



Saltash Town Council

Konsel An Dre Essa



The Guildhall
12 Lower Fore Street
Saltash
PL12 6JX
Telephone: 01752 844846
www.saltash.gov.uk

14 August 2024

Dear Councillor

I write to summon you to the **Meeting of the Planning and Licensing Committee** to be held at the Guildhall on **Tuesday 20th August 2024 at 6.30 pm.**

The meeting is open to members of the public and press. Members of the public wishing to speak about a planning application should register either by email to enquiries@saltash.gov.uk or via The Guildhall, 12 Lower Fore Street, Saltash PL12 6JX, **no later than 12 noon the day before the meeting** where the application will be considered.

Planning applications can be viewed by Members of the Council prior to the meeting on the Cornwall Council's website www.cornwall.gov.uk. Members of the public may view planning applications online during normal working hours of 9:30 a.m. to 4:30p.m. at the Saltash Library Hub.

Yours sincerely,

S Burrows
Town Clerk/RFO

To:

Essa	Tamar	Trematon
R Bickford	J Dent	S Miller
J Brady (Vice-Chairman)	S Gillies	B Samuels (Chairman)
R Bullock	S Martin	B Stoyel
J Foster	L Mortimore	D Yates
M Griffiths	J Peggs	
S Lennox-Boyd	P Samuels	

Agenda

1. Health and Safety Announcements.
2. Apologies.
3. Declarations of Interest:
 - a. To receive any declarations from Members of any registerable (5A of the Code of Conduct) and/or non-registerable (5B) interests in matters to be considered at this meeting.
 - b. The Town Clerk to receive written requests for dispensations prior to the start of the meeting for consideration.
4. Public Questions - A 15-minute period when members of the public may speak about a planning application.

Please note: Any member of the public requiring to speak about a planning application should register by email **no later than 12 noon the day before the meeting** where the application will be considered.
5. To receive and approve the minutes from the Planning and Licensing Committee held on Tuesday 16 July 2024 as a true and correct record. (Pages 5 - 10)
6. To consider Risk Management reports as may be received.
7. Planning:
 - a. To note that Councillor Lennox-Boyd will vote upon the information before her at the meeting but in the light of subsequent information received at Cornwall Council, Councillor Lennox-Boyd may vote differently at that meeting.
 - b. To note that if Councillor Lennox-Boyd wishes to recommend opposite to the Town Council's view she will contact the Town Council by email. Considering time constraints, the Town Council will then hold an online poll of Councillors to determine whether to accept the Officer's view or to ask for the application to be called into committee. The results of these polls will be read into the record at the next Town Council meeting. Members of the public may request, via the Clerk, to be copied into any correspondence.

c. Applications for consideration:

PA24/05152

Mrs Perdita Heller – **Grove Elmgate Saltash PL12 4QY**

New waterless toilets, showers and raised timber seating area installed for use with the permitted development for a 60 day temporary campsite (already permitted). The proposal is for the amenity structures to remain situated beyond the 60 days.

Ward: Trematon

Date received: 19/07/24

Response date: 21/08/24

<https://planning.cornwall.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=SG08JYFGGM400>

PA24/05768

Mr R Allen – **Land South of Tinkhams Farm House Carkeel Saltash PL12 6PH**

Erection of a detached dwelling and garage with a new vehicular access and associated parking and amenity areas without compliance with Conditions 2 and 3 of decision notice PA23/04762 dated 26.10.2023.

Ward: Trematon

Date received: 02/08/24

Response date: 23/08/24

<https://planning.cornwall.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=SH47GCFGJFC00>

PA24/05900

Mr & Mrs Ryan James – **32 Hobbs Crescent Saltash PL12 4JJ**

Extension to form First floor accommodation, with ground floor kitchen extension, pitched roof to garage to replace flat roof.

Ward: Tamar

Date received: 12/08/24

Response date: 02/09/24

<https://planning.cornwall.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=SH9REKFGMLN00>

PA24/05913

Mackie - 15 Townswell Close Trematon Saltash PL12 4RY

Construction of ground floor rear extension, front infill extension and associated glazing alterations.

Ward: Trematon

Date received: 01/08/24

Response date: 22/08/24

<https://planning.cornwall.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=SHDGQZFGFHD00>

8. To receive correspondence from The Planning Inspectorate ROW/3295824: Footpath at Babis Lane and Town Quay - Modification Order 2017 and consider any actions and associated expenditure. (Pages 11 - 31)
9. Public Bodies (Admission to Meetings) Act 1960:
To resolve that pursuant to Section 1(2) of the Public Bodies (Admission to meetings) Act 1960 the public and press leave the meeting because of the confidential nature of the business to be transacted.
10. To consider any items referred from the main part of the agenda.
11. Public Bodies (Admission to Meetings) Act 1960:
To resolve that the public and press be re-admitted to the meeting.
12. To confirm any press and social media releases associated with any agreed actions and expenditure of the meeting.

Date of Next Meeting: Tuesday 17 September 2024 at 6.30 pm

SALTASH TOWN COUNCIL

Minutes of the Meeting of the Planning and Licensing Committee held at the Guildhall on Tuesday 16th July 2024 at 6.30 pm

PRESENT: Councillors: J Brady (Vice-Chairman), R Bullock, J Dent, J Foster, S Lennox-Boyd, S Miller, J Peggs, B Samuels (Chairman), P Samuels, B Stoyel and D Yates.

ALSO PRESENT: 1 Member of the Public, M Thomas (Senior Policy and Data Compliance Officer) and F Morris (Planning and General Administrator).

APOLOGIES: R Bickford, S Gillies, M Griffiths, S Martin and L Mortimore.

38/24/25 HEALTH AND SAFETY ANNOUNCEMENTS.

The Chairman informed those present of the actions required in the event of a fire or emergency.

39/24/25 DECLARATIONS OF INTEREST:

a. To receive any declarations from Members of any registerable (5A of the Code of Conduct) and/or non-registerable (5B) interests in matters to be considered at this meeting.

Councillor	Agenda Item	Pecuniary/Non-Pecuniary	Reason	Left Meeting
B Samuels	PA24/04841	Non-Pecuniary	Applicant known to me	Yes
P Samuels	PA24/04841	Non-Pecuniary	Applicant known to me	Yes
R Bullock	PA24/04841	Non-Pecuniary	Friend of objector	Yes

b. The Town Clerk to receive written requests for dispensations prior to the start of the meeting for consideration.

None.

40/24/25 **PUBLIC QUESTIONS - A 15-MINUTE PERIOD WHEN MEMBERS OF THE PUBLIC MAY SPEAK ABOUT A PLANNING APPLICATION.**

The Chairman informed Members that a member of the public had requested to speak under Agenda Item 7c – Applications for consideration, in support of PA24/04841 - Morhild, North Park Villas, Saltash, PL12 6LP.

The Chairman confirmed that this would be received under Agenda Item 7c – Applications for consideration.

41/24/25 **TO RECEIVE AND APPROVE THE MINUTES FROM THE PLANNING AND LICENSING COMMITTEE HELD ON TUESDAY 18 JUNE 2024 AS A TRUE AND CORRECT RECORD.**

Please see a copy of the minutes on the STC website or request to see a copy at the Guildhall.

It was proposed by Councillor B Samuels, seconded by Councillor Brady and **RESOLVED** that the minutes of the Planning and Licensing Committee held on Tuesday 18 June 2024 were confirmed as a true and correct record.

42/24/25 **TO CONSIDER RISK MANAGEMENT REPORTS AS MAY BE RECEIVED.**

Nothing to report.

43/24/25 **PLANNING:**

- a. To note that Councillor Lennox-Boyd will vote upon the information before her at the meeting but in the light of subsequent information received at Cornwall Council, Councillor Lennox-Boyd may vote differently at that meeting.
- b. To note that if Councillor Lennox-Boyd wishes to recommend opposite to the Town Council's view she will contact the Town Council by email. Considering time constraints, the Town Council will then hold an online poll of Councillors to determine whether to accept the Officer's view or to ask for the application to be called into committee. The results of these polls will be read into the record at the next Town Council meeting. Members of the public may request, via the Clerk, to be copied into any correspondence.

c. Applications for consideration:

PA24/04422

Paul and Susannah Melling – **39 Lower Port View St Stephens Saltash PL12 4BY**

Dormer extension, including building over the existing garage.

Ward: Essa

Date received: 19/06/24

Response date: 19/07/24

It was proposed by Councillor Bullock, seconded by Councillor Brady and resolved to **RECOMMEND APPROVAL**.

PA24/04655

Mr & Mrs A Stone – **29 Longmeadow Road Saltash PL12 6DP**

Proposed alterations and roof conversions to dwelling.

Ward: Tamar

Date received: 26/06/24

Response date: 17/07/24

It was proposed by Councillor Peggs, seconded by Councillor Dent and resolved to **RECOMMEND APPROVAL**.

Councillors Bullock, B Samuels and P Samuels declared an interest in the next agenda item and left the meeting.

Vice Chairman Councillor Brady in the Chair.

PA24/04841

Mr & Mrs S Carew – **Morhild North Park Villas Saltash PL12 6LP**
Extension to dwelling.

Ward: Tamar

Date received: 02/07/24

Response date: 23/07/24

The Vice Chairman requested Members approval to allow a member of the public to speak for up to three minutes in support of PA24/04841.

It was proposed by Councillor Brady, seconded by Councillor Miller and **RESOLVED** to approve the request.

A member of the public spoke in support of PA24/04841.

It was proposed by Councillor Miller, seconded by Councillor Dent and resolved to **RECOMMEND APPROVAL**.

Councillors Bullock, B Samuels and P Samuels were invited and returned to the meeting.

Chairman Councillor B Samuels in the Chair.

PA24/04871

Mr Nathan Jones – **25 Callington Road Saltash PL12 6DU**
Replacement detached garage.

Ward: Essa

Date received: 05/07/25

Response date: 26/07/24

It was proposed by Councillor Peggs, seconded by Councillor Lennox-Boyd and resolved to **RECOMMEND APPROVAL**.

PA24/04937

Mr Jason Gibbs British Energetics – **Spinnaker International Spinnaker House Latchbrook Parkway Industrial Estate Long Acre PL12 6LF**

Proposed wildlife pond with associated re-contouring works and landscape enhancements.

Ward: Tamar

Date received: 09/07/24

Response date: 30/07/24

It was proposed by Councillor Peggs, seconded by Councillor Foster and resolved to **RECOMMEND APPROVAL**.

44/24/25

TO RECEIVE CORNWALL COUNCIL'S CONSULTATION RE STOPPING UP OF A SECTION OF THE HIGHWAY AT TRELEDAN, SALTASH AND CONSIDER ANY ACTIONS.

Members received and discussed Cornwall Council's consultation re Stopping up of a section of the highway at Treledan, Saltash contained within the circulated reports pack.

It was proposed by Councillor Foster to support the consultation.

The motion did not carry due to no seconder.

It was proposed by Councillor Brady, seconded by Councillor Dent and **RESOLVED** to note the consultation.

45/24/25

TO RECEIVE CORNWALL COUNCIL'S CONSULTATION RE THE STATEMENT OF PRINCIPLES - GAMBLING ACT 2005 AND CONSIDER ANY ACTIONS.

Members received and discussed The Statement of Principles – Gambling Act 2005 received from Cornwall Council and contained within the circulated reports pack.

It was proposed by Councillor B Samuels, seconded by Councillor Stoyel and **RESOLVED** to note the consultation and to request Licensing training for Town and Parish Councils from Cornwall Council.

46/24/25 **TO RECEIVE CORNWALL COUNCIL'S CONSULTATION RE THE DRAFT CORNWALL HOUSING DECARBONISATION STRATEGY AND CONSIDER ANY ACTIONS.**

Members received and discussed The Draft Cornwall Housing Decarbonisation Strategy received from Cornwall Council and contained within the circulated reports pack.

Having attended a Cornwall Council Webinar concerning The Draft Cornwall Housing Decarbonisation Strategy, the Senior Policy and Data Compliance Officer gave a brief summary of the strategy to the meeting.

It was **RESOLVED** to note.

47/24/25 **PUBLIC BODIES (ADMISSION TO MEETINGS) ACT 1960:**

To resolve that Pursuant to Section 1(2) of the Public Bodies (Admissions to Meetings) Act 1960 the public and press leave the meeting because of the confidential nature of the business to be transacted.

48/24/25 **TO CONSIDER ANY ITEMS REFERRED FROM THE MAIN PART OF THE AGENDA.**

None.

49/24/25 **PUBLIC BODIES (ADMISSION TO MEETINGS) ACT 1960:**

To resolve that the public and press be re-admitted to the meeting

50/24/25 **TO CONFIRM ANY PRESS AND SOCIAL MEDIA RELEASES ASSOCIATED WITH ANY AGREED ACTIONS AND EXPENDITURE OF THE MEETING.**

It was proposed by Councillor Yates, seconded by Councillor Bullock and **RESOLVED** to issue the following Press and Social Media release:

1. Cornwall Council's public consultation re The Draft Cornwall Housing Decarbonisation Strategy.

DATE OF NEXT MEETING

Tuesday 20 August 2024 at 6.30 pm

Rising at: 7.18 pm

Signed: _____
Chairman

Dated: _____



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Direct Line: 0303 444 5226
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0303 444 5000

Email: caroline.baylis@planninginspectorate.gov.uk
www.gov.uk/planning-inspectorate

Your Ref:
Our Ref: ROW/3295824

The Clerk
Saltash Town Council
Saltash Town Council, The Guildhall
12 Lower Fore Street
SALTASH
Cornwall
PL12 6JX

15 July 2024

Dear Sir/Madam,

Wildlife and Countryside Act 1981 - Section 53
Order Making Authority: Cornwall Council
Title of Order: (Addition of Footpaths at Babis Lane & Town Quay in the Parish of Saltash) Modification Order 2017

I enclose for your information a copy of the Inspector's interim decision on this Order following the Inquiry on 11 June 2024.

This is an interim decision because the Inspector has proposed a modification to the order, which will need to be advertised before a final decision can be made. You are entitled to comment on the Inspector's proposals and I will write to you again shortly about how you can do this. In the meantime, you will find information about the modification process at section 7 of our booklet *Definitive Maps and Public Path Orders*. Please let me know if you require a copy of this booklet.

If you have concerns or queries about the decision or the way we have handled the order, or you simply wish to provide feedback, please visit our Feedback and Complaints webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>. Please quote our reference number in any correspondence.

If you do not have internet access you may write to the Customer Quality Team, Room 3H Hawk Wing, at the address above. Alternatively, if you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service team on 0303 444 5000.

An electronic version of the decision will shortly appear on the Inspectorate's website <https://www.gov.uk/guidance/rights-of-way-information-decisions-and-maps>.

We are continually seeking ways to improve the quality of service we provide to our customers. As part of this commitment we are seeking feedback from those who use our service. It would be appreciated if you could take some time to complete this short survey, which should take no more than a few minutes complete:

https://www.surveymonkey.co.uk/r/Planning_inspectorate_customer_survey

Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Caroline Baylis

Caroline Baylis

<https://www.gov.uk/government/publications/planning-inspectorate-privacy-notice>



Interim Order Decision

Inquiry Held on 11 June 2024

Site visits made on 10 and 12 June 2024

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 15 July 2024

Order Ref: ROW/3295824

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Cornwall Council (Addition of Footpaths at Babis Lane and Town Quay in the Parish of Saltash) Modification Order 2017.
- The Order is dated 16 November 2017 and proposes to modify the Definitive Map and Statement for the area by adding footpaths as shown in the Order plan and described in the Order Schedule.
- There were 15 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.

Procedural Matters

1. A public Inquiry into the Order was held at the Guildhall, Saltash, on 11 June 2024. Provision was made for interested parties to join the Inquiry virtually by Microsoft Teams platform. None of those who attended virtually spoke at the Inquiry.
2. Cornwall Council, the Order Making Authority (the OMA), remained neutral at the Inquiry. Each of the attending interested and relevant parties who were either in support or in objection to the Order, were provided with the opportunity to present their own submissions at the Inquiry.

Background and the Main Issues

3. An application was made under Section 53 of the 1981 Act in May 2001 by Saltash Town Council (the Applicant), and which sought to add to the Definitive Map and Statement (the DMS) a public footpath between Coombe Road and Waterside, Saltash (the Claimed Route). The Claimed Route commences from a point on Coombe Road (at point A on the Order plan) and runs in a southeasterly direction to the foreshore (at point B on the Order plan). It then runs in an easterly direction along the top section of the foreshore and under a railway bridge, before turning in a northeasterly direction to a point where the foreshore meets an access slipway (at point C on the Order plan). It then continues in a northeasterly direction and towards Town Quay, along a trackway to a point (shown at point D on the Order plan), where it forks, with the claimed footpaths terminating at points close to Town Quay (shown at point E and at point F on the Order plan).
4. On the 31 July 2017, the OMA made a recommendation that an Order be made under the 1981 Act, to modify the DMS by adding a public footpath (the Order Route) from Coombe Road to the foreshore - as shown between points A-B on the Order plan - and by adding lengths of public footpath from the foreshore to

- Waterside Saltash - as shown between points C-D-E and between points D-F on the Order plan.
5. However, the OMA declined to include the claimed length of public footpath over the foreshore area adjacent to Coombe Road between point B and point C on the Order plan, within the Order. In that respect, it is not disputed by the OMA that the foreshore has been used by the public. However, the OMA maintains that, by reason of the topography of the way, with no clearly defined route, there being numerous obstructions in the form of boathouses, boats, mooring ropes and given the constantly changing surface of what is an intertidal zone, mean that people would have inevitably wandered over the foreshore. As such, the OMA concluded that there was evidence on the ground that users must have deviated and wandered from the Claimed Route, and that there was no physical evidence to demonstrate that walkers had consistently used the same path.
 6. The Order is made under section 53(2)(b) of the 1981 Act on the basis of an event specified in sub-section 53(3)(c)(i) of the 1981 Act. Section 53(3)(c)(i) requires the discovery of evidence which shows, on a balance of probability, that a right of way subsists, or is reasonably alleged to subsist, over the way in question. However, at this stage, if I am to confirm the Order I must be satisfied, on a balance of probability, that the public rights do subsist.
 7. Dedication through public use arises either by presumed dedication as set out in Section 31 of the 1980 Act, or by implied dedication under common law. The 1980 Act requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of not less than twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention, during that period, to dedicate a public right of way.
 8. The submissions confirm that letters of consultation were issued to affected landowners as identified by the Applicant. However, Section 31 of the 1980 Act does not bind the Crown. Part of the Claimed Route along the foreshore was identified as crossing land below the Mean High Water Mark which, according to HM Land Registry records, shows no registered owner. Given that the foreshore is vested, freehold, in the Crown or a Crown Grantee, further consultation was necessary.
 9. The evidence before me confirms that, in this instance, the Crown Grantee was the Duchy of Cornwall. A further consultation exercise was therefore conducted with the Duchy of Cornwall in July 2017. In response to that consultation, the Duchy of Cornwall confirmed that the *“foreshore subject to the proposed new path is no longer in the ownership of the Duchy of Cornwall Estate having been conveyed in 1899, 1900 and 1905”*. In light of that confirmation, I shall continue to consider whether the evidence shows that the Claimed Route, including that section of claimed footpath along the foreshore, is sufficient to demonstrate presumed dedication under section 31 of the 1980 Act.
 10. If the matter fails under the statute, then I will need to consider whether there is sufficient evidence of dedication at common law. At common law a right of way may be created through express or implied dedication and acceptance. Dedication may be presumed if there is sufficient evidence, from which it could reasonably be inferred, that the landowner has dedicated a right of way and the public has

accepted that dedication. No minimum or fixed user period is required for the dedication of a public right of way at common law.

11. In respect of documentary evidence, section 32 of the Highways Act 1980 (the 1980 Act) requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
12. The main issue is whether the evidence, when considered as a whole, shows that a footpath subsists over the Order route shown between points A-B, between points C-D-E and between points D-F on the Order plan. I shall also consider whether a length of footpath subsists along the foreshore between points B-C on the Order plan and should be added to the DMS. In the event that I find that the evidence shows that a length of footpath subsists along the foreshore between points B-C, then the Order would require modification. My decision is reached on the balance of probability.

Reasons

Documentary Evidence

13. The copy extracts from the Thomas Martyn map (1748/1749) and from Greenwood's map (1748/1749) do not appear to show any route within close proximity to the claimed footpath. Similarly, the Tithe Map for St Stephens by Saltash (circa 1840) and the Finance Act 1910 records, do not show any route or highway which would correspond with the claimed footpath as at the date of their production.
14. Copies of Ordnance Survey Maps (OS Maps) have also been provided. The 1911, 1946, 1947 and 1964 OS Maps do not show any route or highway which would correspond with the claimed footpath.
15. However, the OS Maps from 1888, 1894, 1907 and 1908 all appear to show a trackway, depicted between solid lines, giving access to the foreshore and which corresponds with part of the claimed way as shown between points A-B on the Order plan.
16. I have also been provided with extract copies of the Parish Survey, Draft Provisional and Current Definitive Maps, all of which do not show any recorded route that would correspond with the claimed footpath, nor does there appear to have been any attempt to record a right of way over the Claimed Route as part of the Definitive Map production process.
17. Other than showing a trackway which would correspond with part of the Claimed Route as shown between points C-D on the Order plan, aerial photographs from 1946, 1988, 1995 and 2005 do not appear to show any route or way across the foreshore. I have also been provided with ground level photographs by interested and relevant parties showing the foreshore at various times and differing tide heights, and which include photographs of boats, boat moorings, boathouses, debris including fallen trees and branches, and surface condition. I have also been provided with undated photographs of the trackway between points C-D on the Order plan, and which show the condition of its uneven surface.

Conclusions on Documentary Evidence

18. Photographs may show the existence of features on the ground, and particular use by persons, at the time they were obtained. While they may assist me in building a picture of the situation on the ground at the time they were taken, these images do not provide evidence of the existence or status of any part of the Claimed Route. The OS maps record the physical features, such as routes, present at the time of the survey, but do not indicate the status of the routes shown. In this instance, whilst some of the OS maps show part of the Order Route as a physical feature, they do not show the Claimed Route as a continuous feature.
19. The Definitive Map records appear to show a number of public rights of way for this area were included in the Parish Survey. However, the Parish Survey map did not include any details for the Claimed Route. There is nothing in the evidence before me to suggest that the Parish Survey was incorrect in recording public rights of way within this area. Nonetheless, the current DMS is only definitive in what it actually shows, and the lack of inclusion of a route on the Definitive Map is not evidence that a public right of way does not or cannot exist.
20. Overall, I find that, on the balance of probability, the documentary evidence on its own is not sufficient to show that the Claimed Route has historically existed. I shall turn next to consider the user evidence.

Section 31 of the 1980 Act

The relevant twenty-year period

21. It is necessary to determine when the claimed right of way was brought into question, so that the statutory period of twenty years can be calculated up to that date in accordance with section 31(2) of the 1980 Act.
22. In this instance, the evidence suggests that signage was erected in early 2000 close to point C as shown on the Order plan, and which indicated that part of the Claimed Route between points C-D was 'privately maintained'. A landowner of another property located close to point C on the Order plan, maintains that they erected signs to the effect that the land was private, during the late 1990s, and that since that time he observed that most walkers would avoid crossing his land by walking onto the foreshore by means of a separate access point. That landowner also maintained that he issued a verbal challenge to a walker during the 1990s, advising that they were on private land.
23. Two of those who had submitted a completed User Evidence Form (UEF) claim to have been told the way was not public in July 2000. However, those users also confirmed that they either benefited from a private right of access over part of the Claimed Route or were using the route to deliver boat parts to a landowner. None of the other users reported that they encountered any physical barriers or warning notices whilst using the Claimed Route prior to submission of the application to add the route to the DMS.
24. Whilst I shall return to the issue of challenges and signage below, there is no substantive evidence before me to show that landowners took any direct action, that challenged the public's right to use the Claimed Route, prior to when the application for its addition to the DMS was made in 2001. Therefore, I am satisfied that, on the balance of probability, the use of the route was brought into question

when the application to add the claimed footpath to the DMS was made in 2001. As such, the relevant twenty-year period is from 1981 to 2001.

User evidence

25. Evidence of use of the Claimed Route arises from oral evidence given at Inquiry, and from UEFs submitted in connection with the application. Eighteen UEFs were provided in support of the application and testify to use of the Claimed Route between 1938 and 2001. Three users report that their use was in exercise of a private right. Of those fifteen users who did not state that use was as part of exercising a private right, three of the UEFs report use for the full twenty year period between 1981 and 2001, with a further five of the UEFs reporting use between 1981 and 2000.
26. Frequency of use varies between users, with eight UEFs reporting use on at least a weekly basis with a number of those reporting having used the Claimed Route more often than that with two UEFs reporting use twice weekly, and a further user stating their use was twice daily. Other than the users who confirm that they were exercising a private right of access and claim to have been told the way was not public in 2000, none of the remaining users recall being challenged or seeing signs indicating that the Claimed Route was not a public right of way.
27. At the Inquiry, I further heard from some users who had not completed UEFs, but who confirmed that they had frequently used the entire Claimed Route since the 1970s for recreational purposes including visiting friends, as well as for the purposes of collecting observations as part of academic studies.

Use as of right

28. In order for any use of the Claimed Route to give rise to a presumption of dedication, it is also necessary to consider whether or not that use was 'as of right'. The use as of right requires that the use be without force, without secrecy and without permission. There is nothing before me which indicates that any use of the Claimed Route was with force or that use was in secret or by permission, with the evidence from a number of landowners confirming that they had seen walkers using the Claimed Route, including that part of the Claimed Route over the foreshore between point B and point C as shown on the Order plan.
29. I am satisfied that, on the balance of probability, the evidence demonstrates that use of the Claimed Route was made without secrecy, without permission and without force. Consequently, I am satisfied that use of the whole of the Claimed Route was 'as of right'.

Lack of intention to dedicate

30. In consultation responses, a number of relevant landowners confirm that they have seen walkers using the Claimed Route including the foreshore. However, as noted above, landowners maintain that signs, to the effect that the land was private, were erected close to point C during the relevant period, and that a landowner challenged one individual walker advising they were on private land.
31. None of the users report having seen such signs until just prior to the application being made. Nonetheless, even in the event that signage was erected, and the abovementioned challenge was made during the relevant period, the wording used would have merely confirmed that the land was private. Given that private and

public rights can coexist over land, such signage or verbal challenge would not demonstrate a lack of intention to dedicate on behalf of the landowner.

32. In respect of the Claimed Route, no other relevant evidence has been provided to me which demonstrates a lack of intention to dedicate a right of way on behalf of landowners during the relevant period.

Evidence of use of the claimed length of public footpath over the foreshore

33. There is no dispute that parts of the claimed length of public footpath over the foreshore is covered by the tide to varying degrees at certain times of the day. In that respect, the intermittent covering of any such public right of way by the tide would represent a limitation rather than be seen as an interruption to use. On the site visit which I undertook at low tide, I observed that the lower section of the foreshore area appeared to predominately comprise deep estuarine mud deposits. However, the top section of the foreshore, adjacent to the cliffs and banks which rise up from the estuary at this location, provided a firmer surface comprising what appeared to be a mix of sand and shale.
34. Nonetheless, when walking on that top section of the foreshore, I noted that there were areas where there were protruding rocks and other areas covered in seaweed. On my visits, I also observed a number of moored boats on this top section of the foreshore and the presence of boathouses. However, I was able to pass over or under any moorings and was able to walk around any boathouses that I encountered whilst using the Claimed Route.
35. The information provided by those who completed UEFs is consistent in that it shows the users passed along a route on the top section of the foreshore. All users confirm that they had always used this same route and that they had not encountered any form of obstruction that prevented use of the way. At the Inquiry, I heard from one of the users who had completed a UEF and who confirmed that they had always used that route when the route was not covered by high tides, and had always been able to either pass over or under boat moorings when encountered whilst using the claimed length of footpath. That user also confirmed at the Inquiry that whilst a copy of the map that accompanied their UEF had been supplied to them, they had themselves marked the route they had taken on that map. In that regard, it is noted that all the maps that accompanied the UEFs had been signed and dated by the respective users.
36. I acknowledge that there is evidence from both users and landowners that persons were seen wandering across the foreshore on various occasions. The evidence indicates that such actions were taken by some whilst they were children or while visiting the foreshore as young adults in order to meet with friends. I am in no doubt that the area of foreshore has been used by some for such recreational activities, as well as for traditional local activities such as bait collection, and which would have likely resulted in those persons wandering across large sections of the foreshore rather than using a single consistent route.
37. Nonetheless, in my view, there is sufficient evidence to demonstrate that a single route along the top section of the foreshore was consistently, repeatedly and frequently used, in both directions and by a sufficient number of persons, to raise the presumption that the section of the Claimed Route along the foreshore has been dedicated as a footpath. There is also sufficient evidence to confirm that, at

times other than when the foreshore was covered by the high tide, users were able to use a consistent route around boathouses, and were able to either pass over or under boat moorings. In those respects, I accept that whilst users may have, on occasion, meandered around patches of protruding rock and seaweed or tidal debris they encountered, any such wandering would have been within the width of the habitually used way.

38. Furthermore, I acknowledge that boats lying across the width of the claimed section of footpath could have been encountered on occasion by users, and which may have prevented use of the entire Claimed Route. However, given that it is likely that the boats and their moorings would move with the tide, such features would represent temporary limitations rather than permanent obstructions.
39. The usable width of the section of the Claimed Route across the foreshore would unquestionably vary depending on the position of the tide at particular times. However, as above, the covering over of the surface of the way by the tide at certain times would represent a limitation. The user evidence is consistent in terms of describing the width of the Claimed Route as being seven feet wide at its narrowest point.
40. At the Inquiry, I heard from one of those who had completed a UEF in support of the application, and who confirmed to me that the narrowest point of the Claimed Route was on the foreshore, and that they had always used a corridor of that width when the route was not covered by the high tide. Whilst I note that all of the UEFs are consistent in terms of describing the width of the Claimed Route as being seven feet wide at its narrowest point, I am satisfied that that consistency is not as a result of collusion between users, but rather that those completing UEFs did so from their own recollections of use. I therefore take the view that, should I confirm the Order, the width of the section of the Claimed Route across the foreshore should be recorded as being two meters within the DMS, and that limitations in respect of the tide, boats and boat moorings, should also be recorded in the DMS. In that event, such modifications would require advertising.

Evidence of use of the Order Route

41. Notwithstanding the above, at the Inquiry it was put to me by an objecting landowner that the maps which accompanied the submitted UEFs, do not show that the claimed route runs from the foreshore at point C on the Order plan and along the trackway to point D. The landowner maintained that those plans all show that the claimed route continued to run along the foreshore past point C, connecting with the alignment of the Claimed Route at a location that is between points C-D. It was further put to me that the plans which accompanied the UEFs and the application are grossly inaccurate and do not show a number of properties that exist adjacent to the section of the Claimed Route between points C-D.
42. The maps which accompanied the UEFs and application are based on an extract from an OS map which predates the construction of the properties mentioned by the objecting landowner. It appears from the evidence that those properties were constructed after the beginning of the relevant twenty year period of use and shows features which existed at the time. Whilst those maps do not show more recently constructed dwellings or other buildings at this location, it is accepted that OS maps are based on accurate details and surveys.

43. In this instance, the relevant maps do include features which continue to exist and from which it can be determined what the correct alignment of the Claimed Route would be when transposed onto an up to date map of the area. From the details and documents before me, the alignment of the route between points C-D that each of the users who submitted UEFs claimed to have used, matches that as shown on the Order plan. I therefore do not find that the alignment of the Claimed Route between points C-D is different to that as included on the Order plan.

Overall conclusions on evidence of use

44. In conclusion of the above, whilst I find that the number of individuals who have submitted information in respect of the use of the entire Claimed Route, is not significant, the extent and frequency of reported use is substantial. I am satisfied that, on the balance of probabilities, there is sufficient evidence of use by the public, as of right and without interruption throughout the relevant twenty-year period, and given the frequency and extent of use, there is sufficient evidence to raise the presumption that the entire Claimed Route has been dedicated as a footpath. I do not find that there is sufficient evidence of a lack of intention to dedicate rights of way by the relevant landowners over any section of the Claimed Route.
45. In light of the above, I shall propose to modify the Order to include that section of the Claimed Route across the foreshore at a width of two metres, with a further modification to record the limitations in respect of boats, boat moorings and the tide.

Common Law

46. For the reasons given above, I have found that the user evidence is sufficient to raise the presumption that the Claimed Route has been dedicated as a footpath under statute. As such, it is not necessary to consider the position at common law.

Other Matters

47. At the Inquiry, I was provided with a copy of a letter, dated 26 June 2001, issued by Cornwall Council regarding "*Proposed Modification of the Definitive Map of Public Rights of Way by the Addition of a Footpath from the Waterside to Coombe Road, Saltash*". That copy letter was submitted by a local landowner and objector to the Order, who confirmed that the correspondence had been given to her by the previous landowner of her property. It was put to me that the letter was in response to a query regarding liability that could arise if it were found that a footpath subsisted along the foreshore, and concerned questions in respect of obstructions and limitations.
48. The letter mentions that the application to add the claimed route had been recently made and then only provided a general comment that, in the event that a public right of way was found to subsist, it is likely that this may necessitate the removal of any obstructions thereon. The letter does not confirm whether any feature, such as boat moorings, would constitute an obstruction or a limitation and gave no indication regarding occupiers' liability.
49. A number of other objections to the Order have raised similar concerns regarding the liability position of landowners in the event that the Order was modified to add a length of footpath across the foreshore. Further objections raised concerns

regarding the safety of using a route that crosses the foreshore, concerns about security, impact on property value, and it has been put to me that there would be potential alternative routes that would be more desirable to use on grounds of safety, convenience and security. Additionally, objections have also raised concerns regarding the condition and maintenance of the surface on several sections of the Claimed Route, that confirmation of a public right of way between points C-D as shown on the Order plan would prevent emergency vehicle access along that trackway and would encourage members of the public to use that trackway with vehicles.

50. As advised in a pre-Inquiry Note and as confirmed by me at the Inquiry, matters such as desirability, privacy, health and safety, security or otherwise of routes, are not considerations before me in terms of a Definitive Map Modification. I acknowledge the frustrations felt by objectors that I was not able to accept, or consider, submissions regarding possible alternative and potentially more desirable routes as favoured by some. However, the future management of the Claimed Route as a whole, or the potential need to divert or alter the alignment of the Claimed Route, are for others to consider or would need to form part of separate applications in respect of public rights of way and, consequently, are outside the scope of this Order Decision. Furthermore, there is no suggestion that by confirming the presence of a public footpath along that section of the Claimed Route between points C-D would give rise to a public right to use that trackway with vehicles.
51. In addition to the above, I also acknowledge the submissions from objecting landowners that responses to searches made by solicitors representing purchasers of properties, did not identify the existence of the Claimed Route or Order Route as a public footpath. Whilst I sympathise with the objectors regarding responses provided in respect of searches made during purchase of properties, it is apparent that at the time of those searches, no such public right of way had been recorded on the Order Route. This procedure would therefore have not noted the presence of the Order Route and provides only confirmation of the rights that were recorded at the time of the search.
52. In that regard and for the same reasons, whilst noting the verbal submissions of an objecting landowner at the Inquiry, I also do not agree that by not previously identifying the Order Route within the DMS, the OMA failed in its duty, under section 53(2) of the 1981 Act, to keep the definitive map under continuous review. As above, the DMS is only definitive in what it actually shows, and the lack of inclusion of a route on the Definitive Map is not evidence that a public right of way does not or cannot exist.

Overall Conclusions

53. Having regard to the above and all other matters raised at the Inquiry and in the written representations, I conclude that the Order should be confirmed subject to the modifications described in paragraph 45 above.

Formal Decision

54. I propose to confirm the Order subject to the following modifications:

- In Part I of the Schedule to the Order delete all the text after “*for a distance of 39 metres*” and insert:

“to the foreshore approximately 19 metres south-south-west of ‘31 Coombe Road’ at OSGR SX 4280/5845 shown as point ‘B’ on the attached Order map then continuing in a generally east-north-east direction along the foreshore to a point approximately 18 metres south-east of ‘The Jetty’ at OSGR SX 4318/5852 shown as point ‘C’ on the attached Order map then running in a generally north-easterly direction for a distance of 149 metres to a junction with another footpath to be added by this Order approximately 27 metres north-east of ‘Waterside Bungalow’ at OSGR SX 4327/5864 shown as point ‘D’ on the attached Order map then running in a north-westerly direction for a distance of 8 metres terminating at the Footway approximately 28 metres north-north-east of ‘Waterside Bungalow’ at OSGR SX 4326/5864 shown as point ‘E’ on the attached Order map.

A length of Public Footpath in the Parish of Saltash commencing at another footpath to be added by this Order approximately 27 metres north-east of ‘Waterside Bungalow’ at OSGR SX 4327/5864 shown as point ‘D’ on the attached Order map then running in a generally easterly direction for a distance of 19 metres terminating at the entrance to Saltash Sailing Club approximately 42 metres north-east of ‘Waterside Bungalow’ at OSGR SX 4329/5863 shown as point ‘F’ on the attached Order map.

The width of the lengths of Public Footpath described vary between 2 (two) metres and 5 (five) metres.

- In Part II of the Schedule to the Order delete the text “FP from Babis Lane to foreshore” and insert:

“FP from Babis Lane along the foreshore”.

- In the Schedule to the Order add:

“PART III

Modification of Definitive Statement

Limitations: The public’s right to use the footpath along the foreshore may be limited by the temporary placing of boats and other materials on it by landowners associated with the mooring and laying up of boats, but not such as to form an obstruction to the whole width of the footpath or to prevent the passage of pedestrians. The public’s right to use the footpath along the foreshore may also be limited by the effects of the tide.”

- On the Order map add a length of footpath between points B-C.

Conclusions

55. Since the confirmed Order would affect land not affected by the Order as submitted, I am required, by reason of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Mr A Spencer-Peet

INSPECTOR

APPEARANCES

In Support of the Order:

Mr S Jones

In Objection to the Order:

Mr R Bickford on behalf of Saltash Town Council

Councillor J Peggs

Councillor R Bullock

Mrs L S Marsh

Mr P J Clements

Dr W Thomas

Ms C Craze on behalf of the Ramblers Association

Mr A C Wilkes

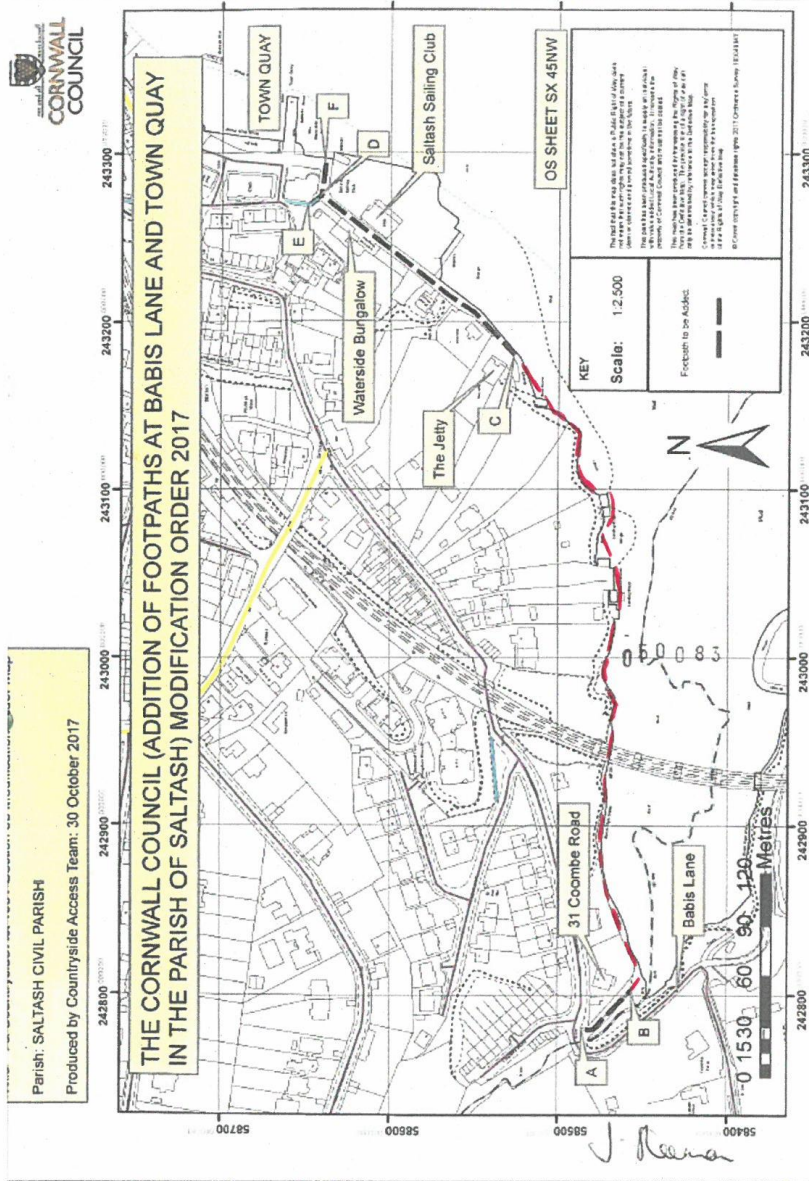
Mrs S Young

Parties speaking neither in support nor in objection to the Order:

Mr J Rowell on behalf of Cornwall Council, the Order Making Authority

Documents Submitted at Inquiry:

1. Copy of letter dated 26 June 2001 issued by Cornwall Council regarding "*Proposed Modification of the Definitive Map of Public Rights of Way by the Addition of a Footpath from the Waterside to Coombe Road, Saltash*", submitted at the Inquiry by Mrs S Young.



Modifications

1. The Secretary of State or Inspector may decide that an order should be confirmed with modifications. The modifications may be quite small, like correcting a spelling error or adding a grid reference or they may be major. The Inspector will explain the exact modifications in the order decision.
2. Some modifications must be advertised so that people are given the opportunity to object or submit representation to them. The following types of modification need to be advertised:
 - moving the line of a path;
 - increasing the width of a path;
 - adding a width to a path (definitive map modification orders and some public path orders);
 - showing a new path on the order;
 - deleting all or part of a path shown in the order (definitive map modification orders only); or
 - changing the type of path shown in the order (definitive map modification orders only).

Decisions, which propose modifications needing advertisement, are known as 'interim' or 'proposed' decisions.

3. Where a modification needs to be advertised, we will arrange for a notice to be published in a newspaper circulating in the local area, outlining how and when objections or representations can be made. A copy of the notice will be copied to the authority, the objectors (including anyone who has made a statutory representation), the applicant and any other people who have asked for a copy of the decision.
4. For your objection/representation to be 'duly made' it has to be made within the time and manner specified in the notice and be with respect to the proposal. Your objection/representation would not be 'duly made' if made before or after the notice period and you would not have the right to be heard.

No objections/representations to proposed modifications

5. If no objections/representations are received to the proposed modifications, the Secretary of State or Inspector will make a final decision, in which he or she will confirm the order with the modifications they previously proposed. The final order decision will be sent to all the people who received a copy of the interim decision.

Objections/Representations to proposed modifications

6. Objections/representations to the modifications will be considered by the Secretary of State or an Inspector (usually the same Inspector who

proposed them). Dependant on the number and content of objections/representations received, there may need to be an inquiry to consider the evidence they contain.

7. If there are only a few objections/representations and/or the issues they raise could be dealt with by written representations, we will write to the authority and relevant parties to ask if they would be happy for a final decision to be made on this basis instead of an inquiry. We will hold an inquiry if anyone asks to be heard by an Inspector.
8. If an inquiry is held into the proposed modifications, the Inspector will not be able to consider any representations into the unmodified part of the order. If anybody asks to give evidence relating to the unmodified part, the Inspector will ask them to submit it in writing to the Planning Inspectorate (within a specified period) and continue to hear the evidence relevant to the modifications. If the submitted representation raises questions likely to effect the Secretary of State or Inspector's decision, it may be necessary to re-open the original inquiry (if one was held). However, if all the parties agree, the new evidence could be dealt with on the basis of written representations (this is the most likely action if the interim decision was made following an exchange of written representations).
9. Having considered the objections/representations, the Secretary of State or Inspector may decide that they do not raise any questions likely to affect their decision. If this is the case no further action on the objections/representations will be taken and the Secretary of State or Inspector will proceed to write a final decision.

What happens if objections/representations are received to the unmodified part of the order?

10. If the only objections/representations received within the objection/representation period relate to those parts of the order the Secretary of State or Inspector does not propose to modify, it may be necessary to re-open the original inquiry or offer the written representations procedure if more appropriate.
11. If the original inquiry is re-opened, the Inspector would not be able to hear evidence relating to his or her proposed modification(s). If anybody asks to give evidence on the modified part, they will be asked to submit it in writing to the Planning Inspectorate within a given period. Again, if the submitted representation raises questions likely to effect the Secretary of State or Inspector's decision, it may be necessary to hold an inquiry so that it can be discussed. However, if all the parties agree, the evidence could be dealt with on the basis of written representations.

Objections/Representations received to the proposed modifications and the unmodified part of the order

12. Where both types of objection/representation are received within the objection/representation period, it may be necessary to hold a 'joint' inquiry. A joint inquiry effectively re-opens the original inquiry whilst allowing the Inspector to hear evidence against the proposed modification(s).

Hearings

13. A hearing may be held instead of an inquiry with the agreement of the authority and the relevant parties.



The Planning Inspectorate

3A Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0303 444 5646
Customer Services:
0303 444 5000

Email: helen.sparks@planninginspectorate.gov.uk
www.gov.uk/planning-inspectorate

Your Ref:

Our Ref: ROW/3295824

The Clerk
Saltash Town Council
Saltash Town Council, The Guildhall
12 Lower Fore Street
SALTASH
Cornwall
PL12 6JX

14 August 2024

Dear Sir/Madam,

Wildlife and Countryside Act 1981 - Section 53

Order Making Authority: Cornwall Council

Title of Order: (Addition of Footpaths at Babis Lane & Town Quay in the Parish of Saltash) Modification Order 2017

I refer to our letter of 15 July 2024 and enclose for your information a copy of the notice of the Inspector's proposal to modify the above-mentioned Order.

If you wish to make an objection to the Inspector's proposed modifications, you must ensure that it is submitted between 28 August 2024 and 25 September 2024. Any objections received outside these dates will not be 'duly made'. A 'duly made' objection is one which is received within the period set out in the notice of modification and, according to the judgment in *Marriott v Secretary of State for the Environment, Transport and the Regions 2001*, must be with respect to the Inspector's proposals.

Only objections received within these dates will ensure your right to be heard.

Enclosure:

Modification Notice

Yours sincerely,

Helen Sparks

Helen Sparks

<https://www.gov.uk/government/publications/planning-inspectorate-privacy-notices>

NOTICE OF PROPOSAL TO MODIFY DEFINITIVE MAP ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

Notice is hereby given pursuant to paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 that the Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs to determine the CORNWALL COUNCIL (Addition of Footpaths at Babis Lane & Town Quay in the Parish of Saltash) Modification Order 2017 proposes to modify the Order by providing for the following modifications:

- In Part I of the Schedule to the Order delete all the text after “for a distance of 39 metres” and insert:

“to the foreshore approximately 19 metres south-south-west of ‘31 Coombe Road’ at OSGR SX 4280/5845 shown as point ‘B’ on the attached Order map then continuing in a generally east-north-east direction along the foreshore to a point approximately 18 metres south-east of ‘The Jetty’ at OSGR SX 4318/5852 shown as point ‘C’ on the attached Order map then running in a generally north-easterly direction for a distance of 149 metres to a junction with another footpath to be added by this Order approximately 27 metres north-east of ‘Waterside Bungalow’ at OSGR SX 4327/5864 shown as point ‘D’ on the attached Order map then running in a north-westerly direction for a distance of 8 metres terminating at the Footway approximately 28 metres north-north-east of ‘Waterside Bungalow’ at OSGR SX 4326/5864 shown as point ‘E’ on the attached Order map.

A length of Public Footpath in the Parish of Saltash commencing at another footpath to be added by this Order approximately 27 metres north-east of ‘Waterside Bungalow’ at OSGR SX 4327/5864 shown as point ‘D’ on the attached Order map then running in a generally easterly direction for a distance of 19 metres terminating at the entrance to Saltash Sailing Club approximately 42 metres north-east of ‘Waterside Bungalow’ at OSGR SX 4329/5863 shown as point ‘F’ on the attached Order map.

The width of the lengths of Public Footpath described vary between 2 (two) metres and 5 (five) metres.

- In Part II of the Schedule to the Order delete the text “FP from Babis Lane to foreshore” and insert:

“FP from Babis Lane along the foreshore”.

- In the Schedule to the Order add:

- “PART III

Modification of Definitive Statement

Limitations: The public's right to use the footpath along the foreshore may be limited by the temporary placing of boats and other materials on it by landowners associated with the mooring and laying up of boats, but not such as to form an obstruction to the whole width of the footpath or to prevent the passage of pedestrians. The public's right to use the footpath along the foreshore may also be limited by the effects of the tide."

- On the Order map add a length of footpath between points B-C.

A copy of the Order as submitted and a copy of the Order showing the proposed modifications together with the Inspector's Order decision dated 15 July 2024 have been deposited at Saltash Library and Information Service, Callington Road, Saltash, Cornwall, PL12 6DX & Reception, Cornwall Council, New County Hall, Treyew Road, Truro, Cornwall, TR1 3AY and may be inspected free of charge during normal working hours.

Any representation or objection with respect to the proposed modifications may be sent to Helen Sparks by email: helen.sparks@planninginspectorate.gov.uk quoting reference number ROW/3295824 on all correspondence between 28 August 2024 and 25 September 2024 and should state the grounds on which it is made. Alternatively, this may be sent in writing to Rights of Way Section, Room 3/A, Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. It should be noted that any such representation or objection may be made available for viewing by interested parties at the council offices on request.

Dated: 28 August 2024

