

Agenda item:

Regulatory Committee

9

Dorset County Council



Date of Meeting	11 June 2015
Officer	Director for Environment and the Economy
Subject of Report	Dorset County Council (Footpath from Broad Street to Marine Parade, Lyme Regis (known as Teneriffe Path)) Definitive Map and Statement Modification Order 2013
Executive Summary	This report considers new evidence submitted by Lyme Regis Town Council reconsiders the position to be adopted by the County Council on the submission of the Order to the Secretary of State following the receipt of objections.
Impact Assessment:	Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.
	Use of Evidence: Any relevant evidence provided has been discussed in the report to the Roads and Rights of Way Committee on 7 July 2009 (Appendix 1).
	Budget: Any financial implications arising from this modification are not material considerations and should not be taken into account in determining the matter.
	Risk Assessment: As the subject matter of this report relates to the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.

Recommendations	<p>That:</p> <p>(a) The Order be submitted to the Secretary of State for determination; and</p> <p>(b) The County Council takes a neutral stance in the proceedings.</p>	
Reasons for Recommendations	<p>(a) There have been objections to the Order and therefore the County Council must submit it to the Secretary of State for an Inspector to be appointed to consider confirmation; and</p> <p>(b) Continued investment of public resources relating to this matter is not considered to be in the public interest.</p> <p>Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieves the corporate plan objectives of:</p> <p>Enabling Economic Growth</p> <ul style="list-style-type: none"> • Ensure good management of our environmental and historic assets and heritage <p>Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> • Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset • Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live • Enable people to live in safe, healthy and accessible environments and communities 	
Appendices	<p>1 Report to the meeting of the Roads and Rights of Way Committee on 7 July 2009 and</p> <ul style="list-style-type: none"> • Extract from the minutes 7 July 2009 <p>2 Report to the meeting of the Roads and Rights of Way Committee 16 January 2012 (dated 2011 in error), which includes:</p> <ul style="list-style-type: none"> • Appeal decision letter dated 15 June 2011 (Appendix 3) • Dorset County Council (Footpath from Broad Street to Marine Parade, Lyme Regis (known as Teneriffe Path)) Definitive Map and Statement Modification Order 2011 (Appendix 4) • Letters of objection to 2011 Order (Appendix 5) • Extract from the minutes 16 January 2012 	<p>Page</p> <p>10</p> <p>49</p> <p>51</p> <p>55</p> <p>58</p> <p>62</p> <p>73</p>

	<p>3 Report to the Roads and Rights of Way Committee 16 January 2014, which includes:</p> <ul style="list-style-type: none"> • Letter from the Planning Inspectorate advising that the Secretary of State for Environment Food and Rural Affairs' decision was not to exercise his power of confirmation of the Order (Appendix 2) 79 • Dorset County Council (Footpath from Broad Street to Marine Parade, Lyme Regis (known as Teneriffe Path)) Definitive Map and Statement Modification Order 2013 (Appendix 3) 80 • Letters of objection to the Order October 2013 (Appendix 4) 84 • Extract from the minutes 16 January 2014 95 <p>4 Additional evidence submitted following January 2014 Committee:</p> <ul style="list-style-type: none"> • Evidence submitted by Lyme Regis Town Council 98 <ul style="list-style-type: none"> ▪ 1823 drawing 98 ▪ 1857 plan 99 ▪ Drawing of Madeira Cottage by Captain Marryatt - Date unknown 100 ▪ Two photographs from the early 1850s and early 1860s 101 ▪ Extract from submission made by Mr Nigel Clarke, ex-Town Councillor, Lyme Regis at January 2014 Roads and Rights of Way Committee 102 • User evidence – letter from Mr T M Sweeney 103 	
Background Papers	<p>The files of the Director for Environment and the Economy (ref. RW/T362).</p> <p>Copies (or photographs) of the documentary evidence can be found on the case file RW/T362, which will be available to view at County Hall during office hours.</p>	
Report Originator and Contact	<p>Name: Roger Bell Rights of Way Officer</p> <p>Tel: (01305) 221670 Email: r.bell@dorsetcc.gov.uk</p>	

1 Background

- 1.1 The background to this application is as set out in paragraph 1 of the report to the Roads and Rights of Way Committee on 16 January 2014. A copy of the report and an extract from the minutes of the meeting forms part of Appendix 3.
- 1.2 The Committee considered the position to be adopted by the County Council on the submission of the Order to the Secretary of State following the receipt of objections to the Order made in 2013. The 2014 report did not consider the evidence relating to the Order, recommending that a neutral stance be taken. The Committee resolved to support the confirmation of the Order, which adds a footpath from Broad Street to Marine Parade in Lyme Regis.
- 1.3 New evidence has subsequently been submitted by the applicant, Lyme Regis Town Council (Appendix 4). In addition, this report refers to the entirety of the evidence considered in relation to the claimed path.

2 Law

- 2.1 The relevant law is considered in the previous reports.

3 Evidence in support of the application (copies available in the case file RW/T362)

- 3.1 The evidence relating to the claimed path is set out in the earlier report to the Roads and Rights of Way Committee on 7 July 2009 (Appendix 1) and has been considered in the Inspector's report, attached to the Secretary of State's decision letter dated 15 June 2011 (part of Appendix 2 to this report and Appendix 3 to the 2012 report).
- 3.2 Further evidence was submitted by **Lyme Regis Town Council** on 27 November 2014 and is attached at Appendix 4.

Evidence	Town Council comments
1823 drawing taken from George Roberts' book	"Mentions the fort, now a viewing platform, 'contiguous to the jetty'."
1857 map to accompany an Act of Parliament to permit raising money to build a sea wall from the Cobb to the site of the current Theatre	"Shows the path as it exits on the Parade (then known as The Walk), as it served the cannon emplacement stationed on the seafront 'fort' in the 1600s which was demolished in the 1830s."

Evidence	Town Council comments
1857 map (continued)	"Shows the angle of the two lines of frontage as they meet.....The 1857 map shows that the door (gate) did indeed exist... The 1857 map also shows lines appearing to be pathways on the bank behind. It is my belief that these paths existed before the houses were built, and they served the forts. One of these pathways, the one to the west does appear to me to be Teneriffe Path."
Drawing of Madeira Cottage by Captain Marryatt Date unknown	No comment given.
Two photographs from the early 1850s and early 1860s	"The drawing of the 1857 map falls between" these two photos. "As both of these photos show the big wall but not the door, the wall obviously hides the door from the photographers."
<p>Ex- Town Councillor Nigel Clarke – (evidence given to the Dorset County Council Roads and Rights of Way Committee 16 January 2014)</p> <p>A now deceased owner of one of the flats "organised the locking of the door that was the entrance from the Marine Parade" as he did not like late night walkers using the footpath and making a noise.</p> <p>"When these buildings were constructed there was no attempt made to block the footpath. The construction of both buildings acknowledges an historical right of passage which passes over this area. The footpath and construction steps would seem to predate both these buildings".</p> <p>"This path is very old and would have at one time given access to the gun batteries that were situated here in the period of the English Civil war in 1685."</p> <p>"I used it as did my father and grandfather and from my family that would show that the path was in use from 1936 till the locking of the door in the 1980's."</p>	<p>"Nigel Clarke, is an historian, writes local history books and is an ex-councillor of exemplary character."</p> <p>"He mentioned the owner of Teneriffe (house) closing the path and locking the door because he was fed up with late night bad behaviour by local lads, around 1990."</p> <p>"His evidence included the observation that the footpath now known as Teneriffe once led to the fort guns."</p>

Evidence	Town Council comments
Two photographs, one of Broad street entrance and one of Marine Parade entrance	<p>Broad Street photo “shows the locked gate put up by local residents in around 2005”.</p> <p>The other shows “the flight of steps is clearly older than the 1920s/1930s cottage spanning the path, as the stone steps have been worn down by centuries of walkers. The cottage is built BESIDE the path, with a door off the steps. The steps are NOT part of the house, but the door on to the street is made to look like a front door. The steps start in the back garden and run down beside the cottage to emerge at the door.”</p>

3.3 Mr Terry Sweeney, a local resident and ex-Head of Dorset Countryside wrote to say that he “was introduced to this footpath by a Lyme Regis resident during the 1970’s and was once a regular user.”

4 Analysis of additional evidence in support of the application

4.1 The additional evidence is analysed in the table below.

Evidence	Analysis
1823 drawing	Shows the sea front at that time. Adds little to the documentary evidence.
1857 map to accompany an Act of Parliament to permit raising money to build a sea wall from the Cobb to the site of the current Theatre	Makes no reference to the claimed route nor shows any public access routes on the map.
Drawing of Madeira Cottage by Captain Marriott Date unknown	Shows Madeira Cottages and remains of West Fort. A gate or door is shown to the right of the buildings. Adds little to the documentary evidence.
Two photographs from the early 1850s and early 1860s	Shows the sea front with the cobb wall (1850s) where the current claimed route terminates at point E. Add little to the documentary evidence.
Ex- Town Councillor Nigel Clarke – (evidence given to the Dorset County Council Roads and Rights of Way Committee 16 January 2014)	Mr Clarke comments on the documentary evidence submitted by the Parish Council. This does not add weight to the evidence already investigated in the original July 2009 report (Appendix 1).

Evidence	Analysis
Two photographs, one of Broad street entrance and one of Marine Parade entrance	Shows points A and E of the claimed route at the time the images were taken. The worn steps could have been created by heavy use by either public and/ or private use. The building being built over the stone steps neither supports nor opposes the claim that the route had public access.

- 4.2 Mr Sweeney’s evidence indicates that his use of the claimed route was regular and from the 1970s onwards.
- 4.3 An email dated 24 March 2015 from Cairo Nickolls, Solicitor for Irwin Mitchell LLP on behalf of the residents abutting the claimed route and objecting to the Order, states “we can confirm that we received the evidence and we have no further representations to make prior to the committee meeting”.

5 Discussion

- 5.1 At the meeting in January 2014 of the Roads and Rights of Way Committee details of the evidence relating to the route were contained in the 2009 Committee report attached as an Appendix to the 2012 and 2014 Committee reports but no discussion took place about the period of use and the challenges to use by the landowners. The Committee decided to support the confirmation of the Order to add a footpath to the definitive map and statement after Town Councillor Lorna Jenkin stated that “The Town Council has also received other photographic evidence and received information from several further residents of usage of the path”. However, this and additional evidence was not available and was not discussed at the meeting because the purpose of the 2014 Committee report was to recommend a neutral stance for the County Council when submitting the Order to the Secretary of State and at any public inquiry.
- 5.2 The new documentary evidence submitted by the Lyme Regis Town Council is shown within the table above, together with the letter from Mr Sweeney. This should be taken into consideration together with historical and user evidence investigated in the first report considered by the Roads and Rights of Way Committee on 7 July 2009.
- 5.3 It is considered that the additional documentary evidence adds very little weight to the other documentary evidence investigated in 2009.
- (a) At the time of the 2009 report, similar documentary evidence was investigated and at paragraph 4.2 (Appendix 1) “Comments on evidence” it states that “The photographic evidence shows a door or gate beside the old cobb wall on the Marine Parade and maybe this was an access point from 1880 to the time when Little Madeira enclosed the steps. However, the documentary evidence does not make any reference to the route being public”.

- (b) At paragraph 4.3.2 it states that “Evidence of a ‘private’ sign on the door of Little Madeira from 1970, as stated by the previous landowner..... can be said to be the first indication of public awareness of challenge to use”.
- (c) At paragraph 5.1 in the “Conclusions” it states “Although there is evidence of the public using the route up to 1970, when the first date of challenge arises, the evidence of use provided for this period is not strong enough to support the application”.
- 5.4 The additional user evidence from Mr Sweeney stating use of the claimed route from the 1970s should be added to the other user evidence analysed in the 2009 report. However, as the relevant period of use is 20 years prior to the first date of challenge in 1970, this evidence does not add much support to the application.
- 5.5 As an objection has been received, the County Council is unable to confirm the Order itself and must submit the Order to the Secretary of State for confirmation.
- 5.6 The options now available to the County Council are:
- To oppose the Order (maintaining the position of the County Council to date);
 - To support the Order (in view of the findings of the Secretary of State); or
 - To take a neutral stance.
- 5.7 Opposing or supporting the Order would entail the preparation of an extensive and detailed Statement of Case to be submitted to the Secretary of State for consideration. This is an extremely time-consuming exercise involving several officers from both Legal Services and Rights of Way. There would also be preparation for and active participation in any subsequent public inquiry which may be held.
- 5.8 If the County Council takes a neutral stance in the matter, merely submitting copies of all correspondence relating to the case for consideration and taking no active part in any public inquiry which may be held, the burden on the resources of the County Council is substantially reduced and the matter can be progressed more swiftly.
- 5.9 The Roads and Rights of Way Committee and County Council officers have already given much consideration to this matter. Significant resources have been allocated to this application and it is considered that it would not be an effective use of public money to continue such a high level of involvement in this case. There are parties able to represent the arguments for and against confirmation and it is considered that taking a neutral stance is most appropriate in the wider public interest.
- 6 Conclusions**
- 6.1 The Order should be submitted to the Secretary of state for confirmation.

- 6.2 The documentary and user evidence from the Lyme Regis Town Council does not add any greater weight to the documents or statements already investigated and therefore, on balance, it is maintained that there is insufficient evidence to support the claimed rights.
- 6.3 The County Council has previously refused this application as they considered that there was insufficient evidence to support the claimed rights. The additional evidence does not add significantly to support the application and therefore the County Council should take a neutral stance in any further proceedings resulting from the objection to the Order.

Mike Harries

Director for Environment and the Economy

May 2015

Roads and Rights of Way Committee

Dorset County Council



Date of meeting	7 July 2009
Officer	Director for Environment
Subject of report	Application for a Definitive Map And Statement Modification Order to Record a Footpath from Broad Street (A3052) to Marine Parade, Lyme Regis
Executive summary	This report considers an application to modify the definitive map and statement of rights of way by adding a footpath from between 13/14 Broad Street (A3052) to 6a/7 Marine Parade, Lyme Regis (known as Teneriffe Path) as shown A – B – C – D – E on Drawing 09/04.
Budget/risk implications	Any financial/risk implications arising from this application are not material considerations and should not be taken into account in determining the matter.
Recommendations	That the application to modify the definitive map and statement of rights of way by adding a footpath from Broad Street (A3052) to Marine Parade, Lyme Regis (known as Teneriffe Path) be refused.
Reasons for Recommendations	It is considered that the balance of evidence shows that there is insufficient evidence to support the claimed rights and therefore the application should be refused.
Appendices	<p>Appendix 1 - Drawing 09/04</p> <p>Appendix 2 - Tithe Map 1841</p> <p>Appendix 3 - The plan of Lyme Regis and Environs 1841</p> <p>Appendix 4 - Second edition Ordnance Survey map 1904 Scale 1:10560</p> <p>Appendix 5 - Ordnance Survey 1929 Scale 1:2500</p>

	<p>Appendix 6 - Extract from the Lyme Regis Parish Survey map 1952</p> <p>Appendix 7 - Ordnance Survey map 1961, Scale 1:2500</p> <p>Appendix 8 - Archive photographs –</p> <p style="padding-left: 40px;">A Walk and assembly rooms photo c.1880</p> <p style="padding-left: 40px;">B Late 1800s photograph</p> <p style="padding-left: 40px;">C Pre 1940s image showing clearly the wall and Little Madeira before the route was built</p> <p style="padding-left: 40px;">D 1935 photograph</p> <p style="padding-left: 40px;">E Post-1940s photograph</p> <p>Appendix 9 - Aerial photographs –</p> <p style="padding-left: 40px;">1947</p> <p style="padding-left: 40px;">1972</p> <p style="padding-left: 40px;">1997</p> <p style="padding-left: 40px;">2005</p> <p>Appendix 10 - Letter from Dr J W 2 March 1989</p> <p>Appendix 11 - Summary of all the user evidence forms</p> <p>Appendix 12 - Bar chart to show periods of use</p> <p>Appendix 13 - Photograph of 'private' sign on the door at the Marine Parade end of the route</p>
Background Papers	<p>The file of the Director for Environment (ref. RW/T362)</p> <p>The maps and the photographs from Appendices 2 – 5 and 7 – 8 can be viewed at the Dorset History Centre.</p>
Report Originator and Contact	<p>Roger Bell</p> <p>Rights of Way Officer, Definitive Map Team</p> <p>Tel: (01305) 221670</p> <p>email: r.bell@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to add a footpath from between 13/14 Broad Street (A3052) to 6a/7 Marine Parade, Lyme Regis was made by the Lyme Regis Town Council on 17 March 2005.
- 1.2 The route claimed commences from between 13-14 Broad Street at point A on Drawing 09/04 (attached as Appendix 1), through an arch and along a covered walkway with a concrete surface in a south-west direction to the Masonic Hall at point B, then along a narrow path of old tarmac behind a row of apartments fronting on Marine Parade to point C. The path then turns south through a gate at point C and continues down some stone and concrete steps via point D to point E where a door opens onto Marine Parade between No. 6a (Little Madeira) and No. 7 (Madeira Cottage).
- 1.3 The length of the route is approximately 90 metres and the width varies from 2 metres from A to B, to 1.8 metres from B to C and the steps from C – D – E are 1.2 metres wide.
- 1.4 This route is currently in the ownership of three people.

2 Law

Wildlife and Countryside Act 1981

- 2.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council keep the definitive map and statement under continuous review and in certain circumstances to modify them.
- 2.2 Section 53 of the Act also allows any person to apply to the County Council for an order to modify the definitive map and statement of public rights of way in consequence of the occurrence of certain events. One such event would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a right of way not shown on the definitive map and statement subsists.
- 2.3 The committee must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 2.4 The County Council must make a modification order if the balance of evidence shows either:
 - (a) that a right of way subsists or
 - (b) that it is reasonably alleged to subsist.The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).
- 2.5 An order can be confirmed only if, on the balance of probability, it is shown that the route does exist on the modified line.

- 2.6 Where an objection has been made to an order, the County Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the County Council can itself confirm the order, provided that the criterion for confirmation is met.

Highways Act 1980

- 2.7 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought into question.
- 2.7.1 'As of right' in this context means without force, without secrecy and without obtaining permission.
- 2.7.2 A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
- 2.8 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.
- 2.9 Section 32 of the Highways Act 1980 says that the Committee must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

Human Rights Act 1998

- 2.10 The Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act, may bring proceedings against the authority under the Act in the appropriate court or tribunal, or may rely on the convention right or rights concerned in any legal proceedings.
- 2.10.1 Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:
- (i) Everyone has the right to respect for his private and family life, his home and his correspondence.

- (ii) There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

2.10.2 Article 1 of the First Protocol provides that:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

2.11.3 Case Law

Coleridge LJ in the case of *R v Residents of Southampton* 1887 stated that “use wholly or largely by local people may be use by the public, as, depending on the circumstances of the case, that use could be by a number of people who may sensibly be taken to represent the local people as a whole/the local community”.

3 Evidence to be considered

Documentary evidence

- 3.1 The Lyme Regis Tithe map 1841 does not show the claimed route (Appendix 2).
- 3.2 The plan of Lyme Regis and Environs 1841, scale 66 yards to one inch, shows a continuous line from Broad Street to Marine Parade. At this time there were not many buildings along the sea front (Appendix 3).
- 3.3 The Second Edition Ordnance Survey 1904 map at a scale of 1:10560 shows the route clearly, which continues without a break until a line at the southern end indicating a gate/door (Appendix 4).
- 3.4 The Ordnance Survey 1929 map at a scale of 1:2500 shows the route clearly, narrowing to where Teneriffe gate is today (point C) and showing a line across the route at this point. The remainder of the route is less defined; however, it does show the steps going down to Marine Parade from D to E (Appendix 5).
- 3.5 The route was not claimed by the Lyme Regis Parish Council in their Survey of public rights of way, which was carried out in June 1952 as a result of the National Parks and Access to the Countryside Act 1949 (Appendix 6), and does not appear in any subsequent edition of the definitive map.
- 3.6 The Ordnance Survey 1961 map, scale 1:2500, shows the route very clearly, again with a line across the route at the site of the Teneriffe gate. The map also shows some steps from D to E (Appendix 7).
- 3.7 Various photos and postcards of Lyme Regis archive were researched. Photographs of the Marine Parade end of the route are enclosed as Appendix 8.

- 3.7.1 The “walk” and assembly rooms photograph, c.1880, indicates where the claimed route exits onto Marine Parade next to the cobb wall in the foreground (Appendix 8A).
- 3.7.2 Another early photograph from the late 1800s shows the cobb wall between the buildings but it is impossible to distinguish if there is a door to the left of the wall (Appendix 8B).
- 3.7.3 A pre-1940s postcard (possibly c1920s) shows very clearly the wall between the two buildings and the little door to the side. The image shows the cobb wall and the site of ‘Little Madeira’ before it was built and before the route was built over (Appendix 8C).
- 3.7.4 A 1935 postcard again shows the cobb wall at the front of the gap between the houses fronting Marine Parade. However, from the angle that the photograph was taken it is impossible to see if there is a doorway to the left of the wall (Appendix 8D).
- 3.7.5 A post-1940s postcard shows the same view and is how it looks today, with the new building replacing the cobb wall next to Madeira Cottage (Appendix 8E).
- 3.8 Various aerial photographs were consulted (Appendix 9).
 - 3.8.1 The 1947 aerial photograph of Lyme Regis clearly shows the route and seems to indicate the route was still open at the Marine Parade end.
 - 3.8.2 Both the 1972 and 1997 aerial photographs are very unclear but the 2005 photograph shows the route clearly.
- 3.9 A letter dated 2 March 1989 (Appendix 10) to West Dorset District Council from Solicitors on behalf of Dr J W states that “this public “Right of Way” had been barred, by the closing and locking of the door at the western end of the footpath – leading on to the sea front”. The letter states that this happened approximately ten weeks before the date of the letter. This would mean that the date of the locked door onto Marine Parade was in approximately December 1988.

User evidence

- 3.10 76 written forms of evidence were submitted by users of the route.
- 3.11 A summary of all the user evidence is attached as Appendix 11 and a bar chart to show periods of use forms Appendix 12.
- 3.12 71 of the witnesses were local and the 6 that currently live outside the East Devon and West Dorset area have all previously lived in the Lyme area.
- 3.13 The locking of the door onto the Marine Parade was remembered over a period of 10 years in between 1984 and 1994 by various witnesses. 39 witnesses recall the door being locked prior to 1990 and 31 witness recall the door being locked in 1990. 6 witnesses say that the door was locked after 1990.

- 3.14 The route was used mainly for pleasure by a total of 54 users, 17 users were using the route to go to or from work, with 5 at work when walking the route.
- 3.15 The users were asked if signs were erected during this time and 50 stated that no signs were visible. 13 users recall signs that said 'Private' and 14 were unsure of the question, or could not remember.
- 3.16 Within the evidence forms there are several corrections and there is different handwriting on some of the forms.
- 3.17 Mrs D H recalls that in around 1985, after she had walked through the route, she was told by a man that she had trespassed on private property.
- 3.18 Mr A & Mrs B L state that "originally owners were happy to have people using it, we often chatted en route" and then "a man stopped us when opening the gate & said it was private". They thought the date was about 1984/5.
- 3.19 N K S remembers a sign from the 1940s to the mid 1950s - "although the actual wording I cannot remember, it definitely indicated public access".
- 3.20 Several users say that it was after the death of the previous owner of 'Little Madeira', Lady Abbott-Anderson, that the gates were erected and public use was first challenged. This would have been in the 1970s.
- 3.21 When interviewed, Ms I J and Mr H M both recalled an element of secrecy when using the route. Mr H M was told by his mother that it was private and to be quiet when using the route.

Other evidence

- 3.22 Mr C J, one of the owners of part of the route, wrote a report in 2005 and speaks for the other owners of the route. The main points are summarised below. The full submission forms part of the background papers.
- 3.22.1 He states in the introduction that "this is in no sense a continuous path, but comprises three separate, privately owned parcels of land, which have, for at least 100 years, been interrupted by lockable doors and gateways".
- a) Background information was given about the property called Teneriffe. This includes; details of conditions of sale from 1931 which makes clear that only persons specified in the schedule have the "rts were in each case full and free liberty of passing and repassing on foot only at all times over and along the whole length of the sd passage".
 - b) A list of properties and owners which have this current right is given with a statement, informed by his solicitors, that covenants can only be ignored or rescinded:
 - (i) by assent of the landowner
 - (ii) by order of The Land Tribunal- whose decisions are open to appeal.
 - c) Also "the existence of these barriers is sufficient evidence that the owners of the property have never had any intention to dedicate as a public right of way".

- d) He notes that there was a “solid blue door” circa 1980 at the passageway at Broad Street. This was not replaced even though money was afforded to replace it. Mr C J states that “the fact that the doors were not replaced is no indication of a change of heart or re dedication by the landowners”.
- e) He states that “As far back as our memories go and from conversations with previous owners, any persons coming onto the property are challenged”.
- f) Definitions and extracts from the case history are mentioned and within this section Mr C J states that, “There have been long periods when some or all, the property owners have not been in residence and when trespassers would not have been challenged”. He continues “the nature of the properties is such that no windows overlook the Teneriffe garden, and the stairway to Marine Parade, which also mitigates against the ability to challenge surreptitious passers-by, but does not diminish the wish not to dedicate”.
- g) Nowhere in the deeds of the six properties is ‘public right of way’ mentioned, only private rights.
- h) Mr C J states that the early maps of the area showing the route “are inconclusive to the level of being meaningless”. He goes on to say that between the Madeira cottage and the steps today “this space was occupied by a stone wall” in the 1800s until circa 1936, so impossible to use”.
- i) “We dispute the claim that, as recently as 1990, people regularly and freely used our private access way,the door to Marine Parade has been regularly locked since 1986 and are willing to swear affidavits to this effect”.
- j) Financial and social considerations are discussed at length and these issues are very important to the property holders. These include anti-social behaviour and maintenance issues; however these cannot be taken into consideration for the purposes of this modification order application.

3.23 Councillor Hogg from Lyme Regis Town Council also wrote a report in 2005. The main points are summarised below. The full submission forms part of the background papers.

- a) In the introduction to this document, he states that Lyme Regis Town Council maintains that the Teneriffe Path “was freely used by the people of Lyme Regis for a period of at least sixty years, 1930 – 1990”.
- b) Councillor Hogg states that the route has a long history and was used in the seventeenth century to gain access to a gun emplacement, which protected the entrance to the Cobb harbour.
- c) He says that a stone wall was erected in the nineteenth century across the path at the Marine Parade end.

- d) Councillor Hogg recognises that property owners had deeds for private rights that include all owners along this route and quotes a letter from Mr Jones to that effect. "Yet during the period 1930 – 1990 no fewer than 62 witnesses walked the Path freely and without hindrance". He says that the reasons for this usage was that "The Marine Parade door was never locked, the message "Private" was not erected until 1990...The Broad Street doors were never locked.....they were allowed to decay away and were removed".
- e) Concluding the research he asks the question: "As restored in the early twentieth century the Teneriffe Path was conceived of as private right of way. But by 1930... locals had free and unhindered use of it which went on for decades. How could this have been?"
- f) He concluded that over time "Keys were lost, doors were left unlocked and the doors at the Broad Street end were allowed to fall into disrepair. The owners left a vacuum for the locals to fill for sixty years".

Consultation responses

3.24 From Owner of Little Madeira – 14 March 2009

She has owned Little Madeira since 1976 and since this time considered this passageway as private and had never thought it to be a public right of way. She states that "I have endeavoured to keep this door locked". However, many relations and friends may have left it unlocked when visiting the house. She would like to record her formal opposition to the modification order application.

3.25 From Solicitors acting for the owner of Little Madeira and the owner of Madeira Cottage – 13 March 2009.

They state that they have in their possession "pre- registration title deeds dating back to 1921 that record the existence of this private footpath and the grant of formal rights of way to various properties that abut it including those of our clients." This included a reference in a conveyance "for the requirement of an erection of a door or gate or the supply of keys to such door to all persons who have a right to pass over the land".

3.25.1 They continue: "Clearly it was never intended that members of the public would have access." Their clients "have endeavoured to keep the door locked at all times however it is accepted that inevitably it has been used at times by the public who have not been observed by our clients or their neighbours, however, this is not evidence of the acceptance of the public's right, or that our clients' private use has been extinguished".

3.25.2 Health and safety issues were raised if this modification order was made, however, this can not be taken into consideration.

3.26 From the owner of Madeira Cottage – 11 March 2009

States that he has been the owner of Madeira Cottage since 2006 and a visitor to Madeira Cottage since 1995 and Little Madeira since 1976. "I have been diligent in maintaining the privacy of the access door from Marine Parade to the stone steps towards Broad Street by means of lock and key." He states that "I have always challenged members of the public who have strayed along from Broad Street and informed them that it is private".

3.27 From a previous occupier – 11 March 2009

He states that his father bought No. 6 Marine Parade 45 years ago and in that time the path has never been a public right of way and that if the public were seen they have always pointed out that it was private.

3.28 From an owner of a property who uses the route – 6 March 2009

He states that when he bought his property in 2004 he was made aware of a private right of way granted on 29 September 1922. A copy of the conveyance was sent with the letter.

3.28.1 Since 2004 they have never seen any member of the public using the footpath and have never given consent to use the path. He says that “the previous owners of our property never dedicated the land as a public footpath”.

3.28.2 Health and safety issues were raised if this modification order was made, however, this can not be taken into consideration.

3.29 From the landowner of Teneriffe – 6 March 2009

He states that the user evidence forms currently within the file have stated that 1990 was the date that the doors were locked and that “This cannot be. In Autumn 1985, we had several very frightening late night incidents and were forced to call the police. This inspired the decision not so much to lock the door at our convenience, but keep it locked and open it at our convenience”.

3.29.1 Mr C J also states that he is not happy with the way evidence of use was collected.

3.30 From an owner of a property that uses the route – 27 February 2009

Ms C enclosed a copy of the covenant granting her access to the route made between the registered owner of the path and the freeholder of her property.

3.31 From Councillor Daryl Turner – 24 February 2009

He states that the route “was always used as a footpath/shortcut from the middle of the town to the sea front” and “I very much support the re-opening of Teneriffe”.

3.32 From a previous landowner – 17 February 2009

Mr A C states that his family owned Madeira Cottage from c.1970 to 1994 and “it was quite clear that there was no public right of way. Indeed there was a sign on the Promenade side of the door saying “Private” and I believe there was also one on the pathway at the top of the steps”.

3.32.1 He goes on to say that “For most of the time the lock was a yale device and therefore was easily opened from the inside (steps side). Its misuse was an ongoing irritation to us, particularly at night because the door slammed loudly. We stopped everyone we could and lectured them severely..... The owners of Little Madeira later changed the lock to a deadlock” and “During our time it was absolutely clear that there was no public right of way down the steps”. An image of the door has also been submitted showing a private sign (Appendix 13).

3.33 From the owner of a local book shop – 17 February 2009

She states that since 1968 the route past the Masonic hall was used by her children for a short cut to the Parade. The Lyme Regis Walkabout Book (1976) did not mention this path and says “I think that we did not want to advertise the path to the hordes of visitors that come each year. It was more considered to be a “locally” used way”.

3.34 From the landowners of the route at the Broad Street end – 15 February 2009

They state that they are the owners of 14 Broad Street and enclosed the Land Registry plan showing that they are the owners of the route up to the Teneriffe building. They also enclosed a copy of the Conveyance dated 2 January 1933, which shows part of the route marked as “Private walk”. They purchased the land in November 2002 and state that “Throughout the period of our ownership the gate at Teneriffe has been locked to the public”.

3.35 From P D, a visitor to Lyme Regis – 29 March 2005 (passed to the landowner Mr C J)

States that she was a resident in Lyme Regis from 1958-1965. “At no time, whilst I was @ school, or subsequently, have people ever been allowed to use the footpath.....to gain access from the town to Marine Parade. It was always marked “PRIVATE”.

3.36 A letter supporting the application from DB – 12 February 2009

He states that when visiting during the 1960's to 1980's his family regularly used the route and “We never sought permission to use this right of way, no attempt was ever made to stop us and there were no signs to indicate that entry was forbidden. In fact, I seem to recall that, at one time, there was a sign at the Broad Street end, indicating that Teneriffe Path was a public right of way”.

4 Comments on evidence

4.1 The word ‘local’ was used frequently during this consultation period and on the evidence user forms. The quote in paragraph 3.33 “I think that we did not want to advertise the path to the hordes of visitors that come each year. It was more considered to be a locally used way” indicates that this route was not open to all the public, however Coleridge LJ in R v Residents of Southampton, 1887, states that “use wholly or largely by local people may be use by the public, as, depending on the circumstances of the case, that use could be by a number of people who may sensibly be taken to represent the local people as a whole/the local community”.

4.2 The photographic evidence shows a door or gate beside the old cobb wall on the Marine Parade and maybe this was an access point from 1880 to the time when Little Madeira enclosed the steps. However, the documentary evidence does not make any reference to the route being public.

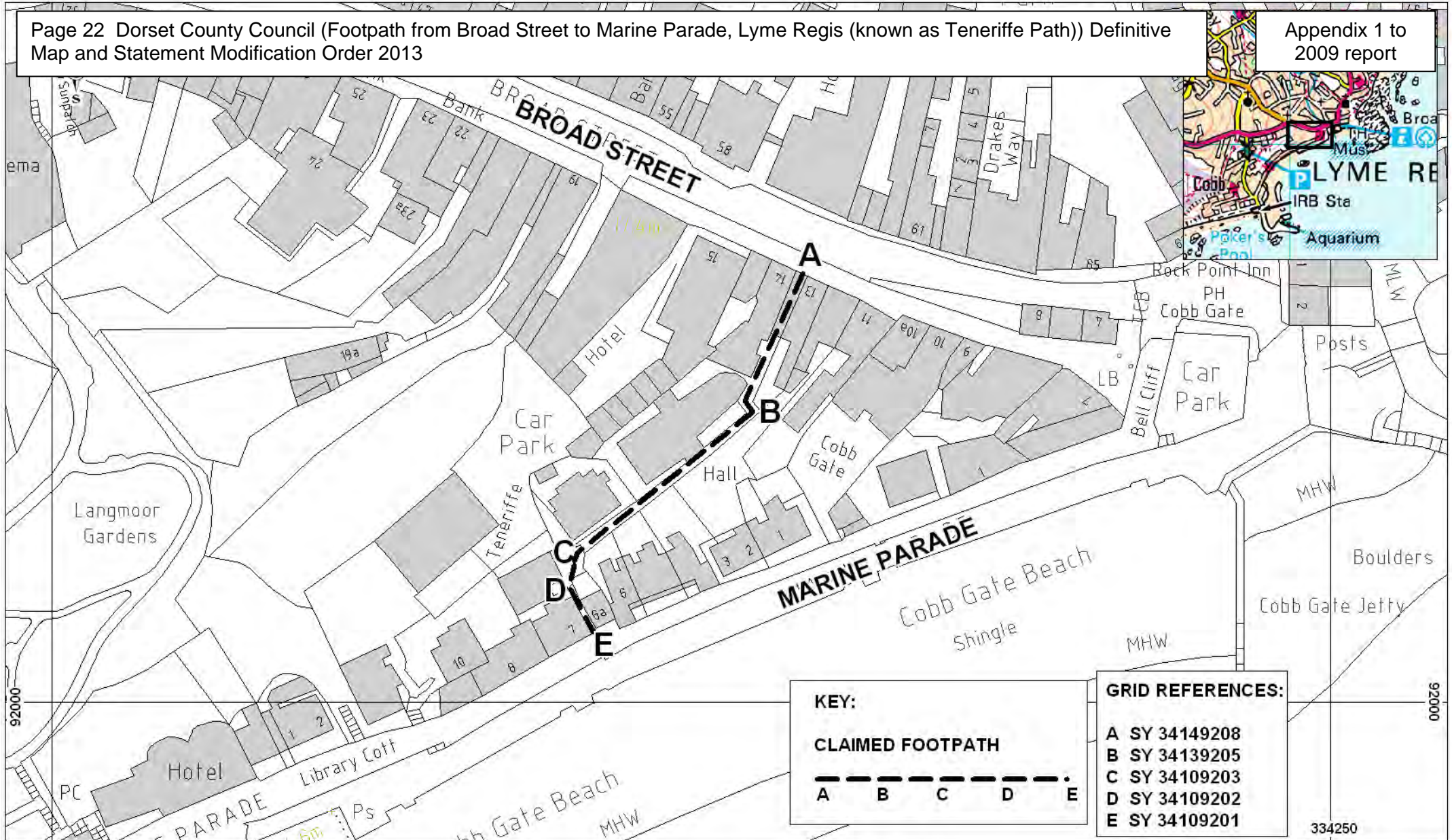
4.3 The users’ memories of the date of the locking of the door at the Marine Parade end of the path vary from 1984 to 1994. This makes it difficult to establish a date of challenge. However, a document from Dr J W (paragraph 3.9), gives a date of December 1988. In 3.17 and 3.18, witness accounts give dates that relate to the Autumn 1985 when Mr C J locked the door. From this, one could say that the date of challenge should be 1985.

- 4.3.1 Although the deeds were available to the landowners and occupiers from 1921 onwards, it seems that the owners at this time did not make the public aware that it was private, even though they had no intention to dedicate it as a public right of way.
- 4.3.2 Evidence of a 'private' sign on the door of Little Madeira from 1970, as stated by the previous landowner Mr A C (paragraph 3.32) can be said to be the first indication of public awareness of challenge to use.
- 4.4 The deeds from the various landowners along the route all state that the route is a private way. These vary in date from 1921 to 1933; none mention the route as public. The deeds also state that gates and lockable doors were in place at the time.
- 4.5 The properties that overlook the route were mainly second homes or/and holiday accommodation. This would have resulted in irregular enforcement in stopping the unwanted user. Also, several witnesses, when interviewed, and on some of the evidence forms, mention an element of secrecy when using this route.
- 4.6 The use of the buildings around the path has now changed. Most of the current owners have not witnessed public use over the past 20 years. However, this does not affect the public use of the path in times past.
- 4.7 The evidence forms that fall within the 20 years prior to the date of challenge, 1970, are of sufficient number to support the application. However, when many witnesses were questioned about these forms they remembered events differently.
- 4.8 A small percentage of the user evidence forms have had some corrections added to them and this affects the evidential weight can be applied to them.

5 **Conclusions**

- 5.1 Although there is evidence of the public using the route up to 1970, when the first date of challenge arises, the evidence of use provided for this period is not strong enough to support the application.
- 5.2 The historical documentary evidence adds little weight to this modification order application.
- 5.3 On balance, it is considered that there is insufficient evidence to support the claimed rights and therefore the application should be refused

Miles Butler
Director for Environment
May 2015



KEY:

CLAIMED FOOTPATH

A B C D E

GRID REFERENCES:

A SY 34149208
 B SY 34139205
 C SY 34109203
 D SY 34109202
 E SY 34109201

WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO RECORD A FOOTPATH AT LYME REGIS-BROAD STREET TO MARINE PARADE

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: REF: 09/04

Date: 03/02/2009

Scale 1:1000

Drawn By: ACH

Cent X: 334132

Cent Y: 92055

GEOGRAPHICAL INFORMATION SYSTEMS

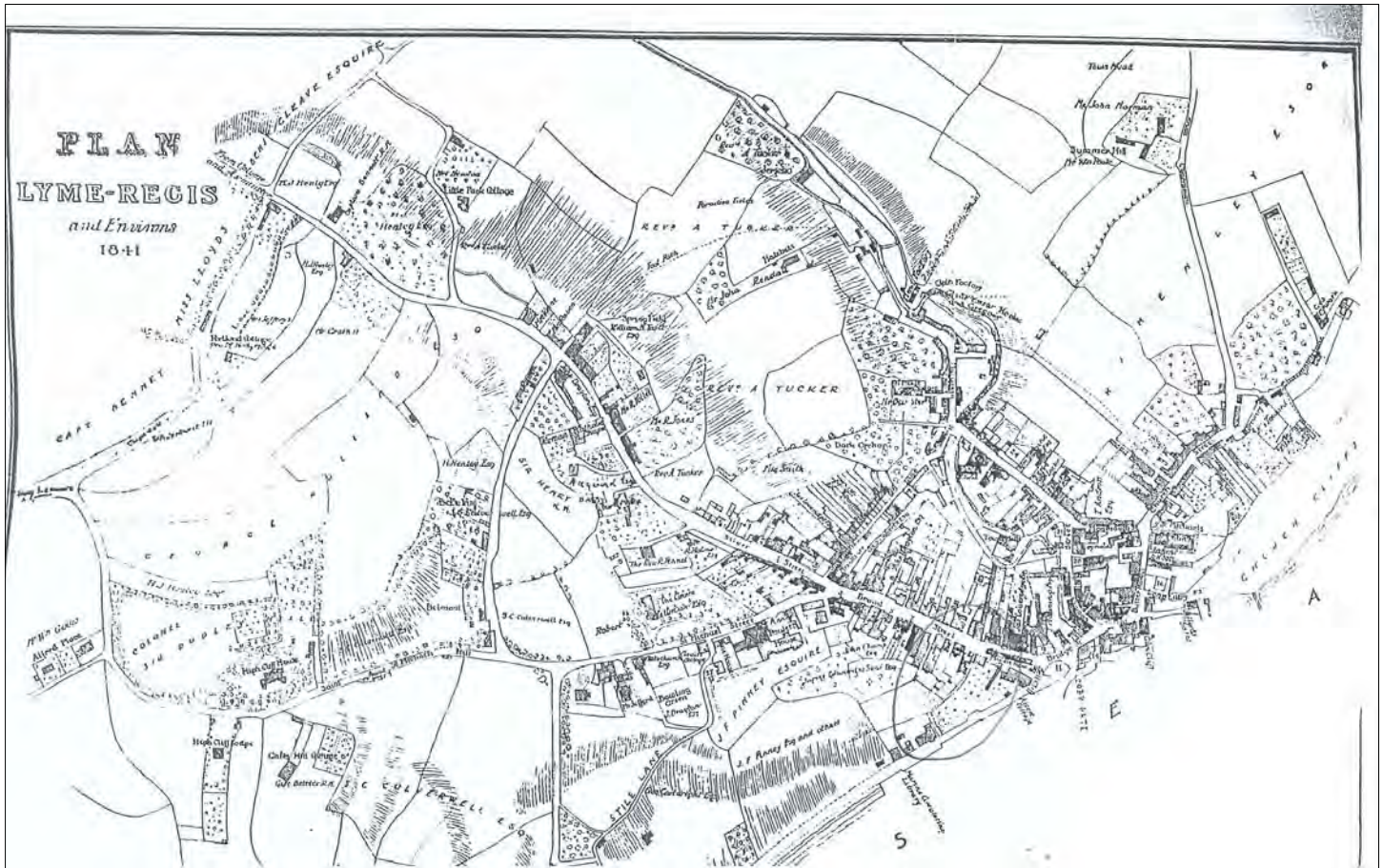


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Tithe Map 1841



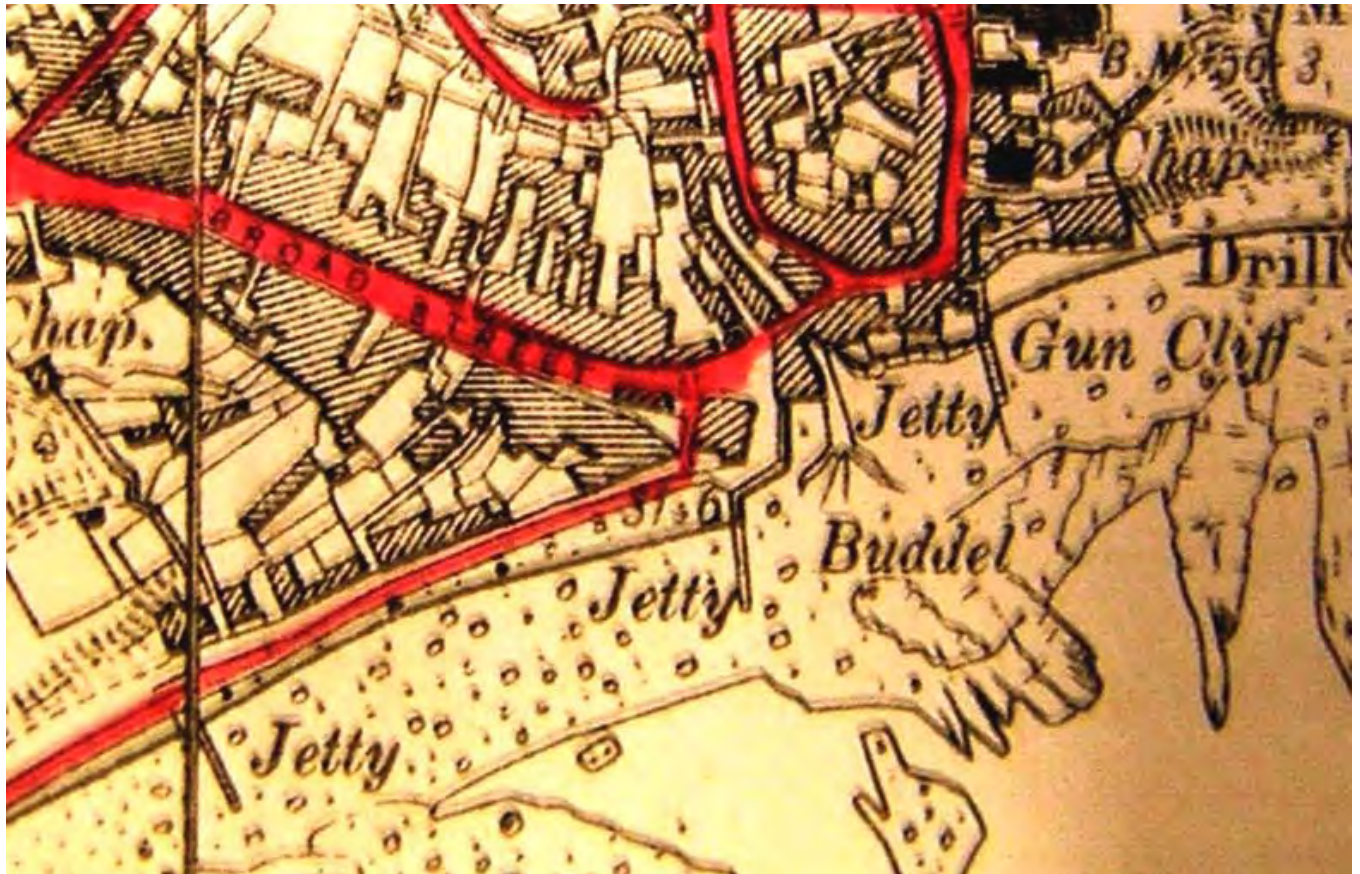
The plan of Lyme Regis and Environs 1841



Enlarged:



Second edition Ordnance Survey map 1904 Scale 1:10560



Ordnance Survey 1929 Scale 1:2500



Extract from the Lyme Regis Parish Survey map 1952



Ordnance Survey map 1961, Scale 1:2500



Archive photographs –

A The “walk” and assembly rooms photograph, c.1880



B Early photograph – late 1800s



C A pre-1940s postcard (possibly c1920s)



D 1935 postcard



E Post-1940s postcard



Aerial photographs

1947



1972



1997



2005



Letter from Dr J W 2 March 1989

PAUL TILDEN & HILL
SOLICITORS
COMMISSIONERS FOR OATHS

PAUL TILDEN
NOTARY PUBLIC

TELEPHONE NOS.
PLYMOUTH 668611 & 266847
(STD CODE 0752)

*Westminster Bank Chambers,
34 Mutley Plain,
Plymouth. PL4 6LQ*

OUR REF. PT MT.JM.WALKER

YOUR REF.

Thursday 2nd March 1989

The Chief Executive
West Dorset District Council
58 High West Street
DORCHESTER
Dorset



Dear Sir,

Re: DR. JOAN WALKER : 5 THE WALK LYME REGIS DORSET

We have been consulted by Doctor Joan Walker, of 5 The Walk, Lyme Regis, now aged 86 years, regarding a footpath which runs along the rear of her property.

Our client has resided in the property for over 20 years and, indeed, many of her neighbours have been in that area for a good deal longer.

During and, no doubt, before the last 20 years our client (and members of the general public) has been accustomed to using the path as a public "Right of Way". From the East, the exit emerges onto Broad Street - and from the West onto the sea front. Our client and members of the public have been accustomed to use this path freely, for at least 20 years.

This was the case until approximately ten weeks ago.

At this time, our client discovered that contrary to The Highways Act, 1959, this public "Right of Way" had been barred, by the closing and locking of a door at the Western end of the footpath - leading on to the sea front. Despite the very best endeavours of our client, she has been unable to reach any satisfactory 'modus vivendi' with the gentleman who has locked this exit door. It remains, to date, locked and the "Right of Way" obstructed to our client's acute disadvantage.

We shall be glad to have your observations on this situation - bearing in mind the statutory obligation imposed upon your Council by the Highways Act, 1959.

Yours faithfully. *W*

USER EVIDENCE (FROM FORMS COMPLETED IN 2003 - 2005)

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Ms C Allison	1980 until closure in 1990	70 times throughout the year	On foot	Used for pleasure. Would use the route daily with her 3 children as a short cut to visit relatives. Route was well used by others. Door locked in 1990.
Mrs S M Applebee	1969 - 1989	4 or 5 times a year	On foot	Used for pleasure. No obstruction, door from Marine Parade always unlocked. Saw a "private" notice in later years.
Mrs R M Blow	1972 - 1990	50 times a year on average	On foot	Used for work, pleasure and shopping. No notices that she was aware of. Always assumed the route was owned by either Lyme Regis TC, West Dorset District Council or Dorset District Council. Footpath was used mostly by local people. Door was locked 13 years ago.
Mr R M Bowles	1958 – 1990 approx	100 plus	On foot	Used for pleasure and work. Used route on a regular basis unhindered through an unlocked door to Marine Parade. Used route until his retirement in 1990 when there was a dispute with an occupant of Teneriffe and has been unable to use the route since. Gate locked about 1990.
Mrs Z Bowles	1964 - 1990	Twice a month	On foot	Used for pleasure. Used route as a short cut from Broad Street car park to the beach. Unlocked door on to Marine Parade. Was aware that her husband and many others used the route. Closed in 1990.
Mrs J E Bray	1976 – 1989/90 approx	3 times a week. 156 times a year	On foot	Used for home needs and work. Was obstructed by a person who bolted the door to Marine Parade and had to re-route. Believed it has been known as a right of way. Believed it was bolted by a Marine Parade tenant or owner of a property there.
Mrs D Brazier	1975 - 1990	At least 50	On foot	Used for pleasure. Gates locked at both ends sometimes approx 1989.

Mr K Broom	1954 - 1970	20 – 30 times a year	On foot	Used for pleasure. Half glazed door at Broad street end and a wooden door at Marine Parade end of route, both unlocked. Always believed the route to be a public right of way. The owner/occupier of the route was aware that others used it as they have met occasionally.
Mr A Brown (Deceased)	Early 1960's – c1990	Many	On foot	Used for pleasure and business. Wooden door at Marine Parade entrance never locked. Used by many people for decades.
Mrs D Brown	1966 - 1990	Many	On foot	Used for pleasure. Door at Marine Parade locked since 1990. Used by public for years.
Mr K J Collier	From mid 1960's to early 1970's	Numerous	On foot	Used for pleasure. Doors unlocked. Route was regularly used by many people.
Mr D C Cozens	1950's – 1960's	20 times	On foot	Used for pleasure & work.
Mrs A Edmondson	1983 - 1991	6 times a year	On foot	Used for pleasure. There were gates and in recent they were locked. Friends suffered verbal abuse when trying to use the route. A Private sign on a gate across pathway and on door to Marine Parade, locked for several years. Previously accessible to all. Believed owner/occupier was aware the public were using the route.
Mr J Edmondson	1983 - 1991	6 times a year	On foot	Used for pleasure. Friends experienced verbal abuse when trying to use the route. Galvanised garden gate has been installed with the word Private designed into the gate. The wooden door onto Marine Parade is permanently locked and has been for several years.
Mrs J Edwards	1972 - 1990	50 times a year	On foot	Used for pleasure. Door was locked to Marine Parade in 1990. have not seen anyone use the route since the door was locked.
Mr and Mrs Elwick	1972 - 1985	Approx 2 – 3 times a week	On foot	Used for pleasure and business. Believed the route was a public footpath until told otherwise. Saw other people use the route.
Ms J Enright	1980's	Several	On foot	Used for pleasure. Fence blocks the path, believes it has been blocked for several years.

Mrs T Evemy	1970's	Often during the summer months	On Foot	Used for pleasure. Door unlocked onto Marine Parade. Believes owner knew of the right of way. Door to Marine Parade was locked no reason why, just happened.
Mrs M A Garrett	1953 – 1980's	1953 – 1954 daily during July and August. Maximum of 6 times a year afterwards	On foot	1953 – 1954 used for business, after then used for pleasure. An unlocked door at Marine Parade end. A number of local people used the route. Was instructed to use the route by employer during July and August 1953 – 1954. Used it for pleasure afterwards until late 1980's or early 1990's when found that the door was locked.
Mr A J Gurd (deceased)	1950's – 1980's	1950's used the route 10 times. Used it a couple of times in the 60's, 70's and 80's	On foot	Used for pleasure. Door locked in 1990's notice said this door is no longer to be used. Owner put up notices stating private and this is not a right of way.
Mrs B Hallett	Post war plus wartime	5 times a year	On foot	Used for shopping etc. Door not locked. During the war used the route to visit sister who worked at Maderia Cottage to avoid the sentries at the head of Marine Parade.
Mrs D Harris	1975 - 1990	Frequently during summer	On foot	Used for pleasure. Her 2 children and friends also used the route. Door at Marine Parade. Obstructed when door was shut and locked.
Mr M Harris	1975 - 1990	Infrequently when need arised	On foot	Used for pleasure and business. Door leading directly onto Marine Parade, door was unlocked. Found door to be locked in the early 1990's. Introduced to the route by a police colleague as a short cut between Broad Street and Marine Parade then used route as necessary as did other police officers.
Mrs T Hawksworth	1978 – until closed late 1980's	Daily every summer holiday	On foot	Used as short cut to get home. Gated (front door) never locked until last able to use it.
Mrs A Higgs	1956 until closed in 1990	120 times a year	On foot	Used as a short cut. Unlocked door to Marine Parade. Route was used by local people as a short cut between Broad Street and Marine Parade.

Mr T Hodder	1955 – 1967	Between 60 and 80 times a year	On foot	Used for pleasure and a short cut. Unlocked door at Marine Parade. Many people used the route.
Mrs L Hogg	1981 - 1985	24 times a year	On foot	Used for pleasure. Gate not locked at Marine Parade.
Mrs H Holman (deceased)	Latter part of 1940's and 1950's	Many	On foot	Used for pleasure. Daughters told it was private. There was no door to begin with but when the door was installed it wasn't locked. Later found that it was locked.
Ms S Holman	1973 – 1990 (periodically 1960 – 1973)	Average 70 times a year	On foot	Used for pleasure and work. Door on Marine Parade always unlocked. Many people used it. Door locked.
Mrs J Hopkins	1960 - 1990	3 – 4 times a year	On foot	Used for pleasure. Door at Marine Parade was locked in 1990 blocking the route.
Mrs D Hunt	1962 onwards	60 times during the summer and 150 times with her mother	On foot	Used for pleasure. Was followed several hundred yards to the Amusement Arcade by a man who told her and her daughter they had just trespassed on private property.
Ms L Jenkin	1984 - 1989	Once a month on average	On foot	Used for pleasure and sometimes for work. Used the route with friends. Gate at the bottom. Used the route as a short cut.
Mr A & Mrs B Lee	1970 - 1985	2 or 3 times a week	On foot	Used for pleasure. Gated & locked but used to be left open. Were told of the short cut in 1970. A man stopped them when they tried to open the gate saying it was private.
Mrs J Littlewood	1940's to late 1970's	Numerous	On foot	Used for pleasure. Unlocked half-glazed door under archway of 13 Broad Street. Unlocked door between 6a and 7 Marine Parade. Used to meet the owner/occupier of the route occasionally on the route. The route was regularly used by parents.
Mr O Lovell	1974 - 1986	Occasionally in winter. 4 – 6 times weekly in summer	On foot	Unlocked door at junction with Marine Parade also recalls door at Broad street end. In recent weeks was told the route was not public.
Mrs D M McGregor	1932 – 1941 1983 – 1986 approx	Several	On foot	Used for pleasure. From 1990 there was a notice saying Private. Door at Marine Parade locked latterly.

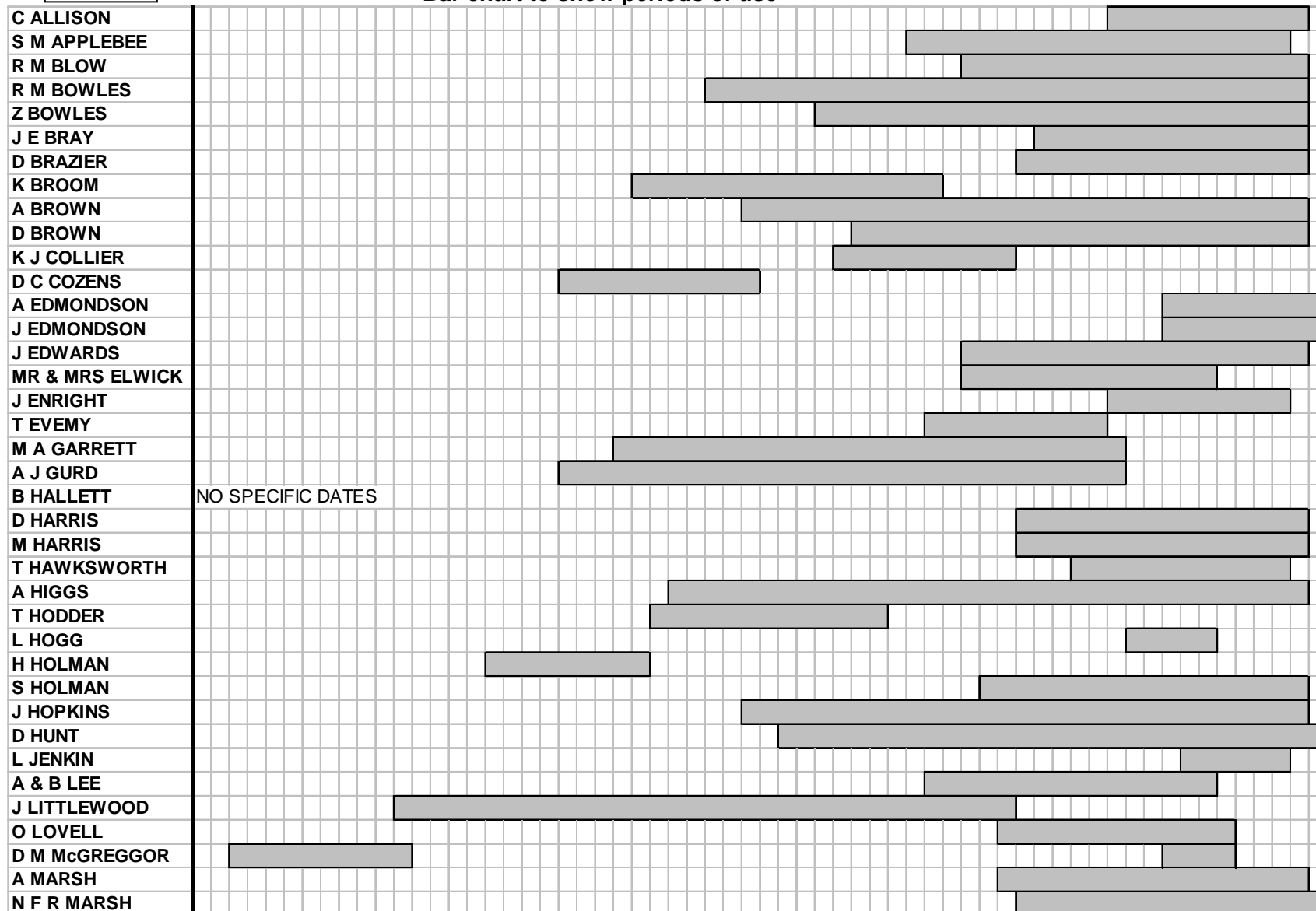
Mrs A Marsh (deceased)	1974 – 1990 approx	5 – 6 times a year	On foot	Used for pleasure and convenience. Unlocked door on path to Marine Parade.
Mr N F R Marsh	Mid 1970's onwards	10 times plus	On foot	Used for pleasure and work. Gate at Parade end unlocked. Obtained permission from property owners in mid 1970's. was stopped when the gate was locked.
Mr H May	1955 – 1990	3 times a week	On foot	Used for pleasure. No obstructions until 1990 when the path was closed.
Ms J A S May	1950's - 1990	10 – 15 times a year	On foot	Used as a short cut. Door onto Marine Parade unlocked. A lot of people used the route.
Mr Moore	1976 onwards	Many times a week through the holiday period	On foot	Used for pleasure. Gated 1980's, Door 1990's latterly locked. Sign on gate saying 'Private'.
Mrs G M Nicholls (deceased)	1944 - 1973	Approx 3 times a week	On foot	Used for business and garage. Believes route is owned by Lyme Regis TC.
Mrs B O'Halleran	1983 - 1985	20 – 30 times a year	On foot	Used for pleasure.
Mrs J Old	1967 - 1990	Approx 500	On foot	Used for pleasure. Unlocked door at Marine Parade and locked in 1990.
Ms M Peart	1960 - 1990	600 times a year	On foot	Used for business and pleasure. Door to Marine Parade not locked. Stopped from using the route in 1990 when door was locked.
Mrs A H Pennington	1972 – mid 1980's	Occasionally	On foot	Used for pleasure.
Mr P J S Piper	Late 1960's – early 1970's	2 or 3 times a year	On foot	Used for pleasure. No indication of ownership of the route. Saw other people using it.
Mrs A Porter (deceased)	Late 1950 - 1980	Approx 50 times	On foot	Used for work and pleasure. Door in recent years only. Private sign in late 1990's.
Mr A J Porter	1940 - 1990	56 times	On foot	Used for pleasure and work. Door not locked at Marine Parade end. Private sign in last few years.
Mrs S Rawlins	Over many years 1970 - 1977 mostly	200 times at least	On foot	Used for work and pleasure. Was aware the owner didn't like people using the route, it was common knowledge.
Mr A F Rice	1936 - 1955	Several	On foot	Used for pleasure. There was a gate which was sometimes locked but the council got it opened. Was told many years ago that it wasn't public.

Miss N L Rowe (deceased)	Approx 1975 - 1986	Approx 2	On foot	Used for pleasure. Didn't use it often.
Mrs K Sanders	From 1946 until the door was locked	20 or more	On foot	Used for pleasure. The door at the bottom of the path is now locked. Believes it has always been a public right of way.
Mrs D J Sheldon	1967 - 1990	20 times a year	On foot	Used for pleasure. Route cut off by locking the door onto the parade by nearby landowner. Believes the land is owned by crown. Seen a sign saying Private.
Ms N K Smith	1940's – 1954/56 approx	Several	On foot	Used for pleasure. Door between cottages unlocked. Notice changed from saying Public Access to saying Private after the sale of Little Madeira.
Mr E W F Street	1930 - 1957	Numerous occasions	On foot	A small gate with spring not locked. Prevented from using it when door giving access to Marine Parade was locked.
Mrs J M Street	1930 - 1950	Numerous	On foot	Used generally. Mother used the route often. Was blocked by gate.
Miss A W Symonds	1969 - 1973	10 or 12	On foot	Used for work. No one ever stopped her from using the route. Door.
Mrs E M Tappin	1940's and 1950's	Daily while working	On foot	Used for pleasure.
Mrs P Taylor	1976 – until path closed in 1990	80 approx	On foot	Used for pleasure. Door was locked at Teneriffe end. Notice saying 'Private'.
Mrs A Thirlwell	1940 – 1955 And 1963 - 1990	150 – 200 times a year approx	On foot	Used for pleasure and work. Gates locked in recent years.
Mrs J Thomson	1962 – 1966 approx	Occasionally	On foot	Used for pleasure. Always used the route with a friend. Used as a short cut from Marine Parade to Broad Street.
Mr S J Tidswell	1960 - 1990	1 – 3 times a year	On foot	Used for pleasure. Door onto Marine Parade locked in 1990. Mother has also used the route from 1967 until the door was locked.
Mr B C Tilzey	1965 – late 1980 approx	10 – 20 approx	On foot	Used for shopping. Locked gate installed early 1990. Used as a short cut.
Mr C Tilzey	1975 - 1980	6 to 10	On foot	Used for pleasure. Gated after 1990 approx. Used the route from childhood until moved away thereafter only whilst on holiday.

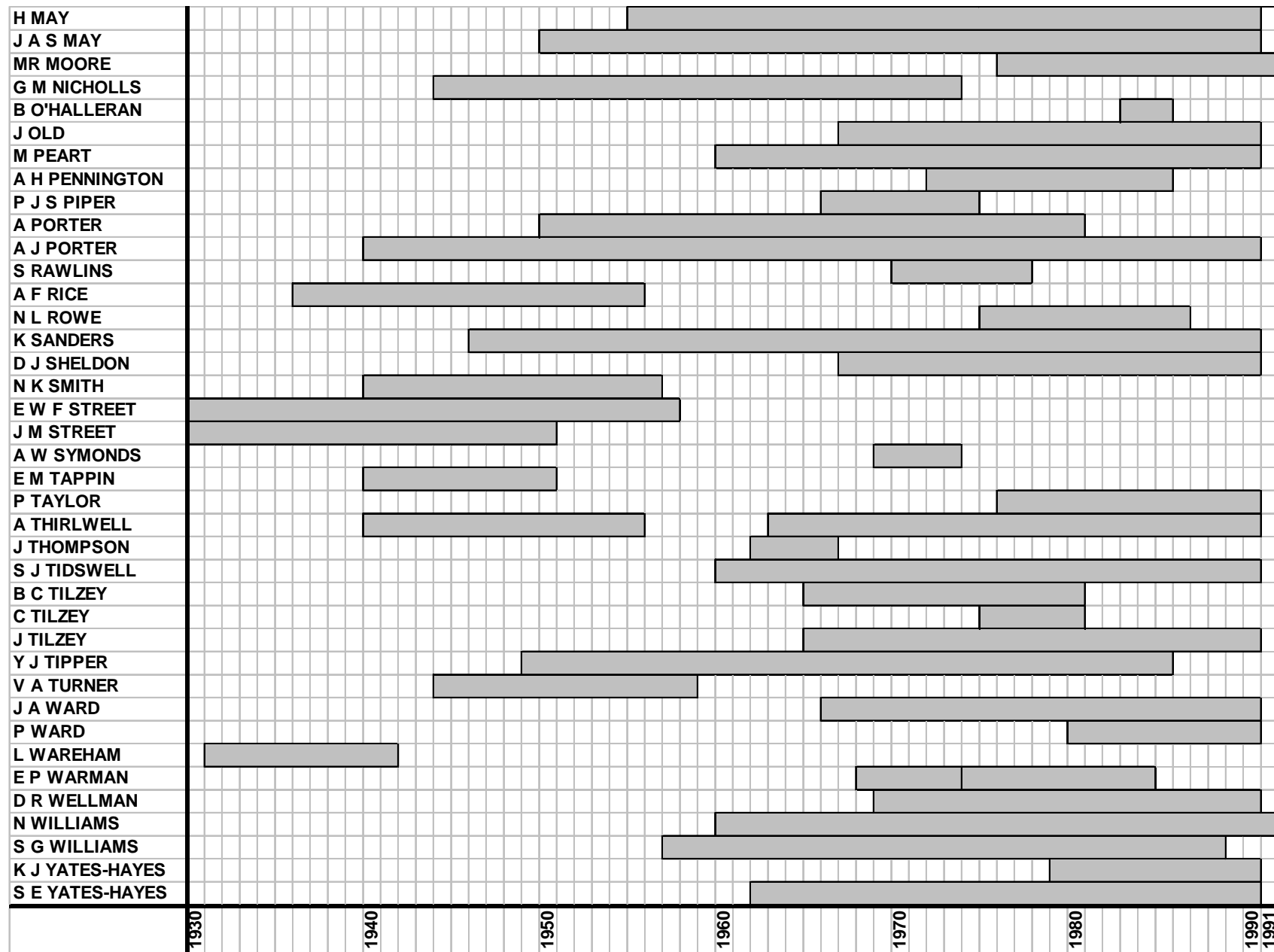
Mrs J Tilzey	1965 until it was closed in 1990	60 - 80	On foot	Used for pleasure. Gates locked 1989/90. Used since childhood.
Mrs Y J Tipper	1949 – 1985	195 times a year	On foot	Used for work and pleasure.
Mrs V A Turner	1944 - 1958	100 times approx	On foot	Used for school and shopping. Door not locked with a notice saying "Teneriffe". Mother found the door locked in 1993.
Mrs J A Ward	1966 – 1990	80 – 100 per year	On foot	Used for shopping. Door on Marine Parade was permanently locked in 1990.
Mr P Ward	1980 - 1990	Approx 100	On foot	Used for shopping. Door on Marine Parade was permanently locked in 1990. sons also used the route.
Mrs L Wareham	1931 - 1941	At least 60	On foot	Used for pleasure. Understood it was a public footpath. No one ever stopped her using the route.
Mrs E P Warman	1968 – 1973 then 1974 - 1984	Approx 75 per year	On foot	Used for pleasure. Sign saying no right of way approx 1974/5.
Mr D R Wellman	1969 - 1990	10 – 50	On foot	Used for pleasure. Knew other people used the route.
Mr N Williams	1960 - 1990's	Frequently in 70's	On foot	Used for pleasure. Door at Marine Parade never locked until recently, doors at Broad St not locked either. Prevented from access in mid 90's by the door at Marine Parade being locked.
Mrs S G Williams	1957 - 1988	70 approx	On foot	Used for pleasure and work. Door at Marine Parade end was always unlocked until late 1980's. Did query why the door was locked - didn't receive an answer. When she was a Girl Guide Leader she used the route on an almost weekly basis, especially during summer months 1968 – 1985. Used the route for business deliveries to adjacent properties.
Mr J Yates-Hayes	1979 - 1990	40	On foot	Used for pleasure. Gated but unlocked. Sign from 1990 saying no access to Beach, Private.
Mrs S E Yates-Hayes	1962 - 1990	42	On foot	Used for pleasure. Gated but unlocked. Sign from 1990 saying private, no thoroughfare.

NAMES

Bar chart to show periods of use



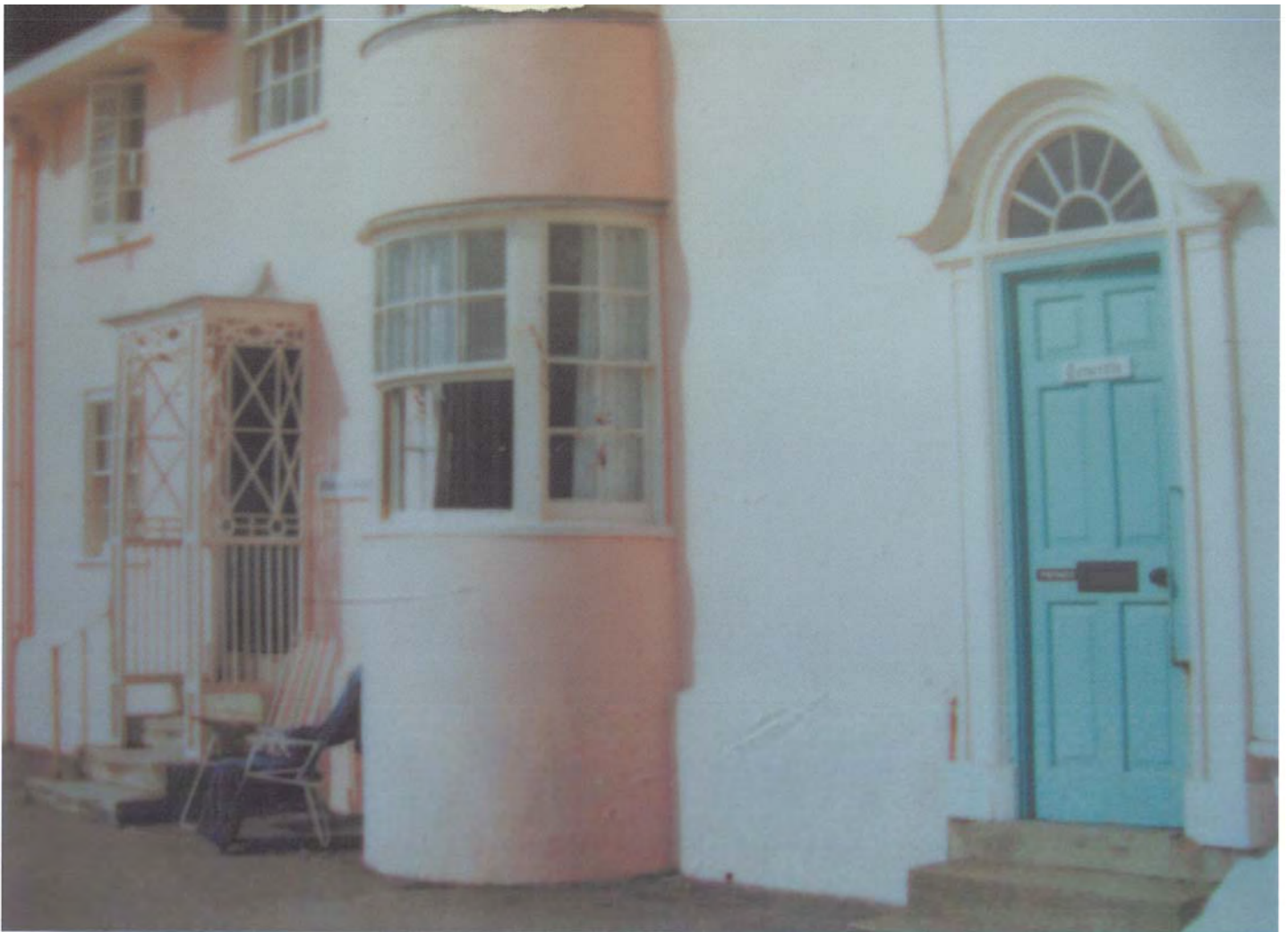
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YEARS OF USE

USE ON FOOT

Photograph of 'private' sign on the door at the Marine Parade end of the route



**Extract from the minutes of the Roads and Rights of Way Committee 7 July
2009**

**Application for a Definitive Map and Statement Modification Order to Record a
Footpath from Broad Street (A3052) to Marine Parade, Lyme Regis**

86.1 The Committee considered a report by the Director for Environment and a visual presentation by officers concerning an application to modify the definitive map and statement of rights of way by adding a footpath from between 13/14 Broad Street (A3052) to 6a/7 Marine Parade, Lyme Regis (known as Teneriffe Path) as shown A-B-C-D-E on Drawing 09/04 (Appendix 1 of the report).

86.2 The Rights of Way Officer reported that the application to add a footpath from between 13/14 Broad Street (A3052) to 6a/7 Marine Parade, Lyme Regis, was made by Lyme Regis Town Council in 2005 and that the route was currently in the ownership of three people.

86.3 The Rights of Way Officer outlined the documentary evidence for the public use of the route and explained that it was not conclusive. He reported that 76 written forms of evidence had been submitted by users of the route, 71 of which were local and 6 of which had been although they had now moved away. The route had mainly been used for pleasure and that the locking of the door on Marine Parade, preventing the use of the route, was remembered variously over a period between the 1970s and 1994 making it difficult to establish a date of challenge. The Rights of Way Officer explained that when many of the witnesses had been questioned about the forms they had remembered events differently.

86.4 Dr Spencer Hogg of Lyme Regis Town Council spoke in favour of the application. He said that although originally the householders of Marine Parade had had exclusive rights to the route, by 1970 the public access had been established. He said that the owners of the properties had moved away and let the houses to holidaymakers and tenants who had not shut the gates. He said substantial numbers of witnesses had said they used the route between 1930 and 1990 so the application should be supported.

86.5 Lorna Jenkin of Lyme Regis Town Council spoke in favour of the application. She said that over 40 people had used the path over 40 years so the route should be considered a public highway. She said that the notice put up in 1970 was inconsequential as the public rights had already been established. She said the path was much loved by locals and had been used as a route in stormy weather to avoid being hit by pebbles.

86.6 Colin Jones, a spokesman for the residents of Teneriffe Path spoke against the application. He said that there were covenants on the properties dating from 1911 that put a legal requirement on residents to lock the gates. The documents were registered with the Land Registry and could only be rescinded by a land tribunal. He asked that the residents of Teneriffe Path be allowed to enjoy their properties by maintaining their privacy.

86.7 Members discussed the evidence and took the views expressed and

Resolved

87. That the application to modify the definitive map and statement of rights of way by adding a footpath from Broad Street (A3052) to Marine Parade, Lyme Regis (known as Teneriffe Path) be refused.

Reason for Decision

88. It was considered that the balance of evidence showed that there is insufficient evidence to support the claimed rights and therefore the application be refused.

Roads and Rights of Way Committee

Dorset County Council



Date of meeting	16 January 2014 ²
Officer	Director for Environment
Subject of report	The Dorset County Council (A Footpath from Broad Street to Marine Parade, Lyme Regis (Teneriffe Path)) Definitive Map and Statement Modification Order 2011
Executive summary	This report considers the position to be adopted by the County Council on the submission of the Order to the Secretary of State following the receipt of an objection.
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment is not a material consideration in considering this application.</p>
	<p>Use of Evidence:</p> <p>Any relevant evidence provided has been discussed in the earlier report.</p>
	<p>Budget/risk implications:</p> <p>Any financial/risk implications arising from this proposed modification are not material considerations and should not be taken into account in determining the matter.</p>
Recommendations	<p>That:</p> <p>(a) The Order be submitted to the Secretary of State for determination; and</p> <p>(b) The County Council take a neutral stance in the proceedings.</p>

Reasons for Recommendations	<p>(a) There has been an objection to the Order and therefore the County Council must submit it to the Secretary of State for confirmation.</p> <p>(b) Continued investment of public resources relating to this matter is not considered to be in the public interest.</p>
Appendices	<p>1 - Report to the Roads and Rights of Way Committee 7 July 2009</p> <p>2 - Extract from the minutes of the Roads and Rights of Way Committee 7 July 2009</p> <p>3 - Appeal decision letter 15 June 2011</p> <p>4 - The Dorset County Council (A Footpath from Broad Street to Marine Parade, Lyme Regis (Teneriffe Path)) Definitive Map and Statement Modification Order 2011</p> <p>5 - Letter of objection to the Order 5 October 2011</p>
Background Papers	The file of the Director for Environment (ref. RW/T362).
Report Originator and Contact	<p>Roger Bell Rights of Way Officer</p> <p>Tel: (01305) 221670</p> <p>email: r.bell@dorsetcc.gov.uk</p>

1 **Background**

- 1.1 An application to modify the definitive map and statement of rights of way by adding a footpath at Lyme Regis in the West Dorset District was considered by the Roads and Rights of Way Committee on 7 July 2009. The Committee considered the application and resolved that the application be refused. A copy of the report forms Appendix 1 and an extract from the minutes of the meeting Appendix 2.
- 1.2 The applicant subsequently appealed against this decision on 8 July 2009.
- 1.3 On 15 June 2011 Dorset County Council was informed by the Department for Environment Food and Rural Affairs that the Secretary of State considered that an Order should be made (Appendix 3).
- 1.4 The Dorset County Council (A Footpath from Broad Street to Marine Parade, Lyme Regis (Teneriffe Path)) Definitive Map and Statement Modification Order 2011 was sealed on 18 August 2011 and published on 31 August 2011. A copy of the Order forms Appendix 4.
- 1.5 An objection to the Order was received following public notice of the making of the Order (Appendix 5).

2 **Law**

- 2.1 Paragraph 7 (i) of Schedule 15, Wildlife and Countryside Act 1981 provides that if any representation or objection duly made to the order is not withdrawn the County Council shall submit the order to the Secretary of State for confirmation.

3 **Evidence to be considered**

- 3.1 The evidence relating to the footpath is set out in the earlier report (Appendix 1) and has been considered in the Inspector's report dated 15 June 2011 (Appendix 3).
- 3.2 It is not intended to review the evidence relating to the footpath, nor the strength of either the case for or the case against confirmation of the Order in this report.

4 **Objection to the Order**

- 4.1 One objection to the Order was received from a solicitor on behalf of the 12 individual objectors dated 7 October 2011. A copy is included in Appendix 6~~5~~.
- 4.2 The objection was made on the grounds :
 - Private signs
 - Locked door and gate
 - Door and gate closed at least one day a year
 - Verbal and physical challenges to use
 - The veracity of the evidence set out in the evidence forms and the claimed nature and frequency of use

5 Discussion

- 5.1 As an objection has been received, the County Council is unable to confirm the Order itself and must submit the Order to the Secretary of State for confirmation.
- 5.2 The options now available to the County Council are:
- To oppose the Order (maintaining the position of the County Council to date);
 - To support the Order (in view of the findings of the Secretary of State); or
 - To take a neutral stance.
- 5.3 Opposing or supporting the Order would entail the preparation of an extensive and detailed Statement of Case to be submitted to the Secretary of State for consideration. This is an extremely time-consuming exercise involving several officers from both Legal Services and Rights of Way. There would also be preparation for and active participation in any subsequent public inquiry which may be held.
- 5.4 If the County Council takes a neutral stance in the matter, merely submitting copies of all correspondence relating to the case for consideration and taking no active part in any public inquiry which may be held, the burden on the resources of the County Council is substantially reduced and the matter can be progressed more swiftly.
- 5.5 The Roads and Rights of Way Committee and County Council officers have already given much consideration to this matter. Significant resources have been allocated to this application and it is considered that it would not be an effective use of public money to continue such a high level of involvement in this case. There are parties able to represent the arguments for and against confirmation and it is considered that taking a neutral stance is most appropriate in the wider public interest.

6 Conclusions

- 6.1 The Order should be submitted to the Secretary of State for determination.
- 6.2 The County Council should take a neutral stance in any further proceedings resulting from the objection to the Order.

Miles Butler
Director for Environment

December 2011



Appeal Decision

by **Michael R Lowe** BSc (Hons)

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 15 June 2011

Appeal Ref: NATROW/C1245/529A/09/33

- 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 Dorset County Council not to make an Order under section 53(2) of that Act.
- The Application dated 17 March 2005 was refused by Dorset County Council on 8 July 2009.
- The Appellant claims that the appeal route between 13/14 Broad Street and 6a/7 Marine Parade, Lyme Regis, Dorset (known as Teneriffe Path) should be added to the definitive map and statement for the area as a footpath.

Summary of Decision: The appeal is allowed

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 Wildlife and Countryside Act 1981.
2. The appeal has been decided on the basis of the papers submitted.

Main issues

3. In considering the evidence and the submissions, I take account of the relevant parts of the 1981 Act and court judgements.
4. Section 53(3)(b) of the 1981 Act states that an order should be made to modify the Definitive Map and Statement where it can be shown that a period of time has expired such that the enjoyment by the public of a path during that time raises the presumption that the way has been dedicated as a public path.

Section 53(3)(c)(i) of the 1981 Act states that an order should be made on the discovery by the authority of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land to which the map relates. In considering this issue there are two tests to be applied, as identified in the case of R v Secretary of State for the Environment ex parte Mrs J Norton and Mr R Bagshaw, and clarified in the case of R v Secretary of State for Wales ex parte Emery.

Test A: Does a right of way subsist? This requires clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that a right of way subsists? If there is a conflict of credible evidence but no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then a public right of way has been reasonably alleged.

For the purposes of this appeal, I need only be satisfied that the evidence meets test B.

5. Section 31 of the Highways 1980 Act (the 1980 Act) provides that a way may be presumed to have been dedicated as a highway if it has actually been enjoyed by the public as of right and without interruption for a full period of 20 years calculated retrospectively from the date on which the right of the public to use the way is brought into question. Landowners can, however, take steps to negate the presumed intention to dedicate a right of way by, for example, closing the way or erecting notices which clearly indicate that no public right of way exists. Further, under section 31(6), a landowner may deposit with the highway authority a map and statement showing those ways, if any, which he or she agrees are dedicated as highways, followed by a statutory declaration to the effect that no additional ways have been dedicated. In the absence of proof of a contrary intention, the declaration will be sufficient evidence to negative any intention to dedicate any additional highways.
6. A highway may be created at common law by the dedication of the owner with the acceptance and use by the public. Dedication may be express or implied. Dedication is inferred where the acts of the owner point conclusively to an intention to dedicate. The evidence would need to be cogent to discharge the burden of proof that rests upon those seeking to establish the rights. The evidence would need to be sufficient to demonstrate that the claimed route had been dedicated and accepted by the public in the past. However, dedication is not to be inferred if the circumstances indicate that the user was likely to have been permissive.
7. In all cases the test to be satisfied is on the balance of probability.

Reasons

8. To examine the evidence against the criteria of the 1980 Act it is necessary to identify a date on which the right of the public to the use of the claimed route as a footpath was brought into question.
9. The evidence forms and other witness statements vary in the date given for the most recent time of the permanent locking of the gate at Marine Parade. Events are recalled from 1984 to 1994. The solicitor's letter instigated by a resident of the near locality, dated 1989, indicates a date of December 1988.
10. The only documentary evidence of a date is December 1988. The recollections of witnesses to dates before December 1988 do not appear to have been so notorious or effective in bringing the way into question. I therefore conclude that the claimed footpath was brought into question in December 1988. If I had found an act of challenge in the 20 year period before December 1988 it would be necessary to look back during a further 20 year period in an iterative process.
11. The evidence statements submitted with the application indicate that the claimed route was used by the public as a footpath without interruption for the 20 year period before December 1988. This evidence indicates that, on the whole, the use was without permission, force or secrecy. It appears to me that the extent of use was sufficient for the landowners to have been aware of the use.
12. A number of owners and former owners of properties have stated that they have challenged any members of the public found using the claimed footpath

Appeal Decision NATROW/C1245/529A/09/33

before December 1988. The evidence of the appellant and some landowners as to the extent of use and instances of challenge during the period in question are not consistent and are difficult to reconcile without oral testimony subject to cross-examination. If the challenges were sufficient to indicate a lack of intention to dedicate it is also likely that they would have brought the public footpath status into question at the same time and thereby established an earlier relevant period. In my view the evidence of challenges before December 1988 is not sufficient to indicate to the users that there was no intention to dedicate.

13. In my view the evidence indicates, on the balance of probability, that it is reasonable to allege that a footpath can be presumed to have been dedicated under section 31 of the 1980 Act. There is a conflict of credible evidence as to events before December 1988, but no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist. This conflict of evidence can be resolved by the publication of a Modification Order and the subsequent confirmation process.
14. In the light of my conclusion as to the requirements of section 31 of the 1980 Act, I need not consider the alternative of dedication at common law.

Conclusion

15. Having regard to these and all other matters raised in the written representations I conclude that the appeal should be allowed.

Formal Decision

16. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Dorset County Council is directed to make an order under section 53(2) and Schedule 15 of the Act to modify the definitive map and statement for Dorset County Council to add a public footpath as proposed in the application dated 17 March 2005. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with her powers under Schedule 15 of the 1981 Act.

Michael R Lowe

Inspector



Wildlife and Countryside Act 1981

County of Dorset Definitive Map and Statement of Rights of Way

**Dorset County Council
(A Footpath from Broad Street to Marine Parade, Lyme Regis (Teneriffe Path))
Definitive Map and Statement Modification Order 2011**

This Order is made by Dorset County Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the County of Dorset Definitive Map and Statement require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) namely, 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.

The authority have consulted with every local authority whose area includes the land to which the order relates. The Dorset County Council hereby order that:

1. For the purposes of this order the relevant date is 19 August 2011.
2. The County of Dorset Definitive Map and Statement shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This order shall take effect on the date it is confirmed and may be cited as the "Dorset County Council (A Footpath from Broad Street to Marine Parade, Lyme Regis (Teneriffe Path))Definitive Map and Statement Modification Order 2011".



SCHEDULE

(The points specified relate to the map attached to the Order and their positions are identified by national grid references)

PART I

Modification of definitive map Description of path to be added

A footpath in Lyme Regis in the West Dorset District, known as Teneriffe Path, with a tarmac/concrete surface, from its junction with the A3052 Broad Street between Nos. 13 and 14 Broad Street at point A (SY 34149208), through an archway and south south west along a covered walkway and continuing between walls to the entrance to the Masonic Hall at point B (SY 34139205). Then south west down a slope between walls to point C (SY 34109203) and south south west down concrete steps and between walls to point D (SY 34109202). Turn south south east and continue down steps between Nos. 6a and 7 Marine Parade and through a doorway and down two concrete steps to exit onto Marine Parade at point E (SY 34109201).

The width of the footpath varies:

Point A – 2.7 metres

Between points A and B – Covered walkway – 1.78 metres, from end of covered walkway to point B - 2 metres

Point B – 1.56 metres

Between points B and C – 1.8 metres

Point C – 1.2 metres

Between points C and D – 1.2 metres

Point D – 1.05 metres

Between points D and E – 1.2 metres

Point E – 0.73 metres

PART II

Modification of definitive statement Variation of particulars of path

A footpath in Lyme Regis in the West Dorset District

From: SY 34149208 To: SY 34109201

Known as Teneriffe Path, with a tarmac/concrete surface, from its junction with the A3052 Broad Street between Nos. 13 and 14 Broad Street, through an archway and south south west along a covered walkway and continuing between walls to the entrance to the Masonic Hall at SY 34139205. Then south west down a slope between walls to SY 34109203 and south south west down concrete steps and between walls to SY 34109202. Turn south south east and continue down steps between Nos. 6a and 7 Marine Parade and through a doorway and down two concrete steps to exit onto Marine Parade.

The width of the footpath varies:

SY 34149208 – 2.7 metres

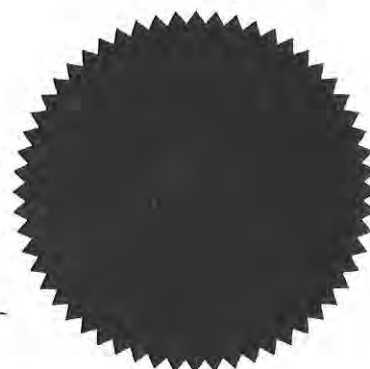
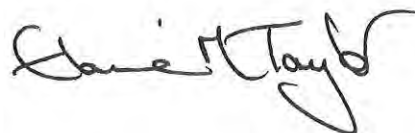
Between SY 34149208 and SY 34139205 – Covered walkway – 1.78 metres, from end of covered walkway to SY 34139205 - 2 metres

SY 34139205 – 1.56 metres
Between SY 34139205 and SY 34109203 – 1.8 metres
SY 34109203 – 1.2 metres
Between SY 34109203 and SY 34109202 – 1.2 metres
SY 34109202 – 1.05 metres
Between SY 34109202 and SY 34109201 – 1.2 metres
SY 34109201 – 0.73 metres

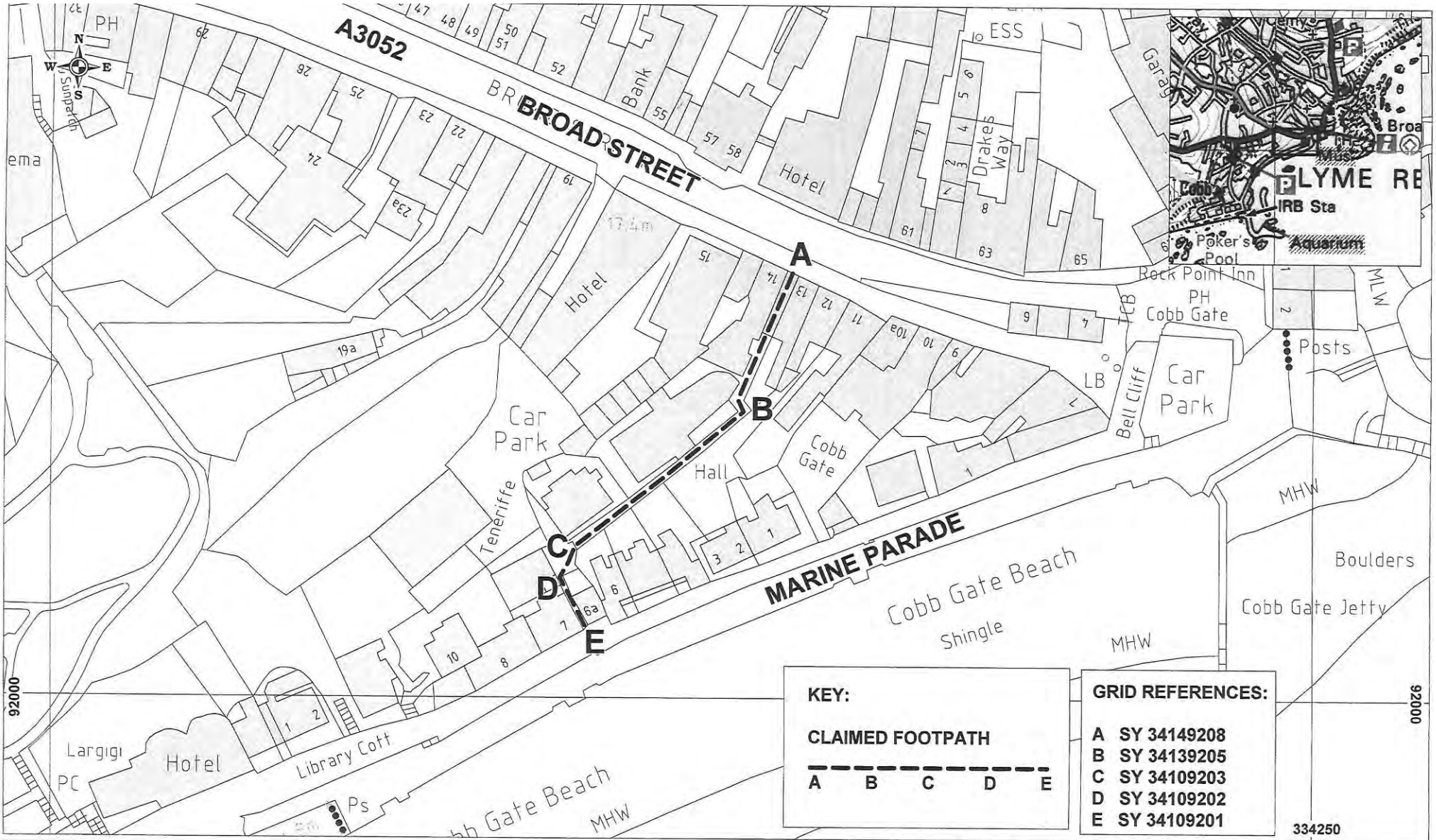
Limitations and Conditions: Point E - SY 34109201 Wooden door 0.73 metres wide.

Dated this 13 day of AUGUST 2011.

THE COMMON SEAL OF THE
DORSET COUNTY COUNCIL
was fixed in the presence of:-



Authorised Signatory



KEY:

CLAIMED FOOTPATH

A B C D E

GRID REFERENCES:

A SY 34149208
 B SY 34139205
 C SY 34109203
 D SY 34109202
 E SY 34109201

WILDLIFE AND COUNTRYSIDE ACT 1981
 APPLICATION TO RECORD A FOOTPATH AT LYME REGIS - BROAD STREET TO MARINE PARADE

David Taylor

Ref: 09/04
 Date: 03/02/2009

NOT TO SCALE

Cent X: 334132
 Cent Y: 92055

GEOGRAPHICAL INFORMATION SYSTEMS

DORSET
 County Council

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Ms. Elaine Taylor
Director of Corporate Resources
Dorset County Council
County Hall
Colliton Park
DORCHESTER DT1 1XJ

OUR REF: JEB/SPS/BET0002/50811

YOUR REF:

BY SPECIAL DELIVERY

5 October 2011

Dear Ms. Taylor

**A FOOTPATH FROM BROAD STREET TO MARINE PARADE,
LYME REGIS (TENERIFFE PATH)
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2011**

I enclose Objections to the Modification Order from the following Objectors:-

1. Sir Neville and Lady Marriner
2. Mr. and Mrs. J. Braybrooke
3. Mr. and Mrs. G. Geipel
4. Mr. Andrew Marriner
5. Mr. Colin Jones
6. Mrs. Rita Jones
7. Mrs. Sheila Jones
8. Miss Judith Cottis
9. Mr. and Mrs. D. Betts
10. Mr. and Mrs. J. Vivian
11. Ms. J. Willcox

I should be grateful if you would acknowledge safe receipt.

Yours sincerely

SIGNATURE REDACTED

JENNIFER BREWER
For **STONE ROWE BREWER LLP**



Ms. Elaine Taylor
Director of Corporate Resources
Dorset County Council
County Hall
Colliton Park
DORCHESTER DT1 1XJ

OUR REF: JEB/SPS/BET0002/50811

YOUR REF:

BY SPECIAL DELIVERY

7 October 2011

Dear Ms. Taylor

**A FOOTPATH FROM BROAD STREET TO MARINE PARADE,
LYME REGIS (TENERIFFE PATH)
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2011**

I enclose a further Objection to the Modification Order from the following Objectors:-

1. Mr. and Mrs. R. Bowmaker

Yours sincerely

SIGNATURE REDACTED

JENNIFER BREWER
for **STONE ROWE BREWER LLP**

Wildlife and Countryside Act 1981
County of Dorset Definitive Map and Statement of Rights of Way

Dorset County Council
(A Footpath from Broad Street to Marine Parade, Lyme Regis (Teneriffe Path))
Definitive Map and Statement Modification Order 2011

OBJECTION

This is an objection to the abovementioned Modification Order, and is made by Mr and Mrs R Bowmaker of 3 Sunnybank, Marine Parade, Lyme Regis DT7 3JE (“the Objector”).

A) Background

1. The Teneriffe Footpath (“the Footpath”) commences between 13-14 Broad Street and runs south-west, beside the Masonic Hall and the property known as “Faraway”. This part of the Footpath is within the curtilage of 14 Broad Street. There is a gate (“the Top Gate”) at the end of this part of the Footpath, where it meets the courtyard beside the property known as “Teneriffe”. The Footpath then turns south through the said courtyard, to a gate at the top of some stone and concrete steps (“the Bottom Gate”). This part of the Footpath is within the curtilage of Teneriffe. The Footpath then continues down the said steps, to a door (“the Door”) between Madeira Cottage and Little Madeira, which opens onto Marine Parade. A number of properties along the route of the Footpath enjoy a private right of way over it.

2. By an application dated 17.03.05 Lyme Regis Town Council (“LRTC”) applied to add ‘the Teneriffe Footpath’ to the definitive map and statement. On 08.07.09 Dorset County Council (“DCC”) refused to make the order, because “the balance of evidence shows that there is insufficient evidence to support the claimed rights”. It is notable that in their report, DCC focused on the locking of the Door at Marine Parade, and evidence of a ‘private’ sign on the Door. DCC considered that 1970 was the first “date of challenge”.¹ They concluded that “although there is evidence of the public using the route up to 1970, when the first date of challenge arises, the evidence of use provided for this period is not strong enough to support the application”.

3. LRTC appealed the decision. In its “Statement Setting out the Council’s Reasons for Refusing the Application” (“the DCC Statement”) DCC concluded that “the period under consideration for establishing deemed dedication... should be 1935 to 1955”,² because “[t]he evidence now available demonstrates that the use of the [Footpath] by the Public was brought into question at least as early as 1955”. DCC submitted that “there has not been a clear period of 20 years use before that date due to the physical changes to the route claimed to have been used. In any event, the evidence of use for the early part of this period is weak and questionable” and “[t]hroughout the period of claimed use since 1955 there is clear evidence of regular interruption and lack of intention to dedicate on the part of the landowners”.³ The Objector adopts the analysis and reasoning set out in the DCC Statement for the purposes of this objection.
4. The appeal was determined by an Inspector appointed by the Secretary of State, on 15.06.11. The Inspector concluded that as “the only documentary evidence of a date [for the *permanent* locking of the gate at Marine Parade] is December 1988” (emphasis added),⁴ that was the date that the public’s right was first “brought into question”. The Inspector therefore apparently attached significant weight to ‘documentary evidence’, and placed little or no weight on the recollections and evidence of and relied upon by the landowners, inter alia set out in the Evidence Forms and letters. The Inspector thus considered the evidence for the period immediately preceding December 1988, but recognised that if the right had first been brought into question at an earlier date, the 20 year period would have to be worked back from that earlier date. The Inspector concluded that on the available evidence “it is reasonable to allege that a footpath can be presumed to have been dedicated under section 31 of the 1980 Act”. The Inspector therefore directed DCC to make the Order, which it did on 18.08.11.
5. The Objector objects to the Order being confirmed and submits that this is a matter for a public inquiry, when the Objector may be afforded an opportunity of being heard, and all the evidence may be tested. To this end, it is noted that in the appeal the Inspector specifically observed that, “there is a conflict of credible evidence as to events before December 1988... This conflict of evidence can be resolved by the publication of a Modification Order and the subsequent confirmation process”,⁵ and that “[t]he evidence of the appellant and some landowners as to the extent of use and instances of challenge during the period in question are not consistent and are difficult to reconcile without oral testimony subject to cross-examination”.⁶

B) Evidence Replied Upon by the Objector

1. DCC tabulated much of the evidence on which the Objector relies, in the DCC Statement.⁷ For convenience, the Objector repeats and adopts the same here, as a non-exhaustive summary of the evidence.
2. Further evidence has been obtained since the determination of the appeal, a non-exhaustive summary of which is as follows:

i) Mr and Mrs Geipel (1964-present)

As aforesaid, the Inspector appears to have placed significant weight on a letter from solicitors acting for a Dr Walker, dated 02.03.89. The letter alleged that Dr Walker had “been accustomed to using the [Footpath] as a “public right of way”... until approximately ten weeks ago”. However, Mr Geoff Geipel - whose family have owned 6 Marine Parade since 1964 - does not remember ever seeing Dr Walker using the steps onto Marine Parade. She was 86 when the letter was written, and had her own access onto Marine Parade through her own property. Margaret Geipel recalls that the Door was in place in 1963, and remembers a “private” sign on the wall by Teneriffe in the 60s/70s.

(Letters from visitors to Little Madeira, mainly between 1976 and 1988)

ii) Dr John Amis

Recalls a Yale lock on the inside of the Door, generally locked. Sometimes people would be challenged, by local owners/occupiers.

iii) Luke Rittner (1977-1979)

Remembers that the Door was always locked, and that he had a key.

iv) Stephen Wright (1978-88)

Recalls that there was a Yale lock on the inside of the Door, and it was generally locked. He does not recall people using the Footpath

v) Catherine Hodgson (1976-late 80s)

Had to lock and unlock the Door, and was challenged occasionally by the people ‘in the house on the next level up’ when she went up the steps to the shops. She had to “make sure that the gate in the middle was closed”.

vi) Julie Day (1978-1988 and 1995-2005)

Mrs Day has produced a photograph of Little Madeira, taken in 1986, showing the “private” sign on the Door. She remembers a Yale lock on the inside of the Door, and that it was always a big priority to keep it locked. The only time she recalls people using the Footpath was quite a while before 1986 – maybe the late 70s.

vii) John Cockett (1987-2009)

The Door was always locked, even when he was sitting outside on Marine Parade. The only people who exited or entered were from the properties at the top of the stairs, and they all had their own keys.

viii) William Hodgson (who worked for Sibyl Colefax & John Fowler) (80s/90s, and before in 70s)

He remembers the “private” notice on the Door, and that the Door was always locked. He was on occasion stopped by a man who lived ‘half way up the path on the left’. There were “private” notices up at the top end, and a gate half way down which was always latched, and which also had a “private” notice. The only people he saw using the path had a key.

ix) Alan Galbraith (1977-1978)

Stayed at Madeira Cottage in 1977 and again in 1988. He clearly remembers that the Door was always locked with a Yale type lock, providing entry from Marine Parade. His sons had a key to the Door, to let themselves in from the Parade.

x) Hector Sims (1976 - present)

In 1976 the Door bore the sign “Teneriffe”. He is sure that some sort of lock was installed, after 1976. There was a sign attached to the wall inside the doorway reading “No thoroughfare” or similar. He also recalls a gate (in the position of the Top Gate) with a sign reading “private”, and that the gate was secured with, he thinks, a padlock and chain.

xi) Ursula le Huray (1974 - 1986)

She stayed at Little Madeira 3 times a year during the above period. She remembers a sign saying ‘private thoroughfare’. The Door was often locked, and the residents encouraged this to prevent the public who had ignored the sign and used the Footpath as a short-cut. She remembers occasions when she went onto the beach without a key, and then had to go

back the 'long way round' to get back in. Occasionally the residents would stop the public using the Footpath.

C) Grounds of Objection

1. Where a way has been used by the public without interruption and as of right (without force, secrecy or permission) for at least 20 years immediately before the right to use the way was 'brought into question', and there is not sufficient evidence of a lack of intention to dedicate, there is a statutory presumption that the way has been dedicated as a way. As noted by DCC and the Inspector, there is a substantial conflict of evidence as to the nature, quality and frequency of use of the Footpath, and as to the actions of the landowners. The Objector submits that there is not sufficient evidence of use by the public to justify the addition of the Footpath to the map, and there is sufficient evidence of a lack of intention to dedicate.

Evidence of a Lack of Intention to Dedicate

2. Pursuant to s.31 of the Highways Act 1980, a public right of way does not come into existence after 20 years' use (as it might in the case of a private right of way, under the doctrine of lost modern grant). The requirement is that there must have been user for 20 years up to the time the right of way is brought into question. This means that the right does not crystallise until the right is brought into question. It is necessary, therefore, to ascertain the earliest date at which the right to use the Footpath was brought into question, and then work back 20 years. Various dates have been applied in the present case: 1970 (in DCC's original committee report); 1955 (in the DCC Statement); and December 1988 (in the appeal). The Objector submits that this lack of certainty or uniformity of analysis reflects the stark conflict in the evidence of alleged user, as against the opposing evidence of and in support of the landowners, and highlights the requirement that the evidence be properly tested.
3. The Objector submits that the landowners' evidence (and the evidence in support of the landowners) evidences a lack of intention to dedicate: for example, there was a 'Private' sign on the Door and on the Top Gate, and various other 'Private' signs are referred to; the Door was locked from time to time, over a long period; the Bottom Gate was locked; trespassers were verbally and physically challenged when attempting to use the Footpath. Evidence of these elements covers all the material periods.

“Private” Signs

4. A significant number of witnesses confirm that a number of signs have been displayed on the Footpath. For example:
 - i) there has been a sign on the Door which reads “Private” since at least 1986. This is clearly within the 20 years period applied by the Inspector on the appeal. Furthermore, there is some evidence that the Door has been marked ‘private’ since 1958.
 - ii) There has been a sign on the Top Gate, which reads “private”, since at least 1985.
 - iii) There is a ‘Private’ sign on the wall of Teneriffe - along the route of the Footpath.
5. These signs are unambiguous and clearly provide sufficient evidence or notice that there was no intention that the Footpath be dedicated to public use, and would have been understood by the public, *in context*, to mean that there was no ‘public’ right of passage along the Footpath.
6. It is highly material that the ‘Private’ sign on the Door is on what appears, for all intents and purposes, to be the front door of a house. Beyond the door is the Footpath, which leads past a number of properties, and eventually to Broad Street. In view of the fact that virtually all rights of way are over private land, a sign on the Door saying “private” would have added nothing to what was already obvious - the land beyond the Door is private. In context, therefore, “private” must reasonably have been understood to refer to the *use* of the Footpath beyond the Door. It was ‘private’, as opposed to ‘public’.

Locked Door/Gate

7. It is notable that in the appeal the Inspector appears to have recognised that there was some evidence that the Door had been locked, at least from time to time, *before* 1988. At paragraph 9, he said that, “The evidence forms and other witness statements vary in the date given for the most recent time of the *permanent* locking of the [Door] at Marine Parade. Events are recalled from 1984 to 1994” (emphasis added). In fact, it is apparent from the evidence of the landowners and other witnesses that the Door was locked long before 1984.
8. A gate across a way may indicate that the owner has no intention to dedicate. In this case, there were three: the Door, the Bottom Gate and the Top Gate. All were closed, and were

locked variously, from time to time. The vast majority of the evidence deals with the locking of the Door. The Objectors submit that the proper inference is that the landowners intended to exclude the public. That is why keys were provided to occupiers and visitors to the pertinent properties, who were asked to (and generally did) keep the Door locked.

9. Moreover, the evidence shows that the Door was finally locked, permanently, before 1989 - therefore during the 20 year period (1968-1988) applied by the Inspector on the appeal.

Closing/Locking the Door/Gates for at least one day a year

10. Closing a path for at least one day a year is an accepted means of demonstrating an intention not to dedicate⁸. Evidence that the Door and/or the gates were locked, even if only occasionally, is significant. If the Door was locked, even only for a day or two at a time, before 1988, this would inevitably constitute an indication of the landowners' intention not to dedicate. There is evidence - as apparently recognised by the Inspector on the appeal - and it is the Objector's case that the Door was locked, albeit not permanently, long before 1989. There is evidence that this occurred since as long ago as 1955.
11. Furthermore, locking the Door and/or Gates, even if only occasionally, constitutes a challenge whereby the right of the public to use the Footpath was brought into question. In the circumstances, the Modification Order - based on 20 years' user up to 1988 - cannot properly be confirmed.

Verbal and Physical Challenges

12. There is clear evidence that the landowners (and others) challenged the public when they attempted to use the Footpath. The number of people challenged, and the frequency with which they were challenged must be considered in context. The Objector submits that the challenges were sufficient to make it obvious to the public that the landowners did not intend to dedicate the Footpath as a public right of way.
13. Furthermore, such challenges would have the result that user thereafter was not 'without force' and therefore not 'as of right'.

its hinges is a use of 'force', and user of the Footpath thereafter was not, therefore, 'without force' nor 'as of right'.

LRTC's Evidence

20. DCC went into some detail in its analysis of the various Evidence Forms submitted by alleged users of the Footpath. This is set out at paragraphs 3.10 to 3.21 of DCC's original committee report. It is particularly notable that:
- i) 66% of the alleged users stated that there were no signs. This is in direct conflict with the clear evidence of a "private" sign on the Door, the "private" sign on the wall of Teneriffe, and the word "private" forming an integral part of the design of the Top Gate.
 - ii) Several of the forms contain corrections, and different handwriting.
 - iii) One person claims to remember a sign in the 40s and 50s which "definitely indicated public access". A similar claim is apparently made in a letter, that there was a sign "indicating that Teneriffe Path was a public right of way" (at para.3.36) This is wholly unsupported by any other witness or documentary evidence, and is not an assertion actually made by the applicant.
 - iv) It is evident that the Footpath, and its precise route, were already highlighted on the plan attached to the blank Evidence Forms. The location and route of the Footpath were thus suggested to the witness. The witnesses' evidence was therefore, in effect, directed by LRTC. Further, it is believed that a number of the potential witnesses read through some of the completed Evidence Forms to see what other people had written, before completing an Evidence Form themselves. This is a wholly unsatisfactory and unsafe method of obtaining apparently independent evidence and it is perhaps not surprising that when DCC took the opportunity to speak to some witnesses, "When many witnesses were questioned about the forms they remembered events differently" (para.4.7)

The Objector challenges the veracity of the evidence set out in the Evidence Forms, and argues that the claimed nature and frequency of user is exaggerated or impossible (because, for example, the Door and/or the Top Gate and/or the Bottom Gates were locked). The evidence set out in the Evidence Forms is dubious, and requires thorough testing - as anticipated by the Inspector on the appeal.

D) Common Law Dedication

1. The Inspector on the appeal applied the statutory test when directing that the Modification Order was to be made. Consequently it is not necessary nor intended to deal at any length with dedication at common law. For the sake of convenience, however, it is noted that the burden of proof would be on the applicant to prove that it can be inferred from the landowners' conduct that they actually dedicated the Footpath as a public right of way. User is not of itself sufficient, however, because there would still remain the possibility that the landowners lacked the intention to dedicate. The aforementioned means by which the landowners seek to demonstrate sufficient evidence of a lack of intention to dedicate, are repeated in rebuttal of an inferred dedication at common law.

Dated this 7th day of October 2011

This Objection is made by the aforementioned Objector, and is filed on their behalf by Stone Rowe Brewer, solicitors for Andrew Marriner and Mr and Mrs Betts.

 Stone Rowe Brewer
Stone Rowe Brewer LLP
12-13 Church Street
Twickenham TW1 3NJ

¹ This was, they considered, the earliest date mentioned by Alan Christie, a previous owner of Madeira Cottage. He said there was a 'Private' sign on the Door. This ignores the fact that Pollyanne Davis also mentions a 'Private' sign, between 1958 and 1965.

² At para.21

³ At para.41 and 42

⁴ This was a reference to the letter dated 02.03.89 from Paul Tilden & Hill, solicitors for Dr Walker. The "gate at Marine Parade" is, presumably, the Door.

⁵ At para.13

⁶ At para.12

⁷ Mainly at paragraphs 12.3 to 12.16.

⁸ See *Rugby Charity Trustees v. Merryweather* (1790) 11 East 375n; *British Museum Trustees v. Finnis* (1833) 4 C&P 460.

Roads and Rights of Way Committee

Extract from the minutes of a meeting held on 16 January 2012

The Dorset County Council (A Footpath from Broad Street to Marine Parade, Lyme Regis (Teneriffe Path)) Definitive Map and Statement Modification Order 2011

19.1 The Committee considered a report by the Director for Environment on the position to be adopted by the County Council on the submission of the Order to the Secretary of State following the receipt of an objection.

19.2 The Rights of Way Officer explained that an application to modify the definitive map and statement of rights of way by adding a footpath at Lyme Regis had been considered by the Committee in July 2009. The Committee had resolved that the application be refused. The applicant had subsequently appealed against that decision and in June 2011 the County Council had been informed that the Secretary of State considered that an Order should be made. An objection had been received following public notice of the making of the Order in August 2011.

19.3 Members were informed that opposing or supporting the Order would entail the preparation of an extensive and detailed Statement of Case to be submitted to the Secretary of State for consideration. This would be an extremely time-consuming exercise involving several officers from both the Legal Services and Rights of Way sections. There would also be preparation for and active participation in any subsequent public inquiry which may be held. If the County Council were to take a neutral stance the matter could be progressed more swiftly and the burden on resources would be substantially reduced.

19.4 Andrew Marriner addressed the Committee. He explained that he owned one of the Grade 2 Listed buildings at the southern end of the proposed footpath. The path did not really adjoin public land but in one place ran through a small back garden and down slippery steps so was not being used to its full extent. A dramatic increase in foot traffic would cause detriment to the Listed buildings along the route. Mr Marriner understood that the Committee were unable to consider health and safety issues in their determination but he felt that the cost implications to the County Council as Highway Authority were worth considering.

19.5 The Committee were informed that the County Council member for Blackmore Vale supported the Director's recommendation as set out in the report.

Resolved

- 20.1 That the Order be submitted to the Secretary of State for determination.
- 20.2 That the County Council take a neutral stance in the proceedings.

Reason for Decisions

21.1 An objection has been made to the Order and therefore the County Council must submit it to the Secretary of State for confirmation.

Roads and Rights of Way Committee

APPENDIX 3 to
June 2015 report

5

Dorset County Council



Date of Meeting	16 January 2014
Officer	Director for Environment
Subject of Report	Dorset County Council (Footpath from Broad Street to Marine Parade, Lyme Regis (known as Teneriffe Path)) Definitive Map and Statement Modification Order 2013
Executive Summary	This report considers the position to be adopted by the County Council on the submission of the Order to the Secretary of State following the receipt of objections.
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment is not a material consideration in considering these applications.</p>
	<p>Use of Evidence:</p> <p>Any relevant evidence provided has been discussed in the earlier reports.</p>
	<p>Budget:</p> <p>Any financial implications arising from this modification are not material considerations and should not be taken into account in determining the matter.</p>
	<p>Risk Assessment:</p> <p>As the subject matter of this report relates to the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.</p>

Recommendations	<p>That:</p> <p>(a) The Order be submitted to the Secretary of State for determination; and</p> <p>(b) The County Council take a neutral stance in the proceedings.</p>
Reasons for Recommendations	<p>(a) There have been objections to the Order and therefore the County Council must submit it to the Secretary of State for confirmation; and</p> <p>(b) Continued investment of public resources relating to this matter is not considered to be in the public interest.</p> <p>Decisions on applications for definitive map modification orders help to ensure the definitive map and statement of rights of way is kept up to date and achieves the corporate aim:</p> <ul style="list-style-type: none"> • To safeguard and enhance Dorset's unique environment and support our local economy.
Appendices	<p>1 Report and extract from the minutes of the meeting of the Roads and Rights of Way Committee 16 January 2012 (dated 2011 in error), which includes:</p> <ul style="list-style-type: none"> • Report to and extract from the minutes of the meeting of the Roads and Rights of Way Committee on 7 July 2009 • Appeal decision letter dated 15 June 2011 • Dorset County Council (Footpath from Broad Street to Marine Parade, Lyme Regis (known as Teneriffe Path)) Definitive Map and Statement Modification Order 2011 <p>2 Letter from the Planning Inspectorate advising that the Secretary of State for Environment Food and Rural Affairs' decision was not to exercise his power of confirmation of the Order</p> <p>3 Dorset County Council (Footpath from Broad Street to Marine Parade, Lyme Regis (known as Teneriffe Path)) Definitive Map and Statement Modification Order 2013</p> <p>4 Letters of objection to the Order October 2013</p>
Background Papers	The files of the Director for Environment (ref. RW/T362)
Report Originator and Contact	<p>Name: Roger Bell Rights of Way Officer</p> <p>Tel: (01305) 221670 Email: r.bell@dorsetcc.gov.uk</p>

1 Background

- 1.1 An application to modify the definitive map and statement of rights of way by adding a footpath at Lyme Regis in the West Dorset District was considered by the Roads and Rights of Way Committee on 7 July 2009. The Committee considered the application and resolved that the application be refused. A copy of the report and an extract from the minutes of the meeting forms part of Appendix 1.
- 1.2 The applicant subsequently appealed against this decision on 8 July 2009.
- 1.3 On 15 June 2011 Dorset County Council was informed by the Department for Environment Food and Rural Affairs that the Secretary of State considered that an Order should be made and The Dorset County Council (A Footpath from Broad Street to Marine Parade, Lyme Regis (Teneriffe Path)) Definitive Map and Statement Modification Order 2011 was sealed on 18 August 2011 and published on 31 August 2011.
- 1.4 An objection to the Order was received following public notice of the making of the Order.
- 1.5 A further report was made to this Committee on 16 January 2012, which considered the position to be adopted by the County Council on the submission of the Order to the Secretary of State following the receipt of objections to the Order. A copy of the report and an extract from the minutes of the meeting forms Appendix 1. (The 2012 report includes the 2009 report, the appeal decision letter, a copy of the 2011 order and the letter of objection to the Order.)
- 1.6 Following submission of the Order and the objections to the Planning Inspectorate the County Council received a letter (Appendix 2) advising that the Secretary of State for Environment Food and Rural Affairs had decided not to exercise his power of confirmation of the Order as the Order was flawed.
- 1.7 The Order was remade on 9 August 2013 and published on 22 August 2013. A copy of the 2013 Order forms Appendix 3.
- 1.8 Several objections to the Order were received following public notice of the making of the Order (Appendix 4).

2 Law

- 2.1 Paragraph 7 (i) of Schedule 15, Wildlife and Countryside Act 1981, provides that if any representation or objection duly made to the order is not withdrawn the County Council shall submit the Order to the Secretary of State for confirmation.

3 Evidence to be considered

- 3.1 The evidence relating to the routes is set out in the earlier reports (Appendix 1) and has been considered in the Inspector's report, attached to the Secretary of State's decision letter dated 15 June 2011 (Appendix 3 to the 2012 report – forming part of Appendix 1).

3.2 It is not intended to review the evidence relating to the footpath nor the strength of either the case for or the case against confirmation of the Order in this report.

4 **Objections to the Order (Appendix 4)**

4.1 An objection to the Order was received on 1 October 2013 from Amanda Braybrooke, who has a flat above a shop, the managers of which have no recollection of public use of the path for two generations. She also considers the path unsuitable and unsafe for public use (although these matters are not relevant in the determination of a modification order).

4.2 On 2 October 2013 Irwin Mitchell LLP submitted an objection on behalf of Pauline, Derek and Simon Kidner, Mr and Mrs M Rose and Mr Jeff Scowen.

4.3 Irwin Mitchell LLP has also taken over the instruction from Stone Rowe Brewer LLP, who submitted objections to the original order from several others. These objectors wish to uphold their existing objections to the 2013 Order.

4.4 The objections from Irwin Mitchell were made on the grounds that that there is sufficient evidence of a lack of intention to dedicate and considers:

- (a) Private signs
- (b) Locked Door/Gate
- (c) Closing/Locking the Door/Gates for at least one day a year
- (d) Verbal and Physical Challenges
- (e) Interruption of use
- (f) Use of Force/ Secrecy
- (g) The veracity of the evidence set out in the evidence forms and the claimed nature and frequency of use

5 **Discussion**

5.1 As objections have been received, the County Council is unable to confirm the Order itself and must submit the Order to the Secretary of State for confirmation.

5.2 The options now available to the County Council are:

- To oppose the Order (maintaining the position of the County Council to date);
- To support the Order (in view of the findings of the Secretary of State); or
- To take a neutral stance.

5.3 Opposing or supporting the Order would entail the preparation of an extensive and detailed Statement of Case to be submitted to the Secretary of State for consideration. This is an extremely time-consuming exercise involving several officers from both the Legal Services Department and the Rights of Way section. There would also be preparation for and active participation in any subsequent Public Inquiry which may be held.

- 5.4 If the County Council takes a neutral stance in the matter, merely submitting copies of all correspondence relating to the case for consideration and taking no active part in any Public Inquiry which may be held, the burden on the resources of the County Council is substantially reduced and the matter can be progressed more swiftly. This option would be consistent with the Committee's previous decision.
- 5.5 The Roads and Rights of Way Committee and County Council officers have already given much consideration to this matter over previous years. Significant resources have been allocated to this application and it is considered that it would not be an effective use of public money to continue such a high level of involvement in this case. There are parties able to represent the arguments for and against confirmation and it is considered that taking a neutral stance is most appropriate in the wider public interest.

6 **Conclusions**

- 6.1 The Order should be submitted to the Secretary of State for determination.
- 6.2 The County Council should take a neutral stance in any further proceedings resulting from the objection to the Order.

Miles Butler

Director for Environment

December 2013

**Letter from the Planning Inspectorate advising that the Secretary of State for
Environment Food and Rural Affairs' decision was not to exercise his power of
confirmation of the Order**



The Planning
Inspectorate

3/25 Hawk Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0303 444 5523
Customer Services: 0303 444 5000
Fax No: 0117 372 6153
e-mail: rachael.sayers@pins.gsi.gov.uk

Sarah Meggs
Dorset County Council
Corporate Services
County Hall
Colliton Park , Dorchester
DT1 1XJ

Your Ref: SLM/E/106473
Our Ref: FPS/C1245/7/30
Date: 20 December 2012

Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53

Dorset County Council

(A Footpath from Broad Street to Marine Parade, Lyme Regis (Teneriffe Path)) Definitive
Map and Statement Modification Order 2011

I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to
the above named Order, which was submitted to him for confirmation on 5 December
2012.

Examination of the Order has revealed that it has been incorrectly drafted. The relevant
date in the Order has been given as 19 August 2011 yet the Order is dated 18 August
2011.

The relevant date cannot be after the date on which the Order was made. Section 56(1)(a)
of the Act states that "*where the map shows a footpath, the map shall be conclusive
evidence that there was at the relevant date a highway as shown on the map.....*" This
shows that the date is to be set in the past and not in the future.

The Secretary of State takes the view that a fundamental error such as this is fatal to the
validity of the Order. As he cannot purport to use his power of modification to correct such
an error, he has decided not to exercise his power of confirmation.

The sealed Orders are returned herewith and a copy of this letter has been sent to the
objectors and all other interested parties.

Yours faithfully

Rachael Sayers

Mrs Rachael Sayers
Rights of Way Section



Dorset County Council (Footpath from Broad Street to Marine Parade, Lyme Regis (known as Teneriffe Path)) Definitive Map and Statement Modification Order 2013

401/13

Dorset County Council 

Wildlife and Countryside Act 1981

**Dorset County Council
County of Dorset Definitive Map and Statement of Rights of Way**

**Dorset County Council (Footpath from Broad Street to Marine Parade,
Lyme Regis (known as Teneriffe Path))
Definitive Map and Statement Modification Order 2013**

This Order is made by Dorset County Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the County of Dorset Definitive Map and Statement require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) namely, 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.

The authority have consulted with every local authority whose area includes the land to which the order relates. The Dorset County Council hereby order that:

1. For the purposes of this order the relevant date is 5 August 2013.
2. The County of Dorset Definitive Map and Statement shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This order shall take effect on the date it is confirmed and may be cited as the "Dorset County Council (Footpath from Broad Street to Marine Parade, Lyme Regis (known as Teneriffe Path)) Definitive Map and Statement Modification Order 2013".

SCHEDULE

(The points specified relate to the map attached to the Order and their positions are identified by national grid references)

Part I

Modification of definitive map Description of path to be added

A footpath in Lyme Regis in the West Dorset District:

A – B – C Known as Teneriffe Path, with a tarmac/concrete surface, from its junction
– D – E with the A3052 Broad Street between Nos. 13 and 14 Broad Street at point A (SY 34149208), through an archway and south south west along a covered walkway and continuing between walls to the entrance to the Masonic Hall at point B (SY 34139205). Then south west down a slope between walls to point C (SY 34109203) and south south west down concrete steps and between walls to point D (SY 34109202). Turn south south east and continue down steps between Nos. 6a and 7 Marine Parade and through a doorway and down two concrete steps to exit onto Marine Parade at point E (SY 34109201).

The width of the footpath varies:

Point A – 2.7 metres

Between points A and B – Covered walkway – 1.78 metres, from end of covered walkway to point B – 2 metres

Point B – 1.56 metres

Between points B and C – 1.8 metres

Point C – 1.2 metres

Between points C and D – 1.2 metres

Point D – 1.05 metres

Between points D and E – 1.2 metres

Point E – 0.73 metres

Limitation: Point E Wooden door 0.73 metres wide

Part II

Modification of definitive statement Variation of particulars of path

A footpath in Lyme Regis in the West Dorset District

From: SY 34149208 To: SY 34109201

Known as Teneriffe Path, with a tarmac/concrete surface, from its junction with the A3052 Broad Street between Nos. 13 and 14 Broad Street, through an archway and south south west along a covered walkway and continuing between walls to the entrance to the Masonic Hall at SY 34139205. Then south west down a slope between walls to SY 34109203 and south south west down concrete steps and between walls to SY 34109202. Turn south south east and continue down steps between Nos. 6a and 7 Marine Parade and through a doorway and down two concrete steps to exit onto Marine Parade.

The width of the footpath varies:

SY 34149208 – 2.7 metres

Between SY 34149208 and SY 34139205 – Covered walkway – 1.78 metres, from end of covered walkway to SY 34139205 – 2 metres

SY 34139205 – 1.56 metres

Between SY 34139205 and SY 34109203 – 1.8 metres

SY 34109203 – 1.2 metres

Between SY 34109203 and SY 34109202 – 1.2 metres

SY 34109202 – 1.05 metres

Between SY 34109202 and SY 34109201 – 1.2 metres

SY 34109201 – 0.73 metres

Limitation: SY 34109201 – Wooden door 0.73 metres wide.

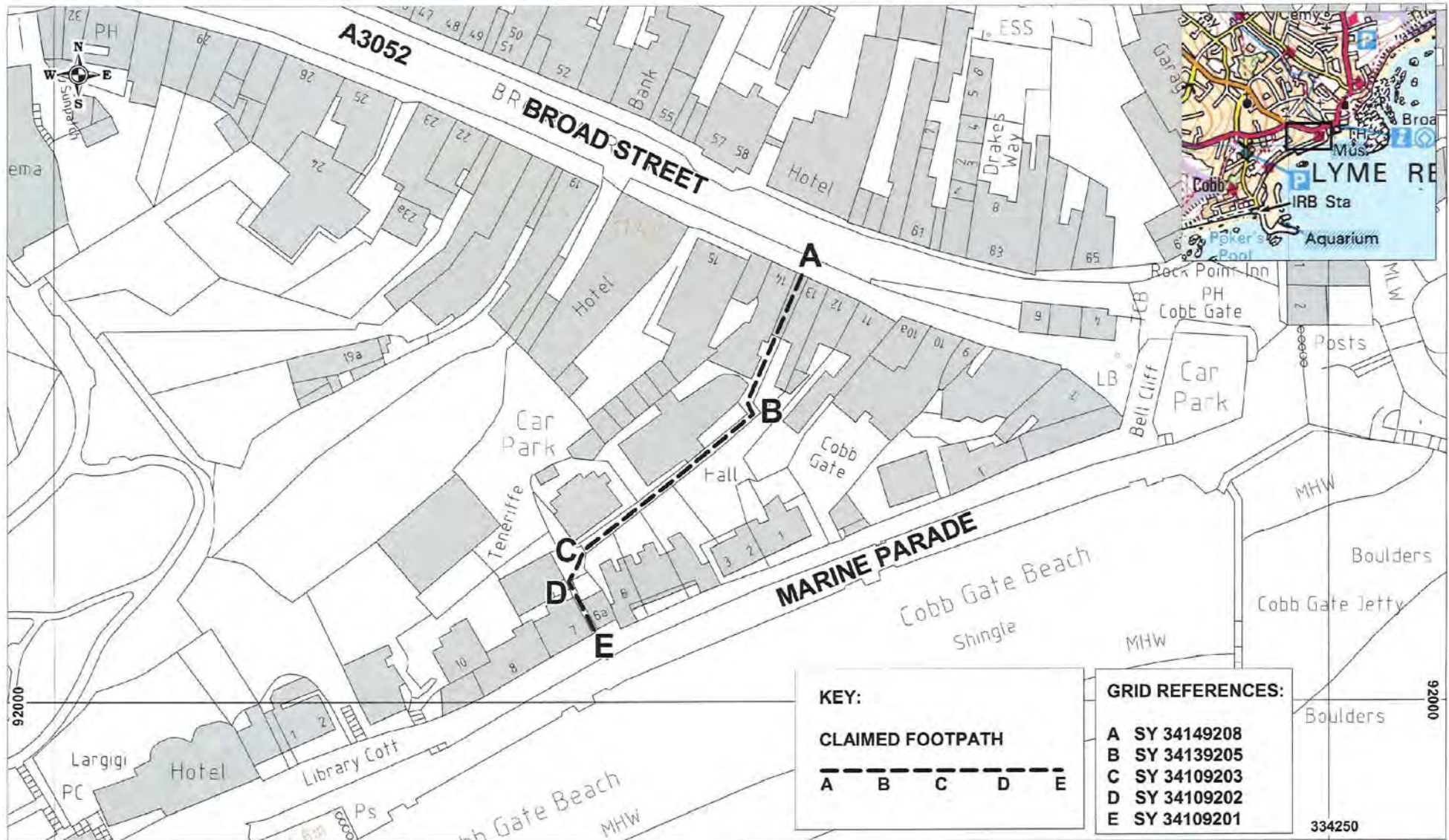
Dated this 9th day of August 2013

THE COMMON SEAL OF THE
DORSET COUNTY COUNCIL
was fixed in the presence of:-



401/13

Authorised Signatory



KEY:

CLAIMED FOOTPATH

A B C D E

GRID REFERENCES:

A SY 34149208
 B SY 34139205
 C SY 34109203
 D SY 34109202
 E SY 34109201

334250

DORSET COUNTY COUNCIL (FOOTPATH FROM BROAD STREET TO MARINE PARADE, LYME REGIS (KNOWN AS TENERIFFE PATH)) DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2013

Jonathan Nair

Ref: 09/04
 Date: 03/02/2009
 Scale 1:1000
 Drawn By: ACH
 Cent X: 334132
 Cent Y: 92055

GEOGRAPHICAL INFORMATION SYSTEMS

DORSET
County Council

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Letters of objection to the Order 2 October 2013



Your Ref: RW/T362
Our Ref: SLE/05074130-1/3633813-1

BY SPECIAL DELIVERY

Vanessa Penny
Senior Rights of Way Officer
Dorset County Council
County Hall
Colliton Park
Dorchester
DT1 1XJ

Contact: Holly Trotman
Direct Dial: 020 7421 3880
Email: holly.trotman@irwinmitchell.com

2 October 2013

Dear Ms Penny,

**DORSET COUNTY COUNCIL – FOOTPATH FROM BROAD STREET TO MARINE PARADE, LYME
REGIS (KNOWN AS TENERIFFE FOOTPATH)
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2013 ("2013 Order")**

Further to our email correspondence and telephone conversations with Rebecca Buck, legal officer, you will be aware that objections were lodged in respect of the Definitive Map and Statement Order in October 2011 by Stone Rowe Brewer LLP. We have now taken over the instruction from Stone Rowe Brewer LLP and have been instructed by some of the previous objectors to write to you upholding their objections in respect of the 2013 Order. Please see letter of same date under separate cover.

In addition, as discussed with Rebecca, there have been some changes since October 2011 in ownership of properties likely to be impacted by the proposal to add Tenerife Footpath to the Definitive Map and as such, I enclose objections to the 2013 Order from the following:

1. Pauline, Derek and Simon Kidner
2. Mr and Mrs M. Rose
3. Mr Jeff Scowen

Could you please acknowledge safe receipt.

Yours sincerely

Signature redacted

**HOLLY TROTMAN
ASSOCIATE
for and on behalf of IRWIN MITCHELL LLP**

Enc.

telephone 0870 1500 100

40 Holborn Viaduct
London
EC1N 2PZ

Wildlife and Countryside Act 1981
County of Dorset Definitive Map and Statement of Rights of Way

Dorset County Council
(A Footpath from Broad Street to Marine Parade, Lyme Regis (Teneriffe Path))
Definitive Map and Statement Modification Order 2013

OBJECTION

This is an objection to the abovementioned Modification Order, and is made by Derek, Pauline and Simon Kidner of 3 Teneriffe, Marine Parade, Lyme Regis, Mr and Mrs M Rose of 1 Teneriffe, Marine Parade, Lyme Regis and Mr Jeff Scowen of 2 Teneriffe, Marine Parade, Lyme Regis, DT7 3JE ("the Objector").

A) Background

1. The Teneriffe Footpath ("the Footpath") commences between 13-14 Broad Street and runs south-west, beside the Masonic Hall and the property known as "Faraway". This part of the Footpath is within the curtilage of 14 Broad Street. There is a gate ("the Top Gate") at the end of this part of the Footpath, where it meets the courtyard beside the property known as "Teneriffe". The Footpath then turns south through the said courtyard, to a gate at the top of some stone and concrete steps ("the Bottom Gate"). This part of the Footpath is within the curtilage of Teneriffe. The Footpath then continues down the said steps, to a door ("the Door") between Madeira Cottage and Little Madeira, which opens onto Marine Parade. A number of properties along the route of the Footpath enjoy a private right of way over it.

2. By an application dated 17.03.05 Lyme Regis Town Council ("LRTC") applied to add 'the Teneriffe Footpath' to the definitive map and statement. On 08.07.09 Dorset County Council ("DCC") refused to make the order, because "the balance of evidence shows that there is insufficient evidence to support the claimed rights". It is notable that in their report, DCC focused on the locking of the Door at Marine Parade, and evidence of a 'private' sign on the Door. DCC considered that 1970 was the first "date of challenge".¹ They concluded that "although there is evidence of the public using the route up to 1970, when the first date of challenge arises, the evidence of use provided for this period is not

strong enough to support the application".

3. LRTC appealed the decision. In its "Statement Setting out the Council's Reasons for Refusing the Application" ("the DCC Statement") DCC concluded that "the period under consideration for establishing deemed dedication... should be 1935 to 1955",² because "[t]he evidence now available demonstrates that the use of the [Footpath] by the Public was brought into question at least as early as 1955". DCC submitted that "there has not been a clear period of 20 years use before that date due to the physical changes to the route claimed to have been used. In any event, the evidence of use for the early part of this period is weak and questionable" and "[t]hroughout the period of claimed use since 1955 there is clear evidence of regular interruption and lack of intention to dedicate on the part of the landowners".³ The Objector adopts the analysis and reasoning set out in the DCC Statement for the purposes of this objection.
4. The appeal was determined by an Inspector appointed by the Secretary of State, on 15.06.11. The Inspector concluded that as "the only documentary evidence of a date [for the *permanent* locking of the gate at Marine Parade] is December 1988" (emphasis added),⁴ that was the date that the public's right was first "brought into question". The Inspector therefore apparently attached significant weight to 'documentary evidence', and placed little or no weight on the recollections and evidence of and relied upon by the landowners, inter alia set out in the Evidence Forms and letters. The Inspector thus considered the evidence for the period immediately preceding December 1988, but recognised that if the right had first been brought into question at an earlier date, the 20 year period would have to be worked back from that earlier date. The Inspector concluded that on the available evidence "it is reasonable to allege that a footpath can be presumed to have been dedicated under section 31 of the 1980 Act". The Inspector therefore directed DCC to make the Order, which it did on 18.08.11.
5. The Objector objects to the Order being confirmed and submits that this is a matter for a public inquiry, when the Objector may be afforded an opportunity of being heard, and all the evidence may be tested. To this end, it is noted that in the appeal the Inspector specifically observed that, "there is a conflict of credible evidence as to events before December 1988... This conflict of evidence can be resolved by the publication of a Modification Order and the subsequent confirmation process",⁵ and that "[t]he evidence of the appellant and some landowners as to the extent of use and instances of challenge during the period in question are not consistent and are difficult to reconcile without oral testimony subject to cross-examination".⁶

B) Evidence Replied Upon by the Objector

1. DCC tabulated much of the evidence on which the Objector relies, in the DCC Statement.⁷ For convenience, the Objector repeats and adopts the same here, as a non-exhaustive summary of the evidence.
2. Further evidence has been obtained since the determination of the appeal, a non-exhaustive summary of which is as follows:

i) Mr and Mrs Geipel (1964-present)

As aforesaid, the Inspector appears to have placed significant weight on a letter from solicitors acting for a Dr Walker, dated 02.03.89. The letter alleged that Dr Walker had "been accustomed to using the [Footpath] as a "public right of way"... until approximately ten weeks ago". However, Mr Geoff Geipel - whose family have owned 6 Marine Parade since 1964 - does not remember ever seeing Dr Walker using the steps onto Marine Parade. She was 86 when the letter was written, and had her own access onto Marine Parade through her own property. Margaret Geipel recalls that the Door was in place in 1968, and remembers a "private" sign on the wall by Teneriffe in the 60s/70s.

(Letters from visitors to Little Madeira, mainly between 1976 and 1988)

ii) Dr John Amis

Recalls a Yale lock on the inside of the Door, generally locked. Sometimes people would be challenged, by local owners/occupiers.

iii) Luke Rittner (1977-1979)

Remembers that the Door was always locked, and that he had a key.

iv) Stephen Wright (1978-88)

Recalls that there was a Yale lock on the inside of the Door, and it was generally locked. He does not recall people using the Footpath

v) Catherine Hodgson (1976-late 80s)

Had to lock and unlock the Door, and was challenged occasionally by the people 'in the house on the next level up' when she went up the steps to the shops. She had to "make sure that the gate in the middle was closed".

vi) Julie Day (1978-1988 and 1995-2005)

Mrs Day has produced a photograph of Little Madeira, taken in 1986, showing the "private" sign on the Door. She remembers a Yale lock on the inside of the Door, and that it was

always a big priority to keep it locked. The only time she recalls people using the Footpath was quite a while before 1986 – maybe the late 70s.

vii) *John Cockett (1987-2009)*

The Door was always locked, even when he was sitting outside on Marine Parade. The only people who exited or entered were from the properties at the top of the stairs, and they all had their own keys.

viii) *William Hodgson (who worked for Sibyl Colefax & John Fowler) (80s/90s, and before in 70s)*

He remembers the "private" notice on the Door, and that the Door was always locked. He was on occasion stopped by a man who lived 'half way up the path on the left'. There were "private" notices up at the top end, and a gate half way down which was always latched, and which also had a "private" notice. The only people he saw using the path had a key.

ix) *Alan Galbraith (1977-1978)*

Stayed at Madeira Cottage in 1977 and again in 1988. He clearly remembers that the Door was always locked with a Yale type lock, providing entry from Marine Parade. His sons had a key to the Door, to let themselves in from the Parade.

x) *Hector Sims (1976 - present)*

In 1976 the Door bore the sign "Teneriffe". He is sure that some sort of lock was installed, after 1976. There was a sign attached to the wall inside the doorway reading "No thoroughfare" or similar. He also recalls a gate (in the position of the Top Gate) with a sign reading "private", and that the gate was secured with, he thinks, a padlock and chain.

xi) *Ursula le Huray (1974 - 1986)*

She stayed at Little Madeira 3 times a year during the above period. She remembers a sign saying 'private thoroughfare'. The Door was often locked, and the residents encouraged this to prevent the public who had ignored the sign and used the Footpath as a short-cut. She remembers occasions when she went onto the beach without a key, and then had to go back the 'long way round' to get back in. Occasionally the residents would stop the public using the Footpath.

C) Grounds of Objection

1. Where a way has been used by the public without interruption and as of right (without force, secrecy or permission) for at least 20 years immediately before the right to use the way was 'brought into question', and there is not sufficient evidence of a lack of intention to

dedicate, there is a statutory presumption that the way has been dedicated as a way. As noted by DCC and the Inspector, there is a substantial conflict of evidence as to the nature, quality and frequency of use of the Footpath, and as to the actions of the landowners. The Objector submits that there is not sufficient evidence of use by the public to justify the addition of the Footpath to the map, and there is sufficient evidence of a lack of intention to dedicate.

Evidence of a Lack of Intention to Dedicate

2. Pursuant to s.31 of the Highways Act 1980, a public right of way does not come into existence after 20 years' use (as it might in the case of a private right of way, under the doctrine of lost modern grant). The requirement is that there must have been user for 20 years up to the time the right of way is brought into question. This means that the right does not crystallise until the right is brought into question. It is necessary, therefore, to ascertain the earliest date at which the right to use the Footpath was brought into question, and then work back 20 years. Various dates have been applied in the present case: 1970 (in DCC's original committee report); 1955 (in the DCC Statement); and December 1988 (in the appeal). The Objector submits that this lack of certainty or uniformity of analysis reflects the stark conflict in the evidence of alleged user, as against the opposing evidence of and in support of the landowners, and highlights the requirement that the evidence be properly tested.
3. The Objector submits that the landowners' evidence (and the evidence in support of the landowners) evidences a lack of intention to dedicate: for example, there was a 'Private' sign on the Door and on the Top Gate, and various other 'Private' signs are referred to; the Door was locked from time to time, over a long period; the Bottom Gate was locked; trespassers were verbally and physically challenged when attempting to use the Footpath. Evidence of these elements covers all the material periods.

"Private" Signs

4. A significant number of witnesses confirm that a number of signs have been displayed on the Footpath. For example:
 - i) there has been a sign on the Door which reads "Private" since at least 1986. This is clearly within the 20 years period applied by the Inspector on the appeal. Furthermore, there is some evidence that the Door has been marked 'private' since 1958.
 - ii) There has been a sign on the Top Gate, which reads "private", since at least 1985.
 - iii) There is a 'Private' sign on the wall of Teneriffe - along the route of the Footpath.

5. These signs are unambiguous and clearly provide sufficient evidence or notice that there was no intention that the Footpath be dedicated to public use, and would have been understood by the public, *in context*, to mean that there was no 'public' right of passage along the Footpath.
6. It is highly material that the 'Private' sign on the Door is on what appears, for all intents and purposes, to be the front door of a house. Beyond the door is the Footpath, which leads past a number of properties, and eventually to Broad Street. In view of the fact that virtually all rights of way are over private land, a sign on the Door saying "private" would have added nothing to what was already obvious - the land beyond the Door is private. In context, therefore, "private" must reasonably have been understood to refer to the *use* of the Footpath beyond the Door. It was 'private', as opposed to 'public'.

Locked Door/Gate

7. It is notable that in the appeal the Inspector appears to have recognised that there was some evidence that the Door had been locked, at least from time to time, *before* 1988. At paragraph 9, he said that, "The evidence forms and other witness statements vary in the date given for the most recent time of the *permanent* locking of the [Door] at Marine Parade. Events are recalled from 1984 to 1994" (emphasis added). In fact, it is apparent from the evidence of the landowners and other witnesses that the Door was locked long before 1984.
8. A gate across a way may indicate that the owner has no intention to dedicate. In this case, there were three: the Door, the Bottom Gate and the Top Gate. All were closed, and were locked variously, from time to time. The vast majority of the evidence deals with the locking of the Door. The Objectors submit that the proper inference is that the landowners intended to exclude the public. That is why keys were provided to occupiers and visitors to the pertinent properties, who were asked to (and generally did) keep the Door locked.
9. Moreover, the evidence shows that the Door was finally locked, permanently, before 1989 - therefore during the 20 year period (1968-1988) applied by the Inspector on the appeal.

Closing/Locking the Door/Gates for at least one day a year

10. Closing a path for at least one day a year is an accepted means of demonstrating an intention not to dedicate⁸. Evidence that the Door and/or the gates were locked, even if only occasionally, is significant. If the Door was locked, even only for a day or two at a

time, before 1988, this would inevitably constitute an indication of the landowners' intention not to dedicate. There is evidence - as apparently recognised by the Inspector on the appeal - and it is the Objector's case that the Door was locked, albeit not permanently, long before 1989. There is evidence that this occurred since as long ago as 1955.

11. Furthermore, locking the Door and/or Gates, even if only occasionally, constitutes a challenge whereby the right of the public to use the Footpath was brought into question. In the circumstances, the Modification Order - based on 20 years' user up to 1988 - cannot properly be confirmed.

Verbal and Physical Challenges

12. There is clear evidence that the landowners (and others) challenged the public when they attempted to use the Footpath. The number of people challenged, and the frequency with which they were challenged must be considered in context. The Objector submits that the challenges were sufficient to make it obvious to the public that the landowners did not intend to dedicate the Footpath as a public right of way.
13. Furthermore, such challenges would have the result that user thereafter was not 'without force' and therefore not 'as of right'.

14. The Objector submits that the evidence of objective acts, existing and perceptible outside the landowners' consciousness, at all material times, is inconsistent with an intention to dedicate. The intention not to dedicate was manifested by overt and contemporaneous acts by the landowners, and the reasonable user would have understood that the owner was intending to disabuse him of the notion that the way was a public highway.

Interruption

15. 'Interruption' means actual and physical stopping of the enjoyment of the public's use of the way, by the landowner or someone acting lawfully on his behalf. The interruption must be with the intent to prevent the public use of the way, and not for some other purpose. In *Poole v. Huskinson* (1843) 11 M&W 827, at 830, Park B said, "A single act of interruption by a landowner is of much more weight, upon the question of intention, than many acts of enjoyment". Thus the occasional locking of the Door and/or the Gates has a two-fold effect: it constitutes an interruption, breaking the 20 year period; and it is an indication of the landowners' intention not to dedicate. The Objector submits that in light of the evidence that the Door and/or the Gates were locked, even if not permanently, since 1955, there can be no sufficient period of uninterrupted user by the public.
16. Evidence that the Door was locked, before 1988, is therefore extremely significant, and means that the Modification Order, based on 20 years' continuous, *uninterrupted* user between 1968 and 1988, cannot properly be confirmed.

Use of Force / Secrecy

17. It is apparent from a number of the Evidence Forms, and the evidence of and in support of the landowners, that some of the alleged users were challenged in their use of the Footpath, and knew it to be contentious. Such use would not be 'without force' or 'as of right'.
18. Further, some of the alleged users claimed to have used the way at night, or quietly and secretly. This was not 'without secrecy', and the landowners would be unlikely to have known about such use.
19. Colin Jones states that the Bottom Gate was "lifted off its hinges" in 1985. This is clearly within the 20 years period applied by the Inspector on the appeal. Removal of a gate from its hinges is a use of 'force', and user of the Footpath thereafter was not, therefore, 'without force' nor 'as of right'.

LRTC's Evidence

20. DCC went into some detail in its analysis of the various Evidence Forms submitted by alleged users of the Footpath. This is set out at paragraphs 3.10 to 3.21 of DCC's original committee report. It is particularly notable that:

- i) 66% of the alleged users stated that there were no signs. This is in direct conflict with the clear evidence of a "private" sign on the Door, the "private" sign on the wall of Teneriffe, and the word "private" forming an integral part of the design of the Top Gate.
- ii) Several of the forms contain corrections, and different handwriting.
- iii) One person claims to remember a sign in the 40s and 50s which "definitely indicated public access". A similar claim is apparently made in a letter, that there was a sign "indicating that Teneriffe Path was a public right of way" (at para.3.36) This is wholly unsupported by any other witness or documentary evidence, and is not an assertion actually made by the applicant.
- iv) It is evident that the Footpath, and its precise route, were already highlighted on the plan attached to the blank Evidence Forms. The location and route of the Footpath were thus suggested to the witness. The witnesses' evidence was therefore, in effect, directed by LRTC. Further, it is believed that a number of the potential witnesses read through some of the completed Evidence Forms to see what other people had written, before completing an Evidence Form themselves. This is a wholly unsatisfactory and unsafe method of obtaining apparently independent evidence and it is perhaps not surprising that when DCC took the opportunity to speak to some witnesses, "When many witnesses were questioned about the forms they remembered events differently" (para.4.7)

The Objector challenges the veracity of the evidence set out in the Evidence Forms, and argues that the claimed nature and frequency of user is exaggerated or impossible (because, for example, the Door and/or the Top Gate and/or the Bottom Gates were locked). The evidence set out in the Evidence Forms is dubious, and requires thorough testing - as anticipated by the Inspector on the appeal.

D) Common Law Dedication

1. The Inspector on the appeal applied the statutory test when directing that the Modification Order was to be made. Consequently it is not necessary nor intended to deal at any length

with dedication at common law. For the sake of convenience, however, it is noted that the burden of proof would be on the applicant to prove that it can be inferred from the landowners' conduct that they actually dedicated the Footpath as a public right of way. User is not of itself sufficient, however, because there would still remain the possibility that the landowners lacked the intention to dedicate. The aforementioned means by which the landowners seek to demonstrate sufficient evidence of a lack of intention to dedicate, are repeated in rebuttal of an inferred dedication at common law.

Dated this 2nd day of October 2013

This Objection is made by the aforementioned Objector, and is filed on their behalf by Irwin Mitchell LLP, solicitors for Andrew Marriner.

Irwin Mitchell Solicitors LLP
40 Holborn Viaduct
London
EC1N 2PZ

¹ This was, they considered, the earliest date mentioned by Alan Christie, a previous owner of Madeira Cottage. He said there was a 'Private' sign on the Door. This ignores the fact that Pollyanne Davis also mentions a 'Private' sign, between 1958 and 1965.

² At para.21

³ At para.41 and 42

⁴ This was a reference to the letter dated 02.03.89 from Paul Tilden & Hill, solicitors for Dr Walker. The "gate at Marine Parade" is, presumably, the Door.

⁵ At para.13

⁶ At para.12

⁷ Mainly at paragraphs 12.3 to 12.16.

⁸ See *Rugby Charity Trustees v. Merryweather* (1790) 11 East 375n; *British Museum Trustees v. Fimmis* (1833) 4 C&P 460.

Roads and Rights of Way Committee

Extracts from the minutes of a meeting held at County Hall, Colliton Park, Dorchester on Thursday 16 January 2014.

Code of Conduct

2.2 Daryl Turner advised that as the local member he had a personal interest in regards to agenda item number 5 (Dorset County Council (Footpath from Broad Street to Marine Parade, Lyme Regis (known as Tenerife Path)) Definitive Map and Statement Modification Order 2013) and he confirmed that he had previously declared his support in favour of the Order. He did not take part in the discussion or decision of the item.

Dorset County Council (Footpath from Broad Street to Marine Parade, Lyme Regis (known as Tenerife Path)) Definitive Map and Statement Modification Order 2013

7.1 The Committee considered a report by the Director for Environment which sought members' opinion on the position to be adopted by the County Council on the submission of the Dorset County Council (Footpath from Broad Street to Marine Parade, Lyme Regis (known as Tenerife Path)) Definitive Map and Statement Modification Order 2013 to the Secretary of State following the receipt of objections.

7.2 Members were advised that an application to modify the definitive map and statement of rights of way by adding a footpath at Lyme Regis was considered by the Roads and Rights of Way Committee on 7 July 2009 where the Committee resolved to refuse the application. The applicant appealed against this decision and on 15 June 2011 the County Council was directed by the Secretary of State to make an Order. This Order was sealed on 18 August 2011 and published on 31 August 2011.

7.3 Following the receipt of an objection to the Order, a further report went to the Roads and Rights of Way Committee on 16 January 2012 which considered the position to be adopted by the County Council on the submission of the Order to the Secretary of State. Members resolved at that time to take a neutral stance in the proceedings. Following the submission of the Order and objections to the Planning Inspectorate the County Council was informed that the Secretary of State had decided not to exercise his power of confirmation of the Order as the Order was flawed. The Order was remade and published in August 2013 and several objections were received.

7.4 The Rights of Way Officer reminded members of the Committee that it was not necessary to review and discuss the evidence relating to the footpath, nor the strength of either the case for or against confirmation of the Order. Members were asked to decide on three possible options:

- i. To oppose the Order (maintaining the position of the County Council to date);
- ii. To support the Order (in view of the findings of the Secretary of State); or
- iii. To take a neutral stance (consistent with the Committees previous decision).

Officers advised that it would not be an efficient use of resources to support or oppose the Order and it was therefore recommended that the County Council continue to take a neutral stance.

7.5 Councillor Lorna Jenkin from Lyme Regis Town Council addressed the Committee and presented the views from Lyme Regis Town Council's recent Planning and Highways Committee. She explained that in 1947 Mr Walters the local bridges surveyor had been tasked with surveying all of the footpaths and rights of way in the town. However, he unfortunately passed away before completing the task and his successor was not appointed in a timely manner and as a result a number of footpaths had not been shown or recorded.

7.6 She explained that the Town Council had a number of old photographs and evidence to support the claim for the Footpath and urged the Committee to support the Order in order to retain the footpaths within the town. She expressed her concern at the number of paths and routes that could be at risk of being lost, not only within Lyme Regis, but across towns in the county.

7.7 David Clarke, local resident, addressed the Committee. He explained that he was a former Lyme Regis Town Councillor and was in full support of reinstating the historic path. He advised members of the Committee that the route was a public right of way until it was closed in 1980 as the landowner objected to the noise in the evening. He agreed that it was important to retain a number of paths within the town that had been used historically and urged members of the Committee to support the Order.

7.8 The Chairman reminded members that they were not being asked to decide on the merits of the original application and were there to decide one of three actions for the County Council. It was noted that if a neutral stance were to be taken, this would not imply that the County Council took no further part in the matter, all the evidence would be sent to the Secretary of State for determination but.

7.9 Members discussed the proposal at length and it was noted that there were a number of footpaths in towns across Dorset that were very similar and to lose them would change the character of the towns. It was therefore proposed that the County Council should support the Order, despite the Roads and Rights of Way Committee having previously agreed to take a neutral stance.

7.10 The Definitive Map Team Manager explained that when considering all of the evidence, the Secretary of State had originally found that there was sufficient evidence for an Order to be made. He did not decide that the rights existed. The Committee decision that followed was to take a neutral stance in the proceedings and it was only due to an error being made in the making of the Order that the matter had been presented to the Committee again for consideration.

7.11 The Senior Solicitor explained that for the Order to be confirmed the Inspector would need to look at the evidence and decide whether, on balance, there was sufficient evidence to support confirmation of the Order. She added that due to a large backlog of Orders waiting to be submitted to the Planning Inspectorate it would take a long time for the Order to go through the system if it was decided to support the Order and it was considered that taking a neutral stance was a more efficient use of time and resources.

7.12 The Committee discussed the revised proposal and, by a majority vote, agreed to support the Order.

Resolved

8.1 That the Order be submitted to the Secretary of State for determination; and

8.2 That the County Council support the confirmation of the Order.

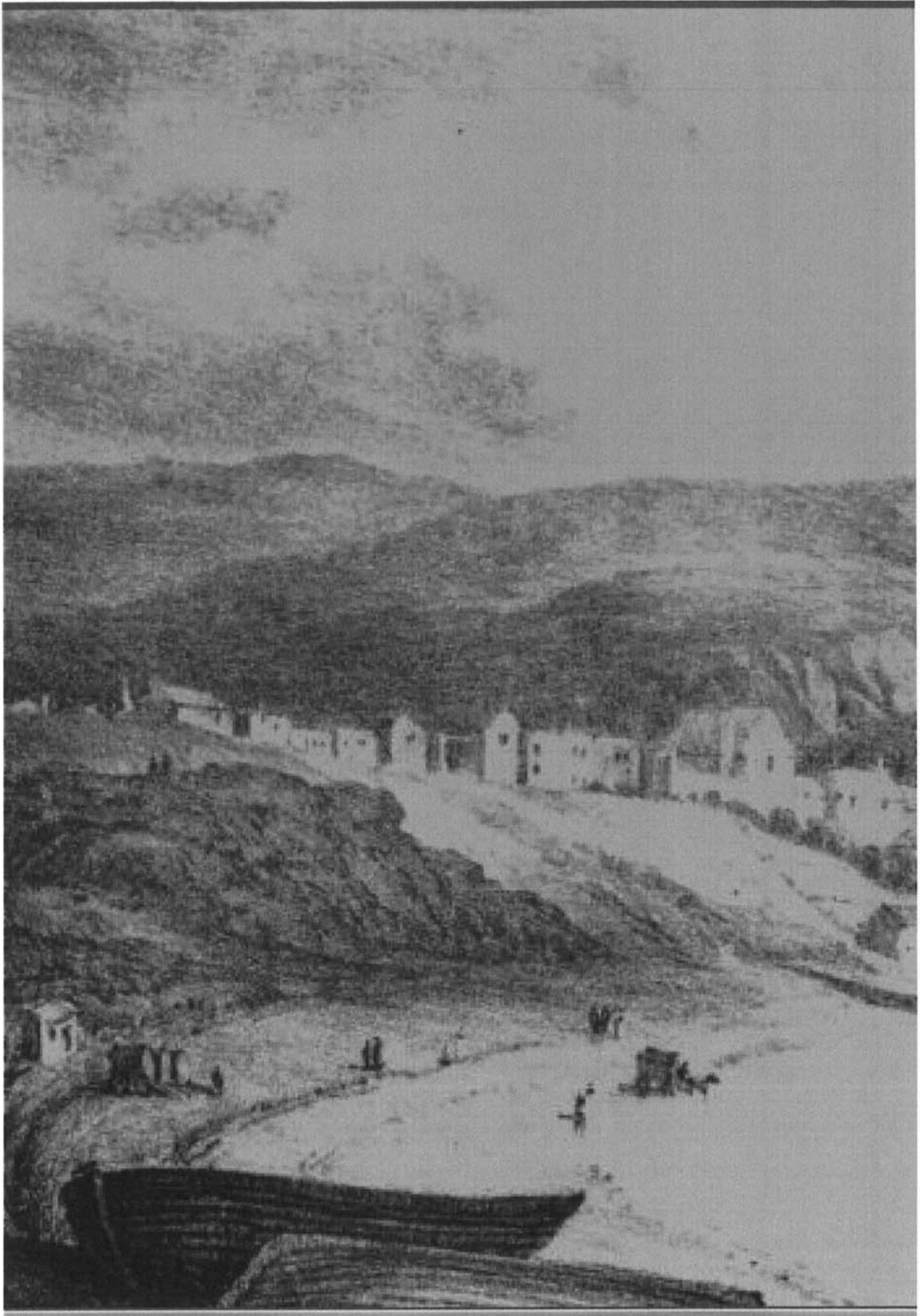
Reasons for Decision

9.1 That there have been objections to the Order and therefore the County Council must submit it to the Secretary of State for confirmation.

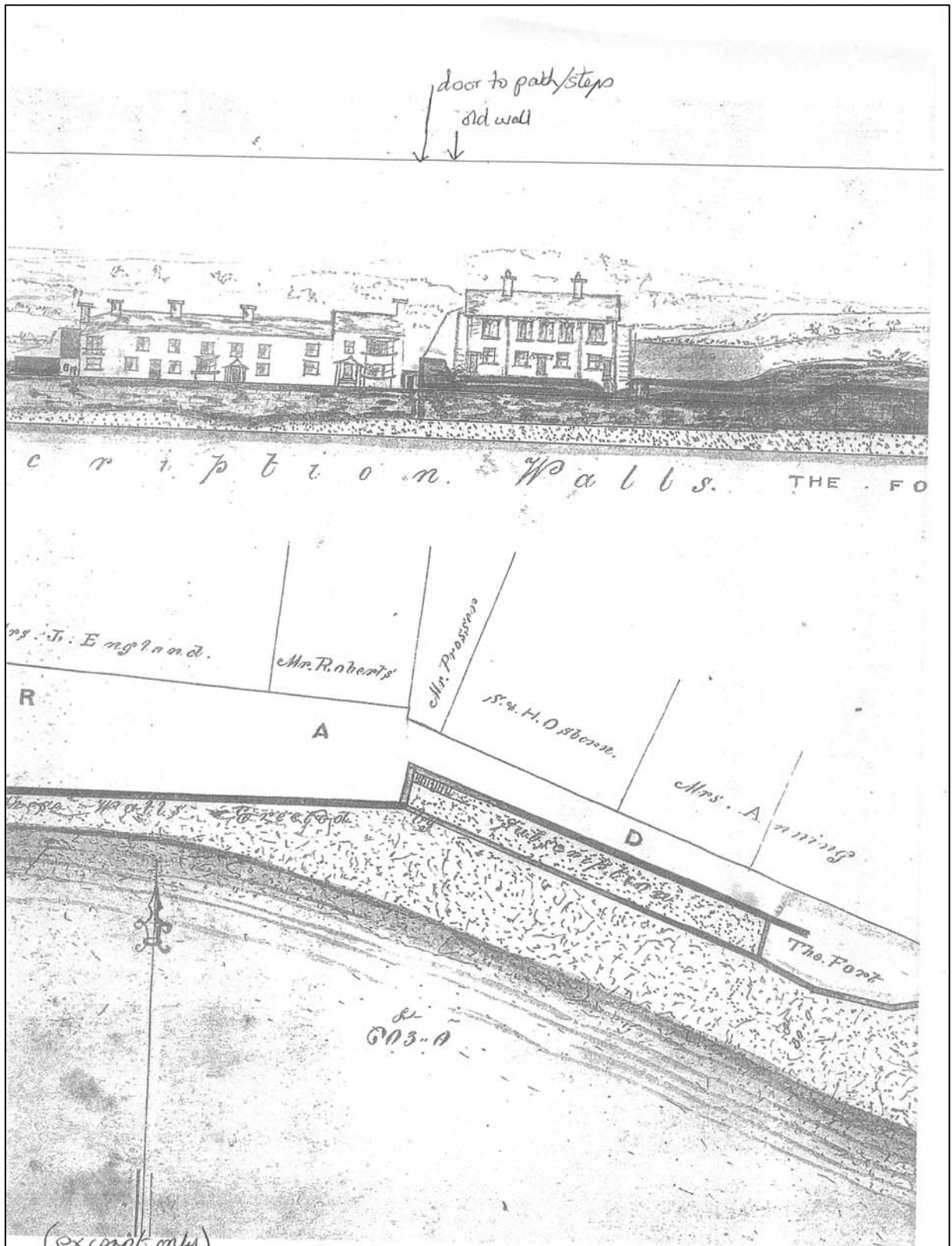
9.2 The County Council should support the existence of public rights of way and the Inspector's decision to direct the Council to make an order indicated the existence of a public footpath on this route.

9.3 To ensure that the definitive map and statement of rights of way is kept up to date and to achieve the corporate aim 'To safeguard and enhance Dorset's unique environment and support our local economy'.

1823 Drawing



1857 plan



(excerpt only)

Reduced copy of a map dated 1857, painted to accompany an Act of Parliament 1857 to raise subscriptions to build a sea wall from Cobb to site of current Theatre. Dorset Records have confirmed map is in their keeping (2005?)

Drawing of Madeira Cottage by Captain Marryatt – Date unknown



Two photographs from the early 1850s and early 1860s



The sea front from the area of the Assembly Rooms in the early 1850s, just as Mary Anning would have known it: indeed with people she probably knew.

The projection in the background is part of a fort built in 1627 and cleared away in 1863.

4

Cobb Hamlet

The houses at the foot of the Cobb were quite new in Mary's time, having been built actually on the beach from the 1770s. After the 1824 storm, she wrote to a friend: *'you cannot conceive what a scene of horror we have gone through at Lyme, in the late gale: a great part of the Cobb is demolished, every vessel and boat driven out of the harbour, and the greatest part destroyed. All the back part of Mrs England's*



The sea front after a bad storm in the early 1860s, when a ship was driven ashore. The long gap between the houses on the front and Cobb Hamlet is clear. Most of this land is very unstable, and is now the Langmoor Gardens.

houses and yards washed down, with the greater part of the hotel, and there is not one stone left of the next house'. All these were in Cobb Hamlet, close to the Royal Standard Inn, and there were also Baths here.

Ships were still being built where Ozone Terrace is now, and open-air stores for coal and wood filled the centre of Cobb Hamlet.

Extract from submission made by Mr Nigel Clarke, ex-Town Councillor, Lyme Regis at January 2014 Roads and Rights of Way Committee

“Recently, I have been contacted by a gentleman living just three miles away from Lyme Regis. In 1947, his father, a Mr Walters, was Dorset CC’s Roads & Bridges Surveyor for West Dorset. He was given the task of mapping and surveying all the footpaths in West Dorset in preparation for registering them on the Definitive Map in 1948. He completed much of the work in the area, but died very suddenly in September 1947. Unfortunately for Lyme Regis, Mr Walters had not yet begun to survey the footpaths and rights of way within the town of Lyme Regis.

DCC did not replace him in a timely manner and so the West Dorset rights of way registration on the definitive map in 1948 was incomplete. This is the reason why there are *NO* footpaths shown within the old borough boundaries of Lyme Regis even though the town has a myriad of little paths between lanes and houses which are still used daily by local people.

The Town Council has also received other photographic evidence and received information from several further residents of usage of the path, which I understand you are unable to receive at this time but includes a map and artist’s drawing to accompany an Act of Parliament of 1857 showing the doorway in the wall where 3rd Madeira Cottage now stands and flight of steps behind, which led down to the old Fort standing on the foreshore, where cannons once faced the sea. Also included were the recollections concerning the local children’s dealings with American soldiers incidents prior to the latter’s departure in early June 1944.”

User evidence - letter from Mr T M Sweeney

FURTHER
Dear Sir,

11 August 2014.

RE: CLAIMED RIGHT OF
WAY VIA 'MADIGRA
COTTAGE', LYME REGIS

I understand that for technical reasons, the legal process for this footpath claim has had to be restarted. This is unfortunate; the way has been unavailable for public use for too long.

I would like to inform you that I was introduced to this footpath by a Lyme Regis resident during the 1970's and was once a regular user. I am therefore a potential witness to the existence of this right and would be pleased to help in any way to prove its existence.

Thank you for continuing to pursue this claim under such difficult circumstances.

Yours sincerely,