

Schedule 14 Applications
Claimed Public Footpaths: Vixen Tor, Whitchurch

Report of the Executive Director of Environment, Economy and Culture

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

Recommendation: It is recommended that:

- (a) a Modification Order be made to modify the Definitive Map and Statement by the addition of a footpath from Whitchurch Footpath No. 13 to Sampford Spiney Footpath No. 5a via Vixen Tor between points V – W – X – Y – Z, as shown in drawing number ED/PROW/08/42A (re-alignment of Route A linked to Route B), and if there are no objections to the Order, or if such objections are subsequently withdrawn, it be confirmed;**
- (b) no Order be made in respect of Routes C or D.**

1. Summary

This is a report concerning Schedule 14 applications for four footpaths across the Vixen Tor enclosure in the parish of Whitchurch. Whitchurch parish forms part of the Plasterdown Grouped Parish Council which also includes Sampford Spiney.

2. Background

Until the current landowner bought Vixen Tor in 2002, it is believed that de facto/permissive access had been allowed to the Tor since the 1970s. Four Schedule 14 applications to record public footpaths were jointly made by the Ramblers' Association, British Mountaineering Council, and the Vixen Tor Action Group in April 2008.

The Definitive Map Review for the section of the parish within the Dartmoor National Park was completed by the Park Authority in the early 1990s, and subsequent claims would normally be deferred until the Review outside the Park reached the parish. However, as the applications are particularly contentious the matter is being brought forward.

The applications are considered in detail in Appendix I to this report.

3. Consultations

A public consultation on the applications took place in July and August 2008, with the following responses:

- | | | |
|------------------------------------|---|--|
| County Councillor Alan Hosking | - | no comment, though has completed a user evidence form included in the applications |
| Dartmoor National Park Authority | - | included in the report |
| West Devon Borough Council | - | Walkham Ward Councillor objects |
| Plasterdown Grouped Parish Council | - | no comment |
| British Horse Society | - | support the applications |
| Devon Green Lanes Group | - | support the applications |

Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	supports the applications
Ramblers' Association	-	support the applications
ACU/TRF	-	support the applications

4. Conclusion

It is recommended that a modification order be made in respect of a variation of Route A connecting with Route B, but no order be made in respect of Routes C and D.

5. Reason for Recommendation/Alternative Options Considered

To progress the Definitive Map Review in the parish of Whitchurch.

Edward Chorlton

Electoral Division: Yelverton Rural

Local Government Act 1972

List of Background Papers

Contact for enquiries: Mike Jenkins

Room No: ABG, Lucombe House

Tel No: (01392) 383240

Background Paper	Date	File Ref.
Correspondence file	Current	DMR/SCH14/VIXEN TOR

cg030209pra
 sc/schedule 14 vixen tor
 3 hq 130209

Background to the Applications

Basis of Claims

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 the Wildlife and Countryside Act 1981 Schedule 14.

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

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

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

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

[i] that a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates;

[ii] that a highway shown in the map and statement as a highway of a particular description ought to be there as a highway of a different description; or

[iii] that there is no public right of way over land shown in the map or statement as a highway of any description, or any other particulars contained in the map and statement require modification.

Wildlife and Countryside Act 1981, Section 56[1] – 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.

Location of the Application Routes

The four claimed footpaths are shown on the accompanying plan EEC/PROW/08/42A and are referred to throughout this report as Routes A, B, C, and D. It should be noted that none of the claims connect with an existing public right of way or county road, but terminate at the

boundary of the common land to which the public have had a formal right of access under the Dartmoor Commons Act 1985.

The land on which Vixen Tor is situated is referred to as the Vixen Tor enclosure and abuts the common land on its north and west boundary. Vixen Tor is situated in the south-western corner of Dartmoor 3 miles from Tavistock just south of the B3357 road near Merrivale. It is easily reached on foot from the north, west and south. An existing public right of way, Footpath No. 13, Whitchurch and Footpath No. 5a, Sampford Spiney passes to the west of the Vixen Tor enclosure, running between Merrivale and Sampford Spiney.

These claims within the enclosure were accessed from the common land via a gate at Point Y with a ladder stile nearby, a stone step stile at Point W, a broken section of wall at the northern end of Route C, and a kissing gate at the northern end of Route D. Since the 1976 notices have been located near Points Y and W, advising *“Access to Vixen Tor. This is private land. Public access to the Tor is allowed only on condition that: no litter is left, no fires are lit; no camping takes place, and no dogs are taken in. No right of way exists across this land. The owners and trustees accept no liability for injury and loss sustained on this land. Windeatt Estate; Dartmoor National Park”*.

Documentary Evidence Common to the Applications

Donne's Map, 1765

The footpaths are not shown and Vixen Tor is not enclosed.

Greenwood's Map, 1827

The footpaths are not shown and Vixen Tor is not enclosed.

Ordnance Survey Maps

1809 (Draft Drawings, 1”) – The footpaths are not shown. No enclosure is shown in the location of Vixen Tor.

Whitchurch Tithe Map and Apportionment, 1843

The footpaths are not shown. The Vixen Tor enclosure is shown divided into two parts. In the apportionment, lots 719 called Little Tor Park and 725 called Vixen Tor cover the Vixen Tor enclosure of today, which was at that time owned by the Windeatt family.

Whitchurch Vestry Minutes, 1843-94

No mention is made of Vixen Tor or the footpaths.

Whitchurch/Plasterdown Grouped Parish Council Minutes, 1894 - 1981

No mention is made of Vixen Tor or the footpaths. The books for 1933 to 1983 are missing.

Crossing's Guide to Dartmoor (1909 onwards)

The book includes visiting Vixen Tor, commenting that as “[Vixen Tor] is situated within the farm enclosures, it will be better that we pass up by the house and obtain permission to visit it”.

Breton's Guide to Dartmoor (1911 onwards)

The book includes visiting Vixen Tor, commenting that “he [the landowner] kindly allows visitors to visit the Tor. Of late years so much trouble has been given by thoughtless people, who strew the ground around the Tor with paper and broken bottles, which closing the Tor to visitors and picnic parties has been under close consideration”. The publication at the same time advertises the Tor as a good place for a picnic.

Guidebook Publications

Out of the thirty four publications included as documentary evidence with the applications, eleven refer to stiles and only two to gates. There are also four references to notices. None specifically mention any of the claimed routes. Such publications indicate the public reputation of Vixen Tor and its enclosure.

Finance Act, 1910

All the application routes are included within hereditament no. 277, owned and occupied by Mr Parson. There is no deduction for Public Right of Way or User.

Earlier Definitive Map Reviews

When a kissing gate was removed possibly at the northern end of Route D and the gateway blocked up in 1963, user evidence was sent to the County Council to be included in the quinquennial review, which did not occur. However in the meantime, public access was restored to Vixen Tor via a new stile possibly near Point Y and therefore the Parish Council decided not pursue their claim.

Dartmoor National Park Authority records

Records show that the Park authority does not hold a copy of any access agreement with the Windeatt Estate, the former landowner. A stile at Point Y accessing the Tor enclosure can be dated to 1971, and the notice near to both Points Y and W to 1976. The stone step stile at Point W is believed to be much earlier but the date is unknown.

Files were transferred to the County Council on completion of the Definitive Map Review within the Park area. These have also been searched, but no relevant documentation has been discovered.

Windeatt Estate records

There are no records relating to the existence of any right of way across the enclosure, nor is there any known access agreement between the Estate and any other party.

Rebuttal Evidence Common to the Applications

West Devon Borough Council

The councillor for the relevant ward of the council has registered her objection to the applications. The objection relates to the possible adverse affect on farming practices and points out that there is already ample access on the moor.

Landowner Evidence

The current owners, the Alford family, submitted a response to the informal consultation besides several additional submissions prior to this report. In these they state that the Windeatt Estate appears to have owned Vixen Tor for around 200 years.

In their submission the owners include the 2000 sale catalogue for Vixen Tor prepared for the Windeatt Estate Trustees. This mentions a permissive footpath across Lot 1 (the Tor) to the Tor, though no detail is given as to its location or how it is accessed. Such sale catalogues contain a disclaimer regarding the details they contain and this one is no exception.

Correspondence dated from 2002 between the landowners and the Dartmoor National Park Authority refers to permissive public access to the entire Vixen Tor enclosure. A letter dated December 1976 between the Park Authority and a local Ramblers Association group also refers to "long and difficult negotiations".

Thirteen letters included in the owners' response submission written to them refer to the belief there are no public rights of way across the Tor enclosure. Two refer to permissive access and the use of a path by workers from the Merrivale Quarry, possibly being Route D. The letters are included in the backing papers.

The owners' submission includes excerpts of historic walking guides of Dartmoor referring to permissive access to the Tor by a previous landowner.

The four applications are now considered in detail.

Route A – Addition of a footpath running south-west from Vixen Tor to Point Y.

Recommendation: It is recommended that the application be accepted subject to its re-alignment along the line X – Y – Z.

1. Description

The path runs from a field gate on the south side of the Vixen Tor enclosure at point Y, north eastwards to the southern side of the Tor, as shown on drawing no. EEC/PROW/08/42A. The path has a grassy surface strewn with occasional small rocks.

2. Supporting Evidence

Documentary Evidence

Ordnance Survey Maps

- 1884 (1st edition, 25") – The path is not shown. Vixen Tor enclosure is no longer divided.
- 1906 (2nd edition, 25") and 1955 (1:2,500) – The path is not shown.
- 1953 (Post War A edition, 25") – The path is not shown.

These maps do not provide evidence of status, merely evidence of the physical existence of a route over time.

Tavistock Rural District Council records, circa C 20th

The late Mr Windeatt of Windeatt Solicitors and his sister owned Vixen Tor prior to 2000 under the name of the Windeatt Estate. Letters received by the Council from Mr Windeatt in 1963 indicate his knowledge and agreement of the public accessing the Vixen Tor enclosure.

Site photographs, circa. C 20th & C 21st

A photograph at Point Y dated 16 June 1935 shows a gate similar to that replaced by the Alford's in 2003. There is no stile near the gate into the enclosure or notice along that section of the boundary. Photographs dated 1953 and 1962 again show the same gate. Again, there is no stile or notice nearby.

Photographs of the Tor taken in 2002 show the area prior to the current ownership. The gate at Point Y is shown unlocked and a path can be seen leading up to the Tor rock formation. Photographs from 2008 show the alterations carried out by the current owners at the entrance to the enclosure.

There are no site photographs of the Windeatt Estate notices.

Dartmoor National Park Authority records

The Dartmoor Park Authority confirmed that the gateway at Point Y was widened in 2003 when the nearby stile and notice was removed. There is no reference to any notice being adjacent to the ladder stile before 1976.

User Evidence

The application was submitted with the support of thirty three User Evidence Forms, indicating use between 1950 and 2003, at varying frequencies. An additional fifteen forms were submitted as a consequence of the informal consultation and user interviews. A total of forty eight forms relate to Route A covering use between the late 1930s and 2003, with thirty people having used the path for at least ten years or more. At least thirteen users stated they used the path more than half a dozen times a year. Fifteen users recall seeing a disclaimer type notice, but no date is given by them.

Interviews have been carried out with twenty seven users to clarify the information contained on their evidence forms. The following is a sample of the additional information gleaned from the interviews.

Ms P Brown has used the path from Point Y since the 1930s, using the gate and then occasionally the stile once it had appeared. She states that access to the Tor has always been open and that previous owners did not stop people. In the 1970s and 1980s she used the path with friends. They just used it and never asked permission. She was about 8/9 years old when she first used the path with her family. She believes that the addition of the stile near to Point Y up and over the wall positively encouraged access. She remembers a “no dogs” notice in later years.

Mr DJ Anthony used the path from 1950 as a young teenager trying to get to the top of the Tor. He mostly accessed the Vixen Tor enclosure from Pew Tor via Point Y. He originally used the gate but then did use the adjacent stile once it appeared. He has a journal containing photos from 1935 and 1959. He does not recall seeing notices of any sort. He never asked permission or was stopped. In the 1980s he also took his children there. The minimum he and his family visited was four times a year. He remembers seeing no dog signs in later years. His father had also used the path since 1935.

Mr Mudge used the path between 1955 and 1980 for pleasure for walking between Sampford Spiney and the Tor. He states that locals and visitors alike used it and he never saw any notices until later years. He thought the landowner was aware of public use as people were often there.

Mr P Littlejohn used to live in Devon with his family and he was brought up here until he left aged 19 years to go to college. He started visiting the Tor with his family in 1962 when he was 15 years old. He started climbing in the 1960s and established climbs on the Tor and is published author and leading climbing figure. He states that his father would never have used somewhere there were notices about no access.

Mr N Crowhurst is very definite about not seeing notices as being in the Police he could not afford to go to places with notices restricting access. He used the path from Point Y towards the Tor since 1968 and took his family there too. He also used the path with the Dartmoor Rescue Group for training.

Mr O’Hanlon used the path since 1970 with his wife while on holiday and then more frequently after moving to Devon in the mid 1970s. They walked there many times and even once had Christmas lunch at the Tor with friends. Lots of climbers and other people were

seen on their visits, and no notices were seen until 'no access' was painted on the wall in 2003. They never thought that they should not be there.

Mr J Frost used the route frequently from 1972 onwards and never saw any signs until 1976 during the long hot Summer, which mentioned dogs, litter and fires. He thought the landowner must have been aware of the use as the Tor was a popular place to visit.

It is apparent from the user evidence forms and interviews with witnesses that the used route varies from the claimed route, running to the western end of the Tor rock formation. The claimed path was only used by six people prior to 1976, as most users prior to that time used the unclaimed variation of Route A, along the line Z – Y – X. Before 1976 when the Windeatt Estate is believed to have erected their notice near Point Y, the variation of the claimed path was used by twenty four people, with one user in the 1940s, seven users in the 1950s, four more through the 1960s, and the remainder from the late 1960s onwards.

Previous Tenant Evidence

Mr Cole, the tenant of the previous landowner, the Windeatt Estate, remembers the public using the path from Point Y to visit the Tor between 1966 and 2002. When he took on the tenancy, he questioned the landowner about the public using the path through the enclosure to the Tor and back, who was happy that they did so.

The ladder stile adjacent to the gate at Point Y was erected in 1967 as the gate did not shut properly, though the tenant never had a problem with gates being left open. The gate at Point Y was difficult to open so Mr Windeatt arranged for the ladder stile to be erected to make it easier and more convenient for the public. The owner told him that the public could use the path and was happy that they did so. He often used to see people and sometimes stopped to chat to them. He also remembers the then tenant of Vixen Tor Cottage, Mrs Garnett telling him whenever she saw people straying off Route A or dogs running a bit wild.

He knew signs were erected at a later date but does not know what they said or precisely where they were located.

3. Rebuttal Evidence

Landowner Evidence

The Alford family has owned Vixen Tor since 2002. On taking possession, they removed the stile at Point Y along with the notice nearby erected by the previous landowners, the Windeatt Estate. The Alford's painted 'No Access' signs and erected barbed wire on the enclosure wall. They have the former Windeatt Estate notices from near Point Y in their possession. The Windeatt Estate notices state that public access is allowed on certain conditions and that no rights of way exist across the land.

4. Discussion

The applicants, the Ramblers Association, British Mountaineering Association and the Vixen Tor Action Group based their application largely on user evidence with supporting documentary evidence, in response to the loss of access to Vixen Tor in 2003 and the failed recording of the Tor enclosure as Access Land in 2005.

The claimed route is shown diagrammatically on the application plan. This is understandable, given that the area in question has limited features by which an accurate route can be plotted, unless specialised surveying equipment is used.

The landowners argue that the application brought the route into question; however it can be determined from the evidence that this is incorrect. Notices apparently erected in 1976 by the previous landowner, the Windeatt Estate, act as a calling into question of the public's use, as they stated '*no right of way exists across this land*'. These notices also act as a lack of intention to dedicate, as they represent a specific event of challenge directly as the result of actions taken by the landowner to regulate access. Five users reported seeing such a notice near Point Y to the enclosure. One of these users is particularly definite about the date when he first saw notices as it was the long hot Summer of 1976.

If the date of calling into question is taken as 1976, the relevant twenty year period required to show presumed dedication is 1956 to 1976. Of the forty eight forms submitted in respect of Route A, a total of twenty four cover this period. Detailed examination and analysis of the user evidence has shown that there is an unclaimed variation of Route A which runs from Point Y to the western end of the Tor at Point X, linking with Route B. Out of the twenty three users, only six users used the claimed path up to the main face of the Tor, but it is not possible to say that the use was regular and continuous. Use of the claimed route is more positive after 1976. The remaining seventeen people used the variation of the claimed route between points Y and X, the use of which is considered to be of an uninterrupted, consistent and regular nature for a moorland path. This is considered adequate to satisfy the requirements of Section 31 of the Highways Act 1980. Use appears to be "*as of right*", that is "*without force, secrecy or permission*". No users' mention ever seeking or being given permission.

The user evidence and interviews have also shown that users accessed the claimed route from the public footpath that passes the western boundary of the Tor enclosure, from Point Z.

Evidence from the Tavistock Rural District Council confirms the users' statements that the landowner in the 1960s, the Windeatt Estate, was aware of public access through the Vixen Tor enclosure and acquiesced to its use. There is also insufficient evidence to demonstrate that landowners had no intention to dedicate a footpath through the Vixen Tor enclosure.

Aerial photography from the 1940s onwards assists in recording where people walked, routes which are no longer visible due to improvements made to the vegetation of the Tor enclosure. Photography of the Tor enclosure, particularly near Point Y demonstrate no lock or chain on the gate or the existence of any notice restricting public use.

In consideration of the claimed path under common law, historical and documentary evidence shows no route depicted along the claimed path. The Tithe Map shows Vixen Tor as enclosed and divided into two portions, and no path shown. No deductions were recorded either under the Finance Act for any Public Right of Way or User. Neither is the claim mentioned in the Parish or District Council Minutes.

Crossing's Guide to Dartmoor and Breton's Guide indicate that access to Vixen Tor was by permission of the landowner. This appears to refer to permission for people to visit the Tor itself and does not preclude a public right of way across the enclosure. However, over thirty other guide publications indicate that no permission was required and access was freely exercised by the public.

5. Conclusion

In the light of this assessment of the evidence, particularly the user evidence from the 1940s, it is considered reasonable to allege that a public right of way subsists on the variation of the claim, shown as Z – Y – X on drawing no. EEC/PROW/08/42A and linking with Route B at Point X.

Route B – Addition of a footpath running north north-west from Vixen Tor.

Recommendation: It is recommended that the application is accepted, connecting with the realigned Route A.

1. Description

The path runs from the granite stone step stile at Point W on the north west side of the enclosure boundary over the wall and follows an old internal boundary towards the Tor, as shown on drawing no. EEC/PROW/08/42A. The path has a grassy surface strewn with occasional small rocks.

2. Supporting Evidence

Documentary Evidence

Ordnance Survey Maps

- 1884 (1st edition, 25") – The path is not shown. Vixen Tor enclosure is no longer divided.
- 1906 (2nd edition, 25") and 1955 (1:2,500) – The path is not shown.
- 1953 (Post War A edition, 25") – The path is not shown.

These maps do not provide evidence of status, merely evidence of the physical existence of the route over time.

Tavistock Rural District Council records, circa C 20th

The late Mr Windeatt of Windeatt Solicitors and his sister owned Vixen Tor prior to 2000 under the name of the Windeatt Estate. Letters received by the Council from Mr Windeatt in 1963 indicate his knowledge and agreement of the public accessing the Vixen Tor enclosure.

User Evidence

The application was submitted with the support of ten User Evidence Forms, indicating use between 1974 and 2003, at varying frequencies. A further fifteen forms were submitted as a consequence of the informal consultation and user interviews. A total of twenty five forms relate to Route B covering use between 1950 and 2003. Most users walked the path in conjunction with the realignment of Route A, with the remainder using it to reach and view the Tor itself. Use has been without hindrance until the current owner closed access to the Vixen Tor enclosure in 2003.

Interviews have been carried out with fourteen users to clarify the information contained on their evidence forms. The following is a sample of the additional information gleaned from the interviews.

Mr Hosking used the path between 1951-4 and from 1970 onwards. He would park in the car park on the Tavistock road and walk to the Tor accessing the enclosure via the stone step stile.

Mr Robinson first used the Tor in 1955 on his honeymoon and occasionally afterwards until 1978 when he moved to the area. It was his favourite Tor. When visiting the Tor, he would approach by either Heckwood or Pew Tor, via Point Y up towards the Tor and out of the

enclosure via the stone step stile at Point W. He remembers a sign saying – no litter, fires, camping or dogs, which he thought was reasonable. He saw others using it especially at weekends, just walking through the same way. He also led guided walks over the step stile at Point W and out over the stones. He never asked permission or was turned away. He started using the path over fifty years ago and always used the same route until the current owner bought Vixen Tor.

Mr Frost (snr) has used the path from Point W since the 1956, using the stone step stile into the enclosure, walking to the western end of the Tor and turning south to Point Y. He states he has always used it without hindrance.

Mr Dempster used the path between 1955 and 1965, in order to access the Tor. He believed the route to be public as access to the Tor was included in numerous climbing guides, and that this was also why he thought the owner was aware of the public's use. Public use has only been prevented since 2003.

Mr Chick first used path about between 1970-5 at least once a year, possibly more. He recalls seeing signs saying "*footpath to Vixen Tor*". He used the stone steps at Point W then walked over to the Tor and then down to the gate at Point Y, and also reversed his route. At weekends he remembers sometimes seeing up to twenty people if they were having a picnic on the Tor over several hours.

Messrs Anthony, Frost, Crowhurst, and O'Hanlon also used this path in conjunction with the variation of Route A.

3. Rebuttal Evidence

Landowner Evidence

The Alford family has owned Vixen Tor since 2002. On taking possession, they removed the stile at Point W along with the notice nearby erected by the previous landowners, the Windeatt Estate. The Alfords' painted 'No Access' signs and erected barbed wire on the enclosure wall. They have the former Windeatt Estate notices from near Point W in their possession. The Windeatt Estate notices state that public access is allowed on certain conditions and that no rights of way exist across the land.

4. Discussion

The applicants, the Ramblers Association, British Mountaineering Association and the Vixen Tor Action Group based their application largely on user evidence with supporting documentary evidence, in response to the loss of access to Vixen Tor in 2003 and the failed recording of the Tor enclosure as Access Land in 2005.

The claimed route is shown diagrammatically on the application plan. This is understandable, given that the area in question has limited features by which an accurate route can be plotted, unless specialised surveying equipment is used.

The landowners argue that the application brought the route into question; however it can be determined from the evidence that this is incorrect. Notices apparently erected in 1976 by the previous landowner, the Windeatt Estate, act as a calling into question of the public's use, as they stated '*no right of way exists across this land*'. These notices also act as a lack of intention to dedicate, as they represent a specific event of challenge directly as the result of actions taken by the landowner to regulate access. If the relevant period is 1956-1976, then evidence of use submitted from fifteen users can be considered. Use is regular and without hindrance. Five users reported seeing a notice close to the stone step stile, dated to 1976.

One of these users is particularly definite about the date when he first saw notices as it was the long hot Summer of 1976.

The user evidence and interviews have clarified that users accessed the claimed route from the public footpath via the route between Points V – W.

In consideration of the claimed path under common law, historical and documentary evidence shows no route depicted along the claimed path. The Tithe Map shows Vixen Tor as enclosed and divided into two portions, and no path shown. No deductions were recorded either under the Finance Act for any Public Right of Way or User. Neither is the claim mentioned in the Parish or District Council Minutes. The guidebook and other related publications serve to indicate the reputation of and public access to the Vixen Tor enclosure. Any need for permission appears to refer to visiting the actual Tor itself and does not preclude a public right of way across the enclosure.

5. Conclusion

In the light of this assessment of the evidence, particularly the user evidence from 1950, that it is considered reasonable to allege that a public right of way subsists on a path similar to the claimed path, shown as V – W – X on drawing no. EEC/PROW/08/42A, and linking with the realignment of Route A.

Route C – Addition of a footpath north from Vixen Tor.

Recommendation: It is recommended that the application is not accepted.

1. Description

The path runs from the enclosure wall on the north northwest side of the Vixen Tor enclosure, southwards to the northern side of the Tor, as shown on drawing no. EEC/PROW/08/42A. The path has a grassy surface strewn with occasional small rocks.

2. Supporting Evidence

Documentary Evidence

Ordnance Survey Maps

- 1884 (1st edition, 25") – The route is not shown. Vixen Tor enclosure is no longer divided.
- 1906 (2nd edition, 25") and 1955 (1:2,500) – The route is not shown.
- 1953 (Post War A edition, 25") – The route is not shown.

These maps do not provide evidence of status, merely evidence of the physical existence of the route over time.

User Evidence

Thirty User Evidence Forms were received in support of this claim, with twenty forms covering use between the 1950s and 2003. Ten recall notices but nine of those were in 2003. Mr Chick and Mr Farrer confirmed that they accessed this path by climbing over a section of broken down wall.

During the course of interviewing some eighteen users of Route C it became apparent that they had confused Route C with Route B. It was not possible to contact all the users of the route and therefore clarify the precise route used.

However that aside, before 1976 when it is thought that the Windeatt Estate erected its notices, the path was only used by seven people, with continuous use only from 1969.

3. Rebuttal Evidence

Landowner Evidence

The Alford family has owned Vixen Tor since 2002. On taking possession, they removed the stile at Point W along with the notice nearby erected by the previous landowners, the Windeatt Estate. The Alfords' painted 'No Access' signs and erected barbed wire on the enclosure wall. They have the former Windeatt Estate notices from near Point W in their possession. The Windeatt Estate notices state that public access is allowed on certain conditions and that no rights of way exist across the land. There has been no gate or stile to access this route from the Common.

4. Discussion

The applicants, the Ramblers Association, British Mountaineering Association and the Vixen Tor Action Group based their application largely on user evidence with supporting documentary evidence, in response to the loss of access to Vixen Tor in 2003 and the failed recording of the Tor enclosure as Access Land in 2005.

The claimed route is shown diagrammatically on the application plan. This is understandable, given that the area in question has limited features by which an accurate route can be plotted, unless specialised surveying equipment is used.

The landowners argue that the application brought the route into question; however it can be determined from the evidence that this date is incorrect. Notices apparently erected by the previous landowner, the Windeatt Estate, in 1976 act as a calling into question of the public's use, as they stated '*no right of way exists across this land*'. These notices also act as a lack of intention to dedicate, as they represent a specific event of challenge directly as the result of actions taken by the landowner to regulate access. Therefore, assuming the relevant period for presumed dedication is 1956-1976, use from seven users can be considered. There is only detailed continuous use between 1969 and 1976. Access to the Vixen Tor enclosure was apparently via a fallen down section of the enclosure wall.

In consideration of the claimed path under common law, historical and documentary evidence also shows no route depicted along the claimed path. The Tithe Map shows Vixen Tor as enclosed and divided into two portions, and no path shown. No deductions were recorded either under the Finance Act for any Public Right of Way or User. Neither is the claim mentioned in the Parish or District Council Minutes. The guidebook and other related publications though serve to indicate the public reputation of and access to the Vixen Tor enclosure.

5. Conclusion

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 along the line of Route C.

Route D – Addition of a footpath around the southern and eastern sides of Vixen Tor.

Recommendation: It is recommended that the application is not accepted.

1. Description

The path runs eastwards from the field gate at Point Y on the south side of the Vixen Tor enclosure, then northwards around the eastern side of the Tor to a blocked up gateway on the north side of the Tor enclosure, as shown on drawing no. EEC/PROW/08/42A. The path has a grassy surface strewn with occasional small rocks.

2. Supporting Evidence

Documentary Evidence

Ordnance Survey Maps

- 1884 (1st edition, 25") – The route is shown with a minor deviation. Vixen Tor enclosure is no longer divided.
- 1906 (2nd edition, 25") and 1955 (1:2,500) – The route is shown with a minor deviation.
- 1953 (Post War A edition, 25") – The route is shown with a minor deviation.

These maps do not provide evidence of status, merely evidence of the physical existence of the route over time.

Tavistock Rural District Council Records, Circa C 20th

In 1963 the Council received complaints from local residents Mr Plumb, Mr Rich, and Mr Curwen regarding an obstructed right of way near Vixen Tor, by the removal of a kissing gate and blocking of the gateway at the northern end of the route. They stated that the path had been in use for at least fifty years by quarry workers, children going to school, and other locals going between Merrivale and Sampford Spiney. The publican of the Dartmoor Inn at Merrivale Mr Plumb recalls numerous visitors including coach parties wishing to use the '*public footpath*' but finding they were unable to do so. He also refers to younger folk climbing over the wall in order to still use the path, which others found more difficult to do.

Correspondence dated 10 July 1963 between the Council and the Windeatt Estate acknowledges the existence of a footpath via a kissing gate and its use by the general public. The Estate sought to identify the removed gate's location and blocked gateway, referring to the tenant's unhappiness regarding the public leaving gates open. The Windeatt Estate was concerned to learn that a path used by the public on their land had been obstructed, and their correspondence indicates that they were not aware that their tenant had removed the gate and obstructed the path. The Estate is later pleased to hear that the Surveyor found no obstructions on the paths he inspected. However it is apparent that the Surveyor confused this path with the public footpath outside the Tor enclosure, which is Footpath No. 13, Whitchurch and Footpath No. 5a, Sampford Spiney.

It was subsequently identified that the obstructed path was not listed on the Definitive Map and Statement, and therefore the Council regretted it could not take any action. Consequently the matter was referred to the Whitchurch and Sampford Spiney Parish Councils to see if they wished to put the path forward for inclusion in the next quinquennial review, which the Whitchurch parish did.

Earlier Incomplete Reviews of the Definitive Map, 1960s-70s

In response to a kissing gate being removed at the north end of the route, it was suggested by the Tavistock Rural District Council that the Parish Council might wish to consider including the path in the next quinquennial review. The Whitchurch Parish Council discussed the matter with the Sampford Spiney Parish Council and they jointly decided to strongly recommend that the path be included in the quinquennial review. The issue was pursued into the 1970s until the addition of a stile in 1971 gave access to the Tor enclosure. In consequence of this, the Parish Council decided not to pursue the re-opening of the footpath previously claimed. No permission or notices are mentioned.

User Evidence

Four User Evidence Forms were received in support of this claim covering use between 1948 and 2003, with only one having used the route for at least ten years or more. An additional three forms were received, but these only detail occasional use. The remaining forms detail use between 1941-52 and 1954-80, and in 1989.

A form from Mr Plumb, a former publican of the Dartmoor Inn at Merrivale was held on file from a previous Review and covered use between 1959 and 1963 by him and his family, which continued until 1972. Letters were received at the same time from the late Mr Rich the Merrivale quarry manager detailing use by his employees of the path for over thirty years and late Mr Curwen from Sampford Spiney who had used it since 1937. Such correspondence however refers to a kissing gate at the northern end of the path being removed and blocked, and consistently date this event to 1963.

Before 1976 when it is thought that the Windeatt Estate erected its notices, the path was used by four people between the 1930s and 70s. Locally, this route is historically known as the main route up the Walkham valley via Heckwood and Vixen Tor Cottage, rather than using the entire claimed footpath via Point Y.

Previous Landowner/Tenant Evidence

Mr Cole, the last tenant of Windeatt Estate remembers the quarrymen using Route D to walk through the Tor enclosure on their way to work at Merrivale Quarry from Sampford Spiney. Before he was a tenant he helped the previous tenant, Mr Jacob Spurr of Whimington Farm, and knew the kissing gate at the northern end of the path, which ended up in such a state of disrepair that the gateway was walled up to prevent stock escaping onto the moor. The obstruction of the path caused upset at the time but nothing was done as there was another way into the enclosure from Point Y.

3. Rebuttal Evidence

Landowner Evidence

The Alford family has owned Vixen Tor since 2002. On taking possession, they removed the stiles at Point W and Y along with the notices nearby erected by the previous landowners, the Windeatt Estate. The Alfords' painted 'No Access' signs and erected barbed wire on the enclosure wall. They have the former Windeatt Estate notices from near Point W and Y in their possession. The Windeatt Estate notices state that public access is allowed on certain conditions and that no rights of way exist across the land. The owners believe the gateway at the north end of the path was blocked up in 1962 by Jacob Spurr, the then tenant for the Windeatt Estate.

4. Discussion

The applicants, the Ramblers Association, British Mountaineering Association and the Vixen Tor Action Group based their application largely on user evidence with supporting documentary evidence, in response to the loss of access to Vixen Tor in 2003 and the failed recording of the Tor enclosure as Access Land in 2005.

The claimed route is shown diagrammatically on the application plan. This is understandable, given that the area in question has limited features by which an accurate route can be plotted, unless specialised surveying equipment is used.

The landowners argue that the application brought the route into question; however it can be determined from the evidence that this date is incorrect. The actions of Mr Spurr in 1963 may be enough to call the public's use of the path into question, though does not act as a lack of intention to dedicate. A tenant does not have that ability only a landowner does, and that did not occur until 1976 when the Windeatt Estate erected their notices as they stated '*no right of way exists across this land*', which may also act as an alternative date for the calling into question of the public's use. However these would probably have not been seen by users if using the historic path rather than the claimed path, as demonstrated by the user evidence.

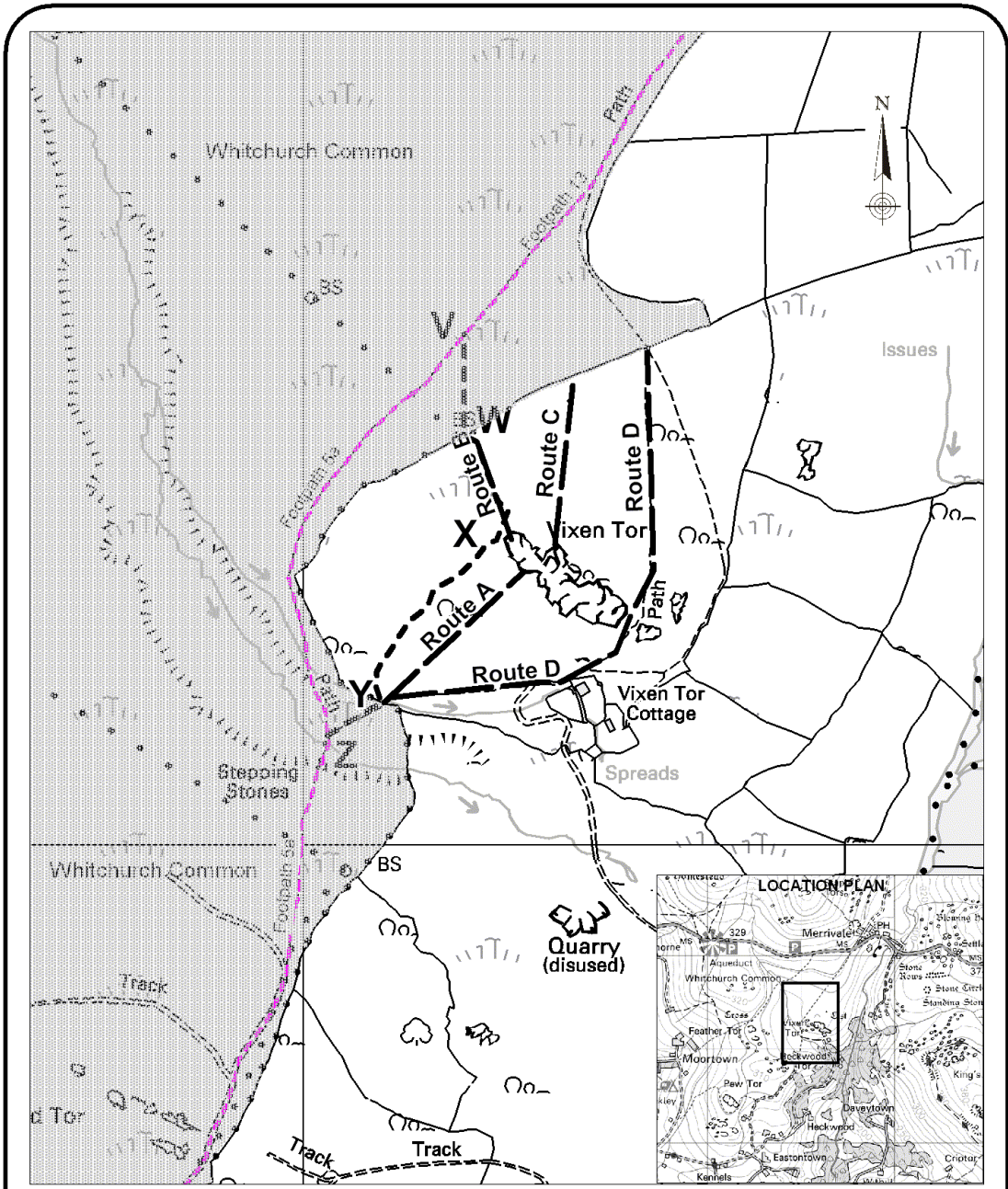
Consequently 1963 may be the date when the specific challenge took place, but if not then, then the date would be 1976. Therefore use which could be considered under statute, requiring twenty years use would be either 1943 to 1963 or 1956 to 1976. For the earlier period, three people have used the path frequently, with the remaining use being very occasional. The later period reduces the users by one. However, the user evidence is of infrequent and occasional use, and is insufficient to satisfy the test under section 31 of the Highways Act 1980.

Evidence from earlier Reviews and the Tavistock Rural District Council demonstrates that a route was being used from at least the 1930s through to the 1960s, without hindrance until the dilapidated kissing gate at the northern end of the path was removed to prevent stock escaping onto the moor. The Parish Council pursued a claim for the path until public access was secured via other means. It is this evidence which it is believed that the letter from Dartmoor National Park Authority to a local Ramblers group in 1976 refers.

In consideration of the claim under common law, historical and documentary evidence shows no route depicted along the claimed path. The Tithe Map shows Vixen Tor as enclosed and divided into two portions, and no path shown. No deductions were recorded either under the Finance Act for any Public Right of Way or User. Neither is the claim mentioned in the Parish or District Council Minutes. The guidebook and other related publications though serve to indicate the public reputation of and access to the Vixen Tor enclosure.

5. Conclusion

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 path.



map ref **SX 5474**

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SCHEDULE 14 APPLICATIONS
VIXEN TOR

drawing number EEC/PROW/08/42A

date Jan 2009

scale 1:5000

drawn by CLG

Notation

- Claimed Footpaths: Routes A, B, C & D
- Recommended Footpath (V - W - X - Y - Z)
- Existing Footpath (Whitchurch 13/Samp. Spiney 5a)
- Common Land

Edward Chorlton

DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

