

Cornwall Council
Environment Service – Countryside Access Team
Statement of Case
Documents required by Planning Inspectorate



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Statement of Case in respect of:

**The Cornwall Council (Addition of a Footpath at Wheal
Friendly in the Parish of St Agnes) Modification Order 2020**

Planning Inspectorate ref: ROW/3261678

The Cornwall Council (Addition of a Footpath at Wheal Friendly in the Parish of St Agnes) Modification Order 2020

Statement of Case

Introduction

1. An application was received on 27 August 2013 to modify the definitive map and statement by adding a public footpath from Footpath 1 St Agnes at Wheal Friendly (OSGR: SW 7199/5117) to its junction with Unclassified Road U6074 Rocky Lane (OSGR: SW 7199/5129) in St Agnes CP.
2. The application was originally supported by 9 Public Rights of Way evidence forms. A further 15 Public Rights of Way evidence forms in support of the claim were submitted by the applicant in 2019. Cornwall Council subsequently determined to make an Order in consequence of the application on 31 January 2020. The Order was made on 13 February 2020.
3. The resulting Order added to the definitive map and statement a length of public footpath in the Parish of St Agnes, shown as route A-C on the Order map attached in Appendix A.
4. In making the Order, the Council had regard to the duty as expressed in Paragraph (2) of Section 53 of the 1981 Act:

(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the definitive map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the event specified in subsection (3); and

(b) as from that date, keep the map and statement under continuous review and as soon as practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

5. The abovementioned Order was made under section 53(2)(b) because of the occurrence of an event as set out in section 53(3)(c)(i) of the 1981 Act being an event whereby:

“...the discovery by the authority of evidence which – when considered with all other evidence available to them shows – that a right of way which is not shown in the definitive map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic...”

6. When considering whether to make an Order under the Wildlife and Countryside Act 1981 Section 53(2)(b) the Council had to be satisfied that an event under section 53(3)(c)(i) of the 1981 Act had occurred. The Council had to decide whether the available evidence shows that a right of way subsists or is reasonably alleged to subsist over the sections of claimed way shown as route A-C on the Order map (the “**reasonable allegation**” test).
7. The Council made the above Order and at the end of a statutory period for representations and objections, the Order was subject to one outstanding objection. The Council was therefore unable to confirm the Order as an unopposed Order and submitted the opposed Order and the objection to the Planning Inspectorate with a request that the Secretary of State for Environment Food and Rural Affairs confirms the Order.
8. When considering whether to confirm an Order made as a result of the occurrence of an event under Section 53(3)(c)(i) of the 1981 Act the Secretary of State has to decide whether the available evidence shows, on the **balance of probabilities**, that the Order should be confirmed. This requirement is set out in paragraph 6(1)(a) of Schedule 15 to the 1981 Act.

Grounds for confirming the Order

9. In determining to make the Order the Council was satisfied that an event had occurred under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. Namely, that the available evidence showed the Order route between A-C could be reasonably alleged to subsist as a highway because it had been dedicated as a public footpath under Section 31 of the Highways Act 1980. The route had been used by the public as of right and without interruption for a period of 20 or more

years ending with the date on which the public right to use the way was brought into question.

10. The Council also determined that, if the Order was opposed, then it should be submitted to the Planning Inspectorate on behalf of Secretary of State for confirmation. In making this decision, the Council confirmed that it was satisfied that the “balance of probabilities” test for A-C had also been met. No evidence has been submitted to the Council since the decision to make the Order which has caused the Council to amend that opinion.

Dedication under Section 31 Highways Act 1980

11. The Council’s report investigated evidence of recent use of the claimed way on foot submitted in support of the application to modify the definitive map and statement. It concluded that this evidence indicated that a highway of public footpath status was reasonably alleged to subsist over route A-C on the Order map. This was sufficient to satisfy the test for an ‘event’ in section Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.

Enjoyment by the Public

12. The first part of section 31(1) of the Highways Act states that: *“Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway*
13. Attributes that convey the characteristics of a route sufficient to define it as a ‘highway’ include a determination that it is open to the public at large, the public use must be as of right, that right is primarily for passage, and the right of passage must follow a defined route. In considering the extent to which these key criteria are met the evidence is evaluated under two broad headings:

i) The Nature of the Way

- a) In determining to make the Order and submit the opposed Order to the Secretary of State for confirmation, the Council gives specific consideration to the nature of the ways. Evidence from Ordnance Survey maps where a pecked line picks out the precise

route of the claimed path and aerial photographs show the way described followed a clearly defined track and was not over an area where the public has wandered at large. This documentary evidence can be found at Appendix B to this Statement.

- b) The user evidence indicated that the way had been enjoyed on foot for various general purposes mainly for accessing the beach, but also for walking recreationally, leisure and going to work.
- c) The character of the way has to be such that use of it would give rise at common law to a presumption of dedication. Therefore, it could not be land to which members of the public are prevented from gaining access by statute. There is no known statute that prevents members of the public from having access to the land. Indeed, at its northern end the route is signed as a footpath to St Agnes. Photographic evidence can be found at Appendix C to this Statement.
- d) It is also submitted that the physical characteristics of the way are such that a right of way could be established. In this instance the available evidence indicates that the way followed a clearly defined and well-established footpath, bounded on both sides by vegetation with steps provided over the steeper sections (see Appendix C).

ii) The Nature of the Use

- a) The way must have been actually enjoyed – the available evidence indicates that the way has been enjoyed by users on foot between 1945 and 2019.
- b) Use of the way must have been by the public – the available evidence indicates that witnesses who claimed they had used the claimed route during the relevant period lived at either end of the path in Wheal Friendly and Trevaunance, but also in the wider surrounding area and outside the parish of St Agnes too. The distribution of users of the path indicates that use was by the public at large.
- c) Use of the way must have been as of right – in other words the use of the way must have been without force, secrecy or permission. The available evidence indicates that use of the way had been as of right for a full 20-year period prior to the date when rights were called in question, so between 1993 and 2013. There was no evidence presented to the Council that any of the witnesses used the route with force or secrecy during the relevant period. The evidence indicated no witness had used the

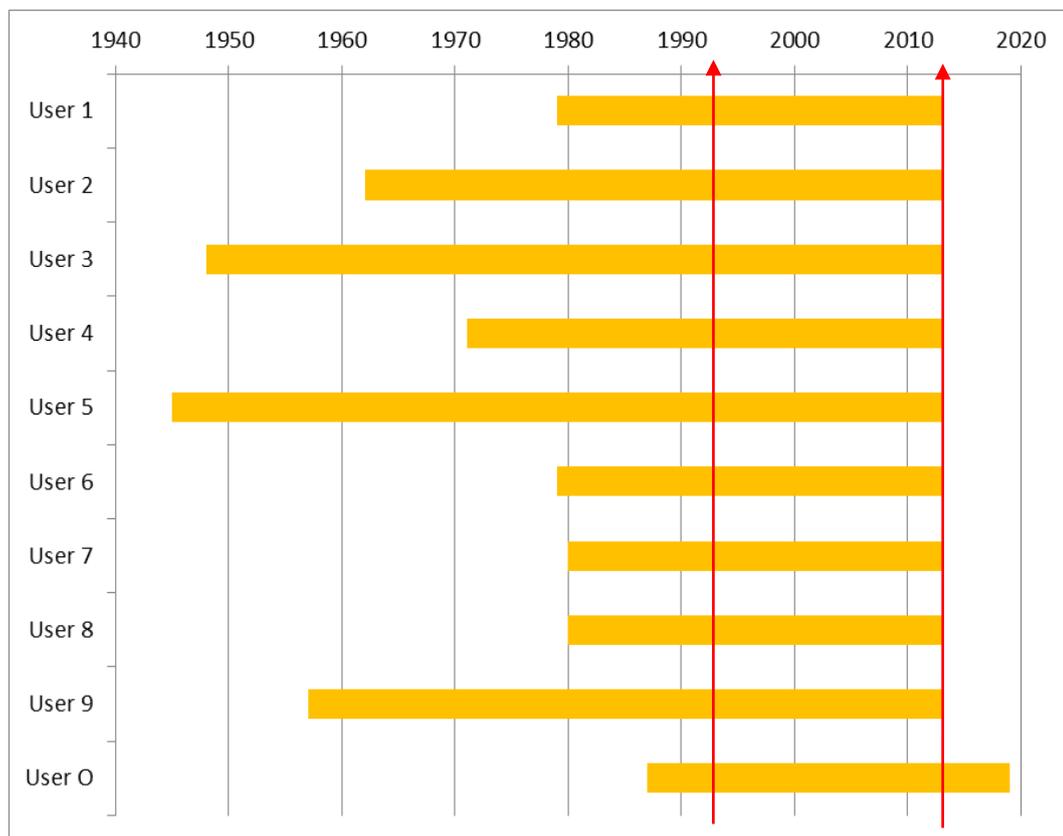
way in exercise of a private right, or by permission from the landowner during the relevant period.

- d) Use of the way must have been without interruption – in other words the use of the way by the public must have been exercisable over the entire period. The available evidence indicates that there that there has been no interruption to the use of the way between the relevant dates.
- e) Use of the way must have been for a full period of 20 years. From the available evidence the Council was satisfied that use of the routes had covered a 20-year period as required by statute and that the frequency of use during that period was sufficient.

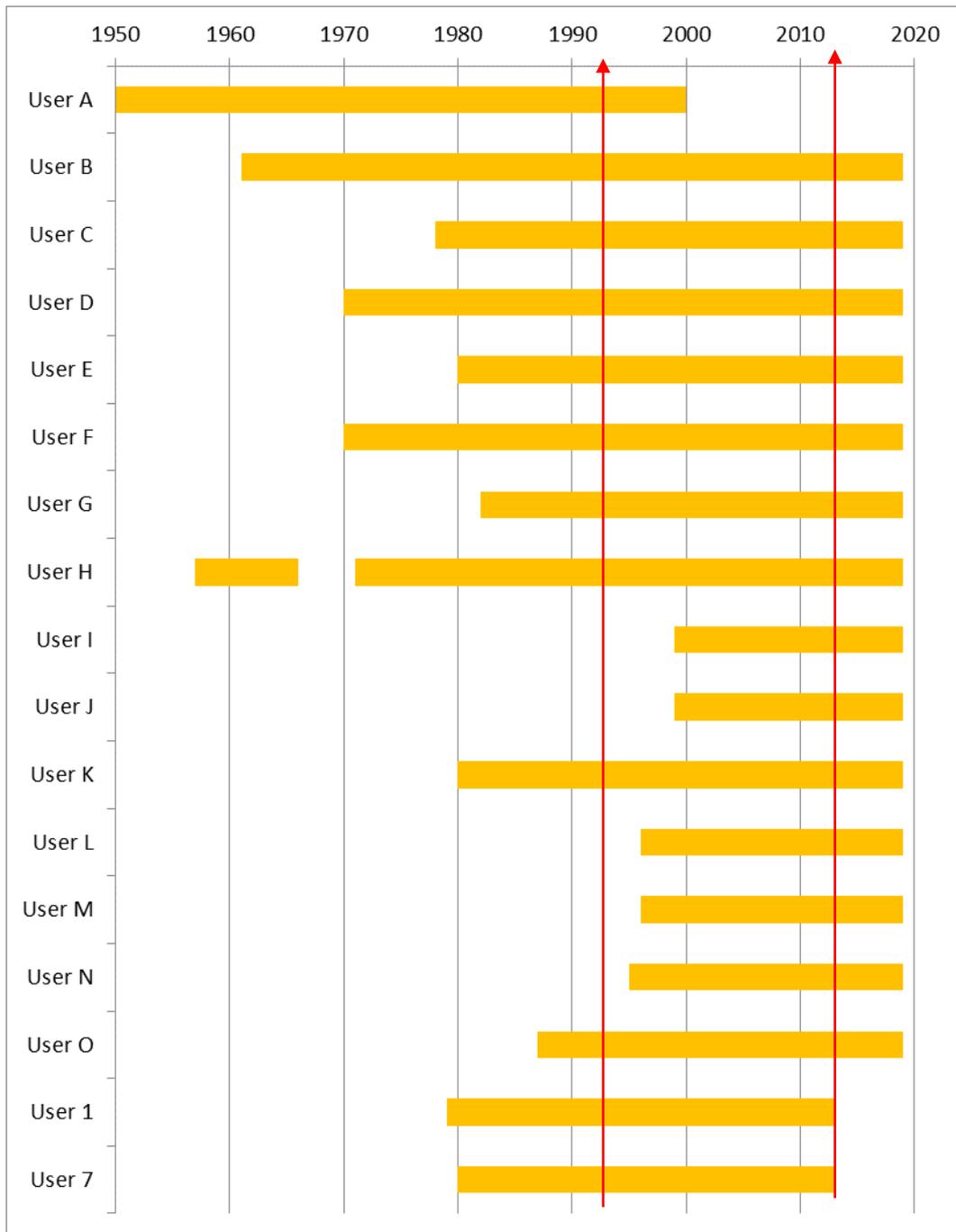
14. Evidence of use is comprised of 24 public path user forms. Forms completed in support of the application can be found at Appendix D to this Statement. A list of the names of witnesses who submitted evidence is provided below.

1		D	
2		E	
3		F	
4		G	
5		H	
6		I	
7		J	
8		K	
9		L	
A		M	
B		N	
C		O	

15. The bar chart below demonstrates evidence of use on foot contained in the witness forms over the period indicated for most of the route shown as A-C on the Order Map (20-year statutory period is also highlighted) (all but three witnesses [1, 7 and O] did not include the short approximately 20m stretch at the northern most extent of the claimed route from the unrecorded track down to publicly maintained road U6074 known as 'Rocky Lane').



16. The bar chart below demonstrates evidence of use on foot contained in the witness forms submitted in 2019 in support of the application over the period indicated covering that part of the route between B-C on the Order Map, the short approximately 20m stretch at the northern most extent of the claimed path from the unrecorded track down to publicly maintained road U6074 known as 'Rocky Lane' (20-year statutory period is also highlighted).



17. In total 24 witnesses claimed to have used the route for varying lengths of time. Although various witnesses used different parts of the way, with only 3 using the path in its entirety [Witness 1, 7 and O], evidence shows that excepting a short 20m section between B-C on the Order map, 10 witnesses used most of the route on foot in excess of 20 years with all 10 having used it for the whole period between 1993 and 2013. A further 17 witnesses claimed to have used the northernmost 20m stretch in excess of 20 years with 11 having used that part of the claimed way for the whole period between 1993 and 2013. Use of the way has continued at least up until the time additional evidence forms were submitted by the applicant

in 2019. No witness claimed use exclusively outside the period of 20 years prior to the date rights were brought into question.

18. Frequency of use among witnesses varies, but in summary amongst those who used most of the route 6 of 10 witnesses indicated they used the way approximately fortnightly. Another 2 witnesses who gave a figure identified they used it more often than that, about once a week and up to 4 times per week respectively. Figures identifying how often the short northern section was used are remarkably similar. In summary 7 witnesses reported that they used that part of the way approximately fortnightly. A further 6 witnesses who gave a figure indicated they used it more often than that, about once a week and in 2 cases between 3-5 times per week. This is consistent with their evidence for the reasons why users say they walked the path, which was mostly for leisure to access the beach.
19. Taking the number of witnesses together with the length of time they used it for and how frequently they used it, use of the whole way on foot has been demonstrated to be substantial and continuous.

Date when the Right was Brought into Question

20. Section 31(2) of the Highways Act 1980 continues:

“The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question,”

21. For the purposes of Section 31 of the Highways Act 1980, it is considered that public use on foot was brought into question by the submission of a modification order claim by the applicant.
22. Where evidence makes no clear mention of any challenge by way of, for instance, physical barriers, verbal restraint or warning notices and where no direct action has been taken by the landowner to challenge public rights, it is not possible to ascertain the date upon which public rights were brought into question. In such circumstances the Highways Act 1980 (as amended by the Natural Environment and Rural Communities Act 2006) advises that the date when a legally valid application is made should be treated, for the purpose of deliberations, as the date upon which public rights were brought into question. In this case the original application was made in 2013.
23. The relevant period of use by members of the public, as of right and without interruption, to establish public rights by presumed dedication

under Section 31 of the Highways Act 1980 is therefore 20 or more years prior to the date when rights were called into question in 2013.

Evidence of a Lack of Intention to Dedicate

24. The second part of Section 31(1) of the Highways Act 1980 continues,

“.....unless there is sufficient evidence that there was no intention during that period to dedicate it.”

25. When consulted about the application all three affected landowners responded reporting at the time that they considered the claimed way to be public, had witnessed people using the path, but had taken no steps to prevent that use.

26. Insufficient evidence was therefore provided to show that the landowners did not intend to dedicate a public footpath during the period over which use has been reported 1945 to 2013. The Council therefore considers that the necessary evidence to negate the evidence of use during the relevant 20-year period has not been discovered.

Dedication at Common Law

27. Apart from the statutory provisions under section 31 of the Highways Act 1980 a public right of way may also come into being by virtue of presumed dedication at common law. To satisfy the common law test the evidence must show that the owner of the land at some time in the past dedicated the way to the public, either expressly, the evidence of the dedication having been lost, or impliedly, by making no objection to the use of the way by the public.

28. At common law a right of way can be established if it can be shown that levels of use by the public were sufficient for the landowner to have known that the way was being used, but by taking no action to stop it, has by making no objection, acquiesced to that use and thereby is presumed to have intended to dedicate the way as public.

29. The common law presumption is that land has been dedicated as a highway if it has been used by the public as of right and without interruption. The land does not have to be used for a defined length of time. However, it must have been used for long enough to justify an inference that the freehold owner intended to dedicate the way as a highway. It is possible, although unusual, that dedication at common law can be presumed on the basis of less than 20 years use. The common law

presumption can be rebutted by demonstrating that the landowner had no intention of dedicating the land to the public. The common law principles of dedication are expressly preserved and, if the statutory provision cannot be used, a claim may be made under common law.

30. In carrying out its duty to investigate the matters raised by the application, the Council did not address the question of whether the evidence indicated presumed dedication at common law on the grounds that dedication of the path as a public highway under section 31 of the Highways Act 1980 had been demonstrated. Nevertheless, if the Secretary of State considers that the statutory provisions under section 31 of the Highways Act 1980 are not met, the Council also invites the Secretary of State to consider whether the evidence shows that a public right of way has been dedicated by virtue of dedication at common law.

Consideration of Points Raised in Objections to the Order

31. One Objections was received from: . Following a period of resolution this was not withdrawn. The outstanding letter of objection is attached at Appendix E.
32. In a letter of objection and in an accompanying report dated 31 March 2020 who identified that he was the owner of land over which the Order route passes objected also on behalf of 54 members of the 'Friends of Wheal Friendly Footpath' to the confirmation of the Order on twenty-one grounds indicating that he disagreed with the argument that had been put forward by the Council in determining to make the Order. However, the objector did not put forward any new evidence that the Council had not previously considered.
33. The first ground for objection was that prior to purchase of the land LR title CL297944 the landowner's solicitor obtained via local land searches from Cornwall Council and preliminary enquiries with the vendor confirmation that other than existing Footpath 1 St Agnes there were no unrecorded rights of way.
34. The second ground for objection was that the landowner considered the vendor, , whose purchased the entire estate of Wheal Friendly Mine in 1951 and remains a key landowner over the first section of the order route had neither been consulted, nor notified of the Order and had therefore been denied the opportunity to provide valuable evidence or make a representation.

35. The third ground for objection identified that the claimed route was over an old mine site where commonly the public have wandered at large and changed paths to the extent that the way was not of a physical character capable of raising the presumption of dedication.
36. The fourth ground for objection stated that upon purchase of the property on 23 April 2013 the landowner closed an informal path, which now forms part of the Order route advising walkers to use the recorded public right of way closer to the engine house. It was considered therefore that no rights could have accrued over the claimed way after this date.
37. The fifth ground for objection was made on the basis that on advice from his solicitor, the landowner had closed the informal path for a week before granting a permissive path agreement on 1 May 2013, thereby asserting that any accrued uninterrupted right of way through long use was extinguished. The objector considered that this meant that no rights could have accrued over the claimed way after this date.
38. The sixth ground for objection reported that as far as could be reasonably ascertained, enquiries by the landowner's solicitor showed the informal path in question had not existed much before 2005. The objector considered that this meant that the minimum statutory period for rights to have accrued of 20 years had not been met.
39. The seventh ground for objection identified that notices erected after purchase had alerted users that the path was not a public right of way, the landowner did not wish to dedicate it as such and therefore use was with the express permission of the landowner. The objector considered this meant that no rights could have accrued over the claimed way after this date.
40. The eighth ground for objection was that under Section 31(6) of the Highways Act 1980 the landowner had filed a declaration with Cornwall Council valid for 20 years identifying Footpath 1 St Agnes and indicating that he had no wish to dedicate any further public rights of way over the land. The objector considered that this meant that no rights could have accrued over the claimed way after the date the declaration was filed.
41. The ninth ground for objection alerted the Council to the fact the objection only applied to part of the path and did not extend to include that section of the Order route between Footpath 1 at Ordnance Survey Grid Reference (OSGR) SW 72013/51275 and SW 72006/51291 which by providing a shortcut for walkers heading to the beach from the village,

according to a survey conducted by the 'Friends of Wheal Friendly Footpath', does satisfy the requirements for presumed dedication set out in Section 31(1) of the Highways Act 1980. On this basis the objector considered there was sufficient evidence for the existence of a public right of way on foot between points B-C on the Order Plan.

42. The tenth ground for objection reported that the survey by 'Friends of Wheal Friendly Footpath' had identified that walkers would have preferred to use the existing Footpath 1 St Agnes, because it was both more direct and interesting, but as a result of this route being blocked users were deliberately forced to take a diversion as an alternative. The objector considered therefore that the section from OSGR SW 72006/51291 towards Churchtown shown between points A-B on the Order map did not meet the tests for presumed dedication set out in Section 31(1) of the Highways Act 1980.
43. The eleventh ground for objection argued that without the opportunity to cross examine witnesses to determine whether they were using the way 'as of right', or as a result of 'force' because the existing recorded footpath was blocked, the quality of evidence contained in their witness statements was poor.
44. The twelfth ground for objection noted that at least 4 witnesses were suspected of living on Wheal Friendly Lane. The objector considered that this meant they would benefit from having special access arrangements to the beach and therefore could not be considered to constitute the 'public at large', so their evidence should be discounted.
45. The thirteenth ground for objection identified that most of the 54 members of the 'Friends of Wheal Friendly Footpath' would qualify as the 'public at large' and their witness statements would provide good evidence.
46. The fourteenth ground for objection considered that plans accompanying the 'User Evidence Forms' varied in quality and by showing multiple alternative routes across the mine site included several inconsistencies. As such it was further considered that at various stages of the modification order process the route of the alleged footpath had changed. In the objector's opinion the plan that accompanies witness statement 1 is the only example that reflects the map attached to the Order.

47. The fifteenth ground for objection considered that it was wrong to claim in the report that all landowners were in favour of the alleged route, when opposition to the Order might have been expected.
48. The sixteenth ground for objection argued that the original application should have been refused by the Council in 2013 on grounds that the coordinates were wrong and not all affected landowners were therefore contacted. Indeed, the objector considered the matter so confusing that the surveying authority was provided with a letter on 28 March 2019 withdrawing landowner objections because it was understood from the grid references that no part of the additional footpath crossed onto their land.
49. The seventeenth ground for objection centred on the fact that in 2013 few councillors at St Agnes Parish Council supported the claim of rights and the Clerk who made the application left the Council amidst turmoil shortly afterwards. However, by 19 July 2019 the same Councillors were alleging that the claimed route was the only one used in living memory by the public. The objector disputes this, because when the parish carried out their survey in the early 1950s there was no knowledge of the Order route at that time.
50. The eighteenth ground for objection focussed on comments made by the in response to a consultation, which the objector considered conflicted with those they had made in respect of an earlier planning application to develop the Wheal Friendly Engine House. Furthermore, they had declined to support the prospect of a Village Green application in favour of securing access via the footpath in question.
51. The nineteenth ground for objection claimed that historical OS maps only show the route of Footpath 1 St Agnes, because the alleged path never existed historically. Moreover, the objector considered that the route identified on underlying OS data as a 'Path (um)' was actually the route of the existing recorded path and therefore doesn't follow the line of the claimed path. Additionally, it was noted that a single dashed line used by Ordnance Survey is not evidence that the way exists, but denotes an undefined feature, such as a hedge, a presumed boundary, or ridge in the landscape.
52. The twentieth ground for objection considered that the definitive map record is understood to show the correct line of Footpath 1 St Agnes running to the south of the mine structure that currently obstructs it. It is further considered that common sense dictates that where a right of way

appears to be obstructed, it is always possible to deviate around the barrier following the shortest route.

53. The twenty-first ground for objection was that the aerial photos do not provide evidence to show that the route existed for the 20-year period of use that is being claimed.
54. The view of Cornwall Council is that the objection does not address issues that are relevant to the confirmation of the Order for the following reasons.
55. Concerning the first ground for objection it is assumed that prior to purchase the landowner's solicitor would have asked the question about the existence of rights of way over the property (it was optional at that point). However, there is no reason why either local land searches at Cornwall Council, or the vendor, would have been aware of a prospective claim for a right of way at the time. This is because the modification order application was not made until after the date that the solicitor's search was conducted.
56. Concerning the second ground for objection, there is no record of ownership of the land belonging to [redacted] recorded with the Land Registry. In the absence of such information the surveying authority gives the applicant permission to serve notice impersonally and requests dispensation from the Secretary of State to do the same when it advertises the making of the Order. Notice of the making of the Order was therefore served on the land impersonally and in a local newspaper. To ensure that everyone who wanted to make a representation could do so, Cornwall Council additionally asked St Agnes Parish Council to promote news about the making of the order as widely as possible in the area, which they did by erecting adverts on their noticeboards and webpage. In this instance the Council as the relevant Order Making Authority not only fulfilled its obligations set by the legislation, it went beyond what statutory duty requires.
57. Concerning the third ground for objection, the claimed route is a clearly defined path on the ground. Whilst there exists the possibility that occasionally a user may have strayed from the path, there is no evidence to suggest this happened regularly. The evidence indicates that the witnesses all used a similar route over the land.
58. Concerning the fourth ground for objection the Landowner Evidence Form completed by the objector on 11 March 2014, nearly a year after he

purchased the property on 23 April 2013, makes no mention of this notice and asked the question: 'Have you ever erected any notices [...] on or near the way?', he answered 'No'. It is therefore unclear how users were informed that they had no right to use the path at the time.

59. Concerning the fifth ground for objection, whilst saying on advice from his solicitor the informal path was closed for a week before granting a 'permissive path agreement' on 1 May 2013, on the same Landowner Evidence Form completed on 11 March 2014 asked the question: 'Have you ever maintained any locked gates, or other obstructions preventing use of the way', the objector answered 'No'. Asked an additional question: 'Have you ever given permission for anyone to use the way? If so, to whom and when?', again the objector answered 'No'. Furthermore, the Council has evidence that shows that the map accompanying the so called 'permissive path agreement' of 2013 is not contemporaneous with it and cannot have been produced until 2017 at the earliest. Even if the document existed, as rights were established between 1993 and 2013, allowing users to access the path by permission in 2013 does not constitute an interruption during the 20-year period over which rights accrued.
60. Concerning the sixth ground for objection the objector provided no evidence from his solicitor to show that rights could not have accrued prior to 2005.
61. Concerning the seventh ground for objection an answer provided on the Landowner Evidence Form completed on 11 March 2014 contradicts the objector's assertion that Notices were erected on site after purchase. Asked the question: 'Do you believe this way to be public', they answered 'Yes'.
62. Concerning the eighth ground for objection Council records indicate that although a Landowner Statement was deposited using provisions in Section 31(6) of the Highways Act 1980, to date the landowner has not applied to lodge a declaration. Whilst the statement and plan does negative their intention to dedicate any further public rights of way over your land, it does not act retrospectively, but only from the date it was filed on 22 February 2019. Furthermore, without a subsequent declaration, the records do not indicate that any interruption took place in the public's right to use the way.
63. Concerning the ninth ground for objection it was noted that the objection did not apply to the section between B-C on the Order map, because the

objector considered that this part of the Order route satisfied the requirements for presumed dedication set out in Section 31(1) of the Highways Act 1980. However, the evidence that the surveying authority based its determination on to add a public footpath between A-B on the Order map was materially different from B-C on the Order map (Footpath 1 at OSGR SW 72013/51275 and OSGR SW 72006/51291), only in respect of the named witnesses who attested to using the various sections of path, the evidence in terms of numbers of witnesses, the length of time witnesses had used it for and the frequency of use meant the weight attributed to the evidence was otherwise remarkably similar.

64. Concerning the tenth ground for objection the suggestion that the route between A-B on the Order map does not meet the tests for presumed dedication set out in Section 31(1) of the Highways Act 1980 because walkers were deliberately 'forced' to use an alternative route as a consequence of the existing Footpath 1 St Agnes being obstructed is not relevant to the tests in the legislation. In the meaning of the words 'as of right' one of the common law principles that gives rise to the presumption of dedication requires the user to be *nec vi* (without force). This only applies to the way being claimed and refers to the use of force to secure a passage along that path, e.g., by breaking the lock on a gate, or cutting barbed wire. The objector therefore failed to provide any evidence to show that during the 20-year period between 1993 and 2013 access over the claimed way was by virtue of force.
65. Concerning the eleventh ground for objection, as it is required to do the Council treats the evidence provided in support of a modification order at face value because witnesses have made a signed statement about their use of the way. The Council's decision to make an Order was based on evidence contained in the User Evidence Forms combined with evidence contained in Landowner Evidence Forms provided in response to a landowner consultation. This showed all three known landowners affected considered the claimed way to be public, had witnessed people using the path, but by their own admission had not taken steps to prevent that use or to stop rights from accruing during the relevant 20-year period from 1993-2013.
66. Concerning the twelfth ground for objection none of the witnesses identified that they used the alleged route by express permission of a landowner, or in exercise of a private or prescriptive right. The suggestion that some witnesses may have lived on Wheal Friendly Lane would not be sufficient to discount their evidence.

67. Concerning the thirteenth ground for objection it was recommended that if members belonging to 'Friends of Wheal Friendly Footpath' were able to provide evidence that an alternative path to the Order route had been established they could make a modification order application to Cornwall Council. However, this would constitute a separate claim and is not relevant to the current Order.
68. Concerning the fourteenth ground for objection the Council disputes that the maps which accompanied the 'User Evidence Forms' demonstrated several inconsistencies. Whilst accepting there were some minor variations in the route shown on the witness plans near to Point A on the Order map, this was understandable given there is no clearly defined linear feature to follow on the underlying mapping data at this location. However, what users intended to show is indisputable and thereafter the lines they drew all followed the way marked 'Path (um)' on the Ordnance Survey map. With detailed aerial photography available to the surveying authority, it was possible to identify the walked route precisely based on the well-worn path that appears on the ground across this open space and that formed the basis for the line shown on the map attached to the Order.
69. Concerning the fifteenth ground for objection the Council's report did not say that all landowners were in favour of the alleged route. It indicated that all three known landowners affected considered the claimed way to be public, had witnessed people using the path, but had taken no steps to prevent that use, or to stop rights from accruing during the relevant 20-year period from 1993-2013.
70. Concerning the sixteenth ground for objection the Council accepts that it is not unusual for people with limited cartographic knowledge to struggle to provide accurate grid references and this is a factor the surveying authority takes into account when accepting modification order claims. The Council was satisfied that the description of the way combined with a map showing the exact route was sufficient to show what rights were being claimed precisely and therefore decided to validate the original application. Furthermore, the surveying authority considered the letter dated 28 March 2019 withdrawing landowner objections because they understood from the grid references that no part of the additional footpath crossed onto their land to be bogus for the following reasons:
- a) the objector had never previously opposed the modification order application, indeed in response to the only formal consultation the Council conducted, they indicated on their Landowner Evidence Form

that they thought the path to be a public right of way, had seen people using it, but had taken no steps to prevent that use;

b) the opportunity to object to a claim for a right of way only arises once an Order is made, but the letter in question predates the Council's decision to make an Order; &

c) when the objector as an affected landowner was consulted the Council included a description of the way and a map showing the route being claimed but did not include coordinates. They did not think that this represented an issue at that time and responded accordingly

71. Concerning the seventeenth ground for objection Cornwall Council is unable to comment on the intentions of the applicant. Furthermore, it is also impossible to say that surveyors had no knowledge of the Order route when St Agnes Parish Council compiled their parish map in the early 1950s, only that they chose not to include it, whether it existed or not at that time. Section 56 of the Wildlife & Countryside Act 1981 provides that the definitive map and statement is a legal record of public rights of way and conclusive evidence that at the 'relevant date' the public had the rights shown on the Map. However, this is without prejudice to the possibility of the existence of higher rights over a particular way or to any other rights that may exist such as those set out in the Order.
72. Concerning the eighteenth ground for objection Cornwall Council only reports responses to the consultation that are relevant to the legislative tests for the path being claimed. Comments made by the [redacted] in respect of a planning application relating to the development of the Engine House at Wheal Friendly, or declining to support a prospective Village Green application, are therefore not relevant to the question of whether rights exist.
73. Concerning the nineteenth ground for objection Cornwall Council has based its decision to add a right of way to the definitive map and statement solely on statute, in this case Section 31(6) of the Highways Act 1980. For clarification purposes, whilst early editions of Ordnance Survey maps show a track which Footpath 1 St Agnes now follows, the only route identified on recent OS maps as a 'Path (um)' is the line of the Order route. The line on the maps showing Footpath 1 St Agnes is superimposed over OS data, so the objector's assumption that the 'Path (um)' refers to the recorded right of way is erroneous. The objector correctly identifies that Ordnance Survey cartographers use a single dashed line to denote several types of linear feature, mostly political boundaries, but in this instance to avoid any confusion, that line has been annotated with 'Path (um)'. This is evidence that the way existed as a topographical entity at the time of the

survey, but it does not say anything about whether it was public, or not. All Ordnance Survey maps carry disclaimers to this effect.

74. Concerning the twentieth ground for objection the surveying authority does not dispute that whilst the definitive map record may show the line of Footpath 1 St Agnes running to the south of the mine structure that currently obstructs it, the survey is rudimentary and has been produced at such a small scale that drawing any firm conclusions from it is often difficult. However, the Council considers that this is an entirely separate matter to the claim for an additional right of way and should be treated independently of it
75. Concerning the twenty-first ground for objection Cornwall Council routinely includes aerial photos in modification order reports whether these images support the existence of a way, or not. In this instance parts of the claimed route are visible as far back as 1946

Summary

76. In regard to the way depicted between points A-C on the Order map, Cornwall Council is satisfied its original determination that the Order be made and that the Order, if opposed, be submitted to the Secretary of State for confirmation was based on a reasonable interpretation of the available evidence and also satisfies the test laid out in Section 53 of the Wildlife and Countryside Act 1981. There was nothing that was raised in the contents of the objections to the Order that causes Cornwall Council to consider that the Order should not be confirmed.
77. The Council considers the available evidence indicates that, on the balance of probabilities a right of way on foot exists over A-B-C on the Order map. This has been established by inference of dedication at statute under Section 31 of the Highways Act 1980, the way has been actually enjoyed by the public as of right and without interruption for a full period of 20 years there being insufficient evidence to show that there was no intention during that period to dedicate it. It is therefore considered that the Order to modify the definitive map and statement by adding a section of public footpath to the definitive map and statement should be confirmed.