

# ADDENDUM REPORT

Planning Committee



**Item Number: 6.3**

**Site: Land Between Church Hill Road and Stamford Lane, Plymstock**

**Planning Application Number: WCA.007**

**Applicant: Radford and Hooe Lake Preservation Association**

**Pages: pp23-29**

Following the publication of the Committee Report into the above matter further relevant information has been received from parties both for and against the application which should be brought to the Committee's attention

It was known that the land behind Stamford Fort was in the ownership of the Ministry of Defence until 1981 when it was developed for housing by Devon County Council and subsequently transferred to a resident's estate management company.

The estate management company say the transfer of land was subject to a number of conditions imposed by Devon County Council which included the requirement for the management company to take steps to prevent public highways accruing. The company say they erected signage on the path to discharge this obligation.

This raises the question as to why that signage included the word "footpath" and an arrow pointing to the application route between 1981 and 2009.

The estate management company say that the land was private but that their residents used the application route during this time which is why the steps and gate were retained and the sign was intended to remind residents to keep to that footpath. This seems to create ambiguity given the application route appears to have been used by the public since the 1920's whilst residents would have enjoyed use of the land at large.

However the management company say this can be evidenced with reference to the user evidence. One of the applicant's witnesses, Mrs Nesta Whyte, says in her evidence that she privately purchased a replacement gate. The company say that at the time the gate was replaced Mrs Whyte was an estate resident and her intention in purchasing and replacing the gate was to benefit the residents only but not the public.

Officers have attempted to contact Mrs Whyte to clarify this, sadly she has passed away, however another of the applicant's witnesses contacted us enquiring about the application and was aware of the gates replacement.

Mrs Coleman says she remembers well the gate being replaced. At the time she was the honorary secretary of the Radford and Hooe Lake Residents Association and Mrs Whyte was an active member of that association. Mrs Coleman says the Association had been discussing using association funds to pay for the replacement of the gate for community benefit (i.e. public use) but were unable due to competing demands. Mrs Coleman says that Mrs Whyte paid for the gate to benefit the public when the Association could not.

Mrs Coleman also took a view on the signage and stated she was aware of the signage in place between 1981 and 2009 but she and other local people had always taken it to mean that the public could use the footpath but were restrained from wondering off it onto the wider land. The path had been used by local people since childhood which in some cases was 50 years previous to the transfer of land to the estate management company, that the signage erected in the 1980's gave the impression that the footpath was available for public use and that when that use subsequently continued it was a further 20+ years before the landowner decided to correct the ambiguity in that signage.

Officers have considered this information carefully and the impact it might have on the original recommendation. It is agreed that on the evidence the signage was ambiguous, use by the public was long term and had created a strong, albeit incorrect, perception within the local community that the application route was a historic public right of way and the signage erected by the management company was so ambiguous as to actually serve to reinforce that perception. There is evidence public use did not subside following the erection of the signage and that without evidence to the contrary the management company appear to have acquiesced to that use for over 20 years until 2009.

Officer's view is that the evidence is strongly suggesting that the landowners did acquiesce to use of the application route by the public and that it was not the use of the route by the public in itself but the financial strain, insurance implications and other concerns caused by public use which motivated the management company to take more robust action to prevent that use from continuing, which it did in 2009 and which acted as the catalyst for the application being made. Officers view is that by the time the management company acted public rights had already accrued due to long user.

On that basis the Officer recommendation remains as stated in the original report.