

Schedule 14 Application
Claimed Public Footpaths: Watermouth Cove, Berrynarbor

Report of the Director of Environment, Economy and Culture

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

Recommendation: It is recommended that no Modification Order be made to add footpaths on the claimed routes between points A–B–C–D–F–G–H, D–E and C–G, shown on drawing number ED/PROW/07/124.

1. Summary

This report relates to a Schedule 14 application, made by Berrynarbor Parish Council, to record footpaths on the headland at Watermouth Cove (the claimed routes).

2. Background

Queries were made in July 2006 on behalf of Berrynarbor Parish Council to report that people were being prevented from walking to and around the coast at the Watermouth Cove Holiday Park in Berrynarbor, between Ilfracombe and Combe Martin. Following further discussions, an application under Schedule 14 of the Wildlife and Countryside Act 1981, dated 26 February 2007, was submitted by Berrynarbor Parish Council to modify the Definitive Map and Statement for the Parish of Berrynarbor by adding footpaths to and around the cliffs on the coast of the headland at Watermouth Cove. The application was accompanied by a plan showing the claimed routes, with certification that notice had been served on the landowners, a copy of a leaflet on walks in Berrynarbor and 21 completed user evidence forms.

In a letter accompanying the application, the Chair of the Parish Council said that the public had been using the headland for many years without any restrictions and had been refused access by the current owners of Watermouth Cove Holiday Park. Notices saying “No Entry” had been put up at all entrances and a professional security guard had been employed to patrol the area to ensure that the public were refused entry. The letter expressed concerns about the loss of the public’s right to enjoy access to the area after using it for so long and reported that more completed evidence forms would be submitted. A further 16 completed evidence forms were submitted in June 2007, with accompanying information about fishing in that area and two more forms were submitted the following month.

The County Council’s parish-by-parish Definitive Map Review process is not due to reach Berrynarbor parish for some time and the policy is not to investigate fresh evidence or consider applications ahead of the review process, except in particular circumstances. Those include if claimed use of a route by the public is threatened with it becoming unavailable through development or obstruction. In this case, discussions leading up to submission of the application indicated that the landowners have deliberately prevented access by the public and have made it clear that they are challenging any use of routes onto and across the land in question.

Accordingly, the application has been processed and investigated ahead of the review reaching Berrynarbor parish and this report considers examination of the evidence submitted and discovered relating to the routes claimed by the Parish Council.

A public consultation on the application took place in January 2008, with the following responses:

County Councillor Mrs A Davis	-	no comment;
North Devon District Council	-	no comment;
Berrynarbor Parish Council	-	(support, as applicants)
Combe Martin Parish Council	-	support the application;
Byways and Bridleways Trust	-	no comment;
Devon Green Lanes Group	-	support, but with no further knowledge of the routes;
Country Landowners' Association	-	no comment;
National Farmers' Union	-	no comment;
Open Spaces Society	-	no comment;
Ramblers' Association	-	no comment.

3. Description of the Routes

The claimed routes described are shown on the plan ED/PROW/07/124.

Existing recorded routes

Footpath No. 2 is recorded as running from the A399 coastal road between Ilfracombe and Combe Martin, through the boatyard at Watermouth Harbour and past an entrance gate to the camping field for Watermouth Cove Holiday Park (point H). It continues along the northern side of the cove onto the headland as a cul-de-sac path, ending at a point on the cliffs (point E) below the ruin of a circular stone building on the headland. Footpath No. 26 runs alongside the road to and beyond the Harbour, partly used as the South West Coast Path which runs past the main entrance to the holiday park (point A), continuing further on Footpath No. 1 from the road to Smallmouth Cave and along the coast towards Combe Martin.

Claimed routes

The main claimed route (A–B–C–D–F–G–H) starts at the vehicular entrance to the holiday park from the road (point A). It runs along the driveway to buildings, continuing along a path passing the entrances to a private beach and Briery Cave and past a playpark onto cliffs above the coast (point B), with a track down to a point used for fishing. It continues along the top of the cliffs, with steps and handrails built in places, onto the Warren on the northern edge of the holiday park camping fields (points C–D), passing several worn tracks down towards other fishing points. From point D, it turns to run down the edge of the Warren alongside the boundary fence of the holiday park to a gate leading onto Footpath No. 2 (point F). It continues alongside the southern boundary fence of the Warren onto a worn track (point G) leading onto a tarmac vehicular access track for the main holiday park site and a tarmac path to a gate allowing pedestrian access from Footpath No. 2 and the Harbour (point H).

Other routes claimed are across the Warren camping field (points C–G) and continuing from the Warren beyond the holiday park along cliffs and towards other fishing points on the headland accessible from the end of Footpath No. 2 (D–E).

4. Basis of Claim

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

The Wildlife and Countryside Act 1981, Section 53 (3)(c) enables the Definitive Map and Statement to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows that:

- (i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

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

The Highways Act 1980, Section 31 (1) states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

In a House of Lords appeal judgment on *R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs* in 2007, it was held that for such evidence of no intention to dedicate a way to be sufficient there must be evidence of some overt acts on the part of a landowner to show the public at large that there was no intention to dedicate.

The same judgment, in respect of *R (Drain) v Secretary of State for the Environment, Food and Rural Affairs*, upheld an earlier High Court decision that the phrase “during that period”, relating to Section 31 (1) as above, did not mean that a lack of intention had to be demonstrated “during the whole of that period”. It did not specify the period of time that the lack of intention had to be demonstrated for it to be considered sufficient. What was considered sufficient would depend upon the facts of a particular case, but if the evidence shows that the period is very short, questions of whether it is sufficiently long (‘de minimis’) would have to be resolved on the facts.

The Highways Act 1980, Section 32 states that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan, or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

5. Location and History

Watermouth Cove is a sheltered inlet with a small beach on the North Devon coast between Ilfracombe and Combe Martin, with nearby features also named as “Widmouth” Head and “Widmouth” Beach. The Watermouth Cove Holiday Park is one of several camping sites along that stretch of coastline, based near the harbour and to the east of the cove, extending over half of the headland on its north side. None of the area is recorded as Open Access land under the Countryside and Rights of Way (CROW) Act 2000. Footpath No. 2 provides public access from the A399 Ilfracombe–Combe Martin road through the harbour onto and towards the end of the headland and past the ruined stone building to the cliffs on the cove.

The ruined building, known as the “Pigeon House”, is thought to have been built as a folly by an owner of the nearby Watermouth Castle, the entrance to which is across the road from the harbour and holiday park. The castle is a Victorian Gothic building set in a park, built in about 1825, which is now a tourist attraction with themed historic collections, modern amusements and a pleasure garden.

The land around the harbour, with the headland, was part of the Watermouth Castle estate in the 19th century, parts of which were sold at various times during the first half of the 20th century. The castle was used as a hospital during World War I and the harbour was used during World War II for tests of the “Pluto” pipeline from Swansea, used for pumping oil supplies across the English Channel to Allied forces for the D–day invasion of Normandy in 1944. The land now forming the holiday park was included in the ownership of the Watermouth Harbour company as part of a trust, but was later sold and the Watermouth Cove caravan site was built on it by the early 1960s, with the harbour now also used for the Watermouth Yacht Club.

6. Documentary Evidence - Historical Maps and Aerial Photography

6.1 Historical mapping: 18th–early 20th century

Early maps, particularly at smaller scales, do not show any parts of the claimed routes. Donn’s map of 1765 shows the area only with the Ilfracombe–Combe Martin road passing Watermouth Cove, showing an earlier house then at Watermouth, with the name of its owner and indicating a “Pleasure House” at the site of the present folly on the headland. No routes are shown on the Ordnance Survey 1st edition 1” to the mile map, published in 1809, or on the later Greenwood’s map of 1827, which was based on the early Ordnance Survey maps.

Later maps at larger scales and with more detail do not show the claimed routes. The Tithe Map of 1841 shows the headland numbered 1310, which is named in the Apportionment as “Smallmouth”, used as pasture. The line of a fence is shown along the cliffs, but there are no paths or tracks shown on the lines of the claimed routes. The Ilfracombe–Combe Martin road is shown coloured and included with those numbered and identified in the Apportionment as public roads, with other tracks shown in the Watermouth grounds.

Deposited plans for the proposed Combe Martin–Ilfracombe road in 1865 do not show the lines of any paths or tracks on the headland, or the route of Footpath No. 2. No footpaths are indicated as being affected within the ‘Limits of Deviation’ for the proposed road in the area that would have required details of any possible diversion, stopping-up or provision of a structure. The plan for a Quarter Sessions diversion of Footpath No. 1 from Watermouth Castle in 1884 indicates the route to be diverted crossing The Naps to Smallmouth Cave nearer to the cliffs on the coast. It shows the Smallmouth headland labelled, but with no paths or tracks recorded on it to indicate the lines of any other footpaths not affected by the diversion.

Ordnance Survey 25" to a mile maps from the 1st edition of the 1880s and 2nd edition of the early 1900s show only the route recorded later as Footpath No. 2 running onto the headland across the open area of The Warren, later partly enclosed. The footpath is labelled "F.P.", running past the folly building and ending at the cliff beyond it. No paths are shown in the same way on or near other parts of The Warren and adjoining land now comprising the site of the holiday park, including the edge of the cliffs and the area of the Briery Cave, which shows only steps leading to its entrance.

The 1910 Finance Act maps drawn up for a survey to ascertain the value of land for the purpose of taxation were based on the 2nd edition 25" to the mile maps, which did not show any sections of the routes within the relevant numbered hereditament, or assessment area of land. The "Domesday" book recording outline details compiled for assessment of the land's value does not indicate any deduction for Public Rights of Way or User associated with that area. The Field Book for the hereditament does not record any deduction, or notes that might have been made in connection with the routes suggesting that there may have been public rights of way on the land required to be taken into account.

It provides evidence that there were no routes considered to be public rights of way on or crossing the land at that time, to require a deduction affecting the calculated details for its valuation.

6.2 Later mapping and aerial photography

Later Ordnance Survey and other maps at smaller scales in the earlier 20th century do not show any part of the claimed routes, or only the line of Footpath No. 2. The keys for some of the later editions of Bartholomew's maps indicate that they showed the routes of some footpaths and bridleways, but do not show any part of the claimed routes. Earlier aerial photography from 1946–9 shows the line of Footpath No. 2 visible on the headland to and beyond the folly. A track is shown on the current line of what is now the entrance to the holiday park, with a worn path leading to the Briery Cave entrance and beyond onto the nearby cliffs. No other worn tracks are visible further onto the rest of the claimed routes around the cliffs on the unenclosed headland, or across the open field before any caravan site was built.

Ordnance Survey mapping from 1963 shows that the Watermouth Cove Caravan Site had been built by then, with an entrance from the road in its present location leading to a carpark and buildings. An access track is shown running outside the enclosed caravan site across the rougher ground of The Warren to the harbour buildings. Other tracks are shown running from the buildings to Briery Cave, continuing to and along the cliffs, with the lines of other steps indicated, including on the cliffs which perhaps gave access to fishing points. None are shown continuing beyond the area of the caravan site further onto The Warren. The line of Footpath No. 2 is shown outside the mainly enclosed area of The Warren, with no indication of any line suggesting a connecting links to any of the other paths. More recent aerial photography from 1999–2000 shows worn tracks around and beyond the main area of the holiday park, including on parts of the claimed routes, but also in other parts of The Warren used as a camping field for the holiday park. Some of those are more likely to be from vehicular access relating to the holiday park, by visitors and in connection with its management, with others nearer to the coast and cliffs in the area around the holiday park.

The showing of parts of the claimed routes on later and current maps records their physical existence at that time and until more recently but does not indicate on its own, or support, the existence of any public right of way along them on foot or otherwise, which would require other more significant stronger evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.

There is no support from older historical maps for the physical existence of the claimed routes and some from more recent mapping only to show that parts of the routes have existed since at least the mid-1960s as sections of tracks or paths. Those nearer to the coast and cliffs in the area of the holiday park are probably from use on foot, but that could have been particularly by people staying at the holiday park or visiting to use the facilities, including to fishing points. No other more significant historical maps or references in historical documentary material have been found to indicate that they may have had the reputation of being considered as public footpaths from earlier, or more recently.

7. Definitive Map and Statement and Earlier Reviews

Part of the main claimed route from point A towards point B, as far as Briery Cave, was included with those surveyed originally by the Parish Council in 1950 for putting forward as public rights of way. The route of the path was described then as: "Entrance from Ilfracombe road. Through iron gate over bridge to Watermouth Caves. Now sold to a Trust Company who has stopped privilege". No grounds were given for believing the path to be public and it was said to have been repaired in the past by the "owners before the Watermouth Estate was sold". It was not identified as likely to be disputed, but noted as "doubtful" and said to be required in the future.

It was queried and objected to in 1955 by solicitors on behalf of the owners, Watermouth Harbour Trust, who did not admit that any public right of way existed on the path. They had acted for the previous owners of Watermouth Castle and reported knowing that "many years ago before the Estate was broken up, a charge was made for visits by the Public to the Caves". Berrynarbor Parish Council were informed by the County Surveyor about the objection and asked if they could provide evidence of use by the public for 20 or more years, or otherwise withdraw the claim. Copies of evidence forms were supplied and, following a Parish Council meeting, the Clerk wrote to inform the County Surveyor that the Parish Council were withdrawing the claim for it to be recorded as public.

Accordingly, it was not included in the schedule of paths put forward for the Draft and Provisional map stages and was not recorded on the Definitive Map and Statement. There was no suggestion in previous uncompleted reviews, particularly from 1978, that any part of the claimed routes should be considered for recording as public rights of way. No claim has been put forward until the recent application was made before the review process for the parish is due to be started in the parish.

8. Supporting Evidence

User Evidence

Twenty-one completed user evidence forms, with accompanying maps mostly marked to show routes used, were submitted with the application in February 2007. A further 16 forms were submitted in June 2007 and two more forms were received in July 2007, mostly with maps and mainly connected with fishing activities. There is, therefore, evidence of claimed use by 39 people relating to the claimed routes to consider in connection with the application.

Thirty of the users indicated on the maps that they had used all or most of the claimed routes, but with some variations. Some included the line of the route already recorded as Footpath No. 2 and one indicated the High Water Mark at the foot of the cliffs, although that could have been from misinterpretation of the base map. Six of the users indicated that they had used only some of the claimed routes, again with some variations. Those included only from A-B, or alternative routes onto the cliffs parallel to A-B, a linear route along the cliffs

from A–B–C–D–E/F onto Footpath No. 2, or to other fishing points on the cliffs between points B/C/D/E and also not along the cliffs between points B–C–D. Four users specified limited routes onto the Warren from point H and G–F–D–C–G as a circular walk, or only from H–G–C/D onto the cliffs. Three of the users did not indicate on the maps with their forms any routes that they had used.

Almost all of the users specified that they had used the routes on foot only, with one indicating use on horseback as well. Another indicated use in a vehicle, but for access to the Warren as rented ground for haymaking, which is private agricultural use as a tenant and not public use. Nearly all of them had used the routes believing them to be footpaths for use only on foot, with two indicating Byways Open to All Traffic. One user specified that the tracks to the Holiday Park and Harbour were byways, with the Warren as a public open access area and another did not specify a believed status for the routes.

The earliest reported use is from 1931 by one person, but whose grandparents and parents were tenants of the land leased from Watermouth Castle, which cannot be interpreted as public use. Other early use indicated from between 1954–65 is also by people with a direct or family connection to farming activities from renting the land and employment, or to the Harbour and four others specified that they had used routes with permission from the owners, all of which is private and permissive rather than public use. The overall claimed use for 20 or more years was by 35 people, with the rest for less than 20 years. Twenty claimed use for 30 or more years and nine for 40 or more years. Only one indicated having used it for 60 or more years, but having specified use “since childhood”, it can only be presumed from the date of birth given as from sometime during the 1940s.

The indicated frequency of use was from between about only once or twice a year and mainly from 12–20 times, about once or twice a month, to about once or more than 50 times a year and some specifying more than 100 times a year, or twice a week. One specified use up to more than 350 times a year, or ‘daily’, but which was to check on sheep in the winter. Some were not specific and referred to ‘many’, ‘various’ and ‘numerous’ times a year, or ‘frequently’, ‘often’ or ‘occasionally’ and ‘most weekends’, or ‘most days when young, now when home’ by someone resident elsewhere in the country. The main use given by most users was for pleasure and fishing or angling, with some referring specifically to walking, including with dogs. Two also specified birdwatching and one scuba-diving. One referred to use for riding, with two others specifying use for haymaking and tending sheep in connection with access for farming.

Most of the users indicated that they were going to and from the Harbour and carparks, or the road and the entrance to the Holiday Park, as access to the rocks and foreshore. Nearly half of those specified going to rock ‘points’ or ‘platforms’ identified by some as fishing ‘marks’ or angling positions and otherwise referred to as fishing ‘spots’ or ‘venues’. That was particularly by those referring to use specifically for fishing, but also for other use. Two specified access to all areas of the headland and two others did not specify a destination, with one indicating use from a nearby farm to the Warren, but which was for farming purposes.

Most of the users said that they had not been stopped or turned back, or told that the routes were not public, but some had recently and had heard of others being told that they could not use them. Most believed that the owner was aware of the public using the routes and it was common knowledge, as so many people used them for fishing and walking. Some had known or had spoken to the previous owners and had used the shop on site when fishing, or referred to the new owners looking out for people and turning them away, or wanting to make money from anglers. Two people reported that their family had been tenants or had worked for previous owners and, therefore, will have had had private rights to use them, with

four reporting that they had used routes specifically with permission from the previous owners.

None of the users had seen any stiles on the routes and most reported not having seen any gates, with some referring to gates from the camping site and the Warren that were never locked. None had seen any other obstructions, but two reported seeing handrails near the rocks, with one referring to a collapsed path and another indicating vegetation growth preventing access from the Warren. Most of the users had not seen any signs or notices on the routes, with some referring to the footpath signs on the recorded Footpath No. 2. Others specified notices relating to the Harbour and Holiday Park camping site, for seasonal holiday residents, for anglers to pay for fishing, to the caves and stating that the owner's house was private. Most reported that they had not seen any signs or notices saying that the routes were not public, with some referring to the signs put up with the restrictions, charges and security guards preventing access to the Holiday Park in the summer of 2006, stating that it was private, with no admission and no dogs.

Additional and further information

Some of the users provided additional details on their forms and in accompanying information about their use of the routes, including about organised and individual or family fishing activities. It included a copy of a guide to shore angling on the North Devon Coast with a section on the rock marks for fishing points at Watermouth, which indicated that they could all be reached after parking in the Holiday Park or Harbour for a small charge.

Most of the comments about use of the claimed routes were that they had been used for a long time without any restrictions on access or problems, in connection with fishing and other activities, until recently and expressing concerns that it should continue. Some referred to the previous owners being less restrictive in controlling access, although indicating that they had paid then for use of facilities but were opposed to the more strict enforcement of controls over access and payment introduced by the new owners, particularly for parking and fishing. Two referred to what they believed was a right of 'piscary' for local people, or access for fishing and also to collect seaweed, allowed by the lord of the manor.

Further information was obtained from the users who had completed forms, to clarify details about the extent and nature of their use of the claimed routes for fishing. More than half of the users said that they had used the routes for fishing, but only just over half of those indicated that they belonged to a fishing or angling club. None of them reported that they had been fishing under any a subscription paid by a club in agreement with the previous and current owners of the Holiday Park, or had paid on site to use fishing points or for a day pass by agreement with the owners. Some of them added notes to emphasise that they had never paid to park or use the area for fishing and had not been refused access previously for fishing, even when using the shop on the Holiday Park site for fishing supplies or other facilities.

Nearly all said that they had not paid to use the carpark or other facilities at the Holiday Park and Harbour when using the claimed routes. Those who had paid indicated that it was at the Harbour and only in the summer months, or in connection with having a boat there. Of those who had not paid, one had used public transport without needing to use the carpark and another reported having been allowed to fish with permission from the owner.

9. Landowner and Rebuttal Evidence

Current owner

The current owner of Watermouth Holiday Park, Mr Fry, submitted a completed landowner evidence form in March 2008 following the consultations, with an accompanying statement and other documentation including photographs. He indicated that he had owned the land crossed by most of the claimed routes since May 2006 and did not believe them to be public, but had seen or was aware of people using them.

Mr Fry specified that he had always required people to ask permission to use the routes since he had owned the land and he had deposited a plan and statement under Section 31 of the Highways Act 1980, to state that no ways over the land had been dedicated as public. He said that staff members and security officers had turned back or stopped people from using the routes and that people using them had been told that they were not public.

He had put up notices or signs stating that the routes were not public and said that there was a locked gate with a sign leading to private accommodation on the site, with others on the claimed routes which were occasionally locked during the year to prevent access. He indicated that parts of the claimed routes had been obstructed by fencing and also at times by camping pitches on parts of the Holiday Park.

In the accompanying statement, Mr Fry gave further details and additional information relating to his evidence form, in connection with his ownership and also concerning the period before he purchased the Holiday Park and actions taken by previous owners. In accordance with maintaining security on the site for the safety of his clients on the site, Mr Fry includes in his booking conditions that all day visitors are required to report and register at reception, with a charge for each visitor. Anyone wanting to walk onto the Holiday Park just to view the area, visit the beach and caves or just to walk the headland, have been challenged, redirected or obstructed. They are invited to pay a fee and if not willing to do so are asked to leave.

In addition to giving further details of the actions he had taken in relation to use of the routes during his ownership since 2006, Mr Fry stated that his belief that the routes were not public was shared by his predecessor as owner, who had taken measures to prevent the establishment of public rights during the previous 20 years.

Evidence of previous landowners

The previous owner of the Holiday Park did not return a landowner evidence form and was reluctant to become involved in the process by providing information concerning his actions taken in relation to use of the claimed routes during his ownership. Accordingly, the information provided by Mr Fry provides evidence relating to such actions taken by previous owners.

Following his purchase of the Holiday Park, Mr Fry obtained through his solicitors clarification from the previous owners of what rights of way, both private and public, affected the property. It shows that the previous ownership extended back to 1989, providing evidence for 17 years of the owner's attitude to public access and actions taken in relation to use during that period. In answers to specific questions, the reply was that there were no rights of way and the public did not have access, but the previous owners had allowed some of the locals to walk their dogs over the site and to fish off the rocks, by permission. The question about whether there were public rights, such as public paths, crossing the property was considered to be not applicable.

Mr Fry gave details of the measures he had taken to prevent open access to the general public, with fishing allowed by arrangement and payment. Visitors to the Holiday Park had paid to use the carpark and the previous owner had also issued car parking tickets in accordance with notices found on the site, shown in accompanying photographs. The signs were already on the site in 2006 when Mr Fry purchased the property, including on all gates and entries to the Holiday Park. They all contained wording saying that the site was private and there was no admission or fishing except by previous arrangements. The signs were all in good order, but new ones were put up that were larger and brighter, stating that the site was private and asking visitors to report to reception, with some saying no entry unless staying on the park. Although not willing to provide details, the previous owner did indicate that there were similar signs on the site when he purchased it in 1989.

From investigations leading up to his purchase of the property, Mr Fry found that in 1979 there was a gatekeeper on the site and provided details in a copy of a letter from existing customers whose visits dated back to that time. They reported that entry then was purely by arrangement or permission. A statement from a former employee who had a summer job on the site was enclosed, which indicated that there used to be a wooden shed near the entrance where she used to sit and her job was to charge an entrance fee to the site, with a ticket issued on payment.

The charges applied to local people as well as holiday visitors and they would be allowed to use the beach, but only if they had permission. She was also required to watch out for people using the entrance to reach the Harbour, making sure that they continued on the access track over the second bridge and not onto the Holiday Park. There had been a chain across the track with a stop sign in the middle and at one time there was a set of large metal gates at the Holiday Park entrance.

Mr Fry reported that the previous owner had not allowed any concessions for fishermen or walkers. Anyone fishing could leave the required fee in a security box if there was nobody around to take the money and permission had been given to a few local people to use the park.

10. Discussion and Conclusion

Statute law

Section 69 of the Natural Environment and Rural Communities Act 2006 has clarified the position on a formal Schedule 14 application providing an event that can be taken as calling the public's right to use a route into question. However, that is unless there are no more significant previous events or actions that may have led to an application being made. The application for these routes to be recorded as public footpaths was made in 2007 in response to specific events in 2006 acting as a significant challenge to use of the routes and as the result of actions taken by the landowner to obstruct or prevent access to them on foot. There is, therefore, evidence of previous actions by a landowner having called into question use of the routes for consideration under statute law, although without a specific date.

Some of the users refer to being turned back or told that they could not use the routes, with notices put up in 2006, specified by two as in June 2006, the month after Mr Fry's purchase. That can be taken as a specific event acting as a challenge to use of the routes, directly as the result of actions taken by a landowner to prevent access to them. There is, therefore, evidence of significant actions having called into question their use for consideration under statute law, but not from a known specific date. It means that it is not possible to identify a more exact period, but use over the 20 years up to 2006 can be considered for that purpose and the period for consideration under statute law would be from June 1986 to June 2006.

Considering evidence of use by the public during that period, there were forms relating to use by 39 people submitted with the application. Of those, one was from a person who reported using the claimed routes up to 1980, before the period in consideration. Seven were from people who indicated that they had used the routes either with permission or in connection with tenancies and employment relating to the land, which is private rather than public use. There is, therefore, evidence of use by 31 people to take into account for the 20 year period.

Thirty of the users specified that they had used all or most of the claimed routes with variations and some of them not on land owned by Mr Fry, particularly between points D–E. Six reported that they had used only some of the routes, four of which were limited to use of the Warren only and three did not indicate which of the routes they had used. Apart from those indicating use of a limited number of routes, the evidence was not specified in detail for the use of particular parts of the routes in terms of numbers and frequency, although specified for the period and the purpose that they were used. Most of the users indicated that they had used the routes for pleasure, some for walking, including with dogs and for birdwatching, but was specified by almost half of them as for fishing, going to and from fishing points on the cliffs in the area from the road, carparks or Harbour.

Most of them reported having used the routes for 20 or more years and mainly between 10–20 or more times a year, or from once to twice a month, although many did not specify how often. Most of those who specified use for fishing had not been members of a club and said that they had not paid to do so, including by subscription through a club or for parking and other facilities at the Holiday Park or Harbour. The evidence submitted suggests that the main use of the claimed routes has been in connection with fishing and reference was made to it being by a right of ‘piscary’ for local people. However, that was a particular customary right under the lordship of a manor and is not a wider public right, extending beyond those subject to the customs from tenancies of the lord of the manor. The ownership of the Watermouth Castle estate from the early 19th century included lordship of the manor, which could have included such a right. It cannot be considered relevant today, though, except where permission has been given for a permissive right and also would not apply to those resident outside the manor. Most of those using the routes for fishing were from other parts of north Devon, including Barnstaple and as far as Bideford, Appledore and Northam. Others from the immediate local area of Berrynarbor and Combe Martin included some who reported having been given permission.

Examination of the evidence suggests that use of all the claimed routes is not clear in representing use by a significant number of people for the required 20 or more years on specific defined routes to be considered sufficient for statutory dedication. Most of the claimed use has been in connection with access to parts of the coast for fishing, including to points beyond the cliffs. Those could represent the points of interest as destinations for cul-de-sac extensions from the main routes for consideration as well as their claimed connections. However, a significant number of the users indicated that they are members of fishing clubs and the overall use does not suggest that it represents sufficient use otherwise by the wider public.

There is evidence that much of the fishing activity from the cliffs at Watermouth was on a permissive basis, with previous owners of the Holiday Park actively involved with the clubs in controlling arrangements, which included permission and payment. Although many of the users said that they had not been members of clubs and did not pay for fishing and other facilities, including carparks at the Holiday Park and Harbour, the reported arrangements suggest that they were expected to comply and pay. Those conditions have been made clearer by the current owner and it appears to be his policy of being more rigorous in

enforcing such controls that has led to the organised submission of user evidence, particularly on behalf of those using the claimed routes for fishing.

Evidence of use other than for fishing is much more limited in terms of the numbers of users and the routes used, as well as frequency and includes some who had used the routes with permission. The main use for walking, including with dogs, appears to have been limited to routes onto and around the Warren, for which it was reported that the previous owner had given permission to some local people. There was reference to the previous owners' restrictions applying only during the summer season and to holidaymakers, but not to local people or all year round. However, there is no indication that it was intended to apply only seasonally, with the requirement to pay for carparking and other facilities applying to all use and to all people, with permission given to some local people, but perhaps not enforced strongly all year round.

The evidence of use is, therefore, considered insufficient to support the recording of the routes as public footpaths by presumption of dedication from use. There is no need to consider whether there were actions taken by the landowners during the 20-year period to provide evidence of any lack of intention to dedicate the route as a bridleway. However, there is evidence that people had been turned back and were made aware that the routes were not public within those 20 years. That has been more recently by the current owner, who made a statutory deposit in 2006 and with new notices, just within the 20 year period. More significantly, though, there is evidence that those replaced similar notices which had been in place on the Holiday Park during the previous ownership and before he purchased it in 1989. They specified that people coming onto the site should pay at the carpark, whether for walking or fishing and comply with the requirement that evidence of any intention not to dedicate a route as public that is brought to the public's attention and within the required 20 year period is sufficient to negate the acquisition of public rights.

Common law

Considering the application in relation to common law requires taking into account the historical and other documentary evidence submitted, or discovered, with the evidence of use. Historical and more recent mapping shows only the route later recorded as Footpath No. 2 leading from the Harbour out onto the headland, with none shown on the claimed routes and elsewhere on the Warren. Later Ordnance Survey and other mapping with aerial photography shows only that parts of the claimed routes from A–B–C leading to and beyond Briery Cave were recorded as physical paths on the ground in 1963, with steps near the cliffs and other tracks connected with access to the caravan site. It is more likely that those paths on the claimed route had been improved and were intended as facilities for people who were staying at the caravan site and available to those using its facilities by payment or permission.

No other more significant historical maps or references in historical documentary material have been found to indicate more specifically that the routes may have had the reputation of being public footpaths in the past or more recently. There is direct evidence that previous owners of the Watermouth estate at the time the Definitive Map was drawn up did not intend to dedicate part of the claimed routes and there will have been no public access allowed when the site was used earlier for military purposes, particularly during wartime. That can be taken to apply to later and current owners. Considering the historical mapping and landowner evidence, with the limited evidence of public rather than permissive use, dedication at common law for the status of footpath on the claimed routes cannot be implied. The evidence does not support the claim that there is any historical basis to the routes being considered as public footpaths, or having the reputation of being available for use by the public as footpaths. There is evidence that the landowners did not intend to dedicate them as public footpaths, or that the public accepted any dedication and used them on that basis

It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is not considered reasonable to allege that public rights of way subsist on the routes. From consideration under statute and common law there is, therefore, insufficient basis for making an Order in respect of the application and, accordingly, the recommendation is that no Order be made to record the claimed routes as public footpaths.

11. Reasons for Recommendation/Alternative Options Considered

To determine the Schedule 14 application to record claimed rights of way at Watermouth Cove, Berrynarbor.

13. Legal Considerations

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

Edward Chorlton

Electoral Division: Combe Martin Rural

Local Government Act 1972

List of Background Papers

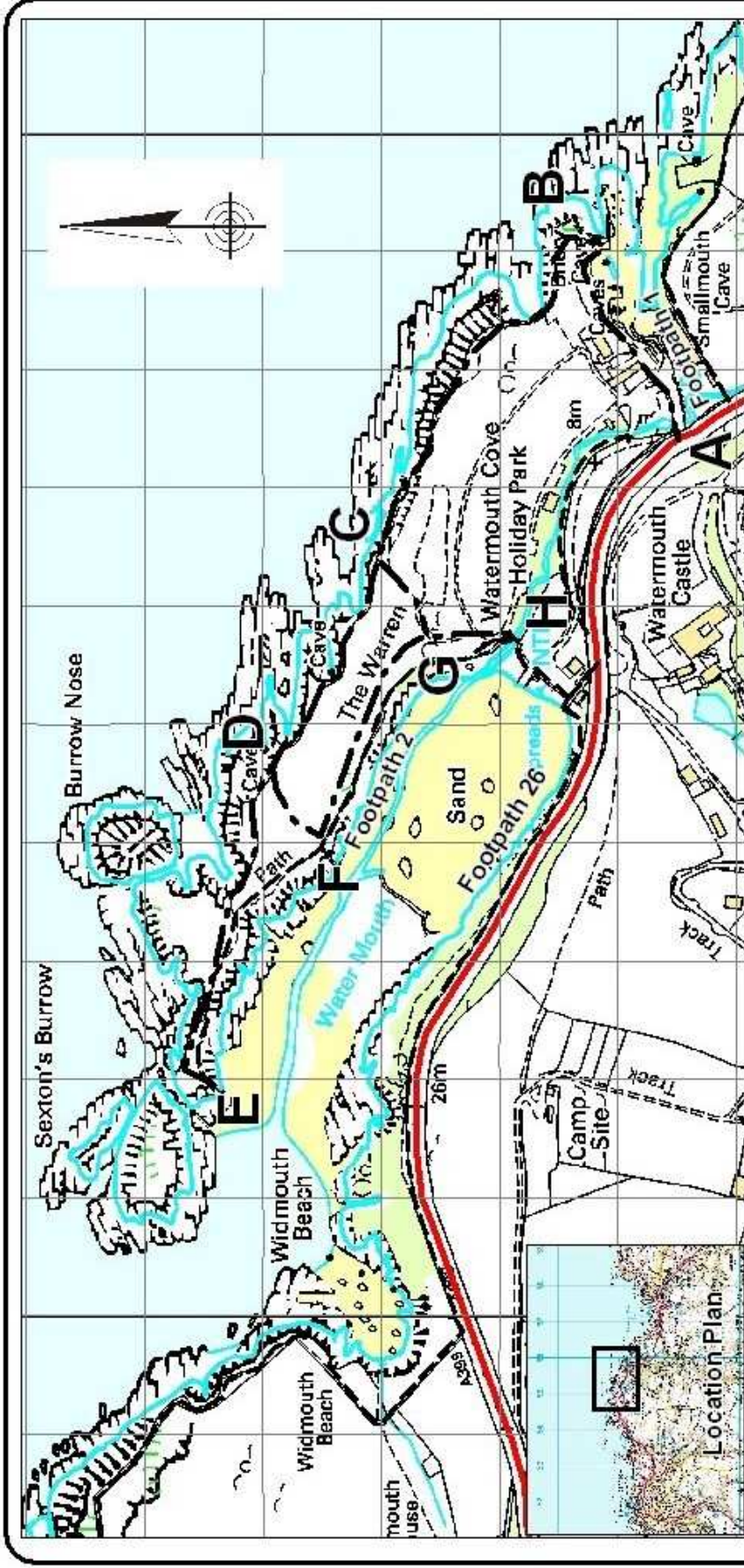
Contact for enquiries: Mike Jenkins

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Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence file	2006-08	DMR/BERRYNSch.14 file

ns130508pra
sc/watermouth cove
3 hq 020608



map ref SS 5448/5548/5648

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Devon County Council Wildlife and Countryside Act 1981 Schedule 14 application - addition of footpaths at Watermouth Cove, Berrynarbor		drawing number ED/PROW/07/124 date Dec 07 scale 1:5000 at A4 drawn by NSC
Notation Claimed Footpaths A - B - C - D - F - G - H; D - E; C - G Existing Footpaths	- - - - - - - - - -	Edward Chorlton DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE