

Definitive Map Review 2012–13: Parish of Sidmouth – Part 1

Report of the Head of Highways, Capital Development and Waste

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

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 3, Schedule 14 applications for claimed addition of footpaths in the grounds of Knowle, Sidmouth, between points E–F–G–H–J, G–K–L–M–N, H–O and F–M shown on drawing number HTM/PROW/13/29.

1. Summary

The report examines two applications under Schedule 14 of the Wildlife and Countryside Act 1981 for the addition of claimed footpaths in the grounds of Knowle, the office headquarters of East Devon District Council in Sidmouth. The applications have been investigated ahead of a wider public consultation on the overall Definitive Map Review process for the town of Sidmouth with its surrounding former Urban District Council area considered as a parish.

2. Introduction – Background and Consultations

An application to record claimed public rights of way on footpath routes crossing the grounds of Knowle was submitted in May 2012. The application was made in advance of a public meeting to open the parish-by-parish Definitive Map Review process for the whole of Sidmouth parish that was held in September 2012. After that meeting, a second application was submitted in October 2012 to record a further claimed route between the office buildings at Knowle as a public footpath.

The applications appear to have been made following campaigns resulting from public consultations by East Devon District Council on its revised Local Plan, which included proposals relating to the Knowle site that needed planning permission for its development. They were considered a threat to public use of the paths and access to parkland in the grounds. A separate application was also made to record the grounds and parkland as a Town and Village Green under Section 15 of the Commons Act 2006.

A public consultation specifically on the two applications for public rights of way was carried out in March 2013 and advertised in the local press. It was undertaken in advance of wider general consultations in respect of proposals relating to several other routes as part of the overall review process for the whole parish. Responses to the consultations were as follows:

County Councillor Stuart Hughes	- no comment
East Devon District Council	- responded with evidence of landownership rebutting the claim
Sidmouth Town Council	- responded in support of the claims
Country Land and Business Association	- no comment
National Farmers' Union	- no comment
Devon Green Lanes Group	- no comment
British Horse Society	- no comment
Ramblers'	- responded in support of the addition for all the claimed routes.

3. Conclusion

The recommendation is that no Modification Order be made in respect of both applications for the addition of claimed public footpaths in respect of Proposal 3, as the user evidence submitted and historical evidence discovered are considered insufficient. Details concerning the recommendation are discussed in the Appendix to this report.

The proposals relating to other routes elsewhere in the parish of Sidmouth will be investigated for subsequent reports to the committee, after a further general consultation as part of the wider overall review process for the whole parish has taken place.

4. Financial Considerations

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

5. Sustainability Considerations

There are no implications.

6. Carbon Impact Considerations

There are no implications.

7. Equality Considerations

There are no considerations.

8. Legal Considerations

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

9. Risk Management Consideration

There are no implications.

10. Public Health Impact

Amendments to the Definitive Map will contribute to the County Council's Health and Well Being Agenda.

11. Options/Alternatives

The County Council has a statutory duty to undertake a review of the Definitive Map and Statement under the Wildlife & Countryside Act 1981 and is undertaking this duty through the parish-by-parish review across the county.

12. Reasons for Recommendation/Alternative Options Considered

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

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Electoral Division: Sidmouth Sidford

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file	2012 onward	NSC/DMR SIDMOUTH

ns240513pra
sc/cr/dmr Sidmouth
03 060613

Background to the Proposal

Basis of Claims

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

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

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

The 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 Schedule 14 of the Act.

Section 69 of the Natural Environment and Rural Communities (NERC) Act 2006 amended the Highways Act 1980, to clarify that a Schedule 14 application for a Definitive Map Modification Order is, of itself, sufficient to bring a right of way into question for the purposes of Section 31(2) of the Highways Act 1980, from the date that it was made.

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

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

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

Proposal 3, Schedule 14 applications for the addition of claimed footpaths in the grounds of Knowle, Sidmouth, between points E–F–G–H–J; G–K–L–M–N; H–O; F–M shown on drawing number HTM/PROW/13/29.

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 3, the applications to record claimed footpaths in the grounds of Knowle, Sidmouth on the Definitive Map, as the evidence is insufficient.

1.1 Background to the applications and description of the routes

In May 2012, a Schedule 14 application was submitted to record several footpath routes between points E–F–G–H–J, G–K–L–M–N, and H–O crossing the grounds and parkland at Knowle as claimed public rights of way. It followed a query in April about the procedures involved for the process of applying. The application was accompanied by 44 completed user evidence forms and four more completed evidence forms in support of the application were received later, in June and August. A second application to record a connecting route running between the office buildings as a claimed public right of way from points F–M and continuing to point N was submitted in October 2012, with one completed user evidence form in support. An additional 18 evidence forms were submitted in April 2013 relating to the second application, some of which had been completed by people who had filled in forms to support the first application. One additional form relating to several of the claimed routes was also received later.

The applications were made by local residents of the Knowle area in response to public consultations by East Devon District Council on the revision of its Local Plan, in connection with proposals for the Knowle buildings and grounds. The revised Local Plan included proposals for development on the Knowle site with outline planning permission for housing development as part of the Council's wider plans to consider selling the site and relocate the office headquarters to Honiton. The District Council's application for outline planning permission was made in August 2012.

The planning permission was for demolition of some existing office buildings and the construction of 50 houses with a residential care home on parts of the site, but proposing to retain most of the open parkland in the grounds with provisions for public access and some footpaths. Following consultations, the application for outline planning permission was rejected by the District Council's Development Management Committee in March 2013, resulting in the plans for the Knowle site and proposed relocation of the Council's headquarters being reconsidered.

The main claimed footpath runs from the north entrance to Knowle on Station Road, point E on the attached map, following the marked pedestrian lane along the side of the vehicular driveway leading past carparks to the main entrance for the office buildings, point F. It continues on the driveway between the buildings and carparking areas onto a wide tarmac path, descending steps down terraces behind the buildings and through the landscaped parkland passing points G and H to a southern pedestrian entrance from Knowle Drive, at point J.

Other claimed path routes branch off to either side, from points G and H. From point G, a tarmac path runs around the western side of the terracing and splits at point K to continue across grass and along a path onto a terrace alongside the building to point L. It passes between buildings at that end to point M and follows the vehicular access driveway at the rear of the offices onto Knowle Drive further north, to point N. Another claimed route starting from point H, with no visible path marked or visible in the grass, runs through trees and across the parkland to a gate in the boundary wall and fence further south on Station Road, point O. The claimed route between the office buildings for the second application starts from in front of the main entrance, point F, running through a passageway between the

buildings into a courtyard behind the offices and onto the vehicular access to the rear of the buildings at point M to point N on Knowle Drive

There are notices indicating no intention by East Devon District Council as landowners to dedicate public rights of way under the "Right of Way Act 1932" at points E, J, O and N, which were reported to have been put up in May 2012. Older notices with restrictions on activities for public use of the parkland and referring to byelaws relating to pleasure grounds are at several public access points, including on the claimed route near the gate at point O.

1.2 History and early historical maps

There is no indication that any routes on the lines of those claimed are shown on historical maps at smaller scales from the earlier 19th century, which are at too small a scale to show such a level of detail. Those include the Ordnance Survey surveyors' drawings of 1806-7 at 3"/mile and the original 1st edition 1"/mile map on which they were based, originally published in 1809 and the later Greenwood's map of 1827 based mainly on the Ordnance Survey map.

Knowle Cottage and grounds

The original house at Knowle is described in historical accounts of Sidmouth as a "marine villa", said to have been typical of the kind of building that created modern Sidmouth, although more opulent than most. Its "cottage ornée" style was a result of the picturesque movement of the late 18th and early 19th century, usually referring to smallish houses, built in a somewhat artificial rustic manner and characterised by thatch with much use of timber features.

Knowle Cottage was said to have been one of the most famous houses in Sidmouth, built in 1805 under the personal supervision of Thomas Stapleton, 6th Lord Le Despencer, who sold it in 1811. It was a thatched building of about 40 rooms with a suite of drawing-rooms nearly 100 ft. long, set in ten acres of ornamental grounds

A description of Sidmouth published in 1816 reported that:

"On a beautiful eminence ... a few years ago, Lord Le Despenser erected a *Marine Villa*. It is a large thatched building, forming nearly a quadrangle. It contains about forty rooms, many of which are large, and fitted up in a style of simple elegance. His Lordship sold this fanciful mansion before it was completed. Being offered as a lodging-house, it was hired by the late Marquis of Bute. Subsequently, it was purchased by Wm. Fauquier, Esq. whose property it still remains. The view from it is extremely rich and picturesque."

From 1836 Knowle Cottage was owned by the collector and connoisseur Thomas Leversage Fish, who added picturesque improvements. In 1850 it was described as:

"the delightful Marine Villa ... an elegant and tasteful residence surrounded by about 11 acres of ground, divided into lawns, gardens, and conservatories, containing rare and choice specimens of botany, as well as many fine specimens of foreign birds and animals."

He was said to have created great interest by making it a show place for over 40 years with the many exotic plants, birds and animals in its grounds and deer park.

"A New Guide to Knowle Cottage, the Villa of T. L. Fish, Esq. Sidmouth" published in 1840 gave details for visitors, with directions:

"A Guide to the Marine Villa of T. L. Fish, Esq.

THE following unpretending pages are compiled, and profess to be simply for the use of visitors, "*a Guide to Knowle Cottage*". The excessive liberality of T. L. Fish Esq. is universally acknowledged, by his weekly permission for the public to view the superb collection within, and without its walls; and the annually increasing number of persons who resort to Sidmouth, during his residence in the Summer, (from July to October,)

is the most incontestable proof of the benefits derived by, and the obligation due from its inhabitants.

THE hours of admission are from two till four o'clock, and it is particularly requested that no person will remain upon any part of the premises later than half an hour after."

There is also an indication that access was even more restricted and it was open at those times only "on every fine Monday in Autumn", rather than between July and October. Those accounts suggest that as long ago as the middle of the 19th century there was access for the public to visit the cottage and its grounds, although it was only on a permissive basis and was strictly limited.

The larger scale Tithe Map of 1839 shows the layout of the adjoining land in relation to the building at that time. It was included as "House and Grounds" in the details of "Cottages &c." but without naming it specifically or who owned and occupied it. Fields to the north and west of the cottage were described as Pasture, either owned and occupied by Thomas Leversedge Fish or occupied by him and owned by John Carslake.

Land adjoining the cottage and grounds was described as Lawn and Pasture or Lawn that was formerly Pasture and Shrubbery or Orchard, also in his ownership and occupation. A driveway is shown giving access to the cottage from the north, now on the line of the public road Knowle Drive from Broadway running around the western side of the grounds. A second driveway is shown giving access to the grounds and the cottage from the road on the east, now Station Road, where there are still tall stone gate posts in the surrounding fence with a large gate.

Beyond the grounds and drive on the south, there was another property also described as a "House and Grounds" with adjoining Garden and Lawn or Pasture identified as being owned by Henry Carew. Other land to the south and west was shown to be mainly divided into smaller gardens and orchards. There was a driveway giving access to that house from the road, now partly on the line of Knowle Drive between stone gateposts at the entrance from Station Road. No other tracks or paths are shown elsewhere on the lines of the claimed paths.

1.3 Later history, historical maps and aerial photography

Knowle Cottage remained as a private residence during the 19th century with several other subsequent owners, who added to the house as well as extending and laying out the grounds and also having the lodges built at the entrances of the driveways to the north and south. The grounds were said to have been over-planted when the estate was put up for sale in 1880 and bought by the Knowle Hotel and Baths Company, who opened it as the Knowle Hotel in August 1882. That was several years after the railway had reached Sidmouth in 1874, with a branch line from Sidmouth Junction at Feniton on the London and South Western Railway.

Later larger scale maps, particularly the plans with the sale particulars in 1880 with the Ordnance Survey 25"/mile 1st and 2nd editions of 1888 and 1906, indicate that there had been extensive new building, to make it the largest hotel in Sidmouth with further landscaping of the grounds and retaining the parkland. The maps show the lodges at the start of the driveways to the hotel buildings, from the north on the line of the current drive and into the grounds from the south on the current line of Knowle Drive.

The lines of most of the claimed routes are shown as paths crossing the grounds, which had been extensively landscaped and planted with trees in the open parkland, with terraces adjoining the hotel buildings. The main paths crossing the parkland can be seen clearly on an oblique aerial photograph of the hotel and grounds taken in 1925. Documents from procedures for the Finance Act 1910 did not record any deduction for Public Rights of Way or

User for the Knowle Hotel grounds, described as “Pleasure Grounds” and “Gardens”, to indicate that the claimed routes may not have been considered as public rights of way at that time.

Knowle was run as a British Rail hotel until after the Second World War, when it was put up for sale by the British Transport Commission’s Hotel Executive in 1951 and sold when the railway line to Sidmouth was closed in 1967. It was acquired by the Knowle Hotel Company, who ran it until the buildings and grounds were bought by Sidmouth Urban District Council in 1968 to move its offices out from the centre of Sidmouth. Later editions of Ordnance Survey maps from the 1950s and 1960s show the main drive into the hotel from the north with Knowle Drive around the hotel grounds and parkland from the south, but without detail of any of the paths on the lines of the claimed routes.

Knowle became the office headquarters of East Devon District Council with the re-organisation of local government in 1974. A significant element in the transfer of the offices and grounds to the new District Council was the designation by Sidmouth Urban District Council in 1973 of the Knowle grounds as public open space under Section 164 of the Public Health Act 1875.

It is referred to in Urban District Council minutes for July 1973, which include the report of a Finance Committee meeting on the 20th July. With reference to the “Adaptation of Knowle as Headquarters for the East Devon District Council”, the minutes record that:

“The gardens and field, though technically held for the purposes of the Local Government Act 1933, have since acquisition been treated as open spaces to which the public have access. It will, moreover, be recalled that a principal reason for the acquisition of Knowle was to preserve the gardens and field as an amenity for the district. Members have suggested that this intention ought to be given legal effect. The best method would seem to be for the portion of the field and garden not required in connection with the above adaptations [of buildings required by the new District Council] to be appropriated for the purposes of Section 164 of the Public Health Act 1875 (which relates to the provision of public walks or pleasure grounds), by a simple resolution of the Council, and it would seem that no adjustment of the accounts would be necessary as both properties were financed out of general rate fund.”

The report recommended that the land be appropriated as a public open space on that basis, under statutory powers. The recommendation of the Finance Committee in its report to put into effect the appropriation of the land as public open space was duly received and adopted at the following full Council meeting on the 24th July. The full significance of that designation is considered further below, in relation to conclusions with reference to the evidence of use by the public and also landowner evidence.

Historical mapping shows that paths and tracks on most of the main claimed routes have existed on their current lines since at least the later 19th century, from before the time that that buildings at Knowle were converted into a hotel with landscaped parkland grounds. Earlier maps show only the lines of driveways giving access to the buildings of properties from before Knowle became a hotel, with no indication of paths or tracks crossing the areas of land before they became landscaped grounds and parkland.

Aerial photography from between 1999 and 2007 shows the buildings and grounds as the District Council office headquarters more recently and as they are currently. Parts of the original grounds around the western and northern sides of the original estate are shown to have been sold off as building plots for houses. Further offices had been added to the original main buildings, with car parks in the northern part of the parkland alongside the entrance driveway and a vehicular access track to the rear of the buildings on the west from Knowle Drive. The lines of paths on most of the claimed routes are visible crossing the

wooded parkland and landscaped grounds south of the buildings, with others hidden by trees or not visible as tracks crossing the more open grassed areas of the parkland.

1.4 Definitive Map, Reviews and Consultations

None of the routes as claimed were included by the Urban District Council in 1956 for putting forward as public rights of way to be recorded from procedures under the National Park and Access to the Countryside Act 1949 for drawing up the Definitive Map and Statement. None of them have been recorded as public roads in earlier, later and current records of publicly maintainable highways. There were no suggestions in the previous uncompleted reviews that any of them should be considered for recording as public rights of way.

These claimed additions are being investigated ahead of consultations on other claims for the wider review process, on the basis of the applications with evidence submitted in 2012 in support of the claim. Specific responses were received from the Ramblers in support and from the landowners, East Devon District Council, who provided evidence rebutting the claims. Further evidence of claimed use was submitted by the applicants in support of the second application, mainly just for the route between the buildings, from points F–M.

1.5 User evidence

The first application was submitted with 44 completed user evidence forms in support of the claim. Two people had completed three forms each, relating to several of the claimed routes individually and one other form had been completed on behalf of two people, so that initially they represented overall use by 41 people. Five additional forms were submitted later, bringing that total up to 46 people claiming use of the routes.

One evidence form was submitted in support of the second application for the claimed connecting route between the buildings from points F–M completed by the applicant, which also related to a route claimed in the first application as well. A further 18 forms were submitted later, 10 of them from people who had previously completed forms for the first application. Two were from people who had not completed forms for the first application, but related to use of other routes in the Knowle grounds as well. There is, therefore, supporting evidence for both applications relating to use of all the claimed routes by a total of 68 people, 49 relating to routes in the first application and 19 for the second application, as shown in the charts in the backing papers.

Application 1 - points E–F–G–H–J, G–K–L–M–N and H–O

The forms for the first application, mainly completed between April and August 2012, were sent in with maps attached to show the routes used. Most of them were copies of the map submitted with the application, that had been printed with lines showing all of the claimed routes and with letters to indicate significant access points and junctions, rather than drawn individually. The letters on the maps do not match those shown on the map used for the consultations and included at the end of this report. To avoid confusion, all references will be to the letters on that map, as below, rather than on those sent in with the evidence forms. Although the majority of the maps were marked to show all of the routes as claimed, many specified in their forms that they had only used some of the routes, with a few referring only to one of them. Some indicated use of other routes on paths or tracks and across the grounds that were not included in the application.

All of the users reported that they had used the claimed routes on foot only, with one indicating use in a wheelchair as well and all believed the routes to be public footpaths. The main basis for their belief that they were public varied, particularly that the routes were known or assumed to be public because people had always used them unrestricted for a long time, specified by some as more than 20 years.

The paths were said to give access to and across what is a publicly owned park and the offices of East Devon District Council for the general public as well as employees, in full view of the office buildings. In addition, the park was administered by the Council, with an access gate, dog-waste bin and notices about byelaws for pleasure grounds. Their use was said to have been unchallenged, with none reporting having been told that they could not use the routes, with no signs saying that they were private and not public until more recently.

The earliest use is reported to have been from 1977 and 1978, by three people, although one specified having worked for East Devon District Council until 2003 to make some of that use permissive or private rather than public. The numbers reporting use since the 1980s increased to just over 10 and since the 1990s up to more than 40, so that nearly all of them reported having used the paths during the 10 years up to when the application was made.

Lower levels of reported frequency of use were from two people who specified using the routes between only three or five times a year, with just over 10 indicating more than 20 times a year up to more than 50, or about once a week. More specified use up to between 100 and 200 times a year, about twice or three times a week, to over 350 times a year or daily and as many as 700 to 800 times a year, or more than twice a day. Two did not specify how often, indicating 'several' times or 'varies'.

The predominant use for nearly all of the users was given as pleasure, including walking, with some referring to walking with a dog and others referring to use for leisure and recreation, or relaxation and exercise. Some of them specified using the paths for shopping, including to the bank or doctor and for business or work, which is likely to have included access to the District Council offices. Others referred to using them for social reasons, specified as visiting friends and visitors or to help with grandchildren. Most people indicated that they were going to and from home, mainly to Sidmouth town centre and various destinations nearby or in other specified parts of the town including the park and the seafront or promenade. Some referred to visiting friends' and relatives' houses, or circular walks and dog walking.

All of them referred in their forms to the start and end points for the routes that they had used, specifying the letters of points shown on the maps accompanying their forms. Most indicated that they used the routes from the rear entrance on Knowle Drive (point N) along the access track and between the buildings onto paths crossing the terraces (to point G) and through the grounds either to Station Road (point O) or near the southern end of Knowle Drive (point J). Others specified having used only the track from the main entrance to Knowle (point E), passing the buildings and following the path down the terraces either as a complete route to point J on Knowle Drive or partly to other points. A few people indicated that they had used other routes not shown on the map, along another access track from Knowle Drive into the Knowle depot area, on paths along the terraces and between points E-O along the eastern edge of the parkland area parallel with Station Road, including as part of a circular walk.

Only one person reported having been stopped or turned back when using the claimed routes, but which was said to have been when there was a rabbit cull in the parkland and grounds. No others said that they had been stopped, or knew anyone else who had been and none said that they were told the paths were not public or they could not use the routes. All of them believed that the owners were aware of the public using the routes, mainly referring to the grounds being designated and managed as a public park, with unrestricted access. The paths were used not just by Council employees but by the wider general public as well, visible from the buildings and included use for access to the Council offices.

One person reported having worked for East Devon District Council, although not indicating that they had been given permission to use the claimed routes or having a private right to do so. No other users reported that they had worked for the owners or had used the routes with

permission, which some indicated was not necessary as it was a public park. Most of the users said that they had not seen any signs or notices on the routes saying that the routes were private and not public to suggest that they could not use them. Some referred to the notices put up more recently to state that East Devon District Council as landowners did not intend to dedicate public rights of way and also the notices about byelaws. The only obstruction reported was said to have been due to tree-felling, with nothing more permanent except when the parkland was used for events during the Sidmouth Folk Festival. The only reference to a gate on any of the routes was to the one at point O in the parkland boundary wall and fence and another further north, which were said to have been always left open and usually never locked.

Nearly all of the users reported knowing or believing that the land crossed by the claimed routes was owned and administered or managed as public land by East Devon District Council, with one believing that it was owned by the County Council. Another suggested that the District Council's claim to legal ownership of the land was being challenged by local community groups.

Application 2 - between points F–M (connecting to point N)

Initially, only one person specified having used the route through the District Council buildings between points F–M, who was the applicant. Additional user evidence forms completed by a further 18 people were submitted in May 2013 following the consultations. Most of them indicated use of that route only, although some had also completed evidence forms for the first application. Two people who had not done so indicated use of other routes as well, which has been included for consideration with the evidence for the first application. It means that there is evidence of use by 19 people to consider specifically for the route claimed in the second application.

Most of the forms, completed during April 2013, were submitted with maps attached marked to show only the claimed route used, although some were copies of the map submitted with the first application printed with lines showing all of the other claimed routes and with letters. Some indicated on the maps or specified in their forms that they had used other routes, although most referred mainly just to the claimed route.

All of the users reported that they had used the route on foot only, with the same person again indicating use in a wheelchair as well and one other sometimes pushing a bicycle. Most of them believed it to be public footpath, with the basis for their belief varying, as a route that has existed for a long time leading to public open space and offices, with people using it and nothing to indicate that it was not public, such as notices and never having been challenged. It was said to be common knowledge as a convenient shortcut for council workers and local residents, with a passageway and made up path on public property or land for access to the Knowle grounds.

The earliest use is reported to have been from 1977 and 1982, by four people, although one who referred to using it for access to the reception at the District Council offices is the partner of a former employee. Four others reported use since the later 1990s, with others having indicated use only since 2000, so that many of them had started using the paths mainly just over or less than 10 years up to when the application was made.

Reported frequency of use was from four people who specified using the routes between only two and 10 times a year, with most indicating use from less than once every two months up to between 50 and 100 times a year, or once or twice a week. Two said that they used it more often, but only up to more than 200 times a year, less than once every other day.

The main use was given as pleasure, including walking, with one referring to walking with a dog and others referring to use for recreation or shopping. Several people indicated using the route for business, which was specified by some as for visiting East Devon District

Council or on Council business. One referred to using it for visiting friends or delivering magazines and cards. Most people indicated that they were going from home, mainly to various destinations nearby or in other specified parts of the town, including the Knowle grounds and park or elsewhere in Sidmouth, particularly the town centre and back. Five referred to using it specifically for visiting the East Devon District Council offices, to the reception desk and for meetings, concerts or functions in the Council chamber.

Although referring in their forms to various destinations, most people had marked on the accompanying maps only the claimed route between the District Council buildings, without indicating which other routes they used through the Knowle grounds. However, some of them did indicate use of other claimed paths and several had submitted forms previously indicating use of the other paths for the first application.

None of the users reported having been stopped or turned back when using the claimed route, or knowing anyone else who had been and none had been told that the path was not public or that they could not use the route. All of them believed that the owners were aware of the public using the route, mainly referring to its regular use being clearly visible from the buildings and seen by people working in the District Council buildings, including Directors, with no attempts to prevent it. Two people indicated that they had been shown the way by a Council official. Others referred to a belief that it was owned by the public or the people of Sidmouth.

None of them indicated that they had a private right to use the route, or that they had worked for the owners and had used it with permission. Most said that they had not seen any signs or notices on the route to suggest that they could not use it by stating that it was private and not public. One referred to a notice on the route indicating the Post Room in the office buildings. Another indicated the notices saying that East Devon District Council as landowners did not intend to dedicate public rights of way, put up more recently in other places including at point N on the access onto the route from Knowle Drive. None reported any obstruction or gate on the route.

Nearly all of the users reported knowing that the claimed route was on property and land owned and administered by East Devon District Council, with access to its buildings and the public open space. Some referred to it being inherited from the Urban District Council and owned by the people of Sidmouth by virtue of public funds.

1.6 Landowner and rebuttal evidence

A landowner evidence form completed on behalf of East Devon District Council was submitted in May 2013 following the consultations. The District Council does not believe the claimed routes to be public rights of way but members of the public have been seen using them, which is considered to have been on a permissive basis. They had not turned anyone back or stopped people from using the claimed routes, or told anyone using the routes that they were not public rights of way, but had put up notices or signs stating that they were not public. The claimed routes had never been obstructed and reference was made to the boundary gates, including at point O, which were believed never to have been locked.

No map and statement had been deposited on behalf of the District Council under Section 31 (6) of the Highways Act 1980 to provide evidence of its lack of intention as the landowner to dedicate the routes as public rights of way.

In additional information, reference was made in detail to the background of the appropriation of the Knowle grounds in 1973 by Sidmouth Urban District Council as pleasure grounds with public walks, as shown on a map from that time. The land was conveyed to East Devon District Council in 1974 and has been managed by them since then with byelaws. As a result, they believed that the claimed use could not have been “as of right” for a presumption

of dedication under statute or at common law, but was “by right” from permissive use under a general right of public access to the land as a pleasure ground. That was brought to the attention of the public by notices about the byelaws at several places in the Knowle grounds.

Referring to case law relating to the requirements of use for claiming land as a Town or Village Green, they believed it to be applicable to use for claimed public rights of way. In addition, they said that use of the routes had been with permission and the District Council had put up notices stating a lack of intention to dedicate them as public rights of way. Although they were new signs referring to the Rights of Way Act 1932, rather than the Highways Act 1980 as the current legislation covering such notices, they were said to have been replacements for earlier ones and showed that the Council had been putting them up for some time. Those were believed to have been sufficient to negate any presumption of dedication on the claimed routes, if needed and raised questions about the feasibility of the claimed use on some of the routes specified.

1.7 Discussion – Dedication under Statute and Common Law

Presumed Statutory Dedication – Section 31, Highways Act 1980

The applications to record the claimed routes as public rights of way were not made in response to a particular event acting as a significant challenge to their use. There was not reported to have been any previous action taken by the landowner that had obstructed or prevented access to and use of the routes from a specific date. The applications appear to have been made in response to East Devon District Council’s proposed sale of the Knowle buildings and grounds with planning permission for their development and subsequent public campaigns against those proposals. There is no evidence of any significant earlier actions to prevent or obstruct use, particularly by or on behalf of the landowner, that could be taken to have called into question use of the routes by the public for consideration of evidence of use under statute law.

Under section 31(2) of the Highways Act 1980, as amended by Section 69 of the Natural Environment and Rural Communities Act 2006, the date that a Schedule 14 application was made can be taken as the date of bringing a right of way into question. It would provide the date of an event that can be taken as challenging the public’s right to use a route, but only if there are no more significant earlier events or actions having done so at a specific earlier time that may have led to or resulted in the application being made.

There is no substantial evidence of any previous significant actions in this case to provide an earlier date for consideration of evidence under statute law. The notices stating the Council’s lack of intention to dedicate public rights of way were said to have been put up around the same time as the first application, or soon after. It means that the period for considering the applications on evidence of use is the 20 years between 1992 and 2012.

For the first application, that is from May 1992 to May 2012. For the second application, the putting up of the notices in May 2012 could be taken as calling that claimed route into question. However, there was only a notice at point N, one of the main entry points to the land, with none at other points on the route between points F and M. That will not have brought to the attention of people using the route from point F any challenge to their use, so may not have been sufficient to call its use into question.

Application 1 – points E–F–G–H–J, G–K–L–M–N and H–O

Considering evidence of use by the public during that period for the first application, there is use claimed by 49 people, on all of the routes across the grounds and others not included in the application, for the whole 20 years between May 1992 and May 2012. Case law has clarified that to give rise to a statutory presumption of dedication under Section 31 of the Highways Act such use should be open, without force or permission and must be “as of right”.

There is no indication that any of the use had taken place secretly or with any force to overcome obstructions intended to prevent it, such as locked gates or fences. However, much of the claimed use is considered not to meet the requirement of being “as of right”, due to the designation of the Knowle grounds as public open space since 1973 from its appropriation by Sidmouth Urban District Council as a pleasure ground. This designation was inherited in 1974 with the reorganisation of local government by conveyance to East Devon District Council as the current landowners. They have managed and maintained the grounds and parkland since then as a pleasure ground with the provision of byelaws. It has been reinforced by bringing to the attention of the public with noticeboards at several points giving access to the grounds. The notices show restrictions on activities and referring to the byelaws, the latest version of which was published in 1996 to replace a previous version from 1984.

Case law in connection with applications for recording land as Town and Village Greens has confirmed that qualifying use for that purpose is the same as for the process in recording public rights of way, although significantly different in respect of some elements. For that process, there has to have been use of an area of land for recreational purposes, rather than to pass and repass on linear routes, for 20 or more years. That use has to have been by people from a locality, rather than by the wider public, to be successful but otherwise on exactly the same basis as consideration for recording public rights of way. As with public rights of way, the use must have been without secrecy, force or permission and “as of right”.

Recent Court judgments have clarified specifically the position on determination of whether use has been “as of right”, most recently from the Court of Appeal (*Barkas v North Yorkshire County Council and Scarborough Borough Council*) in 2012. It confirmed that where members of the public have taken part in recreational activities on land which has been provided for that purpose by a local authority in the exercise of its statutory powers, they have done so “by right” rather than “as of right”. The several statutory provisions that give the public such rights of access over land held by a local authority include Section 164 of the Public Health Act 1875, relating to the provision of pleasure grounds including public walks.

Accordingly, if the land has been used “by right”, that is by virtue of an existing legal right of access under a statutory provision, it has not been use “as of right” and therefore does not qualify as use for an application to record that land with Town or Village Green status. If members of the public already have a right of recreation on land held under one of those statutory powers, it cannot be recorded as a Town or Village Green and any application for that status will not succeed.

The distinction between use “by right” and use “as of right” has been established in relation to consideration of applications for Town and Village Greens and is considered to apply in relation to claims for public rights of way. It is equally relevant in what is a similar process for recording the public’s rights, in relation to this case for passing and repassing on linear routes across land, rather than to use of an area of land for recreational purposes.

It is clear that the District Council has held most of the Knowle grounds under such a statutory provision arising from their appropriation in 1973 and management since 1974 as a pleasure ground, with byelaws, that have given the wider public a general permissive right of access to the land. It means that any use of the land, including to pass and repass on the lines of paths crossing it, has therefore been “by right” arising from the existing right of access by agreement under that statutory provision which is permissive rather than “as of right”, that has to be technically by trespass as if no right existed. It means that much of the user evidence submitted with the application does not meet fully the requirements of the legislation and is not sufficient to give rise to a statutory presumption of dedication as public rights of way on all of the claimed routes crossing the land appropriated in 1973.

That applies from points x and y on the claimed routes beyond points F and L through to points O and J, crossing the parkland and across other parts of the grounds said to have been used, including the paths along the terraces and between points E–O within the boundary of the parkland. For those parts of the routes there is, therefore, no need to consider the next step of whether there were any actions taken by the landowners during that period to provide evidence showing a lack of intention to dedicate them as public.

It follows that claimed use for other parts of the routes not crossing the appropriated land could be considered “as of right” rather than “by right”, that is from point E to point x beyond the Council buildings and point F and from point N beyond points M–L to point y. However, claimed use of those parts of the routes is considered to be by permission, from providing connections to the paths crossing the parkland where there is a general permissive right of access. They do not connect places with recorded public rights such as public highways, or a place to which the public have access “as of right” by a statutory right of access. Land to which the public have access by permission is not used by them “as of right”.

They are also the primary routes used to provide access to the District Council office buildings for the public visiting on Council business, on which it can be considered that there is implied permission or licence for the wider general public to use. They connect the main entrance and carparks to the buildings along the drive, with provision specifically for pedestrian use and also the rear access, while available for providing access to or from the parkland and grounds as a secondary purpose.

Use of the claimed routes for access to the buildings on Council business is by implied permission or licence, which is not public use and, therefore, cannot give rise to a public right of way. Although none of the users specified using the routes for access to the buildings, several people said that they had used them for business, which may have included with the Council and for work, as specified by one person. Access to the Council buildings was also given as a reason for a belief that the routes were public.

The District Council will, therefore, have had no clear means of distinguishing those people using the routes specifically for access to the open space and paths crossing the parkland from those using them for access to the buildings on Council business. For a presumption of a statutory right by prescription, use will have needed to be sufficient to alert the District Council that a right of way was being asserted over the land to indicate a need to show that they had no intention as landowners to dedicate the claimed routes as public rights of way.

There is no evidence reported by users of efforts made to show a lack of intention to dedicate, such as turning people back and telling them that the routes were not public, including putting up notices to that effect during the 20 years up to the date of the application. Notices stating a lack of intention to dedicate were said to have been put up at various points on the routes soon after the application was submitted when notice was served on the District Council, reported by those users who completed evidence forms after May 2012.

The District Council as landowners consider that use of the claimed routes has been permissive, but have said that notices stating a lack of intention to dedicate had been put up before May 2012. The recent notices are stated to be under provisions in the Right[s] of Way Act 1932, which have been superseded with their inclusion in the current relevant legislation, the Highways Act 1980. The reference to earlier rather than current statutory provisions is said by the Council to show that they had been putting up notices for some time, including before 1980. The new signs were said to have been based on replacements for others from 2003 and those that had been put up earlier, before the 1980 Act, which had been regularly defaced or damaged.

Accordingly, the weight of the evidence of use is further reduced to be considered more as from implied permission or licence rather than public use. It is not sufficient to give rise to a

statutory presumption of dedication as public rights of way on the parts of the claimed routes outside the land appropriated in 1973. There is again, therefore, no need to consider further in more detail any actions taken by the landowners specifically during that period to provide evidence showing a lack of intention to dedicate them as public, including the notices.

Application 2 – points F–M (connecting to point N)

Considering evidence of use by the public for the claimed route through the Council buildings, there is use claimed by 19 people for the 20 years between October 1992 and October 2012, the date of the second application, most of which was submitted later. The route is not within the boundaries of the area of land in the Knowle grounds appropriated as public open space and managed as a pleasure ground, although it will have been used by some people as part of routes leading onto that land.

It means that the claimed use for this application could be considered “as of right” rather than “by right” and again there is no indication that any of the use had taken place secretly and with any force or with obvious permission. Only four people said that they had used the claimed route for the full 20 years or more, with five reporting use since later in the 1990s and the remaining 10, just over half, only from after 2000 during the 10 years or so before the application.

The reported frequency of use is not substantial, from only once or several times a year up to once every other day and not even as often as daily or more than once a day. Although none of the users reported that they had been given permission, 10 indicated that their use of the route had included for access to the District Council offices, for several purposes, which is also just over half the total number of users. That can be interpreted as use by implied permission and reduces its weight to make it less substantial as evidence of public use. Two of those also reported that they had been shown the way by a Council official, which can be interpreted as use by invitation to imply more definitely permissive use.

That results in only nine people whose sole use of the route can be accepted as being just as the public and not including access to the offices on District Council business, which would be permissive and on a private or personal basis in the case of the partner of a Council employee. Of those nine, only four had used it for 20 or more years, with the other five having used it since the later 1990s or only for less than ten years up to 2012, which would reduce further its weight as evidence that is sufficient for a public right of way to have been acquired.

Taking all of those factors into account, the evidence of use submitted with the application and after the consultations is also considered insufficient to give rise to a statutory presumption of dedication as a public right of way on the claimed route. That is regardless of the route being outside the area designated as a pleasure ground and, therefore, not subject to the same considerations as for the first application on the issue of use “by right” or “as of right”.

There is again, therefore, no need to consider the next step of whether there is any evidence of actions taken by the landowners during that period to provide evidence of a lack of intention to dedicate the claimed route as public. In this case there is also no evidence reported by users of substantial efforts made during the 20 years between 1992 and 2012 to prevent use of the claimed routes, or to tell people using them that they were not public. The only such actions referred to is the putting up of the notices stating a lack of intention to dedicate at several points, said to have been in May 2012 and including at point N.

For this route, that date was within the 20 years by several months before the application was submitted in October 2012 and is located on the only access for the public to point M from Knowle Drive on the claimed route. Without considering that the notices were stated to be under the provisions of the wrong legislation, those would be sufficient as evidence of a

lack of intention to dedicate, if needed, to negate a presumption of dedication on the access used leading directly onto this route and included in the map with the application.

It means that the claims from both applications will need to also be considered in relation to common law. That is taking into account historical maps and other documentary evidence discovered, in conjunction with the evidence of use submitted for any period shorter or longer than 20 years and any evidence relating to actions taken by landowners.

Inferred Dedication under Common Law – both applications

Historical mapping shows that paths have existed physically on the lines of most of the claimed routes crossing the Knowle grounds from at least the later 19th century up to the present. They appear to have been created mainly with the landscaping of the grounds from before Knowle was converted from a private house and developed into a hotel, with some parts of them having existed previously as driveways and paths crossing the grounds.

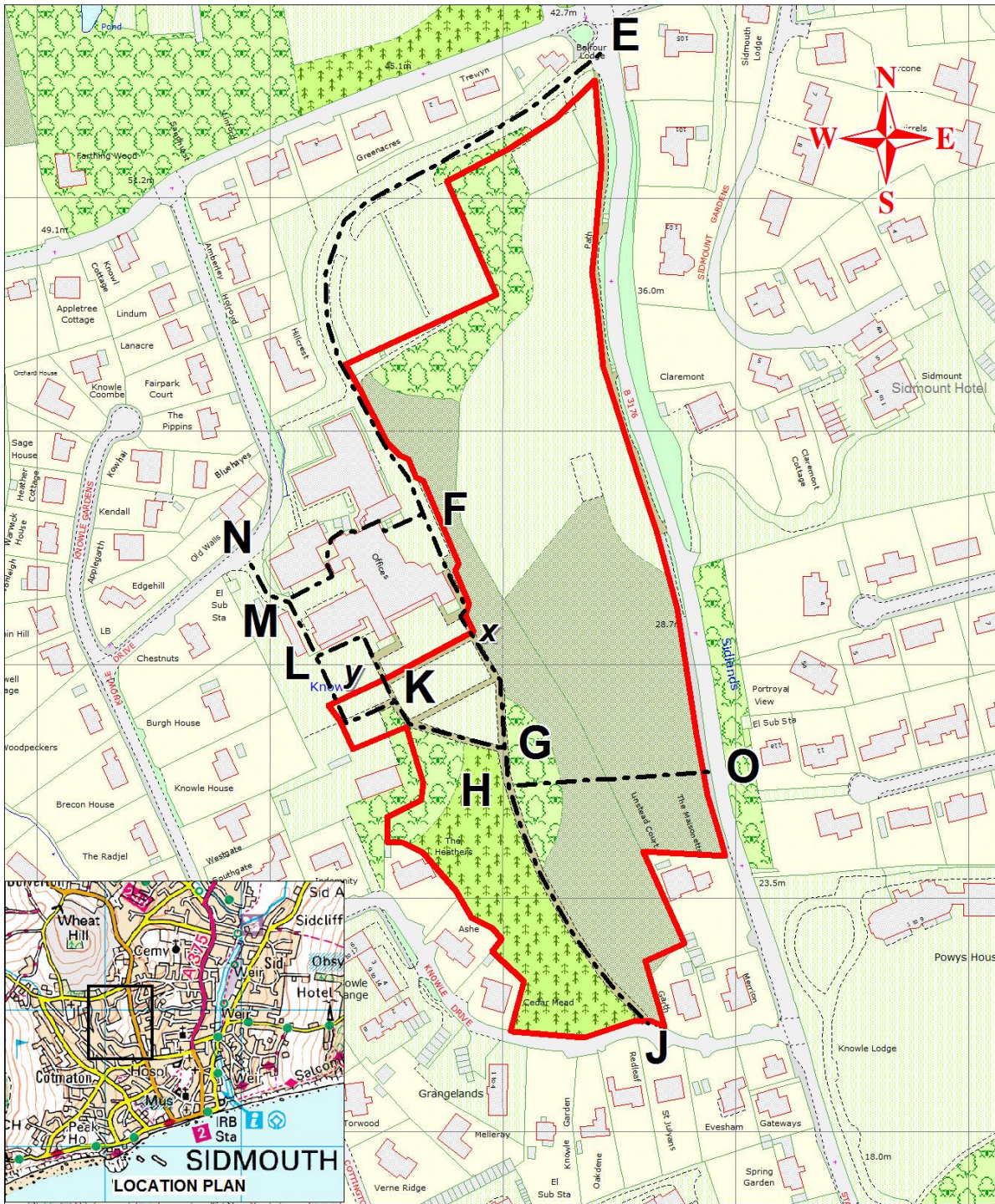
Evidence from the earlier 19th century indicates that there was some form of public access to the buildings and grounds of Knowle Cottage. However, it appears to have been strictly limited and only with permission from the various owners at the time, which cannot be interpreted as meaning that there may ever have been a general public right of access to the grounds or any public rights of way crossing them. The claimed routes will also have been used by staff and visitors to the hotel from the 1880s to the 1960s, then for the offices of the District Councils since 1973. No historical records have been found to indicate that they may have been considered as available for use by the wider public. No more significant evidence has been found to suggest that the paths on the claimed routes were ever regarded as public rights of way of any kind or public roads during those periods. They have not been included in the past and current records of maintainable highways, or considered previously at any time for recording as public rights of way.

Considering the historical evidence available and discovered, in conjunction with other evidence including of use, earlier dedication of the claimed routes as footpaths cannot be inferred at common law. Historical evidence suggests that the claimed routes provided access to the Knowle buildings and grounds for private use, with some limited permissive public access earlier when it was a private residence, then for the hotel and offices of the District Councils since 1973, with no evidence found to support any claim that they were ever considered then to be public. There is insufficient evidence to suggest that they were any form of public right of way, or that the landowners may have intended to dedicate the claimed routes, that the public accepted the dedication and have continued to use them on that basis.

The evidence of use is from during the period when there has been a general permissive right of access to the grounds since their appropriation as a pleasure ground in 1973 and also including access to the District Council's office buildings. For the same reasons as consideration of possible statutory dedication, it can be interpreted as mostly having been "by right" not "as of right" and is, therefore, insufficient to show use of the claimed routes by the public on the basis of having accepted any earlier dedication. Some of it also relates to use specifically for access to the Council buildings, which is taken to be by implied permission and not as the public, including for a former employee. There is evidence of users being informed by notices at access to the routes that there was no intention to dedicate them as public more recently and reported by the District Council from earlier, although it may not have been considered necessary for most of them with the general permissive right of access to the parkland and buildings. Use of the routes to get into the parkland as open space with its general right of access is also considered to be on a permissive basis. Overall, it cannot be interpreted as evidence of continued use by the public, having accepted the landowners' acquiescence, for the inference of an earlier dedication of public rights of way.

1.8 Summary and Conclusion

It is in the light of this assessment of the evidence submitted, in conjunction with all other evidence available or discovered, that it is not considered reasonable to allege that public rights of way subsist on the claimed routes for both applications. From consideration under statute and common law there does not appear, therefore, to be a sufficient basis for making an Order for the routes to be recorded as public rights of way, as claimed. Accordingly, the recommendation is that no Order be made in respect of the applications to record the claimed routes on the Definitive Map and Statement as public footpaths.



map ref **SY1188/1288/1187/1287**

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DEVON COUNTY COUNCIL
 Definitive Map Review, Sidmouth parish
 Informal Consultations, Proposal 3:
 Schedule 14 applications - claimed footpaths, Knowle

drawing number **HTM/PROW/13/29**
 date **Mar 2013**
 scale **1:2500**
 drawn by **NSC**

Notation Boundary of appropriated land ———
 Claimed footpaths - - - - -
E - F - G - H - J (515 metres) / G - K - L - M - N
(155 metres) / H - O (85 metres) / F - M (75 metres)

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT AND WASTE MANAGEMENT

