

**Parish of Kingsbridge
Schedule 14 Application – Addition of a Public Footpath along Crabshell Quay in Kingsbridge**

Report of the Executive 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 a Modification Order be made to add a public footpath to the Definitive Map and Statement along the line A – B – C – D – E as shown on drawing EEC/PROW/08/74a.

1. Summary

This report relates to a Schedule 14 application, made by Kingsbridge Town Council on 18 July 2008, to record a footpath along Crabshell Quay (also known as New Quay) on the Kingsbridge estuary. The application is based largely on user evidence with some supporting documentary evidence.

2. Background to Application

The status of this route was investigated as part of the parish-by-parish review which took place in Kingsbridge in 2004-2006. Following recommendation to the County Council's Public Rights of Way Committee on 7 March 2006 a Modification Order was made and published on 11 August 2006.

Representations to the Order were received and it was submitted to the Secretary of State for determination. The landowners did not dispute the public use but disputed the stated width and position of the Order route. It was determined by written representation and the Planning Inspector did not confirm the Order on the grounds that the evidence was insufficient to show that a public right of way subsists on the basis of presumed dedication under common law.

This decision in February 2008 resulted in significant publicity in the town and criticism that the determination had not given opportunity for the public to be heard or further evidence to be put forward in support. Kingsbridge Town Council then submitted a formal application for a Modification Order, supported by considerable new evidence. Although the parish review has been completed for the town it is considered appropriate that this application now be determined out of turn.

3. Consultations

Consultations on the application took place in August 2008, with the following responses:

County Councillor Julian Brazil	-	no comment
Kingsbridge Town Council	-	support application (applicant)
South Hams District Council	-	support application
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment

Devon Green Lanes Group	-	no comment
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment
Trail Riders' Fellowship	-	support application

4. Conclusion

The application is considered in detail in Appendix I to this report.

It is recommended that an Order be made to record a route along Crabshell Quay as a public footpath on the Definitive Map and Statement as shown on drawing no. EEC/PROW/08/74a.

5. Reason for Recommendation/Alternative Options Considered

To progress the Review of the Definitive Map in the South Hams.

6. Legal Considerations

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

7. Carbon Impact Considerations

There are no considerations.

8. Equality Considerations

There are no considerations.

Chris McCarthy

Electoral Division: Kingsbridge & Stokenham

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	2004 to date	DMR/Kingsbridge

hc040210pra
sccrabshell quay
3hq 110210

Background

A. 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 WCA 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 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:

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

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.

Schedule 14 Application for the Addition of a Public Footpath along Crabshell Quay, Kingsbridge.

Addition of a public footpath along the river bank, from Embankment Road north of Crabshell Quay to rejoin Embankment Road south of the Rivermaid Boatyard as shown on drawing number EEC/PROW/08/74a.

1. Description of the Route

The route runs parallel to the Kingsbridge Estuary, along the embankment for approximately 315 metres. It commences at Embankment Road to the north of Crabshell Quay apartments at Point A on the plan and proceeds generally southwards along a defined path between the Crabshell Quay apartment buildings and the river to Point B. It continues southwards along the embankment by the Crabshell Inn to Point C where it follows a defined path between

Kings Court apartments and the river to Rivermaid Boatyard at Point D, where it continues along the edge before it turns eastwards to rejoin Embankment Road at Point E.

Between points A – B the path has a defined width of 1.5 metres. Between points B – C the path is physically undefined and crosses an area which is currently used for Crabshell Inn customer seating and parking but allows room for people to pass freely between. Between points C – D the path has a minimum width of 0.85 metres defined by the buildings and the edge of the embankment. The path is defined along the edge of the boatyard, between points D - E by safety fencing which restricts it to 1 – 1.2 metres wide.

2. Documentary Evidence

Ordnance Survey Maps

1885 (1st edition, 25") – At this time the quay area is shown as "Newquay" with most of the buildings that exist today. The quay itself is not as extensive as it is today and a landing stage is shown to the south of the Newquay Inn, now the Crabshell Inn. The route as it exists today is shown around what is now the Crabshell Quay development and the quay to the south appears to be open and available over the area now used as a boat yard and store.

1905 (2nd edition, 25") – By this time the quay has been extended to the area it covers today. A covered yard is shown adjacent to the present boat store but a path appears to be available along the quay edge.

1955 (1:2500) – As 2nd Edition.

1970, 1:2500 – As 1955 edition with the addition of a boat store at the southern end of the route.

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

Planning Files

A number of planning applications submitted since the early 1970s, which make reference to the route, have been discovered following a search of South Hams District Council Planning and Land Charges records.

In 1978 the owner of the boatyard, Mr Peter Moule, made an application for winter storage of boats in the yard. On his application, under additional information, Mr Moule states that boats would be stored so as not to obstruct the public right of way. On the accompanying plan he has marked a route along the edge of the boatyard, running between the edge and the area of a covered store. He has marked the path "PUBLIC RIGHT OF WAY", which corresponds with the route between points D – E.

In 2007 and 2008 planning applications were submitted for development of the Rivermaid Boatyard by housing. These developments were not completed but they were to have made provision for retaining the waterside footpath between points D – E.

There were a number of planning applications for the Crabshell Inn and Car Park site in the early 1980s. Initially these plans included the demolition of the Crabshell Inn. Application 28/0994/83/1 for 18 flats and 12 houses on the site was granted conditional approval in October 1983. By an agreement, under Section 52 of the Town and Country Planning Act 1971, dated 21 October 1983 between South Hams District Council and the landowners

Messrs Haines and Willis provision was made for a public footpath along the river bank. The plan shows the 3' wide path extending the length of the site between points B – D.

The planned demolition of the Crabshell Inn had resulted in much local protest and the development plans were subsequently revised further to retain the pub and build only on the southern half of the site. This application, ref 28/1679/83/1, was given outline approval in March 1984 (full permission granted in July 1984 following submission of detailed plans for approval of reserved matters (ref 28/0601/84/2)).

A further Section 52 Agreement dated 16 March 1983 between SHDC and the landowners made provision for a public footpath along the waterfront. It also required the owners to provide for future maintenance of the path.

Correspondence for the SHDC planning files also refer to a public footpath.

A letter dated 13 April 1984 from the landowners' agents details a number of requirements that, following meetings with the Planning Officer and Area Engineer, were deemed to be important and to form the basis of any scheme for the site. One of which being "the right of the public to walk along the estuary side of the site should be retained along with some of the Victorian bollards".

A letter from Kingsbridge Town Council dated 2 May 1984, confirming the Council's approval of the application, states "it is understood that the existing right of the public to walk on the estuary side of the site will be preserved."

A letter dated 14 August 1984 from the South Hams Society to SHDC asks whether there is to be a public footpath along the estuary side of the new buildings. In response SHDC confirms that the provision of a public footpath along the estuary side of the buildings was a requirement of an Agreement between the owners of the site and the District Council upon the granting of outline planning permission. The letter was also copied to the Salcombe Harbour Master for clarification of mooring rights. In his response dated 17 September 1984 he also refers to there being a public right of way along the top of the quay.

In 2002 the Crabshell Motor Inn, between points A – B, at the northern end of the quay was demolished and replaced with the Crabshell Quay apartments. The original planning application, ref 28/0786/01/F was refused but subsequently allowed on appeal to the Secretary of State. One condition of the approval was to protection of an estuary footpath. The appellant's case made reference to "improving a footpath used by the public". A Section 106 Agreement dated 14 January 2002 required the owner to improve the footpath and permit members of the public to use it on foot. Under the terms of the Agreement it was regarded as a Permissive Footpath.

3. User Evidence

Kingsbridge Town Council submitted 137 User Evidence Forms with their application in July 2008. In addition to the twenty-two forms submitted as part of the parish-by-parish review and others submitted following the Inspectors decision not to confirm the Order previously made, evidence has been received from a total of 192 people. This use is summarised on the attached charts.

The use submitted covers a period from 1920 to the present day, ranging from two users in the 1920s to 191 in the last decade. Many use the route on a daily basis going to and from the town centre. Some use it as part of recreational walks. Most comment that it is in constant use.

None of the users report seeing any notices stating that the path was private or not a public right of way. Only one user reported being told that the path was not public but he could not recall details. Most comment that the landowners must have been aware of public use as used so frequently.

Many of the users report that the path was temporarily closed or diverted when Kings Court and/or Crabshell Quay flats were built but comment that the path was reinstated, and in some instances improved, once the building works were complete. A number comment that there were signs directing people around the building works. They do not appear to have considered these interruptions significant or a challenge to their use of the route.

A number also comment that outside the Crabshell Inn the route along the edge of the river became partly obstructed by tables, and occasionally by parked cars.

In his evidence Mr Wills, who has used the route since 1940, explains that the section by the Crabshell Inn was, until recent years, free for people to walk along the edge but if cars were parked they walked inside them. A chain railing was also erected to prevent cars going into the river. In the last 20 years tables and chairs were placed near the edge which forced people to walk around them.

Mrs Fox also comments that the tables and chairs were only moved to the edge after Kings Court was built as the pub's beer garden was demolished to maximise car parking, part of the car park having been built on. Similarly, Mrs Balkwill states that as a child she always walked along the edge as the pub had a beer garden but the tables have since been moved to the edge, and Mr Simcox comments that the tables were not always outside the pub but it is possible to walk past.

Others remark on the tables and chairs as an obstruction, but that they walk around them.

Many comment that in recent years the path along the edge of the boatyard has been defined by safety fencing and signs directing pedestrians. Most users have said or indicated that they used a path along the edge of the boatyard although some have said that they walked through the centre of the yard, between any boats being worked on, until a defined path was fenced along the edge.

Other temporary obstructions referred to are ramps used for offloading ships in the 1950s or the occasional boat being repaired but that it was possible to walk around these.

The only other notices referred to by several users are signs on Kings Court stating that people use the quay at their own risk.

A number of letters in support of the claim, together with a petition of 645 names, were submitted with the application. These are included in the background papers to this report.

Chart of User Evidence (Users 1 - 38) Crabshell Quay

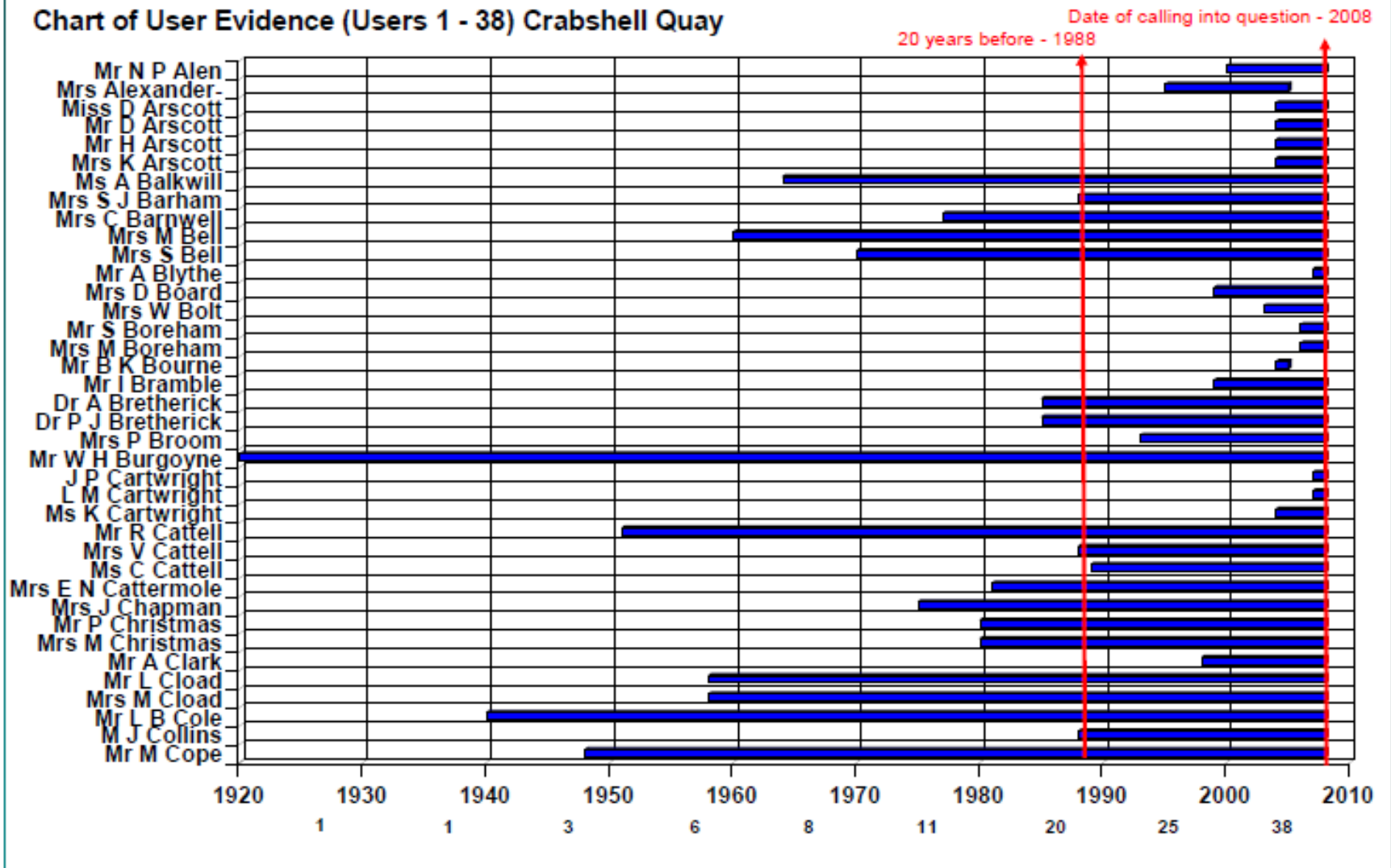


Chart of User Evidence (Users 39 - 76) Crabshell Quay

Date of calling into question - 2008

20 years before - 1988

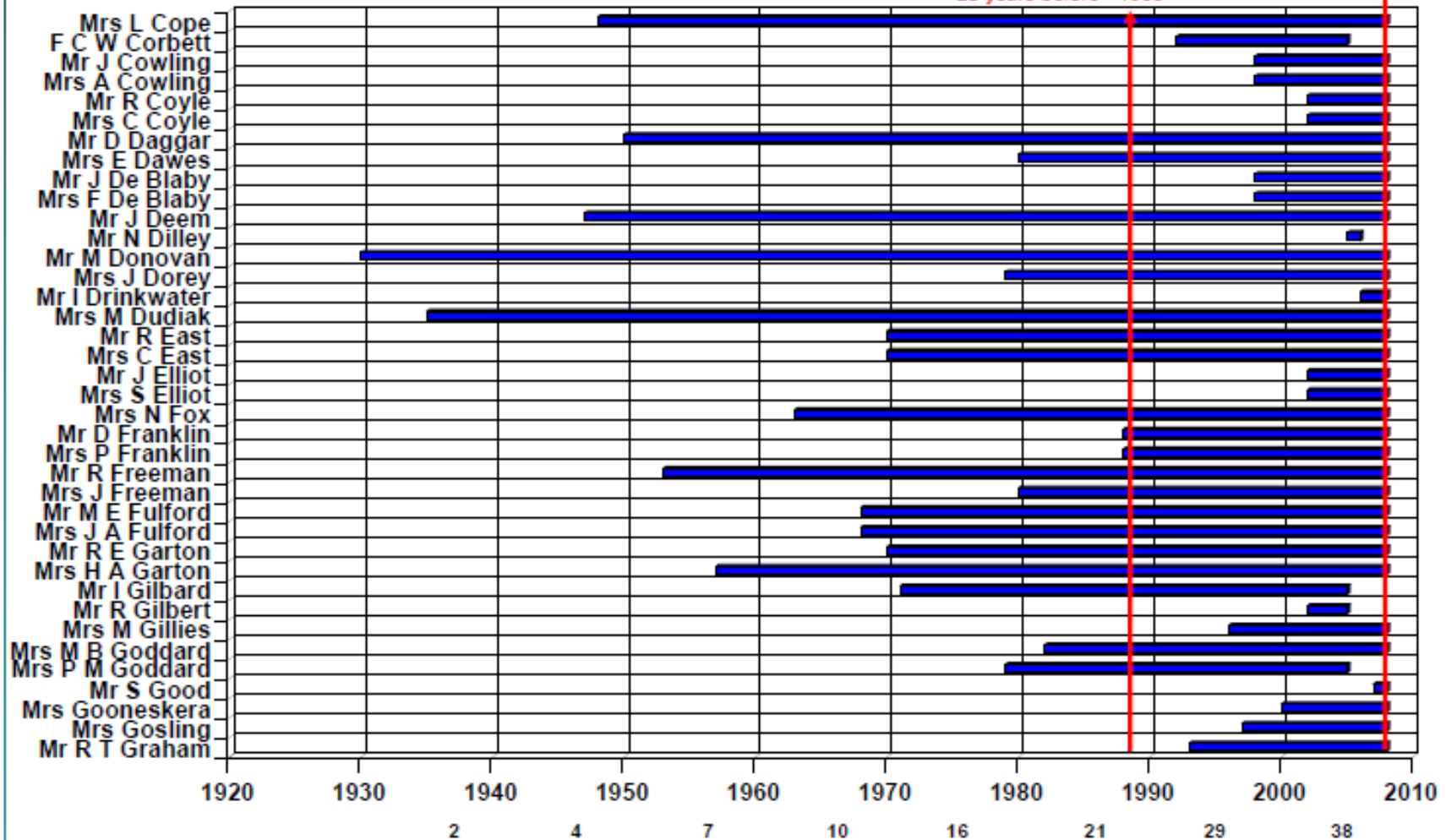


Chart of User Evidence (Users 77 - 114) Crabshell Quay

Date of calling into question - 2008

20 years before - 1988

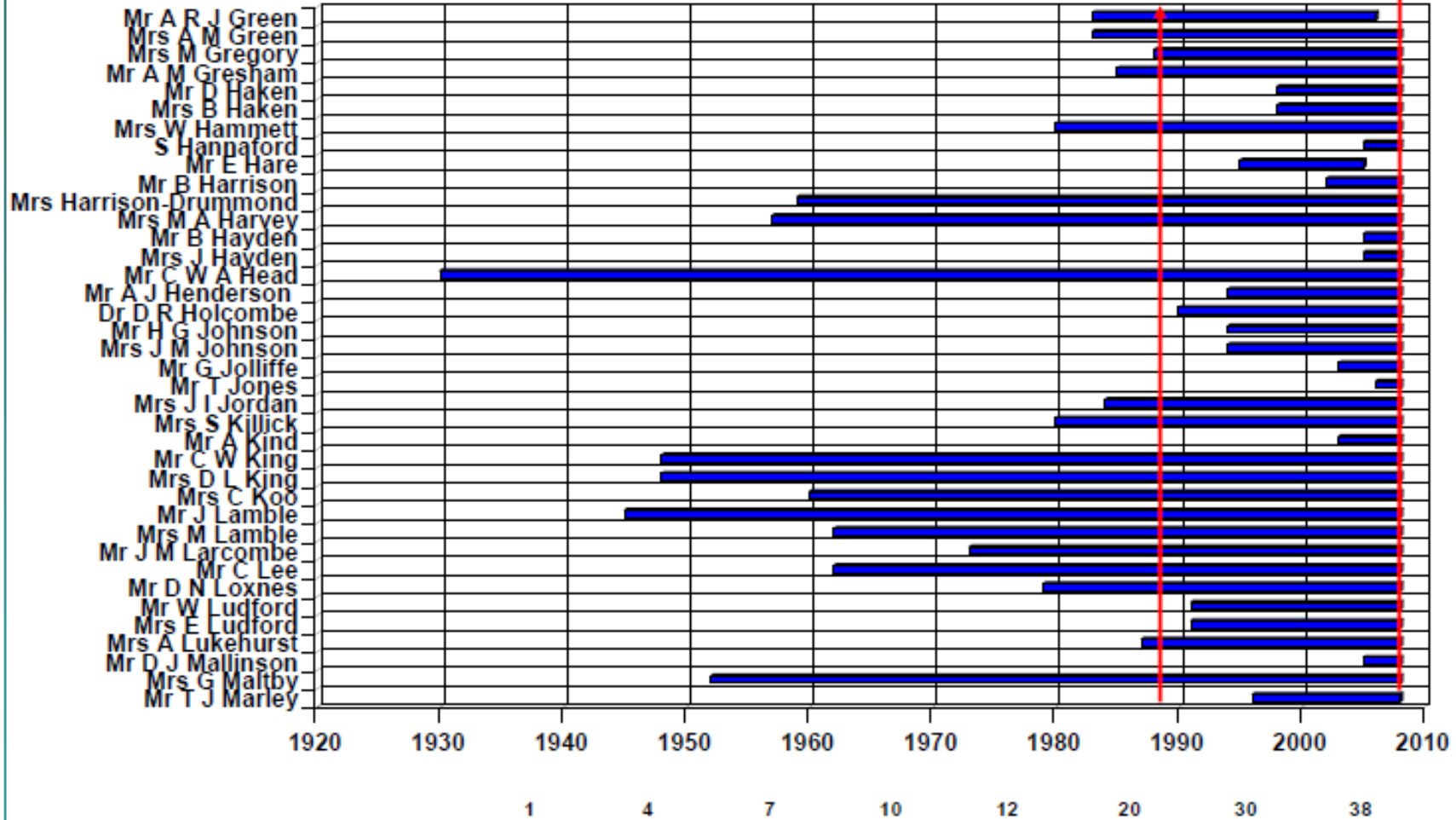


Chart of User Evidence (Users 115 - 152) Crabshell Quay

Date of calling into question - 2008
20 years before - 1988

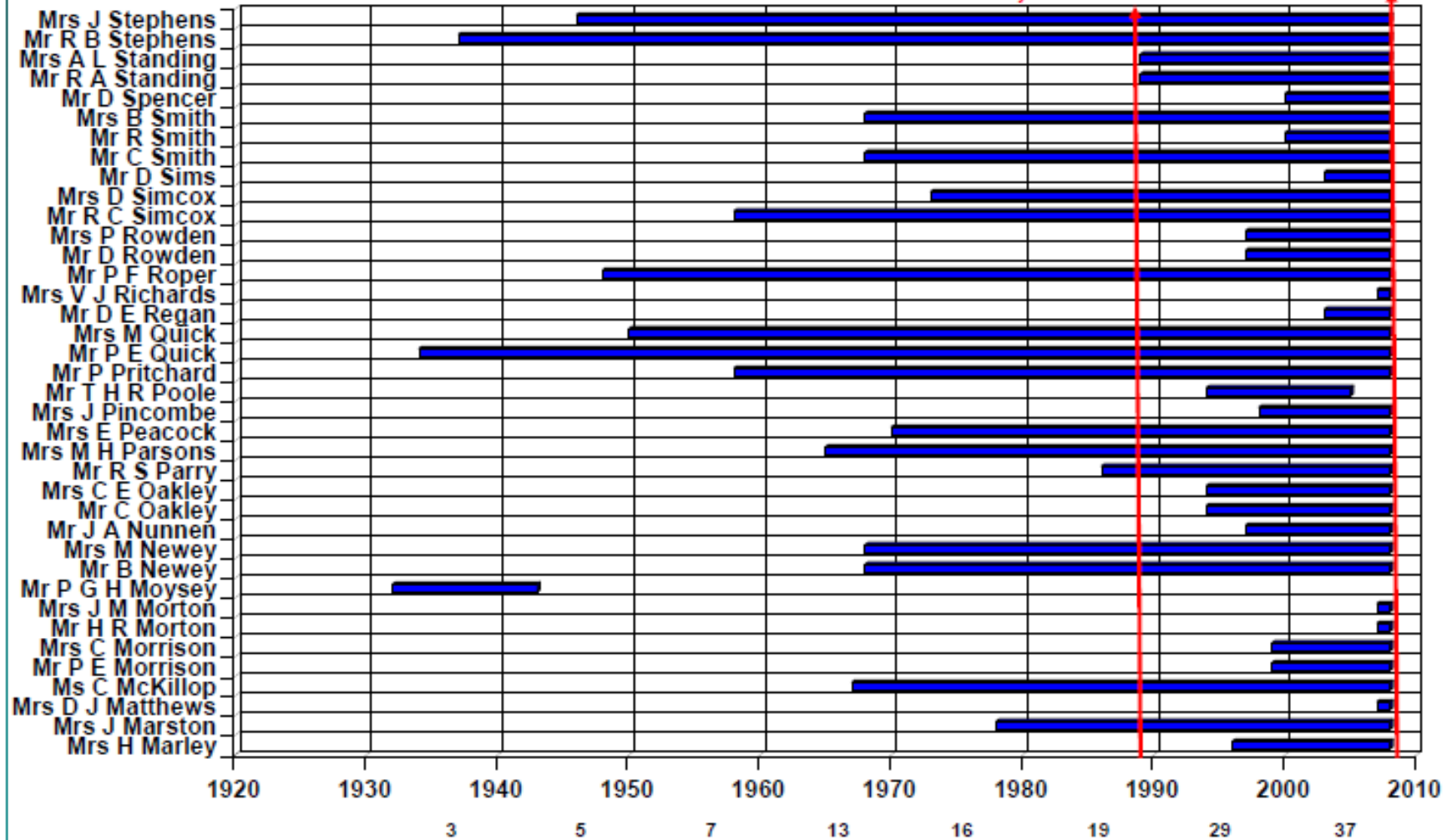
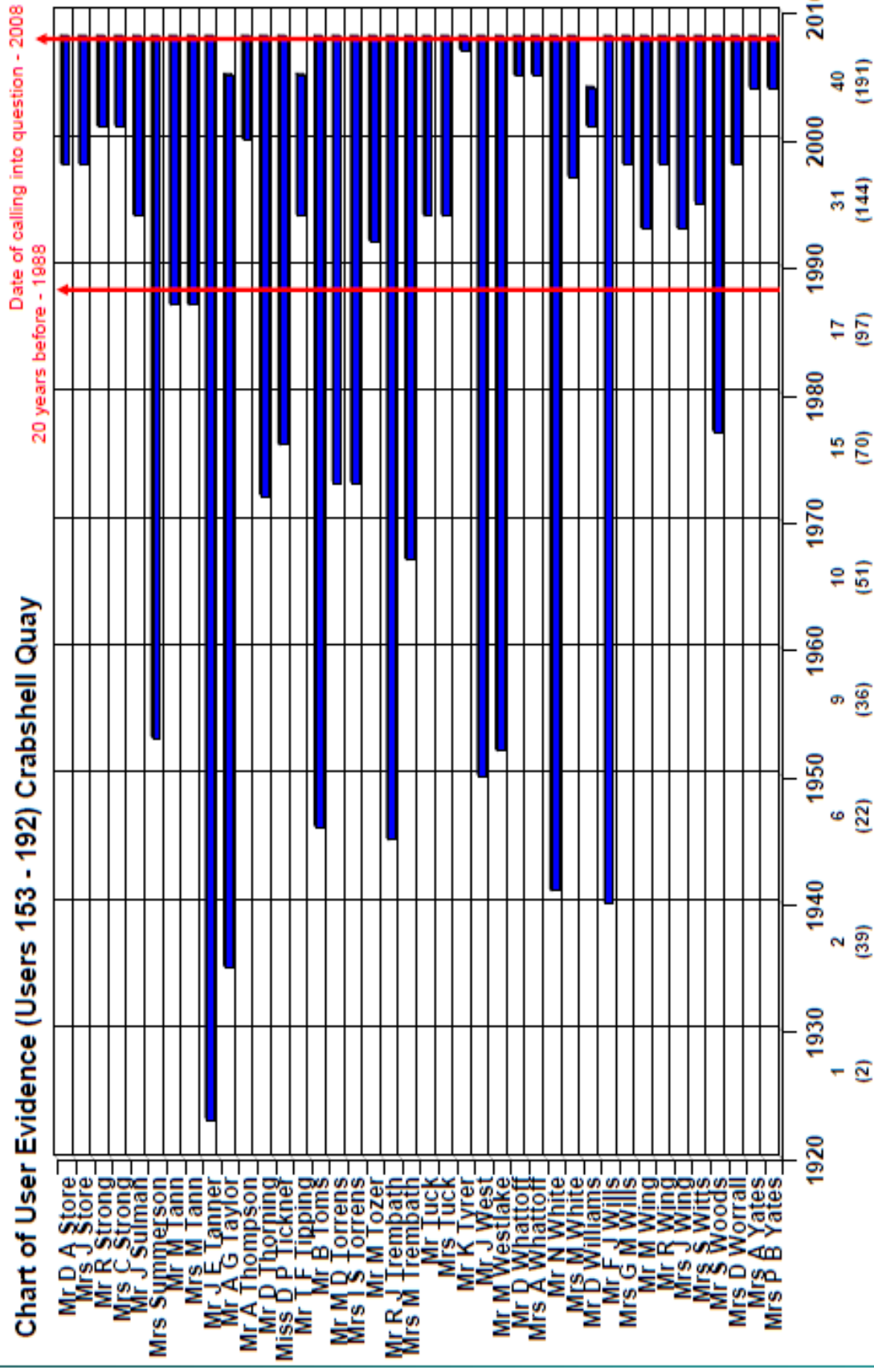


Chart of User Evidence (Users 153 - 192) Crabshell Quay



4. Landowner Evidence

The land crossed by the route is registered with the district land registry under several different landowners. They have been contacted for their views/evidence. Some also submitted evidence for the parish review consultation or in response to the Order published in 2006 and these comments are included here where appropriate.

Mr Peter Moule has owned the Rivermaid Boatyard for the last 35 years. It is crossed by the route between points D – E. He completed a Landowner Evidence Form in 2005 and again in response to the current application.

He states that he believes the route to be a public footpath and has seen members of the public using the path. He also comments that the Rivermaid Ferry lands at the quay where pedestrians disembark and walk along the route. He adds that the path used to continue south through what used to be a coalyard (now Moorings Apartments). He states that he has on occasion stopped people from using it. His reason being that as a private commercial boatyard and quayside craning of boats takes place with heavy machinery and hazards and obstructions can occur. He has not put up any notices indicating that the path was not public but there is a sign stating that the boatyard facilities are private and for patrons only.

Following the publication of the Order Mr Moule made a representation concerning the stated width of 1.5 metres. He stated that in the winter months the yard has been full of stored boats, which define the path along the quay as single file – approximately one metre. He had no objection to the existence of the footpath and would have withdrawn his objection to the Order had the path been defined as 1 metre along the edge of the boatyard.

Carlton Management Ltd owns the freehold of Kings Court flats crossed by the middle section of the route, between points C – D. Mr Schofield, the then Company Secretary completed a Landowner Evidence Form in 2004 and submitted additional correspondence at that time. They believed the path to have been used by the public for over fifty years and understand that at one time it continued beyond the boatyard. On their form they stated that they believed the path to be public but also commented that it was a permissive right of way. They have not prevented the public from using the route or put up notices stating that it is not public. They have put up notices stating that “persons using this quayside do so at their own risk”. They did not object to the recording of the path but did have concerns regarding maintenance responsibilities, such as access to paint the estuary side of the flats. They made a representation to the Order regarding the stated width which they considered insufficiently accurate insofar as it related to their property.

Mr Bardsley completed a Landowner Evidence Form on behalf of Carlton Management in 2008, in response to the current application, on which he states his belief that the path is not public but that he has regularly seen people using it as a footpath. In response to whether the Company has stopped people from using the way or told them it was not public he states that this was related to boats mooring and using the quay or people fishing, picnicking or trespassing on the adjacent car park. He adds that the path is obstructed by scaffolding every 4-5 years for maintenance works on the flats.

In an accompanying letter he states that Carlton Management did not object to the previous proposal to determine the path as a public footpath but they do object to the

current application and believe a better way of recording the footpath would be by means of 106 agreements or some other form of dedication.

The land crossed by the northern end of the route, between points A – B is owned by Crabshell Developments Ltd. They have not responded to this or the previous consultations. The owner of one of the flats, Mrs Bent-Marshall, responded in 2005 and again in 2008. She reports seeing the public using the path on a regular basis since at least the mid 1980s and believes it to be a public footpath.

Mr & Mrs Kerslake-Brameld are the registered owners of the Crabshell Inn and the land crossed by the route between points B – C. They did not respond to the earlier consultation under the Review or to the current application. They did however, object to the Order published in 2006, on the basis that the area crossed by the Order route is used for customer seating and parking and that if they were required to keep it clear it would have a detrimental affect on their business. They did not however deny that the public walked along the quay.

Ms Lubrani made a representation to the Order in 2007. She owns a cottage and land at point B, adjacent to the Crabshell Inn and has an interest in purchasing the Inn. She stated that she would have no objection if the path were to be “defined and contained...to a width no greater than one metre from the quay edge” but submitted that the documentary and user evidence was insufficient to establish the subsistence of a public right of way. No response has been received from Ms Lubrani to the consultation for the current application.

5. Discussion

User evidence indicates that people have been walking along the quay since at least the 1920s. It is in daily use by many people and most comment that it provides a safe alternative to walking along the edge of the busy A379.

Consideration under Statute

For the purposes of presumed dedication under the Highways Act 1980 there are a number of events which could be considered as having called into question the public's right to use the route. These include the development of Kings Court in the mid 1980s, the development of Crabshell Quay in 2002/2003, the Planning Inspector's decision in February 2008 not to confirm the Modification Order and, latterly Kingsbridge Town Council Schedule 14 application in July 2008.

The development of Kings Court in the mid 1980s appears to have been very contentious and resulted in a successful campaign to save the Crabshell Inn. The status of the route was then acknowledged by the owners of the land and the Town and District Councils as an established right of way to be retained. It does not however appear to have been an event which called into question the public's use of the route.

Similarly the development of Crabshell Quay apartments retained the footpath and does not appear to have been considered by the public as an event which called their use of it into question.

The decision in February 2008 by the Planning Inspectorate not to confirm the Order generated much public concern and attention regarding the status of the route and resulted in the Schedule 14 Application in July 2008. It is therefore this decision in

February 2008 which is considered most likely to have called the public's rights into question.

The relevant period of use to be considered for presumed dedication under the Highways Act 1980 is therefore the twenty years before 2008, i.e. 1988 to 2008.

For use during this period to give rise to a presumption of dedication it must be shown to have been uninterrupted and 'as of right', i.e. without secrecy, force or permission. During the construction of the Crabshell Quay apartments in 2002 – 2003 the path was obstructed for several months. Although they did not consider it to be anything more than a minor inconvenience during the building works, many users were aware of it and it can be considered as having interrupted use of the path during this period, albeit temporarily. The section 106 Agreement made at the time of the planning application in 2001 also provided for a permissive path following development. Although it is unlikely that this was brought to the attention of the users of the existing path, their use of the reinstated path since then could be interpreted as being by permission, rather than as of right. The evidence is not therefore considered sufficient to meet the tests for statutory dedication during the period from 1988 - 2008.

Consideration under Common Law

It is therefore necessary to consider the claim on the basis of Common Law dedication, in conjunction with historical and other documentary evidence with evidence of use.

Map evidence shows that the area available today has existed since at least the early 1920s. The northern end of the path, between points A – B, around what is now Crabshell Quay Apartments, appears to have been defined alongside one building or another since that time. The buildings have changed but the path has been consistently defined. The quay appears to have remained largely open with the exception of a covered yard area in the boatyard, between points D – E, which is shown from the 1900s until the 1970s. A strip of land is however shown between the covered area and the edge of the quay, indicating that a path was physically available along the edge. The covered area was demolished in 1977 but in more recent years Mr Moule has defined a route along the edge of the yard on approximately the same line.

The middle section was generally open and undefined until Kings Court was developed between points C – D in the mid 1980s. Prior to this time the path habitually used by the public appears to have been along the quay edge although there is evidence that people could and often would walk in and around any temporary obstructions, such as the odd ship offloading.

When Kings Court was developed the path was retained between the buildings and river.

The area between points B – C, by the Crabshell Inn, has been depicted on maps as open and available since the early 1900s. Prior to the mid 1980s the area immediately adjoining and to the south of the Inn was used as a beer garden. The quay area was used for customer parking. With the development of Kings Court on the southern part of the car park the beer garden was demolished and tables and chairs subsequently moved to the water's edge. People have walked around them as necessary. A line of bollards and a chain runs along the edge of the quay to prevent cars from the Inn and apartment car parks from going into the water. Evidence from

planning files indicates that these bollards were in place before Kings Court was built and were retained as part of the development. The public have therefore habitually walked on the landward side of the bollards and chain.

A couple of users have submitted that when the Crabshell Motor Inn was built (possibly in the 1950s) the developers were required to retain a walkway around the water side of the property, between points A – B. No further documentary evidence is available to support this but the path remained available so presumably the developers were aware of the public's use at that time.

In a 1978 planning application, Mr Moule acknowledged a public right of way along the quay between points D – E, and stated that it would not be obstructed by storage of boats. This is clear evidence that he accepted the route along the edge of the quay as a public right of way then. He has subsequently acquiesced to continued use by the public to date.

Similarly, in 1983 the owners of the Crabshell Inn site, which then extended as far as the boatyard between points B – D, also accepted the route as an existing public right of way at that time. They agreed to retain the footpath when the area was developed into Kings Court flats. The District and Town Councils also considered the path to be an important feature to be preserved and a strip of 3' was to be left for this purpose.

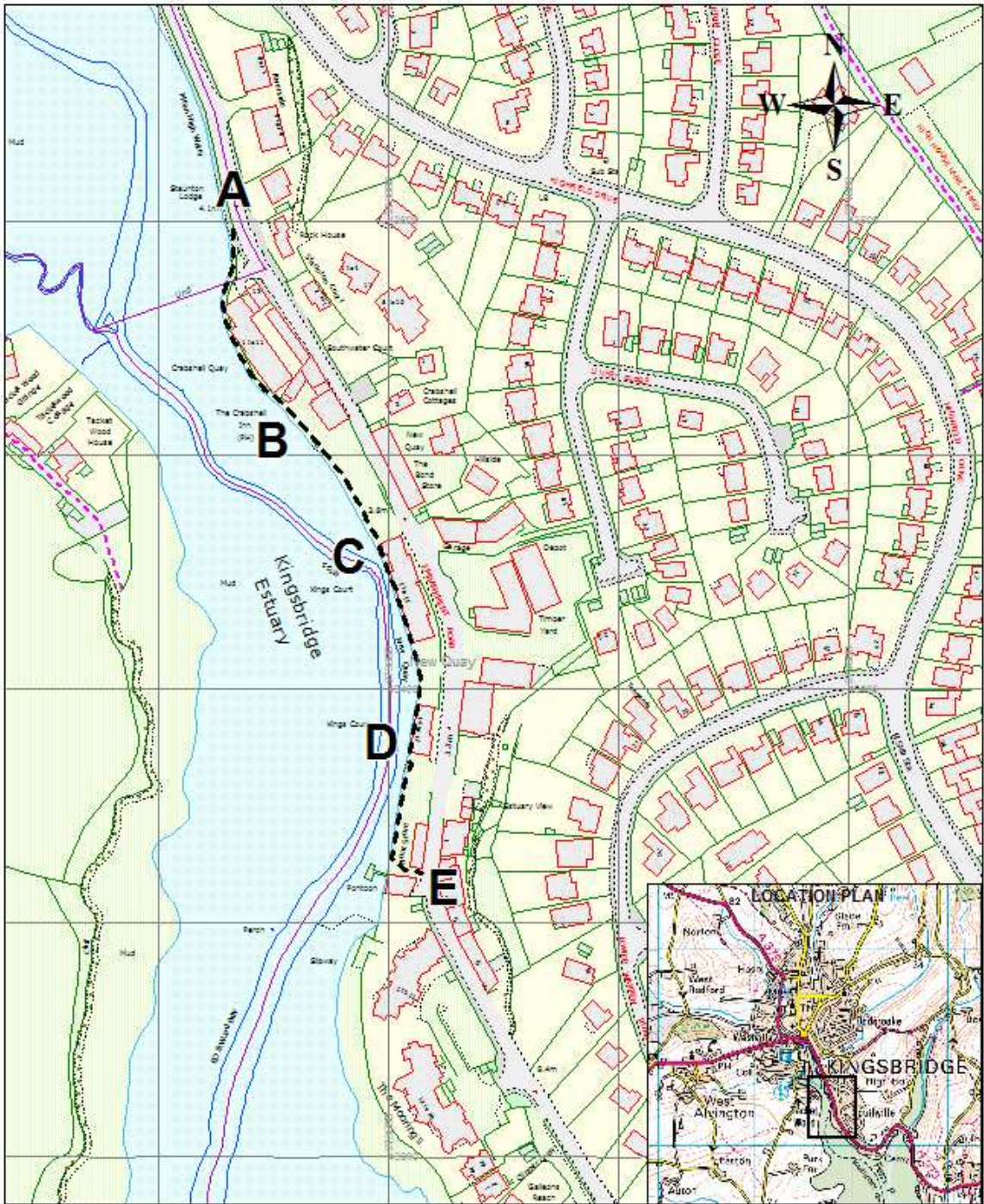
The latest development in 2001-2003 of Crabshell Quay apartments similarly acknowledged that the path was then being used by the public and that it should be protected. The developers only agreed to provide a permissive path, between points A – B. However, there is no evidence to suggest that the use of this section prior to 2001 was by permission. Given the earlier evidence concerning the perceived public status of the route, from the Crabshell Inn to the boatyard, it can be presumed that the whole route was accepted as a public footpath.

It can therefore be inferred that a public right of way on foot has been dedicated by a landowner or landowners at some time in the past, before 1978. Use by the public has been regular and frequent and it is ample evidence that the public have accepted the route as public and have used it, and continue to use it, on that basis.

It is considered that sufficient evidence exists to show that a public right of way not presently shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist.

6. Conclusion

Therefore, it is recommended that a Modification Order be made adding a public footpath between points A – B – C – D – E, as shown on drawing number EEC/PROW/08/74a.



map ref **SX 7343**

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**SCHEDULE 14 APPLICATION:
Addition of a footpath along Crabshell Quay
/New Quay, Kingsbridge**

drawing number	EEC/PROW/08/74a
date	Aug 2008
scale	1:2500
drawn by	HFB

Notation

Footpath to be added A - B - C - D - E - - - (310 metres approx)

Chris McCarthy

EXEC. DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

