

## **Definitive Map Review Parish of Wembury (Part 2)**

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 no Modification Order be made in respect of Proposal 1.**

### **1. Introduction**

The report examines Proposal 1 arising from a Schedule 14 Application made prior to the Definitive Map Review for the parish of Wembury. This proposal was deferred from the meeting on 4 July 2019 due to additional User Evidence forms being submitted from local horse riders.

### **2. Background**

The Background for the Definitive Map Review in the parish of Wembury was set out in Committee report HIW/19/56 of 4 July 2019.

### **3. Proposal**

Please refer to the Appendix to this report.

### **4. Consultations**

Informal public consultations were carried out in April 2019 with the following comments returned:

County Councillor John Hart	- representation as an adjacent landowner of proposal 1
South Hams District Council	- no comment
Wembury Parish Council	- object to proposal 1
British Horse Society	- no comment
Devon Green Lanes Group	- no comment
South West Coast Path Assoc	- possible conflict on proposal 1
Ramblers'	- no comment
Trail Riders' Fellowship/ACU	- no comment
Country Landowners Association	- no comment
National Farmers' Association	- no comment
Cycling UK	- no comment

### **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 (including Climate Change) and Public Health Considerations**

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

## **9. Conclusion**

It is recommended that no Order be made in respect of Proposal 1.

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 be 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 South Hams District area.

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

## **Electoral Division: Bickleigh & Wembury**

### Local Government Act 1972: List of Background Papers

Contact for enquiries: Emily Spurway

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Tel No: 01392 383000

Background Paper	Date	File Ref.
Correspondence file	2018 to date	DMR/Wembury

em101019pra  
sc/cr/DMR Parish of Wembury  
02 041119

## Appendix I To HIW/19/89

### 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 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 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.

In relation to claims for Byways Open to all Traffic (BOATs), 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 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.

Extinguishment of rights for mechanically propelled vehicles also does not apply if, before the relevant date (20th January 2005), an application was made under section 53(5) of the Wildlife and Countryside Act 1981, or such an application was determined by a surveying authority, for an order to modify the definitive map and statement as to show a BOAT.

The judgement in the case of R. (on the application of Winchester College) v Hampshire County Council (2008) however, found that for such exceptions to be relevant the application must fully comply with the requirements of paragraph 1 of Schedule 14 to Wildlife and Countryside Act 1981. It is appropriate therefore firstly to determine whether the claimed vehicular rights subsist and, secondly, whether or not any exceptions apply; if vehicular rights subsist but the exceptions are not engaged then the appropriate status is restricted byway. Such claims may also be considered for a lower status.

**1 Proposal 1: Schedule 14 Application made by the Trail Riders Fellowship to upgrade Footpath No. 1, Wembury (part) to a Byway Open to All Traffic between points A – B as shown on plan HIW/PROW/19/53**

**Recommendation: It is recommended that no Modification Order be made in respect of Proposal 1**

**1.1 Background**

- 1.1.1 Proposal 1 is an application under Schedule 14 of the Wildlife & Countryside Act 1981 to upgrade part of Footpath No.1, Wembury (Bovisand Lane) to a Byway Open to All Traffic (BOAT). The application was submitted by the Trail Riders Fellowship in November 2005.
- 1.1.2 This was one of a number of Schedule 14 Applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict the way that rights for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20th January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.
- 1.1.3 This application was made after 20th January 2005 and was not fully compliant with the regulations as notice of the application had not been served on the landowners. It is not therefore a qualifying application for the specific NERC Act exemption referred to above. However, as an application had been made the proposal was included in the parish review as made, for the upgrading of a recorded footpath a BOAT. As there are limited other exemptions in which vehicle rights may be preserved it would be likely that, subject to sufficient evidence, the route could only be upgraded to a restricted byway.
- 1.1.4 The application contained a Form A, giving notice to Devon County Council that the Trail Riders Fellowship (TRF) were applying to modify the Definitive Map and Statement. Their application was supported by the following evidence:
- 1) Finance Act 1910 Plan
  - 2) Greenwoods Map of Roads 1825
  - 3) Judgement summary of Ayre v. New Forest Highways Board 1892, supports the contention that a road known to be public prior to 1835 would still be public today in the absence of a stopping up order.
  - 4) The route is invariably depicted on commercial maps as a minor road or track. (none were supplied with the application)
  - 5) User Evidence form from one motorcyclist.

- 1.1.5 During the survey of rights of way to produce the definitive map in the 1950s, Bovisand Lane was in the parish of Plymstock in the Plympton St Mary Rural District. In February 1953, Bovisand Lane was recorded as Footpath No.12, Plymstock.
- 1.1.6 Due to boundary changes on the 1<sup>st</sup> April 1967, Bovisand Lane is now in the parish of Wembury and part of Devon County Council's network of rights of way, recorded as part of Footpath No. 1 (pt), Wembury.

## 1.2 Description of the Route

- 1.2.1 Proposal 1 follows the route of Footpath No.1(pt) Wembury. It starts at the county road at the corner with Little Lane and continues into a hedged lane, known as Bovisand Lane. There is a gate across the lane, approximately 10 metres from the county road, which is openable, but walkers pass through a gap between two gate posts and the hedge. The route continues downhill through a hedged lane between fields in a south westerly direction with a small stream running along the southern hedge. The route runs to the north of Bovisand Lodge and across the private drive to Bovisand Lodge Holiday Park. Here, the route is a more open track and continues south westwards and there is a locked gate across the track with a gap adjacent. The gate is clearly marked "Footpath" and there is also a wooden way-marker post with a yellow arrow pointing along the route to the sea. This section of path is fenced to the south and is hedged on the northern boundary. Footpath No.1 joins Footpath No.16 Wembury, part of the South West Coast Path.



Gate at the top of Bovisand Lane set back from its junction with Little Lane.



Gate/Gap on the route, west of Bovisand Lodge

Photos are included in the backing papers

### **1.3 Documentary Evidence**

#### **1.3.1 Ordnance Survey and other maps**

##### **1.3.1.1 The Ordnance Survey 1<sup>st</sup> Edition 25" to 1 mile, 1880 – 1890**

Shows the entire length of "Boveysand Lane" from Little Lane to the landing stage in Bovisand Bay. The map shows the lane as gated just west of its junction with Little Lane and a line which indicates a gate or barrier across it just west of the drive to Bovisand Lodge.

##### **1.3.1.2 The Ordnance Survey 2<sup>nd</sup> Edition 1904 - 6 25" to 1 mile**

This map also shows the line of Bovisand Lane as a hedged Lane to Bovisand Lodge and then continues as a more open track to the landing stage on Bovisand Bay. The route is gated just west of its junction with Little Lane and a similar gate or barrier just west of Bovisand Lodge.

##### **1.3.1.3 OS A Edition 1950s 2500 to 1 mile**

Shows the length of Bovisand Lane, indicating a gate near its junction with Little Lane and a barrier west of the drive to Bovisand Lodge.

##### **1.3.1.4 Finance Act 1910**

Map put forward by the Trail Riders Fellowship shows that the lane was excluded from any land holdings for its length. Unable to locate the Field Books for any further information about the land.

##### **1.3.1.5 Greenwoods Map 1825**

This map shows a route from Staddiscombe through to Bovisand Lodge, with a lesser track towards the coast line.

### 1.3.2 Definitive Map and Statement

1.3.2.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.

1.3.2.2 Originally, Bovisand Lane was recorded as Footpath No.12 Plymstock in the rural district of Plympton St Mary. The description submitted for the footpath in February 1953, describes it as a public footpath and states "Footpath No.12. Starts from Wembury Parish Council Boundary (Footpath No.1) across pasture field, through iron kissing gate, down eight stone steps and along private accommodation road (not repairable by the inhabitants at large) known as Bovisand Lane, through iron gate and continues to the landing stage at Bovisand". In addition, the description says " Path is well defined, but in poor condition and obstructed at one point by timber. Gate and steps in good condition."

The path was walked 24<sup>th</sup> February 1953 by A.D Surcombe. The relevant date for the Plymstock Footpath No.12 is 11<sup>th</sup> October 1954.

Plymstock Boundary changes 1st April 1967, transfers Footpath No.12 Plymstock, to become part of Footpath No.1 Wembury.

1.3.2.3 Correspondence from Wembury Parish Council of 20th October 1969 indicates some paths to be put forward as part of the very early review of the Definitive Map. The letter included paths to be included, some corrections, including Footpath No.1 and lastly, paths to be designated as bridleways, and this included Footpath No.1 described as from "Bovisand Bay to the junction with Little Lane."

1.3.2.4 In a letter from the county council to Wembury Parish Council in November 1971, it explains that despite the review being started in Devon, the county council was under instruction from the Department of the Environment to carry out a Limited Special review to reclassify "roads used as public paths." (the RUPP review). This resulted in a temporary pause to the general review of the Definitive Map. Wembury parish was unaffected by the Limited Special Review as there were no RUPPs in the parish.

1.3.2.5 The general review in Wembury parish was active again in December 1977. In November 1978, Wembury Parish Council submitted a letter to Mr Jackson at the county council for their general review of the Definitive Map. The letter dated the 11 November 1978 starts "This Council has now considered in detail all the evidence forms they have received and apart from some minor adjustments there appears to be no evidence which would cause this Council to conclude any of the further paths they at first thought could be shown to be Rights of Way would stand up to any legal argument".

1.3.2.6 The last two paragraphs of this letter concludes, "We have claims submitted for the establishment of Bridleways but after careful consideration feel the persons who submitted the claims used the paths with the full knowledge and consent of their friends, the owners and do not think evidence could be produced of free use of the paths put forward by the public at large.

The above is our views on the proposed review of the paths and if you require clarification of any point please let us know."

1.3.2.7 Later correspondence between the Wembury Parish Council and the county council in April 1981, discusses a problem of horse riders on Footpath No.16, Wembury which is the long section of coastal footpath through the parish. The location was Wembury Beach and the Gunnery School as stiles had been erected on the path, thus obstructing the horse riders.

In their letter of 22 April 1981 about Footpath 16. Wembury Parish, the Parish Council replied “You will have been told I tried to contact you by phone; this was to have a talk about the riding of horses on this path. There are two bridleways in this Parish. Bridleway 9.....Bridleway 20..... This Council has always been opposed to horses trespassing on footpaths and particularly the Coastal path. There has been plenty of correspondence with you on this matter. We asked you, through the County Footpath Officer, to do something urgently about this hopeless situation developing on this path near Wembury and entirely support action taken to secure this important path as a footpath.”

These letters are contained in the backing papers.

### 1.3.3 Land Registry

1.3.3.1 Bovisand Lane is not registered to any land holding until Bovisand Lodge.

1.3.3.2 Title number DN 399529 relates to the land on the north side of Bovisand Lane at its junction with Little Lane. The parcel of land belongs to Court Gates Farm, Staddiscombe. The register describes the private rights for the purchasers and their heirs for access along the lane and rights for water. The register states “Together with the full rights and liberty for the Purchasers his heirs and assigns the owners occupiers of the said premises hereinbefore described in common with all other persons who have or may inafter have the like right with or without horses cattle sheep and other animals carts and wagons and other vehicles to pass and repass over and along the private road or lane leading from its junction of the road from the village of Staddiscombe and Little Lane shewn on plan No.1 to the sea shore which private road or lane is known and hereinafter referred to as “Boveysand Lane”.....”

1.3.3.3 Title no. DN660681 indicates that the western extent of the footpath is registered to Mr J Fraser. The register also mentions that a conveyance of the land in this title and other land dated 29<sup>th</sup> September 1970 made between the Secretary of State for Defence and John Rodney Bastard contains restrictive covenants. The register is silent on those restrictions.

## 1.4 **User Evidence**

1.4.1 Following the informal parish consultation for Wembury parish review there were 3 User evidence forms relating to use, other than on foot, over Bovisand Lane. One from the parish file from the mid-1970s, although the form is not dated, one submitted from the Trail Riders fellowship as part of their application, (1.4.25) and one from the current parish review.

Eighteen further User Evidence Forms (UEFs) relating to this proposal were submitted from local horse riders throughout June 2019. In total 21 UEFs have been submitted in support of higher rights along Footpath No.1 (pt) known as Bovisand Lane.

1.4.2 Nine of those User Evidence Forms submitted, show evidence of use of the route on foot and horseback for between 14 – 35 years.

1.4.3 Mrs Thompson’s evidence form has remained on file from the abandoned review in the mid-1970s. However, she states that she used the lane from Bovisand Beach, passed Bovisand Lodge and via Bovisand Lane to Little Lane and Hooe Lane. She says she has used it from 1956 – 1977 “innumerable” times for “hacking and therapeutic recreation”. Mrs Thompson said she used the path as part of a circular route from New Barton - Wembury, sometimes to shop or post letters or visit friends. She said she has never been stopped or told the way was not public. She adds “we have treated the way with

respect, making certain gates found closed are reclosed & fastened properly". No plan attached to the evidence form.

- 1.4.4 Ms Robb completed a UEF in June 2019 saying she has used the route from Little Lane to Bovisand, going from Staddiscombe to the beach between 1984 – 2019 on foot and horseback at least once a month. She has always believed the route to be a right of way but said she tried to use the route in June 2018, but it was too uneven and overgrown to get her horse through. In reply to Q8 on the UEF: Were you working for, or were you a tenant of, any owner occupier of land crossed by the route at the time you used it? Miss Robb replies "Yes, Livery at Court Gates June 2018 – current" Q8. Part b. asks whether the owner occupier ever gave you instructions as to the use of the way by the public and, if so, what those instructions were? Miss Robb adds "it could be used to get to the beach on foot, bit too overgrown for my horse". She states that she hasn't been given permission to use the route. No map attached.
- 1.4.5 An email was sent to Ms Robb, 11th July asking for clarification on a few points e.g. how many times she used the route just on horseback as opposed to walking, where she kept her horse, did she ride alone or in company and did she meet any landowners on her ride? No reply to date.
- 1.4.6 Ms Reed completed a UEF in June 2019 and said she has used the route from Little Lane via Bovisand Lane to Bovisand Beach for 25 years since 1994 (age 10) to 2019, on foot and horseback about 30 times a year. She thought the path was public due to the "public signs" and says it has always run over the same route. She says she has not been stopped or turned back when using the path and has never been given permission.
- 1.4.7 A letter was sent to Ms Reed 5<sup>th</sup> August 2019 asking if she could clarify her evidence and submit a map of the route she used. In addition, she was asked where kept her horse? To date, no reply or map submitted.
- 1.4.8 Mrs Egglestone says she has used the route from Little Lane to Bovisand Beach and the coast path on foot and horseback for 34 years from 1985 -2019, 20 plus times a year. She states that she thought it was public as it was "signed" and says it has always run over the same route and that it has gates. Mrs Egglestone said she wasn't challenged or given permission to use the route.
- 1.4.9 On the 5<sup>th</sup> August 2019 a letter was sent to Mrs Egglestone asking if she would complete a map of where she rode. In addition, she was asked if she thought the landowners were aware of the public using the path and where did she keep her horse? A follow up email was sent to Mrs Egglestone on 18<sup>th</sup> September 2019 again asking for clarification of the route she had ridden, was it linear to the beach and back or as part of a circular ride to the beach including the section of coast path? She was also asked if she rode with others and where her horse is kept? No reply has been received.
- 1.4.10 Mrs Hendy lives at Court Gates Staddiscombe and has done so for the past 20 years. She says she has used the route from Staddiscombe, Little Lane to Bovisand to go to the beach from 1984 – 2019 on foot and horseback. Mrs Hendy says she thinks the route is public, "It's a traditional right of way and has been for over 200 years". She mentions that there are fallen trees and debris along the route from bad weather and fly tipping. In addition, she says Court Gates owns land on the right of the route and MacBeans own the other side. In reply to Q11: Have you ever had a private right to use the route in question? Mrs Hendy replies "yes, as farmers at Court Gates" and adds " The farm has been using this route for over 200 years, with horses, dogs & on foot". No map supplied.
- 1.4.11 Miss Hendy completed a user evidence form in June 2019. She describes the route as from Little Lane to Bovisand Beach and states she has used it in 2000, 100 times a year

for pleasure on horseback and dog walking. In reply to Q3: Why do you think the path is public? "Signed". Miss Hendy says that she is a livery yard owner and runs Court Gates Livery Yard. No map submitted.

- 1.4.12 Mrs Cannon says she has used Bovisand Lane from Staddiscombe Road/Hooe Lane to Bovisand Beach from 2002 to date 2019, monthly, for pleasure on horseback. She mentions that she thought the route was public because of "signage". She says she hasn't been turned back or stopped when using the path and thought the owners/occupiers of the lane knew the public were using it but doesn't say why. Mrs Cannon states the gates on the route were not locked and that she hasn't got a private right to use the lane. Mrs Cannon submitted a map with her form, showing two highlighted routes, one from Little Lane along Bovisand Lane to the junction with coast path, plus a spur from this route over the private drive from Bovisand Lodge. The latter is not part of the proposal.
- 1.4.13 In seeking clarification of Mrs Cannon's use of the route, an email was sent on the 11<sup>th</sup> July 2019 requesting a more detailed description of the route she had ridden, plus whether she rode in company, did she meet any landowners along the route and where she keeps her horse? Mrs Cannon replied saying she was "perplexed" as to why these questions were being asked as "all the information was provided on the form which was submitted..... Please would you kindly clarify why additional questions are being raised". A return email was sent to Mrs Cannon on 18/7/2019 explaining why it was helpful to have further clarifying information. No further reply has been received.
- 1.4.14 Mrs Shrimpton identifies the route as from Little Lane to Bovisand Beach. She says she has gone from Staddiscombe to Bovisand and visa versa from 2005 – 2019 on foot, horseback and dog walks. She says she has used the route 80 plus times a year, over the same route and thought it was public due to the "sign posts". She says there were gates and some notices about fly tipping and vandalism. She said she hasn't had permission to use the path and has not been stopped by a landowner and only turned back because the path is poorly maintained.
- 1.4.15 A letter was sent to Mrs Shrimpton on the 5<sup>th</sup> August asking if she would complete a map showing her riding route, why she thought the landowners were aware the public were using the route and where she kept her horse. In a follow up email 18/9/19 seeking clarification of her use of the route Mrs Shrimpton added "I have ridden the lane for years, sometimes alone, sometimes in company. I have had to turn back before but never because I've been told to, but because it is poorly kept, low branches or water damage to the path. I can't really give you more than that. I ride/walk early in the morning so don't often see anyone." No map submitted.
- 1.4.16 Ms Wise has given evidence of use on foot and horse from 1999. She says she has used the route from Little Lane to Bovisand 20 - 30 times a year to Bovisand Beach. She said it was public as it goes directly to the beach. Ms Wise states there is a gate at the start of the path and the it was route obstructed by trees. She mentions that she thought Court Gates - Peter Hendy owns the land crossed by the route.

Ms Wise has only completed page 1 of the user evidence form, page 2 is blank and unsigned. No plan supplied.

- 1.4.17 Five other users give evidence of covering 6 -10 years. Mrs Preston says she has ridden from Little Lane to Bovisand to the beach for 10 years but didn't say how many times a year she used it. Only page 1 of Mrs Preston's form has been submitted. An email was sent 18 &19 September asking for page 2, but none has been submitted to date. No map submitted.

- 1.4.18 Two riders have given evidence covering 8 years, from 2001 – 2019 with usage of 12 – 30 times a year.

Mrs Rogers says she has used the route horse riding from Bovisand Lane to Bovisand Beach from 2011 – date, every month. Mrs Rogers attached a plan indicating a route along Bovisand Lane to the coast path, although it is annotated Bovisand Beach. She says she has used it once a month and it has been occasionally obstructed by fallen trees and says there are no gates. Mrs Rogers adds that the owner of the route would have been aware of its use by riders as it “has been used for a long time by horses since everyone can remember with no issues”. Mrs Rogers says she hasn’t been given permission to use the route but doesn’t say if she has a private right to use the track as a tenant of the owner/occupier of the lane. In the additional information she says “This would have been a drovers route to bring seaweed up from the beach and as such has a very long history of horses on the path with no issues. We wish to continue to use the route officially as we do now and preserve its use for future generations of horse riders. There are very few routes open to riders in the area and very busy dangerous roads”. Mrs Rogers plan indicates that her route to the beach is used as an up and back route.

Mrs Rogers collected and submitted the user evidence forms through June & July 2019, and her own form arrived by email and has not been signed. Emails have been sent reminding her that is important that the forms are signed. No signed form received to date.

- 1.4.19 Ms Axworthy says on her evidence form that she has ridden Bovisand Lane to Bovisand Beach from 2011 to present approximately 30 times a year. She mentions a gate at the entrance to the path and regards it as public due to the signage. She says that everyone in the area uses it and has not been given permission to use the path. A letter was sent to Ms Axworthy asking for a map to clarify her route and where she kept her horse. No map or reply submitted.
- 1.4.20 Two other riders Mrs E & Ms E O’Brien have submitted evidence of riding and walking from Little Lane to Bovisand Beach from 2013 – present, 20 to 30 times a year for pleasure. Mrs O’Brien said she was going from Court Gates livery yard to Bovisand Beach and both mention the gate at Little Lane but never locked. One rider said they didn’t know who owned the land, the other thought it belonged to Devon County Council. Neither submitted a plan of where they rode.
- 1.4.22 Seven forms have been submitted indicating use on foot and horse between 1 – 4 years.
- 1.4.23 Ms Drake has used the route from 2015 – 2019, 4yrs, at least monthly from Staddiscombe to the beach on foot and horse. She says she thought it was public due to the “Signage – Public R.O.W”. Ms Drake mentions that Mr P Hendy owns land on the right-hand side of the track and Mr MacBean on the left-hand side, however no map was included to indicate where she meant. Ms Drake adds that she isn’t a tenant of the landowner, nor has she had permission to use the path. In her additional information she adds: “It would be such a shame to lose the ROW of this path. It has been used by family & friends for years dog walking & horse riding”. An email was sent to Ms Drake asking for clarification of the route she had taken, did she ride in company, why she thought the owners knew the riders were using the path and where did she keep her horse. No reply to date.
- 1.4.24 Miss Lethbridge has submitted an evidence form indicating she has used a route from Staddiscombe Road to Bovisand Beach from 2016 – 2019, 20 times a year on horseback for leisure. She says she thought the route was public by “local knowledge” and that she isn’t a tenant of the landowner nor has she had permission to use the route. Miss Lethbridge says there is an unlocked gate on the route and that there are no obstructions

on the path. Miss Lethbridge has attached a plan with 2 routes highlighted in yellow. One route from Little Lane via Bovisand Lane to the beach and a spur off from Bovisand Lane along the private drive to Bovisand Lodge. An email was sent to Miss Lethbridge asking for clarification of her route, plus the same questions as sent to Ms Drake above.

- 1.4.25 Five of these seven users, give evidence of use for 1 year. Elizabeth Millet was the only user evidence form in support of the Trail Riders Schedule 14 Application made in 2005. She says she used Bovisand Lane travelling from Bovisand to Brixton twice in 1999 on a motor bike. She said she didn't have permission to use the route and thought it was public due to its name, size of track, location and discussion with locals. She has attached a plan with the route highlighted in pink.
- 1.4.26 Ms Martin said she has used the route on horse during 2018 – 2019 a couple of times a year riding for pleasure. She describes the route as from Little Lane/Hooe Lane to end at Bovisand Beach. She says she thought it was public as "Used as access many years no signage to suggest otherwise". She adds that there is an unlocked gate at the top of the route. No map submitted.
- 1.4.27 Mrs Mills said she has used the route once in 2019 as she is new to the area and says she has used it on foot and horse. She says the route starts at Little Lane and ends at Bovisand Beach. Mrs Mills said she was told it was public and hasn't had permission to use it nor was she turned back. She thought the owner/occupier would have known it was being used as it is well trodden and fenced to the side in places. No map attached.
- 1.4.28 Ms Nicholls completed an evidence form in June 2019 and says she has ridden the route from Little Lane to Bovisand from 2018 – 2019 to go to the beach. She thought the route was public due to "signage". She also mentions she has just arrived in the area and is a "tenant" at Court Gates livery yard. She adds the route "needs maintenance – overgrown & path needs repairing – washed away in floods". No plan attached.
- 1.4.29 Ms Egglestone completed an evidence form in June 2019. She gives evidence of the nature of the lane in that there is a gate and overhanging trees at the top of the route. She also mentions that the Hendy's (Court Gates) gave her permission to use the path 3 years ago and that she is a Freelance Riding Instructor. In her additional information she says "I would like to use the route for pleasure on my own horse, but overhanging trees are making the path narrow. This would be hugely appreciated as we wouldn't have to use the fast roads as much".
- 1.4.30 Twelve users were contacted by email or letter seeking clarification of their use of the route as a bridleway. They were asked either to submit a plan of the routes they had ridden or describe where they had ridden to and from via where. In addition, 8 were asked: did they ride the route with anyone else, did they meet the landowners along their ride and where do they keep their horses. For those who have used the route on foot, they were asked to clarify just their horse-riding activities.
- 1.4.31 Four replied. One rider asked why more questions were being requested as all her evidence was on the form. Following an explanation of why, she did not reply again.

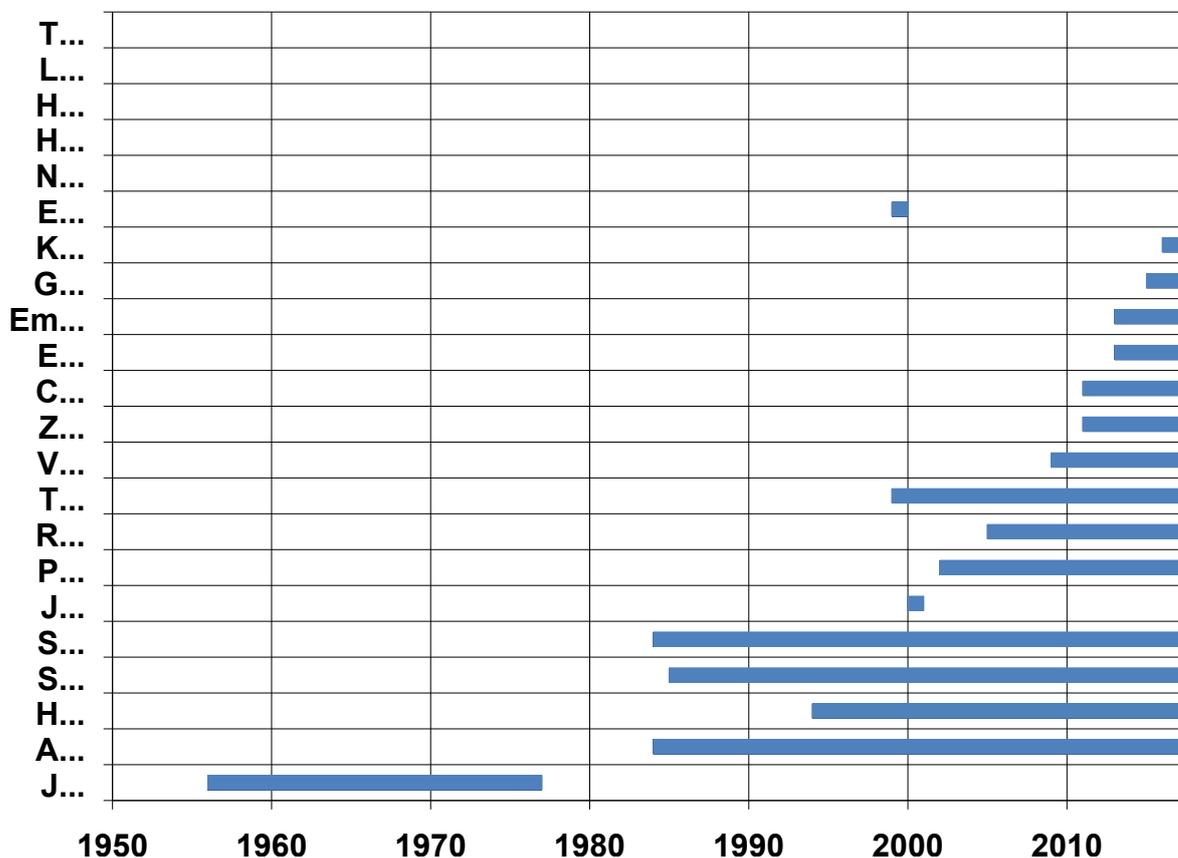
One rider replied stating "I have ridden the lane for years, sometimes alone, sometimes in company. I have had to turn back before, but never because I've been told to but because it is poorly kept, low branches or water damage to the path. I can't really give you much more than that. I ride/walk my dogs early in the morning, so I don't often see anyone".

A third rider replied saying "We ride the lane up and down. I assume the owners know, because it is certainly well known to riders who have used it regularly over the years.

The horses I ride are kept in Wembury.” This rider has used the route from 2018-2019 on a horse twice.

The fourth horse rider was reminded she had only submitted page 1 of her form. They replied that they would send it back, however nothing has been received to date.

1.4.32 The User Evidence Forms are summarised in the following table:



## 1.5 Landowner Evidence

1.5.1 Mr P MacBean has completed a landowner evidence form on behalf of the family farm, Yolland View in Down Thomas. They have owned the land adjacent to the southern side of Bovisand Lane for 30 years and have regarded it as a footpath for 20 years. They have seen people walking the route and in reply to Q3 on the landowner’s form: Have you seen or been aware of members of the public using the way? The reply is “Yes. On foot”. Mr MacBean said they haven’t turned anyone back from the using the route but says, “This is a quiet pretty green lane and should remain so”. Mr MacBean says there are gates, but they are not locked.

1.5.2 Mr & Mrs Hendy of Court Gates, Staddiscombe own land to the north of Bovisand Lane, adjacent to Little Lane and it has been in the family for 200 years. In reply to Q2 on their landowner evidence form: Do you believe this way to be public? a) If so, with what status. The reply states “Footpath with use for horse riding” b) how long have you held this belief? Reply, “50 years and have seen people using the route for that duration.” Mr & Mrs Hendy said they have never given anyone permission to use the route and state that there is a gate at point A, but it allows access to the lane. They conclude their form by adding “Path has been used for walkers and horse riders for as long as we can remember i.e. 50 + years”.

1.5.3 Mrs Hendy completed a User Evidence form in June 2019 stating that she has walked and ridden from Staddiscombe to the beach at Bovisand from 1984 – 2019 on a monthly basis and she thinks its public because, “it’s a traditional right of way and has been used for over 200 years”.

1.5.4 In a letter of the 6<sup>th</sup> May 2019, Wendy Veale writes, “Myself and my Uncle are owners of Manor Farm adjoining this footpath and do not wish to see it open to motor vehicles but remain as a footpath”. She adds, “ My family have farmed at Manor Farm since 1912 and my understanding is for at least the last one hundred years the path has solely been a footpath under the ownership of Kitley Estate. Both Manor Farm and Court Gates have rights of access for farming and indeed my late father used to access the land via tractor until such time the lane got too unsafe to travel down”.

Ms Veale concludes her letter stating, “The footpath is a popular walking route for walkers including families and young children travelling down to the beach all of whom would be put at risk if motor vehicles were permitted. The footpath offers one of the few areas where there is no traffic, wildlife remains undisturbed and people can enjoy the quietness of the countryside”.

1.5.5 Mr J Fraser owns the land crossed by the footpath from west of Bovisand Lodge to the coast path. In addition, Mr Fraser owns the private drive leading from Bovisand Lodge Estate to Coastguard Cottages. He believes the proposal is a footpath and is aware that it used more frequently in the summer months. He has not given anyone permission to use the path, nor has he turned anyone back. He adds that to his knowledge, there have always been gates top and bottom of the route.

1.5.6 The landowners of Bovisand Lodge Estate have submitted evidence against the Trail Riders Schedule 14 Application to upgrade the Footpath No.1 (pt.) Wembury, to a Byway Open to all Traffic. In their letter of the 9<sup>th</sup> May 2019, the Hart Family state “It is an historic footpath and we would object for the following reasons..... The footpath is heavily used by families walking with young children and prams heading to the beach, dog walkers cyclists and even horse riders; all of whom would be put in a dangerous situation if vehicles were suddenly allowed to drive down this footpath. Horses very occasionally use the footpath, which they are not supposed to, and I would mention that a horse was destroyed a number of years ago after it was seriously injured on the footpath”. They add “Footpath 1 crosses 2 junctions – into our Holiday Park and a private house. There are also 2 gates along Footpath 1 to walk around. The gate at the top end of Footpath 1 is a notorious area for fly tipping. Opening up this footpath will just acerbate this problem further down the footpath, making it more difficult for South Hams Council to clean up”.

1.5.7 In the accompanying Landowner Evidence Form completed on the 8<sup>th</sup> May 2019, Mr Hart says that he has known the route to be a public footpath for 60 years. In response to Q3 on the form: Do you believe this was to be public? The reply states “Yes as a footpath with 2 farmers having rights for their horses”. In addition, they have seen walkers using the path daily, plus the occasional horse.

Q7. “Have you or someone on your behalf, ever told anyone using the way that it was not public?”, Mr Hart replies “No.. but have told motorcycles and horses that it is a footpath”.

In 1967 the family erected a gate at the lower end of the path in consultation with the MOD and Wembury Parish Council. The lower end of the path was in the ownership of the MOD and the installation of the gate was supported by the Wembury Parish Council to prevent vehicles from driving down to the beach. Mr Hart says that there has been a gate at the top of the lane for as long as he can remember, and the lower gate was erected in 1967. In addition, Mr Hart mentions that the MOD sold the land, to the west of Bovisand Lodge, with the footpath over it circa 1970 – 71.

- 1.5.8 In a letter from Bond Pearce Elliott & Knape Solicitors to Mrs N. Hart 27<sup>th</sup> January 1966, it was mentioned that the route was maintained by the council as a footpath. The path is described in this letter as a continuation of Footpath No.1, Wembury and continues from the parish boundary at that time with Plymstock as Footpath No.12, Plymstock..." along a private accommodation road (not repairable by the inhabitants at large) known as Bovisand Lane. It continues through an iron gate to the landing stage at Bovisand".
- 1.5.9 Additional information from the Hart family includes a letter from Wembury Parish Council relating to the placing of the gate, west of Bovisand Lodge drive, to prevent vehicles driving down to the beach. The letter is dated 7<sup>th</sup> October 1968 and the third paragraph says, "The Council has no objection to your closing the gate that crosses the path leading down to the beach, which would have the effect of stopping vehicles using the path. We understand from Councillor Squire there is a small gate alongside or at least ample room for pedestrians to pass which is all that really concerns us".
- 1.5.10 An extract from the Conveyancing Deeds dated 16 December 1912 for Bovisand Lodge, was submitted with the Hart family's representations. The conveyance sets out that Bovisand Lodge continues to have private rights as attached to the land, over the private road or lane known as "Boveysand Lane" leading from the junction of the road from the village of Staddiscombe and Little Lane to the seashore. In addition, the conveyance sets out access rights for Court Gates Farm and Manor Farm, with or without vehicles, to pass and re-pass over and along Boveysand Lane from their farms to and from the seashore or any intermediary point". The conveyance also talks about water rights and access to springs. Then the conveyance continues: "Except and reserving unto the said William Pollexfen Bastard his successors in title and assigns and his and their tenants of Manor Farm and Court Gates Farm Staddiscombe aforesaid full right and liberty for him or them and any of them with or without vehicles to pass and re-pass over and along Boveysand Lane aforesaid from and to their farms to and from the seashore or any intermediary point and also to collect and cart away therefrom sand and seaweed for the use of the said farms or either of them and also the right to repair Boveysand Lane aforesaid but without being under any obligation to execute such repairs".
- 1.5.11 Following the Public Rights of Way committee meeting on the 4<sup>th</sup> July 2019, all the landowners and Wembury Parish Council were notified that Proposal 1 relating to Bovisand Lane had been deferred due to late submission of 18 additional user evidence forms relating to horse riding use over the lane. No additional information has been submitted from them.

## **1.6 Rebuttal Evidence**

- 1.6.1 Land Registry details for the land to the north of Bovisand Lane registered to Court Gate Farm, Staddiscombe, Plymouth DN399529 sets out the private right for Court Gate Farm, their heirs and successors, "Together with full right and liberty for the Purchaser his heirs and assigns the owners or occupiers of the said premises hereinbefore describe in common with all other persons who have or may hereafter have the like right with or without horses cattle sheep and other animals carts wagons and other vehicles to pass and repass over and along the private road or lane leading from the junction of the road from the Village of Staddiscombe and Little Lane shewn on Plan No.1 to the sea-shore which private road or lane is known hereinafter referred to as "Boveysand Lane".... Except also and reserving out of the assurance hereby made of the premises hereinbefore firstly and secondly described all such roads pathways rights of water and drainage and other easements privileges and advantages for the benefit of any other hereditaments now or formerly forming part of the Bastard Settled Estates and the owners and occupiers thereof respectively as such owners and occupiers have been accustomed to use exercise and enjoy."

- 1.6.2 Landowner evidence from the Hart Family reports that use of the footpath by horse riders and occasionally motorcycles has been challenged as the route is recorded as a public footpath and that is what they recognise it as. A gate was erected by the family at the lower end of the footpath, west of Bovisand Lodge entrance, in 1967, to prevent vehicles driving down to the beach. The gate was erected with the agreement of the Wembury Parish Council and the Ministry of Defence.
- 1.6.3 In a letter from Wembury Parish Council to the Hart Family in October 1968, it states "The Council have no objection to you closing the gate that crosses the path leading down to the beach, which would have the effect of stopping vehicles using the path. We understand from Councillor Squire there is a small gate alongside or at least ample room for pedestrians to pass which is all that really concerns us".
- 1.6.4 Mr MacBean & family and Mr Fraser as adjacent landowners are also clear that the status of the lane is a footpath.
- 1.6.5 Wembury Parish Council have submitted an objection to the change of designation for Footpath No.1 Wembury. The email from the parish clerk 8<sup>th</sup> May 2019 states that "The council are objecting to the proposed upgrading of Footpath No.1 (part) to a Byway Open to all Traffic. The council feel that this would be a negative development..... At the end of the path there is nowhere for the vehicles to exit and nowhere to turn without crossing the SW Coastal Path, turning would be dangerous to beach users too. To upgrade the footpath to a byway open to all traffic would benefit a small minority at the risk of endangering the larger volume of other users of this path and beach".
- 1.6.6 The South West Coast Path Association submitted that the Trail Riders application would have a detrimental effect on the public footpath.
- 1.6.7 Dr Paul Naylor wrote, as chair, on behalf of the Wembury Marine Conservation Area Advisory Group stating that they strongly object to the proposal.
- 1.6.8 Thirty other representations have been made from local residents in and around Wembury stating how strongly they object to the Schedule 14 Application by the Trail Riders Fellowship to upgrade the route to a byway open to all traffic. (Included in full in the backing papers.)
- 1.6.9 Mr & Mrs Ellis stated that they hoped there would be some improvements to the footpath; "We hope this might be considered for the safety of all walkers and ramblers and to stop horse riders using this path as a bridleway".
- 1.6.10 Mrs Margaret Ward – Edwards states in her email that "The idea of changing the use of this lane is utterly absurd, not to mention incredibly dangerous".
- 1.6.11 A member of the Wembury Local History Society submitted a response saying, "In this beautiful area we do not need traffic drawing closer and closer to the coast and coastal paths need to be reserved for walkers and quiet observation".
- 1.6.12 A resident who has lived in Down Thomas for thirty years says, "I write to register my absolute objection to the proposal to upgrade the footpath to allow vehicles access to Bovisand beach. I have lived in Down Thomas now for some thirty years and have used this footpath regularly and I find the prospect of having to compete with vehicular traffic/motorbikes totally abhorrent. It MUST NOT be allowed to happen!!"

## 1.7 Discussion

### Statute (Section 31 Highways Act 1980)

- 1.7.1 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. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 1.7.2 For the purposes of Section 31 of the Highways Act 1980, a Schedule 14 Application is considered to be a calling into question of a path, in this case relating to the status of the right of way.
- 1.7.3 The Trail Rider's application was made after 20th January 2005 and was not compliant with the regulations as notice of the application had not been served on the landowners. It is therefore not a qualifying application for the specific Natural Environment & Rural Communities Act 2006 exemption. However, as the application had been made, the proposal was included in the parish review, for the upgrading of Footpath No.1 Wembury (pt) to a BOAT. As there are limited other exemptions, in which vehicular rights may be preserved it would be only possible subject to sufficient evidence, for the route to be upgraded to a restricted byway.
- 1.7.4 The path already exists as a public footpath, therefore there is no need to prove its physical existence. The definitive statement states that the path has been gated near its junction with Little Lane and goes to Bovisand Beach. The lane is not registered with land registry until Bovisand Lodge. However, it is clear from Land Registry that adjacent landowners, Court Gates and Manor Farm enjoy private rights along the full length of the lane to the landing stage in the bay. Bovisand Lodge also has private access rights along the lane.
- 1.7.5 Although they do not provide direct rebuttal evidence, there are a substantial number of local people who strongly object to the notion of upgrading the current footpath to include motor vehicles, and one does object against use by horse riders.
- 1.7.6 Representations about safety and suitability, although understood are not factors that can be taken into consideration when establishing public rights way.
- 1.7.7 One user evidence form indicating use on a motor bike twice in one year, cannot be considered valid evidence, as the use of footpaths and bridleways by mechanically propelled vehicles is unlawful and, consequently cannot give rise to higher rights.
- To that end, the Schedule 14 Application to record Bovisand Lane as a Byway Open to All Traffic is unsuccessful. Nor can such use support the status of a Restricted Byway.
- 1.7.8 The next consideration is, does the Schedule 14 Application call the status of the route into question with regards to bridleway rights along its length, up to and including the year 2005 when the application was made.
- 1.7.9 Nine User Evidence forms, including the early one from Mrs Thompson, indicate use of the route to 2005. Further evaluation shows that of the nine, 2 are landowners at Court Farm, and therefore have a private right of way as indicated in the deeds to the farm, and 1 form is incomplete and unsigned.

1.7.10 To that end, six evidence forms remain for consideration of the claim under Statute law. These show a combined use on foot and horseback of the route from 1- 21 years. Mrs Thompson's form, indicating use from 1955 – 1977, may be the evidence referred to by the Parish Council in November 1978, indicating it was used with the consent of the owners.

The five other riders have been contacted by letter or email to seek clarification of their use, as only one had provided a map and 4 gave mixed use on foot or horseback between 12 to 80 times a year.

Only 2 replied. Neither gave any information of who they rode with, which route they took or where they kept their horses.

1.7.11 The test of public use to be applied to upgrade an existing public right of way is higher than for a currently unrecorded route. To upgrade the footpath to a bridleway, evidence must be shown that the higher rights subsist on the balance of probabilities; the lower test of reasonable allegation does not apply in this case.

On evaluation of the User Evidence, there is doubt about the validity of the evidence of some of the riders due to the connection to the Court Gates Livery Yard.

Six horse riders at face value would appear to offer enough evidence to upgrade the route. The riders have provided some additional evidence, but many have been unwilling to clarify their use. This causes uncertainty to the validity of their evidence and does not demonstrate sufficient use "as of right" by horse riders. No clarification has been submitted from those riders of how much use was on a horse and how much was on foot to raise a presumption of dedication of bridleway rights. The use must be demonstrated on horseback to show that such rights subsist, sufficiently under section 31 of the Highways Act 1980 to upgrade Footpath No.1, (pt) Wembury, known as Bovisand Lane to a public bridleway.

1.7.12 To that end, the user evidence up to and including the year 2005 is insufficient to give rise to a public bridleway under s.31 of the Highways Act 1980.

#### Common Law

1.7.13 A claim for a right of way may also be considered under common law. At common law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence - documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

1.7.14 The route is already recorded on the Definitive Map and Statement as a public footpath. This has been the case since the local surveys in the 1950s. At Common Law, use does not raise a presumption of an intention to dedicate, but merely evidence of such an intention. The burden of proof lies on those persons claiming a way as public, or claiming higher rights than those recorded, to show that the facts, when taken as a whole, were such that the rightful inference to be drawn from them was that the landowner intended to dedicate those rights and that the public has accepted the dedication. Each case turns on whether the facts indicated this intention.

1.7.15 The indications from the 1880 – 9 and 1904 - 06 Ordnance Survey map show that Bovisand Lane has been gated at the top, near the junction with Little Lane. This has been echoed in the user and landowner evidence.

- 1.7.16 The erection of a gate to the west of Bovisand Lodge by the owners in 1967, supported by the Parish Council and the MOD, is further evidence that the use by motor vehicles, and to some extent horse riders, was not tolerated or accepted by the landowners. Indeed, most of the landowners are clear that they regard the route as a footpath and at the very most recognise that horse riders may use the lane. The landowners at Bovisand Lodge have challenged motorcyclists and horse riders using the lane stating to those users that it is a public footpath.
- 1.7.17 None of the user evidence forms have mentioned the gate and gap arrangement to the west of Bovisand Lodge on the footpath to Bovisand Bay. None of the riders have mentioned or indicated on a map that they used the narrower coast path to access the beach at Bovisand Bay.
- 1.7.18 The consideration of the general Definitive Map review by Wembury Parish Council in the late 1970s and 1981 is clear about what routes at that time it recognised to be public footpaths and bridleways, and those that were not.
- 1.7.19 Out of the 21 User Evidence Forms submitted, only four had a map attached to them. One was from the Trail Riders supporter, who marked the Bovisand Lane, 1 from Mrs Rogers marking Bovisand Lane to the bay in a straight line not taking into account of the coast path section to reach the beach. Two other riders, who have used it just on horses marked 2 routes on their map, one route along Bovisand Lane to Bovisand Bay, the "beach", the other route continued along the private drive to the west of Bovisand Lodge. It remains unexplained where the riders went next. Equally, it is not clear if the horse riders went along part of the coast path to access Bovisand Beach, or whether they rode to the end of the path, looked at the view and rode back again.
- 1.7.20 Four riders keep their horses at livery at Court Gates Livery Yard and one rider has had permission from the Hendy family to use the lane on her horse. Some of the riders correctly identify the Hendy family as adjacent landowners. As owners of Court Gates, the Hendy family have a private right to use the lane to pass and repass over and along the private lane to access the beach as set out in their deeds. (1.3.3.2) This private right of way could be passed to the riders as customers of their livery yard, as well as to other acquaintances and local friends in the area of Staddiscombe. The riders all appear to come from a nearby local area and the evidence suggests that the route is not used on horseback by the general public at large.

There is no challenge to the use of the route as a public footpath and it will remain legally recorded as such if the test for bridleway rights fails under common law.

- 1.7.21 Similarly, the owners of Manor Farm and Bovisand Lodge are adjacent landowners, and all have private rights to use Bovisand Lane for access.

As the Wembury Parish Council wrote in November 1978, it would appear that the riders have used the route "with the full knowledge and consent of their friends, the owners and do not think evidence could be produced of free use of the paths put forward by the public at large."

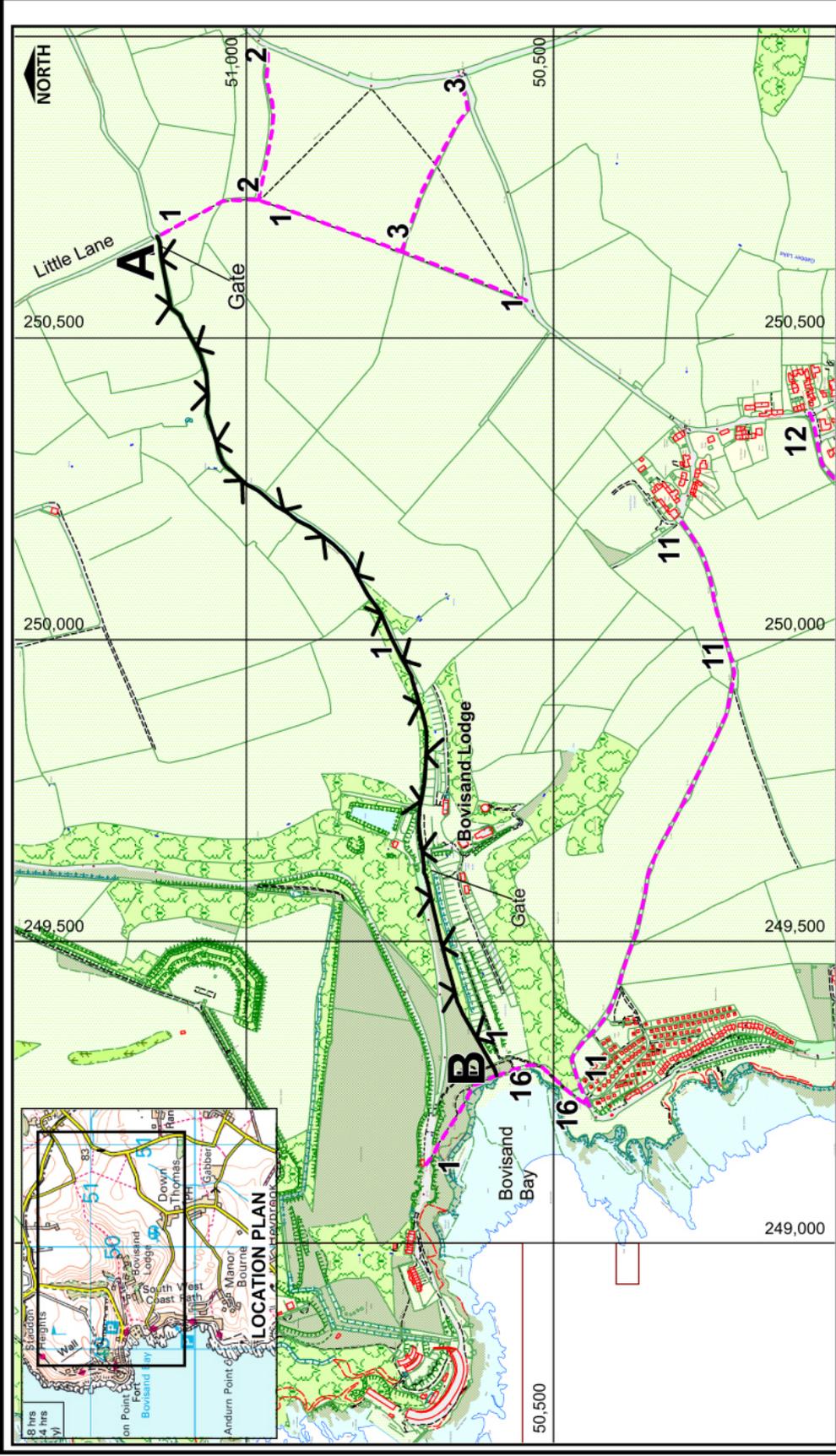
- 1.7.22 The burden of proof under common law falls to the claimants to prove that they have ridden openly and freely without permission, as of right, including frequently so that the landowners would have been aware that they were riding their horses along the footpath and the south west coast path to the beach.
- 1.7.23 Some riders have stated on their forms that the route has been inaccessible to ride as the branches are overhanging a too low to get through on a horse. Other have added

that the poor surface and debris after storms has made it difficult or impossible to use the route. Many riders say that they thought the route was public due to "signage".

- 1.7.24 As a highway authority, Devon County Council is sensitive to the fact that roads are busy with traffic and the opportunity, in some parishes, for off road riding is limited. The review of the Definitive Map is not the mechanism for aspirational or desire routes to be added as publicly maintainable highways. The lack of information from the horse riders to clarify the inconsistencies in their evidence, including the line of route used, providing maps, no information as to where they keep their horses and their use solely on horseback undermines the value and robustness of their evidence.
- 1.7.25 It has been indicated by most of the adjacent landowners that the route is considered a public footpath and in fact some use by horses has been challenged and therefore their use could be with an implied permission. Three of the adjacent landowners have private rights along Bovisand Lane and this use by right may be transferred to those they know or are acquainted with. As mentioned above, little clarification has been offered by the horse riders to assist in understanding the connection with local landowners and the livery yard at Court Gates in order to establish whether the additional rights over the footpath have been acquired as of right. Therefore, the claim cannot succeed under common law.

## **1.8 Conclusion**

- 1.8.1 The NERC Act 2006 extinguished the right to use mechanically propelled vehicles unless one of a few exceptions to this general extinguishment applies. In the absence of meeting any of the exceptions of the NERC Act 2006, the Schedule 14 Application made by the Trail Riders Fellowship in November 2005 to upgrade Footpath No.1 (pt) Wembury to a Byway Open to All Traffic fails. Therefore, it is recommended that no Order is made in respect of this application.
- 1.8.2 In the absence of clear and cogent user evidence to combat the doubt surrounding the sufficient use on horseback as of right and the lack of consistency of the route claimed, it is therefore also recommended that no Order is made to upgrade this footpath to a bridleway, in respect of Proposal 1  
Should the local riders wish to pursue an Application under Schedule 14 of the Wildlife & Countryside Act 1981, that process is still open to them.



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**DEVON COUNTY COUNCIL**  
**Definitive Map Review**  
**Wembury - Proposal 1**

**Notation**  
 Proposal 1: Schedule 14 Application Footpath No.1 (part) Wembury  
 Proposed upgrading to BOAT A - B (1.5km approx)  
 Existing footpaths

**Map Ref SX 492506**  
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drawing no. HIW/PROW/19/53  
 date Oct 2019  
 scale 1:8500 at A4  
 drawn by ES/HC

