

**Cornwall Council**

Report to:	<b>A Delegated Powers Decision to be made by the Natural Environment Manager</b>		
Date:	<b>8 January2020</b>		
Title: _____ _____	<b>Application for a Modification Order to Add Bridleways together with the Upgrade of part of Footpath 13 St Stephen-in-Brannel to Bridleway at Coombe Hill [WCA 592]</b>		
Portfolio Holder(s)	<b>Rob Nolan, Environment &amp; Public Protection</b>		
Divisions Affected	<b>St Stephen-in-Brannel</b>		
Relevant Overview and Scrutiny Committee: <b>Scrutiny Management Committee</b>			
Key Decision:	<b>N</b>	Approval and clearance obtained:	<b>Y</b>
Urgent Decision:	<b>N</b>	Implementation Date:	<b>12/06/2020</b>
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### **Recommendations:**

- That an Order be made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of Restricted Byways at Coombe Hill together with the upgrade of part of Footpath 13 St Stephen-in-Brannel to Restricted Byway in the parish of St Stephen-in-Brannel.
- That the Order be confirmed by Cornwall Council as an unopposed Order if no objections or representations are received to the Order; or, if objections or representations to the Order are received that they be submitted by Cornwall Council to the Secretary of State with a request that the Order be confirmed.

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### **EXECUTIVE SUMMARY**

- The purpose of this report was to consider an application to modify the Definitive Map and Statement by adding two Bridleways together with the upgrade of part of Footpath 13 St Stephen-in-Brannel to Bridleway. The claimed routes to be added are shown as A-C and B-E on the plan at APPENDIX A to this report. The claimed route to be upgraded is shown as C-D on the report map.
- The available evidence of use of the ways with a horse is considered to be sufficient to give rise to the presumption that Public Bridleways have been established under section 31 of the Highways Act 1980.
- There is no evidence available to indicate that landowners had taken sufficient overt action during the relevant period to demonstrate to users that they did not intend to dedicate a right of way over the claimed routes.
- In determining the application, officers have also examined documentary evidence, particularly the tithe survey and incremental value duty records. It is considered that these records indicate that, on the balance of probabilities, presumed dedication of the ways as vehicular highways has occurred at common law and that vehicular highways subsist over the claimed routes between A-D and B-E on the report map.
- Because the Natural Environment & Rural Communities Act 2006 extinguished rights for mechanically propelled vehicles unless the claimed routes qualify under one or more exceptions in the Act and no evidence was produced to show an exemption applied it is only possible to record them on the definitive map as Restricted Byways.
- In conclusion the report recommends that an Order be made under section 53(2)(b) of the Wildlife and Countryside Act 1981 to add the claimed ways and further because a Footpath already shown on the definitive map ought to be shown as a highway of a different status on the basis of the occurrence of two events. Firstly, that the available evidence shows that a Restricted Byway is reasonably alleged to subsist over sections A-C and B-E on the report map and secondly, that the available evidence shows a Restricted Byway subsists on the balance of probabilities over section C-D on the report map.
- It also recommends that the Council confirms the Order if it is unopposed or asks the Secretary of State to confirm it if it is opposed.

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### 1. **APPLICATION DETAILS**

- 1.1. The purpose of this report is to consider an application to modify the Definitive Map and Statement by adding two Bridleways at Coombe Hill together with the upgrade of Footpath 13 St Stephen-in-Brannel to Bridleway.
- 1.2. The routes of the alleged Bridleways are shown on the Map between A-D and B-E set out at APPENDIX A.
- 1.3. On 22 April 2014 submitted an application to modify the Definitive Map and Statement under Section 53 of the Wildlife and Countryside Act 1981 by adding a Bridleway from Unclassified Road U6102 Coombe Hill to its junction with Footpath 13 St Stephen-in-Brannel (shown as A-C on the report map) and a Bridleway from a Bridleway to be added by this application to its junction with Unclassified Road U6102 Coombe Hill (shown as B-E on the report map) together with the upgrade of a section of Footpath 13 St Stephen-in-Brannel to Bridleway (shown as C-D on the report map).
- 1.4. The application was supported by 29 User Evidence Forms which were completed in 2014.
- 1.5. Use of the way on horseback was claimed by all 29 witnesses for varying periods between 1960 and 2014.
- 1.6. The following supporting evidence set out at APPENDIX D-3 was submitted with the application:
  - Statement from regarding application process, project overview and her experiences of riding the claimed routes
  - Signed statements of support from users detailing their experiences of riding the paths
- 1.7. The applicant certified that the requirements of Paragraph 2 of Schedule 14 of the Wildlife and Countryside Act 1981 had been complied with by serving Notice of the Application on the Land and also every owner and occupier of the land. A list of adjacent owners/occupiers is set out at APPENDIX B.
- 1.8. Photographs of the route taken by a Council officer in 2020 and set out at APPENDIX C illustrate its physical condition at that date and describe the topography of the claimed ways.

### 2. **CONTEMPORARY EVIDENCE OF USE**

- 2.1. Establishing a right of way at statute  
Evidence in the form of questionnaires completed by users is generally provided to establish use by the public. Owners of the land are then invited

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to complete and submit a questionnaire deliberately designed to elicit evidence of actions they have taken to demonstrate their intentions not to dedicate a right of way. Evidence of use may be submitted in support of historical evidence showing a right of way subsists, although where no documentary evidence of a route is discovered, a public right of way can still be established if members of the public can demonstrate they have used a path 'as of right' without interruption for a period of 20 years. 'As of right' means any public use of a route is required to have been:

- **without force** (i.e., not breaking a lock on a gate, or cutting down a fence to access the route)
- **without secrecy** (i.e., so as to make the landowners aware that the route was being used)
- **without permission** (i.e., not having the permission of the landowner).

### 2.2. Date rights were brought into question

Legislation requires evidence of 20 years use ending at the date when the right of the public to use the way is brought into question (Section 31 of the Highways Act 1980), e.g., by erecting a notice, preventing access, or depositing a landowner statement with the highway authority indicating their intention not to dedicate a right of way. Where there is no evidence that public rights have been brought into question, Section 31(7B) of the Highways Act 1980 specifies that the date the application was made should be used as the end of the 20-year period.

### 2.3. Establishing a right of way at common law

At common law a right of way can also be established if it can be shown that levels of use by the public were sufficient for the landowner to have known that the way was being used, but by taking no action to stop it, has by making no objection, acquiesced to that use and thereby is presumed to have intended to dedicate the way as public. The common law presumption is that land has been dedicated as a highway if it has been used by the public as of right and without interruption. The land does not have to be used for a defined length of time. However, it must have been used for long enough to justify an inference that the freehold owner intended to dedicate the way as a highway. It is possible, although unusual, that dedication at common law can be presumed on the basis of less than 20 years use. The common law presumption can be rebutted by demonstrating that the landowner had no intention of dedicating the land to the public. The common law principles of dedication are expressly preserved and, if the statutory provision cannot be used, a claim may be made under common law.

### 2.4. Contrary intention to dedicate a right of way

Where a landowner can produce evidence to show that they have taken steps to prevent public rights accruing over a way, a right will not have been dedicated. Such action must be overt, apply to the way being claimed and be capable of making the public aware of the landowner's intentions. They can include erecting and maintaining notices on site stating that the

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route is not public or that it is used with permission; by installing and locking gates; or by telling people seen using the route that it is not public, etc.

In addition to erecting notices Section 31(6) of the Highways Act 1980 (following on from the Rights of Way Act 1932) allows landowners to deposit a statement and map with the relevant highway authority identifying existing public rights of way across their land, indicating their intention not to dedicate any further rights, which upon lodging a declaration is sufficient proof that no additional ways have since been dedicated. Landowner statements of this type do not act retrospectively and therefore have no effect on rights that may pre-exist the date of the initial deposit.

### 2.5. Summary of Evidence

Forms of Evidence are set out at APPENDIX D-1. Below is a summary of witnesses who have used the alleged ways as a Public Bridleway and on foot.

URN	Years of Use	Type of Use	Frequency	Comments
1	1980-2007	Horseback	4/Year	
2	1989-2007	Horseback	5/Year	
3	1999-2014	Horseback	2-3/Year	
4	1999-2014	Horseback	20/Year	Obstructed by car parked in front of lane
5	1990-2010	Horseback	12/Year	
6	1986-2013 1988-2012	Foot Horseback	35/Year 30/Year	Spoken to employees
7	2000-2014	Horseback	10/Year	
8	2011-2014	Horseback	3/Year	Spoken to farmer who owns the path in several occasions
9	1975-2014	Horseback	12/Year	
10	1986-2013	Horseback	10-15/Year	Ridden through when fields being worked
11	1989-2014	Horseback	52/Year	Has never been challenged when seen
12	2000-2014	Foot	10/Year	Been seen riding through

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	2000-2014	Horseback	20/Year	lane but not been approached or stopped
13	1994-2014	Horseback	6/Year	Never questioned when seen
14	1956-2014 1960-1999	Foot Horseback	30/Year 20/Year	Never approached
15	1984-2014 1984-2011	Foot Horseback	10/Year 20/Year	Never been questioned on using it
16	1984-2014 1984-2014	Foot Horseback	4/Year 1/Year	
17	1976-2009	Horseback	7/Year	Obstructed by parked cars at lower end
18	2012-2014	Horseback	1/Year	
19	1998-2014	Horseback	20/Year	Sometimes car parked & debris from house adjacent to rail track
20	1985-2014 1985-2014	Foot Horseback	1/Year 50/Year	Van blocked entrance near viaduct
23	1984-2000	Horseback	8/Year	Easily visible from Coombe Hill Farm of which I knew the owners
24	2002-2014 2002-2014	Foot Horseback	-/Year -/Year	
28	1994-2014	Horseback	6-/Year	
29	2004-2014	Horseback	8+/Year	
30	1995-2009	Horseback	26-/Y	
31	1975-1990	Horseback	15/Year	
32	1990-2012	Horseback	8/Year	Sometimes car parked by cottage, but could always get past
33	2013-2014	Horseback	6/Year	Notice 'Private Land' appeared 6 weeks ago at entrance/exit & in the corner after the railway line
34	2009-2014	Horseback	10/Year	Private notice put up 1 month ago on corner

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				leaving railway line/ Owner of house at Coombe Viaduct end parks white van in entrance making it impassable
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The witnesses have not been interviewed, but information has been taken from the Forms of Evidence which have been signed by each witness to the effect that "I hereby certify that to the best of my knowledge and belief the facts that I have stated are true" accompanied by annexed maps detailing the precise routes, which have also been signed.

**Permissive & Private Use**

Where witnesses identify they have used the alleged route with the permission of the landowner, or in exercise of a private right their evidence cannot be used in support of the claimed public right. No user indicates that they have used the way except as of right.

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Bar Chart of Claimed Use on Horseback



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### Frequency of Use

In order to be satisfied about whether there has been sufficient use of the way by the public, it is necessary to consider not only the number of users and how long they used it for, but also how often witnesses claim to have used the paths. The summary table above shows that 9 witnesses indicated they used the path approximately once a month, with a further 7 approximately every 2 weeks, while 2 witnesses reported that they used it every week. Therefore, together with the number of other witnesses who claim to have used the way, use on horseback has been shown to be substantial and continuous.

### Supplementary Evidence in Support of the Application

Further evidence submitted by the applicant in the form of letters from users supporting the application is set out at Appendix D-3. As these predominantly confirm and emphasize evidence already contained in witness statements about the length of time members of the public had used the paths for equestrian purposes, with no attempts to curtail their enjoyment, it is not considered necessary to summarise these further.

#### 2.6. Evidence from Landowners

With the identity of adjacent landowners who had received a copy of the Notice of Application provided by the applicant, a letter of consultation, inviting the identified landowners to submit comments in regard to the application, was sent to each of the persons certified by the applicant to be an owner and/or occupier of the adjacent land in November 2014.

Although they did not complete a landowner evidence form, reported that they owned and had access over part of the lane. That correspondence is set out at Appendix E. On the map accompanying their response identifying their ownership they wrote that the part of the lane between A-B on the report map had never been ridden on with horses in their lifetime and they were 56. They add that at the point of exit to the road there is a Council drain off the roads and sign for village of Coombe, so would obviously be expensive to alter.

#### 2.7. Consultation Responses

Consultations with the local councils, the prescribed organisations, statutory undertakers and other bodies were carried out in November 2014. Responses to the consultation set out at Appendix G were received from: St Stephen-in-Brannel Parish Council, The Ramblers, Cornwall Auto Cycle Union, and South West Water.

The Deputy Clerk to St Stephen-in-Brannel CP reported that unfortunately members of the Parish Council Planning Committee had no evidence to support the application.

The representative of The Ramblers responded indicating that he had no comment to make.

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The representative of the Cornwall ACU returned the consultation form and asked the question '*are both Bridleways necessary?*'

The response from South West Water refers to the location of its apparatus, but provides no evidence for, or against, a right of way.

the local Cornwall Councillor, was consulted over the application in November 2014. The Councillor provided no comment.

### 3. **DOCUMENTARY EVIDENCE**

Investigating a claim of rights the Council consults at least 7 primary sources to establish whether historical evidence relating to the application route exists. Where a document listed below can be viewed in the Cornwall Archive at Kresen Kernow (KK) a catalogue reference is provided. Alternatively, the record can be made available to view via the Countryside Access Team (CAT).

For further information contact:

1. Kresen Kernow – 01209 614430
2. Countryside Access Team – 0300 1234 202

Further advice about documents and their relative value for investigating rights of way claims can be found in the Guidance to Definitive Map Orders published by the Planning Inspectorate here.

Documents containing evidence pertinent to the application route are listed with the following information:

- document name, date and where it can be sourced (location and reference)
- why the document is considered important for making a decision
- what the document shows that is applicable to the claim for a right of way
- comments from the investigating officer

Upon investigation the following historical documents have yielded no evidence relevant to application route<sup>1</sup>:

- Thomas Martyn Map 1748-1749 Ref: KK [AD1145] – No evidence found
- Greenwood Map 1826-1827 Ref: KK [AD318/1] – No evidence found
- Inclosure Records for [St Stephen-in-Brannel] – No records found
- [Railway & Canal Plans – No records found]
- [Highway Diversion/Extinguishment Records – No records found]

#### 3.1. **Tithe Survey [St Stephen-in-Branwell]**

Date: 1839                      Ref: KK – TM/212

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<sup>1</sup> Please note a distinction is made between documents which contain no relevant evidence recorded as 'no evidence found' and documents for which no record exists recorded as 'no record found'.

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### 3.1.1. Why we consider this document important

Around the early 1840's following the Tithe Commutation Act 1836 the majority of parishes were surveyed by Tithe Commissioners. They produced detailed, large scale parish maps and accompanying schedules, which identified titheable lands (literally a tax value equating to a tenth of the produce of the land), but not highways, or their status. The Tithe Map cannot be used as definitive evidence of public rights, but the maps do mark roads quite accurately, and taken in conjunction with the apportionment record, can provide useful supporting evidence by inference. Land considered to be unproductive was excluded from the process and not subject to tax. Tithes were therefore not payable on public highways, and it was in the interests of landowners to ensure that these were shown correctly and indeed were sometimes shown on the map by special colouring, most often a sienna wash. Where the evidence from the tithe record is uncertain it can only be used in support of, or conjunction with, other more compelling evidence of the public nature of the way.

### 3.1.2. What this document shows in the area of the application route

An extract from the Tithe Map and Tithe Apportionment Register for the Parish of St Stephen-in-Branwell is set out at Appendix F-1. The claimed way between A-D on the report map is contained by a distinct lane with no apportionment number and coloured by a sienna wash. From B-E on the report map the claimed route crosses a parcel of land identified by apportionment number 88.

### 3.1.3. Investigating Officer Comments

As apportionment number 88 is recorded as belonging to Lady Anne Grenville and is therefore in private ownership, suggesting it did not appear to have enjoyed public access at this time. The way between A-D followed a clearly defined lane and is shown no differently from other roads in the area that are now included on the 'list of streets' maintainable at the public expense.

## 3.2. **District Valuation Records**

Date: c1911                      Ref: KK – DV/5/52

### 3.2.1. Why we consider this document important

With the intention of charging tax on any increase in value of property sold or inherited, a survey was carried out by the Valuation Department of the Inland Revenue under the Finance Act 1910. The task of the valuers was to provide information for tax purposes, to plot and record every piece of land, give every land holding a number, and provide ownership and occupation details for valuation purposes. Two parts of the Act were pertinent to highways and are now relevant for rights of way purposes.

First, Section 35 of the Act provided for excluding public vehicular roads from adjoining landholdings. Second, their concern with rights of way was in order to assess tax relief which was available for land crossed by footpaths and bridleways. In Section 25 of the Act while assessing the

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value of the land, deduction was made inter alia for “the amount by which the gross value would be diminished if sold subject to any public rights of way”. In view of the financial implications, many landowners would have been anxious to ensure that public highways were correctly recorded on the plans and all rights of way properly identified in the Field Book. Indeed as such deductions allowed for the existence of public rights of way, the valuations required by the Finance Act 1910 can be highly relevant where highway status is in issue.

The fact almost all individual pieces of land in private ownership were recorded (identified by coloured boundaries) enables one to deduce valuable information about the existence of untaxed public roads which were generally excluded from the parcels of private land. But this does not mean that it should be assumed that roads included, or part included, in a hereditament were not to be subject to carriageway rights. However, if a lane or track was excluded from the taxable landholdings, it is likely that it was considered to be a public road at the time.

The plans used an Ordnance Survey base map, but it is the annotated hereditament numbers and boundaries that are of potential evidential value. Evidence from Finance Act maps can be supported by evidence from the Valuation Book (colloquially known as the ‘Domesday’ Book), Forms 37 (Valuation field notes) and Field Books.

### 3.2.2. What this document shows in the area of the application route

An extract of the district valuation map is set out at Appendix F-2. The sections of claimed way at Coombe Hill from A-D and B-E on the report map are shown as uncoloured roads along their full length.

### 3.2.3. Investigating Officer Comments

By depicting the claimed routes at Coombe Hill as uncoloured roads they were not included in any taxable portion of a hereditament meaning they were omitted from any valuation for tax purposes. This strongly points to the conclusion that these routes enjoyed vehicular rights and were recognised as public carriageways at the time.

## 3.3. **Ordnance Survey Maps**

Date: 1810 - 1961      Ref: NLS Website [here](#).

### 3.3.1. Why we consider these documents important

The roots of Ordnance Survey lie in tactical military strategy, particularly defending vulnerable coastal areas from the threat of French invasion during the Napoleonic wars, hence the first published map was of Kent. However, it took till the early 20<sup>th</sup> century for Ordnance Survey to evolve into a public mapping body responsible for providing spatial information to the public.

Ordnance Survey maps do not provide evidence of the status of a right of way, but merely record the physical features at the time of survey. While carrying a disclaimer to the effect that the representation of any track or

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way is no evidence of a public right of way since the time the 2<sup>nd</sup> edition of the larger scale series were published circa 1890s, they are very useful in confirming the existence of a way at a particular date and the type of use along the way. Although produced at various scales including maps at one inch and six inch to the mile, it is the detailed County Series at 1:2500 that provide the best evidence of routes including their widths and any structures associated with them.

While alongside Ordnance Survey maps other commercial maps say little about the reputation of a route enjoyed by the public, they can provide useful corroborating evidence of the existence of a way over time. Indeed, although the sheets produced by Bartholomew carry a disclaimer to the effect that the 'representation of a road or footpath is no evidence of the existence of a right of way', they also state that 'the uncoloured roads are inferior and not to be recommended to cyclists'. Given that these maps were produced expressly for cycling purposes, where a route is defined it is likely to have been at least accessible by bike.

### 3.3.2. What these documents show in the area of the application route

Ordnance Survey maps set out at Appendix F-3 (including: the Ordnance Survey Six-inch maps of England and Wales 1889 & 1908 editions; smaller scale maps including OS 1:25,000 maps of Great Britain 1951 and 1960 editions; OS One-inch to the mile England and Wales Revised New Series 1896, New Popular Edition 1946 and the 7<sup>th</sup> Series 1961) all identify the claimed routes between A-D and B-E on the report map in their entirety, as a distinct track with solid boundary lines.

### 3.3.3. Investigating Officer Comments

Ordnance Survey and other commercial maps provide evidence that the tracks existed as physical entities on the same lines as the application routes from the late 19<sup>th</sup> century and persisted as features throughout editions published in the 20<sup>th</sup> century too. However, while the ways existed, these maps do not provide evidence of either the type of use that occurred, or whether that use was public or private.

## 3.4. **Definitive Map Record**

Date: 1951-60      Ref: KK – CC/HF/198

### 3.4.1. Why we consider these documents important

In the early 1950s Parish Councils were asked to carry out a survey of all the public rights of way in accordance with the provisions of the National Parks & Access to the Countryside Act 1949 (the 1949 act) with an accompanying descriptive Statement describing the relevant features and the termination points of each way.

In light of the information collected by local parishes the County Council prepared the Draft Map and Statement. Notice of its preparation was advertised in the London Gazette and one or more local newspapers circulating in the area of the authority. The purpose of the public notice was to give the public an opportunity to inspect them and see whether the

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information they contained appeared correct, e.g., whether all the paths believed to be public had been included and whether the information in the statement was accurate, and also to give landowners and occupiers an opportunity to see if paths they regarded as private were shown as public. Anyone could object to what was included in, or omitted from, the map and statement.

Following the determination of any appeals to the Secretary of State about what appeared in the Draft Map and Statement, the County Council then prepared a Provisional Map and Statement including any modifications it had chosen or been directed to make. Notice of its preparation was given in the London Gazette and the local press as before, whereupon any owner, lessee, or occupier of land over which the map showed a public right of way had the right to apply to Quarter Sessions to contend what was shown on the map. It was only following the resolution of any outstanding objections that the first definitive map and statement for Cornwall was published. The Map and Statement together provide conclusive evidence of the existence of those public rights of way shown at the 'relevant date'.

Thereafter, under provisions contained in the Countryside Act 1968, Cornwall County Council carried out a Limited Special Review whereby all RUPPs, the category of way known as a Road used as Public Path (RUPP), previously shown on the Definitive Map as CRB (carriage-road used mainly as a bridleway), or CRF (carriage-road used mainly as a footpath) were reclassified either as a Byway open to all traffic (over which there were vehicular Rights), a Bridleway or a Footpath.

### 3.4.2. What this document shows in the area of the application route

The documents set out at Appendix F-4 show that when St Stephen-in-Brannel Parish Council carried out its Parish Survey in 1951, in which it recorded and described the paths it believed to be public rights of way in its area, they initially included the route between C-D on the report map as a Footpath, although described the section in question in the Schedule that accompanied the map at the time as a cart road. The full description from the survey reads: '*Undefined footpath across fields to field gate leading to cart road which terminates at road at Coombe*'. Bar a renumbering from Footpath 156 to Footpath 13, thereafter it has remained unchanged as a footpath through the various iterations of the definitive map.

### 3.4.3. Investigating Officer Comments

Although the definitive map record identifies a right of way in St Stephen-in-Brannel, which coincides with the claimed bridleway between C-D on the report map, St Stephen-in-Brannel Parish Council originally considered it was a Public Footpath and that was the status they recorded. In respect of the claimed routes between A-C and B-E on the report map the Parish Council did not consider that these were rights of way at the time and they were therefore not included on their parish survey.

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Though the path has been a matter of legal record since the Parish Survey, Section 56 of the Wildlife and Countryside Act 1981 provides that the map and statement are conclusive evidence of the existence, at the Relevant Date, of any public rights of way shown and described, but this is without prejudice to the possibility of the existence of higher rights over a particular way, or to any other rights that may exist.

### 3.5. **Aerial Photographs**

Date: 1988 & 2005      Ref: CAT

#### 3.5.1. Why we consider this document important

Although unable to infer information about the status of a way aerial photographs can sometimes provide useful topographical detail on the existence, character and delineation of tracks including physical features on the route. The value derived from aerial photographs improves where the date and time at which the photographs were taken is known and an accurate record of the position and orientation in relation to the relevant route can be provided.

#### 3.5.2. What this document shows in the area of the application route

The aerial photographic record set out at Appendix F-5 confirms that the alleged ways between A-D and B-E on the report map were distinct tracks in 1946 for most of their extent, indeed in parts as prominent in the landscape as any nearby roads that were recorded on the 'list of streets'. Aerial photos from 1988, 2005 and 2016 show the lane has remained visible since despite vegetation growth during the intervening period.

#### 3.5.3. Investigating Officer Comments

Aerial photos only provide evidence that tracks existed as physical entities at some time on the past, but do not provide evidence of either the type of use that occurred, or whether that use was public.

## 4. **ANALYSIS**

### 4.1. Date That Public Rights Were Brought into Question

4.1.1. To establish that a right of way subsists under Section 31 of the Highways Act 1980, it is necessary to determine a date that public rights were brought into question so that a period of 20 years immediately prior to this date can be calculated over which public use of the ways can be shown to have occurred.

4.1.2. Although an affected landowner responded to a consultation indicating that they had never seen horse riders using the route during the time they had been there, this contention conflicts with evidence provided by a large number of witnesses who claim to have used the route and report that they were seen by landowners, who on occasion had spoken to them and had never challenged their use of the way.

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- 4.1.3. The landowner did not provide any further evidence of actions they had taken to indicate that they did not wish to dedicate a right of way.
  - 4.1.4. A limited number of witnesses speak about van being parked adjacent to a property close to the railway line, but if this represented an obstacle at all, it appears to have only been temporary.
  - 4.1.5. The limited number of witnesses who talked about notices indicated 'private' signs had been erected. These had only appeared recently, and it was not certain what they referred to.
  - 4.1.6. The modification order application submitted in 2014 appears to have been made to update the definitive map by adding unrecorded equestrian rights that users have enjoyed.
  - 4.1.7. In this case, where evidence makes no clear mention of any challenge by way of, for instance, physical barriers, verbal restraint or warning notices and where no direct action has been taken by the landowner to challenge public rights, it is not possible to ascertain the date upon which public rights were brought into question. In such circumstances the Highways Act 1980 (as amended by the Natural Environment and Rural Communities Act 2006) advises that the date when a legally valid application is made should be treated, for the purpose of deliberations, as the date upon which public rights were brought into question. In this case application was made in 2014.
  - 4.1.8. The relevant period of use by members of the public, as of right and without interruption, to establish public rights by presumed dedication under Section 31 of the Highways Act 1980 is therefore 20 or more years prior to the date when rights were called into question in 2014.
- 4.2. Evidence of Use
- 4.2.1. The number of evidence forms (29) submitted by witnesses claiming use of the alleged ways on horseback during the relevant period 1994-2014 is substantial, with 6 users claiming to have used them over the whole 20-year period, with a further 8 users claiming to have used it for at least a 20-year period which ended before 2014.
  - 4.2.2. The regularity that witnesses claim to have ridden the paths on horseback is also considerable with over half (62%) indicating that they used them at least once a month, including many more often than that.
  - 4.2.3. Combining figures for the number of users, the length of time the paths had been used and how frequently witnesses used the claimed routes, evidence of use is sufficient to show the ways have been dedicated as Public Bridleways.
  - 4.2.4. Although evidence of use on foot has been provided, because a part of the way between C-D on the report map is over a public footpath already

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recorded on the definitive map and statement and overall evidence of pedestrian use is considerably less than equestrian use this evidence has not been considered in this report.

### 4.3. Lack of Intention to Dedicate

4.3.1. Only a single landowner responded to a consultation and they failed to provide evidence of any steps they had taken to expressly prevent use by horse riders.

4.3.2. While a limited number of users identified a vehicle represented an obstruction and was possibly deliberately parked to deter use, no landowners have demonstrated they took further actions consistent with preventing rights from accruing during the relevant 20 years period from 1994-2014.

### 4.4. Documentary Evidence

4.4.1. For the sections covering A-D and B-E on the report map documentary evidence is also especially pertinent to the question of whether the claimed routes have been dedicated as highways at common law. In particular the tithe survey shows that in the 1840s they were part of the road network at the time.

4.4.2. The records of the tithe survey are supported by evidence contained in the incremental value duty records from the Finance Act 1910 which points to the fact that the claimed routes between A-D and B-E were considered to be public highways at that date too, because they were shown on the valuation map excluded from surrounding hereditaments no differently to other ways in the vicinity to which they connect that are now recorded as roads on the list of streets maintainable at public expense.

4.4.3. A search of the records at Land Registry shows these routes not to be registered to any landowner which is consistent with other unrecorded carriageways.

4.4.4. In the absence of a legal order stopping up the ways the evidence contained in historical documentary sources is sufficient to show the ways have been dedicated as carriageways.

## 5. CONCLUSIONS

5.1. In deciding whether to make an Order under Section 53(2)(b) of the Wildlife and Countryside Act 1981 it is necessary to consider whether an 'event' has taken place which would require the authority to make the Order. In this report the 'event' that has been considered is under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, namely the discovery of evidence which shows that a right of way which is not shown on the definitive map is reasonably alleged to subsist along the line of routes A-C and B-E on the report map. A further 'event' has also been considered

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under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 namely the discovery of evidence that 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 over the route shown as C-D on the report map. The 'events' will have taken place if it can be demonstrated that the evidence shows that public rights have been shown to exist:

- under Section 31 of the Highways Act 1980 through having been used by the public as of right and without interruption for a period of 20 or more years ending with the date on which the public right to use the way was brought into question.
  - at Common Law by showing that the landowner at some time in the past dedicated the way to the public either expressly, the evidence of the dedication having been lost, or by implication making no objection to use by the public of the way.
  - having regard to Section 32 of the Highways Act 1980 which states that a court, or other tribunal, before determining whether a way has, or has not been dedicated as a highway shall take into consideration any map, plan or history of the locality or other relevant document tendered in evidence.
- 5.2. For the purposes of Section 31 of the Highways Act 1980, it is considered that public use on horseback was brought into question by submitting a properly made modification order application claiming rights over the alleged ways in 2014.
- 5.3. No relevant evidence that could be corroborated was produced that demonstrated a lack of intention to dedicate a right of way on the part of a landowner during the relevant 20-year period prior to the right being brought into question.
- 5.4. The available evidence of use by the public of the route on horseback between A-D and B-E on the report map for a 20-year period prior to the right being brought into question was sufficient to show the ways have been dedicated as Public Bridleways.
- 5.5. '*Definitive Map Orders: Consistency Guidelines – 5<sup>th</sup> revision July 2013*' published by the Planning Inspectorate identify that documents and plans produced under the tithe survey and Finance Act can provide good evidence regarding the status of a way. In all cases the evidence needs to be considered in relation to the other available evidence to establish its value. It is considered that documentary evidence, especially the tithe survey and incremental value duty records from the Finance Act 1910, supported by the other small-scale commercial maps, indicates the claimed routes between A-D and B-E were dedicated as public carriageways at an unknown date in the past. No evidence has been discovered which indicates that public rights along the ways have subsequently been stopped up.

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- 5.6. Section 67 of the Natural Environment and Rural Communities Act 2006 extinguished all existing public rights of way for mechanically propelled vehicles unless the way qualified under one or more exceptions. The claimed routes do not qualify as an excepted way. Subsection 70(1) of the NERC Act 2006 provided for ways to be recorded as Restricted Byways in the definitive map and statement on the basis of documentary evidence or evidence of a qualifying period of use by vehicles. In this instance, because none of the five exceptions in subsection 67(2) are met, the claimed routes between A-D and B-E should be recorded on the definitive map as Restricted Byways.
- 5.7. The evidence set out in this report indicates that Restricted Byways are reasonably alleged to subsist over routes A-C and B-E on the report map. These satisfy the test for 'events' in section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.
- 5.8. Furthermore, the evidence set out in this report also indicates that 'on the balance of probability' a highway shown in the map and statement as a Public Footpath ought to be there shown as a Restricted Byway over route C-D on the report map. This satisfies the test for an 'event' in section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.
- 5.9. It is therefore considered that the Council should make a Definitive Map Modification Order to add sections A-C and B-E to the definitive map and statement for the former borough of Restormel as Restricted Byways together with an upgrade of section C-D from Public Footpath to Public Bridleway.
- 5.10. It is further considered that if the Order made by the Council is unopposed, it should be confirmed by the Council and if the Order is opposed, it should be forwarded to the Secretary of State with a request that it be confirmed.