which appears to read 'M. Cheetham', is written over the typed name.

Mrs. M. Cheetham

Appendix 3

CS/05/21



**IN THE MATTER OF SECTION 143 OF THE HIGHWAYS ACT 1980
AND IN THE MATTER OF FOOTPATH 52 KINGSWEAR GALMPTON
MILL
AND IN THE MATTER OF THE HUMAN RIGHTS ACT 1998**

MR & MRS R CHASTON

And

DEVON COUNTY COUNCIL

FURTHER OPINION

1. I have been asked to provide a Further Opinion following receipt of the Inspector's report dated 4 April 2005 and the subsequent correspondence that has been received by Devon County Council ("DCC"). It is clear to me that this correspondence, and events following the hearing, provide further evidence of an orchestrated campaign against Mr & Mrs Chaston.
2. I understand that, following the recent local elections, the newly constituted Public Rights of Way Committee wish to undertake a site visit on 13 July 2005. This would appear to be a reasonable course of action for DCC to take as it will enable the new committee members to familiarise themselves with the footpath concerned.
3. However I am also instructed that Councillor Hawkins is now a member of that committee. If so then this causes me great concern given his intimate involvement from the outset in this dispute. Whilst ultimately it is a matter for Councillor Hawkins to consider I set out later in this Opinion my concern



about this and the implications of the Code of Conduct for members. My other concerns relate to the recent correspondence received by DCC, the allegations regarding the conduct of the hearing and the inspector and the role of the Parish Council. I shall deal with these concerns under separate headings.

Correspondence

4. Some of the letters sent to DCC appear to be either little more than rebashes of earlier letters or seeking to give the writer's "interpretation" of the facts found by the inspector. Consequently I shall only refer to those letters that appear to require some comment. I note in passing that there appears to be no further comment or complaint from Mr Risdon who is listed as one of the other objectors and who spoke at the hearing.
5. It is also curious that those letters that complain about the inspector's handling of the hearing were only written following receipt of his report. I had the hearing been conducted in the manner alleged it would have been reasonable to expect that letters of complaint would have been written to DCC soon after the hearing closed. The inference must be that these complaints reflect dissatisfaction with the inspector's conclusions not his conduct.
6. Mr Newcombe; 7th May 2005: I note that, once again, Mr Newcombe has written (for sometime he wrote from his own address in West Devon but now appears to be writing from Galampton) at length. He is, of course, one of the prime movers behind this attempt to divert the footpath and his letter raises a number of concerns.
7. Mr Newcombe accuses the inspector of unprofessional conduct in not logging 27 letters. As far as I am aware, at no stage has Mr Newcombe ever informed anyone as to what qualifications, knowledge and experience (if any) he possesses which would justify either his interpretation of the evidence or his accusation of unprofessional conduct by the inspector. No doubt he will elucidate in due



course. It is important because it will be recalled that he contradicted his own written evidence at the hearing when he departed from the unequivocal position he set out in his letter of 30th October 2002 (included in the hearing bundle) which contained a plan showing what he stated to be the "route of public footpath as on definitive map no.28 and also route in living memory". At the very least it shows that his memory (and possibly that of others) is faulted and is wholly unreliable. In the latest letter he also alleges that the inspector did not consider the photograph and map from the 1944 sale particulars. This is simply incorrect. The inspector dealt with this, at length, in paragraphs 8.14.1- 8.14.4 of the report.

8. Mr Newcombe also complains that the inspector did not give Mr Jenkins a chance to sum up at the end of the hearing. This comment shows that Mr Newcombe failed to understand the neutral role that DCC is legally obliged to play in relation to this dispute both at the hearing and overall. This failure to appreciate DCCs essentially impartial role is difficult to understand given Mr Newcombe's comment that he had "been on the Council for 33 years". Mr Jenkins was giving evidence as to his own involvement in the matter (he was, of course, instrumental in serving the section 143 notice which effectively prejudged the issues subsequently discussed at the hearing). Furthermore I am concerned at the suggestion made by Mr Newcombe that Mr Jenkins "showed me what he had prepared for it before summing up had started" as, if correct, this could call into question the impartiality of DCC or, at least, some of its officers.
9. Mr Newcombe's comments regarding the three options for the route of the footpath demonstrate the fundamental inconsistency in his evidence. He states that Option 3 was the original route and Option 2 was not possible as there was no gap between the hedge and the pillar. However this directly contradicts his



own plan accompanying his letter of 30th October 2002. If what Mr Newcombe says in his latest letter is correct (and photo 4 appears to support this) and there was no gap between the hedge and the pillar then, together with the other evidence presented to the hearing about fencing, this reinforces the case that the correct line of the footpath is, and only could have been, Option 1. It is worth noting the perspicacious comments made in paragraph 8.23 of the report in respect of Mr Wildy. The inspector comments that "an owner who erected gates across the route and kept them closed was unlikely a little earlier to have accepted the same route as a public footpath". In my experience, had this been the case there would have been a public protest perhaps generated by those who currently maintain a long association with the route. It can be concluded that since in Mr Wildy's day Option 2 was not possible the only route at that time can have been Option 1.

10. The remainder of his letter is an attempt to provide further untested and uncorroborated "evidence" which should be discounted. The time for presenting and testing evidence has long since passed.

11. Kingswear Parish Council: 4th May 2005. The involvement of the Parish Council and its Clerk raises very serious questions about probity in local government which I shall address later in this Opinion. This letter adds to an already long list of questionable behaviour on the part of the Parish Council. As far as I am aware, the author of this letter was not present at the hearing yet it contains many serious allegations about the hearing. It is also noticeably lacking in the objectivity that one would expect from a public authority and this must call into question its true authorship. I shall comment only on those aspects of the letter that raise relevant issues. Overall the letter simply seeks to re-interpret the evidence in a way that suits the principal objectors' arguments irrespective of the inspector's findings. In due course it will be necessary to identify who on the



Parish Council authorised this and other letters and who was responsible for the drafting. Was it discussed in a formal meeting? If so then copies of the minutes should be obtained.

12. The letter begins by alleging that "the enquiry was grossly unbalanced with the landowners employing a barrister and the objectors having no selected spokes persons". DCC may feel aggrieved by this allegation as it is clear from case law that DCC was obliged to hold such a non-statutory hearing or inquiry, especially as the subject matter of the dispute has serious implications for Mr & Mrs Chaston and their use and enjoyment of their property.
13. Whilst the inspector who was chosen was formally appointed by the Chief Executive of DCC I would expect, from experience, DCC simply asked the Planning Inspectorate to provide a suitable inspector and that Mr Shercliff was selected by the Planning Inspectorate. In any event it is my understanding that Mr Shercliff is a senior inspector on the Lord Chancellor's panel of inspectors and very experienced in the field of contentious footpath inquiries and hearings. In my opinion he conducted the hearing with considerable skill and tact given the free-for-all that many of the local objectors seemed to me to be intent on causing. The assertion that the inspector "chose two of the objectors" is a gross distortion of the events. First, the two individuals concerned, Mr Newcombe and Mrs Brown, were the principal instigators of this dispute, as was evidenced by the contents of DCC's bundle of documents and letters. It was a position that neither of them have ever sought to deny. Second, at the beginning of the hearing the inspector asked those present to identify themselves as active participants. Mr Newcombe did so but Mrs Brown remained silent. It was only later in the proceedings that she indicated that she wished to speak.



14. With regard to the comment in paragraph 4 of the letter it is plain that there was no evidence produced to substantiate the writer's assertion. The matters raised in that paragraph were fully considered by the inspector in his report.
15. The italicised comment at the end of paragraph 5 is unbecoming a public authority. It may also be libellous (the implication being that the deponents had fabricated their evidence) but that is a matter for those previous landowners to consider. Nonetheless this does provide evidence that the Parish Council's approach is openly biased.
16. The assertion in paragraph 6 that the existence of a gate across the path somehow indicated that at least two previous owners "permitted" the public to follow Route 2 is unsubstantiated. In fact, the existence of a gate across a path and its periodical closure is one of the commonly recognised ways of preventing public rights of way coming into existence. Mr Milne, in his letter of 13th April 2005 to Mr Lovell states as such: "Originally as far as we remember the gate across the entrance was normally open but formally closed occasionally to deny a right of way". This point is significant because it carries with it the clear implication that at that time the public footpath followed Option 1 as there is no suggestion by Mr Milne that the footpath was blocked by the owners' actions and others have provided evidence to show that at that time there was no gap in the hedge by the pillar. In other words it is evidence that the owners were seeking to prevent an additional (possibly more convenient) public footpath from coming into existence. I have already drawn attention to the inspector's comments at paragraph 8.23 of the report in paragraph 9 above.
17. The comment in paragraph 7 ignores the fact that one witness gave evidence at the hearing precisely to this effect. It was not hearsay but direct evidence. Furthermore the writer seems to fall into the error of assuming that a footpath has to be accessible to all. This ignores the fact that public footpaths are



frequently found in areas that are accessible only to the most fit and able e.g. across moor land and mountains.

18. Paragraphs 8 and 9 suggest that the writer has some intimate knowledge of how the forms came into existence. Mr Jenkins admitted at the hearing that the forms were produced by him after he had served the section 143 notice and were given to the principal objectors to have completed – see paragraph 6.6. Precisely what role, if any, the Parish Council and/or Councillor Hawkins played in this process is a matter that warrants further investigation. If the Parish Council's analysis of the forms is correct then 15 of the forms supported Option 2 (the route originally suggested by Mr Newcombe as being the correct route) and only a minority supported Option 3. This is however a misreading of the report. As the inspector noted, the lines marked on the maps – with the exception of Mrs Brown's – “using a different pen with different coloured ink to the signed script on the back” (see paragraphs 8.34.1 and 8.35.2) in all cases indicated Option 3.
19. The comment in paragraph 11 regarding the forms having been tampered with is wrong. The inspector considered this matter in detail in paragraphs 8.33 – 8.38. The comment about the inspector's observation in paragraph 6.9 that one witness withdrew her form and three others expressly stated they did not draw the lines themselves is astonishing. If the witnesses were subject to undue pressure, as the writer suggests, then it can only have been undue pressure from the principal objectors as it was they who distributed the forms. It follows that the comment in paragraph 12 about one or two maps having been “touched up” raises further questions about the conduct of the principal objectors who distributed, collected and forwarded the forms to DCC. The significance of any of the forms having been “touched up” and the implications for the two



principal objectors (one a member of the Parish Council) who handled them has apparently not struck the writer.

20. In paragraph 13 a comment is made about "a local resident" but no attempt is made to identify this resident or to explain why they did not give evidence at the hearing when that evidence could have been tested.

21. The writer's observations about the lime kiln are entirely misconceived. The kiln was constructed on the river bank for a reason. Limestone was quarried and brought to the kiln by boat – the maps show jetties by the quarry – and the limestone was then burnt in the kiln to produce lime which was then taken by horse and cart to Lower Greenway Farm. The photographs referred do not show any track following Option 3. Once again this is an example of the Parish Council and/or the principal objectors attempting to read into documents and maps matters that simply are not there. As Mr Milne reports in his letter to Mr Lovell of 13 April 2005: "We cannot recall at any time when the way to the kiln was along the top of the beach and was covered by a high spring tide. We do not remember that the wall behind the beach was ever moved though it was indeed partly repaired. Sorry that I cannot provide any 'ammunition' for you but good luck".

22. Paragraph 18 is simply wrong. Copies of my closing submissions were made available and I read it out in full. I am sure that Mr Clarey would confirm that to be the case. In any event I was under no obligation to prepare or provide written copies of my closing submissions.

23. Mrs Susanna Boot 30th April 2005: Two points arise from this letter. First she makes the comment that the access on Mill Lane is going to be limited or closed and the gate locked. This shows either a complete lack of understanding about the effect of the hearing and/or that she has been misinformed. Second, she (and many others) has failed to appreciate that the route is a footpath and not a



bridleway. As such she has no right to ride a horse along any part of the footpath. Similarly Mrs Margaret Packer mistakenly refers to closing off access to the foreshore in her letter of 6 May 2005.

24. Mrs Mazumbar 3rd May 2005: The only comment that needs to be made about this letter is that my note shows that Mrs Mazumbar appeared at the hearing and confirmed that she had not even walked the route of the footpath and the comments in her letter ought to be viewed in that light.
25. Councillor Nick Bye 1st May 2005: I understand that Councillor Bye is a councillor on Torbay Council. He refers in his letter to a meeting on 27th April 2005 (after the inspector had reported) "called by Councillor Jonathan Hawkins to consider the matter of the pathway/access to the 'beach' at Galampton on the River Dart". This is a matter of great concern because Councillor Hawkins is a member of DCC Public Rights of Way committee who will ultimately have to adjudicate. It is therefore wholly inappropriate for him to be involved in this way and his actions may well have prejudiced DCC's position in this matter – see the recent decision of Richards J in *Costas Georgiou v London Borough of Enfield, Cygnet Healthcare Ltd, Rainbow Developments, Mr JC and Mr J Patel* [2005] JPL 62. Furthermore Councillor Hawkins should also be familiar with the requirements of the Standards Board for England September 2004 guidance entitled "Lobby groups, dual-hatted members and the Code of Conduct".
26. The letter also calls into question how the meeting was conducted because Councillor Bye suggests that he asked for a show of hands of those "who had used direct access from Mill Lane onto the beach prior to 1988" whereas it would have been more pertinent for him to have ascertained by what precise route they had gained access and by what means.
27. Mrs Maurcen Milne 29th April 2005: Much of what Mrs Milne has to say in her letter was contradicted by the evidence presented to the hearing. However she



raises two points which appear to have been missed by the objectors. She states that she used the footpath to gain access to the beach and she also confirms that she used to occasionally gain access by car. First, it is not sufficient to use the footpath to gain access to the beach. It is settled law that the status of a footpath carries with it only the right of passage and re-passage. Thus using the footpath solely to gain access to the beach for recreational purposes is not using the footpath *per se*. Second, as the inspector delicately pointed out to drive a motor vehicle over a footpath is an offence.

28. Mrs Sally Brown 17th April 2005: Mrs Brown is one of the prime movers behind this dispute and the content of her letter must be viewed in that light. I understand that Mrs Brown is a Parish Councillor having been co-opted (rather than elected) onto the Council and so I will assume that she will be familiar with the implications of the Code of Conduct on her actions to date. I deal with her comments regarding the conduct of the hearing later. However at this stage it is necessary to correct her comment about the sworn affidavit of 25th February 2005. As she was present throughout the hearing she will have been aware that, due to Mr Duncan being absent on holiday at the time, an unsworn copy of the statutory declaration was read out at the hearing and the sworn document submitted as soon as he had returned from holiday and was able to swear it.

29. Mr Richard Parkes: 28 April 2005. This letter is extremely interesting; particularly in light of the fact that he has been able to unearth his original contemporaneous manuscript notes made at the time he was undertaking footpath inspections in his capacity as the then Chairman of Kingswear Parish Council. The writer clearly has considerable local knowledge and experience in general and of the disputed footpath in particular. It is clear that Mr Parkes had good reason to be acquainted with this footpath and his letter contradicts the main assertions contained in the other letters referred to above and in the



evidence submitted by the principal objectors. I note that even as early as 1988 he had been informed that the footpath "might be contentious". In my opinion his comment "I must agree with the inspector's comments and Recommendation" is highly relevant.

The conduct of the hearing

30. It was clear to me at the hearing that many present were unaware of the format of such hearings. They failed to appreciate that the purpose of the hearing was to enable any evidence presented to be tested by cross-examination. I recall that at one stage the inspector warned those members of the public who were shouting that unless order was restored he would adjourn the proceedings and reconvene at a later date as a formal public inquiry.
31. It was also clear to me that Mr Newcombe was unable to appreciate the significant legal difference between public and private rights of way. As the inquiry centred on a disputed public right of way over private land Mr & Mrs Chaston's rights under Article 8 and Article 1 of the First Protocol to the European Convention on Human Rights were engaged. The fair hearing requirements of Article 6 therefore obliged those asserting that public rights of way went across Mr & Mrs Chaston's land to produce evidence to the hearing to substantiate that assertion and to have that evidence tested by cross-examination.
32. It must be remembered that the dispute over the route of Footpath 52 concerns a public right of way and therefore none of those present, other than Mr & Mrs Chaston, could similarly rely upon the Human Rights Act 1998.
33. In my opinion the inspector conducted the hearing with considerable tact. His report is detailed and thorough and the fact would not be lost on any court that the complaints about the inspector's conduct of the hearing arose after his report had been received. In my opinion, given the background facts and the



inspector's report any decision by DCC not to accept his recommendation would be irrational and unlawful.

34. With regard to the undated letter from Mrs Maunder it is clear that she has no understanding of the purpose behind non-statutory hearings or inquiries. She would appear to be unaware that the elderly gentleman to whom she refers was one of the principal objectors and it was therefore entirely appropriate to question him in the manner she suggests. The alternative would have been to have undertaken a formal public inquiry with evidence taken on oath and which would have been subject to the provisions of the Perjury Act 1911.
35. My final comment concerns the letter from Mr Pidgeon (who I am instructed is the nephew of Parish Councillor Mrs Brown) dated 5th June 2005 which contains an allegation that the inspector may have been at Naval College with Mr Chaston. Apart from the fact that Mr Chaston has never been at Naval College this letter evidences the depths to which the objectors will sink and their evidence should be viewed by DCC in this light. I am also instructed that the Mr R B Hall to whom Mr Pidgeon refers is the late Mr Robin Hall with whom Mr Chaston was well acquainted and who supported Mr Chaston in his "battle with my sister". It is to be regretted that due to his recent death Mr Hall was unable to appear in support of Mr Chaston.

The involvement of Councillor Hawkins

36. I have been concerned for sometime regarding the involvement of Councillor Hawkins. It has never been explained why or how he came to be present at the meeting with Mr Jenkins on 30th April 2003 which led to the service of the section 143 notice the following day. Councillor Hawkins must have seen Mr Newcombe's map drawn from "living memory" showing the route being Option 2. In any event he was copied with Mr Mallec letter and plan to Mr Chaston of 4th December 2002 clearly describing Option 2. It should have been



incumbent on him to have made it clear to Mr Jenkins as Mr Chaston did at the meeting that the historically accepted route did not go beyond the gates. Why did he allow Mr Jenkins to form a view which he (Councillor Hawkins) must have known was clearly wrong? It follows that it may be that Mr Jenkins would not have acted as he did had Councillor Jenkins not been involved. It is worth repeating that, at this stage, Mr Jenkins had no corroborative evidence to support his view, a position he confirmed to the hearing. In the event Mr Jenkins has been unable to explain why he considered that the matter was so urgent that it warranted the serving of the section 143 notice so quickly and the subsequent removal by DCC workmen of Mr & Mrs Chaston's gates, especially as the matter then became the subject of a non-statutory hearing some two years later. Furthermore, one fact that was established by the hearing was that the gates that were removed were not on the county road but on Mr & Mrs Chaston's private land. He could offer no explanation why simply leaving the gates open would not have sufficed for the time being. He also could not explain why a section of the fence was removed by the DCC workmen. Therefore, it is arguable that DCC have committed a trespass, if not worse. Mr Jenkins did confirm that it was he who prepared the forms and plans which the principal objectors then distributed and that he had done so after he had served the section 143 notice. In other words, he acted without any supporting evidence and under delegated powers.

37. One consequent inevitable implication is that Councillor Hawkins (or others) may have applied undue pressure on Mr Jenkins. It may be possible to investigate this further by means of an appropriate application under the Freedom of Information Act 2000 for disclosure of all internal memoranda, meeting and telephone attendance notes including any that may have passed between Councillor Hawkins and Mr Jenkins regarding this dispute in general



and, in particular, the section 143 notice, the refusal to agree to a moratorium (which, with the benefit of hindsight appears to have been a perfectly reasonable request) and how the "checks" were made on the witness forms as confirmed by Mr Clarey in his letter of 12th June 2003. In the alternative it is possible to apply for advance disclosure of information under the terms of the pre-action protocol applicable to claims for judicial review and the duty in CPR 1.3.

38. In addition to the above, Councillor Hawkins's conduct (and for that matter Mrs Brown as a Parish Councillor) could be said to have engendered an appearance of bias in relation to the determination of this matter, especially as Councillor Hawkins is a member of the Rights of Way Committee of DCC. The issue of the appearance of bias has been examined in some detail by the High Court in the recent decision of Richards J in *Costas Georgiou v London Borough of Enfield, Cygnet Healthcare Ltd, Rainbow Developments, Mr JC and Mr J Patel* [2005] JPI. 62. The judge, who has considerable professional and judicial experience in public law, reviewed the governing principles regarding the appearance of bias. These were summarised by Lord Hope in *Porter v Magill* [2002] 2 AC 257 at paragraph 103: "The question is whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased". The judge then went on to conclude in paragraph 31: "I therefore take the view that in considering the question of apparent bias in accordance with the test in *Porter v Magill*, it is necessary to look beyond pecuniary or personal interests and to consider in addition whether, from the point of view of a fair-minded and informed observer, there was a real possibility that the planning committee or some of its members were biased in the sense of approaching the decision with a closed mind and without impartial consideration of all relevant planning issues. That is a question to be



approached with appropriate caution, since it is important not to apply the test in a way that will render local authority decision-making impossible or unduly difficult. I do not consider, however, that the circumstances of local authority decision-making are such to exclude the broader application of the test altogether." The judge then went on to consider what happened in that case and "the objective impression that is conveyed".

39. This raises two questions about Councillor Hawkins' conduct. The first is in relation to his status as a dual-hatted member i.e. a councillor at parish, district and county levels. The second is in relation to whether or not his apparent extensive and intimate involvement from the outset may "taint" DCCs deliberations over the inspector's report. Whilst it can be expected that he will be prevented from participating in the debate and vote on the report there must be concern that he may still be influencing the Committee "behind the scenes".
40. It follows from this that it may be appropriate to consider lodging a formal complaint against Councillor Hawkins with the Standards Board for England. In my opinion his conduct has called into question his compliance with DCCs Members' Code of Conduct (particularly paragraphs 2 [and especially 2(c)], 4 and 5(a)), especially when viewed in the light of the Board's published guidance on prejudicial interest and dual-hatted members.

The Parish Council

41. Whilst the most recent letter from the Parish Council gives fresh cause for concern, in my opinion the general conduct of the Parish Council warrants further investigation. In particular the circumstances behind the efforts of the Parish Council to interfere in Mr & Mrs Chaston's application to rectify their title to part of their land held at HM Land Registry are highly suspect. I can see no legal justification for the Parish Council meddling in what is a purely private legal matter. A comparison can be made with the entirely proper approach of



DCC. The suspicion must be that certain members of the Parish Council have exerted pressure on the Mr Stevens the Parish Clerk to correspond with the Land Registry. It has been well documented by the Standards Board for England that some Parish Council clerks have been subject to "bullying" by members intent on pursuing their own private agendas. Given the close involvement of both Parish Councillors Hawkins and Mrs Brown there must be a suspicion that this may have happened in the case of Kingswear Parish Council. Therefore it will be necessary to request disclosure by the Parish Council of all relevant minutes, agendas, meeting and telephone attendance notes relating to this matter. It may also be necessary to refer the matter and the conduct of Councillors Hawkins and Mrs Brown to the Standards Board for England.

Possible additional legal action

42. I feel duty bound to raise another matter. A number of documents in my possession, especially those produced by DCC, lead to a suspicion that certain members and officers may have acted in a manner aimed at causing Mr & Mrs Chaston harm. Section 6(1) of the Human Rights Act 1998 provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. Section 7(1) provides that a victim of an unlawful act may rely upon a Convention right. Section 8(1) provides that the Court may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.
43. Furthermore where a party has suffered loss because of the acts of an officer in public office, a claim for misfeasance may arise to restore the party to its position prior to error made. The tort of misfeasance in public office comprises the following elements (see *Three Rivers District Council v Bank of England* No. 3) (HL(E)) [2000] 2 WLR 1220):



- i) The defendant must be a public officer;
- ii) The public officer must be exercising a public function, and such exercise is subject to the principles of vicarious liability;
- iii) The basis for the action lies in the defendant taking a decision in the knowledge that it is in excess of the powers granted to him and that it is likely to cause damage to an individual;
- iv) The claimant must prove that the public officer acted with a state of mind of reckless indifference, in a subjective sense, to the illegality of his act;
- v) A claimant must show sufficient interest to found legal standing;
- vi) Causation is an essential element and is a question of fact;
- vii) A claimant can recover all reasonably foreseeable losses which the officer knew at the time of the decision would *probably* damage to the claimant, or was reckless as to that consequence;

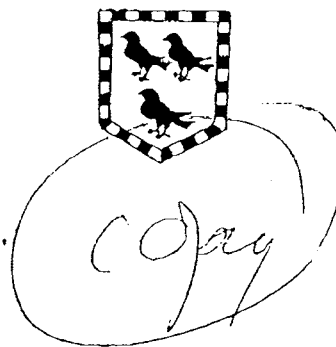
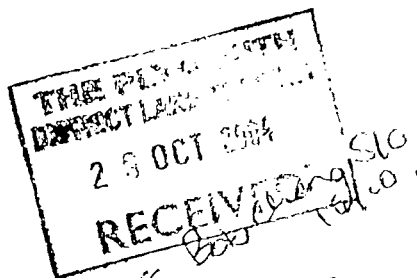
44. The actions of Councillor Hawkins, Mrs Brown, Mr Stevens and Mr Jenkins each give me some cause for concern which I have attempted to briefly summarise above. It follows that it is possible that other documents exist that will reveal further facts sufficient to consider pursuing legal action against one or more of these individuals and/or DCC or the Parish Council.



MARTIN EDWARDS
39 Essex Street
London WC2R 3AT
8 July 2005

Kingswear Parish Council

Plymouth District Land registry
Plumer Road
Tailour Road
Crown Hill
Plymouth PL6 5HY



28 October 2004

Dear Sirs,

Title DN496513 and DN496514

Kingswear Parish Council opposes the proposed registration of the above land by Mr & Mrs Chaston. We understand that it is claimed that the boundary shown on DN186456 is a clerical error and the land should have been included in this title.

As far as DN496514 is concerned, this land forms part of a public footpath, No 52 on the definitive map. The land is outside the wall bounding DN186456 which clearly defines the boundary of Mr Chaston's property along this side. The wall possibly dates back 100 years or more and indicates that the boundary on DN186456 is correctly shown.

While we understand that a public right of way can exist over privately owned land we know of no evidence that the claimed land was ever part of Mr Chaston's property. If it were then why does the boundary wall not enclose it? As a public right of way the Devon County Council is responsible for its maintenance, such as may be necessary. The Council should have a better claim to the land than Mr Chaston, who as far as we are aware, has carried out no care or maintenance during the four years since he has been a local land owner. If the claimed land should be in anyone's ownership then it should be that of the County Council.

Regarding DN496513, this is an extension of the public highway and also part of path No 52 leading to the lime kiln. If there has been a drafting error then we suggest that it may be on the part of the County Council in wrongly marking the end of Mill Lane.

The part of footpath 52 being claimed by Mr Chaston used to provide horse and cart access to the lime kiln, now disused. It is still used by horses today. There is a danger that if the land on which the path runs should fall into private ownership then there could be pressure to close the path in the future.

You may be aware that Mr Chaston has applied to vary the route of path 52 against some local opposition. This application is to be determined by a Rights of Way Inspector on the 15th February next.

I regret that as the local authority my Council was not informed of this application to register the land. Have you informed the Devon County Council as occupiers of the land?

Yours sincerely,

M. Stevens

Michael C Stevens.
Clerk to the Council

3, Orchard Terrace,
Lower Contour Road
Kingswear,
DARTMOUTH TQ6 0AW

Tel & fax: 01803 752 642

Map View

