

Lancashire County Council

Regulatory Committee

Wednesday, 1st July, 2015 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Agenda

Part I (Open to Press and Public)

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

3.	Minutes of the meeting held on 13 May 2015	(Pages 1 - 8)
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4.	Guidance.	(Pages 9 - 32)
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Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

5.	Wildlife and Countryside Act 1981	(Pages 33 - 92)
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**Definitive Map Modification Order Investigation
Addition of Footpath at Love Clough Fold from
Public Footpath No. 1 to Public Footpath No. 9
Rawtenstall, Rossendale Borough
File No. 804-518**

6.	Wildlife and Countryside Act 1981	(Pages 93 - 130)
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**Definitive Map Modification Order Application
Application to add three Public Footpaths from
Riding Close and Park Street to Public Footpath 20
Barnoldswick at Long Ing, Barnoldswick, Pendle
Borough.
File No. 804-558**

7. **Wildlife and Countryside Act 1981** (Pages 131 - 176)
Definitive Map Modification Order Investigation
Application for a public footpath from Marina
Avenue to two separate points on Public Footpath
10 Poulton-le-Fylde, Wyre Borough to be added to
the Definitive Map and Statement
File No. 804-556

8. **Commons Act 2006** (Pages 177 - 192)
The Commons Registration (England) Regulations
2014
Regulation 43

Application for a Declaration of Entitlement to be
recorded in respect of some of the Rights of
Common being grazing rights registered as
attached to land at Out Lane Head Farm, Chipping,
being entry 4 in the Rights Section of Register Unit
CL12

9. **Commons Act 2006** (Pages 193 - 208)
The Commons Registration (England) Regulations
2014
Regulation 43

Application for a Declaration of Entitlement to be
recorded in respect of some of the Rights of
Common being grazing rights registered as
attached to land at Watergrove Gathering Grounds,
Wardle, being entry 18 in the Rights Section of
Register Unit CL166

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 9th September 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, 13th May, 2015 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Present:

County Councillor Jackie Oakes (Chair)

County Councillors

K Snape	P Hayhurst
M Barron	C Henig
I Brown	A Schofield
A Clempson	B Yates
Dr M Hassan	

County Councillors M Barron and Dr M Hassan replaced County Councillors D Stansfield and J Gibson respectively.

1. Apologies.

Apologies were received from County Councillors B Dawson and D Whipp.

2. Disclosure of Pecuniary and Non-Pecuniary Interests.

None declared.

3. Minutes of the meeting held on 4 February 2015

Resolved: That the minutes of the meeting held on 4 March 2015 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 Investigation
Upgrading of Wrightington Footpath 21 to Bridleway between Moss Lane and Mossy Lea Road, Wrightington, West Lancashire
File No. 804-561**

A report was presented on an investigation into the upgrading of Wrightington Footpath 21 between Moss Lane and Mossy Lea Road, to a bridleway.

The investigation had 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. The Parish Council was fully supportive of the application. Details of the investigation and the evidence relating to it were presented to the Committee. Letters had been received from residents of various properties with reference to horse use. Some property owners objected to the upgrade to a bridleway.

Under Section 31 of the Highways Act the view was that although some of the landowners objected to the application now, their lack of action meant their objections were too late in law and the twenty years use from 1994 to 2014 has happened and as such the dedication can be deemed under Section 31 to be promoted to confirmation of a bridleway.

Having examined all the information presented, the Committee agreed that taking all the relevant evidence into account, there was sufficient evidence to upgrade Wrightington Footpath 21 between Moss Lane and Mossy Lea Road to a bridleway and that an Order be promoted to confirmation.

Resolved:

1. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53(c)(i) of the Wildlife and Countryside Act 1981 to 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 the 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.

**6. 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**

A report was presented on an 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.

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

The landowner's understanding had always been that the church and churchyard was private property and there was no right of way through the churchyard and never had been and therefore it should follow that there could be no footpath through his land onto private church property.

According to Ecclesiastical Law a churchyard was consecrated land and therefore there was no public right of way on it without a faculty and there was insufficient evidence of a faculty in this matter.

There was a difficulty in finding that there was evidence of a place of public resort at the termination point of the route..

Having examined all the information presented, the Committee agreed that taking all the relevant evidence into account, there was insufficient evidence of a footpath being able to be reasonably alleged to subsist to accept the application for a public footpath.

Resolved: 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,

**8. Wildlife and Countryside Act 1981
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**

A report was presented on 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.

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') were presented as part of the report and by officers at the meeting.

The Committee was informed that there was some user evidence and insufficient action being taken by landowners. Taking all the evidence both modern and old into account the Committee considered on balance 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

Resolved:

1. That the application for a public footpath from Ormerod Street to Gamble Road be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-557
2. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(b) and Section 53(3)(c)(i) of 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 the 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.

**9. Wildlife and Countryside Act 1981
Claimed Public Footpath from Blackburn Road to Church Street,
Ribchester,
Ribble Valley Borough
File No. 804/510**

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

At its meeting on 24th October 2012 the Committee had agreed that it was not satisfied that a test for confirmation could be met and that a further report be presented to consider the confirmation of the Order.

The report explained what had happened and that the present landowner now acknowledged the existence of the route and had withdrawn their objection as they had now recognised there was a Public Rights of Way footpath.

Having examined all the information presented, the Committee agreed that taking all the relevant evidence into account, the Order be confirmed as unopposed.

Resolved:

1. That the report from 24th 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.

**7. 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**

A report was presented on an 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.

Details of the claim and the evidence relating to it, together with a summary of the law in relation to the Definitive Map and Statement of Public Rights of Way (in the form of Annex 'A') were presented to the Committee.

Officers requested to add to the recommendations that, if Committee were minded not to delete part of footpath 22 Pilling an Order be made to modify the particulars of the statement in order to clarify where the footpath runs.

The Committee needed to determine where the path ran when it became a public right of way and needed to consider what was recorded on the Definitive Map.

From a legal point of view it had to be decided whether Footpath 22 was there in error. It was advised there was no sufficient evidence of an error nor sufficient evidence of an alternative footpath..

It was put to the Committee that there should be two additional recommendations added, stating that an Order be made to clarify the description of the Footpath 22 Pilling under Section 53 (2)(b) and Section 53 (c)(iii) and that it be promoted for confirmation. The wording of said description was considered by the Committee.

Having examined all the information presented and taking all the relevant evidence into account, the Committee agreed to the two recommendations in the report along with two additional recommendations.

Resolved:

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.
3. That an Order be made pursuant to section 53 (2)(b) and Section 53 (c)(iii) of the Wildlife and Countryside Act 1981 to modify particulars in the Statement of Public Rights of Way relating to the section of the footpath westwards from point A to read:
"Heading in a westerly direction from SD 41192 48302 with a width of 6m along an enclosed track leading to Fieldhouse at SD 41135 48294. This section of the route is approximately 60m in length. From Fieldhouse the route heads in a southerly direction following the route shown on the 1932 25 inch Ordinance Survey map to a former field boundary at SD 41135 48290. The width of the track here starts as 10m near the front of Fieldhouse, the route then runs with a width of 9m when 3.5m from the house, reducing to 3m as it heads south-west passing the former out-buildings. It then follows the line of the 1932 boundary of Fieldhouse in the enclosed track for approximately 110m varying in width from a minimum of 3.6m to a maximum of 5.4m, to join public footpath 21 Pilling at SD 41042 48266."
4. That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

11. Date of Next Meeting

It was noted that the next meeting of the Committee will be held at 10:30am on the Wednesday 1 July 2015 in Cabinet Room 'B' – The Diamond Jubilee Room at County Hall, Preston.

I Young
Director of Governance, Finance

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

Executive Summary

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

Recommendation

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

Background and Advice

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

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

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

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

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

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

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

Definitions

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

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

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

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

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

Duty of the Surveying Authority

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

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

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

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

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

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

Orders following "legal events"

Other events include

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

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

Government Policy - DEFRA Circular 1/09

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

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

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

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

These are that:

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

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

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

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

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

Definitive Maps

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

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

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

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

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

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

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

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a “new” route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

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

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

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

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

Dedication deemed to have taken place (Statutory test)

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

Documentary evidence

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

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

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

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

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

Recording vehicular rights

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

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

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

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

Diversion Order s119

TO MAKE AN ORDER

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

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

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

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

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

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

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

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

Diversion Orders under s119A

TO MAKE AN ORDER

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

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

OR

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

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

Diversion Orders under s119ZA

Diversion Orders under s119B

Diversion Orders under s119C

Diversion Orders under s119D

Guidance under these specific sections will be made available when required

Extinguishment Order under s118

TO MAKE AN ORDER

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

GUIDANCE

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

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

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

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

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

Extinguishment Orders under s118A

TO MAKE AN ORDER

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

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

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

GUIDANCE

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

Extinguishment Orders under s118B

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

TO MAKE THE FIRST TYPE OF S118B ORDER

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

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

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

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

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

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

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

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

The same test as above.

GUIDANCE

Again there is convenience to consider.

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

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

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

Regulatory Committee
Meeting to be held on the 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 1st July 2015

Electoral Division affected: Rossendale North
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Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpath at Love Clough Fold from Public Footpath No. 1 to Public Footpath No. 9 Rawtenstall, Rossendale Borough

File No. 804-518

(Annex 'A' refers)

(Appendices A, B and C refer)

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Executive Summary

Investigation into the addition of a public footpath between Public Footpaths No. 1 and No. 9 Rawtenstall at Love Clough in accordance with file no. 804-518 and the consideration of an Order to add to the Definitive Map and Statement a public footpath.

Recommendation

1. 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 record a Public Footpath on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
2. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.
3. That the 2006 Order made following the Committee Decision of 27 September 2006 concerning application 804-421 be submitted to the Secretary of State requesting non-confirmation.

Background

In 2005 an application was received for a footpath starting at point A on the Committee plan but following a different alignment to the route that is the subject of this report.

The 2005 application was accepted by Committee at their meeting on 27 September 2006 and a Definitive Map Modification Order was made. Copies of the Committee report and Legal Order are appended to this report.(Appendices A and B refer)

Objections were received to the making of the Order and following further investigation it was discovered that the Order route had only come into existence on that alignment following the development of farm buildings into residential properties in the late 1980s. However, the map and documentary evidence, and evidence of use submitted with the application appeared to relate more closely to the layout of the buildings when they were part of a working farm, before redevelopment took place. It was therefore decided to investigate the matter again to determine, using all the evidence, exactly where a public right of way might lie.

Interviews were carried out with a number of the users that had filled in forms that were submitted with the original application and all users were sent a photocopy of a photograph of the site prior to development with a request that they mark on the route that they claimed to have used.

As a result of those interviews it is the view of Officers that there is insufficient evidence to promote the 2005 Order through to confirmation and an investigation has now been carried out into the route shown on the Committee plan by a bold dashed line and marked between points A-B-C-D.

In addition to the problems of the evidence, Orders are drawn up under Regulations of 1993 which prescribe what notations have to be used on a definitive map but also states that these same notations should be used on order maps. This provision was not followed by many authorities and notations which were technically incorrect had become standard. The Order Map for this 2006 Order shows the public footpath as a solid black line which does not comply with the Regulations.

The Planning Inspectorate had in the past accepted many orders with incorrect notations but stated in a letter to all authorities of 7 September 2011, that they would *'accept any order containing incorrect notation if the order was made prior to 7 September 2011.'* The Planning Inspectorate Advice Note 22 was revised on 1st May 2013, attached as appendix A, and this no longer allows Authorities to submit Orders where an incorrect notation is used and states *"... an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation."*

A full investigation has been carried out of the route marked between points A-B-C-D on the Committee plan and this report details that investigation and the evidence that was brought to light following the interviews carried out by Officers of Legal and Democratic Services.

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”

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

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

Applicant/Landowners/Supporters/Objectors

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

Advice

Public Rights of Way, Planning and Environment Service's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8105 2725	Junction with Rawtenstall Footpath 1
B	8108 2727	Unmarked point at which the route under investigation moves away from the bank of the watercourse.
C	8110 2730	Point at which the route under investigation passes

		the south east corner of the building now known as Clough Fold Barn.
D	8113 2733	Junction with Rawtenstall Footpath 9

Description of Route

A site inspection was carried out on 13th November 2014.

The route under investigation commences at a point on Public Footpath no. 1 Rawtenstall on the north side of the bridge over Limy Water and shown as point A on the Committee plan.

From point A the route under investigation extends in a north-easterly direction parallel to Public Footpath 4 Rawtenstall (legally recorded to the south of the route under investigation within the boundaries of the watercourse) following a tarmac access road approximately 3 metres wide, which provides access to the CPA Social and Bowling Club and a number of residential properties. A street light is located on the route close to point A.

The route under investigation passes the front of the Social Club but is separated from the Club by a substantial stone wall. Access to the club is via a pedestrian gate near to point A and vehicular access is also available by travelling along the route under investigation to a small car parking area on the north side of the route which is accessed just before reaching point B.

Between point A and point B the route under investigation is bounded by a stone wall on the south side which forms part of the man-made stone banking that defines the route of the watercourse (Limy Water). On the north side, the route is bounded first by a stone wall and then a wooden fence, both of which mark the boundary of the Social Club. There are no signs, gates or barriers at point A indicating whether the route is considered to be public or private.

Ornate iron gates have been erected across the route at point B. The gates were open when the route was inspected and access through them was freely available. The gates are approximately 5 foot high rising to over 6 foot high where they come together in the centre. If the gates were locked there would be no access over or around them for pedestrians attempting to use the route. A lock existed as an intrinsic part of the gate but it was not possible to determine at the time of the inspection whether it was used. A notice was erected on the gates (which had not been present in 2005 when the original application was made) which stated "Private Road (Resident access only) Please Keep Dogs on Lead & off the Grass Verge".

Beyond point B the land over which the route under investigation passes no longer looks like it did during the time that it is claimed to have been used because the farm buildings have been redeveloped into a number of residential properties.

From point B the route under investigation continues in a generally north-easterly direction but is now obstructed by the garden wall of The Barn. The line of the route passes through the front garden and into the garden of the neighbouring property (Clough Fold Barn) which has been split into two properties and extended on the

eastern end. Detailed measurements have not been taken but this extension appears to extend out across the route (at point C).

From point C the route continues through the garden of 2 Clough Fold Barn, passing through the boundary between 2 and 1 Clough Fold Barn (no access) and across the garden area to the east of 1 Clough Fold Barn. Access along the route is further prevented by a boundary wall/hedge.

The route then crosses a private access road that provides access to a number of properties and then passes through a wooden fence (no access) to continue across a garden area in a north-easterly direction and another wooden fence (no access) to reach Public Footpath 9 Rawtenstall at point D.

The total length of the route is 120 metres.

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

		shown.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Greenwood's Map of Lancashire	1818	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 map shows Commercial Street crossing Limey Water, and continuing to the north west. It shows a number of buildings and names them as 'Low Booth'. The route under investigation is not shown.
Investigating Officer's Comments		The route did not exist as a major route in 1818 although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Hennet's Map of Lancashire	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		Love Clough is shown and named but the route under investigation is not shown.
Investigating Officer's Comments		The route did not exist as a major route in 1830 although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any

		public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The route under investigation does not cross land affected by the planned construction of a canal or railway.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map in the County Records Office for the area under investigation.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Award was found for the area under investigation.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map sheets 64 and 72	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-7 and published in 1849. ¹

¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey

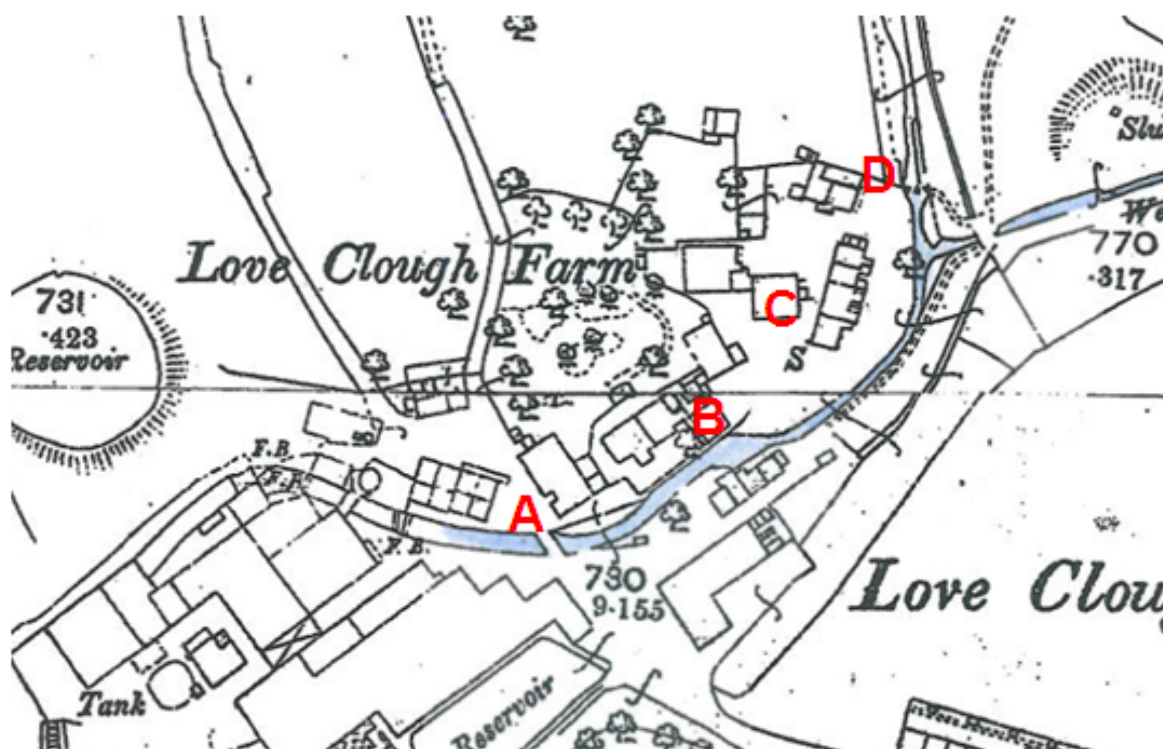


Observations

The map shows a number of buildings in close proximity to the route under investigation which are not named. The route is not shown on the map although access onto it appears to be available at point A passing between the watercourse and a building and then continuing along a more restricted but accessible length to the south east of a second building to point B. From point B the route is not shown but it appears that it could have been possible to pass across open ground to point C where the line of the route passes between buildings. Further buildings are shown on either side of the route under investigation between point C and point D – some of which may have been clipped by the route. From point D a track is shown leading north along the western side of Limy Water

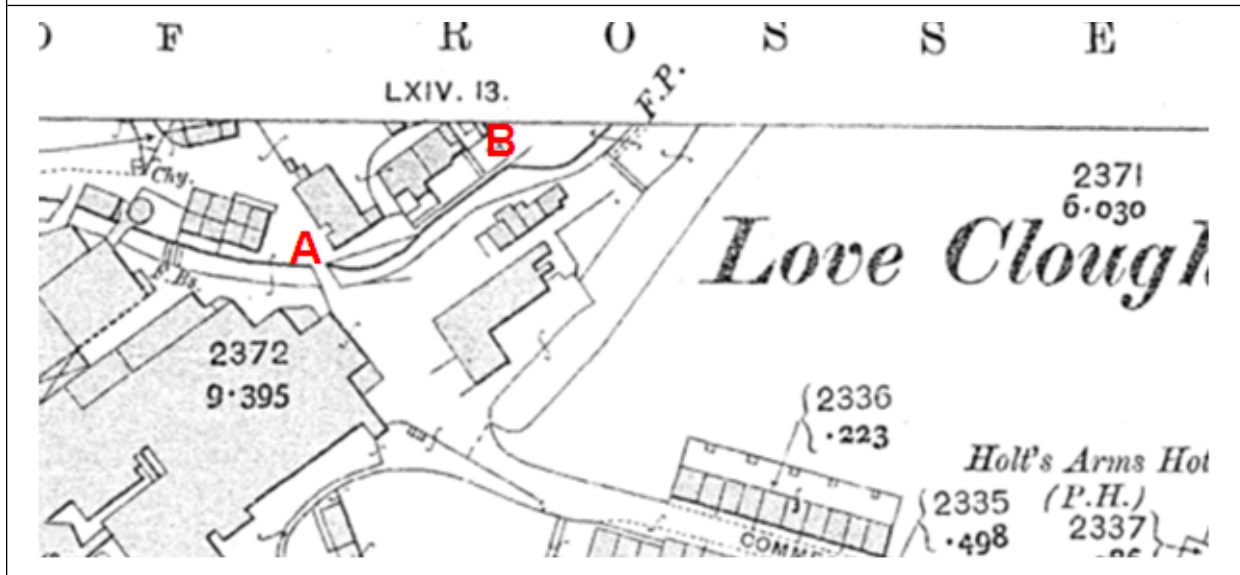
mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally 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.

		consistent with the route now recorded as Rawtenstall Footpath 9.
Investigating Officer's Comments		The route under investigation did not exist as a defined route on the ground in 1849 although it may have been physically possible to pass along the route – or close to the line of the route - between the properties shown.
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.



Observations		<p>The 25 inch scale map provides more detail than the earlier 6 inch map. The blue colouring on the map extract has been added by the County Council to clarify the location of the watercourse.</p> <p>The map shows that the route under investigation crossed an open strip of land between the building and the watercourse from point A separated from the properties to the north of the route by a boundary. Partway between point A and point B this strip narrows considerably (to approx. 1 metre) as far as just beyond point B.</p> <p>From here the route under investigation is not shown as a defined route but crosses an open area of land to point C. Between point</p>
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		<p>C and point D some buildings are shown to the east of the route which the line of the route passes through - although access appears available on either side of the buildings to point D.</p> <p>At point D a line is shown across what appears to be the boundary of the farm north of which is a track which is consistent with the route now recorded as Rawtenstall Footpath 9. Immediately east of the line is the watercourse and on the east side of the watercourse there is a double pecked line leading from/to it suggesting that a route existed to or across the watercourse at this point.</p> <p>The buildings between point A and point D collectively appear to form part of Love Clough Farm (named on the map). The area through which the route under investigation appears to be farm with additional buildings which may have been a collection of barns and cottages associated with the farm.</p>
Investigating Officer's Comments		<p>The route under investigation did not appear to exist in 1891 although access along most of it may have been available. Between point C and point D buildings extended across the route.</p> <p>Pedestrian access to these buildings appears to have been via the route under investigation between point A and point B suggesting that the 1m wide section was passable.</p>
25 inch OS Map	1911	Further edition of the 25 inch map surveyed in 1892, revised in 1909 and published in 1911.



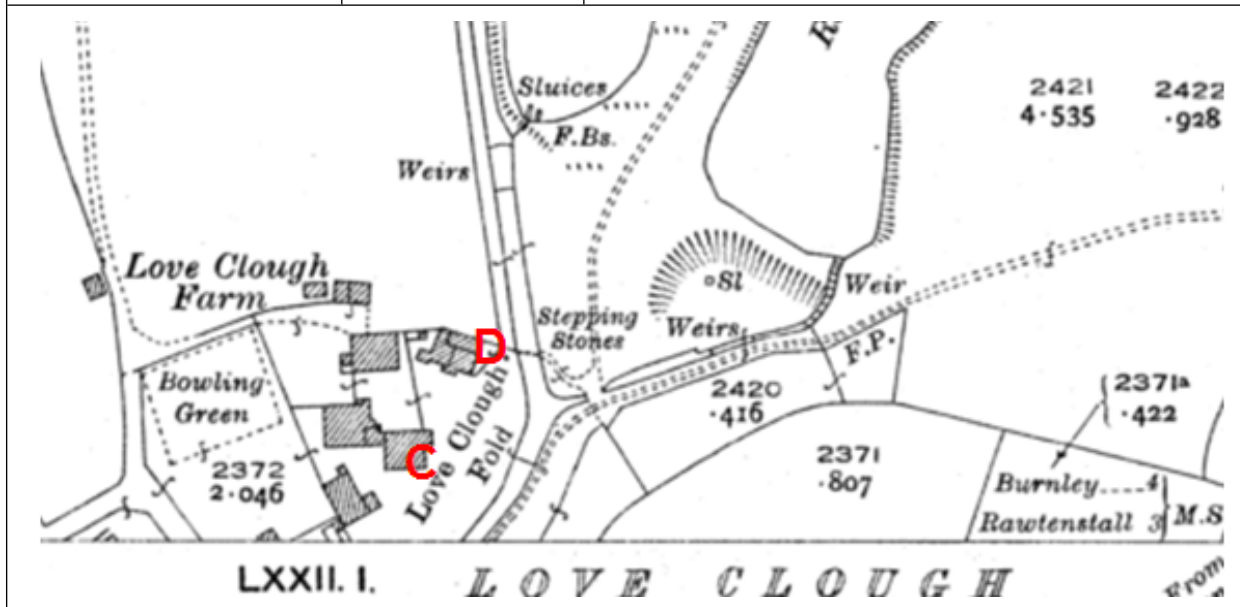
Observations		Shows the area similar to the earlier (first) edition of the 25 inch map. An open access way to the farm buildings appeared to exist between point A and point B the width of which was defined by boundaries. The buildings through which the route under investigation passes between point C and point D are labelled as Love Clough Fold. At point D a boundary is shown across the route of what is now Rawtenstall Footpath 9 and immediately east of point D stepping stones are marked on the map providing a crossing of Limy Water.
Investigating Officer's Comments		The route under investigation did not appear to exist in 1909. Access along most of it may have been available with some buildings over it near point C and point D.

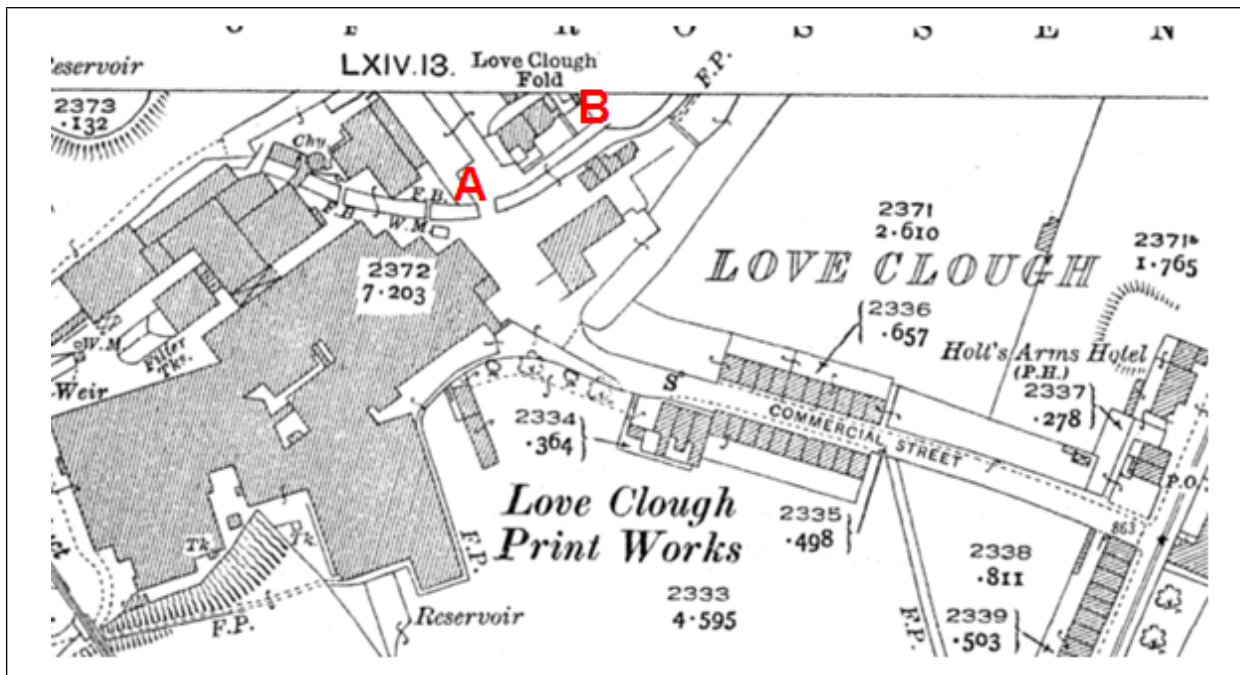
		<p>Pedestrian access to these buildings appears to have been via the route under investigation between point A and point B suggesting that the 1m wide section was passable.</p>
<p>Finance Act 1910 Map</p>	<p>1910</p>	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was 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 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>No Finance Act records are available in County Records Office and it has therefore been necessary to request a copy of the Map and relevant Field Book entries from the National Archives.</p> <p>The route under investigation is not excluded from the numbered hereditaments. The quality of one of the maps held at the National Archives Office is very poor but it appears that the whole length of the route under investigation was included in a single numbered hereditament labelled as part of 1491. It has not been possible to locate a copy of the field book to see whether any deductions were made for the existence of a public right of way.</p>
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Investigating Officer's Comments		<p>The route under investigation was not excluded from the numbered hereditaments suggesting that it was not considered to be a vehicular public highway at that time. Because it has not been possible to find the relevant field book no inference can be drawn with regards to whether the landowner at that time considered the route to be a public footpath or bridleway. However, as the plot number covered a much larger area than the one crossed by the route under investigation it is unlikely that the field book would have provided strong evidence of the existence (or not) of public rights.</p>
25 Inch OS Map	1930	Further edition of 25 inch map (surveyed 1891, revised in 1928 and published 1930)





Observations		Access to the properties labelled as Love Clough Fold still appears to be via the route under investigation between point A and point B and this is shown to be of a greater width than on earlier editions of the map. The cottages that had been located on the route between point C and point D are not shown and the full route appears to be available.
Investigating Officer's Comments		The route under investigation did not appear to exist in 1928. However access along it may have been available to link to the route of Footpath 9 and the stepping stones adjacent to point D.
Aerial Photograph ²	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.

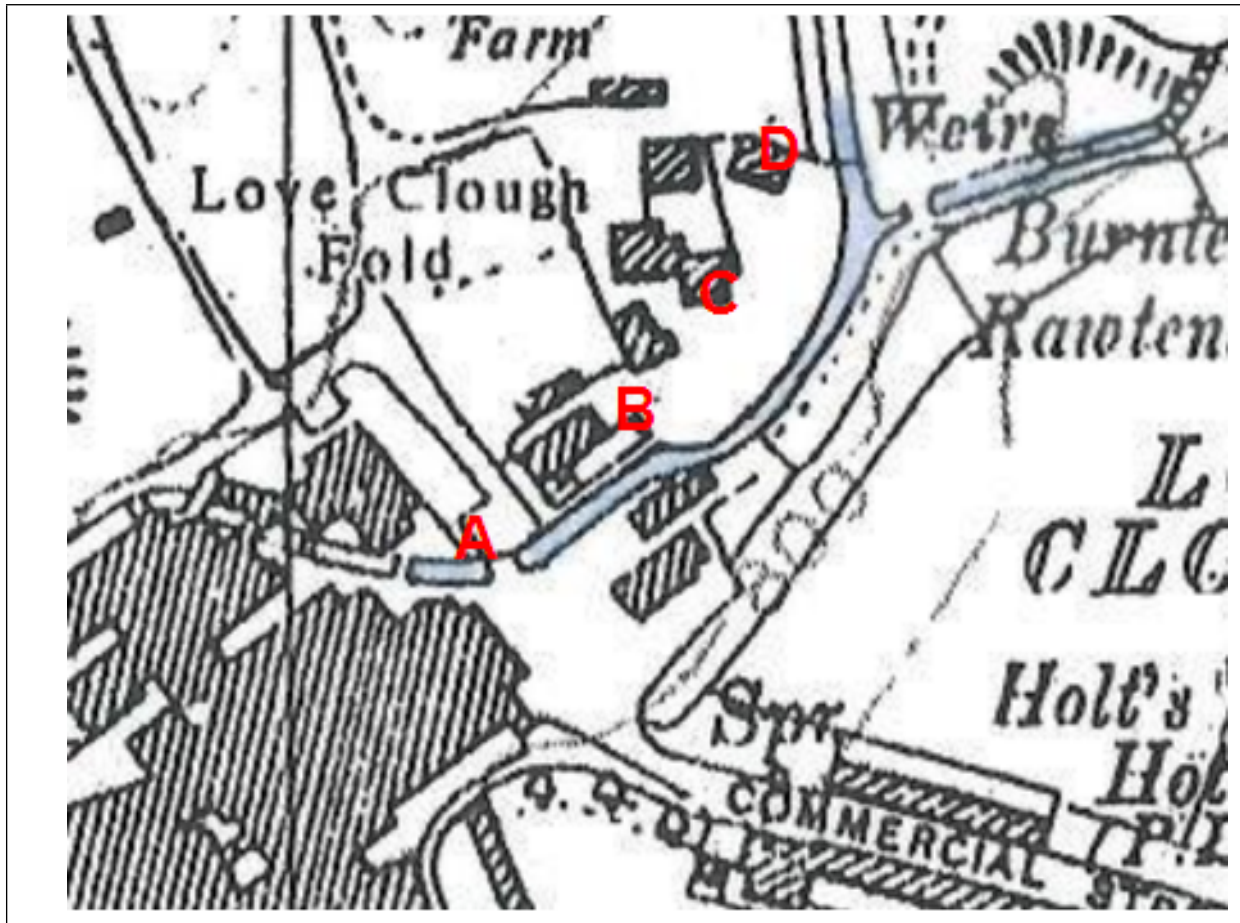
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



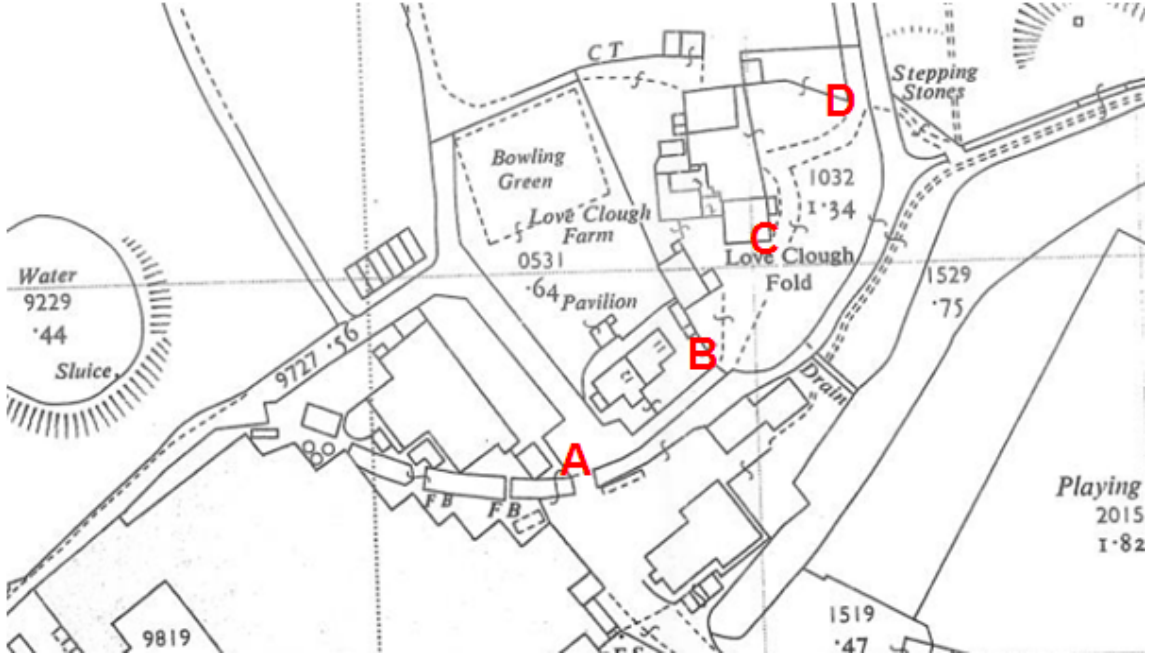
Observations		The route between point A and point B cannot be seen due to tree cover. Between point B-C-D a faint route corresponding largely with the route under investigation can be seen.
Investigating Officer's Comments		Access along the route between point A and point B cannot be seen but a faint line can be seen extending from point B suggesting that it was available. A faint line can be seen between point B-C-D which is consistent with use of a route on foot.
Authentic Map Directory of South Lancashire by Geographia	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.



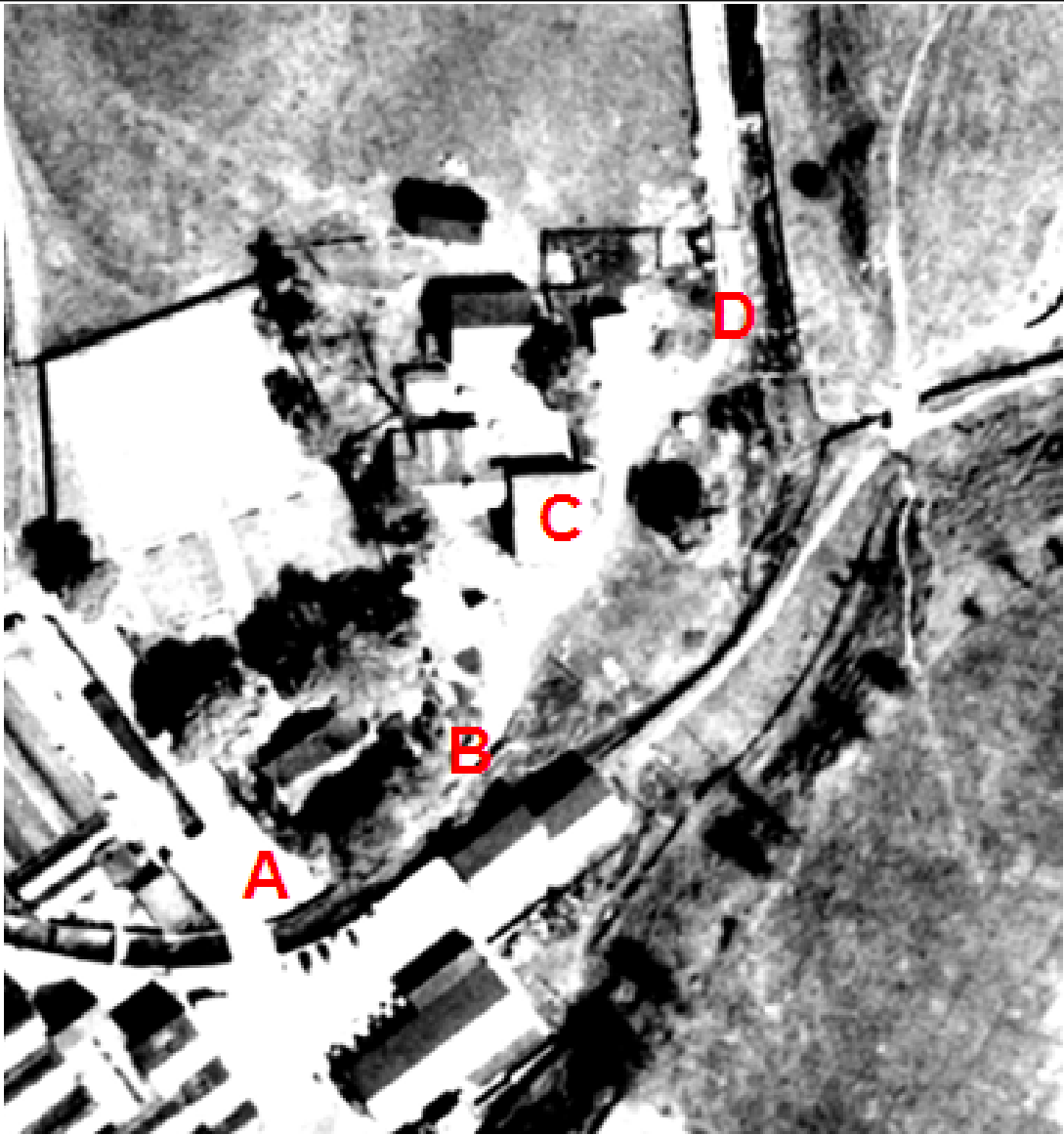
Observations		The route under investigation (and the route of Footpath 9 Rawtenstall) are not shown on the map.
Investigating Officer's Comments		If the route under investigation existed at the time that the map was compiled it was not considered to be a sufficiently important or vehicular highway to be included on a map of this kind.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



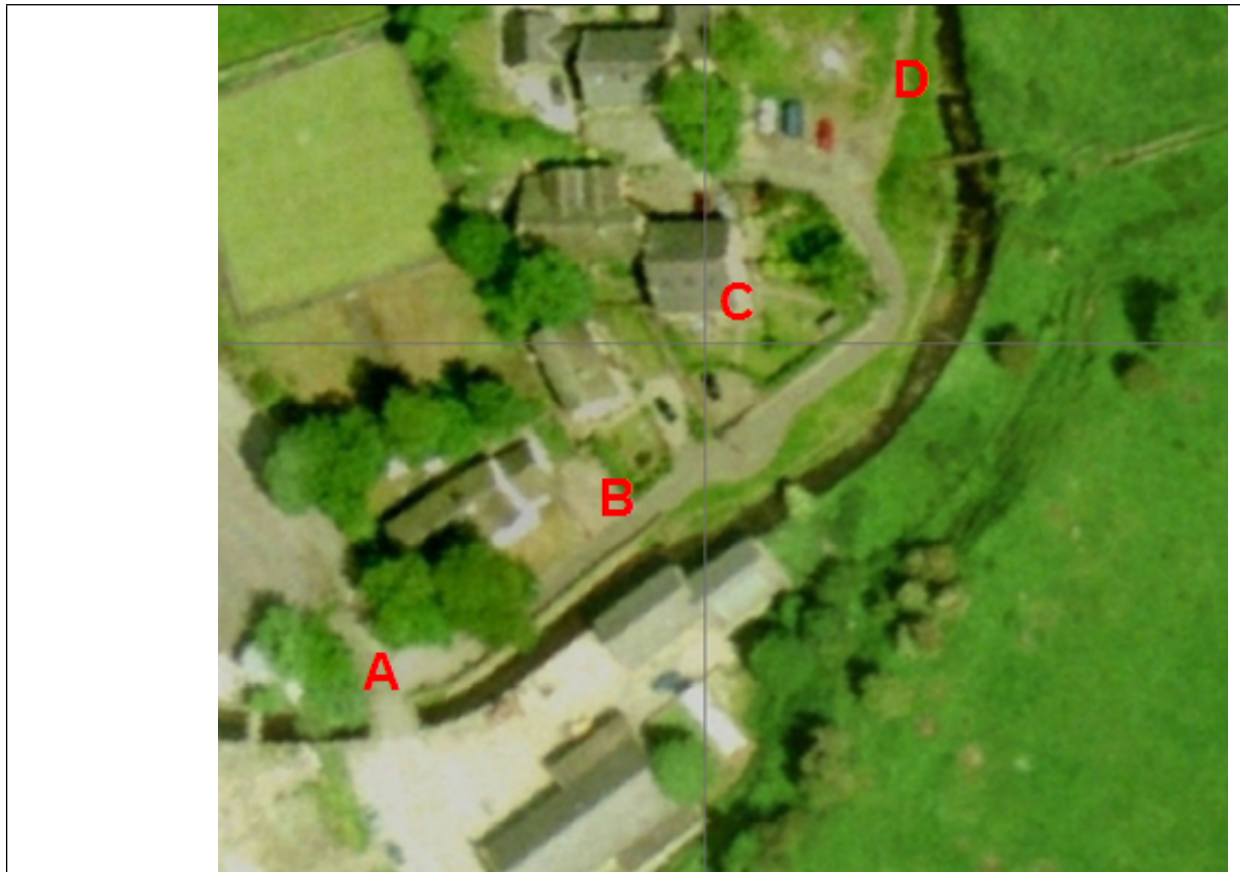
<p>Observations</p>		<p>This 6 inch map has been enlarged and the watercourse coloured blue by officers so that the detail can be seen easily within the report.</p> <p>A solid line is shown across the route just east of point A and beyond that the route would have passed along the enclosed section to point B. The route is not shown between point B-C-D although no feature is shown which might have prevented access. A line is shown across the route just north of point D.</p> <p>An alternative access is shown to Love Clough Fold further north of the route under investigation.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation is not shown although it may have been available on the ground. Access may have been restricted close to point A and immediately beyond point D.</p>
<p>1:2500 OS Map</p>	<p>1962</p>	<p>Further edition of 25 inch map reconstituted from former county series and revised in 1960 and published 1962 as national grid</p>

		series.
		
<p>Observations</p>		<p>The map shows access onto the route at point A being open and the route is shown along an enclosed strip between point A and point B. A line is shown across the route at point B and a track is indicated (double pecked lines) along same line as the route under investigation to point C. This track continues to point D via access to a property between point C and point D but was unenclosed suggesting the route C-D may have been available.</p> <p>Access onto Footpath 9 appears to be available from point D and the words stepping stones are shown adjacent to point D.</p>
<p>Investigating Officer's Comments</p>		<p>Access onto the route under investigation appears to be available at point A and the route accessible to point B. A gate is probably in existence at point A but it is not possible to determine from the Ordnance Survey mapping. A visible track existed through Love Clough Fold to point D which deviates slightly from the route under investigation but indicates that access was available through the property and not just to it. The track is unbounded (as indicated by pecked lines) so it was likely that anyone walking from point B to point D could have taken a direct route.</p>

		<p>An extract of this map was also submitted by the Residents Association who have objected to the application. They consider that the map does not show the application route and that the 'beaten track' provided vehicular access to the farm and outbuildings. The Investigating Officer would agree that the track shown through Love Clough Fold would more than likely have provided vehicular access to the farm and buildings. However, its physical existence as a route through the farmyard also supports and is consistent with the user evidence that has been submitted in relation to this application.</p>
Aerial photograph	1960s	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



Observations		Although it appears to be, it is not possible to be certain whether access was available between point A and point B due to tree cover. A clearly defined track can be seen extending from point B on the photograph to point C and on to point D.
Investigating Officer's Comments		The aerial photograph supports the user evidence that has been submitted that the route under investigation existed on the ground and shows that it appeared to be capable of being used in the 1960s.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		By 2000 it can be seen that there have been changes to the area crossed by the route under investigation. Access between point A and point B can be seen to exist along a hard-surfaced road which then extends in a north easterly direction before curving round to intersect the route under investigation between point C and point D. The route under investigation does not appear to be accessible between point B and point C and from point C to the interception of the new 'road' midway between point C and point D but from this point to point D the route under investigation can be seen.
Investigating Officer's Comments		Redevelopment of the farm has resulted in the construction of an access road and the fencing off of land to provide garden areas. It may still have been possible to walk the route under investigation between point A and point B but use of the full length of the route under investigation on its exact alignment was no longer possible.
Aerial Photograph	2010	Aerial photograph available to view on GIS.




Observations		Further development of the site has taken place. The route under investigation still exists between point A and point B but access along the route between point B and point D is obstructed by numerous fences and garden areas.
Investigating Officer's Comments		The route under investigation may have been useable between point A and point B but not between B and D.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council rural district I 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.

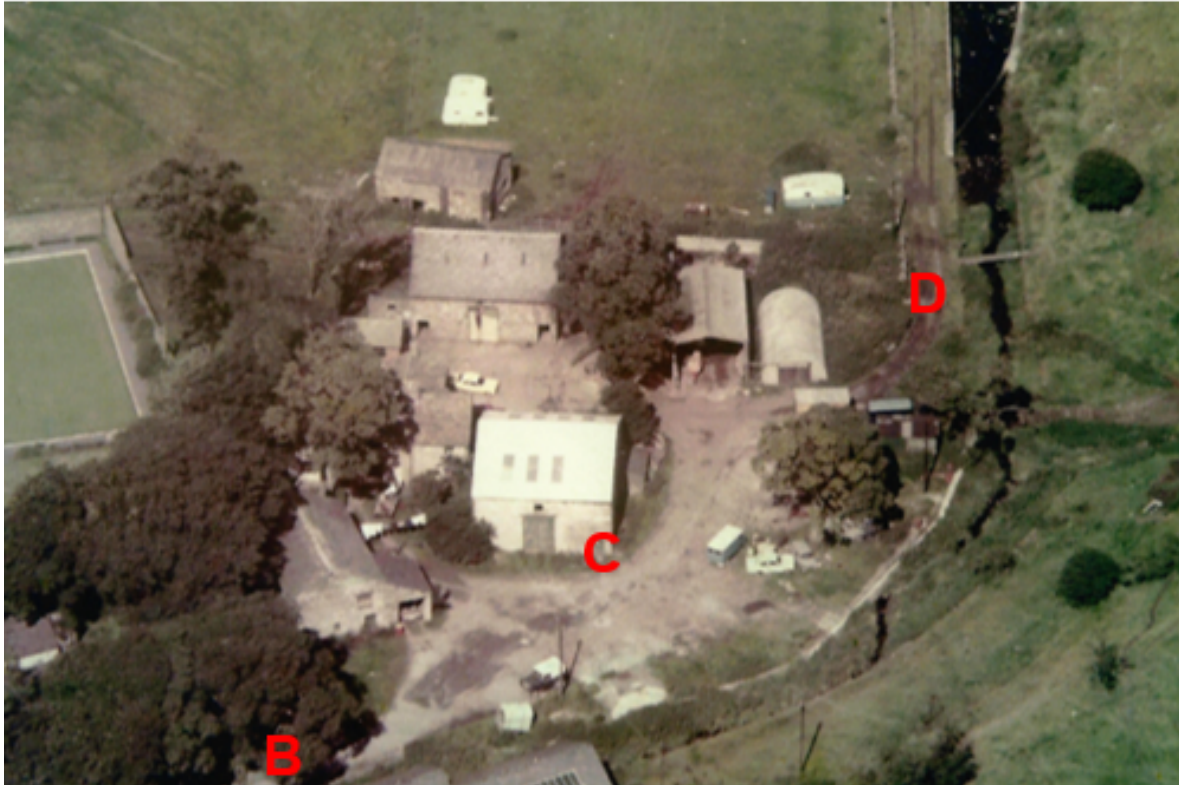
Observations		Rawtenstall was a municipal borough in the early 1950s and so a parish survey map was not compiled.
Draft Map		The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The route under investigation was not shown on the Draft Map of Public Rights of Way for Rawtenstall and there no representations made to the County Council in relation to it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation was not shown on the Provisional Map and there were no representations made to the County Council in relation to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation was not shown on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a

		relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The route under investigation is not shown on the Revised Definitive Map of Public Rights of Way (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be a public right of way by the Surveying Authority. There were no objections to the fact that the route was not shown from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Photographs provided by Mr David Collinge	Undated but prior to redevelopment of farm	Mr Collinge completed a user evidence form that was submitted with the 2005 application and when interviewed by Legal Services provided the photographs subsequently used to confirm the route that people claim to have used.



Observations		The photograph clearly shows the building that was subsequently converted into the two dwellings that make up Cloughfold Barn (adjacent to point C) and the property known as 'The Barn' with a track passing the buildings that corresponds to the route under investigation and which shows the continuation onto Footpath 9 and the crossing of the watercourse adjacent to point D. The shape of the track and footprint of the buildings is consistent with the 1:2500
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		map reconstituted from former county series and revised in 1960 and published 1962.
Investigating Officer's Comments		The route under investigation physically existed leading from point B through point C and on to point D when the photograph was taken and appeared to be capable of use.
Undated photograph		Undated photograph submitted with 2005 application.
		
Observations		This undated photograph shows the building that is now known as the CPA Social and Bowling Club and the walled route between point A and point B providing access to the farm as being open and available.
Investigating Officer's Comments		The photograph confirms that the route between point A and point B existed as a walled route and that access appeared to be available to the farm yard.
Aerial Photograph submitted by Loveclough Fold Residents Association	C1960	Aerial photograph submitted by Loveclough Fold Residents Association.



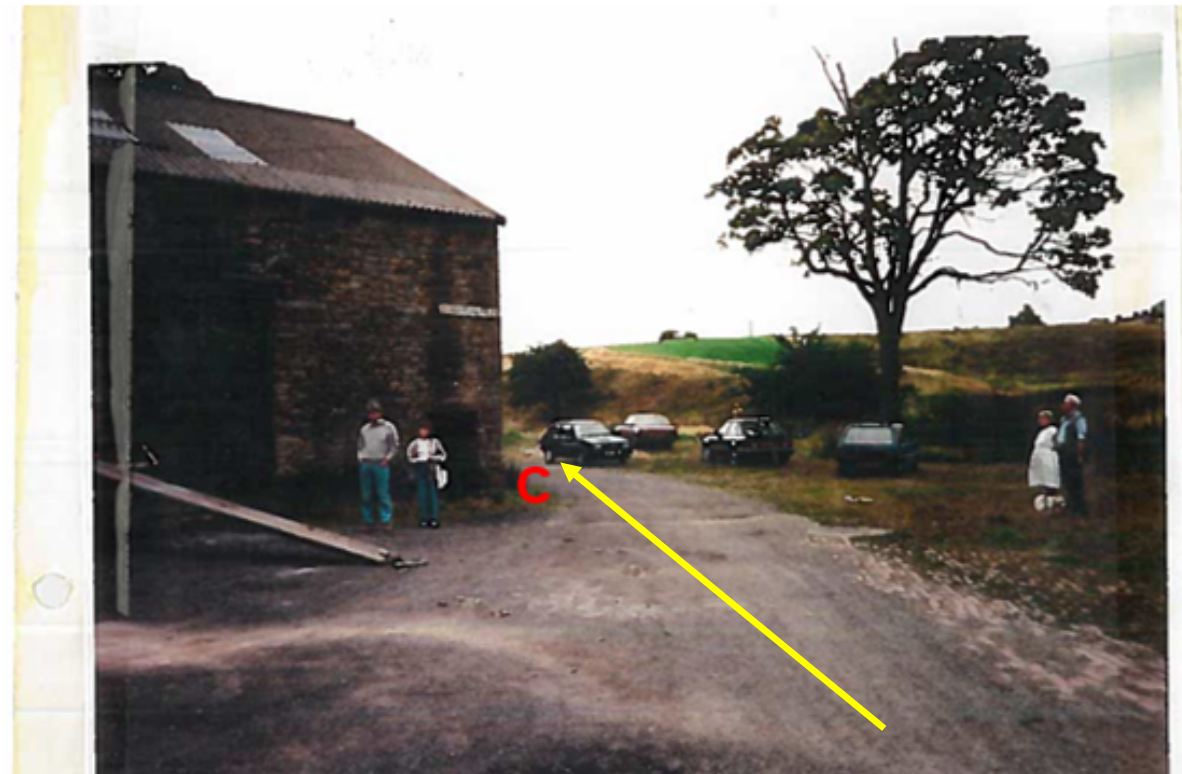
<p>Observations</p>		<p>The aerial photograph is undated but is thought by the Residents Association to have been taken in the early 1960s. It provides a clear view of the farm yard through which the application route runs between point B and point D.</p> <p>The photograph clearly shows the building that was subsequently converted into the two dwellings that make up 'Clough Fold Barn' (adjacent to point C) and the property known as 'The Barn'.</p> <p>A wide track consistent with vehicular access to and around the various farm building can be clearly seen and the full length of the route under investigation between point B and point D looks to have been accessible through to point D.</p> <p>The shape of the track and footprint of the buildings is consistent with the 1:2500 map reconstituted from former county series and revised in 1960 and published 1962.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation physically existed leading from point B through point C and on to point D when the photograph was taken and appeared to be capable of use. The fact that the route passed through a</p>

		farm along an access route also used by vehicles is not inconsistent with public rights of access on foot.
Photographs submitted by Mr Ashworth	1989	<p>When consulted about the original application in 2005 the owner of Loveclough Fold Farm wrote a letter objecting to the application and enclosed a number of photographs, three of which are included below.</p> <p>Mr Ashworth said that he purchased Loveclough Fold Farm in 1989.</p> <p>Photograph 1 has the date September 1989 handwritten on the back of it. Mr Ashworth states that it shows the 'access road past barns owned by Mr and Mrs Smith and Mr and Mrs Felinish' and states that the 'access road' goes round to the farm yard and dairy.</p> <p>Photograph 2 also has the date September 1989 written on the back of it. It is said by Mr Ashworth to show the 'access road' past the front of the barn owned by Mr and Mrs Felinish and round into the farm yard/dairy.</p> <p>Photograph 3 is undated but is described by Mr Ashworth as showing the 'access road' as it 'was'. He describes the access road as running close to the gable end of the barn and round the back of the farm to the dairy, barn and muck midden.</p>

Photograph 1



Photograph 2



Photograph 3



<p>Observations</p>		<p>The photographs provide further evidence of the layout of the farm and associated buildings prior to redevelopment. They show the access route passing through point C which appeared to consist of a mixture of compacted stone/earth.</p>
<p>Investigating Officer's Comments</p>		<p>The photographs are consistent with earlier aerial photographs and Ordnance Survey plans that show the farm prior to redevelopment. The route through point C appears to be open and available to use and the fact that the route passed through a farm along an access route also used by vehicles is not inconsistent with public rights of access on foot.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</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</p>

		<p>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 the landowners under this provision of non-intention to dedicate public rights of way over this land.

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

Point A shown on the committee plan is owned by Avonbraid Limited, Molteno House, 302 Regents Park Road, London N3 2JX. Part of the route between A and B is unregistered. Part of the route near Point B and Point D is owned by David Haworth Ashworth and Alison Jane Ashworth, Loveclough Fold Farm, Loveclough, Rossendale, Lancs BB4 8QT. David Stuart Hemsall and Diane Ewart-Jones, The Barn, Loveclough Fold, Rossendale, Lancashire BB4 8QT are also affected by this route. Point C is owned by Stephen Felinski and Sally Ann Felinski, 1 Clough Fold Barn, Loveclough Fold, Rossendale, Lancs BB4 8QT, and the land just after Point C is owned by James Richard Tozer and Dawn Kimberley Tozer, 2 Clough Fold Barn, Loveclough Fold, Loveclough, Rossendale, Lancashire BB4 8QT.

Summary

The early maps do not show the route with the exception of A-B which was defined by boundaries shown on County Series Ordnance Survey maps. The route under investigation would have linked to the stepping stones.

The 1930 25 inch Ordnance Survey map does not show the route under investigation— other than the enclosed section between point A and B but access along the route may have been possible through the farm as reinforced by the 1940s aerial photograph which shows a faint line consistent with pedestrian use between point B-C-D.

The most relevant pieces of map and photographic evidence examined are the 1:2500 OS map published in 1962, the 1960s aerial photograph, undated photographs taken by David Collinge believed to be dated from the 1960s and the aerial photograph submitted by the Loveclough Fold Residents Association (c1960) all of which clearly show that a physically defined route consistent with that of the route under investigation existed through the farm prior to redevelopment and that it appeared to be capable of being used.

Legal and Democratic Service's Observations

16 users of the 2006 Order route were interviewed and it came to light that the evidence they provided relates up until 1989/1990 to the route shown on the attached committee plan A-B-C-D, their evidence is set out below (these user forms were completed in 2004). The use after 1989/1990 was of the new access track at the development

All 16 users have used the old track through the farm on foot. The years from which they used the route varies:

1930 (1) 1933 (1) 1939 (1) 1956(1) 1947 (1)
1950 (1) 1954(1) 1958(1) 1961(2) 1967(1)
1969 (1) 1972 (1) 1974 (1) 1980 (1)
1 user did not specify.

The main places the users were going included the Printworks, the CPA Club, walking to other Public Rights of Way, fishing lodges, Crawshawbooth, Whinny Hill, Commercial Street, riverside, Clowbridge and other surrounding countryside. The main purposes for using the route included walking the dog, for pleasure / leisure, fishing, picnics and walking to work. The use of the route per year varies from 2-5 times, 20-35 times, once per week, 150 per year, 3-4 times per week, almost every day and constantly.

None of the users have ever used the route on horseback, however 2 users have used the route on a motorcycle / vehicle between the years of 1972-1986 and 1992-1999.

Most users agree that the route has always run over the same line however one user mentions there was a slight variation from near the buildings to the new road in 1986

(as he recalled). Another user states 'no' to this question but didn't provide any further details.

9 users agree that there are no stiles / gates / fences along the route, 1 user mentions where the two tall black gates are at the moment there used to be a farm gate, another user mention having trouble getting over the stile just over the bridge, 2 users state new gates were erected in 2004 and one of the user mentions the gates are closed but unlocked and one other user mentions there are gates adjacent to the CPA Club. However none of the users mentions any of the gates / stiles being locked or preventing any access.

2 of the users worked for a landowner, one worked on Rileys Farm from 1972-1991 but never received any instructions and the other worked for a local farmer (J Bridge) between the years of 1969-1977 and also never received any instructions.

Since the dwellings have been built one user has been told they had no right to use the path, one user has received unkind looks but has not been confronted or ever turned back, and another user has been stopped but carried on along the route. 6 of the users however have heard of others being stopped or turned back, some of these mention that others no longer use the route.

8 of the users have never been told that the route they were using is not a public right of way, however other users provided the following information, 1 user was told about 5 years before 2004 that the route was not a public right of way and was a private way, another user has been told it is private and has not used the route since, another user was challenged by children and told that they couldn't go through the gate as it was private, and 1 user mentions the members of Loveclough Angling had been stopped and told that the land was private and that they had no right to use the path.

2 users mention seeing notices along the route that state 'private', and none of the users have ever asked permission to use the route.

Further information has been provided by users since the interviews were carried out, this information is set out below.

- 1 user mainly used the route for work (Printworks) however Printworks shut down in 1980 but continued to use the route to walk the dog.
- Developers started work on the land in early 1990, even though work was ongoing users could still use the route
- 1 user used this route for family walks growing up and then continued to use the route when he joined the fishing club
- A user was told 'probably 1999' when people moved in that the path was private, but then let the user walk through
- A user mentions that when the developments took place they put the gardens where the track used to run
- Another user has used it since 1961 for getting to work, or going to the club and lodge for past time activities, when the owners sold to the developers a new track was put in and fenced

- 1 user mentions that when using the route to get to the club or during the summer time when walking the dog he would meet lots of people along the way other dog walkers and children playing
- Before 2004 1 user states that nobody said anything to him when he used the path and he often took his kids down to play
- A few of the users mentioned the previous owners never bothered about people using the route and they were only challenged / prevented when the new owners arrived

After carrying out the interviews officers wrote to the other users who did not attend an interview with a copy of the photograph provided by Mr Collinge to ask them to draw on the exact route they used before the development was carried out, 58 users replied and marked on the route along the old track. It is considered that their pre 1989 use is use of the old farm track and therefore the user evidence in this matter is significant.

Information from the Landowners

Recent consultations have been carried out with the landowners regarding the route shown on the attached Committee plan, their information is detailed below.

The landowners affected by the route have formed Loveclough Fold Residents Association and the Chairman Mr David Hemsall has provided a response on their behalf, the initial points raised in the first letter are as follows:

1. Lancashire County Council's consultation letter was identical to the consultation letter submitted for the previous claimed route in 2005, a copy of this letter was attached.
2. He states that residents complied with the terms of that letter and the matter was then concluded in favour of the residents.
3. The only other query relating to Loveclough Fold was raised in 1997 after the previous landowners had failed to comply with an Enforcement Order; at Rossendale Borough Council's Development Control Sub-Committee meeting on 7 May 1997, retrospective planning permission was given (a copy of this was provided) and the relevant Enforcement Order was withdrawn (copy provided).
4. Your letter does not explain why an issue which was settled almost a decade ago is now being exhumed. (Lancashire County Council have since replied to Mr Hemsall to explain the procedure)
5. The resurrection of a matter long since settled strikes residents as being frivolous, vexatious and calculated to cause anxiety and stress.

Mr Hemsall then submitted further evidence to support his objection. He provided a copy of a 1960's aerial photograph and a copy of the Ordnance Survey map of 1960. And states 'the aerial photograph of what in the 1960s was a farm and its outbuildings: the vehicles shown allow pretty precise dating. With respect, I venture to suggest that this is superior to the bodged up panorama which you sent on a previous occasion. I am bound to point out that the present dwellings consist of either (1) the buildings shown or (2) more recent structures erected on the footprint of those farm buildings.'

He then goes on to say 'the second attachment is a copy of the Ordnance Survey map of 1960 which clearly shows the scene depicted in the aerial photograph. From both the attachments, it will be clear that (a) there was no path - and certainly none going towards the footbridge which simply did not exist then - and (b) the beaten track shown both in the photograph and on the map gave vehicular access to the farm and its outbuildings. Neither attachment shows any trace at all of the claimed path.

Indeed, it is the residents' contention that this evidence points to the existence of only one definitive path: that on the south east bank of the Limey Water which is a matter which, with the assistance of an independent expert, the residents are pursuing as a wholly separate matter.'

Avonbraid Limited who own the land around Point A on the committee plan provided a plan that outlines their ownership but didn't actually provide any comments regarding the claimed public footpath.

An objection to the consultation of the Order that was made in 2006 by the residents of the properties affected by the route provides the information below about a route before the development.

The residents say that there was never an issue regarding a footpath existing along the access area to the six converted barns and old farmhouse. The search completed by solicitors showed that there was no footpath or right of way along the access route, but that a footpath existed on the other side of the river (Public Footpath No.4) connecting to Public Footpath No.10 and also Public Footpath No.9 which crossed stepping stones and then ran inside the garden (along the river bank) and then on through adjacent farmland.

They say that the footpath in question served a group of small terraced houses which existed on the east bank of the river and were later demolished in the 1950/60s. These houses served as accommodation for workers of Love Clough Dye Works who owned the whole site until the 1980s.

The residents explained that the farm was sold to Riley Brothers, who owned and farmed the land adjacent to the dye works. They later sold the land to a developer, K and S Ainsworth, who sold the properties in a derelict state to the current occupiers and others over a period of 3 to 4 years.

Riley Bros. submit that Tootal Print Works initially owned the land at Love Clough Fold, along with the dwellings; J and G Bridge rented the farm. In 1983 Rileys purchased the land from Tootal and Mr J Bridge continued to live in the farmhouse and rent a small plot of land until his retirement. In 1988 following Mr Bridge's retirement Rileys decided to sell the farmhouse and surrounding barns for development. In March 1989 these were sold to K and S Ainsworth and Rileys retained the surrounding land for farming purposes. At no time have Rileys ever given permission for people to use the path in front of the properties as a footpath although they don't deny that some locals may have used it to visit the farm to collect milk over the years. However, whilst they owned the land, permission has never been sought either verbally or written, nor would it have been granted.

To summarise, the residents of the Love Clough Fold state:-

- 1. All walks that can be made by using the proposed footpath can be made using the footpath on the opposite side of Limy Water. There is no need to introduce a new, parallel path.*
- 2. Use of the path prior to 1987 was to, not through, the farm. The existing Public Footpath No.4 divided near the present bridge and a short length crossed the river by stepping stones to the farm. This can be verified by the Riley family, previous owners of the land in question and owners of all adjacent fields.*

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

User evidence

Aerial photographs showing available route

OS map evidence

Photographs

Connection to footpath network and stepping stones

No evidence of action by landowner prior to 1989

Against Making an Order

Location being working farm

Possible access to the farm

Another footpath nearby

Conclusion

This matter is unusual in that it stems from the realisation, following interviewing witnesses, that the line of the more modern access route claimed in 2004 was not on the same line as the pre 1989 route used by members of the public. Instead the route followed an old track through the farm which was there until approximately 21990 when the development of the farm into residences began. The route through the farm has been investigated further and the evidence is detailed in the report.

There is no express dedication and so Committee is asked to consider whether there is sufficient evidence from which to deem dedication under S31 or infer dedication from all the circumstances at common law.

Considering S31 it is considered that there were some challenges to some users of the route as early as 1989 but the main challenge would be a at that time when the development of the site affected the old route which became incorporated into new garden areas. It is suggested that the twenty years of use to be considered would be 1969-1989 or 1970-1990

Looking at the user evidence from both those interviewed and those who provided user form and confirmation of their route, it is suggested that the local users used the track through the farm then tried to continue on the line of the new access track at the development and this is why their use refers to use upto 2004.

Looking back to an earlier period of use it is suggested that there is sufficient evidence of use by the public without interruption and with no evidence of actions taken by the landowner for the twenty years being considered such that dedication can be deemed under S31. Committee are asked to discount evidence from the user who worked at the farm as this use would probably not be as of right.

Considering also the use of the route and lack of action by the owner as circumstances from which the owners intention to dedicate a footpath for the public could be inferred, it is suggested that this evidence too would be sufficient from which to draw such an inference of a dedication in the years before the new development post 1989.

Taking all the evidence into account , on balance, Committee may consider that there be sufficient evidence to make an Order in this matter to record a footpath on route A-D and promote same to confirmation.

As the earlier 2006 Order has objections it must be submitted to the Secretary of State but as the evidence of a footpath on the 2006 Order line is now difficult to sustain and there is the additional issue of incorrect notation, Committee may feel it is appropriate to withdraw support from that Order and submit it to the Secretary of State requesting non- confirmation.

Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-518		Megan Brindle , 01772 535604, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A

USE OF CORRECT NOTATION ON DEFINITIVE MAP MODIFICATION ORDERS AND PUBLIC PATH ORDERS

Introduction

1. The purpose of this Advice Note is to inform all Order Making Authorities (OMAs) about the Planning Inspectorate's expectations in terms of the notation to be used in order maps. It supersedes the advice contained in our letter of 7 September 2011 which was issued to all OMAs in England.
2. This advice note is publicly available but has no legal force.

Background

3. All new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded.

Definitive Map Modification Orders

4. Regulation 3 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12) states that '*Rights of Way to which part III of the Act (public rights of way) applies shall be shown on the definitive map as indicated in Schedule 1 of these Regulations*'. Schedule 1 sets out the various line styles to be used to depict footpaths, bridleways, restricted byways and byway open to all traffic. The notation for a restricted byway is the same as that previously used to depict a road used as a public path – either a green broken line or a broken line and small arrow heads as thus: v_v_v_v_. Different options are provided for each type of way.
5. Regulation 6 of SI 1993 No.12 clearly states that '*Regulations 2 (map scale) and 3 (notation) above shall apply to the map contained in the modification...order as they apply to a definitive map*'.
6. On this basis, an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
7. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. In all cases, the map key should clearly identify the different notation types used and what they

mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

9. In addition to using the correct notation, OMAs are reminded that the Regulations also set out specific colours for the various line styles. These must be adhered to. The Regulations do not refer to the use of red ink for any line style but, in any event, we prefer you not to use this colour as it is used by Inspectors if they need to modify an order.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations¹ when preparing public path orders. Public path orders are considered to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity (paragraph 8 above refers).

Combined Orders

14. Combined orders are covered by the Public Rights of Way (Combined Orders)(England) Regulations 2008 as amended by the Public Rights of Way (Combined Orders)(England) (Amendment) Regulations 2010. Whilst they do not specifically state what notation should be used on order maps, Regulation 5 (of the 2008 Regulations) requires that, where a combined order is to be made, the combined order shall be in the form prescribed for an order of the type in question (e.g. a creation order or a diversion order). This is supported by the Guidance for English Surveying Authorities issued in October 2010 which contains, at Annex 1, model forms for each type of order. These clearly state that routes to be stopped-up/diverted shall be shown by a bold continuous line and ways to be added as a bold broken line.
15. On this basis, and unless further guidance is produced by Defra, OMAs will be expected to use the notation set out in the form of order under the relevant public path order regulations.

¹ SI 1993 No.10 for orders under the Town and Country Planning Act 1990 and SI 1993 No.11 for orders under the Highways Act 1980

Regulatory Committee
Meeting to be held on 27 September 2006

Part I - Item No. 5

Electoral Division affected:
Rossendale North

Wildlife and Countryside Act 1981
Claimed Public Footpath from Public Footpath No. 1 to Public Footpath No. 9,
Rawtenstall, Rossendale Borough
Claim No. 804/421
(Annex 'A' refers)

Contact for further information:
J Blackledge, 01772 533427, County Secretary & Solicitor's Group
Mrs A Taylor, 01772 534608, Environment Directorate

Executive Summary

The claim for a public footpath from Public Footpath No. 1 to Public Footpath No. 9, Rawtenstall, Rossendale Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/421.

Recommendation

- i) That the Claim for a public footpath from Public Footpath No. 1 to Public Footpath No. 9, Rawtenstall, Rossendale Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/421, be accepted; and
- ii) 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 footpath from a point on Public Footpath No. 1, Rawtenstall, (GR. 81060 27254), in a general north-easterly direction to a point on Public Footpath No. 9, Rawtenstall, (GR. 81131 27325), a distance of approximately 104 metres, and shown between points A-B-C-D on the attached plan.

Background

A claim has been received for a footpath extending from a point on Public Footpath No. 1, Rawtenstall, immediately to the north of its junction with Public Footpaths Nos. 4 and 94, Rawtenstall, to a point on Public Footpath No. 9, Rawtenstall, immediately to the west of its junction with Public Footpath No. 4, Rawtenstall, a distance of approximately 104 metres, and shown between points A - D on the attached plan, (GR 81060 27254 to 81131 27325), to be added to the Definitive Map and Statement of Public Rights of Way.

Consultations

Rossendale Borough Council

The Borough Council has not submitted any observations on the Claim.

Parish Council

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 – Director of Legal Services Observations'.

Advice

Environment Director's Observations

Description of claimed route

The claimed route commences at a point on Public Footpath no. 1 Rawtenstall approximately 4 metres north west of the junction between Public Footpaths nos. 1 and 4 and shown as point A on the attached plan.

The claimed route extends in a north-easterly direction parallel to Public Footpath no. 4 Rawtenstall (legally recorded to the south of the claimed route within the boundaries of the watercourse). From point A the claimed route follows a tarmac access road approximately 3 metres wide, which provides access to the CPA Social and Bowling Club and a number of residential properties. A street light is located on the claimed route close to point A.

The claimed route passes the front of the Social Club but is separated from the Club by a substantial stone wall. Access to the club is via a pedestrian gate near to point A and vehicular access is also available by travelling along the claimed route to a small car parking area on the north side of the claimed route which is accessed just before reaching point B.

Between point A and point B the claimed route is bounded by a stone wall on the south which forms part of the man-made stone banking that defines the route of the watercourse (Limy Water). On the north side, the route is bounded first by a stone wall and then a wooden fence, both of which mark the boundary of the Social Club on the claimed route. There are no signs, gates or barriers at point A indicating whether the claimed route is public or private.

Ornate iron gates have been erected across the claimed route at point B. The gates were open when the claimed route was inspected and access through them was freely available. The gates are approximately 5 foot high rising to over 6 foot high

where they come together in the centre. If the gates were locked there would be no access over or around them for pedestrians attempting to use the claimed route. A lock exists as an intrinsic part of the gate but it was not possible to determine whether it was used at the time of the inspection. There was no evidence of any notices or signs on the gates that indicated their purpose.

Beyond point B the claimed route continues in a general north-easterly direction along a well-maintained 3-metre wide concrete block paved surface. To the south of the route the watercourse moves away from the claimed route and is no longer separated from the route by a wall. A well maintained mown grass verge now separates the claimed route from the watercourse.

Vehicular access is available from the claimed route to a number of residential properties on the north side of the route. Just beyond point B on the south side of the claimed route there is a telegraph pole and the concrete block paving has been extended to pass completely around the telegraph pole to provide a passing place/ parking area for vehicles.

At point C the claimed route no longer follows the 3 metre wide concrete block paved access road (which continues in a north and then north westerly direction to further residential properties). Instead the claimed route continues in a general north-north-easterly direction across the mown grass verge to point D where it meets Public Footpath no. 9 Rawtenstall. There is no visible worn track across the grass verge and no signs, gates or barriers indicating whether the claimed route is public or private from this point.

Documentary evidence

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

The earliest map examined that shows the area was Yates' map of 1786. The map names the village of 'Love Clough'. It shows Limy Water and a scattering of buildings in the area of the claimed route, but no roads, tracks or paths between them. A map produced between 1804 and 1810 to show the land owned by the Duke of Buccleuch shows the village in much the same way, with no roads or tracks between the buildings. The next map examined was Greenwood's map of 1818. This map shows the modern Commercial Street crossing the brook, and continuing to the north-west, but is of too small a scale to show minor paths or tracks. Hennessey's map of 1830 shows the village in much the same way as Greenwood did some 12 years earlier.

There is no tithe or enclosure map for Loveclough.

The first edition of the six-inch Ordnance Survey map for the area was published in 1849. This map probably shows the buildings that are now known, as shown on the attached plan, as the Club near point A, and The Barn, Clough Fold Barn and Love Clough Fold Farm to the north of point B. Other buildings are shown which have since been demolished. There is a gap between the rear yard of the building that is now the social club and the bank of the brook, which probably corresponds with the

claimed route between points A and B, but the rest of the claimed route is not shown as an actual path or track, but the line B-D crosses what appears to be open ground.

The next map examined was the first edition of the 25-inch map published in 1893. This map shows the claimed route from A to B as a narrow gap between the bank of Limy Water and the enclosed rear yards of buildings as described above. Beyond point B there is an open area within which the buildings mentioned above stand as shown on the 6-inch map, as well as a terrace of 4 cottages, (now demolished). The buildings are named as Love Clough Farm. A stepping-stone crossing of the brook is shown to the north of the footbridge at point D, with a track that corresponds with Public Footpath no. 9. There is a collection of buildings on the opposite side of the brook from the claimed route, with a row of double pecked lines, signifying a path or track of some sort, leading from the far north-eastern side of the buildings along the side of the brook, before crossing it where Public Footpath no. 10 meets Public Footpath no. 4, as shown on the attached plan.

The next edition of the 25-inch map, published in 1911, shows the buildings on each side of Limy Water in much the same way as on the 1893 map. Apart from the length A – B, no path or track is shown corresponding with the rest of the claimed route. The terrace of cottages (now demolished) referred to above, is named as Love Clough Fold on this map. Line B-D would be across an area of open ground at Love Clough Farm.

The 1930 25-inch map still does not show more of the claimed route as a bounded track other than A to B. The terrace of cottages is no longer shown. The open area remains south east of the farm buildings.

The 25-inch map published in 1962 shows the length A to B as on earlier maps. There is a solid line across the track at point B, which would probably indicate the presence of a gate. There are some pecked lines across the open area between the brook and the farm buildings, which is now enclosed gardens. These pecked lines indicate a change of surface across the open area that becomes an unfenced track along the immediate eastern side of the building named on the attached plan as Clough Fold Barn. This continues northwards then eastwards to Public Footpath no. 9. Part of this unfenced track can be seen as a double row of pecked lines north of point D on the attached plan. This unfenced track from point B is not the route claimed as a public footpath but the route as claimed crosses open ground.

Aerial photographs confirm that the surfaced roadway along which the claimed route runs did not exist in 1945 or 1963. Photographs dated 1989, supplied by a resident, show a rough stoned surface yard area between the buildings, which continues as a track immediately against the eastern wall of the building now called Clough Fold Barn on the attached plan. The most recent aerial photograph, taken between 1999 and 2004 shows the surfaced roadway. There also appears to be a trodden path between the roadway and Limy Water from point B to D, but not along the claimed route.

In summary therefore, it appears that a complex of farm buildings known as Love Clough farm has existed on the site from at least the end of the 18th century. In 1849 access is recorded as being possible along the claimed length A to B to an open

yard area between the buildings. A track corresponding to Public Footpath no. 9 northwards from the far side of the yard, by the stepping stone crossing of the brook, has also existed from at least that date. The claimed route B-D crosses the open area although there is no marked path between B and D is shown on maps until 1962 – however this track is not the claimed route. Photographic evidence confirms that the surfaced track nearer to the buildings still existed in the late 1980s and likewise the open area nearer to the watercourse. The buildings at Love Clough Farm are now renovated and some renamed as The Barn, Clough Fold Barn, Loveclough Fold Farm as shown on the attached plan and a new access roadway has been constructed.

It is advised that the line claimed is not shown on the Ordnance Survey Maps as being blocked at any time by any building and would appear to have been across an area of open ground. There are however no documents which assist in determining the status of the claimed route.

Comment is made later in this report about the correct location of a public footpath being on the other bank of the watercourse. However it is advised that Public Footpath no. 4 Rawtenstall, shown on the attached plan, is recorded as lying in the brook. The earliest map produced in the mid 1950s by Rawtenstall Municipal Borough in preparation of the Definitive Map was the Draft Map. This map clearly shows the footpath drawn in the brook. Whether this was deliberate, or an error, is not known. The depiction of the path in the brook was copied at each stage in the production of the Definitive Map, up to and including the current Definitive Map, First Review. It is the case that there is map evidence that a path or track has existed since at least 1893 from the rear of buildings on the opposite side of Limy Water from the claimed route, starting from approximately where the word 'Drain' is on the attached plan. The path on old OS maps is shown continuing along Public Footpath no. 4 to Burnley Road and northwards to the reservoirs on Public Footpath no. 10.

Comment

Director of Legal Services Observations

Information from the Applicant

In support of the Claim the applicant has submitted 156 evidence of use forms indicating knowledge of the route for over 70 years (3); 60-69 years (5); 50-59 years (8); 40-49 years (12); 30-39 years (22); 20-29 years (28); 10-19 years (25); less than 10 years (43); and ten unspecified periods.

The forms indicate use of the route for over 70 years (1); 60-69 years (5); 50-59 years (7); 40-49 years (11); 30-39 years (20); 20-29 years (27); 10-19 years (25); less than 10 years (49), and eleven unspecified period of use.

The usage has been mainly for pleasure purposes, leisure, recreation, bird-watching, dog-walking, walking, running, access to and from school, work and shops, visiting friends and relations, and as access to fishing and the countryside, and ranges from daily, 2/3/4/5 times per week, weekly, fortnightly, monthly, to less frequently.

One witness mentions use of the route in a vehicle; several mention use on bicycles.

Other than as detailed below, the majority of the witnesses state that there are no prohibitory notices on the route; they have not been stopped or turned back whilst using the route (other than very recently); they have not been employed by any landowner over which the route passes; there have been no stiles, locked gates or fences across the route, other than those gates recently erected in or around June, 2004; they have not sought permission to use the route; and that the claimed route has always followed the same line.

Several witnesses refer to members of the local Angling Club being stopped from using the route, and refer to 'others' having been told the route is private, (although it is believed that such challenge has only been in fairly recent times). It has been stated by users that the gates have only recently been erected and, whilst looking imposing, being closed, and giving the impression of being a private driveway, they are not locked. One witness did ask the farmer for permission to use the route approximately 38 years ago. A further witness mentions that the farmer at that time did not stop anyone at all from using the claimed route.

Two of the witnesses are members of the family who were tenant farmers at Love Clough farm for thirty years, and a small number of witnesses worked for the farmer when children. The wife of the farmer states that she is aware that people have used the path to the brook side and the other family member, who lived at Love Clough Farm since 1962 says that this (claimed) route has always been used by the public.

One witness refers to there being stepping stones at the river before the erection of the bridge.

Information from others.

The residents of the properties on the old Love Clough Farm site refer to the collection of the residencies as Loveclough Fold. Some of them have objected to the Claim. One such resident is the owner of the land over which the claimed route B-D runs.

It is submitted that there was never an issue regarding a footpath existing along the access area to the six converted barns and old farmhouse. The search completed by solicitors showed that there was no footpath or right of way along the access route, but that a footpath existed on the other side of the river (Public Footpath No.4) connecting to Public Footpath No.10 and also Public Footpath No.9 which crossed stepping stones and then ran inside the garden (along the river bank) and then on through adjacent farmland.

The footpath in question served a group of small terraced houses which existed on the east bank of the river and were later demolished in the 1950/60s. These houses served as accommodation for workers of Loveclough Dye Works who owned the whole site until the 1980s.

The farm was sold to Riley Brothers, who owned and farmed the land adjacent to the dye works. They later sold the land to a developer, K and S Ainsworth, who sold the

properties in a derelict state to the current occupiers and others over a period of 3 to 4 years. The new access road was built in the late 1990s. The residents had asked for it to be redirected away from the properties. The current access road is not the same route as originally used by people who worked on the farm.

Riley Bros. submit that Tootal Print Works initially owned the land at Loveclough Fold, along with the dwellings; J and G Bridge rented the farm. In 1983 Rileys purchased the land from Tootal and Mr J Bridge continued to live in the farmhouse and rent a small plot of land until his retirement. In 1988 following Mr Bridge's retirement Rileys decided to sell the farmhouse and surrounding barns for development. In March 1989 these were sold to K and S Ainsworth and Rileys retained the surrounding land for farming purposes. At no time have Rileys ever given permission for people to use the path in front of the properties as a footpath although they don't deny that some locals may have used it to visit the farm to collect milk over the years. However, whilst they owned the land, permission has never been sought either verbally or written, nor would it have been granted.

Rileys also own the surrounding lodges and Loveclough Angling Club rent the lodges shown on the map between Public Footpaths Nos.9, 10 and 4, (the agreement with the club that access was gained preferably via the main road, the A682, or via the existing footpath on the opposite side of the river to the properties at Loveclough Fold). The Club were contacted verbally by Mr S Riley on the 26th April, (2005 ?) and advised that if they did not use the correct footpath, i.e. the one on the opposite side of the river that is clearly marked with stiles and footpath signs, then their rental of the lodges would be revoked.

They state that Public Footpath No.4 has always been through the factory yard, in-between the two buildings, over a stile along the riverside and turning right up the hillside or between the lodges as per Public Footpath No.10, land owned by Rileys. There are stiles and footpath signs, which were installed by the Council. However, these signs are poorly marked from Commercial Street. They are, however, clearly marked from the stile to the rear of the buildings, marked as drain on Public Footpath No.4.

It is stated that the Riley family have farmed the surrounding areas for over 100 years and at no time has it been common knowledge that a footpath runs in front of the dwellings at Loveclough Fold. Even though they have not always owned the land surrounding Loveclough Fold, they have always been neighbouring farmers.

There is some mention of use by the public by the residents. One refers to local people being interested in the renovation works and taking time to talk to the few people walking by "mainly ramblers" and never stopping people admiring the surrounding area. One refers to the new gates causing tension as people were used to being able to walk down the new access road to the footpath network. They refer to increased use in recent years.

The residents of the properties at Loveclough Fold have questioned the view of the Environment Director (detailed elsewhere in this Report) that Public Footpath No.4 runs down the middle of the river. They consider that this is not the case, but that Public Footpath No.4 runs on the opposite side of the river to the properties and

through the courtyard of the property on the other side. It is submitted that this is a key point as it goes right to the heart of one of the main reasons that this claim is being made. The dotted line marking the footpath is actually clearly shown on the opposite side of the river and entering the courtyard. It is submitted that the Definitive Statement clearly states that the path runs on the northerly side of the river, between existing Hurstwood buildings.

It is submitted that the development of the print works, who constructed the lodges between Public Footpaths Nos. 4, 9 and 10 to increase the water flow for the productivity of the textile industry made it impossible to walk through the river. There is actually a bridge which, to access the river, would involve an 8 to 10 foot jump from the bridge to get into the river, causing significant injury, even loss of life. The bridge has been in use for at least 70 years so no one has used this path for at least 70 years. It is assumed this was when the Council constructed the footpath on the opposite side of the river – Public Footpath No.4, hence the Council's construction of the stiles, bridge and signage to join Public Footpath No.4 to Public Footpath No.10. Also, the River Limey has been subject to severe flooding, causing nearby properties to be harshly flooded, at least 3 times in the last 40 years, surely an unsuitable location for a public footpath.

It is submitted that, between 1988 and 1991, the four old farm buildings were renovated into six residential properties, the land developed into gardens and the properties were occupied. The road through the Fold was not developed at this time and nobody walked the area, ramblers using Public Footpath No.4 on the opposite side of the river. Around this time the area was designated as a Conservation Area.

From the time of occupation of the houses, up to 1992, problems arose with certain members of the fishing club driving at speed along the unmade path and parking on the open ground. At one time, a sign was put up stating 'Private Road – No Vehicular Access'. This was done on a Friday. By Sunday lunchtime it was in pieces in the river.

Soon afterwards, an agreement was reached with the fishing club so that members did not drive along the path, though some continued to walk along it to the lodges to avoid the stile on Public Footpath No.4, although this was contrary to the lodge owners wishes.

It is submitted that Messrs Ainsworth had sold the various properties as separate lots, but retained the open area, on which stood an old shed or barn, plus the area between the properties and the river. This area should have been paved and landscaped but this was never done.

Finally, in 1996, one of the residents sought to have the unsightly barn removed. Messrs Ainsworth would not do this, and an Enforcement Order was issued. Through planning permission, the residents obtained the right to retain the walls but had to build the road and undertake the landscaping of the riverside at their own expense. This was done under the close scrutiny of the planning department of Rossendale Borough Council and with the understanding that there was not a public footpath through the Fold.

An objection was received to the use of Tegular blocks instead of 'proper cobbles' which came from the Claimant.

Work on the road and landscaping was done in the summer of 1997. Messrs Ainsworth retained the responsibility for landscaping the open area, but failed to do this as they hoped for planning permission for a new house. When it became apparent that such permission would not be forthcoming, the land was sold to one of the residents, who is at last able to undertake the necessary work

The relevance of the above is, it is submitted, twofold. Firstly, the residents take their responsibilities seriously as occupants of a Conservation Area. Secondly, due to the hard work of the residents, the appearance of the area was transformed. Also in 1997, Hurstwood Developments Ltd., the owners of the former redundant factory site across the river, brought the buildings into use as workshops for vehicle and machinery maintenance. Also a caravan was put into house the engineer who works at the site.

Prior to this time, most walkers, particularly those with local knowledge, used Public Footpath No.4, through the works yard. The changes brought about by the workshop and caravan meant that this no longer had the appearance of a public footpath, whereas on the Loveclough Fold side there was now an attractive pathway and from this time that pathway saw more use.

Only occasionally have residents spoken to people about the footpath. On one occasion two members of the fishing club dropped litter, and on another, people banged the gate against the stone wall. As a result, they now take no action.

It is submitted that, around 1997, a sign for the Rossendale Way was put on Public Footpath No.4 on the stile behind the works buildings by Lancashire County Council, though this is not visible from Commercial Street. It is stated that Public Footpath No.4 is clearly shown on the north side of the river on the Mario Maps.

Other than the sign above, not visible from Commercial Street, there is a marked absence of signs. Rossendale Borough Council has been approached about this, most recently about two years ago, but to no effect. The last reply from them suggested something might be done when the new estate was complete.

Over the years, on three occasions, the residents have put up signs or maps. On every occasion these signs have been thrown into the river.

In 2002 Elite Homes purchased part of the factory site from Hurstwood Developments, who retained the workshops to the north of the river, and set about constructing just over fifty houses. During 2003, problems arose with prospective buyers driving along the pathway of Loveclough Fold at speed, thus endangering the lives of the children who live in the Fold. Later in the same year and into 2004 further problems arose with people from the new houses bringing their dogs to the riverside area, often without leads.

In March 2004 when one of the residents attempted to mow the grass on the riverside verge, he had to move more than forty lots of dog-mess before he could

start. The residents decided immediately to put up gates after consulting the local Planning Office. Apart from restrictions as to colour and height, both of which have been met, there was no difficulty. In the intervening week or so a sign was put on the wall asking dog-walkers to respect the area. This was thrown in the river.

As soon as the gates went up, there was reaction from some residents of Commercial Street, and members of the club next to the Loveclough Fold houses.

Several residents got into conversation with occupiers of the new estate and the position was explained. To avoid repetition of the story, a map was attached to the gate showing the position of Public Footpath No.4. This, too, was thrown into the river, this time by the occupier of the caravan who freely admitted as much. He said "I don't want people walking past my window". He also stated that Hurstwood did not want the footpath through the area where they intended to construct 'expensive houses', as it would reduce the value of the site.

After the gates were installed, rather more people than normal came walking in Loveclough Fold. Some walked on the Loveclough Fold side, mainly long-time residents of the area. Others, often people who had looked up the footpath maps on the Internet, used Public Footpath No.4. In response to that, the occupier of the caravan put up wire screens to block the path and the Footpath Officer, who was only in post a short time, was called, by whom the residents do not know.

On his second visit the Footpath Officer confirmed that Loveclough Fold was not a public footpath, and told the occupier of the caravan to take the fences down as they were blocking Public Footpath No.4. He took the fences down for a short time only, then re-instated them within a few days. The footpath is still blocked by a caravan.

Some 56 new houses have recently been built on the adjacent derelict land at the bottom of Commercial Street, known as Penny Lodge Dell. These works are almost complete. In addition to this development, however, the existing workshop property through which the existing footpath runs has also been granted planning permission for the development as housing by Hurstwood, the current owners. The residents are of the firm belief that this Claim is an attempt to remove the route of the existing footpath from that land so as to enable a much more profitable development to be build, as not only will there be more land available but also there won't be the perceived inconvenience of having a public footpath running past one or two of the houses which will be detrimental to the value of the properties.

As a result of the new housing development and the increase of people in the area, particularly dog walkers, there became a large number of people wanting to walk their dogs through Loveclough Fold. As a result of that the grass banking running along the river side and the land which it joins to became constantly fouled by dogs. This was mainly because firstly, they had no knowledge of the correct footpath route; this footpath has been in use for the past hundred years. Secondly, if they had been aware of the correct footpath route, they would not have been able to use it as it is constantly blocked by Hurstwood Developments.

With the completion of the new banks, bridge and road, an easier route had been created than that of confronting the occupier of the caravan and climbing a stile.

Residents in the new housing estate (Penny Lodge Dell) began walking the road, many with their dogs and fouling the lawn areas adjoining the river. It was pointed out to people that these were actually part of the gardens and that the road was private, and that the footpath was on the other side of the river.

In August 2004 Rossendale Borough Council were contacted regarding the failure to maintain the footpath, even though they were aware that an employee of Hurstwoods had deliberately blocked the access and is still blocked to this day. A representative of Rossendale Borough Council came down to see residents of Loveclough Fold regarding the matter of the footpath access (or lack of it). He viewed the site, returned to the office, checked the relevant maps, and confirmed that the footpath and access is on the opposite side of the river, between the buildings of Hurstwood Developments.

To summarise, the residents of the Loveclough Fold believe that the Modification Order should not be made for the following reasons:-

1. All walks that can be made by using the proposed footpath can be made using the existing Public Footpath No.4. There is no need to introduce a new, parallel path.
2. Use of the path prior to 1987 was to, not through, the farm. The existing Public Footpath No.4 divided near the present bridge and a short length crossed the river by stepping stones to the farm. This can be verified by the Riley family, previous owners of the land in question and owners of all adjacent fields.
3. Rossendale Borough Council has consistently failed to mark the various paths, particularly Public Footpath No.4. The change in use and appearance around 1997 has led to much greater numbers of walkers taking the route through Loveclough Fold, in the absence of directional signs. In addition, Public Footpath No.4 has been effectively blocked at various times, by metal fencing, machinery, and latterly an old caravan.
4. The application is, in essence, malicious. The Claimant has destroyed a sign put up by residents and objected to work being done in Loveclough Fold. The Claimant has not been seen to use the path.
5. If the Order was to be granted, it would open the way for commercial gain by the owners of the land opposite. Planning permission exists for a small number of dwellings, and clearly the owners would much prefer, and find it financially beneficial, not to have a public footpath through the development. It is anticipated that the owners would argue that there was already a parallel path, and seek to close the part of Public Footpath No.4 going through their land, thereby switching the path from their side of the river to Loveclough Fold, a process not normally approved. It should be noted that the owners of the factory site erected walls around the front of the site in 2004 in anticipation of developing the land and left a gap of approximately one metre for the footpath indicating that they are aware of the existence of Public Footpath No.4 through their land.

Further objections have been made on the grounds that acceptance of the Claim, and the confirmation of a subsequent Definitive Map Modification Order, would have an adverse effect on security, peace and tranquillity, litter, dog-fouling and hygiene. The Committee will, of course, be aware that, although these points are important to those persons making them, they are amenity objections and have no bearing on whether or not the path exists in law.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

Strong user evidence

All except a few are sure line is as claimed

Line has been available for many years along bounded section A-B then across open ground B-D

Tenants of the farm 1958-88 confirm knowledge of public use

Against Accepting the Claim

Information indicating sufficient lack of intention to dedicate and challenge to use but only recently.

Conclusion

This claim is that there is already a public right of way along the line shown A-D on the plan and that this should be recorded as a public footpath on the Definitive Map.

It is noted in this matter that there are a large number of people who have given evidence of their use of this line. The years during which they have used the route have been put into chart form attached hereto. Use of the route would appear to have taken place over several decades increasing steadily over the years.

There is no express dedication by an owner. For dedication to be inferred at Common Law there needs to be circumstances from which it can be inferred that the owner gave the route over to be used by the public. The owner until the 1980s was Tootal Ltd of the Print Works and part of the route (B-D) passed through an open area of a farm tenanted by the Bridge family from Tootal since 1958. It is advised that it appears that no action was taken to dissuade public use and the use was known to Mrs Bridge and at least one other family member.

Ownership of A-B remained with Tootal Ltd although the very first section near point A has been owned by a succession of Housing developers as part of development land to the south and west of the claimed route and again there is no evidence of action taken against public use.

Even after ownership of land crossed by B-D passed to Rileys and then Ainsworths there is no evidence of negative actions taken in the face of public user and it may be that there is evidence on balance that the route had been given up to public use

on foot. It may be considered that the user by the public and the owners seeming acquiescence in same could on balance be sufficient circumstances from which to infer a dedication of the route as a public right of way.

For dedication to be deemed under Section 31 of the Highways Act 1980 the use by the public has to be over the twenty years immediately preceding the route being called into question. It would appear that there has been challenge to the use of the route recently, there is reference to signage and in particular when the gates were erected in 2004. Taking 2004 as being when the users recognised that their use was challenged, use would have to have been without interruption 1984-2004 and despite all the renovation works and the paving of part of the claimed route the users do not seem to have been interrupted in their use. There is some reference to debris in the past on the open area south east of the buildings but again no mention by users of the route being obstructed such that use was sufficiently interrupted.

Until 1988 this open area crossed by B-C was owned by the Riley brothers and it is suggested that there is no reference to any sufficient lack of intention to dedicate being demonstrated at that time. The Riley brothers now say that they did not intend there being a right of way but seemingly took no action at the time of their ownership. From 1988 to 2003 the open area was in the ownership of the Ainsworths and again it may be considered that there is no reference to any sufficient lack of intention to dedicate on their part.

There are a few users who refer to the line of their route changing slightly and it is suggested that they may have used the old track nearer the buildings and then changed to walk the new access road. The overwhelming majority of users however, when asked if their route had always been on the claimed line stated that it had.

There is a known public footpath very near to this claimed line. The line of the recorded right of way is in the watercourse and although the Definitive Statement for this section of FP4 would seem to refer to a route on dry land, it is advised that a Statement needs a line to apply to and in this matter the line is in the watercourse as advised by the Environment Director. The issue of whether there is evidence of a public right of way on the southern side of the watercourse is not before the Committee as part of this matter. This would need to be the subject of a further application. The Committee may however be concerned to decide whether this route, if considered to subsist as a footpath, may be the correct route and the line in the water being in error. It is advised however that the evidence of existence of this claimed route as a public footpath in the 1950s and therefore being that which should have been recorded as the correct route is slight. There is, it is suggested insufficient evidence for the existence of this route to be cogent evidence of an error and that instead it may be that the dedication of this claimed route as separate public route lies more with user since the 1950s

It is suggested that public use of the claimed line has been tolerated by owners until very recently. Use seems to have increased due to the non availability of a route on the other side of the watercourse, to more people living in the area and more use by those fishing in the lodges and this use is now challenged. However lack of action by owners in the past may mean that the route may on balance be deemed or inferred

as already dedicated as a public footpath. Taking all the evidence into account Committee may be minded to consider 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/Ext
All documents on Claim File Ref: 5.24575 (804/421)		J Blackledge, County Secretary & Solicitor's Group, Ext: 33427

Reason for inclusion in Part II, if appropriate

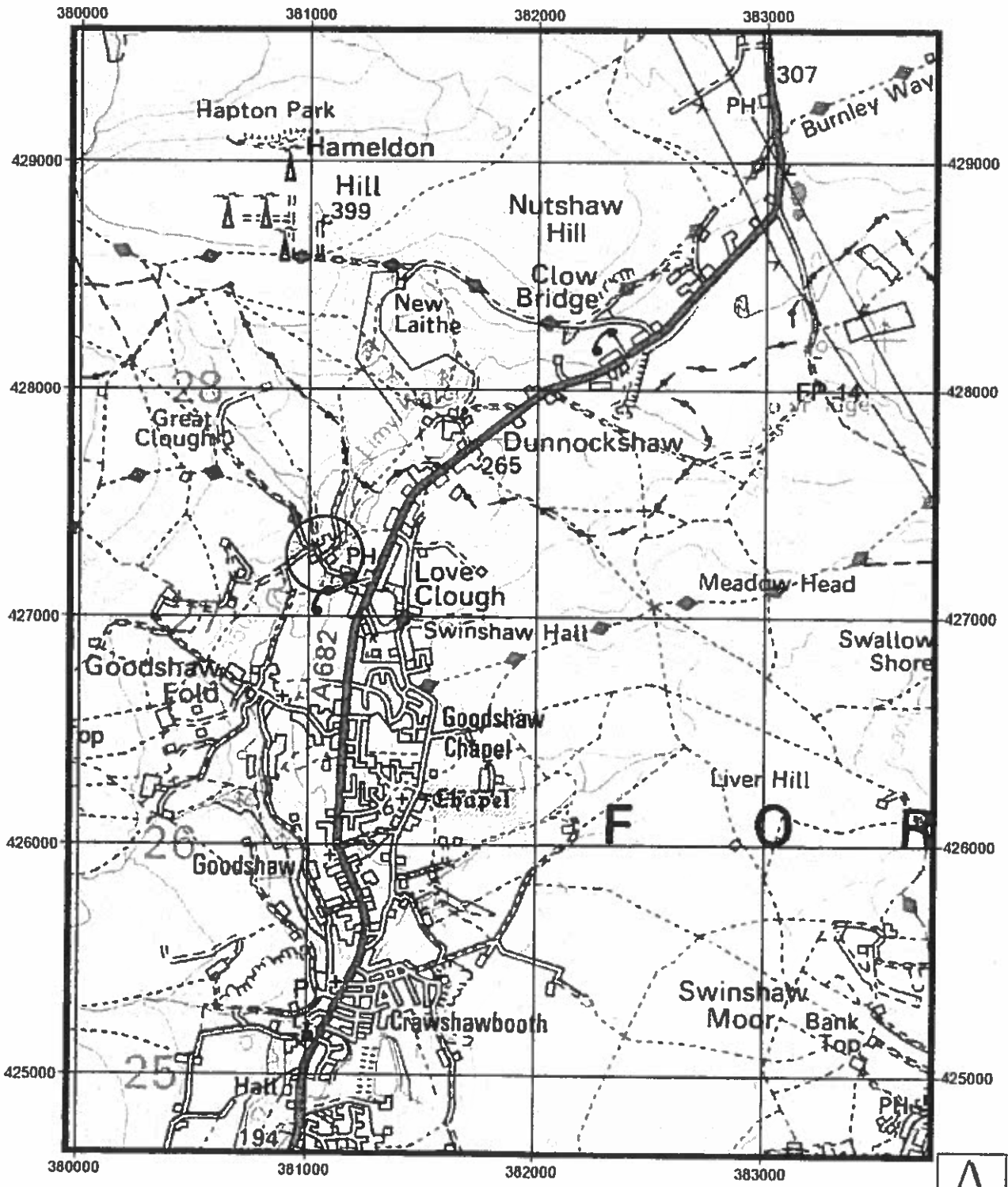
N/A



LOCATION PLAN
Wildlife and Countryside Act 1981
Claimed public footpath from
Public Footpath no. 1 to Public Footpath no. 9 Rawtenstall, Rossendale
Claim no. 804/421

Map 5

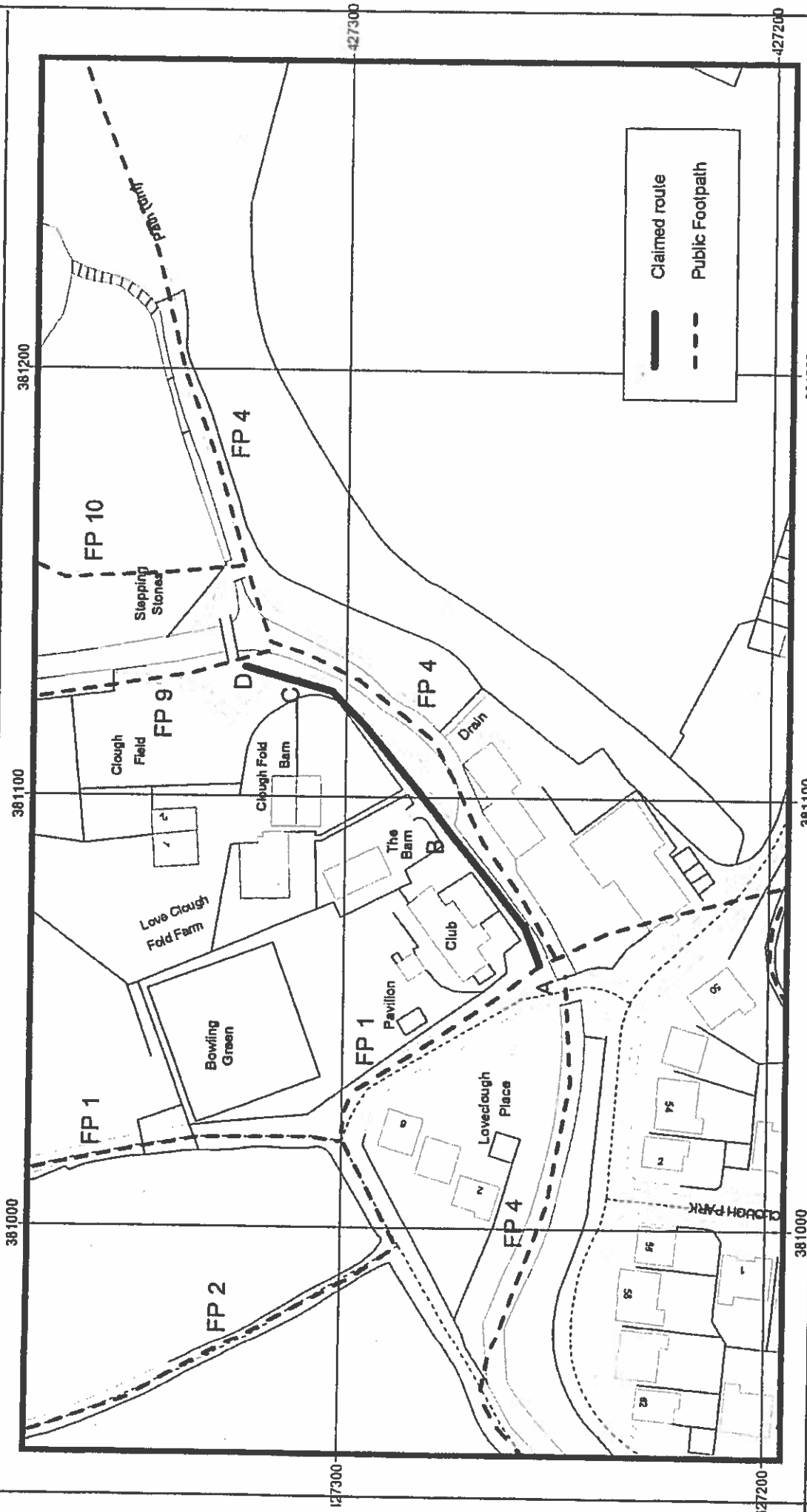
G. Harding B Eng, FICE, FIHT, MIMgt, Director, Environment Directorate.
P.O. Box 9, Guild House, Cross Street, Preston. PR1 8RD



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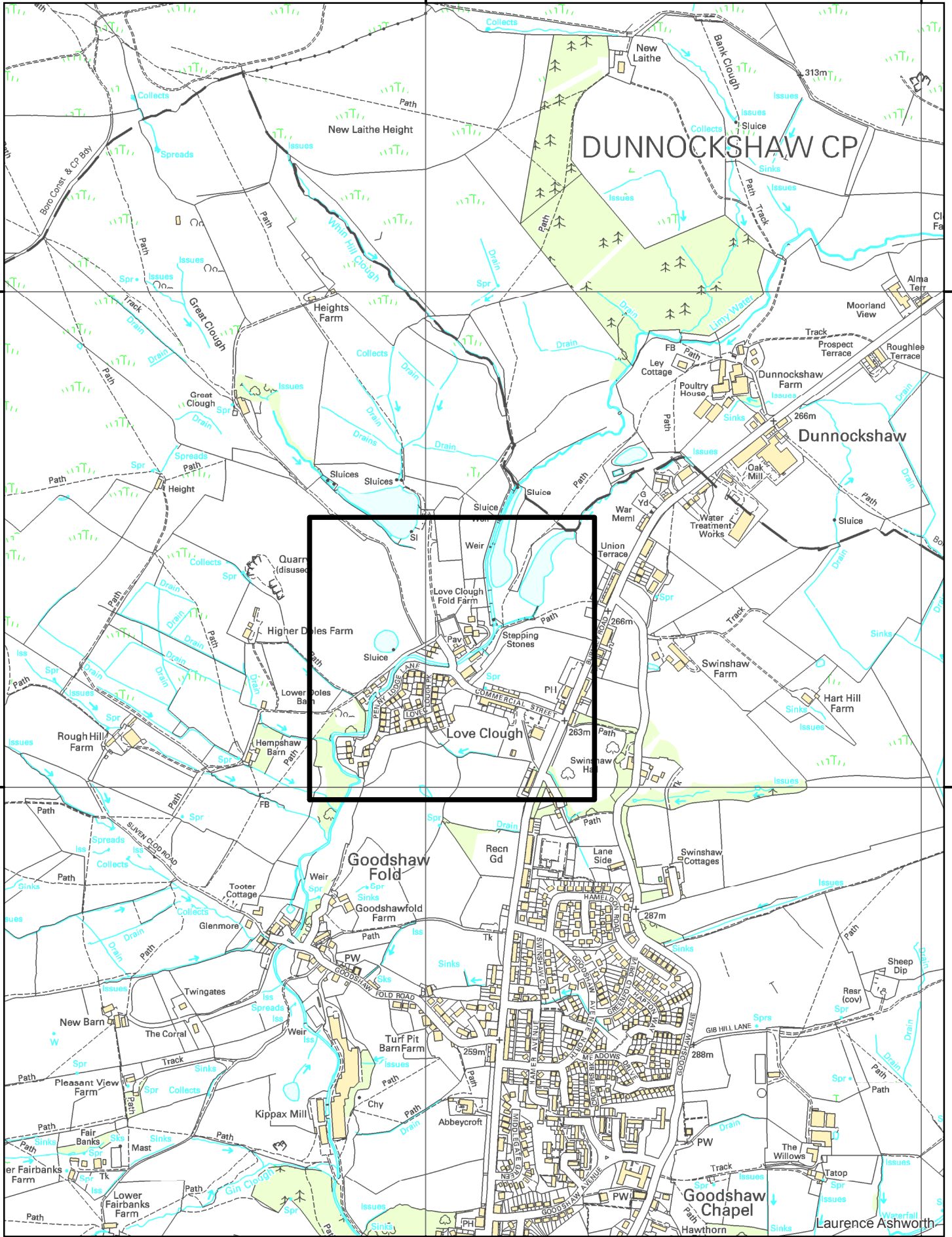
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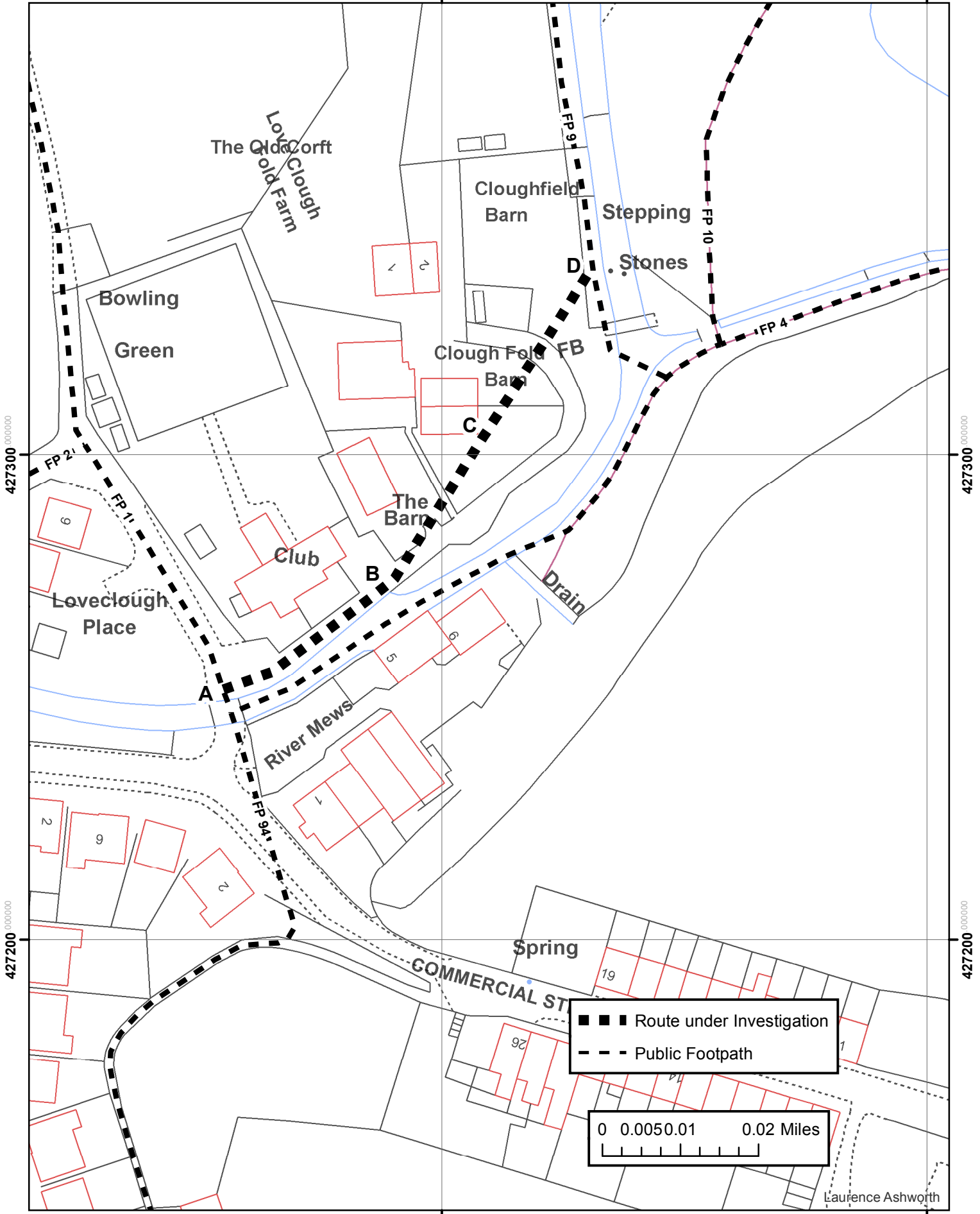
G. Harding B Eng, FICE, FIHT, MIMgt, Director, Environment Directorate,
 P.O. Box 9, Guild House, Cross Street, Preston, PR1 8RD



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Part of sheet





Regulatory Committee

Meeting to be held on 1st July 2015

Electoral Division affected: West Craven

Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

Application to add three Public Footpaths from Riding Close and Park Street to Public Footpath 20 Barnoldswick at Long Ing, Barnoldswick, Pendle Borough.

File No. 804-558

(Annex 'A' refers)

Contact for further information:

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Executive Summary

An application for three public footpaths from Riding Close and Park Street to Public Footpath 20, Barnoldswick at Long Ing, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-558

Recommendation

- That the application (reference 804-558) for three public footpaths from Riding Close and Park Street to Public Footpath 20, Barnoldswick at Long Ing to be added to the Definitive Map and Statement of Public Rights of Way be accepted
- 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 three public footpaths from Riding Close and Park Street to Public Footpath 20, Barnoldswick at Long Ing, shown between points A-B-C-D-E, C-F-G-H, and I-J-G-K-L-M-N, on the attached plan.
- That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

Background

An application has been received from Mr Peter Crompton for three public footpaths extending from points on Riding Close and Park Street to points on Public Footpath 20 Barnoldswick, and shown between points A-B-C-D-E, C-F-G-H, I-J-G-K-L-M-N on

the attached plan, to be added to the Definitive Map and Statement of Public Rights of Way.

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

An order will only be made if evidence shows that:

- A right of way "subsists" or is "reasonably alleged to subsist"
- Or
- "The expiration... of any period such that the enjoyment by the public... raises a presumption that the way has been dedicated as a public path"

When considering evidence, if it is shown that a highway once existed then highway rights continue to exist ("once a highway, always a highway") even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the 1981 Act (as explained in Planning Inspectorates Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate's website also gives guidance about the interpretation of evidence.

The County Council's decision will be based on the interpretation of evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighted 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 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 consulted members of Pendle's West Craven Committee. The Committee resolved that the application should be supported on the grounds that the claimed routes had been used for at least 20 years without challenge.

In addition, the Committee resolved to ask the County Council in its capacity as landowner to dedicate a public right of way on foot as follows:

- From the end of Clifford Street to the new ginnel on the boundary with the new primary school and West Craven Sports Centre and;
- The diagonal route from the end of Clifford Street to the stile at the southeast corner of the County Council field.

Barnoldswick Town Council

The Town Council supports the application for the application routes and in addition to this it was identified that there are additional routes on the land that is currently in the ownership of Lancashire County Council. The Town Council also outlined a further 2 routes in the vicinity of this land that are also used and are not recorded on the Definitive Map.

These requests by the Borough and Town Council are not being treated as part of this report – dedication of new rights or other changes to the public rights of way, based on expediency, are a completely different matter to the determination of what public rights already exist, based on evidence.

Additional routes for which there is evidence of public rights could sometimes be considered at the same time as nearby routes where the evidence is common to both but we do not currently have evidence for these other routes. Therefore they are not being considered within this report.

Applicant/Landowners/Supporters/Objectors

The evidence submitted by the Applicant/landowners/supporters/objectors and observations on those comments is included in 'Advice – Legal and Democratic Services' Observations'. However an objection to the proposal has been received as summarised below.

Indigo Planning

A letter of objection has been received from Indigo Planning Limited on behalf of their client, Stirling Investment Properties LLP, who objects to the application. They state that the application is not substantiated by the submission of a credible or robust evidence base (i.e. it is based on anecdotal evidence) and refers to land which neither the current nor previous owners (Silent Night Ltd) have ever granted third party rights of access to.

The land has been subject to various planning application proposals, including recent submissions for a housing development by the above developer. Further information on this can be found in the Land Ownership section of the report.

Advice

Public Rights of Way, Planning and Environment Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8837 4664	Point on public footpath 20 Barnoldswick on open

		rough grass next to edge of wood
B	8829 4666	Approximately 2 metres SW of southern corner of property at Oak Lea
C	8822 4669	Junction of 2 application routes on rough grass field near stile
D	8822 4670	Stile in boundary at Langsford Close
E	8820 4670	Junction with Riding Close
F	8825 4661	Stile in boundary fence of woodland
G	8826 4659	Point in wood where trodden paths cross
H	8845 4644	Junction of trodden path with stone (drain or utility reinstatement) on Public Footpath 20 Barnoldswick
I	8836 4663	Junction of trodden path with Public Footpath 20 Barnoldswick just inside the wood
J	8831 4664	Point in wood where the trodden path changes direction
K	8825 4659	Gap in fence at edge of wood
L	8823 4655	Just outside corner of playing field
M	8817 4651	Gap in fence behind garages off Lower Park Street
N	8815 4652	Edge of adopted highway Lower Park Street

Description of Route

Site inspections were carried out on 22nd August 2014 and 25th March 2015.

There are three separate routes which are under investigation in this application. The routes mainly consist of woodland and field trails, linking up to main highways or other public footpaths in the area. The routes cross a derelict piece of open land, a privately owned woodland and school grounds.

Route 1 (Points A-B-C-D-E)

The first route commences at a point on Public Footpath 20 Barnoldswick (point A) approximately 1m north of the stile in the field boundary and follows a trodden line on a grass surface heading in a north-westerly direction for approximately 80 metres towards the properties located off Moss Side. The route passes within close proximity to the southern corner of the property boundary of Oak Lea (point B), and continues in a north-westerly direction for approximately 75 metres to meet at a junction with the second application route (point C). The route then continues in the same direction for approximately 5 metres sloping downhill to meet a broken stile at the field boundary at point D. There are paving flags which have been laid on the ground as stepping stones leading down from the stile towards the car park off Riding Close. A dog litter bin is also in situ at the bottom of the slope and at the end of the flags. This indicates that the local area is heavily used for dog walking and the stepping stone flags provide access to the application routes, suggesting this is the route which people have taken. The route then continues 20 metres across a mown stretch of grass and tarmac car park to exit onto Riding Close. The total length of this route is approximately 180 metres.

Route 2 (Points C-F-G-H)

The second route commences from point C, and heads in a generally south-easterly direction following a well-trodden line roughly following the western boundary of rough grassland for approximately 85 metres to a stile in the fence line on the boundary of the woodland (point F). The route enters the woodland and follows the well-worn trail south-east passing the intersection with the 3rd application route (point G) after approximately 20 metres and continuing for a further 280 metres within the edge of the wood to a junction with Public Footpath 20 Barnoldswick (point H). The total length of this route is approximately 385 metres.

Route 3 (Points I-J-G-K-L-M-N)

The third route commences from point I, a point on Public Footpath 20 Barnoldswick approximately 4m inside the boundary fence of the wood. The route follows a well-trodden narrow route through the woodland heading in a west-north-westerly direction for approximately 50 metres to reach point J, an unmarked point where the route changes direction. The route then heads south-west still following the well-trodden line for approximately 70 metres where it crosses the second route at point G and continues a further 3 metres to meet the fence at the edge of the wood at point K. There is a gap in the fence with a small dip and steep slope. The route then continues across the school grounds on rough grass field for approximately 45 metres heading in a south-south-westerly direction to point L, then in a south-westerly direction for a further 75 metres to the garage area off Lower Park Street. As it approaches a gap in the fence at point M, hardcore has been put on the surface of the trodden way. At point M there is a step up onto the tarmac. The route then crosses the tarmac of the garage area in a westerly direction to meet Lower Park Street (point N). The total length of this route is approximately 275 metres.

There were no private property signs in place on site. There was however a 'Borough of Pendle' sign stating 'This is not a right of way' in relation to adjacent land. This was situated on a fence to the side of the second application route between points D and F. There are no gates across the application routes. There are open gaps at points A, D, I, K and M. There are stiles (or the remains of stiles) at points D and F.

There is an out of repair stile located at point D near Riding Close. Although there is now a very large open gap next to the stile, the poor state of the structure suggests that it has been there for many years and the fact that it was erected suggests a need for it perhaps because the route was well used. Stiles are normally erected to allow pedestrian access onto fields whilst ensuring security of stock. The fields on which the application routes run are not grazed and appear to be derelict land, private woodland and school playing fields. One of the landowners denies knowledge of erecting the structure. There is no record of it being erected by either Lancashire County Council or Pendle Borough Council. It is therefore unknown when this stile was erected, why or who by.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
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Thomas Jefferys' Map of Yorkshire	1772	The earliest map examined was Thomas Jefferys' map of Yorkshire. Jefferys was a most prolific engraver and map publisher who was appointed Geographer to the Prince of Wales and George III. Between 1767 and 1770 he surveyed Yorkshire and completed his map only in the year of his death, and so it was published posthumously in 1772. It was published at a scale of 1" to 1 mile on 20 plates and bound in a large atlas. He refused to skimp costs or employ second-rate surveyors to the extent that this commitment to quality contributed to his bankruptcy.
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Observations		The routes are not shown, nor is the development that now surrounds them.
Investigating Officer's Comments		The routes did not exist as major routes at the time when the map was drawn. It is unlikely that they would have existed as the housing they abut did not exist. Therefore no inference can be drawn.
Smith's map of Yorkshire	1801	Nothing is known about this map-maker.



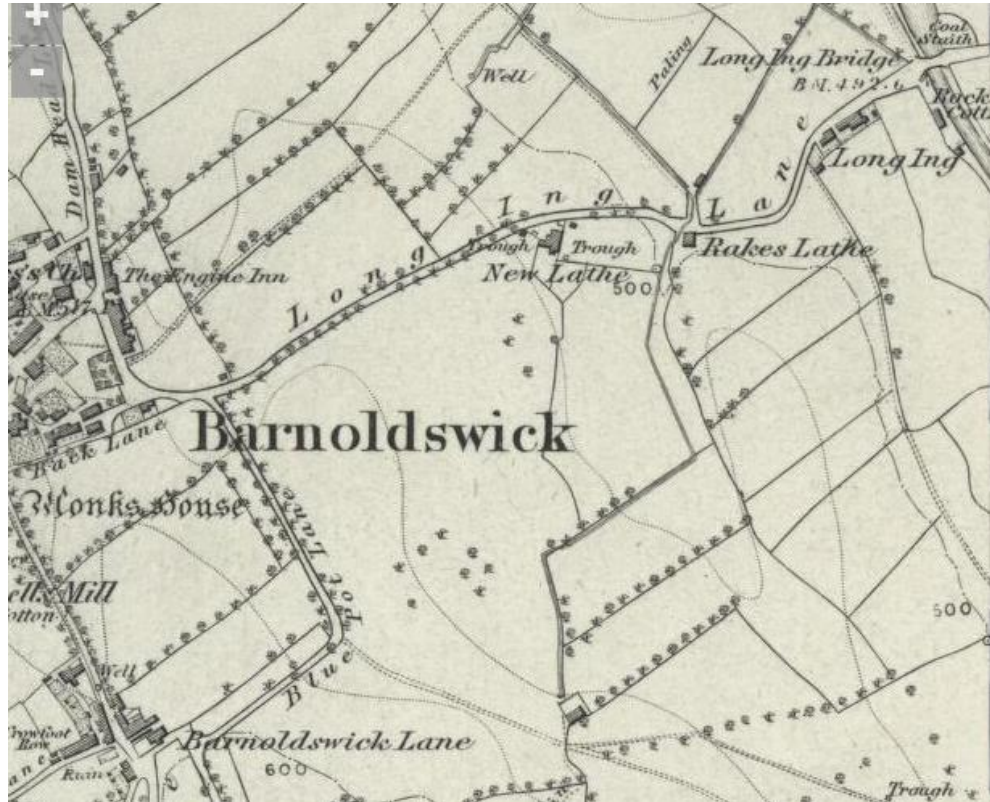
Observations		The routes are not shown.
Investigating Officer's Comments		The routes did not exist as a major route at that time nor the development surrounding them. It is unlikely they existed but if they had done are unlikely to have been shown due to limitations of scale. No inference can be drawn.
Teesdale and Stocking's map of Yorkshire	1817	Nothing is known about these mapmakers although Teesdale is believed to have been a publisher. Teesdale and Stocking's map of Yorkshire of 1817 is drawn to a larger scale than the earlier maps.



Observations		The area of Long Ing is recorded on the map, but the map is of such a scale that the routes cannot be seen.
Investigating Officer's Comments		No inference can be drawn.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The Ordnance Survey sheets as researched below show that Barnoldswick Railway was in very close proximity to the application routes, in particular the second route which it partially crosses. The railway was in use from 1871-1966, but is now disused. There is no relevant documentation on this railway available to research at Lancashire Archives.
Investigating Officer's Comments		No inference can be made.

Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There was no Tithe Map available to view for the township of Barnoldswick.
Investigating Officer's Comments		No inference can be made.
Inclosure Act Award and Maps	1835	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Act Award or Map available to view at Lancashire Archives for the area of Barnoldswick.
Investigating Officer's Comments		No inference can be made.
6 Inch Ordnance Survey (OS) Map	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1849 and published in 1853. ¹

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



Observations		<p>The application routes are not shown. Other routes have been recorded on the map in close proximity.</p> <p>The area has not yet been built up and appears to be mainly open field over land which the application routes cross.</p> <p>(sheet no. 183)</p>
Investigating Officer's Comments		<p>It appears that the application routes did not exist at this time.</p>
25 Inch OS Map	1894	<p>The earliest OS map at a scale of 25 inch to the mile was surveyed in 1892 and published in 1894. (Sheet no.183/4)</p>

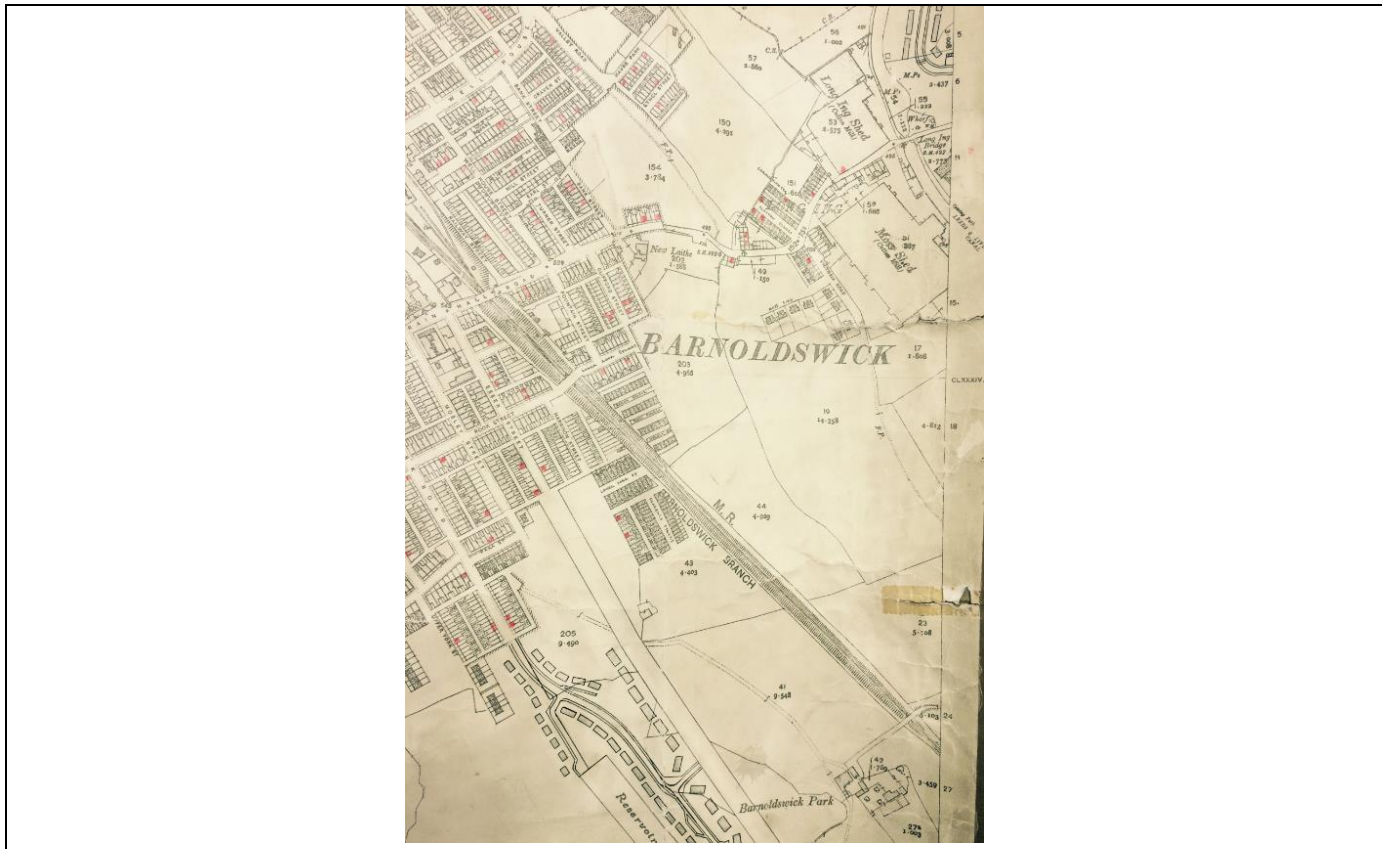


Observations		The application routes are not shown on the map. The fields on which the application routes run remain open un-built on. However, Barnoldswick Branch railway line crosses part of the third application route marked I-J-G-K-L-M-N.
Investigating Officer's Comments		The application routes are not shown on the 1894 OS Map therefore it is presumed that they did not exist at the time.
Finance Act 1910 Map	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</p>

		<p>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>Lancashire Archives do not hold a copy of the Finance Act Map.</p> <p>The Finance Act Valuation Books where of no use as a hereditament number could not be found from the Finance Act Map. (ref: DVKE 1/2)</p>
Investigating Officer's Comments		<p>The Finance Act 1910 Map was not available to view and no inference can be drawn from the Finance Act Valuation Book.</p>
25 Inch OS Map	1909	<p>Further edition of 25 inch map, re-surveyed 1892, revised in 1907 and published 1909.</p>



Observations		The application routes are not shown on the map. Housing and property developments close by have started to occur, including the erection of a mill which is still in situ today as a factory. The land on which the application routes run remains as open fields.
Investigating Officer's Comments		The application routes probably did not exist in 1908.
1:2500 OS Map	1940	Further edition of 25 inch map published in 1940.

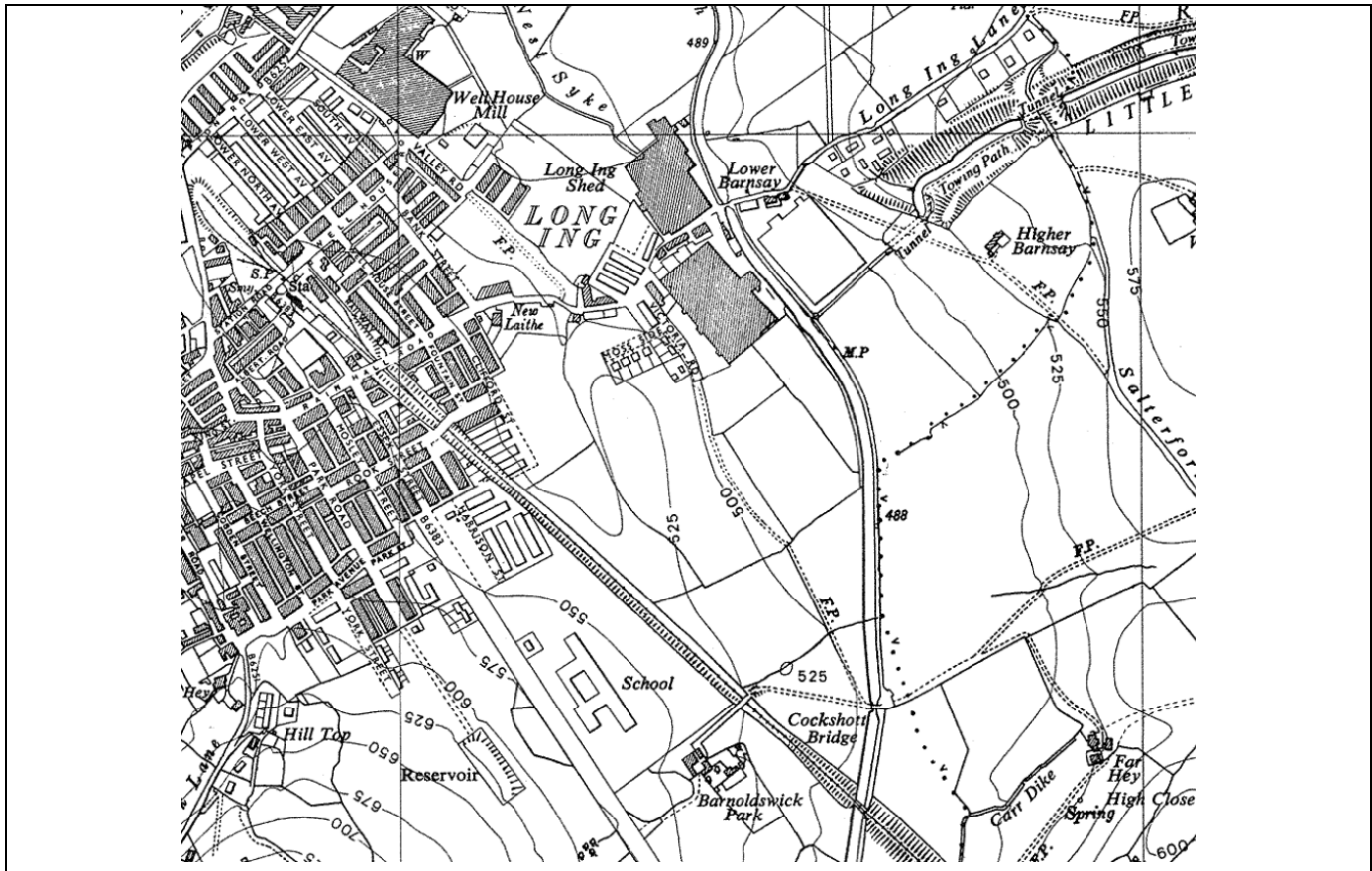


Observations		The properties on Moss Side and Victoria Road have now been built. The railway branch remains in place. The claimed routes are not shown on the map and the fields which they are on remain as open fields.
Investigating Officer's Comments		The application routes probably did not exist at this time.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

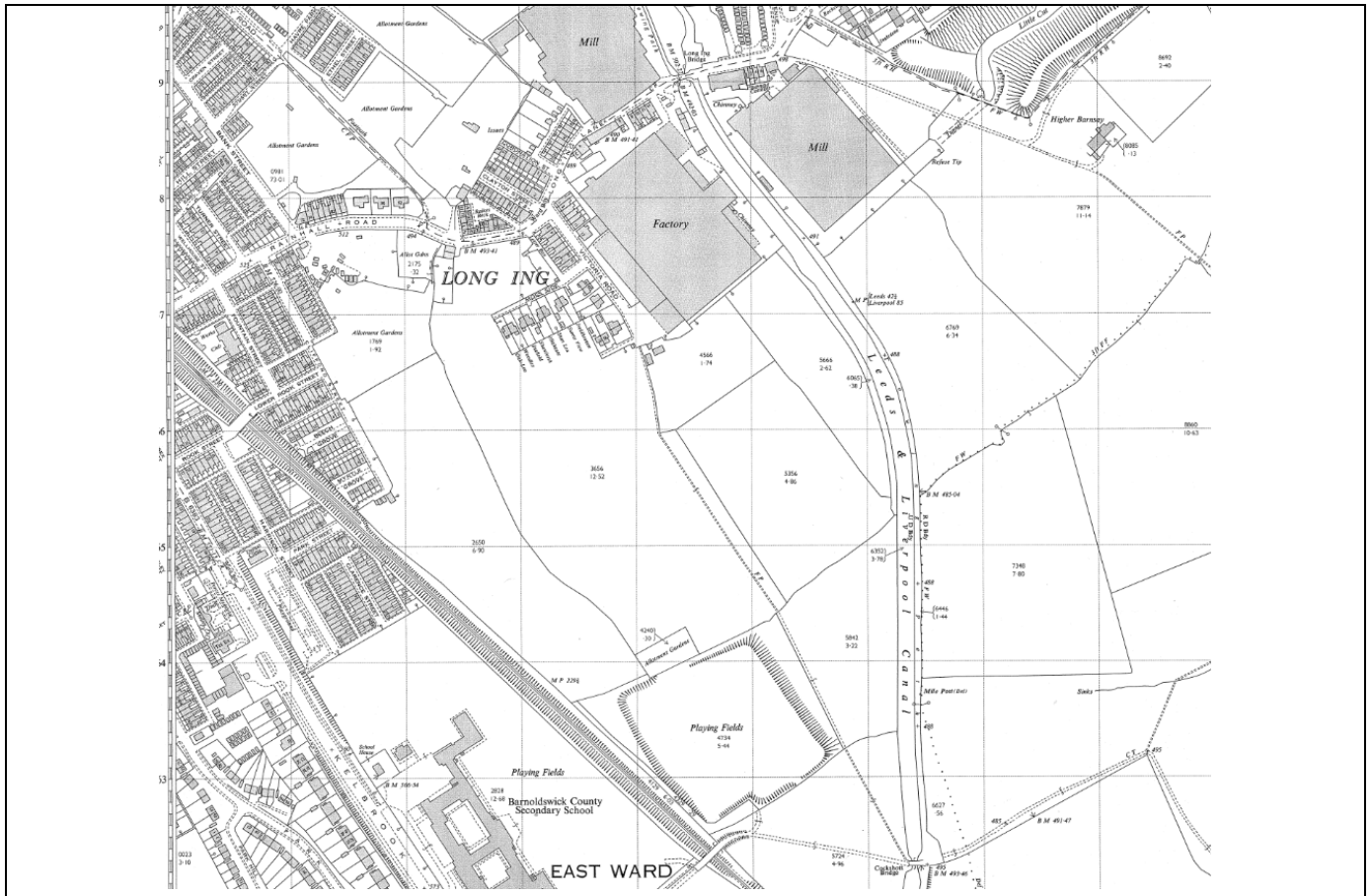
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



Observations		The quality of the 1940 aerial is not great. No trodden lines can be seen on the ground following the application routes.
Investigating Officer's Comments		The 1940 aerial photograph does not show use of the application routes, and therefore does not support the existence of the routes at this time.
6 Inch OS Map	1956	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 routes are not shown on the 1956 6 inch map. The land is shown again as being an open field, with the original line of public footpath 20 Barnoldswick (which has since been legally diverted) in close proximity.
Investigating Officer's Comments		It can be presumed that the routes did not exist at the time of when the map was surveyed. Public footpath 20 is in close proximity and has been shown.
1:2500 OS Map	1964	Further edition of 25 inch map reconstituted from former county series and revised in 1962 and published in 1964 as national grid series.

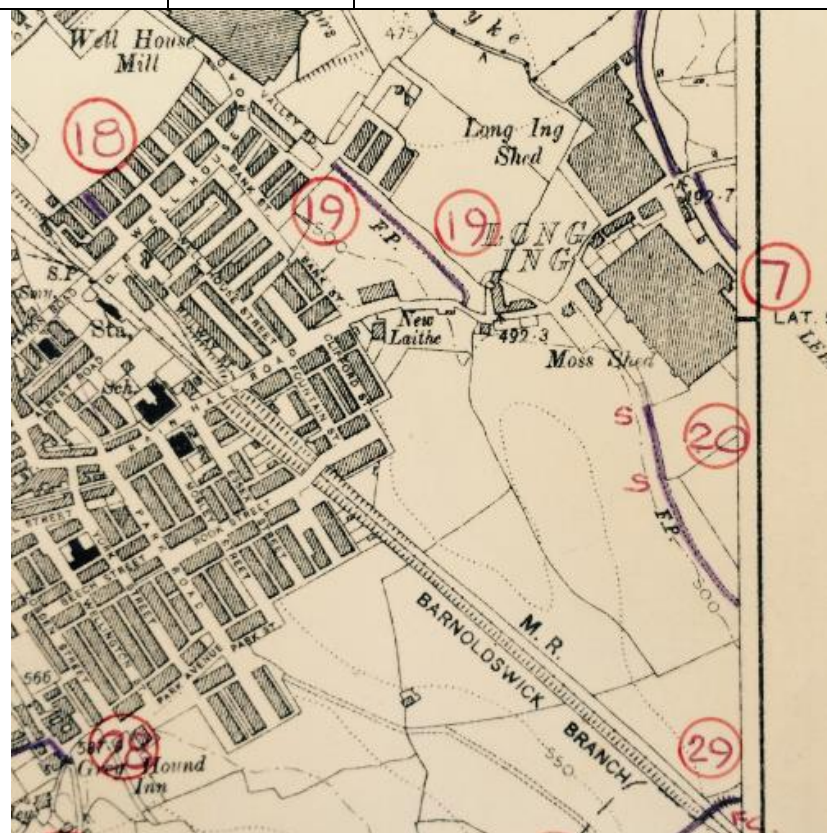


Observations		The land is again shown as an open field. Public The application routes are not shown, although the original route of Footpath 20 Barnoldswick has been recorded in close proximity.
Investigating Officer's Comments		It can be presumed that the application routes did not exist on the ground at this time.
Aerial photograph	1960s	The black and white aerial photograph was taken in the 1960s and is available to view on GIS.



Observations		There are no visible trodden lines shown on the 1960 aerial photograph. The private woodland has not been created at this time.
Investigating Officer's Comments		The application routes did not exist on the ground at this time.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	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		Barnoldswick is an urban district and therefore did not produce a parish survey map.
Draft Map		<p>The parish survey map and cards for the rural districts were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>Barnoldswick is an urban district and therefore produced the draft map straight away.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



Observations		The application routes are not recorded on the Draft Map. Other public footpaths in close proximity
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		have been recorded, in particular Public Footpath 20 Barnoldswick (although it since has had a Diversion Order made on it), two of the application routes join this recorded route. If the routes were in existence at the time when the Draft map was produced it would have thought to have been recorded on the map.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The Provisional Map does not alter from the Draft Map, and does not record the application routes.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application routes are not recorded on the Definitive Map and Statement, therefore there is still no evidence that the application routes existed at this time.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The area formally in the West Riding of Yorkshire was not subject to the review unlike the rest of Lancashire. Therefore no inference can be made.
Investigating Officer's Comments		The application routes are not recorded on any maps preparatory to the Definitive Map and there were no objections to the route not being recorded. They were probably not considered to be public at the time.
Aerial Photograph	2000	Colour aerial photograph taken in 2000.



Observations		The housing surrounding the routes can be seen. A trodden line can be seen on the second application route C-F-G-H. There is a very faint line on part of the first application route near point B but heading through the gate which now has the Pendle Borough Council notice on it rather than to the stile at point D.
Investigating Officer's Comments		It is likely that the land was being used at this time, trodden lines are visible on the aerial photograph, particularly along C-F-G-H, the second application route.
Aerial Photograph	2009	Colour aerial photograph taken in 2009.



Observations		The land has changed since the 2000 aerial photograph was taken. A small woodland is now visible. The lines in the trees show some of the trodden routes, particularly clearly for the third application route, I-J-G-K-L-M-N. There is also evidence of trodden lines for the second application route, C-F-G-H.
Investigating Officer's Comments		The 2009 aerial photograph supports parts of the application, particularly for routes 2 and 3.
The Pendle Way Leaflet	2001	"Pendle Way leaflet – Barnoldswick to Earby" created in November 2001 by Pendle Borough Council
Observations		The leaflet includes a walk which uses Public Footpath 20 Barnoldswick. The leaflet shows a map extract with a red line of the walk of 'Barnoldswick to Earby'. The application routes are not indicated. It could be that the application routes were not known or were just not included on this particular walk.
Investigating Officer's Comments		The leaflet does not support the existence of use of the routes.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner

		<p>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 application routes run.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

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

The affected land is not registered common land.

Landownership Information

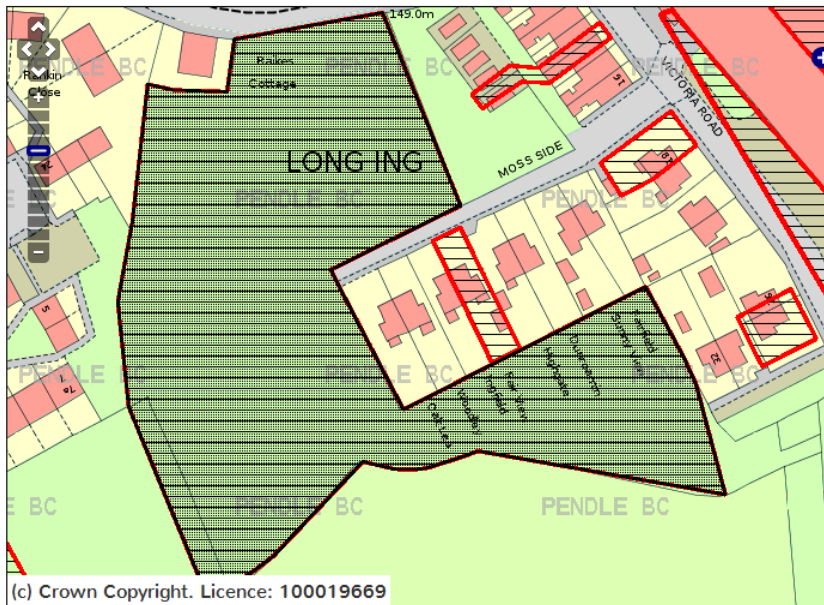
The land in question is owned by 3 different land holders:

- The Lancashire County Council, P.O. Box 78, County Hall, Preston PR1 8XJ
- Stirling Properties LLP, Thorp Arch Grange, Thorp Arch, Wetherby, LS23 7BA
- Housing Pendle Limited, Prospect House, Wharf Street, Blackburn, BB1 1JD

Part of the land is subject to a major residential development proposal. (REF: 13/14/0100P). The housing development application was originally refused by Pendle Borough Council and was referred to the Planning Inspectorate (PIs) on appeal in December 2014. The appeal was allowed and PIs granted planning permission. Indigo Planning who have submitted an objection to the proposal on

behalf of their client (as stated above) commented that if an Order is made this will affect their housing development. They state that neither the current nor previous site owners have ever granted access to the site, nor provided any evidence that there has been uninterrupted use over the last 20 years.

<http://planning.pendle.gov.uk/Planning/lg/GFPlanningDocuments.page>



Summary

There is no historical mapping evidence supporting this application.

The aerial photographs which were inspected do however show recent use of the routes, and that they could be shown to be in existence on the ground from at least 2009, and in parts 2000. This is more clearly shown for the second and third application routes marked C-F-G-H and I-J-G-K-L-M-N. There is evidence on the ground of well trodden lines for all three routes indicating a substantial level of use.

Legal and Democratic Service' Observations

Information from the applicant

The applicant has provided 32 user evidence forms, some refer to route A, some refer to route B, some to route C and some to 2 or 3 routes.

Route A (referred to as route 1) – starts at Riding Close and ends at a northerly point on Barnoldswick Footpath 20.

Route B (referred to as route 2)– starts at Riding Close and ends at a southerly point on Barnoldswick Footpath 20.

Route C (referred to as route 3)– starts at Park Street and ends at a point on Barnoldswick Footpath 20.

18 users have filled out a user form and refer to all 3 routes, their use is set out below.

The users have known the route in years as follows:

0-20(3) 21-40(8) 41-60(5) 1 user did not provide a response

All 18 users have used the path on foot and the years in which the routes were used varies:

1961-2014(1)	1964-2014(1)	1970-2014(1)	1972-2014(1)
1974-2014(3)	1979-2014(2)	1981-2014(1)	1986-2014(1)
1987-2014(1)	1990-2014(1)	1994-2014(1)	1996-2014(2)
1999-2014(1)	1 user did not provide a response		

The main places the users where going to and from include:

Going to and from school, visiting friends and relatives, general walking, shopping, walking from Barnoldswick to Salterforth and back and walking to the canal.

The main purposes for using the routes include:

Dog walking, walking with children, leisure, pleasure, recreation, personal exercise, using the routes a short cut and getting to and from school.

The times per year the users use the route varies from every day, 3 times per day, twice a week, weekly, 200 times, 672 times, 1456 times.

15 users have never used the routes on horseback, motorcycle / vehicle or by any other means, 3 users did not provide a response to this question.

16 users agree that the routes have always run over the same lines, 1 user states 'yes see attached map' however no map was provided and another user states 'they can't recall any change'.

When asked if there are any stiles, gates or fences along the route 14 users answered 'yes' to this question and referred to the map attached, however no map has been provided with any of the user forms. 2 users answered 'yes' but did not provide any further details, 1 user mentions 'yes' for routes A & B and another user states 'yes where the fence is now'. 15 of the users agree that none of the stiles, gates or fences are locked, 1 user mentioned the stiles were blocked off but no further details were provided and 2 user did not provide a response to this question. 16 users agree that they have never been prevented access when using the routes, 1 user can't recall any restrictions and another user states 'only when the council put up metal fencing at C then they were made to take it down as it was a right of way'.

1 user worked for a landowner of which the route runs (Silent Night) between 2008 and 2011 but states they never received any instructions as to the use of the routes by the public.

None of the users have ever been a tenant over which the routes run.

17 users have never been stopped or turned back when using the route nor have they heard of anyone else being stopped or having to turn back, 1 user did not provide a response to this question.

17 users have never been told by any owner or tenant of the land crossed by the routes that they were not public rights of way, 1 user states they have always known the route to be a right of way.

17 users have never seen any signs along the routes which state similar phrases to 'private property', 'no trespassing' etc. 1 user did not provide a response to this question.

15 users have never asked permission to use any of the routes, 1 user states they have been public footpaths for as long as they can remember and another states no as they are public footpaths, 1 also states it wasn't necessary to ask.

At the end of completing the user forms users are asked to provide any additional information they may have, this information is set out below:

- Hundreds of people use these fields on a daily basis
- I know of at least 25 people who regularly use the footpaths for dog walking and recreational purposes. There are also many more who I don't know. You always bump into someone while walking round, people around here enjoy the natural environment
- We do not need more houses leave the fields alone
- Shame to have negative impact on recreation and loss of wildlife habitat when brown sites in Barnoldswick are available (e.g. opposite Silent Night - Coates)

4 users filled in a user evidence form for Routes A and B, their use is set out below.

The users have known the route in years as follows:

20-40(3) 41-60(1)

All 4 users have used the routes on foot, 1 user has used the routes from the 1960's – 1990's, another has been using the routes since 1984-2014, 1 user has been using the route since 1985-2014 and 1 user did not provide a response to this question.

The main places the users were going to and from include Barnoldswick to Salterforth, Rainhall Road and back, from their house to the canal and marina and just using the paths for a walk. The main purposes of using the routes are for dog walking and general exercise. The use of the route per year varies from daily, from 300-350 times and to 40 times per year.

1 user has used the routes on horseback between the years of 1995-2000 but did not provide any further details, the other 3 users have only used the route on foot. 3 users agree that the routes have always run over the same line, 1 user states 'yes Footpath 20'.

All 4 users agree that there are stiles / gates / fenced across the routes and indicate they have marked these on the attached maps, however no maps have been

attached to the forms, and all 4 users agree that none of the gates have ever been locked and that they were not prevented access.

None of the users have ever worked for a landowner over which any of the routes run nor have they ever been a tenant of the land in question.

All 4 users have never been stopped or have turned back when using the routes neither have they heard of anyone else having been stopped nor having to turn back when using the routes.

None of the users have ever been told by any owner or tenant of the land crossed by the routes that the way was not a public right of way on foot, nor have they ever seen any notices along the routes that state similar phrases to 'private property', 'no trespassing' etc.

They have never asked permission to use the routes and one using mentions they understood it to be a public footpath.

Further information from the users is provided below:

- It is obvious these footpaths have been in use over 25 years by numerous individuals and associations, e.g. bird watchers (well known for owls, kestrels in area) canal barges occupants visiting Barnoldswick, parents taking children to school, rambling associations, and hundreds of dog walkers. We need to keep green fields green, use brown sites first.
- We do not need more houses, keep our green fields, Rainhall Road - Long Ing roads far too busy now
- Road not suitable to take more traffic, fields used by grandchildren for playing in

3 users filled in a user evidence form for Routes B and C, their use is set out below.

2 users have known the routes for the past 24 years, 1 user has known of the routes for the past 32 years. All 3 users have used the routes on foot and when asked during which years did they use the route 1 user states between the years of 1982-2012 and the other 2 users don't provide any dates but state 'mostly daily' and 'many times a week'.

The main places the users where going to and from include various places, circular routes, from Riding Close to the canal and the main purposes for using the routes was for dog walking and the use per year includes daily, dozens and at least 150 times per year.

When asked if they have ever used the way by other means such as on horseback or motorcycle / vehicle no response was received from any of the 3 users, it is assumed they never used the routes by other means.

1 user agrees that the routes have always run over the same line, the other 2 users state 'always been similar', 1 user states there are remnants of stiles still there but they are open, another indicates the 2 open access areas are stiles and 1 states there are stiles / gates / fences along the routes and these are indicated on the map,

however no map has been attached that same user agrees that access was not prevented.

None of the users have ever worked for a landowner over where the routes run neither have they been a tenant over the land in question.

All 3 users have never been stopped or have had to turn back when using the routes, however 2 users have heard of other dog walkers turning back along route C.

None of the users have ever been told by any owner or tenant of the land that it was not a public right of way, nor have they seen any signs along the routes that might indicate phrases such as 'private property' or 'no trespassing', none of the users have ever asked permission to use any of the routes.

Further information from the users is provided below:

- Path C is my main route over the years, I have used all the footpaths at various times
- although Path C into B is my main route, I do use all the pathways at various times
- Over the many years of being a dog walker I have used this route and A & C routes on occasion as well as many other people do. It should be kept as a right of way as it has always provided good access to the canal. Maybe building on existing derelict sites in the town should be considered.

3 users filled in a user evidence form for Route A, their use is set out below.

2 users have known of the route for the past 34 years and 1 user has known the route for the past 30 years, all 3 users have used the route on foot, 2 of the users used the route between the years of 1980-2014 and 1 user has used the route between the years of 1994-2014.

The main places the users where going to and from include going to school and back, to Salterforth from Barnoldswick and into Barnoldswick Town with connection of Footpath 20.

The main reasons for using the route include, dog walking, children playing, visiting friends and family, shopping and recreational use. The use per year varies from every day to 50-110 times per year.

2 users have never used the route on horseback, motorcycle / vehicle or by any other means, 1 user did not provide a response to this question. All 3 users agree that the route has always run over the same line.

2 users agree that there are stiles / gates / fences along the route and that these are marked on the attached map, however no map has been attached, 1 user states 'no' to this question. All 3 users state that none of the stiles / gates / fences along the route were locked and that they were not prevented access.

1 user worked for a landowner (Silent Night) between the years of 1998-2007 and states that the landowner told them it was always going to be a public footpath

through the forest and all around and there was never going to be any houses on there. None of the users have ever been a tenant over the land the route crosses.

All 3 users have never 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. All 3 users have never been told by any owner or tenant of the land crossed by the route that it was not a public right of way on foot, nor have they seen any signs along the routes that might indicate phrases such as 'private property' or 'no trespassing', none of the users have ever asked permission to use any of the routes.

Further information from the users is provided below:

- always considered it a right of way, green fields need to remain, need to make it official

3 users filled in a user evidence form for Route B, their use is set out below.

1 user states they have known the route all their life since 1929, 1 has known the route for the past 25 years and 1 has known the route for the past 34 years, all 3 users have used the route on foot, they have used the route between the years of 1989-2014, 1930's-2014 and 1980-2014.

The main places the users were going to and from include from home to the canal, to Barnoldswick, from home to the open countryside, the main purposes for using the route is for exercise and recreational use. The users used this route twice per week, 50 times per year and 6 or 7 times per year intermittently.

None of the users have ever used the route on horseback, or motorcycle / vehicle or by any other means. All 3 users agree that the route has always run across the same line. They all agree that there are stiles / gates / fences along the route and these are showed on the attached maps, again no maps have been received, however 1 user states that a stile / gate / fence is located on Langsford Close. None of the users have ever seen any stiles / gates / fences locked nor have they ever been prevented access from using the route.

None of the users have ever worked for a landowner over which the route crosses nor have they ever been a tenant across the land. The users have never been stopped or turned back when using the route or heard of anyone else having been stopped or having to turn back when using the route.

All 3 users agree that they have never been told by any owner or tenant of the land crossed by the route and that the route was not a public right of way, they have also never seen any notices along the route that state phrases such as 'private property' or 'no trespassing', all 3 users have also never asked permission to use the route.

Further information from the users is provided below:

- we need to keep green fields not housing
- filled the form in on behalf of walking group 'lets walk and talk' established over 10 years ago

1 user has filled in a user evidence form for Route C and their use is set out below.

The user has known of this route for the past 34 years and has used the route on foot since 1980-2014. The user uses the route to go to and from Barnoldswick for shopping, visiting friends and family and for recreational purposes, and uses the route 50+ times per year.

The user has never used the route by way of any other means such as on horseback or by motorcycle / vehicle. They state the route has always run over the same line and when asked if there are any stiles / gates / fences along the route they state there is open access shown on the attached map, but again no map has been attached. None of the stiles / gates / fences were ever locked and they were never prevented from using the route.

The user has never worked for a landowner over which the route crosses nor have they ever been a tenant over the land. They have never been stopped or have turned back when using the route nor have they ever heard of anyone else having been stopped or having to turn back when using the route.

The user has never been told by any owner or tenant of the land crossed by the route and that they route was not a public right of way, they have also never seen any notices along the route that state phrases such as 'private property' or 'no trespassing', the user has also never asked permission to use the route.

No extra information was provided by this user.

Information from others

Housing Pendle Limited

Housing Pendle Limited provided a copy of a plan with their ownership shaded in, they also state that they have don't feel they have grounds on which to object as there is already a stile close to their car park which has also been noted on the map provided.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

User evidence

Against Accepting the Claim

Historical map evidence

Conclusion

The application is in respect of the following routes, which are being claimed as footpaths:

Route 1 – shown A-B-C-D-E

Route 2 – shown C-F-G-H

Route 3 – shown I-J-G-K-L-M-N

In this matter there is no evidence of express dedication, Committee is therefore invited to consider whether a dedication 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, the Head of Planning and Environment has considered the historical map evidence, there appears to be no historical map evidence in support of this application and only aerial photographs which support the existence of route 1 and 2 on the ground from at least 2009 albeit some use of part of the route since 2000.

On balance, the map evidence is considered insufficient to conclude the routes are historical public footpaths and it is 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.

The twenty years under consideration would be the twenty years immediately prior to the route being called into question. There does not appear to any event which has triggered this application from the information provided by the applicant nor do the user forms shed any light in this respect. It would therefore be reasonable to conclude the bringing into question of the route would be the application itself. Therefore the 20 years under consideration would be 1994 - 2014.

32 user evidence forms have been provided in support of all three routes, each route is considered in turn.

Route 1 – A-B-C-D-E

25 user evidence forms provide evidence of use in support of route 1, 6 users claim to have used the route between 41-60 years and these forms suggest the route has been used since 1961. On balance, it appears use has been sufficiently frequent.

Use must also be as of right, without force, stealth and permission. 22 users agree that none of the stiles, gates or fences were locked although 1 user does explain a stile was blocked off but does not elaborate further. 24 users confirm they have never been stopped or turned back whilst using the route, 1 user worked for the

landowner Silent Night and therefore, their use could amount to use with permission, on balance use of this route seems to be as of right and without interruption.

Route 2 - C-F-G-H

28 user evidence forms provide evidence in support of route 2. According to one user the route has been used since 1930. All but 2 users agree the route has followed the same line, two users state the line of the route has always been similar. None of the users have been prevented, stopped or turned back from accessing the route nor has there ever been any locked stiles, gates or fences, although one user does mention stiles were blocked off. On balance, this route has been used sufficiently frequently as of right for the 20 year period.

Route 3 I-J-G-K-L-M-N

22 user evidence forms have been provided in support of this route. Use of the route has been sufficiently frequent with use beginning from 1961. 2 users state the route has followed the similar line with the remainder of the users stating the route has followed the same line. 20 users agree that they have never been prevented from using the route nor turned back, therefore on balance use has been as of right without interruption for the full 20 year period under consideration.

Conclusion

Whilst the current landowners since April 2015, Stirling Investment Properties LLP state they challenge the assertion that the public have acquired rights, they have not provided any evidence that Silent Night as the previous land owner took any overt action to indicate any lack of intention to dedicate during the twenty years under consideration for example by locking gates or erecting signs or purposefully blocking the route occasionally. Although the current land owner Stirling Investments Properties LLP does state the site is enclosed by a fence and stone wall to prevent access this would fall outside the period under consideration, as Stirling Investment Properties LLP only acquired ownership to the land in April 2015. Housing Pendle Limited another landowner of the site across which the routes run have stated they do not have grounds on which to object.

Taking all the information into account, Committee may consider that the criteria in S31 can be established such that a dedication of the footpaths can be deemed such that it can be reasonably alleged, on balance, that all three footpaths subsist in law and that it is appropriate that an Order be made and also that the higher confirmation test is also able to be satisfied as there is sufficient evidence on balance that the rights of way on foot for the public already subsist in law.

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

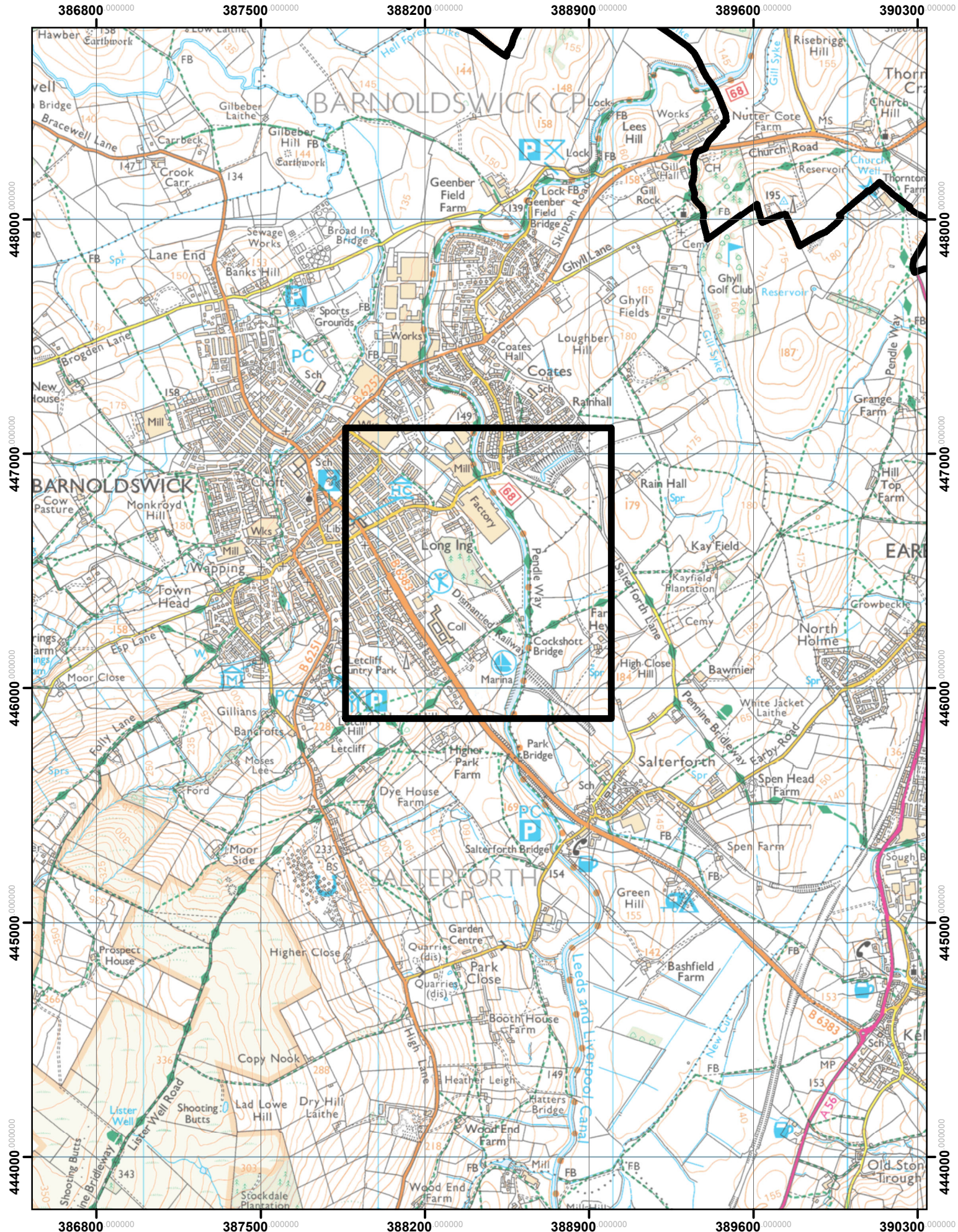
Alternative options to be considered - N/A

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

Paper	Date	Contact/Service/Tel
All documents on Claim File Ref: 804/558	various	Megan Brindle, Legal and Democratic Services, 01772 535604

Reason for inclusion in Part II, if appropriate

N/A



Andrew Mullaney
 Head of Planning and
 Environment

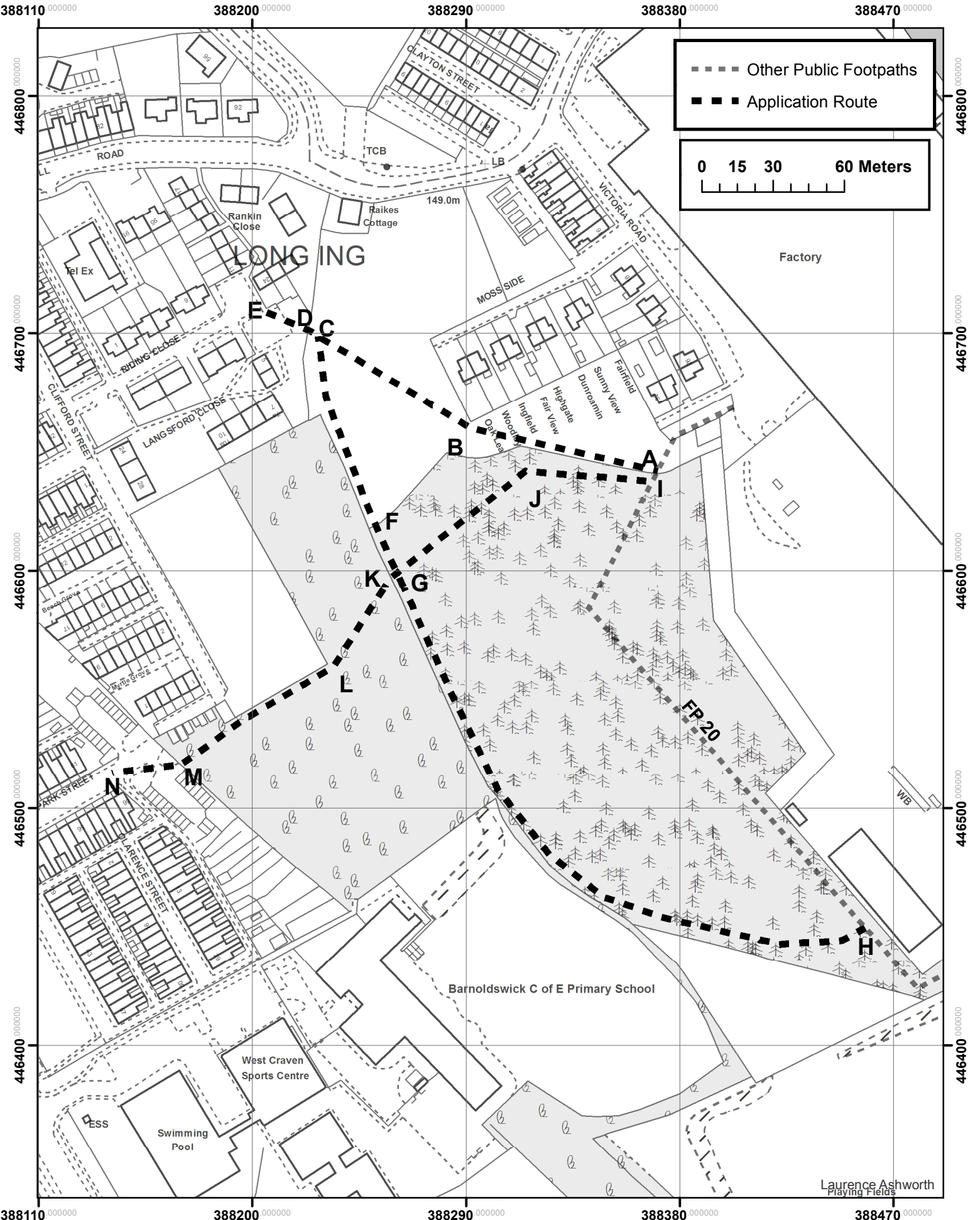
Location Plan - Application No. 804-558

1:20,000



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Andrew Mullaney
 Head of Planning and Environment

Application for three Public Footpaths from Riding Close and Park Street to Public Footpath 20 Barnoldswick at Long Ing, Barnoldswick, Pendle Borough
 Application No. 804-558

1:2,000



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Regulatory Committee

Meeting to be held on 1st July 2015

Electoral Division affected: Poulton-le-Fylde
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Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Application for a public footpath from Marina Avenue to two separate points on Public Footpath 10 Poulton-le-Fylde, Wyre Borough to be added to the Definitive Map and Statement

File No. 804-556

(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 (5)35604, Legal and Democratic Services,

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Jayne Elliott, 07917 836626, Public Rights of Way, Environment and Planning,

Jayne.elliott@lancashire.gov.uk

Executive Summary

Application for a public footpath from Marina Avenue to two separate points on Public Footpath 10, Poulton-le-Fylde, Wyre Borough to be added to the Definitive Map and Statement in accordance with file no. 804-556.

Recommendation

1. That the application for a public footpath from Marina Avenue to two separate points on Public Footpath 10, Poulton-le-Fylde, Wyre Borough to be added to the Definitive Map and Statement in accordance with File No. 804-556, be not accepted

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a public footpath from Marina Avenue to two separate points on Public Footpath 10 Poulton-le-Fylde as shown on Committee Plan between points A-B-C-D-E-F-G and C-H-I-J-K-L-M-N-O to be recorded on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

Borough Council

Wyre Borough Council have been consulted and a response from the Coast & Countryside Section received.

In their response the Borough Council observe that the general area has been walked for many years with, seemingly, free access across the land and that access did not appear to have been limited to the designated public rights of way. The Borough Council state that they have no records or reports of permission for extra access being granted by the landowner/tenant or of anyone being challenged regarding access.

The Borough Council explain that in the last 18 months the housing development has been in the process of being built and that in the last six months the tenant of the wider/adjoining area has changed and that the new tenant intends to use the land for farming purposes and so is looking to try and keep the public on existing public rights

of way (although they mention that this may not include any of the land of concerned with this application).

They comment that the section between point K and point O on the Committee plan is a wide track between two hedges which (although overgrown) they consider is suitable as a footpath and has probably been walked over the years although state that they have no specific evidence of use available.

The Borough Council consider that the section between point C and point K on the Committee plan may have been walked in the past (no specific evidence submitted) but that this would now go across land that has been landscaped as part of the building development and would mean creating a new gate access within the fence (at point J).

They comment that the current road travels in the general direction of part of the route under investigation and that it may be preferable to look at using the pavement alongside the road with a link through the development to Marina Avenue.

They also comment that the route between point C and point G is currently blocked off due to builders fencing and that they have no specific details of its previous use. In addition they express concern about the impact that the path would have on residents and implications for future development of the site.

Parish Council

There is no town or parish council for Poulton-le-Fylde.

Applicant/Landowners/Supporters/Objectors

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

Advice

Public Rights of Way, Environment and Planning Service's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	3456 3763	Start of route under investigation at western end of Marina Avenue.
B	3455 3764	Unmarked point in field adjacent to south west corner of electricity substation.
C	3452 3772	Metal field gate across the route.
D	3454 3785	Unmarked point on route adjacent to metal security fencing.
E	3448 3804	Route passes through remains of gateway.

F	3447 3811	Security fencing across route.
G	3446 3812	Remains of wooden stile with security fencing across it on south edge of junction with Footpath 10 Poulton-le-Fylde.
H	3447 3774	Route passes through remains of field boundary.
I	3428 3780	Remains of old field boundary.
J	3418 3785	Route passes through wooden post and rail fence.
K	3417 3786	Route passes through wooden field gate.
L	3416 3786	Remains of metal kissing gate adjacent to track.
M	3413 3795	Field boundaries meet route under investigation on east and west sides of route.
N	3412 3796	Gateways into fields on east and west sides of route.
O	3410 3807	Open junction with Footpath 10 Poulton-le-Fylde.

Description of Route

A site inspection was carried out on 18 March 2015.

The total length of the route between points A-B-C-D-E-F-G is 515 metres and between points C-H-I-J-K-L-M-N-O is 610 metres.

Route between points A-B-C-C-E-F-G (A-G)

The route under investigation starts at the western end of Marina Avenue (point A on the Committee plan) where there is metal security fencing across the end of the avenue. A small metal padlocked gate and fenced off strip approximately 1 metre wide provides access to an electricity substation from the end of Marina Avenue immediately north of point A but does not allow access onto the route under investigation.

Immediately south of the metal gate metal security fencing has been erected across the end of the avenue and the remains of a post and wire fence. On the date that the route was inspected it was not possible to access the route under investigation from point A.

A photograph taken in 2012 and captured from Google Streetview shows the end of Marina Avenue fenced with post and wire fence into which a small wooden gate had been inserted immediately south of the metal gate providing access to the substation. However, when the route was inspected in 2015 there was no gateway and access was prevented by the metal security fence.

From the end of Marina Avenue at point A the route under investigation passes through the fencing and extends in a westerly direction across rough grazing land for approximately 8 metres adjacent to the fenced off access to the electric substation to point B. It then continues across the field in a more northerly direction for approximately 95 metres to a field gate at point C. Between point B and point C there is a worn trod in the field along the line of the route under investigation although it is not possible to determine whether this has formed by pedestrians or animals. There is evidence that the field has been recently grazed by horses.

Beyond the field gate at point C the route under investigation splits.

The route between point C-D-E-F-F continues from the gate at point C across rough grassland in a north north easterly direction along a visible worn trod towards the corner of some security fencing which surrounds an area of mature trees adjacent to point D. From point D the route continues in a north north westerly direction through a strip of rough grassland bounded by the rear garden fences of houses on Beverley and Sefton Avenues to the east and security fencing marking the boundary of the housing development to the west.

Traces of a trodden route are in evidence along part but not all of the route between point D and point E and at point E the route passes a gatepost and through the remains of a broken fence.

From point E the route continues in a generally north north westerly direction across rough ground that appears to have been recently churned up by vehicles to point F where it is crossed by temporary metal security fencing through which there is no means of access.

Beyond the metal fencing the route crosses a tarmacked access road that leads into the development site and which is also fenced off on the north side of the road separating the route of Public Footpath 10 Poulton-le-Fylde with the access road.

Access along the route under investigation is not available between point F and point G due to the metal security fencing.

At point G immediately north of the metal security fencing is the remains of a wooden stile immediately adjacent to the route of Public Footpath 10 Poulton-le-Fylde and which appears to have provided access from the route under investigation onto the public footpath.

Route between points C-H-I-J-K-L-M-N-O (C-O)

The second part of the route under investigation passes from the field gate at point C on the Committee plan in a west north westerly direction across rough grassland to point H.

There is no visible worn trod in the ground between point C and point H. At point H the route crosses what appears to be the remains of an old fence line marked by a small change in the gradient. It then continues in a west north westerly direction across rough grassland which is quite boggy in places to the south of the new housing development known as High Cross. A worn track roughly consistent with the route under investigation is visible in part between point H and point I but as the route approaches point I it passes through some recently planted trees and then crosses a landscaped area to the north of a pond. This area is well maintained with no evidence of a worn track.

At point J the route under investigation is crossed by a wooden post and rail fence that appears to have been erected as part of the landscaping work around the development and looks to be quite new. It then crosses the tarmac road (Benedict

Drive) leading to the housing development and then passes through a wooden field gate (padlocked shut) at point K.

From the wooden gate at point K the route under investigation continues in a north north westerly direction for approximately 15 metres to point L where the remains of a metal kissing gate are located adjacent to the track. From point L the route continues along a clearly defined track approximately 3 – 3.5 metres wide. The surface of the track is firm but muddy in places with clear evidence of recent use on foot.

Between point L and point M the route is enclosed by a mixture of post and wire fencing and sections of security fencing. Beyond point M the route there is hedging on either side of the route and old metal fencing could also be seen in the hedge along the east side.

At point N gateways exist on either side of the route under investigation into adjacent fields.

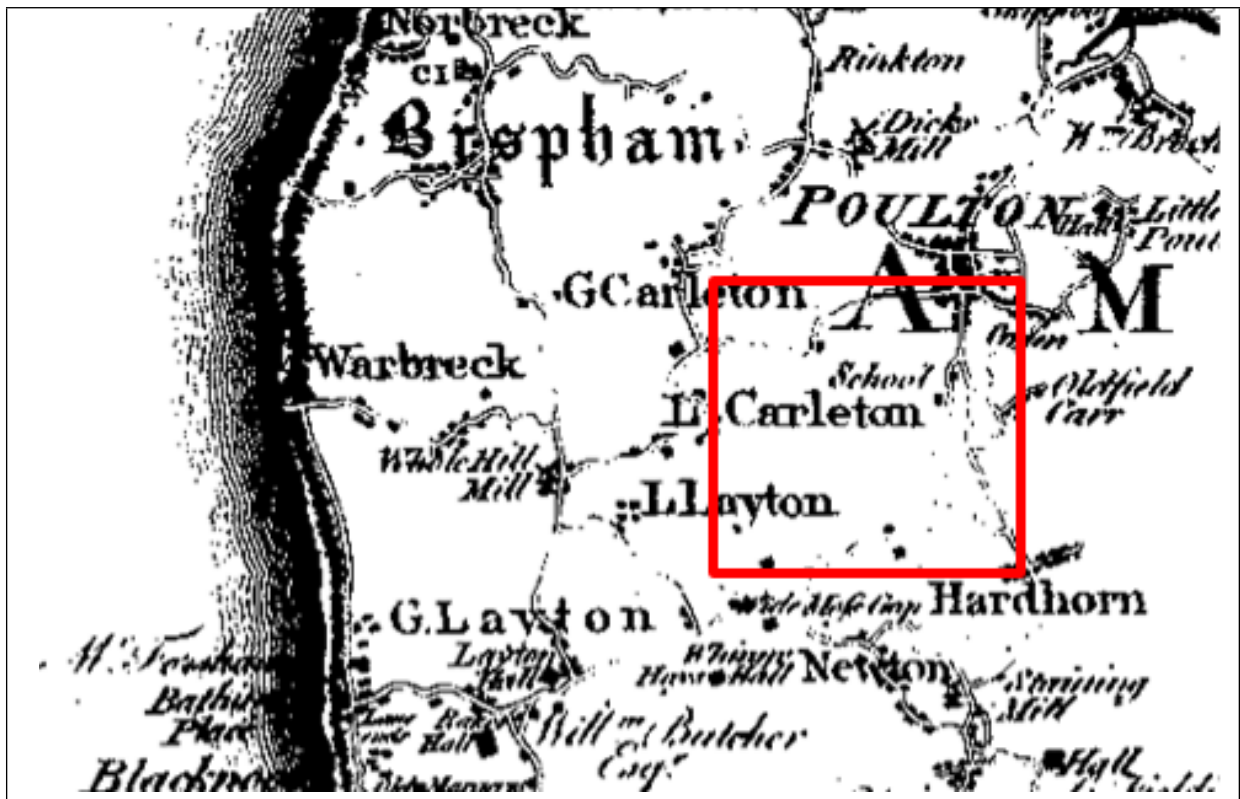
The route under investigation continues from point N along the enclosed track to point O where it meets the open junction with Public Footpath 10 Poulton-le-Fylde.

To summarise, access along the routes under investigation is prevented by fencing at point A, point F, point G and point J and by a locked gate at point K. There are no signs evident indicating whether any part of the routes are public or private. There is some evidence on the ground that parts of the route may have been walked and it appears that despite the locked gate the section between point K and point O is currently being used.

The development of the site for residential housing means that the school that previously existed on the site is no longer in existence and landscaping work between point I and point J has altered what may have been on the ground during the period of time that it is claimed that the routes were used.

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 area crossed by the routes under investigation is within the red box drawn on the map insert. The routes under investigation are not shown but appear to cross an area of undeveloped farmland. The school shown on the map is Baines School which is situated north east of the area under investigation.
Investigating Officer's Comments		It is unlikely that claimed public footpaths across open agricultural land would have been shown on the map. The routes did not exist as major routes at the time although they may have existed as a minor routes which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	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 routes under investigation are not shown.
Investigating Officer's Comments		It is unlikely that claimed public footpaths across open agricultural land would have been shown on the map. The routes did not exist as major routes at the time although they may have existed as a minor routes which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Hennet's Map of	1830	A further small scale commercial map. In 1830

Lancashire		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 routes under investigation are not shown.
Investigating Officer's Comments		It is unlikely that claimed public footpaths across open agricultural land would have been shown on the map. The routes did not exist as major routes at the time although they may have existed as a minor routes which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the routes under investigation was not affected by the construction of a proposed canal or railway.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	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.





<p>Observations</p>	<p>The area under investigation is included on the Tithe Map for the township of Hardhorn with Newton. A second class copy of the Map and Award have been deposited in the County Records Office.</p> <p>The route under investigation is not shown between point A and point C or between point C and point G. It would have crossed farmland described in the Award as a mixture of pasture and arable land with no reference to the existence of a public footpath.</p> <p>Part of the route now recorded as Public Footpath 10 Poulton-le-Fylde is shown passing through point G and is given a number on the map. The Award describes it as a 'Lane' and the section referring to state of cultivation has been left blank. A small tithe is payable (1d to the Vicar and 6d to the Impropriator listed in the Award).</p> <p>The route under investigation between point C and point K is not shown on the Tithe Map and the land that it crosses is shown as fields and listed mainly as pasture land. The area crossed by the route between point J and K is shown as being part of an area detailed as 'outbuildings, fold and</p>
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		<p>lane.'</p> <p>Between points K and point M the route under investigation is shown on the Tithe Map as an enclosed track. It is numbered as being part of plot 45 which is described as 'Outbuildings, fold and lane' and for which tithes of 2d were payable to the vicar and 1s6d to the impropiator listed in the Tithe Award.</p> <p>The route under investigation is also shown as an enclosed track between point M and point O and is described in the Award as a 'Lane' with no entry for state of cultivation. 1d was payable to the vicar and 6d to the Impropiator detailed in the Award.</p> <p>All of the land crossed by the routes under investigation was in the ownership of Peter Bourne Esq and was tenanted by Thomas Thase.</p> <p>The roads that existed through the township that now correspond largely to the public vehicular highways that still exist today were shown on the map but were not numbered and were not included in the Award.</p>
Investigating Officer's Comments		<p>The routes under investigation between point K and point O existed in 1838. It was described as a 'lane' in private ownership and a small tithe was payable suggesting that it was not considered to be one of the public vehicular routes through the Township at that time.</p> <p>The routes under investigation between points A-G and points C-J did not exist in 1838.</p>
Inclosure Act Award and Maps		<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.</p>
Observations		<p>There is no Inclosure Award for the area crossed by the routes under investigation deposited in the County Records Office.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
6 Inch Ordnance Survey (OS) Map	1847	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1847.¹</p>

¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large



Observations		<p>The routes under investigation are not shown between points A to G or between points A to K and the land is shown as open farmland. Marina Avenue is not shown on the map and there does not appear to be access to point A.</p> <p>The route under investigation between point K and point O is shown as an enclosed route between two properties.</p>
Investigating Officer's Comments		<p>The route under investigation between points A-C-G and between points C-K did not exist in 1844. The route under investigation between point K and point O existed in 1844 connecting two properties and continuing from point O along other routes now recorded as public footpaths.</p>
25 Inch OS Map	1892	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1892.</p>

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		<p>The routes under investigation are not shown between points A-C-G or between points C-K and the land is shown as farmland.</p> <p>The route under investigation between points K-O is shown as an enclosed route connecting two properties and as part of a longer route.</p>
Investigating Officer's Comments		<p>The route under investigation between points A-C-G and between points A-K did not exist in 1891. The route under investigation between point K and point O existed as a link between two properties.</p>
25 inch OS Map	1911	Further edition of the 25 inch map surveyed in 1891, revised in 1910 and published in 1911.



<p>Observations</p>		<p>Fylde Farm School had been built by 1910 with two access routes – one corresponding to the current access road into the Wainhomes development now known as Benedict Drive which passes between point J and point K and the other branching off the route now recorded as Public Footpath 10 Poulton-le-Fylde immediately east of point G.</p> <p>Marina Avenue is not shown suggesting that there was still no access to point A. Field boundaries are shown across the routes under investigation at point C and point H.</p> <p>The routes under investigation are not shown between points A-C, points C-G or between points C-K and the land still appears to be farmland.</p> <p>The route under investigation is shown between points K-O as it was on the earlier edition of the 25 inch map.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation between points A-G and between points C-K did not exist in 1910. The route under investigation between points K-O existed in 1911.</p>
<p>Finance Act 1910 Map</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</p>

		<p>evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		There are no Finance Act Maps held at the County Records Office for the Blackpool Valuation District which included the land crossed by the routes under investigation.
Investigating Officer's Comments		No inference can be drawn.
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1891, revised in 1930 and published in 1932.

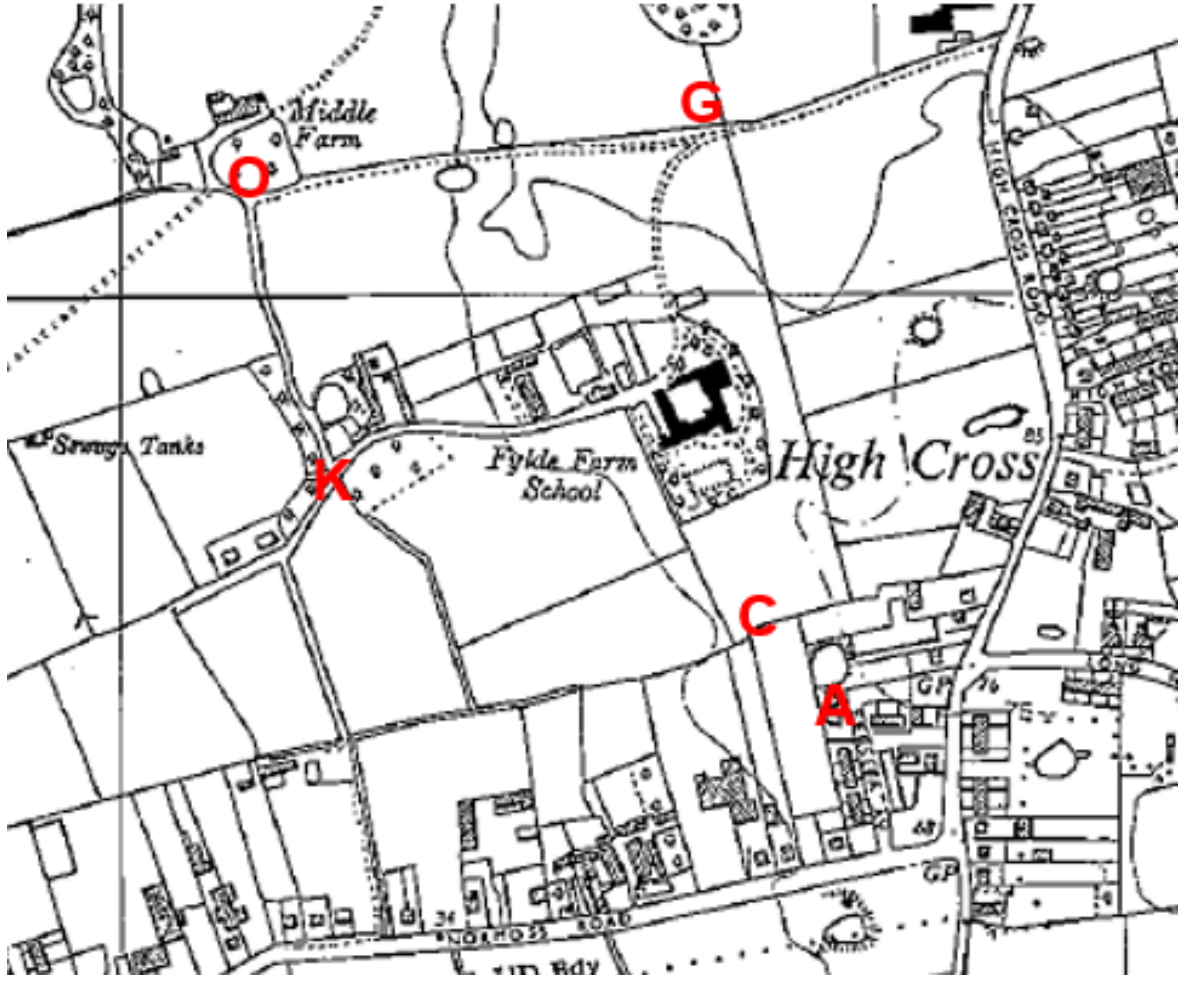


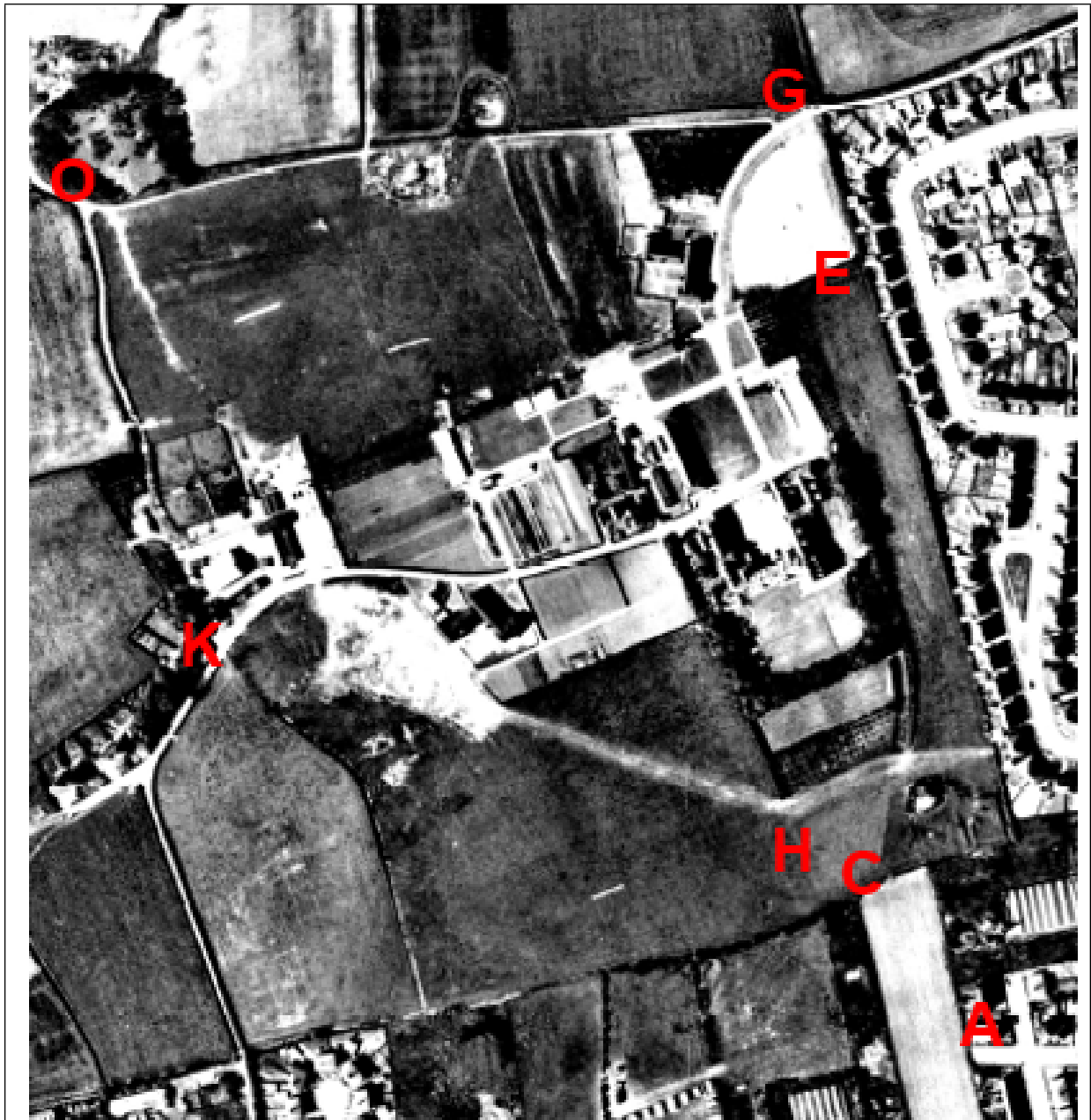
Observations		<p>Fylde Farm School had expanded since 1910. A field boundary is shown across the route at point A. The routes under investigation are not shown between points A-C, points C-G or between points C-K.</p> <p>The route under investigation is shown between points K-O as it was on the earlier edition of the 25 inch map as an enclosed route.</p>
Investigating Officer's Comments		<p>The route under investigation between points A-C-G and between points A-C-K did not exist in 1930. The route under investigation between point K and point O existed as a link between two properties.</p>
Aerial Photograph²	1940s	<p>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.</p>

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



Observations		<p>The routes under investigation are not visible as worn tracks on the ground with the exception of the section between points K-O which is clearly visible as a worn track.</p> <p>A light coloured area can be seen at point C suggesting the existence of a gateway or access point.</p>
Investigating Officer's Comments		<p>The route under investigation between points A-C, points C-G and between points C-K did not exist in the 1940s.</p> <p>The route under investigation between points K-O physically existed in the 1940s.</p>
6 Inch OS Map	1955	<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 before 1930 and is probably based on the same</p>

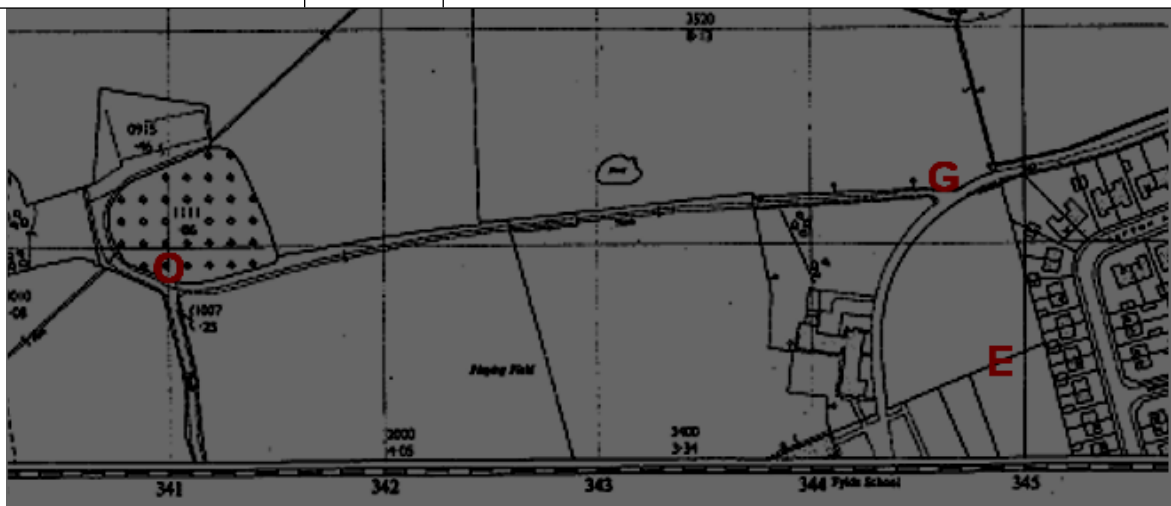
		survey as the 1930s 25-inch map.
		
<p>Observations</p>		<p>Houses have been built along Kerslea Avenue and a field boundary is shown at point A but there doesn't appear to be access from Kerslea Avenue to that point. The routes under investigation are not shown between points A-C, points C-G or points C-K.</p> <p>The route under investigation between points K-O is shown as it was on the earlier edition of the 25 inch map as an enclosed route forming part of a longer route starting on Normoss Road.</p>
<p>Investigating Officer's Comments</p>		<p>The routes under investigation between points A-C, points C-G and between points C-K did not exist in the 1930s.</p> <p>The route under investigation between points K-O existed as part of a longer route connecting properties in the 1930s.</p>
<p>Aerial Photograph</p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



Observations

Marina Avenue is shown although it is not apparent from the photograph whether access was available onto the route at point A. The field crossed by the route under investigation between points A-B-C appears to have been recently cut and there is no visible route on the ground. The gateway at point C is visible but the route between points C-G is not visible and although there appears to be a change in land use at point E it is not possible to see if there is a field boundary or whether a gate or stile existed. The route under investigation is not visible as a worn track between points C-H-I-J-K although a rough track exists north of the route under investigation from the rear of property on Beverley

		<p>Avenue extending in a north westerly direction towards point K.</p> <p>Access appears available onto the route under investigation at point K but the route is not visible due to tree cover to midway between point K and point M. Beyond point M the route is clearly visible to point O where it meets the route recorded as Footpath 10 Poulton-le-Fylde. The property that previously existed north of point O no longer appears to exist.</p>
Investigating Officer's Comments		<p>The routes under investigation did not exist as worn tracks on the ground between points A-C, points C-G or between points C-K in the 1960s.</p> <p>The route under investigation between points K-O, despite being partially obscured by tree cover, can be seen to have existed in the 1960s.</p>
1:2500 OS Map	1968	Further edition of 25 inch map reconstituted from former county series and revised in 1966 and published 1968 as national grid series.





<p>Observations</p>		<p>The routes under investigation are not shown on the map with the exception of the route between points K-O which is shown passing buildings and continuing to the open junction with Footpath 10 Poulton-le-Fylde. It is labelled as a track on the map.</p> <p>Marina Avenue is shown with a solid line across the western end at point A and there is no indication of whether access onto the route existed at this point. The electricity substation is shown.</p>
<p>Investigating Officer's Comments</p>		<p>The routes under investigation between points A-C, points C-G and points C-K did not exist in 1966.</p> <p>The route under investigation between points K-O existed as a track which may have been capable of being used.</p>
<p>Aerial Photograph</p>	<p>1988</p>	<p>Aerial photograph available to view at the County Records Office and Cuerden Depot.</p>



Observations		<p>The routes under investigation are not shown as worn tracks on the ground with the exception of the track between points K-O.</p> <p>It is not possible to see from the photograph whether access would have existed through the field boundaries or whether field boundaries existed.</p>
Investigating Officer's Comments		<p>The routes under investigation between points A-C, points C-G and points C-K did not exist in 1966.</p> <p>The route under investigation between points K-O existed as a track which may have been capable of being used in 1988.</p>
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		<p>The routes under investigation are not visible as worn tracks on the ground with the exception of the route between points N-O and part of the route between points K-N which is not obscured by tree cover.</p> <p>It is not possible to see from the photograph whether access was available at point A, point C, point E, point G or point H or whether gates or stiles existed.</p>
Investigating Officer's Comments		<p>The routes under investigation between points A-C, points C-G and points C-K did not exist in 2000.</p> <p>The route under investigation between points K-O existed as a track which may have been capable of being used.</p>
Aerial Photograph	2010	Aerial photograph available to view on GIS.



<p>Observations</p>	<p>The most recent aerial photograph available to view still shows the school and associated buildings but is dated around the time that the school is known to have closed.</p> <p>The photograph appears to have been taken during the winter months and faint paths can be seen leading from point C heading towards point E and on towards point G and also from point C to point H but from point H to point I and through to point K no route is visible.</p> <p>The route under investigation adjacent to the buildings between point K and point M is difficult to see due to tree cover but from point M to point O is clearly visible.</p>
<p>Investigating Officer's Comments</p>	<p>In 2010 parts of the routes under investigation may have been being used by a low number of pedestrians as show up as worn tracks on the ground.</p>

	<p>The route under investigation between points M-O is clearly visible as a track on the ground.</p>
<p>Images captured from Google Maps</p>	<p>The applicant makes reference to the fact that the routes applied for can be seen on Google Maps but does not supply copies of the images referred to or the relevant date of the images.</p> <p>The images inserted below were captured on 19 March 2015. The aerial photographs were undated but the street view showing access onto the route from point A was dated October 2012.</p>

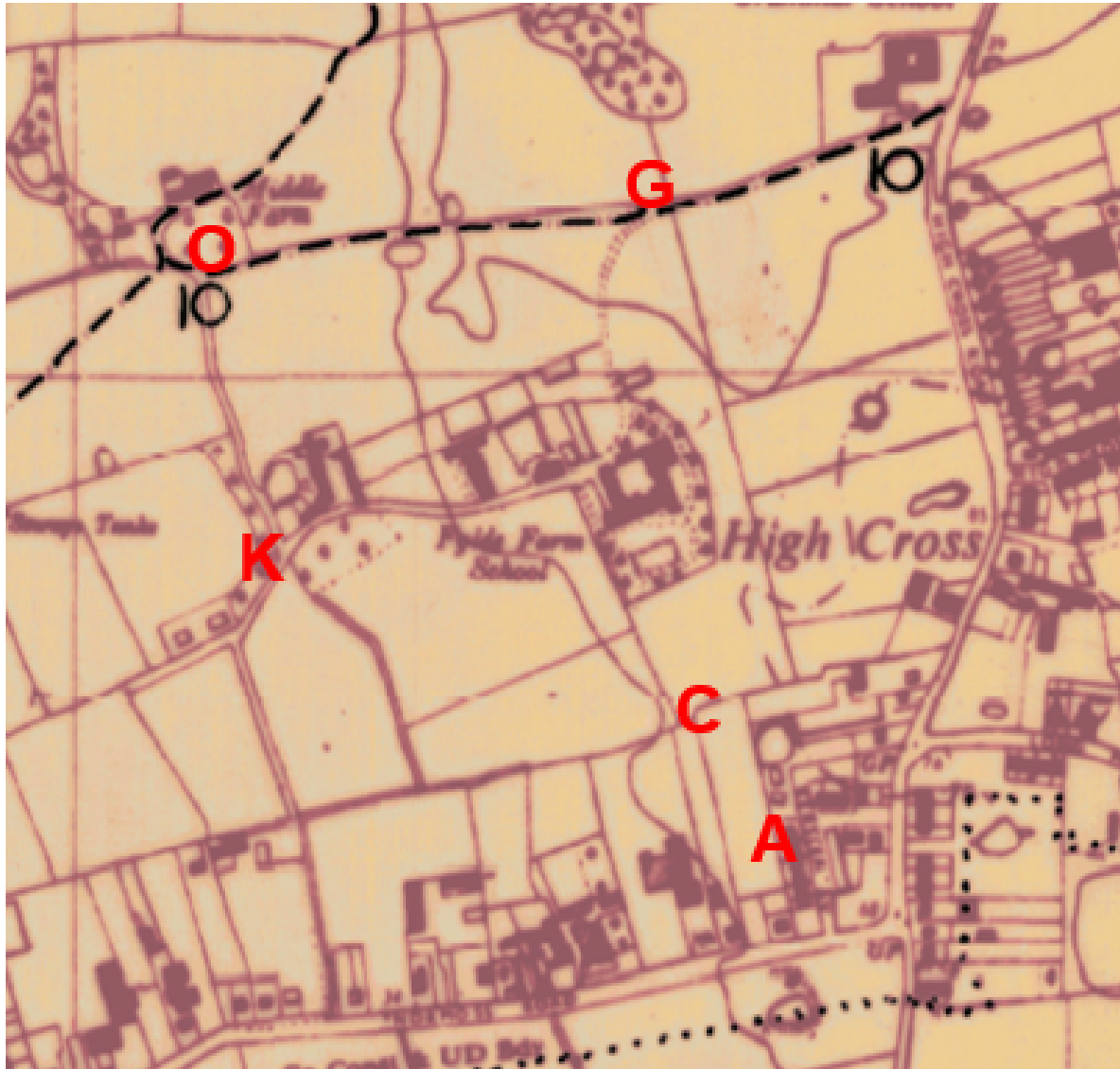




<p>Observations</p>	<p>The aerial photographs do not show a worn track between point A and point C. The gateway at point C can be seen and appears worn. A faint but worn track is visible between point C and point D and between point D to point E and through to point G.</p> <p>Access appears to be available between point C and point J with a possible worn access/gateway at point I. Most of the track between point K and point O is visible.</p> <p>The photograph available to view on Google Street View shows that a small wooden gate existed in 2012 at point A. It is not possible to determine whether the gate was locked or accessible at that time.</p>
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Investigating Officer's comments		The aerial photographs provide some evidence to support the fact that the routes under investigation could be used and that trodden tracks could be seen. The photographs are undated although they predate the demolition of the school and redevelopment of the site so their use is limited. The 2012 street view showing point A is useful in showing what access existed prior to the erection of the security fencing.
Definitive Map Records		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.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Poulton-le-Fylde was an Urban District in the early 1950s and so a parish survey map was not compiled.
Draft Map		The Draft Maps were given a "relevant date" (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The routes under investigation were not shown on the Draft Map and no representations were made

		to the County Council.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The routes under investigation were not shown on the Provisional Map and no representations were made to the County Council.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The routes under investigation were not shown on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Observations		The routes under investigation are not shown on the Revised Definitive Map of Public Rights of Way (First Review) and Statement.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the routes under investigation were 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.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten

		<p>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 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.
Deposited Records Fylde Farm School for Boys, Staining	1851- 1993	Various records held in the County Records Office dating from 1851 to 1993 (Hand List 66)
Observations		<p>Various Minute books, annual reports, financial reports and children's records have been deposited at the County Records Office under the reference Fylde Farm School for Boys, Staining.</p> <p>An inspection of some, but not all of these records has been made.</p> <p>The Fylde Farm School Minute books dated 1973 to 1980 document monthly meetings held by the school management team. No references could be found which referred specifically to the existence of any routes across or through the school grounds that were used by the public. It was clear from the minutes that the school was actively farming the land crossed by the application routes during that time and that school security was taken seriously. There are several references in 1977 to meetings with local residents about the need to improve school</p>

		security and requests from residents for better fencing around the site.
Investigating Officer's Comments		No specific references to the use of the application routes was found and no documentation found regarding the existence of the routes under investigation, any annual closure of paths or the provision of signage. It was clear however that the land crossed by the routes under investigation was being actively managed and farmed by the school and that the security of the site was taken seriously due to the fact that it houses boys with potential behavioural problems.

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 North West Young People Development Trust acquired the property known as the Fylde School, Normoss Road, Poulton-le-Fylde in 1904 having put together the site from a number of separate parcels. The property consisted of some 134 acres. Until 1973 the Trust operated at the Property providing for the education and accommodation of underprivileged young males from the North West area. In 1973 the Property was taken over by Lancashire County Council who ran the property as a controlled community home under an Instrument of Management until it closed in the 1990s. The site was then taken over by the Emmanuel Christian School which closed in around 2010 due to the repeated vandalism of the buildings.

The disposal of part of the property to Wain Homes was completed in March 2013 which included a 10 acre development site and part of the surrounding agricultural land.

Since March 2013 all of the land with the exception of the enclosed track that forms part of the route under investigation between point X and point O on the Committee plan has been in the ownership of Wain Homes North West Limited with the remaining section still owned by The North West Young Peoples Development Trust.

Summary

The 2015 site evidence showed that access along the routes under investigation is currently prevented by fencing at point A, point F, point G and point J and by a locked gate at point K. There are no signs currently evident indicating whether any part of the routes are public or private. There was some evidence on the ground that parts of the route may have been walked and it appears that despite the locked gate the section between point K and point O is currently being used.

The development of the site for residential housing means that the school that previously existed on the site is no longer in existence and landscaping work

between point I and point J has altered what may have been on the ground during the period of time that it is claimed that the routes were used.

None of the routes under investigation are shown on the early commercial maps.

The route between points K-L-M-N-O is shown consistently as an enclosed track forming part of a longer route from the Tithe Map published in 1838 until the current day. In the Tithe Award the route between points K-L-M-N-O is described as a 'lane'. A small tithe is payable and no state of cultivation recorded. The fact that the route is numbered and a tithe payable suggests that it was not considered to be a public vehicular route at that time as these appeared not to be numbered on the map but it is not inconsistent with the existence of a public footpath as part of Public Footpath 10 Poulton-le-Fylde, which is in the same ownership, is described in the same manner.

With the exception of the enclosed track between points K-O 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.

For a rural footpath crossing agricultural land it is not necessarily uncommon for a route not to be shown – particularly if use was light and site evidence, aerial photographs and google street view suggest that access may have been available through field boundaries at point A, point C, point E, point G, point H and point I.

The aerial photographs examined all show the enclosed track between points K-O although it is partially obscured by tree cover in some of the photographs. The photographs confirm that the rest of the routes under investigation crossed farmland but it does not appear to be until 2010 that faintly trodden routes corresponding to parts of the routes under investigation are well enough defined to show up on the photographs.

No other documentary evidence examined supports the view that the routes were considered to be public footpaths.

County Secretary and Solicitors Group Observations

Information from the Applicant

The applicant has provided a supplementary statement in support of his application:

"The footpath which is the subject of this application has been in existence for many years. It is to be clearly observed on Google Earth.

It is understood that the path was in regular use as far back as the mid / late 19th Century when Fylde Farm was established as a School for difficult children and when the ragged school moved to the site from Manchester.

It is understood that a property on Normoss Road was a School Home for Fylde Farm and that there was a footpath leading to the Farm School from this property.

It was in regular use by personnel working at the school and living locally and also by the residents and staff of the school.

Fylde School remained in existence as an establishment for children and young

people who were usually the subject of Approved School Orders (Latterly Care Orders) until its closure in 2004 and the said footpath was in use for all this period of time (c 150 years).

The houses on the west side of Kerslea Avenue (nos 1-15) were built c1936 and it is understood that a stile was erected giving access on to the said footpath around this time.

The pair of houses Nos 17&19 Kerslea Avenue were built around 1946/7 and the Avenue was extended to the dead end at the end of Kerslea about this time, as was road to the end of Marina Drive, it is understood.

This stile gave access for all three houses and ultimately all the other houses erected on Kerslea Avenue and Marina Drive.

It is understood that the stile eventually collapsed and was replaced by a gate, which still exists.

The footpath from this gate linked on to the original path and led to Fylde School and also to Baines School.

It is understood that a kissing gate was erected at the boundary of Fylde School to give access into the School and that a footpath sign was erected. Neither this gate nor this footpath sign exist now.

It is understood that the second gate identified on the map (map attached to the application) is more recent and that it has never been locked until this year (2014).

The footpath, the subject of this application has been in existence for probably 150 years. Its use has been for people working at Fylde School and also walkers and dog exercise, and family events for many years.

It is the only accessible green area in the vicinity and was in regular use by many people, both for the aforementioned events and also for access to the local ponds.

It is submitted that the abrupt denial of this important community facility deprives the local communities of access to the footpath which has added significantly to the quality of life of local residents over many years.

We submit that this footpath should be so designated, thus ensuring that unfettered access to this much appreciated area, valuable to the local communities, can continue in perpetuity.

- 1. It is understood that the right of way has never been questioned.*
- 2. It is understood that no notices have been clearly displayed on the way indicating it was private in living memory."*

In support of the claim the applicant has provided 22 user evidence forms, the evidence of use is set out below:

All 22 users have used the way on foot and the years in which the route was used varies. 2 users refer to their use since the 1940s, three more since the 1960s. There is evidence from four users for the years 1978-82 . a further 4 users used the route from the 1980s, 12 using the route by 1998. The remainder of users started to use the route since 2000. the evidence from the user who lived at Fylde Farm School would need to be discounted as being permissive rather than as of right.

The main places users were going to and from include Marina Avenue to Normoss Road, Marina Avenue back to High Cross, from Kerslea Avenue to Garstang Road,

from Poulton to Normoss, some users were walking all over, and some were going to visit the ponds.

The main reasons for using the route are for dog walking, walking with children, for pleasure, to look at the flora fauna and wildlife and for exercise.

The use of the route per year varies from weekly, daily, twice per week, twice per month, 3 times per day, to 15-30 times per year.

None of the users have seen anyone using the way on horseback or motorcycle / vehicle, however 6 users didn't provide a response to this question. None of the users have used the way by others means.

All the users agree that the route has always run over the same line, or they have responded with 'seems to have', 'as far as I can recall', 'as far as I know' and 'as far as I'm aware', however 1 user did not provide a response to this question.

When asked if there are any stiles, gates or fences along the route, 5 users answered with 'no' or 'cannot recall any', 7 users answered with 'yes' but did not provide any further details, 1 user stated there is a gate at approx. SD 33455E 437725N, 2 users mention a gate being at the end of Marina Avenue, 1 user mentions there is a stile and a kissing gate, another user mentioned that there used to be a gate at the 'enter end'.

17 users agree that none of the gates were locked, one user states 'not until recently' and 4 users didn't not provide a response.

15 users have never been prevented access when using the route, 1 user stated 'not until recently', another states 'only during development work during the year', 1 user states 'no, it had signs saying it was a public footpath', and 4 users did not provide a response.

18 users have never worked for a landowner or been a tenant over which the route runs and 4 users did not provide an answer when asked this question.

18 users have never been stopped or turned back when using the route, 1 user states 'in the past no', another user states 'not until recently, 1 user states 'yes but only when the building works started' and another user states 'not until the fences were erected'.

18 users have never heard of anyone else having been stopped or turning back when using the route, 1 user mentions 'yes when building works started, metal fence put up approx. July 2013' and another user states 'fences and wire prevented normal / usual access at approx. end of 2013' and 2 users did not provide a response to this question.

20 users all agree that they have never been told that the route they were using is not a Public Right of Way, 1 user states 'no in fact at one point it was encouraged as open access route to the farm for young people at the farm' and 1 user did not provide a response.

21 users have never seen any signs along the route but one user recalls seeing a sign stating 'no admittance' 'or similar'.

18 users have never asked permission to use the route, 1 user states 'there was never anyone to ask', 1 users states they didn't ask permission and that there was a sign saying 'public footpath', another user mentions 'followed my neighbours and asked them when moved in who have been using it for many years before I moved in' and 1 user didn't provide a response.

The information below was provided by the users as 'other information they think is relevant':

- I remember years ago someone wanted to close a footpath near to St Joseph's college, not having a dog anymore and with advancing years our walks over the fields are now near to Compley Avenue but I still think the footpaths should remain open.
- I've walked this way with my dogs and children for 17 years
- Over the years our children along with the neighbourhood children have used this right of way, we have walked our dogs along the way for years and now take our grandchildren. I feel it is valuable to our neighbourhood and would be a sad loss if we were unable to use it.
- I had a site meeting with the site manager in July 2013 where it was agreed to allow access across end of 'Baines Lane'. This was later revoked when anti-in trader fencing extended to prevent access Wainhomes would not return phone calls.
- This is a well-known route and is used by many from the area and outside. It is a route which creates a sense of community.
- My son and his local friends used the field to the rear of my property to play football, cricket and general play, from 1990 onwards at no time were they challenged.
- I have walked this route on a daily basis for 10 years with my family and my dog. It has been a great source of pleasure for us and a chance to enjoy the open air in an area where open space is at a premium. It would be a tragedy for local residents to lose this. My children also used to love fishing the ponds.
- As far as I am aware, there has been a public right of way for many years and I have never known of anybody being challenged or stopped whilst doing so. And we as a family used this pathway regularly and would like to do so.
- A lot of neighbours and local people use this same route on a daily basis, to walk their dogs and have walks for health reasons and local children play in this area, which is a safe place to do so.
- These fields are used by the local community for dog walking etc. The fields are habituated by foxes, cranes, field mice etc.
- I came to live in Kerslea Ave when I was 8 in 1946. Apart from a period of 2 years from 1960-1962 I have lived here ever since for several years, my family and other relatives lived in 5 houses on the same side of the avenue. Until this year we used the fields to walk at least twice a day 3 times in the summer to walk our dogs. Our children played in the fields one of my sisters walked daily to and from Fylde Farm approved school where she walked. The path to the school I think was from when the school opened. There used to be a stile at Marina Ave entrance. The footpath has been closed without any

consultation with the community and has caused upset and deprived us from a well-used historical path which has been a great benefit to the people who walked through to the ponds and watched the wildlife also walk their dogs.

- My granddad moved into 15 Kerslea Ave in 1936 and our family have lived here ever since. I have lived here since birth (1945) and have memories from being very young of the family taking our dog for walks along this path. People used the path from the end of Marina Drive to the Fylde School daily when walking to work at the school. I understand it was used from when the school was opened early in the 20th century. I remember that there was a stile at both ends and a sign saying Public Footpath. I used the path and the fields as a young child daily both with our dog and also used to picnic and fish in the ponds regularly. I contacted police in about 1953 and was unable to use the path due to hospitalisation for some years since then but from my knowledge this footpath has been regularly used by many people continuously for probably 100 years. From my personal experience it has been used continually for all my life (68 years).
- As a young child I lived with my parents at Fylde School, they were house parents, there were footpaths and rights of way across the school land and I walked along many of them including this route, another footpath I recall was one which went along the field to the rear of Kerslea Ave / Marina Ave. I do recall a stile where that met the public access.
- We moved to Kerslea Avenue in July 2009 and enjoyed unfettered access to the fields at the rear of our property, down to the ponds, through the derelict Farm School site and onto Beverley Avenue and round in the direction of the Fraye Park and the Baines School access. There is a gate at the end of Marina Drive which went on to the fields and a well-marked footpath exists from there through another gate to the Fylde School field and the pond and onwards for a considerable distance. I understand from local knowledge that there used to be a stile at the end of Marina Drive, replaced by a gate when it became unsafe. I also understand that there was a kissing gate at the rear entrance to Fylde Farm School and also a footpath signpost. This path used to be used, I understand by people working at the school to go to and from work and also as a very valued and valuable source of green recreation land for the Highcross and Normoss Community. It was still used as a green 'lung' in a heavily built up area and it is of great concern to the community that its valued resource is now denied to the community. I also understand that a footpath at the back of Kerslea Avenue to the School has been affected since the school was opened mid-19th century.

Information from the Landowner

A letter has been received from Wainhomes (North West) Limited, they state that they had been made aware of the application for footpaths over their land by the applicant.

They mention that the current claim for a Definitive Map Modification Order should not be supported for the following reasons which they have previously discussed with the applicant:

1. The land affected has been in the ownership of the North West Young People's Trust and their predecessor between them for over 100 years and

more recently occupied under lease by Lancashire County Council. The site was used for the development of wayward children (a form of low security borstal) having secure areas and cells on site for particularly challenging youngsters.

2. Wainhomes (North West) limited state that it would not be appropriate to voluntarily allow public access over the land where vulnerable youngsters are present. They are aware that there have been various incidences of trespass, but at no time, have public access rights been willingly allowed.
3. They have been advised that Young Peoples Trust have never allowed public rights of access.
4. Wainhomes (North West) Limited are aware that parts of the land have been tenanted to a local farmer historically for cattle grazing and crops and part used by Jane Armstrong (a local resident) for horse pasture. Mrs Armstrong has advised that she has a good view of the Marina Avenue boundary which has always been fenced and has noted that some people occasionally jump over the fence or attempt to wire cut the wires to allow their dogs onto the land. There has not been and is not currently an open footpath route onto the land from Marina Avenue. Any access being gained is via trespass in climbing the fences.
5. 4 photographs have been submitted with the objection that show the fencing at the end of Marina Avenue.

The landowners consider that it should be noted that the land has been used for grazing with livestock and securely fenced with locked gates. There are no footpath stiles within their land. The landowner asks to couple this with the security issue associated with the original land use and it is clear that this claim spurious and they hope that LCC can dismiss the application.

They have produced 2 witness statements one from Mrs Jane Armstrong (tenant) and one from Mrs Sylvia Houldsworth, they mention it is purely by chance that Mrs Houldsworth was in discussion with the company last week regarding a boundary hedge and after discussing the footpath claim she was clearly very knowledgeable, having lived in the current property backing onto the land for 53 years. The fact her husband used to work at the Fylde School site for 15 years is also significant.

They mention that it is a key point that people commenced trespassing and walking over the land when the school closed and became derelict. Any unlawful trespass walkers do not have the requisite timescales to claim a prescriptive footpath let alone a definitive one.

Statement from Mrs Jane Armstrong

"I am an adjoining landowner to the field at the end of Marina Avenue, Blackpool, and have lived at the above address since October 2006.

I have been informally using the paddock for the grazing of my horses during the winter months for the past 7 years.

During this time there has never been a footpath crossing the field.

The field fence is repeatedly damaged to gain unlawful access which I and the landowner have repaired, and I have had my own padlocks stolen as I have tried to secure the land. There has never been continuous access over the land.

There has been on occasion when the Police have had to evict travellers from the site and other various security incidents which I am happy to discuss."

Statement from Mrs Sylvia Houldsworth

"I have lived at my current address for 53 years last March 18th and to my knowledge the field behind our house has never been a public pathway. When I came to live here, the land behind was Fylde Farm School, a place for boys who either came from deprived backgrounds or from court proceedings, but not a Borstal as such. The boys were at that time trained to work either as builders, painters and decorators or farm the land looking after livestock. It was previously owned I believe and therefore you were trespassing if you walked through the grounds. The only time I saw people walking through was when the buildings were closed and it became a derelict site. Then it became a dog walker's paradise. It would be brilliant if the field once more became a more rural area with the cattle or sheep, we even had donkeys at one time and goats I believe although the goats may have been on the farm. I know more about the School because my husband worked there for 15 years a long time ago."

A letter of objection to the application from Bromleys Solicitors on behalf of North West Young Peoples Development Trust

During the time that the property was operated as a controlled community home the Trust and Trustees took an active role in the management and functioning of the controlled community home and surrounding land. The agricultural land at the Property was managed by a farm manager under the supervision of LCC and the Trust with certain fields being licenced to local farmers for specific agricultural purposes. The trust and LCC would supervise the maintenance and security of the boundaries to the Property and home generally.

As part of the operating procedures of the Property the Trust would, in cooperation with LCC, close the entire Property down for one day a year. This procedure involved the erection of signs on gates and access ways at the Property precluding access for the day. A photograph of the notices was to be taken and sent to Wyre Council every year and LCC every six years. From available minutes of the Trustees meetings it appears that this procedure was carried out during the first week of March every year. We have located minutes confirming closure from 1998-2003, however the Trustees confirm that the procedure dated back long before this time. Gradually from 1980 LCC had returned parts of the Property to the Trust culminating in the handover of the Property to the Trust in 2003, except Dales House which was later vacated in 2006.

From 2006 the Trust managed the Property in conjunction with various third party developers to include Kensington Developments Limited (2006-2008), Keyworker Homes (North) Ltd (2008-2009) and latterly Wainhomes NW Limited. The Trust and

developers have made every effort to secure all boundaries and erect signs generally including where unauthorised access has been encountered. A number of photographs are attached showing examples of signage erected over the years.

The disposal of part Property to Wainhomes was exchanged on March 2012 with completion in March 2013. The land disposed of was a 10 acre development site and part of the surrounding agricultural land. The retained section of the Property amounting to some 80 acres of agricultural land has been retained by the Trust. The retained land has to date not been occupied rather a farmer has been granted licence to access and take cuts of hay. At the time of preparation of this document terms are under negotiation for the grant of a farm business tenancy to Karl Holt. No third party has the right to enter the retained land in the positions labelled Access routes on the application documentation.

The Trust request that the claim for a public footpath in the position of the Access route be rejected on the basis of the above information. Further information will no doubt be available from the Councils own records concerning the nature and use of the Property.

To support their evidence the following list of documents have been provided:

1. Minutes of the North West Young People's Development Trust Lands Sub Committee dated 12th March 1998, - the minutes refer to all the pathways within the trustees lands has been closed on Monday 2nd March 1998 in order to preserve their private status, and the next scheduled closure is to take place on the first Monday in March 1999.
2. Further minutes state - When the annual footpath closure takes place, the Farm Manager was requested to ensure that signs were erected and suitable photographic evidence taken, it was also agreed that a formal letter from the Trustee would be forwarded to the Principle so that the Farm Manager was in a possession of authorisation to carry out the closure, a copy of this letter would also be forwarded to LCC.
3. Another set of minute's state – The Principal advised that a footpath sign had been placed at the Highcross Road entrance to the site. It was agreed that the Clerk would write to Wyre Borough Council to advise that this was not a public footpath and advised that the sign should be removed.
4. A report for the Trustees 21st January 1999 that state – notices have been received for the closure of the footpaths, this will be done on Monday 1st March as requested and photographic evidence will be provided.
5. Minutes of the Fylde Community Trustees Meeting 1st July 2000 state – that the footpath closure must be reported to Wyre Borough Council annually and Lancashire County Council every sixth year.
Minutes of the Fylde Community Trustees Meeting 1st April 2000 state – notice had been given to Wyre Borough Council on 12th February 2000 that the footpaths at Fylde Community were to be closed on Monday 6th March 2000. Notices had been forwarded to the Principal for lamination and display, along with a map showing where the notices were to be situated. Confirmation is required that the paths were closed. J E Huxley advised that official notice only required to be given every six years.
6. 2003 statement – It was agreed that the footpaths should be closed for one day and it was agreed that Mr Jones would be asked to action this.

7. Photographs showing Private Road signs & Private Land

Information from County Council Estates files

As Lancashire County Council leased the land in question from 1973 until the 1990s, officers contacted Lancashire County Council's Estates team and the following information has come to light:

A letter from the North West Young People's Development Trust was sent to Fylde Community and was copied Lancashire County Council on 7th January 1999. The letter state that the 10 signed notices enclosed are to be displayed at each end and interim points in the rights of way across Fylde Community on Monday 1 March 1999 and that they are displayed for the minimum of 24 hours. The letter also requests that photographs of each of the sites should be taken with the notices in situation and clearly identified on the photograph so that these can be filed and is necessary used for future evidence.

The Notices state:

"This is a PRIVATE WAY provided by the Trustees of the above Charity, expressly for the use of residents and persons having legitimate Fylde Community Home business.

In furtherance of protecting that status, notice is hereby given that the way will be closed to all other persons for one day from 0001 hours on Monday 1 March 1999."

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

User evidence

Aerial photographs

Trodden path sections

Recollections of users

Borough Council

Against Making an Order

Low numbers of users in certain years

Locking of accesses annually by the landowner – evidence corroborated

Lack of intention of owners

Crossing of open ground with less use of claimed line

Conclusion

In this matter it is claimed that there has been sufficient long use by the public such that the path has become a footpath in law and should be recorded on the Definitive Map and statement

The law looks at whether there has been a dedication by the owner. There is no express dedication but Committee are advised to consider whether a dedication could be deemed under S31 Highways Act from twenty years use as of right without interruption up to a "calling into question" or be inferred from all the circumstances at common law.

Considering first of all the possibility of finding a dedication at common law. As the owner of most of the land crossed by the claimed routes until recently was the owner for many decades and refers to the annual locking of gates and indicates their lack of intention to dedicate it is advised that to seek to prove that this owner intended a footpath for the public would be difficult. The present owner has closed access and has no intention to dedicate.

It is therefore suggested that the provisions of S31 Highways Act 1980 whereby a dedication could be deemed, despite what owners now say, may be an appropriate provision to consider. The application itself calls the route into question but in this matter the twenty years use back from 2014 reach the years where there has been the annual locking of access points. As there is corroborative evidence of this annual event being brought to the attention of users and not being on a day when use was unlikely such as Christmas Day, it is suggested on balance that the earliest annual locking of access points would be an earlier calling into question. Such actions by a landowner would also interrupt use and also, despite the short duration be sufficient evidence of lack of intention to dedicate. Committee may consider that the twenty years use from which to deem dedication 1994-2014 cannot therefore be achieved as the first properly evidenced closure was in 1999 or 1998. It is noted that there may be evidence of even earlier ones but no evidence has been submitted. Even if earlier ones are not evidenced and a new period of twenty years 1978-1998 or 1979-1999 able to be considered it is advised that there is only evidence of use from four users as early as 1978/9 for the first few years of that period and this low use in the relevant years may be insufficient to prove use by the public throughout the twenty year period over and above trivial and sporadic use.

It is noted that users make reference to it being a popular route in more recent years but it is suggested that the locking of the accesses by the landowner as evidenced are sufficient actions which demonstrate the owners lack of intention to dedicate and the use has failed to build into a highway right. The more recent use has not been for a new period of twenty years since the last evidenced closure in 2003.

Taking all the information and evidence into account it is suggested that the Committee may consider the evidence insufficient from which to find that a dedication could be deemed or inferred in law and therefore that the application be not accepted.

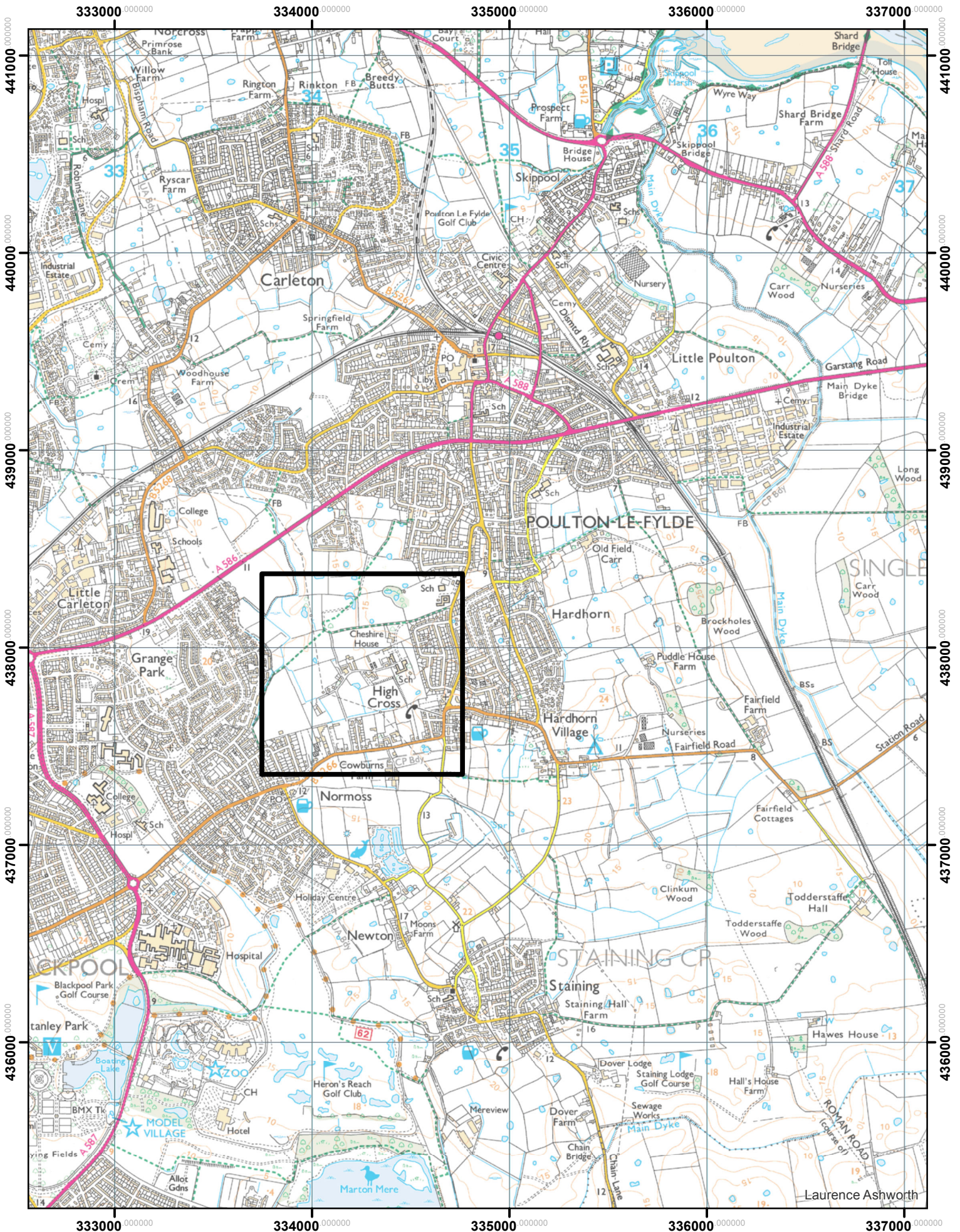
Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
Documents on File Ref: 804-556 5.51738	various	Megan Brindle , 01772 535604, Legal and Democratic Service

Reason for inclusion in Part II, if appropriate

N/A



Steve Browne
Interim Executive Director
for the Environment

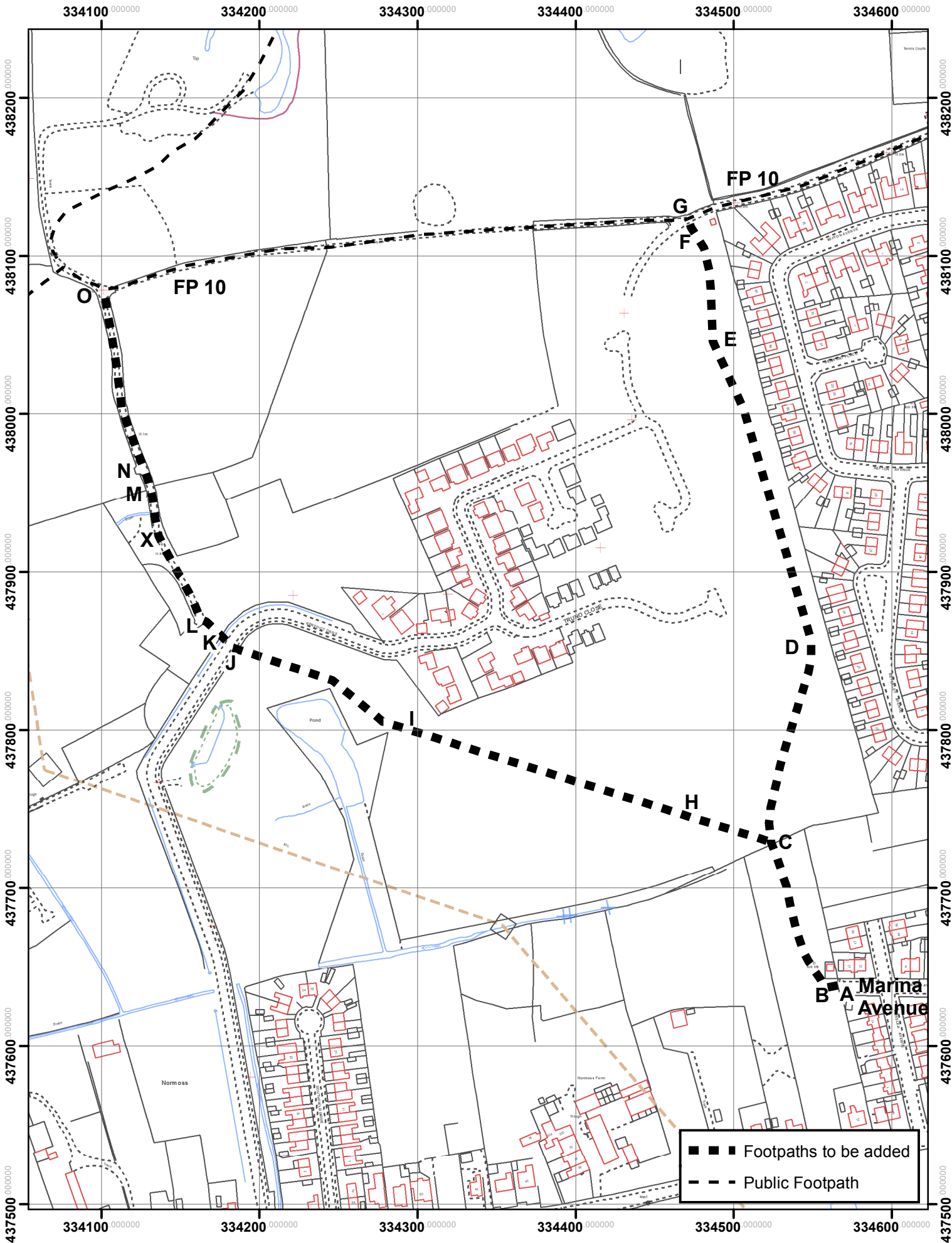
Wildlife and Countryside Act 1981
Addition of public footpaths from Marina Avenue to two points on
Public Footpath 10 Poulton le Fylde, Wyre Borough Application 804-556 LOCATION PLAN

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.

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Regulatory Committee

Meeting to be held on 1st July 2015

Electoral Division affected: Longridge with Bowland
--

Commons Act 2006

The Commons Registration (England) Regulations 2014 Regulation 43

Application for a Declaration of Entitlement to be recorded in respect of some of the Rights of Common being grazing rights registered as attached to land at Out Lane Head Farm, Chipping, being entry 4 in the Rights Section of Register Unit CL12

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

Contact for further information:

Danielle Jay, (01772) 535526, Legal and Democratic Services

danielle.jay@lancashire.gov.uk

Executive Summary

An application from Peter Joseph Rogerson and Elizabeth Susan Rogerson for a Declaration of Entitlement to record the rights to graze 35 Sheep on Common Land Register Unit CL12.

Recommendation

That the application be accepted in part and a Declaration of Entitlement be recorded in the Commons Register in accordance with The Commons Registration (England) Regulations 2014 and that Mr Peter Joseph Rogerson and Mrs Elizabeth Susan Rogerson are entitled to exercise part of the right attached to Out Lane Head Farm, Chipping, namely the right to graze 23 Sheep on unit CL12.

Background and Advice

The Commons Act 2006 (the 2006 Act) makes provision for the registration of common land and of town and village greens. Registration Authorities were created to maintain two registers, one for common land and the other for village greens. The County Council is the Registration Authority for the County of Lancashire and has previously delegated powers and functions concerning alteration of the registers to the Commons and Town Greens Sub-Committee. These powers are now with the Regulatory Committee.

The 2006 Act makes provisions by Regulations for commons registration authorities to record in their registers of common land that a person is entitled to exercise some or all of the rights attached to a particular piece of land. The rights remain attached to the land but can at the moment be exercised by the owner and the application in this matter is that this is the case and should now be registered.

On the 15th December 2014 The Commons Registration (England) Regulations 2014 were brought into force to replace The Commons Registration (England) Regulations 2008. Although this application was submitted under Regulation 44 of the 2008 Regulations, the updated DEFRA Guidance of December 2014 states at paragraph 1.1.7 'All applications made to, and proposals made by, pioneer authorities under the 2008 Regulations automatically switch to the equivalent stage in the 2014 Regulations...'. Therefore from the 15th December 2014, this application automatically became an application under Regulation 43 of The Commons Registration (England) Regulations 2014.

Regulation 43(1) states that applications for a declaration of entitlement to exercise a right of common must be made by an owner of a freehold estate in land to which a right of common is attached or leasehold owner in any such land.

In this matter the rights are attached to Out Lane Head Farm, Chipping, shown edged red on the supplemental map in Appendix 'A', the rights attached to this land are to graze 70 Sheep over register unit CL12.

The application had previously been considered at the Commons and Town Greens Sub-Committee meeting held on 1st July 2013, the minutes of that meeting are attached as Appendix 'B'. A decision was deferred by the Sub-Committee to allow further investigations to take place regarding land ownership and to establish the Applicants' correct entitlement, as it had come to light after the agenda had been circulated that not all of the land subject to the application was in the ownership of the Applicants. Further investigations have since taken place and a new land calculation has been completed.

The Applicants have provided a copy of title number LA855369. This shows that part of the farm, as shown on the supplemental map is owned by Peter Joseph Rogerson and Elizabeth Susan Rogerson, as shown on the plan marked Appendix 'C'. It has been calculated that this land is 33.6% of the Out Lane Head Farm land on the supplemental map.

33.6% of the grazing rights is calculated as the right to graze 23 Sheep. Mathematically, it actually produces a fractional quantity but, following guidance from DEFRA it is advised that a right to graze a fractional animal is not recognised in law, and the fractional right has been rounded down. The Applicants are aware of this.

Notice of the application has been duly given according to the regulations and no response has been received.

It is advised that if the application is well founded the appropriate amendment to the register shall be made. Here it is advised that although the application was to record 35 sheep the correct entitlement is the rounded down figure of 23 Sheep. It is advised that the Application be accepted in part.

Consultations

Notice of the application was given on the County Council web site and also to all parties who have requested to be notified of applications under the 2006 Act.

Implications:

This item has the following implications, as indicated:

Risk management

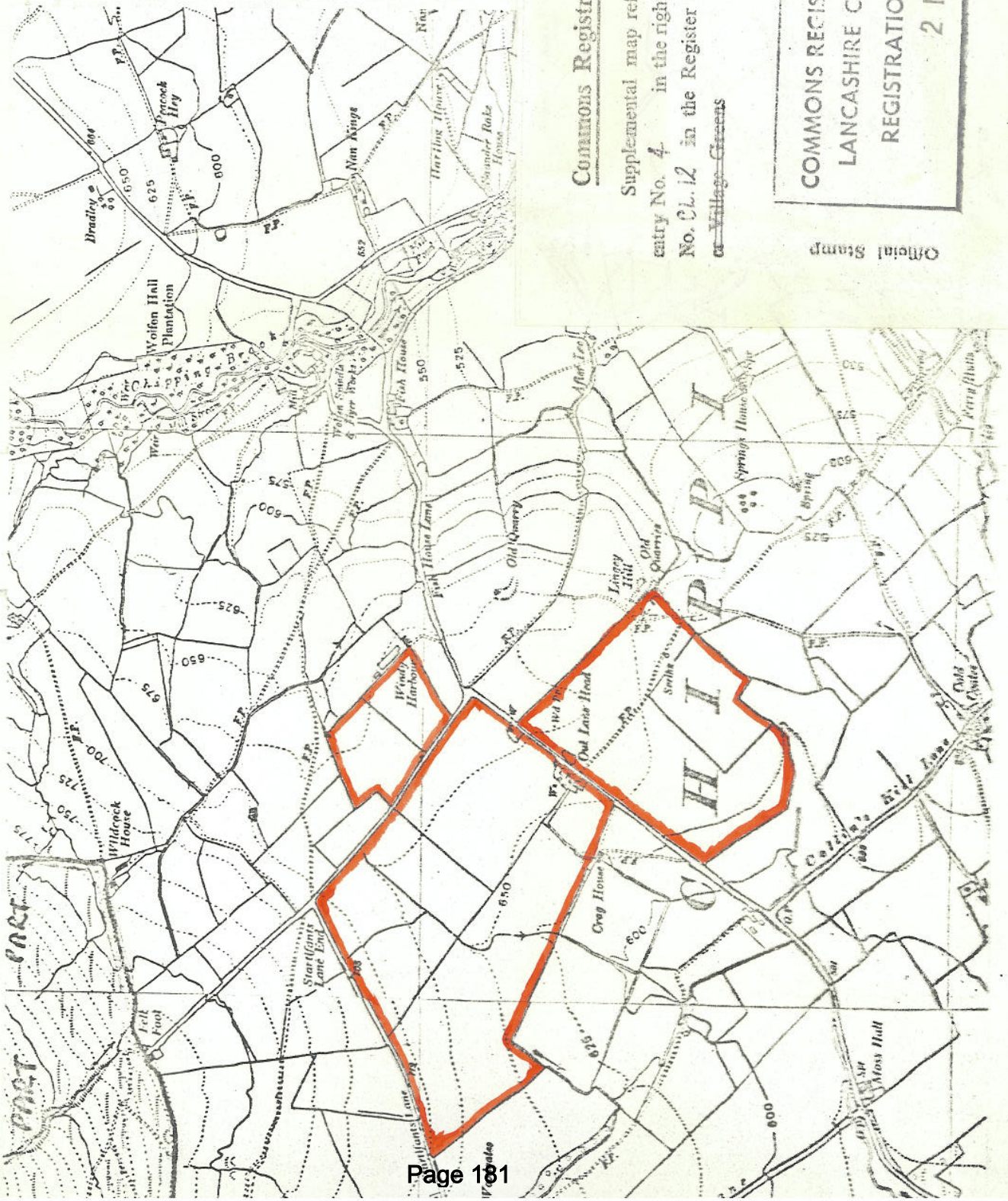
Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that provided the decision is taken in accordance with the advice and guidance given, and is based upon relevant information contained in the report there are no significant risks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

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

Paper	Date	Contact/Directorate/Tel
File of papers denoted 3.603		Danielle Jay Legal and Democratic Services Ext 535526

Reason for inclusion in Part II, if appropriate

N/A



Commons Registration Act 1965

Supplemental map referred to in column 5 of entry No. 4 in the rights section of Register Unit No. 2.L.12 in the Register of Common Land/~~at Village Greens~~

COMMONS REGISTRATION ACT 1965
 LANCASHIRE COUNTY COUNCIL
 REGISTRATION AUTHORITY
 2 NOV 1967

Official Stamp

Lancashire County Council

Commons and Town Greens Sub-Committee

Minutes of the Meeting held on Monday, 1st July, 2013 at 10.00 am in The Duke of Lancaster Room (Formerly Cabinet Room 'C') - County Hall, Preston

Present:

County Councillor Jackie Oakes (Chair)

County Councillors

M Barron	R Shewan
I Brown	K Snape
N Hennessy	V Taylor
S Prynne	D Whipp
P Rigby	

Also in attendance

Mrs L Campy, Solicitor, Legal Services, Office of the Chief Executive
Mr M Neville, Senior Committee Support Officer, Democratic Services, Office of the Chief Executive.

1. Appointment of Chair

Resolved: The appointment by full Council on the 23rd May 2013 of County Councillor J Oakes as the Chair for the remainder of the 2013/14 municipal year is noted.

Before moving on to the next item of business the Chair informed the meeting of the recent death of former County Councillor Albert Thornton who had been the Chair of the Sub Committee between 2008 and 2012.

Members of the Sub Committee stood in silent tribute.

2. Appointment of Deputy Chair

Resolved: The appointment by full Council on the 23rd May 2013 of County Councillor Miss K Snape as the Deputy Chair for the remainder of the 2013/14 municipal year is noted.

3. Constitution, Membership; Terms of Reference and programme of Meetings of the Commons and Town Greens Sub-Committee

It was reported that at the annual meeting of the full Council on the 23rd May 2013 the constitution of the Sub Committee had been agreed as 11 members on the basis of 5 Labour, 5 Conservative and 1 Liberal Democrat and the following nominations had been made by each of the respective political groups.

M Barron	S Pryn
I F Brown	P Rigby
N Hennessy	R Shewan
A Kay	Miss K Snape
J Oakes	C Wakeford
D Whipp	

The Chair informed the meeting that County Councillor V Taylor had subsequently replaced County Councillor A Kay on the Sub Committee.

It was further reported that that current Terms of Reference for the Sub Committee were as follows:

1. To exercise the Council's powers under the Commons Registration (New Land) Regulations 1969 to register common land or town or village greens (except where the power is to be exercised solely for the purpose of giving effect to an exchange of land by an order under Section 19(3) or Schedule 3 of the Acquisition of Land Act 1981, or an order under Section 147 of the Inclosure Act 1845).
2. To make recommendations to the Cabinet Member with responsibility for the Environment on matters under the Commons Registration Act 1965 as amended and Regulations thereunder where responsibility lies with the Cabinet.
3. To amend the register in respect of rights of common under Regulation 29 of the Commons Registration (General) Regulations 1966, namely to apportion, vary, extinguish, release or transfer a right of common.
4. To exercise the duties powers and functions of the County Council as Registration Authority under Part 1 Commons Act 2006.

Details of the programme of meetings for 2013/14, as agreed by the full Council in December 2012, were also presented for information. In response to a query Mr Neville informed the meeting that a programme of two day meetings had been agreed in order to determine any applications for village/town greens which may be received. However, if no such applications were ready for consideration in time for a meeting then, with the agreement of the Chair, the Sub Committee would either be cancelled or one of the dates used for a meeting to consider other business, such as applications relating to common land.

It was also noted that a programme of half day meetings would be explored for 2014/15 with any town/village green applications being dealt with via ad hoc Special Sub Committees.

Resolved:

1. That the constitution of the Sub Committee as agreed by full Council on the 23rd May 2013, together with the current membership and Terms of Reference is noted.
2. That, the dates for future meetings of the Sub Committee, as agreed by full Council in December 2012 and set out below, are noted and that the Chair determine whether in light of the available business individual meetings should be held.

30th September/1st October 2013

21st/22nd January 2014

29th/30th April 2014

4. Disclosure of Pecuniary and Non-Pecuniary Interests

There were no declarations of interest relating to any of the matters on the agenda.

5. Minutes of the last meeting

It was noted that the meetings which had previously been arranged for 28th/29th January and the 13th/14th March 2013 had been cancelled due to lack of business.

Resolved: That the Minutes of the meeting held on the 2nd October, 2012 be confirmed as an accurate record and signed by the Chair.

6. Annex A - Guidance on the law relating to applications to register land as town or village green

Guidance on the law relating to applications to register land as a town or village green was presented for the information and future reference of the Sub Committee.

The Chair reported that on the 12th June 2013 the Regulatory Committee had appointed a Special Sub Committee to consider application VG102 concerning land at Simonstone in Ribble Valley and that she, County Councillor Shewan and County Councillor Brown had subsequently been appointed to serve on the Sub Committee.

Resolved: That the guidance as presented be noted and that similar guidance in relation to common land applications be provided in the future for the information of the Sub Committee.

**7. Commons Act 2006
Commons Registration (England) (Amendment) Regulations 2009 as amended
Regulation 44**

Application for a Declaration of Entitlement to be recorded in respect of some of the Rights of Common being grazing rights registered as attached to land at Gawcar House, Newton-in-Bowland, being entry 5 in the Rights section of Register Unit CL 66 YR

A report was presented regarding an application from Mr Anthony Moores for a Declaration of Entitlement to record his rights to graze 8 Sheep on CL66 YR

In considering the application the Sub Committee was aware that rights to graze 50 sheep over CL66 YR were attached to Gawcar House and that Land Registry title LA699436 indicated that 16.039% of the farmland was owned by Mr Moores, which equated to the right to graze 8 Sheep. In response to a query regarding the calculation Mrs Campy informed the meeting that the right to graze a fractional animal was not recognised in law and so any fractional rights would be rounded down in accordance with advice from DEFRA and the applicant had been advised of this.

It was also reported that Notice of the application had been duly given according to the regulations and no response had been received.

After considering all of the information presented that Sub Committee felt that it was appropriate to amend the Commons Register as set out below.

Resolved: That the application be accepted in full and a Declaration of Entitlement be recorded in the Commons Register in accordance with the Commons Registration (England) (Amendment) Regulations, 2009, that Mr Anthony Moores is entitled to exercise part of the right attached to Gawcar House, namely the right to graze 8 Sheep over the whole of CL66 YR.

**8. Commons Act 2006
Commons Registration (England) (Amendment) Regulations 2009 as amended
Regulation 44**

Application for a Declaration of Entitlement to be recorded in respect of some of the Rights of Common being grazing rights registered as attached to land at Abbot Barn Farm and Nickens Field, Chipping, being entry 43 in the Rights Section of Register Unit CL12

A report was presented regarding an application from Mr Paul Smith on behalf of the trustees of St Bartholomew's Church in Chipping for a Declaration of Entitlement to record the rights to graze 12 Sheep on CL12.

The Sub Committee was informed that rights to graze 45 sheep over CL12 were attached to Abbot Barn Farm and Nickens Field and the Church had been bequeathed the farmstead and land at Abbot Barn Farm by the late Thomas Ellison. It was further reported that the land was held on trust in the name of the two Churchwardens, Paul William Smith (the named Applicant) and Barbara Butters, together with the vicar, John Vickers Scott.

In considering the application the Sub Committee noted that Land Registry title number LAN90266 indicated that 27.040% of the land was owned by the three trustees, which equated to the right to graze 12 Sheep. Notice of the application had been duly given according to the regulations and no responses received.

Having considered all of the information presented the Sub Committee felt that the register should be amended to reflect the entitlement to graze 12 Sheep over the whole of CL12.

Resolved: That the application be accepted in full and a Declaration of Entitlement be recorded in the Commons Register in accordance with the Commons Registration (England) (Amendment) Regulations 2009 that Mr Paul Smith (and the other two trustees of St Bartholomew's Church – Barbara Butters and John Vickers Scott) are entitled to exercise part of the right attached to Abbot Barn Farm and Nickens Field, namely the right to graze 12 Sheep over the whole of CL12

**9. Commons Act 2006
Commons Registration (England) (Amendment) Regulations 2009 as amended
Regulation 44**

Application for a Declaration of Entitlement to be recorded in respect of some of the Rights of Common being grazing rights registered as attached to land at Abbot Barn Farm and Nickens Field, Chipping, being entry 43 in the Rights Section of Register Unit CL12

A report was presented regarding an application from Mr Richard John Seed and Mrs Elizabeth Seed for a Declaration of Entitlement to record their rights to graze 24 Sheep on CL12

When considering the application the Sub Committee was aware that rights to graze 45 sheep over CL12 were attached to Abbot Barn Farm and Nickens Field and that Land Registry title number LAN78981 indicated that 32.9% of the farm land was owned by the applicants, which equated to the right to graze 14 Sheep.

The Applicant had been informed of this and Notice of the application had been duly given according to the regulations and no responses received.

Whilst the application had been for rights to graze 24 Sheep the Sub Committee agreed that, having considered all the circumstances, it was appropriate to amend the Commons Register to show the correct entitlement as the rounded down figure of 14 Sheep.

Resolved: That the application be accepted in part and a Declaration of Entitlement be recorded in the Commons Register in accordance with the Commons Registration (England) (Amendment) Regulations 2009 that Mr Richard John Seed and Mrs Elizabeth Seed are entitled to exercise part of the right attached to Abbot Barn Farm and Nickens Field, namely the right to graze 14 Sheep over the whole of CL12.

**10. Commons Act 2006
Commons Registration (England) (Amendment) Regulations 2009 as amended
Regulation 44**

Application for a Declaration of Entitlement to be recorded in respect of some of the Rights of Common being grazing rights registered as attached to land at Out Head Lane Farm, Chipping, being entry 4 in the Rights Section of Register Unit CL12

The Sub Committee was informed that rights to graze 70 sheep over CL12 were attached to Out Lane Head Farm at Chipping and an application had been received from Mr Peter Joseph Rogerson and Mrs Elizabeth Susan Rogerson for a Declaration of Entitlement to record the rights to graze 35 Sheep on CL12.

Mrs Campy reported that after the agenda had been circulated it had come to light that not all of the land in question was in the ownership of the applicants which would impact on the calculation of grazing rights and would most likely result in the applicant being eligible to graze fewer sheep than set out in the report.

In view of the circumstances there was general agreement amongst the members of the Sub Committee that a decision on the application should be deferred to allow further investigations to take place regarding land ownership and to establish the applicant's correct entitlement of grazing rights.

Resolved: That a decision in connection with the application by Mr Peter Joseph Rogerson and Mrs Elizabeth Susan Rogerson for a Declaration of Entitlement to be recorded in the Commons Register in accordance with the Commons Registration (England) (Amendment) Regulations 2009 regarding the entitlement to exercise part of the right attached to Out Lane Head Farm at Chipping, be deferred to the next meeting to allow further investigations to take place

regarding land ownership and to establish the applicant's correct entitlement of grazing rights.

**11. Commons Act 2006
Commons Registration (England) Regulations 2008**

**Requirement to Amend a Register following the Registration of
Ownership of CL2 Stanley Common, Bowland-with-Leagram under
Land Registration Act 2002**

It was reported that notification had been received from the Land Registrar that certain land had been registered under the Land Registration Acts. The Sub Committee noted that the land in question was registered under title number LAN118265 and related to the whole of the registered Common Land unit CL2 at Stanley Common, Bowland-with-Leagram.

It was further reported that as there was an ownership noted the amendment would involve deleting the registration of ownership as required by paragraph 8(2) of Schedule 3 of the Commons Act 2006 and noting in accordance with Model Entry 23 that the land had been registered under the Land Registration Act 2002.

Resolved: That the Ownership Section of the Common Land Register relating to common land unit CL2 be amended in accordance with the notification from the Land Registrar as specified in the report presented.

**12. Commons Act 2006
Section 19
Commons Registration (England) (Amendment) Regulations 2009**

**Proposal to correct the Commons Register in relation to Common
Land Unit CL65YR, known as Harrop Fell including Harrop Common
and Harrop Fold, Grindleton in the Rural District of Bowland**

The Sub Committee considered a report regarding a proposal to amend the Register of Common Land in order to correct a mistake which had been made when an entry in the register had been amended.

It was reported that in January 1968 a right to graze 95 sheep over common land parcel CL65YR had been recorded at entry No.3 in the rights section of the Register of Common Land. At that time the applicant was Mr Henry Robinson and the right was recorded as being attached to land at Higher Harrop Fold Farm, Bolton-by-Bowland.

In September 1995 an application to amend the register had been received and as the County Council was satisfied with the documentation supplied Notices

were served on all interested parties and, as no objections were received, an amendment was duly recorded in the Register. However, the rights were recorded incorrectly in that the entry referred to the rights being attached to the land rather than being held in gross.

In considering the report the Sub Committee acknowledged that a mistake had been made by the Registration Authority in amending the Register of Common Land and agreed that an amendment should be made to the entry in the Register to show the apportionment of the rights as set out below as being held in gross.

Resolved: That the Proposal be approved and the Rights Section of the Common Land Register relating to CL65YR be amended in accordance with the Commons Registration (England) Regulations, 2008, as amended, to show that the rights set out below are held in gross.

- a) The right of Neville Harrison of Harrop Hall, Slaidburn to graze 8 sheep over the whole of the land comprised in this Register Unit.
- b) The right of David Harrison of Harrop Hall, Slaidburn to graze 8 sheep over the whole of the land comprised in this Register Unit.
- c) The right of Daniel Wood of Harrop Fold, Bolton by Bowland to graze 16 sheep over the whole of the land comprised in this Register Unit.
- d) The right of Mark Blakey of Spencers Farm, Bolton by Bowland to graze 16 sheep over the whole of the land comprised in this Register Unit.

13. Urgent Business

There were no items of urgent business for discussion at the meeting.

14. Date of Next Meeting

It was noted that, subject to the agreement of the Chair, the next meeting of the Sub Committee would be held at 10am on the 30th September/1st October 2013 in the Duke of Lancaster Room (formerly Cabinet Room 'C') at County Hall, Preston.

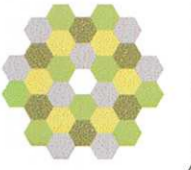
I M Fisher
County Secretary and Solicitor

County Hall
Preston

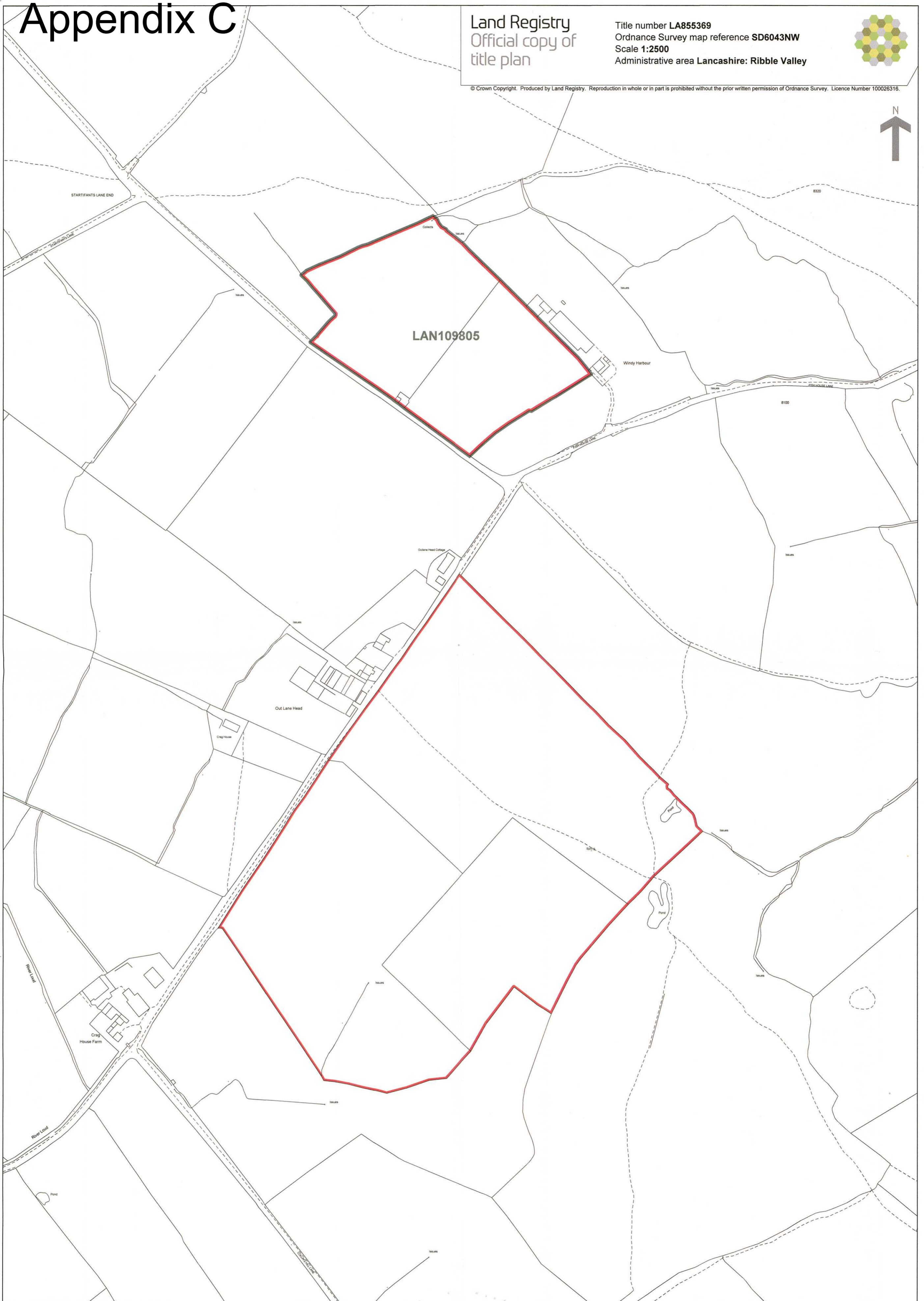
Appendix C

Land Registry
Official copy of
title plan

Title number **LA855369**
Ordnance Survey map reference **SD6043NW**
Scale **1:2500**
Administrative area **Lancashire: Ribble Valley**



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Regulatory Committee

Meeting to be held on 1st July 2015

Electoral Division affected: Rochdale
--

Commons Act 2006

The Commons Registration (England) Regulations 2014 Regulation 43

Application for a Declaration of Entitlement to be recorded in respect of some of the Rights of Common being grazing rights registered as attached to land at Watergrove Gathering Grounds, Wardle, being entry 18 in the Rights Section of Register Unit CL166

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

Contact for further information:

Danielle Jay, (01772) 535526, Legal and Democratic Services

danielle.jay@lancashire.gov.uk

Executive Summary

An application from Mr Terrance James Mitchell for a Declaration of Entitlement to record the rights to graze 6 sheep on Common Land Register Unit CL166.

Recommendation

That the application be accepted in part and a Declaration of Entitlement be recorded in the Commons Register in accordance with the Commons Registration (England) Regulations 2014 and that Mr Terrance James Mitchell is entitled to exercise part of the right attached to Watergrove Gathering Grounds, Wardle, namely the right to graze 5 Sheep on unit CL166.

Background and Advice

The Commons Act 2006 (the 2006 Act) makes provision for the registration of common land and of town and village greens. Registration Authorities were created to maintain two registers, one for common land and the other for village greens. The County Council is the Registration Authority for the County of Lancashire and has previously delegated powers and functions concerning alteration of the registers to the Commons and Town Greens Sub-Committee. These powers are now with the Regulatory Committee.

The 2006 Act makes provisions by Regulations for commons registration authorities to record in their registers of common land that a person is entitled to exercise some or all of the rights attached to a particular piece of land. The rights remain attached to the land but can at the moment be exercised by the owner and the application in this matter is that this is the case and should now be registered.

On the 15th December 2014 The Commons Registration (England) Regulations 2014 were brought into force to replace The Commons Registration (England) Regulations 2008. Although this application was submitted under Regulation 44 of the 2008 Regulations, the updated DEFRA Guidance of December 2014 states at paragraph 1.1.7 'All applications made to, and proposals made by, pioneer authorities under the 2008 Regulations automatically switch to the equivalent stage in the 2014 Regulations...'. Therefore from the 15th December 2014, this application automatically became an application under Regulation 43 of The Commons Registration (England) Regulations 2014.

Regulation 43(1) states that applications for a declaration of entitlement to exercise a right of common must be made by an owner of a freehold estate in land to which a right of common is attached or leasehold owner in any such land.

In this matter the rights are attached to Watergrove Gathering Grounds, shown edged red on the supplemental map in Appendix 'A', is the right to graze 400 Sheep over the whole of the land comprised in register unit CL166.

The Applicant has provided a copy of the title number GM200107. This shows that part of the land, as shown on the supplemental map, is owned by Terence James Mitchell and Mavis Mitchell, as shown on the plan marked Appendix 'B'. It has been calculated that this land is 1.37% of the Watergrove Gathering Grounds land on the supplemental map. It is acknowledged that the title is owned by both Mr and Mrs Mitchell but the application is in name of Mr Mitchell only. Mrs Mitchell has provided written confirmation that she is aware of the application being made and is in full agreement with this application.

1.37% of the grazing rights is calculated as the right to graze 5 Sheep. Mathematically, it actually produces a fractional quantity but, following guidance from DEFRA it is advised that a right to graze a fractional animal is not recognised in law, and the fractional right has been rounded down. The Applicant is aware of this.

Notice of the application has been duly given according to the regulations and no response has been received.

At the Commons and Town Greens Sub-Committee meeting held on 23rd September 2014, the minutes of which are attached as Appendix 'C', the Sub-Committee was informed that in some cases the County Council acted as the Commons Registration Authority for areas of land outside its administrative area. It was reported that Common Land Unit CL166, located in Rochdale, was covered by an Agreement made in 1975 under s.101 Local Government Act 1972. It was resolved that the Agreement made under s.101 Local Government Act 1972, in respect of Common Land Unit CL166, be recorded in the General Part of the Register. Therefore Lancashire County Council is able to deal with this application as the Commons Registration Authority.

It is advised that if the application is well founded the appropriate amendment to the register shall be made. Here it is advised that although the application was to record 6 sheep the correct entitlement is the rounded down figure of 5 Sheep. It is advised that the Application be accepted in part.

Consultations

Notice of the application was given on the County Council web site and also to all parties who have requested to be notified of applications under the 2006 Act.

Implications:

This item has the following implications, as indicated:

Risk management

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

Local Government (Access to Information) Act 1985

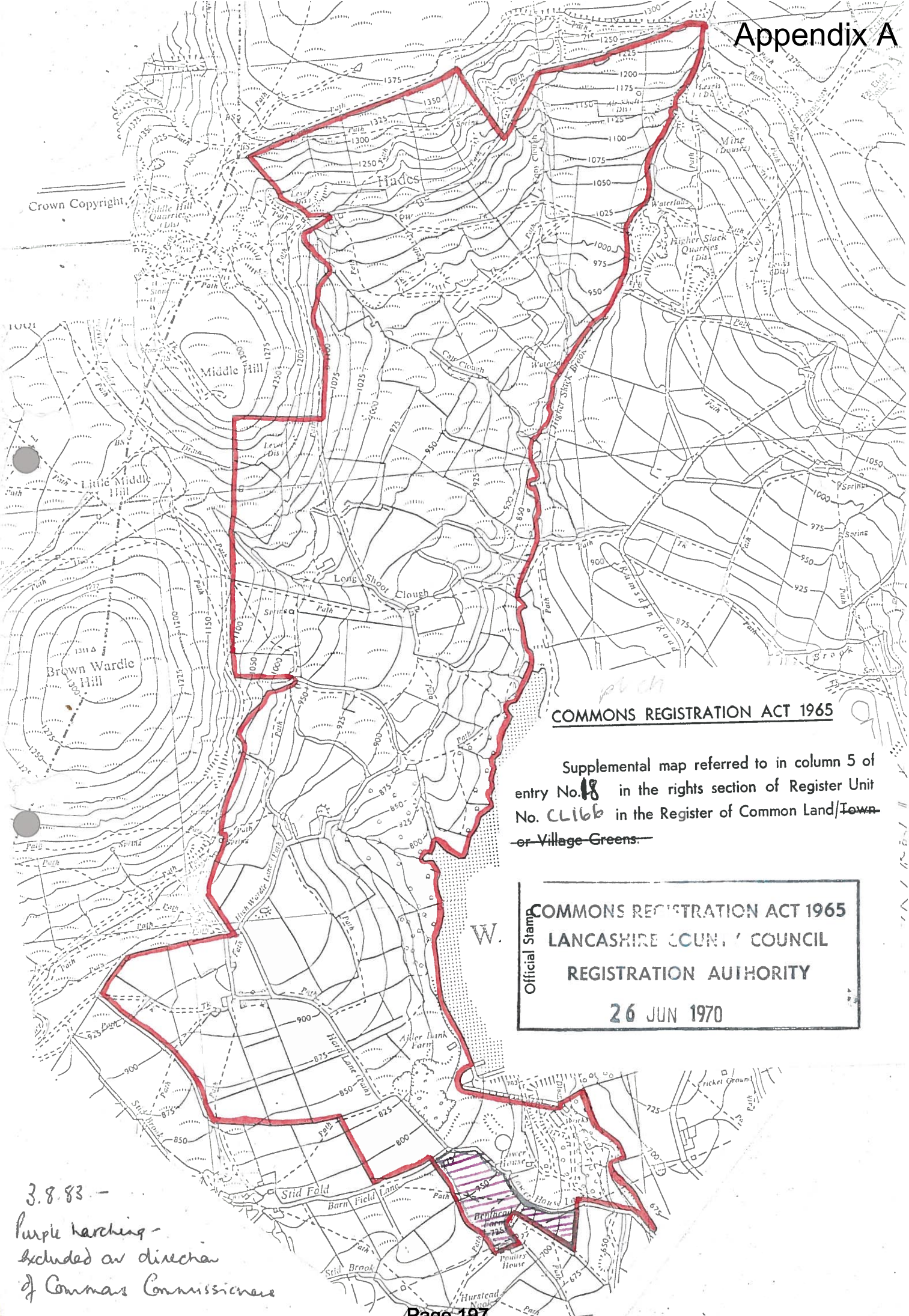
List of Background Papers

Paper	Date	Contact/Directorate/Tel
File of papers denoted 3.607		Danielle Jay Legal and Democratic Services Ext 535526

Reason for inclusion in Part II, if appropriate

N/A

Crown Copyright



COMMONS REGISTRATION ACT 1965

Supplemental map referred to in column 5 of entry No. 18 in the rights section of Register Unit No. CL166 in the Register of Common Land/Town or Village Greens.

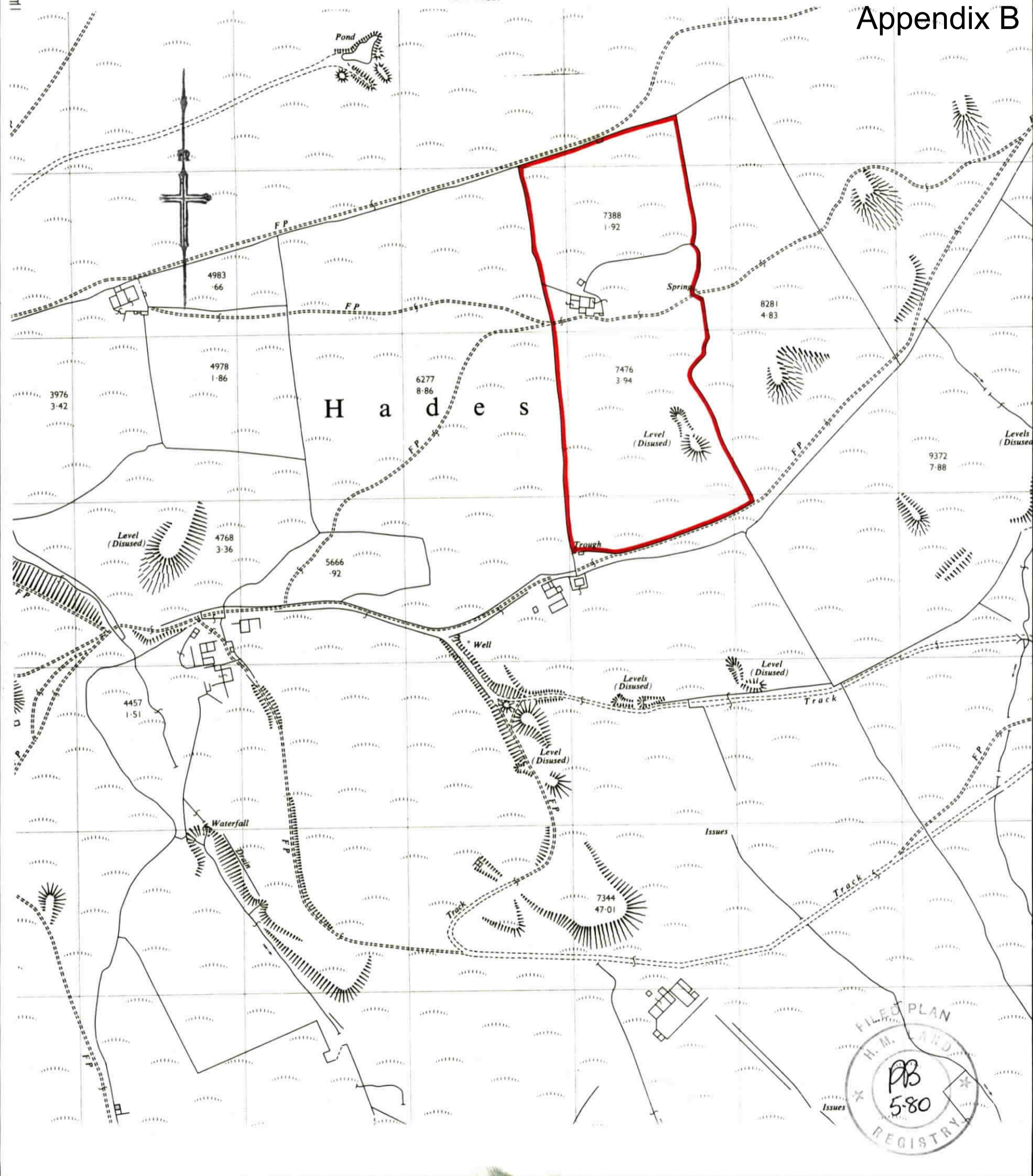
Official Stamp
COMMONS REGISTRATION ACT 1965
LANCASHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY
26 JUN 1970

3.8.83 -
Purple hatching -
excluded on direction
of Commons Commission

H.M. LAND REGISTRY		TITLE NUMBER	
		GM200107	
ORDNANCE SURVEY PLAN REFERENCE	COUNTY	SHEET	NATIONAL GRID
	GREATER MANCHESTER		SD 9019
Scale: 1/2500	ROCHDALE DISTRICT		© Crown copyright

NOTE: AREAS ON THIS PLAN ARE EXPRESSED
IN ACRES AND HECTARES

Appendix B



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 15 June 2015 at 11:17:40. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by Land Registry, Fylde Office.

Lancashire County Council

Commons and Town Greens Sub-Committee

**Minutes of the Meeting held on Tuesday, 23rd September, 2014 at 10.00 am
in Cabinet Room 'C' - County Hall, Preston**

Present:

County Councillor Jackie Oakes (Chair)

County Councillors

I Brown
P Rigby
D T Smith

C Wakeford
D Whipp

*County Councillor D Smith replaced County Councillor M Barron on the Sub Committee for this meeting only.

1. Appointment of Chair.

Resolved: That the appointment of County Councillor J Oakes by the full County Council on the 15th May, 2014, as the Chair for the remainder of the 2014/15 municipal year is noted.

2. Appointment of Deputy Chair.

Resolved: That the appointment of County Councillor Miss K Snape by the full County Council on the 15th May, 2014, as the Deputy Chair for the remainder of the 2014/15 municipal year is noted.

3. Constitution, Membership and Terms of Reference.

A report was presented regarding the constitution, membership and Terms of Reference of the Sub Committee together with the agreed programme of meetings for 2014/15.

It was reported that the full County Council on the 15th May 2014 had agreed the constitution of the Sub Committee as being 11 members of the basis of 5 Labour, 5 Conservative and 1 Liberal Democrat.

Resolved:

1. That the current membership of the Sub Committee, as set out below, is noted.

M Barron P Rigby
I Brown R Shewan
D Clifford Miss K Snape
N Hennessy C Wakeford
J Oakes D Whipp
 B Yates

2. That the Terms of Reference of the Sub Committee, as set out below, are noted:
 1. To exercise the Council's powers under the Commons Registration (New Land) Regulations 1969 to register common land or town or village greens (except where the power is to be exercised solely for the purpose of giving effect to an exchange of land by an order under Section 19(3) or Schedule 3 of the Acquisition of Land Act 1981, or an order under Section 147 of the Inclosure Act 1845).
 2. To make recommendations to the Cabinet Member with responsibility for the Environment on matters under the Commons Registration Act 1965 as amended and Regulations thereunder where responsibility lies with the Cabinet.
 3. To amend the register in respect of rights of common under Regulation 29 of the Commons Registration (General) Regulations 1966, namely to apportion, vary, extinguish, release or transfer a right of common.
 4. To exercise the duties powers and functions of the County Council as Registration Authority under Part 1 Commons Act 2006
3. That the 2014/15 programme of meetings for the Sub Committee, as approved by the full Council in December, 2013 and set out below is noted, with all meetings to be held at County Hall, Preston, unless otherwise specified, commencing at 10.00am.

30th July 2014 (subsequently cancelled)
23rd September 2014
11th November 2014
2nd March 2015
21st April 2015

4. Apologies

Apologies for absence were received from County Councillor Miss Snape, County Councillor R Shewan and County Councillor B Yates.

5. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor D Smith declared a non pecuniary interest in relation to item 8 on the agenda as his wife was a member of the Parish Council which had made the application for a town/village green which was under consideration.

6. Minutes of the last Meeting

Resolved: That the Minutes of the meeting held on the 1st July, 2013 are agreed as an accurate record and signed by the Chair.

7. Guidance

The Sub Committee was presented with revised Guidance in relation to the law regarding applications to register land as a town/village green (received after April 2007 under Section 15 of the Commons Act 2006) and also in connection with applications in respect of Common Land under the Commons Act 2006.

Resolved: That the Guidance set out in Annexes 'A' and 'B' as presented is noted.

8. Commons Act 2006 Commons Registration (England) Regulations 2008

Application VG106 under section 15(8) of the Commons Act 2006 for registration of land at Cumeragh Village Square, Whittingham, Preston City, as a town or village green

It was reported that an application had been received from Whittingham Parish Council under S15(8) of the Commons Act 2006 for three areas of open land at Cumeragh Village, Whittingham, Preston City, to be registered as a town or village green.

Details of the application and supporting information received from the Applicant, including evidence of the freehold land ownership under Land Registry number title LAN90912, maps and aerial photographs was presented together with a summary of the law relating to applications to register land as a town/village green under S15 of the Commons Act 2006 (in the form of Annex 'A') both as part of the report and at the meeting.

When considering the report the Sub Committee was aware that the Applicant owned the three areas of land concerned which had no tenant/mortgagee or occupiers and was not crossed by any recorded public rights of way.

Resolved: That Application VG106 be accepted and the land shown on the plan submitted with the application and referred to in the report presented as Appendix

'B' be added to the Register of Town Greens and that appropriate Notice be given pursuant to the Statutory Regulations.

**9. Commons Registration Act 1965
Commons Registration (General) Regulations 1966 (as amended)**

Application for the Amendment of the Register in relation to Rights of Common on Common Land registered as Entry 4 in the Rights Section of Register Unit CL23

A report was presented in relation to an application from John Stephen Brown of The Green, Ireby, to register a transfer of rights of common not attached to land.

It was reported that an application had been received under Section 13 of The Commons Registration Act, 1965, for 37 of the rights registered under Rights Entry 4 as being attached to Ireby Green to graze 101 sheep gaits over the unit of common land CL23 to be shown as now held by the Applicant in gross and no longer attached to the land.

Details of the application and supporting evidence received from the Applicant, together with a summary of the law relating to applications in respect of common land made under S13 of the Commons Registration Act 1965 were presented both as part of the report and at the meeting.

The Sub Committee was advised that the register be amended to show that 37 of the sheep gaits registered at Rights Entry 4 had been severed from the land and having become a right in gross had transferred to the Applicant. It was also noted that the remaining rights were attached to the land owned by the Applicant and shown as the hatched area on the plan attached at Appendix 'C' to the report presented and that the supplemental map would be amended as appropriate to reflect this.

It was reported that the Applicant's brother, as the owner of a small part of the remaining land which used to carry grazing rights, had responded to the Notice to confirm that the Applicant did have the sheep rights transferred and that he understood some may now be severed away from his land. It was also noted that the Applicant was in the process of selling his land and it was expected that an application would be made in due course to record entitlements to rights and possibly transfer rights in gross to the new owners.

Resolved: That, having considered all of the circumstances, the application be accepted and the Register and supplementary map be amended according to Regulations to show:

1. That the rights to graze 37 sheep gaits on CL23 belong to John Stephen Brown in gross and are no longer attached to the land known in the Register as Ireby Green, Ireby.

2. That the remaining 64 sheep gaits remain attached to the land at Ireby Green, Ireby, being the land shown on a new supplemental map for entry 4 showing the hatched area on the plan set out at Appendix 'C' of the report presented.

**10. Commons Act 2006
Commons Registration (England) Regulations 2008**

Requirement to Amend a Register following the Registration of Ownership of part of CL37 Stanley Common, Bowland-with-Leagram, Clitheroe Rural District under Land Registration Act 2002.

It was reported that notification had been received from the Land Registrar that certain land had been registered under the Land Registration Act 2002. The Sub Committee was informed that the land in question was registered under title number LAN118265 as shown on the plan set out at Appendix 'A' to the report presented and included part of CL37 as shown on the plan at Appendix 'B'.

It was further reported that as there was no ownership noted the amendment would be by noting the Ownership Section of the Register in accordance with Model Entry 23 that a specified part of the land had been registered under the Land Registration Act 2002.

Resolved: That the Ownership Section of the Common Land Register relating to Common land unit CL37 be amended in accordance with the notification from the Land Registrar as specified in the report presented.

**11. Commons Act 2006
Commons Registration (England) Regulations 2008
Regulation 44**

Application for a Declaration of Entitlement to be recorded in respect of the Rights of Common being grazing rights and the right to take bracken and bedding registered as attached to land at Bambers Farm, Bolton by Bowland, Clitheroe, being entry 4 in the Rights section of Register Unit CL65Y.

A report was presented regarding an application from Mr Philip Stephen Woods for a declaration of entitlement to record his rights to graze sheep and take bracken and bedding over land contained in Common Land Register unit CL65Y.

The Sub Committee was informed that rights to graze 36 sheep and take bracken and bedding over that part of the land in the register unit shown edged red on the register map were attached to Bambers Farm, Bolton by Bowland, Clitheroe.

It was reported that Land Registry title number LAN62570 indicated that part of the land holding at Bambers Farm, as shown on the supplemental map, was

owned by Mr Philip Stephen Woods and Mr John Ashworth and it had been calculated that this land was 0.6% of the total land holding of the farm. 0.6% of the grazing rights equates to the rights to graze 0.2 sheep and the Applicant had been informed that, in accordance with guidance from DEFRA, the right to graze a fractional animal had been rounded down.

With regard to the right to take bracken and bedding over the CL65Y the Sub Committee was informed that the right was unquantified and DEFRA guidance stated that 'where an unquantified right is for the benefit of the holding as a whole, rather than attached to a particular dwelling-house or building, it may be reasonable to permit apportionment if the effect would not increase the overall burden on the common'.

It was considered that it could be argued that as the Applicant would not be entitled to any rights to graze sheep over CL65Y there would also be no requirement for him to take bracken and bedding from the common land. However, as the right was not attached to any particular dwelling-house or property it was felt that the right was not exclusive to the sheep and the applicant may have other types of livestock on his land holding for which he would require the bracken and bedding. In the circumstances, it was agreed that the Applicant would be entitled to the right to take bracken and bedding

Resolved: That a declaration of entitlement for the Applicant be recorded in accordance with the Regulations in respect of the Rights of Common attached to land at Bambers Farm, Bolton by Bowland, Clitheroe, being entry 4 in the Rights Section of Register Unit CL65Y in respect of grazing rights showing 0 sheep and in respect of the right to take bracken and bedding being shown as attached to the Applicant's land at Bambers Farm, Bolton-by-Bowland, Clitheroe on Unit CL65Y.

12. Deletion of Common Land Units not having the County Council as Registration Authority from the Register Map and completion of the General Part of the Register

The Sub Committee was informed that under the statutory regulations the County Council as Registration Authority was required to maintain an up to date register showing all the land recorded in its Registers.

It was reported that due to boundary changes in the past some common land units were no longer within the administrative boundary of the County Council and as a result the information from the Register had been passed to the relevant Registration Authorities. However on some map sheets of the Register Map these areas of common land continue to be shown. As a result it was proposed to amend individual map sheets to remove these areas of common land as and when a fresh edition of the sheet was required as a result of other alterations.

The Sub Committee was also informed that in some cases the County Council acted as the Commons Registration Authority for areas of land outside its

administrative area. It was reported that common units CL162, CL166, CL168, CL173 in Rochdale, CL172 in Calderdale and CL254 in Bury were covered by an Agreement under S101 of the Local Government Act 1972 and dated 1975 and units CL42 and CL165 were covered by a straddling agreement which was also dated 1975.

The Sub Committee acknowledged that both Agreements were not currently recorded properly on the Register and agreed that in accordance with the regulations the General Part of the Register should be updated to show details of both Agreements.

Resolved:

1. That any common land units recorded on the Register map sheets for which Lancashire County Council is not the registration authority be removed from the sheets on or before each sheet is amended with a fresh edition of said sheet.
2. That the Agreement under S101 of the Local Government Act 1972 in respect of common units CL162, CL166, CL168, CL173 in Rochdale, CL172 in Calderdale and CL254 in Bury, together with the straddling agreement in relation to units CL42 and CL165, both made in 1975 be recorded in the General Part of the Register.

13. Urgent Business

There were no items of urgent business for discussion at the meeting.

14. Date of Next Meeting

It was noted that the next scheduled meeting would be held at 10am on the 11th November 2014 in Cabinet Room 'C' – The Duke of Lancaster Room at County Hall, Preston.

I Young
County Secretary and Solicitor

County Hall
Preston

