

**Definitive Map Review 2019  
Parish of Broadhembury**

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 no Modification Orders be made in respect of Proposals 1, 2 and 3.**

**1. Introduction**

This report examines three proposals arising out of the Definitive Map Review in the parish of Broadhembury in East Devon district, including two Schedule 14 Applications made prior to the Review.

**2. Background**

The original survey by Broadhembury Parish Council in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 produced a map and details of 18 footpaths and 3 bridleways submitted to the County Council. Comments were added on behalf of Honiton Rural District Council. A fourth bridleway route was added by the Parish Council in 1958. Eight of the footpath routes surveyed were withdrawn or omitted or described as not required. The remaining fourteen routes were recorded for consultations at the Draft Map stage in 1957 and for the Provisional Map, which were then recorded on the original Definitive Map, considered as having existed from the relevant date of 1st September 1957.

The reviews of the Definitive Map under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced no valid proposals from the Parish Council with evidence, although suggesting an amendment by alteration to a recorded route.

The Limited Special Review of Roads Used as Public Paths (RUPPS), also carried out in the 1970s, did not affect this parish.

The following orders have been made and confirmed:

Honiton Rural District Council (Broadhembury No. 17) Public Path Extinguishment Order 1973, Kentisbeare boundary to Loyalty Hall

East Devon District Council (Broadhembury) Public Path Creation Order 1979, now Bridleway No. 24, Broadhembury

East Devon District Council (Broadhembury) Public Path Extinguishment (part) Order 1979, Bridleway No. 2, Broadhembury

East Devon District Council (Broadhembury No. 20) Public Path Diversion Order 1994

East Devon District Council (Broadhembury No. 21) Public Path Extinguishment Order 1994

East Devon District Council (Broadhembury No. 21) Public Path Creation Order 1994

Devon County Council Footpath no. 4 Broadhembury) Public Path Diversion Order 1995

Devon County Council (Bridleway No. 1 Broadhembury) Public Path Diversion Order 1995

Devon County Council (footpath No. 16 Broadhembury) Public Path Diversion Order 1995

Legal Event Modification Orders will be made for these changes under delegated powers in due course.

The current review began in January 2019 with a public meeting held in the Memorial Hall, Broadhembury, which was advertised in the parish, in the local press and online.

### **3. Proposals**

Please refer to the Appendix to this report.

### **4. Consultations**

General consultations on the applications were carried out in June-September 2019 with the following results:

County Councillor Ian Chubb	-	no comment;
East Devon District Council/AONB	-	no comment;
Broadhembury Parish Council	-	comments included on specific proposals
Country Land and Business Association	-	no comment;
National Farmers' Union	-	no comment;
Trail Riders' Fellowship/ACU	-	no comment;
British Horse Society	-	no comment;
Cycling UK	-	no comment;
Ramblers	-	no comment

Specific responses, including from the owners of the land affected, 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 preparing 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 or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

## **9. Conclusion**

It is recommended that no Modification Orders be made in respect of Proposals 1, 2 and 3, as the evidence is considered insufficient to meet the requirements of the legislation. Details concerning the recommendations are discussed in the Appendix to this report.

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 East Devon district area.

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

### **Electoral Division: Whimble & Blackdown**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Thomas Green

Room No: ABG Lucombe House

Tel No: (01392) 382856

Background Paper	Date	File Ref.
Correspondence File	2000 to date	TCG/DMR/BHEMB

tg161019pra  
sc/cr/DMR Parish of Broadhembury  
03 041119

## **A. Basis of Claims**

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 56(1) states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein, but without prejudice to any question whether the public had at that date any right of way other than those rights.

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

Section 69 of the Natural Environment and Rural Communities Act 2006 (NERC) amended the Highways Act 1980, to clarify that a Schedule 14 application for a Definitive Map Modification Order is, of itself, sufficient to bring a right of way into question for the purposes of Section 31(2) of the Highways Act 1980, from the date that it was made.

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 lawful 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.

**1 Proposal 1: Schedule 14 application – upgrade Bridleway No. 22, Long-Go Lane, to Byway Open to All Traffic, a length of 1,310 metres, between points A-B-C shown on drawing no. HIW/PROW/19/25**

**Recommendation: It is recommended that no Modification Order be made in respect of Proposal 1.**

**1.1 Background**

- 1.1.1 In November 2005 the Trail Riders Fellowship submitted a Schedule 14 Application to the County Council for the upgrading of Bridleway No. 22, Broadhembury to a Byway Open to All Traffic (BOAT), supported by maps as documentary evidence and ten user evidence forms. This was one of a number of Schedule 14 applications made by local representatives of the Trail Riders Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20<sup>th</sup> January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.
- 1.1.2 This application was made after 20th January 2005 and also was not fully compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received, the claim was included in the parish review as made, for the upgrading of a recorded bridleway to a BOAT. As there are limited other exceptions in which vehicle rights may be preserved it would be likely that, subject to sufficient evidence, the route could only be upgraded to a restricted byway.

**1.2 Description**

- 1.2.1 The application route is that of Broadhembury bridleway no. 22. It starts at the end of the Unclassified County Road in Long-Go Lane (point A) and proceeds north-eastwards along the lane for approximately 1,100 metres, turning south at the end of the lane (point B) to continue for approximately 200 metres to the junction with the County Road near Hanger Lane (point C).
- 1.2.2 The route is hedged on both sides throughout and passes several small copses of woodland and has multiple access gates leading onto adjacent farmland. There are no gates present across the route at the current time, or indeed any other obstructions to the route. The surface of the track is compacted flint/gravel which has grassed over in the middle strip in places. The route appears to have been maintained by landowners in places to improve access for agricultural vehicles.

**1.3 The Definitive Map process**

- 1.3.1 The application route was not initially included in the survey of paths on behalf of the Parish Council in 1950 to put forward for recording as public rights of way on the Definitive Map. Following the publication of the Draft Map in 1957 the Parish Council lodged an objection stating that the bridleway had been omitted during the original survey. An objection was made by the landowner, Mr Gundry, but was later withdrawn and the route was finally recorded as a bridleway on the original Definitive Map published in 1966. Following the objection by Mr Gundry the Parish Council

collected user evidence forms for the route and these are discussed in the user evidence section below.

## 1.4 Documentary Evidence

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

Early historical maps at smaller scales, particularly the Ordnance Survey drawings and 1<sup>st</sup> edition map, show the route leading north east out of Broadhembury village, starting in the vicinity of the junction of the road leading to Bowerwood. It continues in the same manner, turning a right angle at the junction (point B on the map) and leading south east towards Polams Corner (Pothams on the later tithe map), which is today called Lane End Farm.

### 1.4.2 The track is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing. It is shown on the 1<sup>st</sup> edition map in the same way. It is noted that the location of Hembercombe (shown as *Hembercomb* on the 1809 map) appears to be incorrect, being in the location of what is shown on later maps to be Hanger Farm.

It is also shown similarly on Greenwood's 1827 map, believed to have been mainly copied from earlier Ordnance Survey map editions.

### 1.4.3 Later 19<sup>th</sup> century historical mapping: Broadhembury Tithe Map 1843 & Apportionment 1841; Ordnance Survey 25"/mile late 1880s

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Roads were sometimes coloured and colouring can indicate carriageways or driftways. Public roads were not titheable. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the routes shown. Public footpaths and bridleways are rarely shown as their effect on the tithe payable was likely to be negligible. Routes which are not included within an individual apportionment are usually included under the general heading of 'public roads and waste'.

### 1.4.4 Broadhembury Tithe Map & Apportionment 1843

The route is shown on the Tithe Map for Broadhembury parish, produced in 1843, as an enclosed track on the same route as exists today. Roads were not labelled or identified in the Apportionment as public and included those which were obviously public, as well as others more likely to have been private tracks for access to fields and some not now existing. In this case the whole of the application route is shown to physically exist in the same manner as it does today. No roads are coloured or shaded on this tithe map.

### 1.4.5 Ordnance Survey 25" to a mile 1<sup>st</sup> edition map

Surveyed in 1887, this map shows all of the claimed route as an enclosed track, briefly shown as a single-pecked line but then as a double-pecked line throughout the rest of the route. It starts at the junction with the private accommodation road leading to Bowerwood and proceeds north eastwards, passing south of a small pond, Marlpit Copse and Little Moor Copse. It turns right at what is shown as a cross roads and heads south south-east towards the River Tale and Hanger Lane.

- 1.4.6 There are no gates or other obstructions annotated on the claimed route apart from what appears to be a small stream flowing across it at Little Moor Copse. This stream is still present today but is now piped under the lane.
- 1.4.7 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows Long-Go Lane as an unmetalled track as a continuation from the third class metalled road at Wood Lane heading north east. It turns right at the cross roads and continues south south east towards Stafford Barton. It is depicted in the same way as other roads that are now public roads as well as others that are now private roads.
- 1.4.8 Broadhembury Vestry Minutes  
Prior to the formation of District Highway Boards in the early 1860s, and the later Rural District Councils (1894), the responsibility for the maintenance of public highways generally belonged to the parish and was discharged by locally elected Surveyors of Highways. Vestry minutes from Broadhembury covering the period 1823 to 1889 are held by the South West Heritage Centre.
- 1.4.9 An entry in the Broadhembury Vestry Minutes dated 25<sup>th</sup> January 1827 appears to suggest that at that time the short section of the claimed route between points B and C was considered to be a public road. The entry states: *'It is unanimously agreed for the Waywardens to put the road leading from Stafford to Moor Gate in repair so as to make it passable, and not the other Road through Common as agreed at the last meeting – and to turn the water inside John Granger's hedge.'* Moor Gate seems to relate to the gate depicted on the 1<sup>st</sup> and 2<sup>nd</sup> Edition Ordnance Survey 25 inch to the mile maps halfway up the hill near where the track enters the open common, near a property called Moor (which is no longer in existence). It is also close to Moor copse and Little Moor Copse. Investigations have not identified any other locations in this parish that could be the 'Moor Gate' referred to.
- 1.4.10 A later entry in the minutes dated 14<sup>th</sup> April 1841 contains a copy of a road maintenance contract with a list of roads with mileages attached. One road on the list is: *'From Stafford Green to Moor Gate'* and it is listed as being three quarters of a mile and 107 yards in length. This distance converts to 1,335 metres. When measured on modern digital mapping the distance between the Stafford junction and the location of Moor Gate is 1,303 metres. This seems to help confirm that the location of Moor Gate has been correctly identified, as well as suggesting that the road was still considered public at this date.
- 1.4.11 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the claimed route in the same way as in the 1<sup>st</sup> edition map. It shows the route as an enclosed track, briefly shown as a single-pecked line but then as a double-pecked line throughout the rest of the route. The same later maps were used as the basis for the 1910 Finance Act survey to ascertain the value of land for the purpose of taxation, copies of which were submitted with the additional material for the applications. The map shows the claimed route to have been excluded from surrounding hereditaments (assessment areas of land) throughout.
- 1.4.12 The application route is adjacent to plots 3, 6, 51, 102, 103 and 108. Plots 3 and 51 have no deductions for rights of way and neither mentions the application route at all. Plot 6 is recorded as Bowerwood Farm and has a deduction of £50 for rights of way, which is recorded as crossing ordnance compartment numbers 688, 684, 652 and 687. This tallies with the current Footpath 4. Plot 108 is included within the Grange Estate. There are deductions recorded for hereditaments at other locations in the

parish but not for the plot of land adjacent to the application route. There is no mention of the application route in the entry. Plots 102 and 103 are recorded as a joint entry for Hembercombe Farm, having a deduction of £25 for a right of way across ordnance compartment numbers 729 and 730, again relating to the current Footpath 4. It is also recorded that there are 'no common rights' rather than merely leaving this section blank. There is no reference to the application route in the entry.

#### 1.4.13 Grange Estate sale plans 1902, 1903 and 1920

The entirety of the application route is shown on several sale plans of the Grange Estate produced in the early 20<sup>th</sup> century. In the 1902 plan it is shown coloured pink within land shown as for sale; public roads appear to be coloured yellow on this plan. On the 1903 plan the application route is uncoloured and excluded from coloured sale plots adjacent to it; again, public roads appear to be shaded yellow. In the 1920 plan the application route is shown uncoloured, as are all the other roads on the plan.

#### 1.4.14 Parish Council minutes

Minutes of the Broadhembury Parish Council are kept within the parish and cover the period from the 1894 up until they were digitised and published online in 2014. They vary in quality and detail, with early entries being particularly brief.

1.4.15 Broadhembury Parish Council minutes in 1934 contain a list of what may have been considered then to be public footpaths in the parish. It appears to have been drawn up by the Parish Council in response to the provisions introduced by the Rights of Way Act 1932. The Act established the process for the statutory presumption of dedication of public rights of way that went on to be included in subsequent and current Highways Act provisions. It also introduced the procedure for landowners to show that they did not intend to dedicate additional public rights other than those that they agreed or admitted were public. No part of the claimed route appears in the 1934 list. The list contains several paths in the vicinity of Long-Go Lane, for example 'Hanger to Sheldon Road', some of which are now recorded rights of way. There does not appear to be any item on the list that could be construed to be the claimed route.

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

1.4.17 Several entries in the minute books in 1957-8 record discussions concerning the inclusion of Long Go Lane on the Definitive map. These are discussed in further detail in the definitive Map Review section below. A summary of the results of user evidence collected by the Parish Council is also discussed below in the user evidence section. Copies of the entries are also included in the backing papers.

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

Maps at smaller scales from the earlier 20<sup>th</sup> century, particularly by Ordnance Survey and Bartholomew's map editions from 1910 to the later 1940s, show the claimed route as an uncoloured or white road. Bartholomew's explanatory notes states that '*the uncoloured roads are inferior and not to be recommended to cyclists*'. The

Ordnance Survey mapping shows the route in much the same way as in earlier editions, though the 1960 One Inch edition shows the northern section with a dashed line on the northern side and a line across the route at the Bowerwood end, presumably to indicate a gate or other obstruction.

1.4.19 Later Ordnance Survey 'A' edition larger-scale mapping from 1949 to 1968, around the time that the Definitive Map was being drawn up, shows the route in a very similar manner to earlier editions. Some of the maps show a pecked line on some or all of the northern boundary, as referred to in the previous paragraph, along with a line across the route at the cross roads where it turns to the south east.

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

1.4.21 Highway maintenance records/Handover maps

Highway maintenance records from the 1960s and 1970s show that the application route was not at that time considered to be maintainable at public expense. The application route is left uncoloured and there are no notes or annotations relating to it. These maps did not show footpaths and bridleways, only public roads.

1.4.22 Aerial photography

Earlier RAF aerial photography from 1946–9 shows the application route in much the same manner as it exists today. The southern part of the route appears to be surfaced in some manner. The remainder of the route is not so clearly depicted due to tree cover but does seem to be hedged and there are glimpses of what appears to be a surfaced track. No obstructions are visible, but the tree cover and quality of the image does not allow this to be determined with any degree of certainty.

1.4.23 More recent aerial photography from 1999-2000, 2006-7 and 2015-17 shows the application route in much the same way as it exists today. The track is clearly surfaced where visible and no obstructions are visible. There is some tree cover obscuring the route, in places completely, making it impossible to state this with absolute certainty.

1.4.24 British Newspaper Archives

No articles relating to this route were found in the British Newspaper Archives.

## 1.5 Definitive Map Reviews and Consultations

1.5.1 The application route was initially not put forward for inclusion on the Definitive Map when the Parish Council carried out their survey in 1950. The Parish Council subsequently lodged an objection to the draft map with Devon County Council dated 30<sup>th</sup> April 1958, claiming that the bridleway had been omitted and it was accordingly added and appeared on the published Definitive Map in 1966. A landowner, Mr Gundry, lodged an objection to the proposal to add the route. The Parish Council subsequently collected user evidence forms (discussed below) and challenged the objection. Mr Gundry then withdrew the objection, leading to the inclusion of the route as a bridleway on the Definitive Map.

1.5.2 There has been one previous suggestion that the application route should be considered for recording with a higher status. A letter sent by the Broadhembury

Parish Clerk in 1971 stated that *'No. 22 joins the county roads, and although not suitable for all traffic – is used for farm traffic and seems to be more than a bridleway'*. This letter appears to have been sent following the review of the definitive map that was started in 1968 but not finished. No reply or further correspondence relating to this letter has been found, despite a note on the letter stating that a reply had been sent. The letter does not contain any explanation for the reasons behind this belief.

- 1.5.3 A further review in 1978 was started but not completed. The application route was not mentioned by the Parish Council in correspondence with Devon County Council during this review.

## **1.6 User Evidence**

- 1.6.1 Four user evidence forms were received with the Schedule 14 Application completed in 2005 and covering a period in excess of 20 years. However, any user evidence dating from 1966 or later, when the route was recorded as a public bridleway, would be unlawful (under the Road Traffic Acts of 1930 and 1988), unless with the permission of the landowner. Following the passing of the Natural Environment & Rural Communities Act in 2006, motor vehicle user evidence can no longer be used as evidence to support the creation or upgrading of a public right of way to a byway open to all traffic.
- 1.6.2 Discounting the evidence of use on vehicle, some additional information regarding the route was recorded on these forms. Three of the forms answered no to the presence of stiles, gates or other obstructions as well as notices. The remaining form left this section blank. All four forms state that the path has always run over the same route and never been diverted. The answers given as to why they think the path is public (it must be presumed they understood this to mean public vehicular rights) vary: one states simply 'always has been'; one states 'DCC signs' but does not any further details of which signs; one states 'shown as a through road on 1911 Bartholomew's Map'; and the final one states 'tarmac to tarmac + evidence' but does not give any further clarification of what evidence.
- 1.6.3 During informal consultations four further user evidence forms were, covering the period 1978-2019. All four users claim use on foot, with two stating use on horseback also and one use on a bicycle on two occasions, and the frequency of use ranges from daily to 7-10 times per year. Forms and maps are included in the backing papers and are summarised below. Such use is consistent with the route's current status as a bridleway.
- 1.6.4 A form from Daya Rees (a Broadhembury Parish Councillor) records use for 13 years. She does not specify which years but it seems probable that she is referring to the 13 years prior to completing the form – 2006-19. She records her use as being on foot, for pleasure and as part of a circular walk along the claimed route and returning to Broadhembury past Lane End Farm and Stafford Barton. She states that 'occasionally gates closed for moving cattle' but that there have been no other obstructions to the route. She states that she believes the path to be a restricted byway.
- 1.6.5 A user evidence form was also completed by Chris Dunford, who has previously been the Parish Paths Partnership (P3) footpath warden for Broadhembury Parish. She states that she has used the path 7-10 times per year between 1978 and 2018 for 'exercise'. While she states that she used the route on foot she does note that she has used the route twice on a bicycle. Again, such use is consistent with the route's current recorded status as a bridleway. In further comments supplied with her form

she notes that Long Go Lane would have been used for many centuries to drive stock to graze on the commons and moor land on the top of the hill and *'I think that this tradition is what has led to the belief which I encountered, particularly in discussions on Long Go Lane and Wilderness Lane, that vehicular use of these lanes was solely for agricultural purposes'*.

- 1.6.6 A user evidence form was completed by a Mrs L Tancock of Annex, Bowerwood Farm. Bowerwood Farm is one of the landowners adjacent to the application route and a landowner evidence form has been received and is discussed below. Mrs Tancock states that she has used the route on foot and on horseback since 1995, at least 325 times per year for the purpose of pleasure. She states that there have never been any gates or other obstructions on the route and has circled both footpath and bridleway as the believed status of the route.
- 1.6.7 A form was submitted by S Alder claiming use on foot and horseback from 2008 to the present, at a frequency of 20 times per year. The route is believed to be a bridleway and has been used as of right during that time, with no obstructions encountered.
- 1.6.8 During the Definitive Map process in the 1950s an objection was made by Mr Gundry (the landowner) to the recording of Long-Go Lane. The Parish Council decided to continue with their claim to record the route and collected 54 user evidence forms. These forms have not been found but were summarised in the Parish Council minutes dated 29<sup>th</sup> March 1958 – *'Those forms revealed that there were 9 witnesses who had known, and mostly used, the lane over 60 years, 9 over 50 years, 7 over 40 years, 15 over 30 years, 10 over 20 years and 4, 10 years or under who make considerable use of it. 6 witnesses had ridden horseback, and 1 on motorcycle or car, and 1 witnesses' father had done so.'*

## **1.7 Landowner and Rebuttal Evidence**

- 1.7.1 The application route itself is unregistered. Landowners identified as owning land adjacent to the route were contacted with details of the proposal and asked to complete landowner evidence forms. Two landowners have completed evidence forms confirming that they own land adjacent to the route. Neither has claimed to own the land across which the route itself passes.
- 1.7.2 The majority of the application route is adjacent to land in the ownership of (or leased to) Lane End Farm. The owner of the farm, Martin Bennett, has completed a landowner evidence form along with an accompanying map showing which land he has owned for the past thirty years and that which he has rented for the past ten years. He states on his form that he has believed the route to be a bridleway for 30 years and has seen, or been aware of, regular use of the route by walkers. He states that he has never required anyone to ask permission to use the way but has stopped or turned back motorbikes from using it, though does not state when or how often he has done so. He also states that he (or someone on his behalf) has told people that the way is not public 'lots of times' but does not specify who he has told. He states that he has never put up any signs on the route but has obstructed the route (by locking gates and parking farm machinery and vehicles across it) to prevent travellers and vehicles using it. It is not stated how many times this has taken place. An additional comment is made that the lane is used daily for moving farm animals and that this would not be compatible with it being a public vehicular highway.
- 1.7.3 A landowner evidence form was also completed by John Persey of Bowerwood Farm, with an accompanying map showing the land in his ownership, who states that he has owned the land to the north of the application route at the far western end for more

than 50 years. He also states that he has believed the route to be a bridleway for 80 years. He states that he has seen, or been aware of, walkers and horse riders using the route but does not state how frequently he has seen them. He states that he has never required anyone to ask permission to use the route, turned anyone back or told anyone that the route is not public. Likewise, he states that he has never erected any signs on the route, never obstructed the route and has never been aware of any gates or obstructions on the route.

## **1.8 Discussion**

### **1.8.1 Statute (Section 31 Highways Act 1980)**

Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged. This application was made in advance of new legislation and not in response to any event acting as a significant challenge to use of the claimed route. It did not result from any specific action taken by a landowner to obstruct or prevent access to it from a particular date. There is no clear evidence of any significant actions by a landowner having called into question use of the route at a specific time for consideration under statute law.

1.8.2 The Schedule 14 application for the upgrading of Bridleway No. 22, Broadhembury to a Byway Open to All Traffic made by the Trail Riders Fellowship in 2005 may therefore be taken as providing the date of an event that can be taken to have called the public's right to use a route into question. The period for consideration under statute is therefore 20 years from November 1985 to the date of the application in November 2005.

1.8.3 Evidence of use by the public during that period to support the claimed upgrade is forms relating to use on motorcycles by four people. However, as any evidence of use with mechanically vehicles dating from 1966 or later, when the route was recorded as a public bridleway, would be unlawful (unless with the permission of the landowner), it cannot give rise to a public right of way under Section 31. Other evidence of use submitted supports the route's existing recorded status as a bridleway.

### **1.8.4 Common Law**

The only other basis for its possible consideration as a vehicular highway is if there was any other significant supporting evidence from which an earlier dedication of the route as such can be presumed or inferred under common law. At Common Law, evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown 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 of the higher status and that the public has accepted the dedication.

1.8.5 Greenwoods 1825 map, along with the 1806 OS Surveyor's Drawings and 1809 1<sup>st</sup> Edition 1" map, all show the application route in a similar manner to surrounding lanes that are today county roads.

1.8.6 The title map provides evidence that the application route physically existed on the same line as it does today when it was drawn up in 1843. It does not provide

conclusive evidence of status but the fact that the route is excluded from the titheable plots raises a possibility that the route was considered to be public at that time.

- 1.8.7 The Vestry Minutes record that in 1827 and again in 1841 the section of the application route between points B and C was considered by the parish to be a public road. These records also confirm that the rest of the route between A and B appears not to have been considered to be a public road. However, these entries are concerned with roads and so make no mention of whether other public rights existed. Business conducted by the parish Vestry is unlikely to have received much scrutiny or publicity outside the parish. Part of the route, between points B and C, was doubtless maintained for the use of parishioners but considering that it was not a significant through route to any notable destination it is unlikely that awareness of the public reputation would have been widespread outside the parish.
- 1.8.8 Later Ordnance Survey and Bartholomew's Mapping records the physical existence of the application route on the same route from 1806 until the present day. Bartholomew's maps depict it as an inferior road, Ordnance Survey maps at a smaller scale depict it as an uncoloured road. Larger scale Ordnance Survey maps depict it as an enclosed track, naming it as Long Go Lane.
- 1.8.9 The application route is excluded from surrounding hereditaments on the Finance Act Map 1910, a likely indication that it was considered a public highway of at least bridleway status.
- 1.8.10 The route is not included in the list of public footpaths drawn up by Broadhembury Parish Council in 1934. There are several reasons why it may not have been included on this list: it may not have been considered to have any public rights over it at all; it may have been considered a road rather than a footpath; or it may simply have been omitted by mistake.
- 1.8.11 The application route was not initially included in the list of paths drawn up by Broadhembury Parish Council in 1950 during the original Definitive Map process. This omission was later noticed by the Parish Council who objected to it and proposed that the route be recorded as a bridleway. Despite an objection to the proposal by the landowner, the Parish Council successfully challenged the objection and the route was recorded. It is notable that the Parish Council obtained a large amount of user evidence in challenge to the objection, 54 forms being far higher than would be expected for a rural route today. This user evidence covered a period of more than 60 years, with only one form directly stating use with vehicle (and one other mentioning indirect use by their father). Despite the forms themselves not having survived, the summary of them in the Parish Council minutes appears concise and accurate and is suggestive of bridleway rights existing at that time.
- 1.8.12 Further entries in the Parish Council minutes in the late 1960s, concerning the then landowner wishing to erect gates across the route, confirm that the route was considered to be a public bridleway by the Parish Council. These entries refer to correspondence between the Parish Council, Devon County Council and the landowner and a site meeting following which it was agreed that four gates could be erected across the route as long as they were a minimum width of 12 feet and were not locked at any time to enable pedestrians and horse-riders unrestricted use. All parties acknowledged the route as being a bridleway rather than of any higher status.
- 1.8.13 The letter sent by Broadhembury Parish Council to Devon County Council in 1971 during an uncompleted review alludes to the application route as being 'more than a bridleway'. However, the paragraph in the letter is rather vague and gives no detail or

reasons for this belief other than that the route joins two county roads and is used by farm traffic. The review was not completed, there is no copy of the reply to the letter from Devon County Council and no record of further correspondence on the subject is noted in the Parish Council Minutes.

## **1.9 Conclusion**

- 1.9.1 In the absence of sufficient, lawful, user evidence of higher rights, their existence cannot be considered under Section 31 Highways Act 1980. Lawful user and landowner evidence collected during informal consultations are all consistent with the route's current recorded status as bridleway. Under Common Law, the documentary evidence shows that the route has physically existed since at least the early 19<sup>th</sup> century. The Vestry Minutes, Tithe Map and Finance Act Maps all raise the possibility that the route (or at least part of it) may have had higher rights but no more conclusive evidence has been found to substantiate this. All the evidence from the original Definitive Map process to the present-day points to bridleway rights existing on the route and not any higher rights.
- 1.9.2 From this assessment of the evidence submitted with the application, in conjunction with other historical evidence and all evidence available, it is considered insufficient to support the claim that higher rights subsist on the balance of probabilities. Accordingly, the recommendation is that no Order be made to upgrade Bridleway 22, Broadhembury to a Byway Open to All Traffic in respect of the application for Proposal 1.

## **2 Proposal 2: Proposed addition of a Bridleway, known as Burma Road, from Bridleway 22, Long-go Lane to Bridleway 24 at the Devon and Somerset Gliding Club, a length of 560 metres, between points B-D on drawing no. HIW/PROW/19/26.**

**Recommendation: It is recommended that no Modification Order be made in respect of Proposal 2.**

## **2.1 Background**

- 2.1.1 The route was included as a proposal for informal consultations following a request by Broadhembury Parish Council that it be recorded as a bridleway during an uncompleted review in the 1970s.

## **2.2 Description**

- 2.2.1 The start of the claimed route is at the junction where Bridleway 22 turns a right angle to head south east (point B). The route heads north north-east uphill along a gravelled track for approximately 330 metres. This section of the route is roughly metalled. It then enters an area of woodland, turning the corner and heading north-west as a smaller steeper path for approximately 140 metres to join Bridleway 24 (point D) which is on land owned by the Devon & Somerset Gliding Club. There are field gates at each end of the route, both of which were closed but not locked when recently visited.

## **2.3 The Definitive Map process**

- 2.3.1 The claimed route was not included in the survey of paths on behalf of the Parish Council in 1950 to put forward for recording as public rights of way on the Definitive Map.

## 2.4 Documentary Evidence

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

In the Surveyors Drawings of 1806, the track is shown in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or in some cases are no longer existing. The lower section of the route appears to be shown as enclosed, the upper section as unenclosed. There are no obstructions shown on the route. It is shown on the 1<sup>st</sup> edition map on the same route, though it is difficult to distinguish any difference between the upper and lower sections. Although the lower section of the route is shown in the same manner as it exists today, the upper section is shown on a somewhat different route. There are two routes shown on both the 1<sup>st</sup> Edition and the Surveyor's Drawings that could possibly correlate with the claimed route that is on the ground today. The first is a road that leads to a property called The Moor, which seems to be on a close alignment with the claimed route but does not actually join up with the lower section on these maps. The second continues on from the lower section of the claimed route but runs on a more westward course than the claimed route. It is also shown on Greenwood's later map, believed to have been mainly copied from earlier Ordnance Survey map editions. The lower section is shown as an enclosed road, the upper section being shown as unenclosed.

### 2.4.2 Later 19<sup>th</sup> century historical mapping: Broadhembury Tithe Map 1843 & Apportionment 1841; Ordnance Survey 25"/mile late 1880s

The start of the claimed route is shown on the Tithe Map for Broadhembury parish in 1843 excluded from titheable plots in the lower half of the route. It runs into a plot of common land called Blackdown, stated in the apportionment as being owned by The Reverend William Heberdon (Glebe).

2.4.3 Although the Tithe Map does not provide strong supporting evidence that it may have been considered then to be public, the fact that it shows the route leading to an area of Glebe or common land does perhaps infer that public (or at least commoners') rights may have been a possibility if this was the route used to access it. The map records part of the route's physical existence, leading from what appears to be the road network at that time, but with no continuation further on the claimed route.

2.4.4 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map surveyed in 1887 shows the start of the claimed route as an enclosed road or track. After a gate or other obstruction (which is the subject of further discussion below), the upper half of the route is shown as a double-dashed path initially between two fields and then as an unenclosed track across open ground to the end of the claimed route. It is shown continuing from there in a generally easterly direction along the top of Hanger Plantation.

2.4.5 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the lower half of the claimed route as an unmetalled road but does not depict any of the upper half of the route.

### 2.4.6 Broadhembury Vestry Minutes, 1827 and 1841

An entry in the Broadhembury Vestry Minutes dated 25<sup>th</sup> January 1827 states: *'It is unanimously agreed for the Waywardens to put the road leading from Stafford to Moor Gate in repair so as to make it passable, and not the other Road through Common as agreed at the last meeting – and to turn the water inside John Granger's hedge.'* Moor Gate seems to be the gate depicted on the First and Second Edition Ordnance

Survey 25 inch to the mile maps halfway up the hill near where the track enters the open common, near a property called Moor (which is no longer in existence). It is also close to Moor Copse and Little Moor Copse. Investigations have not identified any other locations in this parish that could be the 'Moor Gate' referred to. The Tithe Apportionment records John Granger as being the occupant of plots 383 and 384 which are located just to the southwest of the lower end of the claimed route. This appears to confirm that Moor Gate has been accurately identified and located. It also appears from this entry in the minutes that the Parish Vestry considered the road referred to be a public highway.

2.4.7 A later entry in the minutes contains a copy of a road maintenance contract with a list of roads with mileages attached, dated 14<sup>th</sup> April 1841. This is a contract drawn up between 'Mr John Blackmore and the Surveyor of the Highways of the parish of Broadhembury in the County of Devon by and with the consent of the parish in vestry assembled'. The contract is for a period of three years, Mr Blackmore being responsible for superintending and repairing all the public highways in the parish with the exception of the Turnpike road (as well as 'bridges, masonry and carpenters work). One road on the accompanying list is: '*From Stafford Green to Moor Gate*' and it is listed as being three quarters of a mile and 107 yards in length. This distance is 1,335 metres. When measured on modern digital mapping the distance between the Stafford junction and the location of Moor Gate is 1,303 metres. This seems to again support the notion that the location of Moor Gate has been correctly identified.

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

The later edition of the Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map. The same later maps used as the basis for the 1910 Finance Act survey show the upper section of the claimed route to have been included in hereditament 3 for which there were no deductions made. However, the lower section of the route was excluded from the surrounding hereditaments.

2.4.9 Grange Estate sale plans 1902, 1903 and 1920

Several plans were produced in the early 20<sup>th</sup> century showing land for sale as part of the Grange Estate. In the 1902 plan public roads appear to be shown coloured yellow. The claimed route is shown coloured pink as part of the land for sale. The route is again shown coloured as part of a sale plot in the 1903 plan. In the 1920 plan the lower section of the route is shown uncoloured, while the upper section is just off the map; no roads are shown coloured at all on this plan.

2.4.10 Broadhembury Parish Council minutes, 1894-1994

The list of what were considered to be public footpaths in the parish in 1934 does not appear to include the claimed route. One path on the list is called 'Hanger to Sheldon road' which could possibly relate to this route. However, it seems more likely to relate to the route that is now Bridleway 1.

2.4.11 Local authorities were encouraged to produce maps and schedules of what were considered by them to be public rights of way at that time. It was not a statutory requirement and without publication of Draft and Provisional versions of maps or consultations leading to a Definitive version, as with the procedures under the later legislation from 1949. Not all of the documentation from the 1932 Act procedures has survived locally, particularly in the form of maps, with only some background administrative documents and schedules or lists in the records of some Rural District Councils and Parish Councils or Meetings. Although the Broadhembury list refers to

maps, no copy of a map has been found in surviving records. As such it is impossible to precisely allocate all the listed paths to physical routes on the ground.

2.4.12 An entry in the Parish Council minutes from a meeting on 13<sup>th</sup> November 1981 reads: *'Mr Blackmore said it had been brought to his notice that the gate at the bottom of Burma Road had been locked. He had spoken to Mr Allen about this. Mr Persey said he would have Burma Road on the agenda for the next meeting when it could be discussed.'*

2.4.13 At the next meeting on the 15<sup>th</sup> January 1982 the following was recorded in the minutes: *'Burma Road was discussed. Mr Blackmore said he owned the top part and had a right of way and had no objection to anyone using the road. The footpath warden had advised that to get Burma Road put on the Definitive Map it would mean finding 5 people who had used the road regularly over the past 20 years. It was agreed to let the matter rest for the time being and see what happened during the summer months.'*

2.4.14 Bartholomew's mapping, 1903, 1923, 1943

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 half-inch 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.

The southern part of the proposal route is shown on all Bartholomew's maps as an uncoloured route, therefore one that was 'inferior and not to be recommended to cyclists.' The northern section is not shown on any of the Bartholomew's maps. It appears that the section that is shown is the metalled lower section that runs up the hill to the woodland.

2.4.15 Later Ordnance Survey mapping and Bartholomew's maps

Most smaller scale maps from the earlier 20<sup>th</sup> century are generally too small to show the whole claimed route in any detail. The New Popular Edition with National Grid published in 1946 shows the lower half of the claimed route but not the upper section. The Seventh Series revised in 1957-8 shows the whole of the claimed route as an unmetalled road, the lower half being unfenced on the west side. All the Bartholomew's maps show the lower half of the claimed route as an uncoloured road but do not show the upper half of the route at all. All these maps are subject to the general disclaimer.

2.4.16 The later Ordnance Survey 'A' edition larger-scale mapping from 1962 and 1968, show the claimed route in a similar way to the other mapping. The 1962 edition shows the whole of the claimed route as a road, of which the lower half is unfenced on the eastern side. The whole route is shown on the 1968 map as a road, unfenced on the western side and mostly fenced on the eastern side. The continuation from the access track is not shown on the 'B' edition of the mapping from 1968. The showing of the route on some early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

#### 2.4.17 Highway maintenance records/Handover maps

Highway maintenance records from the 1960s and 1970s show that the claimed route was not at that time considered to be maintainable at public expense. The claimed route is left uncoloured and there are no notes or annotations relating to it. These maps did not show footpaths and bridleways, only public roads.

#### 2.4.18 Land Registry

The lower section of the proposal route is unregistered. The upper section that runs through the wooded slope up to the Gliding Club is included in DN617156. A conveyance in 1965 granted the owners of this land a right of way '*over and along the trackway through Enclosure GR 7955*' which appears to be the upper section of the proposal route.

2.4.19 DN307336 covers the upper wooded slopes to the west of the claimed route. A right of way is included in a transfer in 1991 as follows: *In so far as the Transferor can transfer the same the full and free right of way at all times and for all purposes with or without motor vehicles and for the Transferee and his successors in title, his servants or agents over and along the land coloured brown on the said plan and from there to the public highway as a means of access to and from the land hereby transferred.*" This seems to clearly state that the right of way covers the lower metalled section of the claimed route to where it joins the current public highway. Subsequent sale/transfer of plots of this land have seen this right transferred to new owners.

#### 2.4.20 Aerial photography

Aerial photography from 1946-9 shows the whole of the claimed route. The lower half is shown flanked by trees, and possibly hedges in places. The upper section is partially obscured by tree cover but is then shown crossing open ground rather than woodland as it does today. It looks to be a reasonably wide track rather than a narrow footpath.

2.4.21 Later aerial photography from 2006-7 and 2015-17 show how the route is now heavily wooded. The lower section of the claimed route is tree-lined, with just small glimpses of the track visible. The upper section passes through woodland, though it is possible to distinguish the course of the route on the upper section of the slope.

#### 2.4.22 British Newspaper Archives

No articles relating to this route were found in the British Newspaper Archives.

## 2.5 **Definitive Map Reviews and Consultations**

2.5.1 The claimed route was not included in the 1950 Definitive Map Review process. The route is first claimed in 1971 in a letter from the Broadhembury Parish Council to Devon County Council during a review that was started but not completed. In this letter the Clerk refers to the route as being called 'Burma Road' and that it is 'used a lot' before asking for it to be made a public bridleway. A further letter sent by the Parish Council in 1978 in response to a review (as before, started but not completed) does not mention the route at all.

## 2.6 **User Evidence**

2.6.1 Three user evidence forms have been submitted relating to this proposal. One states use from 1985 until 2019 at a frequency of '4 or so' times per year; one from 1995 until 2019 at a frequency of 'at least 15' times per year; and one from 2008 until 2017

at a frequency of 3 times per year. Two state that they have used the route on foot, for pleasure and as part of a walk between Broadhembury and the Gliding Club land on top of the hill. One states use on horseback, again as part of a longer route from Broadhembury to the Gliding Club and Blackborough/Stafford Hill. None of the users has obtained permission, had a private right, been stopped or turned back or been told that it is not public; likewise, none states that they know of anyone else being told that it is not public. One states that they were told by a friend that it was public. None of the users has worked for any landowner or tenant of land crossed by the route. None has said they have ever seen any signs or notices to indicate that the route is not public. One form acknowledges gates at both ends of the route, the other two a gate at the top end. One of these states that the gate was occasionally tied shut but not locked. Two users believe the owner(s) was aware of the public using the route, the other states they did not know either way.

- 2.6.2 Chris Dunford, who has previously been the Parish Paths Partnership (P3) footpath warden for Broadhembury Parish, supplied some further information with her user evidence form. Firstly, she states that the Reverend Augustus M Toplady used the route as part of the way from Broadhembury to Sheldon, documented in his diary of 1767-8. Secondly, she states that the name 'Burma Road' was given to the route by Land Girls during the Second World War who were working on the land now owned by the Devon and Somerset Gliding Club. Thirdly, she states that 'discussions with the Gliding Club in the early 1990s produced an agreed path with gate for walkers onto the Gliding Field, to join Bridleway 2'. These discussions would have occurred during the time she was the P3 footpath warden for Broadhembury parish. She also supplies a copy of the Tithe Map showing the lower section of the claimed route. The information she provided is also contained in her book, Broadhembury: A Picture of our Parish, published in 2000.

## 2.7 Landowner and Rebuttal Evidence

- 2.7.1 A landowner evidence form was received from Mr Bennett of Lane End Farm who owns and rents land adjacent to the southern half of the claimed route. He has owned land to the west of the claimed route for 30 years and rented the field to the east for 10 years. He acknowledges that he has seen, or been made aware of, people using the route and stated the frequency as *'not regular but people seem to go "where they want."* He states that he (or someone on his behalf) has turned back or stopped people from using the route and also told people that it was not public. It states that this has been done *'a few times a year'*. The form states that there have always been gates at the bottom of the route. Mr Bennett states that he has obstructed the route by putting a piece of farm machinery across it to stop vehicles, though he doesn't state when or how often this has been done. Mr Bennett also gives the additional comment: *'The lane was made in the war for farming practices not for people to roam on farmland.'* This does not seem to be consistent with the mapping evidence which shows the route has existed far longer than this.
- 2.7.2 The Devon and Somerset Gliding Club (DSGC) submitted a landowner evidence form and additional comments, both with the form and via email, concerning this proposal. They do not acknowledge that a bridleway exists on the route, but do acknowledge pedestrian use of the route, though are unable to estimate the frequency. They have never erected signs, turned anyone back or told anyone that the route is not public. However, they do state that they have padlocked the gate at the top of the route regularly over the years, with the intention of preventing quad bikes from entering their land. It seems that they did not intend to prevent pedestrians using the route. Additional comments include concerns about MPV use, wishes for infrastructure to prevent this should the route be recorded and a desire to divert the existing Bridleway

24 (which this proposal route joins). An additional email notes that they have recently purchased the area of woodland through which the proposal route passes.

- 2.7.3 An email received from the DSGC was received on 29<sup>th</sup> September 2019. This describes a 'fun ride' that occurred on the 15<sup>th</sup> September and which appears to have been organised by the East Devon Hunt, who marshalled and signed a route. Some of the riders participating in this event are said to have come up the proposal route, though this appears not to have been the signed route. It is stated as being the first time an event such as this has been witnessed by the DSGC.
- 2.7.4 An email from the Buddhafield group who own land adjacent to the route claims that members could neither provide evidence to support or contradict the proposal. Informal use by the public on foot had been suspected but they could not confirm for sure. The spokesperson for the group, Paul McFadden, is a PROW Warden for Devon County Council, covering the South Hams area. He claims to have used the route to access their land as a private accommodation road, though has only done so only for a few years.

## **2.8 Discussion**

### **2.8.1 Statute (Section 31, Highways Act 1980)**

Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged. Despite some evidence to suggest that landowners have obstructed the route or locked gates, there is no evidence that this has been done to deliberately or permanently to prevent use of the route on foot. It appears to have been done on a very occasional and temporary basis to prevent unauthorised use of the route by vehicles. Considering this, and the fact that no one has ever contacted Devon County Council to report use of the route being challenged, statutory dedication cannot be considered in this case.

### **2.8.2 Common Law**

A claim for a right of way may also be considered under common law. 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 of the higher status and that the public has accepted the dedication.

- 2.8.3 Historic mapping evidence suggests that the route has been in existence since at least the early 19<sup>th</sup> century. Though the lower half of the route is consistently depicted, the upper section of the route is not, perhaps due to the lower half being suitable for vehicle use and the upper section not. It is not always shown, particularly on later Ordnance Survey small scale mapping, and where it is shown there is some discrepancy on the route it follows. However, the general consensus of the historic mapping evidence is that the route existed and was available for use through the 19<sup>th</sup> century and up to the present day. Though the upper section of the route varies slightly in the mapping evidence, it is consistent in that the route is always shown joining the road to Sheldon.

- 2.8.4 The Tithe Map and Finance Act Plans both show the lower section of the route excluded from adjacent plots/hereditaments, both being a likely indication that the

route was considered public. In the case of the former, the upper section of the claimed route is not shown due to the area being within a plot of Glebe common land. In the latter, the upper section runs through a hereditament that does not have any deductions recorded for public rights of way, providing evidence that the landowner did not consider there to be any public rights of way across their land. Title deeds

- 2.8.5 The entries in the Vestry Minutes are strong evidence that the lower section of the claimed route was considered to be a parish road, maintained at public expense, during the first half of the 19<sup>th</sup> century. Though not conclusive evidence of status, it does correlate well with the mapping, Tithe Map and Finance Act evidence relating to the lower section of the route. However, while it was doubtless maintained for the use of parishioners, it was not a through-route and it is unlikely that awareness of the public reputation would have been widespread outside the parish. Title deeds for relevant land continue to contain private rights of way over the route.
- 2.8.6 Despite mapping evidence from the 20<sup>th</sup> century continuing to show the claimed route, it does not appear in Broadhembury Parish Council's list of footpaths compiled in 1934 in response to the Rights of Way Act of 1932. Likewise, it is not considered during the Definitive Map process in the 1950s. These suggest the route was not considered by the Parish Council to be public during this period. However, this was contradicted in the letter sent by Broadhembury Parish Council to Devon County Council in 1971 asking if the route could be recorded as a bridleway. Parish Council minutes from the early 1980s suggest that people were using the route and the landowner did not object. It seems the Parish Council wished to consider the inclusion of the route on the Definitive Map but the outcome of any consideration is not recorded in the minutes. Highway Maintenance records from the 1960s and 1970s confirm that the lower section of the route was not considered to be a public road at that time.
- 2.8.7 Direct user evidence for the route is sparse, only three user evidence forms being submitted. However, they all suggest use was as of right and for a considerable period – 9 years, 24 years and 34 years respectively.
- 2.8.8 The landowner adjacent to the lower section of the route, Mr Bennett, appears to have told users that the route was not public and turned people back on numerous occasions over several decades. However, he does not state that he has physically obstructed the route to prevent walkers or horse-riders, nor erected any signs prohibiting use. The Devon and Somerset Gliding Club state that they have locked the gate at the top of the route on numerous occasions over the years, though they acknowledge that pedestrian use has always taken place and that they have no wish to curtail this. Parish Council minutes from the early 1980s suggest that the landowner of the top section of the route at that time, Mr Blackmore, had no objections to anyone using it. The information supplied by these landowners is not conclusive of them dedicating the route. However, it does appear to acknowledge that the public have been using the route over several decades, albeit not necessarily always as of right.
- 2.8.9 There is therefore some documentary and anecdotal evidence to support the subsistence, at Common Law, of a public right of way over the proposed route. However, on its own, with the absence of enough direct user evidence to show acceptance by the public, of a right of way of any particular status, the evidence overall is considered insufficient to show that a public right of way subsists or is reasonably alleged to subsist.

## **2.9 Conclusion**

- 2.9.1 It is in the light of this assessment of the evidence submitted, in conjunction with other historical evidence and all evidence available, that it is insufficient to support the claim that public rights can be reasonably alleged to subsist on the route or subsist on the balance of probabilities. From consideration under common law there is, also insufficient basis for making an Order. Accordingly, the recommendation is that no Order be made in respect of Proposal 2.

### **3. Proposal 3: Proposed addition of a Byway Open To All Traffic at Wilderness Lane, from the A373 to County Road C212 near Pitney Farm, a length of 1,260 metres, points E-F on drawing no. HIW/PROW/19/27**

**Recommendation: It is recommended that no Modification Order be made in respect of Proposal 3.**

## **3.1 Background**

- 3.1.1 In November 2005 the Trail Riders' Fellowship submitted a Schedule 14 Application to the County Council to record a Byway Open to All Traffic (BOAT) on Wilderness Lane, Broadhembury, supported by maps as documentary evidence and five user evidence forms. This was one of a number of Schedule 14 applications made by local representatives of the Trail Riders' Fellowship in 2005 prior to the NERC Act (Natural Environment & Rural Communities Act) that came into force in May 2006. The NERC Act would restrict the ways that rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under NERC if a Schedule 14 Application had been made prior to 20th January 2005, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, or the surveying authority has made a determination of an application for a BOAT before 2 May 2006.
- 3.1.2 This application was made after 20th January 2005 and was not fully compliant with the regulations as notice of the application had not been served on the landowners. However, as an application had been received, the claim was included in the parish review as made, for the recording of a BOAT. As there are limited other exceptions in which vehicle rights may be preserved it would be likely that, subject to sufficient evidence, the route could only be upgraded to a restricted byway.
- 3.1.3 In June 2011 the TRF sent an email to Devon County Council requesting the withdrawal of several Schedule 14 applications, including this one for Wilderness Lane. However, as we have been provided with the evidence, we will continue to assess the application as part of the parish review.

## **3.2 Description of the route**

- 3.2.1 The application route starts at the County Road, A373, at point E on the proposal plan. It heads in an east north-east direction in a roughly straight line for approximately 1,260 metres to join the County Road C212 approximately 230 metres north of Pitney Farm, at point F. It is currently not recorded as a highway of any description. It passes to the south of a woodland plantation called The Wilderness. It is an unmetalled track throughout, with some tree growth in the middle of the track in the central section of the route that makes it extremely difficult for 4-wheeled vehicles to pass. There are no gates or man-made obstacles on the route. At the western end there are national speed limit signs which appear to have been installed by

Devon County Council at some point in the recent past. The Highways Team have no record of the installation of these signs. However, it looks likely that they were installed at the same time as the concrete drains next to them that were installed as part of a scheme funded by DCC and Broadhembury Parish Council in 2014/15. None of the route is registered with Land Registry.

- 3.2.2 Historical mapping appears to show a track continuing to the north east on the other side of the County Road C212 to Wilderness Lane. It is possible that the application route was therefore once part of a longer continuous route that ran up to the top of the hill near Wolverstone Moor. Evidence for this continuation of the route is sparse but has been included in the report, especially as it concerns some modern user evidence that covers the whole length rather than just the application route.

### **3.3 The Definitive Map process**

- 3.3.1 This route was not included in the survey of paths on behalf of the Parish Council in 1950 to put forward for recording as public rights of way on the Definitive Map.

### **3.4 Documentary Evidence**

- 3.4.1 Early historical mapping – Donn’s Map 1765, early 19<sup>th</sup> century: Ordnance Survey, Surveyors’ Drawings 1806-7 and Cassini 1<sup>st</sup> edition 1”/mile map 1809 and later (Old Series); Greenwood’s map 1827

The eastern end of the application route is shown on Donn’s 1765 map as a cross road spur, in the same manner as other roads that are public today. This map is included as supporting evidence in the Schedule 14 application.

- 3.4.2 The application route is shown on the Ordnance Survey Surveyors’ Drawings of 1806-7 as an uncoloured road in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public, or those no longer in existence.

- 3.4.3 This application route is shown on the 1<sup>st</sup> Edition map in the same way as some of those recorded now as public roads, but also including others that are not recorded now as public or no longer existing. It is also shown on Greenwood’s 1827 map as a cross road; with either end of the route being depicted but not the central section. Greenwood’s map is believed to have been mainly copied from earlier Ordnance Survey map editions.

- 3.4.4 Broadhembury Vestry Minutes, list of roads, 1841

An entry in the vestry minutes includes a copy of a three-year contract for the maintenance of roads in the parish, dated April 1841. Attached to this contract is a list of roads with their mileages that the contractor agrees to ‘superintend and repair’ on behalf of the Surveyors of the Highways of the parish. 19 roads are listed and none of them relate to the application route.

- 3.4.5 Later 19<sup>th</sup> century historical mapping: Broadhembury Tithe Map 1843 & Apportionment; Ordnance Survey 25”/mile late 1880s

The application route is recorded on the Tithe Map for Broadhembury parish in 1843. It is shown in the same way as roads and other tracks in the parish, some of which are now public and some of which are private. No roads are coloured or shaded on this Tithe map. The route is entirely excluded from the adjacent titheable plots. There are no annotations on the route, and it is not named or numbered on this map. There are no lines across the ends of the route or any other marks that may be taken to represent obstructions, the only mark being an unidentified dot in the middle of the

route. An entry is included on the apportionment as 'Rivers, Road and Waste', totalling 90 acres, 3 roods and 14 perches.

- 3.4.6 The Ordnance Survey 25" to a mile 1<sup>st</sup> edition map shows the application route as an enclosed track on the same physical route as it exists today. The western half is depicted as a double-pecked line. It is also named as 'Wilderness Lane', which appears to be the earliest documented use of the name. There are no obstructions shown on the route. This map comes with the general disclaimer used by the Ordnance Survey after 1889.
- 3.4.7 The Revised New Series smaller-scale map for the area from the later 19<sup>th</sup> century shows the application route as a fenced unmetalled road.
- 3.4.8 Early 20<sup>th</sup> century estate sale plans 1902 and 1903  
Two plans produced during sales of the Grange Estate in 1902 and 1903 show the application route. In the 1902 plan the public road network appears to be coloured yellow, though there is no legend to confirm this. Wilderness Lane is coloured pink suggesting that it was included in the land that was being sold. The 1903 plan shows the public road network in a similar manner to the 1902 plan. Again, Wilderness Lane is not coloured yellow. However, it is not shaded at all which suggests that it was not included in the land that was being sold. It is named in this plan but was not in the 1902 plan.
- 3.4.9 Later historical mapping, from early 20<sup>th</sup> century: Ordnance Survey 25"/mile early 1900s; Finance Act 1910 map & records  
The Ordnance Survey 2<sup>nd</sup> edition 25" to the mile map revised in 1903 shows the route in the same way as in the 1<sup>st</sup> edition map, but without the dashed lines that were present in the previous version. There is also a dashed line across each entrance to the route. As in the 1<sup>st</sup> Edition 25" to the mile maps, the route is named as 'Wilderness Lane'. The same later maps used as the basis for the 1910 Finance Act survey show the application route excluded from the surrounding hereditaments.
- 3.4.10 There are 5 hereditaments recorded as being adjacent to the application route. The field books for plots 53, 55 and 282 have no deductions for rights of way and contain no references to the application route. Plot 9 relates to Home Farm, part of the Grange Estate, and has a deduction of £25 for a right of way across ordnance compartment number 1023 which is the current Footpath 20. There is no reference to the application route in this entry. Plot 108 relates to the Grange Estate and although a deduction of £10 for rights of way is recorded this is for a path on a different part of the estate. There is no reference to the application route in this entry either.
- 3.4.11 Bartholomew's half-inch to the mile mapping, 1903; 1923; 1946  
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 half-inch 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. The whole of the application route between points E-F is shown on all Bartholomew's maps as an

uncoloured route, therefore one that was deemed 'inferior and not to be recommended to cyclists.'

3.4.12 Broadhembury Parish Council minutes, 1894-1994: lists of public footpaths 1934, obstruction of path 1960

Copies of extracts from Broadhembury Parish Council minutes in 1934, with a list of what may have been considered then to be public footpaths in the parish, have been investigated. It appears to have been drawn up by the Parish Council then in response to the provisions introduced by the Rights of Way Act 1932. The Act established the process for the statutory presumption of dedication of public rights of way that went on to be included in subsequent and current Highways Act provisions. It also introduced the procedure for landowners to show that they did not intend to dedicate additional public rights other than those that they agreed or admitted were public. No part of the application route appears in the 1934 list.

3.4.13 In a meeting on 9<sup>th</sup> September 1959 the minutes state: *'In a letter, Mr Drewe raised the question of "why Wilderness Lane had been blocked with barbed wire at the Honiton main road end". Other members of the council had noticed this and agreed with Mr Drewe that it is a right of way and an old Roman road. Mr Blackmore wondered if it ought to have been claimed with the Public Footpaths. Mr Lawrence said that he would also raise the question of Wilderness Lane when he saw the clerk concerned about the footpaths.'*

3.4.14 At the following meeting on the 11<sup>th</sup> January 1960 the minutes record the following: *'The Clerk reported that the barbed wire had now been taken away from Wilderness Lane and a notice put up by Mr Gundry (the landowner) warning people against parking and depositing litter. Mr Lawrence said he had been told that if Wilderness Lane should have been claimed as a public path it could be claimed in 5 years' time, as the footpaths would be revised again then, and probably any mistakes could be put right.'*

3.4.15 In September 1960 it is recorded in the minutes: *'It had been noticed by councillors that barbed wire had again been put across the lane at the main road end and after discussion it was agreed that the Clerk should write to Mr Gundry asking him to remove it, as the lane was a public road way and so the public should be allowed to walk through.'*

3.4.16 The following was also recorded in the minutes from the next meeting in October 1960: *'A letter was read from Mr Gundry stating that the barbed wire and rail across the lane were not fixed and that he had put it there to stop the lane being used as a public lavatory and a dump for broken bottles and filthy rubbish. It had been noted that the barbed wire had now been taken down.'*

3.4.17 Later Ordnance Survey mapping

The later Ordnance Survey 'A' edition larger-scale mapping from the 1950s and 1960s, shows the application route as a fenced road or track, named Wilderness Lane. The showing of the route on early and later maps records its physical existence at those times until more recently and up to the present. They do not indicate on their own or support the existence of public rights of way, in accordance with the Ordnance Survey disclaimer.

3.4.18 Highway maintenance records/Handover maps

Highway maintenance records from the 1960s and 1970s show roads that were at that time considered to be maintainable at public expense. They do not show footpaths and bridleways, only roads. The application route is not shown coloured in

as a part of the road network, which suggests it was not considered then to be a public road. Though not coloured, it is shaded lightly in pencil on one map along with the continuation of the route uphill to the north east, though there is no explanation of what this means. There are no notes or annotations relating to the application route in either of these maps.

#### 3.4.19 Aerial photography

In earlier aerial photography between 1946-9 Wilderness Lane is shown throughout with banks on either side. There is substantial tree growth on either side on the eastern half of the route, though much of the western side has some tree cover but some open banks. Later photography in the 21<sup>st</sup> century (1999-2000, 2006-7 and 2015-17) shows mature trees lining almost the entire length of the route to the extent that the surface of the track is completely obscured.

#### 3.4.20 British Newspaper Archives (online)

No articles relating to this route were found in the British Newspaper Archives.

#### 3.4.21 Definitive Map Reviews and Consultations

Other than the entries in the Parish Council minutes in 1960, there have been no previous suggestions that this application route should be considered for recording as a public right of way in earlier review processes.

#### 3.4.22 Land Registry

There is no title absolute registered for any part of the application route itself. A caution against first registration was registered with the Land Registry on 16<sup>th</sup> May 2012 – DN623378. The register states the following: ‘The statement of truth accompanying the caution states the cautioner claims the following interest in the estate: ‘the beneficiary of a claimed prescriptive right of way as detailed in the statutory declarations of Joanna Allen dated 14<sup>th</sup> June 2011 and Susan Phillips dated 27<sup>th</sup> June 2011.’

### **3.5 User Evidence**

3.5.1 Five user evidence forms were submitted with the application for this route. They cover the period from 1985 -2005. Four of the users have specified the type of use as either motorcycle or trail motorcycle, with the remaining form having had this section left blank. Four of the users state that they used the route between 1-2 times per year, while one user stated they used the route between 5-10 times per year. All these users state that they used the route for pleasure and as part of a circular trail ride or tour. None of the five forms mention any stiles, gates, notices or other obstructions, though one form had left this section blank. All of them state that the path has always run over the same route and that it has never been diverted. Differing answers are given as to why they consider the route to be public: ‘reputation and historic evidence’; ‘open at both ends, always used, on old maps as road’; ‘shows on old records’; ‘tarmac to tarmac’; ‘well-used – Finance Act evidence’. Four of the users state that they believe the owner of the route would have been aware of use due to tyre marks.

3.5.2 One user evidence form was submitted during the informal consultation period by Chris Dunford, formerly the P3 footpath warden for the parish of Broadhembury. She has also written and published a history of the parish. The form is accompanied by a map and covers the application route as well as what appears to be a continuation of the route to the north east, which is discussed in the next paragraph. The period of use is stated as between 1978 and 2012, at a frequency of 5-7 times per year, on foot for exercise/pleasure. No gates, stiles, notices or obstructions are stated to have

been present on the application route. She states that she has never obtained permission to use the route, had a private right, never worked for or been a tenant of any owner or occupier of land crossed by the route, never been turned back or told that it was not public or know of anyone else that has been. She states that during her use she never saw any notices indicating that the route was not public and believes that an owner or occupier would have been aware of use by the public.

- 3.5.3 Additional information is provided with the user evidence form on a separate sheet, suggesting that the application route (along with the continuation to the north east) is an ancient track that has been used for centuries for the purpose of moving stock to graze on common land on the hilltop. She refers to the 'Wriothesley Deeds' from the mid-13<sup>th</sup> century that '*ensure that when Geoffrey Coffin, Knight, gave land at Buvi to Dunkeswell Abbey he ensured that his men at Luton (Livington) and Pitney (Pittingehog) had free passage to Hembury Hill for their animals.*' This is summarised in her parish history book, published in 2000, extracts of which are included in the background papers. The deeds themselves appear to be held by the Hampshire Records Office and have not been viewed.
- 3.5.4 The additional path referred to in the user evidence form was preliminarily investigated prior to informal consultations being published. However, only one other user evidence form was received for this section of path and no documentary evidence was provided or discovered to support it being included as a proposal for informal consultation along with this application route.
- 3.5.5 A further user evidence form was received during informal consultation from S Alder. The form does not state a frequency of use or a period of use, simply stating '*not since the 1980s for road safety reasons*'. Means of use is stated as on horseback. The rest of the form has been completed, suggesting use was as of right with no notices or obstructions encountered, no private rights or relationships with landowners. Under the additional comments section concerns are raised about the safety at the junction of the proposal route with the A373 at point E, with particular reference to this being the case if the route should be recorded with Byway Open to All Traffic status.

### **3.6 Landowner and Rebuttal Evidence**

- 3.6.1 Details of the proposal were sent to all landowners identified as owning land adjacent to the application route. No landowner evidence forms were returned but a letter was received from the main landowner.
- 3.6.2 The letter was received from the agent acting on behalf of the JHB Gundry Wills Trust, who are the owner of the land to the north of the route and also a small parcel at the south east end, stating the historic use of the route and that the Trustees support it being recorded as a restricted byway. Joanna Allen lodged a statutory dedication with the Land Registry on 14<sup>th</sup> June 2011 to record that Wilderness Lane had been used continuously – by successive members of the Gundry Family – since the land was acquired in 1965 and 1968, for vehicular and pedestrian access to woodland plantations and agricultural fields. They state that this right of way was exercised without force, secrecy or permission and no third party had ever challenged it. The letter also states that the current agricultural tenants, Messrs Farley & Sons, have and continue to make regular and frequent use of Wilderness Lane for access to agricultural fields that adjoin the lane. There is no mention in the letter of use of the route by the public and no landowner evidence form accompanied the letter.

## **3.7 Discussion**

### **3.7.1 Statute (Section 31, Highways Act 1980)**

Section 31(1) of the Highways Act 1980 states that if a way has actually been enjoyed by the public 'as of right' and without interruption for a full period of 20 years, it is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The relevant period of 20 years is counted back from a date on which the public right to use the way has been challenged. This application was made in advance of new legislation and not in response to any event acting as a significant challenge to use of the claimed route. It did not result from any specific action taken by a landowner to obstruct or prevent access to it from a particular date. There is no clear evidence of any significant actions by a landowner having called into question use of the route at a specific time for consideration under statute law.

3.7.2 Again, taking the application as providing the date of an event that can be taken to have called the public's right to use a route into question, the period for consideration under statute is the 20 years from November 1985 to the date of the application in November 2005. Evidence of use by the public during that period to support the claimed addition is forms relating to use on motorcycles by five people. However, vehicular use must be disregarded following NERC legislation and so these forms cannot be used as evidence of status. Therefore, the basis for its possible consideration is if there was any other significant supporting evidence from which an earlier dedication of a route as a vehicular highway can be presumed or inferred.

3.7.3 Having discounted the evidence of use on motorcycles submitted with the application, there remains the additional user evidence form submitted during the informal consultation period. The lack of direct user evidence supporting the application route ultimately means that it would not meet the test of having been enjoyed by 'the public' to raise a presumption of dedication. Whilst it appears that use was as of right and without interruption for over 20 years it cannot realistically be viewed as representative of the public at large, even in a rural parish. As such, the application route does not pass the test required for statutory dedication.

### **3.7.4 Common Law**

A claim for a right of way may also be considered under common law. 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 of the higher status and that the public has accepted the dedication.

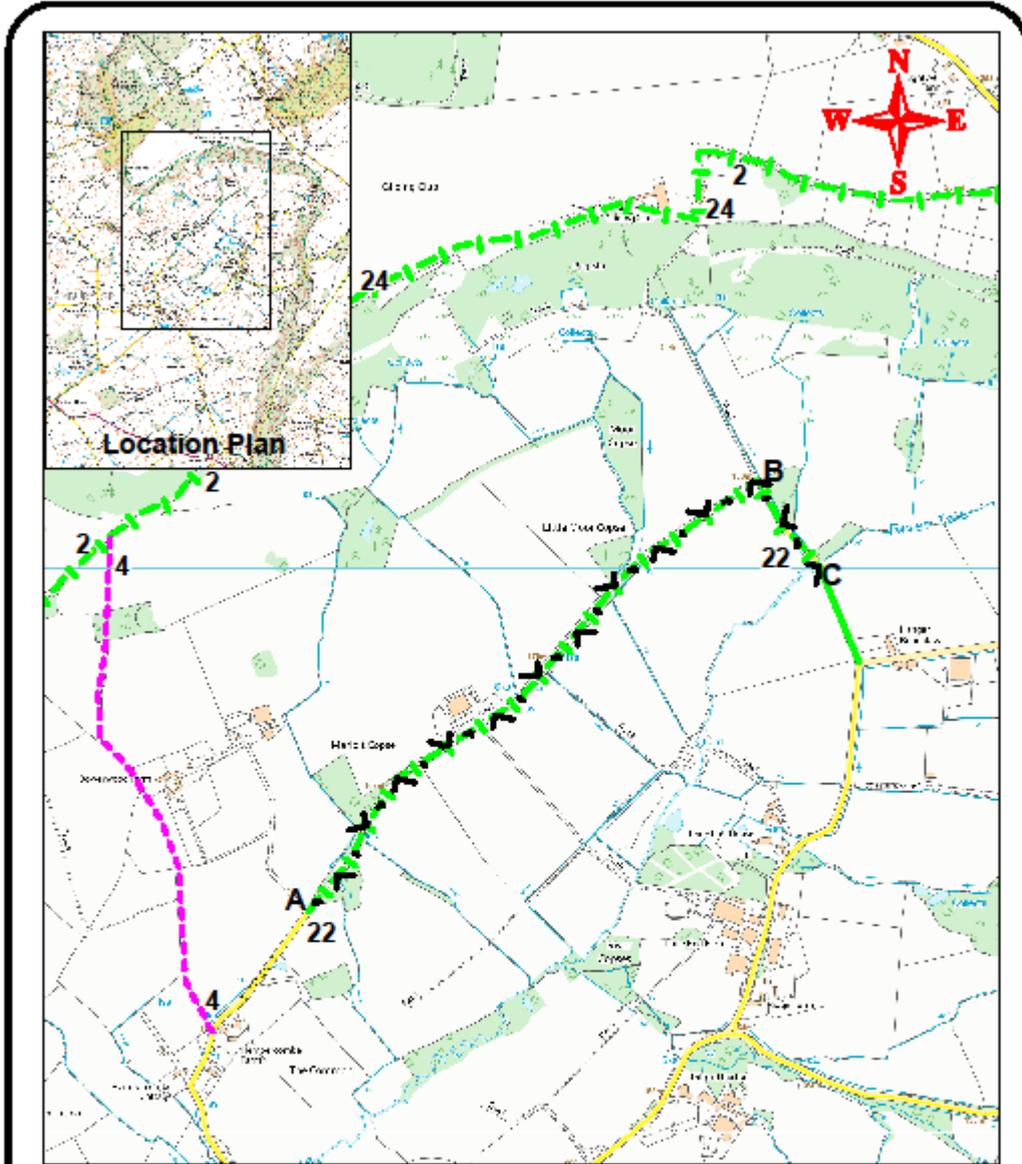
3.7.5 Historic mapping provides evidence that the route has been in existence since at least 1765 (potentially as early as the mid-13<sup>th</sup> century if the Wriothesley Deeds refer to this route), and that it appears to have been open and available for use by the public since then. Use of the name Wilderness Lane dates from at least as early as the 1880s, suggested by some to be an indicator of public status. Both the Tithe Map and Finance Plans, though not conclusive on the matter, suggest that the application route may have been considered public at the time they were produced.

3.7.6 No evidence has been discovered of public money having been spent on the proposal route.

- 3.7.7 Although not included in the 1934 list of footpaths or the Definitive Map process in the 1950s, the Parish Council minutes from 1960 provide strong evidence that at that time the Parish Council considered Wilderness Lane to be public – agreeing that it was a right of way and referring to it as a public road way. The acknowledgement by the Parish Council that they appeared to have omitted the route from the Definitive Map process in error (and were keen to rectify this at the next review) add additional weight to these minutes as evidence of reputation of the route as a public right of way of some description. It is also notable that the Parish Council requested the landowner, Mr Gundry, to remove obstructions from the route and that he acquiesced. Also, the notice erected by Mr Gundry on the route appears to have been for the purpose of deterring parking and littering rather than to prevent people using the route. It is reasonable to consider these as evidence of implied dedication at that time by the landowner, Mr Gundry, whose family still own land adjacent to the route and support the proposal as a restricted byway. Since then there has been no evidence of any landowners taking action to demonstrate a lack of intention to dedicate.
- 3.7.8 The lane appears to have been available for use by the public and their use has been observed although only two valid evidence forms have been received to provide direct evidence of use by the public. There is physical evidence in the form of tyre tracks on the route itself, consistent with the evidence forms submitted by the TRF. The route has some public reputation on trail-riding websites, possibly encouraged by the incorrectly-sited national speed limit signs at the start of the route. Comments from Broadhembury Parish Council also suggest that the route is used by walkers and horse-riders within the parish. Parish Council minutes also suggest that the route was being used by the public during the 1960s.
- 3.7.9 There is therefore some documentary and anecdotal evidence to support the subsistence, at Common Law, of a public right of way over the proposed route. However, on its own, with the absence of direct user evidence to show acceptance by the public, of a right of way of any particular status, the evidence overall is considered insufficient to show that a public right of way subsists or is reasonably alleged to subsist.

### **3.8 Conclusion**

- 3.8.1 In conclusion, it is considered that although there is strong evidence that the route has the reputation of being a public right of way of some description, the evidence discovered to date is insufficient to show, on the balance of probabilities, that a public right of way has been dedicated at common law; and in the absence of sufficient user evidence, to also indicate that such dedication has been accepted by the public. Accordingly, the recommendation is that no Order be made in respect of Proposal 3.



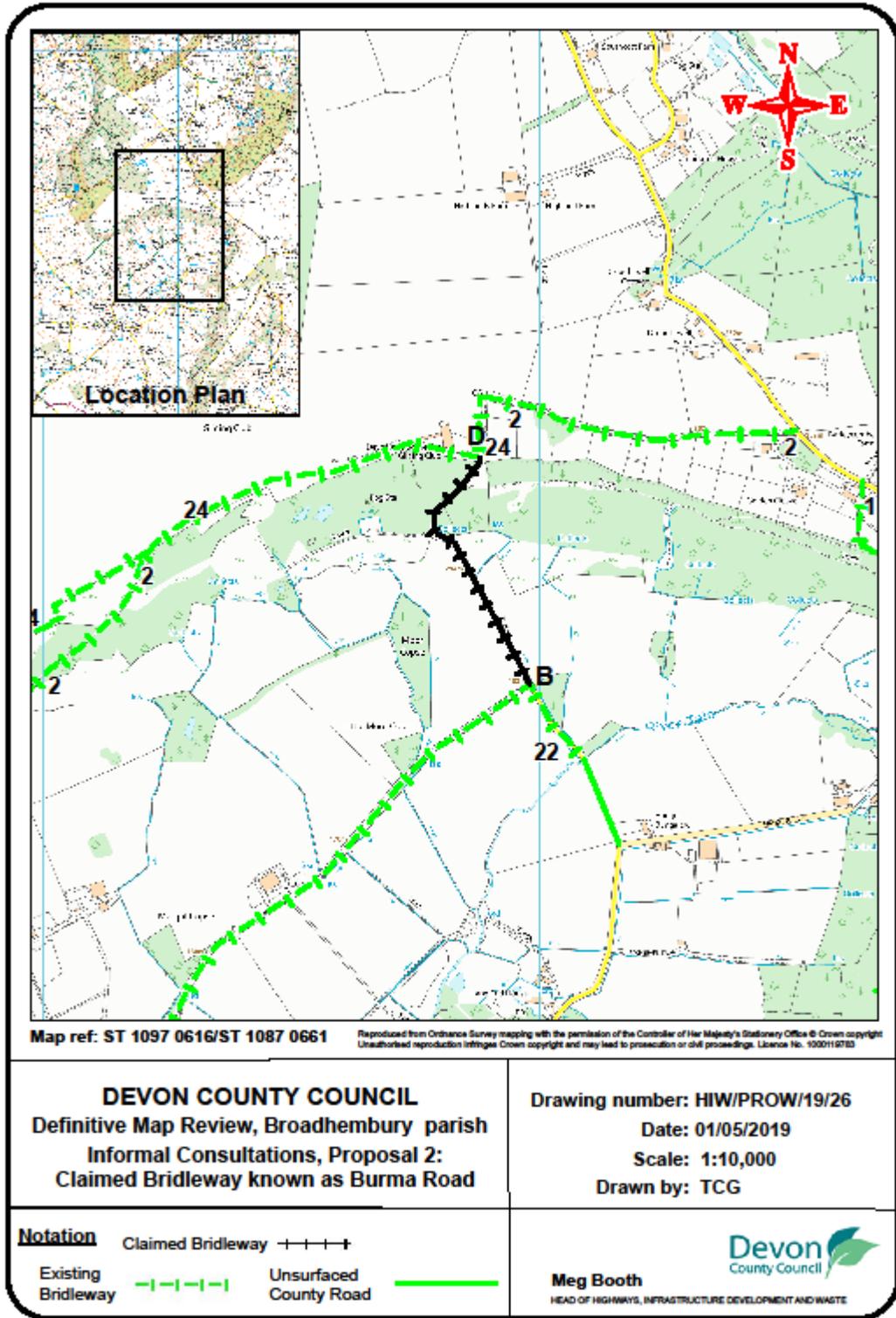
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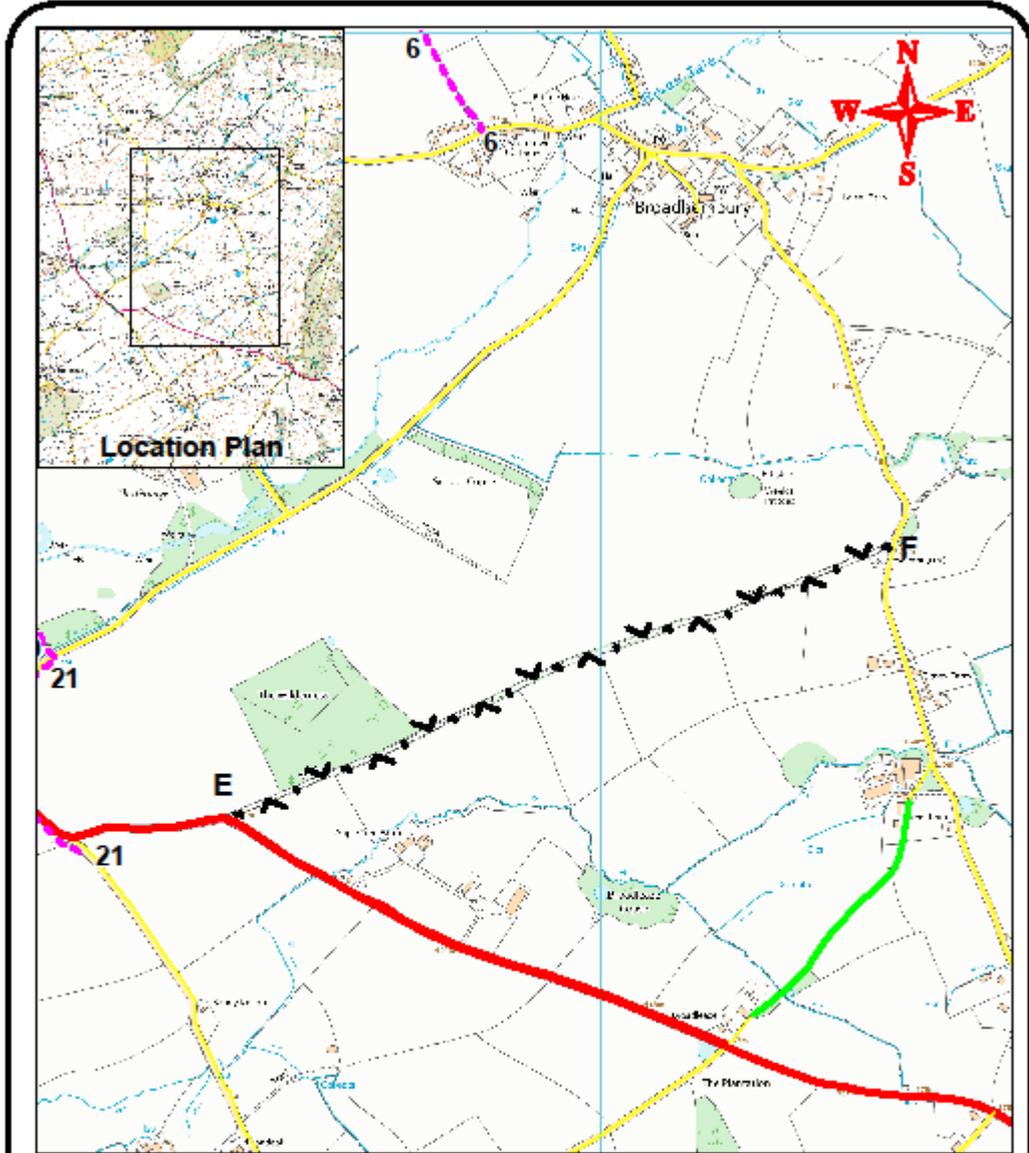
**DEVON COUNTY COUNCIL**  
 Definitive Map Review, Broadhembury parish  
 Informal Consultations, Proposal 1:  
 Upgrade Bridleway 22, Long-Go Lane to  
 Byway Open to All Traffic

Drawing number: HIW/PROW/19/25  
 Date: 01/05/2019  
 Scale: 1:10,000  
 Drawn by: TCG

**Notation** Claimed Byway Open to All Traffic (A-B-C) (1310m)  
 Existing Footpath Existing Bridleway

**Meg Booth**  
 CHIEF OFFICER FOR HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE





Map ref: ST 0934 0361/ST 1050 0409

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**DEVON COUNTY COUNCIL**  
 Definitive Map Review, Broadhembury parish  
 Informal Consultations, Proposal 3:  
 Claimed Byway Open to All Traffic,  
 Wilderness Lane

Drawing number: HIW/PROW/19/27  
 Date: 01/05/2019  
 Scale: 1:10,000  
 Drawn by: TCG

**Notation** Proposed Byway Open to All Traffic (1280m)  
 Existing Footpath Unsurfaced County Road

**Meg Booth**  
 CHIEF OFFICER FOR HIGHWAYS, INFRASTRUCTURE DEVELOPMENT AND WASTE