

Definitive Map Review Parish of Parracombe – Part 3

Report of the Director of Climate Change, Environment and Transport

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

1) Recommendation

It is recommended that a Modification Order be made to vary the particulars of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 as shown on drawing number CCET/PROW/18/27 (Proposal 1). The proposed changes are:

- deleting Footpath No. 2 between points D – E – F – G;
- adding Footpath No. 2 between points D – L;
- deleting Bridleway No. 3 between points G – H
- adding Bridleway No. 3 between points I – H; and
- upgrading Footpath No. 2 to Bridleway between points K – J – I.

2) Introduction

This report examines anomalies in the Definitive Map and Statement in the Parish of Parracombe relating to Parracombe Footpath 2, and the connection of this to Challacombe Bridleway 2.

3) Background

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

4) Proposals

Please refer to the appendix to this report.

5) 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 |
| Challacombe Parish Meeting | – no comment on this proposal |
| British Horse Society | – no comment |
| Byways & Bridleways Trust | – no comment |
| Country Landowners' Association | – no comment |

| | |
|--------------------------|--------------|
| National Farmers' Union | – no comment |
| Open Spaces Society | – no comment |
| Ramblers' | – no comment |
| Trail Riders' Fellowship | – no comment |

Responses are further detailed in the appendix to this report.

6) Financial Considerations

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

7) Legal Considerations

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

8) Risk Management Considerations

No risks have been identified.

9) 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.

10) Conclusion

It is recommended that a Modification Order be made to modify the Definitive Map and Statement in respect of Proposal 1, as shown on drawing number CCET/PROW/18/27. This entails:

- varying the alignment of part of Parracombe Footpath No. 2 from the alignment D – E – F – G to the alignment D – L (and then K – J – I)
- upgrading part of Parracombe Footpath No. 2 between points K – J – I to become Parracombe Bridleway 2
- varying Challacombe Bridleway No. 3 from the alignment G – H to the alignment I – H

11) Reasons for Recommendations

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

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Division: Combe Martin Rural

Local Government Act 1972: List of background papers

Background Paper - Correspondence Files

Date - Current

File Reference - CG/DMR/Parracombe

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Appendix I - to CET/23/47

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.

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 19th 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 1: Clarification of status of Footpath No. 2 between the A39 at its connection with Challacombe Bridleway No. 3, as shown between points H – I – J on plan CCET/PROW/18/27.

Recommendation: That a Modification Order be made to vary the particulars of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 as shown on drawing number CCET/PROW/18/27 (Proposal 1). The proposed changes are:

- deleting Footpath No. 2 between points D – E – F – G;
- adding Footpath No. 2 between points D – L;
- deleting Bridleway No. 3 between points G – H
- adding Bridleway No. 3 between points I – H; and
- upgrading Footpath No. 2 to Bridleway between points K – J – I.

1.1 Background

1.1.1 On reviewing and assessing records in preparation of a proposed diversion under delegated powers, it was identified that there is an anomaly affecting how part of Parracombe Footpath No. 2 and its continuation, Challacombe Bridleway No. 3 are recorded on the Definitive Map and Statement.

1.1.2 This anomaly has been caused by several errors which occurred when the Map and Statement were originally compiled in the 1950s-60s, particularly in relation to previous impacts arising from construction of the former railway line (completed in 1898), and especially the A39 Parracombe Bypass (as built in 1926). Of particular relevance are errors relating to:

- alignment of Parracombe Footpath No. 2 either side of the A39 Parracombe Bypass;
- alignment of Challacombe Bridleway No. 3 on the south side of the A39 Parracombe Bypass; and
- status of Parracombe Footpath No. 2 on the southeast side of the A39 Parracombe Bypass.

1.2 Description of the Proposal

1.2.1 Definitive alignment

The definitive alignment of the proposal starts at point D on Parracombe Footpath No. 2 on the north side of the A39 and proceeds generally southwards via points E and F under the A39 Parracombe Bypass embankment and across part of a field to meet Challacombe Bridleway No. 3 at the Parracombe/Challacombe parish boundary at point G. Challacombe Bridleway No. 3 continues from point G across a field to point H.

1.2.2 Used alignment

The used alignment of the proposal starts at point D on Parracombe Footpath No. 2 on the north side of the A39 and proceeds generally south eastwards across a field to a field gate at point L, where it meets the A39 Parracombe Bypass. It restarts on the south side of the A39 at point K and proceeds south eastwards along a concrete track to point J where it turns westwards along a stoney track to the Parracombe/Challacombe parish boundary at point I. The route turns southwards, negotiating a bridge and cattle grid with a bypass gate, and continuing along the stoney track to meet Challacombe

Bridleway No. 3 at point H.

1.3 Documentary Evidence

1.3.1 Ordnance Survey mapping, 1889 onwards

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'*.

On the 1st Edition 25" scale mapping of 1889 an alignment similar to that shown on the Definitive Map, currently recorded as Parracombe Footpath No. 2, as a continuous unenclosed route. At that time neither the Lynton and Barnstaple Railway nor the Parracombe Bypass had been constructed.

On the later 2nd Edition 25" scale mapping of 1904, the alignment included on the Definitive Map, currently recorded as Parracombe Footpath No. 2, is shown as a continuous unenclosed route. By this time the Lynton and Barnstaple Railway had been constructed but not the A39 Parracombe Bypass.

On the Post War A Edition 25" scale mapping of 1975 no physical route is shown.

On the smaller scale mapping dated 1933-67, the post railway and bypass alignment of Footpath No. 2 is shown as a single dashed line northwest from the A39 Bypass and a double dashed line southeast from the A39 Bypass.

1.3.2 British Newspaper Archive, 1824 onwards

1.3.2.1 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.

1.3.2.2 There are numerous newspaper reports on the new bypass road for Parracombe. However, there is no reference relating to the public rights of way affected by the scheme.

1.3.3 Parracombe Parish Council Minutes, 1894 onwards

1.3.3.1 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.

1.3.3.2 9th May 1898. 'The next business has to consider the action of the Railway Company in placing locked gates across certain public paths in the parish. Mr F Sock proposed and Mr FR Crocombe seconded 'that notice be given to the Lynton and Barnstaple Railway Company that the said Company having

blocked the public footpath from Parracombe to Challacombe at New Close and Brimballs by placing locked gates across them, the Council call on the Company to forthwith remove the obstacles – which are preventing children attending the public schools, and that stiles will not meet the requirements of the case but wicket should be placed’. The Clerk was instructed to write to the Secretary of the Company to this effect, and to say that if the Company do not immediately attend to this the Council will take further action to remove the obstruction’. This includes the route currently recorded as Parracombe Footpath No. 2 just north of point D.

- 1.3.3.3 18th October 1898. ‘A Committee consisting of Rev JF Chanter, F Widdon and J Lock, was appointed to inspect the wicket gates erected by the Railway Company at the public level crossings by order of the Council and report on same at the next meeting’. This includes the route currently recorded as Parracombe Footpath No. 2 just north of point D.
- 1.3.3.4 16th April 1925. ‘The Clerk read a letter received from Mr H Harding and Mr S Leworthy about the state of the footpath to Highley caused by the County Council in making of the New Road. After a discussion it was proposed by Mr D Knight seconded by Mr G Smyth that the Clerk write the County Council’. This is the used alignment of the proposal, currently recorded as Parracombe Footpath No. 2.
- 1.3.3.5 27th September 1958. ‘On a suggestion from the Devon County Council, a part of Footpath No. 2 from Big Bank to the Challacombe boundary was asked to be put on the Survey as a bridlepath, not as a footpath only. The Clerk to write accordingly’. This is the used alignment of the proposal.

1.3.4 Barnstaple Rural District Council Minutes, 1893-1974

- 1.3.4.1 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 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.
- 1.3.4.2 There are numerous references to the ‘*Parracombe New Road*’ now recorded as the A39 Parracombe Bypass. However, there is little information regarding the public rights of way affected by its construction.
- 1.3.4.3 23rd March 1925. Letter from Devon County Council to Parracombe Parish Council. ‘*Main Roads...I have also sent him a copy of your letter as to the condition of the footpath*’. This is the used alignment of the proposal.
- 1.3.4.4 7th May 1925. Letter from Devon County Council to Parracombe Parish Council. ‘Footpath to Highley. Referring to your letter of the 20th ultimo., addressed to the Clerk of my Council, I have to state that except for unavoidable wheel tracks on either side of the footpath to the east of the railway little damage has been done. Instructions have been given that these wheel tracks shall be filled in’. This is the used alignment of the proposal.

- 1.3.4.5 The District Council's 'List of Public Footpaths in the Parish of Parracombe' describes Footpath No. 2 as a 'short cut out of Parracombe village to Challacombe. Entrance from the Coach Road via Sunnyside and New Road. stile at Parracombe and, stile at Pixey Lane and kissing gates at Railway Level Crossing and New Road. Kept in repair by owners of property'.

1.3.5 Quarter Sessions Deposited Plan 539: Lynton & Barnstaple Railway, 1895

- 1.3.5.1 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.
- 1.3.5.2 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, as this was.
- 1.3.5.3 The Bill for the Lynton and Barnstaple Railway was passed by Parliament on the 27th June 1895, and the railway was opened on the 11th May 1898.
- 1.3.5.4 The definitive alignment of the proposal is included in plots 49 and 50, described as '*field, shed and footpath, and field and footpath*', owned by Charles Blackmore and occupied by William Jones.

1.3.6 Ordnance Survey Name Books, 1903

- 1.3.6.1 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.
- 1.3.6.2 Only Pixey Lane which carries a section of Footpath No. 2 just north of the proposal is mentioned as an '*occupation road*'.

1.3.7 Finance Act, 1909-10

- 1.3.7.1 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.

- 1.3.7.2 The definitive alignment and used alignments of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 of the proposal, pass through hereditaments 17, 78, and 89 in Parracombe, and hereditament 91 in Challacombe.
- 1.3.7.3 Parracombe hereditament 17 is Court Place owned by Mr Blackmore and occupied by several tenants. It refers to a '*footpath across some fields*' and there is a deduction for Public Right of Way or User of £25. Hereditaments 78, the Lynton and Barnstaple Railway and 89, Highley Farm, also in that parish do not have any deductions. Challacombe hereditament 91 is Twineford, owned by Earl Fortescue and occupied by S Leworthy. '*There are footpaths to Parracombe thro Ord Nos. 816 814 815 796 and 790*', and there is a deduction for Public Right of Way or User of £10. This relates to the definitive alignment of the proposal of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3.

1.3.8 Historic Photographs, 1898-1935

- 1.3.8.1 Photographs show the proposal route, currently used as Parracombe Footpath No. 2, after the construction of the Lynton and Barnstaple Railway (1895-98), and how it differed before and after the construction of the A39 Parracombe Bypass (1926). It shows that the alignment shown on the Definitive Map was altered by the road construction, and that at that time, this diversion was well used (as evident by the level of wear).

1.3.9 Devon County Council Bridges, Main Roads, & County Buildings Committee minutes, 1923-29

- 1.3.9.1 These records provide information about the Council's views regarding issues within its power and area. There is a lot of discussion about the Parracombe New Road (Bypass), now part of the A39. Whilst there is no specific mention of the public rights of way affected by the scheme, Parracombe Footpath No. 2 and Challacombe Bridleway No. 3, there is some discussion about the private approach road which they follow on the south side of the A39.
- 1.3.9.2 16th February 1923. 'Proposed new road at Parracombe. The County Surveyor submitted a plan and provisional estimate for the construction of a new road...length 2 miles – or a ½ mile more than the existing road through the village, steepest gradient 1 in 20 – as compared with 1 in 5 on old road, as shown on the plan submitted'.
- 1.3.9.3 22nd May 1925. 'Parracombe New Road – Lord Fortescue's Land. Mr Smyth-Richards, Lord Fortescue's Agent, has asked that the approach road to his Lordship's property should be maintained by the County Council. The Sub Committee have instructed the Clerk to see Mr Smyth-Richards on the subject'. This refers to the used alignment for Parracombe Footpath No. 2 and Challacombe Bridleway No. 3, part of the proposal.
- 1.3.9.4 19th July 1929. Report of Northern Division Sub-Committee. 'Parracombe Deviation. Tinnerdy Approach. The Clerk reported that the negotiations with the owner were now nearing completion but that considerable difficulty was being experienced with the tenant (Mr Tamblin) who had refused to allow

possession to be taken pending a settlement of his claim for compensation. Recommended that the tenants compensation be referred to Mr Smale and the County Surveyor, and that the County Surveyor carry out the necessary works out of maintenance funds’.

1.3.10 Fortescue Estate records, 1924-29

- 1.3.10.1 These records provide information about estate matters and contain information relating to the Parracombe Deviation Road (Bypass) construction, now recorded as the A39.
- 1.3.10.2 Various bypass construction plans show the alignment of old and new rights of way split by the road construction, but do not specifically differentiate between public and private. A number of the plans do refer to the ‘*old footpath*’ alignment – pre-road construction.
- 1.3.10.3 There is also detailed correspondence between the Estate, Devon County Council and Barnstaple Rural District Council, along with a draft copy of the conveyance regarding land required from the Blackmore Estate in order to construct a new approach way/accommodation road 9’ wide with a bridge for Twineford and Highley to the bypass road. This was to be facilitated by Devon County Council, along with the relevant works required. It was the second proposal which was constructed and completed. Initially, no route had been included in the bypass road scheme.
- 1.3.10.4 A letter dated 19th January 1928, refers to the right of way. It was from the Northern Division County Surveyor to Lord Fortescue’s agent, with which was enclosed a large scale plan of the approach road and a photograph showing the hillside before the approach road was completed. The letter stated that ‘*the photograph shews actually a very small portion of the existing pathway through the Blackmore Estate*’. Unfortunately, the photograph has since been lost, but the indication is that this is part of the used alignment of the proposal.

1.3.11 Aerial Photography, 1946 onwards

- 1.3.11.1 This shows the used alignment of the proposal for Parracombe Footpath No. 2 and Challacombe Bridleway No. 3, after the construction of the A39 Parracombe Bypass (1926). It indicates that the definitive alignment of the public rights of way was diverted by the road construction and that the current used alignment was available and well use by 1946.

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. The process used the Ordnance Survey 2nd Edition 25” scale mapping which was dated 1906.

1.3.12.2 Parracombe Parish Council described Path 2 as a 'footpath from Parracombe Valley to Challacombe Valley and farms on the way. Entrance from the Coach Road (near Christ Church) by stile through (Tuckingmill) now known as Sunnyside, stile where path joins Pixie Lane. Across old railway track by kissing gates, and on to Parracombe New Road, across this and on to Challacombe'. The map has the A39 Parracombe Bypass annotated on it, with the pre-A39 alignment also marked.

1.3.12.3 Challacombe Parish Meeting describe Path 3 as a 'footpath starting at N. Barton Road to Whitefield Barton, on to Twinford to Parracombe New Road'.

1.3.13 Definitive Map Review records, 1950s-70s

1.3.13.1 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.

1.3.13.2 16th March 1958. Mr JF Huxtable, the Chairman of the Challacombe Parish Meeting wrote to the County Council stating that *'the Draft Map and Statement for the Parish of Challacombe was inspected and the following mistakes were noted: Footpath 3 on map should be a bridleway'*.

1.3.13.3 21st March 1958. The County Council wrote to the Challacombe Parish Meeting and noted that the landowner affected by Footpath 3 had not mentioned in his recent objection *'that the path should be upgraded to a Bridleway'*.

1.3.13.4 1st April 1958. The Chairman of the Challacombe Parish Meeting wrote to the County Council stating that he had 'no evidence from maps etc that Footpath 3 should be a Bridleway, but the Meeting agreed to its being a Bridleway from long usage'.

1.3.13.5 10th April 1958. The County Council wrote to Mr Mackie, the relevant landowner, Lord Fortescue's agent, seeking confirmation as the landowner and whether they had *'any objection to [Footpath No. 3's]... designation as a bridleway'*.

1.3.13.6 11th April 1958. The County Council wrote to Parracombe Parish Council about the Challacombe Parish meeting's request that the *'path leading from Whitefield Barton northwards into [their]... Parish from Challacombe...should be shown as a bridleway throughout, and ... whether [the]... Council would agree with this'*.

1.3.13.7 18th April 1958. In an internal County Council memo, the Footpaths Assistant asked the Council's Clerk when writing to Parracombe Parish Council on the matter, he *'ask which of the two [rights of way connecting with the Challacombe route – Footpath Nos. 2 and 29] should be a Bridleway'*. It was the Footpaths Assistant opinion that *'No. 29 should be the Bridleway'*.

- 1.3.13.8 23rd April 1958. The County Council wrote to the Clerk to Parracombe Parish Council that 'it has now been pointed out to me that two paths connect with the Challacombe path in your Parish, Nos. 2 and 29. It appears to me that of the two, No. 29 should be designated a Bridleway, and I shall be glad to know whether your Council agree'.
- 1.3.13.9 29th April 1958. In a letter from the County Council to the Barnstaple Rural District Council, it was confirmed that 'the proposed modification would include reclassification as a Bridleway of Path No. 3, subject to the view of Parracombe Parish Council on the extension of this path in their Parish. I have written to their Clerk on the matter'.
- 1.3.13.10 7th June 1958. The Parracombe Parish Council replied to the County Council stating that 'regarding the path from Whitefield Barton, the Parish Council feel that No. 29 would be of little use as a bridleway. The part of No. 2 from the Challacombe boundary to Big Bank on the A39 only, is the part that the Council feel would be best as a bridleway'.
- 1.3.13.11 11th June 1958. The County Council informed the Parracombe Parish Council that it would be recommended to the County Council '*to alter part of Footpath 2 to a bridleway, as you suggest*'.
- 1.3.13.12 26th July 1963. At the Roads General Purposes Sub-Committee meeting it was recommended and resolved that Challacombe Footpath No. 3 should have its classification amended to bridleway.

1.3.14 Devon County Roads General Purposes Sub-Committee, 1960s

- 1.3.14.1 26th July 1963. The Committee resolved to upgrade Challacombe Path 3 to bridleway and upgrade the part of Parracombe Footpath No. 2 on the south side of the A39 Parracombe Bypass also to bridleway.

1.3.15 Definitive Map and Statement, 1957

- 1.3.15.1 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, or that an error may have occurred when recorded.
- 1.3.15.2 The Definitive Statement for Parracombe Footpath No. 2 is described as running from the 'Unclassified County road south of Christ Church in Parracombe continuing south-eastwards across fields to Tuckingmill (now known as Sunnyside), south-south-east along a private accommodation road (not repairable by the inhabitants at large) then across a field to Pixey Lane private accommodation road (not repairable by the inhabitants at large), follows this Lane for 75 yards then southwards across a field, the old Lynton railway track and county road A.39 to the Parish boundary 450 yards north-west by west from Highley, where it continues in Challacombe Parish as Bridleway No. 3. Bridleway south from the A.39'. The error is underlined.

1.3.15.3 Challacombe Bridleway No. 3 is described as starting at the 'County Road B 3358 at Yelland Cross and continues northwards along West Land and on to bench mark 122 on the southern side of Challacombe Common continuing north alongside the eastern side of hedgebank to a Private Accommodation Road (not repairable by the inhabitants at large) passing to the east of Twineford and continuing north across two fields to the Parish boundary where it continues in Parracombe Parish as Footpath No. 2. Also including a spur from 250 yards north-east of Twineford in a north-easterly direction to the Parish boundary where it continues in Parracombe Parish as Footpath No. 29'. The error is underlined.

1.3.15.4 On the reverse of the Statement is noted any limitations, objections and decisions. Here it is noted that objections were received from Lord Fortescue and the Challacombe Parish Meeting Chairman. It is also noted that at the County Roads Committee meeting of September 1963, the decision was made to amend part of the route and reclassify it.

1.3.16 Challacombe Estate Sale, 1959

1.3.16.1 Sales particulars should be treated with special caution, as the art of embellishment in advertising is not a newly acquired skill. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.

1.3.16.2 The proposal route is included partly within lot 6 – Twineford (also known as Tinnerdy). There is no mention of the public rights of way crossing the property, only a reference to private rights along the access track from the A39 Parracombe Bypass.

1.3.17 Route Photographs, 2016 onwards

1.3.17.1 The route photographs show the definitive and used alignments of the proposal. It shows that the definitive alignment of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 obstructed by the big bank of the A39 Parracombe Bypass between points D – E – F – G – H, whilst the used alignment is open and available between points D – L and K – J – I – H.

1.3.18 Land Registry, 2018

1.3.18.1 The land crossed by the proposal is owned by Court Place on the north side of the A39 and by Tinnerdy on the south side. The A39 is not registered, but ownership is believed to lie with Devon County Council.

1.4 User Evidence

1.4.1 No user evidence has been received in relation to the proposal.

1.5 Landowner Evidence

1.5.1 Only one of the landowners responded to the informal consultation.

1.5.2 Mr and Mrs De Dieu of Tinnerdy (formerly known as Twineford) have owned their property since 1998 and agree with the alignment variation. The used alignment has been accepted by landowners and the public and uses a well maintained track with appropriate furniture for the public users. The A39 road crossing has good visibility.

1.5.3 To reinstate the pre-1926 definitive alignment would require considerable expense with the river crossing requiring a fording/bridging point, as well as disturbing damp meadow wildlife. Users would also have to negotiate the steep banks on either side of the A39 Parracombe Bypass.

1.6 Rebuttal Evidence

1.6.1 Verbal objection has been received from Mrs Grob of Court Place, regarding the A39 Parracombe Bypass crossing, which users are required to negotiate.

1.6.2 No written rebuttal evidence has been received.

1.7 Discussion

1.7.1 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 The current proposal has two key elements:-
(a) the alignment of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3; and
(b) the status of Parracombe Footpath No. 2 south of the A39 Parracombe Bypass.

1.7.3 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's used alignment has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, though it does not preclude that other unrecorded rights or errors may exist. The definitive map currently shows an unusable alignment recorded as Parracombe Footpath No. 2 and Challacombe Bridleway No. 3. This runs between points D – E – F – G – H. The used but unrecorded alignment runs between points D – L and K – J – I – H.

1.7.4 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's used alignment 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.

- 1.7.5 Common Law. On consideration of the proposal at common law, the historical documentary evidence demonstrates the used alignment's physical existence, and the availability of this since circa 1926. It is shown in a similar manner to other recorded public highways. The documentary evidence also demonstrates that the definitive alignment has been unavailable since that time.
- 1.7.6 Parracombe Footpath No. 2 and Challcombe No. 3 alignment. The Ordnance Survey mapping and historic photographs show how these public rights of way were first altered by the construction of the Lynton and Barnstaple Railway opened in 1895, to the alignment D – E – F – G – H, as enacted by Parliament, and later the A39 Parracombe Bypass in 1926 to the alignment D – L and K – J – I – H.
- 1.7.7 The minutes of the Parracombe Parish Council, Barnstaple Rural District Council, and Devon County Council show detailed discussions took place regarding the Parracombe bypass scheme construction between 1923 and 1926. It is also clear from these records and those of the Fortescue Estate, that not all details of the scheme were set out at the beginning. This included the approach road to Lord Fortescue's property of Twineford, now Tinnerdy, which the used alignment of the proposal follow between points K- J – I – H. The rights of way were acknowledged as being affected by the road scheme, though no detailed information about their diversion from the alignment D – E – F – G – H to D – L and K – J – I – H, appears to have survived.
- 1.7.8 When the Parish Surveys were carried out for the compilation of the Definitive Map in 1950, the most recent complete mapping for the county was the Ordnance Survey 2nd Edition, which unfortunately by that time was nearly 50 years out of date, as later mapping had been destroyed in the Second World War bombing of Exeter. This meant that the Parishes were unable to annotate the Survey Maps with the correct alignment. To compound this, their Survey Forms lacked helpful detail. However, the contemporary RAF aerial photography of the 1940s clarifies the situation regarding the right of way alignment in use at the time the Definitive Map was compiled, which was the used alignment of D – L and K – J – I – H. It appears from the Definitive Map compilation records that no site visit took place at that time, as otherwise the alignment error would have certainly been noticed, and perhaps also the classification error.
- 1.7.9 Parracombe Footpath No. 2 and Challcombe No. 3 status. On the publication of the Draft Definitive Map, the Challacombe Parish Meeting Chairman objected to the inclusion of Path 3 on the basis it was shown at the wrong status. The Chairman claimed that it had apparently been long used as a bridleway. Parracombe Parish Council were consulted regarding the continuation in their parish, and which right of way should be upgraded, either Footpath No. 2 or 29. It appears that they chose Footpath No. 2, as it was a more direct route to the A39 Parracombe Bypass, though the Devon County Council Surveyor preferred Footpath No. 29.

- 1.7.10 The amendment was approved by the County Roads Committee in July 1963, but for unknown reasons, the matter was not progressed and the section of Parracombe Footpath No. 2 on the south side of the A39 was not upgraded. The copies of the Modified Draft Map and the Provisional Map have not survived, but as the section of the footpath south of the A39 is not currently shown as a bridleway on the current Definitive Map, it is assumed that the amendment was not carried out as intended.
- 1.7.11 Current landowner evidence dates back 25 years and acknowledges and accepts the used alignment of the proposal. The Parracombe Parish Council supports the proposal and the Challacombe Parish Meeting has no objection.

1.8 Conclusion

- 1.8.1 On consideration of all the available evidence, on the balance of probabilities, the documentary evidence demonstrates that the definitive alignment of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 between points D – E – F – G – H in the vicinity of the A39 Parracombe Bypass was recorded in error when the Definitive Map was compiled in the 1950s. This seems to be due to the out of date mapping that was used in that exercise (dating from 1906, prior to construction of the Bypass). The proposal route between points D – L and K – J – I – H, the alignment used since 1926 when the A39 Parracombe Bypass was constructed, has been open and available and appears to have been considered public since that time.
- 1.8.2 During the Definitive Map compilation process, an objection was received regarding the status of path 3 in Challacombe and it was accordingly upgraded from footpath to bridleway (Challacombe Bridleway 3). However, this change also required the upgrade of its continuation in Parracombe parish, which was proposed as Footpath No. 2. The County Roads Committee decided this should happen, but the change was not completed.
- 1.8.3 It is therefore considered to be sufficient under Common Law to demonstrate that an alignment error occurred in the recording of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 on the Definitive Map; and that this should be recorded between points D – L and K – J – I – H, rather than D – E – F – G – H.
- 1.8.4 It is also considered to be sufficient under Common Law to demonstrate that the upgrade approved by Devon County Council's County Roads Committee of Parracombe Footpath No. 2 between points K – J – I should also be progressed as intended in 1963.
- 1.8.5 Consequently, it is recommended that a Modification Order should be made to vary the alignment of Parracombe Footpath No. 2 and Challacombe Bridleway No. 3 from the alignment of points D – E – F – G – H to the alignment between points D – L and K – J – I – H, and upgrade that part of Parracombe Footpath No. 2 between points K – J – I to a bridleway on the Definitive Map and Statement, as shown on drawing no. CCET/PROW/18/27 (and as summarised in the table below). If there are no objections, or if such objections are

subsequently withdrawn, this should then be confirmed.

| Path No. | Current | Proposed |
|--|---|------------|
| Parracombe Footpath No. 2 | D – E – F - G | D – L* |
| Challacombe Bridleway No. 3 | G - H | I - H |
| Parracombe Footpath No. 2 to upgrade to Parracombe Bridleway No. 2 | Used alignment of K – J – I but not shown on the Definitive Map | K – J – I* |

* N.B. If an Order is made L – K is not applicable as this public highway (A39) and will be the respective start/end points for Parracombe Footpath No. 2 and Parracombe Bridleway No. 2.

Proposal 1

Looking north towards point G in the bypass embankment.



Looking at the crossing point (E – F) if you attempted to follow the definitive alignment.



Looking at point L from point K at the A39 Parracombe Bypass.



At point L looking northwards towards point D.



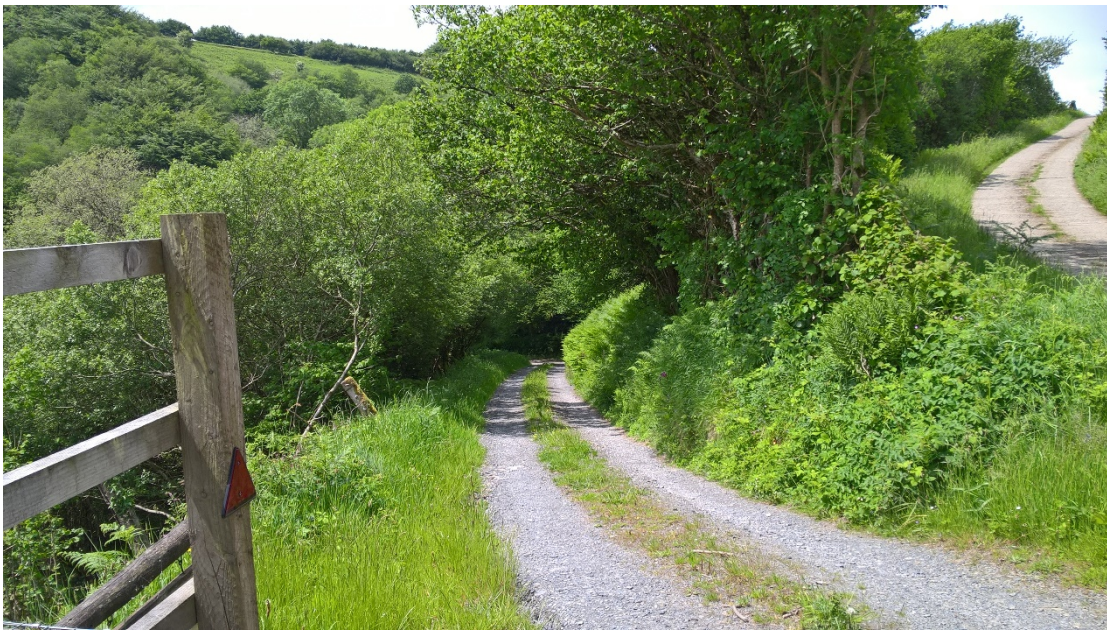
Looking northwards from point H along the track towards point I at the parish boundary.



Looking southwards from the parish boundary at point I, at the bridge, cattle grid and bypass gate and point H beyond.

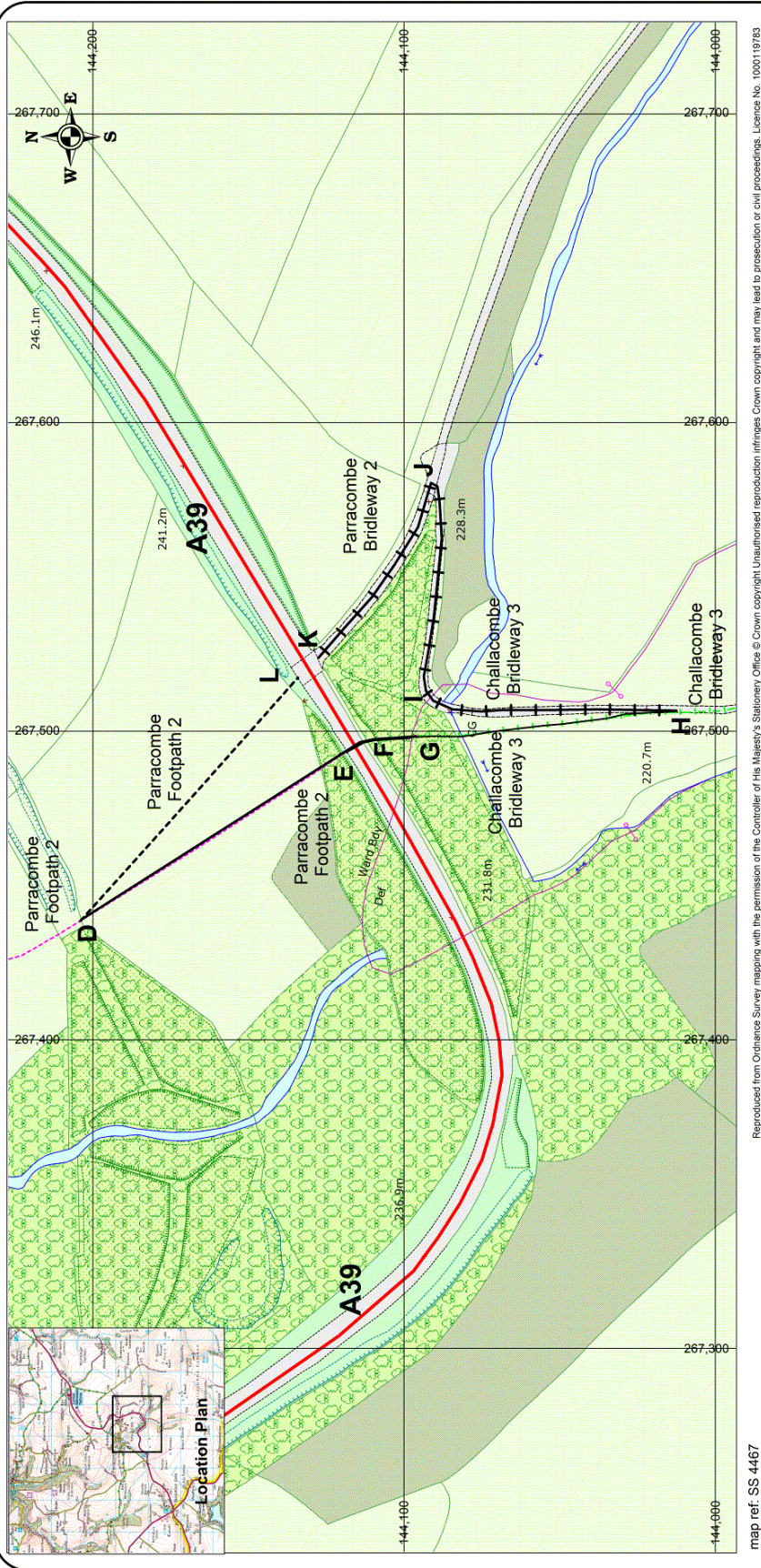


At point J looking westwards towards point I at the parish boundary.



Looking north westwards from point J towards point K at the A39 Parracombe Bypass.





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Devon County Council
Definitive Map Review - Parracombe
Proposal 1: Proposed alignment variation and upgrade of part of Parracombe Footpath No. 2
and alignment variation of Challacombe Bridleway No. 3 near the A39

drawing number CCET/PROW/18/27
date April 2023
scale 1:1,250 at A3
drawn by CLG

Notation

- Footpath No. 2 proposed deletion
- Bridleway No. 3 proposed deletion
- Footpath No. 2 proposed addition
- Bridleway No. 3 proposed addition
- Footpath No. 2 proposed and upgrade
- Bridleway No. 3 proposed and upgrade

- D - E - F - G (approx 130m)
- G - H (approx 86m)
- D - L (approx 106m)
- I - H (approx 81m)
- K - J - I (approx 140m)

Meg Booth
Director of
Climate Change,
Environment & Transport

