

Lancashire County Council

Regulatory Committee

Wednesday, 16th September, 2020 at 10.30 am - Virtual meeting

Agenda

Part I (Open to Press and Public)

No.	Item
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1.	Apologies
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2.	Disclosure of Pecuniary and Non-Pecuniary Interests
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Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

3.	Minutes of the last meeting	(Pages 1 - 12)
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4.	Guidance	(Pages 13 - 36)
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Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

5.	The Constitution, Membership, Terms of Reference and Programme of Meetings for the Regulatory Committee	(Pages 37 - 40)
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6.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway from Noyna Road to Noyna Hall and Upgrade of Footpath to Bridleway from Noyna Hall to Moss Houses Road, Foulridge, Pendle File No. 804-609	(Pages 41 - 168)
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7. **Wildlife and Countryside Act 1981** (Pages 169 - 248)
Definitive Map Modification Order Investigation
Addition of Footpath along dismantled railway line
from Strongstry Bridge to Stubbins Station
File No. 804-614
8. **Highways Act 1980 - Section 119** (Pages 249 - 276)
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Heapey 27
at Black Lion Farm, Wheelton, Chorley Borough
9. **Highways Act 1980 - Section 119** (Pages 277 - 304)
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Wheelton 19
at Clovian House and Miry Fold Farm, Briers Brow,
Wheelton, Chorley Borough
10. **Highways Act 1980 - Section 119** (Pages 305 - 328)
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Trawden 188
at Parson Lee Farm, Wycoller Road, Trawden,
Pendle Borough
11. **Highways Act 1980 - Section 118** (Pages 329 - 344)
Wildlife and Countryside Act 1981 - Section 53A
Proposed Extinguishment of Part of the Recorded
Route of Footpath Rawtenstall 205, From Windsor
Avenue to Staghills Road, Rossendale Borough

12. Urgent Business

An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

13. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Wednesday 18 November 2020.

County Hall
Preston

L Sales
Director of Corporate Services

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 11th March, 2020 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

I Brown	T Aldridge
P Steen	D Howarth
J Marsh	B Yates
T Burns	D Stansfield
B Dawson	

1. Apologies

County Councillor Stansfield replaced County Councillor Barron.

County Councillor Yates replaced County Councillor Clempson.

County Councillor Dawson replaced County Councillor Cox.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last meeting

Resolved: That the minutes of the meeting held on 29th January 2020 be confirmed and signed by the Chair.

4. Guidance

A report was presented providing guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980.

Resolved: That the Guidance as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.

5. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Investigation into the public rights over the route from Keighley Road at Parson Lee Farm along Smithy Clough, Trawden, Borough

of Pendle
File No. 804-611

A report was presented on an investigation into the public rights over the route from the eastern end of Keighley Road at Parson Lee Farm along Smithy Clough to the junction with Bridleway Trawden 191 and Byway Open to all Traffic Trawden 254, Pendle, as shown between points A-B-C-D on the Committee plan attached to the agenda papers.

It was reported that the route formed part of promoted footpath – the Bronte Way – and the Pennine Bridleway National Trail but that it currently had no recorded public status.

A site inspection had been carried out in May 2019.

The Committee were advised that, on balance, the map and other documentary evidence was considered sufficient in itself to conclude that the route was a historical public highway, and it was suggested to Committee that inferred dedication could, on balance, be satisfied. Although the route had historical evidence of public carriageway rights, it was no longer possible to record the route as a byway open to all traffic, due to the introduction of Section 67 Natural Environment and Rural Communities Act 2006. The implication of this Section meant that the highest status that could be achieved by this route was that of restricted byway.

Taking all of the evidence into account and noting how the route was recorded on the old county maps and the investigations of the Head of Service for Planning and Environment, it was suggested to Committee that on a balance of probabilities there was sufficient evidence that the route ought to be shown as a restricted byway.

Resolved:

- (i) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
- (ii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of a Footpath from Footpath Preesall 1 running along the
sea embankment and ramp to Fluke Hall Lane, Wyre Borough
File No. 804-502

A report was presented on an investigation into the addition of a Footpath to be recorded on the Definitive Map and Statement of Public Rights of Way from a point on Footpath Preesall 1 running along the sea embankment and ramp to Fluke Hall Lane, Wyre Borough.

It was reported that, from the 1960s until the present time, the map and photographic evidence examined supported the user evidence and suggested that the route under investigation was capable of being used. It appeared likely that once the section of sea wall extending from point A to the ramp (point B) as shown on the Committee plan had been constructed, this was more likely to be the route used by people walking the route of Footpath 1, as opposed to traversing the steep bank between point A and point D.

The Committee noted that the application had been described as extending from point A to point B, referred to as the public slipway onto Fluke Hall Lane, and that the slipway had no recorded public status. However, to access Fluke Hall Lane it was necessary to walk down the concrete slipway/ramp from point B to point C. The route under investigation therefore included the additional section of the route C-B, and the evaluation was on that basis.

A site inspection had been carried out by the county council prior to the submission of the application in 2008, and photographs taken recording what the route looked like at that time. These photographs have been used to describe what the route looked like at that time, and a further site inspection had been carried out by the Investigating Officer in 2019 to note any changes since that time.

The Committee were informed that, taking all of the evidence into account, the Committee on balance may consider that the provisions of Section 31 of the Highways Act 1980 could be satisfied. In addition, or in the alternative, Committee were advised they may also consider that it could be reasonably alleged that there was sufficient evidence from which to infer dedication of a public footpath at common law.

Resolved:

- (i) That the application for a Footpath from a point on Footpath Preesall 1 to 'the public ramp' to be recorded on the Definitive Map and Statement, and shown on the Committee plan by a thick dashed line between point A and point B, in accordance with File no. 804-502, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public footpath from a point on Footpath Preesall 1 along the sea embankment and ramp to a point on Fluke Hall Lane on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

7. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath between Lightfoot Lane and Tanterton Hall Road, Preston File No. 804-379a

In 2000, an application under Schedule 14 of the Wildlife and Countryside Act 1981 had been received for the addition of a number of footpaths which had been described by the applicant as being situated on land forming part of Ingol Golf Course, and as having been provided by the former Central Lancashire Development Corporation. Five separate sets of routes had been listed and numbered 1 to 5, and evidence in support of each route had been provided.

This report considered the route referred to as 'Route 1' – the addition of footpath length from Lightfoot Lane to Tom Benson Way and continuing to meet Footway F8513 at Tanterton Hall Road. The route was shown between points A-B-C and D-E-F-G-H-I-J-K-L on the Committee plan attached to the agenda papers.

Although the route had recently been inspected, because the application related largely to user evidence predating 2000, details of the 2006 site inspection had been included in the report rather than a detailed description of the site in 2016, as the 2006 inspection provided a better indication of what existed on the ground, closer to the time that the routes were said to have been used.

The Committee were advised that, in addition to the user evidence, map and documentary evidence should also be considered.

Taking all of the evidence into account and noting the investigations of the Head of Service for Planning and Environment, it was suggested to Committee that on a balance of probabilities, there was sufficient evidence that the route ought to be shown as footpaths.

Resolved:

(i) That the application to add to the Definitive Map and Statement footpath lengths between Nog Tow and Tanterton, Preston, in accordance with file 804-379a, be accepted.

(ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add two footpaths between Lightfoot Lane and Tom Benson Way and between Tom Benson Way and Tanterton Hall Road, Fulwood, Preston City to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C and D-E-F-G-H-I-J-K-L.

(iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

8. Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

i) Addition of public footpaths from Walker Lane to Tanterton Hall Road, Preston

ii) Addition of a public footpath from Walker Lane to Lightfoot Lane, Preston File No. 804-379b

In 2000, an application under Schedule 14 of the Wildlife and Countryside Act 1981 had been received for the addition of a number of footpaths which had been described by the applicant as being situated on land forming part of Ingol Golf Course, and as having been provided by the former Central Lancashire Development Corporation. Five separate sets of routes had been listed and numbered 1 to 5, and evidence in support of each route had been provided.

This report considered the routes referred to by the applicant as 'Route 2'. However, due to its length and the fact that it is split by Walker Lane, it has been split down further into routes 2A and 2B for the purpose of this report as described below:

Route 2A – Two footpaths from Walker Lane to Tanterton Hall Road shown by a thick dashed line between points A-B-C-D-E-F-G and H-I-J-K-L-E on the Committee plan attached to the agenda papers.

Route 2B – A footpath from Walker Lane to Lightfoot Lane shown by a thick dashed line between points V-W-X-Y on the Committee plan attached to the agenda papers.

It was noted that, because the application related largely to user evidence pre-dating 2000, details of the 2006 site inspection had been included in the report. This provided a better indication of what existed on the ground, closer to the time that the routes were said to have been used. Further site inspections had been

carried out in 2016 and 2017 to see what changes had occurred since the 2006 inspection.

The Committee were advised that, in addition to the user evidence, map and documentary evidence should also be considered.

Taking all of the evidence into account and noting the investigations of the Head of Service for Planning and Environment, it was suggested to Committee that on a balance of probabilities, there was sufficient evidence that the routes ought to be shown as footpaths.

Resolved:

- (i) That the application to add to the Definitive Map and Statement footpath lengths from Walker Lane to Tanterton Hall Road, Preston, in accordance with file 804-379b, be accepted.
- (ii) That the application to add to the Definitive Map and Statement footpath lengths from Walker Lane to Lightfoot Lane, Preston, in accordance with file 804-379b, be accepted.
- (iii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way two footpaths from Walker Lane to Tanterton Hall Road, Preston as shown on Committee Plan between A-B-C-D-E-F-G and H-I-J-K-L-E.
- (iv) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath from Walker Lane to Lightfoot Lane at Ingol Golf Course, Preston as shown on Committee Plan between V-W-X-Y.
- (v) That being satisfied that the higher test for confirmation can be met the Orders be promoted to confirmation.

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpaths from Manor Court and Greenacres across
Sharoe Brook to Footpath Fulwood 43, Preston
File No. 804-379c**

In 2000, an application under Schedule 14 of the Wildlife and Countryside Act 1981 had been received for the addition of a number of footpaths which had been described by the applicant as being situated on land forming part of Ingol Golf Course, and as having been provided by the former Central Lancashire

Development Corporation. Five separate sets of routes had been listed and numbered 1 to 5, and evidence in support of each route had been provided.

This report considered the route referred to by the applicant as 'Route 3' – addition of footpaths from Manor Court and Greenacres across Sharoe Brook to 2 points on Footpath Fulwood 43, Preston. The route was shown by a thick dashed line between points A-B-C, B-D-E-F, G-H-I-J and H-L-K on the Committee plan attached to the agenda papers.

It was reported that because the application related largely to user evidence pre-dating 2000, details of the 2005 site inspection had been included in the report. This provided a better indication of what existed on the ground closer to the time that the routes were said to have been used. A further site inspection had been carried out in 2019 to see if any changes had occurred since the 2005 inspection.

The Committee were advised that, in addition to the user evidence, map and documentary evidence should also be considered.

Taking all of the evidence into account and noting the investigations of the Head of Service for Planning and Environment, it was suggested to Committee that on a balance of probabilities, there was sufficient evidence that the route ought to be shown as footpaths.

Resolved:

- (i) That the application to add to the Definitive Map and Statement footpath lengths between Manor Court and Greenacres across Sharoe Brook to Footpath Fulwood 43, Preston, in accordance with File Number 804-379c, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way footpaths from Manor Court and Greenacres across Sharoe Brook to Footpath Fulwood 43, Preston as shown on the Committee Plan between points A-B-C, B-D-E-F, G-H-I-J and H-L-K.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**10. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of footpath between FP Preston 64 and the east bank of
Sharoe Brook, Preston
File No. 804-379d**

In 2000, an application under Schedule 14 of the Wildlife and Countryside Act 1981 was received for the addition of a number of public footpaths which were described by the applicant as being situated on land forming part of Ingol Golf Course, and as having been provided by the former Central Lancashire Development Corporation. Five separate sets of routes had been listed and numbered 1 to 5, and evidence in support of each route was provided.

This report considers the route referred to by the applicant as 'Route 4' – the addition of a footpath between Ingol and Walker Lane at Ingol Golf Course, Preston, as shown between points A-B-C-D on the Committee plan attached to the agenda papers.

It was reported that because the application related largely to user evidence pre-dating 2000, details of the 2005 site inspection were included in the report. This provided a better indication of what existed on the ground closer to the time that the routes were said to have been used. A further site inspection had taken place in 2019 to see what changes had occurred since the 2005 inspection.

The Committee were advised that, in addition to the user evidence, map and documentary evidence should also be considered.

Taking all of the evidence into account and noting the investigations of the Head of Service for Planning and Environment, it was suggested to Committee that on a balance of probabilities, there was sufficient evidence that the route ought to be shown as footpath.

Resolved:

- (i) That the application to add to the Definitive Map and Statement footpath lengths between Ingol and Walker Lane at Ingol Golf Course, Preston, in accordance with File No. 804-379d, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath between Ingol and Walker Lane at Ingol Golf Course, Preston as shown on Committee Plan between A-B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met Order be promoted to confirmation.

11. Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

- i) Addition of Footpaths from Lower Greenfield to the east bank of Sharoe Brook with a spur to Walker Lane, Preston**
- ii) Addition of Footpath from Walker Lane to FP Fulwood 43,**

Preston
File No. 804-379e

In 2000, an application under Schedule 14 of the Wildlife and Countryside Act 1981 was received for the addition of a number of public footpaths which were described by the applicant as being situated on land forming part of Ingol Golf Course, and as having been provided by the former Central Lancashire Development Corporation. Five separate sets of routes had been listed and numbered 1 to 5 and evidence in support of each route was provided.

This report considered the route referred to by the applicant as 'Route 5' and, due to its length and the fact that it was split by Walker Lane, it was split down further into two routes:

Route 5(1) – Application to record a public footpath from Lower Greenfield to two different points on Walker Lane, Fulwood, Preston, and shown on the Committee plan attached to the agenda papers by a thick dashed line between points A-B-C-D-E-F-G, E-G and a spur D-H.

Route 5(2) – Application to record a public footpath from Walker Lane across the former Ingol Golf Course to the junction of Footpaths Fulwood 43 and 46 near Sharoe Brook, Preston and shown on the Committee plan attached to the agenda papers by a thick dashed line between points I-J-K-L-M-N.

The Committee noted that, because the application related largely to user evidence pre-dating 2000, details of the 2006 site inspection had been included in the report. This provided a better indication of what existed on the ground, closer to the time that the routes were claimed to have been used. A further site inspection had been carried out in 2018 to see what changes had occurred since the 2006 inspection.

The Committee were advised that, in addition to the user evidence, map and documentary evidence should also be considered.

Taking all of the evidence into account and noting the investigations of the Head of Service for Planning and Environment, it was suggested to Committee that on a balance of probabilities, there was sufficient evidence that the routes ought to be shown as footpaths.

Resolved:

- (i) That the application for the addition to the Definitive Map and Statement of a Footpath from Lower Greenfield to two different points on Walker Lane, Fulwood, Preston City, in accordance with File No. 804-379e, be accepted.
- (ii) That the application for the addition to the Definitive Map and Statement of

a Footpath from Walker Lane to the junction of Footpaths Fulwood 43 and 46 at Sharoe Brook, Preston City in accordance with File No. 804-379e, be accepted.

(iii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Lower Greenfield to a point on the east bank of Sharoe Brook and a point on Walker Lane with a further spur to a different point on Walker Lane, Fulwood, Preston City on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plans between points A-B-C-D-E-F-G, E-G and D-H.

(iv) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Walker Lane to the junction of Footpaths Fulwood 43 and 46 at Sharoe Brook, Preston City on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plans between points I-J-K-L-M-N.

(v) That being satisfied that the higher test for confirmation can be met the Orders be promoted to confirmation.

12. Urgent Business

The Chair informed the Committee that he had agreed that the following report should be considered at the meeting as an item of urgent business. The special circumstances for the use of the urgent business procedure were set out in the report.

a. Highways Act 1980 – Section 119 Wildlife and Countryside Act 1981 – Section 53A Realignment of Footpaths around Nan's Nook near Forton in Connection with the Removal of the Motorway Footbridge

A report was presented on the proposed diversion of part of Footpaths Forton 18, 24, parts of Footpath Forton 27 and Footpaths Ellel 46 and 47 in the districts of Wyre Borough and Lancaster City, from the routes shown by bold continuous lines and marked A-B, H-B, K-L-M-N and P-M, to the routes shown by bold broken lines and marked A-C-D-E-F-G, H-J-C, K-O-L and P-L on the Committee plan attached to the agenda papers.

Nan's Nook Footbridge carried Footpath Forton 18, which was also part of a regional trail promoted as the 'Wyre Way'. The Committee noted that, due to safety concerns, Highways England had recently dismantled and removed the bridge and that this diversion proposal, if successful, would provide the public with a safe and convenient means of crossing the M6.

This matter could not await the next Regulatory Committee scheduled for 26 June 2020, due to the popularity of the network of public rights of way in this

area, and it was considered that the proposed diversion should be progressed as a priority.

Resolved:

(i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpaths Forton 18 and 24, parts of Footpath Forton 27 and Footpaths Ellel 46 and 47 from the routes shown by bold continuous lines and marked A-B, H-B, K-L-M-N and P-M, to the routes shown by bold broken lines and marked A-C-D-E-F-G, H-J-C, K-O-L and P-L on the maps.

(ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.

(iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

13. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 24 June 2020 in Cabinet Room 'B' – the Diamond Jubilee Room at County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

Regulatory Committee

Meeting to be held on 16 September 2020

Electoral Division affected: <u>All</u>
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Guidance for the members of the Regulatory Committee

(Annexes 'A','B' and 'C' refer)

Contact for further information: Jane Turner, 01772 32813, Office of the Chief Executive, jane.turner@lancashire.gov.uk

Executive Summary

Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

Recommendation

The Committee is asked to note the current Guidance as set out in the attached Annexes and have reference to the relevant sections of it during consideration of any reports on the agenda.

Background and Advice

In addition to any advice which may be given at meetings the members of the committee are also provided with Guidance on the law in relation to the various types of Order which may appear on an agenda.

A copy of the current Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way is attached as Annex 'A'. Guidance on the law relating to certain Orders to be made under the Highways Act 1980 is attached as Annex 'B' and on the actions of the Authority on submission of Public Path Orders to the Secretary of State as Annex 'C'.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

Providing the members of the Committee with Guidance will assist them to consider the various reports which may be presented.

Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
Current legislation		Jane Turner, Office of the Chief Executive 01772 32813
Reason for inclusion in Part II, if appropriate N/A		

Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way

Definitions

The Wildlife and Countryside Act 1981 gives the following definitions of the public rights of way which are able to be recorded on the Definitive Map:-

Footpath – means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road; these rights are without prejudice to any other public rights over the way;

Bridleway – means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway; these rights are without prejudice to any other public rights over the way;

Restricted Byway – means a highway over which the public have a right of way on foot, on horseback or leading a horse and a right of way for vehicles other than mechanically propelled vehicles, with or without a right to drive animals along the highway.
(Mechanically propelled vehicles do not include vehicles in S189 Road Traffic Act 1988)

Byway open to all traffic (BOATs) – means a highway over which the public have a right of way for vehicular and all other kinds of traffic. These routes are recorded as Byways recognising their particular type of vehicular highway being routes whose character make them more likely to be used by walkers and horseriders because of them being more suitable for these types of uses;

Duty of the Surveying Authority

Section 53 of the Wildlife and Countryside Act 1981 provides that a Surveying Authority shall keep the Definitive Map and Statement under continuous review and as soon as reasonably practicable after the occurrence of any of a number of prescribed events by Order make such modifications to the Map and Statement as appear to them to be requisite in consequence of the occurrence of that event.

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

- b) the expiration, in relation to any way in the area to which the Map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway;

- c) the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows –
 - (i) that a right of way which is not shown in the Map and Statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, a byway open to all traffic; or
 - (ii) that a highway shown in the Map and Statement as a highway of a particular description ought to be there shown as a highway of a different description; or
 - (iii) that there is no public right of way over land shown in the Map and Statement as a highway of any description, or any other particulars contained in the Map and Statement require modification.

The modifications which may be made by an Order shall include the addition to the statement of particulars as to:-

- (a) the position and width of any public path or byway open to all traffic which is or is to be shown on the Map; and
- (b) any limitations or conditions affecting the public right of way thereover.

Orders following “legal events”

Other events include

“The coming into operation of any enactment or instrument or any other event” whereby a highway is stopped up diverted widened or extended or has ceased to be a highway of a particular description or has been created and a Modification Order can be made to amend the Definitive Map and Statement to reflect these legal events”.

Since 6th April 2008 Diversion Orders, Creation Orders, Extinguishment Orders under the Highways Act 1980 (and other types of Orders) can themselves include provisions to alter the Definitive Map under the new S53A of the Wildlife and Countryside Act 1981 and be “combined orders” combining both the Order to divert and an order to alter the Map. The alteration to the Definitive Map will take place on the date the extinguishment, diversion or creation etc comes fully into effect.

Government Policy - DEFRA Circular 1/09

In considering the duty outlined above the Authority should have regard to the Department of the Environment Food and Rural Affairs’ Rights of Way Circular (1/09). This replaces earlier Circulars.

This Circular sets out DEFRA’s policy on public rights of way and its view of the law. It can be viewed on the DEFRA web site. There are sections in the circular on informing and liaising, managing and maintaining the rights of way network, the Orders under the

Highways Act 1980 and also sections on the Definitive Map and Modification Orders. Many aspects are considered such as -

When considering a deletion the Circular says - "4.33 The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with “higher” rights to a way with “lower” rights, as well as complete deletion – will need to fulfil certain stringent requirements.

These are that:

- the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.
- the evidence must be of sufficient substance to displace the presumption that the definitive map is correct;
- the evidence must be cogent.

While all three conditions must be met they will be assessed in the order listed.

Before deciding to make an order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map or statement should be modified."

Where a route is recorded on the List of Streets as an Unclassified County Road the Circular says – "4.42 In relation to an application under the 1981 Act to add a route to a definitive map of rights of way, the inclusion of an unclassified road on the 1980 Act list of highways maintained at public expense may provide evidence of vehicular rights.

However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. It would be possible for a way described as an unclassified road on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way provided the route fulfils the criteria set out in Part III of the 1981 Act. However, authorities will need to examine the history of such routes and the rights that may exist over them on a case by case basis in order to determine their status."

Definitive Maps

The process for the preparation and revision of definitive maps was introduced by Part III of the National Parks and Access to the Countryside Act 1949.

Information about rights of way was compiled through surveys carried out by Parish Councils (or District Councils where there was no Parish Council) and transmitted to the Surveying Authority (County or County Borough Councils) in the form of Survey Maps and cards.

The Surveying Authority published a draft map and statement and there was a period for the making of representations and objections to the draft map. The Authority could

determine to modify the map, but if there was an objection to that modification the Authority was obliged to hold a hearing to determine whether or not to uphold that modification with a subsequent appeal to the Secretary of State against the decision.

After all appeals had been determined the Authority then published a Provisional Map and Statement. Owners, lessees or occupiers of land were entitled to appeal to Quarter Sessions (now the Crown Court) against the provisional map on various grounds.

Once this process had been completed the Authority published the Definitive Map and Statement. The Map and Statement was subject to five yearly reviews which followed the same stages.

The Map speaks as from a specific date (the relevant date) which is the date at which the rights of way shown on it were deemed to exist. For historic reasons different parts of the County have different Definitive Maps with different relevant dates, but for the major part of the County the Definitive Map was published in 1962, with a relevant date of the 1st January 1953 and the first review of the Definitive Map was published in 1975 with a relevant date of 1st September 1966.

Test to be applied when making an Order

The provisions of the Wildlife and Countryside Act 1981 set out the tests which must be addressed in deciding that the map should be altered.

S53 permits both upgrading and downgrading of highways and deletions from the map.

The statutory test at S53(3)(b) refers to the expiration of a period of time and use by the public such that a presumption of dedication is raised.

The statutory test at S53(3)(c)(i) comprises two separate questions, one of which must be answered in the affirmative before an Order is made under that subsection. There has to be evidence discovered. The claimed right of way has to be found on balance to subsist (Test A) or able to be reasonably alleged to subsist. (Test B).

This second test B is easier to satisfy but please note it is the higher Test A which needs to be satisfied in confirming a route.

The statutory test at S53(3)(c)(ii) again refers to the discovery of evidence that the highway on the definitive map ought to be shown as a different status.

The statutory test at S53(3)(c)(iii) again refers to evidence being discovered that there is no public right of way of any description after all or that there is evidence that particulars in the map of statement need to be modified.

The O'Keefe judgement reminds Order Making Authorities that they should make their own assessment of the evidence and not accept unquestioningly what officers place before them.

All evidence must be considered and weighed and a view taken on its relevance and effect.

An Order Making Authority should reach a conclusion on the balance of probabilities. The balance of probability test demands a comparative assessment of the evidence on opposing sides. This is a complex balancing act.

Recording a “new” route

For a route to have become a highway it must have been dedicated by the owner.

Once a route is a highway it remains a highway, even though it may fall into non use and perhaps become part of a garden.

This is the position until a legal event causing the highway to cease can be shown to have occurred, or the land on which the highway runs is destroyed, perhaps by erosion which would mean that the highway length ceases to exist.

Sometimes there is documentary evidence of actual dedication but more often a dedication can be inferred because of how the landowner appears to have treated the route and given it over to public use (dedication at Common law) or dedication can be deemed to have occurred if certain criteria laid down in Statute are fulfilled (dedication under s31 Highways Act).

Dedication able to be inferred at Common law

A common law dedication of a highway may be inferred if the evidence points clearly and unequivocally to an intention on the part of the landowner to dedicate. The burden of proof is on the Claimant to prove a dedication. Evidence of use of the route by the public and how an owner acted towards them is one of the factors which may be taken into account in deciding whether a path has been dedicated. No minimum period of use is necessary. All the circumstances must be taken into account. How a landowner viewed a route may also be indicated in documents and maps

However, a landowner may rely on a variety of evidence to indicate that he did not intend to dedicate, including signs indicating the way was private, blocking off the way or turning people off the path, or granting permission or accepting payment to use the path.

There is no need to know who a landowner was.

Use needs to be by the public. This would seem to require the users to be a number of people who together may sensibly be taken to represent the people as a whole/the local community. Use wholly or largely by local people may still be use by the public. Use of a way by trades people, postmen, estate workers or by employees of the landowner to get to work, or for the purpose of doing business with the landowner, or by agreement or licence of the landowner or on payment would not normally be sufficient. Use by friends of or persons known to the landowner would be less cogent evidence than use by other persons.

The use also needs to be “as of right” which would mean that it had to be open, not secretly or by force or with permission. Open use would arguably give the landowner the opportunity to challenge the use. Toleration by the landowner of a use is not inconsistent

with use as of right. Case law would indicate that the use has to be considered from the landowner's perspective as to whether the use, in all the circumstances, is such as to suggest to a reasonable landowner the exercise of a public right of way.

The use would have to be of a sufficient level for a landowner to have been aware of it. The use must be by such a number as might reasonably have been expected if the way had been unquestioningly a highway.

Current use (vehicular or otherwise) is not required for a route to be considered a Byway Open to All Traffic but past use by the public using vehicles will need to be sufficiently evidenced from which to infer the dedication of a vehicular route. Please note that the right to use mechanically propelled vehicles may since have been extinguished.

Dedication deemed to have taken place (Statutory test)

By virtue of Section 31 of the Highways Act 1980 dedication of a path as a highway may be presumed from use of the way by the public as of right – not secretly, not by force nor by permission without interruption for a full period of twenty years unless there is sufficient evidence that there was no intention during the twenty year period to dedicate it.

The 20 year period is computed back from the date the existence of the right of way is called into question.

A landowner may prevent a presumption of dedication arising by erecting notices indicating that the path is private. Further under Section 31(6) a landowner may deposit with the Highway Authority a map (of a scale of not less than 1:10560 (6 inches to the mile) and statement showing those ways, if any, which he or she agrees are dedicated as highways. This statement must be followed by statutory declarations. These statutory declarations used to have to be renewed at not more than 6 yearly intervals, but the interval is now 10 years. The declaration would state that no additional rights of way have been dedicated. These provisions do not preclude the other ways open to the landowner to show the way has not been dedicated.

If the criteria in section 31 are satisfied a highway can properly be deemed to have been dedicated. This deemed dedication is despite a landowner now protesting or being the one to now challenge the use as it is considered too late for him to now evidence his lack of intention when he had failed to do something to sufficiently evidence this during the previous twenty years.

The statutory presumption can arise in the absence of a known landowner. Once the correct type of user is proved on balance, the presumption arises, whether or not the landowner is known.

Guidance on the various elements of the Statutory criteria;-

- Use – see above as to sufficiency of use. The cogency, credibility and consistency of user evidence should be considered.
- By the public – see above as to users which may be considered “the public”.

- As of right - see above
- Without interruption - for a deemed dedication the use must have been without interruption. The route should not have been blocked with the intention of excluding the users.
- For a full period of twenty years - Use by different people, each for periods of less than twenty years will suffice if, taken together, they total a continuous period of twenty years or more. The period must end with the route being "called into question".
- Calling into question - there must be something done which is sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway. Barriers, signage and challenges to users can all call a route into question. An application for a Modification Order is of itself sufficient to be a "calling into question" (as provided in the new statutory provisions S31 (7a and 7B) Highways Act 1980). It is not necessary that it be the landowner who brings the route into question.
- Sufficient evidence of a lack of intention to dedicate - this would not need to be evidenced for the whole of the twenty year period. It would be unlikely that lack of intention could be sufficiently evidenced in the absence of overt and contemporaneous acts on the part of the owner. The intention not to dedicate does have to be brought to the attention of the users of the route such that a reasonable user would be able to understand that the landowner was intending to disabuse him of the notion that the land was a public highway.

Documentary evidence

By virtue of Section 32 of the Highways Act 1980 in considering whether a highway has been dedicated, maps plans and histories of the locality are admissible as evidence and must be given such weight as is justified by the circumstances including the antiquity of the document, status of the persons by whom and the purpose for which the document was made or compiled and the custody from which it is produced.

In assessing whether or not a highway has been dedicated reference is commonly made to old commercial maps of the County, Ordnance Survey maps, sometimes private estate maps and other documents, other public documents such as Inclosure or Tithe Awards, plans deposited in connection with private Acts of Parliament establishing railways, canals or other public works, records compiled in connection with the valuation of land for the purposes of the assessment of increment value duty and the Finance Act 1910. Works of local history may also be relevant, as may be the records of predecessor highway authorities and the information gained in connection with the preparation and review of the Definitive Map.

It should be stressed that it is rare for a single document or piece of information to be conclusive (although some documents are of more value than others e.g. Inclosure Awards where the Commissioners were empowered to allot and set out highways). It is necessary to look at the evidence as a whole to see if it builds up a picture of the route being dedicated as a highway.

It should be noted that Ordnance Survey Maps (other than recent series which purport to show public rights of way and which derive their information from the Definitive Map) contain a disclaimer to the effect that the recording of a highway or right of way does not imply that it has any status. The maps reflect what the map makers found on the ground.

Synergy between pieces of highway status evidence – co-ordination as distinct from repetition would significantly increase the collective impact of the documents.

Recording vehicular rights

Historical evidence can indicate that a route carries vehicular rights and following the Bakewell Management case in 2004 (House of Lords) it is considered that vehicular rights could be acquired on routes by long use during years even since 1930. However, in May 2006 Part 6 of the Natural Environment and Rural Communities Act 2006 came into force. Public rights of way for mechanically propelled vehicles are now extinguished on routes shown on the definitive map as footpaths, bridleways or restricted byways unless one of eight exceptions applies. In essence mechanical vehicle rights no longer exist unless a route is recorded in a particular way on the Council's Definitive Map or List of Streets or one of the other exceptions apply. In effect the provisions of the Act curtail the future scope for applications to record a Byway Open to All Traffic to be successful.

The exceptions whereby mechanical vehicular rights are “saved” may be summarised as follows-

- 1) main lawful public use of the route 2001-2006 was use for mechanically propelled vehicles
- 2) that the route was not on the Definitive Map but was recorded on the List of Streets.
- 3) that the route was especially created to be a highway for mechanically propelled vehicles
- 4) that the route was constructed under statutory powers as a road intended for use by mechanically propelled vehicles
- 5) that the route was dedicated by use of mechanically propelled vehicles before December 1930
- 6) that a proper application was made before 20th January 2005 for a Modification Order to record the route as a Byway Open to All Traffic (BOAT)
- 7) that a Regulatory Committee had already made a decision re an application for a BOAT before 6th April 2006
- 8) that an application for a Modification Order has already been made before 6th April 2006 for a BOAT and at 6th April 2006 use of the way for mechanically propelled vehicles was reasonably necessary to enable that applicant to access land he has an interest in, even if not actually used.

It is certainly the case that any application to add a byway to the Definitive Map and Statement must still be processed and determined even though the outcome may now be that a vehicular public right of way existed before May 2006 but has been extinguished for mechanically propelled vehicles and that the route should be recorded as a restricted byway.

Downgrading a route or taking a route off the Definitive Map

In such matters it is clear that the evidence to be considered relates to whether on balance it is shown that a mistake was made when the right of way was first recorded.

In the Trevelyan case (Court of Appeal 2001) it was considered that where a right of way is marked on the Definitive Map there is an initial presumption that it exists. It should be assumed that the proper procedures were followed and thus evidence which made it reasonably arguable that it existed was available when it was put on the Map. The standard of proof required to justify a finding that no such right of way exists is on the balance of probabilities and evidence of some substance is required to outweigh the initial presumption.

Authorities will be aware of the need, as emphasised by the Court of Appeal, to maintain an authoritative Map and Statement of highest attainable accuracy. "The evidence needed to remove a public right from such an authoritative record will need to be cogent. The procedures for defining and recording public rights of way have, in successive legislation, been comprehensive and thorough. Whilst they do not preclude errors, particularly where recent research has uncovered previously unknown evidence, or where the review procedures have never been implemented, they would tend to suggest that it is unlikely that a large number of errors would have been perpetuated for up to 40 years without being questioned earlier."

Taking one route off and replacing it with an alternative

In some cases there will be no dispute that a public right of way exists between two points, but there will be one route shown on the definitive map which is claimed to be in error and an alternative route claimed to be the actual correct highway.

There is a need to consider whether, in accordance with section 53(3)(c)(i) a right of way is shown to subsist or is reasonably alleged to subsist and also, in accordance with section 53(3)(c)(iii) whether there is no public right of way on the other route.

The guidance published under the statutory provisions make it clear that the evidence to establish that a right of way should be removed from the authoritative record will need to be cogent. In the case of *R on the application of Leicestershire County Council v SSEFR* in 2003, Mr Justice Collins said that there "has to be a balance drawn between the existence of the definitive map and the route shown on it which would have to be removed and the evidence to support the placing on the map of, in effect a new right of way." "If there is doubt that there is sufficient evidence to show that the correct route is other than that shown on the map, then what is shown on the map must stay."

The court considered that if it could merely be found that it was reasonable to allege that the alternative existed, this would not be sufficient to remove what is shown on the map. It is advised that, unless in extraordinary circumstances, evidence of an alternative route which satisfied only the lower "Test B" (see page 4) would not be sufficiently cogent evidence to remove the existing recorded route from the map.

Confirming an Order

An Order is not effective until confirmed.

The County Council may confirm unopposed orders. If there are objections the Order is sent to the Secretary of State for determination. The County Council usually promotes its Orders and actively seeks confirmation by the Secretary of State.

Until recently it was thought that the test to be applied to confirm an Order was the same test as to make the order, which may have been under the lower Test B for the recording of a "new" route. However, the Honourable Mr Justice Evans-Lombe heard the matter of *Todd and Bradley v SSEFR* in May 2004 and on 22nd June 2004 decided that confirming an Order made under S53(3)(c)(i) "implies a revisiting by the authority or Secretary of State of the material upon which the original order was made with a view to subjecting it to a more stringent test at the confirmation stage." And that to confirm the Order the Secretary of State (or the authority) must be "satisfied of a case for the subsistence of the right of way in question on the balance of probabilities." i.e. that Test A is satisfied.

It is advised that there may be cases where an Order to record a new route can be made because there is sufficient evidence that a highway is reasonably alleged to subsist, but unless Committee also consider that there is enough evidence, on balance of probabilities, that the route can be said to exist, the Order may not be confirmed as an unopposed Order by the County Council. This would mean that an Order could be made, but not confirmed as unopposed, nor could confirmation actively be supported by the County Council should an opposed Order be submitted to the Secretary of State.

July 2009

Revised basic Guidance on the law relating to certain Orders to be made under the Highways Act 1980

- **Diversion Orders under s119**
- **Diversion Orders under s119A**
- **Diversion Orders under s119ZA**
- **Diversion Orders under s119B**
- **Diversion Orders under s119C**
- **Diversion Orders under s119D**
- **Extinguishment Orders under s118**
- **Extinguishment Orders under s118A**
- **Extinguishment Orders under s118ZA**
- **Extinguishment Orders under s118B**
- **Extinguishment Orders under s118C**
- **Creation Order under s26**

Committee members have received a copy of the relevant sections from the Highways Act 1980 (as amended). The following is to remind Members of the criteria for the making of the Orders and to offer some guidance.

DEFRA's Rights of Way Circular (1/09 version 2) sets out DEFRA's policy on public rights of way and its view of the law. It can be found on DEFRA's web site. Orders made under the Highways Act 1980 are considered in Section 5 where the Guidance says that "the statutory provisions for creating, diverting and extinguishing public rights of way in the Highways Act 1980 have been framed to protect both the public's rights and the interests of owners and occupiers. They also protect the interests of bodies such as statutory undertakers."

Often the legal test requires the Committee to be satisfied as to the expediency of something. It is suggested that for something to be expedient it is appropriate and suitable to the circumstances and may incline towards being of an advantage even if not particularly fair. Something which is expedient would seem to facilitate your achieving a desired end.

Whether something is as convenient or not substantially less convenient may need to be considered. It is suggested that convenient refers to being suitable and easy to use.

Under S40 of the Natural Environment and Rural Communities Act 2006, every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.

Under Section 11 of the Countryside Act 1968 in the exercise of their functions relating to land under any enactment every Minister, government department and public body shall have regard to the desirability of conserving the natural beauty and amenity of the countryside.

Diversion Order s119

TO MAKE AN ORDER

To be satisfied that it is expedient in the interests of the owner, lessee or Occupier.

OR

To be satisfied that it is expedient in the interests of the public

To be satisfied that the Order will not alter a point of termination at all if it is a cul de sac route (ending at a beauty spot for example).

OR

If the route terminates at a highway to be satisfied that the termination point is only being moved to another point on the same highway or to another highway connected to it and the point is substantially as convenient to the public.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

To be satisfied that it is expedient in the interests of the owner, lessee or occupier

OR

To be satisfied that it is expedient in the interests of the public

To be satisfied that the route will not be substantially less convenient to the public.

That it is expedient to confirm it having regard to the effect the diversion would have on public enjoyment of the path or way as a whole.

That it is expedient to confirm it having regard to the effect on land served by the existing right of way (compensation can be taken into account)

That it is expedient to confirm it having regard to the effect on the land over which the "new" section runs and any land held with it (compensation can be taken into account).

Also having regard to any material provision of any Rights of Way Improvement Plan.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

That there is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route unless the statutory undertakers have consented to the confirmation of the Order (consent not to be unreasonably withheld).

GUIDANCE

The point of termination being as substantially convenient is a matter of judgement subject to the test of reasonableness. Convenience would have its natural and ordinary meaning

and refer to such matters as whether the new point of termination facilitated the access of the highway network and accommodated user's normal use of the network.

That the diverted path is not substantially less convenient would mean convenience again being considered. The wording in the Statute allows the diversion to be slightly less convenient but it must not be substantially less so. The length of the diversion, difficulty of walking it, effect on users who may approach the diversion from different directions are factors to be considered.

The effect on public enjoyment of the whole route has to be considered. It would be possible that a proposed diversion may be as convenient but made the route less enjoyable (perhaps it was less scenic). Alternatively the diversion may give the route greater public enjoyment but be substantially less convenient (being less accessible or longer than the existing path).

It may be that the grounds to make an Order are satisfied but the Committee may be unhappy that the route can satisfy the confirmation test. It is suggested that in such circumstances the Order should be made but the Committee should consider deferring the decision on whether to confirm it (if there are no objections) or (if there are objections) whether to instruct officers not to even send the Order to the Secretary of State for confirmation or to instruct to submit the Order to the Secretary of State and promote the confirmation of same. The Council has a discretion whether to submit this type of Order to the Secretary of State. It is not obliged to just because it has made the Order.

Under amended provisions, the "new" section of route will "appear" on confirmation of the Order (or a set number of days thereafter) but the "old" route will remain until the new route is certified as fit for use. It would appear that the public could quickly have the use of a new section which is fit for use as soon as confirmed but if the new route is unfit for use for a long time, the old line of the Right of Way is still there for the public to use.

It is advised that when considering orders made under Section 119(6), whether the right of way will be/ will not be substantially less convenient to the public in consequence of the diversion, an equitable comparison between the existing and proposed routes can only be made by similarly disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public. Therefore, in all cases where this test is to be applied, the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it.

It would appear that a way created by a Diversion Order may follow an existing right of way for some but not most or all of its length.

The reference to having regard to needs of agriculture includes the breeding or keeping of horses.

Reference to having regard to the material provisions of the Rights of Way Improvement Plan refers to the RWIP prepared in June 2005. The full document is on the County Council's web site.

Diversion Orders under s119A

TO MAKE AN ORDER

To be satisfied that it is expedient in the interests of the safety of members of the public using or likely to use a footpath or bridleway which crosses a railway otherwise than by a tunnel or bridge

To be satisfied that the Order will not alter a point of termination at all if it is a cul de sac route (ending at a beauty spot for example).

OR

If the route terminates at a highway to be satisfied that the termination point is being moved to another point on the same highway or to another highway connected to it.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

Whether the railway operator be required to maintain the diversion route.

Whether the rail operator enter into an agreement to defray or contribute towards compensation, expenses or barriers and signage, bringing the alternative route into fit condition.

TO CONFIRM AN ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

To be satisfied that it is expedient to do so having regard to all the circumstances and in particular to –

Whether it is reasonably practicable to make the crossing safe for use by them public; and

What arrangements have been made for ensuring that any appropriate barriers and signs are erected and maintained.

A rail crossing diversion order shall not be confirmed unless statutory undertakers whose apparatus is affected have consented to the confirmation (such consent not to be unreasonably withheld).

GUIDANCE

The statutory provisions make it clear that the diversion can be onto land of another owner lessee or occupier

A change to the point of termination has to be onto a highway but the statutory provisions do not insist that the point has to be substantially as convenient (as is the requirement in S119).

The grounds for this type of diversion order refer to balancing the safety of continuing to use the level crossing and whether it could be made safe rather than divert the path. The information from the rail operator is therefore considered to be very important.

Diversion Orders under s119ZA

Diversion Orders under s119B

Diversion Orders under s119C

Diversion Orders under s119D

Guidance under these specific sections will be made available when required

Extinguishment Order under s118

TO MAKE AN ORDER

To be satisfied that it is expedient that the path be stopped up on the ground that the footpath or bridleway is not needed for public use.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

To be satisfied that it is expedient to do so.

To have regard to the extent to which it appears that the path would be likely to be used by the public.

To have regard to the effect which the extinguishment would have as respects land served by the path (compensation can be taken into account).

Where the Order is linked with a Creation Order or a Diversion Order then the Authority or Inspector can have regard to the extent to which the Creation Order or Diversion Order would provide an alternative path.

That there is no apparatus belonging to or used by statutory undertakers under in, upon, over, along or across the land crossed by the present definitive route unless the statutory undertakers have consented to the confirmation of the Order (consent not to be unreasonably withheld).

GUIDANCE

Temporary circumstances preventing or diminishing the use of the path shall be disregarded. These include obstructions, which are likely to be removed. Trees and 4 feet wide hedges have been held to be temporary and even an electricity sub station. Many obstructions seem therefore to be able to be disregarded but this does make it difficult to assess what the use of the path would be if the obstruction were not there.

To be satisfied that it is expedient to confirm means that other considerations other than use could be taken into account perhaps safety, perhaps cost.

An Order can be confirmed if it is thought that, despite the fact that it was likely to be used, it is not needed because of a convenient path nearby.

Councils are advised to take care to avoid creating a cul de sac when extinguishing only part of a way.

The reference to having regard to needs of agriculture includes the breeding or keeping of horses.

Extinguishment Orders under s118A

TO MAKE AN ORDER

An Order under this section can be made where it appears expedient to stop up a footpath or bridleway in the interests of the safety of members of the public using or likely to use a footpath or bridleway which crosses a railway, other than by tunnel or bridge.

TO CONFIRM AN ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

The Order can be confirmed if satisfied that it is expedient to do so having regard to all the circumstances and in particular whether it is reasonably practicable to make the crossing safe for use by the public and what arrangements have been made for ensuring that, if the Order is confirmed, any appropriate barriers and signs are erected and maintained.

GUIDANCE

It is noted that there is not the same requirements as under S118 to consider need for the route. Instead it is safety which is the reason for the Order being made to close the right of way.

Extinguishment Orders under s118B

Section 118B enables footpaths, bridleways, restricted byways or byways open to all traffic to be extinguished permanently by two types of Special Extinguishment Order.

TO MAKE THE FIRST TYPE OF S118B ORDER

The highway concerned has to be in an area specially designated by the Secretary of State.

To be satisfied that it is expedient that the highway be extinguished for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community.

To be satisfied that premises adjoining or adjacent to the highway are affected by high levels of crime and

That the existence of the highway is facilitating the persistent commission of criminal offences.

TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

The Order can be confirmed if all the reasons for making the Order (above) are still satisfied and also

That it is expedient having regard to all circumstances

Also having regard to whether and to what extent the Order is consistent with any strategy for the reduction of crime and disorder prepared under S6 Crime and Disorder Act 1998 and

Having regard to the availability of a reasonably convenient alternative route or, if no such route is available, whether it would be reasonably practicable to divert the highway rather than stopping it up, and

Having regard to the effect the extinguishment would have as respects land served by the highway account being taken of the provisions available for compensation.

TO MAKE THE SECOND TYPE OF S118B ORDER

To be satisfied that the highway crosses land occupied for the purposes of a school.

That the extinguishment is expedient for the purpose of protecting the pupils or staff from violence or the threat of violence, harassment, alarm or distress arising from unlawful activity or any other risk to their health or safety arising from such activity.

TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

The Order can be confirmed if all the reasons for making the Order (above) are still satisfied and also

That it is expedient having regard to all circumstances

That regard is had to any other measures that have been or could be taken for improving or maintaining the security of the school

That regard is had as to whether it is likely that the Order will result in a substantial improvement in that security

That regard is had to the availability of a reasonably convenient alternative route or, if no such route is available, whether it would be reasonably practicable to divert the highway rather than stopping it up, and

Having regard to the effect the extinguishment would have as respects land served by the highway account being taken of the provisions available for compensation.

GUIDANCE

Under S118B there are specific criteria to be satisfied before an Order can take effect and to remove a highway from the network of rights of way. It should be noted that an Order extinguishes the footpath (or other type of highway) permanently. Members of the Committee may also be aware of the power, since April 2006, of the Council to make Gating Orders whereby highway rights remain but subject to restrictions which are reviewed annually and will eventually be lifted.

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

To be satisfied that there is a need for the footpath or bridleway and

To be satisfied that it is expedient that the path be created

To have regard to the extent the path would add to the convenience or enjoyment of a substantial section of the public, or

To have regard to the extent the path would add to the convenience of persons resident in the area

To have regard to the effect on the rights of persons interested in the land, taking compensation provisions into account.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

The same test as above.

GUIDANCE

Again there is convenience to consider.

There may also need to be some consensus as to what constitutes a substantial section of the public.

Persons interested in the land may include owners and tenants and maybe mortgagees.

The reference to having regard to needs of agriculture includes the breeding or keeping of horses.

Regulatory Committee
Meeting to be held on the 16 September 2020

Guidance on the actions to be taken following submission of a Public Path Order to the Secretary of State

Procedural step

Once an Order has been made it is advertised it may attract objections and representations. These are considered by the Authority and efforts made to get them withdrawn. If there are any objections or representations duly made and not subsequently withdrawn the Authority may -

1. Consider that information is now available or circumstances have changed such that the confirmation test would be difficult to satisfy and that the Order be not proceeded with;
2. Consider that the Order should be sent into the Secretary of State with the authority promoting the Order and submitting evidence and documentation according to which ever procedure the Secretary of State adopts to deal with the Order; or
3. Consider that the Order be sent to the Secretary of State with the authority taking a neutral stance as to confirmation

Recovery of Costs from an Applicant

The Authority may only charge a third party if it has power to do so. We can charge an applicant for a public path order but only up to a particular point in the procedure – in particular, once the Order is with the Secretary of State we cannot recharge the costs incurred promoting the Order at a public inquiry, hearing or by written representations.

The power to charge is found in the - **Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993/407**

Power to charge in respect of the making and confirmation of public path orders

(1) Where—

- (a) the owner, lessee or occupier of land or the operator of a railway requests an authority to make a public path order under section 26, 118, 118A, 119 or 119A of the 1980 Act, or
- (b) any person requests an authority to make a public path order under section 257 or 261(2) of the 1990 Act, and the authority comply with that request, they may impose on the person making the request any of the charges mentioned in paragraph (2) below.

(2) Those charges are—

(a) a charge in respect of the costs incurred in the making of the order; and

(b) a charge in respect of each of the following local advertisements, namely the local advertisements on the making, on the confirmation, and on the coming into operation or force, of the order.

Amount of charge

(1) Subject to paragraphs (2) and (3) below, the amount of a charge shall be at the authority's discretion.

(3) The amount of a charge in respect of any one of the local advertisements referred to in regulation 3(2)(b) shall not exceed the cost of placing one advertisement in one newspaper

Refund of charges

The authority shall, on application by the person who requested them to make the public path order, refund a charge where—

(a) they fail to confirm an unopposed order; or

(b) having received representations or objections which have been duly made, and have not been withdrawn, the authority fail to submit the public path order to the Secretary of State for confirmation, without the agreement of the person who requested the order; or

(c) the order requested was an order made under section 26 of the 1980 Act and proceedings preliminary to the confirmation of that order were not taken concurrently with proceedings preliminary to the confirmation of an order made under section 118 of the 1980 Act; or

(d) the public path order is not confirmed by the authority or, on submission to the Secretary of State, by him, on the ground that it was invalidly made.

Policy Guidance on these Regulations is found in Circular 11/1996. Administrative charges can be charged up to the point where the order is submitted for determination and thereafter for advertising the confirmation decision and any separate notice of the Order coming into operation or force.

Careful consideration of stance

Recently there has careful analysis of all the work officers do and the cost of these resources and how to best use the resources.

The above Regulations have been considered and it is advised that the test as to when an Order should be promoted be clarified and applied consistently.

It is advised that consideration needs to be given to whether the diversion is of such little or no real public benefit such that resources should not be allocated to promoting the Order once submitted although where there is no substantial disbenefits to the public the applicants be able to promote the Order themselves.

This is not the same as considering whether the Order can be confirmed as set out in the statute. It is consideration of what actions the Authority should take on submitting the Order. It is not an easy consideration but officers will be able to advise in each particular matter.

Regulatory Committee

Meeting to be held on Wednesday, 16 September 2020

Part I

Electoral Division affected:
(All Divisions);

The Constitution, Membership, Terms of Reference and Programme of Meetings for the Regulatory Committee

(Appendix 'A' refers)

Contact for further information:

Joanne Mansfield, (01772) 534284, Office of the Chief Executive,
joanne.mansfield@lancashire.gov.uk

Executive Summary

This report sets out the constitution, membership, Terms of Reference of the Regulatory Committee, and the programme of meetings for 2020/21.

Recommendation

The Committee is asked to note:

- (i) The constitution/membership of the Committee, following the county council's annual meeting on 16 July 2020.
- (ii) The Terms of Reference of the Committee.
- (iii) The agreed programme of meetings for the Committee.

Background and Advice

The county council at its annual meeting on 16 July 2020 agreed that the Regulatory Committee shall comprise 12 County Councillors on the basis of 7 Conservative, 4 Labour and 1 Liberal Democrat/Independent member.

The following County Councillors have subsequently been nominated to serve on the Committee for the remainder of the 2020/21 municipal year.

County Councillors

T Aldridge
I Brown
A Clempson
J Cooney

J Eaton
D Howarth
J Marsh
J Parr

L Cox
B Dawson

P Steen
C Towneley

A copy of the Committee's Terms of Reference is attached at Appendix 'A'.

In October 2019, Full Council agreed the following programme of meetings for the Committee, with all meetings to be held at County Hall, Preston, commencing at 10.30am.

- 24 June 2020
- 16 September 2020
- 18 November 2020
- 27 January 2021
- 10 March 2021

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

There are no risk management implications arising from this report.

Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A

The Regulatory Committee

The Committee comprises twelve County Councillors and deals principally with claims relating to public rights of way and various licensing and registration functions (except registration functions relating to Social Services).

Meetings are open to the public but they may be excluded where information of an exempt or confidential nature is being discussed – see Access to Information Procedure Rules set out at Appendix 'H' to this Constitution.

Terms of Reference

The Committee shall carry out the following functions:

Public Rights of Way

1. To determine applications under S53 of the Wildlife and Countryside Act 1981 and to decide whether to make and promote to confirmation Orders thereunder.
2. To exercise the following functions, duties and powers of the Council under the Highways Act 1980:
 - (a) to authorise creation of footpaths, bridleways or restricted byways by agreement under Section 25;
 - (b) to decide whether to make and promote to confirmation Orders for the creation of footpaths, bridleways and restricted byways under Section 26;
 - (c) to decide whether to make and promote to confirmation Orders for the extinguishment of footpaths, bridleways and restricted byways in accordance with Section 118; with the exception of those which are delegated to the Head of Service for Planning and Environment;
 - (d) to decide whether to make and promote to confirmation rail crossing extinguishment orders under Section 118A;
 - (e) to decide whether to make and promote to confirmation special extinguishment orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 118B;
 - (f) to decide whether to make and promote to confirmation public path extinguishment orders (Section 118ZA) and special extinguishment orders (Section 118C);
 - (g) to decide whether to make and promote to confirmation Orders for the diversion of footpaths, bridleways and restricted byways in accordance with Section 119; with the exception of those which are delegated to the Head of Service for Planning and Environment;
 - (h) to decide whether to make and promote to confirmation rail crossing diversion orders under Section 119A;
 - (i) to decide whether to make and promote to confirmation special diversion orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 119B;
 - (j) to decide whether to make and promote to confirmation SSSI diversion orders under Section 119D;

- (k) to decide whether to make and promote to confirmation public path diversion orders (Section 119ZA) and a special diversion order (Section 119C(4)).
- 3. To decide whether to make orders and promote to confirmation to extinguish certain public rights of way under Section 32 of the Acquisition of Land Act 1981.
- 4. To decide whether to make orders and promote to confirmation orders to designate a footpath as a cycle track under Section 3 of the Cycle Tracks Act 1984.

Other Licensing Registration and Regulatory Functions

- 1. To make appointments to outside bodies to which the Council is entitled to have representation in connection with the discharge of any of the Committee's functions.
- 2. To establish Sub-Committees to undertake any part of the Committee's functions.

Common Land and Town and Village Greens

- 1. To decide whether to exercise the Council's powers under the Commons Registration Act 1965 to alter the Register in respect of applications.
- 2. To make recommendations to the Cabinet on matters under the Commons Registration Act 1965 as amended and Regulations thereunder where responsibility lies with the Cabinet.
- 3. To make decisions on applications and proposals as determining authority under Part 1 Commons Act 2006 save for those under Regulation 43 of the Regulations thereunder.
- 4. To decide whether to apply to the Secretary of State as owner for de-registration of Common Land or Town or Village Green under S16 Commons Act 2006.
- 5. To decide whether to take steps and what steps to take to protect unclaimed common land or town or village greens against unlawful interference and whether to institute proceedings under Section 45 of the Commons Act 2006.
- 6. To decide whether to apply to the Court for orders against unlawful works on common land under Section 41 of the Commons Act 2006.

Regulatory Committee

Meeting to be held on 24 June 2020

Part I

Electoral Division affected:
Pendle Rural

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Bridleway from Noyna Road to Noyna Hall and Upgrade of Footpath to Bridleway from Noyna Hall to Moss Houses Road, Foulridge, Pendle

File No. 804-609 (Annex 'A' refers)

Contact for further information:

Simon Moore, 01772 531280, Paralegal Officer, County Secretary and Solicitors Group, simon.moore@lancashire.gov.uk

Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, jayne.elliott@lancashire.gov.uk

Executive Summary

Application for a bridleway to be added to the Definitive Map and Statement from Noyna Road to the junction with Footpath Foulridge 36 east of Noyna Hall and the upgrading to Bridleway of part of Footpath Foulridge 36 from east of Noyna Hall to Moss Houses Road, Foulridge, in accordance with File No. 804-609.

Recommendation

That the application for a bridleway to be added to the Definitive Map and Statement from Noyna Road to the junction with Footpath Foulridge 36 east of Noyna Hall and the upgrading to bridleway of the footpath from east of Noyna Hall to Moss Houses Road, Foulridge, in accordance with File No. 804-609, be not accepted.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a bridleway from Noyna Road to the junction with Footpath Foulridge 36 east of Noyna Hall and the upgrading to bridleway of the footpath from east of Noyna Hall to Moss Houses Road, Foulridge, on the Definitive Map and Statement of Public Rights of Way.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out

the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order will only be made to add a public right of way to the Definitive Map and Statement if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”

An order for upgrading or downgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

- "it ought to be there shown as a highway of a different description"

An order for adding a way to or upgrading a way shown on the Definitive Map and Statement will be made if the evidence shows that:

- “the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path or restricted byway”

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

The county council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the county council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the council’s decision may be different from the status given in any original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

Consultations

Pendle Borough Council

The Borough Council has been consulted but we have received no response.

Foulridge Parish Council

The Parish Council has been consulted but we have received no response.

Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments are included in Advice – Head of Service – Legal and Democratic Services Observations.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8996 4237	Open junction with Noyna Road
B	9002 4211	Route crossed by Footpath Foulridge 34
C	9009 4196	Junction of application route with access track to Noyna Hall Barn
D	9009 4194	Junction with Footpath Foulridge 36
E	9023 4186	Junction with Footpath Foulridge 37 and access track to Ragstones
F	9028 4186	Field gate across route
G	9031 4185	Field gate across route with adjacent gated squeeze stile
H	9033 4185	Wooden gate posts (no gate)
I	9040 4184	Field gate across route
J	9048 4178	Junction of footpaths north east of Moss House Farm
K	9055 4177	Open junction with Moss Houses Road (U40347)

Description of Route

A site inspection was carried out in October 2019.

n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form '13-12-FP36' or 'Footpath Foulridge 36' but are referenced below in the abbreviated form 'Foulridge 36' for brevity since all those referred to are currently recorded as footpaths in Foulridge in Pendle Borough.

The application route commences at point A on the Committee plan which is a point on Noyna Road approximately 120 metres west of the junction of Noyna Road and Foulridge 34.

The route leaves Noyna Road to follow a stone surfaced access road approximately 3 metres wide and bound on either side by post and wire fencing running in a generally south south easterly direction descending gradually downhill for approximately 260 metres to point B.

At point B the access road is crossed by Foulridge 34 which joins the road via a wooden stile in the fence from the field to the north east. The footpath crosses over

the access road to continue south down an access road which leaves the application route at point B and continues directly to Noyna Hall Farm.

The application route continues from point B along another access road which forms the continuation of the route from A-B and continues in a south easterly direction to pass to the east of Noyna Hall Farm and Noyna Hall Barn to meet a triangular junction of access roads at point C.

From point C one road branches south west towards Noyna Hall Barn and Farm while the other one (which forms part of the application route) continues south east for a short distance (approximately 15 metres) to point D where it meets a substantial stone surfaced bounded track approximately 3.5 metres wide and recorded as part of Foulridge 36.

From point D the track provides access west to Noyna Hall Barn and Noyna Hall Barn and also south east (along which the application route runs) towards Parsons House. The application route from point D is bound by stone walls and provides access to some unnamed farm buildings on the north side of the track. It then turns to continue in a more east south easterly direction – still bound on either side by stone walls to point E where Foulridge 37 joins the route via a field gate immediately adjacent to the start of an access road leading south from the application route to Ragstones House and Moss House Farm.

From point E the application route continues in a generally easterly direction – still bound on either side by stone walls – to point F where it is crossed by metal gates (open on the day the route was inspected) through which the route passes to continue between Parsons House and some stables to a field gate (padlocked on the day of inspection) at point G, immediately before which a horse box had been parked restricting access to the full width of the route. Immediately adjacent to the gate is a gated squeeze stile in the stone wall.

Beyond point G the condition of the surface of the route deteriorates and the track – whilst continuing at a width of approximately 3 metres – is puddled, muddy and partially overgrown with the adjacent walls in disrepair. The route continues east with no physical evidence that this part of the route is used regularly by vehicles accessing the various properties located to the east or west of it.

The route passes through point H where wooden gate posts (but no gate) are located and continues to Causeway Top farm which appears to be in a relatively run down state and no longer operating as a working farm. The route continues directly past the front of the farmhouse and adjacent stone barns to point I where it is crossed by a further metal gate (open on the day of inspection) and then continues in a south easterly direction along a roughly tarmacked access road to the junction of the application route with 3 footpaths immediately north of a cluster of houses known historically as Moss Houses (point J).

From point J the application route continues east along a reasonably surfaced tarmac/compacted stone surfaced road which forms part of the access to Causeway Top Farm and also the direct access to Moss Houses to point K where it meets Moss Houses Road.

In summary, the total length of the application route is 950 metres. The route between point A and point D is not recorded as a public right of way but is accessible with no signs indicating whether the route is considered to be public or private. Between point A and point B it forms part of an access road leading directly to Noyna Hall Farm. Continuing from point B to point C this section also provides part of the access road to Noyna Hall Barn. Continuing from point C through to point F the application route also appears to provide access from point A (Noyna Road) to Ragstone House, Moss House Farm and Parsons House. A gate (locked on the day of inspection and partially blocked by a parked vehicle) at Parsons House (point G) seemingly acts as a split with all properties west of point G gaining vehicular access via Noyna Road from point A whereas any property east of point G including Causeway Top and the cluster of properties at Moss Houses being accessed from Moss Houses Road via point K.

Pedestrian access was available along the full length of the route but horses (and possibly cyclists) would have been prevented from using the full length of the route on the day of inspection by the padlocked gate at point G.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.



Observations		The application route is not shown. A number of properties are shown in the area crossed by the application route – including one labelled as 'Noyra' but no access is shown to any of these properties. Noyra Road is shown but Moss Houses Road/Cockhill Lane is not shown.
Investigating Officer's Comments		The application route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Smith's Map	1801	Charles Smith was a London engraver and map seller. His map of Lancashire appeared as a single sheet in 1801 and then between 1804 and 1846 was published in subsequent editions of the New English atlas. His Map was similar to Cary's Map of Lancashire dated 1789 but is not a direct copy. It is thought that Smith and Cary used common sources, especially Yates survey, and since both were aiming at the same market – the increasing number of private and commercial travellers – it is not considered surprising that they produced similar maps.



Observations		The application route is not shown.
Investigating Officer's Comments		The application route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Honor of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honor of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.



The Blue Coloured Parts represent Globe Land
Coal Pits are thus described
Roads and Buildings
Rivers, Brooks and Reservoirs
The Red Figures refer to the Unoccupied Water Falls
The Boundaries of Manors are the most strongly Marked on the Map

Observations		Noyna Road and Moss Houses Road/Cockhill Lane are shown. A route is shown extending south from Noyna Road (opposite Noyney Laith) which is similar – but slightly further east of the application route between points A-D. This route continues to a T junction where one route is shown continuing south/south west towards to Castle Road and Roundhill whilst another route – consistent with the application route between point D and point K continues east passing a number of unnamed properties and a collection of properties labelled Moss Houses to Moss Houses Road/ Cockhill Lane All of the routes detailed above are coloured in the same way as all the other roads in the area and are denoted in the key as 'roads' with no distinction between those considered to be public or private.
Investigating Officer's		The earliest map inspected to show the application

Comments		<p>route between point D and point K existing as part of a through-route across land forming part of the Estate owned by the Honor of Clitheroe. However the route from Noyna Road to point D was on a different alignment from the route applied (as confirmed by the 1st edition OS map detailed below).</p> <p>This small scale map only appeared to show the more significant routes and did not show other routes currently recorded as public footpaths that join the route. This suggests that the route was of a substantial nature and would have been capable of being used by people on horseback and possibly with horse drawn vehicles as part of a longer through-route at that time. The route is shown in the same way as routes now recorded as public vehicular highway and is described as a 'road' in the map key.</p>
John Cary's Map of Lancashire	1806	<p>John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831.</p> <p>In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.</p>



Observations		The application route is not shown.
Investigating Officer's Comments		The application route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Stockdale's Map	1818	An early commercial map included in a book titled 'A description of the country from thirty to forty miles round Manchester' by J Aikin MD and is titled 'A new map of the country round Manchester' dated 1818. There is some uncertainty about the date of

the map as the book was originally published in 1795. There is no key to the map.

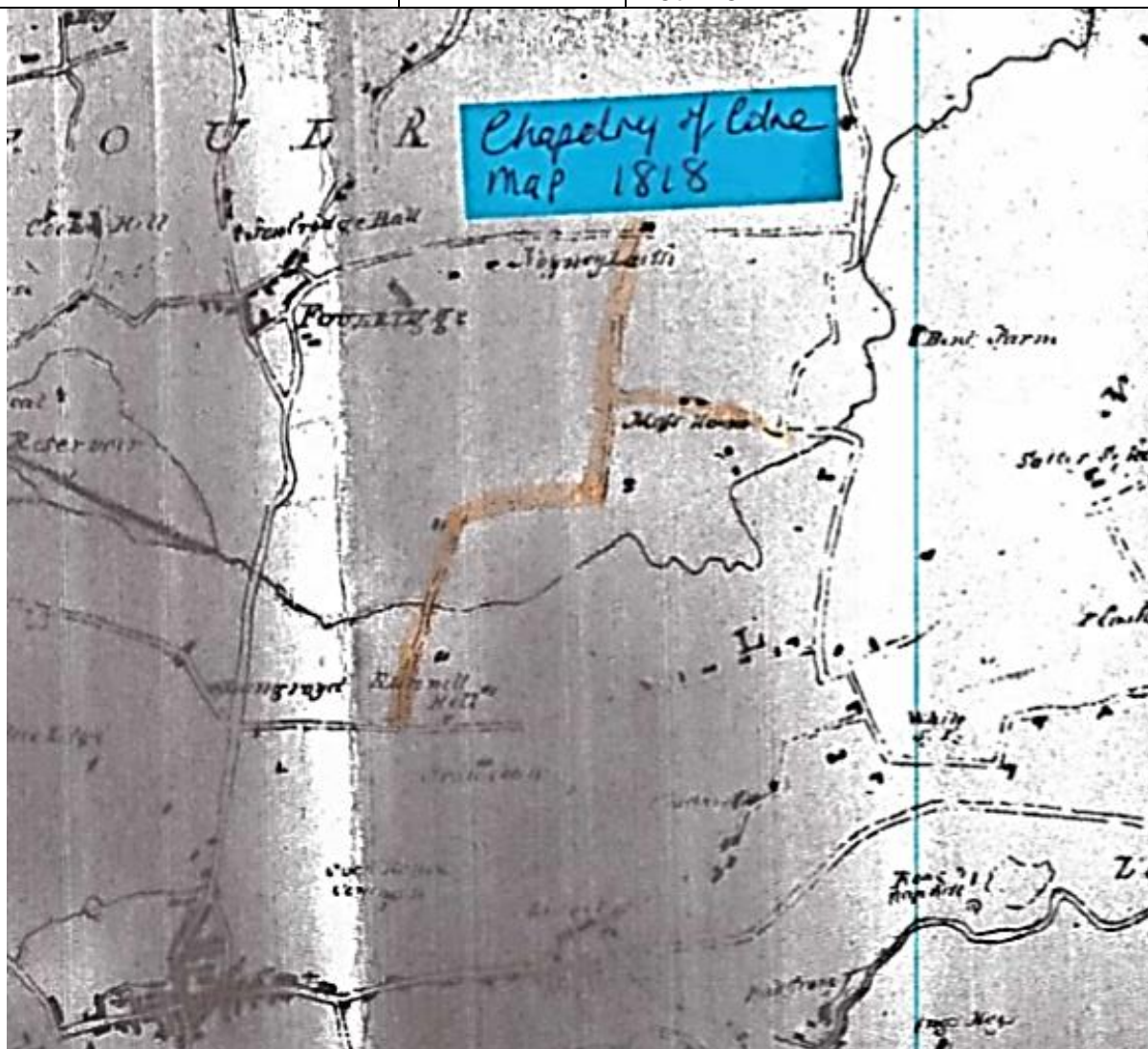


Observations		The application route is not shown.
Investigating Officer's Comments		The application route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Greenwood's Map of Lancashire	1818	Further small scale commercial map.




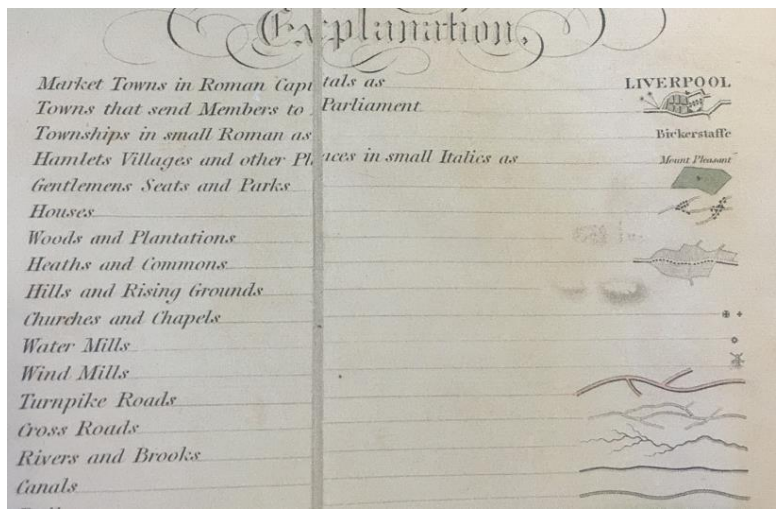
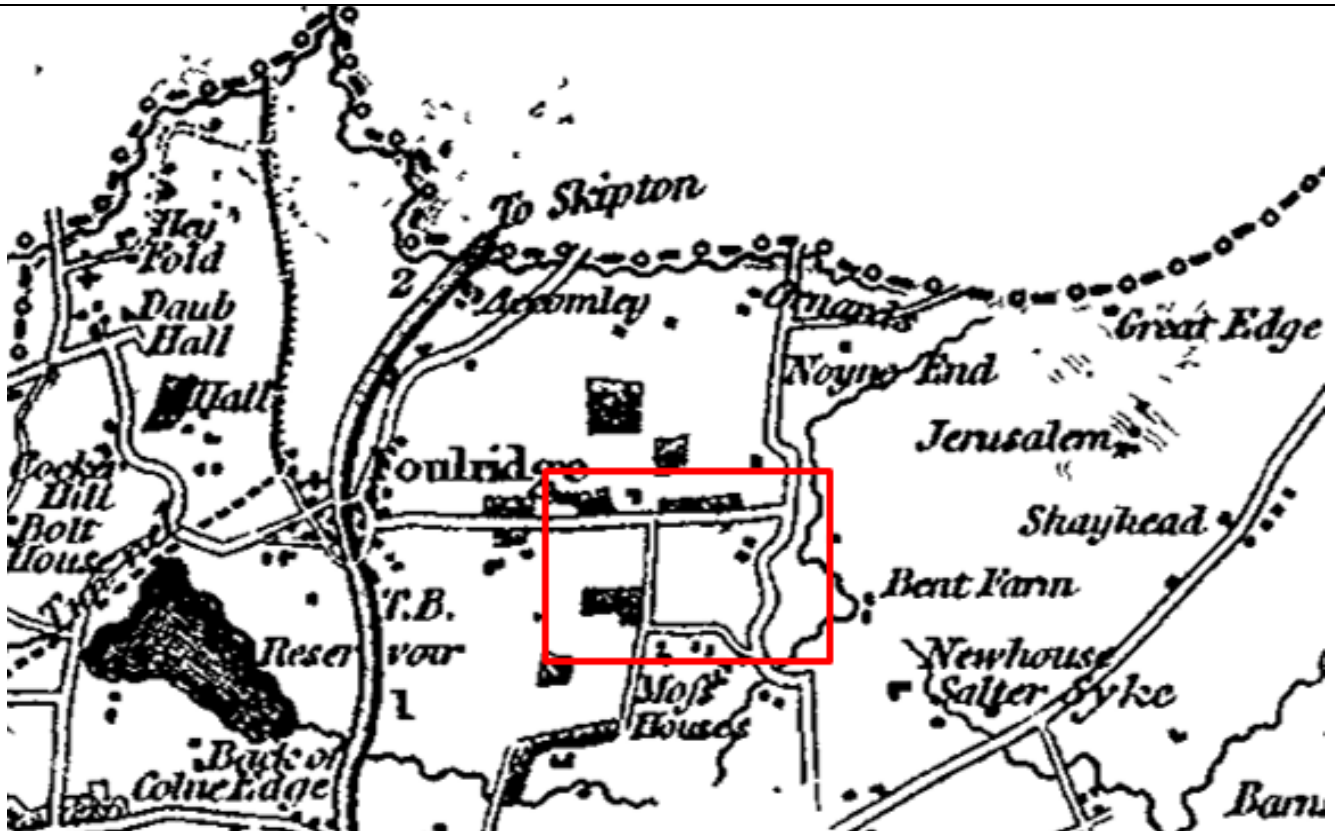
Observations		Greenwood shows a route consistent with at least part of the application route in the same way as it is shown on the Honor of Clitheroe Map detailed above. Noyna Road and Moss Houses Road/Cockhill Lane are shown and a route is shown extending south from Noyna Road which is similar in location to the application route between points A-D but shown starting slightly to the east of point A. This route continues to a T junction where a route consistent with the application route between point D and point K continues east passing a number of properties labelled Moss House to Moss Houses Road/ Cockhill Lane. From the T junction a further route is shown continuing south/south west towards Colne to Round Hill. All of the routes described above (including the application route between point D and point K) are shown as a 'cross road' as depicted in the map key.
Investigating Comments	Officer's	A route consistent with that shown on the Honor of Clitheroe map is shown suggesting that the application route – or a route approximating to it – appears to have existed in 1818. Its depiction on a small scale commercial map suggests that the route was considered by this particular publisher to be a significant route of a substantial nature and would have been capable of being used by people on horseback and possibly with horse drawn vehicles as part of a longer through-route at that time.

Chapelry of Colne Map	1818	A copy of a map provided by the applicant and said to be dated 1818. The origins of the map, why it was produced and location of the original map are not known.
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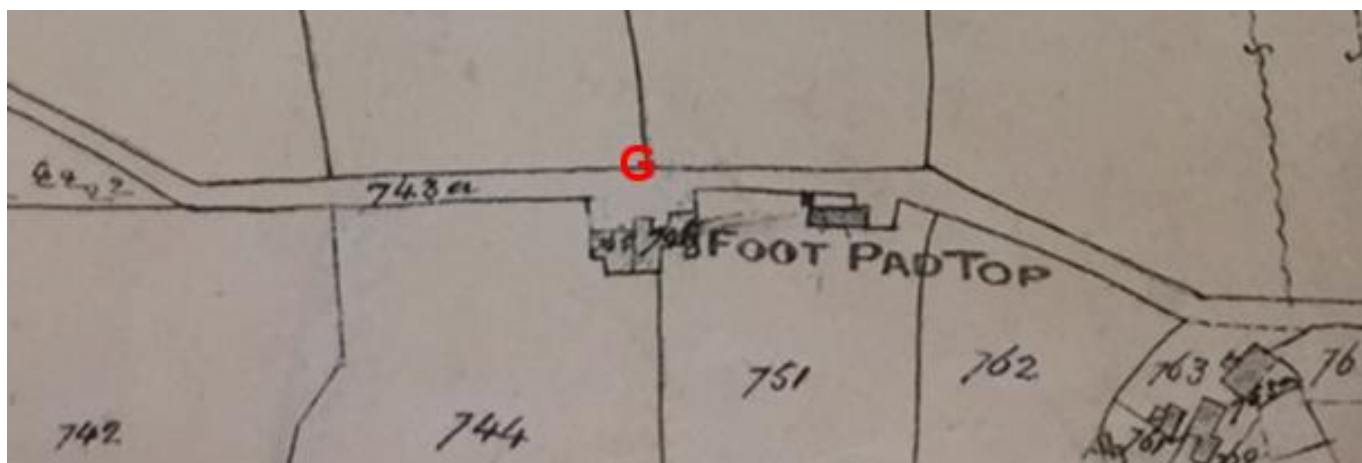
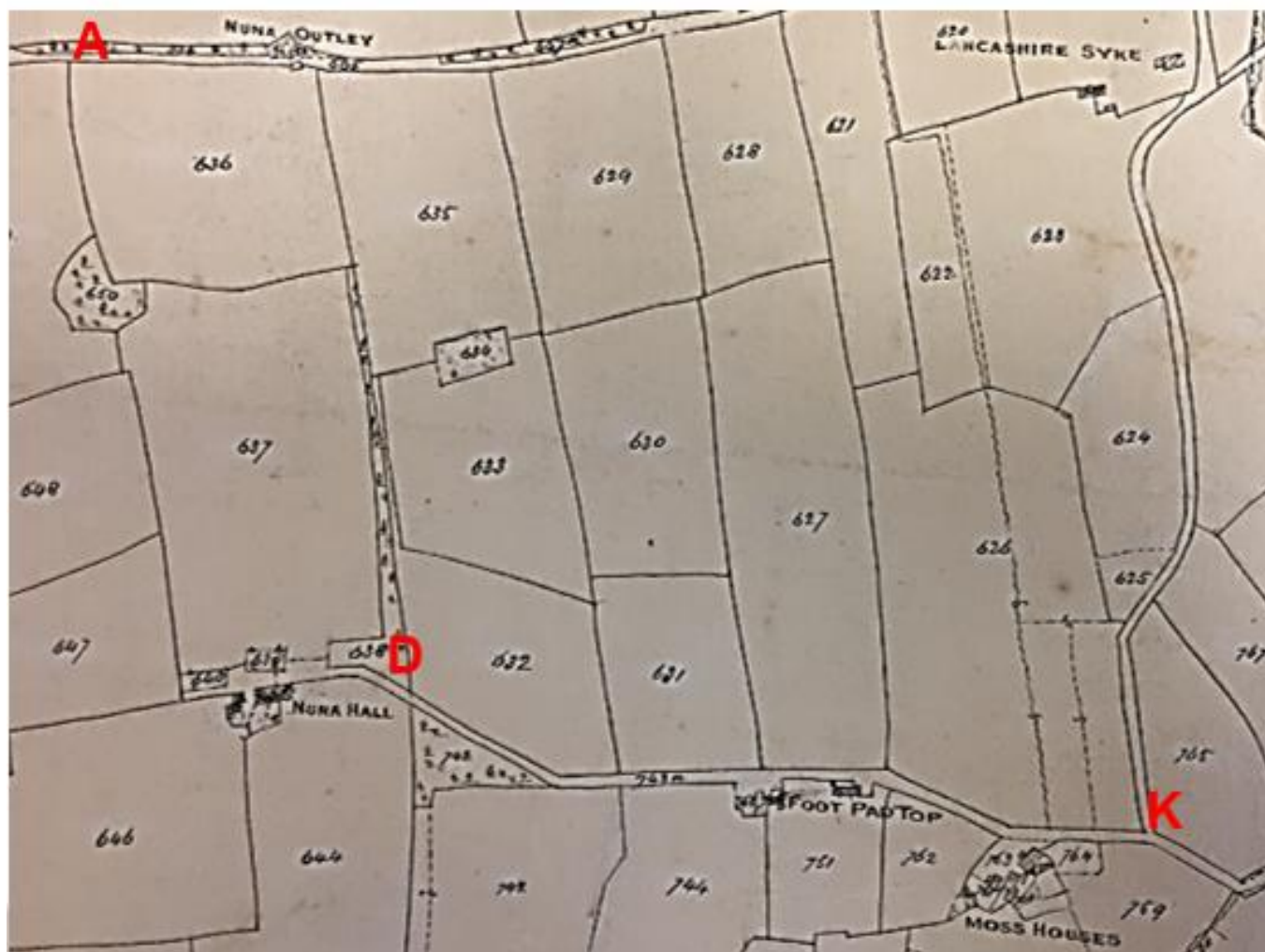
Observations		The map has been copied and annotated by the applicant and appears to show a route existing consistent with what is shown on Greenwoods Map published in the same year. It is not known whether this map was a copy of Greenwoods Map or prepared from an independent survey or what the purpose of the map was or whether it was intended to show any public status of the routes shown.
Investigating Officer's Comments		The application route between point D and point K may have existed in 1818 but little inference can be drawn without further information about this particular map.
John Carey's Map	1825	The applicant submitted a photocopy of a further map on which it was handwritten that it was a map produced by John Cary dated 1825. The original map has not been viewed by the Investigating

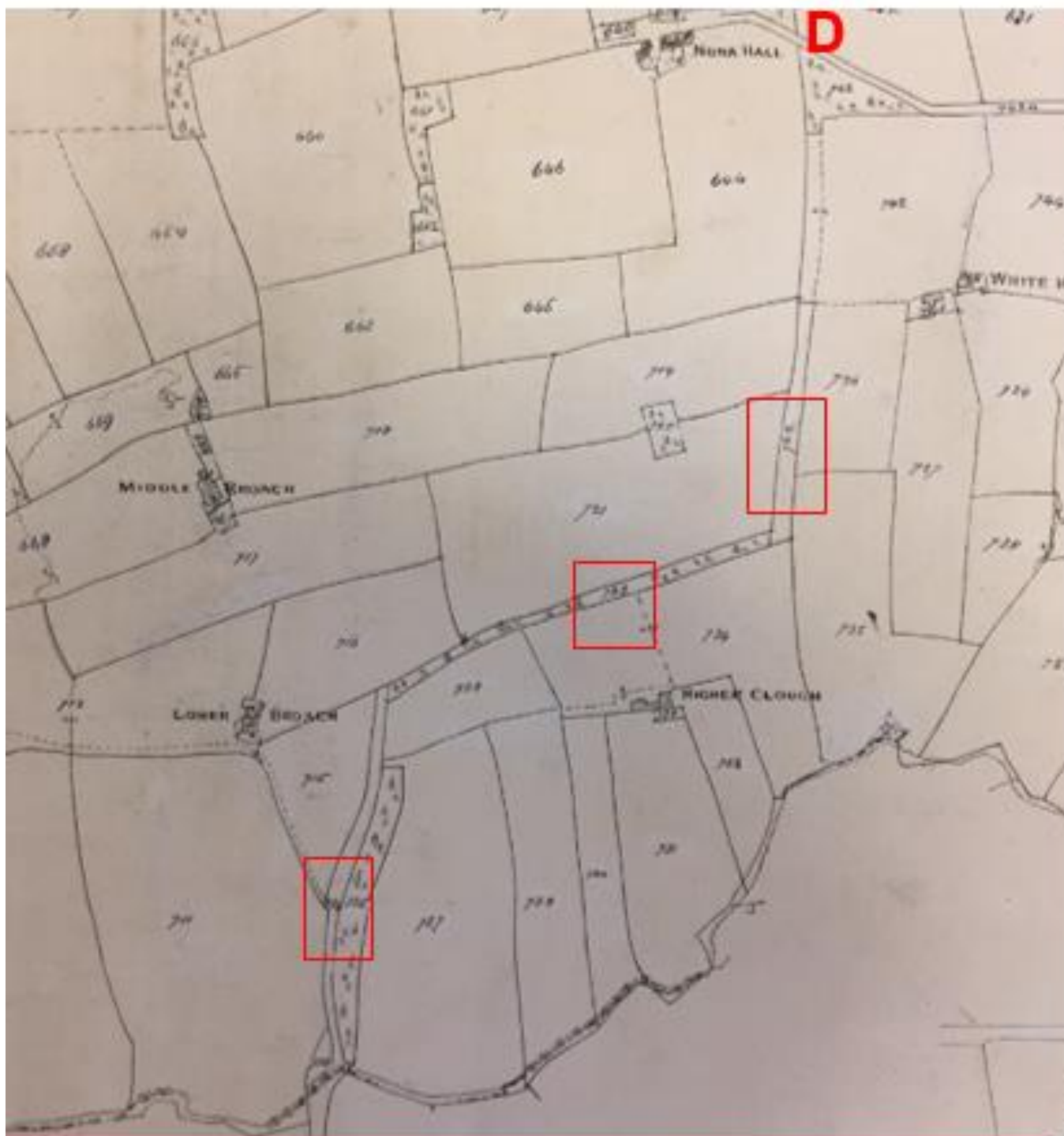
		Officer.
		
Observations		The extract provided by applicant is of poor quality but a route approximating with the alignment of the application route does appear to be shown from Noyna Road through to Moss Houses Road/Cockhill Lane in the same manner as the Honor of Clitheroe Map, Greenwoods Map and the Chapelry of Colne Map.
Investigating Officer's Comments		The application route may have existed but little inference can be drawn without further information about this particular map.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 71/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



Observations		A route is shown from Noyne Hill Road extending south to a T junction to the east of some unnamed buildings with one branch of the route then extending east past a number of marked properties to meet Moss Houses Road/ Cockhill Lane whilst the other route extends south west towards Colne. This route from Noyne Road to Noyne Hall appears similar to but distinct from the alignment of the application route A-D. From east of Noyne Hall to Moss Houses Road (D-K) this corresponds to the application route and is depicted as a cross road in the map key.
Investigating Officer's		Part of the application route (D-K) appears to have

Comments		<p>existed in 1830 suggesting that it formed part of a through-route (via the north-south route to Noyna Road opposite what Greenwood labelled as 'Noyney Laith') and was most probably considered to be available to the travelling public on horseback and possibly carts in 1830. The depiction of the route on this commercially produced small scale map suggests that the route (including D-K) was considered to be at least a bridleway in 1830.</p> <p>Whilst it is not fully known what is meant by the term 'cross road' as the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in Hollins v Oldham). It is unlikely that a map of this scale would show footpaths."</p>
Canal and Railway Acts		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>There are no existing, proposed or dismantled canals or railways crossing the area investigated.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
Tithe Map and Tithe Award or Apportionment	1842	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>





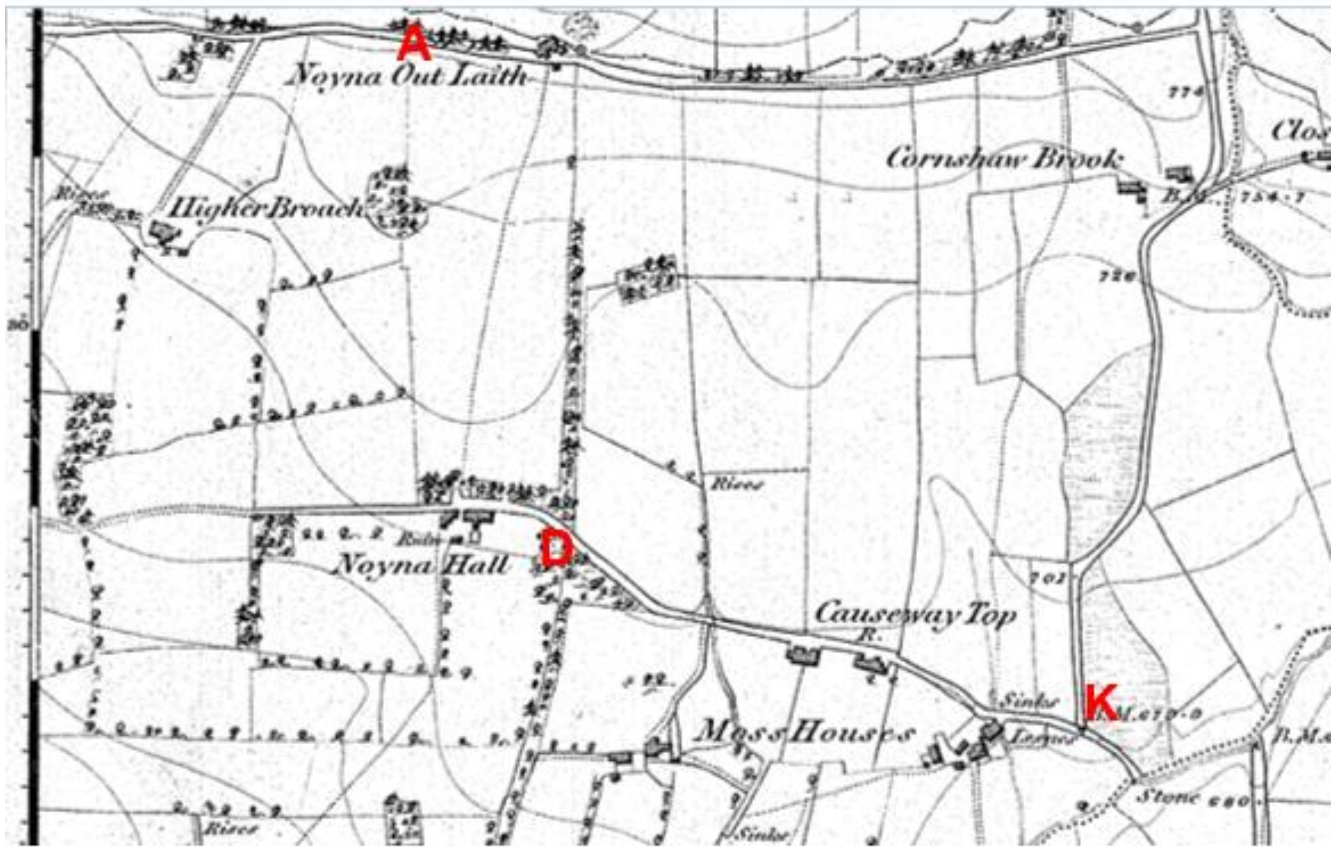
Observations

The Tithe Map dated 1842 is the earliest detailed large scale map examined of the area.

The map does not show the application route between point A and point B. A field boundary is shown from Noyna Lane opposite 'Nuna Outley' extending south to point D part of which is shown fenced off as a narrow wooded strip and numbered 638 (and described in the Tithe Award as a 'plantation'). This field boundary/strip of woodland is

		<p>consistent with the alignment of the route shown on the Honor of Clitheroe Map, Greenwood's Map, the Chapelry of Colne Map and Hennet's Map but there is no trace of that route shown to exist on this map.</p> <p>Noyna Road and Moss Houses Road/Cockhill Lane are both shown on the Tithe Map and are individually numbered. The Tithe Award contains a list of 'Roads' for which there are no recorded landowners or occupiers and both these routes are listed under that section.</p> <p>The application route between point D and point K is shown on the Tithe Map as part of a longer route which extends from point K at the junction with Moss Houses Road west to Noyna Hall. A number of properties are shown along the route with the only access to them being via the application route. Moss Houses are shown south of the application route at point J with a number of individually numbered properties being accessed from the route. Causeway Top Farm is shown but is named on the Tithe Map as 'Footpad Top'. A larger scale map insert shows the section of the application route passing Footpad Top in more detail and shows two separately numbered properties in the region of Parsons House with a line across the application route at point G. The map insert also shows an access track leaving the application route at point J to provide the only access to White Houses.</p> <p>West of point G – on the main Tithe Map – the application route is numbered 743a. This number is not included in the list of Roads in the Tithe Award but is included as part of the entry for Noyna Hall House and whilst being described as 'part of lane' it is also detailed as being owned by Ellen Moon and occupied by John Stalkind. The lane, numbered 743a, continues west from the bend in the application route (point D) to end at Noyna Hall.</p> <p>The track running southwards from the application route at the bend (point D), as shown on a number of earlier private and commercial small scale maps is not shown as a through-route on the Tithe Map although sections of it still appeared to have existed. Three sections were numbered separately and listed in the Tithe Award. All were owned by Ellen Moon with plots 722 and 724 listed as lanes whilst the section between the two – plot 723 - was listed as a plantation.</p>
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Investigating Comments	Officer's		<p>The application route between point A and point D did not exist in 1842 and the route to the east of the application route from Noyna Road to point D, shown on earlier maps, was no longer in existence with no real trace of it identified as part of the Tithe commutation process.</p> <p>The application route between point D and point K existed as a substantial track – described as a lane - providing the only access to a number of properties including Noyna Hall where the route appears to terminate.</p> <p>Whilst being numbered and described as a lane in the Tithe Award it is clearly distinguished from those routes which appeared to be considered as carrying public vehicular rights which were listed separately as roads for which no landowners or occupiers were listed.</p> <p>A line is shown across the route at point G which most probably indicated the existence of a gate – possibly on the boundary between two properties. The existence of a gate across a route with public – or private – access wouldn't be unusual in a rural location – particularly where a route passes through a farm so no inference can be drawn in this respect. The application route between point D and point K appears to have been capable of being used on horseback – and most probably with vehicles in 1842 but is shown as terminating at Noyna Hall suggestive of an access track to properties rather than a public bridleway.</p> <p>There is however a suggestion that a route may have previously existed - both from Noyna Road (east of point A) to point D and from point D south to Castle Road as shown on some earlier private and commercial maps – which may have provided a through route at some point in the past which may have been capable of being used on horseback.</p>
Inclosure Act Award and Maps			Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations			There is no Inclosure Award available for the land crossed by the route.
Investigating Comments	Officer's		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey	1848		The earliest Ordnance Survey 6 inch map for this



¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



Observations


The earliest Ordnance Survey map examined does not show the application route, remains of a route or trace of a route between point A and point D or from a point to the east of the application route A-D along the alignment of the route shown on small scale private and commercial maps published in the first half of the 1800s. A bounded strip of land is shown extending directly north from point D for approximately 270 metres as a narrow belt of woodland consistent with what is shown on the Tithe Map - with no trace of a track and which appears to be on the same alignment as the route shown extending through to Noyna Road on the small scale commercial maps.

The application route from point D to point K is shown as a substantial bounded track. From point K it extends west past a collection of buildings named as Moss Houses continuing through Causeway Top through point D to Noyna Hall. From Noyna Hall a track is then shown continuing west initially bounded but then unenclosed to Foulridge. From point D continuing directly south is a double fenced narrow strip of woodland again on the alignment of what was shown as a cross road on the earlier small scale private and commercial.

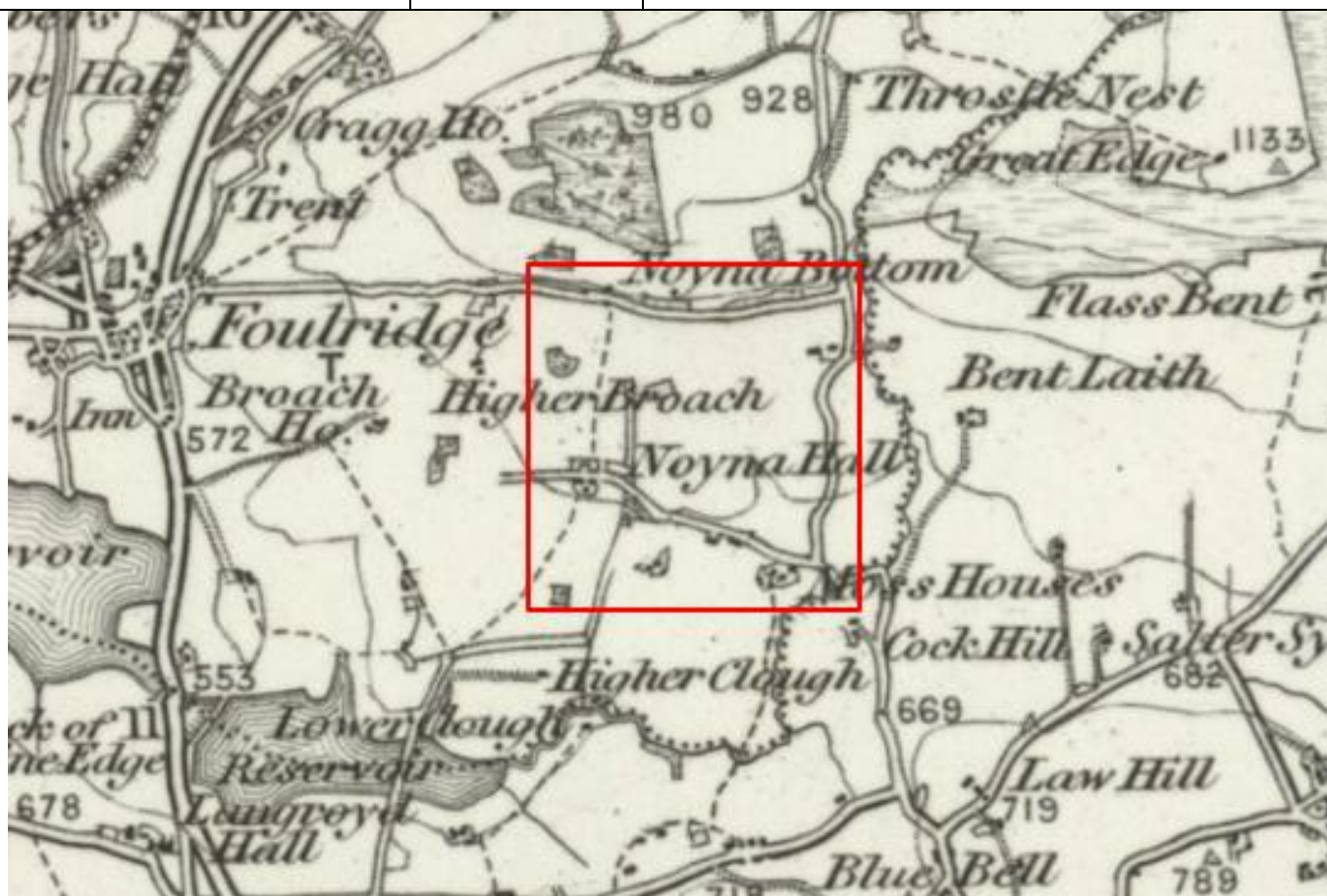
Investigating Comments	Officer's		<p>The application route between point A and point D did not exist in 1844 and there is no indication on the map that it had previously existed along the alignment claimed. The route to the east of the application route A-D extending from Noyna Road to point D is not shown. There is however a bounded strip of woodland which looks to be on the same alignment as the route shown on the early commercial maps. This stops 130 metres short of Noyna Road. The Ordnance Survey map is consistent with what is shown on the Tithe Map a few years earlier.</p> <p>The application route between D and K existed in 1844 as part of a longer bounded route providing access to and from Noyna Hall and also providing access to Moss House Farm (not named on the map), Moss Houses and Causeway Top. No gates are shown across the route although this does not necessarily mean that there weren't any as the map is drawn to a small scale. An unbounded track is shown west from Noyna Hall to Foulridge which together with part of the application route D-K forms a through-route between Foulridge and Moss Houses Road/Cockhill Lane although it is not known what traffic it carried.</p> <p>Traces of a track from point D extending south towards Colne can be seen in places consistent with the earlier commercial maps but this route, if it did exist was no longer evident and does not appear to be capable of being used in the mid-1800s.</p>
1 inch Ordnance Survey Map		1850s	Reprint of First Edition 1 inch OS Map Sheet 92 Skipton & Bradford published by David & Charles as sheet 16 in their reprint editions, surveyed 1844-1850 and published in the 1850s.



Observations		The application route between point A and point D is not shown. From point K heading north west through point D the application route can be clearly seen as a substantial route providing access to Moss Houses and Noyna Hall and possibly to Higher Broach and Broach House. The route shown on earlier private and commercial maps extending south from point D through Lower Clough to Castle Road (not named on the map) is also clearly shown.
Investigating Officer's Comments		The application route did not exist between point A and point D in the 1850s. The route between point D and point K existed as a substantial route providing access to a number of properties. It is not shown as part of a longer through route west of point D – which would have provided weight to it being a public through route of at least bridleway status. However, at odds with the Tithe Map and First edition 6 inch Ordnance Survey map published around the same time, a route is shown linking to the application route at point D which may have formed part of a longer through route to Castle Road and which would be more suggestive of a public bridleway than a 'dead end' route providing access to and from a number of private properties. The original scale of the map (1 inch to 1 mile)

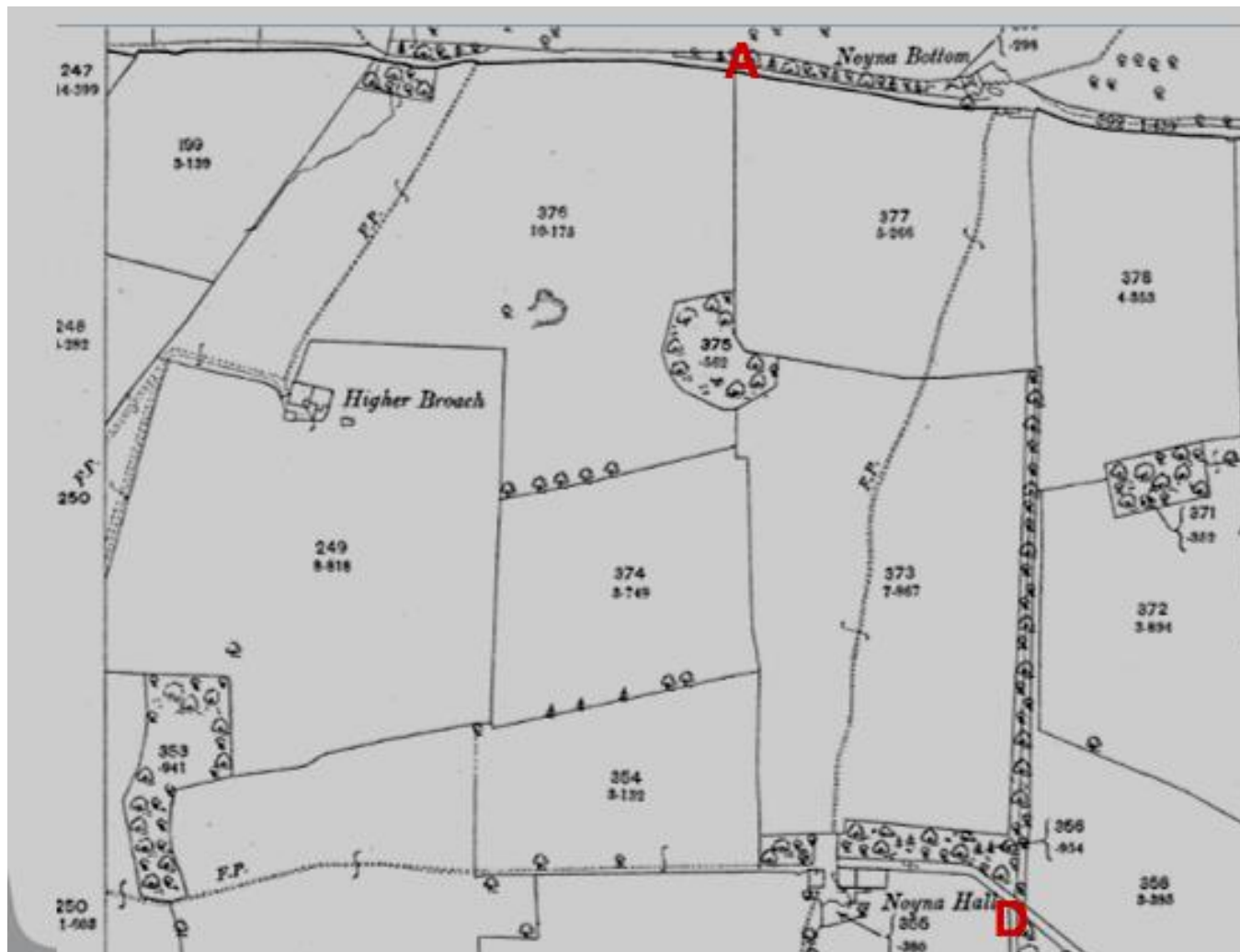
		means that only the more significant routes are generally shown and the purpose of the map in the mid-1800s would probably have been to assist the travelling public. The inclusion of the route between point D and point K on this map is suggestive – particularly if it did form part of a longer through route - of at least public bridleway rights.
Cassini Map Old Series Blackburn & Burnley Sheet 103	1842-1859	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50, 000 OS Landranger Maps and are readily available to purchase.
		
Observations		Cassini's map was almost identical to the 1 inch OS map detailed above. The application route between point A and point D is not shown but the route between point D and point K is shown providing access to a number of properties.
Investigating Comments	Officer's	<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers.</p> <p>The inclusion of the application route between point D and point K on this map suggests that it existed as a substantial track capable of being used on horseback but it is uncertain what public rights may have existed.</p>

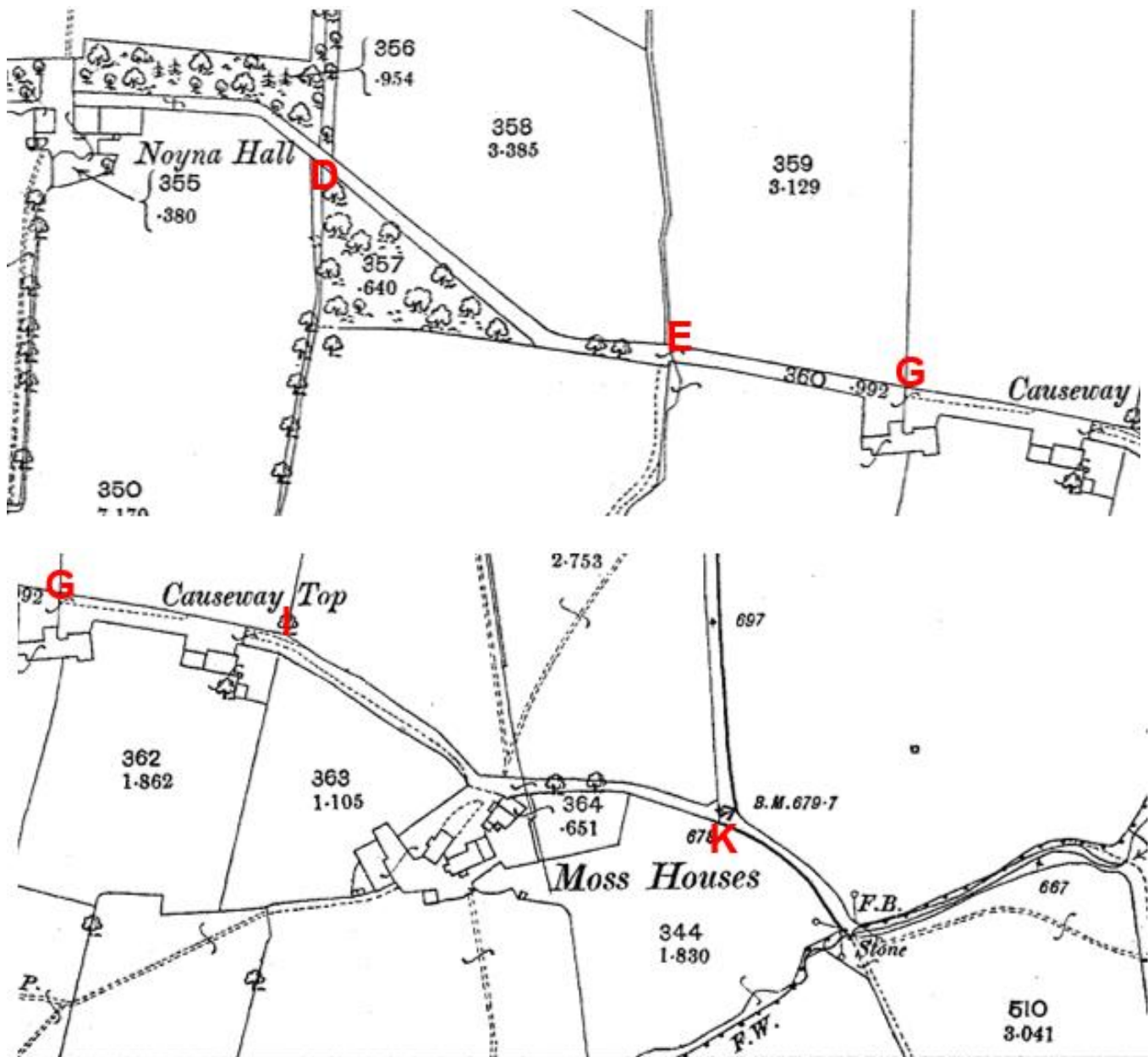
Ordnance Survey 1 inch map Revised New Series - Clitheroe	1898	OS 1 inch map surveyed 1842-49, revised 1896 and published 1898.
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Observations		The application route between point A and point D is not shown. The route between point D and point K is shown as part of a longer route providing access to a number of unnamed properties, Moss Houses and Noyna Hall. Paths (single dashed lines) are shown leading to and from Noyna Hall which may have provided through-routes consistent with the application route between point D and point K being currently recorded as a public footpath. The route south of point D – shown on earlier maps as a link through to Castle Road is still visible for most of its length although the section immediately south of point D is not shown as a double line.
Investigating Officer's Comments		The application route between point A and point D did not exist in the 1890s. The application route between point D and point K existed as part of a longer route providing access to a number of properties and although the route itself appears capable of being used on horseback and by vehicles it did not appear to exist as a substantial through-route capable of being used on horseback

		except south to Castle Road.
25 Inch OS Map Sheet 49-09	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.






Observations

The earliest large scale Ordnance Survey map available to view.

Noyna Road and Moss Houses Road/Cockhill Lane are shown with thickened casing lines on the south or east side of the road on the 1st edition 25 inch OS maps consistent with how publicly maintained vehicular routes were shown but the application route (between point D and point K) is not shown in that way.


The application route between point A and point D is not shown although a footpath (F.P) is shown from Noyna Road (opposite Noyna Bottom) to Noyna Hall. Again there is a trace of the route shown on some of the earlier commercial maps


		<p>from Noyna Road (opposite Noyna Bottom) to point D as a thin strip of woodland along much of what was recorded as this track.</p> <p>The application route is shown between point D and point K as part of a longer route providing access to Noyna Hall. A watercourse is shown across the route at point E and a solid line is shown across it at point G with another west of point I. Parcel numbers and acreages are shown relating directly to the application route between point D and point G.</p>
Investigating Comments	Officer's	<p>The application route between point A and point D did not exist in 1891.</p> <p>Between point D and point K the route existed as a significant bounded route providing access to a number of properties and appeared capable of being used on horseback and with vehicles. It did not however appear to form part of a longer through route for vehicles or horses with routes beyond Noyna Hall shown as footpaths.</p> <p>Thickened casing lines on the south or east side were used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey depicted metalled public roads for wheeled traffic kept in good repair by the highway authority with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot. The application route is not shown in this way indicating that it was not considered as part of the public vehicular highway network at that time.</p> <p>Part of the application route is shown with a dedicated parcel number and acreage however, this is far from conclusive evidence of highway status.</p> <p>Gates are shown at two points on the application route but the existence of gates along a public (or private) route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p>
6 inch Ordnance Survey Map	1895	Second edition 6 inch map resurveyed 1891 and published 1895.

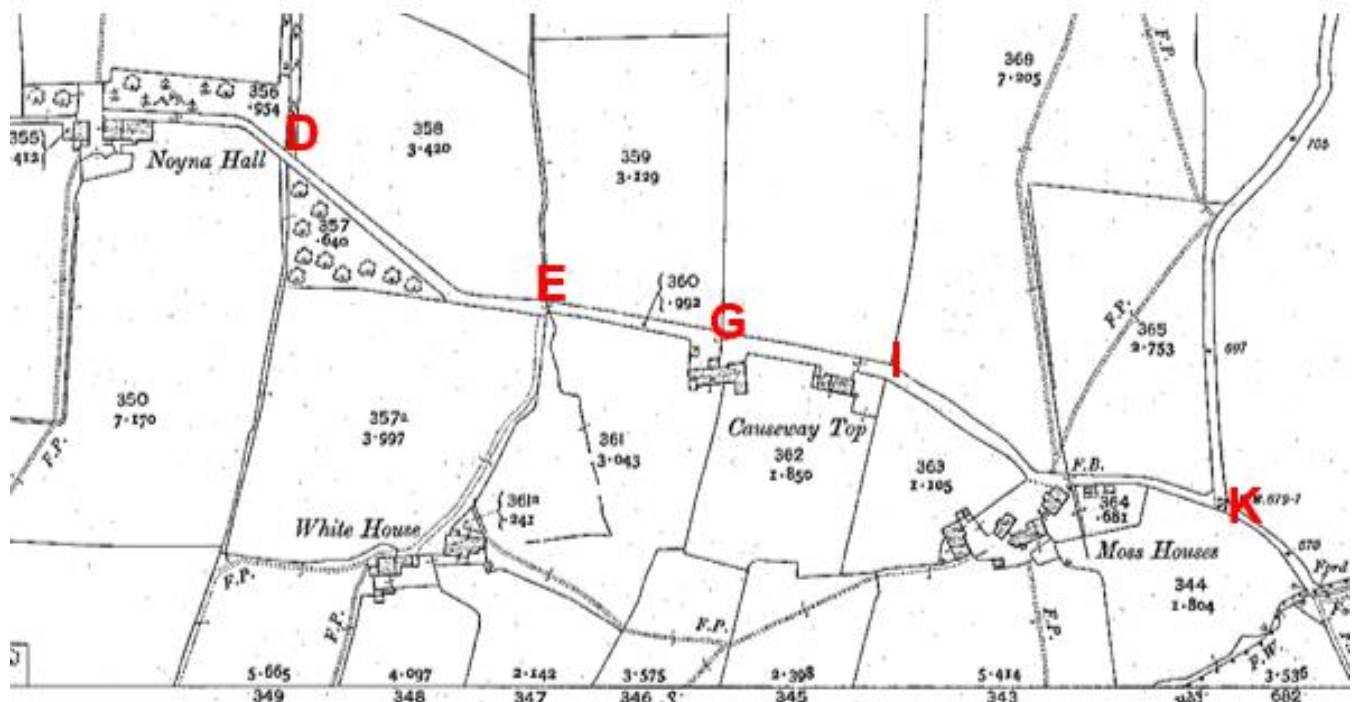
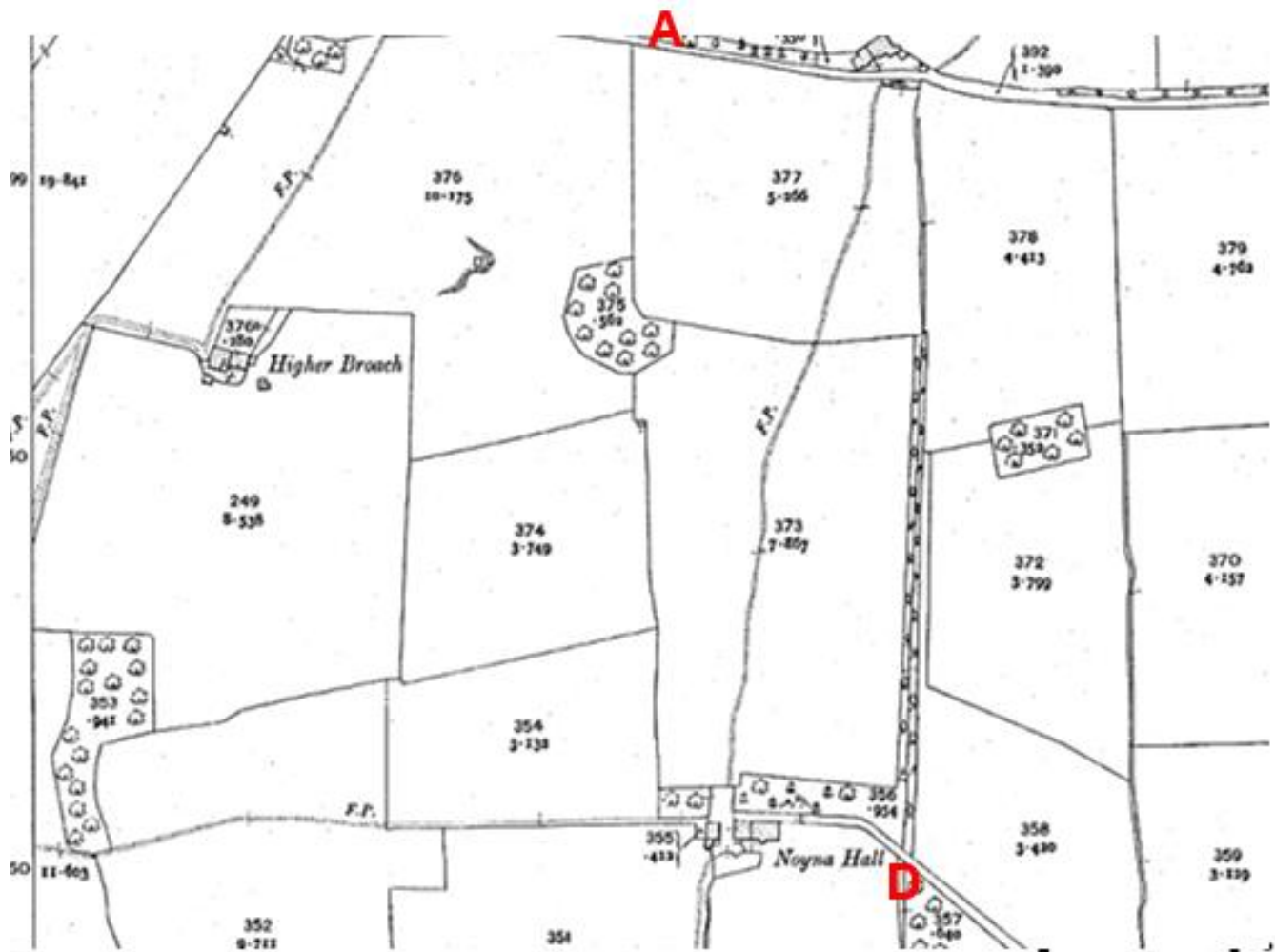
		
Observations		The application route between point A and point D is not shown on the map. From point D to point K the application route is shown as part of a substantial bounded route providing access to Noyna Hall, Causeway Top, Moss Houses and White House.
Investigating Comments	Officer's	The application route between point A and point D did not exist in the 1890s. The application route between point D and point K existed as part of a longer route providing access to a number of properties and although the route itself appears capable of being used on horseback and by vehicles it did not appear to exist as a substantial through-route capable of being used on horseback.
'The Godfrey Edition' OS Sheet 68 - Pendle	1896	Map submitted by the applicant.



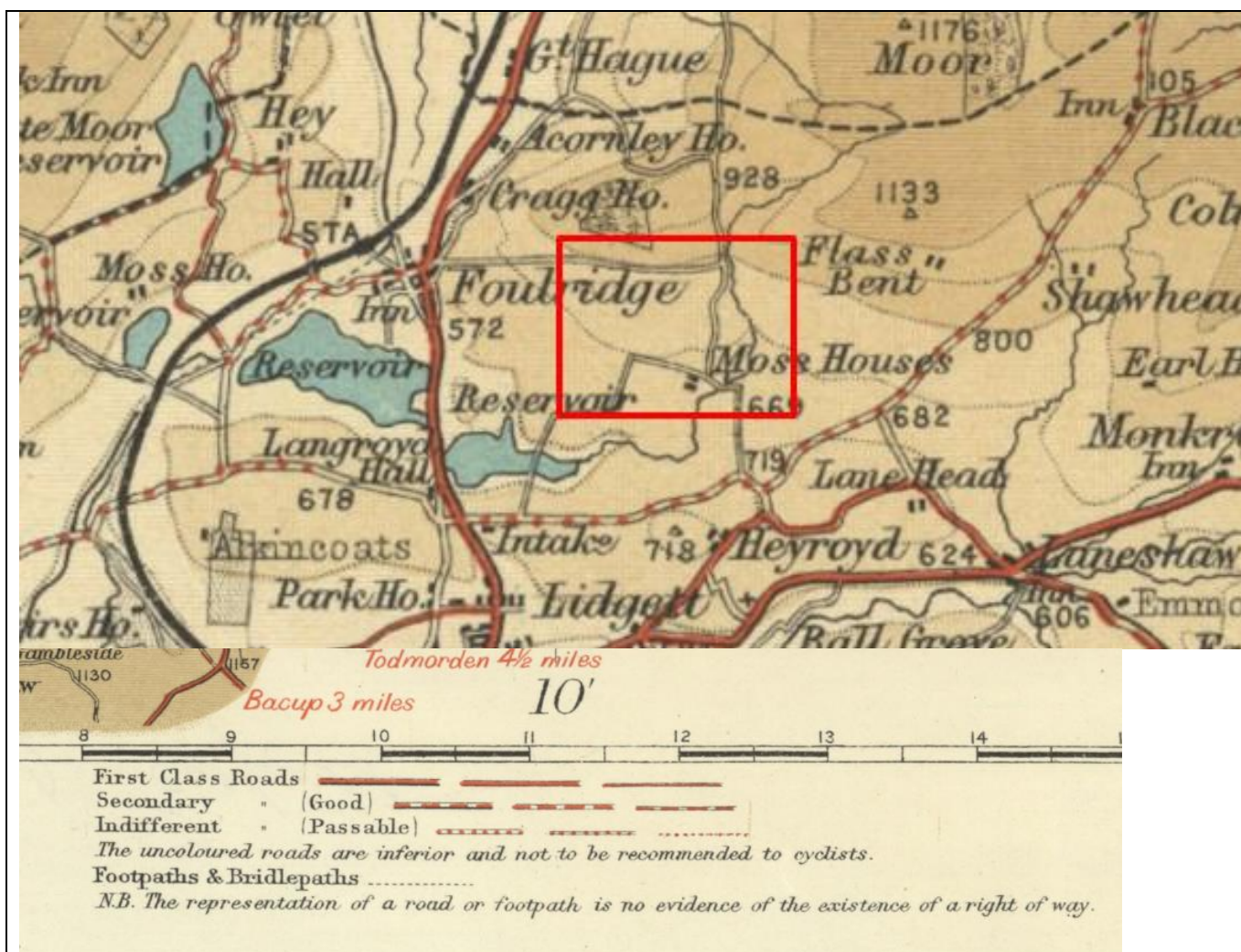
Observations		<p>This small scale map was submitted by the applicant. The quality of the photocopy is poor and no scale or survey date is given. The Godfrey Series of Maps are reprints of Ordnance Survey maps. This particular map extract was from the 1 inch to 1 mile OS map originally published in 1896 and is most probably derived from the same survey as the 6 inch and 25 inch maps published at the same time.</p> <p>Whilst not easy to see due to the quality of the map extract, the application route between point A and point D is not shown on the map. From point D to point K the application route does appear to be shown providing access to Noyne Hall.</p>
Investigating Officer's Comments		<p>The application route between point A and point D did not exist in the 1890s. The application route between point D and point K existed as part of a longer route providing access to Noyne Hall and to be shown on such a small scale map must have been reasonably substantial. It did not however appear to exist as a through-route, the inclusion of which would have been suggestive of a route considered to be at least a bridleway at that time.</p>

Bacons Map of Lancashire	1904	<p>G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps.</p>
		
Observations		<p>Bacons small scale map covers the area crossed by the application route. Noyna Hall is named on the map and is shown as being accessed via a through route which appears to extend from Skipton Old Road to Skipton Road. This route is not entirely consistent with the application route between point D to point K but the direction and position suggests that this is the route depicted. The application route between point A and point D is not shown – with the through-route shown passing Noyna Hall and continuing west to Skipton Road.</p>
Investigating Officer's Comments		<p>The maps of the British Isles were at a small scale and as such only the more significant routes are generally shown. Commercial maps of this nature were expensive to produce and to purchase and as a result routes shown were often considered to be public through-routes. A route considered to be the application route between point D and point K is shown as part of a longer through-route in the same way as routes now known to carry public vehicular rights supporting the fact that it existed as a substantial physical route at that time and that it was probably available for use horseback and possibly with vehicles at that time. The fact that it is shown as a significant through-route west of Noyna Hall however is not consistent with the larger scale OS mapping from that era.</p>
Cassini One Inch Revised	1903-1904	A further commercially produced small scale plan

New Series Map		based on Ordnance Survey mapping.
		
Observations		The application route between point A and point D is not shown. The route between point D and point K is shown providing access to Moss Houses and Noyna Hall but is not shown as a through route (with the exception of footpaths – single dashed lines – shown extending north and south from Noyna Hall).
Investigating Officer's Comments		<p>The application route between point A and point D did not exist. The route between point D and point K existed as a significant route which would have provided vehicular and equestrian access to named properties but not as a through-route.</p> <p>The depiction of the route on this map is consistent with the existence of a bounded access road but not as a through-route which would have been used by the public on horseback at that time.</p>
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1909 and published in 1912.



Observations		The application route between point A and point D is not shown. Between point D and point K the route is shown providing access to a number of properties and is gated at Causeway Farm and Prospect House (point G). It did not continue as a significant bounded track beyond Noyna Hall although routes indicated to be footpaths (F.P.) are shown extending north, south and west from there.
Investigating Officer's Comments		The application route between point A and point D did not exist in 1909. The application route between point D and point K existed as a significant route that clearly provided direct access to a number of properties. It appeared capable of being used on horseback in 1909 but did not appear to form part of a through-route that would have been accessible on horseback at that time suggesting that public use may have been on foot – connecting to various routes shown as footpaths – rather than on horseback.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.

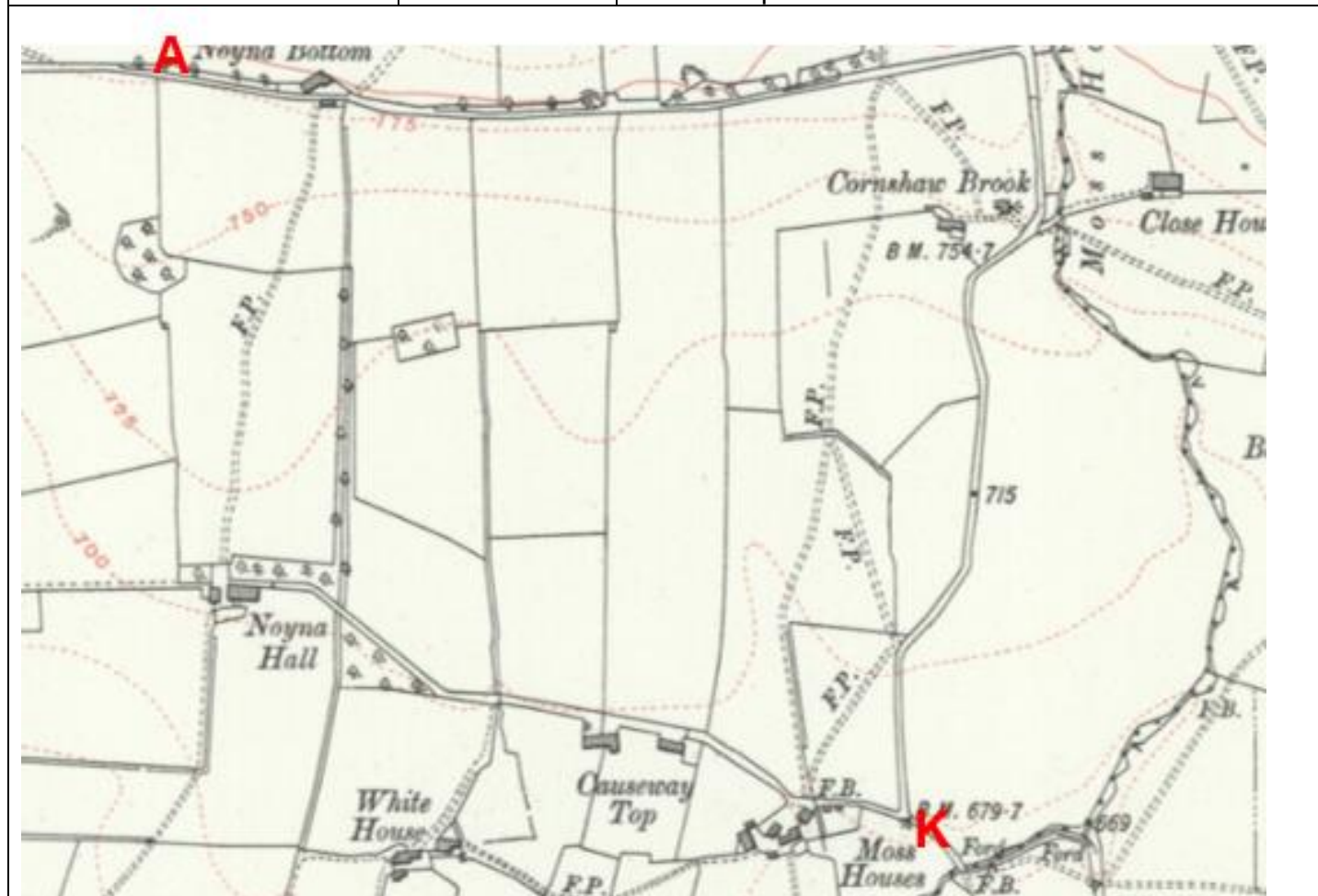


Observations		The application route between point A and point D is not shown. The route between point D and point K is shown as part of a longer route described in the map key as an uncoloured 'road' which is inferior and not to be recommended to cyclists. Moss Houses are marked but Noyna Hall is not. The route shown turns south in proximity to where Noyna Hall is located and can be seen to continue south west to pass through a reservoir to exit onto Castle Road.
Investigating Comments	Officer's	The application route between point A and point D did not exist in the early 1900s. The application route between point D and point K is shown as part of a longer through-route described as an inferior road south from the application route through to Castle Road unlike on contemporary OS maps although traces of this route appear to exist on the earliest 6 inch OS map and are referred to in part on the Tithe Map.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good

		<p>evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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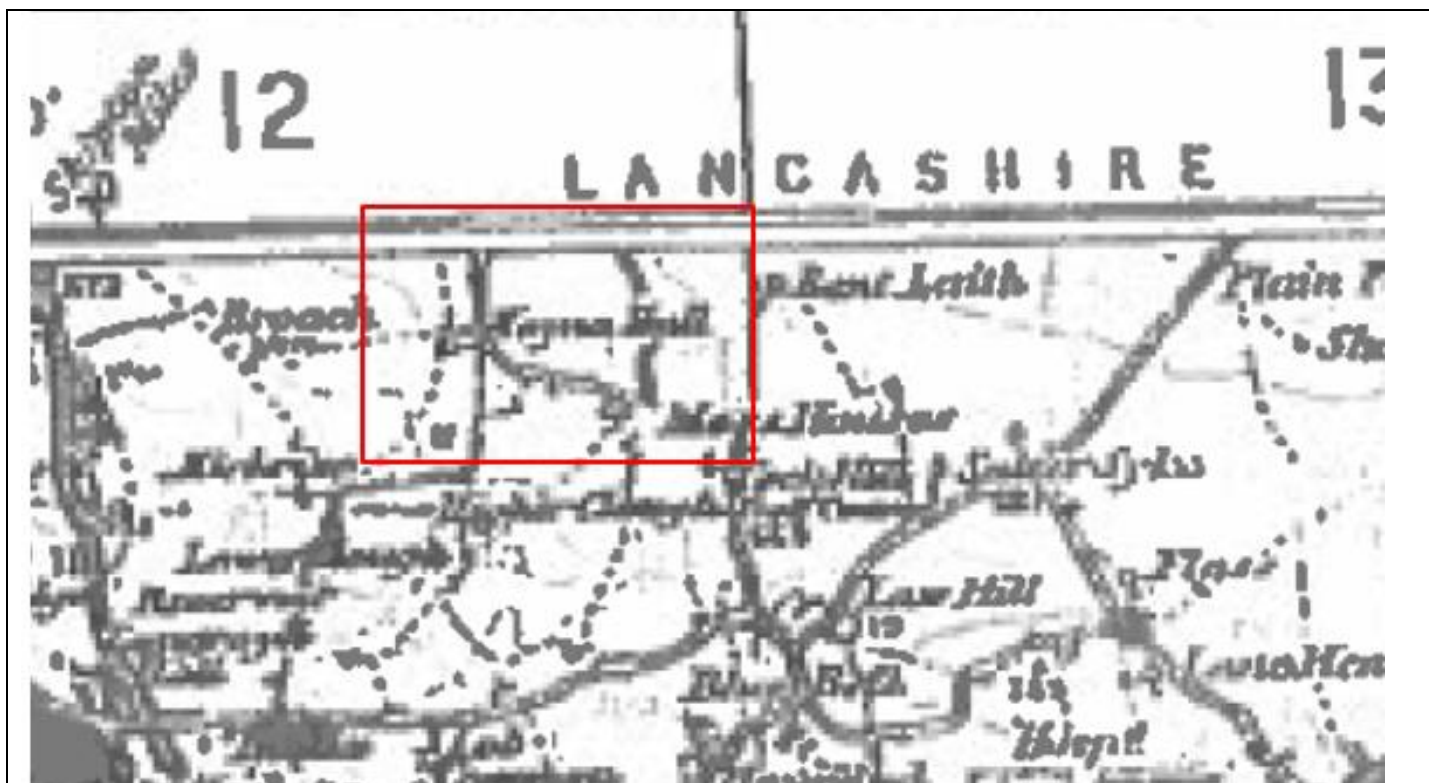
Observations		<p>Finance Act maps and valuation books were inspected at the County Records Office. The map sheet covering the application route appears to be incomplete.</p> <p>None of the application route appears to be shown excluded from numbered hereditaments although it was noted that routes known to be public vehicular highways including Noyna Road and Moss Houses Road are not shown excluded either.</p> <p>Part of the application route between point A and point B crosses the plot numbered 6890 for which no deduction for a public right of way is listed. From midway between point A and point B through to point G the route passes through a plot numbered 6895 and again, no deduction for a public right of way is listed. The rest of the application route – east of point G – crosses land which is not clearly shown on the map as having been numbered.</p>
Investigating Officer's Comments		The Finance act Map sheet inspected is incomplete and no inference can be drawn.
6 inch OS Map	1914	Further edition of the OS 6 inch map revised 1909-1910 and published 1914.



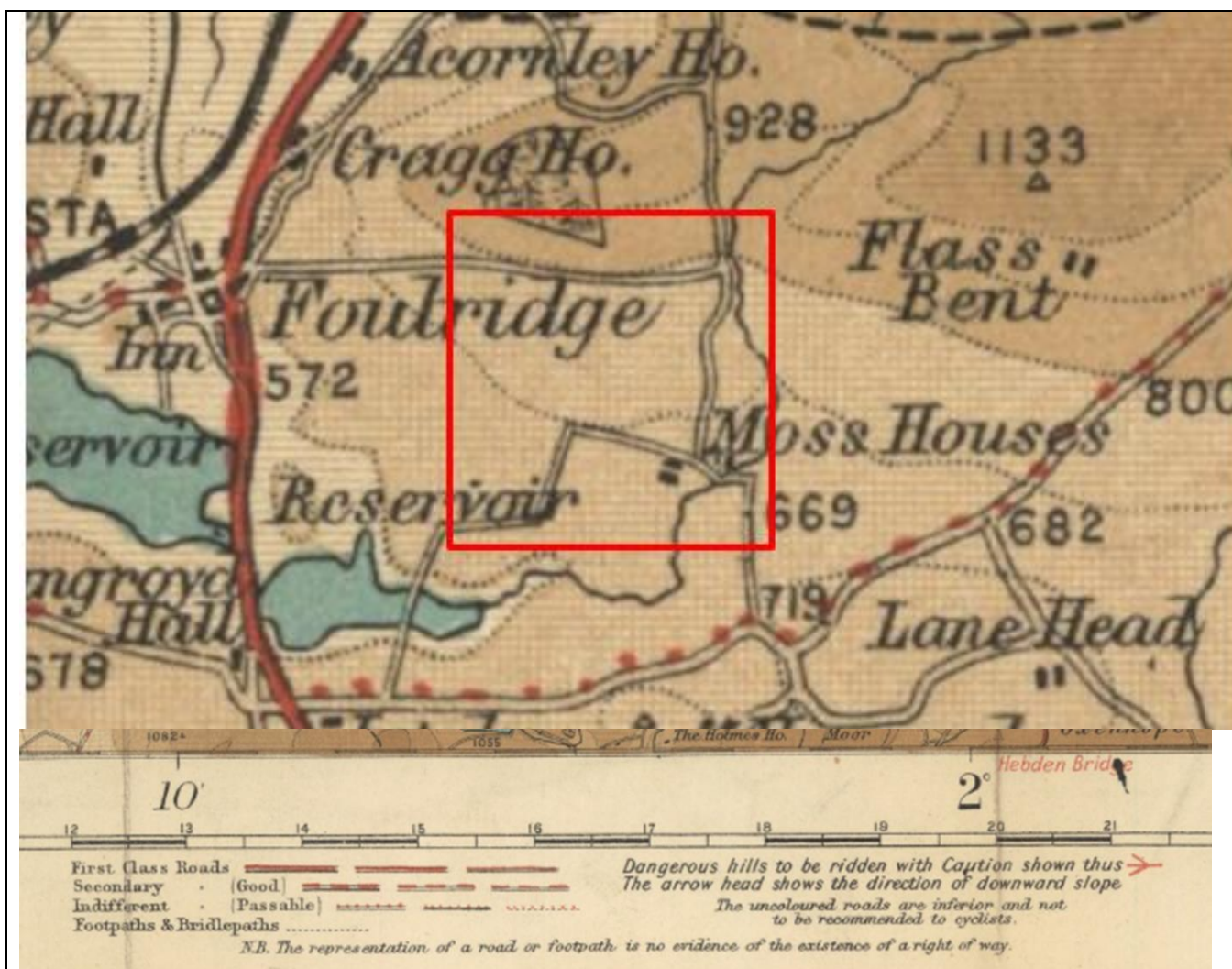
Observations		The application route is not shown between point A and point D. The route between point D and point K is shown as a substantial route providing access to Moss Houses, Causeway Top, Noyna Hall and White House and is shown gated at Causeway Top. Routes extending from the application route or from Noyna Hall are all shown as footpaths.
Investigating Officer's Comments		The application route between point A and point D did not exist in 1909. The route between point D and point K existed as a substantial route which appeared capable of being used on horseback but may not have existed as a through route or a route accessible on horseback beyond Noyna Hall.
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1892, revised in 1930 and published 1932.



Observations		The application route between point A and point D is not shown. The route between point D and point K is shown unchanged from earlier OS maps providing access to a number of properties and routes shown as footpaths.
Investigating Officer's Comments		The application route between point A and point D did not exist in 1930. The route between point D and point K existed as a substantial route which appeared capable of being used on horseback but may not have existed as a through-route or a route accessible on horseback beyond Noyna Hall.
1 inch OS Sheet 30 Lancashire & Yorkshire	1924	OS map extract submitted by applicant.



Observations		This small scale map was submitted by the applicant. The quality of the photocopy is poor. Whilst not easy to see due to the quality of the map extract, the application route between point A and point D is not shown on the map. From point D to point K the application route does appear to be shown providing access to Noyona Hall.
Investigating Officer's Comments		The application route between point A and point D did not exist in 1924. The application route between point D and point K existed as part of a longer route providing access to Noyona Hall and to be shown on such a small scale map must have been reasonably substantial. It did not however appear to form part of a through-route.
Bartholomew's Revised ½ inch map sheet 6 Harrogate	1919-1924	Further edition of Bartholomew small scale map.

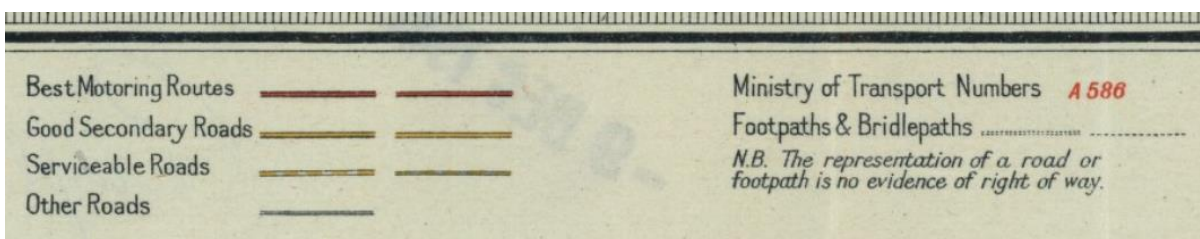
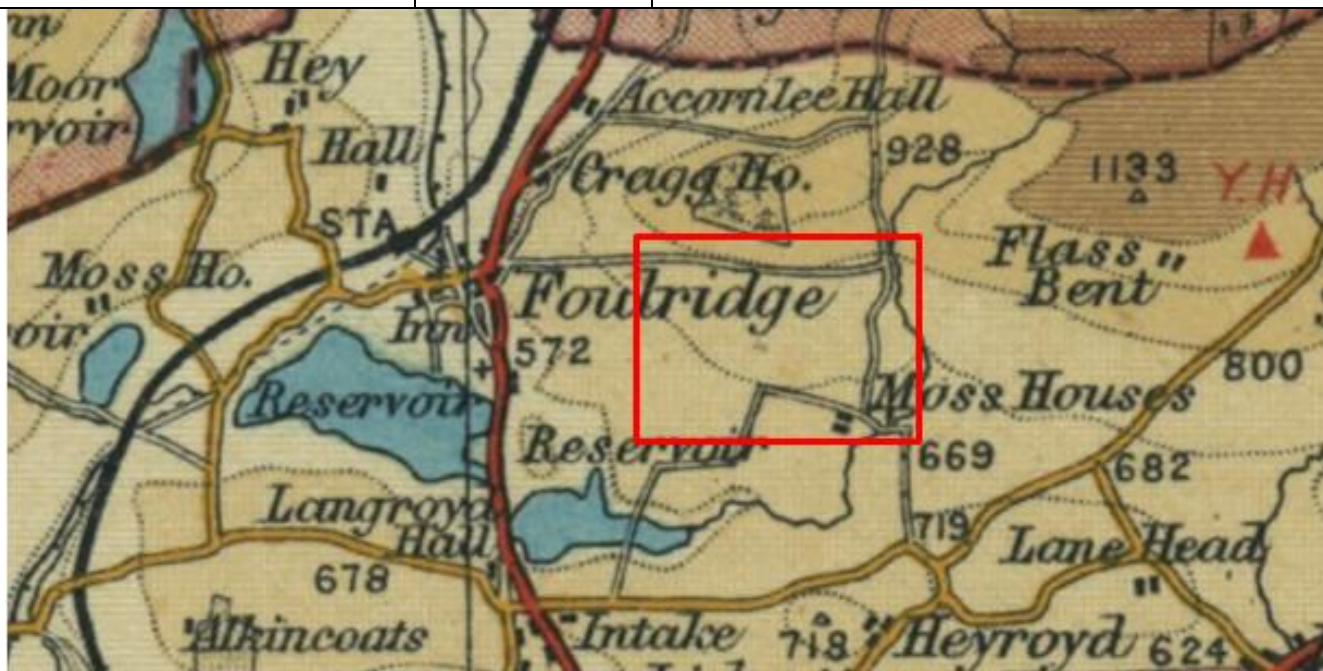


Observations		The application route between point A and point D is not shown. The route between point D and point K is shown as part of a longer route described in the map key as an uncoloured 'road' which is inferior and not to be recommended to cyclists. Moss Houses are marked but Noyna Hall is not. The route shown turns south in proximity to where Noyna Hall is located and can be seen to continue south west to pass through a reservoir to exit onto Castle Road.
Investigating Comments	Officer's	The application route between point A and point D did not exist in the 1920s. The application route between point D and point K is shown in the same way as it was shown on the earlier edition of Bartholomew's map as part of a longer through-route described as a road south from the application route through to Castle Road unlike on contemporary OS maps although traces of this route appear to exist on the earliest 6 inch OS map and are referred to in part on the Tithe Map.
Borough of Colne, Town Planning/Development	1930	Photocopy of 6 inch map provided by the applicant from Colne library collection.




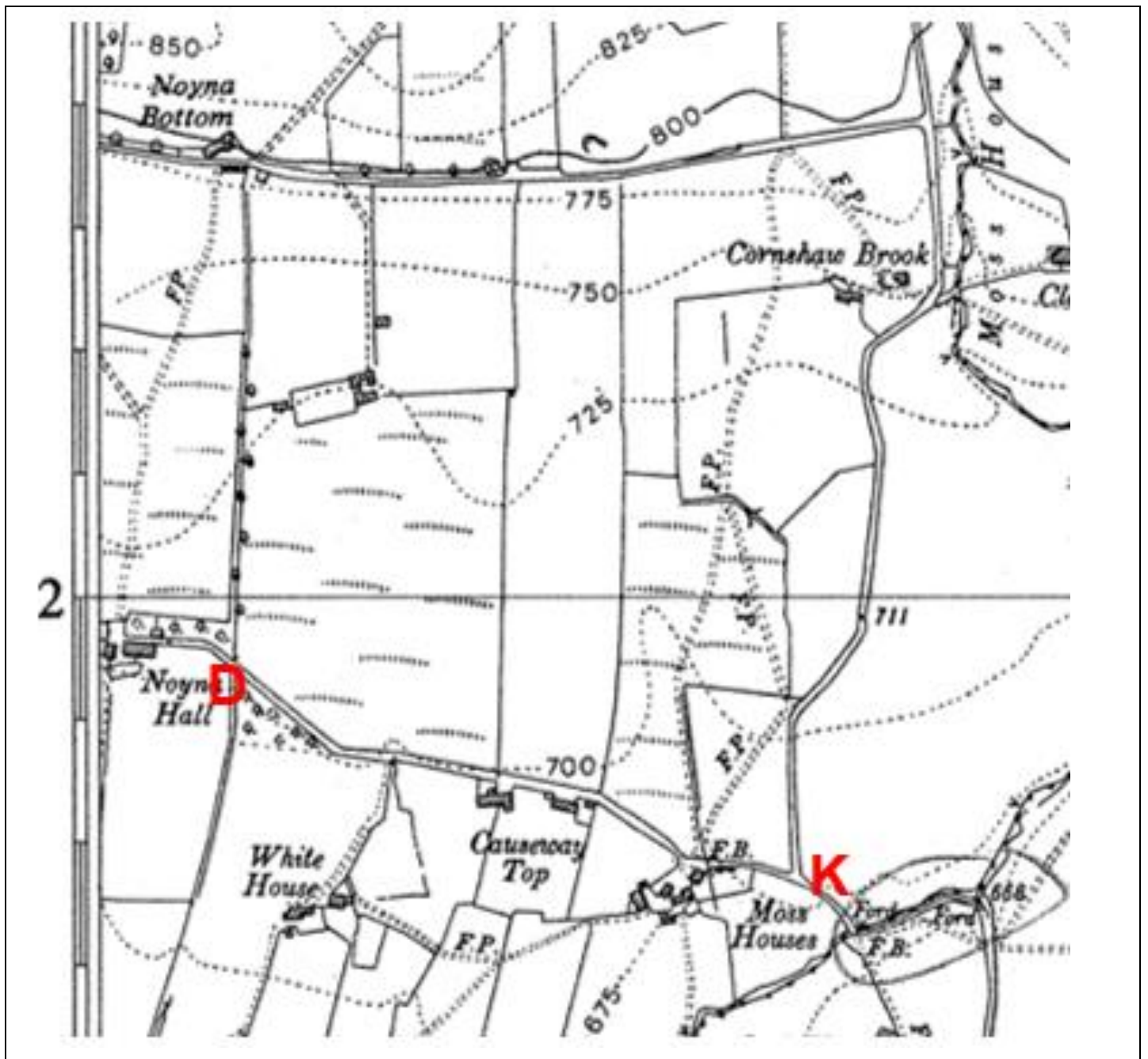
Observations		<p>A track consistent with the first section of the application route (from point A to point B) is visible which then continues from point B due south to Noyna Hall. The application route from point B to point D is not apparent.</p> <p>From point D to point E the route is not visible due to tree cover. From point E to point K the route is clearly visible as a significant track consistent with how a route used by vehicles would appear.</p>
Investigating Officer's Comments		<p>The application route between point A-B existed in the 1940s but at the time that the photograph was taken it did not continue along the application route towards point D. The application route between point D and point E, shown on OS maps produced before and after the date of this photograph is not visible on the photograph. This may be because the track obscured by tree cover but may also indicate that since a new access route from point A on Noyna Road south to Noyna Hall Farm had been</p>

		<p>created then vehicular access to Noyna Hall Farm had significantly decreased via the application route between point D and point K and that the route west of point E was no longer as visible due to decreased vehicular use.</p> <p>Between point E and point K the route is clearly visible and appears capable of being used by horses.</p>
Bartholomew's half inch map	1941	Bartholomew ½ inch mapping Sheet 31 North Lancashire published 1941



Observations		Further small scale Bartholomew's map showing the application route in the same way as the earlier two additions of the map.
Investigating Comments	Officer's	The map indicates that the application route between point A and point D did not exist in the 1940s which is largely consistent with other map and documentary evidence available at that time. The application route between point D and point K is shown to exist but again the route is shown as part of a longer through-route turning south south west in the proximity of point D
OS 1 inch Map	1947	1 inch OS map revised 1924 with further corrections

Blackburn & Burnley Sheet 95		1947.
		
Observations		The application route is not shown between point A and point D but is shown in the same way as it has been shown on earlier (and different scales of OS mapping) between point D and point K as part of a substantial access track to Moss Houses, Noyna Hall and other unnamed properties.
Investigating Officer's Comments		The application route did not exist between point A and point D when the map was revised in 1924. The route between point D and point K did exist providing access to a number of properties and appeared to be capable of being used on horseback as a cul de sac.
6 Inch OS Map 94SW and 84SW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised between 1930 and 1945.





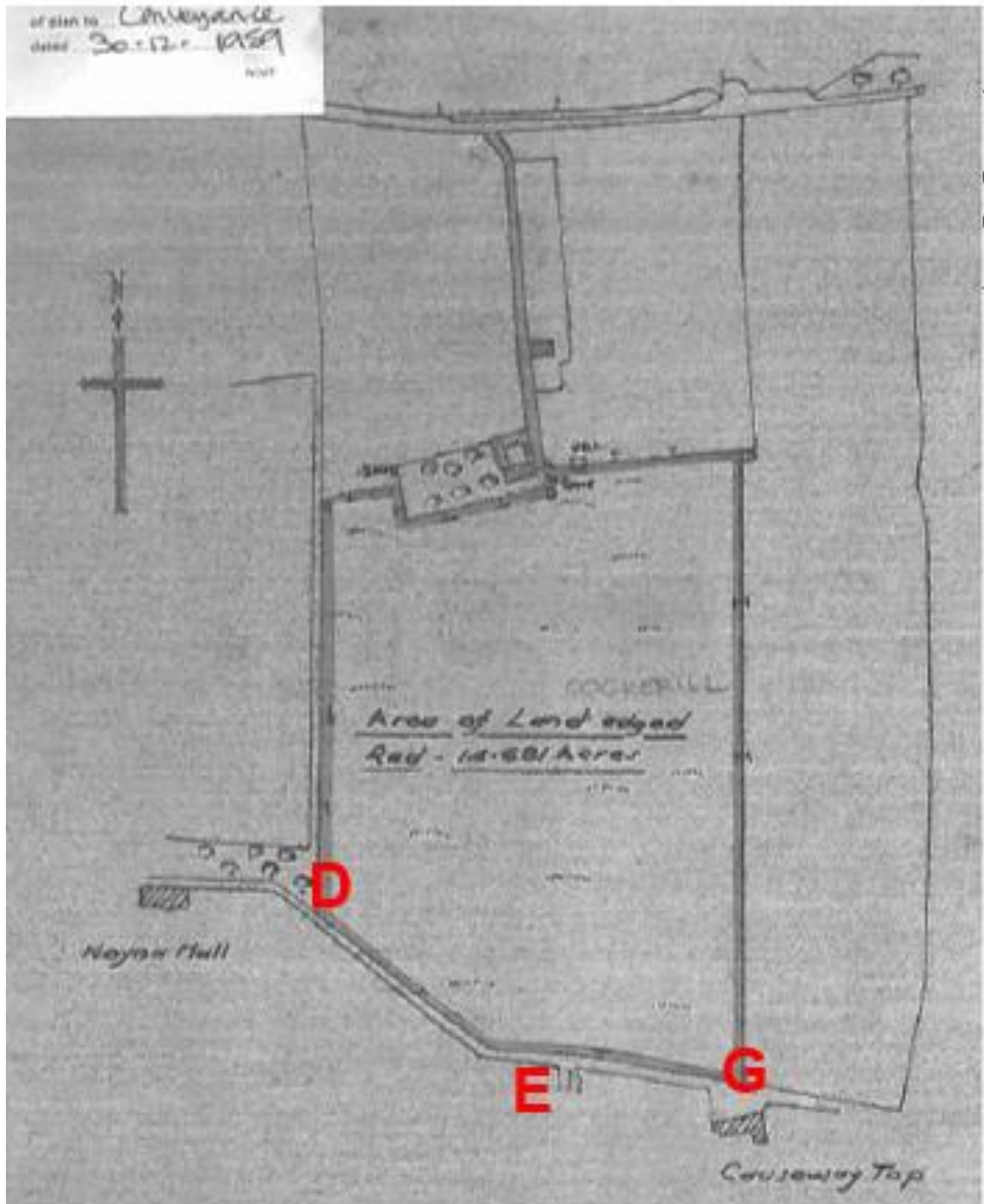
Observations		<p>The application route is shown across two OS map sheets. Only sheet 94SW was available to view as a 'clean copy' but the OS sheet used for the publication of the Revised Definitive Map (Sheet 84SE) was revised and published at the same time.</p> <p>The application route is shown as a track indicated by double pecked lines between point A and point B from where it then continued south along the route of Foulridge 34 direct to Noyna Hall Farm. The application route between point B and point D is not shown.</p> <p>Between point D and point K the application route is shown as it is on earlier editions of the OS mapping as a substantial bounded route providing access to a number of properties.</p>
Investigating Comments	Officer's	<p>The application route between point A and point B appears to have come into existence between 1930 and 1945 as part of an access route direct to Noyna Hall. The route between point B and point D did not exist at that time so it appears that the full length of</p>

		<p>the application route still did not exist as a through-route which could be used by any type of traffic (either public or private) at that time.</p> <p>The route between point D and point K did exist providing access to a number of properties and appeared to be capable of being used on horseback.</p>
OS Map from Mario Maps	1950s	<p>Submitted by the applicant and available to view online on the county council website - http://mario.lancashire.gov.uk/agsmario/default.aspx</p> <p>It differs from the 7th Series 1 inch map published 1962 (detailed below) and the date of publication and revision is not known.</p>



Observations		<p>The application route is shown as part of the access to Noyna Hall between point A and point B. The route between point B and point D is not shown. The application route between point D and point K is shown as a substantial bounded route providing access to a number of properties. A route is also shown extending south west from point E providing access through to Castle Road.</p>
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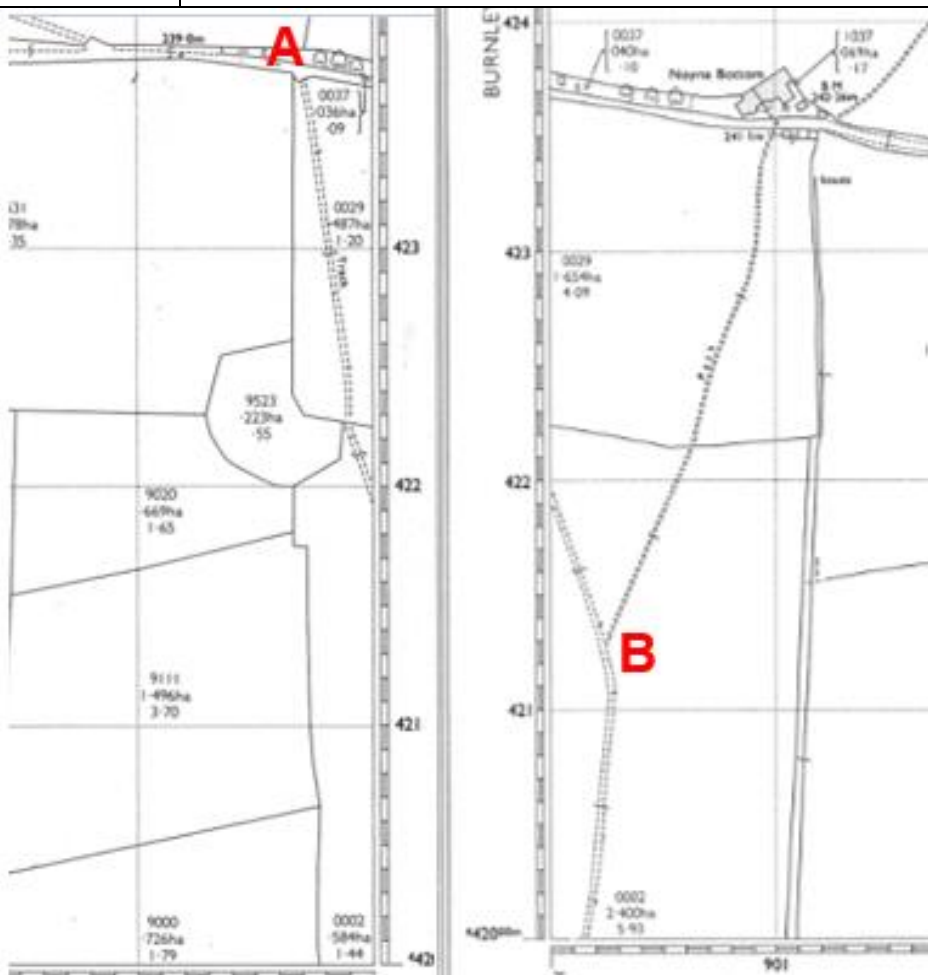
Investigating Comments	Officer's		<p>This small scale 1 inch OS map is believed to have been published in the 1950s. It is consistent with other maps of that time in showing that the application route between point A and point B was now in existence but that the full application route was still not available – as the section from point B to point D did not exist.</p> <p>The map shows a route extending south west from point E through to Castle Road – as shown intermittently on maps predating it.</p> <p>The application route from point D to point K is again shown and appeared to be capable of being used on horseback.</p>
Conveyance and Plan		1959	A copy of a conveyance and plan submitted by the applicant regarding land at White House Farm, Foulridge

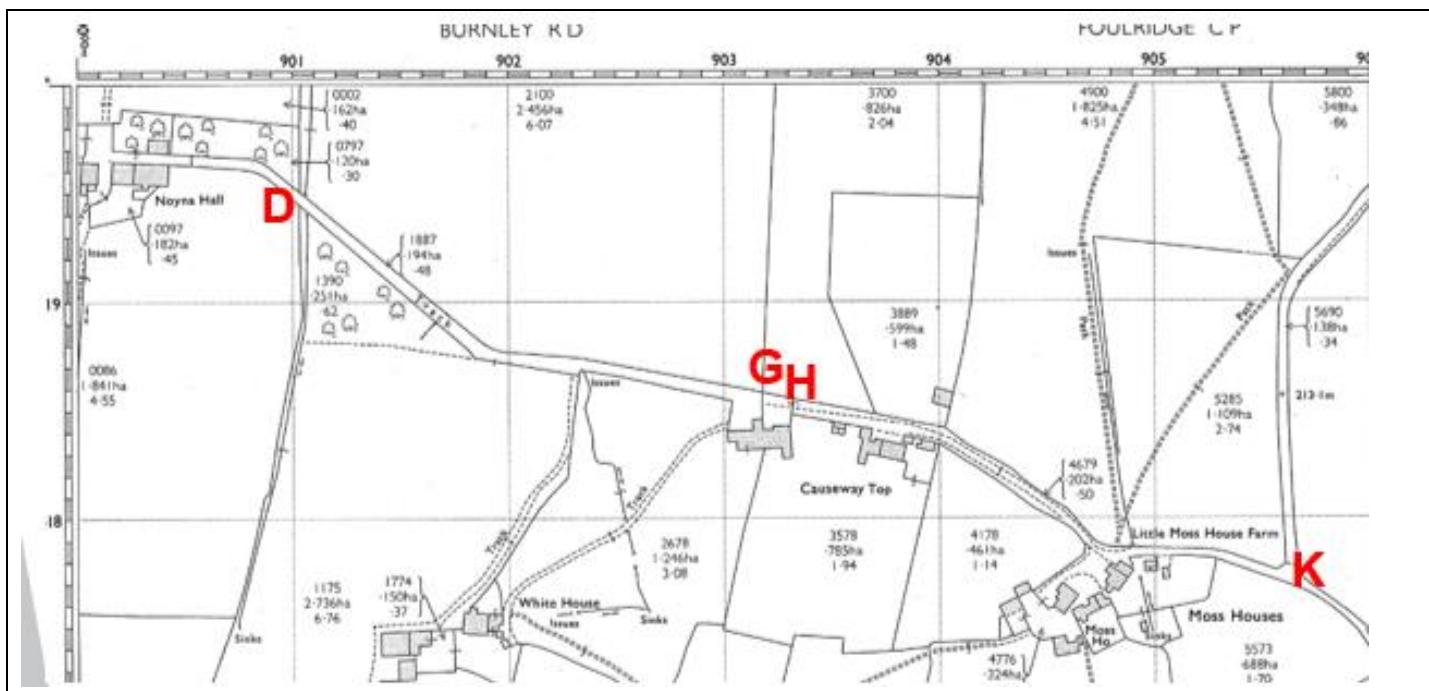


Observations

The Conveyance submitted relates to a plot of land at White House Farm and is dated 30th December 1959. The description of the property refers to it being bounded on the southerly side by 'a roadway leading from Noyne Hall Farm to Causeway Top'

		and refers to access to the property being via Noyna Road (not the application route). A plan included in the conveyance shows the application route between point D and point G but does not indicate what the public (or private) status of the route was believed to be.
Investigating Officer's Comments		The conveyance plan shows the application route between point D and point G physically existed and described it as part of an access road between Noyna Hall and Causeway Top. There is no reference to whether this route carried any public rights.
1:2500 OS Map SD 9041-9141 SD 8842-8942 and SD 9042-9142	1970-71	Further edition of 25 inch map reconstituted from former county series and revised in 1967 and published 1970-1971 as national grid series.

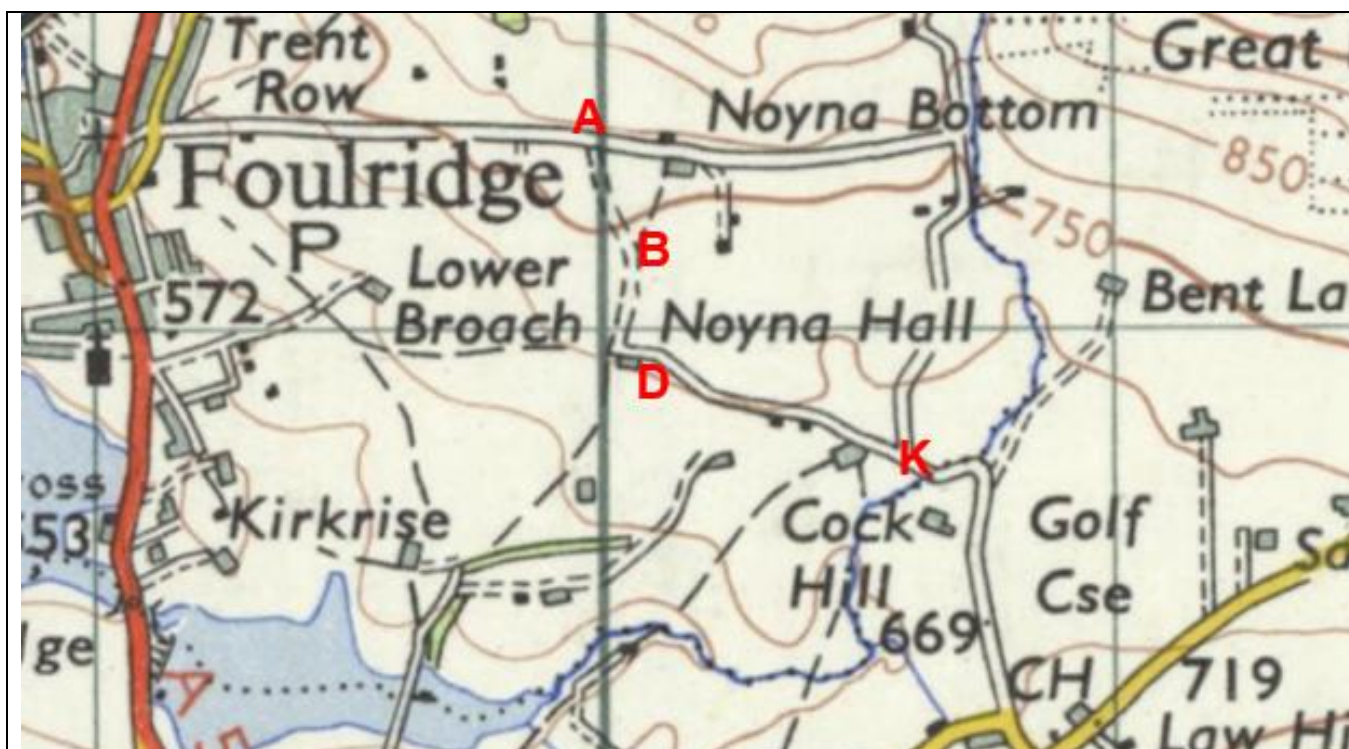




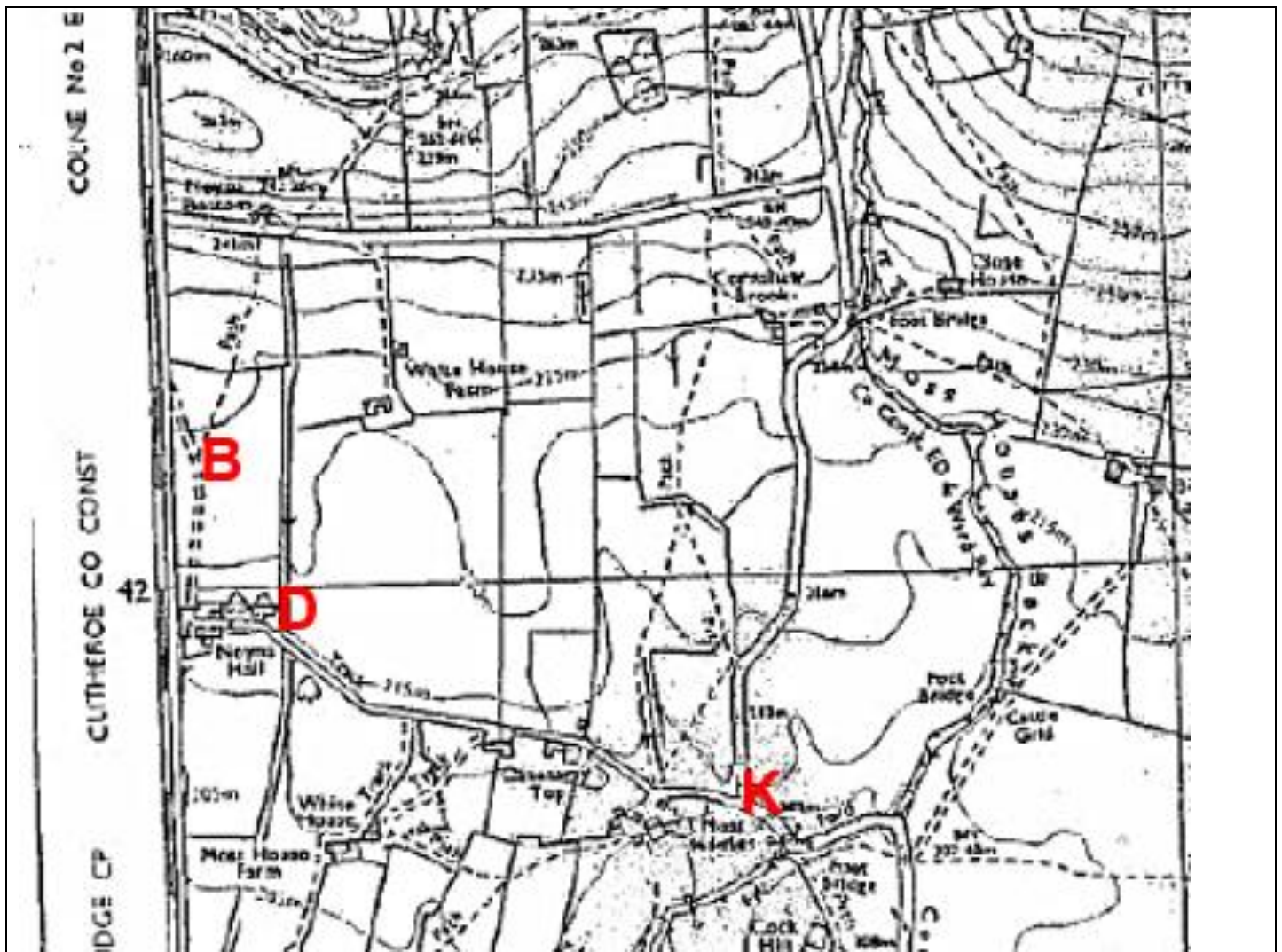
Observations		The application route between point A and point B is shown as part of the access road to Noyna Hall and the route between point B and point D is still not shown. The application route between point D and point K is shown largely unaltered from how it is depicted on earlier OS maps and appears gated at point G and point H and provides access to a number of named properties.
Investigating Comments	Officer's	<p>The application route between point A and point B existed as part of an access route direct to Noyna Hall in 1967. The route between point B and point D did not exist at that time so it appears that the full length of the application route still did not exist as a through-route which could be used by any type of traffic (either public or private) at that time.</p> <p>The route between point D and point K existed providing access to a number of properties and appeared to be capable of being used on horseback.</p>
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



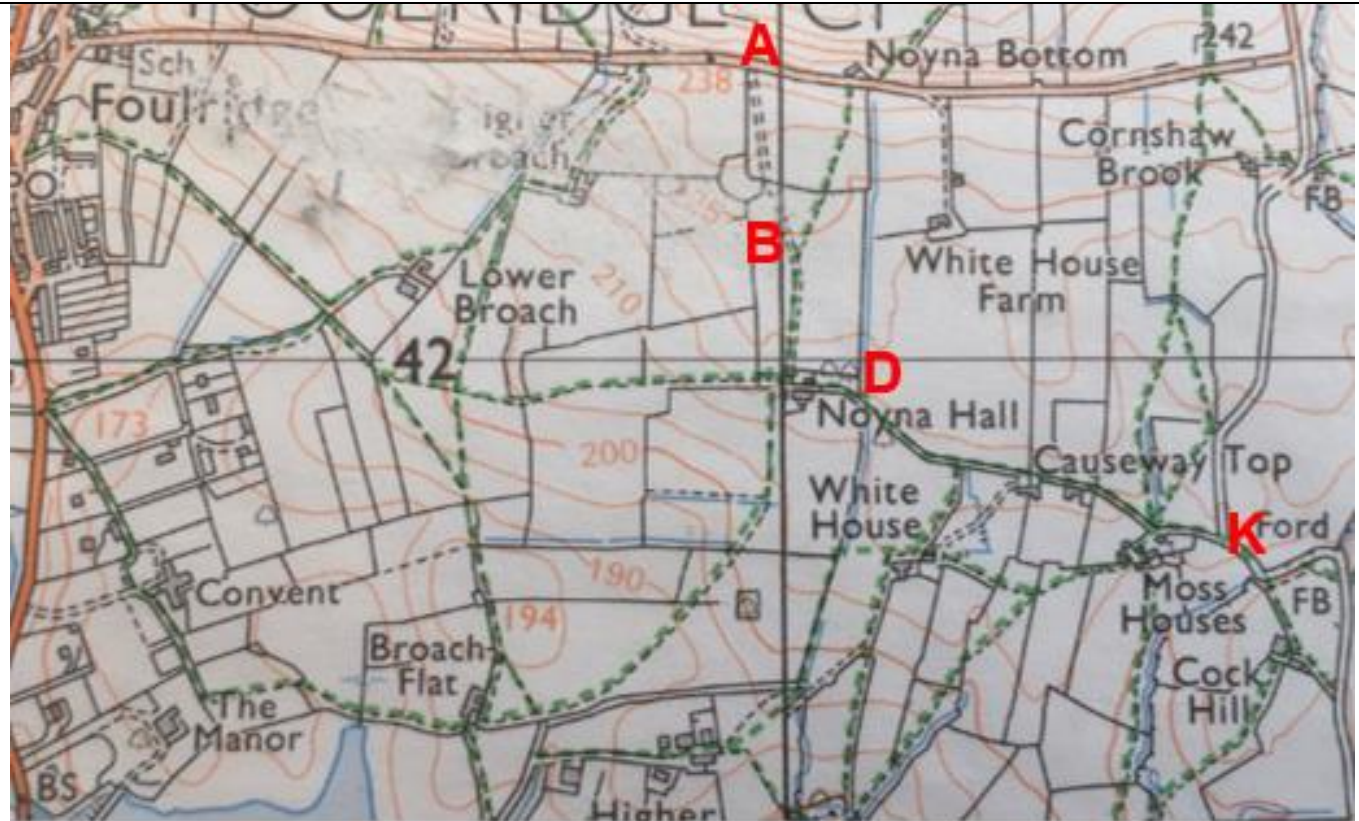
Observations		The aerial photograph clearly shows the primary vehicular access to Noyna Hall as being via the application route between point A and point B and then continuing south direct to the Hall. The photograph shows no evidence of a worn track between point B and point D. The application route between point D and point K can be seen on the photograph consistent with how it is shown on OS mapping.
Investigating Officer's Comments		The application route was not accessible as a through-route from point A to point K via points B-D in the 1960s when this photograph was taken. The route between point A and point B and point D and point K appeared capable of being used on horseback but with no apparent through-route except via Noyna Hall there is no evidence whether such use would have occurred at this time.
1 inch OS Map	1962	1 inch OS seventh series Sheet 95 published 1962 available to view on the National Library of Scotland website https://maps.nls.uk/view/91576411 The map was fully revised in 1956 and published in 1962.



Observations		<p>The application route is shown between point A and point B as part of the access to Noyna Hall. The route between point B and point D is not shown. Between point D and point K the application route is again shown as a significant bounded route providing access to a number of properties. The route shown on the earlier OS 1 inch map believed to date from the 1950s and extending south west from the application route to Castle Road is no longer shown connecting to the application route.</p>
Investigating Comments	Officer's	<p>The application route between point A and point B existed as part of an access route direct to Noyna Hall in 1956. The route between point B and point D did not exist at that time so it appears that the full length of the application route still did not exist which could be used by any type of traffic (either public or private) at that time.</p> <p>The route between point D and point K existed providing access to a number of properties and appeared to be capable of being used on horseback.</p>
1:10,000 OS Sheet 94SW	1960-1977	Map extract submitted – and dated - by the applicant.



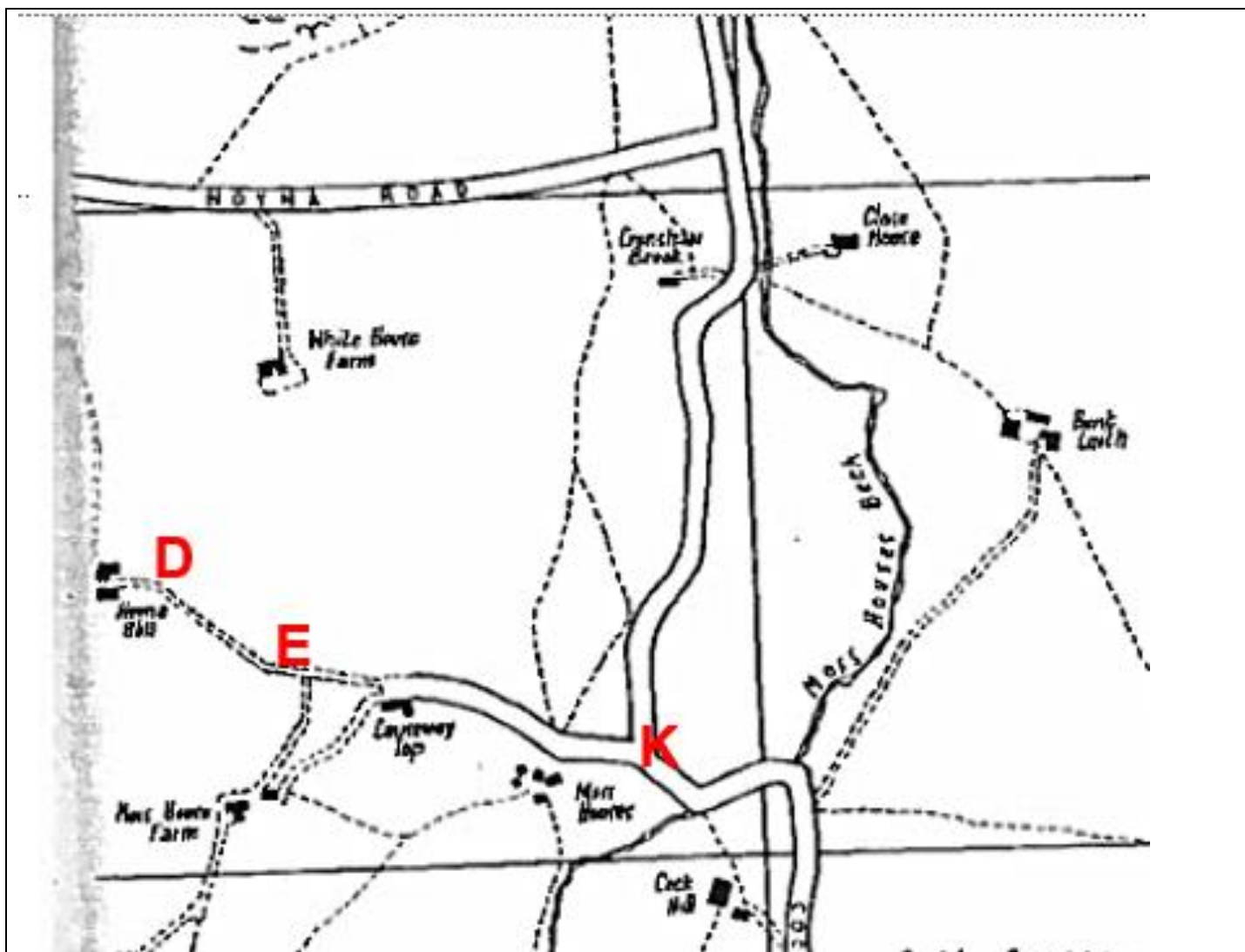
Observations		The map extract provides no further information about the application route during the timescale given (1960-1977).
Investigating Officer's Comments		No further inferences can be drawn.
OS 1:10,000 Pathfinder Series SD 84/94 Barnoldswick/Earby	1983	OS Pathfinder 670 (SD 84/94) Barnoldswick & Earby 1:25,000 surveyed 1960-1977, revised for selected changes 1983, crown copyright 1983



Observations		<p>This OS Map, produced as part of the OS Pathfinder Series, was published predominantly with the leisure industry – particularly walking – in mind. The map was surveyed between 1960 and 1977 and revised for selected changes in 1983. The map again shows the application route in existence between points A-B and points D-K but does not show the route between points B-D.</p>
Investigating Officer's Comments		<p>The application route between point A and point B existed as part of an access route direct to Noyna Hall from the 1960s. The route between point B and point D did not exist at that time – and may not have done until the 1980s - so it appears that the full length of the application route still did not exist.</p> <p>The route between point D and point K existed providing access to a number of properties and appeared to be capable of being used on horseback.</p>
Aerial Photograph	2014	Aerial photograph available to view on GIS.

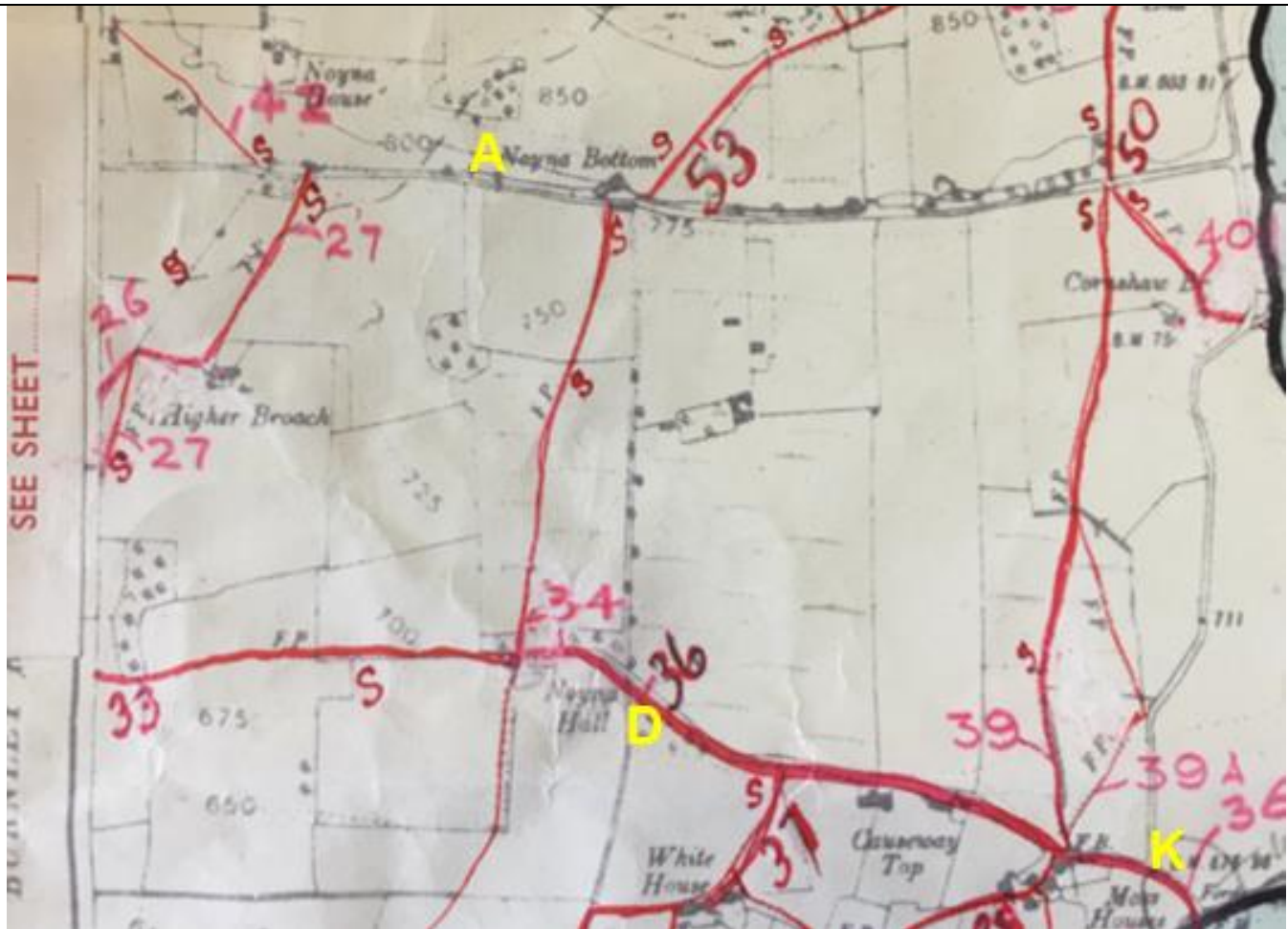


Observations		The aerial photograph shows the full length of the application route – including the route between point B and point D. It is not possible to see from the photograph what gates existed across the route, whether they were locked or passable.
Investigating Officer's Comments		The full length of the application route existed in 2014 and may have been capable of being used on horseback.
Pendle Street Atlas	undated	Submitted by applicant and dated by them as possibly being published in the 1950-1960s. The applicant interpreted what was shown as identifying the application route as a road from Moss Top to Causeway Top.



Observations		<p>No key panel was provided with the map. The application route from point A to point B can be seen as a double dashed line which extends from Noyna Road from point A to point B and then south to provide direct access to the west of Noyna Hall. The application route from point B at point D is not shown.</p> <p>From point D to Causeway Top (between point F and point G) the application route is then shown as a track depicted by double pecked lines which forms part of a longer access route to Noyna Hall. From Causeway Top east to point K the application route is shown bounded by solid lines and depicted in the same way as Noyna Road and Moss Houses Road.</p>
Investigating Comments	Officer's	<p>The application route between point A and point B and between point D and point K existed at the time the atlas was published. From Causeway Top to point K the route appeared to be depicted as a significant route – possibly indicating that it was a wide track bounded on both sides and capable of</p>

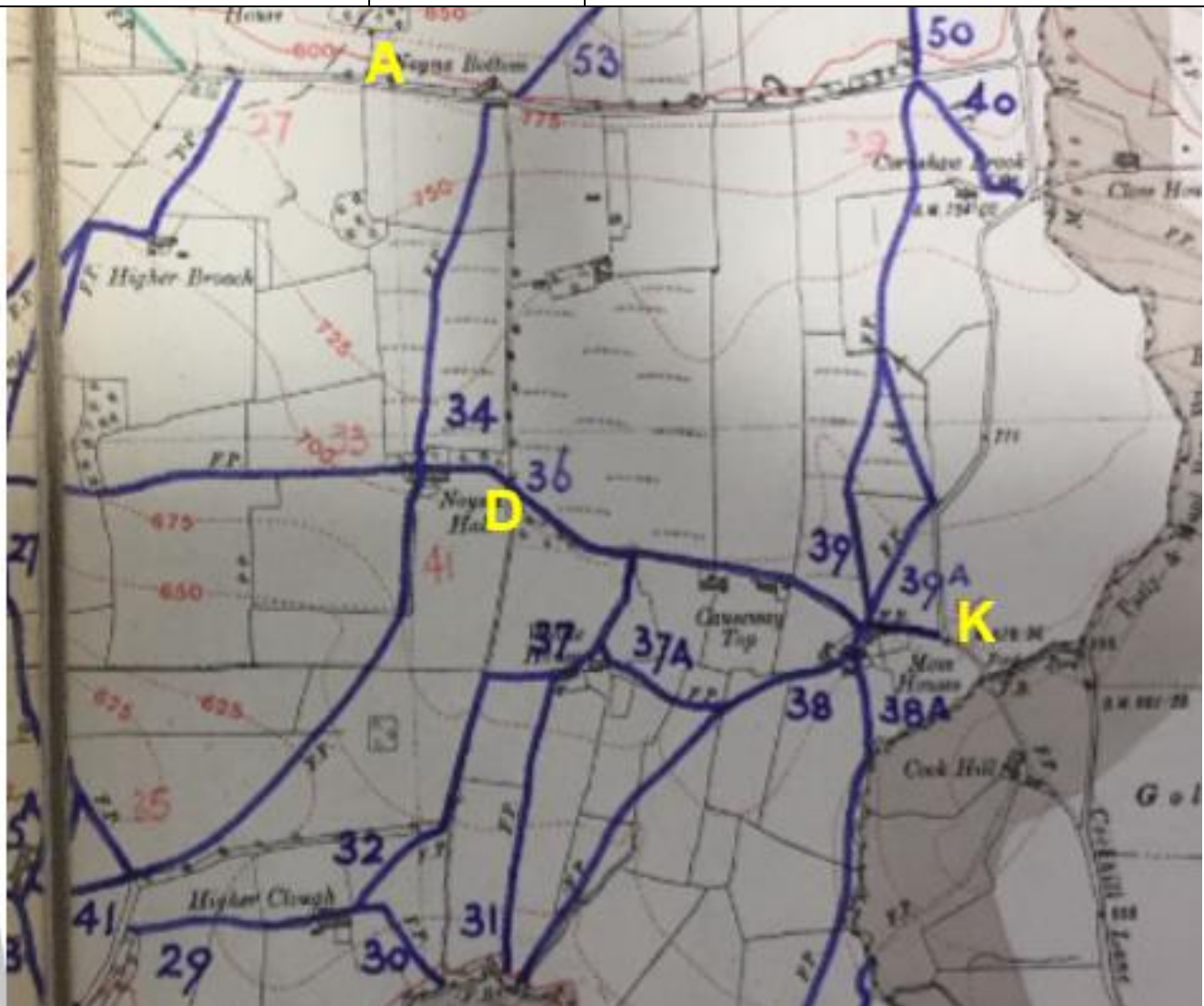
		being used by horses and vehicles. Without further information about the publication little inference can be drawn.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the county council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the county council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the county council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>



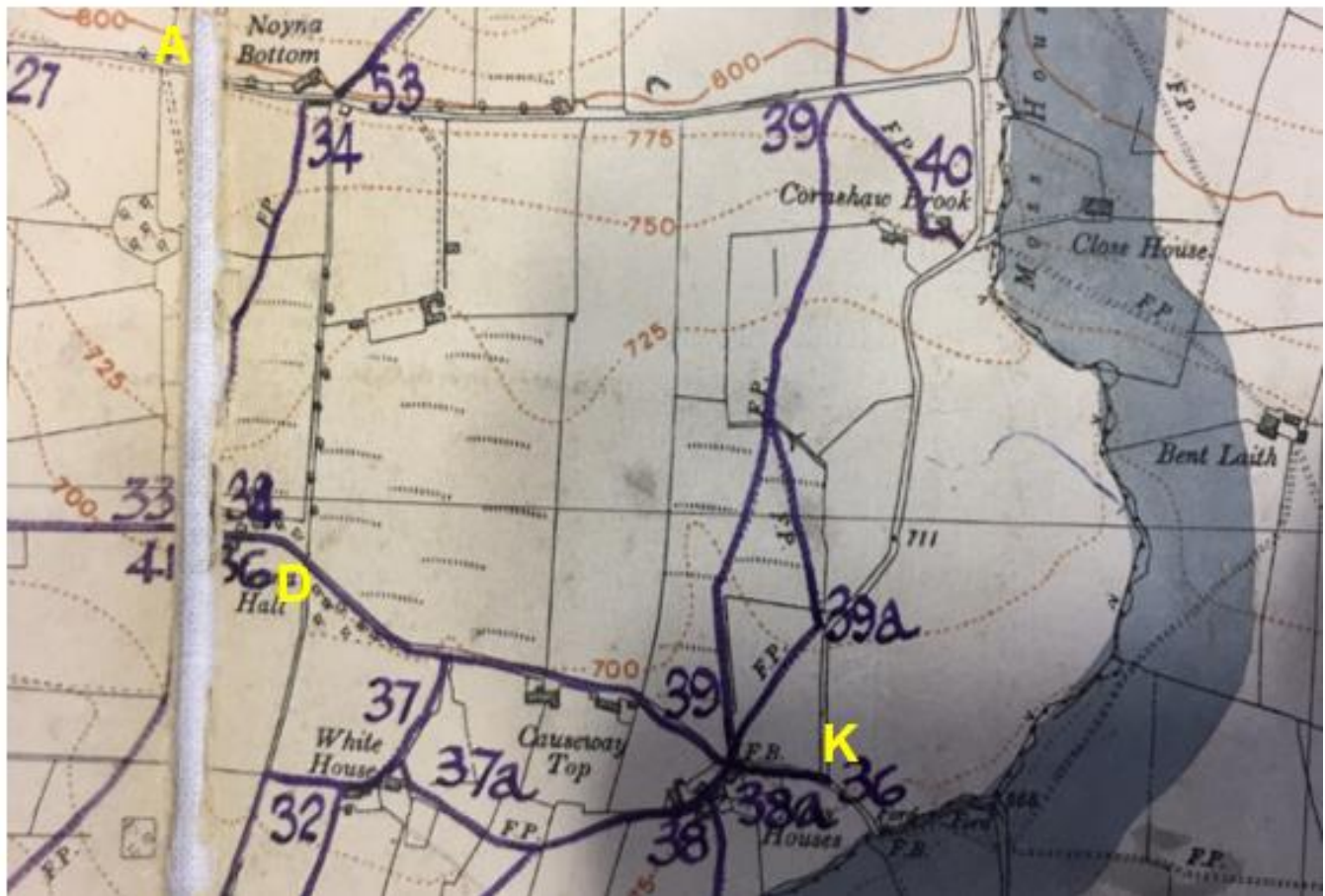
DISTRICT <i>Humbley</i>	PARISH <i>Foulridge</i>	No. <i>16</i>
MAP SHEET No. <i>2</i>	LENGTH <i>0.42</i> miles (to two decimal places)	
BRIEF DESCRIPTION (Field F.P. or otherwise)		
<p>DETAILED DESCRIPTION (giving starting point, means of passage and general condition).</p> <p><i>Nayna Hall farm to Moss House farm to boundary. cart road. F.P.</i> <i>Bad condition.</i></p>		
SURVEYED BY :—		
Name	<i>Donald Greenwood</i>	
Address	<i>21. Station Rd. Foulridge</i>	
Date	<i>25/6/50</i>	
50000/F39/4/50		

Observations		The application route between point A and point D was not recorded as a public right of way in the Parish survey. The application route between point D and point K was recorded as a public footpath
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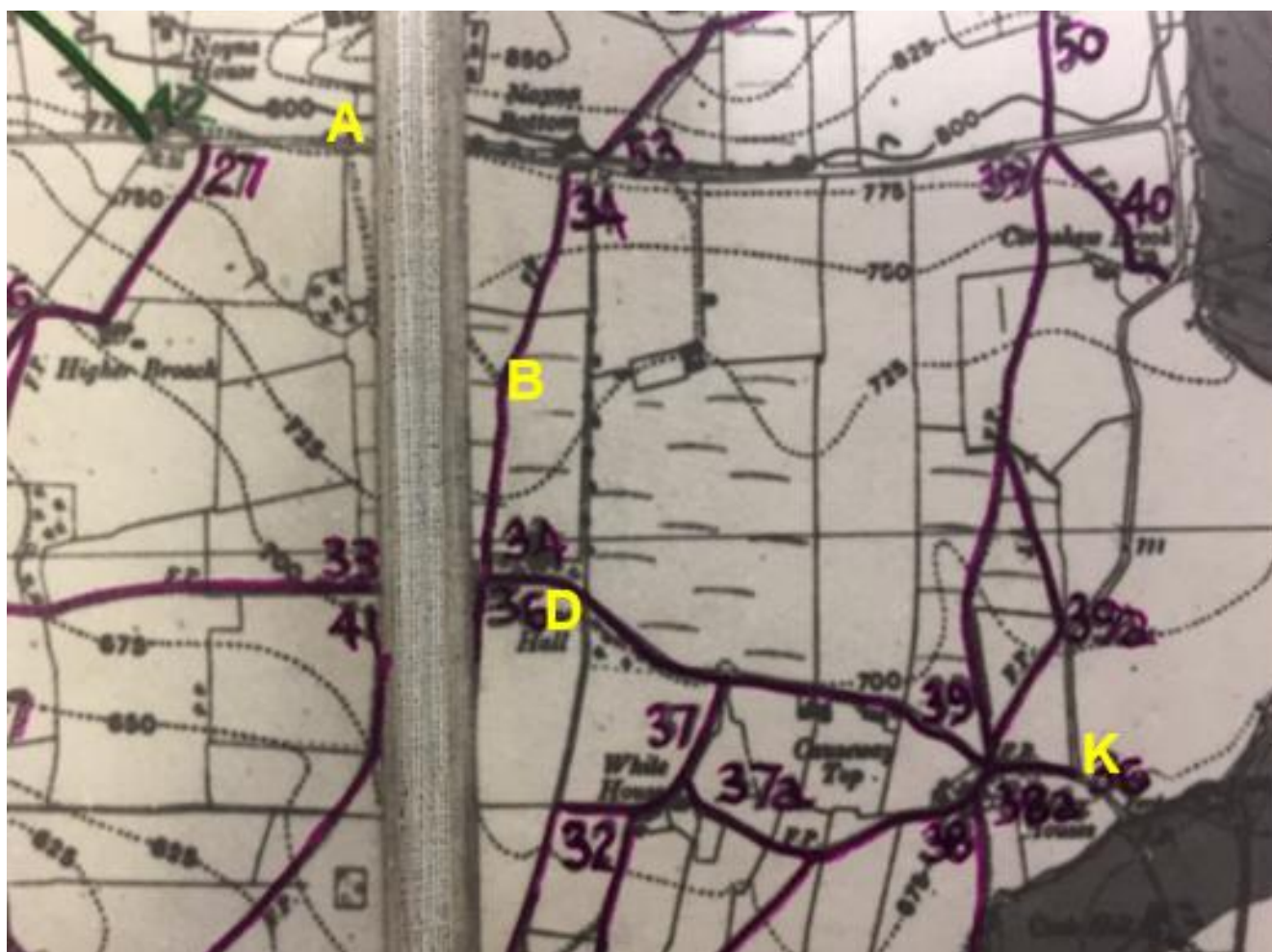
		and numbered as part of Foulridge 36 which was described on the Parish Survey card as being from Noyna Hall Farm to Moss House Farm to boundary and is described as a cart road and footpath in bad condition.
Draft Map		<p>The Parish Survey map and cards for Foulridge were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the Draft Map for Lancashire had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



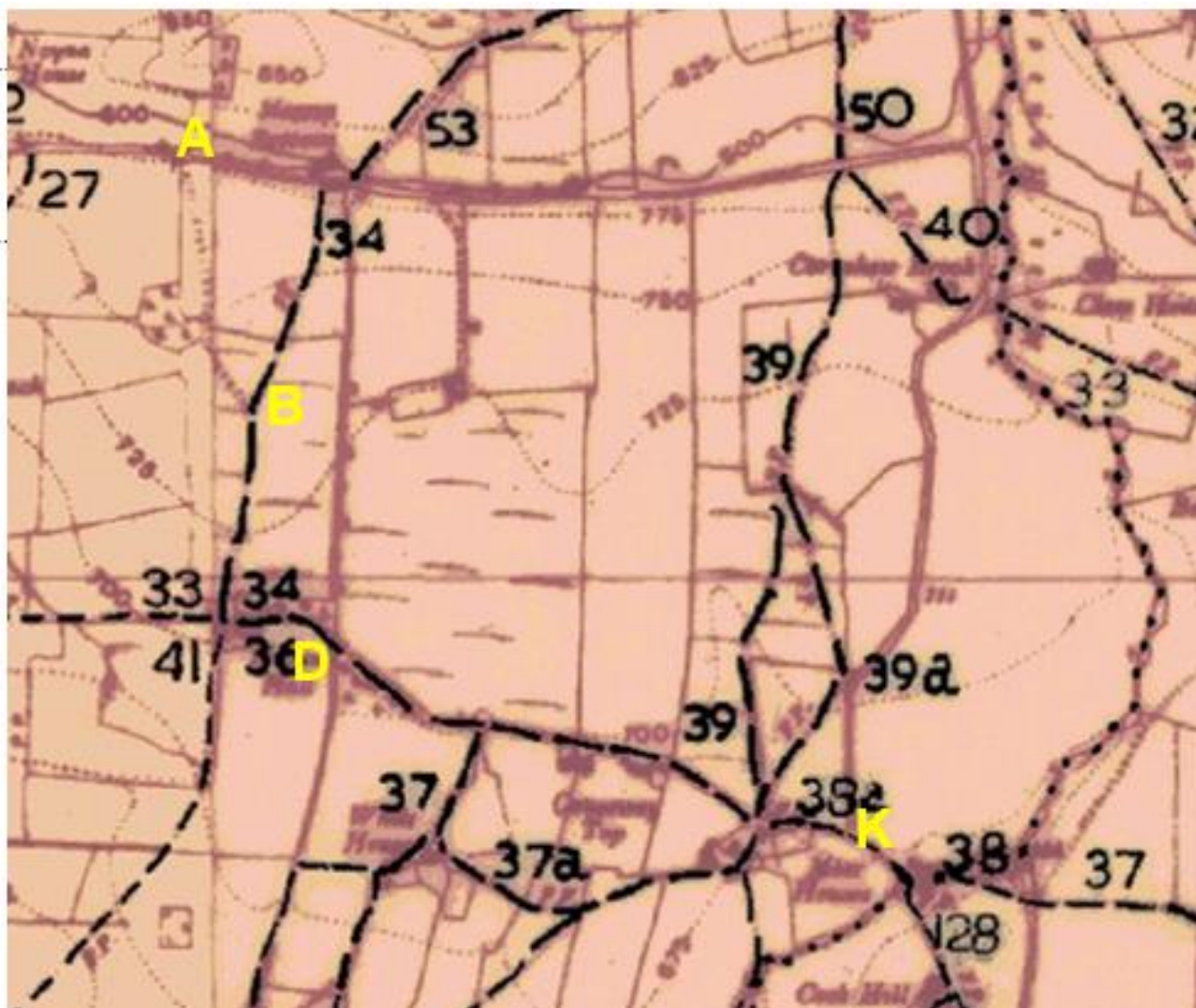
36	"	Farm to junction footpath 33. Junction footpaths 33 and 34 at Noyna Hall Farm to junction Unclassified County Road 4/115 at Moss Houses.	0.37
37	"	Junction footpaths 31 and 32 at White House	
Observations			<p>The application route from point A to point D is not shown on the Draft Map. The rest of the application route is shown coloured purple which denotes a route recorded on the map as a footpath. It is numbered as part of Foulridge 36 close to point D and whereas the route was shown to continue along Moss Houses Road to the parish boundary on the Parish Survey map it is shown to end at point K on the Draft Map.</p> <p>The Draft Statement describes the route as commencing at the junction of Foulridge 33 and 34 at Noyna Hall to the junction with Unclassified County Road 4/115 at Moss House.</p> <p>No representations or objections were made to how the route was shown or the fact that part of Moss Houses Road from point K to the parish boundary was no longer shown as part of Foulridge 36.</p>
Provisional Map			<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Observations		<p>The application route between point A and point D is not shown. The route between point D and point K is shown unaltered from the earlier Draft Map and recorded as Foulridge 36.</p> <p>No representations or objections were made to how the route was shown.</p>
The First Definitive Map and Statement		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>



Observations		The application route between point A and point D was not recorded on the First Definitive Map. The route between point D and point K was recorded as part of Footpath Foulridge 36 and the Definitive Statement remained unchanged from the Draft Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



		Hawthorne Terrace to junction footpath 22 West of Higher Clough.	0.63
35A	"	Junction footpaths 25 and 28 at Broach Flat Farm to junction footpath 35.	0.06
36	"	Junction footpaths 33 and 34 at Noyna Hall Farm to junction Unclassified County Road 4/115 at Moss Houses.	0.37
37	"	Junction footpaths 31 and 32 at White House to junction footpath 36.	0.11
	"	Junction footpath 37 at White House Farm to	

VC.01 FROM	NAME OF FROM		to 2 places decimals
38A	Footpath	Junction footpaths 38 and 39 at Moss Houses Farm to Colne M.B. Boundary, junction with footpath 38B.	0.27
38B	"	Junction footpath 38A to Colne M.B. Boundary.	0.10

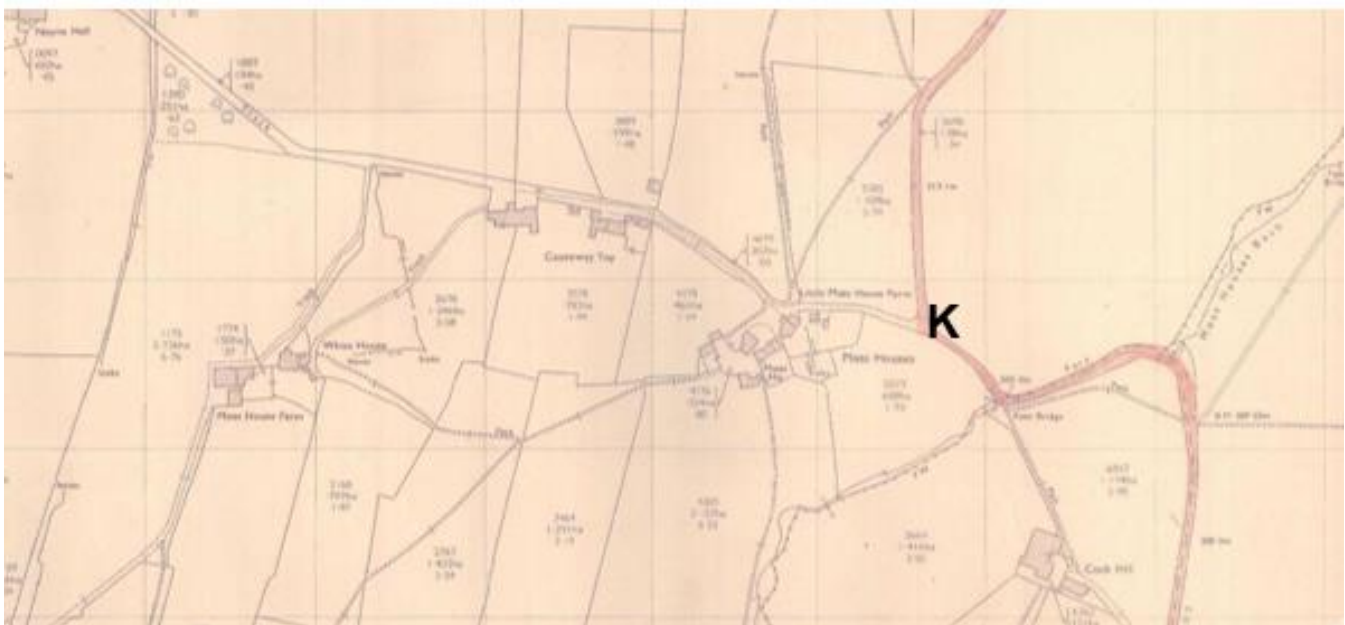
Observations		The application route between point A and point D is not shown on the Revised Definitive Map. The application route between point D and point F is shown recorded as a public footpath as it is on the
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		Draft, Provisional and First Definitive Map.
Investigating Comments	Officer's	<p>From 1953 through to 1962 there was no indication that the application route was considered to be anything other than a public footpath between point D and point K by the Surveying Authority.</p> <p>There were no objections to the fact that the route was recorded as such on the First Definitive Map when the map was placed on deposit for inspection or at any stage of the preparation of the Definitive Map.</p> <p>The application route between point A and point D was not recorded as a public right of way and from 1953 through to 1962 there was no indication that it was considered to be a public right of way by the Surveying Authority.</p> <p>There were no objections to the fact that the route was not recorded on the First Definitive Map when the map was placed on deposit for inspection or at any stage of the preparation of the Definitive Map.</p> <p>The Definitive Statements for the route of Footpath Foulridge 36 and other footpaths connecting to it remained the same throughout the process and despite the numbering shown on the Revised Definitive Map (38a between points J and K), the application route between point D and point K is considered to be part of Footpath Foulridge 36.</p> <p>It is not known why there is a discrepancy between the points on Moss Houses Road at which the footpath terminates.</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the county council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The county council is now required to maintain,</p>

under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.



Road Transfer Map



Lancashire County Council highway records

Observations	1929 to present day	The application route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in records believed to be derived from the 1929 Handover Map.
Investigating Officer's Comments		No inference can be drawn regarding bridleway rights.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the county council since that date.
Observations		A search of the county council records, records held at the County Records office and the London Gazette was made and no record of any legal orders relating to the public status of the route were found.
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the county council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or</p>

		from any earlier act that effectively brought the status of the route into question).
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the county council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by any of the landowners of land crossed by the application route under this provision of non-intention to dedicate public rights of way over this land.
Photographs of the route submitted by the applicant	Undated	Photocopies of 38 numbered photograph were submitted by the applicant.
Observations		<p>The photographs are numbered with a description of where they were taken but are not dated. Additional information about the photographs is provided in the application bundle – mainly historical – drawing attention to certain features along the route:</p> <ul style="list-style-type: none"> • The gateway at Causeway Top Farm (point I) where they draw attention to an 'ancient stone stoop' (gatepost) – photographs 12 and 13 • Causeway Top Farm – where attention is drawn to the name of the farm and the fact that a causeway indicates a road of some importance, explaining that they consider that the name causeway has survived to commemorate trade and communication links over several hundreds of years. They also draw attention to evidence of cobbles on photographs 1 and 2 although neither of these photographs were taken on the application route. • Photographs 17 and 18 showing an ancient stone stoop (gatepost) and stile at Parsons House and drawing attention to the fact that the gate was padlocked in 2015. • Photo 27 – the applicant draws attention to a gate leading to an ancient road adjacent to point D on the Committee plan – which has not been included as part of the application (and is not a recorded public right of way).
Investigating Officer's Comments		The photographs appear to have been taken relatively recently although pre-date the inspection made by the Investigating Officer. They show the route as it exists in modern times but after the locking of the gate at Parsons House (at point G)

		<p>and whilst they help to confirm the exact route applied for and what its modern day appearance is – and whether it appears capable of being used on horseback – very little inference can be drawn from them regarding the existence of public rights.</p> <p>Map evidence confirms the existence of a number of historical gates along the route between point D and point K and physical evidence of stone gateposts is considered to be evidence that those gates existed as recorded by the OS but not evidence of whether the route was public or private or whether it was considered to be a footpath or bridleway.</p> <p>The naming of one of the properties along the route as 'Causeway Top' on its own is not compelling evidence of historical public rights. The route itself is not named on any of the maps available and the historical meanings of causeway do not necessarily imply public rights. The applicant refers to paving – explaining that a causeway was a paved way (one of the historical meanings) – but the sections of paving shown on the photographs submitted are located on the public vehicular route of Moss Houses Road and not on the application route itself.</p>
The History of Colne and The Story of Foulridge both by Fay Oldland	Published 1990, Revised in 2010	<p>Local history book written by a local historian; Fay Oldland. CRO Ref:EO2 Foulridge First Edition published 1990 ISBN 0948743042 Second Edition published 2010 ISBN 978-0-9565366-0-0</p> <p>Information obtained from a local history book was referenced by the applicant to provide additional historical information about the area and the properties located along the route.</p>
Observations		<p>The applicant draws attention to the author's definition of a causeway as being 'a paved way indicating a road formerly of some importance.'</p> <p>The book also provides some historical information about the origins of Moss Houses which were said to date back to the 1600s and owned for almost four centuries by the Bolton family although it is also noted that the 1851 census listed 9 separate properties at Moss Houses and that it was difficult to determine which were owned and which were tenanted.</p> <p>The applicant also included a section of the book referring to transport and communications which</p>

		<p>makes reference to key routes through the parish and the existence of routes and the origins of their names. No specific mention is made of the Order route.</p> <p>Further information is provided about landholding families and trade and the fact that the textile industry was a significant factor in the development of Foulridge and construction of many of the houses including Noyna Hall which was owned by the Barcroft family and had its own weaving 'shed' until the early 1900s. It is submitted that the route between Noyna Hall, Moss Houses and Moss House Road would have been needed – and was used – for access transporting goods to and from the properties.</p>
Investigating Officer's Comments		<p>The book extracts provide some useful background information about the local history of the area but do not provide any information about the public status of the application route.</p>

The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Landownership

The land crossed by the route from point A to a point approximately 15 metres north of point C is registered under title numbers LA837950 and LA837948 to one of the individuals who submitted a user evidence form.

The land crossed by the route from a point approximately 15 metres north of point C through C-D-E-F-G is unregistered and ownership is unknown.

The land crossed by the route between point G and H to a point approximately 20 metres east of point H is registered under title LA828845 (Causeway Top Farm).

The land from a point approximately 20 metres east of point H to I is registered under title LAN221938 (Causeway Top Farmhouse).

The remainder of the order route (from points I-J-K) crosses land that is unregistered and ownership is unknown.

Summary

The applicant explained that the first part of route applied for (between point A-point D) had only been in existence since it was constructed in 1967 and that user evidence had been submitted in particular reference to this section.

The available map and documentary evidence confirms that the route between point A and point B existed by 1940 as part of an access road constructed from Noyna

Road to Noyna Hall. The route between point B and point D appears to have been constructed at a later date and was not shown on any map revised before 1967 or the 1960s aerial photograph. It is however clearly shown on the 2014 aerial photograph and is referred to as existing before that time by users of the route and by landowners and those objecting to the application.

With regards to the route between point D and point K there is map and documentary evidence of its existence dating back to at least the start of the 1800s.

It is shown on a number of early commercially produced small scale maps (Honor of Clitheroe 1804-1810, Greenwoods Map 1818, Chapelry of Colne Map 1818 and John Carey's Map 1825) and is shown in detail on the Tithe Map produced in 1842.

It appears from these early maps that the application route (D-G) provided access to a number of properties either directly or indirectly and that originally it may have continued north to Noyna Road (on a different route to that applied for) and also south to Castle Road but that by the 1840s both of these routes had fallen into disrepair.

The OS maps from the 1840s onwards consistently show that the application route between point D and point K existed as a substantial gated route which appeared to be capable of being used on horseback but that predominantly provided access to a number of properties and which, from the mid-1800s at least, did not appear to provide a consistent through-route suitable for horses.

The historical map and documentary evidence does not support the application route being public bridleway.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted an application for a Definitive Map Modification Order on 9th June 2019. Along with this, the applicant provided the following information in support of the application:

User evidence from 11 individuals (9 in the form of User Evidence Forms and 2 in the form of written letters)

User 1

Claims to have used the route on a horse monthly for 42 years (1975-2017), although has only been able to use part of the route (presumably point A-G) since June 2015 when the gate at Parsons House was locked and blocked passage.

User 2

Was born in 1980, raised on the farm that User 1 lives at and shares same surname as User 1. Claims to have used the route weekly to monthly since the 1980s to 2017 but refers to the gate at Parsons House being padlocked from 2015 preventing him from using the route by vehicle or horse.

User 3

Lives at same address as User 1 and shares same surname. Claims to have used the route on a horse over the same time period as User 1 (42 years from 1975 to 2017) but on a daily/weekly basis. Also reports blockage of the route by the padlocked gate at Parsons House from June 2015.

User 4

Claims to have used the route on a horse monthly for 20 years (1987-2007) but uses the route on foot to present day. Claims there were no obstructions during period of use on a horse but from June 2015 the gate at Parsons House was padlocked which prevented her passing through with a pram.

User 5

Lives at same address as User 4 and shares same surname. Claims to have used the route on a horse over the same time period as User 4 (20 years from 1987 to 2007) but on a weekly basis. Also uses the route on foot to the present day and describes locked gate at Parsons House from June 2015.

User 6

Describes riding a horse along the route twice in 2017 with the applicant (User 7).

User 7

This is the applicant. Claims to have used the route on a horse weekly to monthly for 28 years (1989-2017), although only a few times since June/July 2015 when gate at Parsons House was padlocked.

User 8

Claims to have used the route on a horse weekly for two years (2013-15) and was prevented from using the route from 2015 due to the padlocked gate at Parsons House.

User 9

Frequency of use of route and time period is same as for User 8 (weekly for two years from 2013 to 2015). Also refers to padlocked gate at Parsons House since the summer of 2015.

User 10

Shares same surname as User 9. Claims to have used the route monthly on a horse for a total of four years split between 1985-87 and 2002-04. She is aware of the gate at Parsons House being padlocked since the summer of 2015.

User 11

Shares same surname as Users 9 and 10. Claims to have used the route on a horse weekly for two years (2013-2015). Describes not being able to use the route after June 2015 due to the padlocked gate and vehicles/horse wagons blocking the route at Parsons House.

The nine users who completed user evidence forms claim to have used the route for pleasure. They state that the route had always followed the same course. All 9 people make reference to either using the route with others or witnessing others

using the route. This includes using the route of foot, horseback, bicycle and by motorised vehicle.

Nobody reported having ever been given permission to use the route.

Map extracts:

1. Enlarged 1:25000 OS Explorer Map OL21, South Pennines showing application route highlighted
2. Google Earth Map – undated aerial photograph
3. Yate's Map of Lancashire 1786
4. Reprint of 1st edition 1 inch OS map – Sheet 16, Skipton & Bradford 1805-1873
5. Smiths Map 1808
6. Chapelry of Colne Map 1818
7. Greenwoods Map 1818
8. John Carey's Map 1825
9. Hennessey's Map 1830
10. Honor of Clitheroe Map 1830
11. Tithe Map of Foulridge 1840s
12. David Charles OS reprint 1st edition 1840s
13. OS 6 inch Map Sheet 49 published 1848
14. OS 1 inch Map 1873
15. 1870/1880 – OS 1 inch map
16. 1891/1892 – OS 1 inch map
17. OS 25 inch OS Map published 1892
18. The Godfrey Edition, OS Sheet 68 – Pendle 1896
19. Cassini Historical Map, Blackburn & Burnley 1904
20. OS 1 inch Map 1914
21. OS 1 inch Map 1924
22. Bartholomew's half inch map 1920-1930
23. Borough of Colne, Town Planning/development map 1930
24. 1950s OS map available to view on MARIO
25. OS Sheet 94SW, 1:10 000 1960-1977
26. OS 1:25 000 Pathfinder Series SD 84/94
27. Early edition of Borough of Pendle Street Atlas undated

Note: Maps submitted with the application were considered and comments included in the Map and Documentary section of the report above.

Conveyance:

Copy of a conveyance and plan dated 1959 regarding land at White House Farm, Foulridge.

38 undated photographs and accompanying information:

Considered and comments included in the Map and Documentary section of the report above.

Additional Information

The applicants explain that the first part of the application route between points A-B-C-D is a relatively new route constructed in 1967 and that this part of the application is based on modern user evidence illustrating that the route has been used daily as of right by walkers, horses, horse and cart, tractors, vehicles, cars and cyclists.

They state that prior to 1967 access to Causeway Top Farm, Parsons House, Ragstones and Noyna Hall was from Cockhill Lane via Moss Houses Road and that the owners of Ragstones and Noyna Hall had their original access blocked by the owners of Parsons House in 2015 due to a padlocked gate.

Additional information from others

n.b. this is not everything that objectors and supporters have said. Anything irrelevant in the context of the legislation or already considered in the assessment of the evidence is not included in this section. Information provided by several people is not replicated after the first occurrence.

Noyna Hall Barn

The Owners of Noyna Hall Barn have stated that they strongly object to the proposal on the basis of a number of reasons.

They state that the route shown between points A-D on the Committee plan cannot be 'upgraded' because it is not an existing footpath. They refer to the wording of the Notice of Application for the Modification Order which refers specifically to an application to 'upgrade' the route whereas they argue that this particular section is not an existing footpath and that the order would 'create' a new right of way. They draw particular attention to the consultation plan sent to them by the county council which does not show the application route between points A-D as a public right of way. They state that this is how the route is also shown on the county council 'Mario' map, the Ordnance Survey First Edition 1:2500 map and the Revised Definitive Map of Public Rights of Way.

This is correct but the investigation and report triggered by the application is not constrained by it. If the application route were found to be bridleway it would be an addition to the map A-D and upgrade D-K.

As owners of Noyna Hall Barn they explain that they have a right of way along the application route between points D and K as defined in their Deeds and that they understand that only Noyna Hall Barn, Noyna Hall Farm, Ragstones & Parsons House are entitled to this right of way and that the properties beyond Parsons House i.e. Causeway Top Farm & Barn, Moss Houses etc. are not permitted to use the route between points D and G. They also explain that they are responsible for the maintenance & upkeep of the track along with other residents sharing the right of way.

Private rights do not imply or preclude public rights at the same or different class.

They also question whether any future maintenance of the track would fall to the county council if the track was upgraded.

The track D-K is currently publicly maintainable to footpath standard and privately maintainable for other private use. If it was found to have public bridleway rights the public maintenance liability would depend on the evidence – if bridleway rights were found to have existed from before 1949 it would become publicly maintainable to bridleway standard, if bridleway rights were found to have arisen as a result of use since 1949 neither the public or private maintenance liability would be changed.

They state that as owners of Noyna Hall Barn they have permitted the occasional use of the track by walkers, etc. in the spirit of good will but that they could have enforced (and may do so in the future as a result of this application) strict use of Footpath Foulridge 34 and not the application route (points A-D) in the future.

They are entitled to do this. Whether such permitted use amounts to permission or dedication is a matter of the particular circumstances.

They also challenge the details of the amount of usage submitted as part of the application. They state that they have had groups of walkers (Ramblers Association etc.) coming past their house preferring to follow the Definitive Footpaths as shown on their OS Maps rather than using the track. They also consider that the user evidence detailing use on horseback is incorrect and note that the statements have not been made under oath. They state that they have had very little in the way of equine traffic in the 22 years they have lived there despite being at home and spending considerable time outside in the last 5 years since retiring.

Use of the footpaths not subject to the application is not evidence against use of other routes. Not seeing users is different to knowing there was no such use.

They also state that they have seen very little vehicular traffic which comprised primarily of residents accessing their properties and post deliveries.

Use by residents, visitors, tradespeople, etc. is private use and cannot be used to support the existence of public rights. Use by vehicles is not evidence of bridleway rights. Only use by the public with horses or pedal cycles would provide user evidence of public bridleway rights.

With regards to comments in the application about the blocking of access via Parsons House/Moss Houses they comment that the then owners of Parsons House had issues of unauthorised usage of the track (trespass) and padlocked the gate to prevent unauthorised use. This action was said to have been discussed with themselves and others having rights of way and keys to the padlock issued to those with private rights of access.

The track is not within the ownership of Parsons House and therefore the obstruction of the way, which was illegal even if the status is only footpath, would not be a challenge to bridleway use by the landowner except that it is

said to have been done in consultation with the landowner (at Causeway Top Farm) and also it does interrupt use at that time.

They are concerned about possible future use and development of a bridleway and whether vehicles could use it and how use of the route would be 'policed'.

Vehicles are not permitted to use a bridleway unless the drivers have private vehicular rights. Management of such matters would depend on the particular problems and circumstances but do not inform the determination of whether bridleway rights do or do not exist.

Ragstone House

The owners of Ragstone House also responded to the consultations and stated that they strongly object to the application.

They state that A-D has no historical links to being a bridleway and is a recent farm track post property renovations in the 1970's shown by the fact it is bordered by stock fencing with no historical evidence such as dry stone walls or stone gate posts.

This is consistent with the map evidence above.

Practically, they state that they consider that it is unsafe for a bridleway to be created along this route as there are no passing places and due to many vehicles using this farm track towing trailers, the track would seem very unsuitable for use as a bridleway.

Creation of new bridleway rights is not being considered (this would be a relevant consideration if they were), only whether bridleway rights already exist.

Moss House Farm

The application route off Moss Houses Road used to serve three small dwellings but since a number of barns have been renovated and Causeway Top Farm redeveloped, this same track has to serve six dwellings resulting in an increase in vehicular use and the track now in a very poor state of repair.

In itself the condition is not relevant but it could be if it was impassable for users giving evidence of actual use. This is not thought to be the case here.

Little Moss House Farm

In the almost 15 years of living here horses have never used the track despite what other people may have stated. They refer to the late Tom Pratt, who owned Causeway Top Farm who, they state, for most of his life and his family before him, would never allow horses to pass through his farmyard where he often had cattle roaming.

It is unrealistic to know that a track which was physically capable of being used was not actually used. Evidence can be given that some people were turned away, which is relevant.

They also raised other points covered elsewhere.

Broach Flat Farm

The residents of Broach Flat Farm (situated south west of the application route) commented that they had been at the farm since 1967 and since that time they had also worked as contractors for other farms in the area including the previous owners of Causeway Top Farm. They explain that they had always been told by the owners of Causeway Top Farm to use the main road and not the track (the application route) and that they never opened the gate at Parsons for anyone. They explained that whenever they worked there they were never allowed through and considered that knowing the previous owners of Causeway Top Farm well – especially in their later years – it was 'inconceivable' that any of them would have let anyone through and that they were well known for their 'ferocity'.

Challenges to use by the landowners (unlike at Parsons House, the track at Causeway Top Farm is registered within the ownership) is evidence that use was not 'as of right' and there was no acquiescence in dedication.

Moss House Farm

Raises points already covered and also that since the land was divided up each new owner was given a right of way and that this would not have been necessary at all if it were already a public bridleway.

Private vehicular rights would have been necessary in order to drive on the track regardless of whether it was public footpath or bridleway; firstly because bridleway rights do not include use with vehicles and secondly because the private access needs to be ensured in case the public rights are diverted or stopped up in the future.

Following challenges to private access at Causeway Top the owner of Noyna Hall told Moss House Farm in future to use his track if he needed to get to his animals in a hurry and that the track from Noyna Hall to Noyna Road (the application route A-B-C-D) was partly built because of the hostility of the residents at Causeway Top to private or public use of the track by horses including standing in front of horses shouting and waving their arms.

Little Moss House

In addition to points already covered, Parsons House, Ragstones and other houses west of Causeway Top Farm now use the 'new' track to Noyna Road for convenience and they assume that is why it was installed many years ago.

The reason the track was built does not affect whether it has been subsequently used by the public if the evidence shows actual use.

They cannot see why riders with their horses would wish to use the application route because it is narrow and uneven and leads nowhere except to the houses and

considers that those wishing to travel through the ford can more easily use Noyna Road/Moss Houses Road which is tarmacked with good visibility.

The perceived reasons for using or not using the application route are indirectly relevant in giving credibility or otherwise to user evidence. In this case Noyna Road/Moss Houses Road are also narrow and with faster traffic and tarmac is not a good surface for horses so there are reasons why users might wish to use the application route but that does not mean that there are bridleway rights or that there was actual use by horses.

Parsons House (former residents from 2005-2019)

Raises points previously considered and in addition;

They agreed in 2015 with the owner of Causeway Top Farm to lock the gate across the route at point G to ensure that the footpath remained a footpath and to maintain security.

The gate at point G appears to be within the registered title of Causeway Top Farm so these actions are indicative of the owner of part of the route preventing/discouraging equestrian use of the route.

Between 2014-2016 a riding for the disabled group was run from Parsons House and on a Saturday there would regularly be 10 disabled riders and helpers who would, on occasion ride along the main access track from Parsons House to Noyna Road (G-A) but never along the application route between points G -K and as a keen horse rider herself she explained that anyone living locally knew that Causeway Top Farm would not allow horses along the route.

The fact that some people did not use the application route is not in itself evidence that others did not. The use of A-G by the group does not provide evidence for public bridleway as it was in exercise of private rights. The reputation of Causeway Top is relevant in highlighting the need to question the user evidence but does not negate it per se.

There are already sufficient bridleways in the area but that some require attention to make them safe to ride and that west of Noyna Hall Barn and Farm the existing footpath is not suitable to be made into a bridleway.

This investigation and report is not about making a bridleway but whether bridleway rights already exist. Suitability and whether or not there are other bridleways available are not directly relevant.

They owned over five vehicles plus trailers and horseboxes and from 2005 a number of these vehicles were always parked in front of the gate at point G so it would have been impossible for people to take vehicles, as claimed, along the route.

Parsons House (current residents)

In addition to points previously raised, the track is effectively a dead end with no access to Causeway Top Farm and Barn so from a security point of view the property will be more vulnerable to opportunist thieves if the route is opened up.

Although an understandable concern security relates to management of the route not whether bridleway rights exist. It is unlikely that many thieves would chose horse or pedal cycle as transport for burglary in a rural location.

The footpath is used daily by dog walkers and situations may occur when horses encounter loose dogs or private vehicles using the route and questions who would be responsible should an accident occur or property were to be damaged.

Different public and private users coexist on highways of all descriptions and if bridleway rights are shown to exist on the application route this would be no different. Responsibility would rest with whoever caused an accident or damage.

Moss House

Points previously covered.

Noyna End Farm/Barn

In addition to previous points they refer to inaccuracies in the supporting documentation and comment that over the course of the last 20 years they have met many walkers and a cyclist on one occasion (very recently) but do not believe it would have been possible to access the route other than over the stiles.

The application route can be accessed without stiles, except when the track by Parsons House was unlawfully obstructed.

Causeway Top Farm

Objected to the application but no further comments or grounds for objecting were given.

Volunteer at the Riding for the Disabled Group at Parsons House 2015-16

Points already covered above.

Cockhill Farm

Points already covered above.

Bent Laithe Farm

Points already covered above.

Noyna Hall Farm

Previously they owned horses at the property but were refused access along the track D-K by the late Tom Pratt at Causeway Top who was adamant that it was not a bridleway.

Parsons House (former resident from 1998 to 2005)

Track outside Parsons House terminated at the house and access through the gate was to a farmyard which was not used by anyone other than walkers who accessed the farmyard via a stile. She never witnessed anyone come through the farmyard by vehicle or on horse via Causeway Top Farm.

Moss Houses Farm

Points already covered above.

B.Wade

Walks along this footpath regularly. Believes that making this footpath a bridleway would make it extremely dangerous for the regular walkers, proposed horses and riders.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s):

- Some user evidence on horseback.
- The route from point A-B available from at least 1940 and appears capable of being used on horseback; and landowner of this section supports the application.
- The route from point D-E-F-G-H-I-J-K available from 1830 and appears capable of being used on horseback but this section of route is a recorded footpath.

Against Making an Order(s):

- The route from point D-E-F-G-H-I-J-K appears historically to have been a dead end route (providing access to a number of properties e.g. Noyna Hall) and/or a through route to Castle Road via a route south of point D rather than west of point D to C-B-A.
- The route from point B-C-D only available in more recent years and exact date unknown.
- Several users giving evidence appear to be related so user evidence not from broad section of public.
- Actions of adjacent landowner, possibly with landowner's agreement, to prevent/discourage equestrian use of route (e.g. obstructions).

- Extent of evidence challenging claimed equestrian use of route.

Conclusion

As regards section A-B-C-D (the unrecorded section), Committee must consider whether, on the balance of probability, the evidence discovered, when considered with all other relevant evidence available, is sufficient to show that a public bridleway which is not shown in the Definitive Map and Statement subsists (the higher test for confirming an order) or is reasonably alleged to subsist (the lower test for making an order).

In relation to section D-E-F-G-H-I-J-K (currently recorded as footpath), Committee must consider whether, on the balance of probability, the evidence discovered, when considered with all other relevant evidence available, shows that the existing public footpath ought to be shown as a public bridleway and that the Definitive Map and Statement requires modification to reflect this.

As there appears to be insufficient documentary evidence of historical bridleway rights along the route, the determination of the upgrade/addition of bridleway depends on the evidence of public use of the route and whether this indicates that a public bridleway can be presumed to have been dedicated in accordance with section 31 HA 1980 or dedication implied at common law.

Presumed dedication

In order to raise a presumption of dedication, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a full 20 year period immediately prior to the route being called into question. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public bridleway.

The right of equestrians to use the route appears to have been called into question when the landowner of Parsons House locked the gate outside his property which crosses the route (point G). All but one users mention the locked gate and the majority date this event as having occurred in June 2015. Moreover, one of the objectors from a neighbouring property states that he and the owner of Parsons House agreed in 2015 to lock the gate at point G to prevent any members of the public other than walkers passing through. It therefore seems reasonable to conclude that the 20 year period under consideration for the purposes of the section 31 test runs from June 1995 to June 2015.

As to whether the claimed bridleway was used by the public as of right and without interruption for the relevant 20 year period, user evidence has been provided by eleven individuals, all of whom indicate equestrian use. A landowner of part of the route and two of his relatives submitted evidence of use. They all claimed to have used the route on horseback from weekly to monthly intervals throughout the entire statutory period. Two other families submitted evidence of horseback use through five individuals. The first family (husband and wife) claimed to have used the route on horseback from weekly to monthly intervals for 12 years of the 20 year statutory

period (1995-2007). Two members of the second family used the route for two years (2013-2015) and the third member used it for two periods of two years, the first of which was before the 20 year period started to run (1985-87 and 2002-2004). There were three seemingly unrelated users, one of whom is the applicant who used the route monthly throughout the 20 year period; the other only used the route twice and outside of the statutory period; and the other was an individual who only used the route for two years at the end of the statutory 20 year period (2013-2015).

If Committee disregards the evidence of the individual who had not used the route during the statutory period, essentially, Committee is presented with evidence of use from three families plus two individuals (one of whom only used the route for two years). Guidance from the Planning Inspectorate indicates that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. In this case, Committee may consider that equestrian use of the route is not representative of the public at large and therefore the evidence does not raise a presumption of dedication of a bridleway and thus fails satisfy the statutory test.

Furthermore, the actions of at least one of the landowners (Mr Pratt of Causeway Top Farm) during the relevant period, as described in detail by several of the objectors, is indicative of a lack of intention to dedicate the route as a bridleway which a reasonable user ought to have understood. Committee is advised that this would be sufficient to rebut any presumption of dedication of a bridleway (in the event the presumption had been raised) and defeat the statutory test.

In conclusion, when balancing the evidence received or discovered in support of and in opposition to the application, Committee may consider that it is reasonable to conclude, on the balance of probabilities, that the evidence is insufficient to show (i) that bridleway rights are reasonably alleged to subsist along the unrecorded section of the route or (ii) that bridleway rights do subsist along the section that is currently recorded as public footpath.

Common law inference

Where the evidence fails the statutory test, an inference of dedication under common law must be considered. This involves Committee considering whether evidence from the maps and other documentary evidence coupled with the evidence on site and user evidence indicates that it can be reasonably inferred that in the past the landowners intended to dedicate the route as a public bridleway and the public have accepted it as such. Use of the route by the public must be 'as of right' and there is no fixed period of use or particular date from which use must be calculated retrospectively.

Historical documentary evidence shows that the majority of the route physically existed by 1940. Only section B-C-D did not exist then and it is unclear when it did come into existence. The documentary evidence shows its existence by 2014 but evidence from both users and objectors suggests that it may have existed from around the 1970s. In any event, the existence of the route does not tell us if it carried bridleway rights.

Committee may consider it is reasonable to conclude that the evidence fails to satisfy the common law test for the same reasons as it failed the statutory test – namely the actions of at least one landowner to prevent/discourage equestrian use and use having been by a limited section of the public.

In conclusion, Committee is recommended to reject the application and not make an Order to record bridleway rights.

Risk management

Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

Alternative options to be considered

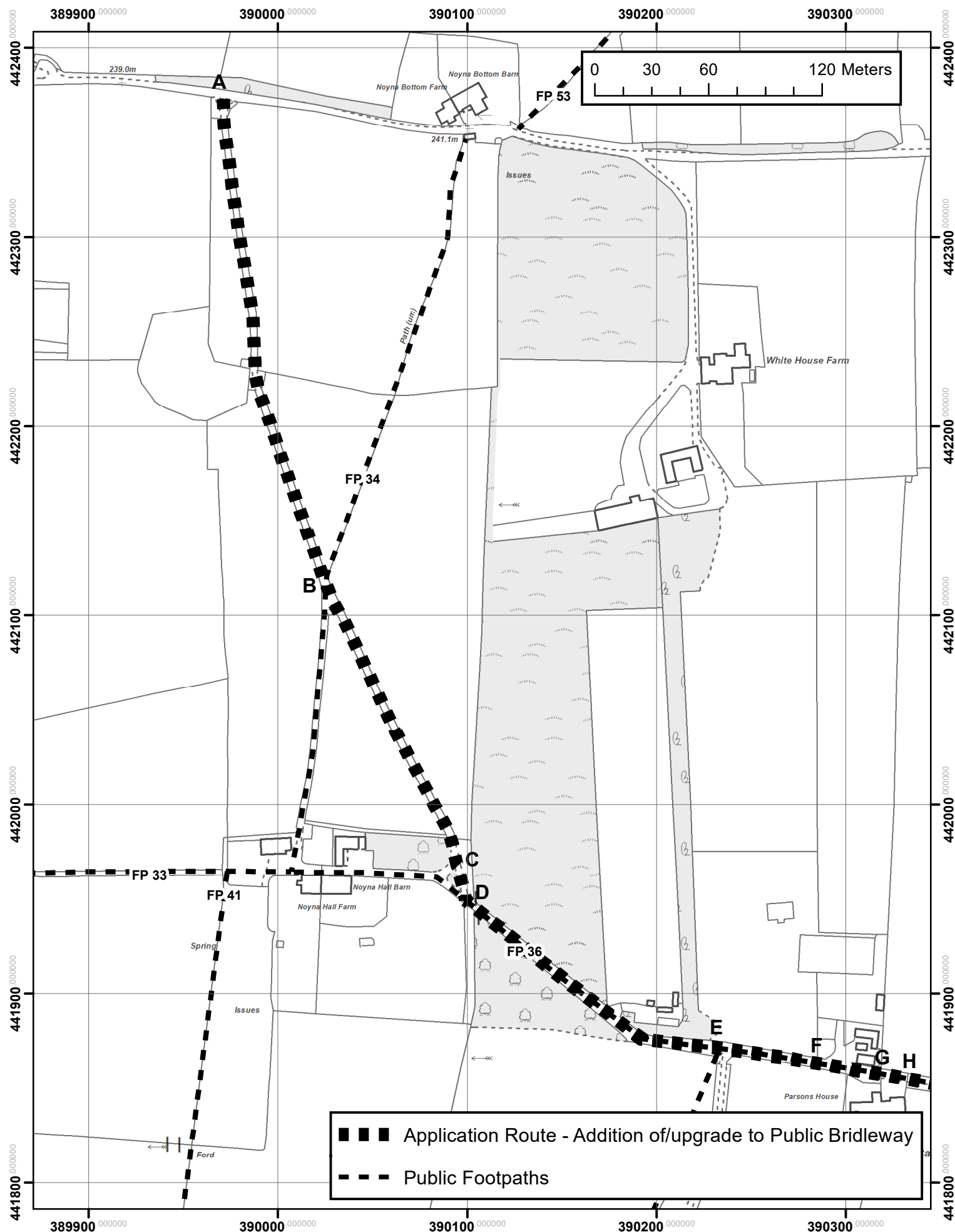
To decide that the evidence shows on balance that bridleway rights subsist, that the application be accepted and that an Order be made and promoted to confirmation.

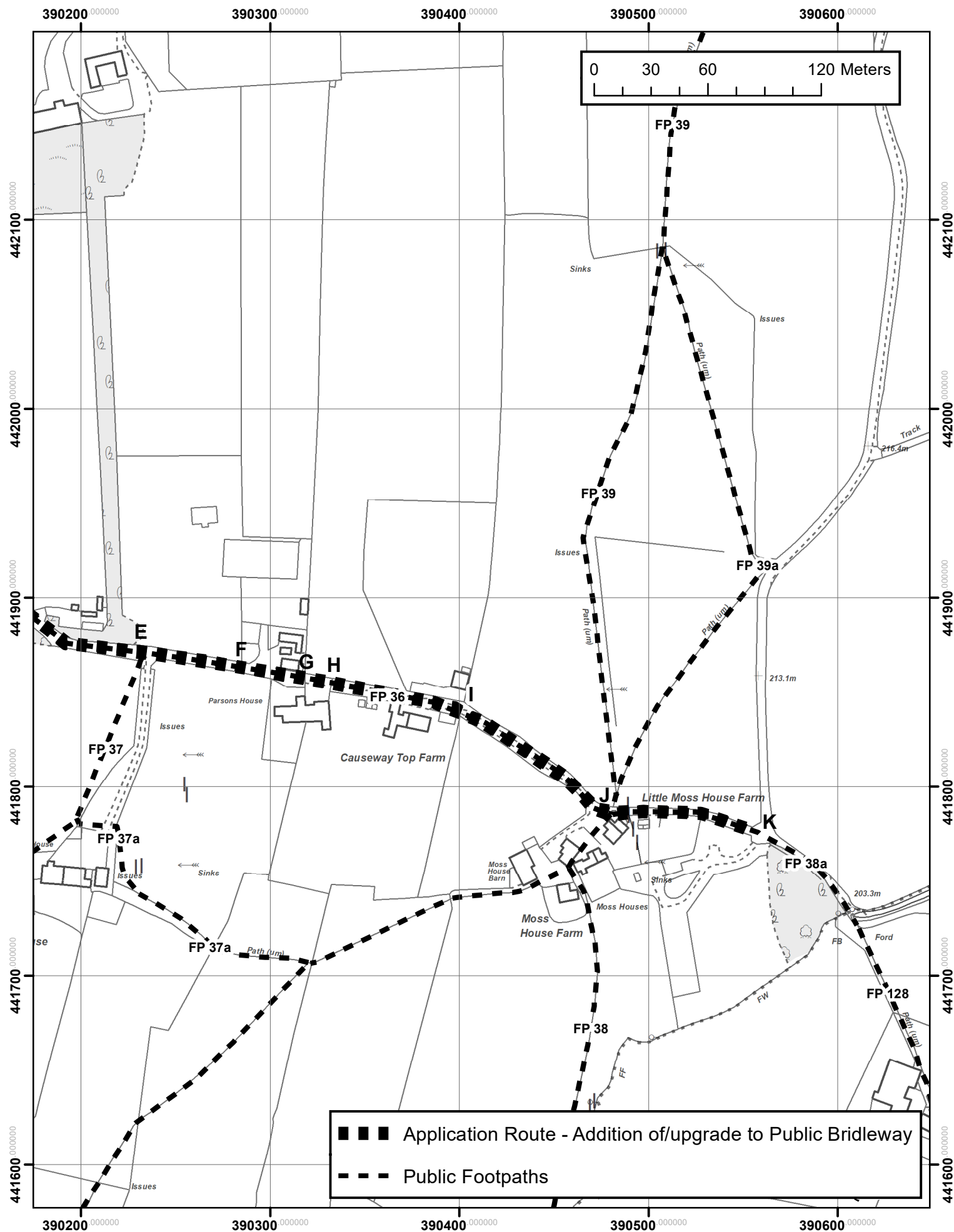
Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-609		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

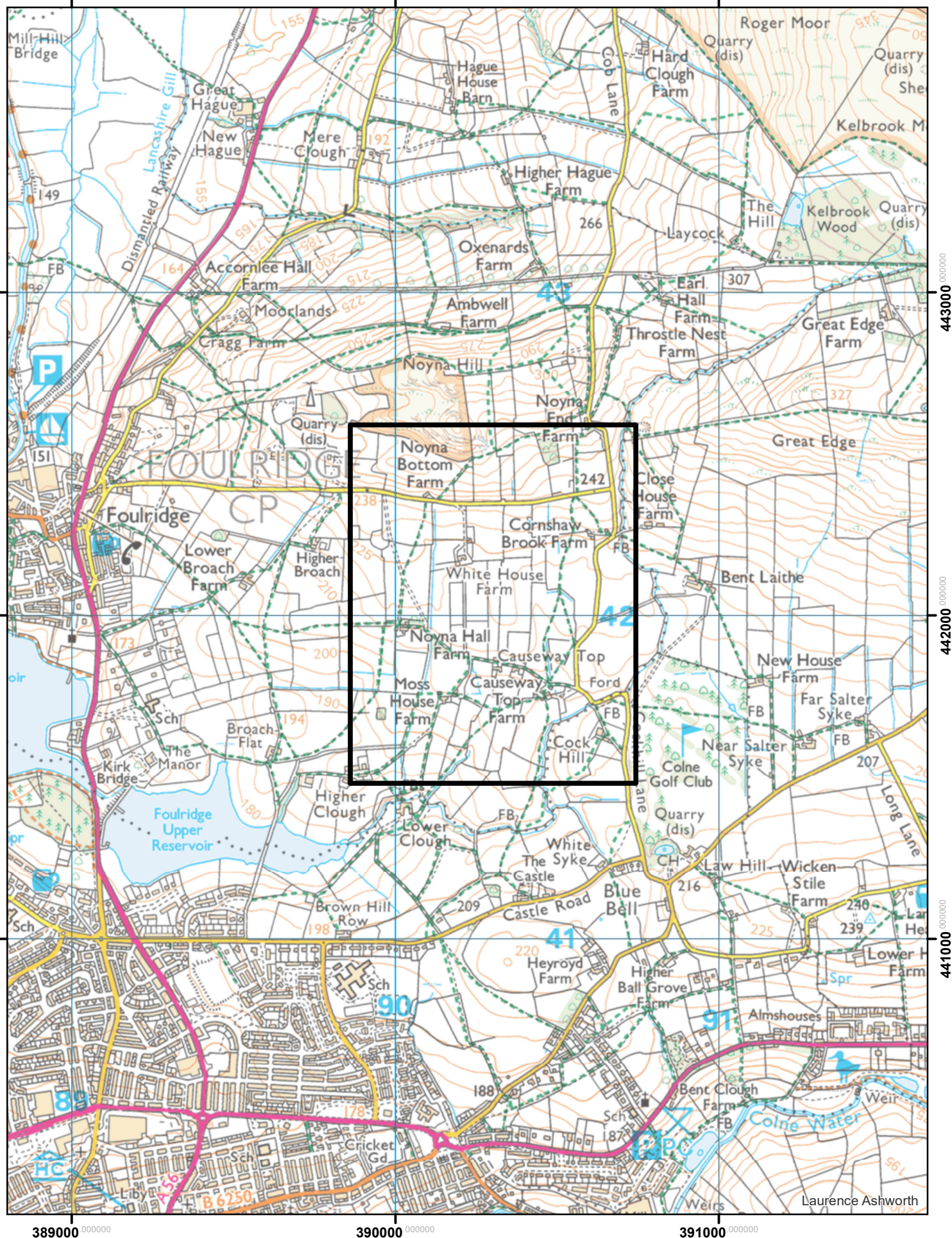




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Wildlife and Countryside Act 1981
Addition of/upgrade to public bridleway of a route
from Noyna Road to Cockhill Lane, Foulridge,
Pendle

Photographs taken November 2019

Point A



Between point **A** and point **B**





Between point **A**
and point **B**





Between point **A**
and point **B**





Point B



Looking back towards point **A** from point **B**



Point **B** looking towards point **C**





Approaching point C



Point C





Point D





Point **D** looking
towards point **E**



Between point **D** and
point **E**





Between point **D** and
point **E**





Approaching point **E**





Point E





Between point **E** and
point **F**



Point F





Point G



Point G



Point H





Between point **H** and
point **I**



Approaching point I



Point I





Between point I and
point J





Between point I and
point J





Approaching point J





Point J



Between point **J** and point **K**





Between point **J** and point **K**





Approaching point **K**



Point K



Point K



Regulatory Committee

Meeting to be held on 16th September 2020

Part I

Electoral Division affected:
Rossendale South

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpath along dismantled railway line from Strongstry Bridge to Stubbins Station

File No. 804-614

(Annex 'A' refers)

Contact for further information:

Simon Moore, 01772 531280, Paralegal Officer, County Secretary and Solicitors Group, simon.moore@lancashire.gov.uk

Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning & Environment Group, jayne.elliott@lancashire.gov.uk

Executive Summary

Application for the addition of a Footpath from Footpath Ramsbottom 45 north of Strongstry Road along the dismantled railway to Stubbins Vale Road (U3623) at Stubbins Station and shown on the Committee plan between points A-B-C-D-E-F-G-H, in accordance with File No. 804-614.

Recommendation

- (i) That the application for the addition of a footpath on the Definitive Map and Statement of Public Rights of Way along the dismantled railway at Stubbins Station, in accordance with File No. 804-614, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Footpath Ramsbottom 45 north of Strongstry Road along the dismantled railway to Stubbins Vale Road (U3623) at Stubbins Station on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-B-E-F-G.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a Footpath from Footpath Ramsbottom 45 north of Strongstry Road along the dismantled railway to Stubbins Vale Road (U3623) at Stubbins Station on the Definitive Map and Statement of Public Rights of Way.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order will only be made to add a public right of way to the Definitive Map and Statement if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”

An order for adding a way to or upgrading a way shown on the Definitive Map and Statement will be made if the evidence shows that:

- “the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path or restricted byway”

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

The county council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the county council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the council’s decision may be different from the status given in any original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

Consultations

Rossendale Borough Council

Rossendale Borough Council provided no response to the consultation request.

Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments are included in Advice – Head of Service – Legal and Democratic Services Observations.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	7901 1873	Open junction with Footpath Ramsbottom 45 east of Buckden Cottages
B	7902 1873	Point on tarmac section of dismantled railway from where application route leaves the tarmac to continue south
C	7902 1870	Metal railing fence across application route at Strongstry bridge
D	7905 1852	Point at which the application route leaves the top of the railway embankment to deviate around factory extension
E	7906 1844	Point at which the application route rejoins the top of the railway embankment after deviating around the factory extension
F	7913 1810	Application route turns south east to descend from railway embankment north of subway
G	7911 1809	Application route passes through gap in boundary fence (currently blocked by a blue industrial container)
H	7911 1809	Junction with Stubbins Vale Road (U3623)

Description of Route

A site inspection was carried out in February 2020.

The application route commences at a point on Footpath Ramsbottom 45 east of Buckden cottages and approximately 40 metres north of the junction with Strongstry Road. (Point A on the Committee plan).

From point A the route extends east through a gap in a stone wall along a tarmac path clearly signed as part of National Cycle Route 6. Wooden bollards positioned across the gap restrict the width to exclude cars.

The application route follows the tarmac path for approximately 5 metres onto land which once carried a railway line (now dismantled) at point B. At point B the tarmac

path turns 90 degrees to continue north along the dismantled railway towards Irwell Vale. The application route turns 90 degrees south at this point to go the opposite way along the dismantled railway along a clearly defined but unsurfaced track.

After approximately 30 metres Strongstry Road passes under the former railway which was carried by Strongstry Bridge at point C. Entry onto the bridge is fenced off by what appears to be quite an old metal railing fence. Several of the metal railings can be seen to have been cut out of the fence and it is easily possible to step through the fence at this point and to continue along the application route. Immediately on the south side of the metal railing fence is a second metal fence which has been erected immediately to the rear of the older fence and this has also been cut so that access is available by stepping through the gap in the two fences in one action.

Once through the fences it is possible to continue along the application route over the railway bridge and south along the dismantled railway on a clearly defined track with evidence of recent use (footprints in the mud). Approximately 30 metres from the bridge a small trench has been cut across the full width application route. It is possible to step across the trench – which exposes fresh earth and appears to have been recently cut - to continue along the application route to point D.

At point D the application route descends east from the top of the railway embankment down a set of wooden steps to run along the bottom of the railway embankment adjacent to fencing separating it from the East Lancashire Railway - for approximately 60 metres before then ascending the slope via a second set of wooden steps to re-join the former railway track at point E.

From point E the application route continues south along the top of the dismantled railway for approximately 350 metres to point F where a fence is positioned across the dismantled railway immediately prior to a subway which passes underneath and formed the original access to Stubbins Station. From point F the application turns to continue in a west south westerly direction alongside the wall of the subway to descend to point G where a large blue industrial metal container has been positioned across the route to prevent access. Signage on the fencing adjacent to the container states that no unauthorised persons are allowed beyond that point and that for their own safety persons should not enter due to the occurrence of fallen tree branches. Beyond the blue metal container the application route continues for a short distance to point to the junction with Stubbins Vale Road (U3623).

Whilst access onto the application route was not available to or from the application route at point H local dog walkers passing the site directed the Investigating Officer to a gap in the fencing to the rear of a War Memorial just north of point H which they explained had been used to access the route since it was blocked at point G.

From the site inspection it appeared that a substantial trodden track had existed along the full length of the application route consistent with the user evidence and that frequent recent use was still being made of most of the route, except at point F where it was blocked.

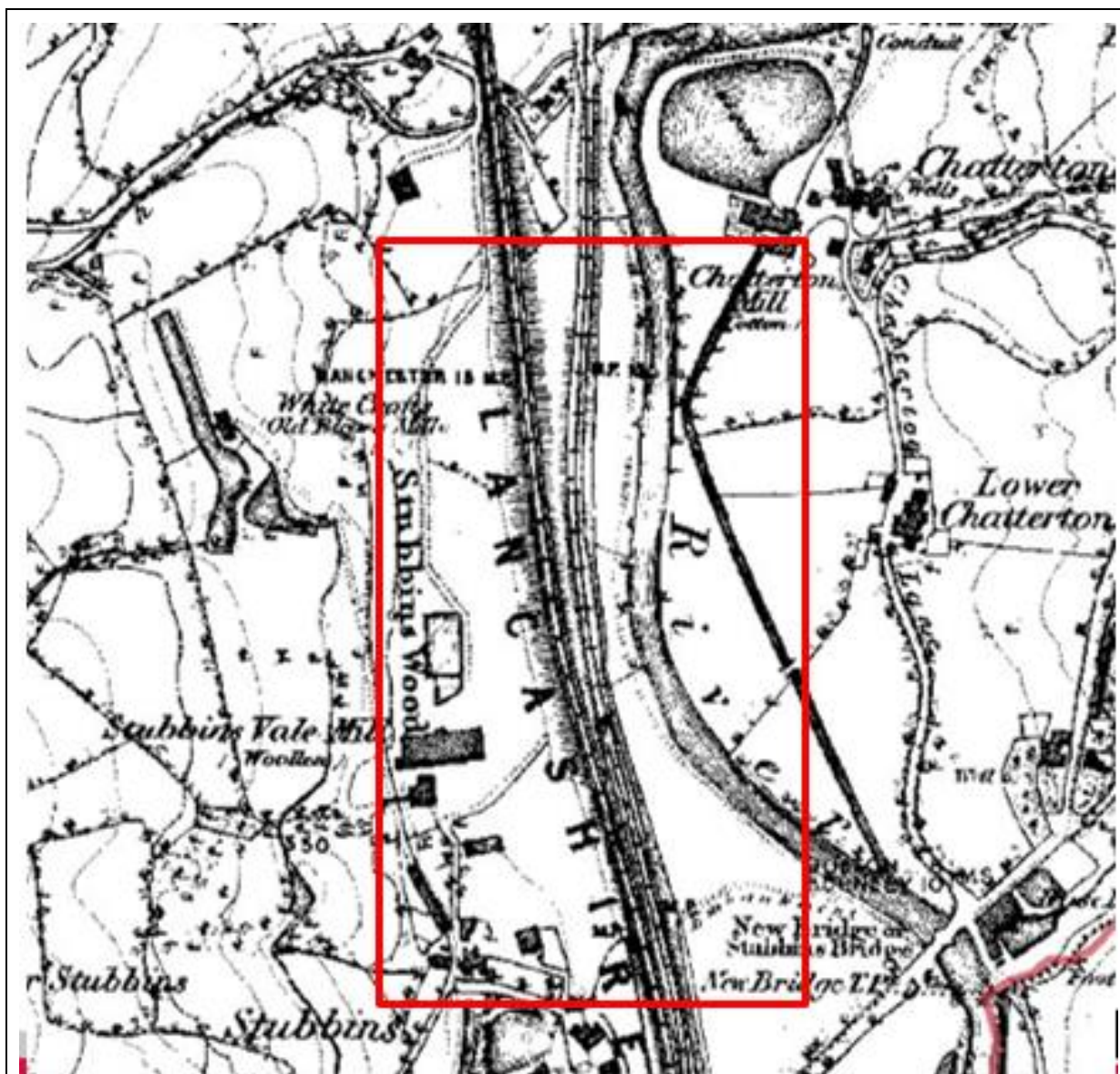
Map and Documentary Evidence

The application under consideration relates to the addition of a footpath along the former track bed of the former East Lancashire Railway which was opened in 1846. The railway between Ramsbottom and Accrington ceased to operate in 1966 and the track bed removed in approximately 1970-1972.

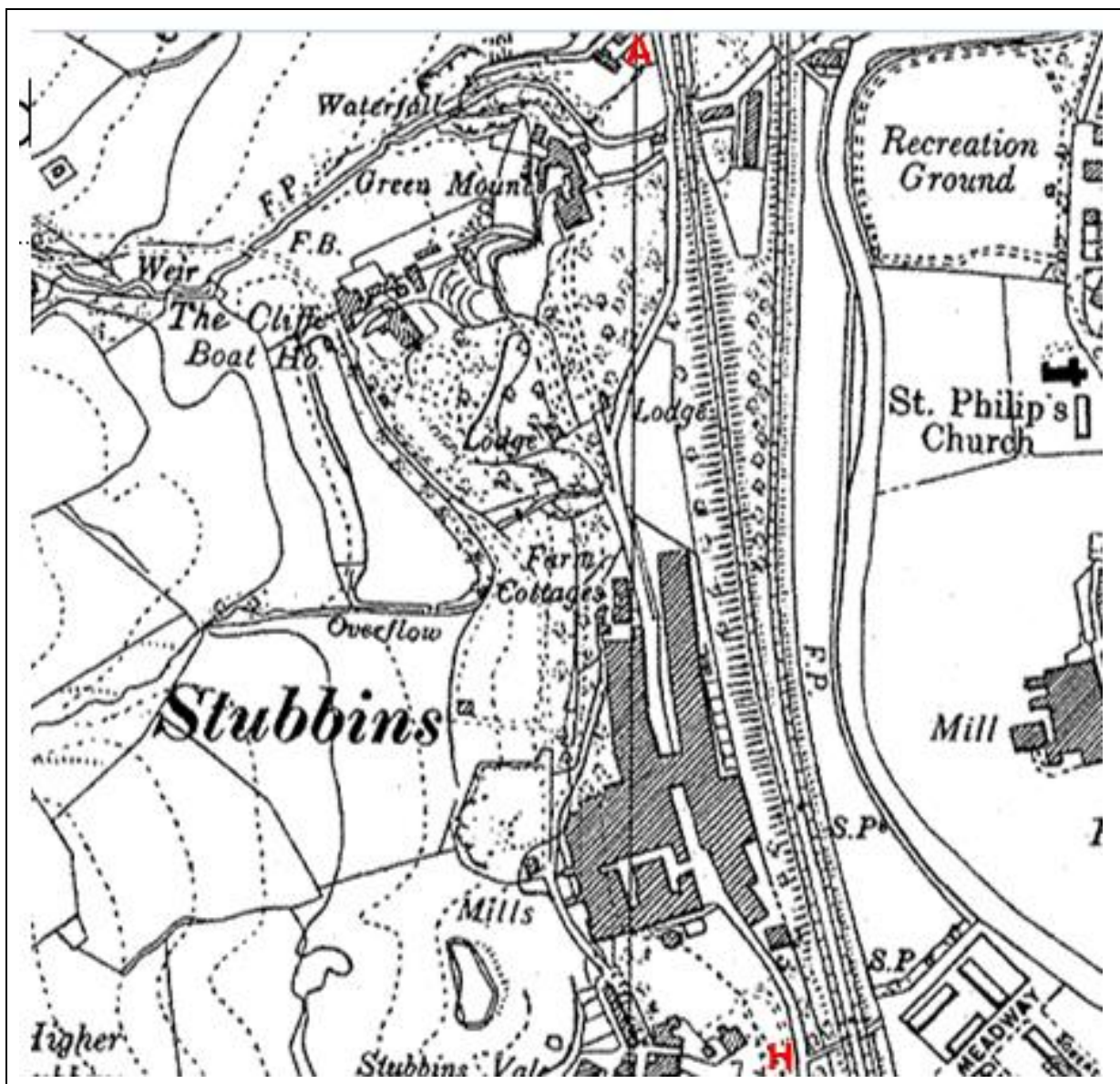
There is no claim that the application route existed as a footpath prior to the closure of the railway and removal of the railway track and for that reason many of the usual maps, plans and other documents which would normally be examined are not included in this report.

Document Title	Date	Brief Description of Document & Nature of Evidence
6 Inch Ordnance Survey (OS) Map 79	1850	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1850. ¹

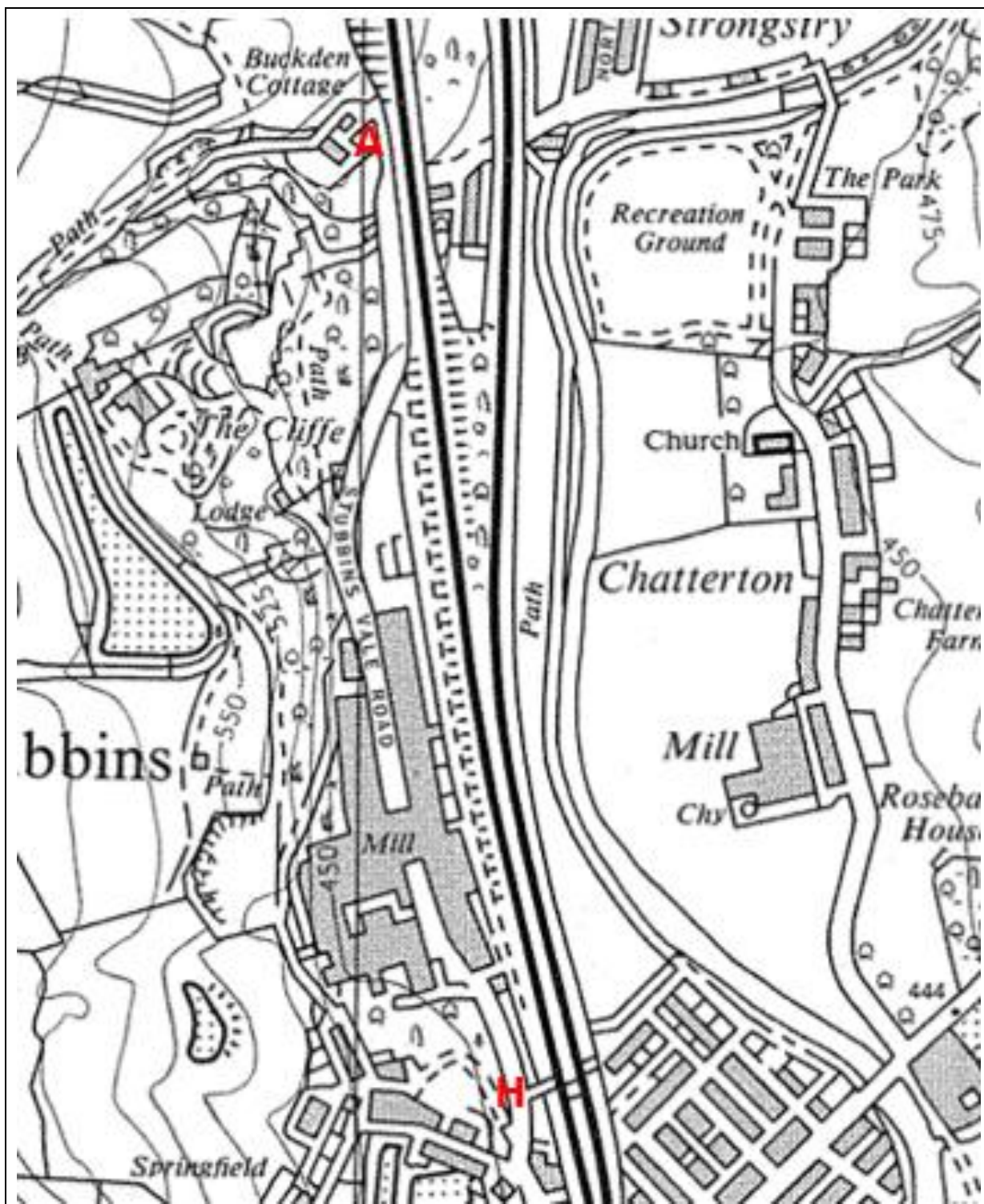
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.




Observations		Included by way of background information - The application route is not shown but the map has been included to illustrate that the railway was in existence from the mid 1800's with no suggestion that the route existed at that time.
Investigating Officer's Comments		The application route did not exist in 1844-47.
6 Inch OS Map Sheet 71NE	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



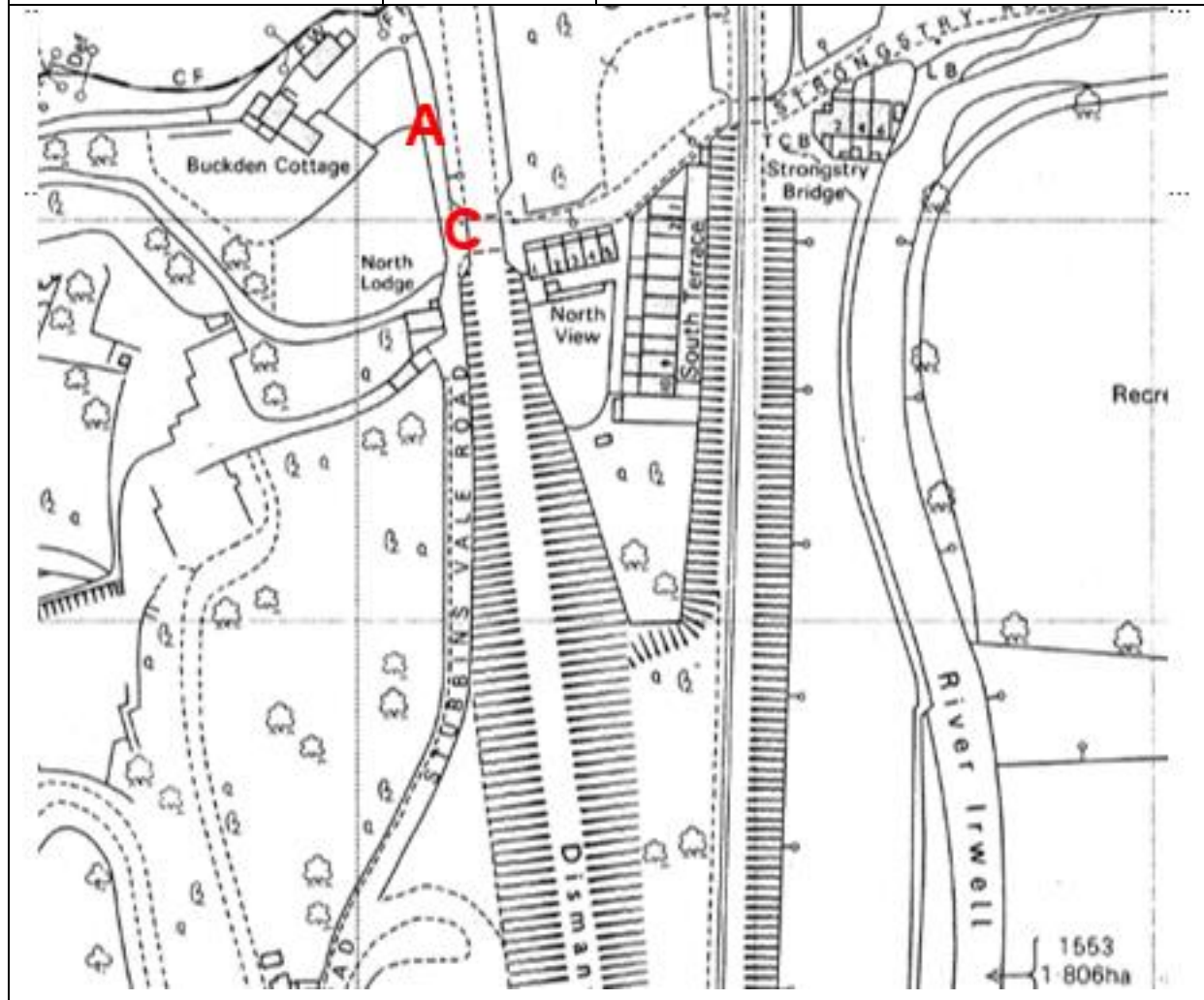
Observations		The application route is not shown and the railway was still in existence.
Investigating Officer's Comments		The application route did not exist when the used as the base map for the Revised Definitive Map was revised in the 1930s.
6 Inch OS Map Sheet 71NE	1964	Further edition of the 6 inch OS map revised 1962-1964 and published 1968.

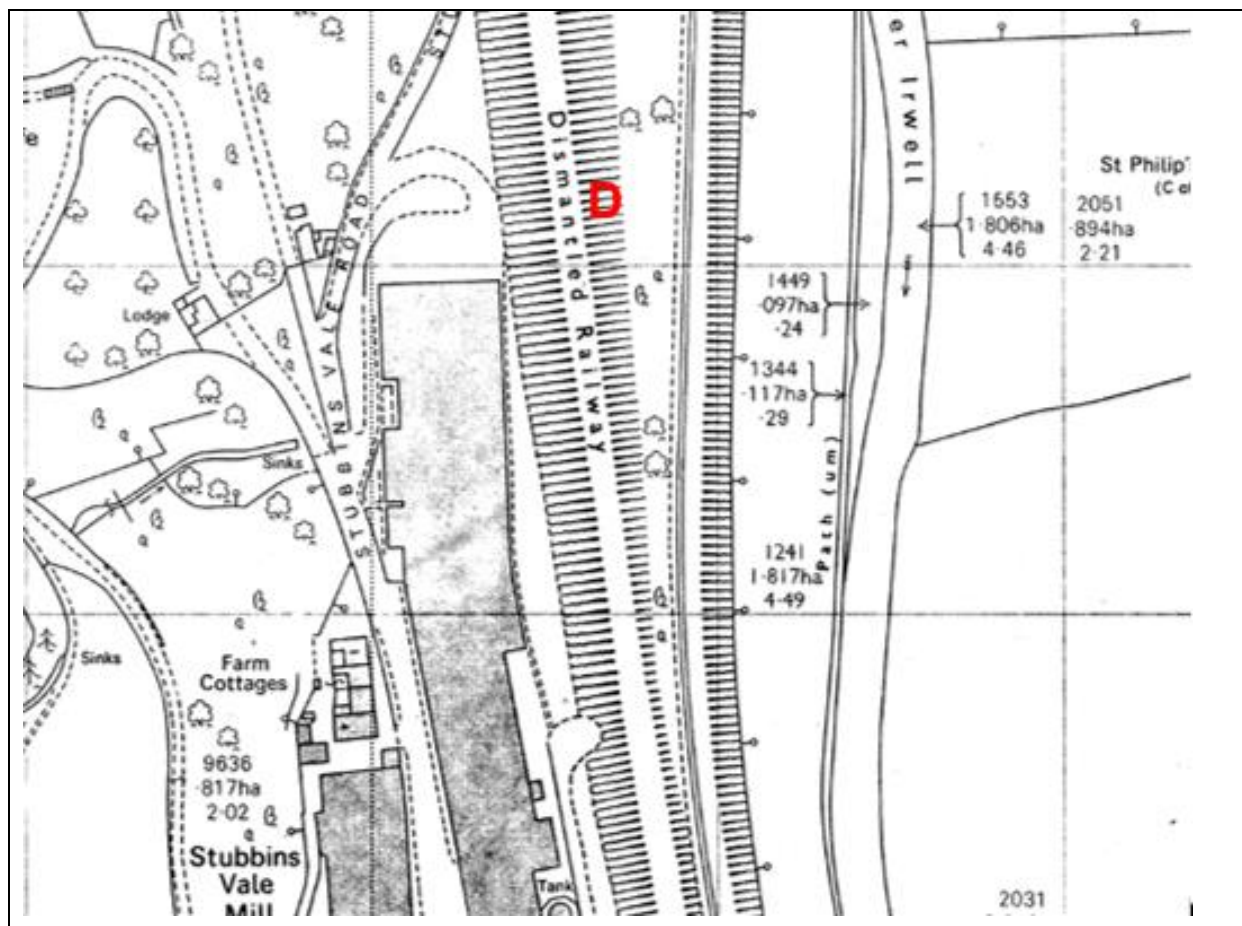


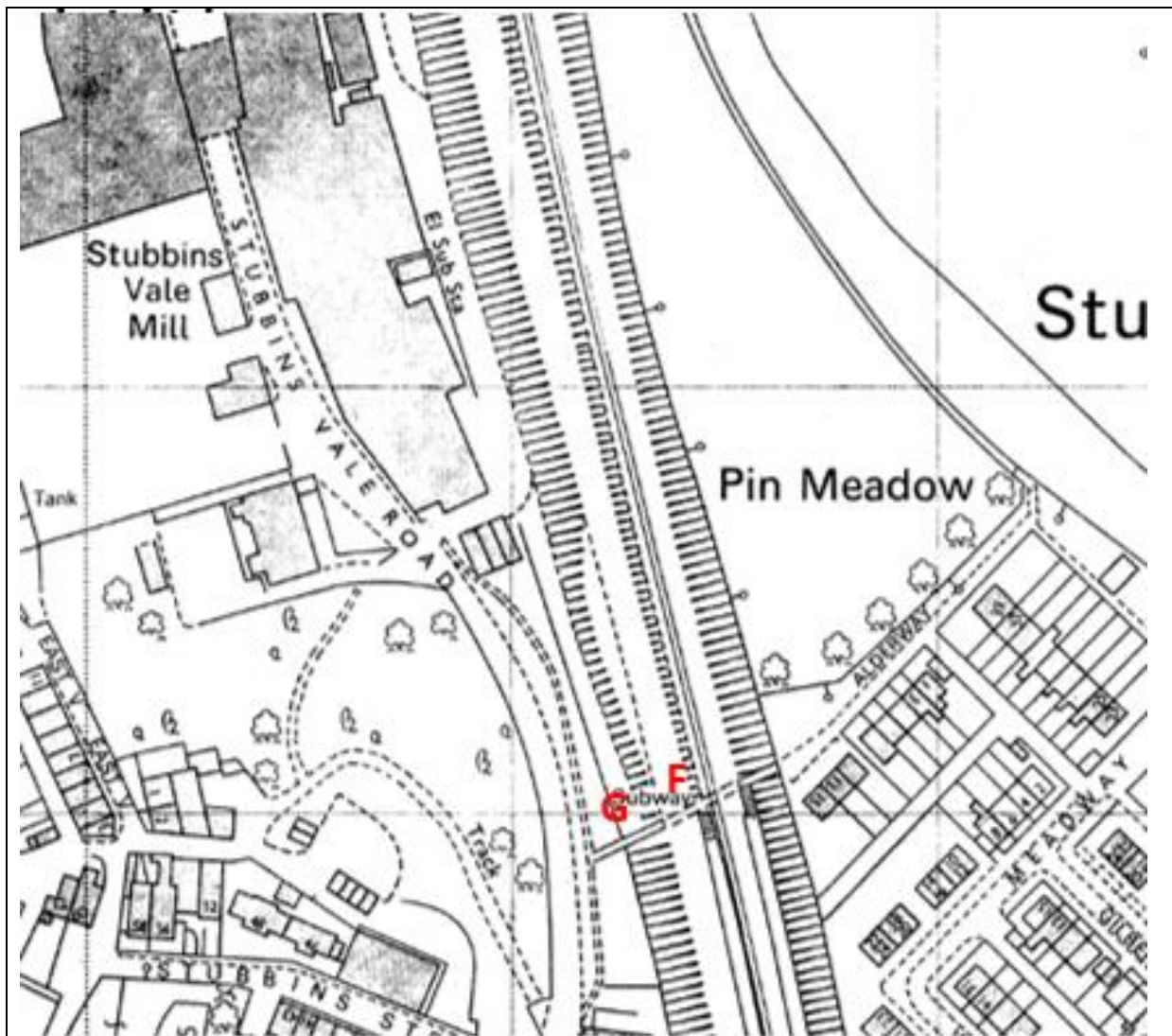
Observations		The application route is not shown and the railway line is still shown to exist.
Investigating Officer's Comments		The application route did not exist in the early 1960s (when the map was revised) immediately prior to the closure of the railway line in 1966.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view

		on GIS.
 <p>The image is a black and white aerial photograph. A railway line runs vertically through the center of the frame. To the left of the railway, there are several large, rectangular industrial or commercial buildings. To the right, there are more buildings, some of which appear to be residential or smaller commercial structures. There are also some open fields and what looks like a small pond or lake on the left side. Two red letters are overlaid on the image: 'A' is near the top left, and 'H' is near the bottom center, just above the railway line.</p>		
Observations		<p>Tree cover means that it is not possible to see in detail the land crossed by the application route. The railway line can be seen clear of trees and it appears that the railway line may still be in existence when comparing it to the railway line which remained unaffected by the closure which</p>

		runs parallel with it.
Investigating Officer's Comments		It is not possible to see from the photograph whether access was available along the application route on foot and no inference can be drawn with regards to the existence of public rights.
1:2500 OS Map SD 7818-7918	1983	Further edition of 25 inch map reconstituted from former county series revised in 1982 and published 1983 as national grid series.





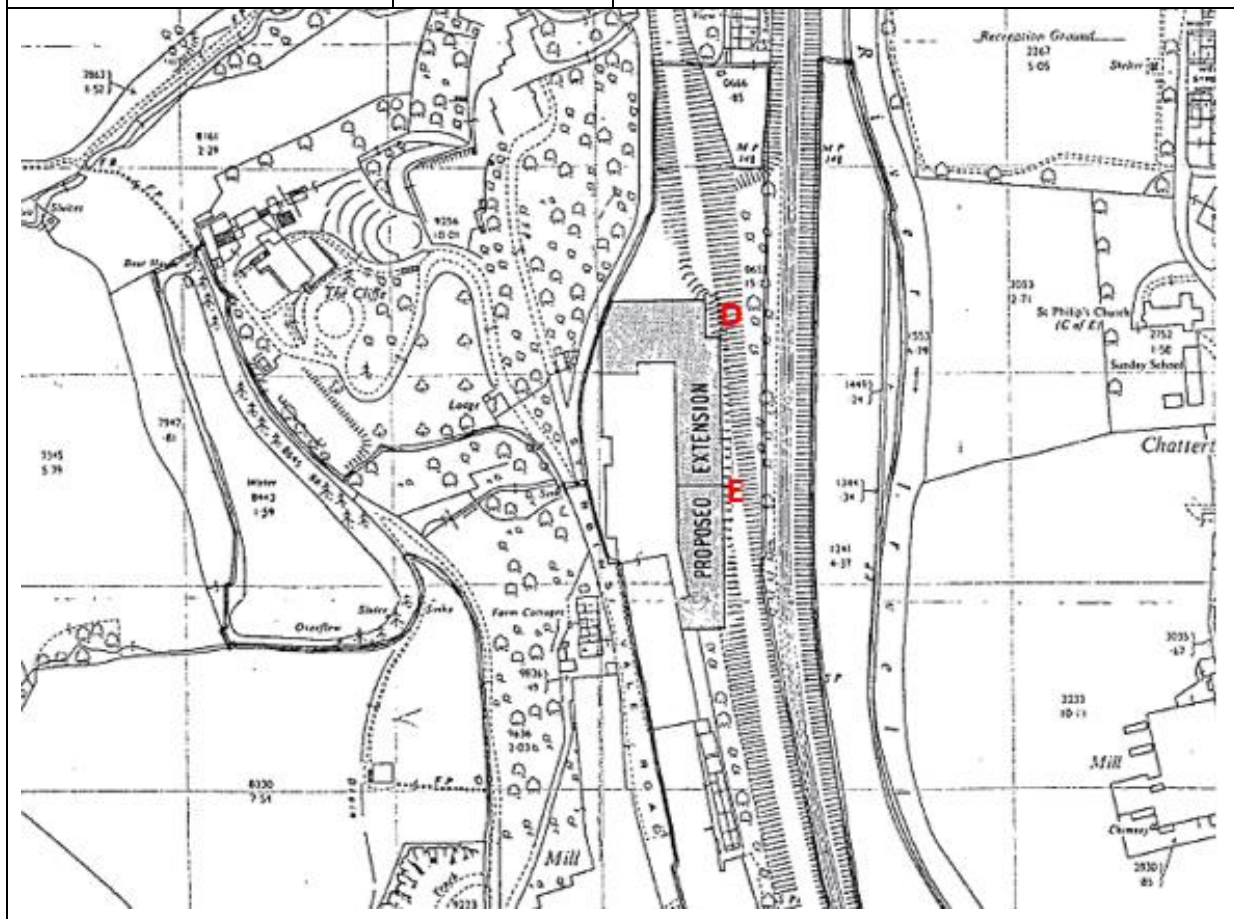


Observations

The application route is not shown. However the railway is shown to have been dismantled. From point A a solid line is shown across the start of the route suggesting the existence of a boundary through which it would have been necessary to be able to pass through. At point C the route is shown to cross the railway bridge. Dashed lines are used to indicate the extent of the bridge structure but there is no solid line which would indicate the existence of some sort of boundary fence across the route.

Between point C and point F a clear strip is shown along the top of the railway embankment with no deviation of the route down the embankment and then back up onto it between point D and point E.

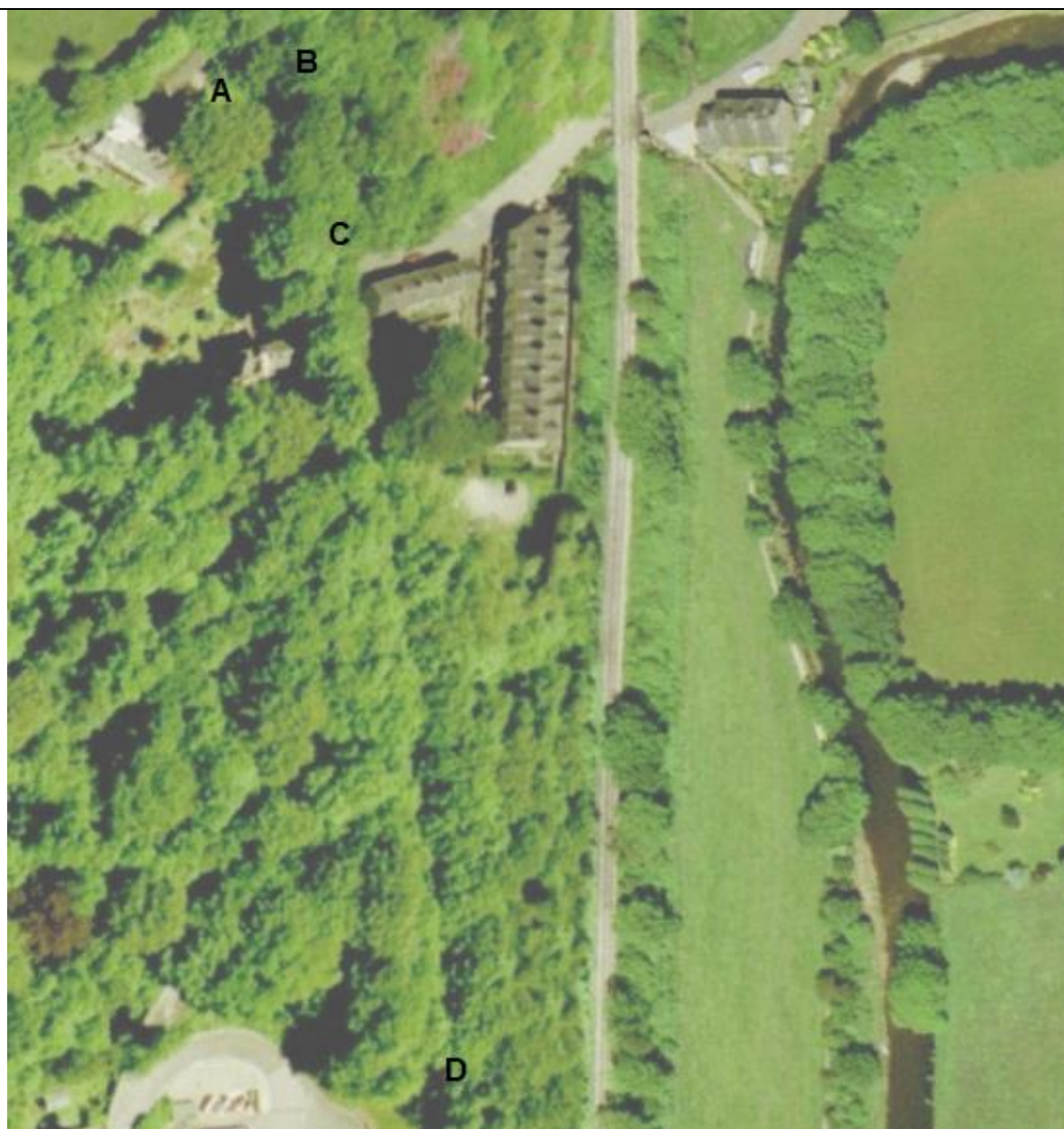
		Between point F and point G no route is shown coming off the top of the embankment and a boundary fence is shown across the route at point G.
Investigating Officer's Comments		<p>This is the earliest OS map examined to show that the railway track had been removed. It looks like it would have been possible to walk the length of the dismantled railway between point C and point F in 1982-3 consistent with the user evidence provided. It also appears that the route at that time would have been along the top of the embankment without a need to deviate off the top of the embankment between point D and point E as the factory to the west of the railway had not been extended at that time.</p> <p>It is unclear from the OS map whether informal access existed onto and off the dismantled railway between points A-B and points F-G-H.</p>
Details of Planning Permission granted to extend Stubbins Vale Mill	1993/1994	Copy of Planning Permission granted by Rossendale Borough Council in 1994.



	project: FACTORY EXTENSION STUBBINS VALE RAMSBOTTOM		
	drawing: LOCATION PLAN		
Observations	drawn:	traced:	<p>The applicant made reference to the application route being diverted and the provision of wooden steps following the granting of planning permission referenced as Application 13/518 to extend Stubbins Vale factory.</p> <p>Enquiries were made to the Borough Council who provided a copy of the Planning Permission granted in 1994. Two plans were attached to the Planning Permission referenced as drawing nos. 96/144/5 and 96/144/5a.</p> <p>Planning permission was granted to extend the factory with associated car parking, servicing and landscaping.</p> <p>A note included in the granting of planning permission stated that the permission should be read in conjunction with a letter from the Agent/Landowner dated 25th November 1993 in relation to the submission of a plan referenced 96/144/9 showing revisions to the yard area and the applicant's willingness to allow the public to 'continue to use the informal footpath along the disused railway</p>
	checked:	approved:	
	print no:	date: 12/10/92	
	SCALE: 1 : 2500		
	date: 2-9-93		
	drawing no: 96 / 144 / 5		

		<p>embankment.'</p> <p>Further enquiries were made to Rossendale Council regarding the letter and plan but the Borough Council were unable to find either.</p>
Investigating Officer's Comments		<p>The extension of the factory resulted in changes to the embankment and appears to have resulted in the diversion of the application route between point D and point E. References to use of the route along the embankment as part of the planning process suggest that it was already in use by the public prior to the request for planning permission in 1993 and supports the user evidence submitted as part of the application. The landowners appear to acknowledge that use had been made of the route along the embankment and accepted continued use along what was described as an 'informal footpath.' However, the knowledge of public use but absence of any mention of a need to divert any rights suggest it was not considered to be a public right of way at the time but that should be taken in the context that at that time public rights of way matters were regarded with less rigour than now.</p> <p>The wording of the missing letter is important as it could have indicated acceptance that rights already existed, dedication of new rights or permission for the public without dedication. Without the letter no particular interpretation can be presumed.</p>
Emails provided by the applicant relating to the provision of steps on the application route		<p>Emails were submitted by the applicant in support of the application.</p>
Observations		<p>The applicant explained that emails from senior employees of Voith demonstrated the previous owners of the lands consent to public access and works undertaken (construction of the steps) to facilitate access.</p> <p>The email referred to was from Harry Storey who, it is explained, worked at Voith 'for many years' and was sent to</p>

		<p>Andrew Rothwell who also worked at Voith. In the email Harry Storey explained that the steps were put in for public use, due to the bridge being unsafe at the Strongstry end. He also explained that the railway was for public use to walk on and that the company gave permission for people to walk across the car park instead of them coming down further on.</p> <p>As part of the investigation of this application the Investigating Officer contacted Harry Storey who explained that he worked at the factory from 1969 to 2010 and was Operations Manager from 2000- 2010.</p> <p>Contact was also made with Andrew Rothwell who also worked for Voith who confirmed that the steps referred to in the email from Harry Storey were the ones along the old railway between points D and E on the Committee plan and that permission was given for walkers 'etc.' to use the rear carpark of what was Voith instead of using the old Railway path if they so desired. He observed that the footpath (application route) had been used for more than 20 years by mill workers on lunch breaks, people out for a walk and also dog walking. He also commented that there was also a path that led from the bottom of the steps D and E that took a course along the side of the railway and exited at the rear of the houses in Strongstry which was also used by the residents of Strongstry.</p>
Investigating Officer's Comments		<p>The emails and further information provided detail knowledge of use by the public by former employees of the landowner and an understanding that use of the route was accepted by the landowner who provided steps to assist the public and also gave permission for the route to be accessed from an additional point via the factory carpark.</p>
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		The photograph was taken during the summer months when the trees were in full leaf and it is not possible to see the application route in any detail.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Photographs supplied by county council project officer	2007	An officer currently working on various cycleway initiatives within the county was consulted about the application and provided a series of photographs of the application route taken in 2007. He explained that in 2007 he worked in the 'Remade' team which was part of the former Environment and planning Directorate.

		The photographs were taken when the remade team where undertaking a feasibility study into the creation of a promoted cycleway along numerous sections of the dismantled railway including the application route.
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Photograph 1 - Point A



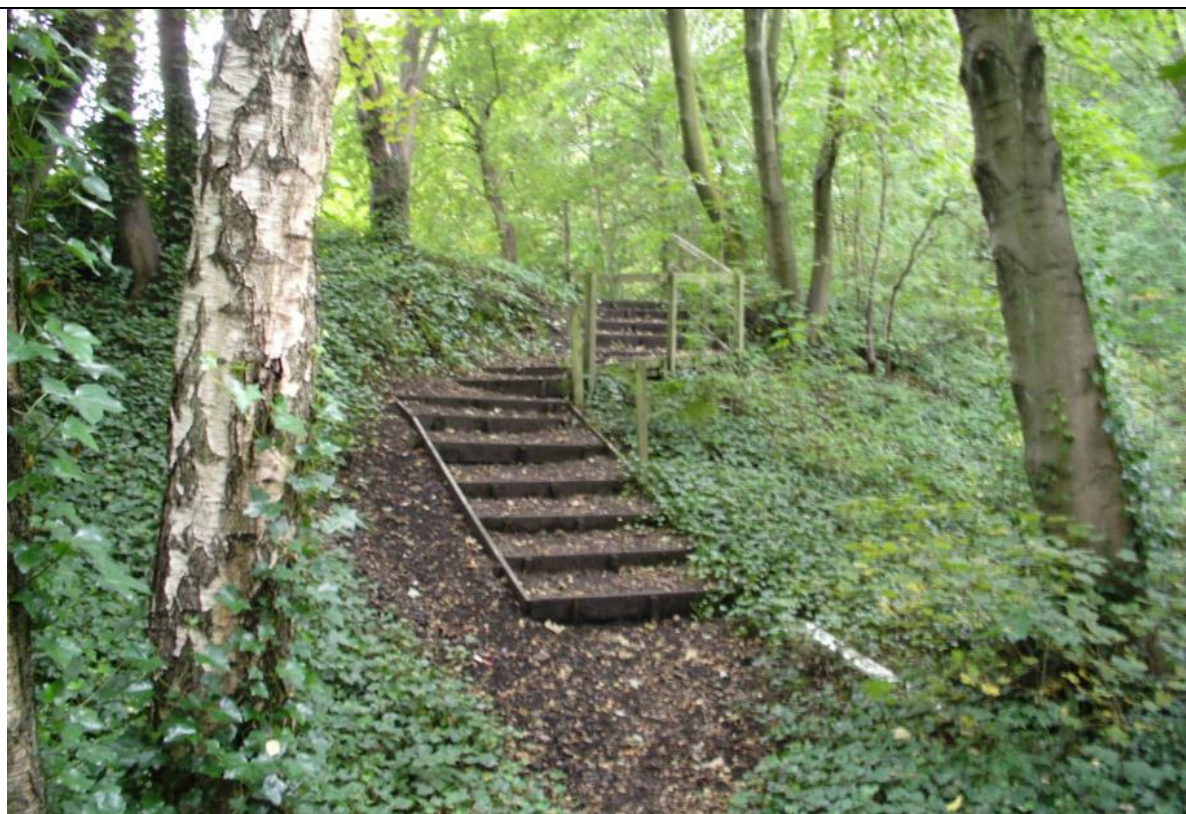
Photograph 2 - Between point B and point C



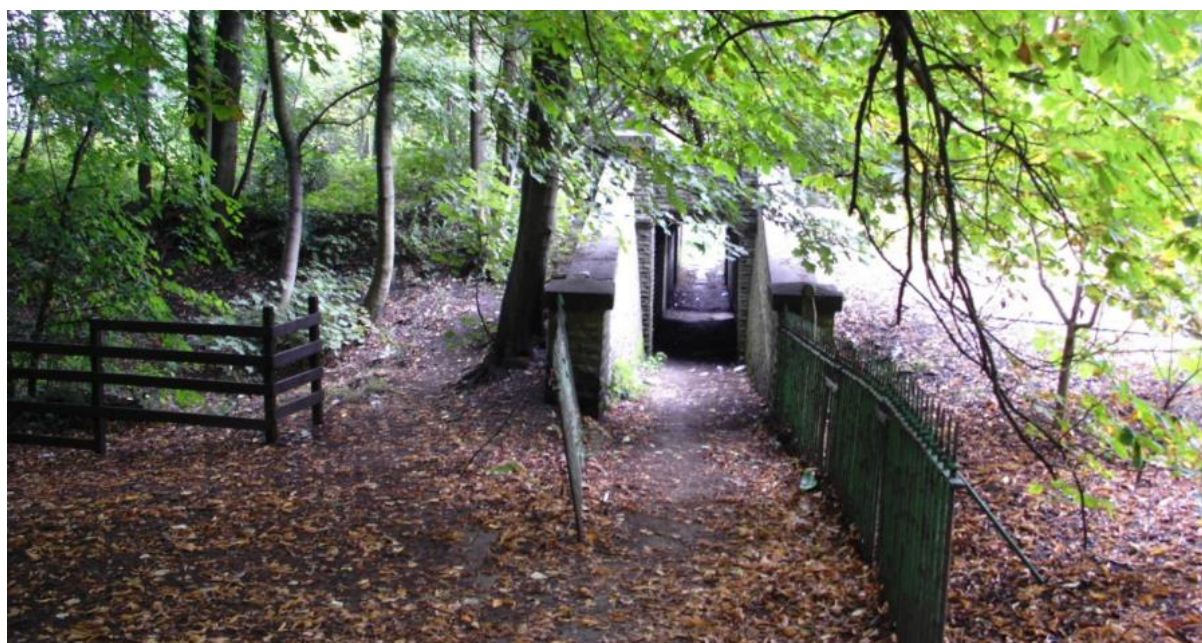
Photograph 3 - Fence at point C looking towards point B



Photograph 4 - Steps from point D



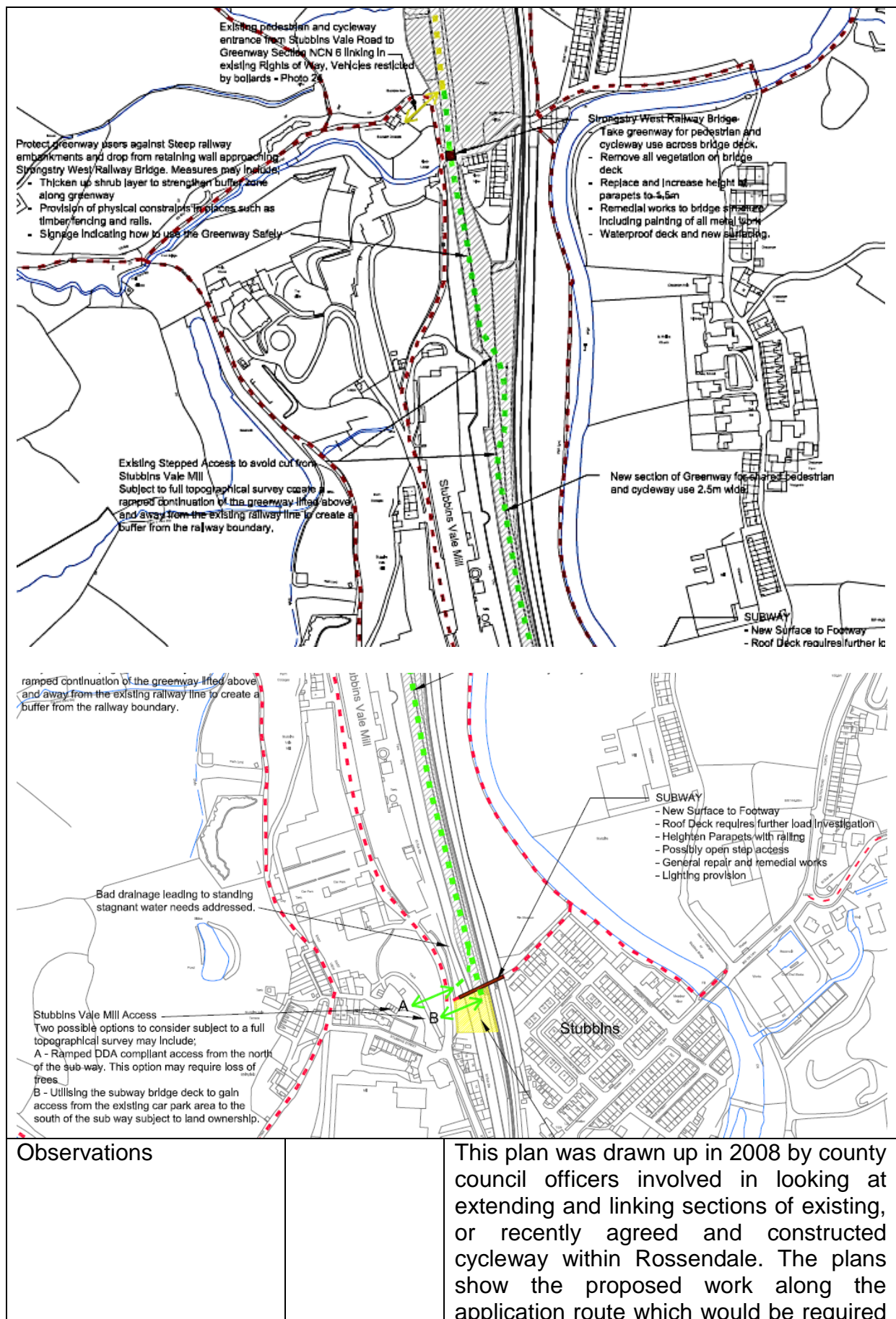
Photograph 5 - Steps looking back towards point D



Photograph 6 - Point G

Observations

Photograph 1 shows the application route at point A. The tarmac cycle route leading north towards Irwell Vale was already in existence and signed as a cycle route at that time. The application route from point A to point B appeared open and available to use and from point B heading south



		to provide a 2.5 metre wide shared access (walkers and cyclists) path which would then be incorporated into the National Cycleway Route. The plan refers to the existing stepped access between point D and point E but makes no specific reference to whether the application route was currently in use or its believed status other than the fact that it was not shown on the plan as a public footpath.
Investigating Officer's Comments		<p>The fact that the application route was not shown on the plan as a public footpath is not surprising as it is not recorded as one on the Definitive map and Statement.</p> <p>Discussions to construct the route as a cycleway or 'Greenway' do not necessarily mean that the route was not already considered to be a public footpath – or could not become a public footpath – as the project was looking specifically at creating a promoted route open to cyclists which would be physically constructed to a high standard. Many existing public footpaths were utilised as part of the cycleway/greenway project at this time.</p> <p>The project officer involved in the scheme at the time explained that whilst much work was undertaken on the ground from the 1990s through to more recently the public legal status of the routes constructed often wasn't recorded.</p> <p>Concerning the application route itself the project officer recalled that in 2007-08 there already appeared to be significant use of the application route on foot. He explained that although the landowners at that time (Voith) agreed in principal to the construction of the greenway/cycleway this was never progressed for financial reasons and that it was deemed a low priority due to the fact that there was a good alternative to the application route via Stubbins Vale Road which was owned by the county council and, at that time, received very limited use.</p>
Remade photograph	2008	Photograph taken by county council project officer in 2008.



Observations		The photograph shows the fence across the route at point C and shows more clearly than the photographs taken a year earlier the gap cut in the fence to allow access.
Investigating Officer's comments		A gap existed in the fence at point C allowing access along the route in 2008 and supports the user evidence submitted from members of the public claiming to have used the route.
Aerial Photograph	2016	Aerial photograph available to view on GIS.





Observations		The photograph is of very limited evidential value due to the fact that the route is obscured by tree cover. However, particularly between point A and point D a fine line can be seen in the trees consistent with the line of the application route.
Investigating Officer's Comments		Taken with all other available site evidence the application route probably existed in 2016 although it is not possible to confirm from the aerial photograph whether access was available along the full length.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any</p>

		correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The application route is within Ramsbottom which was a municipal borough in the early 1950s so a parish survey map was not compiled.
Draft Map		The Draft Maps were given a "relevant date" (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The application route was not shown on the Draft Map and no objections or representations were made to the county council about it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for

		inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not shown on the Provisional Map and no objections or representations were made to the county council about it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown on the First Definitive Map although this is not surprising as the railway was still in existence in the 1960s and there is no suggestion that the application route came into existence until the closure of the railway and removal of the track in the early 1970s.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Observations		The application route is not shown on the Revised Definitive Map.
Investigating Officer's Comments		From 1953 through to 1973 there is no indication that the application route was considered to be a public right of way by the Surveying authority. There were no objections or representations from the public to the fact that the route was not shown when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map. The fact that the application route is not shown is not surprising because the railway was still in existence in the 1960s and there has been no suggestion that the application route came into existence until the closure of the railway and removal of the track in the early 1970s.
Highway Records	Adoption including	1929 to present day
		In 1929 the responsibility for district highways passed from district and

<p>maps derived from the '1929 Handover Maps'</p>		<p>borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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Observations		The application route is not recorded as being publicly maintainable on the List of Streets by the county council and that part of the application route between point A and point B which comprises of part of the tarmac surfaced cycle route promoted as part of the National Cycleway has no recorded public legal status.
Investigating Officer's Comments		No inference can be drawn regarding public rights.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having

		<p>been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no Highway Act 1980 Section 31(6) deposits lodged with the county council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by any landowners under this provision of non-intention to dedicate public rights of way over their land.
Photographs of the application route in use		The applicant submitted a number of photographs said to illustrate the fact that the application route had been used by families and railway enthusiasts in the past.



Photograph 1



Photograph 2



Photograph 3

Observations		<p>Several of the photographs were submitted by an individual who had completed a user evidence statement (Ann Howard) including those reproduced as photographs 1 and 2 above. Mrs Howart explains that the picture of the snow was taken in 1996 and the other photograph dated from the early 1990s.</p> <p>It is not possible to pin point exactly where on the route either photographs were taken.</p> <p>Photograph 3 is undated and shows a person leaning over a fence to take a picture of the East Lancashire Railway. It is not possible to be sure of the exact location but could have been between point D and E on the application route.</p>
Investigating Officer's		The photographs were submitted to

Comments		illustrate use of the application route. Whilst they may help provide useful supporting information – particularly when read in conjunction with completed user evidence forms – on their own they are of little value as it is unclear exactly where they were taken or whether the person taking the photograph or using the route was doing so with permission or in the belief that the route was a public right of way.
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land. Between point A and point C the land crossed by the application route has been designated as a biological heritage site by the county council.

Landownership

The land crossed by the application route between point A and point C is in the registered ownership of Michael Robert Lord of three different addresses in Canterbury, Germany and Rochdale. The land was purchased in March 2017 and is subject to the requirement to maintain a stock proof fence long part of the boundary referred to as A-B-C (or X-Y-Z) in the title documents and shown on the title plan. This corresponds to the erection of a stock proof fence across the application route at point C.

Covenant included in Title LA858164:

The following are details of the personal covenants contained in the Transfer dated 14 January 2000 referred to in the Proprietorship Register:-

"Within one month of the date hereof the Transferee will erect a stockproof fence between the points A-B-C on the plan annexed hereto and shall thereafter maintain the same in good repair"

NOTE: The points A-B-C referred to are shown marked X-Y-Z in blue on the filed plan.

The application route from point C through to point H is owned by Melba Products Limited who purchased the land in May 2019. A similar requirement to maintain stock proof fencing in the proximity of the railway is included in the Title document (LA 444612) with reference to lettering A-B-C and D-E but the Land Registry plan does not include any lettering to confirm the locations referred to.

Lancashire County Council own Stubbins Vale Road (LA 706148).

Summary

The application relates to use of a dismantled railway and is based primarily on the submission of a substantial amount of user evidence. Map and documentary

evidence confirms the existence of the railway and the fact that the rails were still in situ until the early 1970s and the earliest OS map to show the railway as having been dismantled was published in 1983 (having been revised in 1982).

Of significance is the fact that in 1993 the company owning the land crossed by the application route applied for planning permission to extend Stubbins Vale Mill and in doing so would interfere with the railway embankment along which the application route ran. Unfortunately much of the correspondence relating to the granting of planning permission could not now be found but it did appear that there was already use of the railway line by that time by the public and that the company acknowledged this use, agreed to it continuing and appear to have been responsible for the construction of wooden steps in diverting the original route to allow for their factory extension.

The exact date that the steps were constructed is not known but it believed to have been soon after planning permission was granted and reference to the path being closed while work was carried out and the path re-routed appear to pre date the twenty year period back from when the route was blocked off by the current landowner.

Photographic evidence from the 2007-2008 shows the route very similar to how it was when the Investigating Officer inspected the route in 2019 and the gap in the metal railing fence at point C appears to have been the accepted point of access.

In summary, the available map, documentary and photographic evidence, together with the recollections of the route from the county council project officer looking at the creation of a cycleway along the route, supports the evidence of use submitted.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The Applicant provided the following supporting information:

1. A map extract marking existing 'paths' and marking the locations of the obstructions placed on the application route in November 2019 (at points C and G on the Committee plan).
2. A Map showing the route of the 'proposed' DMMO.
3. Emails from senior employees of Voith said to demonstrate the previous landowners consent to public access and works undertaken (steps created) to facilitate that access.
4. Photographs of the steps installed by the previous owner to facilitate 'public' access.
5. Evidence of the strategic intent by Local Authority to designate the path as a cycle route once funding was available, and creating section 19 of the National Cycling Network Route 6.
6. Seven user evidence forms (forms provided by Lancashire county council).
7. Pictures of the application route in use by families and railway enthusiasts.
8. Forty Eight user evidence forms (forms provided by Ramblers Association)

9. Photographs of the blue metal industrial container used to block the application route at point G in November 2019.
10. Minutes of Residents Association meetings discussing attempts to communicate with and co-operate with the new owners of the land.

Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1984 and up to 2019 when the application to record the right of way was made.

20+ Years Including the years (1999 to 2019)	1-19 Years	Not Specified
27	26	2

Frequency of Use

The majority of the 55 users stated that they used the route weekly or daily with five stating that they used the route more than once per day. One user simply specified that they used the route 'regularly' and two did not specify.

More than once daily	Daily	Weekly	Monthly	Yearly	'Regularly'	Not Specified
5	9	27	10	1	1	2

Reasons for Use

Of those who specified their reason for using the route, the most common answer was for dog walking. Others noted scenic walks and leisure and one user stated that they used the route for commuting in addition to recreation.

One user stated use on horseback in addition to use on foot and one stated use on bicycle in addition to use on foot.

Other Users of the Route

Seven users recorded having seen others using the route, three stated this to be constant during their own use, one stated the route was popular, one that they saw others daily and one stated that they saw others frequently. One did not specify how frequently they saw others using the route.

Of these seven all recorded others using the route on foot, three recorded use by others on bicycles and two recorded use by others on horseback.

Consistency of the Route

The majority of the 55 users stated that the route had always followed the same route, of those nine users stating the route had changed most cited a redirection

Has the Application Route Always Followed Same Course?			
Yes	No	Don't know	Not Specified
42	9	2	2

using steps built in 1994, one mentioned diversion of the route due to a fallen tree.

Unobstructed Use of the Route

None of the 55 users recalled having been prevented from using the route.

All but one of these users had seen no signs or notices restricting or prohibiting access on the route. The one user who did acknowledge signs along the route was highlighting those erected in 2019 with the blocking of the route, which prompted the application

Fifty users were aware of no stiles or gates along the route; three responded that they did not know.

Most users did not specify having seen obstructions on the route, of the thirteen that did twelve referenced railings at Strongstry Bridge, which have been opened up. One user suggested this opening was made in the 1990s, another stated that it had been open since 2005. The applicant states that the previous landowner created the opening in the fence.

The one remaining user who recorded an obstruction referred to barriers erected during the construction of the steps, which diverted the route circa 1994.

Route Obstructed		
Yes	No	Not specified
13	1	41

Information from the Landowners

Melba Swintex responded to the consultation, first confirming their landownership.

In relation to the application route they highlighted unstable vegetation which they believe to be a hazard and could lead to potential injury claims. They noted steel fencing originally erected at either end of the route by the previous occupants in order to prevent public access and stated that this fencing was cut down without permission.

Melba Swintex included a letter from the Managing Director of Voith, the previous occupants of the site, explaining that Voith did not give consent for the public to walk

across the land and they did in fact experience issues with public trespassing over the land.

Melba Swintex acknowledged that they had blocked the route and cited health and safety concerns. They stated that steel fencing was erected at either end of the path to deter trespassing, along with warning signs indicating that the land was private and that any access to the public was prohibited. They noted that within a matter of days this fencing was cut down. Melba Swintex further stated that none of its personnel had been approached about the footpath before this occurred, and furthermore they experienced further trespassing onto the property. They noted that as a result of this they once again blocked off the path with a much more substantial barricade.

Mr Martin Lord also responded to the consultation, first confirming his landownership. Mr Lord went on to note that his land was crossed by an 'unadopted footpath' which forms part of National Cycle Network route 6.

Mr Lord drew attention to the requirement to maintain a stock proof fence long part of the boundary referred to as A-B-C (or X-Y-Z) in the title documents and shown on the title plan. This corresponds to the erection of a stock proof fence across the application route at point C. When asked for further details relating to the hole in this fence Mr Lord was not able to identify who had opened it despite efforts to establish this through prior investigations.

Mr Lord passed on information provided by the secretary of the Strongstry residents association who estimated that the hole in the old fence had been created approximately 15 - 20 years ago.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- Substantial user evidence.
- Absence of signs and notices along the route stating that the route was not public prior to 2019
- Absence of action taken by landowners to discourage use of the route.
- Map and other documentary evidence supporting the physical existence of the route since at least the 1970's.
- Provision of alternative access via steps when part of the original route was affected by development in 1994.

Against Making an Order(s)

- Access along the route for at least part of the time period was via a hole cut in a fence across the route at point C.

Conclusion

The application is that the route A-H has already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way. The majority of the users claim that the route has always followed the same route apart from 9 users who acknowledge the fact that the route did alter slightly in 1994 when the then factory owner constructed wooden steps to enable the public to continue to use the route after they had implemented the provisions in the 1994 planning permission.

As there is no express dedication Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Considering initially whether there are circumstances from which dedication could be inferred at common law. It is advised that Committee has to consider whether evidence from the maps and other documentary evidence coupled with user evidence indicates that it can be reasonably inferred that in the past the landowner(s) intended to dedicate the route as a public right of way.

The analysis of the map and documentary evidence indicates that the route did not physically exist prior the closure and subsequent dismantle of the railway line in 1970/72.

Sufficient as of right use agreed by the owners may be circumstances from which dedication can be inferred. The previous landowner has acknowledged that members of the public did use the route in 1993. Planning permission granted in 1994 to extend Stubbins Mill refers to the application route being diverted and the provision of wooden steps being constructed to assist public use of the route while the mill yard was redeveloped. Such actions by the then landowner demonstrates that in 1993 the applicant had knowledge of the public using the route and further showing a willingness to allow the public to 'continue to use the informal footpath along the disused railway embankment. Such acknowledgement of public use of the route in 1993 is consistent with the period of use detailed in the user evidence forms.

However, the wording of the missing letter which was to be read in conjunction with the planning permission is important as such letter could indicate acceptance that public rights existed, the dedication of new rights or permission for the public without dedication. Without the letter no particular interpretation can be presumed.

From looking at the user evidence it would appear that there has never been any clear action by previous owners to prevent use by the public and use by the public has continued for many years such that, on balance, there may be sufficient evidence from which to infer dedication at common law.

Looking next at the criteria for a deemed dedication under section 31 of the Highways Act 1980, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a sufficient 20 year period

immediately prior to the route being called into question. In this matter, the evidence indicates that access to the route was obstructed in November 2019, therefore the 20 year period under consideration for the purposes of establishing deemed dedication would therefore be 1999-2019. As the 20 year period of use we are concerned with commences after the construction of the steps in 1994 the fact that 9 users recall using the "original" slightly different route up to 1994 is not relevant as such time period falls outside of the 20 year period under consideration.

The applicant has provided 55 user evidence forms in support of the application which refer to use of the route from as early as 1984. 27 users have provided evidence of use during the period under consideration. A number of users have made reference to having witnessed other users whilst using the route themselves. 27 of the users claim to have used the route on foot weekly and 9 users claim to have used the route daily and 5 users claim to have used the route more than once a day with all claiming to have used the route 'as of right'.

None of the users recall having ever been told that the route was not a public right of way, nor do any users refer to having been turned back or having asked permission to use the route. It is therefore suggested that there is sufficient evidence of use of the claimed route by the public as of right to raise a presumption of dedication for the period 1999-2019.

Evidence has been submitted regarding the requirement to maintain a stock proof fence across the route at point C. Site evidence, photographs and maps all confirm the existence of this fence but also show that the fence – which clearly existed in 2008 – had a section removed which made it possible for pedestrians to pass through it. None of the users providing evidence appear to have considered this fence to have been erected to prevent them accessing the route or appear to consider that by stepping through the gap in the fence they were using a route that they had no right to use. Arguably the person who actually created the gap, if it was one of the users of the way, should be discounted from evidence of use because it was not 'nec vi' (without force) and therefore was not 'as of right'. However, other people subsequently stepping through the gap were doing so as of right and the fact that use continued could suggest a strength of belief that users had a right.

A current Landowner has expressed concerns with regards to how this application may cause health and safety issues over their land. However, whilst this representation is acknowledged, it is submitted that the concerns are not relevant considerations under either s31 Highways Act 1980 or under common law.

In conclusion, taking all of the evidence into account, the Committee on balance may consider that the provisions of section 31 of the Highways Act 1980 can be satisfied. In addition, or in the alternative, Committee may also consider that it can be reasonably alleged that there is sufficient evidence from which to infer dedication of a public footpath at common law.

Committee is therefore advised to accept the application, make an Order and promote the Order to confirmation.

Risk management

Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

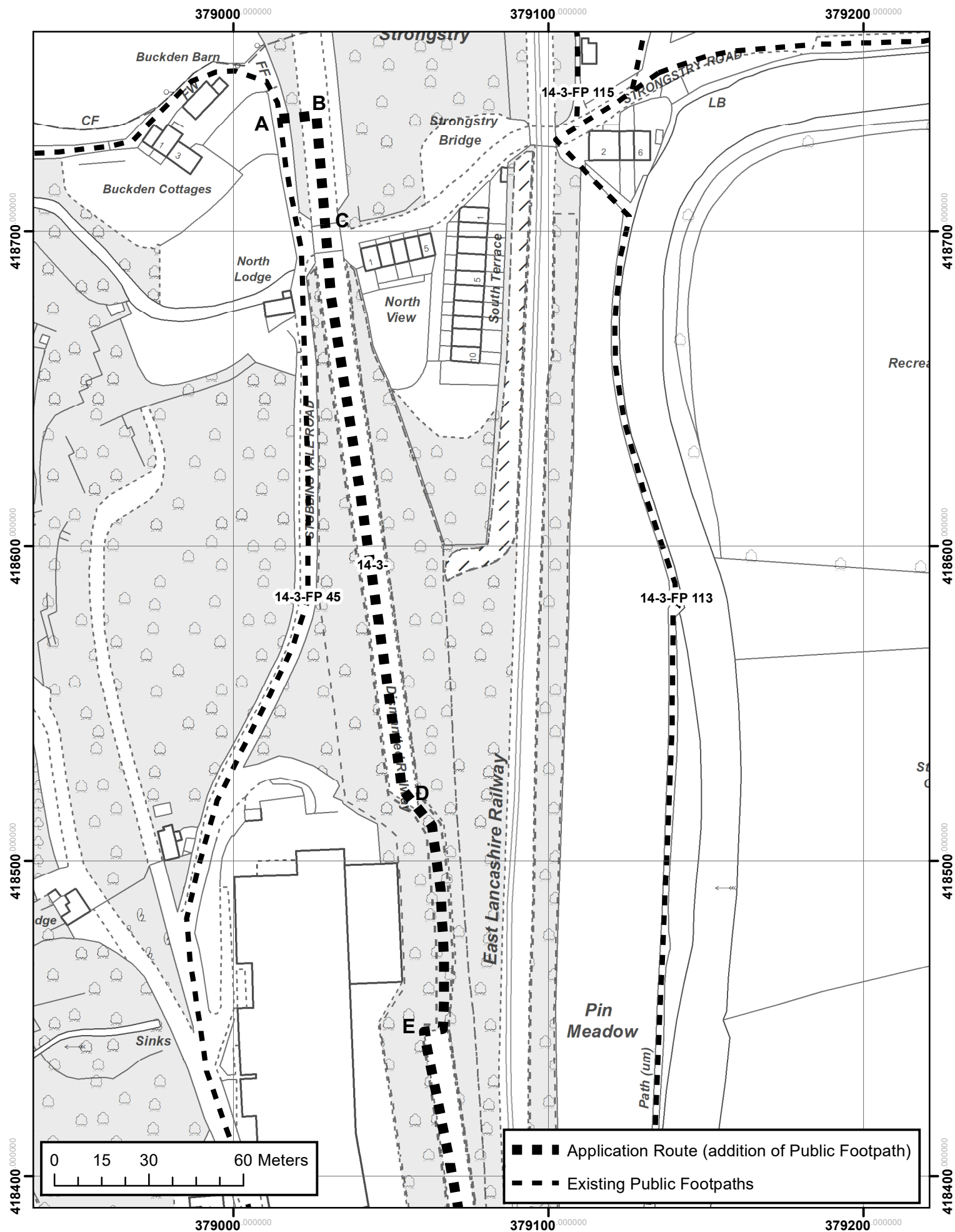
Local Government (Access to Information) Act 1985

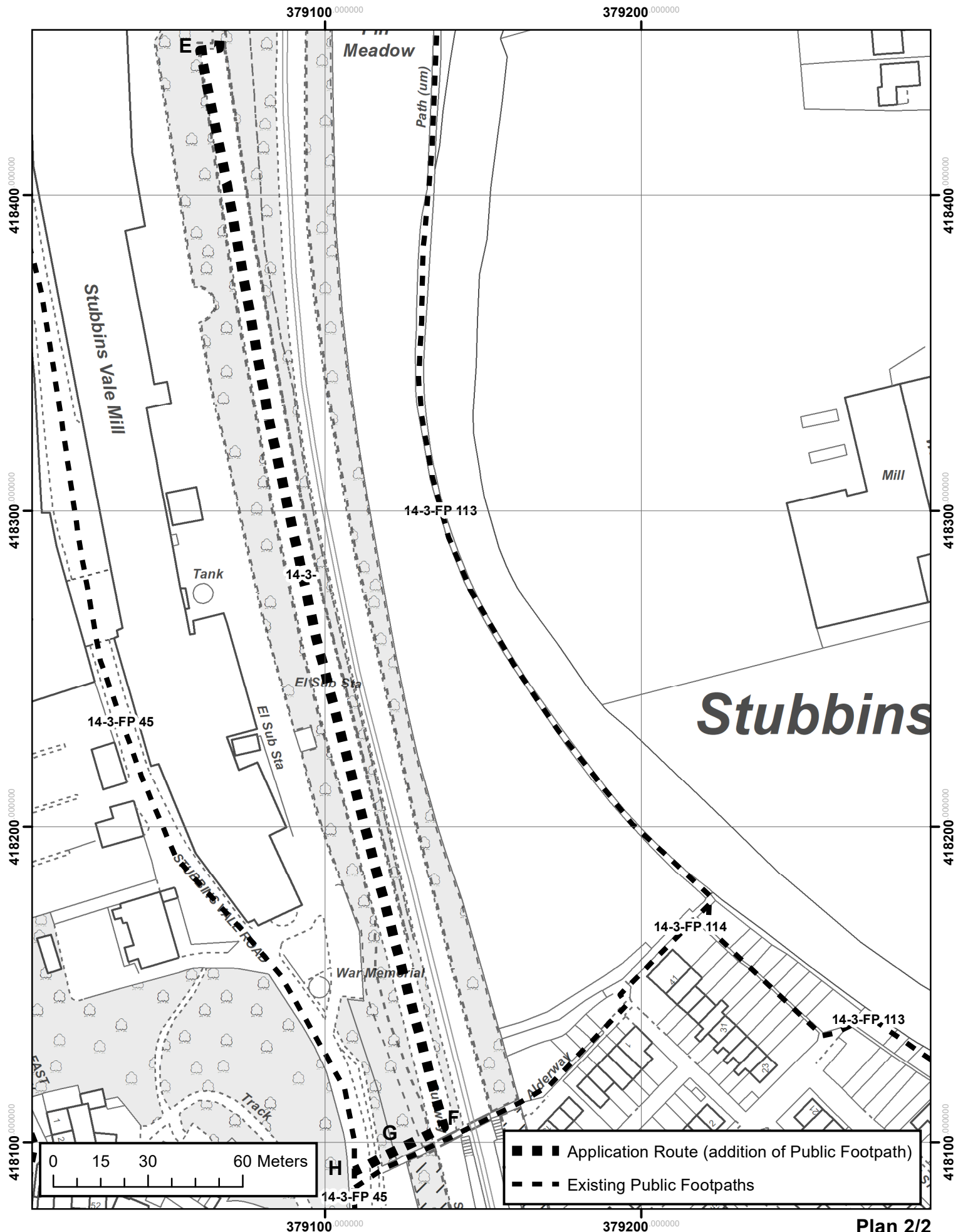
List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-614		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A





Plan 2/2



Public Rights of Way
PROW@lancashire.gov.uk
01772 530317

Wildlife and Countryside Act 1981

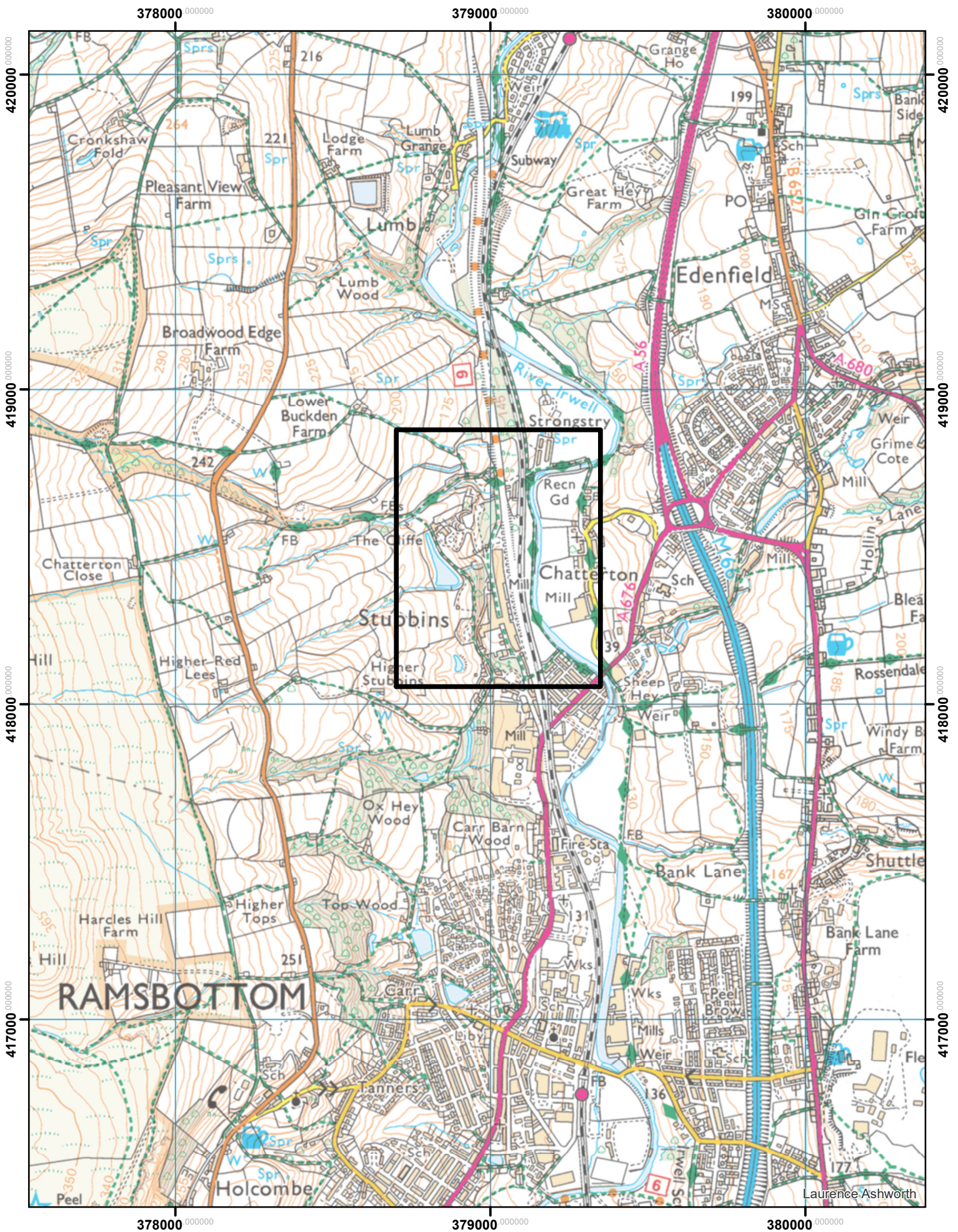
Addition of Footpath along dismantled railway line from Footpath Ramsbottom 45 near to Strongstry Bridge along dismantled railway line to Stubbins Vale Road near Stubbins Station

1:1,500



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Wildlife and Countryside Act 1981
Addition of a Footpath along the dismantled railway
line from Footpath Ramsbottom 45 near to
Strongstry bridge to Stubbins Vale Road near to
Stubbins Holt

Photographs taken February 2020

Point A



Looking back towards point **A**



Point B



Point C





Point C



Point C in 2015



Point C in 2008





From point C





Between point **C** and
point **D**





Between point **C**
and point **D**





Between point **C**
and point **D**





Between point **C**
and point **D**





Between point **C** and
point **D**





Between point **C**
and point **D**





Approaching point **D**





Point D





From point **D**



Looking back towards
point **D**





Between point **D** and
point **E**





Between point **D** and
point **E**





Between point **D** and
point **E**





Point E





From point E





Between point **E** and
point **F**





Between point **E** and
point **F**



Approaching point **F**





Point F





Between point **F** and point **G**





Point **H** looking back
towards point **G**



Signage close to point G



Point **G** to point **H** – photograph taken in 2015



Regulatory Committee

Meeting to be held on 16 September 2020

Part I

Electoral Division affected:
Chorley Rural East

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Footpath Heapey 27 at Black Lion Farm, Wheelton, Chorley Borough

(Annexes 'B' and 'C' refer)

Contact for further information:

Mrs R Paulson, Planning and Environment Group

07917 836628, ros.paulson@lancashire.gov.uk

Executive Summary

The proposed diversion of part of Footpath Heapey 27, Chorley Borough.

Recommendation

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Heapey 27, from the route shown by a bold continuous line and marked A-B-C to the route shown by a bold broken line and marked A-D-E-C on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

The owners of Black Lion Farm, Blackburn Road Wheelton, have applied to Lancashire County Council for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Heapey 27, Chorley Borough.

Black Lion Farm is a working farm that comprises of a residential dwelling, agricultural buildings and farmland. The footpath runs from Blackburn Road, along the farm access track, across the open farmyard and then into a small field, continuing to the former quarry site at Higher Copthurst.

If the diversion is successful, it would remove the footpath that crosses the open farmyard and the small field that is used for grazing and sorting livestock assisting the applicants with their farm operations. It will also improve the privacy and security at the farm, removing the footpath from the open farmyard that includes outbuildings, building materials storage, farm equipment and the parking area for vehicles.

The length of existing path to be diverted is shown by a bold continuous line and marked on the attached map as A-B-C, and the proposed new route is shown by a bold broken line and marked A-D-E-C.

Consultations

Chorley Borough Council and Heapey and Wheelton Parish Councils have been consulted and at the time of writing, their responses are awaited. The Peak and Northern Footpaths Society and the Chorley branch of the Ramblers have been consulted and at the time of writing, their responses are also awaited.

The consultation with the statutory undertakers has been carried out and, at the time of writing, no objections or adverse comments on the proposal have been received.

Advice

Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 5981 2103	South east corner of former quarry site.
B	SD 5981 2106	Point on the east side of the former quarry site, immediately west of the kissing gate.
C	SD 5989 2105	Point on the farm track, to the north of the northern corner boundary of 175b Blackburn Road.
D	SD 5988 2104	South east corner of field.
E	SD 5989 2104	Point on the farm track, to the west of the northern corner boundary of 175b Blackburn Road.

Description of existing footpath to be diverted

That part of Footpath Heapey 27 as described below and shown by a bold continuous line marked A-B-C on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	N	30	The entire width
B	C	Generally ESE	85	The entire width

Description of new footpath

Footpath as described below and shown by a bold broken line A-D-E-C on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	D	Generally E	75	2	Compacted stone
D	E	NE	10	2	Compacted stone
E	C	NE	2	2	Compacted stone

The public footpath to be created by the proposed Order will be subject to the following limitations and conditions:

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 5981 2103 (point A)
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 5989 2105 (point C)

Variation to the particulars of the path recorded on the Definitive Statement

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Footpath Heapey 27 be amended to read as follows:

The 'Position' column to read:

"West Parish boundary near Higher Copthurst to a gate at SD 5981 2103, then running generally east for 75 metres as a stone surfaced footpath to SD 5988 2104 then north east for 10 metres as a stone surfaced footpath to a gate at SD 5989 2104, then north east for 2 metres to SD 5989 2105. The footpath then continues to the A674. (All lengths and compass points given are approximate)."

The 'length' column be amended to read:

"0.27 km"

The 'Other Particulars' column be amended to read:

"The only limitations on the section between SD 5981 2103 and SD 5989 2105 is the right of the owner of the soil to erect and maintain gates that conform to BS 5709:2018 at SD 5981 2103 and SD 5989 2104. The width between SD 5981 2103 and SD 5989 2105 is 2 metres."

Criteria satisfied to make and confirm the Order

The proposed diversion is expedient in the interests of the owners of the land, as it would remove the footpath from the field grazed by livestock and also improve the security of the farm buildings, whilst providing a route that is safe and convenient for public use. The diversion would also reduce potential conflict between the users of the footpath and vehicles unloading livestock, manoeuvring and parking within the working area of the farm.

This proposed diversion will not alter the points of termination of Footpath Heapey 27, therefore it is not necessary to consider the criteria concerning the alteration of termination points.

The Committee are advised that so much of the Order as extinguishes part of Footpath Heapey 27, is not to come into force until the county council has certified that any necessary work to the new footpath has been carried out.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route, of which we are aware at the time of writing.

It is advised that the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The majority of the existing route B-C and all of the new route A-D-E-C is within the boundary of Black Lion Farm that is occupied and managed by the applicants but is not registered with the Land Registry. The applicants have advised that they will be able to prove title to the land but if they are not able to access the documents before the order is made, notices will be erected on site directed at any owner or occupier of the land.

The owners of the remainder of the existing route A-B, located in the former quarry site have been consulted on the proposal and it is expected that they will not raise any objection to the diversion proposal.

The applicants have agreed to bear all advertising and administrative charges incurred by the county council in the Order making procedures, and also to defray any compensation payable and any costs that are incurred in bringing the new site of the footpath into a fit condition for use for the public.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the Order, or should the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion because the new route is of similar length and gradient to the exiting footpath, with the same number of gates.

It is suggested that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. The new footpath will be fenced from the livestock and the working area of the farm, therefore some users of the footpath may feel more comfortable and at ease when passing through the property.

It is felt that there would be no adverse effect on the land served by the existing routes or the land over which the new path is to be created, together with any land held with it. Compensation for any material loss could be claimed by a landowner or someone with rights to the land under the provisions of the Highways Act 1980 Section 28. However such loss is not expected and if a claim were to arise, the compensation is underwritten by the applicants.

It is also advised that the needs of disabled people have been actively considered and as such, the proposal is compatible with the duty of the county council, as a Highway Authority, under The Equality Act 2010. The new route will be of adequate width, firm and well drained underfoot with no stiles. The two gates will conform to BS5709:2018.

Further, it is also advised that the effect of the Order is compatible with the material provisions of the county council's 'Rights of Way Improvement Plan'.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

Stance on Submitting the Order for Confirmation (Annex C refers)

It is recommended that the county council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of an Order is not rechargeable to the applicant, is not undertaken by the county council. In the event of an Order being submitted to the Secretary of State the applicant can support or promote it to confirmation, including participation at public inquiry or hearing. It is suggested that the authority takes a neutral stance.

Risk Management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annexes B and C included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

Alternative options to be considered

To not agree that the Order be made.

To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

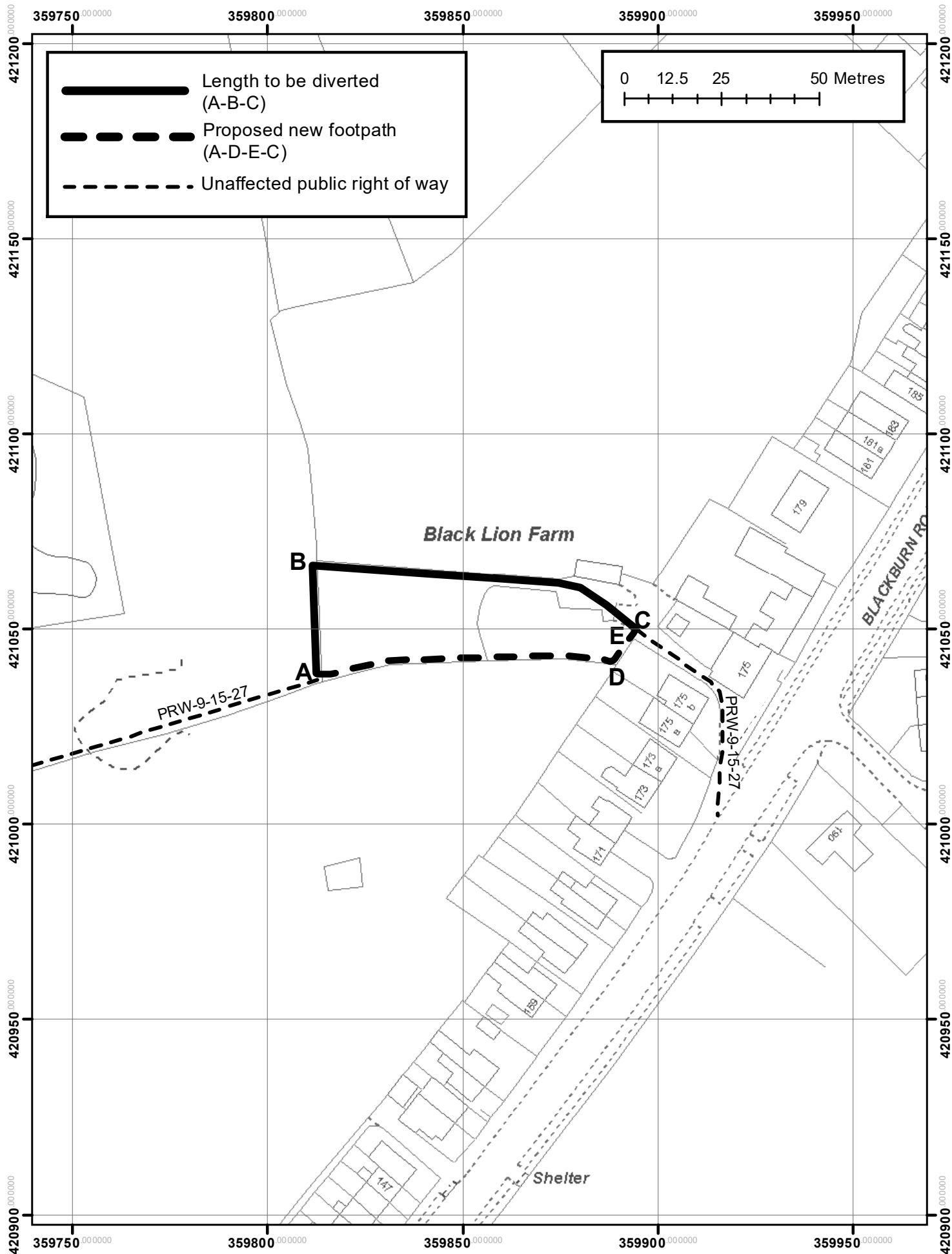
To agree that the Order be made and promoted to confirmation by the county council.

Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
File Ref: 211-692		Planning and Environment Group
File Ref: PRW-9-15-27		Mrs R J Paulson, 07917 836628

Reason for inclusion in Part II, if appropriate

N/A



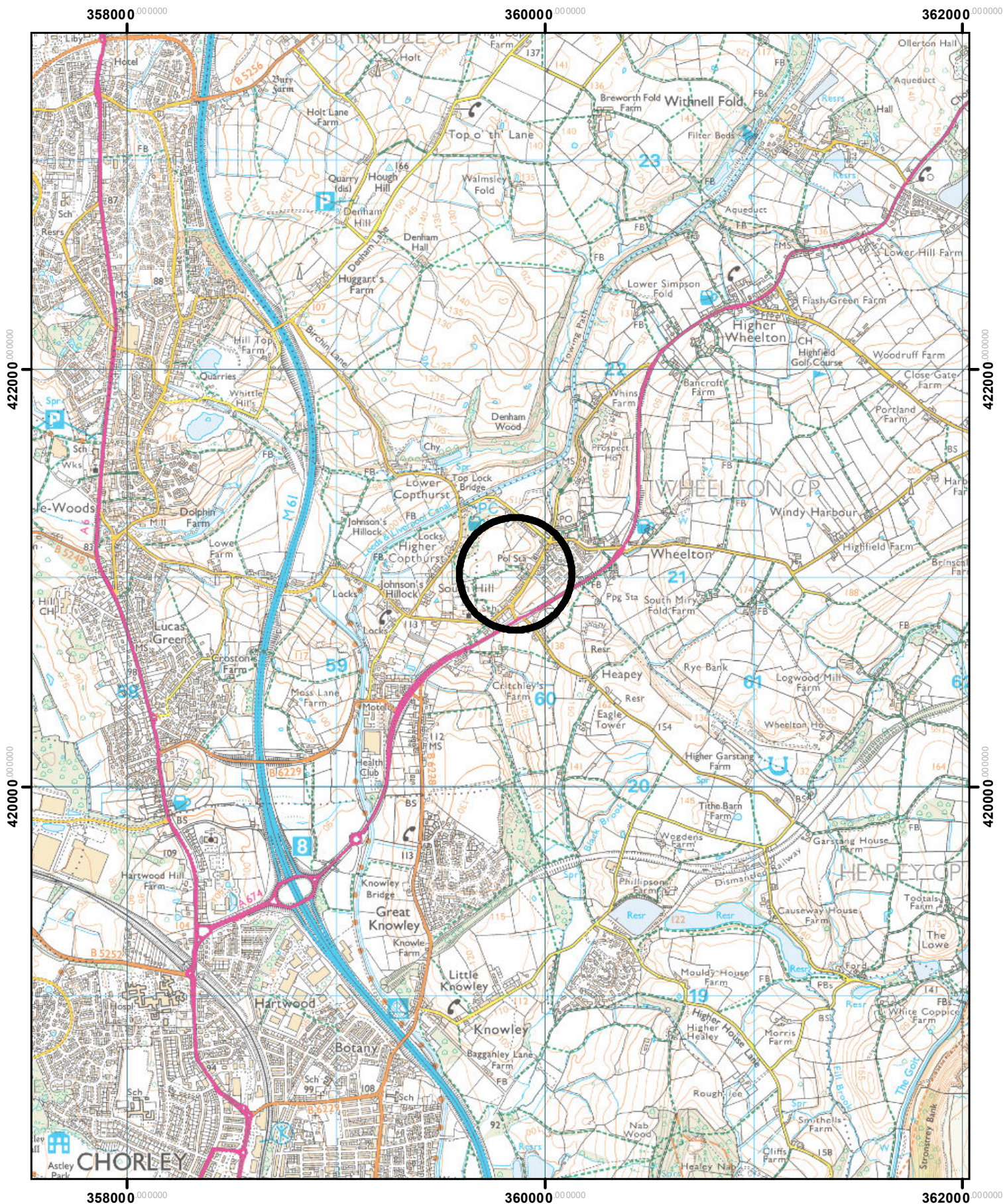
Andrew Mullaney
Head of Planning
and Environment
Lancashire County Council

Highways Act 1980 Section 119
Diversion of part of Footpath Heapey 27 at Black Lion Farm, Wheelton.

Drawing No:
211-692v2
Scale 1:1250 @A4



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Lancashire County Council	Andrew Mullaney Head of Planning and Environment	<div>Location Plan</div> <div>Highways Act 1980 – Section 119</div> <div>Diversion of part of Footpath Heapey 27, Chorley Borough</div>	<div><div>N</div><div>W</div><div>E</div><div>S</div></div>
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Highways Act 1980 – Section 119
Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of
Footpath Heapey 27 at Black Lion Farm,
Wheelton,
Chorley Borough

Existing route to be diverted
C-B-A

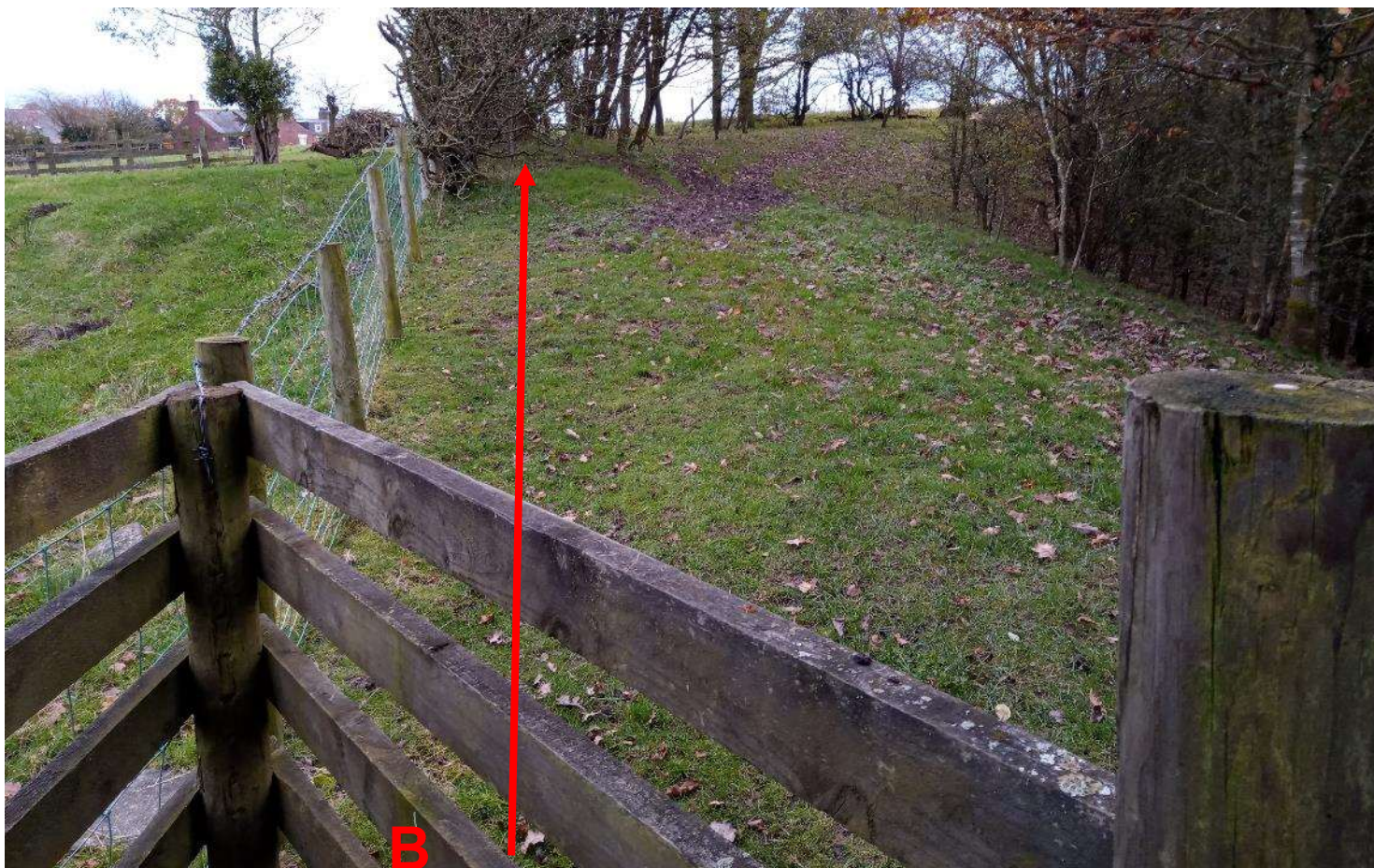








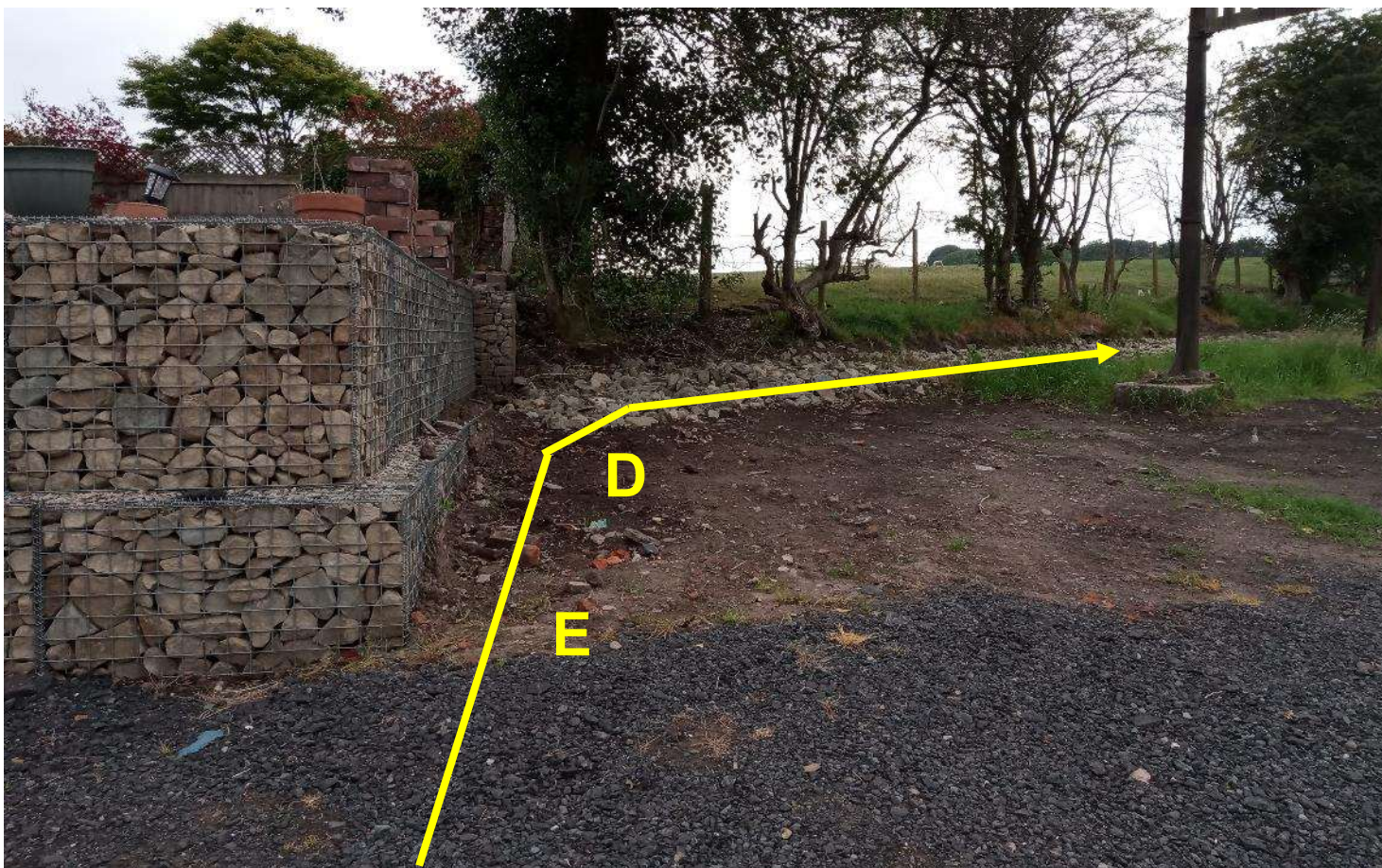






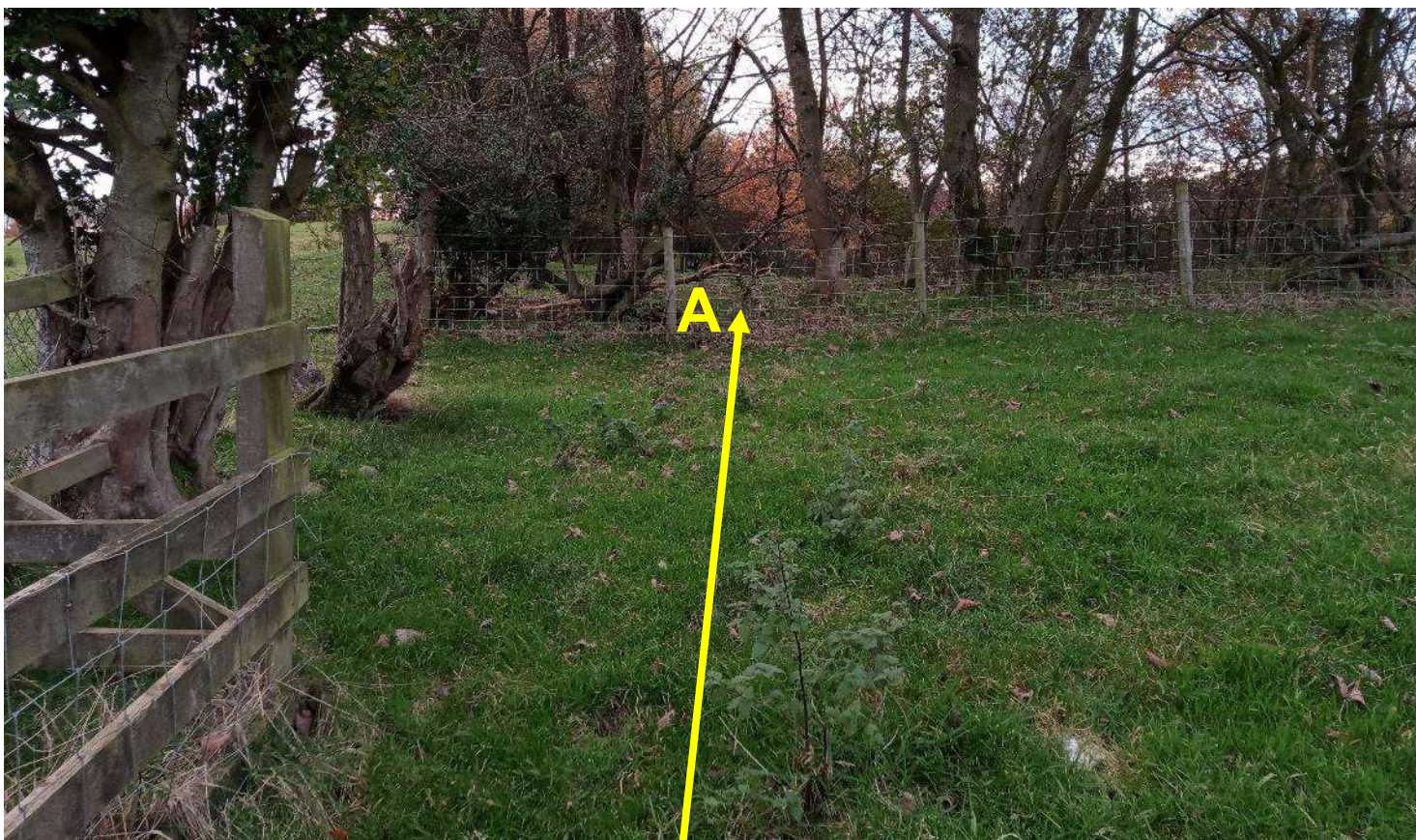
Proposed alternative route C-E-D-A













Regulatory Committee

Meeting to be held on 16 September 2020

Part I

Electoral Division affected:
Hoghton-with-Wheelton

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Footpath Wheelton 19 at Clovian House and Miry Fold Farm, Briers Brow, Wheelton, Chorley Borough

(Annexes 'B' and 'C' refer)

Contact for further information:

Mrs R Paulson, Planning and Environment Group

07917 836628, ros.paulson@lancashire.gov.uk

Executive Summary

The proposed diversion of part of Footpath Wheelton 19, Chorley Borough.

Recommendation

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Wheelton 19, from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked A-C-D-E-F on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

The owners of Clovian House and Miry Fold Farm, Briers Brow, Wheelton have applied to Lancashire County Council for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Wheelton 19, Chorley Borough.

Clovian House and Miry Fold Farm are residential dwellings that were part of a small development on the site that was granted planning permission in 2015. Whilst the development was ongoing, for safety reasons the footpath was temporarily diverted to the edge of the site, onto the alignment of the proposed new route A-C-D-E-F.

The current owners were not involved in the original planning application and have only recently become aware that the necessary order has not been made to permanently divert the footpath onto the alternative route that is available to be walked on the ground. Now that the current owners are aware of this, they wish to regularise the situation. If the diversion is successful it will remove the footpath that runs through the building, boundary fence, hedge and boundary wall of one of the houses and also across the gardens.

The length of existing path to be diverted is shown by a bold continuous line and marked on the attached map as A-B, and the proposed new route is shown by a bold broken line and marked A-C-D-E-F.

Consultations

Chorley Borough Council and Heapey and Wheelton Parish Councils have been consulted and at the time of writing, their responses are awaited. The Peak and Northern Footpaths Society and the Chorley branch of the Ramblers have been consulted and at the time of writing, their responses are also awaited.

The consultation with the statutory undertakers has been carried out and, at the time of writing, no objections or adverse comments on the proposal have been received.

Advice

Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 6091 2091	Point west of the footpath ditch crossing, at the south east boundary of Clovian House.
B	SD 6083 2097	Junction of Footpaths Wheelton 16 and 19.
C	SD 6091 2092	Point at the south corner of the field adjacent to Clovian House.
D	SD 6087 2095	Gate in the field boundary fence between Clovian House and Miry fold Farm at the south west edge of the field.
E	SD 6084 2097	Gate in the field boundary fence at Miry fold Farm at the south west edge of the field.

F	SD 6083 2097	Point on the access track, approximately 5 metres north east of the current junction of Footpaths Wheelton 16 and 19.
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Description of existing footpath to be diverted

That part of Footpath Wheelton 19 as described below and shown by a bold continuous line marked A-B on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	NW	90	The entire width

Description of new footpath

Footpath as described below and shown by a bold broken line A-C-D-E-F on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	NNE	10	2	Compacted stone
C	D	NW	50	2	Grass
D	E	NW	30	2	Grass
E	F	Generally WNW	10	2	Compacted stone

The public footpath to be created by the proposed Order will be subject to the following limitations and conditions:

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 6087 2095 (point D)
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 6084 2097 (point E)

Variation to the particulars of the path recorded on the Definitive Statement

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Footpath Wheelton 19 be amended to read as follows:

The 'Position' column to read:

"From Footpath Wheelton 16 at Miry Fold Farm SD 6083 2097, running generally east south east for 90 metres as a stone then grass surfaced footpath to SD 6091 2092 then south south west for 10 metres as a stone surfaced footpath to SD 6091 2091, then continuing to join Footpath Wheelton 21 near Logwood Mill Farm. (All lengths and compass points given are approximate)."

The 'length' column be amended to read:

"0.80 km"

The 'Other Particulars' column be amended to read:

"The only limitations on the section between SD 6083 2097 and SD 6091 2091 is the right of the owner of the soil to erect and maintain gates that conform to BS 5709:2018 at SD 6085 2097 and SD 6087 2095. The width between SD 6083 2097 and SD 6091 2091 is 2 metres."

Criteria satisfied to make and confirm the Order

To make a Diversion Order under section 119 of the Highways Act 1980, the county council must be satisfied that it appears expedient, in the interests of the owner, lessee or occupier of land crossed by the footpath or of the public, to divert the said footpath or part thereof (whether or not on to land of the same or different owner, lessee or occupier).

The majority of the existing route and of the proposed new route is in the ownership of the applicants. A small length of both the existing footpath and the new route crosses land that is in different ownership. The owner of that land has been consulted and has confirmed that they will not raise any objection to the diversion proposal.

The proposed diversion is expedient in the interests of the owners of the land crossed by the existing route, as it would remove the footpath that runs through the building, boundary fence, hedge and wall of one of the houses and across the gardens. The new footpath is proposed to run outside the residential areas, enabling the existing obstructions on the footpath to be retained and provide the residents with an improvement in privacy and security.

With regards to the obstructions on the footpath, under normal circumstances the landowner would be required to ensure that the existing definitive route is available for use before a Diversion Order is considered. This enables the proposed new route to be easily evaluated in comparison with the existing route although it is advised that temporary obstructions are ignored.

However, in some instances, the restoration of the route is considered to be impracticable, disproportionate or not in the interests of the user and that the existing route can be inspected notwithstanding the obstruction. In this case, due to the boundary fence, hedges and walls of Clovian House, it is not possible to see the existing route in its entirety but it is obvious that it is a house and garden and it is suggested that not being able to see all of the existing footpath will not adversely affect the ability to evaluate the merits of the diversion when comparing both routes.

The legislation requires that if the termination point of a footpath is proposed to be altered, then the authority may only make a Diversion Order if the new termination point is on the same path or a path connected to it and is substantially as convenient to the public.

The proposed diversion will alter the western point of termination of Footpath Wheelton 19 and place it at another point on Footpath Wheelton 16, being the same highway approximately 5 metres north east of the existing termination point. It is suggested therefore, that the proposed termination point is substantially as convenient to the public. This proposed diversion will not alter the eastern points of termination of Footpath Wheelton 19, therefore it is not necessary to consider the criteria concerning the alteration of that particular termination point.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route, of which we are aware at the time of writing.

It is advised that the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The applicants have agreed to bear all advertising and administrative charges incurred by the county council in the Order making procedures, and also to defray any compensation payable and any costs that are incurred in bringing the new site of the footpath into a fit condition for use for the public.

The Committee are advised that so much of the Order as extinguishes part of Footpath Wheelton 19, is not to come into force until the county council has certified that any necessary work to the new footpath has been carried out.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the Order, or should the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that, if the Order were to be confirmed, the new path or way will not be substantially less convenient to the public in consequence of the diversion because the new route is of similar length and gradient to the exiting footpath. It is proposed that there will be two gates on the new footpath at the points where it crosses the field boundaries of two separate paddocks. The gates will conform to the British Standard for gates, gaps as stiles (BS 5709:2018) and as such will be easy to use.

It is suggested that, if the Order were to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. The new footpath, being located on the field edge will provide open views of the countryside, whereas the current footpath runs over gardens and through the one of the properties. It is suggested, therefore that the footpath would be more in keeping with a walk in the countryside, provide improved views and as it does not cross the residential areas of the site, users of the footpath will feel more comfortable walking on the new footpath.

It is felt that there would be no adverse effect on the land served by the existing routes or the land over which the new path is to be created, together with any land held with it. Compensation for any material loss could be claimed by a landowner or someone with rights to the land under the provisions of the Highways Act 1980 Section 28. However such loss is not expected and if a claim were to arise, the compensation is underwritten by the applicants.

It is also advised that the needs of disabled people have been actively considered and as such, the proposal is compatible with the duty of the county council, as a Highway Authority, under The Equality Act 2010. The new route will be of adequate width, firm and well drained underfoot with no stiles. The two gates will conform to BS5709:2018.

Further, it is also advised that the effect of the Order is compatible with the material provisions of the county council's 'Rights of Way Improvement Plan'.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

Stance on Submitting the Order for Confirmation (Annex C refers)

It is recommended that the county council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of an Order is not rechargeable to the applicant, is not undertaken by the county council. In the event of an Order being submitted to the Secretary of State the applicant can support or promote it to confirmation, including participation at public inquiry or hearing. It is suggested that the authority takes a neutral stance.

Risk Management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annexes B and C included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

Alternative options to be considered

To not agree that the Order be made.

To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

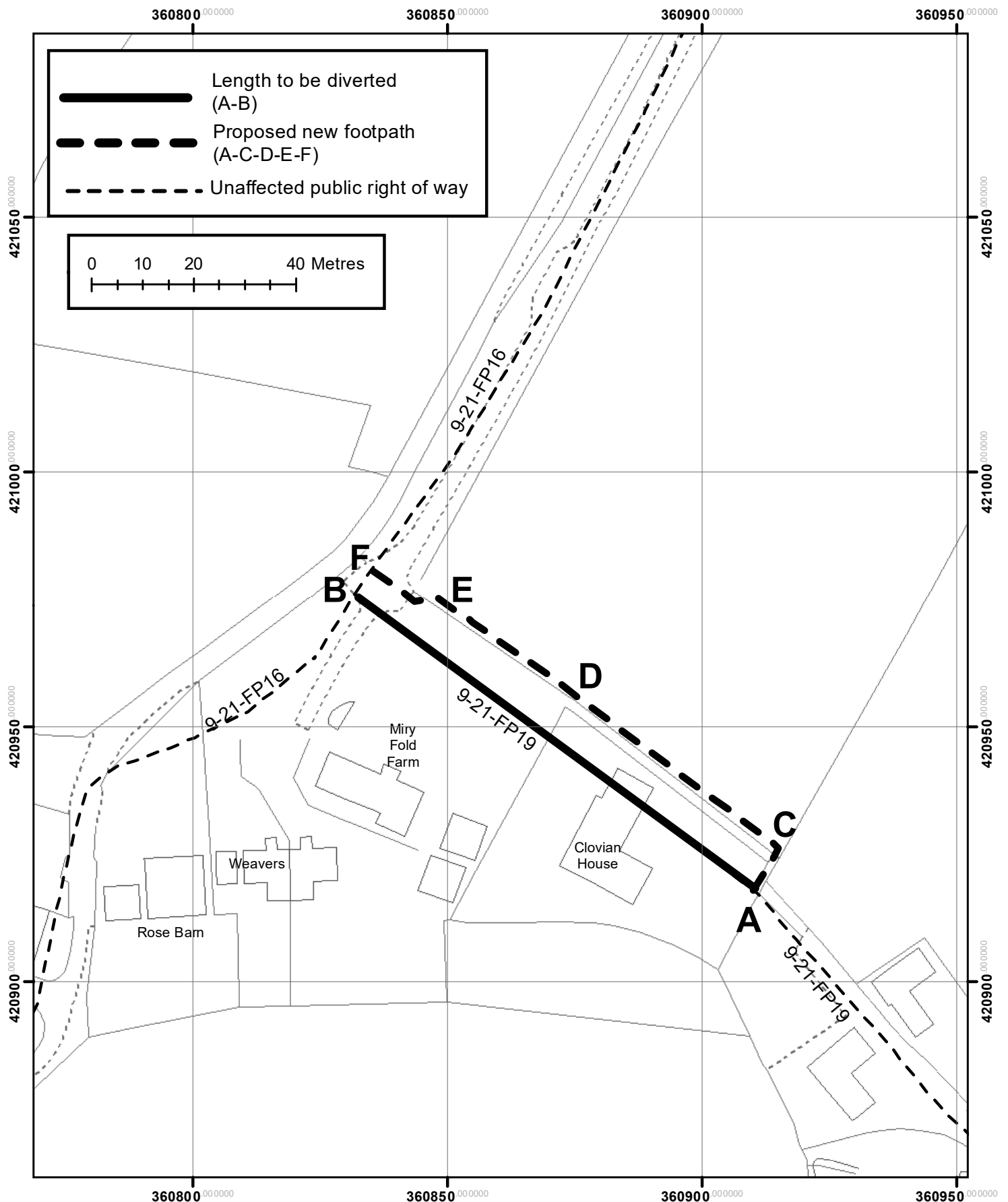
To agree that the Order be made and promoted to confirmation by the county council.

Local Government (Access to Information) Act 1985
List of Background Papers

Paper	Date	Contact/Directorate/Tel
File Ref: 211- 725		Planning and Environment Group
File Ref: PRW-9-21-19		Mrs R J Paulson, 07917 836628


Reason for inclusion in Part II, if appropriate

N/A



Andrew Mullaney
Head of Planning
and Environment
Lancashire County Council

Highways Act 1980 Section 119
Diversion of part of Footpath Wheelton 19 (9-21-FP19)
at Clovian House, Briers Brow, Chorley Borough.


Drawing No:
211-725v2
Scale 1:800 @A4

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Highways Act 1980 – Section 119
Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Footpath
Wheelton 19 at Clovian House and Miry Fold
Farm, Briers Brow, Wheelton, Chorley Borough

Existing footpath proposed to be diverted

A-B

Point A

Current line red, proposed route yellow







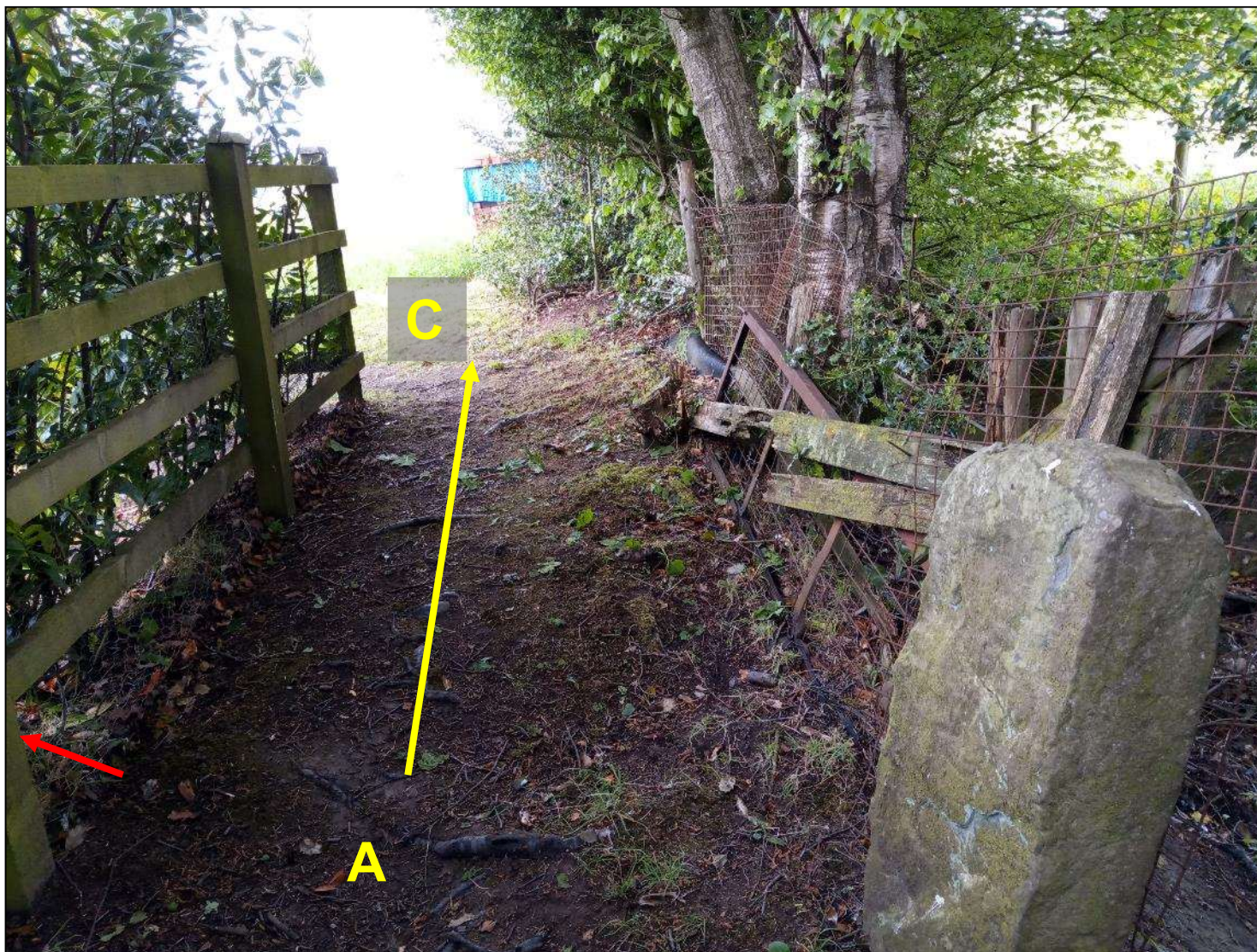




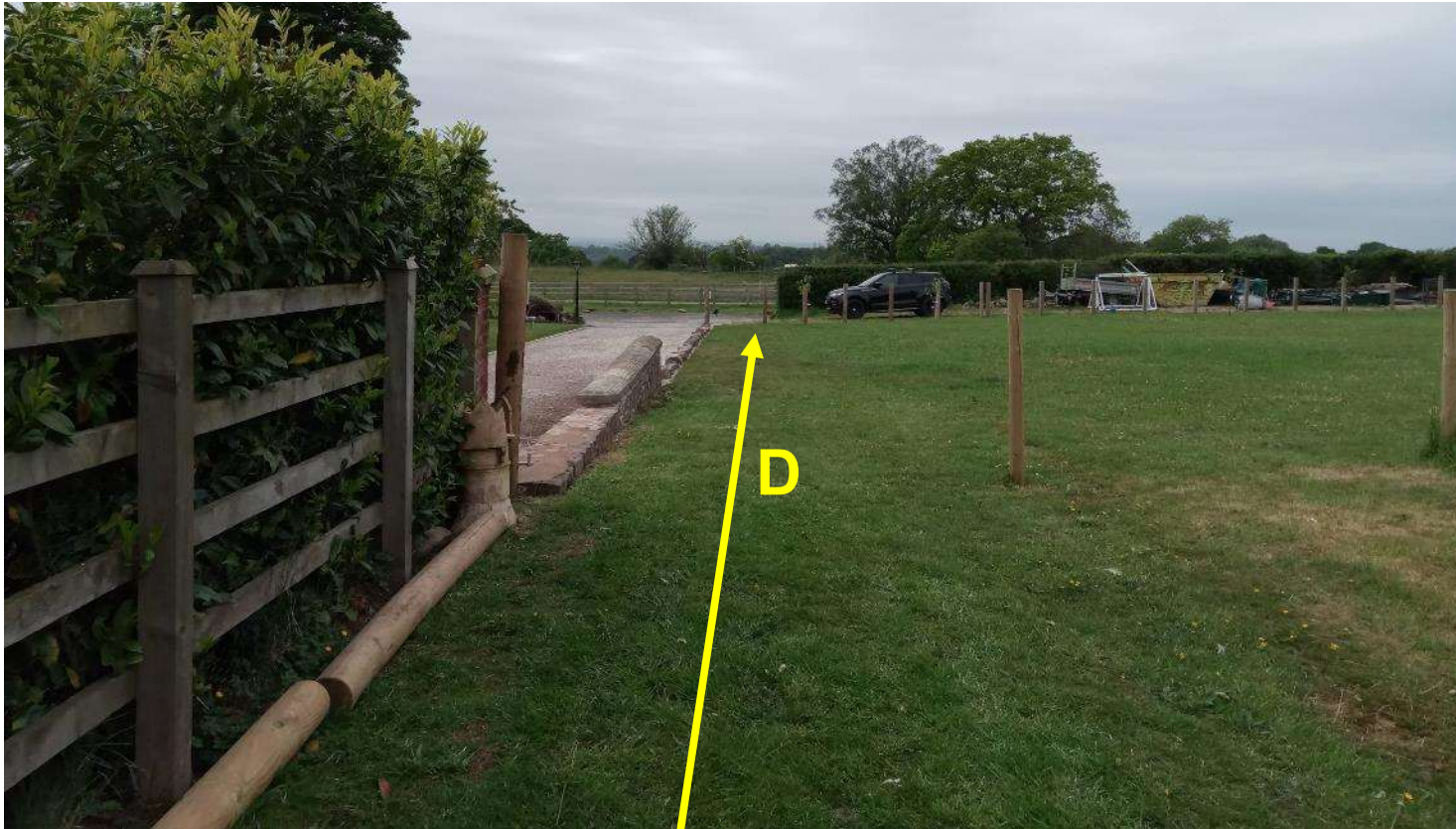


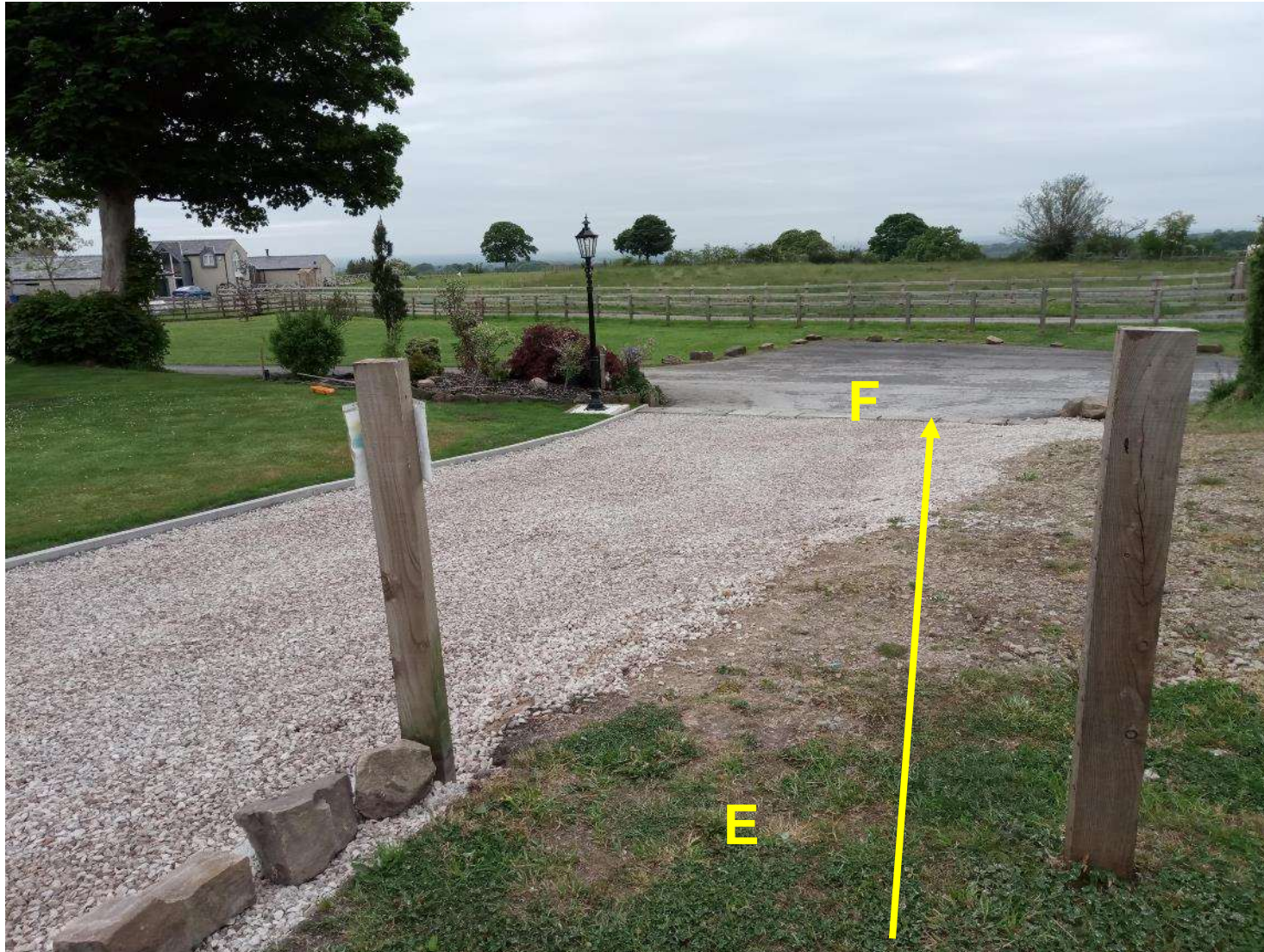
Proposed alternative route

A-C-D-E-F











Regulatory Committee

Meeting to be held on 16 September 2020

Part I

Electoral Division affected:
Pendle Rural

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Footpath Trawden 188 at Parson Lee Farm, Wycoller Road, Trawden, Pendle Borough

(Annexes 'B' and 'C' refer)

Contact for further information:

Mrs R Paulson, Planning and Environment Group

07917 836628, ros.paulson@lancashire.gov.uk

Executive Summary

The proposed diversion of part of Footpath Trawden 188, Pendle Borough.

Recommendation

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Trawden 188, from the route shown by a bold continuous line and marked A-B-C to the route shown by a bold broken line and marked A-D-E on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

The owner of Parson Lee Farm, has applied to Lancashire County Council for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Trawden 188, Pendle Borough.

The current owner was not aware that the recorded route of the footpath is obstructed by an agricultural barn when she purchased the property.

The length of existing path to be diverted is shown by a bold continuous line and marked on the attached map as A-B-C, and the proposed new route is shown by a bold broken line and marked A-D-E.

Consultations

Pendle Borough Council and Trawden Parish Council have been consulted and at the time of writing, their responses are awaited. The Peak and Northern Footpaths Society and the Pendle branch of the Ramblers have been consulted and at the time of writing, their responses are also awaited.

The consultation with the statutory undertakers has been carried out and, at the time of writing, no objections or adverse comments on the proposal have been received.

Advice

Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 9409 3861	Unmarked point in field, north east of the field boundary that is between the pasture field and the field that is located to the south of the barn at Parson Lee Farm.
B	SD 9413 3868	Point on the field boundary between the pasture field and the field that is located to the south of the barn at Parson Lee Farm.
C	SD 9420 3873	Junction of Footpath Trawden 188 and Keighley Road.
D	SD 9411 3873	Culvert crossing of the brook that is located to the west of Parson Lee Farm.
E	SD 9411 3873	Pedestrian gate in the field boundary between Parson Lee Farm and Keighley Road.

Description of existing footpath to be diverted

That part of Footpath Trawden 188 as described below and shown by a bold continuous line marked A-B-C on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	Generally NNE	80	The entire width
B	C	Generally NE	80	The entire width

Description of new footpath

Footpath as described below and shown by a bold broken line A-D-E on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	D	Generally N	120	2	Grass and compacted stone
D	E	E	5	2	Compacted stone and grass

The public footpath to be created by the proposed Order will be subject to the following limitations and conditions:

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 9411 3873 (point E)

Variation to the particulars of the path recorded on the Definitive Statement

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Footpath Trawden 188 be amended to read as follows:

The 'Position' column to read:

"Dean House Farm to SD 9409 3861, generally north for 120 meters to SD 9411 3873 at a culvert crossing of the brook that is located to the west of Parson Lee Farm., then east for 5 metres to the junction with Keighley Road at a pedestrian gate in the field boundary between Parson Lee Farm and Keighley Road at SD 9411 3873.

(All lengths and compass points given are approximate)."

The 'length' column be amended to read:
"0.25km"

The 'Other Particulars' column be amended to read:

"The only limitation on the section between SD 9409 3861 and SD 9411 3873 is the right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018 at SD 9411 3873. The width between SD 9409 3861 and SD 9411 3873 is 2 metres."

Criteria satisfied to make and confirm the Order

The proposed diversion is expedient in the interests of the owner of the land, as it would remove the footpath that runs through a farm building, a boundary fence and an area of rough ground, crossed by a deep ditch that has no provision of a bridge or ditch crossing to provide a safe and convenient crossing point.

With regards to the obstruction of the barn, under normal circumstances the landowner would be required to ensure that the existing definitive route is available for use before a Diversion Order is considered. This enables the proposed new route to be easily evaluated in comparison with the existing route although it is advised that temporary obstructions are ignored.

However, in some instances, the restoration of the route is considered to be impracticable, disproportionate or not in the interests of users it is suggested that not being able to see all of the existing footpath, due to the building on the footpath will not adversely affect the ability to evaluate the merits of the diversion when comparing both routes.

The legislation requires that if the termination point of a footpath is proposed to be altered, then the authority may only make a Diversion Order if the new termination point is on the same path or a path connected to it and is substantially as convenient to the public.

The proposed diversion will alter the northern point of termination of Footpath Trawden 188 and place it at another point on Keighley Road, being the same highway. It is suggested therefore, that the proposed termination point is substantially as convenient to the public. This proposed diversion will not alter the southern point of termination of Footpath Trawden 188, therefore it is not necessary to consider the criteria concerning the alteration of that particular termination point.

The Committee are advised that so much of the Order as extinguishes part of Footpath Trawden 188, is not to come into force until the county council has certified that any necessary work to the new footpath has been carried out.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route, of which we are aware at the time of writing.

It is advised that the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

All of the existing route and of the new route is in the ownership of the applicant.

The applicant has agreed to bear all advertising and administrative charges incurred by the county council in the Order making procedures, and also to defray any compensation payable and any costs that are incurred in bringing the new site of the footpath into a fit condition for use for the public.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the Order, or should the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion because the new route is of similar length and gradient to the exiting footpath. It is proposed that there will be one gate on the new footpath at the point where it crosses the field boundary at the roadside. The gate will conform to the British Standard for gates, gaps as stiles (BS:5709:2018) and as such will be easy to use.

It is suggested that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. The new footpath will provide the similar open views of the countryside and avoid the need to negotiate the steep embankment and deep ditch. If the diversion is successful, it will provide an obvious, safe and convenient footpath away from the buildings at Parson Lee Farm. Therefore, users of the footpath are likely to find the new route easier to use and feel more comfortable than the existing route.

It is felt that there would be no adverse effect on the land served by the existing route or the land over which the new path is to be created, together with any land held with it. Compensation for any material loss could be claimed by a landowner or someone with rights to the land under the provisions of the Highways Act 1980 Section 28. It is noted that all the land crossed by the existing and proposed alternative route are in the ownership of the applicant, therefore such loss is not expected and if a claim were to arise, the compensation is underwritten by the applicant.

It is also advised that the needs of disabled people have been actively considered and as such, the proposal is compatible with the duty of the county council, as a Highway Authority, under The Equality Act 2010. The new route will be of adequate width, firm and well drained underfoot with no stiles. There is proposed to be one gate and that will conform to BS5709:2018.

Further, it is also advised that the effect of the Order is compatible with the material provisions of the county council's 'Rights of Way Improvement Plan'.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

Stance on Submitting the Order for Confirmation (Annex C refers)

It is recommended that the county council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of an Order is not rechargeable to the applicant, is not undertaken by the county council. In the event of an Order being submitted to the Secretary of State the applicant can support or promote it to confirmation, including participation at public inquiry or hearing. It is suggested that the authority takes a neutral stance.

Risk Management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annexes B and C included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

Alternative options to be considered

To not agree that the Order be made.

To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

To agree that the Order be made and promoted to confirmation by the county council.

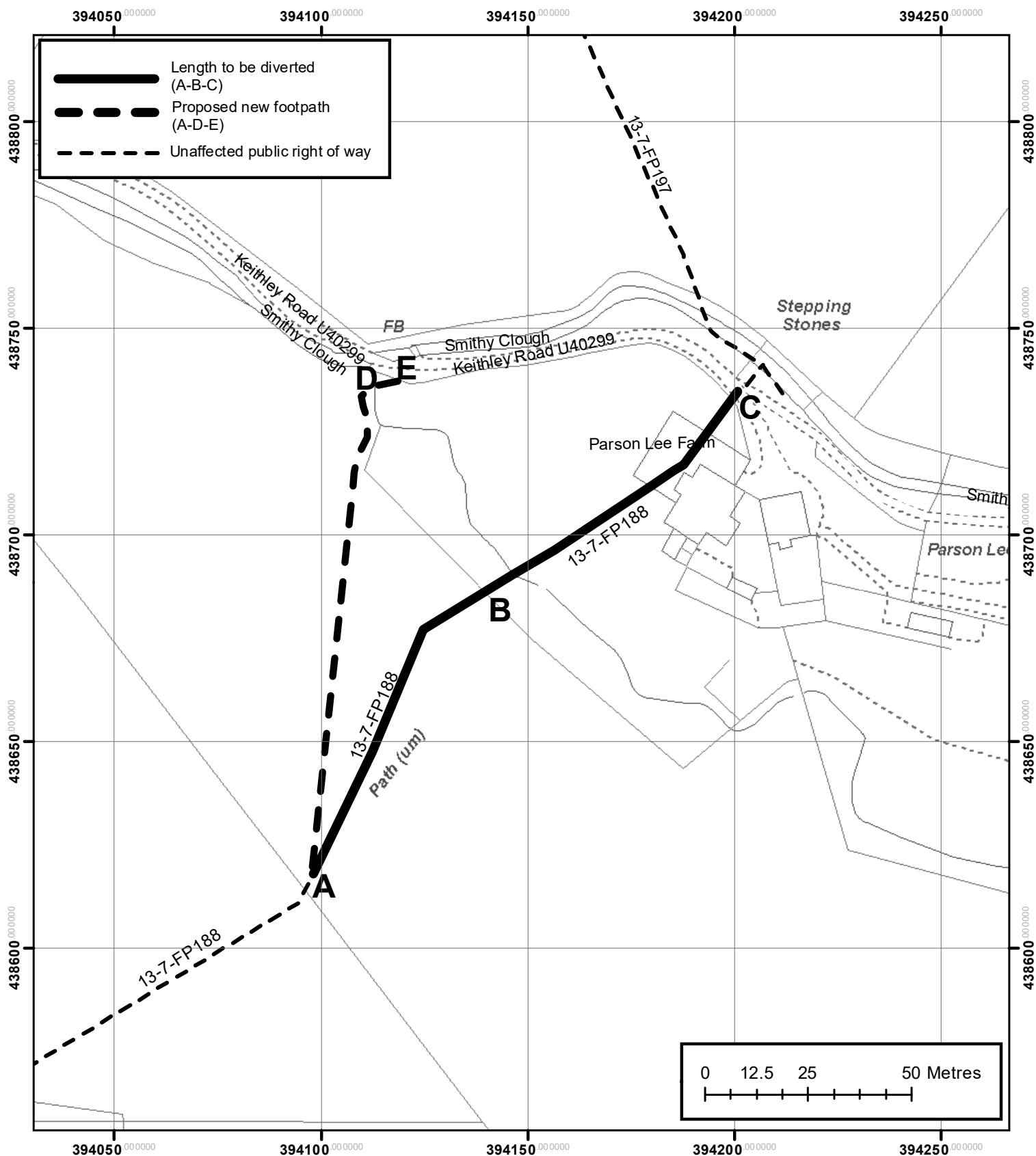
Local Government (Access to Information) Act 1985


List of Background Papers

Paper	Date	Contact/Directorate/Tel
File Ref: 211-686		Planning and Environment Group
File Ref: PRW-13-7-188-		Mrs R J Paulson, 07917 836628

Reason for inclusion in Part II, if appropriate

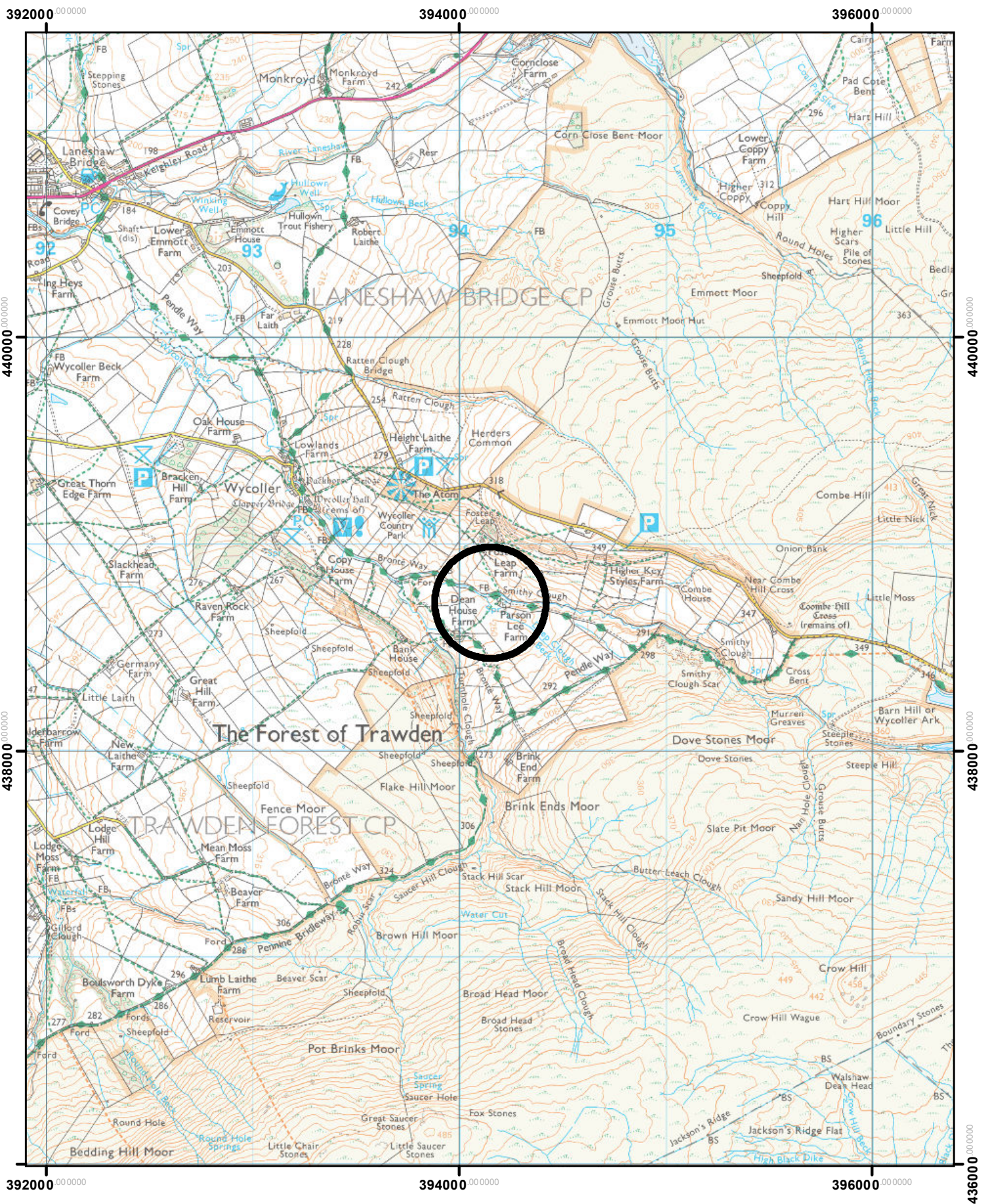
N/A



<p>Andrew Mullaney Head of Planning and Environment Lancashire County Council</p> <p>Contact:- Ros Paulson Public Rights of Way ros.paulson@lancashire.gov.uk 01772 532459</p>	<p>PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER HIGHWAYS ACT 1980 WILDLIFE AND COUNTRYSIDE ACT 1981 LANCASHIRE COUNTY COUNCIL PART OF FOOTPATH TRAWDEN 188 (13-7-188) AT PARSON LEE FARM, KEITHLEY ROAD, TRAWDEN, WYCOLLER PUBLIC PATH DIVERSION ORDER 2020</p>	<p style="text-align: center;">  </p> <p>Plan no: 211-686v2</p> <p>Scale 1:1250 @A4</p>
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Lancashire County Council	Andrew Mullaney Head of Planning and Environment	<p style="text-align: center;">Location Plan</p> <p style="text-align: center;">Highways Act 1980 – Section 119</p> <p style="text-align: center;">Proposed Diversion of part of Trawden 188 at Parson Lee Farm, Pendle Borough.</p>	
<p style="text-align: center;">The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed.</p> <p style="text-align: center;">Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.</p> <p style="text-align: center;">This Map is reproduced from the 1:24,000 Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright.</p> <p style="text-align: center;">Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320</p>			

Highways Act 1980 – Section 119
Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of
Footpath Trawden 188 at Parson Lee Farm,
Wycoller Road, Trawden, Pendle Borough.

Existing footpath proposed to be diverted

A-B-C





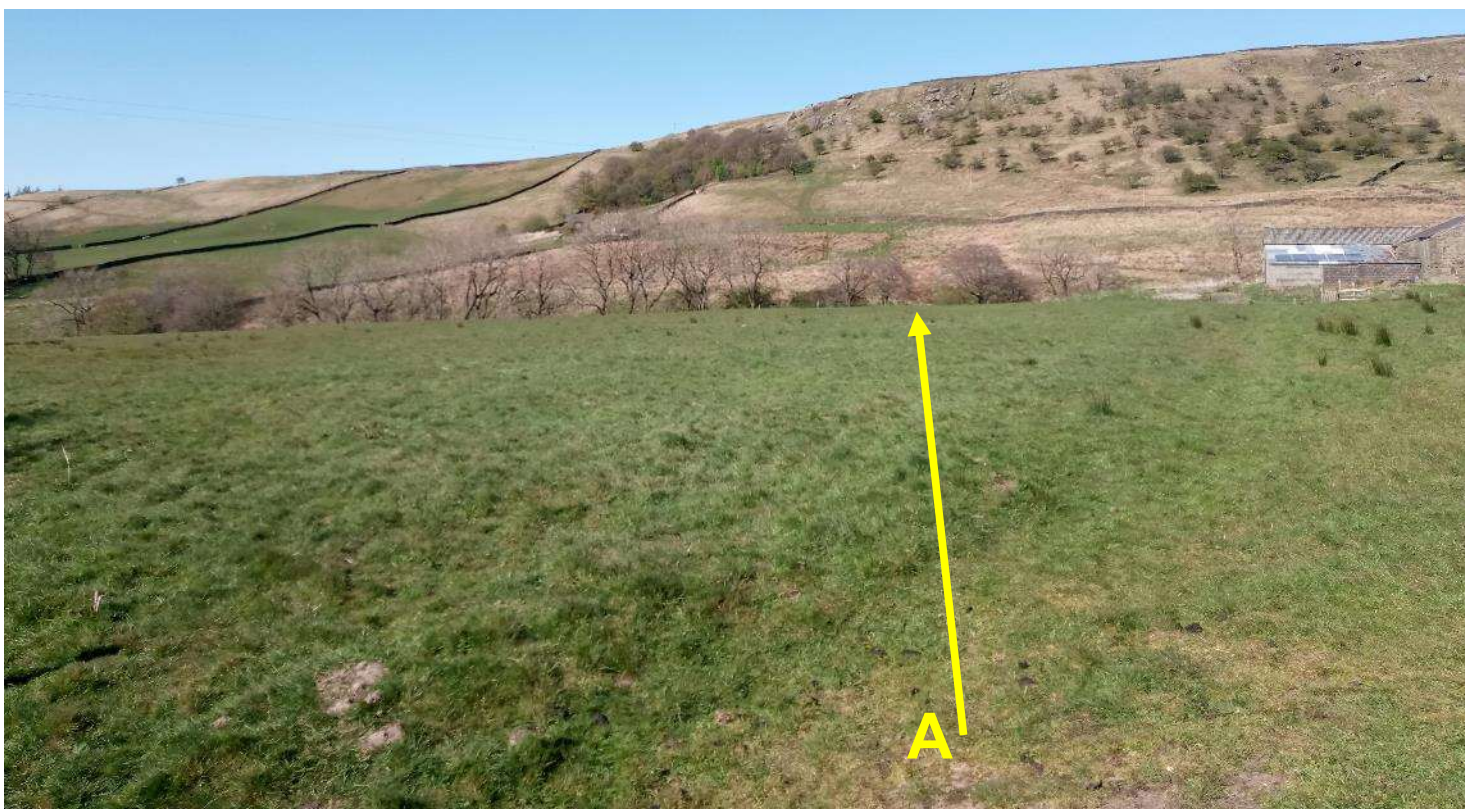








Proposed alternative route A-D-E









Regulatory Committee

Meeting to be held on 16 September 2020

Part I

Electoral Division affected:
Mid Rossendale

Highways Act 1980 – Section 118

Wildlife and Countryside Act 1981 – Section 53A

Proposed Extinguishment of Part of the Recorded Route of Footpath Rawtenstall 205, From Windsor Avenue to Staghills Road, Rossendale Borough

(Annexes 'B' and 'C' refer)

Contact for further information:

Mrs R Paulson, Planning and Environment Group
07917 836628, ros.paulson@lancashire.gov.uk

Executive Summary

The proposed extinguishment of part of Footpath Rawtenstall 205, Rossendale Borough.

Recommendation

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 118 of the Highways Act 1980 to extinguish part of Footpath Rawtenstall 205, on the route shown by a bold continuous line and marked A-B-C on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the extinguishment order.

Background

An application has been received from the person authorised to act on behalf of the registered owners of 25 Windsor Avenue for an Order to be made under Section 118 of the Highways Act 1980, to extinguish part of Footpath Rawtenstall 205, Rossendale

Borough that crosses three properties on a housing estate that was built in the mid 1950's.

The applicant's parents moved to 25 Windsor Avenue in 1954 and lived in the house, firstly as tenants of Rossendale Borough Council local authority housing scheme then subsequently purchasing the property from the local authority in 1981.

At no point in the applicant's parents' tenancy, or during their time as owners of the property had they ever been made aware that a public right of way recorded on the Definitive Map and Statement for Public Rights of Way crossed their property.

A local authority search, carried out in connection with the sale of the property, revealed that a public footpath is recorded passing through 25 Windsor Avenue and the properties to the rear, 104 and 106 Staghills Road.

Rossendale Borough Council and Lancashire County Council do not have any record that a legal order has been made to divert, stop up or extinguish any part of the footpath.

The length of existing path proposed to be extinguished is shown by a bold continuous line and marked on the attached map as A-B-C.

Consultations

Rossendale Borough Council been consulted and at the time of writing, the response is awaited. The Peak and Northern Footpaths Society and the Rossendale branch of the Ramblers have been consulted and at the time of writing, their responses are also awaited.

The consultation with the statutory undertakers has been carried out and, at the time of writing, no objections or adverse comments on the proposal have been received.

Advice

Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 8323 2235	Junction of Footpath Rawtenstall 205 and the northern boundary of 25 Windsor Avenue.
B	SD 8322 2233	Point where Footpath Rawtenstall 205 crosses the southern boundary of 25 Windsor Avenue and the northern boundary of 104 Staghills Road.
C	SD 8322 2231	Junction of Footpath Rawtenstall 205 and the southern edge of the boundary between 104 and 106 Staghills Road.

Description of existing footpath to be extinguished

(All lengths and compass points given are approximate).

The entire width of that part of Footpath Rawtenstall 205, commencing at Point A, running south-south-west for 20 metres, crossing 25 Windsor Avenue to point B then south for 15 metres, crossing 104 and 106 Staghill's Road to point C.

Variation to the particulars of the path recorded on the Definitive Statement

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Footpath Rawtenstall 205 be amended to read as follows:

The 'Position' column to read:

"From Dark Lane from Church Street, Newchurch S to terminate at the northern boundary of 25 Windsor Avenue at SD 8323 2235. The section of footpath between SD 8323 2235 and SD 8322 2231 has been extinguished. At the southern edge of the boundary between 104 and 106 Staghill's Road at SD 8322 2231 the footpath then runs to Bacup Road.

The 'length' column be amended to read:

"0.78 km"

Criteria satisfied to make and confirm the Order

The proposed Order meets the criteria for an extinguishment of a public right of way under section 118 of the Highways Act 1980, i.e. that it is expedient that the path should be stopped up on the grounds that it is not needed for public use.

The footway of Windsor Avenue and Staghill's Road provides a safe and convenient link to either end of that part of Footpath Rawtenstall 205 that is proposed to be extinguished.

Since the houses were built over 67 years ago, there has not been a footpath available to be walked on the ground. Since that time the footpath has been obstructed by the houses, fences, walls and front and back gardens.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route, of which we are aware at the time of writing.

It is advised that the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The applicant is authorised to act on behalf of the registered owners of 25 Windsor Avenue, crossed by the length to be stopped up, marked A-B. There are two other

properties that are crossed by the length of Footpath Rawtenstall 205 proposed to be stopped up. The owners of those properties have been consulted and are not expected to raise any objection to the extinguishment proposal.

The applicant has agreed to bear all advertising and administrative charges incurred by the county council in the Order making procedures.

It is also advised that the needs of disabled people have been actively considered and the availability of the footways of Windsor Road and Staghills Road have been taken into consideration and therefore the proposal is compatible with the duty of the county council, as a Highway Authority, under The Equality Act 2010.

Further, it is also advised that the effect of the Order is compatible with the material provisions of the county council's 'Rights of Way Improvement Plan'.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

Stance on Submitting the Order for Confirmation (Annex C refers)

It is recommended that the county council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit and therefore it is suggested that in this instance the promotion of this extinguishment to confirmation in the event of objections, which unlike the making of an Order is not rechargeable to the applicant, is not undertaken by the county council. In the event of an Order being submitted to the Secretary of State the applicant can support or promote it to confirmation, including participation at public inquiry or hearing. It is suggested that the authority takes a neutral stance.

Risk Management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annexes B and C included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

Alternative options to be considered

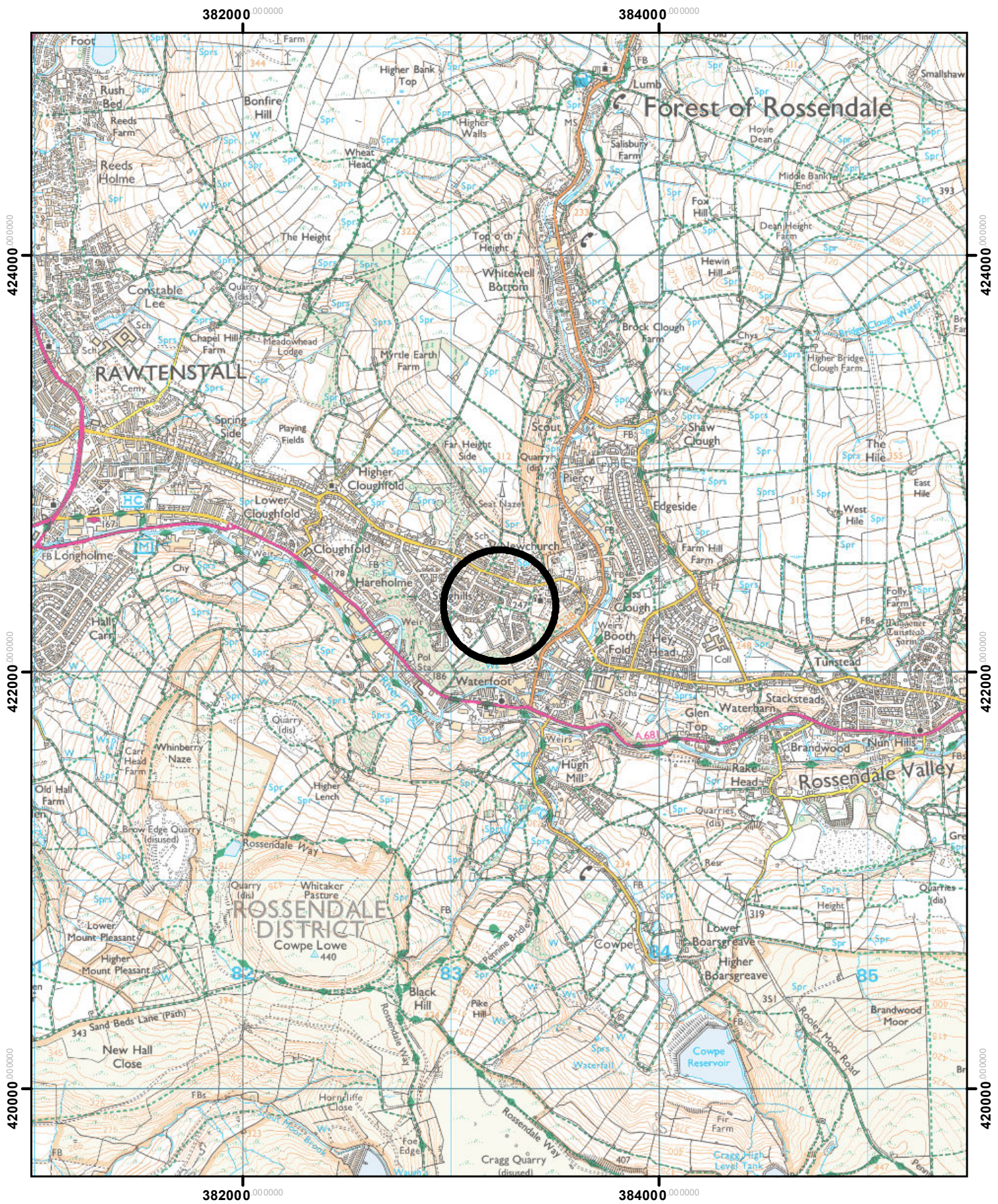
To not agree that the Order be made.

To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

To agree that the Order be made and promoted to confirmation by the county council.

Local Government (Access to Information) Act 20585 List of Background Papers

Paper	Date	Contact/Directorate/Tel
File Ref: 211- 727		Planning and Environment Group
File Ref: PRW-9-21-205		Mrs R J Paulson, 07917 836628
Reason for inclusion in Part II, if appropriate		
N/A		



Lancashire
County
Council

Andrew Mullaney
Head of Planning
and Environment

Location Plan
Highways Act 1980 – Section 118
Proposed Extinguishment of Part of the Recorded Route of
Footpath Rawtenstall 205, Windsor Avenue to Stag Hills Road, Rossendale Borough.



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Highways Act 1980 – Section 118
Wildlife and Countryside Act 1981 – Section 53A

Proposed Extinguishment of Part of the Recorded
Route of Footpath Rawtenstall 205, From Windsor
Avenue to Staghills Road, Rossendale Borough.









