

Definitive Map Review
Parish of Exmouth

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

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

Recommendation: It is recommended that:

- (a) Modification Orders be made to modify the Definitive Map and Statement by adding to them:
 - (i) a public footpath between points between points C and D, as shown on drawing number HIW/PROW/21/04, in respect of Proposal 1.
 - (ii) a public footpath between points E and F, as shown on drawing number HIW/PROW/21/05, in respect of Proposal 2.
- (b) No Modification Order be made in respect of that part of Proposal 1 shown between points A – B – C, as shown on drawing number HIW/PROW/21/04.

1. Introduction

The report examines the Definitive Map Review in the parish of Exmouth in East Devon District.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 17 footpaths in Exmouth, which were recorded on the Definitive Map and Statement with a relevant date of 5th November 1957.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced no valid proposals from the Parish Council.

The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

The following orders have been made and confirmed:

Devon County Council (Footpath No. 2 Exmouth) Modification Order 1953
Devon County Council (Footpath No. 14 Exmouth) Stopping up and Diversion 1962
Devon County Council (Footpath No. 6 Exmouth) Diversion Order 1966
Devon County Council (Footpath No. 8 Exmouth) Stopping Up 1967
Devon County Council (Footpath No. 2 Exmouth) Diversion Order 1971
East Devon District Council (Footpath No. 2 Exmouth) Public Path Diversion 1978
East Devon District Council (Footpath No. 6 Exmouth) Public Path Diversion 1980
East Devon District Council (Footpath No. 2 Exmouth) Public Path Diversion 1980
Devon County Council (Footpath No. 17 Exmouth) Modification Order 1990

Devon County Council (BOAT No. 16 Exmouth) Modification Order 1991
 Devon County Council (Footpath No. 7 Exmouth) Diversion Order 1992
 Devon County Council (Footpath No. 18 Exmouth) Diversion Order 1992
 Devon County Council (Footpath No. 19 Exmouth) Modification Order 1994
 Devon County Council (Footpath No. 5 Exmouth) Diversion Order 1997
 Devon County Council (Footpath No. 22 Exmouth) Dedication Order 1997
 Devon County Council (Footpath No. 3 Exmouth) Diversion Order 1998
 Devon County Council (Footpath No. 4 Exmouth) Diversion Order 1998
 Devon County Council (Footpath No. 20 & 21 Exmouth) Diversion Order 1998
 Devon County Council (Footpath No. 20 Exmouth) Extinguishment Order 1998
 Devon County Council (Footpath No. 21 Exmouth) Extinguishment Order 1999
 East Devon Council (BOAT No.16 Exmouth)TCPA Stopping up & Diversion Or. 1999
 Devon County Council (Footpath No. 1 Exmouth) Diversion Order 2005
 Devon County Council (Footpath No. 5 Exmouth) Diversion Order 2008

Legal Event Modification Orders will be made for these changes under delegated powers in due course.

The current review began in September 2019 with a well-attended public meeting, held in the Town Hall, which was advertised in the parish, in the local press and online.

The two proposals discussed in this report were Schedule 14 Applications held on file until the parish review. No further valid proposals were put forward at the time of the review.

3. Proposals

Please refer to Appendix I to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Jeffrey Trail	-	no comment;
County Councillor Richard Scott	-	no comment;
County Councillor Christine Channon	-	no comment;
East Devon District Council	-	no comment;
Exmouth Town Council	-	no comment;
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
Trail Riders' Fellowship/ACU	-	no comment;
British Horse Society	-	no comment;
Cycling UK	-	no comment;
Ramblers	-	support both proposals;
Byways & Bridleways Trust	-	no comment;
4 Wheel vehicle Users	-	no comment;
Devon Green Lanes Group	-	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(s) 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 Modification Orders be made in respect of part of Proposal 1, shown between points C – D, and in respect of Proposal 2, but that no Modification Order be made in respect of that part of Proposal 1, as shown between points A – B – C.

Should any further valid claims with sufficient evidence be made in 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 East Devon area.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Exmouth

Local Government Act 1972: List of Background Papers

Contact for enquiries: Alison Smith

Room No: M8, Great Moor House, Sowton, Exeter EX2 7NL

Tel No: (01392) 383370

Background Paper	Date	File Ref.
------------------	------	-----------

Nil

as090221pra
sc/cr/DMR Parish of Exmouth
03 020321

A. Basis of Claim

The Wildlife and Countryside Act 1981, Section 53 (2) (b) enables the surveying authority to make an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 15.

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.

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

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

1. Proposal 1: A claimed footpath from Exmouth Footpath No.1 (part of the South West Coast Path) Rodney Bay steps point A on drawing number HIW/PROW/21/04 along the beach at mean high water mark and up a zigzag path to the Devon Cliffs Holiday Park to re-join Exmouth FP No. 1 at point D.

Recommendation: That a Modification Order be made in respect of part of Proposal 1 to modify the Definitive Map and Statement by adding to them a public footpath between points between Points C and D as shown on drawing number HIW/PROW/21/04.

1.1 Background

- 1.1.1 This is a Wildlife and Countryside Act, Schedule 14 Application to add a footpath to the Definitive Map, which was made by The Ramblers Association in 2013, and incorporates the evidence that Exmouth Town Council collected in 2002.

1.2 Description of Route

- 1.2.1 Proposal 1, commences at the end of the spur of Exmouth Footpath No.1 (part of the South West Coast Path) that leads to the bottom of Rodney Bay steps on the beach, at point A. From here the claimed route travels south eastwards, around Orcombe Point, point B, then in a generally north-easterly direction along the beach and foreshore at the Mean High Water line for approximately 1.8 kilometres, almost to Straight Point cliffs. Just before the end of the beach, at point C, the claimed route climbs up the cliff on a zigzag concrete path to the top of the cliffs where it re-joins Exmouth Footpath No. 1 at point D. Currently at point D there is a wooden South West Coast Path signpost with three sign arms; two pointing along the coast path and a smaller arm pointing to the zigzag path, inscribed Sandy Bay. Attached to this post is also an unofficial sign that says, 'Please Note: No dogs allowed on the beach 1st May to 30th September Thank you.'
- 1.2.2 For reference, the holiday park at the top of the zigzag path is formally known as Haven, Devon Cliffs Holiday Park. It is also known locally by its previous name of Sandy Bay Holiday Park, and the end of the beach below the zig-zag path near point C, is known as Sandy Bay.

1.3 Documentary Evidence and Historical Evidence

1.3.1 Ordnance Survey Mapping

1888 -1913 6" to the mile mapping marks Rodney Steps at the west end of the claimed route (point A), it also shows the base of the cliff and beach and rocks of the foreshore. It does not show a path along the beach. It shows the line of a footpath that corresponds to the existing Footpath No. 1, all the way along the top of the cliffs. At the east end of this shown path, around point D, the old map shows the coast path splitting into two paths to cross the stream, the lower route going over a footbridge and then returning to the coast path. This lower path roughly corresponds with point D and the first slope of the zigzag

of the claimed route. However, there is no linking path shown down to the beach (to point C).

- 1.3.2 OS 1960 6" to the mile mapping, shows all the features mentioned above, with the inclusion of Sandy Bay Holiday Park. The footbridge on the coast path is shown on the higher path. The lower path from point D appears to correspond to the first easterly 'zig' of the claimed path and it continues to almost reach the beach above the high water line.
 - 1.3.3 Subsequent OS maps show, the route of the path's easterly 'zig' and then the path turning westwards on the 'zag' and going less steeply to the beach. The modern maps show the stream has been piped underground, to emerge further down the cliff.
 - 1.3.4 Rather unusually the beach and foreshore between Mean High and Low water at Sandy Bay, does not belong to the Crown Estates. The area was passed to the Clinton family many hundreds of years ago, it was held by Clinton Devon Estates until it was sold to the Lee Family in the 1960's.
- 1.4 User Evidence
 - 1.4.1 File records hold a letter from Exmouth Town Council dated October 2002, that simply says 'I enclose thirty-three Statements of Evidence relating to the footpaths listed over leaf'. They then referred to the proposed route as No.1. These forms have been amalgamated with additional forms were presented with the subsequent Ramblers Association Schedule 14 Application, submitted in December 2013. Further User Evidence Forms (UEFs) were submitted as a result of the 2019-2020 Definitive Map review.
 - 1.4.2 In total 78 UEFs and Statutory Declarations have been presented for this route. These evidence forms are included in full in the backing papers.
 - 1.4.3 Examples of the evidence, given by some people who had been using the path from Sandy Bay campsite over many years, give the history of the development of the route to the beach.
 - 1.4.4 David Chapman-Andrews born in 1933, records that at various times from summer 1939 he has used the route. In 1939 there were steps between the coast path at the cafe and the beach at Straight Point. In answer to whether the route had been diverted, he said the wooden steps were replaced with a zigzag concrete path but doesn't give a date. He also says that his uncle, who was born in Exeter in 1907, went camping in the 1920s in the fields near the wooden hut (prior to it being a café). Interestingly, he said they pushed a handcart with their tents and luggage from Littleham Cross railway station to the camping farm. He was told that they scrambled down a steep path to the beach.
 - 1.4.5 Trevor Bartlett has used 'the ramp in question' between 1984 to 1989. He gives additional information saying, 'This path in the early 1940s ran down the

cliff face by the water gully - we used it as children coming down from West Down Farm, through the orchard, to Mrs Roystones bungalow on the cliff top'.

- 1.4.6 Ronald Bagshaw LLB, made a Statutory Declaration in 2004 and a further, more expansive formal declaration also witnessed by a JP. He writes: 'I was the last Clerk and Solicitor to the former Exmouth Urban District Council holding office from summer 1956 to March 1974'. He details his use of the path since 1956. He did not hear any suggestions that the Sandy Bay path was not a public footpath until autumn 2003, when he first observed the notices at the top of the path which said 'Private Land No Right of Way, Highways Act 1980 section 31'. He said, 'Prior to this date I have never known John Lee the former owner or his successors or employees challenge the public walker use the route to Sandy Bay'. He does not give a description of how he accessed the beach at Sandy Bay, but on the map signed in 2004, he clearly marks the zigzag track to the beach. On his retirement Mr Bagshaw worked for the Ramblers Association as Area Footpath Secretary.
- 1.4.7 Mr Ronald Coles, born in 1921, used this route between 1950 and 2005, when he completed his UEF. He used the route approximately 10 times a year and said it had been used by generations to access the low water path between Exmouth via Orcombe Point to Sandy Bay and area by the Marines site (the Rifle Range). He attached a clipping from the Exmouth Journal of a photograph of a large sign at the top of the zigzag path at Sandy Bay, that says 'Private Land No Public Right of Way Highways Act 1980 section 31'. The caption beneath the photo says, 'The sign on the path from the beach at Sandy Bay informing the public that the land is private and there is no public right of way.'
- 1.4.8 John Fowler used the path from 1960 to 2005 regularly for dog walks between 10 and 100 times a year. He always used the route along the beach and up the zigzag from the beach to Sandy Bay, without restrictions for many years. He believes the notices appeared a few years ago perhaps in 2003. He says, 'it's only recently that Sandy Bay camp has attempted to enforce restrictions'.
- 1.4.9 Norman Gibbs, born 1935, used the route since the mid-1940s from the Cliff top to the beach for walking and swimming. He thought it was public because of the vast number of people who have used it over the years. It has not been diverted but it has been improved. Since the 1940s school friends and local residents of the Exmouth area have always used the path to the beach as it was the only access to the beach, apart from at the Orcombe Point end, some distance of 1 to 1 1/2 miles away. He adds that it is not available at high tides.
- 1.4.10 Malcom Mitchell has walked the path since 1970 to 2002 (when he completed his form), 20 times a year, as a circular path using the coast path. His use had been unhindered for 32 years.

1.4.11 Mr McMillan, has used the path since 1932 except between 1940 and 45, to walk on the beach and the Cliff path for pleasure. No one has been stopped and all the other people from Exmouth have used it. He states the notice saying the path was private was only put up in 2003. He says he isn't aware of who owns the Cliff face but goes on to say that the route has always to his knowledge being a public footpath and the footpath in question connects the beach to this Cliff path. On his map he has clearly shown the zigzag path to the beach.

1.4.12 Suzan Martineau used the route between 1966 and 2003 (when she completed her form), from Exmouth to Sandy Bay and back, for pleasure. In approximately January 2003 she says that notices appeared at the top of the concrete path and at the high watermark on the beach. These said 'Private no Footpath'. She says since moving to Exmouth in 1966 'we have frequently at least once a week walked this route at low tide from Exmouth to Sandy Bay up the concrete path and back along the Cliff tops and vice versa. We always met people doing the same circuit it is very popular'.

1.4.13 Brian Payne has used the route between 1948 and 1952 and then started to use the route again between 1997 and 2005. He gives some history, saying 'In the years quoted, 1948 - 1952, I went with my parents and brothers and sisters, together with up to four other families (neighbours from Exeter) for picnic lunches (at Sandy Bay) most Sundays through the summer. We would park in the fields near the top of the path and walk down the path to the beach. There were always many other families doing the same thing. When I returned to use the path eight years ago (1997) I found the path to be in the same position, but it was now wider than it was 50 years ago'.

1.4.14 Kenneth Willoughby, born in 1922, has used the route from the Cliff top down to Sandy Bay beach shown on his map since 1935 approximately 12 times a year, on foot. He said it was public because it is being so freely used by pedestrians wishing to get down the Cliff path. Notices were put up in 2003 saying 'Private No Right of Way'. He had never been granted permission to use this route nor had been questioned when using it.

1.4.15 The above are a small sample of the 78 UEFs and Statutory Declarations. The evidence given in these show continuous use of the of the route from the 1940s to 2005 (when most of the evidence forms were completed). Some users have noted it is not possible to use the foreshore part of the route at high tides because it is completely covered by the sea. Most users seemed to time their walks to coincide with the low tides.

1.4.16 Many users have noted that until 2003 there was no indication that this was not a public path. They do acknowledge in 2003 and again in 2005 notices appear on the zigzag path down to beach and above the high water mark on the beach, that said no public right of way. However, users continued to walk the route. No one comments when the notices were removed, and no one had been directly challenged.

1.4.17 Today there is an official wooden sign arm on the coast path sign that points to Sandy Bay and there are no notices to deter use.

1.4.18 With their UEFs many of the users have attached a pre-produced map on which a strong black line, that follows the mean high watermark, has been printed, to show the claimed path, between points A – B – C – D. Some users have enclosed this map with their form, others have highlighted this line in colour, a smaller number have included their own maps some hand drawn and others on different base mapping. Where they use a map that shows the whole route, all the users show the Mean High Water mark as the claimed route. Some individuals have just enclosed a small section of map that only shows the zigzag path at Sandy Bay. However, all the maps are consistent in showing use of the zigzag path between points C and D from the beach up to the coast path or from the coast path to the beach.

1.4.19 Apart from these maps (many of them pre produced for the users), there is no physical evidence on the ground to show that each one of the users has walked the same line along the beach. The beach is covered and washed twice daily by the tide.

1.5 Landowners Evidence

1.5.1 On 7th of November 2002 the County Council received a letter from Every's Solicitors Exmouth, on behalf of the landowner of Sandy Bay.

1.5.2 It says: 'We write on the instructions of our clients, Mr CJ Lee, Mrs ME Hawkins and Mrs BA Marriott ("the family") who are the owners of freehold of the land at Littleham, near Exmouth, which includes the Devon Cliffs Holiday Park (Sandy Bay). We have acted for them and their family for upwards of 50 years. The ownership includes the freehold of the part of the beach down to the low water mark. Attached is an extract of the plan on the conveyance of the freehold by the Clinton Estate to the family in 1950, the ownership being partly edged in red.

In the edition of the Exmouth Journal published on the 3rd of October 2002, notice is given concerning the omission of certain footpaths from the County Council definitive footpath map including "Sandy Bay West along the beach to Rodney point". It is this alleged pathway to which this letter relates.

It appears the Notice invites the members of the public to claim they have as of right exercised a right of way over the "pathway" so as to support an attempt to establish a public right of way which does not presently exist and so has not previously been omitted.

On behalf of the Lee family we register here a strong objection to the attempt to prove the existence of any such public right of way. Our instructions are to pursue the objection throughout any process which may be instituted to attempt to establish the claimed footpath.

In as much as the matter is at an early stage, we regard this letter as a brief preliminary statement for some of the reasons for the objection. We reserve the right to introduce further reasons for objection and to expand these preliminary points in light of any signed statements which may be following the published invitation referred to above.

The preliminary reasons below are not in any particular order of importance:

- (i) The pathway is incapable of definition on the ground, which consists of shifting sands. No-one looking the length of the beach could possibly identify any pathway.
- (ii) Those who by licence of the Lee family have been allowed to use the beach will have chosen their own way, which would at most times be between high watermark and low watermark, depending also on the wind, sand blow, etc.
- (iii) The maintenance and security of the beach is the responsibility of the Lee family and their tenant. They look after the cleaning of the beach, the removal of seaweed and the control of beach activities. The existence of any public right of way would undermine this control and security.
- (iv) To allege the public right of way is to suggest the public restrict themselves to a particular route. This is totally impractical and incapable of policing. It is an invitation to "abuse" of the use of the beach.
- (v) The beach and its access have always been such signalled as "private". This is a statement of fact advertised in the publicity of the Holiday Park for at least 40 years. It has been an important factor in encouraging one of the largest and most important tourist attractions in the South West. It represents security and control for families. The Holiday Park houses about 15,000 people in the height of the Season.
- (vi) The exercise of control over the beach has been real. There have been instances of people with dogs causing a nuisance on the beach - they have been successfully ordered to leave. This would not be possible if a right of way over an indistinguishable part existed.
- (vii) The proposed pathway is not a route or way to a place. The access to the beach from the cliff top has been formed by the Lee Family.
- (viii) The route from Exmouth to Budleigh Salterton is an existing long established public footpath on the cliff top, which is regularly used. It is not on the beach.

Please acknowledge safe receipt of this letter. Yours Faithfully...'

1.5.3 There is no other correspondence from any landowners or their solicitors since this letter.

1.5.4 During the current Definitive Map Review, as the original landowners the Lee Family and the current landowners Haven Leisure Ltd were consulted.

The Lee Family, in case they had kept 'an interest' in any of the land or beach at Sandy Bay, Devon Cliffs Holiday Park.

- 1.5.5 Mrs Lee has telephoned to say they have sold all their 'interests' in the Devon Cliffs Holiday Park and the freehold to Haven Leisure Limited, and they no longer have any interest in the holiday park or beach.
- 1.5.6 Haven Leisure Ltd. were consulted by recorded delivery letter sent to the Head Office and to the Site Manager at Devon Cliffs Holiday Park, Sandy Bay. There has been no correspondence or telephone contact in response.
- 1.5.7 It is, therefore, not known if the Haven Leisure object to this footpath claim or accept it. The new formal South West Coast Path sign has a sign arm directing people to Sandy Bay and has been erected during their tenure.
- 1.6 Discussion
 - 1.6.1 Statute (Section 31 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 called into question.
 - 1.6.2 Given the different nature of the sections A – B and C – D it is appropriate to consider them separately. Firstly, the zigzag section of the claimed footpath, Devon Cliffs Holiday Park, Sandy Bay, to the mean high water mark (C – D). Use by the public of the zigzag path, was called into question by the landowner, The Lee Family in writing to the County Council as the Surveying Authority, in November 2002. Then publicly, by the placing of the large 'Private Land. No Public Right of Way Highways Act 1980 Section 31' notice prominently at the top and bottom of the zigzag path, early in 2003 (as reported by many of the users). The users also report that a similar notice was erected again in 2005. The landowners made their intentions clear to the public using this path in early 2003. The relevant 20 year period of public use is therefore between 1983 and 2003.
 - 1.6.3 During this 20-year period, 1983 to 2003, there are 53 UEFs, each covering the whole period of that 20 years (and many covering several more years) and 15 other EUFs that include most of that period. The forms recording hundreds of journeys. All users have walked up or down the zigzag path at Sandy Bay beach. No-one reports that they had been given permission to use the route, they were just using it as if it were a right of way. All the maps attached to the forms show the zigzag route (C – D).
 - 1.6.4 The public access the beach at the Exmouth end, at Rodney Steps, is via a spur of Footpath No.1, which comes down to the beach on a set of steps and stops. The zigzag path is similarly confined and defined, to the beach where it stops.

- 1.6.5 The beach and foreshore section of the claimed path between Point A and C, is however different and difficult to define.
- 1.6.6 Rather unusually, the foreshore of the beach at Sandy Bay, does not belong to the Crown Estates. It was given to the Clinton family many hundreds of years ago by the Crown. Clinton Devon Estates rented their portion of the foreshore to the Lee family when they started their campsite in the 1950s. The Lee family subsequently bought the foreshore from Clinton Devon Estates in the 1960s. The Lee family subsequently sold their portion of the foreshore to Haven Leisure limited.
- 1.6.7 Many of the UEFs were accompanied by a standardised map, on which there appears a pre-printed blackened line, that corresponds to the mean high water mark. Some forms were accompanied with individual maps, but all show a defined line along the beach.
- 1.6.8 The tidal range for the Exmouth Approaches (the sea area between Straight Point and Orcombe Point encompassing the beach) varies dramatically between Spring tides and Neap tides. This variation is on a monthly luna and daily cycle. On a low Spring tide, the beach can be 300 metres wide, whilst six hours later, the sea will be touching the base of the cliffs. Conversely, on a small Neap tide the sea will not move away from the bottom of the Rodney Steps. Due to this dramatic, natural and continual variation in the beach area available to walkers, it is impossible to ascertain a single linear walked path, between points A – B – C. At each tide the beach is washed clean. Observation of the use of this beach area by the officer (who has known it for many years), shows that on any day, whatever the weather and if the tides allow, there will be walkers using the beach area to walk from Orcombe Point to Sandy Bay and vice versa. However, the walkers will fan across the whole span of the available sand. They do not follow one defined line, except when they reach the bottom of the zigzag path at Sandy Bay or the bottom of the steps at Orcombe Point.
- 1.6.9 It would therefore be impossible to define a linear footpath the area over this beach and foreshore.
- 1.6.10 Common Law 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 evidence suggests that there may be sufficient evidence that the path between Point C – D was dedicated by implication, by the landowner making no objection to the public's long and frequent use of the path since the 1940s. However, the section of the route between A – B – C could not give rise to dedication at Common Law because the public have wandered so widely over the beach, not establishing a linear right of way that any landowner could have dedicated.

1.7 Conclusion

- 1.7.1 There is sufficient evidence to show that part of the footpath claimed, over the zigzag path between Points C – D at Sandy Bay, has actually been enjoyed by the public, as of right and without interruption for a full period of 20 years between 1983 and 2003; and that 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. It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding to them a footpath between points C – D as shown on drawing number HIW/PROW/21/04, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.
- 1.7.2 There is however, insufficient evidence to show that a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over the land of the beach and foreshore between points A – B – C, as a defined line is incapable of being demonstrated to have been used by the public. Rather the public wander anywhere along the beach depending on the tides and available sand on any particular day. It is therefore recommended that no Modification Order be made for the section of claimed footpath between points A – B – C. It is likely that the beach will become coastal margin under the provisions of the new England Coast Path.

2. Proposal 2: Claimed Footpath from Ellwood Road point E, across the carpark of Brixington Community Baptist Church and down the steps to Churchill Road point F on drawing No. HIW/PROW/21/05.

Recommendation: That a Modification Order be made in respect of Proposal 2 to modify the Definitive Map and Statement by adding to them a public footpath between points between points E and F as shown on drawing number HIW/PROW/21/05.

2.1 Background

- 2.1.1 A Schedule 14 Application was made by Mr T Hayes and Mr J Howlett in June 2013, to add a footpath to the Definitive Map, triggered by the planning application for redevelopment of the Church site crossed by the claimed route.
- 2.1.2 During the course of the current Parish Review of Exmouth the applicants were contacted. Mr Hayes has passed away. However, Mr Howlett wishes to continue as sole applicant and to have the claim determined.

2.2 Description of the Route

- 2.2.1 Proposal 2 starts on Ellwood Road at point E, at the entrance to the carpark of Brixington Community Baptist Church. It crosses the carpark in a southerly direction, before zigzagging down two flights of steps and onto Churchill Road at point F. The route is approximately 50 metres long and provides a short cut between these two roads and the parade of local shops on Churchill Road.

2.3 Background Information

- 2.3.1 There is no historical evidence for this claim. The housing and church were built in the 1960's on a green field site with no pre-existing footpaths indicated.
- 2.3.2 In 2013, the Church applied to East Devon District Council for planning permission to redevelop the site. The plan was to expand the footprint of the building to include meeting rooms, a restaurant and a worship area. The proposed footprint of the new building did not appear to affect the physical line of the subsequently claimed footpath.

2.4 User Evidence

- 2.4.1 Accompanying the Schedule 14 Application were 38 User Evidence Forms (UEFs), covering use of the route by local people for over 30 years. All the evidence forms were completed in 2013, leading up to the Application being made. No further forms have come in, although the route has continued to be used. However, the Schedule 14 Application will be taken as the date the route was brought into question, so no later user evidence was sort.

- 2.4.2 Examples of the use follows and all the UEFs are available within the backing papers to this report.
- 2.4.3 Sheila Anniss has walked the route between 1986 and 2013, about 15 to 20 times a year. Going to and from her house in Ellwood Road and the Farmhouse Inn for pleasure. She knows the car park is owned by the church but says the pathway has been used between the Brixington shops, pubs, bus stops etc for all of the 27 years she has lived there.
- 2.4.4 Patrick Burt has used the route from Ellwood Road to Churchill Road across the car park of the church since 1993 until 2003. Frequently when going to and from the shops on foot. He says 'it's used by everyone and we do see people in the church as we pass'. He goes on to say that he has worked a lot in the area and has used it frequently when going down at lunchtime for a snack and to collect fuel for his mower or a shortcut to the shops.
- 2.4.5 Steven Driver has used the route between 1992 and 2013, 365 days a year. Going from his home in Ellwood Road to the shops, pub and bus stop on foot. He's used it as part of his daily route, as have many other members of the public.
- 2.4.6 Terrance Hayes of Ellwood Road (one of the applicants) used this route frequently on foot, from 1987 to 2013 to go shopping. He says, 'It crosses the car park of the Baptist church and I often saw people in the church as I passed by'. He said this path has been used by local people every day because it's the nearest route to get to the Farmhouse Inn, the restaurant and Tesco's express.
- 2.4.7 Valerie Hayes has used the route since 1987 to 2003. Mainly to go to and from the shops and the bus stop. She says it's always been used by the public. It's the shortest route to Churchill Road to get to the shops Tesco's the Farmhouse Inn and the restaurant. She knows the land is owned by the church.
- 2.4.8 Mr Oliver of Ellwood Road has used the route between 1973 and 2013, weekly to go to the shops and bus stop on foot. He said it is always been there and it's frequently used by the public and he has used it ever since he moved to Ellwood Road in 1973.
- 2.4.9 Jacqueline Owens has used the route every week of the years since 1986, on foot as she has been going shopping.
- 2.4.10 Mr Powell says he's used the route for more than 30 years around 110 times a year, to go from his home to the local shops on foot. Everybody has used it and he's never seen any signs to say it shouldn't be used. People are using it all the time, he comments.
- 2.4.11 Colin Ridgeway has used the route from his home in Ellwood Road on a daily basis between 1976 and 2013 to go to the shops, the bus stop etc. and it's been in constant use on foot, he says.

2.4.12 Phillip Slade has used the route since 1978 and 2013 three times a week to go to the Farmhouse pub, the shops and the garage on foot. Everyone has always used the path. He has never been stopped or turned back from using the path nor has he ever seen any signs.

2.4.13 Mrs Smith has used the route since 1975 to 2013, over 100 times each year to go to the shops, the bus stop and walking for pleasure. She says 'no one has ever objected to us using the path. All the years I've used it, there have never been any signs and I know the occupiers and owners were aware the path was being used'. She knew the Rev. Peter Eastman who lived nearby, and sometimes saw him near the church as she was using the path. She said, 'He never had a conversation about restrictions on the use of the path'.

2.4.14 The above are a selection of the 38 UEFs presented with the Application. Of those users, 20 have walked the route for the full period of 20 years between 1993 and 2013. The other 16 have all started to use the route after 1993, adding their use to the 20 year period. All the users were using the route as part of their daily lives. The route has not changed, and people continue to use it.

2.5 Landowner evidence

2.5.1 The Baptist Union Corporation limited (BUC) was registered as the proprietor of the land on the 10th of May 2013, following a transfer of trusteeship from Devon Baptist Association, who acquired the land in 1966 from the developer and built the current church.

2.5.2 The BUC solicitor Richard Wilson has completed a Landowner Evidence Form and a continuation sheet. He gives details of the Baptist Union's ownership of the freehold of the land since 1966. He says he is not aware of any legal right of way having been conclusively established over the ground. He has provided copies of the deeds and the conveyance dated 11.03.1966.

2.5.6 He writes, 'As the legal trustee off the land, the BUC is not in occupation of the land. However, I understand that persons are stopped from using the claimed route periodically throughout the calendar year, at the discretion of the church.

However, I understand that the church periodically obstructs the route from time to time throughout the year at its discretion'.

He says signs and locked gates have not been erected. And no section 31(6) deposit has been made.

2.5.7 The BUC encloses a copy of its conveyance and a map showing the area sold to the church in 1966 prior to the development of the area when the roads had been laid out and the church and surrounding houses had not been built. No path was shown on this map.

2.5.8 Two further Landowner Evidence Forms have also been completed by the Reverend Simon Atkinson for Brixington Church as the occupier of the land. The first dated 15.01.2015 and the second on 16.12.2020.

2.5.9 He explains that the Church is the beneficiary of the freehold of the land.

2.5.10 When asked has he seen people using the route he had said Yes. He explained 'My tenure at the church commenced 14 years ago, during which time I have seen occasional use of the claimed route by persons on foot'.

2.5.11 When asked if he or others ever stopped or turned back people from the claimed route he answers 'yes' and then clarifies 'no one has been challenged to stop them or turn them back in person, but for the reasons set out in question 9 persons are stopped from using the claimed route periodically throughout the calendar year, entirely at the discretion of the church'.

2.5.12 In response to the question 'Have you ever locked any gates or placed any notices along the route?', he answers 'yes, cones laid out at access/egress points, as described in question 9 and shown on the attached plan'. He clarifies further on the continuation sheet.

2.5.13 'Access to the claimed route is closed periodically for maintenance of the land, to include cutting, strimming and white lining. Further, access to the claimed route is prevented through closure of the path and the car park in order to accommodate frequent church events during the calendar year to include weddings, fun days, church fetes and other similar activities typically hosted by churches as part of its community obligations. Closure is achieved by physically obstructing access which involves the string of cones across two access egress points secured by a rope. No notice is given to persons as to when access will be curtailed, and closure of the route is wholly at the discretion of the church to accommodate its events calendar and or periodically maintenance of its land. Dates are too numerous to relay access is obstructed on multiple occasions throughout the calendar year at the discretion of the landowners.'

2.5.14 In answer to the question 'have you ever erected any notices or signs please indicate and what was their wording?' he states: 'Minutes dated the 4th of February 1981 record agreement by the committee to the acquisition of two "Keep Off" signs. I expect the signs would have been sited at the North and South of the land where the access to the car park and steps is situated respectively'. He noted 'that the purpose of such signs was to make people aware that the land of the claimed route was Church property'.

2.6 Discussion

2.6.1 Statute

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 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.

- 2.6.2 The Schedule 14 Application in 2013 will be taken as the 'calling into question'. The Planning Application to rebuild the Church was the catalyst for it. Therefore the 20 year period of use without interruption, is between 1993 and 2013. There is considerable user evidence detailing this route has been used as a footpath, between Ellwood Road and the shops and pub on Churchill Road. Twenty of the users have each used it for the full 20 year period and many for longer, the other sixteen users have started and continued to use it during that period. Many people walk the route several times a week and some use it daily, when going to and from the shops, bus stop and pub.
- 2.6.3 None of the users have been challenged or seen any signs to say this was not a footpath. None of the users have reported the 1981 'Keep Off' signs, which would have been twelve years before the relevant period. None have said that their way has been physically obstructed at any time. The evidence was submitted in 2013, none of the users have mentioned fun days or church fetes etc. in the relevant period.
- 2.6.4 The landowners the BUC, and the occupiers, The Baptist Church, give different evidence to the public. The landowners say the route into the car park at Ellwood Road has been occasionally been blocked with cones and a rope, when there have been fetes etc. or the car park has been either full or being maintained.
- 2.6.5 However, the cones have not been specifically placed to block the right of way, rather to steward such events. As locals to the area, it is quite likely that some of the users attend the fetes etc. Footpath users have not directly been barred from using the path.
- 2.6.6 None of the users report there being any notices to stop footpath users from using the pathway. Nothing that said anything like 'This is not a public right of way'.
- 2.6.7 The Church Council minutes of 1981 record that it was agreed that two 'Keep off' signs be requested. But no information was presented to say where these signs were to be placed. It is supposition on the Reverend's behalf (he did not start at the church until 2006) as to where they might have been placed in 1981. None of the users report these signs. 'Keep off' signs are insufficient by themselves to show that landowner had no intention to dedicate a right of way and they do not appear to have challenged the use of the path by the public.

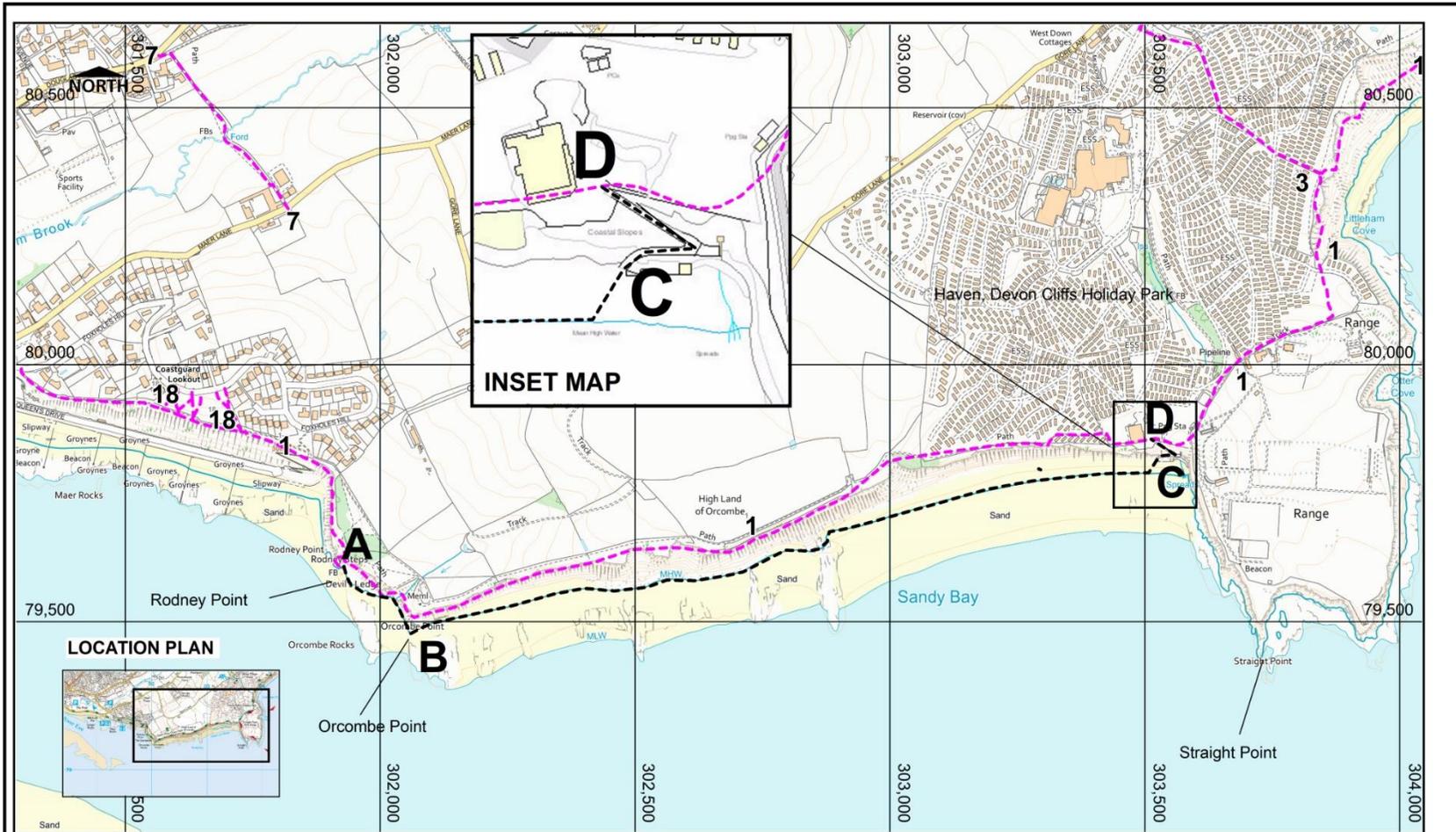
2.6.8 The best way for the landowners, the BUC or its predecessor to have protected its landholding from rights of way claims would have been to make a Section 31(6) deposit, effectively sealing their land from future rights of way claims. This has not been done.

2.6.9 Whilst there is some conflicting evidence from the landowners – that they have coned off the car park and in the past possibly placed ‘keep off’ signs somewhere on the property – none of these actions were done directly to deter use of the footpath. The users have walked the footpath for a full period of 20 years openly, without force without secrecy and without permission.

2.6.10 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. This is not a historical path; the housing and the church only being developed in the late 1960s. However, it is likely that the path was laid out during the development of the church and the public quickly took to using it as a public path as the evidence shows back from 1971.

2.7 Conclusion

2.7.1 When the evidence is taken as a whole, it is considered, that there is sufficient evidence to show that a footpath between point E – F between Ellwood Road and Churchill Road has actually been enjoyed by the public, as of right and without interruption for a full period of 20 years between 1993 and 2013; and that 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. The evidence is also considered sufficient to show implied dedication at Common Law. It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding to them a footpath between points E – F, as shown on drawing number HIW/PROW/21/05, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



Map Ref **SX 994 840**

Grid 500m

Contains Ordnance Survey data. © Crown copyright and database rights 2021. 100019783

DEVON COUNTY COUNCIL
Proposal 1 Exmouth
Proposal to add a footpath

Notation

Existing Footpaths

Proposed Footpath A - B - C - D approx. 1800m

drawing no. HIW/PROW/21/04
 date February 2021
 scale 1:10,000 at A4
 drawn by AS/HC

Meg Booth
 CHIEF OFFICER FOR
 HIGHWAYS INFRASTRUCTURE
 DEVELOPMENT AND WASTE





Map Ref **SX 994 840**

Grid 100m

Contains Ordnance Survey data. © Crown copyright and database rights 2021. 100019783

DEVON COUNTY COUNCIL
Proposal 2 Exmouth
Proposal to add a footpath

drawing no. HIW/PROW/21/05
date February 2021
scale 1:1250 at A4
drawn by AS/HC

Meg Booth
 CHIEF OFFICER FOR
 HIGHWAYS INFRASTRUCTURE
 DEVELOPMENT AND WASTE

Notation

Existing Footpaths 
 Proposed Footpath E-F Approx 50m 

