

**Definitive Map Review 1996 - 2007**  
**Parish of Uffculme**

Report of the Director of Environment, Economy and Culture

***Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.***

**Recommendations: It is recommended that:**

- (a) a Modification Order be made to modify the Definitive Map and Statement by upgrading Footpath No. 19, Kentisbeare (part) to a public bridleway A – B – C – D – E ( Route 8);**
- (b) a Modification Order be made to modify the Definitive Map and Statement by adding a public bridleway A - H - D (Route 9);**
- (c) no order be made in respect of the claimed bridleway J – K (Route 10), but the landowners be approached with a view to entering into a creation agreement to record the route as a bridleway;**
- (d) a Modification Order be made to modify Definitive Map and Statement by adding a public bridleway M - K - F (Route 11);  
all as shown on drawing no. ED/PROW/07/76.**

## **1. Summary**

This is the second and final report dealing with the Definitive Map Review for the parish of Uffculme and examines Routes 8, 9, 10 and 11. Routes 8 and 9 are situated in Kentisbeare parish.

## **2. Background**

The original survey, under section 27 of the National Parks and Access to the Countryside Act, 1949, revealed 33 public footpaths which were recorded on the Definitive Map and Statement, Tiverton Rural District with the relevant date of 15 April 1958.

The following Orders have been made and will require the making of a Legal Event Modification Order for recording on a new reviewed Definitive Map at some stage:

- (a) Public Path Diversion Order 1963, Tiverton Rural District Council (Uffculme Path No. 32) under the Highways Act 1959.**
- (b) Devon County Council (Footpath No. 48, Uffculme) Definitive Map Modification Order 1989 added a new public footpath.**
- (c) Mid Devon District Council Public Path Order (Footpath No. 37, Uffculme) Extinguishment Order 1992.**
- (d) Mid Devon District Council Public Path Diversion Order 1995 (Footpath No. 4, Uffculme).**
- (e) Devon County Council Definitive Map Modification Order 2002 (Bridleway Nos. 9 Uffculme & 9 Kentisbeare).**
- (f) Devon County Council Public Path Diversion Order 2006 (Footpath Nos. 8, Kentisbeare and 42, Uffculme).**

The reviews of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s but were never completed, produced no proposals for change to the map in the parish of Uffculme at that time.

The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

### **3. Review**

The current Review began in May 1996 with a public meeting held in the Garden Room, Bridge St, Uffculme followed in July 2003 by a refresher public meeting held in the Magelake Pavilion, Uffculme. There was an additional “drop in” afternoon held at the Square Corner, Uffculme in February 2005 for the public to look at the parish map and discuss any issues.

General public consultations on 11 proposals generated by the review were carried out in August 2005 and advertised in the parish and in the Mid Devon Gazette. The responses were:-

County Councillor Ray Radford	-	no reply
County Councillor John Berry	-	no reply
Mid Devon District Council	-	no reply
Uffculme Parish Council	-	support proposals 10 & 11
Kentisbeare Parish Council	-	object to upgrading Footpath No.19.
British Horse Society	-	support proposals
Byways and Bridleways Trust	-	support the proposals
Country Land & Business Association	-	no reply
Open Spaces Society	-	no reply
Ramblers' Association	-	object to upgrading footpaths to bridleways
Trail Riders' Fellowship	-	no reply

### **4. Conclusion**

It is recommended that orders be made in respect of part of Routes 8, 9 and 11, but no order be made for Route 10.

### **5. Reasons for Recommendation/Alternate Options Considered**

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

### **6. Legal Considerations**

The implications/consequences of the recommendation have been taken into account in preparing this report.

Edward Chorlton

**Electoral Divisions: Willand & Uffculme and Cullompton Rural**

Local Government Act 1972

List of Background Papers

Contact for enquiries: Mike Jenkins

Telephone No: 01392 383240

Background Paper	Date	File Ref.
Correspondence file: Uffculme	1996 -2007	ES/DMR/Uff

es130607pra  
sn/dmr parish of uffculme  
3 hq 290607

## Background to the Proposals

### Basis of Claims

Common Law presumes that 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.

Wildlife and Countryside Act 1981, Section 53[3][c] enables the Definitive Map to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows -

- [i] that 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;
- [ii] that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.

Wildlife and Countryside Act 1981, Section 56[1] – 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.

**Route 8: To upgrade Footpath No. 19 Kentisbeare (part) from point A at its junction with the Footpath No. 18 on Blackborough Common to its junction with Route 11 at point E.**

**Recommendation: It is recommended that an Order be made to upgrade Footpath No.19 Kentisbeare (part) over Blackborough Common, to a public bridleway on the Definitive Map and Statement along the line A - B - C - D - E as shown on drawing no. ED/PROW/07/76.**

### 1. Background

Fourteen User Evidence forms were submitted between 1996-98 by the British Horse Society in support of upgrading Footpath No.19 Kentisbeare to a public bridleway over Blackborough Common to Forest Gate. As the route had not been considered as part of the Kentisbeare parish review, it seems appropriate to combine the claims on Blackborough Common with those in the neighbouring parish of Uffculme.

Representations have been made by the landowner and the land manager for Blackborough Common in relation to this claim. In addition to this, two comprehensive representations have also been made by District Councillor Mr Snow and Peter Master from Blackborough.

Part of Footpath No.19, Kentisbeare was the subject of a Public Path Diversion Order in April 1994. The original line of part of this path was diverted onto the current line A - B - C - D following a Public Inquiry in June 1995.

## **2. Description of the Route**

The route starts at point A on drawing ED/PROW/07/76 at its junction with the current Footpath No.18, Kentisbeare on the northern section of Blackborough Common. (Footpath No. 18 is awaiting a modification order to change its status to a bridleway). The route goes westwards across Blackborough Common for approximately 165 metres, then turns in a southerly direction at point B and follows the edge of the plantation along an earth and stone track to point C. From this point the route turns generally eastwards following a wide track parallel to a hedge boundary to the Kentisbeare/Uffculme parish boundary at point D. From point D the path leaves the south east corner of Blackborough Common through a hunting gate in a southerly direction and follows the parish boundary along a the track to point E. Here the horse riders appear to have followed a forest track, just in the parish of Uffculme, to a gate leading to the county road, over the remaining section of Footpath No.19, Kentisbeare.

The length of Footpath No. 19, Kentisbeare A - B - C - D - E to be upgraded to bridleway is approximately 870 metres and varies between 2 -3 metres wide.

## **3. Documentary Evidence**

### **Ordnance Survey Mapping 1st Edition 1880s**

This map shows the approximate line of Footpath No. 18, Kentisbeare and the original pecked line of Footpath No. 19 across Blackborough Common passing through a gravel pit to the south east corner of Blackborough Common to the parish boundary. The line of the path continues along a track to the county road to Blackborough or Sheldon. This map also shows a path from Combe's Farm onto Blackborough Common, which is approximately the line of Footpath No. 20, Kentisbeare. Blackborough Common is shown as predominately open ground.

### **Ordnance Survey 2<sup>nd</sup> Edition 1905/06**

Again, the original line of Footpath No. 19, Kentisbeare is shown with double pecked lines heading south south easterly towards the south eastern corner of Blackborough Common. This route is also shown passing through the "Old Gravel Pit" to the parish boundary and follows the track south to the county road. Blackborough Common was still predominately open ground.

### **RAF Aerial photo 1946 - 49**

This photo shows a track leading from the line of current Footpath No. 18, at point A south south east across the common passing to the west side of the old gravel pit. The track can be clearly seen continuing to the eastern corner of the common to the parish boundary. From this point, the line of the path continues along the track to join the county road as depicted in the previous Ordnance Survey maps.

### **Ordnance Survey Mapping A Edition 2500 published 1963**

This mapping indicates several tracks recorded as *C.T.* (cart track) across Blackborough Common. The old line of Footpath No. 19 appears to follow a different line than the tracks depicted on this 1963 OS mapping, which is more in keeping with the aerial photo of 1946 - 49. There is also a track marked *C.T.* from the southeast corner of Blackborough Common going west and then north to the reservoir tank on the common. This track now forms part of the current line of Footpath No. 19 as diverted in 1995.

#### **4. Supporting User Evidence**

Fourteen User Evidence forms, covering a period of use from 1947 - 1998 have been submitted in support of the claim for line A - B - C - D - E - F to be recorded on the Definitive Map as a public bridleway.

All the user evidence describes the route as a bridleway from its junction with the current Footpath No. 18, Kentisbeare, point A to the area called Forest Gate on the eastern end of the route on the Kentisbeare/Uffculme parish boundary shown at point D.

Nine of the fourteen riders have used the route on horses for between 18 and 50 years. The frequency of use varies between 25 times a year, 30 to 50 times a year and three users state they have used the route 100 -150 times a year.

The other five riders said they have used the route for between 1 - 13 years. One of the riders used the route in the late 1940s until 1960 five times a year, whilst another rider used the route between 1992 - 1996 daily.

All the riders have used the route freely without being challenged by the landowner. Eleven of the riders mention a gate at the Forest Gate end near the road, but it was never locked. One rider who had ridden the route since 1975 - 1997 once a week, mentions a permit notice, but not referenced to a particular location.

In response to the question "Do you believe the owner or occupier was aware the public was using the way?" All the users say "yes", either because of hoof prints along the track or that they had seen forestry workers. However, none of the riders say they had been challenged by these workmen.

One local resident states "I have ridden this path frequently for twenty five years from 1971 - 1996 three times weekly for pleasure". They say the route has never been diverted. The rider also mentions an unlocked gate but does not give location.

Another resident describes the route as a bridleway and a woodland track, past the Trig Point and the seat and the route has been known by the family for several generations as well as other riders. This rider used the route from 1978 - 1996, about 50 times a year from Blackborough as part of a circular ride for pleasure. They also mention forestry workers were quite often present in the woods but none of the riders were stopped or challenged.

Another local resident from Sheldon, who completed a User Evidence form in 1996, says the route is a bridleway. They describe the path as a "2 metre wide peaty track, little overgrown but well used approx 1½ miles long" and have used it from 1958 - 1996, 25 times a year. She also mentions that her father had also always ridden the route as part of a circular ride in the woods, over the same line with one unlocked gate.

Two other local riders describe the route as a bridleway and have used it since 1975 to 1997/98 respectively. One rider describes the bridleway as wide and hard passing the Trig Point and seat and has used it once a week for 22 years for pleasure riding to and from home. The other rider also says the route went past the Trig Point and a little plantation of trees and rode the route a lot in the 1970s and 80s, but not so much in the 1990s. Neither rider was ever stopped or challenged by the landowner or the forest managers.

## 5. Rebuttal Evidence

### Landowner Evidence

In September 2005, Mr Stevens, the owner of Blackborough Common, completed a Landowner Evidence form in response to the consultation map for the parish of Uffculme, including Blackborough Common. Mr Stevens has owned the land since 1979 and recognises Footpath Nos. 18 & 19, Kentisbeare as public footpaths. With regard to the question "Have you seen, or been aware of, members of the public using this route? If 'yes' during which years?" The answer was "perennially". To the question "How frequently?" he answers "Frequently", but states they were on foot.

Mr Stevens goes on to say that on management visits to the woodland over the years and especially during harvesting operation he would tell anyone he saw that it was not a public right of way. However he doesn't mention any dates, locations or whether they were on foot or horseback.

With regard to the question "Have you ever erected notices or signs stating that the way was not public?" Mr Stevens answered "Yes" - "What did the signs say?" He states "Public footpath". Mr Stevens goes on to say that within a week of them being installed they had gone. No dates were given as to when the notices were erected or when they disappeared. Mr Stevens adds on his landowner form that barriers were put up in August and November 2004. From the crosses put on the accompanying plan it appears that barriers were erected over the line of the proposed Route 9 which will be discussed later in the report.

In a letter from Mr M. Box of Forest and Land Management Ltd (Mr Steven's land agent) 24 September 2005, Mr Box states "I have been instructed by my client to object to these proposals in the strongest possible terms". He continues "The reasons for the objections are as follows:

1) In the early nineties we put a lot of effort into working with Devon County Council with regard to the diversion of footpath 19. The new route was already being unofficially used by the public, as the views were, and are, stunning in comparison to the then existing route, which ran and still does run through the middle of a conifer plantation. We are planning to improve the views along footpath 19 by opening up and maintaining further vistas; so having agreed this diversion it is nonsense to now propose that the original line route be opened up again as a bridleway.

2) Blackborough Forest is a relatively small area, but it is and will continue to be a very active forest. The main activity will be in the form of thinning, felling and replanting, so to suggest a further public rights of way would pose serious problems when considering health and safety issues. Harvesting machinery and horses just do not go well together, and I worry about possible accidents. The proposed route of the bridleway through the centre of the forest is extremely wet and the passage of horses would cause heavy damage which would soon make the route impassable. This would result in riders wandering off the path and creating tracks within the actual forest, which would cause further problems."

3) As I have already mentioned, Blackborough is, and will be, very active, including the replanting of felled area. This we are required to do by the Forestry Commission, and the owner has a duty to maintain these trees to ensure adequate stocking levels. Because of the high number of Roe deer in the area, these have to be controlled, by shooting, in order to prevent damage to the young trees. This is already taking place on an area which has been felled and replanted. We use very experienced and highly qualified people to do this work for us, and they will have grave concerns regarding your proposal. It would probably result in them unable to continue with deer control measures from a safety aspect. This would result

in heavy losses of the young trees, which would cause us problems with the Forestry Commission.

4) One last comment is with regard to the proposal to up-grade footpath 19 to a bridleway. In my experience footpaths and bridleways along the same route are never successful and usually result in conflict between walker and riders using the path. To conclude, I would once again stress that my client objects to these proposals in the strongest possible terms”.

N.B. The diversion of Footpath No. 19 referred to above was carried out by Mid Devon District Council in 1995, who acted as Agents for maintenance at that time.

### **Kentisbeare Parish Council**

They are not in favour of upgrading Footpath No. 19, Kentisbeare to a bridleway as it forms part of a popular circular walk for the Blackborough area.

At their 6 December 2005 meeting Kentisbeare Parish Council minuted: “the Parish Council resolved to make a recommendation to DCC that all footpaths except Footpath No. 19 be upgraded. Footpath No. 19 should not be upgraded because it is unsuitable being bendy and narrow. This path is used by young families and serious walkers to whom horses and ponies could cause a danger because the path is bendy and narrow”

Kentisbeare Parish Council discussed this matter again at their meeting on 6 March 2007 and the following resolution was made and minuted: “It was resolved to recommend to DCC that Footpath 18 be upgraded to a Bridleway with clearance work and an upgrade carried out to make it suitable for walkers and riders. Footpath 19 should be left as a footpath for walkers only”.

### **Additional representations**

Councillor Terry Snow of Mid Devon District Council has very serious concerns about the footpaths on Blackborough Common being used by horse riders. Councillor Snow states that as this footpath is one of the longest and most beautiful circular footpaths in the parish, horse traffic will destroy it as an amenity. He states that it appears horse riders are having priority over walkers and this infringes their rights. Cllr Snow also adds “The ground is not suitable for horses unless extensive work is done to improve them. In my opinion and others there are serious safety issues, which have to be addressed on these footpaths. You have failed to identify this and no risk management was included on this issue”.

Peter Masters, a local resident of Blackborough and a former local councillor, submitted a letter in connection with the proposals on Blackborough Common. In his letter of 22 March 2007 Mr Masters says about the bridleway claims “ .....but what concerns local people most is that this path joins the north ends of paths 19 and 20, thus forming a circular walk which is attractive to locals and visitors alike. Unfortunately these paths also attract riders and there have been reports of encounters where riders have been informed that they are riding on footpaths. So riding has not gone unchallenged”. Mr Masters goes on to say “In January of this year residents of Blackborough and of the immediate surroundings were consulted in writing over this issue. Of the replies received over 80% were in favour of retaining paths 18, 19 and 20 as a circular walk, unspoiled by horse traffic. A few respondents thought that the path could be shared but only if it were vastly improved”. Mr Masters also felt that the proposals put forward for paths on Blackborough Common, Tower Plot and Newcombe Common seemed rather excessive given the amount of space available but would like to see a sensible solution to the problem.

The Tiverton Group of the Ramblers’ Association is very concerned about the upgrading of footpaths to bridleways. They say “We understand from some Blackborough residents that the soft surface sections of these footpaths have already suffered damage from use by horse



riders. In their present state, it would seem inappropriate to upgrade these footpaths, because the use that will be made of the paths as bridleways by horse riders and cyclists will be to the detriment of walkers”.

## **6. Evaluation of Evidence**

Fourteen User Evidence forms have been submitted in support of the upgrading of Footpath No. 19 to a bridleway. The evidence indicates that this route has been used since the late 1940s on horseback. The track was in existence and being used prior to Footpath No. 19 being diverted onto it in 1995.

Nine of the users state that they had ridden the route for over eighteen years. One rider had used the route from 1947 - 1997, forty times a year. Six riders have stated that they used the route for more than twenty years, some about once or twice a week and three as much as three times a week.

The remaining five riders have used the route as a bridleway for between 1 -13 years. One rider used it from 1948 - 1960 about 30 times a year and a more recent rider has used it from 1992 - 1996 daily.

Eleven of the riders mention an unlocked gate near the road end. There is a hunting gate on the parish boundary at the south east corner of the common at point D and where the track joins the county road at point F. One rider mentions that a notice about permits was erected but that no one took part.

Between points E and F it is most likely that horse riders followed the stone track running parallel to Footpath No. 19 just a few metres to the east in Uffculme parish.

The early Ordnance Survey mapping and the aerial photography show that Blackborough Common and Newcombe Common were open areas of land with sparse woodland. By 1963 the maps show that most of Newcombe Common had been planted with trees along with the eastern edge of Blackborough Common. It is likely that when the area became planted for forestry, then the tracks in and around the woodland were retained for timber extraction and to access the reservoir tank on the western side of the common.

The aerial photography of 1946 - 49 shows a track running along the western edge of Blackborough Common. The evidence of this track is supported by the Ordnance Survey mapping published in 1963 which shows a definite track along the line of the proposed route as far as the reservoir tank. It is very likely that this route continued north westwards as indicated by the aerial photo.

As the population of Blackborough and the surrounding area have increased, the common has become a popular place for walkers and horse riders as it has good views over the surrounding countryside.

There is local concern in some quarters about this proposal becoming a bridleway as it is viewed as detrimental to a popular circular walk. Kentisbeare Parish Council has strongly expressed their objections to the upgrading of Footpath No. 19 and has resolved that it should remain as a public footpath.

Correspondence from District Councillor Snow and local resident Peter Masters have expressed concerns about the surface of the route and the conflict of walkers and horse riders. Should this route be upgraded to a bridleway then the surface of the route would be maintained appropriately with regard to use by walkers and horse riders.

When examining whether the public rights have been acquired over a route, issues of safety and suitability cannot be taken into consideration. Any concerns with regard to the physical conditions on the route can be addressed at a later date should it be upgraded.

With regard to horses using footpaths, it is for the landowner or his agent to make efforts to stop riders using the route by way of barriers or overt notices making it clear that horse riders are not welcome. Mr Stevens, the landowner and his land agent object to the proposed upgrading of Footpath No. 19. However no cogent evidence has been provided to indicate that they have tried to stop riders using this path over the last 28 years. User evidence shows that the path has been used frequently and consistently from 1948 - 1996 when the evidence forms were collected. The path continues to be used today.

## **7. Conclusion**

The user evidence strongly suggests that the path has been used openly without any interruption well in excess of the twenty years required to give rise to a presumption of dedication of public bridleway rights over the routes A -B - C - D - E.

It is, therefore, recommended that an Order be made to upgrade Footpath No. 19, Kentisbeare (part) to a public bridleway on the Definitive Map and Statement, along the line A -B -C - D - E.

**Route 9: To add a bridleway from the junction with the northern section of current Footpath No. 19, Kentisbeare (Route 8) over Blackborough Common to rejoin Route 8 on the Kentisbeare/Uffculme Parish boundary.**

**Recommendation: It is recommended that an Order be made to add a public bridleway to the Definitive Map and Statement between points A - H - D as shown on drawing no. ED/PROW/07/76.**

### **1. Background**

This route was put forward during the review of the Definitive Map for the parish of Uffculme.

Fourteen User Evidence forms were submitted between 1996 - 98 by the British Horse Society in support of adding a bridleway along a forest track over Blackborough Common to the south eastern point of Footpath No.19, Kentisbeare (Route 8), near the parish boundary. As the route had not been considered as part of the Kentisbeare Parish review, it seems appropriate to combine the claims on Blackborough Common with those in the neighbouring parish of Uffculme.

Representations have been made by the landowner and the land manager for Blackborough Common in relation to this claim.

### **2. Description of the Route**

This route starts at point A on drawing no. ED/PROW/07/76. The line of Route 9 follows the forestry track from the northern junction with the current Footpath No. 19, Kentisbeare over Blackborough Common in a generally south south easterly direction to rejoin the current line of Footpath No. 19 at the south east corner of Blackborough Common, near the Kentisbeare/Uffculme boundary.

The path is approximately 3 metres wide and approximately 640 metres long. The surface is earth with rutted wheel tracks in many places. The route is prone to standing water in the ruts

following wet weather. The ruts have been caused by forestry vehicles moving along the track through the plantation.

### **3. Documentary Evidence**

#### **Ordnance Survey Mapping 1st Edition 1880s**

This map shows the original track of Footpath No. 19 across Blackborough Common passing through a gravel pit to the south east corner of Blackborough Common to the parish boundary. The line of the path continues along a track to the county road to Blackborough and Sheldon. Blackborough Common is shown as predominately open ground.

#### **Ordnance Survey 2<sup>nd</sup> Edition 1905/06**

Again, the original line of Footpath No. 19 is shown with double pecked lines heading south south easterly towards the south eastern corner of Blackborough Common. This route is also shown passing through the "Old Gravel Pit" to the parish boundary and follows the track south to the county road. Blackborough Common was still predominately open ground.

#### **RAF Aerial photo 1946 - 49**

This photo shows a track leading from the line of current Footpath No. 18, south south east across the common passing to the west side of the old gravel pit. The track can be clearly seen continuing to the eastern corner of the common to the parish boundary. From this point, the line of the path continues along the track to join the county road as depicted in the previous Ordnance Survey maps.

#### **Ordnance Survey Mapping A Edition 2500 published 1963**

This mapping indicates tracks recorded as *C.T.* (cart track) across Blackborough Common. The track marked on this map is more in keeping with the aerial photo of 1946 - 49. The southern section of Route 9 appears to follow the same line as the southern part of the 1963 OS mapping heading north from the south east corner of Blackborough Common.

### **4. Supporting User Evidence**

Fourteen User Evidence forms covering a period of use from 1947 - 1997 have been submitted in support of the claim for lane A - D to be recorded on the Definitive Map as a public bridleway.

All the user evidence describes the route as a bridleway from its junction with the current Footpath No. 19, Kentisbeare, point A to the south eastern corner of Blackborough Common, point D near the Kentisbeare/Uffculme parish boundary.

Ten of the fourteen riders have used the route on horses for between 19 - 52 years. The frequency of use varies between ten times a year, twenty to fifty times a year and three users state they have used the route 100 -150 times a year.

One local rider from Blackborough describes the route as a bridleway leading "from where the track meets Bodmiscombe - Coombe Track" i.e. the junction with the current Footpath No.18, Kentisbeare to the south eastern corner of Blackborough Common on the parish boundary. He has ridden it fifty times a year for pleasure riding to and from home. He said the route has never been diverted and that it is heavily used by horses. This rider mentions some gates that were locked in recent years but gives no indication as to their location.

Another local rider from Blackborough describes the route as a bridleway and a muddy track under trees about half a mile long. She has used the route twenty times a year since 1958 to 1997 when she completed her user evidence form. She mentions she has used the route based on local knowledge and that her family had been using it for more than seventy years.

This rider does not mention any gates and had never been turned back or stopped from using the path.

A rider from Dunkeswell describes the route as a bridleway and has used it since 1975 - 1997 when she completed her evidence form, twice a week on horse for pleasure riding to and from home. This rider says the route had some obstructions such as overgrown branches and water. Also, that the track was damaged due to removing timber. However, she said that there was "massive local use" of the route and she was never stopped or turned back.

Two riders mention a notice on the route requesting permits be taken out. One rider says the notices did not stay up very long and the other rider said that no one applied for one. No details of the location of the notices were given by the riders.

One further local rider who has used the route weekly since 1991 said she was never stopped or challenged by a land owner. She felt that the owners must have known the public were using the route because of the state of the track. She adds "most horse owners in the district use this path on a regular basis" and use by long standing local knowledge is a common theme throughout the user evidence.

Six of the fourteen riders mention gates. The gates are described as at the "Newcombe end" or "Forest Gate end". No dates were given as to when the gates were erected. It seems that they formed no real barrier as all the riders say they went round the side of the gate and appear really to be barriers to prevent vehicles getting onto the common.

Although the user evidence was collected ten years ago, this route still appears to be ridden by horse riders today.

## **5. Rebuttal Evidence**

Blackborough Common has been owned by Mr Stevens since 1979 and is currently managed on his behalf by Forest and Land Management Ltd, Honiton. They manage the land crossed by the current Footpath Nos. 18,19 and 20, Kentisbeare.

On his Landowner Evidence Form, Mr Stevens says he regards the routes as footpaths and visits the woodland every year. In response to the question on the Landowner Evidence Form "Have you, or anyone on your behalf, ever told anyone using the route that it was not public?" Mr Stevens answers "Yes. On management visits to the wood over the years, especially during harvesting operations".

Mr Stevens also mentions he put up notices twice saying "Public Footpath" but says they had lasted less than a week. However, he did not indicate when they were erected. Mr Stevens goes on to say that he erected barriers in August and November 2004 and has indicated on a map that they were across both ends of this route. Both barriers are large wooden gates to allow forestry machinery into the woods and appear to be kept locked most of the time. However, at point H, the fencing around the edges of the gate has not been built wide enough to prevent riders passing through.

In their letter of 24 September 2005, Forest & Land Management express their client's objections to this proposal. They say "Blackborough Forest is a relatively small area, but it is, and will continue to be a very active forest. The main activity will be in the form of thinning, felling and replanting, so to suggest further public rights of way would pose serious problems when considering Health and Safety issues. Harvesting machinery and horses just do not go well together, and I worry about possible accidents. The proposed route of the bridleway through the centre of the forest is extremely wet and the passage of horses would cause

heavy damage which would soon make the route impassable. This would result in riders wandering off the path and creating tracks within the actual forest, which would cause further problems". The woodland managers also mention that they carry out roe deer culling to protect young trees and that an additional bridleway would cause more health and safety and management concerns. Although a real safety issue, shooting in the forest would have to be carried out with prior notice with regard to the existing public rights of way and for general safety of the public.

## **6. Evaluation of Evidence**

Fourteen user evidence forms give evidence of long and consistent use of the route by horse riders who have used it openly and without hindrance for between 2 and 52 years. Nine riders have used the path for over the twenty years statutory period and three of those have used the route for over thirty-nine years. The frequency of use varies from ten times a year to two and three times a week. There is evidence that the route is still used by horse riders today.

The barriers erected by the landowner in 2004 at either end of the track were a definite act to prevent horse riders from using the route. However, the user evidence indicates that the twenty year period required for presumed dedication had been established long before this date.

With regard to the footpath or riding permit notices, neither the landowner, his agent nor the riders have suggested any dates when they were erected. There appears to have been no attempts to regularly maintain the notices or to enforce riding permits by closing access to the woods for horse riders. On his evidence form Mr Stevens said he put up footpath notices in 1995 following the diversion of the current Footpath No.19, Kentisbeare. If 1995 is taken as the date when bridleway rights were called to question, the user evidence submitted still strongly shows that the route has actually been enjoyed by the public as of right and without interruption for a full period of 20 years. No evidence has been submitted that any actions were taken prior to 1995 to stop horse riders from using the track A - H - D.

## **7. Conclusion**

The use of this path by horse riders has been unchallenged for twenty years and more. Evidence of their use is obvious, yet none of the users say they have been stopped or turned back.

It is considered that there is sufficient use of the path by horse riders to give rise to a presumption of dedication by the landowners and acceptance by the public to reasonably allege that public bridleway rights exist over the line A - H - D.

It is therefore recommended that a Modification Order be made and published to amend the Definitive Map and Statement so as to add a bridleway between A - H - D as shown by drawing no. ED/PROW/07/76.

**Route 10: To add a bridleway from the junction with the north western section of current Footpath No.38, Uffculme, point J, along the Kentisbeare/Uffculme parish boundary between Blackborough and Newcombe Common to join Route 11 towards the southern end of Newcombe Common, point K.**

**Recommendation: It is recommended that no Order is made, but the landowners be approached with a view to entering into a creation agreement to record the route as a bridleway.**

## 1. Background

This route was put forward as part of the review of the Definitive Map for the parish of Uffculme.

Fourteen User Evidence forms were submitted between 1996-98 by the British Horse Society in support of adding a bridleway along a forest track over the western boundary of Newcombe Common along the Kentisbeare/Uffculme parish boundary as shown points J - K on plan ED/PROW/07/76.

Footpath No. 18, Kentisbeare and Footpath No.38, Uffculme (part) have previously been considered by this committee and resolved to be upgraded to public to public bridleways.

## 2. Description

This route starts at the western end of the Footpath No. 38, Uffculme on the north west side of Newcombe Common. The track continues south south east, along a wide earth forestry track on the eastern side of a large hedgebank on Newcombe Common. The route follows a track along this hedge boundary and joins Route 11 at point K. The route varies in width between 2 - 4 metres and is approximately 655 metres long.

## 3. Documentary Evidence

**1<sup>st</sup> Edition Ordnance Survey Map 1880 and 2<sup>nd</sup> Edition Ordnance Survey 1905-06** do not show any track marked along the claimed route. These maps do show a marked track over the north western corner of Blackborough Common in line with Footpath Nos. 18, Kentisbeare and 38 Uffculme, but there is no continuation south south east.

**Ordnance Survey Map A Edition 2500 published 1963** shows no track along the claimed route and shows two hedges abutting the boundary hedge forming a triangle with no obvious track through.

### **Ordnance Survey mapping of the present day**

This mapping shows a distinct track from the north west corner of Newcombe Common, leading from current Footpath No. 38, Uffculme south south east along the parish boundary, veering south eastwards to join the large track across the centre of Newcombe Common.

**RAF Aerial photo of 1946-49** shows very little if any of the claimed route and shows two hedges at approximately 90 degrees to the route abutting the hedge bank itself. This photo also shows the long boundary hedge to the east of the claimed track forming the eastern side of a triangle as shown in the later 1963 OS mapping.

On close inspection of these photographs it can be seen that there is no gap in the first abutting hedge bank or in the hedge point forming the sharp end of the triangle. A small gap can be seen between the boundary hedge and the hedge in the middle. A very faint line may be seen on the western side of the hedge boundary separating Blackborough from Newcombe Common. However there is no track shown along the line of the claimed Route 10.

## 4. Supporting Evidence

Fifteen User Evidence forms were submitted by the British Horse Society in support of this route. The route is described as starting at Forest Gate at point D and ending at the junction with the current Footpath No.38, Uffculme, point J.

The majority of the descriptions for this route describe it as a bridleway along a wide peat and mud track alongside an old hedge bank. Some riders describe the track as a "peaty track 2m wide" or "muddy track wide enough for wide vehicle" or "parts muddy in winter, rutted with grass cover when logging not in progress".

Four of the fifteen riders have used a track since the 1940s for a period of time varying between 12 - 53 years. One local rider said he had ridden a track from 1943 - 1996 about once a week and describes it as approximately 3 metres, peat and turf.

Nine riders state they have ridden a peaty track from Forest Gate to point J for between 19 and 53 years with a frequency varying between 6, 12, 58, 100 times a year, and one user has ridden the path daily from 1975 - 1997.

The two remaining users have ridden along the claimed track: one from 1991 - 1996, four to five times a year and describes the route as "wide track muddy & peaty with good access approx 1 mile"; the other rider has used it from 1995 - 1996 once a week, but describes the route as a peaty track 2 metres wide.

Three of the fifteen riders mention gates. One said it was not locked but gave no location and the other two riders state "gates locked at Forest Gate end" but no further details. The other twelve riders do not mention any gates along the claimed route.

## **5. Landowner Evidence**

Mr & Mrs Alsop own Newcombe Common and it is managed on their behalf by Forest Enterprise. Mr & Mrs Alsop have no opposition to this route being added as a public bridleway.

## **6. Evaluation of Evidence**

The User Evidence submitted in support of Route 10 suggests that the horse riders have ridden around Newcombe or Blackborough Common between point J and the area locally know as Forest Gate, point D, in excess of the 20 year statutory period. However, the descriptions of the route vary between some of the forms and could just as easily relate to any other wide muddy track over Blackborough Common. Only five of the fifteen forms state that the route runs along side an old hedge. None of them say which side of the hedge the route runs.

The aerial photos and early ordnance survey maps show that no route existed along the line of Route 10 at those dates. It is possible that there were many small tracks available on Blackborough Common to horse riders in the 1940s and 50s, but Newcombe Common was more enclosed.

There is evidence on the ground of horse usage over most of the claimed route, (point J to about the old gravel pit), but it remains uncertain which line the riders took to the main road or back into Blackborough Common.

If the user evidence is evaluated from 1971-1997 when the forms were completed then there are nine horse riders who have used the route for between 4-25 years. Six of these riders have used the route for between 18-25 years with a frequency of use between daily, twice a week and once a month. The other three riders have used the route for between 4-13 years, once a week, twice a month and five times a year.

Three riders have mentioned notices. Two state that the notices requested applications to riding permits and the other was about logging operations. Two of the riders who have claimed to have used this route for 22 years mention locked gates at the forest gate end. There is a locked field gate at point D, but there is a hunting gate attached to it and a locked gate at point F with a gap next to it to allow access to the main road. The line submitted by the BHS has no gates along its entire length. To that end the User Evidence is at odds with itself and does not provide cogent evidence that the line claimed was actually the line used.

Although the User Evidence forms suggest that there has been long term usage of a wide peaty and muddy track in this area, the evidence is unclear and contradictory. The line of the claim route is not reflected on the 1963 Ordnance Survey Map which suggests that the line of Route 10 probably did not come into existence until the 1970s.

## **7. Conclusion**

Given the uncertainty over the precise route used it is considered that no order can be recommended. However, the landowners have indicated that they have no objection to use of the route by riders and it is, therefore, recommended that they be approached with a view to entering into a creation agreement for a bridleway between points J and K.

**Route 11: To add a bridleway from point M, the junction with the north eastern section of current Footpath No.38, Uffculme, across Newcombe Common to the county road at point F.**

**Recommendation: It is recommended that an Order be made to add a public bridleway to the Definitive Map and Statement between points M - K - F as shown on the drawing no. ED/PROW/07/76.**

### **1. Background**

This route was put forward by the British Horse Society in 1998 as part of the parish review for Kentisbeare and Uffculme. A section of this route to the Bodmiscombe Road is currently part of Footpath No. 38, Uffculme and will soon be the subject of a Modification Order to upgrade it bridleway status.

### **2. Description**

This route starts at point M on drawing no. ED/PROW/07/76. The line of the claimed path runs in a south south westerly direction across the centre of Newcombe Common to join the current Footpath No. 19, Kentisbeare (Route 8) at point E. From this point it is likely that the horse riders have used a stony track E - F in the parish of Uffculme, as opposed to the line of Footpath No.19, Kentisbeare which runs on soft ground. This path is approximately 3 - 4 metres wide, bounded by banks, and is approximately 850 metres long.

### **3. Documentary Evidence**

**1<sup>st</sup> Edition Ordnance Survey 1880** shows the southern section of the claimed route from point G to approximately mid way north over Newcombe Common. The continuing section of the route to the Bomiscombe Road is also shown.

**2<sup>nd</sup> Edition Ordnance Survey map 1905-06** shows the same line of the route heading north from point G over Newcombe Common.



**RAF Aerial photography 1946-49** shows a clear route similar to the previous 1880 and 1905/6 OS mapping. There is also a very faint line northwards across Newcombe Common possibly showing an early line of the route.

**Ordnance Survey A Edition 2500 mapping published 1963.** This mapping clearly shows a double pecked track, annotated with *C.T* over Newcombe Common to the north eastern boundary to join the current Footpath No. 38, Uffculme. This route is depicted in the same way on modern Ordnance Survey mapping.

#### **4. Supporting Evidence**

Twelve User Evidence forms have been submitted in support of this claim giving evidence of use for between 3 - 52 years, with a frequency of use between 10 to 150 times a year.

Eight riders have ridden the route from 1945 - 1997. Three of these riders used it from the mid 1940s to 1997 and all three used it between twice a week and once a month. Five of the other riders have ridden the route since 1958 and 1997 when the user evidence forms were completed. The frequency of use varied between 20 to 150 times a year.

The remaining four riders have ridden the claimed route for between 3 - 13 years from 1984 to 1997 regularly from about once a month to weekly.

The riders describe the route as hard and flinty across the common and muddy through the trees to the north where it joins the route to the Bodmsicombe road. Four riders mention forest gates. No exact location was given, but one rider said there was an unlocked gate at the road entrance which is most likely to be at point F which is the only gate on this path. One rider who has used this route since 1984 said that in about 1987 permits were required to ride in the woods, however it does not appear to have been enforced or the woodland closed to horse riders. None of the riders say that they have been stopped or challenged when using this path.

Uffculme Parish Council are in support of route becoming a public bridleway.

#### **5. Landowner Evidence**

Mr and Mrs Alsop who own Newcombe Common completed a Landowner Evidence in March 2007. They have owned Newcombe Common for three and a half years and are aware of the public use. Mr Alsop states on the evidence form "I am in agreement with this route becoming a bridleway".

#### **6. Evaluation of Evidence**

The user evidence suggests that the route across Newcombe Common has been in use since 1945 and it is still in use to this day. The route has been used openly without challenge for sixty years and although riders were requested to have permits, none of the riders said they applied. There appears to have been no real opposition to the use of the route by Forest Enterprise who manage the land, as no overt attempts have been made to prevent riders accessing the common. The present landowners are in support of the route becoming a bridleway and acknowledge that the public have been using the route for many years.

The aerial photography from 1946 - 49 shows a track from points K - E - F onto Newcombe Common. The Ordnance Survey map of 1963 shows the entire length of the route between points M - K - F where, as the riders have stated, it carried on downhill to the Bodmiscombe Road.

The evidence put forward in support of this route strongly suggests that the line of the path M - K - F has been used openly without any interruption in excess of the statutory twenty year period needed to give rise to a presumption of dedication of public bridleway rights along the line of the path.

## **7. Conclusion**

It is therefore recommended that an Order be made to add a public bridleway to the Definitive Map and Statement along the line M - K - F as shown on drawing No. ED/PROW/07/76.