

Lancashire County Council

Regulatory Committee

Wednesday, 4th February, 2015 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

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.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Application Application to add a Public Footpath from Horncliffe Close to Bury Road, Rawtenstall, Rossendale Borough File No. 804-554	(Pages 37 - 64)
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6.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Deletion of Part of Bacup Footpath 616, Higher Boarsgreave, Bacup File No. 804-538	(Pages 65 - 84)
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7. **Wildlife and Countryside Act 1981** (Pages 85 - 112)
Claimed Public Footpath (known as Stoopes Hill)
from Water Street to Stoney Bank Road, Earby,
Pendle Borough
File No. 804-494
8. **Highways Act 1980 - Section 119** (Pages 113 - 124)
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Public Footpath No.
44, Grindleton and Public Footpath No. 5 Sawley,
Ribble Valley Borough
9. **Order Making Authorities stance on confirmation of** (Pages 125 - 146)
the Order
Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Diversion of Part of Whittingham Footpaths 1 and 5,
Preston City

10. 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.

11. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on date in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston on Wednesday 25th March 2015.

I Young
County Secretary and Solicitor

County Hall
Preston

Agenda Item 3

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 17th December, 2014 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Present:

County Councillor Jackie Oakes (Chair)

County Councillors

K Snape	C Henig
I Brown	A Schofield
A Clempson	D Stansfield
D Clifford	D Whipp
B Dawson	B Yates
P Hayhurst	

CC Niki Penney replaced CC Julie Gibson for this meeting only.

1. Apologies.

No apologies were presented.

2. Disclosure of Pecuniary and Non-Pecuniary Interests.

CC Niki Penney disclosed a pecuniary interest in item 7 (Three Public Footpaths across Coronation Field, Lancaster City) as she lives within close proximity to the site.

3. Minutes of the last meeting.

Resolved: That the minutes of the meeting held on 22 October be confirmed and signed by the Chair

4. Guidance.

A report was presented in connection with Guidance for members of the Committee regarding the law on the continuous review of the Definitive Map and Statement of Public Rights of Way, certain Orders to be made under the Highways Act, 1980 and the actions available to the County Council on submission of Public Path Orders to the Secretary of State.

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

**5. Wildlife and Countryside Act 1981
Definitive Map Modification**

**Upgrading to Bridleway of Bacup Footpaths 12, 13, 14 and 17
(Tunstead Lane) from Booth Road to Fearn Moss, Rossendale
Borough
File No. 804-514**

A report was presented on an application (under Schedule 14 of the Wildlife and Countryside Act 1981) to upgrade footpaths 12, 13, 14 and 17 on Tunstead lane, Bacup, to a bridleway from Booth Road to Fearn Moss (Rossendale Borough).

Details of the claim and the evidence relating to it, together with a summary of the law in relation to the continuous review of the definitive map and statement of public rights of way (in the form of Annex A) was presented both as part of the report and by officers at the meeting.

Having examined all of the information presented, the Committee agreed that, taking all the relevant evidence into account, on balance, dedication as a restricted byway could be inferred at Common Law and the route, recorded as footpaths at present, be recorded as having restricted byway status as the evidence suggested on balance the route had a higher public status.

Resolved: That

- i. the application for Bacup Footpaths 12, 13, 14 and 17 (Tunstead Lane) to be upgraded in accordance with File No. 804-514, be accepted.
- ii. an Order be made pursuant to Section 53 (2)(b) and Section 53 (c)(ii) of the Wildlife and Countryside Act 1981 to upgrade Bacup Footpaths 12, 13, 14 and 17 to Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-H.
- iii. being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

6. Wildlife and Countryside Act 1981

Definitive Map Modification Order Applications

1. Application to add a Public Footpath from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough - File No. 804-551

2. Application to add a Public Footpath in a circuitous route, starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough - File No. 804-552

A report was presented on an application for a public footpath to be added from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough, and also a footpath to be added in a circuitous route, starting and ending on Laund Lane.

Details of the claim and the evidence relating to it, together with a summary of the law in relation to the continuous review of the definitive map and statement of

public rights of way (in the form of Annex A) was presented both as part of the report and by officers at the meeting.

In discussing the applications, it was noted by the committee that the general right to wander over an area of land was not the same as a right of way, and the lack of a definitive route in some places was recognised.

Having examined all of the information presented, the Committee agreed that taking all the relevant evidence into account, on the balance of probabilities, that there was insufficient evidence for a dedication in this matter as a public footpath and that an Order should not be made.

Resolved: That

- i. application reference 804-551 be rejected
- ii. application reference 804-552 be rejected

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Applications for the Addition to the Definitive Map and Statement of
Three Public Footpaths across Coronation Field, Lancaster City
Application Nos. 804-541, 804-542, 804-543**

County Councillor Penney left the room for this item, having declared a pecuniary interest.

A report was presented on an application for an addition of three public footpaths across Coronation Field, Lancaster City, to be added to the Definitive Map and Statement.

Details of the claim and the evidence relating to it, together with a summary of the law in relation to the continuous review of the definitive map and statement of public rights of way (in the form of Annex A) was presented both as part of the report and by officers at the meeting.

It was recognised that the site was a complex one, and a number of issues relating to the various routes were considered.

Having examined all of the information presented, and noting how the routes was recorded on documents and the user evidence, the Committee agreed that taking all the relevant evidence into account, on the balance of probabilities, that public footpath rights on the claimed routes may be reasonably alleged to subsist and that an Order be made but, whether there was sufficient evidence to satisfy the higher test for confirmation was more difficult and the Committee agreed that a further report be presented on this point and to decide the stance in respect of the Order.

Resolved: That

- i. application 804-541 for a footpath from New Quay Road to Willow Lane Recreation Ground, Lancaster City, to be added to the Definitive Map and Statement of Public Rights of Way, be accepted
- ii. application 804-542 for a footpath from New Quay Road to Public Footpath 33 Lancaster City, be added to the Definitive Map and Statement of Public Rights of Way, be accepted
- iii. application 804-453 for a footpath from the junction of Public Bridleways 32 and 33 Lancaster and Public Footpaths 30 and 33 Lancaster to Willow Lane Recreation Ground, Lancaster City to be added to the Definitive Map and Statement of Public Rights of Way, be accepted
- iv. an Order or Orders be made pursuant to Section 53 (3)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way the following footpaths of 2 metre width:
 - a. 'Route 1' from New Quay Road to Willow Lane Recreation Ground for a distance of approximately 550 metres and shown between points A-B-C-D on the Committee Plan.
 - b. 'Route 2' from 'Route 1' to Public Footpath 33 Lancaster City for a distance of approximately 200 metres and shown between points C-E on the Committee Plan.
 - c. 'Route 3' from the junction of Public Bridleways 32 and 33 Lancaster and Public Footpaths 30 and 33 Lancaster to the junction of 'Route 1' and 'Route 2', for a distance of approximately 390 metres and shown between points F-C on the Committee Plan.
- v. not being satisfied that the higher test for confirming the said Order(s) can be satisfied, the matter be returned to Regulatory Committee at a later date.

**8. Wildlife and Countryside Act 1981
Application for Addition of Bridleway from Old Lane, Mawdesley, Chorley Borough to Old Lane, Bispham, West Lancashire District
File No. 804-445**

A report was presented on a new Order to add to the Definitive Map and Statement a public bridleway from Old Lane, Mawdesley, Chorley Borough to Old Lane, Bispham, West Lancashire District, in accordance with file no. 804-445.

The committee noted that the first Order made in respect of this route had been returned by The Planning Inspectorate as it contained an incorrect notation.

It was suggested a second new Order be made which deals with both the legal width error and the incorrect notation to the Definitive Map and Statement and would be a more modern order also dealing with modifications to the Definitive Statement should the Order be confirmed.

Having examined all of the information presented, the Committee agreed that, taking all the relevant evidence into account, and noting that no further evidence had come to light to alter the evaluation of evidence in 2007, that on balance dedication as a bridleway could be inferred at common law and that a new Order be made and promoted to confirmation to record the route as a bridleway.

Resolved: That

- i. an Order be made pursuant to Section 53 (2) (b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public bridleway from Old Lane, Mawdesley to Old Lane, Bispham on the Definitive Map and Statement of Public Rights of Way using the correct notation and specifying the width of the Order route as varying between 3-8 metres as shown on the Ordnance Survey 25 inch Map surveyed 1892 and published 1894.
- ii. being satisfied that the higher test for confirmation can be met the newly made Order be promoted to confirmation, if necessary at public inquiry.

9. Wildlife and Countryside Act 1981

1. Claimed deletion of Part of Public Footpath No. 129 Chipping, Ribble Valley Borough

**2. Claimed Public Footpath from Public Footpath No. 129 Chipping, Ribble Valley Borough to Fish House Lane
File Nos. 804-472 and 804-476**

A report was presented on an application of the claimed deletion of part of public footpath No. 129, Chipping (Ribble Valley Borough), and the public footpath from No. 129, Chipping, to Fish House Lane.

The committee noted that approval had already been given to this Order being made at a previous meeting. However, the original Order Map for this order used incorrect notation, and following a revision to the relevant advice note issued by the Planning Inspectorate, and in order to resolve the procedural objection to the confirmation of the deletion Order, it was considered preferable to remake a single order which deals with both the deletion of part of Public Footpath 129 Chipping and the addition of a public footpath from a point to the north of No. 10 Old Hive Cottages to Fish House Lane to the Definitive Map and Statement. It was therefore suggested to Committee that a new Order be made and both the Orders made in 2011 be submitted to the Planning Inspectorate requesting these are not to be confirmed. This course of action would resolve :the evidence the authority has regarding footpath s at this location; the issue of the incorrect notation; the concerns raised in the single objection; and enable a more modern Order to be made which would clarify the modifications to be made to the Definitive Statement should the deletion and addition both be confirmed

Having examined all the information presented and noting that no further evidence has come to light which would alter the evaluation of evidence in 2012 for both the deletion and addition of a footpath, the Committee agreed that there was sufficient evidence from which, on balance, to find dedication could be inferred and the test for deletion be satisfied such that a single Order be made and promoted to confirmation whilst the two earlier Order be submitted to the Planning Inspectorate for rejection or non-confirmation.

Resolved: That

- i. both the 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No. 4) Order 2011' and 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No. 5) Order 2011' made pursuant to the Committee decision on 23 September 2009 in relation to the claimed deletion of part of Public Footpath No.129 Chipping, Ribble Valley Borough in accordance with File No. 804-472 and the claimed addition of a public footpath from Public Footpath No. 129 Chipping, Ribble Valley Borough to Fish House Lane be submitted to the Planning Inspectorate for rejection or non-confirmation
- ii. That a further single Order be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(i) and Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete part of Public Footpath No.129 Chipping and add a public footpath from Public Footpath No. 129 Chipping to Fish House Lane, Chipping, Ribble Valley Borough on the Definitive Map and Statement of Public Rights of Way using the correct notation to depict both the routes on the Order Map and clarifying the modifications to be made to the Definitive Statement should the deletion and addition both be confirmed.
- iii. being satisfied that the tests for confirmation can be met the newly made Order be promoted to confirmation.

**10. Wildlife and Countryside Act 1981
Addition of Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge, Pendle Borough
File No. 804-440**

A report was presented on an application for the addition of a bridleway from the junction of Cab Lane and Cockhill Lane, Foulridge, to public footpath 65, Foulridge (Pendle Borough).

The committee noted that approval had already been given to this Order being made at a previous meeting. However, the original Order Map for this order used incorrect notation, and following a revision to the relevant advice note issued by the Planning Inspectorate, it was suggested that it was preferable to make and promote to confirmation a new Order which deals with both the wrong notation and the other modifications required and the original Order made in 2007 be submitted to the Planning Inspectorate requesting it is not to be confirmed.

As the authority still has evidence concerning a bridleway at this location the making of a new Order was properly considered. The Committee noted that no further evidence has come to light or information from any objector which would alter the evaluation of evidence in 2007

Having examined all of the information presented, the Committee agreed that, taking all the relevant evidence into account, on balance dedication as a bridleway could be inferred at common law and recorded as having bridleway status.

Resolved: That

- i. 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification (No. 7) Order 2007' made pursuant to the Committee decision on 9 May 2007 in relation to the claimed addition for a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Castle Road, Laneshaw Bridge, be submitted to the Planning Inspectorate for non-confirmation / rejection
- ii. a further Order be made pursuant to Section 53 (2) (b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge on the Definitive Map and Statement of Public Rights of Way using the correct notation o the Order Map and clarifying the modifications to be made to the Definitive Statement should the Order be confirmed.
- iii. That being satisfied that the higher test for confirmation can be met the newly made Order be promoted to confirmation.

**11. Wildlife and Countryside Act 1981
Claimed Public Footpath from Public Footpath No. 40 to Longworth Road, Billington, Ribble Valley Borough
File No. 804-427**

A report was presented on an application of a public footpath from footpath No. 40 to Longworth Road, Billington (Ribble Valley Borough).

The committee noted that approval had already been given to this Order being made at a previous meeting. However, the original Order Map for this order used incorrect notation, and following a revision to the relevant advice note issued by the Planning Inspectorate, it was suggested that it was preferable to make and promote to confirmation a new Order which deals with both the wrong notation and the other modifications required and the original Order made in 2006 be submitted to the Planning Inspectorate requesting it is not to be confirmed.

As the authority still has evidence concerning a footpath at this location the making of a new Order was properly considered. The Committee noted that no further evidence has come to light or information from any objector which would alter the evaluation of evidence in 2006

Having examined all of the information presented, the committee agreed that, taking all the relevant evidence into account, on balance there was sufficient evidence from which a dedication could be deemed under S.31 of the Highways Act or inferred at common law and it was appropriate that an order be made and promoted to confirmation.

Resolved: That

- i. 'The Lancashire County Council Definitive Map And Statement of Public Rights of Way (Definitive Map Modification (No. 5) Order 2006' made pursuant to the Committee decision on 27 September 2006 in relation to the claimed Public Footpath from Public Footpath No. 40 to Longworth Road, Billington, Ribble Valley Borough; in accordance with file 804/427 be submitted to the Planning Inspectorate for non-confirmation / rejection.
- ii. a further Order be made pursuant to Section 53 (2) (b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public footpath from Public Footpath 40 to Longworth Road, Billington on the Definitive Map and Statement of Public Rights of Way using the correct notation to depict the route on the Order Map and clarifying the modifications to be made to the Definitive Statement should the Order be confirmed.
- iii. being satisfied that the higher test for confirmation can be met the newly made Order be promoted to confirmation.

12. Wildlife and Countryside Act 1981

**Application for deletion of part of Public Footpath no. 3 Broughton, Preston City from the Definitive Map and Statement
Addition of Public Footpath from stile adjacent to Sandyforth Lane, Broughton, to Lightfoot Lane, Fulwood, Preston City
File Nos. 804-498 & 804-511**

A report was presented on an application for deletion of part of public footpath No. 3, Broughton, from the Definitive Map and Statement, and also the addition of a public footpath from the stile adjacent to Sandyforth Lane (Broughton) to Lightfoot Lane, Fulwood (Preston City).

The committee noted that approval had already been given to this Order being made at a previous meeting. However, the original Order Map for this order used incorrect notation, and following a revision to the relevant advice note issued by the Planning Inspectorate, it was suggested that it was preferable to make and promote to confirmation a new Order which deals with both the wrong notation and the other modifications required and the original Order made in 2013 be submitted to the Planning Inspectorate requesting it is not to be confirmed.

As the authority still has evidence concerning a deletion and addition of a footpath at this location the making of a new Order was properly considered. The Committee noted that no further evidence has come to light or information from any objector which would alter the evaluation of evidence in 2006

Having examined all of the information presented, the Committee agreed that taking all the relevant evidence into account, on the balance of probabilities, that the test for deletion could be satisfied in respect of part of Footpath 3 Broughton and also a dedication of the route from the stile to Lightfoot Lane as a public footpath be inferred at common law and that an Order be made in respect of the deletion and addition and promoted to confirmation

Resolved: That

- i. 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way Deletion of Part of Footpath No. 3 Broughton and Addition of a Footpath from Sandyforth Lane to Lightfoot Lane (Definitive Map Modification) Order 2014' made pursuant to the Committee decision on 30 October 2013 in relation to the deletion of part of Public Footpath No. 3 Broughton, from the Definitive Map and Statement of Public Rights of Way and the addition of a public footpath from the stile adjacent to Sandyforth Lane, Broughton, to Lightfoot Lane, Fulwood to be submitted to the Planning Inspectorate for non-confirmation or rejection due to the Order Map containing the incorrect notation to depict the Order route.
- ii. a further Order be made pursuant to Section 53 (2) (b) Section 53 (c)(i) and Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete part of Public Footpath No. 3 Broughton and to add a public footpath from the stile adjacent to Sandyforth Lane, Broughton, to Lightfoot Lane, Fulwood on the Definitive Map and Statement of Public Rights of Way using the correct notation on the Order plan.
- iii. being satisfied that the higher test for confirmation can be met the newly made Order be promoted to confirmation, if necessary at a public inquiry.

**13. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Billington and Langho Footpath 7,
Ribble Valley Borough**

A report was presented on an application duly made by Great places Housing Group under Section 119 Highways Act for the proposed diversion of a section of Billington and Langho footpath 7 (Ribble Valley Borough).

Summaries of the relevant law and guidance in the form of Annexes 'B' and 'C' were presented.

When considering the proposed diversion the Committee noted that it was in the interests of the owners of part the existing footpath to enable the handover of the development as the line of the footpath had not been dealt with under the planning regime and to also provide improvement and security for residences nearby.

It was suggested that in this matter in the event of the Order being submitted to the Secretary of State the applicant supports or promote the confirmation of the Order, including participation at public inquiry or hearing. It was suggested that the Authority take a neutral stance in accordance with Annex C.

The responses received from Statutory Undertakers and other consultees were noted and having considered all the information set out in the report and presented at the meeting, together with the statutory tests, it was agreed that an Order be made but should the Order require sending to the secretary of state the authority take a neutral stance.

Resolved: That

- i. an Order be made under Section 119 of the Highways Act 1980 to divert part of Billington and Langho Footpath 7, from the route shown by a bold continuous line and marked A-B-C-D to the route shown by a bold dashed line and marked A-E-C-F on the attached plan.
- ii. 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 and the Authority take a neutral stance with respect to its confirmation.
- iii. 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

**14. Order Making Authorities stance on confirmation of the Order
Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Diversion of Part of Public Footpath No. 9 Wrightington, West
Lancashire Borough**

A report was presented on an Order previously made under Section 119 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981, for the diversion of a section of public footpath No. 9 in Wrightington (West Lancashire Borough). Objections had been received.

It was felt appropriate to reconsider the stance to be taken by the authority in connection with the confirmation and guidance in the form of Annexes B and C was presented both as part of the report and by officers at the meeting.

It was noted that this diversion is of no public benefit but that it does still meet the statutory tests including that it is not substantially less convenient for the public. The difficulties of justifying the promotion of the order to confirmation, once the matter is referred to the Planning Inspectorate, due to the limited resources the Council has at present were considered by the Committee. Therefore, it was proposed that the Council's position should be to submit the order but take a neutral stance, and allow the applicants to promote the order.

Resolved: That the Order be referred to the Planning Inspectorate and the County Council adopts a neutral stance as regards confirmation of the Order.

15. Date of Next Meeting

It was noted that the next meeting of the Committee will be held at 10:30am on the Wednesday 4 February 2015 in Cabinet Room 'B' – The Diamond Jubilee Room at County Hall, Preston.

I Young
County Secretary and Solicitor

County Hall
Preston

Agenda Item 4

Regulatory Committee

Meeting to be held on 04/02/2015

Electoral Division affected:

All

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 04/02/2015

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 4th February 2015

Electoral Division affected: Rossendale South
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**Wildlife and Countryside Act 1981
Definitive Map Modification Order Application
Application to add a Public Footpath from Horncliffe Close to Bury Road,
Rawtenstall, Rossendale Borough**

File No. 804-554
(Annex 'A' refers)

Contact for further information:

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Executive Summary

An application for a public footpath from Horncliffe Close to Bury Road, Rawtenstall, Rossendale Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-554

Recommendation

1. That the application (reference 804-554) for a public footpath from Horncliffe Close to Bury Road to be added to the Definitive Map and Statement of Public Rights of Way be accepted.
2. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from Horncliffe Close, for a distance of approximately 25 metres to Bury Road, Rawtenstall, Rossendale Borough, and shown between points A and B on the attached plan.
3. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted if necessary by submitting it to the Secretary of State.

Background

An application has been received from Mr Graham Bancroft and Mrs Ann Ashton for a footpath extending from a point on Horncliffe Close to a point on Bury Road, a distance of approximately 25 metres, and shown between points A and B on the attached plan, to be added to 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 1981 Act sets 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 if the evidence shows that:

- A right of way "subsists" or is "reasonably alleged to subsist"
- Or
- "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"

When considering evidence, if it is shown that a highway once 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 1981 Act (as explained in Planning Inspectorate's Advice Note No. 7) 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 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 the 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 has been consulted and no response has been received, therefore it is assumed that they have no comments to make.

Parish Council

There is no Parish Council for the area.

Claimant/Landowners/Supporters/Objectors

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in 'Advice – County Secretary and Solicitors Observations'.

Advice

Environment Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8029 2159	Steps at junction with footway of Bury Road (C701)
B	8031 2158	Junction with the cul-de-sac end of Horncliffe Close (U7464)

Description of Route

A site inspection was carried out on 27th November 2014.

The route commences at the footway of Bury Road, where two steps (point A) approximately 1m wide, provides access to a narrow through route between the properties of 412 and 414 Bury Road, Rawtenstall.

The route continues along a paved surface between the properties for approximately 25 metres until reaching Horncliffe Close (point B). The route is enclosed on either side by boundary walls of the adjacent properties.

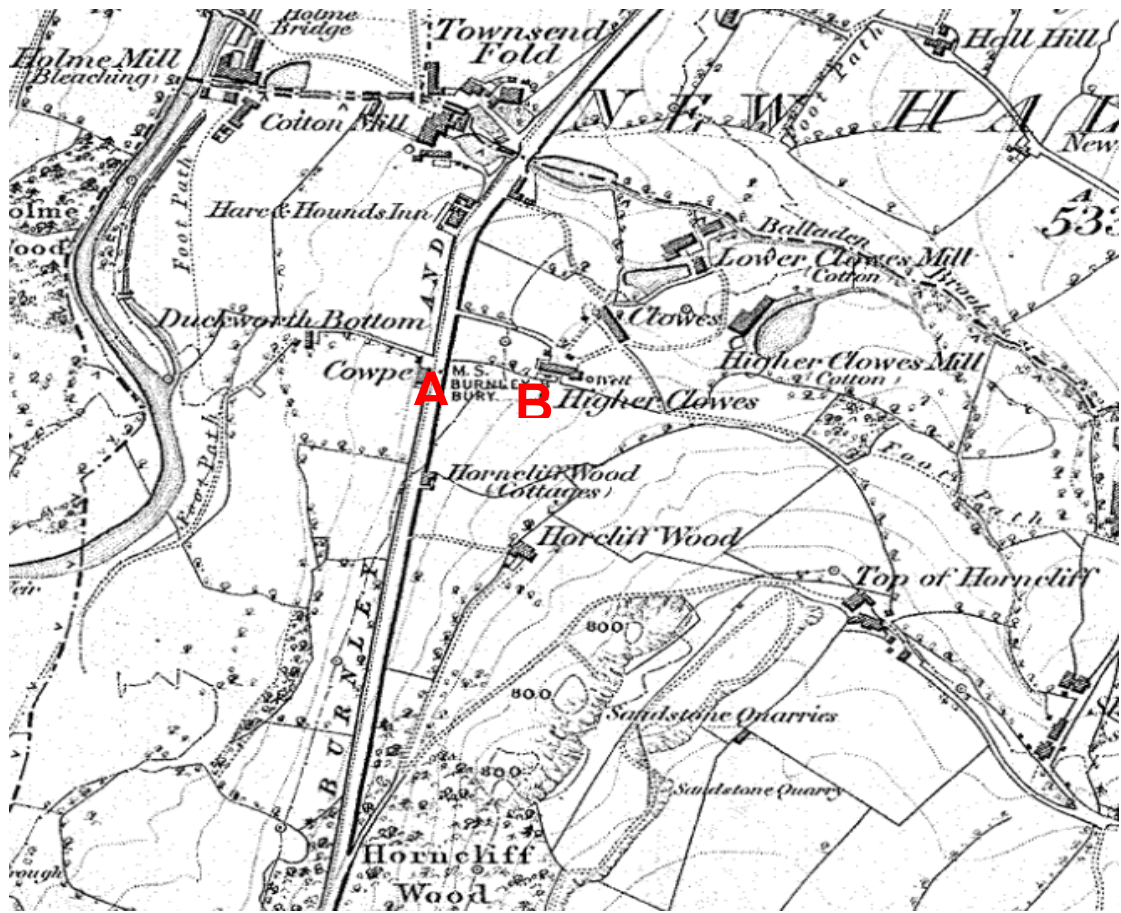
There are no deterrent signs to prevent people from using the route, nor are there any restrictions to prevent use. There does however appear to be the remains of an old gate post at point A, which has been incorporated into the wall of the property 414 Bury Road. Attached to the old gate post are the remains of an old gate latch. There was no gate in situ on the day of inspection and due to the rust on the gate latch; it appeared that a gate had not been there for quite some time. Since there would have been no need for a gate once Horncliffe Close had been built this might indicate that there was access to the former field at this point which could have made it available for public use.

Map and Documentary Evidence

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 route is not shown.

Comments		have not been recorded. No inference can be made.
Canal and Railway Acts		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.
Observations		The line for East Lancashire Railway is located approximately 160 metres from the application route. No documentation from this or any proposed railways or canals in the vicinity was found showing the area crossed by the application route.
Investigating Officer's Comments		No inference can be made.
Tithe Map and Tithe Award or Apportionment		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.
Observations		The Tithe Map for Rawtenstall (Tottington Lower End) does not record a footpath across the land. The land is registered under the land assessment no.299, which is recorded in the Apportionment Book as 'higher fields'
Investigating Officer's Comments		There is no evidence from the Tithe Award suggesting that the application route existed at this time.
Inclosure Act Award and Maps	1835	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.

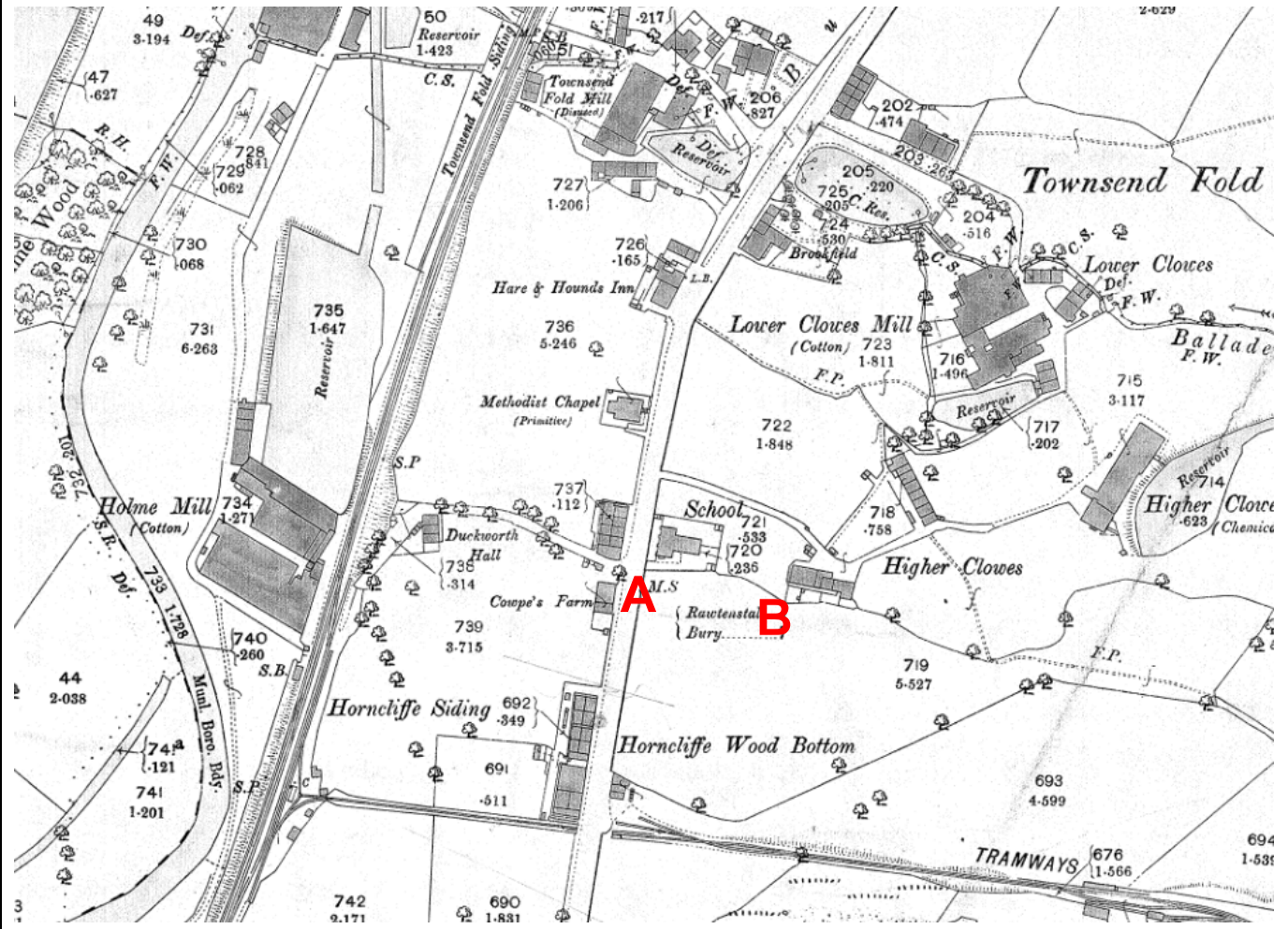
Observations		There is no Inclosure Act Award or Map available to view at Lancashire Archives for the area of Rawtenstall, the old township of Tottington Lower End.
Investigating Officer's Comments		No inference can be made.
6 Inch Ordnance Survey (OS) Map	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1849. ¹



Observations		The application route is not shown. Other routes have been recorded on the map in close proximity. The houses on Bury Road and Horncliffe Close had not yet been built.
Investigating Officer's Comments		It is unlikely that the application route existed at this time as the houses on Bury Road and Horncliffe Close were not yet in existence; therefore it is presumed that the route did not exist

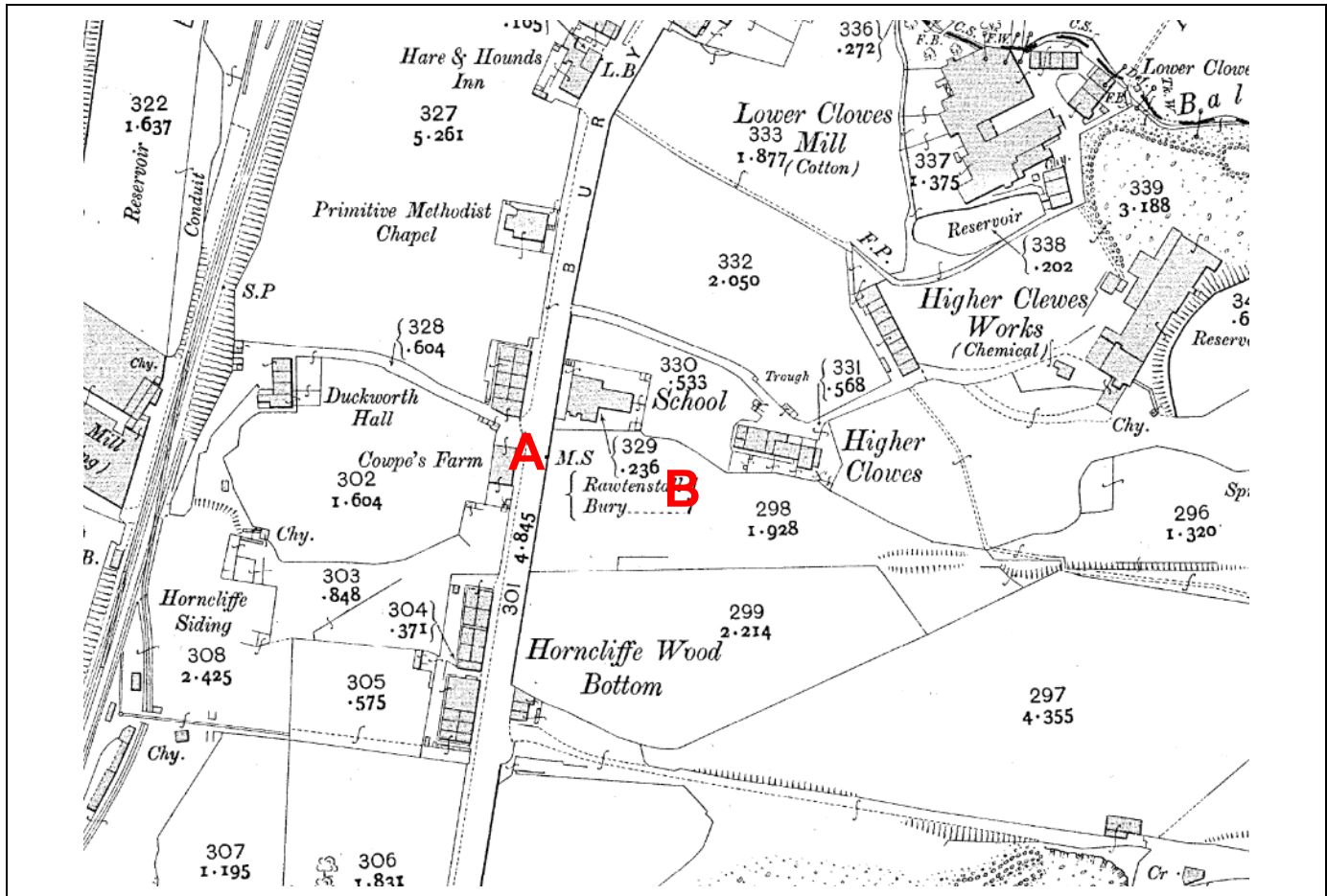
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in 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.

		at this time.
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile was surveyed in 1891 and published in 1893. (sheet no. 72/13)

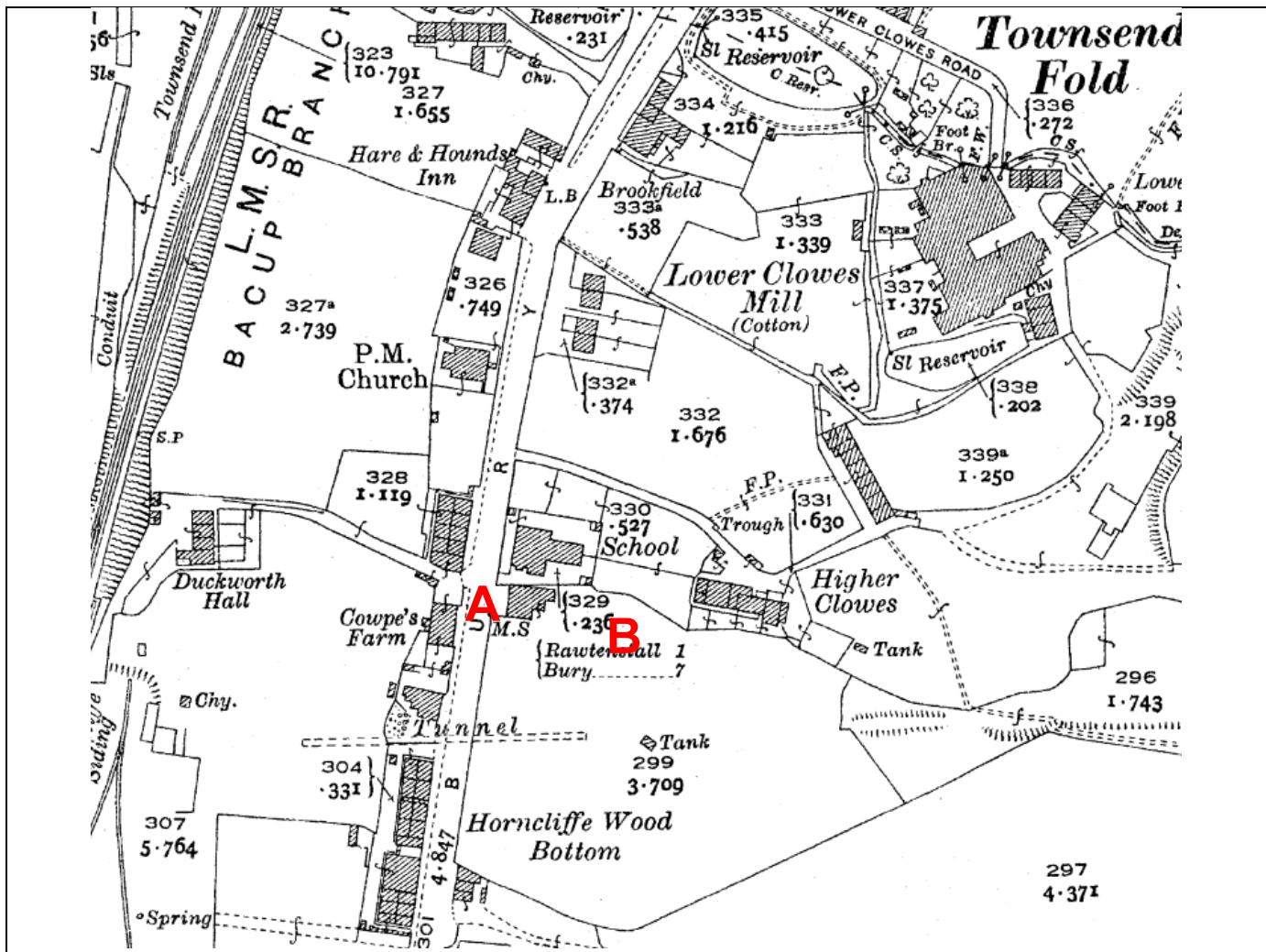


Observations		The application route is not shown on the map. A school had been built just north of where the application route lies, but the houses on Bury Road between which the route passes had not been built yet.
Investigating Officer's Comments		The application route is not shown on the 1893 OS Map therefore it is presumed that the application route did not exist at the time.
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 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. Maps, valuation books and field books produced

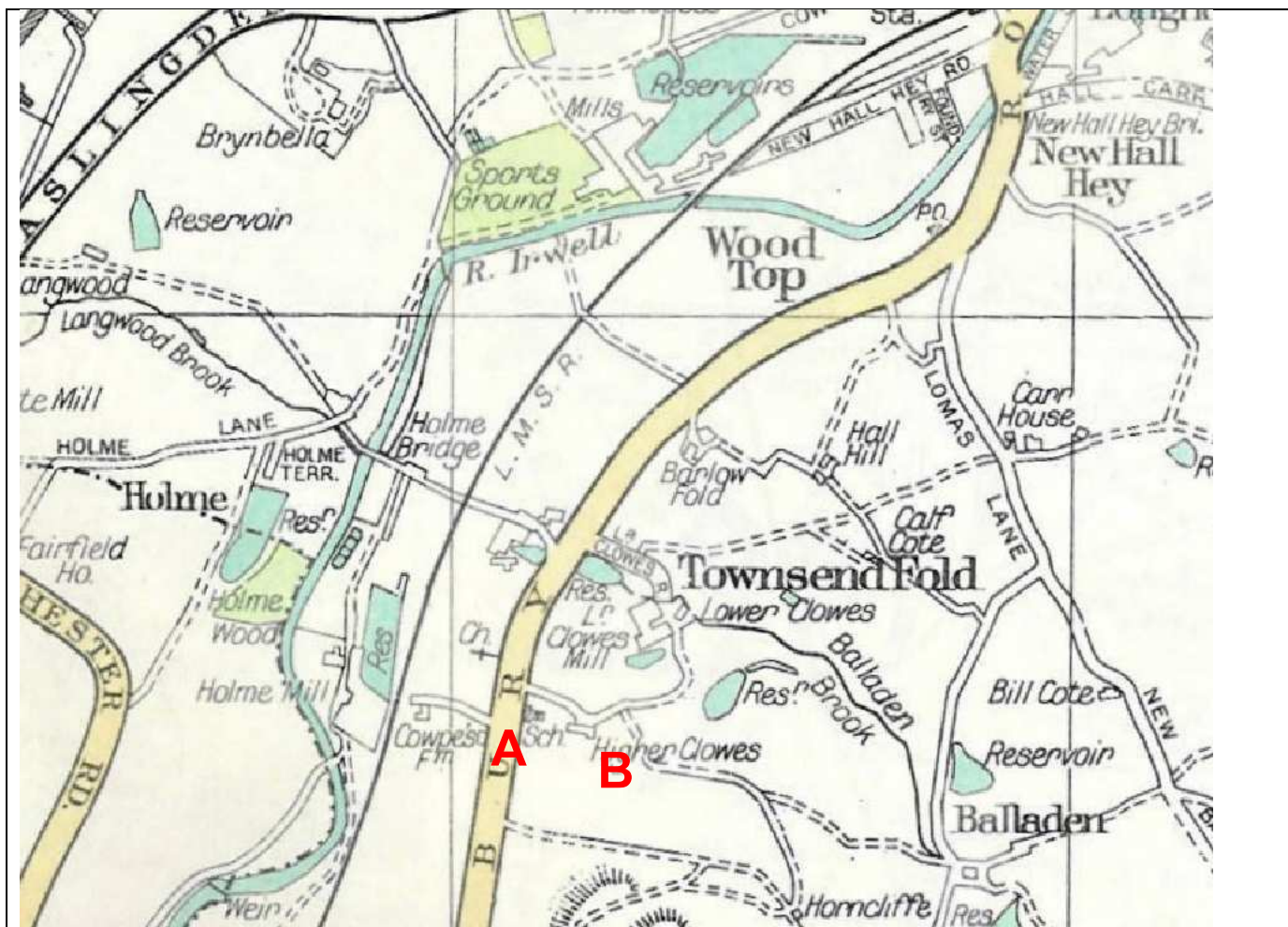
		<p>under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, 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>
Observations		<p>The Finance Act Map records the interested piece of land as no.3764, but does not show a footpath crossing this piece of land.</p> <p>The Finance Act Valuation Book records the area of interest as 'land' 'near to Bury Road'. The Valuation Book does not record a reduction in tax for a footpath crossing this land, this however is not conclusive evidence that a right of way does not exist. (ref: DVAC/1/4/5)</p>
Investigating Officer's Comments		<p>The Finance Act 1910 Valuation Book and Map do not provide evidence to support the existence of the application route.</p>
25 Inch OS Map	1911	<p>Further edition of 25 inch map, re-surveyed 1891, revised in 1908 and published 1911</p>



Observations		The application route is not shown on the map. The school is still in situ close to the application route, but the houses on Bury Road are still not in existence.
Investigating Officer's Comments		The application route probably did not exist in 1908.
1:2500 OS Map	1930	Further edition of 25 inch map resurveyed 1891, revised and re-levelled in 1928 and published in 1930.



Observations		The application route is not shown on the map. The houses on Bury Road and Horncliffe Close had not been built yet, although a property south of the school had been erected.
Investigating Officer's Comments		The application route probably did not exist at this time.
Map Directory of South Lancashire	1934	Map Directory of South Lancashire



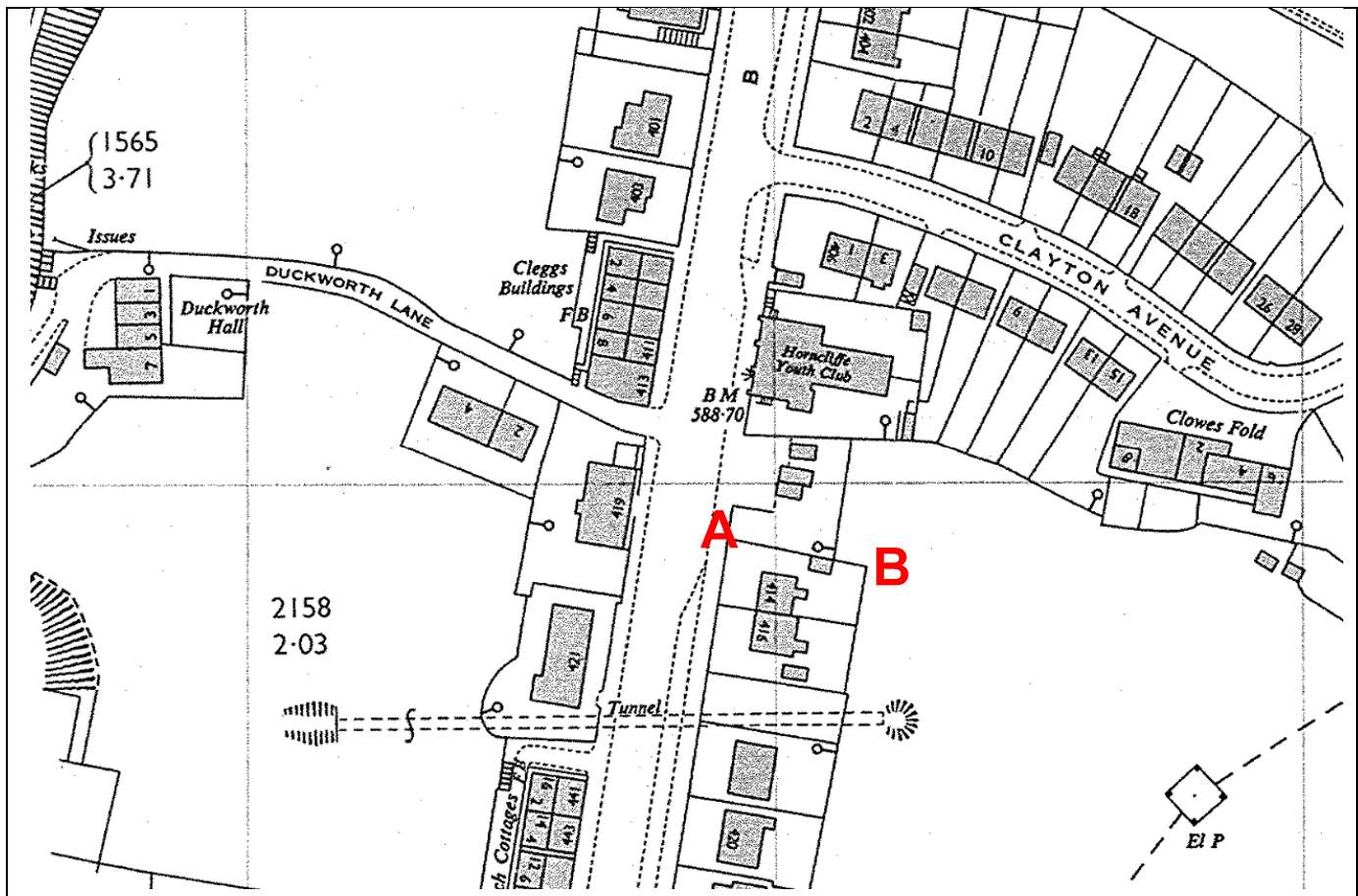
Observations		The application route is not shown on the Map Directory for South Lancashire. Other public footpaths have been recorded on it. The houses at Bury Road and Horncliffe Close had not yet been built.
Investigating Officers' Comments		The Map Directory for South Lancashire does not show evidence to support the application route. It is presumed that the route was not in existence at this time because the houses between which it runs and Horncliffe Close to which it connects had not been built.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		The quality of the 1940 aerial is not great. There

² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

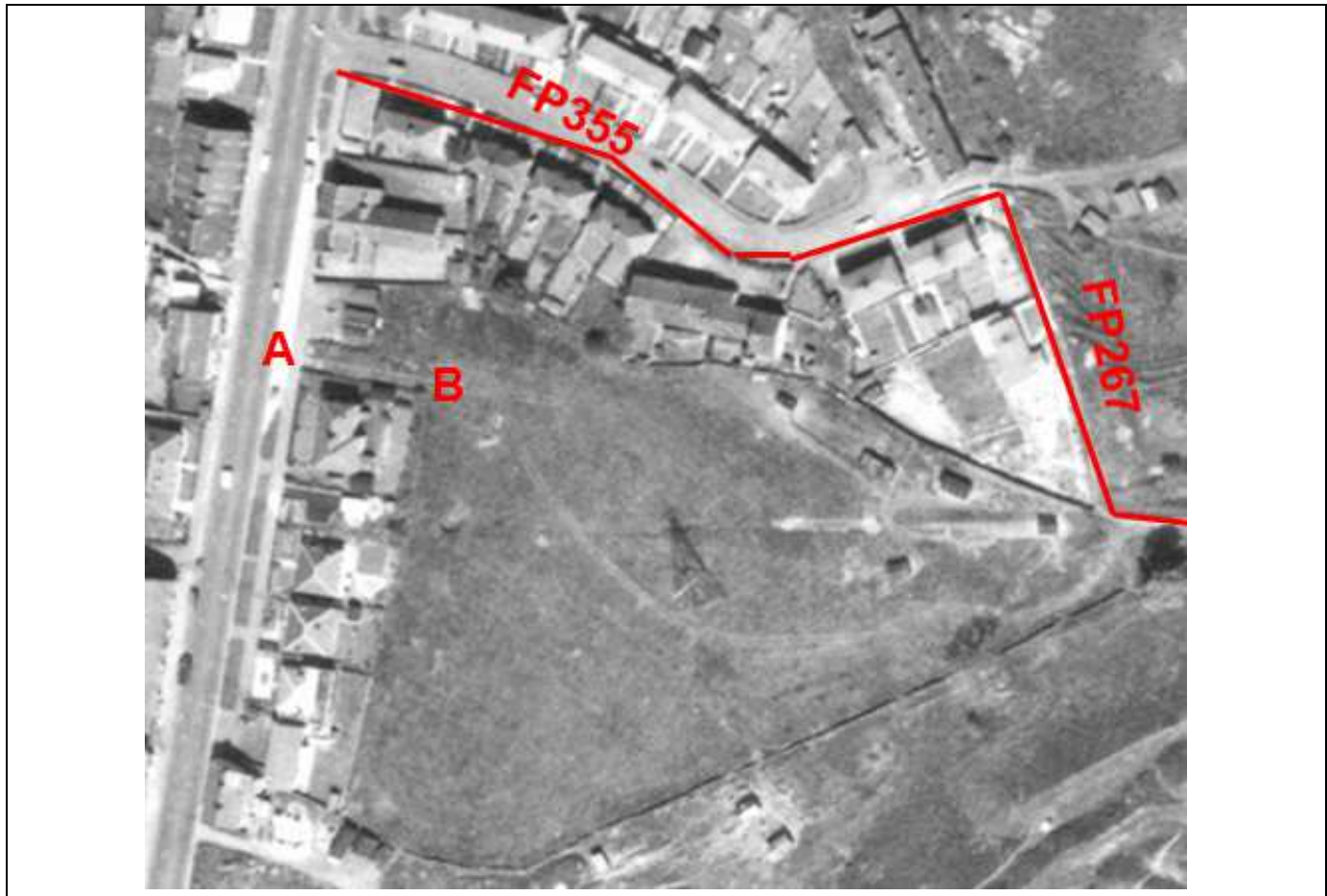
		was little visibility of the application route.
Investigating Officer's Comments		No inference can be made due to the poor quality of the photograph.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The application route is not shown on the map. The house of 414 Bury Road had been built by this time, whilst the house at 412 (where the letters "Sch." can be seen) had not, nor had Horncliffe Close.
Investigating Officer's Comments		It can be presumed that the route did not exist at the time of when the map was surveyed.
1:2500 OS Map	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published in 1963 as national grid series.



<p>Observations</p>		<p>The application route is not shown on the 1963 map. The house at no.414 Bury Road which the application route runs next to is clearly shown (as also shown earlier on the 1955 map). The property of 412 Bury Road had not yet been built, although smaller buildings possibly garages were in place, along with a boundary wall approximately three quarters of the way down the application route. Horncliffe Close had not been built at this point.</p>
<p>Investigating Officer's Comments</p>		<p>It can be presumed that the application route did not exist on the ground at this time.</p>
<p>Aerial photograph</p>	<p>1960s</p>	<p>The black and white aerial photograph was taken in the 1960s and is available to view on GIS.</p>



<p>Observations</p>		<p>There is a clear line along the application route, from point A to B, running alongside the property of 414 Bury Road. 412 Bury Road had not yet been built.</p> <p>There appear to be lines on the ground over the area where Horncliffe Close is now located, linking to public footpath 267 Rawtenstall.</p> <p>These appear to be vehicle markings but could have been used on foot, especially to exit onto FP267 at the opposite side of the field.</p>
<p>Investigating Officer's Comments</p>		<p>It appears that the route existed in 1960 as access from Bury Road to the open field (now Horncliffe Close) and the surrounding footpath network in the area but it is not possible to tell whether this was private or public access. Footpath users would not generally take a circuitous route like that of vehicle tracks on the ground.</p>
<p>Definitive Map Records</p>		<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</p>

		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		Rawtenstall is a municipal borough and therefore did not have a parish survey map.
Draft Map		<p>The parish survey map and cards for the rural districts were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>As Rawtenstall is a municipal borough they prepared the Draft Map straight away.</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>

		still no evidence that the application routes existed at this time.
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 recorded on the Definitive Map First Review.
Investigating Officer's Comments		The application route is not recorded on any maps preparatory to the Definitive Map and there were no objections to the route not being recorded. It was probably not considered to be public at the time.
Aerial Photograph	2000	Colour aerial photograph taken in 2000.



Observations		The application route can be seen as a gap between the properties of 412 and 414 Bury Road. It shows access from Bury Road to Horncliffe Close.
Investigating Officer's Comments		An enclosed route is shown in 2000, supporting the application.
Aerial Photograph	2010	Colour aerial photograph taken in 2010.



Observations		The through route is visible leading from Bury Road to Horncliffe Close.
Investigating Officer's Comments		The 2010 aerial photograph supports the application route.
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 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

		<p>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 Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the application routes run.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

The application route does not cross a Site of Special Scientific Interest or Biological Heritage, nor does it cross access land under the provisions of the Countryside and Rights of Way Act 2000.

The affected land is not registered common land.

Landownership and Planning Information

The owner of the land where the claimed route runs is unknown.

A land registry search has been conducted and shows the land on which the application route crosses as being unregistered.

The Horncliffe Close Estate was a large area of land purchased in 1973 which said area included the plot where No 412 was then constructed. It is not clear whether the large area purchased by the developer included the land on which the application route runs. When he transferred the plot of No 412 Bury Road the developer had initially included a reservation of a private right shown coloured brown on the plot for himself (possibly the claimed route) but any brown colouring and the words granting the right were removed/crossed out before completion. Whether the right of way was not agreed and the land where it ran still transferred or whether the land where he wished to reserve a right of way then fell outside the plot of 412 is not known.

This strip of land may show on the planning permission for the estate but although research has been carried out it is unable to provide further information on this.



Records of the Highway Authority

The original agreement for the dedication of Horncliffe Close by the developer has not been located. The coloured up adoption plans show Horncliffe Close coloured as adopted and the pathway where the claimed route runs is not coloured. It appears from the information available that the developer did not formally include the pathway for adoption as a public footpath by the highway authority.

Summary

There is no historical mapping evidence supporting this application. The aerial photographs which were inspected do however show the route being in existence on the ground from at least the 1960s. The 1960 Aerial Photograph indicates that use was possible on foot leading from Bury Road along the application route then across the open field where Horncliffe Close is now located, to join the footpath network further up at the opposite end of the field.

County Secretary and Solicitor's Observations

Information from the applicant

The applicants have provided 29 user forms in support of their application, however one of these forms has not been included as it is incomplete.

The evidence of use is set out below:

The users have known the route (in years) as follows:

0-19 (10) 20-39 (14) 40+ (4)

27 users have all used the route on foot, 1 user did not specify. The years in which the users used the route varies:

1974-2014(4)	1975-2014(2)	1977-2014(1)	1978-2014(1)
1979-2014(1)	1980-2014(1)	1981-2014(1)	1985-2014(2)
1986-2014(3)	1989-2014(2)	1996-2014(1)	2003-2014(1)
2004-2014(2)	2006-2014(1)	2008-2014(1)	2010-2014(2)
2011-2014(1)	2012-2014(1)		

The users were using the route to from home to school, to work, to visiting friends / relatives, to go to the pub or bus stop, from Hornccliffe road to Bury Road or vice versa, to walk the dog, to get to the train station and to go to the letter box. The main purposes for using the route was to get to and from home, to get to work and back, leisure / pleasure, exercise the dog, get to local amenities, to visit friends / relatives, to go to church or to get to the bus stop.

The use of the route per year varies from 4 times per day, to 600 times per year, daily, 2-5 times per week, weekly and 30 times per year.

When asked if the users have ever used the way on horseback they either answered 'no', or 'n/a' or a response was not provided. 2 users have used the route on a bicycle but they did not specify during which years, 1 user has used the bicycle more than 500 times and the other has used it 'most years'.

3 users have seen others using the route on horseback, 1 of those users have also seen someone using the route on motorcycle / vehicle, and another one has seen someone on a bicycle. The user that saw someone on horseback and on a motorcycle / vehicle did not specify how many times and during which years. The user that saw someone on horseback and on a bicycle states they saw them 'now and then', and the 3rd user to see someone on horseback saw them between the years of 1976-1980.

15 users have also seen other people using the way on foot, they saw them every time they used or during the years that they used it or daily. 1 user also mentions seeing United Utilities along the way when they were doing some works.

26 users all agree the route has run over the same line, 2 users did not provide a response to this question.

When asked if there are any stiles / gates / fenced along the route the users either answer 'no', 'none', 'n/a' or they did not provide a response. The responses were received when asked if any gates were locked. The same responses were also received when asked if they were ever prevented from using the way apart from 1 user who mentions they were prevented for a period of 5 days whilst United Utilities carried out works but the date of this is not given.

The users have never worked for a landowner over which the route crosses or they

never provided a response to this question, the same responses were received when asked if they have ever been a tenant of any land over which the route passes.

5 users were stopped / had to turn back when using the way when United Utilities carried out maintenance works, 3 of those users also heard of other users being stopped for the same reasons, the other 2 answered with 'n/a'. All the other users have never been stopped / turned away when using the route nor have they ever heard of anyone else being stopped or having to turn back.

All the users have answered 'no' or 'n/a' when asked if they were ever told by any owner or tenant of the land that it was not a public right of way on foot. All the users have also never seen any notices or signs along the way telling them 'private' or 'no road'. None of the users have ever asked permission to use the way.

6 users all mention that the current state of the route is becoming dangerous and is in a poor condition, other users mention this route is very useful and is well used.

The applicant would like to emphasise that this is not a greenfield area, rather a pathway provided some forty years ago by the builder of the estate, the pathway remains unadopted. To access Bury Road from their house they have a choice of a 25 metre walk or some 350 metres through an estate built on a fairly steep incline. The also mention that some 30 something children have walked this pathway to start or finish their school day, some of these children are now adults and still use this pathway because their parents reside in Horncliffe Close.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

Physical pathway

User evidence

Local knowledge

No calling into question prior to the application

Aerial photography and mapping since 1963

Against Accepting the Claim

No particular evidence against although evidence of a gateway at point a sometime in the past

Conclusion

The claim is that this pathway, between boundary walls of adjacent properties, has already become a footpath in law.

There is no express dedication and so Committee is advised to consider the relevant evidence to see if a footpath can be deemed to have been dedicated under the provisions of S31 Highways act or inferred at Common Law.

Firstly the provisions of S31 Highways Act requires the route to have been called into question. Here it is suggested that there has been no calling into use, challenging the use, until this application was made in 2014. The twenty years use to be considered is therefore 1994-2014. It is suggested that those using the route are representative of the general public and sufficient and the use was as of right.

There is reference to some people being unable to use the route due to work by a public utilities company. It is suggested that this could in law be a physical interruption of the way. It is not necessary that an interruption has to be intended to prevent public use although the circumstances in which the barring of the way took place and whether there was an intention to stop public use is relevant. In this matter there are those whose use is almost daily and do not refer to being unable to get through. There are those who recall some replacement of some pipes by United Utilities (UU) in 2010. The utility company may have considered the path to be a footpath maintainable at public expense (which is not the case) enabling them to use their statutory powers. If the work by UU challenged use and brought the route into question it may be that the twenty year period slips to 1990-2010 and again there is sufficient evidence of use by the public as of right during that period.

S31 also asks that any evidence of a lack of intention to dedicate has to be considered but in this matter there is no such evidence.

It is suggested that the provisions of S31 whereby dedication by the owner is deemed to have taken place are capable of being satisfied on balance.

Inference of dedication at Common Law from the circumstances, namely, use by the public, the construction of an available route and some work to surface said pathway and no action taken by any owner , would also apply in this matter. It is advised that the owners intention to let this pathway be used by the public could be sufficiently evidenced from the circumstances such that a dedication could be inferred on balance.

Taking all the evidence into account Committee may consider that there is sufficient evidence on balance that this pathway subsists as a footpath for the public and that an Order should be made and promoted to confirmation.

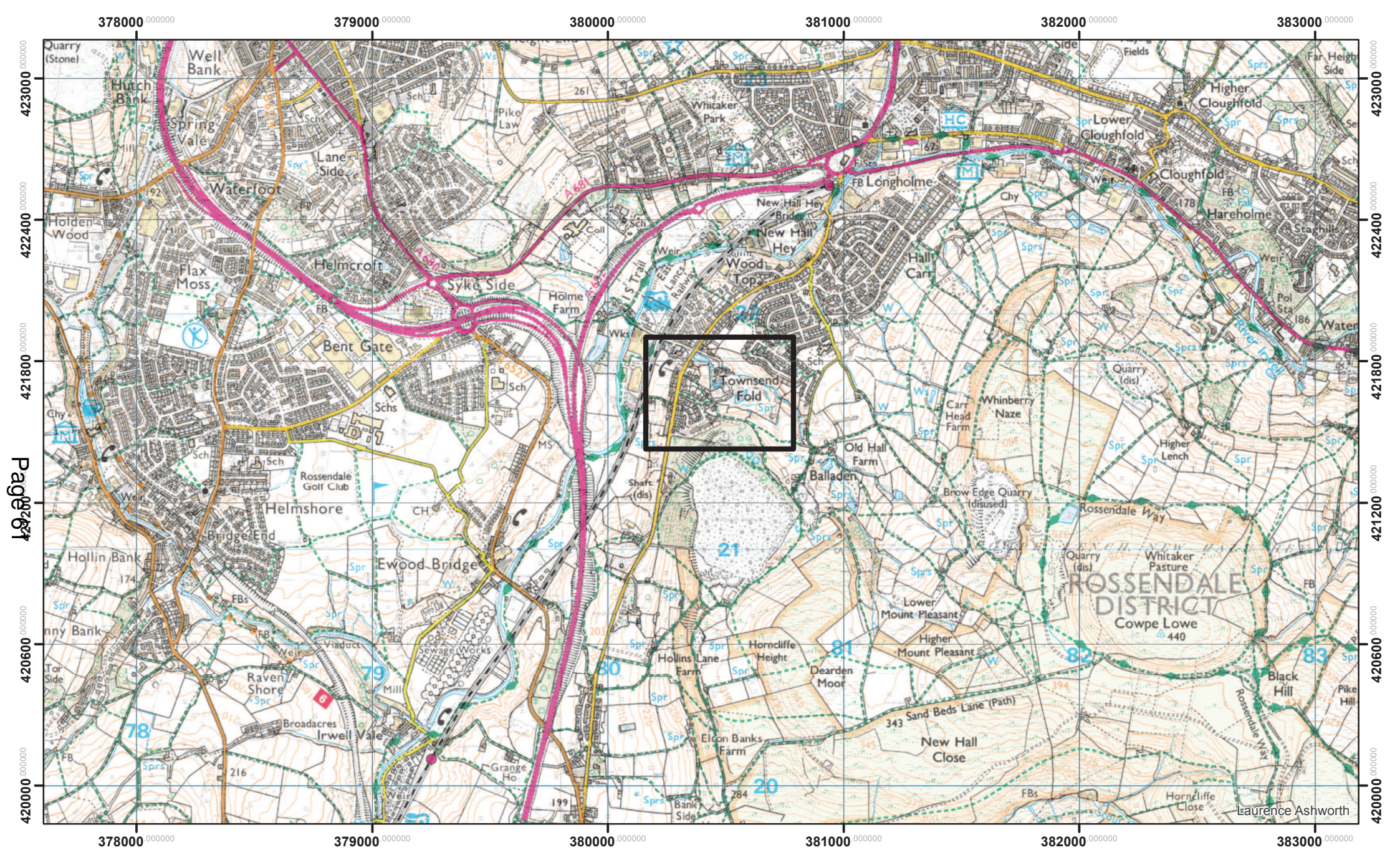
Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/554	Various	Megan Brindle, County Secretary and Solicitor' Group, 01772 (5)35604

Reason for inclusion in Part II, if appropriate

N/A



Location Plan



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Page 699

	<p>Steve Browne Executive Director for Environment</p>	<p>Wildlife & Countryside Act 1981</p> <p>Application for a public footpath from Bury Road to Horncliffe Close, Rawtenstall, Rossendale Borough - Application No. 804/554</p>	<p>1:1,250</p>	
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Regulatory Committee

Meeting to be held on 04 February 2015

Electoral Division affected: Rossendale East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Deletion of Part of Bacup Footpath 616, Higher Boarsgreave, Bacup

File No. 804-538

(Annex 'A' refers)

Contact for further information:

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Jayne Elliott, 07917 836626, Environment Directorate,

Jayne.elliott@lancashire.gov.uk

Executive Summary

Deletion of part of Bacup Footpath 616 in connection with previous decision to upgrade to and add Bridleway between Cowpe Road and Rooley Moor Road (File No. 804-538)

Recommendation

1. That part of Bacup Footpath 616 be deleted as shown on the Committee plan between points F-I.
2. That when an Order is made pursuant to Section 53 (3) (c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add a bridleway and to upgrade Bacup Footpaths 617, 616 (part), 609 and 612 (part) to bridleways on the Definitive Map and Statement of Public Rights of Way that the Order also includes, pursuant to Section 53 (3) (c) (iii), the extinguishment of part of Bacup Footpath 616 between points F-I on the Committee plan.
3. That being satisfied that the 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 was received from the Forest of Rossendale Bridleways Association for a public bridleway to be recorded on the Definitive Map and Statement of Public Rights of Way.

The application was considered by the Regulatory Committee at their meeting on 22 October 2014 and Committee agreed to make an Order to upgrade Bacup Footpaths 617, 616 (part), 609 and 612 (part) to bridleway and to add a bridleway on the Definitive Map and Statement of Public Rights of Way as shown on the Committee plan appended to the Committee Meeting Report between points A-H.

Following the Committee meeting officers started to draft the legal Order and it became apparent, when looking at the existing Definitive Statement, that an error had been made when the Definitive Map (First Review) was drawn in the 1960s and that a short section of Footpath 616 had been incorrectly drawn - as shown on the Committee plan between points F-I and that the footpath should actually have been drawn to follow the existing track between points F-G.

A drafting error of this type can only be dealt with by way of a Definitive Map Modification Order.

The Committee decision of 22 October 2014 was that an Order should be made to record the route between points F-G as a Bridleway. This further report deals with the evidence that has subsequently been discovered by the authority that the part of Footpath 616 shown on the Definitive Map between points F-I should be deleted. The effect would be that the bridleway F-G is shown instead of, rather than as well as, footpath F-I.

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 for deleting a way shown on the Definitive Map and Statement will be made if the evidence shows that:

- That there is no public right of way over land shown in the map and statement as a highway as any description

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 (as explained in Planning Inspectorate's Advice Note No. 7) 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

No further consultations have been carried out prior to this report being submitted to the Regulatory Committee.

Advice

Executive Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8419 2053	Junction of Footpath 612 and southern end of U7774 Cowpe Road.
B	8420 2052	Gate across route
C	8424 2047	Junction of Footpaths 608, 609 and 612 at Boarsgreave Farm
D	8425 2048	Gate across route
E	8429 2066	Unmarked junction of Footpaths 616, 609 and 610 with route
F	8432 2071	Unmarked junction of Footpath 616 with route
G	8435 2072	Junction of Footpaths 617, 618 and 619 west of gate.
H	8435 2072	Gate across route
I	8433 2073	Junction of Footpath 616 with 619

Description of Route

The section of recorded Footpath that is the subject of this report commences at an unmarked point on the track (point F) and extends in a north easterly direction across rough pasture for approximately 20 metres to the unmarked junction with Footpath 619 south of a stone wall (point I).


Access along the route is unobstructed but there is no evidence of a worn track.

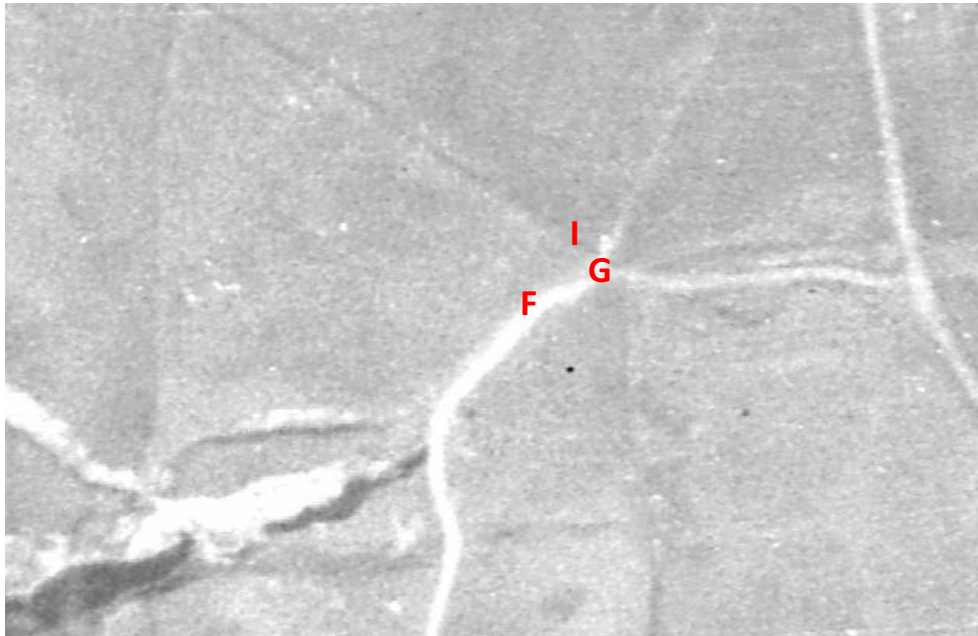
The total length of the route is approximately 20 metres.

Key Map and Documentary Evidence

This report details the key map and documentary evidence only.

Document Title	Date	Brief Description of Document & Nature of
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		Evidence
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.
		
Observations		The earliest large scale Ordnance Survey map shows an unbounded track (double pecked lines) curving round in a general north easterly direction from point F to point G where it meets the routes subsequently recorded as Footpaths 619, 618, 617. The route under investigation between points F-I is not shown.
Investigating Officer's Comments		The route under investigation did not exist as a physical feature (track) in 1892 but the routes between points F-G-H and H-I did.
25 Inch OS Map	1929	Further edition of 25 inch map (surveyed 1891, revised in 1927 and published in 1929.
Observations		The route under investigation is not shown and the junction of routes is shown in same way as on the 1893 and 1910 Ordnance Survey maps.
Investigating Officer's Comments		The route under investigation did not exist as a physical feature (track) in 1927 but the routes between points F-G-H and H-I did.

Aerial Photograph¹	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
		
Observations		A track can be clearly seen curving round in a north easterly direction from point F to point G where it meets the routes subsequently recorded as Footpaths 619, 618, 617. The route under investigation between points F-I is not shown.
Investigating Officer's Comments		A worn track did not exist between points F-I indicating that at the time that the photograph was taken the route was not in use, or that use was not significant.
6 Inch OS Map	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 before 1930 and is probably based on the same survey as the 1930s 25-inch map.

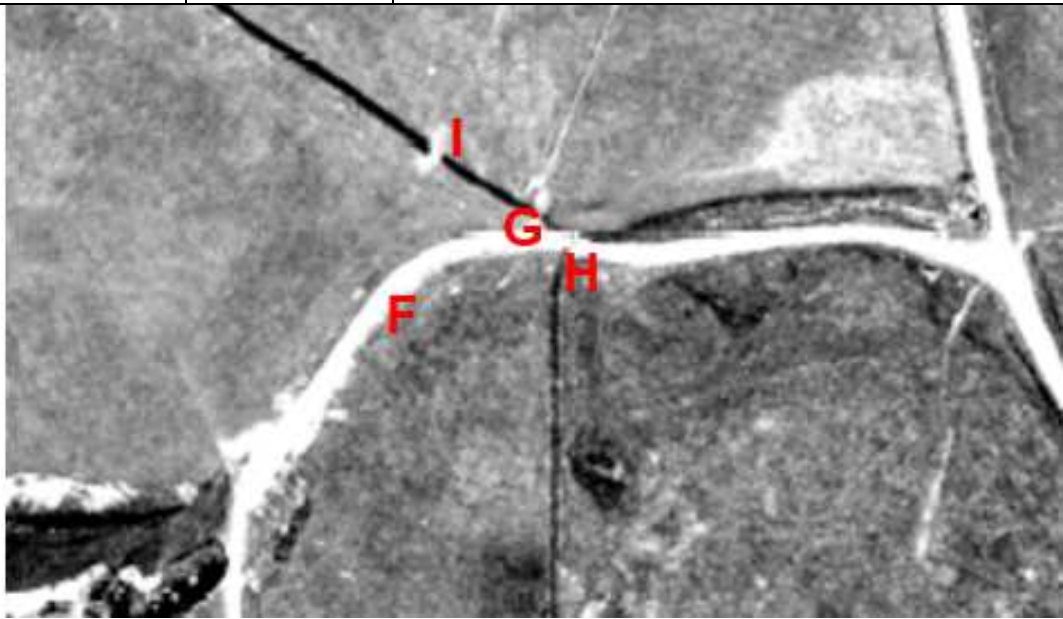
¹ Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.



Observations		<p>A track can be clearly seen curving round in a north easterly direction from point F to point G where it joins the routes subsequently recorded as Footpaths 619, 618, 617.</p> <p>The route under investigation between points F-I is not shown.</p>
Investigating Officer's Comments		<p>At the time that the survey for the map was carried out use was along the routes F-G-H and H-I and that the route under investigation was not the one in use.</p>
1:2500 OS Map	1963	<p>Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published 1963 as national grid series.</p>



Observations		The route under investigation is not shown and the junction of the routes at point G is shown in the same way as on the earlier editions of the 6 inch and 25 inch Maps.
Investigating Officer's Comments		The route under investigation did not exist as a worn track on the ground in 1961 although the tracks that it joined were shown as being unenclosed so access would probably have been unobstructed.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The route under investigation is not shown as a visible track on the ground but the route along the track between points F-G-H is
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		clearly visible.
Investigating Officer's Comments		It may have been possible to pass along the route under investigation between point F and point I but the photograph does not show up a worn track that would indicate frequent use.
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>
Draft Map		<p>In the case of municipal boroughs the map and schedule produced by the initial survey was used, without alteration, as the Draft Map and Statement. 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>



<p>Observations</p>		<p>The route under investigation between point F and point I is not shown. The route of Footpath 616 is shown along the track between point F and point G. No objections or representations were made to the County Council about the inclusion of the route between point F and point G as a public footpath or the fact that a route was not shown between point F and point I.</p>
<p>Provisional Map</p>		<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>



<p>Observations</p>		<p>The route under investigation between point F and point I is not shown. The route of Footpath 616 is shown along the track between point F and point G. No objections or representations were made to the County Council about the inclusion of the route between point F and point G as a public footpath or the fact that a route was not shown between point F and point I.</p>
<p>The First Definitive Map and Statement</p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>



Observations		The route under investigation was not shown and the route of Footpath 616 was shown in the same way on the First Definitive Map as on the Draft Map and Provisional Map.
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		<p>The route under investigation is shown as part of Footpath 616 between point F and point I terminating at a point on Footpath 619. The track shown as part of Footpath 616 on the Draft, Provisional and First Definitive Map between point F and point G is not shown to be part of the Footpath.</p> <p>The Definitive Statement describing the route of Footpath 616 remained unaltered from the Draft through to the Definitive Map (First Review) stating the position of Footpath 616 as "Continuation of footpath 609 at Boarsgreave and in an easterly direction to junction with Footpaths 617, 618 and 619. In good condition."</p>
Definitive Statement		<p>Definitive Statement for Bacup 616 -619 has remained unaltered from the Draft through to the current (First Review) Definitive Statement</p>
Observations		<p>Footpath 616 "... to junction with Footpaths 617, 618 and 619."</p> <p>Footpath 617 "Continuation of footpath 616 and commencing at kissing gate and field gate..."</p> <p>Footpath 618 "Starts at kissing gate and field gate at junction of Footpaths 616 & 617 and proceeds in a northerly direction..."</p> <p>Footpath 619 "Starts at a junction of footpaths 616 & 617 and proceeds in a north-westerly direction..."</p>

Investigating Officer's Comments		<p>From 1953 through to 1962 there was no indication that the route under investigation was considered to be a public footpath by the Surveying Authority.</p> <p>There were no objections to the fact that the route was not shown 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 Statement for the 4 footpaths Bacup 616-619 indicate that they all meet at a point which is at a kissing gate and field gate and that 616 is a continuation of 617. The only arrangement that can be described in that way is consistent with that shown on the Draft, Provisional and First Definitive Maps.</p> <p>No legal order diverting Footpath 616 to the alignment shown on the Definitive Map (First Review) has been found. This suggests that the different alignment of the route may have resulted from a drafting error – particularly given the scale of the OS map used (1:10,560).</p>
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Landownership

Summary

The Ordnance Survey maps and aerial photographs examined do not show the route under investigation and although access between point F and point I may have been unobstructed it is far more likely that public use was along the track between points F-G.

Except for the current Definitive Map the records consistently show the route of Footpath 616 along the track between points F-G and this is consistent with the Definitive Statement that has remained unaltered from the Draft, to the Provisional, First Definitive and Definitive Map (First Review).

No legal order diverting Footpath 616 to the alignment shown on the Definitive Map (First Review) has been found and taking into account the lack of map or documentary evidence that could account for the change it is considered that the different alignment of the route is most likely to have resulted from a drafting error – particularly given the scale of the OS map used (1:10,560).

County Secretary and Solicitors Group Observations

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

The way the line of footpath is shown on records as detailed above

Against Making an Order

Need for cogent evidence

Conclusion

In this matter it is claimed that the line shown on the Definitive Map should be deleted.

It is advised that to remove a route from the Definitive Map it is necessary to show on balance that it was put on the Definitive Map in error. In this matter the route to be deleted (F-1) was shown on the First Review Definitive Map relevant date of 1966 and so the error needs to be shown to have been made in 1966.

Case Law (Trevelyan) confirms that cogent evidence is needed before the Definitive Map and Statement are modified to delete a right of way. Lord Phillips MR of the Court of Appeal stated that:

“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

One such evidence of error could be sufficient evidence of a correct route nearby. In caselaw (Leicestershire case) Collins J held that in these circumstances, “if (the decision maker) is in doubt and is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone that the map is to be treated as definitive.”

Looking at how F-H has been consistently recorded on records, the Committee would normally be asked to consider whether the route shown F-H is already a footpath at law and should be added to the Definitive Map and then whether this means that it was the correct route of the footpath network in 1966 and therefore the route F-I was recorded as on the Definitive Map in error in 1966. It is suggested that whilst this approach is appropriate, Committee is reminded of the previous recent decision of the Committee that an Order be made to record F-H as a bridleway. It is suggested that the authority cannot therefore consider making an Order that F-H be recorded as a footpath at this time.

It is suggested therefore that route F-H is considered and evidence for it being the correct line of the footpath be considered but a decision about it being recorded as footpath by an Order be not made at this time.

Section F-H is, as shown above consistently shown as a route on maps and documents and recorded as a footpath on the first Definitive Map. In contrast the route claimed for deletion F-I is not shown on any map until the Definitive Map (First Revision) of 1966. It is suggested that Committee may consider that there is evidence by way of the maps and documentary evidence that the route claimed for deletion F-I on balance was recorded in error from 1966 onwards and should have continued to be recorded on the line F-H.

The Committee should consider whether it is unlikely that two paths existed so close to each other or whether there was only one public route through to point H from the south which should have continued to have been recorded.

Taking all the evidence into account it may be considered that there is sufficient cogent evidence to suggest that the route F-I was recorded in error and that it should be removed from the Definitive Map

It is advised that the evidence is sufficient to not only satisfy the test to make the Order to delete but also to promote the Order to confirmation.

Risk Management

Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-538		Megan Brindle, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

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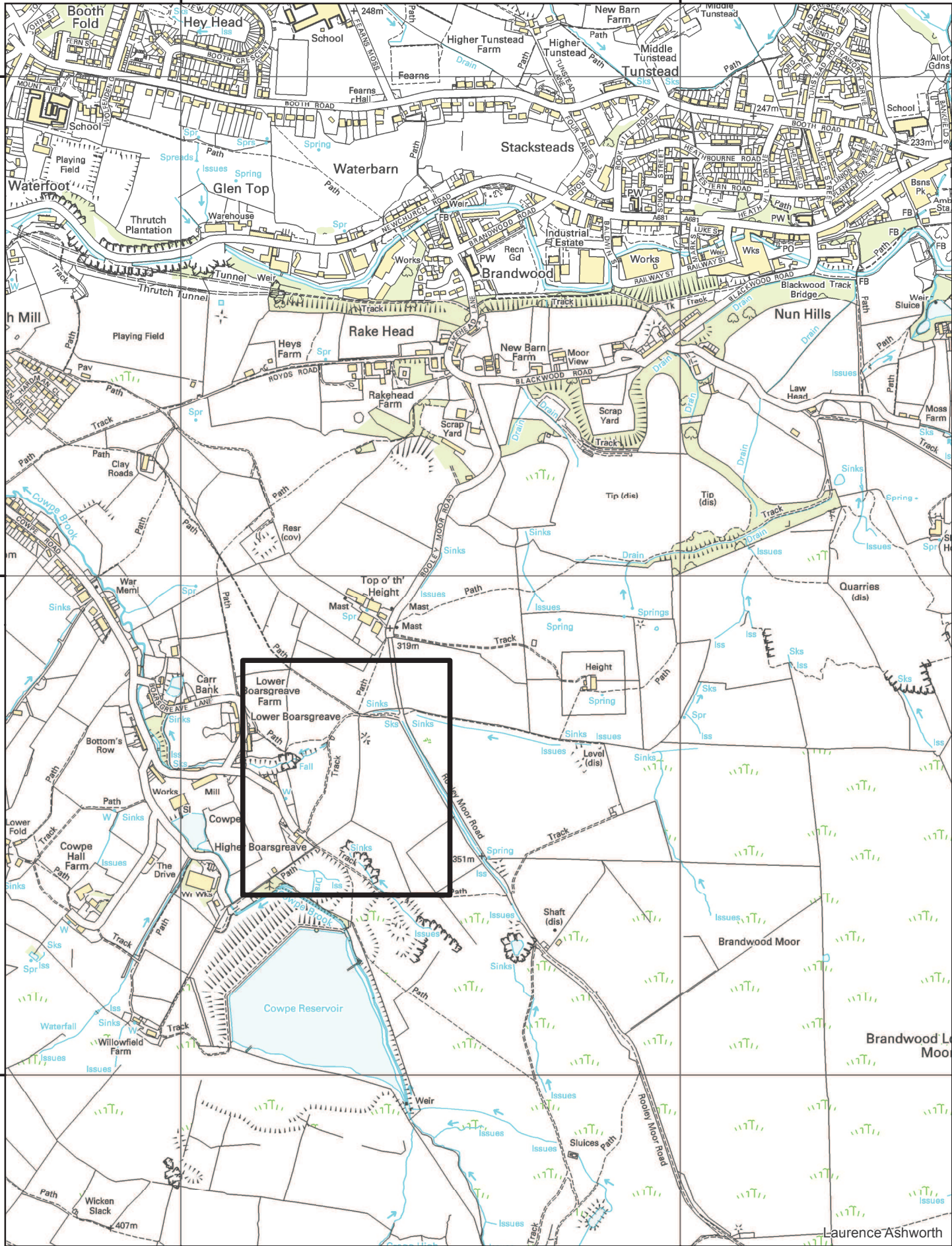
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Steve Browne
Interim Executive Director
for the Environment

Wildlife and Countryside Act 1981

LOCATION PLAN

Application to upgrade to Public Bridleway Public Footpaths 617, 616(part),
609, 612(part) Bacup and addition of short section of Public Bridleway

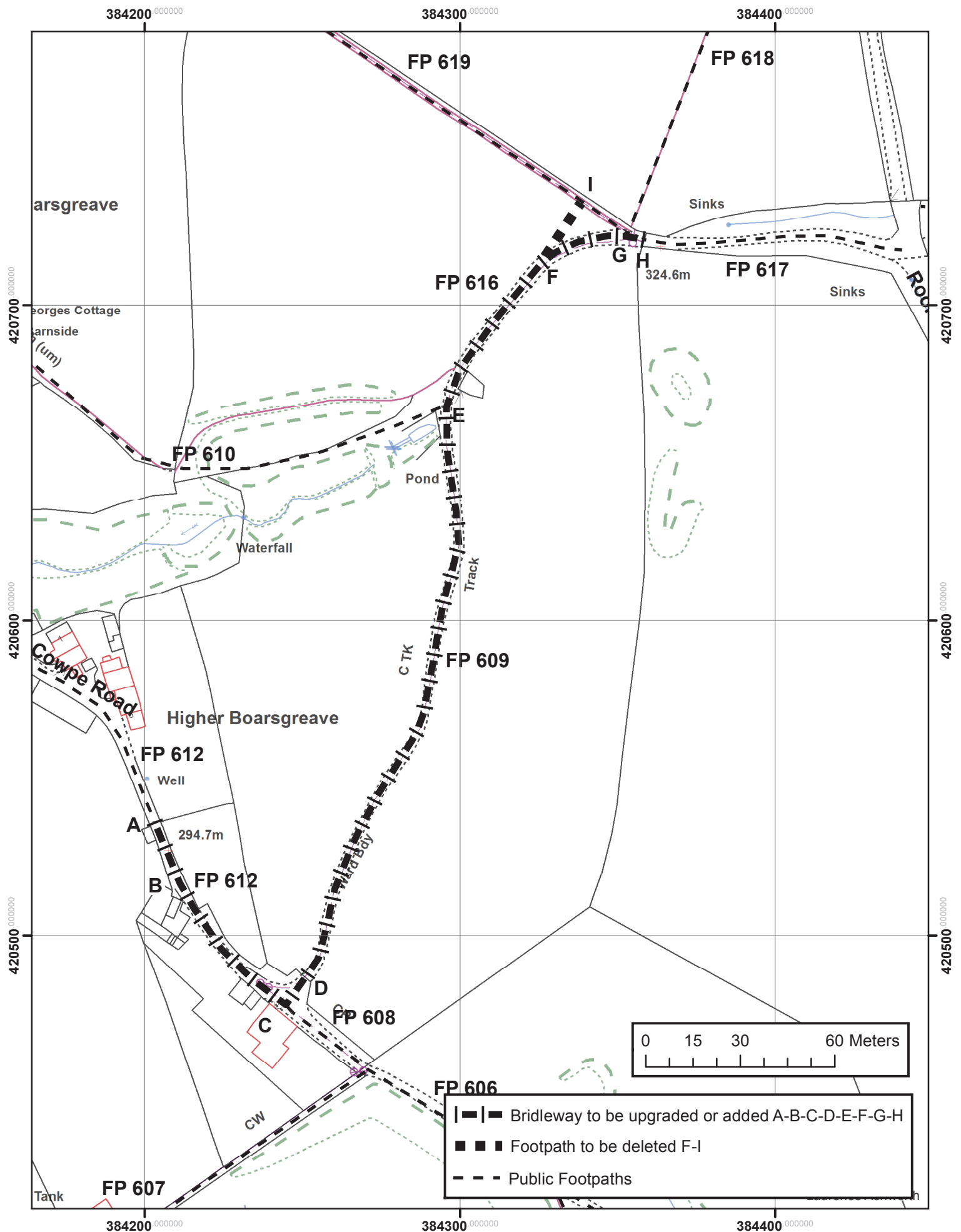
File No. 804-538

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Regulatory Committee

Meeting to be held on 04 February 2015

Electoral Division affected: West Craven

Wildlife and Countryside Act 1981

Claimed Public Footpath (Known as Stoopes Hill) from Water Street to Stoney Bank Road, Earby, Pendle Borough

File No. 804-494

(Annex 'A' refers)

(Appendices A and B refer)

Contact for further information:

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Megan Brindle, 01772 533427, County Secretary & Solicitors Group,

megan.brindle@lancashire.gov.uk

Executive Summary

The consideration of the Order for a public footpath (known as Stoopes Hill) from Water Street to Stoney Bank Road, Earby, Pendle Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File no. 804-494.

Recommendation

1. That 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification (No. 5) Order 2012' made pursuant to the Committee decision on 13 October 2010 in relation to:

The addition of a restricted byway from Water Street to Stoney Bank Road, Earby in accordance with Claim No. 804-494 is submitted to the Planning Inspectorate for non-confirmation / rejection due to the Order Map containing the incorrect use of the notation to depict the Order route.

2. That a further Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Restricted Byway from a point on Water Street, Earby (Grid Reference SD 9103 4671) for a distance of approximately 125 metres to a point on Stoney Bank Road, Earby (Grid Reference SD 9105 4660) shown between Points A and E with a width varying between 2 & 4 metres, using the correct notation on the Order plan for the addition of a restricted byway.
1. That being satisfied that the higher test for confirmation can be met the newly made Order be promoted to confirmation.

Background

Committee at its meeting on 13 October 2010 considered the report attached as Appendix A and accepted the claim for a public footpath known as Stoopes Hill from Water Street to Stoney Bank Road be not accepted but that an Order be made to add the route claimed to the Definitive Map and Statement of Public Rights of Way as a Restricted Byway instead.

An Order was made on 18 April 2012 (the 2012 Order) and an objection received from the Byways and Bridleways Trust regarding the width of the Order route as stated in the Order.

It is advised that officers consider that the width stated in the Order is not incorrect but because the objection has not been withdrawn Lancashire Council Council cannot confirm the Order and must submit it to the Secretary of State for determination.

Orders are drawn up under Regulations of 1993 which prescribe what notations have to be used on a definitive map but also states that these same notations should be used on Order Maps. This provision was not appreciated by many authorities and notations which were technically incorrect had become standard.

It is regretted that the Order Map for this Order contains the incorrect notation to depict the route to be added. The notation which should have been used on the Order Map to show the restricted byway is either a broken green line or by a broken line and small arrowheads. The Order map however, shows the restricted byway which is to be added as a solid black line, and as such this does not comply with the Regulations.

Committee should note that as the Order Map is part of the Order it is not possible for the Order Making Authority to make modifications to the Order once it has been made and advertised without it being referred to the Planning Inspectorate. It is suggested to the Committee that in the circumstances the current Order (attached as appendix B) will not be capable of being confirmed. It is advised that this Order be submitted to the Planning Inspectorate and its rejection or non-confirmation be expected.

Committee is asked to consider the evidence in the report at Appendix A. As the authority still has evidence concerning a restricted byway at this location, the making of a new Order should properly be considered. No evidence against the making of a new Order has been received since 2010.

It is therefore suggested to Committee that a new Order be made and the 2012 Order be submitted to the Secretary of State requesting it is not to be confirmed. This course of action would resolve the issue of the incorrect notation and since neither the objector nor any other person has produced any further evidence since the original Committee decision it is therefore still the view that the new Order, if made, should be promoted through to confirmation.

Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-494	Various	Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee

Meeting to be held on 13 October 2010

Part I - Item No. 4Electoral Division affected:
West Craven**Wildlife and Countryside Act 1981****Claimed public footpath (known as Stoopes Hill) from Water Street to Stoney Bank Road, Earby, Pendle Borough****Claim No. 804/494**

(Annex 'A' refers)

Contact for further information:

Mrs S Khalid, 01772 533427, County Secretary & Solicitor's Group

Mrs R Paulson, 01772 532459, Environment Directorate

ros.paulson@lancashire.gov.uk

Executive Summary

The claimed way (known as Stoopes Hill) from Water Street to Stoney Bank Road, Earby, Pendle Borough to be added to the Definitive Map and Statement of Public Rights of Way as Restricted Byway, in accordance with Claim No. 804/494.

Recommendation

- i. That the claim 804/494 to add the way as a footpath be not accepted.
- ii. Instead the claimed way (known as Stoopes Hill) from Water Street to Stoney Bank Road, Earby, Pendle Borough as shown A-E on the plan attached be added to the Definitive Map and Statement of Public Rights of Way as a Restricted Byway.
- iii. That an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Restricted Byway from a point on Water Street, Earby (Grid Reference SD 9103 4671) for a distance of approximately 125 metres to a point on Stoney Bank Road, Earby (Grid Reference SD 9105 4660) shown between Points A and E on the plan.
- iv. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by sending it to the Secretary of State.

Background

Currently the Definitive Map and Statement for Earby in Pendle Borough does not show the route known as Stoopes Hill from Water Street to Stoney Bank Road as a public right of way.

An application has been made under section 53(5) of the Wildlife and Countryside Act 1981 for an Order to amend the Definitive Map and Statement of Public Rights of Way in Lancashire by adding the route as a public footpath.

The attached plan shows the location of the route under investigation from point A (grid reference SD 9103 4671) to point E (grid reference SD 9105 4660).

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 sets 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 if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”
- “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”
- The status of a recorded right of way needs to be changed
- There is no right of way over land as recorded on the Definitive Map and Statement
- Details of the Definitive Map and Statement need to be changed.

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; this is until a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) 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 landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in the 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.

Consultations

Pendle Borough Council supports the application and acknowledges that the route claimed has been used for many years as a public right of way.

Earby Parish Council has been consulted and has not responded. It is assumed it has no comments to make.

Advice

Executive Director for the Environment's Observations

Points annotated on the attached plan (Plan No. 494A).

	Grid Reference	Description
Point A	SD 9103 4671	Junction of claimed route and Water Street (U40023).
Point B	SD 9103 4668	On claimed route adjacent to 17 Water Street.
Point C	SD 9106 4664	On claimed route to rear of 10 Welbury Close.
Point D	SD 9105 4661	On claimed route at the point where the claimed route separates from the vehicular access to 3 – 7 Stoopes Hill.
Point E	SD 9105 4660	Junction of claimed route and Stoney Bank Road (C687).

Description of Site

A site inspection was carried out on 2 September 2010.

The northern end of the route is used by vehicles accessing 17 Water Street and the rear of some of the cottages on Water Street. The remainder of the route largely runs between the rear walls, hedges and fences of properties on Long Green and Welbury Close, Earby. A number of these properties have pedestrian gates and in some cases, concrete or flagged stepped access leading from the claimed route to their gardens.

There are no gates or barriers restricting access at either end of the claimed route or anywhere along it and no signs indicating that the route is private. A red bin for dog waste has been mounted on a post at the side of the claimed route, approximately 15 metres to the south of point A, adjacent to Becks House and is visible from Water Street. A further bin for dog waste has been mounted on a post at the side of the claimed route, approximately 5 metres to the north of point D, and is visible from Stoney Bank Road.

There are several large manhole covers on the route, suggesting that either public or private plant or apparatus has been laid along the claimed route.

Much of the surface of the route is covered with grass and other vegetation and a worn path, approximately 0.5 metres in width is clearly visible. The vegetation to the side of the worn path this had recently been cleared, providing a clear passage for pedestrians.

The claimed route commences at point A, at a point on Water Street, between 78 Water Street and Becks House.

From point A, the route runs generally southwards for approximately 30 metres to point B. This section of the claimed route is approximately 2.5 metres wide and consists of a compacted stone surface track, with a grass strip running up the centre and grass to the sides. For a short length around point B the route widens to approximately 4.0 metres adjacent to the vehicular access to 17 Stoopes Hill and has a bitmac surface. To the east of point B, there is a gate providing pedestrian access to the rear garden of 9 Long Green.

Beyond point B the route narrows to approximately 2.0 metres for 50 metres to point C, the surface being comprised of compacted stone with grass and other vegetation growing in from the edges.

Near point C the route briefly widens to approximately 2.5 metres beyond which the width is restricted to about 2 metres by a newly constructed stone and breeze block wall, the surface being compacted stone with grass and other vegetation growing in from the edges. The route rises to point D.

At point D, the wall to the west of the claimed route terminates and the claimed route continues for a further 15 metres, to point E, running alongside and on the same level as the vehicular access to 3 – 7 Stoopes Hill. Between points D and E, the route has a bitmac surface and widens to a width of 4 metres at point E, where the claimed route terminates on Stoney Bank Road.

There is a fairly modern road sign mounted on posts to the side of the claimed route at point D, saying 'STOOPES HILL'. A further road sign has been fixed underneath saying 'VEHICLE ACCESS TO No. 17 MUST BE VIA WATER ST.'

In summary, the claimed route is approximately 125 metres in length and varies between 2.0 metres and 4.0 metres in width, mostly enclosed by walls on either side. The claimed route is available for public use as a through route and as a pedestrian access to a number of properties backing onto the route. Each end of the route is used by vehicles to access properties but it is not used as a through route for vehicles.

There is a road sign at the southern end of the route indicating that the route is called Stoopes Hill and no signs indicating that the route is private. Dog waste bins for public use are visible from both ends of the claimed route.

Map and documentary evidence relating to claimed route

A variety of maps, plans and other documents were examined with reference to the claimed route.

DOCUMENT TITLE	Date	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE
Thomas Jefferys' map of Yorkshire Observations	1772	<p>The earliest map examined was Thomas Jefferys' map of Yorkshire. Jefferys was a most prolific engraver and map publisher who was appointed Geographer to the Prince of Wales and George III. Between 1767 and 1770 he surveyed Yorkshire and completed his map only in the year of his death, and so it was published posthumously in 1772. It was published at a scale of 1" to 1 mile on 20 plates and bound in a large atlas. He refused to skimp costs or employ second-rate surveyors to the extent that this commitment to quality contributed to his bankruptcy.</p> <p>The map names the village of Earby and shows the main routes through the settlement, including Water Street. The claimed route is not shown although it is not clear whether or not this is due to limitations of scale.</p>
Investigating Officer's comments		No inference can be drawn. It is not known whether the route was omitted because it did not exist, or because it was only a minor lane between 2 more significant highways and could not be shown at such a small scale, or because it was a private occupation track.
Smith's map of Yorkshire Observations	1801	<p>Nothing is known about this map-maker.</p> <p>The map names the village of Earby but shows fewer roads than Jefferys and is at a smaller scale. The claimed route is not shown.</p>
Investigating Officer's comments		No inference can be drawn for the same reasons as those listed above for Jeffery's map.
Teesdale and Stocking's map of Yorkshire Observations	1817	<p>Nothing is known about these map-makers although Teesdale is believed to have been a publisher. Teesdale and Stocking's map of Yorkshire of 1817 is drawn to a larger scale than the earlier maps.</p> <p>The village of Earby is named. More roads are shown through the village than on earlier maps and the claimed route is shown too. No key has been found to this map so it is not known what the 'roads' shown on it are. Stoopes Hill is however shown in the same way as the rest of the network. There are many properties on the map with no roads shown leading to them.</p>

Investigating Officer's comments		The claimed route existed in 1817 and was of a similar character to other routes on the map. As there are buildings on the map with no road leading to them it is likely, but not certain, that the roads that are shown on the map are public ones, including Stoopes Hill. It is unlikely that the route was a footpath owing to the small scale of the map, and so it is likely that it was used as either a bridleway or a cart road.
Tithe Map and Tithe Award or Apportionment Investigating Officer's comments		No relevant tithe map is held by the Lancashire Record Office or the Yorkshire Archives offices in Wakefield. No inference can be drawn.
Quarter Sessions records Investigating Officer's comments		No record of orders to divert and extinguish public rights of way in Earby was found in the Lancashire Record Office and Yorkshire Archives. No inference can be drawn.
Inclosure Act Award and Maps	1825	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices. They also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status. The Inclosure award for Thornton-in-Craven covers the Earby area.
Observations Investigating Officer's comments		The inclosure map shows the claimed route as a track or road from Water Street to Stoney Bank Road. It is not named on the map nor listed in the award but is shown in the same manner as other existing roads and open to the road network at each end. This fine quality map was produced to record common and waste land to be enclosed, and the names of the owners. New public and private roads with their names were shown on the map too. The owner of each plot of land is recorded in the written award, along with details such as the responsibility for fencing. Roads are described by status (such as 'high road' or 'bridle road') and who is responsible for their maintenance. The route claimed for addition to the Definitive Map, Stoopes Hill, is not mentioned in the award in the list of public and private roads to be laid out. This means that it is likely that it already existed in 1825. The inclosure map and award does not provide any information about the status of the claimed route. On balance, at this date

		the route is likely to have been a public one and could be used both on horseback and by carts.
Railway, Turnpike and Canal Plans Investigating Officer's comments		None relevant for this area No inference can be drawn.
Ordnance Survey maps		The Ordnance Survey 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 the West Riding of Yorkshire in the 1820s 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 early maps carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way. Apart from those described below, no other early OS maps are available in the county archive offices of Lancashire in Preston, or Yorkshire in Wakefield.
6-inch OS map	1896	This map was surveyed in 1892 and published in 1896.
Observations Investigating Officer's comments		The map shows the route claimed from Water Street to Stoney Bank Road. It is not named. There are no gates or other obstructions across the lane. Map evidence indicates that the route was a lane connecting two roads into the village. It is likely that the lane could have been used by all types of traffic including horses and carts.
25-inch OS map	1909	This map was surveyed in 1892, revised between 1906 and 1907 and published in 1909.
Observations		The map shows the route as an un-named lane.
Investigating Officer's comments		It is likely that the lane could have been used by all types of traffic including horses, carts and motor vehicles.
6-inch OS map	1956	This map was revised before 1930 and published in 1956.
Observations		The route is shown as an un-named lane.
Investigating Officer's comments		It is likely that the lane could have been used by all types of traffic including horses, carts and motor vehicles.

25-inch OS map	1963	This 25-inch map was revised in 1961 and published in 1963.
Observations		The route is shown as a lane, named as Stoopes Hill. There is a garage and another property at the northern end and a row of 4 terraced cottages at the southern end.
Investigating Officer's comments		It is likely that the lane could have been used by all types of traffic including horses, carts and motor vehicles.
25-inch OS map	1977	The map was revised in 1975 and published in 1977.
Observations		The route is shown as a lane, named as Stoopes Hill. There is a garage and other property at the northern end and a row of 4 terraced cottages at the southern end. Four pairs of semi-detached houses have been built on the eastern side of the claimed route with their rear gardens backing onto the lane.
Investigating Officer's comments		The claimed route appears to be unchanged in its width (about 4 metres) or general character, and there is nothing in the map evidence that would indicate that it could not be used by horses and vehicles as well as those on foot.
Aerial Photographs	1945 1968 1990 2000 2003	Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features. The earliest set available was taken just after the Second World War in about 1945. The clarity is very variable.
Observations	1945	Stoopes Hill is clearly visible between Water Street and Stoney Bank Road though perhaps somewhat narrower than these 2 roads. It is hard to make out any significant features on the route owing to the lack of clarity in the photograph.
Investigating Officer's comments		The claimed route existed as a narrow lane in 1945.
Observations	c1963	Stoopes Hill is clearly visible as a narrow lane edged in places by hedging. A building corresponding to the garage on OS maps is shown at the northern end with a number of parked vehicles outside it. The terrace of cottages shown on OS maps at the southern end is also visible.
Investigating Officer's comments		The claimed route existed as a narrow lane in the 1960s.

Observations	1990	Stoopes Hill is shown as a very narrow track between Water Street and Stoney Bank Road. Houses have been built on both sides of the route with the back gardens ending on it. Vegetation is in evidence on this colour photo along the route but the exact location of garden fences cannot be seen making it unclear whether the plants are growing on the route or in gardens. A clear worn path can be seen at the northern end of the claimed route.
Investigating Officer's comments		The area has been developed but the claimed route can still be seen. It is now less likely that the route could be used by motor vehicles owing to the positioning of garden fences and vegetation. As a clear worn path can be seen on part of the route at least, the route seems to be used. It is likely that this use is on foot. It is not possible to tell from this photo if the route could be used on horseback.
Observations	2009	Stoopes Hill is clearly shown as a narrow track between the rear gardens of houses. No worn clear path is shown and those parts not obscured by trees or shadow appear green with grass or other vegetation.
Investigating Officer's comments		The photograph does not provide any new information.
Inland Revenue documents	1912	<p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act are 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 the 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 recorded 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> <p>No Finance Act material is available in the Lancashire</p>

		Record Office or the Yorkshire Archive Office in Wakefield.
Investigating officer's comments		No inference can be drawn.
Earby Urban District Council documents		A search was made in Earby Urban District Council records to find anything which might show the route claimed or refer to its status or maintenance records.
Observations		Nothing relevant was found.
Investigating officer's comments		No inference can be drawn.
Definitive Map records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map.
Draft Map		<p>The preliminary survey work was carried out in the West Riding of Yorkshire from the early 1950s. An accompanying statement was written describing each path. In this area it was undertaken by Earby Urban District Council who produced a map of routes they believed to be public drawn onto a 6-inch Ordnance Survey map. It was given a "relevant Date" and notice was published that the Draft Map had been prepared. The Draft Map was placed on deposit in September 1952 for 4 months for the public, including landowners, to inspect them and report any omissions or other mistakes. In Lancashire, hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented. It is presumed that the West Riding of Yorkshire County Council followed this model too.</p> <p>In this instance, the claimed route was not shown on the Draft Map and there were no objections or other comments about a right of way in this area.</p>
Provisional Map		<p>Once all representations to the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1970, 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> <p>In this instance there were no objections relating to the claimed route.</p>
The First Definitive Map and		The Provisional Map, as amended, was published as the Definitive Map in 1973. Legislation required that the Definitive Map be reviewed, and legal changes such as

Statement		diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. Whilst most of the Definitive Map for Lancashire was reviewed, the area formally in the West Riding of Yorkshire was not.
Observations		The claimed route is not shown on the Definitive Map.
Investigating Officer's comments		The claimed route was either not believed to be a public right of way, or it was thought to be a vehicular carriageway and therefore should not be included with other public rights of way and shown on the Map.

The land crossed by the route claimed as a public footpath is not a biological heritage site or a site of special scientific interest.

Summary

In summary, map and documentary evidence show that the route claimed for addition to the Definitive Map has existed since at least the early 1800s. It was shown on early maps in the same way as the rest of the road network in the village and it is likely that it was a public route that could be used by people on foot, on horse-back and with carts. No map or documentary evidence has provided any information either way to show that the route is a public or private one, or that it has ever been used by horses or vehicles. The route seems to have been available for use by all classes of traffic until the route may have been narrowed since the 1960s by encroachment from gardens adjacent to the route and becoming overgrown in places.

Site evidence indicates that the route is currently used by the public on foot. The road sign, worn path, vegetation clearance and dog bins indicate that the pedestrians are permitted to use the route. There is no evidence of current use by horses, bicycles or vehicles.

County Secretary & Solicitor's Observations

Information from the Applicant

Fifteen user evidence forms have been submitted in support of the application indicating knowledge of the route for:

65 years (1)			
51-60 years (3)	41-50 years (2)	41-50 years (2)	31-40 years (6)
21-30 years (1)	11-20 years (2)	0-10 years (0)	

The forms indicate use of the route for:

65 years (1)			
51-60 years (3)	41-50 years (0)	31-40 years (6)	21-30 years (2)
11-20 years (2)	0-10 years (1)		

The usage has been mainly for accessing local amenities such as the school, pub, playing field and for walking the dog, visiting family and friends, recreational walking and also to access Stoney Bank Road and ranges from daily, 2/3/4/5 times per week to less frequently.

All the witnesses state they have used the route on foot. One user states he worked as a milkman and used a vehicle across the route to deliver milk. All users agree that the way has run over the same route and that there have never been any stiles, gates or fences across the route. The witnesses have never seen any gates locked, have not been prevented from using the route nor have they seen anybody being stopped from using the route and permission has never been sought from anybody when using the route.

Five letters have been submitted in support of the application.

One writer states Stoopes Hill, also referred to as Jim Lane, was used by him from the age of 11 for 57 years. Whilst a pupil at Alder Hill School he recalls pupils being taken across this way to Stoney Bank Road and also to gain access to the football field at Springfield. He now uses the path to access Red Lion Street.

Another writer states that as a schoolboy in the 1950s Stoopes Hill was a popular route down to Water Street from Stoney Bank Road and the lane was used to walk to Alder Hill School until the closure of the school in 1961. The writer states the route was used on foot, on cycles, with prams and occasionally by cars. The way was nicknamed Jim Lane; the writer is unsure why this was and the lane was the main access route to the field and meadow which is now occupied by Long Green and Reeval Close. The route was also used by the farmers for haymaking vehicles.

Another writer states when Springfield school was open, mothers mostly with younger children and prams used the route to take their children to school to avoid walking to where Water Street met Stoney Bank. Employees of Spring Mill also used the route when they came home for lunch as there was less distance involved than walking all the way around. When the council houses were built the route was used by people for visiting family and friends and became a well used thoroughfare.

Another writer states he frequently traversed Stoopes Lane as a child with his parents between 1930 and 1940. He also witnessed the way being used regularly by the workers of Spring Mill in the late 1930s who he assumed used the route to return home. He explains from 1948-1955 his wife and he occasionally used the route on their visits. He explains that his father resided on Selbourne Terrace between 1879-1900 and he often spoke of having used the route to gain access to Moor Hall fields. He states the route is clearly defined and named on Mr J A Walker's map of Earby dated October 1972. (The Executive Director for the Environment comments that Spring Mill is located on Stoney Bank Lane at the southern end of the claimed route. Selbourne Terrace lies on the southern side of Water Street approximately 15 metres to the east of the northern end of Stoopes Hill. Moor Hall lies about 800 metres south of the village).

One writer states he has lived on Stoopes Hill since the end of the Second World War until 1965. He explains that during the war the farmer at the time would carry his

hay by horse and cart from the big meadow below Mill Lane down to Stoney Bank and down Jim Lane to his barn. The writer explains he often used Jim Lane on his way to the railway station and school.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim for footpath

- Shown on maps since 1817
- Information from local people
- Evidence from users
- Clearly visible route on aerial photographs since 1945

Against Accepting the Claim that it is just a footpath and in support of it being restricted byway

- Shown on map of 1817 as part of highway network unlikely to be just footpath
- Shown on Inclosure award as part of highway network unlikely to be just footpath
- Recorded on Ordnance survey Maps as open route linking highways

Against accepting it has any highway status

- historic documents available not conclusive
- No real evidence against

Conclusion

In this matter the claim is that there is a footpath from point A – E which should be added to the definitive map. It is advised that it is important to consider whether there is enough evidence for there being on balance a public footpath along the line A – E. or whether on balance the evidence shows it to be a public route of higher status than a footpath. In the absence of an express dedication, it is advised that the Committee consider whether a dedication as a public route can be inferred at common law or deemed under s.31 Highways Act 1980.

Firstly, the committee is advised to consider if A-E is an old public route such that its dedication can be inferred from the way it was recorded on the old maps, documents and records. The Teesdale and Stockings map 1817 indicates that the route A-E is likely to have existed as a full highway for carts and carriages as part of the highway network. The Inclosure Act Award and Map does not mention the claimed route in the list of public or private roads to be laid out as new routes but shows it as an existing route and part of the ordinary full vehicular highway network by 1825. The Ordnance Survey Maps of 1896, 1909, 1956, 1963 and 1977 all show the route in a way which indicates that it was likely to have been used by all types of traffic including horses, carts and vehicles. The claimed route was not recorded on the first Definitive Map and whilst this could indicate that the route was not believed to be a

public right of way, it could equally have been because it was thought to be a vehicular carriageway and therefore should not be included with other lesser public rights of way on the Map.

It is suggested that the way the route is recorded in historic documents indicates on balance that it was in use as part of the public highway network and dedicated for public use with all types of vehicles many decades ago. If this is the case it is further advised that any mechanically propelled vehicular public rights would have been extinguished in 2006 under the Natural Environment and Rural Communities Act (NERC). This would leave the status as a restricted byway. It is suggested that this could be the status able to be recorded on the Definitive Map and Statement.

The 15 user evidence forms indicate more recent knowledge and use of the route on foot for up to 65 years. The usage being mainly for access to local amenities such as the school, pub, playing field and for dog walking. One letter in support of the application refers to the route during the 1950's being used on foot, by cycles and occasionally by cars. The witnesses claim that they have never seen any fences across the route or gates locked, not have they been prevented from using the route or permission being required to access the route. This would, it may be considered, be sufficient evidence from which to deem dedication as a footpath from use in the twenty years prior to the claim being made in 2009 and bringing the route into question but is clearly irrelevant if the route is already dedicated as a highway of higher status. Should the committee be concerned that the evidence of earlier dedication was not sufficient then it would be appropriate to consider evidence for a deemed dedication as footpath.

Taking all the evidence into account it is suggested that on balance the claim that the route A-E should be added to the definitive map and statement as a restricted byway rather than a footpath recognising on balance an earlier dedication can be inferred as a highway of higher status than footpath, indeed a dedication of full vehicular rights but then recognising the effect of the NERC Act 2006 reducing the status to restricted byway.

Alternative options to be considered - to consider making an order recording the route as footpath only.

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' (Item 3) included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there are no significant risks associated with the decision making process.

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

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 5.34497 (804/494)	Various	S Khalid, County Secretary & Solicitor's Group, Ext: 33427

Reason for inclusion in Part II, if appropriate

N/A

WILDLIFE AND COUNTRYSIDE ACT 1981

THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE
COUNTY OF LANCASHIRETHE LANCASHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF
PUBLIC RIGHTS OF WAY (DEFINITIVE MAP MODIFICATION) (NO.5) ORDER 2012

This Order is made by Lancashire County Council ("the Authority") under Section 53(2)(b) of the Wildlife and Countryside Act, 1981 ("the Act") because it appears to that Authority that the Definitive Map and Statement of Public Rights of Way for the County of Lancashire require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i) namely the discovery by the Surveying Authority of evidence which (when considered with all other relevant evidence available to them) shows 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, namely a restricted byway.

The Authority have consulted with every local authority whose area includes the land to which the Order relates. Lancashire County Council hereby order that:

1. For the purposes of this Order, the "relevant date" is the 18th April 2012
2. The Definitive Map and Statement of Public Rights of Way for the County of Lancashire shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No.5) Order 2012.

Dated this 18th day of April 2012

THE COMMON SEAL of the)
Lancashire County Council)
was hereunto affixed in the presence of)



Authorised Signatory

Laura Sals

21445

SCHEDULE

PART I

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF WAY TO BE ADDED

A restricted byway from the junction of Water Street (U40023) between 78 Water Street and Bridgewater House, Water Street, Earby at point A on the Order Map, grid reference SD 9103 4671 on an enclosed track in a generally southerly direction for 30 m to point B, SD 9104 4668; a south-south-easterly direction for 45 m to point C, SD 9106 4664; a generally southerly direction for 30 m to point D, SD 9105 4661 then continuing past where the wall on the western side terminates, for 15 m to point E at Stoney Bank Road (C685), Earby at SD 9105 4660. (All measurements in metres and are approximate).

PART II

MODIFICATION OF DEFINITIVE STATEMENT

The following entry be added to the public rights of way in Earby for Restricted Byway 78:

A restricted byway from the junction of Water Street (U40023) between 78 Water Street and Bridgewater House, Water Street, Earby, grid reference SD 9103 4671 on an enclosed track in a generally southerly direction for 30 m to SD 9104 4668; a south-south-easterly direction for 45 m to SD 9106 4664; a generally southerly direction for 30 m to SD 9105 4661 then continuing past where the wall on the western side terminates, for 15 m at Stoney Bank Road (C685), Earby at SD 9105 4660. (All measurements in metres and lengths are approximate).

Width:

Between SD 9103 4671 (Water Street) and SD 9104 4668 (30 metres to the south), width 2.5 metres.

Between SD 9104 4668 and SD 9105 4661 (end of wall on western side of track), width 2 metres.

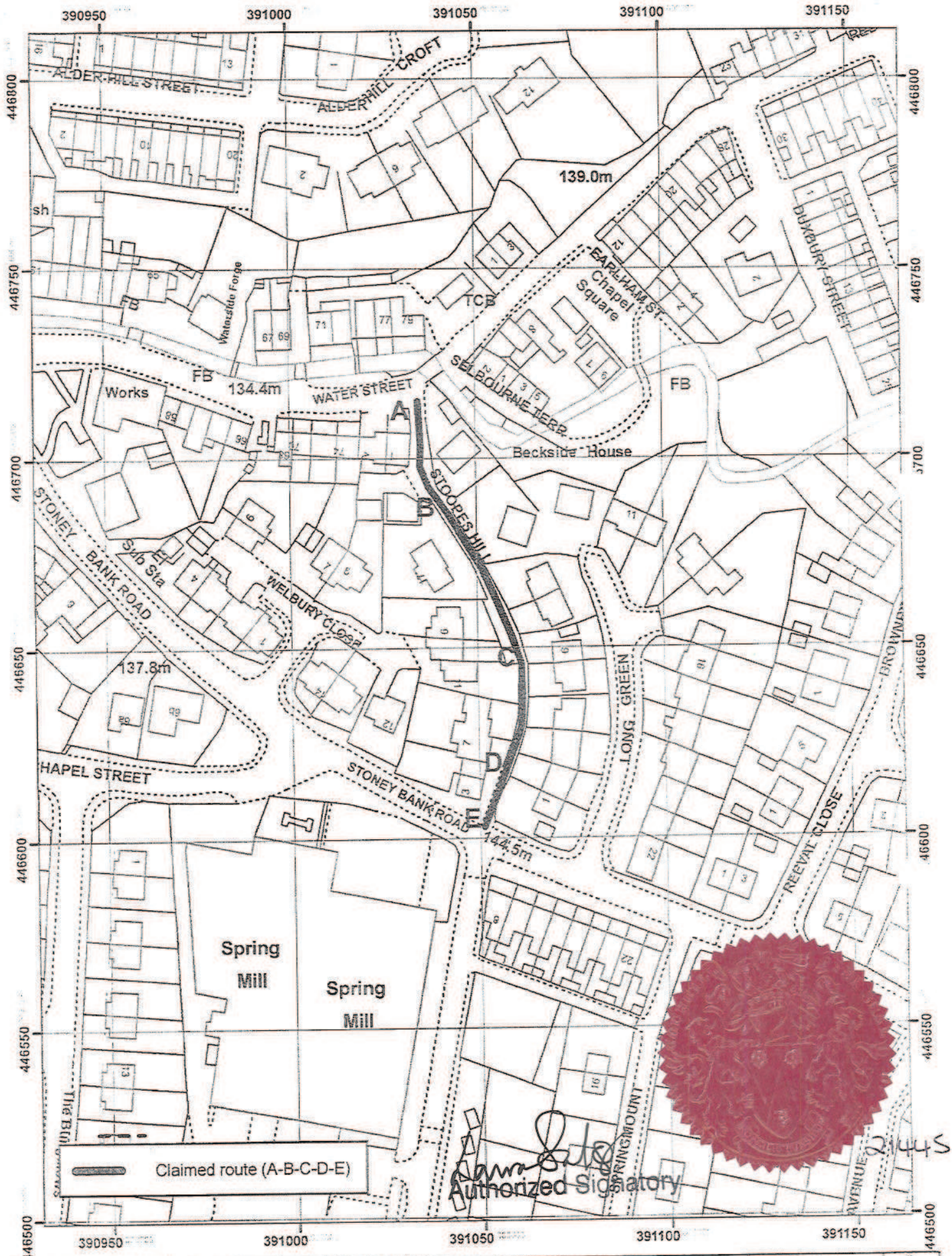
From SD 9105 4661 the width tapers out from 2 metres to 4 metres at SD 9105 4660 at the junction with Stoney Bank Road


Limitations and Conditions:

None

A total length:

120 metres

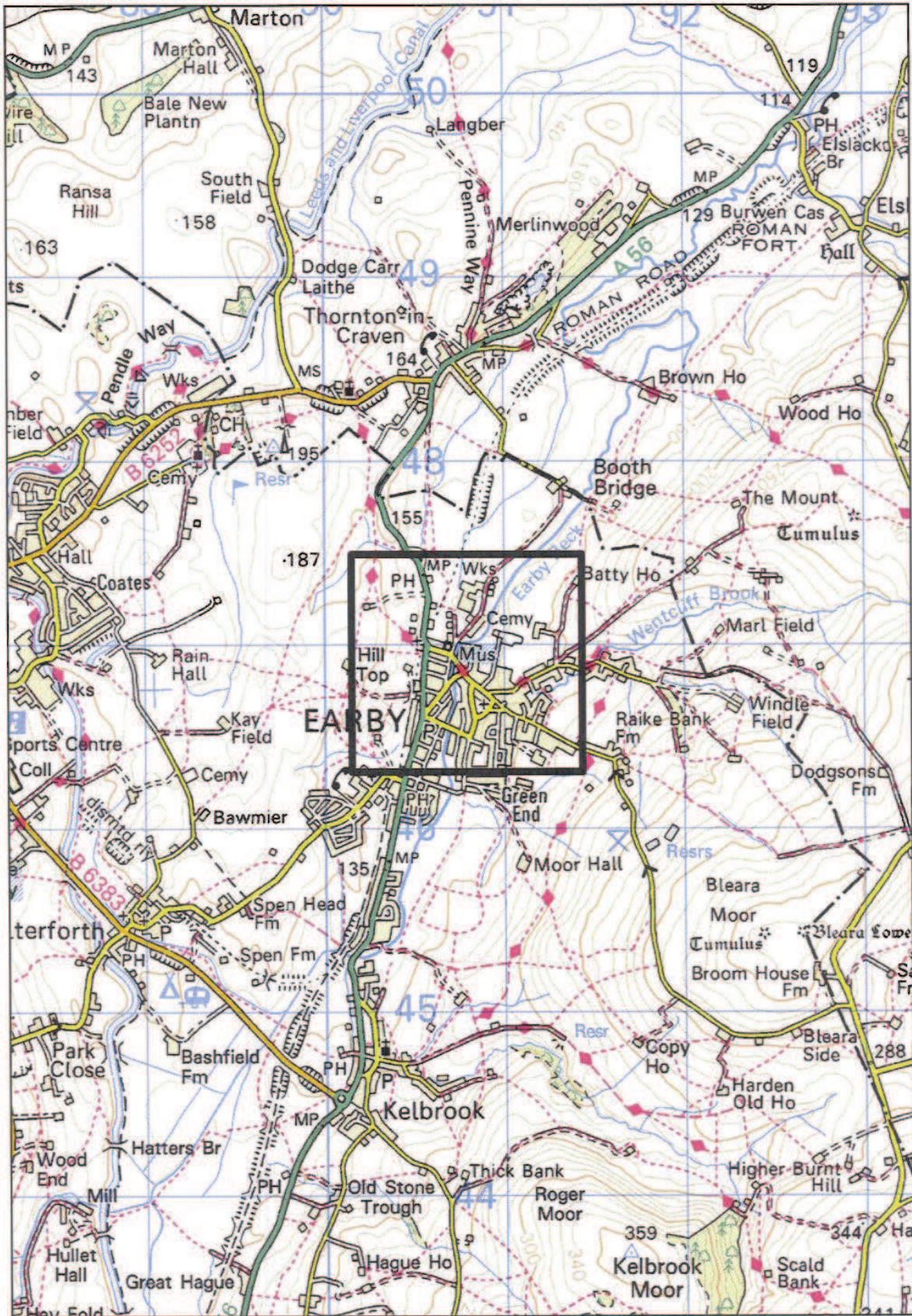



 Claimed route (A-B-C-D-E)

Alan S. [Signature]
 Authorized Signatory

2445

Lancashire County Council	Jo Turton Director of the Environment	Wildlife and Countryside Act 1981. Claimed addition of a public footpath from Water Street to Stoney Bank Road, Earby, Pendle Borough (known as Stoopest Hill). Claim No. 804/494.	Plan No. 494A
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Jo Turton
Executive Director
for the Environment

Location Plan
Claim No. 804/494.

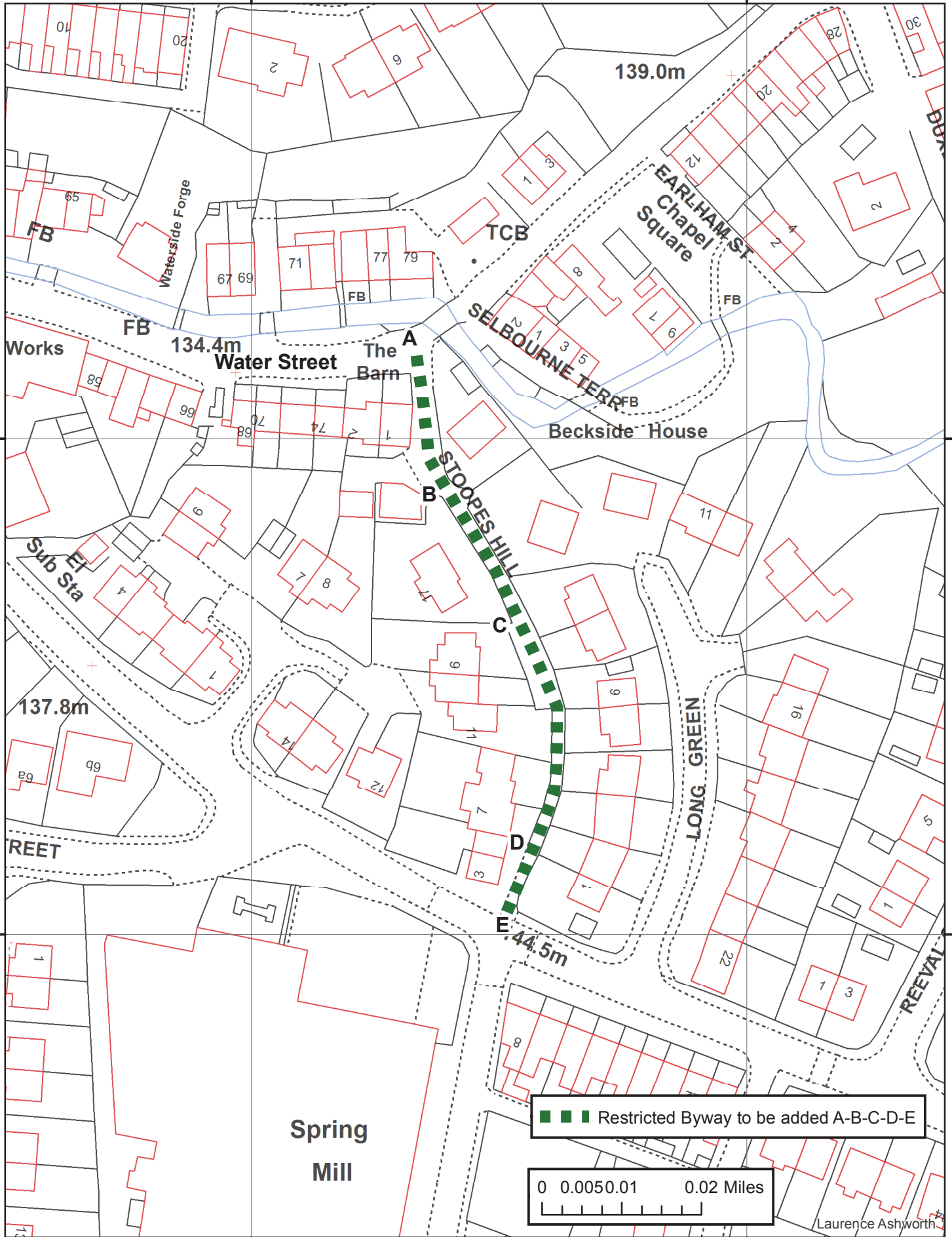


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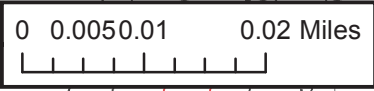
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■ ■ ■ Restricted Byway to be added A-B-C-D-E



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Steve Browne
Interim Executive Director
for the Environment

Wildlife and Countryside Act 1981
Addition of a Restricted Byway from Water Street to Stoney Bank Road,
Earby, Pendle Borough (Stoops Hill) Application No. 804-494

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Regulatory Committee

Meeting to be held on 4 February 2015

Electoral Division affected: Ribble Valley North East
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Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Public Footpath No. 44, Grindleton and Public Footpath No. 5 Sawley, Ribble Valley Borough.

(Annexes 'B' and 'C' refer)

Contact for further information: Mr S Williams, 01772 533886, Environment Directorate. stephen.williams@lancashire.gov.uk

Executive Summary

The proposed diversion of parts of Public Footpath No. 44 Grindleton and Public Footpath No. 5 Sawley, Ribble Valley Borough.

Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert parts of Public Footpath No. 44 Grindleton and Public Footpath No. 5 Sawley from the route shown by a bold solid line and marked A – B – C – D and B – G and C – E and L – J on the attached plan to the route shown by a bold broken line and marked A – H – G – F – E – D and L – K – J on the attached plan.
2. 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 and the Authority take a neutral stance with respect to its confirmation.
3. 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

A request has been received from Joanne McTiffin, Acrelands Farm, Sawley Road, Grindleton, Clitheroe, BB7 4QS for an Order to be made under Section 119 of the Highways Act 1980 to divert parts of Public Footpath No. 44 Grindleton and Public Footpath No. 5 Sawley in the vicinity of Acrelands Farm, Grindleton.

Following a local authority search it has been brought to the attention of the applicant and Lancashire County Council that the legally recorded line of the public footpath is

not presently available for use. An application has been made by the landowner to divert the public footpath onto the route that is for the most part currently being used by the public.

Consultations

The necessary consultation with the Statutory Undertakers has been carried out and at the time of writing, no objections or adverse comments to the proposal have been received.

Ribble Valley Borough Council and Sawley and Grindleton Parish Councils have been consulted. Sawley Parish Council have confirmed that they do not have any objection to the proposed diversion but noted that there is an issue with a septic tank near the route which the owners should be obliged to rectify before the proposed diversion is finalised.

No response has been received from Ribble Valley Borough Council and it is assumed they have no comments to make.

A response from the Manor of Slaidburn has been received who hold the mines and minerals interests under LAN8168 and they have no objection to the proposed diversion.

The Ramblers have confirmed that they are content with the proposal and the Peak and Northern Footpath Society have confirmed they have no objection to the proposal.

Advice

Description of existing footpath to be diverted

That part of Public Footpath No. 44 Grindleton and Public Footpath No. 5 Sawley as described below and shown by a bold continuous line A – B – C – D and B – G and C – E and L – J on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)
A (SD 7698 4663)	B (SD 7704 4676)	NNE	150
B (SD 7704 4676)	C (SD 7707 4679)	NE	35
C (SD 7707 4679)	D (SD 7708 4679)	ENE	10
C (SD 7707 4679)	E (SD 7710 4675)	SE	45
B (SD 7704 4676)	G (SD 7707 4673)	SE	40
L (SD 7694 4661)	J (SD 7695 4661)	ENE	15
Total length			295

Description of new footpath

A footpath as described below and shown by a bold dashed line A – H – G – F – E – D and L – K – J on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A (SD 7698 4663)	H (SD 7703 4671)	generally NNE	100	3	Tarmac surfaced path
H (SD 7703 4671)	G (SD 7707 4673)	ENE	45	2	Field path
G (SD 7707 4673)	F (SD 7709 4674)	ENE	25	2	Field path and footbridge
F (SD 7709 4674)	E (SD 7710 4675)	NE	15	2	Field path
E (SD 7710 4675)	D (SD 7708 4679)	NNW	45	2	Field path
L (SD 7694 4661)	K (SD 7695 4660)	ESE	10	2	Field path
K (SD 7695 4660)	J (SD 7695 4661)	NNE	10	2	Field path
Total length			250		

The proposed alternative route will be subject to a limitation of a kissing gate (to be complaint with BS5709:2006) at point K.

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

If this application is approved by the Regulatory Committee, the Executive Director for the Environment suggests that Order should also specify that the Definitive Statement for Public Footpath No. 44 Grindleton to be amended as follows:

The 'Description of Route' column to read:-

"Footpath commencing at the Sawley Parish Boundary at Green End and proceeding in a north westerly direction to grid reference SD 7707 4673 then:

FROM	TO	COMPASS DIRECTION (approx.)	LENGTH (metres) (approx.)	WIDTH	OTHER INFORMATION
Path junction 50m S of Acreland SD 7707 4673	Sawley Parish boundary at footbridge SD 7709 4674	ENE	25	2 m	Field path and footbridge
Path junction SD 7707 4673	Where path meets driveway SD 7703 4671	WSW	45	2 m	Field path
Where path meets driveway SD 7703 4671	Point on tarmac driveway SD 7698 4663	SSW	100	3 m	Tarmac surfaced path
Point on tarmac driveway SD 7698 4663	Point on tarmac driveway SD 7695 4661	SW	Not defined	3 ft	Not altered by PPO
Where path meets driveway SD 7695 4661	Kissing gate SD 7695 4660	SSW	10	2 m	Field path
Kissing gate SD 7695 4660	Where path meets driveway SD 7694 4661	WNW	10	2 m	Field path

thence south westward to its junction with Path No. 43 "

The length column to read: "0.44 km"

The width column to read: "3 ft except where specified otherwise in the description of route"

The 'General' column to read

"No. 2 Wicket Gates

No 2 Field Gates

No. 1 Kissing gate to meet BS5709:2006 at SD 7695 4660"

If this application is approved by the Regulatory Committee, the Executive Director for the Environment suggests that Order should also specify that the Definitive Statement for Public Footpath No. 5 Sawley to be amended as follows:

The 'Description of Route' column to read:-

"Footpath commencing at the Grindleton Parish Boundary west of Moses Clough and proceeding in a south easterly direction to SD 7708 4679 then

FROM	TO	COMPASS DIRECTION (approx.)	LENGTH (metres) (approx.)	WIDTH (metres)	OTHER INFORMATION
Corner of hedge E of Acreland SD 7708 4679	Point in field SE of Acreland SD 7710 4675	SSE	45	2	Field path
Point in field SE of Acreland SD 7710 4675	Grindleton Parish Boundary at Footbridge SD 7709 4674	SW	15	2	Field path

and also from SD 7710 4675 (point in field SE of Acreland) proceeding in a south easterly direction to the Grindleton Parish Boundary at Green End."

The length column to read: "0.95 km"

The width column to read: "3 ft except where indicated in Description of Route"

Criteria satisfied to make and confirm the Order

The proposed diversion is felt to be expedient in the interests of the owners of the land as would remove the public footpath from the affected dwelling and gardens and provide an improvement in privacy and security for the residents of Acreland.

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, or they have given their consent.

The Committee are advised that so much of the Order as extinguishes part of Public Footpath No. 44 Grindleton and Public Footpath No. 5 Sawley, is not to come into force until the County Council has certified that the necessary work to the alternative route has been carried out.

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.

A majority of the land crossed by the footpath proposed to be diverted and of the land crossed by the proposed alternative route is in the ownership of the applicant. A short section of the section proposed to be diverted (C–D) and the proposed alternative route (F–E) is in the ownership of Mrs Joan Porter, Lawson House, Sawley who has raised no objection to the proposal.

The applicants have agreed to defray any compensation payable and to bear all advertising and administrative charges incurred by the County Council in the Order making procedures, and also to provide an alternative route to the satisfaction of the County Council, including the costs of the design and installation (by Lancashire County Council) of a footbridge at point F and the payment of a commuted sum for future maintenance.

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 alternative route is overall of similar gradient to the existing route.

It is felt that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the path or ways as a whole. It is suggested that many users might find a walk on the new route to be more enjoyable, because the existing footpath runs through the curtilage of residential properties and as such some users of the path would feel more comfortable and at ease. The proposal will divert the footpath away from the property avoiding the need to pass immediately next to the dwelling and through the gardens.

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.

It is also advised that the needs of the disabled 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 – formerly the Disability Discrimination Act 1995 (DDA) in providing a route that has the minimum number of structures and which are easy to use (kissing gate and footbridge) and the route is of adequate width with a firm tarmac surface for part of its length and firm natural surface elsewhere.

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'. In particular it is compatible with the themes Community to Countryside Links (CCL) and Reduced Mobility and Visually Impaired (RMVI).

It is suggested 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 (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 the Order is not rechargeable to the applicant, is not undertaken by the County Council. In the event of the Order being submitted to the Secretary of State the applicant can support or promote the confirmation of the Order, including participation at public inquiry or hearing. It is suggested that the Authority take 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 Annex 'B' (item 5) 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.

To agree that the Order be made and if objections prevent confirmation of the Order by the County Council that the Order be submitted to the Secretary of State to allow the applicant to promote confirmation, according to the recommendation.

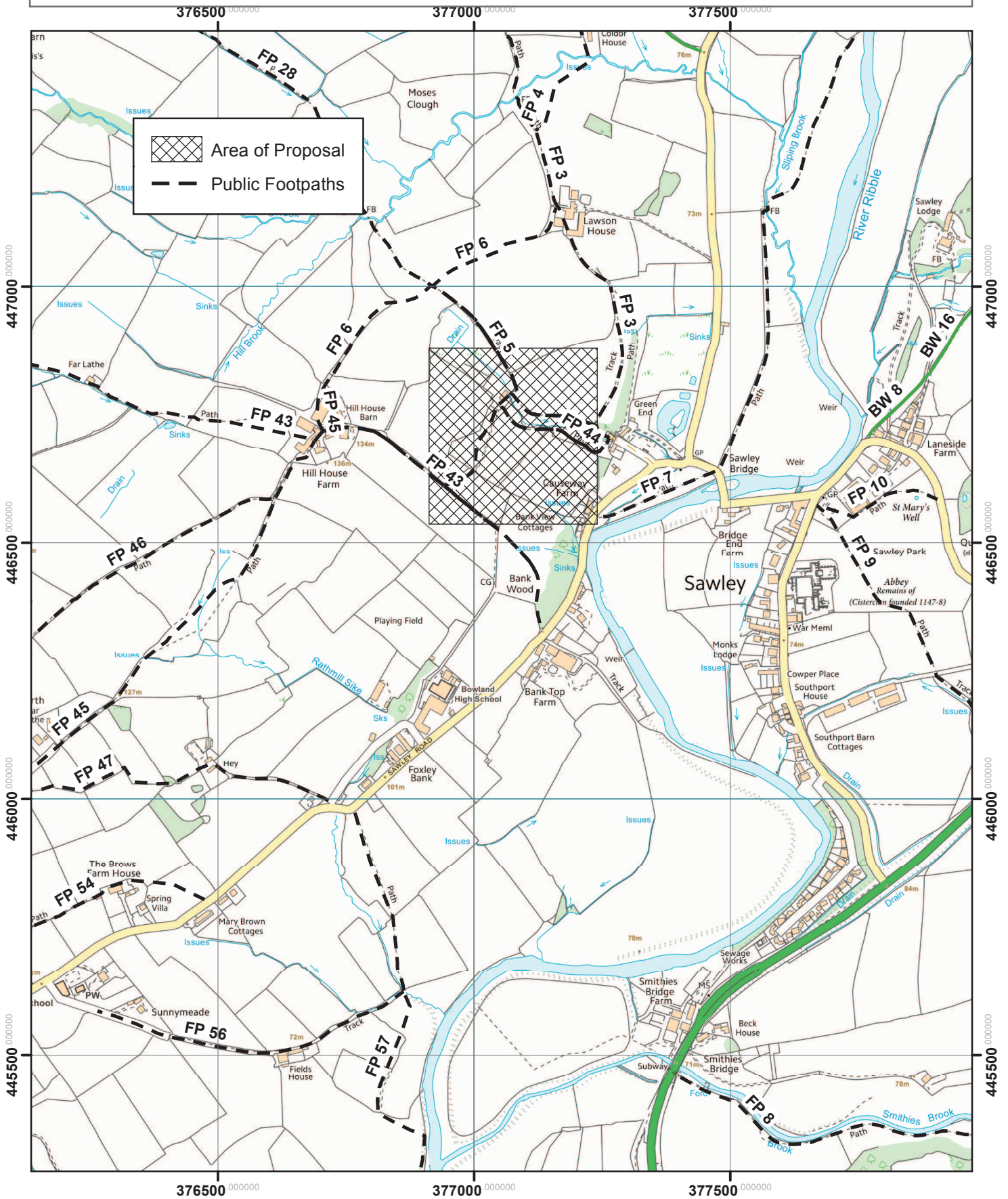
**Local Government (Access to Information) Act 1985
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
File Ref: 211/657	various	Megan Brindle County Secretary and Solicitors Group 01772 535604
File Ref: PRW-03-21-44		Mr Stephen Williams Environment Directorate, 01772 533886

Reason for inclusion in Part II, if appropriate

N/A

Highways Act 1980 - Section 119 - Location Plan
 Proposed Diversion of part of Public Footpath No. 44 Grindleton and Public Footpath No. 5 Sawley Ribble Valley



Jo Turton,
 Executive Director
 for Environment.

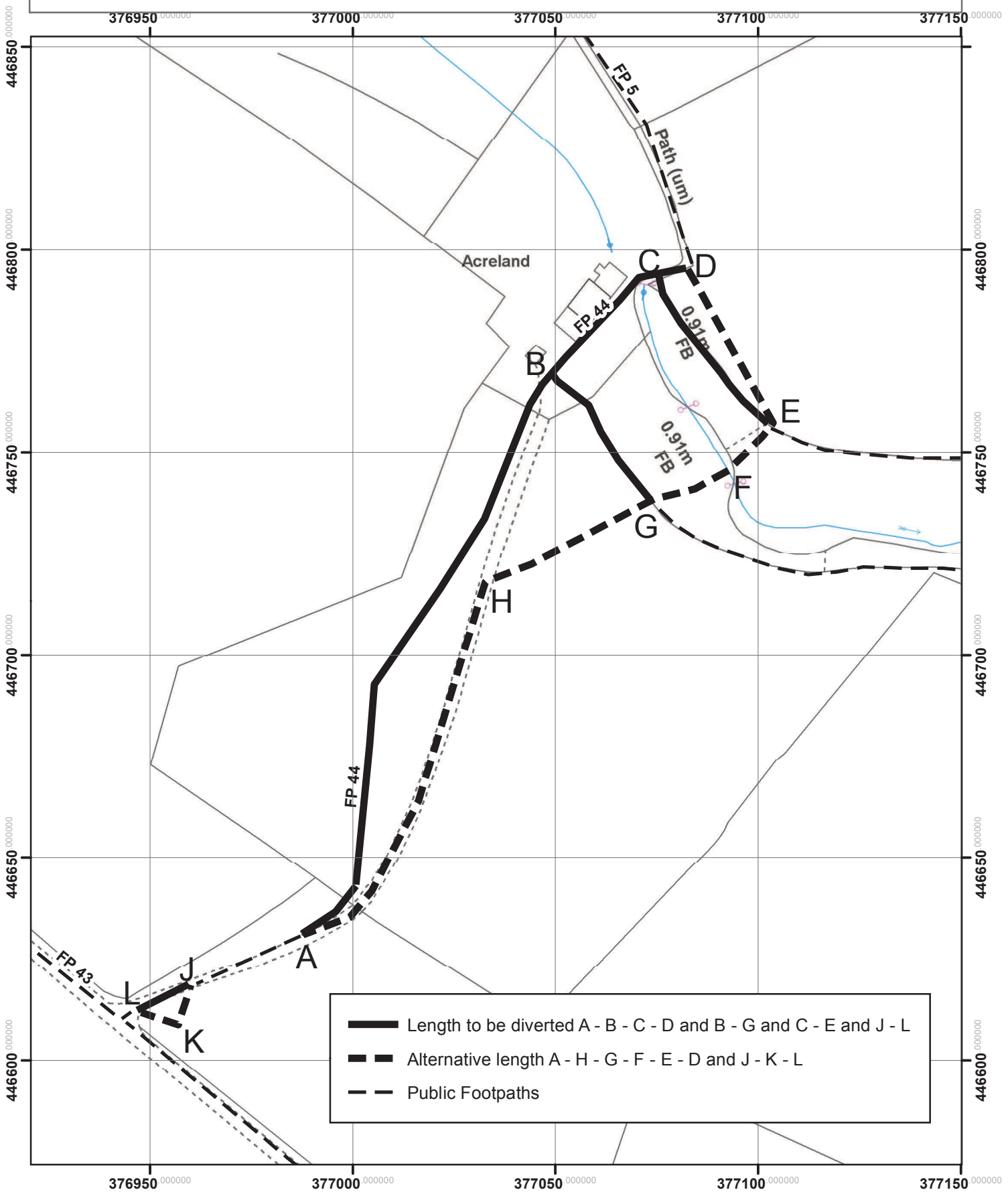
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Highways Act 1980 - Section 119
 Proposed Diversion of part of Public Footpath No. 44 Grindleton and Public Footpath No. 5 Sawley Ribble Valley



Jo Turton,
 Executive Director
 for Environment.

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Agenda Item 9

Regulatory Committee

Meeting to be held on 4th February 2015

Electoral Division affected: Preston Rural

**Order Making Authorities stance on confirmation of the Order
Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 – Section 53A
Diversion of Part of Whittingham Footpaths 1 and 5, Preston City.**

(Annex 'B' and 'C' refers) (Appendix 1 refers)

Contact for further information:

Mrs R Paulson, 01332 532459, Environment Directorate,

Ros.Paulson@lancashire.gov.uk

Miss M Brindle, 01772 (5)35604, County Secretary and Solicitor's Group

Megan.Brindle@lancashire.gov.uk

Executive Summary

The Order for the Diversion of part of Whittingham Footpaths 1 and 5, Preston having received an objection requires the Order Making Authority to consider the stance it is to take with regards to the confirmation of the Order before the matter is referred to the Secretary of State for formal determination.

Recommendation

1. That the report of 24th July 2013 be noted.
2. That the Order be referred to the Planning Inspectorate and the County Council adopts a "neutral stance" as regards confirmation of the Order.

Background & Advice

Committee, at its meeting on 24th July 2013 accepted the application to divert part of Whittingham Footpaths 1 and 5, a copy of the report is attached as Appendix 1. An Order was subsequently made on 23rd July 2014.

One objection was duly made to the Order during the relevant period and this objection remains outstanding. The County Council is therefore unable to confirm the Order and if it is to proceed the matter will require referral to the Secretary of State for formal determination.

The initial committee report considered at the Regulatory Committee on 24th July 2013 stated in Recommendation point 2 '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 and promoted to confirmation if necessary at a Public Inquiry.'

Committee is referred to Annex C and will note the Council may reconsider the stance it is to take to confirmation of the Order in light of the objections. In this matter it is suggested to Committee that the Order be sent to the Secretary of State with the Authority taking a neutral stance as to confirmation.

The Director for Environment considers that this Diversion Order is of no public benefit but that it does still meet the statutory test that it is not substantially less convenient for the public. It is therefore difficult to justify the promotion of the order to confirmation, once the matter is referred to the Planning Inspectorate, due to the limited resources the Council has at present

Committee should note that the Authority can only charge an applicant in accordance with the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993/407 and this does not allow the Authority to recharge the costs incurred by the Authority promoting the Order at a public inquiry, hearing or by written representations once the Order is with the Secretary of State. Therefore, in light of the financial constraints the Authority currently faces, it is difficult to justify the allocation of resources necessary to promote this Order to confirmation, once the matter is referred to the Planning Inspectorate.

Committee is advised that the Order Making Authority should submit the Order to the Secretary of State but take a neutral stance to the confirmation of the Order and allow the applicants to promote the same.

Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
File Ref: PRW-06-09-01	Various	Mrs Ros Paulson, Environment Directorate, 01772 532459

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee

Meeting to be held on 24 July 2013

Electoral Division affected: Preston Rural

Highways Act 1980 – Section 119.**Wildlife and Countryside Act 1981 – Section 53A.****Proposed Diversion of Part of Whittingham Footpaths 1 and 5, Preston City.**

(Annex 'B' refers)

Contact for further information: Mrs R Paulson, 01772 532459, Environment Directorate ros.paulson@lancashire.gov.uk

Executive Summary

The proposed diversion of part of Whittingham Footpaths 1 and 5, Preston City.

Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Whittingham Footpaths 1 and 5, from the routes shown by bold continuous lines and marked A-B-C and H-J, to the routes shown by bold dashed lines and marked A-D-E-F-G and H-K-L on the attached plan.
2. 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 and promoted to confirmation if necessary at a public inquiry.
3. 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

A request has been received from Mr. William Hayhurst and Mr. Michael Hayhurst, Sandbank Estate, Cumeragh Lane, Whittingham, Preston, PR3 2AJ for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Whittingham Footpaths 1 and 5.

The length of the existing paths proposed to be diverted are shown by bold continuous lines and marked A-B-C and H-J and the proposed alternative routes are shown by bold dashed lines and marked A-D-E-F-G and H-K-L on the plan.

Sandbank Estate consists of a diverse collection of businesses such a timber merchant, warehouses and office accommodation. There are a number of vehicular movements associated with these businesses and the landowners have concerns about the potential for conflict between the public and vehicles and also the security

of the site. The footpath also passes adjacent to a dwelling that is in the ownership of the applicants and the diversion will improve the privacy and security of residents.

The diversion of Whittingham Footpath 1 would remove the cross-field footpath and place it on the edge of the field, to meet with Ashley Lane opposite the proposed alignment of Whittingham Footpath 5.

In 2007 the County Council made an Order to divert these footpaths and after publication one objection was received from the owner of Gatehouse Barn, a dwelling adjoining the proposed alternative route for Whittingham Footpath 5. The Order was subject to a Public Hearing on 9 January 2013. The Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs declined to confirm the Order because it was considered that there would be a substantial reduction in the privacy of the garden and paddock of Gatehouse Barn and that it might also impact upon the security of the property.

A copy of the Order Decision is attached as Appendix 'A' to this report.

Subsequently the landowners have erected a closed boarded fence along the Gatehouse Barn garden and a post and wire fence 5.5 metres from the boundary. It is proposed that the footpath will run to the east of the post and wire fence. It is therefore, suggested that the increased distance and fences reduce the potential impact on the neighbour to a level that is acceptable and that all the tests and criteria for a Diversion Order can now be satisfied.

Consultations

Goosnargh Parish Council and Whittingham Parish Council have been consulted and at the time of writing have raised no objection to the proposal.

The necessary consultation with the Statutory Undertakers has been carried out and no adverse comments on the proposal have been received.

The Peak and Northern Footpaths Society, the Ramblers' Association and the British Horse Society have been consulted and have not raised an objection to the proposal.

Preston City Council has submitted an objection to the proposal, following comments received from one of the Councillors who represent the ward in which the proposed Public Footpath diversion is located. The comments read:

'I'm sure you will have received the views of Whittingham Parish Council on this proposal by now from the clerk Julie Buttle. I can only echo those views. The path at present is well used by walkers and cyclists. The whole length is surfaced from Cumeragh Lane to Ashley Lane and affords both walkers and cyclists the luxury of avoiding trailing through mud. This is a long established public right of way and I would like to see it remain as it is. The proposal does not offer a hard surface for the re-route in total and would be of no benefit to the public.'

Preston City Council also state 'It may, of course, be that the new route will be fully surfaced if approved and that this aspect of the objection will be removed. However, for now, the above comment reflects the view of the City Council to this proposal.'

In reply to the objection, the Executive Director for the Environment advises that if the Order is confirmed, the whole of the length between Cumeragh Lane and Ashley Lane will indeed be surfaced. The length A-D and the length E-F-G will consist of a 2 metre wide compacted stone surfaced path and the length D-E currently consists of a 3 metre wide concrete surface. The route will therefore be suitable for use by the public and firm underfoot even in adverse weather conditions.

The objection refers to use of the route by walkers and cyclists, however, it is recorded as a Footpath and there is no suggestion that higher rights exist. Therefore, this is not currently a public right of way that cyclists are permitted to use.

With regards to the comment that the route is a '*long established public right of way*', it is advised that a landowner is legally entitled to apply for a diversion that will move the public footpath to a location more preferable to themselves (i.e. in their interests).

It is suggested that the points raised in the objection submitted by Preston City Council can either be satisfied, or are not a relevant consideration in this instance.

Advice

Points annotated on the plan

Point	Grid Ref	Description
A	SD 5896 3726	Point immediately to the east of the wooden stile that is located between the field and the access road to Sandbank.
B	SD 5871 3757	Apex of the bend in Whittingham Footpath 5, adjacent to the western corner of the office block.
C	SD 5870 3764	Junction of Whittingham Footpath 5 and Ashley Lane.
D	SD 5888 3750	Point on concrete farm track located 3 metres to the north-east of a wooden field gate.
E	SD 5890 3753	Metal field gate that is located between the concrete farm track and the field.
F	SD 5890 3760	Point immediately adjacent to the bend in the sheep netting fence on the western field boundary.
G	SD 5879 3769	Mid point of edge of stone surfaced vehicle turning area, immediately adjacent to the southern edge of Ashley Lane.
H	SD 5868 3786	Point immediately to the east of the wooden stile that is located 60 metres to the north-west of the bend in Whittingham Footpath 1.
J	SD 5871 3766	Junction of Whittingham Footpath 1 and Ashley Lane.
K	SD 5871 3783	Point in the south-eastern field boundary in the southern corner of the field.

L	SD 5879 3770	Mid point of edge of stone surfaced vehicle turning area immediately adjacent to the northern edge of Ashley Lane.
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Description of existing footpaths to be diverted

(All lengths and compass directions are approximate).

a) That part of Whittingham Footpath 5 from point A, running generally north-west for 415 metres on the concrete and tarmac surfaced access track to point B. The path then runs north for 75 metres on a concrete surface through the yard to point C. Shown by a bold continuous line on the Order Map and marked A-B-C, a total distance of 490 metres.

b) That part of Whittingham Footpath 1 from point H, running south-east for 60 metres on a grassed surfaced field edge, then runs south for 150 metres a grassed surfaced cross field path to point J. Shown by a bold continuous line on the Order Map and marked H-J, a total distance of 210 metres.

Description of new footpaths

(All lengths and compass directions are approximate).

a) From point A running generally north-north-west for 250 metres to point D, then north-north-east for 50 metres to point E. It passes through a field gate and runs north for 60 metres to point F, then generally north-west for 150 metres passing through a pedestrian gate and continuing to point G. Between A-D and E-F-G the path will have 2 metre wide stone surface. D-E will have a 3 metre wide concrete surface. The path is shown by a bold dashed line on the Order Map and marked A-D-E-F-G, a total distance of 510 metres.

b) From point H running south-east for 40 metres as a grassed surfaced footpath to point K, then passing through a pedestrian gate and continuing as a grassed surfaced footpath generally south-south-east for 150 metres, passing through a pedestrian gate and continuing to point L.

It is proposed that the path to be created by the proposed Order will be 2 metres wide with the exception of D-E which will have a width of 3 metres. The route will be subject to the following limitations or conditions:

Limitations and Conditions	Position on path to which limitations and conditions apply
The right of the owner of the soil to erect and maintain a two way opening gate that conforms to BS5709:2006	SD 5890 3753 (point E).
The right of the owner of the soil to erect and maintain a one way opening gate that conforms to BS5709:2006	SD 5879 3769 (3 metres to the south-east of point G).
The right of the owner of the soil to erect and maintain a two way opening gate that conforms to BS5709:2006	SD 5871 3783 (Point K).
The right of the owner of the soil to erect and maintain a one way opening gate that conforms to BS5709:2006	SD 5879 3770 (3 metres north-west of L).

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

If this application is approved by the Regulatory Committee, the Executive Director for the Environment suggests that Order should also specify that the Definitive Statement for

a) Whittingham Footpath 1 to be amended to read as follows:

The 'Position' column to read: "Ashley Lane at SD 5879 3770 running north-north-west for 150 metres, crossing a stone surfaced turning area then passing through a gate, continuing as a grassed surfaced field edge path to SD 5871 3783. The path then passes through a gate and runs north-west for 40 metres to SD 5868 3786 then continuing to the Parish boundary. (All lengths and compass directions given are approximate.)"

The 'length' column be amended to read: "0.88 km"

The 'other particulars' column be amended to read "The width of the section of footpath between SD 5879 3770 and SD 5868 3786 is 2 metres. The only limitations on the section of footpath between SD 5879 3770 and SD 5868 3786 are a one way opening gate which conforms to BS5709:2006 at SD 5879 3770 and a two way opening gate which conforms to BS5709:2006 at SD 5871 3783"

b) Whittingham Footpath 5 to be amended to read as follows:

The 'Position' column to read: "Ashley Lane at SD 5879 3769 running generally south-east for 150 metres, crossing a stone surfaced turning area then passing through a gate, then running as a stone surfaced path to SD 5890 3760, then continuing south for 60 metres to SD 5890 3753. The path then passes through a gate and runs south-south-west for 50 metres to SD 5888 3750, on a concrete surface then runs south-south-east for 250 metres as a stone surfaced path to SD 5896 3726 continuing to Cumeragh Lane (near Valve House). (All lengths and compass directions given are approximate.)"

The 'length' column be amended to read: "0.56 km"

The 'other particulars' column be amended to read "The width of the section of footpath between SD 5879 3769 and SD 5890 3753 and also between SD 5888 3750 and SD 5896 3726 is 2 metres. The width between SD 5890 3753 and SD 5888 3750 is 3 metres. The only limitations on the section of footpath between SD 5879 3769 and SD 5896 3726 are a one way opening gate that conforms to BS5709:2006 at SD 5879 3769 and a two way opening gate that conforms to BS5709:2006 at SD 5890 3753."

Criteria satisfied to make and confirm the Order

The proposed diversion is felt to be in the interests of the owners of the land in that, if the proposal is successful, it will move Whittingham Footpath 5 away from a vehicular access road, the buildings, the car park and a yard used for storage of

materials and where machinery operates. This will lead to an improvement in the safety on site and security of the businesses.

It will also move part of Whittingham Footpath 1, and this alteration is considered to be necessary in order to provide a safe and convenient crossing point of Ashley Lane in the event that Whittingham Footpath 5 is diverted. In addition, it will move cross field section of the footpath to a field edge therefore, the diversion of Whittingham Footpath 1 is also considered to be in the interests of the owners of the land.

The proposed diversion will alter the points of termination of Whittingham Footpaths 1 and 5 and place them on another point on Whittingham Lane being opposite each other on the same highway. It is therefore suggested that the proposed termination points are substantially as convenient to the public.

The Committee is advised that so much of the Order as extinguishes part of Whittingham Footpaths 1 and 5, is not to come into force until the County Council has certified that the necessary work to the alternative routes 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.

It is advised that the effect of 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. The alteration of Whittingham Footpath 1 from a cross-field path to a field edge path will be an advantage to the agricultural operations. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The applicants own the land crossed by the sections of footpath proposed to be diverted, and also in respect to the proposed alternative routes.

The applicants have agreed to defray any compensation payable and to bear all advertising and administrative charges incurred by the County Council in the Order making procedures, and also to provide an alternative route to the satisfaction of the County Council.

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 proposed alternative routes are of a similar length and gradient to the existing routes. A stone surfaced path will be provided between points A-D and E-F-G, providing a route that is suitable for use by the public. With regards to the proposed alternative route for Whittingham Footpath 1, substantial drainage and surfacing work has already been carried out in the vicinity of point L and this has alleviated a problem with flooding that previously existed in this corner of the field. The remainder of the surface of the field edge path runs over land that is firm underfoot and is safe and convenient for the public to use in all weather conditions.

It is felt that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the paths or ways as a whole. It is suggested that many users might find a walk on the new routes to be more enjoyable, because the existing footpaths runs along a vehicular access track and through an industrial area, whereas the majority of the proposed footpaths are locate on the field edge. As such, some users of the paths may feel more comfortable and at ease. Furthermore, the proposed alternative route for Whittingham Footpath 5 will provide a pleasant rural footpath with fine views of the surrounding countryside, whereas the views from a large section of the existing path is of the industrial units and offices.

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.

It is also advised that the needs of the disabled 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 – formerly the Disability Discrimination Act 1995 (DDA). The alternative routes will be of adequate width, where necessary gates will be provided, rather than stiles and the diversion will provide a safe and convenient crossing of Ashley Lane.

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'. In this instance BS5709:2006 has been applied to the alternative routes and the least restrictive option of gates has been selected, reducing the limiting effect of structures.

It is considered that, given consideration to the alignment of Whittingham Footpath 1 being 5.5 metres from the boundary between the applicant's land and Gatehouse Barn and the fences that have been erected now reduce the potential impact on the neighbour to a level that is acceptable and that all the tests and criteria for a Diversion Order can now be satisfied. Therefore, having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

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 Annex 'B' 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 according to the recommendation.

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

Paper	Date	Contact/Directorate/Ext
File Ref: PRW-06-09-01		Mrs Ros Paulson Environment Directorate, 01772 533478
Reason for inclusion in Part II if appropriate N/A		



3/25 Hawk Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0303 444 5343
Customer Services: 0303 444 5000
Fax No: 0117 372 6153
e-mail: john.greenslade@pins.gsi.gov.uk

Jennifer Mort
Lancashire County Council
PO Box 78
County Hall
Preston
PR1 8XJ

Your Ref: LSG4/JM9/5.31213/JM9
Our Ref: FPS/Q2371/4/41
Date: 19 MAR 2013

Dear Madam

HIGHWAYS ACT 1980 SECTION 119
Lancashire County Council
Public Footpaths Nos. 1 and 5 (Parts), Whittingham, Preston City
(Public Path Diversion) Order 2008

I enclose herewith a copy of the Inspector's decision with regard to the above-named Order.

For your information, you will also find enclosed two leaflets entitled *Our Complaints Procedure* and *Challenging the Decision in the High Court*.

I enclose herewith ^{both} ~~one~~ of the sealed Orders.

If you have any queries about the enclosed decision, please contact the Quality Assurance Unit at the following address:

Quality Assurance Unit
The Planning Inspectorate
4/06 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Tel: 0303 444 5884
<http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback/>

An electronic version of the decision will shortly appear on the Inspectorate's website.

Yours faithfully

John Greenslade
(Rights of Way Section)

Despatch 10MA



Order Decision

Hearing held on 9 January 2013

by **Michael R Lowe BSc (Hons)**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: **19 MAR 2013**

Order Ref: **FPS/Q2371/4/41**

- This Order is made under section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Lancashire County Council Public Footpaths Nos 1 and 5 (Parts), Whittingham, Preston City (Public Path Diversion) Order 2008.
 - The Order is dated 23 January 2008 and proposes to divert part of Footpaths 1 and 5 near Sandbank Estate as shown on the Order map and described in the schedule.
 - There was 1 objection outstanding when Lancashire County Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
-

Decision

1. I do not confirm the Order.

Preliminary Matter

2. I held a public hearing into the Order at the Old Station, Longridge, Preston, Lancashire on 9 January 2013. I visited the site in the company of the parties after the close of the hearing.
3. The Council submitted a series of modifications to the Order in the event that I was to confirm the Order. The proposed modifications were mainly of a technical nature, but included the substitution of gates in place of stiles.

Background

4. The Order was made following an application from William & Michael Hayhurst of the Sandbank Estate. Consultations with the Parish Council and the Ramblers' Association resulted in agreement to the proposal provided that the alternative footpath to be created was hard surfaced and provided with gates. After publication one objection was received from Mr Newsham of Gatehouse Barn, a property adjoining the proposed alternative route. Following discussions between the Council, the applicant and the objector, the Council decided to proceed with the Order in accordance with the wishes of the applicant.
5. The proposal would divert parts of Footpath Nos. 1 & 5 to a more easterly alignment and thereby avoid the footpath passing through the small industrial estate of Sandbank. However, the proposed alternative route would pass alongside the curtilage and paddock of Gatehouse Barn.

Main Issue

6. The requirements of section 119 of the Highways Act 1980:
- (1) Whether it is expedient in the interests of the owner of the land or of the public that the footpath in question should be diverted;
 - (2) Whether the diverted footpath will (or will not) be substantially less convenient to the public;
 - (3) Whether it is expedient to confirm the Order, having regard to;
 - (a) The effect the diversion would have on public enjoyment of the footpath as a whole;
 - (b) The effect the coming into operation of the Order would have as respects other land served by the existing public rights of way; and
 - (c) The effect any new public rights created by the Order would have as respects the land over which the rights are so created and any land held with it.

A diversion must not alter the point of termination of a footpath: (a) if that point is not on a highway, or (b) (where it is on a highway) otherwise than to another highway connected with it, and which is substantially as convenient to the public.

I must have regard to any material provisions of the rights of way improvement plan of the area.

Reasons

Whether it is expedient in the interests of the owner of the land or of the public that the footpath in question should be diverted

7. The Order has been made because it appears to the Council that the diversion is expedient in the interests of the landowner. The Council and the applicant submitted that the proposed diversion would (i) improve the security of the industrial units, which have been the subject of a number of thefts, (ii) remove the footpath from the vehicular access road and a storage yard in which vehicles are likely to be reversing, thereby enhancing the safe operation of the site and (iii) divert the footpath away from Gate House Farm providing increased security and privacy to the dwelling. The objectors have pointed out that the public tend to use the footpath in an evening and at weekends, times at which the industrial units are not in use.
8. In my view there are clear benefits to the landowner from the diversion of the footpath in terms of security to the properties, increased safety and the privacy of Gate House Farm.
9. I am therefore satisfied that the proposed diversion of the footpath would be expedient in the interests of the owner of the land. No case has been made that the diversion is in the interests of the public.

Whether the diverted footpath will (or will not) be substantially less convenient to the public

10. The existing and proposed routes are of a similar length and gradient. Subject to the works to bring the proposed new footpath into a fit condition for public use, including the provision of a hard surface, no objections have been raised

to indicate that the proposed diversion would be substantially less convenient to the public and I am satisfied that the proposed diversion would not be substantially less convenient to the public.

Termination point

11. The proposed diversion would alter the termination points of Footpath Nos. 1 & 5 at the junction with Ashley Lane. There are no objections to the Council's assessment that the proposed alteration of the termination points would be substantially as convenient and I am satisfied in this regard.

Whether it is expedient to confirm the Order

The effect which the coming into operation of the Order would have as respects other land served by the existing public rights of way

The effect which the new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it

12. These issues are not in dispute and I am satisfied that such matters do not adversely impact upon the confirmation of the Order.

The effect the diversion would have on the public enjoyment of the footpath as a whole

13. There are no objections to the Council's assessment that the proposed diversion would adversely affect the public enjoyment of the footpath as a whole and I am satisfied in this regard.

The Rights of Way Improvement Plan

14. The Council indicated that the Rights of Way Improvement Plan has no significant material provisions in respect of the proposed diversion.

Overall Expediency

15. Whilst the 1980 Act details specific matters that must be considered within the expediency test there is no limit upon other material matters which may be considered under the heading of expediency. Mr Newsham's objection concerns the effect of the proposed diversion upon his property. His land is not directly affected and therefore the provisions for compensation in section 28 of the 1980 Act do not apply. Nonetheless, I am satisfied that the impact of a proposed diversion upon the privacy, security and amenity of persons occupying an adjoining property are a material consideration.
16. The proposed diversion would result in the footpath passing alongside the southerly and easterly boundaries of a paddock used by Mr Newsham and his family for the riding of ponies, and along the easterly boundary of the dwelling and garden. The garden area is partially screened by a row of conifer trees, but the footpath would afford views into the paddock and garden area.
17. In my view the proposed diversion would result in a substantial reduction in the privacy of the garden and paddock of Gatehouse Barn and may also impact upon the security of the property. Whilst I attach less weight to the impact upon the paddock, I am satisfied that the impact upon the privacy of the garden area and the immediate curtilage to the property would be significant. I therefore conclude that the proposed diversion would harm the living condition of those occupying Gatehouse Barn.

18. No objection has been made to indicate that the proposed diversion would have any adverse effects upon agriculture, natural beauty or biological diversity and I am satisfied in these regards.
19. Overall I consider that the interests of the landowner in securing the diversion do not outweigh the harm that would be caused to the interests of those occupying Gatehouse Barn. As a result, it is not expedient to confirm the Order.
20. I have considered whether or not to propose a modification to the Order that would provide an alternative route on a more easterly alignment and avoid the adverse impact upon Gatehouse Barn. However, such a proposal would be likely to extend beyond the area of the existing map to the Order and would, in my view, amount to a significantly different proposal. In the light of my decision the parties may wish to pursue a new proposal.

Conclusion

21. Having regard to all these and all other matters raised at the hearing and in the written representations, I conclude that the Order should not be confirmed.

Michael R. Lowe

INSPECTOR

APPEARANCES

Lancashire County Council

Jane Turner
Ros Paulson

Senior Solicitor
Rights of Way Officer

Supporters

William Hayhurst
Peter Bamber

The applicant for the Order

The Objectors

Paul Newsham
John & Margaret Halsall

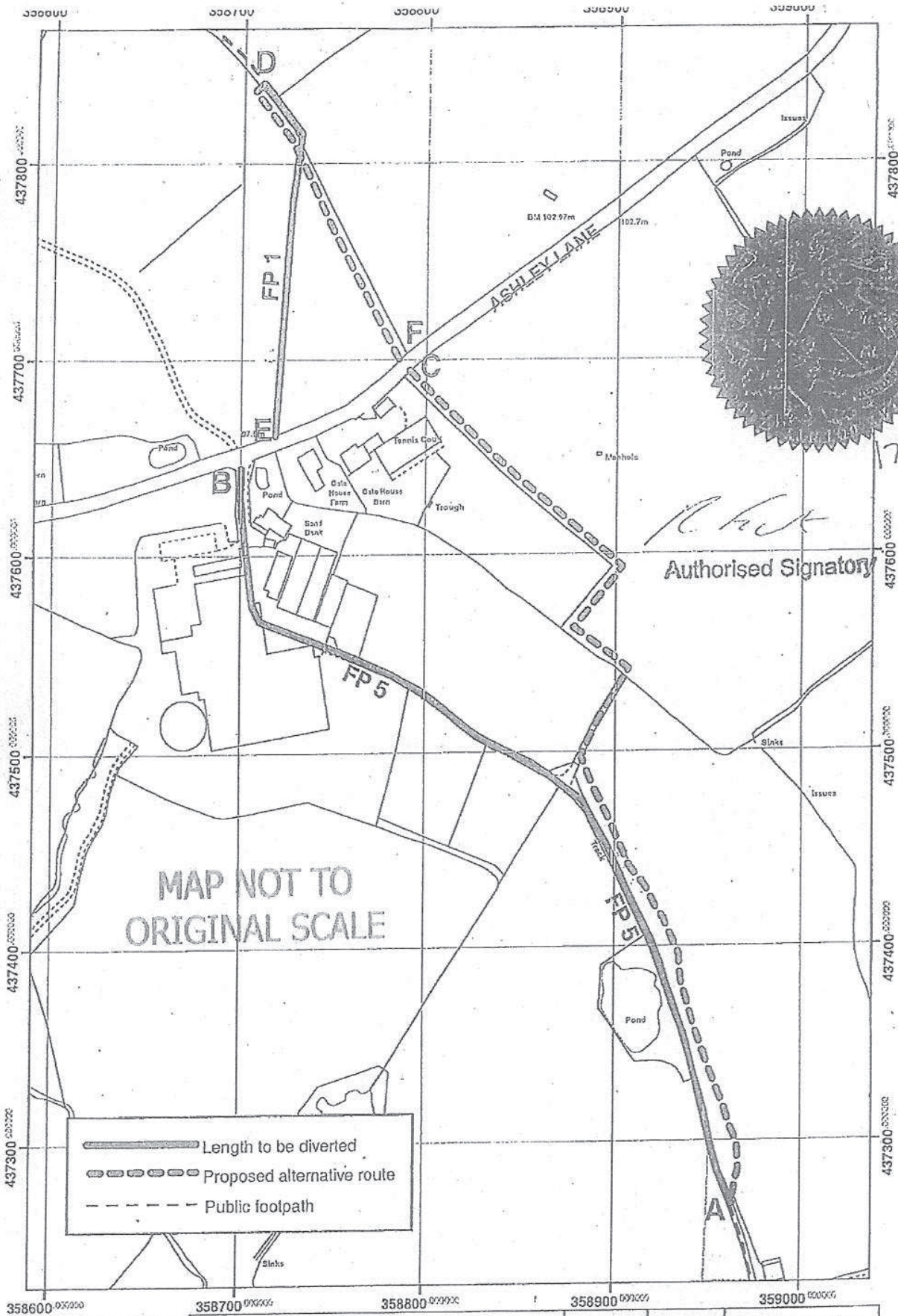
Other Parties

Janet Ward
Margaret Rigby

Goosnargh Parish Council
Whittingham Parish Council

DOCUMENTS (submitted at the Hearing)

- 1 Letter from Michael Hayhurst dated 7 January 2013
- 2 Certificate of posting of notices for the hearing
- 3 Letter from John Halshall
- 4 Photograph of flooding at point F from Mr Newsham



MAP NOT TO ORIGINAL SCALE

	Length to be diverted
	Proposed alternative route
	Public footpath

	<p>Highways Act 1980 Section 119. Proposed diversion of parts of Public Footpath Nos. 1 and 5, Whittingham, Preston City.</p>	<p>1:2,500</p>		<p>G. Harding B.Eng., C.Eng., FICE, FRIIT, MCMIL Environment Director</p>
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Lancashire County Council	Jo Turton Director of the Environment
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Location Plan.
**Highways Act 1980 Section 119. Proposed diversion of
 parts of Whittingham Footpaths 1 and 5, Preston City.**

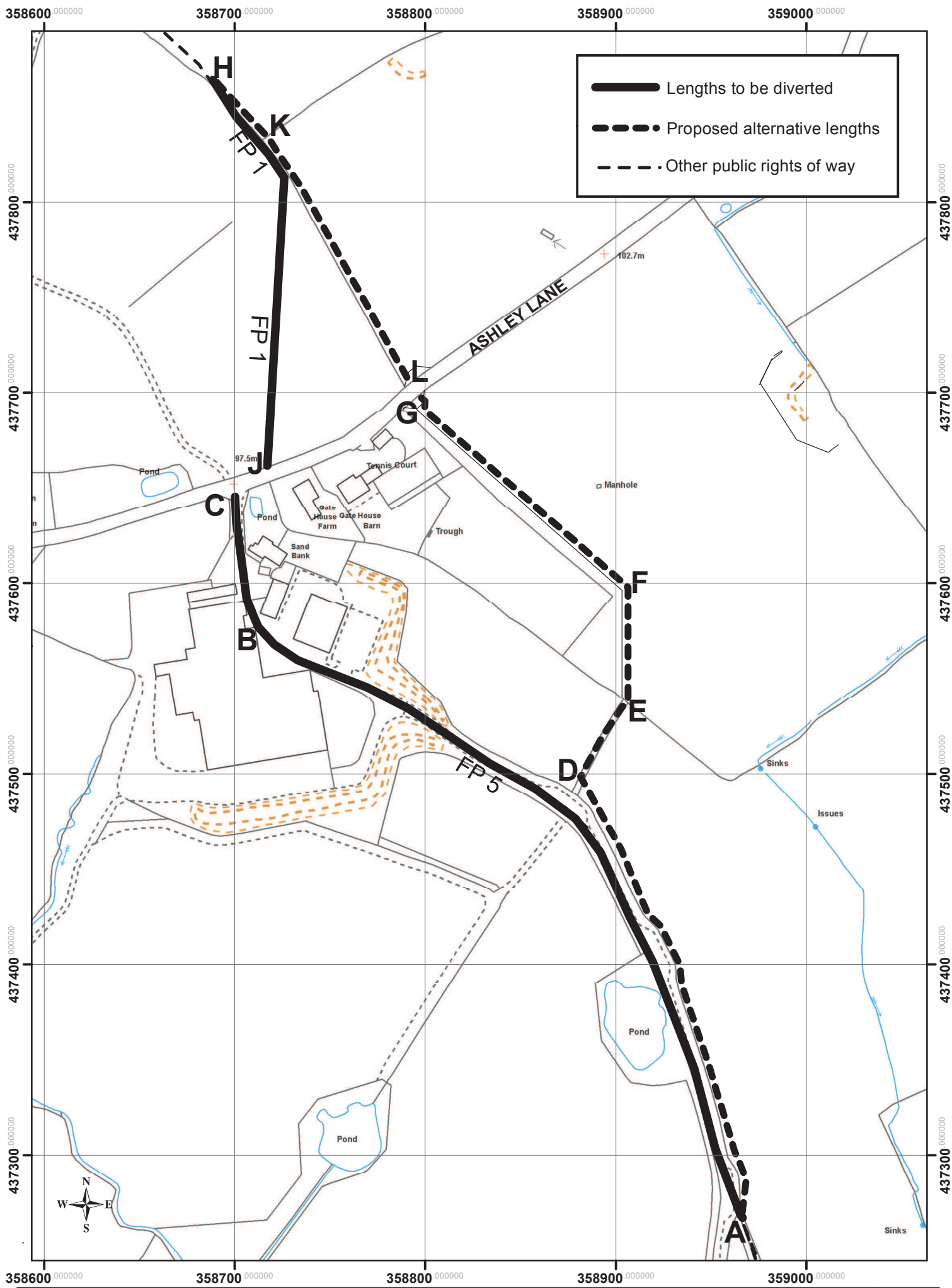


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Lancashire
County
Council

Jo Turton
Director of
the Environment

Highways Act 1980 Section 119.
Proposed diversion of part of Public Footpath Nos. 1 and 5 Whittingham, Preston City.

Plan No.
1264C

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