

**Definitive Map Review  
Parish of Parracombe – Part 2**

Report of the Chief Officer for Highways, Infrastructure 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 a Modification Order be made to modify the Definitive Map and Statement by upgrading Parracombe Bridleway No. 5 to a restricted byway between points A – B – C – D – E – F – G, as shown on drawing number HCW/PROW/18/28a in respect of Proposal 2a.

**1. Introduction**

This report further examines the extension of the second proposal dealt with in the previous parish report of 15 November 2018.

**2. Background**

This is the second report for the Definitive Map Review in the parish of Parracombe. The background to the Review in Parracombe was discussed in the first report of 15 November 2018.

**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	– support the proposal
Parracombe Parish Council	– approve the proposal
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
Cycling 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 (including Climate Change) and Public Health Considerations**

Equality, environmental impact (including climate change) and public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

## **9. Conclusion**

It is recommended that a Modification Order be made to modify the Definitive Map and Statement in respect of Proposal 2a, by upgrading Parracombe Bridleway No. 5 to a restricted byway between points A – B – C – D – E – F – G, as shown on drawing number HCW/PROW/18/28a.

Should any further valid claim with sufficient evidence be made within the next six months it would seem reasonable for it to be determined promptly rather than deferred.

## **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

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

cg230919pra  
sc/cr/DMR Parracombe  
03 041119

**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:

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.  
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.  
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 (20 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.

## **B. Definition of *Ratione Tenurae* Roads**

Research into Highway Board, Rural District Council and Parish Council minutes has indicated that '*ratione tenurae*' roads were, from the late 19<sup>th</sup> century types of road expected to be used by the public, but with the adjacent landowners/occupiers of the road/lane being responsible for the maintenance of the roads. Indictment for non-repair could only be brought by and on behalf of, the public.

Section 25(2) of the Local Government Act 1894 enacted that if a person liable to repair a highway '*ratione tenurae*' failed to do so, after being requested by the district council, the council could repair the highway and recover the expenses from the person liable.

1. **Proposal 2a: Proposed upgrade of Parracombe Bridleway No. 5 from Church Lane, Churchtown to the A39 Parracombe New Road and from there along Barton Lane and Stony Lane to meet Parracombe Restricted Byway No. 30, a short distance from the county road over Parracombe Common, as shown between points A – B – C – D – E – F – G on plan HIW/PROW/18/28a.**

**Recommendation: That a Modification Order be made in respect of Proposal 2a, to modify the Definitive Map and Statement by upgrading Parracombe Bridleway No. 5 to a restricted byway between points A – B – C – D – E – F – G along Barton and Stony Lanes, between Churchtown and Parracombe Restricted Byway No. 30 on Parracombe Common, as shown on drawing no. HIW/PROW/18/28a.**

## **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. This missing link was considered by the Committee at its meeting of 4 March 2019 and it was resolved that a modification order be made to record it as a restricted byway. An order was subsequently made and confirmed for the addition of Restricted Byway No. 30, Parracombe.
- 1.1.2 From research carried out into this anomaly, the evidence discovered appeared to also suggest that Parracombe Bridleway No. 5 perhaps should be recorded with a status higher than that of bridleway.
- 1.1.3 Consequently, at its meeting of 4 March 2019 the Committee resolved that further investigation be made regarding the status of Parracombe Bridleway No. 5 in light of the evidence discovered.

## **1.2 Description of the Route**

- 1.2.1 The proposal route starts at point A at the county road, Church Lane at Churchtown and proceeds in an easterly direction past the former St Petrock's Church and Church Cottage (formerly Barton), then in a south easterly direction along Barton Lane past Lady's Well to meet the county road, the A39 Parracombe New Road (Bypass) at point B.
- 1.2.2 It restarts directly opposite on the other side of the A39 and continues generally eastwards along Barton Lane via point C to point D. From point D the route turns and proceeds generally north eastwards along Stony Lane via points E and F to point G, where it meets Proposal 2, now recorded as Parracombe Restricted Byway No. 30, at point G, a short distance from the county road, known as Chapman Burrows Road, which runs over Parracombe Down Common (point H).

## **1.3 Documentary Evidence**

### **1.3.1 Ordnance Survey mapping, 1804 onwards**

- 1.3.1.1 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'*.

- 1.3.1.2 On the Draft Drawing dated 1804 a route is shown on a similar alignment to Bridleway No. 5, the proposal route between points A – B – C – D – E – F – G and the pre-inclosure alignment of its continuation now recorded as Restricted Byway No. 30, as a through route to Woolhanger, Thornworthy, and beyond to Lynton and Lynmouth.
- 1.3.1.3 A route is shown on a similar alignment to Bridleway No. 5, the proposal route between points A – B – C – D – E – F – G and the pre-inclosure alignment of its continuation now recorded as Parracombe Restricted Byway No. 30 on the 1804 Old Series 1" to 1 mile as a through route to Woolhanger, Thornworthy, and beyond to Lynton and Lynmouth.
- 1.3.1.4 On the later 1<sup>st</sup> Edition 25" scale mapping of 1889 the proposal route, and Parracombe Restricted Byway No. 30, is shown as a continuous enclosed through-route. At that time neither the Lynton and Barnstaple Railway nor the Parracombe Bypass had been constructed.
- 1.3.1.5 On the later 2<sup>nd</sup> Edition 25" scale mapping of 1904, the proposal route, and Parracombe Restricted Byway No. 30, is again shown as a continuous enclosed through-route. By this time the railway has been constructed.
- 1.3.1.6 On the Post War A Edition of 1975 and subsequent mapping the proposal route is shown as an enclosed through-route between points A – B – C – D – E – F – G, but now split at point B by the A39, Parracombe New Road bypass.

### **1.3.2 Cary's Map, 1821**

- 1.3.2.1 Besides the Ordnance Survey, Cary was the leading map publisher in the 19<sup>th</sup> 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 9000 miles of turnpike roads in 1794.
- 1.3.2.2 A route is shown on a similar alignment to Bridleway No. 5, the proposal route between points A – B – C – D – E – F – G.

### **1.3.3 Greenwood's Map, 1827**

- 1.3.3.1 These well-made maps were produced using surveyors and a triangulation system, and are considered to be reasonably accurate. The proposal route is shown as a cross road. Rights of way are generally not shown as the map is too small scale.
- 1.3.3.2 A route is shown on a similar alignment to Bridleway No. 5, the proposal route between points A – B – C – D – E – F – G.

### **1.3.4 Parracombe Tithe Map and Apportionment, 1838-9**

- 1.3.4.1 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*'.

1.3.4.2 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.

1.3.4.3 The proposal route, Parracombe Bridleway No. 5, between points A – B – C – D – E – F is shown. It 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. This hereditament includes the northern end of Church Lane, now recorded as a county road. The section between C – D – E – F unnumbered.

### **1.3.5 British Newspaper Archive, 1824 onwards**

1.3.5.1 This is a digital database of scans of newspapers across the country. It includes local newspapers such as the Exeter Flying Post and the North Devon Journal, except for the years 1825-6 which have not survived. The newspapers included reports on the proceedings of the Magistrates Petty Sessions, Quarter Sessions and Assizes, along with those of the various district Highway Boards and Vestry's.

1.3.5.2 7<sup>th</sup> July 1859 – Parracombe Down Inclosure. 'I...Thomas Braund Irish, the valuer in the matter of the above Inclosure, do hereby give notice, that the Public Way or Thoroughfare now leading from Woolhanger and the southern part of the parish of Lynton to Parracombe, and extending from the Fordage, north of 'Venus Mires', over the Common or Down to Parracombe Lane-Head, will from Saturday, the 6<sup>th</sup> day of August next, be diverted, as at present niched out in the direction of a tenement called 'Berries', situate in the parish of Martinhoe'. This is part of the original alignment of the proposal route prior to the Parracombe Common Inclosure Award of 1862.

1.3.5.3 31<sup>st</sup> January 1867 – District Highway Board [26.01.1867]. '...The Surveyor's Report...I have given Messers Dovell and Blackmore notice to remove their gates across the highway from the point at Rook's Gate to Parracombe Common, or to put the same 10' wide; and I have also given the same parties notice to repair the said highway...William Tamlyn Surveyor'. This includes the proposal route between points A – B – C – D – E – F – G and Parracombe Restricted Byway No. 30.

1.3.5.4 14<sup>th</sup> March 1867 – Ilfracombe Highway Board. 'Surveyor's Report...The road complained of by Mr Crocombe, leading from Rook's Gate to Highley and Hollardy Estates, [Barton Lane – the proposal route between points A – B – C – D] and also towards Parracombe Common Inclosure, [Stony Lane – the proposal route between points D – E – F – G and Parracombe Restricted Byway No. 30 between points G – H] are not completed. The owners, Messers Dovell



and Blackmore, have promised to do the work to the satisfaction of the complainant and the Surveyor...William Tamlyn Surveyor’.

- 1.3.5.5 18<sup>th</sup> April 1867 – Ilfracombe District Highway Board [08.04.1867]. ‘Surveyor’s Report...Notices given to Messers Dovell and Blackmore for repairing certain roads commencing at Rook’s Gate leading past the parish church [St Petrock’s] towards Highley and Hollardy Estates, [Barton Lane – the proposal route between points A – B – C – D] and also towards Parracombe Common Inclosure, [Stony Lane – the proposal route between points D – E – F – G and Restricted Byway No.30 between points G – H] are not completed...Ordered – That summonses be taken out against Messers Dovell and Blackmore, for not repairing a certain highway in the parish of Parracombe, as per notice served from the Board’.
- 1.3.5.6 16<sup>th</sup> May 1867 – Ilfracombe District Highway Board [07.05.1867]. ‘The following was the Surveyor’s Report...The roads of Messers Dovell and Blackmore of Parracombe, are not completed. They both say they will do if more time be given them...William Tamlyn, District Surveyor...The Surveyor stated that Mr Blackmore had agreed to give him £0/0/6 per perch for forming and repairing his road, in the parish of Parracombe, which he was willing to undertake and carry out. Adopted’. This includes the proposal route between points A – B – C – D – E – F – G and Parracombe Restricted Byway No. 30.
- 1.3.5.7 4<sup>th</sup> July 1867 – Ilfracombe District Highway Board. ‘Surveyor’s Report...Messers Dovell and Blackmore of Parracombe, have repaired their roads very satisfactorily. With regard to the gates, Mr Dovell expressed a wish to have a committee from the Board to view the road, to see how far it is practicable to hang a 10’ gate across this road...William Tamlyn Surveyor...As to the gates, hung across Messers Dovell’s and Blackmore’s roads, that it stand over for consideration to the next meeting of the Board’. This includes the proposal route between points A – B – C – D – E – F – G and Parracombe Restricted Byway No. 30.
- 1.3.5.8 4<sup>th</sup> July 1867 – Ilfracombe District Highway Board. ‘*Messers Dovell and Blackmore of Parracombe have repaired their roads satisfactorily*’. This includes the proposal route between points A – B – C – D – E – F – G and Parracombe Restricted Byway No. 30.

### **1.3.6 Parracombe Common Inclosure Award, 1862**

- 1.3.6.1 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.
- 1.3.6.2 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 Stony 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 pre-inclosure alignment of Parracombe

Bridleway No. 5 and Parracombe Restricted Byway No. 30. 'Bartons' Farm is now known as Church Cottage.

1.3.6.3 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 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 on the said map adjoining a certain lane called Stoney Lane'. This set out the current alignment of the proposal route, Bridleway No. 5, between points F – G, and Restricted Byway No. 30, between points G – H as shown on the plan attached to this report. On such a route, all subjects enjoyed an equal right of vehicular passage.

1.3.6.4 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 southeast corner of point H on the Award adjacent to Parracombe Restricted Byway No. 30.

### **1.3.7 Quarter Sessions Order Books, circa 1862**

1.3.7.1 Quarter Sessions records go back a long way, and they may provide conclusive evidence of the stopping up or diversion of highways. Presentments or indictments for the non-repair of highways may also be found here and may provide strong evidence of status where they are confidently identifiable. It should be borne in mind that Quarter Session records are conclusive evidence of those matters the Court actually decided, but are not conclusive in relation to other matters. Reliance on orders alone can be misleading and evidence of completion may be required.

1.3.7.2 Those public carriage roads or highways set out in Parracombe parish which were the subject of the Parracombe Down Inclosure Award of 1862 were noted at the Midsummer Quarter Sessions of 1862 as having been viewed by 2 Justices of the Peace, had been '*sufficiently formed and completed*'. This includes part of the proposal route between points F – G, and the continuation of the proposal route which is now recorded as Parracombe Restricted Byway No. 30 between points G – H.

### **1.3.8 Quarter Sessions Deposited Plan 433: Lynton Railway, 1879**

1.3.8.1 The legal deposit of plans or public undertakings was first provided for in the 1793 Standing Orders of the House of Lords. The need for such deposits was recognised following the canal mania of the early 1790s when it became evident that canal bills were being hurried through Parliament without proper scrutiny. Thereafter, promoters were required to submit to the Lords plans of works, books of reference, and other papers before a bill was brought up from the Commons to the Lords. In 1837 an Act compelled the local deposit of plans of public undertakings with the Clerk of the Peace, and therefore available to public inspection.

1.3.8.2 Any of this type of document may provide evidence on crossed or adjacent paths, roads or tracks and therefore could be relevant as evidence in relation to the existence of Highways, particularly if the scheme was constructed.

- 1.3.8.3 The Bill was proposed on the 11<sup>th</sup> November 1878, but the scheme was never constructed.
- 1.3.8.4 The proposal route is shown as part of the road to Lynton via Thornworthy. The section affected by this railway scheme is a continuation of the proposal route. It is listed in the Book of Reference as number 5 in the parish of Lynton as an occupation road owned by MT Lock Roe and T Baker. This railway scheme was not constructed.

### **1.3.9 Quarter Sessions Deposited Plan 467: Lynton Railway, 1883**

- 1.3.9.1 This Bill was proposed on the 8<sup>th</sup> November 1883, but the scheme was never constructed.
- 1.3.9.2 The proposal route is shown as part of the road to Lynton via Woolhanger and Thornworthy. The section of the route affected by the deposited plan is between points A – B at Churchtown. It is listed in the Book of Reference as number 38 in the parish of Parracombe, a private road owned by Mr James Nott Pyke Nott. This scheme was not constructed.

### **1.3.10 Quarter Sessions Deposited Plan 474: Lynton Railway, 1886**

- 1.3.10.1 The Bill was proposed on the 13 November 1885, but was never constructed.
- 1.3.10.2 The proposal route is shown as part of the road to Lynton via Woolhanger and Thornworthy over the scheme's overview map. However, the actual plan does not show the proposed railway on that alignment, instead showing it crossing the public road to Woolhanger owned by the Ilfracombe District Highway Board and Benjamin Green Lake. This scheme was not constructed.

### **1.3.11 Quarter Sessions Deposited Plan 539: Lynton & Barnstaple Railway, 1895**

- 1.3.11.1 As referred to at paragraph 1.3.8.2, this type of document may provide evidence on crossed or adjacent paths, roads or tracks and therefore could be relevant as evidence in relation to the existence of Highways, particularly if the scheme was constructed, as in this case.
- 1.3.11.2 The Bill for the Lynton and Barnstaple Railway was passed by Parliament on the 27<sup>th</sup> June 1895, and the railway was opened on the 11<sup>th</sup> May 1898.
- 1.3.11.3 The county road, Church Lane is numbered 73 and is listed as a '*road*' in the ownership of the Ilfracombe District Highway Board and the Waywardens of Parracombe. Its continuation, the proposal route is shown between points A – B and numbered 74. It is listed as '*roads, field green waste, and watercourse*' with the road in the ownership of the Waywardens of Parracombe, and the field green waste, and watercourse in the ownership of Sally Dovell, and Charles Blackmore.
- 1.3.11.4 The northern end of Church Lane and the western end of the proposal route near point A, were the subject of road alignment diversion number 3.

### **1.3.12 Parracombe Parish Council Minutes, 1894 onwards**

- 1.3.12.1 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.
- 1.3.12.2 There are numerous references to Bridleway No. 5, the proposal route, known as the Churchtown Road, concerning the section A – B between Churchtown and the 'New Road', now the A39 Parracombe Bypass. The Parish Council repeatedly requested that it be taken over as a county road.
- 1.3.12.3 22<sup>nd</sup> October 1897. 'It was explained to the Council that the occupation road above Churchtown leading to Holworthy was in a bad state of repair. The Clerk was advised to write to the District Council...that the Parish Council call the attention of the District Council to the bad state of the occupation road, belonging to Mrs Dovell, from the railway bridge at Churchtown to the end of Long Barton...the only approach to 4 farms...almost impassable. The abrupt turn from the railway bridge into this occupation road was ...making it impossible to turn with 2 horses...a resolution was...passed 'that the District Council cause the Railway Company to make satisfactory approaches at each end of the new bridge at Churchtown, as...the east end is very dangerous'. This includes the proposal route between points A – B – C – D.
- 1.3.12.4 16<sup>th</sup> June 1902. The 'Chairman brought before the Council the dangerous condition of the fencing belonging to the Railway Company by the roadside adjoining the siding or those especially that dividing the road from Mrs Dovell's property'. The road referred to is the proposal route at Churchtown between points A – B.
- 1.3.12.5 1<sup>st</sup> March 1954. 'The Clerk was instructed to write to the Devon County Council and ask them to take over the piece of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass]. This resolution was...passed unanimously. The Clerk was told to stress that trades people and visitors to the old church use the road very considerably.' This is the proposal route at Churchtown between points A – B.
- 1.3.12.6 18<sup>th</sup> May 1954. 'It was unanimously agreed that a letter be written to the Devon County Council asking them to take over the piece of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass], pointing out that the distance is less than 200 yards, that no owners are interested in supplying the £203 [£4,845 in 2017] asked for, and stress that the road is used by tradesmen and visitors to an ever increasing extent.' This is the proposal route at Churchtown between points A – B.
- 1.3.12.7 9<sup>th</sup> August 1954. 'The Clerk read a letter from the Devon County Council, stating that as the £203 [£4,845 in 2017] asked for regarding the taking over of the strip of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass] was not forthcoming it was unlikely that the strip of road would be taken over. After some discussion Mr Latham proposed that a letter be written to the Barnstaple Rural District Council asking them to support the taking over the road, Mr Harding seconded and as the motion was carried unanimously the Clerk was instructed to write pointing out that the road was increasingly used by tradesmen

and that it was about 100 yards long.’ This is the proposal route at Churchtown between points A – B.

- 1.3.12.8 21<sup>st</sup> March 1956. At the annual parish meeting, ‘it was proposed...that the Clerk write to [Mr] Marshall Wright asking for support in getting the piece of road from the Railway Bridge to the New Road [A39 Parracombe Bypass] taken over. Agreement was unanimous’. This is the proposal route at Churchtown between points A – B.
- 1.3.12.9 20<sup>th</sup> March 1957. At the annual parish meeting ‘a motion that the Clerk write to the Devon County Council asking them to take over the piece of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass], pointing out that tradesmen would benefit not the owners of nearby property...was unanimously carried.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.10 29<sup>th</sup> May 1957. ‘The proposition by Mr Latham that the Devon County Council be asked up the suitable deads on Churchtown Road, when they had lorries in the vicinity hauling deads; the Parish Council to pay for the spreading of the deads...was carried unanimously.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.11 21<sup>st</sup> August 1957. ‘A letter was read from Mr Ayres stating that he would be the request in mind regarding Churchtown Accommodation Road.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.12 13<sup>th</sup> March 1958. ‘Mr Court proposed that the Barnstaple Rural District Council be asked for their support in trying to get the Churchtown Road taken over, also if any grant was available for the purpose. The question had come up regularly over a long period...was carried unanimously.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.13 23<sup>rd</sup> February 1960. ‘A letter was read from Mrs Jones at Churchtown Cottage complaining about the dangerous state of the road outside her cottage. The Clerk was instructed to reply that the Parish Council had for years been trying to get the road taken over. A scheme was proposed in 1954 whereby the County Council would take over the road at a cost of £406, of which £203 [£4,845 in 2017] was to be paid by owners of houses and land adjoining the road, but the scheme failed through lack of support.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.14 9<sup>th</sup> March 1960. ‘There was a general discussion regarding the stretch of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass]. No resolution was taken but all present hoped that the road may be taken over in the near future.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.15 14<sup>th</sup> March 1961. At the annual parish meeting, ‘Mr Martyn proposed that the Devon County Council be asked to take over the stretch of road from the Old Railway [Churchtown] Bridge to the New Road [A39 Parracombe Bypass]...which was carried unanimously. The Clerk was asked to write to the Devon County Council on the subject.’ This is the proposal route at Churchtown between points A – B.
- 1.3.12.16 13<sup>th</sup> March 1963. ‘Mr Latham proposed...a motion that a letter be sent to Mr Ford, asking him if the stretch of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass] could be taken over under the Agricultural Scheme. It

was all agreed that the Clerk write accordingly.' This is the proposal route at Churchtown between points A – B.

- 1.3.12.17 12<sup>th</sup> March 1964. At the annual parish meeting, 'Mr Latham proposed...that a letter be sent Mr Ford asking him if the stretch of road from Churchtown Bridge to the New Road [A39 Parracombe Bypass], could be taken over under the Agricultural Scheme. It was all agreed that the Clerk write accordingly.' This is the proposal route at Churchtown between points A – B.
- 1.3.12.18 12<sup>th</sup> March 1965. At the annual parish meeting, 'the Clerk was instructed to write to the Divisional Surveyor on the following (2) Report on the bad condition of Church Lane and ask if any good waste material could be put onto Church Town Road.' This is the proposal route at Churchtown between points A – B.
- 1.3.12.19 29<sup>th</sup> April 1968. 'On matter arising from the Parish Meeting the Clerk was instructed to write to Divisional Road Surveyor and ask for something to be done to Church Town Road.' This is the proposal route at Churchtown between points A – B.
- 1.3.12.20 17<sup>th</sup> March 1969. At the annual parish meeting, [Mr] Smith proposed...[the] 'Clerk write and see if anything can be done to road at Church Town. Carried unanimously.' This is the proposal route at Churchtown between points A – B.
- 1.3.12.21 19<sup>th</sup> April 1971. 'This meeting was called to consider the re-designation of A) a byway open to all traffic, B) a bridleway, C) a footpath... After [the] Clerk had correspondence on the matter and existing paths had been shown, the following recommendations were approved. 1) Bridle path No. 5 from railway bridge to county road A39 be upgraded to a byway open to all traffic'. This is the proposal route at Churchtown between points A – B.
- 1.3.12.22 21<sup>st</sup> March 1975. 'Mr Richards raised the question of the length of road from the railway bridge to the bypass at Church Town. Clerk instructed to write and ask Council to take over responsibility for this section of road'. This is the proposal route at Churchtown between points A – B.
- 1.3.12.23 24<sup>th</sup> July 1975. A letter was read from Mr Richards regarding the Church Town Road. The 'Chairman reported he had requested the local representative on the Exmoor National Park to investigate this matter of having the road taken over by the County Authorities'. This is the proposal route at Churchtown between points A – B.
- 1.3.12.24 29<sup>th</sup> November 1977. It was proposed 'the existing footpaths and bridleways on the Definitive Map be retained with the exception of that portion of Parracombe Bridleway No. 5 between the old railway bridge and the A39 bypass at Church Town which should be upgraded to [an] unclassified county road'. This is the proposal route at Churchtown between points A – B.

### **1.3.13 Barnstaple Rural District Council Minutes, 1893-1974**

- 1.3.13.1 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.

- 1.3.13.2 There are numerous references to Bridleway No. 5, the proposal route, 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.
- 1.3.13.3 1st April 1949. 'The District Surveyor attended the meeting and conferred with the Council on highway matters... A letter was read from the Parracombe Parish Council asking that a recommendation be made to the Devon County Council to take over a piece of road in the parish, from the Old Railway Siding at Churchtown, to the New Road, a distance at 300-400 yards. It was resolved, that the Devon County Council be recommended to take over the road in question'.
- 1.3.13.4 On a list of the routes surveyed by the Parracombe Parish Council in 1950 for inclusion on the Definitive Map, paths 5 and 6 are described as '*carriage way's, 'from Churchtown Bridge via Barton Lane, Highley Farm, and Twinford to Challacombe', and 'from Barton Lane via the Ark and Stony Lane to Chapman Burrows Road'.*
- 1.3.13.5 10<sup>th</sup> September 1954. 'A letter was read from the Parracombe Parish Council enquiring whether a strip of road from Churchtown Bridge to New Road [A39, Parracombe Bypass] could be taken over. The Council were informed that the matter had already been considered by the County Council who had expressed the view that if the owners made the road up, it might be possible to take the road over. It was resolved that the letter from the Parracombe Parish Council be forwarded to the Devon County Council with a request that the matter be further considered.' This is the proposal route between points A – B.
- 1.3.13.6 24<sup>th</sup> September 1954. 'Letters were read from the Devon County Council as follows:-... (iii) stating that the question of taking over the road from Churchtown Bridge to New Road, [A39, Parracombe Bypass] had been considered twice. The estimated cost of the necessary works was £407 [£9,713 in 2017], and it had been decided that if a contribution of £203 [£4,845 in 2017] was forthcoming, favourable consideration would be given to its adoption.' This is the proposal route between points A – B.
- 1.3.13.7 18<sup>th</sup> May 1956. 'Letters were read...from Parracombe Parish Council... enquiring whether a piece of road from the Railway Bridge to the New Road [A39 Parracombe Bypass] could be taken over...it was resolved that the letters be forwarded to the Area Surveyor for attention.' This is the proposal route between points A – B.
- 1.3.13.8 3<sup>rd</sup> April 1958. 'A letter was read from the Parracombe Parish Council... enquiring whether any grant was available for the making up of the accommodation road from Church Town Bridge to the New Road [A39 Parracombe Bypass] and whether there is any likelihood of the road being taken over by the Highway Authority. It was explained that the road in question was apparently adequate for agricultural purposes and the enquiry arose because of its use by the public at large, although no grant was available for this purpose and there was no likelihood of the County Council taking over the road in its present condition.' This is the proposal route between points A – B.

### **1.3.14 Parracombe Parish Council Correspondence, 1950 onwards**

- 1.3.14.1 These records provide information about the Council's views regarding issues in the parish, including the taking over the proposal route as a county road. 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.
- 1.3.14.2 There are numerous references to Bridleway No. 5, the proposal route, known as the Churchtown Road, 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.
- 1.3.14.3 27<sup>th</sup> March 1950. Devon County Council to Parracombe Parish Council. Accommodation Road – Churchtown, Parracombe. 'In view of the present economic situation my Council regret that there are no funds available at the present time and accordingly I am directed to inform you that no action can be taken with regard to the adoption of the above accommodation road for the time being'.
- 1.3.14.4 29<sup>th</sup> April 1954. Devon County Council to Parracombe Parish Council. Road from Churchtown Bridge to the New Road, Parracombe. 'this matter was considered by my Committee at their recent meeting, when they were informed that the estimated cost of the necessary works was £407 [£9,713 in 2017]. The amount of funds available to my Council for work of this nature is very limited, and in the circumstances, therefore, I was directed to inform you that if a contribution of £203 [£4,845 in 2017] is forthcoming, favourable consideration will be given to its adoption by the County Council. Will you kindly, therefore, get in touch with the adjoining owners and interested persons and inform me in due course whether such contribution will be forthcoming'.
- 1.3.14.5 1<sup>st</sup> June 1954. Devon County Council to Parracombe Parish Council. Road from Churchtown Bridge to the New Road, Parracombe. '*...note that the suggested £203 [£4,845 in 2017] will not be forthcoming. In the circumstances, therefore, I am afraid it is very unlikely that the Council will agree to the adoption of the road, particularly owing to the fact that the amount of funds available to my Council for work of this nature is so limited. I will, however, as requested place the matter before my Committee again at their next meeting*'.
- 1.3.14.6 13<sup>th</sup> September 1954. Devon County Council to Parracombe Parish Council. Road from Churchtown Bridge to the New Road, Parracombe. '*...I placed this matter before the Committee of my Council again as requested by you, and I am directed to inform you that it is regretted that they are unable to depart from their previous decision, namely, that consideration be given to the adoption of this road subject to a contribution of £200 being forthcoming*'.
- 1.3.14.7 20<sup>th</sup> September 1954. Devon County Council to Barnstaple Rural District Council. Road from Churchtown Bridge to the New Road, Parracombe. '*...the Parracombe Parish Council have been informed that the estimated cost of the necessary works on this length of road, which will need to be carried out before it can be considered for adoption, is £407 [£9,713 in 2017], and my Council have decided that if a contribution of £203 [£4,845 in 2017] is forthcoming, favourable consideration will be given to its adoption. The Parish Council subsequently stated that this suggested contribution could not be met and asked that the road*



*should be taken over in any case, but at a recent meeting of the appropriate Committee of my Council they decided to adhere to their previous decision’.*

- 1.3.14.8 11<sup>th</sup> June 1957. Devon County Council to Parracombe Parish Council. Accommodation Road. ‘...I will keep your request in mind when deeds are available’.
- 1.3.14.9 23<sup>rd</sup> March 1958. Barnstaple Rural District Council to Parracombe Parish Council. ‘about the accommodation road leading from Churchtown Bridge to the New Road. I will see that your letter is considered by my Council...I am afraid, however, that it may not be possible to achieve the adoption of the road as a public highway. I understand that the road is admittedly a private one and was not used (except for agricultural purposes) until the New Road was constructed and it is unlikely that the County Council would be prepared to accept it as a public highway for which they are responsible, unless and until the surface was made up to their satisfaction. This would be an expensive matter and I do not suppose the owners of properties abutting on to the road would be prepared to face the cost. However, I will let you know the Council’s view after their next meeting’.
- 1.3.15 Devon County Council Various Roads Committee minutes, 1946-55**
- 1.3.15.1 24<sup>th</sup> February 1950. ‘5<sup>th</sup> report of the Special Sub-Committee appointed to consider accommodation roads in the County which should be taken over by the Council as highways repairable by the inhabitants at large...The Clerk reported requests received for the adoption of the following roads as public highways:- ...Barnstaple Rural...Churchtown Road, Parracombe’. This is the proposal route between points A – B.
- 1.3.15.2 30<sup>th</sup> March 1954. ‘On consideration of a request from the Parracombe Parish Meeting for the taking over of this road as a highway repairable by the public, the County Surveyor reported that the estimated cost of the necessary works was £407 [£9,713 in 2017]. Recommended that the Parish Meeting be informed that a contribution of £203 [£4,845 in 2017] will be required, and that when this is forthcoming the matter be left to the Chairman with power to act’. This is the proposal route between points A – B.
- 1.3.15.3 11<sup>th</sup> June 1954. ‘On consideration of a request from the Parracombe Parish Meeting for the taking over of this road as a highway repairable by the public, the County Surveyor reported that the estimated cost of the necessary works was £407 [£9,713 in 2017]. Recommended that the Parish Meeting be informed that a contribution of £203 [£4,845 in 2017] will be required, and that when this is forthcoming the matter be left to the Chairman with power to act’. This is the proposal route between points A – B.
- 1.3.15.4 30<sup>th</sup> July 1954. ‘The Clerk reported that a letter had now been received from the Parish Meeting stating that the frontagers were unable to raise the required contribution of £203 [£4,845 in 2017] and requesting that the Council should further consider taking over this road as a highway repairable by the public. Recommended that the previous decision of the Sub-Committee be adhered to’. This is the proposal route between points A – B.
- 1.3.15.5 3<sup>rd</sup> September 1954. ‘The Clerk reported that a letter had now been received from the Parish Meeting stating that the frontagers were unable to raise the required contribution of £203 [£4,845 in 2017] and requesting that the Council

should further consider taking over this road as a highway repairable by the public. Recommended that the previous decision of the Sub-Committee be adhered to'. This is the proposal route between points A – B.

### **1.3.16 Ordnance Survey Name Books, 1903**

- 1.3.16.1 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.
- 1.3.16.2 The section of Bridleway No. 5, the proposal route, known as Barton Lane, is described as a '*3<sup>rd</sup> class road extending from a point extending 4 chains southeast of Barton [now known as Church Cottage] to a point 28½ south of Ark Cottage*'. This is the proposal route between points A – B – C – D.
- 1.3.16.3 The section of Parracombe Bridleway No. 5 known as Stony Lane is described as a '*3<sup>rd</sup> class road extending from Barton Lane to junction of road 29 chains south east of Brakebrook*'. This is the proposal route between points D – E – F – G and Parracombe Restricted Byway No. 30 between points G – H.

### **1.3.17 Finance Act, 1909-10**

- 1.3.17.1 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.
- 1.3.17.2 The proposal route, Bridleway No. 5, passes through hereditament 156 between points A – B and hereditament 80 between points E - F. It is excluded between points B – C – D – E and F – G, where it is abutted by hereditaments 46, 73, and 125. Its continuation north eastwards from point F is also excluded.
- 1.3.17.3 Hereditament 156 is Churchtown owned by Mrs Dovell. It is described as cottage, garden and green, however, on the map the cottage and garden are actually hereditament 155. The inspection notes describe hereditament 156 as an old green with a right of way over the whole green, with a deduction for Public Right of Way or User of £18.
- 1.3.17.4 Hereditament 80 is Ark Farm owned by Mr Robert Blackmore. It is described as cottage, pasture and arable land. There is an easement which is described as of a right of way to adjoining farm, for which a deduction for Public Right of Way or User of £15.

### **1.3.18 Bartholomew's maps, 1900s onwards**

- 1.3.18.1 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.

- 1.3.18.2 Bridleway No. 5, the proposal route between points A – B – C – D – E – F and its continuation now recorded as Restricted Byway No. 30, 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.

### **1.3.19 Handover Roads records, 1929-47**

- 1.3.19.1 These records are considered to be a positive indication of what the highway authority believe the status of roads included to be, and are conclusive evidence of a highway authority's acceptance of maintenance responsibility, a commitment not normally undertaken lightly. Such records were for internal use and did not purport to be a record of rights. The lack of a road's inclusion does not necessarily suggest it could not have been a public highway.

- 1.3.19.2 No part of the proposal route, Bridleway No. 5, is included.

### **1.3.20 Aerial Photography, 1946 onwards**

- 1.3.20.1 The aerial photography shows the proposal route, Parracombe Bridleway No. 5 between points A – B – C – D – E – F – G and Proposal 2, now recorded as Restricted Byway No 30 between points G – H, as one continuous route from Churchtown, Parracombe to Parracombe Common.

### **1.3.21 Definitive Map Parish Survey, 1950s**

- 1.3.21.1 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.
- 1.3.21.2 Mr TJ Barrow on behalf of the Parish Council surveyed the proposal route and Proposal 2 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*'.
- 1.3.21.3 The Survey map appears to show some indecision regarding the extent of public vehicular highway in relation to Parracombe Bridleway No. 5 and the proposal route. It appears that the extent of county road includes the section F – G – H, while Parracombe Bridleway No. 5 is shown to extend to point G. The County Surveyor has later annotated the only proposal route G – H as '*C.R.*', which is the abbreviation for '*county road*'. The section between points G – H is now recorded as Restricted Byway No. 30.

### **1.3.22 Definitive Map and Statement, 1957**

- 1.3.22.1 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.

1.3.22.2 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 [the name is incorrect – actually St Petrock'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 [formerly Ark Farm] to join the end of an Unclassified County road 450 yards north-east of Ark Cottage'.

### **1.3.23 List of Streets, 1970s onwards**

1.3.23.1 No part of Bridleway No. 5, the proposal route, is included.

### **1.3.24 Route Photographs, 2016 onwards**

1.3.24.1 The route photographs show the proposal route, Parracombe Bridleway No. 5 between points A – B – C – D – E – F – G and Proposal 2, now recorded as Restricted Byway No 30 between points G – H, as one continuous route from Churchtown, Parracombe to Parracombe Down Common.

1.3.24.2 A notice, indicating access to the A39 Parracombe Bypass via Barton Lane, Parracombe Bridleway No. 5, the proposal route, circa 1993 was situated at point A at the junction with Church Lane and Parracombe Footpath No. 14 (Centry Lane) outside the property known as Fairview.

1.3.24.3 Since the route has been visited as part of the Review, there have been small signs near points A and B stating 'Bridleway only. No unauthorised vehicles. Private access for residents'. It is not known why or when this was erected or by whom.

### **1.3.25 Land Registry, 2018**

1.3.25.1 The whole of Bridleway No. 5, the proposal route, is unregistered between points A – B – C – D – E – F, as is its continuation Restricted Byway No. 30.

## **1.4 User Evidence**

1.4.1 No user evidence has been received for the proposal.

## **1.5 Landowner Evidence**

1.5.1 Only two responses were received from affected landowners to the proposal.

1.5.2 Mr and Mrs Govier of The Ark (formerly known as Ark Farm/Cottage) have owned the property since 2012 and believe it is a bridleway. They have seen walkers daily and horse riders 3-4 times a week, and occasionally cyclists. They have a private right of way between points B – C – D – E – F – G – H. They believe there is no necessity to upgrade the proposal route from a bridleway. They have not erected any notices.

1.5.3 Mr Harrison of Church Cottage (formerly Barton) had a number of questions only regarding the proposal.

## 1.6 Rebuttal Evidence

1.6.1 No rebuttal evidence has been received.

## 1.7 Discussion

1.7.1 In considering the evidence it is necessary to consider the evidential facts in the context of the whole of the documents in which they are contained. Section 32 of the Highways Act 1980 indicates how documents should be evaluated as a whole and how the weight should be given to the facts derived from them. Once the evidence sources have been assessed individually, they are comparatively assessed as required by the balance of probabilities test.

1.7.2 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 Parracombe Bridleway No. 5, the proposal route exists between points A – B – C – D – E – F – G, though it does not preclude that other unrecorded rights may exist.

1.7.3 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.

1.7.4 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, though originally it was not entirely an enclosed lane, as part of it passed over the unenclosed Parracombe Down Common.

1.7.5 At the time of the Ordnance Survey Draft Drawings, Cary's, and Greenwood's mapping between 1804 and 1827 a route is depicted on an alignment similar to Parracombe Bridleway No. 5 and Restricted Byway No. 30, 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.

1.7.6 A requirement of the Highways Acts of 1773 and 1835, which were contemporary with the Surveyors of Highways Accounts, was that all '*common highways*' (public) had to be named in order for indictment for disrepair, the names usually reflecting places they either went to, passed or what they were like, e.g. Barton Road, Stoney Lane. As private roads were not liable in this way, they did not need to be named. A named highway may therefore carry some inference of public status. The relevant parish body would only devote time and effort if they and their parishioners believed it was a public highway for which they were responsible.

1.7.7 If any public roads were to be stopped up or declared non-maintainable, it had to be done through the Quarter Sessions. There are no references in the Quarter Sessions or other local authority records regarding these roads in Parracombe

parish, except for those relating to the highway alterations from the Parracombe Down Inclosure Award.

- 1.7.8 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 Proposal 2 between points G – H, the latter of which is now recorded as Parracombe Restricted Byway No. 30.
- 1.7.9 The first 40 metres of the proposal route between point A and Church Cottage (formerly Barton) and the northern end of Church Lane were diverted in 1895 by the construction of the Lynton and Barnstaple Railway, also enacted by Parliament. Church Lane was described as a road owned by the *'Ilfracombe District Highway Board and Waywardens of Parracombe'*, whilst the proposal route was described as a *'roads, field green, waste'* owned by the *'Waywardens of Parracombe, Sally Dovell and Charles Blackmore'*. The Waywardens, however, would only be interested in the road. The fact that this plan was actually constructed gives it greater weight than those that did not, and would have been specifically surveyed for the scheme.
- 1.7.10 The multiple ownership depicted in the 1895 Railway Plan between the Parish and private landowners is reflected in the Finance Act records which has the proposal route excluded between points B – C – D – E and F – G with the remainder included in the hereditaments belonging to Dovell and Blackmore. Though by the time of modern Land Registry, it is excluded for its entire length from adjacent landholdings.
- 1.7.11 This multiple ownership referred to in the Railway Deposited Plan between the Parish and adjacent landowners does not detract from the public vehicular nature of the proposal route or its dedication, as much of the highway network in this area of North Devon was repairable to a large extent *'ratione tenuræ'* – by adjacent occupiers.
- 1.7.12 This is supported by the Parish Council minutes from the turn of the 19<sup>th</sup>-20<sup>th</sup> centuries. The Ordnance Survey Name Books also describe the proposal route, Bridleway No. 5, known as Barton Lane between points A – B – C – D and Stony Lane between points D – E – F – G – H (including Parracombe Restricted Byway No. 30), as a *'3<sup>rd</sup> class road'*. Authorisation for the spelling was given by the District Surveyor. Meanwhile, Bartholomew's map dating from 1903 indicates it had a reputation as a road open and available to the public, albeit not recommended.
- 1.7.13 The Parracombe Parish Council since its inception in 1894 has at no time suggested that the proposal route could not be used with vehicles, and in the 1950 Parish Survey, they regarded the route as a *'carriageway used as a footpath'*, alluding to the route's historic use with vehicles. The list of public rights of way held by the Barnstaple Rural District Council from that time, describes it as a *'carriage way'* to *'Chapman Burrows Road'* and *'Challacombe'*.
- 1.7.14 The Parracombe Parish Council related records demonstrate a consistency with how they regard the proposal route as a *'carriage way'*. They have consistently considered it to be a public road to be kept by the relevant highway authority until relatively modern times, when notices appeared, possibly erected by adjacent

landowners, though none of those consulted as part of the current Review have claimed to have done so.

- 1.7.15 The section of Parracombe Bridleway No. 5 between points F – G and its continuation of Parracombe Restricted Byway No. 30, may have also been considered a county road in the 1950s. This may be the reason why there was the discrepancy on the Parish Survey map, though it is not included on either the Handover Roads Records of the same period, or on the subsequent List of Streets. It is also not known whether the 1862 Inclosure Award was consulted at that time. The Award taken with other evidence shows that the County Surveyor in the 1950s was incorrect in his amendment on the Parish Survey map, of the extent considered to be county road, which was actually between points F – G – H, not G – H.
- 1.7.16 Between 1950 and 1977, the Parish Council, and those it represented, made regular repeated requests to the Barnstaple Rural District Council to support and apply to the County Council to have the proposal route between points A – B taken over as a county road, detailing regular public use with vehicles. However, it was stipulated that adjacent landowners had to raise half the cost of the necessary works which was £203 [£4,845 in 2017], which they were unable to do. Consequently, the County Council would not take over that section due to a lack of financial resources.
- 1.7.17 The upgrade requests continued as part of an incomplete Review in the 1970s, the Parish Council proposed the upgrade of this section to a Byway open to all traffic, detailing public use in vehicles as supporting evidence. The current Parish Council supports the current proposal.
- 1.7.18 However, the refusal by the County Council to take over the section of the proposal route between points A – B, is not necessarily rebuttal evidence against a higher status than that of bridleway, rather it was a matter of whether it was considered of sufficient utility to be maintainable at public expense.
- 1.7.19 As to the question of what if any higher rights may exist, the NERC Act 2006 needs consideration. It is clear from the evidence that the exceptions relating to main lawful use by mechanically propelled vehicles, inclusion on the List of Streets, express creation for mechanically propelled vehicles, and creation of a road for use by mechanically propelled vehicles, do not apply.
- 1.7.20 What does need to be examined however, is the final exception, that of whether a right of way has been created by virtue of use by such vehicles, as there is evidence of vehicular use of the proposal route in the various local authority records. However, the majority of the references relating to mechanically propelled vehicle use date from the 1950s onwards, many years after Section 14 of the Road Traffic Act 1930 came into force on the 1<sup>st</sup> December 1930.
- 1.7.21 Lawful use of the proposal route by mechanically propelled vehicles would need therefore to be before the advent of Section 14 of the Road Traffic Act 1930 to enable the establishment of a vehicular way, a byway. Use without lawful authority of mechanically propelled vehicles, adapted or intended for use on roads, on footpaths, bridleways, and elsewhere other than roads, became a criminal offence after that date.
- 1.7.22 The historic highway authority records references before the 1<sup>st</sup> December 1930 do not mention mechanically propelled vehicles, only non-mechanically propelled

vehicles, i.e. horse and cart. Therefore, it is considered that the proposal route does not meet any of the NERC Act 2006 exceptions.

- 1.7.23 Two landowners responded to the informal consultation, but could only give information regarding the proposal route, which is currently recorded as Parracombe Bridleway No. 5 since 2012, noting use on foot, bicycle, and horse, though no user evidence was submitted in response to the informal consultation.
- 1.7.24 Issues such as necessity cannot be taken into account in the determination of the proposal. Presumed dedication is considered to have taken place many years prior to those events, and consequently the legal maxim '*once a highway, always a highway*' applies. Though no user evidence was received in relation to the proposal, evidence of user detailed in other evidential sources demonstrates the public's use of the route in all manners without any perceived issues.
- 1.7.25 Consequently, having been enacted by Parliament, the 1862 Inclosure Award is conclusive evidence regarding the public status of the section F – G, and consequently is evidence of express dedication. There is no evidence of such rights for this section having been stopped-up or diverted. Consequently, the legal maxim '*once a highway, always a highway*' applies.
- 1.7.26 With regard to the remainder of the proposal route between points A – B – C – D – E – F, presumed dedication is considered to have taken place many years ago based on all the available documentary evidence, and consequently the legal maxim '*once a highway, always a highway*' applies. Though no user evidence was received in relation to the proposal, evidence of user detailed in other evidential sources demonstrates the public's use of the route in all manners without any perceived issues.
- 1.7.27 In such a situation as this where there is a route of uncertain status existing, its status can be presumed from the highways linked to it, as set out in the case of *Eyre v New Forest Highway Board* (1892). Consequently, the evidence when considered as a whole supports access for the public to the proposal route, currently recorded as Parracombe Bridleway No. 5, of the higher status of restricted byway.

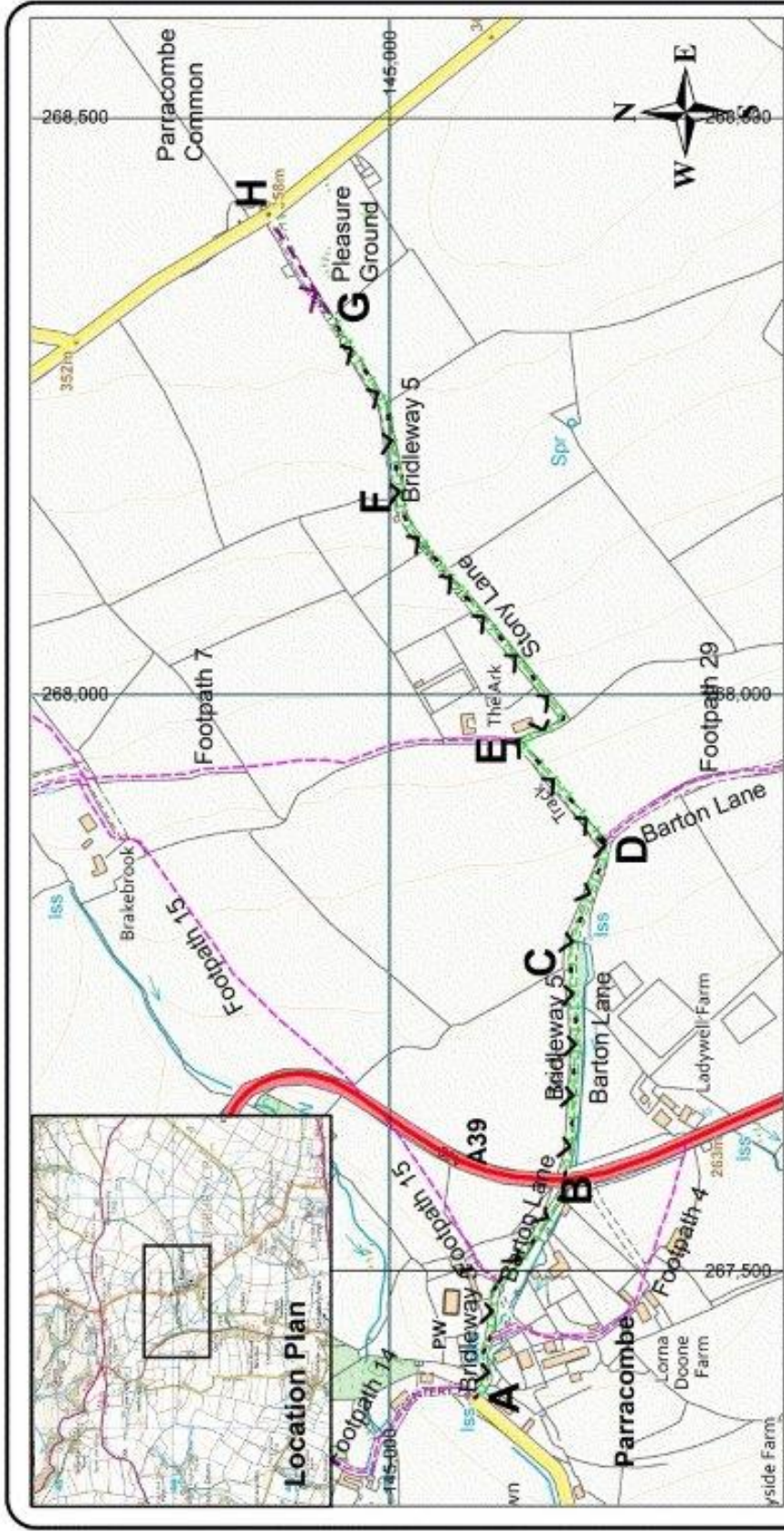
## **1.8 Conclusion**

- 1.8.1 On consideration of all the available evidence, on the balance of probabilities, the documentary evidence demonstrates that the proposal route, currently recorded as Parracombe Bridleway No. 5, along Barton and Stony Lanes between points A – B – C – D – E – F – G has existed since at least 1804. It has been open and available and appears to have been considered public since that time, and in conjunction with Parracombe Restricted Byway No. 30.
- 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 along Barton Lane, and its continuation along Stony Lane, between points F – G – H was confirmed particularly in the 1862 Inclosure Award and the 1895 Barnstaple and Lynton Railway Deposited Plan, between points A – B, as a '*public carriage road*', under the ownership of the Parracombe Waywardens, as well as the later records of the Parish Council and other local authorities. Its continuation at its north western end, Parracombe Restricted



Byway No. 30, was also set out under the 1862 Inclosure Award as a '*public carriage road*'.

- 8.1.3 In such a situation as this where there is a route of uncertain status existing, its status can be presumed from the highways linked to it, as set out in the case of *Eyre v New Forest Highway Board* (1892).
- 8.1.4 Although there has been evidence of public use by mechanically-propelled vehicles, it is after 1930, and therefore, it does not satisfy the exceptions under the Natural Environment and Rural Communities Act 2006 do not need to be considered. Thus, any unrecorded rights for mechanically propelled vehicles are extinguished. Consequently, the highest status the proposal route could be considered to be is a restricted byway.
- 8.1.5 The Parish have consistently considered it to be a public road to be kept by the relevant highway authority until relatively modern times, when notices appeared, possibly erected by adjacent landowners, though none of those consulted as part of the current Review have claimed to have erected these.
- 8.1.6 The evidence when taken as a whole is considered sufficient to show that a highway of a particular description ought to be shown as a highway of a different description. It demonstrates that the route was considered historically as an all-purpose public highway, and is considered sufficient to demonstrate that historic vehicular rights exist and consequently to record the route as a restricted byway.
- 8.1.7 It is therefore considered to be sufficient under Common Law to demonstrate that a public highway of restricted byway status exists between points A – B – C – D – E – F – G, and that consequently Parracombe Bridleway No. 5 carries higher rights.
- 8.1.8 It is therefore recommended that a Modification Order should be made to upgrade Parracombe Bridleway No. 5 to a restricted byway between points A – B – C – D – E – F – G on 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.



<p><b>drawing number</b> HCW/PROW/18/28a</p> <p><b>date</b> May 2019</p> <p><b>scale</b> 1:5,000</p> <p><b>drawn by</b> CLG</p>	<p><b>Devon County Council</b></p> <p><b>Definitive Map Review - Parracombe</b></p> <p><b>Proposal 2a - Proposed upgrade of Bridleway No. 5 along Barton &amp; Stony Lanes to restricted byway</b></p>
<p><b>Meg Booth</b> Chief Officer for Highways, Infrastructure Development &amp; Waste</p> <p><b>Devon County Council</b></p>	<p><b>Notation</b></p> <p>Proposed upgrade to Bridleway No. 5 A - B - C - E - F - G (approx 1,085 m) - - - - -</p> <p>Existing footpath - - - - -</p> <p>Existing bridleway - - - - -</p> <p>Existing restricted byway - - - - -</p>



map ref SS 6744, 6844

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**Devon County Council**  
**Definitive Map Review - Parracombe**  
**Proposal 2a - Overview Plan**

drawing number **HCWIPROW/18/28a**  
 date **May 2019**  
 scale **1:12,500 at A3**  
 drawn by **CLG**

**Meg Booth**  
 Chief Officer for  
 Highways, Infrastructure  
 Development & Waste



- Notation**
- Existing footpath
  - Existing bridleway
  - Existing restricted byway

- Proposal 2a - Proposed upgrade of Bridleway No. 5 to restricted byway
- Restricted Byway No. 30 DMMO (Proposal 2)