



Mrs Milly Southworth
Torpoint Town Council
1-3 Buller Road
Torpoint
Cornwall
PL11 2LD

My ref: CAT/JR/FP/639/03/2
Your ref:
Date: 2 June 2023

Dear Mrs Southworth,

Footpath 3 Torpoint CP – Route Shown on the Definitive Map & Statement [10 Trematon Close, PL11 2JG]

Following your recent letter of 31 May 2023 raising concerns about the above on behalf of Torpoint Town Council, I write to clarify the situation at this location. The points you made in that correspondence are addressed in turn.

The site was developed in 1986 by Costains with planning approval granted by Cornwall County Council, but this did not entitle the developer to build on a recorded public right of way. They needed to apply for a public path diversion order to make necessary accommodation for the path to ensure their construction did not obstruct it. Whilst it now appears that an Order was made at the time, there are no records to indicate this was ever confirmed or certified, not an uncommon occurrence, which has led to numerous paths being illegally built over in various urban areas, including Torpoint. The Council can only speculate why this has occurred, but we assume that once developments were completed, there was little incentive for the developer to ensure the lawful process was also concluded, because this would have incurred additional costs.

The Council disputes that searches undertaken by solicitors have not shown a PROW. Indeed, the authority has seen examples of responses on the CON29 Form for both numbers 4 and 10 Trematon Close which identify the existence of the path.

HM Land Registry records are not reliable documents for showing PROW and do not always include paths. The only legal record of public rights of way is the definitive map and statement held by local authorities.

Rather than it being added to a recently produced definitive map and statement, Footpath 3 Torpoint has been a matter of legal record since the first survey was compiled by parish councils in the early 1950s. If this is 'at odds' with the OS map, all Ordnance Survey plans have carried a disclaimer since 1888 to the effect that the representation on this map of any road, track or path is no evidence of the existence of a right of way, advising that users check with the relevant local authority for the latest information.

The rights of way team at Cornwall County Council and subsequently Cornwall Council was never alerted to the Order to divert the public path, presumably because the Order was never confirmed and those records, being incomplete, were therefore never passed over by Caradon District Council when the unified authority was formed in 2009. Unfortunately, in the absence of such records, the definitive map remains the legal record of rights of way and Section 56 of the Wildlife and Countryside Act 1981 provides that it is conclusive evidence that at the 'relevant date' the public had the rights shown on the map.

Nonetheless, Cornwall Council has recognised in previous communications with residents of Trematon Close that a section of the recorded way is neither accessible nor useable, it being obstructed by gardens and houses. It is also recognised that a serviceable alternative public path consisting of adopted footway and unclassified road exists nearby, which is understood to be the route used on the ground.

Furthermore, because the surveying authority now recognises, in this instance, that attempts were made at the time to divert the path, albeit unsuccessfully (and admits that it cannot rule out responsibility for that resting with its predecessors) Cornwall Council will commit to make a public path order to extinguish a short stretch of right of way at this location covering all costs and will add that task to a program of works to amend the definitive map and statement, for resolution at a future time when resources allow.

Yours sincerely
Dhywgh hwi yn hwir



Jane Tomlinson

Business Change Team Manager and Interim Countryside Access Team Leader
Regulatory Services

Email: jane.tomlinson@cornwall.gov.uk