

APPLICATION FOR MODIFICATION ORDER  
 WILDLIFE AND COUNTRYSIDE ACT 1981  
 Isle of Wight Council Definitive Map and Statement

|                        |  |
|------------------------|--|
| User Witness Interview | Path at Forelands, Bembridge                                   |
| Interviewee            | <b>Prof. Paul Richardson</b>                                   |
| Interviewer            | Darrel Clarke, Rights of Way Manager, Rights of Way, IWC (DRC) |
| Venue                  | [REDACTED]   |
| Date                   | 10 <sup>th</sup> December 2015                                 |

Prof Richardson provided a statement and documents/photographs on behalf of the freehold landowners – Foreland Drive Association (copies attached).

He confirmed that he was speaking on behalf of the Trustees of the Foreland Drive Association, which was set up in 2003. He has been the Secretary for the Association since 2005. Prior to that his Wife was the Secretary for a year or two after they moved to Seascape Cottage in 2002. The area is not known to him prior to 2002.

In 2002 there were no toilets on the concrete plinth. The most common route taken by people (the public generally) was straight down to the sea wall, although it is acknowledged that there may have been minor and occasional use over the concrete plinth by fishermen and beach hut owners at times when the café was closed. In 2002 the path was gravel, not a concrete path as it is now.

The current tenants (Mr & Mrs Guy) have directed people away from the concrete plinth verbally and in writing. The previous tenants (Mr & Mrs Haynes) used to ask people with dogs not on leads not to go through the café grounds. It was these tenants that first started using the plinth as part of the café and annual permission was given to them by the Trustees. The plinth is now formally included in the lease to Mr & Mrs Guy.

Before construction of the sea wall there were all sorts of different routes to the beach. Various paths and land that could be wandered over to get to the beach, but until 1998 the direct route across the plinth was blocked by the toilets.

The photographs he has seen of the portaloos that were subsequently in place for several years suggests that it probably wasn't possible to walk in front of them behind the railings as they were located right at the front of the plinth.

He explained that Mrs Clarke obtained planning permission for her beach hut in front of the plinth in 2005/6 without any problem or complaint from Rights of Way.

In the late 2000s the concrete path straight down to the sea wall was constructed. Prior to that it was a rough gravel path. It was washed out and a channel formed during terrific heavy rainfall. A more formal gravel path was laid but this also washed out so the Isle of Wight Council then laid the concrete path.

There are tanks underneath the plinth where "grey" water drains to from the café – manhole covers in the surface. These are regularly emptied/pumped out by lorry which is organised and paid for by Mr & Mrs Guy. The Association was responsible for maintenance – there was an overflow problem in the past caused by surface water entering the tanks and which they paid to be rectified. However, under the current lease the café lessees are responsible for maintenance.

End of Interview

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Additional information provided subsequently by email:

1<sup>st</sup> February 2016: *"I did want to put on record that I have on a number of occasions (before the placing of notices that prompted the present application for a diversion) observed the Beach Hut cafe lessees [Guys and Haynes] either asking people not to cross the cafe grounds and plinth or granting them permission. There have also been a number of occasions in recent years when private events have been held on the plinth, closed to the public but with the permission of the cafe lessees".*

26/27<sup>th</sup> May 2016: *"Use of the plinth by the cafe was agreed with the Janes in 2005 and they took out public liability insurance on the area from January that year. It was also agreed with them that they could fence the cafe area on the understanding that there was not a public right of way involved. They did not do this, but in 2008 the Haynes renewed a request to do this, mainly to exclude people with unleashed dogs [but they did not do this]. The plinth was formally included in the cafe lease when the Guys took over. ...The fencing on the plinth was down to the Guys, although both the Janes and Haynes had asked our permission to fence it"*

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Em

3 February 2009

Dear Paul

**The Cabin, Forelands Beach, Bembridge**

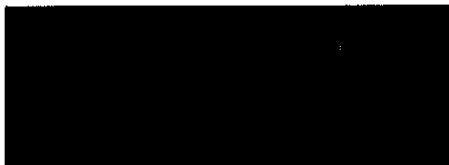
Following our conversation the other day, we would like to extend the picket fence by about 8 meters maximum, ostensibly to help show that the land is café land and not a dog toilet. I may also re-turf the roughest parts to further aid the process.

Jodie did mention to us that she had sought your approval to put a fence across the hardstanding and we would be grateful if the permission could be extended to ourselves -- we would have to look at cost and this may be something for the end of next season. A gate would of course be included, most likely one of those self closing, 2 way springs to enable access at all times. The fence would again be picket style.

You mentioned that you would discuss this at your next meeting in March, but in order to give us time to arrange installation and to paint the fence, we wonder if it would be possible to have your permission before then- we would be happy to pay the postage costs. We are hoping to open in March(subject to weather) and it will be as Long Ledge Café.

Thanks for your continued help and hope to hear from you soon(have included rough sketch of fence proposals)

Yours sincerely

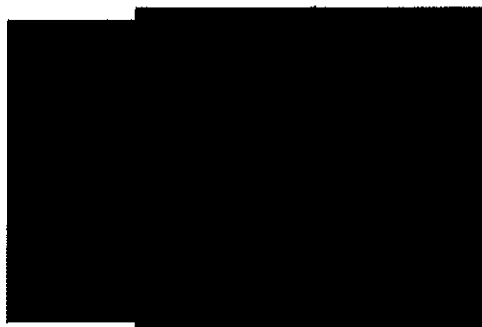


Peter & Jacqueline Haynes

ps. THE FENCE AND SHED WILL BE PAINTED 'SEAGRASS' - A KIND OF GREEN WITH A HINT OF BLUE (I HAVE PAINTED A PART OF SHED IF YOU WANT TO HAVE A LOOK AT THE COLOUR AS I AM HOPELESS AT DESCRIBING COLOURS!)

**Forelands Drive Association**

10<sup>th</sup> December 2015



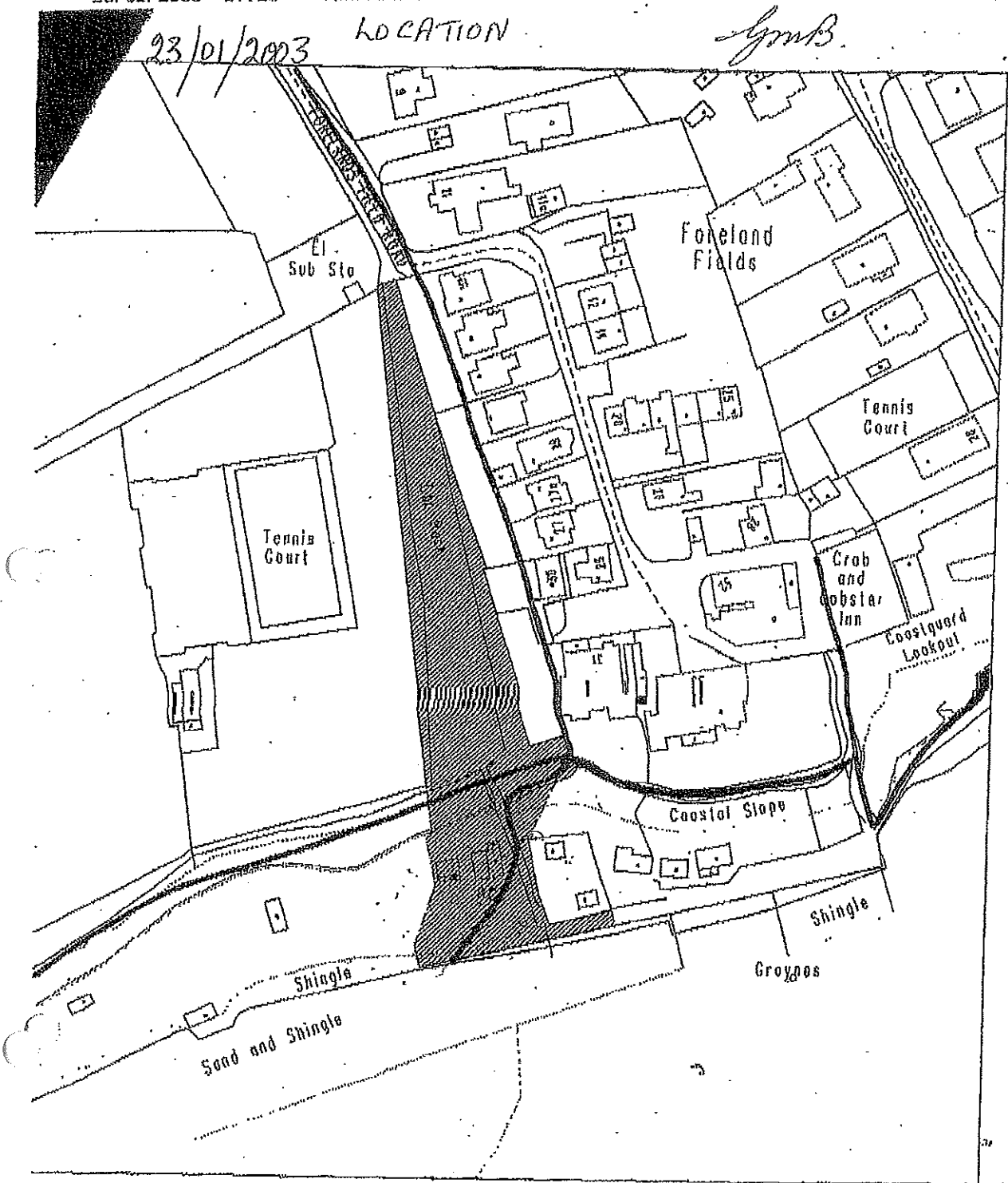
**Footpath BB40**

1. Historically there have been all sorts of routes down to the beach from the top of the coastal slope, especially before the seawall was built. The most obvious one was obviously straight down.
2. There seem to be conflicting views over the route of the official public footpath, but the lower end has been blocked for some years by a small hut with a fenced garden, for which planning permission was granted.
3. The route diagonally across what is now referred to as the plinth could not have been taken continuously for the last twenty years since the large toilet block was located there more recently than that. People no doubt went around both sides of the toilet block, as well as continuing to go straight down to what is now the sea wall and steps.
4. Subsequently the route round the southern edge of the plinth was blocked by portalos.
5. Latterly, especially when the café was closed in the evenings and the winter months, people have used the diagonal route. However, it would be very easy to produce many witnesses who used the direct route down to the seawall steps or along the seawall in either direction. There is also clear evidence, contrary to some witness statements that people have been directed away from this route verbally and in writing.
6. A decision to re-route the official path across the plinth, down the café steps and across the immediate frontage of the café would seem to be perverse, especially when two more appropriate routes (straight down to the steps and/or along the seawall; or straight down and across the lower level of the café grounds) have been proposed.

*Chairman Elizabeth Clarke Secretary Paul Richardson Treasurer Richard Beasley*

23/01/2003 LOCATION

*Symb*



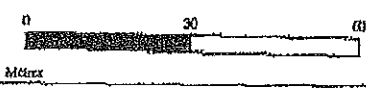
Local Land Charges  
Isle of Wight Council

Plot of Search Extent for Search Reference : 0203005027  
Search Address :  
CAR PARK AND LAND AT FORELANDS  
FIELD ROAD

*Not for use*  
23.01.2003

*Footpath is south of the toilet block.  
thru' the Moore's hut.*

Scale 1: 1250  
14/01/2003



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*W. H. 2003*

# Health hazard feared if Forelands toilet closes

BEMBRIDGE Parish Council has decided to write to Mr Morris Barton, leader of the IV Council, and Dr Peter Brand, the island's new MP, urging them to take action over the closure of toilets at Forelands. A group of members of the parish council and other health-related organisations will also be contacted by the parish council, which believes the beach at Forelands could become a health hazard if the toilets are not replaced. The public conveniences at the popular beach have been shut because the tank which holds sewage is irreparably damaged and would cost £5,000 to replace plus around £200 per year to clean and

maintain. After a recent extensive review of approximately 90 council-owned public conveniences on the island, the IV Council felt that the toilets at Forelands — one of six in Bembridge — should not be retained. But public pressure has meant the IV Council has agreed to fund the necessary repairs to the loos at Forelands. Dr Brand last week said parish council members about the closure of the toilets. He said: "I think it's a load of rubbish to think that the IV Council cannot afford to put a toilet there. It is absolutely disgraceful to shut from people using the beach. They will either go behind the bushes or at the Crab and Lobster. It's not like having a stick for coffee for tea as she is a toilet. Other members of the parish council suggested that, perhaps money could be borrowed from other IV Council departments, such as tourism. Mr Arthur Robinson, chairman, said it seems to me the tourism budget is spent mainly on advertising, but some areas feel some of that ought to go on public facilities, such as toilets like Forelands which is in an area of outstanding natural beauty and is used throughout the summer."

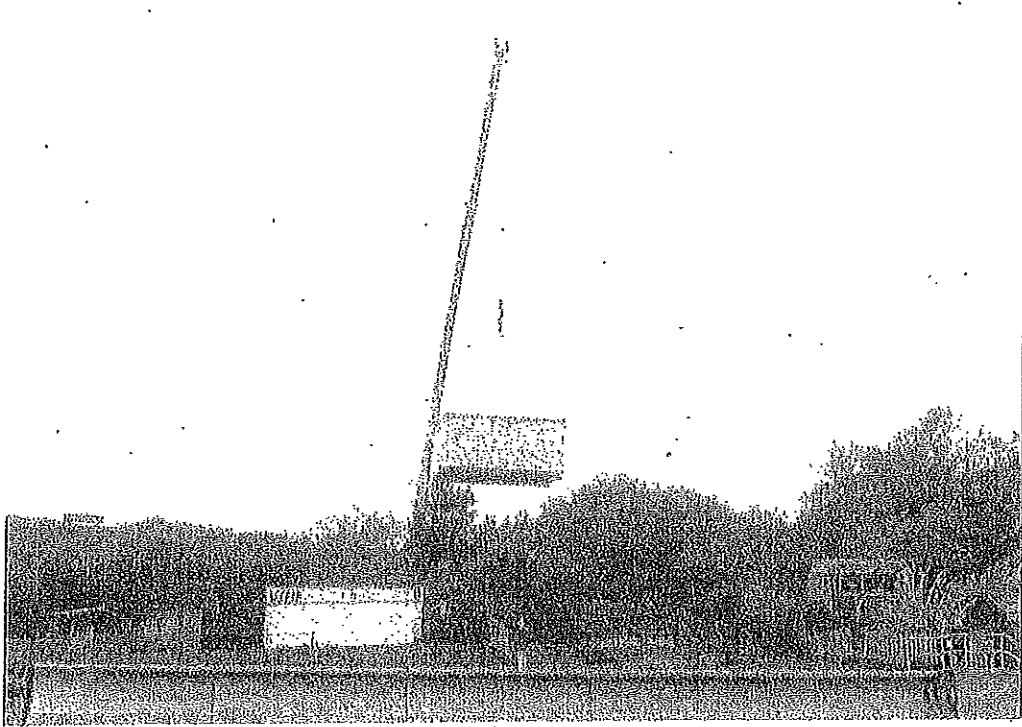
By KATE YOUNG

Surely the IV Council must realise the parish council can only afford a small amount — perhaps £1,000 — because other projects within the village. Mrs Barbara Slough said she would be quite happy to pay £1,000 for the replacement of the toilets, because many residents used them. Other councillors voiced concerns about the increasing encroachment by the IV Council into parish council funds via services it had been asked to take over. The Bembridge council is currently in the process of taking over the management of the public toilets in the resort ground and has also just been asked for a donation to help keep toilets at The Point open during the winter.









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| User Witness Interview | Path at Forelands, Bembridge                                     |
| Interviewee            | <b>Mrs Elizabeth Clarke</b> (with Prof. Paul Richardson present) |
| Interviewer            | Darrel Clarke, Rights of Way Manager, Rights of Way, IWC (DRC)   |
| Venue                  |  |
| Date                   | 25 <sup>th</sup> January 2016                                    |

Mrs Clarke lives in London. Her Parents originally rented 19 Forelands Field from 1948 and later bought it. Mrs Clarke has visited and stayed at the house for one month every summer since 1948.

Mrs Clarke produced a photograph taken from the sea (copy already held by DRC). She believes that this is what the area would have looked like in the 1950s and is her recollection of that time. She pointed out a number of buildings on the photograph (see attached copy). She recalls there being tracks and ways down to the beach and she thinks there was path straight down to the beach – the photo would appear to show a person walking down it. She believes the café in the photo is about in the same location as the present café. She recalls the ground where the concrete plinth is now to be scrubby land, a bit scruffy. Behind the café and the boat shed there were willows growing which were used to make lobster pots. At that time, in order to get to her beach hut it was a case of scrambling down the bank – the area was open and there were lots of tracks that could be used. A bit further to the west there was a building of some description where a fisherman lived and the concrete from this is still visible now. This hut is believed to be what is shown on the 1939 OS Map.

Turning to the photo showing the rockery and white picket fence, Mrs Clarke believes that was taken later, possibly in the 1970s – the café has been extended. She doesn't remember this era quite as well as she was away travelling. At this time people would walk straight down to the beach on the other side of the fence unless you wanted to go to the café or to a beach hut in which case you would turn right at some point.

Photographs of built toilets. People used a route straight down to the sea wall and the steps. There was a path there and this was the main route straight down to the steps off of the sea wall. Council believed that this was the route of the footpath as they surely would not have built toilets over a footpath.

Photographs of portalooos. The same situation – people would walk straight down to the sea wall unless they were going to the café, beach huts or toilets.

She purchased her beach hut in 2003. The photo of a hut in one of the portaloo photos is what was there when she bought. It was also fenced off at this time and a gate in the same place as the present gate. Later she obtained planning permission for the present beach hut.

The previous tenant of the café (Mr Haynes) also had use of the concrete plinth which he used in busy times. This was an informal arrangement as the plinth was not included in his lease. He kept table and chairs/picnic benches. He didn't use table umbrellas though, only the present tenants have used these. The tenants previous to Mr Haynes used the concrete plinth on the odd special occasion.

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Mr Haynes complained about people taking their dogs across the concrete plinth and in front of the café. He used to say it was bad manners to use it as a short cut (Prof. Richardson recalls Mr Haynes verbally telling people not to go across).

The Forelands Drive Association strongly objects to the application and would object to a Modification Order if one were to be made.

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Mrs Clarke Interview - 25th January 2016

beach hut  
owned by  
Mrs Clarke's  
family

cafe

boat shed

Gwen's house  
(opposite)

path straight down to beach

changing dressers

FORELANDS, BEMBRIDGE I.W. D.225.

## Footpath BB40

We would like to make the following points concerning the application for modification order of footpath BB40.

### Background

Our lease of "The Beach Hut" café at Forelands Beach, Bembridge started in February 2012 and we opened for business in March. Our lease includes the grassed cafe area and the concrete 'plinth' area, both of which are used for cafe seating.

When the weather is good, we are very busy and customers access the cafe from all available directions, including over the concrete plinth. When the cafe is closed, we allow pedestrian access over the cafe land, as the area is not closed by gates. However, when we are open, we ask people that are not using the cafe to walk around using the existing concrete path and seawall route.

An incident occurred whereby Janet Milne bumped into one of our customers sitting at a table on the concrete plinth whilst walking her two large dogs across it. Mrs Guy suggested to her that next time she should walk around the plinth. This was met with Ms Milne telling us there was a footpath across the plinth which is why she hadn't bought it herself. We asked for her to bring proof of a footpath for our records as no solicitor had found this to be the case. She never took up our offer of proof. A further incident happened with Margaret Milne (sister) when we blocked off access to the plinth for safety reasons whilst we did some building work putting up fencing as recommended by our landlords to mark out our land and give a boundary. Ms Milne forceably removed the obstruction to walk across the plinth. When challenged, Ms Milne said that she didn't have to walk around because it was a public footpath. An altercation followed and the Police were involved. This was witnessed by a neighbour. It is our understanding from the Police that they visited Ms Margaret Milne that day and she was warned not to continue to cause harassment by crossing the plinth during opening hours and to walk around as asked. The next day we received vandalism of our new fence. We requested a further visit from the Police who upon visiting recommended we install CCTV (done) and to ensure any further harassment be directed to them so they could record further incidents. This resulted in Mr Guy contacting Rights of Way to clarify the legal position of BB40. IWCC confirmed that there was no public right of way across the plinth or the cafe grounds. We put up signs to the effect that there was not a public right of way across the concrete plinth, but these signs have always been torn down and thrown on the beach. We have also received further harassment of scattering of dog poo and rubbish. This has all been photographed for evidence.

### The Application

A number of Solicitors were involved in the lease of the café and all relevant searches/enquiries were carried out and no public right of way was revealed over the plinth.

Modification of a footpath is based upon the new route having become a right of way because it has been used by the general public, without permission, for a number of years. We challenge this application based on all three of these factors.

### Firstly: Public Usage

The application is not representative of the "public" as we are told that all the witnesses are friends and family of three sisters (Janet Milne, Margaret Wills and Susan Sheaf) who have instigated the claim via Mr Ferris and there is clear collusion. The user witnesses are all associated with this family and if any use of the claimed route has occurred then this would have been to gain access to their own beach huts or beach huts of their friends or family.

This is not an application about a public right of way made in good faith but is a personal vendetta due to the sisters missing out on the purchase of the freehold title to the beach huts. This can be demonstrated by the fact that we have offered a number of reasonable solutions to the problem of access to the beach at high tide, and all have been rejected because they don't include a route directly across the cafe land.

### Secondly: Permission

We have always challenged the persons who claim a right of way exists but have also said to them that they have our permission to use it when the café is closed or when it is not busy. For example, we give permission to a local organisation to hold a BBQ on the plinth on Boxing Day. They ask for our permission and also asked permission of the previous café owner to do this. The previous café owner (Mr Haynes) always used to stop people accessing the plinth. (We recall finding numerous "dos and don'ts" signs on the premises when you took on the lease). Mr Haynes was notoriously strict when it came to non-customers, windsurfers, dog walkers, etc walking across the cafe area.

### Thirdly: Length of usage

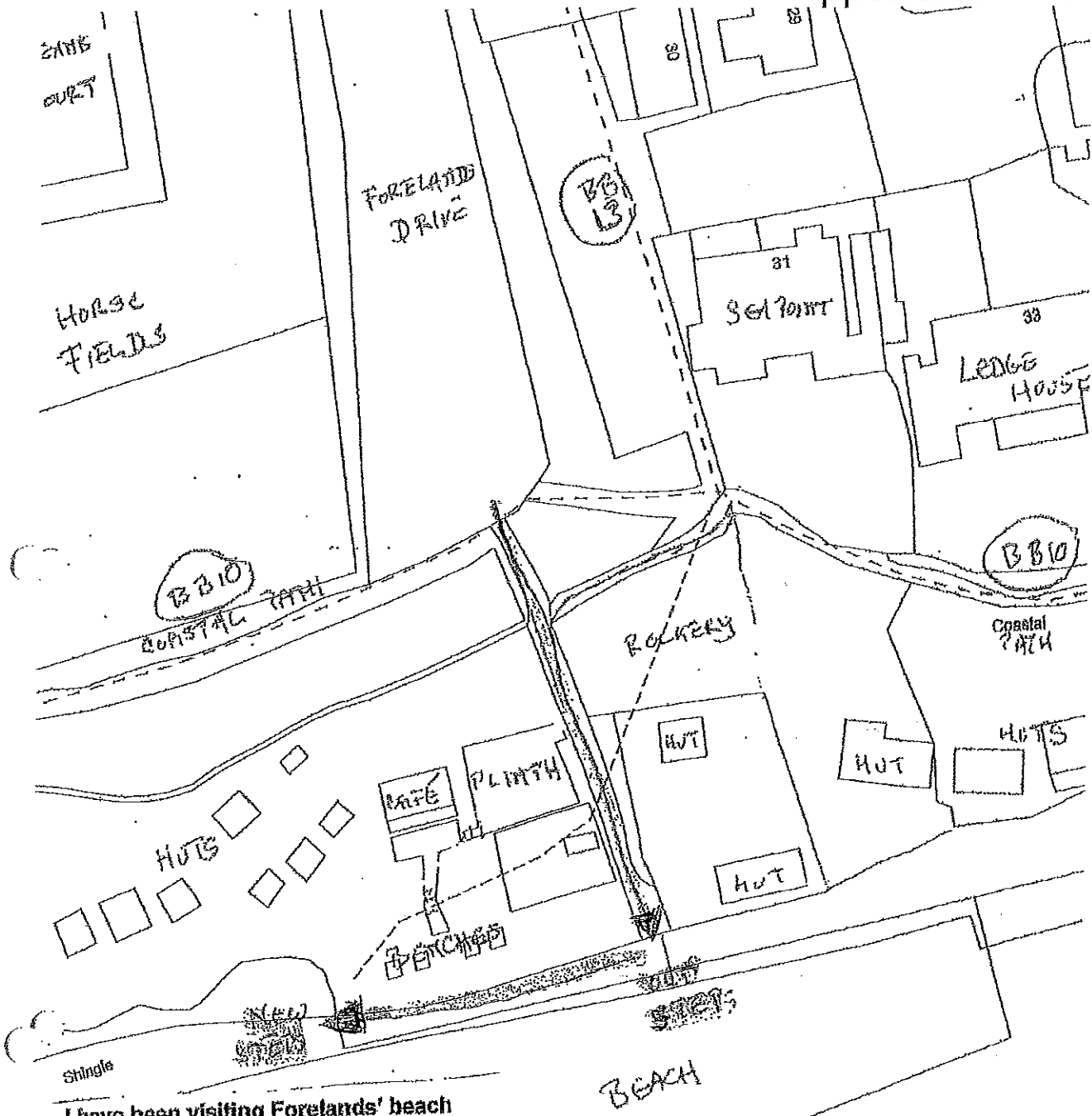
Use of the route diagonally across the concrete plinth for 20 years is not possible as the toilet block was removed in 1998 as confirmed by IWCC.

The plans in the user statements are very unclear as to what route was used and when. Most of them contradict each other and suggest routes that would have been impossible due to the toilet blocks and previous changes to that area.

There have been numerous occasions over the last 20 years when **any** route across the plinth would have been impossible, due to closure of the area for repairs etc. During our lease of the cafe, we close the plinth area every month or so, in order to empty the waste water tank. Interruptions in use have also occurred when we have closed the cafe area in order to put up fencing and effect repairs (as mentioned in the introduction).

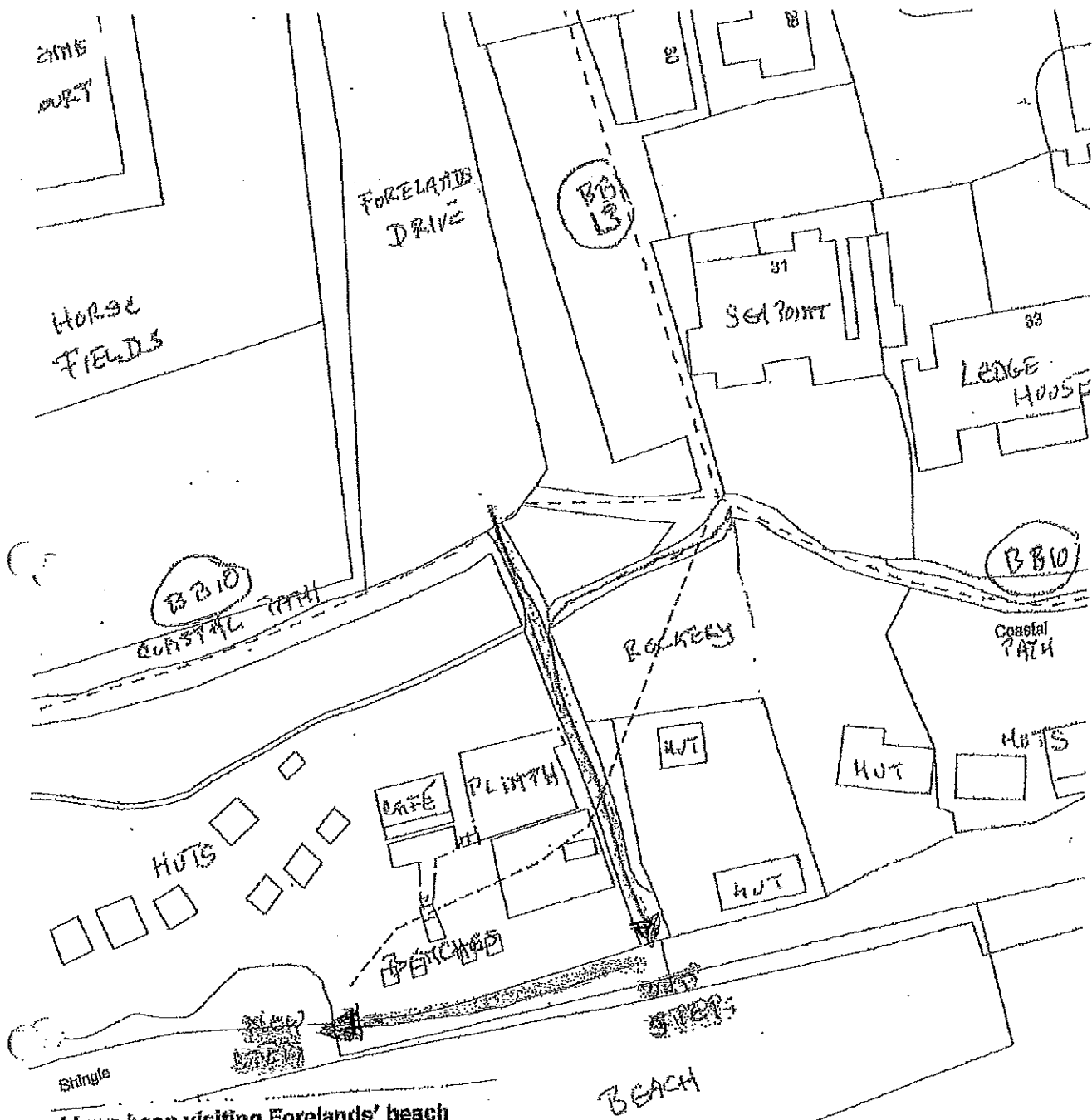
We intend to provide witness statements from a more representative cross-section of the local public who have always known that the cafe area is private land and has never had a public right of way across it. We hope that this will provide further evidence that there has been no intention on the part of the landowner to ever allow any part of the cafe to be used as a public right of way.

This is the witness statement from Jonathan and Emma Guy, lease holders of 'The Beach Hut' cafe and we would like to thank IWCC for their patience in this matter.



I have been visiting Forelands' beach for many years from the Forelands' Drive or the Coastal Path. I have always understood that the official route down to the beach from the top of the coastal slope was down the wooden steps and straight ahead on the concrete path, laid by the Council, to the seawall. From there you could go directly to the beach on the old concrete steps or turn right along the seawall and down the old slope, which has now been replaced with new wooden steps. I never believed that there was a public right of way across the concrete plinth and the café grounds.

Name BARR ST ALDWIN  
 Address [REDACTED]  
 Signature [REDACTED]  
 Date 4/6/16



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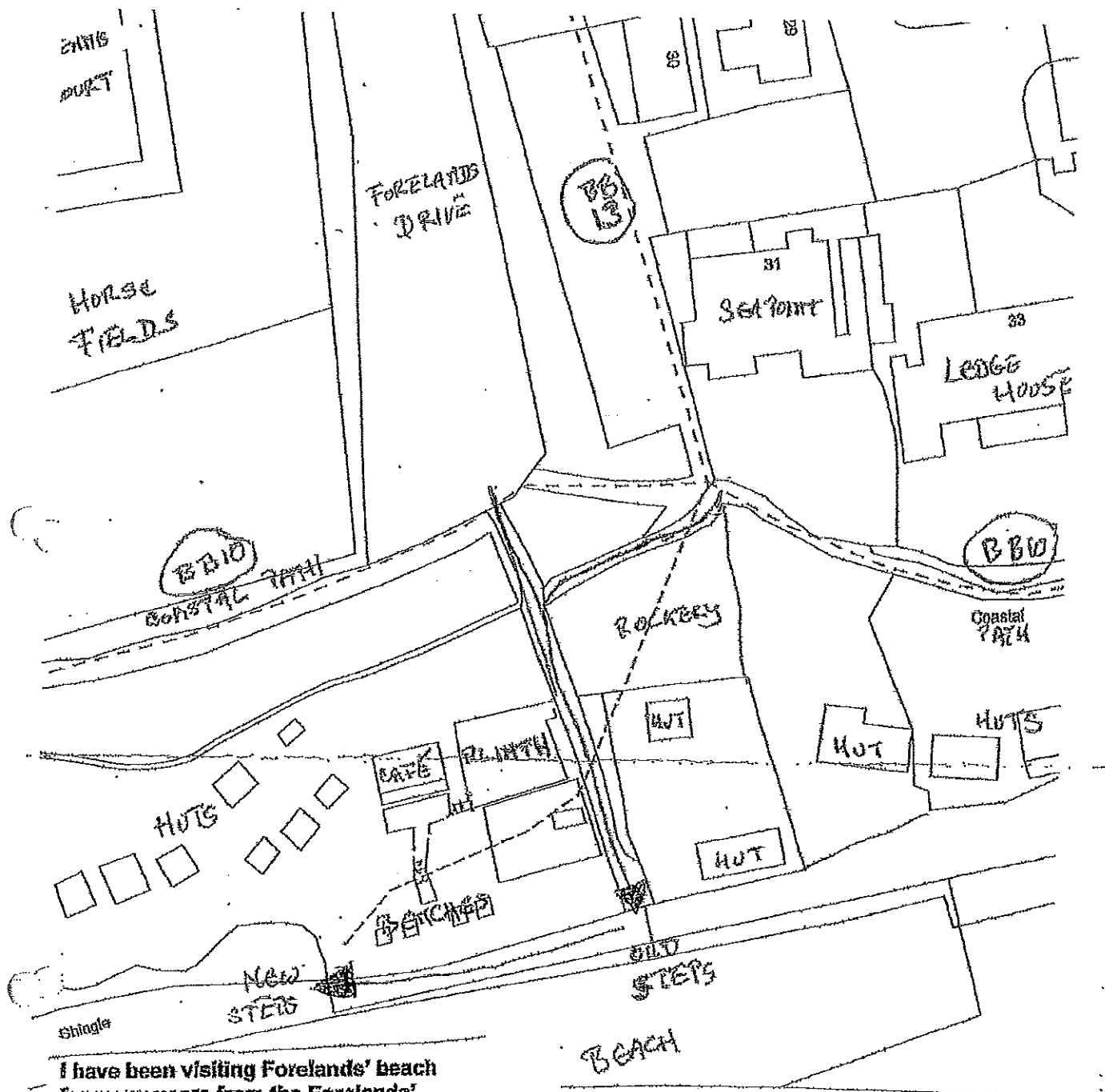
Name ANDREA

Address [REDACTED]

Signature

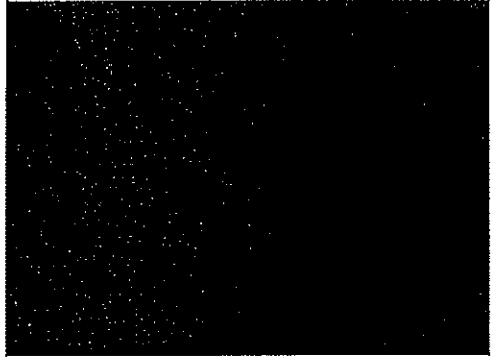
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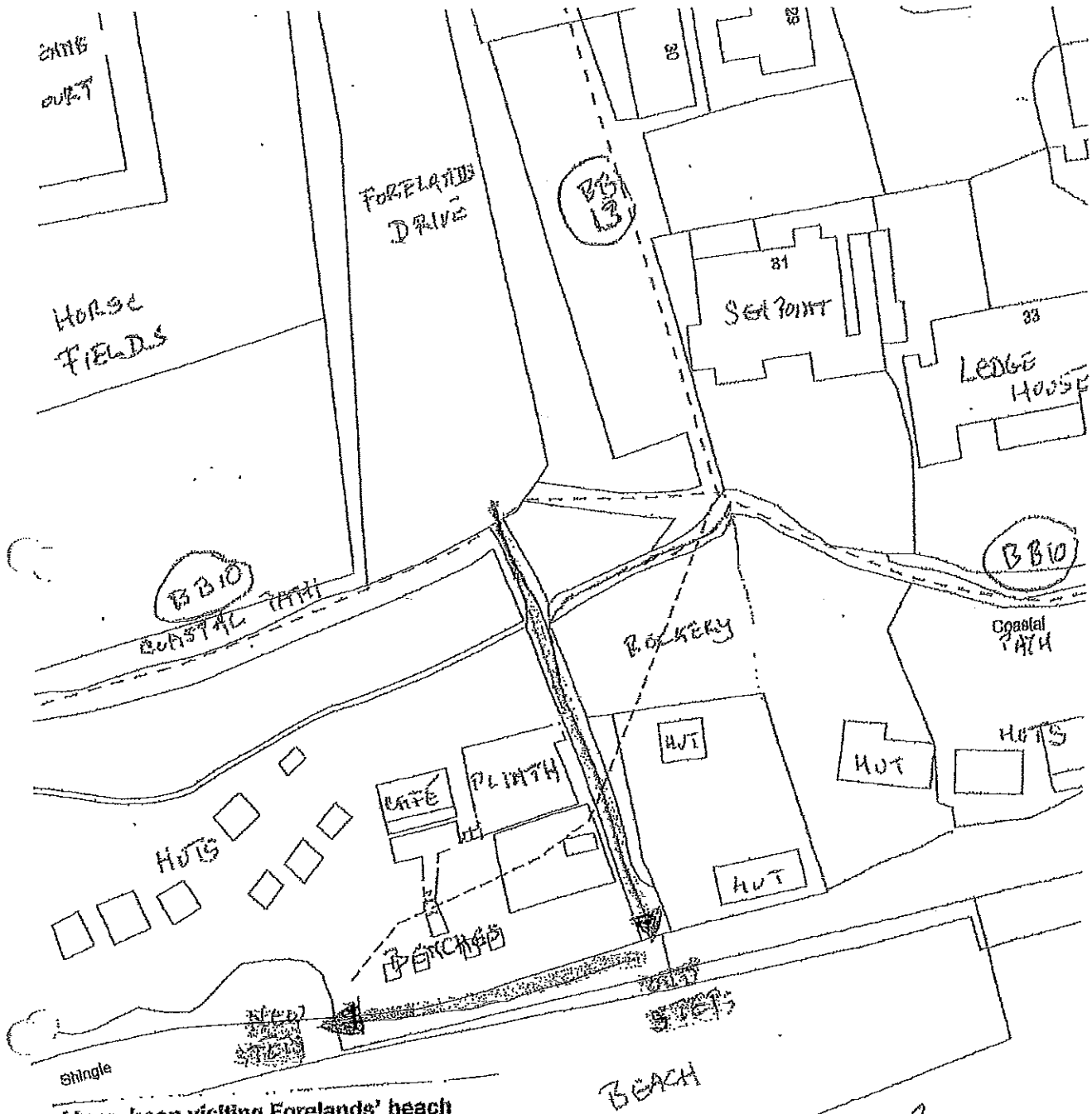




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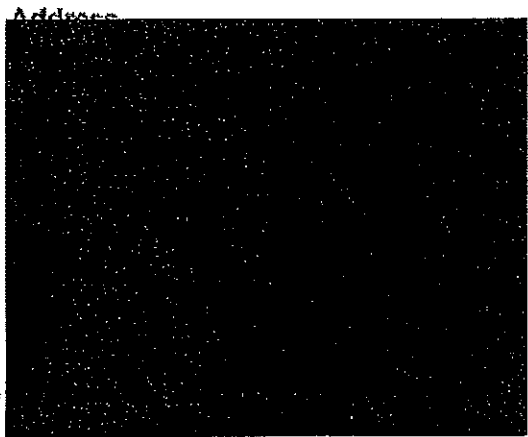
Name *William Attridge*

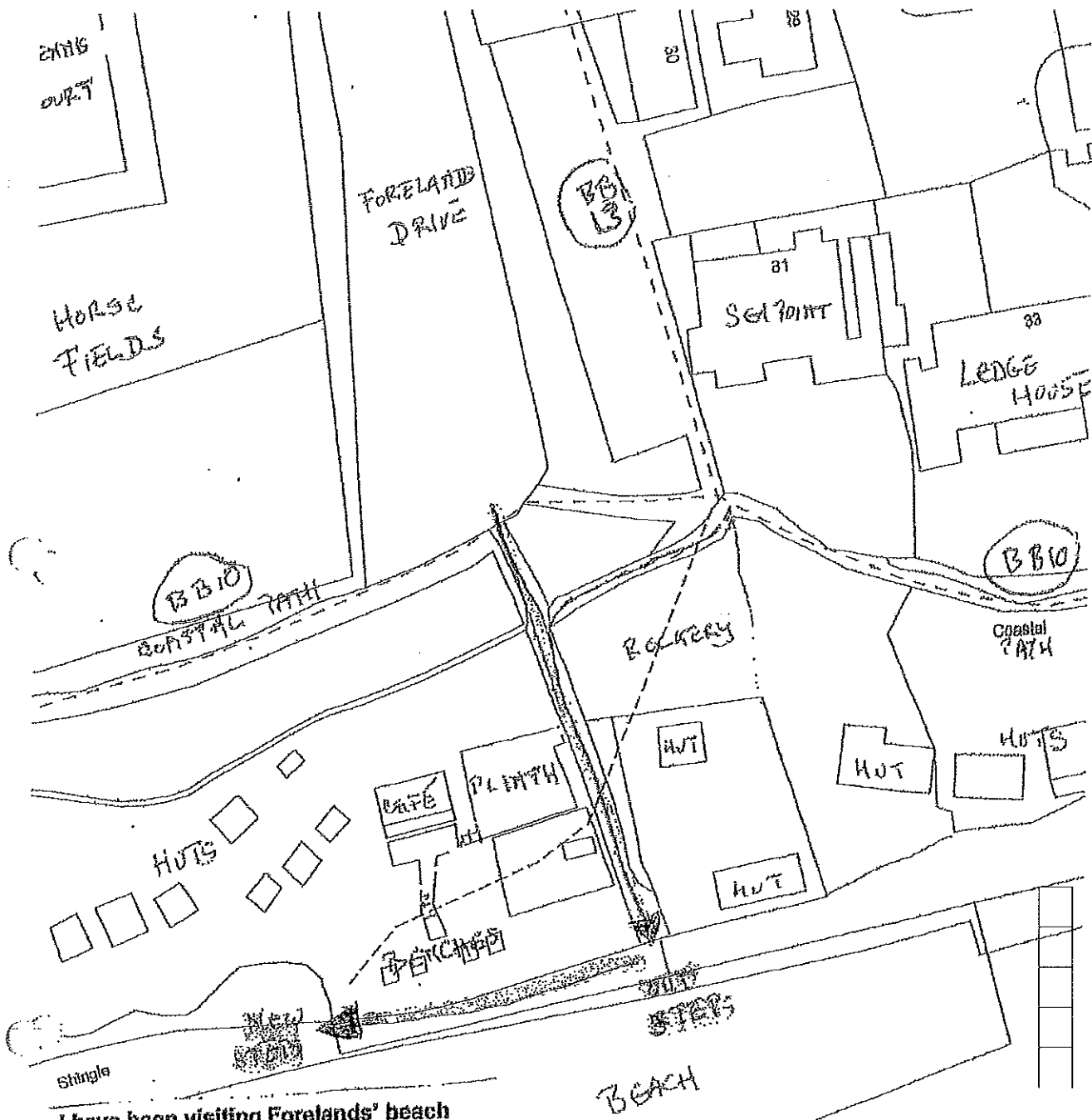




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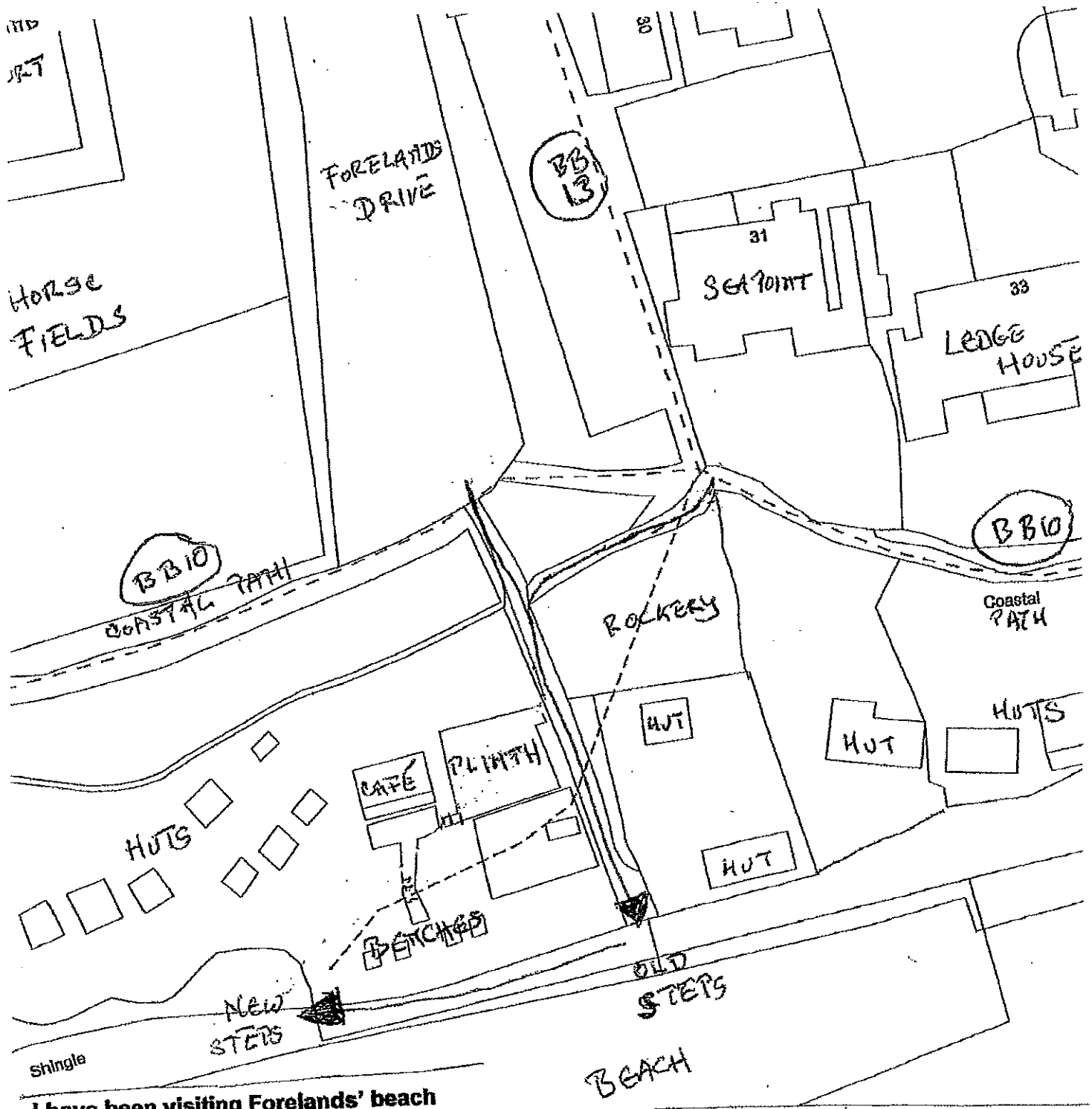
Name *Anne Beadle*





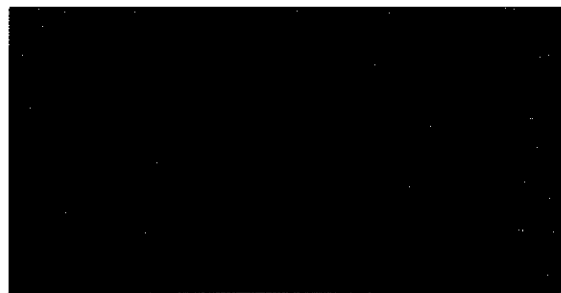
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Name *Donald Biddly*  
 Ad [REDACTED]  
 Sig [REDACTED]  
 Da [REDACTED]

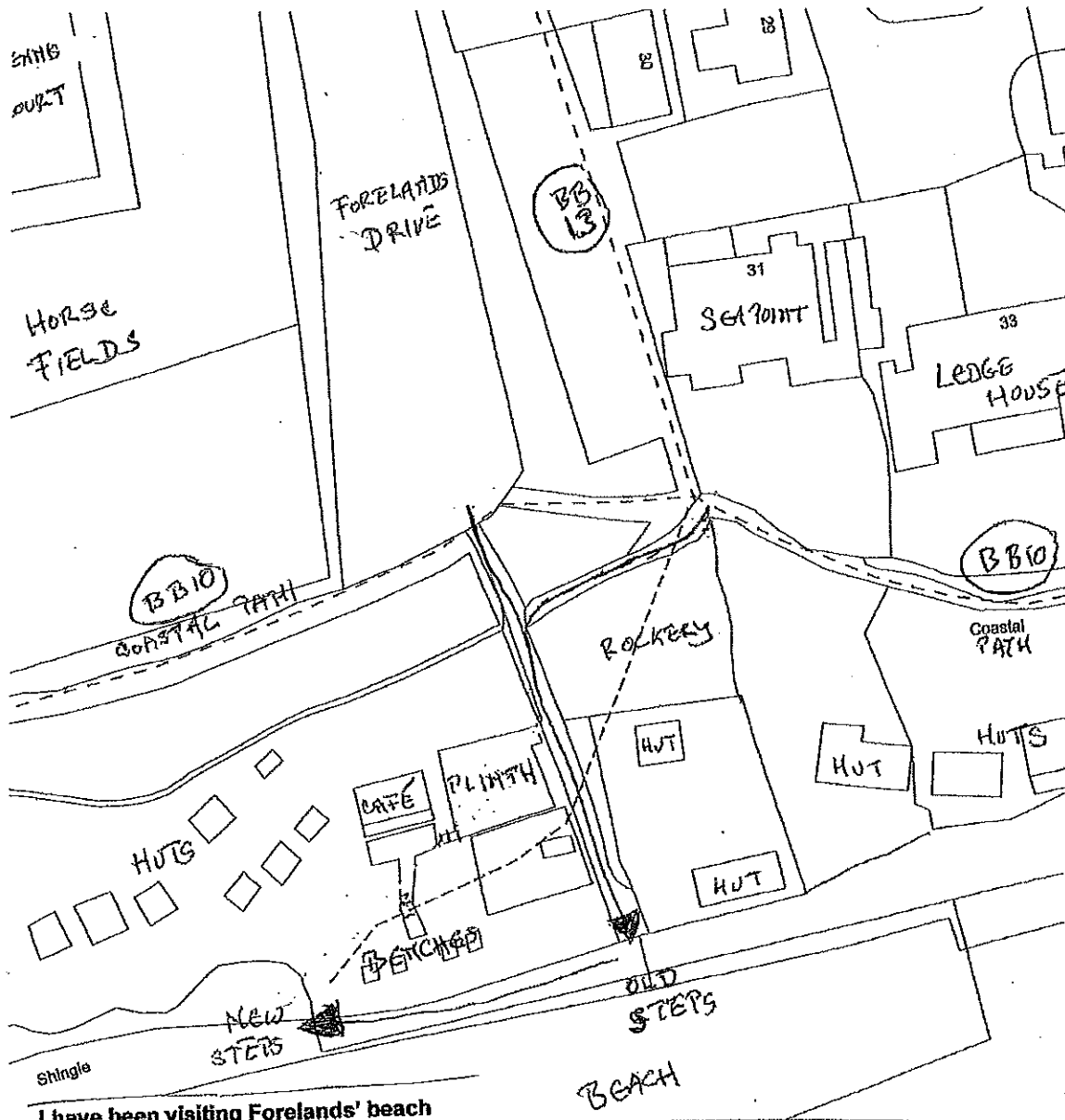


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Name MRS BROWN

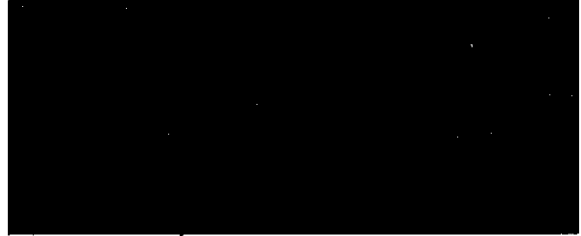


Date 10-06-2016

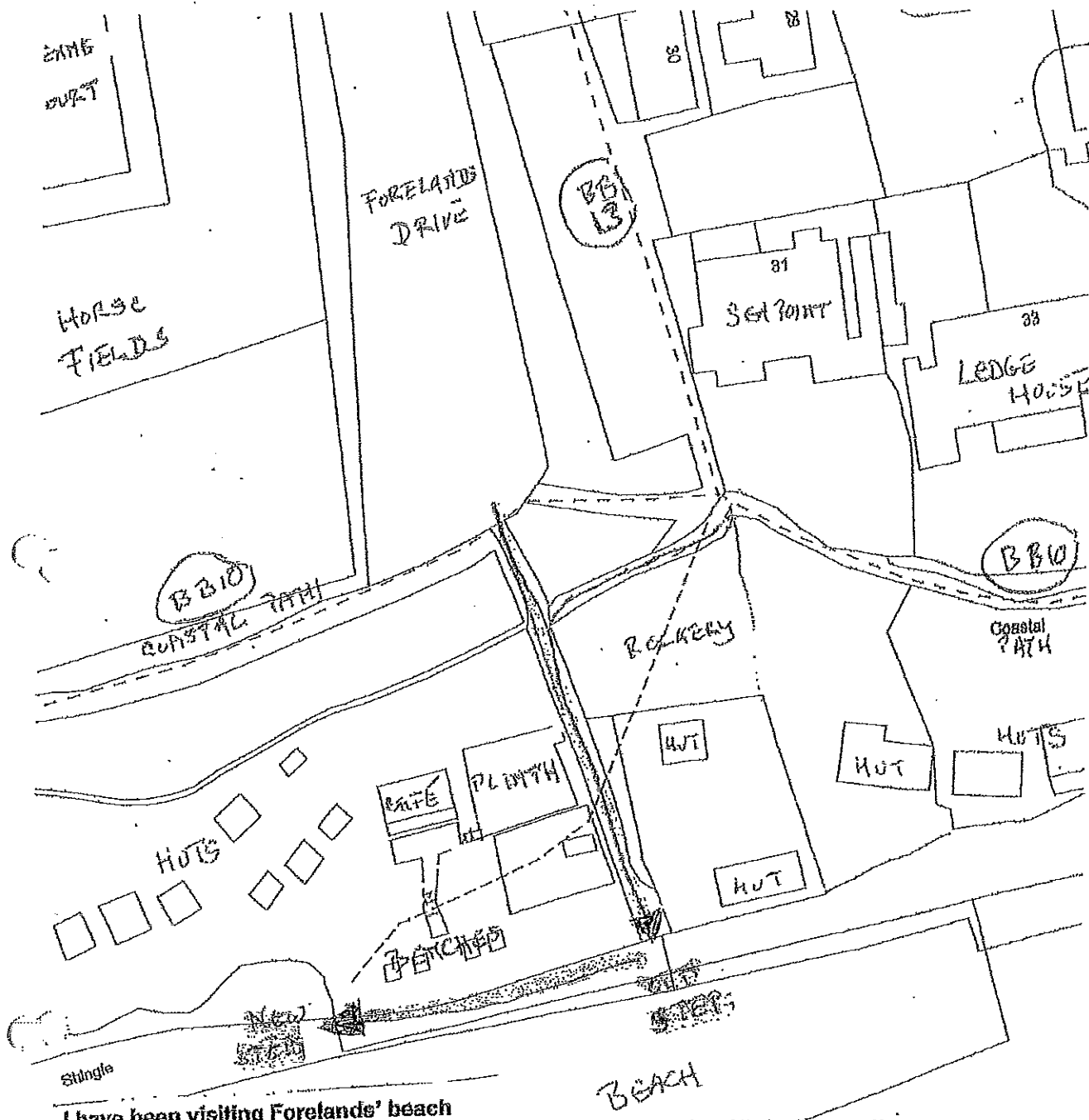


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Name *M. Burdick*



Date *15/6/16*



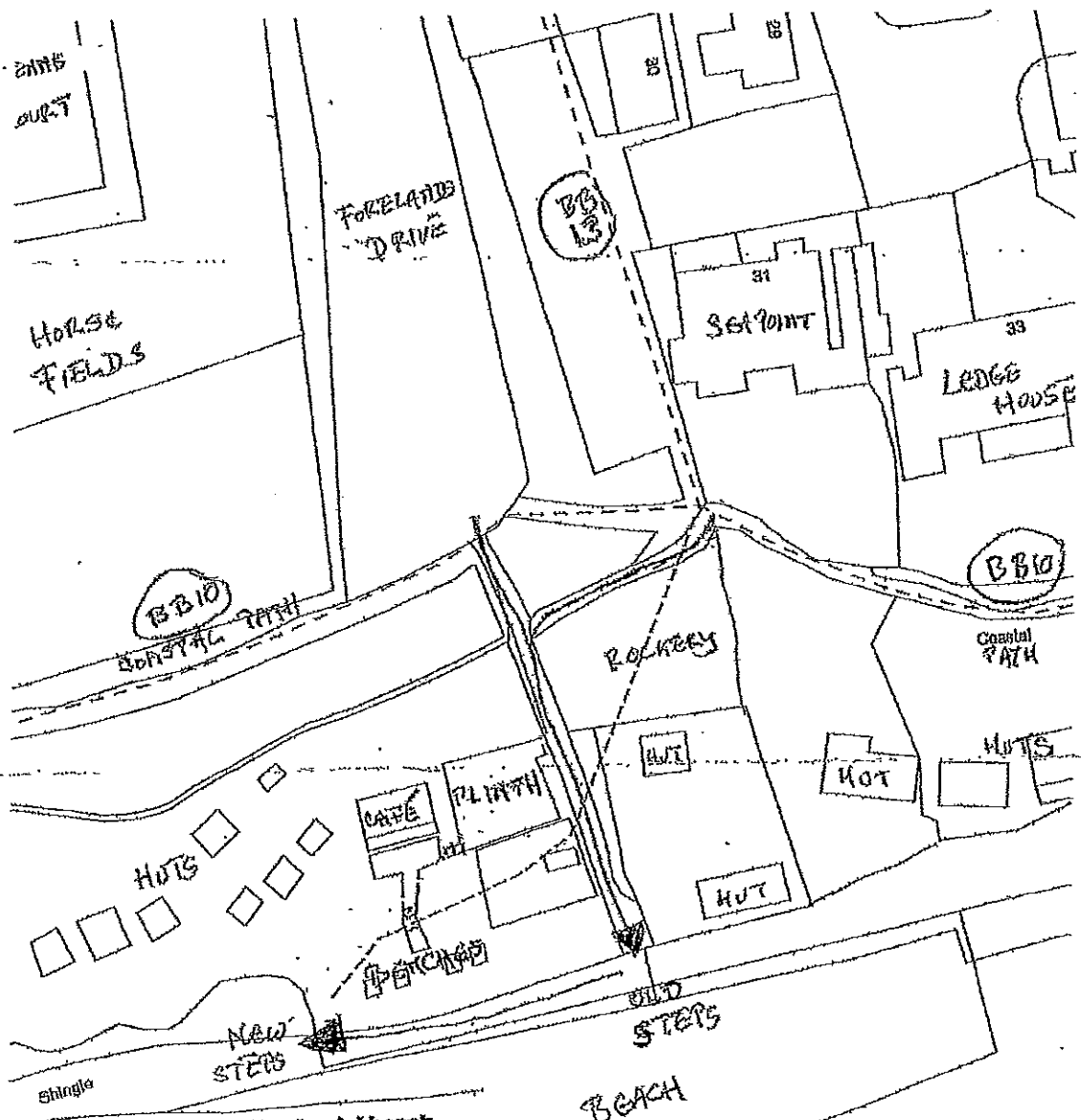
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Name

Address

Anandar Bittar -

Date



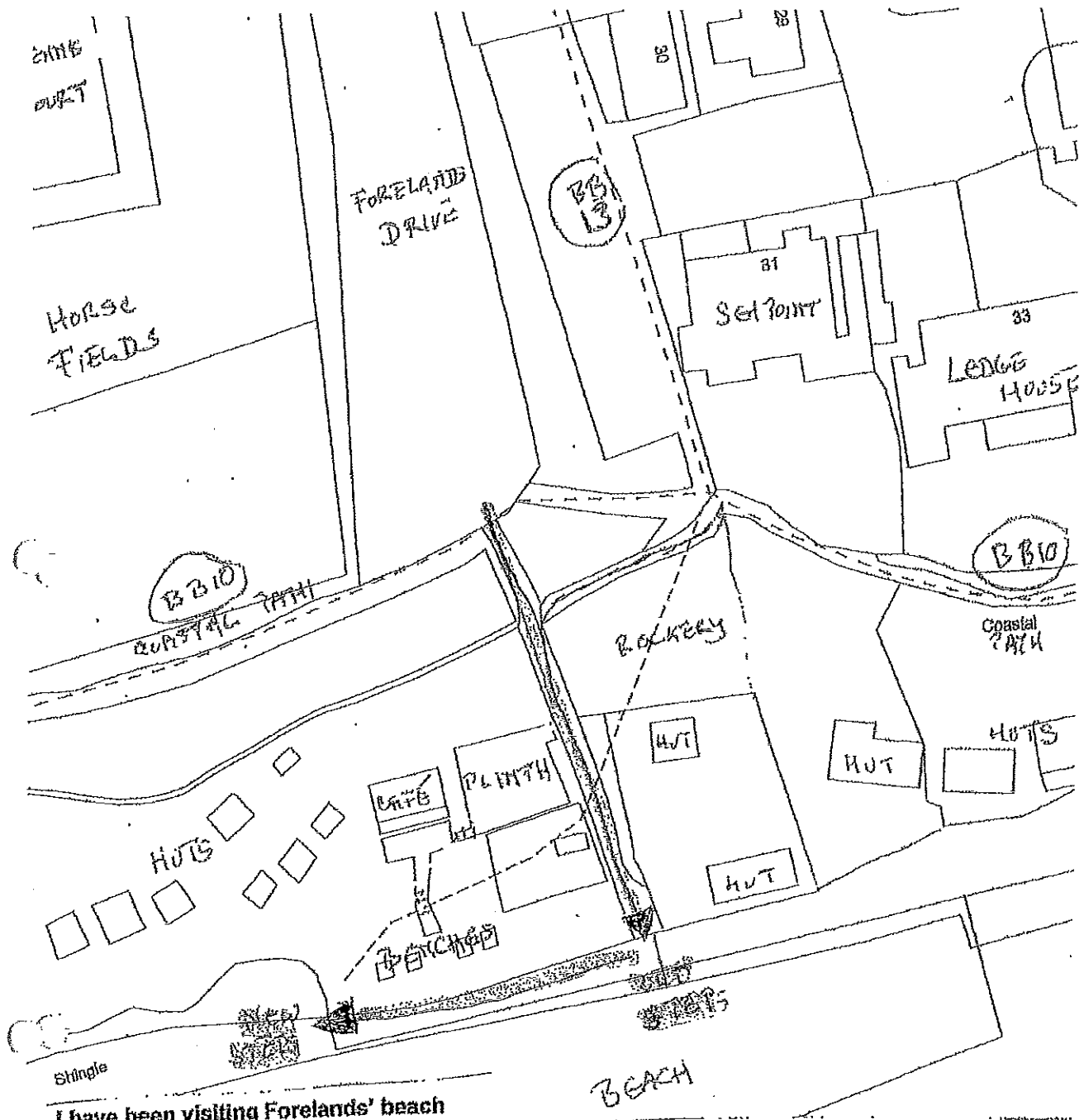
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Name SUSAN CHESTER

Address [REDACTED]

Signature

Date 14/5/16



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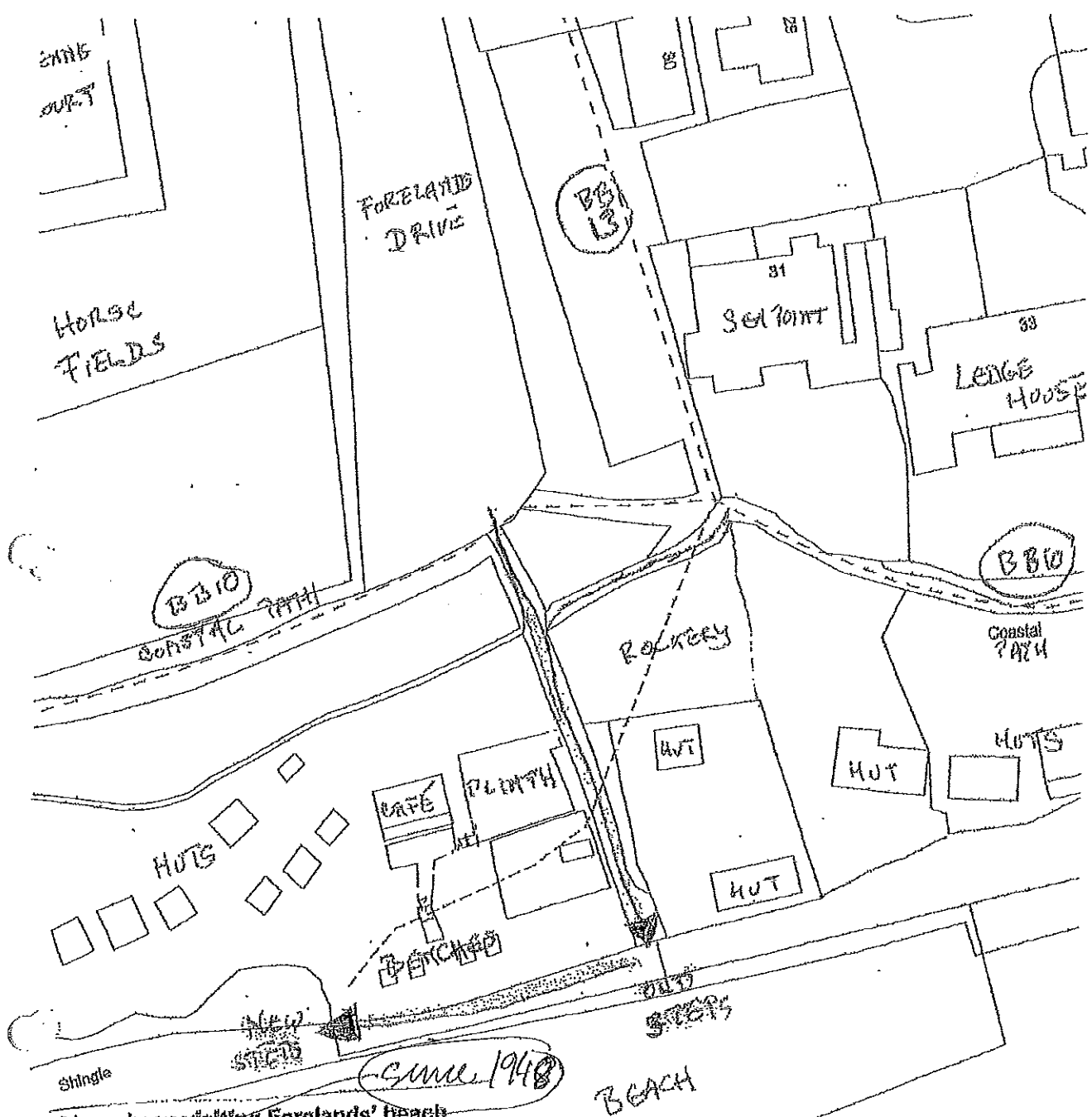
Name *Victoria Clarke*

Address [Redacted]

Signature [Redacted]

Date *4 June '16.*



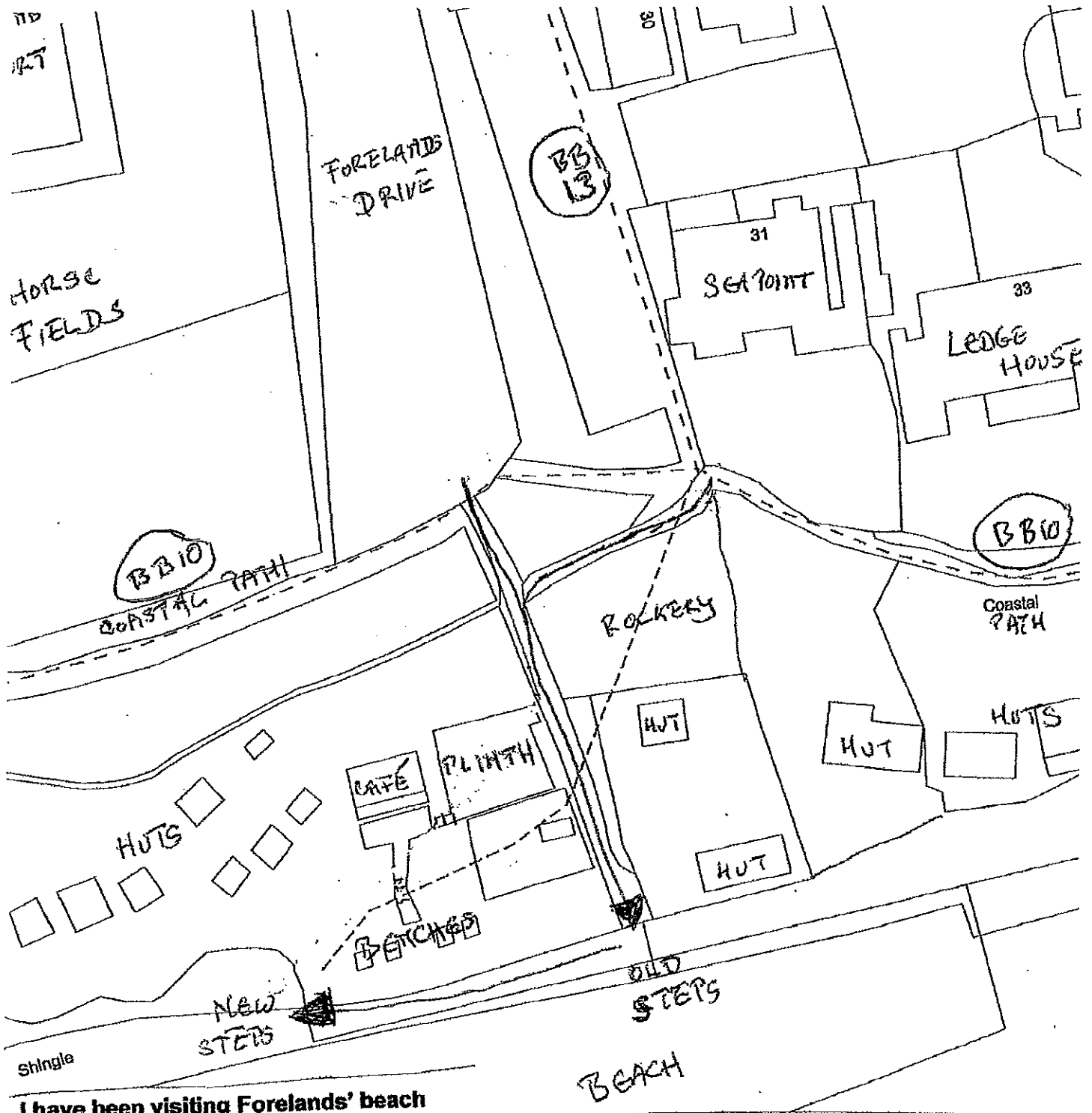


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Name ELIZABETH CLARKE

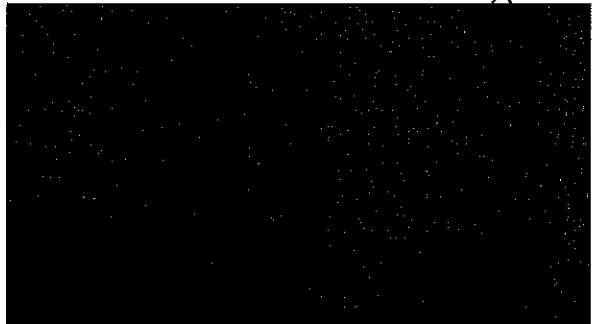


Date 31 v 2016

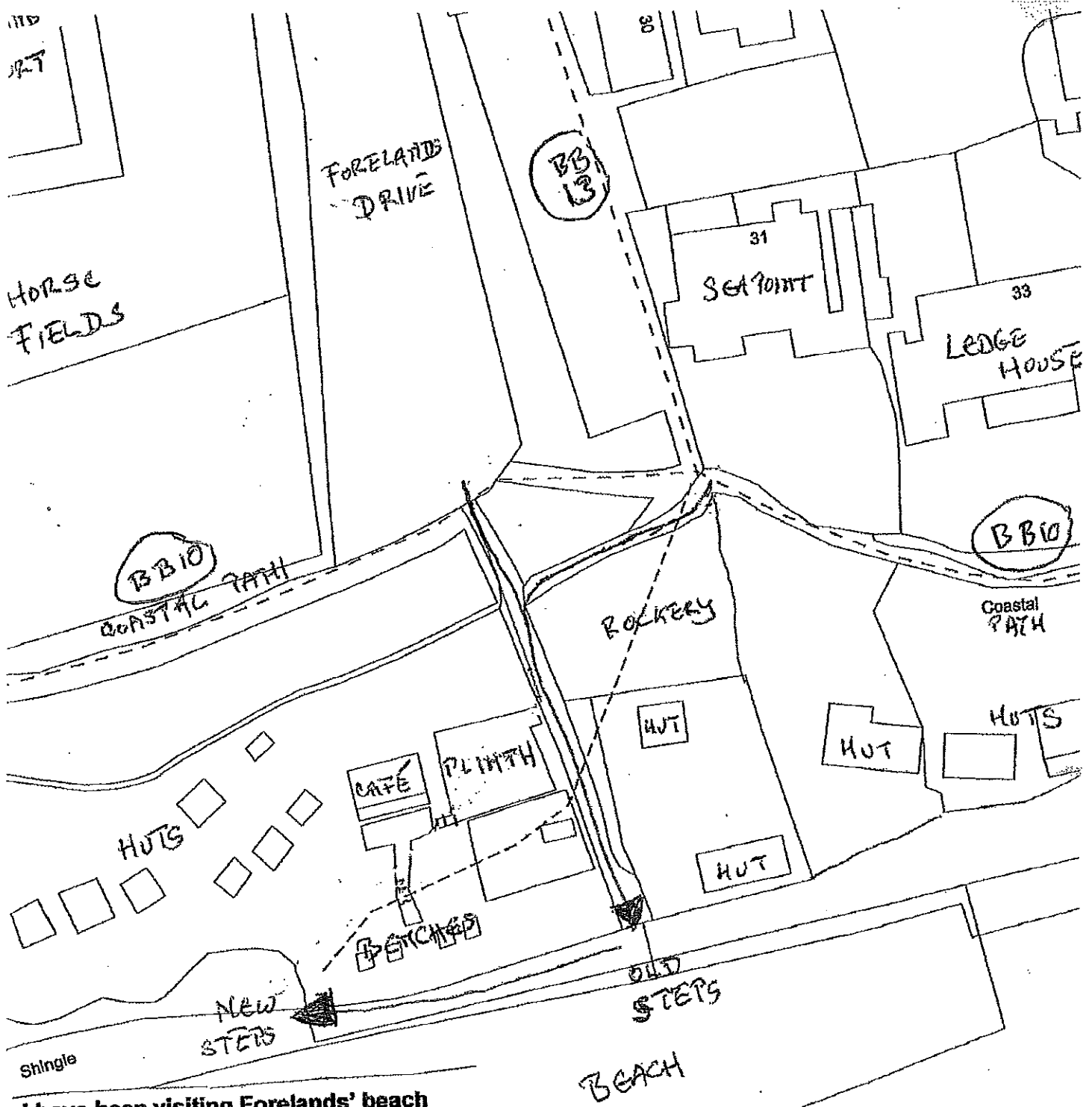


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Name ALAN COX



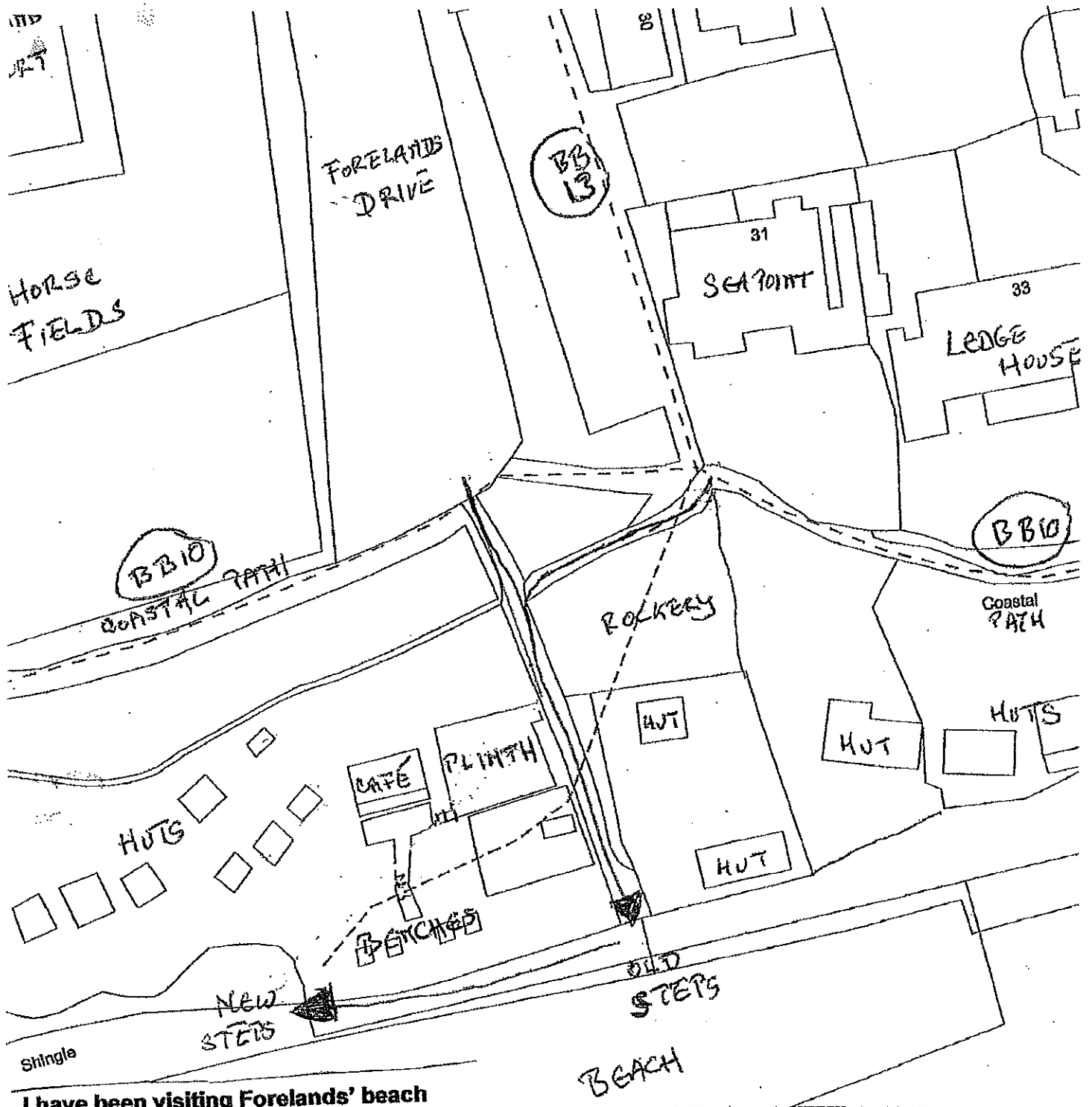
Date 5/6/16



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Name *Mr. Cripps*

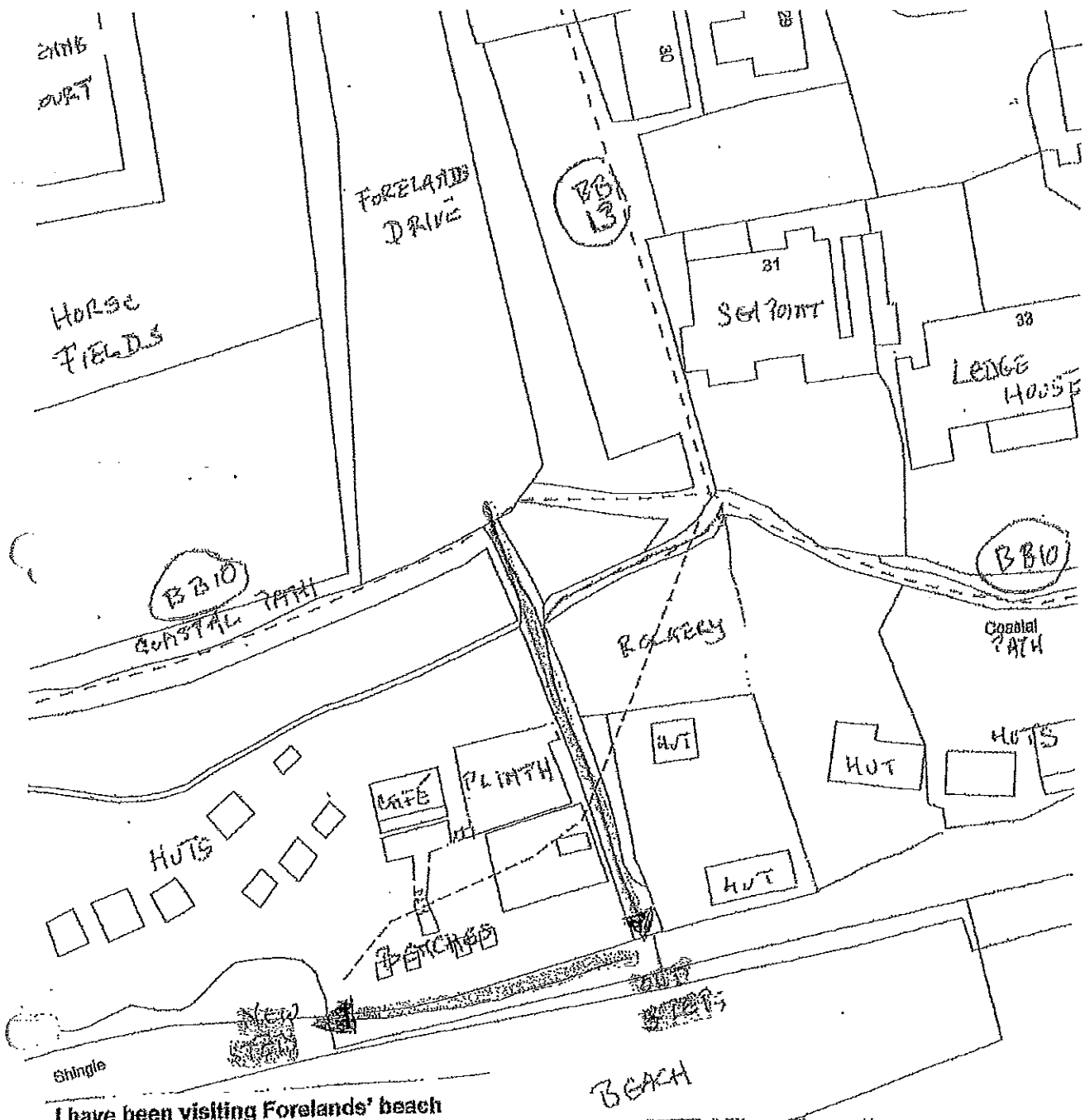
Date *28<sup>th</sup> June 2016*



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Name DAVID CRIPPS

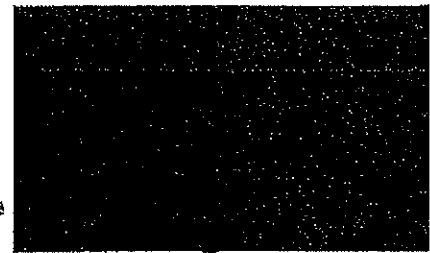
Date 28<sup>th</sup>/6/16



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Name GRANT, H. S. EDMONDS

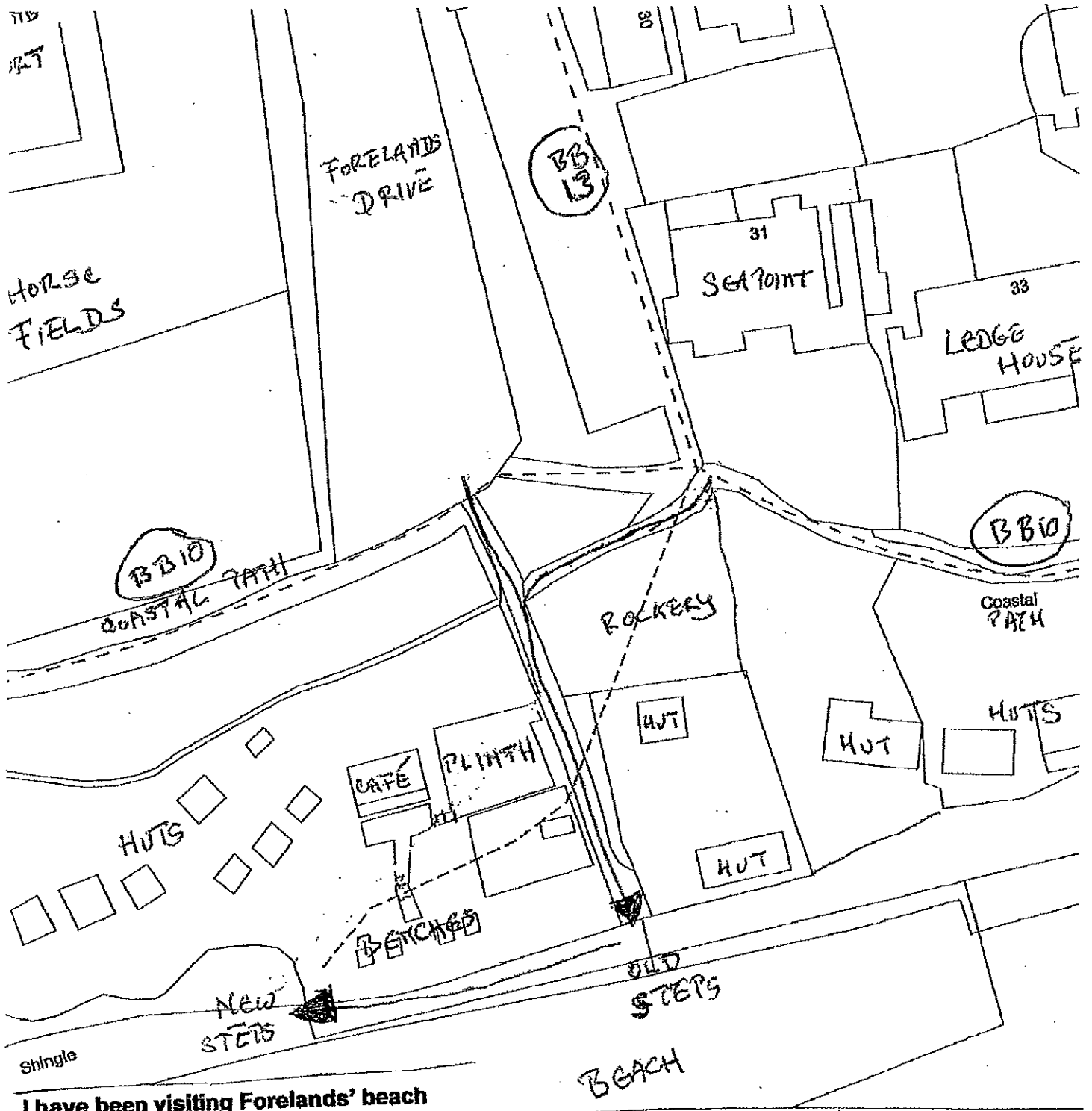
Address



Signature

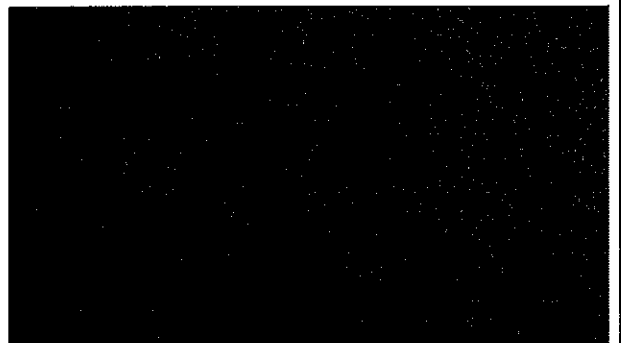
Date

4/6/16



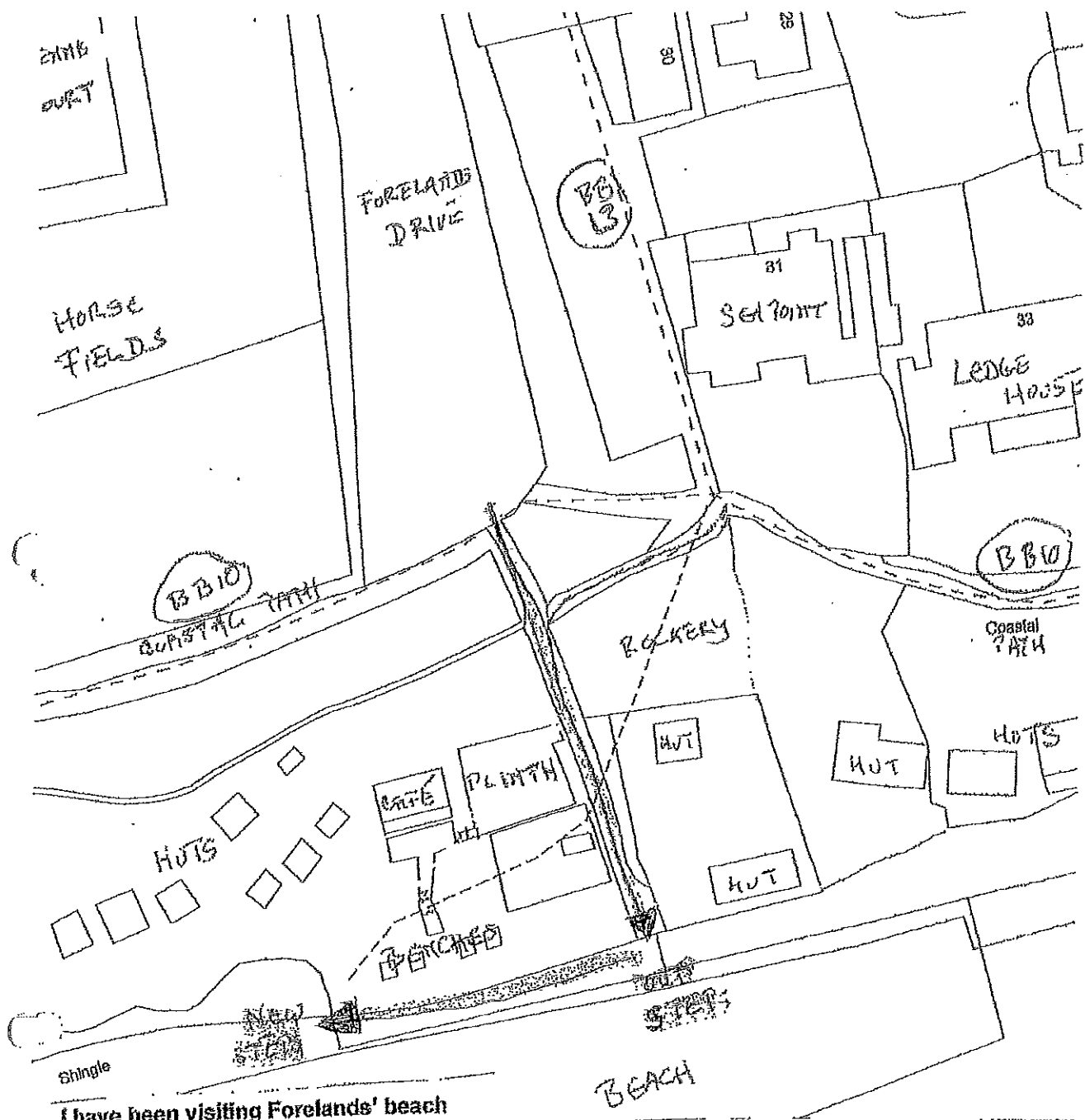
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Name MRS AVERIL FLETCHER



Date

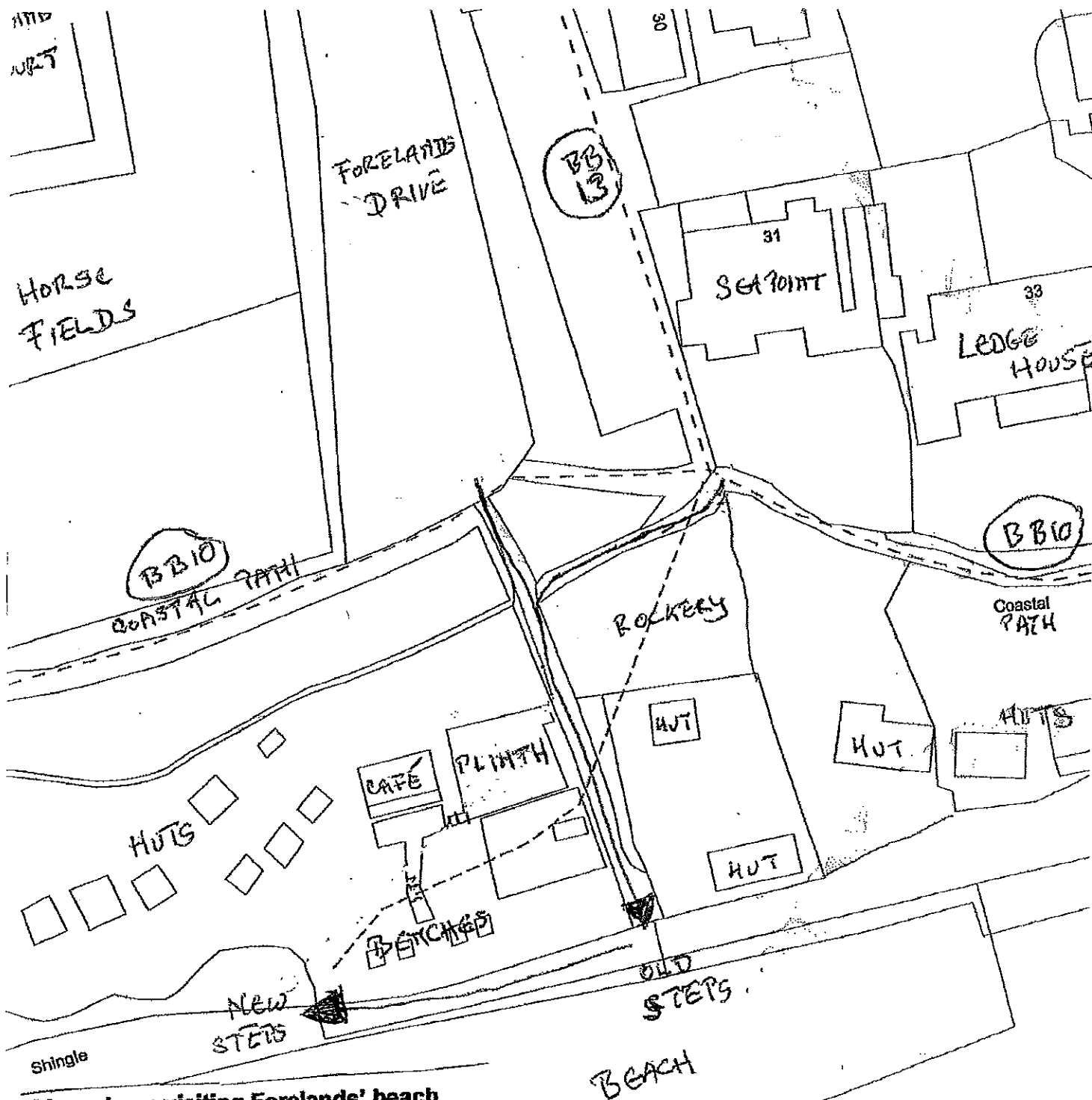
10.6.16



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Name JANE FLOWER

Date 5 June 2016

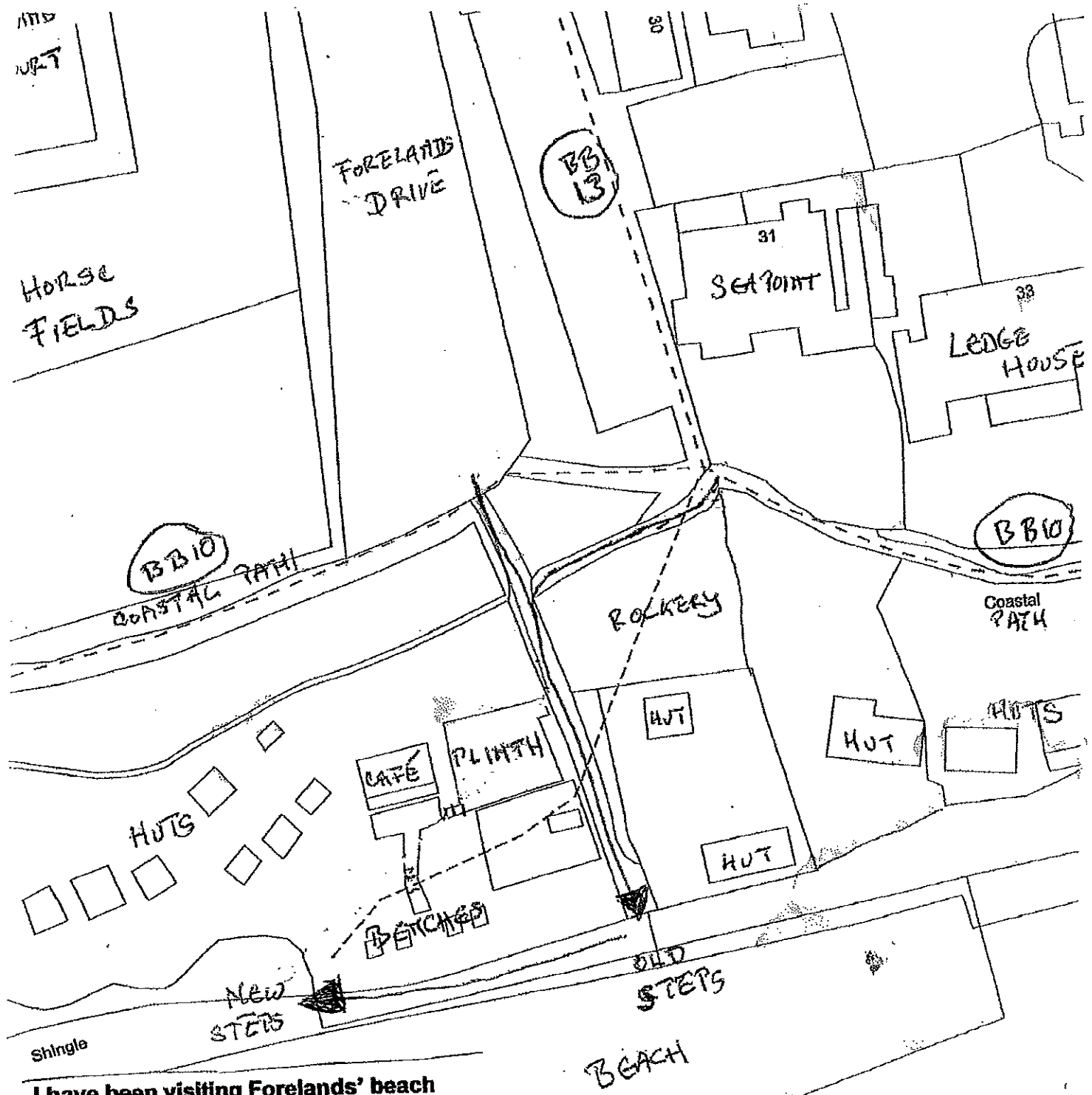


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Name Janet Foster

Date 13/8/16



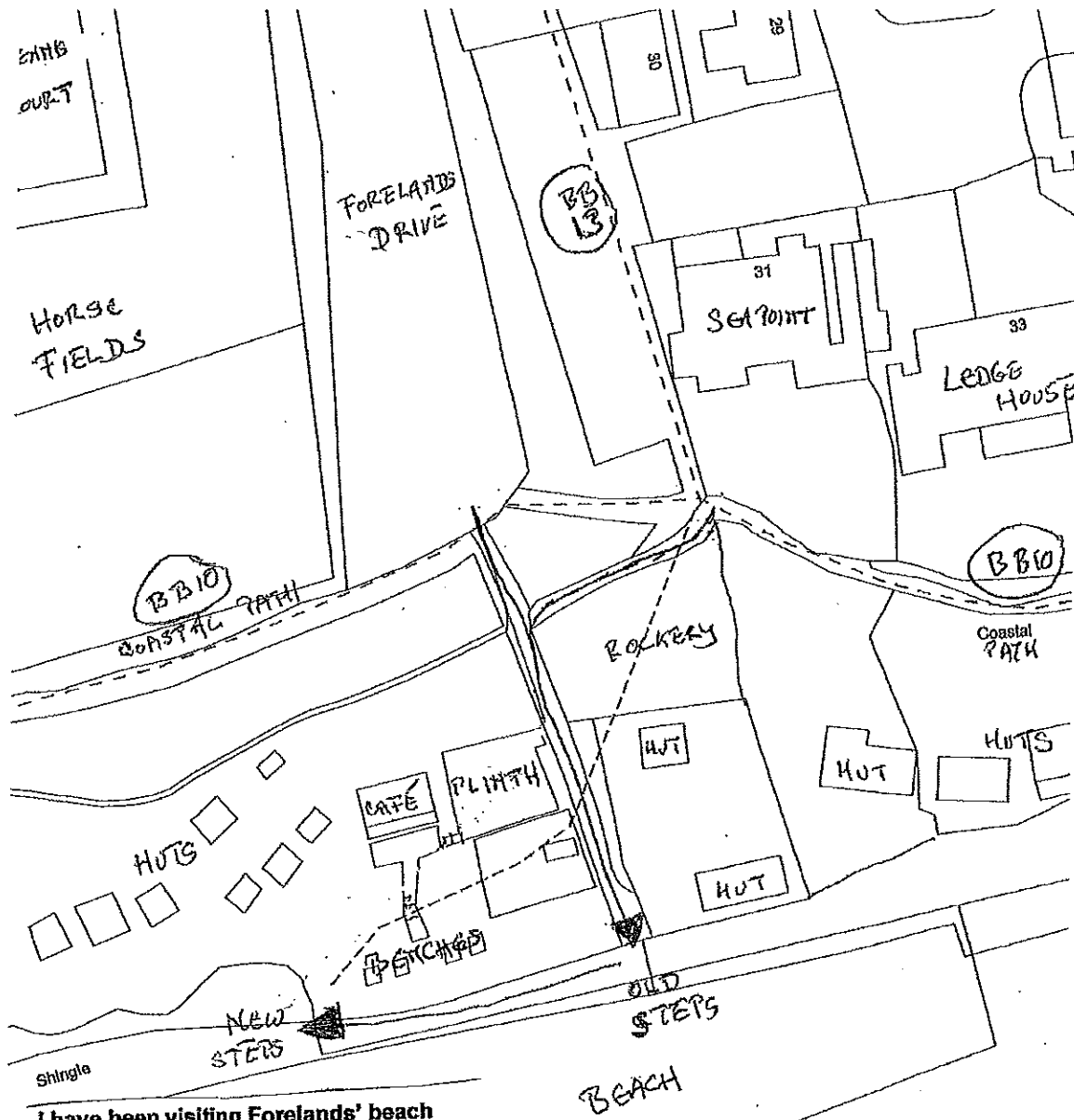


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Name *Tim Foster*

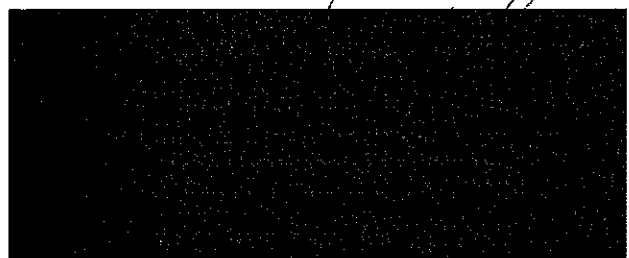
Date *24/06/16*

Barbara

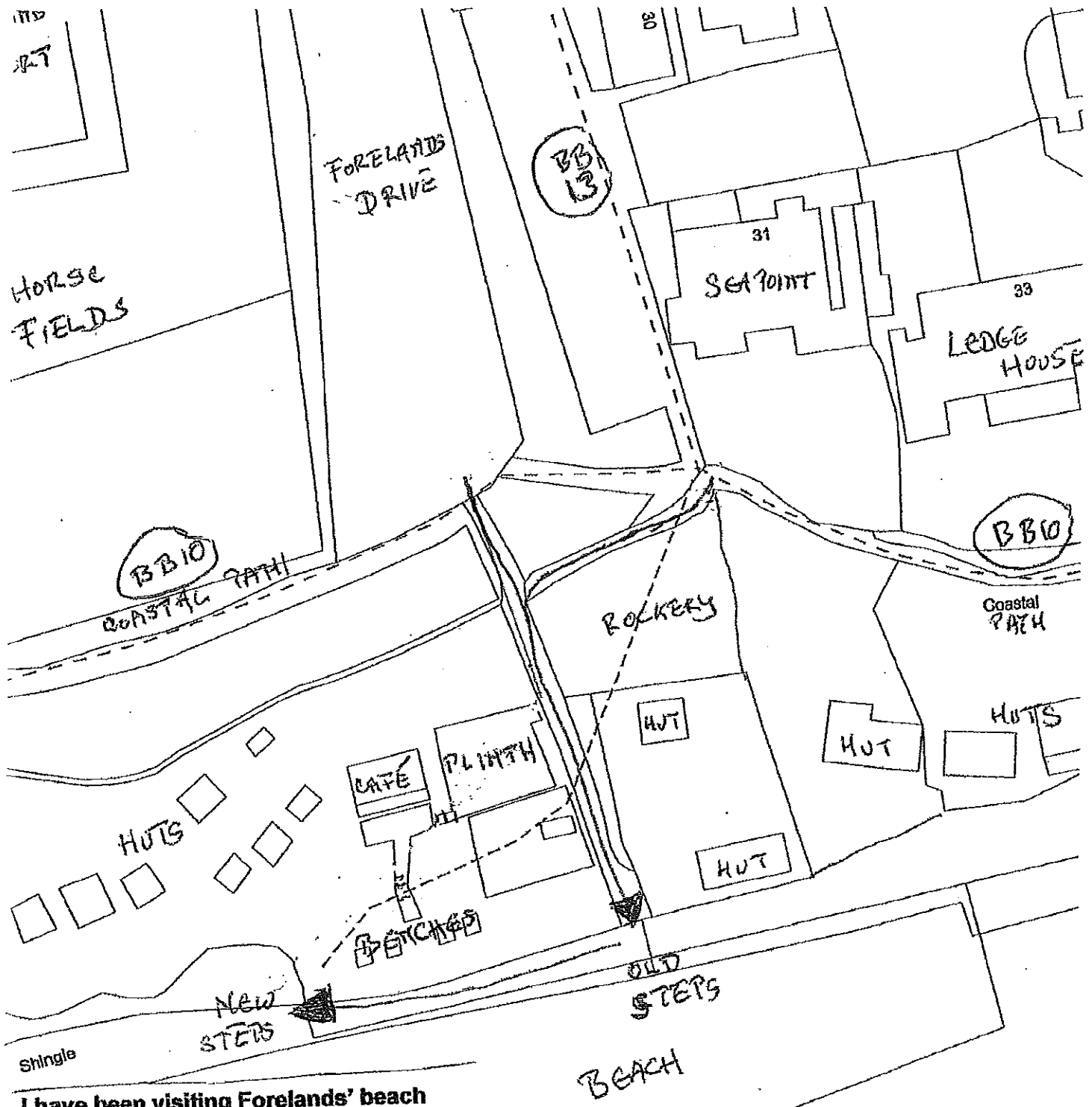


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Name *BARBARA COULP*

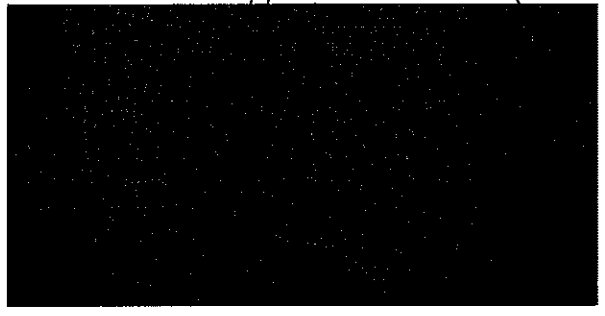


Date *13th June 2016*

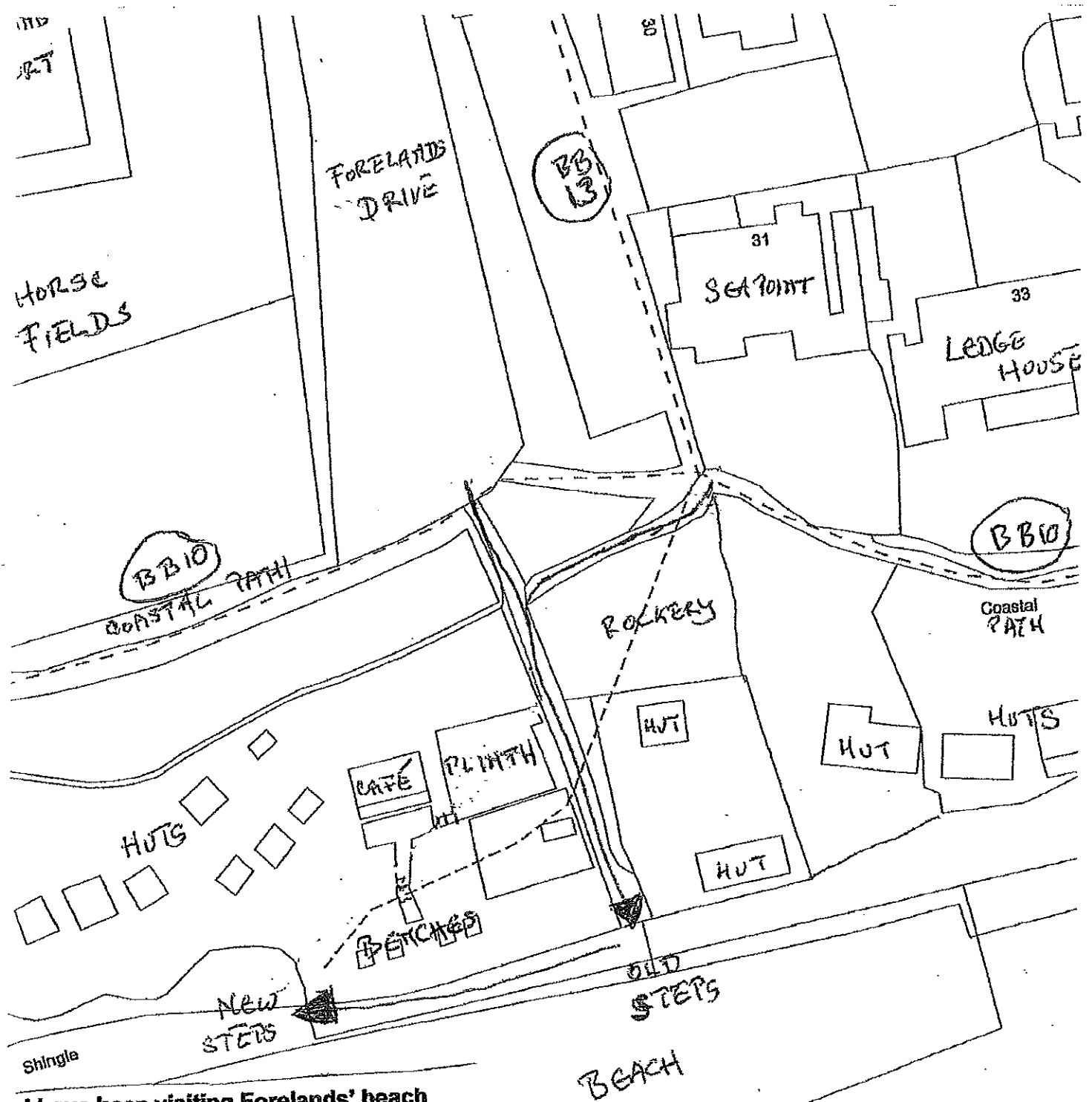


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Name *George Henney*

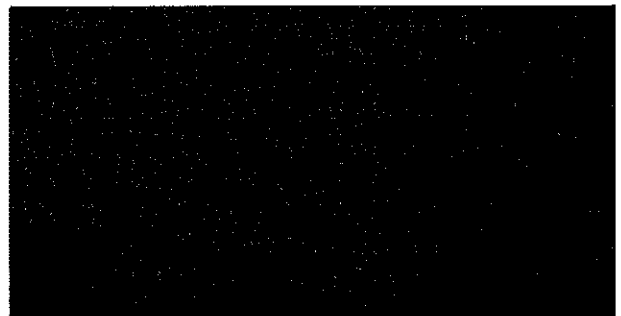


Date *25/06/16*

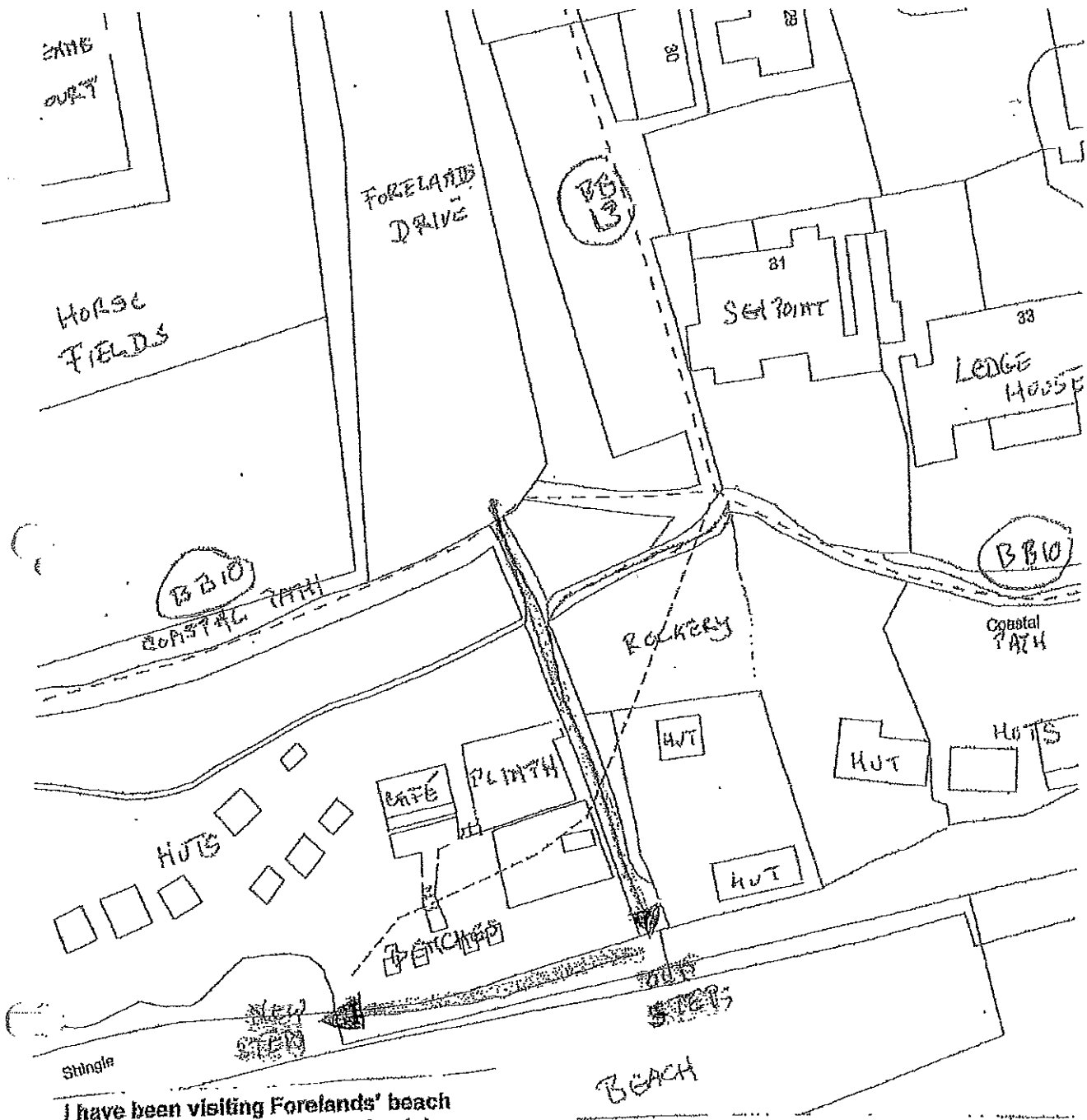


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Name WILL HARVEY



Date 26/6/16.



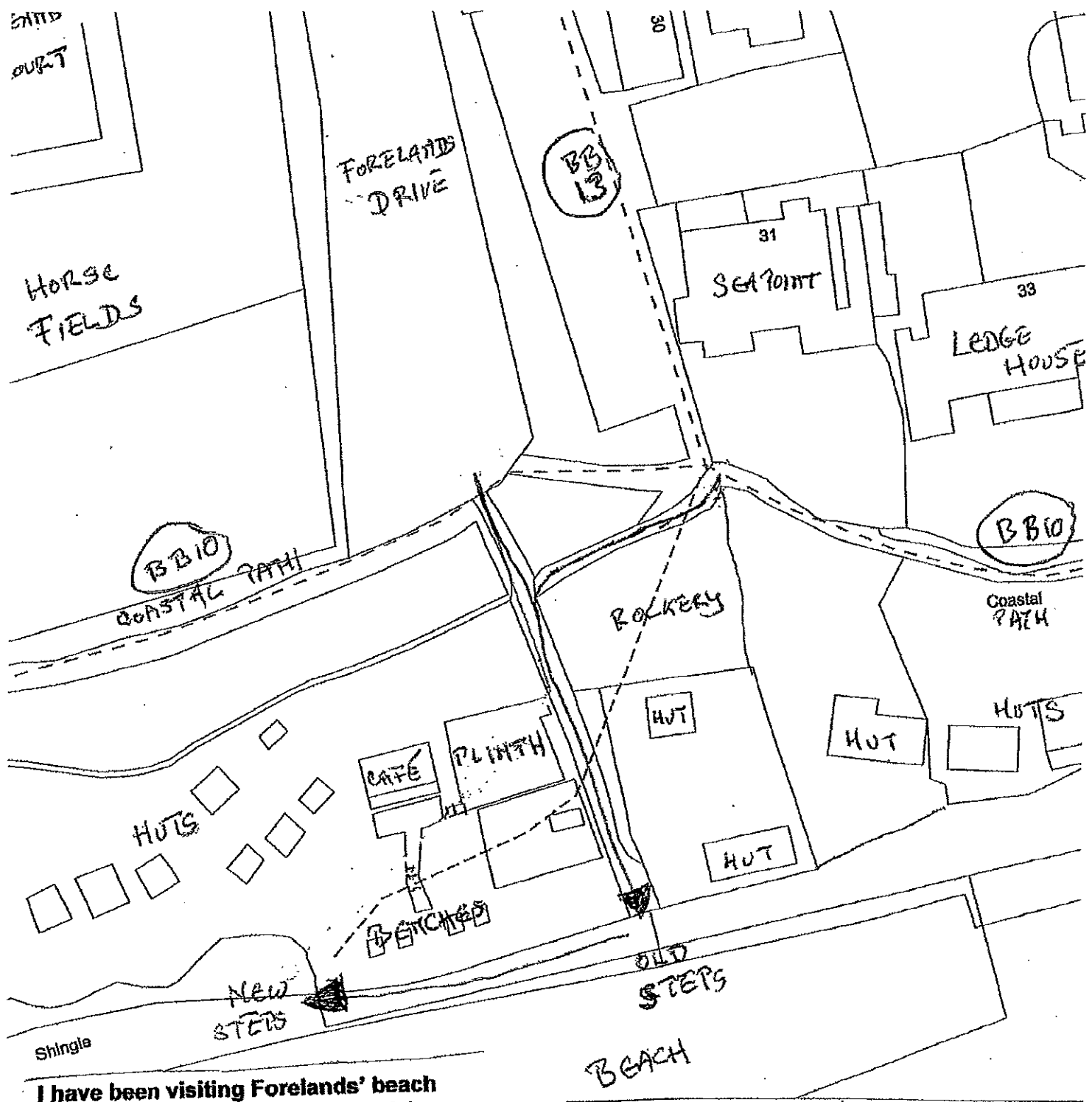
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Name CAROLYN HOLBROOK

Address [REDACTED]

Signature [REDACTED]

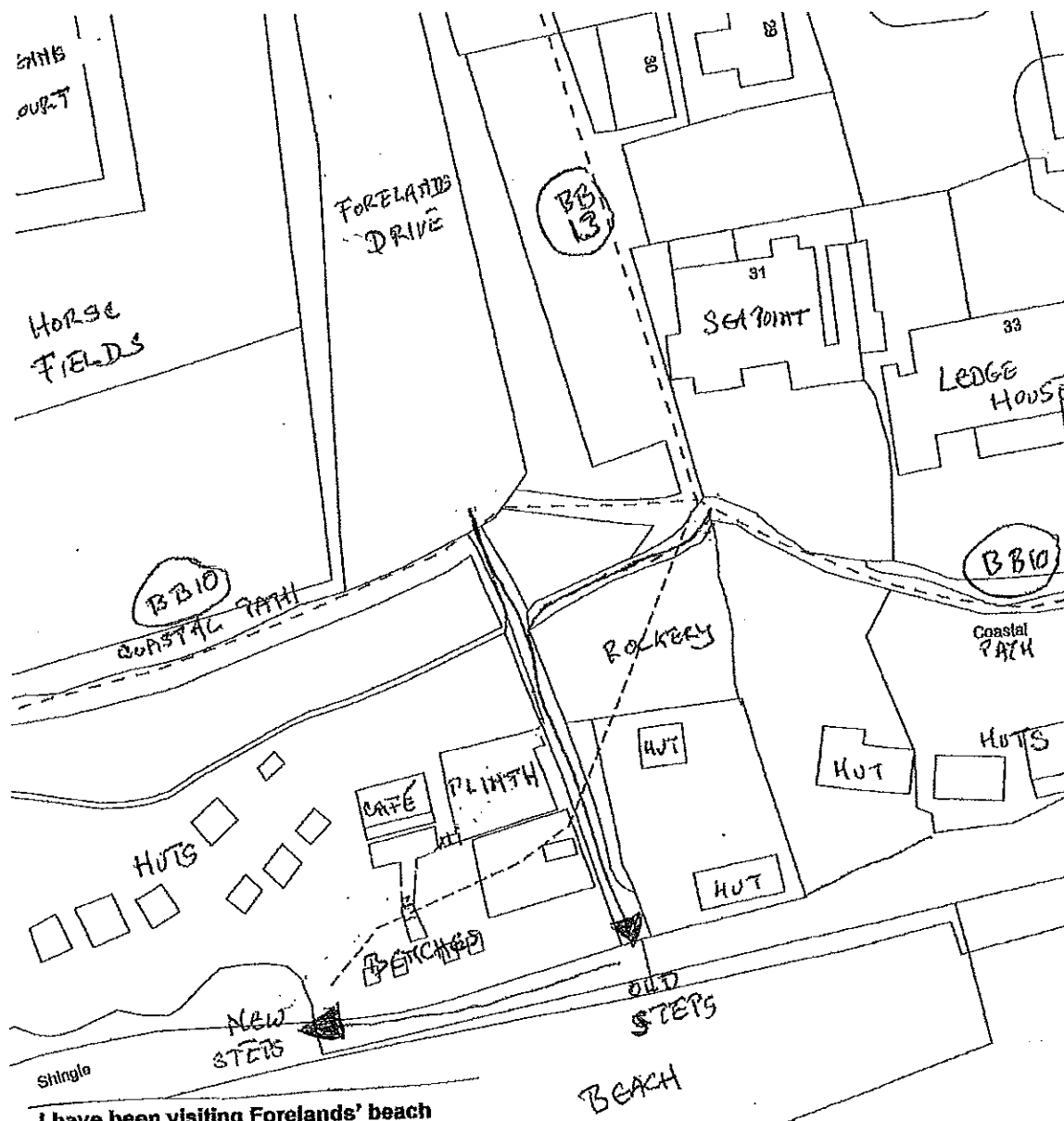
Date 5-06-2016



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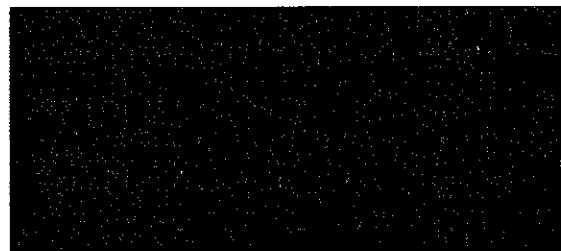
*C. Hunter*  
 [Redacted Signature]

Signature *C. Hunter*  
 Date 27.5.2016

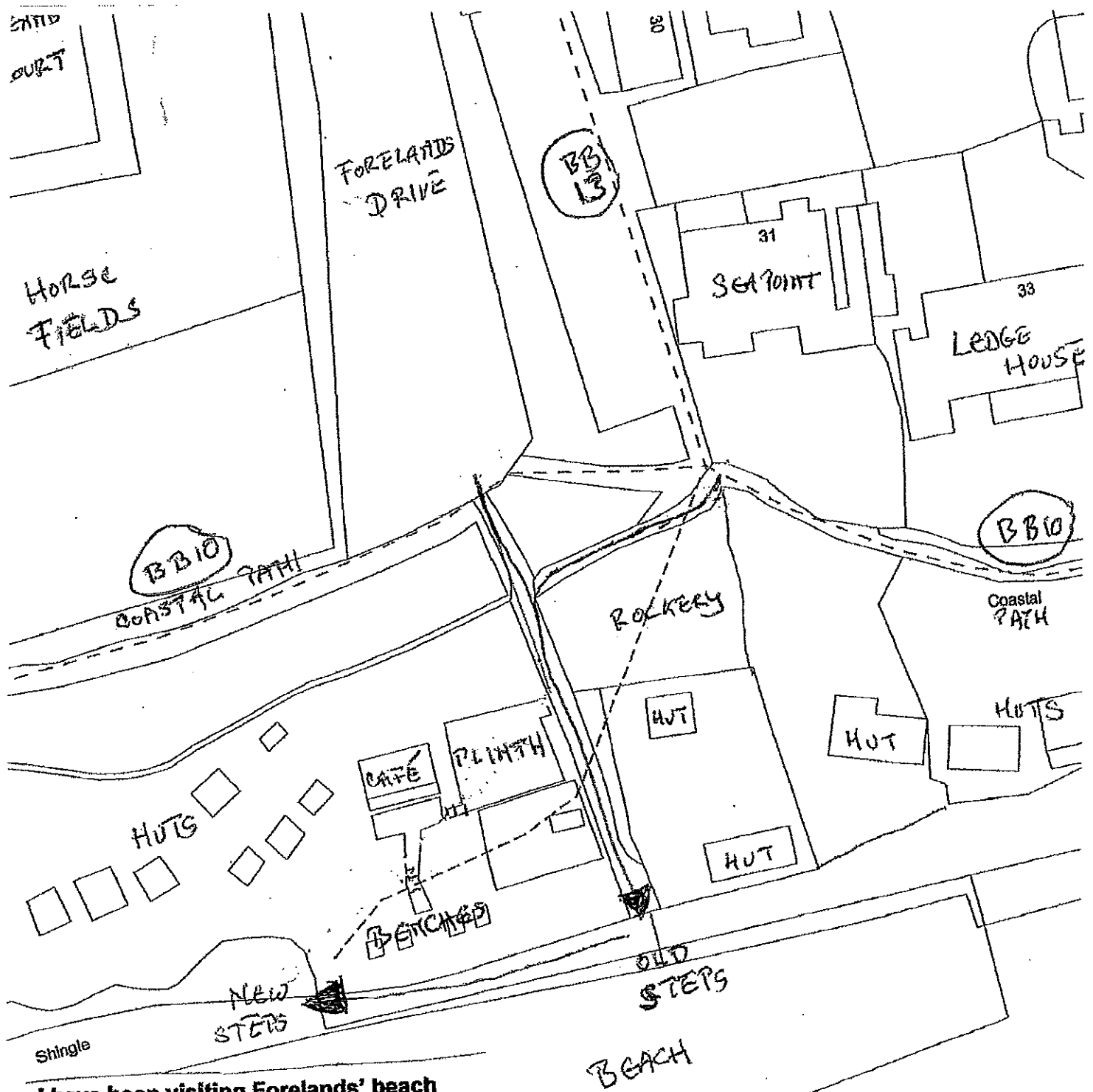


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Name L. C. JOHNSON

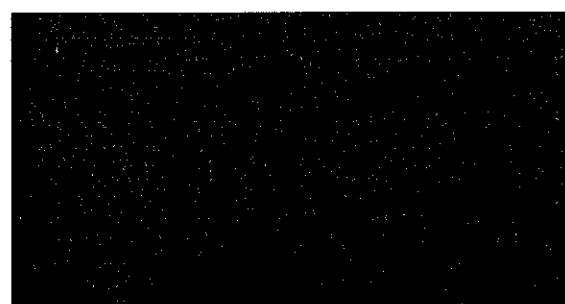


Date 14.6.16



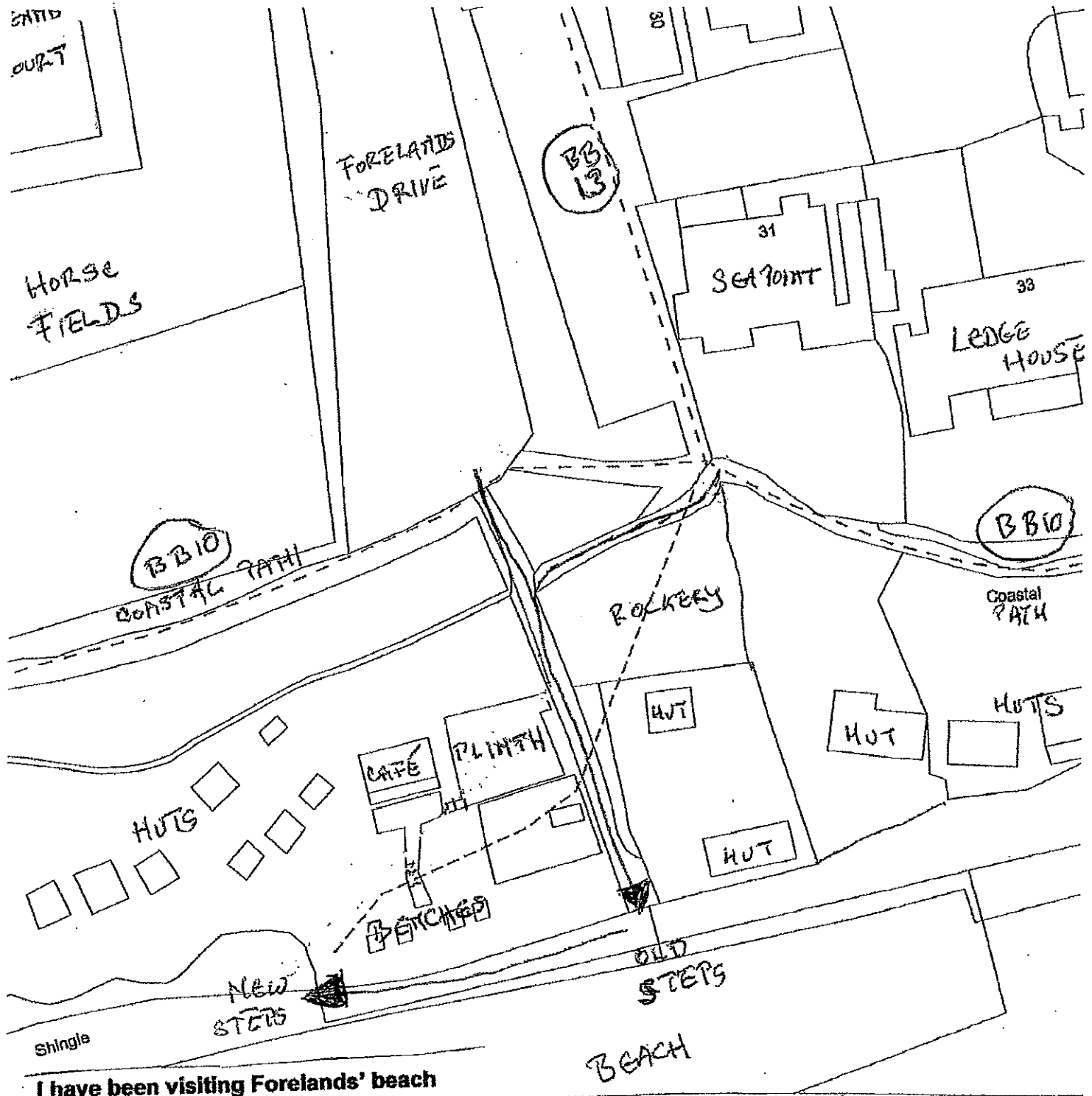
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Name *A Jones*



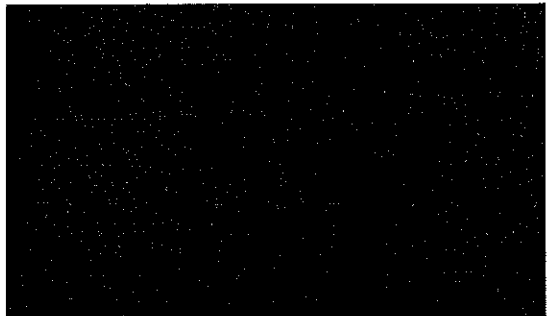
Date *24.5.016*



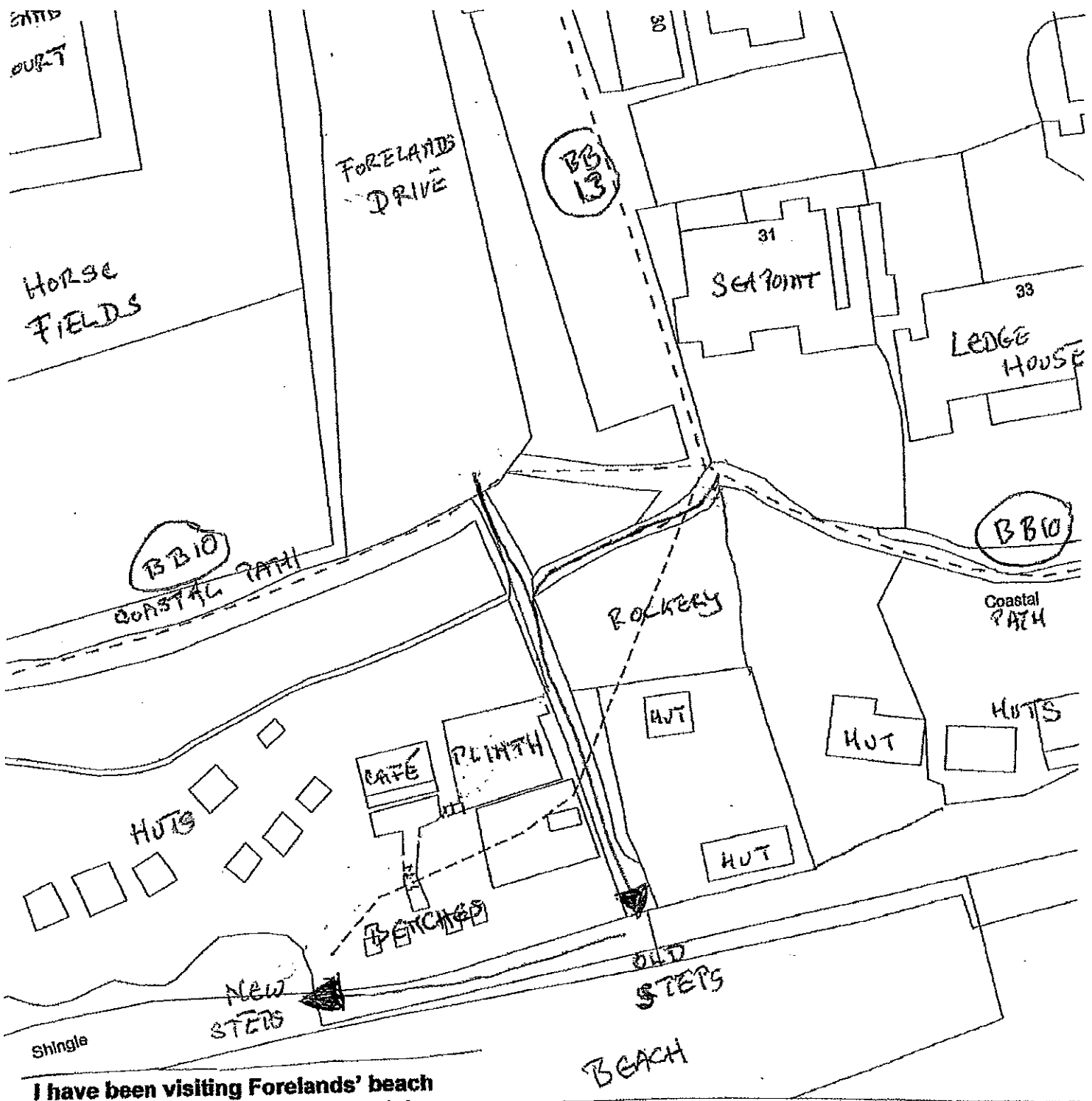


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Name *M. Jones*

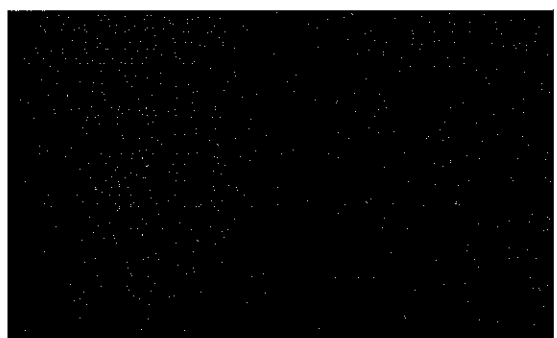


Date *24 May 2016*

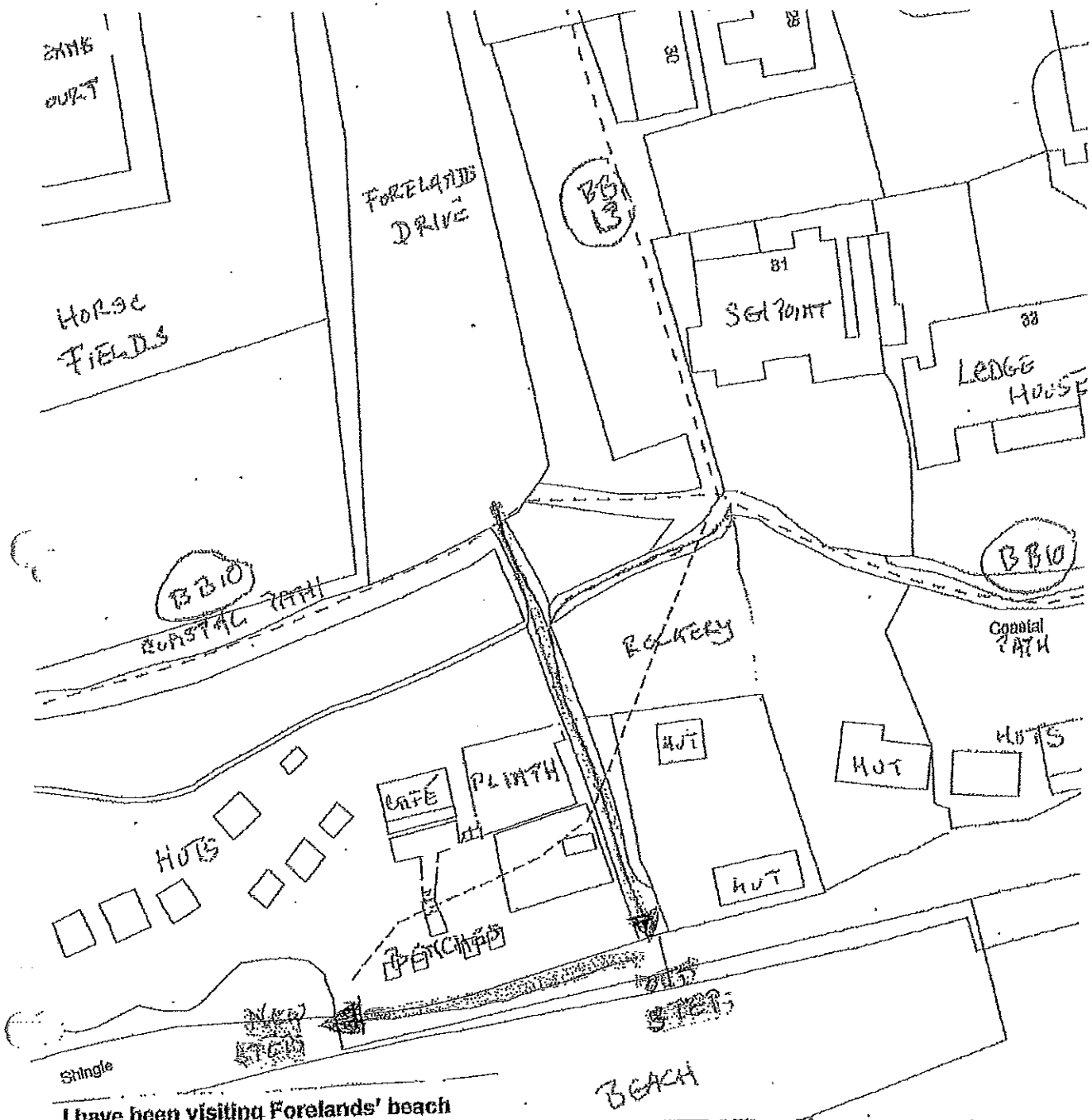


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Name *Paula Bean*



Date *22/5/16*



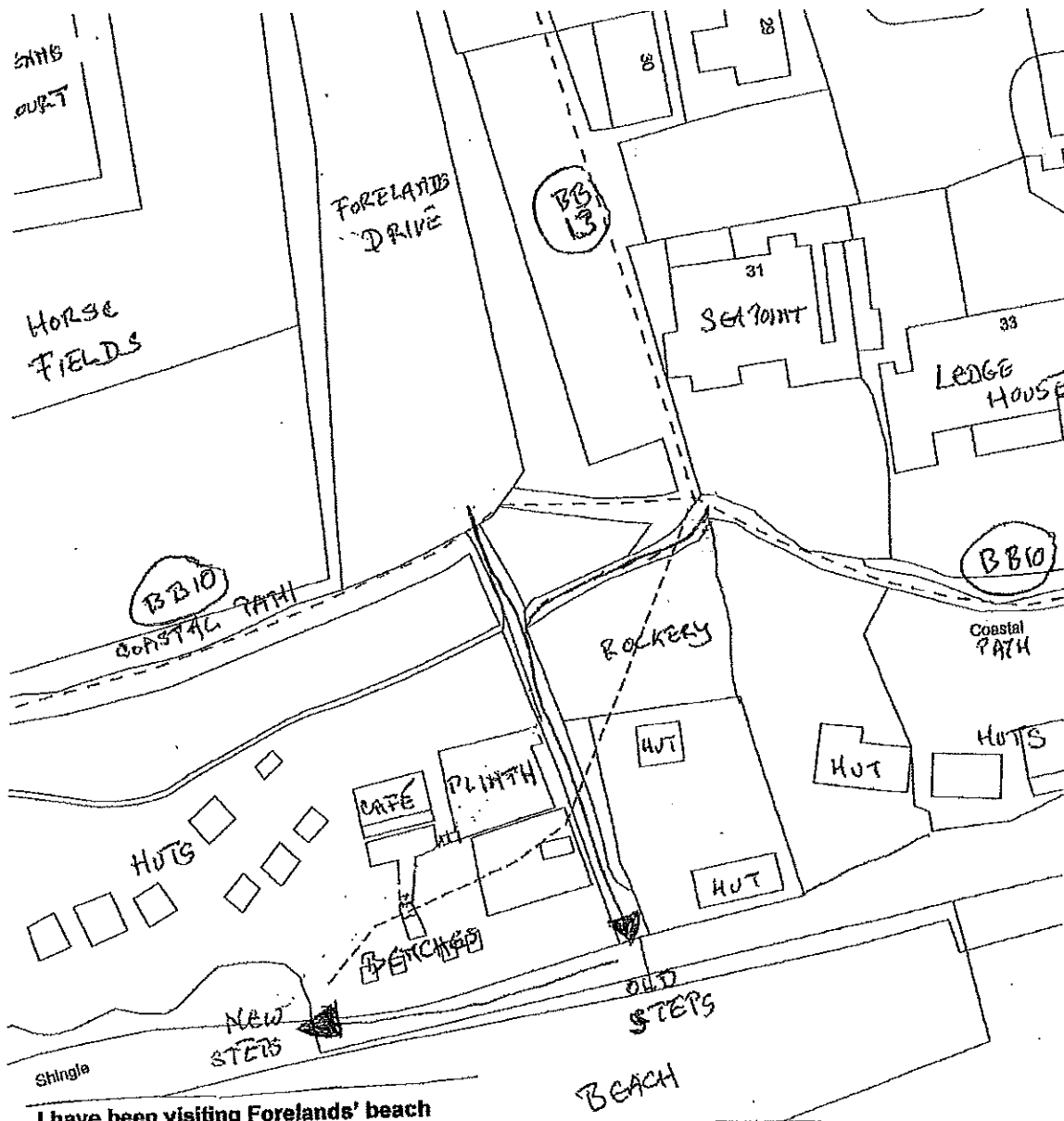
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Name *Cameron D. M. Low*

Address [REDACTED]

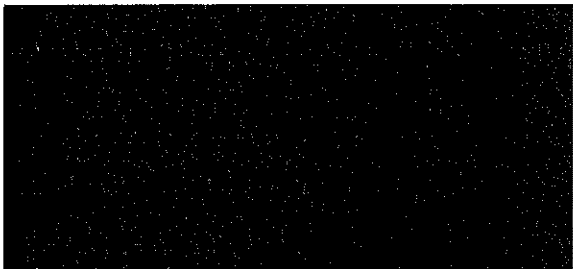
Signature

Date *5th June 2016*

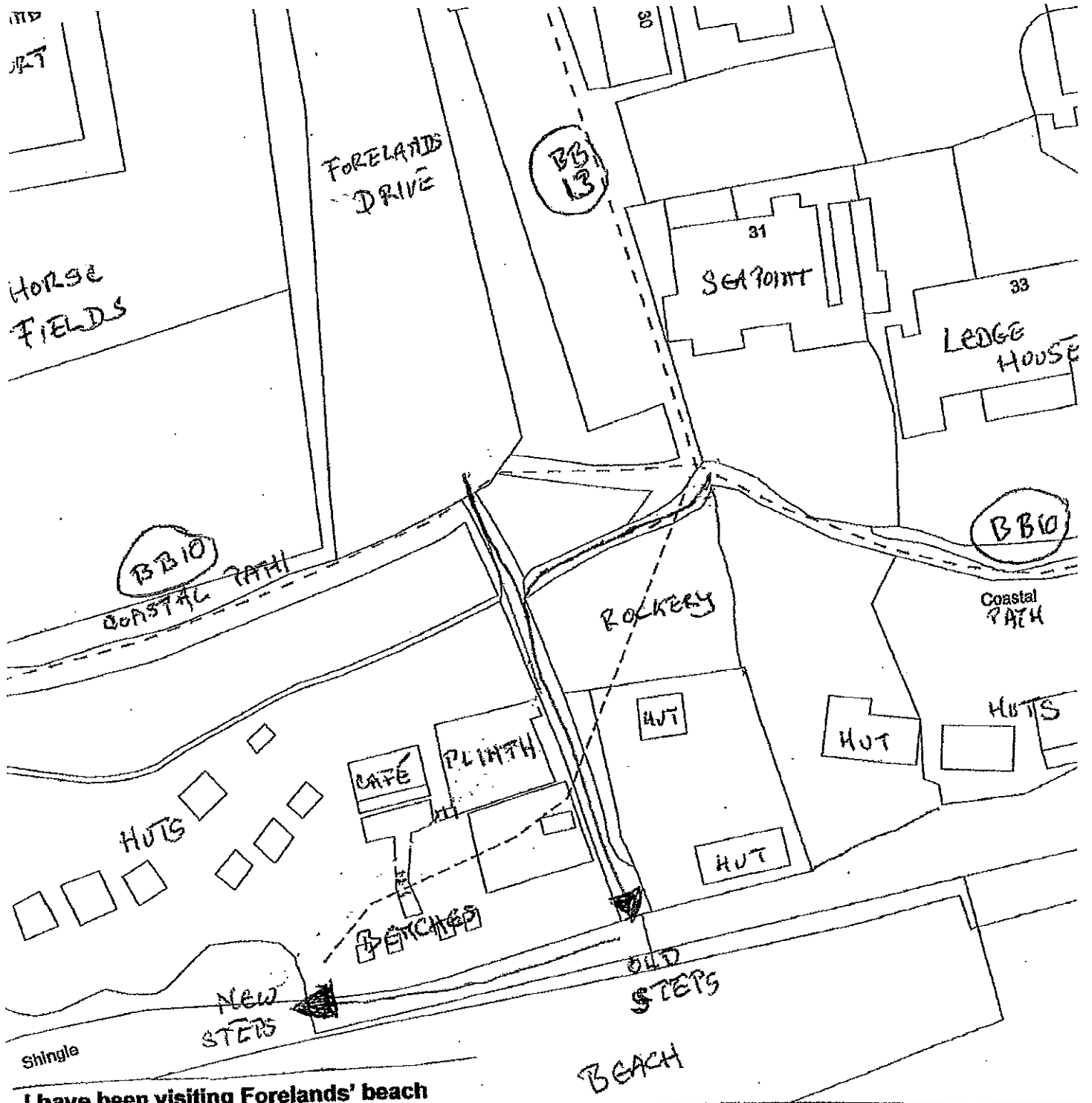


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Name JAMES LUKE

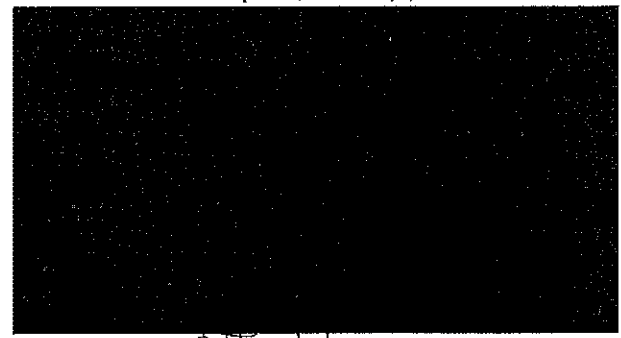


Date 13 June 2016

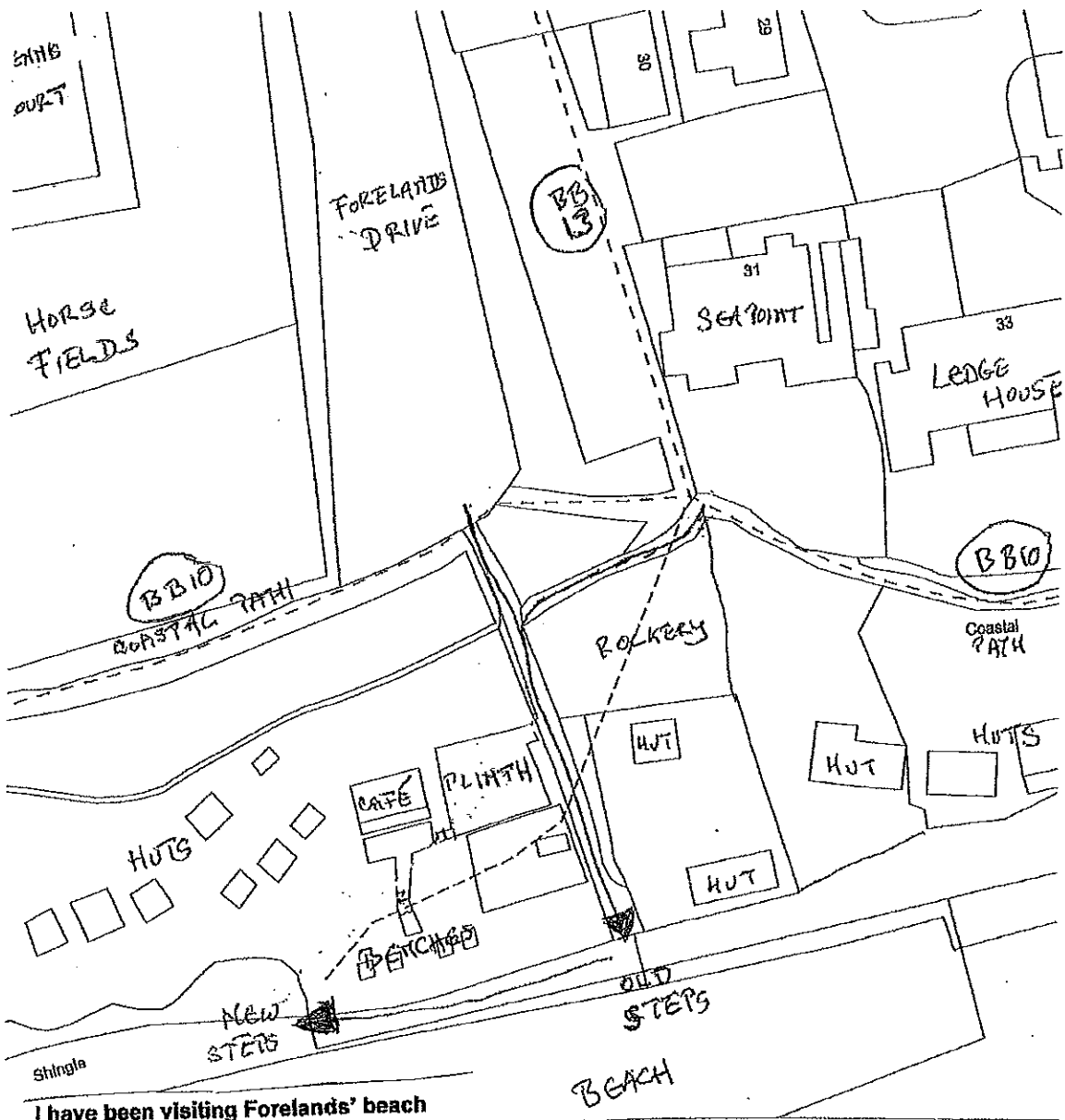


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Name *Stella Luke*

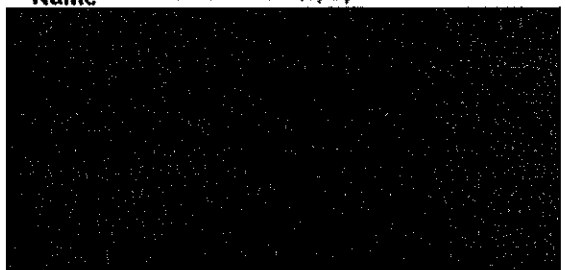


Date *12th June 2016*

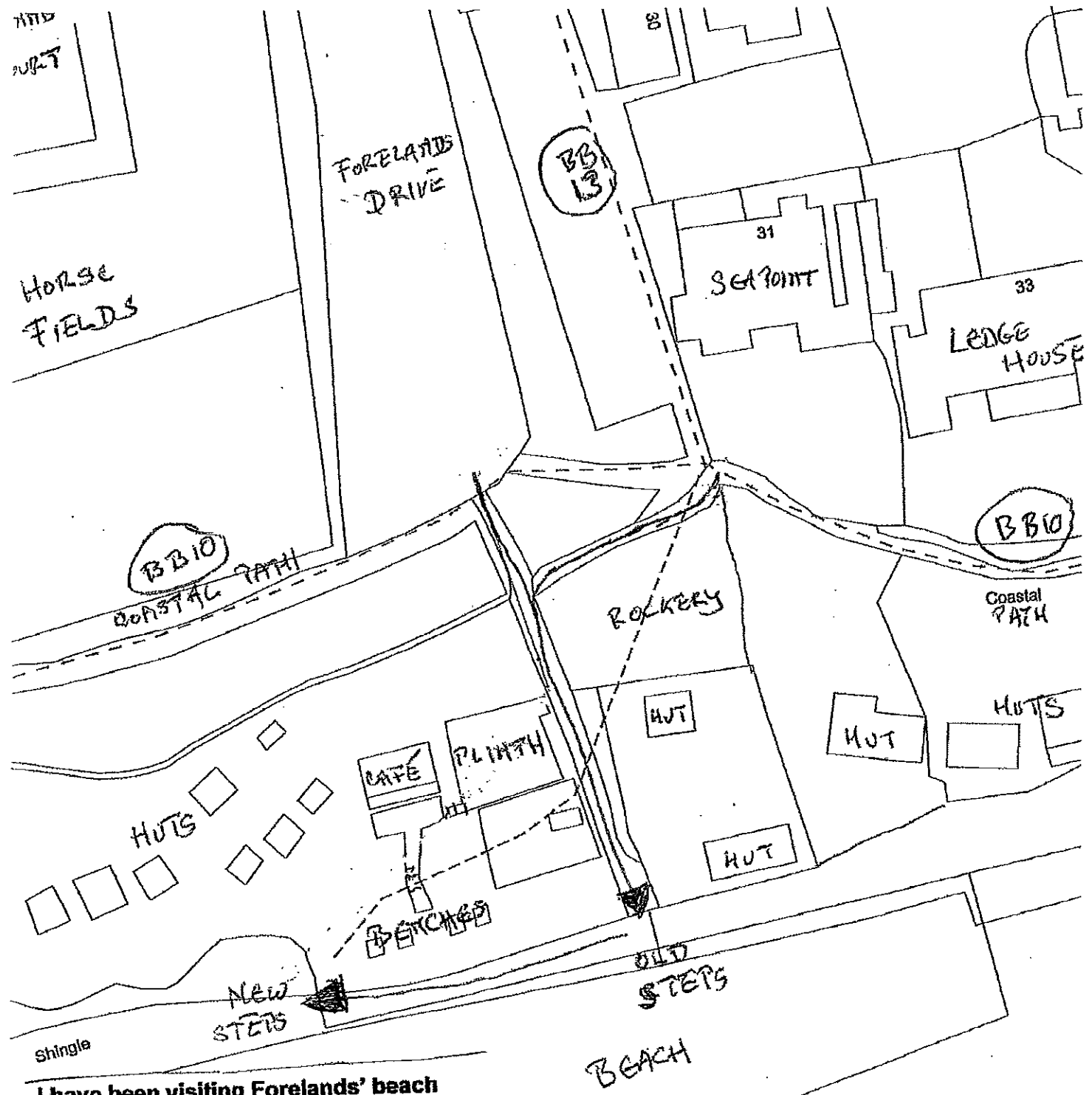


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Name C. S. MACKENZIE



Date 14/6/16

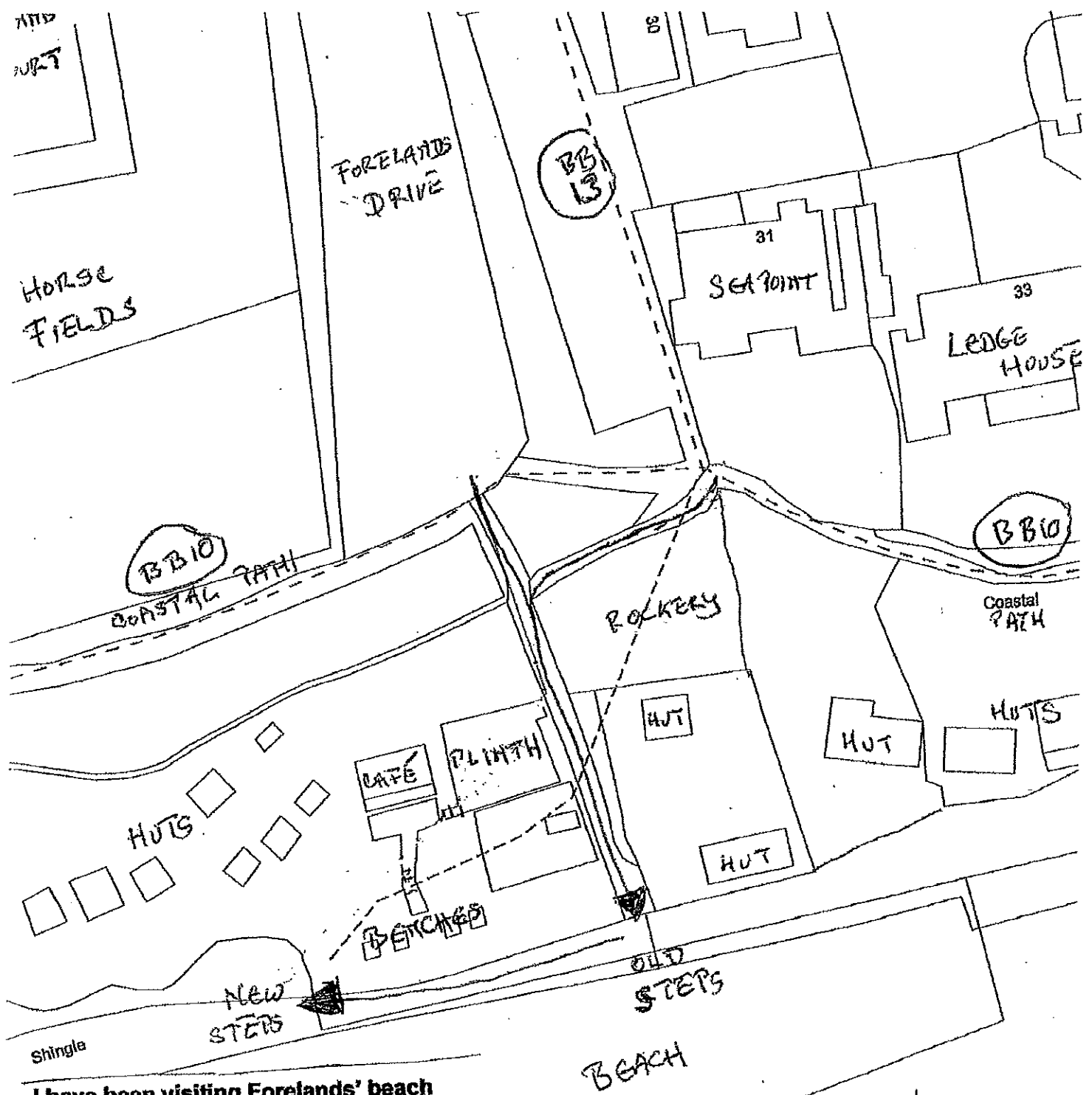


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Name *D. McManus*

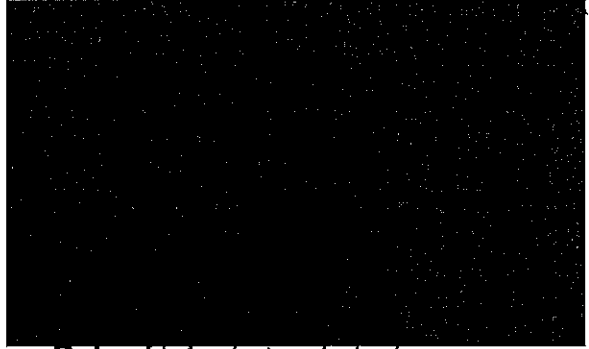


Date *21.6.16*



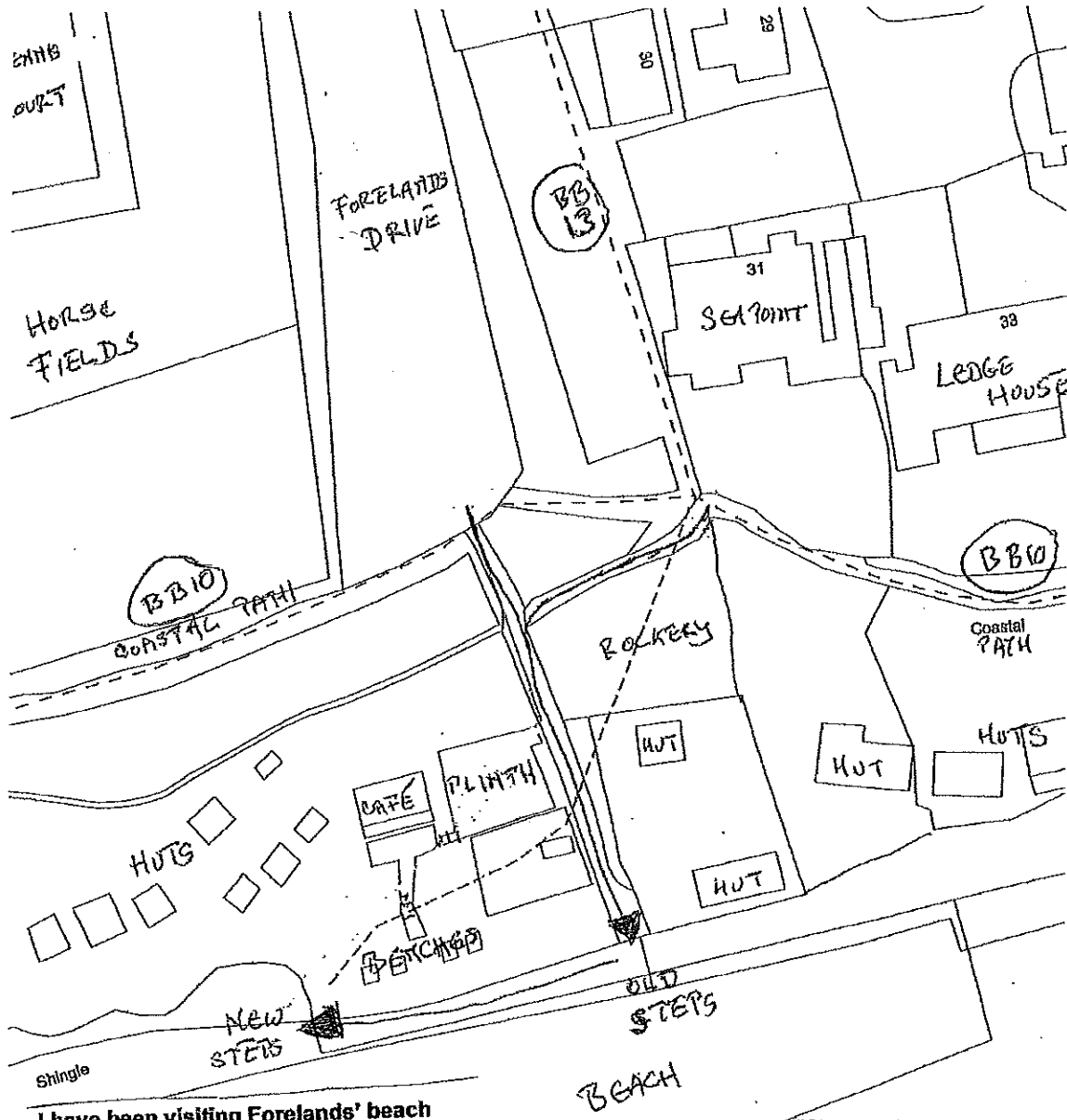
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Name Judith Moore



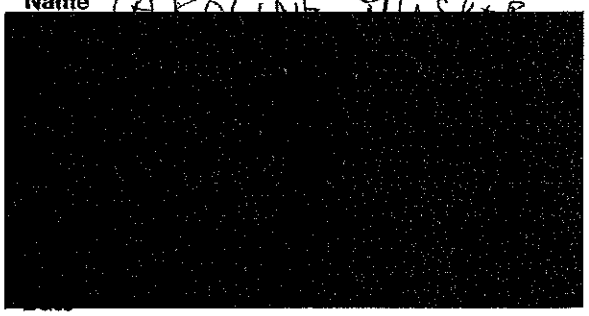
Date 21/6/16



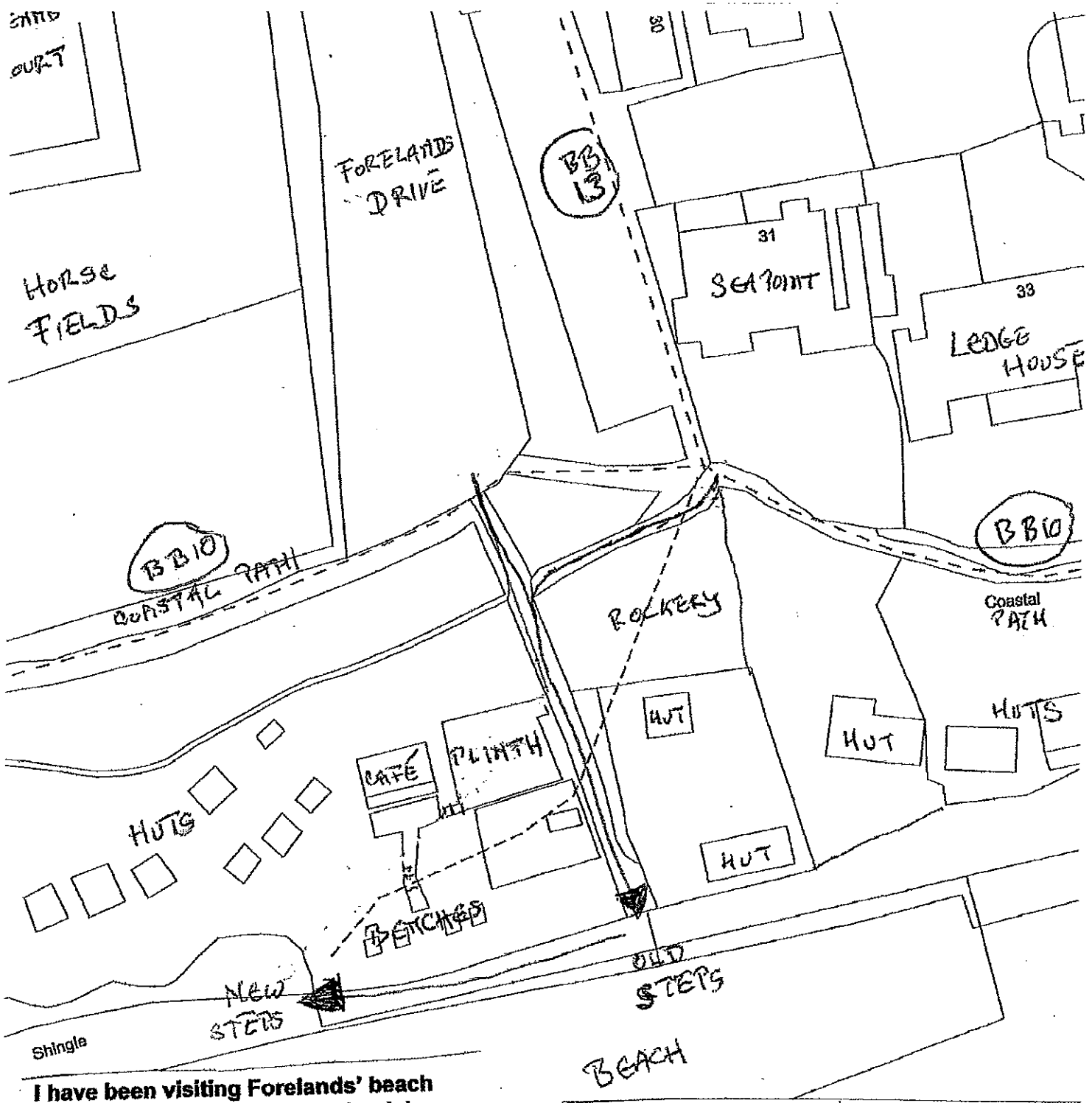


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Name CAROLINE GILKES

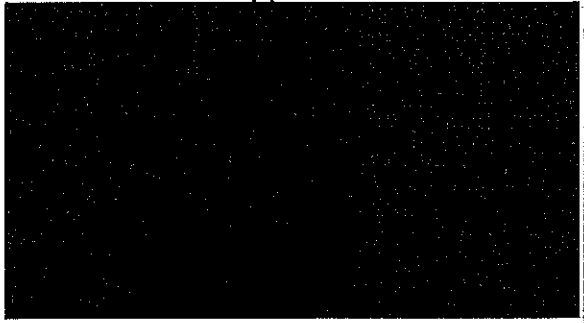


15.6.16

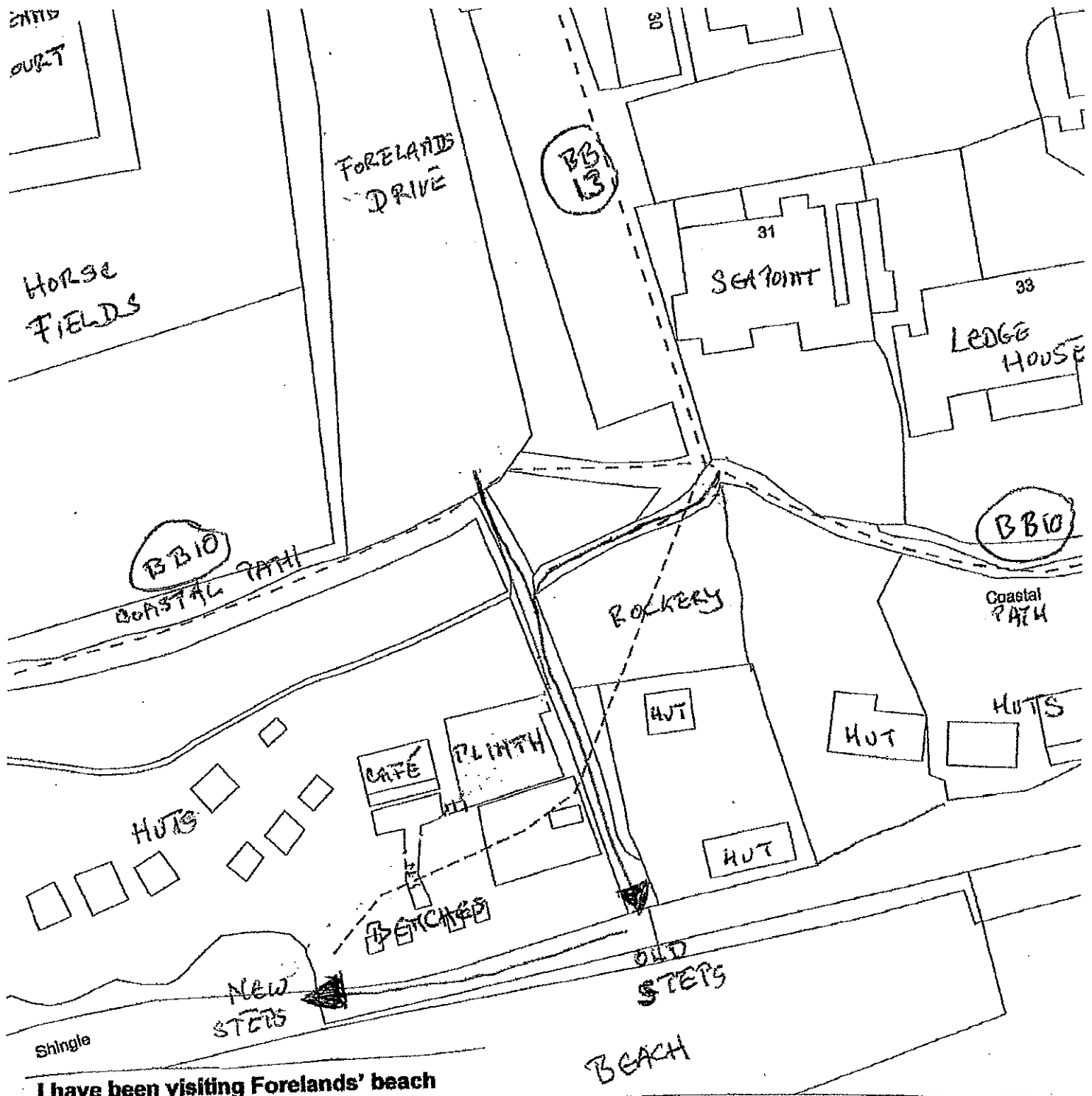


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Name May Newton

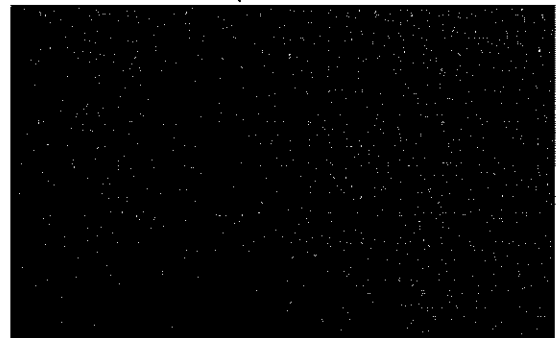


Date 27.5.16

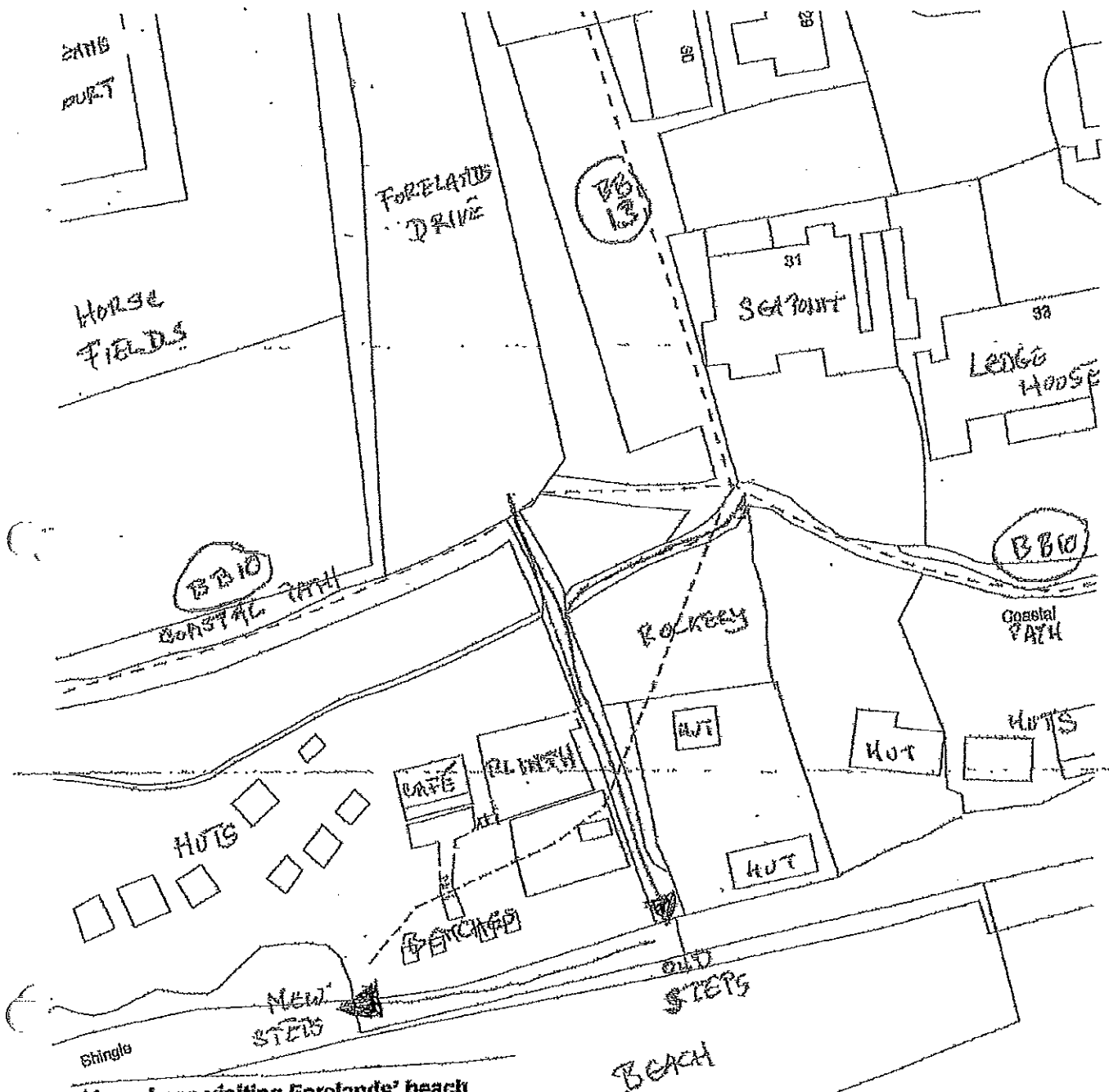


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Name *CMB Newton*

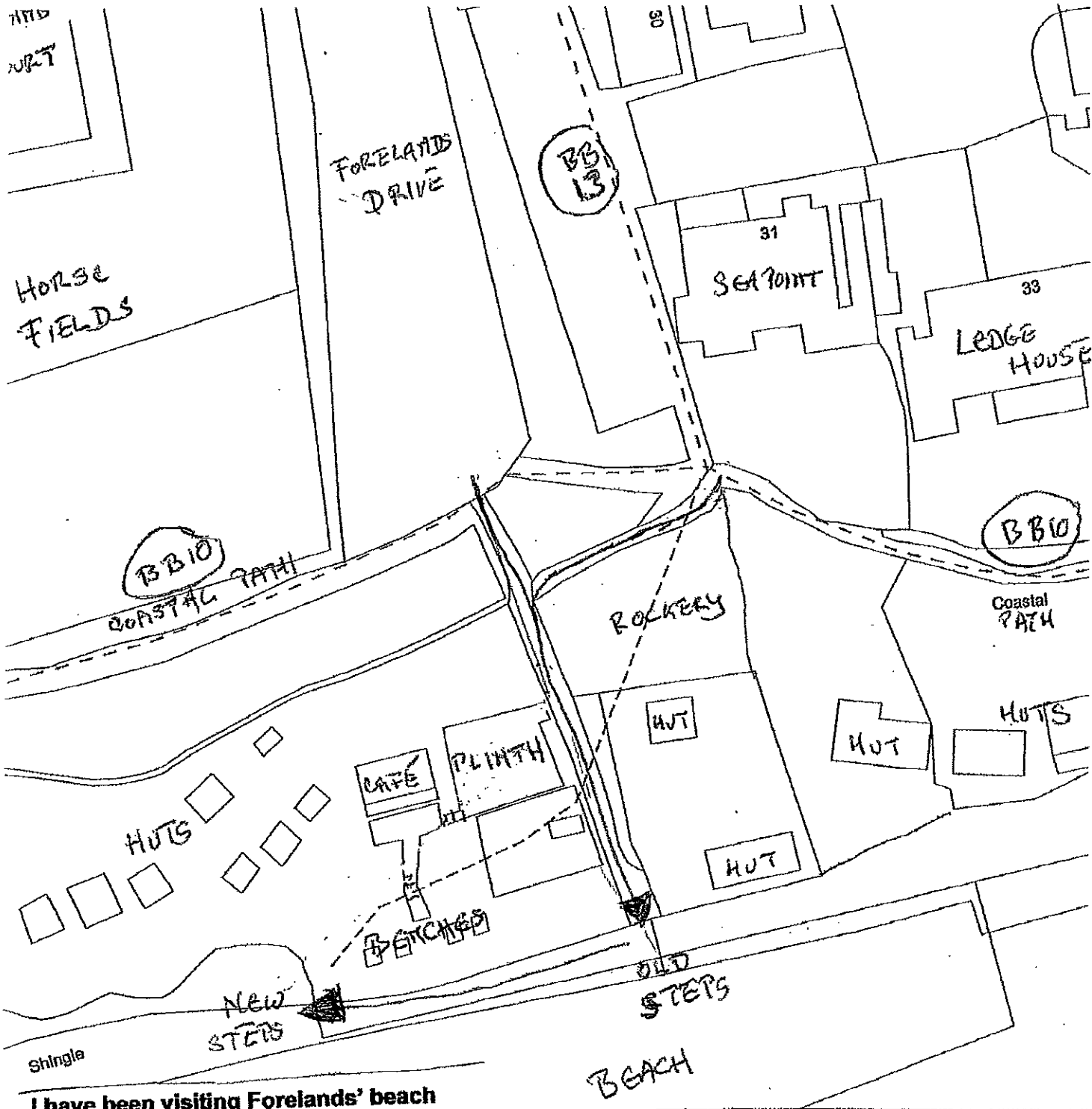


Date *27 May 2016*



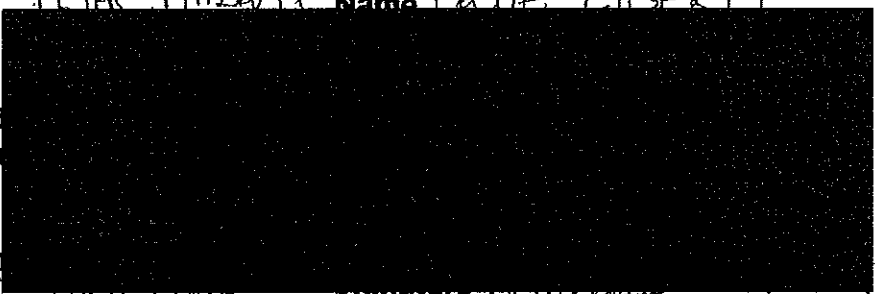
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Name Christine Paskin  
 Address [REDACTED]  
 Signature [REDACTED]  
 Date 20th May 2016

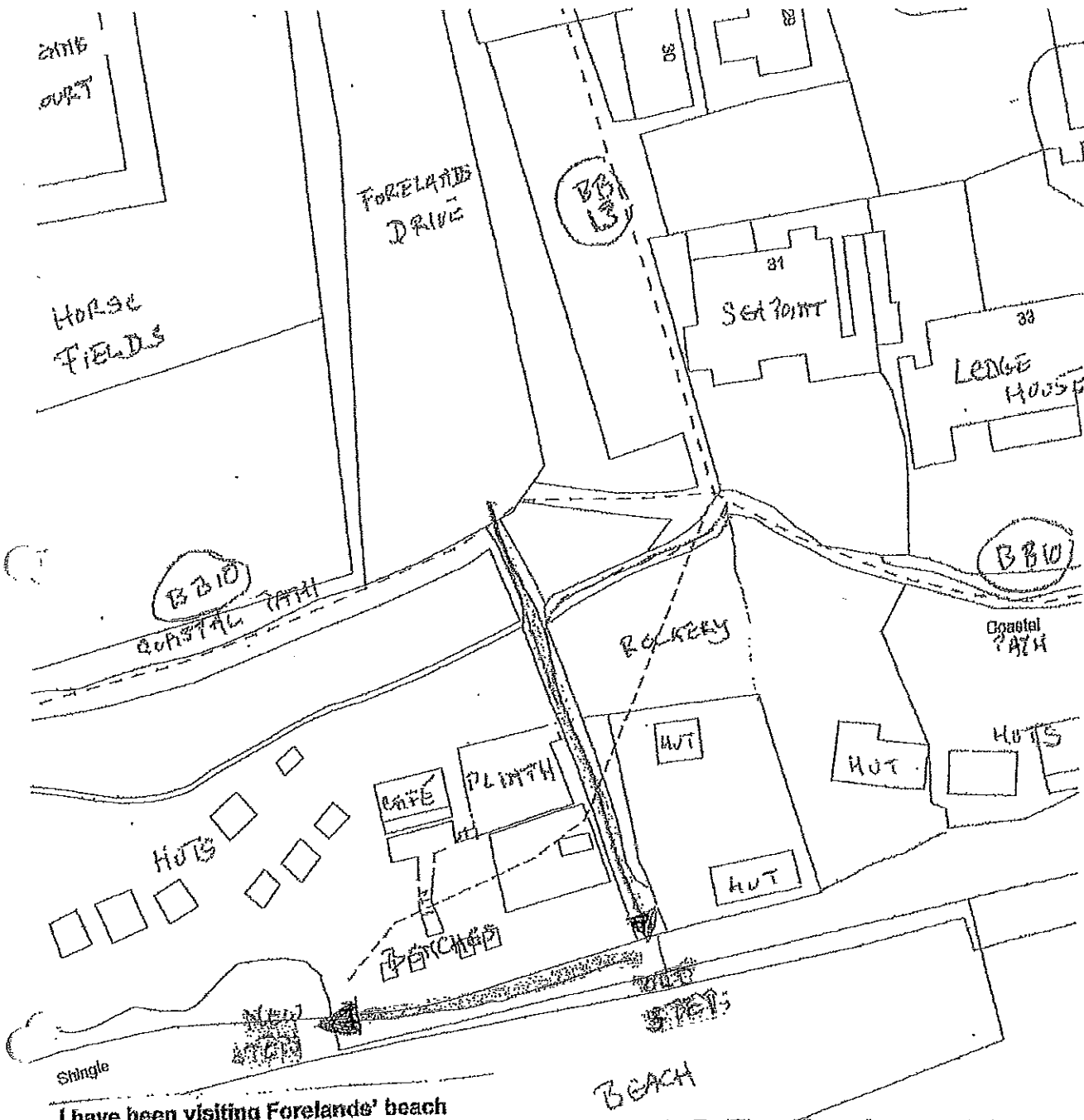


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PRINCE PHILIP'S Name PRINCE LIBERTY

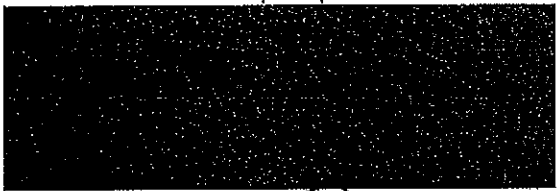


Date 24/6/2016



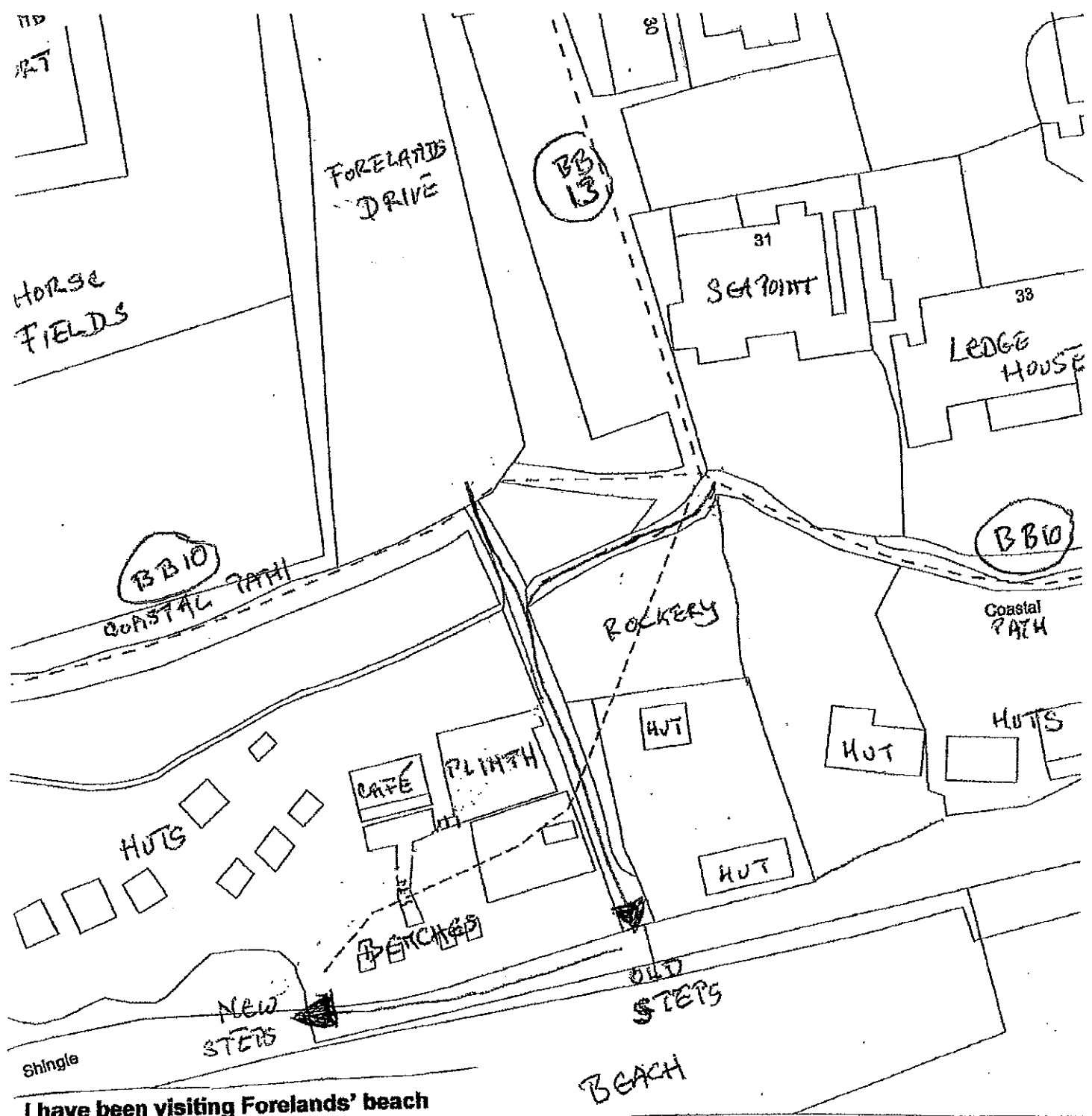
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Name ANTHONY PITCHER



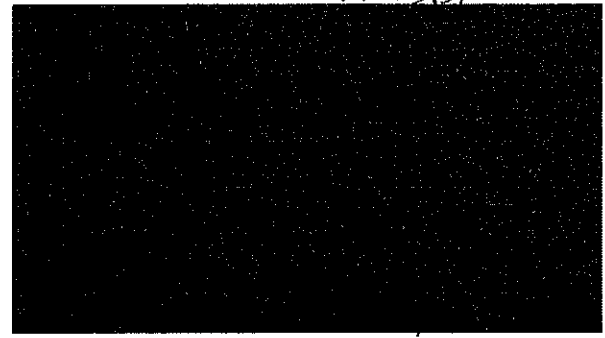
Signature A. Pitcher

Date 2/6/16

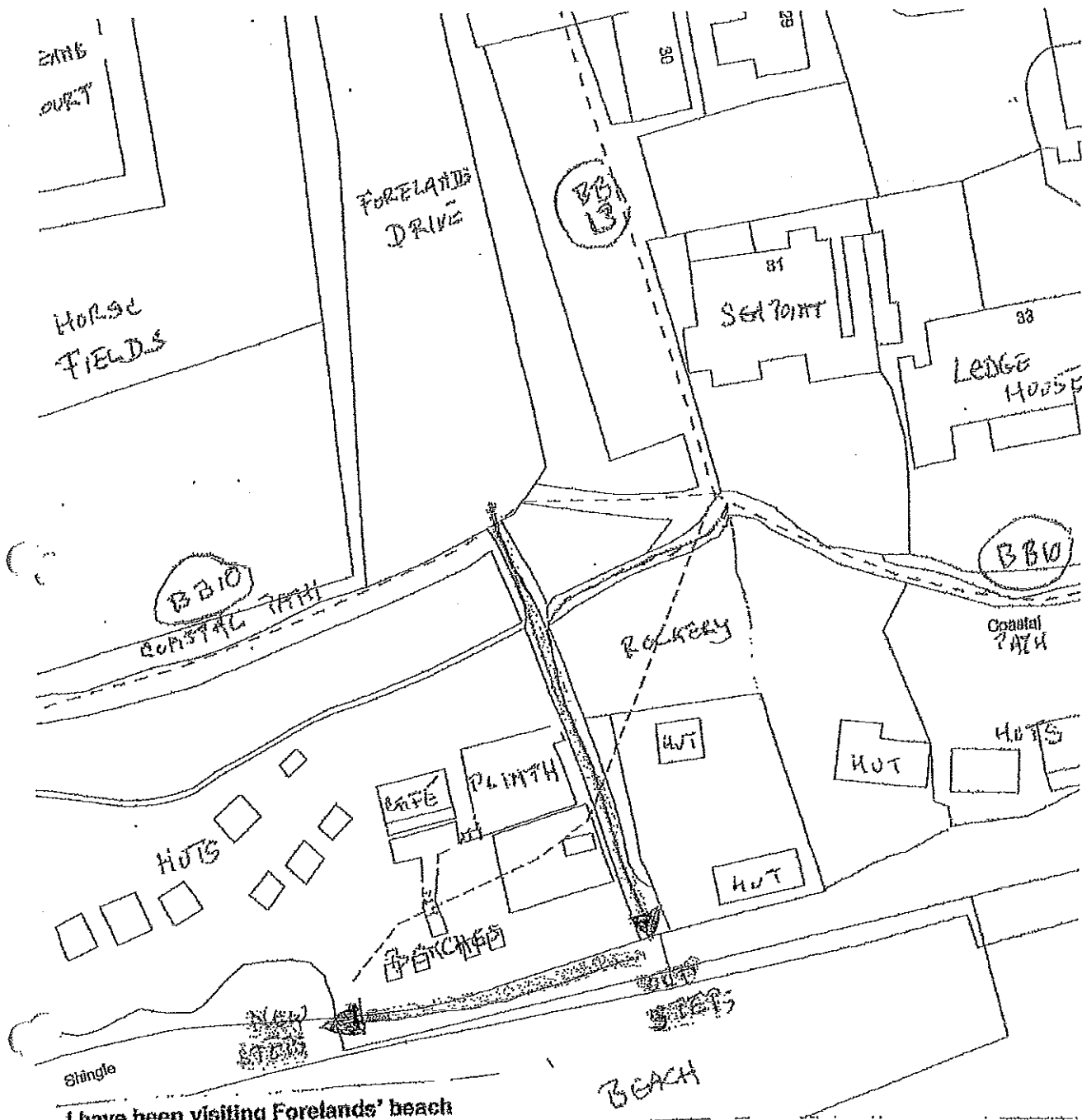


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Name CHRIS PENNY



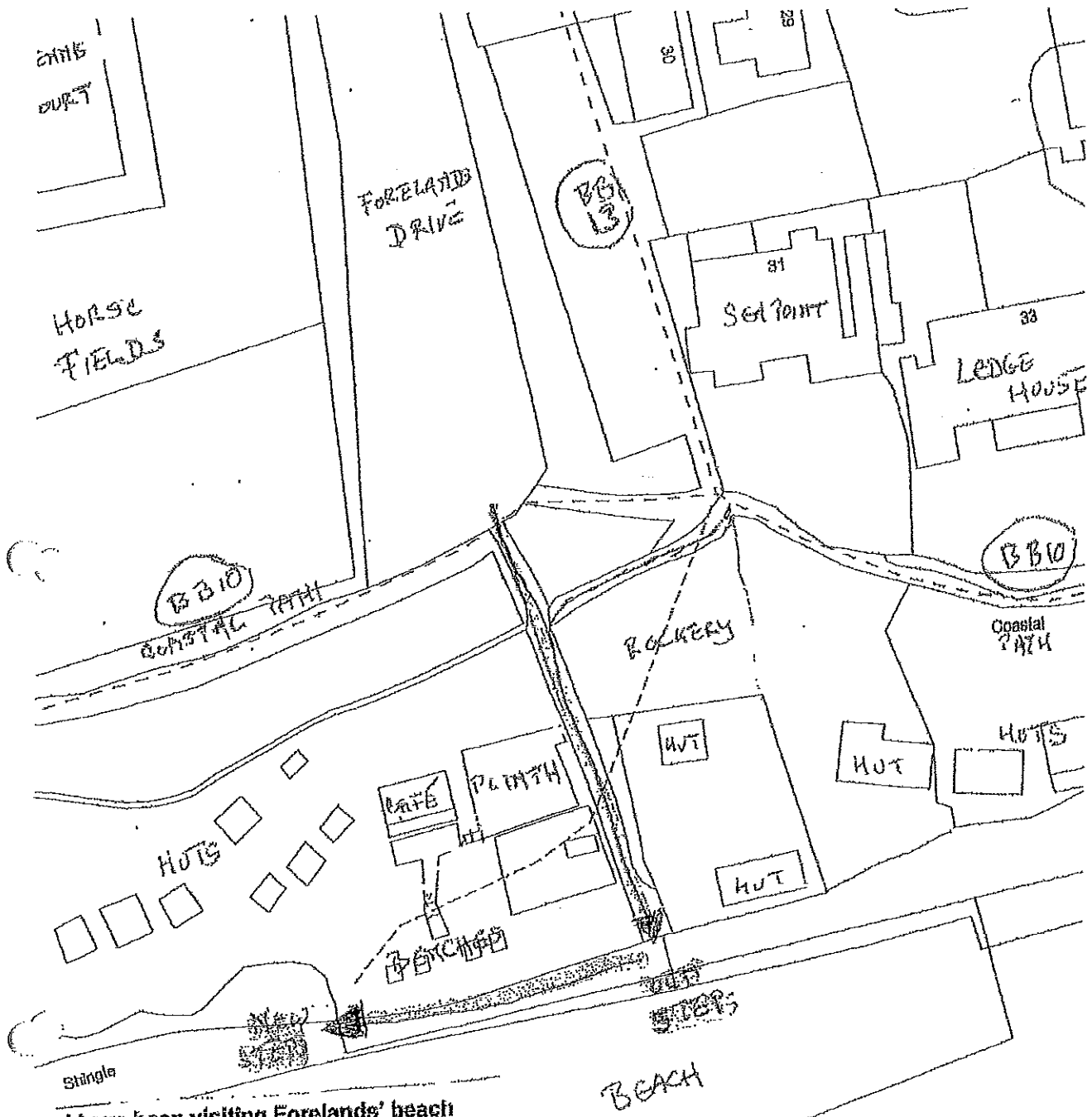
Date 4-6-16



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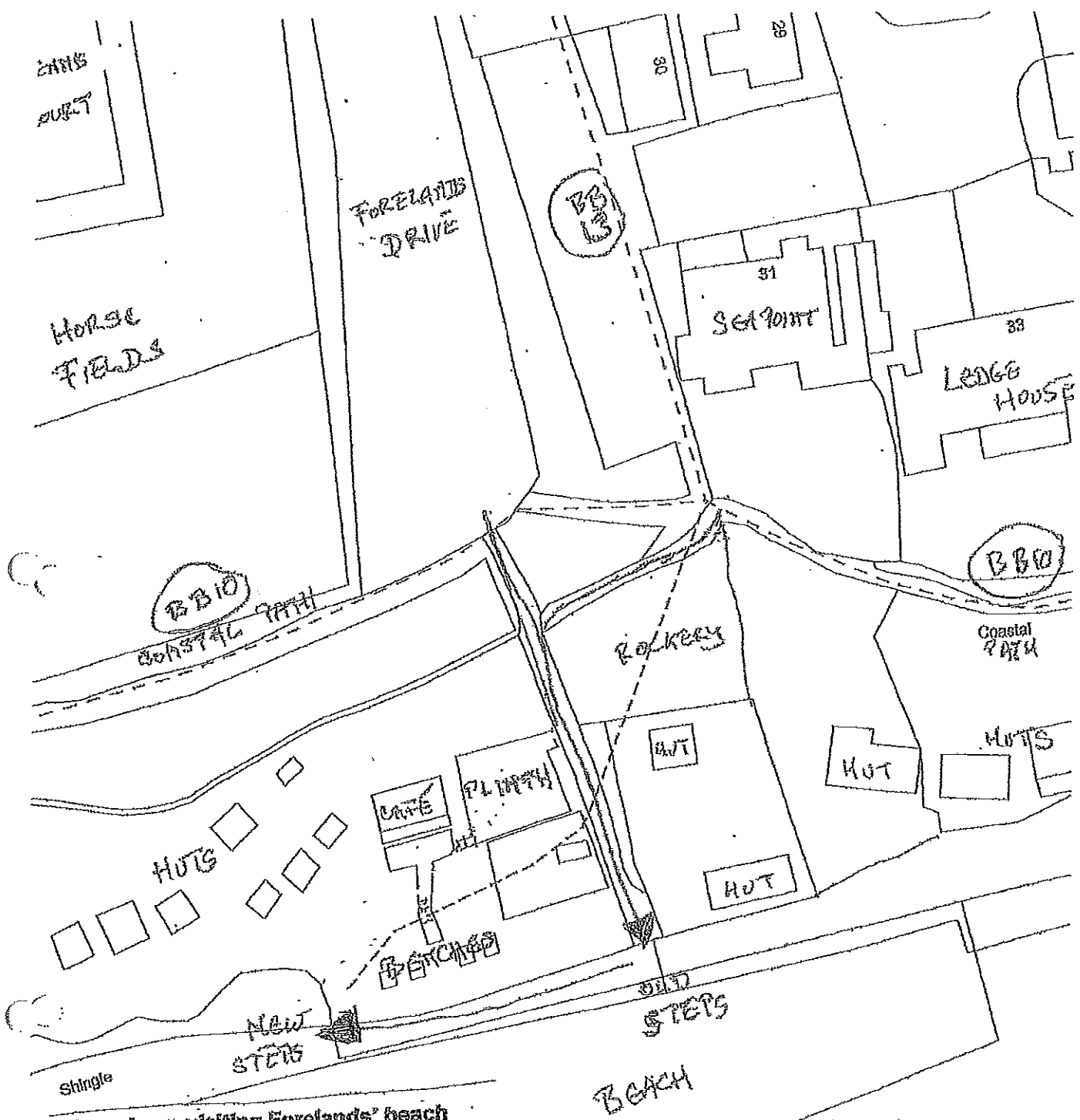
Name *Margaret Ann Pickham*  
 Address [REDACTED]  
 Date *5.6.16.*





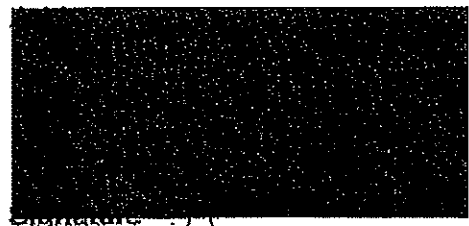
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Name JAN I. PICKINSON & MARYA  
 Address [REDACTED]  
 Signature [REDACTED]  
 Date 26 June 2016



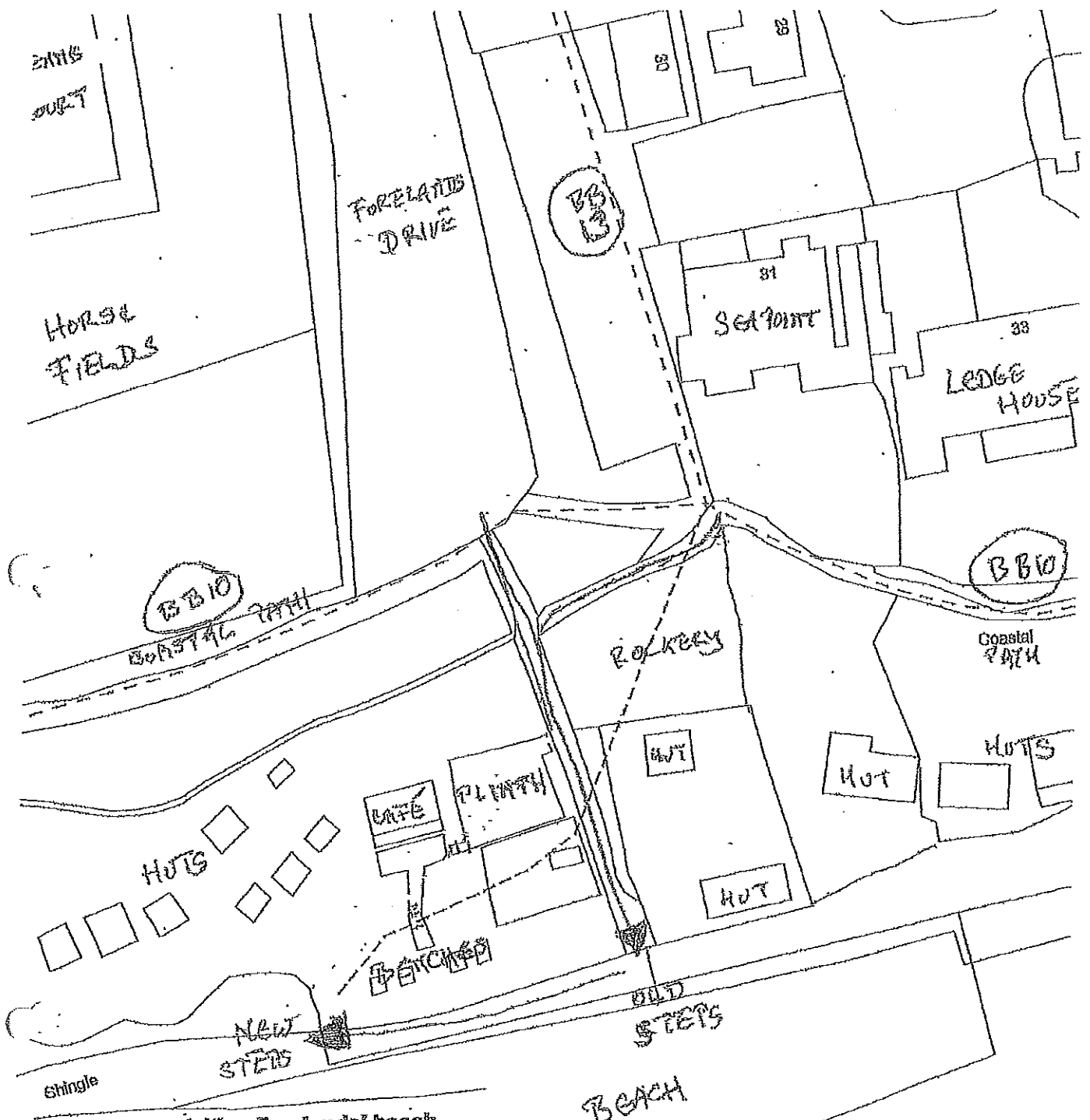
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Name S.A. PRICE.



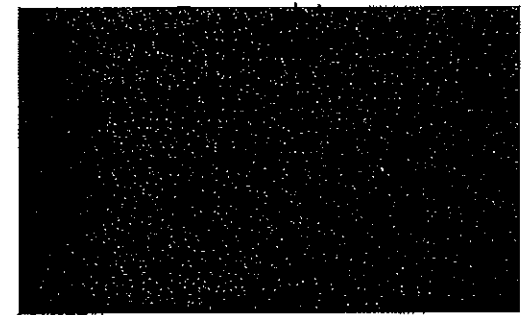
Signature *S.A. Price*

Date 24/5/16

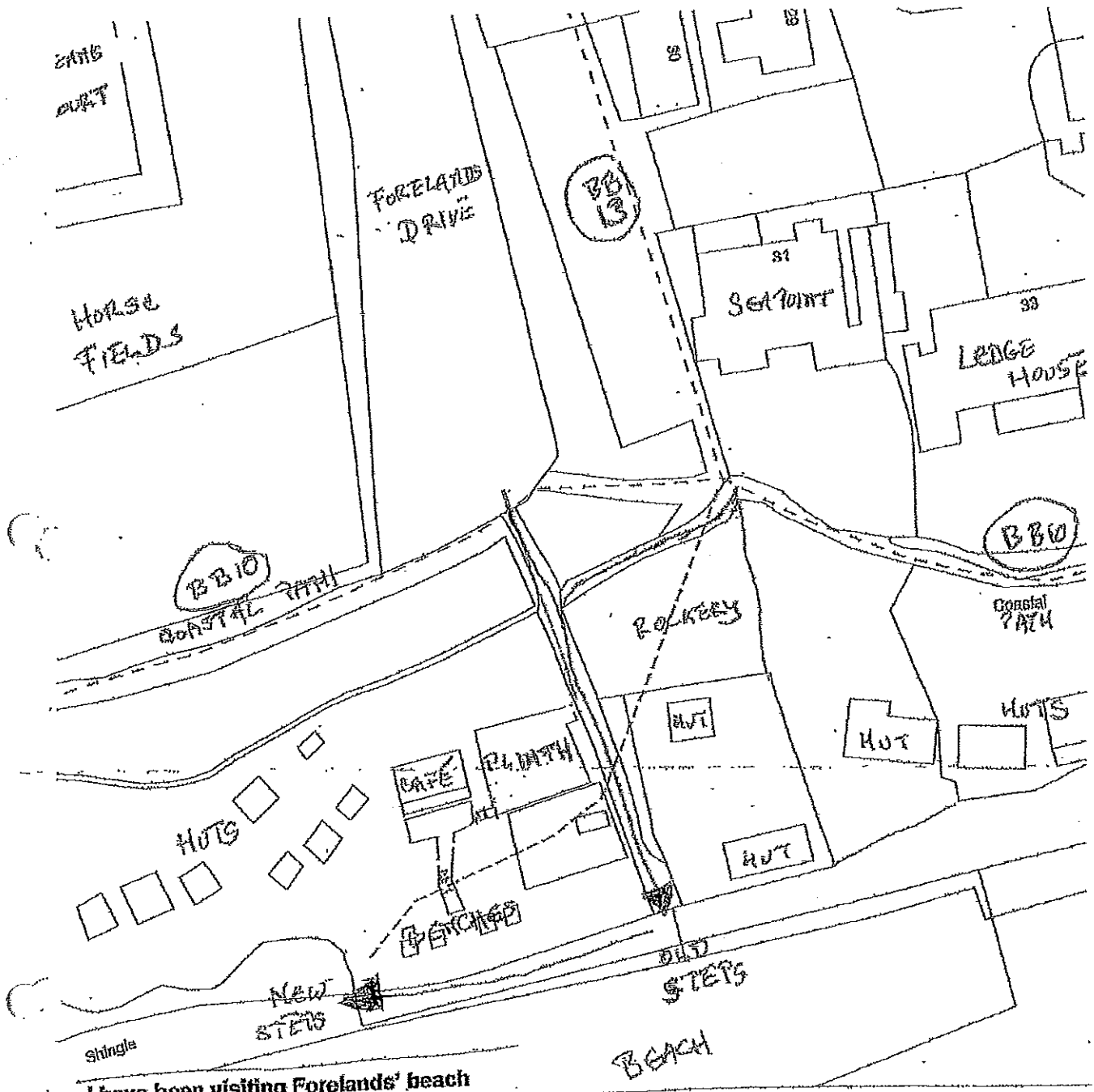


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Name PERRY PRICE

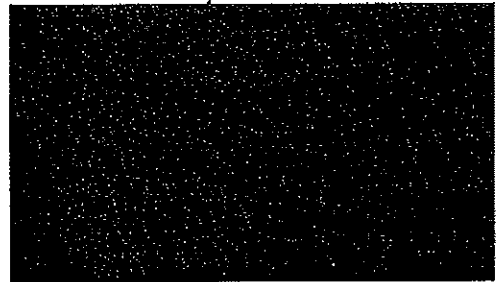


Date 24.05.16

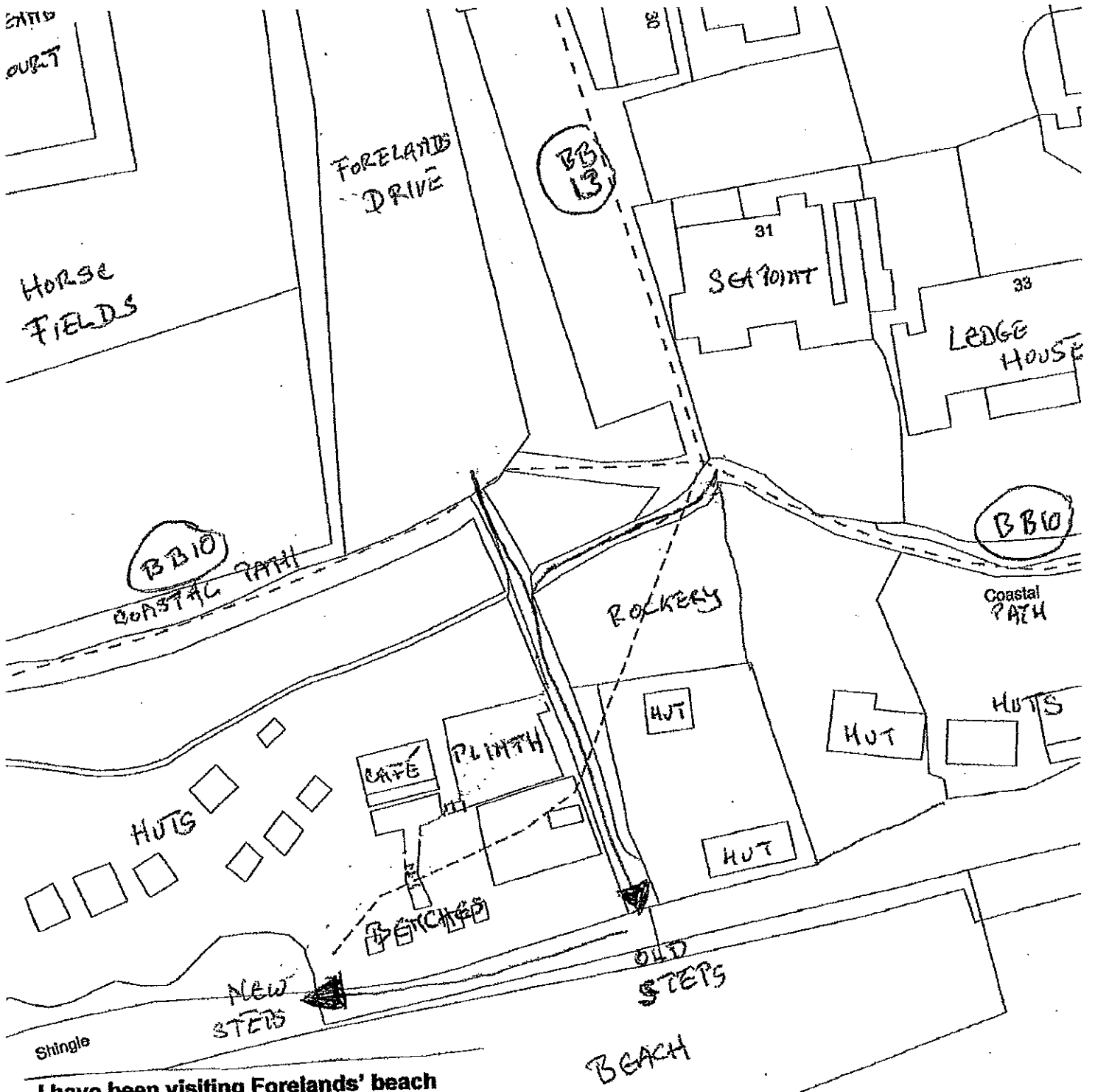


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Name **SALLY RANDLE**

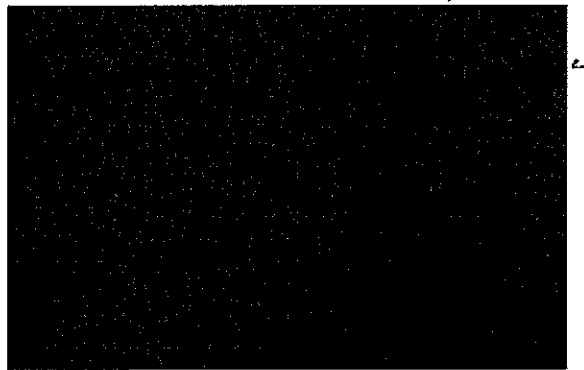


Date **18.5.16**

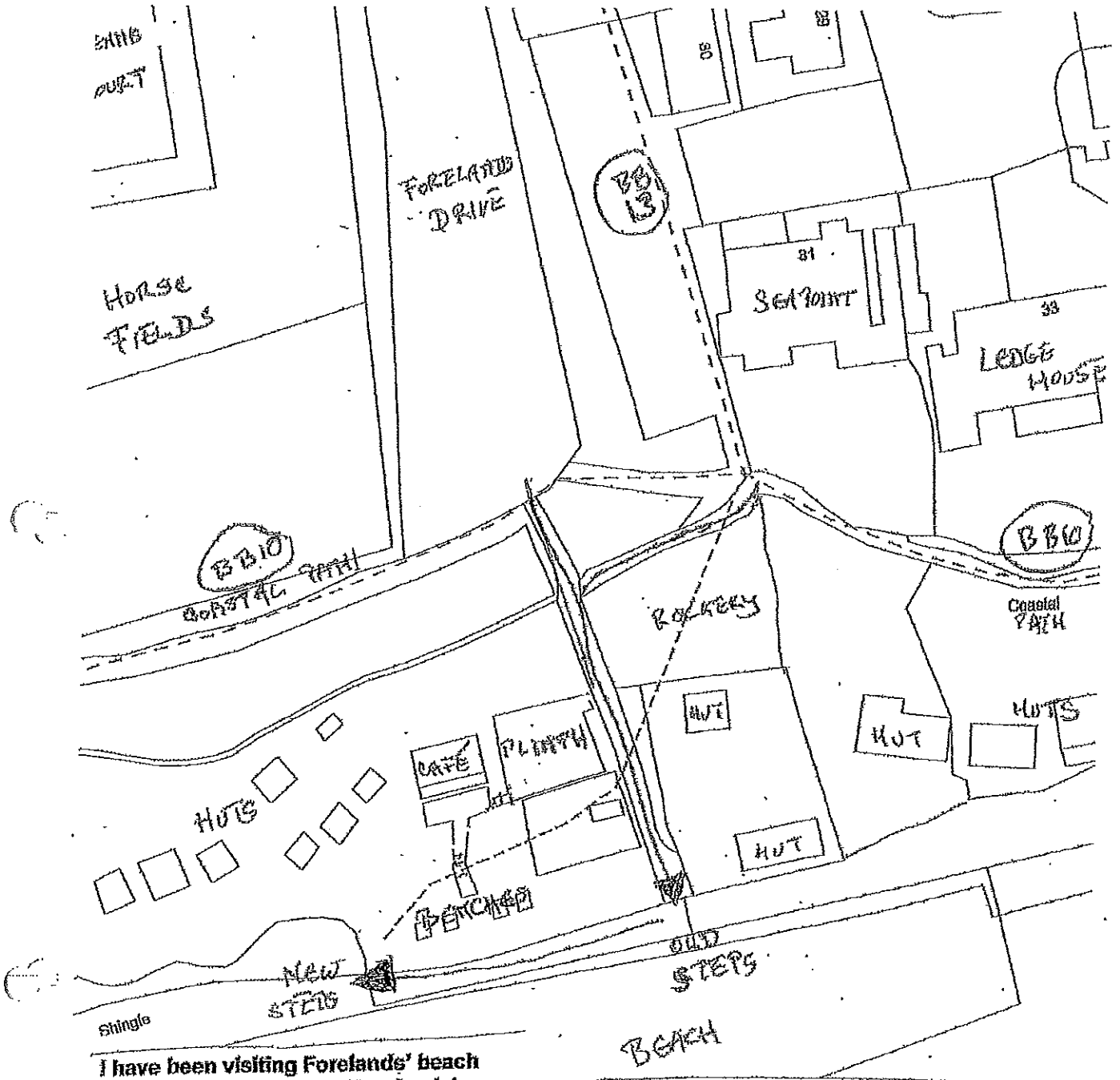


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Name LIZ READING

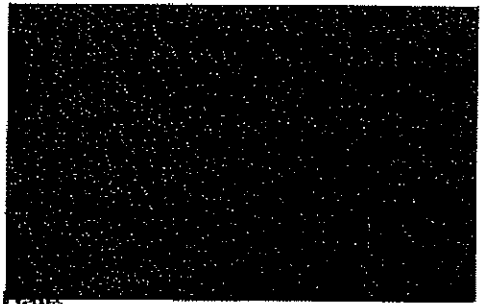


28/5/16.

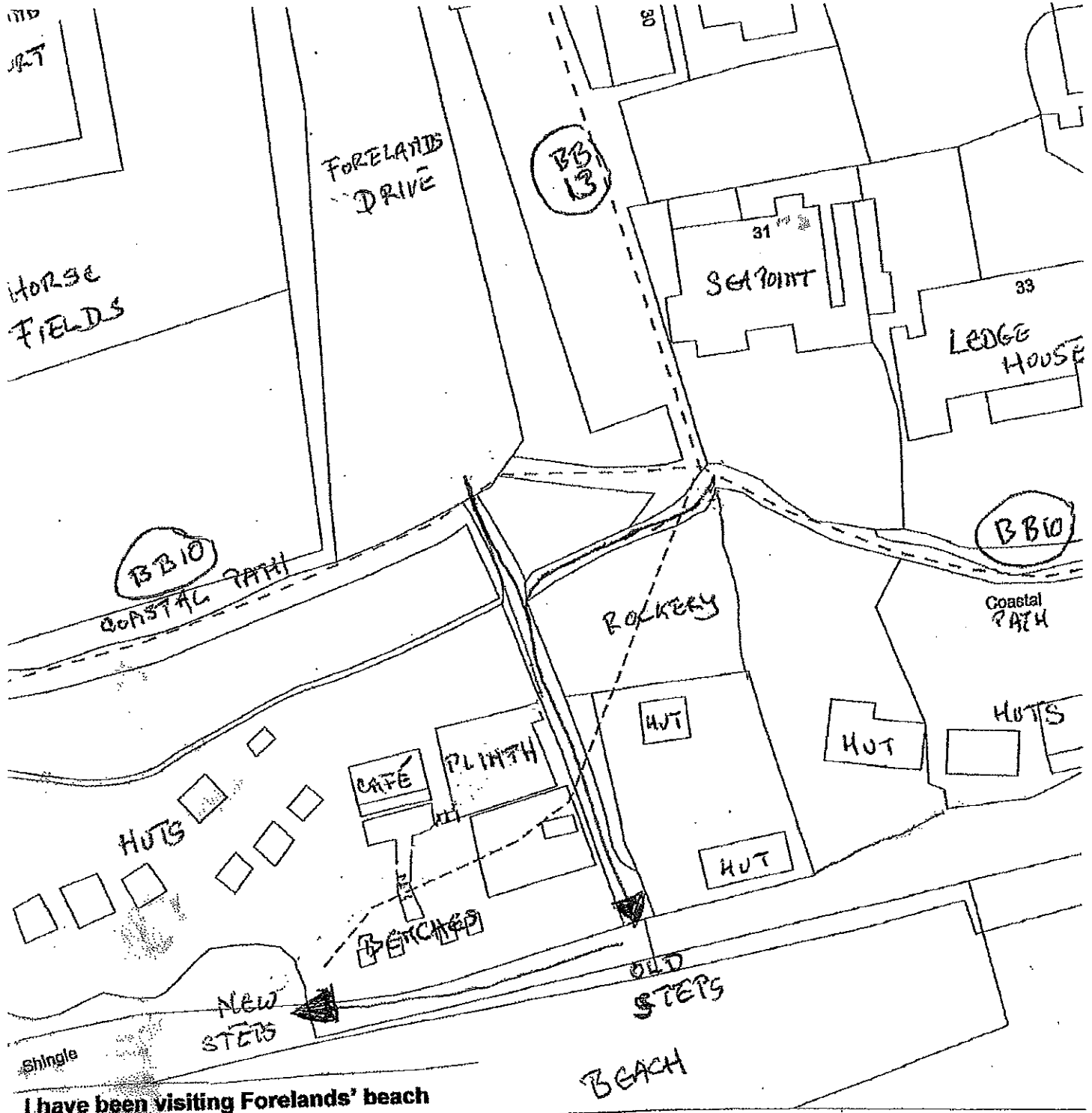


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Name DO & PAUL RICHARDSON



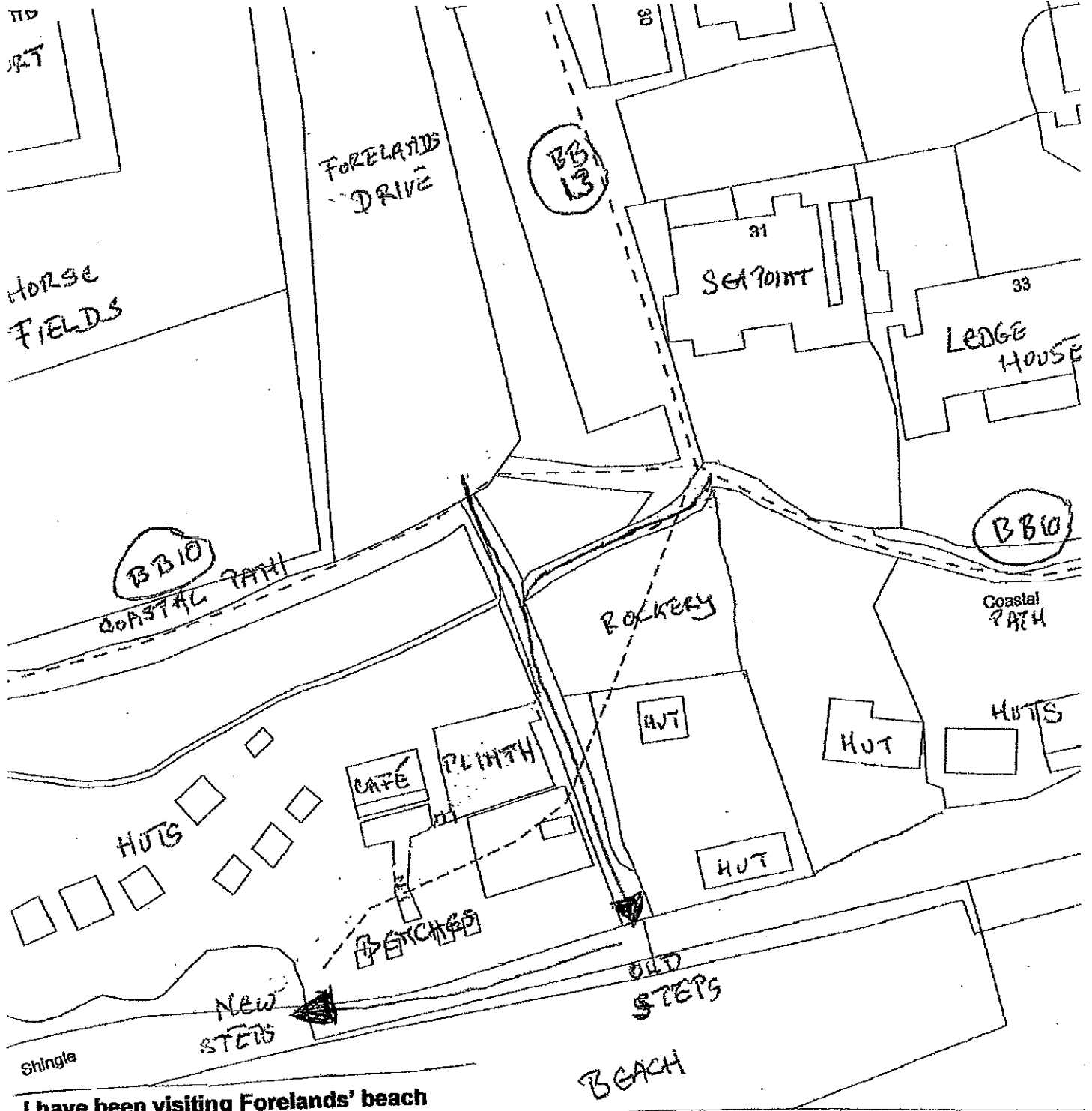
17/5/2016



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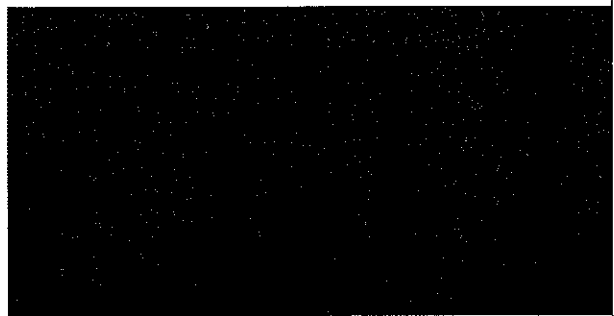
Name *Lee Rogers*

Date *2/7/16*



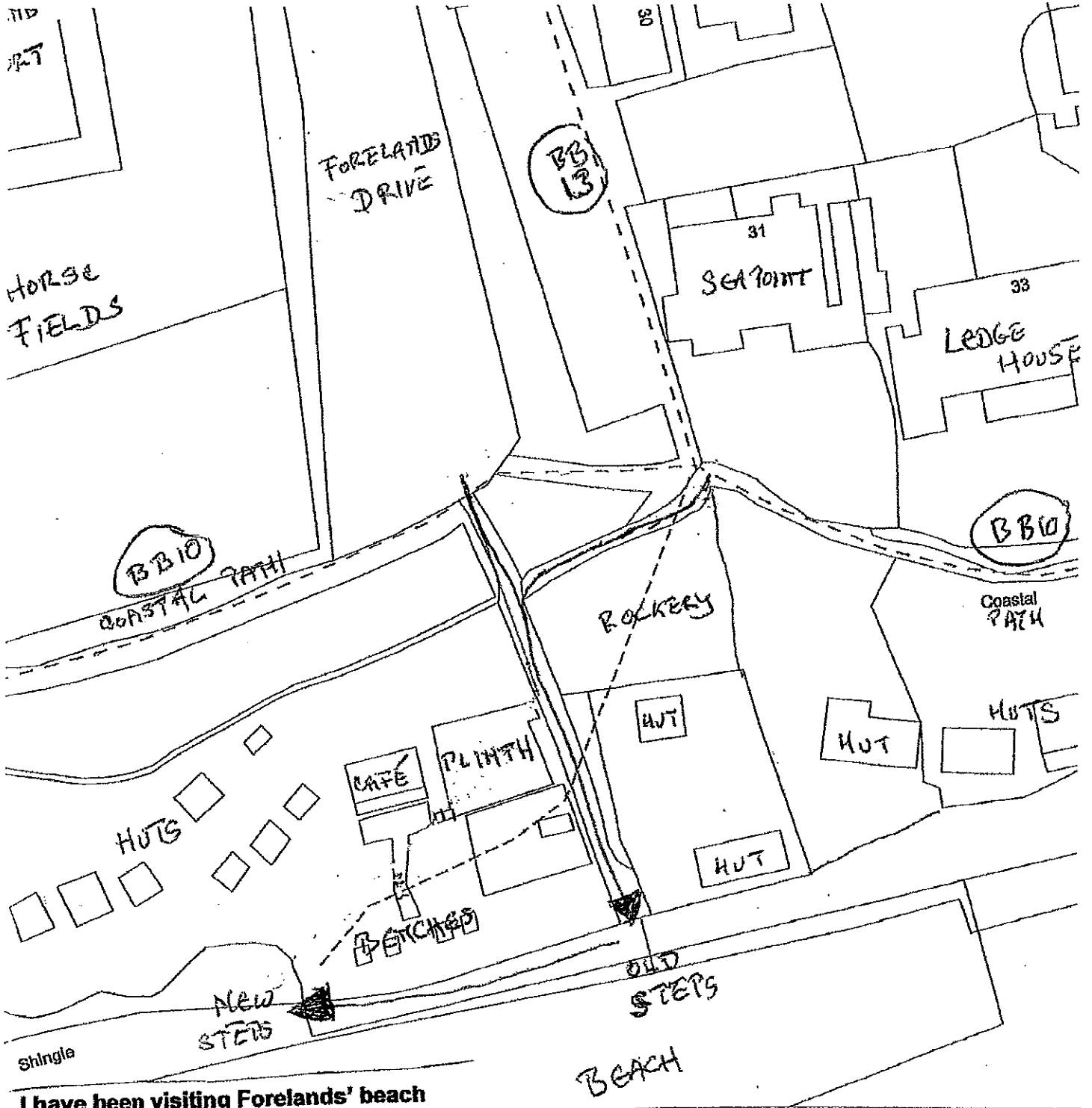
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Name *DR. A. J. SCOURFIELD*



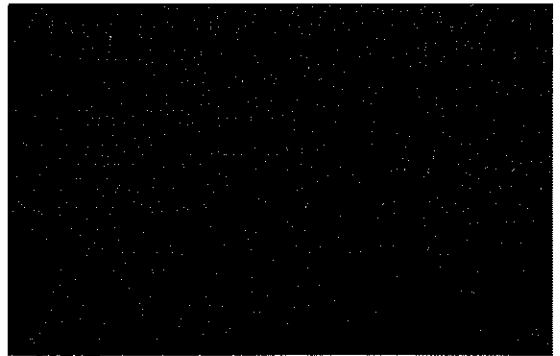
Date *3.6.2016*



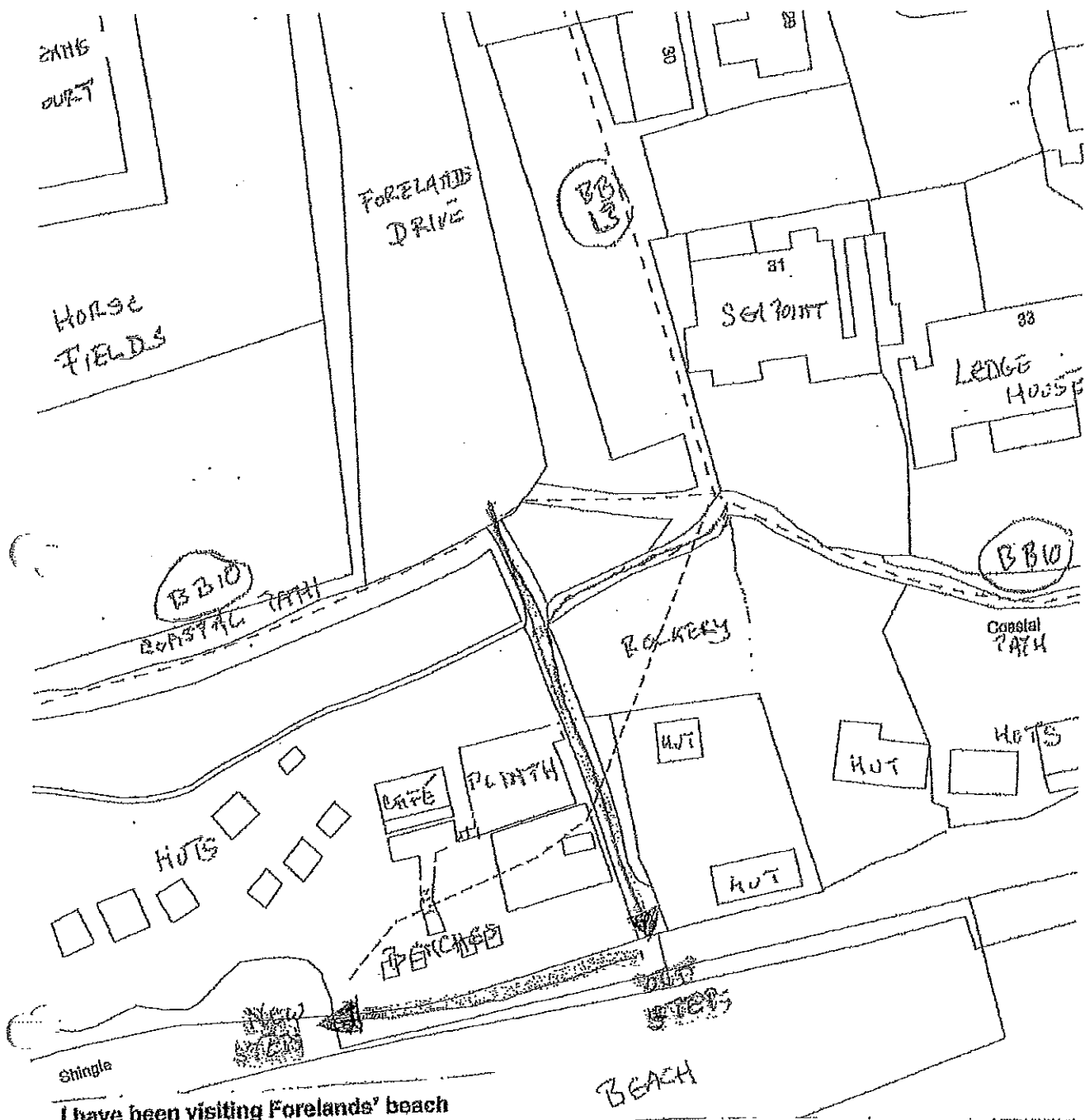


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Name JANE SWURRIGID.

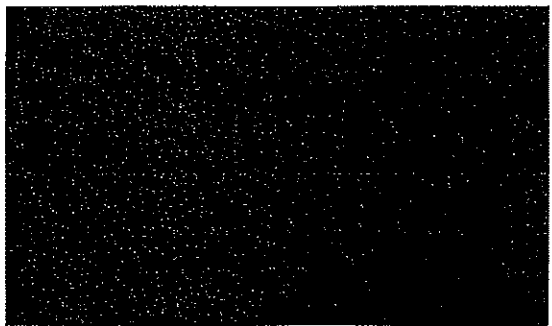


Date 3.6.2016

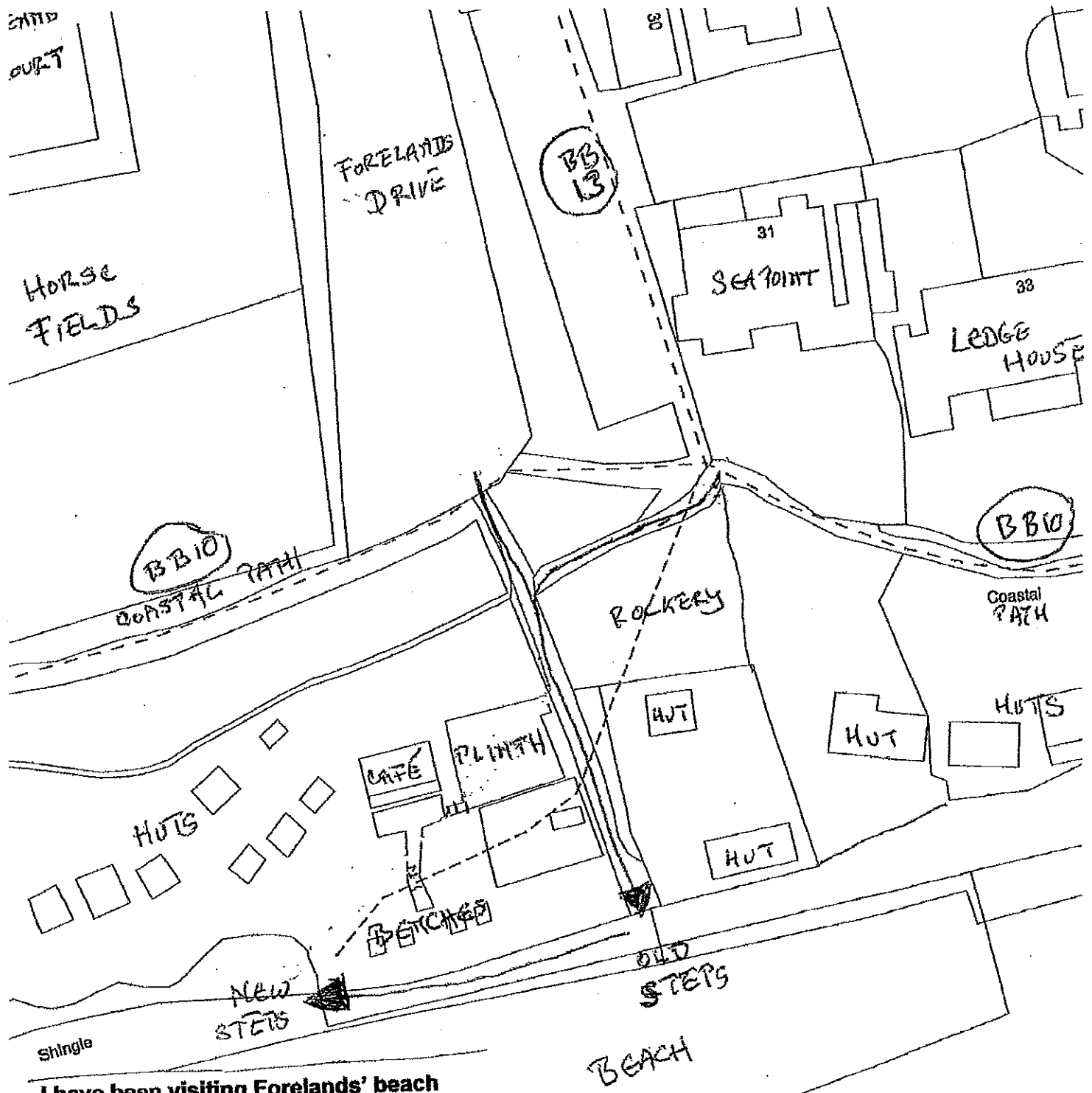


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Name THOMAS SCOTT



5 June 2016

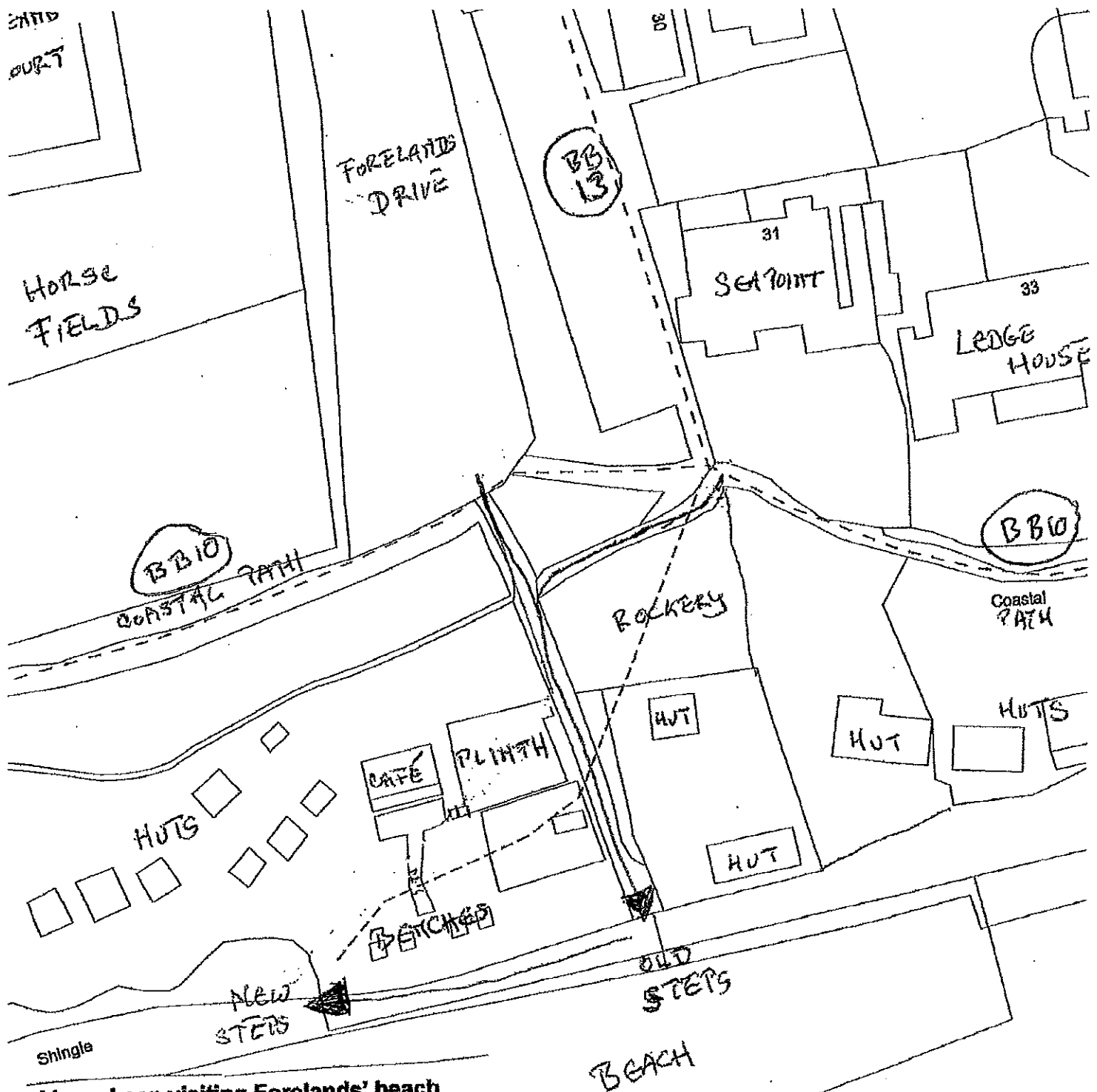


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Name *ROBERT SMITH*



Date *24/5/16*

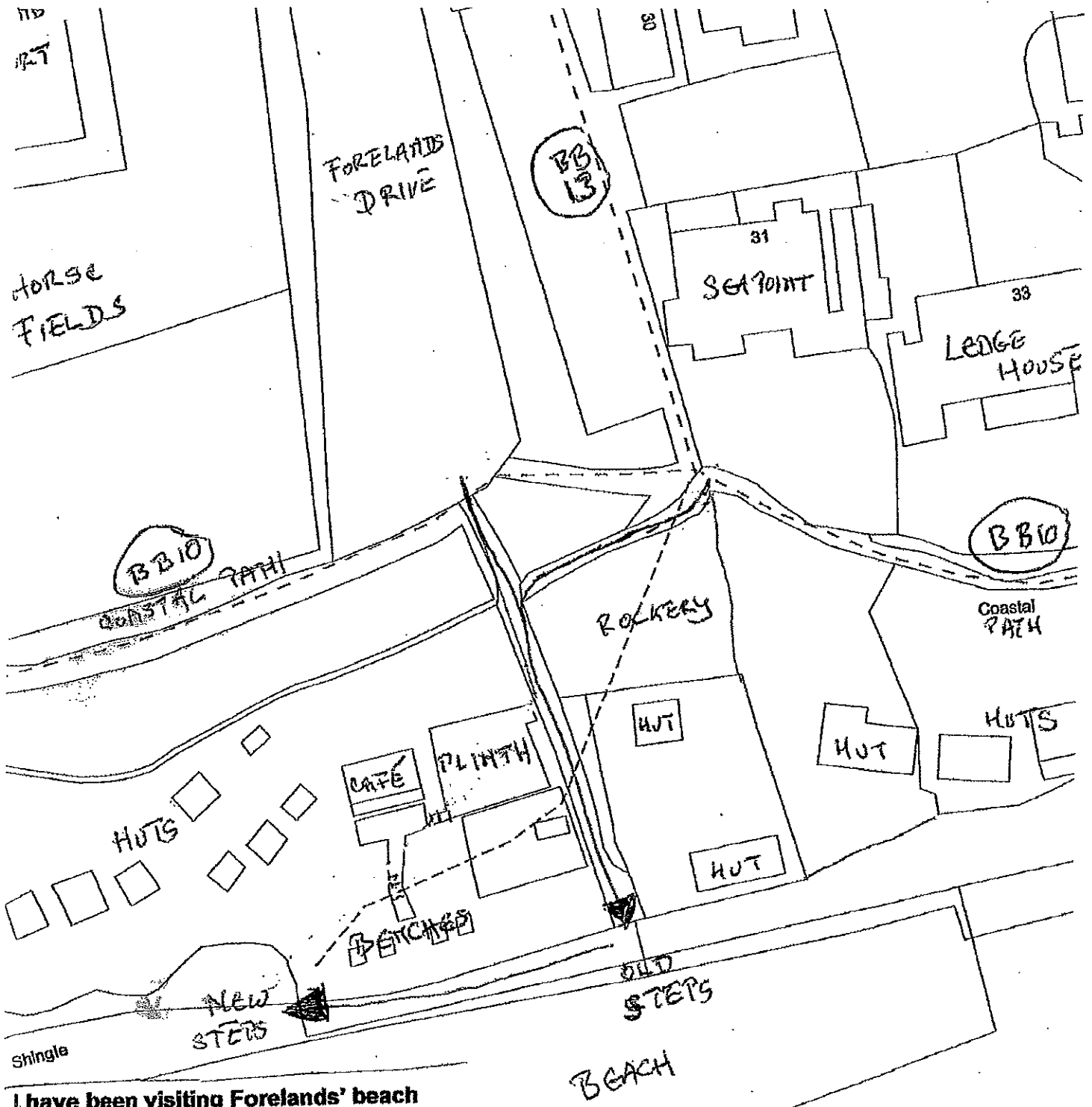


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Name PAUL STORRY

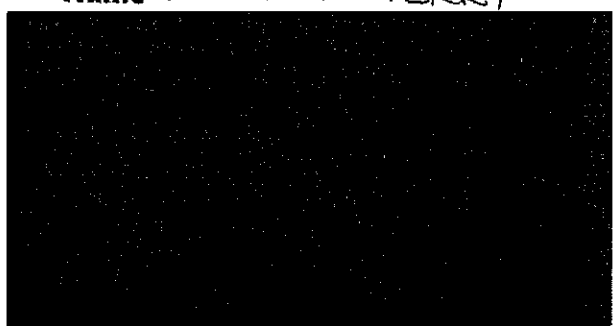


Date 24/5/16

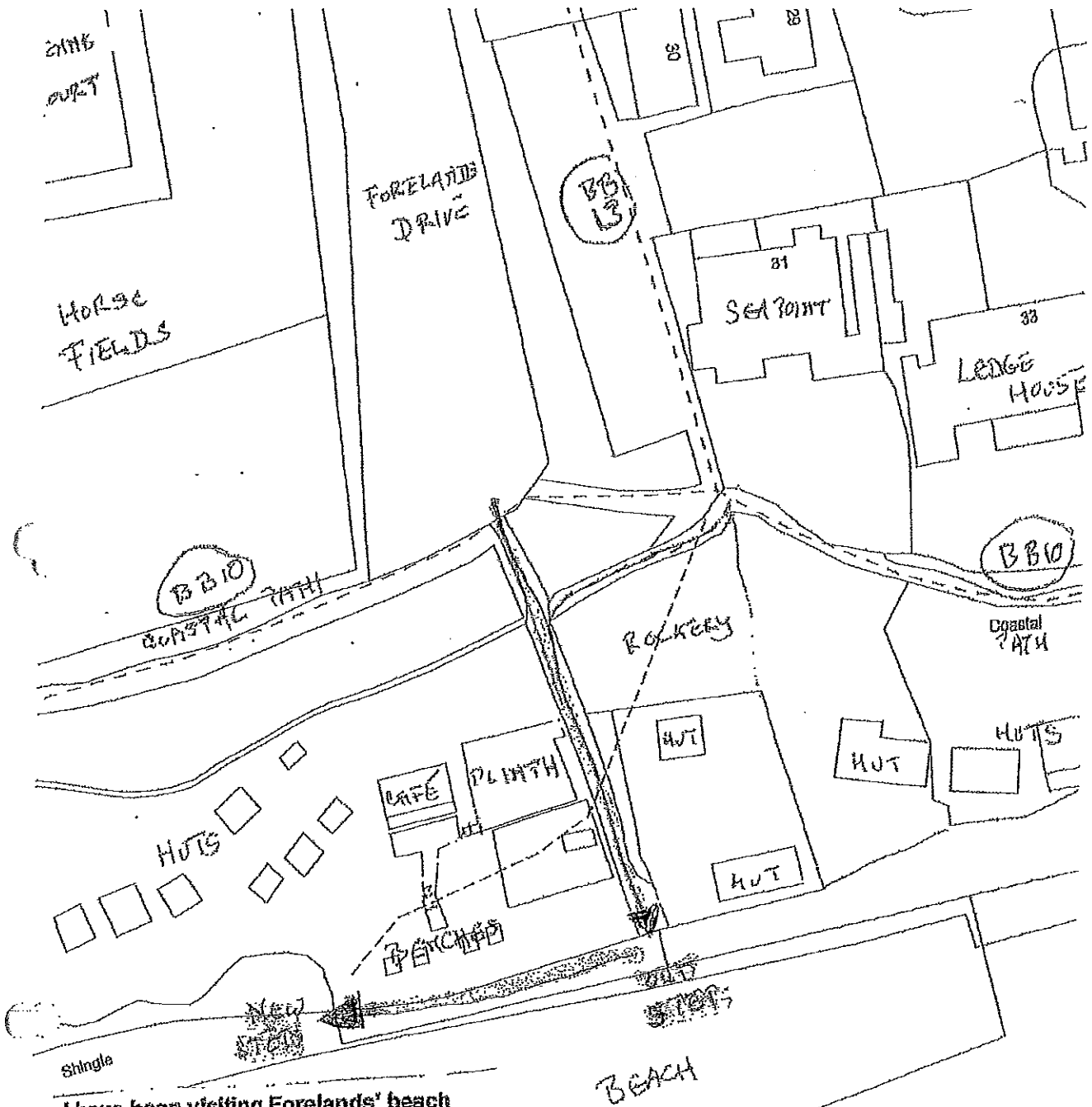


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Name BARBARA TERRY



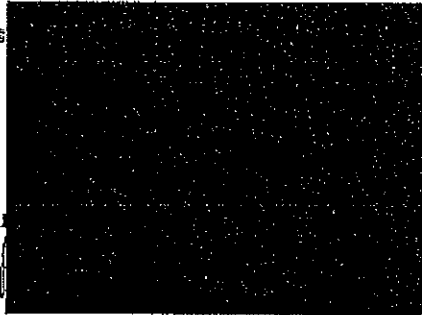
Date 5th June 2016



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Name P. WATSON LEE

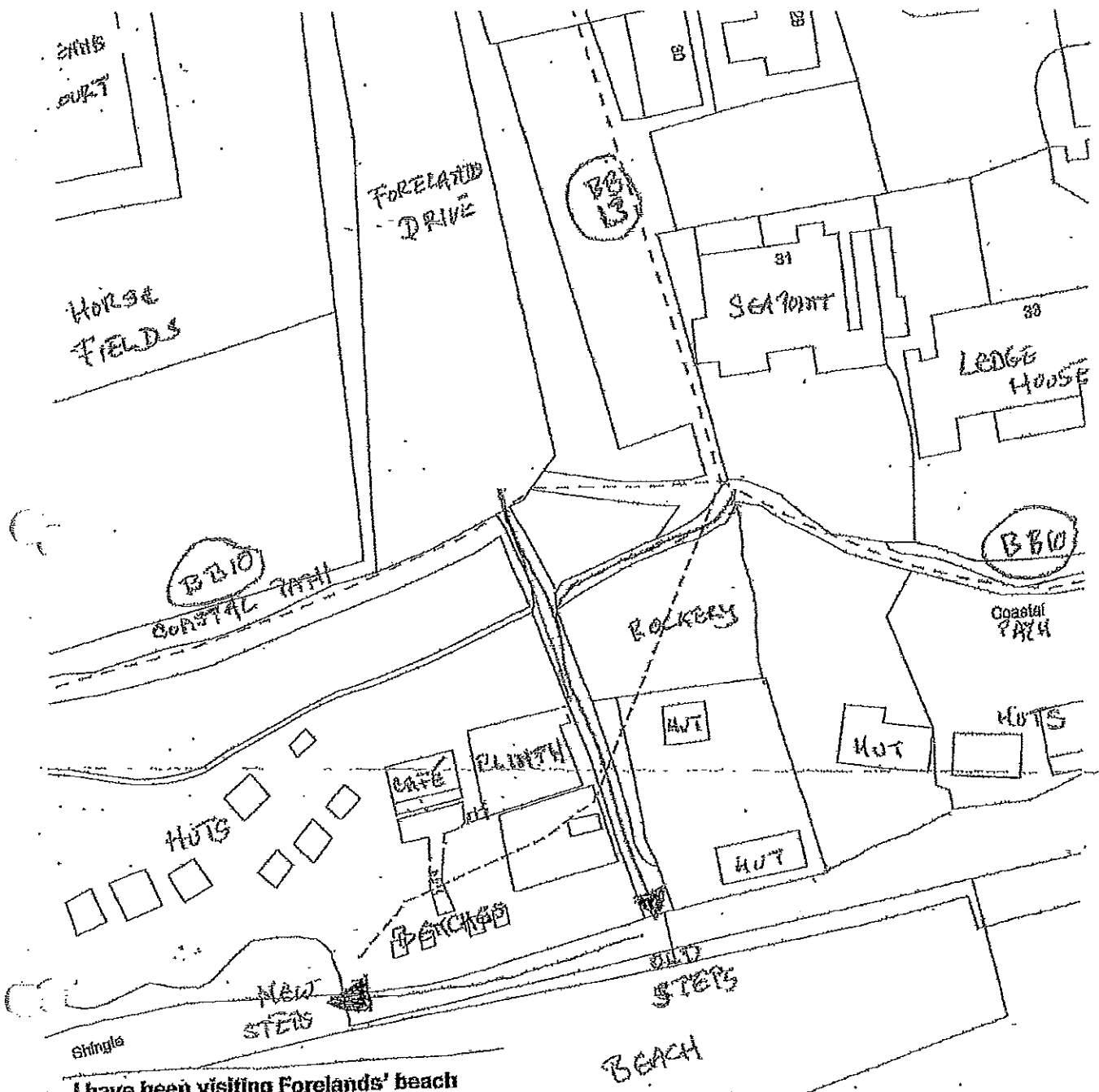
Address



Signature

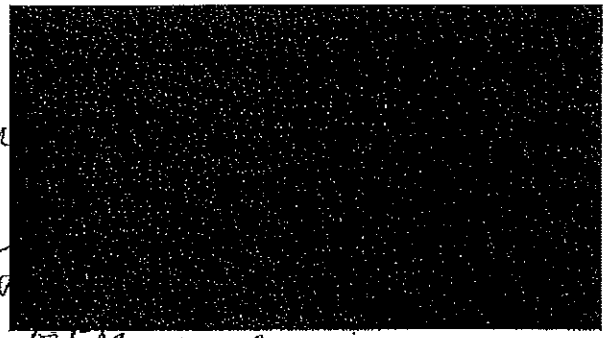
Date

5.6.16

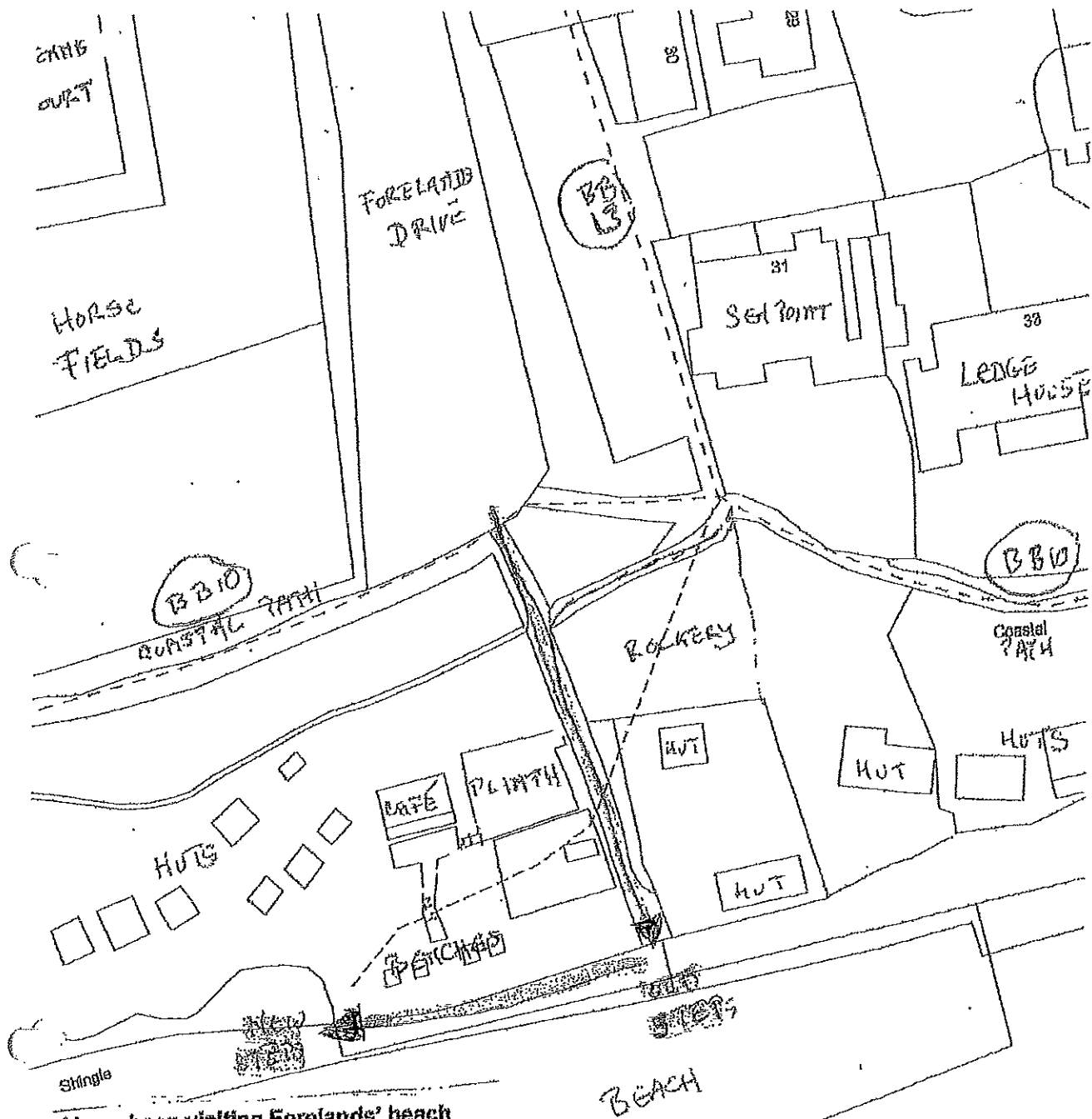


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Name DR Mrs J.F. WATT

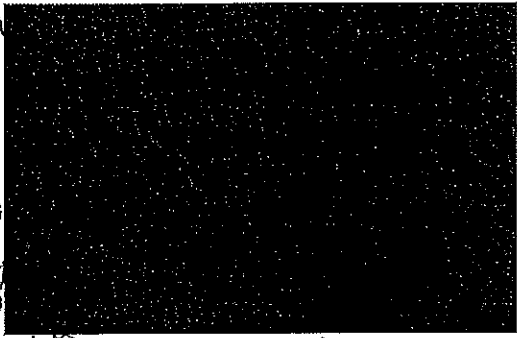


17 May 2016



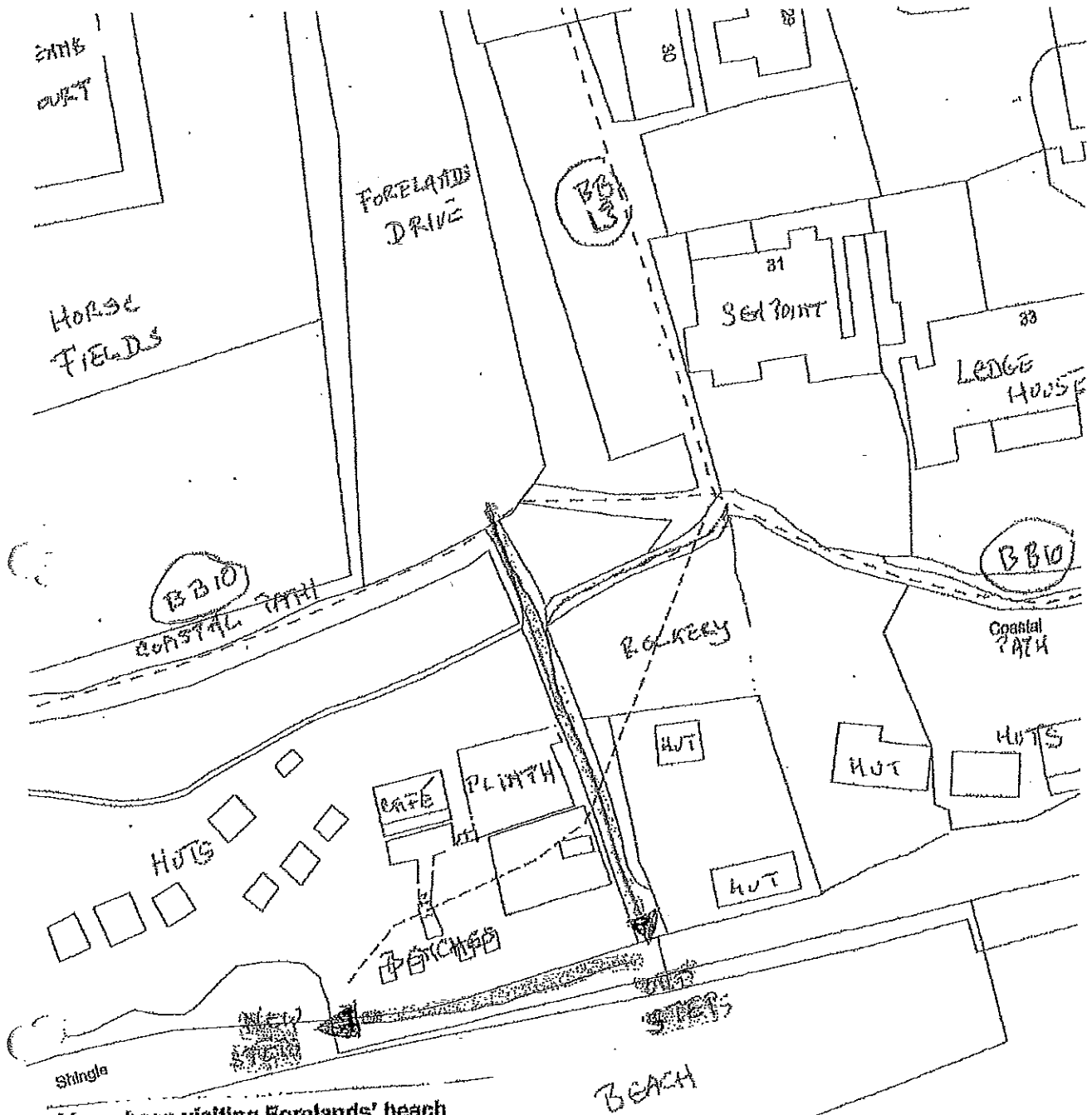
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Name John F. WATT



4 June 2016.

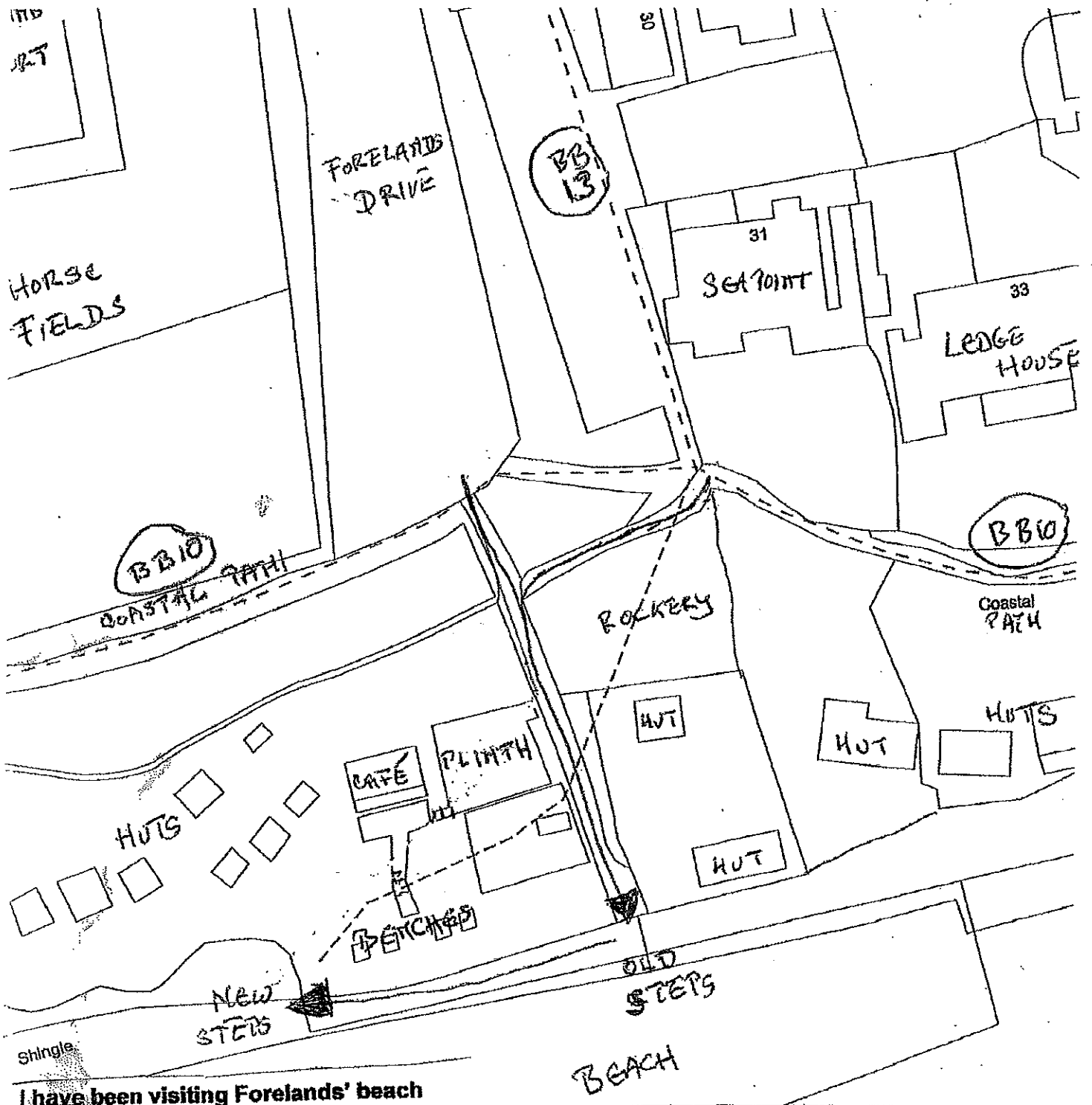




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Name J. Margaret Watt

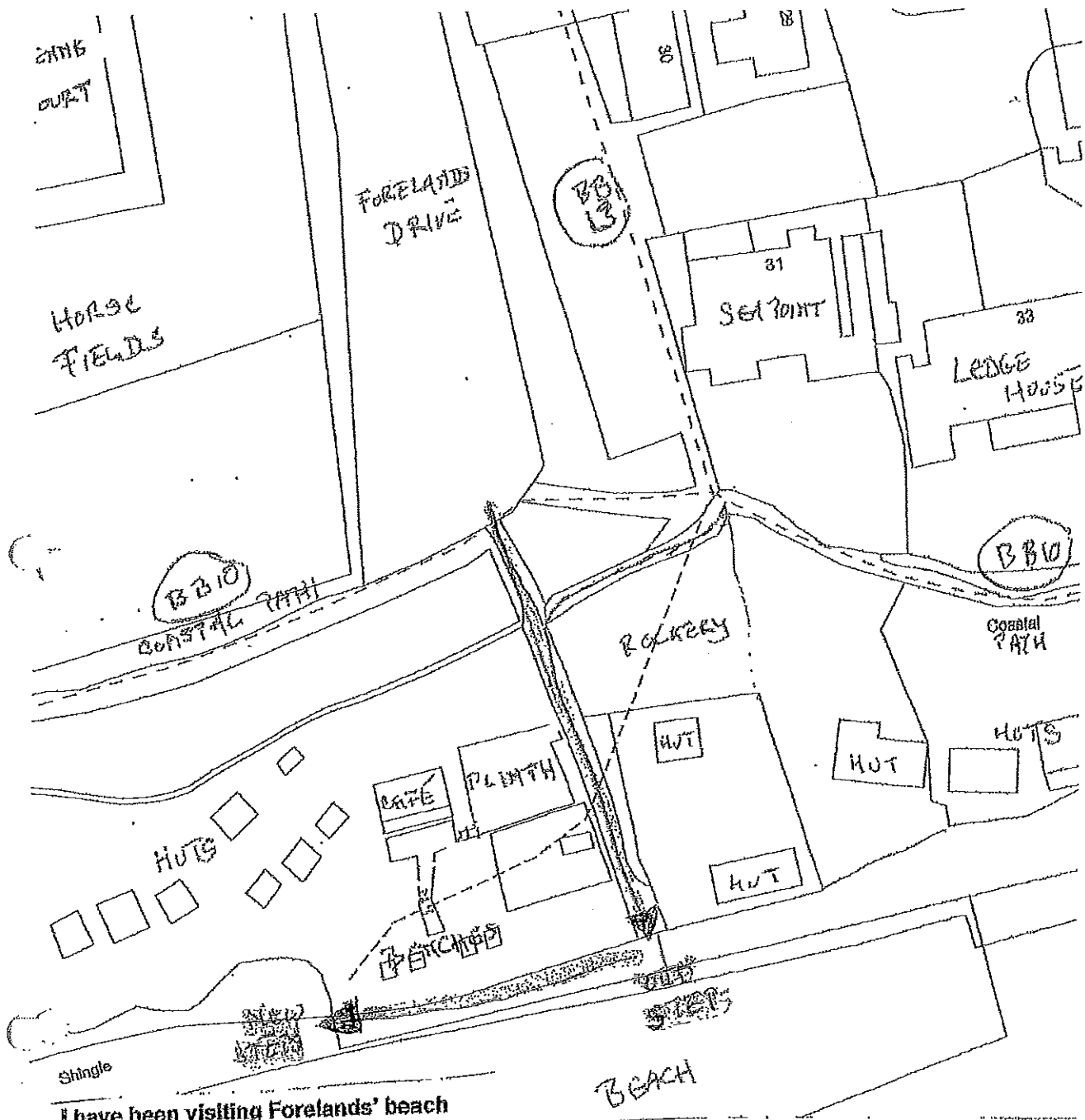
Date 4.6.16.



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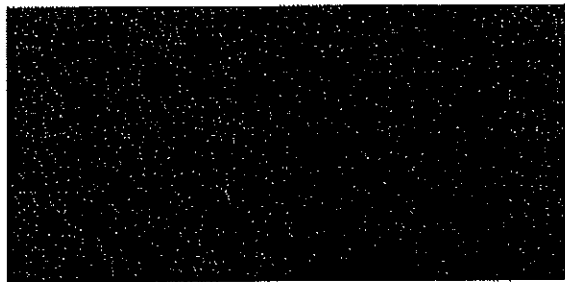
Name Catherine Weir

Date 2/7/16

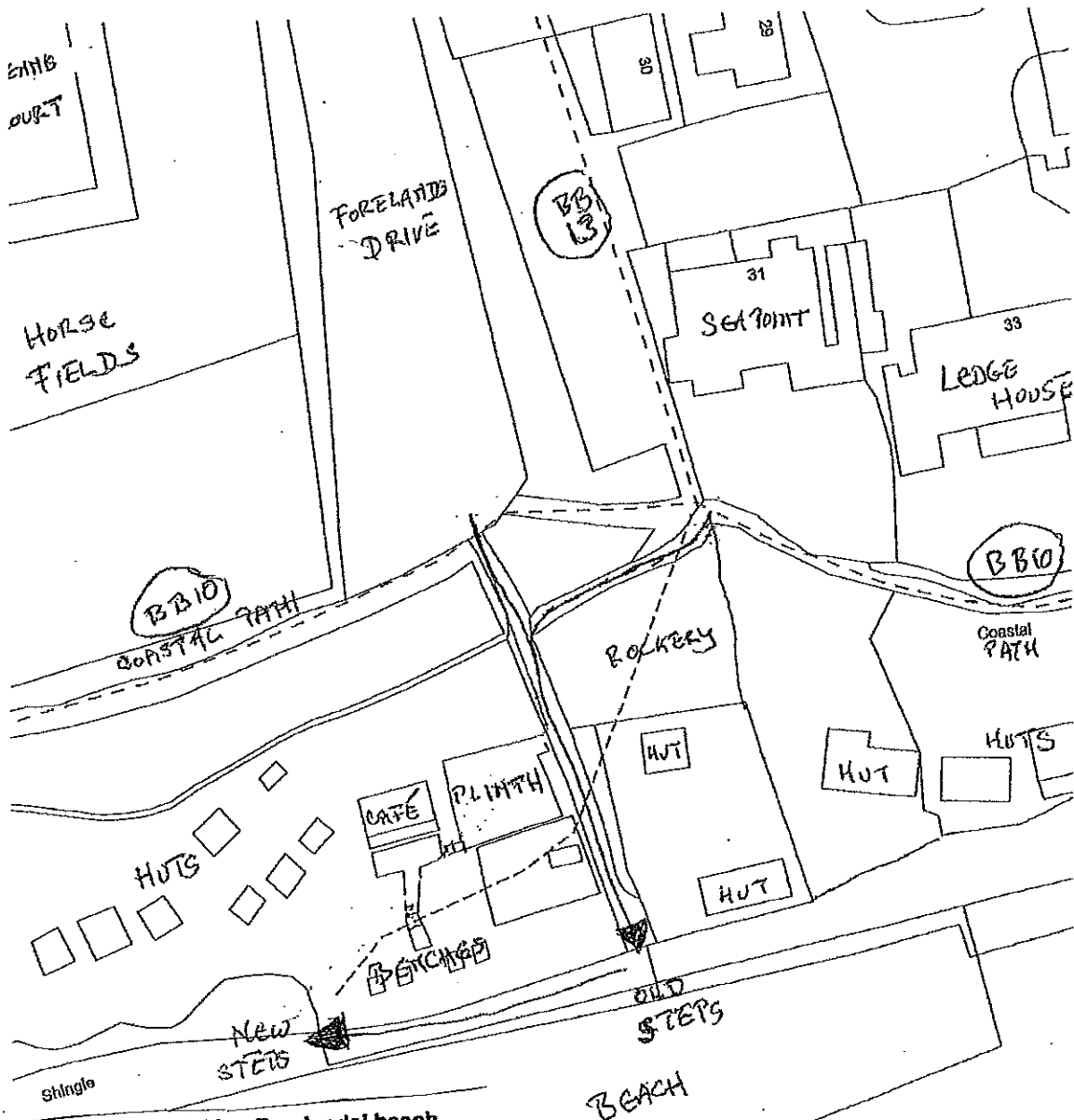


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Name K. WESTMAOTT



Date 1 vi 2016

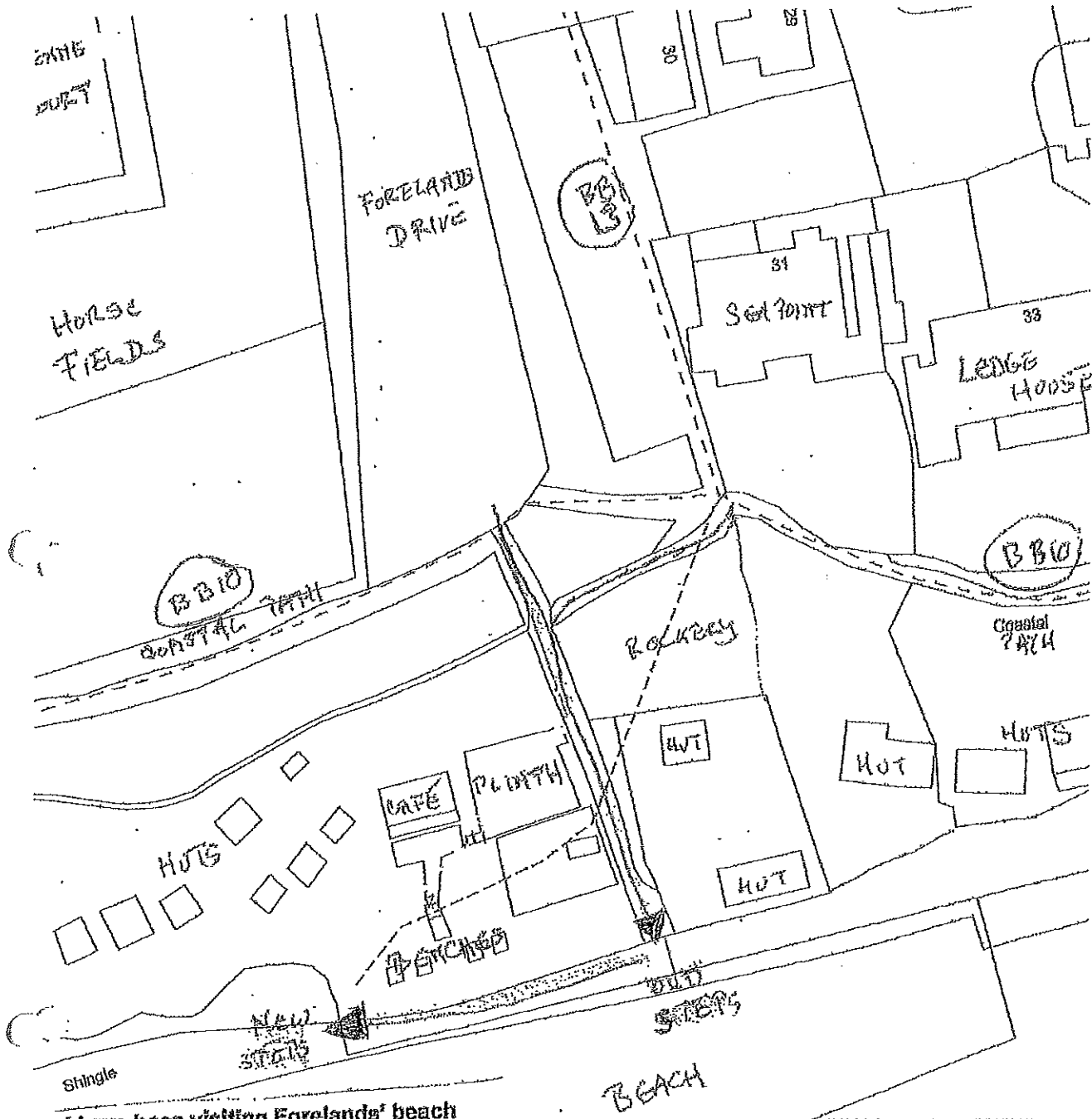


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Name *Lisa Wyatt*

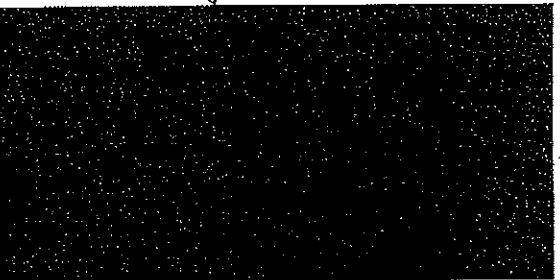


Date *10<sup>th</sup> June 2016*



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Name **MS JACKY WILLY**



Date **31/5/16**