

Background

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.

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 to add a footpath between Heywood Road and Fox Hill, Northam.

The route is shown between points A – B – C on drawing number EEC/PROW/10/91.

Recommendation: It is recommended that a Modification Order be made in respect of this application.

1. Background and Application

In July 2009 residents of Northam House made a planning application to Torridge District Council (TDC) to erect 2.4 metre high gates at the western end of the claimed route. The application for the gates was made as Northam House falls within the Northam Conservation Area and the building occupies a key visual position.

The planning application received objections but it was approved by TDC in October 2009. The gates were erected and locked in January 2010.

As a result of the planning notices on site, members of the public enquired about the status of the path and were advised that it had no recorded public status. This prompted two Schedule 14 applications from members of the public. Notice of the Schedule 14 applications was served on the landowners and placed on site to ensure all landowners were informed of

the claim. At this stage the Schedule 14 applicants became aware of each other and the applications and evidence amalgamated.

Meetings have been held on site to explain the process to the residents.

2. Description of Route

This route starts at the county road Heywood Road, behind a bus stop and passes between Cross House and Northam House at point A on the plan. It proceeds eastwards along a tarmac lane for approximately 60 metres to join the county road at Fox Hill at point C. The lane provides access to several houses and a block of garages

The route is level and approximately 1.7 metres wide in the pedestrian section between points A and B where low walls to front doors steps, restrict the width. Between B and C it is approximately 4 metres wide.

Until January 2010 the route was un gated, with a central concrete bollard placed at point A at the start of the pedestrian section. A similar bollard was apparently located at point B but it was removed a few years ago by a utility company to gain access to a telegraph pole and never replaced.

At point A there is a notice on the wall that says "Private Road to Northam House and 4 & 5 Foxhill". There is a mark on the wall near point B of a similar size suggesting that another notice was in place, but it is no longer present.

In January 2010, 2.4 metre high metal gates were erected across the route at point A and locked. At the same time a wooden five bar field gate with a connecting fence was erected across the lane at point B and locked. This gate was not subject to planning permission.



Claimed route looking towards point A

3. Documentary Evidence

There is little relevant historical evidence. This route came was established when Northam House was split into smaller units and houses built in Fox Hill in early the 1970s. Since the development of the area the claim has appeared on OS maps as a through route.

4. User Evidence

This route was brought into question in January 2010 by the erection and locking of gates at points A and B at both ends of the pedestrian section. The relevant period of use is therefore 1990 to 2010.

Considerable evidence has been provided in support of the claim which is summarised below and shown on the following table:

- 42 people have provided evidence of walking the route during the twenty years between 1990 – 2010.
- Many people have reported using this path on a daily basis as they went to and from the bus stop, the health centre, local amenities, 'going about their daily lives' and dog walking.
- 20 users have walked the route between 200 and 1,500 times a year many using it several times a day.
- 16 users have walked the route between 40 and 200 times a year.
- 3 people have used the route between 4 and 12 times a year.
- The earliest reported use dates from 1968 although most use starts in early 1970s when the development took place.

The estate roads and pavements in Fox Hill are adopted highways and the residents of this estate do not appear to have private rights over the claimed route. Some of these residents are among the most frequent users, however many users from the surrounding neighbourhood were using the path twice a day on several days a week.

Five letters of support have also been received. Mrs Fletcher has lived in Goats Hill Northam for 37 years and has always used the footpath to the bus stop and doctor's surgery, and believes that path to be public.

Mrs Blake from Cluden Road who has been in the area 40 years has used the route often on walks.

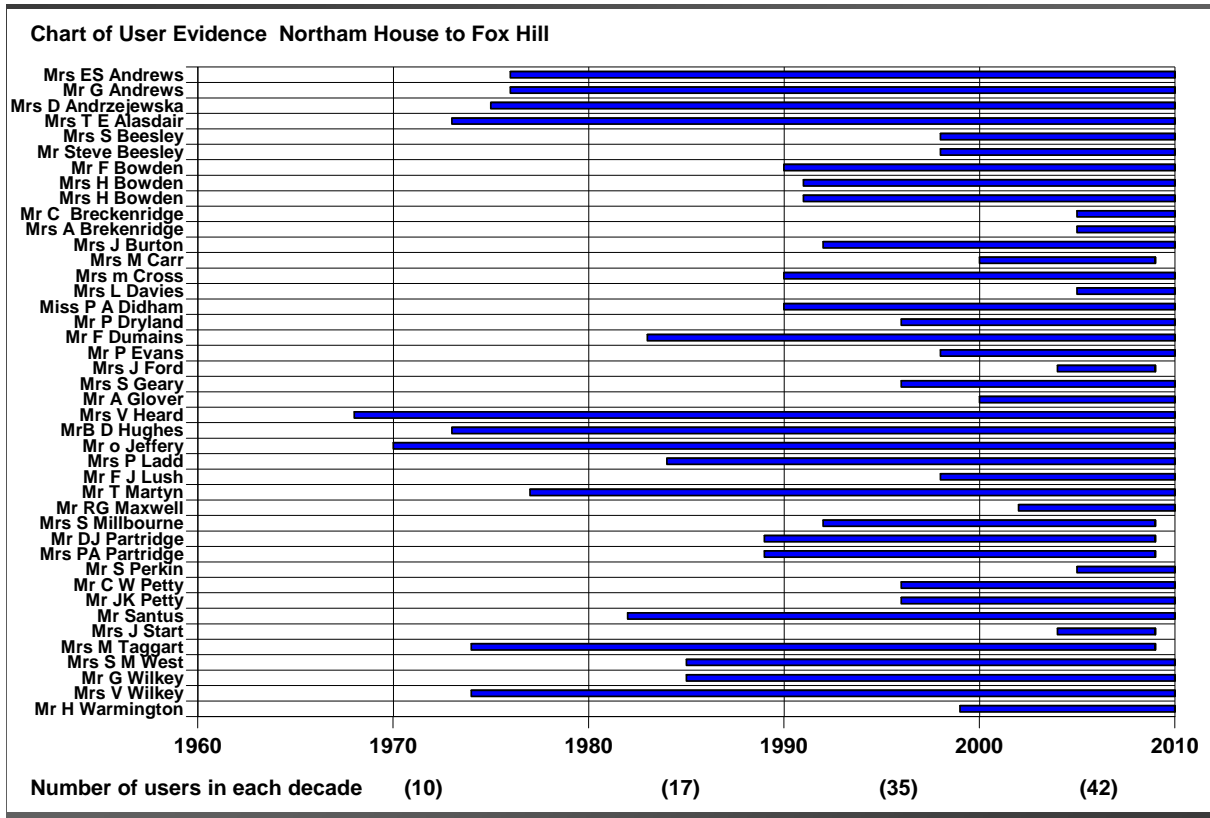
Mrs Mackie of Green Gardens was dismayed when the footpath was closed. She has lived in the area for 60 years and always believed it was a public right of way. She remembers when the doctor's surgery was in Northam House and there was a side door to the waiting room. When the houses were built and Northam House split up the public access remained and does to the present day. It was a much used route to the bus stop on foot or in a wheelchair.

Mrs Start & Mr Care of Goats Hill both in their 70s regularly used the footpath to visit the Health Centre.

Mr du Mains of Ethelwynne Brown Close has stated that he has used the footpath for the last 27 years since moving to the area. He now has mobility problems and being denied the access along the footpath has made it far more difficult to reach the local facilities, bus stop and cenotaph.

Some walkers reported noticing the "Private Road to Northam House and 4 & 5 Fox Hill" sign.

The public rights of way officer has observed many members of the public using the route.



5. Rebuttal Evidence

Six adjoining landowners have provided evidence which is summarised below. Their length of ownership is shown on the following table. All the evidence forms and letters are available in full in the backing papers:

Mr & Mrs Casser have lived in Cross House adjoining the route for 22 years. The route does not cross their land but their two story house forms the northern boundary of the pedestrian section. They refer to a sign that said "Private road to Northam House No. 3 & 5". They say the sign has always been in place and one notice had been removed and replaced. They have provided an old photograph of the street scene prior to the development which apparently shows an old gate. However, on examination the gate is unclear. (The photograph is included in the backing papers).

Mrs W Clarke has lived in 1 Northam House for 2½ years. She has brought the notice to users' attention. One notice was removed. She "has very valid social reasons" for wanting the gates locked.

Mr M Higgins has lived at 4 Northam House for four years. Occasionally he has seen members of the public using the route - people ignored the Private signs. On occasions he has parked his car on the route to unload shopping and members of the public have commented that he was causing an obstruction. He has pointed out that the land was private and the sign said so. His wife told-off some teenagers after they had ridden a motorcycle along the route. The Private signs were there when he bought the house in 2006. He believes they date from the 1970s following Northam House Residents Association receiving a letter from Devon County Council confirming the route was not a public right of way. The

notice at point B was pulled off the wall in 2008. When he saw the property with the estate agent there were a line of flower pots causing a partial obstruction.

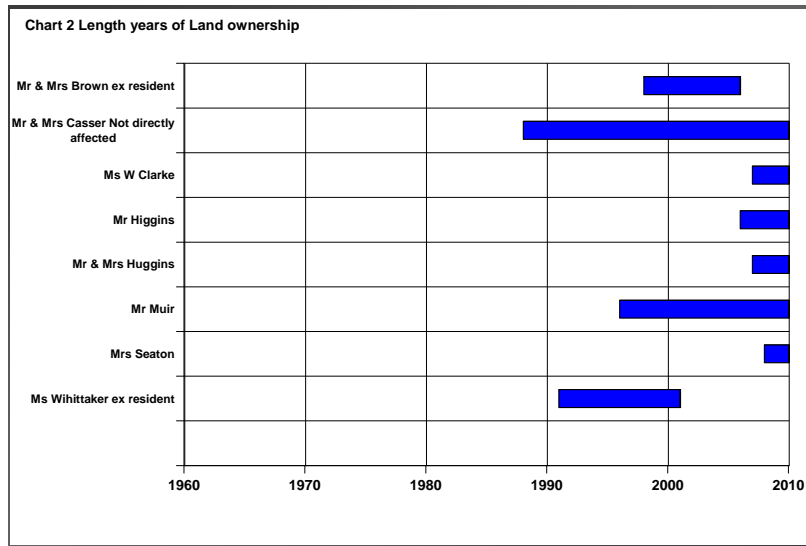
Mr & Mrs Huggins have lived at 2 Northam House for 3 years. They have seen people walking the route daily as a short cut. They were aware two signs were erected in 1982 and one sign was removed in the last 3 years. They state "permission has never been requested and therefore not granted". Some users when challenged did not react favourably. Due to increasing concerns over security and public liability (and after checking it was not a recorded right of way) they successfully applied for planning permission to reinstate lockable gates at the Heywood Road end. They enclose photographs (in the backing papers) of the sign and the mark on the wall at B of the missing sign. Also a letter from Devon County Council in 1982 saying the way was not a recorded public right of way and the owner can erect such notices as he deems appropriate under section 31 of Highways Act 1980.

Mr Huggins also enclosed a letter from Mr & Mrs Brown, residents between 1998 - 2006. They say the path is private and are worried about public liability. During their occupation they have experienced verbal abuse, had a horse go past and had a burglary. They therefore feel the new gates are a good idea.

Mr Muir, of 5 Northam House, has lived on the route for the longest period of any of the residents, some 14 years. He has no objection to his neighbours in Fox Hill and the surrounding area using the lane during the day, as they were doing so long before he moved there in 1996. He says "Certainly since I have been here, I have not seen any damage or trouble due to normal lane traffic". He has seen the public using the route on a daily basis, morning to evening. He writes the only time he has challenged anyone was in January 1996 when he told two girls on horseback to please stop. They never returned. He has never challenged walkers. He explains "The saga of the plant pots started when Mrs T Brown, of No. 4, decided to place 6 large pots in the lane, like an obstacle course. She was a feisty lady and challenged walkers when she saw them. Soon after placing the pots, I suggested to her it was not a good idea, and she was not amused. The lane is unlit and is very dark at night and I pointed out that a walker could well trip over a large pot and we could be sued... anyway, not long after, the pots were remove... Since I moved here in Jan 1996, the other four properties which make up Northam House have changed hands 12 times, this does of course, affect the continuity of ideas regarding the lane". He found himself in a minority when the gates were discussed in 2009. He says numbers 2 & 3 are holiday homes. He was astonished when the planning permission was granted and the police proposal for the gates to remain open between 8am and 8pm was completely ignored. He says this would have been a good solution.

Mrs Seaton of 3 Northam House has owned the property for two years. She has seen people using the route and pointed out the private signs when trying to stop them, but was been ignored. She understood that the notice has been in place since 1973, when the property was divided into 5 separate units. She states "gates erected and locked in January 2010 made her property more secure, as her front door opens onto the 'footpath/passageway' and is only four yards from the bus stop where anti social behaviour takes place, creating a stressful environment ". She says that "the public have no need to use their private footpath."

Mrs Whittaker lived in 2 Northam House from 1991- 2001. She has seen people using the route as a short cut and has told some of them that they didn't have the resident's permission. However, it was 9 years ago so she cannot provide dates and times. During her time at No. 2 the notices were at each end.



6. Discussion

Forty seven individuals have provided user evidence covering the last 38 years from the time the development of Northam House and Fox Hills took place. Many of these users have walked the route as part of their daily routine going to local amenities and the bus stop.

There were no barriers on the route until the gates were erected in January 2010. The evidence indicates that the public took to using the path when Northam House was split into small housing units and Fox Hills estate built in 1972. The elderly people who remember the time before the development have explained that the entrance to the doctor's surgery in Northam House was along path. This use would have been for access and is not therefore relevant in the determination of the claim.

There appear to have been notices in place since 1982 (the date supplied by Mr Huggins). This is apparently the Notice that is still visible at point A which says 'Private Road to Northam House and 4 and 5 Fox Hill.' The notice does not appear to have had the effect of deterring the public from using the path. Many people have passed it daily and do not appear to have thought it meant they had to stop using the route.

Such signs do not provide sufficient evidence of a lack of intention to dedicate. The concrete bollards at points A and B would clearly have prevented vehicles passing along the route, but would not have stopped pedestrians from using the route.

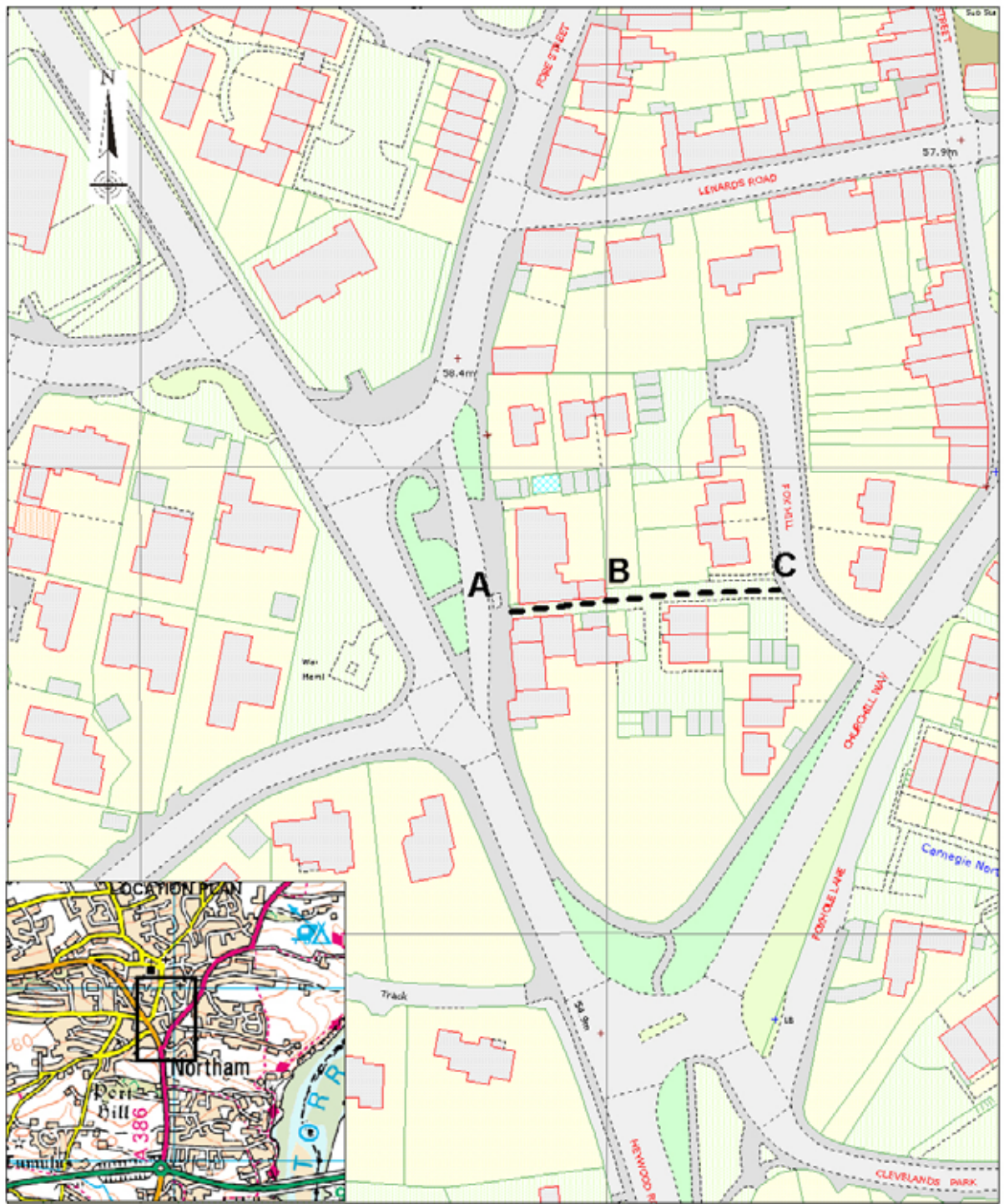
Case law directs that for a notice to be effective its wording must clearly deny a public right of way. The words 'Private road' are of doubtful adequacy because of their ambiguity: The words could be interpreted as showing an intention to deny the existence of a carriageway, but not that of a right of way on foot. The High Court supports these arguments. In *Burrows v Secretary of State for the Environment, Food and Rural Affairs* 2004 and more recently *Paterson v Secretary of State Environment, Food and Rural Affairs* 2010, 'Private' signs were not found to be sufficient to show a lack of intention to dedicate a route on foot. The judges gave guidance on how to interpret signs saying "how a range of members of the public have in fact understood signs in a particular context may well be a helpful indicator how a reasonable person would interpret a sign in that context".

From interviews with the users it is evident that they thought the notices were intended to prevent use in a car but that it was permitted to walk the path.

The erection of the gates in January 2010 did however bring the route into question. The house holders do intermittently report challenging individual walkers, but none of the users have reported ever being approached. So many people used the route on a daily basis that it is quite possible that those who have provided user evidence were not the same individuals that were challenged.

7. Conclusion

On the evidence provided it is considered that a public footpath can be reasonably alleged to subsist over the claimed route shown running between points A - B - C on plan EEC/PROW/10/91. It is therefore recommended that a Modification Order be made to add the path to the Definitive Map.



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**DEVON COUNTY COUNCIL
 SCHEDULE 14 APPLICATION
 CLAIMED FOOTPATH
 HEYWOOD ROAD TO FOX HILL, NORTHAM**

drawing number	EEC/PROW/10/91
date	Oct 2010
scale	1:2500
drawn by	AS

Notation
 Claimed Footpath A - B - C - - - -

Chris McCarthy
 EXECUTIVE DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE



Schedule 14 Application to add a footpath running between Footpath No 11 and Footpath 6a, Northam

The route is shown between points D – E – F on plan number EEC/PROW/10/92.

Recommendation: It is recommended that a Modification Order be made in respect of this application.

1. Background and Application

In February 2010 a local resident from Lower Cleave submitted a Schedule 14 Application, after enquiring if this route was recorded on the Definitive Map. The landowner was served notice of the application. Evidence of use was submitted with the application and further evidence has come forward during the course of the investigation.

The route was brought into question when signs were replaced by the new owner of the property Tree Tops which is situated just to the east of point D.

Old Signs

There were two old signs on the route at point D which read "Private Drive to Yeoldon Lodge" and "Thank you for driving slowly Private Road". A small "Private Drive" sign was located in the hedge near point E. At point F there were another two signs saying "Private Drive to Yeoldon Lodge" and "Private Road No Parking Please keep dogs on leads & do not allow them to foul the area". A Torridge District Council dog fouling sticker was attached to this sign.

New Signs

In March 2009 Mr & Mrs Measures bought the property Tree Tops and the associated land. In mid 2009 they replaced the signs at points D and F. The sign at point D read "Private Drive No public Right of Way Access to Yeoldon House Hotel only" and at point F "Private Drive No public Right of Way No Parking".

Meetings have been held on site with the landowner and Councillor Eastman to explain the process.

2. Description of Route

The claimed route starts at point D on Footpath No. 11 in Durrant Lane outside the gates of the drive to Yeoldon House Hotel. It proceeds in generally eastwards at the top of a valley to point E where the drive forks and follows the northerly track through a gate with a 1 metre wide pedestrian gap to one side to point F on Footpath 6a, Lower Cleave. Footpath 6a is part of the South West Coast Path.

The route has a hard tarmac surface between points D and E and a hard compact stone and gravel surface between E and F. The track is approximately 3 metres wide and 350 metres long. Photographs of the route are included in the backing papers.

3. Documentary Evidence

This route is shown on 1898 OS map and appears to have been made when the house at Yeoldon was built.

Since the development of the area the claimed route has appeared on OS maps as a through route.

4. User Evidence

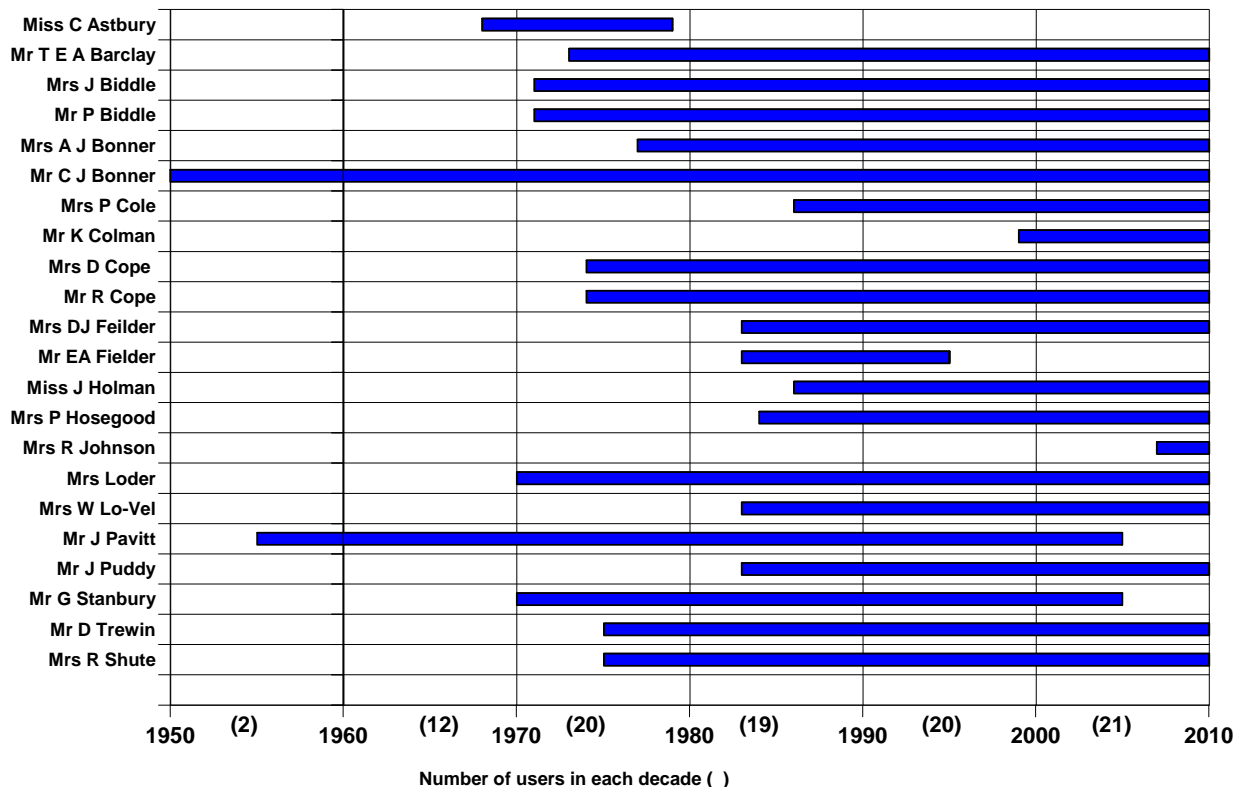
User evidence has been provided in support of the claim which is summarised below and shown on the following table.

- 21 people have provided evidence that they have walked the route, the earliest use is from the mid 1940s.
- All 21 users have walked the route between 1989 and 2009.
- 10 of the people used the route 50 or more times a year.
- The others have all walked the path between 3 and 50 times a year.
- Most users say they saw the “No Public Right of Way” signs erected in mid 2009 and some were challenged.
- Prior to 2009 people have reported seeing and speaking to the owners and not being challenged or asking for permission.
- In the mid 1990s a gate was placed in lower section of lane, just east of point E, to stop vehicles using the route, except as a flood escape route. When the gate was erected a pedestrian gap of approximately 1 metre was left by the landowner.

Use was without permission or challenge until 2009 when Mr & Mrs Measures bought the property and erected new notices. The relevant period for consideration is therefore 1989 to 2009.

One user kept a pony in a field off the lane between 1966 and 1986 so her evidence has only been considered for the period after 1986. The applicant, Mrs Lo-Vel, also rented a pony field beside the lower end of the claimed route. She has stated that she used the whole path as a through route from 1983 as “it provided a pleasant walk”.

Chart of User Evidence Durrant Lane to Lower Cleave



5. Other Supporting Evidence

Various letters of support have been received.

Previous Landowners

Ms S Memelink was the owner of Tree Tops and the surrounding land for 10 years from 1998 to 2009. She says "I had a pleasant relationship with all my neighbours... and I enjoyed the fact that people/public (with dogs) could enjoy the beauty of the area by walking along the road past my house, down to the hotel and even further down to Lower Cleave." She goes on to say that "I understand that it is being said that, during the approximately 10 years I lived in Tree Tops, I approached the council several times with the intent to close the road on the property down to the hotel. *This is not the case.* I have never wanted to close off the road and did not approach Torridge Council to apply for anything to do with closing the road. As said before, I wanted people to be able to enjoy the beauty of the place, as long as they stuck to the road."

Ms Memelink was the owner of the route in the 10 years before use was challenged in 2009. Her evidence corroborates that of the users.

Mr Steel has been the owner of Yeoldon House Hotel since October 1999. He says "For the last 10 years we have enjoyed a very healthy relationship with All of the Durrant Lane & Lower Cleave residents, most of whom have enjoyed walking the said drive for over 30 years. Other walkers have used this drive and discovered the hotel and then booked family events".

Other Supporters

Mrs Shute has written to express her full support for the application to add the public footpath. She says "her family have lived in Durrant Lane for 38 years. Three generations of my family have enjoyed using this route to gain access to the public footpath at Lower Cleave. Since Mr & Mrs Measures became the owners of Treetops the freedom to use the pathway to the river has been taken away." She goes on to add "My family and neighbours who support me on this issue all wish to be listed within this letter. They are my husband, Mr Mark Shute, my father, Mr Derek Trewin, and Mr & Mrs A Miller of the Coach House, Durrant Lane."

Mr C Hassall on behalf of the Taw Torridge Estuary Forum wrote saying "We consider this claimed path an asset to the accessibility of the coast path and its connectivity with the highway network. We have spoken to individuals who have walked this path understanding it to be a right of way, and we support the contention that it should be added to the Definitive Map and so correct a past omission."

Mr B Sussex wrote to say the ACU/TRF are happy to support the footpath claim.

The officer has observed members of the public using the route.

Photographs of the route are enclosed in the backing papers.

6. Rebuttal Evidence

All the forms, letters and photographs supplied by the landowners are available in full in the backing papers:

In March 2009, Mr & Mrs Measures bought Tree Tops and the surrounding land and drive, from Mrs Memelink the landowner from 1998 to 2009.

They have written saying "We realised soon after moving to TreeTops that there were a number of dog walkers using our Private Drive. We conferred with Ms Vine at Yeoldon Lodge who agreed with us. We also spoke with the hotel owner who said that dogs fouled his grounds which are used for weddings and agreed with us that we should try to curtail these walkers which we have tried to do". They believe it is a "Private Drive" and have turned dog walkers and sightseers off and required local residents and neighbours to ask permission.

They say "Private Drive" signs have been displayed on the property for at least 35 years to our knowledge. Since purchasing the property we have renewed these signs at both the top and bottom entrances. "In February and March 2010 the sign at the bottom had been defaced one removed and thrown into a garden and the sign at point E defaced and the locking mechanism on the gate cut". In the New Year 2010 they relocked the gate to the east of point E and stood an old rotten gate in the adjacent gap. The next day the lock was again cut and the gate removed. They have enclosed photographs (included in backing papers) showing the original and replacement signs.

Mr J Baker has emailed saying "I have lived in Durrant Lane for 37 years. I have always sought permission from the freeholders concerned to enable me to pass and repass over the drive...and have always been granted the same on a yearly interval basis."

Dr & Mrs Bevan has emailed saying "Since we moved to Durrant Lane in 1999 the drive belonged to Treetops has always been a private drive with access to the Yeoldon Hotel and there have always been signs stating this. We are puzzled by the claimed footpath applications, there is already a public footpath leading from Haywood Road to Lower Cleave. Therefore we do not see any reason to support a change to the present situation."

Mrs Cooper wrote saying she has lived in Durrant Lane for 30 years. "For the whole time that my husband and I have lived in Durrant Lane, there have always been signs at both ends of the drive belonging to Treetops, indicating clearly that it is a private drive. The present owners of the drive did erect new signs shortly after their arrival in 2009, these were simply to renew and replace the signs which had been in existence for many years."

Mr Cooper, husband of the above Mrs Cooper, says "Through out the period of our having lived in Durrant Lane there have been clear notices at top and bottom of the drive indicating that the drive was, and is private property. Any use that my wife and I have made of the drive has been with the express permission of the owners, past and present."

Mr & Mrs Jeffrey emailed, saying "they have lived nearby to Durrant Lane vicinity for almost 30 years and have never walked from Lower Cleave to Treetops or visa versa. This is because there has always been notice stating it was a private drive."

Mr & Mrs Ritchie say the route is a private drive. They have completed user evidence forms saying they have used the route on foot between 30 and 40 times a year. They saw the Private Drive signs in 1985 and used it by agreement with the owners.

Mr & Mrs Turner were previous owners of Yeoldon Lodge near point F. They wrote explaining that when they bought the property in 1992 and there was a dilapidated sign saying Private Drive. When a new gate was made the sign was renewed saying the same. They owned their property when Ms Memelink put up the gate just below point E, to stop the drive and lane being used as a short by cars. "Not wishing to deny pedestrian access at the time, she installed a non locking gate approximately 3ft wide beside it."

Ms Vines of Yeoldon Lodge writes to strenuously object. She says "the path runs 15ft from the dining room window and would cause a significant loss of my privacy whilst dining." She

does not want to have to maintain route to a higher standard as it would cause hardship. She is worried about dog excrement and the security risk.

7. Discussion

There is no doubt that the actions taken by Mr & Mrs Measures in 2009 in turning people off the route and erecting No Public Right of Way signs had the effect of bringing the route into question. The relevant 20 year period for consideration of the user evidence is therefore 1989 to 2009.

All 21 people who have submitted supporting evidence for the claim used the route openly and freely, and none sought or were given permission. Use has been regularly throughout the period in question.

Four previous owners, Ms Memelink, Mr Steel and Mr & Mrs Turner have provided corroborating evidence that the public were using the route during their tenure, and acknowledged that the path was already in use when they bought their properties.

However, five local people have stated they used the route with permission, but this does not devalue the evidence of those who used the route in the belief that permission was not required.

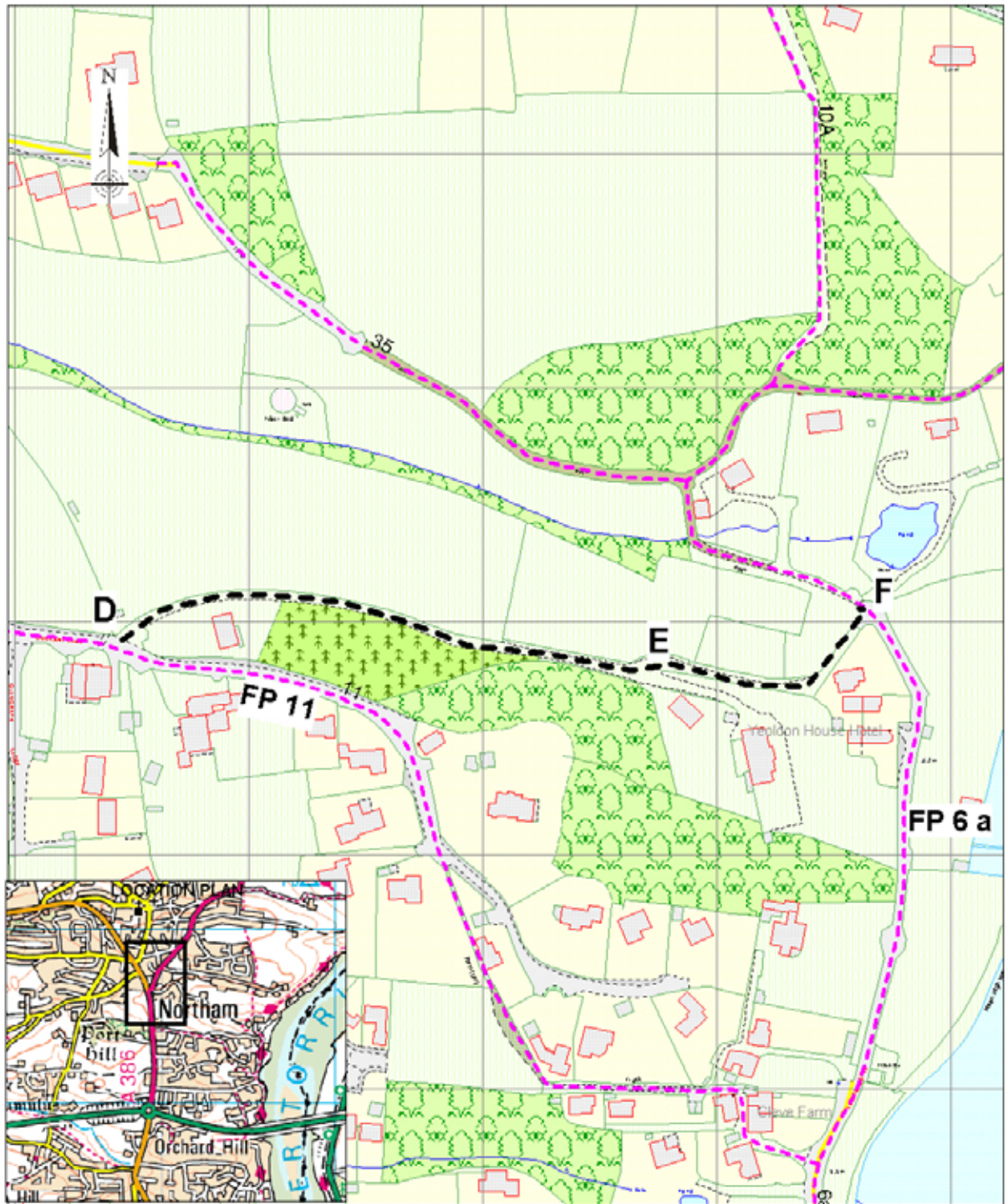
It is not disputed that 'Private Drive' and 'Private Road' notices were in place for many years, but the accompanying wording "Please keep dogs on leads & do not allow them to foul the area", and another asking people to clean up after dogs, indicates that use on foot was accepted by the landowners and such use was frequent. Many people passed the notices and do not appear to have thought it meant they had to stop using the route on foot.

Case law directs that for a notice to be effective its wording must clearly deny a public right of way. The words 'Private Road' or 'Private Drive' are of doubtful adequacy because of their ambiguity: The words could be interpreted as showing an intention to deny the existence of a carriageway, but not that of a right of way on foot. The High Court supports these arguments. In *Burrows v Secretary of State for the Environment, Food and Rural Affairs* 2004 and more recently *Paterson v Secretary of State Environment, Food and Rural Affairs* 2010, 'Private' signs were not found to be sufficient to show a lack of intention to dedicate a route on foot. The judges gave guidance on how to interpret signs saying "how a range of members of the public have in fact understood signs in a particular context may well be a helpful indicator how a reasonable person would interpret a sign in that context"

From interviews with the users it is evident that they thought the notices were intended to prevent use in a car but that it was permitted to walk the path.

8. Conclusion

On the evidence provided it is considered that a public footpath can be reasonably alleged to subsist over the claimed route shown running between points D - E - F on plan EEC/PROW/10/92. It is therefore recommended that a Modification Order be made to add the path to the Definitive Map.



map ref

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**DEVON COUNTY COUNCIL
 SCHEDULE 14 APPLICATION
 CLAIMED FOOTPATH
 FOOTPATH 11 TO FOOTPATH 6A, NORTHAM**

drawing number	EEC/PROW/10/92
date	October 2010
scale	1:2500
drawn by	AS

Notation

Claimed Footpath D - E - F - - - - -
 Definitive Footpaths Nos 11 & 6a - - - - -

Chris McCarthy

EXECUTIVE DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

