

**Definitive Map Review 2007– 8
Parish of Heanton Punchardon**

Report of the Executive Director of Environment, Economy and Culture

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

Recommendations: It is recommended that:

- (a) subject to consultations with North Devon District Council and Heanton Punchardon Parish Council, a Modification Order be made in respect of Route 1, to record on the Definitive Map and Statement a footpath from the recorded end of Footpath No. 1, Braunton along the flood bank to Bue Weir, between points A–B shown on drawing number ED/PROW/08/28; and**
- (b) no Modification Orders be made in respect of:**
 - (i) Route 2, Mill Lane, from Heanton Hill to Footpath No. 3 near Heanton Mill, between points C–D shown on drawing number ED/PROW/08/29;**
 - (ii) Route 3, Footpath No. 6 from Eastacombe Lane to Footpath No. 35, Braunton on the Knowl Water river, as shown on drawing number ED/PROW/08/30, but the landowners be approached with respect of diversions between points E–F and G–H;**
 - (iii) Route 4, from Eastacombe Lane to St. Augustine’s churchyard, between points J–K shown on drawing number ED/PROW/08/31.**

1. Summary

The report examines suggestions arising out of the Definitive Map Review in the Parish of Heanton Punchardon, in North Devon.

2. Background

The original survey by the Parish Council in 1950 under s.27 of the National Parks and Access to the Countryside Act of 1949 put forward 16 footpaths in the parish of Heanton Punchardon. Four footpaths were withdrawn by the Parish Council, with two included in other routes and two additional footpaths included by the County Surveyor in agreement with the Parish Council in 1957. It resulted in 14 footpaths being recorded on the Draft Definitive Map. One footpath was deleted after an application to Quarter Sessions at the Provisional Map stage, so that the Definitive Map and Statement for Barnstaple Rural District, with a relevant date of 1st September 1957, recorded 13 footpaths in the parish.

Proposed reviews of the Definitive Map, under s.33 of the 1949 Act, which commenced in the 1960s and 1970s but were never completed, produced several claims between 1971–8 for the addition, deletion or amendment of routes, but with very little evidence. Those included the claimed footpath on Route 1 and in relation to Route 3, both considered in Appendix I to this report for the current review. The Limited Special Review of Roads Used as Public Paths (RUPPs), carried out in the early 1970s, did not affect this parish. A formal Schedule 14 application was submitted in 1984 with user evidence for the addition of a footpath on Route 1, which is given specific consideration in Appendix I.

Additional public rights of way have been recorded, one by a Creation Order in 1980 and one from another earlier claim resulting in a Modification Order confirmed in 1993 after a public inquiry, so that there are currently 15 footpaths recorded in the parish. The following additional Orders have been made, which will require the making of a Legal Event Modification Order for recording on a new reviewed Definitive Map:

(a) The Diversion of Highways (County of Devon) (No.10) Order 1965, diverting Footpath No. 6a at Eastacombe Lane under the Town and Country Planning Act 1962; and

(b) Dedication Agreement 1980, for part of the disused line of the former Barnstaple – Ilfracombe Railway, creating part of Footpath 22 on the Tarka Trail cycleway.

3. Review

The current Review began in March 2007 with a public meeting in Heanton Punchardon. At the meeting, reference was made to the formal application in respect of Route 1. It was for the continuation of a cul-de-sac footpath recorded in Braunton ending at the parish boundary and was included in the earlier consultations for that parish in 2006 as Route 15. Other issues were identified concerning two unrecorded routes and variations in a recorded footpath, which are considered as Routes 2, 3 and 4 in Appendix I.

Following the meeting, a few evidence forms were submitted in connection with one of the unrecorded routes, but there were no further claims or suggested changes. General public consultations on the Review concerning the four routes were carried out in April 2008 and advertised in the local press. Responses to the consultations were as follows:

County Councillor Jenkins	-	no comment;
North Devon District Council	-	responded with no specific comments;
Braunton Parish Council	-	responded in respect of Route 1, but with no further evidence;
Heanton Punchardon Parish Council	-	happy with the proposals, but no additional claims or evidence;
British Horse Society	-	no comment;
Environment Agency	-	no objection to Route 2, but with comments about flood risks;
Byways and Bridleways Trust	-	no comment;
Country Landowners' Association	-	no comment;
National Farmers' Union	-	no comment;
Open Spaces Society	-	no comment;
Ramblers' Association	-	responded in support of all the proposals, but with no further evidence.

4. Conclusion

It is recommended that a Modification Order should be made in respect of Route 1 and that no Modification Orders should be made in respect of Routes 2, 3 and 4, but to investigate diversions on Route 3 and dedication or creation by agreement with landowners, where possible. Details concerning the recommendations are discussed in Appendix I to this report.

There are no other recommendations to make concerning any further modifications. However, should any valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

5. Reasons for Recommendation/Alternative Options Considered

To progress the parish-by-parish review of the Definitive Map in North Devon.

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Electoral Division: Braunton Rural

Local Government Act 1972

List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2007-to date	DMR/HPUN

ns171008pra
sc/dmr/parish of Heanton Punchardon

2 hq 291008

Background to the suggested changes

Basis of Claims

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

The Wildlife and Countryside Act 1981, Section 53 (3)(c) enables the Definitive Map and Statement 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; or
- (iii) ... 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 Schedule 14 of the Act.

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.

In a House of Lords appeal judgment on *R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs* in 2007, it was held that for such evidence of no intention to dedicate a way to be sufficient there must be evidence of some overt acts on the part of a landowner to show the public at large that there was no intention to dedicate.

The same judgment, in respect of *R (Drain) v Secretary of State for the Environment, Food and Rural Affairs*, upheld an earlier High Court decision that the phrase “during that period”, relating to Section 31 (1) as above, did not mean that a lack of intention had to be demonstrated “during the whole of that period”. It did not specify the period of time that the lack of intention had to be demonstrated for it to be considered sufficient. What was considered sufficient would depend upon the facts of a particular case, but if the evidence shows that the period is very short, questions of whether it is sufficiently long (‘de minimis’) would have to be resolved on the facts.

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.

Common Law presumes that a public right of way subsists if, 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.

1. Route 1, application for addition of a footpath from the recorded end of Footpath No. 1, Braunton along the flood bank to Bue Weir, between points A – B shown on drawing number ED/PROW/08/28.

Recommendation: It is recommended that a Modification Order be made in respect of Route 1 for addition of the claimed footpath to the Definitive Map.

1.1 Background and Description of the Route

In 1971, a query was made to Barnstaple Rural District Council about what was considered to be an ancient right of way from Heanton Court crossing the railway line and continuing along the foreshore around the RAF Chivenor airfield to Vellator in Braunton. The Parish Council were said to have decided to claim it for recording on the Definitive Map, as it was considered to be threatened by development, the closure of the railway line and the possible closure of the airfield.

It appears not to have been taken any further, but a claim to record part of the route from near Heanton Court to the foreshore was made by the Parish Council in 1978 as part of a review process that was not completed. It was investigated in 1991 with reports to the Rights of Way Sub-Committee and led to the recording of Footpath No. 23 on the Definitive Map in 1993, confirmed after a public inquiry. The Parish Council had submitted a formal Schedule 14 application in 1984, with completed user evidence forms, in connection with adding part of the route at the other end. It was described as being from the Toll House to Bue Weir slipway on the Heanton Parish Bank, connecting with Footpath No. 1, Braunton. The application seems not to have been processed at the same time as the previous claim, but aspects of it were examined and noted. A letter of objection was received on behalf of the then landowner in response to notice served of the application. Details were retained on file and the application is considered now as part of the current review process.

The application route starts from the recorded end of Footpath No. 1, Braunton at a fence on the parish boundary on the top of the tidal flood bank of the River Caen leading to the Taw estuary, point A. It continues in Heanton Punchardon parish as a narrow worn track along the grassed top of the flood bank around fields alongside the Chivenor airfield, ending near its boundary, point B. There is no continuation further around the perimeter of the airbase to provide a connection with any other public route nearer Chivenor, so the application was made for a cul-de-sac route.

1.2 The Definitive Map and Statement, historical and recent maps and aerial photography

Footpath No. 1, Braunton is recorded as ending on the flood bank at the Heanton Punchardon parish boundary, opposite the Marsh Inspector's (Toll) House on the other side of the River Caen, as surveyed by Braunton Parish Council in 1950. Its continuation on the claimed route was not included by Heanton Punchardon Parish Council in its survey under the same process and it is not recorded on the Definitive Map and Statement.

Early maps at smaller scales, particularly the Ordnance Survey 1st edition map published from 1809 and the later Greenwood's map of 1827 based on the Ordnance Survey map, do not show the claimed route or any further continuation around the later site of the airfield. They show the lines of what may have been flood banks on the tidal rivers and estuary then to indicate the limit of high water, but maps at such a small scale did not all record or show the lines of footpaths or bridleways.

The later **Tithe Map** of 1841 at a larger scale records the former course of the River Caen before it had been straightened and the tidal flood protection banks built on its current line. Consequently, the current lines followed by the recorded Footpath No. 1 in Braunton on the flood bank and its continuation on the claimed route are not shown as they did not then exist. **Ordnance Survey 25" to a mile 1st and 2nd editions** of 1885 and 1903, show the lines of the recorded footpath and its continuation on the claimed route in more detail. They are shown partly with narrow double-dashed lines, running along the top of the flood bank and labelled 'F.P.', on both sections in the later map. The claimed route is shown continuing as far as it is currently available to follow on the flood bank, with a connection by a footbridge over a drain to another footpath crossing fields.

Although the application was claiming a footpath to the Bue Weir slipway, the maps do not show the path continuing as far as what is named as the Bow Weir limekiln on the shore of the estuary, or any slipway at that time. The limekiln appears to have been accessible from the north by a track or road, but connected by a track and footpath around the adjoining fields to the footbridge onto the claimed route. The maps show that there were several points on the estuary shore in that area marked 'M.P.', indicating the locations of mooring posts for boats, perhaps used in connection with access to the limekiln.

There is no continuation of the route shown or 'F.P.' labelling beyond on the flood bank around the land shown as it was before the airfield had been built, to connect with any other route. No continuation or linking paths are shown on the later large-scale maps to indicate any evidence of a physical path on the ground for recording by later surveyors.

Later Ordnance Survey and other maps up to the 1930s at smaller-scales do not show the lines of the recorded footpath or its continuation on the claimed route. Some show only the lines of roads or tracks giving access to buildings and farmland in the area before the airfield was built. It was originally a civil airfield opened in the 1930s, which was taken over by the RAF in 1940 for use as a Coastal Command station during the Second World War. **Aerial photography** from 1946–9 shows the airfield as built and in use just after the war, but with no clear detail to indicate whether there is a worn track along the flood bank on the claimed route to show that it may have been used at that time.

In 1950, the Clerk to the Parish Council indicated on the base map used for its survey in the process for drawing up the Definitive Map that all footpaths shown on the site of the airfield had been permanently closed by order of the Ministry of Transport. That refers to procedures used during the war, which allowed the initial temporary diversion or stopping-up of highways under the Defence (General) Regulations 1939 on land requisitioned for military use. After the war, those could be made permanent by Orders under the Requisitioned Land and War Works Acts of 1945 and 1948.

Such an Order was made in 1948 for the permanent stopping-up of roads and footpaths at Chivenor, in connection with its continued use by the RAF after the war and having previously been stopped-up in 1939 and 1941 by Orders under the Defence Regulations. It is clear that the footpaths were considered to be public to need stopping-up and included in the Schedule with the roads. Parish Council records show that they were included in a list of paths considered to be public, with the claimed route, forwarded to Barnstaple Rural District Council under the Rights of Way Act 1932, but which did not lead to any formal process of

recording them. Earlier maps show only two roads across the land leading to the estuary shore that were the subject of the permanent stopping-up, either partially or completely, but the footpaths involved did not include the claimed route or the path recorded soon after as Footpath No. 1 in Braunton. The Parish Council proposed registering an objection to the permanent stopping-up of the paths through the District Council, but it was not taken any further because the RAF would not agree to having them across the airfield.

More recent larger-scale Ordnance Survey mapping from 1958 and 1969 shows the claimed route in the same way as in earlier editions, with double-dashed lines on the bank to the perimeter of the airfield, labelled 'F.P.' in 1958 and 'Path' in 1969. They indicate that it may have been available as a continuation of the recorded footpath and perhaps in use during that period to be clear as a worn path for recording by the surveyors at those dates. No details of the airfield are shown on the 1958 map. During that time, the RAF's use of it was mainly for training until fixed wing flying stopped in 1994. The airfield is now used by a Search and Rescue helicopter flight unit, with a volunteer gliding school and as a base for the Royal Marines.

Aerial photography from 1999–2000 and 2005–6 is no more clear than the earlier version, showing only that there was a partly worn track along the mainly grassed top of the flood bank on the claimed route, suggesting that its use may have continued until the present. That has been confirmed from site visits, although some of the wear has been from grazing stock, particularly sheep. The recent aerial photographs also show that boats have continued to be moored in the area, with a slipway beyond the end of the claimed route and accessible only from the airfield, near a building labelled on the 1969 map as a 'Sailing Club'.

There is, therefore, some support from older historical maps at larger scales and aerial photography for evidence only to suggest that the claimed route existed on the ground and was available to use. They do not provide sufficient evidence on their own of public rights and show that there has never been any clear continuation beyond its end, or links to other routes that may have been public rights of way and public roads, suggesting that it has always been a cul-de-sac.

1.3 Definitive Map Reviews and Consultations

There had been a general suggestion from before the time of previous uncompleted reviews that the claimed route should be recorded as part of a longer route from the other direction, but it was not included with those put forward by the Parish Council in 1978. The formal application was made later, but not investigated further beyond an initial report and with a letter of objection received on behalf of the landowner.

The claimed route was included in the consultations for the review process in Braunton in 2006, as a continuation of a footpath from the adjoining parish, as well as with those in Heanton Punchardon in 2008. It received responses from Braunton Parish Council, who were aware that the route was walked and the Ramblers Association who supported it, but neither had any additional evidence. Other responses were from or on behalf of the owners of land affected or adjoining the route and from the officer in charge of the Royal Marines base at Chivenor.

1.4 User Evidence

Six completed user evidence forms were submitted with the 1984 application and no further forms were received following the more recent consultations, so that there is evidence of use by six people to consider. Although not specified, it can be presumed that they all used the path on foot only. They had all known or regarded the route as public from between 14 years and up to more than 70 years, specified by one as from before his lifetime. All of them said

that they had used the route, with the earliest claimed use by two from or around 1914. Two indicated use since 1920 and 1935, with two specifying more recent use since the 1970s. The frequency of use was specified from once a week, about 50 times a year, or three times a week and about 150 times a year, up to twice a day all year round, more that 700 times a year. One referred to using it 'several' times a year and another to 'regular' use, with one not indicating how often he used it. Three specified using the route for walking dogs, with others referring to bird watching and study of wildlife, sketching or just going 'to the river' and 'other uses' or not specified. One indicated that he had been caring for stock and also said that he had been either working for an owner or occupier of land or was a tenant when using the route, so that his use of it was by a private right and cannot be taken as public. That reduces the relevant number of users to five.

All of those indicated that they had used the route as a continuation of Footpath No. 1, saying that they had used it from Braunton, from home or from Vellator, to go to places at or near its end and back. Those were specified as to the River or Pill's Mouth and Ramshorn Ponds, which is not named on any of the maps, or to Chivenor and Bue Weir. Two reported having been stopped or turned back when using the route, or told that it was not public. One indicated that it was in a dispute with people shooting from the bank and the other said that it was during the war years.

One of the users said that there were no stiles on the route and one reported that there were, with others referring to two, three or four stiles, particularly in the northern part, which is on the recorded footpath. One said that there was a gate at the start of the route and a notice about a private reserve in fields nearby, but not on the path and none had seen any notices on the route saying that they should not use it. Most of them knew who owned the land, or said that it belonged to the Heanton Estate. One user considered it to be a valuable walk and another referred to the path providing historical access to boats moored near the mouth of the river when it was used as a port.

1.5 Landowner Evidence

The agent acting on behalf of the executors of the late previous owner of the Heanton estate, Sir R. E. Williams, sent a letter of objection in response to notice of its application served by the Parish Council in 1984. The objection was based on the claimed route being a dead-end leading only to the airfield, referring to concerns about disturbances to wildlife and livestock in adjoining land, particularly by dogs. There was also reference to the potential of increasing wear of the flood bank from additional public use leading to an increase in the costs of its maintenance.

After the consultations in 2006, there was a response by the agent on behalf of the current owners of the land on and adjoining the recorded footpath and the claimed route, but no landowner evidence was submitted. In the 2008 consultations, a completed landowner evidence form was sent in by the owner of land on the recorded route with accompanying information and a letter was received from the agent on behalf of the owner of land on the claimed route, but without a landowner evidence form. The landowner on the recorded route expressed concerns about its use, particularly by people with dogs not keeping to the path and did not provide information relating directly to its continuation on the claimed route.

The agent to the owner of land on the claimed route and adjoining the recorded route provided information relating to his client's ownership since 1998. It was inherited from his father, who had owned it for 12–15 years before that after previously renting it from the Williams Estate. His client knew that there is no public right of way recorded on the route and that it has been used occasionally without consent, but without knowing how regularly as the land is not near the main farm. They have not required anyone to ask permission when using the route and they have never put up signs stating that it is not a public right of way.

People using the existing recorded route and going onto adjoining land to exercise their dogs had been turned away, or told to leave it and keep to the footpath, but not in relation to the claimed route. The owner was said not to favour the recording of the claimed route as a public footpath because of similar concerns as those expressed previously in terms of increased use, wear and the costs of maintenance, as well as problems with the control of dogs on adjoining land with grazing stock and illegal shooting.

A response was also received from the officer in charge of the Royal Marine base at Chivenor. He said that although the claimed route is not on land owned by the Ministry of Defence, it objected to the claimed route being recorded as a public footpath as it would encourage users to continue further along the airfield boundary with the potential for a serious breach of security.

1.6 Summary and Conclusions – Dedication under Statute and Common Law

Statute law

The application for the route to be recorded as a public footpath in 1984 was not made in response to any particular event acting as a significant challenge to its use, or as the result of any action taken by a landowner that had obstructed or prevented access to it from a specific date. There is, therefore, no evidence of any significant actions by a landowner having called into question its use at a specific time for consideration under statute law.

However, Section 69 of the Natural Environment and Rural Communities Act 2006 has clarified the position on a formal Schedule 14 application for a definitive map modification order being, of itself, sufficient to bring a right of way into question for the purposes of section 31(2) of the Highways Act 1980. It would provide the date of an event that can be taken as calling the public's right to use a route into question, but only if there are no more significant earlier events or actions having done so at a specific earlier time that may have led to or resulted in the application being made. There is no evidence of any previous significant actions in this case to provide an earlier date for consideration of the user evidence under statute law. It means that the period for considering evidence of use by the public is the 20 years from March 1964 to the date of the application in March 1984.

For the evidence of use by the public during that period, there is what could be considered as only a small amount relating to use on foot between 1914–84, with five forms out of the six submitted with the application. Three of those indicate use of the route for the whole of the 20 years from 1964–84, although referring to knowledge of it and use for a substantially longer period. The two others are for 12 and 14 years, just over half of the period, but contributing to what has been continuous use throughout the whole 20 years by all five people. However, that is not substantial, although the frequency of use is between one or three times a week to as much as twice a day, where specified. None of the users indicated that they had permission to use the route, but one of the six can be considered to have had a private right as a tenant and two indicated having been told that they could or should not use it. One was reported to have been during wartime, which is well before the start of the 20 years, with the other during the period but related to shooting activities in the area and not as a specific challenge to use of the route. The only notice was reported to be in connection with adjoining land and also not intended to prevent use of the route.

The evidence of use by only five people can, however, be considered insufficient to support the recording of the route as a public footpath by presumption of dedication from use under statute law, even for the lowest possible threshold to meet the test of being reasonable to allege that it subsists. There is, therefore, no need to consider whether there were actions taken by the landowners during that period to provide evidence of any lack of intention to dedicate the route as a public footpath. However, there is no evidence from the users and

landowners of any actions or efforts made to challenge its use, or turn people back and tell them that the route was not public within the 20 year period.

Common Law

Considering the application in relation to common law requires taking into account the historical and other documentary evidence submitted and discovered, with the evidence of use. Historical large-scale mapping shows that a path has existed physically on the whole claimed route, as a continuation of the path later recorded as a public footpath, from at least the later 19th century and into the early 20th century.

Later Ordnance Survey and other mapping with aerial photography shows that the whole claimed route has continued to exist on its current line up to the present, as a continuation of the section of public footpath recorded in Braunton, with both marked 'F.P.' or 'Path'. More significantly, it was included by the Parish Council in 1935 with those put forward to the Rural District Council for recording as public footpaths under the Rights of Way Act 1932. Neither of the routes was included with the footpaths stopped-up permanently in 1948 after temporary stopping-up in 1939 and 1941 under wartime regulations, which included others from those listed in 1935. That might have been because, technically, the routes run beyond the perimeter of the airfield without going onto or across it. Their use by the public may have been considered inappropriate or deterred unofficially on security grounds, particularly during wartime, as indicated by one of the users. That did not prevent Footpath No. 1 being put forward within two years for recording by Braunton Parish Council, even as a dead-end route. However, it may be a reason why the claimed route on its continuation was not considered for recording by Heanton Punchardon Parish Council in 1950, either intentionally or by mistake, having been put forward previously for recording in 1935 as a public footpath.

Evidence of use was submitted by only six people, one of which was not as the public. It is not substantial, but the date of the earliest use was reported by some as from at least 1914, 1920 and 1935, which continued and with use by all five during the 20-year period up to the date of the application. There is evidence on behalf of the landowners at the time of the application and more recently suggesting that they were aware of the public having continued from the end of the recorded footpath on the claimed route. They reported not knowing how frequently the route was used, as the land is more remote from the main farm in the case of the later owners, but indicating that it was known to be occasional and without consent.

The reported frequency of earlier use on the claimed route supports the view that it has not been substantial, referred to by the longest users as 'several' times a year or not specified, although more recent users referred specifically to increased frequencies of from once a week to twice a day. None of them reported that they had done so with permission, with only one indicating use by a private right. The objection to the application and other later comments, particularly from landowners, expressed concerns about aspects of use by the public on the claimed route, rather than challenging the use itself. Those were related to potential problems with dogs and grazing livestock, increased erosion and maintenance, or with security as a dead-end route only to the boundary of the airfield.

No landowner reported having given permission to users or taking any actions to challenge people using the route or to prevent its use, either by turning them back or putting up notices to say that it was not public. That is supported by the evidence from users, with the only examples relating to other activities and not as a challenge to their use. It indicates that the owners of the land appear to have been aware of its use and suggests that they had acquiesced. There is no record of a Deposit and Statutory Dedication made under Section 31(6) of the Highways Act 1980, or earlier. An intention to dedicate can, therefore, be inferred as there is no evidence to the contrary in relation to any owner from the earlier or later periods and that people have, therefore, accepted the route as public. They have used it

as a footpath, continuing from the route that was recorded as a dead-end footpath in Braunton to the parish boundary.

Considering the user evidence in conjunction with all other available evidence, dedication at common law with a status of footpath can be implied. The evidence suggests that the landowner intended to dedicate the claimed route as a public footpath, that the public accepted the dedication and have used it on that basis. It is in the light of this assessment of the evidence submitted, in conjunction with the historical evidence and all other available evidence that it is considered reasonable to allege that a public right of way subsists on the route with the status of a footpath. It would be as a cul-de-sac path, as is the recorded footpath in Braunton, but no evidence has been found to support a further continuation to link with any other public route.

From consideration under common law, therefore, there would appear to be a sufficient basis for making an Order in respect of the application in 1984 for the route to be recorded as a footpath. Accordingly, the recommendation is that an Order be made adding a footpath to the Definitive Map and Statement for Route 1.

2. Route 2, claimed addition of a footpath on Mill Lane from Heanton Hill to Footpath No. 3 near Heanton Mill, between points C–D shown on drawing number ED/PROW/08/29

Recommendation: It is recommended that no Modification Order be made in respect of Route 2 for addition of the claimed footpath to the Definitive Map.

2.1 Background and Description of the Route

In preparations for opening the Review process in the parish, it was noted that this route was not shown on the Definitive Map as a public right of way or on the list of maintainable highways, to indicate that it might have some form of public rights to use it that were not recorded. There had been a query from a local resident about its status after signs had been put up saying that it was private and the route was included in the presentation at the opening meeting as an unrecorded route that could be investigated in the Review.

The local representative of the Ramblers' Association reported having used the lane on foot and, knowing that others had also used it, would arrange for evidence to be submitted to claim it as a public footpath. Completed user evidence forms relating to the route were submitted in 2007, at the end of the period for suggestions after the opening meeting.

The route starts at the minor surfaced road from Wrafton to Heanton Punchardon village, Heanton Hill (point C), providing access to several houses. It continues as a hedged lane, passing the entrance to a narrow path with a bollard leading onto it from a modern housing development and gates further on giving access to fields. The lane turns to run alongside the Knowl Water river, passing the gardens and entrances to other properties, ending near the access to buildings at Heanton Mill on the recorded Footpath No. 3 running from further up Heanton Hill (point D). Footpath No. 3 continues onto a bridge over the Knowl Water, turning across a field and the parish boundary as Footpath No. 34, Braunton, with the recorded Footpath No. 18 continuing on Mill Lane and across the parish boundary as Footpath No. 36, Braunton.

The first section from the road is wider with signs naming it as Mill Lane and a tarmac surface for vehicular access to houses. It continues as a narrower lane with grass and vehicle tracks from use for farming access to fields, widening alongside the river with verges and continuing tracks from vehicular access into properties and the Heanton Mill buildings.

There are signs saying 'Private Drive' near its start and at the end near Footpath No. 3, with a gate on the drive to Heanton Mill buildings.

2.2 The Definitive Map and Statement, historical and recent maps and aerial photography

The route was not included with those surveyed originally by the Parish Council in 1950 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement.

Some **early maps** show the whole route, including at smaller scales, although they do not all record footpaths or bridleways at such a small scale. Those include the Ordnance Survey surveyors' drawings of 1804–5 and the original 1st edition 1" to the mile map on which they were based, published originally in 1809, with the later Greenwood's map of 1827 based on them. They show the line of a route with double solid lines continuing across the river on the line of Footpath No. 18 and No. 36 in Braunton to the road near Park Farm.

Later maps at larger scales show part or all of the route in more detail. The **Tithe Map** from 1841, shows only the first part of the lane running from the road to the river and no continuation beyond. It is coloured in the same way as all roads, with double solid lines and an open connection to the road at Wrafton, with roads shown in the same way and numbered 841, which is indicated in the Apportionment as 'Parish Roads'. However, all roads and tracks are shown coloured in the same way, including those now recorded as public, as well as others that are not, some of them with dashed lines which are more likely to have been private access to fields or land only and not now existing on the ground. Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose.

It provides evidence for the physical existence of part of the route at that time, which may have been considered as part of the parish road network but only providing access to adjoining land and the river. It was perhaps extended later as access to the mill, with earlier maps showing a mill in another location further east along the river and not at the end of the claimed route.

Ordnance Survey 25" to a mile 1st and 2nd map editions of the 1880s and early 1900s show it as a track, mainly with double-solid lines on the whole route, named as Mill Lane, leading to Heanton Mills, with its own parcel number and acreage. It continues across the river, later marked with 'F.B.' for footbridge, on the routes which came to be recorded as Footpath No. 18 and into Braunton as Footpath No. 36, passing Park Farm onto the road. In **Finance Act 1910 records**, it is shown on the map excluded from adjoining hereditaments, suggesting that it might have been considered then to be some form of public or parish road, or providing access to the mill including for vehicles that may have been restricted to a more limited section of local residents.

Most of the **later Ordnance Survey and other maps** at smaller scales in the earlier 20th century, including Bartholomew's editions from the 1920s to the 1940s, do not show the route. Bartholomew's edition from 1932 shows it with thin double solid lines as an uncoloured track, not in the same way as most roads are indicated in the key. The keys for some of the editions of those maps indicate such routes as "inferior roads and not recommended". Some of the maps show the routes of footpaths and bridleways, but it is not recorded in that way. The **Ordnance Survey 1"/mile New Popular edition in 1946** shows the whole route in the same way as the earlier versions, with double solid lines, continuing across the river into Braunton to the road near Park Farm.

Earlier aerial photography from 1946–9 shows the whole route from the road as a clear worn narrow lane, hedged and partly wooded alongside the river, leading to the Heanton Mill

buildings and continuing on Footpath No.3 across the river to provide agricultural vehicular access to fields. Its continuation as Footpath No. 18 and across the parish boundary is less worn, but also providing access to fields. **Later Ordnance Survey mapping from 1957/60 and 1968/82** shows the route at those dates in the same way as in the earlier editions, mainly with double solid lines, named as 'Mill Lane'. Its continuation into Braunton is described as a 'Grass Road' and later as a 'Track'. The **Ordnance Survey 1"/mile 1976 edition** shows the route mainly with double dashed lines as a minor unsurfaced road or track and its continuation in long dashed lines as a 'Path', but not in the same way as recorded public footpaths or bridleways were shown then. More recent **aerial photography from 1999–2000 and 2006–7** shows the route as more open and wooded alongside the river, but less visible on parts of its continuation into Braunton because of tree growth.

The showing of the route on later and current maps records its physical existence at that time and until more recently but does not indicate or support, on its own, the existence of any public right of way along it in vehicles on horseback or otherwise, which would require other more significant stronger evidence. That is in accordance with the disclaimer carried by Ordnance Survey maps since 1889, which states that: "The representation on this map of a road, track or footpath is no evidence of a right of way" and may be presumed to apply to earlier and other commercial maps as well.

There is support from most of the older historical maps and more recent mapping only to show that the route, or parts of it, has existed since at least the first half of the 19th century. It may have been used mainly for access to land or the river and later to Heanton Mills, after the date of the Tithe Map as a track connecting other routes now recorded as public roads. Later maps indicate that it could have been used to provide access to the Mill from the 19th century and into the early 20th century from Wrafton and Braunton. They suggest that it could have had the reputation of being a public road and included use involving vehicles, but it is not clear whether that was for the wider public, or for private or local use only. That would have only been for more limited access to the mill and later for private access to land and properties.

2.3 Definitive Map Reviews and Consultations

There was no suggestion in previous uncompleted reviews that the route should be considered for recording as a public right of way, until the opening of the current review process. The suggested addition was included in the consultations in 2007, on the basis of the fact that it was identified as an unrecorded route. It received a response from the Ramblers' Association, who supported it with all of the routes. The Environment Agency responded with concerns about risk of flooding on the section of the route alongside the Knowl Water river. Other responses were mainly from the owners of land and properties affected and adjoining or nearby.

2.4 User Evidence

One completed user evidence form was submitted in 2007 after the public meeting, followed by a further four completed forms. No more forms were received following the consultations in 2008, so that there is evidence of use by five people to consider. All of them had used the route on foot and believed it to be a public footpath. The basis for their belief was that it was a logical public route to the mill and beyond and having no reason to consider that it was not public, referring to public footpath signs and information from local neighbours. Reference was made to the route being a continuation of a recorded footpath, shown on older maps and included in guide book of walks.

The earliest claimed use was by one person from 1981, with others referring to use during the 1980s–90s, or since 2004 and only once or twice about five years ago on a group walk.

The route has been used by only two people during the previous 20 years and by three or four of them in the previous four or five years. The frequency of use varied from once or twice only and three or four times a year, to 12 times or was not specified as 'several' times a year. All of the users indicated that they had used the route for pleasure, with two indicating that they had used it to go to the local Post Office.

All of them had used the whole route as part of a walk between Wrafton or Heanton and Lower Park Road, Manor Lea and Lower Park Road in Braunton on the connecting public footpaths, or as part of a longer walk. None reported ever having been stopped or turned back when using the route, or told that it was not public and all of them believed that the owners must have been aware of the public using it as it passed near their properties. None reported that they had been given permission to use the route, or were tenants or had worked for an owner which may have resulted in any private right to use it.

None of the users reported that there were stiles or gates on the route and some had not seen any notices or signs saying that they should not use it. Those using it more recently reported having seen signs saying 'Private' or 'Private Road' at the Wrafton end.

2.5 Landowner evidence

Following the consultations, completed landowner evidence forms were sent in by the owners of several properties at both ends of the route and the land adjoining it on both sides. Most of them did not believe the route to be public and had not seen people using it, although one indicated that the narrow path leading onto its end at Wrafton from adjoining houses was used regularly, particularly by people walking dogs. None of the owners at the Wrafton end had turned anyone back or stopped people from using the route. They had not put up notices or signs stating that it was not a public right of way, had not put up gates or stiles on the route and had not obstructed it.

The owners of the adjoining fields and properties at Heanton Mills did not believe that the route was public, but it was the private track for access onto farmed land and leading to their properties, which they maintained for their own use. None had given permission for anyone else to use it, but some were aware that it was used and specified that they had turned people back or told them that it was not public. There were no stiles or gates and they had not obstructed it, but they had arranged for the 'Private Drive' signs to be put up at the time of the Foot and Mouth Disease outbreak in 2001.

In additional information, they referred to other objections to the route being recorded as a public right of way on the grounds of privacy, security, conservation and flooding risk.

2.6 Summary and Conclusions – Dedication under Common Law

The claim for the route to be recorded as a public footpath was not made directly as the result of any action taken by a landowner that had obstructed or prevented access to and use of the route from a specific date. None of the users said that there was a gate on the route that had been locked, or any other obstruction that will have prevented use on foot. The claim was not made in response to any specific event acting as a significant challenge to use of the route, although some of the users reported having seen the signs more recently saying that it was private.

There is no evidence of any other more significant actions by a landowner having called into question use of the route at a specific time for consideration of the user evidence under statute law. If there were, the evidence of use is considered not to be sufficient and there would be no need to consider any actions of landowners as evidence of lack of intention to

dedicate. It can, therefore, be examined in relation to common law, in conjunction with historical and other documentary evidence.

Historical mapping suggests that a track has existed physically on part of the line of the claimed route from at least the early 19th century, although perhaps not as part of a longer route used for access to a mill until after 1841. Later mapping records it in the same way until the present with a continuation beyond the mill, both named as Mill Lane, which may have been considered to provide access to the mill from Wrafton and Braunton up to the early 20th century. Its exclusion in the Finance Act 1910 records could suggest that it may have included access for the public, perhaps to use on foot and horseback and in vehicles, but there is no stronger evidence from other sources to support that. The route appears to have remained as providing private vehicular access to the mill buildings, other properties and land. Parts of it in Braunton were considered later to have public rights to use on foot for recording on the Definitive Map, but not on the claimed route. Parish Council records from around that time in connection with complaints about poor drainage show that Mill Lane was considered to be a private road from Wrafton, with no suggestion that it may have had any rights for the public to use, including on foot.

The date of the earliest user evidence submitted is from the early 1980s, only by one or two people and more recently only by three others, but it is not continuous and at a level that would be considered not sufficient in relation to the statutory 20-year period. There is no evidence, therefore, of any substantial and uninterrupted use of the route up to the present. The reported frequency of the use is not sufficient to indicate that the owners of adjoining properties were aware of it and had acquiesced, as reported in evidence forms. An intention to dedicate cannot, therefore, be inferred as there is evidence to the contrary in relation to several owners, reported as being for a significant period, for the public to have continued using the route and accepting it as a footpath.

Considering the user evidence in conjunction with other evidence available and submitted, including historical and landowner evidence, dedication at common law with a status of footpath cannot be implied. Historical evidence suggests that the route provided access to the mill and may have been considered to be available for public use from the middle of the 19th century to the early 20th century, but with no stronger supporting evidence. There is not sufficient evidence to suggest that the landowner may have intended to dedicate the claimed route as a public right of way, that the public accepted the dedication and used it on that basis. It is in the light of this assessment of the evidence submitted, in conjunction with the historical evidence and all other evidence available that it is not considered reasonable to allege that a public right of way subsists on the route with the status of a footpath.

From consideration under common law there does not appear, therefore, to be a sufficient basis for making an Order in respect of the claim for the route to be recorded as a public right of way. Accordingly, the recommendation is that no Order be made adding the route to the Definitive Map and Statement as a footpath.

3. Route 3, variations in the recorded route of Footpath No. 6 from Eastacombe Lane to Footpath No. 35, Braunton on the Knowl Water river, between points E–F and G–H as shown on drawing number ED/PROW/O8/30

Recommendation: It is recommended that no Modification Order be made in respect of Route 3 for variations in the recorded route, but the landowners be approached with respect of diversions between points E–F and G–H.

3.1 Background and Description of the Route

In April 1978 as part of a review process that was not completed, the Parish Council completed a form with a proposal for amending the existing recorded Footpath No. 6 from Heanton Punchardon onto Footpath No. 35, Braunton on Harding's Lane. They considered that it was recorded correctly in going diagonally across the last field before reaching Footpath No. 35, but should continue on the same line through "The Waste" to a footbridge onto Harding's Lane.

The proposal form was kept on file with others for consideration when the current review process reached the parish. No further queries about the route were received and it was not followed up with the submission of any formal application or additional evidence. A reference to the original question about the recorded route of the footpath was included in the opening meeting for the current review, but no further evidence was put forward. It was included in the consultations in 2008 with another section of the same path found to be used on a different line to the recorded route. No further evidence was submitted, particularly relating to use in support of any correction, with evidence only from the affected landowners supporting amendments onto the lines of the route as used.

The path starts on a track from the minor road, Eastacombe Lane, in Heanton Punchardon village. It is recorded from the track crossing a field diagonally from point E, but has been diverted unofficially around a horse paddock or garden area back to rejoin the recorded line at point F, then onto a track into another field. It is recorded crossing that field diagonally as well from point G, but is used around the headland and has not been reinstated on the definitive line after cultivation, continuing down through fenced woodland to meet the recorded route at a footbridge over the Knowl Water river at point H, onto the recorded Footpath No. 35 in Braunton. The recorded line of that path is across a grass field onto the end of Harding's Lane, which is no longer an enclosed track, continuing alongside the hedge onto the old main road from Braunton to Barnstaple, now a minor road.

3.2 The Definitive Map and Statement

Footpath No. 6 was surveyed by the Parish Council in October 1950 from the recorded starting point and crossing the two fields, but is described as continuing through The Waste and across a footbridge to the beginning of Harding's Lane. That was amended on the survey form as having been diverted to the bottom of a field and across a footbridge, crossing the grass field in Braunton to enter Harding's Lane through a field gate. That was said to have been approved by Barnstaple Rural District Council's Rights of Way Committee "some years ago", which was preferred to the path going through The Waste, as it was largely overgrown and in a very bad condition.

The original proposed route is shown on the survey map crossed out and replaced by the current route to a footbridge, as recorded and described in the Statement. The original route was to another footbridge marked on the map at the end of Harding's Lane, to join a footpath surveyed by the Parish Council as No. 8. It was doubted whether that footpath was public and the landowner had said that it was not, with the path being withdrawn by the Parish Council and not recorded on the Definitive Map.

Footpath No.35 had been surveyed by Braunton Parish Council in September 1950 without detail as "through Harding's Lane to F.B. over stream". It was originally shown on the survey map as crossing the Knowl Water to connect with the original lines of Footpath Nos. 6 & 8, but corrected to show the recorded line meeting the amended line of Footpath No. 6 and described in the Statement.

3.3 Historical and recent maps and aerial photography

Early maps do not show the whole route, particularly at smaller scales, although they do not all record footpaths at such a small scale. Those include the Ordnance Survey surveyors' drawings of 1804-5 and the original 1st edition 1" to the mile map on which they were based, published originally in 1809, with the later Greenwood's map of 1827 based on them. They record the tracks at the start of Footpath No. 6 from Eastacombe Lane, with Harding's Lane on Footpath No. 35 shown continuing further east towards what is named as a Mill.

The **Tithe Map** of 1841 shows part of the track on Footpath No. 6, but leading only into fields and another separate track leading into the fields crossed by its continuation towards the Knowl Water river. However, such maps were not intended to record the lines of footpaths and do not usually show them. Other later maps at larger scales, particularly the **Ordnance Survey 25" to a mile 1st and 2nd editions** of the 1880s and early 1900s, show the lines of the routes recorded at those dates.

The 1885 edition shows the line of a path labelled 'F.P.' on the start of the route, leading onto the track into fields and its continuation from that track across the field leading to a footbridge on the river. It continues across a smaller field in Braunton onto Harding's Lane, which is shown leading to another footbridge over the river with a ford. Harding's Lane is shown continuing as a track through The Waste woodlands ending at a field, but leading in the direction of buildings named as Harding's Mill, on the line of the track recorded in the older maps. The 1903 edition shows most of the path on the same route, but not continuing to the river, where there is also no footbridge recorded. It is shown turning into a field and through The Waste onto the continuation of Harding's Lane, which is shown in the same way as in the earlier edition onto the ford and footbridge leading in the direction of Harding's Mill.

Most **later small-scale Ordnance Survey mapping** editions do not show the route, or show only parts of the tracks, but the **1946 New Popular edition at 1" to the mile** shows the tracks connected by a path on the route in the dashed lines indicated as representing footpaths and bridleways. However, it is at too small a scale to show details of where and how it crosses the river into Braunton parish and onto Harding's Lane. **Aerial photography** from 1946-9 does not show the whole route clearly, with the tracks on parts of it shown then to be still mainly hedged, but with no details clear for where it crossed the river because of trees. Harding's Lane is shown to have been then still a hedged track, leading to a smaller field and continuing into the wooded area on the river. There is no indication of any worn line across the field to suggest a possible route to a footbridge across the river.

The **larger-scale mapping edition from 1957/9**, around the time that the Definitive Map was drawn up, shows the first part of the route in the same way as earlier editions, leading onto the track labelled 'C.T.' for cart track. Its continuation across the next field is shown, but not as far as the river. There is no footbridge recorded at the location from the 1903 map, but one is shown on the site of the current bridge with no line of a path leading to it. The field in Braunton is shown to have then still been smaller, but with no line of a continuing path. Harding's Lane is shown as in previous editions, continuing across the river as a cart track towards the previous site of the mill, labelled as 'Ruin'.

The **1" to the mile edition mapping from 1967** shows the tracks connected by a path on the route in the dashed lines representing 'Paths', not in the styles used by then to indicate recorded Public Paths as Footpaths and Bridleways. It included Harding's Lane, suggesting that it was then no longer a hedged track. Although at too small a scale to show details, it is the only smaller-scale map to suggest that it crossed the river through The Waste onto Harding's Lane.

Aerial photography from 1999–2000 shows that the paddock or garden had been built across the recorded line of the footpath leading from Eastacombe Lane by then, with a track around it which has been used unofficially as an alternative route. There is no record of any official Order diverting it in connection with the construction of the paddock, which may not have been considered to require planning permission. It does not provide any evidence for the line of the route crossing the river, but shows cultivation of the fields it crosses and the larger field adjoining Harding's Lane, which is shown as no longer than a hedged track. More recent aerial photography from between 2005 and 2007 shows the worn line used across the grass field on the unofficial diversion route and also that cultivation of the other field crossed by the route has continued.

3.4 Definitive Map Reviews, Consultations and Landowner Evidence

The proposal for the route to be amended was put forward without any supporting evidence in the previous uncompleted review from 1978 and retained on file until the current review process started. It was included in the consultations in 2008 on the basis of that proposal, with the Parish Council and the Ramblers' Association including it in their support of the proposals put forward for all of the routes. There were only specific responses from the landowners but no further evidence was received, particularly relating to use by the public of any other line for the route.

Following the consultations, completed landowner evidence forms were submitted by the two owners of land crossed by Footpath No. 6. The owner at the Eastacombe end with the unofficial diversion had only owned the land for less than a year, but was aware of the recorded line of the footpath across his garden and the alternative route used around it. He agreed with the possibility of amending the recorded footpath for both sections of the route, on his own land and in adjoining fields, to reflect the situation on the ground and as used by the public.

The owner of the land crossed by the continuation of the footpath had owned it for six years and agreed to any changes proposed, but did not provide any further evidence relating to the variations in the route as recorded and used by the public.

3.5 Summary and Conclusions

The original proposal in 1978 for the recorded line of the footpath to be amended was not made by a formal application and appears not to have been put forward as the result of any event or action taken by a landowner that may have called into question its use on any particular route at a specific date. It was not submitted with any supporting evidence, either of use on any other route than the line as recorded, or referring to historical mapping of what was believed to be the correct route. There is, therefore, no evidence of any significant event having called into question use of the recorded route and for an alternative route at a specific time for consideration of evidence more formally. It can, therefore, be examined more generally, considering only historical and other documentary evidence discovered, without reference to user evidence.

The Parish Council survey of footpaths in 1950 was made using the 2nd edition Ordnance Survey 6" to the mile map, originally surveyed in 1885 for the 1st edition that had been revised in 1903 and published in 1905. As a result, the map was already nearly 50 years old and perhaps out of date by then, with some changes on the ground not shown. The survey initially recorded Footpath No. 6 on a route linking to the proposed Footpath No. 8 crossing the Knowl Water river in woods at The Waste by a footbridge and continuing in Braunton parish as Footpath No. 35 along Harding's Lane. Footpath No. 8 was withdrawn and not recorded as a public footpath, with an amendment of the line to be recorded for Footpath No. 6 as had previously been approved by Barnstaple Rural District Council.

The amended route was a continuation onto another footbridge over the river and then across a grass field onto Harding's Lane, on an amended line of Footpath No. 35 in Braunton. The amendments of both those routes and the withdrawal of Footpath No. 8 were taken forward through the stages of recording on the Draft and Provisional Maps without challenge or objection, to be recorded on the Definitive Map. There was no suggestion at the time that the changes should not have been made, or that the route of Footpath No. 6 should be recorded on a different line.

The earlier 1st edition Ordnance Survey 25" to the mile map surveyed in 1885 shows the line of the path marked 'F.P.' continuing from across the field directly to another footbridge on the river. It continued across the smaller field onto Harding's Lane, perhaps through the field gate referred to in the Parish Council survey. Smaller-scale historical mapping is not helpful for evidence of any other line that may have been intended for the amended route to be recorded for the footpath. Later Ordnance Survey mapping from nearer the period around the time that the details of the Definitive Map were being drawn up shows a footbridge in the current location on the recorded line.

It can be taken that the amended line of the footpath was intended to use that as the footbridge available then, which had perhaps been built there to replace the bridge recorded in 1885. Its recorded line matches the amended description in crossing the then smaller field in Braunton onto Harding's Lane by a field gate. Parish Council minutes from around the same time also record concerns about the ploughing up of Harding's Lane to form part of that field, when it was perhaps also enlarged. There were other references later to the footbridge at the end of Harding's Lane being damaged, but which was considered to be private and not repairable by the parish, with the bridge on the footpath said then to be intact.

Considering the historical map and documentary evidence overall, there is no support for any suggestion that the line of Footpath No. 6 has been recorded wrongly and should be amended to show it on another route. The evidence indicates that both the amendment to the route originally surveyed and the withdrawal of the footpath surveyed as No. 8 were with the agreement of the Parish Council. No cogent evidence has been submitted by them or discovered in support of recording it on the line originally surveyed as No. 6 and to continue on part of the withdrawn No. 8 onto the lower part of Harding's Lane to join Footpath No. 35 in Braunton.

From consideration of evidence discovered there would appear, therefore, not to be a sufficient basis for making an Order in respect of the claim by the Parish Council in 1978 that the recorded line of the footpath should be amended to show it on the alternative route proposed. Accordingly, the recommendation is that no Order be made to amend the recorded line of Footpath No. 6 in the Definitive Map and Statement, but the landowners be approached with respect of diversions between points E–F and G–H.

4. Route 4, investigation of an unrecorded route from Eastacombe Lane to St. Augustine's churchyard, between points J–K shown on drawing number ED/PROW/08/31

Recommendation: It is recommended that no Modification Order be made for the addition of a footpath, but to investigate the possibility of dedication or creation by agreement with the landowner.

4.1 Background and Description of the Route

In 2000, a query was made about a route leading to the church in Heanton Punchardon village around the garden of a house that was advertised for sale. It is not recorded as a public right of way and there were concerns that it was going to be incorporated into the

garden and not available for the public to use to get to the church. The estate agent had said that it might be taken in with the property, but could still be used by agreement with the church and advised that the issue should be taken up with the Parish Council. The query was not followed up and was kept on file until the review process had reached the parish. There was no enquiry by the new owner, or any further queries about its status and whether it could be used by the public.

Access to the route is from opposite the start of Footpath No. 6 on Eastacombe Lane, point J, along a section of a cul-de-sac private access road, Luscombe Lane, turning off between properties, Eagle's Rest (previously called Luscombe House) and The Rectory, as a short hedged section of unsurfaced path. It continues alongside a low chain-link fence separating it from the garden of Eagle's Rest and passing a pond or well, to a wrought iron gate in a wall, point K, with a sign saying "No Dogs Allowed". The gate provides access into the churchyard, which has surfaced paths through burial grounds around the church, a church hall and a carpark with access onto a minor road and another path with steps leading to the road.

4.2 The Definitive Map and Statement, historical documentation and maps, recent mapping and aerial photography

The route was not included with those surveyed originally by the Parish Council in 1950 for putting forward as public rights of way and it is not recorded on the Definitive Map and Statement.

Early maps at smaller scales show a track or road on part of the private access road, continuing to meet the road passing the church. Those include the Ordnance Survey surveyors' drawings of 1804-5 and the original 1st edition 1" to the mile map on which they were based, published in 1809 and later, with the later Greenwood's map of 1827 based on them. The **Tithe Map** of 1841 shows it in more detail, continuing to the road and with a spur turning off on the rest of the route as a cul-de-sac leading to the churchyard. It is coloured in the same way as all roads, with double solid lines and an open connection to Eastacombe Lane. Roads are numbered 841, which is indicated in the Apportionment as 'Parish Roads'. However, all roads and tracks are shown coloured in the same way, including those now recorded as public as well as others that are not, which are more likely to have been private access to fields or land only and not now existing on the ground. Tithe Maps do not usually show footpaths and bridleways, which was not their main intended purpose.

Other later maps at larger scales, particularly the **Ordnance Survey 25" to a mile 1st and 2nd editions** of the 1880s and early 1900s, show only the start of that track continuing on the spur leading to the churchyard with no connection beyond it to the road. The route is shown, with the site of a well and pump, ending at the boundary of the churchyard, with the continuing lines of paths. It is braced to record it as included with the land that is now the Rectory grounds, suggesting that it may have been considered to be owned by the church. In **Finance Act 1910 records**, it is shown on the map excluded from adjoining hereditaments, suggesting that it might have been considered then to be some form of public or parish road, or providing access to the church that may have been restricted to a more limited section of local residents.

Parish Council minutes record a relatively long history of complaints about the condition of the path leading from the churchyard to the 'church well', with discussions about who owned it and who was responsible for its maintenance and repair of the well. The first records from 1898–1901 resulted in the Parish Council considering that its condition was not bad enough to require action and they were not responsible. It was suggested that they should find out who had done previous repairs and asking the Road Surveyor, but with no record that it was considered further at that time.

The route was not included by the Parish Council on the list compiled in 1935 of paths considered to be public, forwarded to Barnstaple Rural District Council under the Rights of Way Act 1932, but which did not lead to any formal process of recording them. The issue of problems with the path caused by water from the well was raised again between 1954–5, when attempts were made to ascertain who owned it and should repair it, or whether it was the Parish Council's responsibility. The results were inconclusive, with the church not willing to accept responsibility and agreement by the Williams Estate to do some repairs and eventually bricking up the well. There is a record in 1965 that the County Council should be asked to include the route in the schedule of recorded public rights of way, but with no indication that it was taken further and it was not included later with the proposals put forward for the review in 1978.

Later small-scale Ordnance Survey mapping editions do not show the route in any detail, or only indicating it as a track ending at the church, but not in the style that was used to record the lines of some footpaths and bridleways from the 1960s. **Aerial photography from 1946–9** shows the line of a track on part of the route before the access road and properties had been built in the area, turning off on the line of the path towards the church and with only traces of the earlier continuation leading to the road still visible.

The **larger-scale mapping edition of 1957** shows the line of the route as a track leading to the churchyard in the same way, with none of the houses built by then and indicating the site of the well. **Aerial photography from 1999 – 2000** shows the houses having been built in the area by then, with the private access road improved and extended and the line of the path to the churchyard indicated by vegetation and tree growth.

There is support from most of the older historical maps and more recent mapping only to show that the route has existed since at least the early 19th century. It was included in parts of what may have been considered then to be the parish road network, leading to the churchyard from a route then connected to what are now recorded as public roads. Later maps indicate that it remained after changes to the roads in that area, leading only to the churchyard from the later 19th century. They suggest that it could have had the reputation of being a public or parish road and may originally have included use involving vehicles, but later and more recently used on foot only for access to the churchyard.

4.4 Definitive Map Reviews, Consultations, User Evidence and Landowner Evidence

There was no suggestion in previous uncompleted reviews that the route should be considered for recording as a public right of way and it was included in the consultations in 2008, on the basis of the fact that it was identified as an unrecorded route. It received no specific responses, with the Parish Council and the Ramblers' Association, including it in their general support of the proposals put forward for all of the routes, but without further evidence.

Only one completed user evidence form was submitted following the consultations, from the person who had raised the initial query about the route in 2000. It is considered not to be sufficient to take into account for further examination and no additional evidence of use has been put forward. No completed landowner evidence forms were returned, but the owner of one of the adjoining properties made contact after the consultations with queries about the route. He said that he was not sure whether it was included in the boundaries of the property and knew that it was used occasionally, but had not stopped anyone using it. His main query was about details of responsibility and liability if it was recorded as a public footpath.

Land Registry records show the route of the access road and path excluded from the boundaries for three of the adjoining properties, with the Rectory not registered to confirm whether it is included as part of that property and in church ownership.

4.5 Summary and Conclusions

No formal application or claim to record this route as a public right of way has been made at any time before or after the Parish Council's recorded suggestion in 1965 that it should be recorded. Earlier and continuing concerns were about its condition and ascertaining ownership for the responsibility to maintain and repair it. More recently, there has only been informal concern raised about whether it would continue to be available for use in connection with the sale of an adjoining property. It is not a claim made as the result of any action taken that had obstructed or prevented access to and use of the route, or in response to any specific event acting as a significant challenge to its use.

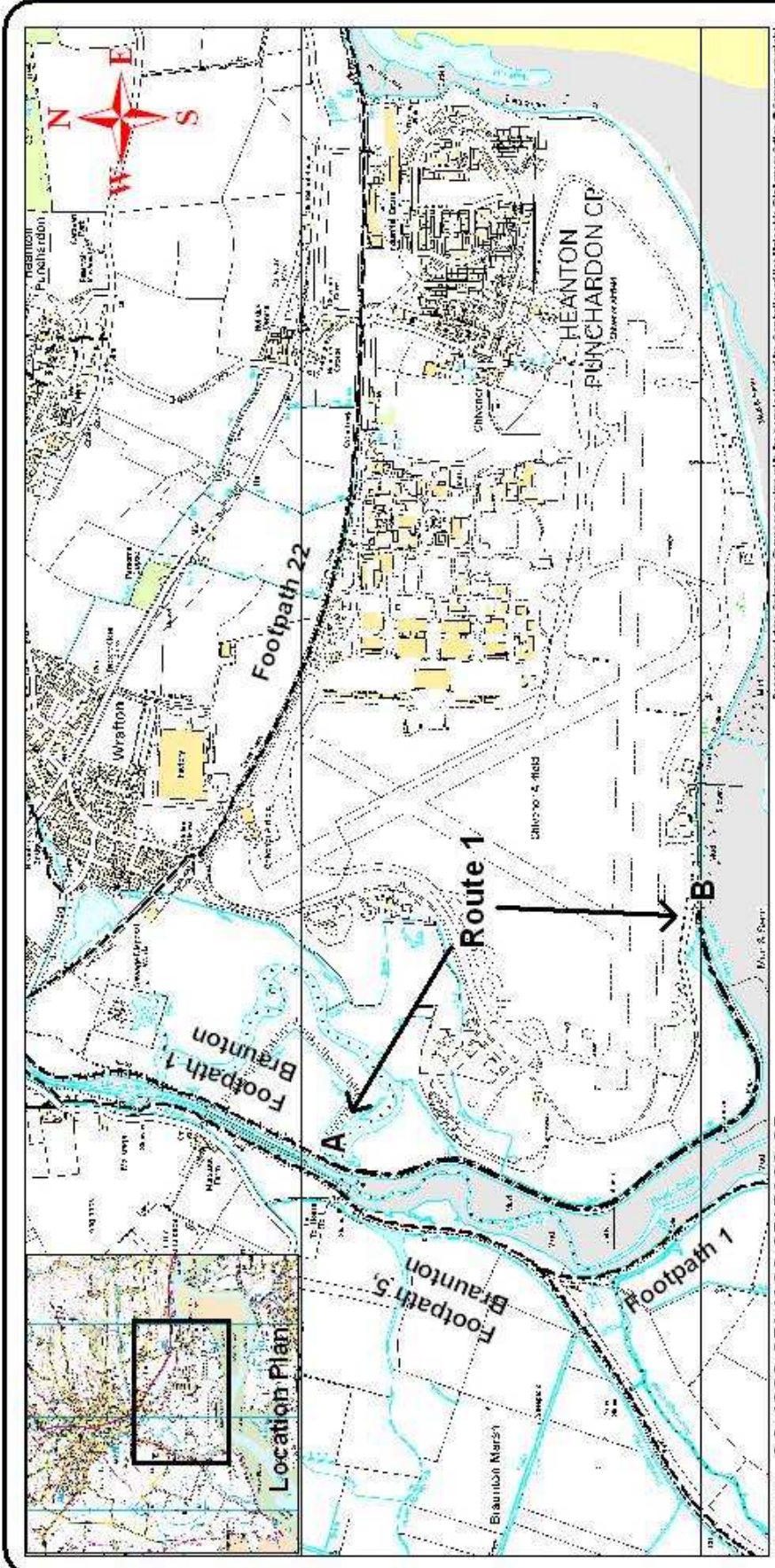
There is no evidence of any actions taken by a landowner having called into question use of the route at a specific time for consideration of any user evidence under statute law. If there were, the evidence of use is considered not to be sufficient and there would be no need to consider any actions of landowners as evidence of lack of intention to dedicate. It can, therefore, be examined in relation to common law, in conjunction with historical and other documentary evidence.

Historical mapping suggests that the route has existed physically as part of a longer track or road from at least the early 19th century, which may have been considered then as part of the public or parish road network. Later mapping records it having been altered by the later 19th century, leaving the route then as a track that provided access to the churchyard and a well and pump, perhaps considered to belong to the church. Its exclusion in the Finance Act 1910 records could suggest that it may have included access for the public, perhaps to use on foot and horseback and in vehicles, but there is no stronger evidence from other sources to support that. It is not recorded as a publicly maintainable highway and the track has been extended as a private access road in connection with nearby housing development.

The route appears to have remained as a connection to paths in the churchyard, providing access to the church. No suggestion was put forward to consider it, or with any continuation beyond its end, to be recorded in the process of drawing up the Definitive Map, or since then. It has only been raised as a possibility during the current review process as an unrecorded route, highlighted by an informal enquiry.

A public right of way can exist on a cul-de-sac route and from presumption of dedication by use, but only if there is some purpose in that use to reach its termination as a point of interest. However, a route leading to a church may not be a public right of way but used by a limited section of the local population as a customary way or church path, for access only to the church. They could be recorded as public if there is sufficient evidence of use by the wider public, particularly if continuing to connect with other public routes as part of a longer route to other destinations than just a church or churchyard. In this case, there is very little evidence of such use and no substantial support from other historical evidence for recording it as a public right of way only to the church.

The evidence submitted and discovered is, therefore, not sufficient to support the recording of the route as a public right of way, either by presumption of dedication from use or inferred from consideration with historical evidence and it is not considered reasonable to allege that a right of way subsists on the route. It is in the light of this assessment of the evidence submitted and discovered that there is considered to be no basis for recommending the making of an Order to add a footpath on the Definitive Map in respect of Route 4. However, there is the possibility of investigating a dedication or creation by agreement with the landowner.



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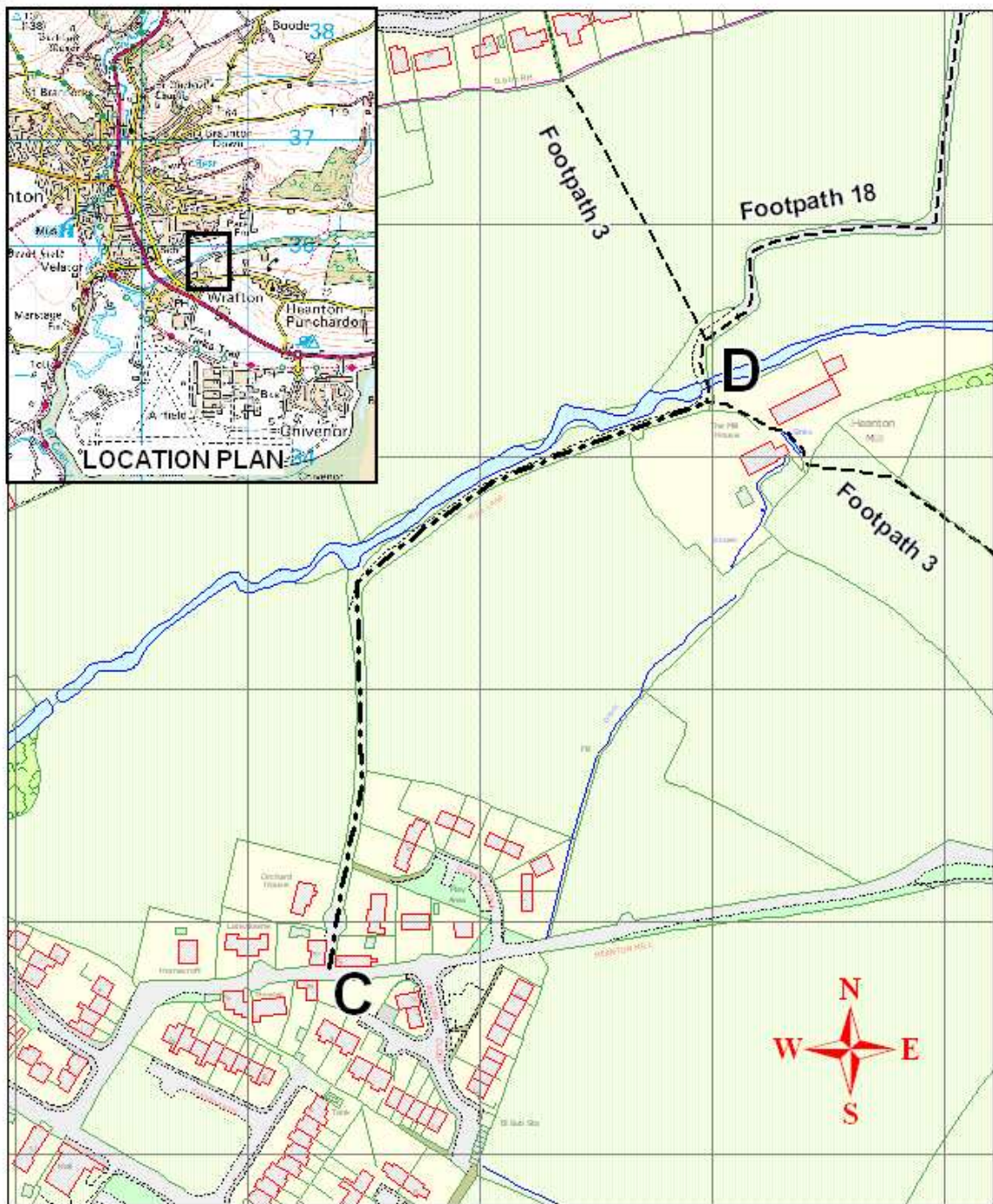
drawing number ED/PROW/08/28
 date Apr 08
 scale 1:15000
 drawn by NSC

DEVON COUNTY COUNCIL
Definitive Map Review, Heanton Punchardon - Informal Consultations
Route 1 - Footpath No. 1, Braunton (cul-de-sac path)
Claimed addition of footpath, A - B

Notation	-----
Claimed footpath	-----
Existing footpaths	-----

Edward Chorlton
 County Council
 DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE





map ref SS4935/4936

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Devon County Council
Definitive Map Review, Heanton Punchardon
Informal Consultations, Route 2 -
Unrecorded route, Mill Lane C - D

drawing number ED/PROW/08/29
 date Apr 08
 scale 1:2500
 drawn by NSC

Notation

Unrecorded route - - - - -
Existing footpaths - - - - -

Edward Chorlton
 COUNTY ENVIRONMENT,
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Devon County Council
 Definitive Map Review, Heanton Punchardon
 Informal Consultations, Route 3 -
 Variations in route of Footpath No. 6, E-F; G-H

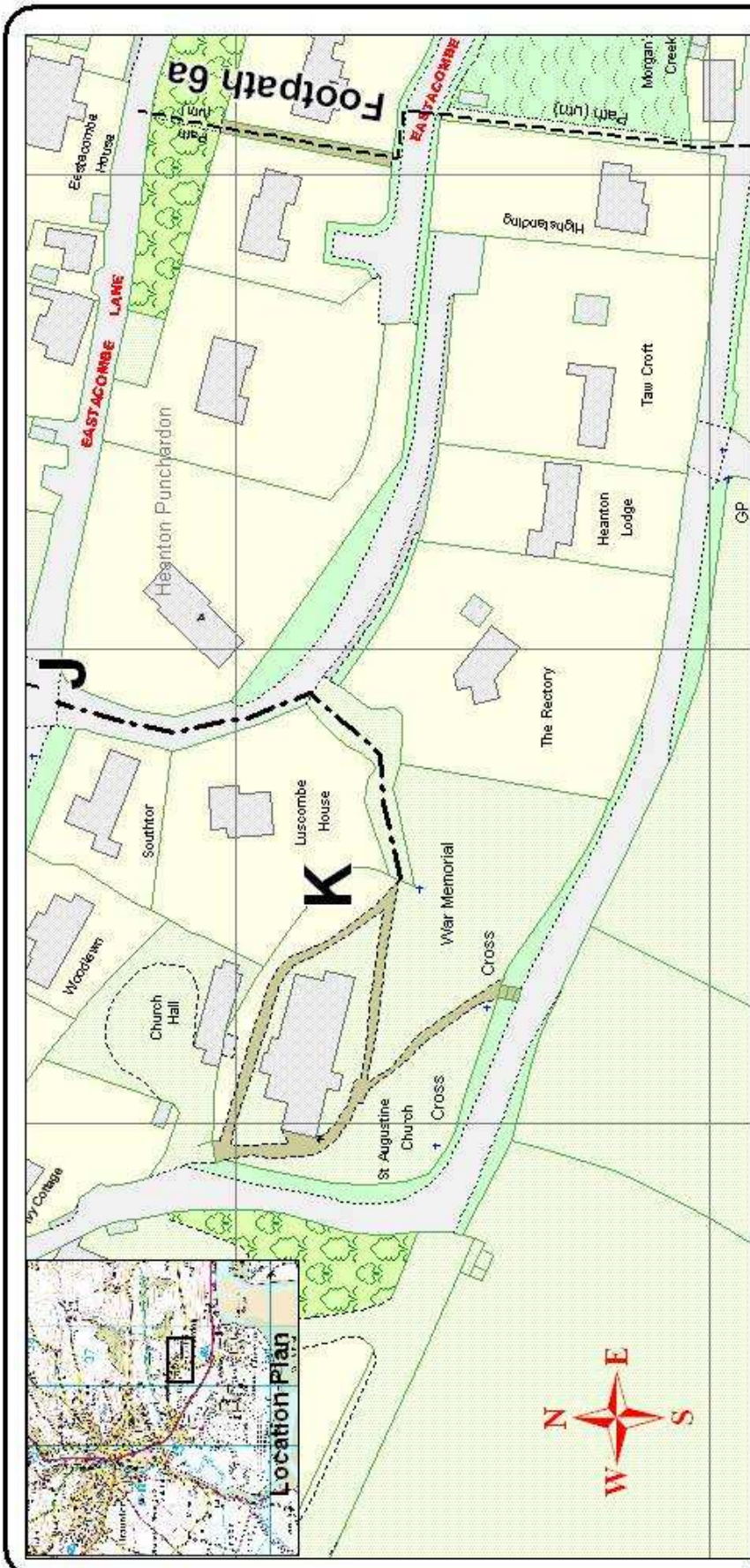
drawing number	ED/PROW/08/30
date	Apr 08
scale	1:5000
drawn by	NSC

Notation

Sections of route in use	-----
Recorded line of footpaths	-----

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 date Apr 08
 scale 1:1250
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DEVON COUNTY COUNCIL
Definitive Map Review, Heanton Punchardon - Informal Consultations
Route 4 - Unrecorded route, Church path J - K

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 COUNTY COUNCIL
 DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE

Notation	Unrecorded route	-----
	Existing footpath	-----

