

# Lancashire County Council

## Regulatory Committee

Wednesday, 21st October, 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.	<b>Apologies.</b>	
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2.	<b>Disclosure of Pecuniary and Non-Pecuniary Interests.</b>	
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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.	<b>Minutes of the meeting held on 9 September</b>	(Pages 1 - 6)
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4.	<b>Guidance.</b>	(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.	<b>Wildlife and Countryside Act 1981</b>	(Pages 31 - 60)
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	<b>Definitive Map Modification Order Investigation</b>	
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	1. <b>Addition of Public Footpath from Coal Pit Lane to Footpath 3 Trawden, Pendle Borough</b>	
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	2. <b>Addition of Public Footpath from a point on Footpath 202 Colne to a junction with Footpath 1Trawden, Pendle Borough</b>	
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	3. <b>Addition of Public Footpath from the a point on Footpath 203 Colne to a further point on Footpath 203 Colne, Pendle Borough</b>	
	<b>File Nos. 804-569, 804-570, 804-571</b>	

6. **Wildlife and Countryside Act 1981** (Pages 61 - 96)  
**Application to Record a Bridleway over Moorland Tracks near Clowbridge Reservoir by Addition of Bridleway and Upgrade from Footpath: Rawtenstall, Rossendale Borough and Dunnockshaw, Burnley Borough.**  
**Application No. 804/549**
7. (Pages 97 - 132)  
**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Investigation**  
**Addition of a Public Footpath from Cop Lane to Alcester Avenue through Penwortham Girls High School, Penwortham, South Ribble**  
**File No. 804-563**
8. **Wildlife and Countryside Act 1981** (Pages 133 - 156)  
**Definitive Map Modification Order Investigation**  
**Addition of Public Footpath from Five Ashes Lane to Scotforth Road (A6), Scotforth, Lancaster City**  
**File No. 804-524**
9. **Highways Act 1980 - Section 119A Rail Crossing** (Pages 157 - 166)  
**Diversion Order**  
**Wildlife and Countryside Act 1981 - Section 53A**  
**Proposed Diversion of Part of Public Footpath No. 39, Silverdale Parish, Lancaster City**
10. **Commons Act 2006** (Pages 167 - 178)  
**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 Todd Hall Farm, Haslingden, being entry 8 in the Rights Section of Register Unit CL82**
11. **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.

**12. Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on Wednesday 2<sup>nd</sup> December 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, 9th September, 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	G Gooch
L Beavers	N Penney
I Brown	R Shewan
A Clempson	D Westley
D Clifford	D Whipp
B Dawson	B Yates

County Councillors N Penney and D Westley replaced County Councillors C Henig and D Stansfield respectively.

**1. Apologies.**

No apologies were presented.

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

None were disclosed.

**3. Minutes of the meeting held on 1 July 2015**

**Resolved:** That the minutes of the meeting held on 1 July 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 a Public Footpath from Sawley Road to the Friends'  
Meeting House on the Parish Boundary, Grindleton Parish, Ribble  
Valley  
File No. 804-550**

A report was presented on an 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 804-550.

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 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 the 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.

**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**

A report was presented on an 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).

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 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 the 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.

**7. 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. 804-55**

A report was presented on 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 had been received from the Secretary of State for Environment, Food and Rural Affairs.

At their meeting on the 17<sup>th</sup> December 2014 the Regulatory Committee considered a report for Claim Nos 804-551 and 804-552 for the addition of two Public Footpaths.

1. From Laund Lane (Haslingden BOAT 134) to Haslingden 109, Rossendale Borough as shown between points A-H-B-C-G on 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 the 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 had allowed the appeals and directed Lancashire County Council to make the Order.

Details of the Decision on Appeal were presented both as part of the report and by the officers at the meeting.

Having examined all of the information presented, the Committee agreed that an Order should be made as directed and the Order confirmed if there were no objections to it. However, if there were objections the Authority were to take a neutral stance.

**Resolved:**

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 and 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.

**9. Date of Next Meeting**

It was noted that the next meeting of the Committee will be held at 10:30am on the Wednesday 21<sup>st</sup> October 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](mailto:jane.turner@lancashire.gov.uk)

### Executive Summary

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

### Recommendation

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

### Background and Advice

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

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

### Consultations

N/A

### Implications:

This item has the following implications, as indicated:

### Risk management

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

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

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

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

### **Definitions**

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

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

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

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

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

### **Duty of the Surveying Authority**

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

#### *Orders following “evidential events”*

The prescribed events include –

#### Sub Section (3)

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

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

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

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

#### *Orders following "legal events"*

Other events include

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

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

#### **Government Policy - DEFRA Circular 1/09**

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

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

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

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

These are that:

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

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

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

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

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

## **Definitive Maps**

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

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

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

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

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

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

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

### **Test to be applied when making an Order**

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

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

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

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

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

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

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

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

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



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

### **Recording a “new” route**

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

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

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

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

### **Dedication able to be inferred at Common law**

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

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

There is no need to know who a landowner was.

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

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

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

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

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

### **Dedication deemed to have taken place (Statutory test)**

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

### **Documentary evidence**

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

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

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

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

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

## **Recording vehicular rights**

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

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

- 1) main lawful public use of the route 2001-2006 was use for mechanically propelled vehicles
- 2) that the route was not on the Definitive Map but was recorded on the List of Streets.
- 3) that the route was especially created to be a highway for mechanically propelled vehicles
- 4) that the route was constructed under statutory powers as a road intended for use by mechanically propelled vehicles
- 5) that the route was dedicated by use of mechanically propelled vehicles before December 1930
- 6) that a proper application was made before 20th January 2005 for a Modification Order to record the route as a Byway Open to All Traffic (BOAT)
- 7) that a Regulatory Committee had already made a decision re an application for a BOAT before 6th April 2006
- 8) that an application for a Modification Order has already been made before 6<sup>th</sup> April 2006 for a BOAT and at 6<sup>th</sup> 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 21 October 2015

Electoral Division affected: Pendle East
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### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

1. Addition of Public Footpath from Coal Pit Lane to Footpath 3 Trawden, Pendle Borough
2. Addition of Public Footpath from a point on Footpath 202 Colne to a junction with Footpath 1 Trawden, Pendle Borough
3. Addition of Public Footpath from the a point on Footpath 203 Colne to a further point on Footpath 203 Colne, Pendle Borough

File Nos. 804-569, 804-570, 804-571

(Annex 'A' refers)

Contact for further information:

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#### Executive Summary

Investigation into the addition of:

1. The addition of Footpath from Coal Pit Lane, Colne to Footpath 3 Trawden, Pendle Borough, in accordance with file no. 804-569 and referred to in this report as Route 1.
2. The addition of Footpath from a point on Footpath 202 Colne to the junction with Footpath 1 Trawden, in accordance with file no. 804-570 and referred to in this report as Route 2.
3. The addition of Footpath, Pendle District, from a point on Footpath 203 Colne to a further point on Footpath 3 Colne, in accordance with file no. 804-571 and referred to in this report as Route 3.

#### Recommendation

1. That an Order be made pursuant to Section 53(2)(b), 53(c)(i) and 53(c)(iii) of the Wildlife and Countryside Act 1981 to add a footpath from Coal Pit Lane, Colne to Footpath 3 Trawden on the Definitive Map as shown on the Committee plan between points A-B-C and amend the particulars accordingly.
2. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.
3. That an Order be made pursuant to Section 53(2)(b), 53(c)(i) and 53(c)(iii) of the Wildlife and Countryside Act 1981 to add a footpath from a point on Footpath 202 Colne to the junction of with Footpath 1 Trawden on the Definitive Map as shown on the Committee plan between points D-E-F-G-

- H-I-J and amend the particulars accordingly.
4. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.
  5. That an Order be made pursuant to Section 53(2)(b), 53(c)(i) and 53(c)(iii) of the Wildlife and Countryside Act 1981 to add a footpath from a point on Footpath 203 Colne to a further point on Footpath 203 Colne on the Definitive Map as shown on the Committee plan between points K-L-M and amend the particulars accordingly.
  6. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

## **Background**

It was recently discovered that the three routes detailed below, whilst physically existing on the ground, and included in the description of routes in the Revised Definitive Statement of Public Rights of Way (First Review), were not shown on the accompanying Revised Definitive Map (First Review).

### **Route 1 - Public Footpath 201 Colne**

Shown on Committee plan 1 between points A-B-C; a distance of approximately 120 metres.

### **Route 2 – Part of Public Footpath 202 Colne**

Shown on Committee plan 2 between points D-E-F-G-H-I-J; a distance of approximately 540 metres.

### **Route 3 – Part of Public Footpath 203 Colne**

Shown on Committee plan 3 between points K-L-M; a distance of approximately 75 metres.

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

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

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

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

## **Consultations**

### Pendle Borough Council

#### Route 1 - Public Footpath 201 Colne

Pendle Borough Council are part landowner for this route, they have supplied a copy of the plan outlining their ownership but provided no further details.

#### Route 2 – Part of Public Footpath 202 Colne

Pendle Borough Council are part landowner for this route, they have supplied a copy of the plan outlining their ownership but provided no further details.

#### Route 3 – Part of Public Footpath 203 Colne

Pendle Borough Council are part landowner for this route, they have supplied a copy of the plan outlining their ownership but provided no further details.

### Colne Town Council and Trawden Parish Council

#### Route 1 - Public Footpath 201 Colne

Trawden Parish Council responded to say they have no objection to the addition and Colne Parish Council did not respond, it is assumed they have no comments to make.

#### Route 2 – Part of Public Footpath 202 Colne

Trawden Parish Council responded to say they have no objection to the addition and Colne Parish Council did not respond, it is assumed they have no comments to make.

#### Route 3 – Part of Public Footpath 203 Colne

Colne Parish Council was the only Parish Council for this addition and no response has been received, it is assumed they have no comments to make.

### Applicant/Landowners/Supporters/Objectors

The evidence submitted by the 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 plans.

Plan No.	Point	Grid Reference (SD)	Description
1	A	9012 3965	Open junction with Coal Pit Lane adjacent to Windy Arbour
1	B	9015 3966	Route 1 passes through gateposts on parish boundary between Colne and Trawden.
1	C	9023 3970	Unmarked point on track where route 1 meets Public Footpath 3 Trawden
2	D	9000 3988	Unmarked point in field at eastern end of recorded section of Public Footpath 202 Colne
2	E	9004 3988	Route 2 crossed by field boundary fence (wooden stile)
2	F	9018 3986	Route 2 crossed by field boundary fence (wooden kissing gate)
2	G	9019 3982	Route 2 passes between stone gateposts
2	H	9047 3979	Route 2 crosses field boundary (pedestrian gate)
2	I	9049 3979	Field Gate on parish boundary between Colne and Trawden
2	J	9049 3978	Open junction with Public Footpath 1 Trawden
3	K	9000 3994	Unmarked point on worn path at eastern end of section of Public Footpath 203 Colne extending from Carry Bridge as shown on the Revised Definitive Map (First Review)
3	L	9001 3995	Route 3 crosses broken down field boundary (remains of stone stile)
3	M	9004 4000	Unmarked point on worn path at western end of section of Public Footpath 203 Colne from Cotton Tree Lane as shown on the Revised Definitive Map (First Review)

### **Description of Route**

A site inspection was carried out on 6 July 2015. All three routes were available to use and appeared to be in regular use.

### **Route 1**

Shown on Committee plan 1 by a thick dashed line between points A-B-C.

The route commences at an open junction with Coal Pit Lane (Point A on the Committee plan) and extends uphill in an east north easterly direction passing to the front of Windy Arbour (a residential property) along a rough tarmac/compact stone access track which provides access to Windy Arbour and a number of other properties that are located further along the track.

From point A the route is signposted as a public footpath and a further sign, attached to the footpath signpost, indicates that the route provides access to some kennels.

From point A the route passes Windy Arbour which is located along the southern side. The north side of the route is bounded by a stone wall with gated access into an adjacent field. The width varies between 3 - 3.5 metres.

At point B the route passes a stone gate post on the south side of the track (no gate) and continues, bounded by fences on either side, as a gravel/compacted earth surfaced track for a further 85 metres to an unmarked point on the track where it meets Public Footpath 3 Trawden.

The total length of the route is 120 metres.

### **Route 2**

Shown on Committee plan 2 by a thick dashed line between points D-E-F-G-H-I-J.

The route commences at an unmarked point (point D) at the eastern end of the section of path recorded as Public Footpath 202 Colne on the Revised Definitive Map (First Review) which is also a sheet boundary of the maps on which the Definitive Map was drawn. From point D a trodden track, consistent with pedestrian use, is visible on the ground across a pasture field. It extends in an easterly direction for approximately 50 metres to a field boundary at point E.

At point E the route passes over a wooden stile into an area of woodland. It continues as a trodden line, approximately 0.5 metres wide, in a more east south easterly direction through the woodland crossing a small wooden bridge and some wooden decking where there is evidence that the ground underfoot is quite wet. As it comes out of the trees into a more open area a trodden track can be followed to point F circumnavigating an area of dense nettles and long grass through which the route under investigation runs.

At point F the route crosses a field boundary to exit the wooded area via a pedestrian kissing gate. It then continues in a general southerly direction to the west of an old field boundary to the intersection of a farm track at point G where it passes

through some stone gateposts and then continues in a north easterly direction for approximately 15 metres across rough pasture before turning to continue in an east south easterly direction across the field (no visible track) rising gradually uphill to point H.

At point H the route passes through a small pedestrian gate and crosses a block paved area continuing in an east south easterly direction to a field gate adjacent to Old Engine Cottage at point I. It passes through the gate to continue across the block paved driveway in a southerly direction to the junction with Public Footpath 1 Colne at point J.

The total length of the route is 540 metres.

### **Route 3**

Shown on Committee plan 3 by a thick dashed line between points K-L-M.

The route under investigation forms part of a longer, well used route extending from Carry Bridge to Cotton Tree Lane.

It commences at an unmarked point on a trodden path at the eastern end of the section of Public Footpath 203 Colne recorded on the Revised Definitive Map (First Review) as starting at Carry Bridge. This point coincides with a sheet boundary of the maps on which the Definitive Map was drawn. From point K it continues in an easterly direction, along the trodden track for approximately 20 metres to pass through a broken field boundary at which there are the remains of a stone stile. It then continues in a north easterly direction to the west of Colne Water for a further 55 metres to point M.

Point M is an unmarked point on the trodden path at the western end of the section of Public Footpath 203 Colne recorded on the Revised Definitive Map and Statement (First Review) from Cotton Tree Lane and also coincides with another sheet boundary on the Definitive Map.

The total length of the route is 75 metres.

### **Map and Documentary Evidence**

All three of the routes that are the subject of this report were originally recorded on the Definitive Map and Statement of Public Rights of Way as public footpaths. When the Map was reviewed and published in 1975 as the Revised Definitive Map and Statement (First Review) the routes were not included on the Map. There does not appear to be any reason for them not to be included other than a drafting error and no legal orders have been found suggesting that they were legally extinguished prior to the revision of the Definitive Map or that their status as public footpaths has ever been challenged. Their inclusion on the First Definitive Map and Statement is conclusive evidence that these public footpaths existed at the relevant date (1<sup>st</sup> January 1953). For these reasons it is not considered necessary to carry out the full range of historical map and documentary research associated with Definitive Map



Modification investigations predating the inclusion of the routes on the First Definitive Map.

<b>Document Title</b>	<b>Date</b>	<b>Brief Description of Document &amp; Nature of Evidence</b>
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>Colne and Trawden were both Urban Districts in the early 1950s so no parish survey maps were compiled.</p>
<b>Draft Map</b>		<p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.  
 Particulars required for the Statement to be annexed to the Draft Bill  
 Section 27(4)

.....C. O. L. N. E. .... Borough of Colne

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals.	(4)
✓ 196.	Footpath	From Maple Street to Church Clough and then to Borough Boundary.	0.51	
✓ 197.	"	From Clayton Street to Carry Lane.	0.18	
✓ 198.	"	From Lenches Road to Carry Bridge.	0.40	
✓ 199.	"	From Coal Pit Lane to Borough Boundary near Higher Carry Heys.	0.34	
✓ 200.	"	From (199) South of Bolton Laith to Coal Pit Lane.	0.07	
✓ 201.	"	From Coal Pit Lane <sup>ROAD TO</sup> Old Engine Farm.	0.08	
✓ 202.	"	From Old Engine Farm to Coal Pit Lane.	0.50	
✓ 203.	"	From Carry Bridge to Cottontree Lane.	0.56	
✓ 204.	"	From (203) to Clarence Street.	0.01	



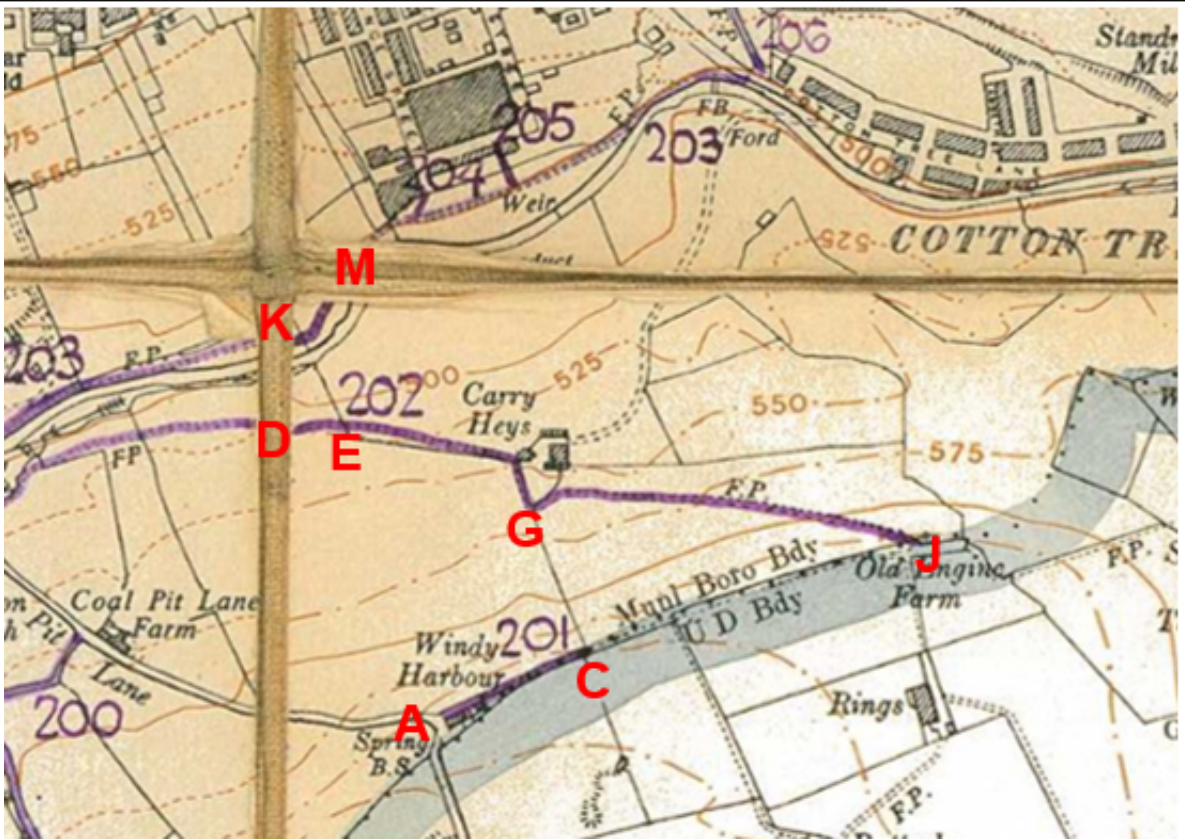
**Colne U.D.**

Observations

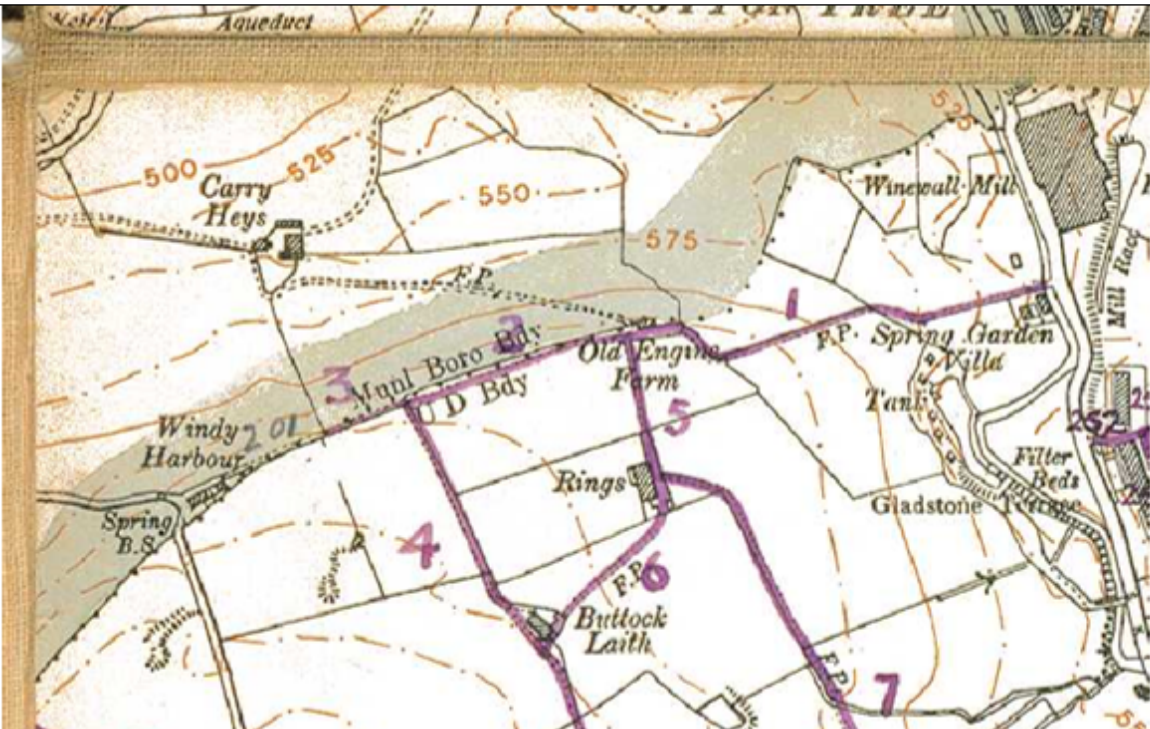
Two separate Draft maps were produced – one for the Urban District of Colne and one for Trawden.

Route 1 is shown on the Draft Map (covering Colne) and is numbered '201'. The Draft statement describes it as a

	<p>footpath 'From Coal Pit Lane to Old Engine Farm' and this has subsequently been edited in pencil to insert the words 'road to' instead of describing the route as terminating at the farm itself.</p> <p>Route 2 is shown as part of a longer route that is numbered '202'. It is described in the Draft Statement as a footpath running from Old Engine Farm to Coal Pit Lane.</p> <p>Route 3 is also shown as part of a longer route and is numbered '203'. It is described in the Draft Statement as a footpath from Carry Bridge to Cottontree Lane.</p> <p>The Draft Map for Trawden shows the route of Footpath 3 Trawden terminating at point C on Committee plan 1 and describes it in the Draft Statement as extending as far as the Urban District and Municipal Borough boundary (near Windy Harbour).</p>
<p><b>Provisional Map</b></p>	<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Colne U.D.



Trawden U.D.

Observations

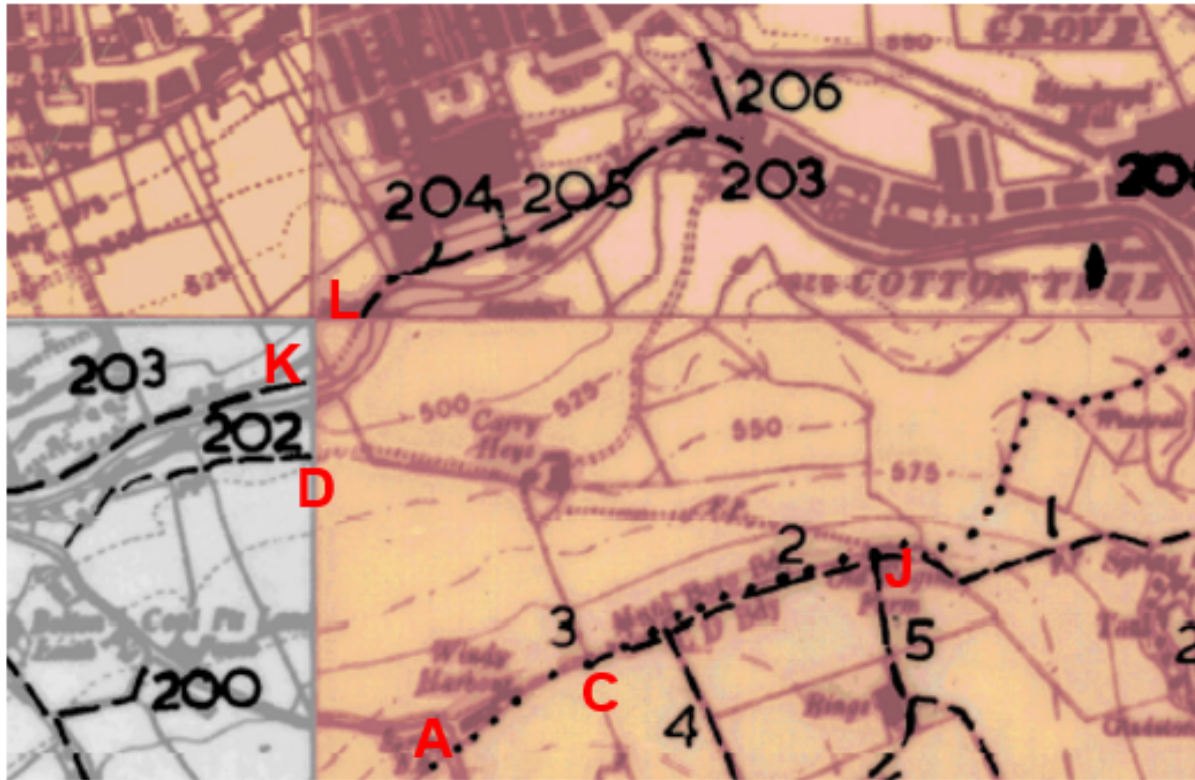
Again, two separate maps were produced – one for Colne and one for Trawden. The Provisional Map for Colne clearly shows and numbers the three routes under investigation – Route 1 (Footpath 201) in

		its entirety, and route 2 as part of Footpath 202 and route 3 as part of Footpath 203.  The existence of Footpath 201 (route 1) is also noted on the Provisional Map for Trawden.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.



<b>Observations</b>		Again, the First Definitive Map comprised separately hand drawn maps produced for the Urban Districts of Colne and Trawden. The Map for Colne included all three routes under investigation.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map

has been subject to a continuous review process.



**CONTINUATION SHEET**

COLNE M.B.

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals
197	Footpath	From Clayton Street to Carry Lane	0.18
198	"	From Lenches Road to Carry Bridge	0.40
199	"	From Coal Pit Lane to Borough Boundary near Higher Carry Heys.	0.34
200	"	From (199) south of Bolton Laith to Coal Pit Lane.	0.07
201	"	From Coal Pit Lane to road to Old Engine Farm.	0.08
202	"	From Old Engine Farm to Coal Pit Lane	0.50
203	"	From Carry Bridge to Cottontree Lane	0.56
204	"	From (203) to Clarence Street	0.01
205	"	From (203) South of Craven Street to Norman Street	0.02

Administrative County of the County, Palatine of Lan  
**National Parks and Access to the Countrys**  
Statement annexed to the Definitive Rights of Way Map

Relevant Date, 1st. January 1953.

Urban District of TRAWDEN

800 (in 3 5071.081, 3161 17179 F) 5873.

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals
1	Footpath	Skipton Road past Spring Gardens Villa to Old Engine Farm.	.25
2	"	Old Engine Farm to junction 3 and 4	.12
3	"	Junction 2 and 4 to Urban District and Municipal Borough Boundary (Near Windy Harbour)	.03
4	"	Junction 2 and 3 to Buttock Laith Farm.	.16

Observations

When the Revised Definitive Map (First Review) was published it was necessary for all the routes that were previously recorded on the First Definitive Map that had not been legally diverted or extinguished to be hand drawn onto new Ordnance Survey base maps which became the Revised Definitive Map (First Review). Unlike previously, separate maps were not drawn for the Urban Districts of Colne and Trawden and a single map (comprising several 1:10,560 scale OS sheets) was drawn for the Borough of Pendle. None of the routes under investigation are shown on this map but the accompanying Definitive Statement records them in the same manner as the First Definitive Statement. Their continuations (202 and 203) on the other side of the sheet boundaries are shown.

Investigating Officer's Comments

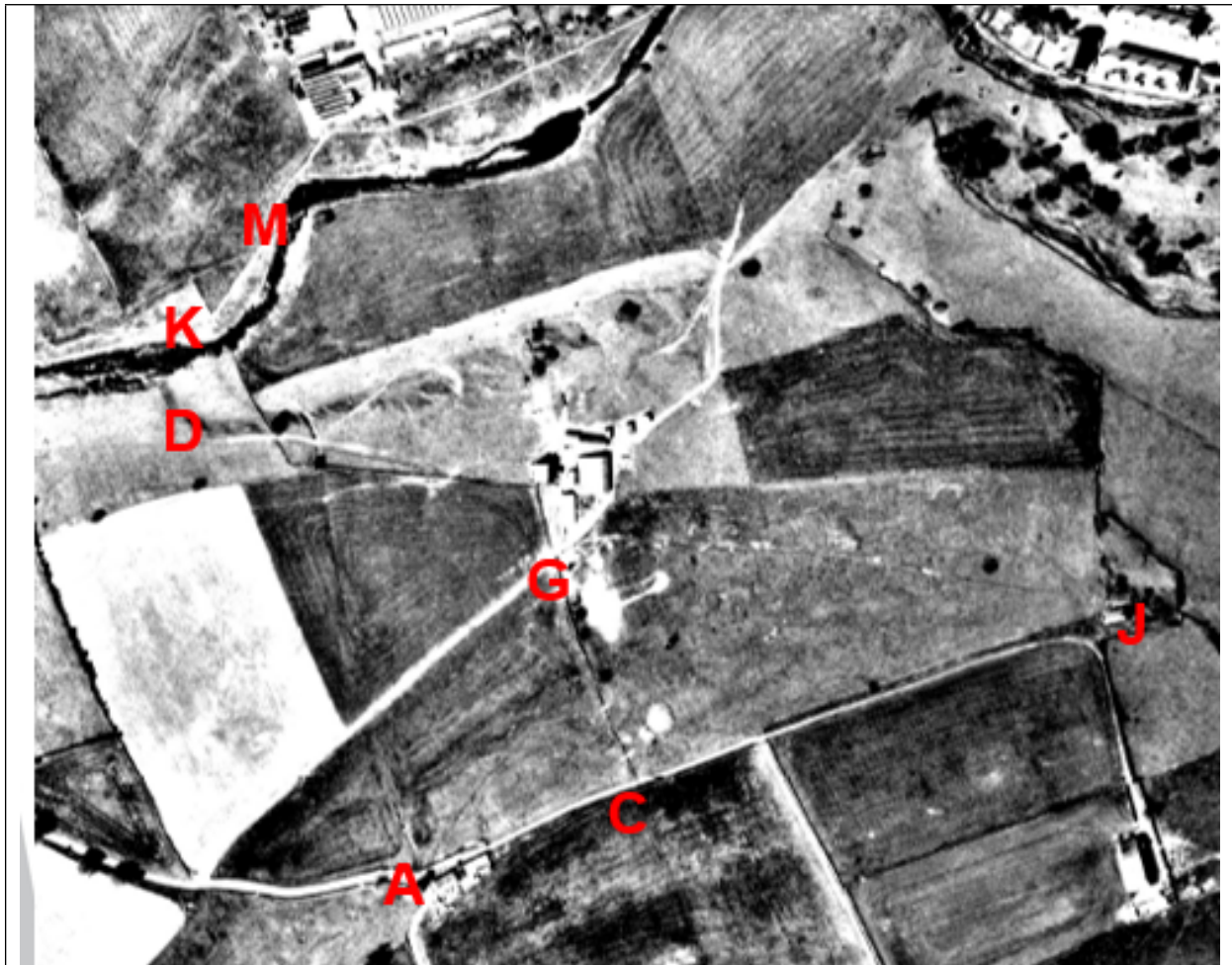
No extinguishment or diversion Orders were noted in the documentation relating to the review process. Experience has shown that the process for preparing and reviewing the Definitive Map has resulted in a number of drafting errors that have subsequently needed to be rectified by legal order. In this particular case the three routes omitted from the Revised Definitive Map (First Review) are all situated in the top left hand corner of OS Sheet SD 93NW and

		are the only three paths recorded on that map sheet that are within the former Urban District of Colne. As all three routes are recorded (unaltered) in the Revised Definitive Statement (First Review) it appears that human error is the reason behind their omission from the Map in that those parts of the three routes recorded on the First Definitive Map that are shown on OS Map Sheet SD 93NW were simply missed and weren't drawn onto the Revised Definitive Map (First Review).
<b>Legal Orders diverting, Stopping up or creating a Public Right of Way</b>		A search has been made at the County Records Office, the London Gazette and of Public Rights of Way records to check whether any legal orders have been made since the routes were originally recorded on the First Definitive Map and Statement to divert or to legally stop up any part of the routes.
Observations		No legal Orders diverting or extinguishing any part of the routes recorded as Public Footpaths 201, 202 or 203 Colne have been found.
Investigating Officer's Comments		The routes of Public Footpaths 201, 202 and 203 Colne have never been legally altered since they were first recorded and still exist on the alignment shown on the First Definitive Map.

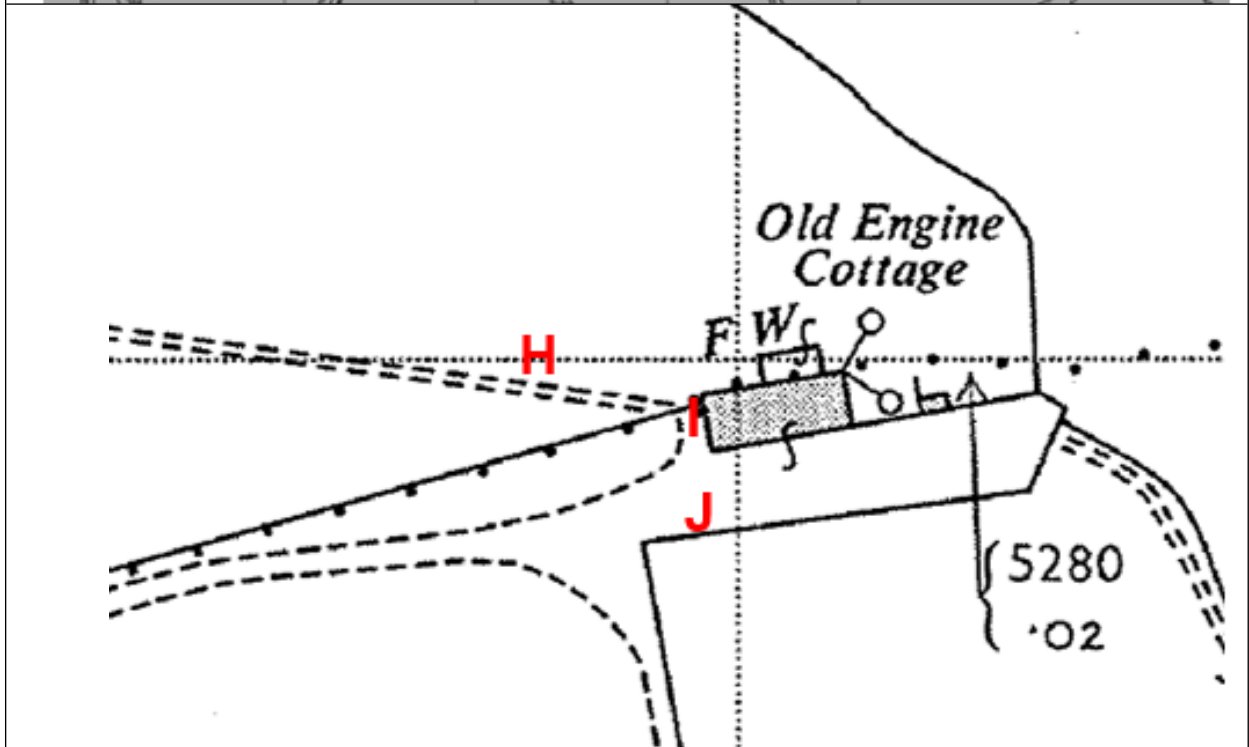
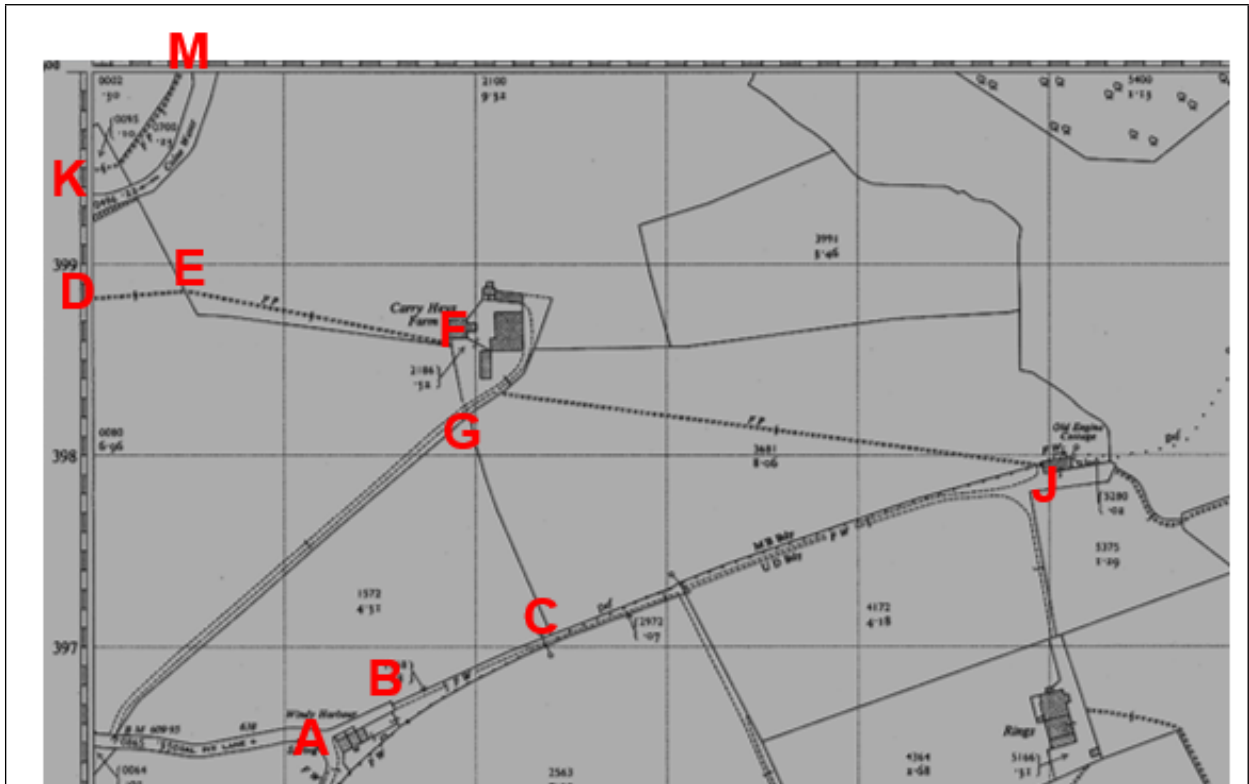
Map and documentary evidence following the publication of the Revised Definitive Map (First Review) further supports the view that the routes still physically existed and were being used as public rights of way following their omission from the Revised Definitive Map (First Review) through to the present day;

<b>Aerial Photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
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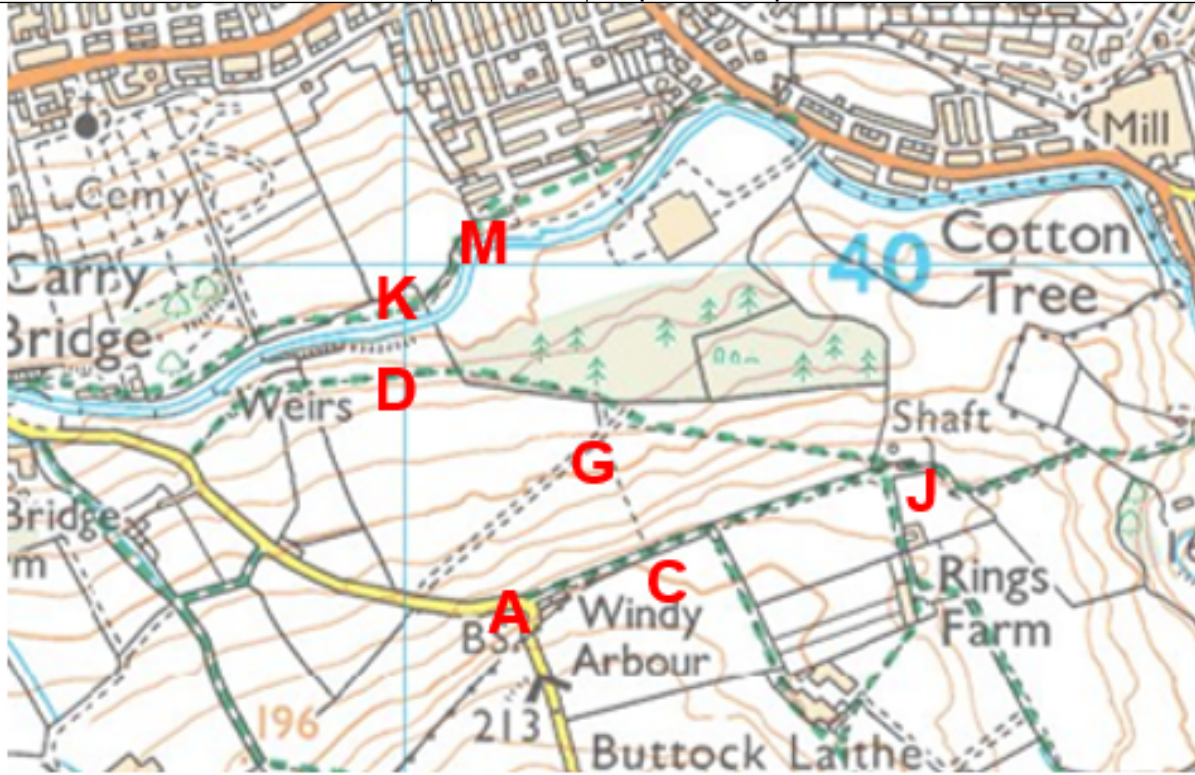


Observations		All three routes can be seen on the aerial photograph.
Investigating Officer's Comments		All three routes existed in the 1960s and appeared to be being used.
<b>1:2500 OS Map</b>	1963	Ordnance survey 1:2500 map reconstituted from former county series, revised in 1961 and published in 1963 as national grid series.



Observations		All 3 routes under investigation are shown and appear to have remained largely unaltered since the 1930s. Both route 2 and route 3 are annotated on the map as being footpaths (F.P).
Investigating Officer's Comments		The three routes existed in the 1960s and appeared capable of being used. Route 1 is shown as a substantial track used to

		access a number of properties. Routes 2 and 3 are shown as footpaths (F.P) indicating their physical appearance was consistent with routes used on foot.
Ordnance Survey Outdoor Leisure Map 21 (South Pennines)	1984	OS 1:25,000 mapping sold to the public showing details of various recreational facilities including the public rights of way network. The Outdoor Leisure Series has more recently been replaced by the Explorer Maps at the same scale



Observations		All three routes are shown as part of the public rights of way network. The property adjacent to point G (Carry Heys Farm) is no longer shown to exist and the green dashed line denoting the route of the footpath in the proximity of point G differs slightly from the route under investigation for a short distance.
Investigating Officer's Comments		The three routes are all included on the Ordnance Survey Outdoor Leisure Map (albeit with a slight discrepancy in the proximity of point G) inferring that the Ordnance Survey had not been supplied with any information about the legal extinguishment of the footpaths. The key panel to the Outdoor Leisure map explains that the public rights of way information contained on the maps has been derived from the Definitive Maps 'as

		amended by later enactments or instruments held by the Ordnance Survey on 1 <sup>st</sup> Jan 1984 and are shown subject to the limitations imposed by the scale of mapping.' Anyone obtaining a copy of the map for leisure purposes would have considered using the paths shown - as supported by the evidence of use on the ground.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS



Observations		Route 1 between point A and point C can be clearly seen to exist as a substantial track on the photograph. Route 2 cannot be easily seen on the photograph. Changes have occurred since the 1960s and the farm adjacent to point G no longer exists. The area of woodland between point E and point F appears to be very recently planted and a faint line – consistent with the route under investigation – can be seen between point F and point G.
Investigating Officer's Comments		Routes 1 and 3 appear to have existed in the 1960s. Route 2 probably existed but changes resulting in the demolition of the

		farm and planting of a woodland may have effected use in the early 1960s.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over 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**

Route 1 - Public Footpath 201 Colne

The landowners affected by the addition of this route are:

Pendle Borough Council

Mr and Mrs Henderson, Windy Arbour

And there is a Caution held by Ingham and Yorke and Napthens Solicitors.

Route 2 – Part of Public Footpath 202 Colne

The landowners affected by the addition of this route are:

Pendle Borough Council

Mr and Mrs Astin, Old Engine Cottage

And there is a Caution held by Ingham and Yorke and Napthens Solicitors.

Route 3 – Part of Public Footpath 203 Colne

The landowners affected by the addition of this route are:

Pendle Borough Council

Graham Preston, 19 Woodhall Road

Charlotte Malik, 45 Main Street

And there is a Caution held by Ingham and Yorke and Napthens Solicitors.

## **Summary**

All three routes were originally recorded on the Definitive Map and Statement of Public Rights of Way as public footpaths. When the Map was reviewed and published in 1975 as the Revised Definitive Map and Statement (First Review) these routes (which were all the sections of public rights of way in Colne on the Ordnance Survey sheet SD 93NW) were not included on the Map. There does not appear to be any reason for them not to have been included other than a drafting error and no legal orders have been found suggesting that they were legally extinguished prior to the revision of the Definitive Map. All three routes are well used and their status as public footpaths does not appear to ever have been challenged.

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

### Information from the Landowners

Route 1 - Public Footpath 201 Colne

One of the landowners (Windy Arbour) outlines their landownership but does not provide any further details.

Route 2 – Part of Public Footpath 202 Colne

One of the landowners (Old Engine Cottage) outlines their landownership but does not provide any further details.

Route 3 – Part of Public Footpath 203 Colne

A letter has been received from F. M. Lister & Son on behalf of Mr Preston and Mrs Malik who state they have no objection to the addition of the route to the Definitive

Map, the agent has also consulted with the tenants of the land Mr J. W. Collinson and Mr J Collinson and they also have no objection to the addition of the route.

Information from Others

No further information has been received from others.

## **Assessment of the Evidence**

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

In Support of Making an Order(s)

Aerial photographs

Trodden path sections

Originally recorded on the Definitive Map and Statement of Public Rights of Way

OS map evidence

No action taken by owners against accepting

Against Making an Order(s)

Route not shown on the Revised Definitive Map (First Review).

Conclusion

This matter is unusual as it stems from what appears to be a drafting error. The evidence for these routes show in law a public footpath and should still be recorded on the Definitive Map and Statement as such.

There is no express dedication and so it is advised that Committee consider whether a dedication can be deemed under s31 Highways Act or inferred at common law.

Section 31 of the Highways Act 1980 deems dedication of a path as a highway may be presumed from use of the way by the public as of right without interruption for a full period of twenty years. The evidence indicates that access to the routes has never been questioned or denied and no user evidence forms have been collected for this matter.

Therefore it is advised that the Committee has to consider whether a highway may be inferred through common law dedication based on the evidence presented from the maps and other documentary evidence which does on balance indicate that the routes exists .

The analysis of the map and documentary evidence by the Planning and Environment Group suggests that there is sufficient evidence on balance to indicate that the routes existed and are indeed recorded on the early maps. It is therefore suggested that there are circumstances from which to infer an early dedication of the routes for use by the public and that the routes were omitted from the later maps as a drafting error.

Taking all the evidence into account the Committee may consider that a dedication in this matter may be inferred under common law and that an Order be made and promoted.

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

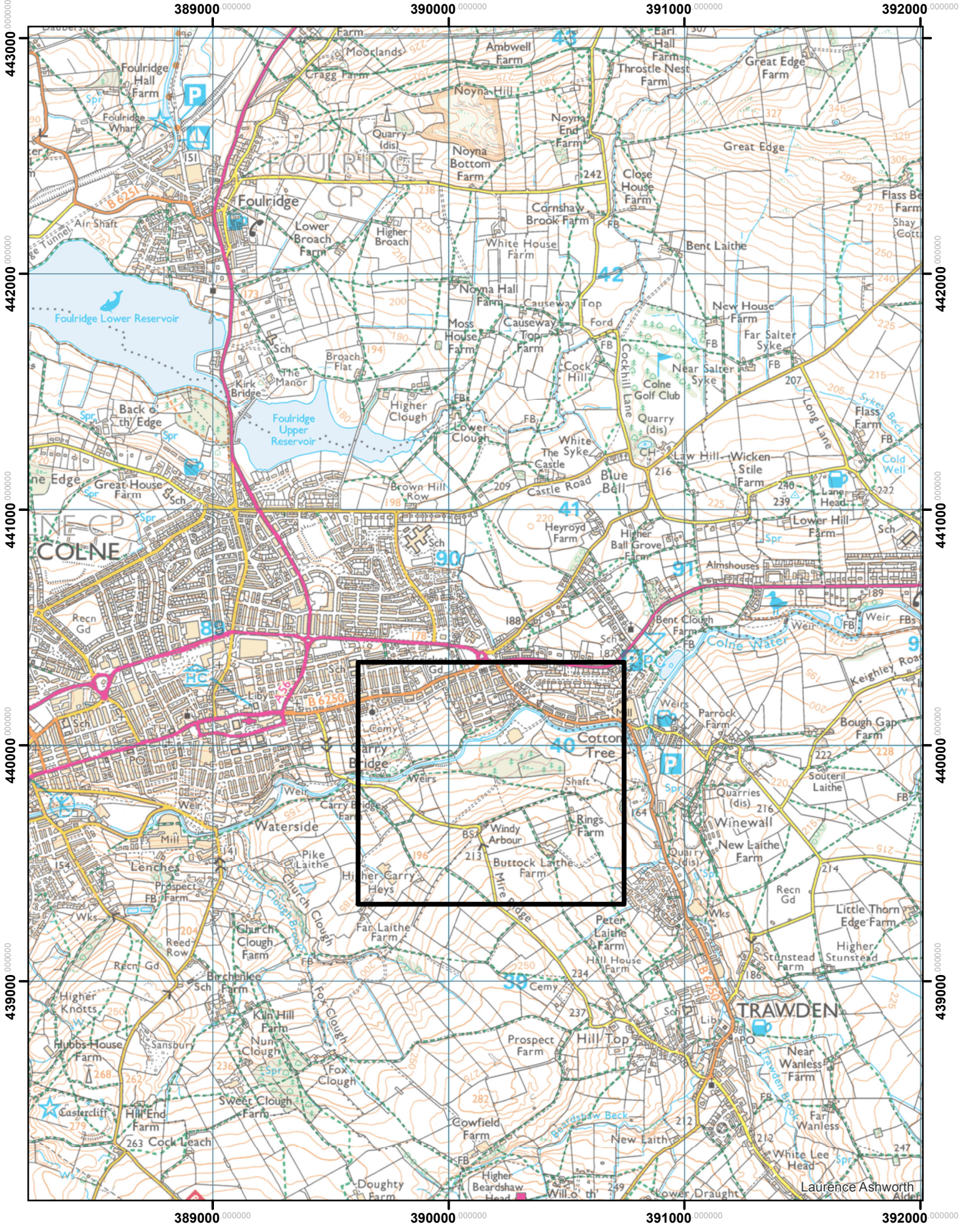
**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref nos: 804-569, 804-570, 804-571	various	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

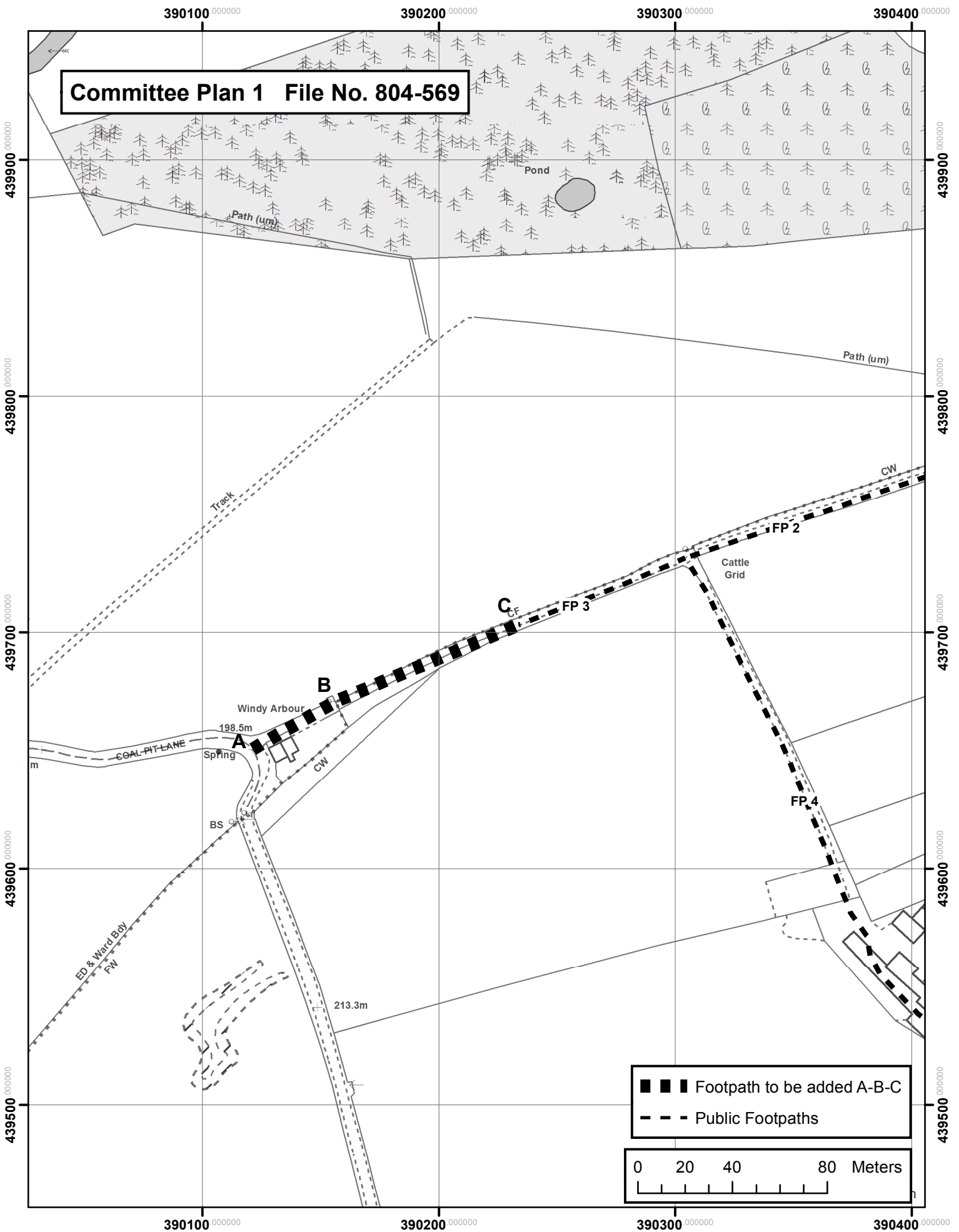
**Wildlife and Countryside Act 1981 LOCATION PLAN**  
**Addition of Public Footpath 201 Colne, part of Public Footpath 202 Colne**  
**and part of Public Footpath 203 Colne, District of Pendle**

1:20,000

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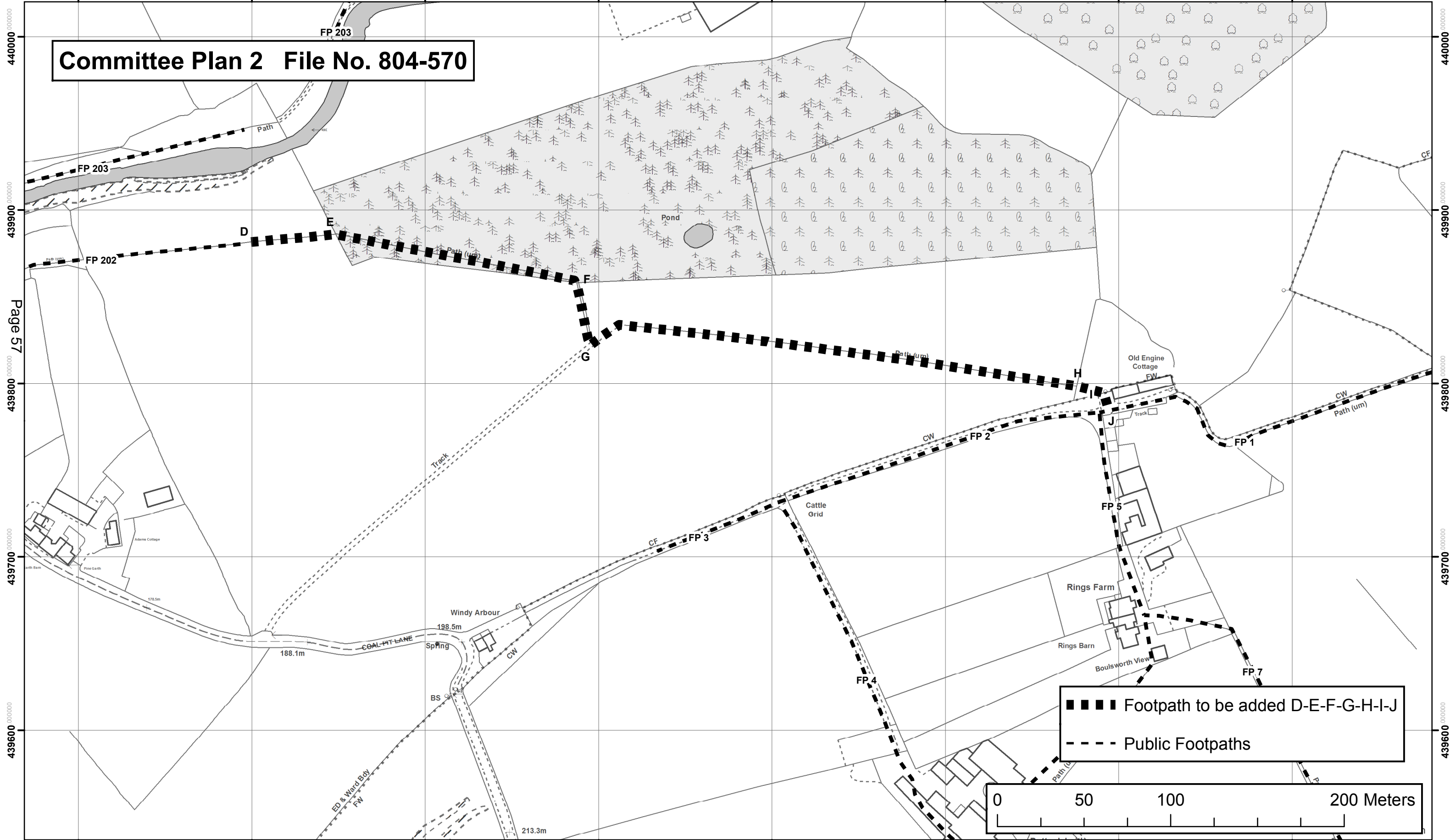




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# Committee Plan 2 File No. 804-570

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**Lancashire**  
County Council

Andrew Mullaney  
Head of Planning and Environment

Wildlife and Countryside Act 1981  
Addition of part of Public Footpath 202 Colne, District of Pendle

1:2000

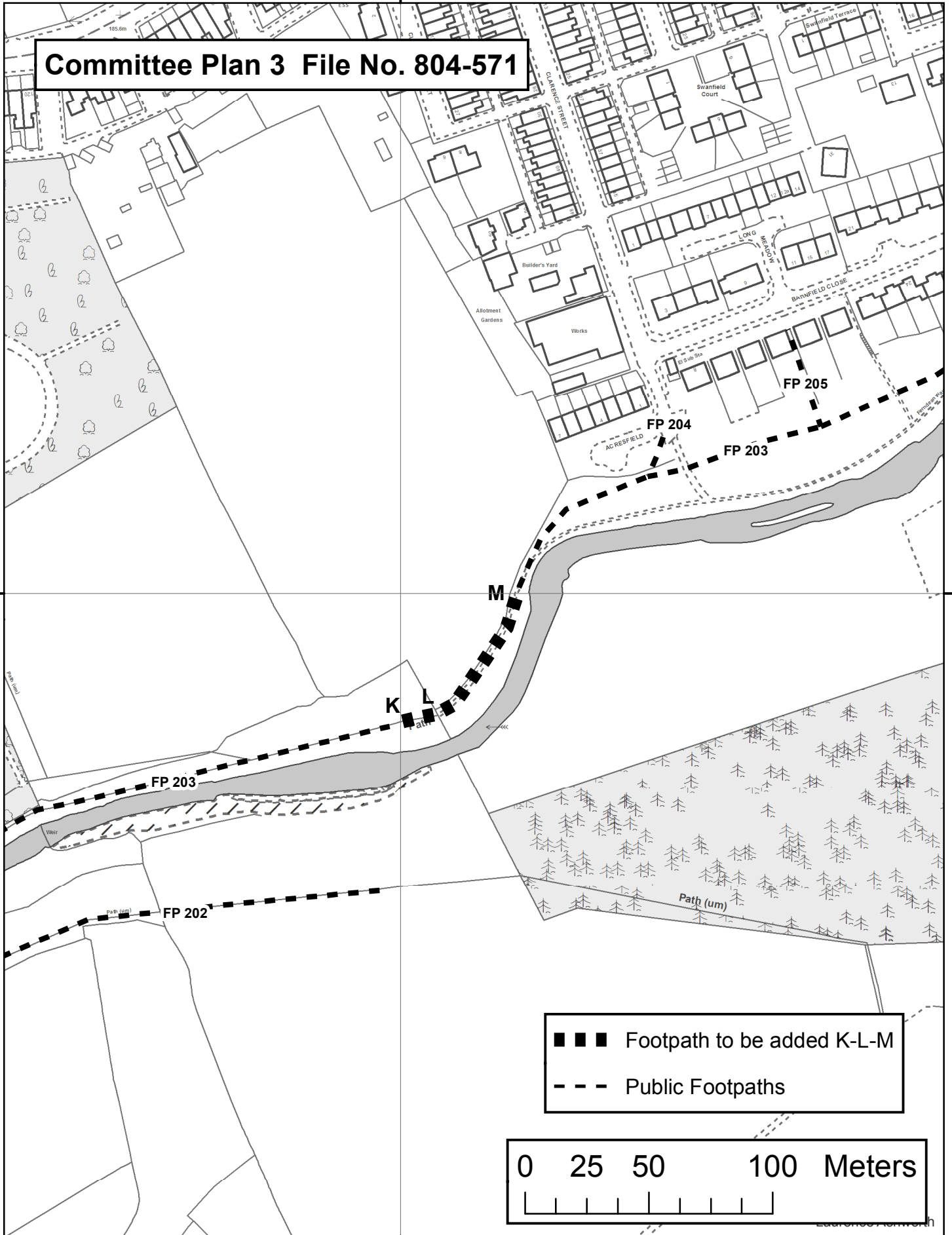


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# Committee Plan 3 File No. 804-571







## Regulatory Committee

Meeting to be held on 21<sup>st</sup> October 2015

Electoral Division affected: Rossendale North, Rossendale East, Padiham and Burley West
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### Wildlife and Countryside Act 1981

**Application to Record a Bridleway over Moorland Tracks near Clowbridge Reservoir by Addition of Bridleway and Upgrade from Footpath: Rawtenstall, Rossendale Borough and Dunnockshaw, Burnley Borough.**

**Application No. 804/549**

(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, Paralegal Officer

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

Hannah Baron, 01772 533478, Environment Directorate

[Hannah.Baron@lancashire.gov.uk](mailto:Hannah.Baron@lancashire.gov.uk)

### Executive Summary

Application to record a bridleway over moorland tracks near Clowbridge Reservoir by addition of bridleway and upgrade from footpath: Rawtenstall, Rossendale Borough and Dunnockshaw, Burnley Borough.. File ref: 804/549

### Recommendation

1. That the application to upgrade to bridleway parts of Footpaths 14, 18 and 21 Rawtenstall, Rossendale Borough and of Footpath 10 Dunnockshaw, Burnley Borough and to add bridleways between Footpaths 14 and 21 Rawtenstall and between Footpath 10 Dunnockshaw and Bridleway 18 Rawtenstall on 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)(b) Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add bridleways and upgrade footpaths to bridleways on the Definitive Map and Statement of Public Rights of Way for a distance of approximately 2060 metres shown between points A-B-D-E-F-G-H-I-J-K-L-M on the attached plan.
3. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said order be promoted if necessary by submitting it to the Secretary of State.

### Background

An application has been received from the Forest of Rossendale Bridleways Association to upgrade a number of public footpaths to public bridleways and to also add sections of bridleway as shown between points A-B-C-D-E-F-G-H-I-J-K-L-M on the attached plan, 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 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 for upgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

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

An order will only be made to add a way 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 / Burnley Borough Council

Rossendale Borough Council and Burnley Borough Council have been consulted and no responses have been received, therefore it is assumed that they have no comments to make.

### Parish Council

Dunnockshaw Parish Council have responded with no objection to the proposal.

There is no Parish Council for Rawtenstall.

### Claimant/Landowners/Supporters/Objectors

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

## Advice

### Head of Service – Planning and Environment Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8323 2806	Junction of Bridleway 15 Rawtenstall with Footpath 14 Rawtenstall, the starting point of the Gambleside Trail with an information board
B	8299 2776	Bend in Footpath 14 Rawtenstall on N edge of site of Gambleside hamlet
C	8299 2770	Waymark post on S edge of the site of former hamlet of Gambleside
D	8288 2768	Junction of grass track with the cinder track leading to the pump station
E	8284 2772	Access track bridge
F	8274 2768	Junction of pump house access track with Footpath 21 Rawtenstall
G	8272 2768	Parish Boundary between Dunnockshaw and Rawtenstall
H	8251 2775	Junction of grass track with stone track (Footpath 10 Dunnockshaw)
I	8253 2749	Pedestrian Gate
J	8248 2739	Well-defined narrow path up bank
K	8245 2736	Cairn and waymark post near the ruins. n.b. approx.

		15m W of the junction of Footpaths 19, 20 & 364 Rawtenstall
<b>L</b>	8250 2706	Kissing gate by junction of Footpaths 16, 18, 19, 42 and Bridleway 18 Rawtenstall
<b>M</b>	8275 2706	Junction of Footpath 18 and Bridleway 18 Rawtenstall

## **Description of Route**

A site inspection was carried out on 16<sup>th</sup> October 2013 and 14<sup>th</sup> August 2015.

The effect of this application to upgrade a number of footpaths to bridleway and to add sections of bridleway to form a bridleway which links to the Mary Townley Loop and West Pennine Link of the Pennine Bridleway. Part of this route is currently a well waymarked, well used concessionary bridleway.

### **A-B currently recorded as Rawtenstall Footpath 14**

At the most northerly point, the application route starts at the junction of Footpath 14 Rawtenstall and Bridleway 15 Rawtenstall (point A) and follows the Gambleside Trail south-west for 400m with a varying width of 1.5m to 3m. Initially it is a sunken stone/grass surfaced track enclosed by steep slopes before opening up and running between stone walls (very broken down on the north-west side) to the north side of the site of the former Gambleside hamlet.

### **B-C-D-E-F currently unrecorded**

The trail continues in a southerly direction from point B for a distance of approximately 65m, passing through the site of the former hamlet of Gambleside to a waymark post where the route takes a 90 degree turn (point C). The route then follows a well-trodden grass track for 185m with a varying width between 2.5m and 3m, winding downhill to meet a cinder access track at point D. The route then follows the access track north-west away from the pump house for 50m with a width of 2.5m crossing a bridge (point E) and proceeds south-west a further 170m to meet Footpath 21 Rawtenstall (point F).

### **F-G currently recorded as Rawtenstall Footpath 21**

The route then turns west-north-west along a good stone track for 20m with a width of 2.5m to continue as Footpath 10 Dunnockshaw at the parish boundary (point G).

### **G-H currently recorded as Dunnockshaw Footpath 10**

The route then continues west-north-west as Footpath 10 Dunnockshaw for 230m with a width of 2.5m to reach point H.

### **H-I-J-K-L currently unrecorded**

This section proposed to be added as bridleway starts from point H, a point on footpath 10 Dunnockshaw and runs generally southwards for 265m with a width of 2m climbing uphill to cross Footpath 13 Dunnockshaw at point I near to the parish

boundary. Located here is a pedestrian gate crossing newly erected fencing; The gate has a width of 0.8m but within an overall gap in the fence of 2m, having post and rail infill either side. This was formerly open before the gate and newly erected fencing were erected. The route then continues south-west on the south-east of a wall on a well-defined trodden line for 110m to point J where the route follows the worn trodden line diagonally up a steep bank, crosses Footpath 364 Rawtenstall and continues a further 30m to a cairn and waymark post (point K) close to some ruined buildings. Although this waymark post purports to make the junction of footpaths 19, 20 & 364 Rawtenstall the junction is actually 15m east of this point and the footpaths have been obstructed by the new fencing.

The route then continues on a narrower track uphill close to the ruins for 315m with a varying width of 1m to 2m across open moorland along a well-defined line generally southwards, crossing Footpath 19 Rawtenstall twice, to a kissing gate in the newly erected fence at the junction of public footpaths 16, 18, 19, 42 and Bridleway 18.

**L-M currently recorded as Rawtenstall Footpath 18**

The application route then heads in an easterly direction following a well-trodden line for 265m with a varying width from 1m to 2m to join Bridleway 18 Rawtenstall at point M.

The routes all follow well surfaced stone tracks or well defined trodden routes along a grass surface. Part of the route appears to form part of the concessionary Pennine Bridleway feeder route but the day of inspection, there were no signs either stating that the route was not to be used as a bridleway or that it was permissive.

There are however two newly (in recent years) erected structures which currently prevent bridleway use along the application route. These are a narrow pedestrian gate at point I and kissing gate located at point L. It was also noted that there was a series of locked gates on public footpath 10 Dunnockshaw which will have stopped access for anyone other than pedestrians accessing the route from Burnley Road, Dunnockshaw, before they reached the claimed bridleway.

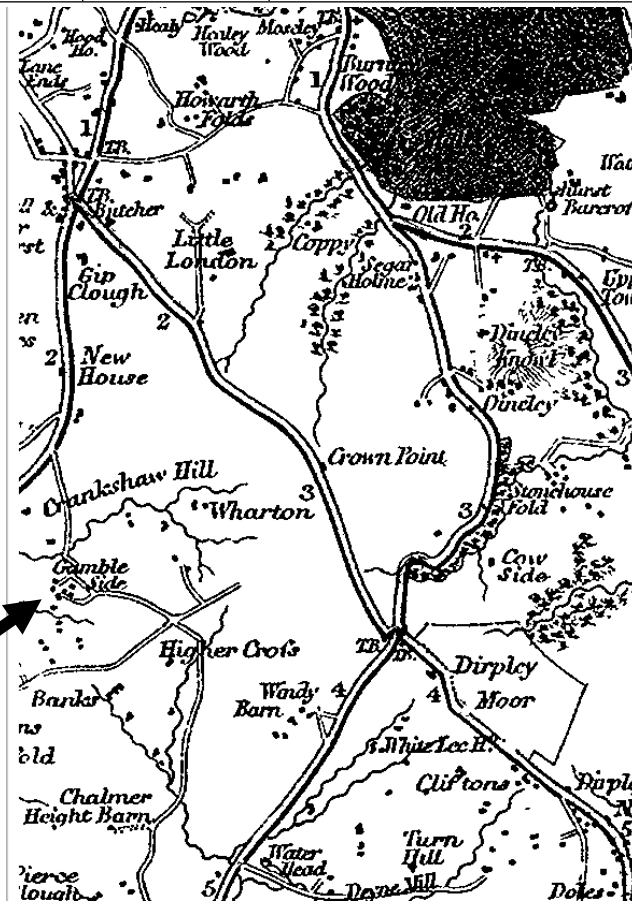
The total length of the ways to be upgraded and added is 2060m.

All distances and compass directions given are approximate.

**Map and Documentary Evidence**

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

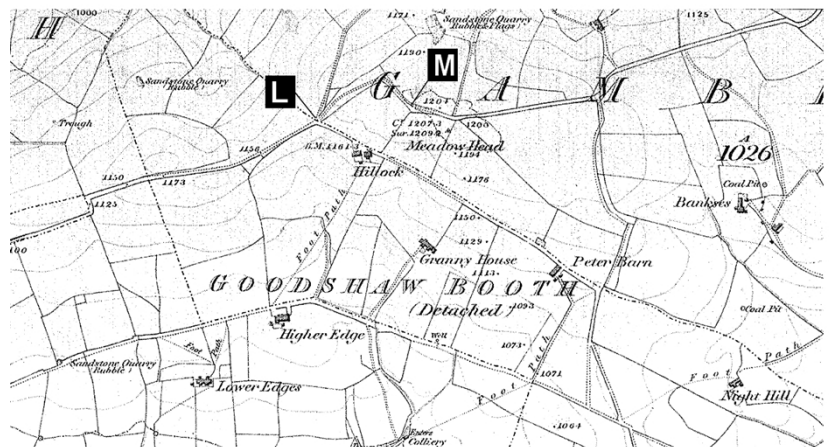
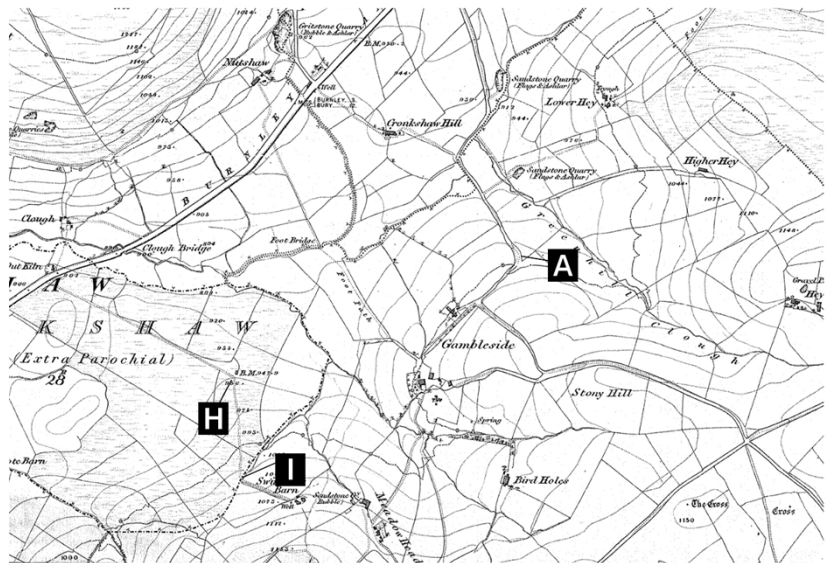
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale, this would not have been shown. Therefore no inference can be drawn.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale may not have been drawn.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map.



Observations		The settlement shown as Gambleside is recorded on Hennet's map. There appears to be a section of road recorded which might correspond to the application route between points A-B which is currently recorded as Public Footpath 14.
Investigating Officer's Comments		This map is of such a scale that public footpaths were not normally recorded. A road appears to have been recorded heading to Gambleside, and in particular to be shown at this scale suggests a

		relatively substantial road with more rights than just on foot as currently recorded. Whilst it is not possible to be certain that the road shown corresponds to the route in question due to the limitations of scale, the latter follows a substantial track across the moors and no other is evident in that general direction. No inference can be made on the rest of the route.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no nearby canals or railways which would affect the application routes.
Investigating Officer's Comments		No inference can be made.
<b>Tithe Map and Tithe Award or Apportionment</b>		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 available to view for the township of Dunnockshaw.  There is no Tithe Map available to view for the township of Higher Booths.
Investigating Officer's Comments		No inference can be made.
<b>Inclosure Act Award and Maps</b>	1835	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.

Observations		There is no Inclosure Act Award or Map available to view at Lancashire Archives for the area of Rawtenstall, the old township of Tottington Lower End.
Investigating Officer's Comments		No inference can be made.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848/49	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848/49. <sup>1</sup>  (sheet 64/72)

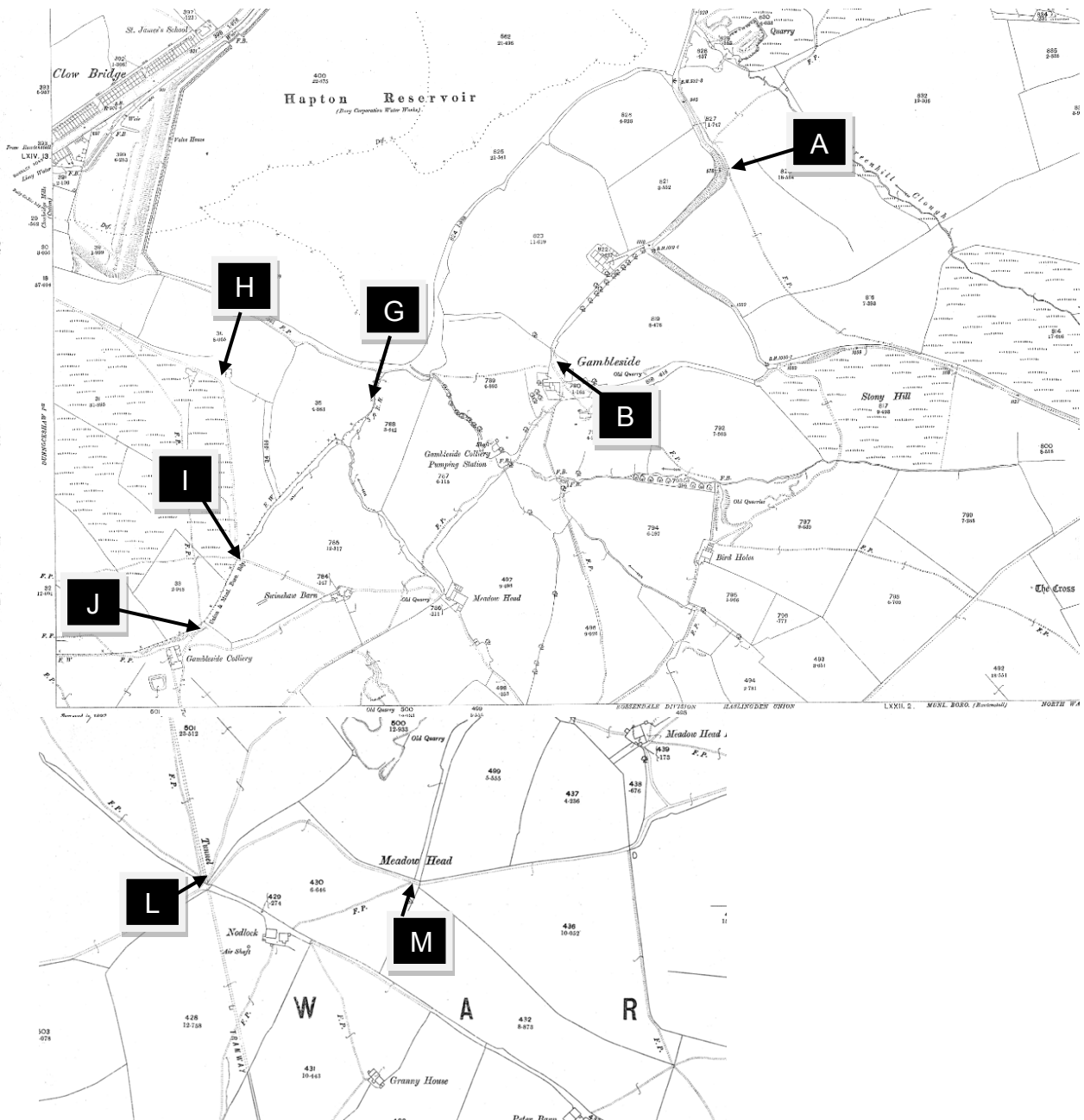


Observations		The application route is shown as an enclosed
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<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25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



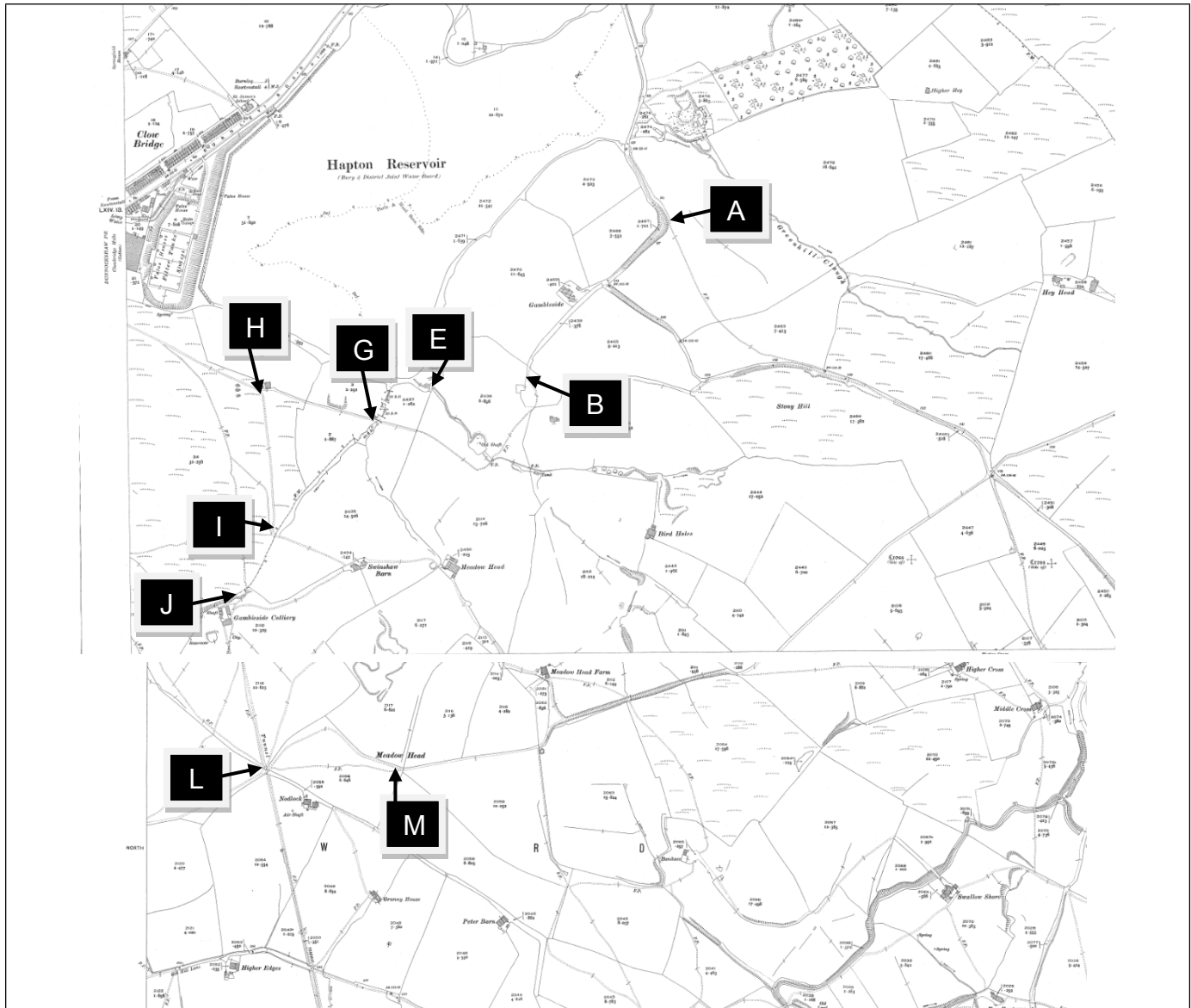
		road running from point A towards Gambleside. There are also pecked lines between points H and I finishing at the parish boundary.
Investigating Officer's Comments		Parts of the application routes are shown as existing in 1848, a way likely to be able to be used by horse between points A-B-C and a route between H-I but there is no indication of bridleway status.
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile was surveyed in 1892 and published in 1893. (sheet no. 64/14 & 72/02)



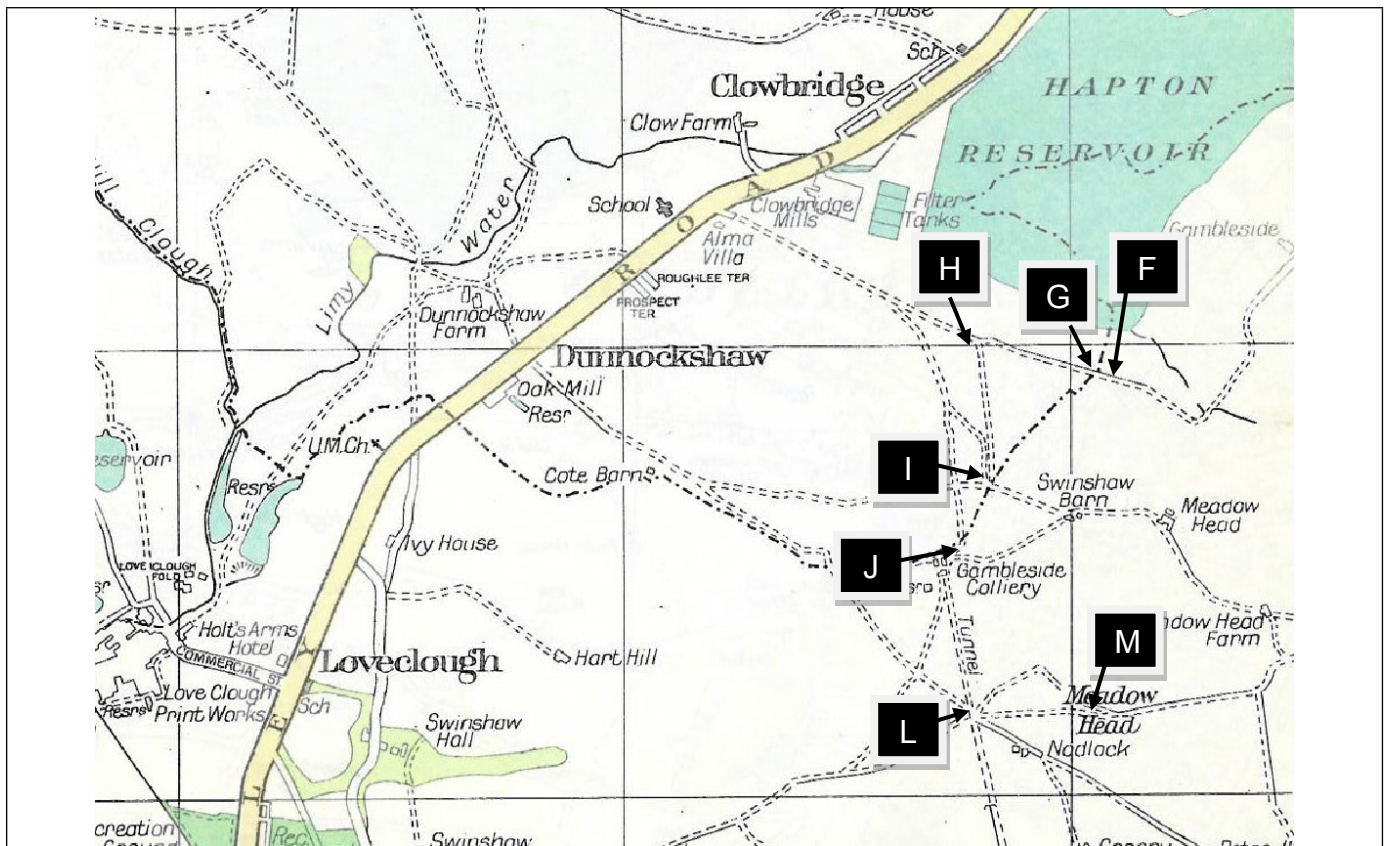
Observations		Parts of the application route are shown on the map, particularly between points A and B as an
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		enclosed track leading to Gambleside. The track between points H and I is also shown as double pecked lines and between J and L a footpath is recorded as running nearby to a tramway and tunnel. There is no further evidence for the rest of the routes shown on this map.
Investigating Officer's Comments		The map shows parts of the route being in existence at this time, particularly section A-B is likely to have been able to be used by horses and sections H-I and K-L existed but no inference of bridleway use can be drawn.
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		The Finance Act Map records the hereditament which included all the application route as no.1557 and shows the footpaths as pecked lines crossing this piece of land.

		<p>The Finance Act Valuation Book records several properties and land under no.1557. The Valuation Book does record a reduction in tax for a right of way crossing at Land and Boundaries at Greenfold (£18), Peter Barn (£20), Nodlock (£20), Lower Edges (£20) and Edges (£10) which are all located surrounding the southern end of the application routes.</p> <p>(ref: DVAC/1/4/1 map: DVAC2/1)</p>
Investigating Officer's Comments		<p>The Finance Act 1910 Valuation Book and Map do not provide evidence to support the existence of the application route as bridleway. Although a reduction in tax has been taken for routes crossing nearby properties, the application route does not specifically pass these, and it is not stated whether this amount was taken for the routes being a footpath or a bridleway.</p>
<b>25 Inch OS Map</b>	1911	<p>Further edition of 25 inch map, re-surveyed 1892, revised in 1909 and published 1911</p>
Observations		<p>The application route again is shown as being in existence between points A and B, as it runs along an enclosed track to Gambleside. The route between points H-I is no longer shown as pecked lines. There are pecked lines between J-L as shown on the previous map, but nothing shown for the remaining application routes.</p>
Investigating Officer's Comments		<p>This map suggests that A-B was usable by horse. F-G-H and K-L existed but there is no indication that they were usable by horses. No further indication on any of the other routes.</p>
<b>1:2500 OS Map</b>	1930	<p>Further edition of 25 inch map resurveyed 1892, revised in 1928 and re-levelled in 1929, and published in 1930.</p>



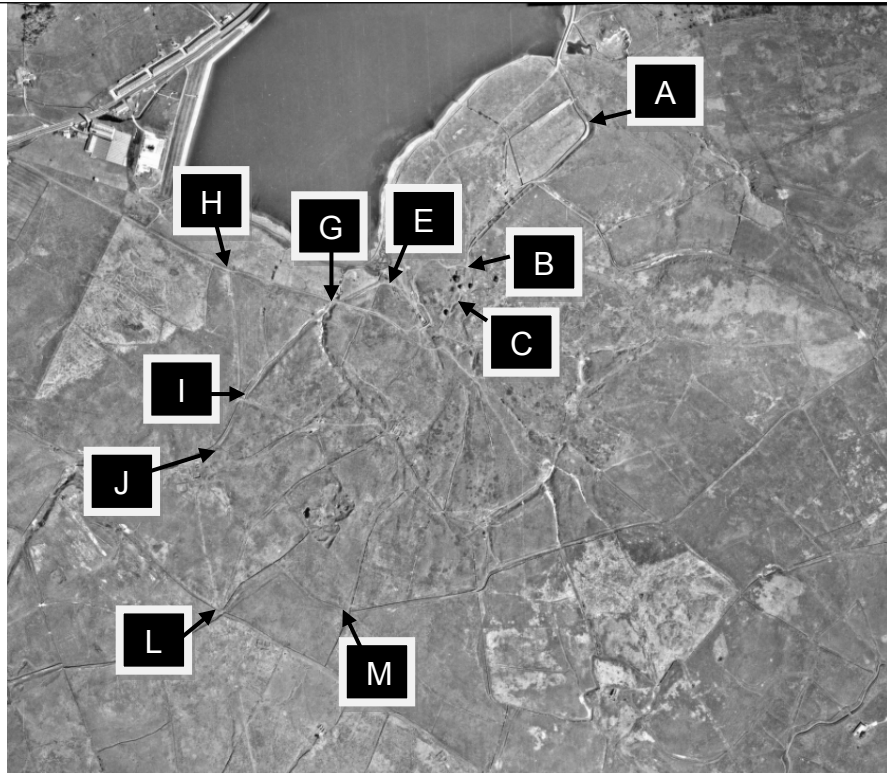
Observations		There is evidence of the routes existing between points A-B (as an enclosed track) and F-G-H-I and J-K-L-M as pecked lines.
Investigating Officer's Comments		The application routes between points A-B, F-G-H-I, and J-K-L-M did exist at this time, but only A-B appears to be usable by horses.
Map Directory of South Lancashire	1934	Map Directory of South Lancashire



Observations		The application routes are shown on the Map Directory for South Lancashire between points F-G-H-I, J-K-L-M.
Investigating Officers' Comments		The Map Directory for South Lancashire shows evidence to support the majority of the application routes being in existence at the time. As a commercial map for sale to the public its value was in showing public routes although the status cannot be inferred.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		The quality of the 1940 aerial is not great. There was slight visibility of the application routes but due to the routes being across moorland and with the poor quality of the photograph, this made it difficult to determine.
Investigating Officer's Comments		No inference can be made due to the poor quality of the photograph.

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

<p><b>6 Inch OS Map</b></p>	<p>1956</p>	<p>The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.</p>
<p><b>Observations</b></p>		<p>A-B is shown as an enclosed track, F-G-H and L-M as double pecked lines annotated "F.P."</p>
<p><b>Investigating Officer's Comments</b></p>		<p>The map provides no further evidence for bridleway status.</p>
<p><b>Aerial photograph</b></p>	<p>1960s</p>	<p>The black and white aerial photograph was taken in the 1960s and is available to view on GIS.</p>



Observations		There are clear trodden lines along all of the application routes. There is a significant enclosed route between points A-B-C, with an irregular trodden line leading down hill from C-D-E-F-G. There are also trodden lines between points H-I-J, and J-K-L-M.
Investigating Officer's Comments		The aerial photograph supports all of the application routes being in existence at this point but provides no information about the type of use or public/private status.
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and

		schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas. The routes on each are recorded as public footpaths. There is nothing shown for the part addition.
Observations		This application comes under two different parishes. Rawtenstall is a municipal borough and therefore did not have a parish survey map. Dunnockshaw comes under the rural district of Burnley. G-H along Dunnockshaw 10 is shown as footpath, the section H-I is not shown.



Draft Map		The parish survey map and cards for the rural
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districts were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.


As Rawtenstall was a municipal borough they prepared the Draft Map directly. Burnley Rural District however did use the parish surveys to compile the Draft Map as seen above.

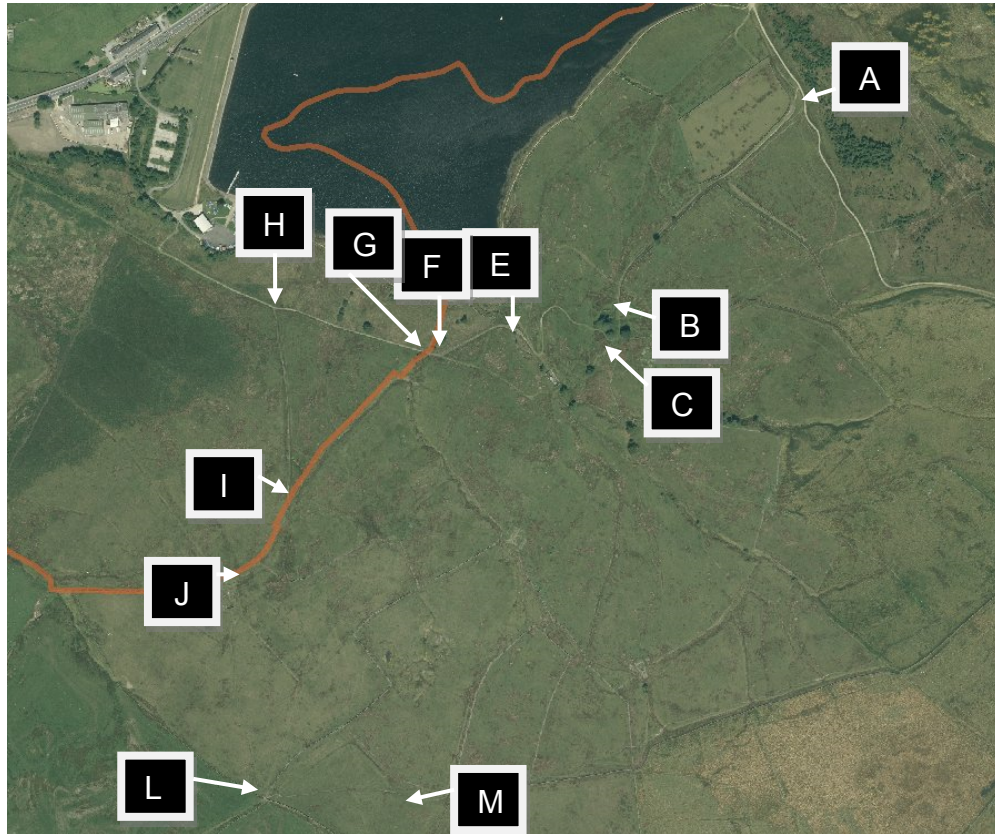
The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.





Observations		The application routes are recorded on the Draft Map as public footpaths where they are now recorded as footpath and those unrecorded now are also not shown on the Draft Map
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The Provisional Map shows the application routes in the same way as the Draft Map.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		None of the application route is recorded as bridleway on the Definitive Map and Statement.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public

		Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		None of the application route is recorded as bridleway on the Definitive Map First Review.
Investigating Officer's Comments		The application route is not recorded as bridleway on any maps preparatory to the Definitive Map and there were no objections to the route not being recorded as bridleway. It was not considered to be public bridleway at the time.
<b>Aerial Photograph</b>	2000	Colour aerial photograph taken in 2000.
		
Observations		The application route can be seen as trodden lines as shown on the previous 1960 aerial photograph.
Investigating Officer's Comments		The photograph supports the line being used but provides no indication of the type of use or whether it was public.
<b>Aerial Photograph</b>	2014	Colour aerial photograph taken in 2014.



Observations		The aerial photograph shows the application routes as well-trodden lines as on the previous 1960 and 2000 aerial photograph.
Investigating Officer's Comments		The 2014 aerial photograph supports the application route being the line used but does not provide evidence of status.
<p><b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b></p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has</p>

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

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

The affected land is not registered common land.

### Summary

Some of the application route is recorded on the documentation which has been inspected. The early commercial maps record a significant road leading from point A to between point B and C at Gambleside hamlet, suggesting that higher rights historically existed along this stretch to reach the dwellings. The Ordnance Survey maps record enclosed tracks or pecked lines for some of the application routes, indicating that they were existed on the ground. The aerial photographs from 1960 onwards to 2014 support all of the application routes as being well used paths, as did our site inspections.

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

In support of the application the applicant has provided 25 evidence of use on horseback forms, the evidence is set out below.

The years that the users have known the route varies:

1947-2007    1965-2006    1958-2007    1962-2005    1964-2005    1967-2006  
1970-2005    1971-2006    1971-2007(2)    1972-2006    1973-2005  
1973-2006(2)    1976-2005    1976-2006    1976-2012    1977-2007  
1982-2005    1986-2006    1988-2007    1990-2012    1993-2005    1993-2006(2)

All 25 users have used the way on horseback of leading a horse, the years that the users used the way varies:

1947-1957    1950-1985    1965-1970    1962-2005    1964-1985    1968-2007  
1970-1992    1971-2006    1972-2006    1973-2005    1973-2006(2)  
1976-2005    1976-2006    1976-2012    1977-2006    1981-2004    1981-2007  
1982-2004    1987-2006    1990-2012    1991-2007    1993-2005    1994-2006(2)

The main places that the users were going to and from include: Crown Point to Cinder Terrace, Cliviger, Vale of Calderdale, Dynley, Cowbridge reservoir, Crown Point Road to Manchester Road, Loveclough, Bacup, Crawshawbooth, Compston's Cross and Water.

The main purposes for using the route include:

Recreation, pleasure, training for competitions, exercise the horses, enjoyment, group trekking and for long distance riding.

The use of the route per year varies from 1-3 times, 3-5, 10-12, monthly, 20 times, weekly, 104 times,

11 of the users have also used the route on foot, the years on which they used the route on foot varies:

1956-2006 1962-2005 1964-2013 1970-2006 1973-2006 1973-2005  
1976-2005 1970-2004 1987-2006 1988-2007.

1 of these users used the route on bicycle between the years of 1962-2005 and another user used the route on a motorcycle / vehicle between the years of 1973-2006.

All 25 users agree that the line has always run over the same route, and all agree that there are no gates / stiles / fences along the route.

None of the 25 users have ever worked for a landowner or have been a tenant of the land over which the route passes.

The users have never been stopped or asked to turn back when using the route, however 2 users mention of others having been stopped. 1 user states that her daughter was accosted by a countryside ranger in 2006 and the other user states that 2 young girls were told not to ride on this route by a countryside ranger in 2005/2006.

24 users have never been told by anyone that the route they were using was not a public right of way, however 1 user mentions in 2005 they were informed they should not be using the route but they have never been prevented or challenged from doing so.

Only 1 user has seen a sign along this route stating when the Right to Roam Act came into force in this area, a board with right to roam policies, and the designated area appeared at Meadow Head on the back of the notice it states no horse riding amongst other things, this was 2006.

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

The applicant has provided a further 14 user evidence forms which indicate use of the route up until 2015, 6 people who filled in these forms also filled in one of the previous submissions. The evidence of use of these forms is set out below.

6 of the 14 users claim to have used the route on foot, the years in which these users used the route on foot is set out below:

1971-2015 1988-2015 1991-2015 1993-2015 1996-2015 2006-2015

All 14 users have used the route on horseback or leading a horse, the years in which they have used the route is set out below:

1950-1980	1971-2015(2)	1972-2015	1973-2015	1976-2015
1991-2015(2)	1993-2015	1994-2014	1995-2015	1996-2013
1996-2015	2005-2013			

The user who used the route between the years of 1996-2013 stopped using the route as they moved to Australia and the user who used the route between 1996-2015 didn't use the route between the years of 2013-2014 due to have children.

1 of the users used the route on a bicycle / horse-drawn vehicle between the years of 1991-2015

All the users have seen others using the route some on foot, others on horseback / leading a horse and some on bicycle. All the users agree that the users they saw using the route was using the same route they use.

The use of the route by the users varies, some users use the route on foot, horseback or leading a horse 3 times a week, weekly, monthly or twice per year.

The main reasons for using the route is for pleasure, exercise, exercise for the horses, as part of organised walks and to enjoy the scenery. The users also use the route to visit places along the route or as part of a longer journey.

6 users agree that the route has always followed the same line, but the other user mention a fence was erected in 2013 along with gates, some users were not prevented access and just diverted their route slightly and some users mention it didn't stop them from using the route. 1 user states ' from Gambleside to BW15 there is now a well-defined path to follow - prior to that I had to take the best dry line available to avoid mud. Spring 2013 a fence went in and so I had to follow the line of the fence instead of going through the mine workings' and the applicant states ' in 2005 the West Pennine Link Route was planned and a surfaced path was put in from the cinder track near the pump house up through Gambleside and along to join BW15. Before that we would take various lines over the grass depending on ground conditions, to avoid mud etc. There is now a clear path to follow which horse riders stick to. In the Spring of 2013 a fence was erected crossing the line of the path below the mine working ruins. Since 2013 we have ridden up the line of the fence from GR382534 427489 to re-join BW18 at the top GR382591 427159. Before the fence was put in we rode up the visible footpath all the way to "Stephanie's gate"'.

None of the users have ever worked for an owner / tenant / employee or a family member of the route, however 1 of the users stated that they met either owner / tenant / employee or a family member of the route when they were using the route and they responded with 'Hi'.

None of the users have ever asked permission to use the route and no one has ever attempted to turn the users back from using the route, the users have never seen any notices or any obstructions apart from the new fence and gates that were erected in 2013.

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

- Until I was asked to give 'user evidence' I was not aware that this route was not part of the concessionary circuits on the catchment area
- I have rode round this route for 42 years and never been questioned or stopped
- I have used this route since the age of 5 or 6 in company or alone as part of a circuit as have my sisters. The only changes have been the creation of a hard track to BW15 from behind the pump house and latterly the fence which did not prevent access along the historic route
- I first used this route in 1971 when I lived in Clowbridge and got my first pony. I have continued to use this route to the present day and now ride from my field in Goodshawfold
- I have regularly ridden this route all my life, riding with friends, fundraising and organised rides
- The section of the claim on the cinder track, past the pump house and Gambleside to BW15 is part of the West Pennine Link Route that was agreed with LCC, UU and the Countryside Agency as a means of access for riders and cyclists to reach the Mary Towneley Loop. However, although this route which starts at Smithills in Bolton is now complete as far as Hambledon Hill, the definitive status stops on Hambledon Hill. I have paperwork and minutes of meetings with LCC and CoAg over the years when this route was discussed but the last mile or so has been forgotten, Part of the WPLR route along the cinder track forms part of this claim
- I have always ridden this route along with friends and in larger organised groups, we have never been told this was not an option
- I have regularly ridden this route throughout my life, hacking out on Sunday mornings, taking part in organised rides and fund raisers and with friends
- I know that before I started using it that it was a well-known route as I was shown it by a lady who was in her 30's and she'd been riding it since she was a teenager. I know my dates are right because that's when I moved there with my horse
- Been riding this route for years, never been told I couldn't ride it. Really love the ride and never been asked not to

#### Information from others

Ingham and Yorke responded to say that they have no objection to the proposal on their client's behalf as their client only holds the mines and minerals for this land.

Response from United Utilities who are the landowner in connection with this application is set out below.

United Utilities Plc is the landowner for the area in relation to the proposed Definitive Map Modification Order. Land in this area is primarily tenanted by Jonathan Shorrocks, Dyneley Farm, Cliviger. United Utilities provides a pay and display car park accessed off the A682 at the south end of Clowbridge reservoir. This car park is



suitable for horse / box trailer use subject to there being a 3 metre-wide access road over an 18 ton gross weight limit bridge. The car park offers two separate horse tie rails and bridle gate catches at various points along the clearly signposted Pennine Bridleway feeder route (Gambleside Trail). This route is featured on the Dunnockshaw Community Woodland leaflet published by United Utilities and is available on its website.

The leaflet referred to features approximately 30km of tracks, paths and bridleways suitable for a variety of users, e.g. dog walkers, cyclists, fell runners and horse riders although not all user groups are permitted to use every route. The reservoir circuit path, for example, is not permitted for use by cyclists or dog walkers. Of the routes referred to 11km are bridleways in addition to the Pennine Bridleways Feeder Route featured on the Community Woodland leaflet. The area is also popular for those with restricted mobility and particularly those restricted to wheelchair use with a 2.3km path around the reservoir margin and 1.5km Quarry Walk specifically modified for Wheelchair and / or tramper vehicle access. The Dunnockshaw area south and east of Clowbridge reservoir also provides a challenging permanent orienteering course and Clowbridge reservoir is home to Rossendale Valley Sailing Club.

With so many use groups visiting an area that also functions as a medium-sized sheep farm it is not surprising to find United Utilities, as the major land owner, has on occasion to deal with conflict between visitor groups. A part-time ranger visits the area between two and three days each week and has done so for the last eight years. He is therefore ideally placed to comment on issues relating to public access.

The ranger has confirmed that horse boxes / trailers access the main car park quite frequently with others opting to park on Limey Lane at the north end of Clowbridge reservoir. The ranger is equally familiar with horse riders moving along the Wholaw Trail, White Hill circuit and the Pennine Bridleway feeder route that runs through Gambleside south and east of the reservoir. Only very infrequently has he observed horse riders trespassing footpaths elsewhere over Gambleside area and in particular along the path between Point A and B on the map detailing a proposed amendment to the Definitive Map. He confirms having occasionally seen riders and cyclists that they are not on an authorised route for their particular activity. To claim therefore that FP 18, 19 and 364 in particular are frequently used by horse riders and have been so over very many years is simply not the case.

The land through which these footpaths run is tenanted and the tenant has committed to the Higher Stewardship Scheme. This scheme aims to encourage farmers to manage their land holding in a manner conducive to establishing and maintaining flora and fauna – beneficial eco systems. Gambleside and the area onwards to Meadow Head, Compston Cross and Limey Valley is an important habitat for upland species and in particular those dependant on open moor and bog. As a major land owner United Utilities is committed to providing public access in support of a wide range of interests. However this has to be managed and balanced against its clear mandate to support its tenants and to create and maintain diverse wildlife habitats. United Utilities feel that the area is very well provided for in relation to horse rider interests and they do not accept that there is a long-standing historical evidence of unopposed trespass by horse riders over the footpaths referred to. Much of the route between Points A and B on the proposed application and onwards to

Meadow Head area runs through a steep hillside that is in places deeply rutted. It also passes close by unfenced former colliery buildings. To provide a safe bridleway route will require significant track enhancement. They feel this will impact adversely on this ecologically important habitat and that this situation will be further exacerbated by increased use by cyclists and possibly off-road motorcyclists – already a significant problem within the Hambleton and Hapton areas nearby.

They trust their points concerned will be considered and that the route amendment will be rejected.

#### Information from file in Legal services

The creation of the Pennine Bridleway national Trail being underway a report was presented to the Committee on 15<sup>th</sup> August 2007 and it was resolved that agreements be entered into by the authority to take dedications of various sections of bridleway route from various owners. One length had been proposed to be dedicated from United Utilities and discussions had already taken place. This was the route section A- H of the route being considered. Various issues arose which has meant that no final agreement was signed but the file indicates United Utilities' intention to dedicate A-H. The basic draft agreement was approved by UU in April 2002.

### **Assessment of the Evidence**

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

In Support of the Claim

User evidence

Evidence of owner intention re section A-H

Against Accepting the Claim

Information from the owner as to their present intention and actions

Conclusion

The claim is that this length is already bridleway in law and should be recorded as such on the Definitive Map and Statement.

It is suggested that there is not sufficient evidence of express dedication although the information on Legal Services File regarding A-H may arguably come close to being such.

The Committee is invited instead to consider the evidence and whether there is sufficient evidence of a dedication which can be deemed from user of the route under S31 Highways Act 1980 for the 20 years prior to the route being called into question. The application will call the route into question but the issue of the fenceline in 2013 may also be sufficient to call the route or that section of the route

into question, the years of use to be considered would therefore be 1993-2013 or 1995-2015. It is suggested that there is sufficient use as of right. The challenges to a couple of the users in 2006 again could be a calling into question but it is suggested that this did not appraise a reasonable number of users of the challenge to their use and is therefore unlikely to be sufficient to be a calling into question. It could arguably be evidence of the landowners lack of intention to dedicate, although there are no clear details given, but this does not seem sufficient evidence of intention as in 2006 the landowner was discussing dedication of part of the route with the County Council.

Despite the concerns of United Utilities today it is advised that the criteria set out in S31 can be satisfied in this matter on balance.

Committee may also look at user or other matters as circumstances from which dedication by an owner may be inferred. This intention to dedicate can be difficult to show if the landowner is longstanding and today expressing a lack of intention, but it is suggested that in this matter there is some good evidence of the owner's intention to dedicate section A-H in particular shown in the file referred to above.

Taking all the evidence into account it is suggested that Committee may find sufficient evidence on balance from which to find a deemed dedication of this route under S31 or inference of dedication of A-H.

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

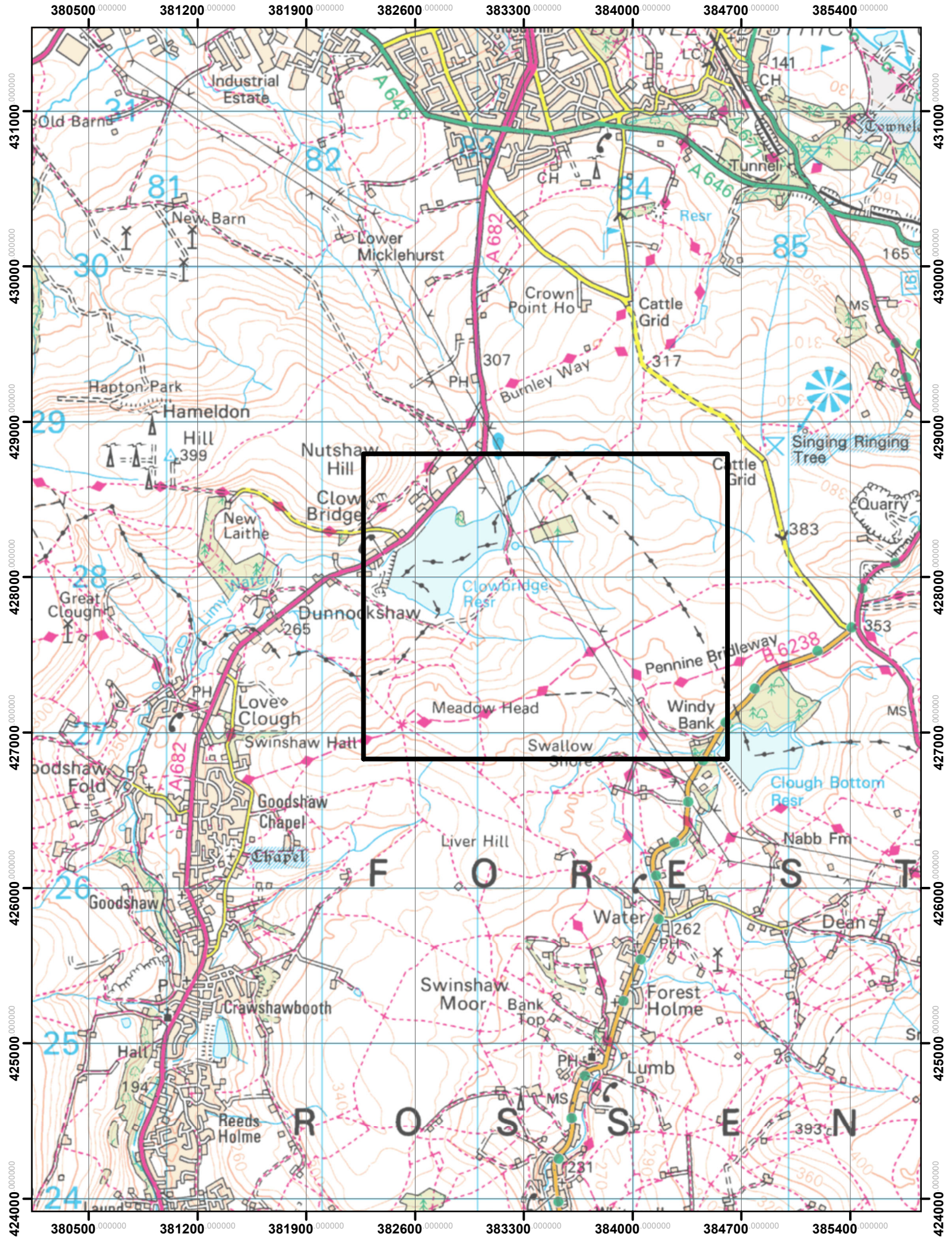
**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Tel
All documents on Claim File Ref: 804/549	Various	Megan Brindle 01772 535604

Reason for inclusion in Part II, if appropriate

N/A





**Andrew Mullaney**  
 Head of Planning and  
 Environment

**Location Plan - 804/549**

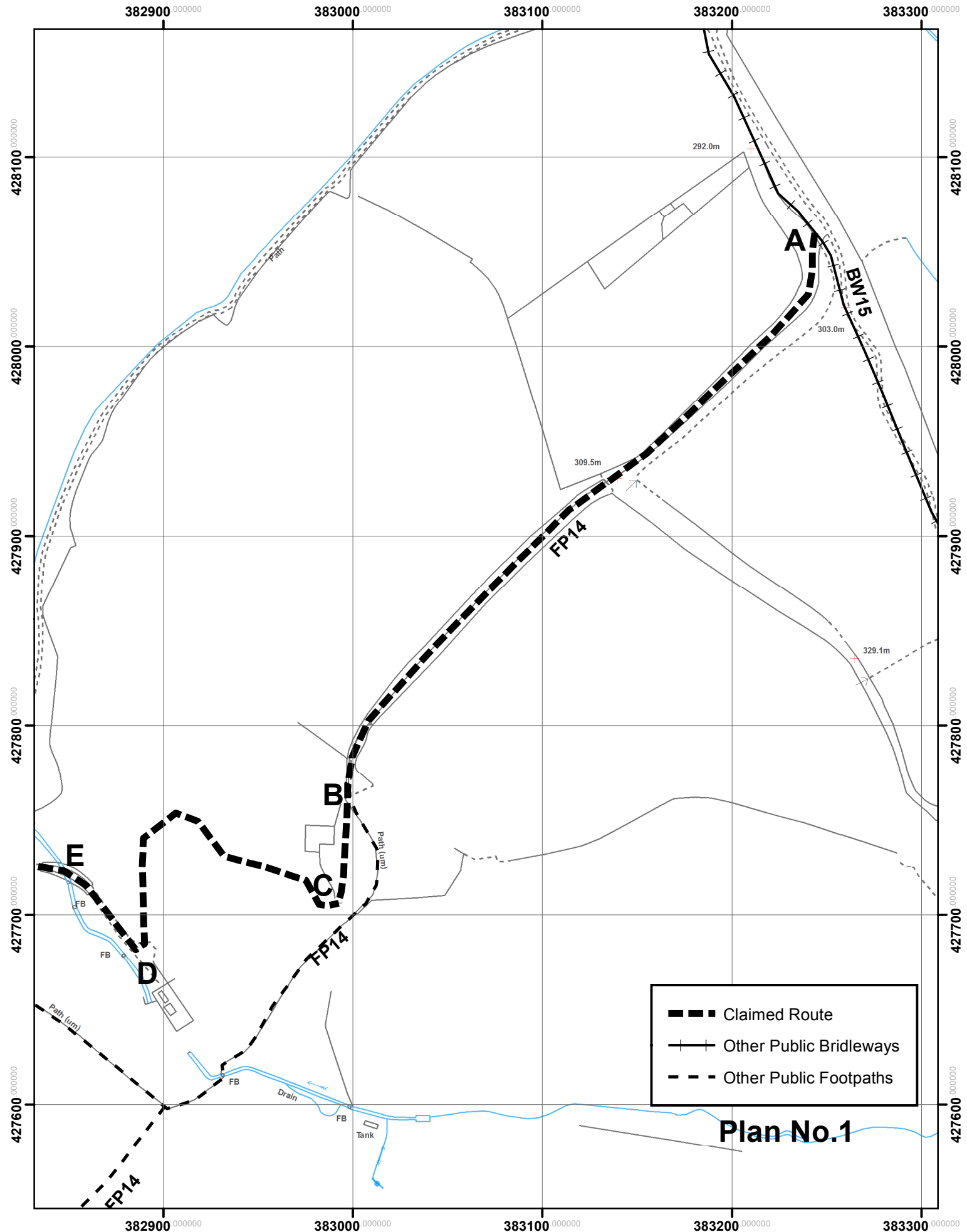
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**Andrew Mullaney**  
 Head of Planning and  
 Environment

Application to Record a Bridleway over Moorland Tracks near Clowbridge Reservoir by  
 Addition of Bridleway and Upgrade from Footpath: Rawtenstall, Rossendale Borough and  
 Dunnockshaw, Burnley Borough. Application No. 804/549

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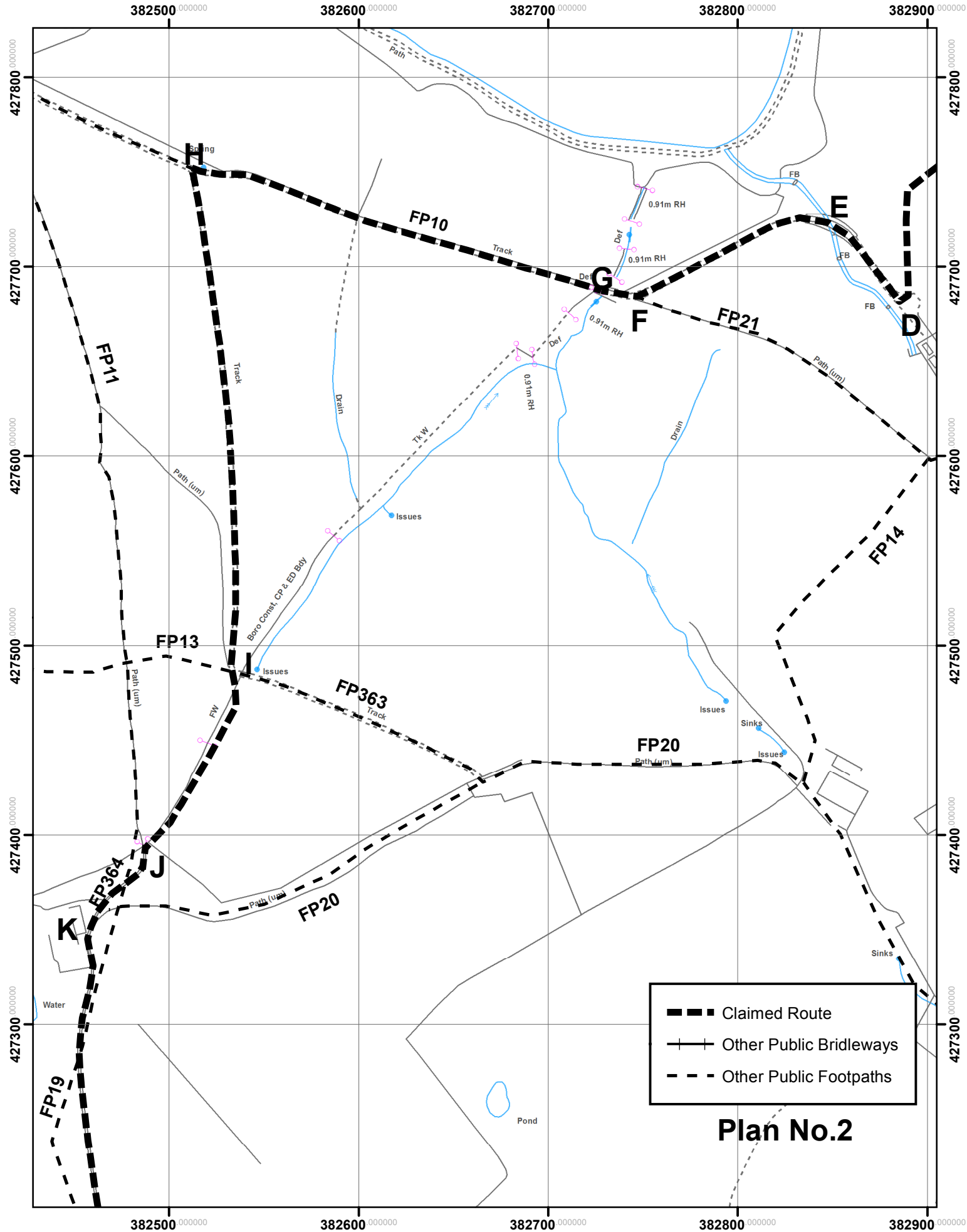


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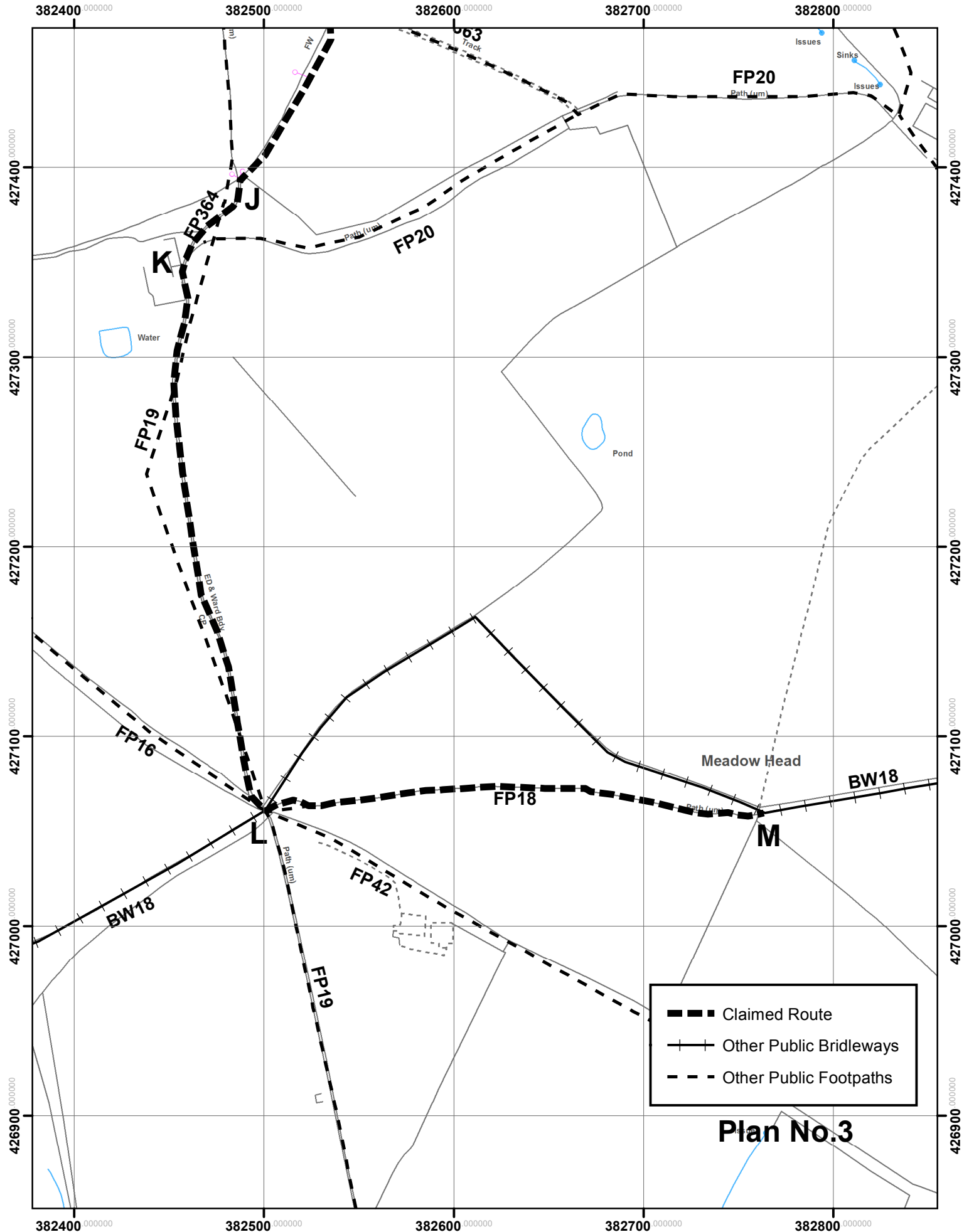
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1:2,500



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## Regulatory Committee

Meeting to be held on 21 October 2015

Electoral Division affected: Penwortham North
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### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

#### Addition of a Public Footpath from Cop Lane to Alcester Avenue through Penwortham Girls High School, Penwortham, South Ribble

File No. 804-563

(Annex 'A' refers)

Contact for further information:

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

Jayne Elliott, 07917 836626, Public Rights of Way Officer, Planning and Environment Group, [Jayne.elliott@lancashire.gov.uk](mailto:Jayne.elliott@lancashire.gov.uk)

### Executive Summary

Application for a Public Footpath from Cop Lane to Alcester Avenue, Penwortham, South Ribble to be added to the Definitive Map and Statement of Public Rights of Way in accordance with file no. 804-563.

### Recommendation

1. That the application for a Public Footpath from Cop Lane to Alcester Avenue, Penwortham, South Ribble, to be added to the Definitive Map and Statement of Public Rights of Way in accordance with file No. 804-563, 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 Cop Lane to Alcester Avenue, Penwortham, South Ribble to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G and points A1-B and points F-G1.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation if necessary by sending it to the Secretary of State

### Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received from Mr David Howarth for a Public Footpath extending from Cop Lane through Penwortham Girls High School to Alcester Avenue, Penwortham, South Ribble Borough a distance of approximately 150 metres and shown on the Committee plan by thick dashed lines between points A-B-C-D-E-F-G and points A1-B and points F-G1 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” or
- “the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path”

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that 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**

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

Penwortham Town Council have also been consulted and their response is set out below.

The Town Council discussed the proposal and the following was stated.  
*"The Council are aware that residents have used the footpath for a number of years and so support the inclusion of the aforementioned route as a definitive public right of way. However, the Council have serious concerns regarding the safety of the pupils attending Penwortham Girls High School and should LCC include the route as a public right of way as immediate access to the school grounds from this route would impinge on the safety of school pupils. Therefore, the Penwortham Town Council suggest that some form of barrier or fencing should be implemented to mitigate the risk."*

Applicant/Landowners/Supporters/Objectors

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

## Advice

### Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5209 2821	Point on Cop Lane adjacent to main school gate
A1	5200 2821	Point on Cop Lane adjacent to pedestrian gate
B	5202 2822	Zebra crossing on tarmac access road into school
C	5206 2824	Zebra crossing adjacent to north west corner of school building
D	5209 2824	Point at which route narrows as it passes between two buildings
E	5210 2824	Point at which route widens after passing between two buildings
F	5214 2825	Point on tarmac access road west of main gate
G	5214 2825	Point on Alcester Avenue adjacent to vehicular gate
G1	5214 2825	Point on Alcester Avenue adjacent to pedestrian entrance

### Description of Route

A site inspection was carried out in April 2015 accompanied by a representative from Penwortham Girls High School through which the route runs.

The route commences at the junction with Cop Lane. Two adjacent entrance points to the school exist and the application has been made to include both.

'Route 1' is shown by a thick dashed line between point A and point B on the Committee plan. This route leaves Cop Lane in an easterly direction and enters the school grounds along the main vehicular access route into the school.

From point A the route passes through gateposts approximately 5 metres apart onto which a metal barrier is attached. The barrier was open when the route was inspected and the representative from the school explained that the current practice was for it to be open during school time and for it to be locked at night, weekends and during the holidays.

The main entrance provides access to the staff and visitor parking area, and is also used by lorries delivering food to the school kitchens on a daily basis during term time.

From point A the route passes east along the tarmac access road to point B where a zebra crossing has been painted on the tarmac to indicate the route that should be taken by pupils across the roadway. Between point A and point B double yellow lines along either side to indicate no parking along the access way.

'Route 2' leaves Cop Lane immediately south of the main school gates at point A1 and passes through a pedestrian gate which was unlocked at the time of inspection but which the representative of the school informed me would be locked out of school hours.

Attached to the wall immediately beyond the gate is a sign which reads "Penwortham Girls High School, No Thoroughfare, Action will be taken against any persons trespassing or otherwise causing a nuisance or disturbance including the unauthorised practicing of games and exercise of animals on these premises." And specified "No ball games, No cycling, No skating, No dogs". A further sign indicated the use of CCTV cameras on the premises.

Beyond the gate the route continues parallel to the main access road into the school, in an easterly direction along a tarmac footway approximately 1 metre wide for approximately 12 metres. It then crosses the main access road to point B. The point at which the route crosses the access road is marked on the ground as a zebra crossing to be used by the pupils.

From point B the two routes claimed to have been used by the public converge and continue in a north easterly direction along the tarmac drive to pass to the north of the main entrance to the school buildings. The route again coincides with a marked out walkway painted onto the tarmac to indicate the route to be used by pupils.

At point C the pupils' route crosses the access road via a further painted zebra crossing towards the main entrance to the school building while a further marked out route continues from point C along the route under investigation.

From point C the route under investigation continues in an east north easterly direction along the tarmac access road which passes to the north of the school building and is bounded by a beach hedge on the perimeter of the school site. The width between the building and the kerb marking the extent of the tarmac is approximately 3 metres and the pedestrian route to be used by the pupils had been marked out along part of the width adjacent to the building.

After approximately 15 metres the tarmac area widens and on the day that the route was inspected this part of the route was partially blocked by a delivery lorry that had reversed up the route to deliver food to the kitchen. Part of the tarmac area south of the route under investigation contained the commercial school bins and there was also a small area where two cars were parked. A marked out pedestrian route to be used by the pupils passes the bins and parked cars on part of the width of the route under investigation to point D.



At point D the width of the route available to use is restricted as it passes between two buildings. The width is approximately 1.1 metre at point D widening to approximately 1.8 metres to continue between the buildings for approximately 5 metres to point E.

Just beyond point E separating the route under investigation from the rest of the school premises is a green security fence into which there is a pedestrian gate which was closed when the route was inspected.

From point E the route under investigation widens to approximately 3 metres and follows a tarmac access road in a north north easterly direction bounded by the green security fence separating it from the school buildings to the south and the boundary hedge to the north. On the day the route was inspected two vans owned by contractors working on the school premises obstructed part of the width of the tarmac road.

After approximately 40 metres the route splits, one route continues to exit the school premises through some double gates which were open at the time that the route was inspected but which are normally locked out of school hours. The route ended just east of the gates at point G at the junction with the western end of Alcester Avenue.

As was the case at the western end of the route where it meets Cop Lane the applicant has claimed that two adjacent access points also exist at Alcester Avenue.

'Route 1' is described above between point F and point G via the main gates. 'Route 2' is also shown on the Committee plan but from point F west of the main gate it passes in a south easterly direction to exit onto the western end of Alcester Avenue at point G1 via an ungated gap.

Just north of point G1, located in the school grounds, but not easy to read from the route under investigation, is an identical sign to the one found on the gate at point A1.

The total length of the route under investigation from point A-B-C-D-E-F-G is 150 metres with the two alternative access routes measuring 30 metres between point A1 – point B and 4 metres between point F and point G1.

### Map and Documentary Evidence

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



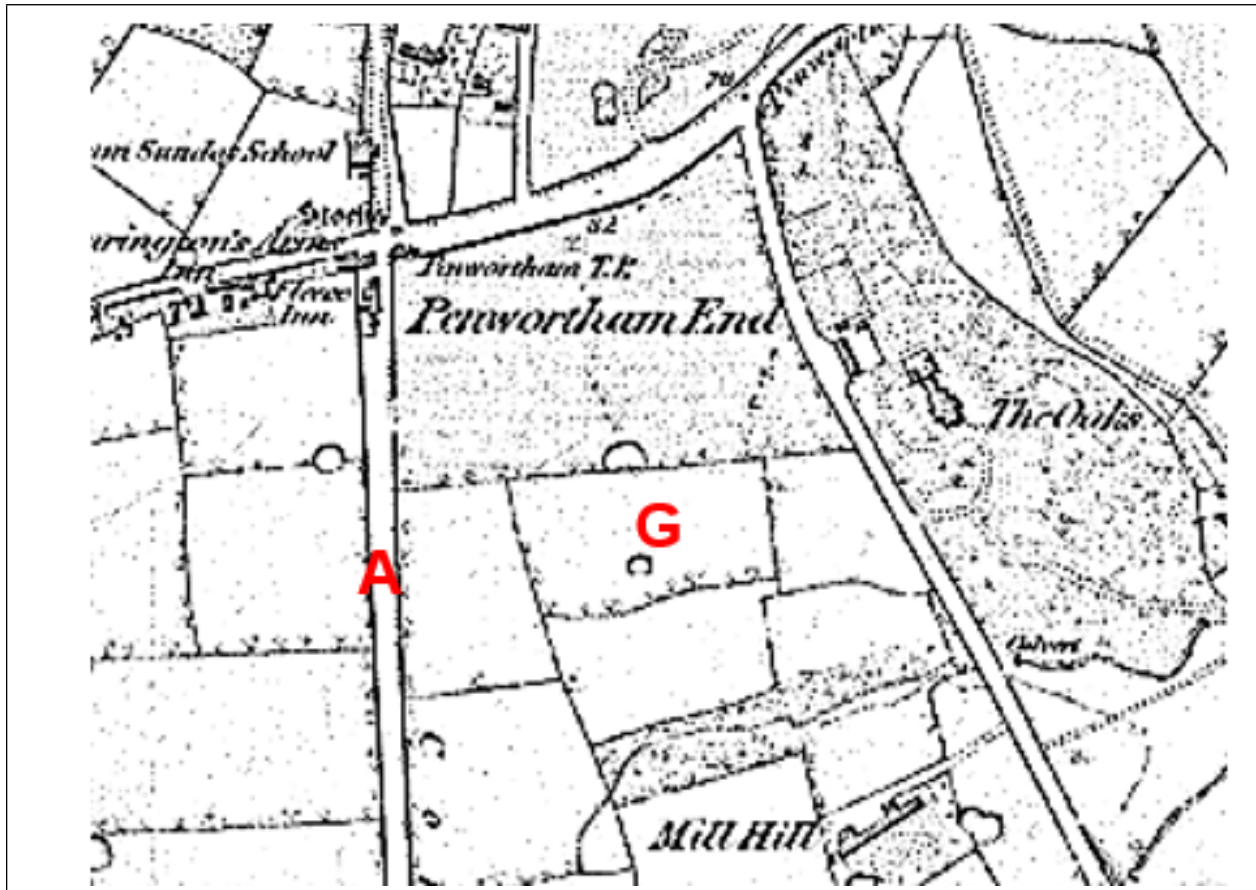
Observations		The route under investigation is not shown. Cop Lane is shown but it is not possible to determine the exact location of the route and the land that it crosses appears to be undeveloped agricultural land.
Investigating Officer's Comments		A route claimed as a public footpath would be unlikely to be shown on the map due to the limitations of scale and the purpose for which it was drawn. The area of land crossed by the route appears to be undeveloped and Alcester Avenue is not shown. The route under investigation is unlikely to have existed in 1786.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads.
Observations		The route under investigation is not shown. Cop Lane is shown but it is not possible to determine the exact location of the route and the land that it crosses appears to be undeveloped agricultural land.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1818.

<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		The route under investigation is not shown. Cop Lane is shown but it is not possible to determine the exact location of the route and the land that it crosses appears to be undeveloped agricultural land.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1830.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no canals or railways crossing the area of land over which the route under investigation runs.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		The Tithe Map for Penwortham was produced in 1839 around the time of the earliest 6 inch

		Ordnance Survey map. As the Ordnance Survey map and earlier commercial maps show that the land crossed by the route under investigation was undeveloped agricultural land with no indication that the route existed the Tithe Map was not examined.
Investigating Officer's Comments		No inference can be drawn.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		The Inclosure Award for Penwortham has not been examined as the land crossed by the route under investigation was undeveloped agricultural land.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849. <sup>1</sup>

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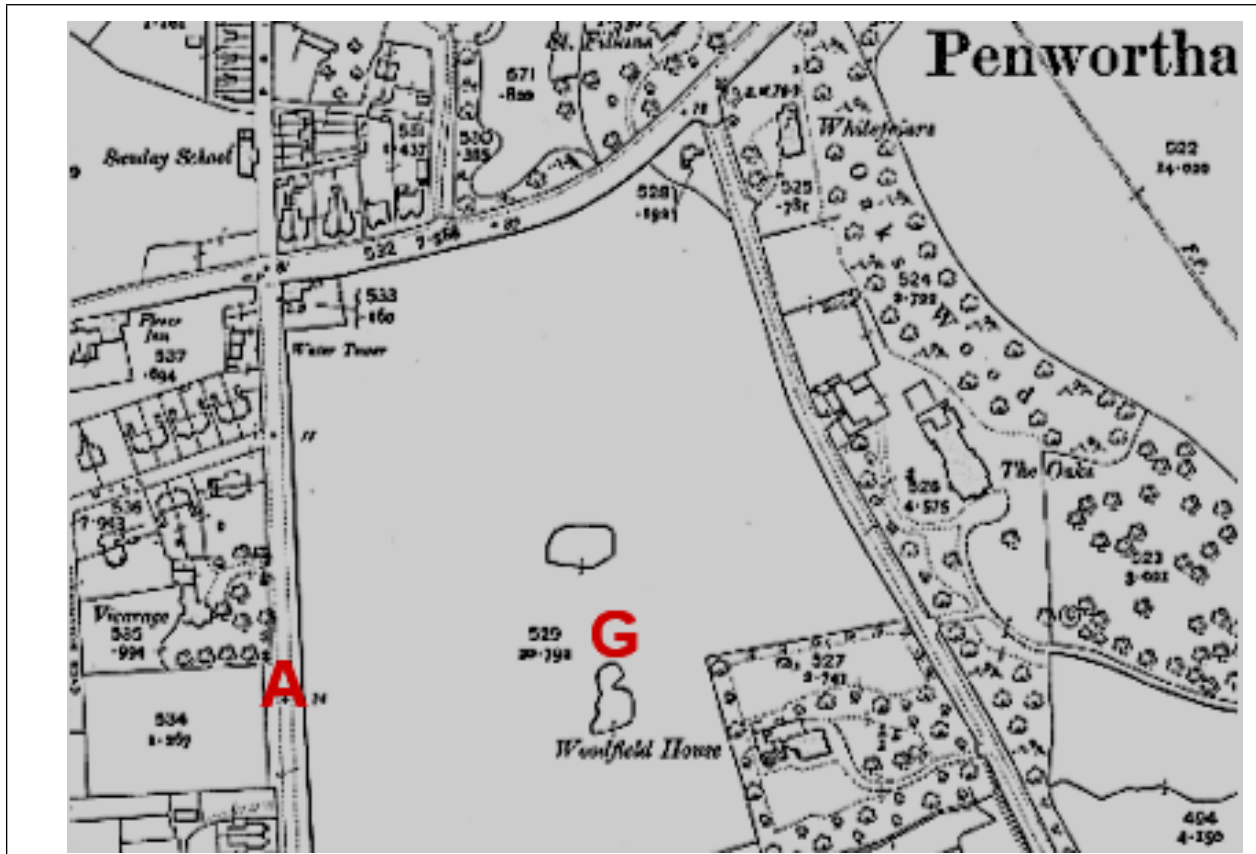
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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



Observations		The route under investigation is not shown. Cop Lane is shown but Alcester Avenue is not meaning that although public access was available to point A (and point A1) point G (and point G1) did not appear to be publicly accessible. The land now crossed by the route under investigation is shown as agricultural land and there is no worn track identified on the map along the route claimed.
Investigating Officer's Comments		It is considered that the route did not exist in 1849.
<b>25 Inch OS Map</b>	Circa 1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published circa 1891.



Observations		The route under investigation is not shown. It crosses agricultural land and point G is seen to be a point in a field to which there appears to be no public access.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1891.
<b>25 inch OS Map</b>	1912	Further edition of the 25 inch map surveyed in 1891, revised in 1909 and published in 1912.



Observations		The route under investigation is not shown and there do not appear to have been any changes since the publication of the earlier edition of the 25 inch Ordnance Survey map.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1912.
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the</p>

		<p>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 is no Finance Act Map deposited in the County Records Office for the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
<b>25 Inch OS Map</b>	1937	Further edition of 25 inch map surveyed 1891, revised 1929 and published 1937.
Observations		The route under investigation is not shown and there do not appear to have been any changes since the publication of the earlier editions of the 25 inch Ordnance Survey map.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1929.
<b>Authentic Map Directory of South Lancashire by Geographia</b>	Circa 1934	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>





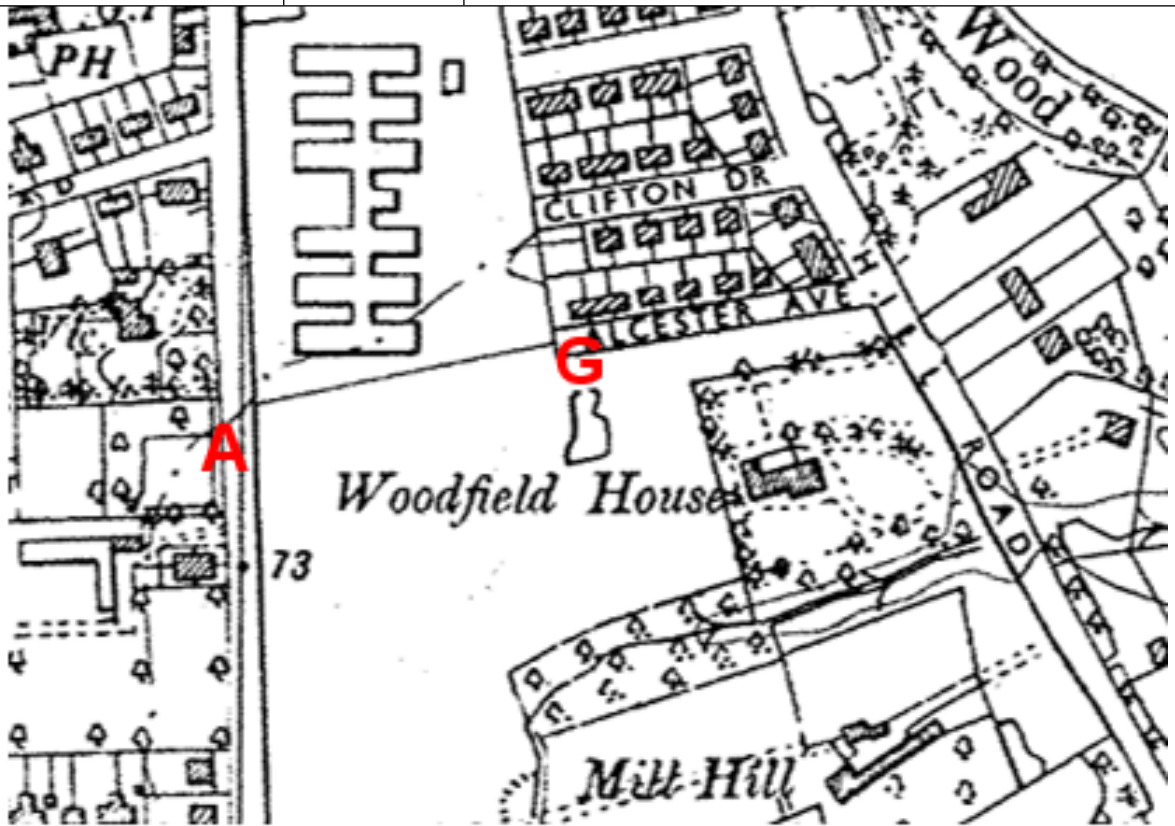
Observations		The route under investigation is not shown. Cop Lane is shown to exist but Alcester Avenue – which provides public access to point G (and point G1) - is not shown on the map.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in the 1930s.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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



Observations		This aerial photograph is the earliest piece of documentary evidence examined to show that Alcester Avenue and the houses along it had been built. The photograph pre dates the construction of the school and the land crossed by the route under investigation appears to be agricultural. A worn track consistent with pedestrian use can be seen coming off Alcester Avenue east of point G (and point G1) and extending towards Cop Lane. This route is not on the exact alignment of the route under investigation and it is not possible due to determine exactly where it exits onto Cop Lane.
Investigating Officer's Comments		A route from Alcester Avenue to Cop Lane may have existed in the 1940s which predated the route now under investigation however the route under investigation did not exist on its current alignment at the time that the photograph was taken.
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 route under investigation is not shown. Public access was available to point A (and point A1) on Cop Lane and to point G (and point G1) from Alcester Avenue but the school is not shown to have existed and there is no trodden track shown to exist across the agricultural land.

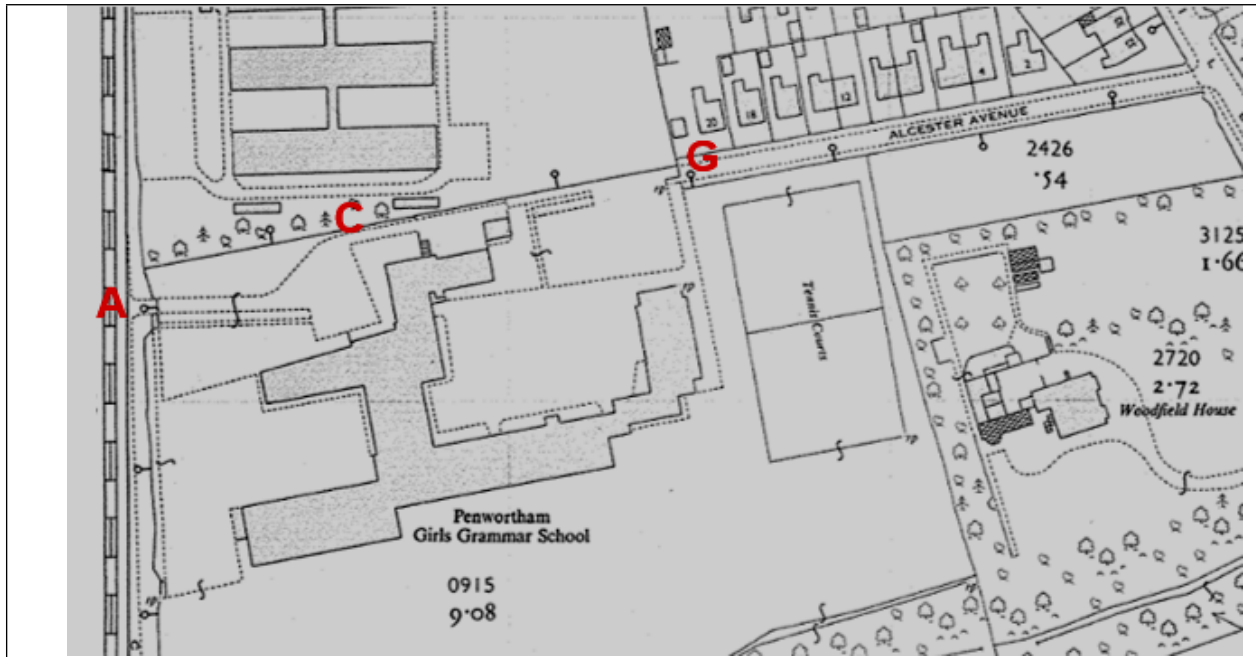
Investigating Officer's Comments

The route under investigation probably did not exist in the 1930s.

**1:2500 OS Map**

1960

Further edition of 25 inch map reconstituted from former county series and revised in 1957 and published 1960 as national grid series.



<p>Observations</p>		<p>The school had been built and is labelled as Penwortham Girls Grammar School. Access appears to be available at point A and may have been gated. A separate path (shown by double pecked lines) is also shown extending from point A1 to run parallel to the main access route indicating a separate pedestrian access.</p> <p>Access appears to be available along the north side of the school from point C through to point G where a pedestrian access also appears to be shown consistent with point G1.</p>
<p>Investigating Officer's Comments</p>		<p>By 1957 it appears that the school has been built and that the main access to the school was from Cop Lane at point A with a designated pedestrian access route from point A1. The route under investigation appears to be available through the school grounds and it appears that pedestrian access onto Alcester Avenue at point G1 was possible although whether this was entirely consistent with the modern day access and whether there was a gate at point G is not clear from the map.</p>
<p><b>Aerial photograph</b></p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



Observations		The black and white photograph confirms the existence of the school in the 1960s and access appears to be available along most of the route claimed. The exact configuration of access points at point G and G1 is still uncertain as it is not possible to see whether gates existed due to tree cover.
Investigating Officer's Comments		The route under investigation appeared to be capable of being used in the 1960s although the configuration of access at Alcester Avenue is unclear.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS.



Observations		The shows that the layout of the school had remained largely unaltered and that the route appeared to be accessible. The building that restricts the width of the path between point D and point E can be seen in the photograph. The exact access available at point G and G1 cannot be seen due to tree cover.
Investigating Officer's Comments		The route under investigation appeared to be capable of use in 2000.
<b>Aerial Photograph</b>	2010	Aerial photograph available to view on GIS



Observations		The photograph is taken during school hours. The layout of the school appears largely unaltered from 2000 and the route claimed appears to be accessible.
Investigating Officer's Comments		The route under investigation appeared to be capable of use in 2010.
<b>Definitive Map Records</b>		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.  Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area 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 Penwortham Parish Council. The route under investigation is not shown on the parish survey map or documented in the parish survey cards.
<b>Draft Map</b>		The parish survey map and cards for Penwortham were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.  The Draft Maps were given a "relevant date" (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these

		objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The 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.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation is not shown on the Provisional Map of Public Rights of Way and there were no objections to the omission of the path.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation is not shown on the First Definitive Map and Statement Map.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The route under investigation is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The route under investigation was not considered to be public during the preparation of the 1 <sup>st</sup> Definitive Map and Statement through to the 1960s.
<b>Highway Adoption</b>	1929 to	In 1929 the responsibility for district highways

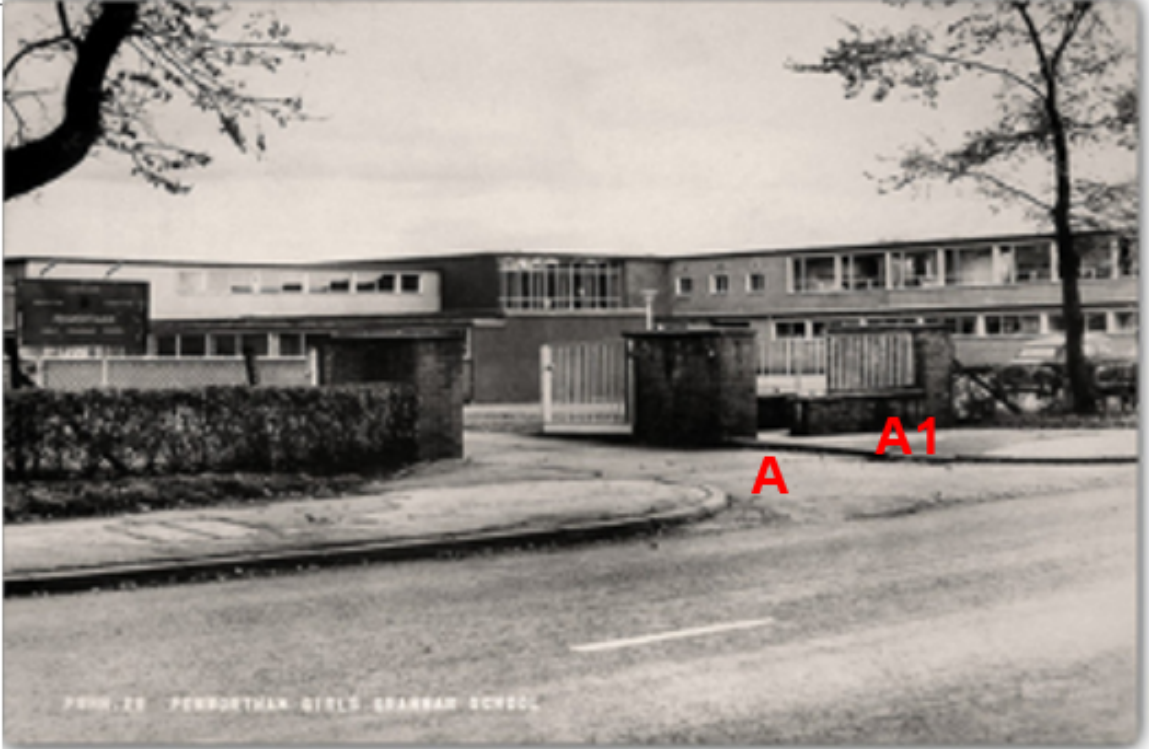


<p><b>Records including maps derived from the '1929 Handover Maps'</b></p>	<p>present day</p>	<p>passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
<p>Observations</p>		<p>The 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>
<p>Investigating Officer's Comments</p>		<p>The fact that the route was not recorded as a publicly maintained highway in 1929 is not surprising as it is unlikely to have come into existence until the school was built in the 1950s (it is stated to have come into existence in 1954 – Wikipedia).</p> <p>Once the school had been built, the fact that the route now under investigation was not recorded on the List of Streets is not unusual as it does not appear to have been laid out as a designated footway as part of a development.</p> <p>The fact that it is not recorded as a publicly maintainable highway does not mean that it does not necessarily carry public rights of access.</p>
<p><b>Statutory deposit and declaration made under section 31(6) Highways Act</b></p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A</p>

<b>1980</b>		<p>statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area of land 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.
<b>Google Street View</b>	2009	Google Street View Images captured May 2009.



<p>Observations</p>	<p>The first photograph confirms that access at point A and point A1 was available in 2009. The barrier across point A is shown in an open position but it is not known whether the photograph was taken during school hours or not. The photograph from Alcester Avenue shows the gate at point G open but it is not possible to see whether access was also available through point G1.</p>
<p>Investigating Officer's Comments</p>	<p>The photographs support the user evidence detailing use of the route under investigation in</p>

		2009.
<b>Undated photograph of the school found on the internet</b>	unknown	A google search located an undated photograph of Penwortham Girls Grammar school on the internet (www.flickr.com).
		
Observations		The photograph shows the entrance to the school on Cop Lane and that access the access points at point A and point A1 existed and appeared to be available. The gates at point A are open in the photograph.
Investigating Officer's Comments		The photograph, whilst undated, supports the user evidence which describes access to the route being from both point A and point A1.

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

All of the land affected by this application is owned by Lancashire County Council and is occupied by Penwortham Girls High School.

### Summary

None of the map or documentary evidence examined was sufficient (even if considered collectively) to conclude that a public right of way existed through the school.

The evidence examined appears to show that the route under investigation did not come into existence until the school was constructed in or around 1954. A worn track – consistent with pedestrian use – is shown on the 1940s aerial photograph between Cop Lane and Alcester Avenue which may have been the predecessor to the route under investigation but it did not appear to be along the exact alignment of the route claimed.

It appears that the route under investigation could not have come into being until the school had been built. The map and photographic evidence examined supports the user evidence in that it appears that access to the school at point A and point A1 existed and appear to have remained unaltered. It also supports the user evidence in that it appeared to be possible to walk through the school grounds along the route claimed throughout the period of use covered by the user evidence submitted.

It appears likely that the gate at point G has existed in its current format during that time but the map and photographic evidence is not sufficiently clear regarding access at point G and G1 to be certain.

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

### Information from the applicant

In support of the application the applicant has submitted 21 user evidence forms, the evidence from these forms is set out below:

All 21 users have used the route on foot, the years in which the users have used the route varies:

1963 – 2015 (1) 1965 – 2015 (1) 1966 – 2015 (1) 1968 – 2015(2) 1969 – 2015(2) 1974 – 2015(2) 1978 – 2015(2) 1981 – 2015(3) 1983 – 2015 (1) 1987 – 2015 (1) 1988 – 2015 (1) 1991 – 2015 (1) 1994 – 2015 (1) 1997 – 2015 (1) 2012 – 2015 (1)

The use of the route on foot varies between users but includes 9 users using the route daily, 9 users using the route weekly, 2 users using the route monthly, and 1 user using the route every 2 – 4 months.

7 users have used the route on bicycle/horse-drawn vehicle, the years in which the users have used the route varies:

1966 – 2015 1968 – 1972 1974 – 2010 1978 – 2015 1981 – 2015  
1987 – 2015

The use of the route on bicycle/horse-drawn vehicle varies between users but includes 3 users using the route weekly, 2 users using the route monthly and 2 users did not respond.

1 user who used the route during 1988 to 2015 has recently had to stop using the route when the school locked the gates. Another user who used the route during 1981 to 2015 didn't use the route for long periods of time throughout 1981 to 1990 due to working out of the UK in the marine industry; his wife and children still continued using the route.

All 21 users recall seeing others using the route on foot, 9 users recall seeing other using the route on a bicycle and 6 users recall seeing others using the route on a bicycle/horse-drawn carriage. All 21 users saw the other people mentioned using the exact same route as the one they use.

The main reasons for using this route include to go to the doctors, the health clinic, the dentist, the church hall, Sunday school, Cop Lane School, to work at the old Government buildings, as well as for delivering local newspapers. Many users also used this route for pleasure including visiting friends, visiting the shops and the post office, attending ballet and functions at the girl's High School and running the Friday night club for children at Penwortham Church Hall. Some of the users also used this route for health reasons; as a short cut between roads such as Cop Lane and Hill Road to prevent them having to use the more dangerous, longer route and to prevent themselves having to breathe in the petrol and diesel fumes from the A59.

17 users stated that their route has always followed the same line and 1 gave no response. The other 3 users stated that their route has changed in the past because of the building that was constructed and the gate that was locked.

When using the route, 5 users have used it in the position of an owner and 2 users have used it as a family member.

8 users recall meeting a landowner/tenant/employee/family member of the route and experienced the exchange of greetings such as good morning or afternoon. 11 users stated that they had never met a landowner/tenant/employee/family member of the route and 2 users gave no response.

3 users stated that they had been given permission to use the route by Julie Westwell, the Headmistress at Penwortham Girls High School in 1991 via a letter that has been attached. 20 users stated that they have never been turned back on the route or had anyone tell them that they had no right to be on the route and 1 user gave no response.

10 users recall seeing notices discouraging use on the route. 2 users recall notices which were next to the tennis courts and stated 'no through fare' that were there from 2011 – 2015. 2 other users recall a 'no through fare' sign on the route that was near Alcester Avenue; 1 user stated it was there from 2011 – 2015 and the other stated it was there from 2013 -2015. 2 users recall a sign at the entrance to the school which stated 'private land, no trespassing' from mid-2014 – 2015. 2 users recall a sign stating 'school property' which was placed at the entrance to the school from 2013 – 2015. 1 user recalls a sign on the entrance gates advising of a planning application that was present for 24 hours. 6 users don't recall ever seeing any notices and 5 users gave no response.

14 users recall there being a gate/barrier placed on the route. 5 users stated that there isn't any gates/stiles/bridges/fences on the route and 2 users gave no response. 12 users state that there has been an obstruction. 10 of the users state that this obstruction was the gate and the barrier; more specifically, the locks on the gate and barrier. All of those 10 users state that it was late 2014/recently that this

obstruction arose and that it is ongoing. 3 of those 10 users stated that this has prevented/deterred them from using the route. 1 user states that the obstruction was the building materials that were placed on the route when alterations were being made to the building for 2 months and that this prevented him using the route for a few days. 1 user stated that the obstruction is the building that has been built on the route but that this didn't deter him from using it.

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

- 3 users refer to a letter they have attached from the previous headmistress Julia Westwell. The letter informs residents of refurbishments being carried out at the school but that 'The right of way from Cop Lane will be maintained, and the contractors' vehicles should not interfere with your access to your own property'
- There are many older people in Penwortham who over the years have found, through ill health and age, this path to be a god send.
- Prior to moving to Penwortham in 1974 I attended a school in Penwortham and stayed at a friend's house. We often walked the route in question at a weekend (1964-1968).
- This user also refers to letter from the previous headmistress, and mentions there is a doctor's surgery and a church hall opposite the Cop Lane entrance to the route. Many older and infirm people use the route from Hill Road and its connecting roads; Clifton Drive, Greyfriars Drive, Alcester Avenue, Valley Road and beyond. Many children use this route to travel to school; priory H.S, Hutton G.S, Cop Lane C.E, Penwortham Community Primary School. It is much safer than walking or cycling on Hill Road and Liverpool Road, crossing at the very busy crossroads of Liverpool Road, Cop Lane and Priory Lane. My own children used this route to travel to Cop Lane C.E.P School (walking) and Hutton G.S (cycling).
- When I first entered government service at Cop Lane I was told this was the quickest route to work and that it was presumed to be a public right of way.
- If the path is closed it will be like splitting a community and it will look like a prison.
- To my knowledge it has always been deemed a public right of way by myself, my family and friends and the general public. People regularly come down Clifton Drive assuming it is Alcester Avenue.
- It has always been accepted locally that the route is a public footpath by long user.
- I have represented this area as a town councillor for 20 years, a Borough Councillor for 12 years and a County Councillor for the last 2 years. In all that time this route has been open and I have known local residents to regularly use it. The maps on Mario (attached) with aerial photographs from the 1940's before the school was built show a well-trodden path along this route through the then grounds of Woodfield House.

Along with the 21 user forms, the applicant has submitted 2 statements from previous users, this information is set out below:

- An email from Mr Edward J Westhead who has also used the route in question but due to not having used the route for 10 years couldn't give the

detail required by the user forms. Mr Westhead states that he used the route from 1984 – 2005 with his mother who, due to her polio and Parkinson's disease, needed to exercise to retain mobility. They walked around Penwortham and on many occasions used the route to get from Cop Lane to Alcester Avenue or vice-versa.

- A 'Focus Feedback Form' from Mr and Mrs D L Tunstall who were born in Penwortham and have used the route for over 30 years. They still use the route regularly as it is a safe route for them to visit their daughter's house. Their two grandsons also use it most days to visit them.

#### Objection from Penwortham Girls High School

An email was received from Penwortham Girls High School on the 23<sup>rd</sup> July 2015 which confirms that Penwortham Girls High School is the occupier of the land and states that they have very strong objections and concerns about the approval of this route as a footpath. They believe that the creation of such a footpath would compromise the security of the school and the safety of the pupils as allowing members of the public unhindered access to the school site, and therefore the pupils, would hinder the schools ability to safeguard their pupils. They also state that they have never encouraged the use of the route and have actively discouraged it by locking the gates and placing up signage stating 'no through fare.'

#### Response from Lancashire County Council's Estates Team

The estates team have confirmed that Lancashire County Council own the land affected by the application but no further comments towards the application has been received.

### **Assessment of the Evidence**

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

#### In Support of the Claim

- User Evidence
- OS Map Evidence
- Aerial Photographs 2000 and 2010
- Letter to 3 of the users from former headmistress
- Absence of sufficient action taken by the landowner to discourage use of the route until recently.

#### Against Accepting the Claim

- Locking of gates and barriers
- Signs and Notices on the route
- Map and photographic evidence not sufficiently clear relating to access at point G and G1 to be certain



## Conclusion

The claim is that the route A-B-C-D-E-F-G and A1-B and F-G1 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. All evidence would appear to relate to the route A-B-C-D-E-F-G and A1-B and F-G1 and therefore the evaluation is on this basis.

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 first consideration is to determine whether the route is called into question. In this matter the information indicates different recollections about when access was prevented, particularly with reference to the presence of, dates and knowledge of notices and signage. Looking at the evidence it suggests that the route was called into question in 2014 by the installation and locking of the school gate and barrier and it is considered that the period of use from which dedication can be deemed would be 1994 – 2014.

All 21 user evidence forms submitted indicate knowledge and use of the route and 19 users state that they have used the route for 20 years or more suggesting good user evidence for the sufficient period.

The main purpose of the route is to access local amenities including the doctors, health clinic, dentist, church hall, Sunday school, Cop Lane school, to work at the old government buildings as well as delivering local newspapers. Many users also claim to have used the route for pleasure including visiting friends, visiting the shops and the post office, attending ballet and functions at the girl's High School and running the Friday night club for children at Penwortham Church Hall. Some of the users also state that they have used the route for health reasons; as a short cut between roads such as Cop Lane and Hill Road supporting a route from A-B-C-D-E-F-G and A1-B and F-G1.

With regards to the interruption and rebuttal by the owner there are several matters to be considered. A building and building materials along the route have been suggested to have interrupted the route for a few days and one of the two users confirm that use was not interrupted. Here it is considered that the obstructions by the building and building materials did not interrupt the route.

Reference is made by some of the users to the presence of notices and signs discouraging use of the route. However, as noted above, recollections differ as to when such notices and signage were present. A number of users don't recall ever seeing any notices and others provided no response in this regard. Again, it is not considered that such notices and signage interrupted the route.

The user forms submitted provide reference to gates and barriers on the route. Users also refer to there being an obstruction with a number of users specifying the obstruction to be the locked gate and barrier having arisen in 2014 or recently and stating that the obstruction is ongoing. A number of users state that the gates and barriers have prevented and deterred them from using the route whilst others refer to simply going under the barrier.

3 users refer to a letter from a former headmistress, acknowledging the route as a public right of way and giving permission to use it.

Considering matters regarding interruption and rebuttal by the owner there does not appear to be sufficient evidence of actions by owners to demonstrate lack of intention to dedicate over the twenty years prior to 2014.

An objection has been received from Penwortham Girls High School. However, whilst this objection is acknowledged, it is submitted that the concerns raised are not relevant considerations under either S31 Highways Act 1980 or under Common Law.

Considering also whether there are circumstances from which dedication could be inferred at common law. Whilst the 1940's aerial photograph provides evidence of a worn track between Cop Lane and Alcester Avenue, this does not appear to be along the exact alignment of the claimed route. The evidence examined appears to show that the claimed route could not have come into existence until the school was built in around 1954. The first indication of the route in its current alignment would appear to be the 1960 1:2500 OS Map, however the access points at G and G1 are still uncertain. Again, whilst the 1960's aerial photograph and subsequent 2000 and 2010 photographs appear to confirm that the claimed route was capable of being used at that time, the access at Alcester Avenue remains unclear.

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 1994 to 2014, in acquiescing in the use and taking no clear overt actions actually intended dedicating the claimed route as a footpath and it had become a footpath accepted by the public.

Taking all of the evidence into account, the Committee on balance may consider that the provisions of S31 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 can 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**

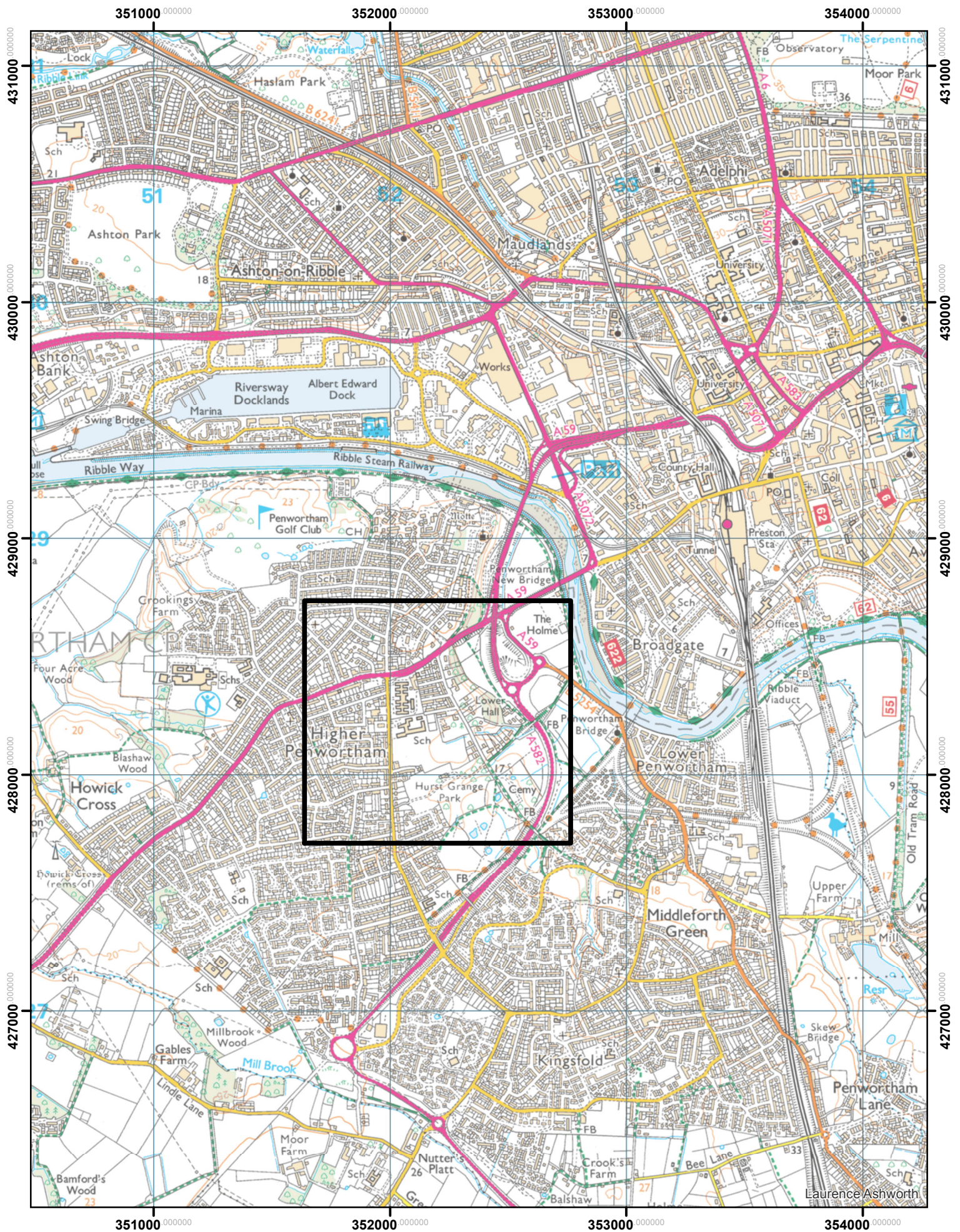
**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-563	Various	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 Cop Lane to Alcester Avenue,**  
**Penwortham, South Ribble**

1:20,000



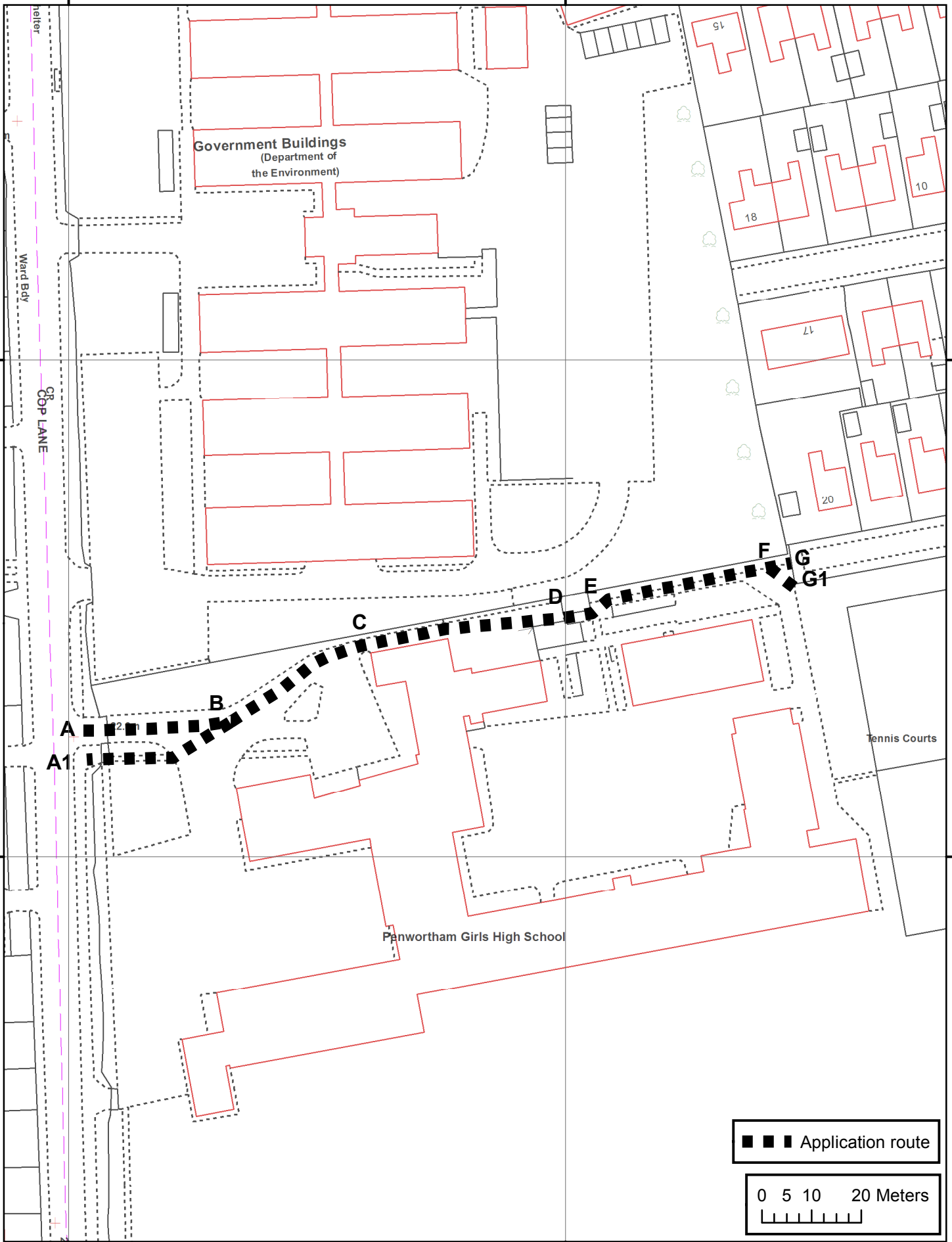
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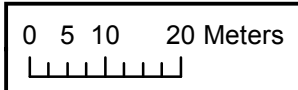


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Application route



Andrew Mullaney  
Head of Planning and Environment

**Wildlife and Countryside Act 1981**  
**Addition of public footpath from Cop Lane to Alcester Avenue through**  
**Penwortham Girls High School, Penwortham, South Ribble**

1:1,000



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## Regulatory Committee

Meeting to be held on 21 October 2015

Electoral Division affected: Lancaster Central
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**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Investigation**  
**Addition of Public Footpath from Five Ashes Lane to Scotforth Road (A6),**  
**Scotforth, Lancaster City**  
**File No. 804-524**  
(Annex 'A' refers)

Contact for further information:

Miss M Brindle, 01772 535604, Paralegal Officer, Legal and Democratic Services

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

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

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

### **Executive Summary**

Application for addition of a public footpath to the Definitive Map and Statement from Five Ashes Lane to Scotforth Road (A6), Scotforth, Lancaster City, in accordance with file no. 804-524.

### **Recommendation**

That the application for a public footpath from Five Ashes Lane to Scotforth Road (A6), Scotforth, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-524 be not accepted.

### **Background**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a public footpath from Five Ashes Lane to Scotforth Road (A6), a distance of approximately 13 metres and shown on the Committee plan between point A and point B 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**

Lancaster City Council has been consulted, but no response has been received it is assumed they have no comment to make.

Scotforth Parish Council has responded to the consultation regarding health and safety with the busy trunk road situated close by. They mention that the potential of an injury or incident could be increased on such a steep area and ask if Lancashire County Council would be liable. They recommend that it remains as an informal snicket as it is used by only a small number of people and they access it at their own risk.

### 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	4803 5744	Open junction with Five Ashes Lane
B	4804 5745	Open junction with Preston - Lancaster Road (A6)

### Description of Route

A site inspection was carried out on 29 August 2015.

The total length of the route is approximately 13 metres.

From point A the route under investigation leaves Five Ashes Lane at an unmarked point on the unfenced verge of Five Ashes Lane. From point A it extends in a generally north easterly direction down a steep slope overgrown with bushes and undergrowth to an unmarked point at the junction with the footway adjacent to Scotforth Road (A6) immediately north of a bus stop and marked on the Committee plan as point B.

At the time that the route was inspected no signs were evident at any point along it indicating whether or not it was public or private.

There was no indication that the route was being used or that it existed as a worn track on the ground. The route was overgrown and it was not possible to walk between point A and point B. It was noted that cars were being parked on a regular basis in a layby close to point A on Five Ashes Lane and that the route, if it had been accessible, would provide direct access onto Scotforth Road and to a bus stop.

As well as being overgrown it did appear that tree branches had been cut and deposited in the area crossed by the route although these deposits did not look to be recent.

### Map and Documentary Evidence


Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route under investigation is not shown on Yates' Map.
Investigating Officer's Comments		It is unlikely that a claimed public footpath of such a short length would have been shown on a map

		of this scale. The route under investigation did not exist as a 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.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.
Observations		The route under investigation is not shown on Greenwoods' map.
Investigating Officer's Comments		The route under investigation did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale would not have been shown on the map so no inference can be drawn in this respect.
<b>Hennet's Map of Lancashire</b>	1830	A further small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		The route under investigation is not shown on Greenwoods' map.
Investigating Officer's Comments		The route under investigation did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale would not have been shown on the map so no inference can be drawn in this respect.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The route under investigation is just to the east of the London Midland and Scottish Railway (now part of the West Coast mainline) but does not cross it. Plans from the construction of the railway

		have not been inspected as there is no evidence that the route existed as a worn track at the time that the railway was constructed.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1841	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.

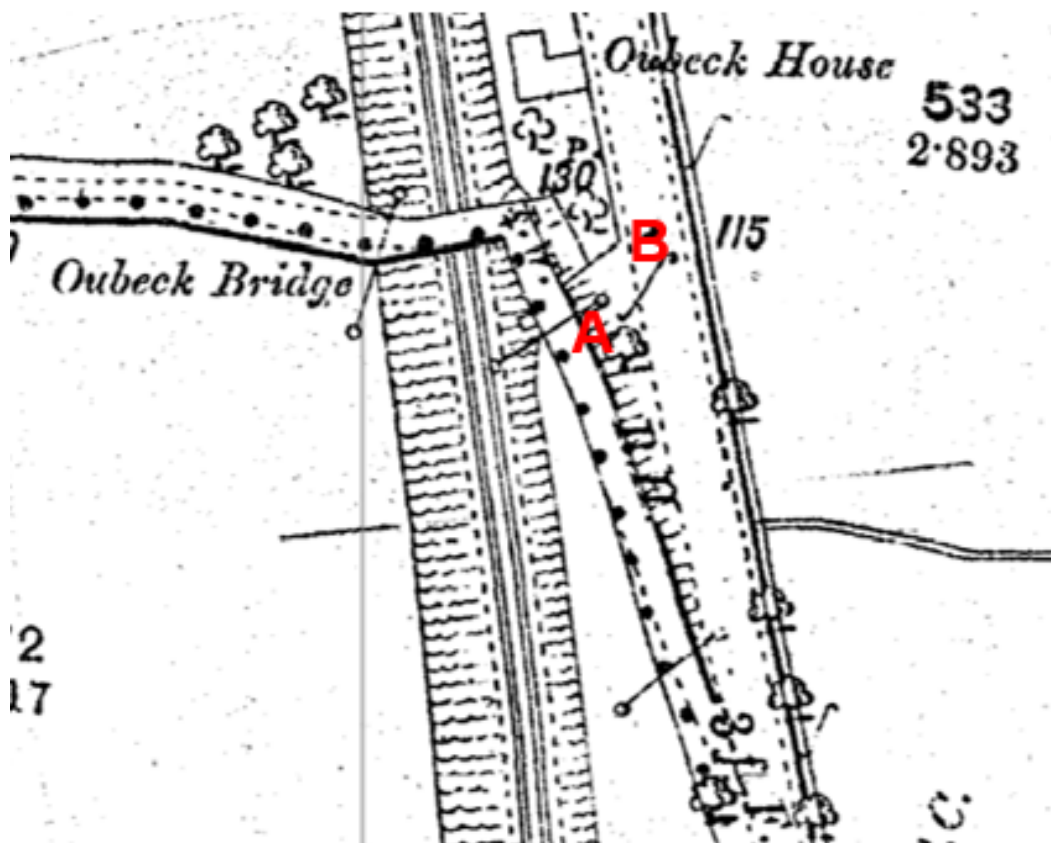


Observations		A copy of the Tithe Map for Scotforth was inspected in the County Records Office. Five Ashes Road and Scotforth Road (A6) are shown but the route under investigation is not. The land crossed is not allocated a number on the Tithe Map.
Investigating Officer's Comments		The route under investigation did not exist in 1841. The land crossed by the route under investigation was not allocated a number on the Tithe Map suggesting that tithes were not payable and that it was possibly seen to be a small area of unproductive land between the two highways

		(Five Ashes Lane and Scotforth Road) or part of the highway waste.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for Scotforth in the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. <sup>1</sup>
		
Observations		Five Ashes Road and Scotforth Road (A6) are shown but the route under investigation is not shown. The land crossed by the route under investigation between point A and point B is

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

		shown shaded indicating a slope.
Investigating Officer's Comments		The route under investigation did not exist in 1848.
<b>25 Inch OS Map</b>	1895	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891 with a reprint in 1895.



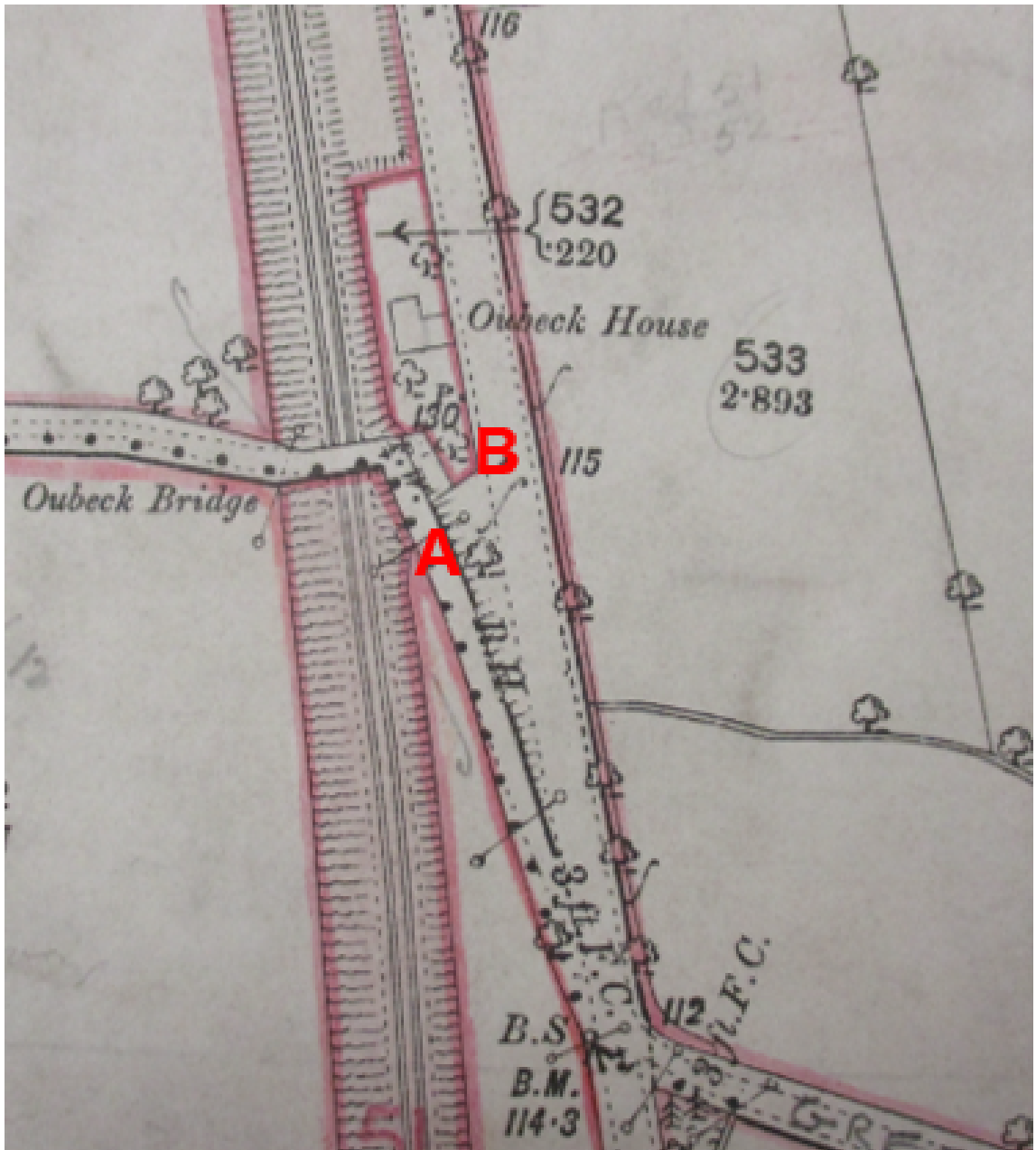
Observations		The route under investigation is not shown. The markings on the map between point A and point B indicates the existence of a steep slope from point A which separated the two parallel roads.
Investigating Officer's Comments		The route under investigation did not exist in 1895.
<b>25 inch OS Map</b>	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.



Observations		The route under investigation is not shown. The markings on the map indicate the existence of a steep slope from point A.
Investigating Officer's Comments		The route under investigation did not exist in 1913.
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if</p>



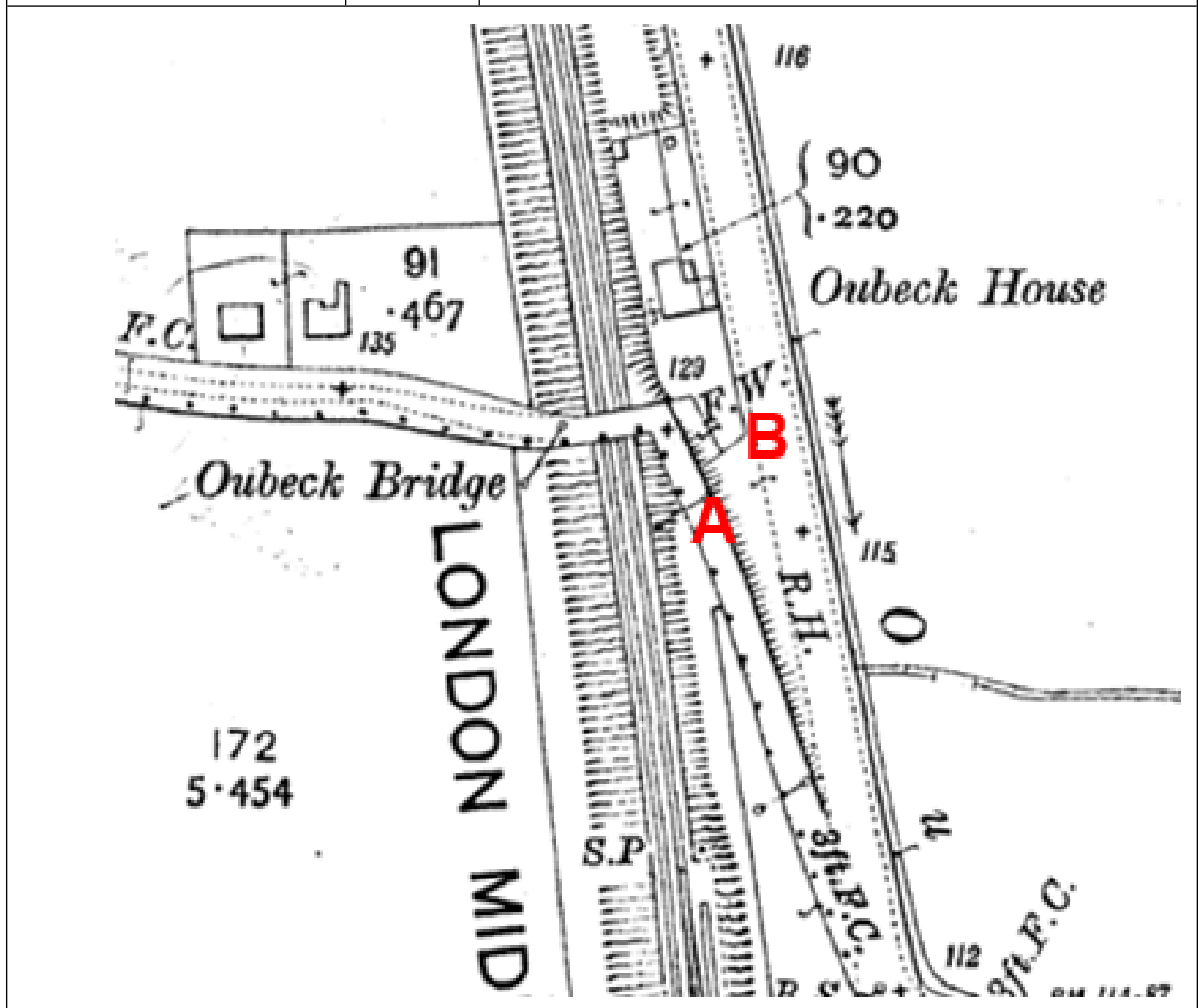
his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the 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.



Observations

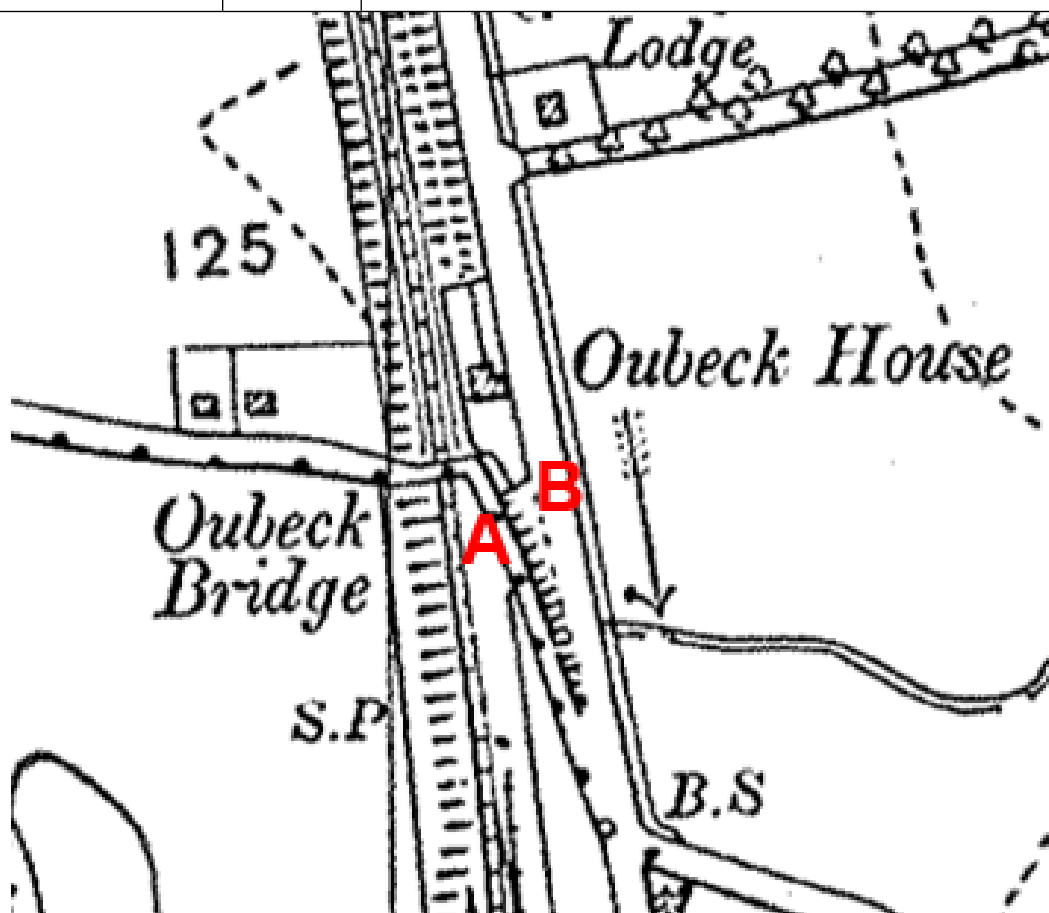
The Finance Act records held by the County

		Records Office have been inspected. The route under investigation is not shown on the Ordnance Survey 25 inch base map used to draw the Finance Act map. However, the area of land crossed by the route is shown to be included within the area of land that has been excluded from the numbered hereditaments as Scotforth Road and Five Ashes Lane.
Investigating Officer's Comments		The fact that a route is excluded from the numbered hereditaments is usually considered to be good evidence of, but not conclusive of, public carriageway rights. Scotforth Road and Five Ashes Lane are public vehicular roads which have both been excluded and the area of land between them – over which the route under investigation passes – may have been considered to be within the boundaries of the highway verge.
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1890, revised in 1931 and published in 1932).



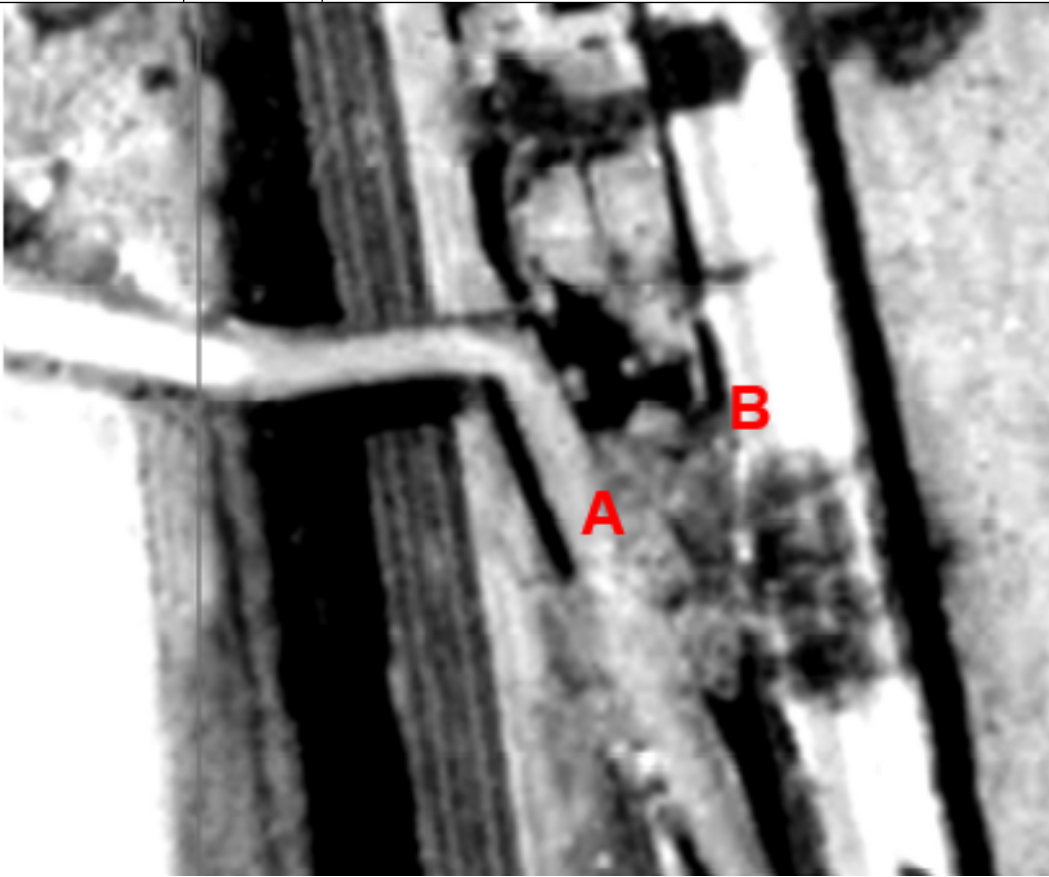
Observations		The route under investigation is not shown. A
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		steep slope is indicated to exist at point A.
Investigating Officer's Comments		The route under investigation did not exist in 1932.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		No aerial photograph was available to view covering the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch OS Map</b>	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



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

		land crossed by the route is shown in the same way as it had been on earlier editions of the Ordnance Survey mapping.
Investigating Officer's Comments		The route under investigation did not exist when the Ordnance Survey carried out their survey in the 1930s.
<b>1:2500 OS Map</b>	C1970	Further edition of 25 inch map reconstituted from former county series and published as national grid series.
Observations		No map was available in the County Council or County Records Office records. An online copy was inspected and the route under investigation is not shown.
Investigating Officer's Comments		The route under investigation did not exist in the early 1970s.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
Observations		The land between point A and point B appears to be vegetated and there is no worn track visible on the photograph.
Investigating Officer's Comments		The route under investigation did not appear to exist in the 1960s.
<b>Aerial Photograph</b>	1988	Aerial photograph available to view at Lancashire

		County Records Office and LCC Offices at Cuerden.
Observations		It was only possible to view a paper copy of the photograph which could not be enlarged successfully. The area between point A and point B appeared to be vegetated and no route could be seen to exist.
Investigating Officer's Comments		The route under investigation probably did not exist in the 1980s.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS.
		
Observations		It is not possible to see a worn track between point A and point B but the vegetation appears less dense along the alignment of the route under investigation.
Investigating Officer's Comments		The route under investigation may have been accessible between point A and point B but if use was being made of the route it appears to very light as no worn track is visible.
<b>Aerial Photograph</b>	2006	Aerial photograph available to view on GIS.



Observations		It is not possible to see whether the route under investigation existed on the ground due to tree cover.
Investigating Officer's Comments		No inference can be drawn.
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most</p>

		parishes but not for unparished areas.
Observations		The parish survey map and cards were drawn up by Scotforth parish council. The route under investigation is not shown on the parish survey map or documented in the parish survey cards.
<b>Draft Map</b>		<p>The parish survey map and cards for Scotforth were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The route under investigation was not shown on the Draft Map of Public Rights of Way and there were no objections to the omission of the path.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation was not shown on the Provisional Map and there were no formal objections or other comments about its omission.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation was not shown on the First Definitive Map and Statement.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No

		further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The route under investigation is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		From 1953 through to 1966 there is no indication that the route was considered to be public by the Surveying Authority, Parish Council and public at large due to the extensive consultation process that lasted until 1975 when the Definitive Map of Public Rights of Way (First Review) was actually published.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
Observations		The 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.
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.
<b>Statutory deposit and declaration</b>		The owner of land may at any time deposit with the County Council a map and statement



<p><b>made under section 31(6) Highways Act 1980</b></p>		<p>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>No Highways Act 1980 Section 31(6) deposits have been 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 public rights of way over their land.</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**

This route is unregistered.

### **Summary**

None of the map or documentary evidence examined shows the route under existence existing as a worn track that was recorded on Ordnance Survey maps, other maps or plans or which showed up on aerial photographs from the 1800s to the current day.

Site evidence in 2015 did not indicate current use of the route as it was overgrown although it did appear that tree branches had been cut and deposited in the area crossed by the route which may have affected any use that had previously been made. It also appeared that cars were being parked on a regular basis in a layby

close to point A and that the route, if it did exist, would provide direct access onto Scotforth Road and a bus stop.

The Tithe Map dated 1841 and the 1910 Finance Act records both appear to show the land crossed by the route under investigation as possibly forming part of highway land between Scotforth Road and Five Ashes Lane. .

## **Legal and Democratic Services Observations**

### Information from the Applicant

The applicant has submitted 2 user forms in connection with the application, the evidence of these forms is set out below:

The users have known the route for the past 34 and 60 years, they have both used it on foot, 1 between the years of 1942-1962 and one between the years of 1978-2012.

The main places the users were going to and from include the bus stop, shops, university, chemist, laundrette and the library, one of the user used the route to get the bus to Galgate or to school. The route was used 5 times a week during school term time when the user was at school and the other user uses the route about 50 times a year.

The users have never used the route by any other means and one of the users has seen others using this route. Both the users agree it has always run along the same line and that there are no stiles / gates / fences along the route and have never been prevented access.

Both users have never worked for a landowner of which the route crosses nor have they ever been tenant, they have never been stopped when using the route or have ever heard of anyone else being stopped.

1 user agrees that they have never been told by anyone that the route they were taking was not a Public Right of Way and 1 user states "a belligerent bloke when I tried to approach him about the tree cuttings he was strewing over the path, did state that he owned the land".

Both users have never seen any signs when using the route and they have never asked permission to use the route.

After completing the user forms, users are asked to provide any further information they feel is relevant, this information is set out below:

- This route has been a short cut over years to save walking round a few hundred yards
- Blockage of the path would force people to walk along the A6 where there is no separate footway

### Information from Others

Scotforth Parish Councillor Stuart Wilson states that as a child he used it as a shortcut to get the bus to school and believes that the piece of land belonged to the railway. He then states it is situated on a steep banking which can be very

dangerous to walk down as the bottom of it leads you straight onto the main A6 road. He then goes on to state that it is overgrown and to his knowledge only a handful of people use it on a regular basis, and can't see the benefit of making it a public right of way because of the reasons he has mentioned.

#### Information from adjoining Landowners

The owners of Outbeck Cottage have objected to this application stating that to their knowledge this has never been a public footpath, it is very steep and dangerous due to entering to the A road on a blind corner by the bridge. The footpath becomes very slippery when it rains therefore there is a health and safety risk, they also state that people appear to use this a garbage dump, sharp objects such as glass are noticeable.

### **Assessment of the Evidence**

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

#### In Support of the Claim

User forms

#### Against Accepting the Claim

Hennet's Map of Lancashire 1830  
Tithe Map 1841  
Finance Act 1910 Map

#### Conclusion

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

Considering first of all whether highway rights could exist on the claimed route looking first at the history of the junction of Five Ashes and Scotforth Road. Hennet's Map of Lancashire published 1830 tells us that the junction was a T-junction at that time. On the Tithe Map 1841 a railway is part built and the claimed route sits within unnumbered land. The Tithe Map also shows the Five Ashes and Scotforth Road junction has been altered from the T-junction by the part construction of the railway with Five Ashes Lane being moved onto the Oubeck Bridge to allow for the provision for the continuation of the line of the railway on the ground. Without further investigation we cannot be sure of what the status of the land crossed by the claimed route to be but we do know that it will either run on existing vehicular highway of Five Ashes Lane (1) or Scotforth Road (2). A third possibility is that the unnumbered land crossed by the claimed route shown on the Tithe Map may have been stopped up (3) as a result of the railway company acquiring the land as part of moving the highway over Oubeck bridge. Without further investigation to identify the status of land crossed by the claimed route, it is necessary that all three possibilities are considered.

Where the line of the claimed route runs on the old vehicular highway of Scotforth Road (1) or on the railway company's repositioned vehicular highway of Five Ashes Lane (2), the claimed route A to B must be rejected for the land crossed by the claimed route is already a vehicular highway.

The third possibility is if the land crossed by the claimed route has been stopped up (3) and therefore rights on foot could have begun to build up. In this case, 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. It is noted that there are two user evidence forms that have been submitted and whilst it is accepted the evidence provided is cogent it is considered that the sufficiency test to show that the claimed route was used by 'the public' has not been satisfied. Further, the presumption of dedication in section 31 arises from the owner's acquiescence in the use claimed and it is doubtful whether there has been enough use for there to have been a continuous right to have been asserted. For this same reason, dedication cannot too be inferred at common law.

Taking all the evidence into account, the Committee on balance may consider that the provisions of s31 Highways and inferring dedication at common law cannot be satisfied.

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.

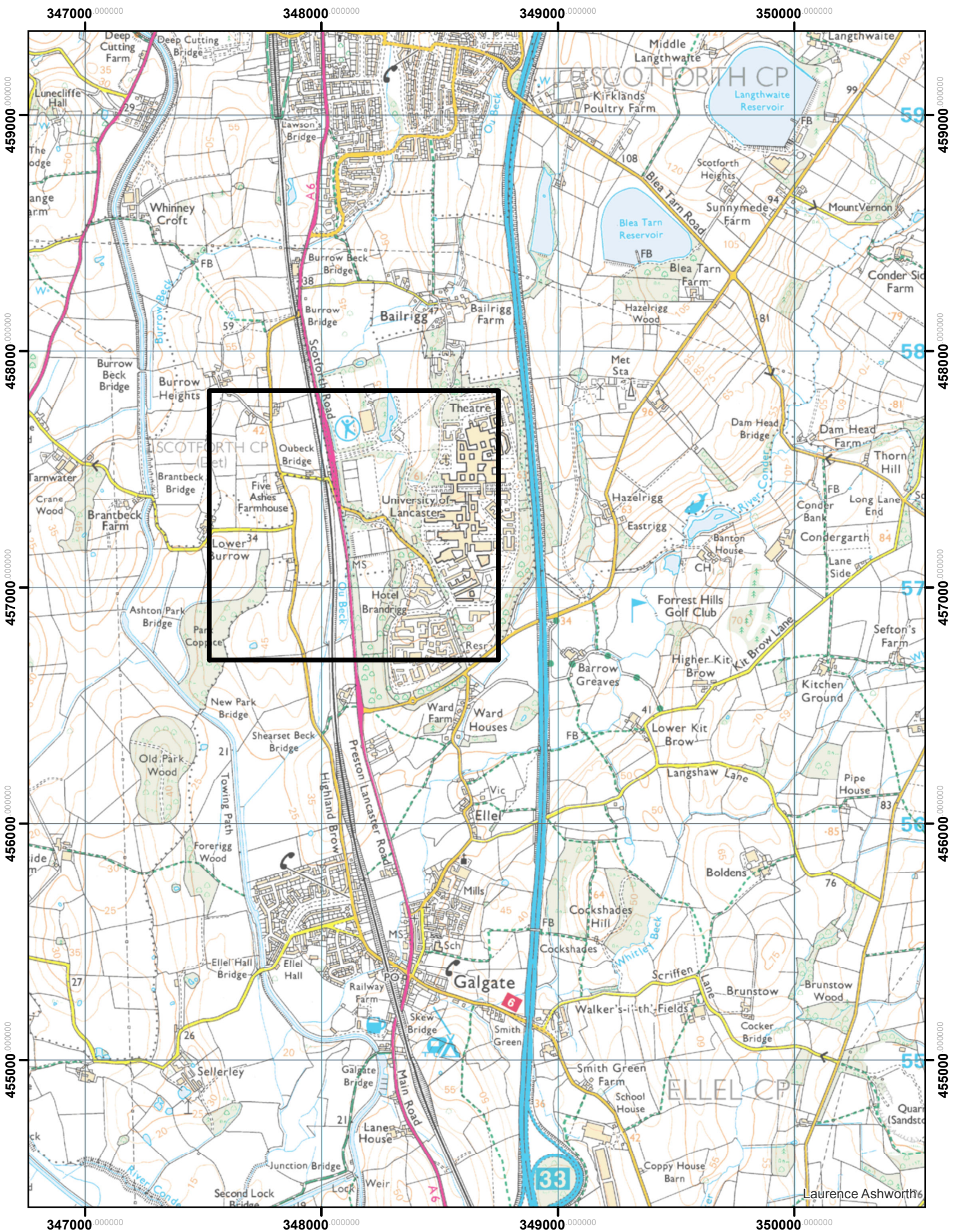
**Alternative options to be considered - N/A**

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-524	Various	Megan Brindle, Legal and Democratic Services, 01772 535604

Reason for inclusion in Part II, if appropriate

N/A



Steve Browne  
Interim Executive Director  
for the Environment

**Wildlife and Countryside Act 1981**  
**Addition of public footpath from Five Ashes Lane to Scotforth Road (A6),**  
**Scotforth, Lancaster City Application No. 804 - 524 LOCATION PLAN**

1:20,000



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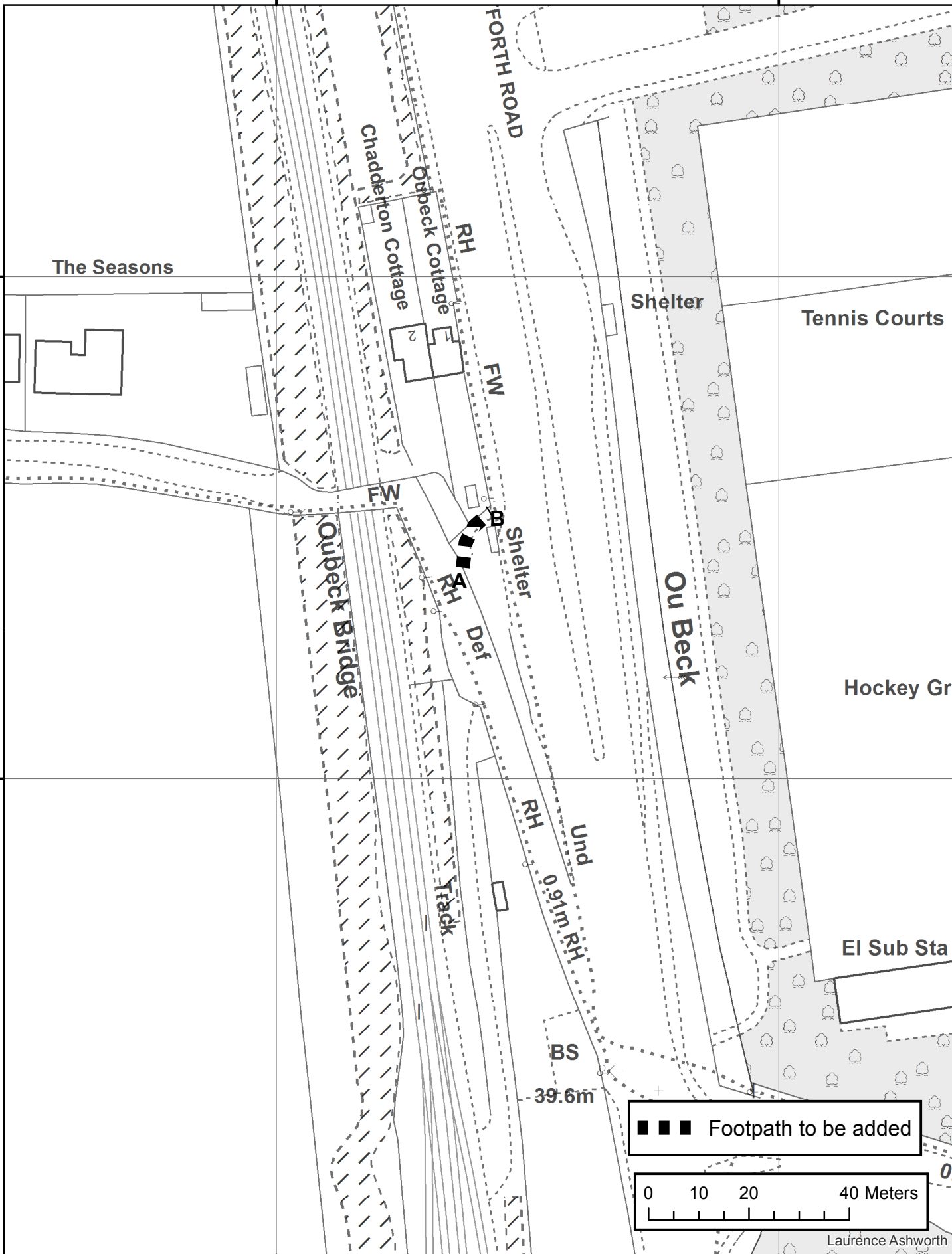
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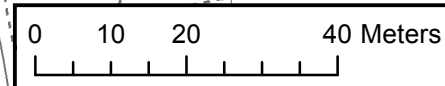
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■ ■ ■ Footpath to be added



Andrew Mullaney  
Head of Planning and Environment

**Wildlife and Countryside Act 1981**  
**Addition of a public footpath from Five Ashes Lane**  
**to Scotforth Road (A6), Scotforth, Lancaster**

1:1,000



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## Regulatory Committee

Meeting to be held on 21 October 2015

Electoral Division affected: Lancaster Rural North
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**Highways Act 1980 – Section 119A Rail Crossing Diversion Order**  
**Wildlife and Countryside Act 1981 – Section 53A**  
**Proposed Diversion of Part of Public Footpath No. 39, Silverdale Parish,**  
**Lancaster City**  
(Annexes 'B' and 'C' refer)

Contact for further information:

Miss Alex Toogood, 07917836607, Planning and Environment Group,  
[alex.toogood@lancashire.gov.uk](mailto:alex.toogood@lancashire.gov.uk)

### Executive Summary

The proposed diversion of part of Public Footpath No. 39, Silverdale Parish, Lancaster City.

### Recommendation

1. That an Order be made under Section 119A of the Highways Act 1980 to divert part of Public Footpath No. 39, in the Parish of Silverdale, from the route shown by a bold black line and marked A-B-C on the attached plan, to the route shown by a bold black dashed line and marked A-D-E on the plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

### Background

The Trowbarrow level crossing is located approximately 50 meters south of Red Bridge on the line between Silverdale and Arnside. The crossing connects public footpaths and a local nature reserve to the local community. The crossing is well used by the local residents and visitors. Trains frequently pass along this section of the track and the crossing is sited on a slight bend with poor visibility for pedestrians and trains. The proposed alternative route follows a track which was previously a well used permissive path as well as Lancaster City Council's vehicular access to Trowbarrow Quarry.

The owners of part of the land over which the permissive path ran decided that they would no longer allow public access and a lock was put on one of the gates. As a result of this members of the public, local residents and visitors to the area, wanting to access the popular Trowbarrow Quarry local nature reserve, had to use the at grade crossing which had previously been used relatively infrequently. This included families with young children. Photographs, including these below, of people on the crossing were posted on social media.



The Office of Rail Regulation decided that the crossing was dangerous and required Network Rail to close the crossing. Network Rail successfully applied for a temporary closure of the section of footpath which is now the subject of this proposal.

A request has been received from Network Rail for an Order to be made under Section 119A of the Highways Act 1980 to divert part of Public Footpath No. 39 Silverdale from the current alignment over the level crossing onto the track to Moss Lane, allowing users to cross the railway via Red Bridge.

The length of the existing paths proposed to be diverted are shown by a bold solid lines and marked A – B – C and the proposed alternative route shown by bold broken lines and marked A – D – E on the plan.

## Consultations

Consultation with the Statutory Undertakers has been carried out and no adverse comments on the proposal have been received. The Lancaster City Council has also been consulted and similarly raised no objection to the proposal. The Ramblers Association have also been consulted and they too have no objection to the proposal.

Silverdale Parish Council, the County Councillor for the area and Peak and Northern Footpaths Society have also been consulted and at the time of writing their response is awaited.

The owners of land over which a short section (approximately 16m) of the proposed route lies have indicated that they object to the proposal; this is the same section of the permissive path which was closed. Network Rail has only made this application after they were unable to secure agreement for a public footpath over this 16m section to join Moss Lane.

The owners of land at the western side of the crossing have indicated verbally that they support the proposed diversion. The length of footpath on their land which would be diverted is minimal (3 or 4 metres from the railway fence to the junction of the footpaths Silverdale 40 from Moss Lane and Silverdale 39 from Red Bridge Lane).

The remainder of the current and proposed routes lies on land owned by Lancaster City Council which supports the proposal.

### **Advice**

Points annotated on the attached plan.

<b>Point</b>	<b>Grid Ref (SD)</b>	<b>Description</b>
A	4761 7576	Crossroads of track and Silverdale footpath 39
B	4758 7576	Stone stile over wall to small grass patch at side of railway track
C	4756 7576	Large gap in field fence at side of railway track
D	4760 7581	Field gate across track
E	4759 7583	Field gate and pedestrian gate at Moss Lane

The length of the footpath proposed to be diverted commences at Point A, in a westerly direction for 35m to a stone stile at Point B then turning west-north-west diagonally across the railway line with no levelled surface for 20m, to Point C.

The proposed alternative route, which commences at Point A, in a northerly direction for 50m along a stone track to a field gate at Point D, where the track continues in a northerly direction for 25m to a pedestrian gate at Moss Lane at Point E. All distances and compass points are given as approximate.

### **Criteria satisfied to make and confirm the Order**

The proposal is considered to meet the criteria for a diversion under Section 119A of the Highways Act 1980, i.e.

- i. that it appears expedient in the interests of the safety of members of the public using it or likely to use it to divert a footpath which crosses a railway, other than by tunnel or bridge (whether on to land of the same or of another owner, lessee or occupier);
- ii. that it is expedient to confirm the Order having regard to all the circumstances and in particular to whether it is reasonably practicable to make the existing at grade 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. The proposal, if successful will provide a safe means of crossing the operational railway and once the public rights over the at grade crossing are removed, will enable Network Rail to exclude the public from the railway at this location. This will resolve the current concerns relating to accidental collisions and accessibility to the railway line for misuse. It is suggested that it is not reasonably practicable to make the crossing safe in particular because of the sight-lines which are limited by the curve of the railway and the presence of nearby Red Bridge and that there is a justifiable case for diverting the footpath so that the crossing can be closed.

In the event that the Order is confirmed, Network Rail will ensure that suitable fencing is erected to bar access to the railway and that appropriate signs are provided advising potential users that the path has been diverted.

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 routes, or they have given their consent.

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

The needs of disabled people have been actively considered and the proposal is compatible with the duty of the County Council as highway authority under the Equality Act 2010 in providing a route that has the minimum number of structures (2 gates) and which are easy to use and a sufficiently wide and convenient surface.

It is proposed that the right of way to be created by the proposed Order will be subject to 2 limitations: a pedestrian or field gate at point D and a pedestrian gate at Moss Lane.

It should be noted that the proposed diversion will alter the termination point of this section of public footpath from its junction with Silverdale Footpath 40 and place it on Moss Lane which is a highway connected with it, and it is suggested that this point is substantially as convenient to the public, having previously been used as a well-used permissive footpath.

The applicant owns part of the land crossed by the section of footpath proposed to be diverted. The majority of the route is owned by Lancaster City Council, who support the application. The small section adjacent to Moss Lane is in private ownership and the owners oppose the diversion.

The applicant, Network Rail, have agreed to defray any compensation, and has also agreed to bear all advertising and administrative charges incurred by the County Council in the order-making procedures. However, there is no power to recharge the costs of pursuing the Order to confirmation following an objection and the County Council will incur costs in this respect. Refer to 'Annex C'

The Committee are advised that so much of the Order as extinguishes part of Silverdale Footpath No. 39 is not to come into force until the County Council has certified that the alternative route is in a suitable condition.

Network Rail have agreed to pay for any necessary works to bring the new route into a suitable condition, should any such works be necessary.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the proposed Order, or should the proposed Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is felt that it is expedient to confirm the Order having regard to all the circumstances and in particular to -

- (a) whether it is reasonably practicable to make the crossing safe for use by the public. This would not be possible in this case as the existing crossing is on a bend in the railway.
- (b) what arrangements have been made for ensuring that any appropriate barriers and signs are erected and maintained. Network Rail have given assurance of this.

Consideration was given to whether all or part of the diverted route should become repairable by Network Rail but it was not considered appropriate in this case as none of the proposed route was over or abutting the railway land.

As the landowners object to the proposal further consideration was given to any adverse effect that the diversion would have on that land adjacent to Moss Lane over which the short section of footpath would lie. The route is subject to private vehicular rights and therefore cannot be obstructed or used for a purpose which would be incompatible with a public path. The length of path on this land is very short; approximately 16m as indicated on the Land Registry plans. The land through which the path would run is a fairly small enclosure not suitable for significant grazing or arable use. Compensation for any material loss could be claimed by the landowner under the Highways Act 1980 S28; such loss is not expected to be significant and the compensation is underwritten by Network Rail.

It is considered that, having regard to the above, it would be expedient to confirm the Order.

## **Risk Management**

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annex 'B' (item 5) included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

### **Alternative options to be considered**

To not decide to make an Order: improvement of the crossing in order to leave it open as the only access to the nature reserve from the north and west was considered. However the curve of the railway line and presence of Red Bridge are the limiting factors which prevent the at grade crossing being able to be made safe. A footbridge was considered by Network Rail but this would be visually intrusive within the Area of Outstanding Natural Beauty and much less convenient for members of the public, especially those with impaired mobility, the elderly or young children. It would also be very expensive.

To decide to make an Extinguishment Order: this footpath is extremely well used by local residents and visitors as it facilitates access to the nature reserve. It is therefore not appropriate to recommend extinguishment of the crossing instead of diversion.

To decide to make a Diversion Order for a different route: other routes for the diversion were sought but there is no other suitable route which could take members of the public across the railway.

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

Paper	Date	Contact/Tel
File Ref: 211/661	various	Megan Brindle, Legal and Democratic Services 01772 535604
File Ref: PPROW/1-30-FP39	various	Alex Toogood, Planning and Environment Group 07917836607

Reason for inclusion in Part II, if appropriate

N/A



**Andrew Mullaney**  
Head of Planning and Environment

# Location Plan

1:20,000

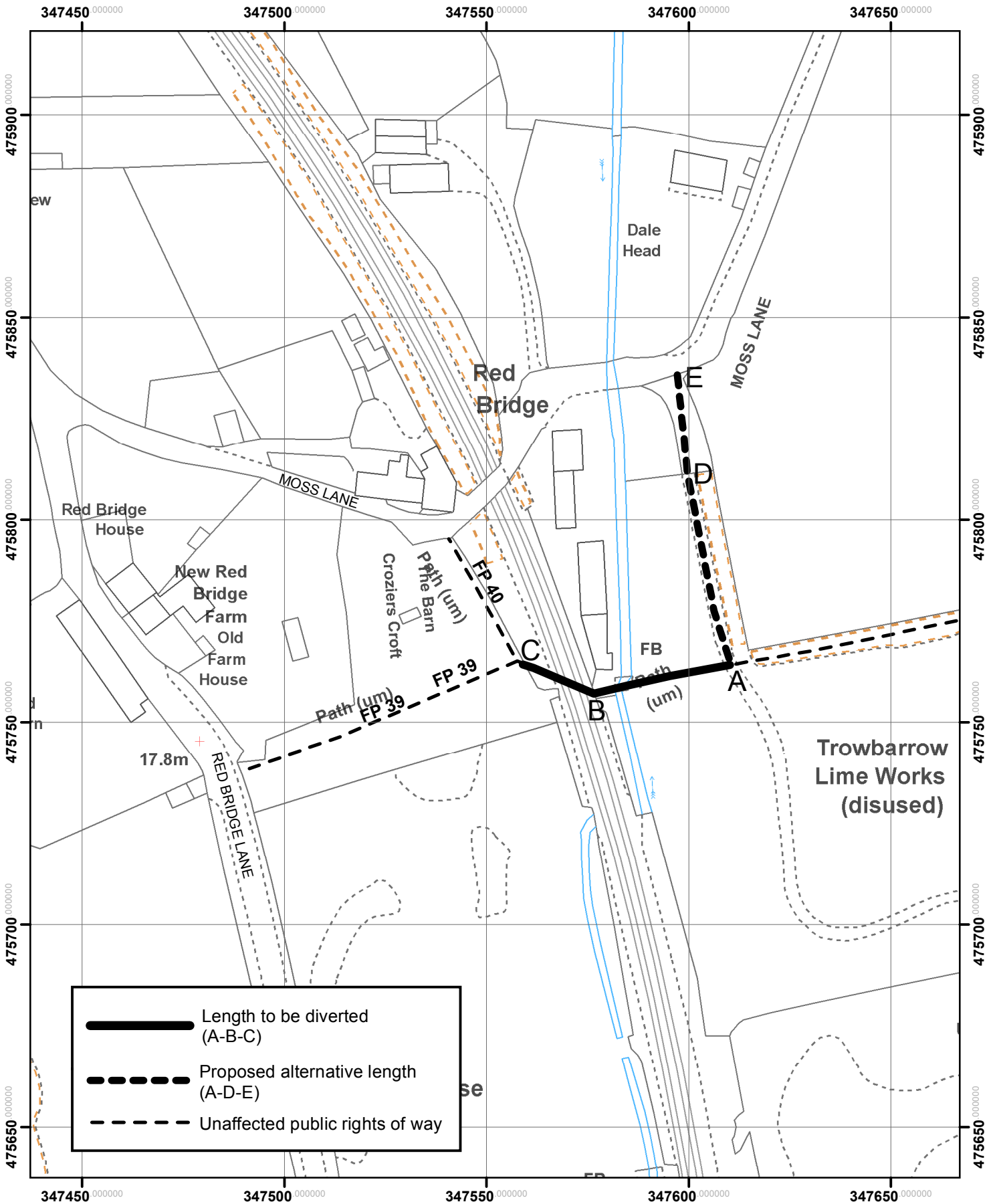


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Highways Act 1980 Section 119A  
 Proposed Rail Crossing Diversion Order  
 Diversion of part of Silverdale Footpath 39, Lancaster City.



Plan No  
1391A

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## Regulatory Committee

Meeting to be held on 21<sup>st</sup> October 2015

Electoral Division affected: Rossendale West
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## 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 Todd Hall Farm, Haslingden, being entry 8 in the Rights Section of Register Unit CL82

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

Contact for further information:

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

[danielle.jay@lancashire.gov.uk](mailto:danielle.jay@lancashire.gov.uk)

#### Executive Summary

An application from Richard Ian Haworth for a Declaration of Entitlement to record the rights to graze 3 head of cattle and 8 sheep on Common Land Register Unit CL82.

#### Recommendation

That the application be accepted and a Declaration of Entitlement be recorded in the Commons Register in accordance with The Commons Registration (England) Regulations 2014 that Mr Richard Ian Haworth is entitled to exercise part of the right attached to Todd Hall Farm, Haslingden, namely the right to graze 3 head of cattle and 8 sheep over the whole of CL82.

#### Background and Advice

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

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

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

Regulation 43(1) states that applications for a declaration of entitlement to exercise a right of common must be made by an owner of a freehold estate in land to which a right of common is attached or leasehold owner of any such land provided that the lease is held of more than six months

In this matter the rights are attached to Todd Hall Farm, Haslingden, shown edged red on the supplemental map at Appendix 'A'. The rights attached to this land are to graze 15 head of cattle and 40 Sheep over register unit CL82.

The Applicant has provided a copy of title number LAN45960. This shows that part of the farm, as shown on the supplemental map is owned by Richard Ian Haworth, as shown on the plan marked Appendix 'B'. It has been calculated that this land is 19.9% of the Todd Hall Farm land on the supplemental map.

19.9% of the grazing rights is calculated as the right to graze 3 Cattle and 8 Sheep. Mathematically, it actually produces a fractional quantity but, following guidance from DEFRA it is advised that a right to graze a fractional animal is not recognised in law, and the fractional right has been rounded down. The Applicant is aware of this.

Notice of the application has been duly given according to the regulations and two objections were received, the applicant has been given an opportunity to respond. The objections and the Applicant's response are attached at Appendix 'C'

It is advised that if the application is well founded the appropriate amendment to the register shall be made. Here it is advised that the correct entitlement is the rounded down figure of 3 Cattle and 8 Sheep. It is advised that the Application be accepted.

## **Consultations**

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

## **Implications:**

This item has the following implications, as indicated:

## **Risk management**

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

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

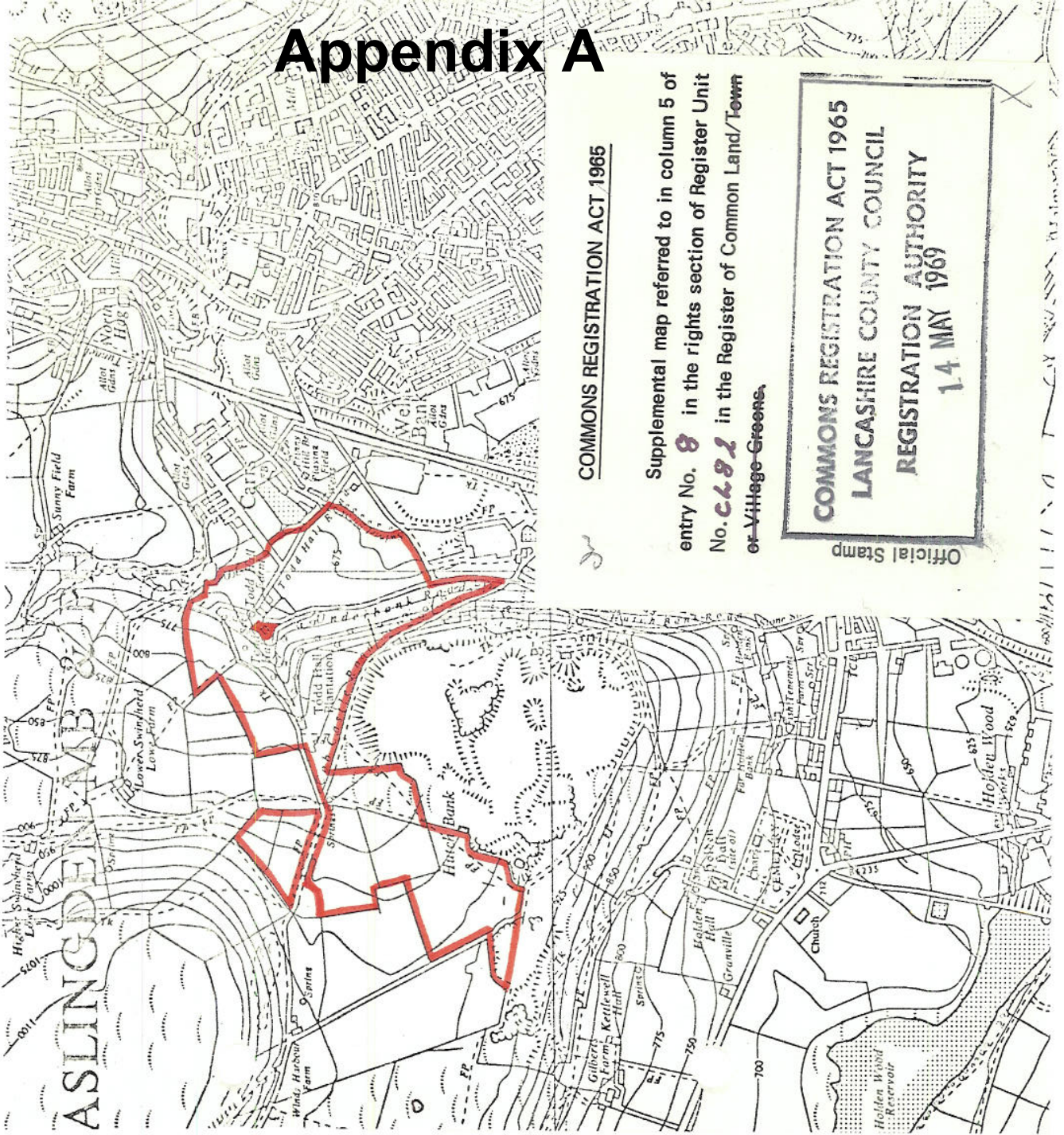
Paper	Date	Contact/Directorate/Tel
File of papers denoted 3.697		Danielle Jay Legal and Democratic Services Ext 535526

Reason for inclusion in Part II, if appropriate

N/A



# Appendix A



## COMMONS REGISTRATION ACT 1965

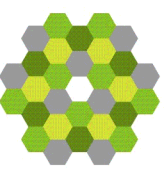
Supplemental map referred to in column 5 of entry No. **8** in the rights section of Register Unit No. **CL82** in the Register of Common Land/Town of **Village-Greens**.

**COMMONS REGISTRATION ACT 1965**  
**LANCASHIRE COUNTY COUNCIL**  
**REGISTRATION AUTHORITY**  
**14 MAY 1969**

Official Stamp

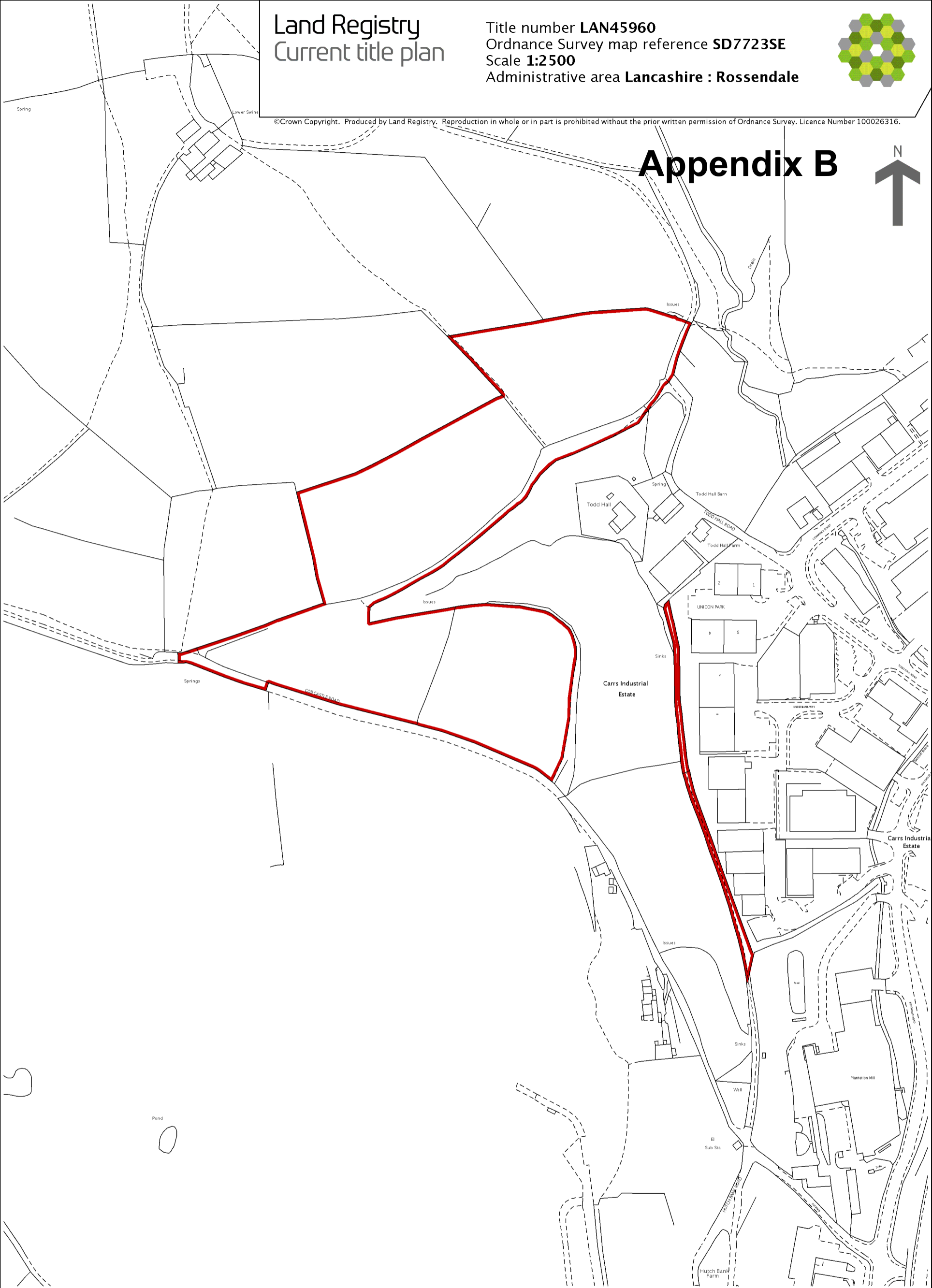






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# Appendix B



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 27 August 2015 at 11:57:25. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by Land Registry, Fylde Office.





The County Secretary & Solicitor.  
Lancashire County Council.  
P.O. Box 78,  
County Hall,  
Preston.  
PR1 8XJ.

Your ref: LSG43 697 MBS  
Our ref: AR/Sel/Commons.943  
Email: Andrew\_Rothwell@nfu.co.uk  
Direct line: 01200 429622  
Date: 23<sup>rd</sup> November 2013

Dear Sir/Madam,

**Commons Act 2006 Regulation 44 The Commons Register (England) Regulations 2008.  
Application To Amend The Register. Common Land Unit CL82, Haslingden Moor,  
Haslingden.  
Application Ref No CA021**

By this letter, we would, on behalf of our various members in the Haslingden area, wish to register an objection to the application by Mr Richard Ian Haworth, to amend the register to record an entitlement to graze three head of cattle and eight sheep over CL82, known as Haslingden Moor.

As a part of the application process, the applicant is required to give notice to all existing graziers and holders of Common Rights, of the submission of the application, and its intent. The number of properties with recorded rights on the Commons Register is shown as Thirteen, with varying levels of entitlement.

We are advised by our members that only one current holder of Common Rights has been notified of this application, and we therefore consider the consultation and application process to have not been fulfilled, and to be flawed. The one Commoner who has been notified is Mr Ashworth, of Sunnyfield Slack Farm, Haslingden, Rossendale, BB4 5ST.

We therefore feel that this application should be voided until such time that all affected parties have been consulted.

Should the application go forward, and the matter of the apportionment of rights be considered, we would bring to the attention of Lancashire County Council, as the Registering Authority, the actions of Natural England in May 2013, whereon all registered Commoners who hold grazing rights on CL82, were instructed to reduce their stocking upon the moor by varying amounts, in some cases, to wholly cease grazing, on the grounds of Overgrazing.

We trust the County Council will take this objection into consideration when determining this application.



p wilson & company  
chartered surveyors

Commons Registration Authority  
County Secretary & Solicitor  
Lancashire County Council  
PO Box 78  
County Hall  
Preston PR1 8XJ

Your Ref: LSG4/3.697/MBS  
Our Ref: C2548-1.SM.kh  
26 November 2013

By Email: [commonsandgreens@lancashire.gov.uk](mailto:commonsandgreens@lancashire.gov.uk)

Dear Sir/Madam,

**OBJECTION TO APPLICATION TO AMEND THE COMMONS REGISTER  
COMMON LAND UNIT CL82  
APPLICATION REF: CA021  
OUR CLIENT: MR J NOBBS, TODD HALL FARM, TODD HALL ROAD, HASLINGDEN,  
ROSSENDALE BB4 5LA**

I am instructed by our above named client to object to the above Commons Act 2006 application. Details of the application have been obtained from Lancashire County Council's website.

Our client's two grounds of objection are:

1. Todd Hall Farm, as it stands today, is owned by our client and not the applicant detailed in application CA021. The applicant's submissions suggest the applicant is the owner of Todd Hall Farm which is misleading.
2. The applicant is believed to lease and own land within Entry Number 8 (previously described as Todd Hall Farm). However, the apportionment of rights to graze cattle and sheep over CL82 (Haslingden Moor, Haslingden, Lancashire) appear to have been calculated from all rented and owned land, instead of just the owned land. For that reason, the calculated right to graze 3 herds of cattle and 8 sheep over CL82 appears to be wrong.

I would be grateful if you could keep me updated on the application on behalf of our client.

Yours faithfully,

**SOPHIE MARSHALL**  
for P Wilson & Company

email: [sophie.marshall@pwcsurveyors.co.uk](mailto:sophie.marshall@pwcsurveyors.co.uk)

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P Wilson & Company is a Limited Liability Partnership  
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Certificate No 902

## Jay, Danielle

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**From:** Cheryl Martin <cheryl@hamers-solicitors.co.uk>  
**Sent:** 23 July 2015 09:22  
**To:** Jay, Danielle  
**Subject:** Application Regulation 44 - CL82 Rights Entry number 8 (Todd Hall Farm Haslingden)

Dear Sirs,

We refer to your email of earlier today. With regard to the objections we would make the following comments:-

1. Objection by NFU – This objection appears to be in two parts. The first part of the objection is that we have not served notice on the correct people. We would refer you to your letter of 30<sup>th</sup> April 2013. In such letter you confirmed the persons on whom we needed to serve notice (namely John Ashworth and Sheila Ashworth) we duly served notice on these people. As far as we are concerned therefore we have served notice on the appropriate persons.

The second part of their objection appears to be that there are too many people already on the Moor. This is not a grounds for objection to registration of rights attached to land. As long as our client is entitled to the rights he is entitled to graze on the Moor.

2. Objection from P. Wilson & Company Chartered Surveyors – Mr Nobbs. This again appears to be in two parts. The first part is merely that Mr Nobbs owns Todd Hall Farm. This is somewhat irrelevant. The land that our client owns was formally part of Todd Hall Farm. The name given to the land is irrelevant. With regard to the apportionment of the rights we have of course already had lengthy correspondence with yourselves over these and you will note from your file that the apportionment of the rights is just in respect of the land owned by our client and not any land rented by our client. The information given by P. Wilson Chartered Surveyors is therefore incorrect.

We note that the matter is to be put before the Committee on the 9<sup>th</sup> September and we look forward to hearing from you in due course.

Yours faithfully,

Cheryl Martin on behalf of  
Eric Hamer  
Hamers Solicitors  
6 Manchester Road  
Haslingden  
Rossendale  
Lancashire  
BB4 5ST

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