

**Definitive Map Review
Parishes of Parracombe**

Report of the Chief Officer for Highways, Infrastructure Development and Waste

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

Recommendation: It is recommended that:

Modification Orders be made to modify the Definitive Map and Statement by:

- (i) adding a restricted byway between points G – H as shown on drawing number HCW/PROW/18/28a (Proposal 2) to resolve an anomaly affecting Bridleway No. 5 so that it meets a public highway at both ends, and that further investigation be made regarding the status of Bridleway No 5 in the light of the evidence set out in this report;**
- (ii) deleting a public bridleway between points J – L and adding a public bridleway between points J – K – L as shown on drawing number HCW/PROW/18/27a (Proposal 3) to resolve an error in the recording of Footpath No. 9 north of West Bodley.**

1. Introduction

This report examines two of the three current proposals arising from the Definitive Map Review in Parracombe.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 12 footpaths and 3 bridleways, which were recorded on the Definitive Map and Statement with a relevant date of 1st September 1957.

The review of the Definitive Map, under s.33 of the 1949 Act, which commenced in the late 1960s but was never completed, produced a number of proposals for change to the Definitive Map at that time, which have been picked up in the current Review. The Limited Special Review of RUPP's, carried out in the 1970s, did not affect the parish.

The following order has been made and confirmed in the parish:

Devon County Council (Footpath No. 10, Parracombe) Public Path Diversion Order 2011

A Legal Event Modification Order will be made for this change under delegated powers in due course.

The current Review was started in 2017 with informal consultation on a number of proposals carried out in 2018 for modification of the Definitive Map and Statement. Two are dealt with in the appendix to this report, whilst the remaining one (Proposal 1) will be the subject of a diversion order under delegated powers.

3. Proposals

Please refer to the appendix to this report.

4. Consultations

General consultations have been carried out with the following results:

County Councillor Andrea Davis	– no comment
North Devon Council	– no comment
Exmoor National Park Authority	– comments included
Parracombe Parish Council	– no comment
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment
Cycle UK	– no comment

Specific responses are detailed in the appendix to this report and included in the background papers.

5. 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.

6. Legal Considerations

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

7. Risk Management Considerations

No risks have been identified.

8. Equality, Environmental Impact and Public Health Considerations

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

9. Conclusion

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a restricted byway between points G – H as shown on drawing number HCW/PROW/18/28a (Proposal 2) and deleting a public bridleway between points J – L and adding a public bridleway between points J – K – L as shown on drawing number HCW/PROW/18/27a (Proposal 3).

It is also recommended that further investigation be made regarding the status of Bridleway No. 5 in light of evidence set out in this report.

10. 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 North Devon area.

Meg Booth
Chief Officer for Highways, Infrastructure Development and Waste

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of Background Papers

Contact for enquiries: Caroline Gatrell

Room No: ABG Lucombe House, County Hall, Exeter

Tel No: 01392 383240

Background Paper	Date	File Ref.
Correspondence Files	Current	DMR/PARRACOMBE

cg180119pra
sc/cr/DMR Parracombe
03 200219

A. Basis of Claim

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.

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

The Highways Act 1980, Section 32 states that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan, or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

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

- (i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
- (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- (iii) there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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 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.

In relation to claims for byways open to all traffic (BOATs), Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguishes certain rights of way for mechanically propelled vehicles except for the circumstances set out in sub-sections 2 to 8. The main exceptions are that:

- (a) it is a way whose main use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles;
- (b) it was shown on the List of Streets;
- (c) it was expressly created for mechanically propelled vehicles;

- (d) it was created by the construction of a road intended to be used by such vehicles;
- (e) it was created by virtue of use by such vehicles before 1 December 1930.

Extinguishment of rights for mechanically propelled vehicles also does not apply if, before the relevant date (20th January 2005), an application was made under section 53(5) of the Wildlife and Countryside Act 1981, or such an application was determined by a surveying authority, for an order to modify the definitive map and statement as to show a BOAT.

The judgement in the case of *R. (on the application of Winchester College) v Hampshire County Council (2008)* however, found that for such exceptions to be relevant the application must fully comply with the requirements of paragraph 1 of Schedule 14 to Wildlife and Countryside Act 1981. It is appropriate therefore firstly to determine whether or not the claimed vehicular rights subsist and, secondly, whether or not any exceptions apply; if vehicular rights subsist but the exceptions are not engaged then the appropriate status is restricted byway. Such claims may also be considered for a lower status.

1. **Proposal 2: Proposed extension of Bridleway No. 5 along Stony Lane to meet the county road over Parracombe Common, as shown between points G – H on plan HIW/PROW/18/28a.**

Recommendation: That a Modification Order be made in respect of Proposal 2, to modify the Definitive Map and Statement by adding to them a restricted byway between points G – H along Stony Lane, between Bridleway No. 5 and the county road known as the Chapman Burrows Road, as shown on drawing no. HIW/PROW/18/28a, and that further investigation be made regarding the status of Bridleway No 5 in the light of the evidence set out in this report.

1.1 Background

- 1.1.1 On examination of our records, it was discovered that there was an anomaly affecting Bridleway No. 5, where it did not continue to meet the minor county road, known as the Chapman Burrows Road over Parracombe Common.
- 1.1.2 Consequently, Devon County Council proposed this should be investigated as part of the Review, and the anomaly resolved, by establishing the correct legal status of the unrecorded section.

1.2 Description of the Route

- 1.2.1 The proposal route starts at point G at the end of Bridleway No. 5 on Stony Lane and runs north eastwards along the lane past the Parracombe Pleasure Ground to meet the county road over Parracombe Common known as Chapman Burrows Road at point H.

1.3 Documentary Evidence

1.3.1 Cary's Map, 1821

- 1.3.1.1 Besides the Ordnance Survey, Cary was the leading map publisher in the 19th century. He maintained a high standard of maps, using actual trigonometric surveys and other up-to-date source materials, including parliamentary documents, which was reflected by his employment to survey the 9,000 miles of turnpike roads in 1794.
- 1.3.1.2 A route is shown on a similar alignment to Bridleway No. 5 and the proposal route.

1.3.2 Parracombe Tithe Map and Apportionment, 1838-9

- 1.3.2.1 Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of '*public roads and waste*'.

- 1.3.2.2 The Parracombe tithe map is a second class map, surveyed at a scale of 3 chains to 1" by an unknown surveyor who did a number of tithe surveys in Devon. Being second class, it is considered only to be a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.
- 1.3.2.3 The proposal route is not shown. However, Bridleway No. 5 is shown between points A – B – C – D – E – F where it met Parracombe Common which was unenclosed at that time. The remainder is coloured sienna, with the section between A – B – C included in hereditament 90 – *'The Green'* owned by William Dovell and occupied by Charles Dovell, and the section between C – D – E – F unnumbered.

1.3.3 Ordnance Survey mapping, 1804 onwards

- 1.3.3.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: *'The representation on this map of a road, track or footpath is no evidence of a right of way'*.
- 1.3.3.2 A route is shown on a similar alignment to Bridleway No. 5 and the proposal route on the 1804 Old Series 1" to 1 mile as a through route to Woolhanger, Thornworthy, and beyond to Lynton and Lynmouth.
- 1.3.3.3 On the later 1st Edition 25" scale mapping of 1889 and subsequent mapping, Bridleway No. 5 and the proposal route are shown as a continuous enclosed through route.

1.3.4 Parracombe Common Inclosure Award, 1862

- 1.3.4.1 Inclosure awards can be evidence of repute of highways at the time they were made. Their significance as evidence depends on the powers given to the relevant Inclosure Commissioners. Awards and maps may provide supporting evidence of other matters, such as the existence of status of a route adjacent to but outside the awarded area. Evaluation of such evidence is considered in the context of the relevant inclosure act.
- 1.3.4.2 The Award states that certain *'public roads and ways'* were to be *'discontinued and stopped up'* including *'a certain public turf road track or occupation way leading from a certain farm called Bartons in the said parish of Parracombe and extending from a certain lane called Stoney Lane to the said common or down and passing thence through 2 certain fields or closes of land called the New Grounds part and parcel of a certain farm called Holworthy in the aforesaid parish of Parracombe'*. This is the historical alignment of Bridleway No. 5 and the proposal route.
- 1.3.4.3 The Award further states that certain *'public carriage roads or highways'* were *'set out and appointed'*, including *'one other public carriage road or highway of the width of 20 feet to be called the Barton Road commencing at the point marked G [point H on proposal plan] and numbered 26 on the said map and extending thence from east to west adjoining old inclosures to and terminating at the point marked H [point F on proposal plan] on the said map adjoining a certain lane called Stoney Lane'*. This describes the proposal route (points H – G on proposal

plan) and part of Bridleway No. 5 (points G – F on proposal plan) with Stoney Lane being the remainder of what is now Bridleway No. 5. On such a route, under the Inclosure Award, all subjects enjoyed an equal right of vehicular passage.

- 1.3.4.4 The Award also set and appointed to *'the Churchwardens and Overseers of the Poor of the said parish of Parracombe all that part or parcel of land numbered 25 on the said map containing 2 acres to be held by them and their successors in trust as a place of exercise and recreation for the inhabitants of the said parish and neighbourhood'*. This is the area on the southwest corner of point H adjacent to the proposal route, shown as 'Please Ground on the current OS base mapping.

1.3.5 Parracombe Parish Council Minutes, 1894 onwards

- 1.3.5.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 1.3.5.2 There are numerous references to Bridleway No. 5, but these are regarding the section A – B between Churchtown and the 'New Road', now the A39 Parracombe Bypass, which the Parish Council repeatedly requested to be taken over as a county road.

1.3.6 Barnstaple Rural District Council Minutes, 1893-1974

- 1.3.6.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.
- 1.3.6.2 There are numerous references to Bridleway No. 5, but these are regarding the section A – B between Churchtown and the 'New Road', now the A39 Parracombe Bypass, which the Parish and Rural District Councils repeatedly requested to be taken over as a county road, which received the support of the District Council.

1.3.7 Ordnance Survey Name Books, 1903

- 1.3.7.1 These Ordnance Survey records were produced in conjunction with the Ordnance Survey mapping and contain information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features. Such records can provide supporting evidence of the existence and status of routes.
- 1.3.7.2 The section of Bridleway No. 5 known as Stony Lane is described as a '3rd class road extending from Barton Lane to junction of road 29 chains south east of Brakebrook'.

1.3.8 Finance Act, 1909-10

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

possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.

- 1.3.8.2 Bridleway No. 5 is included within hereditaments 46 and 80. The proposal route and a short section of the currently recorded bridleway between points F – G – H are excluded from the adjacent hereditaments 73 and 125.

1.3.9 Bartholomew's maps, 1900s onwards

- 1.3.9.1 These maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, footpaths and bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.
- 1.3.9.2 Bridleway No. 5 is shown on the Bartholomew's maps from 1903 onwards as an '*Inferior road*', not to be recommended to cyclists, similar to much of the highway network in the area.

1.3.10 Handover Roads records, 1929-47

- 1.3.10.1 No part of the proposal route or Bridleway No. 5 is included.

1.3.11 Aerial Photography, 1946 onwards

- 1.3.11.1 The aerial photography shows the proposal route as a natural extension of Bridleway No. 5.

1.3.12 Definitive Map Parish Survey, 1950s

- 1.3.12.1 The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.
- 1.3.12.2 Mr TJ Barrow on behalf of the Parish Council surveyed the route as paths 5 (part) and 6. He described the route as a 'lane and cart track from Churchtown Bridge crossing Parracombe New Road' and 'lane leading from Barton Lane via The Ark and Stony Lane to [the] Chapman Burrows Road'.
- 1.3.12.3 The Parish Survey appears to show some indecision regarding the extent of public vehicular highway in relation to Bridleway No. 5 and the proposal route. The Parish Survey map shows that the Parish Council considered that the county road extended from point H to point F. The County Surveyor later annotated the map to show Bridleway No. 5 starting at point G and the section H – G as '*C.R.*', which is the abbreviation for '*county road*'. Bridleway No. 5 was subsequently recorded on the Definitive Map as starting at point G.

1.3.13 Definitive Map and Statement, 1957

- 1.3.13.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.
- 1.3.13.2 The Definitive Statement for Parracombe Bridleway No. 5 is described as running from *‘Churchtown old railway bridge and along a private accommodation road (not repairable by the inhabitants at large) south of St. Peter’s Church to County road A.38, continuing eastwards along a private accommodation road (not repairable by the inhabitants at large), Barton Lane, then generally north-eastwards along another private accommodation road (not repairable by the inhabitants at large), Stony Lane, passing Ark Cottage to join the end of an Unclassified County road 450 yards north-east of Ark Cottage’*. This description corresponds with the line as shown on the Definitive Map, the Bridleway terminating at point G.

1.3.14 List of Streets, 1970s onwards

- 1.3.14.1 No part of the proposal route or Bridleway No. 5 is included.

1.3.15 Land Registry, 2018

- 1.3.15.1 The whole of Bridleway No. 5 and its continuation, the proposal route, is unregistered.

1.4 User Evidence

- 1.4.1 No user evidence has been received for the proposal.

1.5 Landowner Evidence

- 1.5.1 No responses were received from adjacent landowners.

1.6 Rebuttal Evidence

- 1.6.1 No rebuttal evidence has been received.

1.7 Discussion

- 1.7.1 Statute – Section 31 Highways Act 1980. The Definitive Map and Statement is conclusive evidence of the information it contains, that Bridleway No. 5 exists. There does not appear to be a specific date on which the public’s right to use the proposal route, which is a continuation of Bridleway No. 5 has been called into question. Consequently, the proposal cannot be considered under statute law.
- 1.7.2 However, the proposal route may still be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 1.7.3 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the proposal route’s physical existence and availability since at least 1804. It is shown in a similar manner to other recorded public highways.

- 1.7.4 The Ordnance Survey and Cary's mapping shows a route has existed on an alignment similar to Bridleway No. 5 and the proposal route since 1804, which continued onto Woolhanger, Thornworthy, and Lynton/Lynmouth. However, the Ordnance Survey mapping is not evidence of a right of right, only the existence of features on the ground at the time of the relevant survey.
- 1.7.5 Under the Parracombe Down Inclosure Award of 1862 enacted through Parliament, this ancient route, a '*public turf road*' was '*discontinued and stopped up*', and a new route, '*a public carriage road*' was set out and awarded. On such a route, all subjects enjoyed an equal right of vehicular passage. The public carriage road includes part of Bridleway No. 5, between points F – G, and the proposal route between points G – H. Having been enacted by Parliament, the Award is conclusive evidence regarding their public status.
- 1.7.6 The Ordnance Survey Name Book subsequently describes Bridleway No. 5, known as Stony Lane, as a '*3rd class road*', and Bartholomew's map dating from 1903 indicates it had a reputation as a road open and available to the public, albeit not recommended.
- 1.7.7 However, it clear from the Parish Survey that in more modern times, there is some confusion as to the extent of county road along Stony Lane, as to whether it is F – G – H or G – H.
- 1.7.8 The proposal route was considered a county road by the County Council in the 1950s, which may be the reason why it was not included in the Definitive Map Parish Survey in 1950. However, it is not included on either the Handover Roads Records of the same period, or on the modern List of Streets. This conflicts with the evidence of the Inclosure Award.
- 1.7.9 Whilst there are numerous references to Bridleway No. 5 in the Parracombe Parish Council and Barnstaple Rural District minutes, these are focussed on requests for taking over the section of Bridleway No. 5 through Churchtown Green and part of Barton Lane between points A – B as a county road.
- 1.7.10 Express dedication is considered to have taken place under the Inclosure Award in 1862, and there is no evidence of such rights having been stopped-up. Consequently, the legal maxim '*once a highway, always a highway*' applies. The evidence when considered as a whole supports access for the public to the proposal route, as a continuation of Bridleway No. 5, though of the higher status of restricted byway.
- 1.7.11 In such a situation, the principle set out in the case of *Eyre v New Forest Highway Board* of 1892 may apply; that where a section of uncertain status exists, it can be presumed that its status is that of the highways linked to it. However, to investigate this further will require further consultation with landowners and the public as part of the Definitive Map Review.

1.8 Conclusion

- 1.8.1 On consideration of all the available evidence the documentary evidence demonstrates that the route along Stony Lane between points G – H has existed since at least 1862 and over the historic, pre-Inclosure Award route, since at least 1804. It has been open and available and appears to have been considered public since at least that time.

- 1.8.2 At Common Law, all highways existing prior to the Highways Act of 1835 were automatically repairable '*prima facie*' by the parish unless the responsibility could be proven as lying elsewhere. This liability remained so long as the highway existed or until the liability was taken away or transferred by statute. The public nature of the proposal route G – H and its continuation along Stony Lane, currently recorded as Bridleway No. 5, between points F – G was confirmed in the 1862 Inclosure Award.
- 1.8.3 There has been no evidence of public use by mechanically-propelled vehicles, and therefore the exceptions under the Natural Environment and Rural Communities Act 2006 do not need to be considered. Consequently, any unrecorded rights for mechanically propelled vehicles are extinguished. Therefore, the highest status the proposal route could be considered to be is a restricted byway.
- 1.8.4 The historical documentary evidence when taken as a whole is considered sufficient to show that a public right of way not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist between points G – H. It demonstrates that the proposal route was considered an all-purpose public highway and is considered sufficient to demonstrate that vehicular rights exist and consequently to record the route as a restricted byway.
- 1.8.5 The evidence is therefore considered to be sufficient under Common Law to demonstrate that a public highway of restricted byway status exists between points G – H. It also suggests that Bridleway No. 5 may carry higher rights.
- 1.8.6 It is therefore recommended that a Modification Order should be made to add a restricted byway between points G – H to the Definitive Map and Statement, as shown on drawing no. HIW/PROW/18/28a. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed. It is also recommended that further investigation be made regarding the status of Bridleway No 5 in the light of the evidence set out in this report.

2. **Proposal 3: Proposed clarification of the alignment of Bridleway No. 9 north of West Bodley, as shown between points J – L and J – K – L on plan HIW/PROW/18/27a.**

Recommendation: That a Modification Order be made in respect of Proposal 3, to modify the Definitive Map and Statement by deleting a public bridleway between points J – L and adding a public bridleway between points J – K – L, as shown on drawing no. HIW/PROW/18/27a.

2.1 Background

- 2.1.1 On examination of our records, it was discovered that there is an anomaly affecting Bridleway No. 9 north of West Bodley, as there is a difference between the definitive and used alignments.
- 2.1.2 Consequently, Devon County Council proposed this should be investigated as part of the Review, and the anomaly resolved.

2.2 Description of the Routes

- 2.2.1 The definitive alignment starts at point J on a track north of West Bodley and runs north westwards through an area which is overgrown and filled in with waste material to the track at point L.
- 2.2.2 The currently used alignment starts at point J and runs northwards to point K where it bends and continues west south westwards to point L.

2.3 Documentary Evidence

2.3.1 Cary's map, 1821

- 2.3.1.1 Besides the Ordnance Survey, Cary was the leading map publisher in the 19th century. He maintained a high standard of maps, using actual trigonometric surveys and other up-to-date source materials, including parliamentary documents, which was reflected by his employment to survey the 9,000 miles of turnpike roads in 1794.
- 2.3.1.2 Bridleway No. 9, known as Newberry Lane, is shown as a cross-road.

2.3.2 Parracombe Tithe Map and Apportionment, 1838-9

- 2.3.2.1 Tithe Maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, limiting the possibility of errors. Their immediate purpose was to record the official record of boundaries of all tithe areas. Public roads were not titheable and were sometimes coloured, indicating carriageways or driftways. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over a route shown. Such information was incidental and therefore is not good evidence of such. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not numbered are usually included under the general heading of '*public roads and waste*'.
- 2.3.2.2 The Parracombe tithe map is a second class map, surveyed at a scale of 3 chains to 1" by an unknown surveyor who did a number of tithe surveys in Devon. Being second class, it is considered only to be a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either

public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.

- 2.3.2.3 Both the definitive and used alignment are included in an area coloured sienna and recorded as lot 1018, which are the parish 'roads'.

2.3.3 Ordnance Survey mapping, 1804 onwards

- 2.3.3.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: *'The representation on this map of a road, track or footpath is no evidence of a right of way'*.
- 2.3.3.2 A route is shown as a cross road on the 1804 Drawings 2" to 1 mile along a similar alignment to Bridleway No. 9, Newberry Lane, but this is too small a scale to be of assistance with regard to the proposal.
- 2.3.3.3 On the later and larger scale 25" mapping dating from 1889, a track is shown on a similar alignment to the used alignment of Bridleway No. 9 north of West Bodley. A pecked line indicates a change of surface from the track, and trees in the location of the definitive alignment.
- 2.3.3.4 The 6" scale mapping was derived from the 25" scale and subject to the Ordnance Survey's standards of generalisation, meaning that it showed less detail than the 25". This mapping doesn't distinguish change of surface and shows an area which covers the extent of both the definitive and used alignments, although a tree symbol is again shown in the location of the definitive alignment. This mapping was used for the 1950 Parish Survey and the Definitive Map.

2.3.4 Parracombe Parish Council Minutes, 1894 onwards

- 2.3.4.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 2.3.4.2 There are few references to Bridleway No. 9 none of which relate to the anomaly.

2.3.5 Barnstaple Rural District Council Minutes, 1893-1974

- 2.3.5.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.
- 2.3.5.2 There are few references to Bridleway No. 9 none of which relate to the anomaly.

2.3.6 Ordnance Survey Name Books, 1903

- 2.3.6.1 These Ordnance Survey records contain information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features.

2.3.6.2 Bridleway No. 9 runs along the route known as 'Newberry Lane...a 3rd class road extending from the junction of Bodley Lane (a minor county road) and Pound Lane (Footpath No. 10) to South Down'.

2.3.7 Finance Act, 1909-10

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

2.3.7.2 Both the definitive and used alignments are included in an area excluded from any hereditaments, along with the continuations of Bridleway No. 9.

2.3.8 Bartholomew's maps, 1900s onwards

2.3.8.1 These maps were designed for *tourists and cyclists* with the roads classified for *driving and cycling purposes*. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, footpaths and bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.

2.3.8.2 Bridleway No. 9 is shown on the Bartholomew's maps from 1903 onwards as an '*Inferior road*', not to be recommended to cyclists. However, the mapping is too small scale to be of assistance with regard to the proposal anomaly.

2.3.9 Aerial Photography, 1946 onwards

2.3.9.1 The aerial photography is of little assistance regarding the proposal anomaly due to the wooded nature of Bridleway No. 9 near Bodley.

2.3.10 Definitive Map Parish Survey, 1950s

2.3.10.1 The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.

2.3.10.2 Mr TJ Barrow on behalf of the Parish Council surveyed the route as a '*lane leading from Bodley to [the] Killington road bridge*'. There is no indication regarding the alignment north of West Bodley.

2.3.11 Definitive Map and Statement, 1957

- 2.3.11.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.
- 2.3.11.2 The Definitive Statement for Parracombe Bridleway No. 9 is described as running from *‘the end of the Unclassified County road at Bodley, then generally in a northerly direction along a private accommodation road (not repairable by the inhabitants at large), Newberry Lane, which turns north-north-east at 300 yards due west of Higher Bodley, then along Beacon Down Quarry road, a private accommodation road (not repairable by the inhabitants at large) to join the Unclassified County road immediately west of Killington old railway bridge’*. This does not provide any assistance with regards to the alignment north of West Bodley.

2.3.12 Land Registry, 2018

- 2.3.12.1 The definitive and used alignments of Bridleway No. 9 are both part of Newberry Lane, which is unregistered.

2.4 User Evidence

- 2.4.1 No user evidence has been received for the proposal.

2.5 Landowner Evidence

- 2.5.1 No responses were received from adjacent landowners.

2.6 Rebuttal Evidence

- 2.6.1 No rebuttal evidence has been received.

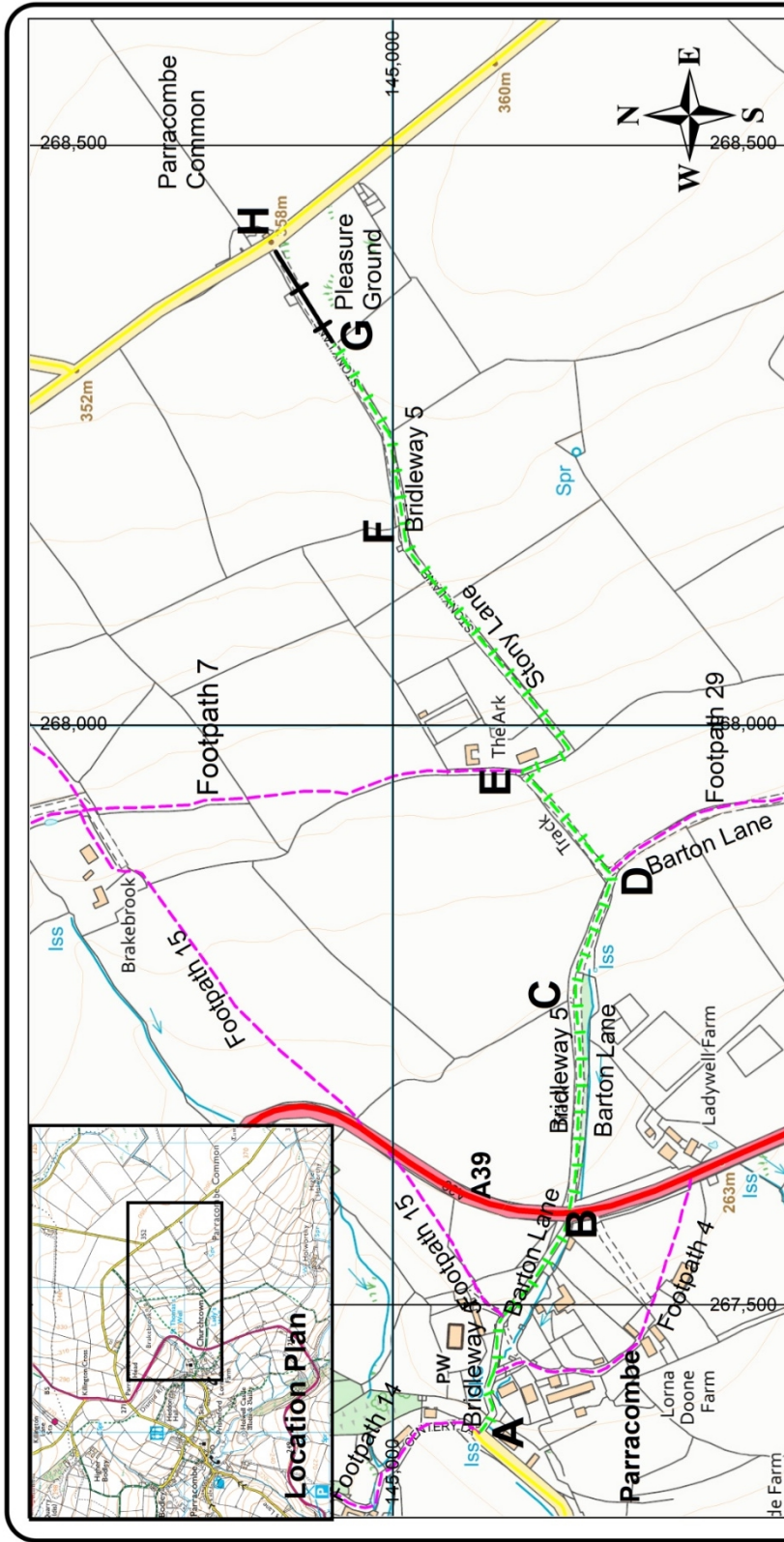
2.7 Discussion

- 2.7.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public’s right to use the proposal route has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, that Bridleway No. 9 exists.
- 2.7.2 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route may still be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.
- 2.7.3 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the proposal route’s physical existence and availability since at least 1804. It is shown in a similar manner to other recorded public highways.

- 2.7.4 Bridleway No. 9 known as Newberry Lane, is shown on the small-scale mapping of the Ordnance Survey dated 1804 and Cary dated 1821, though such mapping is too small a scale to be of assistance in relation to the proposal.
- 2.7.5 Dating from 1889, the 25" Ordnance Survey mapping was created from an original survey, and shows a track following a similar alignment to the used alignment of the proposal. There is no route shown on the alignment recorded on the Definitive Map. The area now crossed by the Definitive Line is shown as being distinct from the track and with tree cover. However, it was 6" mapping that was used for the 1950 Parish Survey. This was not an original survey and was derived from the 25" mapping. Consequently, 6" mapping was subject to the Ordnance Survey's generalisation standards, which meant that it showed less detail and did not distinguish between changes in surfaces, i.e. between a track and its verges. The 6" mapping, which was used for the 1950 Parish Survey and the Definitive Map, does however also show a tree, or trees, on the definitive alignment
- 2.7.6 The earliest large-scale mapping is that of the 1839 Tithe Map, which shows an open area of highway land which could include both the definitive and used alignments, though does not show the routes themselves.
- 2.7.7 The Ordnance Survey Name Books and Bartholomew's maps both refer to Bridleway No. 9, Newberry Lane, but do not provide any assistance regarding the alignment near West Bodley.

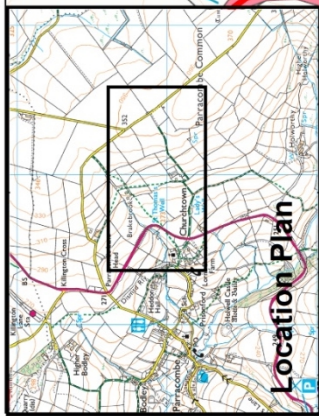
2.8 Conclusion

- 2.8.1 On consideration of all the available evidence the documentary evidence demonstrates that the Bridleway No. 9, Newberry Lane, has existed since at least 1804, and has been considered as a parish road at some time in the past. However, there is insufficient evidence to demonstrate that the public right of way has rights higher than that of bridleway.
- 2.8.2 With regard to the alignment, the documentary evidence, in particular the large-scale Ordnance Survey mapping, demonstrates that an error occurred in the recording of the bridleway on the Definitive Map in relation to its alignment north of West Bodley, due to the insufficient detail on the 6" mapping used.
- 2.8.3 The route photographs show how well-used the alignment J – K – L is, whilst demonstrating that there is no trace of the existence of the alignment shown on the Definitive Map between points J – L, which is covered with trees and vegetation. This is consistent with the historical map evidence.
- 2.8.4 Consequently, the evidence is considered to be sufficient under Common Law to demonstrate that a public highway of bridleway status does not exist between points J – L, but does exist between points J – K – L.
- 2.8.5 It is therefore recommended that a Modification Order should be made to vary the particulars of Parracombe Bridleway No. 9 along Newberry lane, by deleting the section between points J – L and adding the section between points J – K – L to the Definitive Map and Statement, as shown on drawing no. HIW/PROW/18/27a. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed.



Based on Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright
 Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 100019783

map ref: SS 6845



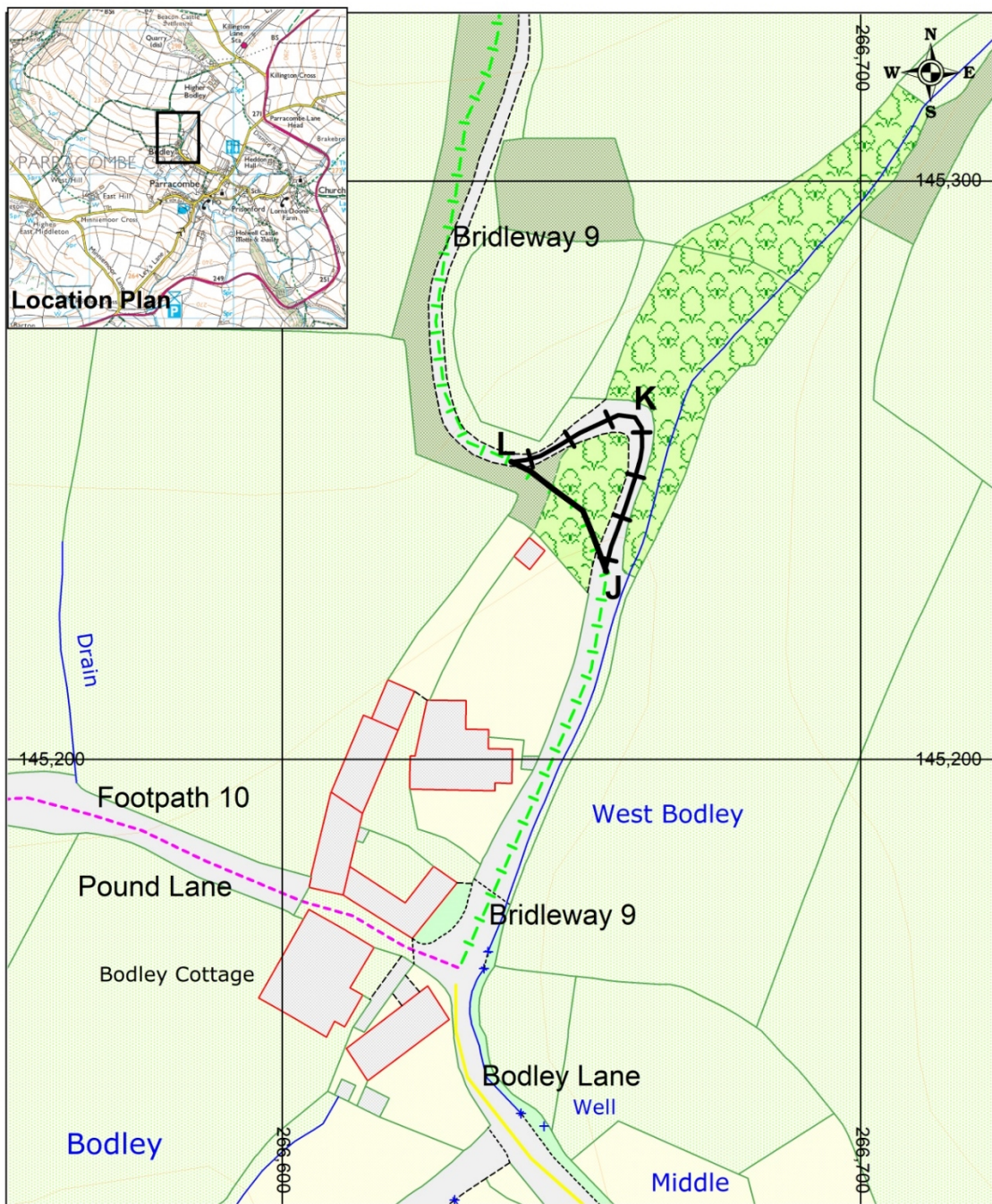
drawing number	HCW/PROW/18/28a
date	December 2018
scale	1:5,000
drawn by	CLG

Devon County Council
Definitive Map Review - Parracombe
Proposal 2 - Proposed extension of Bridleway No. 5 along Stony Lane
to meet the county road on Parracombe Common

Notation
 Proposed extension to Bridleway No. 5 G - H (approx 95 m) +---+---+
 Existing footpath - - - - - Existing bridleway - - - - -

Meg Booth
 Chief Officer for
 Highways, Infrastructure
 Development & Waste





map ref: SS 4566

Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright
 Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 1000119783

Devon County Council
Definitive Map Review - Parracombe
Proposal 3: Proposed clarification of alignment of
Bridleway No. 9 at West Bodley

drawing number HIW/PROW/18/27a
 date June 2018
 scale 1:1,000
 drawn by CLG

Notation

- Bridleway definitive alignment J - L (27m) ———
- Bridleway used alignment J - K - L (52m) - - - - -
- Existing footpath - - - - -
- Existing bridleway - - - - -

Meg Booth
 Chief Officer for
 Highways, Infrastructure
 Development & Waste

