

Emails (6) received from Applicants making comments on draft report and Isle of Wight Council Officer's Responses:

Email 1: Mr Thorne to Mr Clarke 05/09/17 (14:24):

Dear Mr Clarke,

I have today received by mail your letter and enclosures dated 1 September 2017.

I had started to assemble a list of the factual inaccuracies, protest about a procedure which does not allow me to cross examine you or others, and numerous other deficiencies when I realised that your report is not in response to our MO application of 4 years ago. I will therefore consider it no further.

Our MO application is solely to do with the length of route on top of the sea wall and not any part eastwards of our boundary. The route is currently on top of the sea wall because the Definitive Statement says it is. Similarly the route between sea wall and lane is on the shore because the DS says it is. If the Council wish to modify the route from shore to village green then it needs to follow the MO procedure but I have no necessity to apply to have it moved from a fictitious route to where it is already fully recorded as being.

When you prepare a report in response to our application I will consider it but your current report has no relevance and we will not be party to a charade.

Kind Regards
Les Thorne

Officer Response: Incorrect. The second part of the application relates to varying the particulars relating to the section east of the applicants' boundary. The Definitive Statement is silent as to the route of NT46 from the southern end of Castlehaven Lane and the eastern end of the sea wall. It is the applicant's interpretation that NT46 runs along the shore between these two points. This has been investigated and the draft report sets out a conclusion on the evidence.

Email 2: Mr Thorne to Mr Clarke 06/09/17 (11:03):

Dear Mr Clarke,

Thanks for your email.

I have made no modification order application regarding the route of NT46 east of Beach Cottage.

You are acting improperly and unprofessionally in misrepresenting my application.

I request confirmation from the Law Society code of conduct controlled person who approved your report that it has been checked and is factually correct.

I am satisfied that the route is on the shore as it has been since it was first recorded.

Kind Regards

Les Thorne

Officer Response: See response above.

Email 3: Mr Thorne to Mr Clarke 09/09/17 (16:19):

Dear Mr Clarke,

Why do you continue to say that I claim the route ran north /south across the village Green when that was superseded when I studied the OS current in 1952, saw that the lane ran directly down to the shore and sent you a pink shaded plan of the two, lane and shore.

That is clearly the route of NT46 and it is that alignment which the report needs to state is my evidence.

Not that I accept the draft as being appropriate to my application.

I have identified many errors but as you are unprepared to correct the fundamental one, that you have to rely on the DS to describe the route and not introduce unmentioned features which did not exist in 1952, I consider it pointless to identify them.

Kind Regards
Les Thorne

Officer Response: The maps attached to the application form all show NT46 marked by the applicant as running north/south across the village green. The Council has never been informed that these maps be withdrawn or the application be amended subject to the email of the applicants dated 11th October 2017 (see below).

Email 4: Mr Thorne to Mr Clarke 25/09/17 (16:43):

Dear Mr Clarke,

Could I remind you that I await your response on who in the legal department approved the committee report.

Regarding Appendix 8, Item 8. I need this previously unmentioned document given some context. Is it just an internal council list? Why is it unattributed and undated? - please provide that information. Does it purport to show the situation in 1952 except for CB30.

What authority does it have compared with the Definitive Statement? Has it been verified on behalf of the Secretary of State for Transport?

I will await your advice on this and previous outstanding matters.

Kind Regards
Les Thorne

Officer Response: Please refer to paragraph 43 of the Report. This document was produced by the Rights of Way Service in 2017 for the sole purpose of this application and to demonstrate that public rights of way recorded on the Definitive Map for the Isle of Wight providing beach access are common whereas public footpaths recorded

as being along a beach are uncommon and none have been recorded as such in the Parish of Niton.

Email 5: Mr Thorne to Mr Clarke 25/09/17 (21:46) and PS 26/09/17 (10:55)

Dear Mr Clarke,

I happened upon these photos and others which were part of my previous MO application.

These are photos of a laptop screen, the ones you have were far clearer.

They all support the fact that the shore was both accessible and walkable but the west face of the sea wall was not.

Why are they not all in the current application?

More will follow.

Kind Regards
Les Thorne

PS Re the photos, you already have better quality ones but most of them are best seen in the IWC records in Carisbrooke.

Officer Response:

Photographs supplied are of very poor quality. The applicants have confirmed that this is due to them being photos taken off a computer screen. It is suggested by the applicants that the Council trace the originals or better copies. The Council is under no obligation to do this and it is for the applicants to put evidence to the Council for consideration. If that evidence is of poor quality then this cannot be the fault of the Council. Nevertheless, comments can be made on the photos as follows:

1. The quality of the image supplied is so poor that it is impossible for the Council to comment.

2 and 3. The Council has no record of seeing this image before. The applicants are invited to supply a better copy for consideration. However, from the image available it supports other evidence that there was no route which could be reasonably described as a public footpath along the shore.

4. The quality of the image supplied is so poor that it is impossible for the Council to comment or ascertain whether it holds a better copy.

5. This image was included in the applicants' 2009 application and was therefore fully tested during the previous investigations and determinations. There is insufficient information in the image to ascertain where NT46 might have existed on the ground. It does however show that it was taken at a time prior to the mound being eroded on its seaward side.

6. This is a document provided by the applicants during the 2009 application process. It is unclear what relevance this has in respect of the current application. There are

no photographs or witness evidence to confirm the existence of a ramp. The applicants' own witness (Mr Eldridge) confirms that there was no ramp.

7. This is a 1969 aerial image. Its original size is insufficient to clearly identify features on the ground. However, there do appear to be structures on the beach (possibly groynes) which may have made walking along the beach impossible. The mound had not suffered erosion by that time and it could be said that the image shows a track of some kind around the southern edge of it.

8 and 9. The quality of the image supplied is so poor that it is impossible for the Council to comment or ascertain whether it holds a better copy.

10. This image is from the 1970s again showing the state of the beach in front of the sea wall.

11. and 12. The Council has no knowledge of seeing these images before. However, they provide no evidence of the route of NT46 from the southern end of Castlehaven Lane.

13 and 14. Both of these images formed part of the 2009 application and determinations. Photograph 13 is from the 1970s and is likely to be an image of the western end of the sea wall after it was extended. Photograph 14 was taken in 2003. It cannot be denied that there is high drop from the top of the sea wall to the beach. However, this is not a record of the situation in 1950/52 and in any event the height of the beach varies considerably. Evidence has come to light while investigating the current application suggesting that NT46 led from a green area at the western end of the sea wall and up to the caravan park on land on the seaward side of the mound. If this is the case then NT46 did not drop down to the beach in 1950/52 at all.

Photo 1:



Photo 2:



Photo 3:



Photo 4:



Photo 5:



Photo 6:

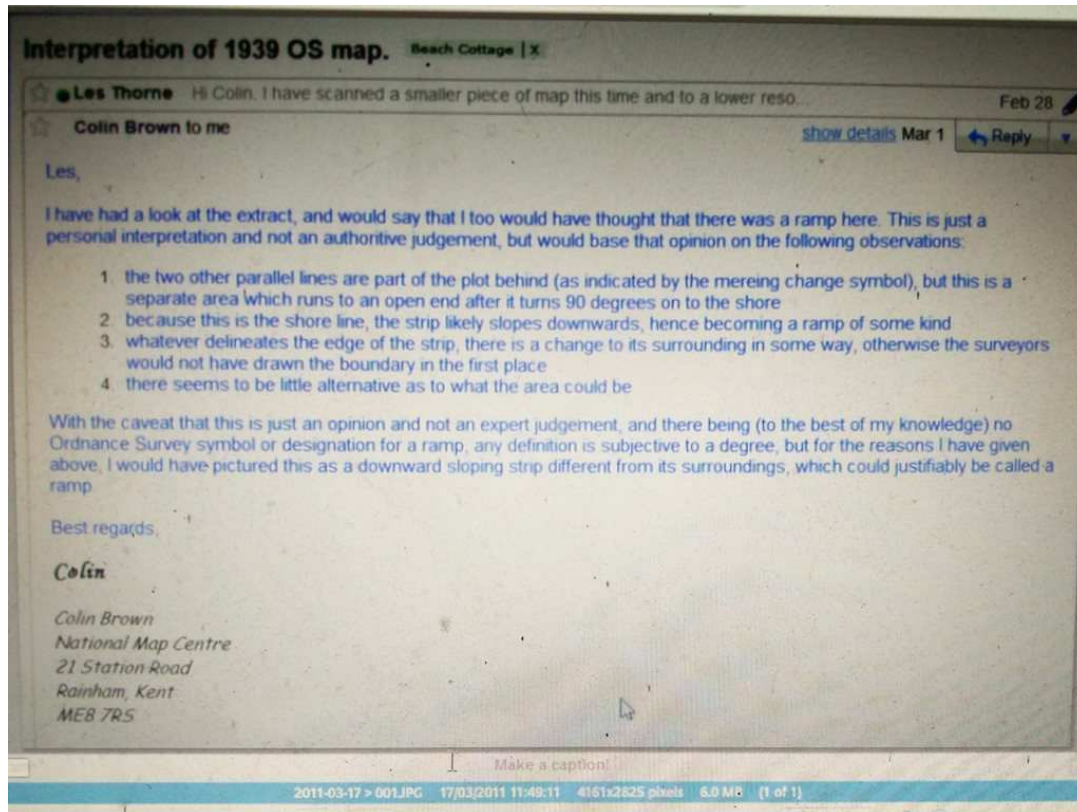


Photo 7:



Photo 8:



Photo 9:



Photo 10:



Photo 11:



Photo 12:



Photo 13:



Photo 14:



Email 6: Mr Thorne to Mr Clarke 11/10/17 (11:58):

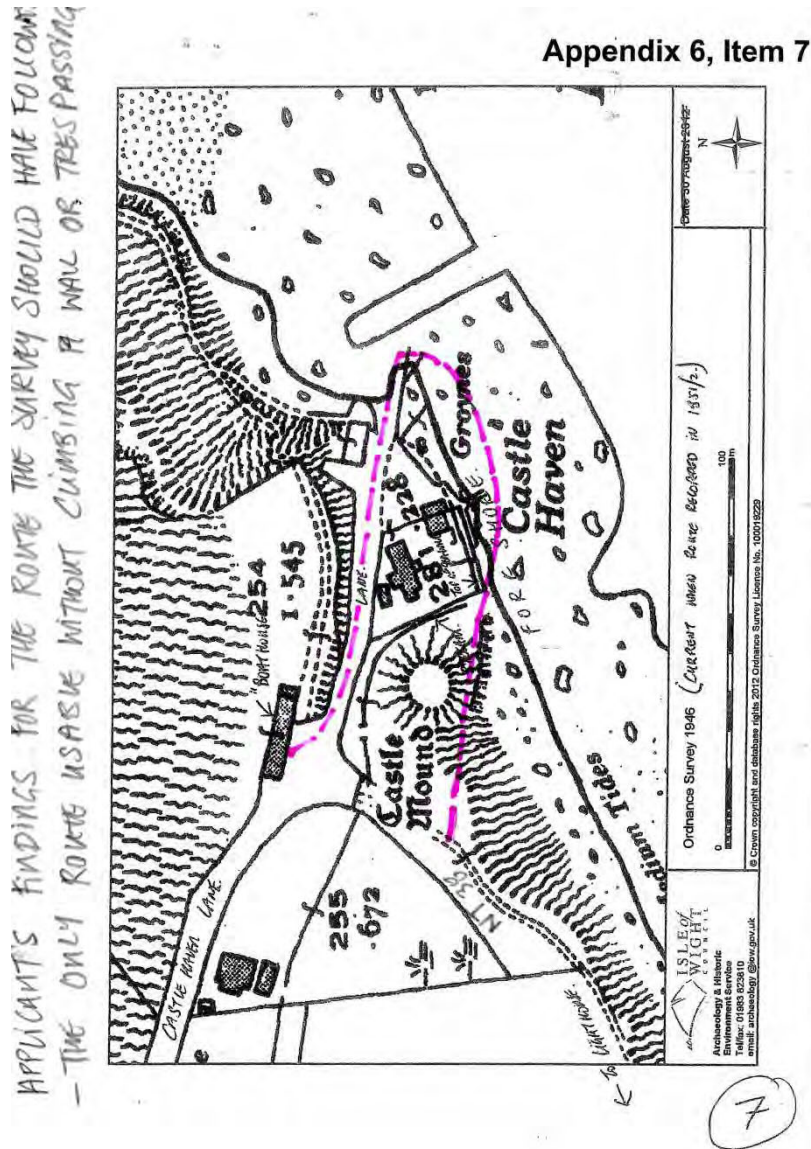
Dear Mr Clarke,

Notwithstanding the content of my previous email I request that the following emails be included in the report:

7 July 15.37
11 July 15.12
20 July 17.37
21 July 12.09
28 July 16.03
28 July 18.16
4 August 18.50
8 August 15.53
9 August 20.35
30 August 13.42
3 September 15.33

Regarding the plan, I have made no application to amend the plan. Everything that we have submitted has been with the intention of demonstrating that the route should be along the shore line and that, as the original DM is not at a scale that can show precisely where the route is, the application was therefore to amend the description in the Definitive Statement.

The plans 5 and 6 from my application should be replaced by the attached plan. This is wholly consistent with the originally submitted plans 5 and 6 as far as the application is concerned as their purpose was only ever to demonstrate the difference between the Shore and the Sea Wall. The plans were not intended to focus on the point where the route reaches the shore as that was not the focus of the application, but in any event we do not agree that the route runs across the village green at all.



Officer Response:

All of the applicants' emails received prior to submission of the draft report were considered and if appropriate/relevant were dealt with in the report.

The section of NT46 along the shore to the east of the applicants' property is a focus of their application – it is provided for in the second part of the application “varying particulars”

The revised map bears no resemblance to the route of NT46 as shown on the 1952 Definitive Map between the southern end of Castlehaven Lane and the western end of the sea wall.

NT46

The Modification Order report and the evidence it cites as relevant has to comply with the established legal doctrine best known as,

“ That which cannot be prevented cannot be acquired”,

Nothing dating from subsequent to the creation of the Definitive Statement has any bearing on the decision and so all such content should be omitted from the report and appendices.

Once the DS was in place successive landowners have been prevented from obstructing the route. It cannot therefore be argued that the fact that the public had access after the DS was in place evidences that its content was correct when it was created.

The differences between the Definitive Map and the Definitive Statement were so obvious that it is not credible that anyone could have compared the two prior to our doing so around 2006.

IWC have already accepted that the DM relates to the public footpath and the western portion of the DS relates to the private path through the caravan site of which Beach Cottage and the Lavatory block in its front garden was then part.

Having accepted that the DS is erroneous one cannot rely upon parts of its content to evidence the location of the route.

Officer Response: This is in contradiction to the application which seeks to rely on other parts of the Definitive Statement as evidence that the route of NT46 from the shore to the eastern end of the sea wall is along the shore.

The question that has to be addressed is what should the Definitive Statement have said when it was first written?

Officer Response: Agreed and this is provided for in the draft report.

It is agreed that the route from its eastern end reached the abutment of lane and shore.
It is agreed that the route from its western end reached the bottom of the coastal slope.
What now needs to be agreed is how one walked between those two points in 1950.

Our case is that the **only** route was along the shore as a 4 metre high almost vertical wall face rose from the shore to the western end of the sea wall and its upper face which served as a path. IWC have accepted this. IWC TO CONFIRM OR OTHERWISE.

Officer Response: The height of the drop at the western end of the sea wall depended entirely on the height of the beach from time to time. Many photos showing a high drop are recent images taken after the western end of the wall was extended in the 1970s and is not evidence of the situation in 1952. The height of the drop from the top of the sea wall to the beach may be irrelevant. Evidence shows that this may not have been the route of NT46 in 1950/52. Evidence shows that NT46 was along a path in the seaward side of the mound leading from a small green area at the western end of the sea wall up to the caravan park.

The alternative view is that a route along the shore was impassable as it was too rocky and slippery and obstructed by groynes. Those promoting this view need to explain how it is compatible with all the contrary photographic and documentary evidence. How a route whose function is to access a rocky shore can possibly be unusable because it is also a rocky shore. And, particularly, how all the fishing boats shown in photographs on what is now village green could have been dragged there from the sea if

the shore was too rocky to walk on. Why would the boat owners have chosen that particular location?

Officer Response: The public clearly accessed the shore but evidence shows that the condition of the shore was such that it is unlikely to have ever been treated or recorded as a public footpath.

All the photographs and documentary evidence that has been provided on this has been omitted from the documentation and must be reinstated.

Officer Response: The applicants need to clearly identify which photographs and documentary evidence they believe to have been omitted. The Council does not consider there to be any.

L R Thorne
2 October 2017

NT 46 – a Footpath.

The Applicants' case.

Our application is only in respect of the portion of the route currently described in the Definitive Statement (DS) as along the top of the sea wall.

Officer Response: The Council considers that there are two parts to the application. The second part seeks to vary the particulars relating to the section of footpath from the southern end of NT46 to the eastern end of the sea wall.

We have made no application and had seen nothing which raises doubt on the route described eastwards. The officers have added to the application the modification of a portion of the route from village green to shore, but the DS still, and has always, located this portion of the route on the shore. It has never been modified to any other location. Presumably, this misrepresentation is intended to conceal that they overlooked the shore route when they had coastal protection boulders installed. The Definitive Statement is definitive evidence of the position of a route and only finding new evidence or an error can justify the position being changed. This whole application concerns **position** so the DS has to be at the forefront of this documentation and not hidden away in a mass of appendices only available on request. The DS records that NT46 goes from road to shore to top of sea wall, a continuous route that existed in 1950. That DS has never been changed, never been subject to a diversion order and that portion never until now been the subject of a modification order application. The route therefore remains on the shore as it has done for 57 years. Officers can identify no errors or new evidence or process that has ever affected the shore route. Officers refuse to respond as to how or when describing the route as being on the village green became true. Additionally and contradictorily, they introduce a previously unheard of document which they now rely on to show that the route did not go along the shore. But this document clearly states that the route **terminates** at the shore. As this document is considered to have sufficient authority to establish the location of the route, as its inclusion by officers evidences, then its content proves that the route goes no further than the shore. The Officer's insertion of this part of the route in our application is dishonest and misrepresents the facts. Apart from this undated document the evidence is that the route currently remains on the shore, albeit severed from the road by the failure to consider NT46 when installing coastal protection; specifically by a small area of lower boulders which provide no coastal protection.

Officer Response: The Council is not seeking to modify the portion of NT46 heading eastwards. The second part of the application seeks to amend the particulars relating to that portion “thereby complying with the alignment shown on the definitive maps”. This part of the application has been investigated and a conclusion reached, as outlined in the report.

The appendices will be made available to all members of the committee prior to the committee meeting and to all interested persons. It is incorrect to say that they are only available on request.

The Definitive Statement does not record NT46 as running along the shore between the southern end of Castlehaven Lane to the eastern end of the sea wall. The Definitive Statement is silent as to the route taken between those two points.

NT46 does provide access to the shore but it does not automatically follow that it then continued along the shore. This is the applicant's interpretation. The matter has been addressed in the report and a conclusion reached based on the evidence.

Our case therefore is limited to the portion of NT46 currently recorded in the Definitive Statement (the document which defines position) as being on top of the sea wall.

Officer Response: Incorrect, as stated above the Council considers that there is a second part to the application.

Around 1950 two members of the Parish Council, a postman and a shopkeeper, were given the task of recording all the historic byways, bridleways and footpaths in their spare time. An onerous task in view of the many complex routes in the area needing their consideration.

First they had to create a map; what became the Definitive Map (DM) which evidences the existence of a route, then they had to survey each route and record its condition and position; what became the Definitive Statement which evidences the position of the route.

On completion they were required to exhibit both sets of documents to the public and hold a public meeting to check the accuracy of the documents. Parish Council Minutes record postponements of that checking process as the documents were not ready, indeed there is no record of it ever having taken place.

Be that as it may, the absence of any checking is evidenced by the fact that the Definitive Map and Definitive Statement for NT46 record two different routes to two different westerly destinations; an obvious and fundamental error which nobody noticed until we received the two documents on our purchase of Beach Cottage (including the sea wall) in 2006. Wrong for 56 years and unnoticed.

Officer Response: This was dealt with in the first (2009) application. No new evidence has been supplied since the decision of the Council and the Planning Inspectorate.

It therefore became the Council's duty to correct the errors in documents so that there was no contradiction and so that they both recorded the same route to the same destination.

The purpose of NT46, which loops from the end of NT38 to a point only 35 yards along NT38 westwards, can only have been to provide public access to the harbour to the east and the shore to the west. The contested sea wall route lies between these destinations.

Officer Response: The determination of the first application provides authority that both the Definitive Map and Statement confirm the route of NT46 as along the top of the sea wall.

We investigated all available documentation and spoke to the very few local people old enough to recall 1950. We submitted a Modification Order Application to change the Definitive Statement to the route position it should have described in 1950. This was considered by IWC in April 2011.

The Council committee agreed that the two routes had separated, that the DM route was NT46 and the DS route was the private path through Beach Cottage and its tea room gardens, caravan site and lavatory block. The task therefore was to agree on where the paths separated.

IWC agreed to delete the northerly route from the westerly end of the top of the sea wall from the DS but decided that this was the point of separation despite accepting that the shore route immediately west of this point was 4 metres (13 ft 4 ins) lower with an almost vertical wall between the two. They suggested that there might have been steps which nobody had ever mentioned.

We protested and pointed out that the only point at which the two routes met at the same ground level was on the shore immediately to the eastern end of the sea wall. We asserted that the only passable route between the shores to east and west of the sea wall was the shore to the south of it. This was rejected on the grounds that we had provided no evidence of a footpath on the shore (nor are there on other shore routes), that this part of the shore was uniquely rocky and obstructed by

groynes and that we had provided no documentary evidence that there were not steps or some other means of scaling the 4 metre drop between top of sea wall and shore.

Officer Response: The height of the drop from the top of the sea wall to the shore varies considerably due to the height of beach material. There is no evidence to show that there was a 4 metre drop in 1952. Many of the photographs of a high drop are in recent times and after the sea wall was extended in the 1970s and are not therefore a reflection on what existed in 1950/52. Further, evidence obtained during the current application suggests that a path from the top of the sea wall in the side of the mound representing NT46 still existed in 1950s.

Then, realising that prior to the coastal protection team's 2003 contract, record photographs would have been taken, we requested copies and were provided with those held on file in the offices the department shared with the RoW team. These clearly showed a blank unscalable wall approximately 4 metres high on the route decided by IWC and that the shore which they had claimed to be impassable was sandy and flat with few obstructions; far easier than the shore being accessed westwards or the well used route east of the harbour to the beach. In truth every tide affects the shore, a calm sea moves sand and shingle but a rough sea moves large stones; rough is pretty common at Castlehaven. Why would anyone have built a path and, if they had, how long would it survive the power of the sea?

Officer Response: These photographs were taken immediately before the placement of coastal protection rocks in 2004 and are not evidence of what existed in 1952. The western end of the sea wall in these photographs did not exist at all in 1952.

We decided to appeal on the grounds that the only passable route had been on the shore. Unfortunately the Inspector failed to visit the island, admitted to not understanding parts of the application, complained that photographs provided by the Council were illegible but nevertheless dismissed the appeal on the grounds that the fact that the sea wall route had become a cul de sac did not justify its deletion. In other words, she had not understood the issue and considered a different, fictitious one. Perhaps she realised this because, unusually, she invited a further appeal. The route to which is a MO application. This Appeal decision provides no support to the Council's 2011 decision.

Officer Response: These are matters that could have been raised on a challenge to the Planning Inspectorate's decision. In the absence of such a challenge the decision is good in confirming that the 2011 decision was correctly made by the Council.

Despite agreeing to amend the DS over 6 years ago we have never received the proposed rewording, despite requests. In response to the Planning Inspector's invitation we submitted a Modification Order Application in 2013, the application now being considered. But it has much developed over the intervening 4 years by matters such as events on the ground, new information having come to light and higher consideration being required to the privacy and security of residents.

Officer Response: Noted. However matters such as privacy and security are not matters that are required to be considered in this process.

Regarding events on the ground.

The westerly end of NT46 was obstructed by development by the then owner of the caravan site involving retaining walls and plateaus large enough for longer caravans in the 1970s – the requirement to seek authority from the Secretary of State for Transport for a temporary closure order did not occur until over 35 years later when the Council falsely claimed erosion as the reason.

The installation of coastal protection in 2004 obstructed the route to the west but authority was not sought until years later.

Similarly, the route to the east was obstructed but still the Council have not informed the authorities.

These matters are currently before the Secretary of State for Transport's representatives.

The storm of February 2014 resulted in the closure of the route on top of the sea wall. The settlement of the coastal protection boulders to a height lower than the top of the sea wall focuses waves onto the top lip of the wall. Strong waves ripped out large stones, the top surface of which was the surface of the path.

A sea wall route requires wall repair and raising the height of coastal protection plus addressing the obstruction of the route by coastal protection in 4 locations. A shore route avoids wall repair and reduces the coastal protection problems to the 2 easily resolved ones.

Officer Response: These matters have no bearing on determination of the application.

New Information.

We have continued to undertake research and we have thanked the Parish Council for having displayed notices locally seeking information, notices displayed for over a year in Norris' store to capture annual visitors' information.

Inevitably, 67 years after the event, there are few remaining who were then old enough to take notice who now have a clear recollection and there is much contradiction between witness statements and much overturned by conclusive documentary evidence. But the process has revealed compelling evidence of many people enjoying a stony shore and many others enjoying the tea room gardens at top of sea wall level but none of anyone scaling the high wall which separated the two. Some say that small boys very occasionally scrambled down this wall but nobody mentions scaling up it. The photographs confirm that the shores are stony and have groynes but none more stony than others and none of the groynes are impassable; one can hardly say that a stony shore prevents access to a stony shore. Every tide changes the shore. The witnesses who in 2011 testified to a virtually level route between top of sea wall and shore, "never more than two feet", appear to have withdrawn.

Officer Response: It is not being suggested that people didn't venture onto a rocky shore. The conclusion reached is that such was the condition of the shore (large rocks and groynes) it is unlikely that this would have been considered to be a public right of way on foot and recorded as such. The 1940s photographs show what conditions were like along the beach. It is improbable a parish surveyor would have identified a public footpath here and would probably have regarded the beach as open to everyone in any event - this is, and no doubt was then, a commonly held belief.

Privacy and Security.

The top of the sea wall is part of our garden and affords views into our home. Particularly at night when it is pitch dark, having someone appear there is very disconcerting. Police records should record over 60 acts of criminal damage, including the total removal of our lawful boundary fence overnight whilst we slept. Recognising that the top of the sea wall, whilst well used over many years, could never have been the NT46 route westwards will enable us to replace the constantly vandalised and repaired boundary with something more attractive such as a stone wall.

Officer Response: These matters have no bearing on determination of this application.

What is under consideration is not whether people long accessed the top of the sea wall but where the route should have originally been positioned in 1950. So nothing that has occurred since then is relevant. There is nothing to favour the top of sea wall route other than the complete error of the original Definitive Statement. Whilst accepting that both shore and top of sea wall were then

popular locations what is at issue is whether there was a footpath between them. We believe that the evidence proves that there was nothing which approaches the standard of a public footpath at the western end of the sea wall. Public access to the top of the sea wall was from north or east only and so it could not possibly have been part of the east/west route of Public Footpath NT46.

We request that the length of route whose position was corrected in the 2011 modification order decision be extended eastwards to the shore south west of what has since become village green.

Officer Response: The draft report concludes these points.

LR & LE Thorne

September 2017.

⑩ This was written prior to studying Appendix 8, Item 8 and understanding its significance. The Council have accepted that NT46 terminates on the shore for some undisclosed time. Their whole case since 2006 has been fabricated and false. Perhaps this needs pursuing in advance of other matters and being concerned on how to incorporate it into our case.

NT46 – a Footpath.

Initial Comments on Council's draft report and Appendices.

Surely the original Definitive Map and Definitive Statement should be at the forefront of these documents, particularly the latter as it evidences route position; the issue under consideration.

Officer Response: Noted, the order of the documents in Appendix 2 will be changed and it now also includes a copy of the Definitive Statement.

It is not possible from the documents to discern the line of argument which supports modification or to identify which documents carry weight and which are extraneous. Rather than present a compact, straightforward, digestible case the aim seems to be to confuse and bury recipients under a mass of paper. Also, clarity is reduced by so much background still being undecided. Eg. Where is the draft DS since 2011? In circumstances where the Land Registry amend title plans to include land up to the new MHWL does the Crown document apply? When the MHWL moves outwards alongside a village green does the village green get bigger; 2 different answers from IWC. Have 2011 interviewees withdrawn their evidence? How does IWC intend to regularise the situation with D of Transport? Also, confusion created by inaccurate statements eg. Parish Council owned no land on the route until 70/80s, it was owned privately by one of two locals who disagreed.

Officer Response: The Report and Appendices are evidence of a thorough investigation of the application and all associated matters that need to be considered in order to determine the application and are written and presented in a clear and methodical manner.

Paragraph 7 of the Report confirms in clear terms how the Definitive Statement will be amended by way of modification order on the next review of the Definitive Map in accordance with the decision of 28th February 2011 in respect of the applicants' 2009 application. This is reiterated by the inclusion of paragraph 8 of the Report. Accordingly, there is no uncertainty or reduced clarity.

The comments which relate to the doctrine of accretion and diluvion and its effect on Land Registry Titles, Crown Land and the size of the Village Green have no bearing on determination of this application.

The Council has not been notified of any withdraw of witness evidence forming part of the report in respect of the 2011 decision on the applicants' 2009 application. There is no requirement to re-examine that evidence as it was fully tested not only during the 2009-11 process/decision but also by the Planning Inspectorate following the applicants' subsequent appeal against the decision.

The Department of Transport has no involvement with matters associated with modifying the definitive map and statement in accordance with section 53 of the Wildlife and Countryside Act 1981.

Any reference to the Parish Council owning the village green prior to 1981 does not affect determination of this application.

Is it intended that the committee will visit the site to gain an understanding of a very complex topography?

Officer Response: This will be for the Chairman of the Committee to decide.

1) Are all the documents listed in Apx 1.1 included &, if so, why dispersed.

Officer Response: Documents listed 2-9 in the application are included in Appendix 6 (applicants' evidence) Items 2-9 and are not dispersed. However, documents 1-9 of Appendix 6 will be moved to Appendix 1 to identify which documents were lodged with the application as listed therein. Paragraph 30 of the Report deals with item 1 of the application.

2) Documents should be the original DM & DS not specially produced baseless and biased ones such as Apx 2,2.

Officer Response: The Definitive Map and Statement 1952 and the Definitive Map 2000 now appear as Items 2, 3, 4 and 5 of Appendix 2. However, Appendix 2, Item 2 is not baseless or biased and remains in Appendix 2 (now as item 6). It reflects the route of NT46 as per the Definitive Map.

3) Apx 2.3 photos 2,3,4,5 & 6 all show incorrect route alignment, ie different from the DS.

Officer Response: The photographs provide an indication of the route of NT46 in accordance with the Definitive Map and Statement.

4) Apx 2,4 IWC previously accepted that the DM is at too small a scale (1 to 10560) to show alignment of the route.

Officer Response: Paragraph 48 of the Report acknowledges this.

5) Apx 2,5 shows no long straight line depicting a route along a narrow sea wall.

Officer Response: Paragraph 6 of the report confirms that there have been no legal changes to NT46 since the 1952 Definitive Map, subject to the committee meeting decision dated 28th February 2011. Accordingly, the 1952 Definitive Map overrides the 2000 Map.

6) Apx 5.1 The Definitive Statement is conclusive proof of position. This gets ignored throughout.

Officer Response: This is dealt with in Appendix 5 – Item 1. The legal provisions and tests set out in paragraphs 16-25 of the report and Appendix 5 have been applied in reaching the determination at paragraphs 54 – 57 of the Report.

7) Apx 6.2 Photographs require dates and locations. Photo 5 shows an easily walkable shore where witnesses have said it was impassable.

Officer Response: These are the photographs referred to in the application (item 2). Paragraph 26 confirms they were taken in 2004. They do not show an easily walkable shore due to the presence of large rocks and groynes.

8) Apx 6.3 & 6.4 Illegible.

Officer Response: These are documents that the applicants submitted with their application as supporting evidence.

9) Apx 6.10 Photo 3 is illegible. Photos 9 & 10 show the road to shore route becoming blocked by groynes but access looks possible slightly to west.

Officer Response: The quality of photo 3 at Appendix 6, Item 10 is the best that is available. The applicants can, if they wish, attempt to obtain a better copy from their witness (Mr Eldridge). Photos 9 and 10: These photos are from the 1980s and do not therefore confirm the situation in 1952 but nonetheless generally support the view that there has never been a walkable route along the shore due to large rocks and groynes.

10) Apx 6.13 Exaggerates the period that Mr White has known Castlehaven. End of page 3 Mr White states that the sea wall is public land. Many have said this and it has coloured their judgement and evidence. Page 138 Mr White admits to repeatedly removing a gate that all interviewees except Mr Eldridge deny ever existed. He says that all the members of the Harbour Club repeatedly removed it too.

Officer Response: The sea wall is in private ownership but with a public right of way along it on foot. With reference to the gate this is dealt with a paragraph 46 of the Report.

11) Apx 7.1. Claims a 4 to 6 foot drop to the beach. As the MHW is close alongside the wall and can be used as a contour line for where the land is level with the surface of the sea at MHW the proven figure based on historic sea levels is 4 metres, as the IWC accepted in 2011.

Officer Response: The drop from the top of the sea wall to the beach has always varied considerably depending on the height at which beach material (generally large rocks in this case) are deposited onto the beach by the sea. Please see Officer Response to comment 14 below.

12) Apx 7.2. The outfall of the stream was west of the end of the sea wall until 1970 when the wall was extended.

Officer Response: Water from the stream would have ended up on the shore and the point made by the witness at Appendix 7, Item 2 is that this is one of the reasons why walking along the beach was not possible.

13) Apx 7.3. "Small boys scramble down". - dangerous but not impossible. But how can that be a public footpath when a few missing stones render a route unusable?

Officer response: Scrambling down to the beach at that time may not have been use of NT46. NT46 is likely to have existed in 1952 along a path on land leading from the small green area at the western end of the sea wall up to the caravan park. With regard to the point regarding missing stones, it is presumed that this is reference to the current temporary closure of NT46 along the sea wall due to storm damage in 2014. The applicants have previously stated that the damage was considerably more than a few missing stones. Extract of Mr Thorne's email of 15th February 2014 "*Overnight the sea removed portions of the top of the sea wall such that public access is dangerous*"; and 23rd January 2015 "*I have no plans to restore the sea wall. The settlement of the revetments has focused the full force of storm waves onto its uppermost courses. Until the revetments are raised to their original height restoring the wall would be futile*". Possible repairs to the sea wall by the Council in order to make it safe for public use are on hold pending determination of this application.

14) Apx 7.4. Shore looks no worse than others, certainly less dangerous than a 4 metre wall and easier than the current well used route to the beach east of the harbour steps. See also 4 pages identifying location of photographs and annotating 3 of them. *[at foot of this document]*

Officer Response: There is evidence in numerous photographs showing the shore comprising of large rocks and groyne which are not characteristics of a public footpath. As mentioned above the height of the drop from the top of the sea wall to the beach varies considerably depending on the height of the beach and any drop to the beach which existed in 1950/52 may not have been the route of NT46 at that time in any event. Note to photograph 7: This is not agreed. The groyne would clearly obstruct any person attempting to walk along the beach (parallel with the sea wall) over large rocks. Note to Photographs 8 and 9: The height of the drop from the top of the sea wall to the beach may be irrelevant. Evidence shows that this may not have the route of NT46 at the time of those photos. Evidence shows that NT46 was along a path from the small green area at the

western end of the sea wall up to the caravan park. Photograph 8 does show that there was land in the side of the mound capable of being walked along. Map 1: The numbers marked on this map appear to confirm the approximate positions of where the corresponding photographs in Appendix 7, Item 4 were taken from. Maps 2 and 3: The route shown does not reflect what is recorded on the Definitive Map. They reflect the applicants' opinion (with no supporting evidence) that the route of NT46 was along the shore. See paragraph 44 of the Report. Map 4: This map is misleading as it suggests that the Council at the Committee Meeting in 2011 (when the applicants' 2009 application was determined) confirmed that the route of NT46 was along the shore between the end of Castlehaven Lane and the eastern end of the Sea Wall. The Council has never confirmed or believed this to be the case. Map 5: This map bears no resemblance to the 1952 Definitive Map (enlarged version at Appendix 8, Item 2). Map 5: No coastal protection rocks fronting the sea wall and village green obstruct NT46. The coastal protection rocks and any other obstructions that may exist on the coastal slope up to the caravan park are not relevant to this application. The Definitive Statement does not record NT46 as running along the beach. This is fully and clearly dealt with in paragraph 44 of the Report. Map 6: This map bears no resemblance to the 1952 Definitive Map in so far as the section of NT46 from the end of Castlehaven Lane to the western end of the sea wall is concerned. The 1952 Definitive Map cannot be totally ignored in this process – the surveyors in 1950 were required to mark on the map the route of the path being surveyed and procedures followed for hearing and determining objections at both the draft and provisional stages before the Map became definitive. Map 6 prepared by the applicants show the section of NT46 heading down Castlehaven Lane ending much further east than what is shown on the Definitive Map. The section of NT46 drawn by the applicants on the shore in front of the green and Beach Cottage bears no resemblance to the 1952 Definitive Map which shows the drawn line much further north.

15) Apx 7.5. Unsubstantiated and vaguely located claims of trespass must be removed. Not appropriate in this forum. Interestingly, similar accusations made to other neighbour.

Officer Response: The notes of the meeting with Mr Rodley record his recollections. The meeting note was sent to Mr Rodley for approval prior to it being included in the draft Report. It is confirmed that this process will not consider or address any issues surrounding any alleged trespass, although the Council does not consider that the meeting note makes any clear claims of such in any event.

16) Apx 8.2. This is not the 1946 OS map current at the time. It looks like the 1939 OS map. It shows the road and shore meeting but no sea wall.

Officer Response: Appendix 8, Item 2 is an enlarged version of the 1952 Definitive Map.

17) Apx 8.4. This whole series of red lined documents looks to be fake. How can a vague line on a map be converted into a precise line objectively? Anyway, 8,4 is the only map showing the route up the coastal slope but to position the red line on the sea wall, as the officer required, he has had to place it north of the coastal slope path. Correct positioning on the coastal slope path places the route south of the sea wall and on the shore. The red lines bear no relationship to the conclusive positions of the route described in the DS nor to alignments on the ground.

Officer Response: Please refer to paragraph 48 regarding the red lines on the maps. With regard to the red line on the map at Appendix 8, Item 4 this is a 1908 map showing a path between the caravan park and the top of the sea wall (western end). While it may have been possible to alter the GIS properties of the red line so that it followed this path this would have been misleading and inaccurate as to an indication of legal line of the path in 1952 (which is what that red line represents). The red line on all maps is identical in terms of its GIS data i.e. route/position. It has not been altered on each map to suit the features shown on each map. There is likely to have been erosion between the time of the survey for the 1908 map and the 1952 Definitive Map and this is why the path would appear to have moved

inland by that time i.e. north of the path shown on the 1908 map.

18) Apx 8.5, Is partly illegible and, like much of the rest, nowhere is the reason for its inclusion explained and the point being made, if any, clarified. I note that the planning permission for the caravan site expired in 1981, where is the current permission document and is it too temporary?

Officer Response: Please refer to paragraph 40 of the Report. The copies are the best available due to only being held on microfiche. Whether or not there is current planning permission for the caravan site is irrelevant to this application.

19) Apx 8.8. A document whose existence was previously not revealed which, like the photographs withheld in 2011, wholly supports our case. IWC must send us every secret document relevant to NT46. This document is presented by IWC as conclusive evidence on the route of NT46. It clearly shows that at the time it was produced the Council accepted that NT46 terminated on the shore. This accords with the signboard and IWC statements from over 10 years ago. They need to explain why they have since claimed otherwise.

Officer Response: Please refer to paragraph 43 of the Report. This document was produced by the Rights of Way Service in 2017 for the sole purpose of this application and to demonstrate that public rights of way recorded on the Definitive Map for the Isle of Wight providing beach access are common whereas public footpaths recorded as being along a beach are uncommon and none have been recorded as such in the Parish of Niton.

20) Apx 8.9. Why has much of this been included when the replies to enquiries are missing?

Officer Response: There is no Item 9 in Appendix 8.

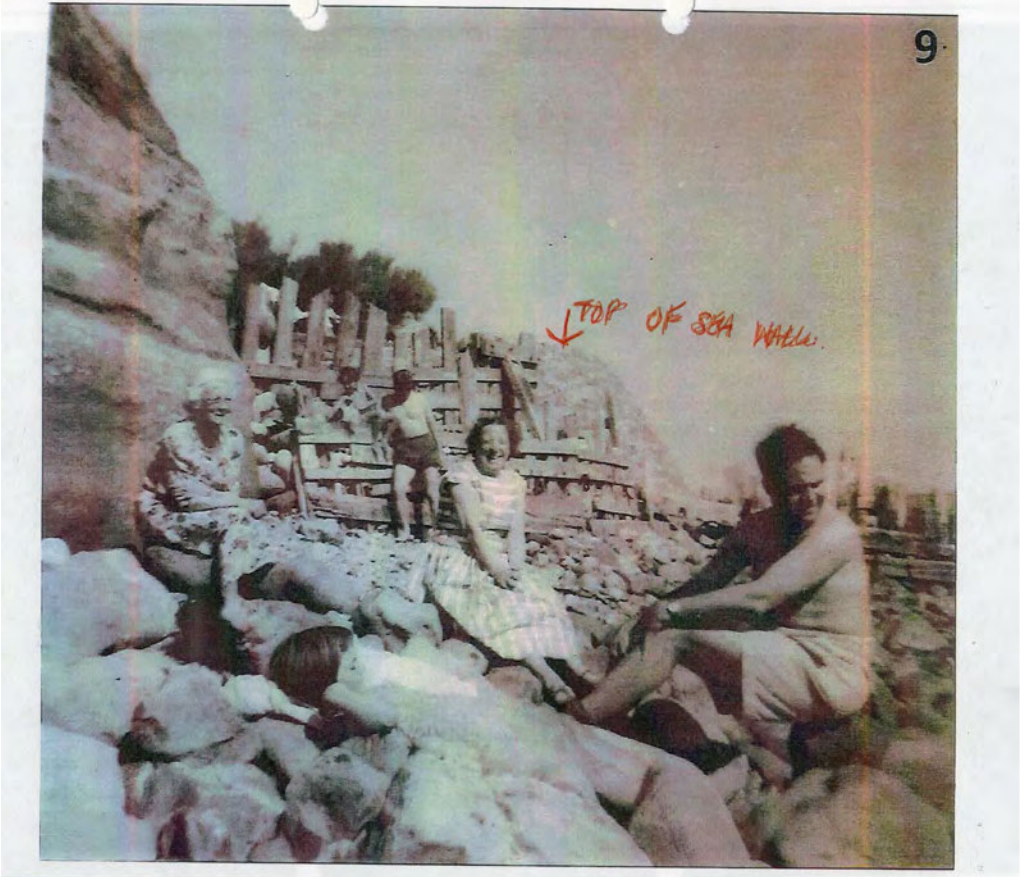
L R Thorne

18 September 2017.

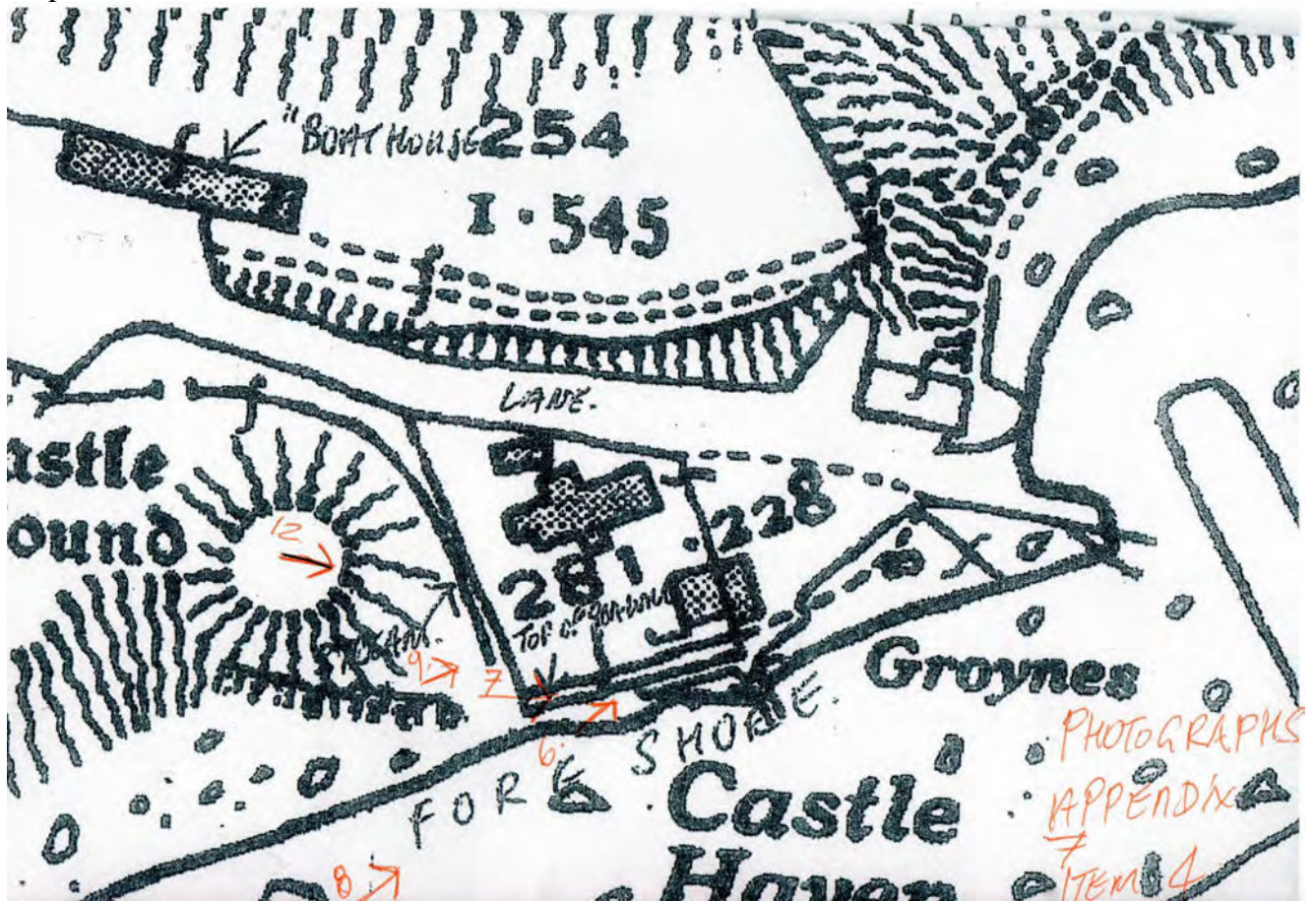


7

↑ ROCKS / GROYNES LOOK UNUSUAL.

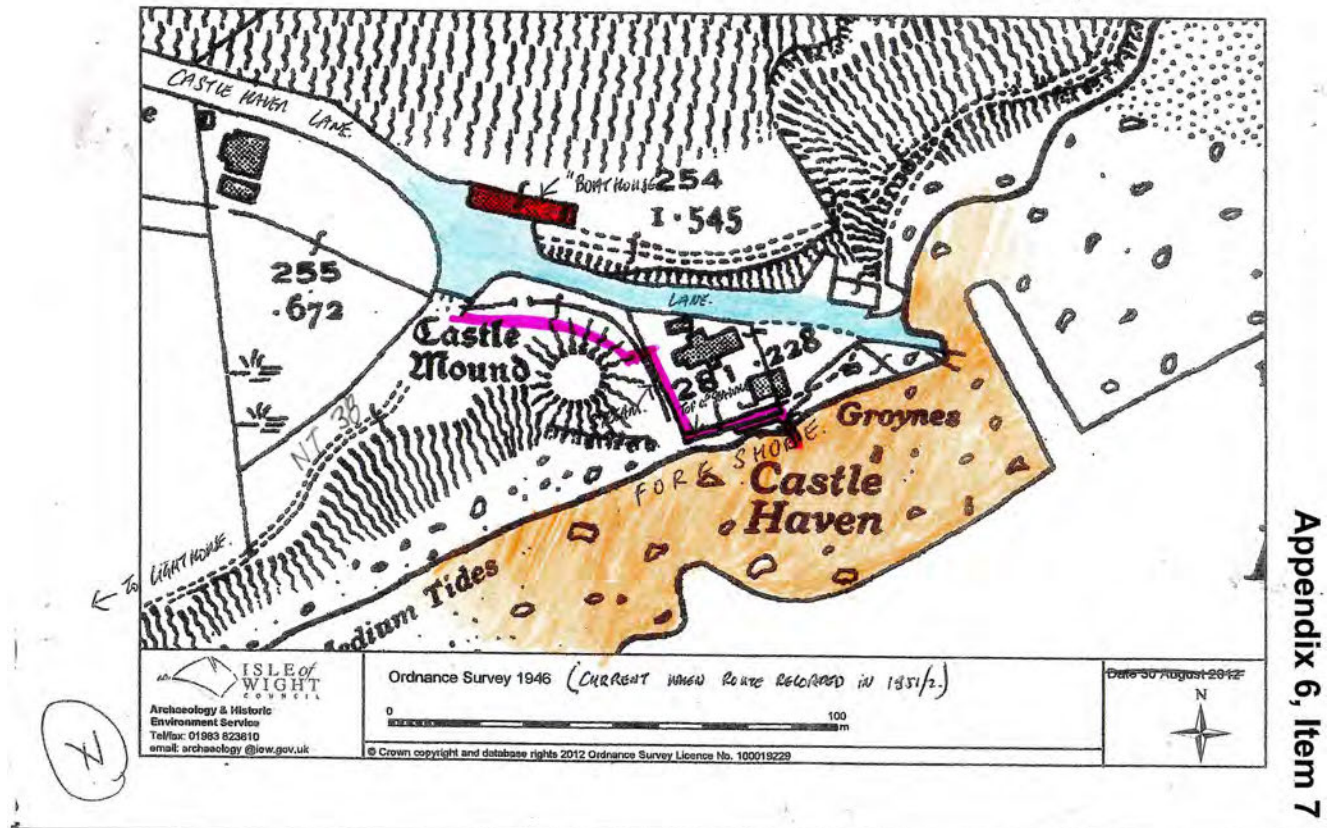


Map 1:



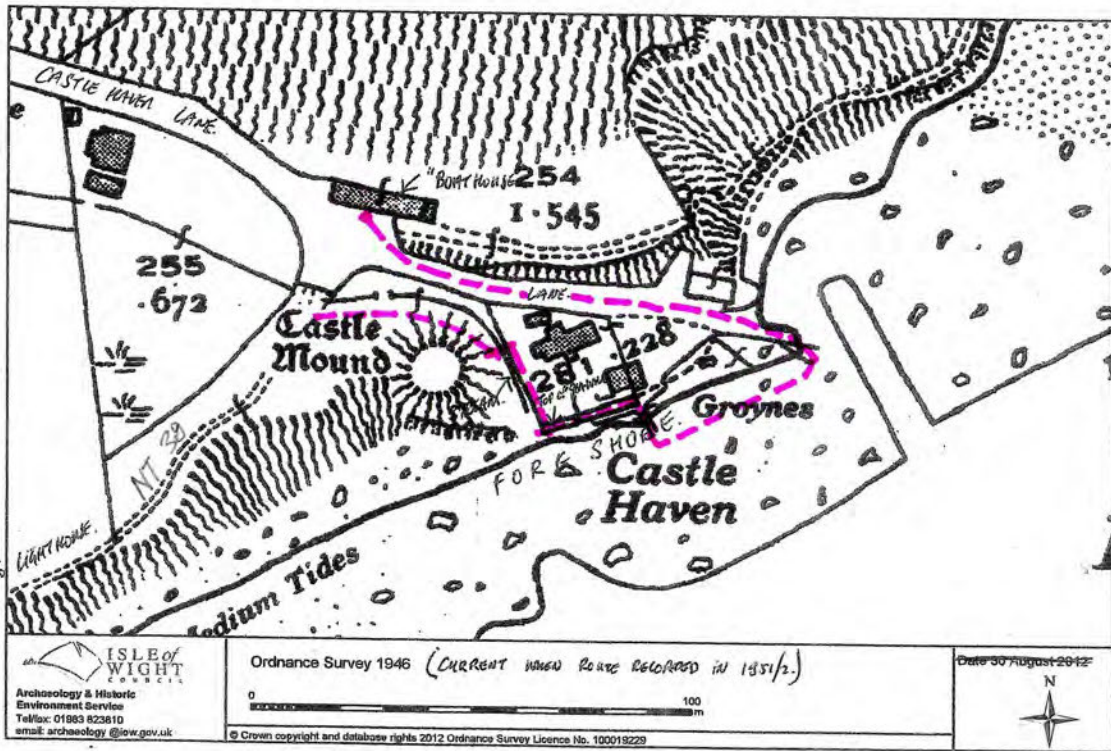
Map 2:

LOCATIONS REFERRED TO IN SURVEY OF FOOTPATH NT46:



Map 3:

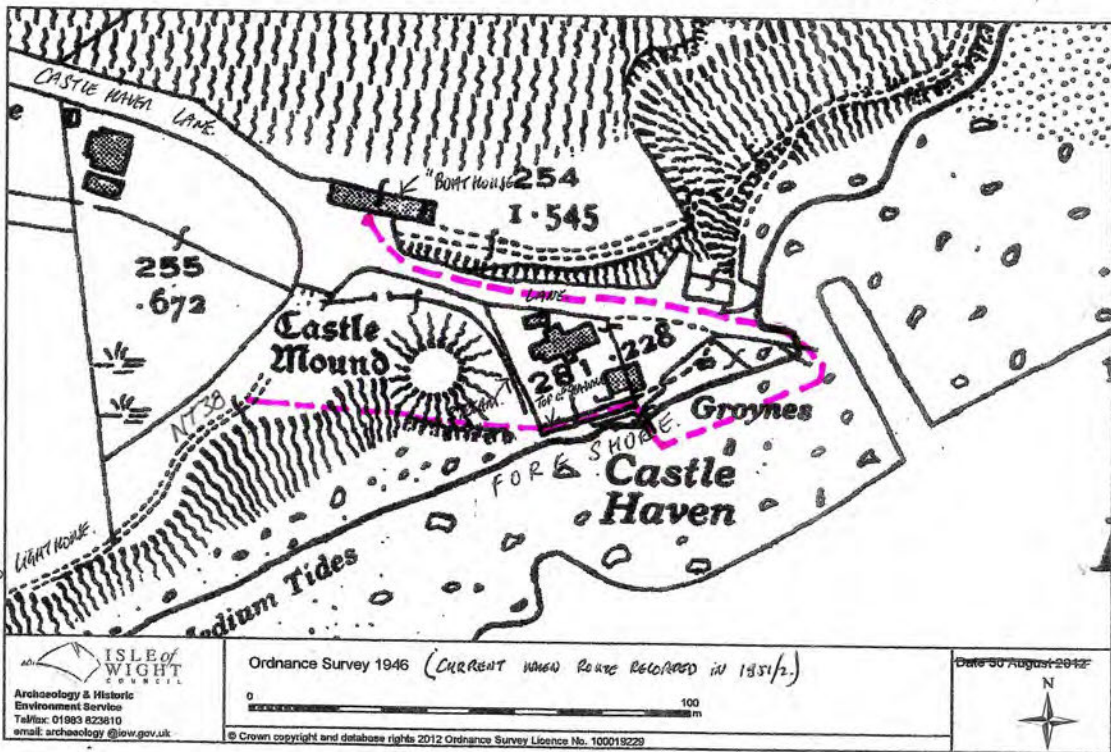
ROUTE FOLLOWING LOCATIONS REFERRED TO IN SURVEY OF NT46.



Appendix 6, Item 7

Map 4:

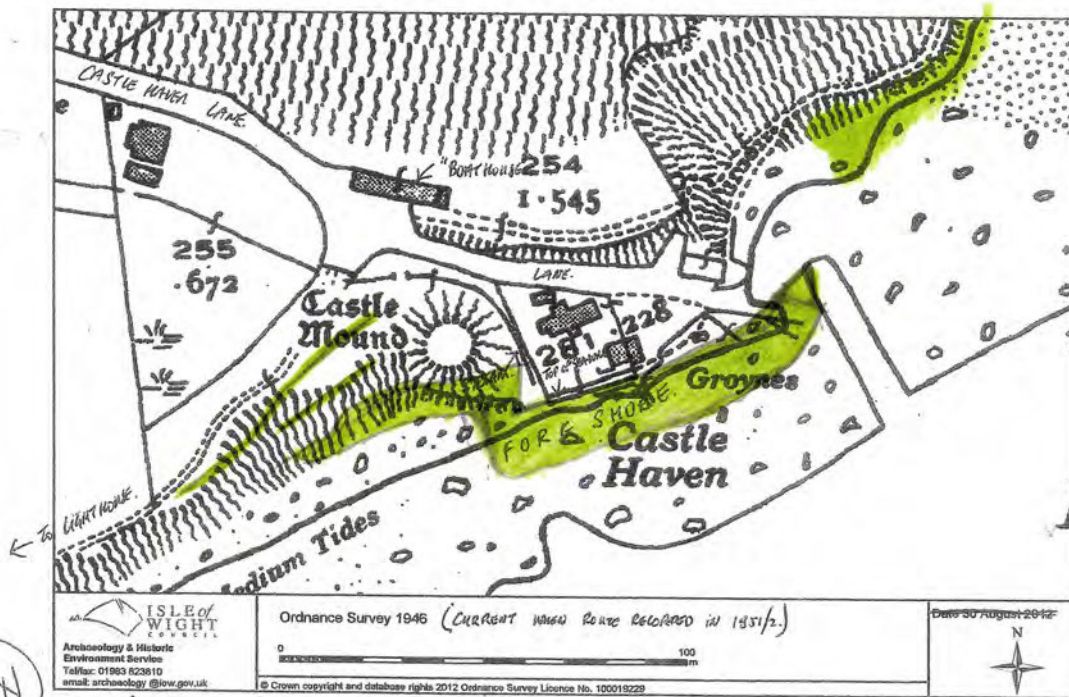
ROUTE RESULTANT FROM MODIFICATION ORDER DECISION OF 2011.



Appendix 6, Item 7

Map 5:

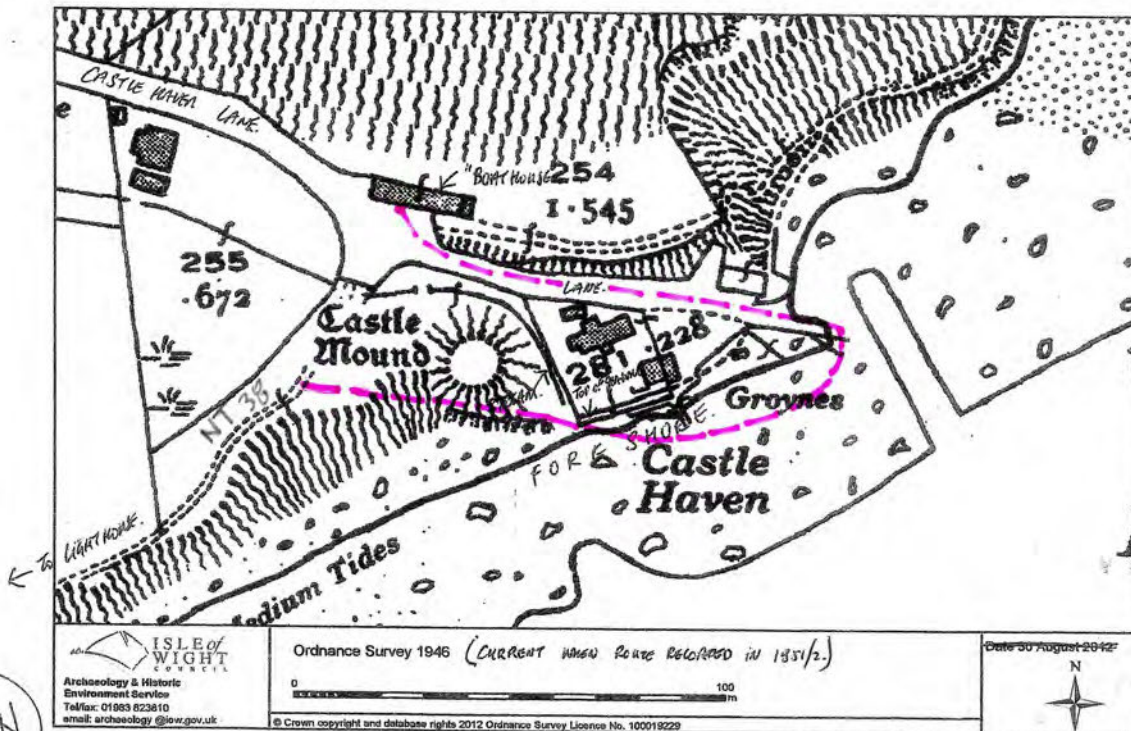
OBSTRUCTIONS TO ROUTE - WALLS 1970s, COASTAL PROTECTION 2003/4



Appendix 6, Item 7

Map 6:

APPLICANT'S FINDINGS FOR THE ROUTE THE SURVEY SHOULD HAVE FOLLOWED - THE ONLY ROUTE USABLE WITHOUT CLIMBING A WALL OR TRESPASSING



Appendix 6, Item 7

Darrel Clarke
Rights of Way Manager, Public Rights of Way
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T +441489616865

Our Ref PYW/M-00675182
Date 4 October 2017

Dear Sirs,

**WILDLIFE AND COUNTRYSIDE ACT 1981- SECTION 53, SCHEDULE 14
APPLICATION FOR MODIFICATION ORDER- PUBLIC FOOTPATH NT46**

We act on behalf of the applicants in this matter and are writing to provide comments on the Draft Committee Report regarding this application. Our client has a number of concerns and these are explained in detail below.

1 The Content of this Application and the description of the existing route of NT46 are not accurately reported

- 1.1 This is not an application to vary the definitive map, or to delete a right of way. It is an application to vary the wording of the Definitive Statement. This is described accurately in paragraph 9 but the report thereafter is not written in a balanced way with frequent references to the deletion of a right of way. This does not present a reasonable and balanced assessment of the applicant's case, which is based on an assessment of whether or not the statement is an accurate reflection of the route as it was when the Definitive Statement was made.
- 1.2 The Committee Report describes the route of NT46 in paragraph 4, relying on the annotated site map that has been provided as Appendix 2, Item 2. This is not an accurate reflection of NT46 when compared to the Definitive Map and Statement. In particular, point B is not on the shore line and the route between points B and C should not cross the Village Green. There is no mention of the Village Green in the

Definitive Statement and the route shown on the Definitive Map and described in the Definitive Statement should reach the shore before turning westwards.

- 1.3 Paragraph 20 of the Report states that there is a presumption that the Map and Statement as originally drawn are correct. The Site Map provided as Appendix 2 Item 2 is a clear contradiction of this due to the positioning of point B and the location of part of the route crossing the Village Green.
- 1.4 Paragraph 27 of the Committee Report refers to the plan submitted with the application as an illustration of where the Applicant considers the line of NT46 to be (Appendix 6, item 5). Whilst this plan was submitted with the application, it is not an accurate reflection of where the applicant considers the path to be. The applicant's case is that the path continues to the shore, before turning westwards, and not across the village green as explained in paragraph 27. Our client has admitted that this plan is an error and this should be reflected in the Committee Report. There appears to be great focus on this drawing, but the Committee should be reminded that the submitted application actually relates to the words in the Definitive Statement only, with the significance of that plan being that the route should go all the way to the shore and then westwards.

2 The application of the legal tests have not been interpreted correctly

- 2.1 The Report correctly identifies that S53(3)(c) of the Wildlife and Countryside Act contains the statutory power for the Definitive Map and Statement to be modified by order when particular criteria are met. In this instance, the application is to vary the particulars in the Definitive Statement, and therefore falls within S53(3)(c)(iii). However, the Report directs the Committee in particular to paragraphs 4.30 - 4.35 of the Rights of Way Circular which provides guidance in circumstances where the application is for the deletion of rights of way. The language within these paragraphs is very precise and at no stage does it refer to the second part of S53(3)(c)(iii) ("...or any other particulars contained in the Map and Statement require modification)". Instead, all of the paragraphs are focused on the considerations where deletion or downgrading are sought, referring specifically to the other circumstances set out in Section 53(3).
- 2.2 It appears that the Council is in clear danger of misdirecting itself in this matter and is certainly not a reasonable and balanced assessment of what has been applied for. In the section entitled "Determination of the Application", Paragraph 57 of the Committee Report starts by setting out what must be done "in order to delete a right of way from

the definitive map” and then assesses the evidence against that test. This is clearly an incorrect assessment of the application that has been made.

- 2.3 The Committee Report at its paragraph 23 notes the case of *R. (On the application of Norfolk CC) v Secretary of State for Environment, Food And Rural Affairs (2005) EWHC 119 (Admin)*. This case concerned the approach to be taken where the Map and the Statement are in conflict with each other. That is clearly the Applicant's case in this matter but the Committee Report does not make any real attempt to consider the application by reference to the principles established in that case as there is no real analysis as to why the Statement does not refer to the Village Green, or does refer to the Shore, where by the Council's own interpretation of the Definitive Map, it concludes that the route does not reach the Shore and instead crosses the Village Green. This position is not consistent with either the Map or the Statement but there has been no analysis as to which should prevail or if there is an alternative.

3 The Assessment of the Evidence Base is flawed

- 3.1 The Evidence relied upon is not consistent with what should be relied upon for the statutory tests. There is no real assessment of the evidence that has been provided to demonstrate what was on the ground at the time the route was originally recorded.
- 3.2 The Committee Report has instead placed excessive weight on the witness statements, which are almost entirely evidence of what was being used after the Map and Statement were adopted. For the purpose of interpreting whether or not the Map and Statement are correct, the relevant evidence to consider can only be that which predates the Definitive Map and Statement, but which was not available at that time.
- 3.3 The Witness Evidence that has been assessed has been described as supporting the existence of the route along the Sea Wall by 6 of the eight witnesses. The Committee Report does not mention however that most of these witnesses have no knowledge of what was happening in 1952. There is only evidence provided by two interviewees that actually pre-dates 1952. One is from Mr Eldridge, who supports the applicant's position that the route actually followed the shore, and not the Sea Wall, which was for private use. The other interviewee is Mr Mogg who only recalls the Sea Wall being used but does not know whether or not it was private. When viewed in the context of interviewees who had some knowledge at the relevant time, the witness evidence does not overwhelmingly support the route being along the Sea Wall as is suggested in the Committee Report.
- 3.4 The Committee Report has not investigated in any detail the documentary evidence

- put forward by the applicant that were relevant at the time the route came into force. It is the weight of that evidence and anything else that the Council may have discovered that would have been a factor when the route was adopted that should have been used to evaluate the application.
- 3.5 The Committee Report is not consistent in the way in which attributes weight to the evidence that has been obtained. In paragraph 46, the evidence of a gate in a photograph from the 1960s is dismissed as irrelevant as it is not evidence of what was there in 1952, however no such statements are made in respect of the witness evidence or planning documents which post-date 1952 as evaluated in paragraph 44.
- 3.6 Paragraph 44 also places particular importance on the table of rights of way that has been produced as Appendix 8 Item 8, although it is unclear where this comes from and when the information was assembled, it must however by its very nature be evidence that post-dates the creation of the right of way in any event.
- 3.7 The Committee Report has taken a questionable approach to the relevance of the word "shore" in the Definitive Statement. The definition of this term provided by the applicant has effectively been ignored, with the preferred interpretation being based on the notion that it may have simply meant access to the beach. There is no real explanation of this and in the absence of defined terms, the ordinary meaning of the word is the only sensible interpretation to use.
- 3.8 It is clear from the documentary evidence that at the western end of the Sea Wall there would have been a considerable drop in levels, such that it would be an illogical route for a footpath to follow. It is extremely difficult to understand why this is considered to be a more likely route than a route which follows the shore. The Committee Report concludes in paragraph 44 that the route along the shore was unlikely on the basis that it would be difficult to follow due to the groynes, large rocks and boulders. There is no explanation as to why this is considered to be less feasible than a route including a significant drop in levels that would be completely unsafe to follow.
- 3.9 Paragraph 44 concludes that it is fundamentally important that there are very few rights of way which continue along beaches. It is difficult to understand why this should be considered to be so fundamental. If nothing else it is clear that in some instances rights of way do continue along beaches, and it could be argued that in this instance it would make far more sense for the route to have followed the beach as opposed to a sea wall that is followed by a dangerous drop.
- 3.10 Throughout the Committee Report, it appears that evidence of the use of the sea wall by the public is being considered as a relevant fact. This is not in dispute, but it is not

a relevant consideration as the actual use of this route is immaterial in this instance. This is another example of how the user evidence appears to have been given too much weight.

4 Areas where the Committee Report and Appendices are unclear or misleading

- 4.1 Our client is concerned that the way the application has been presented is misleading. The matters set out below are points of particular concern.
 - 4.1.1 The appendices to the application have been dispersed through the appendices to the report.
 - 4.1.2 The documents presented in Appendix 2 are presented as if they are official records of the Definitive Map and Statement, which they are not, and some of the photographs show routes that are not accurate.
 - 4.1.3 In Appendix 6.2, the photographs require dates and locations. Photo 5 shows an easily walkable shore where witnesses have said it was impassable. Appendices 6.3 & 6.4 are illegible. In Appendix 6.10 Photo 3 is illegible and Photos 9 & 10 show the road to shore route becoming blocked by groynes but access looks possible slightly to the west.
 - 4.1.4 The plans provided in Appendix 8.4 show the Council's interpretation of the route shown on the Definitive Map but these are presented as though they are entirely accurate and can be relied upon when due to the scale of the Definitive map that is clearly not the case.

5 SUMMARY

- 5.1 Our clients are extremely concerned that in spite of the long time that has elapsed since this application was made, the resulting report does not suggest that a balanced assessment of the submitted evidence has been undertaken. Whilst we can appreciate that this is not a straight forward matter and that it is difficult to make an assessment of what was intended in 1950, the way in which the evidence has been presented appears to be unbalanced.
- 5.2 It is clear from the Definitive Map and Statement that NT46 was a right of way that allowed access to the Shore from Castlehaven Lane and that it then travelled westward in front of beach Cottage before meeting up with NT38. The notion that the path never reached the shoreline is not supported by any documentation, and the plan now produced at Appendix 2, Item 2 does not look like an accurate plotting of the

line of the path as shown on the Definitive Map. The Definitive Statement has already been shown to have errors within it as the Council has previously resolved to amend its description of the route, and there is no sensible explanation as to why a public right of way would have been made along a sea wall which had such a significant level change at one end that would have meant it could not have been safely followed when heading west, and would have been impossible to follow when travelling east.

- 5.3 We trust that this letter will be placed before the Committee when the application is considered and hope that the inconsistencies in the report will be reconsidered.

Yours faithfully,



SHOOSMITHS LLP

Officer Response to Comments of Shoosmiths dated 4th October 2017

1.1 There are two parts to the applicants' claim. The first part relates to deleting the section of NT46 from along the top of the sea wall from the Definitive Statement. However, the 2009 application which concerned deletion of NT46 from along the sea wall was rejected, a decision upheld by the Planning Inspectorate. This provided confirmation that the Definitive Map and Statement records NT46 as running along the top of the sea wall. Therefore, it cannot now be the case that the Definitive Statement be amended without affecting the Definitive Map. Further, the Definitive Map and Statement are so intrinsically connected that it is not possible to determine an application in respect of one without reference to the other. Likewise if an application is made to delete a section of path from the Statement (and/or Map) it is impossible to determine such an application without also considering the remainder of the path, how it connects to the section being deleted and the routes leading to it. Accordingly, by applying to delete NT46 from the Definitive Statement the application has to be treated as also deleting it from the Definitive Map. The applicant also caused ambiguity by completing the section of the application form relating to "deletions". What has been applied for should have been set out in the "varying the particulars" section, although the comments made above would have applied equally to that as well. The second part of the applicants' claims is set out under the "varying particulars" section. It seeks to amend the Definitive Statement by providing that the route of NT46 runs along the shore from the southern end of Castlehaven Lane heading west for approximately 35 metres. Despite this second part to the application, the applicants now contend that the Council, by investigating and determining this part of the application, are seeking to modify the Definitive Map and Statement on its own volition. The applicants contend that this second part of their application does not need to be investigated or determined as there is no argument that the Definitive Map and Statement record NT46 as being along the shore. No supporting evidence has been provided to support this claim. Reliance is wholly on the Definitive Statement and that it describes NT46 "to shore". The Definitive Statement does not state that NT46 is along the shore. This Statement is silent with regard to the section of NT46 from the end of Castlehaven Lane to eastern end of the sea wall. The applicants assume that this silence amounts to fact that the route was along the shore. This is an assumption. An assumption made with no evidence to support it. Conversely evidence which is available shows clearly that there was no path on the shore.

1.2 The annotated site map is a reflection of the Definitive Map. Point B is a fair reflection of the 1952 Definitive Map. The 1952 Definitive Map does not show NT46 reaching the shore line. It can be clearly seen on the 1952 Definitive Map that NT46 turns west before reaching the actual shore line.

1.3 See 1.2 above.

1.4 This should have been made very clear in the application. Nevertheless, the report will be amended accordingly.

2.1 The report directs the committee to all Legal Background contained in Appendix 5. This includes paragraphs 4.30 -4.35 of the Rights of Way Circular relating to deletions. Please be aware that neither the Rights of Way Circular nor the Planning Inspectorate Consistency Guidelines provide specific paragraphs regarding "any other particulars ... require modification" so there has been no intention only to refer to "deletions". For the reasons set out in paragraph 1.1 above the application does relate to "deletions" in any event. Paragraph 18 of the Report confirms that the standard of proof when considering evidence for modifying the definitive map and statement is the balance of probability and this is the

test applied in this matter. Paragraph 17 of the Legal Background deals with “any other particulars” provision.

2.2 Paragraphs 54 to 57 of the Report have been amended for the purposes of clarity only.

2.3 Not agreed, the report (specifically paragraphs 44-53) provides a full analysis of the evidence based on the principles in Norfolk.

3.1 Not agreed, the report provides a detailed and full assessment of the evidence.

3.2 Not agreed, all evidence has been considered in reaching the conclusions in the draft report.

3.3 For clarity the report will be amended to confirm that the witness evidence mentioned was post 1952.

3.4 The specific evidence that is considered not to have been investigated should be identified and provided. A list together with legible hard copies must be provided by the applicant.

3.5 See comment at 3.3 above.

3.6 Please refer to paragraph 43 of the Report. This document was produced by the Rights of Way Service in 2017 for the sole purpose of this application and to demonstrate that public rights of way recorded on the Definitive Map for the Isle of Wight providing beach access are common whereas public footpaths recorded as being along a beach are uncommon and none have been recorded as such in the Parish of Niton.

3.7 It is not clear what point is being made here. The Definitive Statement does use the word “shore” and the definition of this term provided by the applicant is not refuted.

3.8 Witness and documentary evidence shows (on the balance of probability) that in 1950/52 NT46 led from a green area at the western end of the sea wall along land in the southern side of the mound and did not drop down to the beach at that time. The height of the drop from the top of the sea wall to the beach is therefore irrelevant.

3.9 Not agreed. The witness and photographic evidence provide that the beach was in a condition which could not reasonably be considered to be a public footpath. There were large rocks and groynes obstructing such a route. The 1940s photographs show what conditions were like along the beach. It is improbable a parish surveyor would have identified a public footpath here and would probably have regarded the beach as open to everyone in any event - this is, and no doubt was then, a commonly held belief.

3.10 It is a relevant fact as it is evidence of the public exercising a public right of way.

4.1. The application is supported by a number of documents and in turn the Council’s investigations produced a number of relevant documents. The Council considers the draft Report to be the best and clearest way of producing the relevant documents in a form that the committee can cross refer whilst reading the substantive Report.

4.1.1 Documents listed 2-9 in the application are included in Appendix 6 (applicants’ evidence) Items 2-9 and are not dispersed. However, documents 1-9 of Appendix 6 will be moved to Appendix 1 to identify which documents were lodged with the application as listed therein. Item 1 of the application is dealt with at paragraph 30 of the Report.

4.1.2 This will be clarified in a revised report but the Council maintains that the documents are a fair reflection of the Definitive Map.

4.1.3 Appendix 6 is the applicants' evidence. If they require clear copies with dates and locations then they should provide this.

4.1.4 This will be clarified in a revised report but the Council maintains that the documents are a fair reflection of the Definitive Map.

5.1 The draft report is considered to provide a full and balanced investigation and conclusion but will be revised as mentioned above for clarification only.

5.2 The evidence is far from clear that NT46 was along the shore in front of Beach Cottage. The "notion" that the path never reached the shore is supported by a very important legal document – the Definitive Map. The comment regarding a drop at the western end of the sea wall has already been dealt with above. This point is the very substance of the application before the Council.

5.3 Noted.

NITON AND WHITWELL Parish Council

Clerk to the Council: Vickie Ford

Tel: ([REDACTED]

E-mail: [REDACTED]

3rd October 2017

Mr Darrel Clarke,
Rights of Way Manager,
Directorate of Place, Public Rights of Way,
Isle of Wight Council,
County Hall,
High Street,
Newport,
Isle of Wight,
PO30 1UD

Dear Darrel,

Public Footpath NT46

Application for Modification Order s53 Wildlife and Countryside Act 1981

The committee report on the above referenced Application for Modification Order was considered by Niton and Whitwell Parish Council at its meeting on Monday 25th September.

The Parish Council wishes to convey its thanks to you for the detailed research and the professional manner in which the report has been compiled.

The Parish Council wishes to attend the General Purposes (Appeals) Sub Committee meeting at which the matter will be discussed.

Having supported the re-opening of the section of footpath along the sea wall, the Parish Council would be willing in principle to consider financial support for its repair.

Yours sincerely,

[REDACTED]

V J Ford
Clerk to the Parish Council

Officer Response: No comment

Clarke, Darrel

From: Les Thorne [REDACTED]
Sent: 26 January 2018 14:27
To: Clarke, Darrel
Cc: Stewart, David (External)
Subject: Castlehaven coast protection

Dear Mr Clarke,

I refer to your email and my reply of 19 December 2017.

The attached drawings show the coastal protection work AS BUILT on completion of the contract by Van Oord ACZ, designed and administered by High Point Rendel.

They clearly prove that the boulders which block the route from lane to shore were not part of that contract. They were not required for coast protection, the sea is to their east towards Puckaster point and there is no raised ground to their west. They did not have planning or any other approval. Indeed the Council appears to have no record of them nor knowledge of their existence.

The coast protection contract respected the alignment of the route between lane and shore and commenced the revetment slope on grid line 75450N, as shown on drawing 206 revision 0. As the Sectional drawing 207 revision 0 shows the profiling of the revetments ensured that the existing ground level was unchanged wherever the route of NT46 was located.

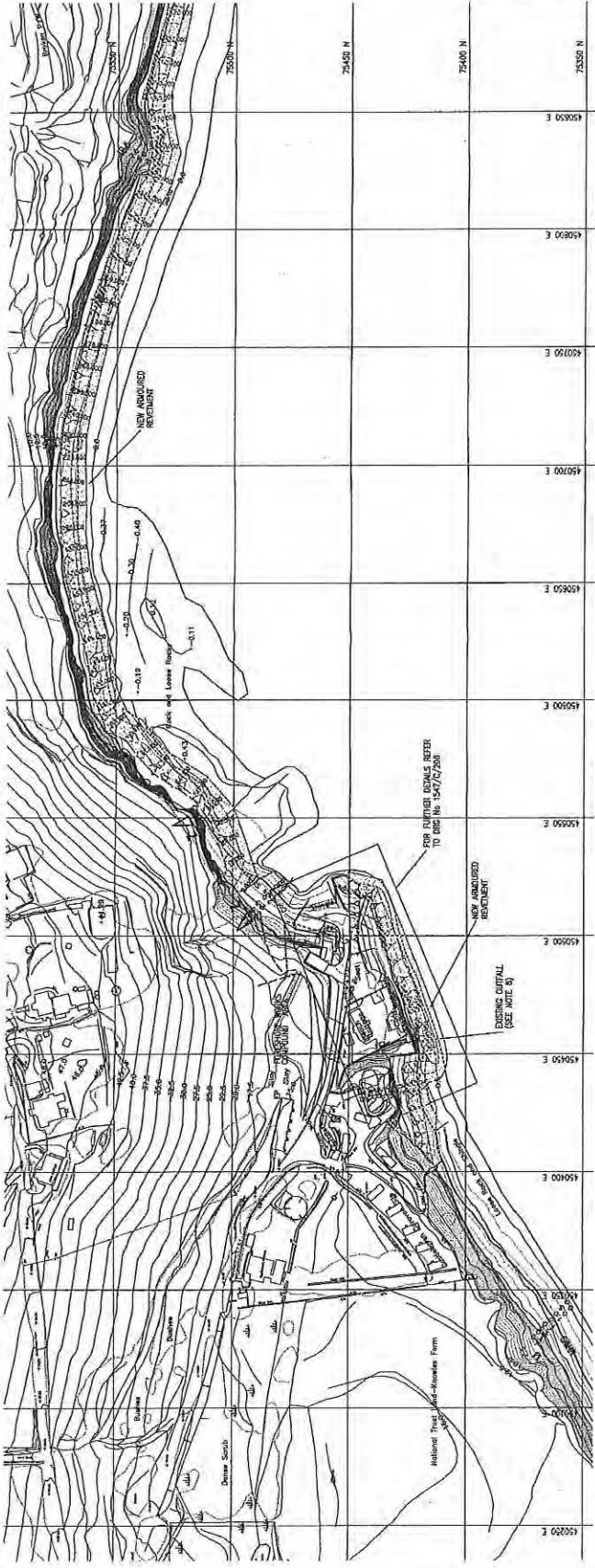
The route of NT46 remained open and unobstructed at the end of the coast protection contract. Others, yet to be identified, are responsible for the unnecessary obstruction and to date have escaped censure because it has been assumed that the boulders were part of the contract.

There is no reason not to remove or bridge these boulders and reopen the route after 13 years unauthorized obstruction.

I will be happy to assist further if you require or to meet with you on site. I will shortly share further pictures with you identifying the few boulders involved.

Kind Regards
Les Thorne

- Notes:**
1. All dimensions are in millimetres.
 2. All levels are in metres related to Ordnance Datum (Newly).
 3. Foreshore levels are approximate and are based on a survey carried out by James Dixon Ltd during construction (Jan-Jun 2004).
 4. All shallops are in metres.
 5. Eastern limit of Works as defined by Planning Permission.
 6. Shallops higher than 0.30m above low water level will show placement of the piers/paths (highly approximate) but not depth.
 7. From shallops 0 to 1.0 of high water level, the maximum depth of the concrete will be from 1.5 to 2.0 metres below low water level to top of in situ concrete. (See Dwg. No. 1547/AB/203 - Sections shallops On and 2 - 2 for details)
 8. Existing outfall through sea wall discharges directly into rear of new rock treatment.
 9. For slipway maintenance details, refer to dwg No. 1547/AB/202.
 10. This site is subject to Environmental Constraints. It is adjacent to a High Conservation Area.

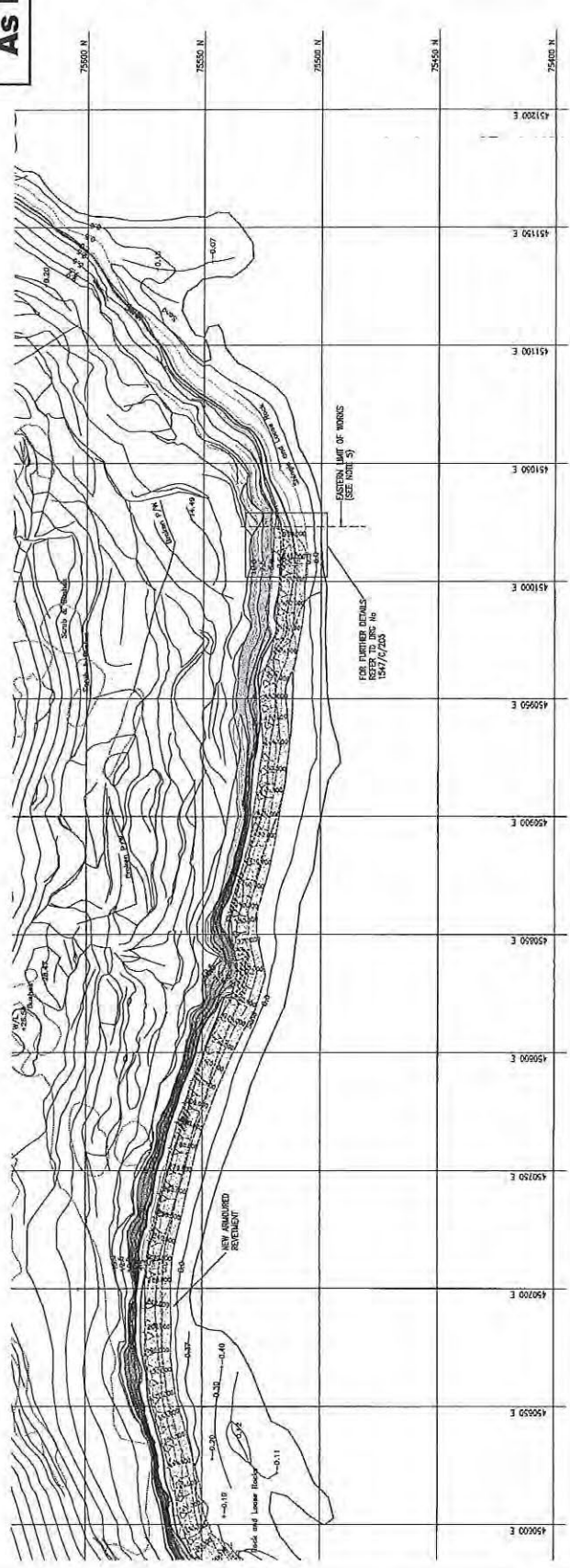


—MMS— MMS at (1:25 in 0:3)

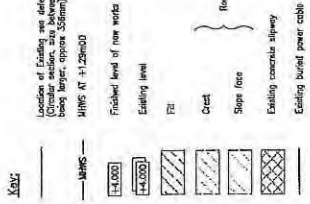
As Built Information



Client		Title		Date	
0	1	2	3	4	5
Issued	Revised	Checked	Drawn	Approved	Author
ISLE OF WIGHT COUNCIL					
CASTLEHAVEN COAST PROTECTION					
FORESHORE WORKS LAYOUT PLAN - NEW WORKS					
High-Point Rendel High-Point Rendel Limited 81 Southport Street, London SE1 1SA, UK Tel: +44 (0)20 7558 0600 Fax: +44 (0)20 7558 0401					
Format	Scale	File Name		Revision Number	
A1	1:1000	1547-AB-202.dwg		0	



- Notes:**
- All dimensions are to centerlines.
 - Contour levels are in metres relative to Ordnance Datum (AOD) and shown three metres above and below the datum.
 - Approximate positions of buildings are shown by dashed lines.
 - Existing timber and defence structures cut down to a level that will allow the ground to be prepared for the new revetment.
 - The revetment is to be constructed in concrete with a rock armour facing.
 - The revetment is to be constructed in concrete with a rock armour facing.
 - See drawing 1547/AB/207 for cross sections.
 - For details of slipway reconstruction see drawing 1547/AB/208.



Location of Existing and proposed, in timber groynes and fences (shown in red) are shown in green (20mm x 20mm with a line width of 0.5mm)

MHWS N + 1.25(0.0)

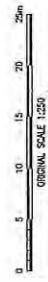
As Built Information



1	1/17/18	1/17/18	1/17/18	1/17/18	1/17/18	1/17/18	1/17/18	1/17/18	1/17/18
D	1/17/18	1/17/18	1/17/18	1/17/18	1/17/18	1/17/18	1/17/18	1/17/18	1/17/18
Client:	ISLE OF WIGHT COUNCIL								
Project:	CASTLEHAVEN COAST PROTECTION								
Drawing Title:	FORESHORE WORKS: CASTLEHAVEN HEADLAND NEW REVETMENT - PLAN								
Client:	High Point Rendel								
Client:	High Point Rendel Limited 9 Southwell Street, London SE1 1SA, UK Tel: +44 (0)20 7664 0400 Fax: +44 (0)20 7664 0401								
Project:	Scale: 1 : 250								
Project:	File Name: 1547-AB-2060.dwg								
Project:	Drawing Number: 001547/AB/206								
Project:	Revision Number: 0								



LOCATION PLAN
SCALE 1:250

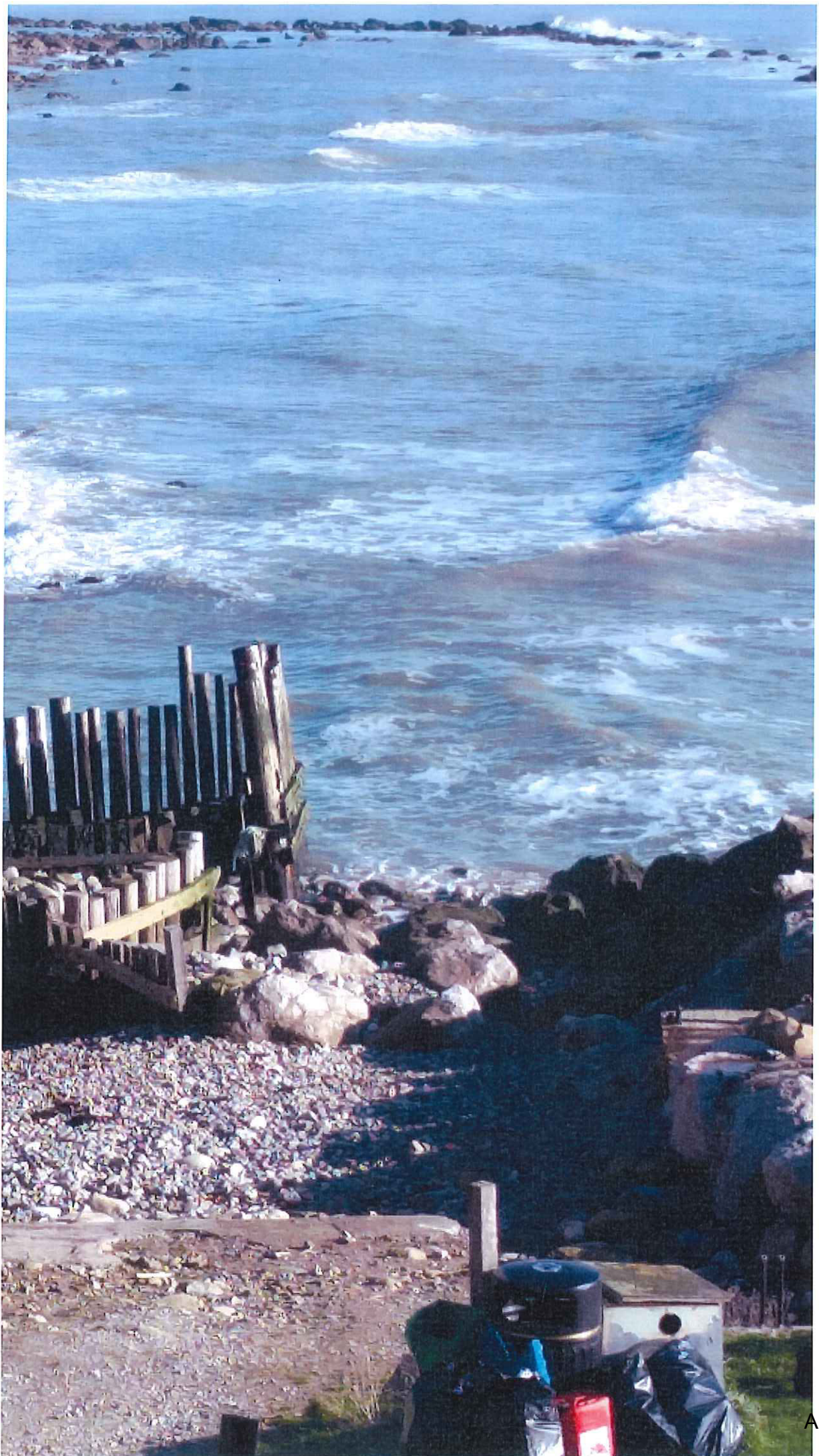


Clarke, Darrel

From: Les Thorne [REDACTED]
Sent: 26 January 2018 14:35
To: Clarke, Darrel
Cc: Stewart, David (External)
Subject: NT46
Attachments: IMG_20180126_123343.jpg

Looking virtually due east down the lane.
The slope of the revetments to the right are in shade.
The unauthorized obstructing boulders are in the sun.
The line where the two meet is grid line 75450N.

Les Thorne



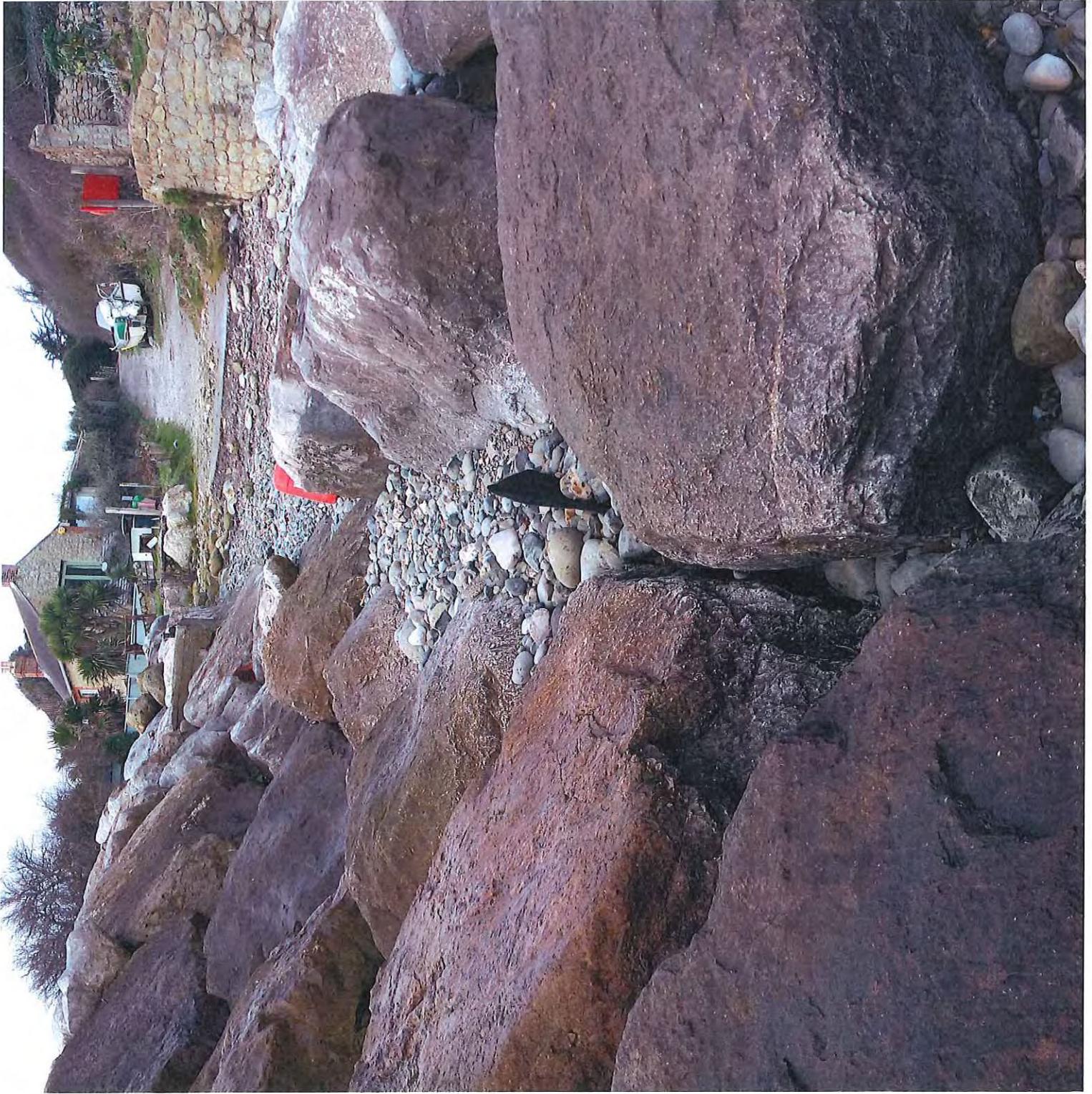
Clarke, Darrel

From: Les Thorne [REDACTED]
Sent: 26 January 2018 14:42
To: Clarke, Darrel; Stewart, David (External)
Subject: NT46
Attachments: IMG_20180126_105450.jpg

Photograph taken looking west along grid line 75450N which aligns with the original NE corner of the cottage at ground level.

The boulders to the right of that grid line are the unauthorized ones. Reopening of the route does not require them all to be removed or bridged.

Les Thorne



Clarke, Darrel

From: Les Thorne [REDACTED]
Sent: 26 January 2018 14:46
To: Clarke, Darrel
Cc: Stewart, David (External)
Subject: NT46
Attachments: IMG_20180126_105121.jpg

Looking east along lane to the shore.

The red container is on grid line 75450N, the slope of the revetments to the right is clearly defined, the random arrangement of the unauthorized boulders to the left is also clear.

Les Thorne



Clarke, Darrel

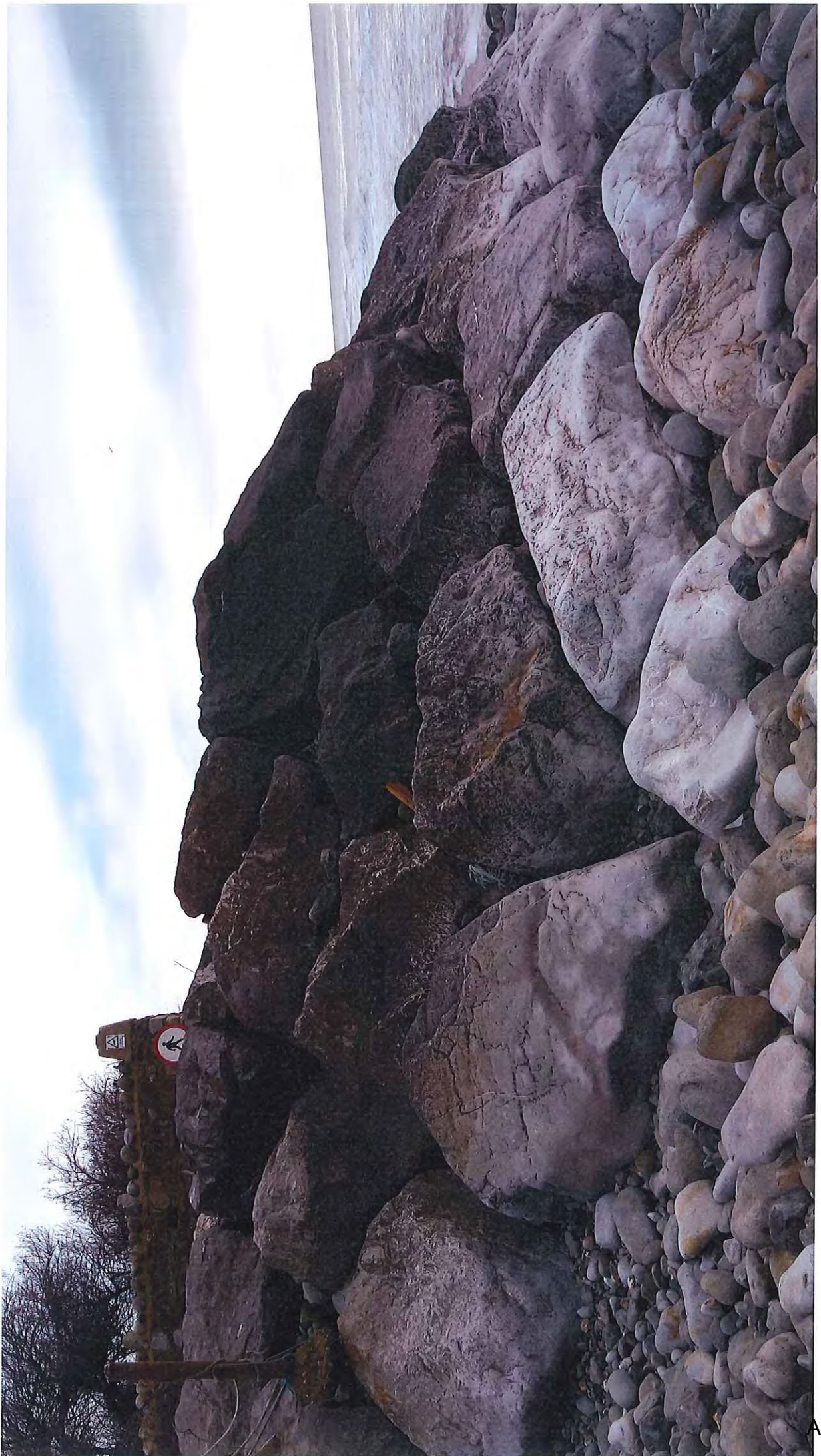
From: Les Thorne [REDACTED]
Sent: 26 January 2018 14:59
To: Clarke, Darrel
Cc: Stewart, David (External)
Subject: NT46
Attachments: IMG_20180126_103759.jpg

Finally,

This photograph is from the shore looking at the western end of the sea wall from my eye level, (I am 6ft but shrinking).

The HPR drawings I sent you show levels at top and bottom of the wall now concealed by boulders prior to the coast protection contract.

Kind Regards
Les Thorne



Clarke, Darrel

From: Clarke, Darrel
Sent: 31 January 2018 09:15
To: 'Les Thorne'
Cc: Stewart, David (External)
Subject: RE: NT46

Dear Mr Thorne

As you will see when you open the attachments, this is all made very clear in the revised report/appendix 9.

If you have any comments to make in respect of those then these should be received by the Council no later than 5th February 2018.

Regards

Darrel

Darrel Clarke | Rights of Way Manager | Directorate of Place | Public Rights of Way | Isle of Wight Council
| County Hall | Newport | Isle of Wight | PO30 1UD
Tel: (01983) 821000 | Email: darrel.clarke@iow.gov.uk | Web: www.iwight.com

From: Les Thorne [REDACTED]
Sent: 30 January 2018 15:49
To: Clarke, Darrel
Cc: Stewart, David (External)
Subject: RE: NT46

Dear Mr Clarke,

Thanks for your email.

Just to be absolutely clear: you are saying that the point at which the road accessed the shore was further west by scaling the Definitive Map which you have already accepted is at too small a scale to establish the alignment of the route. Please confirm this.

I have yet to have the opportunity to open the attachments you sent me on 24 January but hope to in due course.

Kind regards
Les Thorne

On 30 Jan 2018 1:23 p.m., "Clarke, Darrel" <Darrel.Clarke@iow.gov.uk> wrote:

Dear Mr Thorne

Thank you for your additional emails on 26th February.

The rocks edged red on the photo are not considered to be on any part of Public Footpath NT46. The definitive map clearly shows the point at which NT46 stops heading east on Castlehaven Lane and then

turns and continues south/south west. The rocks shown edged red are at least 10 metres (probably more) to the east than the point at which NT46 changes direction, as described.

The alignment of NT46 is fully dealt with in the committee report in respect of your application for a modification order, the final version of which was submitted to you for comment on 24th January (final comments due 5th February 2018).

I anticipate you responding to this email on the basis that your emails of 26th January do not relate to your application for a modification order and that no part of your application relates to NT46 east of the sea wall (forming part of Beach Cottage) and/or referring to the Definitive Statement and its reference to "shore". However, the Council's position on both of these points is made very clear in the report and its replies to your comments on the report (Appendix 9).

Please confirm whether your emails sent to me on 26th January should be treated as comments on the committee report? If you do not confirm, they will be not be treated as comments.

Regards

Darrel Clarke | Rights of Way Manager | Directorate of Place | Public Rights of Way | Isle of Wight Council
| County Hall | Newport | Isle of Wight | PO30 1UD

Tel: [01983 821000](tel:01983821000) | Email: darrel.clarke@iow.gov.uk | Web: www.iwight.com

From: Les Thorne [REDACTED]
Sent: 26 January 2018 16:10
To: Clarke, Darrel
Cc: Stewart, David (External)
Subject: RE: NT46

Dear Mr Clarke

The ones edged red, located between shady revetment slope and timber defences.

Those edged red are south of the grid line 75450N.

Kind Regards

Les Thorne

On 26 Jan 2018 2:48 p.m., "Clarke, Darrel" <Darrel.Clarke@iow.gov.uk> wrote:

Dear Mr Thorne

Thank you for your emails.

Before I can consider the matter please could you clarify which boulders you are referring to as being in the sun. The ones shown edged red on the attached image or the ones edged yellow? I presuming the latter since receiving your later emails with images.

Regards

Darrel Clarke | Rights of Way Manager | Directorate of Place | Public Rights of Way | Isle of Wight Council
| County Hall | Newport | Isle of Wight | PO30 1UD

Tel: [01983 821000](tel:01983821000) | Email: darrel.clarke@iow.gov.uk | Web: www.iwight.com

From: Les Thorne [REDACTED]
Sent: 26 January 2018 14:35
To: Clarke, Darrel
Cc: Stewart, David (External)
Subject: NT46

Looking virtually due east down the lane.

The slope of the revetments to the right are in shade.

The unauthorized obstructing boulders are in the sun.

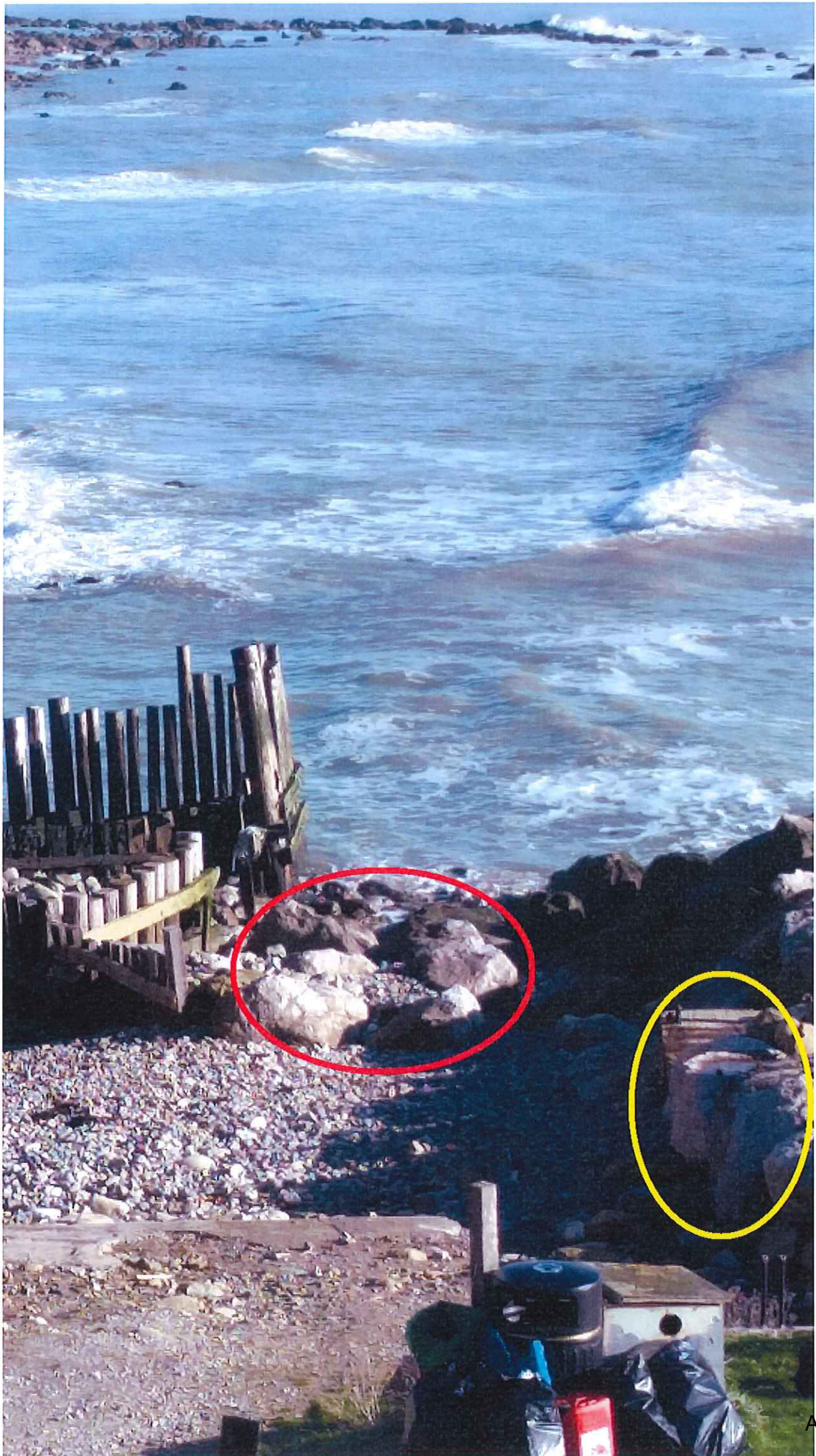
The line where the two meet is grid line 75450N.

Les Thorne

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If you are not the Intended Recipient please contact the sender as soon as possible. It is intended only for the personal attention of the named person, firm or company to whom it is addressed. It may contain information that is privileged and confidential in law. Accordingly any unauthorised dissemination, distribution, copying or other use of this message or any of its content by any other person may constitute a breach of civil or criminal law and is strictly prohibited. No mistake in transmission is intended to waive or compromise any such privilege. Any views expressed in this message are those of the individual sender and may not necessarily reflect the views of the Isle of Wight Council.

The information contained in this e-mail may be subject to disclosure to third parties under either the Data Protection Act 1998 or the Freedom of Information Act 2000 to the extent the law allows and in accordance with the Isle of Wight Council's policies on information management. (If you wish the disclosure of the information in any reply to be restricted please make this clear in your response).

Clarke, Darrel

From: Les Thorne [REDACTED]
Sent: 31 January 2018 14:11
To: Clarke, Darrel; Minns, Alex
Cc: Stewart, David (External); Weeks, Paul
Subject: Re: NT46

Dear Mr Clarke,

Thank you for your email.

I have looked through the attachments but can see nothing which relates to the route between road and shore, only your attempts to modify the route between shore and sea wall. Please identify where this clearly expressed description of the route in the DS is referred to.

What I did note is that you persist in an unbalanced, inaccurate and misleading presentation of the facts. For example, at the very outset you state that we have applied to have part of the route deleted; you know this is untrue yet you have ignored both our & Mr Weeks's objections to this misrepresentation. You falsely state that the application (ie. what we, as applicants, applied for) includes modifying part of the route to the east. Not true; you added an attempt to modify the route from one you invented to where the DS has always described it.

Surely what we should be seeking, on the ground, is the reinstatement of safe access to the shore and, regarding the MO application, establishing those matters on which we agree so that we can focus on where differences lie. Your response to the considerable input from Mr Weeks and ourselves has not demonstrated a willingness objectively to consider the evidence and fairly present the critical issues.

We cannot be expected to continue to provide comments which are not given proper consideration. If we are to provide comments by 5 February we require you to demonstrate that you are prepared to accept that certain facts are established when the evidence so proves.

We ask that by the end of this week you confirm that you agree that the following has been established:

- 1) That the eastern end of NT46 has been obstructed between shore and the top of the coastal slope since the 1970s.
- 2) That the route between road and shore clearly expressed in the DS was severed in 2004.
- 3) Consequently the portion of NT46 to which our MO application applies has not been connected to a RoW for over 13 years.
- 4) That the route IWC currently records requires one to accept that a footpath can run vertically up and down a wall at least 2.65M tall (almost 9 feet). (High Point Rendel drawing 001547/AB/206 Rev 0; top of wall at 4.150, pre-revetment shore at between 1.000 and 1.500)

The documentary evidences establishes that all the above is correct, indeed OS maps current in 1950 show the shore lower as it is now due to strong seas recently.

If you are prepared to accept evidence you should have no difficulty in accepting these statements promptly.

Kind Regards
Les Thorne

On 31 January 2018 at 09:15, Clarke, Darrel <Darrel.Clarke@iow.gov.uk> wrote:

Clarke, Darrel

From: Clarke, Darrel
Sent: 02 February 2018 15:55
To: 'Les Thorne'
Cc: Stewart, David (External); Weeks, Paul; Minns, Alex; Matthews, Lee
Subject: RE: NT46
Attachments: RE: NT46 - obstruction between lane and shore

Dear Mr Thorne

Thank you for your email.

With regard to the third paragraph of your email, I refer you to paragraph 57 of the report and the Council's replies to the comments on the draft report (appendix 9), in particular the answers to points 1.1 and 2.1 of Shoosmiths letter dated 4th October 2017.

I can respond to your 4 numbered points as follows:

1) That the eastern end of NT46 has been obstructed between shore and the top of the coastal slope since the 1970s.

Response: I presume you are referring to the western end of NT46 rather than the eastern end. The section of NT46 from shore to top of coastal slope (at caravan park) does not form part of your application for a modification order and whether or not it is (or has ever been) obstructed is not a question that requires to be answered as part of this process. As you are aware this section of NT46 is closed pursuant to a temporary traffic regulation order. A decision regarding the future of this section will need to be investigated at some stage but this is not something that should (or will be) discussed as part of your modification application process.

2) That the route between road and shore clearly expressed in the DS was severed in 2004.

Response: I refer you to my email to you dated 19th December 2017 (copy attached for your information). Paragraphs 44 and 57 of the report deals with the description of the word "shore" in the Definitive Statement. Paragraph 48 (and again 57) deals with the route of NT46.

3) Consequently the portion of NT46 to which our MO application applies has not been connected to a RoW for over 13 years.

Response: The report provides for the alignment of NT46 (paragraphs 48 and 57).

4) That the route IWC currently records requires one to accept that a footpath can run vertically up and down a wall at least 2.65M tall (almost 9 feet). (High Point Rendel drawing 001547/AB/206 Rev 0; top of wall at 4.150, pre-revetment shore at between 1.000 and 1.500)

Response: On the assumption that you are referring to the western end of the sea wall, this is dealt with at paragraphs 50 and 57 of the report. This point is also dealt with on a number of occasions in replies to your comments on the first draft of the report (appendix 9).

Regards

Darrel Clarke | Rights of Way Manager | Directorate of Place | Public Rights of Way | Isle of Wight Council
| County Hall | Newport | Isle of Wight | PO30 1UD
Tel: (01983) 821000 | Email: darrel.clarke@iow.gov.uk | Web: www.iwight.com

From: Les Thorne [REDACTED]
Sent: 31 January 2018 14:11
To: Clarke, Darrel; Minns, Alex

Clarke, Darrel

From: Clarke, Darrel
Sent: 19 December 2017 10:29
To: Les Thorne [REDACTED]
Cc: Stewart, David (External)
Subject: RE: NT46 - obstruction between lane and shore
Attachments: Section 130D Highways Act 1980.pdf

Dear Mr Thorne

Thank you for your email dated 11th December 2017.

The section of NT46 to the east of the sea wall at Beach Cottage and subject to the s130 notice process is part of your application for a modification order. The second part of the application clearly seeks to vary the particulars relating to the section of footpath from the southern end of NT46 to the eastern end of the sea wall. The Council has not added a location to your modification application.

The Council does not consider the route of NT46 to the east of Beach Cottage to be obstructed to an extent that there is significant interference with the public exercising the right of way.

The Council has never considered the route of NT46 to be on the beach or obstructed by coastal protection rocks. You will be aware from the documentary evidence submitted with the draft report relating to your application for a modification order that in 1984 (long before placement of coastal protection rocks) that the Council deemed the path to be across the village green and along the top of the sea wall. It is not the case that the Council have formed this opinion for convenience following placement of the coastal protection rocks and/or as a result of your application for a modification order or service of the section 130 notice. For these reasons the Council have never considered it necessary to make a temporary traffic regulation order in connection with the section of NT46 to the east of the sea wall and have no intention of doing so now. It considers that section of NT46 to be available for the public to use and there is no significant interference with that right.

In any event, until such time as your application for a modification order is determined, your proposed application to the Magistrates Court is in relation to a right of way that is "seriously disputed" in terms of its location. If you proceed with this application, the Council will, in addition to defending the application as per the points raised above, rely upon section 130B(5) of the Highways Act, 1980. This section states that no order will be made if the highway authority satisfies the court "that the fact that the way obstructed is a highway within section 130A(2) above is seriously disputed".

You are fully aware that this fact is disputed, since you are involved in that dispute. Any such application at this stage would therefore be manifestly unfounded and a waste of the court's time, and that of the authority. All we as an authority will have to do is provide the court with documents proving the dispute exists as to whether the path you say is obstructed is in fact a right of way and the court must then make no order, as that is what the statute directs at section 130B(5). For that reason, we wish to make clear that if you proceed with that application despite our having made clear the grounds upon which it will be resisted, the Council will seek an order for you to pay our costs under section 130D of the Highways Act, 1980. Please see attached the relevant section of the Highways Act, 1980 for your information.

Without prejudice to the Council's position as stated above, please provide the following for consideration:

1. Copies of all documentation that you have submitted to the legal advisor at Newport Magistrates Court.
2. Copies of the documentation evidencing that certain coastal protection rocks were placed without authorisation.
3. Copy documentation evidencing that the placement of those coastal protection rocks serves no function and are not orientated correctly.
4. Photographs marked up to clearly show which coastal protection rocks are being referred to in points 2 and 3 above.

5. If different from the photographs provided in point 4 above, photographs marked up clearly showing which coastal protection rocks you consider need to be relocated or bridged.

With regard to your application for a modification order, I can confirm that a date for a committee meeting has been requested from Committee Services and an amended report will be provided as part of their processes. I will of course advise you of the committee meeting date as soon as I have been notified.

Regards

Darrel Clarke | Rights of Way Manager | Directorate of Place | Public Rights of Way | Isle of Wight Council
| County Hall | Newport | Isle of Wight | PO30 1UD
Tel: (01983) 821000 | Email: darrel.clarke@iow.gov.uk | Web: www.iwight.com



Highways Act 1980

1980 CHAPTER 66

PART IX

LAWFUL AND UNLAWFUL INTERFERENCE WITH HIGHWAYS AND STREETS

Protection of public rights

[^{F1}130D Section 130B: costs.

Where an application under section 130B above is dismissed by virtue of paragraph (a), (b) or (c) of subsection (5) of that section, the court, in determining whether and if so how to exercise its power under section 64(1) of the ^{M1}Magistrates' Courts Act 1980 (costs), shall have particular regard to any failure by the highway authority to give the applicant appropriate notice of, and information about, the grounds relied on by the authority under that paragraph.]

Annotations:

Amendments (Textual)

F1 S. 130D inserted (13.2.2004 for E. and 1.4.2004 for W.) by 2000 c. 37, s. 63(1); S.I. 2004/292, art. 2(a); S.I. 2004/315, art. 2(a)

Marginal Citations

M1 1980 c. 43.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Highways Act 1980. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 90B(1A) inserted by 2015 c. 20 Sch. 10 para. 15(3)
- s. 90C(2)(2A) substituted for s. 90C(2) by 2015 c. 20 Sch. 10 para. 16(3)
- s. 90FA inserted by 2015 c. 20 Sch. 10 para. 20
- s. 105A-105AB substituted for s. 105A by S.I. 2017/1070 Sch. 2 para. 3
- s. 105B 105BA substituted for s. 105B by S.I. 2017/1070 Sch. 2 para. 4
- s. 105C(6A) inserted by S.I. 2017/1070 Sch. 2 para. 5(7)
- s. 105CA-105CD inserted by S.I. 2017/1070 Sch. 2 para. 6
- s. 105ZA inserted by S.I. 2017/1070 Sch. 2 para. 2
- s. 118ZA(5)(a) words inserted by 2015 c. 20 s. 25(3)
- s. 120(3ZA) inserted by 2000 c. 37 Sch. 6 para. 13(6)
- s. 121E(1A)(1B) inserted by 2015 c. 20 s. 23(5)
- s. 146(6) inserted by 2015 c. 20 s. 24(6)(d)
- s. 147(1A) inserted by 2015 c. 20 s. 24(3)
- s. 147(5A) inserted by 2015 c. 20 s. 24(5)
- s. 322(5)(ab) inserted by 2004 c. 18 s. 64(2)
- s. 325(2B) inserted by 2015 c. 20 Sch. 10 para. 21
- Sch. 6 para. 1(3ZA) inserted by 2015 c. 20 Sch. 7 para. 8(2)(b)
- Sch. 6 para. 2(2ZA)-(2ZE) inserted by 2015 c. 20 Sch. 7 para. 8(3)
- Sch. 6 para. 2(4) inserted by 2015 c. 20 Sch. 7 para. 8(4)
- Sch. 6 para. 2(5)(6) inserted by 2015 c. 20 Sch. 7 para. 8(5)
- Sch. 6 para. 2ZZA inserted by 2015 c. 20 Sch. 7 para. 8(6)
- Sch. 6 para. 4A(2) inserted by 2015 c. 20 Sch. 7 para. 8(7)(c)
- Sch. 6 para. 5(ba) inserted by 2015 c. 20 Sch. 7 para. 8(8)
- Sch. 6 para. 4A(1) words renumbered as Sch. 6 para. 4A(1) by 2015 c. 20 Sch. 7 para. 8(7)(a)
- Sch. 6 para. 4A(1) words substituted by 2015 c. 20 Sch. 7 para. 8(7)(b)

Email of Mr Thorne dated 4th February 2018 with officer comments

Dear Mr Clarke,

I need to confirm a few matters with you

1) That the sub committee who consider the application will visit the site and I will be permitted to point out locations, obstructions and other details regarding the route. As I believe I previously mentioned the Council Leader was surprised in 2011 that this had not happened and then considered it essential for an informed decision. This visit has to be when the tide is out.

Officer response: See officer response to this question at Appendix 9, Item 4

2) That all grounds to justify the application, including our privacy and security, will be taken into account. As you know we have had considerable targeting from criminals over many years.

Officer response: These matters have no bearing on determination of this application.

3) That the HPR drawings recently sent to you will be included in the application and it will be pointed out that prior to commencement the western end of the sea wall rose vertically at least 2.65M above the shore. Also that on completion it was possible to walk directly from road to shore and that existing levels along the route that I claim to apply had been respected.

Officer response: The drawings are attached to this document. The point regarding the drop to the beach at the western end of the sea wall is fully dealt with in the report and in the replies to the comments on the first draft of the report. The section of NT46 east of the sea wall is also fully dealt with in the report.

4) That the whole length of NT46 will be considered in detail. As continuity of the route and consideration of all the shore access points available in 1950 is essential. Also, the historical record evidences the honesty and integrity of the RoW duties as performed by you. This will include when portions were obstructed and why, when those authorizing closure were informed and what they were told, how you have responded to the opportunities that exist for reinstating access, when the closure authorization expires.

Officer response: The sections of NT46 subject to this application (and any other sections of it which affect/relate to the application) are fully dealt with in the report.

Finally for the present time, could you tell me what you think NT46 was for. It obviously provided public access over private land but was not for the purpose of going from one end to the other : that is far more directly provided by the route through the caravan site. So what was being accessed by the long loop?

Officer response: The purpose of the first Definitive Map for the Isle of Wight was to record public rights of way which existed in 1952. It was not the case that the statutory process "created" public rights of way which had to serve a particular purpose. NT46 was recorded on the first Definitive Map and the principle of regularity applies (see paragraph 20 of the report).

Regarding your draft report

I note that you have reverted to trying to use the DM to justify the alignment you seek to defend. Where is the long straight line parallel to the front of the cottage that a sea wall route requires?

Email of Mrs Thorne dated 4th February 2018 and officer response

Dear Mr Clarke,

You have requested further comments on your report and I respond with my personal comments as one of the two applicants.

You are reducing the whole process to a pointless exercise. You deliberately misrepresent the application as being for the deletion of a footpath rather than the correction of the Definitive Statement wording. Having accepted that the DS described a private path within the cottage/caravan complex to a different destination you then select part of that flawed statement as evidence of the route to the correct destination.

Your behaviour demonstrates that you are not interested in spending minimal effort to reinstate the readily available public access to the shore but are prepared to use any means and unlimited time to enforce public access into our garden with total disregard for our security and privacy. All the evidence which proves you wrong is ignored, omitted or misrepresented. You seem incapable of considering evidence objectively, preferring to create any scenario which reinforces your preconceived conclusion. Why is harming our home more important to you than providing access to the shore?

The sea wall will never provide such access and it needs considerable repair and additional height revetments even to be a cul de sac.

You renege on matters previously agreed and are never personally prepared to confirm agreement on any matter. Your report fails to record that IWC accepted in 2011 that a drop of almost 4 metres existed at all relevant times in the location that you claimed one could step from wall to shore. And within the pages of speculation on how difficult it was to walk along the shore where is there reference to the hundreds who use just such a shore to access Reeth Bay beach, that every tide moves the stones (even large ones in this exposed location) and that you have photographs showing that this was where boat owners had long chosen to drag boats from sea to land. None of this, and much else, is included in the sections where you feign objective deliberations and conclusions.

You have revealed throughout that you favour hearsay from those who desperately want our application refused and who arrived long after the relevant date rather than documentary evidence from independent, authoritative sources. You make sweeping statements deliberately misrepresenting plans and photographs, always avoiding precisely identifying what it is you are referring to.

It is evident that no matter what you receive from our specialist RoW solicitor or us you will neither reconsider nor change your views. You have acted unreasonably throughout. Should our application be refused then the bias of your report demands that it be appealed by the Hearing or Public Inquiry procedure, that we be represented by a legal team and that we seek full costs on the grounds of your unreasonableness.

It is your duty to address these matters objectively and not to pursue a time-consuming, high public cost vendetta on behalf of a few local people. I urge you to reconsider and apply proper professional standards.

Regards

Lynne Thorne

Officer response: The report and appendices are evidence of a thorough investigation of the application and all associated matters that need to be considered in order to determine the application and are written and presented in a clear and methodical manner.