

## **Schedule 14 Application**

### **Addition of public footpath through Brimhay, from Gidley's Meadow to Forder Lane, in the parish of Dartington**

Report of the Chief Officer for Highways, Infrastructure 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 footpath along the line A - C - B as shown on drawing number HWC/PROW/16/24.

#### **1. Summary**

This report examines a Schedule 14 Application made in June 2015 for the addition of a public footpath from Forder Lane House on Gidley's Meadow, Brimhay to Forder Lane in the parish of Dartington. The application also included a continuation north of Forder Lane to the A385 near Shinnars Bridge, which runs over land owned by the Dartington Hall Trust. Successive deposits and declarations made under section 31(6) of the Highways Act 1980, and previous Acts have covered the Trust's land. These have the effect of protecting the land against rights of way claims since August 1934. This has been explained to and accepted by the applicant and therefore this section is not considered as part of the claim.

The Definitive Map Review for the parish of Dartington was completed in 1991. The application would 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, the claim has been made in response to a planning application to re-develop the sheltered housing on Brimhay whereby the claimed route is at risk of being lost, therefore the application has been brought forward for investigation in line with current policies.

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 footpath subsists, or is reasonably alleged to subsist, over the route A - C - B. It is therefore recommended that an Order be made to add a public footpath to the Definitive Map and Statement, as shown between points A - C - B on drawing number HCW/PROW/16/24.

#### **2. Proposal**

Please refer to the Appendix to this report.

#### **3. Consultations**

General consultations have been carried out with the following results:

County Councillor Mrs Rowe	-	no comment;
District Councillor Mrs Hodgson	-	no comment;

Dartington Parish Council	-	support the footpath;
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;
Devon Green Lanes Group	-	no comment;
Ramblers	-	support the footpath.

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 footpath along the line A - C - B as shown on drawing number HWC/ PROW/16/24.

#### **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

Chief Officer for Highways, Infrastructure Development and Waste

**Electoral Division: South Brent & Dartington**

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2015 to date	ES/DMR/Brimhay Dartington

es171016pra  
sc/cr/sch 14 brimhay gridleys meadow forder lane dartington  
03 161116

## **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 and Countryside Act 1981 for the addition of public footpath through Brimhay Bungalows, from public footpath adjacent to Gidley's Meadow to Forder Lane, in the parish of Dartington as shown on drawing no. HCW/PROW/16/24**

**Recommendation: It is recommended that a Modification Order be made to add a public footpath over the line A – C – B.**

## **1. Background**

- 1.1 The area known as Brimhay is situated in the civil parish of Dartington, and is mixture of a residential care home and sheltered accommodation and the Humpty Dumpty Nursery providing childcare as a day nursery.
- 1.2 The residential care home is called Forder Lane House. It is a 25 bed care home for the elderly and the area includes 18 supported bungalows, owned by the South Devon Rural Housing Association Ltd. The Association was originally known as The Dartington Housing Society formed in 1958 in a joint initiative with Dartington Hall Trust and the former Totnes Rural District Council. The organisation then changed to the Dartington Housing Association Ltd in the early 1970s and was renamed the South Devon Rural Housing Association Ltd in 2009.
- 1.3 Humpty Dumpty Nursery is an independent day nursery for children located on the south eastern quarter of the site.
- 1.4 The area of Brimhay is within level access and easy walking distance of the local village post office, garage and local primary school.
- 1.5 The Schedule 14 Application was submitted to the County Council in June 2015 on behalf of the local group "Don't Bury Dartington under Concrete" and a signed plan on behalf of the group was received on 5 July 2015. This Schedule 14 Application was made in response to the planning application by South Devon Rural Housing Association (SDRHA) to redevelop 18 one bedroom bungalows, collectively known as Brimhay Bungalows. None of these properties meets the Decent Homes Standard and need to be replaced.
- 1.6 The Schedule 14 Application seeks the addition of a public footpath from the north end of the highway maintained at public expense (HMPE) linking footway leading from Footpath No. 28, Dartington, at Gidley's Meadow, along the western boundary of Humpty Dumpty Nursery and then between numbers 9 and 13 Brimhay Bungalows. The claimed footpath continues along a concrete path in front of the gardens of Nos. 7 and 8 then between bungalows Nos.6 and 7 before exiting at Brimhay onto the minor county road called Forder Lane. The plan submitted with the Schedule 14 application shows the claimed path passing adjacent to No.13 and a garage type building. On the ground, the available route passes between bungalows no.9 and the garage of No.13.
- 1.7 The Planning application number is: 14/0142/15/F. This application seeks to demolish the 18 bungalows and redevelop the site with a mix of properties; 12 affordable housing units for people with a local connection, 8 one, two and three bedroom flats for shared occupancy independent living for people with learning difficulties, which would be supported housing and 12 open market houses.
- 1.8 The planning application was submitted to the South Hams Planning Committee at the request of the Ward Member in view of substantial local opposition to the

development. The application for the addition of a public right of way was mentioned for consideration. Full planning permission was subsequently granted for this application, 14/0142/15/F, by South Hams District Council (SHDC) as the local planning authority, on 1 July 2015. The approval was conditional, subject to the prior satisfactory completion of a Section 106 Agreement to secure a number of requirements, including the continuing use of the existing route that runs between Brimhay and Forder Lane.

- 1.9 The Section 106 Agreement would also secure the provision of 10 standard parking spaces for staff and visitors to Humpty Dumpty Nursery. This area is crossed by the claimed route.
- 1.10 Details of the planning application and site plans are contained within the backing papers.
- 1.11 **Further background information.**
- 1.12 This report was deferred from the 8 July 2016 Public Rights of Way Committee meeting at the request of Trudy Turell on behalf of the group “Don’t Bury Dartington under Concrete”. The group lodged a Judicial Review against South Hams District Council’s planning report recommending approval for the development. The Judicial Review (JR) against SHDC was heard in High Court in London on the 19 July 2016.
- 1.13 The JR was successful against South Hams District Council, stating that the planning report had given inadequate planning consideration to the loss of open space currently available within the Brimhay Bungalows site.
- 1.14 A subsequent planning application notice dated 8 November 2016 has been posted for the re-advertisement (additional information received) 14/0142/15/F. The proposal is to redevelop existing Brimhay Bungalows to provide 32 new dwellings and associated highway (12 no. 1 bed apartments, 12 no. market houses and 8 flats).

## **2. Documentary Evidence**

- 2.1 Aerial photography 1999 – 2000, 2005 – 2006, 2006 – 2007 shows there is a clear line through Brimhay Bungalows grounds along the line of A – C – B.
- 2.2 Pictures of a notice placed on the grass at the entrance of Brimhay from Forder Lane taken by Google Street view 2011 relates to keeping dogs on leads and picking up after them.

## **3 User Evidence**

- 3.1 Thirty seven User Evidence forms (UEF) have been submitted by the group “Don’t Bury Dartington under Concrete” in support of the claimed footpath through Brimhay Bungalows grounds. One user has not used any part of the application route and therefore their evidence is not considered further.
- 3.2 The earliest User Evidence forms demonstrate consistent and long standing use of the route on foot from the late 1950s to 2015, when they completed their forms, crossing the area known as Brimhay Bungalows and crossing Forder Lane to continue their journey to the A385.
- 3.3 Use varies from just 4 times a year in one case, to at least daily or 3 times a day for most of the other users. All of the users were going to and from the village school,

shops, swimming pool or bus stop or using the route as part of a circular walk. All the users have walked the route from local areas such as Newmans Close, Cott, Hunters Moon and Droridge.

- 3.4 None of the users report ever being stopped from walking the route, or told that it was not public, nor that they had permission to use it. Many comment that the path is in constant daily use and that they thought the landowners must be aware that people were using it. Others comment that it is a safe, convenient, off-road walking route, particularly for the elderly and children.
- 3.5 A couple of users recall notices, in relation to the Housing Association and nursery, but none report seeing any notices in relation to the claimed path, other than 'no cycling'.
- 3.6 Three of the users, Mrs Brock, Mrs Bastin and Mrs Greenhalgh show a slightly different route on their maps, joining the claim just north of Forder Lane House near bungalow no. 9, at point C as shown on plan no. HCW/PROW/16/24. They have however continued to walk through the Brimhay Bungalow grounds along the claimed path to exit onto Forder Lane and continued to Dartington village.
- 3.7 Four UEFs have been submitted from four tenants living in the Brimhay Bungalows. They also demonstrate almost daily use of the route to the shops, social club and bus stop and as a circular route visiting friends.
- 3.8 All four residents consider it to be a public right of way. One resident says that it is always busy as a school route. Another resident adds that they were "Born and brought up at Cott Farm, now Inn. Always was path from Week to Cott".
- 3.9 None of the four tenants state that they have been given a private right to use the path.
- 3.10 A chart summarising User Evidence Forms submitted is shown below:



#### **4. Additional support and representations**

- 4.1 Dartington Parish Council responded to the consultation by stating; “the Parish Council has no objections to such an application being approved. It actively supports this footpath in the light of how many parishioners use the path, including the elderly and school children”.
- 4.2 The Ramblers’ Association supports the addition and state in their letter of 14 March 2016: “This route has been in continuous daily use for many years. It provides a safe path to the village shop and school. Ramblers considers the adoption of it as a public footpath is fully justified”.
- 4.3 The local group “Don’t Bury Dartington under Concrete” are supporting the claimed footpath by the submission of the Schedule 14 Application and the submission of the user evidence forms. Their representations are for a traffic free route across Brimhay Bungalows grounds. They view the alternative route offered by the developer as: “far from adequate and a real loss to village off road access”.

#### **5. Landowner and Rebuttal Evidence**

- 5.1 The two landowners involved are Ms Connie Willcocks, Managing Director of Humpty Dumpty Childcare Ltd and South Devon Rural Housing Association Ltd, Chief Executive Mr Steve Prime.
- 5.2 Ms Willcocks has submitted a letter of objection and a Landowner Evidence form in relation to the Schedule 14 Application. In her letter of 5 April 2016, Ms Willcocks states that an area crossed by the claimed route from point A, is owned by Humpty Dumpty Childcare and has planning permission from South Hams District Council to create 10 parking spaces for staff, and an extension to the drop off area for parents and families using the day nursery. Ms Willcocks enclosed a copy of the Planning Permission Granted ref. no. 14/1135/15/F dated 22 June 2015 as referred to previously. Ms Willcocks comments that the area currently forms part of the drop off area for families, that various commercial bins are placed there for weekly collection and that it is very rare to find anyone other than Humpty Dumpty Childcare staff and families using this area. In addition she states that there is an existing footpath on the opposite side of the road, which has a raised pavement and is completely safe for use and that this footpath is used for their after-school children when walking back from Dartington Primary School daily.
- 5.3 On her Landowner Evidence form Ms Willcocks states that she does not believe the claimed route to be a public right of way, however she has been aware of its use by members of the public “on occasion”. She also mentions on her form that she has not stopped or turned anyone back, nor erected notices stating that the way was not public.
- 5.4 The low-level wooden fencing in front of the Humpty Dumpty Nursery garden fence was erected prior to Ms Willcocks purchase of the nursery. Ms Willcocks says that this low-level fencing was put there to stop cars driving into and damaging the internal fence. There is a notice attached to the tall garden fence outside the nursery. This notice relates to parking for parents dropping off children. Beyond the two wheelie bins referred to by Ms Willcocks in her letter, there is another notice attached to the tall garden fence saying “Private No Parking for visitors to Brimhay Nursery”. This notice has been updated since the summer and replaced by a notice saying “Private Parking for Humpty Dumpty Nursery Only”



(Noted in October 2016, the low wooden fencing has been removed as part of the parking spaces for Humpty Dumpty Nursery.)

- 5.5 South Devon Rural Housing Association Ltd received approval of their planning application to redevelop the site on 1 July 2015. In December 2015 South Hams District Council, as the planning authority, published its report on the provisions under Section 91 of the Town & Country Planning Act 1990 that the developers must adhere to whilst construction is taking place.
- 5.6 Paragraph 5 of this condition criteria states "The proposed estate road, cycleways, footways, footpath, verges, junctions.....shall be constructed and laid out in accordance with details to be approved by the local planning Authority in writing before their construction begins."
- 5.7 In the Section 106 Agreement signed by South Hams District Council on 2 December 2015, Schedule 4 relates to the Owner's Covenants: Provision of a permissive Footpath. Point 1. States: "Definitions in respect of the permissive footpath". In this Schedule and this Agreement the following definition shall apply to the permissive footpath:  
"Permissive Footpath" means the footpath between Gidley's Meadow and Forder Lane Dartington shown coloured between points "A" and "B" on plan 2. (Enclosed in the backing papers.)
- 5.8 Point 2 continues, "The Owner covenants to provide and maintain the permissive Footpath in good repair (at its sole expense) to a standard as agreed in advance in writing by the Council in perpetuity PRIOR TO the occupation of any dwellings and not to allow or permit the erection stationing or placing of any structure on the Permissive Footpath".
- 5.9 The Chief Executive of South Devon Rural Housing Association (SDRHA), Mr Steve Prime, completed a landowner evidence form in February 2016. He states that the route has crossed land belonging to the SDRHA since 1958. He also considers the route to be permissive and has seen and been aware of the public using the route daily over the past ten years. (The length of time he has been in post.)
- 5.10 Mr Prime says that he has not required the public to ask permission to use the route "But made clear by signage private". In addition, he says he has not stopped or turned back anyone using the path, but says they have put up signs saying "no cycling private etc" for at least ten years.
- 5.11 In response to Q9. Have there to your knowledge, ever been on the way any stiles or gates? Mr Prime answered "yes". "Fence to prevent cyclist riding on footpath (elderly people live there)". Mr Prime also mentions that these signs have been defaced "at times".
- 5.12 There are two wooden cycle barriers along the route of the claimed path. One between Nos. 9 and the garage of No.13 Brimhay and one between the fence of No. 6 Brimhay and the wall of No. 7. Notices saying "South Devon Rural Housing Association Private Property. Please keep to the footpath Respect Residents Privacy", are located on the wooden barrier between Nos.9 and 13 and adjacent to the pathway leading from the back of the bungalows to Forder Lane.

- 5.13 In addition to this, between No.9 and 13, there is also a notice relating to dogs; “Clean it Up”, a “No Cycling” sign and another dog related sign, however it is faded and broken/defaced.
- 5.14 Mr Prime has included a copy of the Section 106 Agreement relating to the planning application and the document sets out the conditions that must be met in order to continue the development. Within the development plans, there is provision for a permissive footpath on a pavement continuing from the public highway at Gidley’s Meadow to Forder Lane as mentioned in 5.7 above.
- 5.15 A site meeting was held with the two landowners on 3 May 2016, to look at and discuss the footpath claim in relation to the layout of the bungalows. During that meeting, Mr Prime said he would be in agreement to dedicating a public footpath through the site. However, no written confirmation of this offer has been received. \*Since July 2016, this offer has been forthcoming, see paragraphs 5.16-21 below.
- 5.16 The development of Brimhay Bungalows came to a halt pending the outcome of a Judicial Review lodged by the group Don’t Bury Dartington under Concrete, against South Hams District Council’s planning considerations to the development plans.
- 5.17 **Additional information supplied from South Devon Rural Housing Association October 2016**
- 5.18 Following the successful Judicial Review (JR) 19 July 2016, SDRHA have resubmitted additional information to be considered as part of this report.
- 5.19 In a letter of 10<sup>th</sup> October 2016 Mr S Prime, Chief Executive of SDRHA adds:  
“I would encourage the Committee to visit the site given the importance of the decision and the difference of view over the route of the claimed footpath. Given that South Devon Rural Housing Association have already agreed to dedicate a public footpath across the site”.
- 5.20 Mr Prime goes on to say “South Devon Rural Housing Association (SDR) owns the site to which the above application relates and has done so since 1958. I believe the site has always had a permissive footpath running through it. No doubt over the years the actual route of that path has changed many times due to the construction of buildings from 1960 to 1965 and again in the 1980s when the garage building was attached to bungalow 13 and effectively closed off one of the potential pedestrian routes.”
- 5.21 In addition to the above comments Mr Prime makes the following comments about the public’s use of the route and states: “My observations of the actual route people took would have varied according to the circumstances on site and are most likely not to have taken one defined route. People accessing from Gidleys Meadow would most likely have taken the shortest route passing between bungalow 9 and the garage and likewise people accessing the site would have travelled either side of the garage when the gap between the garage and bungalow 13 was open. It is more likely that adults with prams and pushchairs or holding children’s hands would have used the wider part of the existing footpath between bungalow 9 and the garage”.
- 5.22 Mr Prime also suggests an explanation of the two routes either side of the old laundry/garage building. In his letter he adds “I enclose a couple of documents from our archives giving approximate dates for when the gap between bungalow 13 and the garage was closed. This shows the gap was shown as closed in 1995 when an architect was surveying the site for improvements. Also included is a drawing

showing proposed works to the existing laundry constructed we believe in the late 80s when other works were carried out in the area, which were subsequently carried out". "The association has no problem with the current application except for the chosen route. There is no firm reason to believe one particular route across the site was used in favour of another. The route claimed by DBDUC group is likely to put people at risk, particularly children for a number of reasons. Firstly plans have been passed to construct 10 parking spaces (14/1135/15/F) directly in front of the nursery school and that is likely to have the most vehicular traffic on a day to day basis."

- 5.23 In his concluding paragraph Mr Prime says: "The route shown by SDR in its planning application links both the public footpath at Gidleys Meadow and the existing footpath emerging at Brimhay Nursery from Newman Crescent. SDR are happy to dedicate these routes as public footpath".

## **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 Neither landowner has taken any overt steps to physically block the route to prevent or deter the public from using the path. The signs placed on the nursery fence relate to parking for the parents coming to the nursery.
- 6.1.3 To that end, the Planning Application can have the effect of calling the route into question and thus triggering the Schedule 14 Application in the absence of any notices or physical obstruction by the landowners. This gives a period from 1995 – 2015 of twenty years of user evidence for consideration.

### **6.2 Common Law**

- 6.2.1 In addition, 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.
- 6.2.2 The User Evidence can also be considered under Common Law, as the notices placed along the site give no intention or indication to negate the public rights to walk through Brimhay Bungalows grounds. The wooden cycle barriers acknowledge that the riding of bicycles through the site is undesirable, however no action was made, physical or by way of overt notices to dissuade the public that they were not welcome to walk through the Brimhay Bungalows grounds. The notices requesting the public to keep to the footpath and respect the privacy of the resident suggests that the landowner of the Brimhay acknowledged and acquiesced to the use by the public on foot.

### **6.3 Discussion continued**

- 6.3.1 The notice seen on Google Street View taken in 2011, at the Forder Lane end at the rear of Brimhay Bungalows relates to dogs being kept on leads and to pick up after them. This sign has been superseded, post 2011, by the current sign stating "South Devon Rural Housing Association Private Property Please Keep to the Footpath Respect Residents Privacy". These notices do not indicate to the public walking

through the Brimhay Bungalow grounds that the path is not public, only that the land is private. This suggests that the landowner is aware of the public using the route on foot and accepts and acquiesces to their use across the site.

- 6.3.2 The wheelie bins located behind Forder House and just beyond the entrance to the Nursery, combined with the notice on the fence saying "Private No parking for visitors to Brimhay Nursery" appears to be placed there to stop parents parking in the area of land belonging to Forder House care home. The location of the bins prevents a through route being made by vehicles from Gidley's Meadow and out onto Forder Lane. There are no signs to indicate that the public have no right to walk through this area or into the grounds of the bungalows.
- 6.3.3 Both landowners acknowledge that they see members of the public using the route and this is reflected by SDRHA placing "Private Property Please keep to the path. Respect Residents Privacy" signs at the entrance and exits of the bungalows.
- 6.3.4 The signs erected on the fence of Humpty Dumpty Nursery indicate that the parking is private for parents dropping off children to the day nursery. The signs give no indication to the public walking through that the landowners consider the route to be permissive and have no intention to dedicate a right of way along it.
- 6.3.5 Following the successful Judicial Review in July 2016 of the planning permission and subsequent planning report by South Hams District Council for Brimhay Bungalows, the Judge also confirmed that planning permission should not be withheld if a right of way crosses the site, it is a matter for the landowner to address.
- 6.3.6 The Chief Executive of SDRHA, Mr Prime, has confirmed in his letter of the 10th October 2016, that they are willing to dedicate public rights on foot through the Brimhay Bungalow site.
- 6.3.7 Information in Mr Prime's letter clarifies that the gap between bungalow No.13 and the old laundry was closed in about 1995 during improvements. This will account for the route offered on the Schedule 14 Application and the route taken in more recent years between Nos 9 and 13
- 6.3.8 Thirty seven User Evidence forms have been submitted in relation to this claim. One UEF is not related to the route. Four UEF are from current residents of Brimhay Bungalows and give recent evidence of use from 2004 – 2015. As tenants, their evidence could be discounted as they have a private residential right to walk through the bungalow grounds. However, they have not challenged any members of the public who have been using the route on a daily basis or seemingly at any other time.
- 6.3.9 Three residents from Droridge who supplied UEFs, have taken a slightly different route from Gidley's Meadow to Forder Lane then up the drive of Forder Lane House and then between bungalows Nos.9 and 13, point C and then continued along the line of the claimed route to Forder Lane, point B on plan no. HCW/PROW/16/24.
- 6.3.10 Some residents from the area of Droridge, may have walked from Gidley's Meadow, following the pavement behind Forder Lane house and then walked between bungalows 9 and 13. This was noted when attending the site visit with Mr Prime and Ms Willcocks.
- 6.3.11 Those walkers living in the south east area of Cott, Hunters Moon and Newman Crescent are most likely to have used public footpath No.28 and the extension of

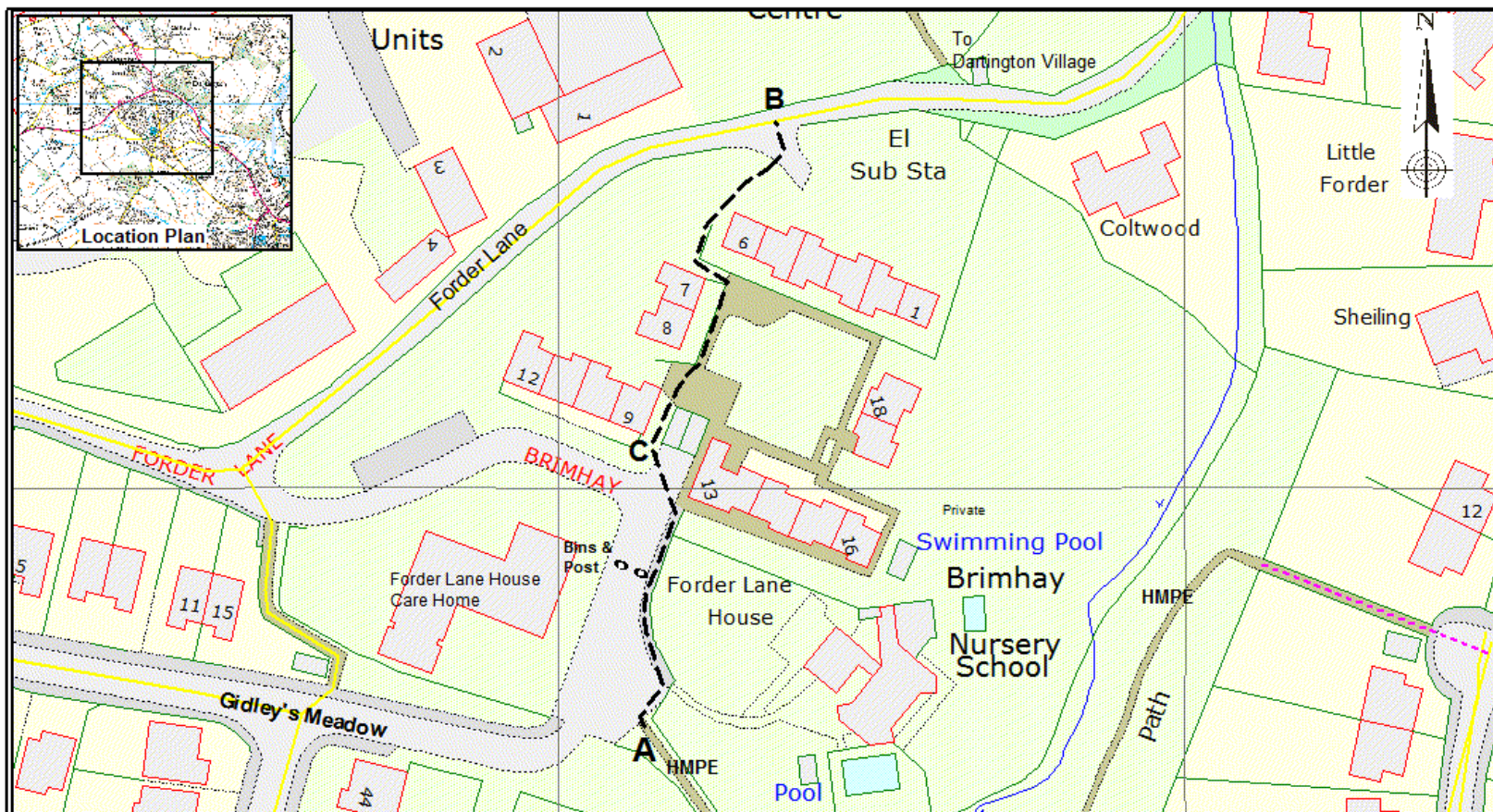
linking footpath (HMPE) as signed, to the car park area in front of Humpty Dumpty Nursery, and then continue through the Brimhay Bungalow grounds, via the path between Nos. 9 and 13 and Nos. 6 and 7 to Forder Lane and on to Dartington Village.

- 6.3.12 The plan submitted with the Schedule 14 Application and some of the maps submitted with the thirty-six UEFs, indicate the line of the path as passing adjacent to the wall of bungalow No. 13. It is acknowledged that on the ground, this route is not possible to walk. (Photo in backing papers.)
- 6.3.13 On clarifying this with some users, it seems that the middle block that looks like a garage was the old laundry. Mrs Orrell stated that she has always walked the path next to bungalow No. 9, with her family for the past fifteen years. Mrs B Gill explained that she used the route to the “right” of the old laundry as well as the other.
- 6.3.14 Taking this into consideration, it would appear that both routes are likely to have been used until the gap between No.13 and the old laundry was closed, believed to be at some point in the 1980s.
- 6.3.15 In considering the thirty-six user evidence forms, they give clear and consistent evidence that members of the public have openly used the route through Brimhay Bungalow grounds at least daily since the late 1950s going to and from the wider locality to the local school, shops and bus stop. This is good evidence of reputation and notoriety of the path.
- 6.3.16 Equally, when considering the amount of daily use by the public, the landowners have made no real attempt to dissuade the walkers from using the path. The signs placed on the fence by the day nursery relate only to the use by parents using the nursery. The wheelie bins do not prevent the public walking through the site or the bungalow grounds, but prevent traffic making a loop from Gidley’s Meadow to Forder Lane.
- 6.3.17 As mentioned above, the notices placed along the route through Brimhay Bungalow grounds, acknowledged the use by the public and show evidence of acquiescence and acceptance by the landowner. No communication has been made to the public about the “permissive” nature of the route either through the bungalows grounds or in fact anywhere else from Gidley’s Meadow to Forder Lane.
- 6.3.18 Matters of safety and suitability are not considerations that can be addressed whilst testing if public rights have been acquired along a route.
- 6.3.19 The thirty-six user evidence forms show longstanding and consistent use from the areas of Cott, Hunters Moon, Newman Crescent and from the area around Droridge to Forder Lane via Brimhay bungalow grounds. However, it also indicates that there may be minor variations in use before the path converges through the cycle barrier at Nos.9 and 13.
- 6.3.20 South Devon Rural Housing Association recognises that the paths are well used by the public and have been for many years. The willingness to dedicate a public right of way across the Brimhay site offers a pragmatic solution to accommodating public rights and the proposed development.
- 6.3.21 Should the Committee resolve to make a Modification Order to record the application route the South Devon Rural Housing Association may wish to apply to the SHDC for a Public Path Diversion Order under s.257 of the Town and Country Planning Act 1990 to enable development to take place.

## **7. Conclusion**

- 7.1 The User evidence submitted, indicates that there has been longstanding and daily use of the area behind Forder Lane House and through the Brimhay Bungalow grounds consistent with the claimed route A – C – B as shown on plan no. HWC/PROW/16/24.
- 7.2 This use has been recognised by the South Devon Rural Housing Association as it erected signs indicating it was private property and asking users to keep to the path and to respect the privacy of the residents. This acknowledges that the path was being used by the public and in essence is acceptance of this use. Efforts to put up wooden cycle barriers, recognises the undesirable use of the route by cyclists, but no overt action has been made by either landowner to inform the walkers that the way was not public.
- 7.3 To that end, it is considered that public footpath rights subsist or are reasonably alleged to subsist over the line A - C - B as shown on plan HCW/PROW/16/24 under Statute Law considering use during the relevant period of 1995 - 2015. In addition, this route can also be considered under Common Law as it may be inferred that a landowner 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.
- 7.4 Therefore, it is recommended that a Modification Order be made to add a public footpath to the Definitive Map and Statement over the route A – C – B. If there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.





SX7861 100m grid

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**DEVON COUNTY COUNCIL**  
**Wildlife & Countryside Act 1981 Schedule 14 Application - Brimhay Dartington**  
**Committee Plan**

Drawing number HCW/PROW/16/24  
 Date June 2016  
 Scale 1:8500 (at A4)  
 Drawn by ES

Notation

Proposed footpath



A - C - B 115m approx

Existing public footpath



HMPE - Highway maintained at public expense

**David Whitton**

HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT AND WASTE

