

**Definitive Map Review 2011-2012  
Parish of Newton and Noss (Part 3)**

Report of the Head of Highways and Traffic Management

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

**Recommendations:** It is recommended that:

- (a) Modification Orders be made to modify the Definitive Map and Statement by:**
  - (i) adding a public footpath (suggestion 7) between the points O – P, as shown on drawing number EEC/PROW/11/44;**
  - (ii) adding a public footpath (suggestion 10) between the points J1 – K1, as shown on drawing number EEC/PROW/11/43;**
  - (iii) adding a public footpath (suggestion 11) between the points G – H, as shown on drawing number EEC/PROW/11/42;**
  - (iv) adding a public footpath (suggestion 12) between the points I – J, as shown on drawing number EEC/PROW/11/42;**
  - (v) adding a public footpath (suggestion 13) between the points K – L, as shown on drawing number EEC/PROW/11/42; and**
  - (vi) adding a public bridleway (suggestion 17) between the points S1 – T1, as shown on drawing number EEC/PROW/11/49.**
- (b) No Modification Orders be made to:**
  - (i) add a public footpath (suggestion 15) between points Q – R, as shown on drawing number EEC/PROW/11/44;**
  - (ii) add a public footpath (suggestion 16) between points Q1 – R1, as shown on drawing number EEC/PROW/11/48;**
  - (iii) add a public footpath (suggestion 20) between points L1 – M1, as shown on drawing number EEC/PROW/11/43; and**
  - (iv) add a public footpath (suggestion 21) between points W1 – X1 – Y1, as shown on drawing number EEC/PROW/11/51.**

## **1. Summary**

This report examines ten suggestions arising from Definitive Map Review in the Parish of Newton and Noss in the District of South Hams. Twenty-one suggestions were put forward in total, eleven having been previously reported to the November 2011 and June 2012 Committees.

## **2. Background**

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 31 footpaths and 1 bridleway in Newton and Noss, which were recorded on the Definitive Map and Statement, published December 1961 with a relevant date of 11 October 1954.

The review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the late 1960s but was never completed, produced a number of proposals for change to the Definitive Map at that time, a number of which are discussed in this report.

The Limited Special Review of RUPPs, carried out in the 1970s, did not affect the parish.

The following Agreements and Orders have been made:

Stopping-up of Highways (Devon) (No. 1) Order 1956 in respect of Footpath No. 1, Newton & Noss.

Creation Agreement 1956 for alternative route of Footpath No. 1, Newton & Noss.

Creation Agreement 1971 in respect of Footpath No. 40, Newton & Noss (SWCP).

South Hams District Council (Footpath No. 28, Newton & Noss) Public Path Diversion Order 1988.

Devon County Council (Footpath No. 18, Newton & Noss) Definitive Map Modification Order 1989.

Devon County Council (Footpath No. 41, Newton & Noss) Definitive Map Modification Order 1990.

Devon County Council (Footpath No. 11, Newton & Noss) Public Path Diversion Order 1990.

Devon County Council (Footpath No. 4, Newton & Noss) Public Path Diversion Order 1992.

Legal Event Modification Orders will be made for these amendments in due course.

### **3. Review**

The current Review began in January 2011 with a public meeting held in the WI Community Hall in Newton Ferrers. Sixteen routes proposed for addition to the Definitive Map were put forward by Newton and Noss Parish Council, and a number of other anomalies were picked up during inspections of existing paths in the parish. A full public consultation was carried out in April 2011, on 21 suggestions for modifying the Definitive Map and Statement.

The responses from councils and user/landowner groups were as follows:

County Councillor William Mumford	-	endorses suggested modifications
South Hams District Council	-	comments in respect of suggestion 21
Newton & Noss Parish Council	-	support all the suggestions
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	-	no comment
Trail Riders' Fellowship	-	no comment

### **4. Conclusion**

It is recommended that Orders be made in respect of suggestions 7, 10, 11, 12, 13 and 17, but that no Orders be made in respect of suggestions 15, 16, 20 and 21.

Should any additional evidence or further valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

### **5. Financial Considerations**

There are no implications.

**6. Sustainability Considerations**

There are no implications.

**7. Carbon Impact Considerations**

There are no implications.

**8. Equality Considerations**

There are no implications.

**9. Legal Considerations**

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

**10. Risk Management Considerations**

There are no implications.

**11. Reasons for Recommendation/Alternate Options Considered**

To progress the parish by parish review of the Definitive Map in the South Hams district area.

Lester Willmington  
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**Electoral Division: Yealmpton**

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2010 to date	DMR/Newton and Noss

hc051012pra  
sc/cr/Newton and noss part 3  
02 hq 051112

## **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 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.

The Wildlife & Countryside Act 1981, Section 53[3] [a] [ii] enables the Definitive Map to be modified following the occurrence of an event whereby a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description.

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.

## **B. Documentary Evidence common to several suggestions**

### **1. Plympton St Mary Rural District Council Act 1933**

This was an Act to constitute the Rural District Council of Plympton St Mary the Harbour Authority for the estuary and tidal waters of the River Yealm. It also conferred further powers on the Council for other purposes.

The Act authorised the Council to construct various works in the harbour and, for this purpose, conferred powers (under Part II) to enter upon, take, appropriate and use all or any of the lands shown on the deposited plans and described in the deposited book of reference. Part III of the Act provided that if the works so authorised were not completed within five years from the passing of the Act, the Council's powers in relation to them would cease, except for those parts which had been completed by that time.

The Board of Trade had the power to survey such works constructed below high-water mark – Crown land – and if such works fell into disrepair require the Council to repair them or restore the site to its former condition. The Board of Trade could also require the Council to repair or restore any works above high water mark if they were in such a condition as to interfere with, or be at risk of interfering with, the right of navigation or other public rights over the foreshore.

A number of works include routes claimed by Newton and Noss Parish Council as public rights of way. Several are already recorded as public rights of way on the definitive map.

The Act also conferred a power of the Council to charge rates for vessels using mooring apparatus provided by the Council or moored to the quays or banks adjoining the harbour.

### **2. The Yealm Harbour Revision Order 1970**

The Order authorised the Plympton St Mary Rural District Council to construct, maintain and improve landing places, approaches, jetties, slips and other such works at the harbour. It also extended the Council's existing powers for levying rates and for the making of byelaws. It also contained incidental provisions for modification, extension or repeal of powers under the 1933 Act.

### **3. The Yealm Harbour Revision Order 1981**

This Order establishes and incorporates the River Yealm Harbour Authority. It transfers to the Authority the harbour undertaking carried on by the South Hams District Council, together with the relevant statutory functions, property, liabilities and obligations, and it confers on the Authority additional powers to improve, manage and maintain and manage the harbour, and to borrow money.

### **Suggestion 7: Addition of a public footpath from Stoke Road to the foreshore north of The Malthouse**

Addition of a public footpath from Stoke Road at Bridgend, running over a slipway to the foreshore north of The Malthouse, as shown between points O – P on drawing number EEC/PROW/11/44.

**Recommendation: That a Modification Order be made to add a footpath to the Definitive Map and Statement between points O – P.**

## **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. It is identified as Parish Path A – Malthouse.

## **2. Description of the Route**

The route starts at point O, as shown on drawing number EEC/PROW/11/44, on Stoke Road at Bridgend. It proceeds northwards for approximately 20 metres over a slipway running adjacent to the road and north of The Malthouse to the foreshore at point P. It also gives access onto a seating area maintained by the Parish Council and is the site of one of the Revelstoke Drive milestones.

## **3. Documentary Evidence**

### **3.1 Ordnance Survey Maps**

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years.

The 1<sup>st</sup> Edition 25" OS map, published 1895, and 2<sup>nd</sup> Edition 25", published 1904-06 do not show the slipway. Only a small triangle of land north of the Malthouse is shown.

The 1:2,500 A Edition post-war OS mapping, published 1951, shows that the land has been reclaimed from the creek on the alignment of the present slipway. It is not identified as a slipway on the map itself.

Current mapping identifies the slipway as such.

### **3.2 Newton and Noss Parish Council Correspondence**

On 8 June 1956 the clerk to Newton & Noss Parish Council wrote to the clerk of the Plympton St Mary Rural District Council (RDC), then the Harbour Authority, referring to the difficulty of access to the beach by the new quay at the east end of the Malthouse, due to quantities of rubble and other materials. It was understood by the Parish Council that work was in progress there but they asked that in view of the inconvenience and obstruction could the clerk to the RDC do anything to expedite the completion.

### **3.3 Earlier Uncompleted Reviews of Definitive Map**

In June 1969, the Parish Council surveyed and submitted to the County Council a schedule of additions or amendments to the Definitive Map for the Review of the Map, as required under section 33 of the National Parks and Access to the Countryside Act 1949 and section 31 of the Countryside Act 1968. The list of paths to be added to the Definitive Map included the route identified as path A. It is described as follows:

*From: The Malthouse, Bridgend*

*To: The Beach*

*A very short path adjacent to the road and the North end of the Malthouse at Bridgend to the beach.*

In correspondence relating to the survey in October 1969 Newton and Noss Parish Council stated that, having investigated the matter thoroughly and held a public meeting, they had

endeavoured to include all known points of access to the Harbour and Foreshore not already on the map but which are known to have been used by the public over the years. They added that it may be held that some of these are under the control of the Harbour Authority and as such need not go on the definitive map, but that they wished to ensure continued access.

In April 1978 Newton and Noss Parish Council again put forward a list of paths to be added to the Definitive Map, including this route, identified as path A and accompanied by one user evidence form.

### **3.4 Newton and Noss Parish Council Minutes**

The first reference to the route in parish minutes appears to be in January 1977 when a parishioner asked whether the slipway was public as it was frequently choked with boats. It was noted that Mr Taylor would discuss it with the Harbour Master. Subsequent minutes in February and March 1977 reported that the Harbour Master had promised to look into it and that it would be cleared before sailing season.

The next reference is in February 1986 when a proposal to re-develop the Malthouse site was discussed at length. The Parish Council objected to the proposal on a number of grounds, including that, at the eastern end the development plan indicated that the applicant owned land which was not his, and of which the owner has not been consulted. Also, that there was a public right of way across this portion of land.

In April 1988 it was reported that the Harbour Authority had agreed to take responsibility of the land east of The Malthouse.

In December 2002, under an item headed Harbour Authority, it was reported that Mr Taylor and Mr Carter would inspect the Malthouse Slip, the base of which had been undermined. In February 2003 it was reported that repair work was not urgent.

In December 2008 it was reported that a quotation be accepted for the tidying of the seating area adjacent to the slipway and also to remove surplus soil from the top of the slipway.

In February and March 2009 the Parish Council paid for improvement works at The Malthouse.

Other recent minutes show that brambles were cleared from the route as part of the Parish Council's routine path maintenance programme, and that the seating area is tidied on a bi-annual basis.

### **3.5 River Yealm Harbour Authority Minutes (1982 onwards)**

The River Yealm Harbour Authority (RYHA) was formed in 1981. Responsibilities for the Harbour were transferred from the District Council.

During 1987 and 1988 the minutes of the RYHA meetings report on the proposed development of The Malthouse.

At the meeting of the RYHA on 8 October 1987 it was reported that a letter had been sent to the solicitors of the new owners of the Malthouse pointing out that their contractor was using Authority land without licence to do so. It was resolved that the Authority's solicitor should write instructing the owner of the Malthouse to remove all equipment from public access and the Authority's areas within seven days or legal action would be instituted.

On 10 December 1987 it was reported that the Malthouse owners had made a proposal to reinstate the land and public slip to the east of the building, in return for permission to allow certain services to be laid underground. It was resolved that plan was acceptable in principle subject to a more detailed submission.

In January 1988 the chairman reported on an injunction to cause the area to the east of the Malthouse including the public slip to be kept clear of obstruction. The firm's proposals to rehabilitate the area were approved in principle. Also noted was a letter from the Parish Council offering a bench to be placed on the Authority's area once it had been rehabilitated, together with further details of the plans for the access to the slip. It was resolved that subject to permission from the Crown Estates Commissioners an easement be granted for underground services.

On 10 March 1988 it was reported that the Crown Estate Commissioners had replied to the Authority's application for permission to grant an easement to the developer for laying services, stating that they did not consider the Crown Estate had an interest in the reclaimed land. It was resolved that the Authority would write to Newton and Noss Parish Council suggesting that the Authority assume control of the land previously considered to be the responsibility of the Parish Council. It was also resolved to ask the developer to make several alterations to the plans for the land.

At the meeting of 12 May 1988 the chairman reported on a site meeting held with the developer's contractor. It was also resolved that the Authority accept responsibility from Newton and Noss Parish Council for their part of the land which is subject to public rights of way to the foreshore, deemed public slipway and an emergency vehicular route.

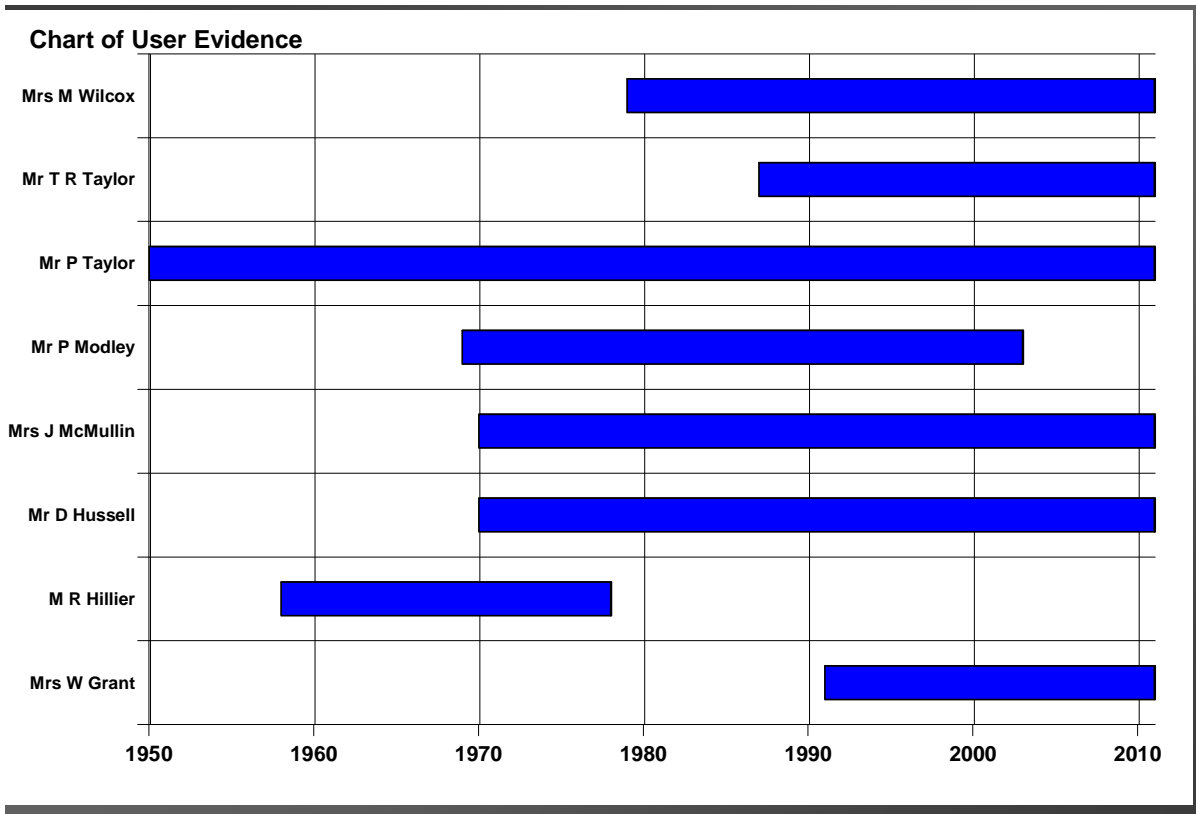
#### **4. User Evidence**

Newton and Noss Parish Council submitted six user evidence forms, in respect of use by seven people, in support of their proposal for the addition of this path. One user evidence form was previously submitted during the review in 1978 giving a total of seven user evidence forms demonstrating use by eight people. The user evidence is summarised in the chart below.

The user evidence forms demonstrate use of the route by the public since 1950. All have used it on foot and two have also used it with a vehicle. The frequency of use ranges from once or twice a year to very frequently. Users comment that use was for pleasure, for access to the foreshore. Two users also comment that they use the route for access to boats. Mrs Wilcox lives in close proximity to the route and states that she uses it frequently for access to the foreshore and also across the creek. She has observed frequent use by the public, including vehicular use and that free access has been enjoyed by all.

The form completed in 1978 by M R Hillier mentions that he/she has known the route to be obstructed by boats during winter laying-up but no other users report obstructions. None of the users report seeing signs or being told that it was not public. All but one of the users believe the route to be a byway or a restricted byway.





## 5. Landowner Evidence

The land crossed by the route is not registered with the District Land Registry. However, it has been maintained by the Parish Council, and the River Yealm Harbour Authority, which leases the tidal lands below high-water mark. They and the adjoining landowners were contacted for their evidence and views during the consultation process.

Both the Parish Council and Harbour Authority support the addition of the route to the Definitive Map as a footpath.

The owners of 1 The Malthouse, which adjoins the route to the south, completed a Landowner Evidence Form. Mr and Mrs Watts state that they have owned their property since 1987 and believe the route to be a public slipway and right of way, describing its status as that of a restricted byway. They say that they have seen members of the public using it occasionally, with horses coming across the creek and locals landing small boats.

The tidal lands, below high-water mark belong to the Crown and leased to the Harbour Authority. No response has been received from the Crown Estate.

## 6. Rebuttal Evidence

No rebuttal evidence has been received.

## 7. Discussion

The claim for the route to be recorded as a public footpath was not submitted as the result of any action taken by a landowner that had obstructed or prevented access to and use of the route from a specific date. There is no evidence of any actions having called into question use of the route for consideration of the user evidence under statute law. It is therefore to be

examined in relation to common law, in conjunction with historical and other documentary evidence.

The route was not included within the 1933 Act, and has not been shown on OS mapping prior to 1951. No documentary evidence concerning the construction or ownership of the slipway has been discovered. However, from correspondence between the Parish Council and RDC it would appear that construction work on a new quay to the east of the Malthouse was ongoing in 1956. It would appear that the land crossed by the route was reclaimed sometime in the early 1950s.

Records show that the Parish Council and Harbour Authority have taken an interest in the route since at least 1956, ensuring that it is kept open and free from obstructions. The Parish Council then put it forward for inclusion on the Definitive Map in 1968. They did so, on the basis that it was used by the public for access to the harbour and foreshore. When, in 1986, The Malthouse was redeveloped the Parish Council and RYHA took action in 1987 to ensure that the public access was not obstructed. At this time the owner of The Malthouse agreed to renovate the current seating area and the slipway, in return for permission to lay underground services.

The Crown does not have any interest in the reclaimed land, and it is not registered with the District Land Registry. However, Newton and Noss Parish Council and RYHA have assumed responsibility for the land and carried out routine maintenance.

The route has been freely available for use by the public for over 60 years and there have been no challenges to call the route into question. The adjoining landowner also believes the route to be public, and has not prevented anyone from using the route or said it was not public.

Most of the users and adjoining landowners consider the status to be higher than a footpath, namely a byway open to all traffic or restricted byway. The landowners have observed use by horses and vehicles and two users also state that they have used the route with a vehicle. However, the user evidence forms predominantly demonstrate use on foot. Therefore considering the user evidence in conjunction with all other evidence, dedication at common law, with a status of at least footpath at some time since the 1950s, can be implied.

## **8. Conclusion**

It is recommended therefore, that a Modification Order be made to add a footpath to the Definitive Map between points O – P, as shown on drawing number EEC/PROW/11/44, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

### **Suggestion 10: Addition of a public footpath from the county road Passage Road, near The Point, Noss Mayo, to the foreshore.**

Addition of a public footpath from the county road Passage Road, opposite the property known as The Point, along a defined path, known as Axworthy's Slip or Steps, to the foreshore, as shown between points J1 – K1 on drawing number EEC/PROW/11/43.

**Recommendation: That a Modification Order be made to add a footpath to the Definitive Map and Statement between points J1 – K1.**

## **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. It is identified as Parish Path F – Axworthy Slip or Axworthy Steps.

## **2. Description of the Route**

The route starts at point J1, as shown on drawing number EEC/PROW/11/43, at the county road Passage Road, through a gap in an iron fence opposite the property known as The Point. It proceeds generally west northwestwards down a short flight of steps then along a narrow path with further steps at the lower end to the foreshore at point K1. It is approximately 18 metres in length. The steps are concrete with a handrail and the sloping path has an earth surface.

## **3. Documentary Evidence**

### **3.1 Ordnance Survey Maps**

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years.

The 1<sup>st</sup> Edition 25", published 1895, and 2<sup>nd</sup> Edition 25", 1904-06 shows a route bounded by double pecked lines leading to the foreshore at the approximate location of point K1. However, it starts on Passage Road approximately 18 metres further east of point J1.

The 1:2,500 A Edition post-war OS mapping, published 1952, shows the route on its current alignment as a defined route with steps indicated.

### **3.2 Revelstoke Tithe Map of 1841**

The route is not shown. The land in question is owned by Robert Robertson and described as woods below Fordhill Plantation.

### **3.3 Finance Act 1909-1910**

The Finance Act base map uses the 1904-06 2<sup>nd</sup> edition 25" Ordnance Survey mapping and therefore shows the route on its original alignment. It is excluded from surrounding hereditaments.

### **3.4 Parish Council Minutes**

Axworthy's Steps are first referred to in the Newton and Noss Parish Council Minutes of June 1937. It was reported that a landslide had taken place at Axworthy's path. It was further reported that subsidence at the entrance was making the approach dangerous. It was resolved that the eastern entrance be closed and that steps be made further along the road with a handrail made leading to the path, and that estimates be invited. At the July meeting it was reported that an estimate had been received for the repairs at Axworthy's path. In August the Parish Council resolved to ask the RDC to cut down the trees at Axworthy's Steps.

In July 1938 the Parish Council discussed that an opening had not been made in the fence leading to Axworthy's steps. It was resolved to write to a Mr Parsons of Bridgend asking him to provide a stand and fix rail for a 2'6" opening.

In June 1939 it was resolved that the Noss Mayo Works Committee should get done any work needed to the Axworthy Steps railings.

The next reference is in the minutes of November 1987 under the item Harbour Report. It was agreed to give the Harbour Authority permission to carry out repairs necessary to the steps above high water at Axworthy Slip at the Authority's expense.

In February 1989 it was resolved to contact the National Trust and make a sketch of any necessary work at Axworthy Steps. The clerk was also to check invoices for previous work with a view to reclaiming a percentage of expenses.

In February 1994 the Parish Council resolved to consider signing Axworthy Steps at the following meeting.

In April 1999 it was resolved that a resident had slipped on Axworthy Steps and it was resolved that Mrs Earp would be asked to clean them.

In June 2006 under the item headed Footpaths, it was suggested that a simple plastic sign be placed at Axworthy Steps.

In October 2006 again under the item Footpaths, Members were asked to consider replacing the rusty stanchions. At the following meeting it was resolved that a site meeting would be arranged and, at the December meeting it was reported that quotes would be invited for a replacement handrail. Subsequent meetings in March and April 2007 report on the acceptance of quotations to provide a metal handrail at Axworthy's Steps.

In November 2008 under the item headed Maintenance, it was reported that the working group had inspected Axworthy Steps at low tide and that the lower steps were very slippery and covered in weed. No handrail on the lower steps was to be queried with the RYHA.

In February 2009 a report of the Harbour Authority meeting referred to an inspection of various steps including Axworthy.

April 2009 correspondence was noted confirming Axworthy lower steps would be maintained by RYHA.

### **3.5 Earlier Uncompleted Reviews of Definitive Map**

In June 1969, the Parish Council surveyed and submitted to the County Council a schedule of additions or amendments to the Definitive Map for the Review of the Map, as required under section 33 of the National Parks and Access to the Countryside Act 1949 and section 31 of the Countryside Act 1968. The list of paths to be added to the Definitive Map included the route identified as path F. It is described as follows:

*From: County Road – Passage Road*

*To: The Beach*

*Leaves the County Road (Passage Road) opposite Panorama (HEASELL) through opening in fence down a flight of concrete steps with handrail, over rocks to beach.*

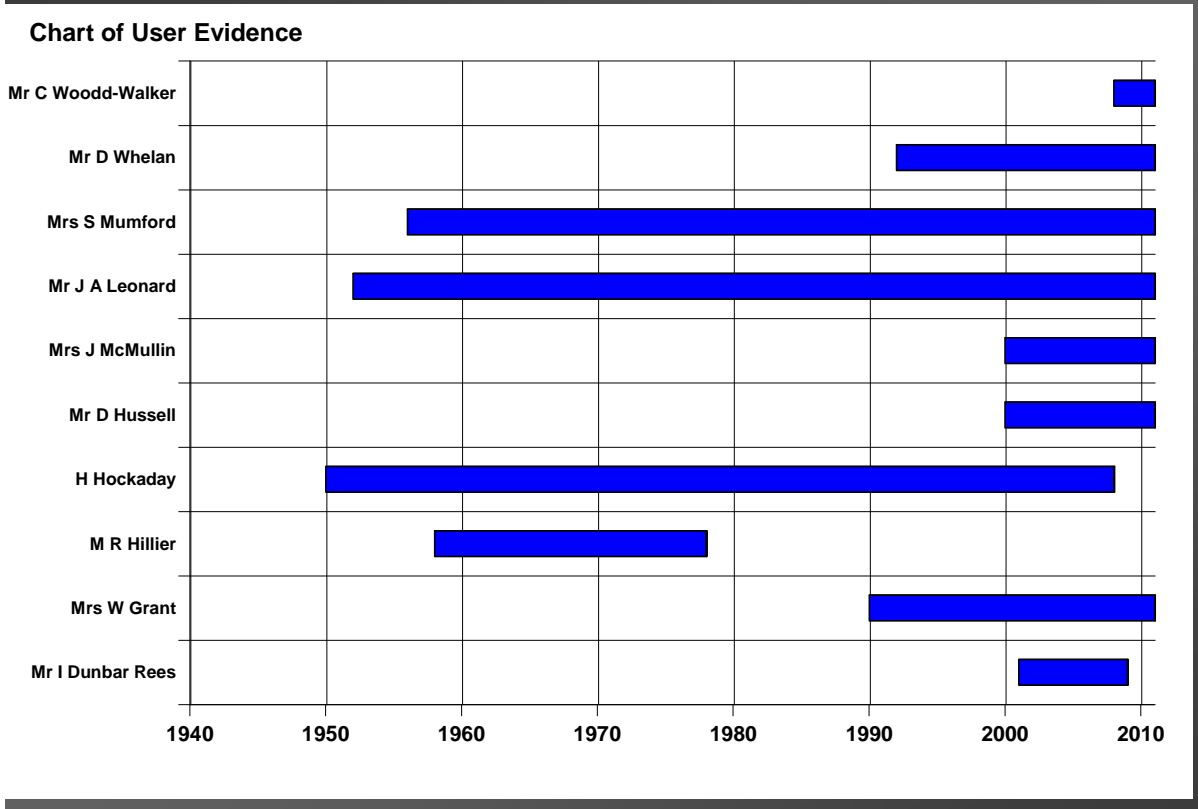
In correspondence relating to the survey in October 1969 Newton and Noss Parish Council stated that, having investigated the matter thoroughly and held a public meeting, they had

endeavoured to include all known points of access to the Harbour and Foreshore not already on the map but which are known to have been used by the public over the years. They added that it may be held that some of these are under the control of the Harbour Authority and as such need not go on the definitive map, but that they wished to ensure continued access.

In April 1978 Newton and Noss Parish Council again put forward a list of paths to be added to the Definitive Map, including this route, identified as path F and accompanied by one user evidence form.

**4. User Evidence**

Newton and Noss Parish Council submitted eight user evidence forms, in respect of use by nine people, in support of their proposal for the addition of this path. One user evidence form was previously submitted during the review in 1978 giving a total of nine user evidence forms demonstrating use by ten people. The user evidence is summarised in the chart below.



The user evidence forms demonstrate use of the route by the public since 1950. All have used it on foot only. The frequency of use ranges from two or three times a year to a hundred times. Users comment that use was for pleasure, for access to the foreshore. Four users also comment that they use the route for access to a mooring or boats. One states that they use it when dog walking.

None of the users report seeing signs or being told that it was not public. All of the users believe the route to be a footpath.

## **5. Landowner Evidence**

The western half of the route is registered with the District Land Registry under title number DN572354, in the ownership of The National Trust. The National Trust was contacted for their views and evidence as part of the consultation process but no response has been received.

In 1992 the National Trust deposited with the County Council a map and statement under section 31(6) of the Highways Act 1980, in respect of their Yealm Estate lands, which includes the land crossed by part of this route. The deposit map shows recorded public rights of way over their land but not the claimed route, which has no recorded public status. The Trust has followed up the initial deposit with statutory declarations, in 1997 and 2003, stating that no additional public rights of way have been dedicated in the intervening period. This protects the National Trust against claims that public rights can be presumed to have been dedicated through long usage during that period, in this instance 1992 to present.

The National Trust has used the system of deposits and statements, under s 31(6), for all land in the county owned by the Trust.

The eastern section of the route is not registered and no owner has been identified, but the Parish Council have assumed responsibility for many years.

## **6. Rebuttal Evidence**

No rebuttal evidence has been received.

## **7. Discussion**

The claim for the route to be recorded as a public footpath was not submitted as the result of any action taken by a landowner that had obstructed or prevented access to and use of the route from a specific date. There is no evidence of any actions having called into question use of the route for consideration of the user evidence under statute law. It is therefore to be examined in relation to common law, in conjunction with historical and other documentary evidence.

The section 31(6) deposit made by The National Trust in 1992, in respect of land crossed by the route, and subsequent statutory declarations are sufficient to show a lack of intention to dedicate a public right of way over that part of the route since 1992. However, it is appropriate to consider whether dedication has taken place prior to 1992.

A route to the foreshore known as Axworthy's Steps or Path, has existed in that location since at least the late 1800s, as evidenced by OS maps of that time, albeit on a different alignment to the present route. It is excluded from Finance Act records of 1909-10. This may indicate that it was considered to carry public highway status, but there may be other reasons, such that the landownership was unknown.

The route was not one of the works specified in the 1933 Act. Newton and Noss Parish Council minutes show that the route was already considered to be a public right of way in 1937, when they closed the eastern end of the path due to subsidence and had a new entrance constructed on its present alignment. The Parish Council paid for the works, including a handrail, and later for a gap to be made in the railings from the road.

The Parish Council has continued to maintain the path, regarded as a parish path, with the Harbour Authority responsible for the lower steps. The route has been freely available for

use by the public for over 60 years, for access to boats and for general recreation, and there have been no challenges to call the route into question.

Therefore, considering the user evidence in conjunction with all other evidence, dedication at common law of a footpath at some time in the past, 1937 or earlier, can be implied. The user evidence demonstrates acceptance by the public of that dedication.

## **8. Conclusion**

It is recommended therefore, that a Modification Order be made to add a footpath to the Definitive Map between points J1 – K1, as shown on drawing number EEC/PROW/11/43, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

### **Suggestion 11: Addition of a public footpath from the county road Passage Road, opposite Ferry Wood, Noss Mayo, to the foreshore over the slipway known as Wide Slip.**

Addition of a public footpath from the county road Passage Road, opposite Ferry Wood, along a defined path known as Wide Slip, to the foreshore, as shown between points G – H on drawing number EEC/PROW/11/42.

### **Recommendation: That a Modification Order be made to add a footpath to the Definitive Map and Statement between points G – H.**

## **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. It is identified as Parish Path G – Wide Slip. It gives access to a seasonal ferry, part of the South West Coast Path.

## **2. Description of the Route**

The route starts at point G, as shown on drawing number EEC/PROW/11/42, at the county road Passage Road, opposite Ferry Wood. It proceeds generally southwestwards along a concrete path against the side of the cliff, with several shallow steps and a handrail, to a slipway onto the foreshore at point H. It is approximately 40 metres in length.

## **3. Documentary Evidence**

### **3.1 Ordnance Survey Maps**

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years.

The 1<sup>st</sup> Edition 25", published 1895, does not show the route.

The 2<sup>nd</sup> Edition 25", published 1904-06, shows the route by double pecked lines leading from Passage Road to the mean high water mark and then over rocks to much the same extent as it is today. It is not identified as a slipway and steps are not indicated.

The 1:2,500 A Edition post-war OS mapping, published 1952, again shows the route. It is shown by double solid lines to the mean high water mark and then as pecked lines over the rocks. It is named as Wide Slip.

### **3.2 Revelstoke Tithe Map and Appropriation 1841**

The route is not shown. The land is numbered 74, belonging to Robert Robertson and described as waste between road and rocks.

### **3.3 Finance Act 1909-10**

The top end of the route is included within hereditament 612, in the ownership of W C Gray and described as Ferry Wood Plantation. There is no deduction for public rights of way or user.

### **3.4 Revelstoke and Newton and Noss Parish Council Minutes**

The first reference to the route is in August 1931 at a meeting of Revelstoke Parish Council, when it was agreed that a bill be paid for cleaning Wide Slip.

The next reference is in April 1932, where it was proposed that the council meet at Wide Slip, but the minutes do not give any indication why.

In March 1934 it was agreed that Wide Slip be cleaned and scrubbed.

In 1935 the Parish boundaries were revised and the new parish of Newton and Noss formed, incorporating Revelstoke and Newton Ferrers.

In April 1946, under the item headed Footpaths, it was noted that Wide Slip was being damaged by the tide and brambles needed trimming. It was resolved to pass to members of the Noss works committee. It was later agreed that no labour was available for trimming overgrowth and that the matter should be referred to the new council for consideration.

Also in April 1946 at the Annual Parish Meeting it was reported that part of the concrete and brickwork facing had broken away and there was a risk of undermining by the tide. Also, that the rails needed attention. It was resolved to refer the matter to the RDC. In June, it was reported in correspondence from the RDC that instructions had been given for the public slipway known as Wide Slip to be repaired.

The next reference is in March 1952, when it was resolved that the attention of the Harbour Authority be drawn to the difficult and dangerous approach below the path. In April 1952 it was agreed to defer the matter of repairs until a reply had been received from the Harbour Authority. It was agreed to arrange for the slip to be cleaned.

Again in January 1953 it was agreed that the works committee be asked to clean the slipway. It was also agreed that the RDC be asked to consider extending handrail for added safety of users of the slipway. In February there was no information available as to whether Wide Slip had been cleaned. Correspondence was also reported from the divisional surveyor regarding the inspection of rails. It was suggested that a rail would be better on the cliff side of the slipway and the chairman would contact the divisional surveyor accordingly. In May it was reported that work had been satisfactorily completed and that the Divisional Surveyor had in hand the matter of extending the hand rail.

In July 1956 it was reported that there was a loose post and wire above Wide Slip and that it had been reported to the Divisional Surveyor.



In May 1959 the poor and rusty condition of the hand rail at Wide Slip was noted. The Clerk was to draw it to the attention of the RDC. In October 1959 the clerk was to write to the RDC again requesting that the handrail be given attention as previously promised.

The next reference to Wide Slip is in July 1968, in reference to correspondence from the Divisional Surveyor. His remarks are not minuted but the Parish Council decided that in view of the steps being on the entrance to the Harbour, it was felt that the onus to repair the railings would fall upon the RDC, so the clerk was requested to contact Mr Yeo on the matter.

In September 1968 it was reported that the Council still felt that Wide Slip was one of the entrances to the Harbour under the 1933 Act, and that should be able to apply to the RDC to carry out necessary repairs. However the DCC, D/Surveyor had informed the Council that he was looking into possibility of carrying out the work. In October 1968 Councillor Revington stated that Wide Slip was definitely the responsibility of the RDC under the 1933 Harbour Act and that the Council should request representatives on the Harbour Committee to bear this well in mind and bring it up at the next meeting.

Further minutes during the 1980s-90s refer to ongoing maintenance of the route.

In November 1983 it was reported that the steps at Wide Slip were becoming undermined and that the County Council would be asked to investigate.

In December 1985 the Noss works committee were to examine the state of Wide Slip.

In January 1986 it was reported that repair work was being carried out by SHDC

In June 1987 it was noted that a reminder was to be sent to DCC regarding request for repairs to steps and handrail at Wide Slip.

In October 1987 it was reported that the cost of repairs to Wide Slip would be £720, of which the Parish Council would be liable for £360 (less a grant from DCC).

Then in September 1990, under Footpaths, it was minuted that Mr Leonard would be asked to carry out repairs to Wide Slip. In October, that an estimate would be obtained from Mr Leonard for submission to the Heritage Coast service.

In February 1998, under the item headed Footpaths, it was reported that Mr Carter was to draw up specification for repairs and that tenders were to be invited.

In December 1998, under Footpaths, it was reported that Wide Slip had not been repaired.

Subsequently, in February 2000 it was reported that work on Wide Slip (and Wembury Steps) had been completed but nuts and bolts were protruding from kerb stones. The Harbourmaster would refer to SHDC.

### **3.5 Plympton St Mary Rural District Council Minutes**

There are a number of references to Wide Slip in the minutes of the Harbour Committee.

At a meeting on 19 February 1934, the Committee considered the works proposed to be carried out under the Council's Act 1933. It was recommended that the Engineer prepare plans and estimates of the cost of a landing pier, etc at Wide Slip on the site of work no. 2.

On 9 March it was recommended that the plans be approved and that the same be submitted to the Board of Trade for approval.

On 25 May 1934 the acquisition of the Yealm Hotel pier in lieu of a new pier at Wide Slip was discussed and referred to a sub-committee to consider. Later minutes show that this option was pursued.

At a meeting on 25 July 1935 it was recommended that subject to a lease being granted by the Board of Trade to the Council for certain tidal lands of the river, works being carried out including construction of a hard at Wide Slip. Regarding these works, at a meeting on 20 October 1937 it was recommended that the acquisition of the necessary land be proceeded with and that tenders be obtained for execution of the works. It is further minuted that when the works are undertaken the landing place at the foot of the public steps be improved by concrete.

On 30 November 1951 it was resolved that the Slipway known as Wide Slip be cleaned, subject to the Clerk being satisfied with the legal position.

On 25 April 1952 a letter was read from the Newton and Noss Parish Council with regard to the condition of Wide Slip. The Committee recommended that the matter be referred to the Clerk. Arising from that minute, at the meeting of the Committee on 30 May 1952 it was recommended that the Engineer be instructed to clean Wide Slip below high water mark.

### **3.6 Plympton St Mary Rural District Council Act 1933**

The route is included as Intended Landing Place No. 2. The deposited plan shows the limits of the works and permitted deviations. The land crossed by the works is numbered and described in the deposited book of reference. Most of Work No. 2 is consistent with the claimed route, which is shown on the base plan within the limits or line of deviation. Above the foreshore, bellowing to the Crown, Board of Trade, the land crossed by the route is identified as 5 on the plan, and described in the book of reference as 'steps and slip' and the owners or reputed owners are given as Revelstoke Parish Council.

### **3.7 Earlier Uncompleted Reviews of Definitive Map**

In June 1969, the Parish Council surveyed and submitted to the County Council a schedule of additions or amendments to the Definitive Map for the Review of the Map, as required under section 33 of the National Parks and Access to the Countryside Act 1949 and section 31 of the Countryside Act 1968. The list of paths to be added to the Definitive Map included the route identified as path G. It is described as follows:

*From: Passage Road*

*To: The Beach*

*Known as Wide Slip – From Passage Road a county road at approximately yards east of Ferry Cottage a concrete path with steps at intervals and iron handrails, over rocks to the beach.*

In correspondence relating to the survey in October 1969 Newton and Noss Parish Council stated that, having investigated the matter thoroughly and held a public meeting, they had endeavoured to include all known points of access to the Harbour and Foreshore not already on the map but which are known to have been used by the public over the years. They added that it may be held that some of these are under the control of the Harbour Authority and as such need not go on the definitive map, but that they wished to ensure continued access.

In April 1978 Newton and Noss Parish Council again put forward a list of paths to be added to the Definitive Map, including this route, identified as path G and accompanied by one user evidence form.

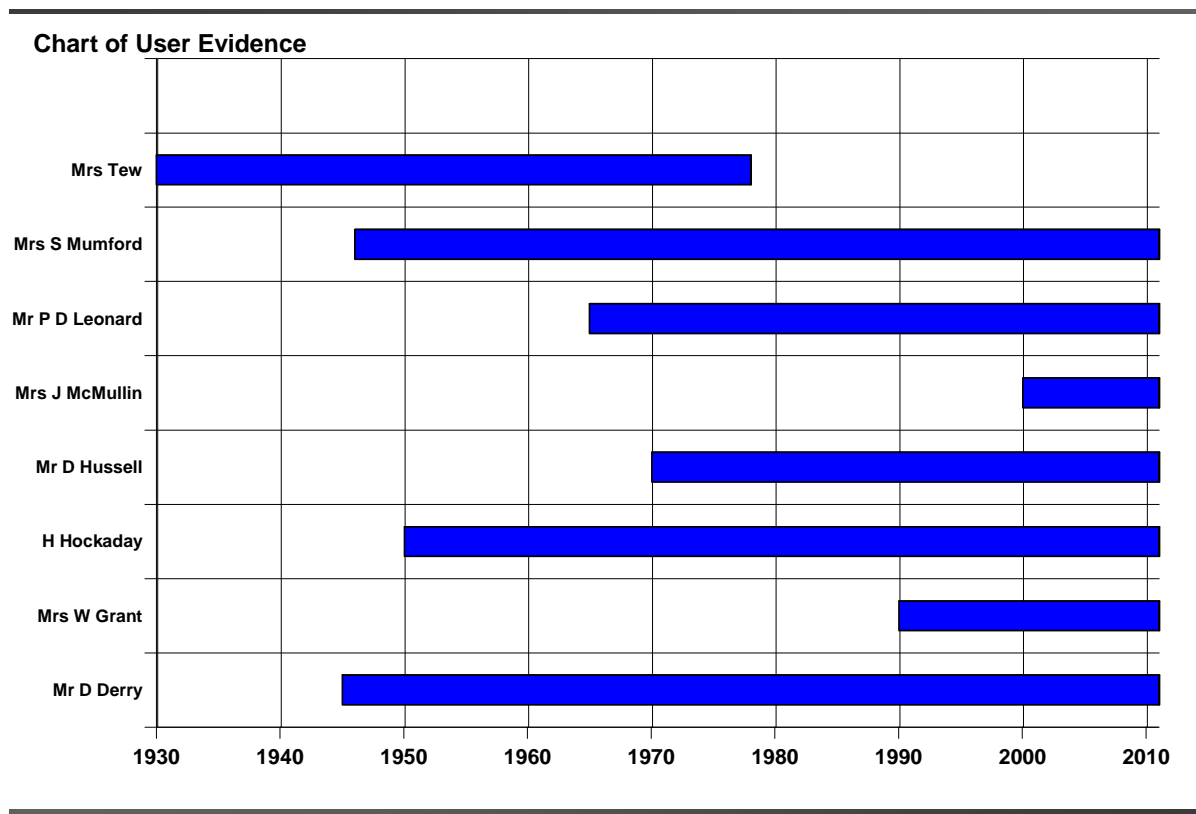
### 3.8 Harbour Authority Committee Minutes 1982 onwards

The minutes of September 1987 report that proposed renovations of Wide Slip put out to tender. In October it was reported that renovation work was underway and that the cost would be split 50/50 between the Parish Council and RYHA.

Minutes also report on later repair works, in 1999-2000 undertaken by the Coast and Countryside Service with contributions from the RYHA.

## 4. User Evidence

Newton and Noss Parish Council submitted six user evidence forms, in respect of use by seven people, in support of their proposal for the addition of this path. One user evidence form was previously submitted during the review in 1978 giving a total of seven user evidence forms demonstrating use by eight people. The user evidence is summarised in the chart below.



The user evidence forms demonstrate use of the route by the public since 1930. All have used it on foot and one also with a bicycle on occasion. The frequency of use ranges from ten times a year to a hundred times plus. Users comment that use was for pleasure or for going to work, for access to the beach or river. A number of users comment that they use the route for access to the ferry to Newton Ferrers or Wembury, commenting that it is part of the South West Coast Path. Several comment that it is in constant public use.

None of the users report seeing signs or being told that it was not public. All but one of the users believe the route to be a footpath.

## **5. Landowner Evidence**

The land crossed by the route above mean high water mark is owned by The National Trust. The Trust has not responded to the informal consultation. The land is covered by the map and statement deposited by the Trust with the County Council under section 31(6) of the Highways Act 1980, as per suggestion 10 above.

Below mean high water the land crossed by the route is owned by the Crown and leased to the Harbour Authority. The Crown Estate has not responded to the consultation. The Harbour Authority has no objection to the proposal to add the route to the Definitive Map as a footpath.

## **6. Rebuttal Evidence**

No rebuttal evidence has been received.

## **7. Discussion**

The claim for the route to be recorded as a public footpath was not submitted as the result of any action taken by a landowner that had obstructed or prevented access to and use of the route from a specific date. There is no evidence of any actions having called into question use of the route for consideration of the user evidence under statute law. It is therefore to be examined in relation to common law, in conjunction with historical and other documentary evidence.

The section 31(6) deposit made by The National Trust in 1992 and subsequent statutory declarations are sufficient to show a lack of intention to dedicate a public right of way over that part of the route since 1992. However, it is appropriate to consider whether dedication has taken place prior to 1992.

A route to the foreshore known as Wide Slip, has existed in that location since at least the late 1800s, as evidenced by OS maps of that time. Newton and Noss Parish Council minutes show that the route was already considered to be public back in 1931, when they paid for Wide Slip to be cleaned and scrubbed. The Parish Council subsequently maintained the path, regarded as a parish path, arranging for brambles and overgrowth to be trimmed. It is also recorded in the deposited book of reference accompanying the 1933 Act as steps and slip belonging to Revelstoke Parish Council.

Following the 1933 Act the RDC considered constructing a pier at Wide Slip but subsequently opted for a concrete landing place instead, at the foot of the 'public steps'. During the 1950s the RDC carried out structural repairs to the path, caused by damage by the tide, installed handrails and cleaned the slipway below high water mark.

The Parish Minutes show that later, in 1968, there was a question about who was responsible for maintaining Wide Slip, with the Parish Council of the view that the RDC was responsible under the 1933 Act as it was one of the entrances to the harbour. It is not clear which part of the route was in discussion. Subsequent minutes show that work has been variously carried out by public bodies – by South Hams District Council, the Parish Council, with funding from the County Council and the former Heritage Coast Service, and by the Coast and Countryside Service with funding from the Parish Council and Harbour Authority. The Harbour Authority is responsible for works below mean high water. The route does not

appear to have been maintained by the National Trust, which owns the land over which the route runs.

The route has been freely available for use by the public for over 60 years, for access to boats and for recreation, and there have been no challenges to call the route into question. It has been considered a public access to the foreshore by the Parish Council and Harbour Authorities since at least 1931 and is publicised as a public landing by the RYHA.

Therefore, considering the user evidence in conjunction with all other evidence, dedication at common law, of a footpath at some time in the past can be implied to have taken place. The user evidence demonstrates acceptance by the public of that dedication.

## **8. Conclusion**

It is recommended therefore, that a Modification Order be made to add a footpath to the Definitive Map between points G – H, as shown on drawing number EEC/PROW/11/42, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

**Suggestion 12: Addition of a public footpath from the county road Passage Road, opposite Ferry Wood, Noss Mayo, to the foreshore over the slipway known as Kilpatrick's Steps.**

Addition of a public footpath from the county road Passage Road, opposite Ferry Wood, along a defined path known as Kilpatrick's Steps, to the foreshore, as shown between points I – J on drawing number EEC/PROW/11/42.

**Recommendation: That a Modification Order be made to add a footpath to the Definitive Map and Statement between points I – J.**

## **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. The path is approximately 35 metres in length. It is identified as Parish Path H – Kilpatrick's Steps.

## **2. Description**

The route starts at point I, as shown on drawing number EEC/PROW/11/42, at the county road, Passage Road, opposite a lay-by below Ferry Wood. It proceeds generally north northwestwards over a seating area and thence down a flight of concrete steps, which turn southwestwards to the foreshore at point J. It is signed with a wooden fingerpost from the county road as Kilpatrick's Steps.

## **3. Documentary Evidence**

### **3.1 Ordnance Survey Mapping**

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years.

The 1<sup>st</sup> Edition 25", published 1895, and 2<sup>nd</sup> Edition, published 1904-06, do not show the route.

The 1:2,500 A Edition post-war OS mapping, published 1952, shows the steps as shown on modern mapping.

### **3.2 Revelstoke Tithe Map and Apportionment 1841**

The route is not shown. The land is numbered 74, belonging to Robert Robertson, and described as waste between road and rocks.

### **3.3 Plympton St Mary Rural District Council Act 1933**

The route is not one of the works authorised by the Act.

### **3.4 Newton and Noss Parish Council Minutes**

The first reference to the steps in parish council minutes is in April 1962 in the report of a visit to Ferry Wood. It was resolved to communicate with Cmdr Watkinson requesting him to remove a length of chain forthwith. It was also resolved to allow the positioning of four outhalls, well clear of steps, and agreed that a notice board worded 'parish property – no obstruction to these steps' be placed near the flight of steps.

In November and December 1974 charging for outhalls from Parish Council land at Passage Wood Steps was discussed. It was resolved that no more than four outhalls be allowed at a charge of £2 per annum be made for this facility. At the meeting of February 1975 regarding outhalls at Passage Wood Steps, it was resolved that a more comprehensive report would be given at the next meeting, when the deeds would be available.

In April 1975 it was reported that charging for outhalls from Parish Council land at Passage Wood had been discontinued because of the question of the Parish Council's liability to the public. It was agreed that some sort of system of control would be desirable. It was resolved that the clerk would investigate the question of liability with the Council's insurers and that the marking out of the Council's land be investigated. In May 1975 following a response from the Council's insurers it was agreed that a charge of £2 per annum be made to persons attaching outhalls to Parish Council land.

In July 1983 it was reported that a letter had been received regarding danger at Kilpatrick Steps. It was resolved that the matter be placed in the hands of the Noss Works Committee to decide what action could be taken.

In January 1988, in discussion of footpaths, it was stated that a fence was required on the seaward side of Kilpatrick Steps and Noss Works Committee agreed to examine the problem.

In 1995 and 1997 provision of a handrail or grab rail at Kilpatrick's Steps was discussed but rejected.

In April 1999, under the item headed Footpaths, it was reported that the steps had been cleaned and the greenery cut back.

In July 1999 it was reported that the Harbour Authority would maintain the steps below high water mark.

In November 2003 it was reported that a parishioner had offering to prune overgrowth and that the steps below high water mark needed repairing – the clerk to contact the harbour Authority. In December 2003 it was reported that the repairs would be carried out by the Harbour Authority.

More recent minutes show that the Parish Council and Harbour Authority have continued to maintain the steps above and below the high water mark respectively.

### **3.5 Earlier Uncompleted Reviews of the Definitive Map**

In June 1969, the Parish Council surveyed and submitted to the County Council a schedule of additions or amendments to the Definitive Map for the Review of the Map, as required under section 33 of the National Parks and Access to the Countryside Act 1949 and section 31 of the Countryside Act 1968. The list of paths to be added to the Definitive Map included the route identified as path H. It is described as follows:

*From: Passage Road*

*To: The Foreshore*

*Leaves west side of Passage Road in Ferry Wood approximately yards north of junction of Passage Road and Path No. 28 across Public resting place owned by the Parish down a path with rough steps at intervals over the rocks to the foreshore..*

In correspondence relating to the survey in October 1969 Newton and Noss Parish Council stated that, having investigated the matter thoroughly and held a public meeting, they had endeavoured to include all known points of access to the Harbour and Foreshore not already on the map but which are known to have been used by the public over the years. They added that it may be held that some of these are under the control of the Harbour Authority and as such need not go on the definitive map, but that they wished to ensure continued access.

In April 1978 Newton and Noss Parish Council again put forward a list of paths to be added to the Definitive Map, including this route, identified as path H and accompanied by one user evidence form.

### **3.6 River Yealm Harbour Authority Minutes 1982 onwards**

At its meeting of 10 September 1987 the Committee resolved to investigate the steps in Passage Wood, thought to be on National Trust land, with a view to possible repair and improvement.

On 8 October 1987 it was reported that the steps needed cleaning from an accumulation of weed and that the top three steps required repairing. It was also noted that whilst there had never been a handrail, the addition of one would be an advantage. It was agreed that the Committee should proceed to implement the work required after tender for up to £250.

On 10 December 1987 it was reported that the cost of repairs to Passage Wood steps had been estimated at between £350 and £400. It was resolved that the work should proceed at a cost not exceeding £400. Correspondence from Newton and Noss Parish Council granting permission to carry out works above high water mark was noted.

On 14 June 1988 it was reported that there was substantial weed growth on Kilpatrick's Steps and that the harbourmaster should arrange for cleaning.

On 10 April 1997 it was reported that the bottom sections of the parish (Kilpatrick) Steps were in a poor state. The Harbour Master was aware of their condition and repair work was being arranged.

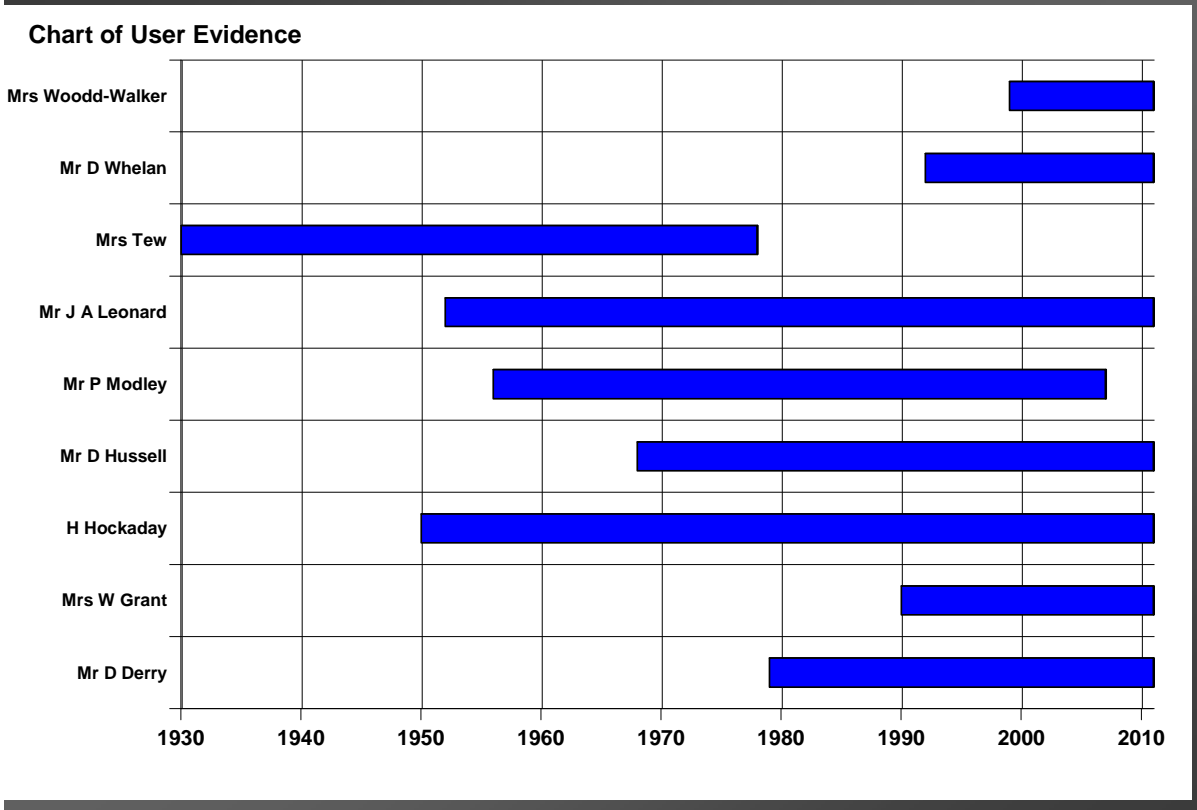
On 13 December 2001 the possibility of a jetty at Kilpatrick’s Steps was discussed as there was nowhere to secure a dingy at high tide and visitors had difficulties. It was pointed out that the Parish Council owned the steps.

**4. User Evidence**

Newton and Noss Parish Council submitted eight user evidence forms in support of their proposal for the addition of this path. One user evidence form was previously submitted during the review in 1978 giving a total of nine user evidence forms. The user evidence is summarised in the chart below.

The user evidence forms demonstrate use of the route by the public on foot since 1930. The frequency of use ranges from three or four times a year to a hundred times plus. Users comment that use was for pleasure, for access to the beach or river or from the river to the picnic area. One user states that they have used it for dog-walking, and another that it is used for access to the foreshore for shrimping, barbeques etc. Three specify that they use it for access to boats. Several comment that it is well used by the public, for access to boats or by fishermen.

None of the users report seeing signs or being told that it was not public. All but one of the users believe the route to be a footpath, stating usage by the public as the reason. Most also state that they believe it is owned by the Parish Council.





## **5. Landowner Evidence**

Where the route leaves the road it crosses a seating area owned by the Parish Council. The concrete steps themselves run over land registered with the District Land Registry under title number DN572354, under the ownership of The National Trust. Both were contacted for their views/evidence during the informal consultation process.

Mr Taylor completed a Landowner Evidence Form on behalf of Newton and Noss Parish Council, in respect of the land crossed by the route. He considers the route to be a public footpath, for over 50 years. He has seen daily use by members of the public, visiting yachtsmen and residents accessing their boats in the main. The Parish Council has also supplied a copy conveyance showing that the seating area, comprising of an area of land 50 yards in width from the road to the high water mark, together with a similar area on the opposite side of the road, was conveyed to the Parish Council in 1960 for public use.

The Trust has not responded to the informal consultation. The land is covered by the map and statement deposited by the Trust with the County Council in 1992 under section 31(6) of the Highways Act 1980, as per suggestions 10 and 11 above.

Below mean high water the land crossed by the route is owned by the Crown and leased to the Harbour Authority. The Crown Estate has not responded to the consultation. The Harbour Authority supports the proposal to add the route to the Definitive Map as a footpath.

## **6. Rebuttal Evidence**

No rebuttal evidence has been received.

## **7. Discussion**

The claim for the route to be recorded as a public footpath was not submitted as the result of any action taken by a landowner that had obstructed or prevented access to and use of the route from a specific date. There is no evidence of any actions having called into question use of the route for consideration of the user evidence under statute law. It is therefore to be examined in relation to common law, in conjunction with historical and other documentary evidence.

The section 31(6) deposit made by The National Trust in 1992 and subsequent statutory declarations are sufficient to show a lack of intention to dedicate a public right of way over that part of the route since 1992. However, it is appropriate to consider whether dedication has taken place prior to 1992.

The route is first shown on Ordnance Survey mapping published in 1952. There is no documentary evidence available which depicts the route or refers to it before this time. It was not included in the 1933 Act as either a new or an existing access to the harbour. The earliest indication that the steps were considered to be public was a reference in the Parish Council minutes requesting the removal of an obstruction and the placing of a notice to the effect that they were parish property and should not be obstructed. The route was subsequently put forward for inclusion on the Definitive Map during an uncompleted review in 1969 and minutes show that the Parish Council and Harbour Authority have accepted responsibility for maintaining the steps above and below high water mark respectively.

The Parish Council minutes show that the Council has levied charges for attaching outhalls to their land. Anyone accessing such outhalls over Parish Council land could therefore be considered to have an implied licence or permission to use the route. However, such permission could not be implied to extend to use of land not owned by the Parish Council

and may therefore be considered use 'as of right'. The user evidence forms also demonstrate use by the public to the beach for other purposes than for access to moorings, namely dog walking, picnics and fishing. It would also appear to be used by visiting boats for access to the seating area and coast path.

The Parish Minutes show evidence of reputation of public rights since the 1960s, which is consistent with the majority of user evidence. Only one user evidence form, completed by Mrs Tew in 1978, demonstrates earlier use, from 1930, with no other evidence to suggest it was considered public at that time.

The steps have physically existed since at least 1952, as shown on Ordnance Survey mapping of the time, and have been freely available for use by the public for at least fifty years, since an obstruction was reported in 1962. The route has been considered a public access to the foreshore by the Parish Council and Harbour Authorities since at least that time, and there have been no other challenges to call the route into question. It is publicised as a public landing by the RYHA.

Therefore, considering the user evidence in conjunction with all other evidence, dedication at common law, at some time since at least 1962 but prior to 1992, can be implied to have taken place. The user evidence demonstrates acceptance by the public of that dedication.

## **8. Conclusion**

It is recommended therefore, that a Modification Order be made to add a footpath to the Definitive Map between points I – J, as shown on drawing number EEC/PROW/11/42, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

### **Suggestion 13: Addition of a public footpath from Footpath No. 36 opposite Passage House over a slipway to the river Yealm.**

Addition of a public footpath from Footpath No. 36 opposite Passage House over a slipway to the river Yealm, as shown between points K – L on drawing number EEC/PROW/11/42.

### **Recommendation: That a Modification Order be made to add a footpath to the Definitive Map and Statement between points K – L.**

## **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. It is identified as Parish Path J – Ferry.

## **2. Description**

The route starts at point K, as shown on drawing number EEC/PROW/11/42, on Footpath No. 36, opposite Passage House. It proceeds generally northwestwards through a wooden pedestrian gate and over a slipway to the river at point L. The claimed path is approximately 31 metres long. A sign on the gate reads 'ACCESS TO BEACH ONLY. PRIVATE QUAYS AND SLIPWAY.' A sign on the quay wall, seen from the river, reads 'PRIVATE QUAYS AND SLIPWAY. ACCESS TO COASTPATH.'

### **3. Documentary Evidence**

#### **3.1 Ordnance Survey Mapping**

The 1<sup>st</sup> Edition 25", published 1895, does not show the slipway. A landing stage is shown approximately 15 metres to the west, on a northeast alignment, from the property today known as Ferryman's Cottage. It also shows that the Yealm Ferry used to run from this landing stage across to the fish store in Wembury. This landing stage is still shown on current mapping.

The 2<sup>nd</sup> Edition, published 1904-06, again does not show the route. The Yealm Ferry is shown from the landing stage near Ferryman's Cottage as per the 1<sup>st</sup> edition. A wall is shown on the alignment of the eastern side of the claimed route, near Ferry Cottage.

The post war A Edition 1:2,500, published 1952, does not show the route to its current extent although a small spur is shown to the mean high water mark. If the slipway extended below high water it is not shown. No ferry routes across the Yealm are shown.

Current mapping shows the extent of the slipway below mean high water mark with pecked lines.

#### **3.2 Finance Act 1909-10**

The Finance Act map uses 2<sup>nd</sup> Edition base mapping therefore the current route is not shown. Passage House and the property now known as Ferryman's Cottage and ferry landing stage (to the west of the claimed route) are all shown under hereditament number 419. This is identified in the field book as Yealm Cottage Ferry – house, gardens and orchard. The description makes no further reference to the ferry. The holding does include a tea room.

#### **3.3 Plympton St Mary Rural District Council Act 1933**

The deposited plan shows an Intended Landing Place Work No. 1 generally on the line of the claimed route. The land to be acquired is described in the book of reference as 'slipway, river banks and riverside waste' and the owners or reputed owners are listed as Alfred Thornton Partridge Read, Harold William Kingcombe Read, Edith Miriam Ransson, Lilian Mary Bennett and their executors. The occupier is listed as Alfred Thornton Partridge Read.

#### **3.4 Plympton St Mary Rural District Council Minutes**

There is no specific reference to Work No. 1 of the 1933 Act. At a meeting of the Harbour Sub-Committee on 19 February 1934 the Committee considered the works proposed to be carried out under the 1933 Act. It was recommended that several works should not be carried out or that they should be deferred. It was also recommended that other works be proceeded with. Work No. 1 is not referred to in either case.

There is no reference to the claimed route in the RDC minutes or later Harbour Authority minutes.

#### **3.5 Earlier Uncompleted Reviews of the Definitive Map**

In June 1969, the Parish Council surveyed and submitted to the County Council a schedule of additions or amendments to the Definitive Map for the Review of the Map, as required under section 33 of the National Parks and Access to the Countryside Act 1949 and section

31 of the Countryside Act 1968. The list of paths to be added to the Definitive Map included the route identified as path J. It is described as follows:

*From: End of Passage Road at Ferry*

*To: The Beach*

*Over a stone and concrete slipway from junction of Passage Road a County Road and path No. 36 adjacent to Ferry Cottage to the beach.*

In correspondence relating to the survey in October 1969 Newton and Noss Parish Council stated that, having investigated the matter thoroughly and held a public meeting, they had endeavoured to include all known points of access to the Harbour and Foreshore not already on the map but which are known to have been used by the public over the years. They added that it may be held that some of these are under the control of the Harbour Authority and as such need not go on the definitive map, but that they wished to ensure continued access.

In April 1978 Newton and Noss Parish Council again put forward a list of paths to be added to the Definitive Map, including this route, identified as path J and accompanied by one user evidence form.

### **3.6 Revelstoke and Newton and Noss Parish Council Minutes**

In March 1932 Revelstoke Parish Council resolved that the attention of the clerk to the RDC be drawn to notice board which is placed over the public path at the ferry. From the date of this reference it cannot be inferred that it refers to the claimed route as the historic ferry crossing is shown leading to a more westerly landing place adjoining Ferryman's Cottage.

In February 1946 Newton and Noss Parish Council minutes refer to various letters received regarding the slipway and right of way at Ferry Cottage. It was discussed that as it appeared there was as yet no complaint of users being interfered with, it was agreed that the correspondence should lay on the table. From the reference to a slipway it may be inferred that this relates to the claimed route although it cannot be absolutely certain.

The next reference to a route at Ferry is in September 1984. It was reported that the owner of Ferry Cottage had placed a private notice across the right of way, and it was agreed that Mr Taylor approach the owner to discuss its removal.

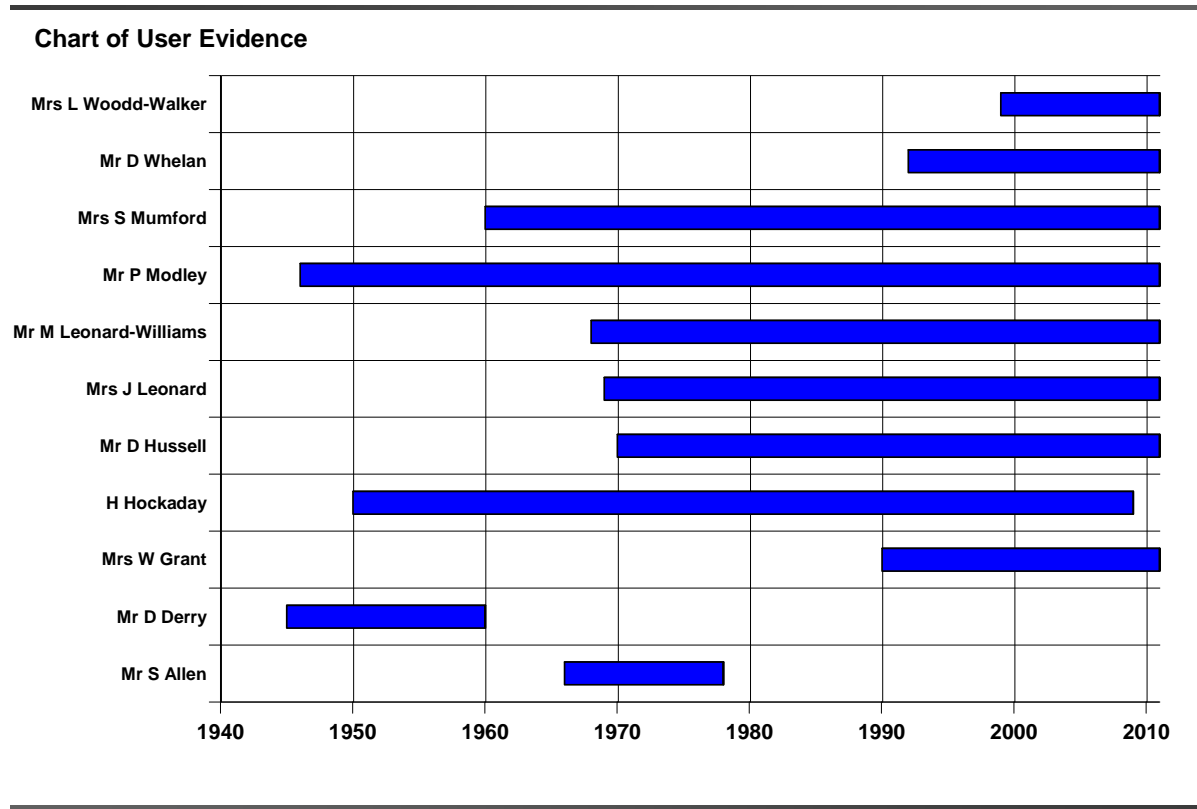
In October 1984 it was reported that the position of public access at Ferry Cottage had been resolved and that the owner had agreed to make the necessary alterations.

## **4. User Evidence**

Newton and Noss Parish Council submitted ten user evidence forms in support of their proposal for the addition of this path. One user evidence form was previously submitted during the review in 1978 giving a total of eleven user evidence forms. The user evidence is summarised in the chart below.

The user evidence forms demonstrate use of the route by the public on foot since 1945. The frequency of use ranges from one or two times a year to more than ten or many. Users comment that use was for pleasure, for access to or from the beach or river. Three users specifically refer to boating. One user states that they have used it for dog-walking, and another that they use it from Noss Mayo along the foreshore. Several comment that it is well used by the public, for access to boats or by fishermen.

Most of the users refer to a gate, stating that it is not locked, and also seeing a notice informing that the quay is private but that there is footpath access to the foreshore. One user adds that she thinks the private quay sign is to stop people leaving their boats there, which they would if the sign was not there. None of the users report being told that it was not public.



## 5. Landowner Evidence

The land crossed by the route above mean high water mark is registered with the District Land Registry under title number DN590552 in the ownership of Mr and Mrs Bowyer since 2009. The tidal lands belong to the Crown. Mr and Mrs Bowyer and the Crown Commissioners were contacted for their evidence or views during the informal consultation process.

Mr and Mrs Bowyer completed a Landowner Evidence Form in respect of their ownership. They state that the land has been owned by themselves for seven years but has been in the family for 42 years. They believe the route to be a public right of way, on foot only. They state that they see members of the public using it up to ten times a day in the winter, and up to a hundred times a day during the summer. They have not required people to give permission to use the route, told anyone that it was not public, or erected signs stating that the way was not public. They also state that the gate at point K is never locked.

No response has been received from the Crown Commissioners.

## 6. Rebuttal Evidence

No rebuttal evidence has been received.

## 7. Discussion

The claim for the route to be recorded as a public footpath was not submitted as the result of any action taken by a landowner that had obstructed or prevented access to and use of the route from a specific date. There is no evidence of any actions having called into question use of the route for consideration of the user evidence under statute law. It is therefore to be examined in relation to common law, in conjunction with historical and other documentary evidence.

At common law an implication of the dedication of a public right of way may arise if there is evidence from which it can be inferred that a landowner dedicated a right of way and that the public accepted the dedication. Usage by the public over a sufficient period 'as of right', together with acquiescence of the landowner to that use may amount to evidence from which dedication can be inferred.

It is not clear from the evidence available when the current slipway was constructed. In the early part of the 1900s maps only show the Yealm ferry landing stage further to the west, at the property now known as Ferryman's Cottage. Early Parish Council minutes do not provide any further clarification. At some stage the ferry landing moved to Wide Slip, but it is not clear from the evidence at what date, or whether ferry passengers were landed at the slipway, or just on the adjacent landing stage.

The plan deposited with the 1933 Act shows a proposed landing place consistent with the route. The land affected was described as slipway, river banks and riverside waste, which indicates that there was a slipway of some kind there at that time. The book of reference shows that it was in private ownership. There is no evidence that the RDC acquired the land or carried out works following the 1933 Act, or any evidence of subsequent improvement or repair by the harbour authorities or other public body. The mapping of the 1950s shows a short spur to the mean high water mark. If the slipway did extend below mean high water at that time the Ordnance Survey did not record it.

The Parish Council minutes of 1946 report various letters received concerning a slipway and right of way at Ferry Cottage, which may refer to the claimed route. The minutes do not record the content of the correspondence or what may have occurred to prompt a number of people to write, but there would appear to have been some question about public rights. However, the minutes also record that there had been no complaint that users had been interfered with, and no action appears to have been taken by the Parish Council. Only one person has provided evidence in respect of this period and they do not report any challenge.

The majority of user evidence demonstrates use from the late 1960s/early 1970s. None of the users report being prevented from using the route or being told that it was not public. The Parish Council minutes record that a private notice was erected across the route in September 1984, but the next month it was noted that, following a meeting with the landowner, the position of public access had been resolved and that he would make the necessary alterations. Two users, whose use ended before this date could not recall a gate or notices. It is therefore likely that the gate and current notices, or notices worded to the like effect, were erected in 1984 confirming footpath access to and from the foreshore. There is no evidence that the landowner had intended to prevent public use on foot at that time and the reference in the parish minutes is not considered sufficient to show that the public's use of the route was called into question.

The current landowners believe the route to be a public right of way for use on foot only and have taken no action to prevent use by the public, seeing many people using it daily. The notices also show that they accept public access to/from the foreshore – their intention being to prevent public use of the slipway and quays with boats.

Therefore, considering the actions of previous and current landowners, in conjunction with user and all other evidence, an intention to dedicate can be inferred. Use by the public is evidence that there has been acceptance of the path by the public as a public footpath.

## **8. Conclusion**

It is recommended therefore, that a Modification Order be made to add a footpath to the Definitive Map between points K – L, as shown on drawing number EEC/PROW/11/42, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

### **Suggestion 15: Addition of a public footpath from the County Road Stoke Road, across Bridgend Quay and down steps to the river.**

Addition of a public footpath from the County Road Stoke Road across Bridgend Quay to steps in the northwest corner onto the foreshore, as shown between points Q – R on drawing number EEC/PROW/11/44.

**Recommendation: It is recommended that no Order be made.**

## **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. It is identified as Parish Path N – Bridgend Quay Steps.

## **2. Description**

The route starts at point Q, as shown on drawing number EEC/PROW/11/44, at Stoke Road at the entrance to Bridgend Quay. It proceeds southwestwards alongside the quay office building, then turns west northwestwards at the corner of the building to steps in the north western corner of the quay to the river at point R. The claimed path is approximately 88 metres long.

## **3. Documentary Evidence**

### **3.1 Revelstoke Tithe Map and Apportionment 1841**

A plot of land is shown with a building in the location of Quay Cottage but the quay is not shown.

### **3.2 Ordnance Survey Maps**

The 1<sup>st</sup> Edition 25", published 1895, and 2<sup>nd</sup> edition, published 1904-06, shows the quay and steps as it is today, with no indication of a gate at the entrance to the road. A small rectangular structure is shown on the quay near the north eastern corner of the building.

The post war A Edition 1:2,500, published 1951, shows the quay and steps as on previous maps. The rectangular structure is identified as a weighing machine with the abbreviation WM.

### **3.3 Finance Act 1909-10**

The quay is numbered on the plan as hereditament 360. It is recorded in the field book as 'Lime Kiln, Stores etc.' at Bridgend. The freehold owner and occupier is identified as W C Gray. The holding is described as a large store with office and weighbridge, also a landing quay which is identified as no. 616. A small store is let out, as are the lime kiln gardens.

No. 616 is described as 'quay and landing', owned by W C Gray and occupied by the Board of Trade. The particulars are given as 'quay and landing abutting into the creek at Bridgend'.

There are no deductions made for public rights of way or user.

### **3.4 Membland Estate Sales Particulars 1915**

Noss Mayo and Bridgend was once part of the Membland Estate, which was split up and sold off in the early 1900s.

Sales particulars produced for the majority of the estate in 1915 show Bridgend Quay as Lot J, which would be included in the sale only if the estate was sold as a whole. It states that the vendor's interest in the quay and landing is leased from the Board of Trade for 31 years from 31 December 1911.

The quay buildings are offered separately as Lot No. 70. The sales particulars describe the large store and weighing house as being used by the Estate, with a small store let out.

### **3.5 Plympton St Mary Rural District Council Act 1933**

The deposited plan shows Bridgend Quay as Intended landing Place and Quay Work No. 8. The quay is described in the book of reference as 'quay and road', with the owners or reputed owners listed as The Crown, Board of Trade with Plympton St Mary RDC as lessees.

### **3.6 Plympton St Mary RDC Minutes**

At a meeting of 11 September 1925 the Highway Purposes Committee discussed the acquisition of leasehold interests in Bridgend Quay. The minutes of 10 September 1926 report that the Board of Trade had consented to the assignment of the lease of Bridgend Quay from the late Sir W C Gray to the Council and that the same had been completed.

Minutes of the Harbour Committee on 25 March 1949 refer to charges for use of moorings on Bridgend Quay. They also report that a Mr Bowden was using the quay without permission but does not clarify such use.

On 22 May 1950 the Harbour Committee again discussed charges for mooring at Bridgend Quay. It was also recommended that application be made to the Office of the Commissioners of the Crown for permission to erect a gate at the entrance to Bridgend Quay in order to permit unauthorised user of the Quay. At a meeting of the Committee on 30 June 1950 a letter was read from the Crown Commissioners raising no objection to the erection of a gate at the entrance to Bridgend Quay. It was recommended that the Clerk and Engineer report at the next Committee on the cost of erecting the gate and the method of controlling the same.

At the following meeting it was reported that the estimated cost of erecting a gate was £23. It was recommended that no gate be erected for the time being and that a warning notice be erected, prohibiting the parking of cars and unauthorised use of the quay.



Other minutes refer only to notices disclaiming the Authority's liability for users of the quay, and charges for mooring or storage of boats.

At a meeting of the Harbour Committee on 10 July 1972 the winter storage of boats on Bridgend Quay was considered. It was stated that authorised capacity of the quay was often exceeded and at times this caused obstruction to persons wishing to cross the quay. It was recommended that winter storage facilities be restricted.

### **3.7 Newton and Noss Parish Council Minutes**

At a meeting of the Council on 23 March 1972 a councillor expressed concern at the number of boats laid up on Bridgend Quay, that it was unduly cluttered and access to the far end of the quay was obstructed. It was resolved that a letter be sent to the RDC asking that in making arrangements for laying up of vessels, the Council ensure that adequate access to the slips and steps be maintained at all times.

In October 1975, it was reported that there was some disquiet over the number of vessels which it was planned to store on the quay during the winter season, as this was in excess of the number agreed. Members stated that the current arrangement prevented proper access to steps and rings by the public, which facility was safeguarded in the lease of the quay to the District Council.

On 16 February 1989, under the item headed footpaths, it was agreed that the list of paths to be added to the Definitive Map should be reviewed and resubmitted to include 13 steps at the northwest corner of Bridgend Quay.

On 20 October 1994, the main points of the Harbour Authority meeting were discussed, including a suggestion that wider spacing between stored boats would have been preferred. At the following meeting, in November, the previous minutes were amended to include 'to allow wider access to the steps.' At the December meeting, again in discussion of the Harbour Authority report it was noted that negotiations concerning the lease of Bridgend Quay were almost complete and that rights of way were discussed.

### **3.8 River Yealm Harbour Authority Minutes 1982 onwards**

At a meeting of the Harbour Authority on 1 December 1983 it was resolved that storage of boats on Bridgend Quay should be on the agenda of a future meeting. In particular, that attention should be drawn to the agreement between Newton and Noss Parish Council and the District Council that there should be sufficient room around the edge of the quay to allow persons to walk unimpeded to enable berthing to be easily facilitated, and that the area to and from the landing steps should be left clear. Winter storage of yachts was again discussed in May 1988. It was agreed that the Harbourmaster would continue his aim to for the objectives of maintaining pedestrian access around the edge of the quay.

On 8 September 1988 progress on negotiations with the Crown Estate Commissioners to acquire a new lease for Bridgend Quay was reported. It was noted that solicitors Fleury Manico had been instructed to act on the Authority's behalf.

On 10 November 1988 it was reported that a letter had been received from Newton and Noss Parish Council pointing out that there were certain rights of way over Bridgend Quay which could affect the terms of any lease. It was agreed to pass this information on the Fleury Manico to assist in their negotiations. On 8 December comments of Fleury Manico of the possible effects of existing rights of way were discussed. It was agreed that a member, Mr Baldwin, should have further discussions with Fleury Manico on this subject. On 9 February

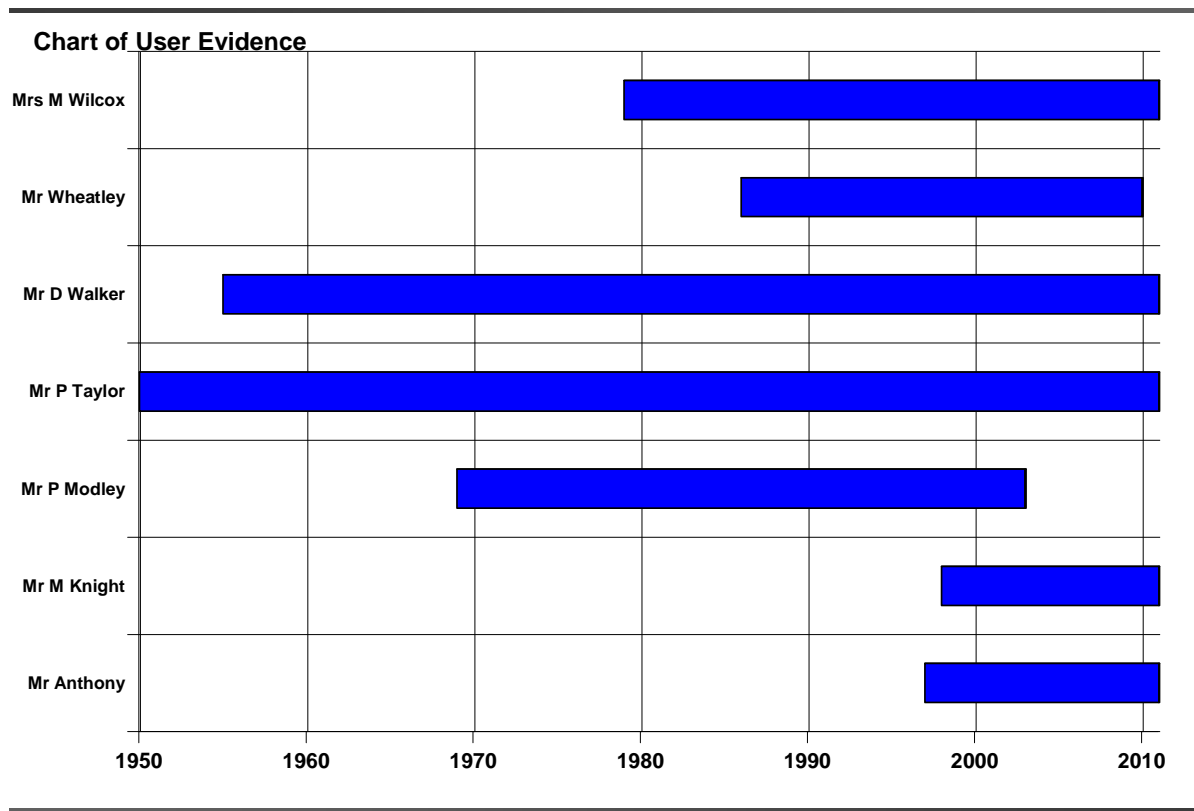
1989 Mr Baldwin confirmed that he had had discussions with Fleury Manico regarding the Authority's attitude to public rights of way over Bridgend Quay.

#### 4. User Evidence

Newton and Noss Parish Council submitted seven user evidence forms in support of their proposal for the addition of this path. The user evidence is summarised in the chart below.

The user evidence forms demonstrate use of the route since 1950. The frequency of use ranges from four times a year to over a hundred. Users comment that use was for pleasure, for access to or from the quay to the foreshore. Four users specifically refer to use for access to boats and dinghies.

None of the users refer to a gate on the route. One user reports seeing notices from the Harbour Authority warning of boat works on specified days. Another, that parked boats sometimes cause diversion rather than obstruction. All consider the route to be a public right of way stating that the quay is for use of the public, that is used regularly by users of the river, and that it is in common usage.



#### 5. Landowner Evidence

Bridgend Quay belongs to the Crown, in the care of the Crown Estate Commissioners, who were consulted during the informal consultation process. No response has been received.

The quay is currently leased from the Crown to the River Yealm Harbour Authority. In response to the consultation, the RYHA stated that it had no objection to the addition of the claimed route to the Definitive Map and Statement as a footpath.

## **6. Rebuttal Evidence**

No rebuttal evidence has been received.

## **7. Discussion**

The Highways Act 1980 and its predecessors do not apply to Crown land. The claim must therefore be examined in relation to common law, in conjunction with historical and other documentary evidence.

At common law an implication of the dedication of a public right of way may arise if there is evidence from which it can be inferred that a landowner dedicated a right of way and that the public accepted the dedication. Usage by the public over a sufficient period 'as of right', together with acquiescence of the landowner to that use may amount to evidence from which dedication can be inferred.

Historical maps show that Bridgend Quay has existed in its current form since at least the late 1800s. The Finance Act records of 1909-10 show that it was at that time part of the Membland Estate, owned by W C Gray, and leased to the Board of Trade. However, sales particulars produced for the sale of the estate in 1915 show that it was acquired by the Board of Trade in 1911 and then leased back to W C Gray for the use of the estate. The lease was subsequently assigned to the Rural District Council in 1926, and has since been transferred to the relevant authority – South Hams District Council and the Harbour Authority – in turn. Use of the quay has therefore been controlled by the relevant harbour authority since 1926, with charges levied for moorings and storage of boats on or adjacent to the quay.

In 1949-50 the RDC were concerned with unauthorised use of the quay, obtaining permission from the Crown to place a gate at the entrance. The RDC did not go ahead with the gate, for what would appear to be financial reasons, but instead erected a sign prohibiting unauthorised use. It is not clear what use the RDC was concerned with, but it can be presumed that access across the quay to boats moored or stored there was not unauthorised.

Access to the steps is first mentioned specifically in Parish Council minutes in 1972 when the council resolved to ask the RDC to ensure that access to the slips and steps were kept clear of stored boats. In October 1975 the number of boats stored on the quay was again said to prevent proper access to the steps and rings by the public. The minutes refer to a facility safeguarded in the lease of the quay. It is not clear whether this relates to the access to the steps or the rings but it implies an amenity or resource rather than a public right. The lease is not available therefore the precise terms are not known.

The Harbour Authority minutes in 1983 also refer to an agreement between the Parish Council and District Council to ensure unimpeded access around the quay edge and to keep the area to and from the landing steps clear. The Parish Council appears to have been concerned with ensuring parishioners could gain access to or from their moorings, a facility for which they pay. There is no reference to a right of way for the general public.

The first reference to public rights of way over the quay is in discussion of the Harbour Authority's lease negotiations in 1988. The Parish Council raised the issue with the Harbour Authority, which in turn passed the information on to their solicitors. Whilst there was clearly some discussion between the Harbour Authority and their solicitors on the subject the minutes are silent on whether the Crown was made aware of the claim or, if so, what their attitude was. After these discussions the Parish Council decided to put the route forward for inclusion on the Definitive Map.

Bridgend Quay provides facilities for mooring, storing and repairing boats. As such, it can be implied that use by the public of the quay to access these facilities is by licence of the Harbour Authority, and its predecessors, and cannot therefore be considered use as of right. The majority of those who completed user evidence forms have used the route to access boats.

The Parish Council and Harbour Authority clearly consider there to be public rights of way across the quay. However, at Common Law, there must be evidence from which it can be inferred that the landowner, in this instance the Crown, intended to dedicate the way to the public. Whilst a gate was not placed at the entrance to the quay in 1950, the Crown would have been unlikely to have granted permission had they considered that a public right of way existed over the quay then. Therefore, this is not an act which can be considered consistent with dedication.

There is no evidence that the Crown was aware of the view of the Parish Council and Harbour Authority that public rights of way existed during discussions about the lease in 1988. If they were made aware, there is no evidence available to show that they accepted the claim. It is also unlikely that the Crown could have been aware of use by the general public to gain access to the foreshore, other than for use of the quay facilities, for which the quay is leased, and could not therefore be considered to have acquiesced to such use.

Therefore, from the evidence available it cannot be inferred that the Crown intended to dedicate public rights of way over the quay.

## **8. Conclusion**

It is therefore recommended that no order be made.

### **Suggestion 16: Addition of a public footpath from the County Road Pillory Hill, to the South West Water Pumping Station and onto the foreshore.**

Addition of a public footpath from the County Road Pillory Hill down steps to the South West Water (SWW) pumping station and then onto the foreshore, as shown between points Q1 – R1 on drawing number EEC/PROW/11/48.

**Recommendation: It is recommended that no Order be made.**

## **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. It is identified as Parish Path O – The Pumping Station.

## **2. Description**

The claimed path starts at point Q1 on Pillory Hill in Noss Mayo, as shown on drawing number EEC/PROW/11/48, at a small metal gate opposite the property Snaefell. It proceeds in a northwesterly direction down a flight of galvanised metal steps then turns in a generally westerly direction along a raised masonry path with handrail to the pumping station, then in an easterly direction down further steps onto the foreshore at Point R1. The path is approximately 30 metres in length.

### **3. Documentary Evidence**

#### **3.1 Ordnance Survey Mapping**

The route is not shown on historic mapping, published in 1966 or earlier.

#### **3.2 Plympton St Mary RDC Minutes**

At a meeting of the Works Committee on 29 September 1972 it was reported that a determination by the Lands Tribunal had been given in respect of the land required to provide access to the pumping station site. It was resolved that the determination be accepted.

#### **3.3 Newton and Noss Parish Council Minutes**

On 14 February 1974 it was proposed that the Parish Council enter and maintain the land adjacent to the pumping station under the provision of the Limitation Act 1939.

On 20 February 1975 it was reported that letters had been sent to the County and District Councils, and to the Water Authority concerning the Parish Council's intention to fence off this land and erect notices to discourage persons from interfering with the natural development of the area. An encouraging reply had been received from the County Council but no comment had been made from the District Council and Water Authority.

On 20 March 1975 it was resolved that the Parish Council intended to fence off the land adjacent to the pumping station, which would be kept as a nature conservation area.

On 22 May 1975 it was reported that a letter from the Water Authority had raised no objection to the Council's proposals for this area. It was agreed that to protect the Council's possible future title to this land, a notional fence be erected and a declaration signed to the effect that the Council had taken this action.

At a meeting of 16 February 1989 the Parish Council agreed that the steps to the pumping station should be included in the list of paths to be added to the definitive map.

On 19 April 1989, under the item headed footpaths it was reported that new galvanised steps had been installed and would be painted by SWWA in due course so that they would be less conspicuous.

On 9 September 2004, the steps were discussed in connection with tree maintenance at the pumping station. The minutes report that the status of the steps was clarified – there was no public right of way but it was hoped the foreshore access would be added to the Definitive Map at the forthcoming review.

On 9 December 2004, under an item headed 'trees at the pumping station', it was reported that representatives from SHDC, DCC, RYHA and T J Brent had met with members of the Parish Council on site to look at overhanging trees. It was felt that the stability of the bank was not a concern but photographs would be sent to SWW as large cracks in the stonework of the platform below the metal steps needed some attention.

On 11 November 2004 in discussion of trees, it was reported that several serious issues had resulted from tidal erosion, in particular the SWW steps were considered to be unsafe at the lower end. It was resolved to report to South West Water and invite DCC and Ross Kennerley [SHDC] to meet on site.

More recent minutes refer to maintenance, by the Parish Council, of trees on the land and inspections of the bank. In July 2008 it was agreed to name the land Broken Way in light of an old photograph showing the area so named.

### **3.4 Newton and Noss Parish Council Correspondence**

Between June and August 2008 Newton and Noss Parish Council corresponded with SWW concerning a locked gate at the pumping station. It would appear from the correspondence that the gate had been locked for several months. SWW confirmed their ownership of a strip of land giving access to the pumping station, approximately 20 metres further west along Pillory Hill, stating that they had no documented rights to use other access.

In a further email to SWW in August 2008 the Parish Clerk referred to telephone conversations and reported that a padlock was still there. She stated that she had understood it was going to be removed. However, a subsequent email from a parishioner reported that the chain was locked only to the swinging part of the gate and that the gate was free to open. In a response from SWW it was confirmed that the contractors would be asked to remove the padlock and put it on the lower gate only.

## **4. User Evidence**

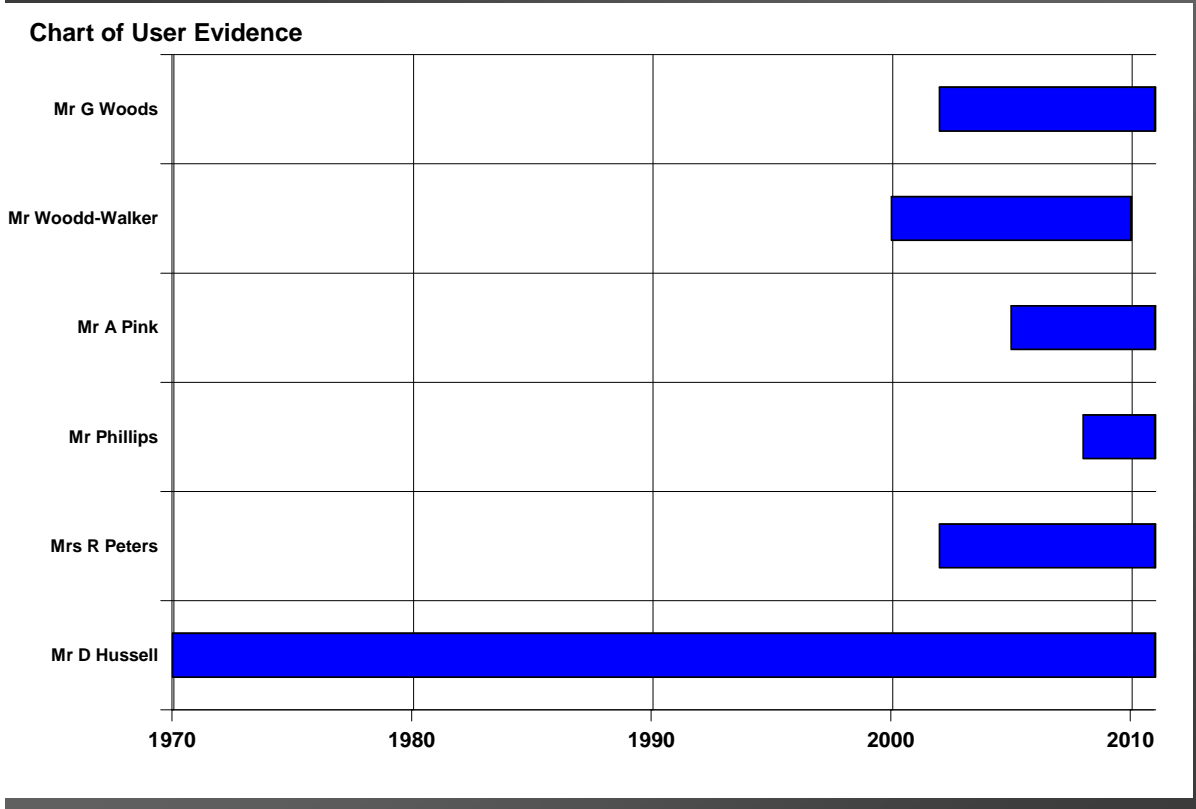
Newton and Noss Parish Council submitted six user evidence forms in support of their proposal for the addition of this path. The user evidence is summarised in the chart below.

One person has provided evidence of use since 1970. The remaining use demonstrates usage during the last ten years. The frequency of use ranges from once or twice a year to several times a day. Five of the users have used it for access to/from boat moorings. Two have also stated that they use it for walks along the foreshore and another that they have used it in connection with their inspections as tree warden.

All of the users refer to a gate on the route and all but two recall that it was locked for several months in 2008, 2009 or 2010 by South West Water. Only one user reports seeing a notice, stating SWW Pump House. None recall any notices indicating that the route was not public.

One user stated that they had been informed a private right of way existed for owners of boat moorings and outhalls. Another, that they had permission from the Harbourmaster in 2006.

All consider the route to be a public right of way because it is always used by the public, including tourists, that use has been unchallenged and that it is needed for access to boats.



**5. Landowner Evidence**

The land crossed by the route is unregistered, except for a narrow strip of land from Pillory Hill, opposite the property Aberford, to the pumping station. This is owned by SWW. It is approximately 20 metres west of the claimed steps.

In correspondence with the Parish Council in 2008 SWW confirmed that they did not have any other documented rights of access.

**6. Rebuttal Evidence**

In response to the informal consultation the sewerage engineer for South West Water completed a Landowner Evidence Form. He stated that he did not consider the route to be a public right of way. He had seen members of the public regularly using the route to access the foreshore to tend boats but not as a thoroughfare. He added that it is an access path to a SWW pumping station and that access is required 24/7. In addition he commented that boat users have used the path to access their mooring ropes. The accompanying plan shows SWW’s registered access, not the claimed route. No path physically exists on the line registered by SWW therefore it is likely that the form refers to the claimed route.

**7. Discussion**

This is an unusual situation. The land crossed by the route is unregistered but the Parish Council acted to take factual possession of the land in 1974, and it does not appear that there has been any objection to this in the intervening years. The steps, which are claimed as a public right of way, would have been constructed by the Water Authority for access to the pumping station when it was built in the early 1970s. However, they do not correspond with the land registered to the company.

South West Water locked a gate at point Q1 for several months in 2008, but unlocked it when the Parish Council protested. This act is considered sufficient to have called into question the public right to use the route and the claim for presumed dedication may therefore be considered under statute law with the relevant period of use being 1988 – 2008.

The evidence of use during this period is limited, with only one person having used the route for the full twenty year period and the remaining five can only demonstrate use during the eight years prior to the calling into question, at most. This level of use cannot be considered sufficient to raise a presumption of dedication.

The claim may also be considered at common law, but again the user evidence is thin and is limited predominantly to boat users. Whilst the documentary evidence may suggest an intention to dedicate a public right of way by the Parish Council, if it has that capacity, the level of use demonstrated is considered insufficient to show acceptance of that dedication by the general public as a right to pass and repass.

However, South West Water, who are responsible for the steps' structure, accept that they are used by boat owners to access their moorings.

## **8. Conclusion**

It is therefore recommended that no Order be made.

### **Suggestion 17: Addition of a public footpath from the county road at Membland to the county road near Pool Mill Farm.**

Addition of a public footpath from the county road at Membland to the county road near Pool Mill Farm, as shown between points S1 – T1 on drawing number EEC/PROW/11/49.

### **Recommendation: That a Modification Order be made to add a bridleway to the Definitive Map and Statement between points S1 – T1.**

## **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement as a footpath. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. It is identified as Parish Path P – Pool Mill.

## **2. Description of the Route**

The route starts at point S1, as shown on drawing number EEC/PROW/11/49, at the county road at Membland. It proceeds east northeastwards along a defined track for approximately 600 metres to the settlement of old farm buildings at Pool Mill Farm and continues along the access road to join the county road at T1, at the northern end of the unsurfaced county road Lambside Lane. It has a mainly earth and stone surface but is metalled at the eastern end.

## **3. Documentary Evidence**

### **3.1 Greenwood's Map, 1827**

Greenwood was a well-known published cartographer of the day. The map shows a route in the approximate location as an unenclosed cross-road from the Membland House end, and



enclosed on both sides at the Lambside Lane end. The central section is unenclosed to the northern side.

### **3.2 Holbeton Tithe Map and Apportionment 1839-42**

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Public roads were not titheable. In the Devon Record Office leaflet on Rights of Ways Records it states under Tithe Maps and Apportionments that where a track is numbered on the map and listed with the holdings of a private individual, it was regarded as of essentially private character. It is possible that the private character referred to maintenance rather than use. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.

None of the roads on the Holbeton tithe map are coloured. However, currently recorded county roads are not apportioned under the landholdings of any individual, whereas private roads/farm tracks are.

The tithe map shows a double fenced road/track for approximately 200 metres of the claimed route at its western end. It is numbered 104, which is listed in the apportionment book under the landholding of Robert Robertson Esq. as 'Road'. It leads to an open field, numbered 107 under the same landholding and described as meadow. It is then shown as a defined feature passing to the south of the mill buildings, under the landholding of Mr Pendarvis and Mr Wynne. It is numbered 116 and described in the apportionment as 'Waste', under that holding. From here the route is shown turning southwards beside a Mill Pond, then sharply eastwards and continues to Lambside Lane. This section is not consistent with the alignment of the present route.

### **3.3 Ordnance Survey Maps, C18 onwards**

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years.

The 1784 – 1786 Draft Drawings show a wide route, fenced or hedged on both sides, from the Membrand House end as far as Pool Mill Farm. The drawings do not show the route through the farm. A defined route is again shown between Pool Mill and Lambside Lane, turning south southeastwards by a pond, then turning 90 degrees and continuing to Lambside Lane.

The 1<sup>st</sup> Edition 1 inch to a mile map (Cassini Reproductions Sheet 202 Torbay & South Dartmoor) first published in 1809 and in the 1860s with revisions, shows a continuous route bounded on both sides, aligned at the eastern end as per the surveyors drawings.

The 1<sup>st</sup> Edition 25", published 1895, shows the route bounded on both sides, the central section heavily wooded on the southern side. To the east of Pool Mill Farm the route is now shown on its current alignment, having been straightened to pass the northern end of the pond and join the end of Lambside Lane (point T1). A building is shown at the southern end on the mill pond, on the line of the earlier route.

The route is shown on subsequent OS mapping in the same manner.

The OS maps do not indicate any gates across the route.

### 3.4 Ermington and Plympton District Highway Board Minutes

At a meeting of the Board on 24 November 1865 it was reported that an application had been made by Mr Adams to have a bridge built over the mill leat at Pool Mill. It was resolved that it was desirable such bridge be built and that the expense borne by the parishes of Holbeton and Newton Ferrers.

On 11 May 1866 the clerk was directed to write to Mr John Thomson Stewards Office calling his attention to the state of the mill leat at Pool Mill which overflows the highway and is at times injurious to the road and dangerous to the public. The Highway Board were willing to cooperate with Mrs Pendarvis in the expense of covering the brook and widening the road.

The surveyor is subsequently directed to cover the Pool Mill leat where it crosses the road. On 6 July 1866 a tender for proposed works at Pool Mill was accepted.

### 3.5 Membland Hall Estate Documents 1895 – 1915

The land surrounding the claimed route was formerly part of the Membland Hall, or Revelstoke, Estate. The estate was purchased by Edward Baring (later 1<sup>st</sup> Lord Revelstoke) in the 1870s. He had the hall significantly extended and also developed the estate, with the construction of three lodge houses and a private carriage drive alongside the River Yealm and the coastline. Following a financial crisis in the 1890s the estate was sold off. Several documents relating this and subsequent sales are held in the Plymouth and West Devon Records Office.

The earliest sales particulars dating from 1895 describe the estate as having two carriage drives, with lodge entrances: one from the west leading off the Plymouth Road, of about half a mile in length; the other, 3 miles long, which crosses and for a short distance traverses the main road, from the east off the main road to Ivybridge. The relevant plan is not included with the particulars but from the description the second drive would appear to include the claimed route. Without the plan however it is not possible to clarify whether the claimed route was detailed in the schedule of hereditaments to be included in the sale of the estate.

An Abstract of Title relating to the Membland Hall Estate, produced in 1915 includes an Indenture dated 15 December 1899. These documents state that the sale is *subject (as regards those parts of the road leading from Wonnell Lodge to Membland Hall which were private roads being the parts coloured blue on Plan No. 1) to such rights of way (if any) as then subsisted over the same.*

The claimed route would have been part of the road described leading from Wonnell Lodge to Membland Hall. It is coloured buff on the enclosed plan along with recorded public roads, whereas other sections regarded as private today are coloured blue.

Pool Mill Farm is included in Sales Particulars of 1915 as part of Lot 1, Membland Hall. The sales catalogue notes that the Vendor's interest in the portions of the road belonging to the Estate from Bridgend to the Bull and Bear Lodge will be included in this Lot subject to the rights of the adjoining owners and purchasers of Lots abutting thereon.

The Conditions of Sale also make reference to the private roads coloured blue on Plan No. 1 *which (with certain portions of the parish roads were constructed as an approach from Wonnell Lodge).* They stipulate that the roads are included in the sale subject to all such rights of way and liabilities for repair as may exist and *without any obligation on the Vendor to define the same, or show any title thereto.*

They also state that from *the removal and alteration of fences the diversion of old roads and creation of new roads, the rearrangement of holdings and other circumstances, it may in some cases be impracticable accurately to distinguish the properties held under the several titles.*

### **3.6 Plympton St Mary Rural District Council Highway Purposes Committee**

At a meeting of the Committee on 19 May 1905 it was resolved that a Committee of councillors visit the road on the Membland Estate from Henna Mill to Bridgend and bring up a report.

On 16 June 1905 it was resolved that the report of the Committee appointed to inspect the road from Membland to Henna Mill be adopted. The report dealt with the route in four sections: Membland to Pool Mill, Pool Mill to Lambside Hill, Lambside Hill to Preston Road; and Preston road to bottom of Alston Hill (or Henna Mill). The first two sections follow the line of the claimed route and are described as follows:

#### Membland to Pool Mill

The road over this part is at a steep gradient, is washed badly by storm water and also requires coating in several places with stones and the water tables attended to.

#### Pool Mill to Lambside Hill

This portion of the road is very level and the water tables require attention to permit the surface water to drain from the surface of the road, a few places require to be repaired with stones.

The third section, Lambside Hill to Preston Road is described as the only part of the road kept in repair by the RDC.

The fourth section, Preston road to bottom of Alston Hill, was described as dangerous in some places. The Committee resolved that the attention of the owner of Membland be called to the dangerous state of the road and respectively ask his immediate attention to same, as well as to Sections 1 and 2.

At the meeting of 14 July 1905 letters were read from Mr Gray and Mr Tilly asking that the Council take over the roads on the Membland Estate. It was resolved that the roads be taken over provided that they are in thorough order and repair and that the Surveyor prepare an estimate of the cost of putting such roads in repair in the first instance.

On 11 August 1905 it was reported that the Surveyor had produced his estimate for putting the roads on the Membland Estate in repair, prior to being taken over by the Council, and it was resolved that the clerk send a copy of his estimate, together with a copy of the resolution passed at the last meeting, to Mr Tilly and await his reply.

### **3.7 Plympton St Mary Rural District Council General Minutes**

These report that at a meeting of the Highways Committee on 22 February 1935 the Committee recommend that a letter from the County Surveyor, in connection with taking over as a public highway the road at Pool Mill Farm leading from Holbeton to Newton Ferrers, be referred to the Highways Inspection Committee.

On 13 March 1935 the Highways Inspection Committee resolved that the road be taken over provided that necessary repairs were carried out.

At a meeting of the Highways Committee on 16 December 1938 a letter was read from Newton and Noss Parish Council with regard to the condition of the Membland and Cliffside Roads. It was reported that a scheme for the improvement of these roads had been forwarded to Devon County Council. It was resolved that further representations be made to the County Council.

At a meeting of the Highways Committee on 24 February 1939 a letter was read from Devon County Council with reference to Membland (and Cliffside) Roads, stating that the roads in question were private roads, and it was regretted no action could be taken.

### **3.8 Parish Minutes**

The route was within the parish of Holbeton until 1935, when it was transferred to the newly formed Newton and Noss Parish Council.

One report, on 6 December 1899, refers to the road from Dinniford Brook Bridge near Henna Mill to Bridgend. The clerk was instructed to write to the Chairman of the District Council asking the Council to put it in repair as the public have a 'right of way' over it.

This could be one of two roads, one which follows the stream valley to Pool Mill and thence to Membland and Bridgend, and therefore includes the claimed route, or one which climbs sharply up the northern side of the valley and follows the ridge. The latter is an unclassified road today.

On 22 November 1938 Newton and Noss Parish Council resolved to write to the RDC calling their attention to the bad state of Membland Road from Bridgend to Poole Mill. On 3 January 1939 a letter in response stated that the matter was considered by the Highways Committee and that they would communicate with Devon County Council. On 22 March 1939 it was reported that a response had been received by the RDC from the County Council to the effect that as the road was a private road no action can be taken.

On 25 March 1955 the question was raised regarding a pot hole in the roadway at Poole Mill, but the Chairman pointed out that it was not a highway repairable by the public at large.

On 20 February 1964 Councillor Horn enquired of the likelihood of that length of unadopted road between Pool Mill Farm and Membland being surfaced and taken over by the Highway Department. It was resolved to take no action in the matter.

### **3.9 Finance Act 1909-1910**

The Finance Act provided for the levying of tax (Increment Value Duty) on the increase in site value of land between its valuation as at 30 April 1909 and, broadly speaking, its subsequent sale of value. The system for calculating the assessable site value allowed for deductions for, among other things, the amount by which the gross value would be diminished if the land were sold subject to public rights of way. The Act required all land to be valued, but routes shown on the base plans which correspond to known public highways, usually vehicular, are not normally shown as included in the hereditaments, i.e. they will be shown uncoloured and unnumbered. So if a route is shown external to any numbered hereditament, there is a strong indication that it was considered a public highway, normally but not necessarily vehicular as footpaths and bridleways were usually dealt with by deductions. However, there may be other reasons to explain its exclusion.

The claimed route is shown entirely excluded from surrounding hereditaments. The field book entries for these hereditaments make no mention of the route. They do however clarify that the house and buildings south of the mill pond were erected in 1887, which would

suggest that the original route, as shown on the Tithe and early Ordnance Survey mapping, was realigned at that time.

### **3.10 Earlier Uncompleted Reviews of the Definitive Map**

In June 1969, the Parish Council surveyed and submitted to the County Council a schedule of additions or amendments to the Definitive Map for the Review of the Map, as required under section 33 of the National Parks and Access to the Countryside Act 1949 and section 31 of the Countryside Act 1968. The list of paths to be added to the Definitive Map included the route identified as path P as a “path in whole or in part being roads used as public footpaths”. It is described as follows:

*From: Membland Road*

*To: Junction with County Road East of Pool Mill*

*Leaves Membland Road adjacent to old stable yard follows the north boundary of that property eastward and follows a metalled road through the end of Membland Wood and between fields to Pool Mill Farm and its junction with a tarmac road continuing eastwards to its junction with a County Road at the Parish Boundary.*

In April 1978 Newton and Noss Parish Council again put forward a list of paths to be added to the Definitive Map, including this route, identified as path P and accompanied by one user evidence form

## **4. User Evidence**

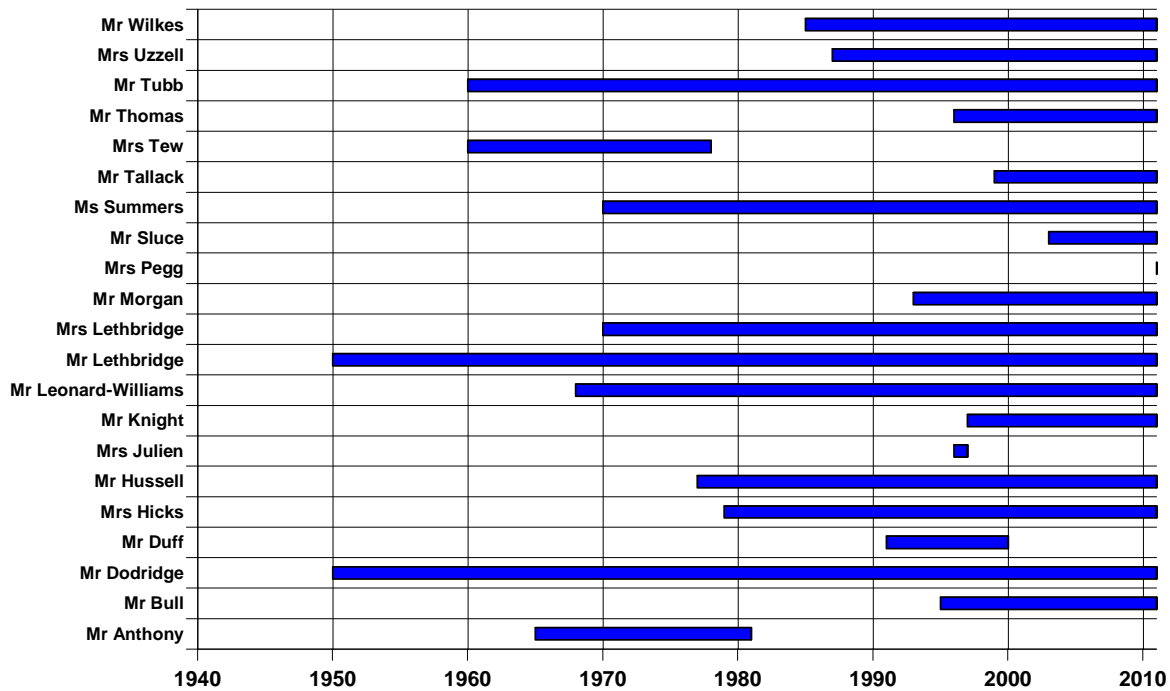
Newton and Noss Parish Council submitted 20 user evidence forms in respect of the claimed footpath. With the one form completed in 1978 there are a total of twenty one user evidence forms. The use is summarised in the chart below.

One user, Mr Dodbridge, states that he lived at Pool Mill Farm from 1950 until 1974 and therefore would have been exercising a private right at that time. His subsequent use however, as a through route, may be considered ‘as of right’. Another user, Mr Anthony, completed his form in respect of use between 1965 and 1981, when he had a property adjoining the route at the Membland end. His deeds stated that he had a private right to use the route during that time and, as such his use cannot be considered ‘as of right’.

The nineteen remaining user evidence forms demonstrate regular use of the route by the public since 1950 until 2011 when the forms were completed. Six claim to have used the route on foot only, four on foot and with a vehicle, three on bicycle only, two on foot and bicycle, one on foot, horse and bicycle, one on foot, bicycle and with a vehicle, and one with a vehicle only.

The frequency of use varies from more than twenty times a year to once a year. Where people have claimed to have used the route in more than one way, for example on foot and by bicycle, they have not specified separately the frequency of each type of use. No users had been obstructed or challenged regarding their use or had seen any signs indicating that it was not public. Many comment that the route is in regular use by the public and that they had no reason to think it was not public.

**Chart of User Evidence - Suggestion 17**



## 5. Landowner and Rebuttal Evidence

The land crossed by the route is not registered with the District Land Registry. Adjoining property owners/occupiers were therefore contacted for their evidence as part of the consultation process

Landowner Evidence Forms were received from four adjoining landowners at the Pool Mill Farm settlement.

Mr and Mrs Ulewicz have owned Bear Lodge (formerly Home Farm) for over 5 years. They do not believe the claimed route to be public but are aware of members of the public using it on foot, mostly dog walkers and mostly at weekends. They also comment that the odd horse rider or cyclist may come through once or twice a month. Mr and Mrs Ulewicz state that they have stopped youths on motorbikes speeding through and that such use has been reported to the police on several occasions for causing a nuisance and danger to young residents.

Mr and Mrs Allen have owned The Haven at Pool Mill for 22 years. They do not believe the route to be public. They state that they have seen members of the public using the route infrequently. They say that they have stopped unsuitable motor vehicles due to overhanging branches and potholes. They comment that vehicle drivers are following satellite navigation instructions with greater frequency despite the surface being unsuitable for normal cars or high-sided trucks.

Mr Sieniewicz has owned Pool Mill Barn for 16 years and considers the route to be private access only since purchasing the property. He states that he has seen members of the public using the route on foot periodically. He has also stopped people using it on motorbikes and told them it was not public.

Ms Catherine Sayers has owned the property Hillersdon for approximately 20 years. She does not believe the route to be public but has seen the occasional walkers, horseriders and cyclists using the path, otherwise only the residents of Pool Mill.

None of the landowners who responded say that they have required people to ask permission to use the route or taken any action to prevent use by the public on foot, bicycle or horseback.

## **6. Discussion**

The claim for the route to be recorded as a public footpath was not submitted as the result of any action taken by a landowner that had obstructed or prevented access to and use of the route from a specific date. There is no evidence of any actions having called into question use of the route for consideration of the user evidence under statute law. It is therefore to be examined in relation to common law, in conjunction with historical and other documentary evidence.

At common law an implication of the dedication of a public right of way may arise if there is evidence from which it can be inferred that a landowner dedicated a right of way and that the public accepted the dedication. Usage by the public over a sufficient period 'as of right', together with acquiescence of the landowner to that use may amount to evidence from which dedication can be inferred.

A through route has physically existed on the general alignment of the route since at least the late 1700s, with a minor deviation at the eastern end. The route appears to have been straightened to the current alignment in the late 1800s, most likely during the development of the Membland Hall Estate. Documents associated with the sale of the estate confirm that old roads had been diverted.

The Tithe Map of 1839-40 and subsequent documentary evidence suggests that the route has been in private ownership since at least that time. However, whilst a route may be considered private, in terms of maintenance, this does not preclude the existence of public rights of way over it. In 1865 the local Highway Board approved the construction of a bridge over the mill leat at Pool Mill and that the expense should be borne by the parishes. Then, in 1866 the Highway Board contributed to the expense of covering the leat and widening the road at Pool Mill. Later, in 1905, whilst confirming that the route was not kept in repair by the RDC, the RDC asked the owner of Membland to give his attention to the dangerous state of the road. The Highway Board or RDC, would not have been concerned with the condition of the route, or contributed to the expense of maintaining it, had they not considered it carried public rights of some sort.

In 1905, following the request referred to above, the owner asked if the roads on Membland Estate could be taken over by the RDC. Estimates were prepared for putting the roads in repair, but there is no further evidence to confirm which, if any roads were taken over at that time. Again, in 1935, the RDC were prepared to take over the claimed route provided the necessary repairs were carried out. However, it would appear that the maintenance of the route was never taken over. Parish Council and RDC minutes from 1938 and 1939 report that the County Council could not take any action to improve the route as it was considered a private road. Minutes from 1955 and 1964 also show that the route was not considered to be adopted as a 'highway repairable by the public at large'.

The documentary evidence is therefore sufficient to show that a through-route from Membland to Pool Mill has been considered a public right of way, albeit one not maintained at public expense, since at least the mid 1800s, and since the late 1880s on its current alignment. The evidence suggests that past landowners must have been aware that the

public were using the route and that they acquiesced to that use. It can therefore be inferred that the landowners dedicated the path to the public as a highway. The documentary evidence does not suggest the status of the highway although it is likely to be higher than a footpath.

Current use by the public, since at least the 1950s has been predominantly on foot and bicycle, with some use by mechanically propelled vehicles. However, the Natural Environment and Rural Communities Act 2006 (NERC) prevents use by mechanically propelled vehicles giving rise to a public right of way of any kind. The level of public use and absence of any action taken by landowners to discourage public access on foot, bicycle and horse, is also sufficient for it to be reasonably alleged that the route can be inferred to have been dedicated as a public bridleway.

## **7. Conclusion**

It is recommended therefore, that a Modification Order be made to add a bridleway to the Definitive Map between points S1 – T1 on drawing number EEC/PROW/11/49, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.

### **Suggestion 20: Addition of a public footpath from Footpath No. 7 across Pope's Quay**

Addition of a public footpath from Footpath No. 7 below the Swan Inn, across Pope's Quay to steps at the western end onto the foreshore, as shown between points L1 – M1 on drawing number EEC/PROW/11/43.

**Recommendation: It is recommended that no Order be made.**

## **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. It is identified as Parish Path S – Pope's Quay.

## **2. Description of the Route**

The claimed route starts at point L1, as shown on drawing number EEC/PROW/11/43, opposite The Swan Inn on steps recorded as Footpath No. 7. It proceeds generally southwestwards then westwards across Pope's Quay to steps at the western end to the foreshore at point M1. It is approximately 25 metres in length. Two seats and a flag pole are placed in the middle of the quay. A sign on the quay wall states that there is a mooring limit alongside the quay of 2 hours, longer periods by arrangement with the Harbourmaster only.

## **3. Documentary Evidence**

### **3.1 Ordnance Survey Mapping**

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years.

The 1<sup>st</sup> Edition 25" OS map, published 1895, shows a structure in the location of Pope's Quay identified as a slipway.



The 2<sup>nd</sup> Edition 25", published 1904-06, and 1:2500 A Edition post-war OS mapping, published 1952, shows the quay marked as such.

### **3.2 Newton and Noss Parish Council Minutes**

The first reference to Pope's Quay is in November 1953. It was referred to as an old quay, covered at each tide and in a somewhat dangerous condition to boats coming alongside.

In February 1973, regarding quay below Swan Inn minutes refer to a letter from a parishioner regarding a decision to tidy debris. It was resolved that the District Council be asked to merely tidy the area and place any loose debris on the structure. At the subsequent meeting it was reported that the previous District Council decision was to be referred back to the Harbour Committee for further consideration. At the same meeting parishioners gave the District Councils proposals further consideration. It was reported as a derelict landing stage, and suggested that a small landing stage be provided. It was resolved that a site meeting should be held to discuss in more detail.

In October 1977, with reference to Noss Quay, it was reported that plans had been submitted and the District Council would calculate cost. At the following meeting, a definite costing was still awaited but that the Parish Council would obtain a private estimate.

In February 1978 it was reported that the District Council had approved the construction of Noss Quay as a village project. Plans were approved at the following meeting and it was resolved that planning permission be sought from the District Council.

In September 1978 it was reported that the planning application was to be considered by SHDC. The Council resolved to investigate if RDC may have been in default for not keeping original quay in good repair.

In February 1979 it was reported that a sub-committee had been formed to oversee the construction of the quay and work would commence soon. Grant of £500 promised from District Council with a Parish Council grant of £2,500. Gifts of stone for infilling promised and collections and subscriptions for the cost of the work would be put in hand.

On 22 March 1979 it was reported that work was due to start the following week. It was also stated that the correct name of the quay was Pope's Quay. In April it was reported that work was under way. The working party was thanked for their efforts.

In July 1979 it was reported that work was still proceeding and that the quay had been christened. It was noted that work so far had been financed by the Parish Council and donations.

In May 1983 it was agreed that the quay belonged to the Harbour Authority. Subsequent minutes in 1983 refer to cleaning of the quay, which would be paid for by the Harbour Authority.

In July 1986 it was reported that restrictions had been set by the RYHA on the use of Pope's Quay by Swan Inn, and the Council requested that if the Inn or other persons used the quay could the RYHA insist on written permission to ensure it is kept as a public amenity. The September minutes reported that the Authority now insisted that any private use of the quay must have their permission.

Minutes of May 1987 and November 1991 reported that the surface of the quay required attention and that it would be concreted.

In January 1992 it was resolved that ownership of Pope's Quay would be considered at the next meeting. In the meantime the Parish Council would arrange insurance.

In March 1992 it was stated that all quays built prior to 1928 were exempt from rent, therefore none paid to the Crown Commissioners. At the subsequent meeting it was reported that the premium paid by RYHA for third party cover was £100. Registering the quay as common land would be considered. The RYHA requested the Parish Council's views on legal ownership.

In July 1992, it was reported that the RYHA had no record of any rent being claimed by the Crown Commissioners for the quay. Early photos verified the quay's existence before 1928. It was agreed that a check would be made as to whether any dues had been paid to a private owner. The possibility of registering the quay as common land would also be investigated.

In September 1992 registration of the quay as common land was discussed and described as very complex. It had been suggested that the Parish Council could claim ownership under adverse possession, i.e. parishioners had to have enjoyed uninterrupted use for 12-15 years, but that the Parish Council should seek legal advice.

In January 1993 it was resolved that a letter be sent to the RYHA confirming the Parish Council's ownership of quay and the wish that the RYHA continue to insure as necessary and collect/retain harbour dues.

In October 1996 disturbances caused by youths were discussed. An overall improvement was reported and that under 18s were banned from Swan Inn facilities. There was however still some concern over use of Pope's Quay. It was agreed that little could be done to prevent youths congregating unless a disturbance was caused.

In October 1998 there was discussion about placing second seat on Pope's Quay. Concern was expressed that it would detract from the appearance of the quay, encourage more noise on a summer evening and cause an obstruction when crowded at regatta times.

In December 2002 it was resolved that a letter be sent to RYHA to record continuance of agreement made in 1993 that the RYHA insure the quay and retain harbour dues.

In January 2004 it was reported that Pope's Quay required maintenance. It was resolved to confirm the extent of work the RYHA might finance.

In January 2006 the Harbour Master requested that the Parish Council take sole responsibility of Pope's Quay. It was resolved at the February meeting that the Parish Council would take full responsibility for the maintenance and insurance but would share regular cleaning and insurance cost with the Harbour Authority on a 50:50 basis.

More recent minutes show that the Parish Council has continued to maintain the quay.

In December 2008 the Parish Council it was resolved to ask the RYHA to consider a mooring limit at Pope's Quay in the interests of residents who use the quay, for crabbing, swimming etc. The April 2009 minutes report a letter from the RYHA agreeing not to contribute to maintenance of Pope's Quay and that a sign would be erected restricting mooring time.

In September 2009 the Parish Council had no objection to the quay being used for a wedding blessing but that attention be drawn to the fact that the quay was a public place and could not be closed.

**3.3 Plympton St Mary RDC Minutes**

At a meeting of the Harbour Committee in October 1954 it was recommended that the Engineer be instructed to submit a report to the next meeting regarding the restoration or improvement of a derelict quay, known as Pope’s Quay, Noss Mayo. At the December meeting it was recommended that no action be taken in the matter.

**3.4 River Yealm Harbour Authority Minutes**

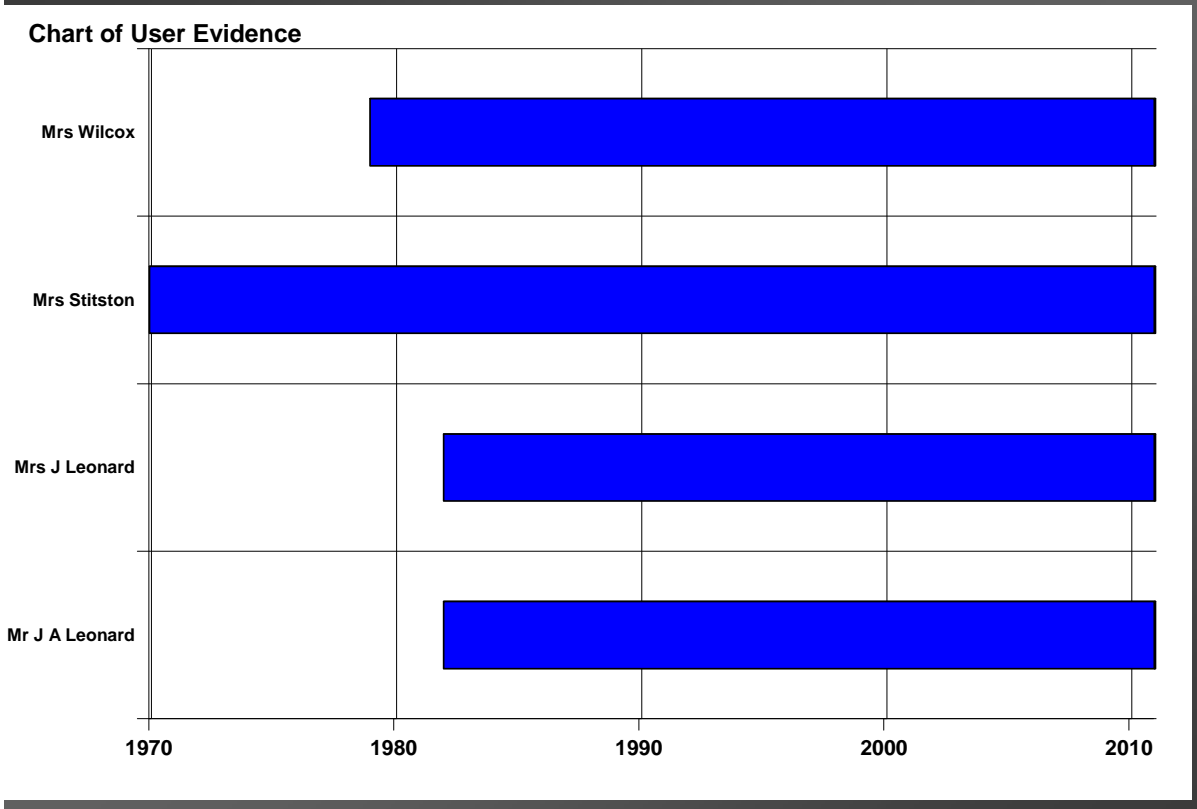
In February 2003 the ownership and insurance of Pope’s Quay was discussed. It was considered uncertain and needed to be established. One member commented that it was built by the village. Another added that if it was under the curtilage of the lease and the Authority derives income from it the logical solution would be for the Parish Council to acknowledge the same. It was resolved to inform the insurance company.

July 2003 minutes confirm that responsibility of Pope’s Quay had been added to Newton and Noss parish Council’s block insurance with the RYHA paying the small additional premium.

A copy of a letter from the Parish Council to the RYHA confirmed the Parish Council’s ownership of the quay and responsibility for inspections and maintenance etc. It also confirmed that routine cleaning and insurance would be shared 50:50 and that future maintenance would be discussed with the RYHA as the need arises.

**4. User Evidence**

Newton and Noss Parish Council submitted seven user evidence forms in support of their claim. Three forms however related to use of the steps leading to the quay (an existing public footpath) rather than a specific route across the quay. The use by the remaining four users who completed forms is summarised in the chart below.



The forms demonstrate use since the 1970s to the present on foot, for reasons such as access to the foreshore to boats, or for dog walking. All comment that the quay was built by the parish and consider it to be public. One user comments that it is widely used by the public, for regatta events, wedding receptions, as well as access and general recreational purposes.

## **5. Landowner Evidence**

The freehold of the quay is registered with the District Land Registry in the ownership of the Crown. The Crown Estates Commissioners were contacted for their views/evidence during the informal consultation process. No response has been received.

The current structure was however built by the parish in 1979, after the original landing stage was reported as derelict. Newton and Noss Parish Council have since assumed ownership and responsibility for the quay, with the assistance of the relevant harbour authorities. They completed a Landowner Evidence Form to the effect that ownership was unknown.

Land adjacent to Footpath No. 7 and the quay belongs to the Swan Inn, registered with the District Land Registry to Punch Partnerships. No response was received from the company. The landlord of the Swan Inn completed a Landowner Evidence form and confirmed very regular public use, but this would appear to relate to Footpath No. 7.

## **6. Rebuttal Evidence**

No rebuttal evidence has been received.

## **7. Discussion**

The claim for the route to be recorded as a public footpath was not submitted as the result of any action taken by a landowner that had obstructed or prevented access to and use of the route from a specific date. There is no evidence of any actions having called into question use of the route for consideration of the user evidence under statute law. It is therefore to be examined in relation to common law, in conjunction with historical and other documentary evidence.

A quay or landing stage has physically existed on the site since at least the late 1800s. It was not included in the 1933 Act and was clearly in a poor state of repair by the 1950s. In the 1970s the Parish Council undertook to rebuild the quay with contributions from the District Council and local donations or subscriptions. The Parish Council has continued to maintain the quay and take full responsibility for it. The quay is considered a public amenity, used for access to the foreshore, either via the steps or slipways to either side, but also for general recreational purposes at all times.

There is no defined route across the quay, and in fact anyone wishing to walk directly across the quay to the steps would need to negotiate the public seats in the centre. Use of the quay would appear to be more consistent with a public open space, rather than a highway to pass and re-pass. The Parish Council considered registering the quay as a common, which also more accurately reflects how the quay is regarded locally.

Therefore given the wider public use and character of the quay it cannot be inferred that a public right of way has been dedicated over it. Public access to the quay is however assured by Footpath No. 7, which extends over the whole width of the steps adjoining the quay and gives access onto the quay.

## **8. Conclusion**

It is therefore recommended that no order be made.

### **Suggestion 21: Addition of a public footpath through Butt's Park Play Park.**

The addition of a public footpath from the Newton Downs road, near the water tower, through Butts Park play park to the playing field then to rejoin the Newton Downs road, as shown between points W1 – X1 – Y1 on drawing number EEC/PROW/11/51.

#### **Recommendation:**

### **1. Background**

The route has been put forward by Newton and Noss Parish Council for addition to the Definitive Map and Statement. It is one of a number of routes in the parish which are considered to be unrecorded public rights of way and which are publicised in the parish footpath guide as non-definitive paths. It is identified as Parish Path U – Butts Park.

### **2 Description**

The claimed route starts at point W1 on the Newton Downs road, near The Butts water tower, and proceeds east north eastwards past garages, turning northeastwards and across Butts Park play park to point X1 at an entrance in the hedge to playing fields. The path continues northwestwards along a narrow path on the western side of the hedge, turning southwestwards the rejoin the Newton Downs road at Y1. The path is approximately 290 metres in length.

### **3. Documentary Evidence**

#### **3.1 Ordnance Survey Maps**

Only part of the Butts Park housing development is shown on the Post War A Edition 1:2,500 mapping, published 1951. The playing field or play park is not shown, nor is there any defined route on the claimed line.

#### **3.2 Newton and Noss Parish Council Minutes**

In October and November 1974, regarding footpath at Butts Park, the clerk promised to investigate whether this path had been recognised by the County Council on the Definitive Map.

In January 1975, the clerk stated that he had taken the matter up with the County Council but it did not appear that a public right of way had been established, although a letter had been sent some years previously. It was clarified that the accesses in question were on District Council land and it would only be necessary to ask that Council to clearly identify the paths concerned. It was resolved that the District Council be asked to erect suitable signs at each access.

The minutes of February 1975 report on access at Butts Park and problems with vehicles obstructing pedestrian access. They do not clarify where.

In September 1986 it was reported that a concrete path had been laid at Butts Park recreation ground and six seats placed in the area. It was agreed that Newton Works

Committee would view it, and that a letter be sent stating that the concrete path was dangerous amongst other complaints about the project. Minutes of December 1986 also refer to play equipment at Butts Park.

In October 1991 it was reported that the path to the playing fields was overgrown and the surface in poor condition.

In April 1996 it was suggested that the footpath across the car park should be added to the definitive map. It was also noted that the fencing had deteriorated and problems were attributed to ball games.

In October 2002 it was reported that Path U was currently closed during nearby construction works and that this would need to be checked on completion.

### **3.3 Earlier Uncompleted Reviews of the Definitive Map**

In June 1969, the Parish Council surveyed and submitted to the County Council a schedule of additions or amendments to the Definitive Map for the Review of the Map, as required under section 33 of the National Parks and Access to the Countryside Act 1949 and section 31 of the Countryside Act 1968. The list of paths to be added to the Definitive Map included parts of the claimed route, identified as two individual paths, T and U, leading to the play park, but not through it.

#### *Path T*

*From: Newton Down Road*

*To: Playing Field at Butts Park*

*Leading from unclassified road known as Newton Down Road due east over concrete aprons to the twelve TDC Garages to a nine feet wide semi metalled path for a distance of 45 yards to entrance of triangular piece of land between housing estate allocated by RDC as Playground.*

#### *Path U.*

*From: Newton Down Road*

*To: Playing Field at Butts Park*

*Leaving Newton Down Road at north eastern extremity of Council Houses by unmade footpath 9 feet wide running south east approximately 78 yards to entrance RDC playground.*

In April 1978 Newton and Noss Parish Council again put forward a list of paths to be added to the Definitive Map, including the routes identified as T and U, with one user evidence form in respect of path T, leading from point X1 to the play park.

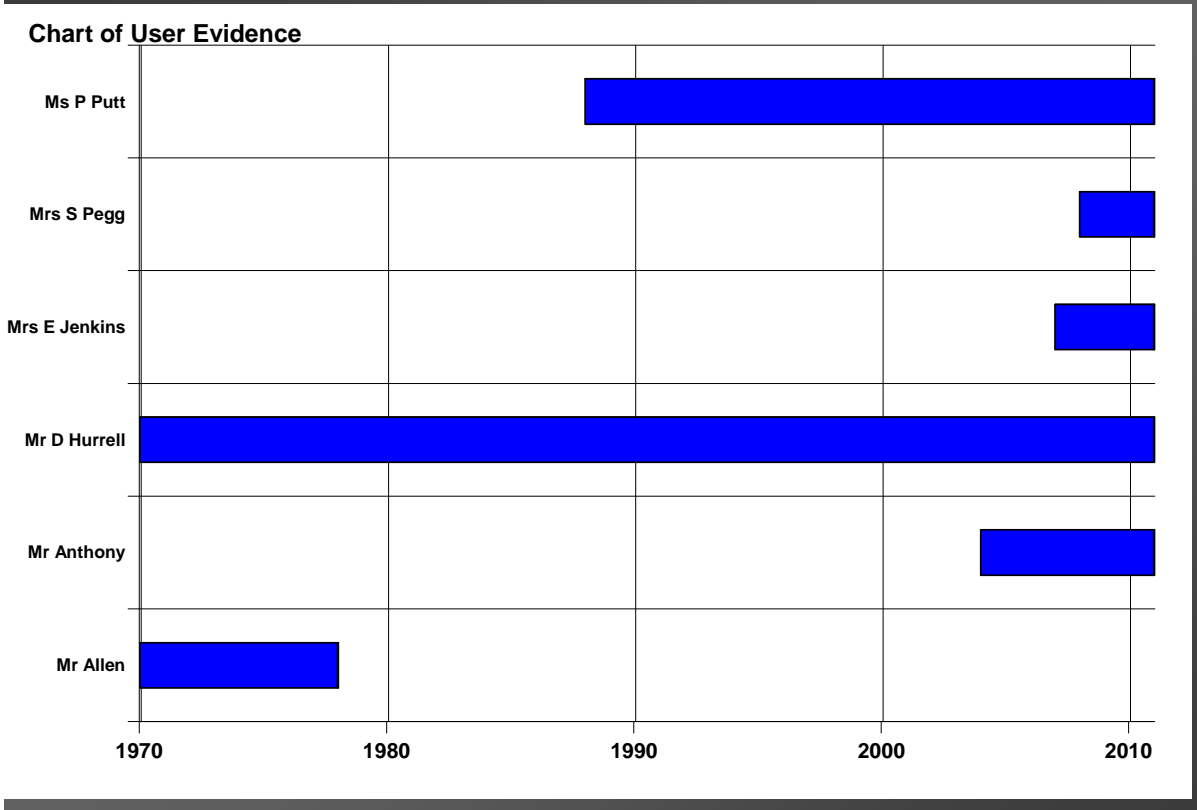
## **4. User Evidence**

Newton and Noss Parish Council submitted six user evidence forms in support of their application. It wasn't clear from the forms where people had walked therefore users were contacted and asked to complete maps showing the route they had used. One user had not used the claimed route, showing use of an existing public footpath. The remaining evidence of use by six people, including the one form in respect of part of the route completed in 1978, is summarised in the chart below.

The earliest use claimed is by Mr Allen who completed a user evidence form in 1978 in respect of the section from point X1 to the playing fields. He stated that he had used the route since 1966. One person has used the claimed route since 1970, one from the late 1980s and the remaining three in respect of use in the last three to seven years. Two of

these users live at Butts Park and it may therefore be implied that they have, or have had, a private right over part of the route.

The route is used to access the playground and playing fields and also as part of a longer walk for pleasure. A couple of users refer to a gate into the playground but that it is not locked. None of the users report seeing a sign on the route, or having been stopped from using it.



**5. Landowner and Rebuttal Evidence**

The playground and part of the path between points X1 – Y1 is owned by SHDC and registered under title number DN402718. The land was acquired for housing by Plympton St Mary RDC in 1949. The Council has not completed a Landowner Evidence Form but did respond to the consultation by email. The Council considered that there was sufficient right of access through Butts Park and the Playing Field, identified in the Local Development Framework as public open space, without it being formally recorded as a footpath.

From point W1 to the entrance to the playground, and for approximately 20 metres from point Y1, the land crossed by the route is owned by Tor Homes, having been transferred from SHDC in 1999. The land is registered with the District Land Registry under title number DN411610. Tor Homes completed a Landowner Evidence Form in respect of the land in their ownership. They consider there to be a public right of way on foot to the public park and sports ground and have regularly seen members of the public using the route. They have marked a gate at the entrance from the garages to the playground and a chicane at the entrance to the playing field at point X1. Neither of which has been locked.

## **6. Discussion**

The claim for the route to be recorded as a public footpath was not submitted as the result of any action taken by a landowner that had obstructed or prevented access to and use of the route from a specific date. There is no evidence of any actions having called into question use of the route for consideration of the user evidence under statute law. It is therefore to be examined in relation to common law, in conjunction with historical and other documentary evidence.

At common law an implication of the dedication of a public right of way may arise if there is evidence from which it can be inferred that a landowner dedicated a right of way and that the public accepted the dedication. Usage by the public over a sufficient period 'as of right', together with acquiescence of the landowner to that use may amount to evidence from which dedication can be inferred.

User evidence for the claimed route is limited. However, the play park is clearly well used by residents and the wider public for general recreational purposes, as well as for access to the adjoining playing field. Such use, for the purposes for which the play park has been held by the District Council for many years, may be considered to be by implied permission, rather than as of right, and does not amount to evidence from which dedication can be inferred.

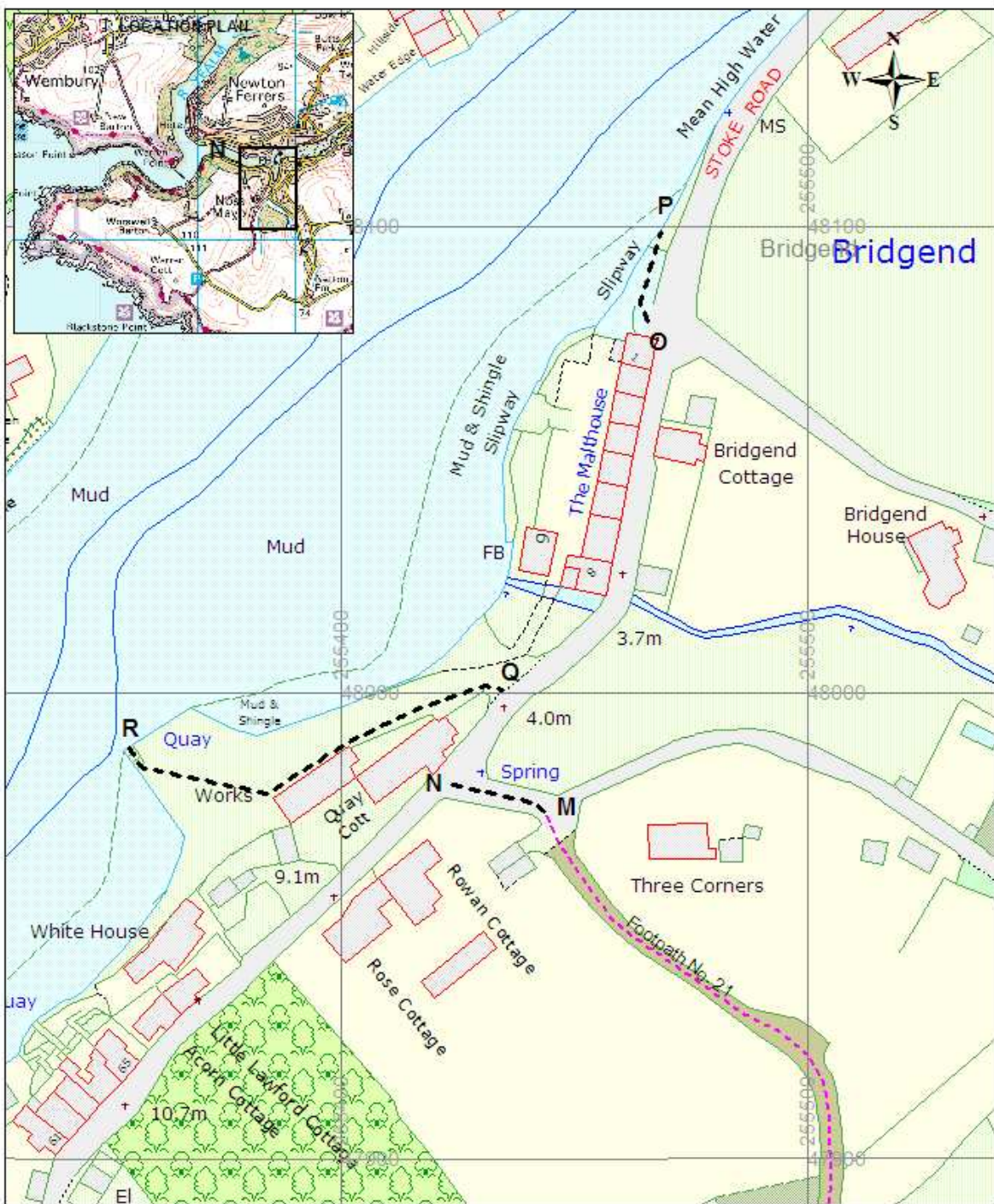
Further, following the transfer of housing to Tor Homes in 1999 the District Council retained a right, for the Council and its successors in title, to pass and repass over and along the roads, footways and accessways, which were not publicly adopted or part of an individual dwelling, for all reasonable purposes connected with the use and enjoyment of the retained land, i.e. the play park. Had the Council intended to dedicate a public right of way there would have been no reason for rights of access to the play park to be included in the transfer.

It is understood that SHDC is in the process of transferring the play park to the Parish Council and therefore existing rights of access will also be transferred.

## **7. Conclusion**

It is therefore recommended that no order be made.





map ref **SX 5548**

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**DEFINITIVE MAP REVIEW:  
PARISH OF NEWTON & NOOS  
SUGGESTION 3: AMENDMENT OF FOOTPATH NO. 21  
& SUGGESTIONS 7 & 15: FOOTPATH ADDITIONS**

drawing number **EEC/PROW/11/44**

date **April 2011**

scale **1:1250**

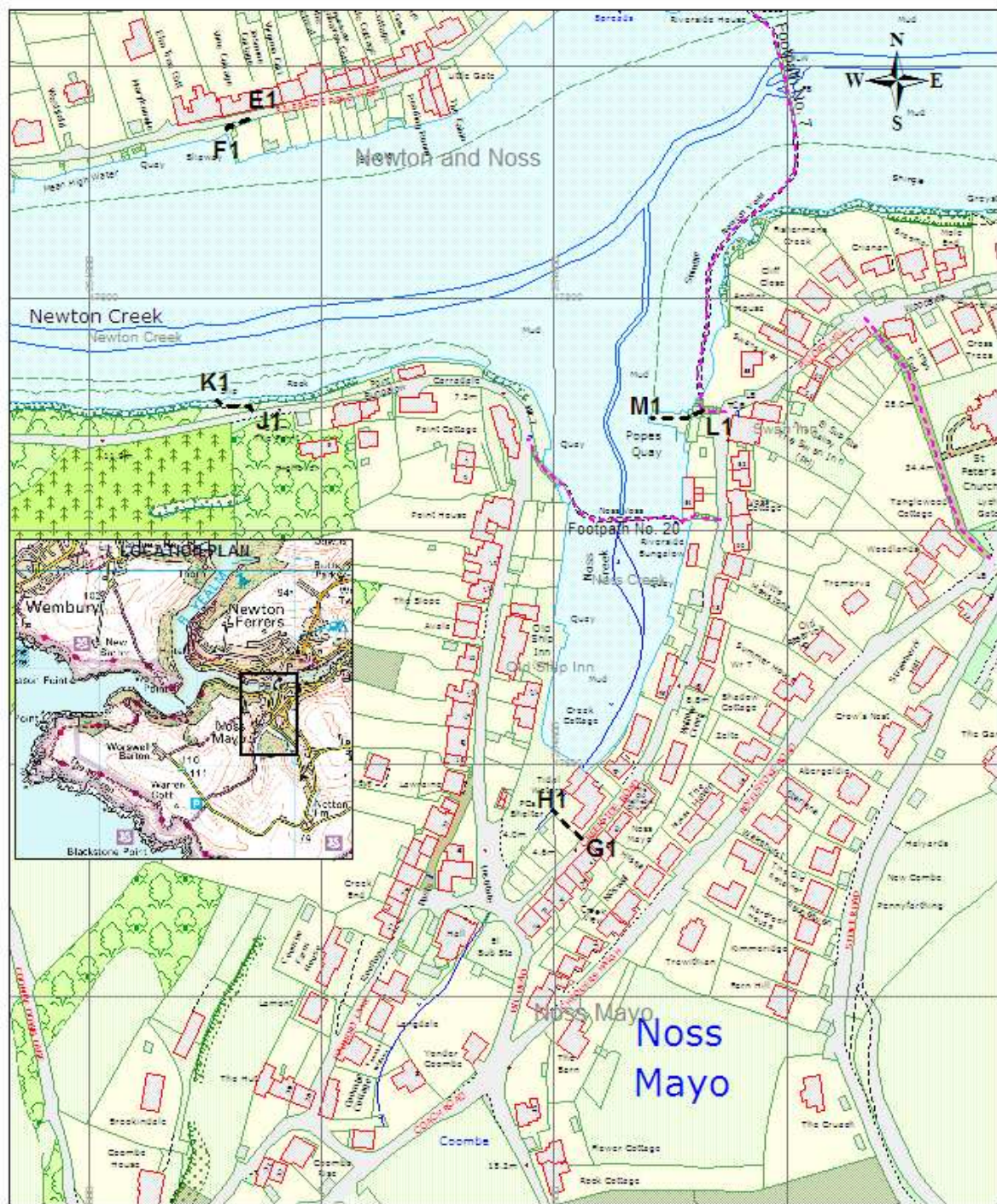
drawn by **HFC**

Notation		Existing footpaths		To be added	
Suggestion 3:	M - N	-----	(approx 22 m)	-----	(approx 22 m)
Suggestion 7:	O - P	-----	(approx 20 m)	-----	(approx 20 m)
Suggestion 15:	Q - R	-----	(approx 88 m)	-----	(approx 88 m)

**Ian Harrison**

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map ref **SX 5447**

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**DEFINITIVE MAP REVIEW:  
PARISH OF NEWTON & NOSS**  
**SUGGESTIONS 8, 9, 10 & 20: FOOTPATH ADDITIONS**

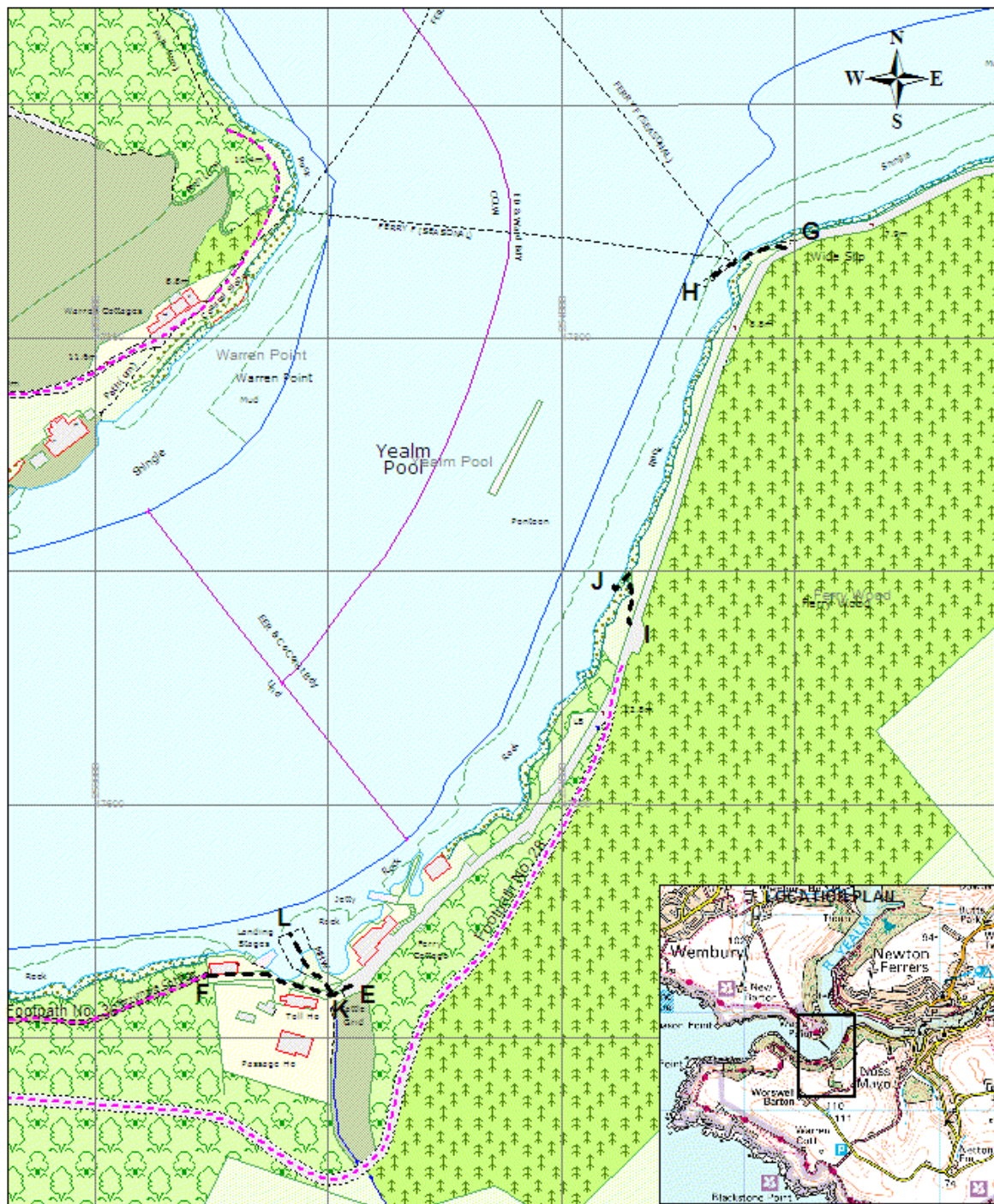
drawing number **EEC/PROW/11/43**  
date **April 2011**  
scale **1:2500**  
drawn by **HFC**

Notation	
Existing footpaths	-----
To be added	
Suggestion 8: E1 - F1	----- (approx 12 m)
Suggestion 9: G1 - H1	----- (approx 17 m)
Suggestion 10: J1 - K1	----- (approx 18 m)
Suggestion 20: L1 - M1	----- (approx 24 m)

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map ref **SX 5347 - 5447**

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**DEFINITIVE MAP REVIEW:  
PARISH OF NEWTON & NOSS  
SUGGESTION 2: AMENDMENT OF FOOTPATH NO. 36  
& SUGGESTIONS 11, 12 & 13: FOOTPATH ADDITIONS**

drawing number EEC/PROW/11/42  
date April 2011  
scale 1:2500  
drawn by HFC

Notation	
Existing footpaths	-----
<u>To be added</u>	
Suggestion 2: E - F	----- (approx 65 m)
Suggestion 11: G - H	----- (approx 40 m)
Suggestion 12: I - J	----- (approx 35 m)
Suggestion 13: K - L	----- (approx 31 m)

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**DEFINITIVE MAP REVIEW:  
PARISH OF NEWTON & NOSS  
SUGGESTION 16: FOOTPATH ADDITION**

drawing number EEC/PROW/11/48

date April 2011

scale 1:1250

drawn by HFC

Notation

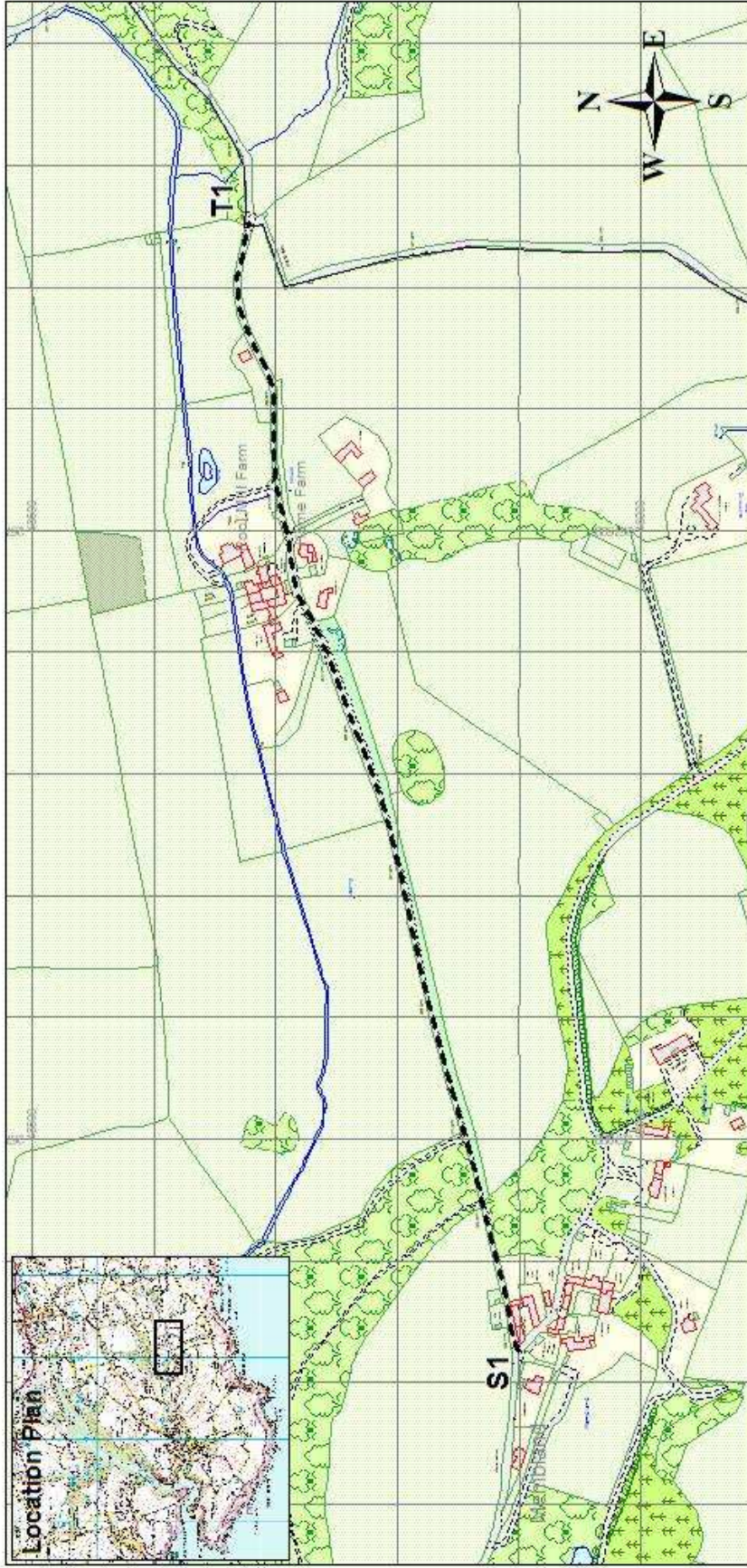
Existing footpaths

To be added

Suggestion 16: Q1 - R1 (approx 35 m)



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map ref. **SX 5648 - 5748**

**DEFINITIVE MAP REVIEW: PARISH OF NEWTON & NOSS  
SUGGESTION 17: FOOTPATH ADDITION**

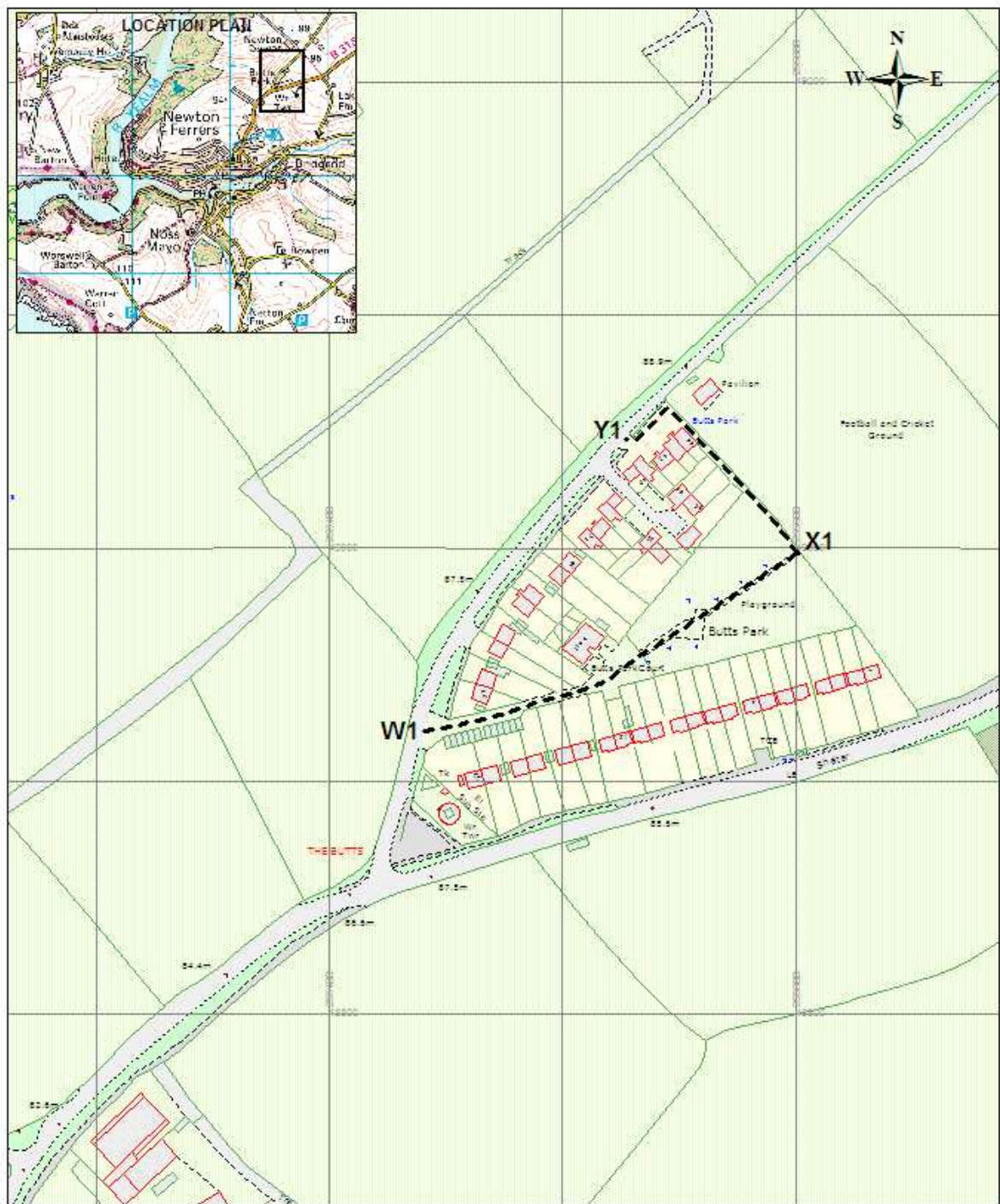
drawing number **EEC/PROW/11/49**  
 date **April 2011**  
 scale **1:5000**  
 drawn by **HFC**

Notation

Existing footpaths    - - - - -

To be added

Suggestion 17:    S1 - T1    - - - - -    (approx 965 m)



map ref **SX 5548 - 5549**

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**DEFINITIVE MAP REVIEW:  
PARISH OF NEWTON & NOSS  
SUGGESTION 21: FOOTPATH ADDITION**

drawing number EEC/PROW/11/51

date April 2011

scale 1:2500

drawn by HFC

Notation

Existing footpaths - - - - -

To be added

Suggestion 21: W1 - X1 - Y1 - - - - - (approx 287 m)

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