

**Schedule 14 application
Parish of Colyton**

Report of the Director of Climate Change, Environment and Transport

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 in respect of the proposal for a Footpath between Whitwell Lane and Holyford Lane, Colyton.

1. Introduction

This report examines one proposal arising from a Schedule 14 application in the parish of Colyton in East Devon district.

2. Background

A Definitive Map Review of the parish of Colyton was conducted between 1989-1992. This proposal was put forward during the review and had also been briefly considered during previous uncompleted reviews in the 1960s and 1970s. A committee report in 1992 recommended that DCC enter into a Creation Agreement with the landowner to record a public footpath, but this was never completed. A Schedule 14 Application was submitted by Mr Colin Pady, the previous landowner of land crossed by the route, in June 2020. As per Devon County Council procedure, this was added to the register for determination once the parish-by-parish review had been completed. However, in July 2021 Mr Pady appealed to the Secretary of State requesting that DCC be directed to determine the application. In January 2022 the Secretary of State directed DCC to determine the application within 6 months.

3. Proposals

Please refer to the Appendix to this report.

4. Consultations

General consultations on the application were carried out in January to April 2022 with the following results:

County Councillor Marcus Hartnell	- no comment;
East Devon District Council/AONB	- no comment;
Colyton Parish Council	- no comment;
Country Land and Business Association	- no comment;
National Farmers' Union	- no comment;
Trail Riders' Fellowship/ACU	no comment;

British Horse Society	- no comment;
Cycling UK	- no comment;
Ramblers	- comments included in background papers;
Byways & Bridleways Trust	- no comment;
4 Wheel vehicle Users	- no comment.

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

5. Strategic Plan

The Council's Plan 2021 – 2025, <https://www.devon.gov.uk/strategic-plan/>, has, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

6. 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.

7. Legal Considerations

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

8. Risk Management Considerations

No risks have been identified.

9. Equality, Environmental Impact (including climate change) and Public Health Considerations

Equality, environmental impact (including climate change or public health implications) have, where appropriate under the provisions of the relevant legislation, been taken into account.

10. Conclusion

It is recommended that a Modification Order be made in respect of Proposal 1 as evidence is considered sufficient to meet the requirements of the legislation. Details concerning the recommendation are discussed in the Appendix to this report.

11. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review in the East Devon district area, as directed by the Secretary of State.

Meg Booth
Director of Climate Change, Environment and Transport

Electoral Division: Seaton and Colyton

Local Government Act 1972: List of Background Papers

Contact for enquiries: Thomas Green

Room No: M8 Great Moor House

Tel No: (01392) 382856

Background Paper	Date	File Ref.
Correspondence File	2000 to date	TCG/DMR/COLYTON

tg170622pra
sc/cr/schedule 14 Parish of Parish of Colyton
02 220622

A. Basis of Claims

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 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.
- (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.
- (iii) there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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

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.

Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes certain rights of way for mechanically propelled vehicles except for the circumstances set out in sub-sections 2 to 8. The main exceptions are that:

- (a) it is a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles;
- (b) it was shown on the List of Streets;
- (c) it was expressly created for mechanically propelled vehicles;
- (d) it was created by the construction of a road intended to be used by such vehicles;
- (e) it was created by virtue of use by such vehicles before 1 December 1930.

Proposal 1: Claimed Footpath between Whitwell Lane and Holyford Lane, Colyton, points A-B on the proposal map HIW/PROW/22/10.

Recommendation: It is recommended that a Modification Order be made in respect of Proposal 1.

1.1 Background

1.1.1 The route was first brought to the attention of Devon County Council in the 1950s during the Definitive Map Process. It was further discussed in subsequent incomplete reviews and considered as a proposal during the parish review in the early 1990s when Mr Pady, the landowner at that time, agreed to enter into a Creation Agreement with Devon County Council to dedicate the route as a public footpath. The Creation Agreement was never completed and when the new owner of the land closed the path Mr Pady submitted a Schedule 14 Application to record the route (in June 2020), accompanied by some limited documentary evidence and fifteen user evidence forms.

1.1.2 As the parish review had already been completed when Mr Pady submitted his application it was added to the register of applications to be dealt with once the county-wide review had been completed. However, Mr Pady appealed to the Planning Inspectorate to request that DCC be directed to determine the application and consequently in January 2022 DCC were directed to determine it within 6 months.

1.1.3 It is an unusual situation for someone to submit an application to record a route on land they previously owned. However, there is nothing legally prohibiting them from doing so. It is worth noting that Mr Pady is a long-standing member of Colyton Parish Council, having held various positions since 1970; including on the Amenities sub-committee and specific footpath sub-committees formed during historic reviews.

1.2 Description

1.2.1 The application route starts at the county road, Whitwell Lane, point A on plan HIW/PROW/22/10, at a field gate (and previously an adjacent stile) and proceeds in a generally south westerly direction, passing to the west of two small ponds. It crosses a stream before passing over a field to join the county road, Holyford Lane, at point B (where there was previously a stile).



Point A



Point B

1.3 The Definitive Map Process

- 1.3.1 The application route was included in the survey of paths on behalf of the Parish Council in 1957 and put forward for recording as a public right of way on the Definitive Map, being allocated the path number 36. The survey form, completed by Mr J. H. Parr and dated 17th July 1957, states the path is not likely to be disputed and is required in future. Under the heading 'general description' is written: '*Salters Lane to Holyford Farm. This path commences through a field gate opposite Salters Lane, passes through two fields, across a footbridge over a water course in the second field, emerging by means of a wooden stile – of which the step is missing – into Holyford Lane. A good path, but not well defined.*' The grounds for believing the path to be public are stated as '*in use for more than 80 years*'. It is stated that the '*landowner repairs gates. The Council repairs Bars and Footbridge.*' In the section headed 'remarks' is written: '*In the second field near the footbridge is a swamp which is passable. The bars referred to are in need of repair. The step is missing.*' It is noteworthy that both the Clerk to the Parish Council and the Chairman of the Parish Council have signed the form. No comments have been added by the Rural District Council.
- 1.3.2 Despite being included on the survey form as Footpath 36, the application route did not go on to be recorded on the Definitive Map. Footpath No.36 went on to be recorded as the footpath between Salters Lane and Four Cross Elms. There is no record of why the application route did not progress onto the Definitive Map at this time.

1.4 Documentary Evidence

- 1.4.1 Colyton Tithe Map 1843 and Apportionment 1841
Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured, and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of 'public roads and waste'. The application route is not shown on the Colyton Tithe Map and there is no mention of it in the apportionment.

1.4.2 Ordnance Survey 1" to the mile maps 1809, 1898

Early maps produced by the Ordnance Survey at a scale of one inch to the mile do not show the application route. Footpaths would not be expected to be shown on these maps.

1.4.3 Ordnance Survey 25" First Edition 1887

Surveyed in 1887, the Ordnance Survey 25" to a mile 1st edition map shows a path roughly corresponding to the application route, marked FP. The terminal points on Holyford Lane and Whitwell Lane are the same as the application route, as is the southern half of the route. The northern half is depicted skirting around the east of an 'old clay pit', which is now the upper pond. A footbridge is annotated where the path crosses the ditch in the middle section of the route. A second path marked FP is shown heading east-northeast from Point B, re-joining Holyford Lane further east.

1.4.4 Ordnance Survey 25" Second Edition 1904 and Revision 1938

The Second Edition map depicts the route in the same way as the previous First Edition. The later revision published in 1938 also shows the route in the same way.

1.4.5 Ordnance Survey 1" maps 1946, 1960, 1966 and 1970

Despite lack of detail due to the scale, all of the later edition 1" to the mile maps show the application route as a dashed line. In the 1946 edition such dashed lines represent 'Footpaths and Bridle Paths' while in the later editions they represent 'Paths and Tracks' or simply 'Paths'. The 1966 and 1970 editions show public rights of way and Roads Used as Public Paths (RUPPs) – the application route is not shown as either of these.

1.4.6 Ordnance Survey 2.5" maps 1949 and 1958

The two maps show the application route marked F.P. and passing to the east of the pond/old clay pit.

1.4.7 Ordnance Survey 6" maps 1889, 1906, 1943 and 1963

All of the 6" editions show the application route as a pecked line marked F.P. passing to the east of the old clay pit/pond. The 1889 edition is annotated with F.B. (footbridge) where the path crosses the stream. In the 1963 edition the word 'Ford' is annotated at this point.

1.4.8 Bartholomew's Mapping 1902, 1923, 1943

Bartholomew's map editions were intended for use by cyclists and as such rarely show footpaths. The application route is not shown on any of the editions.

1.4.9 Shute Estate sales particulars 1918

Sales particulars and plans relating to the sale of the outlying portions of the Shute Estate by Sir Frederick de la Pole include the application route within Lot 3, Whitwell Farm. The property is stated to be let to Mrs Ellen Pady and Mr Thomas Pady. The sale plan uses Ordnance Survey base mapping (1904 25" Edition) and the application route is shown marked F.P. However, the sale particulars make no reference to the footpath at all.

1.4.10 Aerial photography

Aerial photography from 1946 does not generally show the application route as a visibly worn path, though there do appear to be worn areas where the route would cross the ditch and gap in the hedge around the midway point.

1.4.11 Aerial photography from 1999-2000 shows the two ponds constructed in the northern field. The application route is not visible in the northern field but is visible as a worn path on the grass in the small middle field and the large field to the south, where it passes the oak tree.

1.4.12 Aerial photography from 2006-7 is of a much higher quality. A worn path is visible that mostly corresponds to the application route throughout, the only difference being that the northern section appears to pass much closer to the top pond than is marked on the application map. A herd of cattle is visible in the southern field through which the application route passes.

1.4.13 Aerial photography from 2010 also shows the application route as a worn path over the section to the south of the upper pond. It appears to pass through a gate or other structure near the lower pond. The upper section of the route is visible in places but not generally well-defined.

1.4.14 Aerial photography from 2015 shows a worn path in the middle section of the route between the two ponds. There is no path visible in the southern field (though it appears the grass has just been cut) or at the northern end of the route.

1.4.15 List of Streets/Land Charges mapping

The application route is not shown as a highway maintainable at public expense on the List of Streets.

1.4.16 Google Streetview images 2009 and 2016

Images from March 2009 show both the terminus points of the application route. At point A the stile is visible, and the adjacent wooden field gate is closed. There appears to be a blank piece of plywood mounted on the post next to the stile, presumably installed to mount a sign or notice that was no longer displayed. A further image of point A taken in September 2009 shows a similar picture, but the field gate is open. Images taken from point B in March 2009 also show a stile in situ, along with a well-defined trampled path leading across the field to the north along the application route.

1.4.17 An image of point A taken in September 2016 (no image of point B is available for this date) shows that the wooden field gate had been replaced with a galvanised metal one, that is closed. The stile is no longer present, instead the gap beside the field gate is barred with timber fence rails. The post upon which the plywood sign mounting was fixed has been replaced with a round post and the mounting is no longer there.

1.4.18 Miscellaneous photographs

A photograph taken in the summer of 1984 was presented by one of the users, Diane Newton, and shows her two young sons playing in the stream beside the application route. A wooden footbridge is just visible on the left of the photo.

Two photographs in DCC files, one dated 14th August 1990, show the application route and were presumably taken when researching possible proposals for the Definitive Map Review. One shows the stile at point A on Whitwell Lane. The stile appears to be in good repair and the adjacent gate is closed. No notices or signs are visible. The other shows the application route looking south from point A. There is no worn path visible in the foreground but there does appear to be a worn path visible in the distance where the path passes to the west of the old clay pit/pond.

1.5 **Parish Council Minutes**

- 1.5.1 Colyton Parish Council hold extensive minute books dating from 1894 until the present. These minute books have been checked and numerous references to the application route exist, plus several references to paths that appear likely to be the application route but of which there is some doubt. Other references to PROW matters may also be relevant to the application route, particularly relating to historic signage. Entries are described here in chronological order as far as possible.
- 1.5.2 At a meeting on the 17th April 1945 it was agreed that all footpaths should be signposted after the war. At this time the Parish Council annually inspected six footpaths in the parish, which did not include the application route.
- 1.5.3 During 1950 the minutes record that a sub-Committee was formed for the purpose of inspecting and proposing paths to be added to the Definitive Map. A public meeting was held and a schedule of 39 paths was adopted for putting forward for inclusion.
- 1.5.4 Minutes of the meeting held on 3rd June 1952 include a list of paths inspected. For the first time a path titled 'Holyford to Whitwell' appears on this list, inspected by a Lt/Col Chaddock. While this is not conclusively a reference to the application route it is notable that there is no other public right of way existing between these two locations and contemporary mapping suggest there is no other path that it is likely to be between these two places. However, it is possible that it refers to the current Footpath No. 36 as this runs over a stretch of track near Four Cross Elms named Holyford Lane, which may be the Holyford referred to.
- 1.5.5 An entry from the meeting on 1st July 1952 resolves '*that Col. Chaddock and Mr Richards arrange to meet the Div. Surveyor on the 4 Cross Elms to Holyford footpath*'. This may refer to the current Footpath No. 36 as recorded on the Definitive Map. However, this does not seem a wholly satisfactory explanation and it may refer to the entire route from Four Cross Elms to Holyford (including the application route) as covered by the survey forms completed by the parish. No further information is provided to provide an answer to this.

- 1.5.6 The path titled '*Holyford to Whitwell*' appears on the list of inspections again in 1953, 1954 and 1955.
- 1.5.7 The next list of footpaths inspected is dated 3rd June 1958, the year following the completion of the parish survey form for path 36. '*Holyford to Whitwell*' is still listed and a new entry has appeared: '*Salter's Lane to 4 Cross Elms*'. This new listing is conclusively the current Footpath No. 36, and therefore it adds weight to the Holyford to Whitwell listing being the application route. Holyford to Whitwell remained on the inspection list when it was recorded in the minutes in 1959 and 1964.
- 1.5.8 In the minutes of the meeting held on 7th December 1965 an entry is titled '*Holyford footbridge*'. The entry details a letter from a member of the public that '*drew attention to dangerous condition of footbridge over stream in Mr Pady's field*'. The entry continues: '*Mr Morison and the clerk to meet Mr Wakley (the parish handyman) on site and obtain estimate to have same put in order*'.
- 1.5.9 On 30th May 1967 a list of paths inspected is entered in the minutes, which includes footpath numbers. Footpath 36 is simply listed as '*Four Cross Elms to Salter's Lane*' and so is clearly not referring to the application route.
- 1.5.10 In November 1967 the Parish Council agreed to obtain 36 finger post signs.
- 1.5.11 An entry in the minutes on 6th February 1968 describes the quote and specifications of '*footpath signboards*' of which it was agreed to order 12. *The signs quoted for are specified as '18" x 6" x 1" painted white, with 1.5" letters FOOTPATH in black on one side only and varnished*'. It is not stated where these signs were to be installed.
- 1.5.12 On the 2nd December 1969 an entry lists the paths that the Parish Council wished to be added to the Definitive Map during the review. It includes: '*No. 36 To continue from Whitwell Lane across 2 fields to Holyford – has been marked red on map. Footpath*'.
- 1.5.13 Minutes of the meeting on 14th June 1976 record that the DCC Footpath Warden, Mr White, was going to look into several issues, including the '*unregistered path from Whitwell Lane to Horriford Lane*' (Horriford is a toponymical corruption of Holyford). Also minuted is the decision to purchase footpath signs from DCC, of which 50 were ordered at the following meeting.
- 1.5.14 An entry in the minutes from 13th May 1985 suggest that a leaflet about footpaths in the parish was being drawn up. There is no record of this leaflet in local archives or within the parish and so it is presumed that it never came to fruition.
- 1.5.15 An entry from 13th December 1993, during the Definitive Map Review, contains the following entry: '*Proposed dedication of a footpath from Whitwell Lane to Holyford Lane, Colyford: the council fully supported this. It was already a popular and well used path*'.

- 1.5.16 Minutes from 1998 document the creation of a booklet entitled 'Exploring the Coly Valley – The complete guide to the public rights of way of Colyton and Colyford' which was produced with input from DCC under the Parish Paths Partnership scheme. The booklet is discussed further below. A public meeting was held in the parish to launch the publication of this booklet and the minutes describe it as '*well attended*'.

1.6 Exploring the Coly Valley booklet

- 1.6.1 This booklet was published in 1999, edited by James Harper and Richard Westley (the parish P3 warden at that time), contains six guided walks in the Colyton area, including one that encompasses the application route. Mr Pady is acknowledged for his hours of work in guiding the project but is not acknowledged as having contributed to writing or researching the guided walks. A Mr Eric Mawer, a former Ramblers representative who had himself submitted schedule 14 applications, is among those listed as having researched and written the guided walks.
- 1.6.2 A table of public rights of way in the parish is included at the start of the booklet, giving their number, start and finish points and grid references. The application route is not included in this list.
- 1.6.3 Walk number 6 encompasses the application route. Instructions are given and a map is attached. The map shows the guided route as a dashed line interspersed with directional arrows. The map shows the public road network and field boundaries but recorded PRoW are not marked or distinguished in any way. Instruction number 4 states: '*Turn left along Horriford Lane and after 100 metres turn left again over waymarked stile in hedge gap. The path crosses field to footbridge. Keep straight, passing a gravel pit at right, ascending gently to Whitwell Lane*'. This undoubtedly describes the application route walked from point B to point A and strongly suggests that some form of waymarker was present at that time at the stile at point B. The instructions for the guided walks do not clearly distinguish whether routes are recorded PRoW or not. References such as '*bridleway waymark*', '*signposted bridleway*' and '*signposted public footpath*' suggest a distinction is made but conversely the term '*waymarked stile*' appears on the unrecorded application route as well as other routes that are public footpaths.

1.7 Definitive Map Reviews and Consultations

- 1.7.1 A further review commenced in 1969 but was not completed. DCC have a file containing some of the correspondence from this review. The application route was put forward for inclusion (as path no. 36) on the Definitive Map by Colyton Parish Council in a letter they sent to DCC dated 9th December 1969 – also mentioned above under Parish Council Minutes. The letter details how a sub-committee had examined the Definitive Map and lists paths that they wished to retain and those they wished to add to the map. Under the list of paths they wished to add to the map is the entry '*No. 36. To continue from Whitwell Lane across 2 fields to Holyford – has now been marked in Red on Map. Footpath.*' A copy of a letter sent by DCC to Colyton Parish Council and dated 12th January 1971, contains the entry '*Footpath 36:- I presume the landowners*

concerned will have no objection to this path being added as it is signposted and well used. It is signposted and marked by you on the map as going round the east side of the big pit at the northern end. It would seem to be more convenient both for the farmer and the public if it followed the field boundary round the west side. Colyton Parish Council sent a letter to DCC dated 5th April 1971 containing a list of paths they wish to put forward for inclusion and under Path No. 36 it is noted: *'Landowner has no objection. Path as now used does follow the boundary hedge on WEST side of Pit.'* A reply to this letter from DCC dated 20th April 1971 contains the following entry: *'Footpath No. 36. I will ask the County Surveyor to get the signposting corrected if you will kindly let me know the name and address of the landowner concerned.'* On 1st May 1971 Colyton Parish Council furnished the details of Mr C Pady, Holyford Farm, in response to this letter.

- 1.7.2 Also included among the correspondence referred to in the paragraph above is a handwritten sheet containing notes that appear to have been made by the DCC officer conducting the review titled 'Colyton – amendments' and there is an entry for path 36 with the comment *'PC want extension between Whitwell Lane and Holyford Lane. Inspect. Signposted & well used'*. A second sheet in the same handwriting is titled 'Colyton – inspection routes'. One note reads *'Whitwell Lane – new 36 A – Agree – already signposted & well used – suggest it goes west of the pit. Signposted as FP.'*
- 1.7.3 A letter from DCC to Colyton Parish Council by P.W. Heptinstall, an Area Engineer, dated 15th December 1977 (during another uncompleted review) requests more information about this path should the Parish Council wish it to be considered at the next review as it is not shown on the Definitive Map. In this letter the Area Engineer states that he *'understand that there were at one time stiles and sign posts indicating this path.'* There is also one user evidence form dated 12th January 1978 relating to the application route, presumably related to this review, which is discussed further below.
- 1.7.4 A Definitive Map Review was conducted in Colyton parish from 1989 to 1992. The application route was again put forward for consideration during this review due to the fact that Colyton Parish Council had done so in 1978 and based on the same evidence relating to the 1949 process. DCC initially declined to put forward the application route for consultation due to insufficient evidence. However, this decision was reversed following further information supplied by Colyton Parish Council, including references to parish council minutes from the 1950s and 60s (discussed below). The route was subsequently included as Proposal 2 (having initially been numbered proposal 4) for informal consultations.
- 1.7.5 A draft schedule of proposals contained in the file has handwritten annotations, presumably made by the officer conducting the review. Beside proposal 4 (the application route) is written: *'very well used but seems to have little evidence'*. A separate sheet lists the user evidence for each proposal; it simply states 'no user evidence' for proposal 4.

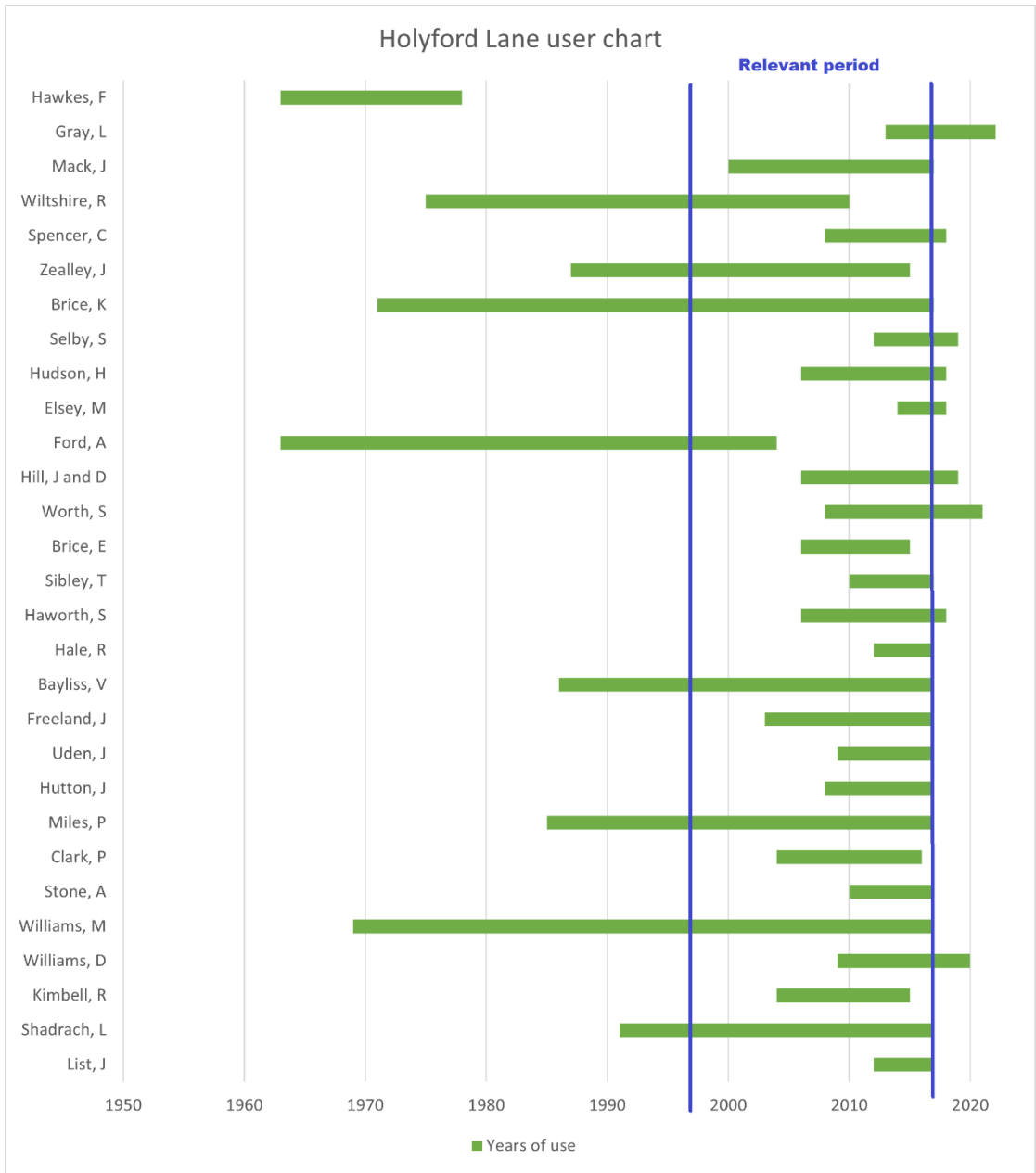
- 1.7.6 In September 1991 a schedule of proposals for the parish of Colyton was published and sent to all affected landowners and statutory consultees. The application route is listed as Proposal 2.
- 1.7.7 Mr Pady sent a handwritten letter dated 20th September 1991 in response to the publication of the schedule of proposals, dealing with the two proposals affecting his land (Proposals 2 and 6). Of proposal 2 he writes that *'this is a very well used footpath which has been in existence for well over 100 years. It has never appeared on a Definitive Map which has always puzzled us. We have no objection to this footpath except for one point – namely the route of the path around the old clay pit & pond – just south of the point where the path joins Whitwell Lane – To our knowledge the path has always passed to the west of the pit & pond.'* He included a hand-drawn map of Proposal 2 showing this. The letter goes on to state that he has no objection to the footpath being recorded on the Definitive Map if it is shown passing west of the pit and pond and asks for confirmation that this will be possible considering that use of the path *'at least within living memory'* has always followed this route.
- 1.7.8 A report on Proposal 2 was put before the Devon County Council Public Rights of Way Sub-Committee on 31st March 1992 recommending that a Creation Agreement be entered into with the landowner under Section 25 highway Act 1980. The conclusion of the report states that *'as the landowner already regards the route as a footpath, it is recommended that a Creation Agreement be made with him to formally dedicate the route for public use'*. Parish Council minutes (as mentioned above) record that Colyton Parish Council supported the recommendation.
- 1.7.9 Draft Creation Agreement
Some further correspondence between Devon County Council and Mr Pady provides information on the proposed Creation Agreement. From an internal memorandum from the Public Rights of Way Section to Devon Legal Services it seems that several unsuccessful attempts were made between 1993 and 1996 to obtain the necessary information from Mr Pady to enable the completion of the Creation Agreement.
- 1.7.10 A letter dated 15th April 1997 from DCC to Mr Pady records that he had been furnished with a copy of Section 25 of the Highway Act 1980 and given an explanation of how DCC would contribute towards initial and future maintenance of the path. The draft agreement itself states that *'The Council will have the right but not the obligation to carry out items of minor repair to the surface of the route'*. No other conditions or limitations are detailed in the draft agreement other than the width which is stated as 2.5 metres.
- 1.7.11 A letter dated 4th May 1998 was sent to DCC by Mr Richard Westley, the Colyton Parish P3 Coordinator at that time. The letter describes how Mr Westley had met Mr Pady to discuss the *'extension of footpath 36... in an attempt to overcome the current difficulties.'* Mr Westley writes: *'He does not dispute that this is a public right of way, indeed both he and his father before him have always believed it to be so. They were amazed to find that it was not included on the definitive map.'* In the letter, Mr Westley suggests that Mr Pady's failure to sign the creation agreement was a deliberate act of protest

over what he saw as a lack of support from DCC over problems with footpath users and *'to some extent difficulties at a local level with some rights of way activists.'* They apparently discussed the evidence supporting the public right of way along the route and the likelihood of a permissive route being unacceptable to some members of the public. Mr Westley writes that Mr Pady *'accepts that although he would prefer this solution the weight of evidence would support a public right of way.'* Mr Westley states that he told Mr Pady that Colyton Parish Council would do all it could through the P3 scheme to ensure effective maintenance of the path once the creation agreement had been signed. Mr Westley then goes on to suggest that DCC contact Mr Pady promptly regarding the signing of the creation agreement.

- 1.7.12 Mr Westley sent another letter to Fiona Barnes (formerly a PROW Officer at DCC) which discusses several PROW issues, including the application route. It is undated but is likely to be roughly contemporary with the letter described above. In the letter Mr Westley reports that *'despite my best efforts he (Colin Pady) refuses to sign the dedication documents. Not that he challenges the existence of the path rather he wishes to use it as a lever to get the County Council to do something about the problem, as he sees it, of dogs on paths.'*
- 1.7.13 Although drafted, the Creation Agreement was never signed and so did not result in the application route being dedicated as a public footpath.

1.8 User Evidence

- 1.8.1 Fifteen user evidence forms were submitted with the Schedule 14 application, a further fifteen forms were submitted during informal consultation and one exists from the 1970's review – making a total of thirty one forms. Several emails were also received from people who claimed to have used the route but did not submit evidence forms.
- 1.8.2 The earliest claimed use dates back to 1963, though several users mention family members using the route prior to this. Three of the users – Williams, Ford and Brice – state that they have used the route for more than forty years. A further three users claim use for more than thirty years and two for more than twenty years. Other users claim lesser periods of use, as shown in the chart below. None of the users say that the route has ever been diverted at any point during their use.



1.8.3 Use of the route appears to have mostly ceased in 2017, with multiple users (Hutton, Freeland, Shadrach, Stillwell and Stone) stating that footpath closure signs were erected in October 2017 (none supplied an exact date). A few users claim to have continued to use the route after October 2017, though only Worth provides information as to why. She writes: *'I must admit to still using the path occasionally. I don't have a dog and was quite prepared not to use it if the landowner ever challenged me'*. She eventually stopped when the planks on the footbridge collapsed sometime after March 2021.

1.8.4 Frequency of use varies widely between users. Four users state that they used the path anywhere from daily to 4 times per week. Four users claimed weekly use, with one user stating they used the route 30-40 times per year and one 30 times per year. Six users claim monthly use and another ten users claimed use every few months. Two users only claim to have used the route once a year, one simply states they used it 'frequently' and one did not state a frequency.

- 1.8.5 Of the thirty-one users, 27 of them state that they have never been given, or sought, permission to use the route. Three of the users – Uden, Brice and Gray – stated that they had been given permission to use the route but it appears that they implied this from the signs on the route rather than it being given directly by the landowner. Only one user – Miles – states that they had direct permission from Mr Pady, as they worked for him during the 1990s. However, Miles claims use since the mid-1980s and it is not stated exactly when permission was given. Many of the users refer to the route as a permissive path in their forms even though they stated that they had never personally been given permission to use it. This appears to stem from permissive path signs that were located on the stiles at each end of the route and that several users refer to.
- 1.8.6 There is complete consensus among the users that the landowner was aware of the public using the route. Many users refer to seeing others using the route and several provide additional details. Three of the users state that they used the application route on group walks with the Ramblers, one of them – Rosemary Kimbell - being the local East Devon representative. Adams mentions in her evidence form that she is the Chair of the Axe Valley Runners and that she had attempted to represent their 250+ members that use the route when completing the form. Bayliss states that she used the route since 1986 as a Colyton resident and then from 2012 as part of a group of 25-30 people under the Ramblers' Walking for Health scheme. She states that she was a walk leader for the Seaton/Colyton group. Uden states that they used the route both on their own and as part of the Colyton Monday Meanderers and Seaton U3A Walking groups.
- 1.8.7 Of the thirty-one users, 18 of them mention the closure signs erected by Mr Hammett in 2017. Nine of the users mention or allude to signs on the route prior to the closure signs being erected. Sibley states that there were '*footpath signs at each end*' as does Hudson and Hawkes, and Zealley alludes to this also. Worth claims that there were signs that said '*permissive footpath*' at either end during her first few years using it from 2008 (Hudson states the same for 2006), while Selby states: '*From memory there were standard footpath signs at both ends of the footpath. Points A and B*' and that '*the signs and stiles looked/seemed official*'. Other than this there is no mention of the wording of any signs erected during Mr Pady's ownership of the land. It is reasonable to presume though that there were signs implying the route was a permissive path located at either end during Mr Pady's ownership, though for how long is not clear from the user evidence.
- 1.8.8 The question 'why do you think the route is public?' drew numerous answers from the users. Many seemed to have some knowledge that Mr Pady owned the field and allowed people to use the path. Some refer to it as a 'permissive' path, though it is quite clear that no one believed they needed direct written or verbal permission from Mr Pady before using it. Eight of the users state that the presence of signs at either end of the route led them to think it was public. However, Worth also states this despite indicating that the signs stated it was a permissive path. Several other users also demonstrate the confusion over the permissive/public nature: Brice states that '*It was public – a permissive path until 2019*' and Gray that it was '*Made available as permissive path by the previous landowner*'. Only Hale does not think the path is public, answering the

question with: '*Not entirely sure it is. I always understood it was a permissive path only*'. Many users refer to the stiles and footbridge as being a reason for thinking the path is public, while many refer to the well-worn path on the ground. 8 of the users state they believed it to be public simply because it always has been or that everyone used it. Several also answer that the path appears on old maps as being behind their belief that it is public. One succinctly states '*local information*'.

- 1.8.9 Just over half of the users claim to know who owns the land currently, with seven users having knowledge that Mr Pady previously owned it. Some of these appear to know Mr Pady personally (including being his neighbour) but some seem to have known of his ownership through others.
- 1.8.10 Though not relevant to the determination of this application, several users mention that the route offers a shortcut to avoid the narrow roads on Holyford Lane and Whitwell Lane, referring to the bakery traffic and delivery vans using it. Several users also highlight the amenity value of the route and that it provides a link to Holyford Woods.
- 1.8.11 In addition to user evidence forms several letters have also been submitted by members of the public who claim to have used the application route. Dr Keith Barfoot wrote to Colyton Parish Council in January 2020 in support of 're-opening' the path. He writes that '*I have walked that path, along with friends, since I moved into Whitwell Lane in 1997. Many locals and holiday visitors to the area used to also walk it and I am not aware of any negative effects of its use*'. Attached to the letter is a map showing the application route marked in black pen.
- 1.8.12 Mr Colin Nott-Bower also wrote to Colyton Parish Council, in December 2019, in support of the efforts to re-open the path following the closure by Mr Hammett. Mr Nott-Bower states that he was born in 1928 at Holyford Close, Holyford Lane, which is adjacent to the southern end of the application route. He states that he used the path regularly during his childhood, from about 1931 onwards and that his mother, who was a keen walker, would have used the path from 1928 until her death in 1996. Mr Nott-Bower states that he and his wife purchased the property named Quest, which is adjacent to the northern end of the application route, in 1963 and lived there until 2008. He states that they used the application route most days as a family, as his wife kept a horse at Holyford Close and would use the path to walk over to feed and water them and his three children would use it as a shortcut to walk to Seaton. He also writes that his parents obtained permission from the landowner at the time to create a fishing pond in one of the fields and that they would use the application route to go fishing at the pond.
- 1.8.13 Mrs Angela Ford also wrote to Colyton Parish Council in December 2019 in support of the reopening of the path – she also later submitted a user evidence form. She is the daughter of Mr Nott-Bower and her letter details how she grew up at the property Quest and used the route throughout her childhood and continued to do so when visiting her parents until they sold it in 2008. She states that she used the application route to go to Holyford Woods or as a

shortcut to Seaton, and that she remembers sitting at the base of the large oak tree alongside the route.

- 1.8.14 Mrs Barbara Jessop wrote to DCC in March 2022 in objection to Mr Pady's application. She states that she has lived in Colyford all her life and has walked the path, along with her children and grandchildren, but believes the Mr Hammett should not be forced to re-open the path. She mentions that Mr Pady had the chance to dedicate it when he was the landowner and '*withdrew the application*'. She also refers to issues with dogs and pedestrians worrying livestock.

1.9 Landowner and rebuttal evidence

- 1.9.1 The land crossed by the application route is currently owned by Christopher Hammett. Mr Hammett purchased the land from Mr Pady on 8th April 2014 but had previously been a tenant since 2010. Mr Hammett has submitted a landowner evidence form and several documents relating to the sale of the land.
- 1.9.2 Mr Hammett confirms that he does not believe that the path is a public right of way and that '*It was sold to me by Mr Pady as a permissive path.*' He states that during his ownership he has only seen limited use of the path by the public (partly due to the wet conditions at certain times) and that both he and his wife have advised people that it is a permissive path. They have done this '*many times, as Mr Pady allowed people to walk over all his land not just this area*'. Mr Hammett states that he has been asked permission to use the path and has given permission to people to use the path and also refused permission to use the path.
- 1.9.3 Mr Hammett has indicated on the form that he gave permission verbally, but then underneath writes that it was '*to local people who knew it was a permissive path, so no permission was given verbally as I carried on with Mr Pady's wishes*'.
- 1.9.4 Mr Hammett states that he has refused the following people permission to use the route: *Mr Green from Beer, an Axe Valley runner; The people from Whitwell Farm; Kevin Searle, Quest, Whitwell Lane.*
- 1.9.5 Mr Hammett states that his use of the land (livestock) plus waterlogging in wet conditions has made use of the route difficult or impossible. He also mentions that maize has been grown on the land during Mr Pady's ownership and this made use of the route difficult or impossible.
- 1.9.6 Mr Hammett states that he had the metal gate on Whitwell Lane (point A) padlocked and the stile removed in 2016 and that the gate has been permanently locked since. Notices were erected in 2016 at each end of the route by Mr Hammett but were subsequently removed by persons unknown. He states that he maintained the notices and they remained in place about a week to a month at a time.

- 1.9.7 Mr Hammett also submitted documents relating to the searches conducted when he purchased the land. A document produced by the solicitors Beviss & Beckinsale states: *'Plan 3 shows the permissive footpath over Waterleys. The path is well-used. Devon County Council are aware of the permissive nature of the path and there is currently no written material concerning it'*. Plan 3 shows the application route marked on by hand and annotated clearly as *'permissive footpath'*. A further document from East Devon District Council simply confirms that there are no recorded PRow crossing the land.
- 1.9.8 Mr Hammett also submitted a letter sent to him by Elizabeth Berry, Clerk to Colyton Parish Council at the time, dated 23rd November 2017. The letter concerns a planning application submitted by Mr Hammett for two eco perch timber units on the land and that *'the Parish Council is concerned as to the future of the permissive footpath that runs close to the proposed units. This footpath has been enjoyed by local residents for over 50 years and is well used, as it avoids having to walk down Holyford and Whitwell lanes'*. The letter asks Mr Hammett what his plans are for the future of this permissive path.
- 1.9.9 Mr Pady, the applicant, also returned a landowner evidence form to cover the period between 1964 and 2014 when he owned the land crossed by the application route. He states that he inherited the land from his father. The form does not refer to the period between 2010-2014 when Mr Hammett stated that he rented the land.
- 1.9.10 Mr Pady states that he believed the path was public due to it appearing on historic Ordnance survey mapping and *'The public used this path without let or hindrance since the ownership of my grandparents 1889-1925 (as tenants of Sir Frederick Pole) – my father, 1925-1964 and myself 1964-2014'*.
- 1.9.11 Mr Pady states that the sale particulars relating to the purchase of the land by his grandmother from the Pole Estate in 1918 are useful in this case but although they confirm his family occupied the land, they do not provide any insight as to the status of the application route.
- 1.9.12 Mr Pady states that he has seen people using the route throughout his ownership, including Colyton Grammar School using it for cross-country runs. He states that he has never stopped or turned back anyone using the route or made it known to them that it was not public. Likewise, he states that no one has done so on his behalf. He writes: *'I have never stopped or turned people back all were welcome to cross my land via the route indicated on the plan'*.
- 1.9.13 Mr Pady states that he has never given permission to anyone to use the route and that no one has ever asked for permission to use the route. He writes: *'no permission ever given – the public knew they were welcome to cross my land – the path was well worn and well defined'*. He also states that he has never locked any gates or placed any obstructions on the route.
- 1.9.14 Mr Pady states that between 1965-1980 public footpath signs were erected by Colyton Parish Council at the stiles at either end of the route. He states that he maintained the stiles throughout his ownership of the land, and they were in

place from the period his grandfather took over the land in 1899 until he sold it to Mr Hammett in 2014.

- 1.9.15 Mr Pady states that he has '*A clear memory that in the late 1960s the DCC sent 2 men with two stout planks to repair the footbridge and how I helped pull their wheelbarrow loaded with planks from their lorry to the footbridge site (the field was too wet to drive over)*'.
- 1.9.16 Mr Pady states that he has never deposited a map and/or statement under Section 31(6) of the Highways Act 1980. Under this section he has written that in the 1960s his father applied for a diversion of the footpath from the east side of the clay pit to the west side '*for ease of management of the dairy herd*' and that permission was granted. He does not state who permission was sought from or indeed who granted it.
- 1.9.17 Under the further information section Mr Pady writes: '*This path has been regarded by the public as a bona fide public path although never registered as a definitive path. It remained as a permissive path throughout the 3 generations of my family – 1889-2014. A gentleman's agreement with Mr Hammett was struck with a promise to keep the path open*'.
- 1.9.18 Mr Pady provided some further information about the path on a separate sheet. This details the history of his family's ownership of the land as well as how the application route has always been a favourite walk for locals, especially as it passes a veteran oak tree in the middle of the southern field. He refers to two village events being held around the oak tree – the celebration of the birth of Prince William in 1982 and a Goose Fayre in 2008 – which included a cricket match, hog roast and live music. In this supplementary sheet Mr Pady also writes that '*There have been attempts to have the path dedicated as a definitive path, but I always took the view that it was safe as long as we farmed the land*' before stating how he believed Mr Hammett would continue to allow the public to use the route.

1.10 Discussion

1.10.1 Statute (Section 31 Highways Act 1980)

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. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.

- 1.10.2 Mr Hammett states that he padlocked the gates at point A and removed the stiles in 2016. He also states that he erected notices at this time, but they were removed. User evidence suggests that notices were initially erected that warned of the possible closure of the path due to dog attacks on livestock. The removal of the stiles is not well-documented in the user evidence and it does not seem to have stopped use, possibly due to the remaining rails being easy to scale. The user evidence supports the date of the first closure notice being erected as October 2017 – several users specifically mention them going up in

this month and there appears to be a consensus that use ceased at this time. Overall, this date appears to be the strongest contender for when the right of the public to use the route was overtly and effectively challenged.

- 1.10.3 Use by the public appears to have continued uninterrupted for more than 20 years prior to October 2017. None of the users mention the route being closed or obstructed during this period, though several refer to waterlogging and wet ground during wet weather. The number of users and frequency of use all appear to be representative of the public at large in that location. Mr Hammett refers to use being obstructed by agricultural activity (livestock and maize cultivation) during Mr Pady's ownership but none of the users mention it.
- 1.10.4 What is not so clear cut in this case is whether use of the route by the public was as of right. Use was certainly 'without force', there being no evidence of the public needing to use it to access the route during 20 years prior to 2017; likewise, there is absolutely no evidence of any secrecy being exercised in the use of the route by the public. The key factor is therefore whether the public were using the route 'without permission'.
- 1.10.5 Many of the users refer to the route being a 'permissive' path and there appear to have been signs to this effect present on the stiles at each end of the route for some of the relevant period (certainly in the mid-2000s). However, almost none of the users sought or were given permission directly from Mr Pady and many believed they were exercising a public right. Conversely, towards the end of the relevant period the actions of Mr Hammett certainly suggest the permissive nature was brought to the attention of the users more overtly than before, adding weight to the assertion that use was by right rather than as of right. Documentary evidence certainly suggests that Mr Pady believed that the route was an unrecorded public footpath, despite the fact that he failed to sign the Creation Agreement when he had the chance. Certainly, at the start of the relevant period (and stretching back more than a quarter of a century) the evidence suggests that Mr Pady intended to dedicate the application route as a public right of way. He certainly did not object to proposals to add the route to the Definitive Map and asserts that during his ownership he allowed anyone to use the route without permission as if it was public. This therefore raises the question of the validity of any 'permissive path' signs that were present.
- 1.10.6 The evidence concerning the nature of use of the route is therefore conflicting: Mr Pady states that he never required permission from anyone and allowed anyone to use the path at any time; at the same time, he erected signs suggesting it was a permissive path and sold the land to Mr Hammett on the basis that the path was permissive. What Mr Pady or Mr Hammett believed in their own minds when erecting the signs is not necessarily relevant; what is important is what message the signs conveyed to the public. Unfortunately, the user evidence during the relevant period presents a similar dichotomy. In this case, during the relevant period the permissive path signs cast some uncertainty over whether use was as of right, though they do not preclude it entirely.
- 1.10.7 Also key to statutory dedication is whether there is sufficient evidence during the relevant period that the landowner did not intend to dedicate. Mr Pady,

despite the permissive path signs, has done little else to suggest to the public that he did not intend to dedicate it. Mr Hammett certainly demonstrated more clearly an intention not to dedicate, with his notices in 2016 plus challenges of users and permission being given. However, the user evidence does not suggest that this intention was clearly communicated until the closure notices in October 2017, so again there is rather a conflict of evidence. Ultimately, although Mr Hammett clearly did not intend to dedicate the route, whether evidence that this was communicated to the public is 'sufficient' is not conclusive.

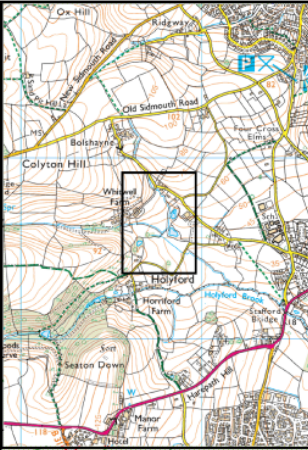
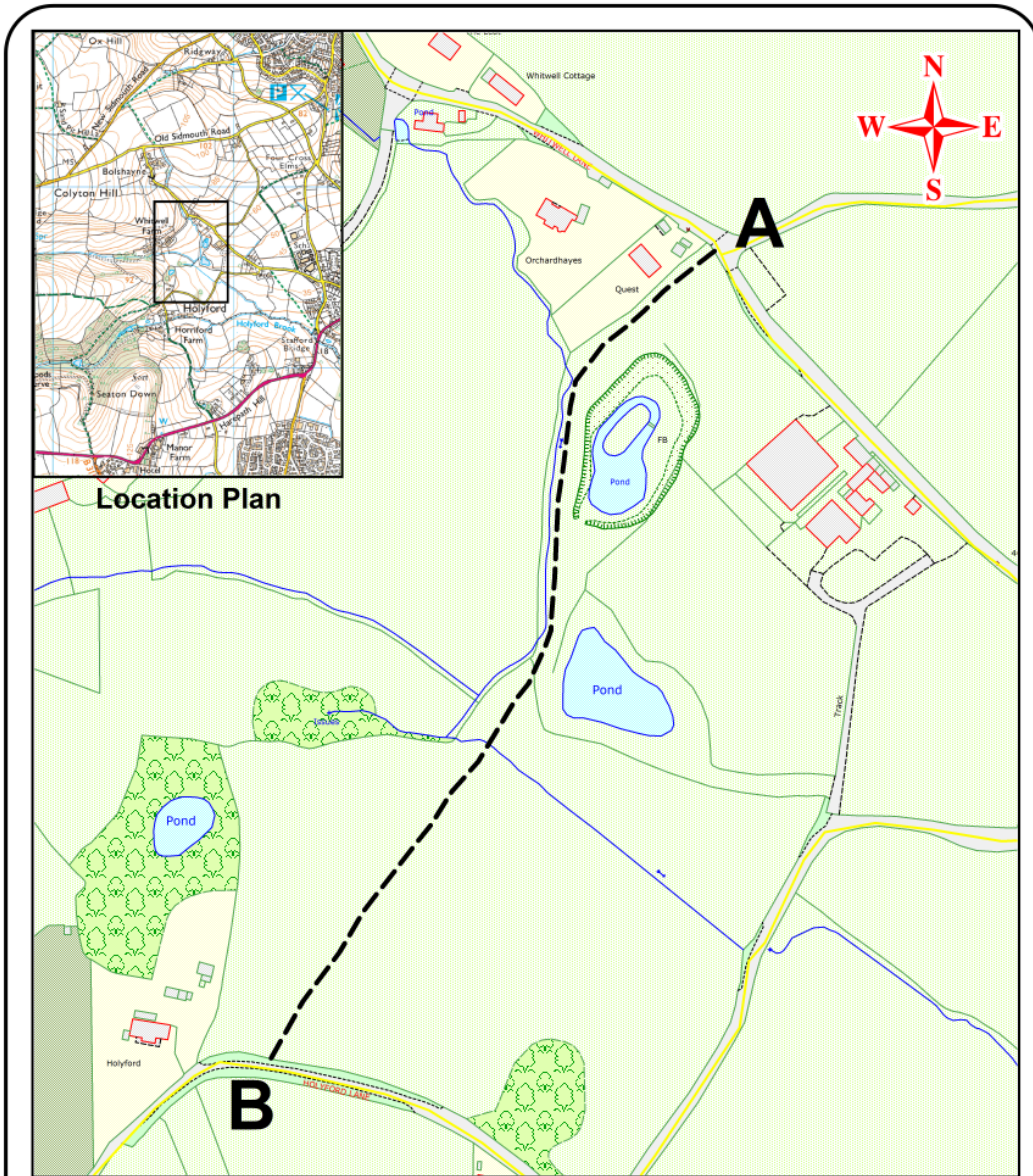
- 1.10.8 In summary, the evidence provides some support for statutory dedication having occurred. However, serious questions are raised concerning the permissive nature of use and also Mr Hammett's actions to demonstrate a lack of intention to dedicate during the relevant period. While the evidence supports a 'reasonable allegation' that public rights subsist on the balance of probabilities based on statutory dedication, it is debatable how it would meet the higher test required for confirmation.
- 1.10.9 Common Law
The only other basis for its possible consideration as a highway is if there was any other significant supporting evidence from which a dedication of the route can be presumed or inferred under common law. At Common Law, evidence of dedication by the landowner can be express or implied and an implication of dedication may be shown 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.
- 1.10.10 Historic mapping shows that the application route has existed physically since at least the 1880s and that it has roughly followed the same route, the only alteration being that it shifted from the east to the west of the old clay pit. The land crossed by the route was in the ownership or occupation of the Pady family from 1918, possibly earlier, until 2014. It was owned by Mr Colin Pady, the applicant, from 1964 until 2014.
- 1.10.11 The path was surveyed by Colyton Parish Council during the Definitive Map process and proposed for addition as a public footpath. It is not known why it did not make it onto the Definitive Map but evidence from subsequent reviews shows that both Mr Pady and Colyton Parish Council believed that it was a public footpath, had been overlooked during the original process and should have been added to the map – indeed, minutes suggest that they formally requested that DCC do so during both the 1969 and 1977 reviews. During the 1950s and 1960s Colyton Parish Council inspected the route during their annual footpath inspections. Stiles were noted on the 1957 survey form and were in place until 2016, with Mr Pady suggesting they were in situ since his grandfather's tenure. There is no suggestion that the path provides any sort of exclusive private access to any property or destination and so it is likely the stiles were maintained by the landowner largely for the benefit of the public using them.

- 1.10.12 Parish Council minutes from 1965 record the repair of the footbridge on the application route by the parish handyman – an example of expenditure of public money on the route. It is possible that this was the repair that Mr Pady refers to in his evidence form where he mentions assisting two DCC ‘repair men’ in fitting new planks to the footbridge.
- 1.10.13 Documents from the 1960s and 1970s reviews are also useful and help corroborate some of the other evidence. Records suggest that in 1971 the route was already signposted as a footpath and well-used and that the landowners were in agreement that it should be recorded. There is no record of what signs were displayed, though Mr Pady suggests that signs were present, erected by the Colyton Parish Council handyman, during the period 1960-1980 . Parish Council minutes document the purchase of footpath signs but are not helpful in identifying their locations. Mr Pady was a member of the Parish Council during both these reviews and was intimately involved in the process. These documents are therefore strong evidence of his intention to dedicate the route at the time.
- 1.10.14 Similarly, the inclusion of the route as a proposal in the Definitive Map Review in Colyton parish in the early 1990s with the subsequent recommendation that DCC enter into a Creation Agreement with Mr Pady, is good evidence that he still intended to dedicate the route at this date. Mr Westley’s letters from 1998 suggest that Mr Pady still believed that the route was a public right of way at this time, despite not having put pen to paper to sign the Creation Agreement. Mr Pady’s supposed refusal to sign the agreement as a protest against DCC’s handling of issues involving dogs and livestock worrying does not appear to have been widely broadcast, and in any event does not retrospectively rebut the evidence from the previous decades.
- 1.10.15 The user evidence, although strongest in this century, stretches back to 1963 - though unsurprisingly only five users record use during the 1960s and 1970s. However, the documentary evidence suggests that from the 1950s onwards the path was well-used by the public. Mr Pady states that he never required anyone to ask permission to use the application route and that the public used it as if it was a public path. The user evidence, particularly that dating to before the ‘permissive path’ signs were in place, mirrors this. The fact that a landowner has openly tolerated use does not mean that the use is not as of right. The evidence suggests that during his ownership Mr Pady not only tolerated use but actively encouraged and facilitated it (provision of stiles, signs, Coly Valley booklet); the path was discussed at several parish council meetings and during definitive map reviews, during which Mr Pady made it clear that he supported the dedication of the route as a public footpath – meetings that were minuted and in the public domain. Evidence also suggests that as well as supporting the dedication of the route he and his predecessors had always believed the route to be a public footpath.

1.10.16 While there is a good case for arguing that express dedication occurred, it can certainly be inferred, from both the user and documentary evidence, that Mr Pady dedicated the application route as a public footpath during his ownership and that the public accepted the dedication by using the route. As such, the test for dedication under common law is met.

1.11 Conclusion

1.11.1 From this assessment of the evidence, in conjunction with other historical evidence and all evidence available, it is considered sufficient to support the claim that public rights subsist on the balance of probabilities. Accordingly, the recommendation is that an Order be made to record a Footpath in respect of this application.



Location Plan

Map ref: SY 2388 9277/SY 2369 9242 Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 1000119783

DEVON COUNTY COUNCIL
 Colyton parish
 Informal Consultation:
 Schedule 14 application, claimed footpath from
 Whitwell Lane to Holyford Lane, Colyton

Drawing number: HIW/PROW/22/10
 Date: Jan 2022
 Scale: 1:2,500 @A4
 Drawn by: TCG

Notation Claimed Footpath (420m)

Meg Booth
 CHIEF OFFICER FOR HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE

