

## **Definitive Map Review Parishes of Challacombe 2017-21**

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

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

**Recommendation: It is recommended that:**

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

- (i) upgrading Bridleway No. 4, Challacombe to a restricted byway between points A - B - C - D , as shown on drawing number HIW/PROW/18/30 (Proposal 4); and**
- (ii) upgrading Bridleway No. 10, Challacombe to a restricted byway between points F - G - H - I - J - K - L - M - N - O - P - S - T - U - V - W where it passes through the county of Devon only, as shown on drawing number HIW/PROW/18/31 (Proposal 5).**

### **1. Introduction**

This report examines two Schedule 14 applications held on file for the Definitive Map Review in Challacombe, one of which also affects Somerset. No other proposals were received as part of the Review.

### **2. Background**

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed 6 footpaths and 8 bridleways, which were recorded on the Definitive Map and Statement with a relevant date of 1 September 1957.

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

No previous orders and agreements have been made and confirmed in the parish.

The current Review was started in 2017. A joint informal consultation was carried out in 2018 with the parish of Parracombe (Proposals 1-3), and involving two Schedule 14 applications held on file for Challacombe (Proposals 4 and 5), for modification of the Definitive Map and Statement.

This is the report for the Definitive Map Review in the parish of Challacombe.

### **3. Proposals**

Please refer to the appendix to this report.

### **4. Consultations**

General consultations have been carried out with the following results:

County Councillor Andrea Davis	– no comment
Somerset County Council	– no comment
North Devon Council	– no comment
West Somerset District Council	– no comment
Exmoor National Park Authority	– comments included in the report
Challacombe Parish Meeting	– object to the proposed applications' status
Exmoor Parish Council	– no comment
British Horse Society	– no comment
Byways & Bridleways Trust	– no comment
Country Landowners' Association	– no comment
Devon Green Lanes Group	– no comment
National Farmers' Union	– no comment
Open Spaces Society	– no comment
Ramblers'	– no comment
Trail Riders' Fellowship	– no comment

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

### **5. Financial Considerations**

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

### **6. Legal Considerations**

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

### **7. Risk Management Considerations**

No risks have been identified.

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

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

## 9. Conclusion

It is recommended that a Modification Order be made to modify the Definitive Map and Statement by upgrading Bridleway No. 4 to a restricted byway between points A – B – C – D, as shown on drawing number HIW/PROW/18/30 (Proposal 4) and upgrading Bridleway No. 10 to a restricted byway between points F – G – H – I – J – K – L – M – N – O – P – Q – R – S – T – U – V, as shown on drawing number HIW/PROW/18/31 (Proposal 5).

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

## 10. Reasons for Recommendations

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

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

### **Electoral Division: Combe Martin Rural**

#### Local Government Act 1972: List of Background Papers

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

cg261021pra  
sc/cr/DMR Parishes of Challacombe  
03 161121

## A. Basis of Claim

The Highways Act 1980, Section 31(1) states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

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

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

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

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

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

The Wildlife and Countryside Act 1981, Section 56(1) states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein, but without prejudice to any question whether the public had at that date any right of way other than those rights.

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

- (a) it is a way whose main use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles;
- (b) it was shown on the List of Streets;
- (c) it was expressly created for mechanically propelled vehicles;
- (d) it was created by the construction of a road intended to be used by such vehicles;
- (e) it was created by virtue of use by such vehicles before 1 December 1930.

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

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

**Proposal 4: Claimed upgrade of Bridleway No. 4, Challacombe to byway open to all traffic, as shown between points A – B – C – D on plan HIW/PROW/18/30.**

**Recommendation: That a Modification Order be made in respect of Proposal 4, be made to modify the Definitive Map and Statement by upgrading Bridleway No. 4, Challacombe to a restricted byway between points A – B – C – D between Withecombe Gate and Two Gates, along Withecombe Lane and across Challacombe Common, as shown on drawing no. HIW/PROW/18/30.**

## **1.1 Background**

1.1.1 The proposal is one of a number of applications submitted by the Trail Riders Fellowship under Schedule 14 of the Wildlife and Countryside Act 1981. This was in response to the proposed Natural Environment and Rural Communities Act 2006 (NERC Act) which would restrict the ways that new rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under the NERC Act if a Schedule 14 Application, that is compliant with the regulations for Schedule 14 applications under the Wildlife and Countryside Act 1981, had been made prior to 20 January 2005 or the surveying authority has made a determination of an application for a Byway open to all traffic (BOAT) before 2 May 2006.

1.1.2 The application in question was made in November 2005 which was after 20 January 2005. It therefore does not engage this particular exception to extinguishment of rights for motorised vehicles.

1.1.3 In line with Devon County Council policies, determination of the application was deferred, to be dealt with as part of the parish-by-parish Definitive Map Review, by which the County Council carries out its statutory duty to keep the definitive map and statement under continuous review. It was included in the parish review consultation as a proposal for consideration of the addition of a BOAT (as originally applied for), as there are other limited exemptions in which vehicle rights may potentially be preserved.

## **1.2 Description of the Route**

1.2.1 The application route starts at the county road, Main Road, B3358, at Withecombe Gate, point A, and proceeds north eastwards along Withecombe Lane, an enclosed lane, past Withecombe Farm to the end of the lane at point B. It continues along the edge of several fields, part of one of the Challacombe Common inclosure to point C. From here, it proceeds across the remaining unenclosed part of Challacombe Common to Two Gates at point D, where it meets the unsurfaced county road, Parracombe uUCR 301 at the parish boundary.

## **1.3 Application Evidence**

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

1.3.1.1 These well-made maps were produced using surveyors and a triangulation system, and are considered to be reasonably accurate.

1.3.1.2 The application route, which is currently recorded as Challacombe Bridleway No. 4, is shown as a 'cross-road'. Between points A – B it is shown as an enclosed lane. The remainder between points B – C – D is shown to run along a different alignment, across what was then the unenclosed expanse of the Challacombe and Parracombe Commons, to eventually meet the historic continuation northwards of Challacombe Bridleway No. 10 near Thornworthy, south of Lynton.

### **1.3.2 Ordnance Survey 1" Maps, 1879-1930**

1.3.2.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: *'The representation on this map of a road, track or footpath is no evidence of a right of way'*.

1.3.2.2 On the 1879 map an enclosed lane is shown from Withecombe Gate at point A, to point B, where the application route (currently recorded as Challacombe Bridleway No. 4) meet the then unenclosed Challacombe North and Parracombe Commons. From here, the remainder of the application route between points B – C – D is not shown. This map was surveyed prior to the formal commons inclosures of 1859 onwards.

1.3.2.3 On the 1918 and 1930 maps, the route is shown as an enclosed lane is shown from Withecombe Gate at point A, to point B, with an unenclosed continuation to Two Gates at point D via point C. It connects with the currently recorded unsurfaced county road towards Parracombe.

### **1.3.3 Johnston's Motoring and Touring Map of Devon 2" to 1 mile Map, 1951**

1.3.3.1 Commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. However, combined with evidence from other sources, they can tip the balance of probability in favour of such status.

1.3.3.2 An enclosed lane is shown from Withecombe Gate at point A, to point B, with an unenclosed continuation to Two Gates at point D via point C. It connects with the unsurfaced county road towards Parracombe, currently recorded as Parracombe uUCR301.

## **1.4 Documentary Evidence**

### **1.4.1 Challacombe Manor Map, 1791**

1.4.1.1 Manorial records contain papers relating to a variety of matters. Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public right of way which crossed the estate. The map was used as a working record between 1791 and 1859.

1.4.1.2 A semi-enclosed lane is shown between points A – B. The common inclosure between B – C is shown, as an addition sometime between 1840 and 1859, but no route. The ancient '*road from Parracombe to Symonsbath*' is shown crossing roughly west to east, where the application route crosses the common south to north between points C – D, but no route is shown existing between those points.

#### **1.4.2 Lord Courtenay's Lands Map, 1797**

1.4.2.1 Manorial records contain papers relating to a variety of matters. Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public right of way which crossed the estate. The map was used as a working record between 1791 and 1859.

1.4.2.2 A semi-enclosed lane is shown between points A – B. The common inclosure between B – C is shown, as an addition sometime between 1840 and 1859, but no route is shown. The ancient '*road from Parracombe to Symonsbath*' is shown crossing roughly west to east, where the application route crosses the common south to north between points C – D, but no route is shown existing between those points.

#### **1.4.3 Ordnance Survey Drawings, 1804**

1.4.3.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: '*The representation on this map of a road, track or footpath is no evidence of a right of way*'. However, the Drawings did not have the disclaimer when published; it was applied retrospectively.

1.4.3.2 An enclosed lane is shown from Withecombe Gate at point A, to point B, where the application route, which is currently recorded as Challacombe Bridleway No. 4, meets the unenclosed Challacombe North and Parracombe Commons. From here, the remainder of the application route is not shown, between points B – C – D. An alternative historic alignment is shown continuing north eastwards just to the west side of the Chapman Burrows, a short distance east of Two Gates, and then on towards Shallowford and Lynton and Lynmouth, the pre-commons inclosure alignment.

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

1.4.4.1 Besides the Ordnance Survey, Cary was the leading map publisher in the 19<sup>th</sup> century. He maintained a high standard of maps, using actual trigonometric surveys and other up to date source materials including parliamentary documents, which was reflected by his employment to survey the 9,000 miles of turnpike roads in 1794.

1.4.4.2 An enclosed lane is shown from Withecombe Gate, point A, to point B, where the route enters and crosses the unenclosed Challacombe Common and continues north eastwards just to the west side of the Chapman Burrows, a short distance east of Two Gates, and then on towards Shallowford and Lynton and Lynmouth. This route is on a slightly different alignment to the application route between points B – C – D, the pre-commons inclosure alignment.

#### **1.4.5 Challacombe Tithe Map and Apportionment, 1839-40**

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

1.4.5.2 The Challacombe tithe map is a second class map, surveyed at a scale of 6 chains to 1" by Hugh Ballment, a land surveyor from Barnstaple. Being second class, it is considered only to be a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.

1.4.5.3 The application route which currently recorded as Challacombe Bridleway No. 4, is shown as a semi-enclosed route between points A – B, Withecombe Lane, from Withecombe Gate to Challacombe North Common. The remainder between points B – C – D is not shown across Challacombe North Common. Only major roads are shown over the common, including the pre-commons inclosure road between Parracombe and Simonsbath.

#### **1.4.6 Parracombe Tithe Map and Apportionment, 1839-40**

1.4.6.1 The Parracombe tithe map is a second class map, surveyed by an unknown surveyor who did a number of tithe surveys in Devon. Being second class, it is considered only to be a legal and accurate record of tithe matters. Parracombe was made by an unknown surveyor at a scale of 3 chains to 1 ".

1.4.6.2 The continuation of the application route northwards from point D was included in Parracombe Common which was then unenclosed. No routes are shown crossing the common.

#### **1.4.7 Cooper's Guide to ... North Devon, 1853**

- 1.4.7.1 These maps were designed for tourists. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.
- 1.4.7.2 It shows the application route between points A – B, which is currently recorded as part of Challacombe Bridleway No. 4, with the pre-commons inclosure continuation alignment.

#### **1.4.8 Working Fortescue Estate Map, nd & 1859**

- 1.4.8.1 Manorial records contain papers relating to a variety of matters. Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public right of way which crossed the estate. This map shows the Challacombe and Exmoor Estate owned by Earl Fortescue, with the Exmoor inclosure allotment including Regis Common. The origin date of the map is unknown but later amendments were made in 1859.
- 1.4.8.2 A semi-enclosed lane is shown between points A – B. The commons inclosure between B – C is shown, as an addition sometime between 1840 and 1859. The ancient '*road from Parracombe to Symonsbath*' is shown crossing roughly west to east, where the application route crosses the common south to north. No route is shown on the application route between points B – C – D.

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

- 1.4.9.1 Inclosure awards can be evidence of repute of highways at the time they were made. Their significance as evidence depends on the powers given to the relevant Inclosure Commissioners. Awards and maps may provide supporting evidence of other matters, such as the existence of status of a route adjacent to but outside the awarded area. Evaluation of such evidence is considered in the context of the relevant inclosure act.
- 1.4.9.2 In the Award, the Valuer, Thomas Braund, set out and appointed 'one public carriage road or highway of the width of 20 feet to be called the Challacombe Road commencing at the point marked A and numbered 2 on the said map and extending thence in a north easterly south easterly and southerly direction through the said down to and terminating at the point marked B on the said map adjoining the Challacombe boundary fence'.
- 1.4.9.3 The Award map shows the continuation of the application route, northwards from point D, set out by the Award as a '*public carriage road*', subsequently known as the Chapman Burrows Road. It is annotated on the map as '*to Challacombe*'.

#### **1.4.10 Regis Common Map, 1868**

- 1.4.10.1 Manorial records contain papers relating to a variety of matters. Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public right of way which crossed the estate. This map shows the property of Earl Fortescue compiled by Hugh Ballment from a map made by Robert Ballment and from the Tithe Map, at a scale of 3 Chains to 1”.
- 1.4.10.2 A semi-enclosed lane is shown between points A – B of the application route, with possibly a gate shown only at point B. Common inclosures are shown between points B – C, but not the application route, which is also not shown between points C – D. However, the original road between Parracombe and Simonsbath over Challacombe North Common is shown, reflecting the fact that the map was surveyed before the inclosure procedures were completed for Parracombe Common.

#### **1.4.11 Challacombe Vestry minutes, 1832-94**

- 1.4.11.1 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 elected Surveyors of Highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended. These references refer to the application route.
- 1.4.11.2 13 January 1868. The Vestry held a meeting ‘to consider the propriety of repairing of the line of road which commences at North Barton Road and passes up over Withecombe to meet the Parracombe and Lynton’ road. ‘It was stated that Earl Fortescue would make the fences for this road, provided that the Parish would also undertake the proposed road avoiding Kipscombe Hill. The meeting was then adjourned to Monday January 20’.
- 1.4.11.3 20 January 1868. ‘It was determined that this Meeting refuse to take any steps with regard to the road over Withecombe, but that the matter be left entirely to be decided between Earl Fortescue and the Highway Board’.
- 1.4.11.4 9 March 1868. ‘The Meeting still refused to take any steps with regard to the road over Withecombe’.
- 1.4.11.5 25 March 1868. ‘It was further resolved that this Vestry deny the liability of making the road over Withecombe’.

#### **1.4.12 Fortescue Estate Survey, 1880**

- 1.4.12.1 Manorial records contain papers relating to a variety of matters. Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any

public right of way which crossed the estate. This map shows the Challacombe and Exmoor Estate owned by Earl Fortescue in the parishes of Kentisbury, Challacombe and Parracombe at a scale of 12 chains to 1”.

- 1.4.12.2 A semi-enclosed lane is shown between points A – B, Withecombe Lane. The remainder of the application route, which is currently recorded as Challacombe Bridleway No. 4 is not shown.

#### **1.4.13 Ordnance Survey Boundaries Branch records, 1885**

- 1.4.13.1 A number of other documents were produced in connection with the production of OS maps which can be of assistance in providing supporting evidence of the existence and status of some routes. Sources of information include Boundary Remark Books and the subsequent Boundary Record Maps.
- 1.4.13.2 The map and journal show the end of Chapman Burrows road, which is currently recorded in part as Parracombe uUCR301, where it meets the application route at Two Gates, point D. It is annotated ‘*to Parracombe*’. No continuation is shown southwards towards point C across Challacombe North Common.

#### **1.4.14 Deposited Plan – Lynton Railway, 1885**

- 1.4.14.1 Individual schemes were promoted by Special Acts. The statutory process required for the authorisation of schemes was exacting, having been set out by parliamentary standing order and the Railways Clauses Consolidation Act 1845. The book of reference and deposited plans made in the course of the process needed to be of a high standard, as they formed the basis for legislation and were in the public domain. Consequently, they were scrutinised by all relevant parties who would not unnecessarily cede ownership, rights or responsibilities, as the status of a way had an impact on the cost of the scheme.
- 1.4.14.2 The scheme was surveyed by William Eve at a scale of 13” to 1 mile. Between miles 3 and 4, the continuation of the application route known as the Chapman Burrows Road and currently recorded in part as Parracombe uUCR301, is lot 25, a ‘*public road*’ owned by the ‘*Ilfracombe District Highway Board*’.

#### **1.4.15 Ordnance Survey mapping, 1889 onwards**

- 1.4.15.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: ‘*The representation on this map of a road, track or footpath is no evidence of a right of way*’.
- 1.4.15.2 On the 1809 Old Series 1” to 1 mile, a route is shown on a similar alignment to the application route, as a through route between Challacombe and Lynton over the unenclosed commons.

1.4.15.3 On the later 1<sup>st</sup> Edition 25" scale mapping of 1889, the route is shown as an enclosed lane between points A – B. A double dashed track is shown on a similar alignment to the application route (currently recorded as Challacombe Bridleway No. 4) between points B – C, which is also annotated 'BR'. The double dashed track continues across the unenclosed Challacombe North Common to point D, with a slight alignment variation on approaching Two Gates. The 6" scale mapping also shows the route with the same alignment variation. The 6" mapping is a reduction of the 25" mapping.

1.4.15.4 On the 2<sup>nd</sup> Edition 25" of 1904, a route is shown in a similar manner to the 1<sup>st</sup> Edition, with the common section between points C – D annotated 'BR'. The route shown does not have the same variation on the approach to Two Gates at point D. The 6" scale mapping also shows the route without same alignment variation. It is annotated 'BR'.

1.4.15.5 On the Post War A Edition of 1975 a double dashed track is shown within the enclosed section, points A – B, and no route shown north of point B.

#### **1.4.16 Challacombe Parish Meeting Minutes, 1894 onwards**

1.4.16.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.

1.4.16.2 There are few references to public rights of way, and none regarding the application route.

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

1.4.17.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain. These references refer to the application route and its continuation in Parracombe Parish.

1.4.17.2 13 July 1895. 'Rev. JF Chanter proposed Mr John Gammins seconded that the attention of the District Council be called to the encroachment by the District Surveyor and the owner of a piece of land adjoining to the road leading to Chapman Burrows in this parish which are public dangers – a fence having been erected half way across the public road in one place and a water table dug out from the road in the other and request the District Council will see these encroachments removed. Carried unanimously'. The Chapman Burrows road is the continuation of the application route in Parracombe parish, set out as a public carriage road by the 1862 Inclosure Award and currently recorded as part of Parracombe uUCR 301.

- 1.4.17.3 10 April 1900. 'Some of the bye roads ought to be kept in a better state of repair and the Chairman mentioned the road leading to Chapman Burrows especially was in a very bad state and this matter was further discussed in the Council meeting which followed by Parish Meeting'.
- 1.4.17.4 2 June 1900. Representations made to the District Council regarding the parish roads, in particular the '*Chapman Burrows Road*' were acknowledged.
- 1.4.17.5 19 April 1906. 'Mr Dallyn said that as it had been complained of by several at the Parish Meeting that Bodley Lane, Chapman Burrow Road and Church Lane, was badly out of repair he had been over the above mentioned roads with the Surveyor and it did not seem at present to be much out of repair but what was required to be done would be carried out at the earliest possible time.'
- 1.4.17.6 29 March 1909. 'Mr AG Budd complained of the state of the Chapman Burrow road there that being of the quantity of coarse stones it was dangerous and that a horse could not be trotted so it without being in danger of throwing it down and said that something had to be done by putting gravel in them and to prevent them further being scattered all over the road and moved a proposition to that effect. Mr W Lock in - seconding the proposition fully corroborated all Mr Budd had said and the meeting was of opinion that the matter should be brought to the notice of the District Council and the Clerk was instructed to write the District Council and put the proposition before them Mr Dallyn being present was asked to support it if he was at the meeting of the District Council when it was brought forward'.
- 1.4.17.7 16 October 1928. 'Mr J Bray proposed that the Clerk write the County Council re-taking off the corners at the old quarry, coming down from Chapman Burrows turning on the new road, and also...seconded by Mr GH Smyth'.
- 1.4.17.8 18 May 1954. 'The next business was the reading of a letter from the Barnstaple Rural District Council requesting a list of roads in the parish, that the Parish Council considered eligible for upgrading, as these roads would get a grant toward their maintenance. It was decided to forward the following list:- 6) All Chapman Burrows Roads'.
- 1.4.17.9 4 March 1974. 'Plastic manure bags be removed from the road to Chapman Burrows'.
- 1.4.17.10 21 May 1974. 'It was agreed Clerk should get in touch with Mr Skipworth Exmoor Park Warden and see if he could get the plastic manure bags removed from the roadside at Chapman Burrows'.
- 1.4.17.11 24 June 1975. 'Councillors requested the following 1) Roads leading to Chapman Burrows and Lock's Lane be seen to, owing to the number of pits in same'. The Chapman Burrows road is the continuation of the application route in Parracombe parish, set out as a public carriage road by the 1862 Inclosure Award and currently recorded as part of Parracombe uOCR 301. Lock's Lane was set out as a private carriage and occupation road by the 1862 Inclosure Award and currently recorded as part of Parracombe uOCR

301.

1.4.17.12 24 July 1975. 'It was reported pits and gullies on Chapman Burrows and Lock's Lane roads had not been filled in, but water tables were being cleared, agreed to leave that matter in abeyance for a while'.

1.4.17.13 29 November 1975. 'Clerk instructed to write to the Divisional Highway as follows: 3) potholes in Chapman Burrows road beyond Lock's Lane'.

1.4.17.14 16 July 1984. 'Rural minor road network. Chairman reported that the road past the sign saying no through road at Chapman Burrows was shown as one that was not to be kept up but after the Chairman had discussed the matter it now would be'.

#### **1.4.18 Barnstaple Rural District Council Minutes, 1894-1974**

1.4.18.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.

1.4.18.2 There are a number of references to the highways in Challacombe parish in these records, but none deal with the application route, which is currently recorded as Challacombe Bridleway No. 4.

#### **1.4.19 Fortescue Estate Farm Plans, C19<sup>th</sup>–20<sup>th</sup>**

1.4.19.1 Estate records contain papers relating to a variety of matters. Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public right of way which crossed the estate.

1.4.19.2 A semi-enclosed lane is shown between points A – B, Withecombe Lane. At the time of the plan, which has no specific date, it appears that the section between points B – C, which at some point was enclosed from the Challacombe North Common is not included in the property of Withecombe.

#### **1.4.20 Ordnance Survey Object Name Books, 1903**

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

1.4.20.2 The books refer to the Withecombe Lane section of the application route, between points A – B, as an '*occupation road extending from Withecombe Gate to within a few chains east of Withecombe*'. It also mentions Withecombe Gate, as '*a gate situated at the south end of Withecombe Lane*'.

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

- 1.4.21.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.
- 1.4.21.2 The section of the application route known as Withecombe Lane, between points A – B, is excluded from adjacent hereditaments. The remainder of the route between points B – C – D passes through hereditament nos. 73, Withecombe, and 87, Whitefield Barton. Its continuation northwards from point D in Parracombe parish is also excluded from adjacent hereditaments, and is currently recorded as Parracombe uUCR301.
- 1.4.21.3 Hereditament 73, Withecombe, was owned by Earl Fortescue and occupied by Mr WH Ridd. A deduction has been made for Public Right of Way or User of £12, which can be identified as the application route between points B – C and another route, which is not recorded on the Definitive Map between Withecombe and Whitefield Barton.
- 1.4.21.4 Hereditament 87, Whitefield Barton, was owned by Earl Fortescue and occupied by Mr JW Comer. A deduction has been made for Public Right of Way or User of £20, which can be identified as the application route between C – D, as well as Challacombe Bridleway No. 3, and an unrecorded route between Withecombe and Whitefield Barton.

#### **1.4.22 Bartholomew's maps, 1902 onwards**

- 1.4.22.1 These maps were designed for tourists and cyclists with the roads classified for driving and cycling purposes. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, footpaths and bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.
- 1.4.22.2 The application route between points A – B, along Withecombe Lane, and its continuation in Parracombe parish northwards from point P, are shown as an *'uncoloured road'*, which was considered *'inferior'* and *'not to be recommended to cyclists'*. The section across Challacombe Common between points B – C – D is not shown, however its continuation in Parracombe parish, known as the Chapman Burrows Road is, which is currently recorded as Parracombe uUCR301. It is shown in the same manner as the section between points A – B.

#### **1.4.23 British Newspaper Archive, 1934 onwards**

- 1.4.23.1 This is a digital database of scans of newspapers across the country. It includes local newspapers such as the Exeter Flying Post and the North Devon Journal, except for the years 1825-6 which have not survived. The newspapers included reports on the proceedings of the Magistrates Petty Sessions, Quarter Sessions and Assizes, along with those of the various district Highway Boards and Vestry's.
- 1.4.23.2 18 January 1934 – North Devon Journal. 'Exmoor and its Development ... John Knight...enclose[d] the Forest with a boundary wall – a total length of about 29 miles...He then made roads, generally following the old paths and pack horse tracks, and where these cut through the walls it was his practice to fix 2 gates, hung from opposite sides, so that whatever the wind was one remained closed. Hence, we get 'Brendon Two Gates', but unfortunately these have all disappeared, excepting one at Wood Barrow'. One of these sets of double gates was at point D, Two Gates at the north end of the application route.

#### **1.4.24 Aerial Photography, 1946 onwards**

- 1.4.24.1 The application route, currently recorded as Challacombe Bridleway No. 4, between points A – B – C – D is visible, in a similar manner to other routes in the parish.

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

- 1.4.25.1 The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.
- 1.4.25.2 Challacombe Bridleway No. 4, the application route, was included in the Parish Survey and was described as a 'bridle road' running from *'Withecrobe Gate and over Homer Common through Parracombe boundary'*.

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

- 1.4.26.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.
- 1.4.26.2 The Definitive Statement for Challacombe Bridleway No. 4 is described as running from the 'county road B3358 at Withecrobe Gate continuing northwards along a Private Accommodation Road (not repairable by the inhabitants at large), Withecrobe Lane, passing to the east of Withecrobe Farm, then north-north-east alongside the western boundary of three fields then north over open land to the parish boundary at Two Gates where it continues in Parracombe Parish as an unclassified county road'.

#### **1.4.27 Challacombe Estate Sale, 1959**

- 1.4.27.1 Sales particulars should be treated with special caution, as the art of embellishment in advertising is not a newly acquired skill. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.
- 1.4.27.2 On the death of both Earl and Lady Fortescue, the Exmoor estate was put up for sale. The application route which was recorded by that time as Challacombe Bridleway No. 4, is included within Lot 7 – Withecombe between points A – B – C and Lot 5 – Whitefield Barton between points C – D. Lot 5 was subject to a right of way between points C – D *‘for all purposes in favour of Lot 7’*.

#### **1.4.28 The Book of Challacombe, 2006**

- 1.4.28.1 This local history book notes the historical importance of the application route, that ‘Parracombe and Challacombe parishes planned to turn this ancient track into a modern road. Parracombe did its part, reaching the top of the moor, but tiny Challacombe was not able to raise the funds’.

#### **1.4.29 Route Photographs, 2017-20**

- 1.4.29.1 Site photographs of Challacombe Bridleway No. 4, the application route, between points A – B – C – D show that it is open and available.

#### **1.4.30 Land Registry, 2017**

- 1.4.30.1 The route between points A – B – C is registered as part of Withecombe, Challacombe, whilst the remainder between C – D is registered as Woodbarrow and Homer Commons, part of Higher Bodley Farm, Parracombe.

### **1.5 User Evidence**

- 1.5.1 No user evidence forms were received in support of the application, though several of the informal consultation responses detail use of the application route.

### **1.6 Landowner Evidence**

- 1.6.1 Responses were received from 3 landowners/tenants affected by the application proposal to upgrade Challacombe Bridleway No. 4 to a Byway open to all traffic.
- 1.6.2 Mr Huxtable of North Swincombe Farm, Challacombe, has owned land adjacent to the application route for over 40 years. He has known the route for over 50 years as a bridleway. They have been aware of the public using the lane on foot and with horses.

- 1.6.3 Mr Rawle of Higher Bodley Farm, Parracombe, has owned and tenanted land affected by the application between points C – D for over 25 years and worked the land for 10 years prior to that. He has only seen use by walkers and horse riders, and had to correct users who have strayed from the currently recorded bridleway alignment. He has stopped people on quads and motorbikes from using the application route. He has erected signs on gates stating '*no vehicles*'. He states that he has locked the gate at Two Gates, point D, '*2 days a year to stop other rights being made*'. Mr Rawle also has environmental and poaching concerns.
- 1.6.4 Ms Turner of behalf of the Bray Sporting Club, Loyton Estate, Morebath, has tenanted land affected by the application route for over 10 years, and states that only walkers and horse riders have been seen using the route.
- 1.6.5 Mr Davis of Withecombe Farm, Challacombe, did not complete a Landowner Evidence Form for the informal consultation.
- 1.6.6 Mr Howcroft of Withecombe Farm, Challacombe, completed a Landowner Evidence Form after purchasing the property in 2018. He understands that the route is a bridleway and has seen use of the application route on foot and horse.

## **1.7 Informal Consultation Representations**

- 1.7.1 Mrs Gibbs objects to the application's proposal. When she has used the route with her horse, she has not seen any motorised use.
- 1.7.2 Mrs Holtom of Littleclose, Parracombe, has lived in the area for over 30 years. She has '*only once seen motorbikes*', who on challenge, said they had the landowner's permission. She has carried out research at the local archives and found no evidence that the application route has been '*used as a through route*', with the track used for '*access only*'. There is no defined track between points C – D. She contacted a previous landowner of Withecombe (1997-2011) who said that '*no motorised vehicle used the track to the common without our consent*'.
- 1.7.3 Miss Jones of Highfield House, Parracombe has ridden the application route between 1991-2017 and has never seen motorised vehicles. She believes the proposed upgrade is inappropriate and that restricted byway status is not practical.
- 1.7.4 Mrs Jones of Challacombe has lived in the area for over 15 years, and has never seen evidence of use by public motorised vehicles.
- 1.7.5 Mr Kingdon of Whitefield Barton, Challacombe objects to the application's proposal, as he thinks it is unsuitable as a Byway. He feels that public motor vehicles would be dangerous to stock in fields between points B – C, as well as wildlife. He has lived at Whitfield since 1961 and is not aware that public motor vehicles have ever used the route.
- 1.7.6 Mrs Kingdon of Whitefield Barton, Challacombe opposes the application. She has known the route for over 45 years, and has only seen it used by walkers

and horse riders. She has wildlife and environmental concerns, particularly for the route's surface.

- 1.7.7 Ms Lyons of Challacombe rides the application route regularly, and has never seen a cyclist or motorcyclist along the route. She has wildlife and crime concerns.
- 1.7.8 Mr Ridd of West Mead, Challacombe does not agree with the application's proposal, as it would be dangerous to horse riders and walkers.
- 1.7.9 Mrs Thomas of Higher Westland Farm, Bratton Fleming says that she and her husband are opposed to the application's proposal, as the bridleway runs across an Environmentally Sensitive Area. They have wildlife and misuse concerns.
- 1.7.10 Mr Tull of the Old Smithy, Challacombe, objects to the application's proposed upgrade, as it would '*destroy this quiet unspoilt part of Exmoor*', as the '*terrain is quite unsuitable for motorised vehicles*', and '*there would be no hope of confining motorised vehicles to a narrow track*'.
- 1.7.11 Mrs Tull of the Old Smithy, Challacombe, states that the application route has never been a byway, and any use would cut up the moorland.
- 1.7.12 Mrs Wyatt, Chairman of the Challacombe Parish Meeting says that '*no-body in Challacombe wants this*'. No-one in the parish is aware of use by the general public.

## **1.8 Discussion**

- 1.8.1 In considering the evidence it is necessary to consider the evidential facts in the context of the whole of the documents in which they are contained. Section 32 of the Highways Act 1980 indicates how documents should be evaluated as a whole and how the weight should be given to the facts derived from them. Once the evidence sources have been assessed individually, they are comparatively assessed as required by the balance of probabilities test.
- 1.8.2 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the application route above that of a bridleway has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, that Challacombe Bridleway No. 4, the application route exists between points A – B – C – D, though it does not preclude that other unrecorded higher rights may exist.
- 1.8.3 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, higher rights above that of a bridleway may yet still be proven to exist along the application route at common law. Evidence of dedication of higher rights 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 a higher status and that the public has accepted the dedication.

- 1.8.4 Common Law. On consideration of the application at common law, the historical documentary evidence demonstrates the application route's physical existence and availability since at least 1791. It is shown in a similar manner to other recorded public highways, though originally it was not entirely an enclosed lane, as part of it passed over the unenclosed Challacombe North Common and its continuation over Parracombe Common.
- 1.8.5 At the time of the Challacombe Manor map, Ordnance Survey Draft Drawings, Cary's, and Greenwood's mapping between 1791 and 1827, a route is depicted on an alignment similar to the application route, Challacombe Bridleway No. 4, between points A – B, but then turning away and heading north eastwards towards Woolhanger, Thornworthy, and Lynton, its pre-inclosure alignment.
- 1.8.6 Other mapping such as the Tithe, Fortescue Estate, including Regis Common, and Bartholomew's only show Withecombe Lane between points A – B, whilst Cary's 1821 Map and Cooper's 1853 Guide show Withecombe Lane and then a variation of B – C – D. This variation existed only until the Challacombe and Parracombe Commons were inclosed from the 1850s onwards its pre-inclosure alignment.
- 1.8.7 A requirement of the Highways Acts of 1773 and 1835, which were contemporary with the Challacombe Vestry's Surveyors of Highways Accounts, was that all '*common highways*' (public) had to be named in order for indictment for disrepair, the names usually reflecting places they either went to, passed or what they were like, e.g. North Lane, Withecombe Lane. As private roads were not liable in this way, they did not need to be named. A named highway may therefore carry some inference of public status. The relevant parish body responsible for the parish highways would only devote time and effort if they and their parishioners believed it was a public highway for which they were responsible.
- 1.8.8 If any public roads were to be stopped up or declared non-maintainable, it had to be done through the Quarter Sessions. There are no such references in the Quarter Sessions or other local authority records regarding roads in Challacombe or Parracombe parish, except for those relating to the highway alterations from the 1862 Parracombe Down Common Inclosure Award.
- 1.8.9 Under the Parracombe Down Inclosure Award of 1862 enacted by Parliament, the continuation of the application route from point D at Two Gates, a '*public carriage road...to Challacombe*' 20 feet wide was set out and awarded. On such a route, all subjects enjoyed an equal right of vehicular passage. This continuation is now recorded as Parracombe uUCR 301. It is part of the most direct route between the two villages of Challacombe and Parracombe.
- 1.8.10 There would have been little point in the Inclosure Commissioners setting out such a public highway in the Award if there was not an existing continuation

of a similar status which the public were already using and entitled to use. As a consequence of the Award, there was pressure on the Challacombe Vestry from Lord Fortescue to make a new road elsewhere in the parish in return for him improving the hedgebanks along the application route between Withecombe Gate at point A and Two Gates at point D. The Challacombe Vestry declined to take action in the matter, but instead referred the matter to the Ilfracombe District Highway Board.

- 1.8.11 It is not known what the Parracombe Vestry thought about the matter, as it appears those records have not survived, but there are plenty of references for the application route continuation from Two Gates at point D in the Parracombe Parish Council minutes, which is now recorded as an unsurfaced county road, uUCR301.
- 1.8.12 Point D at the northern junction of the application route (currently recorded as Challacombe Bridleway No. 4) with its Parracombe continuation, uUCR301, was an important point on the Exmoor Forest boundary, as it was one of the access points into the former Forest. It was named Two Gates because of the 2 gate system John Knight installed at all access points within the boundary wall he constructed after his purchase of the Forest when it was enclosed in 1818. That Award did not affect the application route.
- 1.8.13 Aerial photography from the 1940s shows the application route in a similar manner to other parish routes, and is contemporaneous to the 1950 Parish Survey which recorded the application route as a '*bridle road*', though by the time it was included in the Definitive Map and Statement, it had been altered to '*bridleway*'.
- 1.8.14 The Ordnance Survey 25" mapping from the 1880s onwards shows the application route between points A – B – C and annotated '*BR*', whilst the smaller 1" shows the whole application route as part of a continuous route from Challacombe to Lynton. However, the Ordnance Survey mapping is not evidence of a right of way, only the existence of features on the ground at the time of the relevant survey.
- 1.8.15 The later Ordnance Survey Boundaries Branch records of 1885 have the route passing through Two Gates annotated as '*to Parracombe*', while the 1903 Ordnance Survey Object Name Books note the application route between points A – B along Withecombe Lane as an '*occupation road*', but do not distinguish between public or private. The 1909-10 Finance Act records meanwhile exclude the route along the length of Withecombe Lane between points A – B, with a decent deduction for the remainder across the former unenclosed commons, above that expected for a footpath or bridleway.
- 1.8.16 The 1959 Challacombe and Exmoor Estate sale refers to a private right of way along the application route, but mentions nothing about the existing bridleway which by that time was recorded in the Definitive Map and Statement, demonstrating the interest of such documents lay in private rights only.

- 1.8.17 The whole of the application route is registered to Withecombe Farm, Challacombe between points A – B – C and Higher Bodley Farm, Parracombe between points C – D. Two landowners including Mr Rawle of Higher Bodley Farm, and a tenant responded to the informal consultation. Mr Rawle claims to have locked the gate on occasions at Two Gates, point D, in order to prevent additional rights being created. However, such an action is against the law as set out in the Highways Act 1980 and Wildlife and Countryside Act 1981, with regard to the existing bridleway.
- 1.8.18 Twelve members of the public from in and around Challacombe parish also responded to the informal consultation, all objecting to the application's proposal of upgrading Challacombe Bridleway No. 4 to a Byway open to all traffic. None recalled having seen motorised use of the route by the public. All had environmental or practical concerns about such potential use of the route, which cannot be taken into consideration when determining whether the public have acquired higher than that of a bridleway along the application route.
- 1.8.19 There has been no detailed evidence of public use by mechanically-propelled vehicles, and therefore the exceptions under the Natural Environment and Rural Communities Act 2006 do not need to be considered. Consequently, any unrecorded rights for mechanically propelled vehicles are extinguished. Therefore, the highest status the application route could be considered to be is a restricted byway.
- 1.8.20 Issues such as appropriateness and practicality also raised in responses to the informal consultation cannot be taken into account in the determination of the application. Presumed dedication is considered to have taken place many years prior to those events, and consequently the legal maxim '*once a highway, always a highway*' applies. Though no user evidence was received in relation to the application, evidence of user detailed in other evidential sources demonstrates the public's use of the route without any perceived issues.
- 1.8.21 Consequently, having been enacted by Parliament, the 1862 Inclosure Award is conclusive evidence regarding the public status of the application route's continuation northwards from point D at Two Gates, and consequently is evidence of express dedication. It would have been illogical of the Inclosure Commissioners to set out a '*public carriage road*' across Parracombe Common to Two Gates if there was not a continuation of a similar status that the public could use and were already using to continue onto Challacombe. There is no evidence of such rights for this continuation or the application route having been stopped-up or diverted. Consequently, the legal maxim '*once a highway, always a highway*' applies.
- 1.8.22 In such a situation as this where there is a route of uncertain status existing, its status can be presumed from the highways linked to it, as set out in the case of *Eyre v New Forest Highway Board* (1892). Consequently, the evidence when considered as a whole supports access for the public to the application route, currently recorded as Challacombe Bridleway No. 4, of the

higher status of restricted byway.

## **1.9 Conclusion**

- 1.9.1 On consideration of all the available evidence, on the balance of probabilities, the documentary evidence demonstrates that the application route, currently recorded as Challacombe Bridleway No. 4, along Withecombe Lane and across Challacombe Common between points A – B – C – D has probably existed since at least 1862, when the commons were enclosed. It has been open and available and appears to have been considered public since that time. Prior to that time, the application route alignment followed a slightly different alignment between points B – C – D as did its continuation in Parracombe parish.
- 1.9.2 At Common Law, all highways existing prior to the Highways Act of 1835 were automatically repairable 'prima facie' by the parish unless the responsibility could be proven as lying elsewhere. This liability remained so long as the highway existed or until the liability was taken away or transferred by statute.
- 1.9.3 The historic vehicular nature of the application route along Withecombe Lane and over Challacombe Common to Two Gates between points A – B – C – D, and its continuation along uUCR301, Chapman Burrows Road, from point D, was confirmed in the 1862 Parracombe Common Inclosure Award, where the latter was set out as a 'public carriage road', under the responsibility of the Parracombe Waywardens, and later the Ilfracombe District Highway Board. This is supported by the records of the Vestry, Parish Council and Meeting. It would have been illogical for the Inclosure Commissioners to set out such a highway if there were not a continuation of a similar status, along which the public had the right to continue, the application route.
- 1.9.4 Though the Challacombe Vestry declined to have the application route improved in consequence of the Parracombe Down Common enclosure by Lord Fortescue, it was only because he wanted them to build a new road elsewhere in the parish. Such negotiations would not have occurred if the route was not a public highway. Whilst the Ordnance Survey Object Name Books describe the route as an 'occupation road', neither public or private, the deduction for Public Right of Way or User under the Finance Act, is more than a footpath or bridleway would be given.
- 1.9.5 In such a situation as this where there is a route of uncertain status existing, its status can be presumed from the highways linked to it, as set out in the case of *Eyre v New Forest Highway Board* (1892).
- 1.9.6 Although there has been evidence of public use by mechanically-propelled vehicles, it is after 1930, and therefore, it does not satisfy the exceptions under the Natural Environment and Rural Communities Act 2006 do not need to be considered. Thus, any unrecorded rights for mechanically propelled vehicles are extinguished. Consequently, the highest status the proposal route could be considered to be is a restricted byway.

- 1.9.7 The evidence when taken as a whole is considered sufficient to show that a highway of a particular description ought to be shown as a highway of a different description. It demonstrates that the route was considered historically as an all-purpose public highway, and is considered sufficient to demonstrate that historic vehicular rights exist and consequently to record the route as a restricted byway.
- 1.9.8 It is therefore considered to be sufficient under Common Law to demonstrate that a public highway of restricted byway status exists between points A – B – C – D, and that consequently Challacombe Bridleway No. 4 carries higher rights.
- 1.9.9 It is therefore recommended that a Modification Order should be made to upgrade Challacombe Bridleway No. 4 to a restricted byway between points A – B – C – D on the Definitive Map and Statement, as shown on drawing no. HIW/PROW/18/29. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed.

- 2. Proposal 5: Claimed upgrade of Bridleway No. 10, Challacombe to byway open to all traffic, as shown between points D – E – F – G – H – I – J – K – L – M – N – O – P – Q – R – S – T – U – V – W, on plan HIW/PROW/18/31.**

**Recommendation: That a Modification Order be made in respect of Proposal 5, be made to modify the Definitive Map and Statement by upgrading Bridleway No. 10, Challacombe to a restricted byway between points F – G – H – I – J – K – L – M – N – O – P – Q – R – S – T – U – V – W, between Mole’s Chamber and Saddler’s Stone across Challacombe Common, where it passes through Devon only, as shown on drawing no. HIW/PROW/18/31.**

## **2.1 Background**

- 2.1.1 The proposal is one of a number of applications submitted by the Trail Riders Fellowship under Section 14 of the Wildlife and Countryside Act 1981. This was in response to the proposed Natural Environment and Rural Communities Act 2006 (NERC Act) which would restrict the ways that new rights of ways for motorised vehicles in the countryside could be created or recorded. A right for motor vehicles was preserved under the NERC Act if a Schedule 14 Application, that is compliant with the regulations for Schedule 14 applications under the Wildlife & Countryside Act 1981, had been made prior to 20 January 2005 or the surveying authority has made a determination of an application for a Byway open to all traffic (BOAT) before 2 May 2006.
- 2.1.2 The application in question was made in November 2005 which was after 20 January 2005; and therefore does not engage this particular exception to extinguishment of rights for motorised vehicles.
- 2.1.3 In line with Devon County Council policies, determination of the application was deferred, to be dealt with as part of the parish-by-parish Definitive Map Review, by which the County Council carries out its statutory duty to keep the definitive map and statement under continuous review. It was included in the parish review consultation as a proposal for considering the upgrading of several bridleways to BOAT’s (as originally applied for), as there are other limited exemptions in which vehicle rights may potentially be preserved.

## **2.2 Description of the Route**

- 2.2.1 The application affects several parishes and highways/public rights of way on Exmoor, across both Devon and Somerset. In Devon it affects Challacombe – Bridleway No. 10, and Brayford (formerly the parishes of High Bray and Charles) – uUCR 301 and Bridleway No. 9, and in Somerset, Exmoor – DU 5/18. High Bray parish was combined with the parish of Charles in 1974 to form the new parish of Brayford. The application route is 4,465 metres (2.77 miles) in length, with a total of 3,625 metres in Devon and 760 metres in Somerset. The public highways and rights of way affected are set out below.

<b>County of Devon</b>			
Parish	Status	Number	Length (metres)
Challacombe	Bridleway	10	3528
Brayford	uUCR	303	30
Brayford	Bridleway	9	67

<b>County of Somerset</b>			
Exmoor	Bridleway	DU 5/18	760

<b>County of Devon</b>		
Brayford	uUCR 303	D - E - F
Challacombe	Bridleway 10	H - I - J L - M - N O - P - Q S - T U - V - W
Brayford	Bridleway 9	H - I

<b>County of Somerset</b>		
Exmoor	DU 5/18	F - G - H J - K - L Q - R - S T - U

- 2.2.2 The application route starts in Challacombe parish at the county road, R2801, near Mole's Chamber, point D. It proceeds north eastwards along a short unsurfaced county road currently recorded as Brayford uUCR 303, to a gate at point F and then onto the Devon/Somerset county boundary at point F, a short distance beyond the gate.
- 2.2.3 It continues in Somerset in Exmoor parish, as DU 5/18, turning and heading generally northwards past Solely Stone at point G, then north westwards and downhill into Lew Combe to the Somerset/Devon county boundary at point H, where it carries on as Brayford Bridleway No. 9 (formerly recorded as High Bray Bridleway No. 9).
- 2.2.4 Turning northwards it passes through a stream and gate at point I, where the route passes back into Challacombe parish as Bridleway No. 10 to point J. Here it returns to Exmoor parish and continues northwards through a gate at point K, and then on to Broadbarrow Stone at point L where the route passes back into Challacombe.
- 2.2.5 It continues north north westwards following the common boundary over Roosthitchen to meet Challacombe Bridleway No. 12 at point M, where it turns and heads north north eastwards and through a gate to meet the county road, North Lane, B3358, at point N, east of Edgerley Stone.
- 2.2.6 The route recommences on the north side of North Lane and proceeds through a gate and northwards past Bill Hill Stone, point O, over Broad Mead to the county boundary at point P, where it passes back into Exmoor parish. It continues northwards past Twizzle Stone at point Q to the county boundary at point R, where it returns to Challacombe, proceeds northwards to Woodbarrow Gate and the county boundary at point S, where it passes back into Exmoor.

2.2.7 The route goes through the gate, past Woodbarrow and returns to Challacombe at point T on Winaway. It continues northwards over Winaway and down to Saddle Gate and Saddle Stone at point U. It passes through the gate and proceeds north westwards for approximately 50 metres to meet Lynton and Lynmouth uOCR 306 at point V.

**Application Route**

<b><u>Point</u></b>	<b><u>Feature</u></b>	<b><u>County</u></b>	<b><u>Parish</u></b>
D	Junction of county road R2801 & Brayford uOCR 303	Devon	Brayford
E	Field gate	Devon	Brayford
F	County boundary & end of Brayford uOCR 303	Devon - Somerset	Brayford - Exmoor
G	Sloley Stone	Somerset	Exmoor
H	County boundary	Somerset - Devon	Exmoor - Brayford
I	Gate & stream at Lew Combe	Devon	Brayford - Challacombe
J	County boundary	Devon - Somerset	Challacombe - Exmoor
K	Gate onto Roosthitchen	Somerset	Exmoor
L	Broadbarrow Stone & county boundary	Somerset - Devon	Exmoor - Challacombe
M	Junction with Bridleway 12	Devon	Challacombe
N	Junction with county road B3358: south side of North Lane double gates	Devon	Challacombe
O	Junction with county road B3358: north side of North Lane single gate	Devon	Challacombe
P	Bill Hill Stone	Devon	Challacombe
Q	County boundary	Devon - Somerset	Challacombe - Exmoor
R	Twizel Mark Stone	Somerset	Exmoor
S	County boundary	Somerset - Devon	Exmoor - Challacombe
T	Woodbarrow Gate & county boundary	Devon - Somerset	Challacombe - Exmoor
U	County boundary	Somerset - Devon	Exmoor - Challacombe
V	Saddle Gate & Saddle Stone	Devon	Challacombe
W	Junction with Lynton & Lynmouth uOCR 306	Devon	Challacombe - Lynton & Lynmouth
	Challacombe	Bridleway 10	
	Brayford	uOCR 303	
	Brayford	Bridleway 9	
	Exmoor	DU 5/18	

**2.3 Application Evidence**

**2.3.1 Day & Masters Map of Somerset, 1782**

2.3.1.1 This map surveyed and published by William Day and Charles Harcourt Masters took over 7 years to survey. This map was supplied in support of the application.

2.3.1.2 A route is shown on a similar alignment to the application route between points D – W, as an ‘*open road over commons or downs*’.

**2.3.2 Exmoor Inclosure Award Map, 1818**

2.3.2.1 The application refers to this map, but no copy was supplied in its support. The applicant states that the application route between points D – W is called the ‘*Lynton and South Molton Road*’, a ‘*public carriage road*’.

**2.3.3 Greenwood’s Map of Somerset, 1822**

2.3.3.1 These well-made maps were produced using surveyors and a triangulation system and are considered to be reasonably accurate.

2.3.3.2 Those sections of the application route which exist in Somerset are shown as a ‘*cross-road*’. A route is shown in Somerset between points D – H (Mole’s

Chamber – Lew Combe) and S – T near Woodbarrow Gate.

### **2.3.4 Greenwood's Map of Devon, 1827**

2.3.4.1 The application route between points D – U is shown entirely on the Devon side of the county boundary with Somerset as a '*cross-road*'.

### **2.3.5 Ordnance Survey 1" Maps, 1879-1930**

2.3.5.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: '*The representation on this map of a road, track or footpath is no evidence of a right of way*'.

2.3.5.2 On the 1879 map an unfenced track is shown from Mole's Chamber at point D, to Sadler's Stone and Gate at point V, as part of a continuous route between North Molton and Lynton. The map legend has not been provided, so its depiction can not be clarified.

2.3.5.3 On the 1918 map an '*unfenced road*' is shown from Mole's Chamber at point D, to Sadler's Stone and Gate at point V, as part of a continuous route between North Molton and Lynton.

2.3.5.4 On the 1930 map an '*unfenced road*' is shown from Mole's Chamber at point D, to Sadler's Stone and Gate at point V, as part of a continuous route between North Molton and Lynton.

### **2.3.6 Johnson's Motoring and Touring Map of Devon 2" to 1 mile Map, 1951**

2.3.6.1 Commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. However, combined with evidence from other sources, they can tip the balance of probability in favour of such status.

2.3.6.2 An '*unfenced road*' is shown from Mole's Chamber at point D, to Sadler's Stone and Gate at point V, as part of a continuous route between North Molton and Lynton.

## **2.4 Documentary Evidence**

### **2.4.1 Exmoor Forest Plan, 1785**

2.4.1.1 Estate records contain papers relating to a variety of matters. Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public right of way which crossed the estate.

2.4.1.2 This plan was copied by William Harrison from one in the possession of Thomas Darch Esquire, who was the owner of the freehold tithes of Exmoor Forest at the time when the original plan was surveyed in 1778 at a scale of 1" to ¼ mile.

2.4.1.3 A route is shown on the application alignment (currently recorded in Devon as Challacombe Bridleway No. 10) between points D, annotated '*to Bratton Felmmon*' (Bratton Flemming) to point W, north of Sadler's Stone, annotated '*to Linton*' via point T, Woodbarrow.

#### **2.4.2 Challacombe Manor Map, 1791**

2.4.2.1 Manorial records contain papers relating to a variety of matters. Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public right of way which crossed the estate.

2.4.2.2 A route is shown on the application alignment between points D – L, the Castle Common road and Broadbarrow Stone. It is annotated as '*the Lime Road leading from North Molton to Linton*'. It is also shown between R – W, Twizel Mark Stone and the unsurfaced county road north of Saddle Gate and Stone. It is annotated as '*the Lime Road leading from Linton to North Molton*'.

#### **2.4.3 Cary's Map, 1794**

2.4.3.1 Besides the Ordnance Survey, Cary was the leading map publisher in the 19<sup>th</sup> century. He maintained a high standard of maps, using actual trigonometric surveys and other up to date source materials including parliamentary documents, which was reflected by his employment to survey the 9,000 miles of turnpike roads in 1794.

2.4.3.2 Sheets 11-12 show an unenclosed route from Mole's Chamber at point D to Sadler's Stone at point U via Woodbarrow at point T, and then on past point W towards Shallowford and Lynton and Lynmouth. This is the application route, which is currently recorded in Devon as Challacombe Bridleway No. 10.

#### **2.4.4 Lord Courtney's Lands Map, 1797**

2.4.4.1 Estate records contain papers relating to a variety of matters. Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public right of way which crossed the estate.

2.4.4.2 A route is shown on a similar alignment to the application route between points L – M – N – O – P – R – S – T. At point L, the '*Broad Borough Stone*' (Broadbarrow Stone) is shown and the route is annotated as the '*road from South Molton*', while at point R, the '*Twizzle Mark Stone*' is shown and the route is annotated as the '*road to Lynmouth*'.

#### **2.4.5 High Bray Manor Map, circa 1800**

2.4.5.1 Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public rights of way which crossed the estate.

2.4.5.2 The plan is of Shrewsborough Castle Common. It shows the southern end of the application route (currently recorded in Devon as Challacombe Bridleway No. 10) between points D – E – F – G – H – I, between the surfaced county road and Sloley Stone. At Lew Combe, it is annotated as the '*Lime Road to Challacombe*'.

#### **2.4.6 Ordnance Survey Drawings, 1804**

2.4.6.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: '*The representation on this map of a road, track or footpath is no evidence of a right of way*'. However, the Drawings did not have the disclaimer when published; it was applied retrospectively.

2.4.6.2 An unenclosed route is shown from Mole's Chamber at point D to Sadler's Stone at point V via Woodbarrow at point T, and then on past point W on towards Shallowford and Lynton and Lynmouth. This is the application route.

#### **2.4.7 Gratton Manor Map Book, 1804**

2.4.7.1 Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public rights of way which crossed the estate.

2.4.7.2 The manor of Gratton was located in High Bray, now Brayford parish, and was owned by Richard Harding of Buzzacott House, Combe Martin. The book contains 9 plans of the estate surveyed and planned by William Bear of Buckland Brewer, Bideford. Plan number 9 is listed as '*The Castle*', which is Shrewsborough Castle Common. It shows the southern end of the application route (currently recorded in Devon as Challacombe Bridleway No. 10) between points D – E – F – G, between the surfaced county road and Sloley Stone. At the Stone, it is annotated '*to Challacombe*'.

#### **2.4.8 Exmoor Forest Land and Soil Survey, 1813**

2.4.8.1 Estate surveys were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public rights of way which crossed the estate.

2.4.8.2 The survey was carried out by Matthew Wasbrough, a surveyor of Taunton, at a scale of 1" to 4 miles. It shows a route on a similar alignment to the application route, between points D – W, and is annotated '*from High Bray*' south of point D and '*from Linton*' north of Sadlers Stone at point W.

#### **2.4.9 Forest of Exmoor Inclosure Award, 1818**

2.4.9.1 Inclosure awards can be evidence of reputed highways at the time they were made. Their significance as evidence depends on the powers given to the relevant Inclosure Commissioners. Awards and maps may provide supporting evidence of other matters, such as the existence of status of a

route adjacent to but outside the awarded area. Evaluation of such evidence is considered in the context of the relevant inclosure act.

- 2.4.9.2 In the Award, ‘the said Commissioners did set out and appoint the several Public Carriage Roads Bridle Roads...Watering Places for cattle and Places for getting materials for repair of roads therein stated and therein and hereinafter more particularly described (that was and is to say) Public Carriage Roads...No. 8 The Linton & Southmolton Road, One other Public Carriage Road & Highway of the like breadth of 40 feet commencing at Saddle Stone [point V] and following its present track leaving the Forest in several places through Challacombe and Highbray Commons’.
- 2.4.9.3 ‘...And reciting that we had appointed several meetings to be held at Southmolton, Simonsbath and Minehead which all persons interested were required to attend and all objections which should or might be then and there made to the setting out the said Roads or any of them would be heard and determined so that the said Roads might be finally set out according to the best of our judgement upon the whole and that the map of the said Roads might be confirmed or such alterations made therein as the case might require And reciting that such meetings were accordingly held but no objections were made to all or any of the said Roads so set out and appointed whereupon the map thereof was confirmed’.
- 2.4.9.4 ‘And that we the said Commissioners did set out and appoint the several Public Carriage Roads Bridle Roads Watering Places for cattle and Places for getting materials for repair of roads therein stated and therein and hereinafter more particularly described (that was and is to say) Public Carriage Roads ... No. 8 The Linton & Southmolton Road One other Public Carriage Road & Highway of the like breadth of 40’ commencing at Saddle Stone and following its present track leaving the Forest in several places through Challacombe and Highbray Commons...’.
- 2.4.9.5 The Award Map shows the application route between points D – I, Mole’s Chamber to Broadbarrow Stone, and between points P – V, Bill Hill Stone to Saddle Stone, and the start of the unsurfaced county road towards Lynton. The section between Broadbarrow Stone and Bill Hill Stone is not shown because it is too far away from the Award area.
- 2.4.9.6 This is the application route, currently recorded in Devon as Challacombe Bridleway No. 10.

#### **2.4.10 Crown Allotment Inclosure Award, 1818**

- 2.4.10.1 This map shows that part of the Exmoor Forest Inclosure awarded to the Crown. It shows a route on a similar alignment to the application route between points D – L and just north of point N to T at Sadlers Stone. It also shows the route passing the Twizel Mark Stone and Wood Barrow. Between points P and V, the route is annotated ‘*the Linton and South Molton Road*’.

## **2.4.11 Cary's Map of North Devon, 1821**

- 2.4.11.1 Besides the Ordnance Survey, Cary was the leading map publisher in the 19<sup>th</sup> century. He maintained a high standard of maps, using actual trigonometric surveys and other up to date source materials including parliamentary documents, which was reflected by his employment to survey the 9,000 miles of turnpike roads in 1794.
- 2.4.11.2 An unenclosed route is shown from Mole's Chamber at point D to Sadler's Stone at point V via Woodbarrow at point T, and then on towards Shallowford and Lynton and Lynmouth via point W. This is the application route, currently recorded in Devon as Challacombe Bridleway No. 10.

## **2.4.12 Lynton Vestry minutes, 1828-94**

- 2.4.12.1 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 elected Surveyors of Highways. Relevant Acts of 1766, 1773 and 1835 included the provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended. These references refer to the application route.
- 2.4.12.2 1831. The extent of the '*parish roads*' in Lynton included the continuation of the application route northwards from '*Saddlestone*' [point V] to Cherry Bridge, Lynton to an extent of 2/5/34 miles.
- 2.4.12.3 8 July 1840. 'At a vestry meeting held this day pursuant to public notice given by the Surveyors of the Highways 'respecting the Highways of the Parish', it is resolved, 1, that the road leading from East Ilkerton to Saddle Stone [point U] be put in good repair, 2, that a committee be appointed to survey the said road and to order it to be made and repaired in such a manner and direction with such deviations, as they may think proper'.
- 2.4.12.4 1861. 'Measurements of the Parish Roads...from main road, Cherry Bridge to Shallowford 1/5/2'.
- 2.4.12.5 14 February 1861. 'At a vestry meeting held this day pursuant to public notice, it is resolved, that it appears to this meeting desirable, that the parish roads be let by tender to be held in repair in the following lots:...Lot 7 from main road, Cherry Bridge to Shallowford 1/5/2'.

## **2.4.13 Challacombe Vestry minutes, 1833-94**

- 2.4.13.1 14 July 1833. The Vestry organised a meeting for the 22<sup>nd</sup> 'for the purpose of taking into consideration the making or repairing the road on the Common joining the Forest of Exmoor leading from Sadler's Stone [point V] to a stone in Lewcombe against Martinhoe road'.

- 2.4.13.2 23 February 1834. The Vestry organised a meeting for 3 March 'for the purpose of taking into consideration the making of road on the Common leading to the Forest of Exmoor from Sadler's Stone [point V] to a stone in Lewcombe'. There were no votes for the road and 5 against.
- 2.4.13.3 12 October 1840. 'At a meeting of the rate payers of the parish of Challacombe held at the Vestry Room of the said parish in pursuance of a ? notice, to decide on the liability of the said Parish to make and repair a certain track or road between Sadler's Stone [point V] and Lewcombe, it was agreed that it appears expedient to their meeting that the opinion of some learned counsel be obtained as to the liability of the Parish of Challacombe to make or repair the said line of road from Sadler's Stone to Lewcombe and that the parish will be answerable for the defray of expenses of obtaining a copy of the Commissioners Award and of examining the witnesses required from the same'.
- 2.4.13.4 21 December 1840. 'According to a regular notice also given for the same tie on this day, 10 o'clock, to determine on the propriety of putting in a 'plea of not guilty' at the next Quarter Sessions to the Indictment professed against the Parish of Challacombe to make or repair 2 miles and 2 furlongs of road from Sadler's Stone [point V] to Lewcombe. It was unanimously agreed that in consequence of a counsel's opinion on this subject not having yet arrived, that this meeting do stand adjourned until Saturday next December 26<sup>th</sup> instant at 9 o'clock in the forenoon. This proposition was made by Mr William Ridd and seconded by Mr Partidge Ridd'.
- 2.4.13.5 'It was unanimously agreed that in consequence of a counsel's opinion on this subject not being yet arrived that the meeting was adjourned until the 26<sup>th</sup> instant'.
- 2.4.13.6 'According to a ... notice given for that purpose and where as the counsel's opinion is not yet arrived it was unanimously agreed to adjourn the aforesaid meeting unto Thursday 31<sup>st</sup> December 1840 at the Vestry Room at 12pm moved by Mr Ambrose Dallyn and seconded by Mr David Pile'.
- 2.4.13.7 31 December 1840. 'At a meeting duly adjourned to this day from December 26<sup>th</sup> 1840, to determine on the proposition of putting in a plea of 'not guilty' to the indictment professed against the parish of Challacombe to repair 2 miles and 2 furlongs of road from Sadler's Stone [point V] to Lewcombe, it was determined by a majority of 7 to 2 to abide by the opinion of counsel taken afor this parish and plead 'not guilty' to the indictment in question at the ensuing sessions of ? It was agreed that the Surveyor of the Highways Mr Thomas Dallyn and another house holder do attend at Exeter for the purpose of carrying out the above proposal and that their reasonable expenses be defrayed by the parish'.
- 2.4.13.8 25 January 1841. 'According to a regular notice given for a public vestry meeting to be held this day at the Vestry Room in the parish of Challacombe to determine whether the inhabitants will make a certain line of road from Saddle Stone [point V] to Lewcombe 2 miles and 2 furlongs that is indicted or

defend the same at law and to provide such sum or sums of money shall defray all expenses at the Court of Equity, and providing such evidence as may be brought needful. It was unanimously agreed that this meeting stand adjourned unto Saturday the 30<sup>th</sup> January instant at 2pm. Move by Mr William Huxtable and seconded by Mr Ambrose Dallyn’.

2.4.13.9 30 January 1841. ‘At a meeting duly adjourned to this day from 25 January 1841 to determine on the propriety of making a road from Saddle Stone [point V] to Lewcombe 2 miles and 2 furlongs that is indicted or defend the same at law at the Assizes by providing such sum or sums of money as shall pay all expenses touching the said case it was determined by a majority of 10 to 1 to defend the case and to provide such sum or sums of money as shall pay expenses at the said trial and in providing such evidence as may be thought needful for the said case’.

2.4.13.10 13 January 1849. ‘At a public meeting holden at the Vestry Room of this parish pursuant to due notice the 4<sup>th</sup> January 1849, it was unanimously resolved that the said meeting be adjourned to Monday 22<sup>nd</sup> January 1849’.

2.4.13.11 22 January 1849. ‘At the adjourned meeting holden at the Vestry Room of this parish 22<sup>nd</sup> January 1849 Mr Thomas Dallyn in the chair. It was proposed by Mr W Crang and seconded by Nathaniel Vellacott that the parish of Challacombe have nothing whatever to do with the way leading from Edgerley Stone to Mole’s Chamber. Carried unanimously’.

#### **2.4.14 High Bray (Brayford) Tithe Map and Apportionment, 1838**

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

2.4.14.2 The High Bray tithe map is a first class map, surveyed at a scale of 4 chains to 1“ by George Northcote, a land surveyor from Barnstaple. Being first class, it is considered to be a legal and accurate record of all matters it contained, not just tithe information. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.

2.4.14.3 The High Bray tithe map appears to show something following the alignment of High Bray, now Brayford, Bridleway No. 9, part of the application route

between points H – I. Its continuation at the southern end across Castle Common is not braced to the common.

#### **2.4.15 Challacombe Tithe Map and Apportionment, 1839-40**

2.4.15.1 The Challacombe tithe map is a second class map, surveyed at a scale of 6 chains to 1" by Hugh Ballment, a land surveyor from Barnstaple. Being second class, it is considered only to be a legal and accurate record of tithe matters. Land that was not subject to tithes was generally accepted to be either public, glebe or crown estates. In many cases public roads are coloured sienna as prescribed by Lieutenant Dawson, a military surveyor with the Ordnance Survey, to the Tithe Commissioners. The original document is held at the National Archives, with copies for the parish and diocese held locally.

2.4.15.2 The application route is shown as an unenclosed track from the county boundary at point F near Sloley Stone, point G. it is annotated as '*from North Molton*'. It is shown running northwards via Lew Combe via point I and Broadbarrow Stone, point L to approximately point M. No route is shown between points L, the junction with Bridleway No 12, and N, the county road, B3358, North Lane.

2.4.15.3 It restarts at point O on the north side of the B3358, North Lane, and continues northwards following the county boundary via Wood Barrow, point T, and points U and V, Saddlers Stone, to point W, at the junction with Lynton and Lynmouth uUCR 306.

#### **2.4.16 Exmoor Tithe Map and Apportionment, nd**

2.4.16.1 In Somerset, not all parishes conformed to the normal pattern of tithe map production. There are divided into six groups: parishes for which no tithe maps were produced, and for which there are not available alternative sources, parishes where only limited areas are mapped, parishes where urban areas are excluded, or if mapped, are unnumbered and therefore omitted from the apportionment, parishes where all tithes had been merged under an earlier enclosure award, and for which no tithe maps were produced or, if produced, only covered small areas – for these parishes, the enclosure maps and awards, which date between 1799 and 1926, cover the whole parish and should be consulted in preference to the tithe map, parishes for which urban areas are missing from the diocesan copy, but which are shown on the parish copies, and parishes for which only outline maps, lacking the normal detail, were prepared.

2.4.16.2 No tithe map was produced for Exmoor parish, but the Exmoor Forest Inclosure Award of 1818 can be consulted instead, and has been, above.

#### **2.4.17 Cooper's Guide, 1853**

2.4.17.1 Thomas Henry Cooper produced a visitor's guide entitled 'A Short Historical Sketch of Lynton, Lynmouth, Ilfracombe, and Places adjacent in North Devon'.

2.4.17.2 A route is shown on the map on a similar alignment to the application route, between points E – W and continuing on to Lynton.

#### **2.4.18 Working Fortescue Estate Map, nd & 1859**

2.4.18.1 This is a working map of the Estate with the fences on the commons erected since the map was made, inserted in red by Hugh Ballment is entitled '*A map or plan of the manors of Challacombe and Wistland taken in 1791 by Robert Ballment*', and is annotated '*the map mounted on cloth and the fences on the commons erected since the map was made, inserted in red by me High Ballment 1859*'. It shows the Challacombe and Exmoor Estate owned by Earl Fortescue, with the Exmoor inclosure allotment including Regis Common.

2.4.18.2 A route is on the application alignment between points D – L and M – N, with the former annotated as '*Road called the Lime Road leading from North Molton to Linton*'.

#### **2.4.19 Regis Common (Challacombe) Inclosure Agreement & Map, 1861-2**

2.4.19.1 Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public rights of way which crossed the estate.

2.4.19.2 This agreement records the enclosing and dividing the common known as Challacombe or Lord Courtenay's Common covering over 535 acres between Earl Fortescue, Thomas Dallyn, Richard Ridd, Partridge Ridd, and Humphrey Ridd. It refers to the road from North Molton to Lynton via Moles Chamber, which includes the application route. It states that the surveyor was to omit from any allotments '*appropriating and setting aside a sufficient portion of the Common as a Track or Road space over and near the same Road or Track for the passage of persons entitled to pass and repass over and along the same so as to prevent encroachment upon or interference with the said allotment and in the allotment of the whole of the said Common... shall be compelled to make or to repair the said last mentioned Road or any part thereof running over the said Common or shall incur sustain or be put unto any costs charges less damage or expenses with reference thereto or to any indictment or other proceedings for the repair or non-repair thereof then and in that case each of the said several parties hereto shall and will contribute to such making or repair from time to time*'.

2.4.19.3 The associated map shows a route on a similar alignment to the application route between points M – N, and a continuation, now recorded as Challacombe Bridleway No. 12 along South Lane towards Challacombe village. The route is numbered as allotment 10, and is allotted to all parties involved as an '*occupation road...17' wide*'. It is noted that '*this road if fenced off must be made and kept in repair by the owner for the time being of each allotment through which it passes*'.

#### **2.4.20 Lord Fortescue's Regis Common map, 1868**

- 2.4.20.1 Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public rights of way which crossed the estate.
- 2.4.20.2 The map records Lord Fortescue's property at a scale of 3 chains to 1" in several parishes including Challacombe. It was completed by Hugh Ballment from a map made by Robert Ballment and from the Tithe Map. It shows a route on a similar alignment to the application route between points H – I – J – K – L and M – N where it crosses Earl Fortescue's allotment from the Regis Common. At point H, the route is annotated '*from North Molton*'.

#### **2.4.21 Shrewsborough Castle Common Inclosure Award, 1872**

- 2.4.21.1 Inclosure awards can be evidence of repute of highways at the time they were made. Their significance as evidence depends on the powers given to the relevant Inclosure Commissioners. Awards and maps may provide supporting evidence of other matters, such as the existence of status of a route adjacent to but outside the awarded area. Evaluation of such evidence is considered in the context of the relevant inclosure act.
- 2.4.21.2 The Award Map shows the application route passing through the Award area between points D – E – F – G – H – I – J and annotated '*to Lynton*'. It is not covered by the Award, having been subject to a previous Award.

#### **2.4.22 Deposited Plan – Lynton Railway, 1878**

- 2.4.22.1 Individual schemes were promoted by Special Acts. The statutory process required for the authorisation of schemes was exacting, having been set out by parliamentary standing order and the Railways Clauses Consolidation Act 1845. The book of reference and deposited plans made in the course of the process needed to be of a high standard, as they formed the basis for legislation and were in the public domain. Consequently, they were scrutinised by all relevant parties who would not unnecessarily cede ownership, rights or responsibilities, as the status of a way had an impact on the cost of the scheme.
- 2.4.22.2 The scheme was surveyed by G. Bush at a scale of 400' to 1". Between miles 3 and 4 miles, the application route is recorded as lot 9a, a public halter or bridle path owned by the Ilfracombe District Highway Board.

#### **2.4.23 Lynton Local Board & Urban District Council Minutes, 1878-1974**

- 2.4.23.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain.

- 2.4.23.2 There are a number of references to the highways in Lynton and Lynmouth parish in these records, with a number specifically dealing with the application route.
- 2.4.23.3 27 March 1878. The parish highways were divided into lots to be put out for tender. Lot 4 included the highway 'from the Barnstaple Road at Cherrybridge to Shallowford and Sadlers Stone. Also from East Ilkerton to Hanging Gate with 30 yards of new stones'. This includes the application route between points V – W.
- 2.4.23.4 26 March 1879. The parish highways were divided into lots to be put out for tender. Lot 3 included the highway 'from the Barnstaple Road at Cherrybridge to Shallowford and Sadlers Stone. Also from East Ilkerton to Hanging Gate with 30 yards of new stones'. This includes the application route between points V – W.
- 2.4.23.5 25 February 1880. 'Roads (Tenders for repairs). The Surveyor reported that the contracts for the repairing and cleaning of the roads...he had...published the usual notice inviting tender...Lot 4. From the Barnstaple Road at Cherrybridge to Shallowford and Sadlers Stone...'
- 2.4.23.6 24 March 1881. Roads. Tenders for Repairs. The Surveyor reported that ... he had recently published the usual notice inviting tenders...Lot 4. From the Barnstaple Road at Cherrybridge to Shallowford and Sadlers Stone...'
- 2.4.23.7 27 June 1918. 'Shallowford. A letter having been received from Mr Fox, stating that if the Council would let him know again what repairs exactly required to be done, he would get same done as quickly as possible. The Clerk was instructed to look into the matter and let Mr Fox know'.
- 2.4.23.8 27 April 1922. 'Works Committee Report....The question of letting the district roads by tender was discussed, the committee decided the following roads be let...from Cherrybridge to Saddlerstone'.
- 2.4.23.9 26 April 1928. 'Repair to road, Ilkerton to Sadlers Stone Gate [affecting the application route between points W – V]. A petition was read from Messers Sanders of Thornworthy and Pugsley of Shallowford with regard to the repair of this road and the Surveyor was instructed to do the same'.
- 2.4.23.10 27 November 1930. 'Hardening for Shallowford. It was resolved...that the thanks of the Council be tendered...for...the material'. This is the continuation of the application route towards Lynton.

#### **2.4.24 Ordnance Survey Boundaries Branch records - Challacombe, 1885**

- 2.4.24.1 A number of other documents were produced in connection with the production of Ordnance Survey maps which can be of assistance in providing supporting evidence of the existence and status of some routes. Sources of information include Boundary Remark Books and the subsequent Boundary Record Maps.

2.4.24.2 The map and journal show a route on the application alignment between points I – J – K and O – P – Q – R – S – T. They show Saddle Stone but no route. However, a post is noted in situ at that point marked 'Lynton'.

#### **2.4.25 Ordnance Survey Boundaries Branch records – High Bray, 1885**

2.4.25.1 The map and journal show a route on the application alignment between points D - I.

#### **2.4.26 Ordnance Survey Boundaries Branch records - Exmoor, 1885**

2.4.26.1 The map and journal show a route on the application alignment between points D – K and O – U. It is annotated 'cart track'.

#### **2.4.27 Ordnance Survey mapping, 1809 onwards**

2.4.27.1 Ordnance Survey maps do not provide evidence of the status of this route but rather its physical existence over a number of years. These early Ordnance Survey maps carried a disclaimer, which states that: *'The representation on this map of a road, track or footpath is no evidence of a right of way'*.

2.4.27.2 The application route is shown as an unenclosed cross road on the 1809 Old Series 1" to 1 mile as a part of a longer through route between South and North Molton and Lynton and Lynmouth.

2.4.27.3 On the later 1<sup>st</sup> Edition 25" scale and subsequent large scale mapping, the route is shown as a continuous through route, indicated by a double dashed unenclosed track.

#### **2.4.28 Challacombe Parish Meeting Minutes, 1894 onwards**

2.4.28.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.

2.4.28.2 There are occasional references to public rights of way but no specific references to the application route.

#### **2.4.29 High Bray Parish Council Minutes, 1894 onwards**

2.4.29.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.

2.4.29.2 There are occasional references to public rights of way and several specific references to the Sloley Stone at point G, but none to the application route, which includes Brayford Bridleway No. 9.

#### **2.4.30 Exmoor Parish Meeting and Council Minutes, 1894 onwards**

- 2.4.30.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a Parish Council had powers only in relation to public highways through the appointed Surveyor of Highways historically, which they had a responsibility to maintain.
- 2.4.30.2 There are no specific references to the application route.

#### **2.4.31 Barnstaple Rural District Council Minutes, 1894-1974**

- 2.4.31.1 The Minutes provide information about the management of the route and the Council's views regarding the public highways in the parish. A public body such as a District Council had powers only in relation to public highways through the appointed Surveyor historically, which they had a responsibility to maintain. The records for 1898-99 have not survived.
- 2.4.31.2 There are occasional references to public rights of way but no specific references to the application route.

#### **2.4.32 Bartholomew's maps, 1902 onwards**

- 2.4.32.1 These maps were designed for tourists and cyclists with the roads classified for driving and cycling purposes. They were used by and influenced by the Cyclists Touring Club founded in 1878 which had the classification of First Class roads, Secondary roads which were in good condition, Indifferent roads that were passable for cyclists and other uncoloured roads that were considered inferior and not to be recommended. Additionally, footpaths and bridleways were marked on the maps as a pecked line symbol. Cyclists were confined to public carriage roads until 1968. The small scale does not permit all existing routes to be shown, omitting some more minor routes. The purpose of these maps was to guide the traveller along the routes most suitable for their mode of transport.
- 2.4.32.2 The application route between points D – W is shown running northwards from Moles Chamber to 'Two Gates', actually Saddle Stone and Gate, and its continuation northwards to Shallowford and Lynton beyond, are shown as an '*uncoloured road*', which was considered '*inferior*'. Saddle Stone and Gate [point V] is probably named Two Gates because of the 2 gate system used at access points onto the unenclosed commons on Exmoor Forest employed by John Knight who purchased much of it on its enclosure in 1818.

#### **2.4.33 Ordnance Survey Object Name Books, 1903**

- 2.4.33.1 These Ordnance Survey records contain information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features.
- 2.4.33.2 The application route is not named, but features along its extent are: Saddle Stone, Saddle Gate, at point V and Woodbarrow Gate at point T.

#### **2.4.34 Fortescue Estate Farm Plans, 1905**

- 2.4.34.1 Estate records contain papers relating to a variety of matters. Estate maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public right of way which crossed the estate.
- 2.4.34.2 The northern section of the application route is shown as a double dashed track as it approaches Saddlers Stone, point V, and its continuation northwards. It is annotated as the '*old road*'.

#### **2.4.35 British Newspaper Archive, 1906 onwards**

- 2.4.35.1 This is a digital database of scans of newspapers across the country. It includes local newspapers such as the Exeter Flying Post and the North Devon Journal, except for the years 1825-6 which have not survived. The newspapers included reports on the proceedings of the Magistrates Petty Sessions, Quarter Sessions and Assizes, along with those of the various district Highway Boards and Vestry's. These references refer to the application route.
- 2.4.35.2 27 August 1840 – North Devon Journal. Petty Sessions – Barnstaple, August 20<sup>th</sup>. 'Bad Roads. JC Roe of Linton preferred a complaint against the Surveyors of Challacombe, for not keeping a road lying between Saddlestone [point V] and Lew Combe [point H], in proper repair. This case, which is one of great importance, went off on a point of form, as it appeared that the whole of the road between the 2 points mentioned in the information, was not in the parish of Challacombe, some small portions of it being on the forest of Exmoor. Mr Roe made an amended information, and the case will be heard on the next Special Sessions for highways, namely October 1<sup>st</sup>'.
- 2.4.35.3 8 October 1840 – North Devon Journal. Barnstaple Petty Sessions October 1<sup>st</sup>. 'Challacombe Highway. Mr Colwell Roe of Linton, summoned the Surveyors of Challacombe for not keeping in repair a road or tract lying between Saddle Stone [point V] and Lewcombe [point H], in that parish. The locus in quo lies on Challacombe Common, on the border of Exmoor, and was never known to have been repaired by any person. The Surveyor, on behalf of the parish, denied his liability to repair, in consequence of which, the Bench had no alternative but to order an indictment to be preferred at the Quarter Sessions. Mr Riccard, of South Molton, appeared for the complainant; and Mr C Dene, for the parish'.
- 2.4.35.4 31 July 1841 – Western Times. The Queen v The Inhabitants of Challacombe. 'Mr M Bere with whom Mr M Smith appeared for the prosecution and Mr Sergeant Bompas and Mr Kekewich for the defence. This was an indictment preferred against the inhabitants of the parish of Challacombe for not repairing a certain public highway running through their parish and being part of a road leading from Southmolton to London [Lynton]. The case possesses no general interest and was proceeding when we went to press'.

- 2.4.35.5 5 August 1841 – North Devon Journal. Devon Lammass Assize – The Queen v Challacombe. ‘Mr Bere and Mr Montague Smith were counsel for the prosecution, and Mr Sergeant Bompas and Mr Kekewich for the defence. This was an indictment against the inhabitants of the parish of Challacombe, near Southmolton, for neglecting to repair a certain public highway within their parish. The highway in question was alleged to be about 2 miles in length, and part of the road leading from Southmolton to Lynton. The matter occupied some hours in the investigation, but it terminated in a verdict of not guilty’.
- 2.4.35.6 7 August 1841 – Exeter & Plymouth Gazette. Nisi Prius. Before Mr Justice Maule. Friday – The Queen v Challacombe. ‘In this case, which was an indictment for neglecting to repair an alleged highway, and which was proceeding when we put to press last week, a verdict of Not Guilty was returned’.
- 2.4.35.7 12 September 1906 – West Somerset Free Press. ‘Devon and Somerset Staghounds...By the showing of some tail hounds, I suppose that the line that the stag took across Lynton Common to the higher part of Shallowford Combe, and thence bent upwards to Woodbarrow...on the climb to Woodbarrow [point T], by the well-remembered track from Shallowford.’.
- 2.4.35.8 18 January 1934 – North Devon Journal. ‘Exmoor and its Development... Some of the old pack horse tracks still remain, including one from Lynton to South Molton...During mining operations it was necessary, with the influx of miners, to open licensed premises. One of these was at Mole’s Chamber’, adjacent to the section of the application route points G – H, known as the Acland Arms.
- 2.4.35.9 5 April 1939 – North Devon Journal. ‘Urban Council’s Monthly Meeting Works...Mr Gillbanks reported that as a result of the inspection made by the Surveyor and himself it was recommended that the piece of road from Durcombe Water to Furzehill be taken over by the Council for repair, and that the remainder of the work necessary under the 4 year plan on the Ilkerton road to Shallowford be completed as soon as possible...both reports adopted’.

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

- 2.4.36.1 The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. It was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a route is not included within any hereditament there is a possibility that it was considered a public highway, though there may be other reasons to explain its exclusion.
- 2.4.36.2 Between points D – E – F – G - H the application route passes through hereditament Exmoor 64, listed as agricultural and moorland owned by Sir CTD Acland. There is a £25 for Public Right of Way or User.

- 2.4.36.3 Between points H – I – J the route passes through High Bray parish and hereditament 126, High Bray Common, owned by Mr Comer Clarke. There is no deduction for Public Right of Way or User.
- 2.4.36.4 Between points J – K – L – M – N the route passes through Challacombe parish and hereditament 35, Regis Commons, owned by Earl Fortescue. There is no deduction for Public Right of Way or User.
- 2.4.36.5 Between points O – P – Q – R – S the route continues through Challacombe parish and hereditament 2, Home Close, and from point S onwards through 67, Swinecombe, both owned by Earl Fortescue. There is no deduction for Public Right of Way or User for hereditament 67.
- 2.4.36.6 The maps for Devon and Somerset for the section between Woodbarrow Gate and Saddle Gate, points S – T – U – V – W have not survived in the records held by the National Archives. The map for north of Saddle Stone Gate to Shallowford, on the continuation towards Lynton shows no route excluded from the hereditaments and there is no deduction for Public Right of Way or User all the way to East Ilkerton, only Rights of Common.

#### **2.4.37 Aerial Photography, 1946 onwards**

- 2.4.37.1 The application route between points D – V is visible and, in some parts, well worn.

#### **2.4.38 Handover Roads Records, 1947**

- 2.4.38.1 The application route between points D – F is shown as an unclassified county road.

#### **2.4.39 Challacombe Definitive Map Parish Survey, 1950s**

- 2.4.39.1 The compilation process set out in the National Parks and Access to the Countryside Act 1949 involved a substantial amount of work and such records are considered a valuable source of information. The rights of way included in the process had to pass through draft, provisional and definitive stages with repeated public consultations.
- 2.4.39.2 In the list of public rights of way agreed with the Parish Meeting in 1957 Bridleway No. 10 was described as starting

#### **2.4.40 High Bray Definitive Map Parish Survey, 1950s**

- 2.4.40.1 In the list of public rights of way agreed with the Parish Council in 1957 Bridleway No. 9 was described as starting 'at the parish boundary in the north-east corner of Castle Common 10 yards west of Sloley Stone, southwards then south-eastwards to the county boundary about 80 yards south of the Sloley Stone where it enters Somerset as Bridleway No. 5/18'.
- 2.4.40.2 The parishes of High Bray and Charles were combined to form the parish of Brayford in 1974.

#### **2.4.41 Exmoor Definitive Map Parish Survey, 1950s**

- 2.4.41.1 The survey card for the application route where it runs through Somerset in the parish of Exmoor and Dulverton Rural District describes the route as a bridleway starting at '*a point 300 yards west of Driver Cottages on Simonsbath – Challacombe Road*'. It also details structures along the route: field gate near River Barle, county bridge across River Barle, CRB – carriageway used as a bridleway, field gate across common, and field gate on metal road through Mole's Chamber to Simonsbath – South Milton Road. The walking survey was made by Mr F Vigars on 16 December 1950.
- 2.4.41.2 On the Draft Map, the route, DU5/18, was coloured as a footpath, but by the time the Provisional Map was published, its status had been changed to bridleway, in line with Devon.

#### **2.4.42 Somerset Definitive Map and Statement, 1953**

- 2.4.42.1 The inclusion of a public right of way on the Definitive Map and Statement is conclusive evidence of its existence. However, this does not preclude that other rights which are currently unrecorded may exist.
- 2.4.42.2 The Definitive Statement for Exmoor Bridleway No. DU5/18 describes the route as starting from 'the county road at Mole's Chamber and runs north along the county boundary via Sloley Stone [point G] to Broadbarrow Stone [point L], where it continues in Devon. It enters the county again at Broad Mead for a short distance then goes into Devon to just south of Woodbarrow [point T]. It comes back into Somerset and continues northerly for a short distance then returns to Devon again'. The relevant date is 30 November 1953.
- 2.4.42.3 There is an anomaly in the Somerset Definitive Map and Statement for DU5/18, as part of the section between Sloley's Stone [point G] and a point 340 metres south of Broadbarrow Stone [point L], at a gate in Lewcombe [point I], is actually within Devon. This anomaly section lies within the parishes of High Bray, now Brayford, and Challacombe.

#### **2.4.43 Devon Definitive Map and Statement, 1957**

- 2.4.43.1 The Definitive Statement for Challacombe Bridleway No. 10 describes it as running from 'the end of the Lynton Urban District Road [point W] at Saddle Gate and continues southwards to the County Boundary about 100 yards north of Woodbarrow Gate [point T] (where the Bridleway enters Somerset as BR5/18) and from the County Boundary about 50 yards south of Woodbarrow Gate southwards for a distance of approximately 543 yards where the Bridleway again enters Somerset returning in Devon 147 yards further south. From this point the Bridleway continues south against the western boundary of Broad Mead until due east of Breakneck Hole Bridge where it turns south-eastwards crossing County Road B3358, then south-south-west for about 400 yards then south-south-east to the County Boundary at Broadbarrow Stone [point L] where it again enters Somerset returning into

Devon about 37 yards north of Sloley Stone [point G] and continues south to the Parish boundary 10 yards west of the Stone where the Bridleway continues in High Bray Parish as Bridleway No. 9'.

- 2.4.43.2 The Definitive Statement for Brayford (formerly the parishes of High Bray and Charles) Bridleway No. 9 describes it as running from *'the parish boundary in the north-east corner of Castle Common 10 yards west of Sloley Stone [point G], southwards then south-eastwards to the county boundary about 80 yards south of the Sloley Stone where it enters Somerset as Bridleway No. 5/18'*.

#### **2.4.44 Challacombe Estate Sale, 1959**

- 2.4.44.1 Sales particulars should be treated with special caution, as the art of embellishment in advertising is not a newly acquired skill. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.
- 2.4.44.2 On the death of both Earl and Lady Fortescue, the Exmoor estate was put up for sale. The application route is included within Lots 8 – North Swincombe Farm, 11 – Woodbarrow Common, and 16 – Barton Town Farm. All 3 lots have a right of way along sections of the application route.

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

- 2.4.45.1 The sheets which cover the application route are not included in the formal record.

#### **2.4.46 Local History, C20<sup>th</sup>**

- 2.4.46.1 Antiquary's Exmoor – Charles Whybrow. 'Benjamin Donne's map of Devon, published in 1765, marks Mole's Chamber 'a dangerous bogg', and to this day one can see how the old road curved round its head...the old road from South Molton to Lynton shows a...sunken way between Woodbarrow Gate [point T] and Saddlestone Gate [point V]'...this probably prehistoric trackway...used to denote the boundary between Somerset and Devon and between the Royal Forest and the neighbouring commons. John Knight and others built lengths of the 'forest wall' along it in the 1820s'.
- 2.4.46.2 Yesterday's Exmoor – Hazel Eardley-Wilmot (1990). 'The old road from Lynton past Woodbarrow and Moles Chamber to South Molton provided a direct way across the moor...Only parts of it are in use now, though for centuries it was 'the king's highway'. The 5 mile stretch from Barbrook to Moles Chamber shows what all roads were like until the 19<sup>th</sup> century - wide enough for droving, but very rough. This one begins as a deep lane between hedges, and continues as a good farm-track over the common past Shallowford and up to the corner of the Forest and country as Saddle Gate [point V], where the Saddle Stone is a 3 parish meare-stone. It follows the combined Forest and county boundary up to Woodbarrow [point T] ...and down southward past the Twizzlemark Stone [point R] – now immured in an enclosure bank – through Broadmead, where some of the lesser meare-stones which preceded the fence can still be seen. Then for a short

distance road and boundary part, the road going sharply round a stream-head (which both avoid) and climbing Roosthitchen to rejoin the boundary at Broadbarrow Stone [point L]. They continue downhill together, under the lee of Castle Common, to cross Lewcombe [point H] where an unimpressive but named meare-stone almost in the stream-bed is another 3-parish boundary mark; together they climb again, along the side of the hill, to Moles Chamber’.

#### **2.4.47 The Book of Challacombe, 2006**

2.4.47.1 This local history book notes the historical importance of the application route.

#### **2.4.48 Route Photographs, 2017-19**

2.4.48.1 Site photographs of the application route between points D – W show that it is open and available.

#### **2.4.49 Land Registry, 2017-19**

2.4.49.1 The application is registered for its whole length between points D – W.

### **2.5 User Evidence**

2.5.1 No user evidence forms were received in support of the application, though several of the informal consultation responses detail public use on foot and horse of the application route. There is no detailed evidence of use of the route by either non-mechanically propelled vehicles and mechanically propelled vehicles.

### **2.6 Landowner Evidence**

2.6.1 Responses were received from 4 landowners/tenants affected by the application route.

2.6.2 Mr Clare of Capelands Farm, Bratton Fleming, has owned Castle Common which is affected by the application route between points D and I for over 13 years, and has occasionally seen walkers and horse riders. He states that no gates were locked. He fenced the land adjacent to the route, as he has found gates left open and stock escaping, and users straying across his fields. He is concerned that motor vehicles would try to do the same. He also has environmental concerns.

2.6.3 Mr Mellstrom of Woolhanger Farm, Parracombe, has owned land affected by the application route for over 30 years between Lewcombe and Woodbarrow Gate, points I and T. He has only occasionally seen walkers using the route, and states that no gate were locked. He objects to the application proposal because it would allow *‘direct access onto open farmland’* along a track which *‘cannot support vehicular access’*. Mr Mellstrom also has concerns for his grazing stock, and believes that the application proposal *‘could cause obstruction to normal agricultural activities’* and *‘could cause a hazard and danger to farm personnel’*.

2.6.4 Mr Rawle of Higher Bodley Farm, Parracombe, has owned and tenanted land between Woodbarrow Gate point T, and Sadlers's Stone and Gate, point V, for over 10 years and has known the area for over 35 years. He has only seen walkers using the application route, mainly in the summer season. He has stopped people on quads and motorbikes from using the application route. He has erected signs on gates stating '*no vehicles*'. He states that he has locked a gate at '*2 days a year to stop rights like this being made*', though does not state where this occurred. Mr Rawle also has environmental and poaching concerns.

2.6.5 Ms Turner of behalf of the Bray Sporting Club, Loyton Estate, Morebath, has tenanted land affected by the application route for over 10 years, and states that only walkers and horse riders have been seen using the route.

## 2.7 Informal Consultation Representations

2.7.1 Mrs Gibbs objects to the application's proposal. When she has used the route with her horse, she has not seen any motorised use.

2.7.2 Mrs Holtom of Littleclose, Parracombe, has lived in the area for over 30 years. She has used the application route on a regular basis on foot and horse, and has never seen any motorised vehicles.

2.7.3 Miss Jones of Highfield House, Parracombe, has ridden the application route. As the ground is rough and sometimes boggy, a motorised vehicle would damage the route and potentially get stuck. When she has ridden the route, she has occasionally seen other horse riders and the farmer's quad. She has seen farm trailers abandoned because they got stuck. There have been issues with the gates on either side of the road crossing at points N and O at the B3358.

2.7.4 Mrs Jones of Challacombe has lived in the area for over 15 years, and has never seen evidence of use by public motorised vehicles.

2.7.5 Ms Lyons of Challacombe rides the application route regularly, and has never seen a cyclist or motorcyclist along the route. She has wildlife and crime concerns.

2.7.6 Mr Ridd of West Mead, Challacombe does not agree with the application's proposal, as it would be dangerous to horse riders and walkers.

2.7.7 Mr and Mrs Thomas of Higher Westland Farm, Bratton Fleming say they are opposed to the application's proposal, as the bridleway runs across an Environmentally Sensitive Area. They have wildlife and misuse concerns.

2.7.8 Mr Tull of the Old Smithy, Challacombe, objects to the application proposed upgrade, as it would '*destroy this quiet unspoilt part of Exmoor*', as the '*terrain is quite unsuitable for motorised vehicles*', and '*there would be no hope of confining motorised vehicles to a narrow track*'.

2.7.9 Mrs Tull of the Old Smithy, Challacombe, states that the application route has never been a byway, and any use would cut up the moorland.

2.7.10 Mrs Wyatt, Chairman of the Challacombe Parish Meeting says that '*no-body in Challacombe want this*'. No-one in the parish is aware of use of the route with vehicles by the general public.

## **2.8 Discussion**

2.8.1 Statute – Section 31 Highways Act 1980. There does not appear to be a specific date on which the public's right to use the application route has been called into question. The Definitive Map and Statement is conclusive evidence of the information it contains, that Bridleway No. 10 exists. Therefore, the application itself calls the public's right into question.

2.8.2 As there is no specific date of calling into question or user evidence, the proposal cannot be considered under statute law. However, the proposal route may still be proven to exist as a public right of way at common law. Evidence of dedication by the landowners can be express or implied and an implication of dedication may be shown at common law if there is evidence, documentary, user or usually a combination of both from which it may be inferred that a landowner has dedicated a highway and that the public has accepted the dedication.

2.8.3 Common Law. On consideration of the application at common law, the historical documentary evidence demonstrates the proposal route's physical existence and availability since at least 1785. It is shown in a similar manner to other recorded public highway.

2.8.4 On consideration of the application at common law, the historical documentary evidence demonstrates the application route's physical existence and availability since at least 1785. It is shown in a similar manner to other recorded public highways, mainly unenclosed passing over the Regis and Challacombe Commons.

2.8.5 At the time of the Exmoor Plan, Challacombe and Gratton Manor, and Fortescue and Courtenay Estate mapping between 1785 and 1859, a route is depicted on an alignment similar to the application route, which is currently recorded as Challacombe Bridleway No. 10. Other mapping such as Cary's of 1794 and 1821, Ordnance Survey Draft Drawings of 1804, and Greenwood's of 1827, show a cross road on a similar alignment to the application route. A route is also shown on the Challacombe and High Bray (now Brayford parish with Charles) Tithe Maps. No Tithe Map and Apportionment was produced for the parish of Exmoor which the application route also passes through. It is later included on the 19<sup>th</sup> and 20<sup>th</sup> century Ordnance Survey large scale mapping, however such mapping is not evidence of a right of right, only the existence of features on the ground at the time of the relevant survey. It also appears on the Bartholomew's tourist maps of the early 20<sup>th</sup> century, though that is only evidence of its public reputation.

- 2.8.6 It is annotated on these various maps as the road to/from High Bray, Bratton Fleming, Lynton, Lynmouth, and the Lime Road to North Molton, Challacombe, and Lynton.
- 2.8.7 A requirement of the Highways Acts of 1773 and 1835, which were contemporary with the Surveyors of Highways Accounts, was that all '*common highways*' (public) had to be named in order for indictment for disrepair, the names usually reflecting places they either went to, passed or what they were like, e.g., '*the Lime Road to Linton*'. As private roads were not liable in this way, they did not need to be named. A named highway may therefore carry some inference of public status. The relevant parish body would only devote time and effort if they and their parishioners believed it was a public highway for which they were responsible.
- 2.8.8 The most important evidence relating to the application route, which is currently recorded as Challacombe Bridleway No. 10, is that relating to the Exmoor Forest enclosure by Act of Parliament. Inclosure awards can be evidence of repute of highways at the time they were made. The Exmoor Forest Inclosure Award of 1818 shows the application route was set out as road number 8, the '*Linton and Southmolton Road*' a '*public carriage road*', with the width of '*40 feet*' commencing at '*Saddle Stone and following its present track leaving the Forest in several places through Challacombe and Highbray Commons*'. There would have been little point in the Inclosure Commissioners setting out the application route as a public carriage road, if it did not continue as such outside the Inclosure Award area. Being enacted by Parliament, this is conclusive evidence of the route's existence and its status.
- 2.8.9 The later Regis Common (Challacombe) Inclosure Agreement acknowledges and respects the earlier Award, but also sets out an 'occupation road' over part of the application route, which was already a '*public carriage road*'. The 1872 Inclosure Award of Shrewsborough Castle is also affected the route, which is annotated as the road '*to Lynton*'. It did not set out that part of the route it affected in High Bray parish (now Brayford), as this had already been carried out by the 1818 Exmoor Forest Inclosure Award.
- 2.8.10 A deposited plan for the Lynton Railway Company in 1878 appears to confuse the application route's status at that time. It refers to it as a '*public halter or bridle path*' owned by the Ilfracombe District Highway Board. Certainly, it would have mainly been used by packhorses due to the rough nature of the terrain it passes over, however the Highway Board was concerned with public roads, not bridle paths, which would have been the responsibility of the parish Vestry. It should also be noted that the railway plan was not enacted by Parliament and constructed.
- 2.8.11 There are frequent references to the route in the Challacombe Vestry minutes between 1833 and 1849, when the Vestry attempted to refuse carrying out the application route's maintenance, due to its considerable length and were indicted at the Assizes. Frequent references can also be found in the Lynton Vestry minutes between 1831 and 1861 regarding the application route's continuation as a parish road.

- 2.8.12 The indictment and court case against the Challacombe Vestry for the application route being out of repair between Lewcombe, point H, and Saddle Stone, point V, was reported in the local newspapers now included in the British Newspaper Archive. The Vestry was found not guilty as the route had never known to be repaired by anyone.
- 2.8.13 The minutes of High Bray Parish Council are silent about the route, though this could be expected as only a very short length passes through the parish. The Challacombe Parish Meeting and Exmoor Parish Meeting/Council minutes are also silent about the application route, which may be attributed to the decline in its importance and being bypassed by other more convenient routes, and its location along the parish boundary. The same applies to the Barnstaple Rural District Council records. It is also not included on the Handover Roads Records or List of Streets.
- 2.8.14 Though not within the Lynton Urban District Council area, the application route's continuation, recorded as Lynton and Lynmouth uOCR 306, was. There are regular references to the route being maintained as part of the parish road network between 1878 and 1930. It would have been illogical for successive highway authorities to maintain the application route's continuation if there was not a continuation of a similar status which was available for the public to use.
- 2.8.15 If any public roads were to be stopped up or declared non-maintainable, it had to be done through the Quarter Sessions. There are no references in the Quarter Sessions or other local authority records regarding the application route, except for those relating to the highway alterations from the Exmoor Forest Award.
- 2.8.16 Ordnance Survey Boundaries Branch records from 1885 for High Bray, Exmoor, and Challacombe all show the application route, which is annotated as a '*cart track*' to '*Lynton*'. The route is not listed in the 1903 Object Name Books, though features along its length are.
- 2.8.17 19<sup>th</sup> century plans for the Fortescue Estate, also known as the Challacombe Estate, though primarily concerned with private rights and land matters noted the application route as the '*old road*'. The later Challacombe and Exmoor Estate sale refers to several private right of way along the application route, but mentions nothing about the existing bridleway which by that time was recorded in the Definitive Map and Statement, demonstrating the interest of such documents lay in private rights only.
- 2.8.18 The Finance Act records are inconsistent with a deduction for Public Right or User for some hereditaments but not all. The records are also incomplete with the map sheet for the section between Woodbarrow, point T, and Saddle Stone and Gate, point V, missing.
- 2.8.19 Newspapers in the British Newspaper Archive from the 1930s reminisced about the historic nature of the route and the former pub, the Acland Arms, which served travellers at its southern end at Mole's Chamber between 1825 and 1883, an '*isolated and supposedly disreputable hostelry*' with links to

smuggling. Modern local history sources also note the ancient nature and rough character of old roads in this area including the application route.

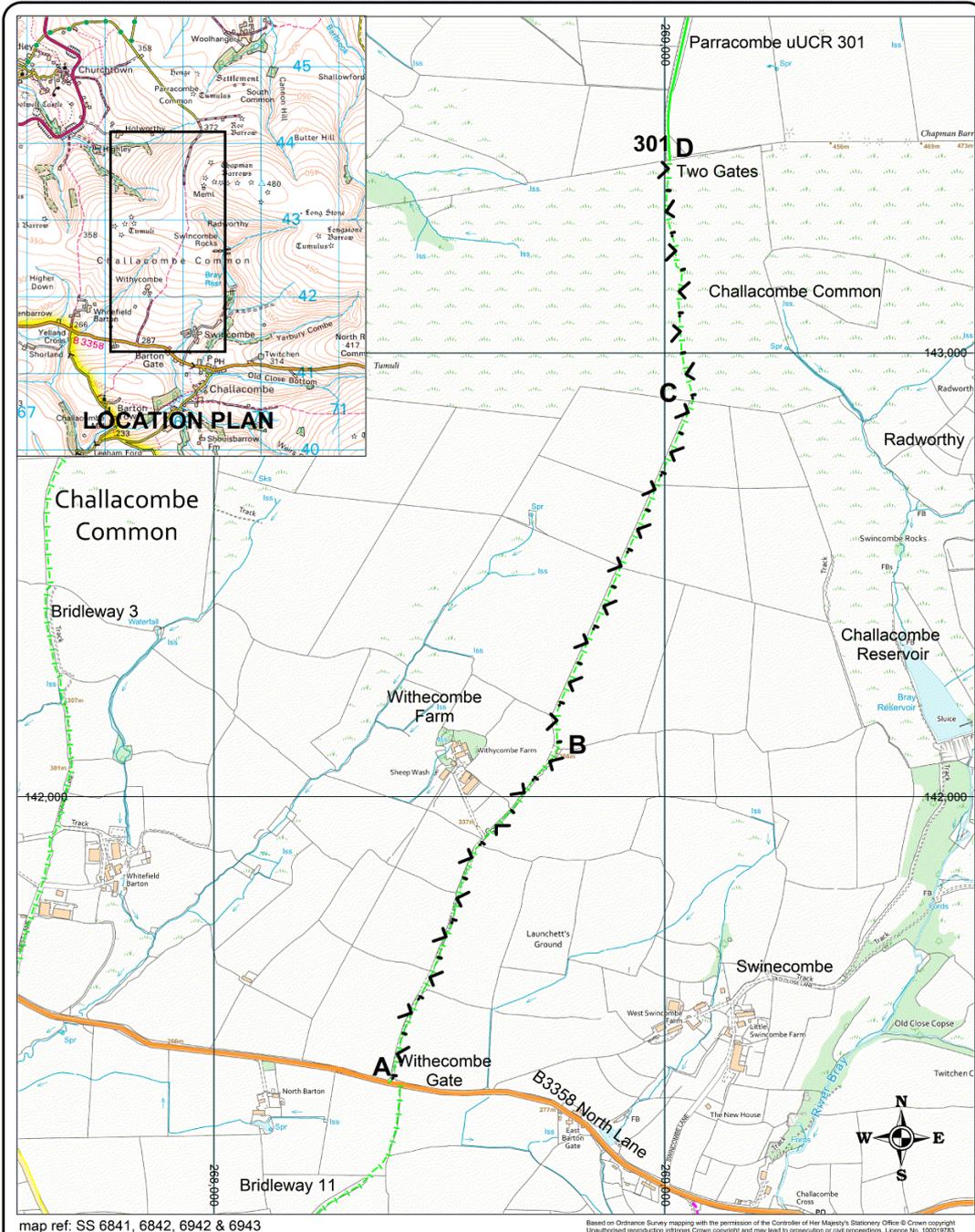
- 2.8.20 Aerial photography from the 1940s shows the application route in a similar manner to other parish routes, and is contemporaneous to the 1950 Parish Surveys. These do not dispute the application route's current status of bridleway, though initially Somerset did initially have it recorded as a footpath on their Draft Map, but corrected this by the time of the Provisional Map.
- 2.8.21 No user evidence has been submitted in support of the proposed application status by the applicants or by members of the public.
- 2.8.22 Direct landowner evidence was received from four landowners/tenants in response to the informal consultation with knowledge of the application route dating back over 35 years to circa 1980. Only one landowner has seen any public motor vehicles which he has challenged. The same landowner states he has erected notices stating '*no vehicles*' and a gate locked for two days a year to stop higher rights being acquired. However, it would be illegal to lock a gate on an existing public right of way.
- 2.8.23 Twelve members of the public including the chair of the Challacombe Parish Meeting also responded to the informal consultation, with several having walked and ridden the application route. The only vehicles they have noted have been farmers on their quad bikes tending stock. A number have environmental concerns; however, these cannot be taken into account in the determination of a Schedule 14 application under the Wildlife and Countryside Act 1981.
- 2.8.24 Presumed dedication of the application route as a '*public carriage road*' is considered to have taken place many years prior to those events, and consequently the legal maxim '*once a highway, always a highway*' applies for that status. The evidence when considered as a whole also does not support a lack of access for the public to the route.
- 2.8.25 Modern acts against public use have little weight. There is no Section 31(6) deposit, and if any existed, it would not apply retrospectively.

## **2.9 Conclusion**

- 2.9.1 On consideration of all the available evidence, the documentary evidence demonstrates that the route between Mole's Chamber and Saddle Stone Gate, currently recorded for the most part as Challacombe Bridleway No. 10, between points E – W has existed since at least 1785. It has been open and available since that time. It appears to have been considered public since at least that time.
- 2.9.2 The key evidence relating to the application route is the Exmoor Forest Inclosure Award of 1818 shows the application route was set out as the '*Linton and Southmolton Road*' a '*public carriage road*', with the width of '*40 feet*'. There would have been little point in the Inclosure Commissioners setting out the application route as a public carriage road, if it did not continue

as such outside the Inclosure Award area. Being enacted by Parliament, this is conclusive evidence of the route's existence and its status.

- 2.9.3 At Common Law, all highways existing prior to the Highways Act of 1835 were automatically repairable *'prima facie'* by the parish unless the responsibility could be proven as lying elsewhere. This liability remained so long as the highway existed or until the liability was taken away or transferred by statute.
- 2.9.4 Whilst there is evidence that the route has latterly been considered to be a private track, included within land holdings and not maintained at public expense, there is no evidence of a stopping up order or declaration of non-maintainable highway at public expense of the proposal route. The legal presumption, *'once a highway always a highway'* applies.
- 2.9.5 There is some suggestion of the proposal route having been used with motor vehicles. Vehicle use must be prior to 1930 to be legal and satisfy any of the exceptions under the Natural Environment and Rural Communities Act 2006. However, the limited vehicle evidence does not satisfy any of the exceptions set out in the legislation. Consequently, any unrecorded rights for mechanically propelled vehicles are extinguished. Consequently, the highest status the route could be considered to be is a restricted byway.
- 2.9.6 The evidence, particularly the historical documentary evidence, when taken as a whole is considered sufficient to show that a highway of a particular description ought to be shown as a highway of a different description. It demonstrates that the route was set out as and considered an all-purpose public highway, and is considered sufficient to demonstrate that non-motorised vehicular rights exist and consequently to record the route as a restricted byway.
- 2.9.7 The evidence is therefore considered to be sufficient under Common Law to demonstrate that the application route between points E – F should be added to the List of Streets as an unsurfaced county road, Brayford uUCR 303.
- 2.9.8 It is also considered to be sufficient under Common Law to demonstrate that the public highway currently recorded between points F – W as a public bridleway should be upgraded to restricted byway.
- 2.9.9 It is therefore recommended that a Modification Order should be made to upgrade Challacombe Bridleway No. 10 between points F – W to restricted byway to the Definitive Map and Statement, as shown on drawing no. HIW/PROW/18/31. If there are no objections, or if such objections are subsequently withdrawn, that it be confirmed. As the whole of the application route is not included within the county of Devon, this report will be forwarded to Somerset County Council for their consideration of those sections within their jurisdiction.



map ref: SS 6841, 6842, 6942 & 6943

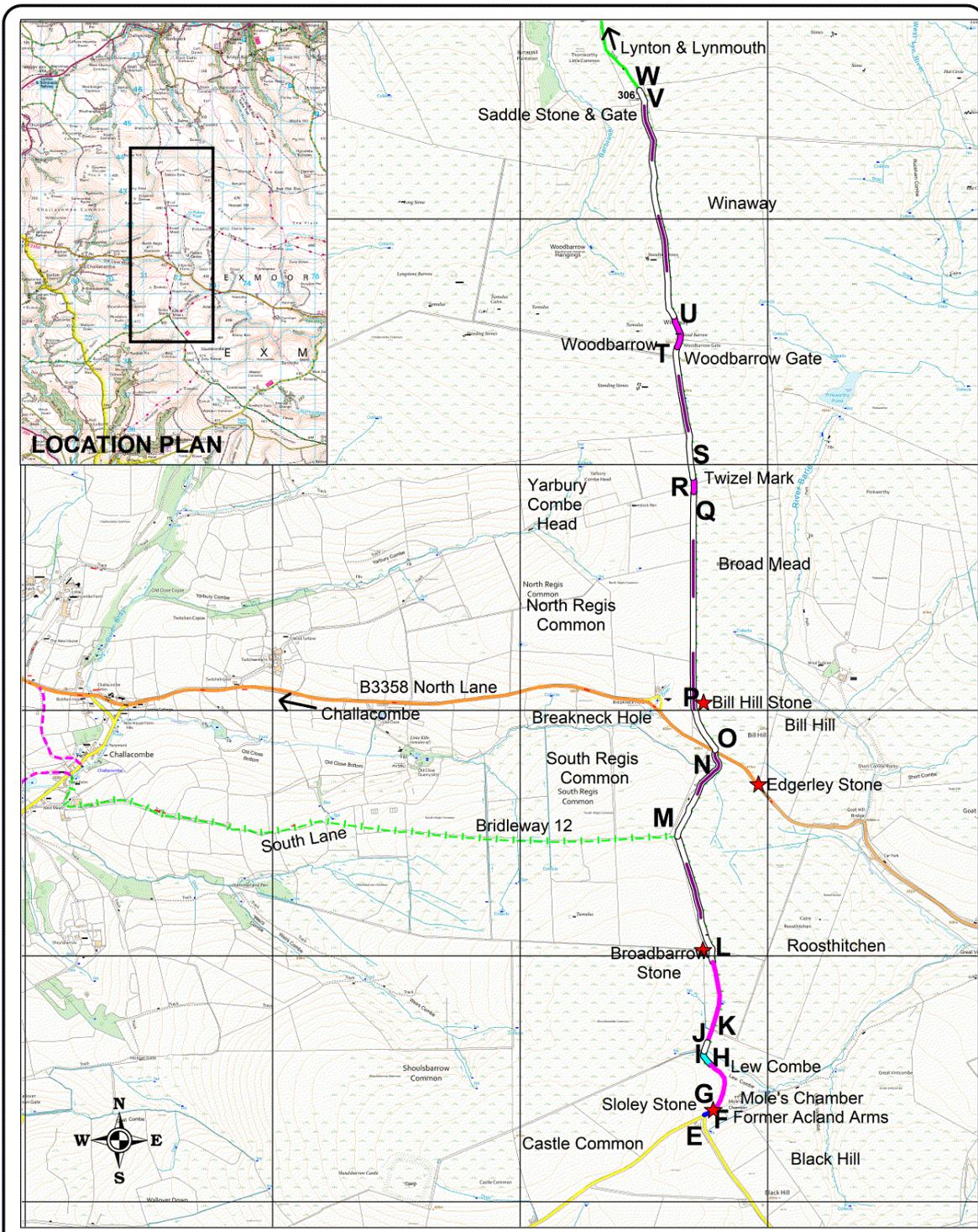
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**Devon County Council**  
**Definitive Map Review - Challacombe**  
**Proposal 4 - Schedule 14 application: Claimed upgrade of Bridleway No. 4**  
**to byway open to all traffic between Witcombe Gate & Two Gates**

drawing number **HCW/PROW/18/30**  
 date **May 2018**  
 scale **1 : 10,000**  
 drawn by **CLG**

**Notation**  
 Claimed upgrade of Bridleway No. 4 to byway A - B - C - D (approx 2,260 m)   
 Existing footpaths   
 Existing bridleways

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



map ref: SS 7139, 7140, 7141, 7142 & 7143

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**Devon County Council**  
**Definitive Map Review - Challacombe**  
**Proposal 5 - Schedule 14 application: Claimed upgrade of Bridleway No. 10**  
**to Byway open to all traffic between Mole's Chamber & Saddle Gate**

drawing number **HIW/PROW/18/31**  
 date **February 2020**  
 scale **1 : 10,000**  
 drawn by **CLG**

**Notation**  
 Claimed upgrade of Bridleway No. 10 to Byway  
 E - F - G - H - I - J - K - L - M - N - O - P - Q - R - S - T - U - V - W (approx 4,465 m)   
 Existing footpaths   
 Existing bridleways 

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

