

CET/25/26

Public Rights of Way Committee  
6 March 2025

## Schedule 14 Application Parish of Thurlestone

Report of the Director of Climate Change, Environment and Transport

---

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

---

### 1) Recommendation

That the committee be asked to determine the application in favour of making a Modification Order to amend the Definitive Map and Statement by adding public footpaths along the routes A – B – C and D – B – C as shown on the proposal map CCET/PROW/25/07.

### 2) Background

This report examines one proposal arising from a Schedule 14 Application in the parish of Thurlestone in the South Hams District. The Application was submitted to the County Council in July 2019 and as per policy, was added to the Devon County Council Statutory Schedule 14 Register.

The parish-by-parish review of the Definitive Map for Thurlestone commenced in April 2009 with a public meeting held in the parish hall. This proposal was not put forward as part of the review and had not been claimed in any previous reviews.

When a Schedule 14 application is submitted after completion of the relevant parish review, standard process is for this to be determined once the remaining parish-by-parish reviews have been completed. However, due to the relatively high public profile of this proposal, the number of user evidence forms submitted, and because the route has been blocked since May 2019, it is considered expedient to determine this application out of turn. This is in accordance with the relevant objectives and policies of the Devon Rights of Way Improvement Plan (copied below).

#### **LEGAL STATUS: Definitive Map and Statement**

*A2. Schedule 14 Applications and related claims will be prioritised on an area basis as part of the parish-by-parish review. Exceptions to this will be considered where the route offers significant public benefit – for example where there is no nearby alternative path available; where a path will help address road safety concerns; if there is a high public profile supported by a substantive user evidence; if the path provides a strategic link; or where a route is likely to be affected by development. These factors will also inform prioritisation of applications post completion of the parish-by-parish review. In determining applications, negotiation with the*

*landowner(s) will be assessed to establish whether an alternative solution is available, for example, express dedication.*

*A3. New claims which arise in a parish where the review has been completed will be deferred until the whole of that particular District has been reviewed. However, exceptions may be made in line with the criteria in policy A2 above.*

### **3) Proposal**

Please refer to the appendix to this report.

### **4) Options/Alternatives**

Determination of this application is in accordance with the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review. The details considered in making the recommendation are set out within the appendix to this report.

### **5) Consultations and Representations**

General consultations have been carried out with the following results:

County Councillor Rufus Gilbert	-	no comment
South Hams District Council	-	no comment
Thurlestone Parish Council	-	supports proposal
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Devon Green Lanes Group	-	no comment
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	no comment

Specific responses are detailed in the appendix to this report.

### **6) Strategic Plan**

The Council's Plan 2012-2025, <https://www.devon.gov.uk/strategic-plan/> has, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

At a strategic level, public rights of way are of great importance to:

- connecting people and places (including Active Travel),
- the local economy (with the network providing essential infrastructure in support of recreation, leisure, and tourism),
- carbon reduction, biodiversity, landscape, and heritage (particularly provision for non-car based travel, contribution to climate change avoidance and mitigation measures, and as a key component of green infrastructure), and
- physical and mental health and wellbeing (with benefits directly attributable to exercising outdoors and contact with nature).

Directly relevant priorities set out within the Devon Strategic Plan include:

Responding to the climate emergency, especially 'more opportunities for cycling and walking', and 'encourage sustainable lifestyles'.

- Supporting recovery and growth, especially 'maintain, and where necessary, improve our highway network' and 'improve sustainable transport options'
- Improve health and wellbeing, especially 'give people greater opportunities for walking and cycling to increase their physical activity'
- Supporting people and communities, especially 'enable a range of transport options, including public transport'.

## **7) 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 the relevant statutory duties.

## **8) Legal Considerations**

The implications/consequences of the recommendation(s) has/have been taken into account in the preparation of the report. A summary of the legal basis is set out in the Appendix at Section A.

Should a Modification Order be made, this will be publicised with opportunity for representations and objections to be submitted. If no representations or objections are made against the Order, or if made are withdrawn, Devon County Council may confirm the Order. If any representations and objections which have been duly made and not withdrawn, the Order will be submitted to the Secretary of State for Environment, Food & Rural Affairs (through the Planning Inspectorate) for determination.

## **9) Environmental Impact Considerations (including Climate Change, Sustainability and Socio-economic**

Environmental impact (including climate change sustainability and socio-economic) implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

## **10) Equality Considerations**

Where relevant, in coming to a decision the Equality Act 2010 Public Sector Equality Duty requires decision makers to give due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding in relation to the protected characteristics (age, disability, gender reassignment, marriage and civil partnership (for employment), pregnancy and maternity, race/ethnicity, religion or belief, sex and sexual orientation).

A decision maker may also consider other relevant factors such as caring responsibilities, rural isolation or socio-economic disadvantage.

Equality impacts have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report. No impacts have been identified.

## **11) Risk Management Considerations**

No risks have been identified.

## **12) Summary/Reasons for Recommendations**

The Schedule 14 application considered in this report has been submitted and assessed in accordance with the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review.

It is recommended that the committee determine the application in favour of making a Modification Order to amend the Definitive Map and Statement by adding public footpaths along the routes A – B – C and D – B – C as shown on the proposal map CCET/PROW/25/07.

### **Meg Booth**

Director of Climate Change, Environment and Transport

**Electoral Division: Salcombe**

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

Background Paper	Correspondence Files
Date	2018 to date
File Reference	DMR/Thurlestone Schedule 14 Application, Dixons Quay, Bantham

Contact for enquiries:

Name: Emily Spurway

Telephone: 01392 382867

Address: Fox Tor, Great Moor House, Bittern Road, Exeter

es240225pra

sc/cr/Schedule 14 Application Parish of Thurlestone

03 250225

## Appendix 1 to CET/25/26

### A. Basis of Claim

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

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

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

The Wildlife and Countryside Act 1981, Section 53(3)(c) enables the Definitive Map to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows that:

- (i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
- (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- (iii) there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

The Wildlife and Countryside Act 1981, Section 56(1) states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein, but without prejudice to any question whether the public had at that date any right of way other than those rights.

The Wildlife and Countryside Act 1981, Section 53(5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WLCA 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.

**Application under Schedule 14 of the Wildlife and Countryside Act 1981 to add 2 public rights of way across land above Dixons Quay, Aunemouth, Bantham in the parish of Thurlestone as shown on plan: CCET/PROW/25/07**

**Recommendation: To determine the application in favour of making a Modification Order to amend the Definitive Map and Statement by adding public footpaths along the routes A – B – C and D – B – C as shown on the proposal map CCET/PROW/25/07.**

## **1. Background**

- 1.1 A Schedule 14 Application was submitted by Mr Graham Gilbert to the County Council on 22 July 2019. The application itself is dated 19 July 2019 and was made in the prescribed form as set out in the regulations and was added to the register for determination once the parish-by-parish review had been completed in the district. The application was made in response to a change in the landownership of the field over which the claim is shown on the plan. The entrances to the field were fenced and barbed wired placed over the access points; and in May 2019, the stile at point B was removed by the landowner, and the gap blocked. In May 2019, the landowner confirmed to the Applicant that he had fenced off the entire field and had no intention of providing public access in the future and turned him away.
- 1.2 There is a private easement for individuals who rent/lease storage space in the boathouses. They use a path from point D along the northern side of the field, to the steps to the boathouses and foreshore just below point B. This path is outside of the scope of this report as those users have a private right of access to Dixons Quay and the boathouses.
- 1.3 The current landowner (not the same person as in 2019), via their land agent, put forward the suggestion of an alternative permissive path as a gesture of goodwill. The proposed permissive path would follow the line of the current private easement for the boathouses. One condition of the permissive path agreement was that should any further application be made to claim a public right of way, the permissive path would be removed. In addition, the provision of the permissive path was on the condition that the applicant withdrew the current claim. The nature of the permissive path would not consider the possibility of unrecorded public rights that may exist over the field. It should also be noted is that the suggested permissive route crosses wet and boggy ground due to a spring and a cattle water trough. This offer was not accepted by the applicant.
- 1.4 Another potential option open to the landowner(s), is to enter into a Creation Agreement with the highway authority under s25 of the Highways Act 1980 to dedicate a public footpath over an acceptable line to the foreshore so that the field is not cut into three. To date, this possibility has not been acceptable to the landowner of the field.

## **2 Description of the Route**

- 2.1 The route is as depicted on the attached plan CCET/PROW/25/07 running from Footpath No.6, Thurlestone across the field from points A – B – C and D – B – C via steps behind point B, down to the area known as Dixons Quay to the left (south south west) of the Boathouses and onto the foreshore of the River Avon. Prior to

the entire field being fenced off, there was a partial hedge line in between the track (Footpath No.6) and the field edge. At point A there was the remains of a kissing gate and point D was a gap, no hedge and no gate. The sparse hedge line can be seen in a Google Earth image, 2018, supplied as part of Mr Gilbert's application, and attached at the bottom of this report.

### 3 Documentary Evidence

- 3.1 Letters of support for the application have been submitted from Thurlestone Parish Council in June 2019 and September 2024 and the Aune Conservation Association in June 2019. This is additional and separate to user evidence included with the application.
- 3.2 A letter from the Restormel Office of the Duchy of Cornwall, 28 June 2019, states; "The Duchy is aware of an application being made to modify the Definitive Map of the Bantham part of Thurlestone Parish. The modification is to include a footpath over a field above Dixon's Quay on the Avon Estuary to allow continued public access to the estuary which the Duchy owns. We write to confirm that we have no objections to the said application" The letter is signed by Chris Gregory, Land Steward. Following the informal consultation in August 2024, Tom Stratton, Land Steward for the Duchy of Cornwall, submitted a further representation which is summarised in section 6 below.
- 3.3 As part of the Schedule 14 Application, Mr Gilbert submitted a photo from Google Maps (dated 22/6/2018) of an aerial/satellite photo of the field above Dixons Quay indicating well-worn tracks across the field as annotated by him on his application, This shows the lack of a full hedge across the top of the field. The area of Dixons Quay and boathouses can be seen on this picture at the bottom of the field on the foreshore.
- 3.4 In 2018, the field was registered with Land Registry by Dr Simon Spooner, son of the owner of the field and a Conveyance from October 1935 was lodged within the Title Deeds. The details of the 1935 conveyance appear to relate to access to the foreshore along the edge of the field. An extract of the conveyance plan has been attached at the bottom of the appendix to assist in the orientation of the land in relation to the 1935 Deed. The Deed appears to set out the land in relation to separating a plot to the southwest edge of the field, next to the cottage. The text sets out a right for the purchaser and all persons authorised by him to pass and re-pass over and across the face of the cliff and any other land of the Vendors lying between foreshore and the north-west boundary of the said land coloured green(maybe faded) for the purpose of obtaining access to such foreshore and together also with the right to erect against cut out cliff steps or another means access to the said foreshore. The Deed talks about water and drainage rights and then continues "*under signs all persons authorised by them to place a gateway gateways at any time hereafter at the top of the cliff at a convenient "spot" to be approved by the purchaser as a means of access to any boathouse or boat houses that may hereafter be built on the foreshore at Aunemouth or elsewhere together with a right of way for all purposes on foot only over the land coloured green to such gateway or gateways as aforesaid keeping said gateways or gateways in good condition and substantial repair*". There is also a mention of an agreement dated 26 March 1935 made between the Vendors, Kingsbridge Rural District Council and the South Devon Regional Planning Committee (summarised later in this report).

- 3.5 The interpretation of this conveyance could be the setting out of the land and potential development plot, plus preserving access to the foreshore for the plot owner and associates. The maps attached at the end of the appendix show the field layout in the 1904 Ordnance Survey 25inch mapping, compared with the 1935 Deed and then with the OS Historic 1950s map indicating the house on the plot adjacent to the field plus the boathouse. In addition, the notation of the track in green, perhaps faded to yellow, sets out the accommodation road from the public highway near the Sloop Inn, Bantham, to the field and plot. The track continued towards Aunemouth, a hamlet that was locally important for pilchard fishing, the track was unfenced and open to the field. This could be the agreement setting out the access arrangements mentioned in relation to the Kingsbridge Rural District Council plus the planning committee.
- 3.6 Public Footpath No.6, Thurlestone was recorded on the Definitive Map and Statement in the 1950s along the whole length of this track from the public highway near the Sloop Inn, leading to the hamlet of Aunemouth and onto public Footpath No.6, Aveton Gifford, looping back to Higher Aunemouth, suggesting it was a well-used and valued route between the two parishes.
- 3.7 In March 2018, the farm tenancy between Mr DA Dayment and the Spooner family came to an end and in August 2019 a new farm tenancy was granted between Dr Spooner and his sister with Bantham Estates.
- 3.8 In July 2019, Dr Spooner and Ms Wymer (sister) registered a Statement under s31(6) of the Highways Act 1980 to state that they have no intention to dedicate any public rights of way across their land. The Declaration was made on 2 August 2019 stating that no public rights of way had been dedicated since the initial statement. This and the fencing, locking of the gates and challenges made to walkers in the field in May 2019 called the routes into question and precipitated the Schedule 14 Application made by Mr Gilbert.
- 3.9 In November 2021, the field subject to this schedule 14 application, was bought by Lady Alvingham. As landowner they or their Land Agent would have had access to full knowledge of this Schedule 14 Application under the Wildlife & Countryside Act 1981, as the county council has a statutory duty to keep a register of all such applications available to the public. This is carried out as a digital layer on the County Councils Environment viewer on its web site, plus hard copies kept at Great Moor House Exeter.
- 3.10 Ordnance Survey maps:
- 1904-06 25-inch Ordnance Survey (OS) mapping, shows the fields before any housing development has taken place. The line of the track which is now Footpath No.6, Thurlestone is clearly visible and delineated from the field by a pecked line. This indicates a change of surface to the field and that the track to the field side is unfenced or not a solid boundary.
  - 1950 OS Historic mapping shows the development of several properties along the track, including the Boathouses, Aunecliffe Cottage and the track is unfenced to the field side, same as 1904-06 mapping.



- 1963 – 1969 Historic mapping shows the property Onnalea, the boathouses and the continuation of the pecked lines against the field.
- 2015 Aerial photography clearly shows the track and the hedge to the field with gaps. This aerial photo also shows two routes across the field meeting above the Boathouse, very similar to the claimed paths.
- 2018 Google Earth imagery supplied by the Applicant, shows the field above Dixons Quay with two routes visible leading from the track (FP6 Thurlestone) along the claimed routes to the cliff above Dixons Quay. This image also shows the incomplete hedge line on the lower side of the track.

## 4 User Evidence

- 4.1 Seventy-five User Evidence Forms were submitted with the Sch.14 Application in July 2019 in connection with the claimed routes and a further five were submitted in the following months, making a total of eighty User Evidence forms from walkers. All have claimed use of the paths on foot, either accessing the paths from public Footpath No.6, Thurlestone or as part of a circular walk. The routes have all been used regularly with 52 walkers stating they have used the routes from points A – B – C and D – B – C, 23 users stating they have used the route point A – B – C and 5 using point D – B – C as shown on plan CCET/PROW/25/07.
- 4.2 Of the 80 forms, 74 of the walkers say they have used the routes for 20 plus years and 4 walkers between 0-19 years. Eleven of the evidence forms as submitted have additional text annotating some parts to provide further information. This suggests that they may have had help in completing the form. An example is L Martin whose evidence states that she has used A – B – C onto the estuary, as indicated by her map, since 1989 about 10 times a year. She says she considers it public as a well-trodden path from Bantham village to the lime kiln and estuary. She had not been given permission and did not mention any notices or gate on the route. Further summaries are set out as below.
- 4.3 C Martin completed a user evidence form in May 2019 and has used the route A – B – C from Bantham to and along the Estuary. They state on their map “ *I have indicated my route down to the Boathouse with arrows. I walk from my house across the field. I walk back too obviously*”. They have used the path since 1975 approximately 30 times a year, they say there have never been any notices that they can recall and only mention a piece of string as an obstruction. They answer “No” in regard to permission to use the path, nor had been stopped or turned back from using the path.
- 4.4 P. McCarthy has used both routes A – B- C -and D – B – C, since 1968 in the school holidays, weekend and evenings. He mentions that as children and as a family they used the route almost every day in the school holidays to access the riverbank and the riverbed. They state that there was an obvious path in the field and a stile at the bottom of the field. They say they have used this route on a regular basis since 1968 and they didn’t have permission nor where they turned back. Mr McCarthy concludes his statement by adding “*I have used this route on a regular basis since 1968*”.

- 4.5 J Rhymes has used the entire route since 1974, 20 times a year walking from Bantham to the river. He said the routes starts from Aunecliffe (cottage) by kissing gate and goes to Dixons Quay. He says the gate was never locked, there was a stile down to the river but no notices. In reply to the Q10.c Do you believe the owner occupier was aware of the public using the path? They said *“yes, path used regularly by locals”*. In addition, Mr Rhymes said the previous owners of the land always encouraged everyone to use the path.
- 4.6 L Gunning completed a user form in June 2019 and indicates the whole route on her map. She says she has used the path for 54 years *“a lot”* walking from Bantham to Dixons Quay and considered it public due to *“historical use”*. She says she did not know the owner but has used the path with her children and hopes to continue to visit Dixons Quay via this way.
- 4.7 L Chilcott has used both paths, whole route, from 1997 – 2017, regularly in summer and occasional in winter walking to the river from Bantham. She considered it to be public due to its use and that there was a proper stile in place. She says the gate was never locked and the only notice said, *“no Bass fishing”* and there were no obstructions until the stile was taken away and everything fenced.
- 4.8 E Simmons has used the route A – B – C from 1964 to 2010, 20-30 times a year reducing to 5-10 times a year. She describes the route starting from just passed Aunecliffe on the footpath, heading northeast to the stile half way across the bottom edge of the field leading down to Dixons Quay field. She said it was previously known as *“Gates field”*. She thought the route was public as so many people have used it for years and to her knowledge, there were no notices. Mrs Simmons said she hadn't had permission to use the path as she thought it was a public footpath and had not been prevented from using the route until the fences were put up. She adds *“As children myself and friends used this route to Dixons Quay to swim in the river, walk & play, we continued with our children and the next generation of children (3 generations) other people use this route to go cockling – dog walking”*.
- 4.9 Mrs Kibbler has used the path across the field from Aunecliffe to Dixons Quay A - B - C from 1963-2019 50 plus times a year. She states that she was walking from the footpath onto the sands and the riverbed for walking and swimming. She thought the path was public because the paths had always been there and used. She had not been given permission or challenged when using the route.
- 4.10 S Williams said she has used the entire route from walking from Higher Aunemouth to the river and Dixons Quay for walks and swimming from 2007 – 2019 between 5 – 15 times a year. She mentions a stile over the hedge to the boat quay and that there has been electric fence in recent years to keep cows in. She mentions that in 2007-2008, the tenant farmer who rented the field gave her permission, but she was not turned back from using the paths and said that she had not been told it was not public. In her additional information she adds; *“I have regularly walked through the field with our children over the las 12 years since I have lived here carefully & considerately, never leaving litter or causing mess. I have never seen a sign or been told not to”*.
- 4.11 A Williams completed a user evidence form in May 2019. He states that he has used the routes every year from 1964 to the present day from anywhere between 5-100 times a year going from Higher Aunemouth to the river and Dixons Quay to fish

and swim. He adds *"I was told by the tenants of the field that it has always been used by locals"*. Mr Williams states that in 1965, the tenant farmer gave him permission. He states *"Eileen Dayment (tenant farmer) took us through as children from 1964/1965 and told us that her family had been using the path since 1948 & told us that it had always been used"*. Mr Williams said *"no"* to any gates or notices on the routes and similarly mentions the electric fencing to keep the cows in the field.

- 4.12 Ms Richards has walked all of the path A – B – C & D – B – C from 1978 - 2019 30 – 40 times a year going from Bantham to the river, mooring and boathouse as part of a circular walk. She says it has always been used by local people without restriction. She says there was a stile between Dixons Quay and the field, no gate, no signs or obstructions and considers that the owners were aware of that the ways were used due to the stile and paths were visible.
- 4.13 M Maguire has used the route A – B – C from 1971 – 2018. He has used it between 1976-1993 40 times a year and then 4-5 times a year to 2018 going from Bantham to Dixons Quay and the foreshore. He thought it was a public path because of common usage over many years. He says there was a stile above Dixons Quay and wasn't turned back or stopped from using the route.
- 4.14 N Weldon says the routes start at the northeast & south east corners of the field above Dixons Quay. On his accompanying plan he has marked the entire route A – B – C & D – B – C and has used the paths from 1971 – 2019 20 times a year to the estuary, Bantham Quay, shop, home and farms. He says the path has run over the same route and has been used by numerous people over many years. He states that he has not had permission to use the paths or ever been turned back or stopped. He mentions that he met a past owner Gill Goddard and the tenant farmer David Dayment on the path but has used the path numerous times throughout his life and continues to do so regularly with his children.
- 4.15 E Lane has completed an evidence form (assisted by G Gilbert in June 2019 as elderly). She says she has walked in the field since the 1940s a 100 plus times a year going cockling with her son on the estuary. She says everybody used the path and it was only diverted when there were cows in the field. She acknowledges there was a stile but hasn't mentioned any signs or obstructions. She says the owners must have been aware of the use as it was obvious. In here additional information Elsie says, *"Always down the estuary at the end of the day in the summer with my son and others"*.
- 4.16 J Pelly has used both paths A – B – C & D – B – C from 1947 – 2019, 20 times a year going from the track down to the Quay and back up as it is the main public route to the estuary. She had never been turned back and said it wasn't necessary to have permission as it was always open. In her additional information she adds; *"This path has been used by numerous people to reach their boats, collect bait or go to river for swimming, or to cross over to the other side (New Quay Cottage) all my life I am 80"*.
- 4.17 V Hodder has used route D - B – C from 1993 – May 2019 at least 52 times per year to Dixons Quay and the river based on 26 years use and has never been stopped or challenged.

- 4.18 Mr & Mrs Richards from Somerset have used path D – B – C to the foreshore from 1978 – 2010 from their holiday caravan to the river 10 -15 times a year. They considered the route to be public as well used, well-trodden and that there was a stile provide to get to the river. Both walkers said the path was well used by locals and visitors to and from the Boathouse and the river. Neither had been stopped or turned back when using the route. Mrs Richards said she had met many local people on the path to the river all of whom respect and appreciate its natural beauty.
- 4.19 C Donald has used both paths since 1977 to 2019, 42 years, twice a week and says the route has historically always been used as a path. She mentions Mr Spooner as the landowner and says the path is “self-evident”.
- 4.20 Mr Gilbert completed a user evidence form in July 2019 saying he has used both paths since 2010, 50 -60 times a year to and from the estuary from Bantham to walk and swim. He said there is a stile and steps above Dixons Quay and a notice on the boathouse, aimed at waterborne users, but the boathouse is not on the route. He was aware at the time the landowners were Dr Spooner, his sister Ms Wymer and Bantham Estates. Mr Gilbert said prior to being stopped from using the route in May 2019 by Dr Spooner, the path was clearly marked and well used. Mr Gilbert says that Mr Weedy and S Wigg were also prevented from using it in May 2019.

NB. To clarify the field access, Mr Gilbert has provided this comment on 6 March 2025; *“The field was completely open to the footpath along the south side before Dr Spooner erected his fencing. However, walkers followed one of the 2 paths through the long grass down to the stile leading to the steps above Dixon's Quay, depending where they were coming from (ie from the village direction or the eastern approach). The Dayments, as Tenant farmers, would erect a temporary electric fence once or twice a year for a few days when they had stock in the field”.*

- 4.21 The common theme from the users is that the paths were all year round and there was one stile above the steps down to Dixons Quay. None of the users mention any locked gates or permanent obstruction until spring 2019 when the route was fenced off, and the stile removed above the steps. The only notice relating to access to be mentioned by a walker was on one of the Boat House doors adjacent to the claimed route in 2007. This was apparently done as the request of Rose Dixon of Bantham Estates. The notice states “Private Quay – No public right of way, Evans Estates accepts no responsibility for injury & loss however caused. BBQs and fires are strictly prohibited”.
- 4.22 Two user evidence forms were received from previous tenant farmers of the field crossed by the claim, Mr J Dayment and Mr D Dayment. Their evidence as former tenants is discussed in section 6. below.

## **5. Additional email representations following informal consultation**

- 5.1 Thurlestone Parish Council: In their letter of the 13 September 2024, the parish council states they support the application to add the footpaths across the land and Dixons Quay to the Avon Estuary in Bantham. The parish council says they confirm that these routes have been used to access Dixons Quay and the Avon Estuary for generations by members of the community and support the submission from the parish council in 2019. They add *“To confirm the importance of Dixons Quay is listed as a non-designated heritage asset in the Thurlestone Neighbourhood Plan, highlighting its importance to the local community”.* The letter continues *“We are aware some members of our Parish have been walking these paths for over 40 years during which time no one has been stopped from doing so by either the fields*

*owners Mr & Mrs Spooner, Evans Estates or Bantham Estate, until Mr & Mrs Spooners son inherited the field from his parents in 2018/2019 and blocked access to both paths overnight". In addition, the parish council states, "Neither previous nor current owners of the estate at Bantham have ever stopped anyone from using the steps or crossing the quay to the Avon Estuary".*

- 5.2 Representations via email: Following the informal consultation 5 August 2024, 21 representations were made via email and not user evidence forms. Thirteen of the representation were from those who had visited the area for holidays from anywhere between 15 – 60 years. One said their friends had use of a boathouse on the quay, so they would have an implied private right to walk through the field to access the quay. The 12 remaining visitors have visited the area up to five times a year with family and have accessed the estuary via the claimed paths for walking, swimming and birdwatching. One said they walked from Bantham to Aveton Gifford.
- 5.3 Six walkers live locally, Aveton Gifford, Bantham and Stoke Gabriel and have used the paths to access the river for 40 – 70 years.
- 5.4 Two of the representations were from relatives of the original boathouses from the 1930s. The Hebard family say their grandparents and parents lived locally and were always aware that the path was used by the public not just boathouse owners. They suggest that the current leaseholders have not opposed the use of the routes by the public.

## **6. Landowner Evidence**

- 6.1 There are 3 landowners affected by this application.
- Lady Alvingham, who owns the field, which is crossed by the claim, and is represented by her Land Agent Mr J Brown of Rural Insight Land & Development based in Melton Mowbray.
  - The Bantham Estates, recently under new ownership, who own the boat- houses and a section of the cliff.
  - The Duchy of Cornwall own the Avon Estuary.
- Two previous tenant farmers have also completed evidence forms giving details of the nature of use of the paths under their tenancies.
- 6.2 Lady Alvingham: A Landowner Evidence Form (Form F) has been submitted by her Land Agent, Mr J Brown. Lady Alvingham purchased the field above Dixons Quay, Bantham in November 2021. The form states that since taking ownership, no one has been seen using the claimed route as fencing has been erected, the gate is always locked, and signage erected. The form says there have always been gates on the route for more than twenty years. As part of the evidence, Mr Brown has submitted a Statutory Declaration from the previous landowner to which he refers in the Form F. Mr Brown makes reference to the offer from the landowner to create a permissive path along the line of the current easement route to the Boathouses as a goodwill solution (as detailed earlier in section 1.3 of this report).
- 6.3 Dr Simon Spooner: Dr Spooner signed a landowner declaration in April 2021 in response to the application made by Mr G Gilbert in July 2019. It is this declaration that Mr Brown, land agent, refers to in the Landowner Evidence Form on behalf of Lady Alvingham.

6.4 The Bantham Estates Ltd: Mr Gilbert submitted a Landowner Evidence Form completed and signed by Ryan Hooper, Estate Manager on 18.7.2019. Mr Hooper states that the path is to Dixons Quay, and they do not believe it to be public. They have been aware of members of the public using it, but have not required people to ask permission, or challenged anyone using the path. They say that a notice has been placed on the Quay saying "*Private Quay – No public right of way, The Evans Estates accepts no responsibility for injury & loss however caused. BBQs and fires are strictly prohibited*". Their accompanying map has an asterisk and arrow pointing to a boathouse saying, "*sign on building*".

6.5 Duchy of Cornwall: In their letter of the 10 September 2024, Tom Stratton Land Steward for the Duchy based at Princetown writes:  
*"Thank you for your letter dated 5th August 2024 regarding the above. I am afraid I cannot print your Landowner Response form to a size that enables me to complete it, so I summarise below, the Duchy of Cornwall's response.*

*1. The Duchy of Cornwall does not own the terrestrial land subject to the Application however we own the foreshore and fundus (riverbed) below Dixon's Quay.*

*2. On receiving your letter, we contacted Bantham Estate to obtain their views regarding the application. The Estate Manager, Manon Fosburgh is relatively new, and she does not have a long term knowledge of the site however she did advise me that the owner of the field has built a new track, starting from the junction with the claimed path blue route on below extract plan), leading down to the Quay and on to the foreshore, in the last few months. Ms Fosburgh also explained that a new stile has been built to give access to what I assume is the right-hand line of one of the paths.*

*3. The Duchy does not have any records showing a public right to or over the foreshore in this location*

*4. We would be interested to know if Devon County is aware of the new track as it would appear, on the basis that this goes to the foreshore, that we will need to follow this up with the landowner.*

*A Title search shows the owner as a Lady Alvingham."*

6.6 Mr D Dayment

A Landowner Evidence form (Form F) from Mr D Dayment was submitted as part of the Schedule 14 Application in July 2019. On his form Mr D Dayment describes the route as from the track to Aunemouth to the Estuary at Dixons Quay and had been in the tenancy of his family from 1946 - 2017. In reply to the Q2. Do you believe this way to be public? Mr Dayment says, "*Public footpath no restrictions*" and has thought this for all his life. In response to Q3. Have you seen, or been aware of, members of the public using this way? He replies "*The path has existed for as long as I can remember and the public has always used it*". Mr Dayment says that he has not required people to ask permission to use the route, nor has he stopped or turned any one back from using the route or told the anyone it was not public. In reply to Q.9 Have there, to your knowledge, ever been on the way any stiles or gates? Mr Dayment has crossed out gates and written "*Stile at N side of the field at top of cliff*" Mr Dayment continues that they only obstructed the way when arable crops were grown and the path was diverted to the side of the field, otherwise they have regarded the path as public and have never been asked by owners to stop the public using it.

Mr D Dayment also completed a User Evidence Form in May 2019. He said he has use the whole route as a farmer until 2017 and knew the landowners to be Mr & Mrs Spooner. Q8. On the evidence form says Were you working for, or were you a tenant of, any owner or occupier of the land crossed by the route at the time when you used it? Mr Dayment states "*Tenant*". Part b of Q8.asks 'Say whether the owner or occupier ever gave you instructions as to the use of the way by the public and, if so, what those instructions were'; Mr Dayment replied "*No*". In the final section Mr Dayment adds "*The path has existed for as long as long as I can remember and the public has always used the path*". Mr Dayment added a signed plan of the paths.

Mr John Dayment submitted a User Evidence form signed and dated 28 May 2019. His form was written on his behalf by Mr G Gilbert, signed & dated 28 May 2019. John Dayment describes the route as from the eastern end of the field down to the stile. He states that the public have always used the route and we as tenant farmers never stopped the public. Mr J Dayment says the paths have run over the same routes except for a couple of year when growing crops. He says there is a stile at the northern side of the field by steps to Dixons Quay, but no gates or notices. He adds "*My family have been tenant farmers from 1946 – 2017 and the public have always used this footpath & we have never been asked by the landowner to stop public use*".

## **7 Rebuttal Evidence**

- 7.1 Mr J Brown submitted declarations on behalf of Nicholas Johnston of Bantham Estates Ltd, dated 13 November 2024 and on behalf of his client, Lady Alvingham, a substantial declaration made by the former owner of the field, Dr Simon Spooner, 30 April 2021. Lady Alvingham purchased the field and became the freehold owner in November 2021, after the date of the schedule 14 application, and will have to rely on the evidence provided by Dr Simon Spooner on behalf of himself and his sister as the previous owners.
- 7.2 In his declaration, Dr Spooner states that his parents purchased the field and a property above the field, called Onnalea, in 1975. He says no public rights of way were recorded in the field at the time it was as purchased. Dr Spooner says the house was a holiday home and to the best of his recollection his family would be there no more than a couple of weeks during each school holiday, approximately 6 - 8 weeks a year.
- 7.3 Following the purchase of the land, Dr Spooner's parents leased the grazing rights to W J Dayment. Dr Spooner adds that during the ownership of Onnalea, his father asked anyone he witnessed trespassing on the land to leave. He also says that between 1975 -1979, the land was ploughed, planted with rape seed and grassed for grazing sheep and cattle consistent with the grazing licence with WJ Dayment. In 1979, Dr Spooner's parents sold the house, Onnalea, but retained the field.
- 7.4 In May 1985 Mr Spooner senior wrote to Mr R.J Dayment at Lower Aunemouth Farm, (taking this to be the same person as WJ) thanking him for the payment of the Grazing Agreement. In addition Mr spooner says "*I would refer you to our telephone conversation last week and I do share your views about trespass. This is a matter for me to endeavour to resolve. You did suggest that possibly the field could be ploughed but upon taking advice I am informed that this could convert the*

*Grazing Agreement into an Agricultural lease, which is not a situation I would wish to happen. I am going through my Deeds but so far cannot find any reference to plans to a public right of way. I thought there was one which ran adjacent to the boundary leading to the estuary and then along the front of the estuary, but so far I have not found this information". The letter continues..." I propose writing to Messrs. Michelmores Hughes who, as you know, manage the Evans Estates to see whether they have any knowledge. It is possible that the best thing I can do is to arrange for a suitable board to be erected but I shall come back to you in due course on this subject."*

- 7.5 In March 1986, Mr & Mrs Spooner and Mr R.J. Dayment enter into an Agricultural Agreement for the field. Dr Spooner highlights within this agreement page 11 section 18, *"to do his best to prevent trespass over any part of the Holding and to give notice to the landlord..."* This suggests that trespass is a topic within the Agreement.
- 7.6 In a letter of the 28 April 1986, Mr Spooner writes to Mr M.A.Ellis of Simmons & Simmons Solicitors, London. Mr Spooner writes; *"I have after much consideration, granted Mr Dayment the farmer, an Agreement for the Paddock. I was required to do this since both Mr Dayment and I were having continued problems of trespass, not with standing that that I arranged for a suitable sign to the effect " Private Land No Right of Way Trespassers will be prosecuted" to be fairly installed at the entrance. The sign, within a few days, had been torn down and removed"*.
- 7.7 Dr Spooner refers to a letter dated 15 October 1986 written by his father to W. J Dayment Lower Aunemouth Farm regarding the paddock. Mr Spooner writes *"so far as the Paddock is concerned, you appear to have limited the major trespass diagonally across the field and in the fulness of time, let us hope that the same applies to the temporary footpath around the sides. A firm, but gentle, resolve has many advantages especially considering the unfortunate scenario when the previous notice was removed in what I can only describe as an unpleasant manner"*.
- 7.8 Within his submission Dr Spooner has added copies of letters between his father and South Hams District Councils, Totnes, Technical Services department. Mr Spooner wrote on 12 June 1985 addressed to K Brown Esq, Technical Services South Hams District Council *"I write to advise you that I own the freehold land verged red on the enclosed extract from a map. (from 1935 Deed) this map was prepared some years ago and you will notice that a strip 30 ft wide from the top of the cliff has been reserved for public use under Regional Town Planning Agreement. I should be obliged if you would kindly inform me whether there are any recorded public rights of way across my property to the best of your knowledge. Insofar as the 30ft strip is concerned, I would welcome amplification of this expression"*.
- 7.9 On 30th September 1985, Mr V J Payne of South Hams Technical Services replied to Mr Spooner, titled Land At Bantham and says *"I refer to your letter of the 12 June 1985, which has taken some time to investigate. The Councils Planning Officer has replied to me to the effect that planning records and Land Charges records show no information regarding the strip of land reserved for public use nor is it known what the term " A Regional Planning Agreement" refers to. The Definitive Map of public footpaths shows no public footpath existing over the land. I am unable to give you*



*any more information on this matter, but it should not be overlooked that the reference might have some legal significance, and you should seek the guidance of a Solicitor. This information is provided after appropriate enquiries in the belief that it is in accordance with information at present available to the Councils Officers, but on the distinct understanding that neither the Council, or its Officers, are in any way legally responsible therefore”.*

- 7.10 On 2 August 2000, Mr Spooner receives a reply to his letter of 28 July 2000 , not in bundle, regarding rights of way at land at Bantham. The Officer Mr P Taper writes *”Please find attached a copy of Mr Pynes response dated 30 September (1985) relating to both points mentioned on your original letter. I have reinspected the Definitive Map and made enquiries in our Land Charges Section and to the best of our knowledge and understanding the situation remains the unaltered”.*
- 7.11 Dr Spooner has included correspondence from October 2004 - December 2004 relating to the access and lease arrangements to the Boathouses on Dixons Quay. These are private access agreements.
- 7.12 In paragraph 15. of Dr Spooner’s Declaration he states that his father’s correspondence with the Solicitors Michelmore Hughes confirming the discussions and actions that were taken plus the terms of the farm tenancies with the tenant farmer Mr W J Dayment, contradict the statements made by John and David Dayment in support of Mr Gilberts application. Dr Spooner states *“They also indicate that my father had no intention of dedicating the claimed route as a public footpath and that members of the public will have been aware during the farmers tenancy that they were not exercising a public right”.*
- 7.13 Dr Spooner challenges the user evidence; he states *“This may have been a route used on occasions by trespassers but that is very different from being a public route. In fact the route of the claimed footpath leads across land in private ownership (being the land) to other land belonging to a third party (being the quay and boathouse). None of this land is public land or land open to the public”.* He mentions Alex and Sian Williams had been given permission to use the path by Eileen Dayment, tenant farmer, Mr Weedy had permission in 1957 from a former owner of the boathouses, plus was challenged by him in April 2019 along with S Wigg. That users Adam, Lane, C & L Martin and F Robertson all said the field was ploughed, cropped or stocked and thus obstructed on occasions. Dr Spooner adds that one user H Hunt said the field was owned by an old lady who lived at the house above called Onnalea who walked around the area and loved the locals, never objected to them using the path. Dr Spooner *“This is total fabrication as my mother never walked around the area (due to ill health at the time) and never gave permission or allowed people to trespass across our field.”*
- 7.14 In summing up his rebuttal evidence Dr Spooner states; *“further, none of those claiming a good knowledge of the land fully acknowledge that the land is in private ownership as is the cliff face and the boathouse and quay and that the landowners had taken many steps including asking well known local farmers to prevent trespass. It is inconceivable that local people would be unaware of these matters and would think they were exercising a public right of way. It is in fact more likely that the facts pertaining to the land as I set out above would have been well known to local people and they would have known that any use they made of the land was*

*without consent and a matter of trespass*". He adds that no user has mentioned a locked gate or signage put up by his father.

## **8. Discussion**

- 8.1 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 relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged.
- 8.2 Whilst the Definitive Map and Statement are conclusive evidence of the legal rights contained within them, they are not exclusive to rights that lay unrecorded.
- 8.3 Matters of suitability and desirability are not factors that can be taken into consideration under the tests to be applied by Highways Act 1980 s31(1). It must be demonstrated that the users have passed and repassed along the routes, openly and freely, without stealth or secrecy for 20 years at least to demonstrate that public rights have been acquired over the routes as of right. Actions of landowners to negate any public right from being acquired must be overt and obvious, bringing the fact to the attention of the public.
- 8.4 The history of the area, boathouses and the field are longstanding and well documented. The Deed of 1935 is likely to relate to access issues for the plot of land obviously sold for building purposes and secure an easement to the river. However, what seems likely to have occurred and has been demonstrated by the earliest user evidence since 1946 is that walkers have gone diagonally across the field or taken a shorter diagonal route from the northern corner of the field to the foreshore by the side of the boathouses. The boathouses appear to be a point of interest, however most users state that they walk to and from Bantham along the estuary, across the fields and Public Footpath No.6, Thurlestone as part of a circular walk. Several users have also said they went to the estuary to walk dogs, swim, collect cockles and bait. A lot of the user evidence is multi-generational. The route set out in the Deed of 1935 has not been used or accepted by the public.
- 8.5 Mr Spooner sold the house Onnalea in 1979 but retained the field. The family lived in the south east of England and therefore didn't witness walkers using the field everyday as some of the user evidence suggests. The field was tenanted to local farmers under an Agricultural tenancy from 1975 - 2017. In 2018, the land was gifted to Dr Spooner and his sister by their mother.
- 8.6 Dr Spooner challenged walkers in April/May 2019 and then he and his sister fenced the entire field with post and wire fencing. Prior to this, the hedge line was incomplete and there was a gap at point D. As mentioned by several users, tenant farmers periodically placed electric wire in the field to control stock. This appears not to have been a problem for either the walkers or the tenant farmers.
- 8.7 With a firm calling into question of the public ability and right to walk through the field in May 2019, a key consideration is whether the user evidence for a 20 year

period (i.e., between 1999 – 2019) is sufficient to establish a public access, as of right, over the routes to the estuary. Eighty User Evidence Forms and twenty one emails have been submitted in relation to this application.

- 8.8 If the User Evidence is taken as a twenty year period from 1999 – 2019, the earlier correspondence from the mid 1980s shows that public use was noticed and acknowledged, even if it wasn't considered desirable. The reference to placing of a notice along the route falls outside of the period under consideration and the actions or notices, were seemingly not kept up by the landowner (who didn't live locally), nor the tenant farmers. However, Mr Spooner's letter to South Hams District Council in July 2000 which references an earlier letter of September 1985, references a request to check the Definitive Map and Statement for public rights of way across his field (for which none were recorded).
- 8.9 In correspondence between Mr Spooner and his solicitor in October 2004, the solicitor talks about the renewal of the leases to the boathouses at Dixons Quay. As there are no public rights of way recorded across the field, the solicitor sets out that access for occupiers to the boathouses is a matter for the landowners. This would be considered accurate at the time. However (and as indicated at 8.2 above), whilst the Definitive Map and Statement are conclusive evidence to the legal rights shown by them, this is not exclusive to any public rights that might lay unrecorded.
- 8.10 The notice placed on the boathouse door at Dixons Quay by the Bantham Estates Ltd in 2007, is only visible if you travel up the estuary to the area, not if approached from Footpath No. 6, Thurlestone (via the field, stile and steps and head back towards Bantham). The notice suggests that there are no public rights along the concrete platform in front of the boathouses and that mooring boats to the quay, BBQs and fires were strictly prohibited. This notice is not considered as a negation of the public right to access the steps, stile and field beyond.
- 8.11 Eighty User Evidence Forms have been submitted in support of this application, along with twenty - one submissions by email. Three of the email submissions had permission or were connected to use of the boathouses and therefore would have an implied right of access. The other eighteen email submissions suggest use of the paths for over 40 years as visitors and six as local residents. None of them have completed users evidence forms or submitted a map indicating which paths they used, so their evidence is noted as evidence of reputation of the paths and their use.
- 8.12 Of the eighty evidence forms, 11 had additional annotations marked in a different handwriting. Whilst the user evidence is taken at face value, this annotation potentially detracts from the specific information being given, and so these have been discounted in making the recommendation for this report. Evidence from F Weedy, A & S Williams, Casper Dunstan includes an element of permission given to their use of the routes, plus J Dayment and D Dayment were the tenant farmers.
- 8.13 The remaining 63 evidence forms give evidence of use of the routes over the field to access the area known as Dixons Quay, to the estuary, Bantham and neighbouring Aveton Gifford, and in excess of twenty years, with some use going back over 40 years. Some comments about the owners being aware that the route was being used because they lived there are possibly inaccurate because the full

facts of the ownership and occupancy of the house 'Onnalea' were not known. The user evidence does mention crops and livestock in the field but this was not taken as a deliberate obstruction, and they have continued or used the edge of the field to access the river. Ploughing, cropping and grazing livestock in the field do not in themselves constitute obstructions to the path, nor are they actions to denote that paths are not to be considered public. The electric fencing was put around the field to keep stock in as there was no hedge in several places on the edge of the field next to Fp6, Thurlestone. The walked lines/tracks as shown on aerial photography and Google Earth 2018 suggest that in the latter years up to 2019, the paths were used very frequently. The user evidence suggests that the walkers went through the fields from as little as 3 times a year to every week. There are forms from visitors saying they use the path for accessing the river for over 32 years, 15 times a year.

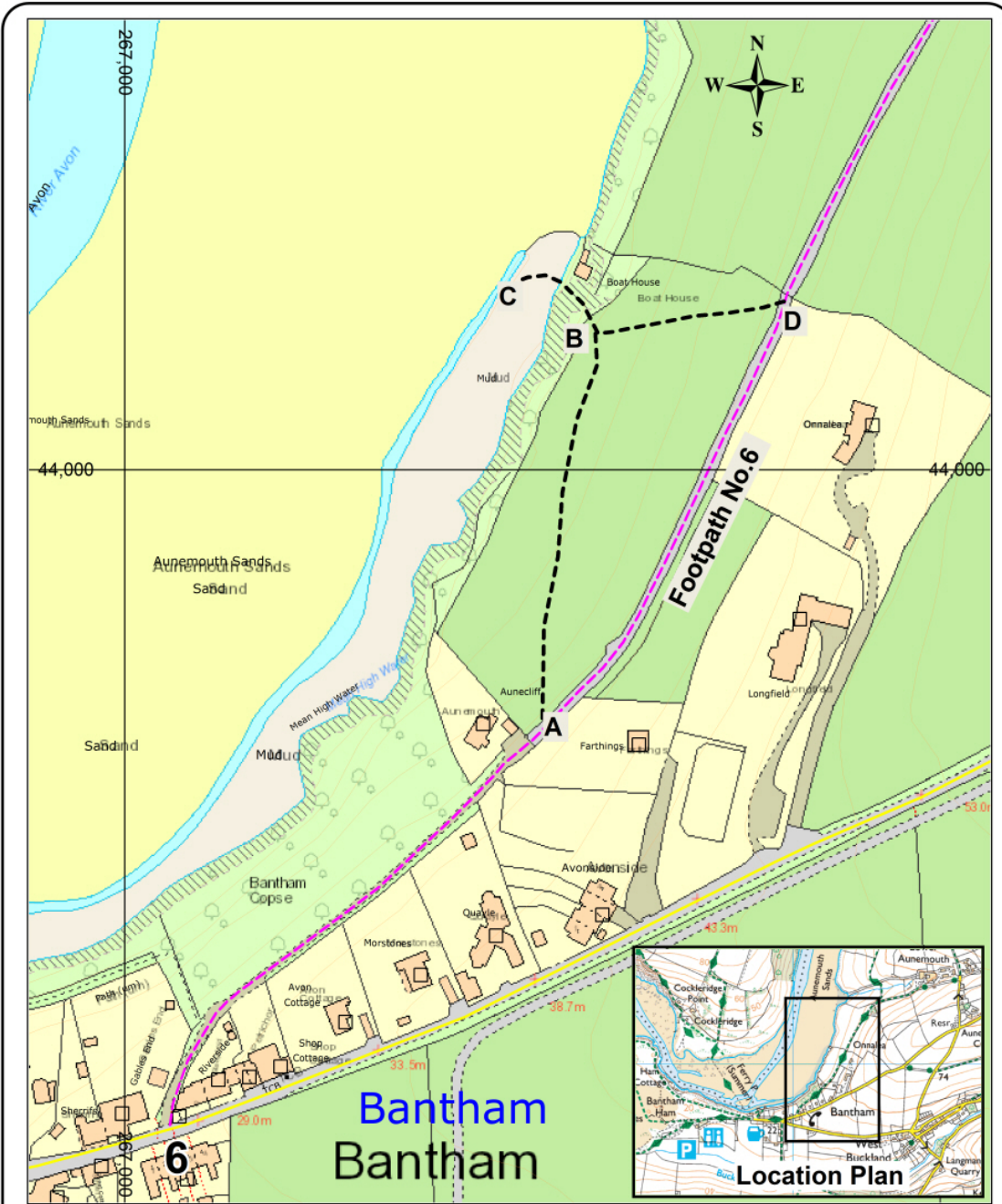
- 8.14 With the exception of the notice erected in 2007 on the boathouse by Bantham Estates Ltd and the one mentioning no bass fishing, no one has mentioned any notices of any kind. The tenant farmers do not seem to have carried out actions to dissuade walkers from using the paths through the field - either by use of notices, or verbally (over a period in excess of 40 years). The exception seems to be Alex & Siam Williams who were given permission by Mrs E Dayment. Alex Williams states he was told by the tenant farmers that the field had always been used by locals. The approach adopted by the tenant farmers appears at odds with the evidence submitted by Dr Spooner in his Declaration. The landowner could have potentially been more insistent that access was restricted.
- 8.15 It is Dr Spooner's contention that each user, if not given permission, must have been trespassing over the land and therefore cannot acquire a public right of way as of right, over private land. Trespass is a civil action against the landowner, not a criminal offence and individuals can only be prosecuted if criminal damage can be proven against them by the landowner.
- 8.16 Considerable user evidence as submitted shows regular, consistent and apparent uninterrupted use of the routes shown on plan CCET/PROW/25/07, sections A – B - C and D – B – C for the twenty year period from 1999 to 2019 and this use is considered to be adequate to satisfy the requirements of section 31 of the Highways Act 1980. The Bantham Estate and the Duchy of Cornwall have not offered significantly relevant information at the time of the route being called into question in May 2019.
- 8.17 The paths have been walked for pleasure with many referring to the estuary as a point of interest and part of circular walks to Bantham and further. The paths appear to have been popular over multi generations with families spending time swimming, cockling and using the routes openly and freely all year round. Most refer to the paths as being well worn and clearly defined and give long and/or continuous usage as their main reason for believing the paths to be public. Most suggest that the landowner/tenants were aware of public use.

## **9. Conclusion**

- 9.1 Use appears to be 'as of right', that is without force, secrecy or permission. The Highways Act 1980 states that the route has to have been enjoyed by the public as of right and without interruption for a full period of twenty years to be

recorded as a public right of way. It is acknowledged that there are some inconsistencies between the user and landowner evidence, however with sixty three user evidence forms it is reasonable to be alleged on the balance of probabilities, that public rights have been acquired over the routes show in the plan CCET/PROW/25/07.

- 9.2 It is therefore recommended that the application is determined in favour of making a Modification Order to amend the Definitive Map and Statement by adding public footpaths along the routes A – B – C and D – B – C as shown on the proposal map CCET/PROW/25/07, and if there are no objections to the Order, or if such objections are subsequently withdrawn, that it be confirmed.



map ref: SX 6744

Based on Ordnance Survey mapping with the permission of the Controller of His Majesty's Stationery Office © Crown copyright  
 Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No.

**Devon County Council  
 Parish of Thurlestone  
 Schedule 14 Application - Dixon's Field**

drawing no. **CCET/PROW/25/07**  
 date **February 2025**  
 scale **1:2,000**  
 drawn by **CLG**

**Notation**

Application A - B - C and D - B - C

Existing public footpath -----

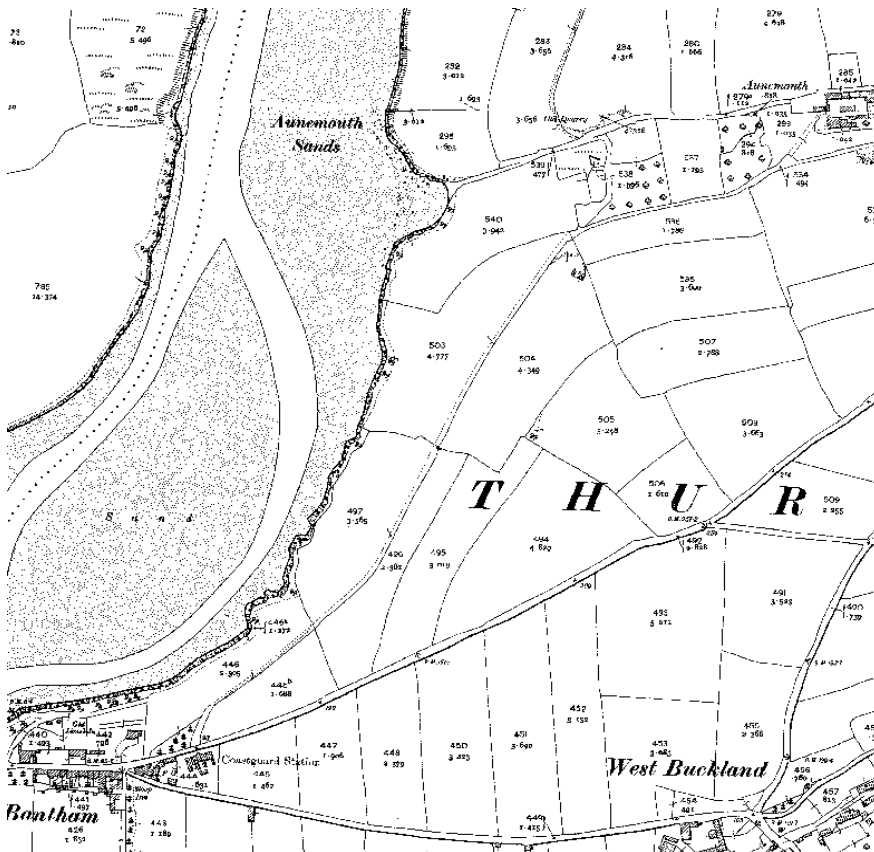
**Meg Booth**  
 Director of Climate Change,  
 Environment & Transport



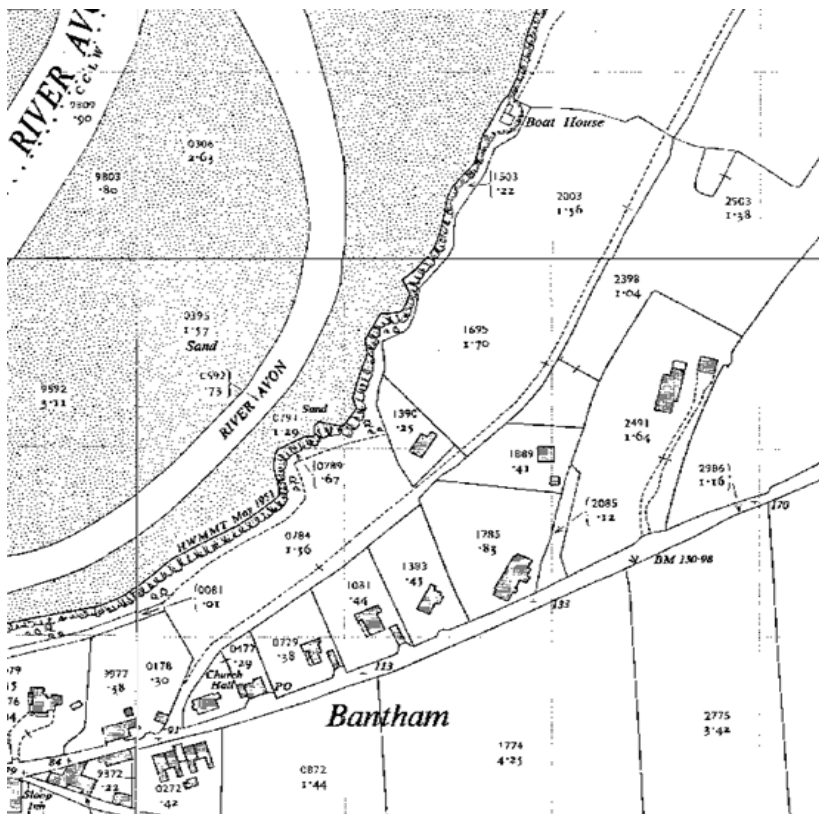




Google Earth image, 2018, supplied as part of Mr Gilbert's application



Extract from OS 2<sup>nd</sup> Edition 25" 1904 map showing Bantham, the track through the fields to Aunemouth. Dixons Field os 497



Extract of OS Historic 1950s map showing Dixons Field now identified as parcel 2003, Boat house, and the plot removed from the original field as shown in 1935 Deed for the field, making provision for development...perhaps Aunemouth Cottage. The dashed line suggests the track is open and unfenced next to the field at this time.





# This Conveyance



is made the fourth day of October One thousand nine hundred and thirty-five.

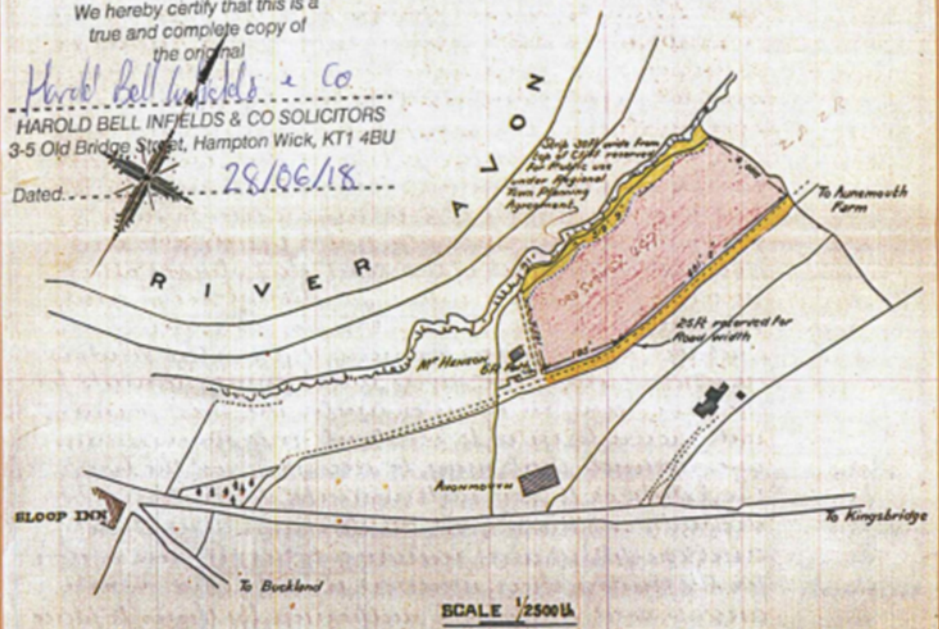
Between Evans Estates Limited whose registered office is situate at 57 Mount Stuart Square in the city of Cardiff (hereinafter called 'the company') of the one part and Walter Rougier Bramwell Esq. John Gates of Springham Crantley Road Windsford in the county of Gloucestershire (hereinafter called 'the Purchaser') of the other part

Whereas the company being seized in fee simple

We hereby certify that this is a true and complete copy of the original

Harold Bell Infields & Co.  
HAROLD BELL INFIELDS & CO SOLICITORS  
3-5 Old Bridge Street, Hampton Wick, KT1 4BU

Dated: 28/06/18



in possession free from incumbrances of the said hereditaments hereinafter described has agreed to sell the said hereditaments to the purchaser for a like estate free from incumbrances for the sum of One thousand six hundred and seventy six pounds five shillings

Now this Deed witnessed:-

That in consideration of the sum of One thousand



Extract plan from the Sale Deed between Evans Estates Ltd (Vendor) and Walter R Bramwell Gates (Purchaser) October 1935