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# Appeal Decision

On papers on file

**by Alan Beckett BA MSc MIPROW**

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

**Decision date: 11 June 2015**

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## **Appeal Ref: FPS/J1155/14A/4**

- This Appeal is made under Section 53 (5) and Paragraph 4 (1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) against the decision of Devon County Council not to make an Order under section 53 (2) of that Act.
- The Application dated 14 July 2009 was refused by Devon County Council (the Council) on 14 November 2014.
- The Appellants claim that the definitive map and statement of public rights of way should be modified by deleting part of footpath 3 Northlew (shown B – X – A on the plan appended to this decision) and adding a footpath (shown B – C) on the attached plan.

## **Summary of Decision: The Appeal is dismissed.**

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### **Preliminary Matters**

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine an appeal under Section 53 (5) and Paragraph 4 (1) of Schedule 14 of the 1981 Act.
2. This appeal has been determined on the basis of the papers submitted.

### **The Main Issues**

3. Section 53(3)(c)(iii) of the 1981 Act states that a modification order should be made by the surveying authority following the discovery of evidence which (when considered with all other relevant evidence available to them) shows that there is no public right of way over land shown in the map and statement as a highway of any description. Section 53 (3) (c) (i) of the 1981 Act provides that a modification order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

### **Reasons**

4. In arriving at my conclusions I have taken account of the evidence submitted by the parties; the relevant part of the Wildlife and Countryside Act 1981; the findings of the Court of Appeal in the *Trevelyan*<sup>1</sup> case; the guidance given in Defra Rights of Way Circular 01/09 (version 2, October 2009) and the findings of the High Court in the case of *R oao Paton v Devon County Council and Exeter Crown Court* [2014] CO/8887/2012 ('Paton').

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<sup>1</sup> *Trevelyan v Secretary of State for Environment, Transport and the Regions* [2001] EWCA Civ 266

5. In the *Trevelyan* case, Lord Phillips MR held that *"Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake."*
6. In *Trevelyan* the Court also quoted with approval guidance which had been published in Department of the Environment Circular 18/90. The guidance stated that it was for those who contended that there was no right of way to prove that the definitive map was in error and that a mistake had been made when the right of way was first recorded; it also stated that the evidence needed to remove a right of way from the record would need to be cogent, and that it was not for the surveying authority to demonstrate that the map was correct.
7. Circular 18/90 has been superseded by Defra Circular 01/09. Circular 01/09 says at paragraph 4.33 *"The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with "higher" rights to a way with "lower" rights, as well as complete deletion – will need to fulfil certain stringent requirements. These are that:*
  - *the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.*
  - *The evidence must be of sufficient substance to displace the presumption that the definitive map is correct.*
  - *The evidence must be cogent."*
8. The need for an Order to be considered when evidence is submitted as to the possibility of rights of way existing is dealt with under Section 53 of the 1981 Act. Section 53 (3) (c) (i) of the 1981 Act provides that an Order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates. As made clear by the High Court in the case of *R v Secretary of State for the Environment ex parte Norton and Bagshaw*, this involves two tests:

**Test A** - Does a right of way subsist on the balance of probabilities? This requires clear evidence in favour of the Appellant and no credible evidence to the contrary.

9. **Test B.** Is it reasonable to allege on the balance of probabilities that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then the answer must be that it is reasonable to allege that one does subsist.
10. In *Paton*, the Appellants in this case sought a declaration from Exeter Crown Court under section 56 of the Highways Act 1980 that the claimed route B – C was a publicly maintainable highway which was out of repair. At first instance, Mr Recorder Abbott found on the evidence before him that there was no highway on the alignment B – C but that there was a publicly maintainable highway on the alignment B – X – A as shown in the definitive map and statement. The appeal against the decision of Mr Recorder Abbott was dismissed by Mr Justice Burton in the High Court in January 2013.
11. Following an application by the Appellants in September 2014, Mr Justice Burton revisited his judgement and in October 2014 held *"by that judgement of 16 January 2013 I concluded that the Recorder was asked by the Claimants to determine whether there was a highway maintainable at the public expense from Station Road (point C) to Kimber Road (point F) via point B. He found that there was not, and that rather than turning down to point C the highway maintainable at public expense carried on to point A (in Queen Street). Hence there was no highway B to C and no such highway is maintainable at public expense. I was satisfied that there was no error of law by the Recorder in so concluding. There is no jurisdiction for, or merit in, the Claimants' yet further renewed application"*.
12. A significant amount of documentary evidence and correspondence has been submitted by the Appellants in this case. Although I have read and studied all of the documents submitted, I only describe below that material which is directly relevant to the question of the position of footpath 3 and the access into Glebe Yard.
13. The burden of proof lies with the Appellants and the standard of proof in relation to the proposed deletion of part of footpath 3 is the civil standard of proof; that is the balance of probabilities.

## **Background**

14. The Appellants claim that the current definitive line of footpath 3 Northlew shown as B – X – A is an alternative alignment for the historic route of the footpath which they claim ran over B – C. It is their case that the owner of the Glebe Yard land could not have dedicated and could not be presumed to have dedicated the path X – A as that land was not owned by the owner of Glebe Yard. Consequently, the path shown B – X – A on the definitive map had been diverted from its true line and it is the true line (that is B – C) that should be recorded in the definitive map and statement.
15. The Appellants interpret the description of footpath 3 as set out in the definitive statement as indicating that the path commenced within Glebe Yard and then ran in a generally westerly direction to Kimber Road. As the land between point X and Queen Street has never been part of Glebe Yard, the Appellants contend that the public footpath commenced on Station Road at point C where the path would have entered Glebe Yard without running over third party land. The Appellants claim that the route B – C is the historic route of the footpath and that the route shown in the definitive map as B – X – A was substituted at the

time of the parish survey in the 1950s. Furthermore they contend that as B – C was never formally stopped up, the public rights over that route remain and should be recorded and that as B – X – A was not a public footpath on 16 December 1949<sup>2</sup> it should be deleted from the definitive map and statement.

16. I understand that prior to 2012 the land between point X and Queen Street was unregistered and that it has only been part of the registered title of Clome Cottage since that date. Prior to 2012 the Appellants' property comprised of the cottage on the north side of the land between X and Queens Street and a garage and hard standing to the south. The 'gap' between Clome Cottage and its outbuilding provided access to Glebe Yard when a haulage and transportation business operated from there and it is through this gap that the public have walked when following the definitive line of footpath 3. The boundary between what is now registered as the Appellants' property and the neighbouring property of Glebe Yard is at point X. The Appellants refer to the land to the west of this point as 'glebe land' and to the east as 'clome land'.

***Whether any evidence has been discovered which was not considered when footpath 3 was first recorded on the definitive map.***

17. Footpath 3 was added to the definitive map following a survey of public rights of way in the parish by the Parish Council. The grounds for believing the path to be public were that it had been "dedicated to the public by usage many years ago". There is nothing in the parish survey to suggest that documents such as Ordnance Survey (OS), tithe or Finance Act 1910 mapping had been considered by the parish council in determining the existence of a footpath between Northlew and Kimber Road.
18. The Appellants have submitted documentary evidence in the form of OS maps, tithe and Finance Act records, aerial photographs and other documents in support of their case. I consider that some evidence has been discovered which was not considered when Northlew 3 was first added to the definitive map.

***Documentary evidence***

*Ordnance Survey (OS) maps*

19. The 2 inch to 1 mile draft drawing of 1803 shows the general layout of the village at the time with an accommodation road running west from the Queen Street area to serve adjacent fields. This is likely to incorporate points X - B - D and may include A - X although that section is shown as part of the general road network. There is no indication on this map of a route from Station Road along the alignment B - C; the Station Road boundary is shown as unbroken.
20. The Appellants claim that the alleged route C - B is shown on 1 inch to 1 mile maps in the same way as other minor public roads. The 1 inch scale maps were derived from larger scale mapping and consequently much of the detail of the larger scale map is sacrificed and the resultant map more generalised than at the larger scales; buildings become blocked together for example with fine detail about and between those buildings becoming lost. Whilst the 1887 1 inch map suggests that the accommodation road along which footpath 3 runs made a dog-leg to the south, the contemporaneous large scale mapping shows that this was not the reality on the ground. The 'dog-leg' on the 1887 1 inch map is likely to be a simplified representation of the access from Glebe Yard into

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<sup>2</sup> Section 47 of the National Parks and Access to the Countryside Act 1949

Queen Street. Little weight can be placed on the 1 inch maps as evidence of the existence of the claimed route B – C.

21. The first edition 25 inch to 1 mile map shows a double peck line running through OS parcel 342 to a gap between buildings fronting Queen Street. At this point (which equates to point X) OS show a line across the end of the track; the peck line feature does not extend beyond this point. The Appellants state that this feature was a wall and that the footpath did not extend to point A. The solid line shown by OS represents the eastern limit of parcel 342 and may represent a gate as opposed to a wall as it is an OS convention to show gates in the closed position. This map does not show any feature running from B to C to emerge opposite Elmfield House.
22. The Appellants also place weight upon the existence of a benchmark at or around C on the 25 inch map as evidence of the importance of the claimed historic alignment of footpath 3. However, benchmarks were not installed by OS surveyors as markers of public rights of way or features of local importance; their function was entirely different. No weight can be attached to the existence of a benchmark as being indicative of the existence of a route over B – C.
23. The second edition 25 inch map shows the same features as the preceding edition although there are no peck lines shown within parcel 342. This plan does not show any feature on the claimed alignment of B – C.
24. The post-war 25 inch map shows that the enclosed section of parcel 342 has contracted eastwards and that a double peck line runs through the remainder of the parcel to point B. Between points B and X appears to be the yard serving a depot located in the north-west corner of the yard. There is an identifiable gap between Clome Cottage and its outbuildings with a solid line at X. The land between X and A is shown as being part of Queen Street. The northern boundary of Station Road opposite Elmfield House is unbroken; the map does not show any feature on the claimed alignment B – C.
25. The 6 inch to 1 mile maps show (at lesser levels of detail), the same information as the 25 inch maps. The first edition shows a double peck line track through parcel 342 which crosses the yard area to point X which appears gated. The gap between Clome Cottage and its outbuildings can be seen and the land crossed by X – A is depicted as part of Queen Street. There is no feature shown on the alignment B – C. The second edition differs from the first in not showing a double peck line track through parcel 342.
26. The 1932 2.5 inch map shows the collection of buildings fronting Queen Street without any gaps between them; the gap between Clome Cottage and its outbuildings is not shown. Whilst this may suggest that there was no gap present through which footpath 3 could pass, the physical layout of buildings on the ground is better reflected by the larger scale 25 inch maps. In common with other OS maps this map does not show any means of access to Glebe Yard from Station Road.

#### *Greenwoods map 1827*

27. Greenwoods map is at a scale of 1 inch to 1 mile and shows the enclosed accommodation lane of Glebe Yard extending eastwards as far as Queen Street. No route on the claimed alignment B – C is shown by Greenwood.

### *Northlew Tithe map 1843*

28. The primary purpose of tithe commutation was not the recording of public highways. With regard to the Northlew tithe map the glebe land (apportionment 2030) is shown to extend to apportionment 2028 which is part of the road network in the centre of the village. The boundary between apportionment 2030 and 2028 at point X appears to be a gate or fence. On the various copies of the tithe map submitted there is no evidence of a break in the solid boundary line of apportionment 2030 with Station Road; there is no indication on the tithe map of a point of entry to the claimed route at C. The tithe map also shows the existence of a pond on the line of the claimed route B – C.

### *Manor of North Lew sale particulars 1897*

29. The sales particulars contain a brief description of Lot 8 which comprised Clome Cottage, a front garden, a pig house and shed. No plan is attached to the sales particulars. The sales particulars are of no assistance in the determination of the position of footpath 3.

### *Finance Act 1910 records*

30. The Finance Act plan shows the glebe land as hereditament 207 with the colourwash denoting the boundary of the landholding at X abutting what was considered at the time to part of the road network in the centre of the village. The land crossed by Footpath 3 between X – A is shown as part of the uncoloured road network and appears to be have been regarded as an extension of Queen Street.

31. Clome Cottage and its outbuildings are recorded as hereditament 18 and are at opposite sides of the excluded area. At point X is a solid line which delineates the boundary between hereditament 207 and the village road network. The Appellants claim that this represents a cob wall, although it may be representative of a gate shown in the closed position. There is no break in the boundary between hereditament 207 and Station Road. No deductions for the existence of public rights of way or user were claimed in respect of hereditament 207. The Finance Act records do not demonstrate the existence of the claimed route B - C

### *Bartholomew's Maps 1921-27*

32. These maps are at a scale of 0.5 inch to 1 mile and 1 inch to 1 mile. The base map information has been overlaid by the red colouration used to depict a secondary motoring road. The scale of the map is too small to show the alignment of footpath 3. The appellants claim that B – C is shown as a motoring road; however the red broken line shown at this location is more likely than not to have arisen as a result of poor alignment of the overlay with the base map. The broken red line is more likely to have represented Queen Street and not the claimed route B - C. The Bartholemew's maps do not provide evidence that a road existed on the alignment B – C in the 1920s.

### *Aerial photography 1912 - 1963*

33. The Appellants claim that aerial photography from pre-1930 (which the Council attribute to 1912) shows a footpath sign at point C and an entrance way into Glebe Yard from Station Road. On the enlarged photograph there is what

appears to be a post or upright located at the north-west corner of a building but the photograph is too indistinct to determine what this post may or may not be. Given that this post is not adjacent to the roadside it is more likely to be associated with the adjacent buildings as opposed to being a direction marker for pedestrians. Although the ground to the west of the upright is not occupied by buildings, it is not possible to determine from the photograph whether access to Glebe Yard was possible from Station Road when the photograph was taken.

34. The Appellants submit that the 1946 and 1948 aerial photographs show the existence of a cob wall at point X and that no footpath could have run on the B – X – A alignment. The copy of the 1948 aerial photograph submitted is of poor quality and the 1946 photograph is only marginally better, however the 1946 photograph does show a feature across the gap between the buildings at point X. In the light of the almost contemporaneous path survey conducted by the parish council, this feature is more likely than not to be the field gate recorded as being at point X than the cob wall claimed by the Appellant. From the 1946 photograph it is possible to make out wear patterns in the yard area which appear to be predominantly east – west (A – X – B) with little evidence of any north-south wear which would be expected had access to Glebe Yard been from Station Road at C. The aerial photographs do not support the contention that there was an access to Glebe Yard from Station Road in the 1940s.
35. The 1962 and 1963 aerial photographs show the existence of a field gate at point X; the gate is closed in the 1962 photograph, and open in the 1963 photograph. The wear lines in Station Road and Queen Street demonstrate that access to Glebe Yard was via A – X – B at this time. There is no evidence of access to Glebe Yard being taken from point C.

#### *Chapman's postcards 1927 - 1951*

36. The subject of two of these postcards was Clome Cottage and the neighbouring properties on Queen Street, the third being a view of the Church Room on Station Road. The photograph used in the Clome Cottage postcard is taken at too oblique an angle to clearly show the access between the cottage and its outbuildings; nonetheless, the gap is shown on contemporaneous Ordnance Survey maps and aerial photographs. The postcard showing the Church Rooms does not show and means of access to Glebe Yard from Station Road.

#### *MAFF Farm Survey 1941*

37. The survey record for farm 14/174/2 does not affect the land crossed by that part of footpath 3 at issue. Although the condition of the farm road is described as 'good' there is no indication within the survey record as to which road the surveyor was referring to. The farm survey records are of little assistance in this matter.

#### *Northlew Parish Survey 1950*

38. Under the provisions of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) Northlew Parish Council conducted a survey of public rights of way within the parish. One of the paths surveyed was footpath 3 which was described in the survey as '*starts at the Village, on through the Glebe Yard, and road to Field Gate No. 1. along by a fence to Field Gate No. 2. Gate needs repair. The original path continues along by a bank fence to a*

*brook, but now impassable owing to growth from a bank fence. No footbridge is available to cross the brook. Continue across field to field gate No. 3 at the terminus at Kimber Road'. In a schedule of paths in the village, footpath 3 was described as 'Glebe Yard to Kimber Road'.*

39. The path surveyed was shown on a map compiled by the parish and is shown as exiting onto Queen Street to a point opposite the chapel by means of a gap between Clome Cottage and its outbuildings. The grounds for believing that the route was a public footpath were that it had been dedicated through use many years prior to 1950.
40. The Council produced extensive documentation regarding the definitive map process in Devon to demonstrate that all that was required of the Council under the 1949 Act was carried out. There were no objections or representations made to the inclusion of footpath 3 on the A – X – B alignment at either the draft or provisional stages of the mapping process.
41. Footpath 3 appeared on its current alignment in the definitive map in 1958. The definitive statement for footpath 3 reads: *'It starts at County Road C.463 opposite the Chapel in Northlew and proceeds westwards through the Glebe Yard and over a short length of private accommodation road (not repairable by the inhabitants at large) crossing fields and a brook (footbridge demolished) to join the Unclassified County Road approximately 400 metres east of the entrance to Lake Farm'.* The Definitive Map (relevant date 1 December 1957) shows the path as commencing opposite the Chapel, then running to the gap between Clome Cottage and its outbuildings before crossing Glebe Yard and then heading in a generally westerly direction to Kimber Road; the definitive map reflects the written description found in the definitive statement.

#### *Highways Records*

42. The highways records show that the C.463 runs from Bogtown to the village square at Northlew. There is no record of a highway of any description over the claimed alignment B – C in the handover records or the successive lists of streets maintained by the Council as Highway Authority. Queen Street was adopted as a highway maintainable at public expense in July 1950.

#### *The Book of Northlew (published 2002)*

43. The book provides a history of the village as compiled by members of the local history group. It is stated that the Baters had run a haulage business from their yard in Queen Street since 1900. The description of the yard as being *"in Queen Street"* suggests that the access to the yard was via the gap between Clome Cottage and its outbuildings and not via an entrance on Station Road.

#### *Northlew Parish Council user evidence 2009*

44. The Parish Council objects to the application to delete part of footpath 3 and interviewed 7 long standing residents with regard to their memories of Glebe Yard and the entrance to it from the village. Collectively the resident's memories extended back to the 1930s. There was no recollection of a means of access to Glebe Yard from Station Road; two residents recalled the existence of a pond on the claimed line of B – C and had skated on it in their youth when frozen. Access to Glebe Yard had always been from Queen Street via a field gate which had stood next to a wicket gate attached to Clome Cottage.



## Conclusions

45. The Appellants have not produced any evidence of use of the claimed route B – C in support of their case that the claimed route was a public highway and the historic alignment of footpath 3 prior to the parish survey in 1950; the Appellant is therefore reliant upon the interpretation to be placed upon documentary evidence to demonstrate that a mistake had been made in 1950 when the parish council made its survey of public rights of way and recorded footpath 3 on the alignment B – X – A and not B – C.
46. The burden of proof in this case lies with the Appellants to demonstrate on a balance of probabilities that a mistake was made when footpath 3 (B – X - A) was first recorded in the definitive map and that the alternative route C – B subsists or can be reasonably alleged to subsist.
47. The documentary evidence considered above does not, in my view, support the Appellants' assertion that the correct historical line of footpath 3 ran on the alignment B – C. Successive OS maps (particularly those at a large scale) do not show the existence of a means of access to Glebe Yard other than through the Queens Street entrance. Although the Appellants contend that OS maps show the existence of a cob wall at X, those maps could equally show the existence of a gate at that point. Given that the Baters ran a haulage business from Glebe Yard from 1900 with the access being taken from Queen Street, the line drawn by OS at X is more likely than not to have been a gate than a cob wall. The existence of a gate at X is demonstrated by the parish survey of 1950 and the aerial photographs of 1962 and 1963. The Ordnance Survey maps considered do not show a means of access to and from Glebe Yard from Station Road. Although OS maps do not provide evidence of the status of a way shown, in this case they support the Council's contention that the line of footpath 3 shown in the definitive map and statement is correct as there is no evidence of the existence of a means of access to Station Road at C which the footpath could have followed.
48. The Tithe maps do not show a means of access to Station Road at C and demonstrate that a pond existed on the line of the claimed route. The Finance Act and Tithe maps both show that the land between Clome Cottage and its outbuildings was considered to be part of Queen Street and was excluded from assessment for tithe commutation and incremental land value duty. The farm survey documents do not shed any light on this matter, nor does the particulars from the sale of the Northlew Manor Estate.
49. The aerial photography considered together with the picture postcards from the twentieth century demonstrate that the access to Glebe Yard was from Queen Street between Clome Cottage and its outbuildings and not via point C on Station Road. The wear patterns in the road surface indicate the direction of travel to access Glebe Yard.
50. The survey of public rights of way conducted by the Parish Council in 1950 is indicative of local reputation of footpath 3 on the B – X – A alignment as the route which had been in use by the public for many years. The documentary evidence relating to the definitive map process in Devon is extensive and demonstrates that the statutory procedures had been carried out. The parish minutes which are included within that bundle of documents demonstrates that the Parish Council had been diligent in its execution of the survey. There is nothing in the survey documents to suggest that the parish survey was

- incorrect in recording footpath 3 on the B – X – A alignment or that they had substituted B – X – A for the claimed route B – C. The documentary evidence when taken as a whole demonstrates that there was no access to Glebe Yard from C for the parish council to have claimed as a public footpath in 1950.
51. The Appellants contend that it would not have been possible for the owner of Glebe Yard to have dedicated a public footpath over (what is now) Clome Cottage land as the owner of Glebe Yard had no property rights over that land. It is the Appellants contention that if the path commenced at Glebe Yard (as described in the Parish Council’s schedule) it would have to commence at a point where Glebe Yard made a connection with the public road; that is, at point C on Station Road.
52. The reason for considering the path to be public in 1950 was evidence of dedication by use over many years prior to the survey. That the owner of Glebe Yard could not expressly dedicate a right of way over land not in his ownership is not disputed, however the absence of a known landowner for the gap between Clome Cottage and its outbuildings is no bar to dedication being deemed or presumed to have occurred through a period of long use, which is the case under the provisions of the 1949 Act. The Parish Council considered that footpath 3 ran on the alignment shown on the definitive map on the basis that the landowners (whoever they were) had dedicated a public right of way over their land. The evidence of use obtained by the Parish Council from long standing residents confirms that the B – X – A alignment had been in use to the extent of current living memory; it is likely that when the parish survey was conducted in 1950 living memory would have extended back into the late nineteenth century.
53. Footpath 3 was shown to commence at the chapel as the Parish Council was unaware that Queen Street had been adopted as a publicly maintainable highway. The Appellants submit that the description of the footpath in the definitive statement as commencing on the C.463 indicates that it commenced on Station Road. To my mind, two factors do not support such a contention; first the C.463 runs from Bogtown to the village square in Northlew and the description in the definitive statement of where on the C.463 the path starts is qualified by ‘*opposite the Chapel in Northlew*’; this ties the eastern end of the path to point A and not to point C.
54. I conclude that there is no evidence which supports the Appellants’ claim that the Parish Council illegally diverted the line of footpath 3 from B – C to B – X – A as part of the parish survey. In addition, I conclude that the Appellants have not submitted evidence of sufficient substance to demonstrate that an error had been made when footpath 3 was first added to the definitive map on the B – X – A alignment. Furthermore, I conclude that there is no evidence to support the contention that there was historically a means of public access to Glebe Yard from Station Road. It follows that it is not possible for the Appellants to reasonably allege that a public right of way subsists over the claimed route B – C.
55. The evidence submitted with this appeal appears to be the same evidence considered by Mr Recorder Abbott and Mr Justice Burton in the *Paton* case. The conclusions I have reached are as one with the findings of the Court.
56. Accordingly, I conclude that the Appeal should be dismissed.

**Formal Decision**

57. I dismiss the appeal.

*Alan Beckett*

Inspector

APPENDIX – footpath 3 Northlew

