

**Definitive Map Review 2006–15:  
Parish of Combe Raleigh – part 1, with part of Awliscombe Parish**

Report of the Head of Highways, Capital Development and Waste

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

**Recommendation: It is recommended that no Modification Orders be made in respect of Proposals 1 – 6a for the applications to record a claimed Byway Open to All Traffic and claimed public footpaths in Combe Raleigh parish and an adjoining part of Awliscombe parish.**

**1. Summary**

This report examines proposals arising out of the Definitive Map Review in the parish of Combe Raleigh in East Devon district. It concerns the investigation of one application made to add a claimed Byway Open to All Traffic and other applications to add claimed public footpath routes in the parish, which include a crossing into the adjoining parish of Awliscombe.

**2. Introduction**

The original survey by Combe Raleigh Parish Meeting in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of 14 footpaths submitted to the County Council. Comments were added on behalf of Honiton Rural District Council and a fifteenth footpath route was added by the Parish Meeting in 1956. Eleven of the footpath routes surveyed were withdrawn or omitted, or described as not required. The remaining four routes were recorded for consultations at the Draft Map stage in 1957 and for the Provisional Map, which were then recorded on the original Definitive Map, considered as having existed from the relevant date of 1 September 1957.

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 no valid proposals from the Parish Meeting with evidence, although suggesting amendments by alterations to recorded routes. The following additional Public Path Order from the diversion of one of those routes has been made and will require the making of a Legal Event Modification Order for recording on a new reviewed Definitive Map:

- (a) The County of Devon (Footpath No. 11) (Parish of Combe Raleigh) Public Path Diversion Order 1990, Highways Act 1980.

As a result, the current number of recorded public rights of way in the parish is four footpaths. The investigations of one formal application made on behalf of the Trail Riders' Fellowship (TRF) in 2005 and others by the Ramblers in 2008, which include some routes crossing into parts of the adjoining parishes of Awliscombe and Luppitt, were deferred to be considered as the proposals in the current review process.

### **3. Background**

The current Review started with a public meeting in April 2006, with correspondence in 2008 about the Ramblers' applications. There was further correspondence with the Parish Meeting in 2012, when no further proposals were put forward.

### **4. Proposals**

Please refer to the Appendix to this report. The proposal numbers correspond generally to those used by the Ramblers for their individual applications.

### **5. Consultations**

General consultations on the applications were carried out in July 2014 with the following results:

County Councillor Paul Diviani	-	does not support any of the proposals;
East Devon District Council/AONB	-	no comment;
Combe Raleigh and Awliscombe Parish Councils	-	do not support any of the proposals;
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
ACU/TRF	-	no comment;
British Horse Society	-	no comment;
Cyclists' Touring Club	-	no comment;
Ramblers	-	support all proposals from their own applications and the recording of a restricted byway from the TRF's application.

Specific responses, including from the owners of the land affected, are detailed in the Appendix to this report and included in the background papers.

### **6. Financial Considerations**

Financial implications are not a relevant consideration to be taken into account under the provision of the Wildlife and Countryside Act 1981. The Authority's costs associated with Modification Orders, including Schedule 14 appeals, the making of Orders and subsequent determinations, are met from the general public rights of way budget in fulfilling our statutory duties.

### **7. Legal Considerations**

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

### **8. Risk Management Considerations**

No risks have been identified.

### **9. Equality, Environmental Impact and Public Health Considerations**

Equality, environmental impact or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

## 10. Conclusion

It is recommended that no Modification Orders be made in respect of the applications for Proposals 1- 6a, as the evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendations are discussed in the Appendix to this report.

There are no recommendations to make concerning any other modifications. The remaining proposals for claims from five other applications for routes in Combe Raleigh adjoining Luppitt and crossing the parish boundary to connect with those made in other claims will be included in a report on the review process in that parish for a subsequent meeting of the Committee. The review of the rest of Awliscombe parish will also be presented in a report to a further meeting of the Committee.

## 11. Reasons for Recommendations

To undertake the County Council's statutory duty under the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review and to progress the parish-by-parish review in the East Devon district area.

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### **Electoral Division: Honiton St Paul's**

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2000 to date	NSC/DMR/COMBER

ns070515prw  
sc/cr/parish of combe Raleigh part 1 part awliscombe parish  
02 110615

## A. Basis of Claims

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.

The Wildlife and Countryside Act 1981, Section 53 (5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

The Wildlife and Countryside Act 1981, Section 53 (3)(c) enables the Definitive Map and Statement to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows that:

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

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.

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. That can be either expressly, with evidence of the dedication having since been lost, or by implication in having not objected to the use of the way by the public, the landowner is presumed to have acquiesced, with the public having accepted that dedication by continuing to use it.

## **B. Introduction: Background to all applications**

Twelve formal applications under Schedule 14 of the Wildlife and Countryside Act 1981 were submitted in April 2008 on behalf of the Ramblers. They were for routes in the parish of Combe Raleigh not currently recorded as public rights of way claimed for recording as public footpaths. They included three routes crossing the parish boundary to the east which were duplicated in the 24 applications submitted at the same time for claimed routes in the adjoining parish of Luppitt and connected with other routes in that parish. Another was for a claimed route crossing into the adjoining parish of Awliscombe to the west – (part 1 report). A separate formal application had been submitted previously in 2005 on behalf of the TRF to record one of the Ramblers' claimed routes in Combe Raleigh as a Byway Open to All Traffic (part 1 report).

The Ramblers had served notice of their applications on those believed to be the owners of the land affected at that time. They certified having served that notice and submitted copies of all the evidence in support of their claims with the applications, which were mainly copies of historical maps with other historical documentary material. Most of those were included with individual applications and other evidence common to all of the applications, mainly historical maps, was submitted at that time in a separate appendix. Further supporting evidence in the form of copies from other historical maps and documents was submitted a year later.

### **Historical documentary evidence common to all applications**

Most of the documents providing evidence relating to all of the applications submitted in a separate appendix are historical maps. They were mainly produced by the Ordnance Survey at a range of scales between 1"/mile and 2<sup>1</sup>/<sub>2</sub>"/mile from 1809 to 2006, with one by Bartholomew at 1<sup>1</sup>/<sub>2</sub>"/mile from 1960. Copies of the legends to the maps were also supplied, most of which included the standard disclaimer that the representation on the map of a road, track or footpath is no evidence of a right of way. Other historical maps and documents submitted later were also related to all of the applications.

The individual applications indicated which of the maps, if not all of them, was intended to be included with the evidence supporting the claim for that particular route, although with no interpretation of its significance as to whether or not it was shown, or how it was depicted. Other historical documents common to several of the applications are discussed in the individual sections for each proposal below.

### **User evidence**

No direct evidence of current or recent use by the public on any of the claimed routes was submitted in support of the applications. There is, therefore, no need to consider statutory dedication of any of the claimed routes as public footpaths under Section 31 of the Highways Act 1980 from 20 years' use of them by the public up to the date of the applications. There is no date other than the applications for any calling into question and also, therefore, no need to consider any evidence of actions by the landowners to show lack of intention to dedicate during that specific 20 year period.

The only statutory element is consideration of the historic maps and documentary evidence in accordance with Section 32 of the Highways Act. That is in relation to a test of whether an intention by the landowners to dedicate the routes as public footpaths at some time in the past can be inferred under common law. It would require sufficient evidence from which it can be inferred that there was use by the public of the claimed routes in the past, with the landowners acquiescing to that use and taking no actions to prevent it, with acceptance by the public in continuing to use them.

**1. Proposal 1: Schedule 14 application – claimed addition of footpath between Combe Raleigh–Honiton road and Footpath 5 at Woodhayne Farm, points A–B shown on drawing number HTM/PROW/14/81.**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 1 for the claimed addition of a footpath.

**1.1 Description**

1.1.1 The claimed route starts at the minor road to Combe Raleigh from Honiton (point A) following the access track leading to Woodhayne Farm. It continues along the track passing a property, then turning into a field adjoining Woodhayne Farm to the east and passing north of the main farm buildings to join the recorded line of Footpath No. 5 in an adjoining field to the west of the farm (point B).

1.1.2 Footpath No. 5 is recorded as starting at the end of the minor road leading to The Rectory north of Woodhayne Farm, running generally southwestwards crossing the field on the west of the farm buildings to the parish boundary. It continues as a recorded footpath across fields in Awliscombe parish, then onto a track crossing into Honiton alongside the River Otter and leading back into Awliscombe parish to end at the road from Honiton to Cullompton.

**1.2 The Definitive Map process**

1.2.1 The claimed route was not included in the survey of paths on behalf of the Parish Meeting in 1950 to put forward for recording as public rights of way on the Definitive Map. Footpath No. 5 was recorded in the process, but with no reference to a connection with the claimed route.

**1.3 Documentary Evidence**

1.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

Early historical maps at smaller scales, particularly the Ordnance Survey drawings and 1<sup>st</sup> edition map, show the start of the track leading from the road towards Woodhayne, but turning north and not continuing to the farm on the claimed route. A track is shown leading to the farm from the road to the north and continuing on the line now recorded as Footpath No. 5 running southwest towards the river.

The track is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing. It is shown on the 1<sup>st</sup> edition map in the same way and also on Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions.

1.3.2 Later 19<sup>th</sup> century historical mapping: Combe Raleigh Tithe Map 1841 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

Later maps at larger scales show the route in more detail. The start of it is shown on the Tithe Map for Combe Raleigh parish in 1841 as an enclosed track leading from the road towards Woodhayne. Roads were not labelled or identified in the Apportionment as public and included those which were obviously public, as well as others more likely to have been private tracks for access to fields and some not now existing.

The claimed route continues to Woodhayne shown with double-dashed lines as an unenclosed track, with both sections coloured in the same way as all roads or tracks. The track is numbered on the map and identified in the Apportionment as a private road to Woodhayne. There is no path or track shown on the line of the route claimed through the fields from the access track around the Woodhayne farm buildings.

1.3.3 Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose. The Tithe Map records do not, therefore, provide strong supporting evidence that it may have been considered then to be public, but records part of the route's physical existence, leading from the road network at that time, but with no continuation further on the claimed route.

1.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows most of the claimed route, with a section of the track to Woodhayne from the road as enclosed, with a line across it suggesting a barrier such as a gate. It continues beyond with double-dashed lines as an unenclosed path or track through fields, not labelled 'F.P.', to the Woodhayne Farm buildings. The rest of the claimed route is shown in the same way, turning off to run around the farm into the yard between the buildings with lines suggesting gates at each end. The line of the path now recorded as Footpath No. 5 is also shown in the same way on its current route around the adjoining field.

1.3.5 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the track to Woodhayne Farm, but is at too small a scale to show any continuation and does not indicate the line of Footpath No. 5.

1.3.6 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, with the line of Footpath No. 5 labelled 'F.P.'. The same later maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation, copies of which were submitted with the additional material for the applications. The map shows the claimed route to have been included in the defined hereditament, or assessment area of land, for Woodhayne Farm with a total area of just over 43 acres.

1.3.7 A copy of the Field Book for that hereditament with details of the assessment for the farm was included with the application. It records a total deduction of £75 in respect of a fixed charge for Public Rights of Way or User affecting the value of the land. Details of 'Charges, Easements and Restrictions' affecting the value of the land refer to those as 'R[ight] of Way' through several fields with Ordnance Survey numbers, including those on the claimed route: 378<sup>a</sup>, 378, 380 and 360 leading to the farm buildings and yard. It suggests that the route was considered to carry some form of right of way at the time, although without any specific reference to it as a 'public footpath'.

1.3.8 Parish Meeting minutes – lists of public footpaths, 1913/1934 and repairs, 1946

Copies of extracts from Combe Raleigh Parish Meeting minutes in 1913 and 1934 with lists of what may have been considered then to be public footpaths in the parish were submitted with the application for this route. In 1913, the list for the Parish Meeting was reported as being: "... to the best of their knowledge and belief and observation ...", after other general notes on footpaths. The first path on the list is described as: "1) From Woodcott (the Keepers Cottage) through Woodhayne and over Rectory Field to Rectory Lane." Without any detail of its route to and through Woodhayne Farm, it is

described as continuing beyond the farm probably on what is now recorded as the northern section of Footpath No. 5 onto the end of Rectory Lane.

1.3.9 The 1934 list describes the path in exactly the same way as in 1913. It appears to have been drawn up by the Parish Meeting then in response to the provisions introduced by the Rights of Way Act 1932. The Act established the process for the statutory presumption of dedication of public rights of way that went on to be included in subsequent and current Highways Act provisions. It also introduced the procedure for landowners to show that they did not intend to dedicate additional public rights other than those that they agreed or admitted were public.

1.3.10 Local authorities were encouraged to produce maps and schedules of what were considered by them to be public rights of way at that time. It was not a statutory requirement and without publication of Draft and Provisional versions of maps or consultations leading to a Definitive version, as with the procedures under the later legislation from 1949. Not all of the documentation from the 1932 Act procedures has survived locally, particularly in the form of maps, with only some background administrative documents and schedules or lists in the records of some Rural District Councils and Parish Councils or Meetings. Although the Combe Raleigh list refers to a map for the parish, no copy of a map has been found in surviving records.

1.3.11 Copies from later Parish Meeting minutes in 1946 were also submitted, referring to a decision to "... repair the stile on the footpath where it leaves the road to Woodhayne", in connection with inspecting stiles and public footpaths when complaints were received.

1.3.12 Later Ordnance Survey mapping and Bartholomew's maps

Maps at smaller scales from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions from 1910 to the later 1940s, are too small to show the claimed route in any detail. Their keys included dashed lines to show footpaths and bridleways, but also with the standard disclaimer. They show the track on the claimed route as access to the main Woodhayne Farm buildings only, with no indication of a path in the adjoining field to the farmyard. Most of them do not show the line of Footpath No. 5, although it is on some later versions and labelled 'F.P.' in the 1948 edition.

1.3.13 Later Ordnance Survey 'A' edition larger-scale mapping from 1959/60, around the time that the Definitive Map was being drawn up, shows the access to Woodhayne Farm on the claimed route in the same way as on earlier maps, as an enclosed track. It does not show the section running through the adjoining field, or the line of Footpath No. 5.

1.3.14 The showing of the access track on part of the claimed route on early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, which would require other more significant supporting evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889 and by other editions, which may be presumed to apply to earlier and other commercial maps as well.

1.3.15 Aerial photography

Earlier RAF aerial photography from 1946–9 shows the access to Woodhayne Farm as a surfaced track, but with no indication of any worn path through the adjoining field into the farmyard. There is also no worn track on the line of Footpath No. 5 apart from around entrances to fields at gates, which was probably from trampling by stock.



1.3.16 More recent aerial photography between 1999–2000 and 2007 shows the access track on the claimed route in the same way up to more recently. There are no worn lines of any path in the fields, apart from in a straight line as a short cut crossing the field from regular use more recently of the recorded Footpath No. 5.

#### **1.4 Definitive Map Reviews and Consultations**

1.4.1 There have been no previous suggestions that the claimed route should be considered for recording as a public right of way in earlier review processes that were started but not completed. The claimed footpath was included in the consultations in July 2014 on the basis of the application submitted in 2008. The responses included objections by the Parish Meeting, the affected landowners and the local County Councillor, with support only from the Ramblers as the applicants.

#### **1.5 User Evidence**

1.5.1 No evidence of claimed use was submitted in support of the application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

#### **1.6 Landowner and Rebuttal Evidence**

1.6.1 The owners of properties and land on or adjoining the access track to the farm, completed landowner evidence forms. All of them indicated that the claimed route crossed their land or adjoined their properties and none believed it to be public. None of them had seen, or been aware of, the public using the route or had required people to ask permission when using it and had not turned back or stopped anyone from using it.

1.6.2 Two referred to having told people occasionally that the access track is private, with a notice stating that it was a private road that was said to have been there since the 1950s up to the present. None of them had obstructed the claimed route, with two reporting that a gate on it was not locked as there was no need with it being used for agricultural use only.

1.6.3 The owners of Woodhayne Farm and land with Barton Farm had deposited maps and statements under Section 31(6) of the Highways Act 1980 to show a lack of intention to dedicate public rights of way across their land on the claimed route at the time of the consultations. The deposit for Woodhayne farm had been made in August 2014, with that for Barton Farm made earlier, in 2003, for land on the route adjoining most of the access track, but which had not been renewed by a statutory declaration in 2013.

1.6.4 Two of the owners provided further information relating to their knowledge of the route and the history of recording public rights of way in the parish, with views against the claim. They included copies from the minutes of the Parish Meeting from the process of drawing up the Definitive Map in the 1950s and in August 2014 from the more recent consultations on the claims.

1.6.5 They included additional details of their objections to the recording of the claimed route as a public footpath, on the basis of it not having been recorded originally from the procedures in the 1950s. Concerns were also raised about the detrimental effects on privacy, security and safety at Woodhayne Farm in relation to use of land and buildings for keeping horses, particularly in deterring potential buyers for a possible sale of the property.

## 1.7 Discussion

- 1.7.1 As discussed in the background to all applications (part B, above), no evidence of use has been submitted to support the claimed addition, so that there is none during that period to consider whether a statutory presumption of dedication has arisen from use by the public.
- 1.7.2 Considering the application in relation to common law requires taking into account the historic maps and other historical documentary evidence submitted and discovered, but without being able to consider any evidence of claimed actual use by the public. Historical mapping shows that part of the track to Woodhayne Farm on the start of the claimed route has existed physically since at least the early 19<sup>th</sup> century and all of the route since the later 1880s, although not shown on later smaller-scale maps. Later Ordnance Survey and other mapping with aerial photography show only that the access track to the farm has continued to exist on its current line more recently up to the present, without showing the continuation of a path on the route.
- 1.7.3 The larger-scale Tithe Map from the first half of the 19<sup>th</sup> century does not provide any support for the claim that the route was considered to be public at that time. The later Finance Act records suggest that it may have been considered to carry public rights in the early 20<sup>th</sup> century, although without referring to it as a 'public' right of way or footpath for the deductions in the assessment process. There is no more specific evidence to show how that was determined as the basis from which any earlier dedication by the landowner could be inferred, or the extent to which there may have been acceptance and use then by the wider public or by a more limited number of people in the locality.
- 1.7.4 Its inclusion in the lists by the Parish Meeting of what were considered to be public footpaths in the parish soon after that time and later in 1934 suggests that it may have had the reputation then of being public. However, the lists were not produced as part of any statutory process for recording public rights of way at those times. There is also no reference to any more significant evidence indicating the basis for that belief, relating either to the extent of any use by the public or the views and intentions of landowners to add more substantial weight for any inference of an earlier dedication.
- 1.7.5 The further reference to repairs to a stile presumed to be on the claimed route considered by the Parish Meeting was also before the statutory procedures for recording public rights of way and responsibility for their maintenance. It does not add significant weight to evidence for its reputation of being public at the time or earlier, particularly as it was not included in the Parish Meeting's survey a few years later in the procedures for recording public rights of way on a statutory basis.
- 1.7.6 No other more significant historic maps or references in historical documentary material have been submitted or discovered to add more substantial weight to any suggestion that the route had the reputation of being a public footpath in the past, or more recently. In particular, no claims for its addition or evidence relating to its past use have been made as part of the procedures for earlier reviews since then, particularly by the Parish Meeting. Statutory deposits under Section 31(6) of the Highways Act 1980 were made in 2003 and 2014 by the owners of land on the claimed route as evidence to show their lack of intention to dedicate more recently.
- 1.7.7 Considering the historical evidence, but without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or an inference that it had the reputation of being

available and used by the wider public. There is no significant or substantial evidence that is sufficient to suggest that the landowners may have intended to dedicate the route as a public footpath, or that the public may have accepted any dedication and used it at any time in the past on foot, or have continued to use it on that basis.

## **1.8 Conclusion**

- 1.8.1 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 1.

## **2 Proposal 2: Schedule 14 application – claimed addition of footpath between Combe Raleigh–Honiton road and lane near Summerland Cottage, points A–C–D–E shown on drawing number HTM/PROW/14/81.**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 2 for the claimed addition of a footpath.

### **2.1 Description**

- 2.1.1 The start of the claimed route for this application is the same as for Proposal 1 (point A), following part of the access track leading to Woodhayne Farm, turning off to run through fields on the west of Combe Wood. It continues along part of a cul-de-sac minor road, turning opposite Torswood (point C) through fields and passing Barton Wood (point D) across the claimed route for Proposal 3. It ends on a cul-de-sac minor road leading from Combe Raleigh village at a barn near a property now called Fletchers (point E).

### **2.2 The Definitive Map process**

- 2.2.1 The claimed route was included in the survey of paths on behalf of the Parish Meeting in 1950 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 1, but was reported not to be a public footpath and not included on the Draft and Provisional Maps or recorded on the Definitive Map.

### **2.3 Documentary Evidence**

- 2.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

The maps showing the start of the track leading towards Woodhayne are as for Proposal 1 on part of this claimed route alongside Combe Wood, but with no continuation further towards either of the roads. The track is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing. It is shown on the 1<sup>st</sup> edition map in the same way and also on Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions.

2.3.2 Later 19<sup>th</sup> century historical mapping: Combe Raleigh Tithe Map 1841 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

The start of the claimed route is shown on the Tithe Map for Combe Raleigh parish in 1841 as an enclosed track leading from the road towards Woodhayne, as for Proposal 1. No continuation from it is shown through the fields alongside Combe Wood to the road or beyond that to the road from Combe Raleigh village, with Tithe Maps not usually showing footpaths and bridleways.

2.3.3 As for Proposal 1, with the track identified in the Apportionment as a private road to Woodhayne, the Tithe Map does not provide strong supporting evidence that it may have been considered then to be public. It records part of the route's physical existence, leading from the road network at that time, but with no continuation further on the claimed route.

2.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the start of the claimed route, as for Proposal 1. There is no continuation shown crossing the fields, but showing a parallel access track with double-dashed lines around its edge adjoining Combe Wood. The continuation of that track crossing fields alongside and beyond Combe Wood is on the claimed route to the road near Rectory Wood, but is not labelled 'F.P.'. A continuation from the wood is shown crossing the field to the north with double-dashed lines and labelled 'F.P.' to meet another path shown in the same way. No line of a path is shown continuing beyond across fields south of Barton Wood to meet the road near buildings of the property then named Summerland Cottage.

2.3.5 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the track to Woodhayne Farm, but is at too small a scale to show any continuation further on the claimed route.

2.3.6 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route mainly in the same way as in the 1<sup>st</sup> edition map, but on all of the line claimed and with the paths labelled 'F.P.'. The same later maps used as the basis for the 1910 Finance Act survey show the claimed route to have been included in the hereditaments for Woodhayne Farm with Proposal 1, as well as for the Rectory Glebe and Barton Farm.

2.3.7 The Field Book details of fixed charges for Public Rights of Way or User affecting the value of the land for the Woodhayne Farm hereditament relating to Proposal 1 are also relevant to part of Proposal 2. The total deductions referring to Ordnance Survey field numbers include those on the first part of this claimed route: 378<sup>a</sup>, 365, 364 and 361 leading to the road at Rectory Wood. There are deductions recorded in the Field Book for the Rectory Glebe for "R[ight]s of Way" for fields numbered 260 and 264, but included as a Restriction and not specifying it as for Public Rights of Way or User.

2.3.8 However, there are also the lines of other paths shown crossing those two fields, included in other claimed routes, so it is not clear whether the deduction was for one, some or all of them. There are no deductions in the Field Book for Barton Farm relating to the fields on the continuation of the route beyond the wood to the road. It suggests that parts of the route may have been considered to carry some form of right of way at the time, although without any specific reference to them as 'public' footpaths.

### 2.3.9 Combe Raleigh Parish Meeting minutes – lists of public footpaths, 1913/1934 and repairs, 1946

The lists of what were considered to be public footpaths in the parish in 1913 and 1934 included the second path described as: “From Woodcott skirting Big Cover [Combe Wood] across Rectory Lane over Henley and Rectory Field called Centry to lane by Fletchers Cottage”, which is the route as claimed.

2.3.10 The reference in the Parish Meeting minutes in 1946 to the repair of a stile on the footpath leaving the road to Woodhayne were also submitted for this claimed route. There is no clearer detail of its location to ascertain whether it related specifically to the route for this application or the one claimed in Proposal 1, or to some other path.

### 2.3.11 Later Ordnance Survey mapping and Bartholomew’s maps

Most smaller scale maps from the earlier 20<sup>th</sup> century are too small to show the whole claimed route in any detail. They show the access track to Woodhayne Farm on the start of the claimed route only, with only later editions from the 1920s to the 1960s showing the continuation with a dashed line of a path and subject to the general disclaimer.

2.3.12 The later Ordnance Survey ‘A’ edition larger-scale mapping from 1959/60, shows the access to Woodhayne Farm on the claimed route in the same way as for Proposal 1, with its continuation shown as a path with double-dashed lines and labelled ‘F.P.’. The continuation from the access track is not shown on the ‘B’ edition of the mapping from 1968. The showing of the route on some early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

### 2.3.13 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 shows the access to Woodhayne Farm as a surfaced track up to more recently in the same way as for Proposal 1. There are no worn lines of any path on the continuation of this claimed route leading from the track across the fields to connect with the roads.

## 2.4 **Definitive Map Reviews and Consultations**

2.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the application for Proposal 1, with the same responses in objection and support only from the applicants.

## 2.5 **User Evidence**

2.5.1 As with Proposal 1, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## 2.6 **Landowner and Rebuttal Evidence**

2.6.1 The evidence from two of the land or property owners for Proposal 1 also relates to parts of this claimed route, with the deposit in 2003 to show a lack of intention to dedicate public rights of way across land on the route. Other tenants of land on the route and owners of adjoining properties also submitted evidence forms.

- 2.6.2 As with the evidence for Proposal 1, none of the landowners or tenants believed this claimed route to be public. They had not seen or been aware of the public using the route or had required people to ask permission when using it. One owner said that people using it, particularly for picking apples, had been turned back or stopped and told that it was not public. Two stated that there had been notices in various places on the route, some of which were specified, in the past and up to more recently. None of them had obstructed the claimed route, although one reported that gates on it were kept wired shut and the top bar wrapped with barbed wire, but without indicating their locations on the accompanying map.
- 2.6.3 Concerns were also raised by one owner about the detrimental effects of public access on bio-security and security in connection with a poultry business on the land producing free-range eggs.

## **2.7 Discussion**

- 2.7.1 As with Proposal 1, there is no evidence of use submitted to support this claimed addition to consider whether a statutory presumption of dedication has arisen from use by the public.
- 2.7.2 Most of the historic maps and other historical documentary evidence for this application are the same as for Proposal 1, with some differences in detail and there is also no evidence of claimed use for an inference of dedication under the common law test. As with Proposal 1, earlier historical mapping shows the track to Woodhayne Farm on the start of the claimed route since at least the early 19<sup>th</sup> century and identified on the Tithe Map in 1841 as a private road. That does not provide any support for the claim that the route may have been considered to be public at that time. No continuation of the rest of the claimed route is recorded on the Tithe Map or on later maps until the early 20<sup>th</sup> century, when it is shown as a path crossing fields, parts of which are labelled 'F.P.'.
- 2.7.3 Finance Act records from around that time suggest that some of the route may have been considered then to carry public rights with deductions in the assessment process for parts of it, but not on others and without referring to it as a 'public' right of way or footpath. As with Proposal 1, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use then by the wider public could be inferred.
- 2.7.4 Although also included by the Parish Meeting in the 1913 and 1934 lists of what were considered to be public footpaths in the parish suggesting that it may have had the reputation then of being public, it was not as part of any statutory basis for recording public rights of way at those times. There is no evidence for the basis of that belief, either from reference to use by the public or from landowners to add weight for any inference of an earlier dedication.
- 2.7.5 The reference in Parish minutes to the repair of a stile is not clear as to its location on this claimed route, or the route of Proposal 1 and in the same way does not add further weight to evidence for its reputation of being public at the time. This route was included in the Parish Meeting's survey a few years later in the procedures for recording public rights of way on a statutory basis for the first time. However, the grounds for believing it to be public were only that it was shown as a footpath on the Ordnance Survey map and with reference to being shown on a map prepared by the Rural District Council under the 1932 Act. It does not refer to being based on known use by the public for any previous period of time and, although stating that it was no longer used, there was no indication of the nature and extent of what earlier use there may have been. The route was said not to be a public footpath and no longer required.

- 2.7.6 As with Proposal 1, no other more significant evidence from historic maps or historical documentary material has been submitted or discovered to provide a more substantial basis for consideration that the route had the reputation of being a public footpath in the past or more recently. There have been no claims for its addition with any evidence of its past use, particularly by the Parish Meeting, as part of the procedures for earlier reviews since then. The same statutory deposit under Section 31(6) of the Highways Act 1980 as for Proposal 1 made in 2003 by the owners of land on parts of this claimed route as well are clear evidence to show a lack of intention to dedicate more recently.
- 2.7.7 Considering the historical evidence and again without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or having the reputation of being available for use by the public. There is no evidence to suggest that the landowner intended to dedicate the route as a public footpath, or that the public accepted any dedication and have used it on that basis on foot.

## **2.8 Conclusion**

- 2.8.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 2.

## **3 Proposal 3: Schedule 14 application – claimed addition of footpath between lane south-west of Combe Raleigh village and junction of Duck’s Path with Limer’s Cross–Tracey road (in Awliscombe parish), points F–G–D–H shown on drawing number HTM/PROW/14/81.**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 3 for the claimed addition of a footpath.

### **3.1 Description**

- 3.1.1 The claimed route for this application starts at the minor road in Awliscombe parish below St. Cyres’ Hill (point F), running along a track through woodland to the parish boundary with Combe Raleigh. It continues from the end of the track across fields, passing the end of the claimed route in Proposal 6a (point G) and crossing the claimed route in Proposal 2 near Barton Wood (point D), to end at the minor road near Combe Raleigh village (point H).

### **3.2 The Definitive Map process**

- 3.2.1 This route was included in the survey of paths on behalf of the Parish Meeting in 1950 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 3, but noted as being withdrawn by the Parish and it was not included on the Draft and Provisional Maps or recorded on the Definitive Map. The continuation of the route in Awliscombe parish was not included in the corresponding survey of paths by Awliscombe Parish Council later in the same year.

### 3.3 Documentary Evidence

#### 3.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

This claimed route on the track in Awliscombe parish and its continuation in Combe Raleigh are not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths.

#### 3.3.2 Later 19<sup>th</sup> century historical mapping: Awliscombe Tithe Map 1840/Combe Raleigh Tithe Map 1841 & Apportionments; Ordnance Survey 25"/mile late 1880s

The section of the claimed route in Awliscombe is recorded on the Tithe Map for that parish in 1840 as a narrow track leading from the corner of the road to the parish boundary. It is shown coloured in the same way as roads and other tracks in the parish, enclosed from the adjoining land and crossing just over the parish boundary, where it is labelled 'To Comberawleigh'. No continuation is shown on the Tithe Map for Combe Raleigh parish in 1841. The Tithe Map records part of the route's physical existence as the track in Awliscombe parish, leading from the road network at that time, but with no continuation further on the rest of the claimed route in Combe Raleigh parish. Tithe Maps do not usually show the lines of footpaths, particularly across fields rather than crossing unenclosed open land.

#### 3.3.3 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the section of the claimed route in Awliscombe parish with solid lines as an enclosed track leading from the corner of the road through woodland to the parish boundary. It is labelled 'Duck's Path', with its own parcel number and acreage and lines across it at both ends suggesting that there were gates. Its continuation through fields on the rest of the claimed route in Combe Raleigh parish is shown with double-dashed lines, parts of which are labelled 'F.P.'. It crosses the lines of paths shown on other claimed routes at points G and D, parts of which are also labelled 'F.P.'.

#### 3.3.4 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the line of a track on the Duck's Path through the woods, with a single dashed line for the continuation further of a path on the claimed route, although other paths crossing the land are not shown.

#### 3.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, with a footbridge shown at the end of the Duck's Path crossing a stream on the parish boundary. The same later maps used as the basis for the 1910 Finance Act survey show Duck's Path on the claimed route not excluded from the adjoining land. It is included in the woodlands along the boundary of the hereditament for Tracey in Awliscombe, with its continuation crossing fields in the hereditaments of the Rectory Glebe and Barton Farm in Combe Raleigh.

#### 3.3.6 The Field Book for Tracey does not include any deduction of a charge for Public Rights of Way or User affecting the value of the land or plantation for that hereditament. The Field Book details relating to previous proposals are also relevant to the continuation of this route in Combe Raleigh. A deduction is recorded for "R[ight]s of Way" affecting the Rectory Glebe land, but is included as a Restriction and not specifying it as for Public Rights of Way or User. As with Proposal 2, it is not clear which lines of other paths



shown crossing those two fields and included in other claimed routes may have been the subject of the deduction.

3.3.7 There are no deductions in the Field Book for Barton Farm relating to the fields on the further continuation of the route to the road. Together, they suggest that parts of the claimed route may have been considered to carry some form of right of way at the time, although without any specific reference to them as 'public' footpaths.

3.3.8 Parish minutes: 1897, lists of public footpaths 1913/1934, Duck's Path 1913–50 and repairs, 1946

An extract from Combe Raleigh Parish minutes in 1897 submitted with the application refers to the repair of a stile in Henley crossed by the route, but for a location at the lower end of the field and not on this claimed route. The lists of what were considered to be public footpaths in the parish in 1913 and 1934 included the third path described as: "From Duck Path over Rectory Fields and Henley to the Village". The lists included the Ordnance Survey field numbers on the route as claimed.

3.3.9 Additional evidence of extracts from Awliscombe Parish minutes between 1913–50 was submitted in support of this application, relating to maintenance of the Duck's Path and further details of the procedures for recording public rights of way under the 1932 and 1949 Acts. They record inspections by the Parish Council and repairs made on the path between 1913–15, including to gates, to support the view that it was considered to be a public footpath for public money to be spent on it.

3.3.10 Although included on the list put forward in 1933 for claiming as a public footpath under the 1932 Act, the minutes show that the Parish Council decided in 1935 not to spend money on repairing Duck's Path as it was said to be never used by the public. The later estimate of the cost of repairs to a stile on the path in 1942 was considered to be excessive, with a proposal to close it as it was very rarely used then.

3.3.11 A reference in the Combe Raleigh Parish minutes from 1946 to the removal of barbed wire on a stile on the Duck's Path was also included with the application, but with no further details of its location on the route or the background to the circumstances for dealing with it. In the process of surveying paths in 1950 to be recorded as public rights of way under the 1949 Act, Awliscombe Parish Council considered the Duck's Path to be a church path and that it should be closed as a public path.

3.3.12 Later Ordnance Survey mapping and Bartholomew's maps

Some of a range of maps from the earlier 20<sup>th</sup> century at larger and smaller scales, particularly by the Ordnance Survey, show the whole claimed route mainly with a dashed line used for indicating all footpaths, some labelled 'F.P.'. It was before the Ordnance survey started showing public rights of way and included others in parts of the same area that are not recorded now as public. In the Provisional edition of 1948, the Duck's Path is shown as an enclosed track, with the continuation shown as a footpath.

3.3.13 The later Ordnance Survey 'A' edition larger-scale mapping from 1959/60, shows the Duck's Path track as on earlier maps, but with no continuation from its end across the fields to connect with the paths for Proposal 2. Its further continuation from there to the road is shown as a path with double-dashed lines and labelled 'F.P.'. The showing of the route on early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

### 3.3.14 Aerial photography

In earlier and later aerial photography between 1946–9 and 2007 the line of Duck's Path does not show clearly because of the woodland growth and there are no worn lines of any path on the continuation of the claimed route leading from the end of the track across the fields to connect with the road.

## 3.4 **Definitive Map Reviews and Consultations**

3.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the applications for the previous proposals, with the same responses in objection and support only from the applicants.

## 3.5 **User Evidence**

3.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## 3.6 **Landowner and Rebuttal Evidence**

3.6.1 Evidence was submitted by the owner of the adjoining woodlands on the Duck's Path section of the claimed route in Awliscombe and the evidence from some of the owners and tenants for previous proposals also relates to its continuation in Combe Raleigh. That includes the deposit in 2003 to show a lack of intention to dedicate public rights of way across land on the route.

3.6.2 As with the evidence for previous proposals, none of the landowners or tenants believed this claimed route to be public. They had not seen or been aware of the public using the route, or had required people to ask permission for access to the land. Some referred to having turned people back or stopping them and telling them that it was not public. They indicated that there had been notices saying that it was private land in various places on the route providing access and gates were kept wired shut and with barbed wire, reported to be on the fence at the end of the Duck's Path.

3.6.3 The owner of the woodlands on the Duck's Path also provided further information, with copies of correspondence from Awliscombe Parish Council relating to repair of the path and the procedures for claiming public rights of way under the 1932 and 1949 Acts. He highlighted the references to the path being impassable when put forward for claiming in 1934 and discussions at that time about whether it should be repaired, resulting it not being maintained then or later and not put forward for recording as a public footpath in 1950.

## 3.7 **Discussion**

3.7.1 As with previous proposals, there was no evidence of use submitted to support this claimed addition to consider whether a statutory presumption of dedication has arisen from use by the public.

3.7.2 Most of the historic maps and other historical documentary evidence for this application are the same as for previous proposals, with some differences in detail and there is again no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows that part of the claimed route in Awliscombe parish has existed since the first half of the 19<sup>th</sup> century. It is shown on the Tithe Map in

1841 as a track leading across the parish boundary into Combe Raleigh, but with no further continuation shown at that time. That does not provide any support for the claim that part of the route may have been considered to be public at that date. It is shown as a track on later maps, with a continuation until the late 1950s on the rest of the claimed route as a path crossing fields, some of which are labelled 'F.P.', to connect with others shown in the same way.

- 3.7.3 Finance Act records from the early 20<sup>th</sup> century suggest that some of it may have been considered then to carry public rights with deductions in the assessment process for parts of it, but not on others and without referring to it as a 'public' right of way or footpath. As with previous proposals, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred.
- 3.7.4 The references in Awliscombe parish minutes to maintenance on the Duck's Path section around that time suggest that the Parish Council accepted some responsibility for minor repairs. However, that was queried later with the District and County Councils for anything more substantial or expensive and not followed up, on the basis that it was never used by the public, or very rarely used. That was recognised to be a discretionary power rather than a duty, without any formal obligation, as there had then been no statutory recording of public rights of way.
- 3.7.5 As with previous proposals, its inclusion by Combe Raleigh Parish Meeting in the 1913 and 1934 lists of what were considered to be public footpaths in the parish, could suggest that part of it may have had the reputation then of being public, but again that was not as part of any statutory basis for recording public rights of way at those times. There is no evidence for the basis of that belief, either from the extent of any use by the public or from landowners to add weight for any inference of an earlier dedication.
- 3.7.6 The Duck's Path was not put forward by Awliscombe Parish Council to be recorded as a public footpath, as it was considered to be a church path and with suggestions that it should be closed. Its continuation was included in Combe Raleigh's survey, but again the grounds for believing it to be public were that it was shown as a footpath on the Ordnance Survey map and not referring to any use by the public. Without the Duck's Path being claimed in Awliscombe, it was considered not to be required and withdrawn.
- 3.7.7 As with previous proposals, no other more significant evidence from historic maps or historical documentary material has been submitted or discovered to provide a more substantial basis for consideration that the route had the reputation of being a public footpath in the past or more recently. There have been no claims for its addition with any evidence of its past use, particularly by the Parish Meeting, as part of the procedures for earlier reviews since then. The same statutory deposit under Section 31(6) of the Highways Act 1980 as for previous proposals made in 2003 by the owners of land on parts of this claimed route are clear evidence to show a lack of intention to dedicate more recently.
- 3.7.8 Considering the historical evidence and again without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or having the reputation of being available for use by the public. There is no evidence to suggest that the landowner intended to dedicate the route as a public footpath, or that the public accepted any dedication and have used it on that basis on foot.

### **3.8 Conclusion**

- 3.8.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is again, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 3.

### **4 Proposal 4: Schedule 14 application – claimed addition of footpath between lane south-west of Combe Raleigh village and lane leading to Worfield House, points I–C shown on drawing number HTM/PROW/14/81.**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 4 for the claimed addition of a footpath.

#### **4.1 Description**

- 4.1.1 The claimed route for this application starts at the minor road in Combe Raleigh village near Barton Farm (point I), from a track running past farm buildings. It continues across fields and into Rectory Wood to end at the minor road by Torswood on the claimed route for Proposal 2 (point C).

#### **4.2 The Definitive Map process**

- 4.2.1 The claimed route was included in the survey of paths on behalf of the Parish Meeting in 1950 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 2, but was reported not to be a public footpath and not included on the Draft and Provisional Maps or recorded on the Definitive Map.

#### **4.3 Documentary Evidence**

- 4.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

This claimed route is not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths.

- 4.3.2 Later 19<sup>th</sup> century historical mapping: Combe Raleigh Tithe Map 1841 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

The claimed route is shown on the Tithe Map for Combe Raleigh parish in 1841 as a dashed line leading from the road in Combe Raleigh village across fields and into Rectory Wood. It ends on what is now a minor county road, shown on the Tithe Map with double-dashed lines and coloured in the same way as other roads and tracks, at point C on the claimed route for Proposal 2.

- 4.3.3 No line of a path is shown crossing that same field on either of the other two claimed routes between points C–D in Proposal 2 and points D–H in Proposal 3. The Apportionment entries for the fields crossed by the line of the path shown are described as Pasture and Meadow, with no mention of any footpaths, which are not usually shown on Tithe Maps. It does not provide strong supporting evidence that it may have been

considered then to be public, but suggests the physical existence of a path on the route at that time, between what are recorded now as public roads.

4.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the claimed route as a path across fields with double-dashed lines labelled 'F.P.', crossing a footbridge over a stream or drain. It connects with the path on the route of Proposal 2 at point C leading into Rectory Wood and through the wood to the road. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century does not show the line of a path on this claimed route, although showing one crossing the same field on the route of Proposal 3.

4.3.5 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. The same later maps used as the basis for the 1910 Finance Act survey show the claimed route to have been included in the hereditament for Barton Farm, with those for Proposals 2 and 3.

4.3.6 The Field Book details of fixed charges affecting the value of the land for the Barton Farm hereditament relating to those proposals are also relevant to Proposal 4. The total deductions referring to Ordnance Survey field numbers include one of those on this claimed route, 311 leading from the road. It also includes number 353, which is for a piece of woodland then in the middle of the next field, but was perhaps intended to be 352 for the field itself.

4.3.7 The deductions refer to "R[ight]s of Way" and are included with Public Rights of Way or User, but not specified as for a 'public' footpath or right of way. It suggests that part of the route was considered to carry some form of right of way at the time, although without any specific reference to it as a 'public' footpath.

4.3.8 Parish minutes: 1897 and lists of public footpaths 1913/1934

The extract from Combe Raleigh Parish minutes in 1897 submitted with the application for Proposal 3 referring to the repair of a stile in Henley crossed by two paths was said to be for a location at the lower end of the field, which may have been on this claimed route. The lists of what were considered to be public footpaths in the parish in 1913 and 1934 included the fifth path, described as: "From Rectory Lane across Henley and Barton home field to village", which is the route as claimed and with a note of the Ordnance Survey field numbers.

4.3.9 Later Ordnance Survey mapping and Bartholomew's maps

Some maps from the earlier 20<sup>th</sup> century at larger and smaller scales from the 1920s to the 1960s, particularly by the Ordnance Survey, do not show the claimed route. Others are shown mainly with a dashed line used for indicating all footpaths, some labelled 'F.P.'. From the Fifth edition of 1937 at 1" to the mile and in later larger scale editions it is shown in that way, but before they started showing public rights of way and then up to 1976, including those in other parts of the same area that are not recorded now as public and subject to the general disclaimer.

4.3.10 The later Ordnance Survey 'A' edition larger-scale mapping from 1959/60, shows the claimed route in the same way as earlier editions, with double-dashed lines and labelled 'F.P.'. The showing of the route on some early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate

on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

#### 4.3.11 Aerial photography

Earlier and later aerial photography between 1946–9 and 2007 does not show the worn lines of any path crossing the fields on the claimed route. They show the later construction of a track and agricultural structures from before 1999–2000 affecting and obstructing the start of the route from point I leading from the road into the fields.

### 4.4 **Definitive Map Reviews and Consultations**

4.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the application for previous proposals, with the same responses in objection and support only from the applicants.

### 4.5 **User Evidence**

4.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### 4.6 **Landowner and Rebuttal Evidence**

4.6.1 The evidence from some of the owners and tenants for Proposals 2 and 3 also relates to this claimed route. It includes the deposit in 2003 to show a lack of intention to dedicate public rights of way on land crossed by parts of the routes from those proposals and also applying to this route.

4.6.2 As with the evidence for previous proposals, none of the landowners or tenants believed this claimed route to be public. They had not seen or been aware of the public using the route, or had required people to ask permission for access to the land. Some referred to having turned people back or stopping them and telling them that it was not public. They indicated that there had been notices saying that it was private land in various places on the route providing access and gates were kept wired shut and with barbed wire.

### 4.7 **Discussion**

4.7.1 As with previous proposals, there is no evidence of use to consider whether a statutory presumption of dedication has arisen from use by the public.

4.7.2 Most of the historic maps and other historical documentary evidence for this application are the same as for previous proposals, with some differences in detail and there is again no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows that the claimed route has existed since the first half of the 19<sup>th</sup> century. It is shown on the Combe Raleigh Tithe Map in 1840 as a path leading across fields between roads, but does not provide any support on its own for the claim that it may have been considered to be public at that date. It is shown on most later maps until the 1970s on the whole of the claimed route as a path crossing fields, some of which are labelled 'F.P.', to connect with others shown in the same way on the claimed route for Proposal 2.

4.7.3 Finance Act records from the early 20<sup>th</sup> century suggest it may have been considered then to carry public rights with a deduction in the assessment process for part of it,

crossing one field, but without referring to it as a 'public' right of way or footpath. As with previous proposals, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred.

- 4.7.4 As with previous proposals, its inclusion by Combe Raleigh Parish Meeting in the 1913 and 1934 lists of what were considered to be public footpaths in the parish, could suggest that part of it may have had the reputation then of being public, but again that was not as part of any statutory basis for recording public rights of way at those times. There is no evidence for the basis of that belief, either from the extent of any use by the public or from landowners to add weight for any inference of an earlier dedication.
- 4.7.5 The reference in Parish minutes to the repair of a stile is not clear as to its location in the area of this claimed route, or those in other proposals and in the same way does not add further weight to evidence for its reputation of being public at the time. It was included in the Parish Meeting's survey later in the procedures for recording public rights of way on a statutory basis for the first time. However, the grounds for believing it to be public were only that it was shown as a footpath on the Ordnance Survey map and with reference to being shown on a map prepared by the Rural District Council under the 1932 Act. It does not refer to being based on known use by the public for any previous period of time and, although stating that it was no longer used, there was no indication of the nature and extent of what earlier use there may have been. The route was said not to be a public footpath and no longer required.
- 4.7.6 As with previous proposals, no other more significant evidence from historic maps or historical documentary material has been submitted or discovered to provide a more substantial basis for consideration that the route had the reputation of being a public footpath in the past or more recently. There have been no claims for its addition with any evidence of its past use, particularly by the Parish Meeting, as part of the procedures for earlier reviews since then. The same statutory deposit under Section 31(6) of the Highways Act 1980 as for previous proposals made in 2003 by the owners of land on this claimed route are clear evidence to show a lack of intention to dedicate more recently.
- 4.7.7 Considering the historical evidence and again without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or having the reputation of being available for use by the public. There is no evidence to suggest that the landowner intended to dedicate the route as a public footpath, or that the public accepted any dedication and have used it on that basis on foot.

## **4.8 Conclusion**

- 4.8.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is again, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 4.

## **5 Proposal 5: Schedule 14 application – claimed addition of footpath between Dunkeswell–Honiton road and Combe Raleigh road, points J–K shown on drawing number HTM/PROW/14/81.**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 5 for the claimed addition of a footpath.

### **5.1 Description**

5.1.1 The claimed route for this application starts at the minor road in Combe Raleigh village, opposite the houses at Hillside (point J) and crosses the corner of a field to end on the minor road from Honiton to Dunkeswell (point K).

### **5.2 The Definitive Map process**

5.2.1 The claimed route was included in the survey of paths on behalf of the Parish Meeting in 1950 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 6, but was reported not to be a public footpath and not included on the Draft and Provisional Maps or recorded on the Definitive Map.

### **5.3 Documentary Evidence**

5.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

This claimed route is not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths.

5.3.2 Later 19<sup>th</sup> century historical mapping: Combe Raleigh Tithe Map 1841 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

The claimed route is not shown on the Tithe Map for Combe Raleigh parish in 1841, although they do not usually show the lines of footpaths. The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the claimed route crossing the corner of the field as a path with double-dashed lines and labelled 'F.P.' The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century does not show the claimed route.

5.3.3 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the claimed route in the same way as in the 1<sup>st</sup> edition map. The same later maps used as the basis for the 1910 Finance Act survey show the route to have been included in the hereditament for Newhouse Farm.

5.3.4 The Field Book details of fixed charges for Public Rights of Way or User affecting the value of the land for the Newhouse Farm hereditament records a deduction for 'R[ight] of Way' through the field with the Ordnance Survey number 276 crossed by the route. It suggests that the route was considered to carry some form of right of way at the time, although without any specific reference to it as a 'public' right of way or footpath.

5.3.5 Parish Meeting minutes: 1895–1938; lists of public footpaths, 1913 and 1934

Extracts from Parish Meeting minutes between 1895 and 1938 with references to repairs on this claimed route were submitted in support of this application. They were



mainly concerned with repairs to gates on what was referred to in 1895 as the 'Church path known as Crossing path on Newton's Knap' and later as the path at Crossways, or 'Crossey'. The minutes indicate that consideration was given to repairs, including the replacement of gates which were agreed to be repaired or replaced at various times, mainly in the periods between 1895–1901, 1910–27 and in 1938.

5.3.6 The lists of what were considered to be public footpaths in the parish in 1913 and 1934 included the fifth path, described as: "Crossway Path. From main road by Newtons to main road by Hilcote", which is the route as claimed and referring to the Ordnance Survey field number on the route.

#### 5.3.7 Later Ordnance Survey mapping and Bartholomew's maps

Most maps from the earlier 20<sup>th</sup> century do not show the claimed route, particularly at smaller scales, with only the later edition at a larger scale from 1948 showing the dashed line of a path not labelled .F.P'. The later Ordnance Survey 'A' edition larger-scale mapping from 1959/60 does not show the line of a path on the route. The showing of the claimed route on some early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

#### 5.3.8 Aerial photography

Aerial photography from 1946–9 shows what may be a narrow worn track across the field, which corresponds to the line of the path shown on earlier mapping. It could suggest evidence of wear from use at and before that time, although without any indication of its extent or whether it was from use by the wider public rather than for private access or agricultural use. More recent aerial photography from between 1999/2000–2007 does not show any worn line more clearly, but indicating what may be a residual cropmark in the grass along the line of the path.

### 5.4 **Definitive Map Reviews and Consultations**

5.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the applications for all of the proposals, with the same responses in objection and support only from the applicants.

### 5.5 **User Evidence**

5.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

### 5.6 **Landowner and Rebuttal Evidence**

5.6.1 The owner of the field crossed by the claimed route, part of Newhouse Farm, completed a landowner evidence form. He did not believe the route to be public and had not seen, or been aware of, the public using it. He had not required people to ask permission when using the route and had not turned back or stopped anyone from using it. He had not deposited a map and statement under Section 31(6) of the Highways Act 1980 to show a lack of intention to dedicate public rights of way across the land.

5.6.2 In additional information, he reported that the path had never been used during his lifetime or those of his parents or grandparents in more than 100 years of the family's ownership. He enclosed photographs showing the extent of vegetation growth in the hedges at both ends of the claimed route.

## **5.7 Discussion**

5.7.1 As with previous proposals, there is no evidence of use to consider whether a statutory presumption of dedication has arisen from use by the public.

5.7.2 Most of the historic maps and other historical documentary evidence for this application are the same as for previous proposals, with some differences in detail and there is again no evidence of claimed use for an inference of dedication under the common law test. Earlier historical mapping shows that the claimed route has existed since at least the later 1880s into the early 20th century, although it is not shown on most editions of maps later in the 20<sup>th</sup> century at smaller and larger scales.

5.7.3 Finance Act records from the early 20<sup>th</sup> century suggest that the route may have been considered then to carry public rights with a deduction in the assessment process for the field crossed by it, but without referring to it as a 'public' right of way or footpath. As with previous proposals, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred.

5.7.4 The references in Parish Meeting minutes between 1895 and 1938 to repairs and maintenance on the route, particularly gates, was initiated on the basis of its being identified as a church path and one later report on its condition was made by the rector. It suggests that it was considered as a discretionary power rather than a duty, without any formal obligation, as there had then been no statutory recording of public rights of way. In the same way, it does not add significant further weight to evidence for its reputation of being used by the wider public at the time, rather than perhaps by a limited section of local inhabitants.

5.7.5 As with previous proposals, its inclusion by the Parish Meeting in the 1913 and 1934 lists of what were considered to be public footpaths in the parish, could suggest that it may have had the reputation then of being public, but again that was not as part of any statutory basis for recording public rights of way at those times. There is no evidence for the basis of that belief, either from the extent of any use by the public or from landowners to add weight for any inference of an earlier dedication.

5.7.6 It was included in the Parish Meeting's survey later in the procedures for recording public rights of way on a statutory basis for the first time. However, the grounds for believing it to be public were only that it was shown as a footpath on the Ordnance Survey map and with reference to being shown on a map prepared by the Rural District Council under the 1932 Act. It does not refer to being based on known use by the public for any previous period of time and, although stating that it was no longer used, there was no indication of the nature and extent of what earlier use there may have been. The route was said not to be a public footpath and no longer required.

5.7.7 As with previous proposals, no other more significant evidence from historic maps or historical documentary material has been submitted or discovered to provide a more substantial basis for consideration that the route had the reputation of being a public footpath in the past or more recently. There have been no claims for its addition with any evidence of its past use, particularly by the Parish Meeting, as part of the procedures for earlier reviews since then.

5.7.8 Considering the historical evidence and again without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or having the reputation of being available for use by the public. There is no evidence to suggest that the landowner intended to dedicate the route as a public footpath, or that the public accepted any dedication and have used it on that basis on foot. The current owner referred to knowing that it had not been used by the public during at least a century of ownership by his family.

## **5.8 Conclusion**

5.8.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is again, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 5.

## **6 Proposal 6: Schedule 14 applications – claimed addition of Byway Open to All Traffic and footpath known as Hill Road, between end of lane near reservoir and Limer’s Cross–A373 road, points L–M–N shown on drawing number HTM/PROW/14/81.**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 6 for the claimed addition of a Byway Open to All Traffic and footpath.

### **6.1 Description**

6.1.1 The claimed route is the same for the application made by the Ramblers for a Footpath and the Trail Riders Fellowship application for a Byway Open to All Traffic. It starts at the minor road in Awliscombe on the parish boundary near the top of St. Cyres’ Hill (point L) through a gate and running along a track at the edge of a field. It continues on a track through woods along the side of the hill, passing the start of the claimed route for Proposal 6a (point M) and a pump house to a gate on the end of the cul-de-sac section of unsurfaced county road continuing from the minor road from Combe Raleigh village (point N). The end of the recorded maintainable highway is indicated by an old County Council boundary stone by the gatepost, marked “DCC Bdy”.

### **6.2 The Definitive Map process**

6.2.1 This claimed route was not included in the survey of paths on behalf of the Parish Meeting in 1950 to put forward for recording as public rights of way on the Definitive Map and was not included on the Draft and Provisional Maps or recorded on the Definitive Map.

### **6.3 Documentary Evidence**

6.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors’ Drawings 1806–7 and 1<sup>st</sup> edition 1”/mile map 1809 and later (Old Series); Greenwood’s map 1827

The earliest maps show this claimed route as a track leading from the road on St Cyres’ Hill, named as ‘Comberawleigh Hill’, continuing on the section of unsurfaced maintainable highway and the minor road to Combe Raleigh village. It is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing. It is shown on the 1<sup>st</sup> edition

map in the same way and also on Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions.

6.3.2 Later 19<sup>th</sup> century historical mapping: Awliscombe Tithe Map 1840/Combe Raleigh Tithe Map 1841 & Apportionments; Ordnance Survey 25"/mile late 1880s

The start of the claimed route is shown on the Tithe Map for Awliscombe parish in 1840 as a short section of enclosed track leading from the road across the parish boundary into Combe Raleigh, but with no continuation further in that parish. The Combe Raleigh Tithe Map from 1841 shows a longer section of that part of the route leading from the road towards woodlands on the hill. No track is shown as a continuation on the claimed route crossing open land to connect with the section of unsurfaced highway, which is shown as enclosed and continuing on the line of the minor road to the village.

6.3.3 The sections of the claimed route shown are coloured in the same way as all roads, but they were not labelled or identified in the Apportionment as public. They included those which are now recorded as public roads as well as others more likely to have been private tracks then used only for access to land and properties and some not now existing. Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose. It does not, therefore, provide strong supporting evidence for the physical existence of a continuous and connected track on the whole of the claimed route at that time.

6.3.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows both sections of the route as in the Tithe Map, with a connecting section of unenclosed track on the continuation running around the woodlands and crossing the open land, but not labelled 'F.P.'. The lines of other tracks are shown in the same way leading off it as access into enclosed fields. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the route in the same way, but is at too small a scale to show it in any detail.

6.3.5 A list of highways in Combe Raleigh from Honiton District Highways Board records submitted in support of both applications includes one under "Other Highways in Parish" numbered as: "(8) Combe Raleigh Church to level 828 on St. Cyres 2200 yds.". The list is undated, but is probably from towards the end of the 19<sup>th</sup> century or into the early 1900s and includes the whole claimed route beyond what is recorded currently as public highway. The distance given from the church corresponds in relation to the numbered level shown on the larger-scale Ordnance Survey maps for the Surface Level recorded by the surveyors along the section of road on St. Cyres' Hill near the end of the claimed route.

6.3.6 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. An additional connecting track is shown leading from it to the site of Honiton Corporations' water works built by then, labelled on modern maps as reservoirs.

6.3.7 On the same later maps used for the 1910 Finance Act survey the enclosed sections on the start of the claimed route and beyond its continuation are shown excluded from the adjoining hereditaments or assessment areas of land. That is in the same way as other routes, including those recorded since then as public roads, but also others which are not public and used for private access to land. It could suggest that part of it may have been considered to have the same status as public roads at the time, or alternatively that it was a route with other public rights or shared ownership and private rights but not

recorded later as a public road or public right of way with any lower status. The unenclosed track connecting them is included within the hereditament for the lands of Barton Farm.

6.3.8 The Field Book for Barton Farm includes in the section for “Fixed Charges, Easements, Common Rights and Restrictions”, the “Parish road to St. Cyrus hill – Honiton water supply pipe line”. In the total deduction of £75 in respect of a charge for Public Rights of Way or User, it refers to those as ‘R[ight] of Way’ through fields with Ordnance Survey numbers including number 225 on the claimed route, with an ‘Easement’ for the water supply pipes. It suggests that the route was considered to carry some form of right of way at the time, although without any specific reference to it as a ‘public’ road or footpath. It may have been for shared access on routes to other parts of the open land including to the water works or the old sand pit marked on the map, as a common resource rather than as a through route for use by the wider public.

6.3.9 The whole of the claimed route was not included in the lists of what were considered to be public footpaths in the parish in 1913 and 1934 or later, with no references in the Parish Meeting minutes to any repairs on the route.

#### 6.3.10 Later Ordnance Survey mapping and Bartholomew’s maps

Most smaller scale maps through the 20<sup>th</sup> century show the claimed route mainly in the same way as earlier editions, with the sections of enclosed track connected by dashed lines crossing the open land but not labelled ‘F.P.’ and subject to the general disclaimer.

6.3.11 The later Ordnance Survey ‘A’ edition larger-scale mapping from 1960, shows the claimed route in the same way as earlier editions, with the connecting track through the woodland shown as a track with double-dashed lines and not labelled ‘F.P.’. The showing of the route on some early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public roads, or rights of way in accordance with the Ordnance Survey disclaimer.

#### 6.3.12 Aerial photography

Earlier aerial photography from 1946–9 shows parts of the claimed route visible as a track across some of the open land, before the growth of woodland made it not visible on later photography from between 1999/2000 and 2007.

### 6.4 **Maintainable Highways Records**

6.4.1 No part of the claimed route was included in earlier and later records of maintainable highways to suggest that it may have been considered then to have the status of a public road, as a continuation of the unsurfaced county road beyond the County Council boundary stone, or running from the minor road on St. Cyres’ Hill. The earliest records specify the unsurfaced minor road to be a cul-de-sac spur, from Combe Raleigh village “... to the beginning of St. Cyres’ Plantation at Waterworks Gate”, with a mileage corresponding with the distance to the boundary stone at the gate at Point N. The claimed route is not shown on the current records of maintainable highways, the List of Streets, compiled from later and more recent records.

### 6.5 **Definitive Map Reviews and Consultations**

6.5.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the application for all of

the proposals, with the same responses in objection and support only from the applicants.

## **6.6 User Evidence**

- 6.6.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## **6.7 Landowner and Rebuttal Evidence**

- 6.7.1 The evidence from one of the landowners for Proposal 3 also relates to this claimed route. As with the evidence for that proposal, he did not believe this claimed route to be public, he had not seen or been aware of the public using the route and had not required people to ask permission when using it. He had not turned people back or stopped anyone using it and told them that it was not public. He stated that there had always been signs saying “No Entry” put up by South West Water on point N on the route and one saying “Private – No Entry” at point L. He had not obstructed the claimed route, but reported that there were three gates on it that were all locked, at the same points and on a field entrance at the end of the track from point L.
- 6.7.2 In further information, he referred to beliefs that the route had always been private, with only part of it used for access, as a postman’s path, to St. Cyres’ Cottage that was shown on older maps and had been demolished before the First World War. He referred also to that section being part of a route added to the Parish Meeting’s list of those to be considered as public in 1934 that had not been put forward later but was not included as supporting evidence for this proposal.
- 6.7.3 The owners of other land adjoining the section of unsurfaced road leading to the start of the route provided similar information, including about locked gates at both ends. They reported using the route themselves with permission from the landowner and advising anyone else using it that they would need to do the same as it was private land, or not to use it when there was shooting on.

## **6.8 Discussion**

- 6.8.1 As with previous proposals, there is no evidence of use to support these claimed additions, either on foot or in vehicles to consider whether a statutory presumption of dedication has arisen from use by the public, either as a Byway Open to All Traffic or as a footpath.
- 6.8.2 Most of the historic maps and other historical documentary evidence for this application are the same as for previous proposals, with some differences in detail and there is also no evidence of claimed use for an inference of dedication under the common law test. As with previous proposals, earlier historical mapping shows the whole claimed route as a track since at least the early 19<sup>th</sup> century, or part of it as enclosed on the Tithe Maps for both parishes and with no continuation. It is shown later connecting what are recorded now as public roads, but on their own they do not provide support for the claim that the route may have been considered to be public at those times, either as a vehicular road or footpath.
- 6.8.3 A linking continuation of the rest of the claimed route is shown in more detail on most later maps up to the present, as a mainly unenclosed track crossing open land and through fields, partly enclosed adjoining or through woodlands, but not labelled ‘F.P.’. Some tracks or paths were shown leading from it to other parts of the land and

properties, including later to waterworks with reservoirs, which will have been used only for private access.

- 6.8.4 The claimed route was recorded in a list of highways in the parish by Honiton District Highways Board as a continuation of what is now recorded as a minor road, which could suggest that it was considered then to be a public road. The record was perhaps from around the time that the Board's responsibility for minor roads was being transferred to the Rural District Council after the 1894 Local Government Act.
- 6.8.5 The route was not included in the main list with 'Parish' highways but with 'other' highways listed, which are now recorded as publicly maintainable roads. Part of one was believed then to be doubtful as to whether it was a highway, but said to have been repaired by the Parish in the past and later recorded as public. The claimed route is part of the longest route in the parish on the list and it did not go on to be included in the later and current records of maintainable highways, perhaps because it was considered not to have been maintained previously. No evidence of records for any past maintenance of the route was submitted in support of either application.
- 6.8.6 Finance Act records from around that time could also suggest that it may have been considered then to be a Parish road and the basis for charges in respect of other rights and restrictions. A deduction was included in the assessment process for land on part of it, but not on others and without a further reference to it as a 'public' road, right of way or footpath. As with previous proposals, there is no evidence for how that was determined as the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred, particularly as a public road, or as a public footpath.
- 6.8.7 The claimed route was not included in later lists of what were considered to be public footpaths in the parish to suggest that it may have had the reputation then of being public, with no evidence submitted of expenditure by the Parish for maintenance. It was not put forward, either as a footpath or with higher rights, in the later procedures for recording public rights of way on a statutory basis for the first time.
- 6.8.8 As with previous proposals, no other more significant evidence from historic maps or historical documentary material has been submitted or discovered to indicate more specifically that the route had the reputation of being a public road or public footpath in the past or more recently. There have been no claims for its addition with any evidence of its past use, particularly by the Parish Meeting, as part of the procedures for earlier reviews since then.
- 6.8.9 Considering the historical evidence and again without any evidence of claimed use, dedication at common law for the status of Byway Open to All Traffic or public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as either a public road or public footpath, or having the reputation of being available for use by the public. There is no evidence to suggest that the landowner intended to dedicate the route as an all-purpose highway or public footpath, or that the public accepted any dedication and have used it on that basis either on foot or in vehicles. Evidence from the landowner indicates that there have been notices on the route aimed at preventing access by the public, with locked gates.

## **6.9 Conclusion**

- 6.9.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the

balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made to add a Byway Open to All Traffic or footpath on the claimed route in respect of the applications for Proposal 6.

## **7 Proposal 6a: Schedule 14 application – claimed addition of footpath between junction with Proposal 3 and junction with Proposal 6, part of a network, points M–G shown on drawing number HTM/PROW/14/81.**

Recommendation: It is recommended that no Modification Order be made in respect of Proposal 6a for the claimed addition of a footpath.

### **7.1 Description**

7.1.1 The claimed route for this application starts from the track in woodlands along the side of St. Cyres' Hill on the claimed route of Proposal 6 (point M). It runs up the hill through the woods and along the edges of fields on the top of the hill, then down through the woods and across a field to end on the claimed route of Proposal 3 (point G).

### **7.2 The Definitive Map process**

7.2.1 Part of this claimed route, leading to point G, was included in the survey of paths on behalf of the Parish Meeting in 1950 to put forward for recording as public rights of way on the Definitive Map. It was surveyed as path No. 4, but reported to be no longer required as a cul-de-sac and it was not included on the Draft and Provisional Maps or recorded on the Definitive Map.

### **7.3 Documentary Evidence**

7.3.1 Early historical mapping – early 19<sup>th</sup> century: Ordnance Survey, Surveyors' Drawings 1806-7 and 1<sup>st</sup> edition 1"/mile map 1809 and later (Old Series); Greenwood's map 1827

This claimed route is not shown on earlier maps at smaller scales, which do not usually show the lines of footpaths.

7.3.2 Later 19<sup>th</sup> century historical mapping: Combe Raleigh Tithe Map 1841 & Apportionment 1840; Ordnance Survey 25"/mile late 1880s

The claimed route is not shown on the Tithe Map for Combe Raleigh parish in 1841, although they do not usually show the lines of footpaths. The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows part of the claimed route running from the track in Proposal 6 as a path with double-dashed lines and not labelled 'F.P.' crossing a small field. It ends at the boundary with the open fields on top of St. Cyres' Hill, with no line of a path shown continuing across those fields on the line of the claimed route to the former location of St. Cyres' Cottage. The line of a path is shown continuing from the cottage through woods and a field to meet the path crossing the field on the route of Proposal 3. The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century does not show the claimed route.

7.3.3 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the whole claimed route with a continuation passing the cottage and marked 'F.P.' crossing the last field. The same later maps used as the basis for the 1910



Finance Act survey show the route to have been included in the hereditament for Barton Farm.

7.3.4 The Field Book details of charges for Public Rights of Way or User affecting the value of the land include a deduction for 'R[ight] of Way' through the field with the Ordnance Survey number 225 crossed by the route of Proposal 6 at the start of this claimed route. There is no reference to other field numbers on the continuation of the route. A deduction for the field numbered 264 in the Rectory Glebe hereditament land where this route ends on the path in Proposal 3 could refer to that, or another one in the field at the end of Proposal 2. It indicates that the deductions were not in respect of this route to suggest whether it might have been considered to be public at that time.

#### 7.3.5 Parish minutes: list of public footpaths, 1934

The lists of what were considered to be public footpaths in the parish in 1934 included an additional three paths that were said not to have been included in the Schedule under the 1932 Act. The first was described as: "From Church through fields 352, 260, 264, 265, 266, 267, 242, 243 & 225", which is the route as claimed referring to the Ordnance Survey field numbers on the route as a continuation from parts of the paths in Proposals 2 and 3. Only part of that route was put forward later in the procedures for recording as public under the 1949 Act.

#### 7.3.6 Later Ordnance Survey mapping and Bartholomew's maps

Most maps from the earlier 20<sup>th</sup> century do not show the claimed route, particularly at smaller scales, with only the later 1948 edition at a larger scale showing the dashed line of a track on the route not labelled '.F.P' leading to the site of St. Cyres' Cottage. The later Ordnance Survey 'A' edition larger-scale mapping from 1959/60 does not show the line of a path on any part of the route. The showing of the claimed route on some early and later maps records its physical existence at those times, but not until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

#### 7.3.7 Aerial photography

Earlier aerial photography from 1946–9 shows parts of the claimed route visible as a track through the woodland and crossing the fields on St. Cyres' Hill towards the site of the cottage and into woods, but with no indication of a worn line continuing across the field. More recent aerial photography from between 1999/2000–2007 does not show most of the route due to the growth of woodland, with no worn line across the field to suggest any more recent use.

### **7.4 Definitive Map Reviews and Consultations**

7.4.1 There have been no previous suggestions that this claimed route should be considered for recording as a public right of way in earlier review processes. The claim was included in the consultations in July 2014 on the same basis as the application for previous proposals, with the same responses in objection and support only from the applicants.

### **7.5 User Evidence**

7.5.1 As with previous proposals, no user evidence was submitted in support of this application for consideration of whether a statutory presumption of dedication has arisen, or on which to base any inference of dedication at common law.

## **7.6 Landowner and Rebuttal Evidence**

- 7.6.1 The evidence from the landowner for Proposal 6 also relates to this claimed route. As with the evidence for that proposal, he did not believe this claimed route to be public, he had not seen or been aware of the public using the route and had not required people to ask permission when using it. He had not turned people back or stopped anyone using it and told them that it was not public.
- 7.6.2 In further information, he referred to beliefs that the route had always been a private path, as part of what was used for access to St. Cyres' Cottage before it was demolished and had not been used at all since then, perhaps for over a century. The information provided by the owners of other land adjoining the road leading towards the start of the claimed route in Proposal 6 is also relevant to this claimed route.

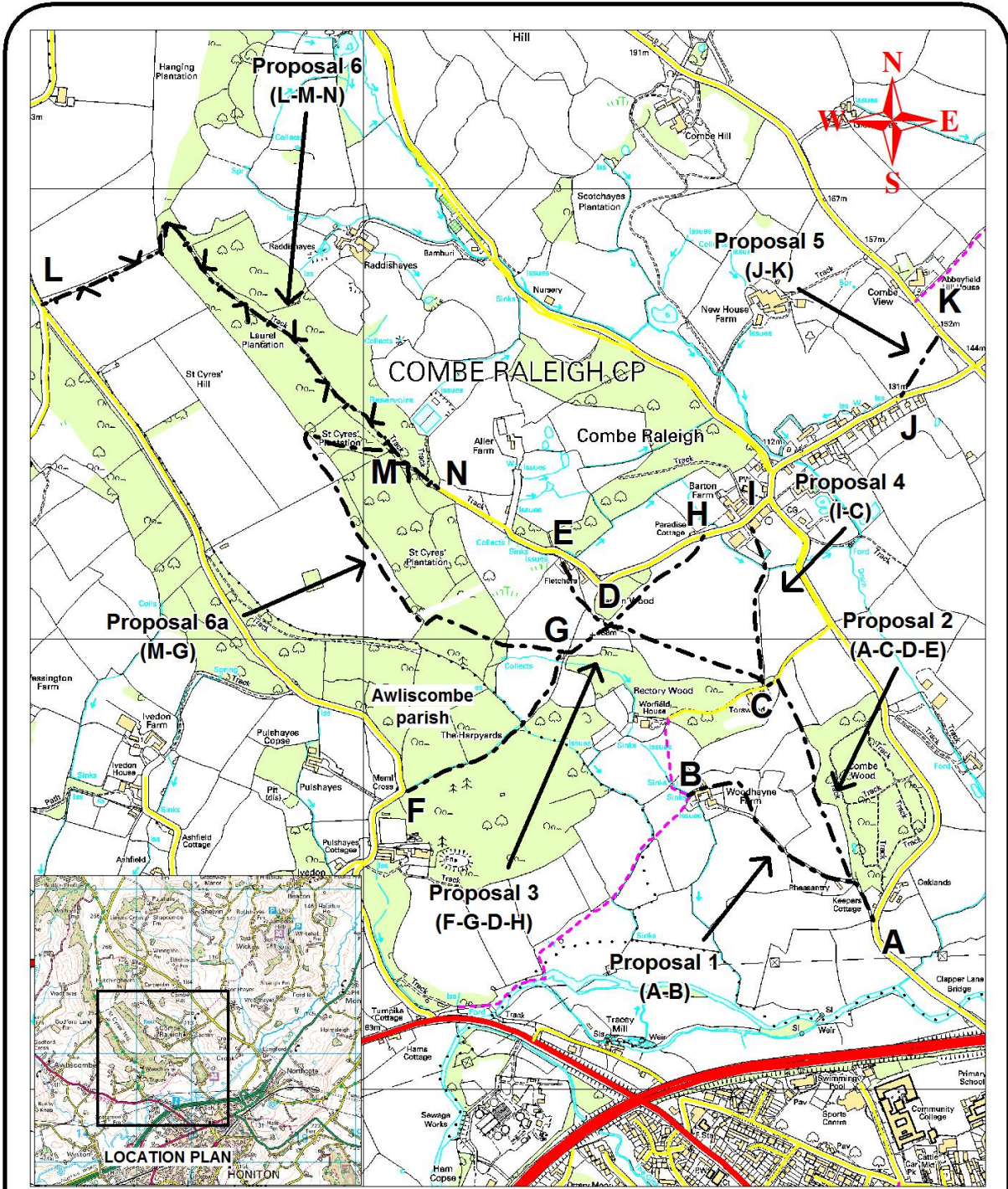
## **7.7 Discussion**

- 7.7.1 As with previous proposals, there is no evidence of use to consider whether a statutory presumption of dedication has arisen from use by the public.
- 7.7.2 Most of the historic maps and other historical documentary evidence for this application are the same as for previous proposals, with some differences in detail and there is also no evidence of claimed use for an inference of dedication under the common law test. As with previous proposals, historical mapping shows parts of paths on the claimed route to have existed since later in the 19<sup>th</sup> century, but on their own they do not provide support for the claim that the route may have been considered to be a public footpath at those times.
- 7.7.3 Sections of paths were shown as having led only towards St. Cyres' Cottage before that was said to have been demolished and later passing it to continue on the rest of the claimed route. A linking continuation through woodlands and crossing a field onto other paths labelled 'F.P.' is shown on some later maps, but not up to more recently or the present.
- 7.7.4 Finance Act records from around that time do not indicate that the whole route may have been considered then to be a public right of way, with a deduction for Public Rights of Way or User only on a small part of the land crossed by it and perhaps in connection with other routes shown on the map. There is no need to consider evidence for the basis from which any earlier presumed dedication by the landowner or the extent of any use by the wider public could be inferred from it.
- 7.7.5 Only part of the claimed route was included in a later list of what were considered then to be public footpaths in the parish to suggest that it may have had the reputation of being public, but with no evidence submitted of expenditure by the Parish for maintenance. The same part of it was put forward in the later procedures for recording public rights of way, but only on the basis of being on earlier maps and not proceeded with as a cul-de-sac with the cottage having been demolished.
- 7.7.6 As with previous proposals, no other more significant evidence from historic maps or historical documentary material has been submitted or discovered to indicate more specifically that the route had the reputation of being a public footpath in the past or more recently. There have been no claims for its addition with any evidence of its past use, particularly by the Parish Meeting, as part of the procedures for earlier reviews since then.

7.7.7 Considering the historical evidence and again without any evidence of claimed use, dedication at common law for the status of public footpath cannot be inferred. The evidence is not sufficient to support the claim that there is any historical basis to the route being considered as a public footpath, or having the reputation of being available for use by the public. There is no evidence to suggest that the landowner intended to dedicate the route as a public footpath, or that the public accepted any dedication and have used it on that basis on foot. Evidence from the landowner indicates that there have been notices on the route for the previous proposal aimed at preventing access by the public, with locked gates, required for access onto this claimed route.

## **7.8 Conclusion**

7.8.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law without being able to consider statutory dedication there is, therefore, insufficient basis for making an Order. In addition, the claimed routes for Proposals 3 and 6 are not considered to have public rights, which would be needed to provide access onto each end of this route to be available as a public footpath. Accordingly, the recommendation is that no Order be made to add a footpath on the claimed route in respect of the application for Proposal 6a.



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**DEVON COUNTY COUNCIL**  
 Definitive Map Review, Combe Raleigh parish  
 Informal Consultations, Proposals 1-6a:  
 Claimed addition of footpaths and byway

drawing number	HTM/PROW/14/81
date	Jul 2014
scale	1:12,500
drawn by	NSC

**Notation**

- Claimed footpaths (Proposals 1-6a)
- Claimed byway (Proposal 6)
- Existing footpaths

**David Whitton**

HEAD OF HIGHWAYS, CAPITAL DEVELOPMENT & WASTE

