

Schedule 14 Application

Addition of public bridleway(s) at Filham Park, near Ivybridge, in the parish of Ugborough

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 and record a public bridleway along the line E – j – k – H as shown on drawing number HWC/ PROW/14/109c, but that no Modification Order be made in respect of the sections j – F – G and F – k.

1. Summary

This report examines a Schedule 14 Application made in May 2014 for the addition of bridleway(s) at Filham Park, near Ivybridge, in the parish of Ugborough.

The Definitive Map Review for the parish of Ugborough was completed in 1994. The application would therefore normally have been deferred until the Review has been completed for the whole county, in line with the County Council's Statement of Priorities for keeping the Definitive Map and Statement up-to-date. However, as the claim affects land adjoining Ivybridge and owned by Ivybridge Town Council, the application has been brought forward for investigation at the same time as the Definitive Map Review in the parish of Ivybridge, for reasons of efficiency.

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 bridleway subsists, or is reasonably alleged to subsist, over the route E – j – k – H. It is, therefore, recommended that an Order be made to add a public bridleway to the Definitive Map and Statement, as shown between points E – j – k – H on drawing number HCW/PROW/14/109c, but that no Order be made in respect of the claimed sections j – F – G and F – k.

2. Proposal

Please refer to the Appendix to this report.

3. Consultations

General consultations have been carried out with the following results:

County Councillor Croad	-	no comment.
Ugborough Parish Council	-	no objection.
Ivybridge Town Council	-	Object to this proposal.
Country Land and Business Association	-	no comment.
National Farmers' Union	-	no comment.
ACU/TRF	-	no comment.
British Horse Society	-	no comment.
Cyclists' Touring Club	-	no comment.

Ramblers - no comment.

Specific responses are detailed in the Appendix to this report and included in the background papers.

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 have been taken into account in preparing 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.

8. Conclusion

It is recommended that Modification Order be made to modify the Definitive Map and Statement and record a public bridleway along the line E – j – k – H as shown on drawing number HWC/ PROW/14/109c, but that no Modification Order be made in respect of the sections j – F – G and F – k.

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.

David Whitton
Head of Highways, Capital Development and Waste

Electoral Divisions: Yealmpton and Ivybridge

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2013 to date	ES/DMR/IVY

es271015prw
sc/cr/sch14 filham park parish of ugborough
03 171115

A. 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 (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.

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; and
- (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.

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.

Application made under Schedule 14 of the Wildlife & Countryside Act 1981 to add a public bridleway over land known as Filham Park, in the parish of Ugborough between points E – j – F – G and F – k – H as shown on drawing no. HCW/PROW/14/109c (Proposal 3 of Ivybridge Definitive Map Review)

Recommendation: It is recommended that a Modification Order be made to add a public bridleway over the line E – j – k – H, but that no Order be made in respect of sections j – F – G and F – k.

1. Background

- 1.1 Filham Park is situated in the civil parish of Ugborough but is physically located on the southern side of Ivybridge. The park provides 34 acres of open grassland and recreational space shared between rugby, football and a cricket pitch. The area is very popular for dog walking, family walks and sports clubs. A fishing lake was built in around 2004 in the south - western area of the park.
- 1.2 Land ownership background: Ivybridge Town Council purchased the area of Filham Park covering the land with the track, including the drive to Wadland Lodge (point H) in April 1989. The field and track from G – F was purchased by the Town Council in March 2006. Land Registry details are included in the background papers.
- 1.3 In March 2014, a local resident, Mrs Deirdre Boulter, submitted a Schedule 14 Application under the Wildlife & Countryside Act 1981 on behalf of local horse riders in response to the gradual exclusion of horse riders from Filham Park over the past five years.
- 1.4 The letter accompanying the application explained the situation and the reason for making the application:

“The field known as Filham Park was originally owned by farmers and used for taking hay and grazing animals. There were three entrances, each having a double gate for vehicular access and a single gate for pedestrians, horse riders and cyclists etc. Public had access to the park and were freely able to use it for horse riding, cycling, walking and exercising dogs with no limitation at all”. The letter continues, “At the end of 2000 the lake was installed in the corner of the park and there was disruption while the landscaping work was being done and a path made around the outside of the lake. A section nearby was made into a cricket pitch and also, about that time, notices appeared telling horse riders to keep to the path. Prior to this, horse riders rode anywhere in the park but there had always been a path from A to B, B to C and A to C.” (A, B and C is lettering on Applicant’s plan and relates to points H, E and G respectively).
- 1.5 The letter also describes the gates in the park; “The gates at A (H) and C (G) consisted of a double gate and a single gate, and the gate at B (E) consisted of a double gate and a kissing gate. The double gate at B was locked in 2009 and queried with Ivybridge Town Council as to why it was locked and I was informed that they wanted to prevent unauthorised vehicles from coming into the park. I was informed that horses were still welcome as before. The double gates being locked were not a problem for horse riders at A and C as there was still easy access through the single gates. However, at B, the single gate was a kissing gate, which made it harder for horse riders to use this gate. In 2009, some riders were given keys, a few used the kissing gate and some went around the gate into the field beside it and through the gate at the side. So the route through Filham Park remained unchanged

until 15 April 2013 when the gate at A was locked and we were informed that horse riders were no longer allowed through the park.”

- 1.6 The letter closes by stating “One form has been completed by one rider that has ridden through the park since 1953 about twice a week and another has ridden through for over 40 years which takes us back to 1972 at least”. (Letter enclosed in the backing papers).
- 1.7 The application included a plan of the park and requests for a bridleway to be established on the path marked on the plan in red.
- 1.8 The applicant submitted a Form A as part of the schedule 14 Application, March 2014, requesting an upgrading of the footpath to a bridleway through Filham Park. Technically as the route was not recorded as any right of way this was not possible. This was pointed out to the applicant, Mrs Boulter, and another Form A was submitted in May 2014 correctly applying for the addition of a bridleway over Filham Park.
- 1.9 As explained in the summary to the report, despite Filham Park being in the administrative parish of Ugborough, it was included in the consultation for the current review of Ivybridge because of its proximity and identification with Ivybridge town and surrounding area, and therefore shared sources of documentary evidence.

2. Documentary Evidence

2.1 Ordnance Survey Mapping

- 2.1.1 1880 - 90 1st Edition mapping 25 inch to a mile shows a lane abutting the western boundary of Filham House, from point E, that goes west across the field. The track is then depicted as a double pecked track across the fields curving slightly south around the trees and into Wadland Woods. The track is clearly delineated through Wadland Wood to Wadland Lodge at point H. This mapping also shows a double pecked track from the county road by point G, Higher Newlands through field no.199, linking with a path denoted by the OS as *F.P*, in field no. 137.
- 2.1.2 OS 2nd Edition 1904 – 06 25 inch to a mile shows this as the same peck lines as the 1st Edition OS mapping between point E – H and from the main road at point G to end in fields northwest of point F. Also note that a hedge line has been removed in the middle of the parkland.
- 2.1.3 OS A Edition 1952 & 1953 1:2500: These later maps show a track E – H as a clear route from the county road by Filham House to the road at Wadland Lodge. The path curves southwards in the same location as depicted in the 1st Edition mapping around the area marked as marshy ground. In addition, the section from the county road, point G to fields is marked with the notation *CT*.

2.2 Aerial photography

- 2.2.1 The aerial photography from 1999 – 2000 shows the area of Filham Park as open fields to the start of Wadland Wood. It is possible to see the path leading from the county road adjacent to Filham House point E, leading into the Park. The photo shows the track is clear and very obvious leading into Wadland Woods. The track from point F to G is also quite clear from this aerial photo.

- 2.2.2 Aerial photo 2005 – 2006 clearly shows the route adjacent to Filham House across the Park and deviates around the western edge of a fishing lake and exits into Wadland Wood to Wadland Lodge. This aerial photo also shows the track F – G is very clear and the veterinary centre has been built near point G.
- 2.2.3 Aerial photography from 2006 - 2007 clearly shows the line of the route from E continuing through the Park, a deviation around the lake and into the wood at the same entrance.
- 2.2.4 Aerial photography from Google images 2015 show the line of the track has partially been moved in an arc shape to accommodate the cricket pitch area.

2.3 Filham Estate Sale Catalogue, 1911

- 2.3.1 Filham Estate sale catalogue describes Filham as a Sporting & Agricultural Estate. The track shown on the estate plans from the north west of Filham House at Lower Filham, due south and then south west across the fields and into Wadland Wood. The track exits onto the county road by Wadland Lodge. This corresponds to the line on the OS mapping, E – j – k – H. No lake exists at this time.

2.4 Byelaws relating to Pleasure Grounds, Public Walks and Open Spaces

- 2.4.1 The effect of the land belonging to a public authority or council is that the usage of the land may be limited by the Public Health Act 1875, s164, and the Open Spaces Act 1906, by giving the “Urban authority” the option to make Byelaws for the regulation of any such public walk or pleasure ground.
- 2.4.2 In October 1990, Ivybridge Town Council put in place byelaws relating to Pleasure grounds, public walks and open spaces. The Schedule of pleasure grounds under part 1 of the Byelaws includes Longtimber and Pithill Woods and Filham Park. The Byelaws were confirmed by the Secretary of State in August 1991.
- 2.4.3 Ivybridge Town Council’s Byelaws commence by stating: “Byelaws made by the Council of Ivybridge under Section 164 of the Public Health Act 1875 and Sections 12 and 15 of the Open Spaces Act 1906 with respect to the Pleasure Grounds at Longtimber and Pithill Woods, Exeter Road Playing Fields, Victoria Park and Filham Park.
 - 1. In these byelaws:
 - “the Council” means Ivybridge Town Council
 - “the pleasure ground” means the grounds listed in the attached schedule
- 2.4.4 Part 4 of these Byelaws state: “A person shall not, except in pursuance of a lawful agreement with the Council, or otherwise in the exercise of any lawful right or privilege, bring or cause to be brought into the pleasure ground any cattle, sheep, goats, or pigs or any beast of draught or burden”.
- 2.4.5 In the Ivybridge Council’s Byelaw schedule for the pleasure grounds Part 1 it states:- Under section 164 of the Public Health Act 1875: Longtimber and Pithill Woods, Filham Park. (The full Byelaw is contained in the backing papers.)

The Public Health Act 1875 Part IV Local Government Provisions Public Pleasure Grounds, etc.

164 Urban authority may provide places of recreation:

Any urban authority may purchase or take or lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.

Any urban authority may make byelaws for the regulation of any such public walk or pleasure ground, and may by such byelaws provide for the removal from such public walk or pleasure ground of any person infringing any such byelaw by any officer of the urban authority or constable.

- 2.4.6 The Department for Communities and Local Government provides guidance to authorities for making byelaws, including typical matters which authorities may choose to restrict by making them a criminal offence. For example: climbing, camping, kites, ball games and other sports as well as cycling and horse-riding are such matters which may be covered. Current guidance states that byelaws should only be adopted to address existing problems. It may be implied therefore that recreational activities which are not covered by byelaws are not prohibited and are permitted 'by right' under the provisions of the appropriate Act of Parliament.
- 2.4.7 The 1990 byelaw relating to Filham Park restrict certain recreational activities but does not specifically restrict horse-riding. No further byelaws relating to Filham Park have been confirmed.

3. User Evidence

- 3.1 Sixty two User Evidence Forms have been submitted in total to support this Schedule 14 Application. The use has been on foot, horseback and bicycle and spans from the 1946 until 2013 when use by horse riders was prevented. The route has been described as from Ermington Road near Caton to Filham House - Higher Newlands.
- 3.2 Of these sixty two users, thirty two have completed forms in respect of use on foot, horse and bicycle only since Filham Park was acquired by Ivybridge Town Council in 1989. Whilst this use demonstrates the reputation and long and continued use of Filham Park, the acquisition by the Town Council and subsequent publishing of Byelaws impacts upon the nature of the recreational use of the Park after this date. Such use is considered as "by right" with an implied permission under the provisions of the Public Health Act 1875.
- 3.6 Therefore, considering this, the period to be examined is prior to 1989, with the earliest use from 1946. Thirty user Evidence Forms demonstrate use of Filham Park by horse riders and walkers in this time. The use is summarised in the chart at the end of this section.
- 3.7 Ten of the thirty users have submitted forms giving evidence of use of between 10 and 43 years. Others demonstrate use for between 1 and 8 years. Two people have used it only during the year of 1989.
- 3.8 The earliest recorded use of the route across Filham Park was from Mr Waycott (sadly passed away) from 1946 - 1989, a time span of 43 years using it ten times a year going from Ugborough and Filham Park. The form is a joint form and Mrs Waycott says she has used the path from 1962, giving a usage time of 27 years up to 1989, for horse riding and always thought it to be public. Both said that there were no gates or stiles and they used the route all year round. They did not obtain permission to use the route and describe it as a "right of way". They have added additional

comments "Now Filham Park is closed to horses, I have to take my horses the long way round to the vets".

- 3.9 Another form gives evidence from a local resident of use from 1955 – 2013. She has used the path for walking and horse riding and said she has used it for almost 60 years. Her evidence spans between 1955 and 1989 which equates to 35 years during the relevant period, using it between 10 -15 times per annum. She mentions three gates and states they were never locked, she did not have permission, or a private right, nor was she ever challenged or turned back when using the path. In the additional information this user says "I feel that horse riders are being penalised, you have taken yet another piece of land for use by everyone else. Yes, make a bridle path through Filham Park marked out with speed restrictions, it is also much safer than riding up through Ivybridge estates to get to the moors etc".
- 3.10 A resident from Peek Mill has used the route across Filham Park to Keaton or vice versa about 100 times per annum on horseback from 1953 – 2000. This gives 36 years use up to 1989 when Ivybridge Town Council purchased the land. She says she has always been able to use the route and had never had permission or a private right to do so. She states on her form that she has never been stopped, or turned back and has always just used the track.
- 3.11 Another horse rider who completed their user evidence form in 2013, gives evidence of use for over 40 years. Having completed the form in 2013, the period of use to be considered would be from 1973 – 1989. This provides evidence of use for 16 years, she said she used it all year round 100 times plus. This rider thought the route to be public because she had never been refused access or turned back. At the end of her form she adds "spoilt the pleasure of riding in the area as park has always been open to horse riders".
- 3.12 Further examination of the User Evidence shows that five riders have used the tracks on horseback for between 10 – 15 years.
- 3.13 One local rider from Ivybridge said he has ridden from Ermington Road to Filham from 1974 to May 2013, when he completed his form. Taking the date of Ivybridge Town Council buying Filham Park in 1989, this rider's use is 15 years between 1974 – 1989, with a frequency of twenty times a year. In reply to Q3 Why do you think the path is public? He replies "used by everyone, my son learnt to drive in Filham Park & he is 43." He said the route had been diverted but has given no details. He also states there were gates but with no location and no mention if they were locked or not. This rider has not been given permission to use the route nor has he ever been turned back. He says in the final part of his form, "It has always been a lovely & safe route to ride to the moors".
- 3.14 Another rider from Wrangaton used the route on foot and horse from Filham to Keaton on the Ermington Road between 1975 – 2008. Taking 1989 as the end date this provides 14 years of riding and walking evidence. She mentions that the gates were always open and that she was never turned back or given permission to use the path. As additional information she adds, "Why do we always change things that have been working fine for years to please a few & upset the many".
- 3.15 A further rider has used the route to Keaton, Ivybridge and the vet centre at Higher Newlands between 1978 – 2011. Taking the user date to 1989, this rider has used the route for 11 years, approximately 250 times a year. In reply to Q3. Why do you think the path is public? She replies "No objections used by so many people". She states that she has never been stopped or challenged when using the path.

- 3.16 Two riders provide evidence of use starting in 1979. Both riders have used the route from Filham, Ivybridge to Penquit as part of a circuit 2 – 3 times a week for 10 years. One rider says she rode with her children on lead reins and the other mentions taking a vehicle along the route as well. One rider mentions two gates at the Filham end and that there were grazing cows or sheep, but she could still get through. In addition, this rider said “so many rode this route & I drove it as well and never stopped by anyone”. She had never obtained permission or had a private right along the route and adds at the bottom of her form “Rode this route to keep off the main roads into Ivybridge as some bad bends, would go this way to Cornwood Show. Gave my sister rides here as we were in a safe place. Took young horses and ponies here off the main road. So good for lead rein ponies”.
- 3.17 The second has said the path was public because it was always open for riders and that the gates at each end, but not locked. In reply to Q9. Have you ever obtained permission to use the route? She replies “No. Because it has always been used by riders, walkers & cyclists”.
- 3.18 Eighteen users have submitted evidence of horse riding or walking and riding across Filham Park between 1 – 8 years. The use is regular once a month to a frequently 1 to 2 times a week.
- 3.19 One of the rider’s evidence is for 8 years from 1966 -74 when she rode a circuit from Filham to Ermington ten times a year. In answer to Q3. Why do you think the path is public?, she replies “Common knowledge/accessibility”. She states that when she used the route it had not been diverted, the gates were not locked and there were no notices. She added that she thought the landowner was aware of the route being used as it was “common knowledge.” In her additional comments, this rider adds “No problems using the route, no complaints by anybody, gates never locked, very useful route for horse riders”.
- 3.20 Another local rider used the route from Lower Filham to the Ermington Road, for 6 years from 1983, 52 times a year and mentions that the gates were always open. She had never had permission to use the path, nor was she stopped or turned back.
- 3.21 Three riders have used the route for 5 years from 1984 with a varying frequency of between once a month to three times a week. One of these riders states in reply to Q3. Why do you think the path is public? “Always has been 40 years or more”. The same riders adds “I have been riding through Filham for more than 30 years even when they put the lake in, we were still able to ride around and off the main road. I was informed in the 80s this was a bridleway and always thought it was”. Another rider said she used the path, approximately 12 times a year from Peek Mill – Ermington – West Lake. She thought the path to be public as all usage continued unhindered. She says the gates were not locked when she used the route, there were notices and she had never obtained permission to use it. In response to Q10.c. Do you believe the owner or occupier was aware the public was using the path? This rider replies “Yes” “No-one attempted to stop horse riders”.
- 3.22 The third rider in this group, who completed her evidence form in June 2013, states she has ridden the route 20 times a year from 1984 – 2009 (1989) from Yeolands Farm to Filham. In answer to Q3. Why do you think the path is public? She says “Owned by the council for use of everyone”. She also mentions that signs saying Keep to the tracks were put up about 10 years ago, in about 2003 and mentions that only one gate at Filham was locked in 2009.

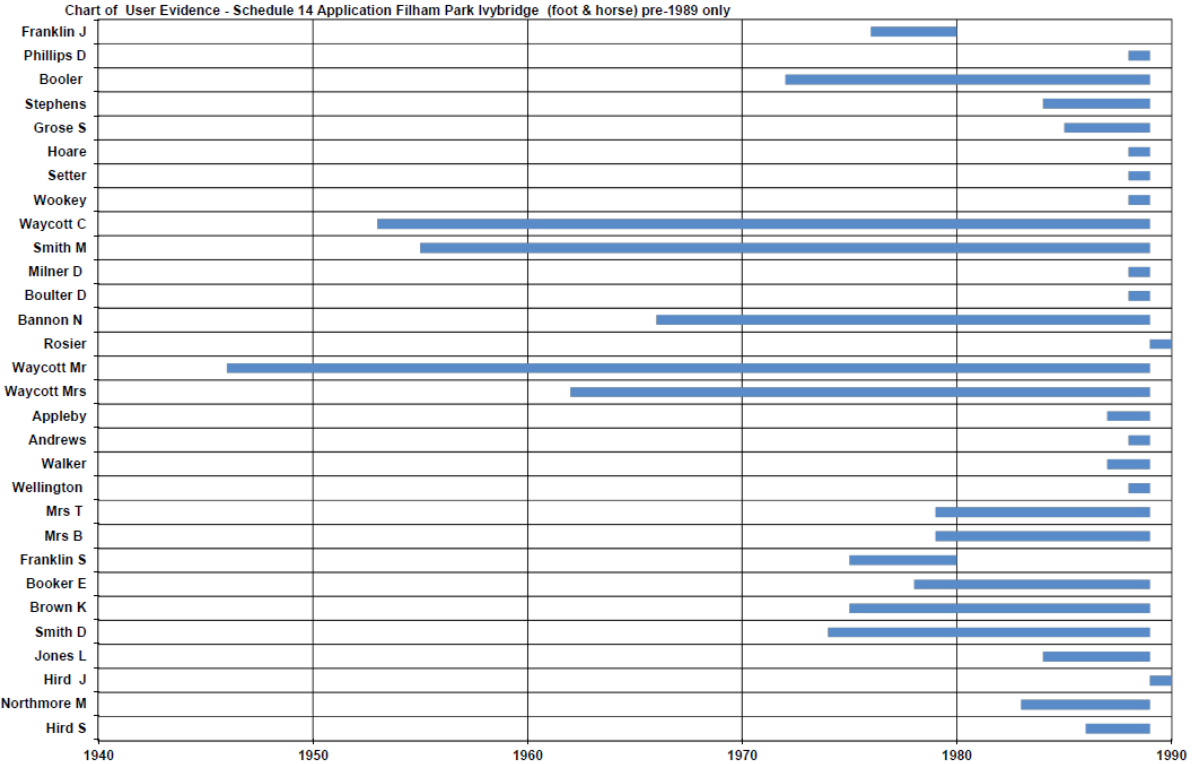
- 3.23 Thirteen users have used this route for 1 – 4 years, with a varying frequency of between six times per annum to 150 times a year on horseback. Of these thirteen users, two have used the route on foot and horse and one has walked the route daily. Their use is consistent between Filham gate and Keaton, with some riders also visiting the vet centre at point G. In addition they give evidence that there were gates in place at three entrances and that the Filham gate was locked in 2009 and the gate near Keaton was locked in April 2013.
- 3.24 One of the users on foot and horse started using the route in 1988 and clarified in a telephone conversation in October 2015 that she used the path as a short cut to ride around the area with no problem at all, that the gates were not locked and the local farmer John Smerdon had no objection. This local rider says her daughter was given a key to a gate by Ivybridge Town Council.
- 3.25 One rider, who used it from 1987, has clarified her use by email in October 2015, and she says “I was at livery at Keaton House (Mr & Mrs Day - later Sir and Lady Day). We used to go up along the main road and through next to the lodge house - from recollection the gates were never locked as I did not need a key. The main gates at the bottom were usually open, but unlocked if closed, so that we could pass through and up the road through the wooded area. There was at some time a smaller gate at the entrance to the park itself, which was there to keep livestock in and which we could open from horseback. We would pass up through the park and exit next to Filham House - again no key needed. Sometimes we would then go left and left again towards Godwell Lane or right to head for the moors, or turn right from the Park, accessing the Penquit/Ermington areas. In those days the roads were a lot quieter and we would do a variety of 'round trips' returning along the main road to Keaton House via Penquit, Ivybridge or Ermington directions. It is a long time ago, but I believe there were quite often cows and sheep, and they were not fenced off, but roamed free in the park (before the days of health and safety legislation!).” In response to being asked if she used the track up via the vet centre she replied, “I don't remember there being another exit up towards where the vets are now. Therefore, I used to ride from one to the other”.
- 3.26 One local rider gives evidence of use from 1988 – 2013. He rode his horse from Peek Mill to Keaton five or six times a year for pleasure and on hunt business. He states on his evidence form that “Instructed to apply for a key which I did. This has been in place for four years”. He adds, “I have been issued with a key to use this right of way on my horse but this permission has recently been withdrawn”. This helps to clarify the dates of the locking of the gate into Filham Park and the key usage by a limited number of riders to 2009.
- 3.27 One rider gives evidence of a sign saying “Riders keep to the path”. She has not had permission to use the path. She adds “Having lived in Ivybridge since 1984 the park has always been a safer way to meet friends on horseback to meet up and ride from there together rather than riding the roads. In later years a great way to get safely to the vets from my stables at Bittaford”. This lady rode her horse 100 -150 times a year from Filham Gate to Keaton Gate. She reports that the gate at Filham was locked in 2009 and at Keaton in April 2013. In a telephone conversation in October 2015, this rider clarified her use of the tracks through Filham Park. She said she had kept her horses at Bittaford for 28 years and rode regularly to meet up with friends on horses from Filham Gate to Keaton Gate via the Lodge. She remembers riding the “little lane” to the road near the vets as she had to get off her pony to open and shut the gate as it was a bit awkward. She mentions there were sheep in the fields and this seemed quite usual. She thought that Mr Smerdon was the landowner before Ivybridge town Council.

- 3.28 Several riders were contacted in October 2015 by way of telephone or email to clarify some points raised in the User Evidence in general. Mr & Mrs Franklin have submitted another User Evidence form with a covering letter and map clearly explaining their use of the track across Filham Park from 1976 – 1980 and 1975 - 1980 respectively. Both rode horses across the Park from Wadland Lodge to Filham House and never saw a notice saying it was not public, never stopped or turned back, did not have permission to use the route and were aware of other members of the public also using the track. In addition they say there were no locked gates.

- 3.29 Another clarified her use of the route in a telephone conversation, saying she rode from Penquit to the Lodge Gate, through to another gate, which you could open and shut. The gates were never locked and she also mentions that there was stock in the field and would look to see if they (stock) were hiding behind trees. She said you might meet 2 – 3 other people walking too and that she also rode the route with her parents. She mentions that she rode the route to the vets less, but possible.

- 3.30 Another user said that Mr J Smerdon was the owner of the fields before Ivybridge Town Council. She said there was no objection to using the Park and people rode all the way round the area and used the Park as a short cut.

- 3.31 Another user described the route she used as from Filham to Ermington and back on horse from 1966 – 1974. She said she used the route across the Park with friends, the gates were not locked, there were no notices and it was recognised as a route through.



4. Additional support and representations

4.1 Ugborough Parish Council has no objection to the proposal through Filham Park.

- 4.2 Mr T Barber, a long standing Ivybridge resident and a former District Councillor for Filham Ward, replied to the informal consultation with personal comments and information. He wrote: "Proposal 3: proposed bridleway through Filham Park. This area was privately owned farmland prior to its purchase for playing fields etc. by Ivybridge Town Council and, I understand, claims have been made concerning the use of the pathways for horses across it. Certainly for a number of years, horses were permitted to use it by the town council (presumably also by their predecessor as owner) but I believe in latter years, at least, only for specific people. Tracks across it allowed horses to be kept safely off the relatively dangerous Ermington – Ivybridge road between point H and G on your map. Following various discussions and despite protests, Ivybridge Town Council decided to ban all horses in the park, the reason being health and safety. They did this following the solicitors advice but that advice was not released to the public and I am unaware of its content. I cannot personally verify or otherwise past use of these trackways as bridlepaths".
- 4.3 Two Ivybridge residents response to the Filham Park proposal were: "Proposal 3: Proposed addition of a public bridleway through Filham Park in Ugborough. I completely support this proposal. The right of horses to proceed along these routes has only recently been taken away by Ivybridge Town Council on public safety grounds, even though there has never been an incident or hurt to the public by horses using Filham Park and its approaches. On the contrary, equine events used to be held in the park on an annual basis that brought revenue for the Town and pleasure to many of its residents. I would welcome the return of horses to the park". The second says "Proposal 3, horse riders were for many years allowed to access the park until recently with little or no inconvenience to other park users. I would enjoy seeing horses back in the park. I support the proposal."
- 4.4 A letter from a local resident, who also completed a user evidence form in 2014, and Master of the Modbury Harriers wrote to express his concerns of the horse ban in Filham Park. He writes an account of the events surrounding the locking of the gate and the issues facing local users: "The purpose of this letter is to explain why local horse riders felt that an application was necessary in the first place. 1. For more than 50 years horses have been permitted to access and use Filham Park. Ivybridge Town Council presumably used local rate payers money to buy the park and until recently encourage an annual horse show (Ivybridge Horse Show) for which they received a very reasonable payment from the Show Secretary..... The sum of money paid, more than covered the costs to make good any damage to the grass that may have been caused by vehicles and horses on the few occasions that the ground was wet during the very popular one day show."
"2. A lake and cricket pitch were installed including gate blocking access to wheel chairs, pushchairs, invalid carriage, bicycles and horses at two critical points". He goes on to explain: "However those horse riders that approached the Town Council were issued with a key allowing them to access the park. Suddenly without warning, this permit system was removed and horse riders were told that they were no longer permitted to access the park".
- 4.5 A neighbouring landowner has written to confirm that she grazed sheep in Filham Park in the 1990s. She clarifies that she did not rent the land, but grazed and cut it to save the council having to pay for it to be cut. She states that for as long as she can remember horse riders have ridden through the park and is sure that was the case for many years before the council bought it. She adds that her children rode through regularly from about 1989.

5. Landowner and Rebuttal Evidence

- 5.1 Evidence has been submitted from two adjacent landowners and Ivybridge Town Council as the owners of Filham Park.
- 5.2 The owner of Wadland Lodge (point E), completed a landowner evidence form in October 2014. He has owned and lived in the lodge for 25 years and says the public have been free to use the path past his lodge just like Filham Park. In reply to Q3. Have you seen, or be aware of, members of the public using this way? "Yes" "Daily use by walkers and horses but in about 2011 the Council stopped horses and disabled by locking the gate near the cattle grid". He says he has not required people to ask permission to use the route. With regards to the locked gates he states, "Main gates never locked, horses & disabled scooters blocked when pedestrian gate locked". He has enclosed a plan with the gates marked.
- 5.3 The owner of Wadland Lodge has also completed a User Evidence form, on which he states he has a private right of access along the drive to Filham Park from point E for only 20 metres to access his property. His user evidence states that he has used the route on foot every day for 25 years as a walk into Ivybridge.
- 5.4 The owner of the Vets practice on the Ermington Road at point G, completed a Landowner Evidence form in October 2014. He describes the route as going from "West of Filham House to Ermington/Ivybridge Road nr Caton". He regards the route to be public as it gives traffic free access to Filham and has believed this to be the case for the past ten years. He has never told anyone that the route was not public and he has not erected notices saying the route was not public. With regards to gates he says, "Originally a gate on the access road to Filham Park c. 10 years ago never locked". He has marked his accompanying plan accordingly. He has owned the practice for eight years.
- 5.5 Ivybridge Town Council purchased the main fields known as Filham Park and the two entrance tracks from points E and H in April 1989. The Land Registry details are enclosed in the backing papers. Filham House has a private right of access across Filham Park.
- 5.6 The additional field and track F – G (adjacent to vet centre) was purchased by Ivybridge Town Council in March 2006 as shown in the Land Registry plans.
- 5.7 Following the informal consultation for the parish of Ivybridge, including the Schedule 14 Application for Filham in Ugborough, in October 2014, Ivybridge Town Council submitted an objection via their solicitor Foot Anstey. The Landowner Evidence is further explained in a supplementary letter with plan and an annex containing photos and extract from Town Council meetings. These are included in full in the background papers.
- 5.8 The introduction of the Landowner Evidence says; "The position of the Town Council of Ivybridge, as the freehold proprietor is that no Public Right of Way or Bridlepath exists over Filham Park. There is no evidence to support the claim and it should be rejected".
Point 1.c. states; "This document supplements the Landowner Evidence Form (FORM F). For avoidance of doubt, the Town Council reserves the right to make further and additional submissions at a later date if necessary. The Town Council has seen no evidence in support of the claims made and considers it to be unreasonable to put the Town Council to the cost of making objections to

unsubstantiated claims. It is surprising that the application has been allowed to proceed without evidence”.

- 5.9 In reply to Q3 on the Landowner Evidence form ‘Is the way claimed public?’ the reply is “NO” expanded by:
- (a) “a public right of way does not, and cannot, exist. The Town Council has owned and controlled Filham Park for 26 years. In that time there has never been a public right of way over the park”.
 - (b) ”At the time of purchase of the Park, there was no mention of a public right of way over the Park or Access Road (and the Access Road had not been formed).”
 - (c) “For the period 1995 to 2000 the Town Council let Filham Park for grazing of livestock (it is likely that the Town Council let the land for grazing before then but the records have not yet been located). The tenant farmer made the boundary to the park at position “X” and at position “Y” stock proof. It is incredible that the claimant can claim horses have had access as of right during this period”.
- 5.10 Annex 1 contains extracts from Ivybridge Town Council minutes of the Parks and Open Spaces Committee from April 1995, August 1995, January 1996, February 1996 and March 1997 referring to grazing of Filham Park and the request to remove cattle and use sheep instead, or extension of the grazing lease.
- 5.11 Annex 2 contains 7 photos, taken by Foot Anstey, solicitors representing Ivybridge Town Council, in September 2005 (as part of a separate issue), that correspond to the numbers 1 – 7 on their copy of the DCC consultation plan.
- Photo 1 is the entrance to Filham House and not point E, the entrance to the claimed route.
- Photo 2 submitted by Foot Anstey shows the access at Godwell Lane (point G) The photo is of a latched field gate with the remains of a notice saying “Please shut the gate”. The text description from Foot Anstey describes the access as closed with a chain and cattle grid. There is no cattle grid or chain visible in the photo.
- Photo 3 is marked on their plan on the south side of the fishing lake near their point X (plan included in background papers). This is not on the claimed route. The text in their letter says photos 3 and 4 show the entrance adjacent to Filham House. “The access in these photographs is restricted by a gate, cattle grid and chain”.
- However looking at these photos in relation to the route and having walked the route, we would respectfully suggest they are not in the same location.
- Photographs 4 & 7 show the entrance from the Filham House end, and appear to be taken each side of the gate, near Foot Anstey’s point Y on their enclosed plan. Adjacent to both of these cattle grids in both photos is a hunting gate with a long bridle gate latch. These smaller gates are shown in the photos as open and unlocked.
- 5.12 Photographs 5 and 6 show the car park. The explanation provided is “Access is restricted by gates on both sides and there is a sign on the gate to the left of the picture which states “dogs on lead please sheep grazing.”
- 5.13 Annex 3 of Ivybridge Town Council’s landowner statement relates to a private access agreement/covenant between the owners of Filham House, Mr & Mrs Jefferson and Ivybridge Town Council. 4.2 of the Grantee’s Covenant states, “subject to the Owner complying with its obligations under clauses 3.2 the Grantee will keep the gates at

points marked “Y” and “Z” locked unless the Owner notifies the Grantee in writing...or otherwise they are to be left unlocked.”

These comments relate to private access to the park.

- 5.14 Annex 4 of the submission is a copy of the notice displayed at point Z on Foot Anstey’s plan, when the lake was constructed in 2004. The contention is that “The use by horse riders were therefore restricted, not as of right as Ivybridge Town Council was able to suspend the use. Furthermore the use was interrupted and therefore not continuous”.
- 5.15 Point 3 (k) explains “The route G to F is the Access Road constructed by the Town Council”. No date of construction is given.
- 5.16 Annex 5 appears to be an extract of the Parks & Open Spaces committee 16th June 2009 discussing the horse show in the proceeding May and the subsequent damage to the ground. Discussions then moved onto suggestions for alterations to the gates in Filham Park to preclude horses but to permit disabled access plus pedestrians with pushchairs.
- 5.17 Annex 6 of the submission is a copy of the contractor’s letter of 19 May 2009 discussing the works to remove a cattle grid and replace with a kissing gate and “a 5 ft access gate for horse which could be locked as proposed”.
- 5.18 Annex 7 is a copy of email correspondence between Ivybridge Town Clerk and Mr Stafford about a private right of access through Filham Park.
- 5.19 Points 4 and 5 of Foot Anstey’s submission on behalf of Ivybridge Town Council considers the use of the route by permission. For a limited time it would appear that a horse pass system was in operation. Foot Anstey state “A limited number of people were granted horse passes over a period of 8 years until it was removed altogether last year following health and safety concerns”.
- 5.20 With regard to permission, Foot Anstey state in their submission at 5 (b) “The use of the park is regulated by byelaws under the Open Spaces Act 1906. Any use of the Park for recreation is permitted under the bylaws and is not exercised as of right”.
- 5.21 Under the heading 7 Stopping people using the right of way, Foot Anstey state (a) “Use of the park is regulated by the bylaws and by the conditions of use. The Town Council may require anyone to leave the Park at anytime.”
Point (d) “The cricket pitch has a fence around it to prevent access. The route F to E is shown passing directly across the pitch.”
- 5.22 The Landowner Evidence form Q8 asks ‘Have you ever told anyone that the way is not public?.’ In response, Foot Anstey state (a) The conditions of use of the Park and bylaws are clearly advertised.
- 5.23 For further information, Foot Anstey has stated for their client: “Generally, it would appear that this claim has been prompted by the decision of the Town Council to withdraw its horse pass system. However, there is overwhelming objective evidence that the Town Council has carefully controlled the use of the Park since its purchase. This application must not be allowed to proceed unchallenged by Devon County Council in the absence of objective evidence of claimed use as of right”. Foot Anstey add: “This claim will prejudice the Town Council’s use of the Park and its investment over a number of years”.
Their concerns are highlighted continuing from point 12 (f)

“Unrestricted access for horses is a safety hazard for other members of the public using the park, as well as the horse riders themselves. February 2009 a complaint was received by ITC [Ivybridge Town Council] from a member of the public concerning the hazard unauthorised horse riders were causing in the Park. The complaint enclosed several pictures which are at Annex 8. The pictures clearly show that if horse riders are permitted unrestricted access to the Park significant damage will be caused to the grassed area as well as the general safety issues it poses in relation to members of the public and dogs in the Park”.

Point (g) “The proposal for a bridleway between two rugby pitches and over a cricket pitch is clearly not very sensible and causes significant health and safety issues.”

Point (h) states: “Horses have previously been welcomed at Filham Park for specific events such as horse shows (which stopped after excessive damage) and even regular dressage training sessions (stopped by South Brent Riding Club themselves as the ground was too boggy and not suitable). ITC have therefore tried to accommodate horses but it has not been successful even on this quite limited basis when the Park was so heavily used by sports clubs and the public. This demonstrates that unlimited access is not suitable and the Park will suffer significant damage as a result”.

5.24 Annex 9 from Foot Ansteys submission shows pictures from early 2004, before the lake was constructed showing a boggy section of the ground.

5.25 Points 12 (k) & (l) from the submission conclude; “The Park and the decisions made concerning the Park have historically been influenced by sporting requirements and ultimately that is why the land was purchased. The fact that the Park is now designated as part of the sports playing pitch strategy contributing to the football, rugby and cricket need of the town means that ITC must protect those users. The already established sporting uses of the Park are not compatible with unrestricted access for horse riders”.

Point (l) “ITC have tried to accommodate limited horse access over the years but it is not possible with the growth of the Town and reliance of the Ivybridge community on land at the Park being part of the recreation and sporting strategy and this is only expected to get stronger”.

6. Discussion

6.1 Statute (Section 31, Highways Act 1980)

6.1.1 Section 31 (1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public ‘as of right’ and without interruption for a full period of 20 years, it 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.

6.1.2 From 2009 Ivybridge Town Council started to restrict access into Filham Park by altering gates on the edge of Wadland Wood and commencing a key permit system for horse riders. It would appear that the locking of gates in 2009 - 2013 caused the route to be firmly called into question and prompted the Schedule 14 Application. Under statutory legislation, the relevant 20 year period for consideration of user evidence would be between 1993 – 2013.

6.1.3 Land Registry details show that Ivybridge Town Council purchased the main body of Filham Park in 1989. They have subsequently maintained it as public open space. The Town Council introduced Byelaws relating to the Pleasure grounds, Public walks

and Open Spaces in 1990. Part 1 of the Schedule is made under section 164 of the Public Health Act 1875 and applies to Filham Park. The Byelaw sets out what cannot be done within the Park and hence recreational activities are carried out with an implied permission of Ivybridge Town Council.

- 6.1.4 Although horse riding is not expressly restricted in these Byelaws, the riders have enjoyed an implied permission to ride across the Park since the land was acquired in 1989 or at least since the Byelaws were made in 1990. To that end, the horse riding, walking and cycling has been “by right” for the relevant period of time, as the Public Law right is use of the route with *precario*, ie.permission.
- 6.1.5 Therefore, use of the routes from 1989-1990 onwards, during the relevant period, cannot be considered ‘as of right’, and the test for statutory presumed dedication is not met.
- 6.1.5 As the test for presumed dedication under statute is not met it is not necessary to consider the actions of inactions of the landowners during that time. However, the landowner evidence submitted by Foot Anstey on behalf of their clients has demonstrated various actions undertaken by Ivybridge Town Council as a landowner to restrict activities within Filham Park.

7. Common Law

- 7.1 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.
- 7.2 Taking into consideration the purchase of the land by a local council, Ivybridge Town Council, in 1989 and the passing of Byelaws in 1990, the period of use to be looked at under Common Law is prior to 1989.
- 7.3 The evidence needs to demonstrate that the use of the claimed track up to 1989 was sufficient to show that it was open and notorious, without stealth or secrecy and without permission and that this use was accepted by the landowner without challenge.
- 7.4 In considering the sixty two User Evidence forms submitted and the important factor that the use has to be “as of right” in order to test the public nature of the use, thirty of the User Evidence Forms have been examined under the Common Law test. The evidence covers a period from 1946 – 1989. Please note that most of these users continued using the Park beyond 1989/ 90.
- 7.5 All of these thirty riders have ridden across the park without permission from 1 – 43 years and between 10 to 250 times per annum. They have not during that time, seen any notices to challenge their use, or has their use been challenged by a landowner, or have they been asked to leave the area. None of the riders encountered locked gates during that time. One rider said the gates by the Wadland Lodge were usually open, but unlocked if they were closed. The smaller gates from the woodland into the Park were known to have been to keep stock in the fields and could be opened from horseback.

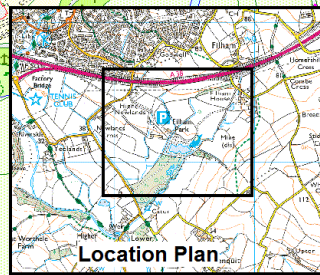
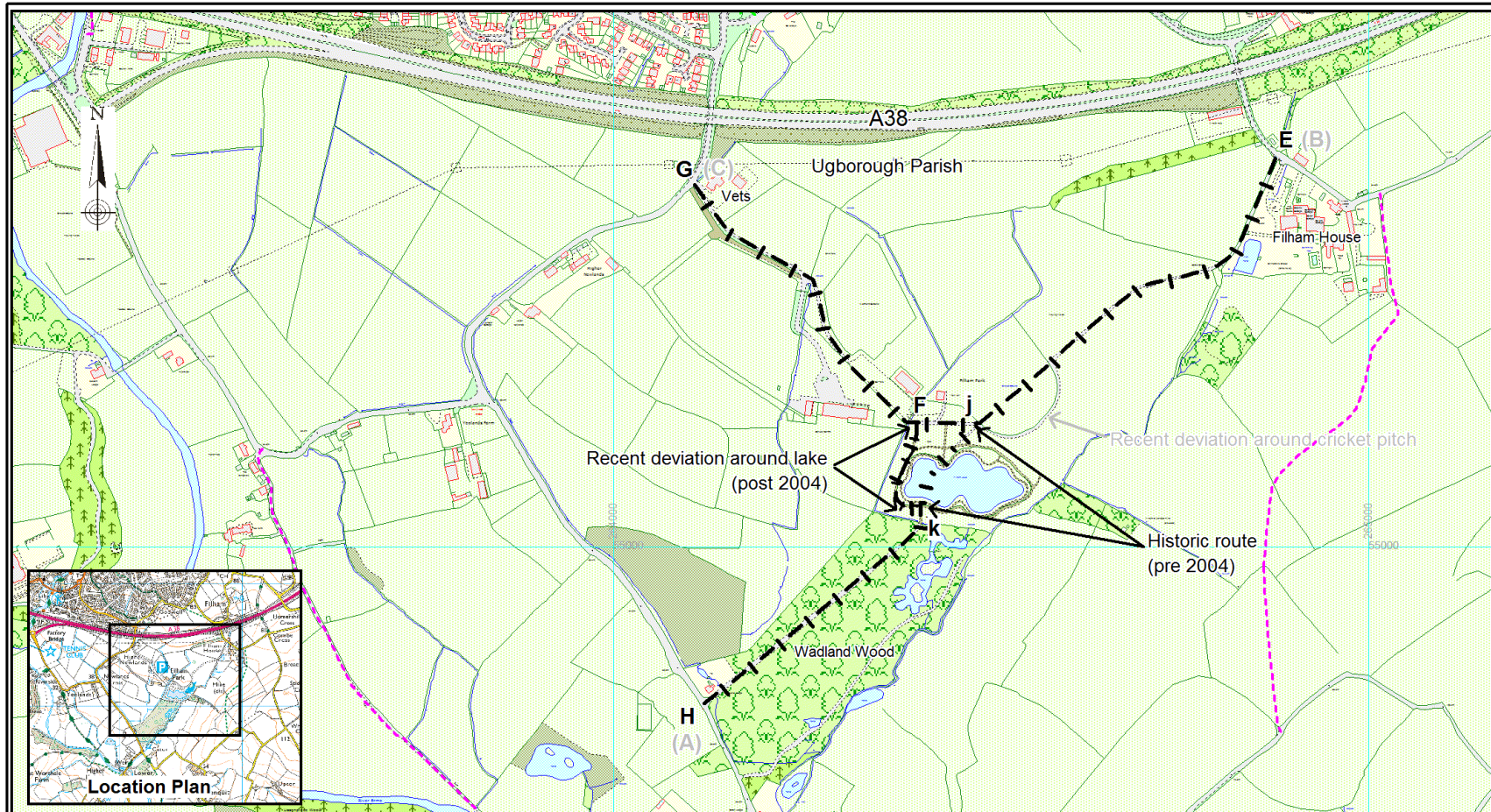
- 7.6 The documentary evidence supports the physical existence of a route from the entrance adjacent to Filham House at point E, to Wadland Wood and thence to Wadland Lodge at point H, as a clearly defined track since at least the 1880s. The track is shown consistently on OS mapping on the same alignment until a fishing lake was built over it in approximately 2004 and subsequently a cricket pitch further to the northeast. This has altered the alignment of the available and used track, as shown on the plan HCW/PROW/14/109c.
- 7.7 The aerial photography from 1999 – 2000 also clearly shows the track through the Park prior to the fishing lake and cricket pitch. This photo also shows the existence of a track from the Park to the county road at point G. This track would therefore appear to have been in existence before Ivybridge Town Council purchased it in 2006 and prior to the building of the veterinary centre at G.
- 7.8 The combination of the thirty User Evidence forms and the consistent documentary mapping gives strong and cogent evidence that horse riders have used the line E – j – k – H prior to the construction of the lake in 2004, and then more recently the cricket pitch.
- 7.9 It should be noted that the subsequent addition of a recreational fishing lake and cricket pitch over the line of the route used by the riders prior to 1989 does not extinguish any rights that have been established along the route prior to the building of the lake or cricket pitch.
- 7.10 The combination of documentary and User evidence from Filham Park along the track to point G, adjacent to the vet centre, is less clear. Documentary evidence does not show the whole route prior to aerial photography of 1999-2000. Some riders have mentioned using the line F – G to go to the vet centre. However, the vet centre was not built until 2005/2006. Prior to 1989, use of the route to point G is infrequent and user evidence is less clear.
- 7.11 The development of the Park and the perceived or real issues relating to a mix of users and fishing, cricket, dog or rugby do not come under the remit of matters that can be taken into consideration at this stage. Safety and suitability are not relevant objections to the question of the status of the public rights to use routes through the park.

8. Conclusion

Taken together, the user and documentary evidence demonstrates that the test at common law is satisfied; it may be inferred or implied that a landowner, at some time in the past, has dedicated a highway through the acquiescence in its use and that the public has accepted that dedication by using the route openly and freely.

To that end it is considered that public bridleway rights subsist or are reasonably alleged to subsist over the line E – j – k – H. Therefore, it is recommended that a Modification Order be made to add a public bridleway over the route E – j – k – H, but that no Order be made in respect of sections j – F – G or F – k.

It is also recommended that to accommodate the existence of the fishing lake and the cricket pitch over the historic line of the bridleway, a concurrent public path diversion order be made, following discussion with the landowner, Ivybridge Town Council.



SX 6454 1km grid

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DEVON COUNTY COUNCIL
Definitive Map Review - Ivybridge (Proposal 3)
WCA 1981 Schedule 14 Application Filham Park, Ugborough - Committee Plan

Drawing number HCW/PROW/14/109c
 Date Oct 2015
 Scale 1: 7000 (at A4)
 Drawn by ES

Notation	
Proposed bridleway E - F - G - H	- - - - - 1620m approx
Historic route (pre 2004) E - j - k - H	- - - - - 1090m approx
Existing public footpaths	-----

David Whitton
 HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT AND WASTE

