

Schedule 14 Application
Addition of a footpath between Streatham Rise and Streatham Drive, Exeter

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 a Modification Order be made to modify the Definitive Map and Statement by adding a Footpath between the county roads Streatham Rise and Streatham Drive between points A – B as shown on drawing number HCW/PROW/14/79a.

1. Summary

This report examines an application made in 2013 under Schedule 14 of the Wildlife and Countryside Act 1981 to add a Footpath to the Definitive Map and Statement. This application was made by members of the public as a result of the route being brought into question.

Exeter City Council completed the Definitive Map Review for the City in 1981 so this application is now being determined in line with the Rights of Way Improvement Plan policy. The claimed route, supported by a large amount of user evidence, has been blocked and may be affected by development. It is therefore reasonable that the application be determined promptly.

The evidence provided in relation to the application is discussed in the appendix to this report. It is considered sufficient to show that a public right of way on foot subsists, or is reasonably alleged to subsist, over the claimed route and it is, therefore, recommended that an Order be made to add a footpath to the Definitive Map and Statement, as shown on drawing number HCW/PROW/14/79a between points A – B.

2. Proposal

The Schedule 14 Application to add a footpath is discussed in the Appendix to this report.

3. Consultations

General consultations have been carried out with the following results:

- | | | |
|----------------------------|---|---|
| County Councillor P Prowse | - | has responded as the local County Councillor and Exeter City Ward member. He is aware of the path and the issue of its closure. He has not used the path himself. |
| Exeter City Council | - | no comment. |
| Ramblers | - | support the addition but have not provided further evidence. |

The British Horse Society, Byways and Bridleways Trust, National Farmers Union and Country Land and Business Association have not been consulted due to urban setting.

4. 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.

5. Legal Considerations

The implications/consequences of the recommendation has been taken into account in the preparation of the report.

6. Risk Management Considerations

No risks have been identified.

7. Equality, Environmental Impact and Public Health Considerations

Equality, environmental impact or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

8. Conclusion

It is recommended that a Modification Order be made in respect of the Schedule 14 Application, to add a footpath.

9. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to determine the Schedule 14 application and to keep the Definitive Map and Statement under continuous review.

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Electoral Division: Duryard & Pennsylvania

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence Files	2007- date	AS/DMR/EXE/STRE

as151014pra
sc/cr/DMR Exeter Streatham Rise Drive

04 041114

A. Basis of Claim

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.

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 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 surveying authority (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; a Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein... and shall be 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(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.

Section 69 of the Natural Environment and Rural Communities Act 2006 (NERC) 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.

- 1. Schedule 14 Application to add a footpath between Streatham Rise, beside properties known as Clayden and Knightley, and Streatham Drive, Exeter, between points A and B as shown on drawing number HMT/PROW/14/79a**

Recommendation: It is recommended that a Modification Order be made in respect of the Schedule 14 Application to add a Footpath to the Definitive Map and Statement.

1.1 Background to the Application

- 1.1.1 In 2007 the University of Exeter put the property known as Clayden on Streatham Rise, up for sale on the open market. The sales particulars made it clear that the purchaser was to erect a fence between Clayden and the property known as Knightley. Local residents Mr Saunders and Mr Harris made enquiries of Mr Alcock, the Director of Buildings & Estate Service for the University of Exeter. Mr Alcock suggested that it was the University's intention to close off the path.
- 1.1.2 Mr Saunders and Mr Harris then wrote to the solicitors dealing with the sale and the estate agents for Clayden and informed them that the public had been using the path for in excess of 40 years and they were going to make an application to Devon County Council for the route to be defined as a Public Footpath.
- 1.1.3 As a result of this, 42 user evidence forms were collected from local people who had used the route. These were brought to the County Council in May 2007, but no formal application was made at that time. The user evidence forms were placed on file. The property was subsequently withdrawn from the market and is still owned by the University. The claimed footpath remained open and available to use and the users continued to walk the path unhindered.
- 1.1.4 In 2013, after planning permission notices were displayed for the reconfiguration of the property known as Knightley at the Streatham Drive end of the route, Mr Saunders again approached the County Council to see if a right way had been recorded. He was informed it had not as The Definitive Map for Exeter was not being actively reviewed at that time.
- 1.1.5 Subsequently, in July 2013 a formal Schedule Application was received reintroducing the original 42 evidence forms and 8 further forms. During 2014 the University have carried out development work at Knightley and extended the property leaving the path beside the new extension. They have also resurfaced the area around Clayden, and in May 2014 a new gate was erected and locked at the entrance to Clayden just east of point A. The application is supported by a large amount of user evidence and, as a result of it being blocked and at risk of development, the County Council considered it appropriate to determine the application promptly.

1.2 Description of the Route

- 1.2.1 The route commences at the county road Streatham Rise at point A on plan number HCW/PROW/14/79a and runs north eastward and then generally east south eastwards along a defined tarmac path/drive to the side of a property known as Clayden, continuing along a tarmac path beside Knightley then out through the gateway and onto the county road Streatham Drive at point B. It is approximately 106 metres in length.
- 1.2.2 When the site was inspected in September 2013 the route was un-gated and open and available for use. There was an old centrally placed concrete bollard at approximately point C. This did not restrict pedestrian use but would have stopped a car passing along the route. There were no notices at either end of, or along the route.
- 1.2.3 In October 2013 site safety fencing was put up while the work on Knightley was been carried out. In May 2014 a new gate was erected and locked just east of Point A.

Photographs of route taken September 2013.



Point A looking east Clayden



Point C Bollard



Beside Knightley looking towards Point B



Point B on Streatham Drive

1.3 Documentary Evidence

1.3.1 Ordnance Survey Mapping

The 1st Edition 1890 large scale map at a scale of 25" shows fields in the area of the claimed route. It shows Streatham Drive leading to Streatham House. The area of Streatham Rise was undeveloped fields. 2nd Edition 1905, 25" show the area still as undeveloped fields. 4th Urban Edition 1932 shows the area had been developed with the road Streatham Rise built and also some properties including Knightley.

1.3.2 By the 1952, A Edition 25" scale mapping shows the physical existence of a path between Streatham Rise and Knightley and a gateway onto Streatham Drive. The 1968 B Edition 2,500 scale shows Clayden has been built and there is an open way between Clayden and Knightley. No gate on to Streatham Drive is shown. The map accompanying the application appears to be a copy of the A Edition from 1952.

1.3.3 It should be noted that the Ordnance Survey conventions for marking boundaries had changed by 1968 and the OS no longer shows gates in boundaries. This convention continues on the modern mapping with no gate shown into Knightley. Therefore measurements have to be taken to position the gateway.

1.3.4 Ordnance Survey (OS) completed the national Positional Accuracy Improvement (PAI) programme in 2006. This programme was developed to enable the OS to capture data at 1:2,500 scale to a greater absolute accuracy (absolute accuracy is the position of features in relation to the Ordnance Survey National Grid). For the County Council as a customer of Ordnance Survey products, it means the information that was derived from legacy products of Land-Line data or digitised from

old paper plots and plans before 2001 will no longer exactly align to current plots or MasterMap topography layer which we now use. PAI has produced maps in urban area with the accuracy of + or - 0.4 metres. Whereas the old maps were working on tolerances of between + or - between 1.8 metres and 2.3 metres. All post 2006 OS mapping now uses this dataset.

- 1.3.5 The Informal consultation map showed the claimed line drawn on modern mapping post the PAI programme. The gateway at point B is no longer shown by the OS, so general measurements were taken to position the gateway and the dashed lines on the informal consultation plan.
- 1.3.6 Should the Committee decide that a right of way subsists or is reasonably alleged to subsist then a formal Order Plan would be made, after taking more detailed measurements of the route on the ground.

1.4 User Evidence

- 1.4.1 Fifty user evidence forms have been submitted in support of the claimed route. The County Council has to consider this evidence with all available evidence. The user evidence is summarised below and shown on the table in the backing papers.
- 1.4.2 Forty-two users have given evidence of use up to 2007 when they completed their forms. Some of those have been contacted and asked if their use has continued since that date. All those contacted have said that they continued to use the path until it was gated and locked in May 2014.
- 1.4.3 None of the users report seeing any sign on the claimed route until May 2014, and until then the route has been un-gated. Some users report a short concrete pillar centrally placed in the path to stop vehicles from passing along the path. This caused no hindrance to their use on foot.
- 1.4.4 A sample of the use people have made of the route follow:
 - a) Mrs Allen walked the dog along the claimed footpath between 1977 and 2007 about 24 times a year. She commented that everyone seems to use it, and thought it was a right of way.
 - b) Mrs Blandford walked the route 50 times a year between 1987 and 2007, to go to and from the shops on foot, and she commented it was in continuous use. She saw no gates or notices.
 - c) Mr Blandford also walked the footpath 50 times a year between 1987 and 2007 to get to and from the bus to the city.
 - d) Mr Bonner has used the route at least weekly since 1967 on a Sunday walk and often in the week as well, until the gate was locked in 2014. He saw the ground staff and passed the time of day with them.
 - e) Mrs C Bonner has walked the footpath about 100 times a year, between 1977 and 2007 for pleasure to get to and from the Northcott Theatre and for a walk.
 - f) Mr Clark moved to the area in 1983 and has used the route on the way to visit friends and to the city centre, 50 times a year on foot until 2014. He said it was an established right of way. Occasionally he went through on his way to work, however this was not for the University or services to either property.

- g) Mr Harris and family used the footpath approximately 500 times a year for pleasure, between 2001 and 2013 when they completed their forms. Mrs Harris worked for the University and walked through on the way to and from work on occasions, but regarded the route to be public and used it for pleasure.
 - h) Mrs Hoddinott started to use the route when she moved to the area in 2011 and she has used it more than 200 times a year until it was gated and locked in May 2014.
 - i) Mrs Joyce used it from 1998 when she moved to the area until it was locked in 2014, for walking for pleasure, to the bus stop and pond about 300 times a year, sometimes twice a day.
 - j) Mrs Mitchelmore has used the claimed footpath from 1966 to 2007 approximately 180 times a year, to the bus stop and campus for a walk. She says many people were using the path and never saw notices, she noted the pillar to stop vehicles. She says "I have used this path for over 40 years without comment or permission".
 - k) Dr Proud used the route on foot between 2000 and 2007 and has continued to walk it until it was locked 2014. She never used the route in connection with work. Her husband Dr Kelly also used the path for pleasure and not in connection with work.
 - l) Mr S Saunders has used the route from 1966 when he moved into Streatham Rise right through to May 2014, when the gate was erected and locked. Approximately 350 times a year, for pleasure, when going to and from the bus stop, the Northcott theatre and for a walk in the University grounds.
 - m) Mrs Saunders has been walking the footpath since 1966, 250 times a year and continued to do so until the gate as erected and locked in 2014, to go to and from the bus stop, Northcott Theatre and the campus for pleasure. She says it was used by so many people.
 - n) Ms Tinti has used the path between 2004 and 2007 when she completed the user evidence form. She has worked for the university and has used it for pleasure and to walk to work. She worked in Queens Building not in a building on the route and went from one public highway to another before walking some distance to the campus. She says "I thought it was public". This can be considered as evidence of public use as it is sufficient if the sole or predominant purpose of the use was for pleasure or recreation.
- 1.4.5 Streatham Rise and Streatham Drive are both county roads and the residents who live on these do not have private rights to use the claimed route. Some of these residents are among the most frequent users as would be expected, however others from the surrounding neighbourhood were using the path as well. They were all using it just going about their daily lives. The individual users have given their evidence. Some make up families, however each user has given evidence in their own right and therefore this evidence needs to be given weight accordingly.
- 1.4.6 None of the users report seeing any notices saying, 'no public right of way' or anything else on the route to suggest it was not public. The users have used it "as of right", without force, secrecy and without permission.
- 1.4.7 Some 42 users have recorded their use between 1956 and 2007, and the majority of these continued to use the path if they were physically able until it was locked in 2014. Four users have only used the route recently, since 2011, when they moved

into the area. None of the users report having been stopped or interrupted from using the way until 2014 when it was gated and locked.

- 1.4.8 One evidence form has been completed by Mr Paddon who was head of Security for the University from 1993 until 2003, and has only used the claimed path during the course of his work. Therefore his evidence has been disregarded. However he has said that during his tenure he had never been called to the route for trespass.
- 1.4.9 Several of the users comment they have on occasions seen the University's grounds staff and security staff and were not stopped or challenged. This is evidence that University staff had seen members of the public using the route.
- 1.4.10 At this stage in the process there is no forum for testing the user evidence. The case officer has contacted some people by telephone clarify use, and to ascertain if a sample of those that filled in forms in 2007 stopped using the route then.
- 1.4.11 All of the users who have been contacted were asked how they moved from the corner of Knightley house to the road. They have all said, through Knightley's gateway.
- 1.4.12 The only person who had marked his map differently to the claimed line was Mr Paddon, referred to in paragraph 1.4.9, whose evidence has not been counted as he only went to the route for work inspection purposes and when on patrol.

1.5 Landowner evidence

- 1.5.1 The University of Exeter has made a submission in response to the application, in which they state "The University objects to the Application and hereby requests the Surveying Authority to refuse the Application and to decline to make the order sought or any order." The University has provided evidence which is summarised below. Their submission is available in full in the backing papers.
- 1.5.2 In the submission from the University they say; "The University of Exeter are the landowners of both Clayden and Knightley and have been since 1957, prior that the land being held by University College of the South West of England from about 1949."
- 1.5.3 Within its submission The Land Registry documents appears to show that the University of Exeter has only owned the Title Absolute of Clayden and Knightley since 27 September 2000, the land having previously been owned by The Peninsular & Oriental Holdings Limited.
- 1.5.4 The University have produced two Landowner evidence forms. The first was from 2007 when they were initially contacted by the County Council about the user evidence forms submitted to them at that time, and the second completed in September 2014.
- 1.5.5 The first one was completed by Mr Alcock the Director of Buildings & Estate Service completed it on 16 August 2007. For clarity the questions and responses are detailed below:
 - i) *Does the route cross your land?* "Yes 58 years."
 - ii) *Do you believe this way to be public?* "No."

- iii) *Have you seen, or been aware of members of the public using this way?* “It is believed that adjoining house owners may have used it, but no knowledge of how long and how often and no knowledge of use by the public generally.”
- iv) *Have you required people to ask permission?* “No”.
- v) *Have you deposited a section 31(6) Highways Act plan and statement?* “No”.
- vi) *Have you or someone on your behalf ever turned back or stopped anyone?* “No”.
- vii) *Have you or someone on your behalf ever told anyone the way is not public?* “No, not directly face to face, but those now asserting a public right of way have been told in recent months in connection with the proposed sale of Clayden that the existence of a public right of way is denied”.
- viii) *Have you ever erected notices or signs stating that the way was not public?* “Yes”
 - a. *If yes please give details and approximate dates:* “Signs as shown in the attached photographs making it clear that the University grounds and roads are private. They are believed to have been in place for in excess of 20 years.”
 - b. *Have the notices ever been defaced or destroyed?* “Not so far as the university is aware.”
 - c. *Show their position on the accompanying plan.* “See attached marked in red on the plan.”
- ix) *Have there, to your knowledge, ever been on the way any stiles or gates?* “No.”
- x) *Have you ever obstructed the way?* “No”
 - a. *If yes state where, how and when:* “Not as far as I am aware.”
- xi) *Can you give any further information?* “The University does not accept that there has been at least 20 years use as a right by the general public and in any event had no intention to dedicate as evidenced and communicated by the signs referred to in 8 above”

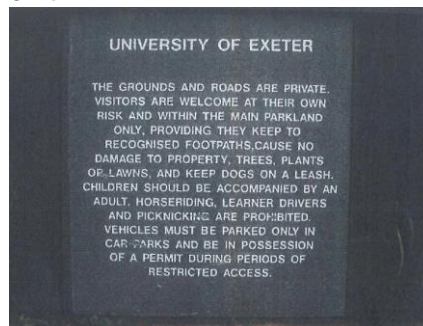
1.5.6 The position of this notice and porters lodge appears on Committee plan marked as X and Y. It should be noted that the Campus Welcome Map faces south on Streatham Drive, on the verge abounding the county road and pavement and not beside the gateposts of Knightley. The porters lodge was up the hill about 120 metres from the site to the east a little way up the private road leading into the University’s road network with the notice on the side of the hut facing west. There also used to be a barrier at this point to control traffic.

1.5.7 Photographs of Original Campus Welcome Notice taken in 2007.

Point X

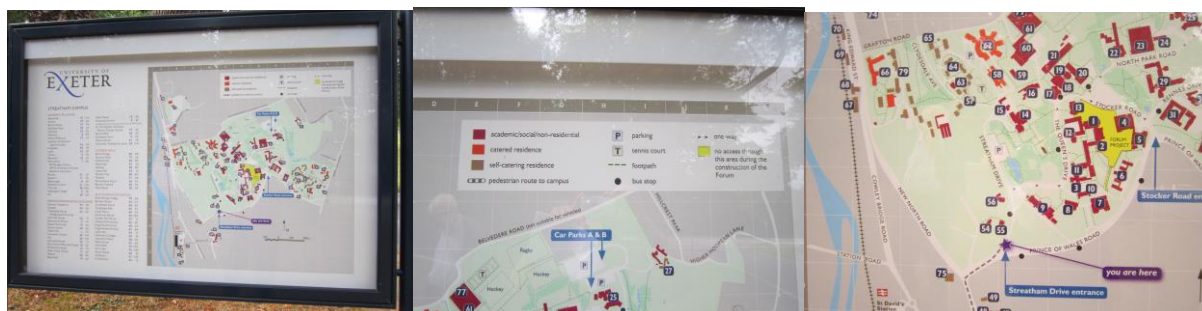


Point Y



1.5.8 On the new version of the University's Campus Welcome Map, the claimed route is again shown as a green dashed "Footpath" between the county roads of Streatham Drive and Streatham Rise. It is shown in the key at the side of that map as a Footpath marked with green dashes. (This map shows the path right through from road to road rather than just between the properties.) Large copies of these photographs are available in backing papers.

1.5.9 Photographs of New Campus Welcome Map taken in 2013 at Point X



1.5.10 The close up of the original Welcome Map says "You Are Here" and it also clearly shows the claimed route as footpath in green markings defined in the key printed on the side of the map as Footpath. Large copies of these are available in the backing papers.

1.5.11 Mr McCann Director of Estate Development has also completed a Landowner evidence form on 18th September 2014. He has answered the same set of questions as Mr Alcock:

- i) *Does the route cross your land?* "Yes" and goes on to say "Acquired by the University College of the South West of England in about 1949 and then owned by the University since 1957. See paras 10 and 13-21 of the submissions and pages 6-19 of the bundle."
- ii) *Do you believe this way to be public?* "There is no right of way for the reasons set out in the submissions."
- iii) *Have you seen, or been aware of members of the public using this way?* "I have been aware of occasional local residents with permission of the University."
- iv) *Have you ever required people to ask permission before using the way?* "People had permission at all material times see paragraph 51 – 66 of the (University) submission and pages 22-31 of the bundle".
- v) *Have you ever made a Section 31 (Highways Act 1980) plan and statement?* "No".
- vi) *Have you or has someone on your behalf, ever turned back or stopped anyone from using the way* "From time to time the university prevented public access as mentioned in para 70 of the submissions."
- vii) *Have you or someone on your behalf, ever told anyone using the way that it was not public* "Yes the public was told it was not public, see para 28, 29 and 51 – 68 of the submissions."

- viii) *Have you ever erected notices or signs stating that the way was not public?* “Yes.”
 - a. *If yes please give details and approximate dates:* see para 51 – 56 of submission and pages 22 – 31 of bundle.”
 - b. *State whether notices have ever been defaced or destroyed.* “Not so far as am aware”.
 - c. *Show the position on the accompanying plan.* “See answer A above and points X and Y on the revised objection plan at page 1 of the bundle.”
- ix) *Have there ever been gates or stiles?* “No not at any material time.”
- x) *Have you ever obstructed the way?* “Yes see answer 6, further there was until recently a bollard as shown on the plan page 1 of the bundle.”
- xi) *Can you give any further information?* “Please see the submissions and the bundle.”

The submission bundle is included in full in the backing papers.

1.5.12 Mr Roke a University Groundsman from 1979 then and Grounds Manager since 1995 has submitted a statement within the University’s response in which he says:

“Throughout my involvement with the land the University regularly obstructed and prevented public access along the route A-B-C...as and when required for its own purposes from time to time, including for hedge cutting and for works to the trees at Clayden and Knightley and the neighbouring property to the north (Redcot) in which I was involved. Operatives/banksmen would be positioned at points A & C to prevent people from walking along that route and to turn them away or show them another way round. This route closure would take place at least twice a year and sometimes more, as the University might decide. It would involve heavy vehicles and machinery being brought on to the land and blocking the route. On each occasion public access was prevented along ABC for up to a number of days each time. Hedge cutting would normally take at least two days to complete: tree work could require the route to be closed off for longer, often about three to five days each time.

From about September 2007 until the recent refurbishment works, the Music School at Clayden had a large mini bus which, when not in actual use, would be parked across the footpath at the far end of Clayden’s drive, between the hedge and the Clayden building. While it was parked there no-one could get between point A and B on the Revised Objection Plan because all access was blocked by the mini bus.”

1.5.13 The University argue that the application is flawed and that authority should not be considering it.

1.5.14 The University believe the Welcome Notices and notice on the Porters Hut would have informed the public that use was by permission, and they say that this use was subject to the University’s overriding right to withdraw permission at any time.

1.5.15 The University also question at length the validity of the user evidence by questioning the fact that some users share a household and that the University Staff would have been given the right to use the path. As expressed already there is no forum for this until a case is in front of a Planning Inspector who would have the opportunity to test the user evidence. At this stage evidence from both sides has to be taken a face value.

1.6 Discussion

- 1.6.1 The University argue that the application is flawed and that the County Council should not be considering it.
- 1.6.2 The County Council has accepted the Application as duly made under the provisions of schedule 14 of the Wildlife & Countryside Act namely, the map accompanying application was to the correct scale, the forms were complete, the applicant had certified that they had served notice on the landowner and they had produced evidence in support of the application. Because of this the Council has a duty to determine the application. As the Application was properly made the applicant has a right of appeal to the Secretary of State in the event of the Council failing to determine the application within 12 months or if they disagree with the Council's decision. The map accompanying the application shows the route joining the county road and pavement at point B. The explanation of the location of the gate way of Knightley and the modern mapping has been given at paragraph 1.3 in the report.
- 1.6.3 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.
- 1.6.4 There are two events which may be considered to have called the public's right to use the way into question for consideration of the claim under Statute. Firstly, in 2007 local users become aware of the potential threat to the route when they saw the Sales Particulars for Clayden. These showed that the purchaser was to erect a new fence between Clayden and Knightley that would have potentially blocked their right of way. No physical action was taken by the University to prevent the public from using the route, no signs were put up or gates erected and locked. However, this galvanised the local resident Mr Saunders into contacting the County Council for user evidence forms. An officer contacted the University and Mr Alcock completed a Landowner Evidence Form on behalf of the University. User evidence was gathered but held on file as the Definitive Map for the City of Exeter was not being reviewed at that time and no formal application had been made. The path remained open and the property taken off the market.
- 1.6.5 The Planning Application for the redevelopment of Knightley again brought it to the attention of the users that the route that they regarded as a public right of way was under threat. The Applicant contacted the County Council and was told that route was not recorded and so made a Schedule 14 in July 2013. Under the provisions of the Natural Environment and Rural Communities Act 2006, the date of a Schedule 14 Application may also be taken as the date on which a route is called into question.
- 1.6.6 In order for a claim to be successful the route must be used openly, freely and without interruption for a period of at least twenty years. In this case it can be seen the public have been walking the route since 1956.
- 1.6.7 There are 49 individuals who have provided user evidence covering at least the last 40 years. Many of these users have walked the route as part of their daily and weekly routine going to local amenities and to and from the bus stop. None have found any obstacle to walking the route. None of the users have been stopped or interrupted from using the way until 2014 when it was gated and locked.

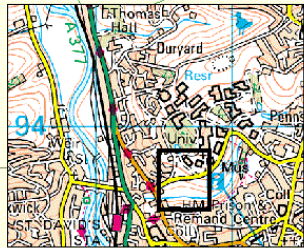
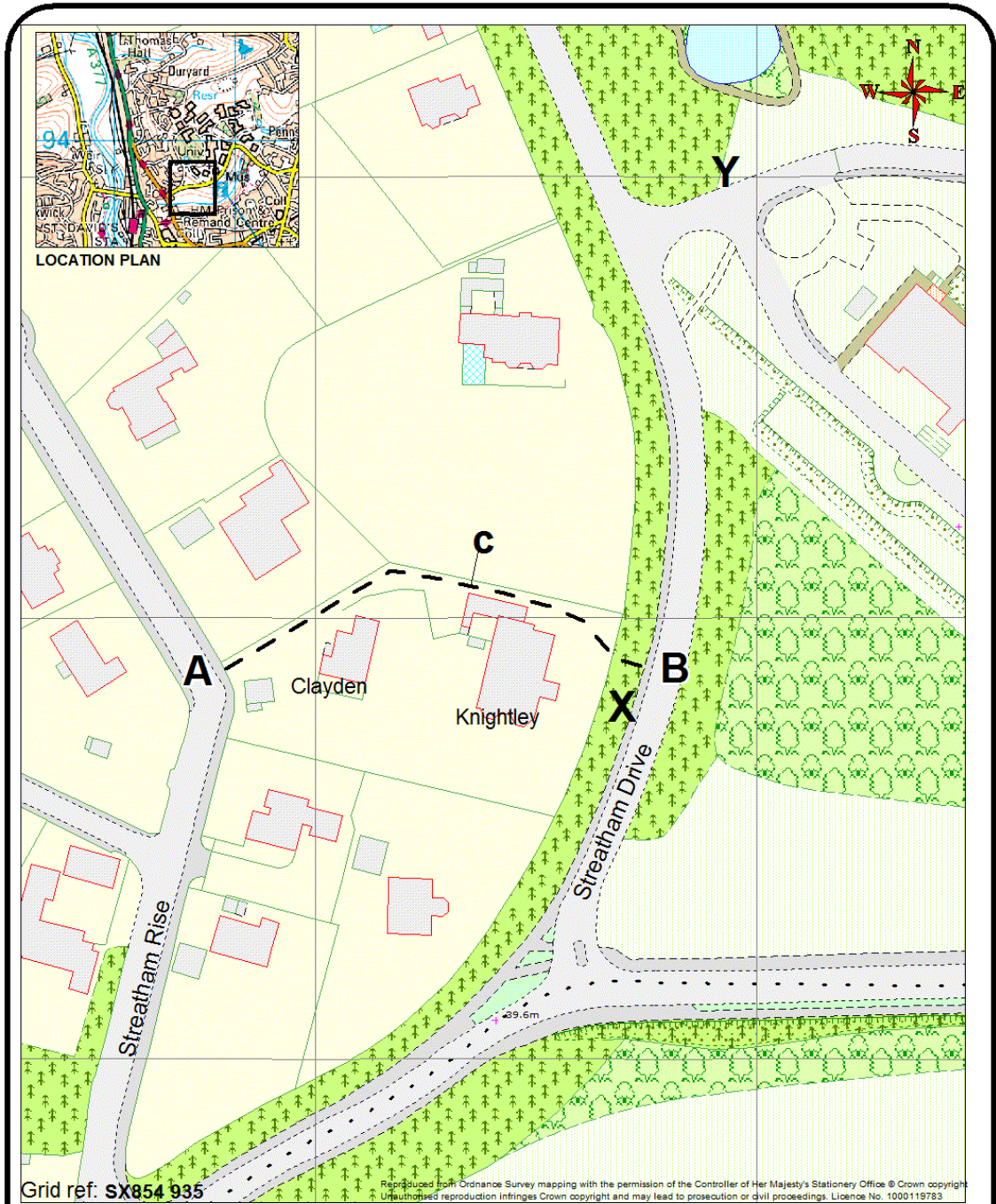
- 1.6.8 The law requires that a route must be used by the public at large. It is not sufficient if the use has been merely by a class of people, such as employees of a particular employer or customers of a particular business or tenants of a particular landlord. In this case the users are from private houses in and around the local area. They are not tenants of the University and nor do they have any private or given rights to use the path and as such their use is public and 'as of right'.
- 1.6.9 If the date of calling into question is taken as 2007 the relevant period is from 1987 to 2007. During this period there is considerable evidence of use by the public, demonstrated by 41 user evidence forms, sufficient to raise a presumption that public rights had been dedicated over the claimed route.
- 1.6.10 If the public's use of the route was not called into question until the Schedule 14 Application was made in July 2013, there are 49 user evidence forms demonstrating use by the public during the relevant period, between 1993 and July 2013, sufficient to raise a presumption that the claimed route had been dedicated.
- 1.6.11 Prior to the locked gate at point A in 2014 there is no evidence of any obstruction on the route. The concrete bollard at point C would clearly have prevented vehicles passing along the route, but it did not stop pedestrians from using it.
- 1.6.12 There have been no signs on the route to indicate it was not public.
- 1.6.13 The case law is clear as to the steps a landowner must take to show the public that they had no intention to dedicate a right of way. It holds that "a landowner must overtly show the public that there is no public right of way with signs that are specifically worded to that effect."
- 1.6.14 The Campus Welcome Maps, versions one and two have not had the effect of deterring the public from using the path, rather its purpose was seen as giving visitors directions around the campus, indeed both notices marked the claimed route as a footpath. The blank reverse side of the sign is the only aspect a user may have seen in the distance when arriving at the gateway of Knightley.
- 1.6.15 The sign on the porter's hut was a distance from the claimed route and could be read as you approached the University's network of privately maintained roads. It said the grounds and roads are private and visitors are welcome to keep to recognised footpaths (amongst other things).
- 1.6.16 For a notice to be effective its wording must clearly deny a public right of way. The notice on the porter's hut could not be seen when using the path, and the position and ambiguity of the wording insufficient to clearly inform that public the claimed path was not a public right of way.
- 1.6.17 Case law also directs that the words 'Private road' are of doubtful adequacy because of their ambiguity. The words could be interpreted as showing an intention to deny the existence of a carriageway, but not that of a right of way on foot. The High Court supports these arguments. In *Burrows v Secretary of State for the Environment, Food and Rural Affairs* 2004 and more recently *Paterson v Secretary of State Environment, Food and Rural Affairs* 2010, 'Private' signs were not found to be sufficient to show a lack of intention to dedicate a route on foot. The judges gave guidance on how to interpret signs saying "how a range of members of the public have in fact understood signs in a particular context may well be a helpful indicator how a reasonable person would interpret a sign in that context".

- 1.6.18 The Welcome Maps and porter hut notice are not found to be sufficient to tell the public not to use the route or give an indication of lack of intention to dedicate the claimed route as a footpath.
- 1.6.19 A landowner may turn people away from the route telling them that they have no right to be there. The University has provided no evidence of having done this. None of the users report having been stopped or turned off the path, with the intention of showing the public the route was not a public right of way. Neither Mr Alcock, Mr McCann nor the security staff had turned people off the route or stopped them from going through. In fact some users have corroborated Mr Roke (the Groundsman's) statement that; on rare occasions when hedge cutting or tree works were in progress the users were met by a banksman who checked if it was safe to walk through or took them round a different way. These men were there to ensure the safety of the users and workmen, not to disabuse the public of their notion that the route was public.
- 1.6.20 A landowner can erect gates and lock them to keep the public off his land. The University only erected and locked a gate to stop public access in May 2014. Prior to this in October 2013 site safety fencing was put up while the building work on Knightley was being carried out. This was for the safety and security of the site while the building works were being carried at Knightley rather than with the intention of showing the public it was not a right of way. It also postdates the application.
- 1.6.21 Since the 1932 Rights of Way Act a landowner has had the ability to protect his land from rights of way claims by depositing with the appropriate council a map and a statement indicating which public ways he admits to. This provision has continued to date and is known as a Section 31(6) deposit. The University has made no s31(6) deposit, so has no statutory protection from rights of way claims over its holding.
- 1.6.22 Therefore, whether 2007 or 2013 is taken as the date on which the public's right to use the route was called into question, the user evidence submitted is considered sufficient to show that a right of way subsists or is reasonably alleged to subsist over the claimed route, as shown by the consistent and regular use of the public for either period of 20 years, and without any sufficient evidence to demonstrate that the landowner had no intention to dedicate a public right of way during that period.
- 1.6.23 A claim for a 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.
- 1.6.24 As the public's use is over a prolonged period and the maps show the University marked the claimed path a 'Footpath' with no proviso of the class of people who could use it and made no attempt to lock, block or deter the public from the claimed footpath, it may also be inferred that the route has been dedicated at common law.

1.7 Conclusion

- 1.7.1 Based on the evidence provided and detailed in the report it is considered that a public footpath subsists or can be reasonably alleged to subsist over the claimed route shown running between points A – B on plan **HCW/PROW/14/79a**. It is therefore recommended that a Modification Order be made to add the path to the

Definitive Map and Statement and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



DEVON COUNTY COUNCIL
Claimed Footpath Committee Plan
Between points A & B
Streatham Rise to Streatham Drive, EXETER

drawing number	HCW/PROW/14/79a
date	October 2014
scale	1:1250
drawn by	AS

Notation

- Claimed Footpath A - B - - - -
- Point c position of old bollard
- Point X approximate position of Campus Welcome Notice
- Point Y approximate position of Old Porters Hut



David Whitton
 Head of Highways, Capital Development & Waste