

**Definitive Map Review 2006 – 08
Parish of Braunton (Part 4)**

Report of the Director of Environment, Economy and Culture

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that a Modification Order be made to add a restricted byway and upgrade Bridleway No. 19 to restricted byway in respect of Route 3, claimed addition of byway, the “American Road” to White House, between points E–F, but not between F–G, shown on drawing number ED/PROW/06/112.

1. Summary

The report examines a proposal from a claim 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 proposals including claims and applications for modifying the Definitive Map were subsequently put forward for general public consultations in August 2006. Three previous reports taken to the Public Rights of Way Committee have examined claims and applications for the addition of footpaths, bridleways and byways and the upgrading of footpaths to bridleway and byway, with the consideration of recorded cul-de-sac footpaths, concerning 12 of the proposals. This report examines one remaining claim for the addition of a byway and upgrading to byway concerning Route 3. Applications in respect of route 6 and evidence submitted recently for another route in Braunton will be considered for a further report to conclude the review process in the parish. The application for addition of a footpath in respect of Route 15 will be considered in a subsequent report to the Committee on the review for the adjoining parish of Heanton Punchardon.

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; |

- English Nature - responded in connection with Route 6, with concerns about damage from vehicular use;
- 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 a Modification Order be made in respect of Route 3 to add sections of restricted byway and upgrade the recorded bridleway to restricted byway. Details concerning the recommendations are discussed in Appendix I to this report. The remaining applications in respect of Route 6 and Route 15 and evidence for a claimed addition 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 have been taken into account in preparing the report.

Edward Chorlton

Electoral Division: Braunton Rural

Local Government Act 1972

List of Background Papers

Contact for enquiries: Mike Jenkins

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

ns080208pra
sc/parish of braunton (part 4)
2 hq 260208

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, ... ;
- (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or
- (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 3: Claimed addition of byway, the “American Road” to White House, between points E–F–G, shown on drawing number ED/PROW/06/112

Recommendation: It is recommended that a Modification Order be made in respect of Route 3 to record a restricted byway on the route from E–F, but not from F–G.

1.1 Background and description of the route

In 1997, the County Council received complaints about gates put up preventing vehicular access to a carpark (point x) and track leading from Sandy Lane into and across the Braunton Burrows, an extensive area of sand dunes south west of Braunton. The area is

within the North Devon Area of Outstanding Natural Beauty (AONB), with parts recorded by Natural England as a National Nature Reserve (NNR) and a Site of Special Scientific Interest (SSSI), now designated as a UNESCO Biosphere. The western part is leased by the owners, Christie Estates, to the Ministry of Defence for military exercises and training.

The track is known as the 'American Road', from its association with earlier military use of the Braunton Burrows area by US forces during the Second World War. The road from the corner of Sandy Lane onto the track was stated at that time not to be recorded as a maintainable public highway and the American Road was not recorded as a public right of way or highway, although crossed in several places by the recorded Bridleway No. 19. The possibility of a claim to record it as a public right of way was raised then, but no evidence was submitted.

Complaints were made again later in 2001 after gates had been put in during the Foot and Mouth Disease outbreak earlier that year and kept locked, preventing vehicular access to the carpark and track. The County Council was found to have wrongly maintained and improved the stretch of road leading from Sandy Lane to the carpark, providing a tarmac surface, even though it was not recorded as publicly maintainable highway. It was claimed again that the American Road should be recorded as a public right of way and three completed user evidence forms were submitted.

Ten further completed user evidence forms were submitted early in 2002, with references to historical documentary material, in support of a claim made then that the American Road should be recorded as a public right of way. The forms related to claimed use of the route, including in vehicles, to near Crow Point, the southernmost point of the Braunton Burrows and beyond to the White House at the end of the Toll Road from south of Braunton.

The evidence was held on file, as the Definitive Map Review process had not then been started in the parish. In 2003, parts of the recorded route of Bridleway No. 19 across the Burrows were diverted officially onto tracks through the dunes and onto the American Road south of the carpark to near Crow Point. In 2005, large rocks were placed around the boundaries of another carpark for Broad Sands near the White House (point y), to prevent damage to vegetation within the SSSI from vehicle use.

Complaints were made that the rocks prevented public vehicular access onto the beach, including for launching boats, to unofficial car parking sites near Crow Point and onto the American Road from its southern end. As a result, requests were made for further user evidence forms, 20 of which were returned completed, mainly claiming use in vehicles. Following consultations after the review process had started, which included the route as a claimed byway, a further three completed user evidence forms were submitted in 2006, relating to use mainly on foot and on bicycles.

Route 3 starts from the corner of the minor county road, Sandy Lane (point E), along a stretch of road with a tarmac surface not recorded as maintainable highway, then passing through gates and past the carpark onto the unsurfaced American Road. South of the carpark, it continues along the American Road as the now diverted Bridleway No. 19, passing through two field gates towards Crow Point, where the recorded bridleway turns southwest across the dunes to end at the shore. The track continues further, crossing the route of the recorded Footpath No. 60, to near Crow Point (point F) and turning northeast parallel to the footpath near unofficial car parking areas. It crosses the footpath again where the rocks have been placed, running through the Broad Sands carpark, near the White House at the end of the Toll Road (point G).

The Toll Road is a privately-maintained tarmac road which branches off the public road from Velator around Braunton Great Field to Sandy Lane, running parallel with Footpath No. 5

leading to the White House and the Broad Sands carpark. The road is owned by the Braunton Marsh Commissioners, with payment for use by the public at a toll house at its northern end which is usually attended. There are two gates, at the start of the road near the toll house and at the end near the White House and the entrance to the carpark. The recorded Footpath No. 5 runs from near the White House along a floodbank beside the Toll Road, with Footpath No. 66 running onto the coastal floodbank. It continues across the parish boundary as Footpath No. 1, Heanton Punchardon alongside the River Taw estuary to become Footpath No. 67, Braunton and joining Footpath No. 5 further north on the floodbank.

1.2 The Definitive Map and Statement and maintainable highways records

No part of the route, particularly on the American Road, was included with those surveyed originally by the Parish Council in 1950 for putting forward as public rights of way and it was not recorded on the Definitive Map and Statement. The route of Bridleway No. 19 was put forward and recorded on its original line, but the survey used 2nd edition Ordnance Survey 6"/mile mapping dated in 1905/6 and showed the lines of earlier routes crossing Braunton Burrows, including the start of what was later extended as the American Road. The other footpaths were recorded as surveyed.

Sandy Lane was coloured in on the survey map and labelled as 'UCR', but with nothing to indicate that its continuation towards Braunton Burrows was required then to be recorded as a public road or right of way. The roads were shown in the same way on the earliest and later maps of maintainable highways, with no indication that any part of the route was considered to be a publicly maintainable road.

1.3 Historical and recent maps and aerial photography

1.3.1 Historical mapping, 17th/18th/19th century – early 20th century **Ogilby's, Bowen's and Donn's maps – 1675, 1754 & 1765**

John Ogilby's strip map published in 1675 is the earliest found showing the line of a route across the area, as part of "The Road From Exeter to Barnstable & Thence to Ilfracomb". It shows the route running from Ilfracombe through "Ham" (Georgeham), passing "Santon" (Saunton) Court and east of St. Ann's Chapel to the Taw estuary. It is shown continuing on the opposite side of the estuary, where historically there has been a ferry, from Appledore and Northam towards Bideford and Torrington.

A small scale and more stylised map from the later 18th century by Emmanuel Bowen in 1754 shows a route in double dashed lines crossing the area from the coast passing St. Ann's Chapel, continuing to Ford and Georgeham towards Ilfracombe. Benjamin Donn's map in 1765 shows the area in more detail and a route crossing Braunton Burrows northwards in the same way passing the chapel, recorded then as in ruins. The route is shown continuing in double solid lines passing Saunton Court, which is labelled, continuing to Ford and Georgeham. They could be interpreted as following a line across Braunton Burrows later recorded as the original route for Bridleway No. 19, but nothing is shown on the line of the claimed route leading towards Fairlinch.

Historically, it indicates the line for one of the main transport routes through North Devon at that time, particularly from Torrridge, from a landing near Crow Point for the ferry across the Taw estuary from Appledore and Instow. It continued north to Georgeham towards Ilfracombe and for Croyde, as there was then no coastal road from Braunton through Saunton.

Ordnance Survey, 1804/5 & from 1809- and Cary's map, 1821

The Surveyors' drawings at 2"/mile in 1804–5 for the Ordnance Survey 1st edition 1"/mile map show a route on the same line, passing the site of St. Anne's Chapel and continuing past Burrow House. Two other routes are shown in the same way turning from there on an approximate line to the claimed route from Sandy Lane and Burrows Close Lane beyond the Great Field, parallel and converging to continue with double solid lines onto the road from Braunton to Saunton near Lob and Fairlinch. The 1"/mile map published in 1809 and later shows the routes in more detail, suggesting that they were then unenclosed over Braunton Burrows in an area mainly of sand dunes and rough unenclosed land, leading onto enclosed lanes out of the Burrows. Cary's map of North Devon from 1821, based on the early Ordnance Survey maps, shows the routes in the same way.

Inclosure Award, 1824 and Greenwood's map, 1827

The Inclosure Award and Map for Braunton Marsh, Velator Marsh and South Burrow from 1824 is significant in showing the origins of the more recent and current layout for public and private roads in the area. The Award resulted from an Act of Parliament in 1811 for more comprehensive inclosure of the land after earlier small-scale improvements had started at that time. The Award set out allotments of the inclosed land parcels, with the setting out of public and private roads, which were all shown on the Map mainly with double solid lines and coloured in a brown wash, but labelled as public or private. Most of the roads now recorded as public were awarded and set out as carriage roads, or labelled as an 'Ancient Public Road'.

The private roads included the Toll Road, leading to point G and with no continuation shown beyond towards point F. Sandy Lane was shown labelled as a public road 'from Saunton' to point E, continuing onto an 'ancient' road around the Great Field and the start of the Toll Road onto the awarded public road 'from Braunton Town'. The continuation of Sandy Lane on the claimed route is shown on its current line from point E with double solid lines and coloured alongside allotments of land labelled 'I' and 'K', then uncoloured leading onto and ending at land labelled 'LL'. No continuation is shown beyond leading further into the Burrows, which is shown mainly blank on the western side as unenclosed land.

The Award indicated that Jonathon Cleveland Esq. had purchased those labelled allotments of land subject to conditions that he should "make ... and keep in repair the hedges or fences" between adjoining allotments of land, as well as between the allotted land and:

"... the road or common highway lately set out on the east thereof by the said Commissioners and leading from Saunton Village towards South Burrow".

The land labelled 'LL' was subject to:

"... the right of all his Majesty's liege subjects to pass and repass over the same with cattle carriages and on foot to and from a certain road or common highway on the north thereof set out by the said Commissioners and leading into the said piece or parcel of land from the village of Saunton and other places and the common passage from South Burrow to Appledore and other places on the south side thereof ..."

John Cleveland had agreed "for himself his heirs executors administrators and assigns" with Commissioners that he and they would "permit and suffer his Majesty's liege subjects to pass over the said piece or parcel of land as aforesaid".

It provides evidence that the first part of the claimed route from point E had been set out as a continuation from the awarded public road on Sandy Lane and, although not identified as "ancient", was considered then to be some form of highway for use by the public. It was not

specifically awarded as a public road, but also not as a private road. Although not showing any further continuation on the Map, the mention of passage to Appledore indicates that it was considered to continue further across the Burrows to connect with the ferry.

Greenwood's map of 1827, based on the early Ordnance Survey map, shows the first part of the route in double solid lines to "Barrow House", having perhaps included changes resulting from the Inclosure Award, suggesting that it had been enclosed. The earlier route from Saunton presumably towards the ferry is shown in double dashed lines, suggesting that it remained unenclosed across the Burrows.

Tithe Map & Award, 1841

Part 1 of the Braunton Tithe Map from 1841 shows routes coloured, including public and private roads as set out in the Inclosure Award. Some are numbered and named, with double solid lines, half-solid and dashed, or double-dashed and some shown as cul-de-sac routes, ending with solid or dashed lines. Not all 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.

Sandy Lane is shown coloured and named with double solid lines, turning onto Greenaway Lane, with a continuation beyond point E on the claimed route to point x and turning off to a drain on part of an awarded private road. There is no continuation onto Braunton Burrows, which is shown as open land, labelled "Rabbit Warren" and "Churchill Green", indicating the sites of lighthouses and St. Anne's Chapel near Crow Point. The Toll Road is shown in the same way, but not numbered or named, as a cul-de-sac ending at point G and closed with dashed lines. No continuation is shown beyond towards point F and the south end of the Burrows.

No parts of the route are numbered with reference to the Apportionment for any possible description of their status as private or public roads and Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose. There was no recorded total for routes considered then to be public or parish roads. The Tithe Map only provides some supporting evidence for the existence on the ground for part of the route at that time beyond point E, but not for its status and with no indication of any other route crossing the Burrows.

Ordnance Survey, late 1880s & early 1900s

Ordnance Survey 25" and 6" to a mile 1st and 2nd map editions of the late 1880s and early 1900s show the first part of the route continuing from Sandy Lane and in the same way, with double dashed lines within solid lines as an enclosed lane to beyond point x. It is not named and is shown in the same way up to that point for the 1st edition as other surfaced roads considered then and now recorded as public, with a thicker line on one side. A route is shown beyond continuing across the Burrows, indicated as open rough land, with double-dashed lines suggesting an unenclosed track. Other routes are shown crossing the same area, including a continuation from further north on or near the line recorded later as Bridleway No. 19.

The track runs in the general direction of the claimed route to point F, with a turning off on the route of Bridleway 19 towards the lighthouses. It continues on the line now recorded as Footpath No. 60 to point F, where the White House is shown named as "Ferry House".

Finance Act 1910 records

The 1910 Finance Act maps drawn up for a survey to ascertain the value of land for the purpose of taxation show the first enclosed section of the route from point E excluded from adjoining hereditaments, or assessment areas of land, beyond the corner of Sandy Lane and Greenaway Lane, which are also excluded. The continuation as a track across the Burrows is shown included in separate hereditaments. 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 no deductions for Public Rights of Way or User for the hereditament relating to the Burrows, described as "Rabbit Warren Land & Shooting" of more than 2,000 acres, to suggest that the rest of the route may have been considered then to have public rights.

It provides some evidence suggesting that the first section 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 leading onto the Burrows. That would add weight in supporting any more significant stronger historical evidence indicating the existence of public rights on the whole route.

1.3.2 20th Century Ordnance Survey and Bartholomew's mapping and aerial photography

Ordnance Survey and other maps

Some maps at smaller scales from the earlier 20th century, including Ordnance Survey and Bartholomew's editions from the 1920s to the 1940s, show parts of the route with no connection between them, leading towards the lighthouse, or in some cases the complete route. It is shown 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, with some showing part of the route recorded as Bridleway No. 19. The Ordnance Survey 1"/mile New Popular edition in 1946 shows the first section with double solid lines, with the continuation across the Burrows as dashed lines connected with the lines of the paths recorded as Bridleway No. 19 and Footpath No. 60.

Aerial photography

Earlier aerial photography from 1946 shows the route continuing further across the Burrows in a straight line, presumably from alterations by the US military forces to improve access for vehicles in their use of the area for training and exercises during the Second World War. Its continuation on the rest of the route was perhaps also the result of having been established as a track connected with use by military and other vehicles, including for agricultural use, around the enclosed land to near Crow Point and connecting with the end of the Toll Road. The lines of other routes connected with that use appear to have been established across the main area of sand dunes on the western side of the Burrows.

Later Ordnance Survey mapping

Ordnance Survey mapping from 1958/9 shows the route at those dates in the same way as in earlier editions, with double solid lines for the first section, continuing with double-dashed lines for the rest of the route to points F and G. The lines of other routes are shown across the western part of the Burrows in the same way, including on the original line of Bridleway No. 19 and other routes. Some lines were probably from continuing use by vehicles in later military activities, but also from developing post-war recreational use. The Ordnance Survey 1"/mile 1976 edition shows the route in the same way, partly with solid and dashed lines, with connecting routes recorded as "Paths" on parts of Bridleway No.19 and not identifying then recorded public rights of way. More recent aerial photography from 1999–2000 shows the whole route as a clear and wide track, with a more extensive network of other narrower tracks across the western area from increased recreational access and areas used for official or unofficial car parking at the end of Sandy Lane, near Crow Point and at Broad Sands.

The showing of the route on later and current maps records its physical existence at that time and until more recently. It does not indicate or support, on its own, the existence of any public right of way along those parts of it not recorded as public bridleway following the diversion, 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.

1.4 Other historical sources

References to historical material were submitted in connection with the claims made between 2001–2, including some of those considered above, but with others relating to earlier occasions when the issue of public use of the route had been raised previously. It was said to have been in dispute since before the Second World War, when the landowners were reported in 1937 to have put in a locked gate preventing use. It was challenged and the lock was removed, but replaced and with a 'private' notice which were reported to have been removed again in the presence of a policeman.

In 1976, gates were installed near the carpark that were kept locked, which the Nature Conservancy (now Natural England) said was to prevent access by vehicles and stop them from causing erosion and damage to the sand dunes on the reserve. That had been challenged, including by farmers who used the route for agricultural access, when the lock was cut and the issue was raised with the Parish Council. It was claimed to be an historical road to the ferry that should not be obstructed to prevent its use, which was accepted and the gates were left open and unlocked.

1.5 Definitive Map reviews and consultations

Braunton Parish Council did not include any reference to the route 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 addition was included in the consultations in 2006, on the basis of the claim and evidence submitted from 2001–2 and in 2005. The responses included concerns expressed by the Parish Council 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 supported 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 agent on behalf of the owners, from the MoD as occupier of the affected land, from English Nature and the Marsh Inspectors and also from other individuals with some further evidence of use.

1.6 User evidence

Three completed user evidence forms were submitted without accompanying maps in connection with the claim later in 2001, relating to use of the route to Crow Point on foot, horseback and in a vehicle. Nine more completed forms were submitted early in 2002 with maps, some for the whole route to Broad Sands, mainly on foot and in vehicles, with some indicating use on bicycle and one on horseback. A further 23 completed forms with maps were submitted in 2005 following the placing of the rocks at the Broad Sands carpark. They related mainly to use of the route from point G to other parking areas nearer Crow Point and point F, but some for the whole route to point E and mainly in vehicles, with some on foot and bicycle. Three more evidence forms were submitted as a result of the consultations, relating to use of the whole route on foot and bicycle. Three of the forms received were for use by two people, so there is evidence of claimed use by 41 people to consider in connection with the several stages relating to the claim.

Eighteen of the users indicated having used the route only in vehicles, specified by some as in a car, with a further 23 having used it in vehicles as well as on foot or bicycle, so that there is evidence of use in vehicles by 31 people. However, not all of the use in vehicles had been on the whole route between E–F–G, with many specifying having used parts of the route to official and unofficial carparks only, from point E–x and particularly from point G to other unofficial carparking areas beyond point y between Broad Sands and Crow Point near point F.

Five users specified use of the route only on foot, with a further 15 having used it on foot as well as in vehicles, or on bicycles and, in one case, on horseback, so that there is evidence of use on foot by 20 people. Not all of the use on foot was for the whole route, but was specified in some cases as from the carparks at points x and y, onto other paths and to places around Crow Point. Eight people specified use of the route on bicycles, having also used it on foot and in vehicles. Only two people indicated having used it on horseback, in addition to use on foot.

More than half of the users had used the route believing it to be a Byway Open to All Traffic, but who were mainly submitting evidence of use in vehicles after the rocks were put in at the Broad Sands carpark. Others who had used the route mainly on foot or bicycles and in vehicles only to the carparks believed it equally to be a footpath or bridleway, or did not specify, or believed it to have the status of all three categories.

The earliest reported use is from 1944 by two people on foot but referring to having used it in vehicles and by one from 1947 on foot and also on a bicycle. Eight reported using it since the 1950s, mainly in vehicles with two also on bicycle, foot and horseback and the same number since the 1960s, half in vehicles and also on foot and bicycle. The main use had been by 16 people since the 1970s, half in vehicles and also on foot, bicycle and on horseback, with two people saying that they had only used the route since the 1980s and one since the 1990s, in vehicles but also on foot and bicycle. It could be implied from how long two others reported using the route, but two did not specify when they started using it, with one saying “all my life”.

The frequency of use was from between about 4–5 times a year, mainly more than 20 times to about once a week or more than 50 times a year or once a week and some specifying more than 100 times up to 150 times or three times a week, up to more than 350 times a year, or ‘daily’. Some referred to ‘several’ or ‘many’ times a year, or ‘lots of times’ and one did not specify how often. The predominant use for most users was given as pleasure, including walking, with some referring to walking dogs and one specifying use for fishing. Some of the users in vehicles referred to using the route from point G connected with

launching boats and access to them on moorings at Broad Sands or near Crow Point. One specified some use in a vehicle as a service officer for supervising the clearance of mines in 1967, which was under a private right and with the permission of the owners and occupiers, which cannot be considered as public use.

None of the users said that they had been stopped or turned back, or told that they could not use the route, believing that the owner was aware of the public using it because there were so many who did. Only one specified that he had used it with permission, for the work on mine clearance, but no other users reported that they were tenants, or had worked for the owner and had a private right to use it. None reported having seen any signs or notices on the route to indicate that they could not use it, or stiles and other obstructions on the route, apart from the boulders put in at the Broad Sands carpark, which had prevented vehicular access only but allowed other use. There were reports of gates on the route, with reference to the gates on the Toll Road leading to point G and those put in on the American Road more recently, particularly at the end of Sandy Lane during the Foot and Mouth Disease outbreak in 2001. They were reported to have been locked for a time, also preventing use only in vehicles and allowing other users to pass, but then left unlocked. References were also made to earlier dates when gates had been installed and locked, but later left unlocked and open.

1.7 Landowner evidence

Landowner evidence forms were submitted in response to the consultations by the agent on behalf of the Ministry of Defence as tenant, a joint owner of land on the route and from the Clerk to Braunton Marsh Inspectors, who own the section of the route from the end of the Toll Road to the Broad Sands carpark.

The agent for the main owners of the land affected, Christie Estates, did not complete a form, but stated in a letter that the route had never been available for the public to use as claimed, because it had been obstructed by locked gates and referring to signs saying that there is no public right of access. He said that previous attempts over more than 30 years to establish a vehicular right of way for access to the Broad Sands area of the Burrows had been prevented legally, by all of the relevant authorities involved in protecting it as an internationally-renowned conservation area. He referred to three sets of gates on the route that were repaired by the Ministry of Defence after attempts had been made in the past to vandalise them.

He said that any claim for rights to have been established by uninterrupted use would be challenged, with Statutory Declarations from the lessees to substantiate that the original three sets of gates have not been left open except during military exercises. The locked gates had ensured that nobody had been able to use the route, apart from designated appointees with the requisite keys. He also stated that the route was unfit for use, except by military vehicles and increased vehicular access would potentially lead to damage within a Special Area of Conservation and designated Biosphere Reserve, which the owners and others concerned have sought to prevent from the results of illegal activities in the past.

The Senior Land Agent on behalf of Defence Estates for the Ministry of Defence submitted a form as a tenant for more than 60 years of Christie Estates in the western part of the Burrows adjoining the route. From his personal experience of 10 years, he believed the route to be a public bridleway and had seen people using it occasionally on foot during that time. He had never given anyone permission to use the route and reported that the Warden since 1975 had turned back travellers in buses in the 1980s. He did not indicate whether he had put up notices or signs to say that the route was not public, but referred to gates which were first locked in 1996. The gate at the northern end of the American Road remained locked,

with a southern gate open since 1995. He said that the route had been obstructed by rocks spaced a metre apart in March 1995, but perhaps referring to those placed in 2005.

A joint owner of unspecified land on the route for 20 years said she had believed for 40 years that the route was not public, but had seen people using it on foot, horseback and bicycle. She had not given permission for anyone to use it and said that a small part from the White House to the stone barrier is part of the Toll Road. She reported turning back or stopping people with dogs off leads, caravans and uninsured drivers on the route and telling anyone caught breaking the laws of the Toll Road that it was not public. She said that there had been notices or signs for 40 years saying that the Toll Road was private, with the rules for its use, which had occasionally been defaced or destroyed.

She indicated that there were gates to control access onto the Toll Road and the Burrows, which were locked every night on the Toll Road and permanently on the American Road. In further information, she referred to the diversion of Bridleway 19 onto the American Road and if vehicles were allowed along it would cause problems for riders who had not opposed the diversion.

The Clerk to Braunton Marsh Inspectors said that they had owned land on the route from points G–x as part of the Toll Road since the 1840s and now including the Broad Sands carpark. He did not believe it to be public and had seen people using it on payment of the toll, who had permission as a result. People had been turned back or stopped on that basis and everyone using the Toll Road had been told that it was not public, with notices from about 70 years ago saying 'Private Road'.

He indicated that there had been gates at both ends of the Toll Road for many years, which were locked on various occasions. In an accompanying letter, he said that the Inspectors have the right to refuse access to anyone causing damage or a nuisance to other users. He referred to the public footpath on the bank alongside the road, which does not extend to the road itself and they restricted use of the road by trial bikers and he did not believe that the route should be recorded as a byway.

1.8 Summary and conclusions – consideration under Statute and Common Law

Statute Law

No formal application has been made for the route to be recorded as a public right of way, with recent claims made in response to events that were taken as significant challenges to its use and as the result of actions taken by the landowner to obstruct or prevent access to it from specific dates. There is, however, also evidence of earlier actions by or on behalf of the landowner that called into question use of the route at other times to take into account for consideration under statute law.

References have been found to the installing of gates in 1937 and 1976, as well as in 2001 during the Foot and Mouth Disease outbreak leading to the initial claim from 2002. If the earliest of those dates is taken as having called into question the public's right to use the route, it would mean that the period for consideration under statute law would be the 20 years from 1917 to determine whether there was sufficient use by the public or evidence during that period of the landowner's lack of intention to dedicate. However, no evidence has been submitted or discovered relating to that period, either of use and landowner's earlier actions or intentions, other than the reference to events at the time that the gate was put in and the consequences.

The more recent actions with the installing of gates and placing of rocks at the other end of the route in 2005 appear to have been intended to control private vehicular access and

prevent public use in vehicles, rather than all public use. It was reported to have been possible for people to continue using the route on foot and bicycle alongside the recent gates as well as between the rocks at the Broad Sands carpark and also on horseback onto the American Road from the recorded bridleway before its diversion.

If 1976 is taken as the date for calling into question, the relevant period for considering evidence of use and landowner's intentions is the previous 20 years from 1956. Evidence has been submitted from 30 people who claim to have used the route during that period, 10 of them for the whole 20 years. Twenty of them had used the route in a vehicle, with the rest mainly on foot, some on bicycles and two on horseback. In relation to 2005 as the date for calling into question, evidence from all 41 of the users relates to use of the route during the previous 20 years, with 24 of them having used it for the whole period. Thirty had used it in a vehicle and 21 on foot, with some on bicycle and two on horseback.

In relation to both periods, some of the users referred to there being gates on the route, on the American Road and the Toll Road, which were not locked or were only locked sometime, including during recent military activities and particularly at the time of the Foot and Mouth Disease outbreak in 2001. Some referred to signs or notices on the route relating to the carparks, including at the end of the Toll Road, in connection with Foot and Mouth Disease or specifically prohibiting barbecues and overnight camping or fires, or to keep on paths and not wander over the Burrows and with Ministry of Defence information. References to other obstructions were specifically about the placing of rocks at the Broad Sands carpark preventing vehicular use further on the route, particularly by those who had used it as a continuation from the end of the Toll Road, from points G–F.

For both periods, therefore, the evidence indicates that most of the claimed use submitted has been in vehicles and particularly as a result of the obstruction to vehicular use from 2005 for those using it in vehicles continuing beyond the carpark from the end of the Toll Road. Use of that road by the public in vehicles is by payment of a toll to use a private road, as informed by notices and which will have been prevented when its gates were closed and locked. Such use has only been possible by continuation from having paid a toll on a private road and it cannot, therefore, be taken as evidence of public vehicular use but can only be interpreted as private use. Some users indicated that they had used the route in vehicles as a continuation onto the Toll Road from the American Road, from points F–G. However, the gates put in beyond Sandy Lane have been to control or prevent vehicular access to the Burrows, with the provision of carparking and with field gates further down the American Road.

The evidence is, therefore, considered not sufficient under statute law to support the recording of the route as a Byway Open to All Traffic by presumption of dedication from use. That is on several counts, as the predominant claimed use has been in vehicles, which has also arisen particularly from continuation beyond the end of a private road. In particular, it has been mainly in vehicles rather than on foot and horseback and does not meet the requirements for the recording of routes as BOATs on the Definitive Map, which has also not been possible due to provisions in the Natural Environment and Rural Communities Act of 2006.

There is evidence of actions taken by the landowners during both periods to control vehicular access and to indicate a lack of intention to dedicate the route specifically for use by vehicles. It does not seem to have been aimed at preventing use on foot or in bicycle, which was claimed to have continued when gates were put in and between the rocks at the carpark. However, public rights are already recorded for use on foot with the footpaths continuing from the banks at the White House towards Crow Point, although not on the track and which has been raised as a management issue that can be dealt with by other procedures. In addition, the recorded bridleway has been diverted onto most of the American

Road for use on foot, horseback and on bicycles. There is not considered to be sufficient evidence to suggest that, where unrecorded, the route can be alleged to subsist either as a Restricted Byway rather than as a BOAT under NERC Act provisions, as a bridleway or footpath under statute law.

Common Law

Considering the claims in relation to common law requires taking into account the historical and other documentary evidence submitted and discovered, with the evidence of use. Older historical maps and more recent mapping suggest that a route has existed on parts of the claimed route, from points E–F, since at least the second half of the 17th century and generally on its current line since the early 19th century. The early unenclosed route from the ferry towards Saunton Court appears to have been superseded and made more permanent at the northern end on its current line, particularly from its inclosure in the early 19th century when that part of it became straightened and enclosed in connecting it with public roads awarded and set out then. The requirement in the Inclosure Award for owners to fence their allotted lands from the route beyond Sandy Lane and allow its use by the public, including in carriages, adds significant weight to the view that its continuation was considered then to be a public road leading to the ferry from Crow Point to Appledore.

The Tithe Map and Finance Act records add support to that evidence for the first section from Sandy Lane having still been considered then as some form of a public highway, but with no indication then of a continuation through the Burrows. It appears to have remained as a link to the ferry landing near Crow Point, which may have been at the end of what is now recorded as the bridleway near the lighthouse. However, it may have been at other locations near Crow Point and the White House is shown named as ‘Ferry House’ on earlier 25”/mile and 6”/mile Ordnance Survey maps. The ferry was the destination of the route referred to at the time of the Inclosure Award in 1824 and as shown on earlier maps. A ferry is known to have run between Braunton and Appledore from at least the early 17th century until improvements in road transport and railways to and beyond Braunton meant that it was no longer needed, perhaps by the later 19th century.

The route was accepted as having been closed during the Second World War for military purposes, but there is no indication that it had been by an official order under Defence Regulations required to stop it up temporarily for the duration of the war or permanently, either then or after hostilities had ended. The early aerial photography shows that it had been improved for use by military vehicles, mainly on its pre-war line, but straightened in parts, added to point F and continuing to point G as a link with the end of the Toll Road. Parts of the old route seem to have become less important, although continuing in use to be recorded as a bridleway in 1950 and with other routes recorded as footpaths.

Consideration of the historical records, therefore, suggests that unrecorded sections of the route should be recorded as having public status. Historical use of the route included horse-drawn wheeled vehicles, but there is no indication that significant public use by motorised vehicles continued, other than for private vehicular access and to carparking areas, particularly from the private Toll Road. That is supported by the user evidence which shows that, apart from use in vehicles as considered above, more recent use of the whole route by the public has been mainly on foot, bicycle and horseback.

Considering the user evidence in conjunction with all other available evidence, particularly earlier historical evidence, dedication at common law with a status higher than that of bridleway can be inferred. The evidence suggests that, historically, the landowners intended to dedicate the claimed route as a public highway and that the public accepted the dedication and used it on that basis. It is in the light of this assessment that it is considered reasonable to allege that a public right of way subsists on the route with a higher status than

bridleway. That is in line with the legal definition of a Byway Open to All Traffic as a highway over which the public have had a right of way for all kinds of traffic, but now mainly used on foot and horseback.

From consideration under common law, there would previously have been the possibility of making an Order for the route to be recorded as a Byway Open to All Traffic. However, provisions in the Natural Environment and Rural Communities Act of 2006 introduced more restricted criteria required to be met for recording Byways Open to All Traffic for use by the public in motorised vehicles on the basis of evidence suggesting that they were used historically by non-motorised, horse-drawn vehicles. It would otherwise have been considered sufficient, but can result now in the recording of routes only as restricted byways, which have rights for use by the public on foot, horseback, bicycles and in horse-drawn vehicles, but not in or on motorised vehicles, including motorcycles.

Accordingly, it is not possible on that basis to recommend the making of an Order for Byway Open to All Traffic on the route, leading to the recommendation that an Order be made to record a restricted byway between points E–F, but not between points F–G, by addition on the unrecorded sections and upgrading part of the existing recorded bridleway to restricted byway.

