

## Order Decision

Hearing held on 13 July 2016

Site visit made on 12 July 2016

**by Helen Slade MA FIPROW**

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

**Decision date: 8 August 2016**

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### **Order Ref: FPS/N1160/7/5**

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the City of Plymouth (Footpath No 12, Plymstock Radford) Definitive Map Modification Order 2014.
- The Order is dated 5 December 2014 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding at the commencement of the hearing.

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

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### **Application for costs**

1. At the Hearing an application for costs was made by Plymouth City Council (PCC) against Mr Paddy Paddison. This application will be the subject of a separate Decision.

### **Procedural Matters**

2. I made an unaccompanied visit to the site the afternoon before the Hearing when I was able to see the area which is the subject of the Order and to walk some parts of the path concerned. However, much of the area is now either overgrown through lack of use, or impossible to access because it is fenced off. I was nevertheless able to view the inaccessible areas from adjacent land.
3. At the opening of the Hearing I was advised that the sole objector, Mr Paddison, had withdrawn his objection the previous day by email. Mr Paddison did not attend the Hearing, but several of the supporters of the Order did arrive. I therefore held a short Hearing to ensure that no other matters required my attention, during which PCC made a costs application.
4. I did not carry out any further visits to the site as I did not consider it necessary to do so.

### **The Main Issues**

5. The Order was made in consequence of an event specified in Section 53(3)(3)(b) of the 1981 Act, which provides that an Order should be made to modify the Definitive Map and Statement where evidence has been discovered which shows that, when considered with all other relevant evidence available, a period of time has expired during which the routes in question have been
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enjoyed by the public sufficient to raise the presumption of dedication as a public path. The test to be applied is the balance of probability.

6. With respect to evidence of the existence of a highway, the statutory test is set out in Section 31 of the Highways Act 1980 ('1980 Act'), which states that where a way, which is of a character capable of giving rise to a presumption of dedication at common law, has been enjoyed by the public as of right and without interruption for a full period of 20 years, that 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 period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, either by a notice or otherwise.
7. I have had regard to the guidance provided by the Department for Environment, Food and Rural Affairs and to other relevant legal judgements.
8. I was not asked to examine the matter at common law and I have not needed to do so.

## **Reasons**

### ***The use of the route***

9. The Order route consists of a path running roughly north to south between Hooe Road and Westcombe Crescent, with two links running generally east to link with an existing public footpath (115/7/6). The application, made originally in 2007 by Ms Karen Eynon, related to part of the Order route. In determining the application, PCC extended the north/south route along an access track to Hooe Road, and added an additional east/west link. In the view of PCC the evidence of use supported the addition of these two sections of the route. Due to the withdrawal of Mr Paddison's objection, I have no information to suggest that any of the evidence of use is contested.
10. I am satisfied that the date on which the use of the principal route (A-B-C-D) was brought into question is 2007, when fencing was initially erected on the land following its purchase by a potential developer. Although use of much of the route continued to be possible, due to the failure of the planning application, it is clear that the Ms Eynon's application was prompted by the potential for development, notwithstanding that the erection of additional fencing in 2013 prompted further evidence of use to be submitted.
11. I am also satisfied that the evidence supports ample public use of the Order route during a 20 year period dating back from 2007. There is no evidence of any interruption to use during that period, and in fact the evidence indicates that usage was facilitated by maintenance of the area carried out by PCC itself. This maintenance appears to have resulted in the Order routes being well defined during that period, although they are not so clear now due to the prevention of their use which has occurred since 2013.
12. The use of the routes made by the public has clearly been 'as of right': there is no evidence of user by force, by stealth or of the existence of any permission.
13. It follows that the evidence supports the deemed dedication as a public footpath of the principal route, and the two spurs, unless there is any evidence of a lack of intention to dedicate a highway.

### **Actions of the landowner**

14. Only a landowner can dedicate a highway across their land. As a result, only a landowner is in a position to demonstrate a lack of intention to dedicate, either directly or by some clear authority.
15. During the period of 20 years in question, much of the land appears to have been owned by the developer of the surrounding Reddicliff housing estate. At the Hearing Ms Lynda Parlour, one of the supporters of the Order and a long-time user of the route, stated that the relevant company went into liquidation at some point, and that the land reverted to the Crown, which continues to have an 'lean' on the land until 2022. The land itself appears to have been in the ownership of a Mr Berger at the time of the original application. It has since been transferred to Lancrest Properties with which Mr Berger is also connected, as shown by Land Registry Documents and papers associated with a Village Green application affecting the land in question.
16. No other registerable transaction has taken place, and neither Lancrest Properties nor Western Power Distribution (South West) plc (the owners of track to Hooe Road) has objected to the Order. Mr Paddison, although claiming to be the tenant of the land, has not provided any evidence to support his contention, nor has he demonstrated his relationship to Lancrest Properties, if any. Furthermore, he had no interest in the land, legal or occupational, during the relevant 20 year period. His interest is more recent and therefore not relevant to my determination of the matter.
17. The status of the present occupier of the land is not clear, but he or they may be a sub-tenant of Mr Paddison. Whilst they have been instrumental in preventing access to the land, this has only occurred since 2013, and is not relevant to the question of dedication during the relevant 20-year period.
18. I am therefore satisfied that no-one with the appropriate authority has demonstrated a lack of intention to dedicate the Order route as a highway during the relevant period of 20 years between 1987 and 2007. Consequently the Order route can be deemed to have been dedicated as a public right of way.

### **Other Matters**

19. Although Mr Paddison withdrew his objections, one of his concerns was that PCC had not followed due procedure in making the Order, in particular that the Council had not consulted the relevant parties properly, or made the papers available in good time.
20. In determining the Order I must be satisfied that the correct procedures have been followed, and I have been presented with no evidence to cause me to doubt the evidence given to me by the Council to show that all the correct notices, letters and consultations have been displayed, published, served or issued.
21. I am therefore satisfied that there is no substance to Mr Paddison's concerns in this regard.

**Conclusions**

22. Having regard to these and all other matters raised at the hearing in the written representations I conclude that the Order should be confirmed.

**Formal Decision**

23. I confirm the Order.

*Helen Slade*

**Inspector**

## **APPEARANCES**

### FOR THE LOCAL AUTHORITY:

Mr Robin Pearce

Plymouth City Council

### INTERESTED PERSONS IN ATTENDANCE:

Rosemary Starr

Plymouth City Council

Lynda Parlour

Local resident and user

Rosemary Croyle

Local resident and user

Anne Hobbs

Local resident and user

David Hobbs

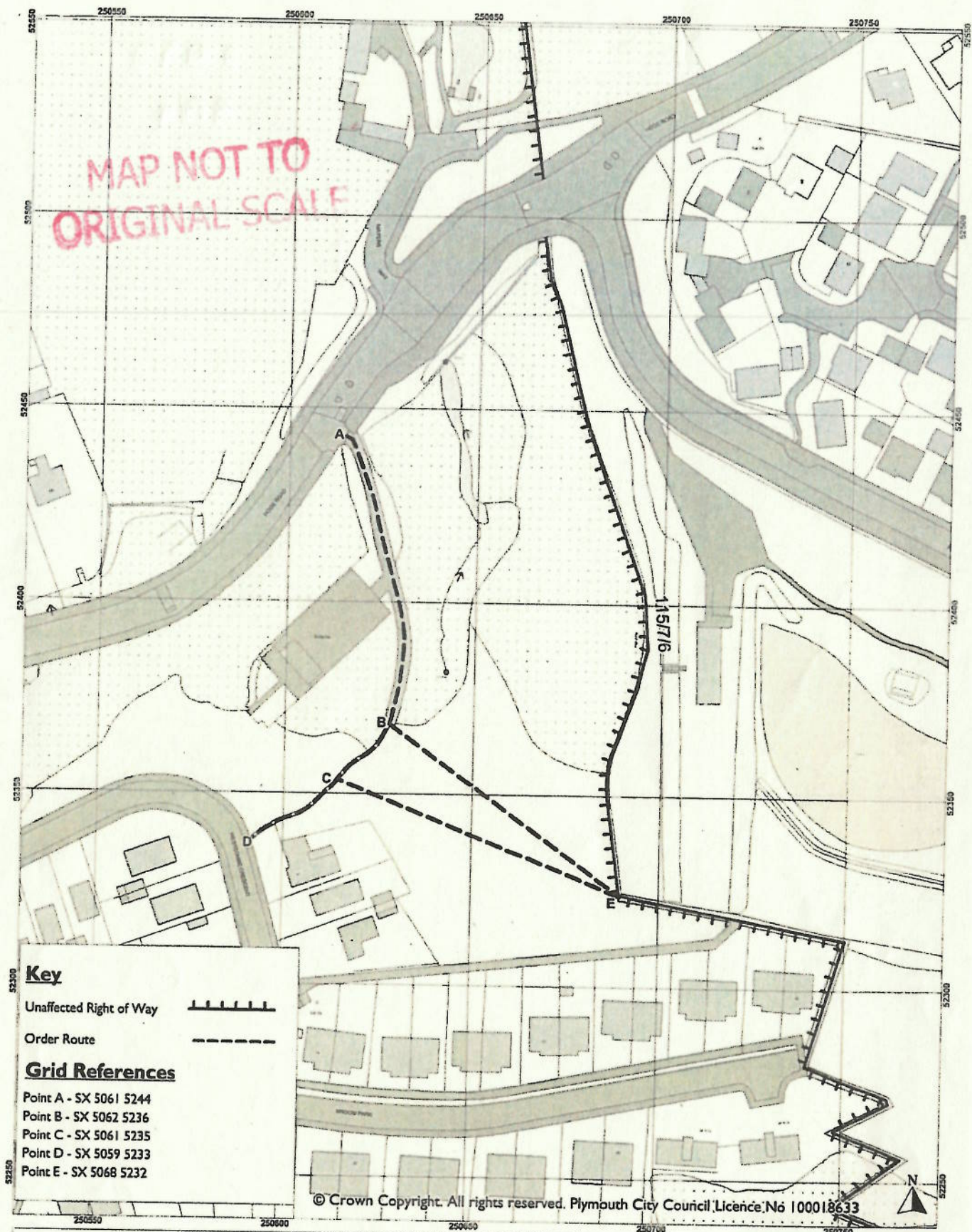
Local resident and user

Patricia Rogerson

Local resident and user

Christopher Wood

Local resident and user



## WILDLIFE AND COUNTRYSIDE ACT 1981

ADDITION OF A PUBLIC FOOTPATH FROM HOOE ROAD  
TO WESTCOMBE CRESCENT

Scale 1:1250

