

# Lancashire County Council

## Regulatory Committee

Wednesday, 13th May, 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
-----	------

1.	<b>Apologies.</b>
----	-------------------

2.	<b>Disclosure of Pecuniary and Non-Pecuniary Interests.</b>
----	---

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.	<b>Minutes of the meeting held on 4 February 2015</b>	(Pages 1 - 6)
----	---	---------------

4.	<b>Guidance.</b>	(Pages 7 - 30)
----	------------------	----------------

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.	<b>Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Upgrading of Wrightington Footpath 21 to Bridleway between Moss Lane and Mossy Lea Road, Wrightington, West Lancashire File No. 804-561</b>	(Pages 31 - 74)
----	--	-----------------

6.	<b>Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of a Public Footpath from Burwains Avenue to the grounds of St Michael and All Angel's Church, Foulridge, Pendle Borough to the Definitive Map and Statement of Public Rights of Way File No. 804-560</b>	(Pages 75 - 104)
----	---	------------------

7. **Wildlife and Countryside Act 1981** (Pages 105 - 150)  
**Definitive Map Modification Order Investigation**  
**Application to delete part of Public Footpath 22**  
**Pilling and add a parallel Public Footpath at Field**  
**House, Pilling**  
**File No. 804-553**
8. **Wildlife and Countryside Act 1981** (Pages 151 - 192)  
**Application to add a public footpath from Ormerod**  
**Street to Gamble Road, Thornton Cleveleys, Wyre**  
**Borough to the Definitive Map and Statement of**  
**Public Rights of Way**  
**File No. 804-557**
9. **Wildlife and Countryside Act 1981** (Pages 193 - 220)  
**Claimed Public Footpath from Blackburn Road to**  
**Church Street, Ribchester,**  
**Ribble Valley Borough**  
**File No. 804/510**
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 Wednesday 1<sup>st</sup> July in Cabinet Room 'B' - the Diamond Jubilee Room, at County Hall, Preston.

I Young  
Director of Governance,  
Finance and Public Services

County Hall  
Preston

# Agenda Item 3

## Lancashire County Council

### Regulatory Committee

**Minutes of the Meeting held on Wednesday, 4th February, 2015 at 10.30 am  
in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

**Present:**

County Councillor Jackie Oakes (Chair)

#### **County Councillors**

I Brown	P Hayhurst
A Clempson	C Henig
D Clifford	P Rigby
C Crompton	D Stansfield
B Dawson	D Westley
J Gibson	B Yates

County Councillors C Crompton, P Rigby and D Westley replaced County Councillors K Snape, P White and A Schofield respectively at this meeting.

**1. Apologies.**

Apologies were received from County Councillor David Whipp.

**2. Disclosure of Pecuniary and Non-Pecuniary Interests.**

None declared.

**3. Minutes of the last meeting.**

**Resolved:** That the minutes of the meeting held on 17 December 2014 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, as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.

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

**Application to add a Public Footpath from Horncliffe Close to Bury Road, Rawtenstall, Rossendale Borough  
File No. 804-554**

A report was presented on an application for a public footpath from Horncliffe Close to Bury Road, Rawtenstall to be added to the Definitive Map.

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, there was sufficient evidence on balance that the pathway subsists as a footpath for the public and that an Order should be made and promoted to confirmation.

**Resolved:**

- i. That the application for a public footpath from Horncliffe Close to Bury Road (ref. 804-554) to be added to the Definitive Map and Statement of Public Rights of Way be accepted.
- ii. That an order be made pursuant to Sections 53(2)(b) and 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 plan set out in the report presented.
- iii. 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.

**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**

A report was presented on the proposed deletion of part of Bacup footpath 616, Higher Boarsgreave, Bacup.

At its meeting on 22 October 2014 the Committee had 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 between points A-H on the plan presented to the Committee.

It was reported that when officers had started to draft the legal Order it had become 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. The footpath should actually have been drawn to follow the existing track between points F-G.

The Committee was informed that a drafting error of this type could only be dealt with by way of a Definitive Map Modification Order.

Details of the evidence relating to this matter, 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 there was sufficient cogent evidence, to suggest that route f-I was recorded in error and that it should be removed from the Definitive Map. Furthermore, the Committee agreed that the evidence was sufficient to not only satisfy the test to make the Order to delete but also to promote the order to confirmation.

**Resolved:**

- i. That part of Bacup Footpath 616, between points F-I, be deleted as shown on the plan set out in the report presented.
- ii. That when an Order is made pursuant to Section 53(3)(c)(i) and 53(3)(c)(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 plan set out in the report presented.
- iii. That being satisfied that the test for confirmation can be met, the Order be promoted to confirmation.

**7. 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**

A report was presented on the Order for a public footpath (known as Stoopes Hill), from Water Street to Stoney Bank Road Earby as determined by the Committee on 13 October 2010.

The Committee was informed that the Order made on 18 April 2012 could not be confirmed and members were asked to consider the making of a new Order for the reasons set out in the report.

Details of the evidence relating to this matter 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 the authority still had evidence concerning a restricted byway at this location and a new Order should be made and promoted through to confirmation. It was also agreed that the Order made on 18 April 2012 should be submitted to the Secretary of State requesting that it be not confirmed.

**Resolved:**

- i. 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 be 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.
- ii. That a further Order be made pursuant to Sections 53(2)(b) and 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 set out in the report presented with a width varying between 2 and 4 metres, using the correct notation on the Order plan for the addition of a restricted byway.
- iii. That being satisfied that the higher test for confirmation can be met, the newly made Order be promoted to confirmation.

**8. 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, Ribblesdale Borough**

A report was presented on an application for the proposed diversion of part of public footpaths 44 (Grindleton) and 5 (Sawley).

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 Annexes B and C) was presented both as part of the report and by officers at the meeting.

Having considered all the information set out in the report and presented at the meeting, it was agreed that an Order be made and that in the event of no objections being received, the Order be confirmed. The Committee also agreed that in the event of objections being received and not withdrawn, the Order should be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.

**Resolved:**

- i. 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 marked A – B – C – D, B – G, C – E and L – J on the location plan to the route marked A – H – G – F – E – D and L – K – J on the plan set out in the report presented.

- ii. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
- iii. That provision be included in the Order such that it is also made under Section 53a of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**9. 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**

A report was presented on the Order for the diversion of part of Whittingham Footpaths 1 and 5, Preston, which had resulted in an objection being received. Members were informed that the objection required the County Council to consider the stance it wished to take with regards to the confirmation of the Order before the matter was referred to the Secretary of State for determination.

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 Annexes B and C) was presented both as part of the report and by officers at the meeting.

Having considered all the information set out in the report and presented at the meeting, the Committee agreed that the Order should be submitted to the Secretary of State with the County Council taking a neutral stance to the confirmation of the Order

**Resolved:**

- i. That the report of 24 July 2013 be noted.
- ii. That the Order be submitted to the Secretary of State and the County Council adopt a "neutral stance" as regards confirmation of the Order.

**10. Date of Next Meeting**

It was noted that the next meeting of the Committee will be held at 10:30am on the Wednesday 25 March 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 XXXXX

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](mailto: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 1<sup>st</sup> 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 6<sup>th</sup> 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 XXXX

## **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 13 May 2015

Electoral Division affected: Skelmersdale East
---

### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

#### Upgrading of Wrightington Footpath 21 to Bridleway between Moss Lane and Mossy Lea Road, Wrightington, West Lancashire

File No. 804-561

(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, Paralegal Officer, Legal and Democratic Services,  
[megan.brindle@lancashire.gov.uk](mailto:megan.brindle@lancashire.gov.uk)

Jayne Elliott, 07917 836626, Planning and Environment,  
[jayne.elliott@lancashire.gov.uk](mailto:jayne.elliott@lancashire.gov.uk)

### Executive Summary

Investigation into the upgrading of Wrightington Footpath 21 between Moss Lane and Mossy Lea Road, West Lancashire Borough to a bridleway, in accordance with file no. 804-561.

### Recommendation

1. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(ii) of the Wildlife and Countryside Act 1981 to upgrade Wrightington Footpath 21 between Moss Lane and Mossy Lea Road to bridleway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G.
2. That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

### Background

An investigation has been carried out into the status of Wrightington Footpath 21 between Moss Lane and Mossy Lea Road following the submission of user evidence by Wrightington Parish Council claiming that the route should be recorded as a bridleway on the Definitive Map and Statement of Public Rights of Way as shown between points A-G on the Committee plan. The application itself is self-started by the Planning and Environment section of Lancashire County Council.

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

- "it ought to be there shown as a highway of a different description"
- "the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path or restricted byway"

When considering evidence, if it is shown that a highway of a particular status existed then those 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 are not relevant to the determination of what the status is, although they may be important to subsequent management of the route. 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**

### West Lancashire District Council

West Lancashire Borough Council has been consulted and no response has been received it is assumed they have no comments to make.

### Wrightington Parish Council

The Parish Council are fully supportive of this application.

Applicant/Landowners/Supporters/Objectors

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

## Advice

### Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5358 1094	Open junction with Moss Lane
B	5359 1096	Width of route narrows between fence surrounding electricity substation on north west side of the route and tree protruding from boundary on south east side of path
C	5365 1103	Route adjacent to rear boundary fence of Wrightington Hotel and Country Club
D	5377 1114	Route adjacent to adjoining field boundary to north
E	5388 1117	Width of route restricted by large tree growing within the boundaries of the path
F	5396 1120	Open junction with Mossy Lea Fold
G	5406 1124	Open junction with Mossy Lea Road

### Description of Route

Site inspections were carried out in September 2014 and January 2015.

The route under investigation commences at point A on Moss Lane, immediately south of Wrightington Hotel and Country Club.

Access onto the route from the lane is open and unrestricted. A public footpath signpost is situated at the start of the route indicating its recorded status and additional Lancashire County Council notices have been attached to the signpost advising that it should not be used by horses or unauthorised vehicles.

From point A the route under investigation is 5 metres wide enclosed between post and sheep netting fences and hedges/trees that separate it from the hotel premises to the north and a field to the south. The surface of the route is firm with a compacted stone strip down the centre and grass down either side. There is evidence of recent use by horses (hoof prints).

Between point A and point B the width of the route tapers to 2.6 metres at point B where it passes between a fenced-off electricity substation (which is not accessed from the route) and a mature tree which protrudes into the route from the south eastern fence line.

Beyond point B the route continues at a width of approximately 4 metres enclosed between the boundary fences of the hotel to the north and the field to the south. Trees along the hotel boundary have been cut back and maintained to a height suitable for pedestrians but the higher branches are at a height that would affect anyone riding a horse.

Between point B and point C the useable width reduces to approximately 2 metres due to the branches extending out across the path from the hedges and trees growing along either side of the route.

From point C the views from the route open up along the north side and although it is still enclosed from the adjacent fields there is just a post and wire fence to the north. A mature hedge bounds the route on the southern side all the way to point F and between the wooden post and wire fence and hedge there is a useable width of approximately 2.5 metres. The surface of the path from point A through to point F appears to have been recently mown.

A large tree is situated within the width of the route under investigation at point E which restricts the width available to use at this point to between 1.5 metres – 2 metres depending on whether the adjacent hedge has been cut back.

Beyond point E the path continues rising gradually uphill with a drop down on the northern side of the path of approximately 1 metre within the boundaries of the enclosed path. There is still approximately a 1.5 metres – 2 metres wide level path available to use above the 'drop' which extends over a distance of approximately 10 metres.


At point F the route passes onto a tarmac surfaced parking area at the front of two properties (6 and 8 Mossy Lea Fold). It then continues along an access road known as Mossy Lea Fold past a number of residential properties that are accessed from the route. The route also provides access to a field to the south. This part of the route is approximately 4 metres wide and the surface comprises of compacted stone and soil. A streetlight is positioned half way along Mossy Lea Fold between point F and point G.

The route under investigation ends at the open junction with Mossy Lea Road at point G on the Committee plan. It is signed as a public footpath and also as Mossy Lea Fold. Lancashire County Council notices are attached to the public footpath signpost advising the public that the route should not be used by unauthorised vehicles or horses.

The total length of the route is 585 metres.

### **Map and Documentary Evidence**

<b>Document Title</b>	<b>Date</b>	<b>Brief Description of Document &amp; Nature of Evidence</b>
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to

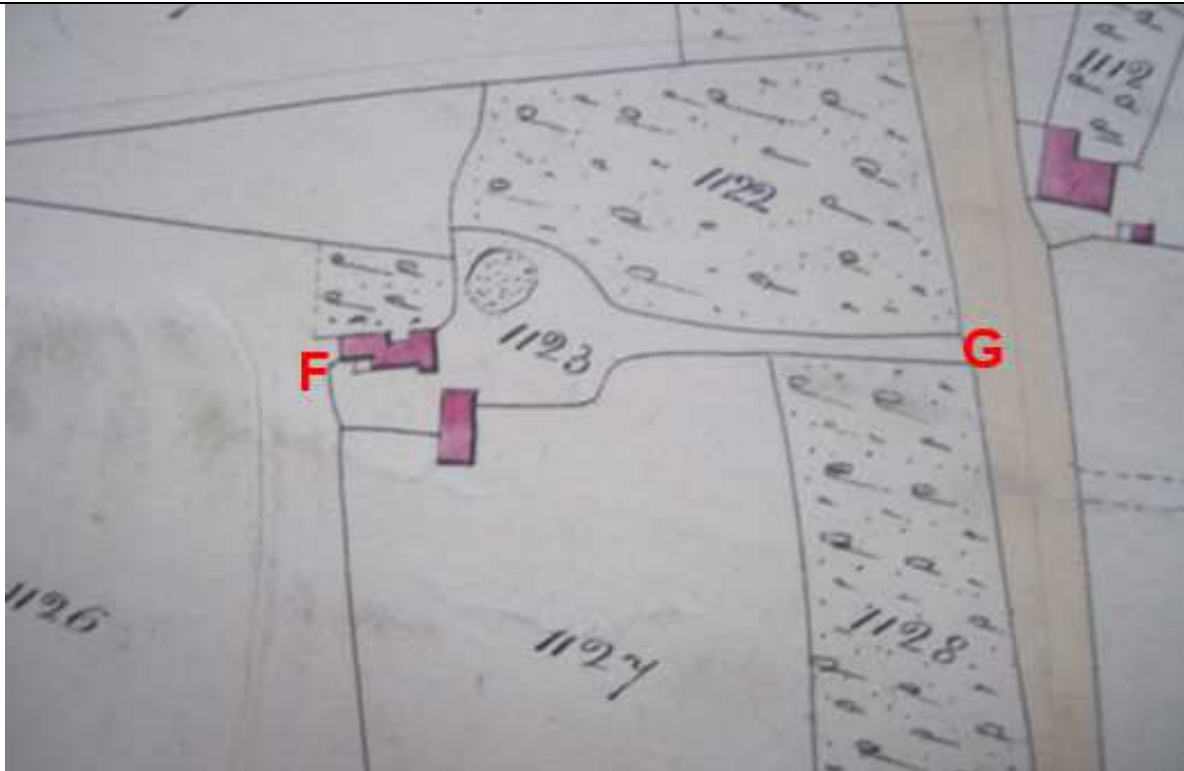
		<p>their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.</p>
		
<p>Observations</p>		<p>Moss Lane and Mossy Lea Lane are shown but the route under investigation is not shown on the map. Two buildings are shown east of point A but the means of access to the properties is not shown</p>
<p>Investigating Officer's Comments</p>		<p>It is likely that the route, if it existed in 1786, would have been of little significance and was therefore not included on the map.</p>
<p><b>Greenwood's Map of Lancashire</b></p>	<p>1818</p>	<p>Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.</p>



Observations		The area through which the route under investigation runs is shown within the white box on the inserted plan. Moss Lane and Mossy Lea Road are shown but the route under investigation is not.
Investigating Officer's Comments		It is likely that the route, if it existed in 1818, would have been of little significance and was therefore not included on the map.
<b>Hennet's Map of Lancashire</b>	1830	A further small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		Moss Lane and Mossy Lea Road are shown but the route under investigation is not.
Investigating Officer's Comments		It is likely that the route, if it existed in 1830, was of little significance and was therefore not included on the map.
<b>Canal and Railway Acts</b>		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 route under investigation does not cross land for which there were any planned railways or canals.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1841	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.






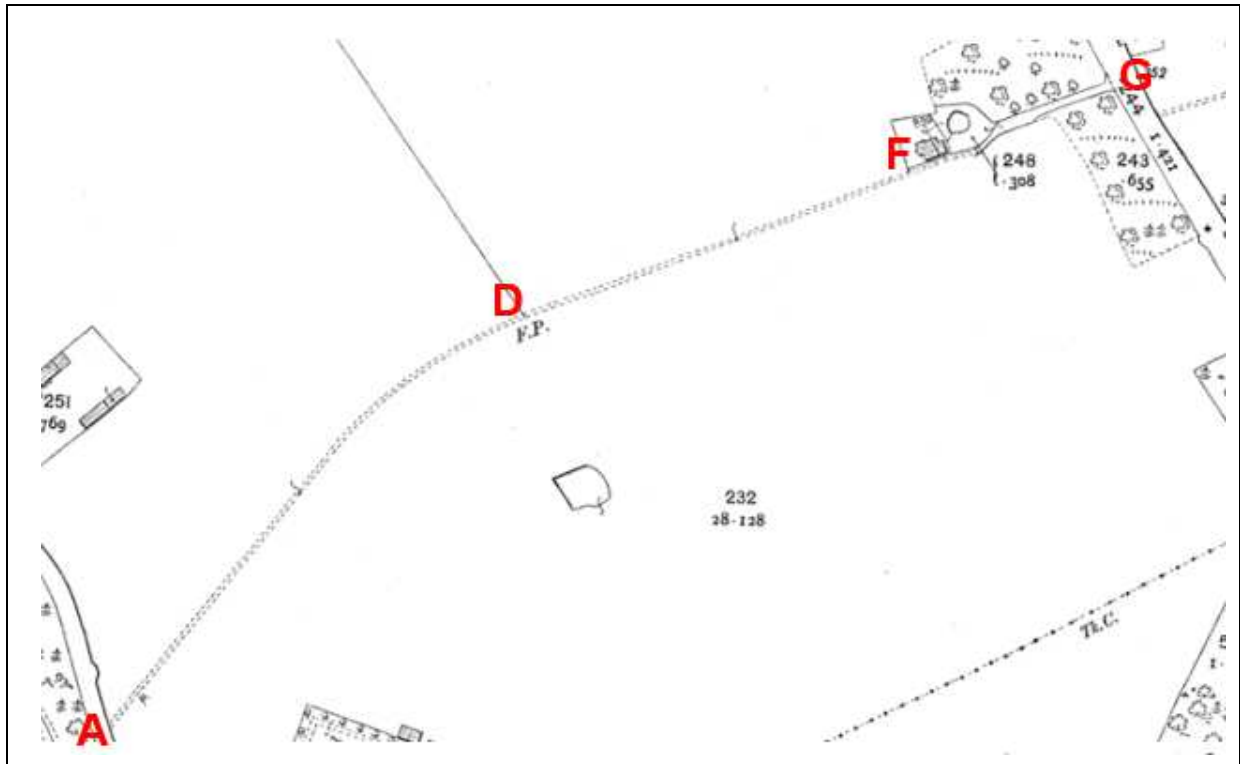
Observations		<p>The Tithe Map and Apportionment held in the County Records Office was inspected.</p> <p>Between point A and point F the route under investigation is not shown to exist on the Tithe map and there is no reference to its existence in the Tithe Award. Between point F and point G the route under investigation is shown as the access to Mossy Lea and is included as part of the numbered plot 1123. No reference is made to the existence of a public right of way along it.</p>
Investigating Officer's Comments		The route under investigation probably did not exist in 1841.
<b>Inclosure Act Award and Maps</b>		<p>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 at the time.</p>
Observations		There are no Inclosure Award records for the parish of Wrightington held at the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance</b>		The earliest Ordnance Survey 6 inch map for this area surveyed in 1845-6 and published in



Survey (OS) Map		1849. <sup>1</sup>
		
Observations		<p>The route from point A on Moss Lane is not shown but it appears that the area over which the Hotel and Country Club have been built (to the north of the route under investigation) was the site of the former Green Slate Collieries with two coal pits marked; the most southerly being close to the route under investigation. A track is shown leading to the colliery between point D and point F but is shown to run on the south side of a hedge line so may not be on the exact alignment of the route now under investigation.</p> <p>The route under investigation can be seen as a pecked line leading to and from the properties in the location of the properties now numbered 6 and 8 Mossy Lea Fold. Beyond point F to point G the route under investigation can be clearly seen providing access to the properties and exiting onto Mossy Lea Road (a Turnpike Trust Road at that time).</p>
Investigating Officer's		It appears that parts of the route under

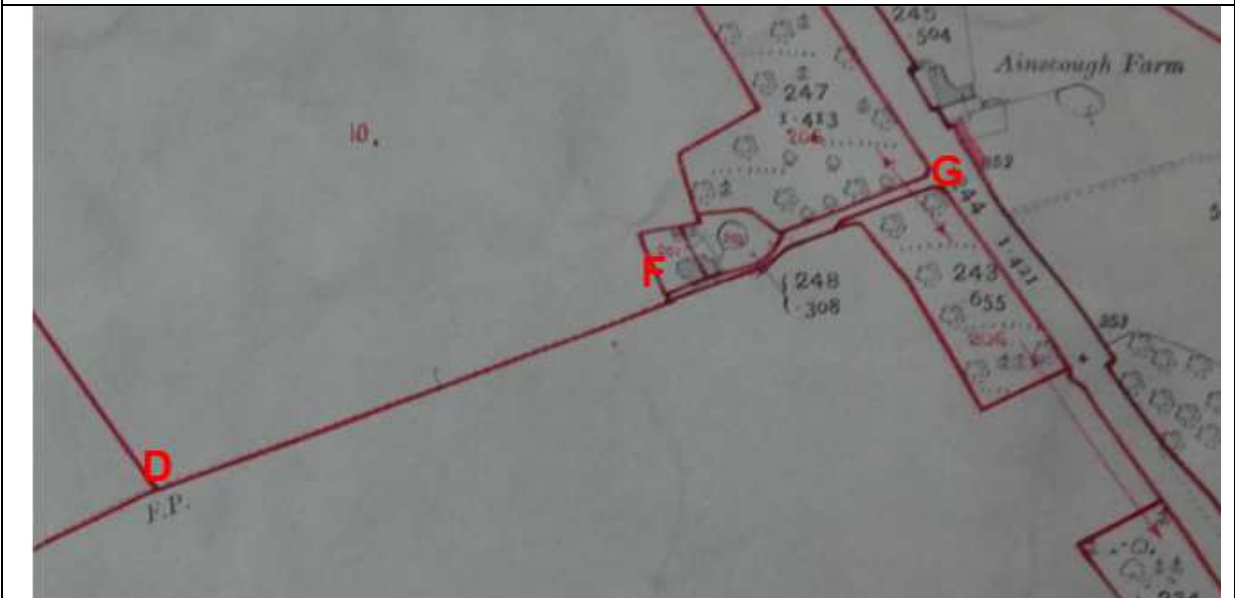
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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

Comments		investigation physically existed in 1849 but it did not form a through route from point A to point G. The track from Mossy Lee Fold, mostly on the south side of the field boundary, appeared to provide access directly to the Colliery although it did not appear to be the main or sole access.
<b>25 Inch OS Map</b>	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1894.
		
Observations		Green Slate colliery is no longer shown to exist and the full length of the route under investigation is shown from point A through to point G and is annotated as a footpath (F.P.). Lines are shown across the route at points A, D and F which may indicate the existence of gates and/or stiles. A field boundary is shown to exist between point A and point F and the route marked as a footpath is shown to follow the north side of the field edge.
Investigating Officer's Comments		The route physically existed on the ground in 1894 and appeared to be capable of being used. It is not possible to determine from the OS map whether horses could (or did) use the route and it appears that gates and/or stiles may have existed at points A, D and F and that the OS surveyor at that time recorded the path as being a footpath in appearance as opposed to a more substantial track which would be more likely to indicate equestrian use at that time..
<b>25 inch OS Map</b>	1908	Further edition of the 25 inch map surveyed in 1892, revised in 1907 and published in 1908.



<p>Observations</p>		<p>When the 25 inch map was revised in 1907 the route under investigation was shown in the same position as it had been previously but it appears that there was no longer a field boundary along the southern side of the route between points A to F. However the field numbers given on the OS map still differentiate between the different plots of land as though the boundary had remained in place.</p> <p>The route under investigation is shown by double pecked lines and labelled as a footpath (F.P). Lines are shown across the route at point A and at point D suggesting that gates and/or stiles may have existed at these points.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed in 1907 and appeared to be capable of being used. It is not possible to determine from the map whether horses would have used the route at that time.</p>
<p><b>Finance Act 1910 Map</b></p>	<p>1910</p>	<p>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.</p> <p>Maps, valuation books and field books produced</p>

		<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>
--	--	---



<p>Observations</p>	<p>There are no Finance Act Records in the County Records Office for the area under investigation so it was necessary to request an inspection of the Finance Act records at the National Archives.</p> <p>The Finance Act Map was photographed and it</p>
---------------------	--

		<p>can be seen that a red line denoting the boundary of separate numbered hereditaments has been drawn down the centre of the route under investigation from point A through to point F. An inspection of the OS 25 inch base map used shows that there was no physical boundary recorded by the OS adjacent to the route at that time but that a worn track shown by doubled pecked lines and annotated as being a footpath (F.P.) existed.</p> <p>It is therefore not possible to determine whether the route under investigation was considered to be part of hereditament (plot) numbers 19, 10 or 557 or whether it was considered to be part of all three.</p> <p>The Field Book entry for plot 557 could not be found at the National Archives so it is not possible to find out who owned and or occupied this land or whether a deduction for public rights of way or user was claimed.</p> <p>No deduction for public right of way or user was made in respect of hereditament (plot) 10 which is described as 'Hunger Hill, Wrightington'. The photocopied field book extract is of poor quality and it is not possible to read the details of the landowner and occupiers names.</p> <p>A deduction of £14 was made for public right of way or user within hereditament 19. But the exact route or routes are not specified. The book records the following details 'footpaths (8) 1200 yards through land and farmyard' and the property is described as New House Farm, Wrightington. The landowner is not listed – 'See no. 7' and occupiers given as being Samuel Horncliffe and Robert Cuterley.</p> <p>Between point F and point G the route under investigation is excluded from the numbered hereditaments.</p>
Investigating Officer's Comments		<p>No inference can be drawn from the Finance Act records with respect to the route between point A and point F.</p> <p>Between point F and point G the route was excluded from the numbered hereditaments suggesting that it may have been considered to be part of the public vehicular highway network at that time.</p>
<b>25 Inch OS Map</b>	1928	Further edition of 25 inch map (surveyed 1892,

		revised 1926 and published 1928.
Observations		The route under investigation is shown as an open route across fields between point A and point F and as an enclosed route from the properties east of point F to point G. Lines are shown across the route at point A and point D which may indicate the existence of gates or stiles.
Investigating Officer's Comments		The route under investigation existed in 1928 and appeared to be capable of being used. It is not possible to determine from the map whether horses would have used the route at that time.
<b>Authentic Map Directory of South Lancashire by Geographia</b>	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The publisher claimed to have incorporated new districts, streets and trunk roads in the atlas and acknowledges the assistance of municipal and district surveyors when compiling the book.



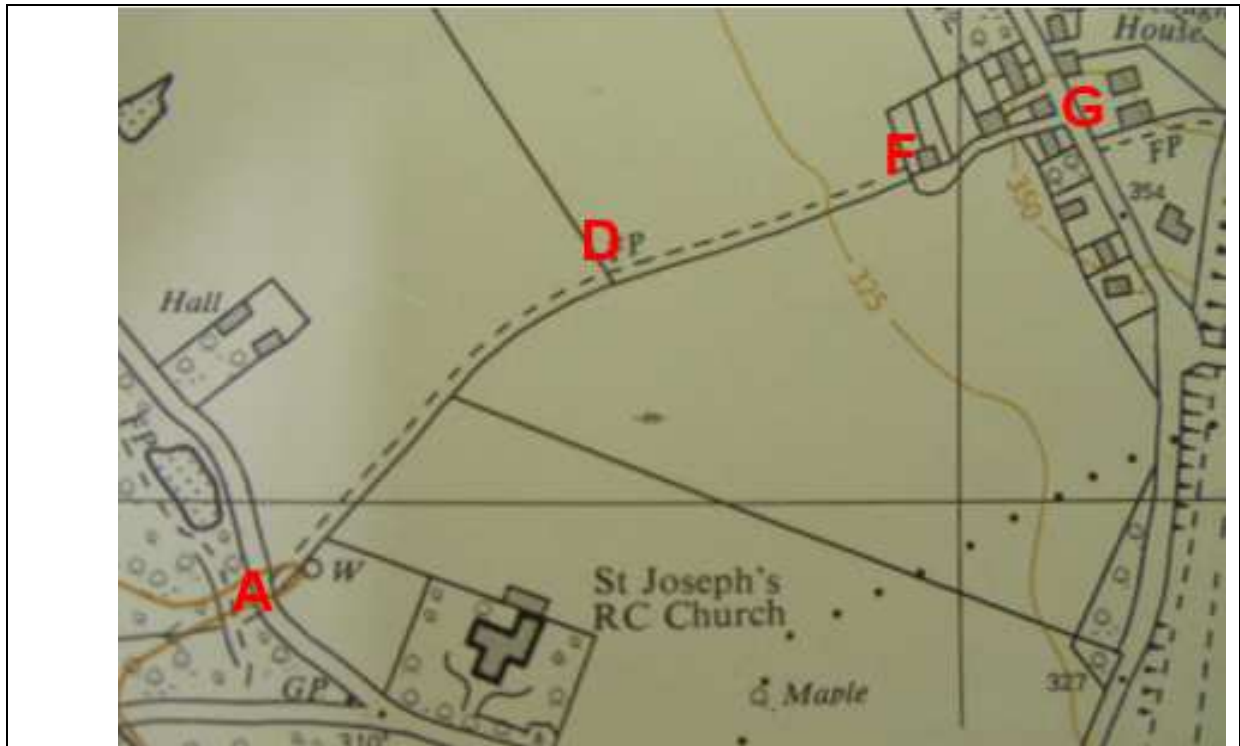
Observations		The full length of the route under investigation is shown on the map as a track (double pecked line) to point F and as a more substantial route between point F and point G.
Investigating Officer's Comments		The route under investigation existed in the 1930s – possibly as a substantial track - but was not considered to form part of the public vehicular network.
<b>Aerial Photograph<sup>2</sup></b>	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.

<sup>2</sup> 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.

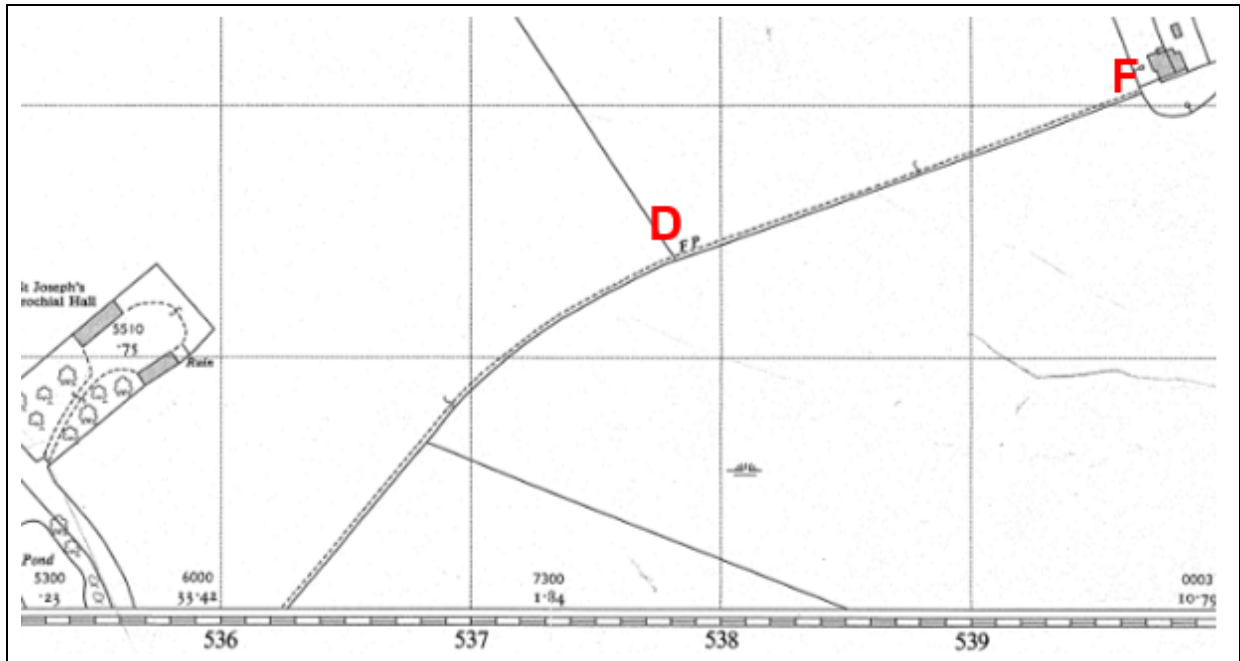




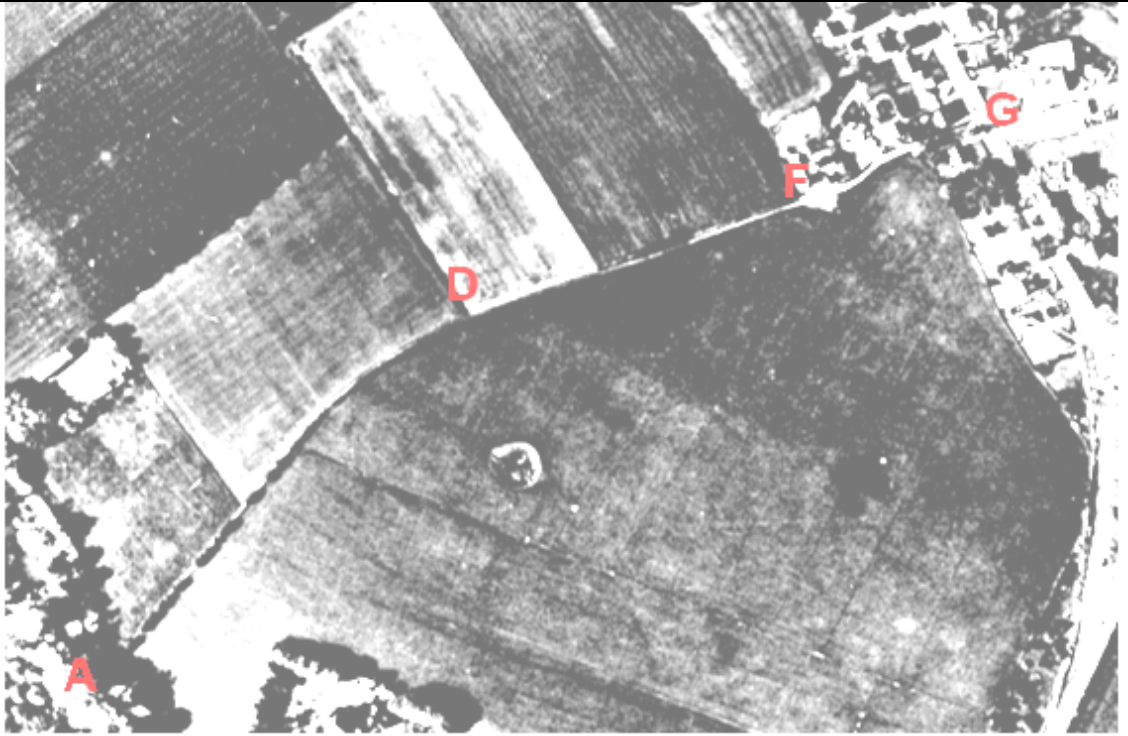
Observations		A close examination of the photograph suggests that the dark line between A and F that can be seen is consistent with the way that a hedge would show up and on the north side gaps appear visible in the hedges at point D and also point F suggesting that the route may have been on the north side of the hedge. Between point A and point F it was barely visible on the ground.
Investigating Officer's Comments		The photograph shows the route consistent with the low level use of a public path between point A and point F.
<b>6 Inch OS Map</b>	1965	OS map published in 1965 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.



<p>Observations</p>		<p>The full length of the route under investigation is shown with the section between point A and point F shown as a field edge path running along the north side of a field boundary and labelled as a footpath (F.P.). Access from point F to the route along the front of the properties between point F and point G is shown differently on this map to maps produced before or after this date, here suggesting that there was no direct link through from point F to point G. However, this failure to align the route is considered to be more likely to be a result of the scale of the mapping as there is other documentary evidence confirming that the route connected through at that time.</p> <p>Solid lines are shown across the route indicating that gates and/or stiles may have existed at point A, point D and point F.</p>
<p>Investigating Officer's Comments</p>		<p>The route between point A and point F is shown to follow a field boundary but is not enclosed. It is not possible to determine from map evidence whether the route was being used by horses at this time.</p>
<p><b>1:2500 OS Maps</b></p>	<p>1959 and part 1966</p>	<p>Further edition of 25 inch map reconstituted from former county series and revised in 1958 and 1965 and published 1958 and 1966 as national grid series.</p>



<p><b>Observations</b></p>		<p>The 1959 1:2500 OS map shows that the route under investigation followed a field boundary from point A to point B with lines across the route indicating the possible existence of gates and/or stiles at point A, point D and point F. The route is again shown by the use of a single dashed line and annotated as a footpath (F.P) by the OS.</p>
<p><b>Investigating Officer's Comments</b></p>		<p>The full length of the route existed and appeared to be capable of being used although gates and/or stiles may have existed at point A, point D and point F which could have restricted access to certain types of user.</p>
<p><b>Aerial photograph</b></p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



Observations		The route under investigation can be seen as a worn track between point A and point F and as a more significant route between point F and point G. It is not possible from the photograph to determine whether any gates or stiles existed across the route at that time. The route appears to be bounded by a hedge along its southern side between point A and point F.
Investigating Officer's Comments		The route existed as a physical feature in the 1960s but it is not possible to determine from photograph whether the route was being used by horses at this time.
<b>Aerial Photograph</b>	1988	Aerial photograph available to view at Cuerden depot.



Observations		The full length of the route under investigation can be seen. The hotel has been built north of the route between point A and point C but it is not possible to see whether the route had been fenced off (enclosed) along this section. The route between point C and point F still appears to be open (not enclosed) along the northern side. It is not possible to see whether there are any gates or stiles across the route from the photograph.
Investigating Officer's Comments		The route existed as a physical feature in 1988 but it is not possible to determine from photograph whether the route was being used by horses at this time.
<b>Definitive Map Records</b>		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.  Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	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

	<p>and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
--	--



<p>Observations</p>	<p>The surveyors recorded the route under investigation as a 'C.R.F.' on the map which indicated that they were describing its physical attributes as being that it was a cart road mainly used by the public as a footpath.</p> <p>The parish survey card describes the route as a footpath from Moss Lane to Mossy Lea Road (As per 1932 Act Schedule). It is described on the survey card as 'Path starts at wicket gate between R.C. Chapel and estate workshop on Moss Lane, continues along hedge side through a gap in cross fence, past cottages to Mossy Lea Road opposite Messrs. Sharrock's workshop.' The survey card was dated 1951.</p>
---------------------	---

<b>Draft Map</b>		<p>The parish survey map and cards for Wrightington were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> 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>
Observations		The route under investigation is shown on the Draft Map of Public Rights of Way as a public footpath and there were no objections to inclusion or the recorded status of the path.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation is shown on the Provisional Map of Public Rights of Way as a public footpath and there were no objections to inclusion or the recorded status of the path.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation was considered to be a public footpath in the 1950s.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		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 <sup>th</sup> 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 <sup>st</sup> 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 route under investigation is shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review) as a public footpath.
Investigating Officer's Comments		The route under investigation was not considered to have changed status by the 1960s.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>





Observations		The hand drawn records derived from the 1929 handover maps show the route of Wrightington FP 21 between point A and to a point just east north east of point F coloured purple to indicate footpath status but do not include the final section just beyond point F to point G.
Investigating Officer's Comments		<p>The records inspected appear not to show the final section of the route known as Mossy Lea Fold as part of the recorded public footpath. However, these records have no legal status with regards to the recording of public footpaths and it looks like a simple drafting error occurred as the footpath is shown on one printed map sheet but not the other (i.e. it was drawn on one sheet but the final section along Mossy Lea Fold failed to be drawn on the other sheet).</p> <p>The highway records inspected confirmed that Mossy Lea Fold is not considered to be a publicly maintainable vehicular route.</p>
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no statutory deposits which could

		indicate that the landowners did not intend to dedicate bridleway rights covering the period of time during which it is claimed that the route was being used as a public bridleway.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over this land.
<b>Lancashire County Council Public Rights of Way file records</b>	1956 - 2015	A comprehensive search was carried out of the archived public rights of way letters and reports of issues relating to public rights of way in the parish of Wrightington.
Observations		<p>Files dating back to 1956 were searched and a substantial body of correspondence was found to exist dating back to 1959 when Mr Fred Berry, owner of 110 Mossy Lea Road (now numbered 9/8 Mossy Lea Fold) instructed solicitors to write to the County Council regarding a footpath and occupation road passed his premises. The route is described as a public footpath and an occupation road and it is clear that the route referred to is Wrightington Footpath 21. The letter says that a stile (at point A on the Committee plan) was being bypassed by people breaking through the hedge and as a result farm vehicles, horses and motorcyclists were now using the route of the footpath and damaging the surface. The letter states that Mr Berry owned land on either side of the path and that he had erected two posts in the path (at point F on the Committee plan) to prevent unauthorised use. Mr Berry requested that the County Council re-erected a stile that had previously erected at the start of the path on Moss Lane (point A).</p> <p>The County Council refused to erect the stile at point A on the grounds that they had no authority to do so and in 1962 there is further correspondence from which it appears that horses from a local riding school had continued to use the route and that there had been a number of confrontations between Mr Berry and Mr Roorcroft – the owner of the riding stables.</p> <p>By 1963 it appears that the posts erected by Mr Berry had been removed and that the route was again being used by farm vehicles and horses.</p> <p>Further correspondence in 1964 refers to Mr Berry renewing his complaint about the surface of the path. Mr Berry again requested that the County Council reinstated a kissing gate</p>

	<p>(previously referred to as a stile) that he stated existed at point A until about 1956.</p> <p>A memorandum dated 1964 stated that the accommodation road (footpath) had been purchased by the adjoining landowner - Mr T Calderbank, Lake House, Moss Lane, Wrightington - who had removed the structures erected by Mr Berry and that the farmers farming the fields adjacent to the route had permission to gain access to the fields via the footpath.</p> <p>The memo also stated that Mr Calderbank previously lived in the house now occupied by Mr Berry when his mother still lived in Lake House and that Mr Berry's actions had generated considerable strong local feeling with regards to his interference with 'the rights and privileges of usage enjoyed by local people over a very long time'.</p> <p>In 1964 the County Council wrote to Mr Berry stating that as the public's right of access on foot did not appear to be being interfered with by people using it on horseback or motorcycles then they would not be taking any further action at the present time and would not be erecting a kissing gate at point A as it would not serve any useful purpose. Reference was also made to fact that the posts erected by Mr Berry had been done so on land not in his ownership and without lawful authority.</p> <p>Further correspondence was sent to Mr Berry in 1968 following his complaint that the surface of the route had been damaged by farm vehicles and the County Surveyor makes reference to the fact that since the removal of a stile '3 years ago' horse riders and motorcyclists had been using the route – adding to its unsatisfactory condition. The County Council did not take any action other than erecting a public footpath signpost.</p> <p>In 1974 the Wigan Footpath Society reported that the path was in poor condition due to use by horses. The County Council report noted that the path was slightly muddy but still considered it to be reasonable and noted that there was evidence of 2 horses having used the route.</p> <p>Further correspondence was found from 1978 when Mr Berry submitted a complaint to the Local Ombudsman alleging that the County</p>
--	--

	<p>Council had failed to replace stiles or to prevent damage to the surface of the route under investigation.</p> <p>The Local Ombudsman dismissed the complaint in a decision letter dated 12 September 1978. In the letter he stated that he had no power to investigate the actions of the local authority before 1 April 1974 and concentrates on actions since that date. The County Council, in defence of their actions explained that the question of whether horse riders could use a footpath was one for the landowners and that if such use was permitted they would only intervene if the surface was being damaged or pedestrians obstructed. In this case it was stated that both landowners had confirmed in September 1977 that they had granted permission for horse riders to use the path.</p> <p>However the County Council then corresponded with the two landowners – Mr Laithwaite of 2 Tunley Lane Farm, and Mr Calderbank of Lake House who both subsequently withdrawn their permission for horse riders to use the path. A letter dated 13 June 1978 from Mr Laithwaite has been kept on file to that effect but states that on no account must any stiles or gates be erected. A letter from Mr Calderbank withdrawing his permission for horse riders to use the path has not been kept but in a letter from the County Council to Mr Calderbank dated 15<sup>th</sup> May it is noted that Mr Calderbank had withdrawn his permission. The Local Ombudsman makes reference to seeing a letter dated 15<sup>th</sup> May withdrawing permission.</p> <p>On the basis that horse riders were no longer permitted by the landowners to use the route the Local Ombudsman discontinued the investigation.</p> <p>In 1979 further complaints were made to the County Council by a resident that lived along the footpath about the condition of the surface of the route between point F and point G and the fact that it was still being used by horses. The County Council inspected the route but considered it to be satisfactory for public use on foot.</p> <p>In 1980 one of the local residents again complained about horses and queries the</p>
--	---

		<p>making of a local byelaw to stop them but this is not acted upon.</p> <p>Throughout the 1990s there are sporadic complaints about the condition of the surface of the route between point F and point G and requests for the County Council to improve the surface, No work appears to have been carried out as the footpath was considered to be fit for pedestrian use.</p> <p>In 1998 and 1999 further reports related to the section A to F being overgrown and requesting that it be cleared so that horses could use the verges instead of churning up the central section and in 2000 a further report was submitted about horses using the route and confronting a local resident who was walking with a dog off the lead.</p> <p>From 2000 onwards regular reports were submitted from the Parish Council and local residents about the path between point A and point F being overgrown (surface and/or hedges) with reports that the County Council had cleared surface vegetation and contacted landowners – referred to as Wrightington Country Club, Peter and David Carr of Sandholme Farm and Tom Green of Chisnall Hall. Occasional references were made to horses using the route.</p>
Investigating Officer's Comments		<p>There appears to have been a significant amount of equestrian use throughout the period, some of which appears to have been by permission and some as of right. Challenges by someone not the landowner appear to have been continually defied suggesting that there was a belief that there were equestrian rights. The repeated Council inspections and the conclusion that the path was acceptable for walkers suggests that this equestrian use was not of such a nature that it was a nuisance to existing public rights.</p>

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

### **Landownership**

The landowners affected are listed below, this includes those affected by the proposed upgrade where the route encroaches onto their land.

- Liverpool Roman Catholic Archdiocesan Trustees Incorporated of Archdiocesan Offices, Croxteth Drive, Liverpool L17 1AA
- Whelan Hotel co Limited, Loire Drive, Robin Park, Wigan, Lancashire WN5 0UH
- Thomas Green and Marian Green of Chisnall Hall Farm, Mossy Lea Road, Wrightington, Lancs
- John Frank Winnard, 48 Manse Avenue, Wrightington, Wigan, Lancs WN6 9RP
- Timothy Calderbank, Boundary Farm Cottage, Boundary Lane, Wrightington, Wigan, Lancs WN6 0YX
- Pauline Folding, Brewery Cottage 8 School Lane, Standish, Wigan, Lancs WN6 0TD
- Christine Reddington, Brewery Cottage 8, School Lane, Standish, Wigan, Lancs WN6 0TD
- Alan Henry Wain Cooke and Jacqueline Anne Cooke of 8 Mossy Lea Fold, Wrightington, Lancs WN6 9RD
- Ian Thomas Carney and Pamela Margaret Carney, 4 Mossy Lea Fold, Wrightington, Wigan, Lancs WN6 9RD
- Andrew Mcevoy and Elizabeth Mcevoy of 2 MossyLea Fold, Wrightington, Wigan, Lancashire WN6 9RD
- Stephen Charles Brittle and Paula Jayne Cranham of 112 Mossy Lea Road, Wrightington, Wigan, Lancs WN6 9RD
- Sharon Joan Tomlinson of Ribblebank House, Riverside, Ribchester, Lancashire PR3 3XS
- Tenant - Kristine Diane Jackson of Abbeville, Hall Lane, Wrightington, Wigan, Lancs WN6 9EL

## Summary

The route under investigation was recorded as a public footpath as part of the definitive map process dating back to the 1950s and its publicly recorded status was not challenged as part of that process.

None of the commercial maps, Ordnance Survey maps or aerial photographs examined provide sufficient evidence to suggest that the route should have been historically recorded as a public bridleway.

The parish survey card dated 1951 records the existence of a wicket gate at point A, the removal of which at some point towards the end of the 1950s appears to have triggered complaints by a resident (Mr Berry) who lived adjacent to the footpath that the route was then being used by horses.

Mr Berry erected a structure in the path to prevent horses but this was subsequently removed as it appeared that although he owned land on either side of the footpath he did not own any part of the route itself.

Use of the route appears to have continued until at least 1978 when the two landowners at that time - Mr Calderbank and Mr Laithwaite – stated that they were withdrawing their permission for horses to use the route. No physical barriers preventing use appear to have been erected as the route also provided private vehicular access to a number of properties and to fields.

From 1978 it appears from the County Council files that there has continued to be some use of the route by horse riders as evidenced by the reports submitted about horses using the path, the surface conditions and regular reports about the path and hedges being overgrown – which were said to have hindered pedestrians and also horse riders although County Council inspections suggested that the path was usable.

No further correspondence since 1978 documents Mr Laithwaite or Mr Calderbank or subsequent landowners specifically allowing or preventing horses using the route.

### **Head of Service – Legal and Democratic Services Observations**

25 user evidence forms have been submitted to the Council as part of this investigation, 1 of these user forms has been excluded as it is incomplete. 10 of the forms are evidence of use on a non-mechanically propelled vehicle (a bicycle) and 14 forms are evidence of use on horseback. The information supplied in these forms is set out below:

#### **Evidence of use on a non-mechanically propelled vehicle - 10 user evidence forms**

The years in which the users have known the route varies from 80 years, 69 years, 60 years, 52 years, 50 years, 48 years and 31 years. 10 of the users have all used the way on a non-mechanically propelled vehicle, and the years in which they used the route varies:

1933-2013	1940s-1950s	1944-1950	1945-1960	1950-2013
1955-1982	1958-2013	1965-1995	1965-2013	1982-2014

The main places the users were going to and from include, St Joseph's School to St Joseph's Church, country walks, to the church, general leisure activities, from Mossy Lea Road to Wrightington Country Club, Mossy Lea Road to four lane ends and to the fishponds.

The main purposes for using this route was to see friends, for pleasure, for prayers at church, exercise, leisure activities and for church services. The use of the route varies from daily, weekly, frequently to 15-20 times per year.

10 users also used this route on foot, the years in which this occurred varies  
1940s-1950s      1945-1960      1950-2013      1955-1982      1962-1968  
1965-2013      1965- 1995      1982-2014

None of the users have used the route on a motorcycle / vehicle but 6 of these users have used the way on horseback during the years of 1960-2005, 1989-2005, 1940s-1950s, 1960-2013 and 1967-2000, 1 user does not mention during which years he used the route.

9 of the users agree the route has always run over the same line, 9 users have never seen any stiles / gates / fences across the route, 1 user mentions seeing a stile near St Joseph's church with a gap, but no further details have been provided. 8 users agree that they have never been prevented access when using the way.

None of the users have been a landowner of the land the route crosses and 9 users have never been a tenant for the land affected, however 1 user mentions that their grandparents were tenants of the lower of the 2 houses and provided his name, this user mentions that they don't know of any instructions received.

None of the users have ever been stopped or have had to turn back when using the route, nor have they ever heard of anyone else being stopped or turning back when using the route.

All 10 users have never been told by anyone that the land crossed by the way was not public, the users have also never seen any signs along the way or have ever asked permission to use the route.

At the end of completing user evidence forms users further information is requested, this information is shown below:

- "My brothers and I walked the paths on a daily basis to and from school. We caught the bus from St Joseph's church the paths were the shortest way from school to bus stop. I also hacked out with friends and rode my bike up and down the pads nobody ever stopped us or said otherwise everybody used it"
- "This route is used because of the danger of walking / cycling / horse-riding past the BP Garage / roundabout, speed of traffic at Junction B5238 towards St Joseph's Church. This path must be kept open for anyone who wishes to enjoy the pleasure of the countryside and is safer than the road"



- "I have never been stopped or questioned or deliberately turned away when riding this track. I have used the track on my own and in company with other riders over the years"
- "This was known as the church pad and was more of a wide well cindered track and was the main route for people of Wrightington to get to the church and back walking"
- "I think it is important to use public rights of way on a regular basis or they soon grow over. This particular right of way is a useful cut-through to avoid a busy stretch of road near the BP garage where Bradley Wiggins was knocked off his bike. Local residents made an effort to keep the wider part of mossy lea fold accessible by employing a local tradesman, Mr Colin Schofield, to resurface it at least once to my knowledge"
- "a good short cut and safer"

#### Evidence of use on horseback (14 users)

The years in which the users have known the route varies:

1953-2013	1957-2013	1984-2013	1961-2014	1963-2013	1964-2014
1966-2013	1972-2013	1986-2013	1988-2013		

13 users have used the way on horseback or leading a horse along the route, the years in which they used the route varies:

1950-2013	1960-2005	1963-1998	1963-2014	1966-1974	1966-2013
1968-2014	1972-1975	1983-2013	1986-2008	1988-2010	1988-2013
1993-2008	1993-2013	1996-2013			

The main places the users were going to and from include, Tunley Moss, Moss Lane, Mossy Lea Road, Wrightington Country Club, Prescotts Farm, Hunger Hill, Standish, Arbour Lane many of the users visit these places on a circular route. The main purposes for using the route include hacking / horse riding, for pleasure, going to shows, exercising horses, to miss out on a dangerous road.

The use per year varies from weekly, 35 times, 30 times, 20 times, 15 times, once per month, 10 times and 2 or 3 times.

8 of the users also used the route on foot during the years of 1960-2014, 1963-2013, 1963-2008, 1972-1975, 1958-2013, 1974-2014, and 2000-2013.

None of the users have ever used the route on motorcycle / vehicle, however 4 of the users have used the route on a bicycle, between the years of 1963-2014, 1963-2008, 1960-2013 and 1974-2014. None of the users have ever used the route by other means.

10 users all agree that the route has always run over the same line, 4 users did not provide a response to this question, 13 users have never seen any stiles, gates or fences along the route and they agree that they have never been prevented access.

13 users have never worked for a landowner of the route nor have they ever been a tenant over the land which the route runs. The same 13 users have never been

stopped from using the route and they have also never heard of someone else being stopped or having to turn back when using the route.

13 users have never been told by anyone that the route they were crossing was not a public right of way, they have never seen any signs along the route or asked permission to use the route.

At the end of completing user evidence forms users further information is requested, this information is shown below:

- "If this path is closed to the general public this would be detrimental to the public and the countryside. This is a safe place for walkers and horse riders to get through busy traffic avoiding four lane ends. The closure would affect people of all ages in a negative manner."
- "Using this path enables you to avoid a very dangerous stretch of road (round BP Garage - where Sir Bradley Wiggins got knocked off his bike) I stable my horse at Wrightington and will continue to use this path as long as I am able to ride, More bridleways need to be open in Wrightington not closed."
- "Route allows avoidance of a busy stretch of road going to the motorway roundabout"
- "Always know this pathway as a public right of way since starting at St Joseph's school in 1958. As children in the class walked to the church on many occasions with the teachers using this pathway"
- "I used this path regularly as a girl being a pupil at St Joseph's school, we walked and rode with friends up and down the pads. On a school day the church provided transport to school but my brothers and others had to make our own way home from school to St Joseph's church to catch a bus home which meant going down the pads."
- "I have always used this route for horse riding as part of a circular ride from Standish to Wrightington. Especially for hacking and going to and from charity farm shows."
- "Found it important to avoid using busy road and motorway roundabout - instead could use bridge and cut through to pepper lane."
- "I have used this route over the years as a circular route from Standish to Wrightington when riding horses."
- "This route is very important as it cuts off a very dangerous main road that goes past St Joseph's church to the BP garage. This route makes it much safer for children on push bikes as well as horses that do no harm to the environment."

#### Information from others

A letter has been received from the residents of 112 Mossy Lea Road. They state the ownership of the land Mossy Lea Fold is believed to belong to Mrs Calderbank resident of Tunley Lane (and her family one resident of Mossy Lea Fold Mrs J Cook daughter).

They state that this lane is never maintained and several years ago they paid with permission from the Council and the Calderbank family to maintain the trees as they have a Tree Preservation Order on them. As in the agreement they need to be maintained every year, and for the last 3 years this has never happened, the

residents ask who will maintain this.

The horses already use this pathway on a regular basis.

Cars and vans of both residents and visitors travel down at high speeds, which to the residents is a danger in itself.

The pathway in front of the houses towards Mossy Lea Road is very uneven, with large pot holes and even bigger puddles, so who will maintain this.

The fence of 112 Mossy Lea Road consists of 16.5 fence panels which have been hit by wagons on several occasions, and are replaced by the residents at great expense, what happens if an incident occurs damaging the property as most of the time the residents are at work and never see it happening.

Their final issue is just a personal one, being that they have lived at this address since 2002 and have had several dealings with the Council over planning and building of a house / garage / noise pollution / noisy neighbours, and an illegal 6'3 fence built next to their property, nothing has been done about any issues they raise. In the past they have reported that someone has cut the trees, bushes etc without permission for their own benefit so what will change or be done about this bridleway.

#### Response from Jacqueline Cook

Jacqueline Cook has provided deeds of ownership of this route and states that she and on behalf of the other co-owners object to the upgrade to Bridleway of this route.

She has lived at 8 Mossy Lea Fold since 1996 and her property is on the footpath. She has had to complain several times about issues with horse riders using the footpath.

The path is quite narrow and gets very muddy. Horses churn the path up even more and cause it to be very uneven and dangerous. She knows of at least one instance where her elderly neighbour fell and broke her arm due to the imprints left by horses. She also knows of several locals who have been afraid to use the footpath because of fear of a similar thing happening.

She mentions there is also a blind corner about halfway down the path and when on foot it is impossible to see a horse approaching. There are many people who use this path and the health and safety risk would be too great.

In the past, they have had problems with several horses using the path at a time and also on occasions galloping up with no regard for footpath users. Her own young children have been put at risk while playing in their own garden as the footpath cuts across our property.

They have also had instances where riders have lost control of their horses and have to use the larger tarmac area at the front of our property to bring them under control leaving deep skid marks on the tarmac.

They have repeatedly asked several riders not to use the footpath and explained to them the many safety issues raised by riding on a footpath.

#### Letter from 2 Mossy Lea Fold

These residents have comments and concerns about the proposed upgrading:

1. The only access they have to their house is down Mossy Lea Fold which as far as they are aware is a private right of way (easement) and follows the same route as part of the current public footpath. They are not aware who owns this land but Mossy Lea Fold provides private vehicular access to 3 houses and a farmer's field. If changing the footpath to a bridleway restricts vehicular access down Mossy Lea Fold and therefore to their house then they would have strong objections.
2. The current surface of Mossy Lea Fold is in a bad state of repair. Upgrading to a bridleway would increase usage of this easement and therefore they would have concerns over the state of the ongoing maintenance of the surface, and ask where responsibility for the maintenance lie would?
3. Their driveway is very tight with visibility very difficult when reversing (straight out onto the footpath). It is also very difficult for those who are on Mossy Lea Fold / the footpath to see them emerging from their driveway. This isn't a problem with walkers who aren't travelling at speed however this may raise concern if the footpath is upgraded and cyclists are travelling at speed straight past their driveway entrance as they may not see each other.
4. Given the tight vehicular access and the fact they need to reverse onto Mossy Lea Fold they have concerns that they would not be able to see a horse approaching – and the reaction time of the rider – and lack of anywhere to go could result in an unnecessary accident.
5. The track is very narrow in parts where it runs alongside the field. Horses have already been known to gallop up this track leaving no space for any walkers to pass – there is also a blind bend, they have 2 young children who use this path frequently to access Wrightington Country Club and are therefore extremely concerned that this would be putting their children in unnecessary danger.
6. Too frequently they are having to reverse off the track onto Mossy Lea Fold which is done blindly due to horses already coming down Mossy Lea Fold. Reversing in this manner onto a 30mph road is obviously extremely dangerous, especially given they are often completing this manoeuvre with young children in their vehicle.

#### Comments from John Winnard

John Winnard is one of the registered owners of the top half of the field bordering Mossy Lea Road and the footpath.

He would personally be against the footpath being upgraded to a bridleway mainly from a health and safety point of view. There have been several occasions when there have been incidents when horses, presumably unauthorised, have been cantering up the path when families have been trying to walk along and it will only be a matter of time before someone is hurt. He mentions from site you can see that the path is fairly narrow and there is also a blind spot where a horse rider cannot see ahead properly about halfway down. The horses also churn up the ground which makes it difficult for families to enjoy the walk along what is supposed to be a "footpath".

## Comments from Anthony Winnard

Anthony Winnard is part landowner in respect to this matter, his Grandfather, Tom Calderbank who lived at "Lake House" was one of the original owners and on his demise it was willed to the five children's families.

Due to the obscured view which a rider would encounter and the lack of width of the footpath, surely this would be an accident waiting to happen which he certainly would not be a party to and must express his objection strongly.

He states would it not be prudent to employ an independent Health and Safety Officer to assess the implications of the footpath to a change of use to bridleway and the probability of a serious accident due to people's folly.

He also wonders who would be liable if there was an accident if there was a change of use.

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

#### In Support of Making an Order

- User evidence
- Some historical map evidence

#### Against Making an Order

- Strong historical map evidence

## **Conclusion**

The route under consideration is currently recorded as a public footpath. The application is to upgrade the section of footpath from points A-B-C-D-E-F-G to a bridleway, as it is suggested the public footpath carries higher public rights.

Committee should note that as the route already appears on the definitive map as a public footpath, it is not sufficient to satisfy the lesser test of reasonably alleging the existence of bridleway rights, neither is it necessary for there to be conclusive evidence of the existence of a higher public right than a public footpath, instead the standard of proof required is the balance of probability.

There is no evidence of an express dedication and therefore Committee is invited to consider whether a dedication of bridleway rights can be inferred, on balance, from all the circumstances at common law or deemed under s.31 Highways Act 1980.

Looking firstly at whether dedication can be inferred at common law. Committee is advised to consider whether evidence from the Old County maps and other documentary evidence coupled with the evidence on site does on balance indicate how the route should be recorded. The Head of Service - Planning and Environment has considered the historical map evidence. There does not appear to be sufficient evidence from the early commercial maps, ordnance survey maps or aerial photographs to suggest the route was in existence as a bridleway, or had it been in existence it was of little significance. However; there does appear to be some documentary evidence from the Head of Service - Planning and Environment to suggest the route was being used by horses. A complaint in 1950 from Mr Berry suggested the route was being used by horses after the wicket gate (at point A) was removed.

The Planning and Environment written records also suggest that in 1977 permission had been granted by two landowners allowing the public footpath to be used on horseback. There is subsequently two letters from the same landowners dated May and June 1978 withdrawing their permission for horses to use the path. This suggests that it was highly likely the footpath was being used on horseback during this period up until the permission was withdrawn in 1978 suggesting the landowner did not intend to dedicate the land at this point in time.

The County Council records also suggest there had been some continued use of the route by horse riders after 1978 due to reports submitted by the public that horses were using the route however; apart from the above there does not appear to be any other corroborative map evidence supporting the path being used on horseback.

On balance, the map and other documentary evidence is in itself considered to be insufficient to conclude the route was a historical public bridleway and it is therefore suggested to committee that inferred dedication cannot on balance be satisfied.

Committee is therefore advised to consider whether deemed dedication under S.31 Highways Act 1980 can be satisfied. Committee will be aware that in order to satisfy the criteria of S.31 there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty-year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

*R (on the application of Godmanchester and Drain) v SSEFRA (2007)* is the most recent case addressing the meaning of s31 (2) with regard to what acts constitute 'bringing into question'. By reference to earlier case law: "Whatever means are employed to bring a claimed right into question they must be 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". On balance there does not appear to be any act challenging users but instead it is reasonable to conclude on balance that the bringing into question of the route would be the submission of the user forms by Wrightington Parish Council and the self-started application by the Environment Directorate in December 2014. Therefore the

relevant twenty year period under consideration would be December 1994 – December 2014

Wrightington Parish Council has submitted user evidence forms supporting the route has been used on horseback as well as user forms supporting the route has been used on a bicycle.

19 of the user evidence forms indicate the route has been used on horseback (although it should be noted that none of these users had used the route with a horse and cart) and 14 users confirm the route has been used on a bicycle during the 20 year period under consideration. Use of the route appears to be sufficiently frequent and users do not report any instances of being stopped or turned back from using the route hence use of the route has been without stealth, force or secrecy. Committee will however note that use was with permission during 1978-1979. There is no evidence in support from the landowners to suggest they had granted any permission after 1979 or stopped or prevented people from using the route on horseback.

Although the landowners do object to this application it is acknowledged by them that the route was used on horseback. It is noted there was a sign advising the route should not be used by horses or unauthorised vehicles but there is no evidence to suggest that failure to comply with this notice was policed. From the evidence it is noted there had been no gate after 1950 preventing use on horseback again suggesting the route was not used by force.

It is suggested to Committee that taking all the relevant evidence into account, on balance dedication as a bridleway under S.31 can be deemed and the footpath under consideration should be recorded as having bridleway status.

### **Risk Management**

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

**Alternative options to be considered - N/A**

### **Local Government (Access to Information) Act 1985**

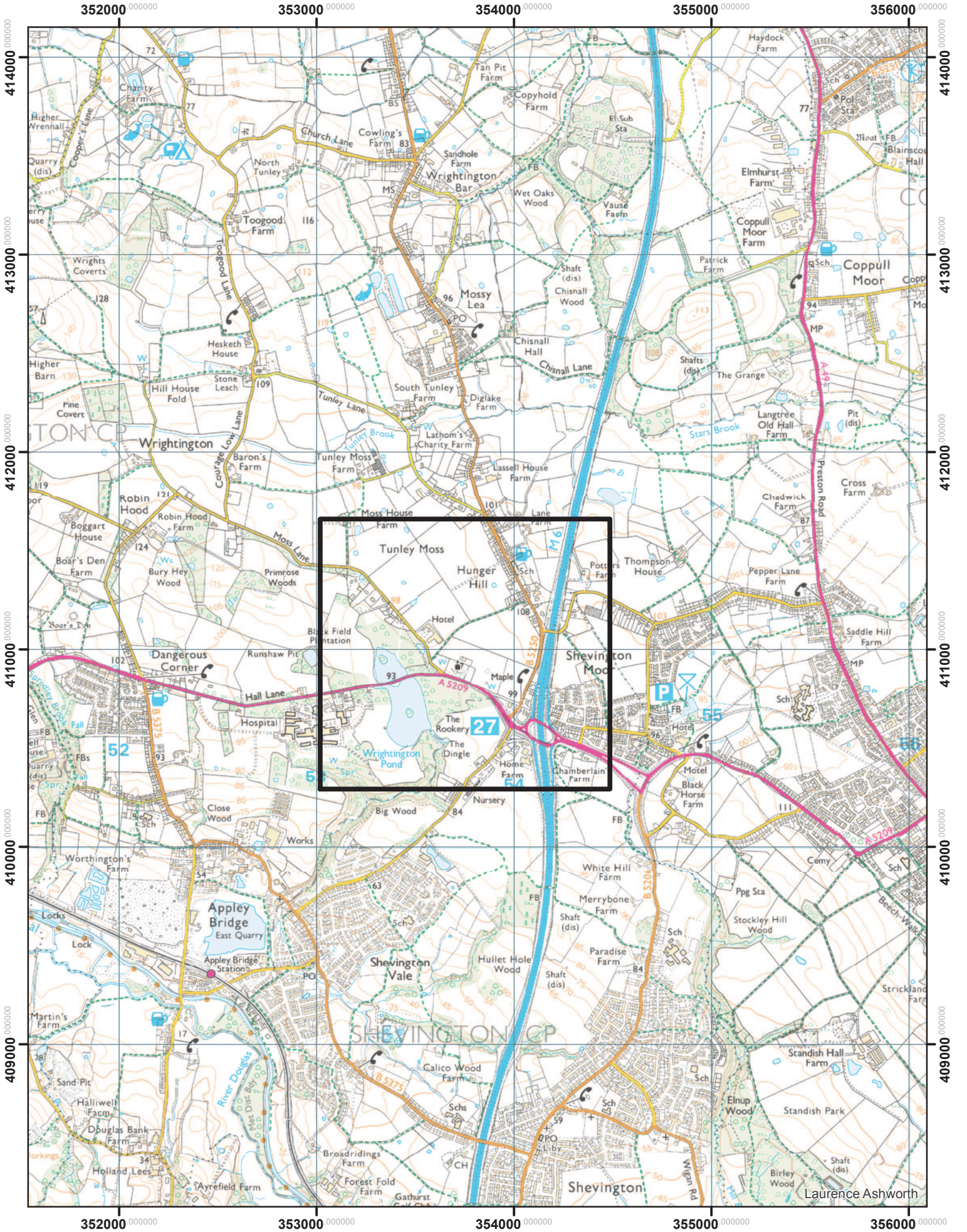
#### **List of Background Papers**

<u>Paper</u>	<u>Date</u>	<u>Contact/Directorate/Tel</u>
All documents on File Ref: 804-561		Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A





Steve Browne  
Interim Executive Director  
for the Environment

**Wildlife and Countryside Act 1981**  
**Location of Public Footpath 21 Wrightington, West Lancashire to public bridleway**  
**LOCATION PLAN**

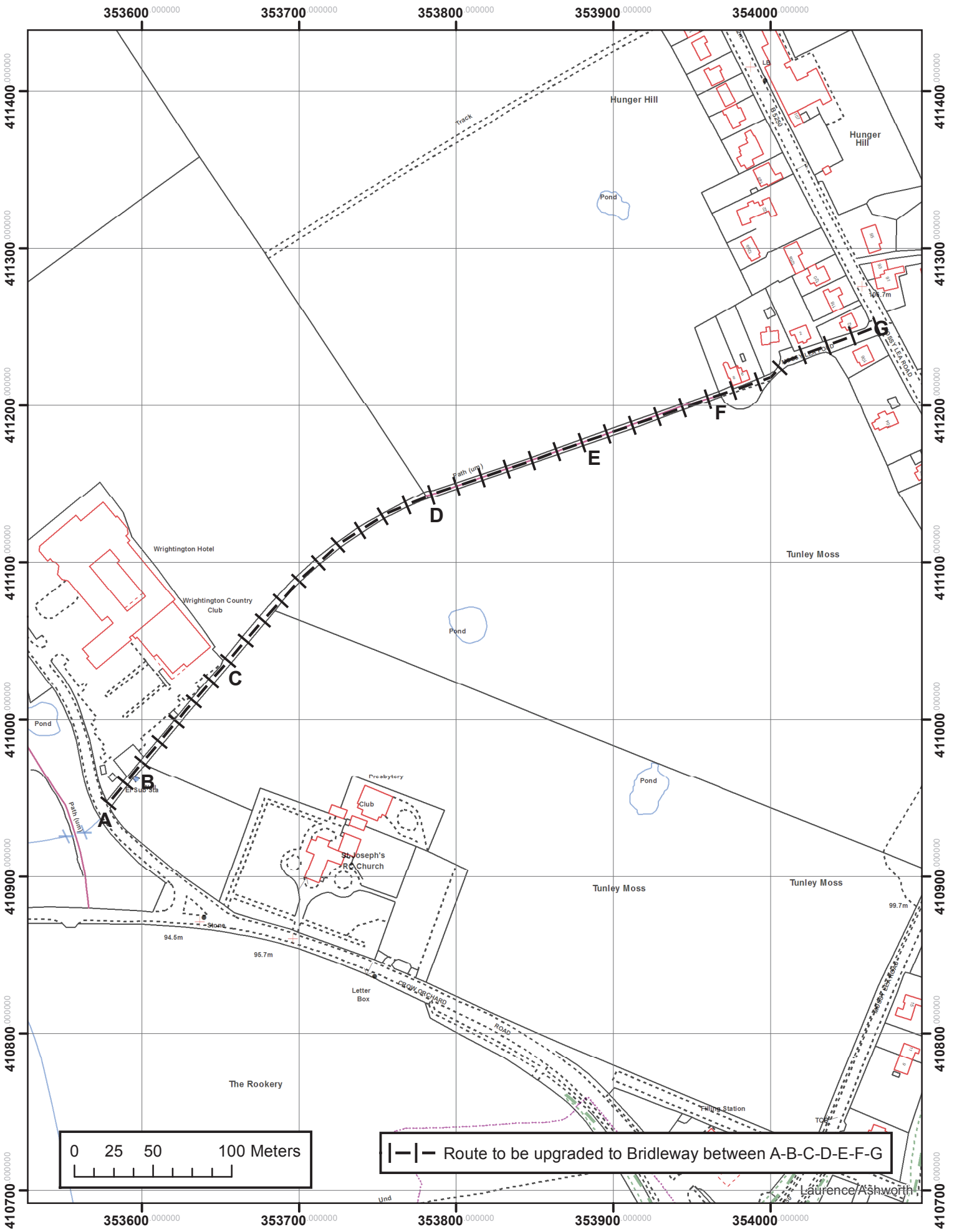
1:24,000



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320





Steve Browne  
Interim Executive Director  
for the Environment

**Wildlife and Countryside Act 1981**  
**Upgrade of Public Footpath 21 Wrightington, West Lancashire District to Public Bridleway**

1:3,000



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320



## Regulatory Committee

Meeting to be held on 13 May 2015

Electoral Division affected: Pendle East
---

### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

**Addition of a Public Footpath from Burwains Avenue to the grounds of St Michael and All Angel's Church, Foulridge, Pendle Borough to the Definitive Map and Statement of Public Rights of Way**

**File No. 804-560**

(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, Paralegal Officer, County Secretary and Solicitors Group, [megan.brindle@lancashire.gov.uk](mailto:megan.brindle@lancashire.gov.uk)

Jayne Elliott, 07917 836626, Environment Directorate, [jayne.elliott@lancashire.gov.uk](mailto:jayne.elliott@lancashire.gov.uk)

#### **Executive Summary**

Application for a public footpath from Burwains Avenue to the grounds of St Michael and All Angels' Church, Foulridge, Pendle Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-560.

#### **Recommendation**

1. That the application for a public footpath from Burwains Avenue to the grounds of St Michael and All Angels' Church, Foulridge, Pendle Borough, in accordance with File No. 804-560, be not accepted

#### **Background**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a public footpath from the eastern end of Burwains Avenue to the grounds of St Michael and All Angels' Church, Foulridge as shown by a thick dashed line between points A-B-C-D on the Committee 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 Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (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**

### Pendle Borough Council

Pendle Borough Council have been consulted on this application as a local authority and as the owner of adjacent land. They outlined their land ownership just near point A but did not provide any comments on the application so it is assumed they have no objection.

### Foulridge Parish Council

Foulridge Parish Council have been consulted and they support the addition of the footpath as they believe that it is well used by the residents of Foulridge and it is important that it is retained.

### Applicant/Landowners/Supporters/Objectors

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

## Advice

### Executive Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8897 4198	Open junction of eastern end of Burwains Avenue with application route.
B	8898 4196	Point at which application route passes between two garages.
C	8897 4195	Point at which application route turns west at rear (south) of garages to continue along north side of boundary fence.
D	8897 4195	Gap in boundary fence through which application route passes into grounds of St Michael and All Angels' Church.

### Description of Route

A site inspection was carried out on 21<sup>st</sup> April 2015.

The route under investigation commences at the eastern end of the adopted highway extent at Burwains Avenue.

Access onto the route at point A on the Committee plan is open and unrestricted. No signs were visible at or close to point A indicating whether the route, or the land that it crossed, was considered to be private.

From point A the application route extends in an easterly direction along a compacted earth and stone track, approximately 2.5 metres wide, turning almost immediately in a southerly direction and providing access to a row of garages located to the east of the track.

The track, and the land on which the garages are located, is well maintained and the grass either side of the track, had been recently mown. From point A the application route follows the track for approximately 30 metres to point B where it ends at the front of 3 of the garages. The application route then continues along a flagged path between two of the garages. The flags appear to have been loosely positioned but have settled so that they are quite firm to walk on between the two garages. As the route enters the gap between the two garages at point B there is an available width of approximately 70cm which fans out to a width of approximately 165cm at the back of the garages at point C.

From point C the application route turns to continue in a general westerly direction along the back of two of the garages and is enclosed between the garages and the boundary hedge that separates the garage site with the church grounds. Stone flags have been positioned along part of this route and a concrete base is evident at point D where a gap in the boundary hedge adjacent to the south east corner of a building in the rear garden of 36 Burwains Avenue provides access into the grounds of St Michael and All Angels Church. The claimed route ends at point D

Beyond point D the application route passes through the gap in the hedge and provides access to the church and graveyard and it is possible to exit the church grounds onto the A56 (Skipton New Road).

The total length of the application route is 40 metres.

Close to point D, but within the grounds of the church is a stone that is located at ground level. The wording on the stone reads 'Highways Act 1980 No public right of way'. The stone is not set firm in the ground and it is possible to lift it up and move it. Although close to point D it is not clear whether the intention is for the stone sign to refer to the church yard or specifically to the access to the application route.

### Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The application route is not shown. The road now known as Skipton New Road (the A56) passing through Foulridge is shown but the church and Burwains Avenue are not.
Investigating Officer's Comments		It is not uncommon for public footpaths not to be shown on these maps – particularly where they cross agricultural land and it is therefore possible that it could have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads.
Observations		The application route is not shown.
Investigating Officer's		It is unlikely that the application route existed in

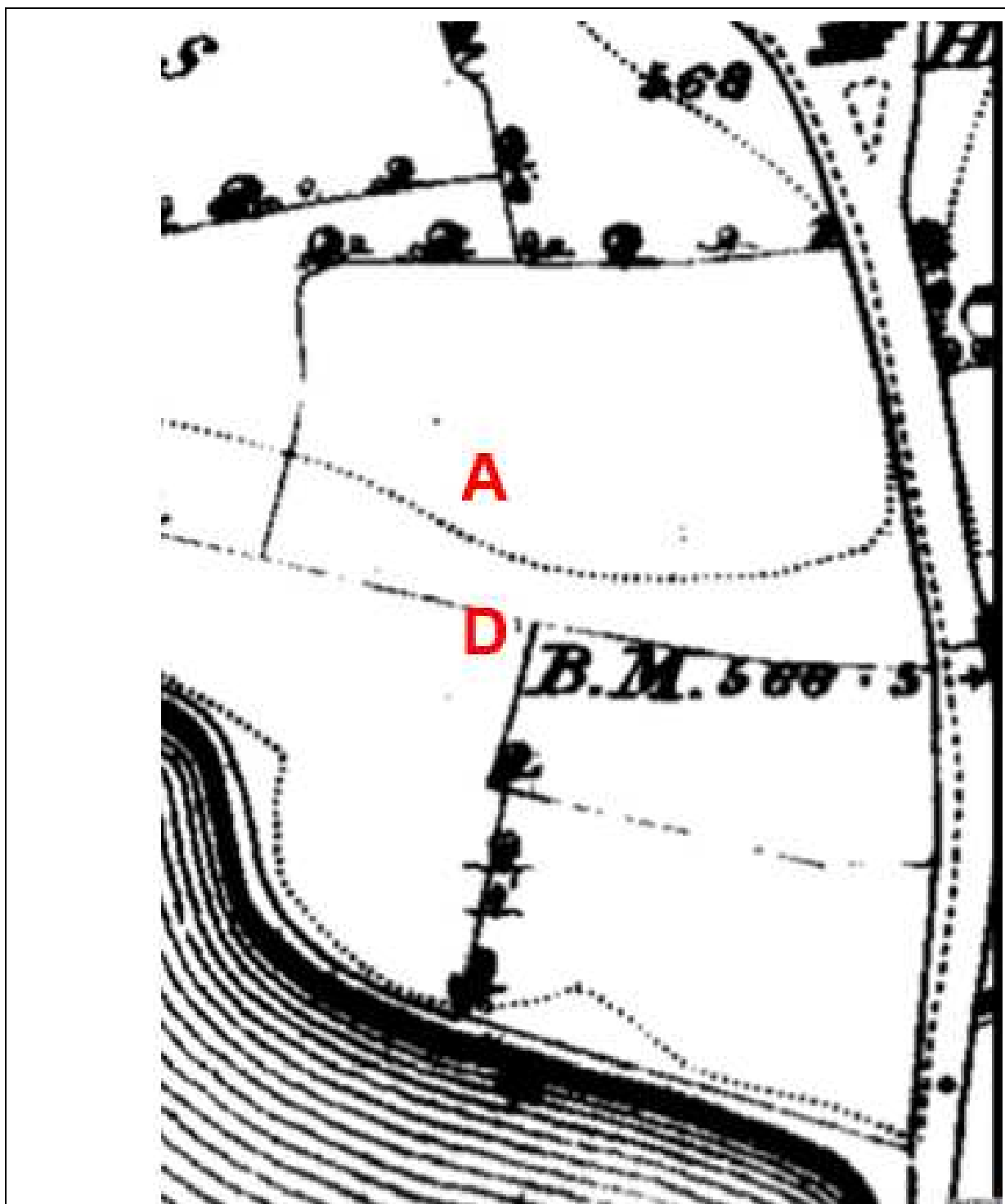


Comments		1818 but it is not uncommon for public footpaths not to be shown on these maps – particularly where they cross agricultural land and it is therefore possible that it could have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		The application route is not shown.
Investigating Officer's Comments		It is unlikely that the application route existed in 1818 but it is not uncommon for public footpaths not to be shown on these maps – particularly where they cross agricultural land and it is therefore possible that it could have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
<b>Canal and Railway Acts</b>		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 application route did not cross land affected by the construction (or any known proposed construction) of a railway or canal.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1842	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		A copy of the Tithe Map for Foulridge was inspected in the County Records Office. The land crossed by the application route is shown as pasture land and neither the church nor Burwains Avenue are shown. The Schedule that accompanies the Tithe Map makes no reference to the existence of a public right of way.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1842.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for Foulridge in the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848. <sup>1</sup>

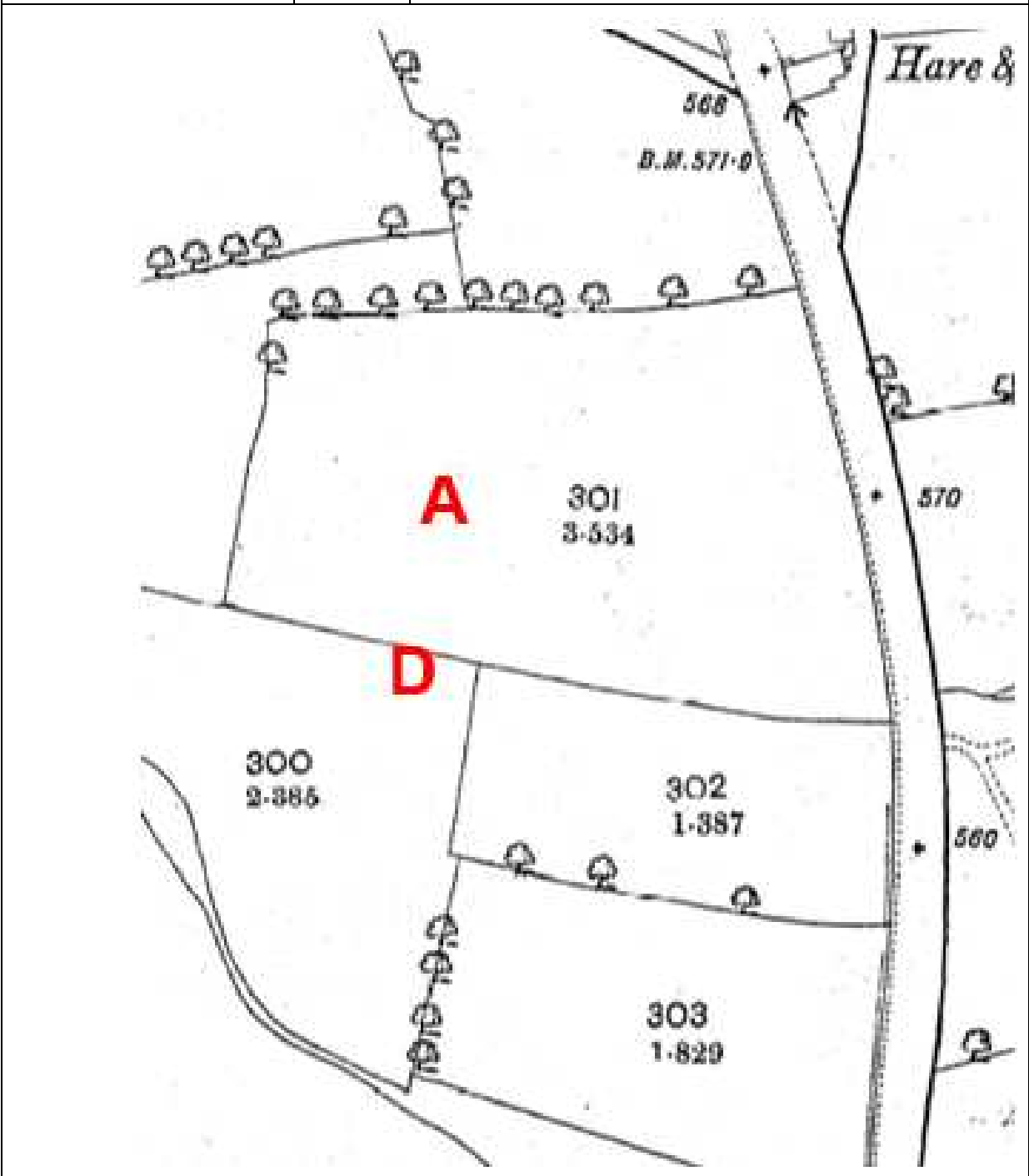
---

<sup>1</sup> 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.

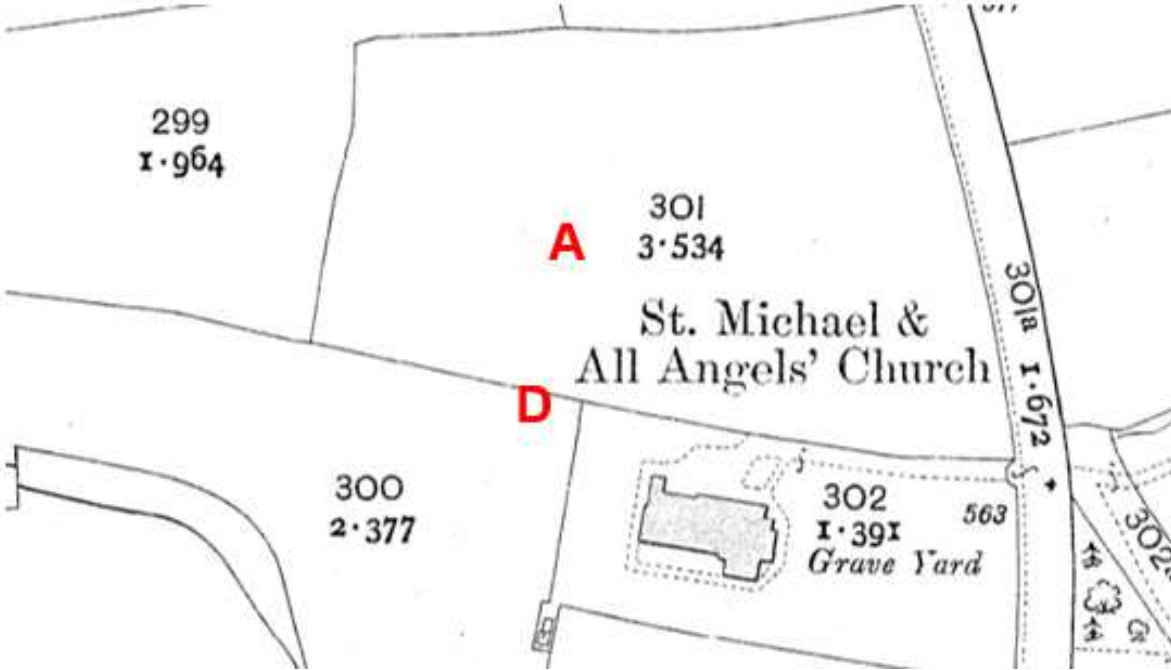


<p>Observations</p>		<p>The application route is not shown.</p> <p>The land crossed by the application route is shown as fields and the church and Burwains Avenue are not shown. A field boundary is shown across the route at point D.</p>
<p>Investigating Officer's Comments</p>		<p>It is considered very unlikely that the application route existed in 1844. It is not shown on the map and the start and finish points (point A and point D) do not appear to have been publicly accessible</p>

		at that time.
<b>25 Inch OS Map</b>	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891-92 and published in 1894.



Observations		<p>The application route is not shown.</p> <p>The land crossed by the application route is shown unaltered from the earlier edition of the 6 inch map detailed above and there still appears to be no public access to point A or point D.</p>
Investigating Officer's Comments		The application route is unlikely to have existed in 1891-2.

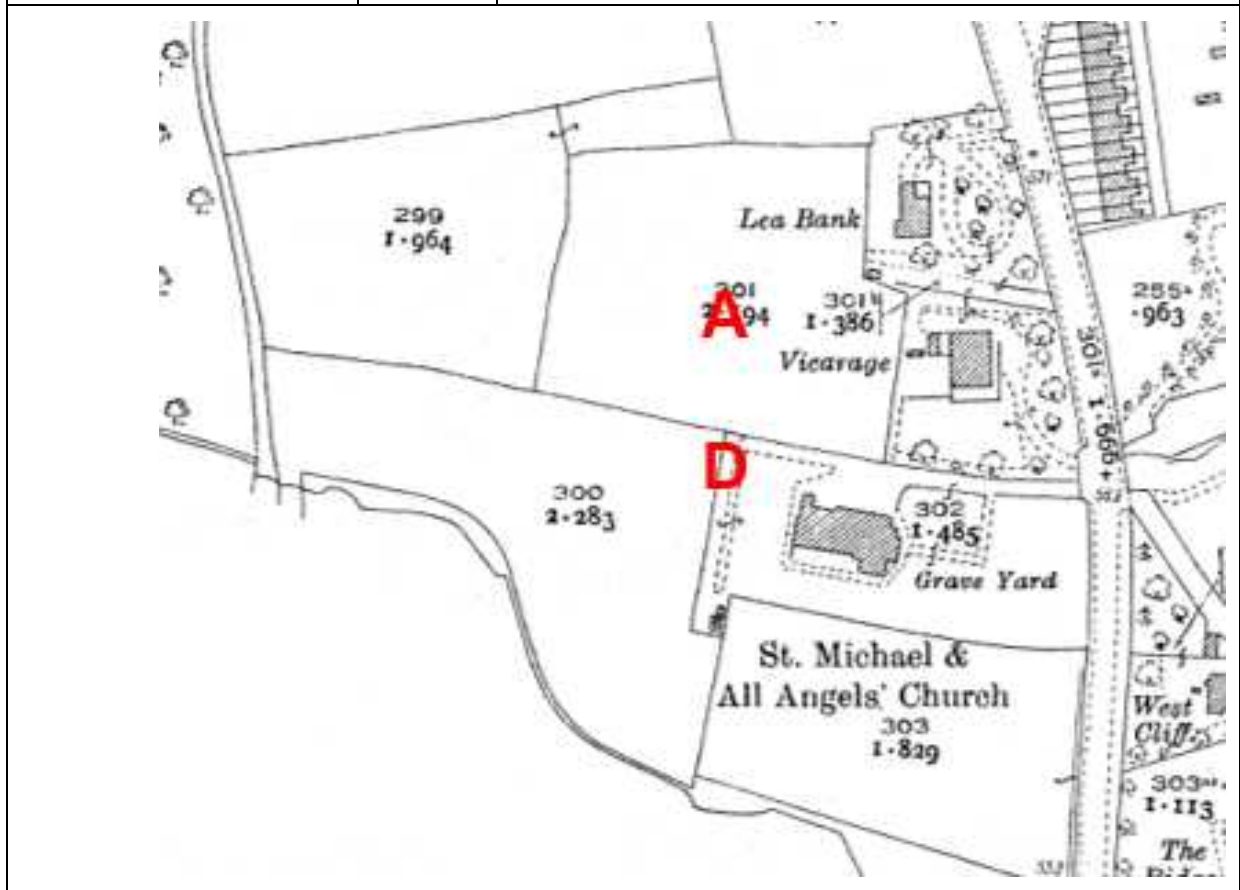
<b>25 inch OS Map</b>	1912	Further edition of the 25 inch map surveyed in 1891-92, revised in 1910 and published in 1912.
		
Observations		<p>The application route is not shown.</p> <p>St Michael and All Angels' church is shown (and named) with the land around it labelled as a graveyard. The western boundary of the graveyard is shown to the east of point D and the application route under investigation is shown within OS field number 301 extending as far as the field boundary between OS field numbers 301 and 300 at point D.</p>
Investigating Officer's Comments		The application route is unlikely to have existed in 1910. The grave yard is smaller than today
<b>Finance Act 1910 Map</b>	1910	<p>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.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on</p>

	<p>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>
--	--



<p>Observations</p>	<p>The Finance Act map and records held by the County Records Office were inspected.</p> <p>The application route is not shown on the OS base map used as part of the Finance Act mapping process and it is not shown as in excluded from the numbered hereditaments.</p> <p>The application route crosses land which would</p>
---------------------	---

		have been within what was (at the time of the Finance Act taxation process) numbered as plot 6540. Within the valuation book held by the County Records Office no reference is made to the existence of a public right of way within that plot and no deduction appears to have been claimed. The valuation book entries for the church grounds (7232) and the field into which point D would have provided access (7233) have also been checked and neither detail any deduction being claimed for the existence of a public right of way.
Investigating Officer's Comments		The application route probably did not exist or was not considered to be a public right of way circa 1910 or a deduction was not considered to be worth claiming.
<b>25 Inch OS Map</b>	1932	Further edition of 25 inch map (surveyed 1891-92, revised in 1930 and published in 1932.



Observations		The application route is not shown. The vicarage to the north of the church is now shown and it appears that the church grounds had been extended along the western boundary so that point D is now situated at a point on the northern boundary of the graveyard and – if access through
--------------	--	---

		the boundary existed - would provide access into the grounds of the church.
Investigating Officer's Comments		The application route probably did not exist in 1930 and although it could have been possible to access at point D into the church grounds it does not appear that the application route existed and point A does not appear to have been publicly accessible at that time.
<b>Aerial Photograph<sup>2</sup></b>	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.

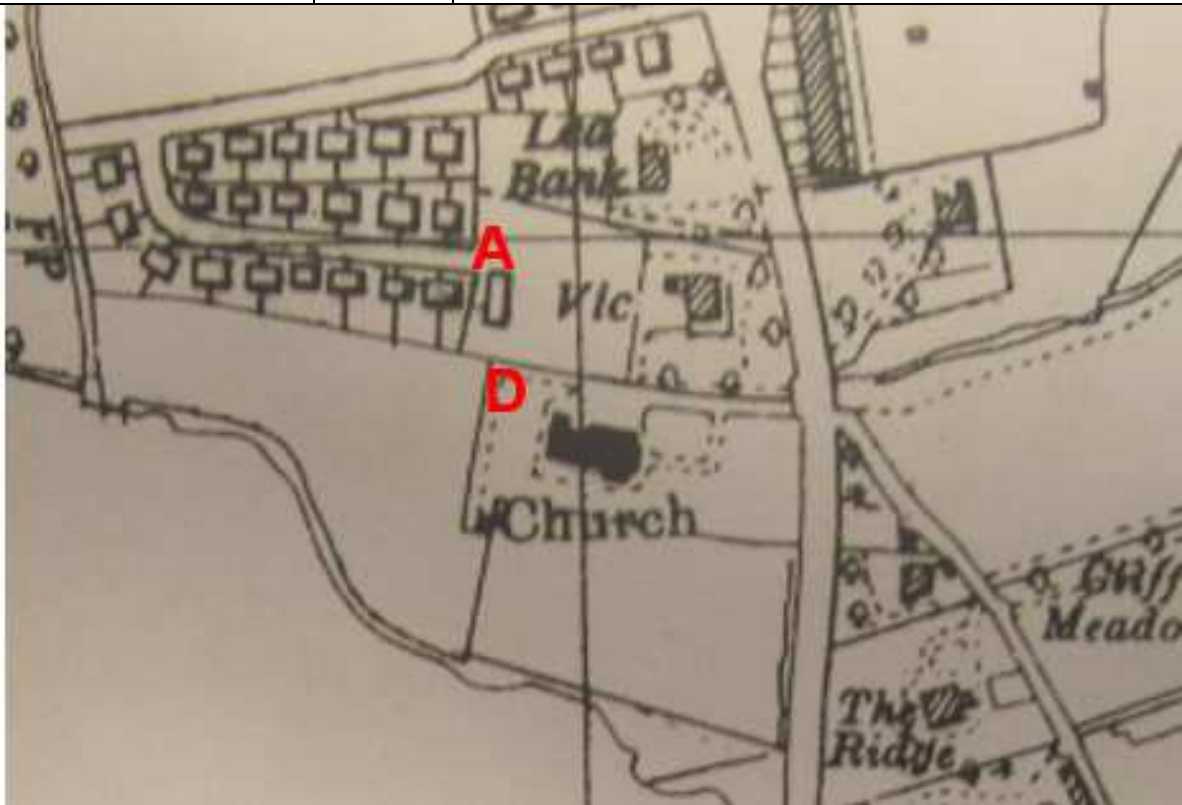


Observations		The quality of the photograph is poor but it appears that Burwains Avenue and the houses along it had been constructed as far as point A by
--------------	--	---


<sup>2</sup> 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 1940's. It is not possible however to see whether the route under investigation existed as a worn track – or whether it was accessible - from the photograph.
Investigating Officer's Comments		It appears that public access existed to point A and it is considered likely that the existence of the application route post-dated the construction of Burwains Avenue and the properties situated along it. However it is not possible to see whether the application route existed – or was accessible – from this particular photograph.
<b>6 Inch OS Map</b>	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. Burwains Avenue is shown and a building is shown in the proximity of 36 Burwains Ave but having a considerably larger footprint than the current building. It is not possible to determine whether the building would have obstructed the application route due to the scale of the map.
Investigating Officer's Comments		As the map was revised in, or before the 1930s it appears that Burwains Avenue and the properties

		along it existed at that time. Access may therefore have been available to point A but there is no indication from the map that the application route existed at that time.
<b>Aerial Photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
Observations		Access onto the application route appears to be open and available at point A and a track corresponding to the application route can be seen between point A and point B. It is not possible to see whether it was possible to walk between the two garages between point B and point C as a large square object consistent with a small shed or lean-to can be seen on the photograph. The route between point C and point D is not visible on the photograph.
Investigating Officer's Comments		The application route appeared to exist between point A and point B but it is not possible to see whether the rest of the route was available to use in the 1960s from this photograph.
<b>1:2500 OS Map</b>	1970	Further edition of 25 inch map reconstituted from

		former county series and revised in 1969 and published 1970 as national grid series.
Observations		The application route is not shown. However, access onto the application route at point A appears to have been available and the garages are shown to exist at that time. It appears that access was available between point A and point B and a gap is shown between the garages between point B and point D which may have been accessible. No gap in the boundary is shown to exist at point D.
Investigating Officer's Comments		The application route may have been unobstructed between points A and D in 1969 although it is not possible to know whether it was possible to get through to the church grounds at point D nor whether this route was actually used.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		The application route can be seen as a track between point A and point B and appears to be open and accessible from Burwains Avenue at point A. It is not possible to see whether the application route existed between point B and point D on the photograph.
Investigating Officer's Comments		The application route existed as an access track between point A and point B in 2000 but it is not possible to see whether the remainder of the route existed at that time.
<b>Aerial Photograph</b>	2010	Aerial photograph available to view on GIS.



Observations		The application route can be clearly seen between point A and point B. A gap can be seen between the garages at point B although it is not possible so see whether it was possible to walk through. Point C is obscured by trees. The access point into the church grounds at point D can be seen.
Investigating Officer's Comments		The application route may have existed in 2010.
<b>Definitive Map Records</b>		<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>
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules

		were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The parish survey map and cards were drawn up by Foulridge parish council. The application route is not shown on the parish survey map or documented in the parish survey cards.
<b>Draft Map</b>		The parish survey map and cards for Foulridge were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.  The Draft Maps were given a “relevant date” (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The application route is not shown on the Draft Map of Public Rights of Way and there were no objections to the omission of the path.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route is not shown on the Provisional Map and there were no objections to the omission of the path.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route is not shown on the First

		Definitive Map.
Investigating Officer's Comments		The application route was not considered to be a public right of way in the 1950s.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		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 <sup>th</sup> 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 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The application route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The application route was not considered to have been a public footpath by the 1960s.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



<p>Observations</p>	<p>The highway records confirm that Burwains Avenue is publicly maintainable to point A but do not show any part of the application route as being a publicly maintainable highway.</p>
<p>Investigating Officer's Comments</p>	<p>The application route is not recorded as being publicly maintainable in the records held by the County Council but there are public rights to point A.</p>
<p><b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b></p>	<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established.</p>



		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).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the routes under investigation 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 affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is registered common land.

### **Landownership**

The main owners of the route are David Crabtree Tinniswood and Carol Tinniswood, Bryn Tawel, Cocker Hill, Foulridge, Colne, Lancashire BB8 7LW.

Part of the route encroaches into land owned by The Borough Council, Pendle, Town Hall, Market Street, Nelson, Lancs BB9 7LG

### **1976 Planning Permission**

As detailed below there is reference to a footpath being retained in a grant of planning permission but this was to the vicarage garden and it is considered that this is unlikely to be the claimed route as the vicarage garden area is not accessed at point A.

### **Summary**

There is no evidence of the application route on any of the Ordnance Survey maps produced from 1848 through to 1970 from when a track is shown between point A and point B providing access to the garages. There is no map evidence to support the existence of the application route between point B and point D and the aerial photographs are difficult to interpret due to their scale and the fact that the route passes between a narrow gap between buildings and is obscured by trees. The 2010 aerial appears to show access to the church yard at point D.

St Michael and All Angels' Church was built in 1903 and consecrated in 1905. However, until the construction of Burwains Avenue – possibly in the 1930s – there does not appear to be any access to the application route at point A.

It is considered likely that any use of the application route would have post-dated the construction of Burwains Avenue and the properties situated along it.

There is very limited map and documentary evidence supporting the existence of the route that is now apparent on site and none to support that the route was considered to be a public footpath.

## Head of Service – Legal and Democratic Services Observations

### Information from the Applicant

The applicant has applied for this Modification Order and says that the path into the churchyard is used by churchgoers, access to the churchyard, pathway to the main A56 busy road and to the bus stops, mainly for the use of children to go to the church school and colleges.

The applicant has personally used this path after moving to the village in 1970 several times a week. The applicant has also supplied a copy of an invoice from Mr Tinniswood requesting rent for the garage on site dated 31/12/2013 and the receipt for the purchase of the garage in 1984.

The Applicant also submits a copy of a letter to him from Pendle DC in 1976 informing him that outline planning permission for 2 houses had been granted on the cul de sac end of Burwains Avenue subject to various matters including new garages and that the footpath to the vicarage garden shall be preserved together with a provision for a private drive to serve the vicarage garden.

An aerial photograph marked with the past and present locations of the stone sign in the churchyard was also submitted

The applicant has submitted 12 forms detailing use in support of this application, the evidence of these forms is set out below:

The years in which the users have known the route varies:

1954-2014	1960-2014	1964-2014(2)	1965-2014	1969-2014
1970-2014	1980-2014	1984-2014	1994-2014	1997-2014

All 12 users have used the route on foot, the years in which the users used the route varies:

1954-2014	1964-2014	1965-2014	1970-2014(2)	1978-2014
1984-2014	1986-2014	1992-2014	1995-2014	1997-2014

The users were mainly going to church, the A56 Skipton Road, the bus stop, general walks or to school. The main purposes for using the route include access to the churchyard, going to church services, to go shopping, to the bus, to use it as a short cut to avoid traffic or to visit friends and family.

The use per year is varies between each user from 200 times, 100 times, 75 times, weekly, 10-15 times to just 2-3times.

8 of the users have never used the route on horseback or by motorcycle / vehicle, 4 users did not provide a response to this question. 1 user has used the route on bicycle between the years of 1974-2014.

11 users agree that the line has always run over the same route, 1 user did not provide a response, the same user also states there is a gate at the church yard that is sometimes locked at night, the other 11 users state there are not stiles / gates / fences along the route. 8 of the users have never been prevented access when using the route, 4 of the users did not provide a response to this question.

11 users have never worked for a landowner, 1 user did not provide a response. 3 users have rented a garage along the route between the years of 1965-2014, 1975-2014 and one since 1984 that the user now owns the garage. These particular users have never received any instructions to use the route.

None of the 12 users have ever been stopped or turned back when using the route nor have they heard of anyone being stopped or having to turn back when using the route. 11 users have never been told that the route they were using was not a public right of way, 1 user did not provide a response to this question. 6 users have seen a sign along the route that states 'no public right of way', 3 of these users state this sign is made of stone, 2 of the users state the sign is at the top of the church yard. 11 of the users have never asked permission to use the route, 1 user did not provide a response to this question.

At the end of completing the user form, users are asked to provide any further information they think is relevant, this information is set out below:

- "This footpath used by many villagers to access the church, graveyard and to access busy A56 main Road. Used as a short cut for schools, colleges, bus routes and a fairly level route through to Burwains Ave across the garage site."
- "The footpath from Burwains Ave through to Foulridge Church runs through the site of a number of garages of which I own one. I therefore also use the footpath to access my garage three / four times a month."
- "This access is used by a lot of people, i.e. church goers, walkers, visiting graves and school pupils, church functions."
- "In about 1985 Foulridge Parish Council gave myself and another resident on the Street, Billy Holmes, money to purchase concrete to put a path at the top of Burwains Ave, towards Alms Ave. Also from Burwains through the garages to the Church on the path we use today. This was to help a local man who lived on Burwains, his wife would push him in his wheelchair to the church and to take him out for fresh air. We use the path to catch the bus and to go on walks and watch lots of people using the path, going to church, school and walks."
- "This route is used by many people of all ages as a safe and easy route from the west side of Foulridge Village to the church and Skipton Road."

#### Information from the landowner

A letter has been received from Mr D C Tinniswood who makes the following comments. He mentions in terms of the boundary fencing he has the responsibility for the area of land adjoining the Vicarage, which runs along the rear of the seven garages shown on the map. The PCC of St Michaels and All Angels Church / Blackburn Diocesan Authority have responsibility for the boundary fence running parallel to the Church drive, part of which separates his land from the drive, i.e. the area behind the garages shown on the map.

The land owned by him and his wife was left to him in his father's will in 1987/8. At that point he informed the Church Council / Vicar that it would be sensible to improve the boundary fence so that the public could not trespass through his land onto the

church drive. The action that they chose to take was to place a stone plinth at ground level stating "No right of Way Highways Act 1980" (Mr Tinniswood supplied a photograph of this stone). The secure fencing they chose not to install.

On a number of occasions he has posted "Private Land" and dog fouling notices at the entrance to the garage site from Burwains Avenue. Each time the notice has been torn down even though it was posted on a tree trunk twelve feet above the ground.

Furthermore he mentions we should be aware of the fact that the Diocesan Authority in 2007 asked if they would work in partnership with them to develop a plot of land compromising his garage site and church land between the Vicarage and the garage site. He provides an outlined plan of the proposed development for which planning permission is underway.

His understanding has always been that the church and churchyard is private property and that access is only for church services, events and access to the graveyard. There is no right of way through the churchyard and never has been. It is private property and therefore it should follow that there can be no footpath through his land onto private church property.

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

#### **In Support of Making an Order(s)**

accessible route  
user evidence  
aerial photographs

#### **Against Making an Order(s)**

difficulty in there being a place of public resort at termination  
some users with implied permission re access  
low user evidence  
actions taken by landowners  
difficulty re public footpath rights on a churchyard

#### **Conclusion**

In this matter it is claimed that this route has already become a footpath in law.

Most claimed routes link from a highway to a highway and the issue of there being a public destination at each end does not arise. In this matter it is advised that the issue of whether the route is of a character capable of becoming a footpath needs to be considered. The route connects to a highway at one end and the churchyard at the other. There is evidence of the churchyard gate being locked sometimes. It is suggested that there is no evidence of a faculty (a consent of the consistory court)

being given for public footpath in the church yard and that a faculty cannot be presumed in view of the stone sign in the churchyard negating any intention to dedicate a public route. The church yard is difficult to consider as being a public area.

Case law in 2012 led to a route being found not to have the essential element required of a highway as it should be open to use by the public at large. This particular route is not used as a cul de sac. Users do not get to the church yard boundary and the hedge and turn back along the garage access path. It is advised that it may be considered that this claimed route reaches not a place of public resort but a private graveyard which may even have its access gates locked and cannot therefore be of a character capable of being a public footpath.

If the Committee consider that the graveyard could arguably be a place of public resort so as to be a suitable termination point for a highway route, it is suggested that the Committee consider whether there is sufficient evidence of a dedication of the route. There is no express dedication and so it is advised that consideration is given as to whether the provisions of S31 Highways Act can be satisfied and dedication be deemed, or dedication inferred at common law

The use would need to be without permission and it is noted that three of the 12 users have rented garages at this location and must have enjoyed permission right to access the garage possibly even along the line of the claimed route. Their use may be regarded as permissive and should arguably be disregarded when looking at as of right use of the route.

In addition to the low user evidence there is the issue of the Notice on the land right at the end of the route in the churchyard indicating a lack of intention to dedicate by the landowner and the lack of a faculty to enable a public route to be created. This sign may possibly be viewed as calling the claimed route into question. A route does not have to be called into question by the landowner where the route runs but that sign acts like a gate blocking as of right use of the claimed route. It was possibly put up as long ago as 1987. This action challenged the public right to use the way. Several of the users refer to seeing it. This pushes the twenty year use period back possibly to the 1960s when only a couple of users refer to their use of the claimed route.

The Committee may consider that there is insufficient evidence of use for the twenty year period. Within that period there is also reference to some actions by the landowner himself. These actions seem to have had little effect. No signs on the route itself are referred to by users and in any event "private land" notices may not successfully negative his intention to dedicate a footpath.

These actions taken however would make it difficult to prove on balance that the owner had intended dedicating for the purposes of whether dedication can be inferred at common law. It is advised that the landowner of today has been owner since 1987 and it would be difficult to show intention to dedicate. The user of the land can be circumstances from which to infer intention to dedicate but there were some actions taken and permissive use expected from those renting the garages.

There is the issue as to whether there is a termination at a place of public resort. Should this be considered able to be satisfied there are issues of use with permission, low number of use in relevant years, and difficulties of proving landowner intention such that it is advised that, taking all the evidence into account there is insufficient evidence from which to find on balance dedication bale to be reasonably alleged to be deemed under S31 Highways Act or inferred at Common Law.

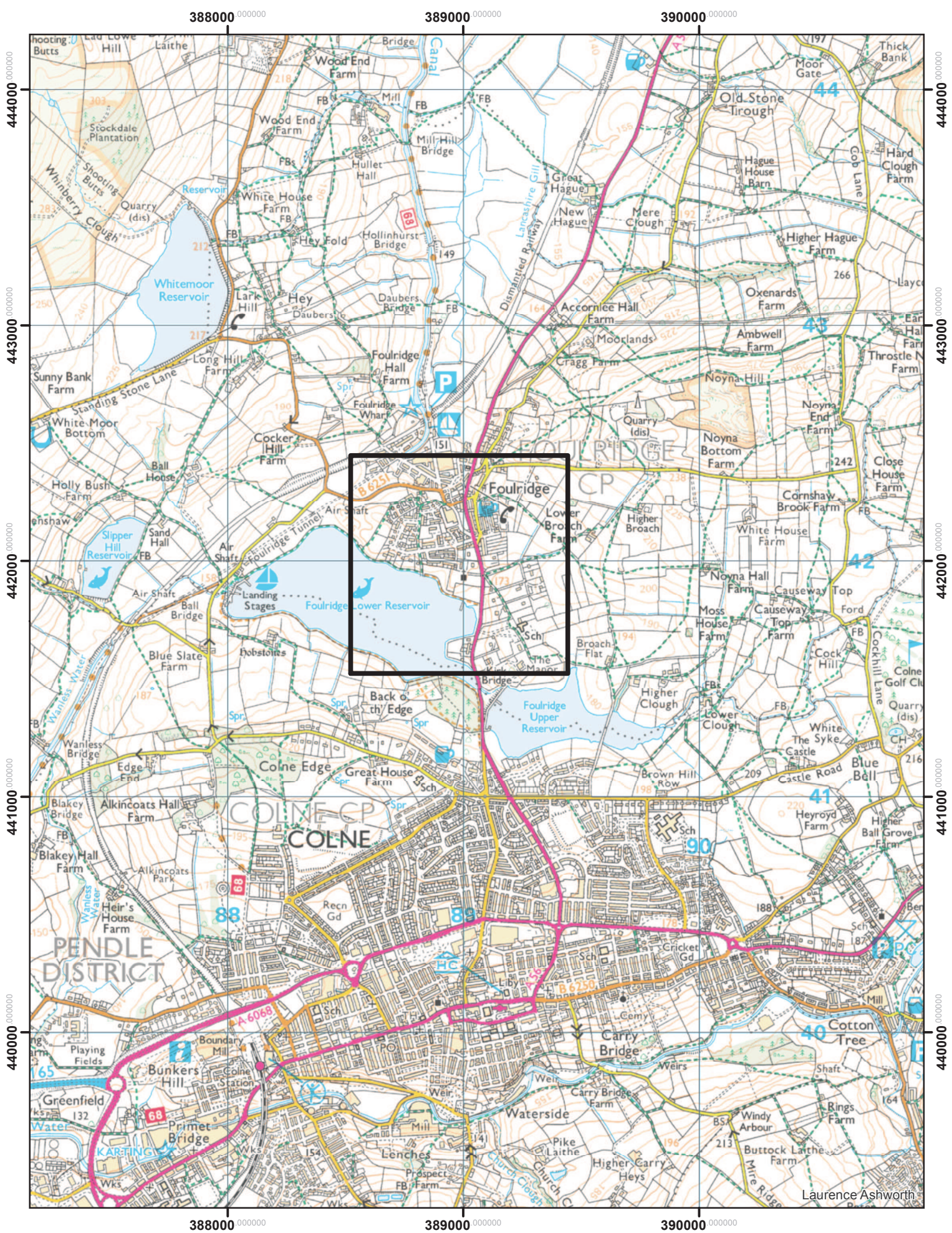
**Alternative options to be considered - N/A**

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-560	various	Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



<p>Lancashire County Council</p>	<p>Steve Browne Interim Executive Director for the Environment</p>	<p><b>Wildlife and Countryside Act 1981</b>  <b>Addition of public footpath from Burwains Avenue to the grounds of St Michael and All Angel's Church, Foulridge, Pendle Borough</b> LOCATION PLAN</p>	<p>1:20,000</p>	
--------------------------------------	--	---	-----------------	--

The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320





389000 000000

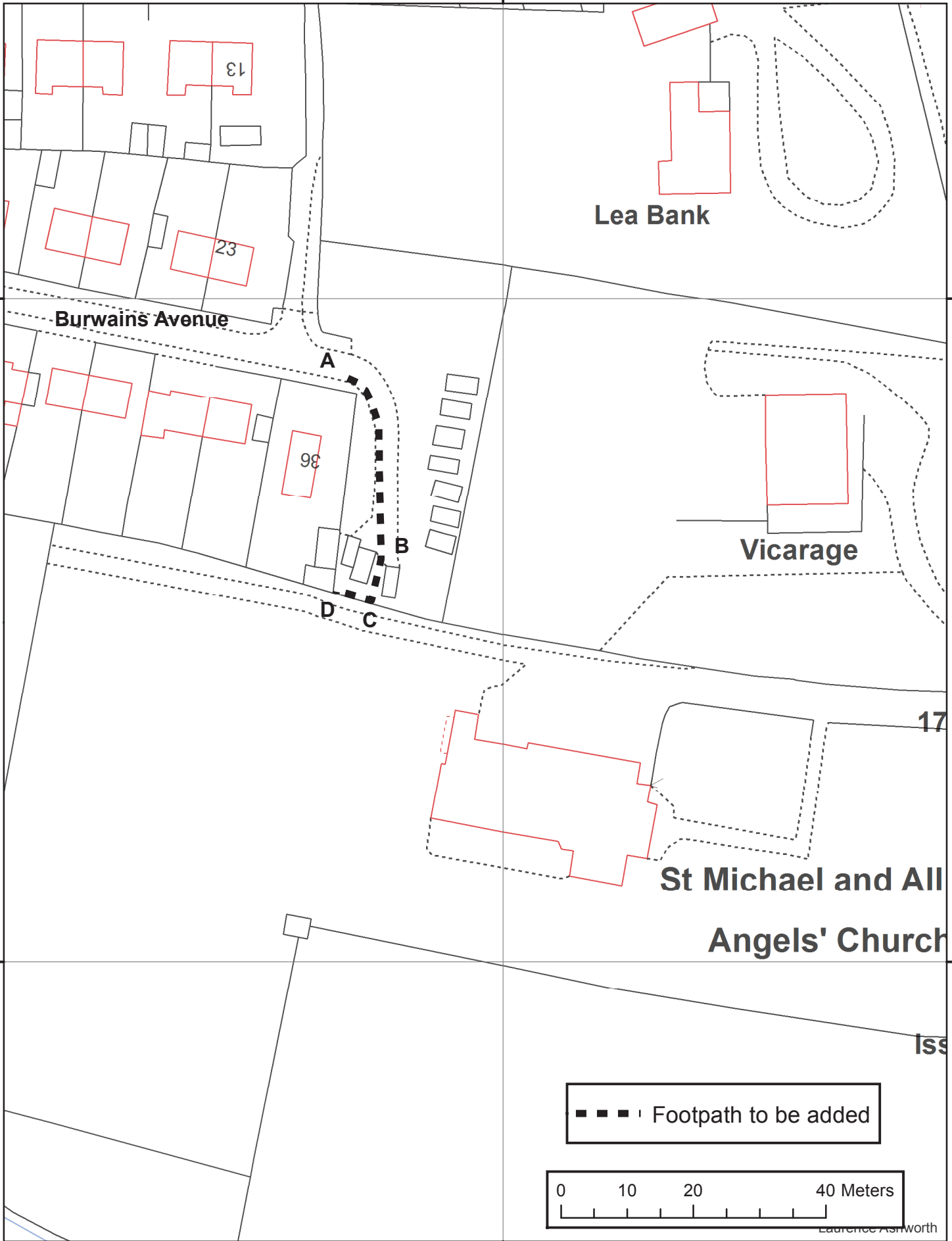
442000 000000

442000 000000

441900 000000

441900 000000

389000 000000



Laurence Ashworth



Steve Browne  
Interim Executive Director  
for the Environment

**Wildlife and Countryside Act 1981**  
**Addition of a Public Footpath to the Definitive Map and Statement**  
**from Burwains Avenue, to the grounds of St Michael and All Angels' Church, Foulridge**

1:750



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320



## Regulatory Committee

Meeting to be held on 13 May 2015

Electoral Division affected: Wyreside
--

**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Investigation**  
**Application to delete part of Public Footpath 22 Pilling and add a parallel**  
**Public Footpath at Field House, Pilling**  
**File No. 804-553**  
(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, Legal and Democratic Services,

[megan.brindle@lancashire.gov.uk](mailto:megan.brindle@lancashire.gov.uk)

Jayne Elliott, 07917 838826, Environment Directorate,

[Jayne.elliott@lancashire.gov.uk](mailto:Jayne.elliott@lancashire.gov.uk)

### Executive Summary

Application to delete part of Public Footpath 22 Pilling from the Definitive Map and Statement of Public Rights of Way and to add a parallel Public Footpath at Field House, Pilling, in accordance with file no. 804-553.

### Recommendation

1. That the application to delete part of Public Footpath 22 Pilling from the Definitive Map and Statement of Public Rights of Way, and shown by a thick dashed line between points A-B-C-D-F, in accordance with File No. 804-553, be not accepted.
2. That the application to add a Public Footpath parallel to the section proposed for deletion to the Definitive Map and Statement of Public Rights of Way, and shown by a thick dashed line between points A-E-F, in accordance with File No. 804-553, be not accepted.

### Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received from the owner of Field House, Pilling for the deletion of part of Public Footpath 22 Pilling as shown by a thick dashed line between points A-F via B-C-D on the Committee plan and a distance of approximately 130 metres and for the addition of a Public Footpath shown by a thick dashed line between points A-F via E on the Committee plan for a distance of approximately 130 metres on the Definitive Map and Statement of Public Rights of Way.

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

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

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

An order for 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

An order for modifying the particulars contained within the Definitive Statement as to the position, width, limitations or conditions will be made if the evidence shows that:

- The particulars contained in the Definitive Map and Statement require modification

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**

Wyre Borough Council have been consulted and no response has been received, it is assumed they have no comments to make.

Pilling Parish Council have been consulted and have stated that whilst the Councillors accept the principle of moving the footpath and appreciate that there is little impact providing the footpath is not removed, they consider that it would be more advisable to keep to Field House Lane, as it is a cleaner route, until the stile at

the entrance to Field House (point C on the Committee plan) before diverting into the field.

Applicant/Landowners/Supporters/Objectors

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

## Advice

### Head of Service – Planning and Environment Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	4119 4830	Point on Pilling Footpath 22 immediately adjacent to rear north west corner of boundary fence of Provident House.
B	4116 4830	Point on access track recorded as Pilling Footpath 22 between gateposts marking the point at which ownership of the land changes.
C	4115 4829	Wooden stile and concrete gatepost situated in fence on south side of access track carrying Pilling Footpath 22.
D	4113 4829	Point at which Pilling Footpath 22 turns south west adjacent to Field House.
E	4112 4827	Point at which Pilling Footpath 22 turns west.
F	4107 4827	Unmarked point on Footpath 22 in field immediately south of boundary fence of Field House.

In the interests of clarity the routes will be referred to within this report as follows:

Route 1 – the route which the application seeks to delete and shown on the Committee plan as A-B-C-D-F.

Route 2 – the route which the application seeks to add and shown on the Committee plan as A-E-F.

This application is believed to have arisen due to a disagreement about the correct position of Pilling Footpath 22 on the ground. The applicant purchased Field House at a public auction in September 2005, has subsequently converted it and now lets it as a detached family home.

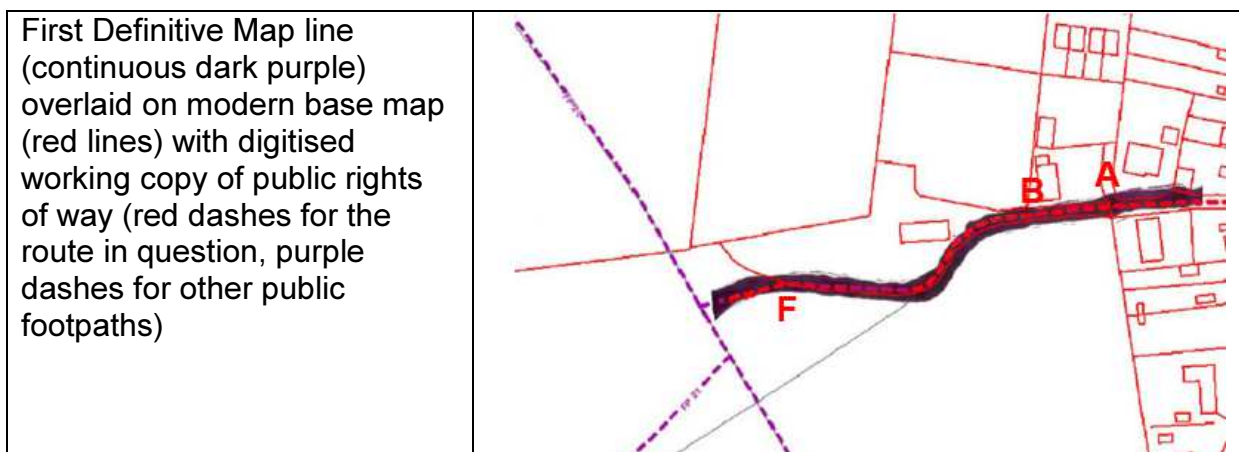
Following representations made on behalf of the applicant to the County Council in 2012 about the exact alignment of the footpath on the ground an undertaking was made to provide the applicant with a plan showing the position of the public footpath in relation to the property.

Field House is separated from the adjacent field to the south by a fence and hedge and the footpath is shown on the Definitive Map with thick imprecise dashes on a 1950s base map.

The Environment Director, in the letter dated 14 February, concluded that the public footpath had historically followed an enclosed track (as shown on the 1932 OS Map detailed later in the report) and that in part the current boundary of Field House coincided with the southern boundary of the formerly enclosed footpath and hence the public footpath was within the garden for much of the southern edge of the garden (between point E to point F on the Committee plan). However, it was concluded that at the eastern end of the garden the changes in the boundary position were not so clear, in part because of the changes to the out buildings, and that the footpath now runs along the boundary, partially inside and partially outside the Field House boundary (between point D and point E).

The precise location and width of the existing footpath is not recorded in the Definitive Statement but in such cases, if the route was enclosed between two defined highway boundaries when it was originally recorded (or came into being) it would normally be taken to be recorded as being the full available width. The track shown on the 1932 25 inch Ordnance Survey Map is approximately 4 metres wide around Field House suggesting that the width of the footpath that would have been available to the public would have been 4 metres.

The plans inserted below were provided to the applicant to show the position of the footpath along the current boundary of Field House and showed that it appeared to fall partially inside and partially outside the boundary.



1932 Ordnance Survey 25 inch Map overlaid on modern OS base map, as supplied to applicant



As a consequence of the provision of this information the applicant (landowner) submitted the applications that are being considered by the Committee in this report.

The applicant seeks to record the route of the public footpath from point A on the Committee plan as being in the field on the south side of the bounded access track between point A – D and continuing in a generally south westerly and then westerly direction along the field edge on the south side of the current boundary fence/hedge of Field House (Route 2) and to delete the route of Pilling Footpath 22 from running along the access track or through any part of Field House (Route 1).

This report will look at all the relevant historical maps and documents available to determine whether the original assessment made by the County Council was correct and determine the exact alignment the Pilling Footpath 22 in proximity to Field House. It will also look at whether the claimed route for addition correctly depicts the historical route of the Public Footpath or whether there is evidence to support the view that this route has subsequently come into existence.

### **Description of Routes**

A site inspection was carried out in October 2014 and a further inspection was made in March 2015.

Pilling Footpath 22 leaves Lancaster Road to follow a stone surfaced access track between Coleraine and Provident House in a westerly direction for a distance of approximately 55 metres to point A. This section of the route is known locally, and marked on Ordnance Survey maps, as Field Edge Lane.

### **Route 1**

Route 1 is shown on the County Council's digitised (working copy) public rights of way map as being the one depicted by a thick dashed line on the Committee plan between points A-B-C-D-F. However, the digitised line does not illustrate the full (unrecorded) width of the public footpath and thus could appear misleading as it appears to show Route 1 entirely within the garden of Field House whereas it actually overlaps the boundary in parts.

From point A Route 1 (recorded as Pilling Footpath 22) continues west along an enclosed stone surfaced track with grass down the central strip towards Field House. There is no gate across the track near point A although a rusty post is located on the north side of the track which looks like the gate post shown on a photograph submitted by the applicant which is discussed later in the report.

Approximately 30 metres further along the track from point A the route passes between some old concrete gateposts at point B where there is also a metal field gate in the fence along the south side of the track providing access into the adjacent field. This gate was tied shut when the route was inspected and didn't appear to have been recently used.

From point B the surface of the route changes to loose gravel and after a further 8 metres there is a wooden stile in the fence on the south side of the track at point C. This stile has been waymarked with a yellow public footpath arrow directing walkers into the field. Immediately west of the stile is a concrete gatepost on which it is possible to see the remains of a painted yellow waymark arrow also pointing into the field.

From point C Route 1, north of the boundary, curves slightly to the south west to point D then straddling the fence/hedge continues south west to E then west along the north side of the garden hedge, i.e. inside the garden, to point F where it passes through the hedge into the field.


## Route 2

Route 2 leaves the stone access track (Pilling Footpath 22) at point A to pass through a metal field gate (open on the day of inspection) into the pasture field. It then continues along the edge of the field south of the enclosed access track past the wooden stile at point C and follows the field edge south west then west on the south side of the Field House boundary to point F.

## 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 routes under investigation are not shown.
Investigating Officer's Comments		The routes under investigation did not exist as major routes at that time. They may have existed as minor routes but due to limitations of the scale would not have been shown so no inference can be drawn in this respect.



<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.
		
Observations		The start of Pilling Footpath 22 as it leaves Lancaster Road appears to be shown extending west towards point A. Field House and the routes under investigation are not shown.
Investigating Officer's Comments		The routes under investigation did not exist as major routes at that time. They may have existed as minor routes but due to limitations of the scale would not have been shown so no inference can be drawn in this respect.
<b>Hennet's Map of Lancashire</b>	1830	A further small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



Observations		A route which appears to be the start of Pilling Footpath 22 from Lancaster Road is shown extending towards point A but Field House and the routes under investigation are not shown.
Investigating Officer's Comments		The routes under investigation did not exist as major routes at that time. They may have existed as minor routes but due to limitations of the scale would not have been shown so no inference can be drawn in this respect.
<b>Canal and Railway Acts</b>		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 routes under investigation did not cross land that was affected by the development of a railway or canal.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1845	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

		<p>lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>
--	--	---

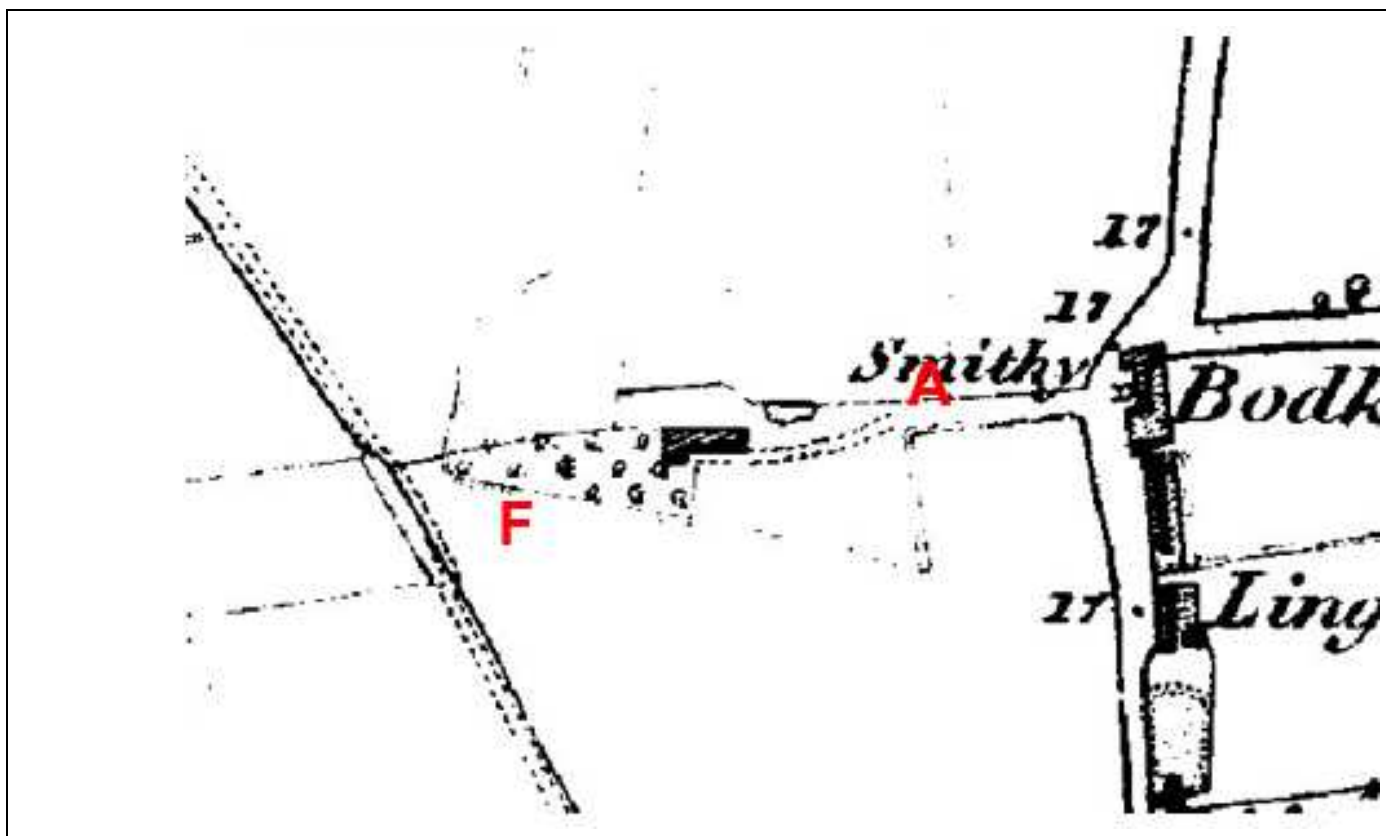


<p>Observations</p>		<p>Neither of the routes under investigation are shown on the Tithe Map.</p> <p>The map shows the first part of the route now recorded as Pilling Footpath 22 from Lancaster Road to point A uncoloured. Immediately west of point A there is a line drawn across the end of the uncoloured route and the land beyond it is coloured and the field numbered 817. The Tithe Schedule lists the owners of this land as Hornby Edward Esq, Gardner Esq, and Wilkinson Thomas Esq. and the occupier of the land as Thomas Wilkinson. The plot is described as 'House Field' and there is no reference to the existence of a public right of way.</p> <p>A building is shown west of point A in the approximate</p>
---------------------	--	--

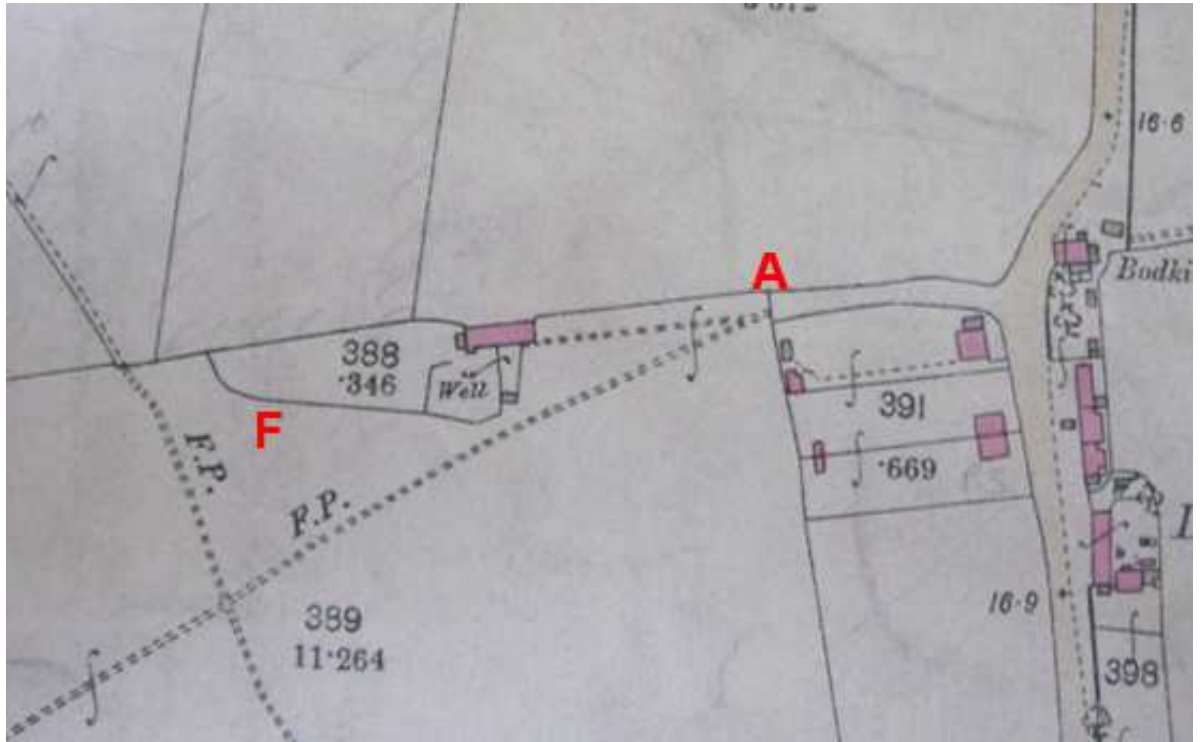
		position of Field House. No access track is shown to this building and it is included within the shaded plot no. 818 and described in the Tithe Schedule as 'House and garden'. The landowners are listed as being the same as for plot 817 and the occupier Thomas Wilkinson. There is no reference to a public right of way.
Investigating Officer's Comments		A house existed in the approximate location of Field House in 1845 but the means of accessing the property is not shown on the map. Neither route under investigation appeared to exist at that time.
<b>Inclosure Act Award and Maps</b>	1847 and 1867	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		Pilling Lane Inclosure Map and Schedule dated 1847 and the Pilling Inclosure Award dated 1867 were inspected at the County Records Office.  Neither map covered the area crossed by the routes under investigation.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. <sup>1</sup>

---

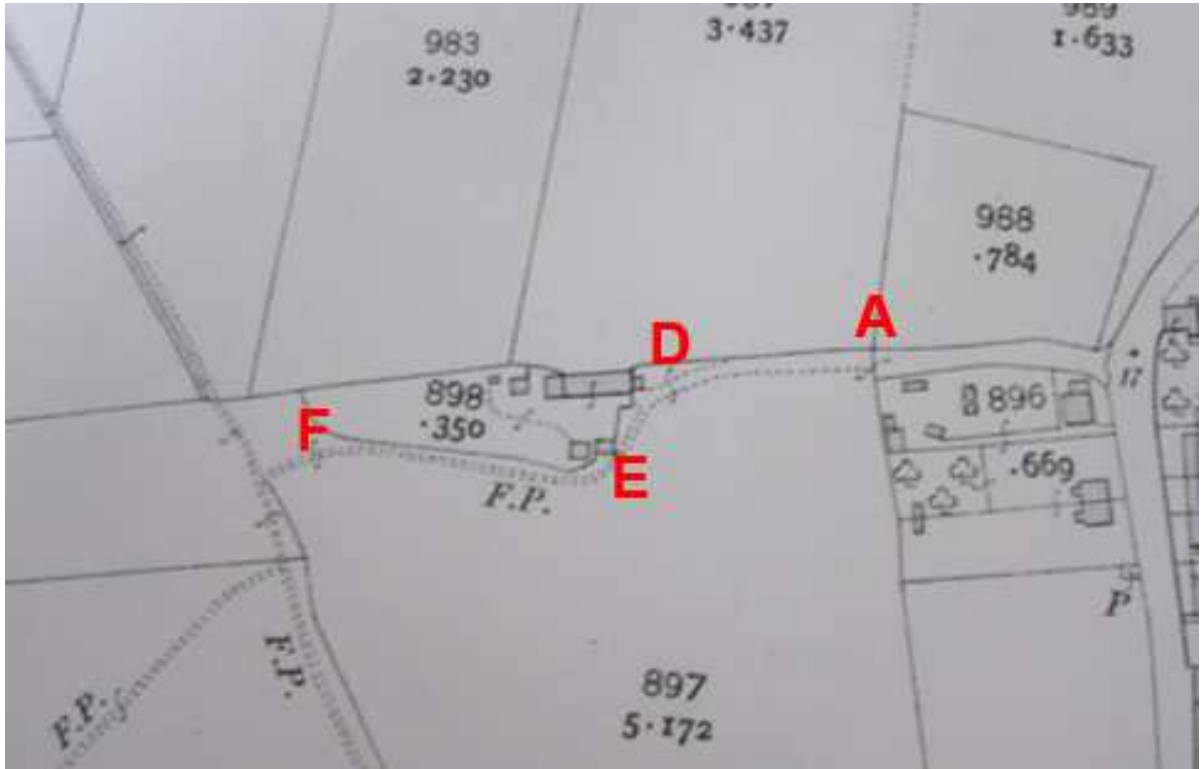
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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



Observations		The map shows the start of Pilling Footpath 22 (Field Edge Lane) leaving Lancaster Road opposite Bodkin Hall as a substantial enclosed track to point A. From point A neither of the routes under investigation are shown although an unenclosed track (double pecked lines) is shown extending from point A to the front of an unnamed building that is in the same position as the existing building later known as Field House.
Investigating Officer's Comments		The building now know known as Field House existed in 1848 with access to it being along Pilling Footpath 22 to point A and then continuing to (but not past or beyond) the south face of the property. Neither Routes 1 or 2 appeared to exist at that time.
<b>25 Inch OS Map</b>	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1893.

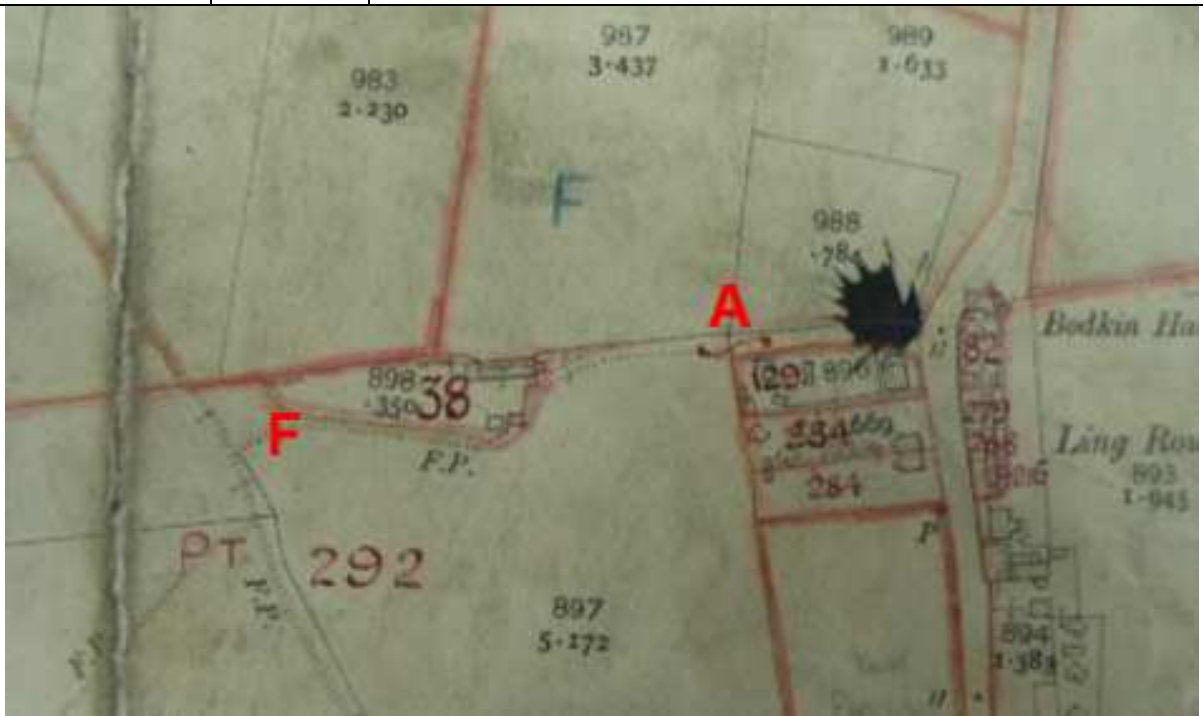


Observations		Access from Lancaster Road opposite Bodkin Hall and along Pilling Footpath 22 to point A is clearly shown as being along an enclosed track which is then gated immediately west of point A. From the gate there is a double pecked line annotated as a footpath (F.P.) which extends in a west south westerly direction to the intersection of 3 other routes which are also marked as footpaths. A double pecked line is also shown to extend from the gate directly to the building (Field House) but this is not annotated with the letters 'F.P' and does not continue around or beyond the property.
Investigating Officer's Comments		Neither Route 1 or 2 appear to have existed in 1893. A route that does not correspond to either of the routes appears to have existed on the ground at the time of the survey extending from point A but running to the south of either of the routes under investigation to link to the route now recorded as Pilling Footpath 21a.
<b>25 inch OS Map</b>	1912	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1912.



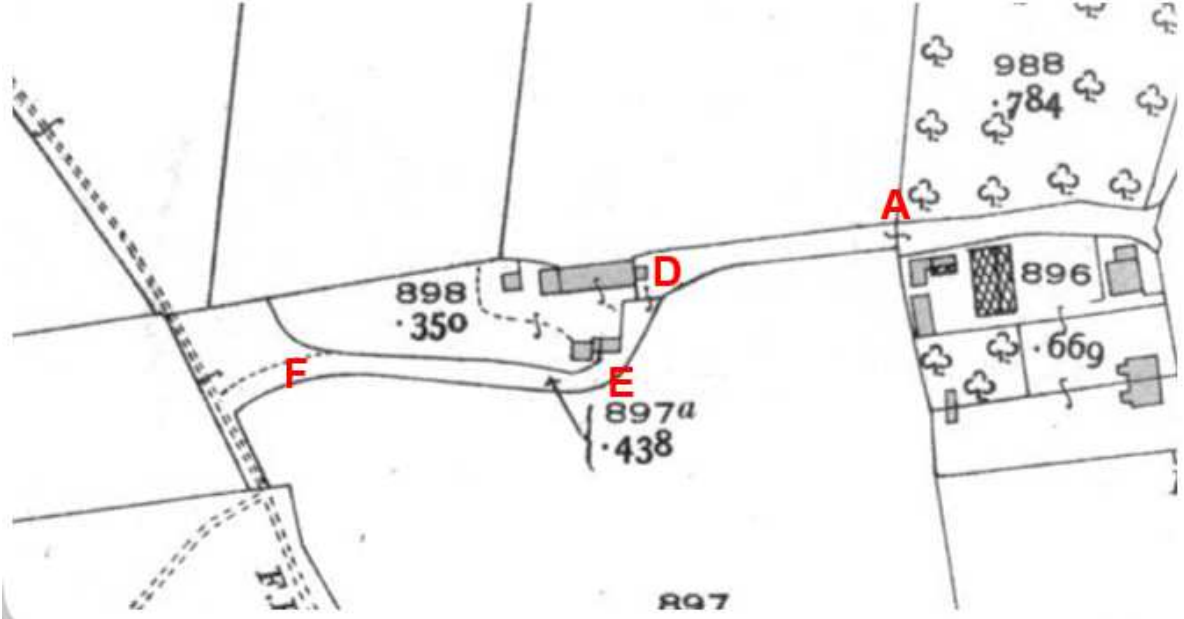
<p>Observations</p>		<p>A gate is shown across the route now recorded as Pilling Footpath 22 immediately west of point A. Beyond the gate, extending in a westerly direction is an unenclosed track running through OS field No. 897. This track extends in a westerly direction towards Field House and is consistent with Route 1. The track then curves to continue in a south westerly direction and then more west north westerly direction to point F along the south side of the boundary of the property and within OS field No. 897 and is marked as a footpath (F.P.). It is difficult to align this map with the modern mapping (because there are insufficient common features that can be aligned) but as far as we can tell the F.P. shown would fall partially inside and partially outside the modern boundary of Field House between E and F.</p>
<p>Investigating Officer's Comments</p>		<p>By 1912, a footpath ran around what was then the perimeter of Field House. Although this route is marked as a footpath (F.P.) on the map there is no certainty when it actually became a <u>public</u> right of way but the map does indicate that a through route existed that linked to other routes that are now recorded as public footpaths and that it appeared to be capable of being used. It is not possible to determine the extent to which this footpath corresponds to Route 1 or Route 2.</p>
<p><b>Finance Act 1910 Map</b></p>	<p>1910</p>	<p>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</p>

		<p>deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
--	--	---

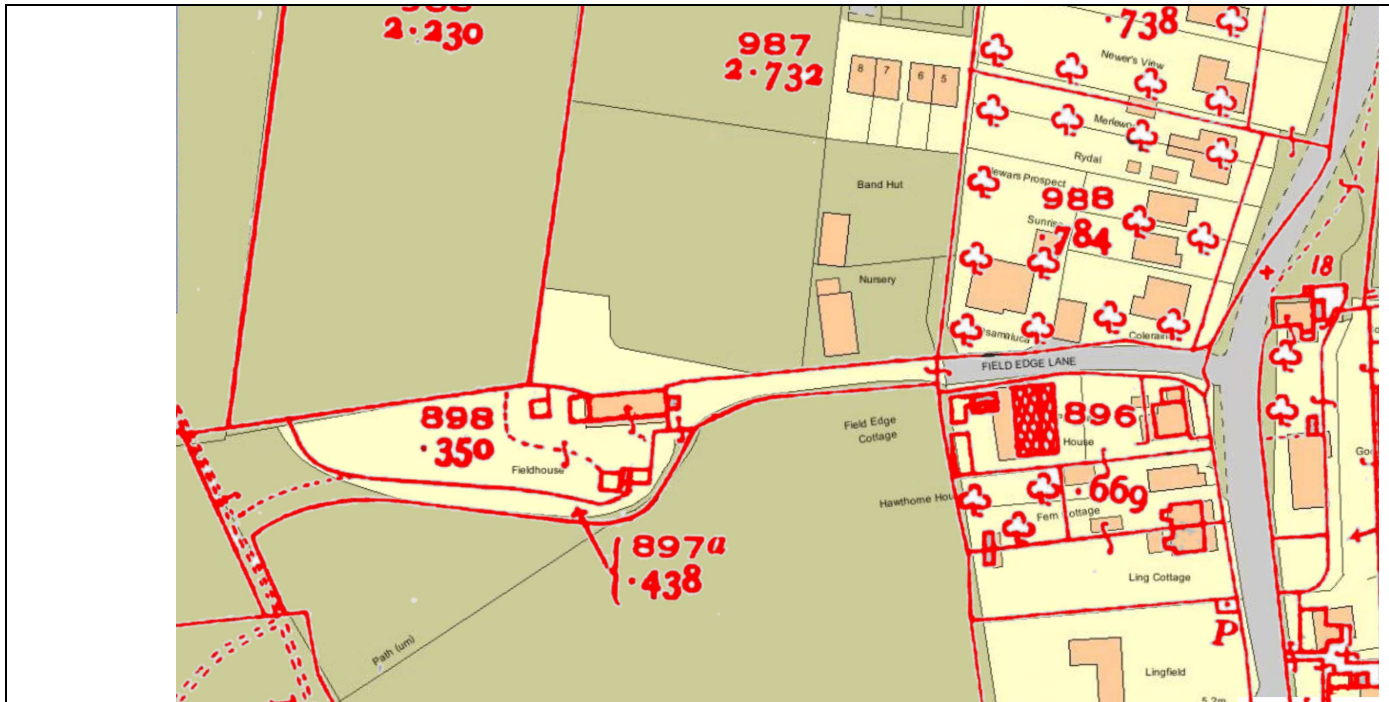


Observations		<p>The Finance Act Map held by the County Records Office is drawn on the OS 25 inch base map published in 1912. It does not show either of the routes under investigation</p>
--------------	--	---



		<p>as being excluded from the numbered hereditaments. The enclosed (undisputed) section of Pilling Footpath 22 from Lancaster Road to point A is shown as being part of plot 292 which also includes the unenclosed access track to Field House and the continuation of the track around the outside of the southern boundary of Field House which is labelled as a footpath on the OS base map. The schedule held in the County Records Office details plot 292 as being owned by EGS Hornby, Dalton Hall, Burton, Westmorland and as being occupied by Mr Wilkinson. No deduction is listed for public rights of way or user.</p> <p>Plot 38 is also owned by EGS Hornby but is occupied by Robert Bureer. It is described as 'House' and 'Fields Cottage, Stakepool'. No deduction is listed for public right of way or user.</p>
Investigating Officer's Comments		<p>All the land crossed by the routes under investigation were in the same ownership at the time that the valuation was carried out although the property (Field House) and field where occupied by different tenants. No deductions were listed for the existence of public rights of way or user across either of the plots suggesting that the landowner at that time did not accept the existence of any public rights of way or chose not to claim a deduction for them.</p> <p>The Valuation Field books have not been requested from the National Records Office.</p>
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1890, revised in 1930 and published 1932).
		
Observations		By 1930 it can be seen that the route around Field House has become an enclosed track between fences or

		<p>hedges. Access along the track appeared to be gated just west of point A and just south east of the house but the whole length of the enclosed route from Lancaster Road through point A to point F and including a small area of land north west of point F is braced together and numbered as OS parcel no. 897a. The enclosed track is consistent with the alignment of the full length of the definitive route of Pilling Footpath 22 and is shown connecting to another route labelled as a 'F.P' (footpath). The width of the enclosed track measured from the map is approximately 4 metres.</p> <p>Route 2 from point A running parallel to and south of the enclosed track (between point A and point D) is not shown. It is not clear whether there would have been access into the field from point A although the field boundaries are offset so it may have been possible that a stile or gate may have provided access directly into the field from this point.</p>
<p><b>Investigating Officer's Comments</b></p>		<p>Route 1 existed on the ground as an enclosed track which was approximately 4 metres wide in 1930. Route 2 did not exist in 1930.</p>
<p><b>Site Measurements and OS MasterMap overlaid with 1932 3<sup>rd</sup> Edition OS 25 inch Map</b></p>		<p>Key to the interpretation of the OS map evidence is whether the current boundary fence/hedge of Field House is consistent with either boundary of the enclosed track shown on the 1932 25 inch OS Map. (The 1932 is used because it is the earliest map which can be satisfactorily aligned with modern mapping sufficiently and because it is based on the same survey used for the base-map for the 1<sup>st</sup> Definitive Map.) In addition to the overlay provided to the applicant a further version is shown below. These were produced using photo-editing software by digitally removing the solid white background from the 1932 map, replacing the black lines with colour (to distinguish them from the lines on the MasterMap) and adjusting the size &amp; alignment (without skewing) to best match the MasterMap on which it is overlaid.</p>



Having overlaid the 1932 Map with the modern MasterMap site measurements were then taken to check that the modern Ordnance Survey map accurately reflected what was on the ground.

Modern OS Map showing points from which measurements were taken on site:

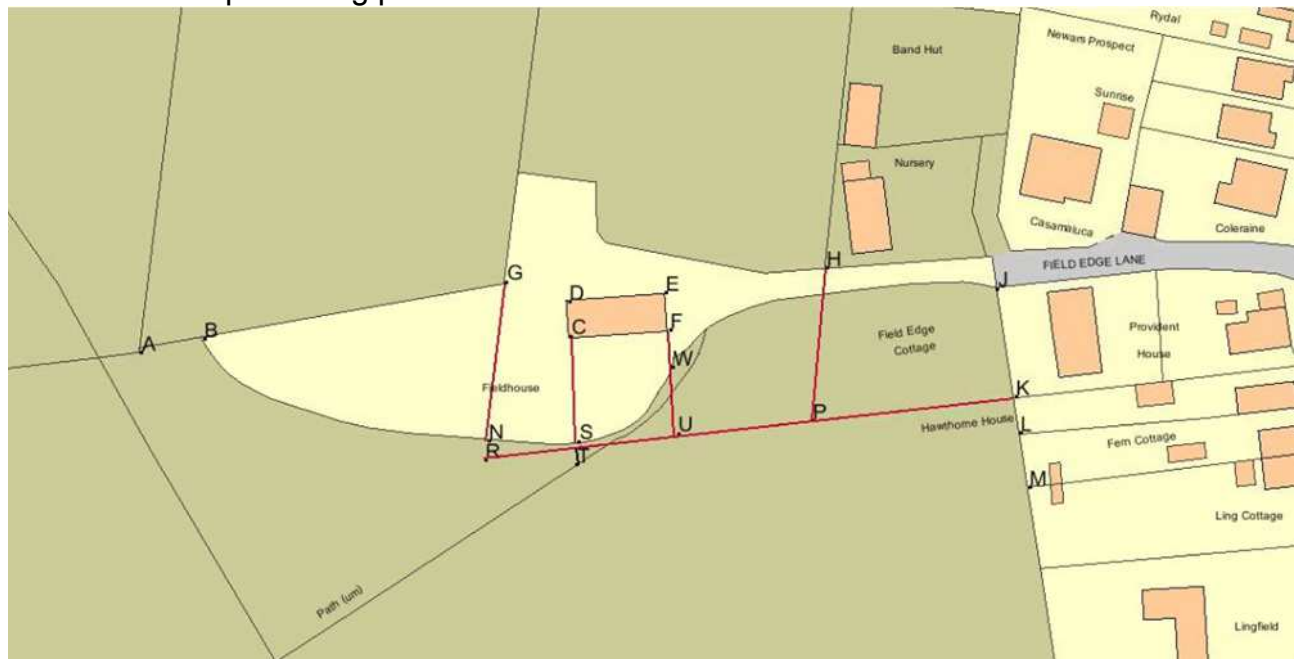


Table of measurements taken on site in October 2014 in comparison to measurements taken from modern OS base map:

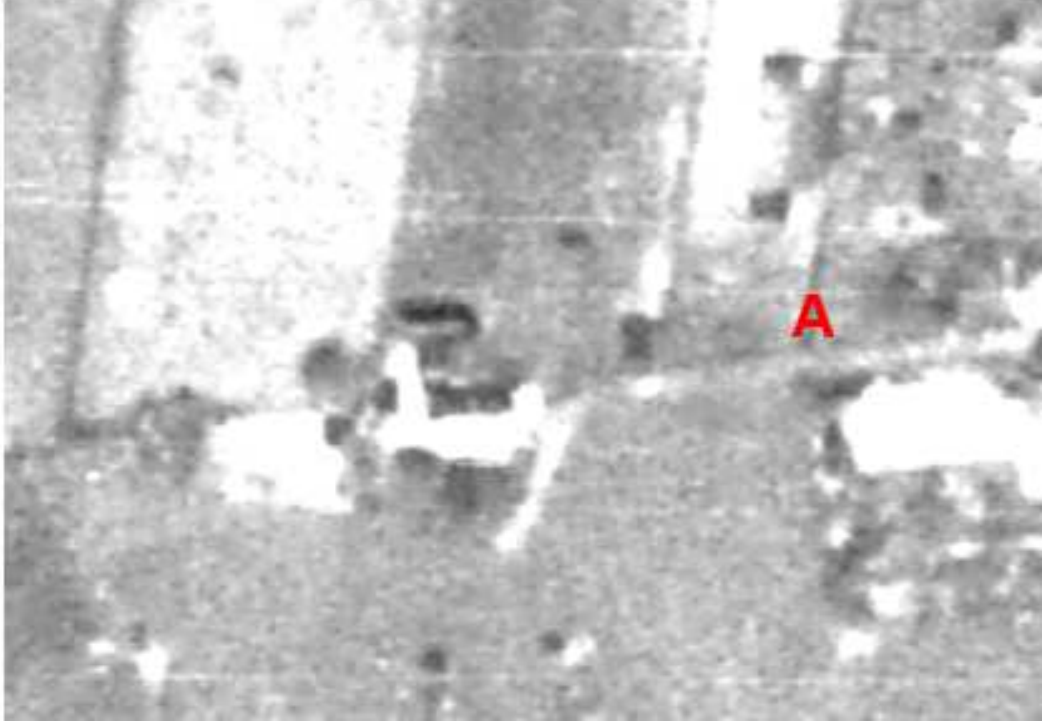
Length measured	On Site measurement (metres)	Modern OS base map (metres)
C-S	19.36	18.89
D-C	6.11	6.76

C-F	18.16	17.76
E-F	6.36	6.75
F-W	5.65	7.22
E-H	27.58	28.9
G*-D	12.07	11.57
G*-N	24.4	26.6
G*-G	1.5	Not possible to measure from map

G\* - measured from tree south of G on plan – the intersection of N-S field boundary with alignment of the northern wall of the house.

n.b. Site measurements were taken using a laser distance meter (Stanley TLM99). Map measurements were made using the measurement tool on ESRI ArcView GIS.

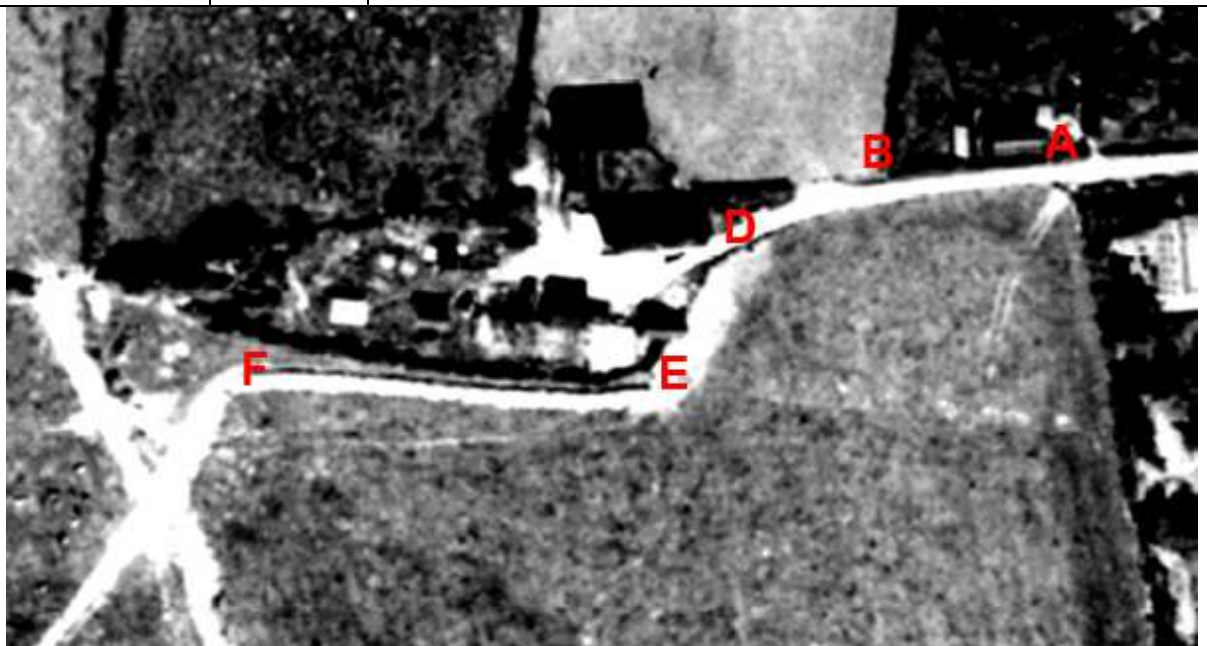
Observations		<p>At a site inspection carried out in October 2014 measurements were taken to establish which (if either) historical boundary of the track coincided with the current boundary of the property with the field. The measurements taken suggest that the modern OS MasterMap does reflect the reality on site with a tolerance of <math>\pm 1/2</math>m. However, the fairly new fence at point W is closer to the house than the OS MasterMap suggests. It was also noted that there was a greater difference between the site and map measurements between points E-H but this could be accounted for because the distance was outside the range of the laser measurement tool in the prevailing light conditions. It should also be noted that the position of point G and point G* is imprecise as there was no clear physical feature to measure from.</p> <p>The site survey confirmed that the current boundary of the property reflects more closely that of the southern boundary of the enclosed track shown in 1932 and this confirmed the County Council's original view that at least part of the approximately 4 metre wide enclosed track that existed in the 1930s had subsequently become absorbed into the garden of Field House.</p> <p>Use of the overlay confirms the measurements taken on site and the view that the historical route of the footpath lies predominantly within the garden of Field House between point D and point F. i.e. that Route 1 and not Route 2 existed in the 1930s.</p>
Investigating Officer's Comments		<p>Route 1 existed on the ground as an enclosed track which was approximately 4 metres wide in 1930 and now lies predominantly within the garden of Field House between point D and point E as shown on the overlaid map.</p>

<b>Aerial Photograph<sup>2</sup></b>	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 photograph is poor and the necessary detail required cannot be seen.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch OS Map</b>	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.

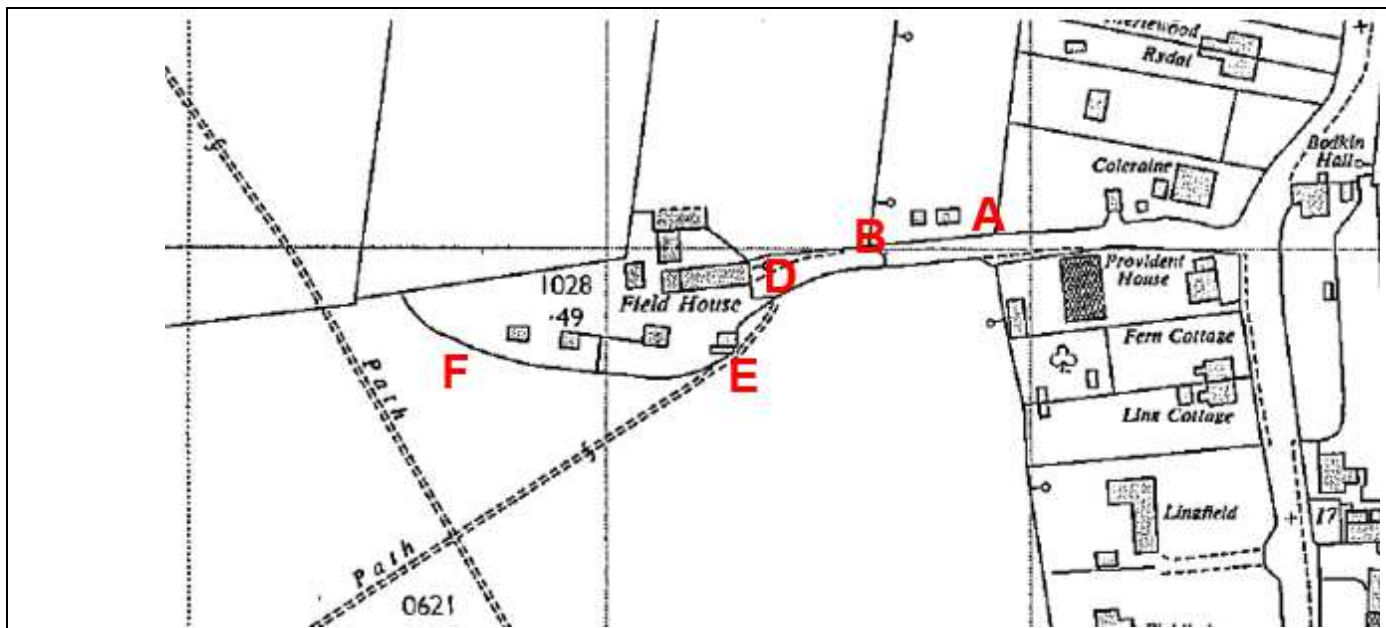
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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



Observations		Route 1 is shown as an enclosed track as it was shown on the 1932 25 inch Ordnance Survey Map. Route 2 is not shown on the map.
Investigating Officer's Comments		The route available to be used by the public during the 1950s when the Definitive Map was being prepared was likely to be the enclosed track along which the definitive route of Pilling Footpath 22 was recorded. Route 2 probably did not exist in 1955.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.




Observations		<p>Route 1 can be clearly seen as a worn track between point A-B and continuing to point D. Beyond point D a light coloured strip indicative of a substantial track can be seen both into Field House and also outside the curtilage in a south westerly direction passing close to two small buildings which are within the curtilage of Field House (as shown on the 1932 25 inch OS). It is not possible to see whether this worn track is enclosed from the field. The worn track then turns at point E to continue in a more westerly direction to point F but it appears that immediately to the north of the visible track is a fence or hedge then a gap and then another fence/hedge. Between these two hedges/fences there appears to be an enclosed strip of land which is open and accessible at either end and a worn trod is visible along this strip.</p> <p>From point A access appears to be available into the field south of the track but there is no worn track parallel to the access road along the field edge (Route 2).</p>
Investigating Officer's Comments		<p>In the 1960s it appears that access along Route 1 was available along a clearly defined access track from point A to point D. From point D in a south westerly direction a substantial track – probably created by farm vehicles and/or animals - can be seen. It is not clear whether this would be inside, outside or straddling the modern fence. From point E it then appears that the farm vehicles/animals were taking a route on the south side of the enclosed strip that was shown clearly as the track around the property on the 1932 OS map although the enclosed section from point E to point F can still be seen. The photograph suggests that whilst this part of Route 1 may still have been useable a track had now come into being on the outside of the southern boundary consistent with part of Route 2 (point E to point F) but there is no indication that this use was public.</p>
<b>1:2500 OS Map SD 4048 &amp; SD 4148</b>	1968	Further edition of 25 inch map reconstituted from former county series and revised in 1967 and published 1968 as national grid series.



<p>Observations</p>		<p>By 1967 it appears that access was no longer gated just west of point A but that a gate had been erected across the route at point B. An enclosed track is still shown between point A and point D which is consistent with the Definitive Map route of Pilling Footpath 22. West of point D access to Field House (now labelled as such on the map) appears to be gated with a track (double pecked line) and labelled as 'path' passing from point D to point E and then continuing in a south westerly direction to an intersection of paths. Field House appears to have expanded with a number of additional outbuildings shown. The enclosed track shown on the 1932 OS map is no longer evident and the boundary of the curtilage from the field to the south between point E and point F is consistent with that shown as the southerly boundary of the former track which has effectively been absorbed into the garden.</p>
<p>Investigating Officer's Comments</p>		<p>The existence of gates across a track leading to farm premises does not necessarily preclude public access as many public rights of way are gated. It appears likely that access along Route 1 would still have been available in 1968 along the enclosed track to point D and then south west to point E. Between point E and point F access no longer appeared to be available along Route 1 but may have been available along Route 2. However, a worn track was identified by the Ordnance Survey and marked as a 'Path' to the south suggesting an alternative route may have been in use instead. The map does not provide any evidence that a route existed on the field edge south of the enclosed track between point A and point D.</p>
<p><b>Aerial Photograph</b></p>	<p>1988</p>	<p>Aerial photograph available to view at the County</p>



		Records Office and LCC Cuerden Depot.
		
Observations		<p>By 1988 it appears that the property had fallen into disrepair and few of the outbuildings that could be seen on the 1960s 25 inch OS can be identified.</p> <p>The track between point A-B-D can be seen but appears to have largely grassed over and no longer appears to be separated from the field to the south.</p> <p>The boundary around Field House looks to have largely been broken down or collapsed and is poorly defined but a darker green strip which may have been the remnants of a track around the outside edge can still be seen in the grass.</p>
Investigating Officer's Comments		<p>It still appears that the public could be using Route 1 along the track from point A to point D and would then follow Route 2 on the edge of the field around the south side of the broken property boundary to point F. It is not possible to determine whether the boundary on this photograph corresponds to any older boundary or track.</p>
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS.



Observations		The means of access immediately west of point A is unclear but could have been gated. The former track to Field House is no longer visible and the route now appears to be completely grassed over forming part of the field to point B from where a mown track can be seen leading to the property which may have been fenced on the south side but it is difficult to see. Grass from the field has been recently cut making it difficult to see whether any worn tracks existed.
Investigating Officer's Comments		It is not possible to see from the photograph any route used at the time.
<b>Aerial Photograph</b>		Most recent aerial photograph available on GIS

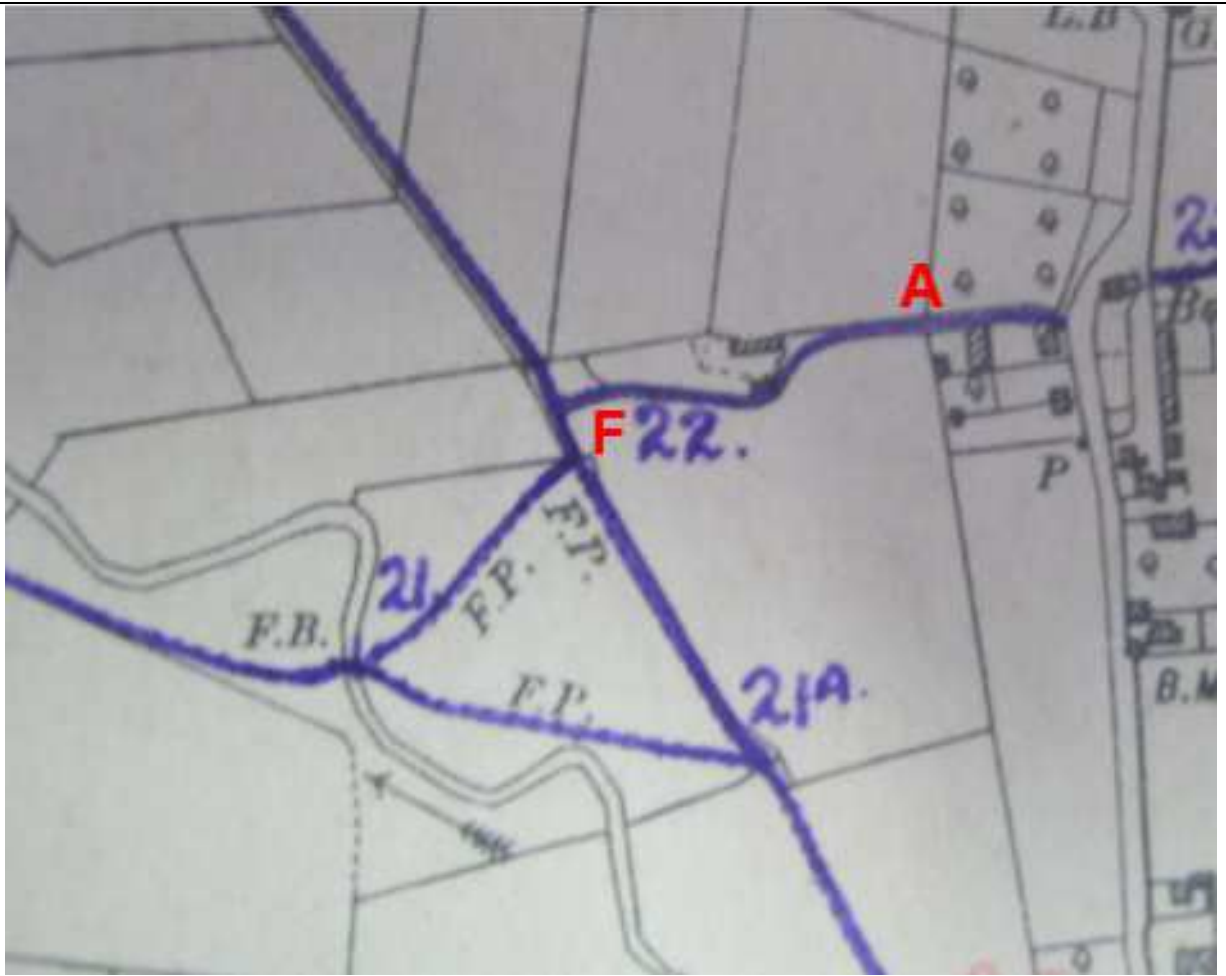


Observations		By the time that this photograph was taken the property had been redeveloped. The access track had been reinstated between point A and point D and new fencing erected around the property boundary. The route from point A along the track appears to be open and a gate can be seen south of point A providing access into the field south of the access track.
--------------	--	---

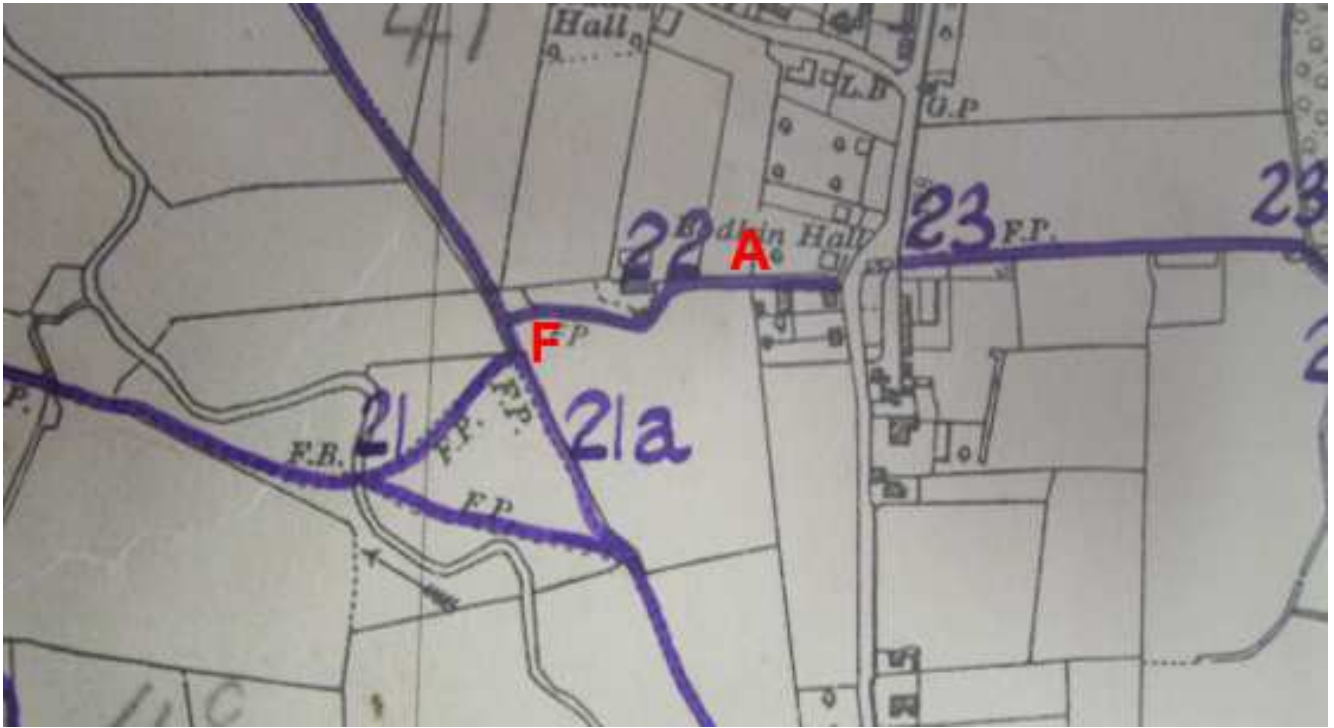
Investigating Officer's Comments		The fenced off access track between point A and point D had been reinstated as access to Field House and appeared to be accessible to the public. It was not possible to see from the photograph whether the stile existed at point C but access beyond point C appears to have been more likely to have been along the field edge, Route 2, rather than through the garden, Route 1.
<b>Definitive Map Records</b>		<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>
<b>Parish Survey Map</b>	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>



<p><b>Observations</b></p>	<p>The parish survey was prepared for Pilling in 1950 when the maps and survey cards were produced. The parish survey card provides no useful information about the location of the route other than its starting point and destination and that it was considered to be in 'fair condition'. The footpath has been drawn to follow the access track right up to the eastern side of the building that is now known as Field House and then south to point E within the boundary of Field House and then west with the red line drawn along the boundary of the property to point F. The maps were hand drawn using Ordnance Survey maps at a scale of 6 inches to 1 mile as a base.</p>
<p><b>Draft Map</b></p>	<p>The parish survey map and cards for Pilling were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a "relevant date" (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> 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 of Footpath 22 Pilling is clearly shown to follow the access track existing at that time through point A and point B towards Field House. It is not shown to go right up to Field House like it was shown on the Parish Survey map but curves round consistent with Route 1 with the thick purple line depicting the route having been drawn along the boundary of the 6 inch OS base map between points D-E-F.</p>
<p><b>Provisional Map</b></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>



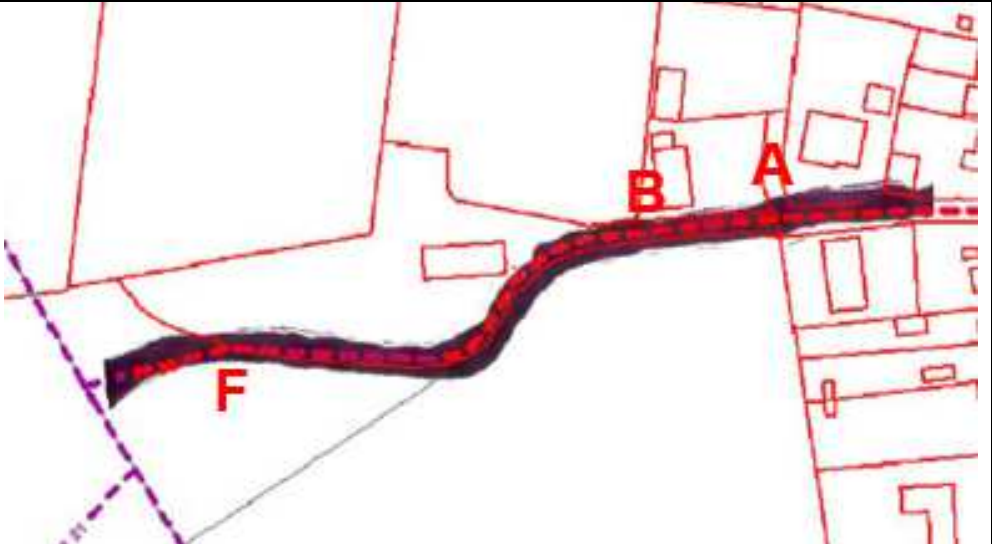
Observations

The route shown on the Provisional Map is consistent with the route shown on the Draft Map.

**The First Definitive Map and Statement**

The Provisional Map, as amended, was published as the Definitive Map in 1962.



<p>1<sup>st</sup> Definitive Map line (continuous dark purple) overlaid on modern base (Ordnance Survey Master-Map) with digitised working copy of public rights of way (red dashes)</p>		
<p>Observations</p>		<p>The First Definitive Map shows the route of Pilling Footpath 22 following the enclosed track around the property, Route 1, and does not show Route 2, the route applied to be added.</p>
<p><b>Revised Definitive Map of Public Rights of Way (First Review)</b></p>		<p>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<sup>th</sup> 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<sup>st</sup> 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.</p>



Observations

The Definitive route of Pilling Footpath 22 is again shown as being along the enclosed route and had not been legally altered or diverted from the route shown on the First Definitive Map. The first of the two map extracts above is an enlarged copy of the current Definitive Map



		(First Review). The map immediately below it is an extract of the Ordnance Survey base map used for the Definitive Map (First Review) showing more clearly the enclosed track along which the Definitive Map line of the footpath was drawn.
Investigating Officer's Comments		It is recognised that the hand-drawn lines of the various maps used in the Definitive Map process lack the precision of the Ordnance Survey base on which they were drawn. However, the maps produced as part of the process leading to the current legal document (the Definitive Map & Statement of Public Rights of Way) all show Public Footpath 22 Pilling in the same position – following the formerly enclosed track between point A and point F.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over this land.
<b>Photographs submitted by the Applicant</b>		Undated photographs submitted by the applicant.



Photograph 1



Photograph 2



**Photograph 3**

**Observations**

Photograph 1 was submitted by the applicant attached to a copy of a letter sent to Mr W Lawrenson of Abram House by Lancashire County Council on 27 September 1993. The letter makes reference to both the stile and locked gate being within the width of the path and states that no illegal obstruction of the public right of way exists.

The photograph has been taken from Public Footpath 22 Pilling looking west to point A. Across the route at point A is a padlocked field gate with a sign attached saying 'Keep out of this Field'. Adjacent to the gate on the left (south) side is a metal ladder stile that has been waymarked with a yellow arrow. A notice is present below the waymark but it is not possible to see what it says.

The County Council letter gives the details of the LCC PROW Inspector that was responsible for the area at that time – Mr J Shaw – and the car that can be seen on the photograph is known to have been owned by Mr Shaw suggesting that he took the picture when he inspected the footpath.

The applicant has stated that he purchased the property in 2005 but does not provide any information regarding whether or not he had knowledge of the area before that time.

With reference to the photograph the applicant states

		<p>that the gate and adjacent stile had been in place for 40 years and that the gate was padlocked in 1985. However he provides no information regarding the basis of that knowledge.</p> <p>Photograph 2 was also provided by the applicant. It is undated but the applicant states that the stile was "placed in position in 1971 alongside the access road to Field House to carry Footpath 22 into the field owned by Mr. Donald Lawrenson." The applicant states that this was the case when he bought the property in 2005. He does not provide any evidence to substantiate his claim that the stile had been in position since 1971.</p> <p>Photograph 3 is again undated but was submitted by the applicant and shows gated access into Field House at the time of the sale by public auction in September 2005. The gate is said by the applicant to have been erected in 1971 - no evidence is provided to substantiate this.</p>
Investigating Officer's Comments		<p>Photograph 1 shows that a field gate was locked across the Definitive Map route of Pilling Footpath 22 in 1993 and that the County Council did not appear to take any action at that time regarding the gate because a stile existed alongside it. A different view would now be taken in the same circumstances and although the gate may be accepted as a legal limitation or subsequently authorised the locking of it would not be considered acceptable. However this was common practice at that time. The access track beyond the gate is visible in the photograph and is not fenced off from the adjacent field suggesting that the public would still be able to walk along it after climbing over the stile and may have chosen to do so (as opposed to walking the route to be added) as the track would have been easier and likely to be drier underfoot.</p> <p>No evidence is provided to substantiate the applicant's claim that the stile existed since 1971 so no inference can be drawn from this submission and it is not the view of the Investigating Officer that its existence at that location meant that Route 2 rather than Route 1 was in use. Furthermore, the situation in 1971 does not necessarily assist determination of where the public right of way was recorded in the 1950s.</p> <p>Photograph 2 is undated and although the stile may have existed for a considerable period of time as stated above it is not the opinion of the Investigating Officer that its existence at that location proves that Route 2 was the one in public use instead of Route 1. It appears that the access track (Definitive Map route between point A-B-C) was not fenced off during the 1980s and 1990s and although unlawful it is not uncommon to find that</p>

		landowners padlocked field gates across access tracks that carried public rights and provided adjacent stiles.  It is not possible to know from Photograph 3 whether the public went through the gate into the property or not. It would be irrelevant to the recording of the route in the 1950s as to whether a gate had existed at this location since 1971 as claimed by the applicant.
<b>Legal Orders diverting, Stopping up or creating a Public Right of Way</b>		A search has been made at the County Records Office and of the Public Rights of Way records to check whether any legal orders have been made since Pilling Footpath 22 was originally recorded on the Definitive Map and Statement to divert or to legally stop up any part of the route.
Observations		No legal Orders diverting or extinguishing any part of the route recorded as Pilling Footpath 22 have been found.
Investigating Officer's Comments		The route of Pilling Footpath 22 has never been legally altered since it was first recorded and still exists on that line irrespective of whether or not it can be physically walked.

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

### **Landownership**

The applicant Christopher John Kelly, Sale Wheel House, Dinkley, Ribchester, Preston PR3 3XU owns some of the land in connection with this application. Donald William Lawrenson and Vera Lawrenson, Bonds Farm, Wheel Lane, Pilling, Preston PR3 6HN are also landowners of this application, part of this route is unregistered.

### **Summary**

The primary question to be answered is "what is the precise route shown by the Definitive Map and Statement?" and a subsidiary question "is the Definitive Map and Statement correct?"

On some date between 1189 and 1961 (between the start of legal memory and the relevant date of 1<sup>st</sup> Definitive Map and Statement) a public footpath came into being and was subsequently recorded as Pilling Footpath 22. In considering the line of this way the evidence leading up to the preparation of the 1<sup>st</sup> Definitive Map should be given significant weight and in the absence of any legal diversion, evidence after 1961 given relatively little weight. The greatest weight must be given to the 1<sup>st</sup> and 1<sup>st</sup> Review Definitive Map and Statement as the legally conclusive record of public rights of way at the relevant date.

The current (1<sup>st</sup> Review) Definitive Map and Statement is imprecise but the map is sufficiently clear when viewed in conjunction with a 'clean' copy of its base-map to show it follows the enclosed track around the then boundary of Field House.

The base-map used for the Definitive Map is the 1955 Ordnance Survey 6 inch map which was derived from a pre-1930 survey, almost certainly the same survey as the 1932 Ordnance Survey 25 inch map which can therefore be used to assist with precision. Therefore by measuring the position on the ground which corresponds to the position on these maps or by overlaying these maps on modern maps we can determine the correct position of Pilling Footpath 22.

The site survey confirmed that the current boundary of the property reflects more closely that of the southern boundary of the enclosed track shown in 1932 and this confirmed the County Council's original view that at least part of the approximately 4 metre wide enclosed track that existed in the 1930s subsequently became absorbed into the garden of Field House.

The County Council also constructed the overlay inserted above to compare the route of the enclosed track on the 3<sup>rd</sup> Edition 25 inch Ordnance Survey map with modern day features.

Use of the overlay confirms the measurements taken on site and the view that the historical route of the footpath lies predominantly within the garden of Field House between point D and point F and that Route 2 did not exist in the 1930s.

The second question is whether the Definitive Map and Statement is correct, bearing in mind the Trevelyan case which shows that the presumption should be that it is taken to be correct unless substantial evidence is produced to show otherwise.

The strongest support for the Definitive Map is from the 1<sup>st</sup> Definitive which shows the same line as does the draft and provisional that led to it. The parish survey map shows a very similar line except that it runs closer to the house near point D. The 1912 Ordnance Survey 25" map shows a similar line suggesting temporal continuity and that the line was established at some time between the 1890 survey and 1910 revision.

There is no evidence supporting a consistent alternative line and post-1960s structures and boundary changes would constitute unlawful interference with and obstruction of the public right of way rather than evidence of either a lawful diversion or a correction to the legal record.

To conclude, it is considered that the route recorded as Footpath 22 Pilling as part of the Definitive Map process was correctly recorded as running along the enclosed track clearly identified on the 1932 3<sup>rd</sup> Edition 25 inch OS.

It is considered that the original (legal) route of the public footpath has probably not been capable of being walked in its entirety since some point in the 1960s and that it is now substantially within the boundary of Field House between points C and F. The fact that the route between point C and point F has not been capable of being walked for such a period of time does not mean that it is no longer the legal route of the public footpath.

Because the Definitive Map route of part of the public footpath has been blocked it appears that the public have used an alternative route around the field edge but there is insufficient map and documentary evidence to identify the exact position of this route and insufficient user evidence to show it as an additional footpath. In any event this would not change the line of the public right of way which the applicant seeks to remove from his property.

## **Head of Service – Legal and Democratic Services Observations**

Information from the applicant:

The applicant states he bought Field House, a derelict cottage owned by Mr. Walter Lawrenson (Abram House, Smallwood Hay Road, Pilling, Preston, PR3 6HE) at a public auction in September 2005 and has subsequently converted it into a modern detached family home.

He then states at the time of the purchase Footpath 22 Pilling passed along Field Edge Lane and at the western boundary of Provident House a stile carried the path into the field south of Field House. The field is owned by Donald Lawrenson brother of Walter (Bonds Farm, Duck Street, Pilling, Preston, PR3 6HN).

He has included photographs to support his application – photograph 1 shows the stile provided in 1971 taking the footpath into the field alongside the access road to Field House.

Mr Kelly then goes on to state that after he purchased Field House Mr Donald Lawrenson for some reason best known to himself arranged for the footpath to be moved along the access road to the house and to continue several metres into the front garden of Mr Kelly's property to a new stile provided by Mr Lawrenson to return the path into the field.

Documents provided by the applicant:

1. Photograph 1 shows the stile placed in position in 1971 alongside the access road to Field House to carry Footpath 22 Pilling into the field owned by Mr Donald Lawrenson, this was the situation when the applicant bought the property in 2005.
2. Documents showing research into the legal line of Public Footpath No 22 Pilling, the documents include:
  - a) A letter from RPC, Temple Circus, Temple Way, Bristol, BS1 6LW in response to a complaint by Mr Kelly with concerns to the Local Authority Search report dated 9<sup>th</sup> September 2005 on behalf of PSG Franchising Limited – PSG reviewed the complaint submitted by Mr Kelly and their conclusion is as follows:

"Having reviewed your complaint, PSG are satisfied that the Report was prepared to a reasonable standard. PSG were only required to identify the footpath as it appeared on the Definitive Map. PSG are confident that this was achieved. We are not persuaded that the footpath does run through

the property and there are obvious concerns with the Council's conclusions. However, even if the footpath does run through the property, this clearly indicates a discrepancy with the Definitive Map, for which PSG are not responsible. We therefore suggest that you address this directly with the Council."

- b) A letter from David Goode to Mr Kelly dated 14<sup>th</sup> February 2013, Mr Goode responds to Mr Kelly's letter regarding the correct legal line of Public Footpath 22 Pilling. The historical maps considered in Mr Goode's letter are Ordnance Survey 25" Map 1893, 1912 & 1931, Parish Survey Map 1951, Draft Map 1953, Provisional Map 1953, 1<sup>st</sup> Definitive Map 1953, Base for Definitive Map (Ordnance Survey 6" Map 1955), Definitive (1<sup>st</sup> review) Map 1966 and Current Ordnance Survey Master-Map. The conclusion to Mr Goode's letter is that in part the current boundary of Field House coincides with the southern boundary of the formerly enclosed footpath and hence the public footpath is within the garden for much of the southern edge of the garden. However, at the eastern end of the garden that changes in the boundary position are not so clear, in part because of the position of various outbuildings, and the footpath now runs along the boundary, partially inside and partially outside the Field House boundary. It is clear that it runs along the access drive to the eastern end of the building before straddling the fence for a short distance.
- c) Document 3 is a statement from the applicant, the applicant states it has proven very difficult to establish what is the legal line of Footpath 22 from the Definitive Map and Statement, he refers to the search carried out by PSG for the Auction details and the firm is very doubtful about the conclusions reached by the County Council team and have suggested that even if the footpath does pass through the property on the ground this is not evident from the Definitive Map.  
The applicant disagrees with the conclusion reached by the County Council. The Council also seem confused as demonstrated when in the early 1990s the Council took the view that a padlocked gate across the access road (now considered by the Council to be the route of the path) to the Field House was not an illegal obstruction to the public right of way. The applicant then provides a copy of a County Council letter to Mr Walter Lawrenson dated 29<sup>th</sup> September 1993 together with photograph number which shows the padlocked gate.  
When PSG a firm carrying out legal searches are unable to interpret the Definitive Map and the County Council also in similar difficulties there is in his view an overwhelming need to modify Footpath 22. This application for a Modification Order to delete the very complex section of what has been viewed by the County Council (with some difficulty) as the legal line of Footpath 22 in the vicinity of Field House.  
The applicant then states the deleted section of Footpath 22 to be replaced by adding a section from the western boundary of Provident House through the field south of Field House. This proposed section of the footpath has, until recently, been in constant use for almost forty years with no objection from the owner, the owner will need to resite the stile he



provided in the Field House boundary to near Provident House.

- d) A letter from Lancashire County Council to Abram House (next door to Field House / Provident House) dated 27<sup>th</sup> September 1993 regarding the matter of the metal stile and the padlocked gate. Their land search revealed that neither the public footpath nor Provident House were registered, but from a site inspection and measurements taken it was evident that both the stile and the gate were within the width of the path. The County Surveyor was therefore satisfied that both are on Abrams land rather than that within the curtilage of Provident House and that no illegal obstruction of the public right of way exists.
- e) Photograph 2 shows the gate across the access road to Field House adjacent to the stile carrying footpath 22 into the Field, this situation has existed for almost 40 years and the gate was padlocked in 1985.
- f) Photograph 3 shows gated access to Field House at the time of sale by public auction in September 2005. (Gate provided 1971).

#### Information from other landowners

A letter has been received from Mr and Mrs Lawrenson, owners of the field south of Fieldhouse. They do not agree to move the footpath to the broken line as shown on the committee plan. They are happy to follow the footpath along the road to stile referenced A on a plan they submitted (point C on the Committee plan) and then move into the field and follow the new proposed section towards west.

#### **Assessment of the Evidence**

The Law - See Annex 'A'

In Support of the Proposal to add A-E-F

Available route

Acknowledgement of present landowner of part of route from just south of C to point F

Against Accepting the Proposal to add A-E-F

Insufficient evidence from documentary or user evidence

No present user evidence for the route acknowledged as acceptable by present landowner

In Support of the Claim to delete A-B-C-D-F

No real cogent evidence of error in 1966 sufficient to delete

Against Accepting the Claim to delete A-B-C-D-F

Initial presumption that it exists

The evidence needed to remove a public right from such an authoritative record will need to be cogent

No objections to it being shown on the Definitive Map (First Review)

## Conclusion

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

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 (A-B-C-D-F) was first shown on the Definitive Map (First Revision) dated 1975 but with a 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. In caselaw (Leicestershire case) Collins J held that in these circumstances, “it is not possible to look at s53(3)(c)(i) (adding a route) and s53(3)(c)(iii) (deleting a route) in isolation because there has to be a balance drawn between the existence of the definitive map and the route shown on it which would thus have to be removed” He went on “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 M where you have a situation such as you have here, it seems to me that the issue is really that in reality section 53(3)(c)(iii) will be likely to be the starting point, and it is only if there is sufficient evidence to show that that was wrong – which would normally no doubt be satisfied by a finding that on the balance of probabilities the alternative was right – that a change should take place. The presumption is against change, rather than the other way round”.

It is therefore suggested that the Committee first consider whether the claimed section A-E-F 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 A-B-C-D-F was recorded as on the Definitive Map in error in 1966.

It is suggested that Committee, having considered the map and documentary evidence presented, may consider that there is no evidence by way of the maps and documentary evidence that the route A-E-F was already a footpath in law by 1966 . More recently the present owners seem content that there be a public footpath south of the fenceline on their land from the stile at point C westwards to point F but at the present time there is no evidence of public user for that modern route. A dedication of a highway by an owner needs evidence of acceptance by the public. There may well shortly be evidence of a modern footpath coming into existence but not one in existence in 1966 and therefore no evidence on balance of an alternative route in 1966 to indicate an error in recording line A-B-C-D-F as Footpath 22.

Committee is therefore advised to look at the evidence to see if the recording of Footpath 22 on A-B-C-D-F was in error. It is suggested that there is no cogent evidence of such an error. The enclosed route which used to exist at this location was recorded as carrying the line of the public route. It is advised that the evidence is not sufficient to overcome the presumption that it exists. There is no sufficient cogent evidence to satisfy the test to delete the footpath.

It is therefore advised that the application to delete be not accepted and the application to record a public footpath on A-E-F also be not accepted

**Alternative options to be considered - N/A**

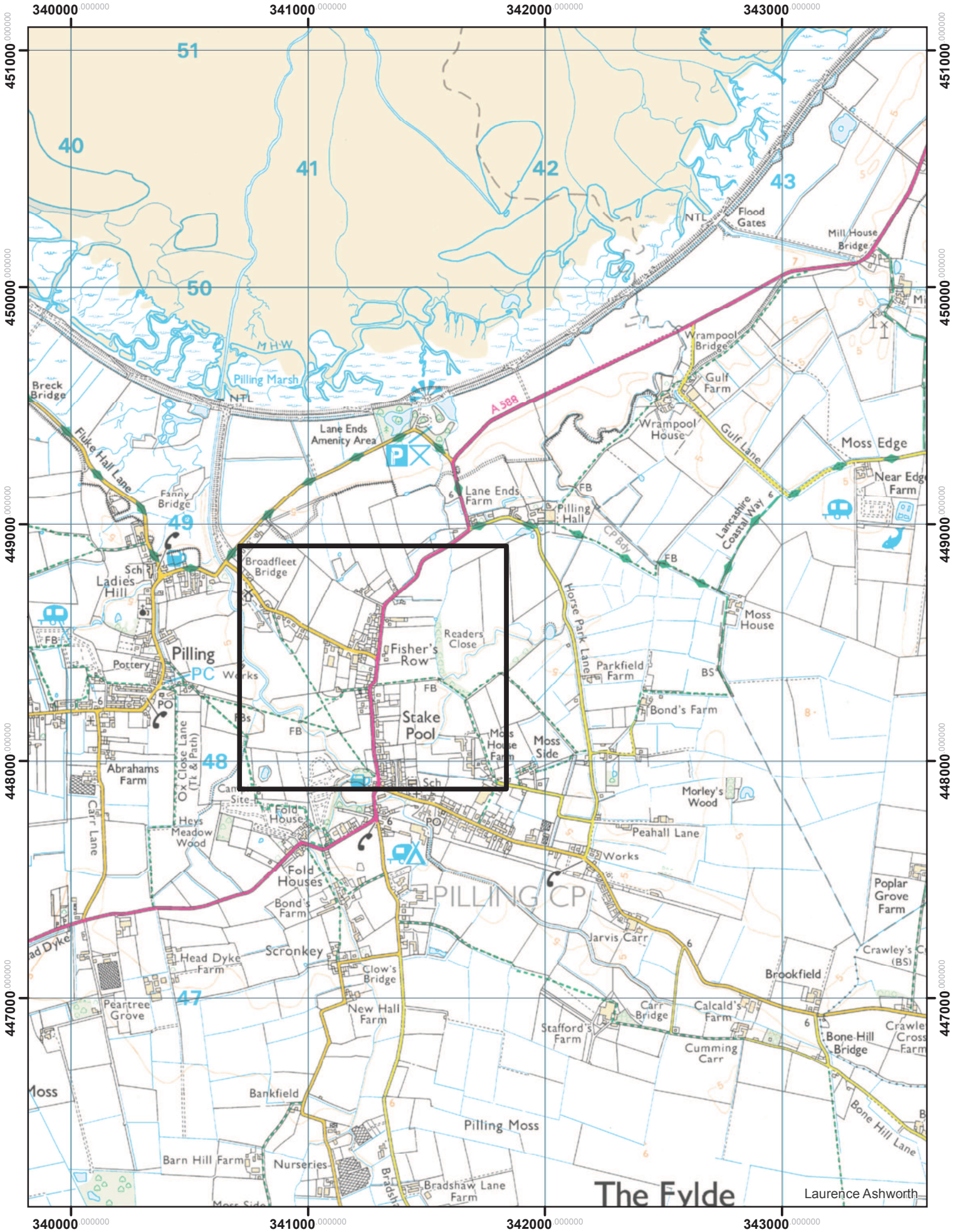
**Local Government (Access to Information) Act 1985**  
**List of Background Papers**

<u>Paper</u>	<u>Date</u>	<u>Contact/Directorate/Tel</u>
All documents on File Ref: 804-553	Various	Megan Brindle , 01772 535604, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A





Steve Browne  
Interim Executive Director  
for the Environment

**Wildlife and Countryside Act 1981**  
**Claimed deletion of part of Public Footpath 22 Pilling and**  
**claimed addition of a parallel public footpath, Pilling, Wyre Borough LOCATION PLAN**

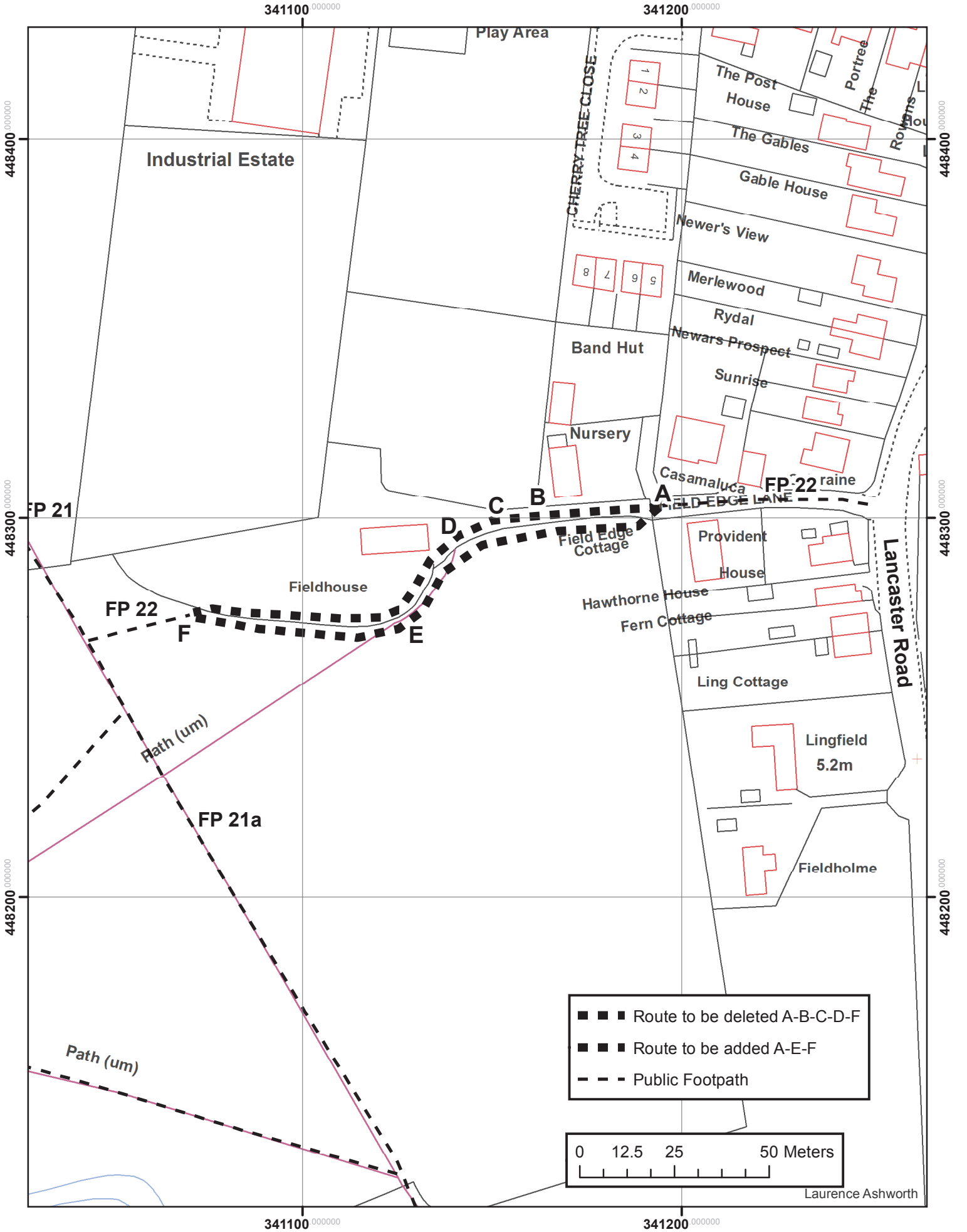
1:20,000



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320









## Regulatory Committee

Meeting to be held on 13 May 2015

Electoral Division affected: Thornton Cleveleys North
--

### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Application

Application to add a public footpath from Ormerod Street to Gamble Road, Thornton Cleveleys, Wyre Borough to the Definitive Map and Statement of Public Rights of Way

File No. 804-557

(Annex 'A' refers)

Contact for further information:

Miss M Brindle, 01772 535604, Legal and Democratic Services

[Megan.brindle@lancashire.gov.uk](mailto:Megan.brindle@lancashire.gov.uk)

Mrs J Elliott, 07917 836626, Planning and Environment

[Jayne.elliott@lancashire.gov.uk](mailto:Jayne.elliott@lancashire.gov.uk)

### Executive Summary

An application for a public footpath from Ormerod Street to Gamble Road to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-557.

### Recommendation

1. That the application for a public footpath from Ormerod Street to Gamble Road to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-557, be accepted
2. That an Order be made pursuant to Section 53(2)(b) and Section 53 (3)(b) and Section 53(3)(c)(i) the Wildlife and Countryside Act 1981 to add a public footpath from Ormerod Street to Gamble Road to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-F.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

### Background

An application has been received for a footpath extending from a point on Ormerod Street to a point on Gamble Road, a distance of approximately 500 metres, and

shown between points A-F 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 Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

Wyre Borough Council has been consulted and no response has been received so it is assumed they have no comments to make.

There is no parish council for this area.

Claimant/Landowners/Supporters/Objectors

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in ‘Advice – **Head of Service** -Legal and Democratic Services’ Observations’.

## **Advice**

## Head of Service – Planning and Environment'ss Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (Square SD)	Description
A	3392 4349	Junction of route with Ormerod Street (now inaccessible due to safety fencing around perimeter of development site)
B	3386 4353	Route passes through gateway (no longer accessible or evident on ground due to development)
C	3384 4369	Route passes through gateway (no longer accessible or evident on ground due to development)
D	3381 4379	Route passes through gap in hedge with adjacent gatepost
E	3378 4391	Route crossed by wooden post and rail fencing
F	3378 4394	Junction of route with Gamble Road

### Description of Routes

The total length of the route is approximately 500 metres.

An initial site inspection was carried out in June 2014 to verify the application plan and photographs of the route were taken. A further inspection was carried out in March 2015 by which time the route between point A and point D was no longer accessible due to the site being fenced off and the construction of a community sports complex and training ground being well under way.

In June 2014 it was possible to gain access to the application route from Ormerod Street at point A on the Committee plan. Three large concrete blocks were positioned across the start of the route which would prevent vehicular access but which did not prevent pedestrians. Broken fencing and barbed wire was evident on either side of point A but this did not prevent access and there were no signs indicating whether the application route was considered to be public or private at this point.

From point A the application route followed a worn path, visible in the long grass, approximately 0.5 metres wide, in a north westerly direction to point B. The path was unsurfaced but appeared to have become worn as a result of significant use.

At point B the route passed over a concrete strip approximately 3.5 metres wide and 6 metres long and passed through the remains of a gateway (gateposts in situ but no gate). The concrete strip looked like it may have been laid at some point in the past to prevent the gateway becoming muddy.

Beyond point B the application route continued in a northerly direction across a grassed area with a worn path approximately 0.5 metres wide visible throughout the full length. Immediately south of point C it passed to the east of a pond alongside which the path widened to follow a worn track approximately 3 metres wide.

At point C the route passed through gateposts (no gate) and continued in a generally northerly direction across a grass field along a 0.5 metre visible worn track on the ground to point D.

At point D the application route passed through a gap in a broken hedge where a wooden gatepost was situated on the east side of the path. An old sign stating 'Private Property Keep Out' was nailed to the post but due to its position it was not immediately apparent whether the sign indicated that the land to the north or to the south of point D was the private land referred to.

From point D the application route continued in a generally northerly direction to cross a well maintained playing field. No worn path was visible but it was possible to walk the application route to point E where the route was crossed by a wooden post and rail fence and brambles that were growing along the fence line. The fence was broken down at various points east and west of point E but it was difficult to climb the fence at point E.

Beyond point E the application route continued for approximately 50 metres across rough grass to exit onto Gamble Road at point F at which point there was the remains of some wooden posts and a small mound of earth running parallel to Gamble Road. No signs indicated the existence of the application route at point F.

When the route was re-inspected in March 2015 it was no longer possible to walk between points A and point D as the land had been fenced off and any evidence of a worn path removed as part of the construction of the football pitches and sports facilities.

The route between points D-E-F remained unaltered from when it had been inspected in 2014 with the exception of a football pitch being marked out on the playing field between point D and point E which it would be necessary to cross if walking the route applied for.

### **Map and Documentary Evidence**

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



Observations		The application route is not shown. Pool Foot is shown on the map south of the land crossed by the route but the two roads between which the application route runs are not shown.
Investigating Officer's Comments		The route under investigation probably did not exist in 1786.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads.
Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route under investigation probably did not exist in 1818.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most

		helpful that had yet been achieved.
Observations		The route under investigation is not shown. Pool Foot is shown but the two roads between which the application route is said to run are not shown.
Investigating Officer's Comments		The route under investigation probably did not exist in 1830.
<b>Canal and Railway Acts</b>	1877	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 could not 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 land affected by the application was not crossed by any proposed railways or canals.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1839	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 application route is not shown on the Tithe Map and there is no reference to its existence in the Tithe Schedule.

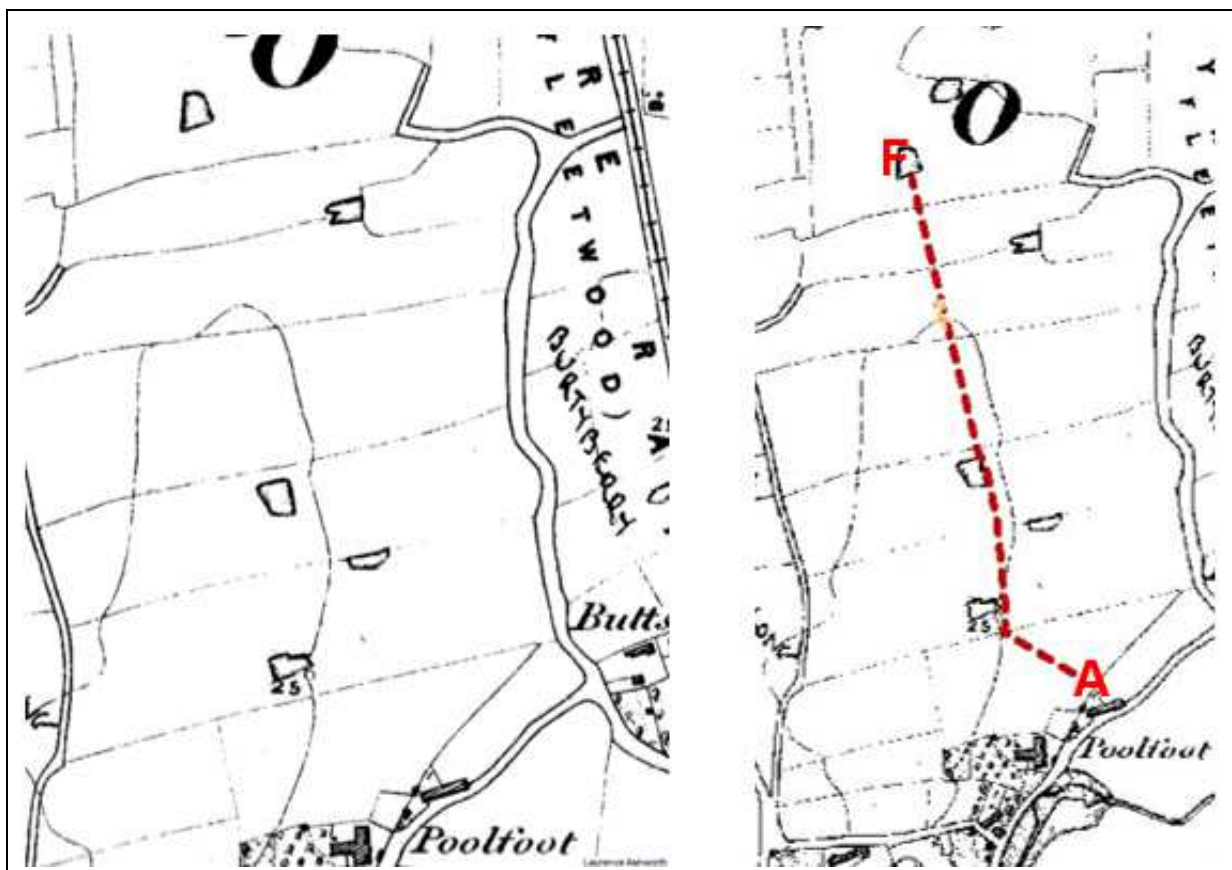
Poolfoot is shown (but not named on the map) and it can be seen that point A is located north of the property but is not linked to the road past the farm. The route, if it existed, would cross 6 field boundaries between point A and point F and there is no indication that access existed through

		these boundaries.
Investigating Officer's Comments		It is considered very unlikely that the application route existed in 1839.
<b>Inclosure Act Award and Maps</b>		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		No Inclosure Award for the area crossed by the route under investigation has been deposited in the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848. <sup>1</sup>

---

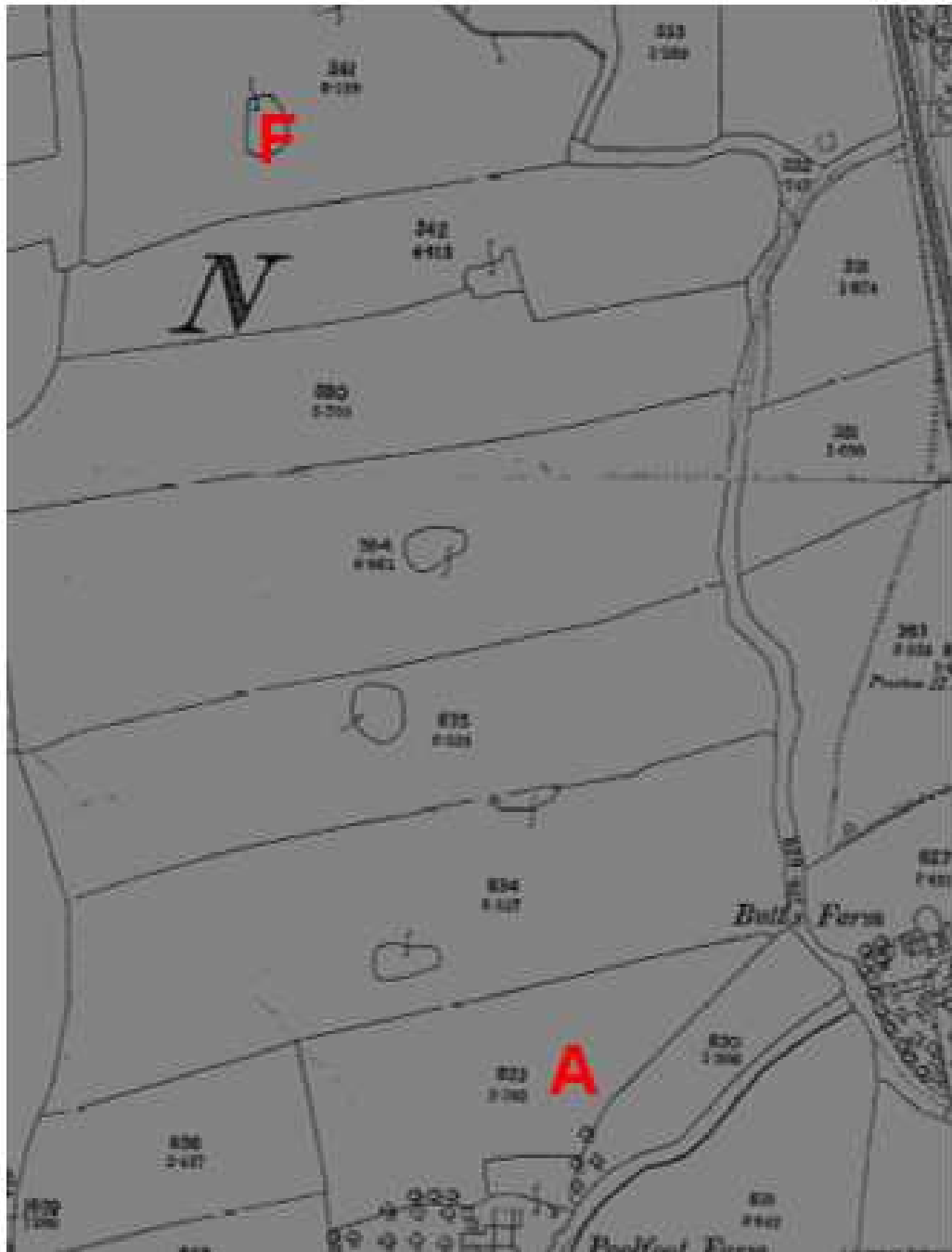
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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





<p>Observations</p>		<p>Two map extracts are provided above, the one on the left shows the land as recorded by the Ordnance Survey in 1848 and the one on the right is the same map showing the application route overlaid onto it.</p> <p>The application route is not shown on the 1848 map. Poolfoot is shown and it can be seen that point A is located north of the property but is not linked to the road past the farm. The route, if it existed, would cross 6 field boundaries between point A and point F and there is no indication that access existed through these boundaries. The application route would have terminated at the edge of the pond at point F.</p>
<p>Investigating Officer's Comments</p>		<p>It is considered very unlikely that the application route existed in 1848. It is not shown as a worn track on the map and passes through at least 6 field boundaries. The start and finish points (point A and point F) do not appear to have been publicly accessible at that time.</p>
<p><b>25 Inch OS Map</b></p>	<p>1891</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and</p>

published in 1891.



Observations

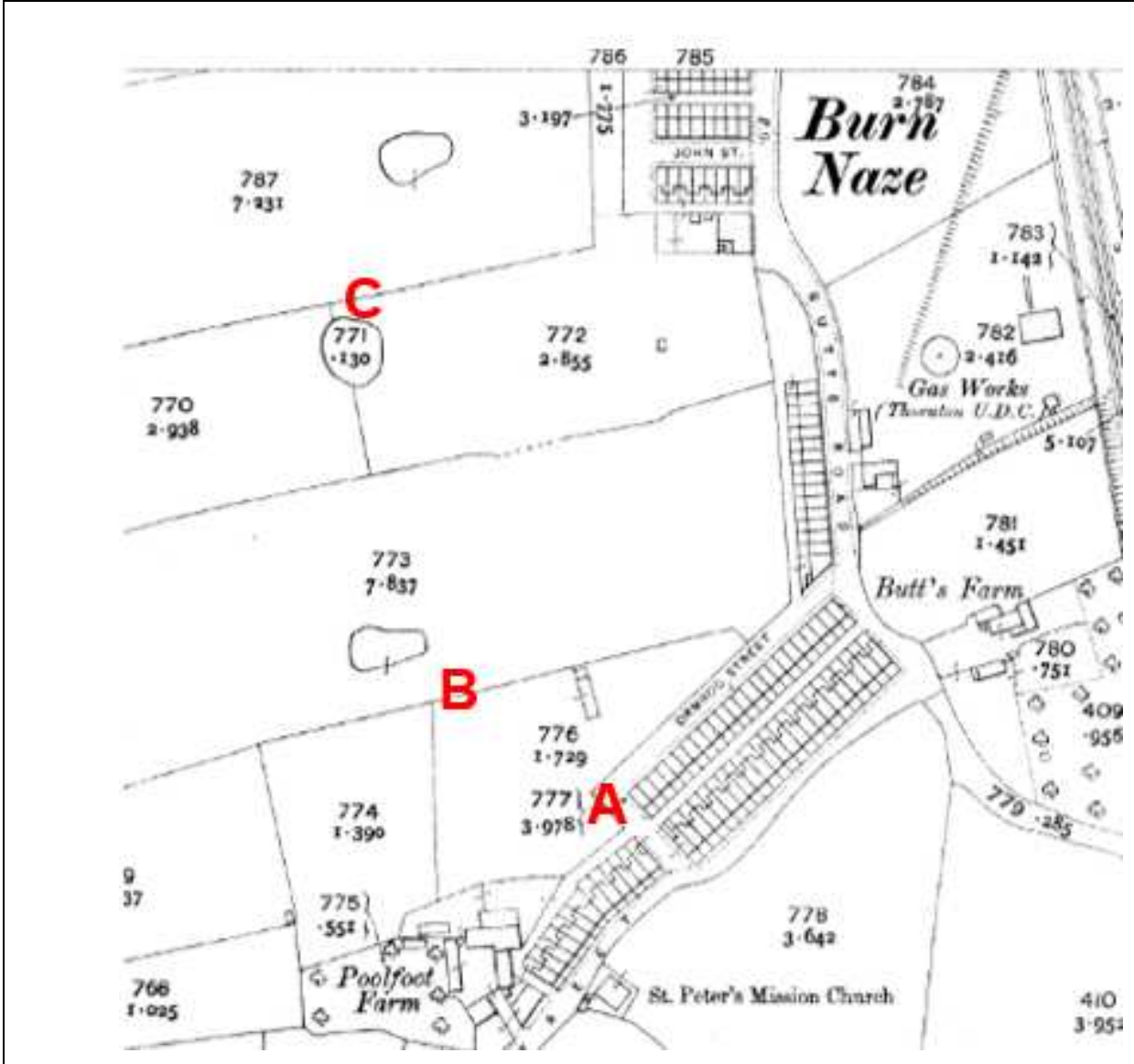
The application route is not shown on the map. The road and field layout do not appear to have changed since the area was surveyed for the 6 inch map in 1844.

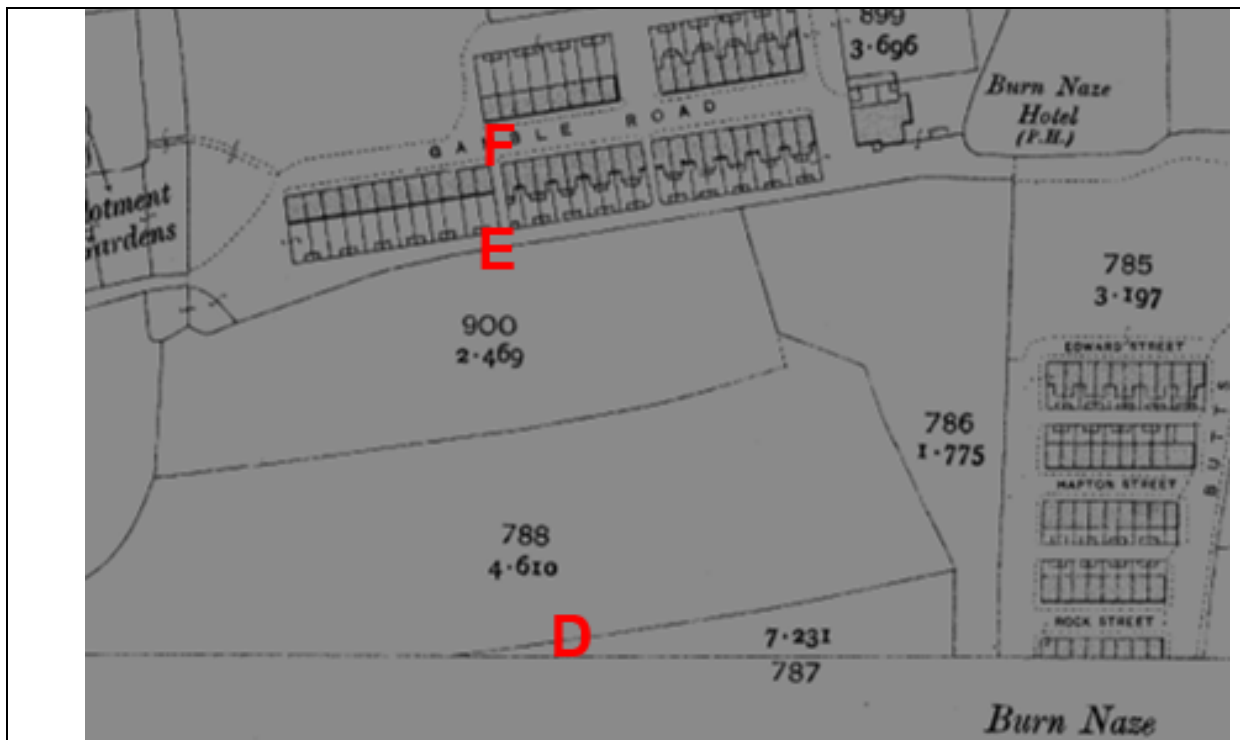
Investigating Officer's Comments

It is considered very unlikely that the application route existed in 1891. It is not shown as a worn track on the map and passes through at least 6 field boundaries. The start and finish points (point A and point F) do not appear to have been

		publicly accessible at that time.
<b>Finance Act 1910 Map</b>	1910	<p>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.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		There are no Valuation Maps for the area crossed by the Application route in the County Records Office. The Valuation Book has been deposited but without knowing the hereditament numbers concerned it is not possible to check the appropriate entries.
Investigating Officer's		No inference can be drawn.

Comments		
25 inch OS Map	1912	Further edition of the 25 inch map re-surveyed in 1890, revised in 1909 and published in 1912.



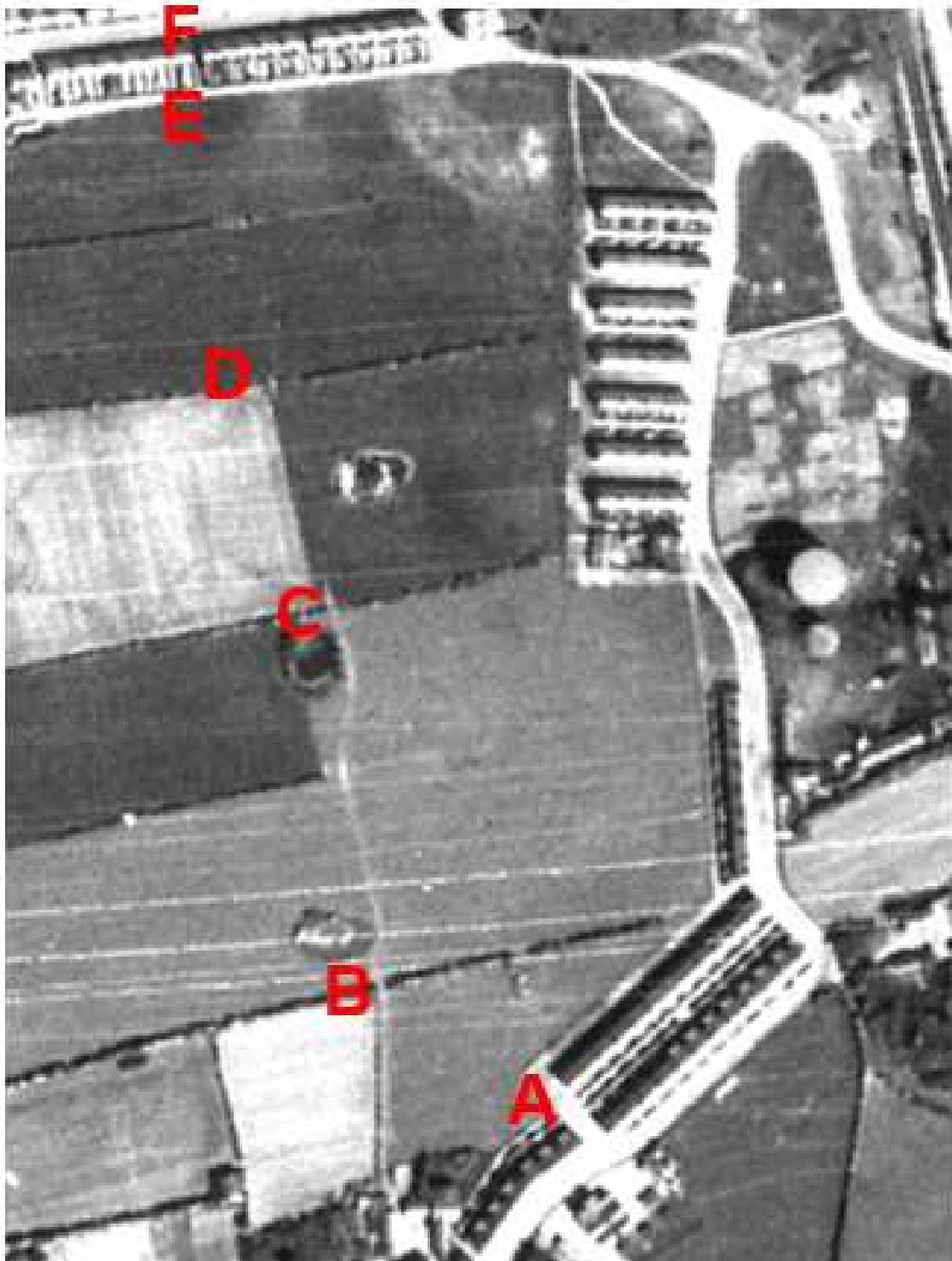


<p>Observations</p>		<p>By 1912 it can be seen that Ormerod Street had been constructed and Poolfoot is now described as Poolfoot Farm. The application route is not shown. It would still be necessary to pass through 6 field boundaries between point B and point E and there does not appear to be an open junction at point A.</p> <p>At point E the application route crosses a boundary and then passes along a gap that has been left between rows of terraced houses built along the south side of Gamble Road.</p>
<p>Investigating Officer's Comments</p>		<p>It is considered very unlikely that the application route existed in 1912. It is not shown as a worn track on the map between point A and point E and passes through at least 7 field boundaries. The start and finish points (point A and point F) now appear to be accessible from roads constructed since the previous edition of the map was published but there is no evidence that access was available at point A. Between point E and point F a route appears to have been constructed between the terraced housing providing access to the backs of the properties. This appears to have been open at point F and may have been accessible to the public.</p>

<b>25 Inch OS Map</b>	1932	Further edition of 25 inch map (surveyed 1890, revised in 1930 and published 1932.
Observations		The land crossed by the application route is shown in the same way as on the 1912 Ordnance Survey Map. The application route is not shown with the exception of the gap between the terraced houses between point E and point F
Investigating Officer's Comments		The application route probably did not exist with the exception of the section between point E and point F.
<b>Aerial Photograph<sup>2</sup></b>	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.

---

<sup>2</sup> 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.

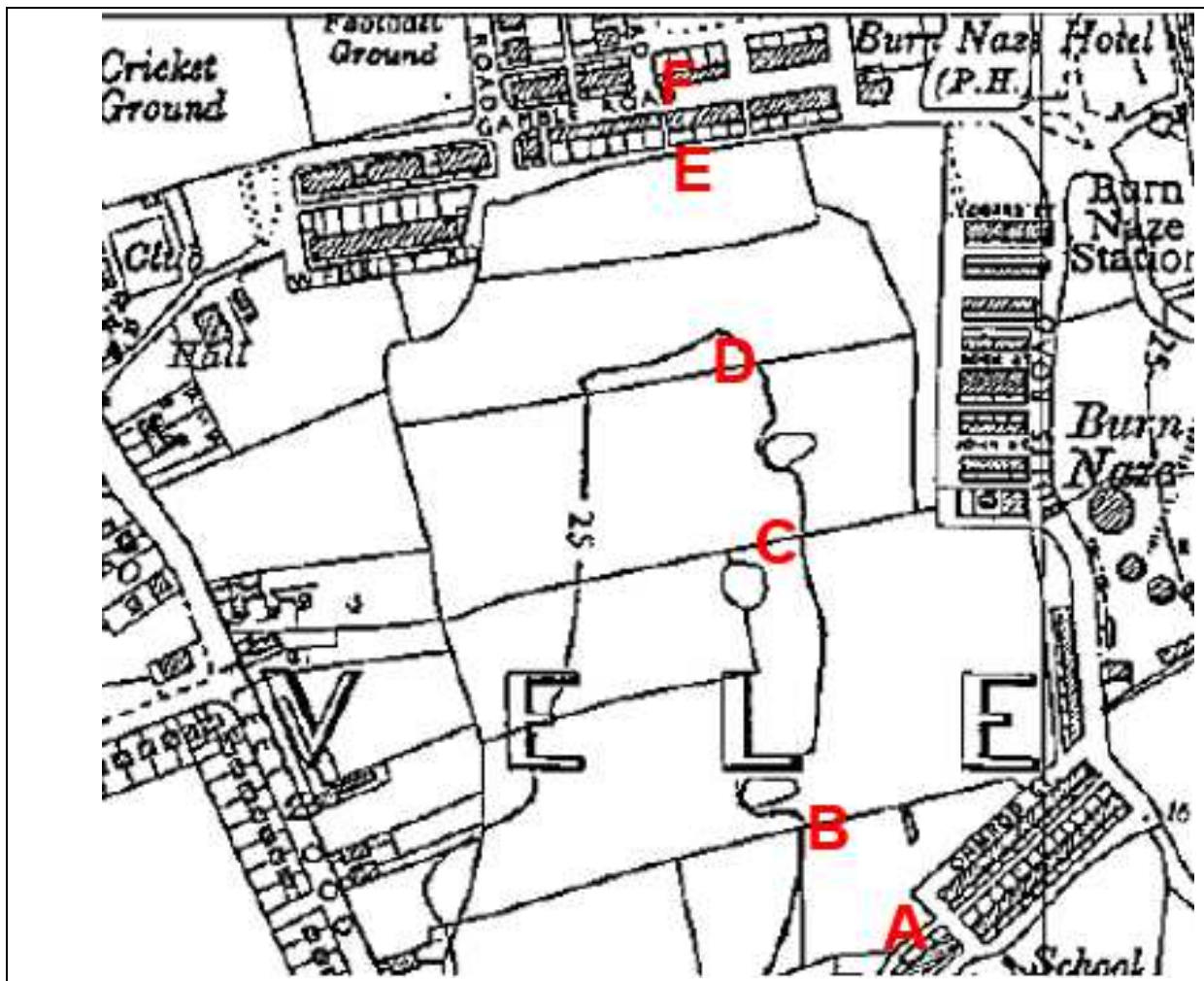


Observations

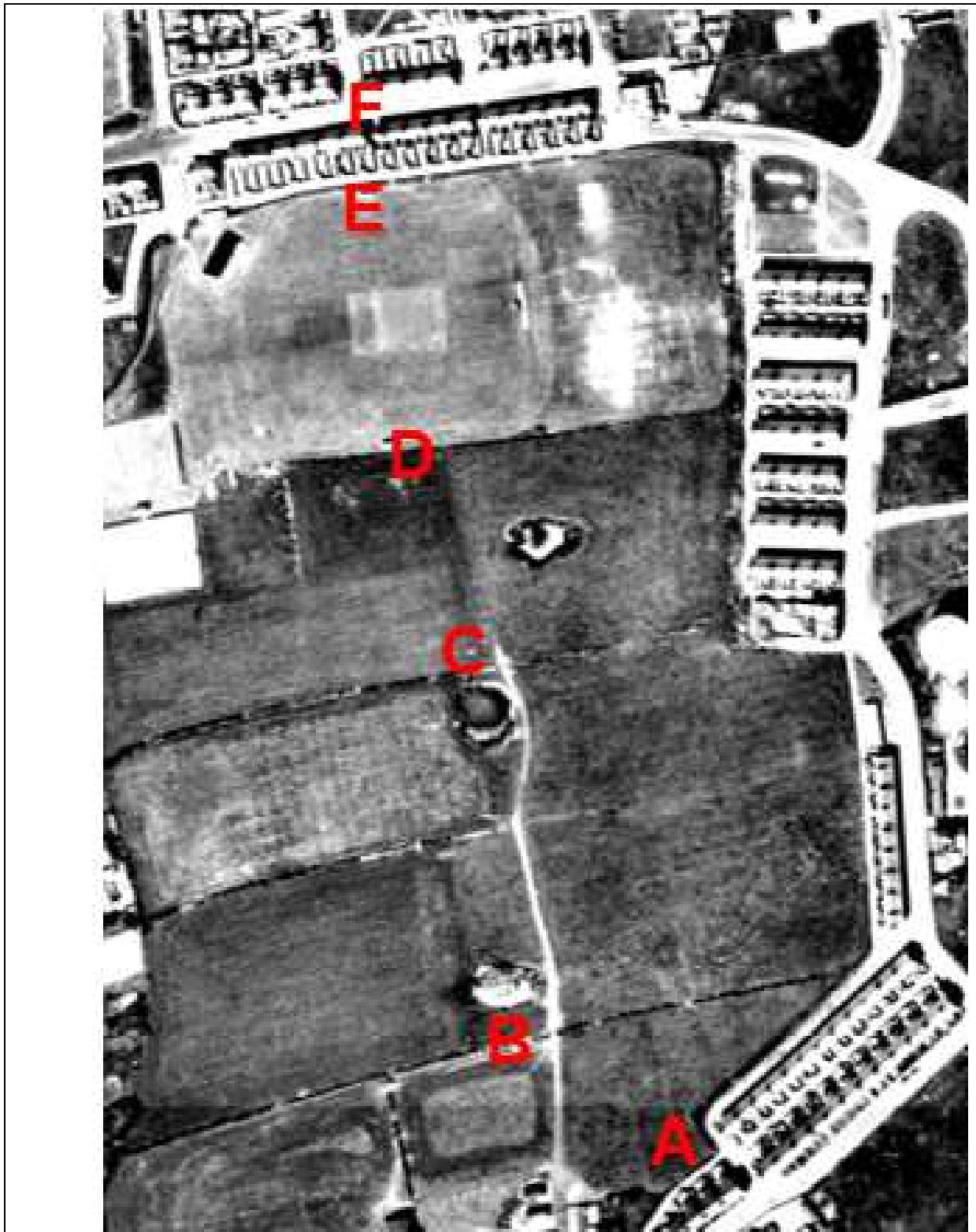
The earliest aerial photograph examined is of good quality. It does not show the application route existing as a worn track between point A and point B. A gap in the hedge can be clearly seen at point B and a track leads up to this gap from Pool Foot Farm. Between point B and point C a route near to but not quite following the

		<p>application route can clearly be seen as a worn track on the ground and a route appears to exist through the hedge at point C. Between point C and point D the route cannot be seen as a worn track but it appears to cross a field which had possibly been cut to the west of the route but not cut to the east. Access through the hedge appears to be available at point D. Between point D and point E the route is not visible on the ground. A hedge/fence line can be seen midway between the two points which was marked on the earlier editions of the Ordnance Survey maps. This appears to be largely broken down and it looks like access would be available between point D and point E along the application route.</p> <p>The gap between the houses between point E and point F is visible but it is not possible to see whether there was a fence across the route at point E.</p>
Investigating Officer's Comments		<p>With the exception of point E to point F the application route crossed farmland. Part of the route is visible as a track but this appears to be an access track from Pool Foot Farm.</p> <p>The application route may have been accessible but there is no evidence from the photograph confirming the existence of a through route.</p>
<b>6 Inch OS Map</b>	1957	<p>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 1930-45 with major changes revised in 1950.</p>



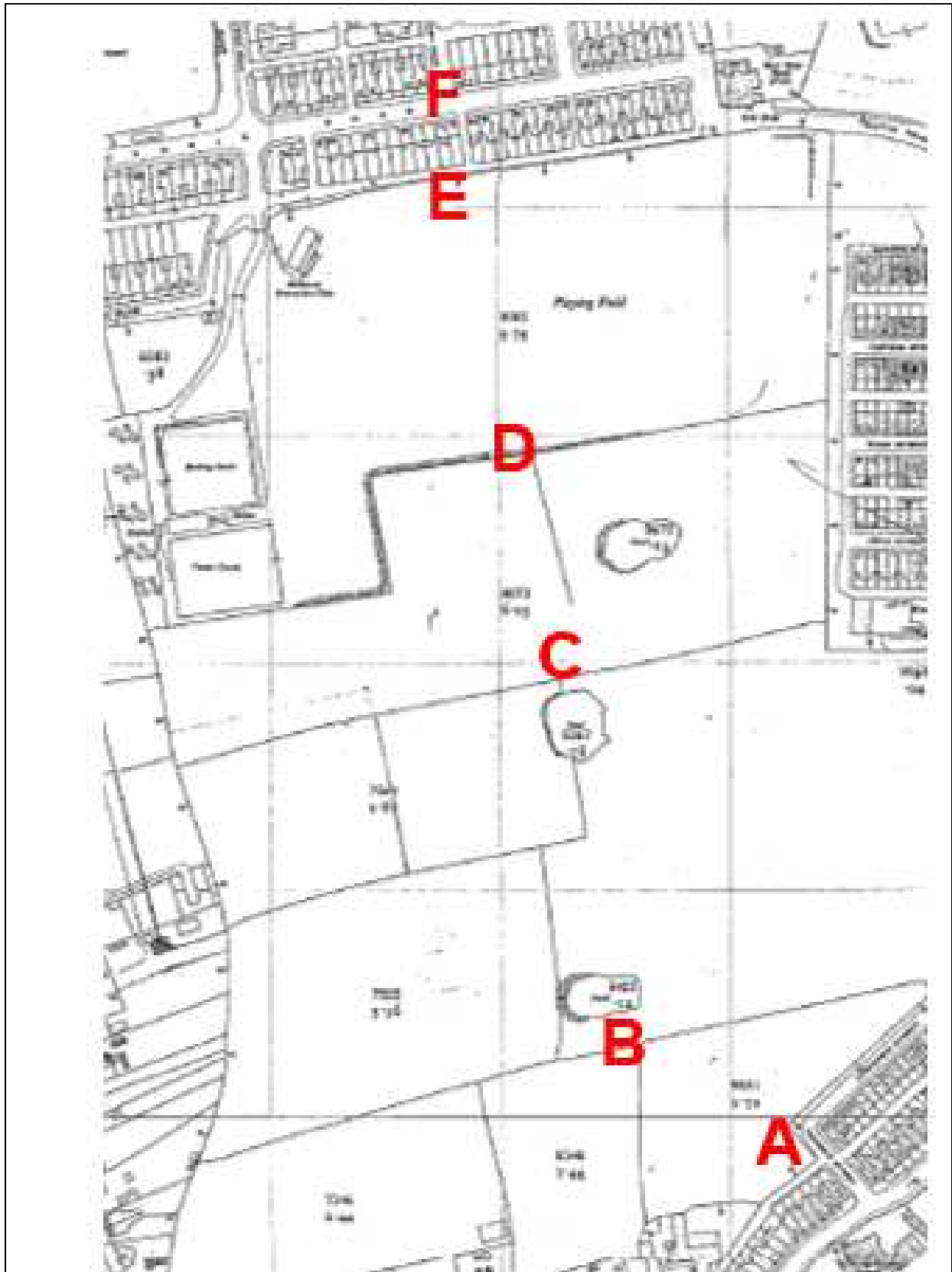


Observations		The application route is not shown and the land crossed by the route appears unaltered from the earlier edition of the 25 inch Ordnance Survey Map.
Investigating Officer's Comments		The application route probably did not exist when the map was revised between 1930-1950.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



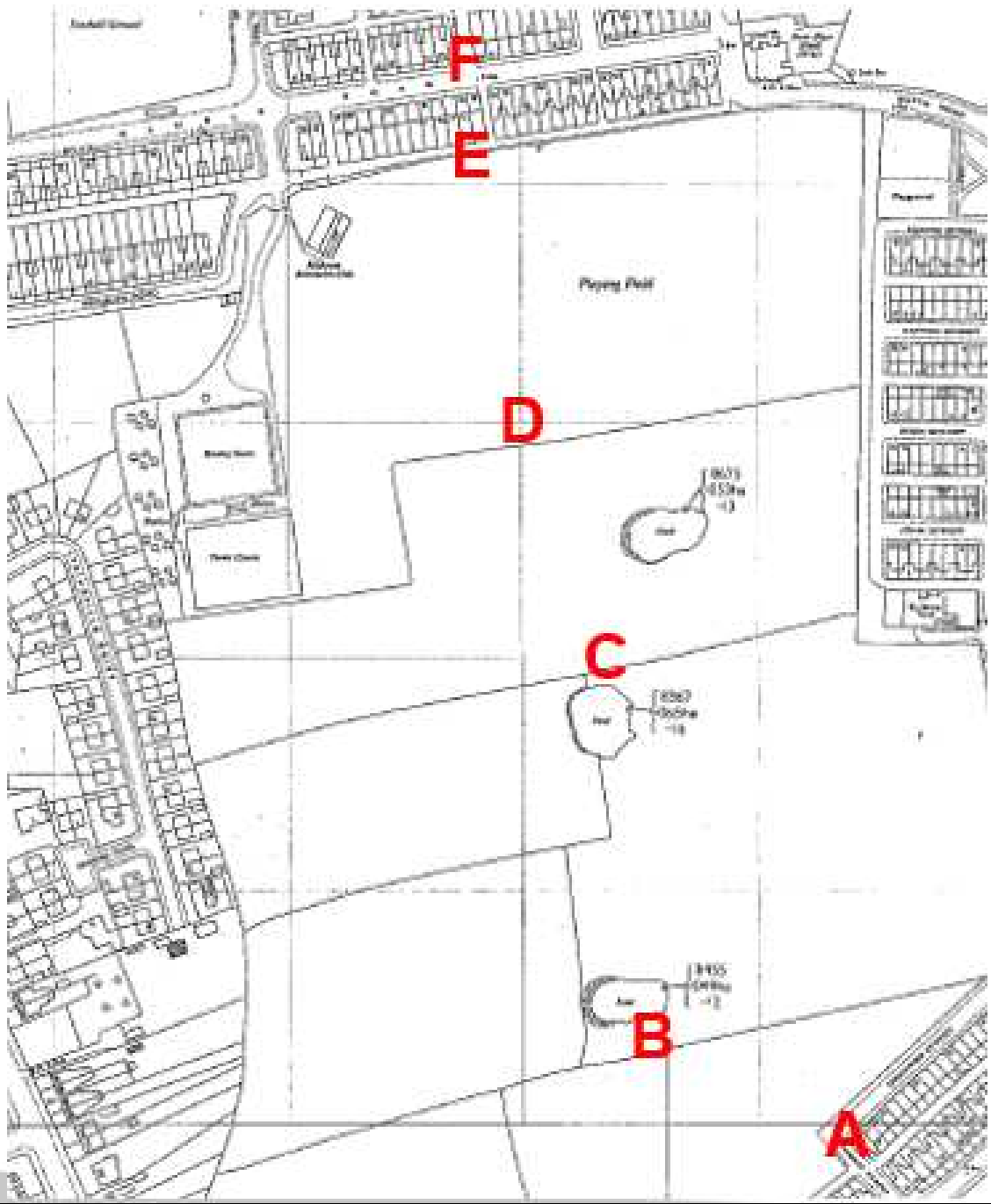
<p>Observations</p>	<p>The application route is not shown between point A and point B. A substantial farm track is shown from Pool Foot Farm to point B and then along a line near to but slightly off the line of the application route to point C. There appears to be access into the field at point C but there is no worn track from</p>
---------------------	---

		<p>point C to point D and there does not appear to be access through the hedge at point D.</p> <p>Between point D and point E the use of the land has changed since the 1940 aerial photograph was taken and the line of the application route crosses directly over the square of a cricket pitch to point E. There is no visible route between point D and point E.</p> <p>There appears to be a gap in the boundary near point E which may have provided access to or from the cricket field and application route.</p> <p>The route between the houses from point E to point F is not visible from the photograph.</p>
Investigating Officer's Comments		<p>Between point A and point D the route crossed farm land and whilst part of it (point B to point C) was close to but not quite coincided with a farm access track there is nothing to suggest that the route existed as a through route.</p> <p>Access to and across the cricket field may have been available but there is no evidence that the application route was in regular use and access along it may have been affected by use for cricket or by the square – whilst it is not known of the particular circumstances here it was widespread practice at that time that a cricket square was not walked on except during matches and a groundsman would often take steps to protect the square.</p>
<b>1:2500 OS Map</b>	1961	Further edition of 25 inch map reconstituted from former county series and revised in 1959 and published 1961 as national grid series.




<p>Observations</p>	<p>The application route is not shown with the exception of the gap between the terraced houses between point E and point F. The land crossed by the application route between point D and point E is identified on</p>
---------------------	---

		the map as a playing field.
Investigating Officer's Comments		With the exception of the route between point E and point F the application route does not appear to exist as a worn track on the ground in 1961.
<b>1:2500 OS Map</b>	1971	1:2500 OS map published in 1971.



Observations		The application route is not shown with the exception of the gap between the terraced houses between point E and point F. The land crossed by the application route between point D and point E is identified on the map as a playing field.
--------------	--	--

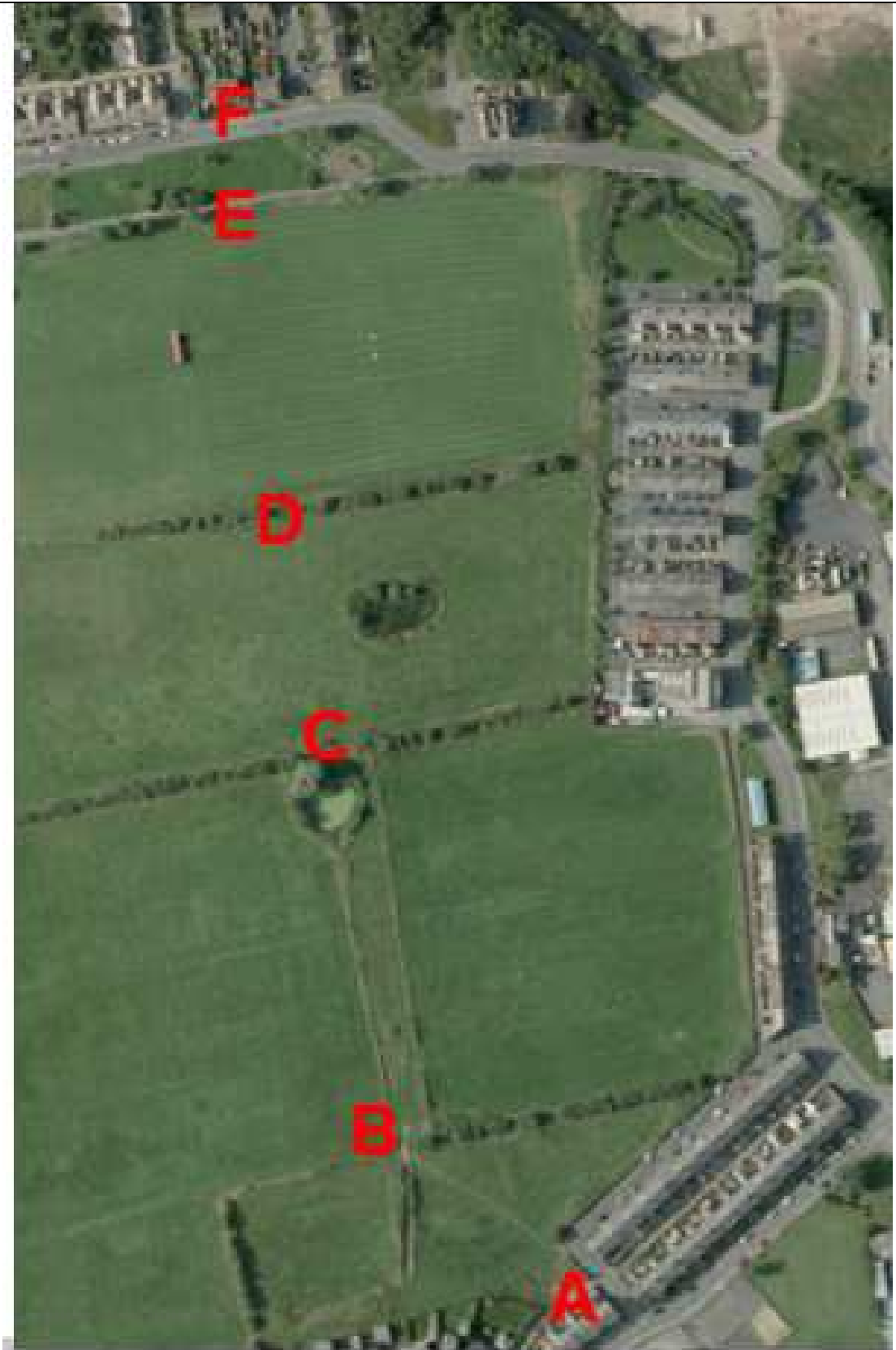
Investigating Officer's Comments		With the exception of the route between point E and point F the application route does not appear to exist as a worn track on the ground in 1971.
Aerial Photograph	1988	Aerial photograph available at CRO and LCC Cuerden Offices.
		
Observations		<p>The application route is not visible as a worn track on the ground between point A and point B. A farm access track is still visible from the back of Pool Foot Farm to point B and through to point C. The application route is not visible between point C and point E and it is not possible to see from the photograph whether any sports pitches are marked out between point D and point E.</p> <p>The terraced housing along the south side of Gamble Road has been demolished and it looks like a network of surfaced paths have been put across the land. One of these paths can be seen crossing the application route between point E and point F. It is not possible to see from the aerial photograph whether the route between point E and point F was accessible.</p>

Investigating Officer's Comments		The application route did not appear to exist as a through route following a worn route visible on the ground in 1988.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS.



Observations		The application route is not visible as a worn route between point A and point B and the land that it crosses appears to form part of Pool Foot Farm. A well-worn access route from the farm to point B can be seen and this track follows the application route as far as point C and into the field through a gap in the hedge. The application route is not visible on the ground between point C and point D or between point D and point E where it crosses the playing field. It is not possible to see whether access was available through the fence/hedge at point E and there is no worn path or laid out path between point E and point F although there does appear to be a worn access point onto the strip of land that the terraced hoses had previously been built on at point F.
Investigating Officer's Comments		The application route did not appear to exist as a through route following a worn route visible on the ground in 1988. There was a worn trod between points B and C on the application route unlike on previous photographs where a slightly different route was visible. This appears to be because a hedge had been removed allowing a more direct line to be taken.
<b>Aerial Photograph</b>	2010	Aerial photograph available to view on GIS.





Observations		The most recent aerial photograph available to view as part of the County Councils records. The application route can be clearly seen as a worn track between point A and point
--------------	--	--

		<p>B and the access track from the rear of Pool Foot Farm now looks much less significant. Between point B and point C traces of the application route can be seen as a faint track within a wider enclosed strip between fencing/hedges. No worn track can be seen between point C and point D or across the playing field to point E. It is not possible to see whether access was available at point E and no worn track is visible between point E and point F.</p>
<p>Investigating Officer's Comments</p>		<p>This is the first photograph to show a worn track consistent with pedestrian use between point A and point B and it appears that the frequency of access to the land from Pool Foot Farm may have reduced. However, the application route did not appear to exist as a through route following a worn route visible on the ground in 2010.</p>
<p>Google Images</p>	<p>2012</p>	<p>Google images captures September 2012</p>

**POINT A**



**POINT F**



<p>Observations</p>		<p>These photographs show the start and finish points of the application route. At point A it can be seen that the route is accessible to pedestrians and that a worn track extends from point A in the direction of point B. At point F it appears that access may have been available but that there was no clearly defined or worn route and that some sort of fencing may have been in existence.</p>
<p>Investigating Officer's Comments</p>		<p>The photographs confirm that access onto the application route existed at point A in 2012 and shows that access between point E and point F would have been available but that there was no worn track and that access may have been restricted by posts that appeared to have been erected with the purpose of providing some sort of fence.</p>
<p><b>Photographs provided by NPL Estates</b></p>		<p>A number of photographs were submitted by the landowners stating that they illustrated a lack of use of the application route.</p>

September 2008



September 2008



Observations

The two photographs included within the report were labelled as being taken in 2008 and show the land crossed by the application route. On the second photograph it is possible to pick out a faint track between point B and point D consistent with the application route. Between point D and point E it can be seen that a football pitch had been marked out on the land crossed by the application route.

Investigating Officers Comments		The photographs suggest that there may have been some low level use of at least part of the application route in 2008.
<b>Definitive Map Records</b>		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.  Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	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 areas and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced was used, without alteration, as the Draft Map and Statement.
Observations		Thornton Cleveleys was a Municipal Borough in the early 1950s and so a parish survey map was not compiled.
<b>Draft Map</b>		The Draft Maps were given a “relevant date” (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The application route was not shown on the Draft Map and no representations were made to the County Council.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to

		be made to the Crown Court.
Observations		The application route was not shown on the Provisional Map and no representations were made to the County Council.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown on the First Definitive Map and Statement.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		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 <sup>th</sup> 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 <sup>st</sup> 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.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use

		<p>(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		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the application route runs.
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 as common land.

### **Landownership**

The land is owned by NPL Estates Limited and their response to the consultation is set out further below in this report.

### **Summary**

The 2014 site evidence confirmed the existence of a walked path between point A and point D and use at that time was significant enough to have created a worn path. Between point D and point E the route was accessible but there was no evidence of its existence on the ground. Access through the fence at point E was possible but difficult as it was necessary to climb over the fence and negotiate the brambles. No worn route was evident across the rough land between point E and point F.

Since that time development works have removed any existence of the route between point A and point D.

There is no evidence of the physical existence of a worn track on any of the Ordnance Survey maps produced from 1848 to the current day with the exception of the gap between the terrace houses that existed between point E to point F from 1912 to at least 1971 and it is suggested that this gap was constructed to provide access to the rear of the terraced properties rather than forming part of the application route.

For a rural footpath crossing agricultural land it is not necessarily uncommon for a route not to be shown – particularly if use was light. The aerial photographs inspected appear to suggest access would have been available between points A, B, C, D and E in the 1940's, 1960's, 1988, 2000, 2008 and 2010 and that during that time parts but not all of the route were visible.

Between point A and point D the route appears to have crossed farmland with access to the field from Pool Foot Farm which involved use of the application route from point B to point D. There is no photographic evidence supporting use of the route from point A to point B until 2010 and this is supported by the Google images from 2012 showing access was available at point A.

Between point D and point E it appears that the route has crossed land forming part of a playing field since the 1960s to the present day. A defined route is not shown on any maps or aerial photographs and the route would have crossed pitches marked out for either cricket or football during much of this time.

Since the demolition of the terrace houses on Gamble Street there is no map or documentary evidence for the route between point E and point F.

No other documentary evidence examined supports or counters the view that the route was considered to be a public footpath.

## **Head of Service - Legal and Democratic Services' Observations**

### Legal and Democratic Services Observations

#### Information from the applicant

In support of the application the applicant has provided 10 user evidence forms, the evidence is set out below:

9 users have provided a response when asked how long they have known the route:  
0-20 years (4)      21-40 years (3)      41-60 years (2)

9 users have used the route on foot and one user hasn't, the years in which the users have used the route is shown below:



1954-2014(1)      1965-2014(1)      1976-2014(1)      1992-2014(1)  
1998-2014(1)      1999-2014(2)      2000-2013(1)

1 user did not provide a response to this question.

The main places the users were going to and from include:  
visiting friends or relatives, school, taking the dog for a walk, from Wembley Road to Ormerod Street, home to Fleetwood Road, Red March to home and to Bourne Poacher.

The main purposes for using the route include leisure, exercise, doing the school run, visiting friends or family, going to the shops or to get the bus, dog walking, social reasons and for car MOTs / repairs.

The use per year varies:

4-8 times, 10 times, 50 times, 100 times, nearly every day, every day and often.

8 of the users have never used the route on horseback, 2 users did not provide a response to this question, 2 users have used the route on motorcycle / vehicle, once since 1998-2014 and the other has used it since 2000 when they learnt to drive.

6 users have seen other people using the route on horseback during the years of 1992-2014, 1996-2014(daily), 1999-2014(2 users), 2000-2013, 2000-2014.

4 of the users have seen others using the route on motorcycle / vehicle between the years of

1976-2014, 1998-2014, 2000-2013, 2000-2014

Some users mention they have seen others using the route by dog walking, exercise and camping.

7 of the users agree that the route has always run over the same line, 1 user responded with 'same ish', another user responded with ' yes route has remained the same apart from when flooded' and 1 user responded with ' all round field from 2000-2014'.

All of the users agree there have never been any stiles / gates / fences along the route and they have never been prevented access.

None of the users have ever worked for a landowner or been a tenant of the land that is crossed by the route.

None of the users have ever been stopped or have had to turn back when using the route, nor have they heard of anyone else having been stopped or having to turn back.

The users all agree that they have never been told that the route they were using was not a Public Right of Way, nor have they ever seen any signs, however one user responded ' no, no signs of legible context', and none of the users have ever asked permission to use the route.

At the end of filling in a user evidence form, users are asked to provide any further information they feel is relevant to the application, this extra information is set out below:

- 'Fish on pond with uncle, walk the dog, leisure'
- 'my next door neighbour has used this footpath for over half a century, particularly in recent years to walk his dogs'
- 'as children we were told not to go near the cricket pavilion as it belonged to ICI'
- 'bus routes are changing and going to Fleetwood Road is the best way to get bus to Fleetwood'
- 'local people have used this route for social and health activities as well as a shorter route away from busy traffic'
- 'love the fields as they are. Great for dog walking etc., children to play etc. Some of my earliest memories are of my nan taking me to feed horses in the field adjoining Ormerod Street as a child'

### Objection from Landowner NPL Estates Limited

NPL Estates Limited strongly resist any decision of the County Council to make a Definitive Map Modification Order in this instance and, were the County Council minded to do so, they would submit representations, supported by witness evidence, that demonstrates that there has at no time been a public footpath along the route shown on the consultation plan.

NPL Estates Limited purchased the land on 8<sup>th</sup> June 2001, at that time they erected fences and signage to stop people entering the southern boundary of the property. The erection of such fences and signage alone demonstrates that there has not been any intention whatsoever to dedicate any route as a public footpath.

To the north of the property there are 3 existing football pitches which the purported path dissects. The presence of the pitches is clearly an interruption to any claimed path rights.

They have provided copies of photographs of the property taken in 2008 and several more photographs taken recently, these photographs demonstrate that there is no footpath on the property.

They confirm as landowners, that there is no public footpath through the site, they will dispute any evidence that is presented that states that the public has used the way without interruption for 20 years.

In addition, prior to their acquisition of the site in 2001, the land was used for active farming purposes and thus was not open to the public to access or use.

In light of what NPL have mentioned, they believe that the County Council cannot properly come to the view that it has sufficient evidence before it that a right of way has been shown to exist and, on this basis, it cannot possibly make a Definitive Map Modification Order in these circumstances.

Planning permission for the property has been approved by Wyre Borough Council on 4<sup>th</sup> June 2014, the planning permission approval is to provide a community sports complex and training ground.

The design of the facility has incorporated a new pedestrian footpath from north to south from Wembley Road (adjacent and parallel to Gamble Road) to Ormerod Road, which provides a similar route and route length to that proposed. The facility is predominantly for public use and recreation.

Further to their first letter NPL Estates Limited provide a second letter with 2 witness statements, they explain that the 2 employees have been at the Hillhouse International Business Park, since 1970 and 2001 and have never recalled there being a designated footpath on Poolfoot Farm. There is obvious signage in the area stating 'PRIVATE PROPERTY KEEP OUT' and thus access gained by any persons is illegal. The signage has also been witnessed by the Wyre Borough Council Chairman on the 3<sup>rd</sup> September 2014, prior to the approval of the planning application for the sports complex.

#### 1<sup>st</sup> Witness Statement from Peter Kenneth Naylor

'I have been a resident in the Thornton area since 1970 to present date and employed on the former ICI owned Hillhouse Site throughout the same time period.

As a goalkeeper for the ICI football club in the 1970's, I regularly trained and played on the football pitches opposite the Burn Naze public house.

Whenever the ball was kicked into the fields behind the southerly goal, I had to climb over a continuous barbed wire fence to retrieve the ball from a field full of grazing cattle.

There was certainly no sign of a footpath or gaps in the fence to ever indicate a public right of way of any description.

This situation hadn't changed up to the late 1990's, when I was then refereeing and coaching on the same pitches.

During the last 10 years, my involvement as an NPL employee included investigating fly tipping / vandalism on NPL owned land adjacent to the Ormerod Street area.

There is no dedicated footpath from this end: continuous fences have been damaged to gain illegal access for riding trail bikes on the land, causing nuisance to the local residents and for fly-tipping rubbish mainly in the ponded areas.'

#### 2<sup>nd</sup> Witness statement from Scott Carswell

'I have been an employee of NPL Estates since 2001 based at Hillhouse Business Park where one of my duties is to look after NPL's landholding in the area.

This area of Thornton, known as Pool Foot Farm, was a working farm until around 2004, all be it latterly the principle business was stabling horses for local people who would use the land for horse-riding.

The area has been visited weekly either by myself or one of the services team when signage 'Private Property Keep Off' and fence lines would be checked along with the

internal fields area for illegal fly-tipping. I would add that Wyre Borough Council Planning Committee visited the area on the morning of 3<sup>rd</sup> September 2014 prior to the approval of the planning application for the sports complex, when the Chairman of the committee noted the presence of the 'Private Property Keep Off' signs.

In conclusion, this area, in my time, has never had public access and never has had a footpath crossing the fields.'

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

#### In Support of the Claim

- User evidence
- Local knowledge
- 2010 Aerial Photograph and 2012 Google Images

#### Against Accepting the Claim

- Lack of evidence of the route existing on any of the maps which have been inspected
- Photographs provided by NPL Estates
- Reference to action by the owners
- Old signage located at Point D of the route

## **Conclusion**

The claim is that this route is in law a public footpath and should be recorded on the Definitive Map and Statement as such.

There is no express dedication and so it is advised that Committee consider whether a dedication can, on balance, be deemed under S31 Highways Act 1980 or inferred at Common Law from all the circumstances.

Looking firstly at whether dedication can be inferred on balance at common law it is advised that evidence from the maps in this matter is not the circumstance from which dedication could be inferred but user can be the circumstance from which to infer a dedication. With regards specifically to the Finance Act 1910 Map evidence, it is advised that whilst it is likely that there will be maps and field books held at the National Archives in claims such as this where there is modern user evidence and no strong map evidence of a route in the early 1900's, it would not be the usual practice of the Authority to go to the expense of employing an officer to research such records unless an Order is subsequently made and objected to. Whilst it may be difficult to now indicate an intention to dedicate by NPL Estates Limited since their actions in 2014, Committee is advised that the user of the route prior to 2014 may be sufficient to indicate that the owners at that time did nothing to stop the public use and from which their intention to give the route up to be a public footpath could on balance be inferred.

Common law does not require there to be twenty years of use. The use would appear to be as of right and exercised by sufficient members of the public.

If Committee however is not content that a dedication in this matter may be inferred at common law then the user evidence should be considered and s31 applied.

S31 requires the finding of a calling into question from which to run the twenty years back. This must be an action making it clear to a reasonable number of users that their use of the route is being challenged. The evidence in this matter is overwhelmingly user evidence, countered by evidence of actions taken by the owners of the land in question. On balance it is considered that the claimed route was not called into question until 2014 when the route between point A and point D became no longer accessible due to the site having been fenced off with the construction of a community sports complex and training ground being well under way and the twenty year period to consider would therefore be 1994 to 2014.

From the user evidence information it would appear that neither the fencing and signage which the owner claims to have erected on their purchase of the land in 2001 in an attempt to stop people entering the southern boundary of the land nor the said physical use and marking of the land for sports activities brought home a challenge to a significant number of users. Other than 1 user referring to 'no signs of a legible context', none have seen any signs along the route, been stopped or required to turn back, told that the route was not a Public Right of Way or asked for permission to use the route. It is noted that old signage stating 'Private Property Keep Out' is located at Point D of the route. However it suggested that this signage is not sufficient in its positioning to indicate which private land it refers to.

All of the users agree that there have never been any stiles, gates or fences along the route and that they have never been prevented access.

Taking all the evidence both modern and old into account the Committee may consider that a dedication in this matter may be deemed under S31 or inferred under common law and that an Order should be made and promoted to confirmation.

## **Risk Management**

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

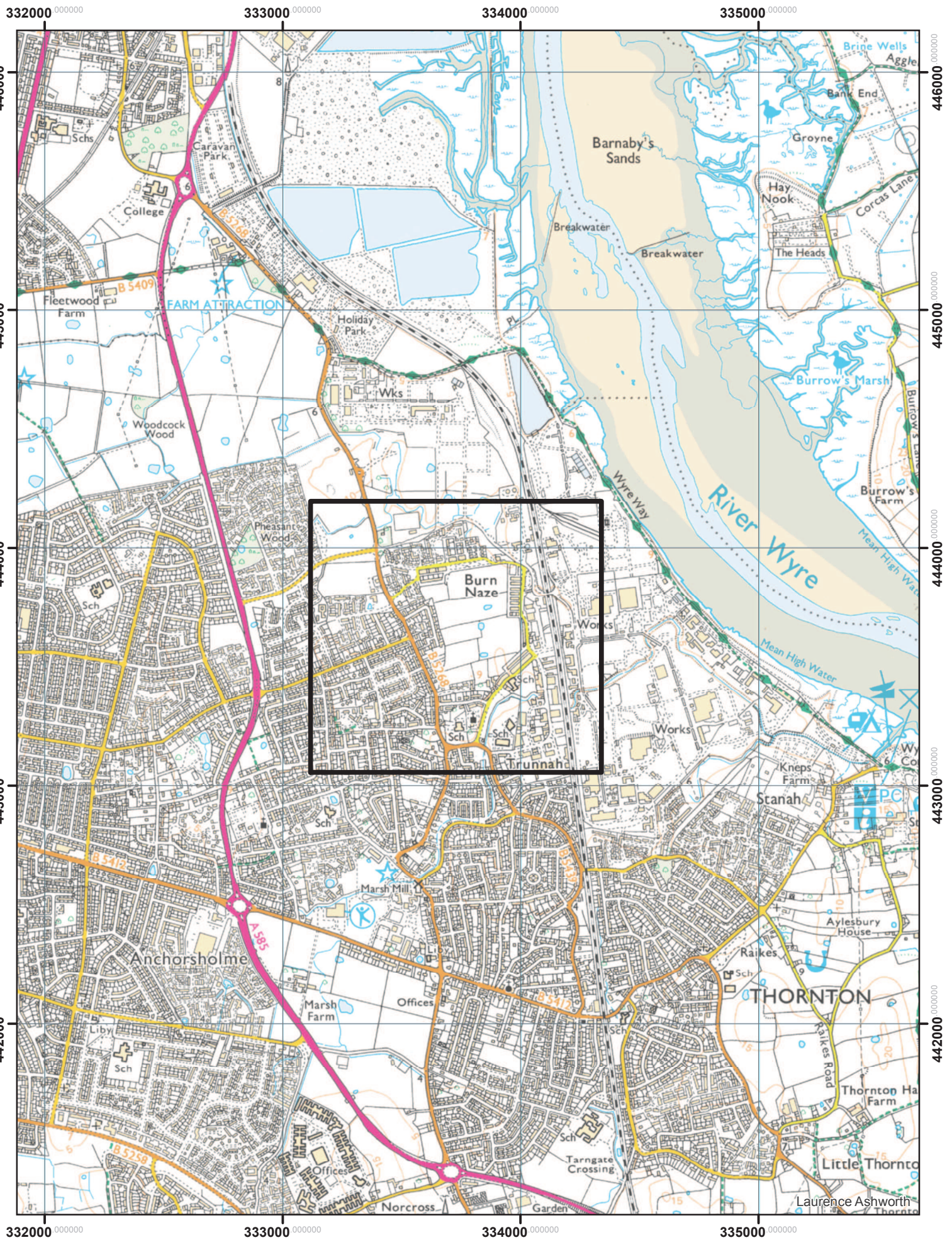
**Alternative options to be considered - N/A**

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

<u>Paper</u>	<u>Date</u>	<u>Contact/Directorate/Tel</u>
All documents on File Ref: 804-557	various	Megan Brindle , 01772 535604, Legal and Democratic Services

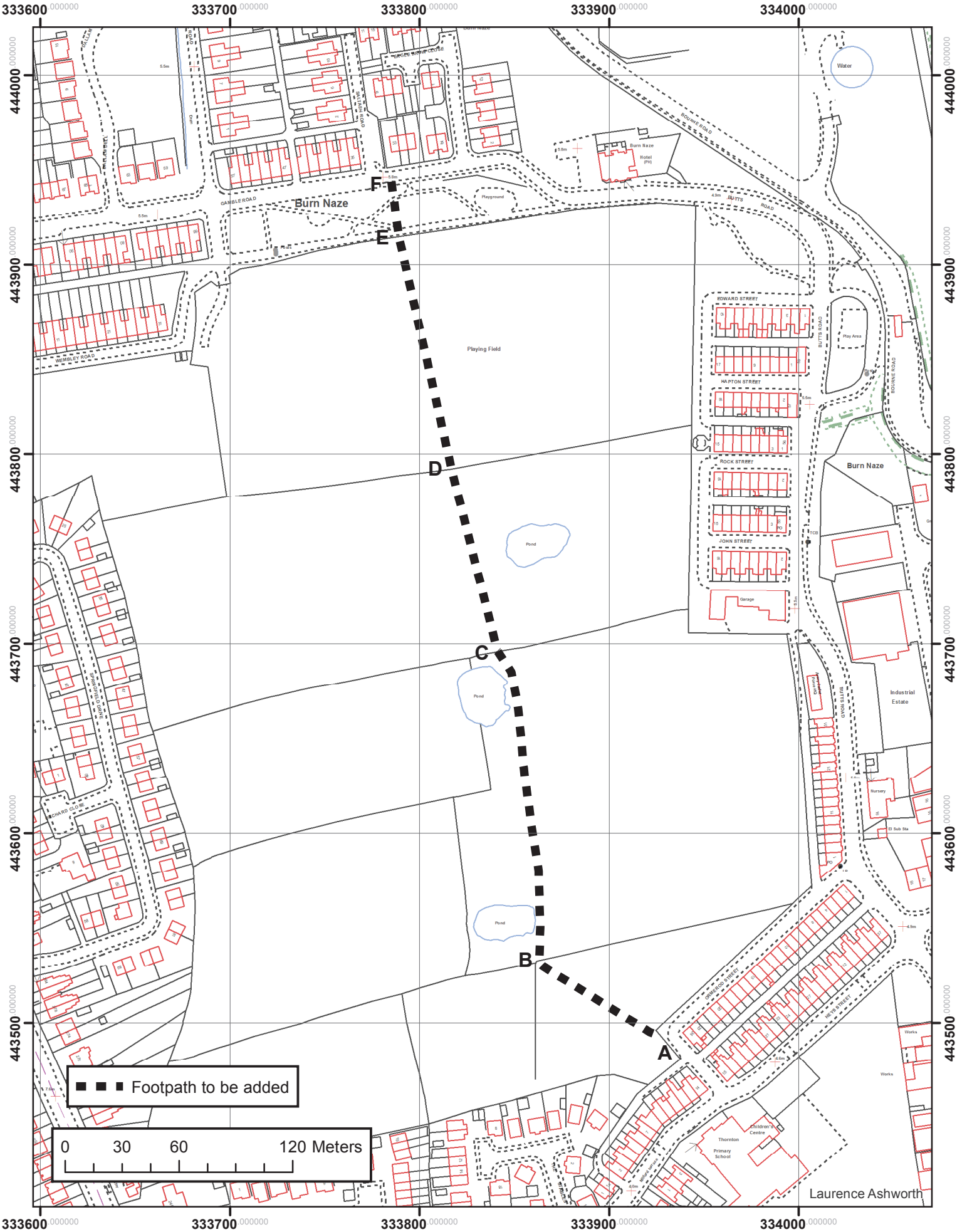
Reason for inclusion in Part II, if appropriate

N/A









Steve Browne  
Interim Executive Director  
for the Environment

**Wildlife and Countyside Act 1981**  
Application to add a public footpath from Ormerod Street to Gamble Road,  
Thornton Cleveleys, Wyre File No. 804-557

1:2,500



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320



## Regulatory Committee

Meeting to be held on 13<sup>th</sup> May 2015

Electoral Division affected: Longridge with Bowland
--

### Wildlife and Countryside Act 1981

**Claimed Public Footpath from Blackburn Road to Church Street, Ribchester, Ribble Valley Borough**

**Claim No. 804/510**

(Annex 'A' refers)

(Appendix 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, Paralegal officer, [Megan.brindle@lancashire.gov.uk](mailto:Megan.brindle@lancashire.gov.uk)

### Executive Summary

The Order for a Definitive Map Modification to add a public footpath from Blackburn Road to Church Street, Ribchester, Ribble Valley Borough was made on 22<sup>nd</sup> October 2014 following the Regulatory Committee's decision on 24<sup>th</sup> October 2012.

### Recommendation

1. That the report from 24<sup>th</sup> October 2012 be noted.
2. That the Order be confirmed as unopposed as the test for confirming the route is able to be satisfied on balance

### Background

On 24<sup>th</sup> October 2012 Regulatory Committee discussed the report (Appendix A) and decided that a further report be presented to consider the confirmation of the Order.

During the last meeting committee discussed the map and documentary evidence including; The Tithe Map and Tithe Award or apportionment 1838, Ordnance Survey maps from 1912, 1932, 1956, and 1967, an aerial photograph from 1963, Definitive Map records and Statutory deposit and declarations made under Section 31(6) of the Highways Act 1980, ownership information and photographic evidence.

Following the debate on the evidence both for and against accepting the claim, it was **Moved** and **Seconded** that the claim be not accepted, however after being put to the vote the Motion was **Lost**.

Following further debate and questions to officers, it was proposed that the test for making an Order could be satisfied giving the owner of the land the opportunity to provide further evidence of lack of dedication. Subsequently an Order was made on 22<sup>nd</sup> October 2014.

The Order was advertised between 14<sup>th</sup> November 2015 and 2<sup>nd</sup> January 2015, and no objections have been received.

Atkins Global responded to the objection period stating they have no objection to the proposed public footpath.

Daniel Thwaites Public Limited Company as landowner initially responded to the Order making with the following comments.

The claim that the company's actions have been acquiescent is absolutely rejected. They mention that until recently a gate was erected at the site entrance to Church Street and produce a photograph of this, the purpose of this gate was to regulate access to the site. Whilst they mention that some of their tenants chose to leave the pedestrian gate open it could most certainly be argued that this was for ease of access for customers visiting on foot from the south of the village wishing to use the pubs rear entrance door or beer garden.

In 2011 the company obtained planning permission for the development of a large section of the car park. During the planning application process their architects who worked closely with Lancashire County Council to ensure free flow of pedestrians through the proposed development by the use of clearly defined pavements.

They rejected that a claimed footpath exists through the site and considered that the proposal would have an adverse effect on both the proposed development for which planning approval has been obtained and the ongoing business of the public house.

Daniel Thwaites Public Limited Company have since withdrawn their objection and state that the purchasers of the development site are aware of the requirement to divert the footpath and believe that they have already opened discussions with Ribble Valley Borough Council to expedite matters as they wish to commence building works early in the new year.

## **Advice**

Head of Service – Legal and Democratic Services Observations

### **Information from the applicant**

Since this matter was initially presented to Committee on 24 October 2012 no additional user evidence has been submitted.

The applicant has produced 12 user evidence forms. The users claim to have known and used the route for the number of years as detailed below:

(0-10) - 1	(11-20) - 3
(21-30) – 1	(31-40) - 2
(41-50) - 3	(51-60) - 1
(61-70) - 0	(71-80) – 1

Therefore Committee may recall that the main purpose for using the route was to access local amenities and as a short cut, the usage of the route ranges in degree from being used by some on a daily basis and by others a few times a year or between 50 and 250 times a year.

The route is claimed as a footpath and all users agree the route has always run over the same line. None of the users report asking for permission to use the route although one of the users reports being an employee of the Landowner (Thwaites Brewery) between 1964-1984. None of the users report seeing any notices along the route.

One user is the resident of 48 Church Street, Ribchester which is situated next to point B on the proposed Order Plan. Number 48 confirms that for the last 20 years from 1990 he has known and used the route as a short cut. He refers to locked gates between 1950 to 1960's and further states that access at "the back of our cottage, never had a problem getting access". Another user refers to gates locked until mid 70's.

Four users report there being a gate along the route with one user reporting to have seen a gate at the side of the Black Bull Inn but states this gate was always left open. Two of the users state gates were put up to prevent pedestrians and cyclists and this was about five years ago. One of the users states he believes the pub landlord put up these gates.

Two of the users report being prevented from using the route, one user states this was because the gates were being locked and the other user states this was because he was told by the landlady at the Black Bull that the route was not a public right of way. No dates are given for these events.

The applicant states that about eight years ago, the then tenant of the hotel attempted to close the gate but was dissuaded from doing so by the police and on the same night the gate and supporting fence were removed by persons unknown and since no further attempts have been made to restrict access.

In addition to the user evidence forms, the applicant has provided 16 standard signed statements from local residents which state the number of years, the individual had resided at Ribchester and states, 'during my residency there has always been a pedestrian access across the car park land between Blackburn Road and Church Street, Ribchester.'

There is also a letter from a resident of Blackburn Road which states the corner of the Black Bull Inn is badly maintained and with peak time traffic being heavy; it is safer to cross Church Street from the car park.

### **Information from others**

At the time the matter was presented to Committee on 24 October 2012 the landowner, (Thwaites Breweries), pointed out the land over which the claim was made is in private ownership and is used as the car park for the Inn, and that there.

have been signs displayed for many years stating the land is in private ownership with no public right of access and the public would be crossing the land entirely at their own risk. They submitted a plan of proposed development dated 2008 to demonstrate that the line claimed cannot follow the claimed line. However following the Order being made the landowner has withdrawn their objection and has supplied no further evidence against the confirmation of the Order. Instead the landowner appears to now accept that the footpath exists. Their application to divert the footpath by the correct procedure would acknowledge the existence of the footpath.

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

#### In Support of the Claim

- User evidence
- Map evidence indicates the route A - B physically available from 1960's
- Acknowledgement of Owners

#### Against Accepting the Claim

- The claimed route is not shown as a path or track on any map or other document examined

#### Conclusion

The claim is that the route A – B is an existing public footpath and should be added to the Definitive Map and Statement of Public Rights of Way.

It was concluded in the Committee Report of the 24 October 2012 that taking all available evidence into account including the fact that not one user refers to any signs/notices, the landowner had not produced sufficient evidence that there was no intention to dedicate on the facts provided.

Further at such time it was suggested that the way the route is recorded through documentary evidence is not itself sufficient circumstances from which dedication could be inferred. Due to it being difficult to infer a dedication at common law, as it is the same owner today who was now making it clear that their intention was not to dedicate the route.

However the landowner has now acknowledged the existence of the route withdrawing their objection and has supplied no further evidence against the confirmation of the Order. In addition the landowner appears to accept the existence of the footpath and plans to apply to have the route diverted to enable future development.

Taking all the evidence into account it is suggested that there is sufficient evidence that on balance, the route is a public footpath as an inference can be made under Common Law that it is already dedicated to public use on foot. It is suggested that the Committee may consider that the higher test for confirmation can be now be satisfied and the Order dated 22 October 2014 be confirmed.

**Alternative options to be considered - N/A**

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

Paper	Date	Contact/Tel
All documents on Claim File Ref: 804/510	various	Megan Brindle 01772 535604

Reason for inclusion in Part II, if appropriate

N/A





## Regulatory Committee

Meeting to be held on 24<sup>th</sup> October 2012

Electoral Division affected: Longridge with Bowland
--

### Wildlife and Countryside Act 1981

**Claimed Public Footpath from Blackburn Road to Church Street, Ribchester,  
Ribble Valley Borough**

**Claim No. 804/510**

(Annex 'A' refers)

Contact for further information:

Jennifer Mort 01772 533427, County Secretary and Solicitor's Group

[jennifer.mort@lancashire.gov.uk](mailto:jennifer.mort@lancashire.gov.uk)

Anne Taylor, 01772 534608, Environment Directorate

[anne.taylor@lancashire.gov.uk](mailto:anne.taylor@lancashire.gov.uk)

### Executive Summary

The claim for a public footpath from Blackburn Road to Church Street, Ribchester, Ribble Valley Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/510.

### Recommendation

1. That the Claim for a Public Footpath from Blackburn Road to Church Street, Ribchester, Ribble Valley Borough, in accordance with Claim No. 804/510 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 Blackburn Road (SD 6499 3539) for a distance of approximately 80 metres to Church Street, Brierfield (SD 6496 3531) and shown on the attached plan A-B.
3. That, being satisfied that the test for confirmation can be met, the Order be confirmed if no objections are received. If objections are received, that the Order be submitted to the Secretary of State and promoted for confirmation, if necessary at a hearing or public inquiry.

### Background

A claim has been received for a footpath extending from a point on Blackburn Road, Ribchester to a point on Church Street, Ribchester, a distance of approximately 80

metres, and shown between points A - B on the attached plan, (SD 6499 3539 to SD 6496 3531), to be added to the Definitive Map and Statement of Public Rights of Way.

## **Consultations**

### Borough Council

Ribble Valley Borough Council has advised it does not hold any evidence either in support of or against the application.

### Parish Council

Ribchester Parish Council is the applicant in this matter; their evidence will be considered below.

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

## **Advice**

### **Environment Director's Observations**

#### **Description of the Route**

The claimed route starts at SD 6499 3539 at a bend in Blackburn Road and runs in a southerly direction across an open area currently used as a car park. The tarmac surface shows the scars of various fixtures or damage and the remains of lines marking parking bays. After about 40 metres the claimed route passes on the east side of the boundary of a garden and outbuilding and turns very slightly to the west along a 2 metre wide area between the remains of marked-out parking bays on the east side and the rear of 49 Blackburn Road on the west, opening out behind the Black Bull Inn then through a 4 metre wide gap with planters in the centre, between buildings to terminate at SD 6496 3531 on Church Street, Ribchester. Adjacent to the building on the south-east side of the gap and near the back edge of the footway there appears to be an old and very large gatepost. Also at the back of the footway across the gap are scars on the ground which suggest that 2 or 3 posts or bollards preceded the planters in preventing vehicular traffic entering the car park from Church Street. The length of the claimed route is approximately 80 metres.

#### **Map and Documentary evidence considered**

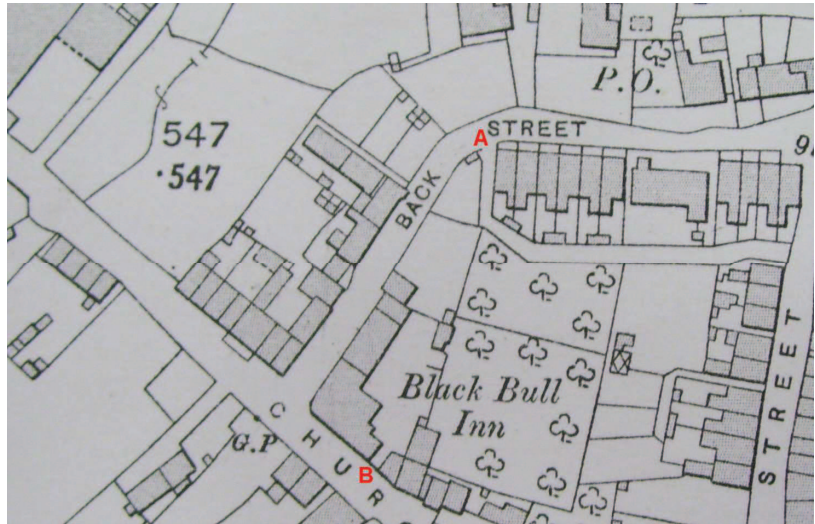
Various maps, plans and other documents were examined to see when the claimed route came into being and to try to determine what its status might be.

DOCUMENT TITLE	DATE	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE
<b>Yates' Map of Lancashire</b>	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 road layout at the centre of the village is shown with some buildings but the small scale of the map makes it impossible to see whether the claimed route existed between the buildings.
Investigating Officer's comments		No inference can be drawn.
<b>Greenwood's Map of Lancashire</b>	1818	Greenwood's map of 1818 is a small scale commercial map.
Observations		The road layout at the centre of the village is shown with some buildings but the small scale of the map makes it impossible to see whether the claimed route existed between the buildings.
Investigating Officer's comments		No inference can be drawn.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map.
Observations		The road layout at the centre of the village is shown with some buildings but the small scale of the map makes it impossible to see whether the claimed route existed between the buildings.
Investigating Officer's comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1838	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.

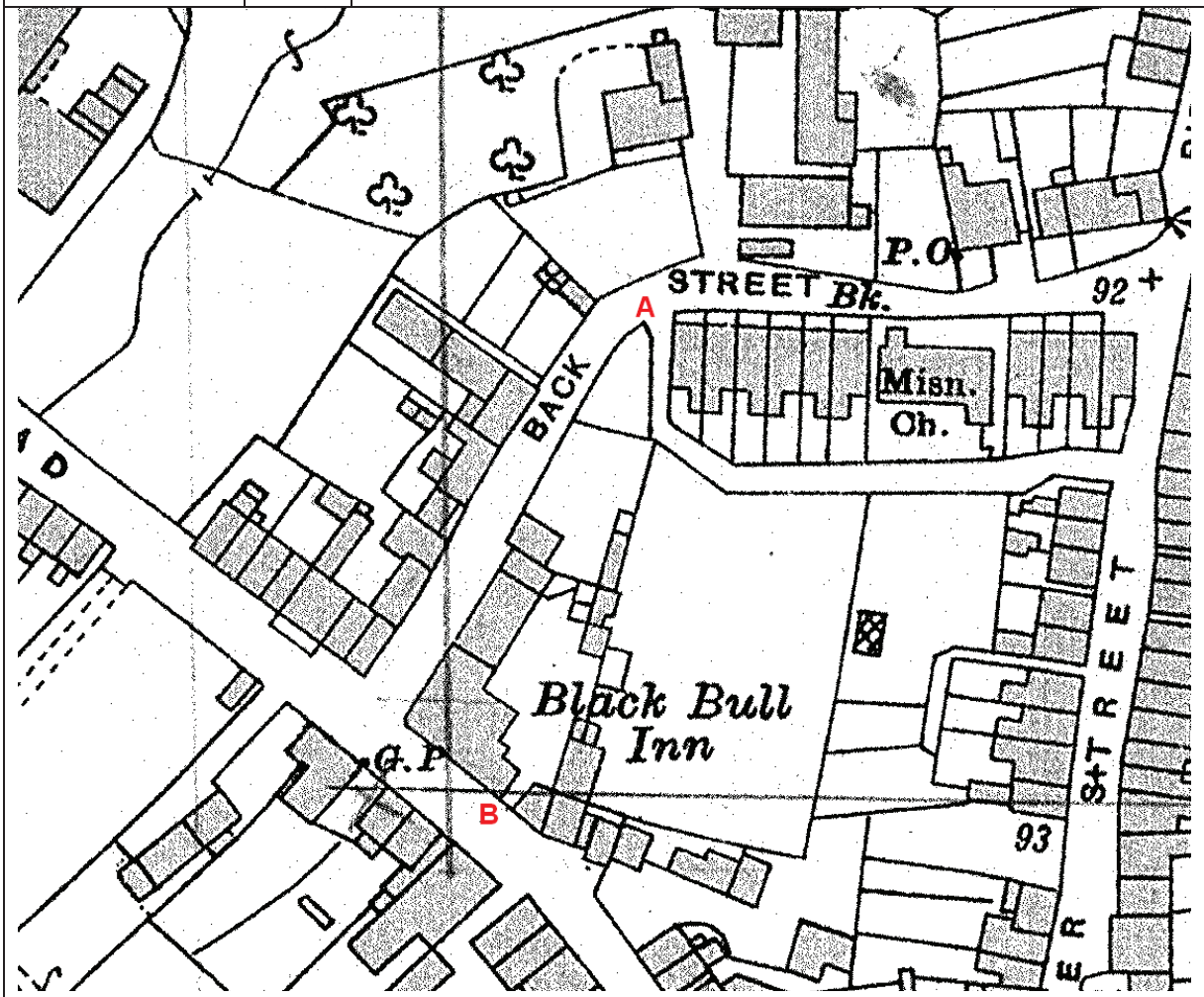


Observations		<p>The title map for Ribchester shows and names the Black Bull Inn and the schedule records that it was owned by Daniel Thwaites. The claimed route is not shown as a path or track. It would have been possible to walk through the pub yard but the land between the yard and Blackburn Road is divided into 2 plots described as gardens. The claimed route is to the east of the detached outbuilding, which would necessitate crossing 4 or 5 fences, hedges or walls.</p>
Investigating Officer's comments		<p>The claimed route did not exist in 1838.</p>
<b>Finance Act 1910 Map</b>		<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation and not recording public rights of way. However the maps can often provide very good evidence.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		<p>The Finance Map material is not available in the Lancashire</p>


		Archives.
Investigating Officer's comments		No inference can be drawn.
<b>Ordnance Survey maps</b>		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.
6 inch OS map	1847	The earliest OS map examined was surveyed between 1844 and 1845 and published in 1847.
Observations		The 1847 OS map shows and names the pub as the Old Bull Inn. The claimed route is not shown as a path or track. It would have been possible to walk through the pub yard but the land between the yard and Blackburn Road is divided into 2 plots and shown as orchards or gardens. The claimed route is to the east of the detached outbuilding, which would necessitate crossing 4 or 5 fences, hedges or walls.
Investigating Officer's comments		The claimed route did not exist in 1844, the date of survey of the map.
25 inch OS map	1891	The earliest edition examined which was published at the larger scale showing the area in more detail was surveyed in 1890 and published in 1891.
Observations		The pub is called the Black Bull Inn. The claimed route is not shown. The land to the north of the pub to Blackburn Road (called Back Street on this map) is divided into 2 enclosures in the same way as on the 1847 map. The claimed route is to the east of the detached outbuilding, which would necessitate crossing 4 or 5 fences, hedges or walls. There is also a solid line across the claimed route at Church Street suggesting a gate.
Investigating Officer's comments		The claimed route did not exist in 1890.
25 Inch OS map	1912	Further edition of the 25 inch map revised in 1910 and published in 1912.




Observations		The area of land across which the claimed route runs is shown in the same way on this map as the 1891 edition.
Investigating Officer's comments		The claimed route did not exist in 1910.
25 inch OS map	1932	Further edition of the 25 inch map revised in 1930 and published in 1932.



Observations		The area of land across which the claimed route runs is shown
--------------	--	---

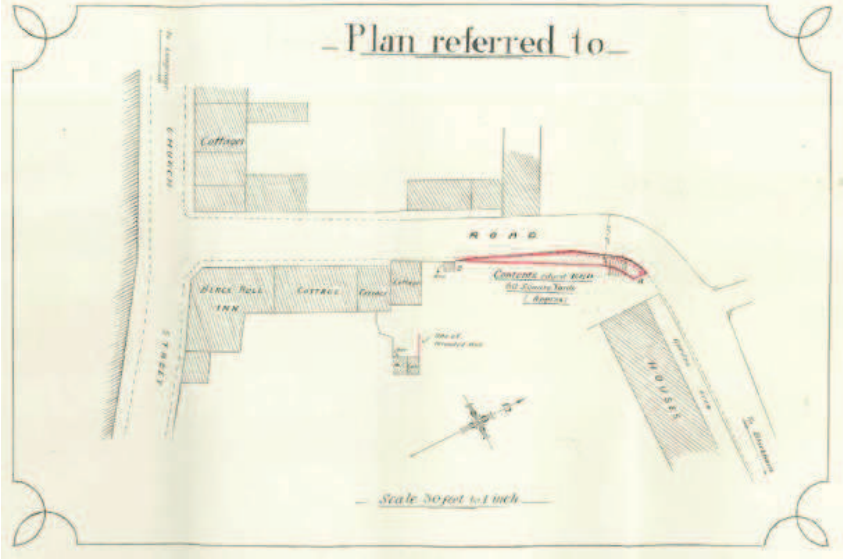
		in the same way on this map as the 1891 and 1912 editions.
Investigating Officer's comments		The claimed route did not exist in 1930
6 Inch OS map	1956	This map was used as the base map for the Definitive Map, First Review, and was published in 1956 (although the date of revision was before 1930).
Observations		The buildings on Church Street and Blackburn Road are shown but no gap is shown at the start of the claimed route on Church Street. The claimed route is not shown and the land is shown divided into plots as on earlier maps.
Investigating Officer's comments		The claimed route did not exist in 1930.
25 Inch OS map	1967	Further edition of the 25 inch map published in 1967.
		
Observations		This is the first map examined that shows that it might have been possible to walk along the route claimed. No path or track is shown, but the area to the north of the pub yard is shown as open land with no physical restrictions. There is a solid line across the entrance to the yard at Church Street consistent with a gate at that location.
Investigating Officer's comments		It might have been possible to use the route as claimed in 1967. There may have been a gate at the Church Street end.
<b>Aerial Photographs</b>		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.
Aerial photograph	C 1945	This photograph was taken around 1945.
Observations		Although the photograph is not very clear, it is apparent that the


		area to the north of the pub is open ground. However if there were any fences made of wire or other light materials across the claimed route it would not be possible to see these on this photograph.
Investigating Officer's comments		It is possible that the claimed route could be used in 1945.
Aerial Photograph	1963	Black and white aerial photograph taken in June 1963.
		
Observations		Although the photograph is not very clear, it is apparent that the area to the north and east of the pub is open ground. Some vehicles are parked around the perimeter. It appears that there is a gap between the buildings onto Church Street but it is insufficiently clear to identify whether or not there was a gate.
Investigating Officer's comments		It is likely that the claimed route could be used in 1963.
Aerial photograph	1988	Colour aerial photograph taken in June 1988.
Observations		The photograph is of quite good quality. The area to the north and east of the pub is open ground and some parked vehicles can be seen on the land by Blackburn Road.
Investigating Officer's comments		It is likely that the claimed route could be used in 1988, although the photograph does not provide any information about the start of the route on Church Street
Aerial photograph	2000	Aerial photograph taken in June 2000.
Observations		The photograph is not in clear focus. However, the land across



		which the claimed route runs to the north and east of the pub is open ground and at least 28 parked vehicles can be seen across the whole area.
Investigating Officer's comments		As the whole area is used for parking vehicles the claimed route could be used in 2000 depending on the extent of parking on a particular day. The photograph does not provide any information about the start of the route on Church Street.
Aerial photograph	2010	Aerial photograph taken in March 2010.
Observations		The photograph shows that the land across which the claimed route runs to the north and east of the pub is open ground. Four parked vehicles can be seen around the perimeter of the area. No path or trodden route can be seen across the land corresponding to the claimed route. There seems to be a gap between buildings at the start of the claimed route on Church Street.
Investigating Officer's comments		As the whole area appears to be used for parking vehicles the claimed route could be used in 2010 depending on the extent of parking on a particular day. The photograph shows a gap between buildings at the start of the route on Church Street but it is not possible to see if some kind of barrier to pedestrians was located there.
<b>Definitive Map Records</b>		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.
Parish survey map	1950-1952	The initial survey of public rights of way was carried out by the parish council and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In this instance the initial survey was carried out by Ribchester parish council.
Observations		The claimed route was not shown on the survey map.
Investigating Officer's comments		The claimed route was not regarded as a public right of way in the early 1950s.
Draft Map	1955	Preston Rural District Council amalgamated the parish maps into a Draft Map. The Draft Maps were given a "relevant date" (1 <sup>st</sup> January 1953) and notice was published that the Draft Map had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The claimed route was not shown on the Draft Map.
Provisional Map		Once all of the representations were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for

		amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The claimed route was not shown on the Provisional Map.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the First Definitive Map and Statement in 1962. 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. 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 was not shown on the first Definitive Map.
Investigating Officer's comments		The claimed route was not regarded as a public right of way in the 1950s.
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 <sup>th</sup> 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 <sup>st</sup> 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 claimed route is not shown on the Definitive Map (First Review).
Investigating Officer's comments		The claimed route was not regarded as a public right of way prior to 1966.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or 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 claimed route runs.

Investigating Officer's comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over his land.
<b>Ownership information</b>		As dedication of a highway stems from a dedication by a freehold owner, ownership information and old Deeds can show who owned the land at the relevant times and possibly how a route is described or shown on plans at the times of sale or lease
	1925 1966	A plan (below) showing the location of 60 square yards of land purchased by the highway authority from Daniel Thwaites' trustees. In 1966 a further narrow strip of land (plan not shown) was dedicated by Daniel Thwaites & Co. Ltd. as highway.
<div style="text-align: center;"> <p>- Plan referred to -</p>  <p style="text-align: center;">- Scale 30 feet to 1 inch -</p> </div>		
Observations		<p><i>[Note: the annotations A and B on the above plan are on the original and are not the A and B referred to in this document]</i></p> <p>The ownership of the brewery is not registered but near to point A are two strips of land held by the County Council, taken to widen Blackburn Road footway. In 1925 the Preston Rural District Council purchased a strip from the trustees of Daniel Thwaites deceased and in 1966 a dedication of extra highway width was given to the County Council by Daniel Thwaites and Company Ltd.</p> <p>The 1925 plan shows a tapered strip of land on the bend of Blackburn Road near point A, edged in red. The red parcel of land is for improvement of the Blackburn Road by the former Preston Rural District. At the rear of the cottage which is number 49 Blackburn Road is a wall which divides land at the rear of the pub to the south from the land to the north which opens onto Blackburn Road at point A. By reference to the 1932 Ordnance Survey mapping (above) it is assumed that the land to the east of the WC/coal shed of 49 Blackburn Road was not mapped rather than the blank space representing an open area. However, the 1932 map also shows a second boundary to the north of 49 Blackburn Road not shown on this plan. It reasons for this apparent discrepancy are not known, it could have been that the boundary on the 1932 map was a light or temporary fence or was constructed between 1925 and 1930, similarly the</p>

		<p>driveway adjacent to the houses to the east of point A is shown separated from the claimed route by 1932 but not on the 1925 plan. At point B only the pub buildings are shown – the map does not extend to the adjacent cottage. A solid line is shown extending from the pub eastwards next to the road.</p> <p>The plan attached to the 1966 dedication labels the land near point A as Hotel Car Park and does not show any fencelines although it is not particularly detailed that distance from the Blackburn Road.</p>
Investigating Officer's comments		<p>The map indicates that the land is open near point A in 1925 and not fenced off from the road and open through to the WC/coal shed behind 49 Blackburn Road. At the other end of the claimed route at point B it is likely that there was a fence, wall or gate across the claimed route. It is not possible to deduce whether or not the claimed route could have been used in 1925.</p> <p>In 1966 this smaller scale map indicates the land was free of fencelines as it would arguably have shown the historic fenceline near point A if it had existed as it would affect the strip being dedicated.</p>
<b>Physical Evidence</b>		Features observed on site can often assist in understanding the history of the route and the land across which it runs.
		
Observations		The traces of marked out parking bays indicate that there was room to walk along the claimed route behind 49 Blackburn Road but this was not to allow vehicle movements as the width was insufficient.
Investigating Officer's Comments		It is likely that whilst the car park was marked out in this way the claimed route would not have been obstructed by parked cars.



Observations		The gatepost on the south-east side of the gap suggests that once the gap was gated whereas the scars across the gap suggest that there were posts or bollards.
Investigating Officer's Comments		The traces of posts appear to be more recent than the gatepost and these would have prevented vehicular use but allowed pedestrians to pass through.

The claimed route is not a biological heritage site or site of special scientific interest. It is not recorded as Access Land under the provisions of the Countryside and Rights of Way Act 2000.

### Summary

The claimed route is not shown as a path or track on any map or other document examined. Maps show that the pub has existed since at least 1838 but that the land to the north and east of the pub yard was divided into various plots until sometime between 1930 and 1963. The aerial photograph for 1963 (confirmed by the 1:2500 OS map of 1967) shows that the land had been opened up and field boundaries removed. The exact date that this occurred is not known. The area has been used as a car park and it is likely that it was possible to cross the car park on foot from the pub to Blackburn Road since the early 1960s at least. What is less certain is whether there was a gate, fence or other barrier across the entrance to the pub yard on Church Street at any time and if this could have prevented use by pedestrians.

### County Secretary and Solicitor's Observations

#### Information from the applicant

In support of the application, the applicant has produced 12 user evidence forms. The users claim to have known and used the route for the number of years as detailed below:

(0-10) - 1	(11-20) - 3
(21-30) - 1	(31-40) - 2

(41-50) - 3  
(61-70) - 0

(51-60) - 1  
(71-80) - 1

The main purpose for using the route has been to access local amenities such as the shops, school and church, and some users state the route has been used as a short cut. The range of use varies with four users stating they have used the route on a daily basis and the others stating they have used the route less often such as a few times a year or between 50 and 250 times a year.

All the users agree the route has been used on foot. Two of the users state the route has also been used on a bicycle and one user states the route has been used on horseback. However, the route is being claimed as a footpath and all users agree the route has always run over the same line. None of the users report asking for permission to use the route although one of the users reports being an employee at the Thwaites Brewery between 1964-1984. None of the users report seeing any notices along the route.

One user is the resident of 48 Church Street, Ribchester which is situated next to point B on the proposed Order Plan. Number 48 confirms that for the last 20 years from 1990 he has known and used the route as a short cut. He refers to locked gates between 1950 to 1960's and further states that access at "the back of our cottage, never had a problem getting access". Another user refers to gates locked until mid 70's.

Four users report there being a gate along the route with one user reporting to have seen a gate at the side of the Black Bull Inn but states this gate was always left open. Two of the users state gates were put up to prevent pedestrians and cyclists and this was about five years ago. One of the users states he believes the pub landlord put up these gates.

Two of the users report being prevented from using the route, one user states this was because the gates were being locked and the other user states this was because he was told by the landlady at the Black Bull that the route was not a public right of way. No dates are given for these events.

The applicant states that about eight years ago, the then tenant of the hotel attempted to close the gate but was dissuaded from doing so by the police and on the same night the gate and supporting fence were removed by persons unknown and since no further attempts have been made to restrict access.

In addition to the user evidence forms, the applicant has provided 16 standard signed statements from local residents which state the number of years, the individual had resided at Ribchester and states, 'during my residency there has always been a pedestrian access across the car park land between Blackburn Road and Church Street, Ribchester.'

There is also a letter from a resident of Blackburn Road which states the corner of the Black Bull Inn is badly maintained and with peak time traffic being heavy; it is safer to cross Church Street from the car park.

## Information from others

The landowner, referred to as Thwaites Breweries, points out the land over which the claim has been made is in private ownership and is used as the car park for the Inn. They point out that there have been signs displayed for many years stating the land is in private ownership with no public right of access and the public would be crossing the land entirely at their own risk. They submit a plan of proposed development dated 2008 to demonstrate that the line claimed cannot follow the claimed line.

## Assessment of the Evidence

### The Law - See Annex 'A'

#### In Support of the Claim

- User evidence
- Map evidence indicates the route A - B physically available from 1960's

#### Against Accepting the Claim

- Landowners contrary evidence
- The claimed route is not shown as a path or track on any map or other document examined

#### Conclusion

The claim is that the route A – B is an existing public footpath and should be added to the Definitive Map and Statement of Public Rights of Way.

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

Considering initially the criteria for a deemed dedication under Section 31 of the Highways Act, that use needs to be “as of right”, without interruption and also be sufficient for the 20 year period . There is mention of signage and locked gates and possible challenges but it is suggested that not sufficient detail is known to indicate that the route was called into question for the purposes of S31 until the application was made in 2010. It is advised that the route was called into question from the date of the application, 12 March 2010 and the period of use from which dedication can be deemed would be March 1990 to March 2010.

Twelve evidence of use forms have been submitted claiming to have known and used on foot the claimed route "as of right". However, one user confirms that she was an employee "...20 years as Landlady of Blackbull" out of the 44 years she has

known and used the route and confirms this was from "1964 to 1984 Thwaites Brewery". As her own use for the period of 20 years from 1964 to 1984 would have been with permission as landlady and therefore use was not "as of right", this use will be excluded from the evidence to be considered.

All twelve user evidence forms indicate knowledge and use of the claimed route A to B for 20 years or more suggesting user evidence for the sufficient period. It is clear that the route provided a short cut avoiding the narrow Black Bull corner and to easily access the local shop opposite point B. There is some indication of the presence of a gate at point B and whilst on balance it can be accepted that a gate existed at some point, the time period and whether the gate physically prevented users from using the route is in doubt. The current landowner of several years has made no reference to the issue of 'gates' and map evidence does not indicate a gate, fence or other barrier on Church Street or across the route further north so as to prevent use by pedestrians. On balance it is considered that the way had been available and used without interruption 1990 to 2010 and earlier.

In addition to the twelve user evidence forms above the applicant has submitted 16 standard signed statements from local residents which state the number of years the individual had resided at Ribchester and states, 'during my residency there has always been a pedestrian access across the car park land between Blackburn Road and Church Street, Ribchester.' Whilst weight is lost from the fact that it is not the user's personal evidence and words in effect have been put into their mouths via a standard statement, this should not detract from the fact there is a further 16 users of the route claiming knowledge and use.

Further, the applicant has submitted a letter from a resident of Blackburn Road which states the corner of the Black Bull Inn is badly maintained and with peak time traffic being heavy; it is safer to cross Church Street from the car park.

The applicant's submission of user evidence including user evidence forms, standard signed statements and the letter collectively indicate good use for the period of 1990 to 2010. All users are from the local village providing credible use of the route, many have lived in the village all their lives and those new to the village recognise the route A to B and use it. Whilst all users have confirmed that the route has not changed its line claimed from A to B this ought to be set against the fact that the land the route crosses is a car park and cars parked may have dictated the exact line walked. Cars parked would have been intermittent and temporary in nature but the spaces painted for use would keep the route free.

There is one owner of the claimed route and they have provided written representations. They refer to signs having been erected and the signs are being advocated as being inconsistent with the dedication of a highway. However, there has been no submission from the landowner of supporting evidence of any signs/notices, dates and location and therefore a proper assessment cannot be weighed in the balance including consideration as to whether such signs were sufficiently clear to negative the intention of the owner to dedicate. Taking all available evidence into account including the fact that not one user refers to any signs/notices, the landowner has not produced sufficient evidence that there was no intention to dedicate on the facts provided.



Considering also whether there are circumstances from which dedication could be inferred at common law, the claimed route crosses land that is the car park to the Black Bull pub and map evidence indicates it was possible for users on foot to cross the line claimed from A to B in the years since the early 1960s at least.

It is suggested that the way this route is recorded on documentary evidence is not itself sufficient circumstances from which dedication could be inferred. However, sufficient as of right use acquiesced in by the owners may also be circumstances from which dedication can be inferred. However, to infer a dedication at common law is difficult, as in this matter it is in effect the same owner today who is now making it clear that their intention has not been to dedicate the route. To prove on balance that by their acquiescing in the use and taking only limited actions they intended the claimed route be open for use of the public as a footpath when they now say to the contrary would be unlikely.

Taking all the evidence into account, the Committee on balance may consider that the provisions of S31 Highways Act can be satisfied in this matter but to infer dedication at common law is difficult. It is therefore suggested that the claim be accepted.

**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 5.37214 Ref: 804/510		Jennifer Mort Office of Chief Executive (01772) 533427

Reason for inclusion in Part II, if appropriate

N/A





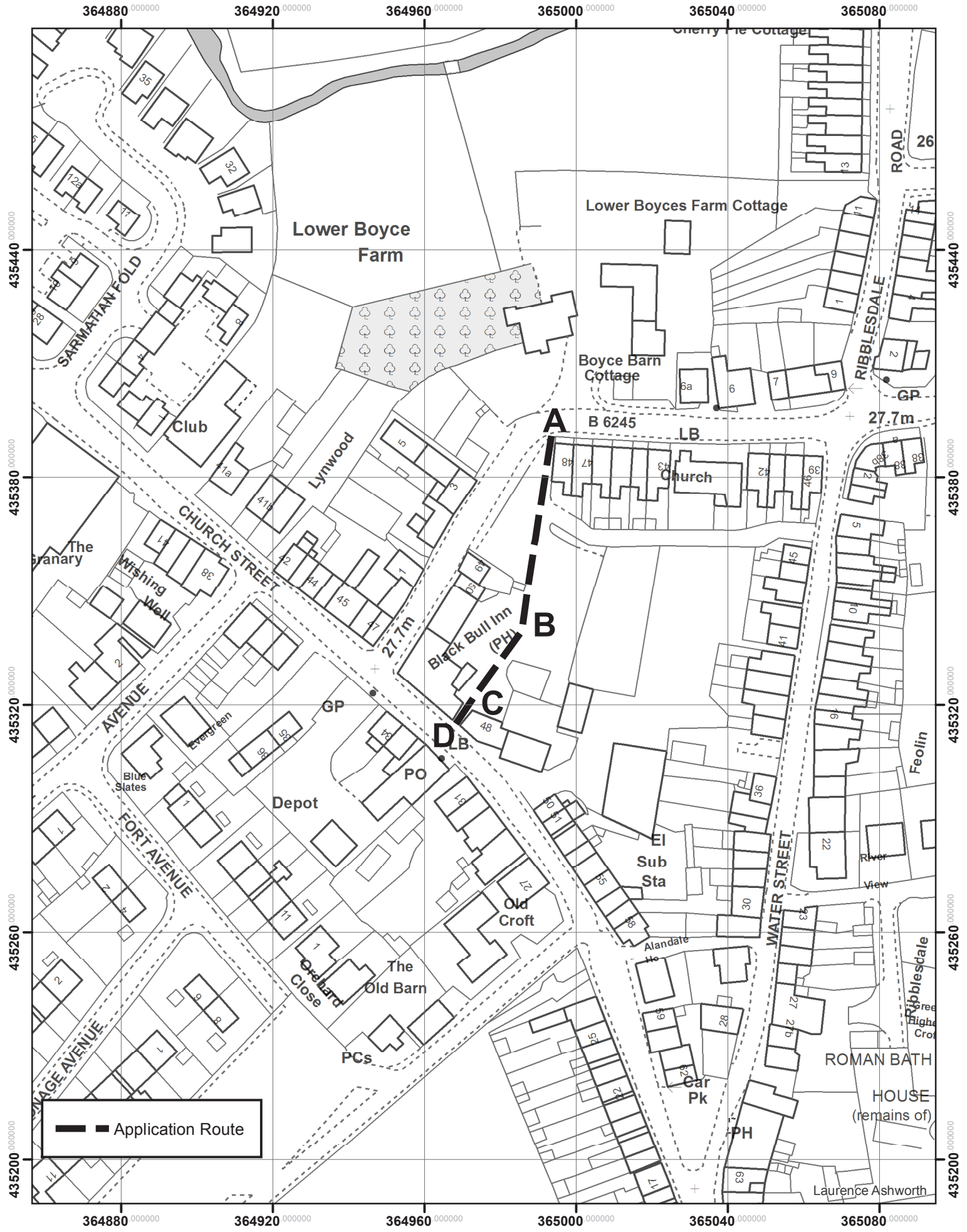
Claim 804-510 Black Bull Inn, Ribchester - Location Plan



Date: 10/10/2012

This map is reproduced from Ordnance Survey material with the Permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (C) Crown Copyright.  
 Unauthorised reproduction may lead to prosecution or civil proceedings.  
 Lancashire County Council - OS Licence 100023320 (C)





**Steve Browne**  
Executive Director  
for Environment

Claimed public footpath from Blackburn Road to Church Street, Ribchester,  
Ribblesdale  
Application No. 804/510

1:1,250



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320

