

**Definitive Map Review 2006 – 2007  
Parish of Braunton (Part 2)**

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 no Modification Orders be made in respect of:

- (a) Route 5, to record on the Definitive Map and Statement a footpath from the B3221, Saunton Road, at the entrance to Saunton Golf Club westwards to the Saunton Sands car park, between points J – K shown on drawing number ED/PROW/06/113;
- (b) Route 7, for the claimed addition of byways from the unsurfaced public road near North Lobb along a track to Cruffen Cross and along Cruffen Lane to the minor road near Incedon, between points O – P – Q shown on drawing number ED/PROW/06/115;
- (c) Route 8, for the claimed addition of a byway from the A361, Ilfracombe Road, near Stony Bridge along a track, Stony Lane, to the minor road at Winsham Cross, between points R – S shown on drawing number ED/PROW/06/116;
- (d) Route 9, to record on the Definitive Map and Statement a bridleway from the minor road at Beara Down Cross southeastwards along Farpark Hill Lane to the minor road, Watery Lane, near Beara Farm, between points T – U shown on drawing number ED/PROW/06/117, but to consider a possible creation by agreement with the landowner; and
- (e) Route 12, for the claimed upgrading of Footpath No. 33 to bridleway from Down Lane along a track on Braunton Down and Watery Lane to the minor road, Higher Park Road, near Park Farm, between points Y – Z shown on drawing number ED/PROW/06/119.

## **1. Summary**

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

## **2. Review**

The current Review began in March 2006 with a public meeting in Braunton. Fifteen suggested proposals for modifying the Definitive Map were subsequently put forward for general public consultations in August 2006. Those were concerned with: the claimed addition of footpaths, a bridleway and byways; the claimed upgrading of recorded footpaths to bridleway or byway; the claimed upgrading of recorded bridleways to byways; and the consideration of recorded cul-de-sac footpaths. A previous report taken to the Public Rights of Way Committee in March 2007 examined three of the proposals for the claimed addition of footpaths (Routes 1, 2 and 4) and two of the recorded cul-de-sac footpaths (Routes 13 and 14). This report examines further proposals for the claimed addition of a footpath (Route 5), byways (Routes 7 and 8) and a bridleway (Route 9) and the claimed upgrading of a recorded footpath to bridleway (Route 12).

### **3. Consultations**

Responses to the consultations in August 2006 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;  |
| 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 no Modification Orders be made in respect of Routes 5, 7, 8, 9 and 12 due to insufficient evidence, particularly in respect of significant historical map and documentary evidence and use by the public. Details concerning the recommendations are discussed in the Appendix to this report. The remaining claims for the proposed additions and upgrading in respect of Routes 3, 6, 10, 11 and 15 will be considered in a further concluding report 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.

### **6. Legal Considerations**

The implications/consequences of the recommendations/proposed course of action have been taken into account in preparing the report.

Edward Chorlton

**Electoral Division: Braunton Rural**

Local Government Act 1972

List of Background Papers

Contact for enquiries: Mike Jenkins

Room No: ABG

Tel No: (01392) 393240

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

ns140607pra  
sc/parish of braunton part 2  
3 hq 290607



## 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;
- (iii) ... 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 5, Claimed Addition of a Footpath from the B3221, Saunton Road, at the Entrance to Saunton Golf Club Westwards to the Saunton Sands Car Park, between points J – K shown on drawing number ED/PROW/06/113.**

Recommendation: It is recommended that no Modification Order be made in respect of Route 5 for addition of the claimed footpath to the Definitive Map.

##### **1.1 Background and Description of the Route**

In March 2001, a query was received from the owner of a property adjoining Saunton Golf Club concerning a path alongside their garden leading through the sand dunes north of Braunton Burrows to the beach at Saunton Sands. The Golf Club had put in a practice field

and driving range alongside the path and were saying that there was no right to walk on it. The adjoining property owner said that the path had existed since the 1950s and they had walked it for years, including to get to the Post Office and village hall near the Club House and other people had used it as well. The whole area was closed during the Foot and Mouth Disease outbreak that year and under a new lease from the owners, Christie Estates, the Golf Club had put up signs saying that dogs were only allowed on the bridleway and footpath from the Saunton Sands carpark to the beach.

No evidence of use was submitted then and no further queries about the route were raised until early in 2006 just before the Definitive Map Review process was started. A suggestion was made that the path was clear and well-used and should be considered in the review, followed by the submission of a completed user evidence form. Initial investigations indicated that there was a worn path which appeared to be well-used, leading towards the Saunton Sands carpark and allowing access onto a recorded bridleway to give access to the beach.

The claimed route starts from the Saunton – Croyde road (point J) through the entrance to the Saunton Golf Club along the driveway into the carpark, passing buildings and following a tarmac path alongside the fences of adjoining gardens towards the driving range area. It continues as a narrower worn sandy track through rough vegetation and trees, passing the driving range and continuing into the sand dunes towards the beach at Saunton Sands. Within the sand dunes, it leads onto other worn tracks leading in several directions and into the Braunton Burrows, but connects with one leading into the Saunton Sands carpark (point K). There is no indication of any specific track across the carpark, but Bridleway No. 24 is recorded on a parallel line to the north of the claimed route running into the carpark and continuing onto the Saunton Sands beach. Footpath No. 23 is also recorded running from the carpark to further up on the Saunton – Croyde road near the Saunton Hotel.

## **1.2 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.

### **Historical mapping – early and later Ordnance Survey, Greenwood’s and Tithe Map**

Earlier historical maps do not show the line of the claimed route, particularly at smaller scales, such as the Ordnance Survey surveyors’ drawings of 1804-5 and the original 1<sup>st</sup> edition map based on them, published in 1809 and the later Greenwood’s map of 1827 based on the early Ordnance Survey maps. Later maps at larger scales, such as the Tithe Map of 1841 and the Ordnance Survey 25” to a mile 1<sup>st</sup> and 2<sup>nd</sup> editions of the 1880s and early 1900s, also do not indicate the line of any route in the area, which is shown on the Ordnance Survey maps as rough ground in the northern part of the extensive dunes of Braunton Burrows.

Accordingly, there is no support from older historical mapping for evidence suggesting the earlier existence of any path on the line of the claimed route, with links to other routes now recorded as public rights of way and public roads, up to that date. More recent Ordnance Survey mapping from 1958/60 shows the Golf Club at that date, but there is no indication of the line of any path continuing from its driveway or passing the adjoining properties across the dunes to the Saunton Sands carpark, or continuing to the beach.

### **Aerial photography**

RAF Aerial photography from 1946 – 9 shows that the Golf Club had been built by then, with no clear indication of any single track on the claimed route to the carpark. It indicates the

lines of many worn tracks, which may or may not have been from use by the public, but also from use of the dunes for military training purposes and natural erosion. More recent aerial photography from 1999 – 2000 shows the current situation, with later developments in the area including the Golf Club driving range and practice field. It indicates some worn tracks, including on part of the claimed route from the Golf Club, but also showing that there continues to have been a complex network of worn tracks in that area of dunes. Some of those will have resulted from increased recreational use by the public, including in connection with holiday developments, but not supporting the continued existence of a single track on the line of the claimed route.

### **1.3 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 just before the current review process was started. The suggested addition was included in the consultations in 2006, on the basis of the query raised in 2001 and the evidence submitted in 2006. It received specific responses only from the relevant owners of affected land and adjoining properties, with the submission of a further user evidence form and a letter with comments from nearby residents in support but no other completed forms for evidence of use.

### **1.4 User Evidence**

One completed user evidence form was submitted initially in connection with the suggestion that the claimed route should be considered in the review process, with the possibility of further evidence of use being available if the suggested addition was advertised in consultations. Following the consultations, only one further completed user evidence form was submitted, with a letter from local residents concerning their use of the route, so that there are only two evidence forms to consider.

The first form related to use of the claimed route for a few months only in 1947, connected with working on the beach at Saunton as an alternative to driving in a vehicle on the road, with the second form relating to use only between the years 2005 – 6. The letter referred to the path being available for use by local residents and Golf Club members since 1960 “by courtesy of the Saunton Golf Club”. It was considered that the path was useful for local people and the wider public as well using the South West Coast Path, connecting with other recorded public rights of way and particularly to avoid having to walk on a busy section of the Saunton – Croyde road.

### **1.5 Landowner Evidence**

Following the consultations, completed landowner evidence forms were sent in by the owners of properties adjoining part of the route, with letters from the agent to the main owner of the land affected, Christie Estate and the Secretary/Manager of Saunton Golf Club, as lessee.

The adjoining landowners did not indicate that they owned any part of the route, reporting ownership by them for more than 10 or 20 years, or by other members of their family since the 1930s. They believed the claimed route to be public and had seen people using it on foot for up to more than 50 years or as long as they could remember and had not stopped anyone from using it or turned anyone back. None had put up notices or signs on the route stating that it was private, or had put up gates or stiles and had not obstructed it.

In additional information, one owner said the route had been used since the 1930s by members of his family and by local residents. There had been variations with changes by the

Golf Club and there were also many other paths crossing the area from the owners, Christie Estates, allowing wider permissive public access to the Braunton Burrows.

No landowner evidence form was submitted on behalf of the main landowner, but a letter was received from the agent to the Christie Estate as Chief Executive of Christie Farms. He did not believe that any public rights could be established on the route, from controls by Saunton Golf Club as lessee over private access in vehicles from the road to use the facilities and by the Estate, in relation to the Saunton Sands carpark. He referred to Statutory Declarations being available from the Golf Club and the Estate as landlords to that effect, including the turning back of trespassers and interruptions with the frequent closure of areas crossed by the route.

## **1.6 Summary and Conclusions – Consideration 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. The suggestion appears not to have been made in response to any specific event acting as a significant challenge to use of the route. 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, earlier aerial photography and later Ordnance Survey mapping does not show that there has been a single, clear path on the line of the claimed route for a long period of time. Earlier maps do not record the lines of any routes across the sand dunes, with later maps showing the developments of the drive from the Saunton – Croyde Road to the Golf Club and the Saunton Sands carpark and the lines of some sections of paths in between and elsewhere in the area. Aerial photographs show the lines of many tracks that may have been worn from use by people in the area, or from natural processes in a mobile area of sand dunes. Parts of the wider Braunton Burrows area have also been used for military training purposes, particularly during the Second World War and continuing to the present, which will have prevented long use by the public, or severely limited it, due to strictly enforced security regulations.

Evidence had been put forward suggesting that there was use of the claimed route by the public and even with a minimal amount of user evidence, there was considered to be the basis for putting forward a suggestion in consultations that it should be investigated for recording as a public right of way. However, very little further evidence of public use was submitted as a result of the consultations and no evidence has been discovered, particularly from historic maps, indicating the existence of a track on the line of the route to support any possible historical basis for public rights. The landowner and lessees have controlled access at both ends of the route for private use of facilities at the Golf Club and at the Saunton Sands carpark, including a signs at the entrance to the Golf Club carpark that there is no through way to the beach. There is also an indication that parts of the route between them are part of the network of many lines of paths crossing the sand dunes from use by the public under wider permissive access on Braunton Burrows by agreement with the landowner.

The user evidence submitted in respect of the claimed route is, therefore not sufficient to support the recording of a public right of way on the claimed route 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 submitted and discovered that there is



considered to be no basis for recommending the making of an Order for addition of a footpath on the Definitive Map in respect of Route 5.

**2. Route 7, Claimed Addition of Byways from the Unsurfaced Public Road near North Lobb along a track to Cruffen Cross and along Cruffen Lane to the minor road near Incledon, between points O – P – Q shown on drawing number ED/PROW/06/115.**

Recommendation: It is recommended that no Modification Order be made in respect of Route 7 for addition of the claimed byways to the Definitive Map.

**2.1 Background and Description of the Route**

A large number of Schedule 14 applications were submitted on behalf of the Trail Riders' Fellowship (TRF) to record routes as claimed Byways Open to All Traffic in advance of the Natural Environment and Rural Communities Act 2006. That was before the review process had been opened in Braunton and several were made for routes in the parish. Two of those, dated in November 2005, were received in December with accompanying copies from historical map evidence for connecting routes at North Lobb.

The first of the claimed routes starts from a corner on the recorded unsurfaced minor road running between the surfaced minor roads to North Lobb and at Lobthorne Style on the Georgeham parish boundary (point O). It runs generally eastward as a narrow lane between hedgebanks to a minor surfaced road at Cruffen Cross (point P), with the second route continuing in the same direction from that road as Cruffen Lane and ending at the minor surfaced road from Incledon to Fairlinch Cross (point Q).

The start of the route at North Lobb is closed off by a field gate and wire fencing, with the first section overgrown and becoming completely blocked from the road at Cruffen Cross by encroaching vegetation growth. Its continuation across the road as Cruffen Lane is also blocked by growth from adjoining hedges, particularly at each end, making it completely inaccessible for use.

**2.2 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.

**Historical mapping – early Ordnance Survey, Greenwood's, Tithe Map and 1910 Finance Act**

Some early maps show both sections of the route with double solid lines, including those at smaller scales such as the Ordnance Survey surveyors' drawings of 1804-5 and the original 1<sup>st</sup> edition 1" to the mile map based on them, published in 1809. It is also shown on the later Greenwood's map of 1827, which was based on the early Ordnance Survey maps.

Later maps at larger scales show the route in the same way, with more detail. The Tithe Map of 1841 shows the whole route coloured, but not numbered or named and not indicating it as closed off from its connecting routes, now recorded as public roads. However, they were not labelled or identified as being public roads then with some included that are now recorded as public, as well as others that are not and some more likely to have been private access to fields or land and not now existing on the ground. The unsurfaced road from North Lobb is shown in the same way and numbered, with the Apportionment recording it as "Part of Road at Lob Thorne, Waste".

Ordnance Survey 25" to a mile 1<sup>st</sup> and 2<sup>nd</sup> map editions of the 1880s and early 1900s show the route with both sections labelled with their own parcel numbers and acreages. They are closed with dashed lines at the connecting roads to show them as separate land parcels, rather than indicating any physical boundary or obstruction on the ground such as a gate or fence. Those roads are also shown with their own parcel numbers and acreages, but with one thicker line indicating that they were recorded then as surfaced roads and more likely to have been public. Both sections of the claimed route are shown with thinner solid lines, suggesting that they were not considered by the Surveyors then to be public roads.

The 1910 Finance Act maps drawn up for a survey to ascertain the value of land for the purpose of taxation show both sections of the route excluded from adjoining numbered hereditaments, or assessment areas of land. Its exclusion from adjoining land suggests that it may have been considered as a form of public road at the time, or at least a route carrying public rights but giving no indication of its status. The associated Field Books for adjoining hereditaments do not record any deduction for Public Rights of Way or User or information that might have been in connection with the route, although it would not be expected for a route excluded on the maps.

It is not sufficient on its own as evidence that the route may have been considered at that time to be a public right of way or road. However, it would contribute in supporting any more significant stronger historical evidence indicating the existence of public rights.

#### **Later mapping and aerial photography**

Later Ordnance Survey and other maps at smaller scales in the earlier 20<sup>th</sup> century either do not show the route, or show only the continuing section of Cruffen Lane by double solid lines as an uncoloured track, not in the same way as most roads are indicated in the key. The keys for some of the later editions of Bartholomew's maps indicated that they showed the routes of some footpaths and bridleways, but where the claimed route is shown it is not recorded in that way.

Earlier aerial photography from 1946 – 9 shows the route as two sections of narrow lane hedged on both sides between the roads, but then more open with the first section appearing to have been worn with access to an adjoining field. The connecting roads show more clearly as being open, wider and surfaced.

Later Ordnance Survey mapping from 1958 shows both sections of the route at that date in the same way as in the earlier editions, with parcel numbers and acreages indicating that its physical existence on the ground continued to be recorded by Ordnance Survey surveyors more recently. They are shown with the symbols for rough vegetation, indicating that it must have become more overgrown and the first section has those for trees, suggesting more substantial encroaching vegetation growth by then. More recent aerial photography from 1999 – 2000 shows that section to have remained more overgrown, which is supported by the most recent and current Ordnance Survey mapping.

The showing of part of the route on later and current maps records its physical existence at that time and until more recently but does not indicate on its own, or support, the existence of any public right of way along it on foot, horseback or otherwise, which would require other more significant stronger evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.

There is support from older historical maps and more recent mapping only to show that the route has existed since at least the early 19<sup>th</sup> century as sections of narrow tracks

connecting other routes perhaps considered then to be public and now recorded as public highways. No other more significant historical maps or references in historical documentary material have been found to indicate that they may have had the reputation of being considered as public roads from then or more recently. In particular, there is no indication of any public expenditure on them or responsibility for their maintenance. Neither section of the route has been shown on the past and current records of maintainable highways to suggest that it may have been considered as a road with public rights at any level of status.

### **2.3 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 applications were made before the review process for the parish was started. The claimed route was included in the consultations in 2006, on the basis of the application and the evidence submitted in 2005. The responses included concerns expressed by the Parish Council and local residents about all of the applications made for Byways Open to All Traffic leading to routes being recorded as available for use by motorised vehicles. The British Horse Society support it with most of the routes put forward, but only if it is recorded as a Restricted Byway and not as a Byway Open to All Traffic. Some specific responses referred to the route, or parts of it, having been partly or completely overgrown since at least the 1980s or longer. It had not been visible or accessible since then, but appeared to have been an old farm track and one view was expressed that it would be useful if made into a bridleway.

### **2.4 User and Landowner Evidence**

No completed user evidence forms were submitted with the copies of historical maps accompanying the Schedule 14 application form. None were sent in following the later consultations and there is, therefore, no evidence of use by the public to consider further.

One completed landowner evidence form was submitted by the owner of land adjoining part of the claimed route. He had owned the land for six years and indicated that he did not own any part of the route itself, although it could be presumed that his ownership might include to the centre of the route. He did not believe the claimed route to be a public right of way as it was impassable, had not been used for more than 40 years and indicating that use of it by motorcycles would be harmful to wildlife in the area.

He 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. He provided further information about possible owners of other adjoining land, but no further landowner evidence was submitted.

### **2.5 Summary and Conclusions – Consideration under Statute and Common Law**

The applications for the routes to be recorded as Byways Open to All Traffic were not made in response to any specific event acting as a significant challenge to use of the routes, or as the result of any action taken by a landowner that had obstructed or prevented access to them from a specific date. There is, therefore, no evidence of any significant actions by a landowner having called into question their use at a specific time for consideration under statute law.

However, Section 69 of the Natural Environment and Rural Communities Act 2006 has clarified the position on using a formal Schedule 14 application to provide the date of an event that can be taken as calling the public's right to use a route into question. That is if there are no more significant earlier events or actions that may have led to the application being made. As there are none, it means that the period for consideration under statute law

is the 20 years from November 1985 to the date of the applications in November 2005. That would be in relation to considering evidence of use by the public, but as no such evidence has been submitted there can be no consideration of the application under statute law on that basis.

The applications can, therefore, be examined only in relation to common law. That would be in considering historical and other documentary evidence submitted and discovered only, without any evidence of use. Historical mapping shows that the tracks have existed physically on the line of the whole claimed routes from at least the early 19<sup>th</sup> century. Their exclusion on the Finance Act mapping is the only indication that they may have been considered then to be highways with some level of public status, but is not sufficient on its own without other more significant supporting documentary or mapping evidence and evidence of past or recent use.

Later Ordnance Survey and other mapping shows that the routes have continued to exist on their current lines up to the present. Aerial photography and other evidence suggests that parts had been used as access for adjoining land but have become more overgrown, particularly over the last 50 years to become impassable.

Considering the historical mapping and landowner evidence, without any evidence of use, dedication at common law cannot be implied. The evidence does not support the claim made in the applications that there is any historical basis to the routes being considered as public highways, or having the reputation of being available for use by the public. There is no evidence to suggest that the landowner intended to dedicate the claimed route as a public highway of any kind, or that the public accepted any dedication and have used it on that basis.

It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available that it is not considered reasonable to allege, on the balance of probabilities, that a public right of way subsists on the route. From consideration under common law there is, therefore, no sufficient basis for making an Order in respect of the applications for the routes to be recorded as Byways Open to All Traffic, or for recording them as public rights of way with any other status. Accordingly, the recommendation is that no Order be made adding the routes to the Definitive Map and Statement as Byways Open to All Traffic.

**3. Route 8, Claimed Addition of a Byway from the A361, Ilfracombe Road, near Stony Bridge along a track, Stony Lane, to the minor road at Winsham Cross, between points R – S shown on drawing number ED/PROW/06/116.**

Recommendation: It is recommended that no Modification Order be made in respect of Route 8 for the addition of the claimed byway to the Definitive Map.

**3.1 Background and Description of the Route**

A Schedule 14 application on behalf of the Trail Riders' Fellowship, dated and received in November 2005, was made to record a route known as Stony Lane as a claimed Byway Open to All Traffic. The application was accompanied by copies from historical maps, with copies of record sheets of runs by TRF members and a completed user evidence form as supporting evidence of use.

The claimed route starts from near Stony Bridge on the A361, Braunton – Ilfracombe road (point R), as a narrow track running generally eastward up through the wooded hillside and then as a narrow hedged track between fields. It continues as a wider hedged track used for access to adjoining fields, ending at the minor surfaced road at Winsham Cross, to the north

of Higher Winsham Farm (point S). A minor unsurfaced road is recorded continuing eastward, ending at the minor surfaced road crossing Halsinger Down towards Marwood parish.

The start of the claimed route is almost completely obscured by encroaching woodland vegetation growth beside a fast stretch of a busy road without a verge on that side, making it difficult and dangerous for access as an entrance from and exit onto the road. The surface of the first narrow section of the track through the woodland is rough but relatively clear from encroaching vegetation and worn in the centre. It is more overgrown on the section of track between the fields and clearer on the wider section leading to the road, with worn tracks from its use in vehicles for access to adjoining fields and also for the maintenance of two telecommunication transmitter masts.

### **3.2 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.

#### **Historical mapping – early Ordnance Survey, Greenwood's, Tithe Map and 1910 Finance Act**

Some early maps at smaller scales appear to show the end of the route only as a dead end stub of double solid lines leading from the road north of Higher Winsham. Those include the Ordnance Survey surveyors' drawings of 1804 – 5 with the original 1<sup>st</sup> edition 1" to the mile map based on them, published in 1809. It is also shown in the same way on Greenwood's map of 1827, based on the early Ordnance Survey maps. None of the maps show any continuation for the whole route at that time, or any section of the route at the Ilfracombe road end.

Later maps at larger scales show the whole route with more detail. The Tithe Map of 1841 shows the route coloured, but not numbered or named and not indicating it as closed off from its connecting routes, now recorded as public roads. However, those were not labelled or identified then as public roads 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.

Ordnance Survey 25" to a mile 1<sup>st</sup> and 2<sup>nd</sup> map editions of the 1880s and early 1900s show the whole route labelled with its own parcel number and acreage. It is closed with dashed lines connecting with the road at Winsham Cross, to show it as a separate land parcel, rather than indicating any physical boundary or obstruction on the ground such as a gate or fence. The connecting roads are also shown with their own parcel numbers and acreages, but with one thicker line appearing to indicate that they were then recorded as surfaced or public roads. The claimed route is shown with thinner solid lines, suggesting that it was not considered by the Surveyors then to be a public road. It is narrower at the western end and wider at the eastern end, with double-dashed lines suggesting a track with verges leading onto the road at Winsham Cross.

The 1910 Finance Act maps drawn up for a survey to ascertain the value of land for the purpose of taxation show the route excluded from adjoining numbered hereditaments, or assessment areas of land. Its exclusion from adjoining land suggests that it may have been considered as a public road at the time, or at least a route carrying public rights but giving no indication of its status. Details of the associated Field Books for adjoining hereditaments do not record any deduction for Public Rights of Way or User or information that might have been in connection with the route, as would be expected for a route excluded on the maps.

It is not sufficient on its own as evidence that the route may have been considered at that time to be a public right of way or road. However, it would contribute in supporting any more significant stronger historical evidence indicating the existence of public rights.

### **Later mapping and aerial photography**

Some later Ordnance Survey and other maps at smaller scales in the earlier 20<sup>th</sup> century, including Bartholomew's editions from the 1920s and 1930s, show the whole route with thin double solid lines as an uncoloured track, not in the same way as most roads are indicated in the key. The keys for some of the editions of Bartholomew's maps indicated such routes as "inferior roads and not recommended". Some of the maps indicated the routes of footpaths and bridleways, but where the route is shown it is not recorded in that way.

Earlier aerial photography from 1946 – 9 shows the route as a narrow lane starting from the western end leading into the wooded section, widening to a more open track, hedged on both sides. The section leading to the road at Winsham Cross is wider and worn from access to adjoining fields. The connecting roads show more clearly as being open, wider and surfaced.

Later Ordnance Survey mapping from 1957 – 9 shows the route at that date in the same way as in the earlier editions, with parcel numbers and acreages indicating that its physical existence on the ground continued to be recorded by Ordnance Survey surveyors more recently. It is shown named in both sections as "Stony Lane". More recent and current Ordnance Survey mapping shows it in the same way and named, labelled as a 'path' running through the woods and as a 'track' leading onto the road at Winsham Cross.

More recent aerial photography from 1999 – 2000 shows the hedged sections of the track leading from the woods as wider, more open and worn on the section from Winsham Cross, from use by vehicles for access to adjoining fields and the location of the telecommunication masts.

The showing of the route on later and current maps records its physical existence at that time and until more recently but does not indicate or support, on its own, the existence of any public right of way along it on foot, horseback or otherwise, which would require other more significant stronger evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.

There is support from older historical maps and more recent mapping only to show that part of the route has existed since at least the early 19<sup>th</sup> century, probably for access to land. It is shown from the later 19<sup>th</sup> century as a complete route from linked sections of narrow tracks connecting other routes perhaps considered then to be public and now recorded as public highways. No other more significant historical maps or references in historical documentary material have been found to indicate that it may have had the reputation of being considered as a public road from then or more recently. In particular, there is no indication of any public expenditure on it or responsibility for its maintenance. No section of the route has been shown on the past and current records of maintainable highways to suggest that it may have been considered as a road with public rights at any level of status.

### **3.3 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 application was made before the review process for the parish was started. The claimed route was included in the

consultations in 2006, on the basis of the application and the evidence submitted in 2005. The responses included concerns expressed by the Parish Council and local residents about all of the applications made for Byways Open to All Traffic leading to routes being recorded as available for use by motorised vehicles. The British Horse Society support it with most of the routes put forward, but only if it is recorded as a Restricted Byway and not as a Byway Open to All Traffic. Some specific responses referred to parts of the route being an overgrown farm track, indicating that there might be evidence of use on foot or horseback and referring to use on motorcycles, but suggesting that it should not be recorded as a Byway Open to All Traffic or Restricted Byway.

### **3.4 User and Landowner Evidence**

One completed user evidence form and copies of sheets recording runs by TRF members were submitted with the copies of historical maps accompanying the Schedule 14 application form. Two evidence forms were sent in by the British Horse Society following the later consultations.

The user evidence form submitted with the application did not specify how or when the route had been used. It referred in accompanying information to use with others, presumably also members of the TRF, on two specified days in August 2005. The copies of TRF run record sheets related to organised trail rides on specified days in January and October 1986, March 1987 and March 1989. The two further evidence forms related to use on horseback only once or twice in 2004 and without specifying how many times in 2006.

There is, therefore, only a limited amount of evidence relating to use by the public for consideration. It is concerned with use over 20 years, but the dates referred to in the years 1986 – 7, 1989, 2004 and 2005 – 6 show that there has not been continuous use throughout that period. The TRF run record sheets specify the numbers involved in riding on the individual dates as being between two and six members at a time. That does not add significantly to the weight of evidence, but may be interpreted as increasing the proportion of use in motor vehicles compared to other use. Only a minimal amount of evidence for use on horseback has been submitted, with no evidence at all of use on foot to consider.

The owner of the route was not identified and no evidence was obtained from any owner of adjoining land. From consultations it was suggested that there had been some use of the route on horseback with the landowner's permission, but indicating that other use, particularly on motorcycles, would be challenged.

### **3.5 Summary and Conclusions – Consideration under Statute and Common Law**

The application for the route to be recorded as a Byway Open to All Traffic was not made in response to any specific event acting as a significant challenge to use of the route, or as the result of any action taken by a landowner that had obstructed or prevented access to it from a specific date. There is, therefore, no evidence of any significant actions by a landowner having called into question its use at a specific time for consideration under statute law.

However, Section 69 of the Natural Environment and Rural Communities Act 2006 has clarified the position on using a formal Schedule 14 application to provide the date of an event that can be taken as calling the public's right to use a route into question. That is if there are no more significant earlier events or actions that may have led to the application being made. As there are none, it means that the period for consideration under statute law is the 20 years from November 1985 to the date of the application in November 2005.

In considering evidence of use by the public during that period, there is only a limited amount and it does not relate to continuous use throughout the whole of the 20 years. It is, therefore,

not sufficient to support the recording of a public right of way on the claimed route by presumption of dedication from use. Accordingly, there is no need to consider whether there were actions taken by the landowners during that period to provide evidence of any lack of intention to dedicate.

Considering the application in relation to common law requires taking into account the historical and other documentary evidence submitted and discovered, with the evidence of use. Historical mapping shows that a track has existed physically on part of the route from at least the early 19<sup>th</sup> century and on the whole route since the late 19<sup>th</sup> century. Its exclusion on the Finance Act mapping is the only indication that it may have been considered then to be a highway with some level of public status, but is not sufficient on its own without other more significant supporting documentary or mapping evidence and evidence of past use to relate to more recent and current use.

Later Ordnance Survey and other mapping shows that the route has continued to exist on its current line up to the present. Aerial photography and other evidence suggests that parts had been used as access for adjoining land but have become more overgrown, particularly over the last 50 years.

Considering the historical mapping and landowner evidence, with the limited evidence of use, dedication at common law cannot be implied. The evidence does not support the claim made in the application that there is any historical basis to the route being considered as a public highway, or having the reputation of being available for use by the public. There is no evidence to suggest that the landowner intended to dedicate the claimed route as a public highway of any kind, or that the public accepted any dedication and used it on that basis.

It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is not considered reasonable to allege, on the balance of probabilities, that a public right of way subsists on the route as a Byway Open to All Traffic. The legal definition requires evidence that it was a highway over which there may be an historic public right of way for use by all kinds of traffic, but which is now used mainly as a footpath and bridleway, that is mainly on foot and on horseback. In this case, there is insufficient evidence for any such historical use, or to meet the requirement for recent and continuing use mainly on foot and horseback. There is only a minimal amount of evidence of use on horseback and no evidence at all of use on foot.

From consideration under common law there is, therefore, no sufficient basis for making an Order in respect of the application for the route to be recorded as a Byway Open to All Traffic, or for recording it as a public right of way with any other status. Accordingly, the recommendation is that no Order be made adding the route to the Definitive Map and Statement as a Byway Open to All Traffic.

**4. Route 9, Claimed Bridleway from the minor road at Beara Down Cross southeastwards along Farpark Hill Lane to the minor road, Watery Lane, near Beara Farm, between points T – U shown on drawing number ED/PROW/06/117.**

Recommendation: It is recommended that no Modification Order be made in respect of Route 9 for the addition of the claimed bridleway to the Definitive Map, but to consider the possibility of a creation by agreement with the landowner.

**4.1 Background and Description of the Route**

In 1995, two completed user evidence forms were submitted in connection with use on horseback of a route not recorded as a public right of way, known as Farpark Hill Lane. There is no indication of what led to the forms being sent in, but they were kept on file for



consideration when the current review process reached the parish and no issue of access to the route was raised before the review was started.

The route concerned starts from the junction at Beara Down Cross of a recorded minor unsurfaced county road, Burland Lane from Halsinger, with the minor surfaced county road from Braunton across Beara Down and Fullabrook Down towards West Down (point T). Farpark Hill Lane continues as a narrow hedged track, running southeastward and downhill to meet a recorded minor surfaced road to Beara Farm (point U), known as Watery Lane, which branches off the minor surfaced road to Whitehall in Marwood and continues as a minor unsurfaced county road to connect back onto it.

The lane is open from the roads at both ends and clear from growth of vegetation from the hedges on both sides, with a mainly even grassed earth and stone surface worn by vehicle tracks and some exposed bedrock. The tracks include those from use of the route for access to adjoining fields by farm vehicles, with a worn central track in parts suggesting that there may also be some use on horseback, bicycles or motorcycles.

#### **4.2 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.

##### **Historical mapping – early Ordnance Survey, Greenwood's, Tithe Map and 1910 Finance Act**

Some early maps at smaller scales show the whole route with double solid lines between Beara Down Cross and Beara Farm. Those include the Ordnance Survey original 1<sup>st</sup> edition 1" to the mile map published in 1809, based on the surveyors' drawings of 1804 – 5. It is also shown in the same way on Greenwood's map of 1827, based on the early Ordnance Survey maps.

Later maps at larger scales show the whole route with more detail. The Tithe Map of 1841 shows the route coloured, but not numbered or named and not indicating it as closed off from its connecting routes, now recorded as public roads. However, those were not labelled or identified then as public roads 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. The junction of the routes at Beara Cross from Burland Lane leading into the route is labelled "The Cross Lanes".

Ordnance Survey 25" to a mile 1<sup>st</sup> and 2<sup>nd</sup> map editions of the 1880s and early 1900s show the whole route named as Farparkhill Lane, labelled with its own parcel number and acreage. It is closed with dashed lines connecting with the road at Beara Down Cross, to show it as a separate land parcel, rather than indicating any physical boundary or obstruction on the ground such as a gate or fence. It appears to be included with part of Watery Lane running through Beara Farm to the Whitehall road. The connecting roads are also shown with their own parcel numbers and acreages, with one thicker line appearing to indicate that they were then recorded as surfaced or public roads. The claimed route is shown with thinner solid lines, suggesting that it was not considered by the Surveyors then to be a public road.

The 1910 Finance Act maps drawn up for a survey to ascertain the value of land for the purpose of taxation show the route excluded from its hereditament, or assessment areas of land, with the other connecting routes now recorded as public roads. There is an added note of "Public Road" written on it and the connecting routes at Beara Farm. Its exclusion from

adjoining land and the note suggest that it may have been considered as a public road at the time, or at least a route carrying public rights but giving no indication of its status. The associated Field Book for the hereditament records a deduction for Public Rights of Way or User concerning a footpath, but which may refer to another route nearby now recorded as Footpath No. 41 within a larger acreage of land.

It is not sufficient on its own as evidence that the route may have been considered at that time to be a public road or right of way. However, it would contribute in supporting any more significant stronger historical evidence indicating the existence of public rights.

### **Later mapping and aerial photography**

Some later Ordnance Survey and other maps at smaller scales in the earlier 20<sup>th</sup> century, including Bartholomew's editions from the 1920s and 1930s, show the whole route with thin double solid lines as an uncoloured track, not in the same way as most roads are indicated in the key. The keys for some of the editions of Bartholomew's maps identified such routes as "inferior roads and not recommended". Some of the maps indicated the routes of footpaths and bridleways, but the route is not shown recorded in that way.

Earlier aerial photography from 1946 – 9 shows the route as a narrow lane, hedged on both sides, with the section leading from Beara Farm worn from access to adjoining fields. The connecting roads show more clearly as being open, wider and surfaced.

Later Ordnance Survey larger-scale mapping between 1956 – 7 and 1960 show the route at that time in the same way as in the earlier editions, with parcel numbers and acreages indicating that its physical existence on the ground continued to be recorded by Ordnance Survey surveyors more recently. It is shown named as "Farpark Hill Lane". More recent and current Ordnance Survey mapping shows it in the same way and at larger scales, named and labelled as a 'track'.

More recent aerial photography from 1999 – 2000 shows the route remaining as an open hedged lane, wider and more worn on the section from Beara Farm from use by vehicles for access to adjoining fields nearer that end.

The showing of the route on later and current maps records its physical existence at that time and until more recently but does not indicate or support, on its own, the existence of any public right of way along it on foot, horseback or otherwise, which would require other more significant stronger evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.

There is support from older historical maps and more recent mapping only to show that the route has existed since at least the early 19<sup>th</sup> century as a complete route connecting other routes perhaps considered then to be public and now recorded as public highways. No other more significant historical maps or references in historical documentary material have been found to indicate that it may have had the reputation of being considered as a public road from then or more recently. In particular, there is no indication of any public expenditure on it or responsibility for its maintenance. No section of the route has been shown on the past and current records of maintainable highways to suggest that it may have been considered as a road with public rights at any level of status.

### **4.3 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 evidence forms were submitted

some time before the review process for the parish was started. The claimed route was included in the consultations in 2006, on the basis of the evidence submitted in 1995. The responses included British Horse Society support for most of the routes put forward, with further user evidence forms for the claimed route. Another response referred to the route seeming to be well used by people on horses and perhaps also on foot, suggesting that it should be recorded as a bridleway or as a footpath, depending on the evidence and unless any actions by landowners to prevent use could rebut it.

#### **4.4 User and Landowner Evidence**

Two completed user evidence forms were submitted in 1995, with two further evidence forms sent in by the British Horse Society following the later consultations. No other evidence of use was submitted, so that there are only four forms to consider. The earlier forms related to use on horseback between 1983/5 – 1995. The two further evidence forms related also to use on horseback from 1998 – 2006 and in 2006 only.

Evidence had been put forward suggesting that there was use of the claimed route by the public and even with a minimal amount of user evidence, there was considered to be the basis for putting forward a suggestion in consultations that it should be investigated for recording as a public right of way. However, very little further evidence of public use was submitted as a result of the consultations.

There is, therefore, only a minimal amount of evidence relating to use by the public for consideration. It is concerned with use over more than 20 years, but the dates referred to in the years 1983 – 95 and 1998 – 2006 show that there has not been continuous use throughout that period. Only a limited amount of evidence for use on horseback has been submitted, with no evidence at all of use on foot to consider.

One completed landowner evidence form was submitted by the owner of land adjoining the route on the south and tenant of the land on the south. He had owned the land for 12 years, had been a tenant for 34 years and did not indicate that he owned any part of the route itself, although it could be presumed that his ownership might include to the centre of the route. He believed the route to be a public right of way as a bridleway and footpath for 40 years and had seen members of the public using it on foot and horseback once a week.

He had only turned back or stopped a 4X4 vehicle driven by underage boys using the route but 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. He said that he was in favour of the route being used by walkers and horseriders, but not by motor vehicles or motorcycles.

#### **4.5 Summary and Conclusions – Consideration under Statute and Common Law**

The evidence suggesting that the route could be considered for recording as a bridleway appears not to have been submitted in response to any specific event acting as a significant challenge to use of the route, or as the result of any action taken by a landowner that had obstructed or prevented access to it from a specific date. There is, therefore, no evidence of any significant actions by a landowner having called into question its use at a specific time for consideration under statute law. It can, therefore, be examined in relation to common law, in conjunction with historical and other documentary evidence.

Considering the evidence in relation to common law requires taking into account the historical and other documentary evidence submitted and discovered, with the evidence of use. Historical mapping shows that a track has existed physically on the whole route from at least the early 19<sup>th</sup> century. Its exclusion on the Finance Act mapping, with the note of it as a public road, is the only indication that it may have been considered then to be a highway with

some level of public status, although it does also continue and connect routes recorded now as unsurfaced maintainable county roads. The historical mapping is not sufficient on its own without other more significant supporting documentary evidence and evidence of past use to relate to more recent and current use.

Considering the historical mapping and landowner evidence, with the limited evidence of use, dedication at common law cannot be implied. The evidence is not substantial in supporting any historical basis to the route being considered as a public highway, or having the reputation of being available for use by the public. There is no evidence to suggest that the landowner intended to dedicate the claimed route as a public highway of any kind, or that the public accepted any dedication and used it on that basis.

It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is not considered reasonable to allege, on the balance of probabilities, that a public right of way subsists on the route as a bridleway. There is no evidence for any historical use on horseback, a minimal amount of evidence of recent or current use on horseback and no evidence at all of use on foot. From consideration under common law there is, therefore, no sufficient basis for making an Order to record the route as a bridleway, or for recording it as a public right of way with any other status. Accordingly, the recommendation is that no Order be made adding the route to the Definitive Map and Statement as a bridleway.

However, there are references to a reputation of more substantial use of the route by the public on horseback and also on foot than is suggested by the evidence submitted. That includes information provided by the landowner, who has not expressed any opposition to its use, except by motor vehicles or motorcycles. There is, therefore, the possibility of investigating whether the landowner would be willing to dedicate the route by agreement specifically as a public bridleway.

**5. Route 12, Claimed Upgrading of Footpath No. 33 to Bridleway, from Down Lane, along a track on Braunton Down and Watery Lane to the minor road, Higher Park Road, near Park Farm between points Y – Z, shown on drawing number ED/PROW/06/119.**

Recommendation: It is recommended that no Modification Order be made in respect of Route 12 for the claimed upgrading of Footpath No. 33 to bridleway.

**5.1 Background and Description of the Route**

Early in 2006, complaints were received from local residents about horseriders using the recorded Footpath No. 33 in Braunton. In response, the Public Rights of Way Warden put up a notice stating that there was no access for horses on the footpath. After the meeting to open the review in the parish in March 2006, there was a query from a horserider who kept horses on land adjoining the footpath about whether she could ride on the route. She said that she had been told by other local people that it had always been used by horseriders and she believed that it should be recorded as a bridleway. She requested user evidence forms to complete one herself and to arrange for completion by other people she knew who used the route.

The route of Footpath No. 33 starts from the end of the recorded minor surfaced county road, Down Lane (point Y), climbing northeastwards out of Braunton village from East Hill towards Braunton Down. It continues from the junction with the recorded Footpath No. 32 on Green Lane, along a hedged and part surfaced rough track running between enclosed fields on the lower slopes of Braunton Down. Beyond a gate leading off into fields with stables and grazing for horses, the track is narrower with a grassed central verge between worn vehicle

tracks continuing and then turning southeast with a concreted section leading towards a gate providing vehicular access to a property, Wellpiece.

The footpath turns southwestwards and continues as a much narrower track worn in grass running alongside the garden fences of other properties, where it is more overgrown. It leads as a wider track onto the surfaced section of Watery Lane, a private access road, running downhill past the entrances and driveways to other properties and fields to end at the minor surfaced county road, Higher Park Road (point Z), which is the old road to Barnstaple.

## **5.2 The Definitive Map and Statement, Historical and Recent Maps and Aerial Photography**

The route was included with those surveyed originally by the Parish Council in 1950 for putting forward as public rights of way, leading to its being recorded on the Definitive Map and Statement. It was recorded in the Statement as running along Down Lane and turning along Watery Lane, described as a "Private Accommodation Road (not repairable by the inhabitants at large)".

### **Historical mapping – early Ordnance Survey, Greenwood's, Tithe Map and 1910 Finance Act**

Some early maps at smaller scales show Down Lane with double solid lines as a dead end road leading from the Braunton village onto Braunton Down and the start of Watery Lane from the road in the same way. No continuation is shown between them across Braunton Down, which is shown shaded to represent rougher open land. Those maps include the Ordnance Survey surveyors' drawings of 1804 – 5 with the original 1<sup>st</sup> edition 1" to the mile map based on them, published in 1809 and Greenwood's map of 1827, based on the early Ordnance Survey maps.

Later maps at larger scales with more detail do not all show the whole route. The Tithe Map of 1841 shows Down Lane continuing on the route to end on Braunton Down, parts of which were still unenclosed then and managed as an open field with strips. It does not show any further continuation crossing the fields and strips, with Watery Lane shown as an uncoloured track leading onto land and with a continuation onto the Down. It is uncoloured and numbered, with the Apportionment recording it as "Lane, Waste". Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose. It does not, therefore, provide strong supporting evidence for the existence of higher rights, or even record the physical existence of a continuous route at that time.

Ordnance Survey 25" to a mile 1<sup>st</sup> and 2<sup>nd</sup> map editions of the 1880s and early 1900s show the start of the route as a continuation of Down Lane, which is named and labelled with its own parcel number and acreage. It is closed with a solid line, indicating a physical boundary or obstruction on the ground such as a gate or fence. The route is shown continuing along the southern boundary of the Down with double-dashed lines as an unenclosed track on the line of the recorded footpath and turning to join the end of Watery Lane. That is also named, with its own parcel number and acreage and dashed lines at the junction with Higher Park Road for the parcel boundary rather than indicating any obstruction.

The 1910 Finance Act maps drawn up for a survey to ascertain the value of land for the purpose of taxation show only the end of Down Lane on the route excluded from adjoining hereditaments, or assessment areas of land. Its exclusion from adjoining land suggests that it may have been considered as a public road at the time, or at least a route carrying public rights but giving no indication of its status. Part of Watery Lane is shown excluded in the same way, but the connection between them is shown included in the adjoining fields or strips.

Details of the associated Field Books for adjoining hereditaments do not record any deduction for Public Rights of Way or User that can be related specifically to the route where included, or information that might have been in connection with the route, as would be expected for a route excluded on the maps.

It is not sufficient on its own as evidence that parts of the route on the continuation from Down Lane and on Watery Lane may have been considered at that time to be a public road. However, it would contribute in supporting any more significant stronger historical evidence indicating the existence of public rights.

### **Later mapping and aerial photography**

Later Ordnance Survey and other maps at smaller scales in the earlier 20<sup>th</sup> century, including Bartholomew's editions from the 1920s and 1930s, show the whole route with thin double solid lines as an uncoloured track, not in the same way as most roads are indicated in the key. The keys for some of the editions of Bartholomew's maps indicated such routes as "inferior roads and not recommended". Some of the maps indicated the routes of footpaths and bridleways, but where the route is shown it is not recorded in that way.

Earlier aerial photography from 1946 – 9 shows the route as a narrow lane continuing from the end of Down Lane, hedged on both sides, then running along the bottom of the visible fields on Braunton Down, some of which were still in an open system as strips at that date. Its continuation is not so clear, although showing other parts of Watery Lane as a clear narrow track. The connecting roads show more clearly as being open, wider and surfaced.

Later Ordnance Survey mapping from 1959 – 60, 1968 and 1976 shows the route at those dates in the same way as in the earlier editions, with both sections of the lanes named and showing further consolidation of the Braunton Down field strips into larger fields. The buildings in the adjoining field now used as stables are shown to have been built by about 1960. More recent aerial photography from 1999 – 2000 shows the hedged sections of Down Lane and its continuation to the top of Watery Lane as wider, more open and worn but with the rest of Watery Lane to Higher Park Road more wooded and not visible.

The showing of the route on later and current maps records its physical existence at that time and until more recently but does not indicate or support, on its own, the existence of any public right of way along it on foot, horseback or otherwise, which would require other more significant stronger evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.

There is support from older historical maps and more recent mapping only to show that parts of the route have existed since at least the early 19<sup>th</sup> century, probably for access to land. It is shown from the later 19<sup>th</sup> century as a complete route from linked sections of narrow tracks connecting other routes perhaps considered then to be public and now recorded as public highways. No other more significant historical maps or references in historical documentary material have been found to indicate that it may have had the reputation of being considered as a public road from then or more recently. In particular, there is no indication of any public expenditure on it or responsibility for its maintenance. No section of the route has been shown on the past and current records of maintainable highways to suggest that it may have been considered as a road with public rights at any level of status.

### **5.3 Definitive Map Reviews and Consultations**

There was no suggestion in the previous uncompleted reviews that Footpath No. 33 should be considered for upgrading to bridleway, until the evidence forms were sent in after the current review process for the parish was started. The claimed upgrading was included in the consultations in 2006, on the basis of the evidence submitted by then. The responses included concerns expressed by the owners of adjoining and nearby properties, with objections to the route being recorded as a bridleway. The British Horse Society did include it in supporting most of the routes put forward, but did not submit additional user evidence forms for this route.

### **5.4 User and Landowner Evidence**

Twelve completed user evidence forms were submitted in connection with the claimed upgrading to bridleway, mainly between June – August 2006 before the consultations, but with one submitted later that year. More than half of the forms related to use on foot only or on foot with use on bicycle, horse or in a vehicle as well, but are not significant as the route is already recorded as a footpath.

Two people referred to use in a vehicle, as well as on foot and horses, but in connection with access to adjoining land or property. However, there has been no suggestion that the route may have been used by the public in vehicles to consider for recording it as a Byway Open to All Traffic or restricted byway. Three people referred to use on bicycles, with use on either foot and horse as well and although cyclists have a legal right to use bridleways, it cannot be taken into account as adding to any evidence for bridleway status.

The evidence of use on horses only was from three people, with three others who used the route either on foot, bicycle or in a vehicle as well. There is, therefore, only evidence of use on horses by six people to consider. Use on horses only was specified as from 1972 and between 1974 – 9 only, with those using it on horses as well as either on foot, bicycle or in a vehicle specified use from about 1957 and from 2005 – 6 only.

The main use on horses was said to be from the Down Lane stables, including on a circular route, for pleasure. There are some references to seeing other people using the route on horses as well and being told by local people that it had been used by horseriders for a long time. None of them had been prevented or turned back, or told that they could not use the route and some of them referred to having only seen the recent signs preventing use on horses.

No owner(s) of the route itself were identified, but evidence forms were submitted by the owners of several properties and land adjoining Down Lane and Watery Lane on the route. None of them indicated that they owned any part of either lane, but some referred to their own use in vehicles for access to their property or land. Most of them knew that it was recorded as a public footpath and some were aware that there was use by some people on horses from the stables on Down Lane and did not agree with it. However, none of them had turned back or prevented anyone using the route on a horse, or told them that they should not ride on it. None had put up signs or notices to that effect, but the sign put up by the County Council was in response to a request from the owners of adjoining property owners at the top of Watery Lane. Other responses to the consultations were from the owners of properties adjoining the maintainable road section of Down Lane. They were concerned about what they believed would be the consequences of horseriders being allowed to use the footpath officially if it was upgraded and had collected signatures for a petition objecting to the route being recorded as a bridleway.

## **5.5 Summary and Conclusions – consideration under Statute and Common Law**

The evidence for the route to be recorded as a bridleway appears to have been submitted in response to signs aimed to prevent use on horses. That can be taken as a specific event acting as a significant challenge to use of the route, although not directly as the result of any action taken by a landowner to prevent access to it. There is, therefore, evidence of a significant action having called into question its use by horseriders for consideration under statute law, but not from a known specific date. It means that it is not possible to identify an exact period for consideration under statute law, although use over the 20 years from 1986 – 2006 can be considered.

In considering evidence of use by the public during that period there is only a limited amount, which does not relate to continuous use throughout the whole of the 20 years and has been mainly in connection with riding from stables on land adjoining the route. Access to and from that land in connection with the stables can be interpreted as being with a private right from the landowner and one of the users is the tenant of the stables and fields used as grazing for the horses. The evidence of use is, therefore, not sufficient to support the recording of a public right of way on the claimed route by presumption of dedication from use. Accordingly, there is no need to consider whether there were actions taken by the landowners during that period to provide evidence of any lack of intention to dedicate the route as a bridleway.

Considering the application in relation to common law requires taking into account the historical and other documentary evidence submitted and discovered, with the evidence of use. Historical mapping shows that a track has existed physically on parts of the route from at least the early 19<sup>th</sup> century and on the whole route since the late 19<sup>th</sup> century. Exclusion of part of it on the Finance Act mapping is the only indication that the section continuing from Down Lane may have been considered then to be a highway with some higher level of status than that of footpath. However, it is not sufficient on its own without other more significant supporting documentary or mapping evidence and evidence of past use to relate to more recent and current use.

Later Ordnance Survey and other mapping shows that the whole route has continued to exist on its current line up to the present. Aerial photography and other evidence suggests that it had been mainly used as access for adjoining land and properties, particularly in vehicles, but other parts, particularly on Watery Lane, have become more overgrown recently.

Considering the historical mapping and landowner evidence, with the limited evidence of use, dedication at common law for the status of bridleway cannot be implied. The evidence does not support the claim that there is any historical basis to the route being considered as a public highway, or having the reputation of being available for use by the public as a bridleway. There is no evidence to suggest that the landowner intended to dedicate the route as a public highway or bridleway, or that the public accepted any dedication higher than that of footpath and used it on that basis.

It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is not considered reasonable to allege, on the balance of probabilities, that a public right of way subsists on the route as a bridleway. From consideration under common law there is, therefore, no sufficient basis for making an Order in respect of the claim that the route should be recorded as a bridleway. Accordingly, the recommendation is that no Order be made adding the route to the Definitive Map and Statement as a bridleway.