

**Definitive Map Review 2006 – 2007
Parish of Braunton (Part 3)**

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.

Recommendation: It is recommended that no Modification Orders be made in respect of:

- (a) **Route 10, claimed upgrade of Footpath No. 39 to bridleway and application for upgrade to byway, from the minor road near Whitehall Mill, southwestwards through Pippacott Wood to the minor road at Pippacott Farm, between points V – W shown on drawing number ED/PROW/06/118; and**
- (b) **Route 11, application for addition of a byway from the minor road near Pippacott Farm, southeastwards along Moor Lane to the minor road, Waterlake Lane, near Lee Cottages, between points W – X shown on drawing number ED/PROW/06/118.**

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. 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). A second report was taken to the Public Rights of Way Committee in July 2007 and examined 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). This report examines claims and applications for proposed upgrading and addition in respect of Routes 10 and 11. The claims and applications for proposed additions and upgrading in respect of Routes 3 and 6 will be considered in a subsequent report to the Committee. The application for a proposed addition in respect of Route 15 will be considered in a subsequent report to the Committee on the review of Heanton Punchardon parish.

3. Consultations

Responses to the consultations in August 2006 were as follows:

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| 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 comment;
Country Landowners' Association	- no comment;
National Farmers' Union	- no comment;
Open Spaces Society	- no comment;
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 10 and 11 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 Appendix I to this report. The remaining claims for proposed additions and upgrading in respect of Routes 3, 6 and 15 will be considered in subsequent reports to the Committee.

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

5. Reasons for Recommendation/Alternative Options Considered

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

6. Legal Considerations

The implications/consequences of the recommendation(s)/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

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

ns231007pra
sc/dmr parish of braunton
2 hq 021107

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 10: Claimed upgrading of Footpath No. 39 to bridleway and application for upgrading of footpath to byway, V – W shown on drawing number ED/PROW/06/118.

Recommendation: It is recommended that no Modification Order be made in respect of Route 10 to upgrade the footpath to bridleway or to byway.

1.1 Background and Description of the Route

In April 1978, the Clerk of Marwood Parish Council sent completed user evidence forms to the Clerk of Braunton Parish Council in connection with a claim for upgrading the recorded Footpath No. 39 in Braunton to a bridleway. Braunton Parish Council agreed to support the claim and submitted the forms with a letter in May 1978 including it with their suggestions for changes in the parish for the Definitive Map review started at that time but not completed. The forms were held on file until the current review process was started, when a Schedule 14 application had also been received on behalf of the Trail Riders' Fellowship (TRF) to record the route as a claimed Byway Open to All Traffic (BOAT). It was one of the large

number of applications submitted around that time in advance of the Natural Environment and Rural Communities (NERC) Act 2006 coming into force to prevent the recording of routes as BOATs available for use by the public in mechanically-propelled vehicles.

Footpath No. 39 is recorded starting from the minor surfaced road near Whitehall Mill and the parish boundary with Marwood (point V), through a gateway and running along a wide track through Pippacott Wood. At the south-west boundary of the wood there is a stile, with the route continuing along a narrower hedged and wooded lane to another stile. It then follows a wide grassed track with access to a field, between a stone wall and hedged bank onto a gravelled track passing a farm building and through a field gate onto a tarmac drive to Pippacott Farm, ending on the minor surfaced road at Pippacott (point W).

1.2 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 as a footpath in the Statement, starting at the unclassified county road in Pippacott, continuing along a "Private Accommodation Road (not repairable by the inhabitants at large)" and through Pippacott Wood to the county road north-west of Whitehall. There was no indication that it was considered then for the possibility of recording it with any higher status, as a bridleway for use by horseriders or for use in vehicles.

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

The earliest maps at smaller scales showing a route between Pippacott and the road near Whitehall, labelled 'Mill', are the Ordnance Survey 1st edition 1" to the mile map, published in 1809 and Greenwood's map of 1827, based on the early Ordnance Survey maps. The route is shown with double solid lines, on a different and straighter line than as in later maps and as on the ground.

Later maps at larger scales with more detail do not all show the whole route. The Tithe Map of 1841 shows it with double solid lines, coloured and numbered 1387, leading from Pippacott to the edge of Pippacott Wood. However, not all of those routes were 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 only and not now existing on the ground.

In the Apportionment, 1387 is included in the section for 'Waste', describing it as "Mill Lane, Waste". No continuation is shown through the wood to link with the road to Whitehall. Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose. It does provide some supporting evidence for the existence of a route that may have been considered then to be a lane leading towards the mill at Whitehall, although not showing the physical existence of a continuous route at that time.

Ordnance Survey 25" to a mile 1st and 2nd map editions of the 1880s and early 1900s show the same route with double solid lines as an enclosed lane to the edge of Pippacott Wood. It is not named, or shown in the same way for the 1st edition as other surfaced roads considered then and now recorded as public, with one thicker line. It is labelled with its own parcel number and acreage and shown open from the Pippacott end, but closed with a solid line on the boundary with Pippacott Wood, indicating a physical boundary or obstruction on the ground such as a gate or fence. The route continues through the wood with double dashed lines, suggesting an unenclosed track, to the road near Whitehall, where it is also closed with a solid line suggesting a gate at that end. The later map shows the first section closed with dashed lines, indicating the land parcel boundary rather than any physical boundary at that time.

The 1910 Finance Act maps drawn up for a survey to ascertain the value of land for the purpose of taxation show the first section of the route excluded from adjoining

hereditaments, or assessment areas of land. The section through Pippacott Wood is shown included in a separate hereditament, but with the adjoining public road to Whitehall excluded. The exclusion from adjoining land could suggest that the first section of the route may have been considered as public at the time and if not a public road, at least carrying public rights but giving no indication of its status. However, other nearby cul-de-sac routes more obviously providing access only to farmland and fields are also shown excluded in the same way.

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 first section of the route or information that might have been in connection with it, as would be expected where excluded on the maps. There are deductions for Public Rights of Way or User for the hereditament including Pippacott Wood, specifying the Ordnance Survey numbered field and land parcels affected. They include a 'Right of Way (Cart Track) over Ord. No. 276' for the section of the route through Pippacott Wood. Others are specified as 'Public Rights of Way' through other numbered fields, some of which are now recorded as public rights of way.

It provides some evidence suggesting that part of the route may have been considered at that time to be some kind of public road, perhaps with a status of more than footpath or bridleway continuing through the wood. That would add weight in supporting any more significant stronger historical evidence indicating the existence of higher public rights than its current recorded status of footpath.

Later Ordnance Survey and Bartholomew's Mapping and Aerial Photography

Some later Ordnance Survey and other maps at smaller scales in the earlier 20th century, including Bartholomew's editions from the 1920s to the 1940s, 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 indicate such routes as "inferior roads and not recommended". Some of the maps show the routes of footpaths and bridleways, but where the route is shown it is not recorded in that way. The Ordnance Survey 1"/mile New Popular edition in 1946 shows the first section with double solid lines, continuing through the wood with dashed lines.

Earlier aerial photography from 1946 – 9 shows the first section of the route from Pippacott as a clear narrow lane, hedged and partly wooded, with its continuation to the road not visible through Pippacott Wood. Later Ordnance Survey mapping from 1957/60 shows the route at those dates in the same way as in the earlier editions, with double solid lines for the first section, but labelled 'FP' and closed at the boundary with Pippacott Wood. The section through the wood is shown with double-dashed lines and closed at the entrance from the road near Whitehall. The Ordnance Survey 1"/mile 1976 edition shows the whole route with long dashed lines as a 'Path', not in the same way as recorded Public Footpaths or Bridleways were shown then.. More recent aerial photography from 1999 – 2000 shows the first section of the route at Pippacott as more open, but not visible on its continuation towards and through Pippacott Wood because of trees.

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 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 most of the older historical maps and more recent mapping only to show that the route, or parts of it, has existed since at least the first half of the 19th century. It may have been used mainly for access to land and Pippacott Wood, but the Tithe Map and Finance Act records indicate that it could have been considered as providing access to the road leading to Whitehall Mill from the 19th century and into the early 20th century as a

complete route. They suggest that it may have included use involving carts, but it is not clear whether that was only for private or wider public use.

1.3 Definitive Map Reviews and Consultations

Braunton Parish Council supported Marwood Parish Council's claim that the recorded public footpath should be upgraded to bridleway and included it with their suggestions in May 1978 for changes in the parish for the Definitive Map review started at that time but not completed. The claimed upgrading was included in the consultations in 2006, on the basis of the suggestion and evidence submitted in 1978 and the application submitted earlier that year. 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. There were specific responses from the owners of affected land and adjoining and nearby properties, but no others with further evidence of use.

1.4 User Evidence

Five completed user evidence forms were submitted without accompanying maps in connection with the claimed upgrading to bridleway in 1978, relating to use of the route on horses. One evidence form was sent in with the application in 2006 relating to use on a motorcycle, but no further evidence forms were submitted as a result of the consultations. There is, therefore, only evidence of use on horses by five people and by one person on a motorcycle to consider.

All of the users on horseback had known of the route as public for between four and more than 30 years up to 1978. Three of them specified having used it for between 15 – 20 years, for 30 years and "all my life", with the other two specifying use for only four and six years. The frequency of their use was from between about twice a year, to about once a week or more than 50 times a year and 'several' times a year, or not specified. The main use on horses was given just as riding, with one referring to exercising horses away from main roads and also use on foot for walking and one specifying use for pleasure and hunting.

Two did not indicate where they were riding to and from on the route, with one specifying use from Whitehall – Pippacott and two as part of longer rides in the area from Ashford – Marwood and Boode – Prieford. Three of them said that they had not been prevented or turned back, or told that they could not use the route, but two indicated that they had and also that a stile and bars across the route had recently been put in which had prevented them from using it on horses. One reported having been stopped about 18 months or two years previously, with two told that it was not a bridleway by the then owner, Mr Wills of Pippacott Farm, who had also erected the stile and one said that other riders had also been told the same. None reported having seen any signs or notices on the route to indicate that they could not use it on horses. Two of the users said that they had ridden or had been led on the route since they were children and had 'pared' the path regularly. One reported that the father of an adjoining owner, Mr Manning of Pippacott, used to take corn to the mill by horse and butt.

The user on a motorcycle said that he had used the route in the years 1947 – 53, from 6 -12 times a year, riding between Braunton and Ilfracombe. He believed the route was public, as a BOAT, because it was always open. He was never stopped or turned back when using the route and had not been told that he could not, believing that the owner was aware of the public using it because if he saw them, he did not object. He had not been given permission to use the route, he was not a tenant, had not worked for the owner and did not have a private right to use it. He had not seen any stiles, gates or other obstructions on the route, or notices saying that he should not use it. He reported that he had used the route with his brother as part of a circular pleasure tour through the local countryside when they lived in North Devon.

1.5 Landowner Evidence

The identified owners of the land affected and adjoining the route submitted landowner evidence forms in response to the consultations. Another form was submitted later by the owner of adjoining woodland, relating mainly to the issue of private access.

The Woodland Trust has owned Pippacott Wood since 1991, knowing of the recorded public footpath and that it had been used occasionally on foot, saying that the Trust also has a policy of allowing permissive access by the public to all of its sites on foot only. In 1991 a plan and statement were deposited under Section 31 of the Highways Act on behalf of the Trust in respect of the land, with a declaration made in 1997 that no other rights had been dedicated, which was repeated in 2003.

Nobody had turned back or prevented anyone using the route through the wood, or told them that they should not use it and no signs or notices had been put up to that effect. There were no stiles on its section of the route, but there had been a gate in the roadside access to the wood from before the Trust purchased it, which was locked but had a squeeze gap alongside that allowed access on foot. In accompanying information, the Trust indicated that it did not allow any use of the route in vehicles, unless by a legal private right or easement, or specifically under licence. The Trust had no evidence that the route was used on horseback and is objecting to any upgrade of the recorded footpath to bridleway or byway, believing that it would harm a very important wildlife site.

Mr Robert Lee of Pippacott Farm has owned land crossed by the route and adjoining it on the south side up the boundary with Pippacott Wood, presuming to include to its centre, since 1987. He reported knowing since then that the route was a public footpath used regularly on foot and he had stopped two horseriders in the late 1980s from using it, telling them that it was not a bridleway. He had not told anyone that it was not public, or put up signs or notices to that effect. There were stiles on that section of the route and a gate, which he said was never locked.

In accompanying information, he said that the footpath was on a private accommodation lane owned by the adjacent landowners, which he had maintained and surfaced where it crosses his land. Its continuation in Pippacott Wood had been widened by the previous owner who was planning to fell the timber, which caused a local outcry. That had led to the Woodland Trust buying the wood and putting in the locked gate at the Whitehall road end. The stiles had been installed as new or to replace an older one soon after he had bought the property and land, with the horseriders reported as having tried to use the route before those had been put in. Mr Lee did not believe that there was sufficient evidence or a case for the claimed upgrade, either to a bridleway with the route being unsuitable for use by horseriders and particularly not as a byway for use in vehicles.

Mr Kevin Manning of Hunts Farm said that land adjoining the route on the north side up to Pippacott Wood, presuming to include to its centre, had been in his family's ownership since 1919. He had known for his lifetime that the route was used once or twice a week as a public footpath on foot and had not told anyone that it was not public, or put up signs or notices to that effect. There had been stiles on that section of the route that he said had been there since 1970 and a gate, which was never locked.

In accompanying information, he said that he objected to the route being upgraded to byway or bridleway, as it was narrow and would make it impossible for public use on foot, with problems particularly if it was used by motor vehicles.

Mr David Stevenson of Pippacott Barton said that he had owned land adjoining the route at the Pippacott end for six years. He had known for that time that the route was used as a public footpath occasionally by local and recreational walkers on foot and had not told anyone that it was not public, or put up signs or notices to that effect. There had been stiles on the route that he said had been there for more than the last six years and a gate, which

he said was locked permanently, presumably meaning at the Whitehall road end at Pippacott Wood.

He believed that upgrading to bridleway would make it awkward and hazardous for public use on foot and dangerous for walkers if it was used by motor vehicles.

Mrs Kathleen Harris of Barnstaple said that her family had owned land at Pippacott, some of which was adjoining the route on the south side near Pippacott Wood, since the 1930s and which she had owned since 1979. She knew of the route and believed it to be a bridleway and had not told anyone that it was not public, or put up signs or notices to that effect. She said that stiles had been erected illegally, blocking their access to manage the land they owned.

In an accompanying letter, Mrs Harris supplied additional information and a signed declaration by her brother, providing further details about the family's use of the route as access to their land for farming and woodland management. Those refer to use of the route by local people on foot, horseback and in vehicles rather than wider public use, but particularly by members of her family in connection with using and managing their land. Her main concern was for the route to be available for their use as private access, including in vehicles, which had been prevented since the stiles were put in.

1.6 Summary and Conclusions – Consideration Under Statute and Common Law

The application for the route to be recorded as a byway 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 to obstruct or prevent access to it other than on foot from a specific date. There is, therefore, no evidence of any more recent significant actions by a landowner having called into question use of the route other than as a footpath 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 previous events or actions that may have led to the application being made, or any even earlier. If there were none, it would mean that the period for consideration under statute law would be the 20 years from February 1986 to the date of the application in February 2006.

In this case, there is such an earlier event connected with the evidence submitted for the route to be upgraded to a bridleway, which appears to have been in response to the stiles being erected and intended to prevent use on horses, reported in April 1978 as having been put in "recently". That can be taken as a specific event acting as a significant challenge to use of the route on horseback, directly as the result of an action taken by a landowner to prevent access to it by horseriders. There is, therefore, evidence of a significant action having called into question its use on horseback for consideration under statute law, but not from a known specific date. It means that it is not possible to identify an exact period, but use over the 20 years from 1958 – 1978 can be considered for that purpose.

Considering evidence of use by the public during that period, there is only a limited amount relating to use on horseback between 1958 – 1978, with five forms. Only one and perhaps two others relate to use of the route for the whole of the 20 years, although indicating knowledge of it for longer. The two others are for only three and four years up to 1978, which although suggesting the possibility of continuous use throughout the whole period, is not substantial and limited in frequency to suggest that it does not indicate sufficient use for 20 years. There is also one reference to use for hunting, which cannot be taken to represent use by the public as riding with the hunt usually takes place with the permission of landowners for access to land and is considered to be permissive use.

The evidence of use is, therefore, considered insufficient to support the recording of the route as a bridleway by presumption of dedication from use. 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. However, there is evidence from the users and landowners that owners had previously turned back horseriders and told them that the route was not a bridleway within those 20 years. The only user evidence form submitted with the application in 2006 was in connection with use during the late 1940s to the early 1950s and does not relate to the preceding 20 years, so does not allow consideration under statute law in relation to use.

Considering both the claim and 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 first half of the 19th century and on the whole route since the later 19th century. Later Ordnance Survey and other mapping with aerial photography shows that the whole route has continued to exist on its current line up to the present.

The Tithe Map and Finance Act records suggest that the first section from Pippacott may have been considered then to be some form of a highway with a higher level of status than of footpath, with the possibility that it was considered to have continued on the section through Pippacott Wood. However, it is not consistent with what is recorded for other routes in the immediate area and is considered insufficient on its own without other more significant supporting documentary or mapping evidence and evidence of reputation or past use to relate to more recent and current use. Other evidence suggests that the route has been used with horses and in vehicles mainly for private access to adjoining properties, land and the woods, but was only used for getting to Whitehall Mill by a limited number of Pippacott residents rather than by the wider public.

No other more significant historical maps or references in historical documentary material have been found to indicate more specifically that it may have had the reputation of being a public road in the past or more recently. The route as a whole does not have the character to suggest it was considered to be included in the public road network and used as if it were a public road. 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 public road more recently.

Considering the historical mapping and landowner evidence, with the limited evidence of use, dedication at common law for the status of bridleway or byway 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 that a public right of way subsists on the route as a bridleway or as a byway. From consideration under statute and common law there is, therefore, insufficient basis for making an Order in respect of the claim or application and, accordingly, the recommendation is that no Order be made to upgrade the recorded footpath on the route to bridleway or byway.

2. Route 11: Application for addition of byway from near Pippacott Farm along Moor Lane to Waterlake Lane, W – X on drawing number ED/PROW/06/118.

Recommendation: It is recommended that no Modification Order be made in respect of Route 11 for addition of the claimed byway to the Definitive Map.

2.1 Background and Description of the Route

One of the Schedule 14 applications on behalf of the TRF in advance of the NERC Act 2006, submitted in February 2006 with accompanying copies from historical map evidence and one completed user evidence form, was for another route nearby at Pippacott. It starts from a gateway on the minor surfaced road near the above route and the drive to Pippacott Farm (point W). It crosses what is now the landscaped garden of Pippacott Farm and continues as a narrow and overgrown hedged track running between fields down into woodlands on the Knowle Water river. Water drains along the track from a pond near Pippacott Farm and from a spring into the river, making the surface very boggy, with a ford indicated on recent maps for a continuation of the route on the other side of the river.

The parish boundary runs along the river, with the route continuing in Heanton Punchardon through woodlands and along a completely overgrown and inaccessible hedged track running up between fields. It ends at a gap between hedges on an overgrown verge of the minor surfaced road, Waterlake Lane (point X), which leads to a junction with the Whitehall road at Lee Cottages.

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

Neither section of the route on each side of the river was included with those surveyed originally by Braunton and Heanton Punchardon Parish Councils in 1950 for putting forward as public rights of way and the route is not recorded on the Definitive Map and Statement.

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

The earliest maps at smaller scales showing the route are the Ordnance Survey 1st edition 1" to the mile map, published in 1809 and Greenwood's map of 1827, based on the early Ordnance Survey maps, which show it between Pippacott and the road near Lee with double solid lines, with later maps at larger scales showing it in more detail.

The Braunton Tithe Map of 1841 shows it mainly with double solid lines and varying widths, coloured and not numbered, running from Pippacott towards the Knowle Water river. The section leading to the river is shown with double-dashed lines, suggesting that it was unenclosed there and not indicating a ford. However, not all of those routes were 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 only and not now existing on the ground.

The Heanton Punchardon Tithe Map, also from 1841, shows the other section from the river also mainly with double solid lines, coloured and included with all roads shown in the same way and numbered 841, which is indicated in the Apportionment as 'Parish Roads'. However, all roads and tracks are shown coloured in the same way, including those now recorded as public, as well as others that are not, some of them with dashed lines which are more likely to have been private access to fields or land only and not now existing on the ground. Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose. It provides evidence for the physical existence of the route at that time that provided access to adjoining land and the river, part of which may have been considered as part of the Parish road network at the time.

Ordnance Survey 25" to a mile 1st and 2nd map editions of the 1880s and early 1900s show the route mainly with double solid lines as an enclosed track from the road at Pippacott, leading to land near the river. It is not named, or shown in the same way for the 1st edition as other surfaced roads considered then and now recorded as public, with one thicker line. It is shown open from the road at Pippacott, labelled with its own parcel number and acreage. The route continues through the wood to the Knowle Water with narrower double-dashed lines, suggesting an unenclosed track and connecting to another track shown in the same

way, leading onto a ford and footbridge across the river. It is shown continuing from the river as an unenclosed track onto an enclosed track, labelled with its own parcel number and acreage, then with solid and dashed lines onto a wider section of Waterlake Lane, suggesting that it was partly enclosed at that end.

The 1910 Finance Act maps drawn up for a survey to ascertain the value of land for the purpose of taxation show the first section of the route from Pippacott excluded from adjoining hereditaments, or assessment areas of land. The continuing sections through the wood, crossing the river and to Waterlake Lane are included the hereditament, but with the lane and public road to Whitehall excluded. Exclusion of the first section from adjoining land could suggest that it may have been considered as public at the time and if not a public road, at least a route carrying public rights but giving no indication of its status. However, other nearby cul-de-sac routes more obviously providing access only to farmland and fields are also shown excluded in the same way. A note on the Waterlake Lane end saying "R of W to Pipacott" does not specify whether it is referring to a public or private right of way.

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 first section of the route or information that might have been in connection with it, as would be expected where excluded on the maps. There is no deduction for Public Rights of Way or User relating to the hereditament including the wooded section leading to the river, but a deduction is recorded for the numbered hereditament including the section to Waterlake Lane. However, the specified Ordnance Survey numbered field and land parcels affected were for another route now recorded as a public footpath within the wider area at Halsinger, as part of a larger estate. Other recorded references to 'Right of Way' were in connection with cul-de-sac routes providing access to land elsewhere on that part of estate as private rather than public rights.

It provides some evidence suggesting that part of the route may have been considered at that time as some kind of public road, which could add weight in supporting any more significant stronger historical evidence indicating the existence of public rights.

Later Ordnance Survey and Bartholomew's Mapping and Aerial Photography

Some later Ordnance Survey and other maps at smaller scales in the earlier 20th century, including Bartholomew's editions from the 1920s to the 1940s, 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 indicate such routes as "inferior roads and not recommended". Some of the maps show 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 start of the first section of the route from Pippacott Farm as a clear narrow lane, hedged and partly wooded, with its continuation not visible because of trees and woodland. Part of the section leading to Waterlake Lane shows as a worn track onto the road from a narrow hedged lane, open at that time. Later Ordnance Survey mapping from 1957/60 shows the route at those dates in the same way as in the earlier editions, with the first section labelled 'FP'. It continues labelled as 'CT', for Cart Track, with the other track on the woods on the river and the section leading to Waterlake Lane, in the same way as other routes nearby leading only to fields. The Ordnance Survey 1" to a mile 1976 edition shows the whole route with long dashed lines as a 'Path', not in the same way as recorded Public Footpaths or Bridleways were shown then. More recent aerial photography from 1999 – 2000 shows the first section of the route in the garden at Pippacott Farm as more open, but most of its continuation to the river and towards Waterlake Lane is not visible because of trees, with the section leading into the road then more clear.

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, 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 most of the older historical maps and more recent mapping only to show that the route has existed since at least the early 19th century. It was probably used mainly for access to land, woods and the river, from both ends. The Tithe Map and Finance Act records do not provide significant support for any suggestion that it may have been regarded as a public road with anything more than just private rights of access.

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 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 already submitted. 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. There were specific responses from the owner and a tenant of land affected, but no others with further evidence of use.

2.4 User Evidence

One completed user evidence form was submitted with the application in 2006 relating to use on a motorcycle, but no further evidence forms were submitted as a result of the consultations. There is, therefore, only evidence of use by one person on a motorcycle to consider.

He said that he had used the route in the years 1947 – 53, from 6 – 12 times a year, riding between Braunton and Ilfracombe. He believed the route was public, as a BOAT, because there was no hindrance or objection. He was never stopped or turned back when using the route and had not been told that he could not, believing that the owner was aware of the public using it because he would acknowledge their presence. He had not been given permission to use the route and was not a tenant, he had not worked for the owner and did not have a private right to use it. He had not seen any stiles, gates or other obstructions on the route, or notices saying that he should not use it. He reported that he had used the route with his brother as part of a pleasurable ride in the country and said that it was also used by the then North Devon Motor Club as part of their reliability trials. He gave the names of other people who had also used it, but with no other evidence concerning their use.

2.5 Landowner Evidence

One identified owner and a tenant of the land affected on the route submitted landowner evidence forms in response to the consultations.

Mr Robert Lee of Pippacott Farm has owned land crossed by the first section of the route to the river since 1987. He reported believing since then that the route was not public and had only seen people trying to use it once recently. He had only told occasional walkers trying to locate Footpath No. 39 that the route was not public, but had not put up signs or notices to that effect. There were no stiles on the route, but it was obstructed and fenced off when he bought the property and he had put in a gate in the late 1980s, which he said had been locked only recently since seeing the people trying to use it.

In accompanying information, he said that the route was a private accommodation lane owned by the adjacent landowners for access to adjoining fields. It was overgrown, fenced off and impassable when he bought the land and then fenced it off with a gate onto the road. Nobody had complained at the time or in the 20 years since then, or had tried to use it until the recent occasion as reported. He had drained it, but the route was still very wet with water

running down to the river where the ground is very muddy with no bridge across. He believed that as well as being impassable, it is unsuitable as a byway or any public right of way and did not believe that any right of use has been established in the past.

Mr Colin Latham of Chapel Farm in Marwood said that he had been a tenant since 1992 of the land crossed by the second section of the route from the river to Waterlake Lane, which was owned by the Governors of the Ley Charity. He reported believing since then that the route was not public, had not seen anyone using it and had not told anyone that it was not public, or put up signs or notices to that effect, as it was impassable. There had been no stiles or gates on that section of the route, which he said had been obstructed with barbed wire and sheep netting fencing since 1991 – 2. He said that nobody had ever complained about the fencing or, to his knowledge, had attempted to use the route as it was totally impassable because of fallen trees, undergrowth and bracken.

2.6 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 February 1986 to the date of the application in February 2006. That would be in relation to considering evidence of use by the public.

Only one completed user evidence form was submitted with the application, but in connection with use of the route during the late 1940s to the early 1950s. As it does not relate to the preceding 20 years, it does not allow consideration under statute law in relation to use and is, therefore, considered insufficient to support the recording of public rights on the route by presumption of dedication from use.

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 the route from at least the early 19th century, with later Ordnance Survey and other mapping and aerial photography showing that the whole route has continued to exist on its current line up to the present.

The Finance Act and Tithe Map records, respectively, suggest that the first and last sections of the route may have been considered then to be some form of a public road, but is not consistent with what is recorded for other routes in the immediate and wider area providing access only to fields and farmland. It is considered insufficient on its own without other more significant supporting documentary or mapping evidence and evidence of reputation or past use to relate to more recent and any current use. There is no evidence suggesting that the route may have been used other than as private access to fields, woodland and the river from farms in Pippacott and from Waterlake Lane rather than by the wider public.

No other more significant historical maps or references in historical documentary material have been found to indicate more specifically that it may have had the reputation of being a public road in the past or more recently. There is none suggesting that it was considered to be included in the public road network and used as if it were a public highway. 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 public road more recently.

Considering the historical mapping and landowner evidence, with the limited evidence of use, dedication at common law for the status of byway 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 such. There is no evidence to suggest that the landowner intended to dedicate the route as a public highway, or that the public accepted any such 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 that a public right of way subsists on the route, as a byway. From consideration under statute and common law there is, therefore, insufficient basis for making an Order in respect of the application and, accordingly, the recommendation is that no Order be made to record the route as a byway.