

**Definitive Map Review 2008–11
Parish of Mortehoe**

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 no Modification Order be made in respect of Route 1, claimed footpath from Gora Lane between points A–B–C shown on drawing number EEC/PROW/09/124, but to investigate the possibility of dedication by the landowners continuing on an alternative route.

1. Summary

The report examines suggestions arising out of the Definitive Map Review in the parish of Mortehoe.

2. Background

The original survey by the Parish Council in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 put forward 23 paths in Mortehoe parish, without distinguishing footpaths from bridleways. After discussions with the County Surveyor from 1956–7, four of the paths were withdrawn by the Parish Council, two further footpaths were added, two were combined and those to be recorded as bridleways were identified. Details of those paths giving public access to several beaches were clarified from discussions with landowners. However, parts of two footpaths, Nos. 8 and 8a, providing access onto and across two beaches were later deleted from the Draft map by the County Roads Committee in 1963, following an objection by the landowners. The Definitive Map and Statement for Barnstaple Rural District, with a relevant date of 1st September 1957, recorded 26 footpaths and two bridleways in Mortehoe parish.

The reviews of the Definitive Map under s.33 of the 1949 Act which commenced in the 1960s and 1970s but were never completed, led to claims and suggestions including those submitted by Mortehoe Parish Council in 1978 for recording or amending several routes which have been kept on file. There had been an earlier claim from 1967 resulting in a petition to the Parish Council in 1968, with user evidence submitted to Barnstaple Rural District Council in 1968 and also to the County Council in 1971, 1977 and 1978, which is considered in the Appendix to this report.

With alterations of recorded public rights of way and the creation of a new footpath, there are currently 27 footpaths and two bridleways recorded in Mortehoe parish. The following Orders have been made, which will require the making of a Legal Event Modification Order for recording in the publication of a new consolidated Definitive Map and Statement:

- (a) Barnstaple Rural District Council and The National Trust, Public Path Creation Agreement and Deed of Dedication, Highways Act 1959, Section 27 1969, Footpath No.13a;
- (b) Devon County Council (Footpath No. 14, Mortehoe) Public Path Diversion Order 1982;

- (c) Devon County Council (Footpath Nos. 24 & 34, Ilfracombe and Footpath No. 16, Morteohoe) Public Footpath Diversion Order 1990;
- (d) Devon County Council (Footpath No. 16, Morteohoe) Public Footpath Diversion Order 2002;
- (e) Devon County Council, Parish of Morteohoe, Footpath No. 26, Morteohoe Public Path Creation Agreement, Highways Act 1980, Section 25 2005;
- (f) Devon County Council (Footpath No. 3, Morteohoe) Public Path Diversion Order 2008.

3. Review and Consultations

The current Review was started in February 2008 with a public meeting in Woolacombe. At the meeting, reference was made to suggestions for unrecorded routes that had already been submitted previously and kept on file. Other issues concerning recorded footpaths were identified, some of which were included in the consultations but are not considered in the Appendix as they involve path diversions under delegated powers.

Following the meeting, further suggestions were submitted for other unrecorded routes, but not in connection with any formal claims or applications and with no supporting evidence. Other suggestions for amendments were identified to be resolved by procedures for diversion or extinguishment and creation followed up as part the review process. The opportunity was available to take them forward as proposed diversions of existing recorded footpaths that had either been affected by developments or had discrepancies with the routes used, including on long sections of the South West Coast Path through the parish. They were included in the consultations for the review process as proposed diversions for Routes 2, 3 & 4 and 5, 6, 7, 8 & 9.

General public consultations on the Review concerning all nine routes identified were carried out in December 2010 and advertised in the local press. Responses to the consultations were as follows:

County Councillor Andrea Davis	-	no comment
North Devon Council	-	no comment
Morteohoe Parish Council	-	no comment
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
ACU/TRF	-	no comment
Byways and Bridleways Trust	-	no comment
Cyclists Touring Club	-	general support and suggesting other changes
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment

4. Conclusion

The recommendation is for no Modification Order to be made in respect of Route 1, but to investigate the possibility of dedication by the landowners continuing onto an alternative route currently used as a permissive footpath. Details concerning the recommendation are discussed in the Appendix to this report. The procedures required to resolve problems with the other routes resulting from development processes and alignment issues will be dealt with by diversions under delegated powers.

There are no other recommendations to make concerning any further modifications. However, should any valid claim be made in the next six months with sufficient supporting evidence it would seem sensible for it to be determined promptly rather than deferred.

5. Legal Considerations

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

6. Equality Considerations

There are no considerations.

7. Carbon Impact Considerations

There are no implications.

8. Sustainability Considerations

There are no implications.

9. Risk Management Consideration

There are no implications.

10. Reasons for Recommendation/Alternative Options Considered

To progress the parish-by-parish review of the Definitive Map in North Devon.

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Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence Ile	2007 to date	DMR/MOR/Parish File

nc270111pra
sc/cr/DMR Morteheo
02 hq 150211

Background to the Suggested Changes

Basis of Claims

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

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

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

The 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.

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

1. Route 1, Claimed Footpath from Gora Lane between points A–B–C shown on drawing number EEC/PROW/09/124.

Recommendation: It is recommended that no Modification Order be made in respect of Route 1 for addition of the claimed footpath to the Definitive Map, but to investigate the possibility of dedication by the landowners continuing on an alternative route.

1.1 Background and Description of the Route

In 1967, a local resident of Woolacombe was in correspondence with the National Trust and another local landowner at the start of what became a long personal campaign for re-opening a footpath in the area. She said that it had been used in the past, but had been closed off for a long time and should be re-opened to provide a safe route for people walking from the village to the sand dunes and Woolacombe beach without having to use roads, which were particularly busy with traffic during the holiday season by then. She sent a petition to

Mortehoe Parish Council in 1968 about opening the footpath, signed by 35 residents and indicating that there was much wider support locally. The landowner, Parkin's Entertainments Ltd., said that the area of land had been closed during the Second World War when it was used for military activity. They had bought it after the war and closed it off to make it secure for grazing, then later used it for the construction of a car park. Part of the land area was also used later for the building of a waste water and sewage treatment works.

The Parish Council and the National Trust were supportive, with the claim referred to Barnstaple Rural District Council who indicated that it would need to be supported by evidence. Completed user evidence forms were submitted to the District Council, who reported in 1969 after initial investigations and discussions with the landowner that they would not pursue it further. The claim was then made to the County Council from 1970, with additional user evidence forms submitted in 1971, 1977 and 1978 for consideration under earlier review procedures that were not completed.

The claimed footpath starts from the end of South Street on Footpath No. 3 (point A) near Woolacombe School, down steps onto Gora Lane, which is part of a National Trust permissive footpath following a hedged track between gardens and a sports field leading to a gate into a grass field (point B). The route as claimed is obstructed by a fence and high boundary embankment, passing through an area now used for storage and crossing the Sandy Burrows car park, then through the bank and hedge at the corner of the sewage treatment works. It ends at Challacombe Hill Road (point C) opposite the continuation of the South West Coast Path along Bridleway No. 5 on Woolacombe Warren. The car park is still owned and operated by Parkin Estates.

The claimed route is not accessible from the end of Gora Lane across the car park, but the permissive footpath continues from point B around the edge of the field and along the boundary of the sewage treatment works, crossing a stile and through a gate onto Challacombe Hill Road opposite the end of Footpath No. 25.

1.2 Historical and Recent Maps and Aerial Photography

Early maps at smaller scales do not show the whole of the claimed route, although they do not all record footpaths or bridleways at such a small scale. Those include the Ordnance Survey surveyors' drawings of 1804–5 at 2"/mile and the original 1st edition 1"/mile map on which they were based, published originally in 1809, with the later Greenwood's map of 1827 based on them.

Most **later maps** at larger scales only show part of the route in more detail. The **Tithe Map** from 1840 shows the first part as a continuation from the road that was later Barton Lane and the continuation of South Street, with Gora Lane running to end at the stream and fields. There is no continuation shown on the claimed route in the field beyond, which is numbered 272 and named in the Apportionment as 'Sandy Burrows, Arable'. Challacombe Hill Road is shown with double dashed lines as unenclosed and numbered 747.

The lane is shown with double solid lines not coloured and numbered 269, described in the Apportionment as 'Houses, Ponds, Roads' of Woolacombe Barton. Public roads are numbered 747, which is indicated in the Apportionment as 'Parish Roads'. Private roads for other named farms are numbered separately and included in their descriptions in the Apportionment.

All roads and tracks are shown not coloured in the same way, including those now recorded as public, as well as others that are not, some of them with dashed lines which are more likely to have been private access to fields or land only and not now existing on the ground. Tithe Maps do not usually show footpaths and bridleways, which was not their main intended

purpose, although the line of what is now recorded as Footpath No. 3 from South Street is shown with narrow, double-dashed lines.

The **Ordnance Survey 25"/mile 1st edition map** of the 1880s shows Gora Lane with double-solid lines as the continuation of an enclosed track from Woolacombe, with its own parcel number and acreage. The track appears to provide access to fields where there was probably a gate and crossing a stream. Its continuation is shown running across a field with double-dashed lines as an unenclosed track, on the claimed route. It crosses Challacombe Hill Road, shown then also as unenclosed, continuing beyond on the line probably intended to be recorded later as Bridleway No. 5 across Woolacombe Warren. The **2nd edition** of the map in the early 1900s shows Gora Lane in the same way as in the earlier edition with the construction of roads and housing in the area by then, but without showing any continuation on the claimed route across the field.

In **Finance Act 1910 records**, Gora Lane is shown included with the hereditament or assessment area for Woolacombe Barton Farm on the map recording their boundaries, suggesting that it was considered then to be a track for private agricultural access only to fields from the farm. The Field Book records a small deduction for public right of way or user, but indicating that it was through the farm buildings and continuing across numbered adjoining fields on the line now recorded as Footpath No. 3, not on Gora Lane. The continuation on the claimed route is not shown crossing the field and with no deduction for public right of way or user to suggest that there might then have been public access on the claimed route to Challacombe Hill Road.

Later Ordnance Survey and other maps at smaller scales in the earlier 20th century, including Bartholomew's editions from the 1920s to the 1940s, do not show the whole claimed route, but some of them indicate only the line of Gora Lane with the development of new buildings and roads in the area. Some of the maps indicate the lines of footpaths and bridleways, but the continuation on the claimed route is not shown in that way. The **Ordnance Survey 1"/mile New Popular edition in 1946** does not show the whole route but only Gora Lane in the same way as earlier editions.

Earlier aerial photography from 1946–9 shows the field crossed by the claimed route with worn wide tracks from military use of the area during the Second World War, as reported by the claimant and some of the users in their evidence forms. It was used from 1940 by the army who built an underground ammunition store and Nissen huts with roads for military vehicles as part of the Weapons Training School based at the Woolacombe Bay Hotel. Access to the military area for civilians and the general public was prohibited, with Gora Lane appearing to have been used only for agricultural access to the adjoining field and no line of a path is shown continuing across the field specifically on the claimed route.

Later Ordnance Survey mapping from 1960 and 1978 shows Gora Lane at those dates in the same way as in the earlier editions, enclosed with double solid lines and named, providing access to the adjoining field with a gate. No line of any continuation is shown on the claimed route, with the field divided and enclosed and part of it used as a car park with access from Challacombe Hill Road. The waste water and sewage treatment works is shown to have been built before 1978. The **Ordnance Survey 1"/mile 1976 edition** shows Gora Lane in the same way as earlier editions but with no continuation on the claimed route in the same way as recorded public footpaths or bridleways were shown then. **Aerial photography from 1999–2000, 2005–6 and 2006–7** shows the area more recently with tree growth on Gora Lane and the current line of the permissive path on the field edge around the boundaries of the extended car park and water treatment works.

The showing of the whole claimed route on one earlier map and partly on later and current maps records its physical existence at an earlier date and of parts until more recently. It

does not indicate or support, on its own, the existence of any public right of way along it on foot, horseback or in vehicles, which would require other more significant stronger evidence, although there is no claim for public bridleway or vehicular rights. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: “The representation on this map of a road, track or footpath is no evidence of a right of way” and may be presumed to apply to earlier and other commercial maps as well.

There is support from some of the older historical maps and more recent mapping only to show that part of it, particularly on Gora Lane, has existed as an enclosed track since at least the middle of the 19th century. It was probably used mainly for access to land, although there may once have been a continuation as a worn track crossing the field to the public road on Challacombe Hill. Later maps indicate that Gora Lane provided access only to the adjoining field and did not support any suggestion that it may have been available for public access to the road or beyond onto other paths across Woolacombe Warren and to the beach. That appears to have been the only basis for the claim that it may once have had the reputation of being considered a public route and available for the public to use at least on foot and perhaps also on horseback during the 19th century and into the early 20th century. No additional and stronger supporting historical mapping evidence has been submitted or discovered.

1.3 The Definitive Map and Statement, Reviews and Consultations

The claimed route was included with those surveyed originally by the Parish Council in 1950 for putting forward as public rights of way, as part of path No. 5. It was described as being:

“From Manor Road, through Gora Lane, Sandy Burrows field across Golf Links to Parish Boundary branching beyond Parish Boundary to Pickwell and to Vention Lane (Bridle Path along Marine Drive or path over Golf Links.) Good path but slightly overgrown but can easily be traced through bushes.”

From negotiations with the Parish Council between 1956–7, the route was not included as part of what came to be recorded as Bridleway No. 5 from Challacombe Hill Road crossing Woolacombe Warren. Part of it from Barton Road and along the end of South Street passing the top of Gora Lane was included in what came to be recorded as Footpath No. 3, continuing past the school to Eastacott. There was no objection to it not being included at the Draft and Provisional stages of publication and, as a result, the claimed route was not recorded on the Definitive Map and Statement.

From the long-running campaign and collection of evidence for the claim to record the route as a public footpath, there have been suggestions in the previous uncompleted reviews that the route should be considered for recording as a public right of way. The claimed addition was included in the consultations on the basis of the evidence submitted at various times in the 1970s. It received specific responses with comments only on behalf of the landowners affected and no further supporting evidence.

1.4 User Evidence

The petition sent to Morteoh Parish Council in 1968 about the claimed route was signed by 35 local residents. From early correspondence, 25 completed user evidence forms were submitted to Barnstaple Rural District Council in support of the claim the same year, but it was reported later by the County Council that those forms could not be found. A further 12 forms were submitted to the County Council in 1971 after the claim had been investigated by the Rural District Council in 1969 and not pursued further. An additional 12 forms were submitted in 1977 and 29 more forms in 1978 with the Parish Council’s suggestions for a

review process that was not completed. No further evidence forms were received following the more recent consultations.

Eight of the people who were said to have completed the forms in 1968 did so again when forms were submitted at the later dates. Overall, seven people completed forms on two occasions and one was completed on behalf of two people, so from a total of 53 forms there are 46 to consider for 47 people. Three other people reported in their forms that they had not used the route, but appear to have completed them to add support to the claim. There is, therefore, use by 44 people to consider initially.

Three of the users were related to the tenant farmer of the field, then part of Barton Farm, so their access to it using the claimed route will have been mainly by private right rather than as the wider public. Another used it for deliveries to the farm. Two were in the army and used it when involved in the wartime military use of the field, which is not public. Another said that her use had included use by permission said to have been given to civilians during the war when the field was not being used by the army. One reported having used it earlier for access to work on the golf links and another used it only when making a football pitch on the field, with access from several places. Three others said that they went there to see football matches or used the whole field for recreation more generally. One person reported using Gora Lane for access to the field to graze horses for Woolacombe Riding Stables. Overall, there are 13 people whose use can be considered as private or permissive rather than public, so that there is evidence of use by a total of 31 people to take into account.

None of the user evidence forms was accompanied by maps showing the line of the route that had been used from Gora Lane to Challacombe Hill Road. From earlier correspondence about the claim, it was considered to be the track shown on the 1st edition 25"/mile Ordnance Survey map of the later 19th century crossing the field. Although not specified, it can be presumed that they all used the route on foot only. One person referred to using Gora Lane with horses, but did not indicate whether they were ridden or led and another reported that horseriders from the riding stables had ridden along it. Just under a third of all the users reported that they had known or regarded the route as public from between two years and up to more than 60 years. Just over a third said that they had known it as public since the early years of the 20th century up to the end of the Second World War in 1945 and by one person since 1895. Others were less specific, referring to having known it since childhood, for 'many' years or all their life, or 'always' and by some referring to until it was blocked.

Most of them said that they had used the route, with the earliest claimed use by one person from 1906 out of three who reported having used it before 1910 and eight saying that they used it from between 1910–20. Between 10–20 people said that they had used it in each decade from 1920 up to when the field was closed for wartime military use in 1940. Four people said that they did use the route in the 1940s during the period of wartime closure up to when it was closed off permanently after 1945. However, that was reported to have been possible for those involved in the military activities or by civilians only with permission. Very few said that they had used it after then up to 1978 when the last of the forms were completed and the claimed route was no longer available from the end of Gora Lane, which may have involved a continuation on a different line. Several did not specify how long they had used it, with others referring again only to having used the route 'always', for 'many' years, or since childhood and before the army took over when it was closed and then later blocked off.

Only a few specified the frequency of their use, from under 10 times a year or less than once a month and between 20–30 times a year or about twice a month, to at least 100 times a year or twice a week. The majority were less specific and referred more generally to how often they used the route, including 'whenever needed' and 'summer mostly' to 'occasionally' or 'varying time during school' and 'most nights in the Summer'.

Chart of User Evidence for Gora Lane - 1

(* not public use)

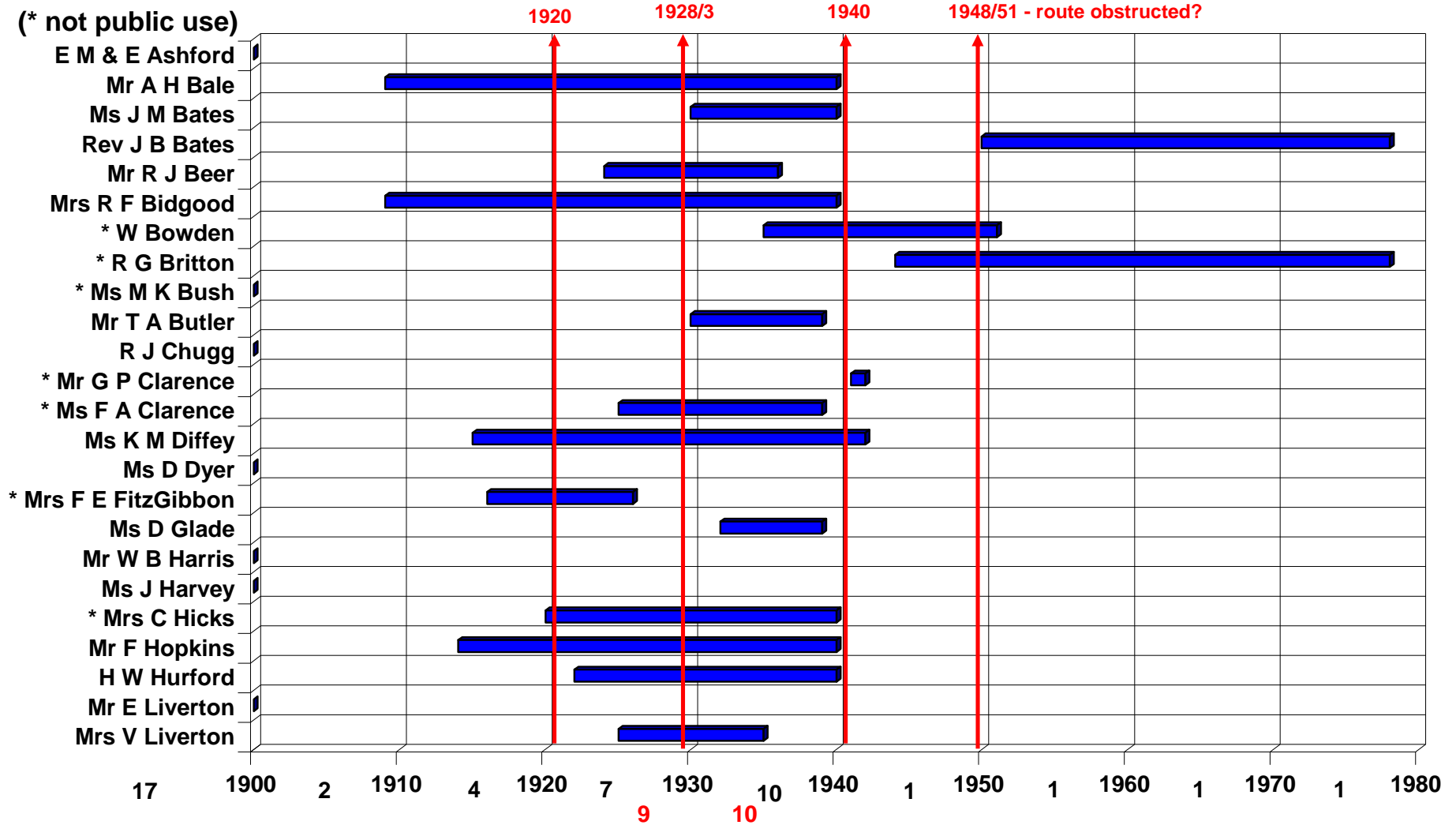
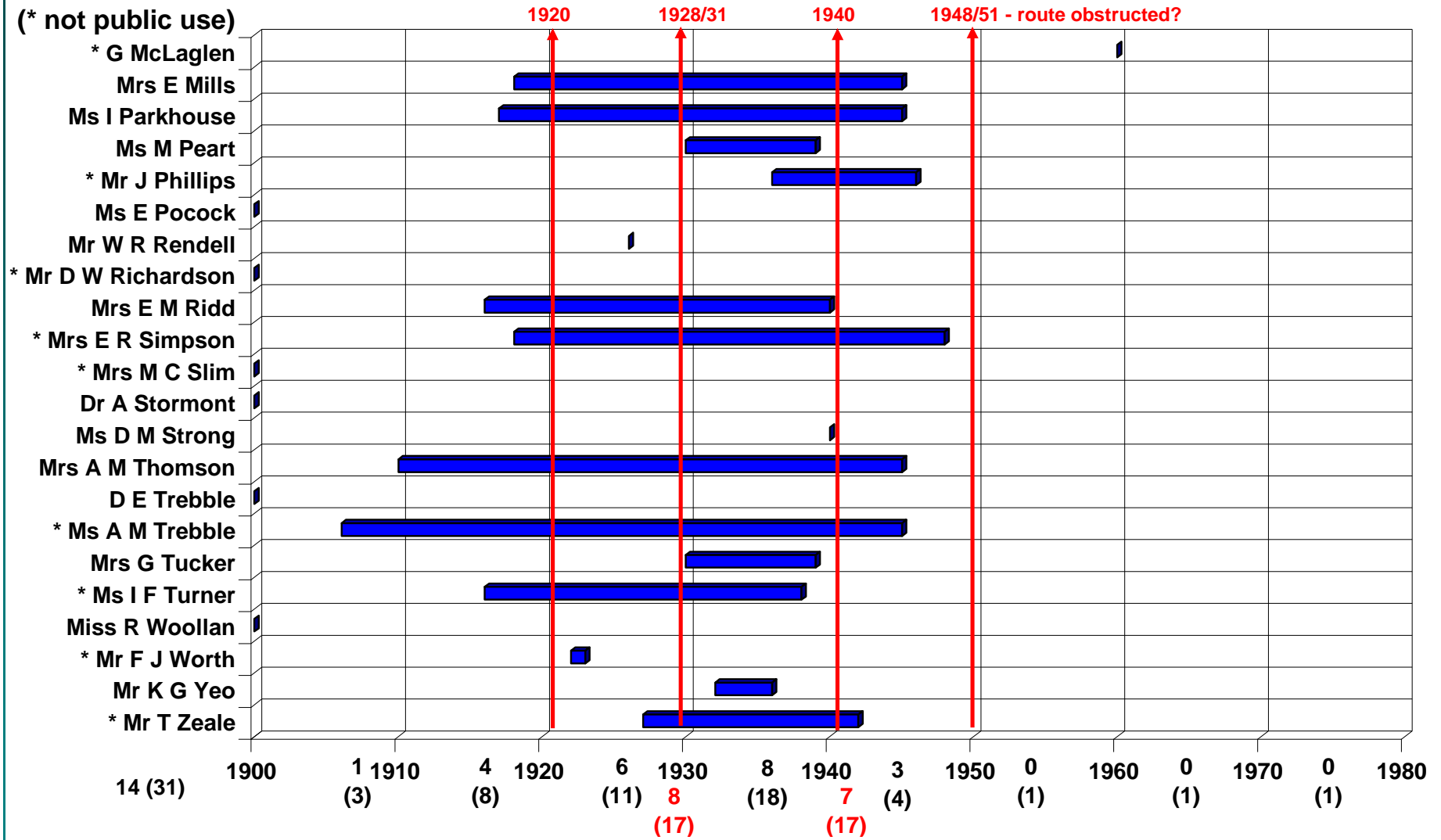


Chart of User Evidence for Gora Lane - 2

(* not public use)



Some indicated that they had used it 'many', 'several' and 'an indefinite number' of times a year, or 'uncountable' and 'cannot remember – quite a lot'. Others said that they had used it 'often', 'regularly', 'frequently' or 'daily', with two people not indicating how often they used it.

Some specified using the route for walking, including with dogs, or for pleasure, exercise, recreation and sport. Those included football as well as golf and caddying, with the field included in the early 20th century as part of the golf links shown on the 2nd edition Ordnance survey map. Others reported using it to get to other locations nearby, such as Potters Hill, Marine Drive, the sand dunes and the beach, including to go swimming, or for 'boyish pursuits'. Some referred to using it more practically for business or work, to go to church or shopping and travelling home from school, for a short cut as the quickest way to save time, to avoid traffic and getting home before dark.

Many indicated that they had used the route along Gora Lane to and from parts of Woolacombe, including Station Road, South Street and the school to other various named places nearby. Those were specified by some as Challacombe Hill Road, Potters Hill and Marine Drive or the sand dunes, the beach or the coast path. Some referred to using it for access only for activities on Sandy Burrows including grazing horses and sports, such as football matches and tennis courts and golf or caddying on the golf links. A few said that they had used it to get to and from other named places in or near Woolacombe, such as Barton Farm, Ivycott Farm, Roadway Farm and Woolacombe Bay Dairy, which is likely to have included farming or business use that can be interpreted as private rather than public. Two reported using the route to go further as far as Putsborough or Georgeham.

More than half said that they had used the same route, with others reporting that it had been on the same route until military use of the land from 1940, or until it had been closed and blocked off, or until the car park was built. Some did not specify whether it had been on the same route, with one not sure and another reported having used the adjoining field. Almost all of them referred to there having been a stile and gate at the end of Gora Lane on the route and a gate at the Challacombe Hill Road end, but saying that there were no notices to say that they should not use it.

Almost all of them stated that they did not have any private right or permission to use the route, although two indicated that permission had sometimes been given during the war. Two reported that they were related to the tenant of Barton Farm or stayed with the owner at Woolacombe Bay Dairy, one had used the route for access to the land for constructing the football pitch and another for working on the golf links. Some people said that the land was owned then by Parkin's Entertainments and previously by the Chichester estate.

Most reported that they had not been stopped or turned back when using the route, or told that it was not public, except after military use of the land from 1940 and no obstruction until it was blocked up at the end of Gora Lane after the end of the war. In additional information, some people provided further details about their knowledge of how the route was used previously. Others indicated that they were supporting it being recorded as a public footpath, including those who had not used it, so that the public and particularly children could walk from Woolacombe to various places more safely without having to use roads, especially when they are busy with traffic during the summer holiday season.

1.5 Landowner Evidence

Following the consultations, completed landowner evidence forms were sent in on behalf of Parkin Estates, owners of Sandy Burrows car park and the National Trust, owners of the land affected on Gora Lane and the permissive route. Further details relating to their ownership were provided from the files in their site offices.

Parkin Estates

The managing director said that Parkin Estates had owned the Sandy Burrows field since 1948. They did not believe that the route was public and had never seen anyone using it. They had never required people to ask permission to use it and did not indicate whether they had deposited a Section 31 Highways Act 1980 statement for the land. The land had been secured for grazing donkeys used in beach rides on Woolacombe beach and access to it was blocked from the end of Gora Lane later as requested by the National Trust after they had bought that with the adjoining land. A smaller carpark had been built on Sandy Burrows by 1960, with plans in the 1950s to develop other parts as a football pitch and sports ground and proposals to sell it to the Parish Council. Part of the land was sold to Barnstaple Rural District Council in the early 1970s to build the sewage treatment works.

They had never turned back or stopped anyone using the route, or told anyone using it that it was not public and had not put up any signs stating that it was not public. The stile on the route at point C had been only for golfers to access the fairway on Sandy Burrows.

National Trust

The local warden for the area said that the National Trust had owned Gora Lane and the adjoining land on the claimed route for about 60 years. He did not believe that the route was public, indicating that there had been permissive access from A–B for seven years and he had never seen anyone walking between B–C. No footpaths were shown on their estate maps in 1977, but he had been aware of the public using part of it on the permissive route. The Trust had cleared Gora Lane to open it for use in 1992 after discussions with the Parish Council as it had become blocked by vegetation growth and then again in 2002. They had never required people to ask permission to use it and had not deposited a Section 31 Highways Act 1980 statement for the land.

They had never turned back or stopped anyone using A–B on the route, or told anyone using it that it was not public and had not put up any signs stating that it was not public. There had been stiles or gates on the way, with a bridlegate at point B now moved about 100 metres that had never been locked.

Additional Information

Further details about the landowners involved was available in earlier review files and was also obtained from their own records, or from archived historical documentary sources. In particular, previous correspondence with the Parish Council and the Rural District Council as well as the County Council provides more background details about their ownership and actions in connection with the route and its use relating to the claim.

Although the user evidence forms submitted for the claim to Barnstaple Rural District Council appear not to have survived, there is some correspondence and an official record of its investigation in the minutes of the Council's Rights of Way Committee and later the Open Spaces Committee. They show that the claim was made in April 1968, with user evidence forms submitted in May. The minutes of the Rights of Way Committee in May 1969 record that the claim had been made with the supporting user evidence. The present and former landowners were maintaining that no public right of way existed and it was resolved then only that the claim should be investigated.

In June, the Rural District Council indicated that the owners were likely to resist the claim and requested clarification of the route used, asking for it to be shown on a copy of a map. The minutes of the Open Spaces Committee later the same month record that solicitors for the landowner were denying strongly the existence of any public right of way, referring to a statutory declaration to that effect by a former tenant farmer of the land, by then deceased. They did not believe that there was any new evidence to change the Parish Council's decision in 1951 that it was not a public right of way.

As a result, the Committee resolved that there was no justification in taking any action to pursue the claim any further, suggesting that it could be investigated under reviews by the County Council. No surviving copy of the statutory declaration by the former tenant has been found, but there are copies of declarations made by two other people in 1972, including from a former employee of the farmer. They provided supporting information about how the land was used, including as part of the golf course, stating that there had never been a public right of way along Gora Lane and crossing Sandy Burrows.

After the user evidence forms were submitted to the County Council in 1971, alternatives to the claimed route from the end of Gora Lane to Challacombe Hill Road were investigated by the Rural District Council in 1972 for the possible creation of a new route. Those were around the north or south of the proposed sewage works, or along the northern boundary of the Sandy Burrows car park, which were referred to the County Council after a site visit. In 1973 the County Council's Roads Committee considered a report to the Northern Divisional Roads Committee in 1973 on a request for the creation of a new route to the north of the car park, recommending that no action should be taken in view of the likely cost and without the support of the landowner.

The evidence forms submitted in 1971, 1977 and 1978 were not investigated under earlier review processes, but were retained for consideration with the claim as part of the Parish Council's submission in 1978 for suggested changes after a public meeting. The Parish Council included a statement made on behalf of the landowner opposing the claim, which was supported by correspondence from their solicitors. The statement outlined details of the background and how they had responded in opposing the claim previously, wondering why it was being raised again then after it had already been considered and dismissed. It referred again to the statutory declaration made by the former tenant farmer and statements by solicitors for the Chichester estate that there had never been a public right of way across the land.

1.6 Summary and Conclusions – Dedication under Statute and Common Law

Statute Law – Section 31, Highways Act 1980

The claim for the route to be recorded as a public footpath was not made at any time directly by a formal application, or following soon after some previous action taken by a landowner which had obstructed or prevented access to and use of the land from a specific date. None of the users said in the 1970s that the route had been obstructed recently, or that any gate on it had been locked recently, to prevent its use. The claim was not made in response to any specified recent event acting as a significant challenge to use of the route, although most of the users reported that the route had been blocked up physically after 1945, following prevention of access to it from 1940 during wartime military use of the land. It suggests that there is evidence of earlier more significant previous actions that could be taken to have called into question use of the route, including by a landowner, for consideration of the user evidence under statute law. Those were the prevention of civilian access to the land from 1940 when it was used by the army for military wartime use until 1945 and particularly its closure by obstruction from the end of Gora Lane after the land was sold in 1948.

However, the closure of the land for wartime military use is not taken to have been intended specifically to call use by the public into question and will only have stopped up any existing public rights of way temporarily or permanently if it had been by powers under special regulations. No record has been found to indicate that those powers were needed to be used in this case. For the obstruction of the route after 1945, no detail of a precise date has been found for when access to the land from the end of Gora Lane was obstructed. The only known dates are when the land was sold to Parkin's Entertainments in 1948, with Gora Lane and the adjoining land bought by the National Trust in 1951 from the Chichester estate.

The evidence of these reported actions is not specific enough to be sufficient for determining a more exact date to consider the user evidence under statute law. If it was, there is evidence of use by 17 people as the public during both possible 20-year periods, which is not considered sufficient without being able to obtain more details. No maps were attached to any of the user evidence forms showing the line of a path used and it includes some evidence of use for private access only or otherwise with permission.

There are also indications that the land was used more widely as an area for a range of recreational activities, for which there were several other access points rather than just for crossing it on the route of a single path between gates at points A and C. Those are reported to have been both formal and informal activities including golf, football, tennis and camping as well as playing and picking mushrooms. Parish Council records from the 1950s show that they objected to plans for proposed leisure developments on the land and were in prolonged negotiations with the landowners to buy some of it to provide a site for a new parish hall, with formal community sports and recreation facilities that were eventually built elsewhere.

It is not necessary to consider any actions of landowners as evidence of lack of intention to dedicate, but there are indications of the landowner's approach to dealing with public access during the period. The evidence of use can, therefore, be examined in relation to common law over a longer period, in conjunction with historical and other documentary evidence.

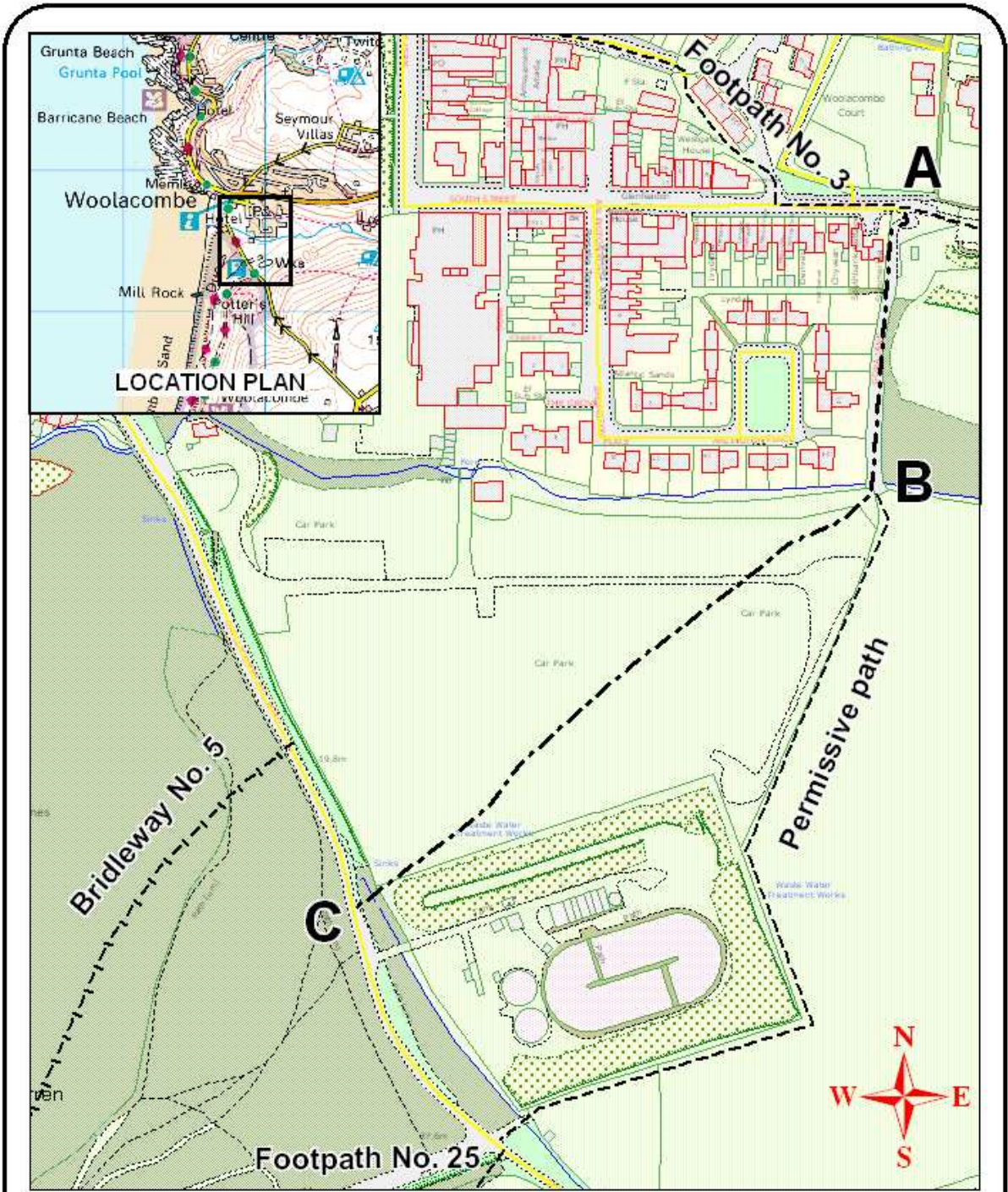
Common Law

Historical mapping shows that a track has existed physically on part of the line of the claimed route on Gora Lane from before the middle of the 19th century, providing access to fields and not as part of any longer route. The line of a track continuing across the land is shown only on the 1st edition large scale Ordnance Survey map from the 1880s, but not on any earlier or later maps. Later mapping shows Gora Lane in the same way until the present with no continuation. Its inclusion in the hereditament for the Finance Act 1910 records indicates that it was used only for private access to the land and adjoining fields, with no record of a deduction to suggest the existence of a public right of way along it or continuing across the field on the claimed route and no stronger evidence from other sources in support of it being considered then as public. Gora Lane appears to have remained as providing private agricultural access to the fields and was considered in 1950 for recording on the Definitive Map as part of a longer route, but was withdrawn without sufficient evidence then to support recording as public. Access for the public has been agreed with the landowners more recently with a permissive footpath on an alternative route across the adjoining land.

The date of the earliest user evidence submitted for the claimed route is from the early 1900s up to 1920, but only by up to eight people as the public. Some did not indicate when they had used it and many did not specify how often. From 1920 until civilian use of the land was prevented from 1940, there was use by between 10 to just over 20 people in each decade. Details of that use cannot be obtained and it has been considered not sufficient in relation to any statutory 20-year period. Only a few said that they had used it at all after 1940, some of which was in connection with military use or by permission and any claimed use following its obstruction after 1945 will have been on an alternative route. There is no evidence, therefore, of any substantial and uninterrupted use of the route up to the present. The reported frequency of the use is not sufficient to indicate that the owners were aware of it and had acquiesced, with evidence that they had always considered it not to be public. An intention to dedicate cannot, therefore, be inferred as there is evidence to the contrary in relation to the previous and current owners, for a significant period before the claim and up to the Parish Council's proposal in 1950 to record the route on the Definitive Map. That was withdrawn for lack of evidence then and the more recent evidence does not suggest that the public have continued using the route as claimed and accepted it as a footpath.

Considering the user evidence in conjunction with other evidence available and submitted, including historical and landowner evidence, dedication at common law with a status of footpath cannot be inferred. Historical evidence suggests that Gora Lane on the claimed route had once provided private agricultural access to the land, with no stronger supporting evidence to suggest that it was public, or part of a longer route used by the public. There is insufficient evidence to suggest that the landowner may have intended to dedicate the claimed route as a public right of way, that the public accepted the dedication and used it on that basis. It is in the light of this assessment of the evidence submitted, in conjunction with all other evidence available or discovered, that it is not considered reasonable to allege that a public right of way subsists on the route with the status of a footpath.

From consideration under statute and common law there does not appear, therefore, to be a sufficient basis for making an Order in respect of the claim for the route to be recorded as a public right of way. Accordingly, the recommendation is that no Order be made adding the route to the Definitive Map and Statement as a footpath. An option is available to investigate the possibility of dedication on the alternative route, currently used by agreement with the landowners as a permissive footpath, to record it as a public right of way.



map ref **SS4543/4643**

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Devon County Council
Definitive Map Review, Morteohoe parish
Informal Consultations, Route 1:
Claimed footpath from Gora Lane

drawing number EEC/PROW/09/124
 date Dec 09
 scale 1:2500
 drawn by NSC

Notation

Claimed route, A - B - C	-----
Existing footpaths	—————
Existing bridleway	- - - - - - -

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 ENVIRONMENT, ECONOMY & CULTURE

