

Lancashire County Council

Regulatory Committee

Wednesday, 9th September, 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 1 July 2015	(Pages 1 - 6)
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4.	Guidance.	(Pages 7 - 30)
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Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

5.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of a Public Footpath from Sawley Road to the Friends' Meeting House on the Parish Boundary, Grindleton Parish, Ribble Valley File No. 804-550	(Pages 31 - 68)
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6.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of a public footpath from Gisburn Road to the junction of Public Footpaths 38, 39 and 41 Blacko, Borough of Pendle File No. 804-559	(Pages 69 - 104)
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7. **Decision On Appeal** (Pages 105 - 146)

Wildlife and Countryside Act 1981

Definitive Map Modification Order Applications

1. **Application to add a Public Footpath from
Laund Lane (Haslingden BOAT 134) to Haslingden
Footpath 109, Rossendale Borough**

File No. 804-551

2. **Application to add a Public Footpath in a
circuitous route, starting and ending at a point on
Laund Lane (Haslingden BOAT 134), Rossendale
Borough**

File No. 804-55

8. **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.

9. **Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on Wednesday 21st October in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

I Young
Director of Governance,
Finance and Public Services

County Hall
Preston

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 1st July, 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	C Henig
I Brown	R Shewan
A Clempson	D Stansfield
D Clifford	D Whipp
F De Molfetta	P White
B Dawson	B Yates
P Hayhurst	

County Councillor F de Molfetta replaced County Councillor J Gibson for this meeting.

1. Apologies.

No apologies were presented.

2. Disclosure of Pecuniary and Non-Pecuniary Interests.

None were disclosed

3. Minutes of the meeting held on 13 May 2015

Resolved: That the minutes of the meeting held on 13 May 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
Addition of Footpath at Love Clough Fold from Public Footpath No.
1 to Public Footpath No. 9 Rawtenstall, Rossendale Borough
File No. 804-518**

A report was presented on an 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.

At the Regulatory Committee meeting 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 was the subject of this report. The 2005 application was accepted by the Committee at its meeting on 27 September 2006 and a Definitive Map Modification Order was made. Objections were received to the making of the Order and in preparing the matter to submit to the Secretary of State witnesses were interviewed. The line they had actually used was not that in the 2006 Order.

It was the view of Officers therefore that there was insufficient evidence to promote the 2006 Order through to confirmation and an investigation had now been carried out into the route indicated by the interviewed witnesses as shown on the Committee Plan.

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

Having examined all of the information presented, the Committee agreed that taking all the relevant evidence into account, there was sufficient evidence for the addition of a public footpath and that an Order should be made and promoted to confirmation.

Resolved:

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.

**6. 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**

A report was presented on 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.

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 statements 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.

Having examined all of the information presented, the Committee agreed that taking all the relevant evidence into account, there was sufficient evidence that an Order should be made and promoted to confirmation.

Resolved:

1. 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.
2. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way 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 to the report
3. 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.

**7. 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**

A report was presented on an 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, which recommended that the application be not accepted.

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 both as part of the report and by officers at the meeting.

Regarding the user evidence the Committee was informed that one action by a landowner can be sufficient to disrupt the twenty year period. Members were informed that there was not sufficient use in the twenty year period prior to the landowner's action.

It was moved and seconded "That having examined all the information presented and having taken all the relevant evidence into account, the application for a public footpath be not accepted and that no Order be made".

The following amendment was moved and seconded "That the application for a public footpath be accepted and the Order be made". Upon being put to the vote the amendment was lost and it was:

Resolved: That the application for a public footpath from Marina Drive 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 and no Order be made.

**8. 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**

It was reported that 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 CL 12.

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 were presented both as part of the report and at the meeting

The Committee was informed that the application had previously been considered at the Commons and Town Greens Sub-Committee meeting held on 1st July 2013. 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 that not all of the land subject to the application was in the ownership of the Applicants. Further investigations had since taken place and a new land calculation had been completed.

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) 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 CL 12.

**9. 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

A report was presented on 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 CL 166.

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, were presented both as part of the report and at the meeting.

It was reported that at the Commons and Town Greens Sub-Committee meeting held in September 2014, 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 CL 166, located in Rochdale, was covered by an Agreement made in 1975 under s.

101 Local Government Act 1972. It was resolved at that meeting that the Agreement made under s. 101 Local Government Act 1972, in respect of Common Land Unit CL 166, be recorded in the General Part of the Register. Therefore Lancashire County Council was able to deal with this application as the Commons Registration Authority.

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) Regulations 2014 and that Mt 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 CL 166.

11. Date of Next Meeting

It was noted that the next meeting of the Committee will be held at 10:30am on the Wednesday 9th September 2015 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 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 9 September 2015

Electoral Division affected: Ribble Valley North East
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Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of a Public Footpath from Sawley Road to the Friends' Meeting House on the Parish Boundary, Grindleton Parish, Ribble Valley

File No. 804-550

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the addition of a public footpath to the Definitive Map and Statement from Sawley Road, Grindleton to the Friends' Meeting House on the parish boundary, Grindleton, Ribble Valley, file reference no. 804-550.

Recommendation

1. That the application for a public footpath from Sawley Road, Grindleton to the Friends' Meeting House on the parish boundary, (file no. 804-550), be accepted.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public footpath from Sawley Road, Grindleton to the junction of Public Footpaths 5 Sawley and 44 Grindleton by the Friends' Meeting House on the parish boundary to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a public footpath in the Parish of Grindleton, Ribble Valley from a point at the junction with Sawley Road, Grindleton to the junction of Public Footpath 5 Sawley and Public Footpath 44 Grindleton on the Grindleton/Sawley parish boundary near the Friends' Meeting House.

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 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

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

Sawley Parish Council and Grindleton Parish Council have both been consulted and no response has been received, it is also assumed they have not 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 – Head of Service – Legal and Democratic Services Observations.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	7735 4665	Open junction with Sawley Road (C571)
B	7726 4670	Point at which the route passes between two gateposts
C	7726 4670	Unmarked junction with Public Footpath 5 Sawley and Public Footpath 44 Grindleton on the parish boundary

Description of Route

A site inspection was carried out in February 2014.

The route under investigation commences at the junction with Sawley Road (point A) just west of the village of Sawley and on the north side of the River Ribble. From Sawley Road access onto the start of the route is open and unrestricted.

From point A the surface of the route is tarmac and it is approximately 4 metres wide bounded on the south western side by a substantial stone wall and on the north eastern side by a well maintained hedge. Close to point A and clearly visible from Sawley Road, a sign has been attached to the wall indicating that the route provides access to the Friends' Meeting House. No other signs indicating whether the route was considered to be public or private were present when the route was inspected.

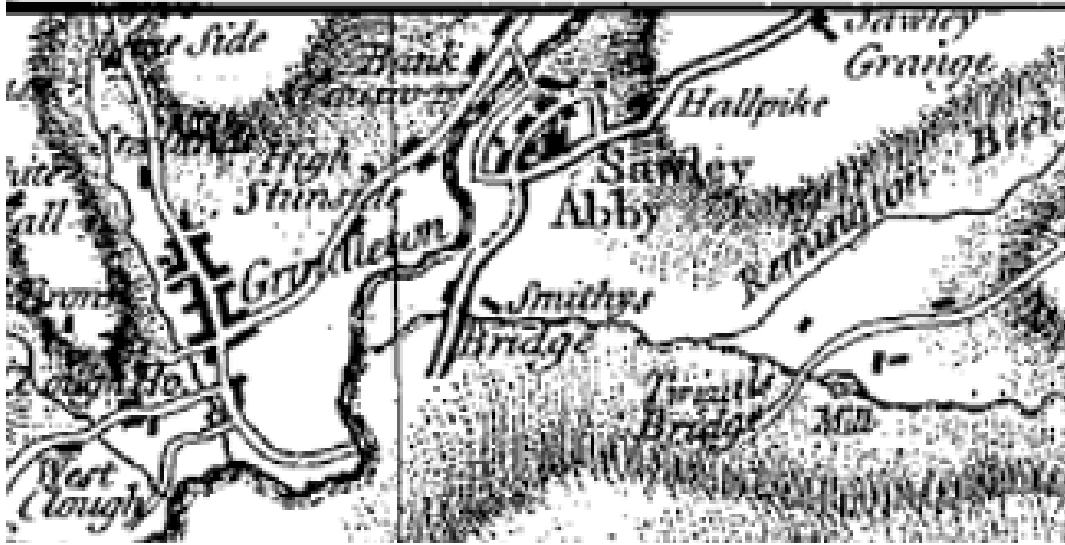
From point A the route extends in a north westerly direction along the tarmacked track passing an open access to a garage on the north east side of the route after approximately 25 metres. It then continues for a further 40 metres to an opening on the north east side providing vehicular access to Green End.


The tarmac route continues in a north westerly direction to pass between Green End cottage on one side (north east) and the Friends' Meeting House on the other (south west).

The tarmac ends at point B where the route passes between gateposts (no gate) immediately adjacent to Green End Cottage and then in a general westerly direction up a short sharp incline that has been block paved to provide access to a garage, passing to the south of the garage to an unmarked point on the parish boundary between Grindleton and Sawley and the junctions of Public Footpaths 44 Grindleton and 5 Sawley.

The total length of the route is approximately 100 metres.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Jeffreys' Map of Yorkshire	1772	Small scale commercial map. Jefferys' Map of Yorkshire was published in 1775 at a scale of 1 inch:1 mile. It was originally surveyed from 1767-1770, 69 and a half miles to 1 degree (approx.). It was published in a book of 42 leaves by act of parliament dated 25 Mar 1772.
		
Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route did not exist as major route at the time although it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
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 over which the route under investigation runs historically formed part of the West Riding of Yorkshire and is not covered by Yates's Map of Lancashire.

Investigating Officer's Comments		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.
Observations		The area crossed by the route under investigation is not shown on the map.
Investigating Officer's Comments		No inference can be drawn.
Hennet's Map of Yorkshire	1830	Small scale commercial map. In 1828 Henry Teesdale of London published George Hennet's Map of Yorkshire.
		
Observations		The parish boundary is marked (thick dashed line) and a building is shown in the location of Green end but the route under investigation is not shown.
Investigating Officer's Comments		The route did not exist as major route at the time although it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
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 route under investigation is not affected by any canals or railways and there do not appear to have been any proposals to construct either in the past.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1848	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.



Observations		A parish copy of the Tithe Map for Grindleton has been deposited in the County Records Office (PR3031/4/3) dated 1848. No Tithe Map for Sawley is available at the County Records Office.
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		The route under investigation is shown on the Tithe Map of Grindleton. Between point A and point B the route appears to be included within the plot numbered 387 which is described in the schedule as 'farmyard' under the ownership of William Asherton and occupied by James Hargreaves. A line is drawn across the route at point B and beyond that the route between point B – C is in different ownership. Plot 389 is listed as the Quaker Chapel and Yard.
Investigating Officer's Comments		The route under investigation existed between point A and point B and appeared to be capable of being used. It is not clear from the Tithe records whether access was available from point B to point C (or beyond). The route between points A – B appeared to be in the ownership of Green End Farm providing direct access to the farm but also access to the Quaker chapel and graveyard. The information provided in the Tithe Award is not inconsistent with public rights of access on foot.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Map of Grindleton deposited in the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1850	The earliest Ordnance Survey 6 inch map for this area surveyed in 1847 and published in 1850. ¹

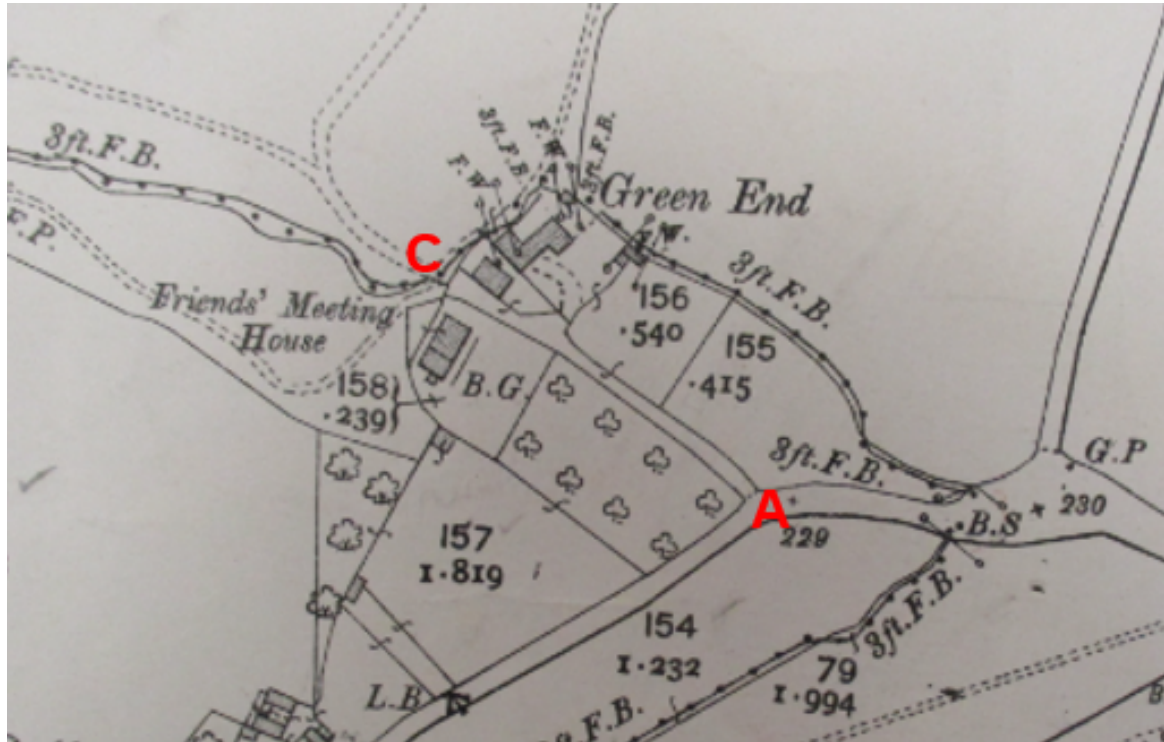
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in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



Observations		The full length of the route under investigation is shown. Access onto the route from Sawley Road is shown as being open and unrestricted. The route is shown bounded on either side and provides access to a number of buildings that are collectively labelled as 'Green End'. Access appears to be available between the buildings to point C. The parish boundary is marked and two paths (double pecked lines) appear to converge at point C.
Investigating Officer's Comments		The route under investigation existed in 1847 and appeared to be capable of being used providing access to 'Green End' and forming part of a through route connecting to two paths which continued north and west of the properties.
25 Inch OS Map	1886	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1884 and published in 1886.



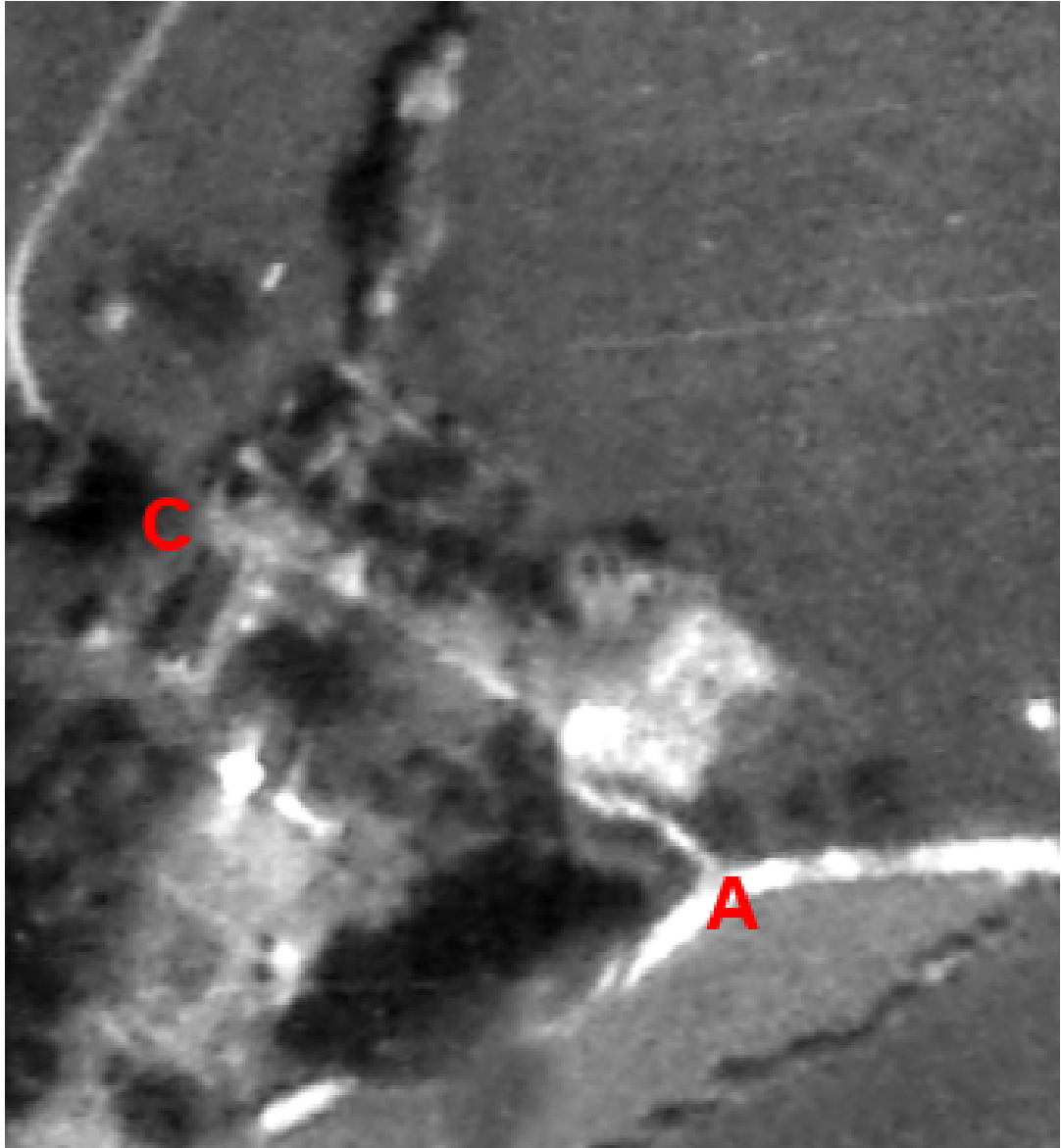
Observations		<p>The route under investigation is shown with the buildings at Green end being shown in more detail than on the earlier 6 inch map. The Friends' Meeting House is shown to the south of the route with the main access to it appearing to be the route under investigation. A burial ground is also marked at the front of the Meeting House. 'Green End' appears to be the buildings north of the route and access to Green End is along the route under investigation. A line is shown across the route under investigation between point B and point C which probably indicated the existence of a gate or gates as routes indicated by double pecked lines and annotated as footpaths (F.P) are shown continuing beyond the line.</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1884 and appeared to provide the main access to a number of properties and a place of worship and burial ground. Paths which subsequently came to be recorded as public footpaths are shown to extend from point C.</p>
25 inch OS Map	1908	Further edition of the 25 inch map surveyed in 1884, revised in 1907 and published in 1908.



Observations		<p>The full length of the route under investigation is shown. A dashed line is shown across the route at point A which may indicate a change in surface condition from Sawley Road. Access to Green End is via the route under investigation but is gated to be separate from the route.</p> <p>A gate across the route under investigation is also shown at point B but a route (double pecked lines) extends beyond point B through point C and beyond.</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1907 and appeared to be capable of being used.</p>
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</p>


		<p>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 deposited in the County Records Office for the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.

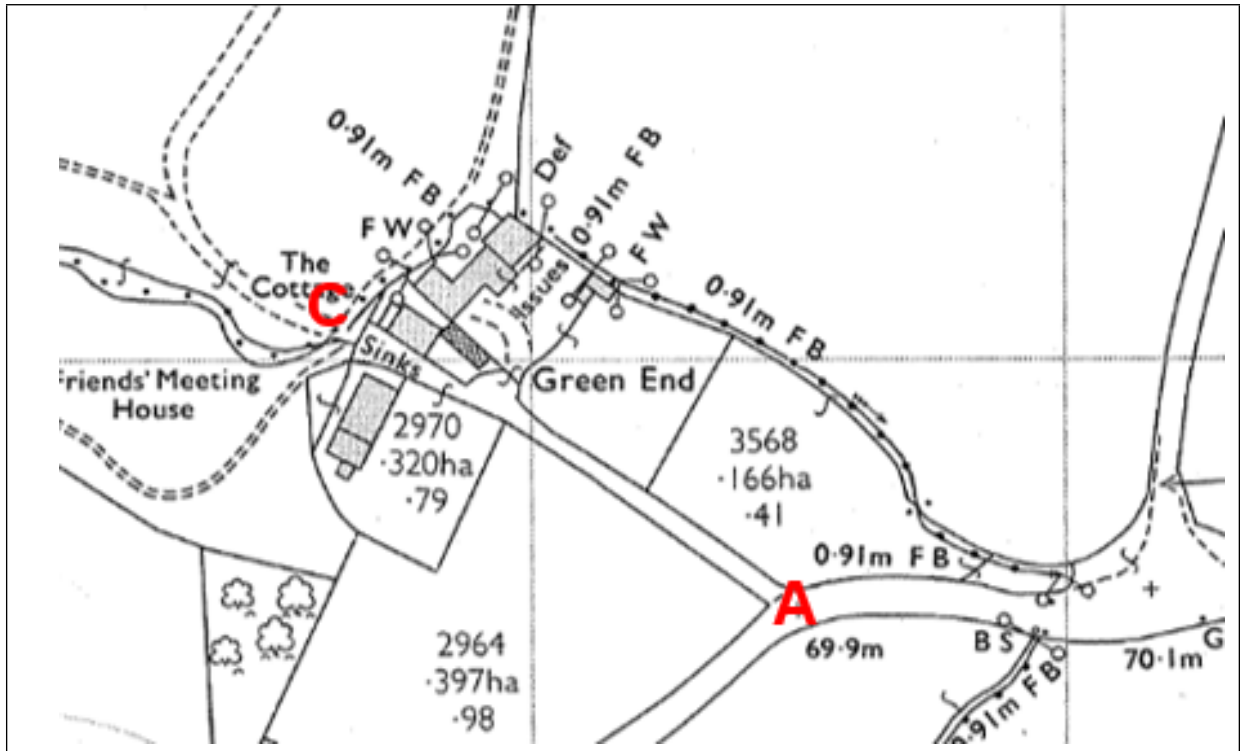
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
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Observations		The quality of the aerial photograph is poor although it is possible to make out the route under investigation it is not possible to see much detail.
Investigating Officer's Comments		The route under investigation existed in the 1940s and was probably capable of being used.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First

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.

		<p>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>
		
<p>Observations</p>		<p>The route under investigation is shown and appears to be a substantial route providing access to the properties at Green End and the Friends' Meeting House. The scale of the map makes it difficult to determine the exact nature of the route between point B and point C although a number of paths appear to go to/from Green End and the Friends' Meeting House from the approximate location of point C.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation provided the main access to Green End and the Friends' Meeting House in the 1930s and probably existed as a through route connecting to other routes that were subsequently recorded as public footpaths.</p>
<p>1:2500 OS Map</p>	<p>1973</p>	<p>Further edition of 25 inch map reconstituted from former county series and revised in 1972 and published 1973 as national grid series.</p>



Observations		The scale of the map provides greater detail and it can be seen that the route under investigation existed as a substantial enclosed route between point A and point B providing access to Green End and the Friends' Meeting House. A line is shown across the route under investigation at point B which may indicate the existence of a gate at this point. Beyond point C the routes originally recorded as Footpaths 3 and 5 Sawley are shown and the route of Footpath 44 Grindleton appears to pass through a gate to point just to the south east of point B onto the route under investigation.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used linking Sawley Road to three public footpaths.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The route under investigation is shown although due to tree cover and shadows it is not possible to see in detail whether the route provided a link to Public Footpath 3 and 5 Sawley and Footpath 44 Grindleton.
Investigating Officer's Comments		The route under investigation existed and may have been capable of being used.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		The route under investigation can be seen although it is still not possible to see whether access along the full length of it was available.
Investigating Officer's Comments		The route under investigation existed in 2010 and may have been capable of being used.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required all highway authorities to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>At the time that the Definitive Maps were originally prepared the parishes of Grindleton and Sawley were part of Bowland Rural District in the West Riding of Yorkshire.</p> <p>When the area became part of Lancashire as part of the Local Government reorganisation in 1974 records relating to the preparation of the Definitive Map were passed to Lancashire County Council and the current record – the</p>

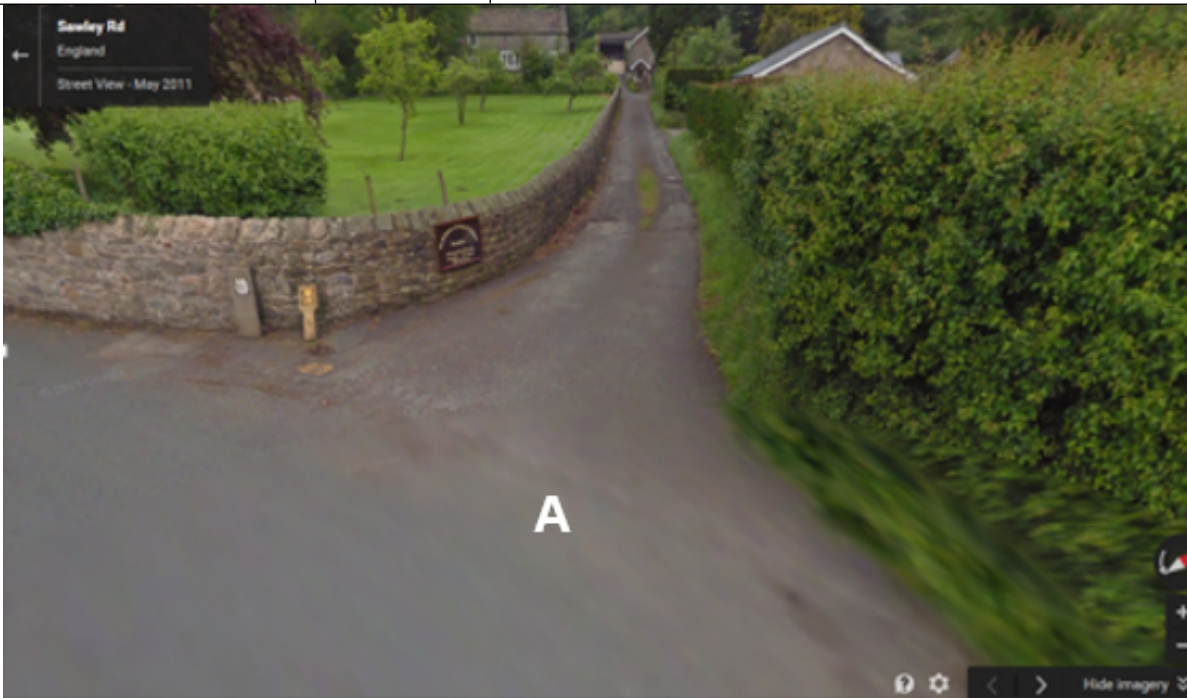
		Revised Definitive Map and Statement (First Review) was prepared.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The County Council does not have the parish survey maps that were originally prepared for the parishes of Grindleton or Sawley. However, Parish Survey cards for the parishes of Grindleton and Sawley have been examined. The surveys in both parishes appear to have been carried out between 1950 and 1951 by the same person – Councillor W Procter. Footpath 44 Grindleton is described in the parish survey card as terminating at 'Friends Meeting House' . Footpaths 3 & 5 Sawley are described in the parish survey cards as starting at 'Green End'.
Investigating Officer's Comments		The fact that Footpath 44 is described as ending at 'Friends Meeting House' suggests that the surveyor may have considered that there was already public access to Green End which did not require to be recorded on the Definitive Map. This is further supported by the same surveyor describing Footpaths 3 & 5 Sawley starting at Green End which could be accessed via the route under investigation.
Draft Map		The parish survey map and cards for Grindleton and Sawley were handed to West Riding of Yorkshire County Council who then considered the information and prepared the Draft Map and Statement. The Draft Maps were given a “relevant date” (22 nd September 1952) and notice was published that the draft map for the West Riding of Yorkshire had been prepared. The draft map

		was placed on deposit for a minimum period of 4 months on 6 th June 1953 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 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 1970, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation was not shown on the Draft 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 1973.
Observations		The route under investigation was not shown on the Draft Map and no representations were made to the County Council.
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 by Lancashire County Council with a relevant date of 1 st September 1966. This Map included the parishes of Grindleton and Sawley which now formed part of Lancashire although these would have had a relevant date inherited from West Riding. 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) and Statement.
Investigating Officer's Comments		From 1952 through to 1973 there is no indication that the route under investigation was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.

		<p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
Observations		<p>The route under investigation is not recorded as being publicly maintainable in the records originally derived from the 1929 Handover Maps and now held by the County Council.</p>
Investigating Officer's Comments		<p>The route under investigation was not recorded as a publicly maintained highway in 1929. However, many public rights of way have been found not to have been recorded on these maps – often if they were unsurfaced at that time so the fact that the route was not recorded as being publicly maintainable does not necessarily mean that it wasn't.</p>
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to</p>

		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).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.
Google Street View	2011	Image captured from Google Street View and dated May 2011
		
Observations		The photograph shows the start of the route under investigation from the junction with Sawley Road. The route is tarmac and is not gated and access appears to be available. A brown sign can be seen on the wall and although it was not possible to read all of the wording the sign provides information about the Society of Friends and the bottom line says 'All welcome'. A check of the hedge line east of point A was also made on Google Street View to see if there was any evidence of a public footpath sign or post. None was found.
Investigating Officer's		The route under investigation appears to be

Comments		available from point A in 2011. No signpost identifying the route as a public footpath was visible from the photograph.
Undated photograph of Public Footpath signpost and 'No right of Way' sign		Photograph submitted by the Applicant.



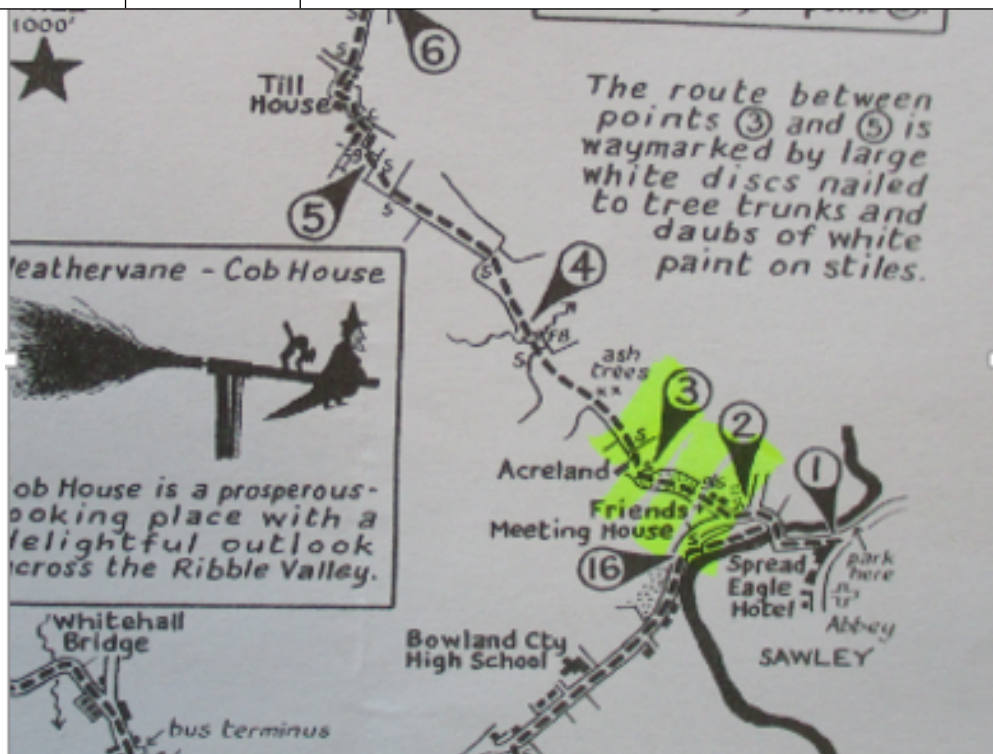
Observations		This photograph shows a public footpath signpost banded onto a wooden post that appears to have existed in the hedge for some considerable time (green and weathered in appearance). Next to it is a sign saying 'Private No public right of way'. The applicant has stated that the private sign appeared in 2013 and that the public footpath sign was subsequently removed by Ribble Valley Borough Council.
Investigating Officer's Comments		The photograph is undated and it is not possible to see from the photograph exactly where the signs are located in relation to the route under investigation although it does not appear that the footpath sign pointed along the route under investigation from point A. The wooden post onto which the footpath sign had been banded appears to have been there

		<p>for a considerable length of time – although it is possible that it may have been moved from a different location. If the sign from an original post became worn or damaged it was the normal practice of the County Council to replace it with a metal arrow which could be banded onto a post.</p> <p>No records relating to the erection, replacement or removal of a sign have been found so little inference can be drawn.</p>
Ramblers Jubilee Commemorative Walk Clitheroe 60k Route Card	Route devised 1990 and published 1995	Long distance circular route devised by a member of the Clitheroe Ramblers Group
Observations		The 60km route included use of the route under investigation.
Investigating Officer's Comments		The inclusion of the route devised by local Ramblers supports the use of the route by the public in the 1990s.
Extract from Walking in the Forest of Bowland by Gladys Sellers published in 1994	1994	A well-known and respected walking guidebook published by Cicerone Press.



Observations		Chapter 5 describes a number of walks in the
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		Sawley area. One walk is described as 'Sawley to Scridbles Farm' (page 151 of the book) with a hand drawn map showing the route on page 145. The route is described as starting Sawley Road and directs you to walk in the direction of Grindleton taking the first 'lane on the right'. The Lane referred to is the route under investigation and the author states that it is signed the Friends' Meeting House. At its end you are advised to go through a gate and continue alongside a stream (Footpath 5).
Investigating Officer's Comments		The route under investigation is included in a well-known local guide book and is described as a lane. There is no reference to a public footpath signpost and the suggestion is that the author considered it to be a lane up until its end where you passed through a gate and continued along a path. The inclusion of the route in the guidebook suggests that it was being use by the public in 1994.
Walks in Ribble Country by Jack Keighley published 1999	1999	A further guidebook published by Cicerone Press.



Observations		The hand drawn map shows the route under investigation forming part of a circular walk. The guidebook directs you to "Turn R (<i>right</i>) up to
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		the Friends' Meeting House and keep straight on, passing to immediate L (<i>left</i>) of garage (looks private) to gate/stile."
Investigating Officer's Comments		The inclusion of the route in the guidebook suggests that it was being use by the public in 1999.
Extract from the Blackpool Gazette - Rural Life	April, 2013	Newspaper article detailing a walk around Sawley with further details on walking website found at www.lancashirewalks.com



Directions. From the abbey entrance walk past the Spread Eagle and turn left to cross the River Ribble by the handsome road bridge. At the junction turn left but almost immediately turn right onto the drive of the Friends Meeting House.



Keep ahead to reach the forecourt of a garage next to a wooden gate.



Edge along the left side of the forecourt (taking care as when wet the tiles can be slippery) to access a footpath on the left. This passes a shed and soon enters woodland steadily climbing. After a stile

<p>Observations</p>		<p>Route described as passing along the drive of the Friends' Meeting House to the forecourt of a garage next to a wooden gate (point B). Then edge along the left side of the forecourt to reach a footpath on the left.</p> <p>The undated photographs that are included on the website show access along the route under investigation from point A and show the various onward routes waymarked at point B</p>
<p>Investigating Officer's Comments</p>		<p>The article submitted was published in April 2013 and describes the route under investigation as consisting of the drive of the Friends' Meeting House. The inclusion of the route within a published walk in 2013 suggests that it was being used by the public at that time.</p>

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

Landownership

There is a freehold title for the mines and minerals for the majority of this route in the name of Thomas Assheton, 42 Lansdowne Gardens, London SW8 2EF and Napthens, Solicitors, Preston who have been consulted on the matter and no response has been received. There is a freehold owner for part of the route and the applicant confirmed notice of application to this landowner without response. The

remainder of the route is unregistered. The applicant has posted on site 'notice of application' to unknown landowners and no responses have been received.

Summary

A substantial length of the route under investigation (between point A and point B) is shown on maps dating back to 1848 (the Tithe Map) and is clearly shown on all subsequent Ordnance Survey maps inspected. Map evidence suggests that the route formed the access to Green End and to the Friends' Meeting House and burial ground and research on the Friends' Meeting House states that it was built in 1777 suggesting that access may have existed from at least that time.

At point B the Ordnance Survey mapping suggests the existence of a gate which is borne out by the modern day site evidence as the route passes between gateposts at this point. Beyond point B it appears from the mapping evidence that access would have been available to link to the recorded routes of Public Footpaths 3 and 5 Sawley.

Grindleton and Sawley parish councils were tasked with the production of a parish map and accompanying survey cards in the 1950s. Both surveys were carried out by the same individual and the fact that the route under investigation is not recorded in the parish survey but 3 paths are described as starting at Green End or Friends' Meeting House which is consistent with it being assumed that there was public access to Green End.

The various walking guides submitted, which all include the route under investigation, suggest that the route has the reputation of being public and formed an important link in the rights of way network. Sawley is an attractive and historic village and the rights of way in the area are known to be well walked.

The map and documentary evidence examined does not appear to provide sufficient evidence of a public right of way alone but it does support the user evidence submitted with this application and the fact that the enclosed and tarmac route provides access to a place of worship, burial ground and farm may explain why Grindleton Parish Council did not feel it necessary to record the route as a public footpath in the 1950s.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant has provided a covering letter for his application:

The applicant is the Footpath Secretary for Clitheroe Ramblers and is submitting the application. The applicant has provided details of who he thinks the landowner for the claimed route is, although there is no record at the Land Registry. The Lane is surrounded by 3 other properties and the issue came to light earlier in 2013 when a notice appeared at the Sawley Road end of the Lane saying 'Private, no public right of way'. The applicant states there has been a Public footpath fingerpost at this point for as long as people can remember, but this was taken down by RVBC when it was

pointed out the public right of way does not appear on the Definitive Map, (the applicant has attached a photograph of this).

The applicant continues to say this lane forms a very important link in many circular walks around Sawley as well as being part of the Nationally Recognized Long Distance Route called Clitheroe 60K.

In support of the application the applicant has submitted 15 user evidence forms, 1 of these forms has been completed by 2 users, so 16 users have used the route in total, the information provided in those forms is set out below.

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

1958-2013(1)	1973-2013(1)	1978-2013(1)	1980-2013(2)
1983-2013(1)	1989-2013(1)	1991-2013(1)	1993-2013(2)
1994-2014(2)	1998-2013(1)	2004-2014(1)	

1 user states they have used the route for 'several years' and another states 'a lot of years'.

All 16 users have used the route on foot, the years in which the route was used varies:

1957-2012(1)	1965-2012(1)	1978-2013(1)	1980-2013(1)
1985-2013(1)	1990-2012(1)	1990-2013(2)	1991-2010(1)
1991 & 2009-2012(1)	1993-2013(1)	1998-2013(1)	2005-2013(1)
2007-2013(1)			

1 user did not provide a response to this question, and 1 user only stated in 1995

The main places the users were going to and from include Sawley, Beacon Hill, Hill House, Rodhill Gate, Acreland, Grindleton, Bolton-by-Bowland, and circular walks such as Clitheroe 60K.

The main purpose for the users using the route were for group walks, leading scouts on a walk, trainer as a runner, for recreation / country walk / pleasure and dog walking.

The use per year varies from 2-3 times, 100 times, 3-4 times, once or maybe twice, on and off over the years to several times a year.

15 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 16 users agree that they have never seen anyone using the route on horseback or by motorcycle / vehicle, however 13 of the users mention they have seen others walking when they have been using the route. The ones who provided dates of when they saw other users state, 1980-2013, 1957-2012, 1995, 2005, 2013 and 1991-2010.

12 users all agree that the line has always run over the same route, 4 users did not provide a response to this question.

When asked if there are any stiles / gates/ fences along the route, 3 users mention there is a stile and all the other users answered 'no' to this question.

When asked if any of the gates along the route were locked or whether they were prevented access from using the route the users either didn't provide a response or

answered 'no'.

Similarly all the users either answered 'no' or did not provide a response when asked if they have ever worked for a landowner over which the route crosses or if they have ever been a tenant over which the route crosses.

None of the users have ever been stopped or 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.

When asked if they were ever told by someone that the route they were using was not a public right of way by foot, 15 users answered 'no', 1 user responded with 'no I never recorded dates of when the path was walked as this was never deemed necessary, and public right of access was never questioned'.

9 users have never seen any signs or notices along the route, however 6 users provided comments:

1. 'Recently the footpath sign has been turned to point up at Sawley Road and a Perspex sign fixed to say 'not a public right''
 2. 'no the footpath signpost has become obscured by vegetation at times but as far as I know has always been present'
 3. 'no, not until a notice was put up in March 2013 prior to that there was a public footpath sign at this point on Sawley Road'
 4. 'there was a public footpath signpost where the route left Sawley Road at SD774467, this had been there so long that the hedge had grown round it'
 5. 'there is one notice to the entrance from the lane which appears to be new'
 6. 'notice said 'private no....', originally there was a footpath sign 1991 – 2010'
- 1 user did not provide a response.

None of the users have ever asked permission to use the route.

At the end of the user evidence form users are asked to provide any extra information they feel is relevant to the application, this information is provided below:

- This user is responding on behalf of both the West Lancashire long Distance Walkers and the Fylde Ramblers. Some members of West Lancashire long Distance walkers have walked this lane on numerous occasions over the years, but below is a list of specific organised walks by both walking groups which passed along this lane:
West Lancashire Long Distance Walkers
 1. 31st March 2011 went to Chatburn, West Bradford, Beacon Hill, Sawley, Chatburn and there were 7 walkers.
 2. 11th September 2012 went to Sawley, Beacon Hill, Bolton-by-Bowland, Till House, Sawley and there were 16 walkers.Fylde Ramblers
 1. 20th December 2009 went to Sawley, Beacon Hill, Grindleton Fell, Higher Heights, Rod Hill Gate and there were 9 walkers
 2. 12th December 2010 went to Sawley, Grindleton Fell, Beacon Hill, Bolton-by-Bowland, Sawley and there were 13 walkers.The West Lancashire '100' which was held in 1991 also came down this lane from Beacon Hill and Till House - (West Lancs Long Distance Walkers still have the route description). Prior to the event all property occupants were

notified that walkers would be coming down this lane throughout the night and there was not the slightest objection to this. The route of the Clitheroe 60K also comes down this lane, this is still listed as a long distance path on the LDWA website. A screenshot of the Clitheroe 60K website is provided as evidence.

- This user provides 4 dates in which he has done the Long Distance walk of 60K
- Being very close to Clitheroe and the adjacent countryside this section of path has been used on short afternoon and evening walks and has also been used on much longer walks, full day and long distance walks as part of well-loved routes
- I am and have been secretary of Clitheroe Ramblers since 1981. I have led a number of walks for the group using this route. On 4/8/1980 I used the route to do a circular walk via Higher Heights 37 on the walk and again on 10/6/1981 with 24 on the walk. It is also used by the Clitheroe 60K route originally lead by the Mayor of the Ribble Valley on 15/4/95. I was on the Clitheroe Ramblers 60K walk on 15th / 16th, we used the footpath on the 2nd day there were 27 on that walk
- Have walked this route on many occasions since 1998, with private group of friends on Wednesdays, with close friends a resident at till house and with the ramblers (Lancashire Weekend Walkers)
- From 1957 my wife and I used this lane several times a year as part of walks for pleasure and recreation. After joining the Ramblers in the mid 1960s we also walked it in Rambler group walks. At the ramblers AGM in 1987 I was elected a footpath officer, Grindleton and Bolton by Bowland were two of the parishes allocated to me. I used to park my car near the junction of Sawley Road and Bolton by Bowland Road and walk this lane approximately monthly to reach footpath I wished to check. This continued to 2006 when I handed over these parishes to another footpath officer but I continued to use this way for occasional recreational walks up to 2012.

As well as the user evidence forms the applicant has also provided copies of:

- Clitheroe 60K walk booklet
- A Cicerone Guide for Forest of Bowland Walks
- A Cicerone Guide for Walks in Ribble Country
- Rural Life Country Trails
- Friends' Meeting House, Public Services, Weddings and Burial Ground

Information from Others and Landowners

The applicant has informed the County Council of a suspected landowner Mr David Webb, but whilst the Council has made reasonable attempts to contact Mr Webb, no response has been received.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

- User evidence
- Tithe Map for Grindleton
- Ordnance Survey Maps
- Aerial Photographs
- Parish Survey Map
- Ramblers Jubilee Commemorative Walk Clitheroe 60 K Route Card
- Extract from walking in the Forest of Bowland by Gladys Sellers published in 1994
- Walks in Ribble Country by Jack Keighley published 1999
- Extract from the Blackpool Gazette – Rural Life published April 2013

Against Accepting the Claim

- Ordnance Survey 25 inch maps – gate

Conclusion

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

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

Considering initially the criteria for a deemed dedication under section 31 of the Highways Act, that use needs to be “as of right” and also sufficient for the 20 year period. The route was called into question 2013 with erection of a sign stating 'Private, no public right of way' and the period of use from which dedication can be deemed would be 1993 - 2013.

15 user evidence forms have been submitted of which one form has been completed by husband and wife. All 16 users claim to have known and used the route on foot "as of right". The 16 users indicate knowledge and use of the claimed route A – B – C for a continuous period for 20 years or more without interruption suggesting good user evidence for the sufficient period. Some weight is lost in that two users repeat the same information although use by the public at large is satisfied corroborated by various walking publications and user evidence of numerous walking groups. Whilst none of the users confirm there was a gate across the route some users answer 'no' as to whether stiles, gates or fences prevented them from using the route. It appears at point A some users recall a footpath sign with one user confirming it was recently turned to point up at Sawley Road and a Perspex sign fixed to say 'no public right of way' sign erected. Purpose of the route A – B – C from and to Sawley, Beacon Hill, Hill House, Till House, Rodhill Gate, Acreland, Grindleton, Bolton-by Bowland and various circular walks such as Clitheroe 60k for group and individual walks, leading

scouts on a walk, training as a fell runner, for recreation, country walking and dog walking.

There is a freehold title for the mines and minerals for the majority of the claimed route. There is a second freehold title of part of the route. No representation(s) have been received from known landowner(s). The landowner(s) of the remaining parts is unknown and despite the applicant having posted the relevant notices at each end of the claimed route for a period of four months, no further landowner information has been received.

Considering also whether there are circumstances from which dedication could be inferred at common law, part of the claimed route between A and B appeared capable of use on the Tithe Map for Grindleton dated 1848 and shown on all subsequent Ordnance Survey maps inspected. Map evidence supports access between the claimed route A to B as access to Green End and to the Friends' Meeting House and burial ground possibly since 1777 when the House was built. The 6 inch OS map 1847 suggests that access appears to be available between the buildings to point C, subsequent Ordnance Survey maps and confirmation by a site visit 2014 confirm that a gate existed at point B although access appears to be available beyond point B to link to the public footpaths 3 and 5 Sawley. The Parish Survey map whilst not recording the claimed route did describe Footpath 4 as ending at Friends Meeting House' and Footpaths 3 & 5 Sawley starting at Green End being consistent with the assumption there was public access to Green End. A title register confirms that land crossed by the claimed route B - C has since 1981 and continuing to date to be subject to a right of way in favour of adjoining land, day and night, with or without vehicles described as 'along the farm track'. This suggests the route was and continues to be available and capable of use. The various walking guides which include the claimed route suggest the route has the reputation of being public and formed an important link in the rights of network.

It is suggested that the way this route is recorded on documentary evidence is not itself sufficient circumstances from which dedication could be inferred, however, sufficient as of right use acquiesced in by the owners may also be circumstances from which dedication can be inferred. The use as evidenced corroborated by the documentary evidence outlined above would suggest that on balance there are sufficient circumstances to infer at common law that the owners in 1993 to 2013, in acquiescing in the use and taking no overt actions actually intended dedicating the claimed route as a footpath and it had become a footpath accepted by the public.

Taking all the evidence into account, the Committee on balance may consider that the provisions of section 31 Highways Act can be satisfied and there is also sufficient evidence on balance from which to infer dedication at common law of a footpath in this matter and that the claim be accepted.

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.

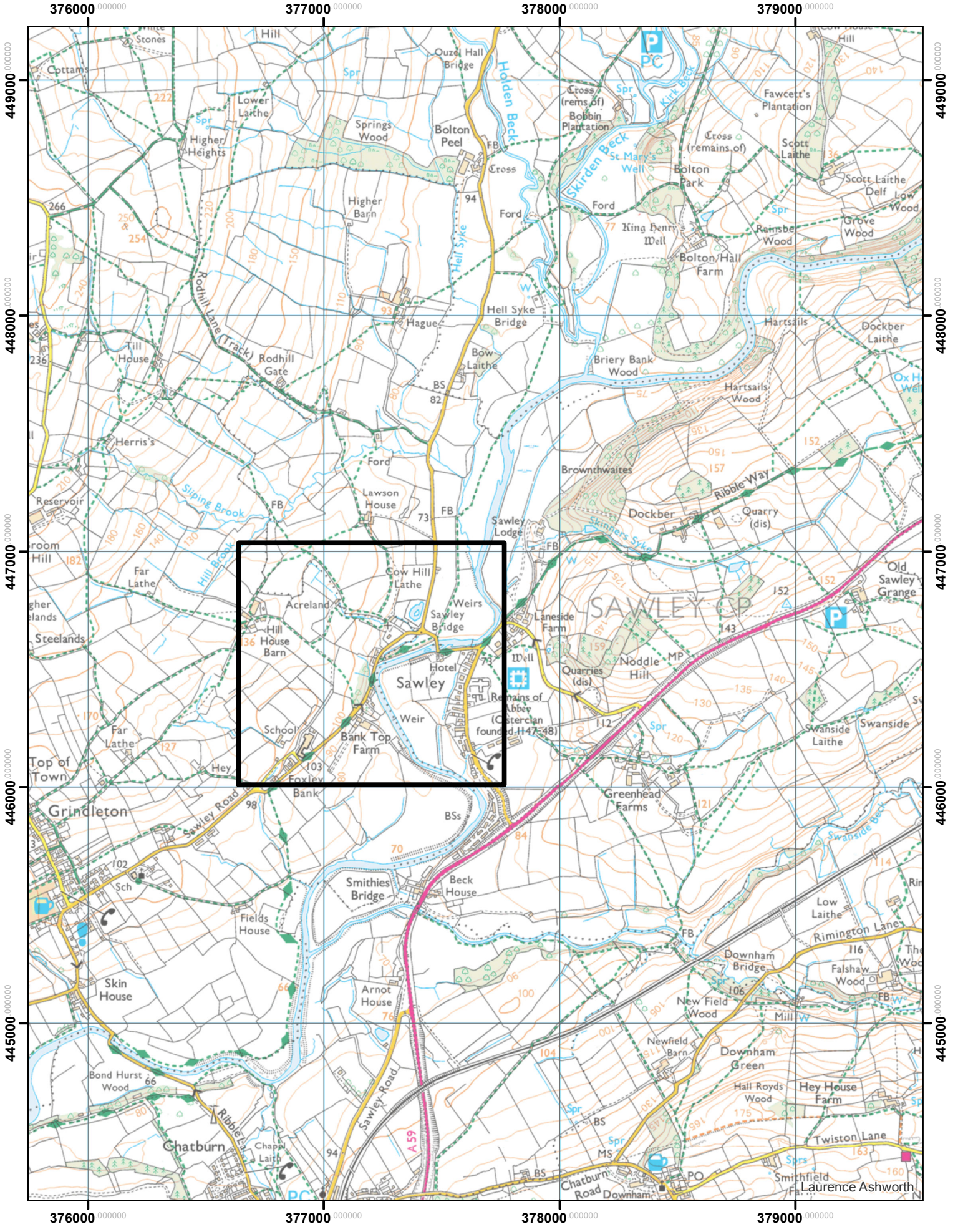
Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-550		Megan Brindle , 01772 535604, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A



Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981 LOCATION PLAN
Addition of a public footpath from Sawley Road to junction of
Public Footpath 44 Grindleton and Public Footpath 5 Sawley, Ribble Valley

1:20,000



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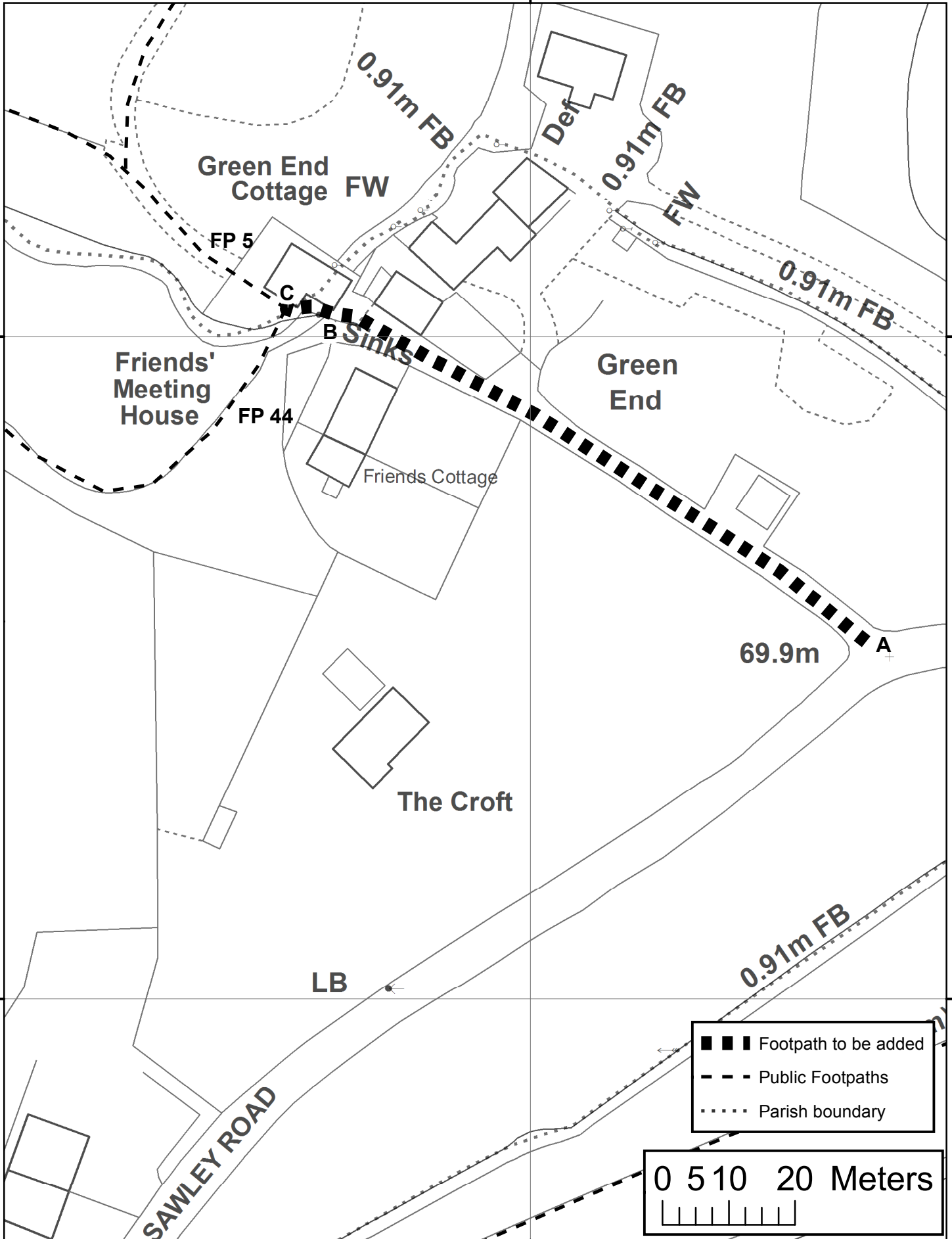
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Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
Addition of public footpath from Sawley Road, Grindleton to junction of
Public Footpaths 44 Grindleton and 5 Sawley on the parish boundary, Ribbles Valley

1:750



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Regulatory Committee

Meeting to be held on 9 September 2015

Electoral Division affected: Pendle East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of a public footpath from Gisburn Road to the junction of Public Footpaths 38, 39 and 41 Blacko, Borough of Pendle

File No. 804-559

(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, Legal and Democratic Services,

megan.brindle@lancashire.gov.uk

Jayne Elliott, 07917 836626, Planning & Environment Group, Public Rights of Way,

jayne.elliott@lancashire.gov.uk

Executive Summary

Application for the addition to the Definitive Map and Statement of a public footpath from Gisburn Road to the junction of Public Footpaths 38, 39 and 41 Blacko, Pendle Borough. (File reference 804-559)

Recommendation

1. That the application for a public footpath from Gisburn Road to the junction of Public Footpaths 38, 39 and 41 Blacko (reference 804-559) be accepted.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public footpath from Gisburn Road to the junction of Public Footpaths 38, 39 and 41 Blacko, Pendle Borough to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a public footpath from Gisburn Road to the junction of Public Footpaths 38, 39 and 41 Blacko 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

Pendle Borough Council

A response from the Countryside Access Officer for Pendle Borough Council (“the Officer”) has been received. The Officer explained that he met the current landowner on site on 1st August 2014 and at that time the route was open and being used by the public. The Officer recalls that at that time there were no signs erected on the route deterring use and that a walker used the footpath during the time that he was on site and that she was not challenged by the landowner.

On 12th August 2014 a further visit to the route was made by an employee of Pendle Borough Council and it was noted that signs had been placed at either end of the route stating “Private Road – Private Property – No Public Access – Please Respect Our Privacy”.

The Officer made the following comments about the site discussion on 12 August with the current landowner:

- The current landowner wanted to fence in part of the width of the path to a narrow strip against the hedge and set up a gate across the footpath, this was part of his plans to protect his children
- The Officer did not have a record of how wide the footpath was but looking on site they advised it would be about the full width of the existing farm track and the gate he would like could not be authorised and explained the reasons for this
- The current landowner wanted to fence off the track and the Officer told him how Section 31 of the Highways Act 1980 worked and suggested he find out if there is evidence that people have ever been challenged when using the footpath.
- The Officer stated that a lady with a dog walked the path from footpath 39 during the site visit and was not challenged
- The current landowner mentioned that footpath 41 was difficult to use as it had become overgrown and the officer agreed to trim and waymark

A further [telephone] discussion took place on 4th September 2014 and the comments are set out below:

- The applicants and the Officer discussed the Definitive Map Modification application and asked if the current landowner would be willing to remove his signs rather than going through the process
- A voicemail was left to the current landowner who later called back to say he has had loads of hassle and abuse from local people and he is now not bothered if people use the track, his main concern is dogs frightening his children. The footpath was agreed and 'dogs on lead's signs to be erected.

Blacko Parish Council

The Parish Council have replied stating that they have no objection to the application. They state that they are fully aware that the route has been used as a public footpath in the "recent past" and provided an extract of a plan from a deed said to be dated 1881 which shows the route as a footpath.

Applicant/Landowners/Supporters/Objectors

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

Advice

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

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description

A	8600 4131	Start of the route under investigation on Gisburn Road (A682) between property numbers 326 Gisburn Road and 7 Back Gisburn Road and 324 Gisburn Road.
B	8602 4131	Unmarked junction of the application route with Back Gisburn Road and location at which private road signs were located in August 2014.
C	8605 4131	Unmarked point at which the application route leaves the track north east of a row of garages.
D	8605 4130	Open junction with Footpaths 38, 39 and 41 Blacko.

Description of Route

Site inspections were carried out on 22 August 2014 and 21st April 2015.

The route commences at a point on the eastern side of Gisburn Road (A682) between house numbers 324 and 326 (and 7 Back Gisburn Road) and shown as point A on the Committee plan.

From point A the route extends in an easterly direction bounded on either side by the gable ends of the two properties. The full width of the gap between the properties is 4 metres at point A and has been roughly tarmacked widening to 4.5 metres at point B.

There is no gate or other barrier restricting access at point A and no evidence of anything previously existing which may have prevented or restricted access.

To the rear of the properties at point B there is access both north and south of the route to the back of the adjacent houses. In August 2014, situated to the rear of the properties, facing west on the south side of the route, there was a red sign with white lettering clearly positioned so that it could be seen and read from the route. The sign read "Private Road – Private Property – No Public Access – Please Respect Our Privacy". In 2015 when the route was re-inspected the sign was no longer there.

From point B the route continues in an easterly direction along a compacted stone surfaced track. When first inspected in 2014 the track was bounded along the northern side by a stone wall. On the south side a wide entry existed beyond point B across which a metal barrier gate was present. The gap provided access to some garages, the rear of which abut the route under investigation.

The stone surfaced route appeared to be being used by vehicles and varied in width between 4.5 and 2.6 metres.

In April 2015 the stone wall along the north side of the route had been removed as part of the building works taking place on the north side of the route between point B and point C although the stone surfaced route remained unaltered passing in an easterly direction to the rear of the garages. At point C, in August 2014 a second red and white sign facing east had been erected stating that the track was private. This sign was no longer present in April 2015. The track bears away in a north easterly direction to Beverley Road and beyond point C coincides with most of the route recorded as Public Footpath 38 Blacko.

The route under investigation leaves the stone surfaced track at point C in a south easterly direction along an unenclosed trodden track for approximately 5 metres across rough land to the open junction with Public Footpaths 38, 39 and 41 Blacko.

The total length of the route is 55 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		Yate's Map of Lancashire does not cover the area crossed by the route under investigation.
Investigating Officer's Comments		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		Greenwood's Map of Lancashire does not cover the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 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		Hennet's Map of Lancashire extend far enough north to cover the area crossed by the route under investigation but the point at which the route leaves Gisburn Road is on the fold of the map and is therefore not visible.
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 route under investigation does not cross land affected by the construction (or proposed construction) of a railway or canal.
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 for Blacko deposited in the County Records Office.
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		There is no Inclosure Award for Blacko deposited in the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848. ¹

¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one



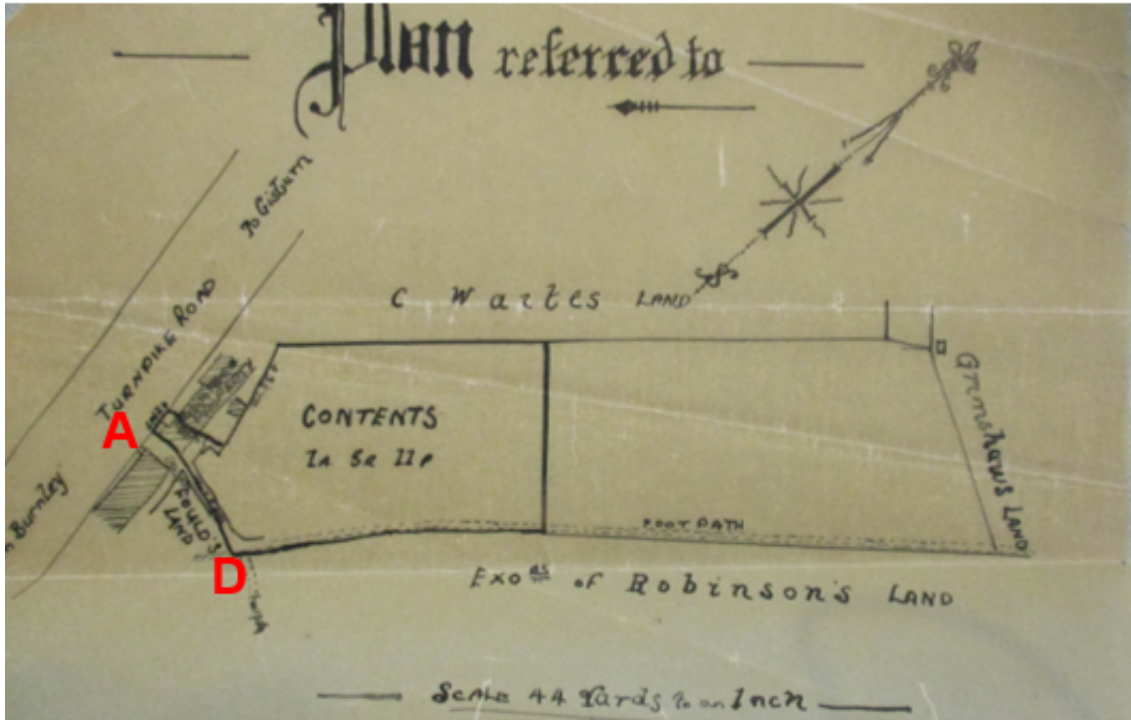
Observations		Properties are shown to the north and south of the approximate position of point A with a wider gap than now exists through which access appears to be available. From the rear of the properties a single pecked line is shown extending to point D. Gisburn Road is shown and labelled as being a Turnpike Trust road (under the ownership of the Marsden Gisburn and Long Preston Trust). The junction of routes now recorded as Public Footpaths 38 and 39 Blacko (which are both shown as single pecked lines) at point D appears to be in the same position as it is today.
Investigating Officer's Comments		Access from Gisburn Road to point D may have been available in 1848 but it appears from the map that the alignment of the route was slightly different to the route now under investigation.
Extract from Deeds in the possession of Mr	1881	When consulted about the application to record the route as a public footpath Blacko Parish

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.

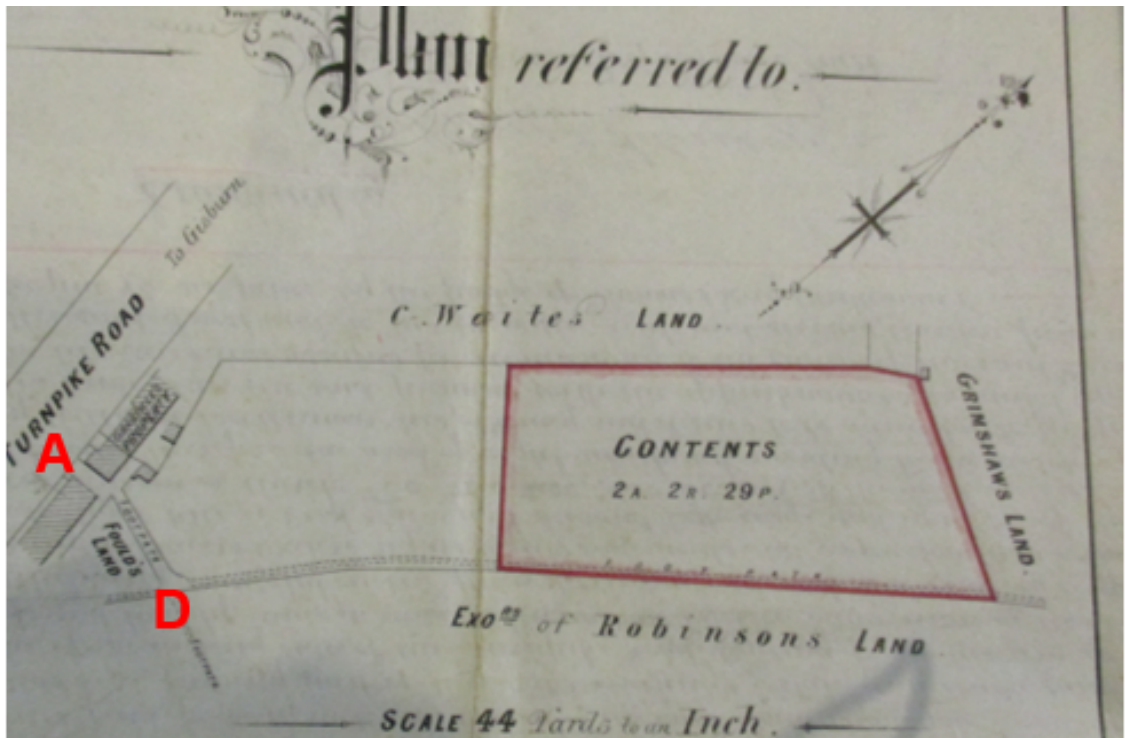
R Foster and inspected by Blacko Parish Council as part of the consultations carried out on the application

Council submitted a plan copied from the deeds of a local landowner and referred to it dating back to 1881.

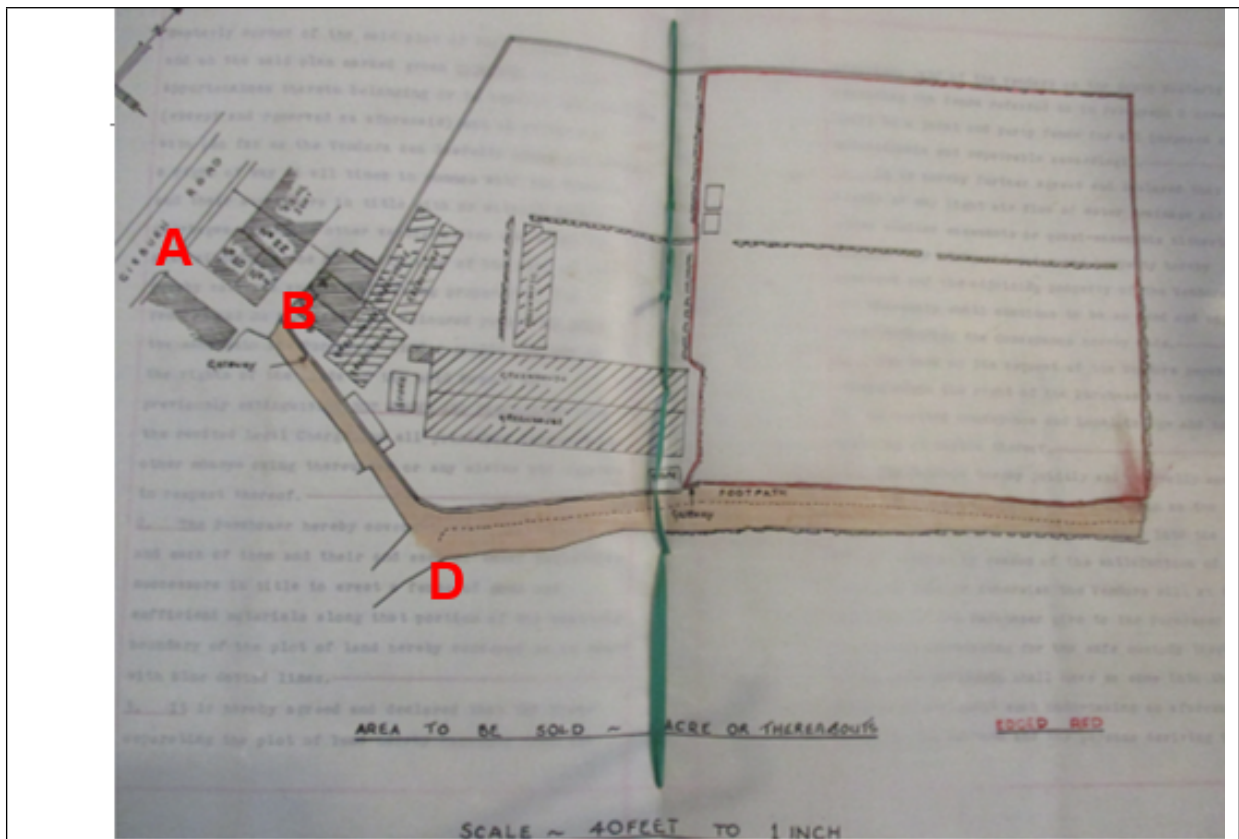
Plan 1



Plan 2



Plan 3



Observations

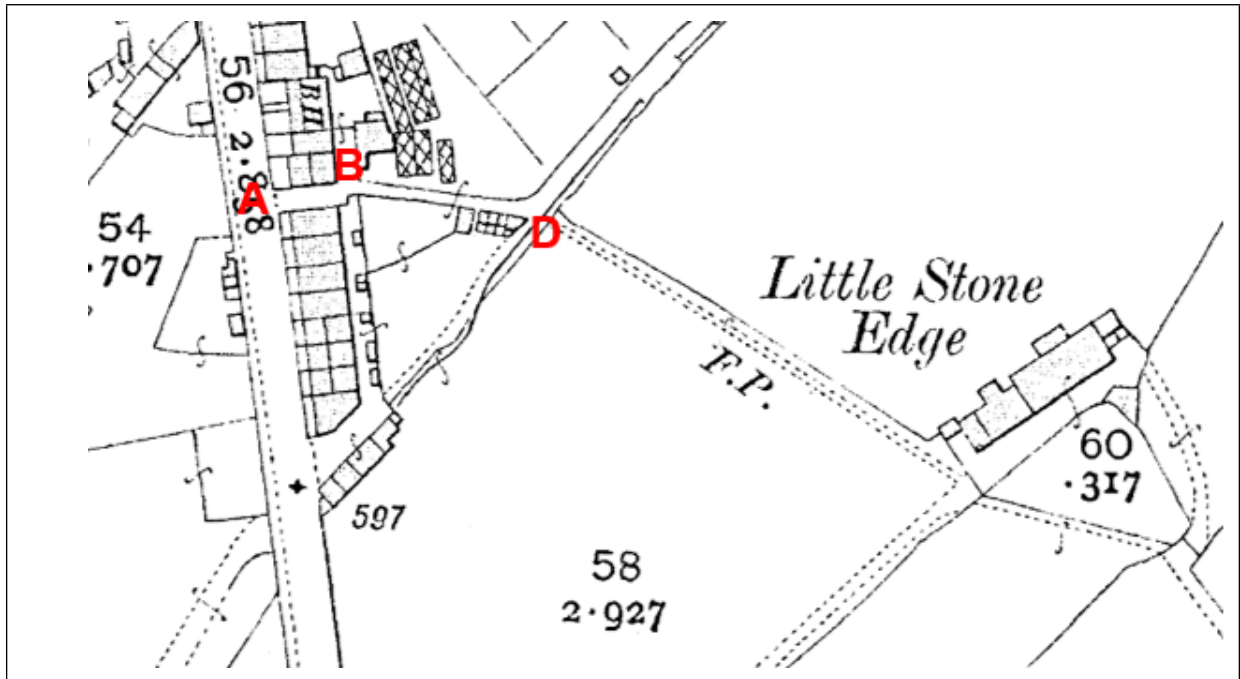
Further investigations were carried out and the plan (Plan 1) submitted by the Parish Council was found to be an undated plan contained within a bundle of deeds in the possession of Mr Foster. It is labelled 'Plan referred to' suggesting that it formed part of a document – most likely relating to the sale of the plot of land north of the route under investigation, and shown by a bold solid line on the plan. It describes Gisburn Road as the 'Turnpike Road' which would be consistent with the date given by the parish council (1881). The plan shows the route passing between buildings between point A and point B and then continuing (un-gated) as an enclosed track to point D. Between points B and D the word 'Footpath' has been written on the route under investigation. Further documents within the possession of Mr Foster were subsequently inspected and a deed dated 7th May 1881 for land now in the ownership of Mr Foster was inspected. The plan that formed part of the deed (Plan 2) whilst not identical to the plan originally submitted by the Parish Council (plan 1), was very similar in appearance and was drawn at the same scale. The plan shows the route and describes it as a 'Footpath'. Further conveyance documents in the possession of Mr Foster consistently show the existence of

		the route. In an abstract of title of Mr and Mrs Pollard to a plot of land that was accessed via the route under investigation are the details of a conveyance dated 18 March 1948 made between Thomas Brown (the vendor) and John Pollard and Minnie Pollard (the purchasers). The conveyance related to the sale of the land edged red on plan 3 above and it was stated that the plot had access to Gisburn Road by the public road coloured brown on the said plan'. This information regarding access was subsequently repeated in a further conveyance dated 25 April 1952 between Mr and Mrs Pollard (the vendors) and Mr Harold Gilbert Claxton (the purchaser).
Investigating Officer's Comments		The route existed in 1881 and was considered by the surveyor who drew the plan in relation to the sale of adjacent land to be a footpath. When land that was accessed via the route was sold in 1948 (and again in 1952) access to Gisburn Road was described as being along a public road – consisting in part of the route under investigation suggesting that it was considered to carry public vehicular rights at that time.
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		Development appears to have taken place since 1844 and the properties north of the route extended and south of the route rebuilt or modified. Access onto the route at point A appears to be open but a dashed line suggests
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		<p>that there may have been a change in the surface from Gisburn Road when entering onto the route. The route between point A and point B provides access to the rear of the properties on both the north and south sides from point B.</p> <p>A line is shown across the route under investigation just east of point B suggesting that a gate or barrier may have existed across the route at this location. Beyond point B the route under investigation can be clearly seen as an enclosed track. The bracings on either side of the track suggesting that the land on either side was in the same ownership on either side of the track. Some small buildings – possibly animal pens - are shown on the south side of the track in the position of the garages that exist today.</p> <p>Between point C and point D it appears that the route would have crossed a small watercourse and the means of crossing it is not shown. At point D it can be seen that the route now recorded as Public Footpath 39 Blacko existed on the ground as a visible track which was shown as a double pecked line leading to Little Stone Edge.</p> <p>The routes now recorded as Public Footpaths 38 and 41 Blacko are also shown to have existed at this time.</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1891 and appeared capable of being used linking to the routes subsequently recorded as Public Footpaths 38, 39 and 41 Blacko. The existence of a gate across the route to the east of point B would not be inconsistent with the existence of a route that was capable of being used by the public as many more routes would have been gated at that time for stock control purposes.</p>
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1891, revised in 1910 and published in 1912.



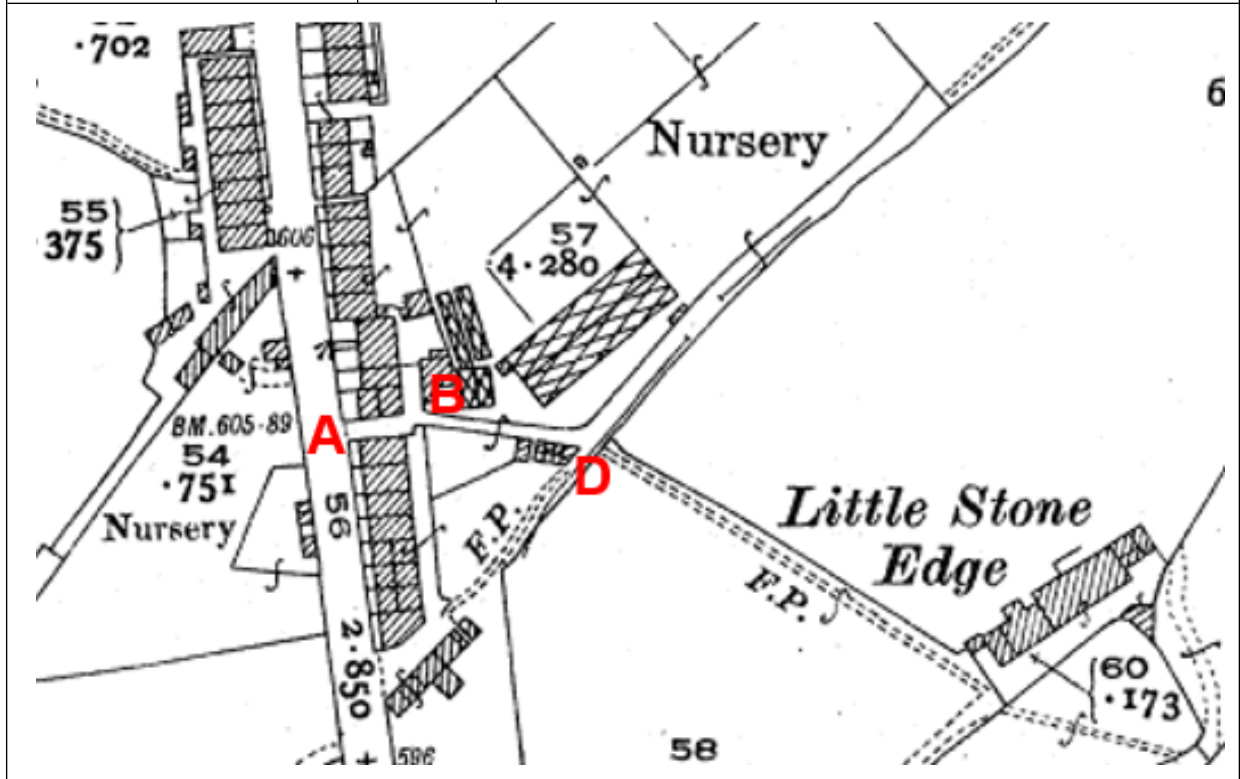
Observations		<p>The route under investigation is shown as it was on the earlier edition of the 25 inch map. Access onto the route at point A appears to be open although a change in surface condition appears to be indicated by the dashed line. No gate or barrier is shown across the route at point B as it had been on the earlier map suggesting that the route was now open and accessible along the full length forming part of a continuous route with the track now recorded as Footpath 38 Blacko which provides access through to Beverley Road. The route appears to link to the path now recorded as Footpath 41 Blacko and the footpath (F.P) leading to Little Stone Edge which is now recorded as Footpath 39 Blacko.</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1910 and appeared capable of being used.</p>
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</p>

	<p>incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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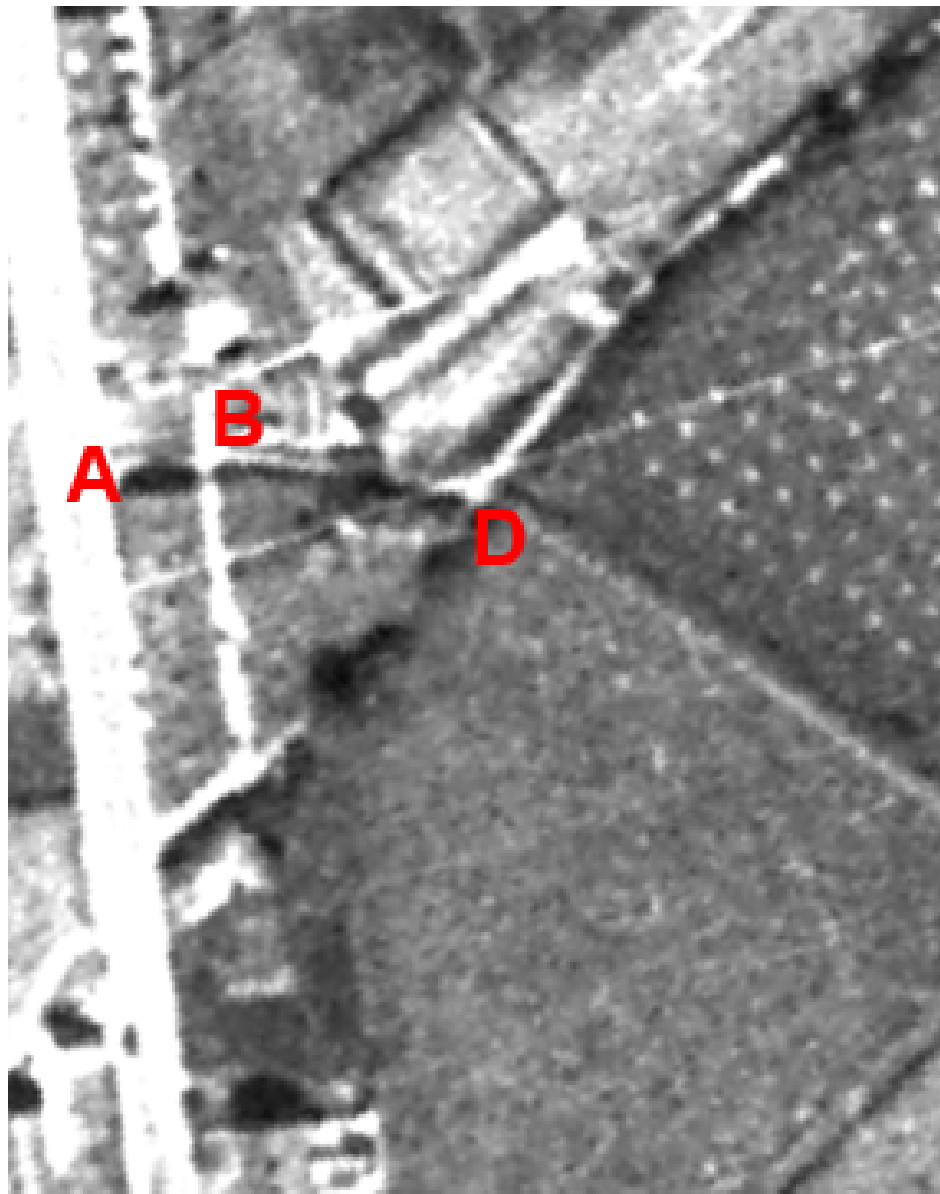
<p>Observations</p>	<p>The Finance Act records held by the County Records Office have been inspected but the Map and Field book entries have not been requested from the National archives.</p> <p>The full length of the route between point A and point D is excluded from the numbered hereditaments on the plan held by the County</p>
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		Records Office. Plot 96 is listed in the schedule as being owned and occupied by Robert Foulds which is consistent with why the route was labelled as 'Folds Land' on the deed plan submitted by the Parish Council and in the possession of Mr Foster referred to earlier in this report.
Investigating Officer's Comments		The fact that the route is excluded from the numbered hereditaments is usually considered to be good evidence of, but not conclusive of, public carriageway rights. The length excluded does not, however, provide a through route linking two public vehicular highways which would suggest less weight should be given to it carrying public vehicular rights. The exclusion of the route does however suggest that the route under investigation was a substantial physical route which would have been capable of being used by the public on foot and which may have been used by vehicles at that time.
25 Inch OS Map	1931	Further edition of 25 inch map (surveyed 1891, revised in 1930 and published 1931).



Observations		The route under investigation is shown to exist as part of a longer route and also connects to other routes now recorded as public footpaths and two of which are annotated as footpaths (F.P.) on the
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		map.
Investigating Officer's Comments		The route under investigation existed in 1930 and appeared to be capable of being used by the public.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.



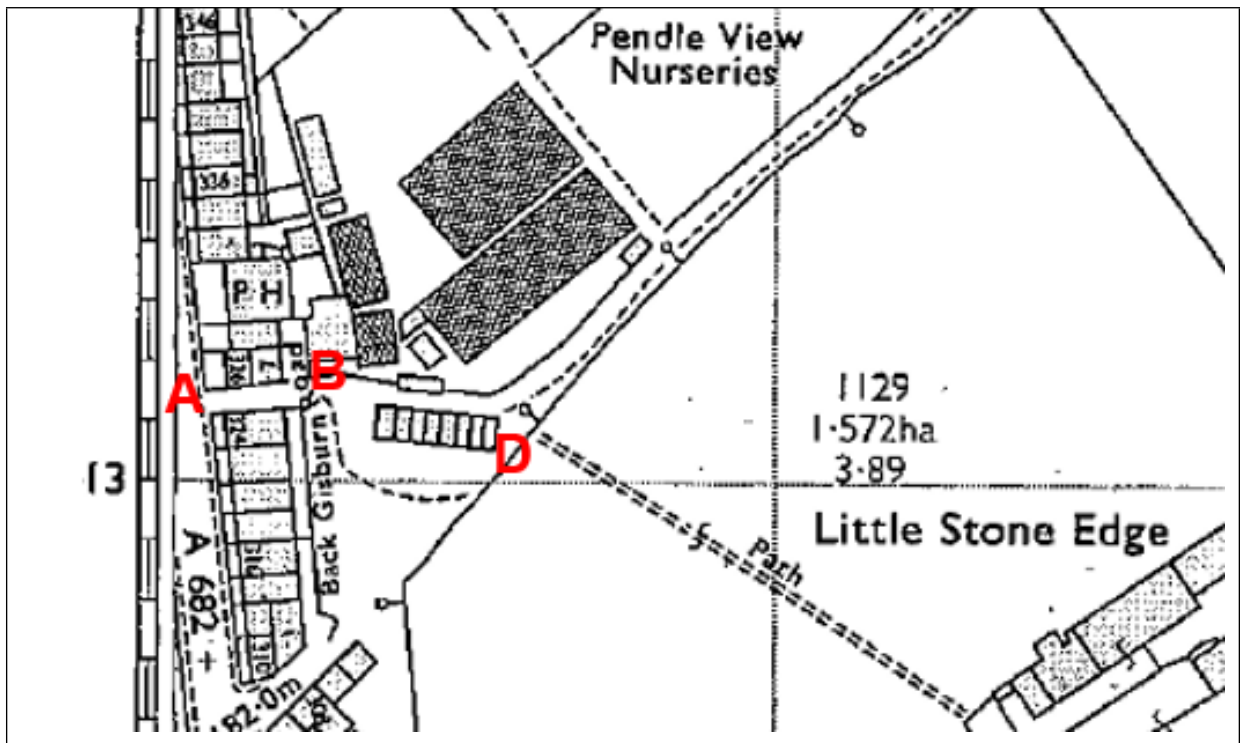
Observations		The quality of the aerial photograph is poor although it is possible to see the full length of the route and the fact that it connects to other routes
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² Aerial photographs can show the existence of paths and tracks, especially across 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.

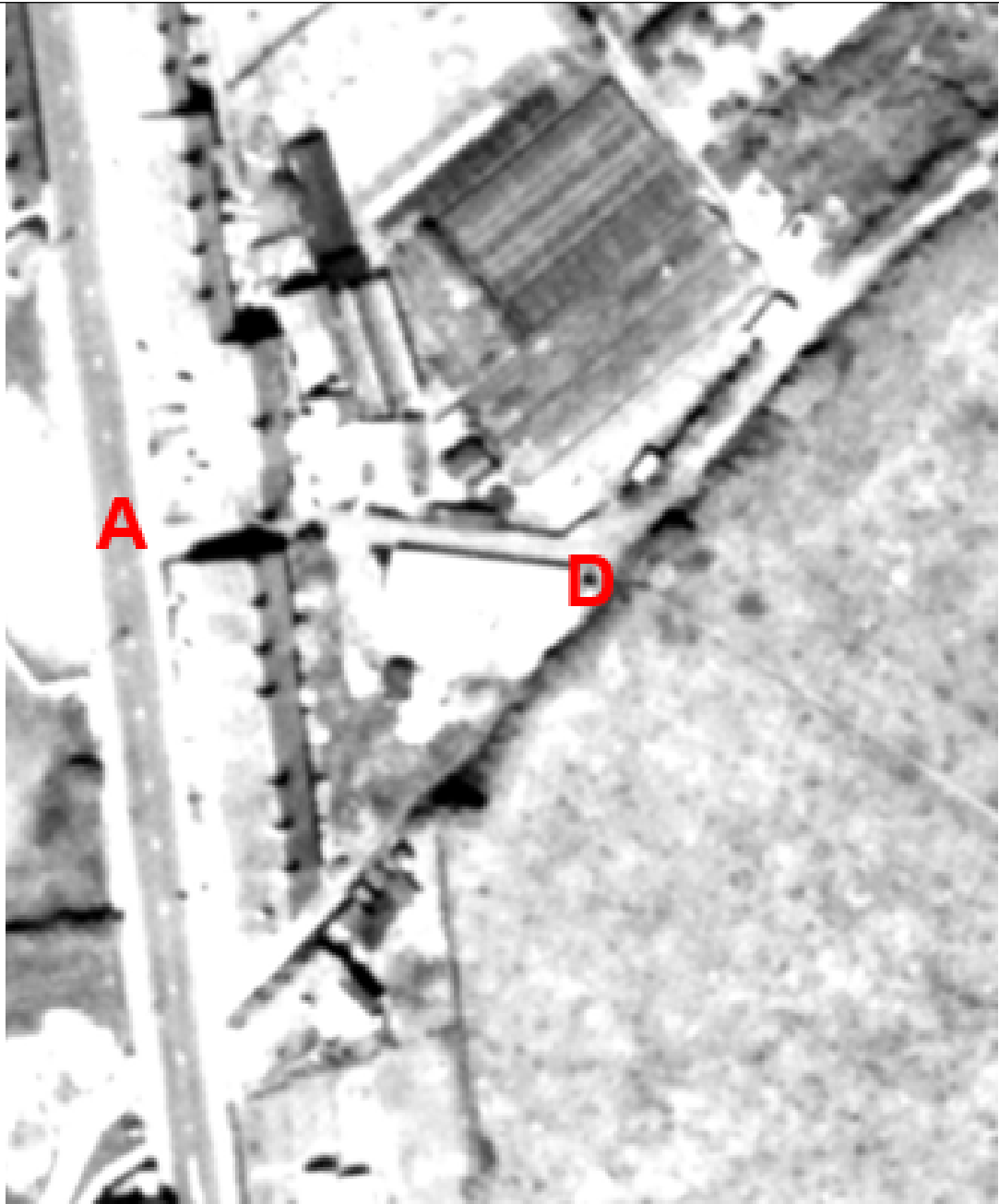
		at point D and that it is crossed by a substantial route at point B.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used in the 1940s.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The full length of the route under investigation is shown as part of a longer route which possibly provided access to a nursery and also formed part of the route now recorded as Footpath 38 Blacko and also connected to two other routes that are shown on the map and which are now recorded as Footpaths 39 and 41 Blacko.
Investigating Officer's Comments		The route under investigation existed when the map was revised before 1930 and appeared to be capable of being used to connect to other routes now recorded as public footpaths.
1:2500 OS Map	1970	Further edition of 25 inch map reconstituted from former county series and revised in 1969 and published 1970 as 1:2500 national grid series.



Observations		The route under investigation is shown to exist as part of a longer route providing access to Pendle View nurseries and also providing access to the routes recorded as Footpaths 38, 39 and 41 Blacko. The garages that still exist along the south side of the route (between point C and point D) are shown with access to them being via the route under investigation between point A and point B.
Investigating Officer's Comments		The route under investigation existed when the map was revised in 1969 and appeared to be capable of being used to connect to other routes that were recorded as public footpaths.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.




Observations		The route can be seen as a substantial track in the 1960s.
Investigating Officer's Comments		The route existed and appeared to be capable of being used by the public in the 1960s to connect to three legally recorded public footpaths.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		The route under investigation can be clearly seen on the photograph and a track connecting the route under investigation to Footpath 39 Blacko south east of point D is very visible.
Investigating Officer's Comments		The route existed and appeared to be capable of being used by the public in 2000 to connect to three legally recorded public footpaths.
Aerial Photograph	2010	Aerial photograph available to view on GIS.

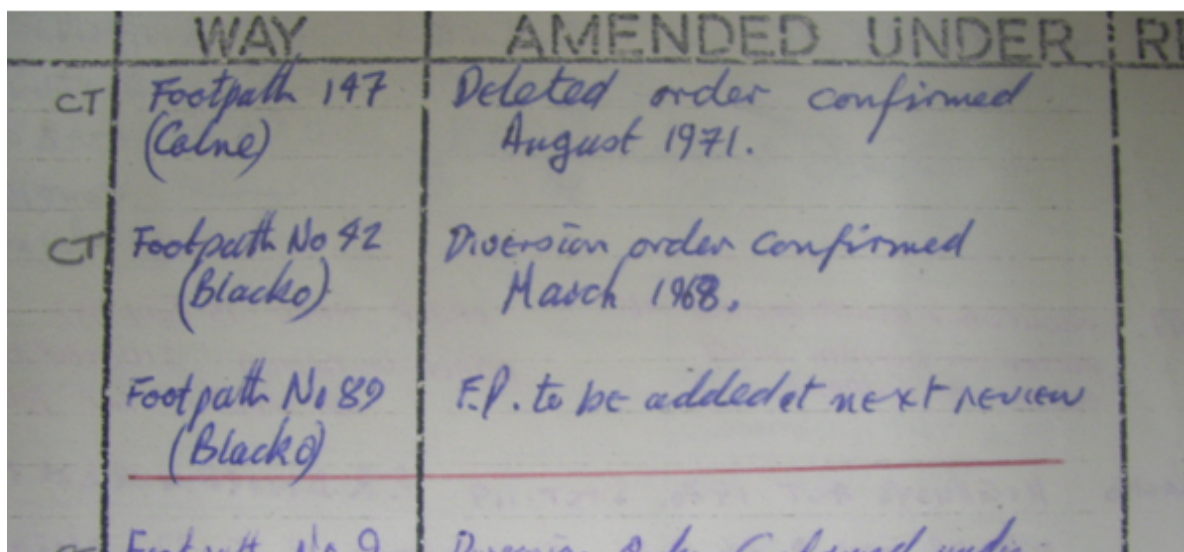


Observations		The route under investigation can be clearly seen on the photograph and a track connecting the route under investigation to Footpath 39 Blacko south east of point D is still very visible.
Investigating Officer's Comments		The route existed and appeared to be capable of being used by the public in 2010 to connect to three legally recorded public footpaths. There was a worn trod between points C and D suggesting it was actually being used.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a</p>

		road is maintainable at public expense or not does not determine whether it is a highway or not.
		
Observations		The County Council records do not contain any details of the route under investigation being recorded as a publicly maintainable highway.
Investigating Officer's Comments		The fact that the route under investigation is not recorded as a publicly maintainable highway in the List of Streets does not mean that it is not a public right of way.
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		The parish survey map and cards were drawn up by Blacko parish council. The route under investigation is not shown on the parish survey map or documented in the parish survey cards.
Draft Map		<p>The parish survey map and cards for Blacko were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The route under investigation is not shown on the Draft Map of Public Rights of Way and there were no objections to the omission of the path.
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 is not shown on the Provisional Map and there were no objections to the omission of the path.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation is not shown on the First Definitive Map.
Investigating Officer's Comments		The route under investigation was not considered to be a public right of way in the 1950s.

<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th 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 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
<p>Observations</p>		<p>The route under investigation is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation was not considered to have changed status by the 1960s.</p>
<p>LCC Internal Definitive Map Amendment Book</p>		<p>Following the publication of the Revised Definitive map (First Review) and until the County Council digitised the public rights of way information contained within the Revised Definitive Map (First Review) it was the standard practice of the Lancashire County Council Public Rights of Way Team to record any subsequent legal alterations to the Revised Definitive Map (First Review) on a paper copy kept in the office and to list details of all the amendments on a form accompanying each map sheet.</p>



<p>Observations</p>		<p>When the hand drawn amended version of the Revised Definitive Map (First Review) was inspected it was discovered that the route under</p>
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		<p>investigation had been hand drawn on the amendment sheet and labelled with the number 89. The accompanying form stated that the footpath was to be added at the next review. No details of why it was considered that the route under investigation should be added to the Definitive Map were provided.</p>
Investigating Officer's Comments		<p>The internal system of maintaining an amended Definitive Map was originally put in place when it was fully expected that there would be a further review of the Map and Statement prior to the continuous review process that was adopted post 1981.</p> <p>There are numerous examples across the County where paths that had not been recorded as public rights of way had been identified and added to the amendment book with similar notations suggesting that when the Map was next reviewed the path would be added to it. Whilst no further details are provided the inclusion of the route, and the fact that it had been numbered suggests that the fact that the route was not shown on the Definitive Map had been raised and that the County Council had made an initial assessment that had led to them considering that it should be added at the next review.</p>
Lancashire County Council Public Rights of Way Records	1958 to current date	<p>Following on from the discovery that the route under investigation had been included on the LCC Internal Definitive Map Amendment book a search of the LCC Blacko Parish files containing information on public rights of way issues was carried out.</p>
Observations		<p>A search of the parish files was carried out and a letter found from Burnley Rural District Council to Lancashire County Council dated 25th May 1972. The letter explains that Burnley Rural District Council had received a request from Blacko Parish Council for the route under investigation to be added to the Definitive Map. The letter states that the Parish Council said that the route was well used but appeared to have been omitted from the footpath survey carried out in 1951. No reason for it being omitted is given.</p> <p>A reply was sent from the County Council to Burnley Rural District Council stating that the path could only be included at the next Review period and that a note had been made for this to be done at the appropriate time.</p>

		<p>Further correspondence was found from the following year (13 May 1973) when it appears that Blacko Parish Council, on receipt of a copy of the Provisional Definitive Map (First Review) again queried why the route under investigation was still not shown. In response, the County Council explained that the previous year in a letter to the Surveyor of Burnley Rural District Council the County Council had undertook to include the route currently under investigation at the next review "i.e. the Second Review".</p>
Investigating Officer's Comments		<p>It appears that the route under investigation was being used in 1972 and that use must have been sufficiently well used for the Parish Council to raise the fact that it was not recorded as a public footpath when they considered that it should be. There is no suggestion from the correspondence in 1972 or 1973 that actual use of the route at that time was being challenged.</p>
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		<p>No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the routes under investigation</p>

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

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

Landownership

Part of this route is owned by Mark Sugden, 22 Stone Edge Road, Barrowford, Nelson BB9 6BB, a small part of the route has a Caution held by Ingham & Yorke and Napthens, and part of this route is unregistered.

Summary

The 2015 site evidence shows that the route is currently open and available to be used. There is development taking place to the north of the route which has changed its appearance but not its alignment over the past 12 months. The signs evident on site in 2014 stating that the route was private are no longer in place but are known to have initiated the application to record the route as a public footpath.

No early commercial maps were available or viewed showing the route but it is clear from the first edition of the Ordnance Survey mapping of the area in 1844 that at least part of the route existed at that time.

The full length of the route under investigation is shown to exist on the deed plan dated 1881 and is labelled as a footpath connecting to the routes now recorded as Public Footpaths 38, 39 and 41 Blacko – all of which are also labelled on the conveyance plans as 'Footpaths'.

With the exception of the 1891 Ordnance Survey map which showed that a gate may have existed immediately east of point B the full length of the route under investigation appears to have been open and freely accessible when surveyed for future revisions of the Ordnance Survey mapping.

Aerial photographs from the 1940s, 1960s, 2000 and 2010 also support the existence of the route.

The maps and aerial photographs also support the evidence that the route under investigation linked directly to three routes that are recorded as public footpaths (Footpaths 38, 39 and 41 Blacko) and that the route under investigation formed part of the network of routes all converging at point D.

The Finance Act records obtained from the County Records Office are inconclusive. The route has been excluded from the numbered hereditaments which can suggest that it was considered to be a public vehicular highway at that time and this is consistent with the information provided in the 1948 and 1952 deeds which describe

the route as a 'public road'. However, it is a dead end – not meeting a public vehicular highway at the eastern end.

No map or documentary evidence has been found suggesting that the route could not or had not been used by the public on foot. When Blacko Parish Council carried out the survey of paths that they believed to be public the route under investigation was not included. The reason for this is not known but by the 1950s the nursery and garages adjacent to the route were in existence and it is possible that the route was missed as its appearance was one of a public road – or that as suggested in the 1948 and 1952 conveyances it was considered by the surveyor to be a public road.

It is not until 1972 that the Parish Council appear to formerly query why the route under investigation is not recorded on the Definitive Map and request that it be included at the next review as it was a well-used route. There is no suggestion at that time that use of the route was being challenged – just that it was not recorded.

Legal and Democratic Services Observations

Information from the Applicant

In support of the application the applicant has provided 12 user evidence forms, 3 of these forms have been completed by 2 people, so 15 users have submitted evidence in total, the information from these forms is set out below:

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

1935-2014(1)	1971-2014(1)	1974-2014(2)	1975-2014(1)
1979-2014(2)	1980-2014 (1)	1989-2014(3)	2000-2014(3)
2006-2014(1)			

All 15 users have used the route on foot and have never used it by any other means, the years in which the users have used the route is the same as which they have known the route apart from one user who has known it from 2000-2014 but has only used it from 2001-2014.

The main place the users were going to and from was from Gisburn Road to Beverley Road, Blacko and Great Stone Edge, and Barnoldswick Road, the main purposes for using the route were dog walking, leisure / pleasure and visiting friends and family and going to the local shop.

The times per year in which the users used the route varies from every day, 5-10, 36-40, 200-250, 300.

13 users agree that the line of the route has always been the same, 1 user stated it was slightly modified about 7 years ago when the fields were fenced off, and it has become more defined since, and the other user states the route has become more permanent since the garages were built which was about 50 years ago.

When asked if there are any stiles / gates / fences along the route, 9 users responded with 'no', 3 users agree that there are 2 stiles, 1 of these users mentioned

they are both at the eastern end of the route, and 2 of the users mention they were at each end and that these gates were locked. 2 users didn't provide details about any stiles / gates / fences but mentions signs were placed saying 'no public access'. All the users agree that they were never prevented access from using the route.

None of the users have ever been a landowner over which the route crosses and 1 user used to be tenant of one of the garages along the route but didn't receive any instructions about the route from the owner.

None of the users have ever been stopped or turned back while using the route, 2 users did mention that the previous owner of the land would often take time out to chat to them as they passed by and sometimes moved their vehicle to allow them to pass with ease. The users have they ever heard of anyone else having been stopped or turning back. The users have never been told by anyone that the route they were taking was not a Public Right of Way.

4 users mention that signs were erected recently, and 2 of these users provided the date of 10/8/14. None of the users have ever asked permission to use the way.

At the end of filling out the user evidence forms, users are asked to provide any further details they feel is relevant, this information is set out below:

- Used often by local folk, why is another local path being closed?
- This path has been used by many residents of the village for many years. There has been a long held assumption that this is a public right of way, no-one has ever to my knowledge contradicted this.
- The path from my home meets the path from Beverley, I then use the track which is the natural continuation of the path from Beverley to Gisburn Road, at matter of only about 100 yards, over a rough unmade motorised road. The user provides a copy of an OS map identify which route he takes, he mentions that large numbers of villagers / walkers / runners use the path past my house and then at the intersection with the Beverley path turn left onto the track and leave Gisburn Road quite safely. Many parents take their children to school at Blacko by this route. The proposed new route is not visible, it would be dangerous in dark winter weather. The past week or so two red signs have been erected saying the track is a private road, these are confusing and intimidating, and also 2 strips of orange fencing have appeared and again are confusing and intimidating. It is my opinion that the use of the track has been the right of way for at least 50 years.
- I have always walked my dogs along this path all my life and to my knowledge has always been a right of way.
- I have lived in Blacko for over the last 30 years and have walked this route regularly. My neighbour who is 87 years of age and has lived in the village all her life told me that it had always been a right of way.
- Born and bred in Blacko, I have always been free to walk to the fields in the area without farmers etc saying no access.
- The usage of this footpath and friendly relationship of the previous owners of the land has been identical, 14 years of constant and free use of the lane to gain access to Gisburn Road.
- I always thought it was a Public Right of Way.

Also in support of the application the application has provided a copy of the Deeds from 439 Gisburn Road, these Deeds show the footpath addition as a footpath in 1881.

A copy of 'Paths Around Pendle' has also been provided, the applicant states this has been in circulation for many years and the proposed footpath is shown as a footpath.

Information from the Landowner

The following response has been received from a landowner that owns part of the application route.

"As owner of the property 2 Black Gisburn Road, we own the land which is suggested become a public footpath.

We are currently undertaking work on the premises and once complete later this year, we want to put a gate at the entrance to our land in order that our children can play safely and no vehicles (apart from ourselves and the local farmer who has access) can access.

May we suggest as an alternative option, permissive access allocation, which allows residents to continue their use as a walkway, while satisfying our own needs as land owners.

As we understand, a permissive access would not appear on Ordnance Survey maps, because it is not permanent.

We would ask for certain parameters of use – such as users having their dogs on leads while passing this area – our daughter particularly scared of them and to ensure no fouling on our land.

We would be happy to place up signage which allows usage, yet detailing the parameters of this use, but do not wish for any formal arrangements; simply 'good faith' on both parts.

We write in good faith and believe that our suggested way forward would meet both our needs and those of the villagers.

And, as owners of the land, we want protection against further access being opened up around our home."

As part of the consultation the Caution holders by Ingham & Yorke and Napthens Solicitors were consulted. A response was received from Ingham and Yorke who explained that their clients are only interested in the mineral rights and underneath this land.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

- User evidence
- Ordnance Survey maps
- Deed Plans (Deeds in possession of Mr R Foster)
- Finance Act 1910
- Aerial photographs
- Revised Definitive Map (First Review)

Against Accepting the Claim

- First edition 25" Ordnance Survey Map – suggestion of a gate or barrier
- One user *may* not be "as of right"

Conclusion

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

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

Considering initially the criteria for a deemed dedication under Section 31 of the Highways Act, that use needs to be "as of right" and also sufficient for the 20 year period. The route was called into question August 2014 by the erection of two signs at point B and C on the route stating "Private Road – Private Property – No Public Access – Please Respect Our Privacy" and the period of use from which dedication can be deemed would be 1994 - 2014.

Twelve user evidence forms have been received of which three forms have been completed by husband and wife. Fifteen users claim to have known and used the route on foot "as of right". One user whilst claiming to have used the route from 1935 to 2014 for the purposes of visiting friends and relatives and for the playing field confirms that he was a garage tenant which calls into question whether any of his use is "as of right". Without further information a full assessment of use is not available and therefore the user's evidence has been excluded. The evidence of the fourteen users will therefore only be considered.

Fourteen users indicate knowledge and use of the claimed route A – B – C – D for a continuous period of 20 years or more without interruption suggesting good user evidence for the sufficient period. Some weight is lost in that some information between users is repeated although use by the public at large is satisfied. Purpose of the route was from Gisburn Road to Beverley Road, Blacko, Great Stone Edge and Barnoldswick Road for dog walking, leisure, pleasure and visiting friends and family and going to the local shop.

There is one known landowner of part of the claimed route. The landowner(s) of the remaining parts is unknown and despite the applicant having posted the relevant notices at each end of the claimed route on 27 August, no further landowner information has been received. The known landowner has provided representations 14 May 2015 and explains that once current work on his premises is completed later this year he wants to put a gate at the entrance of his land so his children can play safe and no vehicles can access. The landowner suggests as a way of meeting the needs of the villagers and his own that he provides permissive access subject to dogs on leads and no fouling both achieved by the owner placing signage to this effect.

Considering also whether there are circumstances from which dedication could be inferred at common law, part of the route is shown to exist on the earliest Ordnance Survey 6 inch map in 1844. The whole of the claimed route was shown to exist in 1881 on the Deed Plan and was labelled as a footpath connecting to routes labelled 'Footpaths' now recorded as Public Footpaths 38, 39 and 41 Blacko. With the exception of the first edition 25" Ordnance Survey map showing a possible gate/barrier but with the feasible explanation that routes in 1891 would have been gated for stock control purposes, the full length of the claimed route appears open and freely accessible and capable of connecting to the now recorded Footpaths 338, 39 and 41 Blacko when surveyed for future revisions of the Ordnance Survey mapping. The fact that the route was excluded for the purposes of the Finance Act 1910 suggests the claimed route was a substantial physical route which capable of being used on foot. Use of the claimed route in 1972 is corroborated by the Parish Council raising the fact that the route was not recorded as a public footpath and it considered it ought to be recorded. The existence of the route is also corroborated aerial photographs from 1940s, 1960s, 2000 and 2010.

It is suggested that the way this route is recorded on documentary evidence is not itself sufficient circumstances from which dedication could be inferred, however, sufficient as of right use acquiesced in by the owner(s) may also be circumstances from which dedication can be inferred. The use as evidenced corroborated by the documentary evidence outlined above would suggest that on balance there are sufficient circumstances to infer at common law that the owner(s) in 1994 to 2014, in acquiescing in the use and taking no overt actions actually intended dedicating the claimed route as a footpath and it had become a footpath accepted by the public.

Taking all the evidence into account, the Committee on balance may consider that the provisions of section 31 Highways Act can be satisfied and there is also sufficient evidence on balance from which to infer dedication at common law of a footpath in this matter and that the claim be accepted.

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/Directorate/Tel
All documents on File Ref: 804-559		Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

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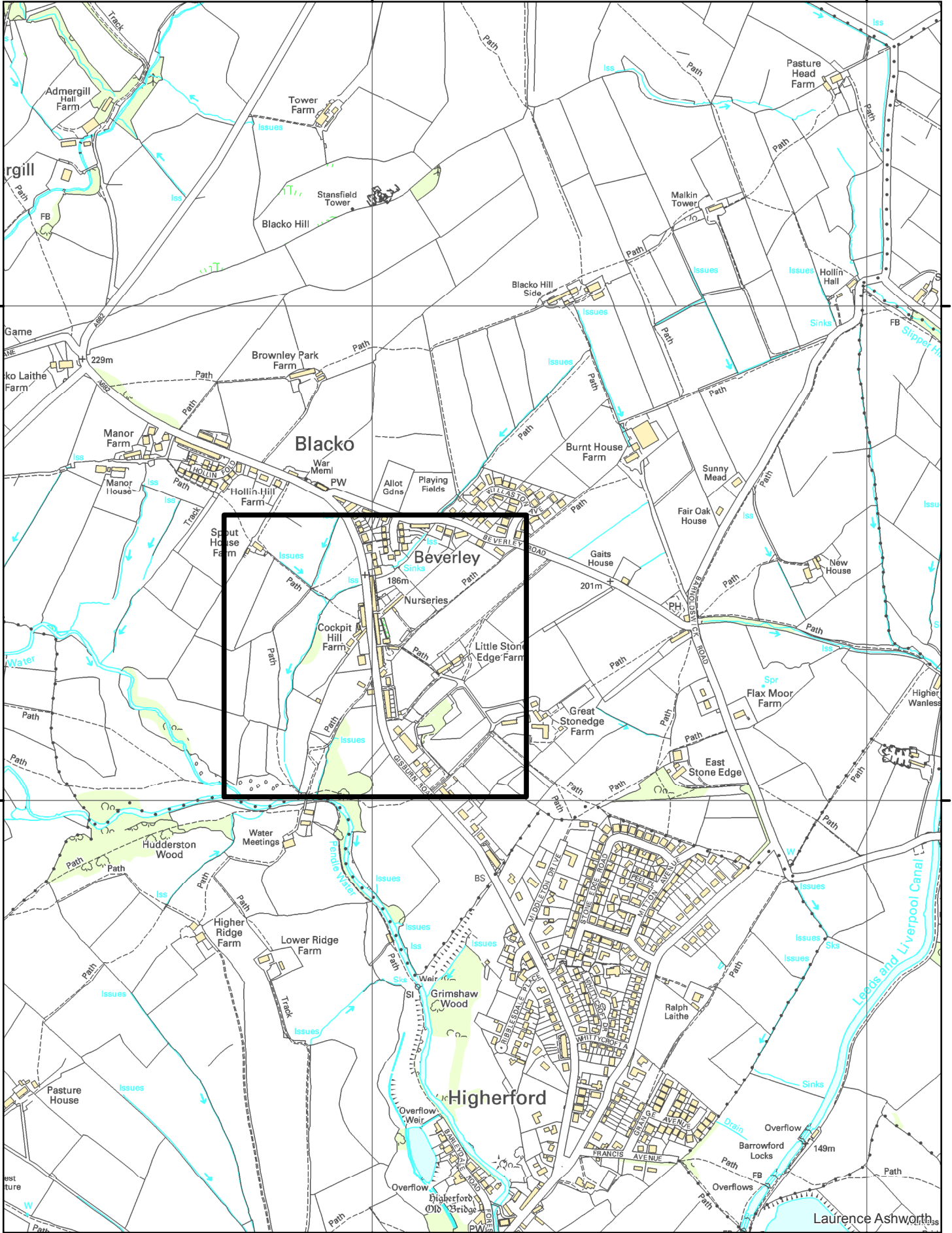
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Steve Browne
Interim Executive Director
for the Environment

Wildlife and Countryside Act 1981
Addition of public footpath from Gisburn Road to Public Footpaths 38, 39 and 41 Blacko,
Pendle Borough LOCATION PLAN

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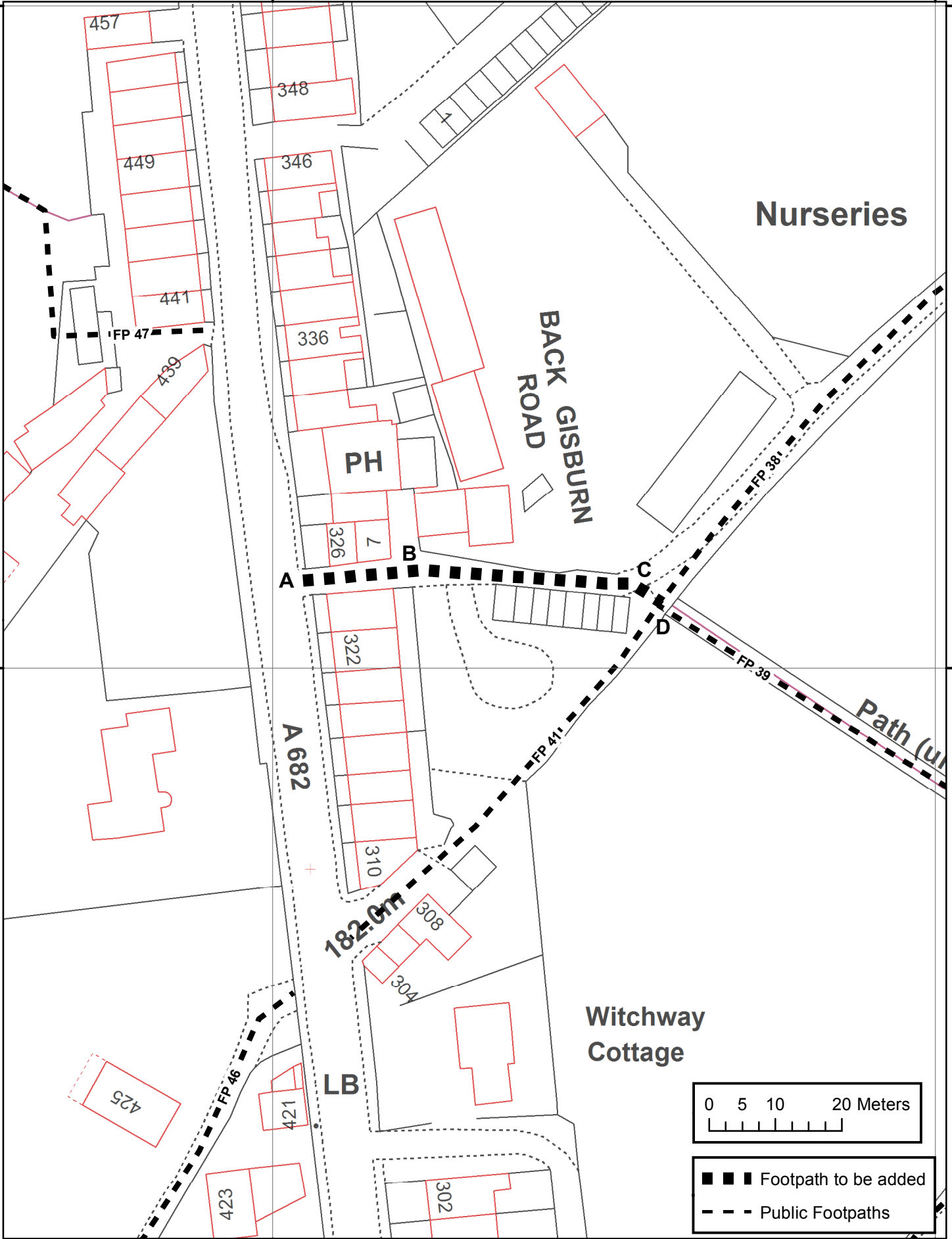
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Steve Browne
Interim Executive Director
for the Environment

Wildlife and Countryside Act 1981

Addition of public footpath from Gisburn Road to

Blacko Footpaths 38, 39 and 41, Pendle Borough Application 804-559

1:750



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Regulatory Committee

Meeting to be held on 9th September 2015

Electoral Division affected: Rossendale West

Decision On Appeal

Wildlife and Countryside Act 1981

Definitive Map Modification Order Applications

1. **Application to add a Public Footpath from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough**
File No. 804-551
2. **Application to add a Public Footpath in a circuitous route, starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough**
File No. 804-552
(Appendix 'A' refers)

Contact for further information:

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

Megan.Brindle@lancashire.gov.uk

Executive Summary

A decision on an Appeal made under Section 53 and Schedule 14 of The Wildlife and Countryside Act 1981 against the refusal to make a Definitive Map Modification Order has been received from the Secretary of State for Environment, Food and Rural Affairs.

Recommendation

1. That the Report be noted.
2. That, in the light of the Secretary of State for Environment, Food and Rural Affairs decision to uphold the Appeal lodged in respect of Claim Nos. 804-551 & 804-552, 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 by adding a public footpath
 - a) from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough as shown between points A-H-B-C-G on the attached plan
 - b) in a circuitous route, starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough as shown between points C-D-E-F-H-A on the attached plan
3. That should no objections be received the Order be confirmed, but if objections are received the County Council as Order Making Authority submit the Order to the Secretary of State for formal determination, but the County

Council shall notify the Secretary of State that it does not actively support the Order and to adopt a "neutral stance" as regards confirmation of the Order.

Background and Advice

At their meeting on the 17th December 2014, the Regulatory Committee considered a report for Claim Nos. 804-551 & 804-552 (copy attached as Appendix A) for the addition of two Public Footpaths:

1. From Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough as shown between points A-H-B-C-G on the attached committee plan.
2. In a circuitous route, starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough as shown between points C-D-E-F-H-A on the attached committee plan.

The Committee resolved that the claims were not accepted. Both applicants appealed against this refusal to the Secretary of State for Environment, Food and Rural Affairs, after receiving both appeals it was decided between the Secretary of State and the Order Making Authority that both the appeals would be dealt with together and by the same Inspector. The Secretary of State for Environment, Food and Rural Affairs has allowed the appeals and directed Lancashire County Council to make an Order.

The Inspector has considered the documentary evidence and noted that the map evidence is of little assistance, but the aerial photographs provide some evidence of worn lines in the ground on the general alignment of the Appeal routes. The Inspector states that although the aerial photographs cannot demonstrate how those worn lines came into existence, they suggest that it may have been possible to walk from Laund Lane to Public Footpath 109 Haslingden (claim no 804-551) since the 1940s and this it may have been possible to walk from Public Footpath 109 Haslingden to Laund Lane via the circuitous route (claim no 804-552) since the 1960s.

The Inspector has considered the summary of user evidence prepared by the Council set out in Committee Report (Appendix A). The Inspector notes that use of the 804-551 route commenced in the 1950s and it was used for recreational purposes as part of a longer walk in the immediate area or as a means of access to Cribden Hill and the frequency of use varied between 2 or 3 times per year to 4 times per week.

Use of the 804-552 route commenced in the late 1940s and has continued until the route was blocked by fencing in 2013 and was used for recreational walking, exercising dogs and to watch model aeroplanes being flown from the field and the frequency of use for this route varied from 5 times per year to 4 times per week.

It is noted by the Inspector that access to Laund Hey at Point A shown on the Committee plan was prevented in 2013 when the new fencing was erected by Rossendale Borough Council's grazing tenant but there is no evidence to the land being restricted before this date. The Inspector notes that the Council are aware of a 20 year period in which users used the claimed routes but that the Council

considered that use is likely to have been interrupted by the activities of the model aircraft flying club. The Inspector also notes that Rossendale Borough Council has had a number of tenancies and licenses on the land since 1972 and note their view that the licenses and tenancy agreements demonstrate that use of the land for recreational purposes was with the permission of the landowner and that use of the Appeal routes could not have been 'as of right'.

The appellants however submit that there is no fundamental incompatibility between use of the land for the flying of model aircraft and use of the linear routes over the same land for recreational walking, the appellants mentions that there is no 'interruption' of use and that pedestrians would wait until the model aeroplanes has taken off or landed and that even though the land has been subject to tenancies and agreements, neither have attempted to prevent pedestrian access.

The Inspector agrees with the appellants that the terms on which the landowners has granted licenses to third parties for the use of its land are unlikely to have been brought to the attention of those pedestrians who habitually used the claimed routes during the 20 year period until 2013. The Inspector mentions that an agreement between the landlord and the tenant is essentially a private matter and there would be no reason for the general public to be made aware of the provisions under which the license was granted and if the landowner's intention in granting the licenses was not to dedicate a public right of way, it is unlikely that the public would have been aware of that intention.

The Council's view that the flying of model aeroplanes is a dangerous activity and the use of the land by pedestrians was incompatible with the activities and that there is only evidence of 1 complaint provided by Rossendale Borough Council regarding a near miss when a model aeroplane crash landed is felt by the Inspector to have any evidential basis and the dual use of the land does not appear to be incompatible.

The Inspector mentions that the Council's view that the claimed routes would have been interrupted by the activities of the flying club appears to be little more than an assertion and is in direct contrast to and conflict with the evidence of those who have claim to have walked the routes for a period of 20 years until 2013. The Inspector refers to Section 31 of the 1980 Act regarding interruption of use and states that for any action to qualify there must be some interference with the right of passage and whether any action can be regarded as an interruption is also dependent upon the circumstances of that action as temporary obstructions of a minor natures such as the parking of vehicles or the storage of building materials have not been relevant interruptions.

It is noted by the Inspector that the terms of the licenses granted flying at particular times and days and that it is likely that outside of the authorised hours, members of the public would have been able to pass and re-pass unhindered along the claimed routes. If the use of the claimed routes has been restricted by the model aeroplanes then such restrictions would have been temporary for the duration of the authorised flying hours. The Inspector states that there is no evidence to them that the flying of model aircraft during the authorised hours prevented use of the claimed routes by the public and they do not consider that public use of the claimed routes was effectively interrupted by the flying of model aircrafts.

The Inspector has considered the evidence submitted with both applications and evidence submitted by the Council, Rossendale Borough Council and the appellants about interrupted use and has concluded that the appeals should be allowed and that the County Council are now directed to make an Order.

Consultations - N/A

Alternative options to be considered - N/A

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

Paper	Date	Contact/Tel
All documents on Claim File Ref: 804-551 & 804-552	Various	Megan Brindle 01772 535604

Reason for inclusion in Part II, if appropriate

N/A

Appendix A

Regulatory Committee

Meeting to be held on 17th December 2014

Electoral Division affected: Rossendale West

Wildlife and Countryside Act 1981 Definitive Map Modification Order Applications

1. **Application to add a Public Footpath from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough**
File No. 804-551
2. **Application to add a Public Footpath in a circuitous route, starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough**
File No. 804-552
(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 (5)35604, County Secretary and Solicitors Group,

Megan.Brindle@lancashire.gov.uk

Hannah Baron, 01772 (5)33478, Environment Directorate,

Hannah.Baron@lancashire.gov.uk

Executive Summary

1. An application for a public footpath from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-551.
2. An application for a public footpath as a circuitous route starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-552.

Recommendation

1. That the above application reference 804-551 be rejected
2. That the above application reference 804-552 be rejected

Background

Two separate applications duly made under Schedule 14 of the Wildlife and Countryside Act 1981 have been received from; (1) Mr John Barnes on behalf of the Rossendale Peak and Northern Footpaths Society and (2) Mr Frederick Hope, for an investigation into two footpaths crossing over the same area of land at Laund Hey, Haslingden, Rossendale Borough. These applications involved alleged footpaths which overlap and need to be taken together, the combined effect of which, if successful, is to add two footpaths to the Definitive Map and Statement:

- (1) 804-551 - a footpath (referred to as 'the direct route') extending from a point on Laund Lane (Haslingden BOAT 134) in a direct route to a junction with Haslingden Footpath 109, a distance of approximately 560 metres and shown between points A-H-B-C-G on the attached plan and
- (2) 804-552 - a footpath following a circuitous route from the same point on Laund Lane, generally following around the northern side of the same field to meet the above route at a point close to its junction with Haslingden Footpath 109. A distance of approximately 740 metres and shown between points C-D-E-F-H-A on the attached plan.

The land in connection with these applications is owned by Rossendale Borough Council.

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

An order will only be made if the evidence shows that:

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

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

The County Council's decision will be based on the interpretation of evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the Council's decision may be different from the status given in the original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The

decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

Consultations

Rossendale Borough Council

Rossendale Borough Council (RBC) has been consulted and is also the landowner in connection with both applications. RBC objects to both of the applications for the following reasons:

1. The land is owned by the Council registered at the Land Registry under Title Number LAN79804 and other than footpath 109, the public are not permitted to enter the land unless with consent.
2. The land is subject to use agreements with a local farmer and a model aeroplane flying club. Both parties do not allow entry onto the land without permission.
3. The nature of its permitted use is not conducive to public access. There has been an incident reported to the Council in 2012 whereby a member of the public on the field was narrowly missed by a low flying model plane. The public should not have unconditional access to land where dangerous activities are taking place.
4. Ground conditions are not suitable for public access.
5. The proposed route does not lead anywhere other than around a self-contained field.
6. Other public rights of way are available in the locality.

The Council mentions that it has owned the land since 30th March 1921 by virtue of a Conveyance dated 30th March 1921 made between (1) Thomas Heys & J T Munn and (2) the Mayor Aldermen & Burgesses of the Borough of Haslingden.

The Council has granted permission to third parties to use its land:
1) Rossendale & Hyndburn Model Aircraft Flying Club have had a licence to use the land since 1988.

2) A Farm Business Tenancy has also been granted to a local farmer in August 2013 in respect of the Council's land. This tenancy is subject to the Licence granted to the model aircraft flying club.

Parish Council

There is no Parish Council for the area affected.

Applicants/Landowners/Supporters/Objectors

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

Advice

Environment Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (Grid Square SD)	Description
A	7927 2365	Squeeze stile exiting from Laund Lane (Haslingden BOAT134) onto field
B	7953 2375	Gap in vertical flagstone boundary.
C	7979 2385	Junction of the circuitous application route with the direct one
D	7971 2396	Point just south-south-west of where Haslingden Footpath 109 crosses the field boundary
E	7949 2388	Gap in vertical flagstone boundary
F	7930 2382	Point just south-west of where the power lines pass over the northern field boundary wall
G	7980 2385	Junction with Haslingden Footpath 109
H	7928 2365	Junction of circuitous route with the direct route

Description of Route

A site inspection was carried out on 22nd February 2014 and 27th November 2014

- (1) The direct application (804-551) route commences at a point on Laund Lane, an entrance to a field by a squeeze stile approximately 0.4m wide in the stone wall (Point A). The stile incorporates a stone step and metal post in the middle of the gap in the stone wall, which has the effect of permitting walkers but preventing use by horses, bicycles, wheelchairs, buggies and preventing cattle passing through. There is trodden evidence on the ground around this gap which shows that the route at this point is heavily used. The route meets the junction of the direct route and the circuitous route at Point H, approximately 2m from the squeeze stile. The direct route then extends in a general east-north-easterly direction following a trodden route approximately 1m wide on the ground towards a line of old vertical flag stones, with a new fence alongside. The route then crosses the field boundary via a gap in the vertical flagstones (Point B). A 3m wide padlocked gate within a newly erected fence is now located about 1m in front of the original boundary. The route

then continues across a second field to meet the junction with the circuitous application route (Point C) and meets Haslingden Footpath 109 at a 3m wide gate at Point G. The total length of the application route is approximately 560 metres.

- (2) The second application route (804-552), the circuitous route, follows the same points as above as far as point C. Once at point C, before meeting the junction with Haslingden Footpath 109, this application route heads in a north-westerly direction running in parallel with and adjacent to Haslingden Footpath 109 to point D. There is no trodden evidence of a route on the ground at this point. The old field boundary has since gone, but there is a very distinct trodden line for Haslingden Footpath 109. At point D, the route then heads south-west along a well-trodden route approximately 1m wide on the ground and continues towards the old vertically flagged field boundary which currently has new fencing on the west side (Point E). The route passes through a gap in the flags and continues in the same direction to Point F, following the trodden line. The route then heads south to meet point H, the junction of the circuitous route with the direct route. Exit of the field is then via the squeeze stile at Point A. The total length of the application route is approximately 1310 metres.

There is an overall width of 2m, as indicated by a 1m trodden route on the ground giving half a metre either side, except for where the route is restricted for example at the stile at point A.

There are no deterrent signs located along the application routes to suggest that the land is private property or that anybody found crossing the land would be trespassing. There is a squeeze stile located at point A on entrance to the field and gaps in the vertical flags at points B and E, but there were previously no other gates, stiles, fences or walls across the route until September 2013 when users state that a padlocked gate and fencing was erected preventing access close to points B and E. The landowner has allowed access through the fence close to the wall, but this takes walkers off the application route.

The land which these applications cross, Laund Hey, has a very diverse history. Research indicates that the land has been in use for hundreds of years as a recreational site, dating as far back as the 1860s when the land was used for bowling practise and cricket for the local people of Haslingden. Information from the applicant suggests that 'Laund Hey was left to Haslingden Borough Council for the use and recreation of the people of Haslingden, this land was left in a will'.

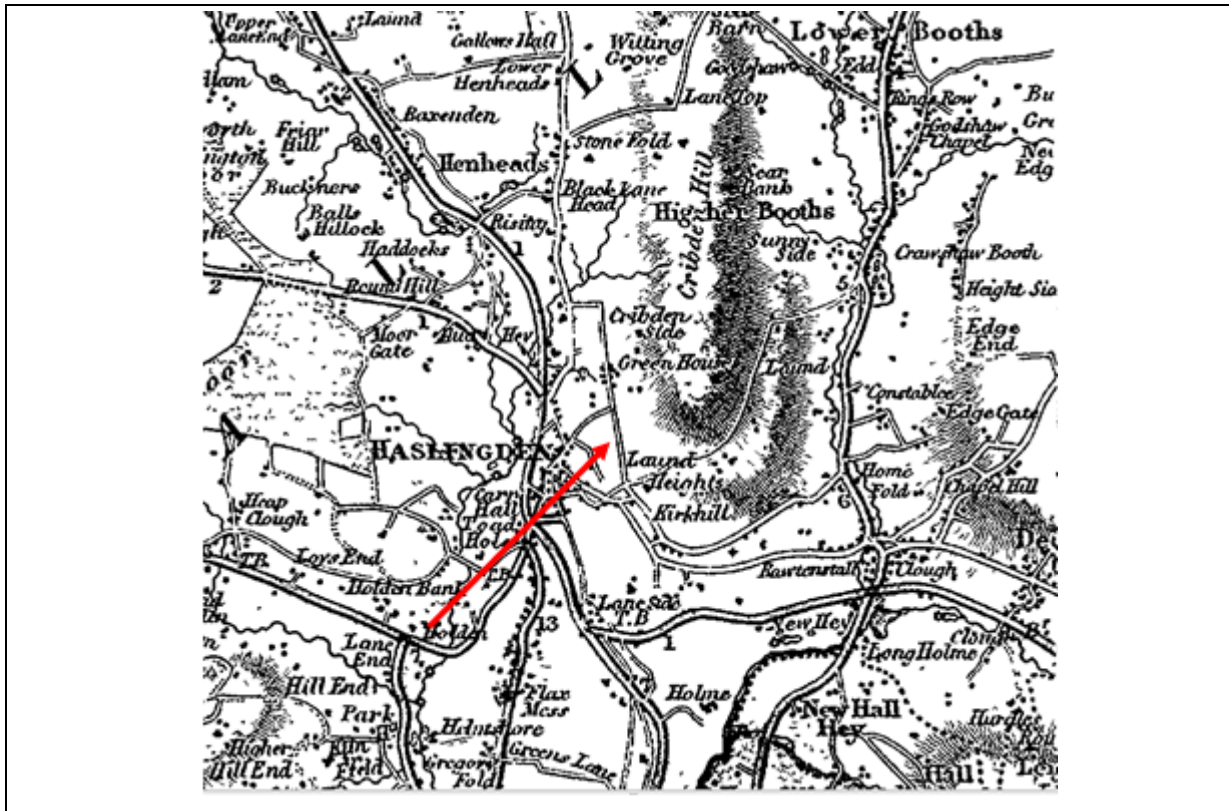
Further research found that the land was used to hold horse racing until it was enclosed for cultivation. This is a clear indication that the general public (or at least the local people of Haslingden) would have gained access to this piece of land for various different reasons, and could have used either of the application routes.

It is also noted that the field which the application routes cross closest to Laund Lane is currently rented out and has been in use by the Model Aeroplane Flying Group since 1988.

If an Order is made and confirmed, this particular activity on the land could pose a health and safety risk to pedestrians, as low flying aircraft could pose a potential hazard to walkers. The tenant farmer has also erected new fencing along the application routes at the boundary of points B and E. Although he has blocked the application routes off, he has left space at the boundary wall to allow walkers to pass through; this could indicate his knowledge of a public footpath passing through the land.

Map and Documentary Evidence

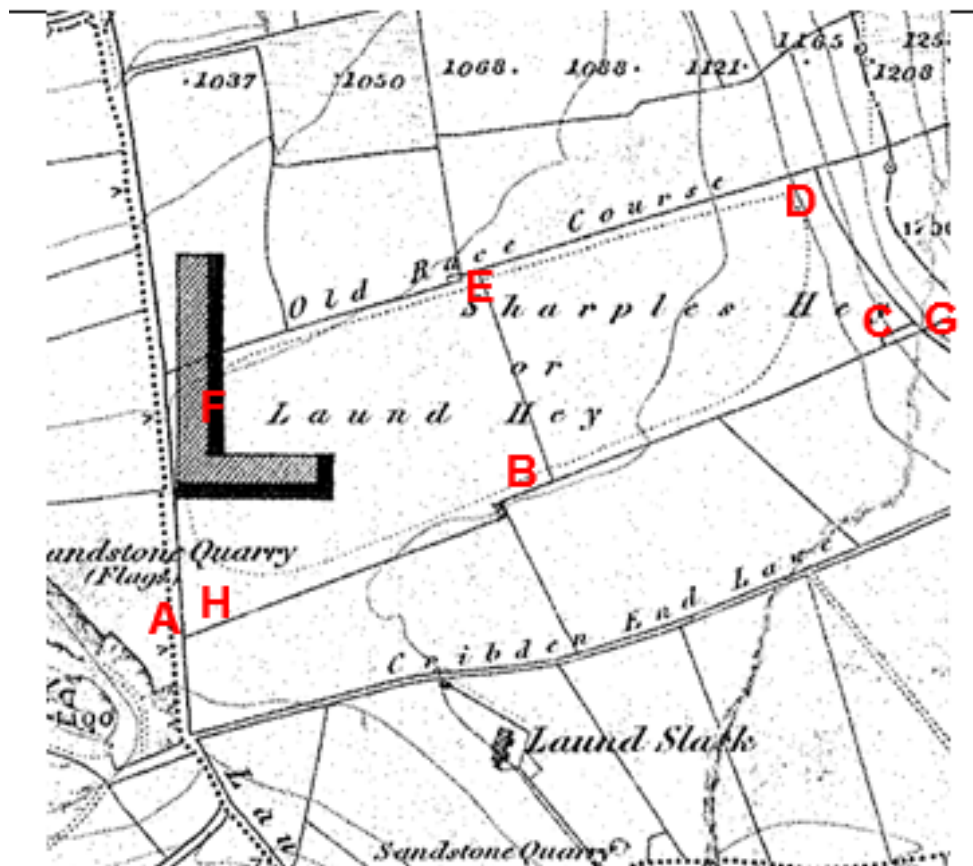
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The application routes are not shown.
Investigating Officer's Comments		The routes did not exist as major routes at that time. They may have existed as minor routes but due to the limitation of the scale of the map, public footpaths were unlikely to have been shown. Therefore no inference can be drawn.
Greenwood's Map of Lancashire	1818	Small scale commercial map.
Observations		The routes are not shown.
Investigating Officer's Comments		The routes did not exist as major routes at that time. They may have existed as minor routes but due to the limitations of scale, a footpath may not have been drawn.
Hennet's Map of Lancashire	1830	Small scale commercial map.



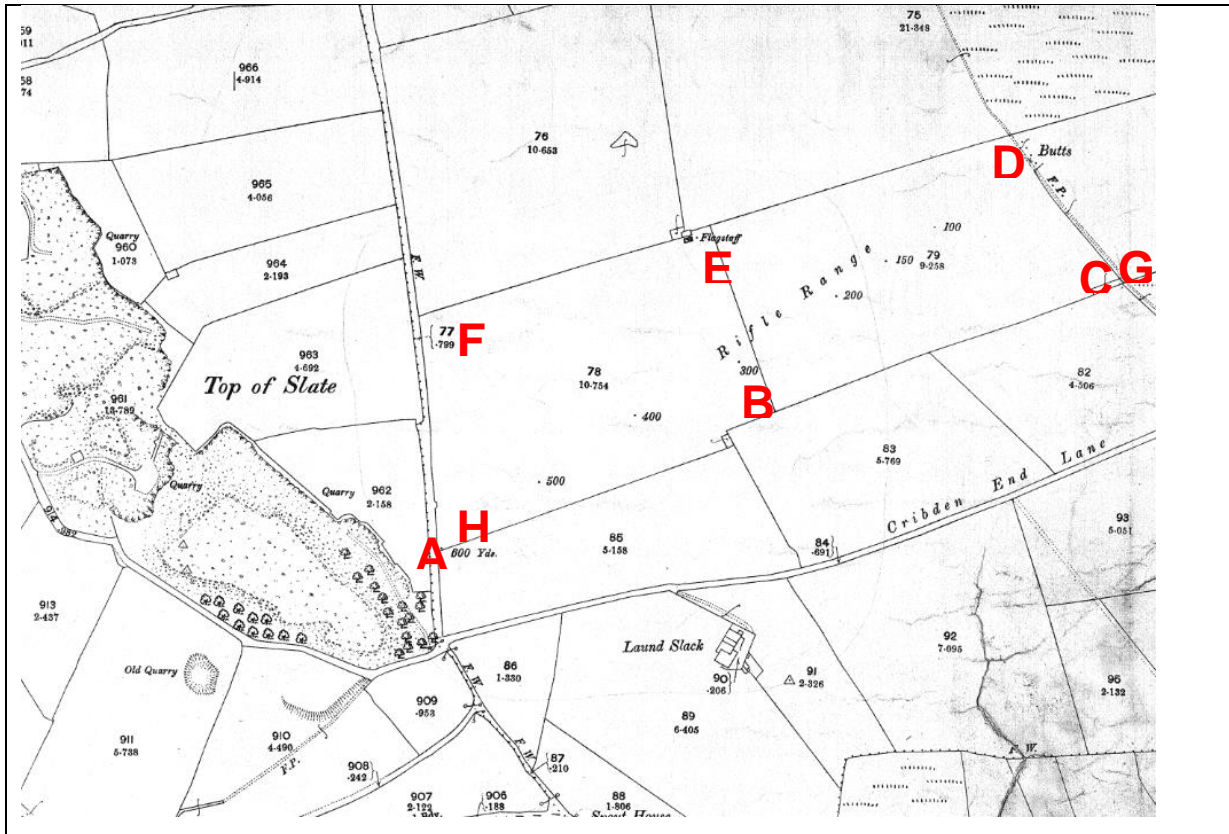
Observations		Laund Lane has been recorded on Hennet's map, which is currently recorded as a Byway Open to all Traffic. Neither of the application routes are recorded on this map, but due to the nature and scale of this map, this is not uncommon.
Investigating Officer's Comments		The map is of such a scale that public footpaths have not been recorded. No inference can be drawn as to whether they existed at this time.
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		There are no Canals or Railways in close proximity to the application routes.
Investigating Officer's Comments		Therefore 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		No Tithe Map or Apportionment available.
Investigating Officer's Comments		No inference can be made as to whether either of the application footpaths existed at this time.
Inclosure Act Award and Maps	1835	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Act Award or Map available for the area of Haslingden.
Investigating Officer's Comments		No inference can be made.
6 Inch Ordnance Survey (OS) Map	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1849. ¹ (Sheet no.71)

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.



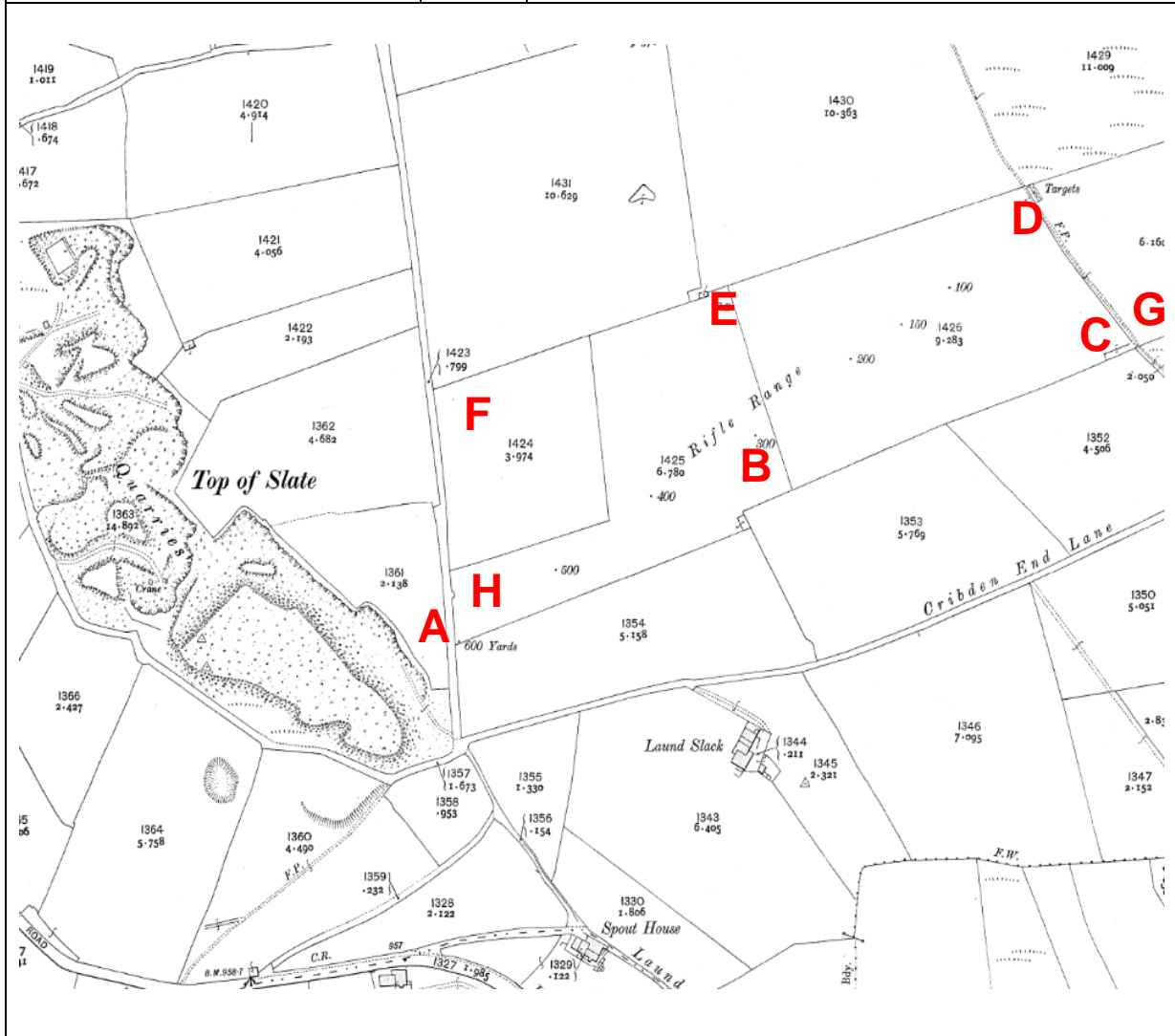
Observations		<p>A circular dotted line is shown circulating Laund Hey, similar to but not the same as where the application routes run.</p> <p>The area of land is labelled "Old Race Course" and "Sharples Hey or Laund Hey".</p>
Investigating Officer's Comments		<p>The area of land has been recorded as being an 'Old Race Course' this indicates that the land is no longer in use as this, but does still show the area of where the racecourse was in relation to the land. The line of the racecourse, although similar to the line of the application routes, does not give any evidence for the application routes.</p>
25 Inch OS Map	1893	<p>The earliest OS map at a scale of 25 inch to the mile was published in 1893. (sheet no. 71/12)</p>



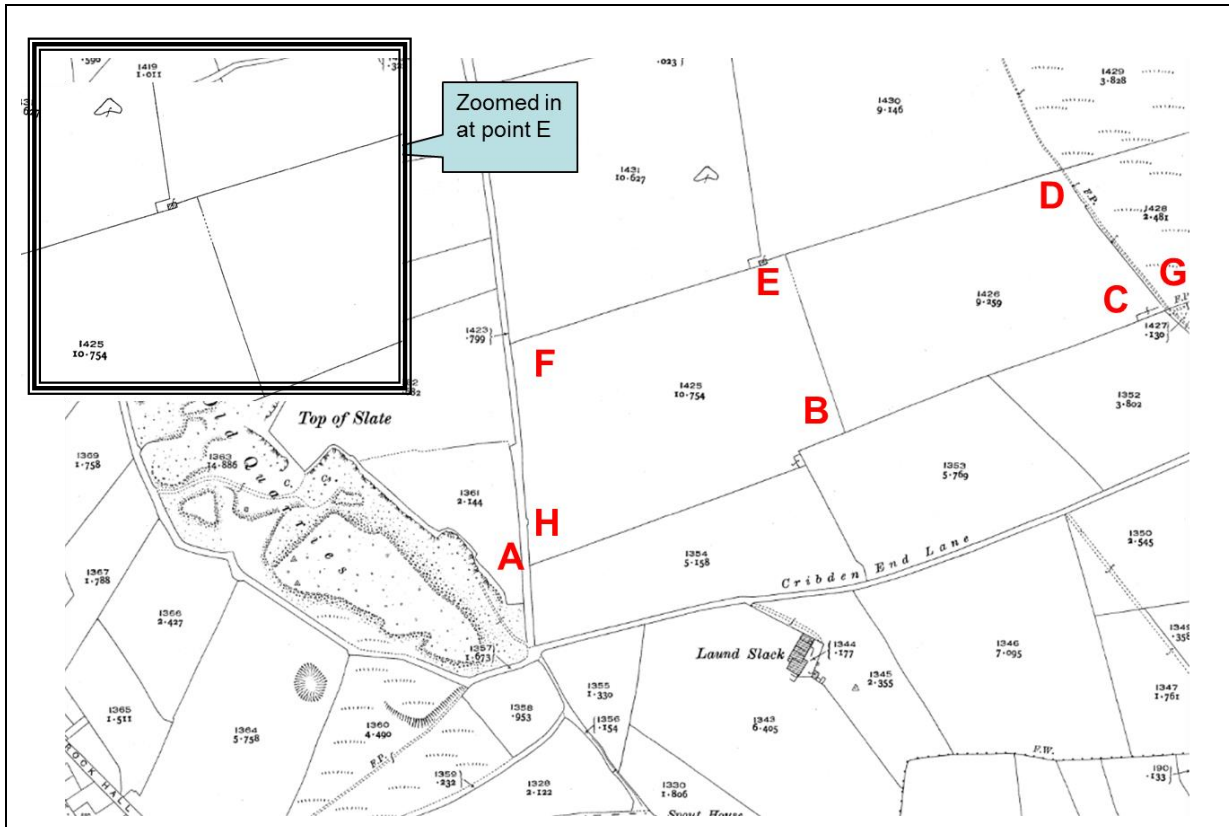
<p>Observations</p>	<p>By 1893 the land has changed use and is now labelled as "Rifle Range". This indicates that the area of land is still in use, even though neither of the application routes are shown on the map. Other public footpaths in the area have been recorded, particularly Haslingden Footpath 109 (running parallel to C-D) and BOAT 134 (running parallel to A-F, recorded as a footpath at this time).</p>
<p>Investigating Officer's Comments</p>	<p>The application route is not shown on the map, therefore it is presumed that the application routes did not exist at the time. Public footpaths on that land may have been incompatible with use as a rifle range.</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>The Finance Act Map has been inspected and does not record the application footpaths.</p> <p>The Finance Act Valuation Book records the plot of land 'Laund Hey', but does not note any public rights of way crossing the land for purposes of reducing tax. However this does not give conclusive evidence that a route does not exist.</p>
<p>Investigating Officer's Comments</p>		<p>No inference can be made from the Finance Act 1910 Valuation book or map.</p>

25 Inch OS Map	1911	Further edition of 25 inch map, re-surveyed 1890-2, revised in 1909 and published 1911
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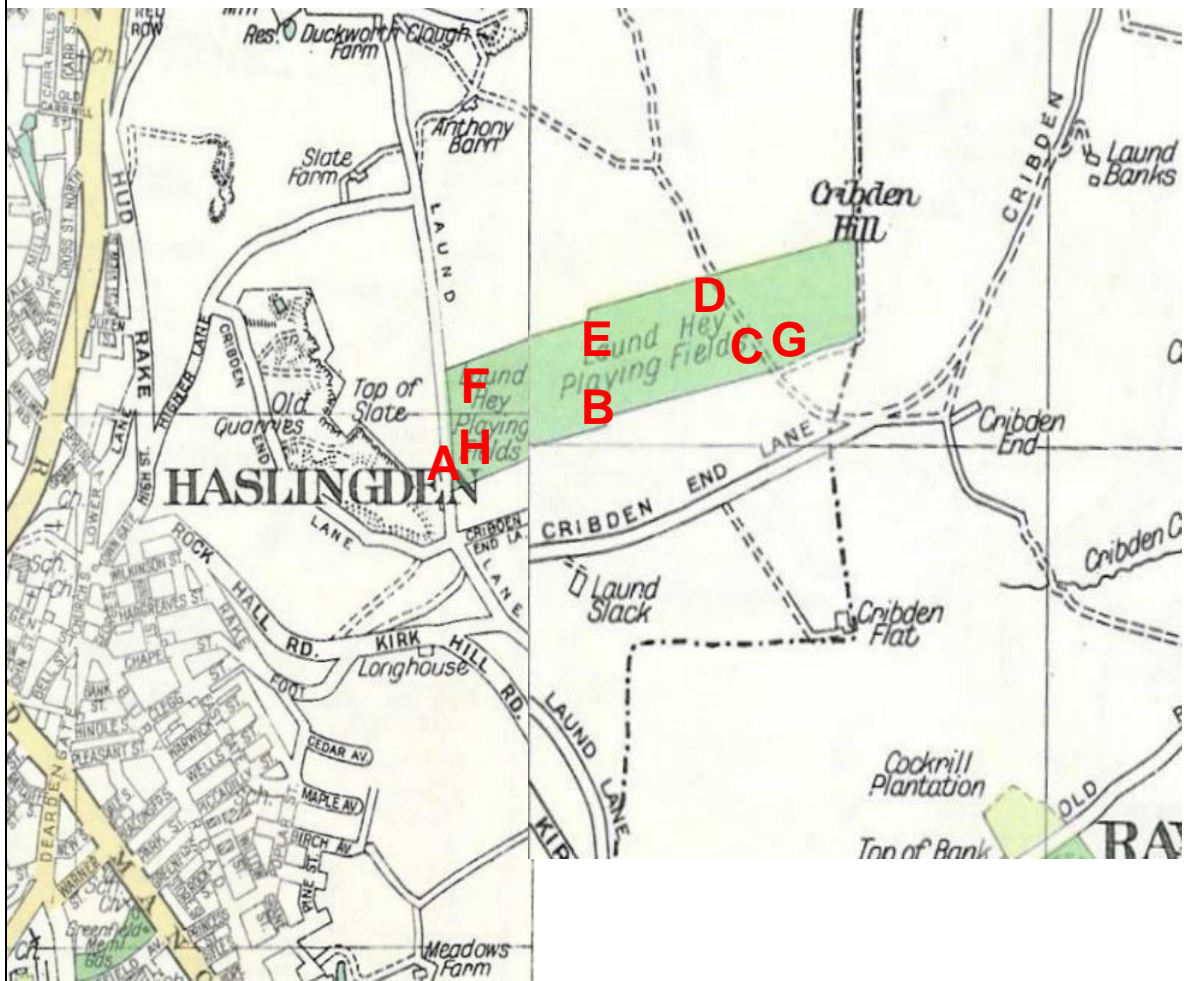


Observations		There is no evidence shown on the map for either of the application routes. The land remains labelled as a Rifle Range.
Investigating Officer's Comments		The map does not show either of the application routes. The land is recorded as being used as a rifle range which suggests that use of the routes would at times not have been possible.
1:2500 OS Map	1930	Further edition of 25 inch map resurveyed 1890-2, revised in 1928 and re-leveled and published in 1930.



Observations		Neither of the application routes is shown on the 1930 map. However at point E there is a change in the boundary. The zoomed image shows how the boundary changes from a solid line (indicating a field boundary) to a faint dotted line. Dotted lines indicate a change of surface, and the lack of solid line could indicate that there was a way through for walkers at this point. The land is no longer labelled as "Rifle Range", giving no indication to the use of the land at this time.
Investigating Officer's Comments		A single dotted line indicates a change of the surface; therefore it is presumed that there was not a solid field boundary located at this point. This gap in the boundary could have provided access through Point E but provides no positive evidence of a footpath.
Map Directory of South Lancashire	1934	Map Directory of South Lancashire

(Merged image)



<p>Observations</p>		<p>The area over which the two application routes run is recorded on the Map Directory of South Lancashire as "Laund Hey Playing Fields". There is a path or track shown crossing the land but the application routes are not shown.</p>
<p>Investigating Officers' Comments</p>		<p>The naming of the land is important as it gives a clear indication that local people would have been using the land for recreational purposes. Use of the application routes as footpaths would potentially not be apparent to the landowner who may have presumed it to be use of the playing fields in the permitted manner. The fact that another route is shown crossing the land but the application routes were not shown implies that the latter did not exist at the time.</p>

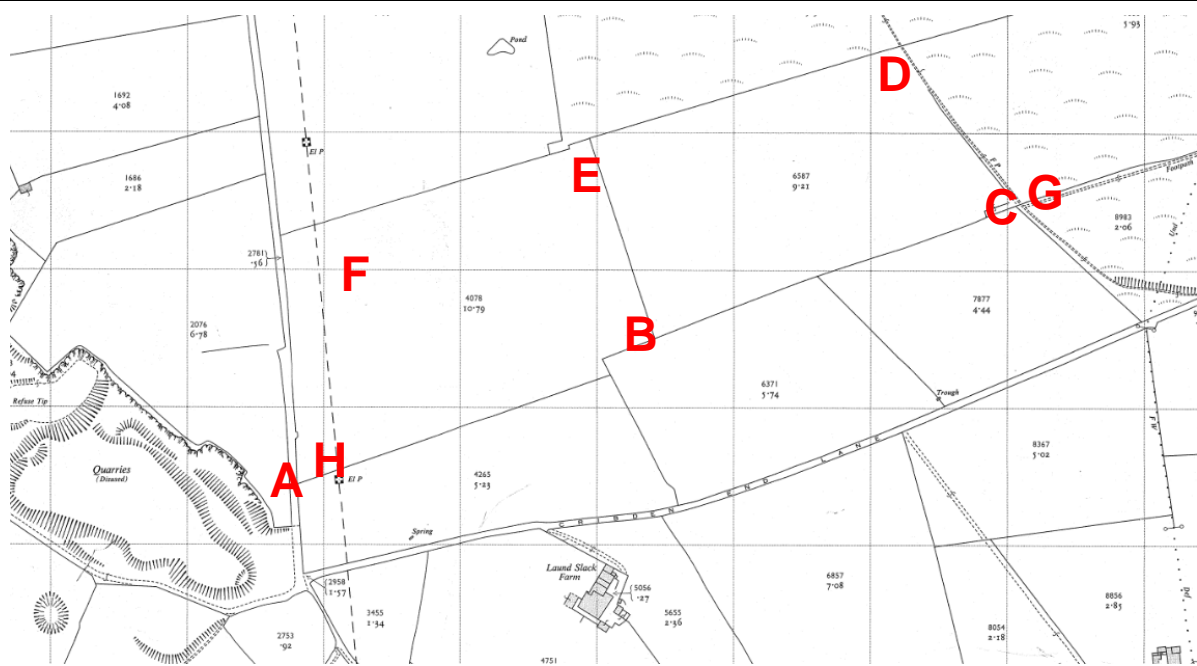
Aerial Photograph ²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
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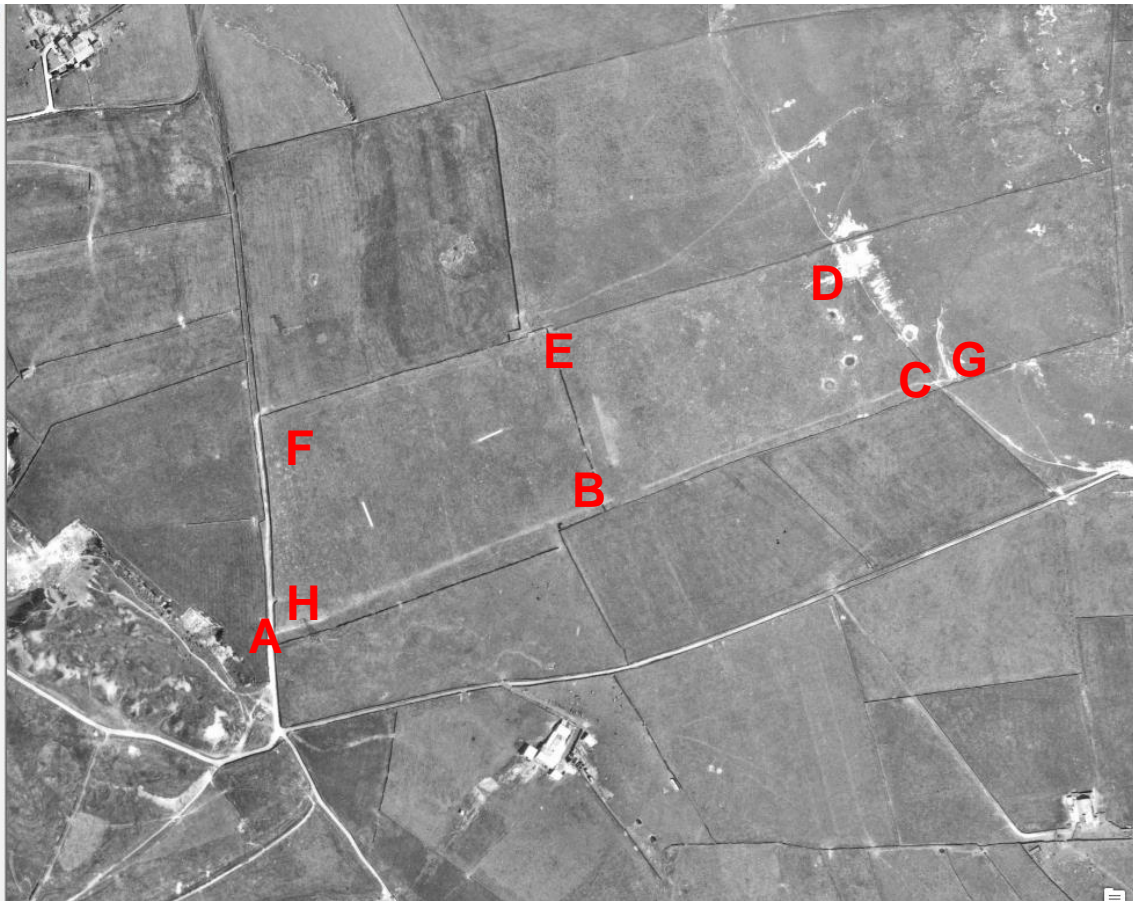
Observations	<p>The aerial photograph is of generally good quality for the time. There is a clear distinction of the used road network and also of that used as a way on foot over land.</p> <p>There is a clearly defined trodden route between points A-H-B-C-G, the direct application route.</p> <p>The circuitous application route between points C-D-E-F-H is not visible at this time.</p>
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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.

Investigating Officer's Comments		The application route along points A-H-B-C-G appears to have existed on the ground in 1940. The circuitous application route probably did not exist in 1940 along points C-D-E-F-H.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
Observations		The application routes are not shown on the map.
Investigating Officer's Comments		The routes did not exist at the time of when the map was surveyed.
1:2500 OS Map	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published in 1963 as national grid series.



Observations		The application routes are not shown on the 1963 map. Similarly to previous maps, the use of the land has no longer been recorded. Haslingden Footpath 109 is recorded in close proximity to the application routes.
Investigating Officer's Comments		It can be inferred 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.

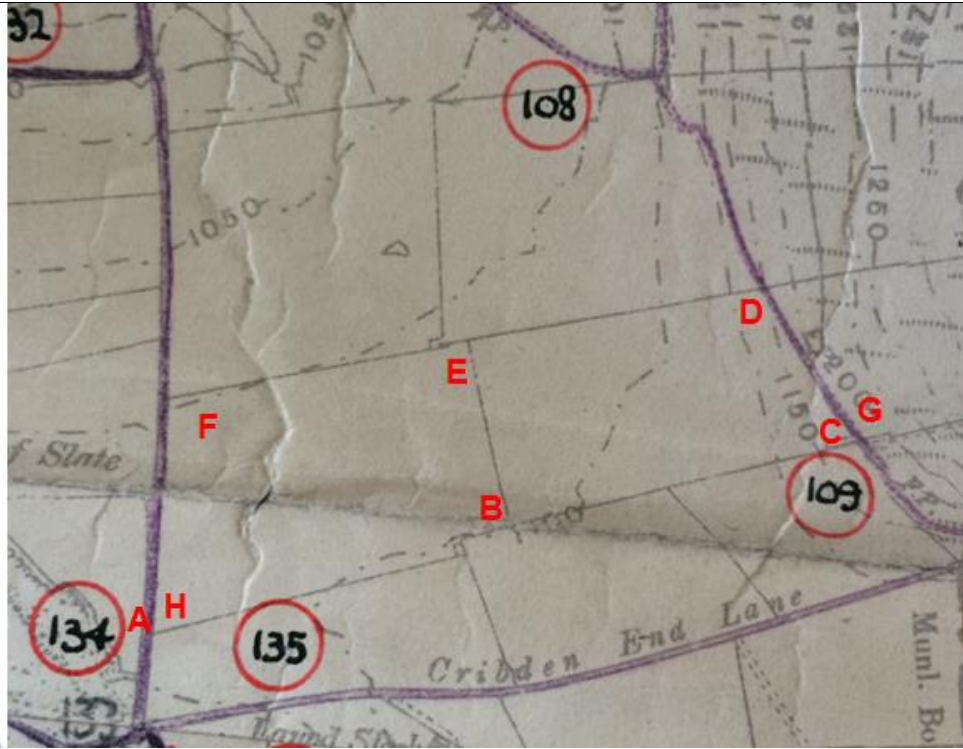


<p>Observations</p>		<p>The direct application route is visible on the 1960 aerial photograph between points A-H-B-C-G.</p> <p>The application route is faintly shown in some parts on the 1960 aerial photograph between points C-D-E-F-H.</p>
<p>Investigating Officer's Comments</p>		<p>The application route appears to have existed on the ground in the 1960s along points A-H-B-C-G.</p> <p>The application route does not appear to have existed significantly in the 1960s along points C-D-E-F-H.</p>
<p>Aerial Photograph</p>	<p>1989</p>	<p>Aerial photograph available to view at the County Records Office.</p>




<p>Observations</p>	<p>The direct application route is visible around point B.</p> <p>The application route is visible between points E-F towards H</p> <p>Apparent use of part of the land for motorbike scrambles makes it difficult to determine if there are any trodden lines from walkers between points B-C-G and C-D-E.</p>
<p>Investigating Officer's Comments</p>	<p>Some use is evident on the ground for part of the route near point B and E-F towards A. However, use of part of the land for motorbike scrambles would be inconsistent with dedication of public footpaths and is likely to have been an actual interruption to use and challenge to any use of the application routes as of right. A scramble of the size evidenced by the tracks on the ground is most unlikely to have taken place without the acquiescence of the landowner.</p>

Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>Haslingden was a municipal borough and therefore does not have a parish survey map.</p>
Draft Map		<p>The parish survey map and cards for the rural districts were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>As Haslingden was a municipal borough they prepared the Draft Map directly.</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.
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 record either of the application footpaths.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		Neither of the application routes are recorded on the Definitive Map and Statement.

<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th 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 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
<p>Observations</p>		<p>Neither of the application routes are recorded on the Definitive Map First Review.</p>
<p>Investigating Officer's Comments</p>		<p>Neither of the application routes are recorded during the process to prepare and review the Definitive Map and Statement and there were no objections to the route not being recorded.</p>
<p>Aerial Photograph</p>	<p>2000</p>	<p>Colour aerial photograph taken in 2000.</p>
		

Observations		At first glance, there does not appear to be anything shown on the 2000 aerial photograph. However, on close inspection a faint trodden line is shown, between points B-C-G and D-E-F-H.
Investigating Officer's Comments		A trodden line is shown in 2000, supporting evidence of use of parts of both application routes.
Aerial Photograph	2010	Colour aerial photograph taken in 2010.



Observations		Parts of the direct and of the circuitous route are visible on the 2010 aerial photograph. There is a clear visible line on the ground showing between points A-H, B-C-G and D-E-F-H and part of the application route between H-B.
Investigating Officer's Comments		The majority of both of the application routes existed in 2010 as shown by the clear trodden line on the ground.

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

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

The affected land is not registered common land.

Landownership

Rossendale Borough Council is the landowner for both of the applications.

Summary

There is no documentary evidence showing that public rights might exist along the application routes. Neither of the application routes is recorded on any of the early commercial maps, Ordnance Survey Maps or the Definitive Map records.

Some of the aerial photographs from 1940 through to present day support the existence of parts of the routes on the ground. From the restrictive squeeze stile at Point A it can be inferred that use was most probably only on foot.

There are solid field boundary lines which cross the application routes at points A, B and E, and on older maps at point G. If gates/stiles were situated along these boundaries they would not have necessarily prevented access along the route and the existence of such structures on a route crossing farmland is not uncommon.

The Model Aeroplane Flying Group has rented part of the land out since 1988 and motorcycle scrambling is evident from the aerial photograph in 1989. This could be considered to bring into question the claimed public rights, it could be seen as a non intention to dedicate by the landowner (RBC) and is likely to have actually interrupted use when those activities were happening on the land.

County Secretary and Solicitor's Observations

(1) Comments to 804-551

The applicant has provided the following details in relation to the application:

1. Long established path running west to east across Laund Hey approx. 1 metre wide and running 10 metres north of the field boundary wall, which is parallel to Cribden End Lane.
2. The claimed path begins at a well-constructed squeeze-stile, wide enough to admit a pedestrian.
3. The claimed path is clearly visible on an aerial photograph, taken in the 1960s and displayed on LCC's "Mario" site.
4. The claimed path did pass through a 5-metre wide gap in the original vertical flagstone field boundary. There was no fence and gate across the route before Sept 2013.
5. The claimed path proceeds eastwards to intersect with an undisputed path running SE to NW around the western flanks of Cribden Hill. It also gives access to the top of Cribden Hill along the north side of a wall climbing the hillside. I believe this to be open access land and badge signs on walls and fences at 798238, 799239 and 799240 seem to confirm this.
6. Laund Hey is an area of flat land, albeit at a high elevation, which has been recognised as an area for popular recreation, both organised and informal, over centuries.
7. A noticeboard, erected by the borough council and its partners nearby, informs visitors of its use as a racecourse in the 18th century. There is a documented history of cricket, football, rugby, rifle-shooting, motorcycle-scrambling and model aircraft-flying at the site. A booklet produced by

Rossendale Groundwork in the late 1980s called "Making Tracks" in the "Changing Faces of Rossendale" series (ISBN 0947738169) lists some of these and, ironically, is co-produced by the Borough Council.

8. In recent times it has been especially popular with dog walkers as improved road access and parking at the adjoining Halo site have made arriving by car, to walk in open countryside with fine views, easier.

- A photograph has been provided which shows a squeeze stile at Laund Lane
- Another photograph shows the path along Laund Hey beyond the squeeze stile
- A screenshot of LCC Mario site shows the claimed path across Laund Hey, it is not shown on the Definitive Map but is clearly visible on the 1960s aerial photograph
- A further photograph show the gateway across the application route with the gate that was placed in September 2013
- 2 photographs of Halo Slate – Lancashire and Rossendale Councils boast of Laund Heys historical recreational use

Guided Walks, organised by Groundwork and Rossendale Borough Council, have used Laund Hey Haslingden (on behalf of public access as of right). These walks are after 2000. They have used it more since 'Watery Lane' was much improved in 2003. Prior to, the conditions underfoot has been very bad.

4 th September 2011	'Halo Again'	22 attended
1 st November 2009	'Steps of Cribden'	19
7 th April 2008	'Halo and Cribden Side'	10
7 th August 2005	'Halo, Halo, Halo'	29
14 th November 2004	'Tracks of Time'	27
6 th July 2003	'Watery Lane'	29
7 th July 2002	'Little Ireland'	32

The applicant has provided 10 user evidence forms to support the application. 1 form has been excluded as they haven't used the route. The evidence is as follows:

All 9 users have known the route for over 20 years, 7 users have known the route long than this: 1 user claims they have known the route for 30 years, another user states 33-34 years, 1 user states 38 years, 1 has known the route for 45 years, 2 have known the route for 50 years and 1 has known it for 60.

8 users have used the way on foot and the years in which the route was used varies from:

1997-2013, the last 20 years, 1980 – present day, past 30 years, the last 38 years, 1968-2009, late 1960s – present (2), 1950s-2010

Only 5 user stated where they were going from and to:

1. To link to the footpath around Cribdens flanks from Cribden End Lane to Duckworth Clough and to go to the crest of Cribden Hill
2. generally walking the area
3. was going to the model flying club
4. from Oswaldtwistle to Rossendale
5. Rawtenstall, Stonefold or access to Cribden Hill

The users use the route for walking, pleasure, leisure, dog walking, motor cycle sport and fitness.

How often the route is used varies:

100 times since 2010, 200 times per year, 3 times per week, most weekends, most days, 700-800 times per year, 2 or 3 times a year.

1 user has used the route on motor cycle and for model flying, no other user has used the route by ways of other means.

5 users agree the way has always run over the same route, 1 user states it has until the route was blocked by a barbed wire fence in September 2013, another user states that it has always been the same path with no variations until recently when the field has been fenced and they have to go through the muddy stile, 1 user states it is exactly the same route several metres from and running along the boundary wall and 1 user is not sure.

1 user states there were no stiles / gates or fences before sept 2013, the vertical flagstone boundary did not obstruct the claimed path and a 5 metres wide 'gateway' with prominent pillars gave the pathway alignment, another user claims that there were never any stiles / gates or fences until the past few months when the farmer had fenced off parts of the field. 2 users agree there is a stile on the west side, 1 user is not sure, 1 user states 'no' and another states 'yes' but did not provide any details.

1 user claims the gate that was erected in September 2013 is padlocked, another user states that the gate on the line of the original path is locked so they took a 'short diversion' through the stile, 1 user claims the gate was locked in later years, another user states the main gate (not stile) was locked by the model aeroplane club for their vehicular access are 2 users are not sure if any gates are locked.

None of the users have ever worked for a landowner or have been a tenant of any land over which the route passes.

1 user turned back when using the way only due to the state of cattle trod mud at the stile - not by any person.

None of the users have ever heard of anyone else having been stopped or turned back when using the way.

None of the user have not been told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not a public right of way on foot.

The users have also never seen any signs such as 'Private' on or near the way. All 9 users agree they have never asked permission to use the way.

(2) Comments to 804-552

Evidence provided by the applicant.

The applicant has provided a statement as part of his application. He explains that the path he has requested to be added to the Definitive Map has been used for decades mainly by dog walkers, but the whole of Laund Hey was always completely open to the public. People have used the route for picnics, kite flying, football, cricket, rugby and rambling for over 60 years that he can remember. He also states that Laund Hey was left to Haslingden Borough Council for the use and recreation of the people of Haslingden, the land was left in a will. This entire land has been used weekly for decades unopposed and unrestricted.

At a later date the applicant provided a further statement stating that Public Footpath 135 Cribden End Lane is very rarely used by members of the public, access to Public Footpath 109 has always been from Laund Hey, Footpath 135 is a narrow lane used by farm vehicles which is why the public refrain from using it.

The applicant has provided 19 user evidence forms in support of his application.

17 users have known the route for 20 or more years, some have known the route for 30, 40, 50, 60 and 70 years. 1 user has known the route for 12 years and another user did not provide any times scales.

All 19 users have used the route on foot.

All 19 users have used the route up until 2013 (when it was blocked), 1 user has been using the route since 1948, 4 users have used it since the 1950s, 1 user has used the route since 1963, 4 users have used the route since the 1970s, 7 since the 1980s, 1 since 1990 and 1 since 2001.

Most users used this route to get to and from Laund Hey, 1 user mentions using this route to get from Kings Highway to Cribden and another from home to Crawshawbooth. The main purposes for using this route are for dog walking, leisure walking, exercise and for watching the model aeroplane club.

The number of times the users use the route varies from every day, 200 times per year, 1-2 per week to just 5 times a year.

None of the users have used the route by any other means, however 17 users have seen people using the route on horseback. 3 users state they have seen others using the way either by walking, having a picnic or dog walking. 12 users state that they have seen others along the way by use of other means but did not provide any further details and 1 user has also seen mountain bikes being used, 3 users have never seen other users using the way other than walking.

The years in which users saw others using the route either on horseback, walking, dog walking, mountain biking or picnicking varied from the 1940s, 1950s, 1970s, 1980s, 1990s and 2000s, users saw others during this time 'regularly' or 'frequently'.

18 users all agree that the route has run over the same line, 1 user did not provide a response to this question.

15 users have never seen any stiles, gates or fences along the claimed route, 2 users state there is a stile but no further details have been provided, a further 2 users stated 'as attached', however nothing further was attached. 16 users state that no gates were locked, 1 user did not provide a response to this question and the same 2 users stated 'as attached'. 18 users have never been prevented access along the way, 1 user states not until august / September 2013.

18 users have never worked for a landowner over which the route crosses, 1 user did not provide a response to this question. All 19 users have never been a tenant of any land over which the route passes.

None of the 19 users have ever been stopped or have turned back when using the way, nor have they heard of anyone being stopped or having turned back until August / September 2013.

All users agree that they have never been told by any owner / tenant of the land or anyone in their employment that the route they are crossing is not a Public Right of Way on foot. None of the users have ever seen any signs along the way nor have they ever asked permission to use the way.

A letter has been received from Ingham & Yorke who hold the mineral rights for this location, they state it is not pertinent for them to make comment on the proposed footpath as this has no direct impact on their interest.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

User evidence forms

Against accepting the Claim

Map Evidence

Conclusion

Committee will be aware that in order for the way to become a public footpath there would need to have been a dedication by the owner at some point in the past and acceptance by the public. There is therefore a need to consider whether there is

evidence that the claimed footpath can be reasonably alleged to have already been dedicated in which case the test for making an order would be satisfied and to then consider whether on balance there is evidence that the claimed route has been dedicated and the higher test for confirmation can be satisfied.

As there is no express dedication, it is suggested Committee considers firstly whether, in all the circumstances there is evidence from which dedication can be inferred at Common Law and to then secondly consider whether there is sufficient evidence from which to deem dedication from use under S31 Highways Act 1980.

Looking firstly at whether dedication can be inferred at common law. The Executive Director for Environment has considered the historical map evidence, the evidence suggests the route claimed by the two applications cannot be seen on any of the early commercial maps or Ordnance Survey Maps and is suggestive the route was not likely to have been in existence. The only early aerial photographs showing the full length of the direct route (A-H-B-C-G) are the aerial photographs taken in 1940 and 1960, the circuitous route (C-D-E-F-H) is only faintly showing on the 1960 aerial photograph. Thereafter, the 1989 aerial photograph only shows use near point B and E-F as part of the land had been used for motorbike scrambling; motorcycle scrambling is inconsistent with dedication as a footpath. The aerial photograph of 2000 only shows use of parts of the routes, a fine trodden line is shown between points B-C-G and D-E-F-H. The 2010 aerial photograph then shows the majority of the route as a clear trodden line on the ground between points A-H-B-C-G and D-E-F-H. On balance, the map evidence is considered to be insufficient to reasonably allege the route was a historical public footpath.

The Model Aeroplane Flying Group had been granted a license to use the land by the landowner since 1988 and it is therefore reasonable to conclude on balance, the landowner did not intend to dedicate the routes as public footpaths, bearing in mind it would be dangerous for members of the public to have used the claimed routes at the same time as the flying activity was taking place. It is therefore suggested to committee that inferred dedication cannot on balance be satisfied.

Committee is therefore advised to consider whether deemed dedication under S.31 Highways Act 1980 can be satisfied. Committee will be aware that in order to satisfy the criteria of S.31 Highways Act 1980, 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.

It appears on balance that the route was called into question in September 2013, as this is when users suggest they were prevented from using the line of the claimed route due to locked gates and barbed fencing being erected across the route therefore, on balance it is reasonable to conclude the 20 year period under consideration would be from 1993-2013.

The Direct Route

Evidence of use has been provided in 9 user evidence forms in relation the direct route. All users claim to have used the route for 20 years or more, the longest period of knowledge and use of the route being 60 years (1 user). Claimed use is consistent with use as a public footpath. Frequency of use differs with some users claiming the route has been used between 700-800 times per year, 2-3 times per week or to 2 or 3 times a year.

On balance, it appears, the use has been sufficiently frequent. It is suggested that for use to be sufficient it would need to be more than of the appearance of being sporadic and sufficient to show use by the public as a whole. Use must also be as of right, it must be without force, without stealth and without permission. On balance there does not appear to have been use with force or stealth during the 20 year period under consideration. One user may have used the route with permission, as he suggests in the user form he used the route to go the model flying club. The applicant also states guided walks had been organised since 2000 by Rossendale Borough Council however such use would equate to use with permission, as Rossendale Borough Council owns the land.

The Circuitous Route

Evidence of use has been provided in 19 user evidence forms in relation the circuitous route. The user forms specify the route is 'from: Laund Hey' but do not specify where this route should end, it is appreciated that this is a circuitous route so users would end up back at the same point however; there does not appear to be any plan annexed to each claim form to delineate the circuitous route they are referring to in their claim form which begs the questions whether all users have used the same line of the route being claimed. Users claim to have used the claimed route between 20 to 70 years. The use seems to be sufficiently frequent ranging from daily use to 5 times a year, use is suggestive as not having been used without force, stealth and without permission.

Both Routes

The landowner's action, granting a licence to the Model Flying Club suggests the landowner did not intend to dedicate the route as a public footpath, as this a dangerous activity, is incompatible with use of the land for flying model aircrafts especially as the claimed route runs close by the club's storage containers and they would not have intended members of the public to use the route at the same time as this activity was taking place. It is suggested the land over which the claimed routes run had been open to public for recreation and therefore; it would not be reasonable for the landowner to have been expected to notice users were following a consistent route.

The aerial photographic evidence for the 20 year period under consideration is not supportive of the entire route having been used in 1989 which predates the 20 year period, the aerial photograph of 2000 only shows part of the route, as detailed above. The 2010 aerial photograph also fails to show the length C-D, it seems on

balance that the users may have in fact been using footpath number 109 as opposed to the separate line C-D, as claimed as there is no evidence to support its existence.

With regards to the route having been used without interruption, on balance it seems that use may have been interrupted whilst the model aeroplane flying club was using the land, as this activity would deter users, due to the danger of being hit by the model aeroplane and prevent them from using the route whilst this activity took place.

On balance, it is difficult to satisfy deemed dedication under S.31 and inferred dedication under common law and Committee are advised to reject the claim.

Risk Management

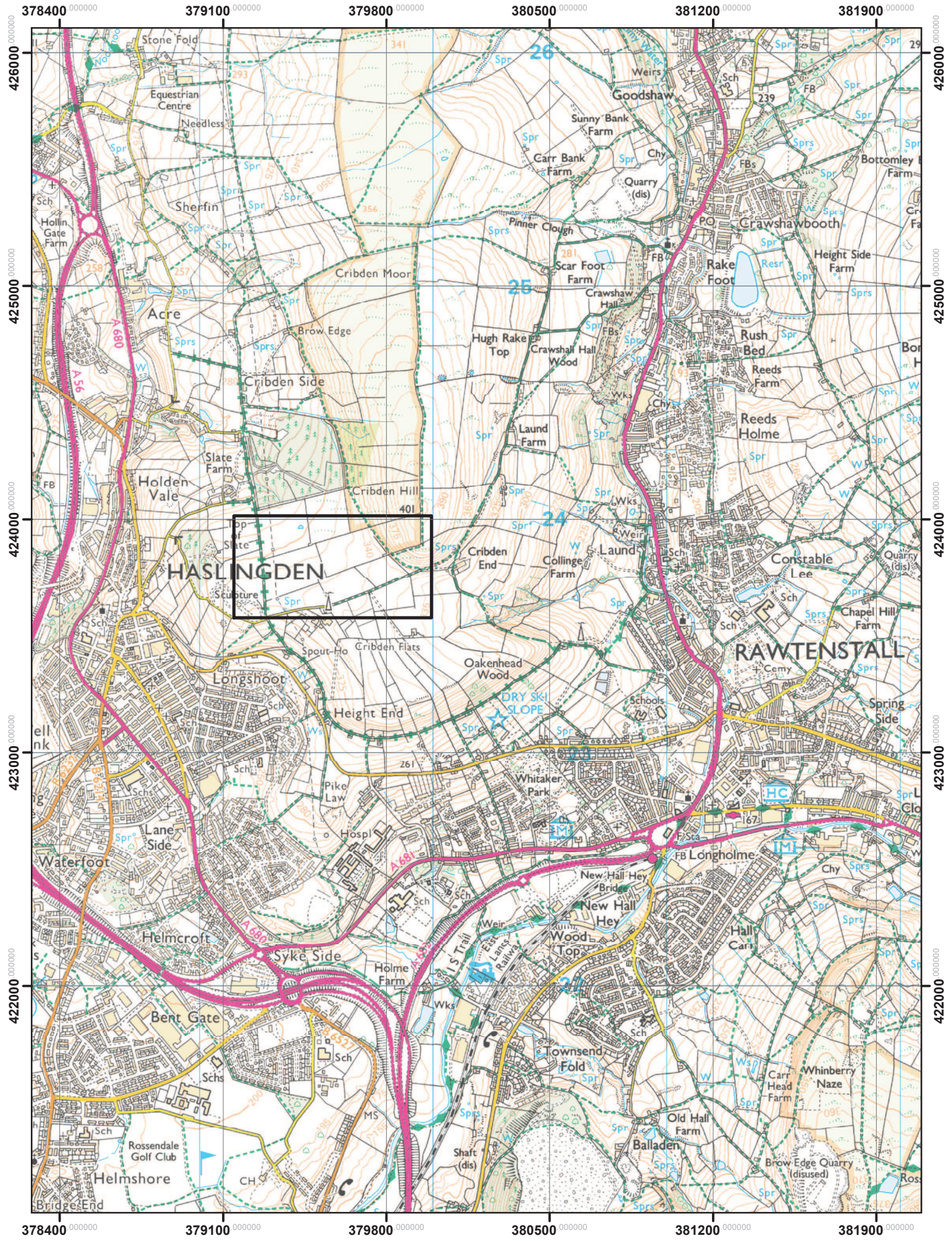
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda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

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

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804-551 & 804-552	Various	Megan Brindle, County Secretary and Solicitor's Group, 01772 535604

Reason for inclusion in Part II, if appropriate

N/A



Steve Browne
Executive Director
for Environment

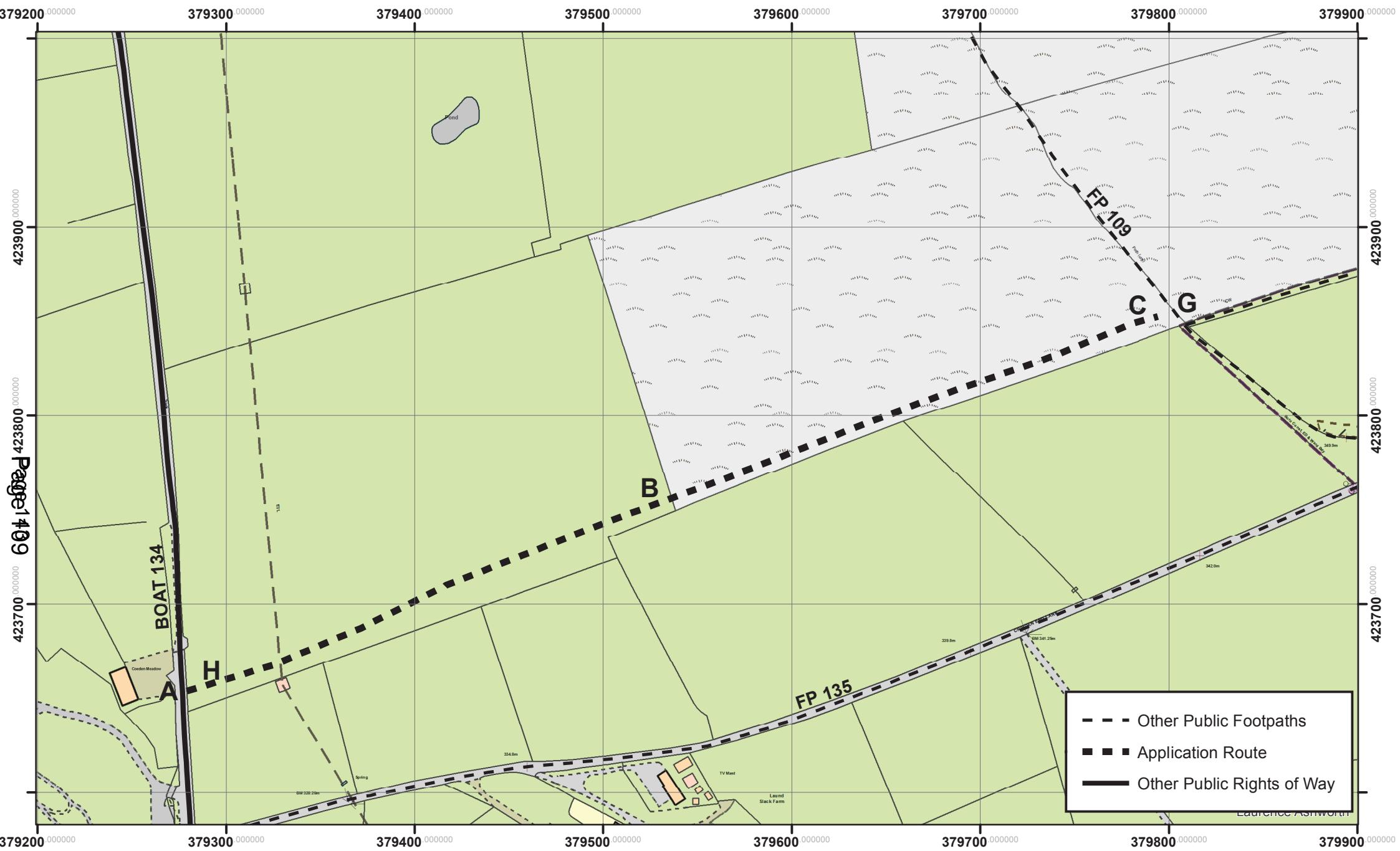
Location Plan

1:20,000



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Lancashire
County Council

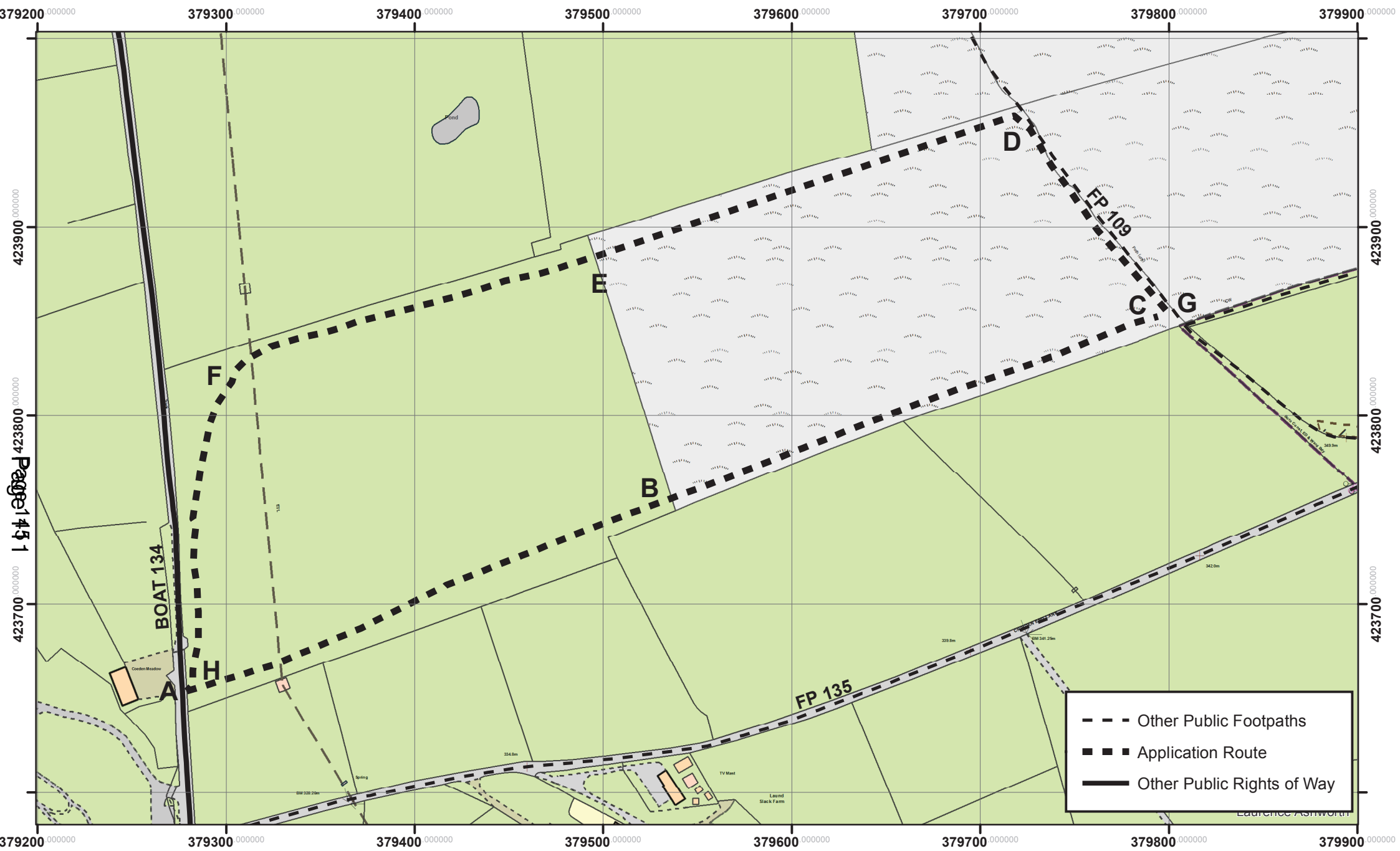
Steve Browne
Executive Director
for Environment

Claimed public footpath from Laund Lane to public footpath 109 Haslingden, Rossendale Borough
Application No. 804-551




1:2,500



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	Other Public Footpaths
	Application Route
	Other Public Rights of Way

Lancashire
County Council

Steve Browne
Executive Director
for Environment

Circuitous claimed public footpath starting and ending at a point on BOAT 134 Haslingden (Laund Lane)
Haslingden, Rossendale Borough - Application No. 804-552

1:2,500



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