

**Definitive Map Review 2007–2009
Parish of Heanton Punchardon (Part 2)**

Report of the Executive Director of Environment, Economy and Culture

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

Recommendation: It is recommended that a Modification Order be made in respect of Route 2, to add a footpath between points C–D shown on drawing number ED/PROW/08/29, Mill Lane, from Heanton Hill to Footpath No. 3 near Heanton Mill, deferred from the previous committee meeting and following the submission of further user evidence.

1. Summary and Background

This report examines further the evidence for one of four claims or proposals for suggested changes arising out of the Definitive Map Review in the Parish of Heanton Punchardon in North Devon, considered at the last Committee meeting. A decision on a claim for a public footpath to be recorded on Route 2, along part of Mill Lane between Heanton Hill and Footpath No. 3, was deferred at the meeting for the collection of additional evidence. The relevant extract of that report is attached as Appendix II. Further user evidence has been submitted, which is considered now in conjunction with all evidence examined previously to reach a final decision.

2. Review – Consultations

The current Review began in March 2007, with general public consultations undertaken in April 2008 and advertised in the local press in respect of all four routes. 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 at that time.

3. Conclusion

It is recommended that a Modification Order adding a public footpath should be made in respect of Route 2, following consideration of additional user evidence submitted. Details concerning the recommendation 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.

4. Reasons for Recommendation/Alternative Options Considered

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

Edward Chorlton

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/HEANTP

ns260109pra
sn/parish of Heanton Punchardon
3 hq 130209

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 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 a Modification Order be made in respect of Route 2 for addition of the claimed footpath to the Definitive Map, following the submission of further user evidence.

1.1 Background – Previous Report

A report on the review process for the parish of Heanton Punchardon was presented at the last meeting of the committee in respect of four routes. It included consideration of evidence for a claim that a public footpath should be recorded on Route 2, attached to this report as Appendix II. The recommendation in the report for the route was that no Order should be made as the evidence, particularly of use by the public, was considered to be insufficient. Members resolved then that a decision should be deferred to this meeting to allow time for the collection of any additional evidence of use. Further user evidence has been submitted and, in conjunction with evidence previously considered, is examined now as to whether there is sufficient evidence to support recording the route as a public footpath.

1.2 Additional User Evidence

Five user evidence forms were submitted initially and examined in the report to the last Committee. They were considered to provide insufficient evidence of substantial and uninterrupted use of the route up to the present in relation to a statutory 20-year period, or at a level that would be considered sufficient under common law in conjunction with historical mapping and other documentary evidence.

A further 17 completed user evidence forms have been collected and submitted since the last Committee meeting. Nearly all of the users reported having used the route on foot only, with one not specifying how they had used it. Most of them believed the route to be public, as a footpath, which two people did not specify but indicated that it was for use on foot only. Two believed that it is an old lane, used historically by vehicles, but which could only be recorded now as a restricted byway. The main basis for believing the route to be public was that people had always used it, or they had seen other walkers and it was linked to other recorded footpaths, including on its continuation as Mill Lane in Braunton parish. Others said that they had used it for a long time and had no reason to believe that it was not public, with two indicating that it had previously been signposted.

The earliest claimed use of the route was from 1931 by one person, with three indicating use since the 1940s. Others specified using it since or during the 1950s, 1960s and 1970s, or more recently since the 1990s and since 2000 up to or only in 2008. Several users with ages ranging from their 50s and 80s did not specify when they had used it, saying only that they had done so since childhood and for all or most of their lives, or for more than 60 years.

The route has been used by 12 people for the period of 20 years from 1988–2008, by 10 or 11 people in the 40 years before that and by under 10 people for the previous 20 years. Where specified, the frequency of use was indicated by some of the users as from once or twice a year to approximately six times a year. Two did not specify frequency; with others indicating that, they had used it ‘various’, ‘numerous’ or ‘several’ times a year and ‘most

weeks', or 'regularly'. Almost all of the users indicated that they had used the route for pleasure, with one not specifying a purpose and two referring to use for walking or visits. One reported using it for organised groups of walkers and another said that it had been part of a cross-country run from Braunton School. Some of the users provided additional information about their own or others' use of the route and with some details relating to the historical background.

Most people indicated that they had used the route between Wrafton and the Mill or beyond to Heaton, or to and from various destinations in Braunton, including Lower Park Road, South Park and East Hill. One did not specify where they were going to or from and another reported using it just going out for a country walk. None reported ever having been stopped or turned back when using the route, or being told that it was not public. Most of the users believed that the owners were aware of the public using it, mainly because it had always been used and also to have put up signs. Two reported having seen and spoken to the owners or occupiers when using it. Only one person indicated that they may have been given permission to use the route, but without details and none reported that they were tenants or had worked for an owner and had any private right to use it.

None of the users reported that there were any stiles, gates or other obstructions on the route, with some referring to stiles and gates at other locations or on connecting footpaths. One person had also used another route on the opposite side of the river, which had gates and was obstructed or closed 30–40 years ago. Half of them had seen notices erected on the route saying that it was private, which some reported as saying "Private Drive". Those were said to have only been put up recently and referring to one end only, but were also believed to apply only to vehicular traffic from the Heanton Hill road at Wrafton (point C). Most of those saying that they did not see any signs or notices had used the route only in earlier periods, but some knew that signs had been put up more recently.

1.5 Summary and Conclusion – Dedication under Statute and Common Law

Statute Law

As reported to the last Committee meeting, the claim for the route to be recorded as a public footpath was not made in response to any formal application or particular event at a specific date acting as a significant challenge to use of the route. Some of the users reported having seen the signs more recently saying that it was private, but there is no accurate date for when they were erected. They can also be interpreted as having been put up to deter vehicular traffic rather than people walking, without stating more precisely that it was not a public right of way.

There is no evidence of any other more significant actions by a landowner, such as stopping or turning back people walking, to call 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 could perhaps be considered sufficient and there are no other significant overt actions of landowners that could be taken as sufficient evidence of lack of intention to dedicate.

Common Law

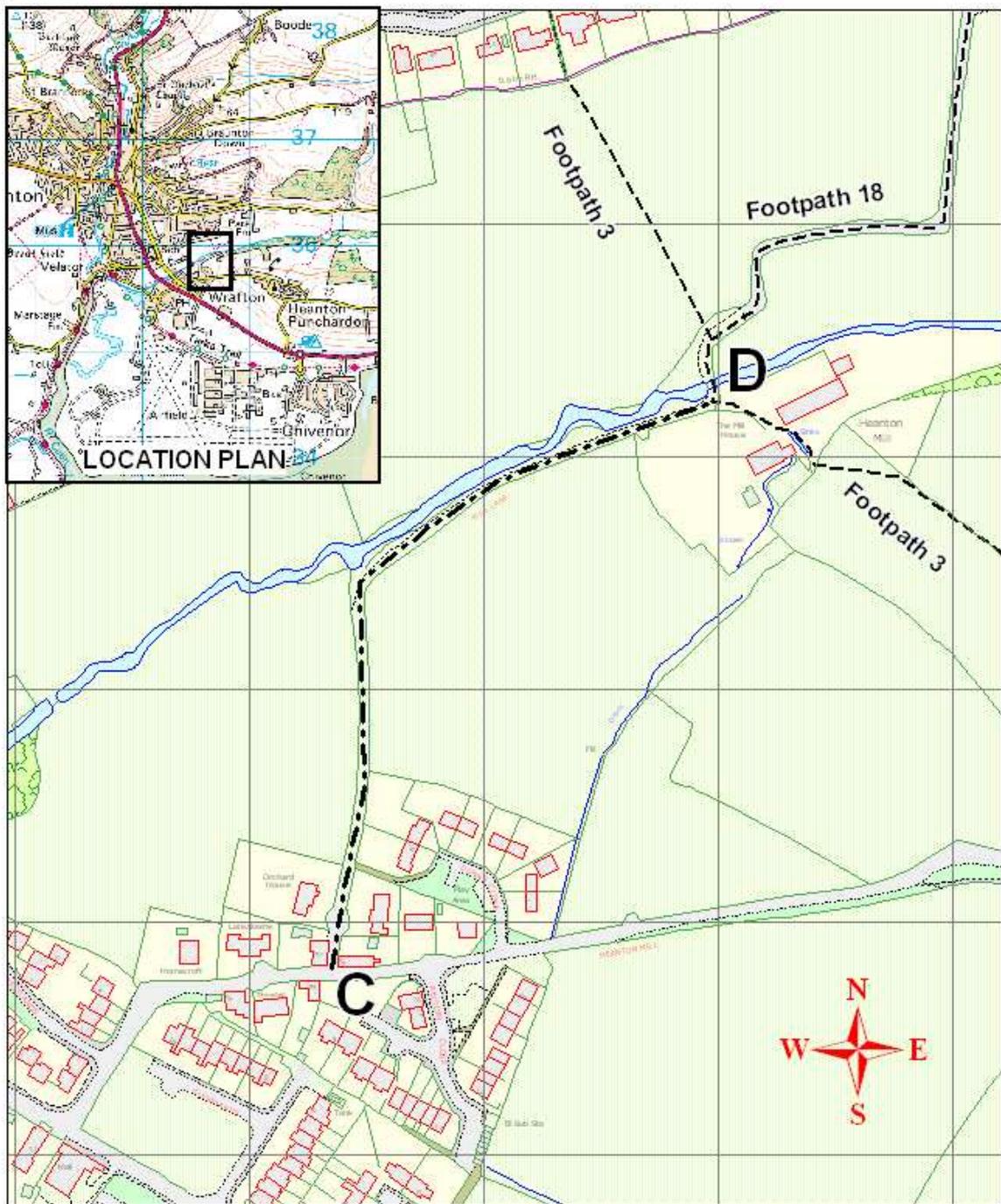
All of the user evidence, as submitted earlier and more recently, can be examined in relation to common law, in conjunction with historical and other documentary evidence. As reported previously, historical mapping suggests that a track has existed physically on part of the line of the claimed route 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 Finance Act 1910 records suggests 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 adjoining fields for farming. Its continuation in Braunton parish was considered later to have public rights to use on foot for recording on the Definitive Map, but was not recorded then on the claimed route in Heanton Punchardon parish. 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 was believed then to have had any rights for the public to use, including on foot.

The earliest specified date of the user evidence submitted is from the early 1930s by one person and from the 1940s by three people, but could also include other older users who did not give more precise dates. Use increased from the 1950s to a level from the 1960s to the present that could be considered sufficient in relation to the statutory 20-year period. There is evidence, therefore, of continuous and uninterrupted use of the route up to the present. Although the reported frequency of the use is not particularly high, or not specified, it does suggest that it was sufficient for the owners of adjoining land and properties to be aware of it and they had acquiesced, as reported in evidence forms, with no substantial evidence of actions taken to prevent it. In particular, the notices are relatively recent and can be taken as aimed to deter use in vehicles rather than more widely to prevent use on foot. An intention to dedicate can, therefore, be inferred, as there is no evidence of other more significant actions by the owners that would have deterred the public from continuing to use 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 can 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 sufficient evidence to suggest that earlier landowners intended to dedicate the claimed route as a public right of way, that the public accepted the dedication and have continued to use it on that basis, on foot. 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 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 appears, 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 an Order be made adding the route to the Definitive Map and Statement as a footpath.



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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,
 ECONOMY & CULTURE DIRECTOR



Extract from Public Rights of Way Committee Report, 10 November 2008

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.