

## **Schedule 14 Application**

### **Addition of a footpath at Kipling Tors**

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 by adding a footpath along the bottom of Kipling Tors between points A – B – C – D, as shown on drawing number HCW/PROW/16/16.

#### **1. Introduction**

This report examines a Schedule 14 application made in 2016 to add a footpath running between two parts of Northam Footpath No. 26 between points A – B – C – D. The application was received following the completion of the Parish Review in Northam and was therefore deferred pending completion of the parish-by-parish review in the rest of the district, in line with County Council policy. However, in April 2017 the applicant applied to the Secretary of State requesting that the County Council be directed to determine the application. In September 2017 the Secretary of State granted that request and directed Devon County Council to determine the application.

#### **2. Background**

The parish review was carried out between 2001 and 2010. No proposal was made in relation to the application route.

#### **3. Proposal**

Please refer to the appendix to this report.

#### **4. Consultations**

A full public consultation was carried out between November 2019 and January 2020.

The responses were:

County Councillor Eastman	–	no comment
Torrige District Council	–	accept the proposal
Northam Town Council	–	no comment
British Horse Society	–	no comment
Byways and Bridleways Trust	–	no comment

Country Landowners' Association	–	no comment
Devon Green Lanes Group	–	no comment
National Farmers' Union	–	no comment
Open Spaces Society	–	no comment
Ramblers	–	no comment
Trail Riders' Fellowship	–	no comment

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

## **5. Financial Considerations**

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

## **6. Legal Considerations**

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

## **7. Risk Management Considerations**

No risks have been identified.

## **8. Equality, Environmental Impact (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 a Modification Order be made to modify the Definitive Map and Statement in respect of the Schedule 14 application, by adding a footpath between points A – B – C – D, as shown on drawing number HIW/PROW/16/16.

## **10. 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.

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

**Electoral Division: Northam**

Local Government Act 1972 - List of Background Papers

Contact for enquiries: Caroline Gatrell

Telephone No: 01392 383240

Background Paper	Date	File Ref.
Correspondence file: Northam Sch 14 appn Kipling Tors	2016-2020	CG/DMR/NTM KIP

cg041120pra  
sc/cr/schedule 14 Addition of a footpath at Kipling Tors  
03 161120

**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.

Section 69 of the Natural Environment and Rural Communities Act 2006 (NERC) amended the Highways Act 1980, to clarify that a Schedule 14 application for a Definitive Map Modification Order is, of itself, sufficient to bring a right of way into question for the purposes of Section 31(2) of the Highways Act 1980, from the date that it was made.

**Schedule 14 application to add a footpath connecting two parts of Northam Footpath No. 26 along the bottom of Kipling Tors, Westward Ho! between points A – B – C – D, as shown on plan HIW/PROW/16/16.**

**Recommendation: That a Modification Order be made in respect of the Schedule 14 application, to modify the Definitive Map and Statement by adding a footpath between points A – B – C – D at Kipling Tors, as shown on drawing no. HIW/PROW/16/16.**

## **1. Background**

- 1.1 In 2016, Mr Barnes of Bideford made a Schedule 14 application to record the claimed route in Northam parish, with some documentary evidence and 11 user evidence forms submitted in support of the application.
- 1.2 The parish of Northam was the subject of the parish by parish review between 2001 and 2010, when no claim was made for the application route. As the application was received after the parish review had been completed, it was kept on file, to be determined once the County was completed, in line with Devon County Council policy, as set out in the Rights of Way Improvement Plan.
- 1.3 The applicant appealed to the Secretary of State in April 2017 under the provisions of Schedule 14 of the Wildlife and Countryside Act 1981, against the County Council's non-determination within 12 months of receipt.
- 1.4 In September 2017 the County Council was directed by the Planning Inspectorate to determine the application within three years. Consequently, an informal consultation was carried out between November 2019 and January 2020.

## **2. Description of the Route**

- 2.1 The claimed addition starts at its junction with Footpath No. 26 at point A and proceeds westwards along the bottom of Kipling Tors via points B and C to meet Footpath No. 26 at point D approximately 90 metres south of the junction with Footpath No. 25 at Seafeld House.

## **3. Application Evidence**

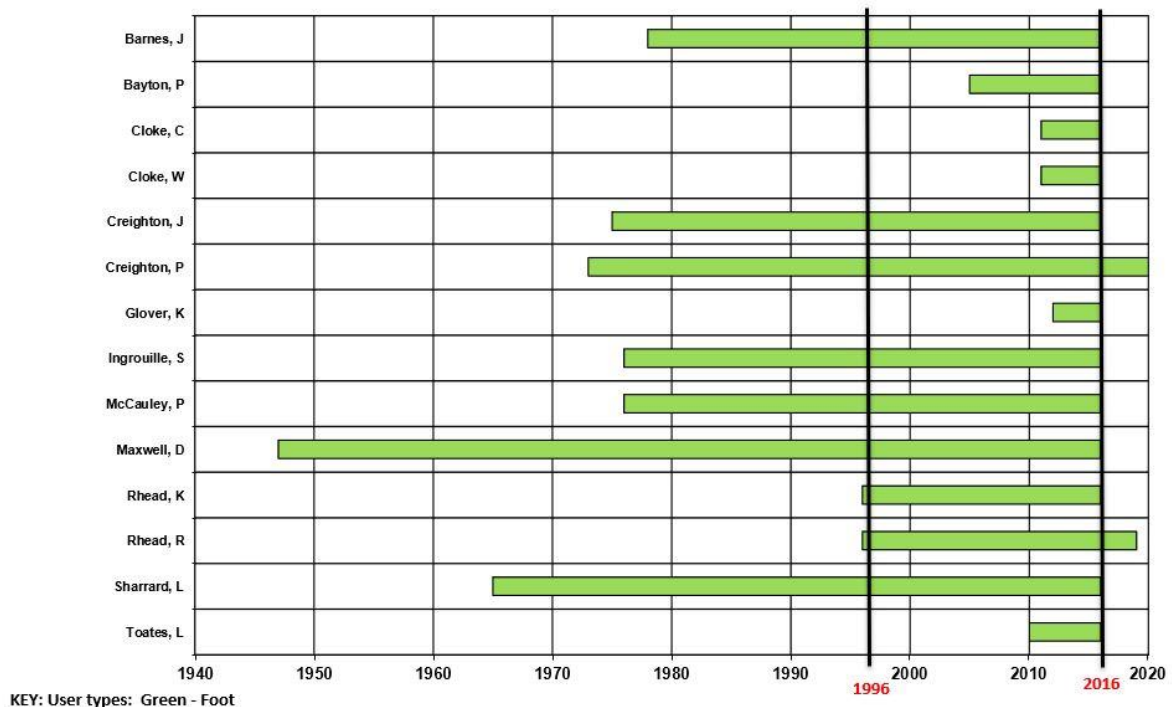
- 3.1 The applicant has submitted several historic maps and 11 user evidence forms in support of their application, which are included in full in the background papers to this report.
- 3.2 Ordnance Survey mapping, 1897-1967
  - 3.2.1 The applicant submitted extracts of Ordnance Survey mapping with the application to support the claim. The Ordnance Survey mapping is discussed in further detail at paragraph 4.2.

### 3.3 User evidence.

- 3.3.1 The applicant submitted 11 user evidence forms in support of the application dating from the late 1940s to 2016.
- 3.3.2 Mrs J Barnes of Northam has used the application route 3-4 times a year since 1978 as part of a walk on the Tors. She believes it was an old road in the 19<sup>th</sup> century. She recalls a rotted gate and a footpath sign. Mrs Barnes has never been challenged or turned back.
- 3.3.3 Mr Bayton of Westward Ho! has used the route since 2005 without hindrance, when walking between Ocean Park to Seafield House. He recalls a gate which was always open, and that the path is well used.
- 3.3.4 Mrs Cloke of Westward Ho! has used the application route since 2011 on a weekly basis, walking her dog. She states that it is regularly maintained and well used. She recalls a large gate which was always left open, but never saw any notices or obstructions.
- 3.3.5 Mr Cloke of Westward Ho! has used the route since 2011 on a weekly basis walking his dog. He states that it is regularly maintained and well used. He recalls a large gate, possibly at point C, which was always left open, but never saw any notices or obstructions. He has never been challenged or turned back.
- 3.3.6 Mrs Creighton of Westward Ho! has used the application route between 5-100 times a year since 1975 as part of a walk to Kipling Tors and the Coast Path with her dogs. She has always known the path to be well used by locals and visitors. She recalls a gate at the Seafield end which has never been locked. It has become overgrown when there was a dispute as to who was liable for its maintenance. It is now regularly cut. She submitted an additional form detailing her use up until 2020.
- 3.3.7 Mrs Ingrouille of Westward Ho! has used the route since 1976 about 15 times a year as part of a walk on Kipling Tors. She recalls a stile at the Braddicks end and that there has been an obstruction of rubble and vehicles, (though this appears to be on Footpath No. 26 near Stanwell Hill).
- 3.3.8 Mr McCauley of Westward Ho! has used the route since 1976 on a monthly basis as part of a walk between Green Cliffs and Seafield House. He has never been challenged or turned back.
- 3.3.9 Mr Maxwell of Westward Ho! has used the application route since the late 1940s about 5 times a year walking between Stanwell Hill and Seafield. He states that it is well used and maintained. He has never been challenged or turned back.
- 3.3.10 Ms K. Rhead of Northam has used the route since 1996 about 3 times a year as part of a walk between home and Pierhouse, and believes it to be an old road. She recalls that it is well maintained by Torridge District Council. She

has never been challenged or turned back and does not recall the route ever being obstructed.

- 3.3.11 Mr Sharrard of Westward Ho! has used the application route frequently since 1965 walking his dog around Kipling Tors. He always thought it had the same status as the other paths on the Tors.
- 3.3.12 Mrs Toates of Westward Ho! has used the route since 2010 walking her dog between the Bath Hotel Road and Seafield, several times a week. She recalls a gate which was always open, but no other obstructions or notices. She has met numerous other dog walkers and other people using the path. She submitted an additional form detailing her use up until 2020.
- 3.3.13 Three additional user evidence forms were received in response to the informal consultation and are summarised below.
- 3.3.14 Mrs P Creighton of Westward Ho! has used the route on an almost weekly since 1973. She recalls a gate which was open and in disrepair towards to the Seafield end. She has never been challenged or turned back, and does not recall the route ever being obstructed.
- 3.3.15 Mrs Glover of Northam has used the proposal route since 2012 about 4 times a year between home and Kipling Tors. She has never been challenged or turned back, and does not recall the route ever being obstructed.
- 3.3.16 Ms R. Rhead of Northam has used the route about 6 times every year. She has never been challenged or turned back, and does not recall the route ever being obstructed.



## **Other Relevant Evidence discovered by the County Council**

### **3.4 Greenwood's Map, 1827**

- 3.4.1 These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate. The proposal route is shown as a crossroad. Rights of way are generally not shown as the map is too small scale.
- 3.4.2 A route is shown on a similar alignment to the application route between points A – B – C and its continuation Footpath No. 26 to Stanwell Hill.

### **3.5 Ordnance Survey mapping, 1809 onwards**

- 3.5.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: *'The representation on this map of a road, track or footpath is no evidence of a right of way'*.
- 3.5.2 The 1809 small scale mapping shows a route on a similar alignment to the application route between points A – B – C and its continuation Footpath No. 26 to Stanwell Hill.
- 3.5.3 The 1<sup>st</sup> Edition 25" mapping of 1888 shows the application route as a continuation of Footpath No. 26 from Stanwell Hill, a double dashed track on the alignment A – B – C, with a continuation onto meet Footpath No. 25 west of Seafield above the raised beach. At that time, there was no footpath shown on the alignment of Footpath No. 26 from point C up to the top of Kipling Tors and to Hillside, formerly known as Orme Lodge.
- 3.5.4 The 2<sup>nd</sup> Edition 25" mapping of 1904 shows the application route as a continuation of Footpath No. 26 from Stanwell Hill, a double dashed track on the alignment A – B – C, but the continuation westwards was cut off by the construction of the Bideford, Westward Ho! and Appledore Railway, and appearing no longer to connect with Footpath No. 25 west of Seafield.
- 3.5.5 The Post War A Edition 25" mapping of 1961 shows the application route as a continuation of Footpath No. 26 from Stanwell Hill, a double dashed track on the alignment A – B – C, with no physical continuation shown west of point C, but with a continuation now northwards along the alignment of Footpath No. 26 to meet Footpath No. 25 opposite Seafield.
- 3.5.6 The 1930s small scale mapping shows a route on a similar alignment to the application route A – B – C and its continuation of Footpath No. 26 to Stanwell Hill, and up to the top of Kipling Tors to Hillside (formerly Orme Lodge).



### **3.6. Northam Tithe Map and Apportionment, 1838-9**

- 3.6.1 Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of *'public roads and waste'*.
- 3.6.2 The Northam tithe map is a second class map, surveyed at a scale of 3 chains to 1" by Mr B Herman of Northam, who did a number of tithe surveys in Devon. Being second class, it is considered only to be a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.
- 3.6.3 The application route between points A – B is shown, and coloured sienna. The remainder of the route between points B – C – D is not shown.

### **3.7 British Newspaper Archive, 1824 onwards**

- 3.7.1 This is a digital database of scans of newspapers across the country. It includes local newspapers such as the Exeter Flying Post and the North Devon Journal, except for the years 1825-6 which have not survived. The newspapers included reports on the proceedings of the Magistrates Petty Sessions, Quarter Sessions and Assizes, along with those of the various district Highway Boards and Vestry's.
- 3.7.2 7<sup>th</sup> September 1927. Western Morning News. *'In honour of Mr Rudyard Kipling, who used to frequent them when he was a student at the United Services College, the cliff walks on Western Hill, Westward Ho! are to be known as Kipling Tors'*.
- 3.7.3 15<sup>th</sup> October 1937. Western Morning News. *'It was stated that General RO Paterson had reported that the Kipling Memorial Council were prepared to make a grant towards the cost of acquiring Kipling Tors, Westward Ho! as a local memorial to the late Mr Rudyard Kipling. The Financial Committee recommended the Council should guarantee to support the proposal to acquire the Tors with attendant expense to the extent of £250 [£11,250 in 2017], the Northam and Westward Ho! Chamber of Commerce being asked to associate with the Council in the provision of this sum. This was decided. General Paterson said the proposal was that the Tors should eventually be*

*taken over by the National Trust, and if this were done that body would undertake the whole of the future maintenance after the Tors were fenced’.*

- 3.7.4 21<sup>st</sup> October 1937. North Devon Journal. *‘The decision of Northam Urban District Council to borrow £225 [£10,125 in 2017] as the Council’s contribution to the purchase of Kipling Tors was referred to at Thursday’s meeting of that authority. Mr F Wilkey...said he was in no way opposed to a memorial to Rudyard Kipling, but his objection was he understood the portion purchased by the Council was only the top part of the Tors. He would guarantee 2/3 of the public did not know the lower part was not included in the purchase. Mr Fulford said the Committee were anxious to purchase the whole, but he pointed out the question of cost, and it was unanimously decided half a loaf was better than none. The Chairman (the Rev. AE Green) said no discussion would alter it now, but Mr A Reed said what Mr Wilkey had pointed out was news to him – he thought they had all the Tors’.*
- 3.7.5 26<sup>th</sup> March 1938. Western Morning News & Daily Gazette. *‘...The Tors at Westward Ho! where Kipling used to ramble in his younger days, had been purchased for a memorial...’.*
- 3.7.6 31<sup>st</sup> March 1938. North Devon Journal. *‘In his report to the annual meeting of Northam and Westward Ho! Chamber of Commerce...the...Secretary...said the Chamber was working in conjunction with Northam Urban Council and the Kipling Memorial Committee at Windsor in the provision of a local Kipling memorial. The Tors at Westward Ho! where Kipling used to ramble in his younger days, had been purchased for a memorial, and they hoped it would be possible’.*
- 3.7.7 1<sup>st</sup> April 1938. Devon & Exeter Gazette. *‘In his report to the annual meeting of Northam and Westward Ho! Chamber of Commerce...the...Secretary...said the Chamber was working in conjunction with Northam Urban Council and the Kipling Memorial Committee at Windsor in the provision of a local Kipling Memorial. The Tors at Westward Ho! where Kipling used to ramble in his younger days, had been purchased for a memorial and they hoped it would be possible to provide a memorial hall, with a Kipling library and museum, and seating for 400 or 500 people’.*
- 3.7.8 9<sup>th</sup> June 1938 – North Devon Journal. *‘Protest that only portion of Tors bought. The decision of Northam Urban District Council to borrow £225 [£10,125 in 2017] as the Council’s contribution to the purchase of Kipling Tors was referred to at Thursday’s meeting of that authority. Mr F Wilkey...said he was in no way opposed to a memorial to Rudyard Kipling, but his objection was he understood the portion purchased by the Council was only the top part of the Tors. He would guarantee 2/3 of the public did not know the lower part was not included in the purchase. Mr Fulford said the Committee were anxious to purchase the whole, but he pointed out the question of cost, and it was unanimously decided half a loaf was better than none. The Chairman (the Rev. AE Green) said no discussion would alter it now, but Mr A Reed said what Mr Wilkey had pointed out was news to him – he thought they had all the Tors’.*

- 3.7.9 1<sup>st</sup> July 1938. Devon & Exeter Gazette. *'Arising out of a report by General RO Paterson, it was agreed at yesterday's meeting of Northam Urban Council that it should be left to the Kipling Appeal Committee to arrange for the care under the National Trust of Kipling Tors, Westward Ho!'*
- 3.7.10 1<sup>st</sup> July 1938. Exeter & Plymouth Gazette. *'Arising out of a report by General RO Paterson, it was agreed at yesterday's meeting of Northam Urban Council that it should be left to the Kipling Appeal Committee to arrange for the care under the National Trust of Kipling Tors, Westward Ho!'*
- 3.7.11 8<sup>th</sup> December 1938. Western Morning News & Gazette. *'The Rudyard Kipling Memorial Fund Committee presented Kipling Tors near Westward Ho! to serve as a perpetual memorial to Kipling. There are 24 acres of gorse covered hillside, long known to the readers of 'Stalky and co.' as 'Kipling Tors'.*
- 3.7.12 2<sup>nd</sup> February 1939 – North Devon Journal. *'...the Kipling Tors were acquired by the National Trust'.*
- 3.7.13 3<sup>rd</sup> February 1939 – Exeter & Plymouth Gazette. *'The Kipling Tors were acquired by the National Trust'.*
- 3.7.14 23<sup>rd</sup> March 1939 – North Devon Journal. *'...the Kipling Tors, which have been preserved for the nation...'*
- 3.7.15 24<sup>th</sup> March 1939 – Western Times. *'...the Kipling Tors, which have been preserved for the nation...'*
- 3.7.16 8<sup>th</sup> April 1939. Express & Echo. *'Captain RA Richards...writing with regard to Kipling Tors, drew attention to what he alleged to be their disgraceful condition. On both sides of the path leading from the South Gate were numerous heaps of builders' rubbish, and there was a large dump of old pots and pans though not actually on Trust property. The Clerk...said the spot complained of was nothing to do with Kipling Tors or the Council, and they had merely a right of way along the path referred to. The Chairman (Rev AE Green) agreed it had nothing to do with the Council, but it was decided to write to the owners'.*
- 3.7.17 14<sup>th</sup> April 1939. The Western Times. *'Captain RA Richards...writing with regard to Kipling Tors, drew attention to what he alleged to be their disgraceful condition. On both sides of the path leading from the South Gate were numerous heaps of builders' rubbish, and there was a large dump of old pots and pans though not actually on Trust property. The Clerk...said the spot complained of was nothing to do with Kipling Tors or the Council, and they had merely a right of way along the path referred to. The Chairman (Rev AE Green) agreed it had nothing to do with the Council, but it was decided to write to the owners'.*

3.7.18 14<sup>th</sup> April 1939. Devon & Exeter Gazette. *‘Captain RA Richards...writing with regard to Kipling Tors, drew attention to what he alleged to be their disgraceful condition. On both sides of the path leading from the South Gate were numerous heaps of builders’ rubbish, and there was a large dump of old pots and pans though not actually on Trust property. The Clerk...said the spot complained of was nothing to do with Kipling Tors or the Council, and they had merely a right of way along the path referred to. The Chairman (Rev AE Green) agreed it had nothing to do with the Council, but it was decided to write to the owners’.*

### **3.8 Northam Vestry Minutes, 19<sup>th</sup> Century**

3.8.1 The Minutes provide information about the management of the route and the Council’s views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.

3.8.2 The records refer to named parish highways. It is not known if the application route was named, and therefore whether these records refer to it or not.

### **3.9 Quarter Sessions Deposited Plan 340: Bideford & Westward Ho! Light Railway, 1875**

3.9.1 The legal deposit of plans or public undertakings was first provided for in the 1793 Standing Orders of the House of Lords. The need for such deposits was recognised following the canal mania of the early 1790s when it became evident that canal bills were being hurried through Parliament without proper scrutiny. Thereafter, promoters were required to submit to the Lords plans of works, books of reference, and other papers before a bill was brought up from the Commons to the Lords. In 1837 an Act compelled the local deposit of plans of public undertakings with the Clerk of the Peace, and therefore available to public inspection.

3.9.2 Any of this type of document may provide evidence on crossed or adjacent paths, roads or tracks and therefore could be relevant as evidence in relation to the existence of Highways, particularly if the scheme was constructed.

3.9.3 The railway proposed by this plan was not constructed. It records part of the application route between points A – B as lot 123, an occupation road owned by the Northam Burrows Hotel and Villa Company, Messers CJ Trupp, WM Dowell, and TA Thrupp, and Mesdames CS Pyke and CA Thrupp.

### **3.10 Quarter Sessions Deposited Plan 413: Bideford, Westward Ho! & Appledore Railway, 1896**

3.10.1 The plan received Royal Assent on the 21<sup>st</sup> May 1896 and opened on the 24<sup>th</sup> April 1901.

3.10.2 Part of the application route between points A – B is recorded in lot 36, a field and private road and waste, owned by Mr GJ Taylor.

### **3.11 Northam Urban District Council Minutes, 1893-1974**

3.11.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.

3.11.2 There are numerous references to Kipling Tors generally, rather than to specific routes.

3.11.3 7<sup>th</sup> August 1947. 'Kipling Tors. The Committee gave instructions to have the paths cleared of growth'.

3.11.4 11<sup>th</sup> September 1952. '*Kipling Tors. A letter from Miss Willes...was read complaining of the condition of the paths and other matters in the district. The letter was referred to the Surveyor to deal with.*'

3.11.5 13<sup>th</sup> November 1952. '*Miss Willes: A further letter from Miss Willes was read, complaining of matters which she considered required attention, the Surveyor reported on the interview he had had with Miss Willes.*'

3.11.6 11<sup>th</sup> June 1953. '*National Trust. A letter, enclosing correspondence and plan was read from the National Trust Local Agent, asking the Council's views on an offer which had been made to the Trust to sell land at the north of the Kipling Tors. The Council was of the opinion that it would be a definitive acquisition to the present Trust property and instructions were given for a reply to be sent, stating this and expressing the hope that the Trust would be able to acquire the land...*'

3.11.7 7<sup>th</sup> July 1960. '*Report of the Surveyor...following recommendations: - that posts be erected at the ends of the footpaths on Kipling Tors to prevent motorcycles using them.*'

### **3.12 Old Photographs, 19<sup>th</sup> Century onwards**

3.12.1 These photographs show Footpath No. 26 and the whole of the application route as natural continuations of each other, open and available.

### **3.13 Bartholomew's maps, 1900s onwards**

3.13.1 These maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent

roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, footpaths and bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.

3.13.2 The application route between points A – B – C – D and its continuation recorded as Footpath No. 26 is not shown.

### **3.14 Handover Roads records, 1929-47**

3.14.1 These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are conclusive evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. Such records were for internal use and did not purport to be a record of rights. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway.

3.14.2 The application route is not included.

### **3.15 Aerial Photography, 1946 onwards**

3.15.1 The aerial photography shows the application route A – B – C open and available to the public, connecting with Footpath No. 26 at several points.

### **3.16 Definitive Map Parish Survey, 1950s**

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

3.16.2 Footpath No. 26 was surveyed and included in the Parish Survey, but not the application route between points A – B – C – D, though the initial path description could apply to it, as it stated that the path ran *'from Westward Ho! main road at Stanwell Hill by Tapp Cottages, north of OS no. 571 to Kipling Tors, and forming the north boundary of the Tors to a path at the end of Merley Road...'*

### **3.17 Definitive Map and Statement, 1957**

3.17.1 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.

3.17.2 The Definitive Statement for Northam Footpath No. 26 is described as running from *'its junction with Footpath No. 25 at Seafield and proceeds southwards for a distance of approximately 100 yards turning eastwards and rising to the top of Kipling Tors then southwards to meet the Class 3 county road at Hilltop. Also, a spur from the top of Kipling Tors eastwards to meet the Class 2 county road, B3236, at the bottom of Stanwell Hill'*.

### **3.18 Definitive Map Review records, 1970s onwards**

3.18.1 A letter was received from Torridge District Council dated the 4<sup>th</sup> April 1989 regarding a recent meeting of their Environmental and Leisure Services Committee. They had given consideration to a request for a footpath on the application alignment to be recorded. It was noted that the path was commonly used but not registered. It appears that part of the footpath discussed is already recorded as part of Footpath No. 26. It was passed to Devon County Council to deal with.

### **3.19 List of Streets, 1970s onwards**

3.19.1 This is the County Council's record of highways maintainable at public expense.

3.19.2 The application route is not included.

### **3.20 Northam Town Council Minutes, 1974 onwards**

3.20.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.

3.20.2 The records are still held by the Town Council, and due to Covid-19, the Council office are closed, so it has not been possible to arrange to view them.

### **3.21 Westward Ho! History Society, 2002 onwards**

3.21.1 The Society have gathered a number of newspaper articles, several of which refer to Kipling Tors, though not specifically the application route or Footpath No. 26.

### **3.22 Route Photographs, 2016 onwards**

3.22.1 The route photographs show that the application route, between points A – B – C – D, is a natural continuation of what is currently recorded as Northam Footpath No. 26. It is open and available to the public, and well maintained.

### **3.23 Land Registry, 2017**

- 3.23.1 The main part of Kipling Tors was purchased by the Northam Urban District Council in 1938 at the cost of £700 (£27,542 in 2017). The northern part of the Tors and crossed by the application route was purchased by the Northam Urban District Council from Mrs MMJ Fulford in 1955 at the cost of £50 (£1,193 in 2017), and is now registered to Torridge District Council.
- 3.23.2 The 1955 conveyance refers to the application route as a private roadway which could be used with/without horses, carts, and carriages by authorised persons.

## **4. Informal Consultation Responses**

- 4.1 Northam Town Council accept the proposal to add the application route to the Definitive Map.
- 4.2 The British Horse Society representative is aware that there may have been some use of the Kipling Tors area by horse riders, but no evidence has been submitted to support a higher status.

## **5. Landowner Evidence**

- 5.1 The registered landowner, Torridge District Council, did not respond to the informal consultation.

## **6. Rebuttal Evidence**

- 6.1 No rebuttal evidence has been received.

## **7. Discussion**

- 7.1 In considering the evidence it is necessary to consider the evidential facts in the context of the whole of the documents in which they are contained. Section 32 of the Highways Act 1980 indicates how documents should be evaluated as a whole and how the weight should be given to the facts derived from them. Once the evidence sources have been assessed individually, they are comparatively assessed as required by the balance of probabilities test.
- 7.2 Statute – Section 31 Highways Act 1980. Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public ‘*as of right*’ and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 7.3 As there does not appear to be a specific date on which the public’s right to use the application route has been called into question, the Schedule 14 application is considered to call the public’s right to use the route into



question for the purposes of section 31 of the Highways Act 1980. The application was made in 2016, and therefore the relevant statutory period to be considered is 1996-2016.

- 7.4 Eleven user evidence forms were received in support of the application, with another 2 received in response to the informal consultation, giving a total of 13. All 13 users detail their use during the relevant statutory 20-year period, with use ranging from daily to 4 times a year. Several users recall a gate, possibly at point C, where remains can be seen.
- 7.5 During the relevant statutory 20-year period, no users saw any notices or experienced obstructions to the route. None of the users were challenged or told that the route was not public.
- 7.6 There is also no evidence of any lack of intention to dedicate by the landowner, Torridge District Council, who have been actively maintaining the application route. Therefore, it is reasonable to allege that a public right of way on foot exists along the application route between points A – B – C – D.
- 7.7 Additionally, the application route may also be considered, and may be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 7.8 Common Law. On consideration of the application at common law, the historical documentary evidence demonstrates the application route's physical existence and availability since at least 1804, when the section A – B was documented on the Ordnance Survey Draft Drawings Map. It is shown in a similar manner to other recorded public highways in the area.
- 7.9 From that time onwards, a route is depicted on an alignment similar to the application route between points A – B on the Ordnance Survey Old Series 1" mapping, Greenwood's map, and the Northam Tithe Map. The large scale Ordnance Survey mapping from 1889 shows the application route as a natural continuation of Northam Footpath No. 26.
- 7.10 The Bartholomew's Tourist Maps of the early 20<sup>th</sup> century do not show the application route, but these are small scale, and their purpose was to show appropriate routes for motorists and cyclists.
- 7.11 It is not known if the application has ever had a name, and therefore it is unclear whether any of the references to named parish highways in the Vestry minutes of the 19<sup>th</sup> century refer to the application route. The contemporaneous Railway deposited plans of 1875 and 1896, the latter of which was actually constructed, show the application route as a '*private occupation road*', as does the later National Trust Conveyance of 1938.
- 7.12 Whilst there are numerous references to Kipling Tors in the British

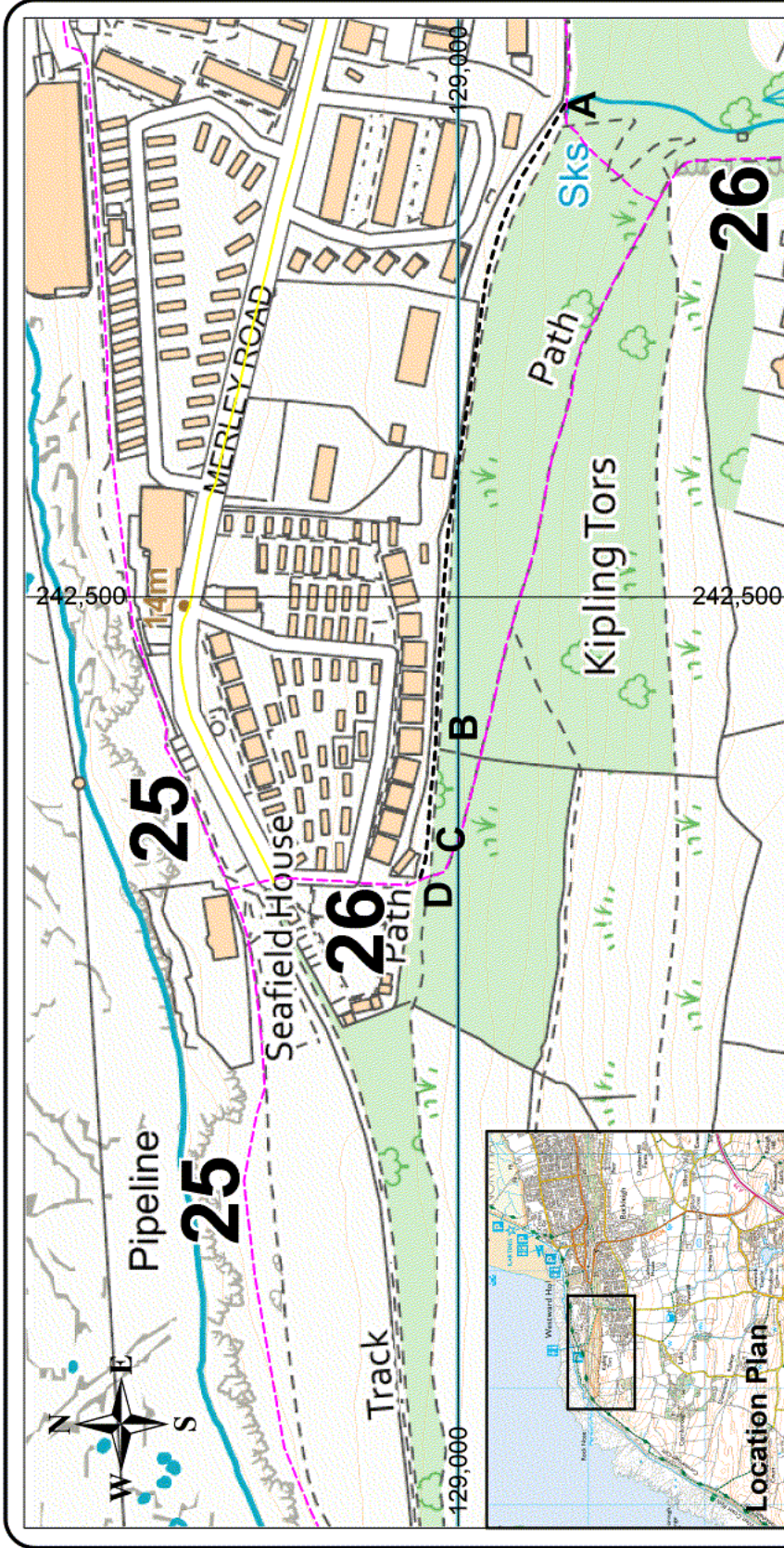
Newspaper Archive and Northam Urban District Council, particularly after Rudyard Kipling's death, when most of the Tors was purchased in the 1938 as a memorial to the author, there are none which refer to specific routes. There was concern at that time that only the southern portion of the Tors was being purchased. However, it was only that portion available for sale. What is clear from these records, is that the name '*Kipling Tors*' has been used to refer to not just that conveyed to the National Trust in the 1930s but also including the northern part conveyed to the Northam Urban District Council in 1955 from Mrs Fulford, the widow of the late Councillor Fulford. This northern section was transferred to Torrridge District Council on the demise of the Urban District Council in the 1970s.

- 7.13 Though there is no reference to the application route in the Northam Parish Survey or the Definitive Map and Statement, the contemporary RAF Aerial Photography shows the application route open and available, and a well-used continuation of Footpath No. 26. There is no evidence of gates, bollards, or other furniture on the route.
- 7.14 The later request of Torrridge District Council in 1989 for Devon County Council to add the application route to the Definitive Map and Statement as part of the Review, can be taken as an action of intention to dedicate the route to the public. Their acquiescence to the current application supports this.
- 7.15 This is supported by the user evidence from 13 members of the public dating from the late 1940s to the present time, which has been regular and frequent. None were ever challenged, or encountered obstructions on the route. Several recall a large gate, possibly at point C, where there are the remains of a gate post, which was never locked. No notices against public use of the application route have ever been seen.
- 7.16 In such a situation as this where a route of uncertain status exists, its status can be presumed from the highways linked to it, as set out in the case of *Eyre v New Forest Highway Board* (1892). Consequently, the evidence when considered as a whole supports access for the public to the application route, currently unrecorded, of the status of footpath.
- 7.17 Due to Covid-19 a relatively small portion of the normal research could not be completed in time, however those sources are not particularly significant given the weight of the available evidence in support of the application route, and it meets the test of statutory presumed dedication.

## **8. Conclusion**

- 8.1 On consideration of all the available evidence, the documentary evidence demonstrates that the application route, currently unrecorded between points A – B – C – D has physically existed since at least 1804. It has been open and available and appears to have been considered public since that time, and in conjunction with Northam Footpath No. 26.

- 8.2 In such a situation as this where a route of uncertain status exists, its status can be presumed from the highways linked to it, as set out in the case of *Eyre v New Forest Highway Board* (1892).
- 8.3 The former Urban District Council, and the current District and Town Councils have consistently considered it to be a public highway, with Torridge District Council requesting its inclusion on the Definitive Map in 1989.
- 8.4 The evidence when taken as a whole is considered sufficient to show that it is reasonable to allege that a public highway exists along the application alignment of the status of a footpath. It also demonstrates that the route was considered historically as a private vehicular highway.
- 8.5 It is therefore considered to be sufficient under Common Law to demonstrate that a public highway of footpath status exists between points A – B – C – D.
- 8.6 It is therefore recommended that a Modification Order should be made to add the application route as a footpath between points A – B – C – D on the Definitive Map and Statement, as shown on drawing no. HIW/PROW/16/16. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed.



map ref. SS 4228 & 4229

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<b>Devon County Council</b>	
<b>Definitive Map Review - Parish of Northam</b>	
<b>Schedule 14 application: Proposed addition of a footpath at Kipling Tors</b>	
<b>Notation</b>	
Proposed addition of footpath	A - B - C - D (approx 335 m) -----
Existing footpath	.....
<b>drawing number</b>	HCW/PROW/16/16
<b>date</b>	October 2019
<b>scale</b>	1:2,500
<b>drawn by</b>	CLG
<b>Meg Booth</b> Chief Officer for Highways, Infrastructure Development & Waste	