



## Order Decision

Inquiry opened on 11 October 2018

Site visit made on 11 October 2018

**by Susan Doran BA Hons MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 18 January 2019**

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### **Order Ref: ROW/3191682**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Devon County Council (Bridleway No.6, Ugborough) Definitive Map Modification Order 2016.
- The Order is dated 23 August 2016 and proposes to modify the Definitive Map and Statement for the area by adding to it a public bridleway as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding at the commencement of the inquiry.

### **Summary of Decision: The Order is confirmed**

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#### **Procedural Matters**

1. This case concerns the addition of a public bridleway following a track between the county road at Filham House (point A on the Order plan) and the county road (B3211) at Wadland Lodge (point D), passing through Filham Park which is owned and managed by Ivybridge Town Council ("the Town Council").
2. I made an unaccompanied inspection of the Order route on the afternoon of 10 October, and a further visit accompanied by representatives of Devon County Council ("the Council") and the Town Council following the close of the Inquiry.
3. At the inquiry I accepted late evidence received by the Council. In all cases I have attached greater weight to the evidence that has had the benefit of being tested through the Inquiry process. However, I do not agree with the Objector that no weight should be given to the evidence that has not been tested.
4. An application for costs was made by the Town Council, against the Council, and this is the subject of a separate decision.

#### **The Main Issues**

5. The Order has been made further to an event specified in Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 ("the 1981 Act"), which requires me to consider whether the evidence discovered by the Council (when considered with all other relevant evidence available) is sufficient to show, on the balance of probabilities, that a bridleway which is not shown in the Definitive Map and Statement subsists, and that the Map and Statement requires modification.
6. The evidence adduced is both documentary and of use by the public. In this case, the Council relies on an implied dedication of public rights under common law. This requires me to consider whether the evidence as a whole shows that the owners of the land over which the Order route passes have dedicated it as

a bridleway to the public. There is no evidence of express dedication in this case. An implication of dedication at common law may be shown if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. Such acceptance is usually shown through use of the route by the public.

## **Reasons**

### ***Documentary evidence***

7. Ordnance Survey ("OS") mapping, aerial photographs, documents relating to Filham House, conveyances and land registry information were submitted. The OS maps provide evidence of the longstanding physical existence of a track along the alignment of the Order route, though not of its status. The same is true of the aerial photographs which show the track. A 1957 conveyance concerning Filham Estate refers to a right to pass over certain 'roads' identifying one as '192'. A plan identifies this as part of the Order route between A and B. Arguably there would have been no need to grant a private right if a public right already existed. However, such documents concerned private rather than public matters, and this is not necessarily unusual or indicative that no public right of way existed or could exist. It does suggest the then landowner had not expressly dedicated a public right of way.

### ***User evidence***

8. The parties agreed that the relevant user evidence pre-dates 1990 when the Town Council had acquired the land and bye-laws were established.
9. Thirty user evidence forms ("UEFs") were submitted claiming use of the Order route between 1946 and 1990 as part of a circular or longer ride in the area. I heard first-hand evidence from 10 users. Their claimed use included periods before and after the installation of cattle grids at B and C in around 1973, and varied in frequency. Use was described from 1950-1965, 2-3 times a week after school and at weekends; from 1953, several times a week, then less often in later years; from the 1960s, at weekends, later in school holidays, then less often in subsequent years, with a gap in use in the 1970s; from 1966 to 1974, monthly at weekends and sometimes during school holidays; from around 1968 exercising horses from a local riding school as a through route occasionally; from 1975 to the late 1980s on summer evenings and winter weekends; from 1985 to 1991 at least twice a month; from 1988, frequency depending on the time of year; from 1989 at weekends during good weather, in summer and after school; and from 1990 weekly and more often in the summer.
10. Users recalled gates at all or some of the locations A, B, C and D which were closed, or open, but none were ever locked. The gates were closed when stock were in the field. The gates at B and C were described as having a 'horse latch' or similar. Users had never had to seek access through the gate at D from the occupants of Wadland Lodge; and some recalled the gate here was mostly open, and in early years in poor condition.
11. Witnesses had not sought or been given permission to use the route, and had not been challenged in their use of it. Some saw other users on foot and on horseback. Some rode with other people, some rode alone. However, I did hear of use to exercise horses around the field between B and C which I have discounted as this does not represent use of the Order route itself.

12. I note some users gave more detailed or slightly different evidence in person compared to their responses in the UEFs. For example, few of the UEFs noted the presence of gates. Whilst that may indicate a shortcoming in the users' written evidence, the fact they were not locked or difficult to negotiate may explain why gates were not noted. Some people interpreted the questions in the UEFs differently, but evidence was clarified when questions were put to the witnesses face to face. It is usually the case that specific and identifiable events are more likely to be accurately recalled than general recollections. The evidence as a whole needs to be weighed in the balance.
13. I do not share the Town Council's view that the use claimed does not amount to use by the public at large. I am satisfied that there has been consistent and regular use of the Order route over many years by a number of individuals who can reasonably be considered to be the public, rather than a limited group of individuals or members of the same family for example. Use had been open and unchallenged, uninterrupted and without express permission sought or granted over the period leading up to 1990.

### ***Landowner evidence***

14. The landowner was said to have been very strict about access due to the security of his cattle which were subject to strict controls. It is evident that the land was grazed by stock, initially cattle, and later sheep mostly during the spring and summer months. Whilst some users did not recall encountering livestock several clearly described the type of cattle they had come across, mostly bullocks, and which had not prevented their use of the Order route.
15. Cattle grids had been installed at B and C in the early 1970s, said to make it easier for farm vehicles to access the land. Alongside them gates were installed which it is claimed were locked, contrary to the evidence of the users. Around the same time the track was surfaced. The son of a former landowner indicated in writing that the gates were "horse friendly" as his father was a horse lover. This supports the recollections of users as regards the gates they had encountered and, in my view also supports the claims of users that the gates were in fact unlocked. Rather than being incompatible with, or an impediment to, use by horse riders, the presence of accessible gates beside the cattle grids appears to have facilitated use by the public even when the land was grazed.
16. I also heard that the gate at D was locked in the early 1950s and its use controlled by the occupiers of Wadland Lodge. This contrasted to the recollections of users that the gate was open and for a period derelict when the Lodge was unoccupied. In addition, a witness said that the gates had been kept locked in the late 1960s to mid-1970s. However, they were not using the Order route themselves, nor was it visible from their location to know whether or not the gates were in fact locked. On balance I prefer the evidence of the users that the Order route was not obstructed by locked gates when they used it.
17. The Town Council interpreted the actions of the previous landowner as granting permission for use by horse riders, rather than tolerated use or dedication of a public right of way. The former landowner's son indicated his father had no objection to its use, provided people shut the gates, as the fields were stocked. His son went on to state that as a 'horse lover'<sup>1</sup> he would not have wanted any restriction on use by horse riders. I agree with the Council that it is

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<sup>1</sup> And member of the Hunt, although such use would not qualify as use by the public

commonplace to ask people to close gates, and here it was made clear that the reason was to prevent the stock from straying. Rather than exercising control or granting permission, I consider the landowner was acknowledging use.

18. Notices on gates at A and D in the early 1950s and late 1960s to mid-1970s stated 'Private'. None of the users recalled them. However, unless further qualified, the term on its own is unlikely to indicate the landowner did not intend the way be used by the public. None of the witnesses recalled any other notices that indicated the public, were not allowed to go through.
19. Witnesses for the Town Council had seen little use of the Order route. I do not doubt these recollections which relate to the early part of the period of claimed use. However, they were not present on the land regularly; for example one played and camped in the woods away from the Order route. I agree with the Council that the evidence is not persuasive that use was private or permissive as claimed.
20. On balance I find the evidence does not support the Town Council's contention that the actions of the former landowner(s) were such that they did not intend to dedicate the Order route as a public right of way.

### **Summary**

21. The documentary evidence is inconclusive, but demonstrates the physical existence and consistent alignment of the Order route. User evidence is consistent with regular and open use of the way over many years with no evidence the landowner stopped or prevented use by the public: a previous owner had full knowledge of such use. Use was neither permissive nor interrupted: the installation of gates beside the cattle grids neither prevented nor impeded use. There is no evidence that the landowner had no capacity to dedicate. On balance I conclude that there is evidence from which an inference of dedication by the landowner may be inferred and that the public has accepted that dedication as evidenced by their continued use of the way.

### **Other matters**

22. The Order gives a variable width of between 2.5 and 5.5 metres on the basis the public have acquired rights over the full width of the track including at B and C, the gates and cattle grids. The Town Council considered it should record only the width of the gates at these points. I agree with the Council that the public enjoyed the track width prior to the cattle grids, and the width alongside after their installation. Accordingly I decline to modify the Order as suggested.

### **Conclusions**

23. Having regard to these and all other matters raised both at the inquiry and in written representations, I conclude that the Order should be confirmed.

### **Formal Decision**

24. I confirm the Order.

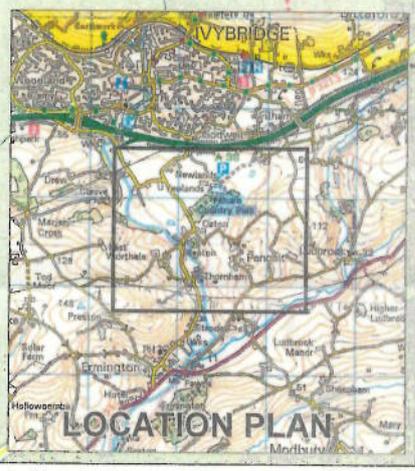
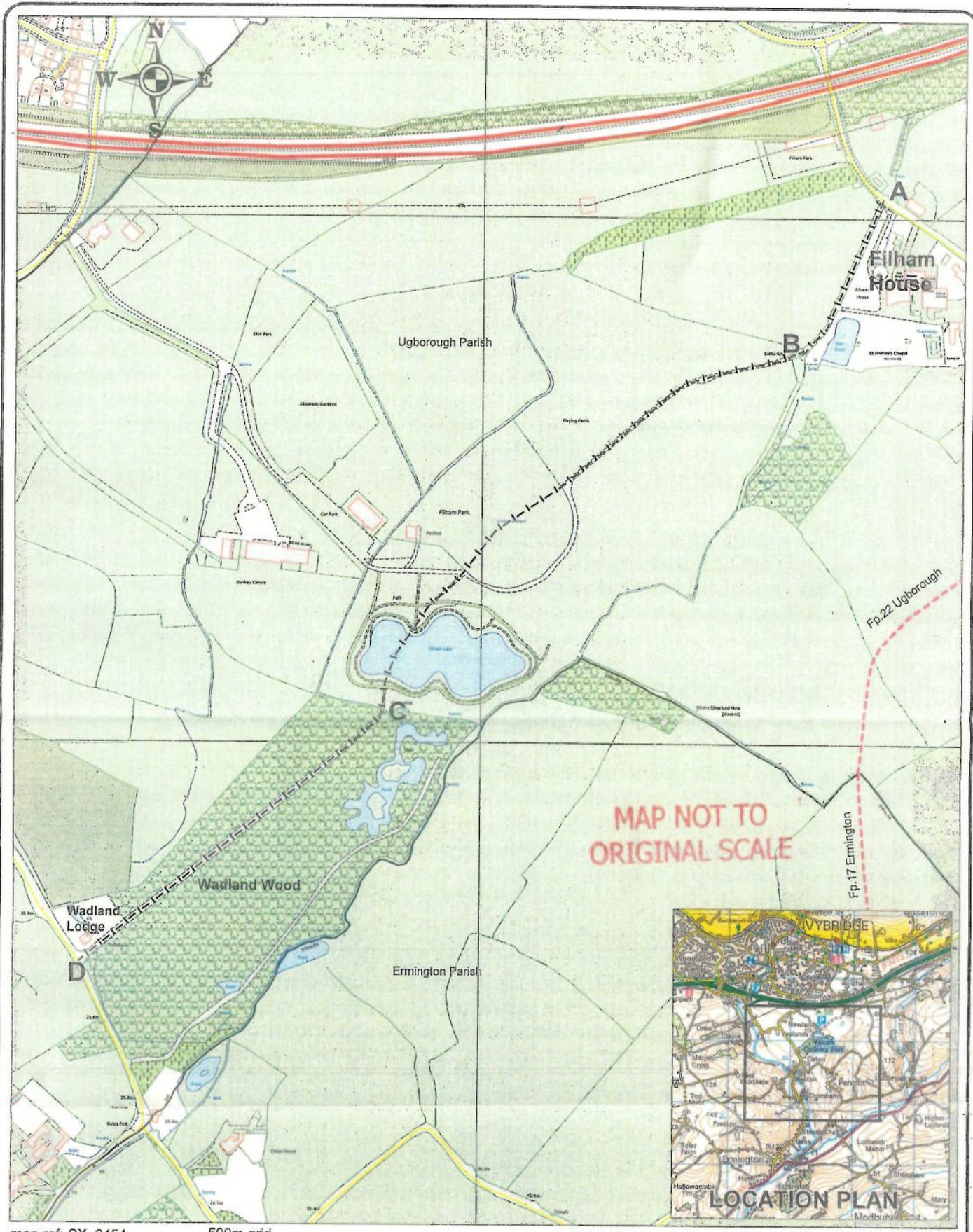
*S Doran*

**Inspector**



## **DOCUMENTS**

1. Letter from Mrs I Trippas dated 8 October 2018, submitted by Devon County Council
2. Email from Mr A Hart-Davis dated 30 September 2018, submitted by Devon County Council
3. User evidence forms of Mrs E Trainer and Mrs S Grose, submitted by Devon County Council
4. Closing submissions on behalf of Devon County Council
5. Closing submissions on behalf of Ivybridge Town Council
6. Devon County Council's submissions in response to the costs application



map ref: SX 6454 500m grid

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**Devon County Council  
Definitive Map Modification Order 2016  
Bridleway No.6, Ugborough**

drawing number HCW/PROW/16/14  
date July 2016  
scale 1 : 3,500 (at A3 only)  
drawn by ES

**Notation**

Bridleway No.6, Ugborough **A - B - C - D** - - - - - 1090m approx  
Existing public footpaths - - - - -

**David Whitton**  
Head of Highways, Capital Development & Waste



*Handwritten initials*