

Darrel Clarke  
The Definitive Map and Right of Way Officer  
County Hall  
Newport  
Isle of Wight  
PO30 1UD

Dear Mr Clarke

**Path a Forelands Bembridge Isle of Wight BB40**

Further to our previous correspondence please find enclosed:

36

36 Completed Form A (Witness Statements) + Principle Arguments Statement

1 Completed Form C (Notice of Application for Modification Order)

This letter, requesting sight of legal advice and to inform the Elected Representatives of the current position..

**Witness intimidation**

During the process of gathering witness statements rumours have circulated that the land owner (who is also a land lord to The Beach Hut Tenants at Foreland) has threatened that if any tenants complete a truthful witness statement the future tenancy of their beach hut could be withdrawn. Because of the judicial nature of the process and the formality of the witness statements, I am frankly uncertain that IF such an intimidation did occur it would be lawful. Would you, through your office, seek an opinion on this single point of law from the Principal Lawyer? I have overcome this problem by not involving the people concerned. I have however left in the bundle of witness statements a single statement (with the "no disclosure" box completed) from an individual who is a tenant of a beach hut so it can be see if anything untoward happens.

In fact, I have had no difficulty getting the required number of statements. I feel, more people have been incensed and motivated at the "attempted" intimidation than have been constrained by it. But in spite of this, the good law officer's formal view would still be of interest to many.

### **Making a profit from a public right of way”**

*Do the rights set out in the order all ready exist? If they do then the map must be modified regardless of any effect on any ones property interest. The fact that a right of way may be a nuisance is irrelevant.*

I have attached the land owner’s letter with high lights to indicate this fundamental point exactly. Increasing the lessors’ income is being achieved by increasing the lessees’ “exclusive use land area” which in turn is decreasing the land area available to the public. The fact that lessors’ are able to think of a worthy and laudable cause for their increased income need not be a surprise.

I have no commercial interest either in the café or the potential value of its lease. I am only concerned with the potential loss of public amenity.

### **Public notices**

The Café Operators Public Notice (here-with attached) gives a good example that there is an understanding that, in the past, the public have had use of the area.

A paragraph reads “This terrace is *now* part of the café area etc...” This wording has been interpreted to mean that there is an understanding that previous operators of the café did *not* have use of the terrace. Needless to say it is the decades of conduct and practice by the *previous* café owners and the historic use by the public that is the basis of the “Presumption of Dedication” claim.

Also

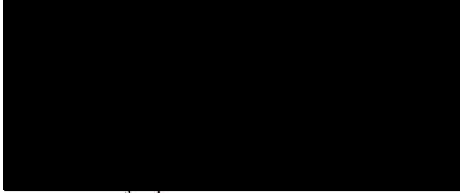
The final paragraph reads “Only customers are covered by our insurance, *others* using the café area do so at there... etc” This similarly implies an understanding that other individuals that are not customers use the area.

### **The Status Quo**

The continuous use, by the public, of the route as outlined in the attached witness statements has meant that the lower part of BB40 has become disused overgrown and obstructed. Were the council required to reinstate BB40 as shown on the definitive map, it would involve, at public expense, the rebuilding of the path across a rockery and effective enforcement action to demolishing a beach hut that should be regarded

as an unlawful obstruction. (see attached diagram area outlined in red) To avoid this it has been considered both wise and pragmatic that the Status Quo be maintained until this due process is concluded.

Yours sincerely



G.R.Ferris  
14<sup>th</sup> June 2013

cc Councillors J Bacon and G Kendal for information

enc. 35 Witness statement form A + Statement of the Principle Arguments from the  
Public's point of view


Mrs Clarke's letter dated November 2012

Diagram showing unlawful obstruction of BB40

2 photos of café owners notices (now removed)

1 photo showing the extent of the public's investment in concrete stairs and hand rails

*Mrs. E. A. Clarke*



November 2012

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What a summer! I hope you had a few sunny days at the beach all the same.

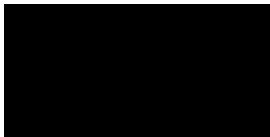
I enclose herewith the renewed lease of your beach hut.

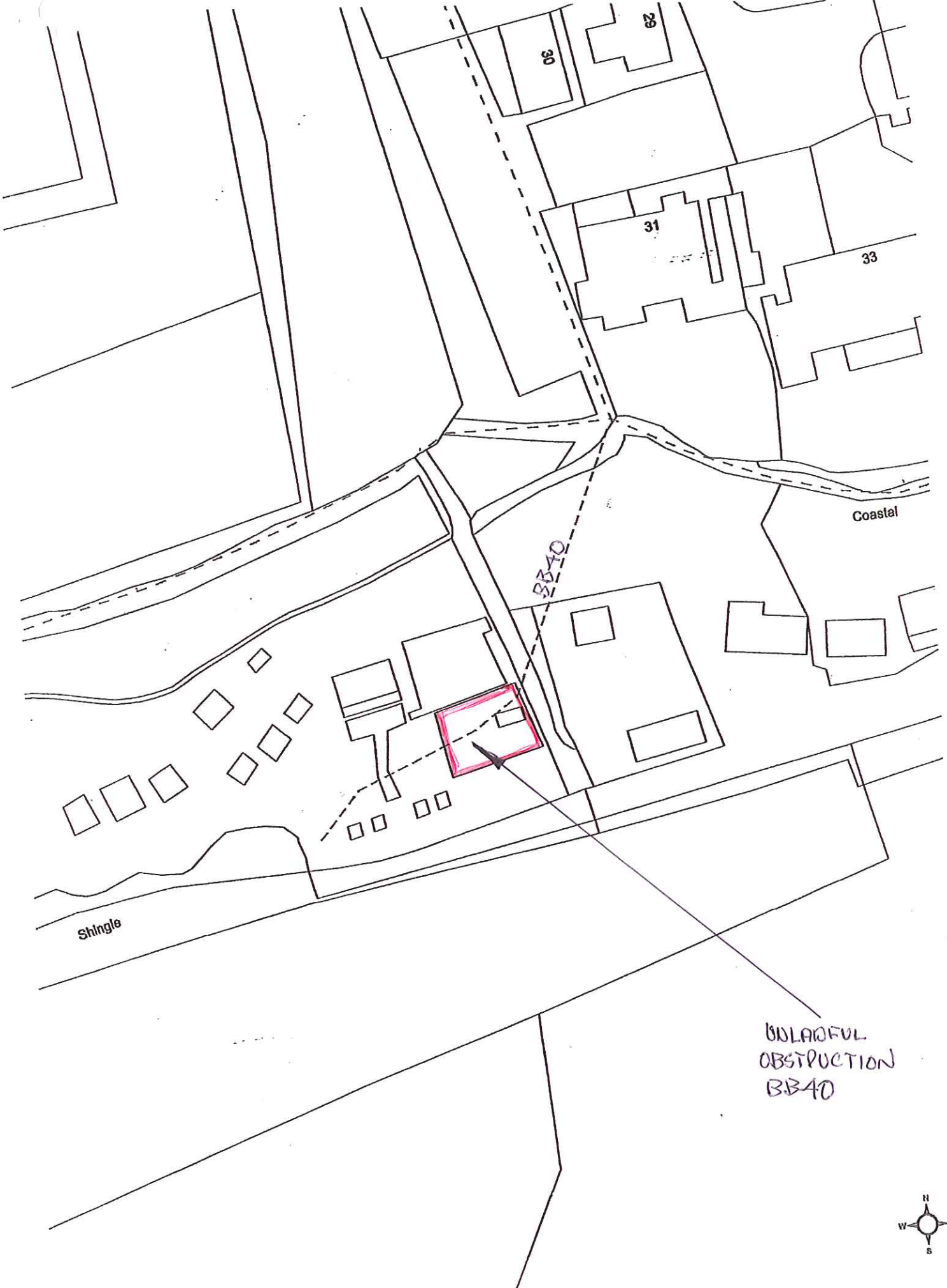
This year we said goodbye to Peter and Jacqui Haynes from the café, and welcomed Jon and Emma Guy. The Forelands Drive Association, of which I am chairman, leased them the concrete terrace, formerly the site of the toilets for those of you who remember those days. Previously the terrace was used occasionally by the Hayneses by informal agreement, but it is now officially part of the café.

Discussions are going on between the Association, the Council, and some residents, as to the exact line of the footpath down to the beach. Meanwhile, it is to be hoped that while the terrace is in use as part of the café area, common sense as well as normal courtesy would cause people going for a walk and not using the café, to take a few extra steps and go straight down to the beach by the concrete path installed by the Council.

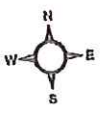
The Association depends on the **success of the café for its income**. This in turn depends on the goodwill of us all. If difficulties should be caused to the running of the café by the thoughtlessness of a few individuals, so that the Association found it hard to let the café, we should be unable to pay for maintenance and insurance of the Drive and should have to close it to public access by car. This would be a nuisance and a sorrow for many, and I much hope it can be avoided; and that we shall all be able to enjoy Emma's cooking for a long while to come.

Wishing you a peaceful and blessed Christmas and New Year,  
Yours sincerely,





UNLAWFUL  
OBSTRUCTION  
BB40





PREVIOUS PUBLIC INVESTMENT



Please note the terrace and stairs are private and **now** part of the The Beach Hut, for customers use only.

There is no public right of way through this land. Anyone using it does so at their own risk and will be liable for any damage to property or persons.

Any harassment or vandalism will be reported to the Police and we will take legal action. We reserve the right to install CCTV.

The owners of this land have leased this terrace to The Beach Hut. This terrace is now part of our business.



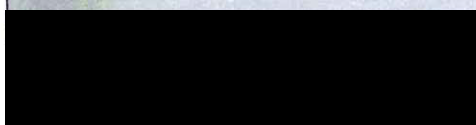
WELCOME TO THE BEACH HUT

Well behaved dogs are also welcome!

Please Note: This terrace is now part of the café area and is private land for customer's use only. It has been confirmed that there is no public right of way across.

If you are not visiting the café, we would appreciate it if you would use the concrete footpath, when the terrace is in use.

Only customers are covered by our insurance, others using the café area do so at their own risk and will be liable for any damage or injury.



APPLICATION FOR MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

THE ISLE OF WIGHT COUNCIL  
DEFINITIVE MAP AND STATEMENT

To: Isle of Wight Council of County Hall, High Street, Newport, IW, PO30 1UD

I/We [full name[s]]..... SPAHAM RONALD FERRIS.....

of: [full address[es]].....  
[REDACTED ADDRESS]

hereby apply for an Order under Section 53(2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the area by [ strike out what does not apply and \*delete as appropriate]

[deleting the [footpath] [bridleway] [byway open to all traffic]\*

from .....  
to .....]

[adding the [footpath] [bridleway] [byway open to all traffic]\*

from.....  
to .....]

[[upgrading] [downgrading]\* to a [footpath] [bridleway] [byway open to all traffic]\* the [footpath] [bridleway] [byway open to all traffic]\*

from.....  
to .....]

[[varying] [adding to]\* the particulars relating to the [footpath] [bridleway] [byway open to all traffic]\*

from Foreland Car Park (Bamburidge) (Point A on attached Map)  
to The Beach (Point X on attached map)


by providing that This path to my knowledge for 23 years has been in continuous use for 23 years.

as shown on the map accompanying this application.



I/We attach copies of the documentary evidence (including user evidence forms of witnesses) in support of this application (as set out on the list below).

Dated: ..... 5th July 2013 .....

Signed: .....  .....

List of documents/user evidence forms (if necessary continue on the reverse of this page or on a separate sheet and attach it to this form):

1 MAP WITH PHOTOS ATTACHED - ONE LOOKING EAST, ONE  
LOOKING WEST, OF THE AREA ~~BELOW~~ BELOW THE  
CAR PARK INCLUDING MR BUTLER'S BOAT SHED & CAFE

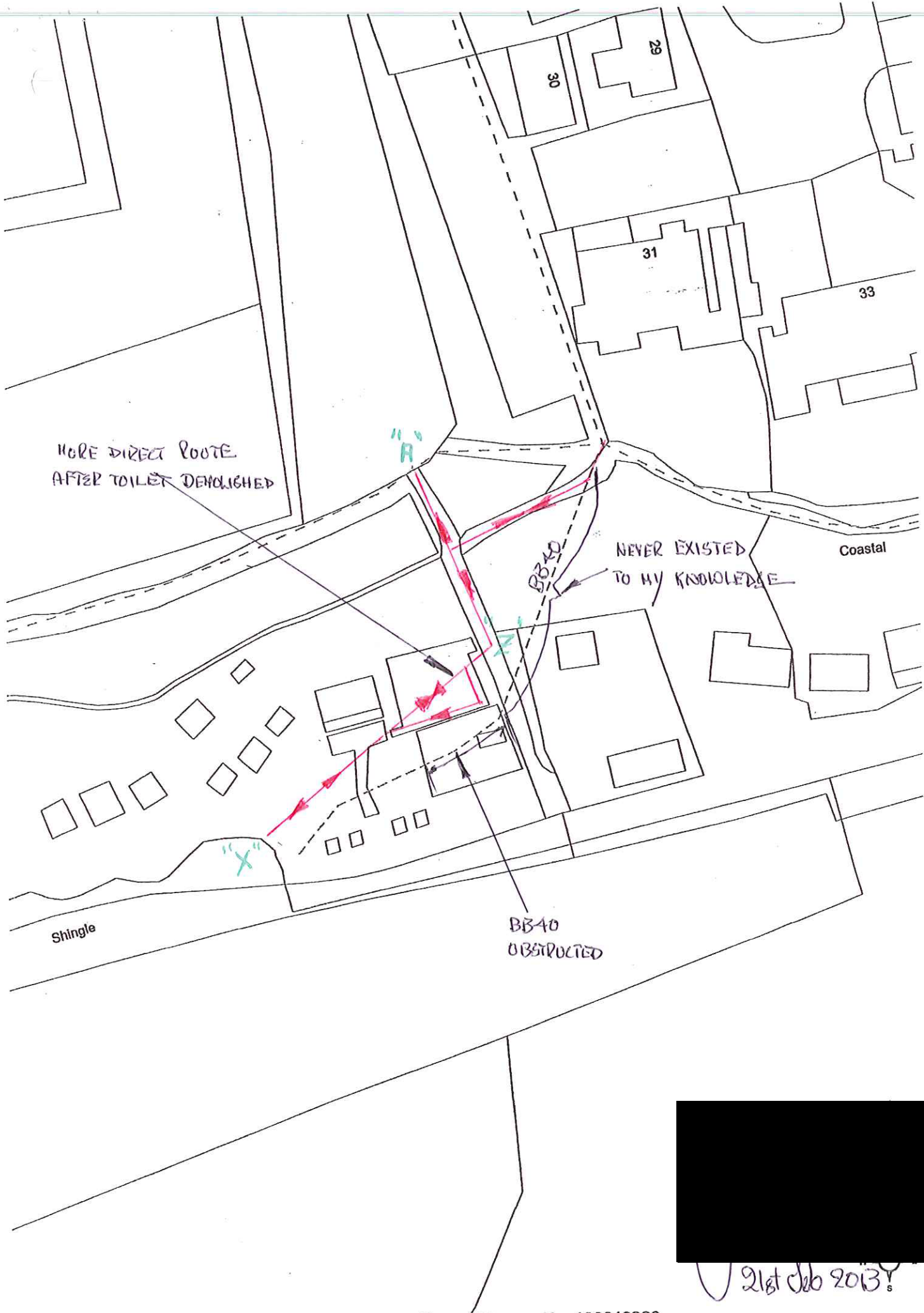
DETAIL OF FORELANDS TAKEN FROM A MAP IN 'MRS  
BUNCE'S BOOK 'FORGOTTEN FORELANDS' SHOWING  
A FOOTPATH FROM BB13 DOWN ACROSS CLIFF TO A  
HUT (MR THANE'S)

36 SIGNED STATEMENTS MADE UP OF  
32 INDIVIDUAL FORM 2  
4 JOINT FORMS — NAMES OVERLEAF

GRAHAM FERRIS  
MRS PATRICIA HARROP  
ARTHUR ROBINSON .  
MARGARET WILLS  
DENIS GARE  
MARGARET GARE  
BRIAN & CHRISTINE BOTTRIEL  
RACHEL FAMES  
TERENCE FAMES

[REDACTED]

BRENDA MILLS  
KATHLEEN CHATFIELD-MOORE  
ADRIAN & WENDY BAILEY  
JONATHAN BAILEY  
GRAHAM SUTTON  
DAVID FULFORD  
SANDRA FULFORD  
SARAH FULFORD  
KENNETH ORCHARD  
ELIZABETH MITCHELL  
ANDREW & JOSEPHINE NIGHTINGALE  
JAMES ROBERTS .  
DAVID BETTERIDGE  
JANE CITRUBB .  
ALISON SCOVELL  
ROBIN MACONCHY  
MARY CHAPPELL  
STEVEN SIMMONDS .  
LYN SIMMONDS  
KEITH SEYMOUR  
PAM YOUNG .  
VALERIE DYER



MORE DIRECT ROUTE  
AFTER TOILET DEMOLISHED

NEVER EXISTED  
TO MY KNOWLEDGE

BB40  
OBSTRUCTED

Shingle

Coastal

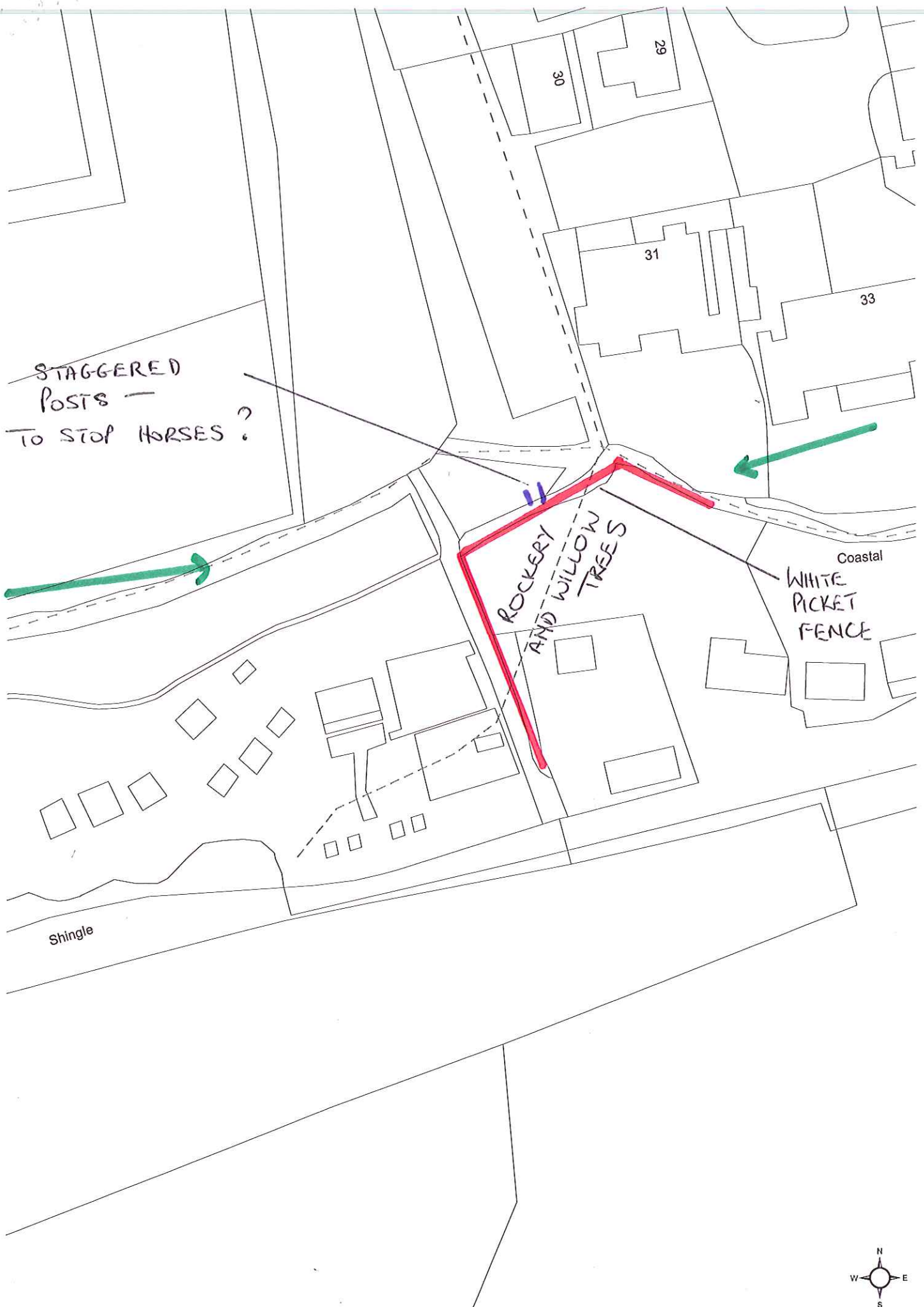


21st Feb 2013

Attached are two photos, one taken looking west, from the path, across the rockery at the top of the first hut plot at a time before the Toilets were built. (1961/62?)

The second photo, looking east, taken from the cliff path shows the white picket fence enclosing the first hut plot, and the staggered white posts on the sloping footpath to prevent livestock going down the path. This also shows the growth of vegetation mainly willow trees where BB40 is supposed to be. In this photo is the original toilet block and Mr. Butlers Boat shed and Café. (1970's?)

STAGGERED  
POSTS —  
TO STOP HORSES ?





KATHLEEN'S PHOTO 1961/62 ?

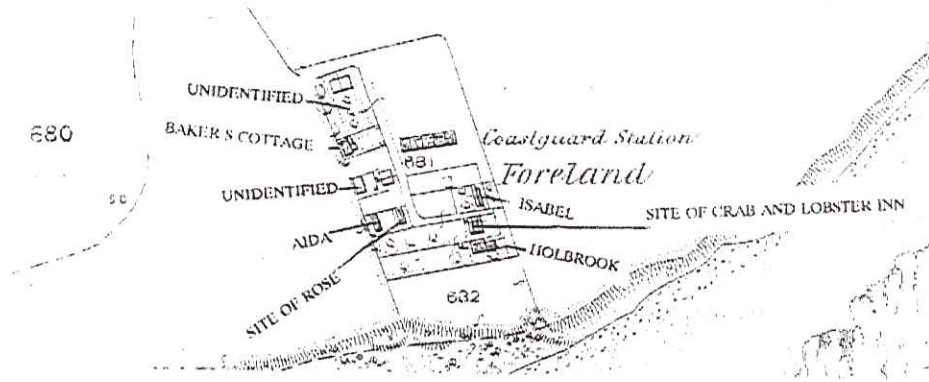


6020 FORELANDS, BEMBRIDGE, I.W.

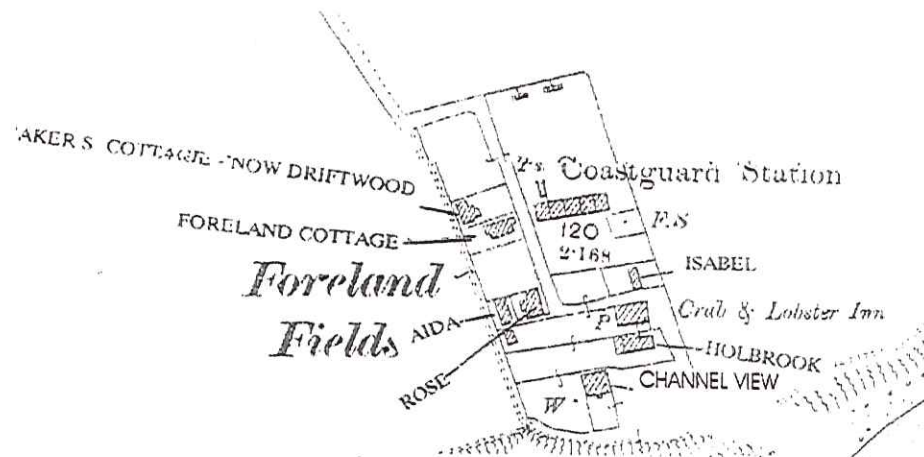


## EARLY MAPS AND BUILDINGS

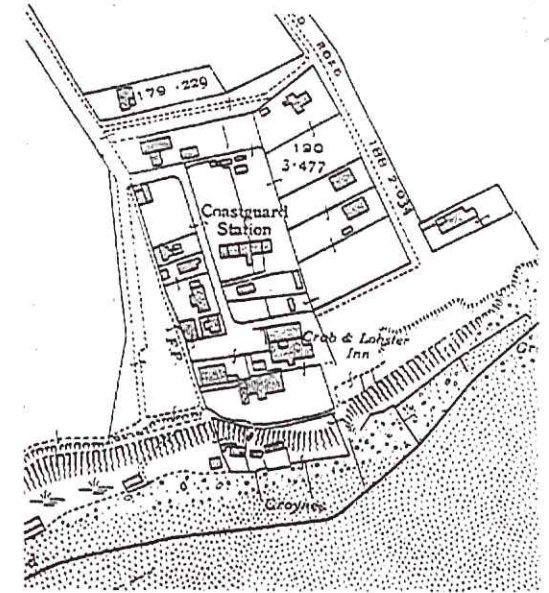
**1862** The first map of Forelands available shows the coastguard cottages built around 1846 with three buildings to the south which can be identified today, although the properties facing west have altered considerably two can still be traced. It is interesting to note the footpath from the corner passing in front of the houses still exists today as a public right of way. Originally a fisherman's path lead to the shore without trespassing in the farm field. The coastal path is also shown with a connecting path to the beach.



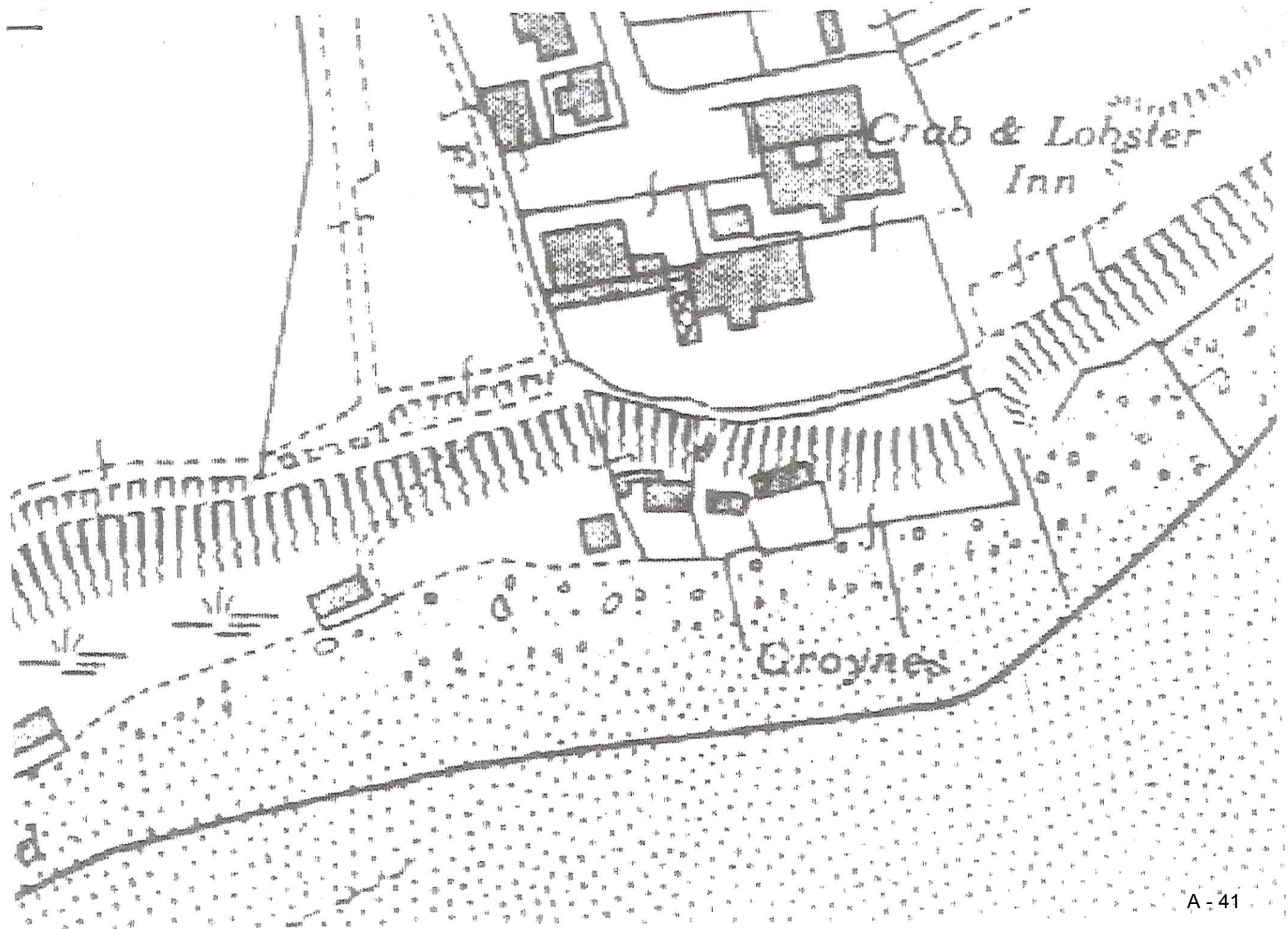
**1906** there were six major changes during the thirty years. Most importantly for the hamlet, the licensing of the Crab and Lobster Inn must have brought people to this remote spot. A new building south of the inn has a well in the garden, presumably earlier occupants on the site relied on the springs from the cliff for their water. There is a property behind Aida and the adjacent buildings on the earlier map are not shown. Forelands Cottage is marked, but the corner plot with its trees and buildings appears as blank on the map.



**1939** Forty years later there had still been relatively little development compared with the High Street area of Bembridge. However, the changes that have occurred are significant. Wealth had arrived, making the hamlet a desirable place to live. Roads are shown rather than tracks. Vehicle access and a car park had been created on the west side by extending into the field but the footpath remains. By now the Holbrook cottage had become The Singing Kettle with a single storey extension to increase the number of tables for their customers. Two large properties on the cliff top have been built and the construction of Beachfield Road extends the Boundary eastwards. For the first time, the substantial chalets below the inn are shown as are some of the fishermen's huts, both eastwards and westwards. The marshy areas are marked, and were used by fishermen to grow the willows required to make prawn, crab and lobster pots.



**1970** A further thirty years changed Bembridge and Forelands forever. Although a few large houses still remain as private homes, most of the area has become an urban sprawl with bungalow estates squeezed into many large gardens, and all but one of the farms being covered in concrete, used as summer grazing or turned into pony paddocks.



Crab & Lobster  
Inn

Croyles

## **STATEMENT OF PRICIPLE ARGUMENTS FOR THE RETENTION OF BB40 IN ITS CURRENT POSITION**

I have itemized below the principle arguments for continuing with path on the route it has been apparently since the beach reopened after the war in 1946.

1. Legally straight forward: The public have established rights to the path by their continuous use of the path without permission, secrecy or force for many years. (see formal witness statements enclosed)
2. Cost: There should be absolutely zero cost to the public purse as the status quo is simply being maintained.
3. Loss of a Public Asset: The current route brings the path diagonally across a substantial level plinth with concrete steps complete with hand rail, all built at considerable public expense. Although getting exclusive use of plinth, steps and grassy area would be of commercial value to the café's business it is a publicly funded construction and should really be retained for public amenity use.
4. Public Safety: The first part of the land owners proposed route has been formed by the "run off" of land drainage water (see map attached). The result is an often wet and sloping path, with out hand rail. The path is then shown turned parallel to the sea wall, although the route is some 8 meters from the edge any understandable tendency by the café owners to increase their trading area will have the effect of "pushing" the proposed foot path even closer to the top of the sea wall - a sea wall presently with out the benefit of a guard or hand rail.

G.R.Ferris

16<sup>th</sup> June 2013

CERTIFICATE OF SERVICE OF  
NOTICE OF APPLICATION FOR MODIFICATION ORDER  
WILDLIFE AND COUNTRYSIDE ACT 1981

THE ISLE OF WIGHT COUNCIL  
DEFINITIVE MAP AND STATEMENT

To: Isle of Wight Council  
of: County Hall, High Street, Newport, Isle of Wight, PO30 1UD

I/We [full Name[s]]..... GRAHAM RONALD FERRIS.....

of: [full address[es]].....



HEREBY CERTIFY that the requirements of paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 have been complied with.

Dated: ..... 26th June 2013 .....

Signed: .....

For the information of the Isle of Wight Council, notice of the Application has been served on the owners/occupiers listed below:

..... ELIZABETH ANN CLARKE .....

..... CHRISTINE ANN PASKIN .....

..... JOHN FERGUSON .....

..... £ .....

..... JONATHAN RICHARD SOY £ EMMA MCARDLE .....

.....  
.....  
.....