

**Definitive Map Review
Parish of Ilfracombe – Part 3**

Report of the Chief Officer for Highways, Infrastructure Development and Waste

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

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a footpath to the Definitive Map and Statement between points A – B – C along Doggie Lane, as shown on drawing number HCW/PROW/16/35.

1. Introduction

This report examines a Schedule 14 application received in July 2016 at Higher Slade in the parish of Ilfracombe.

2. Background

The current Review was started in 2009 with informal consultation on a number of proposals carried out in 2014 for modification of the Definitive Map and Statement. Seven proposals were considered in a report to the Committee in March 2016 and further four proposals were considered by the Committee in July 2016. This report deals with an additional Schedule 14 application received for the parish of Ilfracombe.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Edmunds	– no comment
Ilfracombe Town Council	– support the application
North Devon Council	– no comment
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– support the application
Trail Riders' Fellowship	– no comment

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

5. Financial Considerations

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

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that a Modification Order should be made in respect of Proposal 25.

Should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

10. 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 and to progress the parish by parish review in the North Devon area.

David Whitton
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Ilfracombe

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence Files	Current	DMR/ILFRACOMBE

cg111016pra
sc/cr/DMR Ilfracombe 03 161116

A. Basis of Claim

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

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

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

The Wildlife and Countryside Act 1981, Section 53(3)(c) enables the Definitive Map to be modified if the 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.

Proposed addition of a footpath between Higher Slade Road and Footpath No. 22, Ilfracombe, as shown between points A – B – C on plan HCW/PROW/16/35.

Recommendation: That a Modification Order be made to add a footpath to the Definitive Map and Statement between Higher Slade Road and Footpath No. 22, Ilfracombe, in respect of the application route.

1 Background

The Schedule 14 application was submitted by the Higher Slade Community Association in response to what users perceived as a potential obstruction by an unknown party to the application route at point A.

2 Description of the Route

The route starts at point A at its junction with Higher Slade Road opposite number 15 Higher Slade and proceeds south eastwards then southwards along a hedged lane, known as Doggie Lane, to point B where it turns eastwards to meet Ilfracombe Footpath No. 22 beside West Wilder Brook approximately 70 metres south of Higher Slade Road at point C.

3 Documentary Evidence

Ordnance Survey mapping, 1809-1962. Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way".

On the 1809 Board of Ordnance Draft Drawings only the northern section of the application route from point A is shown.

On the 1876, 1908, 1921, 1930, 1931, 1932, 1946, 1950, and 1960 1" to 1 mile scale mapping, the application route is shown, though only partially on the earliest editions. Some editions also show.

On the 1st Edition 25" mapping of 1888, the application route is shown.

Ilfracombe Tithe Map, 1840. Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official boundaries of all tithe areas. Roads were sometimes coloured and the colouring generally indicates carriageways or driftways. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible.

The Ilfracombe tithe map is first class surveyed at a scale of 3 chains to 1 " by James Webb of Worcester, and is a legal and accurate record of all matters shown. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many case public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners.

The application route is shown as an open and available part of the parish highway network along with what is now recorded as Ilfracombe Footpath No. 22, and is numbered 1555 – roads and waste.

Deposited Plan – Ilfracombe Water Works, 1857. Individual schemes were promoted by Special Acts. The statutory process required for the authorisation of schemes was exacting, having been set out by parliamentary standing order. The book of reference and deposited plans made in the course of the process needed to be of a high standard, as they formed the basis for legislation and were in the public domain. Consequently they were scrutinised by all relevant parties who would not unnecessarily to cede ownership, rights or responsibilities, as the status of a way had an impact on the cost of the scheme.

The plan which was surveyed by a local surveyor, Arthur Whitehead, for the Ilfracombe Local Sanitary Board at a scale of 40" to 1 mile, shows the lane which Ilfracombe Footpath No. 22 runs along from Higher Slade Road southwards and its connection with the eastern end of Doggie Lane, the application route from point C.

Deposited Plan – Ilfracombe Railway, 1862. Individual schemes were promoted by Special Acts. The statutory process required for the authorisation of schemes was exacting, having been set out by parliamentary standing order and the Railways Clauses Consolidation Act 1845. The book of reference and deposited plans made in the course of the process needed to be of a high standard, as they formed the basis for legislation and were in the public domain. Consequently they were scrutinised by all relevant parties who would not unnecessarily to cede ownership, rights or responsibilities, as the status of a way had an impact on the cost of the scheme.

The plan was drawn up by W R Galbraith, a well-known engineer and surveyor. It shows the lane along which part of Ilfracombe Footpath No. 22 runs and the southern part of the Doggie Lane, the application route from point C for approximately 185 metres. It is recorded in the Book of Reference as an '*occupation road*' and is listed in the shared ownership of 10 people. However, it is listed in the occupation of 9 people, some of whom are not listed as owners, and the public.

Newspaper Extracts, 1904. The application route, Doggie Lane, is named in articles placed in both the North Devon Journal and Western Daily Press dated July 1904, in relation to the official opening of new works for Ilfracombe's water supply. It is referred to in order to locate existing and new nearby water works. There is no information regarding its reputation or status.

Finance Act records, 1909-10. The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

The application route, Doggie Lane, between points A – B – C is excluded from any hereditaments.

Conveyance at Higher Slade, 1919. In 1919, Devon County Council purchased (Higher) Slade Farm from Mr Richard Reed including land adjacent to the application route, Doggie Lane, but not the lane itself. No reference is made to the lane.

Conveyance at Higher Slade, 1925. Such conveyances or transfers were essentially dealing with private rights of property and were not prepared with a view to defining public rights. The plan attached show the northern end of Doggie Lane, the application route from point A, though this is for general reference purposes only.

Mortgage & Receipt at Higher Slade, 1926-34. Such conveyances or transfers were essentially dealing with private rights of property and were not prepared with a view to defining public rights. The plans attached show the northern end of the application route, Doggie Lane from point A, though this is for general reference purposes only.

Conveyance at Higher Slade, 1929. Such conveyances or transfers were essentially dealing with private rights of property and were not prepared with a view to defining public rights. The plan attached show the northern end of the application route, Doggie Lane from point A, though this is for general reference purposes only.

Abstract of Title at Higher Slade, 1946. Such conveyances or transfers were essentially dealing with private rights of property and were not prepared with a view to defining public rights. The plans attached show the northern end of the application route, Doggie Lane from point A, though this is for general reference purposes only.

Aerial Photography, 1946 & 1970s. The 1946 photography shows the open and available physical existence of the proposal route between points A – B – C, though it is not evidence of status. The 1970s oblique photograph only shows the application route, Doggie Lane, from point A for a short distance southwards, but shows it well worn, open and available.

Ilfracombe Parish Survey, 1950. The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through a draft, provisional and definitive stages with repeated public consultations.

The application route, Doggie Lane, was not included. However, the survey form for Footpath No. 23 which was walked on the 10th July 1950, refers to the original alignment of this footpath as reputedly starting from Doggie Lane *'which is now extinct'*.

Extract of Estate of Frank Woodward, 1958. This refers to Chilliver Meadow being located at Doggie Lane, Slade, which is between points B and C on the south side of the application route.

Definitive Map Review records, 1970s-80s. The application route, Doggie Lane is not included.

Land Registry records, 2016. The application route, Doggie Lane, is not included in any of these records or shown belonging to any particular owner(s). Various plans attached to nearby registrations show the northern end of the route from point A for short distance, but there is no other information except its existence. The Higher Slade Community Association has made an application to register Doggie Lane.

Site Photographs, 2016. The photographs show the application route, Doggie Lane, between points A – B – C, with the partial obstruction of the route at point A with dumped earth. They also show the remains of an old cast iron signpost and the partial overgrowth which still remains on the approach to point C from point B.

Landowner Evidence

Two landowner evidence forms were collected by a representative of the Higher Slade Community Association as part of the Schedule 14 application, from Mr Mather of the Old Barn at Higher Slade and Mr Woodward of 23 Higher Slade, who own land adjacent to the application route, Doggie Lane. Mr Pincombe, a tenant of Higher Slade Farm owned by Devon County Council, which also has land adjacent to the route, responded to the informal consultation.

Mr Mather has owned land adjacent to the application route for 9 years and has lived at Higher Slade for the last 35 years. He has been aware of public use of the route since 1981 and believes it to be a public right of way. He knew the previous owner of his land, Fred Cooke, who also regarded the route as public.

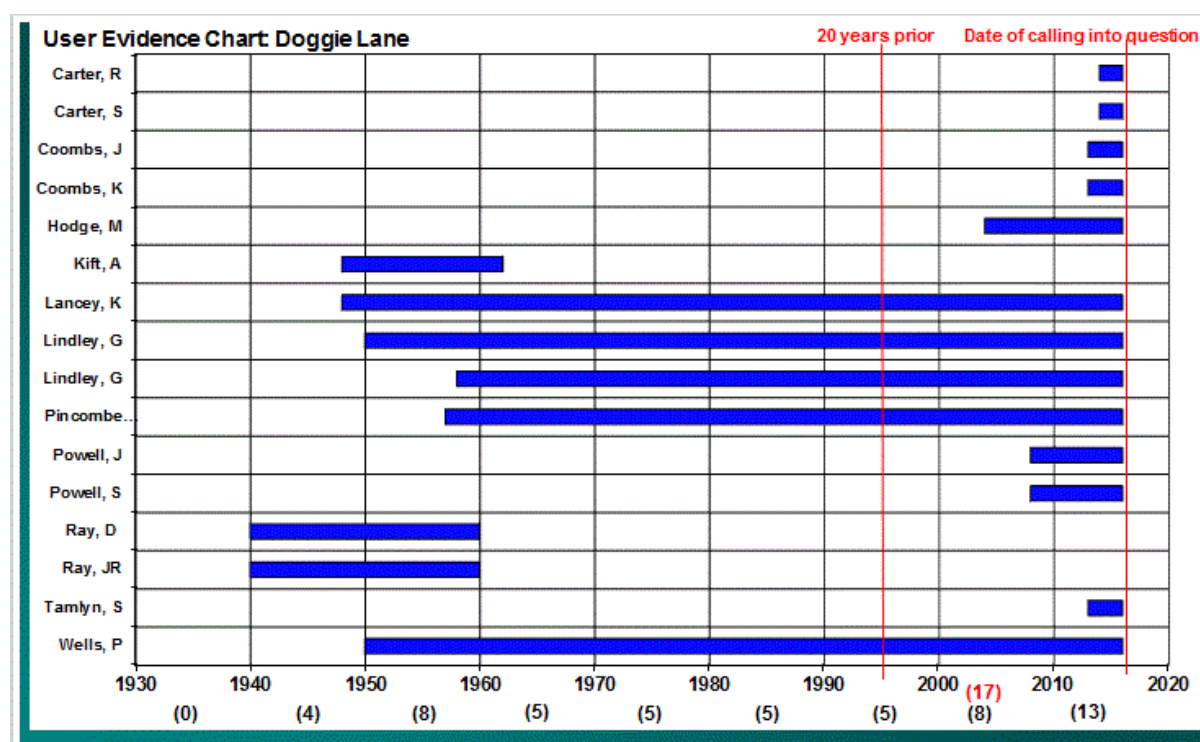
Mr Pincombe has tenanted Devon County Council owned land adjacent to the application route for over 50 years and believes the route to be a public right of way on foot. He has never challenged anyone using the route or obstructed it in any way.

Mr Woodward has owned land adjacent to the application route for the last 43 years, and his family have owned the land for over 100 years and have always regarded the application route as a public footpath. He has seen the public using the route when at his field.

No response has been received from the remaining landowners – Devon County Council Estates, Mr and Mrs Davis, and Mr Hornsby.

User Evidence

Fifteen user evidence forms from sixteen member of the public were collected by a representative of the Higher Slade Community Association, covering the period 1940 to 2016, detailing use on foot of the application route, Doggie Lane, until obstructed by an adjacent landowner at point A, at its junction with Higher Slade Road.



Mr Carter has used Doggie Lane since 2014 daily as it is a natural link to the Tarka Trail and the Cairn Pleasure Grounds. It has not been obstructed and he has not been challenged.

Mrs Carter has used Doggie Lane since 2014 most days to reach the Tarka Trail and she has never been told it was not public or that she had to seek permission.

Mrs Coombs has used Doggie Lane every week since 2013 to walk the dog to the Slade Reservoirs. A friend of hers allegedly recalls a right of way sign though not its location and that the route was blocked at one end by a fallen tree.

Mr Coombs has used Doggie Lane since 2013 for dog walking to the reservoirs. The previous occupant of his house is said to recall a sign post at point B and he found the remnants of it.

Mr Hodge has walked along Doggie Lane since 2004 on a monthly basis to reach the Tarka Trail and the North Devon Coast Path. He has never been challenged or seen any notices against public use.

Mr Kift has walked along Doggie Lane during 1948-53 and 1955-1962 for pleasure and was not challenged. He recalls it also being used by fishermen going to the reservoirs and South West Water employees, as well as an access to fields to the south.

Mr Lancey walked along Doggie Lane since 1948 several times a year for pleasure. He thought it was public as there was a sign.

Mr Lindley has used Doggie Lane since 1950 on foot collecting wood and berries. He thought it was public because the Victorian cast sign said 'public footpath'. Only part of the sign post remains. He has never been challenged but does recall a wire obstruction in 2016.

Mr Lindley has used Doggie Lane since 1958 to go to the woods. He recalls the old iron sign which partially disappeared in recent years. It has always been quite overgrown which he has cleared whilst using it.

Mr Pincombe used Doggie Lane during 1957-63 walking between Pincombe Farm and the Reservoir. He recalls the old iron sign. He has never been stopped or turned back.

Mr Powell has used Doggie Lane since 2008 between Higher Slade and the Reservoir and believed it public from local knowledge.

Mrs Powell has used Doggie Lane since 2008 generally more in the summer than the winter and believed that the route was owned by the County Council. She thought the owner was aware of public use as it has always been thought of as public.

Mr and Mrs Ray used Doggie lane during 1940-60 once or twice a year to get to Slade Road. There were never any obstructions or notices against use by the public.

Ms Tamlyn has used Doggie Lane since 2013 to reach the Tarka Trail and the Coast Path occasionally and has never been prevented from doing so. She takes her children and dog along the lane, who also enjoyed using it.

Mrs Wells has used Doggie Lane since 1950 and recalls it being signed in the past. It has only been obstructed in 2015 with wire.

Rebuttal Evidence

No rebuttal evidence has been received.

4. Discussion

Statute – Section 31 Highways Act 1980. It is considered that there is no event prior to the Schedule 14 application being made to Devon County Council which is sufficient to call the public's use of the application route into question. The only known possibility was the dumping of soil and the erection of short posts in the lane at point A, by an unknown party, though the route remains passable. This is also not considered sufficient to demonstrate a lack of intention to dedicate. Local residents have continued to use the route and also

carried out some clearance in response, which has not been challenged. Consequently the relevant period to be considered is 1996-2016 (2016 receipt of S14 application).

User evidence forms from sixteen members of the public were received in support of the application route, Doggie Lane, between points A – B – C submitted to Devon County Council in 2016 by the Higher Slade Community Association, detailing regular use of the route on foot, often with other family members and pets. Thirteen of the users are included within the relevant 20 year period. They never saw any notices against the public's use of the proposal route, nor were they ever challenged. Their use was not threatened with obstruction until 2016. Since the perceived obstruction in 2016, the public have continued to use the application route, carried out maintenance on it, and applied to register the land to the Higher Slade Community Association. However, presumed dedication is considered to have taken place prior to that time, and consequently the legal maxim 'once a highway, always a highway' applies. No rebuttal evidence has been received.

Additionally, a claim for a right of way along the application route between points A – B – C 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.

Common Law. On consideration of the application at common law, the historical mapping shows that the application route, Doggie Lane, between points A – B – C has physically existed as a through route, open and available since at least 1840, as shown on the 1st class Tithe Map, which included it in the parish's '*roads and waste*'. It is considered a legal and accurate record of all matters shown. The Finance Act records of 1909-10 also show the open and available nature of the application route, as it was totally excluded from any hereditament.

The Ilfracombe Railway deposited plan of 1862, which was enacted by Parliament, though only showing the southern part of the application route, records it as an '*occupation road*' in the occupation of a number of local landowners and '*the public*'. Such plans were scrutinised by all relevant parties who would not wish to cede ownership, rights or responsibilities, as the status of the route would have an impact on the scheme's cost.

The Definitive Map Parish Survey for Ilfracombe in 1950 though not including the application route describes the alignment of Footpath No. 23 as starting at point B on Doggie Lane originally, though through the process this was altered to its current recorded alignment.

No landowner claims formal ownership of the application route, Doggie Lane, which is supported by the Land Registry records which show it not included within any land holding. Two adjacent landowners, Messers Mather and Woodward, along with the County Council's Higher Slade farm tenant, Mr Pincombe responded to the consultation. They have known the route as public for over 50 years and knew previous landowners who also regarded it as such. The public have been seen using the route and have never been challenged or obstructed from doing so. The reason for the dumping of soil and erection of small posts at point A is unknown but has not obstructed the public's use.

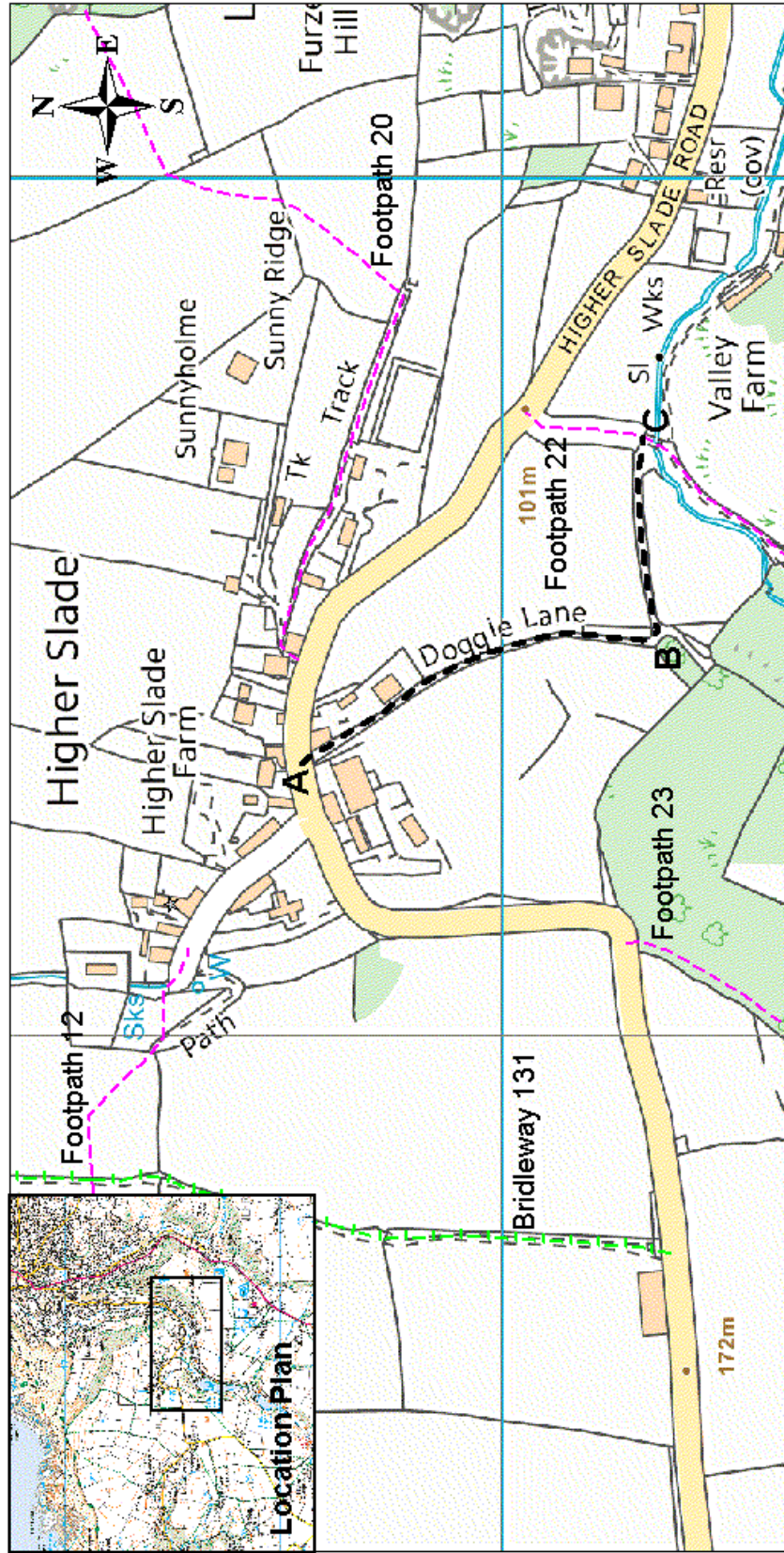
User evidence was received from sixteen people detailing use since 1940 on foot. No-one recalled any challenges, notices or effective obstructions, until 2016 as detailed above. No rebuttal evidence has been received against the application. Ilfracombe Town Council supports the proposal.

5. Conclusion

The documentary evidence demonstrates that the application route known as Doggie Lane between points A – B – C has existed since at least 1840. It has been open and available since that time, and appears to have been considered public since that time, and part of the parish highway network, as detailed in the landowner and user evidence. The user evidence details use on foot since at least 1940 which was not been called into question or challenged until 2016, by the Schedule 14 application. The evidence when taken as a whole is considered sufficient to show that a public right of way not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist.

The user evidence also shows that there has been long use of the application route between points A – B – C on foot is considered sufficient to demonstrate that there is a public right of way of that status.

It is therefore recommended that a Modification Order should be made to add a footpath between points A – B – C to connect between Higher Slade Road opposite Cloud Cottage and Ilfracombe Footpath No. 22 to the Definitive Map and Statement. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed.



**Devon County Council
Definitive Map Review - Ilfracombe
Schedule 14 application to add a footpath along**

drawing no.	HCW/PROW/16/35
date	July 2016
scale	1:3,500
drawn by	CLG

Notation

Schedule 14 application: Claimed footprint A - B - C (approx 345m)

Existing footpath Existing bridleway



Devon
County Council

David Whitton
Head of Highways, C