

**Definitive Map Review 1996-2007
Parish of Colebrooke (part 1)**

Report of the Director of Environment, Economy and Culture

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

Recommendation: It is recommended that:

- (i) A Modification Order be made to modify the Definitive Map and Statement by:**
 - (a) adding a footpath (Suggestion 3 – Church Path) between points D – E as shown on drawing number ED/PROW/07/41;**
 - (b) adding a Byway Open to All Traffic (suggestion 4 – Byway to Cemetery) between points E – F as shown on drawing number ED/PROW/07/41.**

- (ii) No Modification Order be made to record a public footpath between Waterleat Cottages and Footpath No 19 (Suggestion 5) between points K and L as shown on drawing number ED/PROW/07/42.**

1. Summary

The report examines 3 suggestions arising out of the Definitive Map Review in the Parish of Colebrooke. Reports on the remaining suggestions will be presented at future Committee meetings.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act, 1949 completed in 1951, revealed 19 footpaths and 1 bridleway, though 14 footpaths (to include Footpath No. 19 put forward by District Surveyor) and 1 bridleway were recorded on the Definitive Map and Statement for Colebrooke published in 1958. A further route for a bridle path forwarded by the clerk in January 1952 (Butsford Lane) was not included on the map as it was described by the County Surveyor as ‘appears to be a public accommodation road and therefore must be omitted’. The parish clerk Mrs Olding wrote in March 1957 saying several bridleways and footpaths had been omitted including Butsford Lane, Lower Combe Lane, Great Wotton Lane, Coleford to Lower Combe to Combe House & Lodge and from Lower Combe northward; but was advised too late for inclusion. Most of these routes have been included as suggestions under the current review.

Due to parish boundary changes Footpaths No. 1, 3 and part of 2 are now in Copplestone parish and Colebrooke currently has 12 footpaths and 1 bridleway.

The reviews of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced several proposals for addition including in 1970 one proposal for the addition of a footpath along a route already recorded on the general roads map. In 1978 there was a proposal regarding the correct route of Footpath No. 12 but the alternative route was already recorded as a county road. The proposals previously suggested in 1957 were not followed through.

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

The following Orders have been made:

- (a) Tiverton District Council (Footpath No. 12, Colebrooke) Public Path Diversion Order 1976;
- (b) Tiverton District Council (Footpath No. 4, Colebrooke) Public Path Diversion Order 1977;
- (c) Tiverton District Council (Bridleway No. 15, Colebrooke) Public Path Diversion Order 1977;
- (d) Mid Devon Parishes Order 1992 Footpaths Nos 1,3 and part 2 transfer to Copplestone;
- (e) The Devon County Council (Footpath No. 4, Colebrooke) Public Path Diversion Order 1992;
- (f) The Devon County Council (Footpath No. 4, Colebrooke) Public Path Diversion Order 1994;
- (g) Mid Devon District Council (Footpath No. 10, Colebrooke) Public Path Diversion Order 2000;
- (h) Mid Devon District Council (Footpath No. 12, Colebrooke) Public Path Diversion Order 2001.

3. Consultations

The review was initially opened in Colebrooke with a parish meeting held on 23 January 1996. In October 1996 the Parish Council made comments on the existing recorded public rights of way and suggested the addition of a public footpath/byway along the path by the church yard past the cemetery to the Coleford road by the Old School. A consultation map and schedule of proposals was published in September 1997 with 3 proposals. Additional suggestions were brought forward by local user group representatives but the review was not progressed and left in abeyance until 2005. When the Parish Council queried formalising the status of the route from the Old School to the cemetery, the review was re-opened and due to the time passed a second public meeting to start the review process again was held in December 2006.

After re-examination of the routes previously included, the routes submitted by the Parish Council in 1957 and review of the evidence received for additional routes, a further consultation map was published in March 2007 with 12 suggestions for change. Reports on 3 suggestions are now brought to this Committee meeting.

General consultations have been carried out since March 2007 with respect to these proposals and the responses have been:

County Councillor N Way	-	no comment
Mid Devon District Council	-	no comment
Colebrooke Parish Council	-	comments on all suggestions
British Horse Society	-	no comment
Byways and Bridleways Trust	-	comments on all suggestions
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers' Association	-	comment on all suggestions
Trail Riders' Fellowship	-	no comment
Cyclists Touring Club	-	no comment

4. Conclusion

It is recommended that Modification Orders be made in respect of Suggestions 3 and 4 as discussed in Appendix I. It is further recommended that no Orders be made in respect of Suggestion 5. Reports on the remaining suggestions will be brought to the next Committee.

Edward Chorlton

Electoral Division: Crediton Rural

Local Government Act 1972

List of Background Papers

Contact for enquiries: Mike Jenkins

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Background Paper Correspondence File	Date 1995 to date	File Ref. DMR/COL
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tw261007pra
sc/dmr parish of Colebrooke - part 1
3hq 051107

Background to the Suggestions

Basis of Claims

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

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

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.

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

[i] that a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates;

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

[iii] that there is no public right of way over land shown in the map or statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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

A. Suggestion 3: Addition of a Public Footpath, Church Path, between Footpath No. 6, Colebrooke by the Parish Hall and the church gates opposite the cemetery, as shown on Drawing ED/PROW/07/41.

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a public footpath (Suggestion 3 – Church Path) between points D – E as shown on drawing number ED/PROW/07/41.

1. Background

The path was brought forward by the parish council in 1997 when the review was initially opened in the parish. The clerk advising 'a possible addition to the network in the Parish for our consideration is the path from the Parish Hall, Colebrooke running along the northern side of the Churchyard and other properties until it meets the highway at the Old School to be given official PROW status'. The clerk continued to advise that there is a need to allow vehicular access on the length from the Old School to the Parish Council Cemetery to service the needs of undertakers etc from time to time. This section from the north east corner of the churchyard to the Old School has been considered separately as Suggestion 4 – Byway to Cemetery and is discussed under item B in this report.

A route comprising the currently proposed suggestions 3 and 4 was included on the 1997 Schedule of Proposals as Proposal 3 – Addition of a Footpath: Church Path, between Footpath No. 6 near Parish Hall and the Coleford Road.

Following the re-opening of the review this route has been re-considered and included on the Schedule of suggestions published in March 2007 for consultation.

2. Description of the Route

The route runs along a narrow path of 1-2 metres from outside the parish hall and western pedestrian gate to the churchyard in an eastwards direction pass the church yard, a private house and parish cemetery to the north eastern gate to the church yard. The path is defined by a stone wall and hedge on the north side and metal railings on the south side. The path has a grass/earth surface although some scalplings, road scalplings have been laid at the western end. The grass appears to be mown regularly and in September 2006 it was noticed that garden solar lights had been placed along the route to provide some illumination after dark

3. Consultations

Colebrooke Parish Council – supports as public footpath.

Byways and Bridleways Trust – supports the proposal.

Ramblers' Association – supports the proposal.

4. Documentary Evidence

Colebrooke Tithe Map and Apportionment, 1846

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring generally indicates carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.

In Colebrooke there was an Apportionment of Rent Charge in lieu of Tithes confirmed by the Tithe Commissioners in 1845. A Tithe Map and Apportionment was still produced detailing all land and property in the parish. The route is not shown on the Tithe map which would indicate that the path came into existence after 1845. The Church and churchyard (no 645 recorded as Church & Yard) and orchard that later became the cemetery (no 642 recorded as Orchard & House) are shown and listed.

Ordnance Survey Maps, C19th onwards

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years. The route is shown on the 1884 (1st Edition, 25") and all subsequent maps. It appears that there may have been a gate across the west end in 1880-1890 but this appears to have disappeared when the post war editions of OS maps were published.

Parish Survey under National Parks & Access to the Countryside Act 1949

The parish survey of public rights of way was conducted in 1951 by six gentlemen of the parish. The middle section which included Colebrooke village centre was surveyed by Mr W Pennington and Mr H Orchard but they did not include a path along the route of suggestions 3 or 4.

Colebrooke Parish Council Minutes

References found in the Parish Council minutes include mention of the route over the years.

20 May 1931

Proposed by the Chairman and seconded by the Rev H C Pratt that a portion of cemetery be consecrated. That the portion to be consecrated be from the hedge against the Church path to a line drawn 22 ft north of straining post on the west ... Calls the route the Church Path.

2 December 1942 photo

Mr W Coles proposed & Mr Matanle seconded that a protest should be made against the removal of the iron railings on the church boundary, and adjoining the footpath, also the main church gates. The possible removal of the railings would have been to do with the war on at that time. Route referred to as footpath.

17 September 1968

A Parish Meeting called was attended by only one parishioner & councillors Mr F Hockridge, Mr W Hockridge, Mr May, Mr Mock, Mr Burrow, Mr Ford Mr Pennington under chairmanship of Mr A Thorne.

Business

The Right of Way map & the paths were examined and it was agreed that map should be left as it was, as no protests had been received, & no objectors.

Addition

One should be added from South West Entrance to 'Green' to the Coleford Spreyton Road, footpath only. This discussion resulted from the un-completed review of public rights of way in Devon of 1968. The route proposed could be a path along suggestions 3 and 4 as mentioned above although it appears that when considered in 1970 it was believed to refer to a route already on the roads register.

28 July 1992

Other Urgent Business

5) Mrs Hockridge has received several complaints regarding the overgrown state of some public footpaths in the parish. Also mentioned was the overhanging ivy etc on the wall on the cemetery Path. Clerk to write to Mr Oliver. This extract refers to the path as the cemetery path.

Finance Act, 1909-10

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion. The suggestion does not appear to be

included in a hereditament. The colouring for the three adjacent hereditaments does not extend to include the path. This indicates that the path was not included in their ownership.

Aerial Photographs, 1946-9, 1999-2000 & 2005-6

The photographs show the physical existence of the route in both 1946 and 1999. Since 1946 Newberry House has been built and the hedgerow trees surrounding the cemetery have grown.

HM Land Registry

A search at Land Registry has confirmed that the path is not registered. The church and church yard are also not registered, nor is the cemetery although this is owned by the parish Council and Burial Authority, having been purchased in 1929.

Long Distance Trails in Devon

The Devonshire Heartland Way is a 43 mile long distance trail through the heart of Devon linking Stoke Canon in the Exe Valley in the east with Okehampton in the west. The trail passes along the route of suggestion 3 and suggestion 4 which links in with Footpath No. 6 from the west and Footpath No 19 to the east. The trail guide published in 2004 describes the path by the church as being known as 'Drunkards Lane'.

5. User Evidence

Only limited user evidence has been received in proportion to the perceived use of the path but this is not considered unusual especially as there has been no 'calling into question' of the public's use of the route. The evidence forms received indicate that the path was considered to be owned by the parish and considered by the parishioners to be a public right of way. The forms completed have mostly been by users using suggestions 3 and 4 together as a through route from the Old School to the Parish Hall (previously the school after the Old School was no longer used).

Mr Armstrong of Penstone has used the route many times a year from 1975 and believed the land crossed by the route to be public.

Mrs Burrow, a retired farmer's wife has used the path since 1957 and describes it as always known as a public right of way and a quick way to the green for shops.

Mr Enderson, the Parish Council Chairman and lifelong resident of the parish has advised that he has used the path from 1942 and that his father and grandfather have used the path. They would use the path to get to the school, now the Parish Hall and would also have been used by people visiting the bakery and Post Office. He considers the route to be a public path.

Mr K Harris, a previous clerk to the parish council and life long resident of the parish also used the route to attend school in the 1950s and continues to use it several times a year. The path was used by his father and grandfather to attend school. He comments that 'this path has been used for many years by a large number of people in the parish'.

Mr & Mrs Moore have used the path from 1960 until the present time, from up to six times at week in earlier days to weekly now. They believe the path has always been public.

Mr Pitts a local farmer and adjoining landowner with respect to suggestion 3 commented 'I would support the mapping of this as footpath from village hall to pond area'. In his user evidence form (commenting on suggestions 3 and 4) he advises that the path has been used by the public as long as his memory (50 years). In answer to the question 'Do you

believe the owner was aware the public were using the way' Mr Pitts comments 'because it was always believed to be owned by Parish Council'.

In 1997 a user form was completed on behalf of the Parish Council in which the path was advised to be considered public on the basis of parish records and local knowledge since the early 19th century. The route shown included suggestions 3 and 4.

6. Landowner Evidence

Landowner evidence forms were sent to the adjoining occupiers inviting them to return their completed forms and to have the opportunity to make any other comments on the suggestion.

Mr Berry of Newberry House advises that he considers the path to be a public footpath and has observed people using the path during the 10 years of his ownership.

Canon Hall the team vicar for the group of parishes including Colebrooke has advised that the path is not part of the church property and believes the path to have been a footpath for many years. It is frequently used for walking.

A local resident commented on some of the suggestions and advised that during last Winter the path became very churned up and difficult to use if wearing shoes, due to horses.

7. Rebuttal Evidence

No rebuttal evidence has been received in respect of this suggestion.

8. Discussion

The tithe map confirms the physical existence of the route for in excess of 150 years. And the route is also shown on the OS maps from the 1st Edition larger scale published in 1880 to 1890 onwards. The path would have been a logical route for people to take from the Coleford and Penstone (using Footpath No 19) direction to the Parish Hall (previously the school) and the Post Office, shop and local Inn all of which were located around the green. It would also have provided a useful way to the cemetery, consecrated in 1931 for inhabitants west of the church.

References in the parish Council minutes indicate that the route was considered to be a public footpath from at least 1931 onwards.

User evidence received from local residents, some of which have lived in the parish all their lives advise that the path was considered public and thought to be owned by the parish. Although only a small number of forms were received, these were completed in respect of suggestion 4 as this was enquiries on the status of this route that prompted the review to be re-opened in the parish. The route would also be used by walkers following the Devonshire Heartland Way.

An adjoining occupier has observed use by the public during the last ten years and the local vicar has advised seeing frequent walking along the path. The suggestion may have been proposed by the Parish Council in 1968 and was brought up again when the review was opened in 1997 and included on the first consultation map as Proposal 3 (together with suggestion 4).

It is understood that a public footpath confirmed along the route of D to E would not join a public highway at E but as it is considered that sufficient evidence also exists for a public

right of way along the route of E to F (suggestion 4 – discussed under item B), the suggestion would not be a cul-de-sac path.

There has been no incident or actions by any parties to trigger a ‘calling into question’ required to satisfy a claim under the Highways Act 1980. It is however, considered that long use over a number of years and the other evidence examined supports the presumption that the suggestion had been dedicated as a public right of way by presumed dedication under Common Law many years ago.

9. Conclusion

The evidence examined is considered sufficient to indicate that a public right of way not presently shown on the Definitive Map and Statement for the parish subsists or can be reasonably allege to subsist.

It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a footpath (Suggestion 3 – Church Path) between points D – E as shown on drawing number ED/PROW/07/41.

B – Suggestion 4 – Addition of a Byway Open to All Traffic (Cemetery Path) from the northwest corner of the church yard (and eastern end of suggestion 3) to the Colebrooke to Coleford county road by the Old School.

Recommendation: It is recommended that a Modification order be made to modify the Definitive Map and Statement by adding a Byway Open to All Traffic (suggestion 4 – Byway to Cemetery) between points F – E as shown on drawing number ED/PROW/07/41.

1. Background

This route forms an extension of suggestion 3 and was brought forward by the parish council in 1997 as a through route from the Parish Hall to the Old School. The clerk advised that it was necessary to retain vehicle access on the eastern section of the route to the north west corner of the churchyard and cemetery entrance as this had been enjoyed by the public for many years.

As the parish council had specifically requested vehicular access along this part, it was considered appropriate to consider the route in two sections and the path was included on the consultation map as suggestions for change as two separate proposals, suggestion 3 – footpath from the Parish Hall to the north east corner of the churchyard (considered above) and suggestion 4 – byway open to all traffic from the Old School to the cemetery.

2. Description of the Route

The route runs from the county road by the Old School (now converted to a private dwelling) at point F, along a track to point E, adjacent to the Church gates in the north east corner of the churchyard and cemetery gates and east end of Suggestion 3. The first part of the track has a hardcore/scalping surface turning to grass/soil nearer point E. The route has a width of 3 – 5 metres, defined for the first 50 metres from the county road by hedges and the building and boundary walls of the Old School.

3. Consultations

Colebrooke Parish Council – supports the suggestion.

Byways and Bridleway Trust – supports the suggestion with a higher status, having previously supported the route as a public footpath in 1999.

Ramblers' Association – supports the suggestion.

4. Documentary Evidence

Colebrooke Tithe Map and Apportionment, 1846

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring generally indicates carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.

In Colebrooke there was an Apportionment of Rent Charges in lieu of Tithes confirmed by the Tithe Commissioners in 1845 but a Tithe map recording all land and property in the parish was prepared.

Suggestion 4 is shown tinted and without an apportionment number, in the manner that roads that are now county roads are shown, for three quarters of its length to the pond area. The route appears on the map to be an extension of the county road between Coleford and Colebrooke. None of the routes tinted brown on the Tithe map have been given an apportionment number but at the end of the Apportionment is listed Public Roads & Waste 48 1 30 (acres, rods & perches) which is presumed to include all the tinted land on the map. This does indicate that the track has been in existence for over one hundred and fifty years and would seem to have been available to the public throughout that time.

Ordnance Survey Maps, C19th onwards

OS 1st Edition 25 inch to a mile

The track is shown as a defined line from the county road at point F to the pond area by point E. A dashed line at the junction with the county road may indicate a change in surface and the track has its own apportionment number and an area of 0.290 acres. Field no. 650 became consecrated as the cemetery in 1931.

OS One inch to a mile 1946 & 1960

The route can be seen on both editions, coloured white representing 'Minor roads in towns, Drives and Unmetalled Roads'.

The track continues to be recorded on OS mapping through the years showing the physical existence of the route and its availability to the public.

Parish Survey under National Parks & Access to the Countryside Act 1949

The parish survey of public rights of way was conducted in 1951 by six gentlemen of the parish. The middle section which included Colebrooke village centre was surveyed by Mr W Pennington and Mr H Orchard but they did not include a path along the route of suggestions 3 or 4.

Colebrooke Parish Council Minutes

There are several references to the route recorded in the parish minutes:

28 March 1928

Agenda To consider what steps should be taken to improve the footpaths of Colebrooke.

Proposed by Mr E Hutchings and seconded by Mr W Gregory that the Clerk write to the Rural District Council and call their attention to the bad state of the road leading from the Old School behind Rowes Farm to the entrance to the Churchyard and hope that they will have it attended to at once, carried unanimously.

30 April 1930

The Clerk was requested to call the attention of the Surveyor to the Rural District Council to the bad state of the road at the back of Rowes Farm.

In these two references the route is called a road (as opposed to footpath or bridleway) indicating it was used by vehicles.

7 October 1986

Old School House Land application

After discussion it was agreed unanimously the Council will not sell the land marked green on the map, as it is, and has been a right of way for many many years. Parishioners would resent action by P.C if sold.

1 December 1987

Planning

2) Old School Colebrooke – Mr S Bedford. Conditional Planning permission granted by MDDC using public rights of way and parish council land for access. Letter to be sent to Mr Bedford stating that all the members present object to proposed use of land and rights of way.

2 February 1988

Planning

3) Old School Colebrooke Considerable discussion took place over the recent planning approval which uses parish council land and public rights of way for access. Property now for sale. Mr Pennington proposed, seconded by Mr Burrow, that Chairman and Clerk consult a solicitor Bevan Ashford Crediton and get a letter written to selling agent detailing land ownership. Mr Burrow and Mr Enderson to erect a post and wire netting fence 14 feet from front of the building to mark out clearly council owned land.

26 July 1988

Matters Arising

4) Old School Colebrooke. Further letter received from Bevan Ashford. Noted that Mr Bedford does not claim ownership of green and trackway.

9 October 1990

Other urgent business

2) Old School Colebrooke Someone has recently stolen some slates from the roof and it is considered to be unsafe for people using the road and PROWS adjacent.

23 July 1991

Planning

3) Old School, Colebrooke. Another application for holiday accommodation has been made and the Councils response re rights of way protection was noted.

These references relate to the conversion of the old school to a dwelling and refer to the land adjacent to the building and crossed by suggestion 4 as a public right of way and parish council land.

Finance Act, 1909-10

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

The suggestion falls within hereditament no 126 Rowes, as does the county road between Colebrooke Mill and Colebrooke and the lane from Colebrooke to Penstone (now Footpath No. 19). There is a note in the field book under Particulars, description and notes made on inspection '*PR of Way through Ord nos.*' with the subsequent entry under the section for Charges, Easements and Restrictions of '*Right of Way £2 x 25 yp*'. However, it is only the tithe amount of £300 that is carried forward to the second page and no deduction is allowed for Public Rights of Way or User. The right of way referred to could be in respect of the current Footpath No. 19 or for the east end of Footpath No. 6 continuing to Brocks Farm, although unlike other field book entries in this parish, the ordnance (field) numbers crossed by the right of way were not stated. There are no other recorded rights of way on the land comprising hereditament no 126.

Aerial Photographs, 1946-9, 1999-2000 and 2005-6

The photographs show the existence and availability of the route from the county road to the cemetery. Between 2000 and 2005 a triangular area of land north of the route, has been given to the Parish to create an amenity area and to provide parking for the church, cemetery, parish hall or visitors to the village. Part of this has been surface with scalplings or similar material for vehicles.

Land Charges Records

The lane is uncoloured indicating that it is not maintained by the County Council.

Land Registry Records

The properties adjoining the route comprising Rowes Farmhouse, Branscombe, The Old School and land once belonging to Rowes Farm are registered but the route is not included in any titles. The title for the land formerly part of Rowes Farm has recorded a private right of way for the owners along the route of the suggestion. The right is supported by a statutory declaration from the previous owners who had '*exercised vehicular and pedestrian rights of way over the roadway coloured green on the said plan*'. The rights of ownership and rights of way were declared to have been exercised as of right without any let hindrance or objection.

The owner of Branscombe advised that larger vehicles requiring access to their property need to use the route but no private right to use the track for access is recorded in the title.

5. User Evidence

When the route was raised by the parish council in early 2005, the clerk was advised to collect evidence in support of use by vehicles as this section was only proposed as a footpath in 1997.

Some user evidence has been received and the forms received indicate that the path was considered to be owned by the parish and considered by the parishioners to be a public right of way. The forms completed have mostly been by users using suggestions 3 and 4 together as a through route from the Old School to the Parish Hall (previously the school after the Old School was no longer used). Any vehicle use would only be as far as point E.

Mr Armstrong of Penstone has used the route on foot many times a year from 1975 going to the shop, hall and to visit a relative. He believed the land crossed by the route to be public and a byway.

Mrs Burrow, a retired farmer's wife has used the path since 1957 and describes it as always known as a public right of way and a quick way to the green for shops. She has used it on foot and vehicle and in connection with work to access the fields north west of the cemetery.

Mr Enderson, the Parish Council Chairman and lifelong resident of the parish has advised that he has used the path from 1942 and that his father and grandfather have used the path. They would use the path to get to the school, now the Parish Hall and would also have been used by people visiting the bakery and Post Office. He considers the route to be a public path. He has used the route on foot and by vehicle more recently to go to the parish hall and cemetery.

Mr K Harris, a previous clerk to the parish council and life long resident of the parish also used the route initially to attend school in the 1950s. He now uses the route by foot and vehicle to access the hall and cemetery and continues to use it several times a year. He comments that 'this path has been used for many years by a large number of people in the parish'.

Mr Manning of Colebrooke has used the route on foot many times a year since 1963 and considered it to be a byway and always in use by the public.

Mr & Mrs Moore have used the path on foot from 1960 until the present time, from up to six times a week in earlier days to weekly now. They believe the path has always been public and considered a byway.

Mr Pitts is a local farmer and adjoining landowner. In a user evidence form (commenting on suggestions 3 and 4) he advises that the path has been used by the public as long as his memory (50 years). In answer to the question 'Do you believe the owner was aware the public were using the way' Mr Pitts, comments 'because it was always believed to be owned by Parish Council'.

In 1997 a user form was completed on behalf of the Parish Council in which the path was advised to be considered public on the basis of parish records and local knowledge since the early 19th century. The route shown included suggestions 3 and 4.

6. Landowner Evidence

Mr Graham has resided at Branscombe for 8 years and considers the route to be a 'right of way for all traffic but mainly used as a footpath or bridleway'. In his form and covering letter Mr Graham has observed daily use by walkers and/or vehicles and advises that the use had increased sharply in the last 2 years. Although they have their own driveway access from the Coleford road the route is used by larger vehicles requiring access to Branscombes. Mr Graham has mentioned the gate way about half way along the track but has never known this to be used.

Mr Pitts a local farmer and adjoining landowner advises that the path has always been recognised as a public footpath and has been used by vehicles. He commented 'I would support the mapping of this as footpath from village hall to pond area (suggestion 3) then as marked red on map unsurfaced county road'. The area coloured red corresponds to the route of suggestion 4.

7. Rebuttal Evidence

No rebuttal evidence has been received for this suggestion. Mr Graham of Branscombe had made the comment that the increased use was causing the track to become worn and this would need to be maintained to maintain reasonable and safe access.

8. Discussion

The tithe map confirms the physical existence of the route for in excess of 150 years. And the route is also shown on the OS maps from the 1st Edition larger scale published in 1880 to 1890 onwards. The route would have been a logical route for people to take from the Coleford and Penstone (using Footpath No 19) directions to the church, churchyard and cemetery (consecrated in 1931) and continuing in foot along suggestion 3 to the Parish Hall (previously the school) and the Post Office, shop and local Inn all of which were located around the green.

Reference in the parish Council minutes refer to the route being called a road in 1928 and 1930. As complaints were made about the state of the route this would indicate that it was being used by members of the public and that as it was requested that the matter be reported to the Crediton Rural District Council, this indicates that the Parish Council considered the route to be public. Later concerns regarding the planning applications for the Old School and possible implications for the right of way confirm that the route was considered to be a public right of way by the parish council.

User evidence received from local residents, some of which have lived in the parish all their lives advise that the path was considered public and thought to be owned by the parish. A small number of forms were completed following the parish council's request in 2005 for the route to be recorded as a byway open to all traffic. It was this request that prompted the review to be re-opened in the parish. The route would also be used by walkers following the Devonshire Heartland Way.

An adjoining occupier has observed use by the public during the last eight years and use is also supported by the local landowner Mr Pitts. The suggestion may have been proposed by the Parish Council in 1968 and was brought up again when the review was opened in 1997 and included on the first consultation map as Proposal 3 a footpath from the Parish Hall through to the Coleford road by The Old School.

Foot use along suggestion 4 could continue along suggestion 3 and there would be a through route from a county road to a public highway, Footpath No. 6. A route recorded as a byway open to all traffic would be open to users of a higher status but they would not be allowed to continue past point E. It is unusual to have a cul-de-sac public right of way but it can occur where the path leads to some spot such as a beach, ancient monument or place of beauty (places defined in the Instructions to Road Foreman issued in the 1950s). A path to a church is usually a churchway and not a public footpath but in this instance the path is not just used to go to the church but continues on to another public highway and is also used for access to the cemetery (owned by the parish council), the parish hall and previously the school, shop, Post office and inn that were all located near the green west of point D.

Use by vehicles to access the cemetery only could be considered to be the exercising of a private right of way, but the route as shown by the evidence forms received has been used to go to not just the cemetery but to the church and churchyard, school and later parish hall, shop, inn and post office when they were still open, for agricultural purposes to neighbouring fields and in more recent years to access the private dwellings Old School House and Branscombe.

A private right of way would usually attach to a property or for access to a specified area or building. The private right of way recorded along the route in the title for the land that was formerly part of Rowes Farm, is a right for the owners of that land. It is not a right for the general public to use the route. Similarly it could be said that vehicles using the route to access the cemetery since the 1930s have acquired a private right for this purpose, but the route has also been used for other purposes. All the different uses may have acquired their own private rights of way but it is considered that these uses are too varied in terms of the destination and the purpose of using the right of way to be recorded in property deeds in the manner that private rights of way or easements usually are.

The nature of use is therefore considered to be consistent with using the route as a public right of way and a parking space for the church, cemetery, hall or other reason is considered to be a suitable terminus for a public right of way. The Planning Inspectorate has confirmed a Modification Order adding a cul-de-sac byway leading to an old Mill, as this was considered to be a valid termination point for the public right of way. (PINS ref 514510 Isle of Anglesey County Council 2004).

There has been no incident or actions by any parties to trigger a 'calling into question' required to satisfy a claim under the Highways Act 1980 and no evidence that use was with permission. It is however, considered that long use over a number of years and the other evidence examined supports the presumption that the route had been dedicated as a public right of way by presumed dedication under Common Law many years ago.

However, since the route was raised by the parish council in 2005 the Natural Environment and Rural Communities Act 2006 has come into force. Section 67(1) of the Act extinguished, as of 2 May 2006, any right the public had to use mechanically propelled vehicles over a route that was not shown on the definitive map and statement or was only shown as a footpath, bridleway or restricted byway. Section 67(1) is subject to a number of exceptions which are set out in Section 67 (2) to (8).

A relevant exception which could apply is s67(2)(a), if the main lawful use by the public during the period of 5 years ending with commencement (May 2006) was use for mechanically propelled vehicles. The Parish Council acquired the additional area of land in about June 2004 and signed the site as village amenity area and car parking for Colebrooke. With the additional parking space available, vehicle use had increased and it is considered likely that more vehicles have used the track than walkers since then. Prior to summer 2004 there was still regular use by vehicles by people visiting the cemetery as well as by hearses on occasions. Main use by motor vehicles would mean the route does not fall into the usual definition of a BOAT as it would not then be 'mainly used by the public for the purpose for which footpaths and bridleways are so used'.

However, judgements in various court cases have provided further interpretation of when it is appropriate for routes to be recorded as BOATs, in particular, the case of *Masters v Secretary of State for the Environment, Transport and the Regions* [Court of Appeal 2000]. The effect of these would seem to be that the test for a carriageway to be a BOAT relates to its character or type and in particular whether it is more suitable for use by walkers and horse riders than vehicles. The Order route is not tarmaced and as mentioned by Mr Graham in Branscombes has deteriorated with the increase in use by vehicles. This would indicate that the surface was of a character more suitable to use by walkers and riders and allow the route to be added to the Definitive Map and Statement as a BOAT.

9. Conclusion

The evidence examined is considered sufficient to indicate that a public right of way not presently shown on the Definitive Map and Statement for the parish subsists or can be

reasonably allege to subsist. Use by motor vehicles in addition to walkers and the nature of the track support the right of way to be a byway open to all traffic and regular and frequent use by vehicles in the five year period from May 2001 to May 2006 falls within exception s67(2)(a) of NERC Act 2006.

It is therefore recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a byway open to all traffic (Suggestion 4 – Byway to cemetery) between points F - E as shown on drawing number ED/PROW/07/41.

C. Suggestion 5: Addition of a public footpath from Waterleat Cottages, adjacent to the railway to meet Footpath No. 19, Colebrooke as shown on Drawing ED/PROW/07/42.

Recommendation: It is recommended that no Modification Order be made to add a public footpath between points K and L as shown on drawing number ED/PROW/07/42.

1. Background

This route for a footpath running beside the railway embankment from Waterleat Cottages to join Footpath No. 19, Colebrooke was proposed as an additional route for consideration when the review was started in 1997, supported by evidence from users and documentary sources. It was suggested that the route was an extension of Footpath No. 11, from Waterleat Bridge to Keymelford Bridge and Yeoford Railway station and would have been used by people from Coleford walking to Yeoford station, rather going to Copplestone station north of Coleford. The fare from Yeoford to Exeter was 5d less in 1946 and 8d in 1950, sufficient to justify the additional half mile down hill walk to Yeoford rather than to Copplestone.

The route had not been brought forward in previous in-completed reviews and no path along the route proposed was included in the survey of paths completed by the parish council in 1950. Path No. 11 was described as 'Starts at Waterleat Cottages near Railway Bridge, 1st field entered by stile..' and it was this path from Waterleat Cottages to Keymelford that was recorded as Footpath No 11 on the Definitive map.

2. Description of the Route

The route proposed starts at point K, just west of Waterleat railway bridge and east of Waterleat cottages. The path then goes in a north westerly direction following the bottom of the railway embankment through a paddock and then a field, now woodland being part of Waterleat House to meet Footpath No. 19 at point L. The path has an earth and grass surface and length of approximately 250 metres. Photographs taken in 1994 show the alleged remains of stiles at points K and L but the path has not been in recent use and is overgrown. The field between Waterleat Cottages and Footpath No. 19 is now shrub and woodland and no path is visible on the ground.

3. Consultations

Colebrooke Parish Council – does not support the addition of a public footpath.

Byways and Bridleways Trust – supports the proposal.

Ramblers' Association – supports the proposal.

4. Documentary Evidence

Colebrooke Tithe Map and Apportionment, 1845

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring generally indicates carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.

In Colebrooke there was an Apportionment of Rent Charges in lieu of Tithes confirmed by the Tithe Commissioners in 1845.

Tithe Maps would not usually show footpaths and the maps were more concerned with recording the use of land as this would be relevant to the amount of tithes payable. Apportionment number 625 includes the route of the path and has the description of Waterleat and status of Pasture and Meadow. Apportionments 1190 & 1191 are both recorded as Part of Waterleat House and Garden.

Ordnance Survey Maps, C19th onwards

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years.

OS 1st Edition 25" to a mile 1880-90 & 2nd Edition 1904-1906

A double pecked line is shown on the 1st and 2nd edition maps annotated with the letters F.P. Other routes that are shown in a similar way are now recorded public footpaths including Footpath No 11.

OS 1st Edition 6" to a mile 1880-1890 & 2nd Edition 1904-1906

A single pecked line is shown along the suggested route annotated F.P. Footpath No 11 is shown in the same way.

Parish Survey under National Parks & Access to the Countryside Act 1949

The parish survey of public rights of way was conducted in 1951 by six gentlemen of the parish. The middle section which included Colebrooke village centre was surveyed by Mr W Pennington and Mr H Orchard but they did not include a path along the route of suggestion 5. The path from Waterleat Bridge south east to Keymelford was included as Footpath No 11 and recorded on the definitive map.

Colebrooke Parish Council Minutes

There are no references in the Parish Council minutes to a path or other right of way along the route of the suggestion. There are several references to Footpath No 11 and for the landowner/s to be approached regarding repairs. These references would indicate that Footpath No. 11 was in regular use by walkers between Colebrooke and Yeoford.

Mr Enderson, Parish Council chairman and a lifelong resident of the Parish advised that during the 1950s, children from Colebrooke school were allowed to play sports on the field belonging to Waterleat House. The field would be reached from the school by walking down Footpath No. 19 from the village and then along the route of suggestion 5.

Deposited Railway Plans

Before the construction of a major undertaking such as railways, major roads and canals, plans of the undertaking had to be deposited with the appropriate public authorities and usually followed by a Private Act of Parliament then being passed for the plans accepted for the building of the Railway.

The railway line between CREDITON and FREMINGTON was constructed by the North Devon Railway Company (previously the Taw Vale Extension Railway and later the London and South Western Railway Company) and opened in August 1854. The section from Coleford Junction to North Tawton opened in November 1865.

The North Devon Railway 1844 (DP/167) records the field crossed by the suggested route as number 22 on the plan. In the book of reference this is described as Pasture. Numbers 19, 20 and 21 refer to Waterleat House and Cottages described as Dwellinghouse & Garden and Cottages & Gardens. Reference numbers 1, 4 and 6 include the land now crossed by Footpath No. 11 and are described as Pasture, Arable and Pasture.

The Taw Vale Extension Railway of 1845 (DP/193) records the fields crossed by the proposed route as number 23 on the plan. In the accompanying book of reference the land is described as Meadow, Pathway and Linhay. Various terms are used in the book of reference including number 3 described as Meadow and Public Footpath, number 4 as Meadow and Pathway and number 9 as Meadow, Pathway and Pig Sty. Plan numbers 3, 4 and 9 are the fields now crossed by Footpath No. 11, Colebrooke. The old lane that is now recorded as Footpath No.19, number 29 on the plan, is described as a Parish Road and Bridge and the field between Footpath No. 19 and Colebrooke Mill, number 30, as Meadow and Pathway.

The Bristol & Exeter Railway Extension of 1846 (DP/204) prepared plans and the corresponding book of reference for a line from CREDITON to LAUNCESTON. The survey was undertaken before the existing Exeter to Barnstaple line was constructed. The field north of Waterleat was numbered 16 and recorded as Pasture Footpath Linhay and Stream. The fields numbered 2 and 6 on the plan through which Footpath No. 11 now passes are both recorded as Pasture Footpath and Stream. The field between Colebrooke Mill and the lane now Footpath No. 19 is numbered 22 and listed as Pasture and Footpath. On the plan there is a pecked line following the south west side of the river through fields numbered 22, 16, 6 and 2 and although not labelled this may be the route of the footpath recorded in those field numbers in the book of reference.

The North Devon & Okehampton Railway of 1862 (DP/271) prepared plans and a book of reference for a proposed line from the existing North Devon line at Colebrooke near Waterleat to Okehampton. It lists the field crossed by the suggested route as number 8 on the plan, with the book of reference describing the land as Meadow and Footpath. The field between Footpath No. 19 and Colebrooke Mill, number 13 is recorded as Meadow and Shed. A pecked line is shown in field number 8, from the north end of Footpath No. 19 to Waterleat; following the west side of initially the river and then the railway embankment of the North Devon line to Waterleat. Elsewhere on the plan a similar pecked line is labelled Footpath.

Before the railway was constructed there was no road from Colebrooke Mill to Penstone and it appears that people followed a 'Parish Road along the Bed of the River' (plan number 31 on the Taw Vale Railway Extension 1845 plan) to the old lane that is now Footpath No. 19 and into Penstone. The alternative way to the hamlet would have been to use the road from the mill up hill to the village centre and then down Footpath No. 19 or via the road with the ford and footbridge beside Waterleat House to Penstone.

Finance Act, 1909-10

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there

may be other reasons to explain its exclusion. An allowance or deduction in the total value for a property could be claimed if the land was subject to public rights of way.

Waterleat House and field Ordnance number 642 were included with hereditament number 50. Although the FP is clearly shown on the 1906 OS 2nd Edition 25" to a mile maps used by the Finance Act valuers, no allowance for a public right of way was given in the valuation.

Catalogue for the Sale of Combe Estate August 1919

Waterleat House together field Ordnance number 662, was included as Lot 20 and to be sold at auction in August 1919. No reference was made to any public rights of way.

Aerial Photographs, 1946-9, 1999-2000 & 2005-2006

The photographs show that a path along the route suggested would have been available to use in 1946. By 1999 and in 2005 the field is reverting to woodland and a path cannot be seen in the aerial photographs.

HM Land Registry

A search at Land Registry has confirmed that Waterleat House and the land crossed by the route are not registered. However, public rights of way are not usually recorded on property deeds.

5. User Evidence

User evidence was collected in 1996 at the time of the earlier review and this is summarised on a summary of use. This confirms use by thirteen users between 1915 and 1996. One of the users (Mr A Howe) refers to using the route to go from Lower Combe to Coleford which would more accurately describe an alternative suggestion under the review. A further user evidence form was received for use from 2005-6 but this appears to relate to a route across the eastern edge of the adjoining field and not the route under consideration.

The user evidence shows that the path was in use by at least one of the users throughout the period 1915 to 1996 with a maximum of five users during the 1930s including three members of one family and Mr Howe. The user evidence supports occasional use of a path along the route of suggestion 5 for a period of some eighty years.

Frequency of use recorded varies from once a year to many, frequently and a maximum of twice a week. Use of the path was for varied reasons, mainly walking for pleasure and in the countryside, but also included delivering bread (may be business/private right of way use but final destination not advised), courting, walking the dog, visiting relatives at Yeoford and going to the station, chapel, post office and general stores.

Mr Conibere who used the path from 1946 to 1960 about six times a year recalls repairing the stiles for Mr & Mrs Hills in 1957-58.

6. Landowner Evidence

Waterleat House was owned by the Hills family between June 1957 and December 1962. They have forwarded a copy of an aerial photograph of Waterleat House taken in 1961 which appears to show a path running along the bottom of the railway embankment as in the 1946 aerial photograph. Mr & Mrs Hills completed a user evidence form in April 1994 (it not being realised that separate landowner forms were available). They advise that during their ownership *'people used the path quite happily and never caused any problems. They were never stopped or turned back by us.'* They remember a stile at the bottom of Waterleat Cottages gardens and a swing gate at the end of their fields. Shortly after they arrived at the property they asked the Southern Railway to repair their fence besides the path

alongside their property, as they wished to keep stock in that field. The railway company did so and also repaired the stiles efficiently. They believe the footpath was a continuation of the footpath from Yeoford.

Landowner evidence forms were sent to the current owner and occupiers of Waterleat Cottages inviting them to return their completed forms and to have the opportunity to make any other comments on the suggestion.

Miss S Thornburgh has resided at Waterleat House for 44 years (the family having purchased the property from Mr & Mrs Hills in 1962 or shortly thereafter) and has never known a footpath to exist. She has not been aware of members of the public using the way as no way exists. As a result of bad experiences with the general public and walkers on her parents' previous farm she would strongly oppose any new pathway.

Mr D Gosling purchased 1 Waterleat Cottages more recently than the other two owners. He has never seen anyone on the lands indicated and understands that there has been no use of the land as a path for at least forty years.

Mrs B Fishlock purchased 2 Waterleat Cottages in 1989. She has never seen any members of the public using the way. Mrs Fishlock provided some additional information and advises that she had been informed by Mr Enderson that the previous owner before 1962 (which would have been Mr & Mrs Hills) allowed young boys of the parish to play cricket in the field and the gentleman from Colebrooke Mill to use the field as a short cut. This would have been use by agreement and ceased when the property was sold as Miss Thornburgh's parents would never have bought the property with a public right of way across the land and neither would she have.

7. Rebuttal Evidence

As advised above the current landowners of Waterleat House and Waterleat Cottages do not consider the route suggested to be a public right of way and have not ever seen anyone using the path during their ownership.

8. Discussion

There has been no incident or actions by any parties to trigger a 'calling into question' required to satisfy a claim under the Highways Act 1980 and it is therefore necessary to ascertain whether the suggestion had been dedicated as a public right of way by presumed dedication under Common Law.

A pecked line annotated F.P along the route of the suggested footpath has been shown on the 1st and 2nd Edition of the OS 6" and 25" to a mile maps published in 1890-1990 and 1906. Although OS maps always include the disclaimer to the effect that routes shown are necessarily public rights of way, field examiners were given clear instructions as to which routes should be shown on the maps. The instructions issued in 1905 include the instruction that '*Mere convenience footpaths for the use of a household, cottage or farm; or for the temporary use of workmen, should not be shown; but paths leading to any well-defined object of use or interest, as to a public well, should be shown*'. A note adds '*A clearly marked tack on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public*'. Although, this would not prove that the path was public, the inclusion of it on the 2nd Edition 25" and 6" OS maps would seem to indicate that the examiners who carried out the survey regarded it as such at the time their surveys were undertaken.

The survey under the Finance Act was undertaken at a similar time between 1910 and 1920. Although the path would have been visible on the OS maps used by the valuers no claim was made for a public right of way through the one field of the hereditament of Waterleat. Comparisons with the handwriting on the field book record indicate that the same individuals completed the information in the field books for other hereditaments within the parish and public rights of way were claimed for other properties. The field books for properties in this parish that claimed for public rights of way often included the field numbers through which the right of way passes and which correspond with a path annotated FP shown on the OS map.

Hereditament number 14 comprised a House Garden and Smiths shop in Coleford. Although smaller than Waterleat at 1 acre 3 rods and 11 perches a public right of way is recorded in the field book for number 14 as passing through the field number 120 and an allowance of £50 given. This was 25% of the gross value for the hereditament of £200, Waterleat having a gross value of £257. As the valuers appeared to be conscientious in recording the public rights of way in the parish, it is questionable as to why the path at Waterleat was not allowed for unless it was not considered to be a public right of way. It was however, up to the owners to claim for the public rights of way and they did not always seem to do so and were not required to do so.

The parish survey of public rights of way to be included in the definitive map of 1951 did not include a path along the route of the suggestion and this would indicate that the path was not considered to be public at that time. There are no references to the path in the Parish Council minutes between 1894 and 2005, although no reference in the parish council minutes does not mean that the path was not been used by the public. However, reports of complaints by people using paths does indicate that the path was being used by the public believing it to be a public right of way.

The Deposited Plans prepared by the parties interested constructing major projects such as railways would survey the land that would be required and its use, ownership and occupation in the Book of Reference to accompanying the plan.

The North Devon Railway 1844 records the field crossed by the path as Pasture and also records the fields crossed by Footpath No. 11 as Pasture, Arable & Pasture.

The Tav Valley Extension Railway 1845 describes the field crossed by the path as Meadow, Pathway and Linhay. The fields now crossed by Footpath No. 11 are described as Meadow & Public Footpath, Meadow and Pathway and Meadow, Pathway and Pig Sty. This appears to make a distinction between Public Footpath and Pathway although only one of the three fields crossed by Footpath No 11 is recorded as Public Footpath.

The Bristol & Exeter Railway Extension 1846 survey was undertaken before the existing Exeter to Barnstaple line was constructed. There was a pecked line on the plan, possibly showing a footpath from Colebrooke Mill to Keymelford which follows the south west side of the river through fields numbered 22, 16, 6 and 2; all of which are recorded as Footpath in the book of reference. This path does not follow the route of the suggested footpath though and does not follow the current route of Footpath No. 11. Following the construction of the North Devon Railway in 1854 the line of the path recorded in 1846 would have been affected. The path in field number 22 becoming the route of the new road to Penstone from Colebrooke Mill.

The North Devon & Okehampton Railway 1862 seems to show a footpath following a route from the north end of Footpath No. 19 beside the river and then along the western embankment of the Barnstaple line to Waterleat. This could be an alternative path to the footpath shown in the plans from 1846 and uses a different route following construction of

the railway in 1854. This not the route currently proposed as suggestion 5 and this path would have also have been affected by construction of the line to Okehampton in 1865.

Before the construction of the railway through Colebrooke, a direct walking route to Yeoford from Coleford could have been through the fields south of Colebrooke Mill to the lane that is now Footpath No. 19, along the route of suggestion 5 to Waterleat and then along Footpath No. 19 to Yeoford. A shorter distance than walking up the hill to Colebrooke and then down to Waterleat. When the railway was constructed a new road was built from Colebrooke Mill to Penstone and a walker from Coleford could then go from Colebrooke Mill through Penstone to Waterleat and on to Yeoford. This would have been an increased distance of 100 metres but would have been a level route on a road and not across fields with stiles and gates.

Following construction of the Barnstaple railway line in 1854, a footpath shown in 1846 alongside the river to Waterleat appears to have been diverted to a route beside the railway embankment in 1862 and this path would have been affected by construction of the line to Okehampton.

It is therefore considered that the first part of a footpath route that may have been used from the mill to Waterleat would have become redundant after construction of the new road to Penstone. Walkers may have stayed on the road through Penstone or may have used a footpath through one field from the end of Footpath No 19 to Waterleat. This footpath would have been affected by the construction of the Okehampton line and the possible alternative path along the route of suggestion 5 involved crossing the line and was a little longer.

The Hills family owned Waterleat House from 1957 to 1962. They observed people using the path and advised that they did not cause any problems. Three users advise using the path during this time. Mr Thornburgh and his family have resided at Waterleat since 1962 and have not observed any use of the path (five users advise using the route since the early 1960s) although it is considered more likely that users would be noticed by the residents of Waterleat Cottages. Mrs Fishlock has lived at 2 Waterleat Cottage since 1989 and has not observed any use, although only one user has advised using the path in the early 1990s.

The user evidence confirms limited use of the path between 1915 to 1994 but is not considered sufficient to show presumed dedication from the use of the way by the public. There is not enough evidence of consistent use by a sufficient number of members of the public (six being considered a reasonable number) over a period of time (twenty years being required for a claim to succeed under the section 31 of the Highways Act 1980).

Mr & Mrs Hills allowed the local school and children to use their field and were happy for people to use a path across their land. Use of routes would often be passed by word of mouth and it is quite probable that some use continued after Mr & Mrs Hills had sold the property as evidence by the user evidence, but without the user being aware that use of the path was originally with permission. The users have all advised that they believed they were using the route as a public right of way and their evidence can support documentary evidence indicating the existence of public rights.

The documentary evidence examined supports the physical existence of the path as shown by the 1st and 2nd Edition OS maps annotated F.P., the reference to a pathway or footpath in some of the railway companies' deposited plans in the field crossed by the suggested route before construction of the railway lines and the presence of what seems to be a path on the 19467 and 1961 aerial photographs.

Evidence indicating that the path was not a public footpath is found in the Finance Act Field book for Waterleat where no allowance was given for a public right of way on the property, which was inconsistent with other hereditaments in the parish as most currently recorded public rights of way had been allowed for in the individual hereditaments; the path not being referred to as a public footpath in the book of reference for the Taw Valley Extension Railway although other paths in the parish are described as such, and the exclusion of the path from the survey of Public Rights of Way completed by the parish council in 1951.

9. Conclusion

Overall the evidence in support of a public footpath existing along the route of suggestion 5 is limited and this is not considered sufficient to show that a public right of way not shown on the Definitive Map and Statement for the parish subsists or can be reasonably alleged to subsist.

It is recommended that no Modification Order be made to add a public footpath between points K and L as shown on drawing number ED/PROW/07/42.