

**Schedule 14 Application
Addition of Footpath at Church Field, Highweek**

Report of the Head of Highways, Capital Development and Waste

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

Recommendation: It is recommended that no Order be made to modify the Definitive Map and Statement for the addition of a footpath from Highweek Church to Blenheim Close as shown on drawing number HCDW/PROW/13/76, but that negotiations be undertaken with the landowners for the dedication of the permissive footpath from D to H as a public right of way.

1. Summary

The report examines the Schedule 14 application made for the addition of public footpath/s between Church Field, Footpath No 15, Newton Abbot and Blenheim Close in the parish of Newton Abbot and district of Teignbridge.

2. Background

In the summer of 2011 a local resident contacted the County Council to report that a public footpath had been blocked in the vicinity of Highweek Church. The caller was advised that the route she described was not a public right of way, but if the route had been used for a minimum of twenty years, she could apply to the County Council to add the route as a public footpath to the definitive map by way of a Schedule 14 application under the Wildlife and Countryside Act 1981. A Schedule 14 application was subsequently received.

3. Proposal

Please refer to Appendix I to this report.

4. Consultations

General consultations have been carried out with the following results in respect of the Schedule 14 application considered in this report.

County Councillor Cllr Barisic	-	no direct response received
Teignbridge District Council	-	responded as part landowner
Newton Abbot Town Council	-	response received
Ramblers' Association South Devon Group	-	response received
Devon Green Lanes Group	-	no response received

5. Financial Considerations

Financial implications are not a relevant consideration to be taken into account under the provision of the Wildlife and Countryside Act 1981. The Authority's costs associated with Modification Orders, including Schedule 14 appeals, the making of Orders and subsequent determinations, are met from the general public rights of way budget in fulfilling our statutory duties.

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 has been considered and taken into account in the preparation of this report.

10. Risk Management Considerations

There are no implications.

11. Public Health Impact

There are no implications.

12. 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. Where the review has been completed in a district, Schedule 14 applications made are considered as received.

13. Reasons for Recommendation/Alternative Options Considered

To determine the Schedule 14 received for the addition of footpath/s in Church Field, Highweek.

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Head of Highways, Capital Development and Waste

Electoral Division: Newton Abbot North

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2011 to date	Sch 14/Highweek

tw231013prw
sc/cr/church field highweek sch 14
03 111113

Appendix I To HCW/13/70

A. Basis of Claim

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 and Countryside Act 1981, Section 53[3][c] enables the Definitive Map to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows –

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

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

Schedule 14 Application - Addition of Footpath/s at Church Field, Highweek

Schedule 14 Application for the addition of a public footpath, running from the south side of Highweek Church to Blenheim Close, as shown between points A – B – C – D and A – B – F – C – D on plan number HCDW/PROW/13/76.

Recommendation: It is recommended that no Order be made to modify the Definitive Map and Statement for the addition of a footpath from Highweek Church to Blenheim Close as

claimed in the Schedule 14 application, but that negotiations be undertaken with the landowners for the dedication of the permissive footpath D-H as a public right of way.

1. Background

Land to the east of Highweek Church, lying between Footpath No, 15, Newton Abbot and Blenheim Close was purchased by Mr Langmead and Mrs Harle in July 2011. After discussing the position of the boundary with the adjacent landowner, Teignbridge District Council, new fencing was erected along their boundary, as any previous fencing was no longer evident.

In August 2011 the new landowners contacted the local public rights of way warden to advise that people were walking their dogs across their land despite there being no right of way. They had put up fences but they had been taken down or cut.

The erection of the new fencing and therefore obstruction of a route previously used, duly prompted a local resident to contact the County Council to report that a public footpath had been blocked. The caller, Mrs Shefras, was advised that the route she described was not a public right of way. As the Definitive Map Review had been completed in Teignbridge district, the caller was advised that she could apply to the County Council to add the route as a public footpath to the definitive map by way of a Schedule 14 application under the Wildlife and Countryside Act 1981, if it could be shown that the path had been used for at least twenty years by the public.

A Schedule 14 application was subsequently received on 17 August 2012 claiming the addition of footpath from Highweek Church to Blenheim Close. The application was supported by a number of user evidence forms describing use of paths across grassland to the south and east of Highweek Church.

It is understood that the current permissive path shown between points D and H was initially proposed by a previous owner and a successful planning application for a barn made in 2009 had a condition requiring the permissive path to be signed. In March 2012 and July 2013 planning applications were made for outline permission for two dwellings on the land owned by Mr Langmead and Mrs Harle. Both applications were refused by Teignbridge District Council planning department.

2. Description of the Route

The route described in the Schedule 14 application was from The Church, Highweek to Blenheim Close, The Churchills and the route used by the applicant, Mrs Shefras and several of the users was from A to B, then to C on both the northerly and southerly paths and then from C to D. The section from A to B runs along a hardened surface track at the top of the grass plateau that falls away steeply southwards to the rear of properties along The Churchills and Blenheim Close. The path then crosses a grass meadow and more shrubby land to the east of the landowners' boundary line (at points I and J on the plan) and west of point C. A defined path was visible across the grassed area and a track had been mown in the summer of 2013. Some users had also indicated using links north of the claimed footpath to join Footpath No. 15, Newton Abbot (known as church path) at points G and E.

Photographs of the route are included in the backing papers.

3. Consultations

Responses were received from:

Teignbridge District Council are part landowners of the routes claimed and their comments are accordingly included under Landowner evidence.

Mr Robinson responded as Footpath Officer for the South Devon Ramblers. He had not been aware of the application and this was not an area in which their rambling group regularly walk. He supported the application solely on the basis that as Ramblers they would always welcome additions to the rights of way network.

Newton Abbot Town Council advised that the town councillors representing that area have expressed the view that this is a grass mown path through a meadow, which has been in use for many years by walkers, and therefore see no reason to object and in fact support the application.

4. Documentary Evidence

Ordnance Survey and Other Maps

The Ordnance Survey and other mapping do not provide evidence of the status of a route but can be evidence of its physical existence over a number of years.

OS 1st Edition 25" to a mile 1880-1890

The current line of the south western end of Footpath No. 15, Newton Abbot running from the road to the church is depicted on the map as a doubled pecked line labelled *F.P.* Church path running east from the church is shown as a defined lane with mature trees on the hedge line. The land crossed by the claimed footpaths and on which the houses south of the routes have been built are all fields and paddocks apart from the presence of a large house called Churchills south of point C. There is no evidence of any tracks or footpaths shown on the map that correspond to the claimed routes.

OS Post War Mapping 1:2:500 scale 1956

By 1958 the south west end of Footpath No. 15, Newton Abbot from Pitt Hill Road to the church runs within a defined lane and is labelled FP. Church Path is labelled and the large house Churchills is now labelled as Greylands School. Again no evidence of any tracks or paths that correspond to the claimed footpath is shown on the map.

Tithe Maps and Apportionments

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. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not tithe able. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Sometimes footpaths may be shown or referred to on the map or in the apportionment.

The Tithe map for Highweek was prepared in 1847. The south west section of Footpath No. 15, Newton Abbot from Pitt Hill Road to the church is clearly shown on the map as a double pecked line across the middle of field 599 and has its own apportionment number 599a. In the

apportionment, 599a is described as Footpath, part of Churchills, owned and occupied by Sarah Bartlett. Church path, running eastwards from the church (also part of Footpath No. 15, Newton Abbot) has the apportionment number 1178, described as Road under the ownership of Trustees of Chapel and Trustees of Turnpike.

No reference is made to any path or way in the fields southeast of the church through which the claimed footpath passes on either the map or in the apportionment.

5. Parish Survey under National Parks & Access to the Countryside Act 1949 and Previous Devon County Council Parish Reviews

Highweek area fell for consideration under Newton Abbot Urban District in the preparation of the definitive map. Footpath No.15 was surveyed by the chairman of the NAUDC, A C Shobrook. The grounds for believing the path to be public was use over many years. The form was dated 21 May 1957 and the route described as Pitt Hill Road to Highweek Church and thence to Exeter Road. Footpath No. 15 was shown on the map accompanying the survey form as currently recorded and no other footpaths in the vicinity of Highweek Church were proposed or subsequently claimed when the draft and provisional definitive maps were published for public consultation.

There is nothing to suggest that any claims for any additional footpaths in the vicinity were claimed in previous definitive map reviews in the district or county.

6. Newton Abbot Town Council Meeting Minutes

The Town Council Planning Committee had considered the planning applications received for the eastern side of the site. The 2013 planning application for the outline permission for two houses on the eastern side land was considered at the Town Council planning meeting on 6 August 2013. The committee's recommendation was for refusal, the grounds for which included the adverse impact on the permissive path. It is understood that this referred to the claimed path rather than the permissive path recently constructed.

7. Aerial Photography 1946. 1999, 2006-7 & 2011

The 1946 aerial photography predates development of the Churchills Estate and the land is fields. A path /track is visible along the line of Footpath No.15, south west of the Church. There are no visible paths/tracks that correspond to the claimed paths.

On the 1999 aerial photography a track on the ground in the grass surface can be clearly seen corresponding to the routes shown as A – B – C to D and B – F – C. On the 2006-7 photograph similar tracks can be seen although the junction at point C appears further west in the later photograph. The vegetation to the east of point C appears to be becoming more shrubby.

By the 2011 photograph a clear track can be seen along the route A – B – F – C – D, although the track is not so clear from points C to D as the vegetation growth has increased. The permissive path from H to D, linking Footpath No, 15, Newton Abbot to Blenheim Close appears visible.

8. Land Registry

Where land is registered the register of title can contain information of easements and other private rights that affect the property. These can include references as to how the property is accessed if the access crosses land that is not a public highway. It is unusual for titles to make any reference to public rights.

The register of title confirms the ownership of the land described as on the west side of Blenheim Close (Mrs Harle and Mr Langmead) since August 2011. There are a number of clauses relating to the land/property but no mention of any public rights. A covenant contained in a transfer of 5 June 1978 refers to the owner of the land maintaining a stock proof post and wire fence between two points marked on the plan. The points are not shown on the plan but a note states that the points referred to, form the western boundary of the land.

The land owned by Teignbridge District Council is also registered but the register contains no reference to any public rights of access on the land claimed by the applicant in the schedule 14.

9. Planning History of the Site

The eastern land crossed by the claimed routes was granted planning permission for the erection of an agricultural barn/stable with associated hard standing and access track in October 2009 for a previous owner, Mr Brooke. This application replaced an earlier application reference 08/04553 when it was noticed the land owned by the applicant was shown incorrectly.

Comments made by the applicant, public and standard consultees made reference to a public footpath through the site as follows:-

Jan Dilkes (08 application) stated 'the land has been used as a public footpath for as long as I can remember (I am 57) and it would therefore restrict public usage even though it is private land. I understand that Public Footpath Status has been applied for.'

S Argyle (08 application) and local resident stated 'The public have used the area for access for over 20 years to walk and enjoy the far reaching views, the proposed alternative access limits residents walks and no longer allows the residents to have access to the area.'

Local Resident 49 Blenheim Close (08 application) also the current path through the field has been used for nearly 30 years as a way up to the village should be retained

Officer Report (08 application) under Observations comments 'The applicant has proposed a footpath through the site to replace the walking route that local residents have enjoyed using.'

Newton Abbot Town Council (both applications) no objections subject to the permissive pathway being incorporated/retained into the proposal (08 application) but would suggest that a public right of way has been established

Applicant/landowner (both applications) included in the Design and Access Statement. 'We understand that people use the field to access the public church path and the Churchills as part of a circular walk. As part of the proposal a 'permissive path' has been incorporated to allow the local residents to cross the private land and to continue to access the church path and from there Churchills.' The location of the permissive path was not shown on the location plan but is understood to be the route D to H as shown on the plan.

Permission was granted and Condition 6 stated “that prior to commencement of use of the bran/stable hereby approved, the permissive path signage to be erected at either end of the path shall be provided.” The planning permission for the barn would have expired in October 2012 (without the barn being constructed) and no signage was observed in the summer of 2013.

In 2012 and 2013 outline planning applications were made for the erection of two dwellings on the site but both were declined. A public comment to the 2012 application referred to the footpath being blocked at the site.

10. User Evidence

A total of 17 user evidence forms were received in two envelopes. The applicant, Mrs Shefras, provided a list of the people that she understood had completed user evidence forms but it was not clear whether these had been sent in by the applicant or were to be forwarded direct by the users themselves. Those users from the list for whom a completed form had not been received were written to and sent a further form and map for completion. None of these were returned but one user from whom a form had been received forwarded a completed map of her route.

Due to the open nature of the land and as the routes crossed open fields it was considered acceptable for the users to mark the path they had used on the aerial mapping of the area instead of the usual map if they wished to. As confirmed by the aerial mapping from 1999 tracks were visible on the ground and users were able to mark which routes they had use.

Analysis of the maps attached to the user evidence forms recorded several of the users following the route described by the applicant, with members of the public using B to C as well as B – F – C. Some users had also used short routes to cut through to Footpath No. 15, Newton Abbot from F to C and C to E.

A user evidence chart prepared for the main route used of A to B, B to C or B to F to C (most users used both routes) and C to D records the evidence of 16 people on 15 forms, as Mr & Mrs Powell had completed a joint form. A further form from Mrs White did not include a completed map and Mrs Hatcliff confirmed that she had only used the route D to C to E.

Of those users whose evidence is included on the chart, most advise using the route regularly from daily, to two to three times a week to ten or thirty times a year. Use was for pleasure on foot and several users mention dog walking. Reasons for thinking the path to be public are given as been using it for 46 years, everyone uses it, no notices to say otherwise, public footpath sign, because a number of public use it, no gates or fences – previous usage and historical, because it was always open and clear, all public been using it and well-worn track in open field.

Some users refer to the path being diverted from 2011 or in 2012, Mrs Elliott, Mr Harwood, Dr Haugh, Mrs Steer and Mr Spargo refer to notices, diversion of path in connection with land to be grazed by goats. Some users refer to obstacles or obstructions after 2012, gates and fencing, hedge cuttings, wire netting, metal poles and mesh, locked gate and brushwood piled up and then wire.

None of the users report obtaining permission to use the route or ever been stopped or turned back or told that the land was not public. In response to the question do you believe the owner/occupier was aware the public was using the path, users have responded why would they

obstruct the path with the excuse they were keeping goats; it was used by many people, everyday; they were not bothered about it being used; posted notices and it has been in constant use – local knowledge.

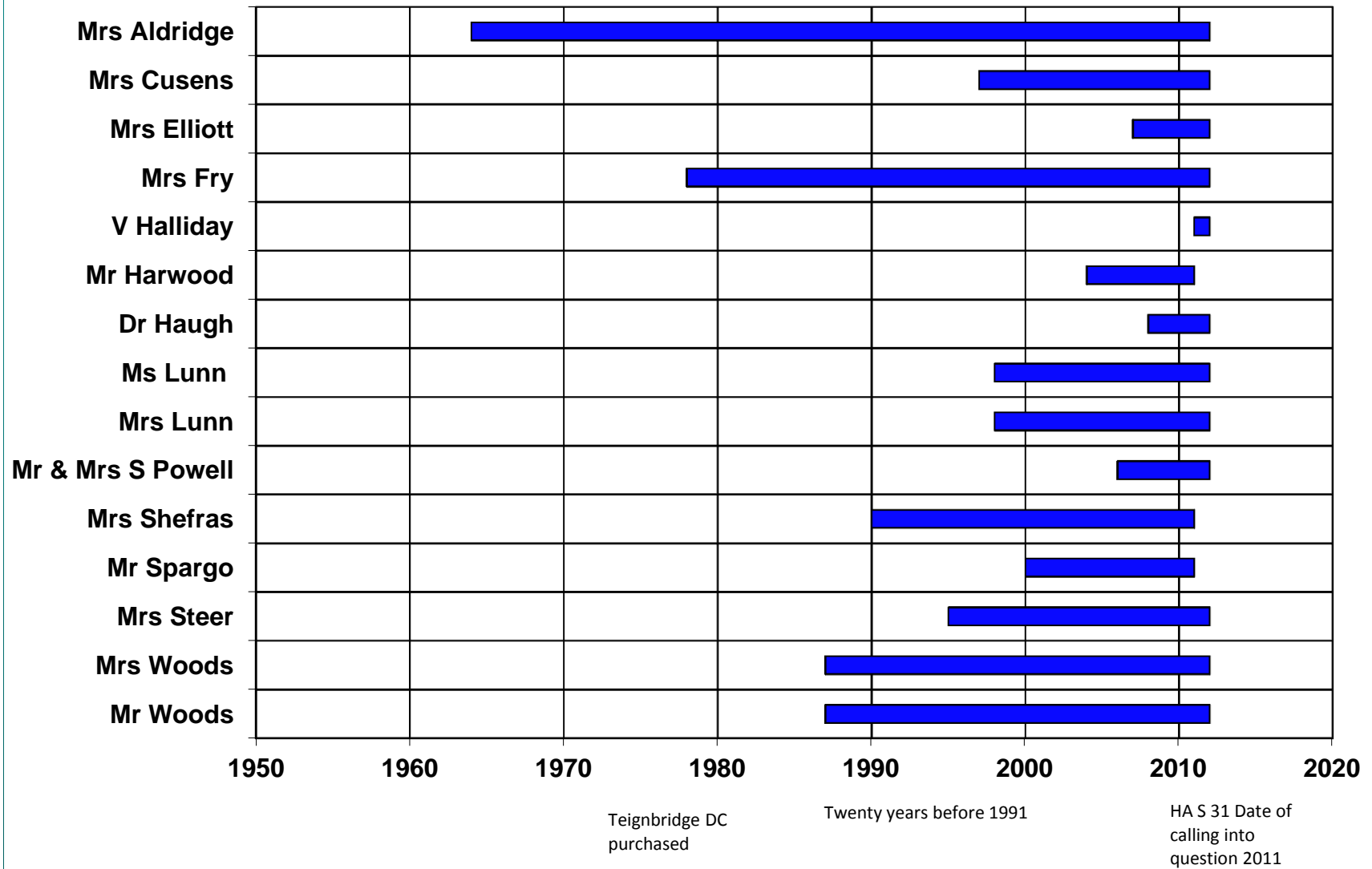
Under the additional information section comments made included:

- I have been using these fields uninterrupted for 46 years. Now one is unable to use the lower field, the permissive path only leads into Blenheim Close.
- I was surprised to find this area closed. This is another beautiful walk closed!
- Really miss not able to do the full walk and see no reason why access is denied.
- The person who owned the land before Mr Langmead was not concerned about the public using the path for dog walking and pleasure. There were no restrictions.
- Satellite images clearly show the path is well used.
- Popular route especially for dog walkers.
- We use this path and enjoy the view and feel of countryside we have left in Highweek.
- The land was owned by somebody else until 2011. Nobody did anything about the land. It is very peaceful and beautiful.
- Many dog walkers use the route. Everyone seemed to be surprised when it was closed.
- This path has been very well used by the public for at least twenty years.

In summary the user evidence records regular use by a number of the public of a route between Footpath No. 15, Newton Abbot, near Highweek Church and Blenheim close, since the mid 1960s (one user), with most use recorded from the mid to late 1990s to summer 2012 when the user evidence forms were completed. Use was for pleasure, often dog walking and until recently it appears that there were no notices or other obstructions to indicate the path through Mr Langmead's and Mrs Harle's land was not an extension of the land owned by Teignbridge District Council.

Chart of User Evidence Received for Schedule 14 - Highweek Church

Users walking the route A-B; B-C or B-F-C and C-D



11. Landowner Evidence

The land crossed by the claimed footpath/s is owned by two separate landowners, Mrs Harle and Mr Langmead own the eastern side of the land and Teignbridge District Council own the western half of the land in question. The approximate boundary of the land between the two ownerships at points I and J is shown on the plan.

Mrs Harle and Mr Langmead confirmed that they had owned their land since summer 2011 and advised that it has never been public. On two occasions when erecting the new fence they reminded dog walkers that the land was private. They also informed all close neighbours on purchasing the land and had erected signs. These were defaced or destroyed and fences and hedges were also broken down. The gate at the entrance to the site, near point D was padlocked.

A covering letter provided additional information and advised that the last eight houses in Blenheim Close were granted permission in 1983/4. Planning applications had been submitted for their site between 2001 and the present. In 2002 contractors erected fencing around the site and sometime in the 1990s a hedgerow was planted along the Teignbridge boundary with their land. The owner of 43 Blenheim Close had lived in their house from new and advised that damage to gates and fences was carried out by professional gardeners and people with vans dumping gardening waste on the site.

Mrs Harle & Mr Langmead advise that there is no historical reason for anyone to be walking these fields unlike the ancient path to Highweek Church. The permissive path from D to H allows residents of The Churchills easy access to the church and they would be happy to allow this to become a public right of way so that the access is assured.

Teignbridge District Council have owned the land to the west since 1982 and purchased the land for the purposes of public open space and it was subsequently designated as a Local Nature Reserve in 2004. The Council has always allowed and encouraged public access on their land and advise that this was always by permission and not as of right.

A paddock, labelled 1 on their completed plan attached to the form and located west of the boundary I – J but south and north of the claimed paths in the shaded area on the plan, was fenced off in 2010 to create a dog free area for grassland fertility, although the public were still permitted to walk in the paddock. The paddock fence did not impede the routes used by walkers between B to C and F to C and the eastern side of the paddock fence is located on the boundary of their land and the land belonging to Mrs Harle and Mr Langmead.

Early in 2012, understood to be after the new boundary fence (along points I – J) had been erected and the two through routes blocked; the ranger service erected notices at the hedgerow leading to the paddock area, to advise the public that the path no longer connected to the adjoining land and was not designated as a public right of way. These signs were ripped down.

Teignbridge District Council advise that as their land is a Public Open Space and Local Nature Reserve it is not necessary to create public rights of way to protect public access and the creation of these could have an adverse impact on their management of the site. However, the effect or otherwise on the management of land is not a valid consideration in determining whether public rights exist.

12. Discussion

A claim for a public right of way can arise through use by the public under section 31 of the Highways Act 1980 by deemed dedication, if twenty years use of the path can be shown after the public's use of the route is called into question. There must be no evidence of the landowners' lack of intention to dedicate during that time and use by the public of the route claimed must have been as of right; that is without force, secrecy or permission.

Statute

The claim for a public footpath would fall for consideration under section 31 of the Highways Act 1980 as there was a clear calling into question of the public's use of the route through the erection of the new fencing at the boundary and notices erected from summer 2011. The twenty year period for which use must be shown by the public would be between 1991 and 2011. The user evidence received confirms use by the public during this period with five users recorded as using the route from 1990 or before and increasing to fifteen users in 2011 when the forms were completed.

There also seems to be a general consensus amongst neighbouring householders, the Teignbridge District Council's rangers and the previous landowner to Mrs Harle and Mr Langmead that the paths were being used by the public. The County Council usually considers a minimum of six users throughout the twenty years to be representative of use by the public. The public using the path appeared to have used similar routes to those claimed, particularly where they have used the aerial photography as they have marked the worn paths on their maps. Three of the users have attached a pre-printed map of the routes and as it cannot be certain that they have used the routes shown their evidence carries lesser weight. As clear paths are visible on the aerial photography, there must have been some use to create such paths although as they were wandering around an open field it is possible that deviation did occur and the path used by each individual may not have followed the same route throughout the twenty years. A route across an open field is not easy to define and a public right of way is a linear route that can be clearly defined on the ground. The frequency of use by the users was high, usually at least weekly, the majority using the route whilst dog walking. However, the extent and number of user evidence forms received, particularly for the first part of the twenty year period, is less than would usually be considered sufficient to show the required deemed dedication use by the public under Section 31.

For deemed dedication to have occurred, it is also necessary to show that there were no signs of any lack of intention to dedicate by the landowners during the twenty years of use. It appears that the boundary fence between the two blocks of land had fallen into disrepair or was non-existent prior to summer 2011 and in the absence of a barrier or any signs, the public merely walked from one part to the other. This is supported by the 2006-2007 aerial photograph which shows no differentiation at the boundary and clear paths that would have been visible to the landowner when visiting the site. The previous owner was aware of the public's use as this was referred to in his planning applications of 2008 and 2009 and he does not seem to have done anything to deter the public or inform them that the path was not public. None of the users refer to seeing any signs relating to access or their use of the route until the change of ownership in 2011 and afterwards. Accordingly there does not seem to be any evidence of any lack of intention to dedicate the right of way by the landowners during the period 1991 to 2011.

Additionally it is necessary that the public's use of the right of way claimed as a public footpath must be 'as of right'. This means that their use must be without permission, without force and without secrecy. There is nothing to indicate that the use was with force or secrecy, although

the current landowners refer to fences recently being broken down; and no users report having been given permission. However, as an area of public open space, the public have been invited to use the land owned by Teignbridge District Council and therefore the public's use of the land owned by the Council has been 'by right', the people being allowed to walk over the land and encouraged to use the site for recreation. This right may be lawfully enjoyed independently of the users being aware that they have the right and differs from that obtained when users are given a licence (express or implied) to use land for recreation.

As the use of the land crossed by the footpath was **by** right and not **as of** right, a valid Section 31 claim for a public right of way cannot arise on the Teignbridge District Council land.

The public's use of the land owned by Mrs Harle and Mr Langmead would appear to be as of right as there is nothing to indicate that permission had been given. Although previous landowners seem to have been aware the land was being used by the public and taken no action, this would not be the same as permission having been given by the landowners or the land being acquired for public open space as with the Teignbridge District Council land.

Public rights of way are not usually a cul-de-sac and normally connect a public highway to a public highway, whether this is a road or another public right of way. The section of claimed footpath from the boundary at points I or J to C and then D would not be running from a highway/PROW to another highway/PROW. There are public rights of way that are culs-de-sac, but usually only if the right of way leads to a point of interest such as a well or view point to which the public would have a permanent right of access in perpetuity. It is not considered that the boundary at points I and J, being the access points to the Teignbridge District Council land and although giving access to the nature reserve, are of a sufficient point of public interest for a cul-de-sac public right of way to have been created. The access to the nature reserve is permissive and although considered unlikely, could be stopped at some time in the future.

The route used by some users from D to C to E could be a public right of way as this connects Blenheim Close to Footpath No. 15, Newton Abbot, a public highway to a public right of way but only three users referred to this route which would be inadequate to show deemed dedication.

Therefore the claim is not considered to meet the statutory tests for a successful claim to arise for deemed dedication under statute, section 31, due to use not being 'as of right' for part of the route and the other part not being of sufficient public interest to overcome the presumption that a public right of way goes from a public highway to a public highway.

Common Law

A claim for a public right of way may also exist at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

A public right of way could have arisen under common law prior to Teignbridge's ownership of the land in 1982. If a right of way was deemed to subsist prior to their purchase then this would still exist as once a highway, always a highway. The maps considered do not support the existence of a public right of way apart from the recorded Footpath No. 15, Newton Abbot (shown on the Tithe Map) and the 1946 aerial photograph does not show any tracks corresponding to the path claimed. There is no evidence of any express or implied dedication by any previous landowners or any evidence to show that public money (prior to Teignbridge's

purchase) has been expended on the route. The covenant in the June 1978 transfer refers to the maintaining of a stock proof fence along the boundary. This does not support the landowner at that time permitting access across his land and would indicate a lack of intention to dedicate. Only two users, Mrs Aldridge and Mrs Fry, refer to use of the route prior to 1982 and one of the 2008 planning application responders comments on the path being used for nearly thirty years. This would correspond to the period of time when the houses in the close were constructed.

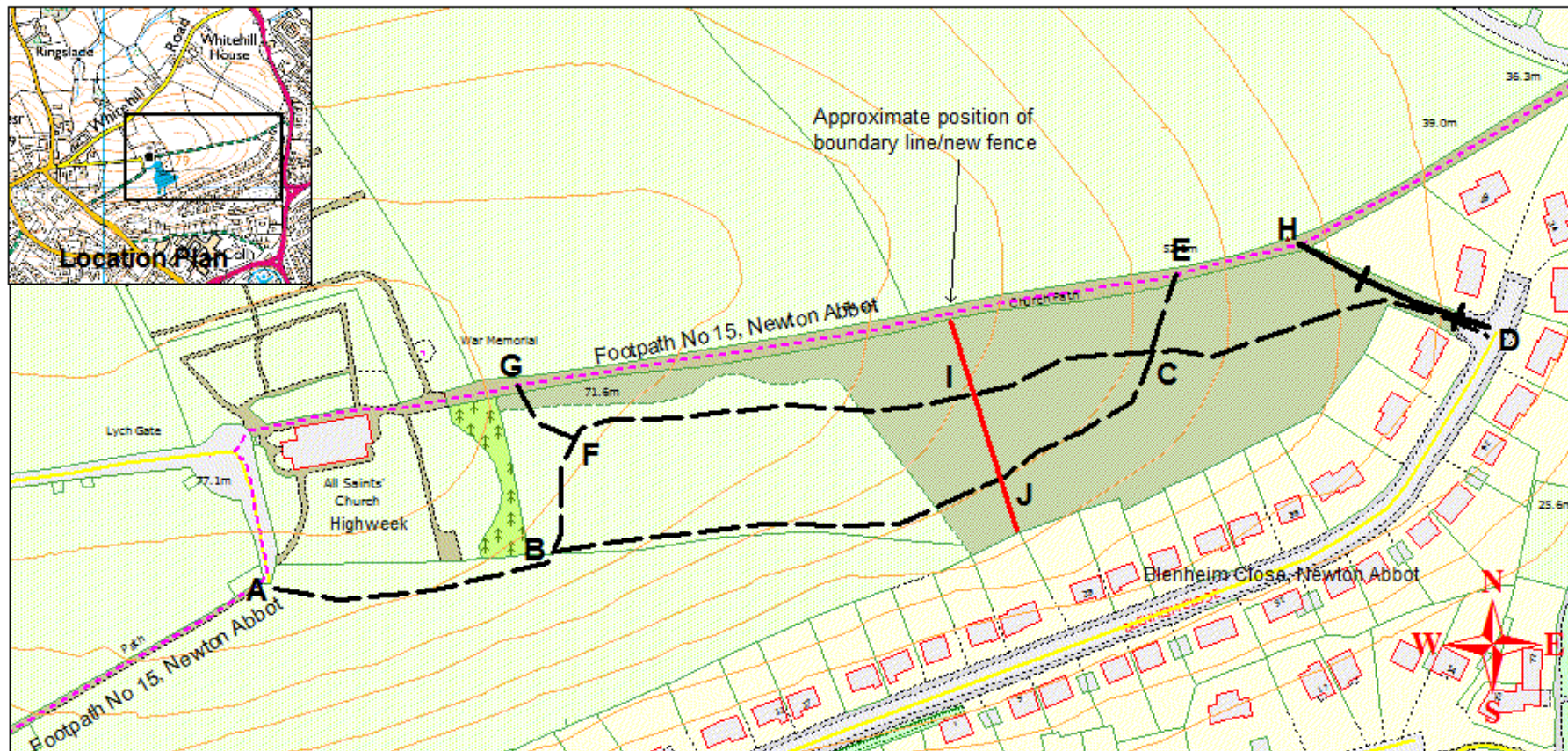
A permissive path has been created along the eastern side of the route from points D to H which provides a useful connection from Blenheim Close to Footpath No. 15, Newton Abbot, Church Path, and creates a circular walk for the public. This path is of a reasonable width and surface and has no gates or stiles to impede the public. Mrs Harle and Mr Langmead have indicated that they would be prepared to dedicate this path as a public right of way, under section 25 of the Highways Act 1980, which would ensure its existence in perpetuity.

13. Conclusion

A public right of way is not deemed to subsist through deemed dedication under section 31 of the Highways Act due to insufficient use by the public during the twenty year period; the use not being 'as of right' for part of the route and the other part not being of sufficient public interest to overcome the presumption that a public right of way goes from a public highway to a public highway.

Additionally there is insufficient evidence of either express or implied dedication by the landowners prior to 1982 to support the existence of a public right of way at common law.

It is therefore recommended that no Order be made to modify the Definitive Map and Statement for the addition of a footpath from Highweek Church to Blenheim Close as shown on drawing number HCDW/PROW/13/76, as claimed for in the Schedule 14 application, but that negotiations be undertaken with the landowners for the dedication of the permissive footpath from D to H as a public right of way.



map ref: **SX 8572**

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**DEVON COUNTY COUNCIL
SCHEDULE 14 APPLICATION**

LAND SOUTH AND EAST OF HIGHWEEK CHURCH

drawing number	HCDW/PROW/76
date	Jul 13
scale	1:2,000 at A4
drawn by	TW

<u>Notation</u>	Claimed Public Footpaths	— A - B - C - D (approx 430 m)	Newly Created Path D - H (approx 70 m)
	Existing Public Footpaths	- - - B - F - C (approx 240 m)	
		- - - F - G & C - E (approx 25 m & 26 m)	

DAVID WHITTON
HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE

