

**Definitive Map Review 2006 – 2007
Parish of Braunton (Part 1)**

Report of the Director of Environment, Economy and Culture

Please note that the following recommendations are subject to confirmation by the Committee before taking effect.

Recommendations: It is recommended that:

- (a) **Subject to consultations with North Devon District Council and Braunton Parish Council, Modification Orders be made in respect of:**
- **Route 1, to record on the Definitive Map and Statement a footpath from Wrafton Road along Chicken Lane to Curve Acre, between points A – B shown on drawing number ED/PROW/06/111;**
 - **Route 2, to record on the Definitive Map and Statement a footpath from Score Farm bridge along the River Caen bank to Station Close, near Gubbin's Lane, between points C – D shown on drawing number ED/PROW/06/111; and**
 - **Route 4, to record on the Definitive Map and Statement a footpath from Footpath No. 75 at Down End across Saunton Down to Footpath No. 22, between points H – I shown on drawing number ED/PROW/06/113;**
- (b) **No Modification Orders be made in respect of:**
- **Route 13, for a continuation beyond the recorded end of Footpath No. 31 across Braunton Down from point B1, as shown on drawing number ED/PROW/06/119, but to consider the possible creation of a link by agreement with the landowner in connection with a diversion; and**
 - **Route 14, for a continuation beyond the recorded end of Footpath No. 54 in the woods on West Hill from point D1, as shown on drawing number ED/PROW/06/120, but to consider the possible creation of other routes by agreement with the landowners.**

1. Summary

The report examines five suggestions arising out of the Definitive Map Review in the Parish of Braunton.

2. Background

The original survey by the Parish Council in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 put forward 61 footpaths and six bridleways in the parish of Braunton. Additional footpaths were included by the Parish Council from the survey and by the County Surveyor in agreement with the Parish Council in 1957. Two footpaths were included in other routes, with three withdrawn by the Parish Council and another one not included after consulting the Rural District Council. Three objections were received to paths proposed on the Draft Definitive Map, two of which were later withdrawn, with one footpath deleted after a hearing in 1963. The Definitive Map and Statement for Barnstaple Rural District, with a relevant date of 1 September 1957, recorded 56 footpaths and six bridleways.

The reviews of the Definitive Map, under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced a suggestion submitted with user evidence forms in 1978 for recording a footpath relating to Route 4, considered in the Appendix to this report for the current review. Another suggestion was submitted with user evidence forms for the upgrading of a recorded footpath to a bridleway in relation to Route 10, which will be considered in a subsequent report to the Committee. The Limited Special Review of Roads Used as Public Paths (RUPPs), carried out in the early 1970s, did not affect this parish.

Further claims were made between 1993 – 2005 in advance of the formal opening of the review process, with and without evidence, for Routes 1 and 4 considered in the Appendix and for Routes 3 and 9, which will be considered in a subsequent report to the Committee. Formal Schedule 14 applications were submitted, in 2001 for Route 2, also considered in the Appendix and in 2005 to record Routes 6, 7, 8, 10 and 11 as Byways Open to All Traffic, which will be considered in a subsequent report to the Committee.

Additional public rights of way have been recorded and there are currently 62 footpaths and 7 bridleways recorded in the parish, with one Byway Open to All Traffic from a Modification Order added under the review process in the adjoining parish of Georgeham. The following additional Orders have been made, which will require the making of a Legal Event Modification Order for recording on a new reviewed Definitive Map:

- (a) The Barnstaple Rural District Council (Parish of Braunton) Diversion Order No. 1 1959, diverting Footpath No. 47 at Knowle, Braunton under the National Parks and Access to the Countryside Act 1949;
- (b) The Diversion of Highways (County of Devon) (No.8) Order 1965, diverting Footpath No. 34 at Lower Park Road under the Town and Country Planning Act 1962;
- (c) Public Path Creation Agreements 1978, creating Footpaths 74 & 75 on the South West Coast Path at Saunton Down under the Highways Act 1959;
- (d) The North Devon District Council (Field Close - Mill Stile) Public Path Creation Order 1979, creating Footpath 76 on the River Caen bank, Braunton;
- (e) Dedication Agreement 1980, for part of the disused line of the former Barnstaple – Ilfracombe Railway, creating part of Footpath 77 on the Tarka Trail cycleway;
- (f) Public Path Creation Agreement 1982, for part of the disused line of the former Barnstaple – Ilfracombe Railway, creating Footpath 77 on the Tarka Trail cycleway;
- (g) The Devon County Council (Footpath Nos. 10 & 11, Braunton) Public Path Diversion Order 1988, diverting the footpath at Braunton Great Field under the Highways Act 1980;
- (h) The North Devon District Council (Footpath No. 34, Braunton) Public Path Diversion Order 1990, diverting the footpath at Lower Park Road, Braunton under the Town and Country Planning Act 1971;
- (i) The Devon County Council (Footpath No. 23, Braunton) Public Path Diversion Order 1994, diverting the footpath at Saunton under the Highways Act 1980;
- (j) Dedication Agreement 1996, for part of the disused line of the former Barnstaple – Ilfracombe Railway, creating Footpath 78 on the Tarka Trail cycleway;

- (k) The Devon County Council (Footpath No. 58, Braunton) Public Path Diversion Order 2002, diverting the footpath at Saunton under the Highways Act 1980;
- (l) The Devon County Council (Bridleway No. 19, Braunton South West Coast Path National Trail) Public Path Diversion Order 2003, diverting the bridleway at Braunton Burrows under the Highways Act 1980; and
- (m) The Devon County Council (Footpath Nos. 9, 10, 11 & 12, Braunton) Public Path Diversion Order 2003 and Devon County Council (Bridleway No. 80 and Footpath Nos. 81 & 82, Braunton) Public Path Creation Order 2003, diverting footpaths and creating a bridleway and footpaths crossing Braunton Great Field under the Highways Act 1980.

3. Review

The current Review began in March 2006 with a public meeting in Braunton. At the meeting, reference was made to the claims that had already been submitted previously and to other identified issues concerning recorded cul-de-sac footpaths, two of which are considered as Routes 13 and 14 in the Appendix. A claim by a Schedule 14 application made in 1984 for the continuation of another cul-de-sac footpath recorded in Braunton as ending at the parish boundary with Heanton Punchardon, Route 15, will be considered in a subsequent report to the Committee in connection with the review process for that parish.

Following the meeting, further evidence forms were submitted in connection with several routes and two further claims were made, for adding a footpath at Saunton Golf Club to the Saunton Sands carpark, Route 5 and for upgrading the recorded Footpath No. 33 to bridleway, Route 12. Both of those will also be considered in a subsequent report to the Committee.

General public consultations on the Review concerning all 15 routes were carried out in August 2006 and advertised in the local press. Responses to the consultations were as follows:

County Councillor Jenkins	-	responded with no specific comments about individual routes;
North Devon District Council	-	responded with no objection to Route 2;
Braunton Parish Council	-	supports claims for Routes 1 & 2, with concerns about the claims for byways and willing to discuss creation of paths in connection with Route 14;
British Horse Society	-	supports suggestions for Routes 1 – 12 and submitting evidence collected for Routes 8, 9 & 12;
Environment Agency	-	oppose addition of Route 2, pending flood defence scheme development;
Byways and Bridleways Trust	-	no reply;
Country Landowners' Association	-	no reply;
National Farmers' Union	-	no reply;
Open Spaces Society	-	no reply;
Ramblers' Association	-	responded only in connection with Route 6, opposing its proposed upgrading to byway.

4. Conclusion

It is recommended that Modification Orders should be made in respect of Routes 1, 2 and 4 and that no Modification Orders should be made in respect of Routes 13 and 14, but with the investigation of possible continuations of the footpaths by creation in agreement with landowners. Details concerning the recommendations are discussed in the Appendix to this report. The claims for Routes 3, 5 – 12 and 15 will be considered in subsequent reports to the Committee

There are no other recommendations to make concerning any further modifications. However, should any valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

5. Reasons for Recommendation/Alternative Options Considered

To progress the parish-by-parish review of the Definitive Map in North Devon.

Edward Chorlton

Electoral Division: Braunton Rural

Local Government Act 1972

List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	1995 to date	DMR/BRAU/1995 Parish/File

ns060207pra
sc/dmr braunton parish
2 210207

Background to the Suggested Changes Basis of Claims

Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

The Highways Act 1980, Section 31 (1) states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

The Highways Act 1980, Section 32 states that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan, or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

The Wildlife and Countryside Act 1981, Section 53 (3)(c) enables the Definitive Map and Statement to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows that:

- (i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, and;
- (ii) any other particulars contained in the Map and Statement require modification.

The Wildlife and Countryside Act 1981, Section 56(1) states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein, but without prejudice to any question whether the public had at that date any right of way other than those rights.

1. Route 1, claimed addition of a footpath from Wrafton Road along Chicken Lane to Curve Acre, between points A – B shown on drawing number ED/PROW/06/111.

Recommendation: It is recommended that a Modification Order be made in respect of Route 1 for addition of the claimed footpath to the Definitive Map.

Background and Description of the Route

In September 1997, Braunton Parish Council recorded in the minutes of a meeting that it had received a report on a path known as Chicken Lane. The Parish Council's view was that the lane had been used by the public for many years and should be recorded as a public right of way. A copy of the minutes was sent to the County Council, with a request that the route should be considered when the review process reached the parish. A formal Schedule 14 application package with evidence forms had been requested previously in connection with

the route. Only the completed evidence forms were submitted later that year to follow up the Parish Council's request and were kept on file for consideration when the review had been started in the parish.

The path, also known as Chicken Farm Lane, is open and with no fencing and gates across it, starting from the old Wrafton Road passing between a house and walled tennis courts. It runs alongside the southern bank and hedge boundary of a school playing field, with garden hedges, fences and driveways to houses on the south side, ending at Curve Acre, a newer residential estate road. The path is wider at the Wrafton Road end, with a tarmac surface, passing the private drives and an access gate for the playing field, narrowing and with a looser stone surface running between a newer garden fence and a rougher verge or hedge onto the tarmac footway and grassed areas on Curve Acre. There is no road link between Curve Acre and The Brittons estate road to the north, but a pedestrian gate allows access on foot in that direction.

The Definitive Map and Statement, Historical and Recent Maps and Aerial Photography

The route was not included with those surveyed originally by the Parish Council in 1950 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement.

Earlier maps show the route, particularly at smaller scales, only as a cul-de-sac stub of a lane leading off the road between Braunton and Wrafton with no continuation beyond its end, although they do not all record footpaths or bridleways at such a small scale. The Ordnance Survey surveyors' drawings of 1804-5 and the original 1st edition map on which they were based, published in 1809 and the later Greenwood's map of 1827 based on the Ordnance Survey map, show it in the same way.

Later maps at larger scales, such as the Tithe Map of 1841 and the Ordnance Survey 25" to a mile 1st and 2nd editions of the 1880s and early 1900s, show the lane in more detail but still as a cul-de-sac leading into fields and with no continuation. The Tithe Map shows it coloured in the same way as all roads, but they were not labelled as public and included those which were obviously public as well as others which were more likely to have been private access to fields and some not now existing. No continuation or linking paths are shown on the later large-scale maps to indicate any evidence of a physical path on the ground for recording by later surveyors. There is no support from older historical mapping for evidence suggesting public rights on the lane or continuing beyond its end, or links to other recorded public rights of way and public roads, up to that date.

More recent Ordnance Survey mapping from 1960 shows the lane still as a cul-de-sac ending in fields with no continuation beyond, with the field to the north as a playing field and buildings in fields on the south by that date and two entrances leading to them from the lane. Aerial photography from 1946 – 9 indicates that they had been built before then, at some date since the early 1900s and suggesting that some may have been farm buildings, perhaps the reason for it being known as Chicken Farm Lane.

The Ordnance Survey mapping edition of 1968 shows that further buildings there and also the residential housing estates had been built before then beyond the end of the older lane, with Curve Acre to the south and The Brittons to the north. A link is shown connecting the end of the lane to beyond the end of Curve Acre, recorded as included in the adopted estate road, allowing access on foot along the whole of the lane as it is now between recorded public roads. A solid line across the end of the lane indicates that it may have been closed off by a gate at that time.

Definitive Map reviews and Consultations

There was no suggestion in the previous uncompleted reviews that the route should be considered for recording as a public right of way, until the Parish Council raised it as an issue in 1997. It appears to have arisen then due to concerns that the building of the garden fence for the house at the Curve Acre end was making the path narrower and may have been considered for extending to block it off and prevent use by the public.

The suggested addition was included in the consultations in 2006, on the basis of the Parish Council's claim and the evidence submitted in 1997. It received specific responses only from the Parish Council, who supported it as their own suggestion, although the British Horse Society did include it in their support for most of the routes put forward and there was no comment from the Ramblers' Association.

User Evidence

No further evidence of use was submitted after 1997 and no additional forms were received as a result of the consultations. A total of 19 user evidence forms was submitted, seven of which had been completed on behalf of two people, so that there is evidence of use by 26 people. All of them had used the path on foot, with several indicating that they had used it on a bicycle as well. All of the users believed the route to be public, as a footpath, but most believed it to be a bridleway, although none had used it on horseback. The main basis for their belief was that the path had always been used by the public and they had used it for a long time, or understood it was for use by local residents and some had been told by adjoining owners that nobody owned it.

The earliest claimed use was from 1947, with one person indicating that they had used it as just a lane formerly to fields, now The Brittons. The route has been used by all 26 people for the period of 20 years from 1977 – 97, by 21 people for the 30 years between 1967 – 97, by four for 40 years and by only one for 50 years since 1947. The frequency of use varied from 'several' or about 50 – 100 times a year, once or twice a week, to 'hundreds' or 'most days' and more than 300 to 700 times a year, or not specified at all. Most of the users indicated that they had used the route for pleasure, some for work or business, or both and two specifying that it was for shopping or visiting relations in The Brittons.

Most people had used the whole route to and from Wrafton Road, specifying various destinations in the village, including the bus stop or schools and further to Wrafton or Barnstaple, as well as to the fields before the housing estates were built. None reported ever having been stopped or turned back when using the route, or being told that it was not public. Some of the users believed or had been told that nobody owned the route to be aware of the public using it or objecting to its use. None reported that they had been given permission to use the route, or were tenants or had worked for an owner and had any private right to use it.

None of the users reported that there was a stile on the route, with three referring to a gate at the Curve Acre end before the housing development which none of them indicated had been locked. None had seen any notices on the route saying that they should not use it. Most of them considered it an important, useful or convenient route, much used by older and younger residents, particularly schoolchildren.

Landowner Evidence

Following the consultations, completed landowner evidence forms were sent in by most of the owners of properties adjoining the route on both sides. None of them indicated that they owned any part of the route, although it may be presumed that their ownership could extend

to the centre of the route from the land on each side and ownership of the lane itself is not registered. Most of the owners believed the route to be a public right of way, as a footpath and one believing it was a bridleway, with all of them aware that the public were using it mostly on foot. Some indicated use in vehicles, which was presumably for private access to adjoining properties or the playing field.

Most of them had not stopped people from using the route or turned anyone back, but one had stopped those on motorcycles and in cars trying to get onto the playing field. Two had put up notices or signs stating that it was a private road and not to be used by vehicles or for parking, one of which had been damaged. None had put up gates or stiles on the route and most had not obstructed it, with one using a dumper truck to block vehicles not pedestrians. Some of them, including the County Council in respect of the playing field, indicated in further information that they did not consider that they owned or occupied the path itself, but had private rights of access to the adjoining properties or land, including in vehicles and in connection with maintenance of the playing field.

Summary and Conclusions – Dedication under Common Law

The user evidence in support of the suggestion that the route should be recorded as a public footpath was not submitted with a formal application or claim as the result of any action taken by a landowner that had prevented access to and use of the route from a specific date. None of the users said that there was a gate on the route recently, or any other obstruction that will have prevented use on foot. The suggestion appears not to have been made in response to any specific event acting as a significant challenge to use of the route and none of the users reported having seen any signs or notices saying that they should not use it, other than in vehicles.

There is, therefore, no evidence of any significant actions by a landowner having called into question use of the route at a specific time for consideration of the user evidence under statute law. The route itself is considered not to be owned and there is no registered owner to call its use into question and to show that they did not intend to dedicate it as a public right of way. It can, therefore, be examined in relation to common law, in conjunction with historical and other documentary evidence.

Historical mapping and earlier aerial photography shows that not all of the route existed physically on the ground before the building of the housing developments on Curve Acre and The Brittons from the 1960s. Later Ordnance Survey mapping shows the development of the housing by 1968 and the older existing lane being linked to the newer estate route which allowed continued access and use, although suggesting that there may have been a gate at its end.

The date of the earliest user evidence submitted is from 1947 along the old lane when it led only to fields before the housing development, but the main use was from the mid-1960s which will have been for the whole route after the houses had been built. There is evidence of use by 21 people from 1967 and by all 26 from 1977 at a level that would be considered sufficient in relation to the statutory 20-year period. There is evidence, therefore, of substantial use of the claimed route from the mid-1960s and increasing after the mid-1970s following the development. The reported frequency of the use is sufficient to indicate that the owners of adjoining properties were aware of it, which they reported in their evidence forms and indicates that they had acquiesced. An intention to dedicate can, therefore, be inferred as there is no evidence to the contrary in relation to any owner from the earlier period and the public using the route have, therefore, accepted it as a footpath. Some used the route on bicycles, but there is no evidence of use on horseback for bridleway rights to be considered.

Considering the user evidence in conjunction with all other available evidence, dedication at common law with a status of footpath can be implied. The evidence suggests that the landowner intended to dedicate the claimed route as a public right of way, that the public accepted the dedication and used it on that basis. It is in the light of this assessment of the evidence submitted, in conjunction with the historical evidence and all other available evidence that it is considered reasonable to allege, on the balance of probabilities, that a public right of way subsists on the route with the status of a footpath.

From consideration under common law, therefore, there would appear to be a sufficient basis for making an Order in respect of the suggestion that the route should be recorded as a footpath. Accordingly, the recommendation is that an Order be made adding a footpath to the Definitive Map and Statement for Route 1.

2. Route 2, claimed addition of a footpath from Score Farm bridge along the River Caen bank to Station Close, near Gubbin's Lane, between points C – D shown on drawing number ED/PROW/06/111.

Recommendation: It is recommended that a Modification Order be made in respect of Route 2 for addition of the claimed footpath to the Definitive Map.

Background and Description of the Route

In June 1987, Braunton Parish Council were advised by the Area Engineer that a request had been made to record a public right of way alongside the River Caen from Gubbin's Lane to the bridge by Score Farm. The Parish Council decided to leave the matter until after the proposed route of a Braunton bypass, which was under consideration at that time, had been agreed. The issue of the bypass was not resolved because of opposition to its route and the question of the path along the River Caen bank was not raised again until after a proposal was made for residential development at Score Farm. The original planning application for the proposed development was made in 1990, renewed in 1993 and 1999, with final approval of details in 2003.

A formal Schedule 14 application with completed user evidence forms was submitted in 2001, while details of the planning proposal were being considered, because of concerns that the development would encroach on or obstruct the path and result in it being no longer available for use. The application was kept on file for consideration when the review had been started in the parish, as work on the development has not proceeded beyond demolition of the old Score Farm buildings. There has been no building or obstruction of the path, so that it has remained open and available for use by the public.

The path starts from the minor surfaced road crossing the River Caen over Score Bridge, named after Score Farm, running southward from the bridge along the river bank passing the farmhouse and a continuing cob wall. The first section from the road is wider and tarmac, but it continues past the farm building and wall as a narrow earth and stone track worn through the vegetation on the bank alongside the river. It runs past the gardens of adjoining properties in Station Road and turns away from the river bank through rougher overgrown waste land to end on the estate road for a newer housing estate, Station Close.

The estate road is adopted and connects with a footway from Footpath No. 77 on the Tarka Trail cycleway created on the track of the old Barnstaple – Ilfracombe railway line to provide a connecting link for use on foot onto the footways alongside the minor public road, Station Road, near Gubbin's Lane.

The Definitive Map and Statement, Historical and Recent Maps and Aerial Photography

The route was not included with those surveyed originally by the Parish Council in 1950 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement.

Early maps do not show the route, particularly at smaller scales, although they do not all record footpaths or bridleways at such a small scale and particularly in built-up areas. Those include the Ordnance Survey surveyors' drawings of 1804-5 and the original 1st edition 1" to the mile map on which they were based, published in 1809, with the later Greenwood's map of 1827 based on them.

Later maps at larger scales show the route in more detail. The Tithe Map of 1841 shows the line of a track running from South Street to the river before Score Bridge had been built and turning along the bank, passing Score Farm and another bridge, then back to South Street. It includes the whole claimed route and is coloured in the same way as all roads, with an open connection to them. However, they were not labelled as public and included those which are now recorded as public as well as others which were more likely to have been private access to fields or land and not now existing.

Deposited Railway Plans for the Barnstaple – Ilfracombe railway schemes proposed in the 1860s show how the route was affected by the line on the chosen scheme running through Braunton, which was eventually built and opened in 1874. Plans for the proposed route through Braunton were put forward in 1860, 1862 and 1869, which show that the existing track was then considered to be part of a public road. It was proposed in two of the plans to be diverted onto the line of what is now Station Road alongside the railway line, with the parish road to Score Farm being crossed on the level and apparently cutting off the route from the river bank.

Ordnance Survey 25" to a mile 1st and 2nd map editions of the 1880s and early 1900s show that there was still a track on the line of the route from the road at Score Bridge alongside the river. It is shown closed by a solid line but connecting with a track running to the railway, which had been built by then. It continues leading onto Sing's Lane, now Gubbin's Lane, previously the name of the lane to the north, with both shown connected by Station Road, presumably created by the diversion as proposed.

Aerial photography from 1946 – 9 shows the route clearly worn running past Score Farm alongside the river and continuing to the railway line, with the connection onto the road at Station Road and Gubbin's Lane. The nature of the route's width and surface at Score Farm is shown in photographs from the early 20th century, suggesting that it was known as being open and available from that end for use by the public at that time.

Later Ordnance Survey mapping editions from 1960 and 1968 show the track at those dates on the route in the same way as in the earlier editions, with the names of Station Road and the lanes as currently recorded. The railway line was closed in 1970 and more recent mapping shows the route labelled as an unmade path, indicating that its physical existence on the ground has continued to be recorded by Ordnance Survey surveyors up to the present.

There is support from older historical maps and more recent mapping to show that the route has existed since at least the middle of the 19th century. It had been a track connecting other routes now recorded as public roads and indicating that it had the reputation of being a public road from that date. It was affected by the building of the railway line, but has been available on its complete route again since the railway was closed in 1970.

Definitive Map Reviews and Consultations

There was no suggestion in the previous uncompleted reviews that the route should be considered for recording as a public right of way, until it was raised as an issue with the Parish Council in 1987. It appears to have arisen due to concerns that the residential development at Score Farm would encroach on the path or lead to it being blocked off and prevent its use by the public.

The suggested addition was included in the consultations in 2006, on the basis of the application and the evidence submitted in 2001. It received a specific response from the Parish Council, who supported it, although the British Horse Society did include it in their support for most of the routes put forward and there was no comment from the Ramblers' Association. The Environment Agency responded suggesting that the route should not be recorded as a public footpath until a flood defence scheme had been built to protect the development at Score Farm. North Devon District Council responded with a query about whether the route would be recorded as a cycleway as part of the Tarka Trail.

User Evidence

Three completed user evidence forms were submitted in 2000 before the formal application was received and 17 forms were sent in with the application in 2001, which included two from users who had submitted forms previously. A further six forms were received following the consultations in 2006, so that there is evidence of use by 24 people to consider. Almost all of them had used the path on foot, with one not specifying how they had used it. Most of the users believed the route to be public, some as a footpath but nearly half not specifying any status. The main basis for their belief was they had used it themselves for a long time and assumed it was available to the public as it had always been open, was known locally and used. Some reported that their parents and grandparents had used it as well, or referred to knowing about it from local history books and photographs.

The earliest claimed use was from 1926, with one person referring to using it from when living at Score Farm, but related to farming and access to land which can be interpreted as private use, with several others indicating or suggesting use as the public since the 1930s. The route has been used by 20 people for the period of 20 years from 1981 to 2001 when the application was made. Use by seven others who submitted evidence in 2006 indicates that use of the route has continued to the present, with 15 – 20 people having used it over the 30 years from the 1970s, up to 10 people for 40 – 50 years since the 1950s and at least five since before then.

The frequency of use varied from between three – four times a year, with several specifying more than 52 times, or at least once a week, up to 150 – 250 times a year or more than three times a week. Some did not specify frequency, or referred to 'frequent' or 'varying' use, 'constantly' or 'continuous', 'all times' and 'more times than I can remember/count'. Most of the users indicated that they had used the route for pleasure, some for work or business as well, including farming and access to adjoining land. Some specified use for walking with dogs or children, for social and family visits, to see wildlife and nature, or for birdwatching.

Most people had used the whole claimed route from Score Bridge to Gubbin's Lane specifying various destinations in the village and beyond, including the Tarka Trail and to Vellator or Chivenor. A few indicated on the maps with their forms that they had only used part of the route, with some also having continued on a path further along the riverbank to Batts Meadow and beyond, particularly before the houses were built in Station Close. None reported ever having been stopped or turned back when using the route, with only one reporting having been told that it was not public, but giving no details. Some of the users believed that nobody owned the route or that the owner must have been aware of the public

using it. None reported that they had been given permission to use the route, or were tenants or had worked for an owner which may have resulted in any private right to use it. Three users indicated that they also had a private right from using part of the route as access to adjoining land, including in connection with farming.

None of the users reported that there was a stile on the route, with several referring to a gate at the south end onto the Batts Meadow, probably before the housing development on Station Close, which none of them indicated had been locked. None had seen any notices on the route saying that they should not use it. Most of them considered that it was an old route they had used knowing that it had been used by the public for a long time and some had also used it in continuing further along the river bank.

Landowner Evidence

From before and after the consultations, no landowner evidence was submitted by the owner of Score Farm, or other nearby properties, but a completed form was sent in by the owner of a garden on land adjoining the route. She indicated that she did not own any part of the route itself and its ownership appears not to be registered, although it might be presumed that ownership could include the adjoining land extending perhaps at least to the riverbank. She believed the route to be a public right of way as a footpath, was aware that the public had been using it on foot for a long time and submitted a completed user evidence form in relation to her own use as well.

She had not turned anyone back or stopped people from using the route, had not put up notices or signs stating that it was not a public right of way, had not put up gates or stiles on the route and had not obstructed it. She did not consider that she owned the route itself, but had private rights of access to the adjoining land from previous family ownership since the time that the railway line had been built.

Summary and Conclusions – Dedication under Common Law

The application for the route to be recorded as a public footpath was not submitted as the result of any action taken by a landowner which had obstructed or prevented access to and use of the route from a specific date, but from concerns that it might happen with the development. None of the users said that there was a gate on the route recently, or any other obstruction that will have prevented use on foot. The application appears not to have been made in response to any specific event acting as a significant challenge to use of the route and none of the users reported having seen any signs or notices saying that they should not use it.

There is, therefore, no evidence of any significant actions by a landowner having called into question use of the route at a specific time for consideration of the user evidence under statute law. Ownership of the route itself appears not to be registered and there is no owner to call its use into question and to show that they did not intend to dedicate it as a public right of way. It can, therefore, be examined in relation to common law, in conjunction with historical and other documentary evidence.

Historical mapping shows that a track existed physically on the line of the whole claimed route which was considered then to be a public road, from at least the middle of the 19th century before the building of the railway in 1874. Later Ordnance Survey mapping shows that it was altered by the building of the railway, which cut off part of it in a diversion with the building of Station Road. Continued access across the railway line may not have been possible, but the whole route has been available for use again since the railway closed in 1970.

The date of the earliest user evidence submitted is from 1925, with between 10 – 15 people having said that they used the route regularly before 1970. Some of that early use was private, in connection with access to adjoining land or continuing along the river bank. The main use was from after 1970, which will have been for the whole route after the railway had closed. There is evidence of use by between 15 – 20 people from 1970 until the application was made in 2001 at a level that would be considered sufficient in relation to the statutory 20-year period, with later evidence indicating that use has continued since then. There is evidence, therefore, of substantial and uninterrupted use of the route from 1970 which has continued to the present. The reported frequency of the use is sufficient to indicate that the owners of adjoining properties were aware of it, which was reported in an evidence form and indicates that they had acquiesced. An intention to dedicate can, therefore, be inferred as there is no evidence to the contrary in relation to any owner, including from the earlier period and the public using the route have, therefore, accepted it as a footpath.

Considering the user evidence in conjunction with all of the other evidence, including historical and landowner evidence, dedication at common law with a status of footpath can be implied. Historical evidence suggests that the route was considered to be a road up to the middle of the 19th century, but affected by the building of the railway in 1874 until that was closed in 1970 and it became available on the whole route for use on foot. The evidence suggests that the landowner intended to dedicate the claimed route as a public highway and that the public accepted the dedication and used it on that basis. It is in the light of this assessment of the evidence submitted, in conjunction with the historical evidence and all other evidence available that it is considered reasonable to allege, on the balance of probabilities, that a public right of way subsists on the route with the status of a footpath.

From consideration under common law there would appear, therefore, to be a sufficient basis for making an Order in respect of the application for the route to be recorded as a footpath. Accordingly, the recommendation is that an Order be made adding the route to the Definitive Map and Statement as a footpath. The issues raised by the Environment Agency about flooding risk and by North Devon District Council about a cycleway can be dealt with in managing the route when it is recorded as a public footpath.

3. Route 4, claimed addition of a footpath from Footpath No. 75 at Down End, across Saunton Down to Footpath No. 22, between points H – I shown on drawing number ED/PROW/06/113

Recommendation: It is recommended that a Modification Order be made in respect of Route 4 for the addition of the claimed footpath to the Definitive Map.

Background and Description of the Route

In April 1978 as part of a review process that was not completed, user evidence forms were submitted to Braunton Parish Council in connection with a claim to record a public footpath from the Braunton – Croyde road at Down End onto and across Saunton Down to join the recorded Footpath No. 22. The forms were kept on file for consideration when the current review process reached the parish. The issue of access to the route was raised again in a query in 1993, when there was reported to have been a 'Private Property' sign, but without further details and it was not followed up with the submission of an application or any additional evidence.

Queries about the path were also made early in 2006 before the opening meeting for the current review, which included a reference to the route and further evidence forms concerning use of the path were submitted in April and May 2006, after the meeting.

The path starts at the B3231 road from Saunton to Croyde, adjoining the parish boundary with Georgeham, with concrete steps now part of the recorded Footpath No. 75, added by a Creation Agreement in 1978 for the South West Coast Path. Footpath No. 75 continues along the foot of Saunton Down just above the road, with the concrete steps continuing up onto the Down through rough vegetation. The steps continue up to the site of an old bunker near the top of the Down, reported as having been built as a military observation post by the RAF or Royal Observer Corps, for use during wartime and maintained into the Cold War period.

The users reported that the path continues past the bunker through rough vegetation in a field on the top of the Down, then through gates crossing improved grass fields and alongside a stone wall on the top of Saunton Down. The route ends at the recorded Footpath No. 22, which runs from the Saunton Sands Hotel onto the Down and continuing to Croyde as Footpath No. 17 in Georgeham.

The Definitive Map and Statement, Historical and Recent maps and Aerial Photography

The claimed route was not included with those surveyed originally by the Parish Council in 1950 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement.

Early maps do not show the route, particularly at smaller scales, although they do not all record footpaths or bridleways at such a small scale. Those include the Ordnance Survey surveyors' drawings of 1804-5 and the original 1st edition 1" to the mile map on which they were based, published in 1809, with the later Greenwood's map of 1827 based on them.

The Tithe Map of 1841 does not show the route, but such maps were not intended to record the lines of footpaths or bridleways and do not usually show them. Other later maps at larger scales, particularly the Ordnance Survey 25" to a mile 1st and 2nd editions of the 1880s and early 1900s, also do not show the route. The Saunton – Croyde road was built later, with the line of other footpaths shown and labelled on the route of where the road was built below Saunton Down, including to an earlier Lookout Station.

Later small-scale Ordnance Survey mapping editions do not show the route, but the 1946 New Popular edition at 1" to the mile shows the line of a path on the whole route from the road to Footpath No. 22 in the dotted lines indicated as representing footpaths and bridleways. Aerial photography from 1946 – 9 does not show the route clearly, but appears to show the path running up from the road to the site of the bunker, with a narrow worn track continuing across the rough ground and into the improved grass field, which could have been worn from use by people or by grazing animals. It continues as a track from the gate, which appears to have been worn from access by farm vehicles, alongside the wall to and across the line of Footpath No. 22. It suggests that there may have been a track worn on the whole route at that date, but does not provide evidence on its own that it was then in use by the public.

The larger-scale mapping edition from 1960 shows the path from the road up to a building on the site of the bunker at that date, but with no continuation beyond it across the rough and improved fields to connect with Footpath No. 22, which is shown by dashed lines and labelled "F.P.". More recent mapping indicates part of the route from the road to the bunker labelled as an unmade path, showing that section as having continued to exist physically on the ground and recorded by Ordnance Survey surveyors up to the present.

There is no strong support from historical maps for a path on the whole route, with more recent mapping and aerial photography recording that part of the route has existed from the road to the bunker since before 1960, but with some support for the existence of a continuation to connect with Footpath No. 22.

Definitive Map Reviews and Consultations

The claim that the route should be recorded as a public footpath was put forward in the previous uncompleted review from 1978, also in 1993 and around the time that the current review process started. The claim was included in the consultations in 2006, on the basis of the evidence submitted in 1978 and earlier in 2006. It received a specific response only from the landowner, although the British Horse Society did include it in their support for most of the routes put forward and there was no comment from the Ramblers' Association.

User Evidence

Eight completed user evidence forms were submitted with the claim in 1978, without accompanying maps to show the route used and with one relating to use by two people. Letters from two users were sent in just before the consultations and a further four completed evidence forms with maps were received following the consultations. One of them was following up a letter, so that there is evidence of use by a total of 14 people to consider.

The earlier evidence forms do not specify use on foot, although it can be implied from most of the users indicating that they used it for activities connected with walking only. All of the later users specified that they had used it on foot only. Where specified, the users believed the route to be a public footpath, with the main basis for their belief that it was used by the public, as a clear route with steps and gates. There was no indication to say that it was not public or signs to the contrary, with one reporting that it was shown on a local walking map and they had been told by a relative that it was public.

The earliest claimed use was from 1912, with use by seven people before 1948 and by 13 people for the period of 20 years between 1958 – 1978, when the first evidence was submitted. That takes into account an overlap with the earliest use from the evidence submitted in 2006, which was from 1963 and indicates that use of the route has continued to the present, with evidence of use by five people from before 1978 to 2006. One did not specify any dates of use, but reported using it 'nearly every year'.

The frequency of specified use varied from between one – six times a year by users from the 1930s – 1940s and 1960s – 1980s, to about 20 times or more a year from the earliest use in 1912 to the 1950s. Several did not specify frequency, or referred to use 'many' times or 'frequently, particularly for the years from 1912 to the 1930s. Most of the users indicated that they had used the route for pleasure, recreation or exercise, specified by some as walking, including with dogs, or for nature study, birdwatching and sketching.

Most people had used the whole claimed route as part of a longer or circular walk between Down End and Saunton or parts of Georgeham and Croyde, including South Hole Farm and Long Lane, using the recorded Footpaths 17 and 22, or further to Braunton and Barnstaple. None reported ever having been stopped or turned back when using the route, or being told that they should not use it. Some of the users believed that the owner must have been aware of the public using the route as it was an obvious path leaving the road and people were seen on it, including by farm workers at the eastern end who did not challenge their use. None reported that they had been given permission to use the route, or were tenants or had worked for an owner and had any private right to use it.

None of the users reported that there were any stiles on the route, with several referring to a gate or gates on the Down, which none of them indicated had been locked. Some of the earlier users reported seeing a sign saying 'Beware of Bull' on a gate, but none had seen any notices saying that they should not use the route. The query about the route in 1993 referred to a 'Private Property' sign, but without any details of its location. None indicated that there was any other obstruction on the route. Some of the later users reported that the steps and the western end of the path to the bunker as a viewpoint were clear from the 1960s – 70s, but had started to become overgrown by the 1980s. Parts of it had become more difficult to use on the rougher ground from vegetation growth, particularly after the Foot and Mouth Disease outbreak in 2001.

Landowner Evidence

Most of the users indicated that the land crossed by the route was owned by the Christie Estate. Following the consultations, no landowner evidence form was submitted by the owner, but a letter was received from the agent to the Christie Estate on behalf of Christie Farms. He believed that the claimed use could not lead to the establishment of public rights, referring to Statutory Declarations being available from Christie Estate farm tenants and employees. He indicated that the route was impassable due to vegetation growth preventing continued use for the creation of prescriptive rights. There had also been locked gates to prevent livestock, with signs indicating that the land belonged to Christie Farms and that no trespassing was permitted. It was evidence that he indicated would be used to annul a claim that use of the route has led to the creation of public rights.

Summary and Conclusions – Dedication under Common Law

The claim for the route to be recorded as a public footpath was not submitted as the result of any action taken by the landowner that had obstructed or prevented access to and use of the route from a specific date. Some of the users said that there were gates on the route, which were not locked, but with no other obstruction that will have prevented use on foot. The original claim in 1978 appears not to have been made in response to any specific event acting as a significant challenge to use of the route and none of the users reported having been stopped or seeing signs or notices saying that they should not use it. The only report of a sign in 1993 was without any specific details and was not followed up in user evidence.

There is, therefore, no evidence of any significant actions by the landowner having called into question use of the route at a specific time for consideration of the user evidence under statute law. It can, therefore, be examined in relation to common law, in conjunction with historical and other documentary evidence.

Historical mapping does not provide strong evidence for the physical existence of a path on the line of the whole claimed route, but more recent maps show that part of the route at the western end, particularly up the steps and to the former observation bunker, has existed since at least 1960. Earlier aerial photography indicates that it had been there since at least the time of the Second World War. It also suggests that there was a continuation across the fields on Saunton Down on a line that corresponds to the route described by earlier users and shown by later users, to connect with Footpath No. 22 on top of the Down.

Earlier maps and aerial photography also show that the western end of the route has crossed fields with rough vegetation and continuing across improved grass fields. There is evidence that part of the route, particularly at least up the steps to the bunker, has been maintained and kept clear, including more recently for access to the site as a viewpoint and will have allowed access to a continuation beyond on the rest of the route. That was reported to have been clearer and easier to follow, but has become more overgrown recently and less

easy to use, including the steps, particularly since the closure of all footpaths during the Foot and Mouth Disease outbreak in 2001.

The date of the earliest user evidence submitted is from 1912, with up to six people having said that they used the route before 1948. There is evidence of use by up to 13 people from then until 1978, when the claim was made, at a level that would be considered sufficient in relation to the statutory 20-year period, with later evidence indicating that use has continued since then. There is evidence, therefore, of uninterrupted use of the route from the early part of the 20th century, particularly after the 1930s, which has continued to the present. The reported frequency of the use is sufficient to indicate that the landowner must have been aware of it and indicates that they had acquiesced.

Although the agent for the landowner refers to evidence available to annul the claim of use leading to the establishment of public rights, there was none submitted or details provided in a landowner evidence form. The references to signs and locked gates are not substantiated or corroborated by evidence from the users. The gates are reported to have been locked for the control of livestock, not to prevent use by people and there is no substantial evidence that any such actions were supported by notices or other means to prevent use. There is no record of a Deposit and Statutory Dedication made under Section 31(6) of the Highways Act 1980, or earlier. An intention to dedicate can, therefore, be inferred as there is no evidence to the contrary in relation to the landowner from the earlier and later period and the public using the route have, therefore, accepted it as a footpath.

Considering the user evidence in conjunction with all of the other evidence, including historical and landowner evidence, dedication at common law with a status of footpath can be implied. Mapping and aerial photograph evidence suggests that the whole route has been available for use on foot since before about 1946, which has allowed continued use, even with encroaching vegetation. The evidence suggests that the landowner intended to dedicate the claimed route as a public footpath and that the public accepted the dedication and used it on that basis. It is in the light of this assessment of the evidence submitted, in conjunction with the historical evidence and all other evidence available that it is considered reasonable to allege, on the balance of probabilities, that a public right of way subsists on the route with the status of a footpath.

From consideration under common law there would appear, therefore, to be a sufficient basis for making an Order in respect of the claim for the route to be recorded as a public footpath. Accordingly, the recommendation is that an Order be made adding the route to the Definitive Map and Statement as a footpath.

4. Route 13, investigation of a continuation beyond the recorded end of cul-de-sac Footpath No. 31 across Braunton Down from point B1, as shown on drawing number ED/PROW/O6/119

Recommendation: It is recommended that no Modification Order be made for any continuation beyond the recorded end of the footpath, but to investigate the possible creation of a link by agreement with the landowner in considering any proposed diversion.

Background – Description of the Route, the Definitive Map and Statement and the Parish Submission

Footpath No. 31, Braunton is recorded as a cul-de-sac path starting from the minor road, Easthill, climbing through woods and across grass fields on East Hill and arable fields on Braunton Down. It ends on top of the Down at the eastern boundary of a large field (point B1), with no continuation eastward beyond a hedge and bank. It is described in the Statement as starting “at the Unclassified County Road, Higher Park Road, about 150 yards

south-east of New Road, and proceeds in a north-east by east direction across East Hill to the eastern boundary of Braunton Down”.

Braunton Parish Council's survey in 1950 described the end of the footpath as “on the down”, showing the route following the dashed line of a path recorded and labelled “F.P.” on the 2nd edition Ordnance Survey map as ending at that point. It was included in the Parish submission with the grounds for believing it to be public given as “by reason of usage”. The County Surveyor accepted the route as surveyed by the Parish Council and did not consider further whether any continuation should be recorded.

Historical Maps

Early maps do not show the route, particularly at smaller scales, although they do not all record footpaths or bridleways at such a small scale. Those include the Ordnance Survey surveyors' drawings of 1804-5 and the original 1st edition 1” to the mile map on which they were based, published in 1809, with the later Greenwood's map of 1827 based on them.

The Tithe Map of 1841 shows the route of a path crossing that part of Braunton Down, which was then still unenclosed and managed as an open field with strips. It was not on the same line as the recorded footpath, but was shown crossing the strips and ending near the same point on the Down. Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose, but it is recorded in the apportionment as “Braunton Down Church Path”. There was no continuation beyond it further onto the down, which had already been enclosed as fields by that date.

Other later maps at larger scales, particularly the Ordnance Survey 25” to a mile 1st and 2nd editions of the 1880s and early 1900s, show the line of part of that path and of others apparently used for access to the field strips. Those included the path that came to be recorded as Footpath No. 31, which is labelled “F.P.” on the 2nd edition map and shown on both ending at the boundary of the open part of the down, with no continuation beyond it.

Later small-scale Ordnance Survey mapping editions do not show the route, as recorded or with any continuation, including the 1946 New Popular edition at 1” to the mile which does record the lines of some footpaths and bridleways. Aerial photography from 1946 – 9 shows the down still farmed in strips and the line of Footpath No. 31 as recorded, but with no indication of a worn track beyond it which may have suggested that there was any continuation then in use by the public.

The larger-scale mapping editions between 1959/60 and 1976 show the line of Footpath No. 31 as recorded, with no continuation beyond it and incidentally recording the disappearance of other paths with the field strips as they became consolidated into larger fields. Aerial photography from 1999 – 2000 shows the land having been amalgamated before then into one large arable field and now crossed by the recorded line of Footpath No. 31, but showing no evidence of any continuation that may have been established or used more recently.

There is, therefore, no support from historical or more recent mapping and aerial photography for evidence suggesting any possible continuation of the route beyond the end of the recorded footpath, or links to other recorded public rights of way and public roads.

Definitive Map Reviews, Consultations, User Evidence and Landowner Evidence

There was no suggestion in previous reviews which were not completed that any continuation of the footpath should be considered for addition. In the build-up to the current review, a suggestion was made that people had walked beyond its recorded end to link up with other public footpaths and roads, but with no indication of a specified route or any

evidence submitted. In the absence of any evidence, there was considered not to be a prima facie case for including in the consultations any consideration of recording a possible continuation of the route. It was only possible to indicate that the footpath is recorded as a cul-de-sac route, asking for any suggestion of any continuation and evidence of use to be brought forward.

Only two completed user evidence forms were submitted following the consultations, which were considered not to be sufficient to take into account for further examination and no additional evidence of use has been put forward. The landowner did not return a completed evidence form, but made contact to discuss the footpath and whether it could be diverted with a possible dedication of an added continuation to link with a public road.

Summary and Conclusions

A public right of way can exist on a cul-de-sac route and from presumption of dedication by use, but only if there is some purpose in that use to reach its termination as a point of interest, such as a viewpoint. Footpath No. 31, Braunton was accepted as a cul-de-sac route to the eastern boundary of Braunton Down, although without specifying that it was a viewpoint. No suggestion was put forward for any continuation beyond that point to be considered for recording in the process of drawing up the Definitive Map, or since then, but has only been raised as a possibility during the current review process.

A suggestion was put forward that people using the footpath may have walked further on from its recorded end, but without any evidence there was considered to be the basis only for indicating in the consultations that it was recorded as a cul-de-sac. However, the evidence of public use submitted as a result of the consultations is considered to be insufficient and no evidence has been discovered, particularly from historical maps, supporting any continuation of the route.

The user evidence submitted is, therefore, not sufficient to support the recording of public rights for a continuation of Footpath No. 31 to join any other recorded public footpath or public road by presumption of dedication from use. In consideration with historical evidence, it is not reasonable to allege, on the balance of probabilities, that there is sufficient evidence for the addition of a footpath in respect of Route 13.

It is in the light of this assessment of the evidence submitted and discovered that there is considered to be no basis for recommending the making of an Order to add a footpath on the Definitive Map for any continuation of Footpath No. 13. However, the possibility of the landowner being willing to dedicate a link for a continuation of the footpath can be investigated further, including in conjunction with considering any suggestion for a diversion of the route.

5. Route 14, investigation of a continuation beyond the recorded end of cul-de-sac Footpath No. 54 in the woods on West Hill from point D1, as shown on drawing number ED/PROW/O6/120

Recommendation: It is recommended that no Modification Order be made for any continuation beyond the recorded end of the footpath, but to consider the possible creation of other routes by agreement with the Parish Council and any other landowners.

Background – Description of the Route, the Definitive Map and Statement and the Parish Submission

Footpath No. 54, Braunton is recorded as a cul-de-sac path starting from the minor road, Frog Lane, following an access track past two properties and continuing along a worn path climbing up through woodlands on West Hill, to “The Beacon”. It is described in the Statement as starting: “at the Unclassified County Road, Frog Lane, about 100 yards south-west of Scur Farm and proceeds in a northerly direction along a Private Accommodation Road (not repairable by the inhabitants at large) which turns north-west, then across open land to the Beacon (West Hill)”.

Its recorded end is at an opened up viewing point in the woods on the top of West Hill, with a bench and information board (point D1). A notice on the path indicates that the site is owned by the Parish Council and there are posts marking the route, with no continuation beyond its recorded end. There are lines of other paths in the woods connected with the recorded public footpath, which are clear and have been improved in places, including with the building of steps.

Braunton Parish Council’s survey in 1950 described the footpath as “to the Beacon”, showing the route following the dashed line of a path recorded and labelled “F.P.” on the 2nd edition Ordnance Survey map as ending at that point. It was included in the Parish submission with the grounds for believing it to be public given as “by reason of usage”. The County Surveyor queried the reason for recording the route as public, but noted that it was a “view” and accepting it as a cul-de-sac, without considering whether any continuation should be recorded.

Historical Maps

Early maps do not show the route, particularly at smaller scales, although they do not all record footpaths or bridleways at such a small scale. Those include the Ordnance Survey surveyors’ drawings of 1804-5 and the original 1st edition 1” to the mile map on which they were based, published in 1809, with the later Greenwood’s map of 1827 based on them.

The Tithe Map of 1841 does not show the route, but such maps were not intended to record the lines of footpaths or bridleways and do not usually show them. Other later maps at larger scales, particularly the Ordnance Survey 25” to a mile 1st and 2nd editions of the 1880s and early 1900s, show the line of the path with double-dashed lines and labelled “F.P.” on the 2nd edition map. It is shown on both ending in rough ground at the top of West Hill, not then wooded and with no continuation beyond it.

Later small-scale Ordnance Survey mapping editions do not show the route, as recorded or with any continuation, including the 1946 New Popular edition at 1” to the mile which does record the lines of some footpaths and bridleways. Aerial photography from 1946 – 9 shows West Hill as still then open and rough land, less wooded and with worn tracks, including on the line of Footpath No. 54 as recorded. Other worn paths are shown linked to it, but with no indication of any beyond it which may have suggested that there was any continuation then in use by the public.

The larger-scale mapping editions between 1959/60 and 1968/76 show the land at West Hill as becoming more wooded, with the line of Footpath No. 54 as recorded, labelled “F.P.” or as an unmade path, with no continuation beyond it. Aerial photography from 1999 – 2000 shows the land as much more wooded, with the recorded line of Footpath No. 54 not visible. The line of another path is worn in more open land, but nothing is shown to indicate any continuation in the woods or beyond that may have been established or used more recently.

There is, therefore, no support from historical or more recent mapping and aerial photography for evidence suggesting any continuation of public rights beyond the end of the recorded footpath, or links to other recorded public rights of way and public roads.

Definitive Map reviews, consultations and landowner evidence

There was no suggestion in previous reviews which were not completed that any continuation of Footpath No. 54 should be considered for addition. In preparations for the current review, it was noted that there is no continuation but other paths exist within the woods on the top of West Hill which are in use and have been maintained. In the absence of any evidence, there was considered not to be a prima facie case for including in the consultations any consideration of recording a possible continuation of the route. It was only possible to include in the consultations indicating that the footpath is recorded as a cul-de-sac route, asking for any suggestion of any continuations and evidence of use to be brought forward.

No user evidence forms were submitted following the consultations and no additional evidence of use has been put forward for any possible continuation or other paths on West Hill. The Parish Council as landowner did not return a completed evidence form, but supplied details from the Land Registry concerning the area of land in its ownership in connection with the possible dedication of other paths for the creation and recording of a circular route on the Beacon.

Summary and Conclusions

A public right of way can exist on a cul-de-sac route and from presumption of dedication by use, but only if there is some purpose in that use to reach its termination as a point of interest, such as a viewpoint. Footpath No. 54, Braunton was accepted as a cul-de-sac route to the Beacon as a viewpoint on West Hill. No suggestion was put forward for any continuation beyond the woods at West Hill to be considered for recording in the process of drawing up the Definitive Map, or since then. However, the possibility of a continuation and links within the woods on land owned by the Parish Council has been raised during the current review process.

No suggestion was put forward that people using the footpath may have walked further on from its recorded end, but without evidence there was considered to be the basis only for indicating in the consultations that it was recorded as a cul-de-sac. However, no evidence of public use has been submitted as a result of the consultations and no evidence has been discovered, particularly from historical maps, supporting any continuation of the route.

The evidence is, therefore, not sufficient to support the recording of public rights for a continuation of Footpath No. 54 to join any other recorded public footpath or public road by presumption of dedication from use. In consideration with historical evidence, it is not reasonable to allege, on the balance of probabilities, that there is sufficient evidence for the addition of a footpath.

It is in the light of this assessment of the evidence discovered that there is considered to be no basis for recommending the making of an Order to add a footpath on the Definitive Map for Route 14. However, it will be possible to investigate further the Parish Council's expressed interest in the creation by dedication of other existing unrecorded footpaths used and maintained to provide links as connections for a circular route within the woods at the Beacon on West Hill.