

Lancashire County Council

Regulatory Committee

Thursday, 15th March, 2018 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Agenda

Part I (Open to Press and Public)

No. Item

1. Apologies

2. Disclosure of Pecuniary and Non-Pecuniary Interests

Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

3. Minutes of the last meeting (Pages 1 - 8)

4. Guidance (Pages 9 - 32)

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. Slideshow of Works Completed

Presentation by David Goode

6. Wildlife and Countryside Act 1981 (Pages 33 - 62) **Definitive Map Modification Order Investigation** **Addition of a Restricted Byway at Lathom High School, Skelmersdale, West Lancashire** **File No. 804-591**

7. Wildlife and Countryside Act 1981 (Pages 63 - 86) **Claimed Public Footpath from Public Footpath** **No.39 Newburgh to Public Footpath No.40** **Newburgh, West Lancashire Borough** **Claim No. 804/491**

8. **Wildlife and Countryside Act 1981** (Pages 87 - 138)
Definitive Map Modification Order Investigation
Addition of Footpath from Lancaster Road to Public
Footpath 19, Pilling, Wyre Borough
File No. 804-459

9. **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.

10. **Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on Wednesday 6th June 2018 in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 17th January, 2018 at 10.30 am
in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

M Barron	A Clempson
J Cooney	B Dawson
I Brown	J Parr
P Steen	J Gibson
J Marsh	L Beavers

1. Apologies

No apologies for absence were received.

County Councillor Julie Gibson replaced County Councillor Kim Snape.

County Councillor Lorraine Beavers replaced County Councillor Terry Burns.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last meeting held on the 15th November 2017

Resolved: That the minutes of the meeting held on 15th November 2017 be confirmed and signed by the Chair.

4. Guidance

A report was presented providing guidance for Members of the Committee on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way, the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980, and the actions of the Authority 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. Highways Act 1980 - Section 119A Rail Crossing Diversion Order Wildlife and Countryside Act 1981 - Section 53A

Proposed Diversion of Part of Staining Footpath 6, Fylde Borough

A report was presented on the proposed diversion of part of Staining Footpath 6, Fylde Borough.

An application had been received from Network Rail to divert part of Staining Footpath 6, from the route shown by a bold continuous line and marked A-B on the plan attached to the agenda papers, to the route shown by a bold dashed line marked A-C-D-B, in connection with its proposal to replace Preese Hall Level Crossing with a stepped footbridge.

It was reported that the construction of a stepped footbridge would eliminate the risk to the public when crossing the operational railway. It was acknowledged that the new route was longer than the existing route and required more steps to be negotiated, however given the substantial improvement in the safety of the crossing, it was suggested that this was reasonable. In addition, users of the railway crossing that were in a hurry (and would be inconvenienced by waiting for a train to pass), may find a footbridge to be the preferred option.

The Committee noted that Network Rail had explored all alternative options for a permanent means by which the increased risk to the footpath users could be reduced. Their preferred option was to provide a new stepped footbridge, to ensure that the public could cross the railway safely. It was reported that Network Rail had applied for a Diversion Order to change the legal alignment of the footpath, to enable the level crossing to be closed when the footbridge is in place.

In the event that the Order is successful, Network Rail would ensure that suitable fencing was erected to bar access to the railway, and that appropriate signs were provided advising potential users that the path had been diverted.

The Committee noted that consultation with the statutory undertakers had been carried out and that no objections or adverse comments on the proposal had been received.

Resolved:

- (i) That subject to satisfactory responses to the consultations, an Order be made under Section 119A of the Highways Act 1980, to divert part of Staining Footpath 6, from the route shown by a bold continuous line and marked A-B on the attached plan, to the route shown by a bold dashed line and marked A-C-D-B.
- (ii) That in the event of no objections being received, the Order be confirmed and, in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.

- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**6. Highways Act 1980 - Section 119A Rail Crossing Diversion Order
Wildlife and Countryside Act 1981 - Section 53A(2)
Proposed Diversion of Part of Westby-with-Plumpton's Footpath 7,
Fylde Borough**

A report was presented on the proposed diversion of part of Westby-with-Plumpton's Footpath 7, Fylde Borough.

An application had been received from Network Rail to divert part of Westby-with-Plumpton's Footpath 7, in connection with its proposal to replace Kirkham Tip Level Crossing with a stepped footbridge.

The length of the existing path proposed to be diverted was shown by a bold continuous line marked on the plan attached to the agenda papers as A-B. The proposed alternative route was shown on the plan by a bold dashed line and marked A-C-D-E-F-B.

It was reported that the construction of a stepped footbridge would eliminate the risk to the public when crossing the operational railway. The new route was marginally longer than the existing route but would require an equivalent number of steps to be negotiated as the existing route. Given the substantial improvement in the safety of the crossing, it was suggested that this was reasonable. In addition, users of the railway crossing that were in a hurry (and would be inconvenienced by waiting for a train to pass), may find a footbridge to be the preferred option.

The Committee noted that Network Rail had explored all alternative options for a permanent means by which the increased risk to the footpath users could be reduced. Their preferred option was to provide a new stepped footbridge to ensure that the public could cross the railway safely. It was reported that Network Rail had therefore applied for a Diversion Order to change the legal alignment of the footpath, to enable the level crossing to be closed when the footbridge was in place.

In the event that the Order is successful, Network Rail would ensure that the existing level crossing was removed, suitable fencing was erected to bar access to the railway and that appropriate signs were provided, advising potential users that the path had been diverted.

The Committee noted that consultation with the statutory undertakers had been carried out and that no objections or adverse comments on the proposal had been received.

Resolved:

- (i) That subject to satisfactory responses to the consultations, an Order be made under Section 119A of the Highways Act 1980 to divert part of Westbywith-Plumpton's Footpath 7, from the route shown by a bold continuous line and marked A-B on the attached plan, to the route shown by a bold dashed line and marked A-C-D-E-F-B.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Application
To Record a Bridleway from Burnley Road to Antley Gate, Trawden,
Pendle Borough
File No. 804-581**

A report was presented on an application for a bridleway to be recorded from Burnley Road to Antley Gate, Trawden, Pendle.

A previous application had been received in October 1984 from the Trail Riders Fellowship, to upgrade the footpaths from Burnley Road to Antley Gate, Trawden, to byway open to all traffic. It had been considered by the Public Rights of Way Sub-Committee in July 1986 and rejected on the basis of insufficient evidence.

A further application had been received in October 2016, from different applicants, to upgrade most of the same route but this time to bridleway, with an addition of bridleway close to a short section of the route, as shown between points A-O on the Committee plan attached to the agenda papers. This application included documentary and user evidence which had not been considered when the first application had been made.

It was reported that the applicant had provided 10 user evidence statements to demonstrate usage over 20 years of the route, in addition to a bundle of documentation including maps, leaflets and references to several books, to try to illustrate that the route was a historical carriageway and that bridleway rights should be recorded.

A site inspection had been carried out on 24th November 2016.

It was suggested that the limited equestrian use evidenced in this matter was not sufficient evidence of use from which dedication of a bridleway could be deemed just from that use, and there was no other evidence of a historical or long-standing bridleway use.

Taking all the evidence into account, it was suggested that the evidence was insufficient to satisfy the criteria of S31, nor sufficient from which to infer landowners' intention to dedicate a bridleway in this matter.

Resolved: That the application to record a bridleway from Burnley Road to Antley Gate, Trawden, Pendle, in accordance with File no. 804-581, be not accepted.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Garstang Road (A6) to Pinewood Avenue,
Broughton, Preston City
File No. 804-590**

A report was presented on an application for the addition to the Definitive Map and Statement of a footpath from Garstang Road (A6) to Pinewood Avenue, Broughton, Preston City, as shown between points A-B-C-D-E-F on the Committee plan attached to the agenda papers.

A site inspection had been carried out on 13 September 2017.

The Committee noted that there was no map or documentary evidence to suggest that the application route existed as a through route before Pinewood Avenue and the associated housing development was built between 1965 and 1967. The map evidence was not in itself sufficient to infer dedication under common law. The land was in the ownership of BT during the relevant period under consideration. BT objects to the application and have notices up mitigating against dedication. Therefore, the mapping and user evidence taken together were considered as insufficient from which to infer dedication under common law.

Eleven user evidence forms had been submitted by the applicant. Section 31 of the Highways Act provides that the route must have been enjoyed by the public as a whole. However, the user forms suggest use was in fact by local inhabitants mainly residing at Pinewood Avenue and Willow Tree Close, and therefore it was not possible to demonstrate use by the public as a whole.

It is understood two notices had been put up along the route by the landowner, British Telecommunications (BT), which made it clear that the land was private property and that unauthorised access was trespass and not permitted. The case officer suggests one of the notices was worn and weathered suggesting it had been in place for some time. This is considered sufficient evidence to negative the presumed intention to dedicate the way as a highway.

Taking all the evidence into account, it was suggested to Committee that, on balance, the provisions of S31 Highways Act could not be satisfied and that dedication could not be deemed under Section 31 nor inferred under common law and hence it was recommended that the application was not accepted.

Resolved: That the application for an addition of a footpath to the Definitive Map and Statement from Garstang Road to Pinewood Avenue, Broughton, in accordance with File No. 804-590, be not accepted.

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of footpath at Calder Vale, Wyre Borough
File No. 804-587**

A report was presented on an application for the addition to the Definitive Map and Statement of a footpath from Albert Terrace passing through The Holme (Calder Vale) and continuing adjacent to a pond to meet Footpath 80 Barnacre with Bonds, Wyre Borough, as shown between points A-B-C-D-E on the Committee plan attached to the agenda papers.

The applicant had originally applied for a route from between 9 and 10 The Holme to point E, to be recorded as a public footpath but had not included the section of the route between points A-B or part of the route between points B-C. Following discussion with the applicant, it was understood that she had only claimed the route from The Holme to point E as that was the section of the path to which access had been prevented, and the applicant had not realised that it was necessary to claim the full length. The application had subsequently been revised to include the full length between points A-B-C-D-E.

The thirty four user evidence statements which had been submitted with the application had referred specifically to the route as running from between 9 and 10 The Holme to point E. Thirty of the users had subsequently confirmed – by way of a signed plan on which they had drawn the full length of the route A-E – that their evidence related to the full length of the route.

A site inspection had been carried out on 14 June 2017.

No adverse comments or objections had been received. Barnacre with Bonds Parish Council had confirmed that they fully supported the application and that the route accessed from land between 9 and 10 The Holme, running along the mill pond to join the public footpath to Primrose Cottages, had been used by locals for over 70 years.

The Committee were advised that the way the route was recorded on documentary evidence was not in itself a sufficient circumstance from which dedication could be inferred. Sufficient 'as of right' use may also be a relevant circumstance from which dedication can be inferred. The described use of the

route, as corroborated by the documentary evidence, as well as the treatment of the route by previous landowners, would suggest that it may reasonably be alleged that there are sufficient circumstances to infer dedication at common law.

Resolved:

- (i) That the application for a public footpath to be added to the Definitive Map and Statement from Footpath 80 Barnacre with Bonds at Albert Terrace, passing through The Holme (Calder Vale) and continuing alongside a pond to rejoin Footpath 80, Barnacre with Bonds, Wyre Borough, in accordance with File No.804-587, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath from a point on Footpath 80 Barnacre with Bonds at Albert Terrace, passing through The Holme and continuing adjacent to a pond to rejoin Footpath 80 Barnacre with Bonds as shown on Committee Plan between points A-B-C-D-E.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

10. Urgent Business

There were no items or Urgent Business.

11. Date of Next Meeting

It was noted that the next meeting of the Committee would be held at 10.30am on Thursday 15th March 2018 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

Regulatory Committee

Meeting to be held on Thursday 15th March 2018

Electoral Division affected: <u>All</u>
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Guidance for the members of the Regulatory Committee

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

Contact for further information: Jane Turner, 01772 32813, Office of the Chief Executive, jane.turner@lancashire.gov.uk

Executive Summary

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

Recommendation

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

Background and Advice

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

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

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

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

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

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

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

Definitions

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

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

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

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

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

Duty of the Surveying Authority

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

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

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

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

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

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

Orders following “legal events”

Other events include

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

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

Government Policy - DEFRA Circular 1/09

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

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

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

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

These are that:

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

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

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

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

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

Definitive Maps

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

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

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

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

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

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

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

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a “new” route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

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

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

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

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

Dedication deemed to have taken place (Statutory test)

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

Documentary evidence

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

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

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

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

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

Recording vehicular rights

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

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

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

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

Diversion Order s119

TO MAKE AN ORDER

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

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

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

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

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

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

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

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

Diversion Orders under s119A

TO MAKE AN ORDER

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

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

OR

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

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

Diversion Orders under s119ZA

Diversion Orders under s119B

Diversion Orders under s119C

Diversion Orders under s119D

Guidance under these specific sections will be made available when required

Extinguishment Order under s118

TO MAKE AN ORDER

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

GUIDANCE

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

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

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

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

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

Extinguishment Orders under s118A

TO MAKE AN ORDER

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

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

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

GUIDANCE

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

Extinguishment Orders under s118B

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

TO MAKE THE FIRST TYPE OF S118B ORDER

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

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

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

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

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

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

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

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

The same test as above.

GUIDANCE

Again there is convenience to consider.

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

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

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

Regulatory Committee
Meeting to be held on the 15th March 2018

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 been 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 15th March 2018

Electoral Division affected: Skelmersdale West

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of a Restricted Byway at Lathom High School, Skelmersdale, West Lancashire

File No. 804-591

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the addition to the Definitive Map and Statement of Public Rights of Way, of a restricted byway from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School, to a point on highway F8761 (known as Summer Street), in accordance with File No. 804-591.

Recommendation

That the application for a Restricted Byway from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School to a point on highway F8761 (known as Summer Street) and shown on the Committee plan between points A-B-C-D, in accordance with File No. 804-591, be not accepted.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a Restricted Byway to be recorded on the Definitive Map and Statement of Public Rights of Way, from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School, to a point on highway F8761 (known as Summer Street).

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

West Lancashire District Council has been consulted and no response has been received, therefore it is assumed that they have no comments to make.

There is no Parish Council for the area.

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	4759 0741	Open junction with cycleway
B	4760 0741	Barrier across the route
C	4763 0742	Access from school buildings to tennis courts
D	4770 0749	Barrier at junction with Summer Street

Description of Route

A site inspection was carried out 6 October 2017.

The application route crosses land forming part of Lathom High School, running along a tarmac road, immediately south of the school buildings and between the buildings and adjacent school fields and tennis courts.

Whilst the school buildings have been secured with fencing the grounds, including the playing fields, have not.

The application route starts at an unmarked point on a tarmac path which is marked out on the ground and signed as a cycleway. At point A on the Committee plan, the cycleway turns north leading round to the main entrance to the school, and then continues past the school looping back round to link to the application route at the eastern end of the application route.

From point A, the application route leaves the cycleway and follows a tarmac roadway in an easterly direction. At point B, a metal barrier has been erected across the route which was fixed in an open position on the day the route was inspected, but which the school said would normally be kept padlocked shut to prevent vehicles from accessing the school fields.

A notice on the barrier stated 'No entry' and on the school wall close to point A - and pointing along the cycle track towards the main entrance to the school – there was a sign stating 'Alternative footpath around the front of the school, follow arrow'. A representative of the school pointed out the location of a pedestrian route, with two flights of steps, along the edge of the building, which provided access from the cycle route north of point A onto the application route east of the barrier, and stated that this access could be used by pedestrians if they wished to use the application route on foot instead of using the alternative signed.

From point B, the application route runs east along a tarmac road to the rear of the school fence and open to school fields to the south. At point C, there is access from the school buildings via gates in the fencing and across the application route to the tennis courts and outdoor all weather sports pitches.

From point C, the application route continues along the tarmac road, following the school fence initially east north east, curving round to the north to point D where a second metal barrier is located across the route. Again, this barrier was open on the

day of inspection. Metal fencing had been erected to the side of the barrier with a gap through which it was possible to walk. A sign on the school fence adjacent to barrier states 'Private School Grounds, Trespassing or causing a nuisance may result in prosecution' and a further sign duplicated the information at point A regarding the use of an alternative footpath around the front of the school.

At point D, the application route meets the western end of Summer Street which is recorded as F8761 on the List of Streets (i.e. the record of publicly maintainable highways as required by S36 of the Highways Act 1980).

The total length of the route is 160 metres.

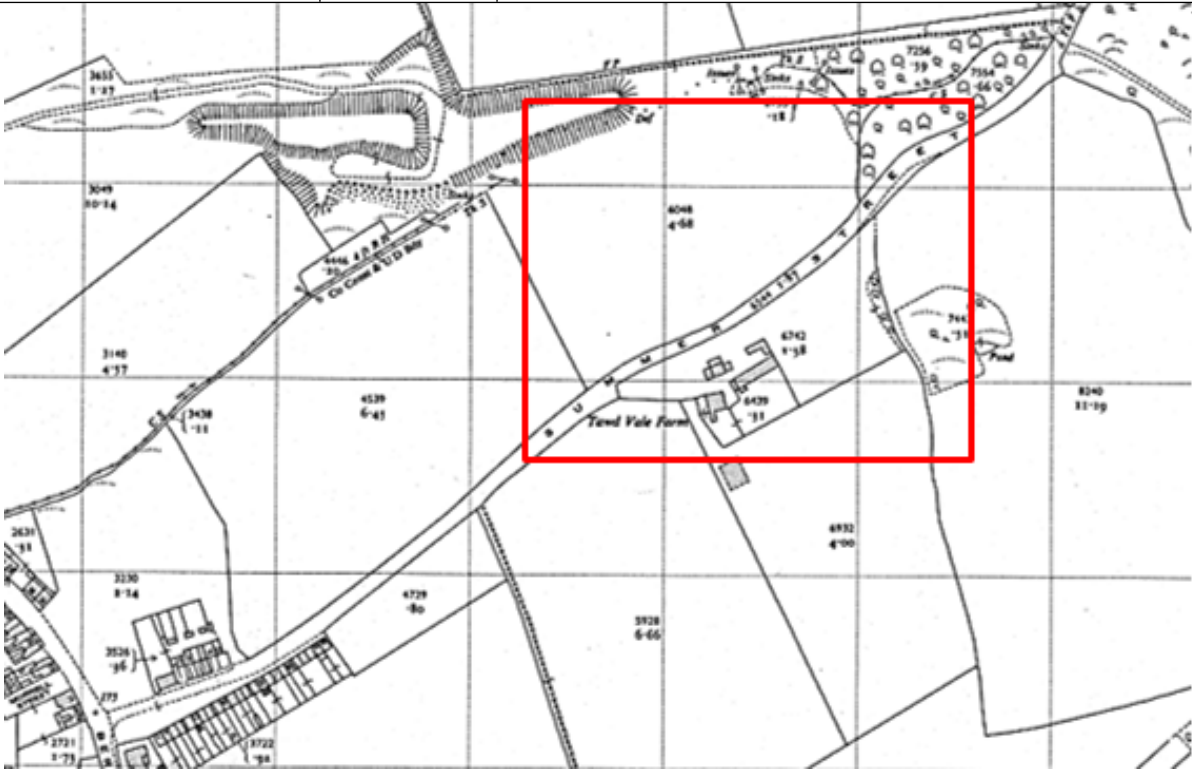
Map and Documentary Evidence

Several maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be. The route is not shown on early commercial maps or the Ordnance Survey maps published in 1849, 1893, 1908, 1927, 1955 and 1960 and is not visible on aerial photographs taken in the 1940s or 1960s.

The route crosses land which is within an area which was designated as Skelmersdale New Town in 1961 and over the next 20 years the area was extensively developed to provide new housing, shops, business areas and road systems.

The area was subsequently redeveloped and Lathom High School (formerly Tawd Vale High school) built – including the access road around the rear of the school along which the application route runs.

The school opened in 1969.


Document Title	Date	Brief Description of Document & Nature of Evidence
1:2500 OS Map	1960	1:2500 OS map revised 1959 and published 1960.
		
Observations		The map shows the land crossed by the application route prior to the construction of the school. A road named as Summer Street is shown cutting through the land now comprising of the school buildings and grounds but the application route is not shown.
Investigating Officer's Comments		The application route did not exist in 1959.
Aerial photograph	1960s	Aerial photograph available to view on GIS with the position of the application route shown marked in red.

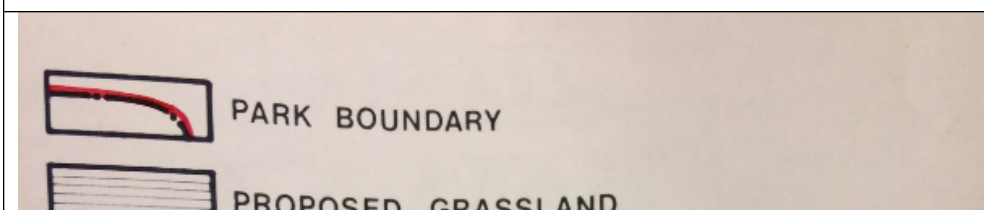
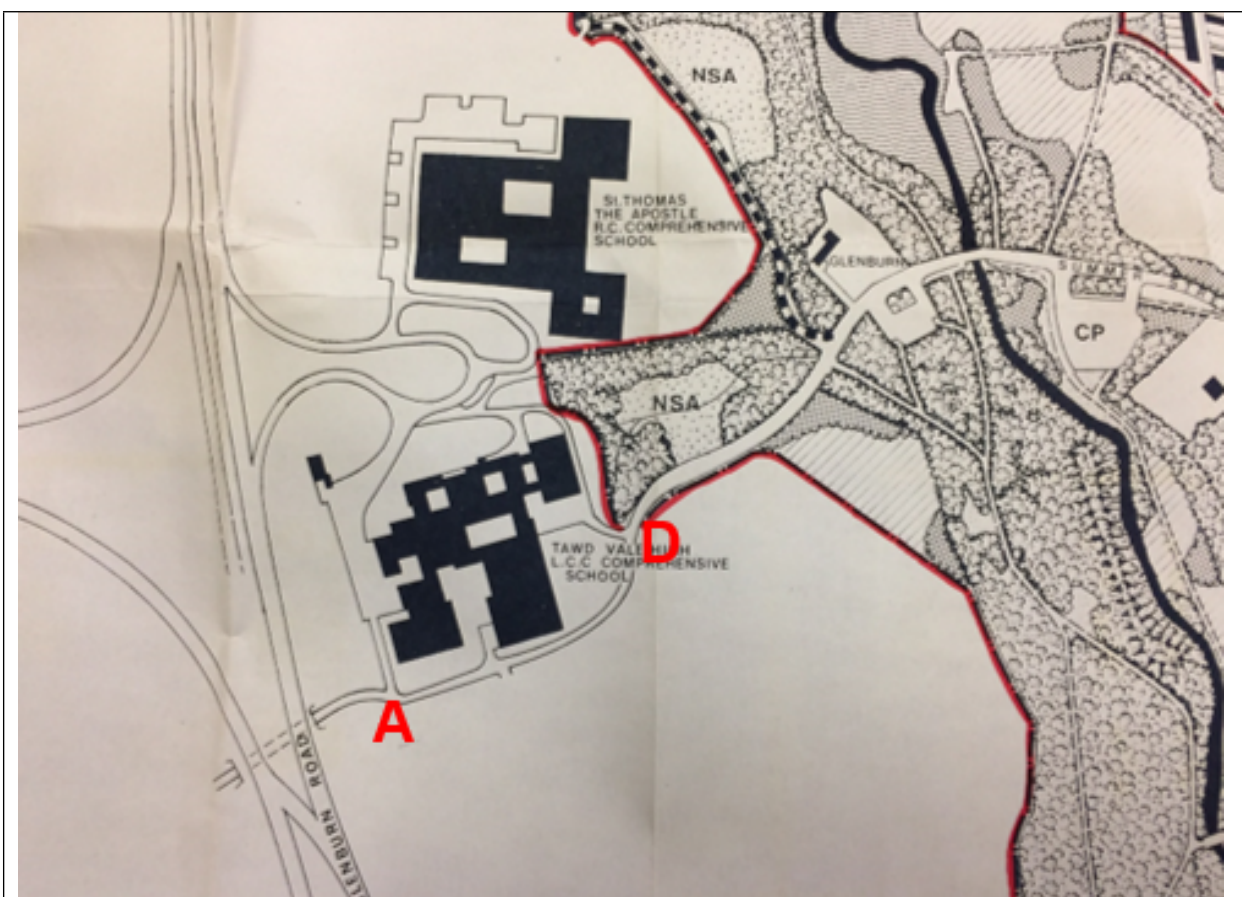


Observations

The photograph clearly shows the route of Summer Street prior to the area being redeveloped. The alignment of the application route has been digitised to overlay the aerial photograph to show how the application route is not on the same alignment as Summer Street.

An unedited version of the photograph is also included to show the land under the digitised line and the fact that the application route cannot be seen to have existed as a worn route on the

		ground at that time.
Investigating Officer's Comments		The application route did not exist in the 1960s.
Highway Extinguishment Order	1972	<p>On the 26th September 1972 The Secretary of State for the Environment made an order to extinguish public rights over part of Summer Street.</p> <p>The Order – titled 'The Urban District of Skelmersdale and Holland (Skelmersdale Development Corporation: Part of Summer Street and Parts of Footpaths Nos 102 and 103) Rights of Way Order 1972' extinguished all public rights along part of Summer Street shown between points A – B on the Order plan shown below.</p>
		
Observations		The 1972 Order extinguished all public rights along Summer Street between point A and point B on the above plan including that part of the route east of the application route which is now recorded on the List of Streets as footpath. The application route did not form part of Summer Street and was not referred to in the order.
Investigating Officer's Comments		The application route was not affected by the 1972 Order but the fact that it is not referred to or shown in the Order suggests that it did not exist in 1972.
Tawd Valley Park landscape plan	1974	Plan deposited in the County Records Office Ref NTSK4/1/582

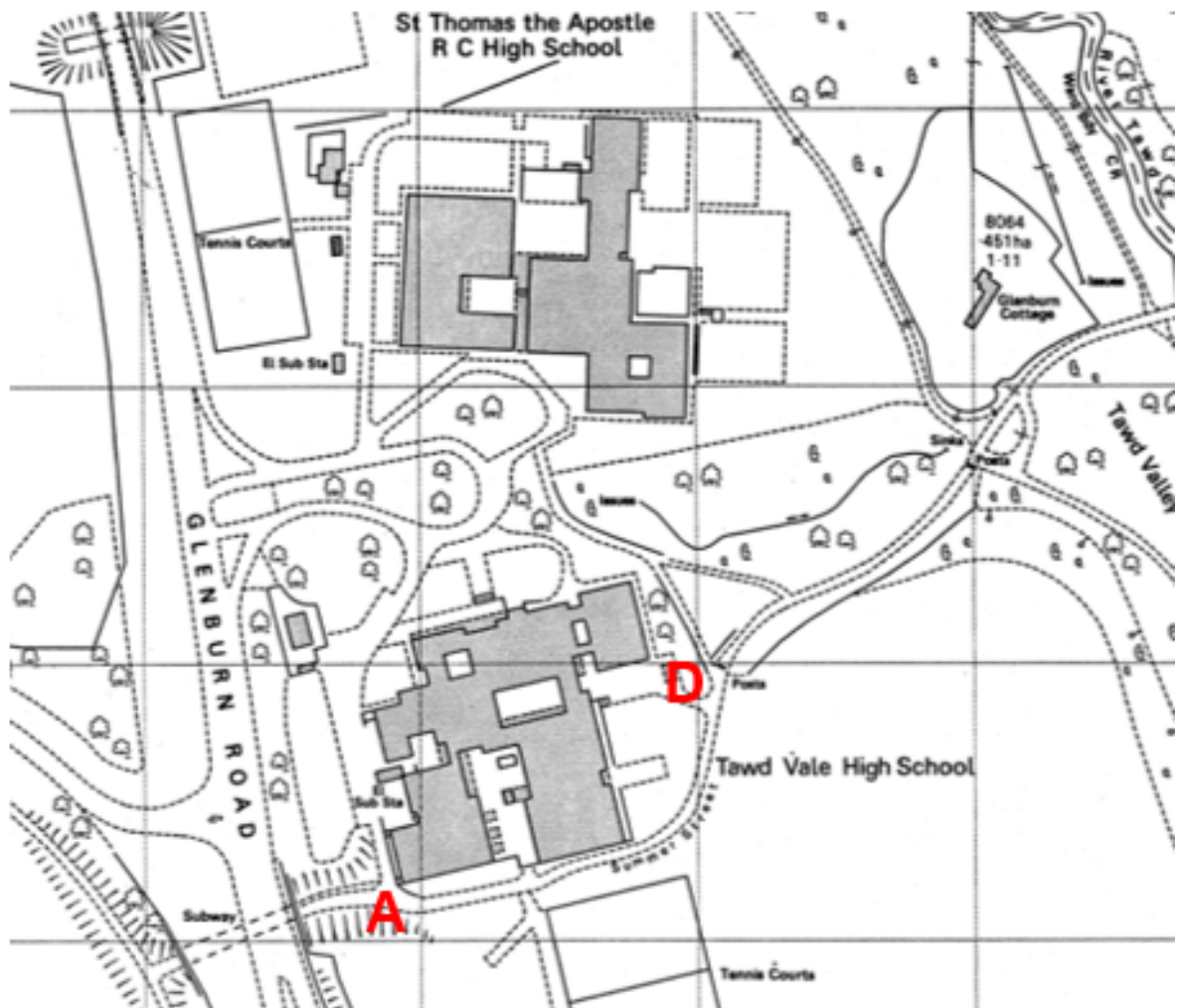


SKELMERSDALE DEVELOPMENT CORPORATION TAWD VALLEY PARK 3 SECTION 42(I) NEW TOWNS ACT 1965		
Scales 1:2500	Drawn G. HOUGH Traced Checked Date March 1974	Org. No. L.P.Tv.28d
A.D. HALL BSc, ARTC, CEng, MICE, FIMunE, MIHE Chief Engineer		J.D. PROCTER BArch(LPool), MCD, ARIBA, MRTPI Chief Architect & Planning Officer

Observations

A plan of Tawd Valley Park dated 1974 was inspected. The application route lies outside the

		boundary of the country park but is shown on the plan as part of a longer route providing access into the park. There is no indication what the status was thought to be but the route is shown as part of a substantial track and access appears to be open.
Investigating Officer's Comments		The application route existed in 1974 and appeared capable of being used.
1:2500 OS Map	1985	Further edition of 25 inch map reconstituted from former county series and revised in 1983 and published 1985 as national grid series.

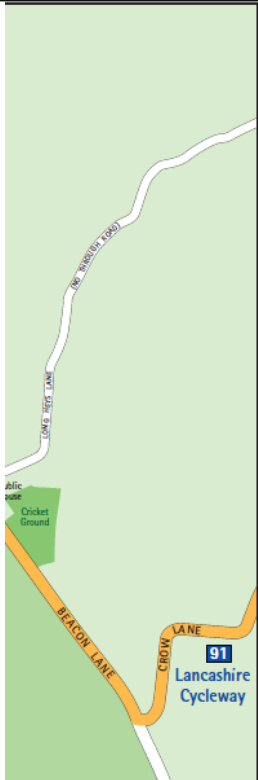


Observations		The application route is shown as part of a longer route and is named on the map as Summer Street. The route appears to be fairly wide and open at point A and point D (i.e. no barriers or gates are shown across it).
Investigating Officer's Comments		The application route existed in 1983 and appeared to be capable of being used. It appears likely that it would have been possible to use the route with vehicles as it was wide

		<p>enough and without barriers. However it could not have been used by most vehicles beyond point D due to the narrow width of the northern path and posts across the eastern.</p>
Aerial Photograph	1988	<p>Aerial photograph available to view in the Lancashire County Records Office dated 1988.</p>
		
Observations		<p>The application route can be clearly seen as part of a longer route passing the school. It appears to have a substantial surface and looks like it would have been wide enough to have been used by vehicles. It is not possible to see whether the posts beyond point D (as shown on the 1985 OS map) existed due to tree coverage</p>

		and the scale of the map.
Investigating Officer's Comments		The application route existed as part as a longer through route in 1988 and appeared to be capable of being used.
Ormskirk-Skelmersdale Cycle Leaflet	2013	A leaflet produced by Lancashire County Council to promote cycling in West Lancashire.

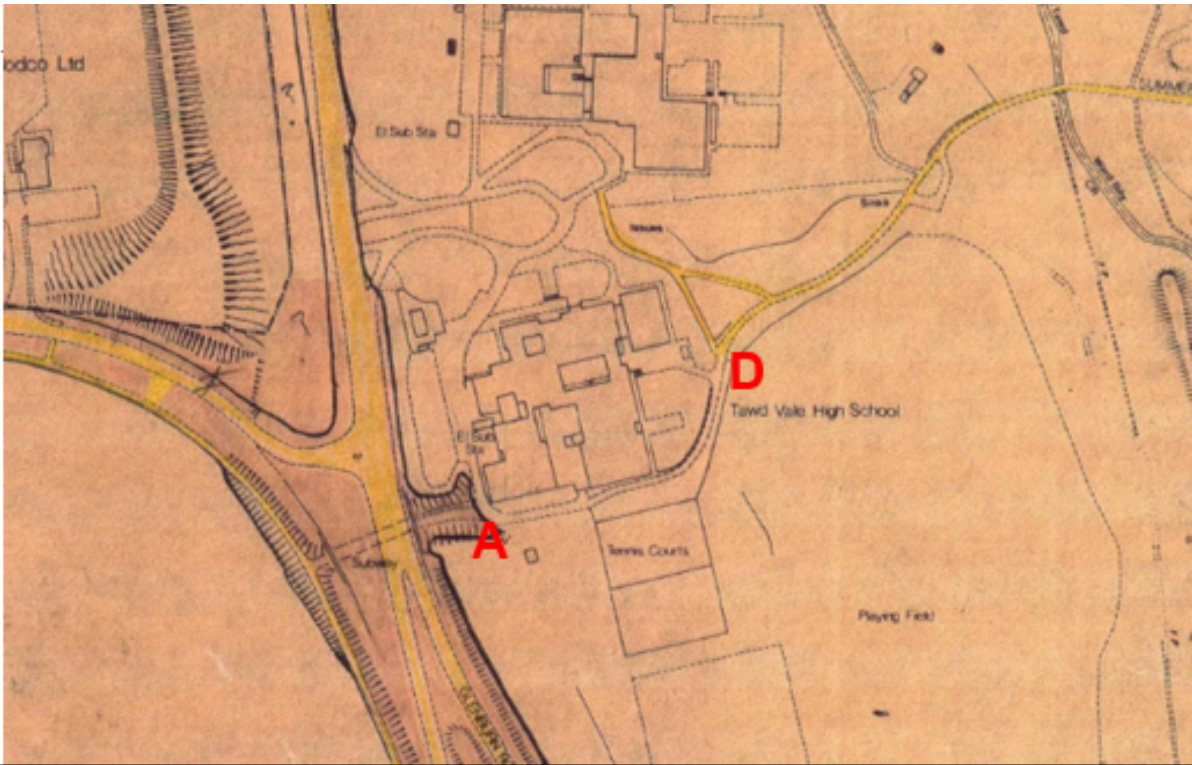


		<h3>Key</h3> <ul style="list-style-type: none"> Main road Minor road Recommended on-road cycle route (not all signed) Cycle track Proposed cycle track Cycle lane Bridleway (cycling allowed) Footpath (dismount, no cycling) Toucan/Pelican*/Zebra* crossing (*cyclist's dismount) One way National Cycle Route number Regional Cycle Route number Rail line and Station Bus Station Rural area Park and open space Urban area Pedestrian area (no cycling) Place of interest Schools Et Colleges Major employment site Shops Cycle Shop Hospital Other buildings
Observations		<p>The leaflet promotes the benefits of cycling across Skelmersdale. It states that a network of high quality routes were being developed across Skelmersdale linking housing estates, schools and employment areas.</p> <p>The map shows a network of existing cycle tracks (solid green line) and proposed cycle tracks (green dashed lines).</p> <p>The application route is not shown on the map but a route is shown around the north of Lathom High School (as currently exists) which passes through point A.</p>
Investigating Officer's Comments		<p>The application route was not considered to be part of the existing cycle network in 2013 and was not identified by the County Council as a proposed cycleway. Neither is it shown as a recognised footpath link.</p>
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area</p>

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

Observations		The route under investigation was not shown on the First Definitive Map and no representations were made to the County Council.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The route under investigation is not shown.
Investigating Officer's Comments		There is no indication that the application route was considered to be a public right of way by the Surveying Authority.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark 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>

Highway adoption records





Lancashire County Council record of cycle routes

Observations		<p>The application route is not recorded as a publicly maintainable route on the List of Streets by the County Council. The two routes continuing beyond point D are recorded as a footpaths F8761 (Summer Street) and F570.</p> <p>The route linking to point A (from under the subway and continuing north around the front of the school) is recorded on the County Council records as an off road cycle route and is signposted and marked out on the ground.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights along the application route.</p>
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection</p>

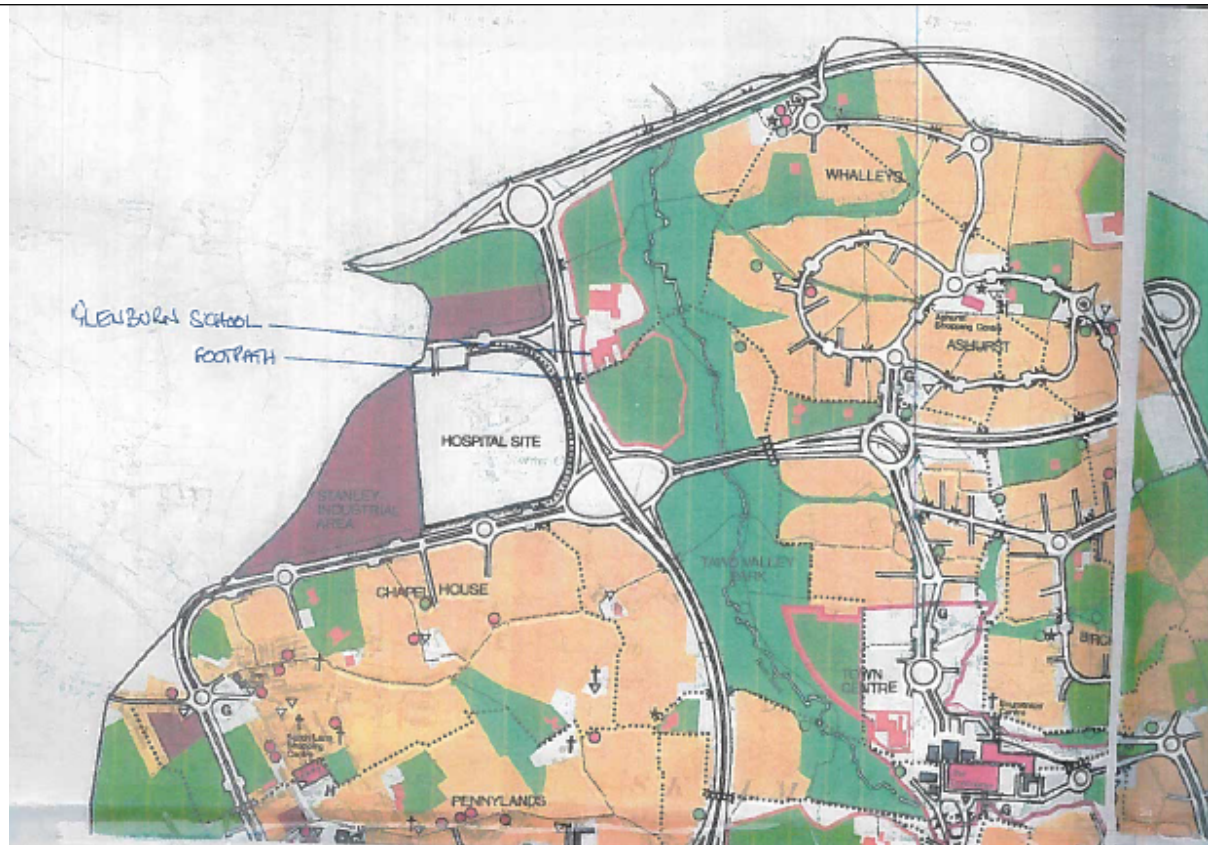
		<p>to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been 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 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 intention by a landowner under this provision of non-intention to dedicate public rights of way over their land.

Plans and Maps
submitted by the
applicant

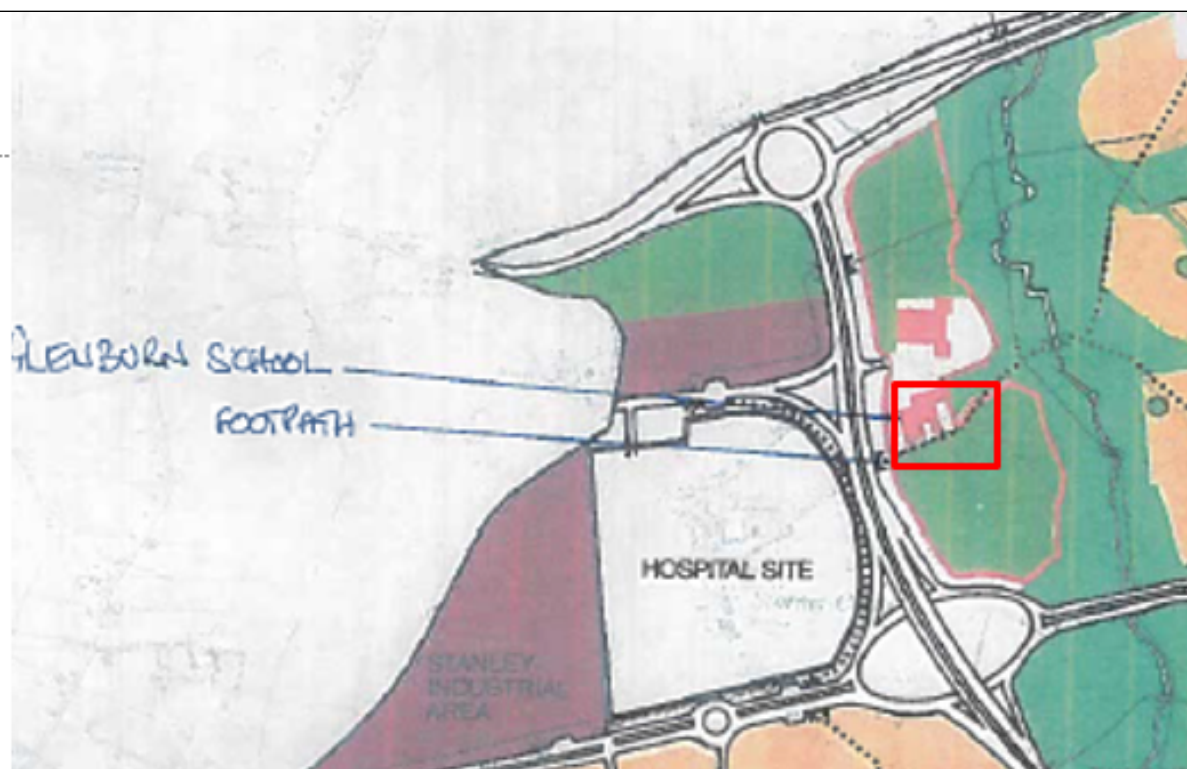
1975



West Lancashire District Council Plan of Tawd Valley Park



Skelmersdale New Town Basic Plan 1975



Observations

Tawd Valley Park was created as part of the new town development and still exists today. The site surrounds the River Tawd as it meanders its way from Yewdale across a large

		<p>section of the historical town of Skelmersdale through to Cobbs Clough Brow. The country park is maintained by West Lancashire District Council Ranger Service and contains an extensive path network set out as part of the New Town development.</p> <p>The leaflet submitted by the applicant provides details of three trails within the park and marks the paths according to whether they are wheelchair friendly or 'less' wheelchair friendly. There is no indication on the leaflet as to whether the routes are recorded as public rights of way.</p> <p>A route is shown annotated with blue dots (wheelchair friendly) which passes Lathom High School. This route is described as going from Summer Street to Glenburn Road and appears to include the application route.</p> <p>The second plan submitted by the applicant is described as 'Skelmersdale New Town Basic Plan' and said to be dated 1975. It shows a route believed to indicate the application route as part of a longer route. There is no key to the plan to indicate the status or intended status of the route and it is unclear whether the plan shows features that had already been constructed or aspirational (for example the hospital site).</p>
Investigating Officer's Comments		<p>The West Lancashire District Council plan of walking trails in Tawd Valley Country Park indicates that the application route was considered to be part of a longer route providing access into the county park at least on foot. However the plan (brochure) is undated but must post-date 2015 as the school is described as Lathom High School and was known as Glenburn High School prior to that time.</p> <p>The plan dated 1975 is indicative of the fact that it was at least proposed to construct a longer route – part of which included the application route. But it is unclear whether it was intended to be permissive or dedicated as a public path.</p>
CCTV coverage submitted by Lathom High School	2016	CCTV coverage dated 5 September 2016 submitted by the School.

Observations		<p>The CCTV coverage consists of a series of still shots spanning a period of 10 minutes and 50 seconds over the lunch break (1.30pm) on a school day.</p> <p>The camera is positioned looking down onto the application route at point C at which point students cross the route to gain access from the school buildings to the playing fields.</p> <p>The coverage shows students crossing the route on foot going to and from the school buildings and some students sitting on the grass immediately to the east of the application route. Two adults are shown stood on the application route at point C who appear to be supervising the pupils.</p> <p>Several cars are shown parked adjacent to the route immediately before reaching point C.</p> <p>Approximately half way through the footage four cyclists can be seen riding along the route through point C. The cyclists all appear to be teenage boys carrying rucksacks but it is not clear whether they are pupils of the school. A short time after the cyclists are seen three mini-motorcycles are seen being ridden along the application route through point C. The riders appear to be young males.</p>
Investigating Officer's Comments		<p>The CCTV footage illustrates the fact that pupils have access to and across the application route.</p> <p>Cyclists and motorcyclists are seen travelling along the route whilst pupils are crossing it illustrating a management issue for the school.</p> <p>If the cyclists are pupils attending the school no inference can be drawn; if they are not then it could suggest a reputation that the route is a public bridleway or restricted byway.</p> <p>Use of the route by mini-motorbikes is illegal and no inference can be drawn.</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

Ownership of the land crossed by the application route between points A-B-C-D is registered with the Land Registry as being owned by The Lancashire County Council of County Hall, Preston, PR1 8XJ.

Summary

The application is for the route to be recorded as a restricted byway.

The available map and documentary evidence has been inspected by the County Council who have looked at the history of the route.

The route applied for did not exist until the development of Skelmersdale New Town – most probably in the early 1970s. The section of Summer Street – a public vehicular highway which crossed the land on which Lathom High School was built was extinguished (in part) in 1972 but was not on the same alignment as the application route.

It appears that the application route was probably constructed when the school was built following the extinguishment of Summer Street (part) but there is no evidence that the route was legally created as an alternative to the route extinguished.

The routes connecting to the application route are not recorded as public vehicular routes but, since the construction of the New Town appear to have been recognised as footways and cycle routes.

Map and documentary evidence suggest that the application route formed part of a network of routes leading into Tawd Vale Country Park and the route appears to have been physically capable of being used on foot, horse and bicycle.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In support of the application for the addition of a restricted byway from Glenburn Road to Summer Street to the rear of Lathom High School, the applicant has provided copies of 5 user evidence forms, the information provided on these forms is summarised below.

All 5 users have used the route on foot, 2 of the users also have used the route on bicycle. None of the users have ever used the route on a horse or by motorised vehicle.

4 of the users have seen other users using the route on foot, bicycle and on horse. The years in which the users have used the route vary from 1949 to present day:
1983 – Present 1995 – 2016 1949 – 2005 1996 – 2017 1970 – 2017

1 user mentions not being able to access the route during 1970's when the schools were being built.

Below sets out how often the users used the route:

On foot daily (1) On foot weekly (1) On foot monthly (1)

On foot weekly and bicycle monthly (1) On foot and bicycle weekly (1)

All 5 of the users used the route for pleasure reasons; dog walking, cycling, visiting the shops. 1 user used the route to get to the doctors and the vets. 1 user used the route to visit family members on Summer Street between 1949 & 1960 and later for pleasure.

All 5 of the users agree that the route is tarmacked and has always run over the same line. Whenever they saw others they were also using the same route. All 5 users agree there have never been any stiles or gates. 3 users provide that in December 2016 a barrier was erected blocking access to the route.

All of the users answered 'no' to ever having worked for a landowner/tenant of the affected land.

None of the 5 users have been given permission to access the route or told that the route wasn't public.

1 user commented that lots of families use the public route to walk and cycle to old Skelmersdale.

In addition to the user evidence details above, the applicant provided the following, which he asserts support the claim for the route to be recorded as a restricted byway:

1. Email to the school
2. Reply from the school
3. Ordnance survey map of Skelmersdale
4. Ordnance survey map of Stanley/Ashurst
5. Mario map overlay of school and pre-school construction
6. Mario map of old Glenburn Colliery
7. Mario aerial view of pre-school construction
8. Mario map of school & paths
9. Mario aerial photo
10. Google aerial photo
11. Newly installed barriers
12. Newly installed gate – west side
13. Newly installed gate – east side
14. Signage for 'alternative route' and barriers – east side
15. West Lancs Council map showing disabled access to Tawd Park
16. Planning application for temp classroom provision
17. Skelmersdale New Town basic plan 1975.

Information from Others

A response to the consultations had been received from the School Business Manager at Lathom High School, which stated that the land at the back of school was separated by a path which meant open access to the back of school via the subway and Summer Street. They have had numerous instances of illegal motorbikes and cars being driven at the back of school on the path, tennis courts, all weather pitch and fields during the school day. This puts all students and staff at risk of serious injury or death. They have installed drop down bar gates at either end of the school building to prevent motorbike and car access to the back of school but state that it does not prevent access for able bodied walkers. To ensure access is available for all regardless of physical ability they have clearly marked the public footpath route that takes people around the front of school giving them the same access to the subway and summer street.

Information from the Landowner

Lancashire County Council object to the creation of a new restricted byway on the grounds that its creation would adversely affect the development potential and future value of the County Council's landholding at Lathom High School. Estates have looked at historical OS maps and aerial survey photographs and state there was a roadway leading from Stormy Corner to Summer Street which would have passed directly through the centre of the High School buildings. They provide that this road must have been closed or diverted when the High School was built so there must be some record of the closure or diversion orders, which may throw some light on the reason why this access route exists.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

- A small amount of User Evidence
- Present line available since 1974
- Some user evidence on pedal cycle

Against Accepting the Claim

- Relatively low user numbers if considering user evidence
- Lack of historical evidence

Conclusion

The claim is that the route A- D is an existing public right of way as a restricted byway and should be added to the Definitive Map and Statement of Public Rights of Way.

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

Considering initially the criteria for a deemed dedication under Section 31 of the Highways Act, that use needs to be "as of right" and also sufficient for the 20 year period. The first consideration is to determine when the route was called into question. In this matter, the information from 3 of the users indicate that the route was called into question in December 2016 by the installation of gates/barriers across the route and the erection of signs, it is considered that the period of use from which dedication can be deemed would be 1996 – 2016.

Five user evidence forms have been submitted to indicate knowledge and use of the route and all 5 users state that they have used the route for 20 years or more, with two of the users claiming to have used the route on pedal cycle whilst the other 3 users claim only to have used the route on foot.

The main purpose given for using the route is to access local amenities including the doctors, vets and shops, the users also claim to have used the route for pleasure including visiting friends/family and dog walking.

Reference is made by some of the users to the presence of notices and signs discouraging use of the route erected in December 2016.

Taking all the user evidence information into account, it is suggested there does not appear to be any evidence to demonstrate no intention by the land owner to dedicate over the twenty years prior to 2016.

Objections have been received from Lathom High School and Lancashire County Council Estates team. However, whilst these objections are acknowledged, it is submitted that the concerns raised are not relevant considerations under either S31 Highways Act 1980 or under Common Law.

It is suggested that the limited user evidenced in this matter is not sufficient evidence of use from which dedication of a restricted byway could be deemed just from the limited use presented and no other evidence of a historical or long-standing use.

Section 31, Highways Act 1980, as amended by section 68 of NERC 2006, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway. Committee is therefore asked to also look at whether the use by two users on pedal cycles would be sufficient to deem dedication by the owner as a route for non mechanically propelled vehicles. It is suggested that such use is insufficient in this matter.

Considering also whether there are circumstances from which dedication could be inferred at common law. The map evidence suggests that the application route did not exist before the development of the school which opened in 1969. The route is shown on a plan of Tawd Valley Park dated 1974 but does not form part of the park.

In 1985, the route is shown on the 1:2500 OS Map noted as Summer Street, however Summer Street was extensively redeveloped and the subject of a Highway Extinguishment Order in 1972 and is also not recorded as publicly maintainable on the Lists of Street held by the County Council. Therefore the mapping and user evidence taken together are insufficient from which to infer dedication under common law.

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**

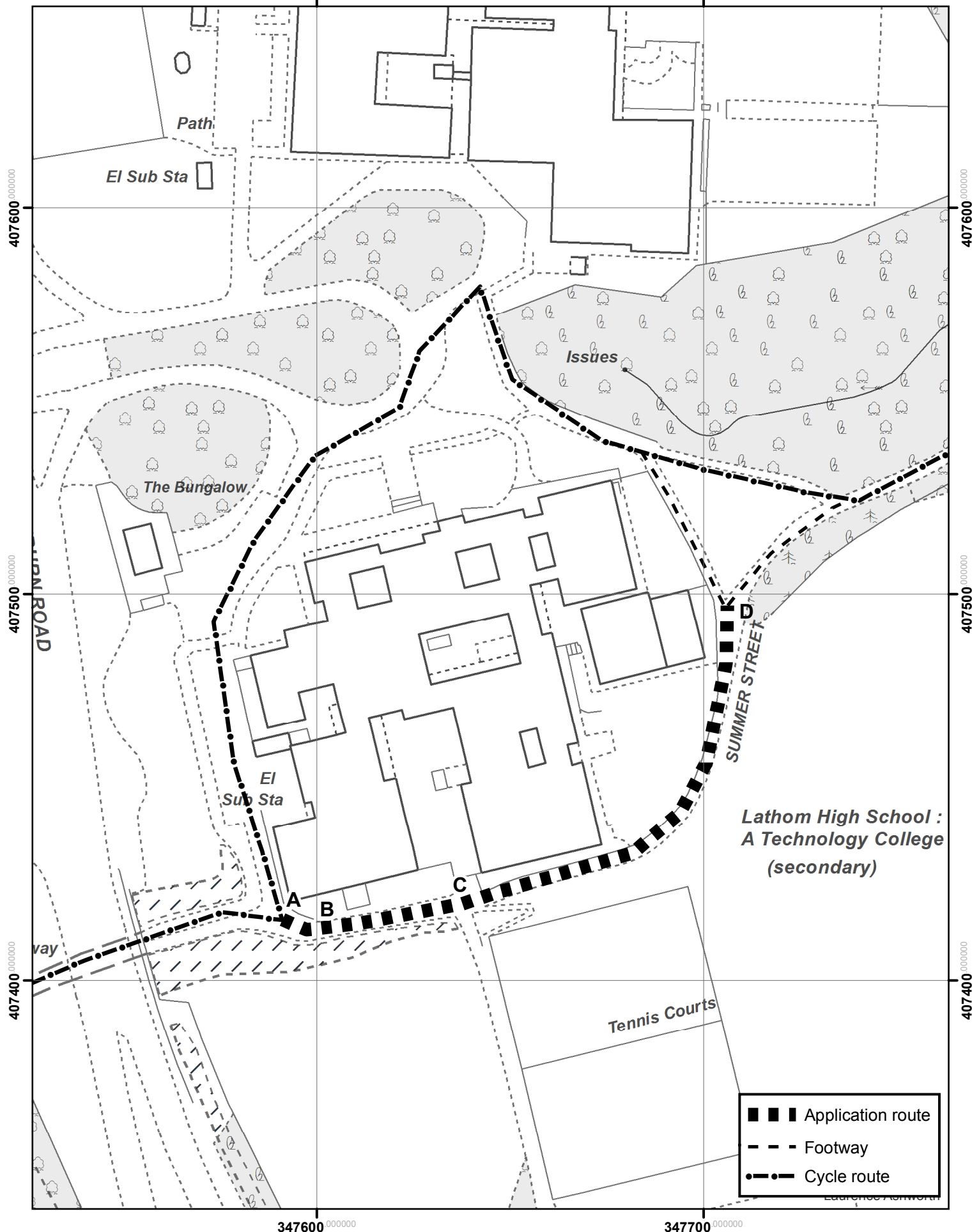
Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-591		Claire Blundell, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

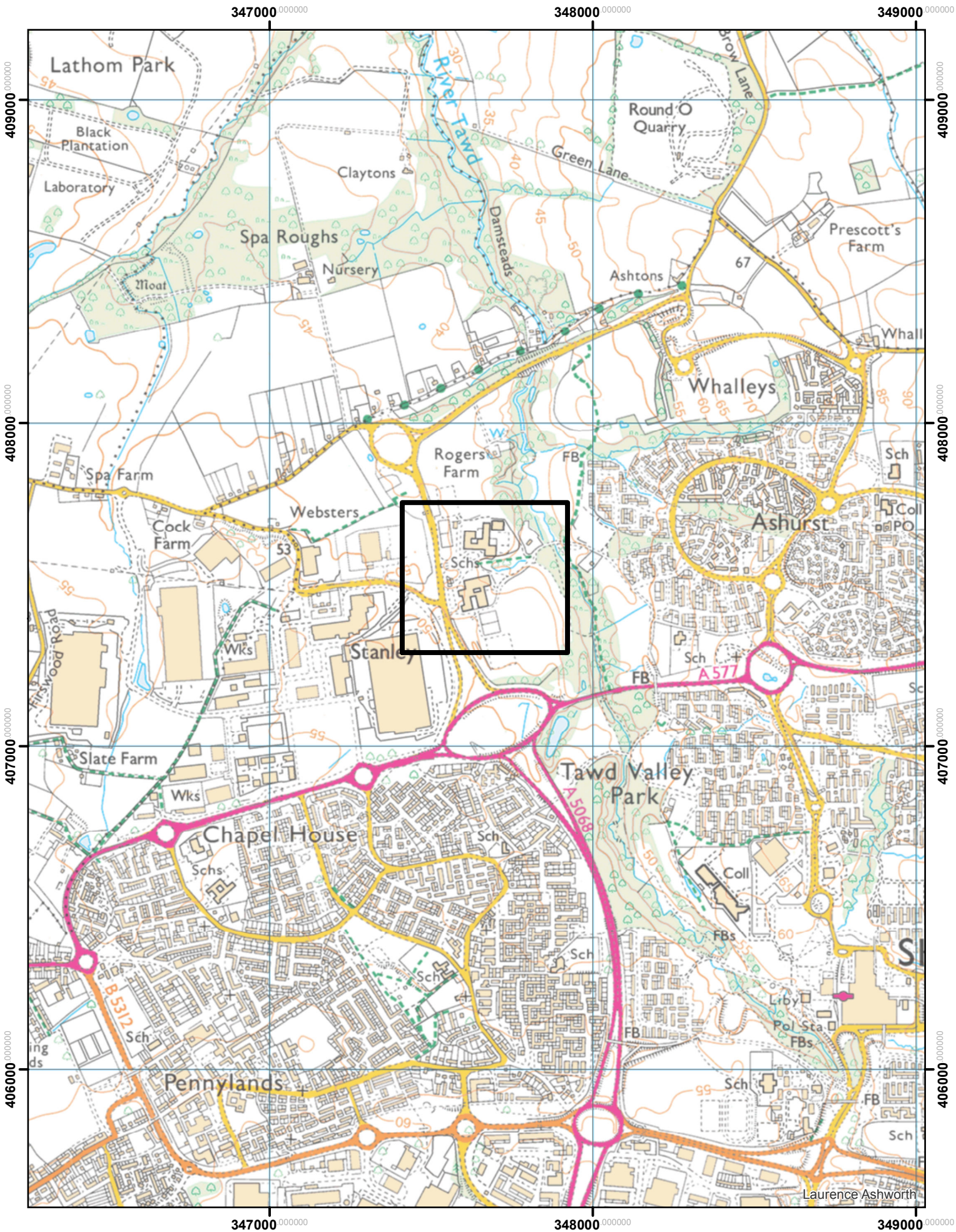
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Regulatory Committee

Meeting to be held on 15th March 2018

Electoral Division affected:
West Lancashire East

Wildlife and Countryside Act 1981

Claimed Public Footpath from Public Footpath No.39 Newburgh to Public Footpath No.40 Newburgh, West Lancashire Borough

Claim No. 804/491

(Annex 'A' and Appendix 'A' refers)

Contact for further information:

Miss C Blundell, 01772 533196, County Secretary & Solicitors Group

Mrs J Elliott, 01772 533442, Environment Directorate,

Jayne.elliott@lancashire.gov.uk

Executive Summary

The withdrawal of support for "The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No.3) Order 2011", on the basis that although the County Council considered that there was sufficient evidence to satisfy the test to make the Order, information has come to light since that means the evidence will not be sufficient to meet the higher test that it subsists on the balance of probabilities.

Recommendation

That the County Council as Order Making Authority should submit The Lancashire County Council (Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No.3) Order 2011 to the Secretary of State for Environment, Food and Rural Affairs for formal determination, but notify the Secretary of State that it does not actively support the Order and adopts a "neutral stance" as regards confirmation of the Order.

Background and Advice

On 12th May 2010, the Authority gave consideration as to whether or not an Order should be made to add a Public Footpath, extending from a point on Public Footpath No. 39 Newburgh, to a point on Public Footpath No. 40 Newburgh, West Lancashire Borough to the Definitive Map and Statement of Public Rights of Way. Appendix A refers.

The decision of the County Council was that there was sufficient evidence that a Public Footpath was reasonably alleged to subsist or to subsist along the route.

A Definitive Map Modification Order was duly made on 12th January 2011. An objection was received to the making of the Order by the landowner. He refers to post and rail fencing replacing earlier chestnut paling and having witnesses regarding this and having evidence of work redirecting walkers. Statutory provisions state that where there are objections, the Order Making Authority should submit the Order to the Secretary of State for formal determination.

Although the Order Making Authority previously assessed the evidence and considered that there was sufficient evidence to satisfy the test to make the Order and also to promote it to confirmation, now in considering information that has come to light since, on the balance of probabilities, it is advised that officers no longer consider that the evidence will be sufficient to meet the higher test for confirming the Order that the route already subsists as a footpath on the balance of probabilities.

Interviews have been carried out with a number of the users that had filled in forms. As a result of the interviews, it is the view of Officers that there is insufficient evidence to promote the Order through to confirmation. Issues arose in the following areas:

- There was a low number of users prepared to give evidence and their evidence, credibility and recollections were not as expected from originally considering the written user evidence;
- there is better evidence of a short fence blocking the route several years ago indicating a lack of intention to dedicate by the previous owner and an interruption to use of the line;
- There is better evidence that this fence line was extended more recently indicating a lack of intention to dedicate by the present owner and again interrupting the line of any used route.

The actions of the owners, and the weak evidence of use, on balance, make it difficult to argue inferred or deemed dedication. It is felt therefore, that it would be difficult to justify promoting this Order to confirmation as originally thought. The Committee may therefore feel that the County Council as Order Making Authority should reverse its previous decision, in light of the new evidence, and agree that the order be submitted to the Secretary of State for formal determination, but notify the Secretary of State that it does not actively support the Order and adopt a "neutral stance" as regards confirmation of the Order.

It would be usual for the Applicant to be invited to promote the Order. The Objectors would make their own submissions.

Alternative Options

To decide to promote the Order to confirmation.
To decide to oppose the Order made

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

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/491	15/03/2018	C Blundell, County Secretary & Solicitor's Group, 01772 533196

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee

Meeting to be held on 12 May 2010

Part I - Item No. 4

Electoral Division affected:
West Lancashire East

Wildlife and Countryside Act 1981

Claimed Public Footpath from Public Footpath No. 39 Newburgh to Public Footpath No. 40 Newburgh, West Lancashire District

Claim No. 804/491

(Annex 'A' refers)

Contact for further information:

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Mrs J Elliott, 01772 533442, Environment Directorate,
jayne.elliott@lancashire.gov.uk

Executive Summary

The claim for a Public Footpath from Public Footpath No. 39 Newburgh to Public Footpath No. 40 Newburgh, West Lancashire District to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/491.

Recommendation

- i. That the Claim for a Public Footpath from Public Footpath No. 39 Newburgh to Public Footpath No. 40 Newburgh, in accordance with Claim No. 804/491 be accepted.
- ii. That an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Public Footpath 2 metres in width from Public Footpath No. 39 Newburgh to Public Footpath No. 40 Newburgh, West Lancashire District for a distance of approximately 330 metres (grid reference SD 4889 0906 to SD 4869 0931) and shown between points A – C on the attached plan.
- iii. That, being satisfied that the test for confirmation can be met, the Order be confirmed if no objections are received. If objections are received, that the Order be submitted to the Secretary of State and promoted for confirmation, if necessary at a hearing or public inquiry.

Background

An application has been made under section 53(5) of the Wildlife and Countryside Act 1981 for an Order to amend the Definitive Map and Statement of Public Rights of

Way in Lancashire by adding a public footpath extending from a point on Public Footpath No. 39 Newburgh to a point on Public Footpath No. 40 Newburgh, West Lancashire District shown between Points A and C on the attached plan.

The claimed public footpath is approximately 330 metres long extending from a point on the existing Public Footpath No. 39, Point A on the plan, to a point on the existing Public Footpath No. 40 Newburgh, Point C on the plan. On the date that the claimed route was inspected access was physically blocked by a wooden post and rail fence at Point C and it was also partially obstructed by a recently constructed drainage channel that crossed the claimed route near to Point B. Despite these obstructions it was still possible to walk the full length of the claimed route by deviating around the fence at Point C and climbing across the drainage ditch close to Point B.

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

An Order should only be made if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”(to be satisfied that an Order to add a route can be confirmed it would be necessary to decide on balance of probabilities that the right of way subsists, that it can only "be reasonably alleged to subsist" is too low a test for confirmation of an Order – Committee are also asked to consider if the Order can satisfy the confirmation test when considering an addition of a route)
 - “The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path”
 - The status of a recorded right of way needs to be changed
 - There is no right of way over land as recorded on the Definitive Map and Statement
- or
- Details of the Definitive Map and Statement need to be changed.

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

The County Council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in the original application. The decision may be that the routes have

public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists.

Consultations

West Lancashire District Council;

West Lancashire District Council has been consulted but has not responded to the consultation. It is therefore assumed they do not have any comments to make on the claim.

Newburgh Parish Council

Newburgh Parish Council is the applicant in this matter.

Executive Director of the Environment's Observations

Description of Route

A site inspection was carried out on 29th September 2009.

The claimed route commences at Point A on the plan (Grid Reference SD 4889 0906). Point A is a point on Public Footpath No. 39 Newburgh approximately 356 metres from Cobbs Brow Lane. Beyond Point A Public Footpath No. 39 Newburgh continues in an easterly direction crossing the brook which forms the boundary between the parishes of Newburgh and Parbold. It then continues in an east north easterly direction as Public Footpath No. 34 Parbold.

From Point A the claimed route extends in a general north westerly direction across a small area of rough grass (unfenced) to follow the edge of an arable field.

There are no signs indicating the existence or otherwise of the claimed route at Point A and no physical restrictions preventing access onto the claimed route. The route of Public Footpath No. 39 Newburgh is waymarked from the footbridge that forms part of the public footpath but the claimed route is not.

From Point A the claimed route follows the eastern edge of the field. There is no worn track apparent in the grass. After travelling a short distance a shallow hole has been dug in the ground which can easily be walked round. The claimed route is not fenced off from the field. To the east of the claimed route is an area of woodland within which runs the brook that marks the parish boundary. There is no access into the area of woodland from the claimed route.

In places a faint track can be followed in the grass. The grass along this section is quite long and doesn't appear to have been recently cultivated. Although the field to the west has been cultivated it appears that a wide strip had been left within which the claimed route runs.

Recent work has been carried out along the western side of the claimed route (in the field) to dig a substantial ditch approximately 1 metre deep and 2 metres wide. The ditch extends nearly the whole length between Point A and Point B and is part of a

land drainage scheme that is currently being completed. It appears likely that a large land drain will be inserted into the ditch which will then be filled and covered. The ditch only looks to have been dug in the past few months.

Close to Point B the drainage ditch crosses the claimed route. The ditch then continues into the woodland and down to the brook. It is possible to climb down into the ditch and then back out. It would also be possible to walk a route parallel to the claimed route on the other side of the ditch to get from Point A to Point B.

Beyond the drainage ditch the claimed route continues around the edge of the field. The ground is dry and compact with short grass and the claimed route follows what appears to be an unsurfaced vehicular access track. The unsurfaced track passes through Point B and continues in a north north westerly direction branching off the route of the claimed footpath just before Point C to join Public Footpath No. 40 Newburgh.

The claimed route continues to follow the edge of the field in a north north westerly direction towards Point C (SD 4869 0931). Just before reaching Point C the claimed route is blocked by wooden post and rail fencing. The existence of older palisade fencing suggests that the post and rail fencing is a more recent addition/repair. In addition, some tree branches have been cut and placed across the claimed route next to the fencing. It is possible to walk around the fencing to gain access to Public Footpath No. 40 Newburgh and Point C.

Beyond the fence the claimed route meets Public Footpath No. 40 Newburgh approximately 261 metres from its junction with Cobbs Brow Lane. At Point C, facing Public Footpath No. 40 Newburgh the words 'NO FOOTPATH AHEAD' have been written onto the wooden post and rail fencing with a black marker pen. The wording appears to refer to the route of the claimed footpath. The word 'FOOTPATH' with an arrow has also been written pointing in the direction of Public Footpath No. 40 Newburgh with the words 'TO COBBS BROW LANE ONLY'. At the end of the section of fencing a yellow public footpath waymark disc has been nailed onto the fence in the direction of Public Footpath No. 40.

As the route is a field edge path it is suggested that the width of said claimed route would be 2 metres, being sufficient width for 2 users approaching from opposite directions to pass each other comfortably where there are no immediate physical constraints.

Map and documentary evidence relating to claimed addition

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

DOC NO.	DOCUMENT TITLE	Date	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE
1.	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

	Observations		<p>system of consultation or checking. Limitations of scale also limited the routes that could be shown.</p> <p>Cobbs Brow Lane and the watercourse forming the parish boundary are shown but the map does not show the claimed route (or the existing routes of Public Footpath Nos. 39 and 40 Newburgh).</p>
	Investigating Officer's comments		No inference can be drawn.
2.	Greenwood's Map of Lancashire Observations	1818	<p>Greenwood's map of 1818 is a small scale commercial map.</p> <p>Cobbs Brow Lane and the watercourse are shown; also a building that could be Balls Barn situated on Public Footpath No. 39 Newburgh is shown. The claimed route and the existing routes of Public Footpath Nos. 39 and 40 Newburgh are not shown.</p>
	Investigating Officer's comments		No inference can be drawn.
3.	Hennet's Map of Lancashire Observations	1830	<p>Small scale commercial map.</p> <p>Cobbs Brow Lane and the watercourse are shown but not the claimed route or recorded public footpaths.</p>
	Investigating Officer's comments		No inference can be drawn.
4.	Tithe Map and Tithe Award or Apportionm'nt Observations	1845	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p> <p>A tithe map for Newburgh dated 1845 includes the area crossed by the claimed route. The map shows a double pecked line from Point A extending north along the claimed route for approximately 45 metres to the edge of the extent of the map on the parish boundary. It also shows a double pecked line signifying the existence of a track between Point B and Point C on the claimed route with the claimed route meeting a field boundary at Point B. The remainder of the claimed route is not shown.</p> <p>Note that Public Footpath No. 40 Newburgh is not shown from Cobbs Brow Lane to Point C. The property known as Mount Pleasant is shown but access to it is via a track south and east then following the claimed route between</p>

		<p>Points B and C and then continuing along what is now known as Public Footpath No. 40 Newburgh or via a track that leads towards Ball's Farm, then along part of Public Footpath No. 39 Newburgh to Point A, along a short section of the claimed route towards Point B and across the boundary into Dalton.</p> <p>The Schedule accompanying the Tithe Map describes the field over which section B-C of the claimed route passes as 'Richards Hey' which was owned by Thomas Woodcock and leased by James Taylor. It is described as plot 450 – fallow. The field over which section A-B of the claimed route passes is plot 452, also known as 'Richards Hey' and owned by Thomas Woodcock and farmed by James Taylor. It was described as being planted with potatoes and turnips.</p>
	Investigating Officer's comments	<p>This shows/suggests that at the time that the Tithe Map was produced there was movement between Point B and Point C along the claimed route and that access to Mount Pleasant appeared to be via that part of the claimed route at that time. There is no indication as to the status of this field edge path.</p> <p>The route shown from Point A but not on the claimed line, as far as the parish boundary (where the map ends) is presumed to have continued on the other side of the watercourse in the parish of Dalton as there was no apparent place of resort at the boundary. There is no indication as to the status of this route.</p>
5.	Finance Act 1910 Map	<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.</p>
	Observations	<p>No such map was found in the Lancashire Records Office.</p>
	Investigating Officer's comments	<p>No inference can be drawn but it is unlikely, even if a map did exist, that it would be possible to say with any certainty that any reference to a public right of way was to the claimed route and not to one of the other recorded public right of way across the land.</p>
6.	Inclosure Act Award and Maps	<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>
	Observations	<p>No inclosure award for Newburgh was made.</p>
	Investigating Officer's comments	<p>No inference can be drawn.</p>
7.	Ordnance Survey maps	<p>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</p>

			<p>approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.</p>
	6 Inch OS map Observations	1848	<p>The earliest OS 6 inch map for this area.</p> <p>The claimed route is not shown. However, Public Footpath No. 39 is shown and a property titled Ball's Barn is shown to exist just off Cobbs Brow Lane. Public Footpath No. 40 Newburgh is also shown. Partway along the route is a property known as Mount Pleasant. Access to the property appears to have been from Cobbs Brow Lane along Public Footpath No. 40 with another route shown coming across the fields from Ball's Barn. Close to Point C on the claimed route and coming off Public Footpath No. 40 Newburgh there is a double pecked line shown extending south south east through the edge of the woodland running parallel to the claimed route up to Point B. From here it turns south west away from the claimed route towards Ball's Barn. Whilst the claimed route follows the field edge just to the west of the woodland this track is shown to exist parallel to it but just within the boundary of the woodland.</p>
	Investigating Officer's comments		<p>Both Public Footpaths No. 39 and 40 are shown, as is route near to and partly parallel to the claimed route, but not the claimed route therefore it can be inferred that the claimed route was not in use in 1848.</p>
	25 Inch OS map Observations	1894	<p>First Edition published at the larger scale showing the area in more detail.</p> <p>None of the claimed route is shown on this map and neither is the track parallel to the claimed route between Points B - C that had been shown on the earlier 6-inch edition. The routes of Public Footpath Nos. 39 and 40 are shown, as is Mount Pleasant but Ball's Barn is not shown. The claimed route meets a field boundary close to Point A and another at Point B.</p>
	Investigating Officer's comments		<p>It can be inferred that the claimed route was not in use in 1894.</p>
	25 Inch OS map Observations	1908	<p>Further edition of 25 inch map.</p> <p>The claimed route is not shown. The routes of Public Footpath Nos. 39 and 40 are shown, as is Mount Pleasant. The claimed route meets a field boundary close to Point A and another at Point B.</p>
	Investigating Officer's		<p>It can be inferred that the claimed route was not in use in</p>

	comments		1908.
	25 Inch OS map Observations	1928	Further edition of 25 inch map. The claimed route is not shown although Public Footpath Nos. 39 and 40 are shown, as is Mount Pleasant. The claimed route meets a field boundary close to Point A and another at Point B.
	Investigating Officer's comments		It can be inferred that the claimed route was not in use in 1928.
	6 Inch OS map Observations	1955	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1955 (although the date of revision was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1928 25-inch map. The claimed route is not shown although the routes of Public Footpath Nos. 39 and 40 are shown. The claimed route meets a field boundary close to Point A and another at Point B.
	Investigating Officer's comments		It can be inferred that the claimed route was not in use in the 1928 when the survey is believed to have been carried out.
	25 Inch OS map Observations	1960	Revised edition of 25 inch map. This edition does not show the claimed route. However, the routes of Public Footpath Nos. 39 and 40 Newburgh are shown. The claimed route meets a field boundary close to Point A and another at Point B. Mount Pleasant is shown as a 'ruin' and beyond it the route of Public Footpath No. 40 Newburgh has been enclosed between two field boundaries leaving a narrow strip of land (approximately 2 metres wide) as an enclosed footpath. Access onto the claimed route from Public Footpath No. 40 at Point C would pass through one of these field boundaries.
	Investigating Officer's comments		It can be inferred that the claimed route was not in use in 1960.
8.	Aerial Photographs Observations	1945	Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features. The earliest set available was taken just after the Second World War in about 1945. The clarity is generally very variable but in this case appears to be quite good. There is no track or walked route apparent along the length of the claimed route and it appears to meet a field boundary at Point B.
	Investigating Officer's comments		It can be inferred that the claimed route was not in use in 1945.

	Aerial photograph	1960s	The black and white aerial photograph taken in the 1960's was not available to view in the Lancashire Record Office. It can be viewed on the County Council's computer mapping system (Mario or Map Zone) but the clarity is poor.
	Observations		A track does appear evident along the claimed route between Points B and C.
	Investigating Officer's comments		It can be inferred that part of the claimed route between points B and C was in existence in 1960s.
	Aerial photograph	1988	Aerial photograph taken on 21 st May 1988
	Observations		It is not possible to see the claimed route as it is obscured by trees.
	Investigating Officer's comments		No inference can be drawn.
	Aerial photograph	2000	Aerial photograph taken on 8 th May 2000
	Observations		There is a faint line between Point A and Point B which may indicate the claimed route but the route is again partly obscured by trees.
	Investigating Officer's comments		No strong inference can be drawn but there is some suggestion that part of the claimed route between points A and B was in use in 2000.
9.	Definitive Map records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.
	Parish survey map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas.
	Observations		<p>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.</p> <p>There is no parish survey map for Newburgh. Newburgh formed part of Ormskirk Urban District and the initial maps were produced by Ormskirk Urban District Council automatically becoming the Draft Map and Statement of Public Rights of Way.</p>
	Investigating Officer's comments		No inference can be drawn.
	Draft Map		The preliminary survey work was carried out in Lancashire

	Observations		<p>from the early 1950s. An accompanying description was usually written for each path. In this area it was undertaken by Ormskirk Urban District Council who produced a map of routes they believed to be public drawn onto a 6-inch Ordnance Survey map. It was given a "relevant date" (1st January 1953) and notice was published that the draft map had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.</p> <p>The claimed route was not shown on the Draft Map of Public Rights of Way. In this instance, there were no formal objections or other comments about the omission of the claimed route.</p>
	Investigating Officer's comments		The claimed route was not considered to be public in the 1950s.
	Correspondence relating to the preparation of the Definitive Map Observations		<p>Records were searched in the Lancashire Record Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p> <p>In the 1990's the West Lancashire branch of the Ramblers Association archived a great deal of material with the Lancashire Record Office. Within the deposit are a number of Ordnance Survey maps at a scale of 6 inch to 1 mile which have been annotated by the Ramblers Association following a survey that they carried out to check the rights of way recorded by the Parish Councils and Urban District Councils following the completion of the parish surveys. The maps were complemented by a series of written reports which provided detailed descriptions of footpaths as they were circa 1927-1933.</p> <p>The maps and written reports were originally intended to be complementary and the maps are frequently annotated to indicate the precise location of features mentioned in the reports. Later the maps were used as working records of the Draft Map and finally of the Definitive Map and were extensively annotated.</p> <p>Within the Ramblers records there is a copy of Ordnance Survey Map Sheet SD 84SE which covers the area of the claimed route. Public Footpath Nos. 39 and 40 Newburgh are shown coloured red and have been numbered in purple. The claimed route is also shown in red but has been subsequently crossed out with a series of 9 crosses drawn with blue ink between Point A and Point C. It has</p>

		<p>been circled in pencil and the number 13 written next to it, also in pencil. The word 'claimed' has been written in pencil above the number 13.</p> <p>A further search of the Ramblers records found a letter dated 7th January 1953 from the Ramblers Association to Ormskirk Urban District Council. In the letter the Ramblers Association query the omission of two routes in Newburgh. The first path queried is the route that subsequently became Public Footpath No. 39 on the Definitive Map. The second path queried is parallel to the claimed route from Point A running north along the parish boundary to Point C and then a route continuing to a footbridge where it crosses the parish boundary (now recorded as part of Public Footpath No. 40 Newburgh).</p> <p>In response, a letter from Ormskirk Urban District Council to the Ramblers Association dated 20th January 1953 stated that a footpath shown on the Ordnance Survey map linking Public Footpath Nos. 39 and 40 was shown on the other side of the parish boundary in the Wigan Rural District area. A sketch map accompanying the letter shows the routes of Public Footpath Nos. 39 and 40 numbered and coloured red. It also shows a single dashed line on the east side of the parish boundary running parallel to the claimed route indicating the existence of a track but it does not indicate the status of the route.</p> <p>The Parish Survey Map for Dalton does not show this route as a public footpath and neither does the Draft Map or any other map associated with the preparation of the Definitive Map.</p> <p>It appears that following this response and the omission of the claimed route from the Draft Map the Ramblers Association annotated their schedule of 'Footpath Queries' by writing that the claimed route was not put on the Definitive Map. They accompanied this comment with the word 'claim'. No further correspondence relating to the claimed route could be found.</p>
	Investigating Officer's comments	<p>It appears that the West Lancashire group of the Ramblers Association surveyed the area in 1927-33 and carried out considerable work in the 1950's to check routes to be included on the parish surveys and Draft Maps. They queried the existence of the claimed route and whether it should be included on the Definitive Map. It did not get included on the Map but their correspondence could be taken to suggest that they thought that it should be claimed at some point in the future.</p>
	Provisional Map	<p>Once all these representations were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made</p>

	Observations		to the Crown Court. The claimed route was not shown on the Provisional Map of Public Rights of Way and here were no formal objections or other comments about the omission of the claimed route.
	Investigating Officer's Comments		Landowners did not admit the claimed route to be a public right of way in the 1950s.
	The First Definitive Map and Statement Observations		The Provisional Map, as amended, was published as the Definitive Map in 1962. The claimed route was not shown on the First Definitive Map and Statement of Public Rights of Way.
	Investigating Officer's comments		The claimed route was not considered to be a public footpath in the 1950s.
	Revised Definitive Map of Public Rights of Way (First Review) Observations		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published. 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 The claimed route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
	Investigating Officer's comments		The claimed route was not considered to have become a public footpath by the 1960s.
10.	Statutory deposit and declaration made under section 31(6) Highways Act 1980		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last 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). 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

	Observations		<p>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>A statutory deposit and declaration was made by the current landowner. The deposit was received on 12th March 2008 and acknowledges the existence of the routes already recorded on the Definitive Map but stated that no other land had been dedicated as highways. The statement was signed by Mr Martin John Ainscough, Giants Hall, Newburgh, Wigan WN8 7XA who stated that he had owned the land (affected by the claimed route) since 12th April 2007. No previous plans or deposits have been submitted by previous landowners.</p>
	Investigating Officer's comments		<p>The Statutory deposit and declaration was submitted approximately 6 months prior to the submission of the claim. The exact date of the calling into question of the status of the claimed route has been considered by the County Secretary and Solicitor.</p>

The land crossed by the route claimed for addition to the Definitive Map is not a biological heritage site or a site of special scientific interest.

Summary

In summary, early map evidence does not show that the claimed route existed as a worn track on the ground. The Tithe Map of Newburgh dated 1845 does show a route corresponding to the claimed route between Point B and Point C, suggesting that there was movement along the claimed route at that time. However, the first Ordnance Survey 6 inch map that was examined (dated 1848) does not show any part of the claimed route in existence although it does show a route running parallel to the claimed route between Point B and Point C within the boundary of the woodland. No further Ordnance Survey or privately produced map examined through to the 1960's shows the claimed route existing as a physical feature evident on the ground.

An aerial photograph taken in the 1960's shows a track visible along the route of the claimed footpath between Point B and Point C. The most recent aerial photograph taken in 2000 shows a faint line along the claimed route between Point A and Point B which could indicate a walked route. The remainder of the route between Point B and Point C is obscured by trees.

The claimed route is not shown on the Definitive Map or on any of the maps prepared as part of the preparation of the Original Definitive Map or Definitive Map (First Review). However, the West Lancashire group of the Ramblers Association queried whether the route existed in the 1950's and whether it should be included on the map. Although no official application was made by them to have it added to the

Definitive Map correspondence on their files suggests that they believed that it should be claimed at some point in the future.

County Secretary & Solicitor's Observations

Information from the Applicant

Twenty-two user evidence forms have been submitted in support of the claim. These forms indicate knowledge and use of the route as follows - for 72 years (1) 61-70 years (1); 51-60 years (0); 41-50 years (2); 31-40 years (3); 21-30 years (7); 11-20 years (7); 0-10 years (1). The route has been predominantly used for leisure walking and running.

The range of use varies from being used 4 times per annum, every week to over 250 times per annum. All the users agree the route has only been used on foot and has always run over the same route.

One user says that there is a stile on the footpath from Newburgh Village past Derby House. All other users state that there are no stiles and gates across the route. One user states at the end of year 2007 he was prevented because of a fence/hedge from using the route. All users except for one states he was stopped from using the route and turned back from using the footpath and in 2008 witnessed someone being told by an employee of the land owner they could not use the path in future and a notice stating 'private' was displayed. There is no indication from the form where along the route this notice was situated. All the users state there has never been any gates locked along the route.

The applicant, Newburgh Parish Council, has provided in support of their application a leaflet and map produced by the Footpath Committee of Newburgh Parish Council dated February 1986. This leaflet attempts to explain the official and unofficial footpaths there are in the area.

The leaflet details that there is an 'unofficial' footpath which is not on the Definitive Map which continues south along the edge of the woods, down to Public Footpath No. 39. This illustrates the fact that the footpath had been recognised by the Footpath Committee when the leaflet was produced.

Information from Others

A land owner, Mr Ainscough who has tenanted the land to Martin Ainscough Farms Limited in which he is a shareholder and director has stated he has a significant amount of evidence to refute this claim and he would be instructing solicitors to represent him to prevent the claim from going any further. However, despite writing to Mr Ainscough he has not provided any evidence to refute this claim at this moment in time.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

- Evidence of use
- Aerial photograph 1960 and 2000
- West Lancashire group of the Ramblers Association queries
- No contrary intention from owner until 2007/8

Against Accepting the Claim

- The majority of the Map and Documentary evidence indicates that the claimed route was not in use nor considered to be public prior to 1960
- Statutory deposit and declaration made and received 12 March 2008

Conclusion

The claim is that this route is an existing Footpath and should be added to the Definitive Map and Statement of Public Rights of Way.

It is therefore advised 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.

Statutory inference of dedication under section 31 Highways Act 1980 is satisfied where 20 years as of right use of a way has occurred without interruption unless there is sufficient evidence of a contrary intention by the landowner. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question. Often it is the application to have the route recorded which brings the path into question but here the new owner seems to have begun to challenge use and take some action in 2007 and 2008. In particular a statutory deposit and declaration received under section 31(6) of the Highways Act 1980 provides sufficient evidence to negative the intention of the owner to dedicate any such additional way as a highway and further inclusion on the County Councils register brings about knowledge among landowners, users of rights of way, and the general public about applications concerning ways which landowners do not intend to dedicate as public rights of way. The date the way was brought into question is when the statutory deposit and declaration was received on 12 March 2008.

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 period 1988-2008. Twenty-two user evidence forms indicate knowledge and use of the route for many years. Fourteen users of the twenty-two state they have used the route claimed for 20 years or more for leisure and recreation purposes providing strong user evidence. One user states at the end of 2007 he was prevented from using the path, another user in 2008 witnessed someone being told by an employee

of the land they could not use the path in future and a notice stating 'private' was displayed but these incidents may not in isolation have brought the route into question. It is advised that even if the route was called into question in 2007 there is still sufficient evidence of qualifying use 1987- 2007.

It is to be noted that current landownership is claimed by Mr Ainsworth since 13 April 2007 evidenced by a copy of a transfer signed as a deed, however land registry documentation does not currently reflect this landownership detail. Mr Ainsworth has written to the Order Making Authority and stated his landownership and also that he does have a significant amount of evidence to refute the claim and whilst he advised he would be instructing a solicitor to put his evidence together no evidence has been received by the County Council to date. Although the current owner submitted a statutory deposit and declaration dated 12 March 2008 no previous plans or deposits have been submitted by previous landowners. The transfer indicates that the land was previously held on trust and the trustees have been consulted on the claimed route and no observations or comments have been received. Trustees of land held on trust for sale generally have power to dedicate rights of way and, although in this case the powers of the trustees are unknown it is presumed that they did have such capacity.

Considering also whether there are circumstances from which dedication could be inferred at common law, early map evidence does not show that the claimed route existed on the ground as a through route. Only the Tithe Map of Newburgh dated 1845 shows a route corresponding to the claimed route between Point B and Point C, suggesting that there was movement along that part of the claimed route at the time. The claimed route is not shown on the Ordnance Survey maps and there is no documentary evidence of its existence as a through route until aerial photography in 1960's shows a track visible along the route of the claimed footpath between Point B and Point C suggesting that part of the route was in existence and further aerial photography in 2000 shows a faint line along the claimed route between Point A and Point B, the route between Point B and Point C being obscured by trees. The West Lancashire group of the Ramblers Association queried in the 1950s whether it should be included on the Definitive Map: this suggests it was believed by the group that the now claimed route should be claimed at some point in the future.

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 the 1960s to 2007, in acquiescing in the use and taking no overt actions actually intended dedicating the claimed route as a footpath and it had become a footpath accepted by the public.

Taking all the evidence into account, the Committee on balance may consider that the provisions of 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 be accepted.

Risk

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 are no significant risks associated with the decision making process.

Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985

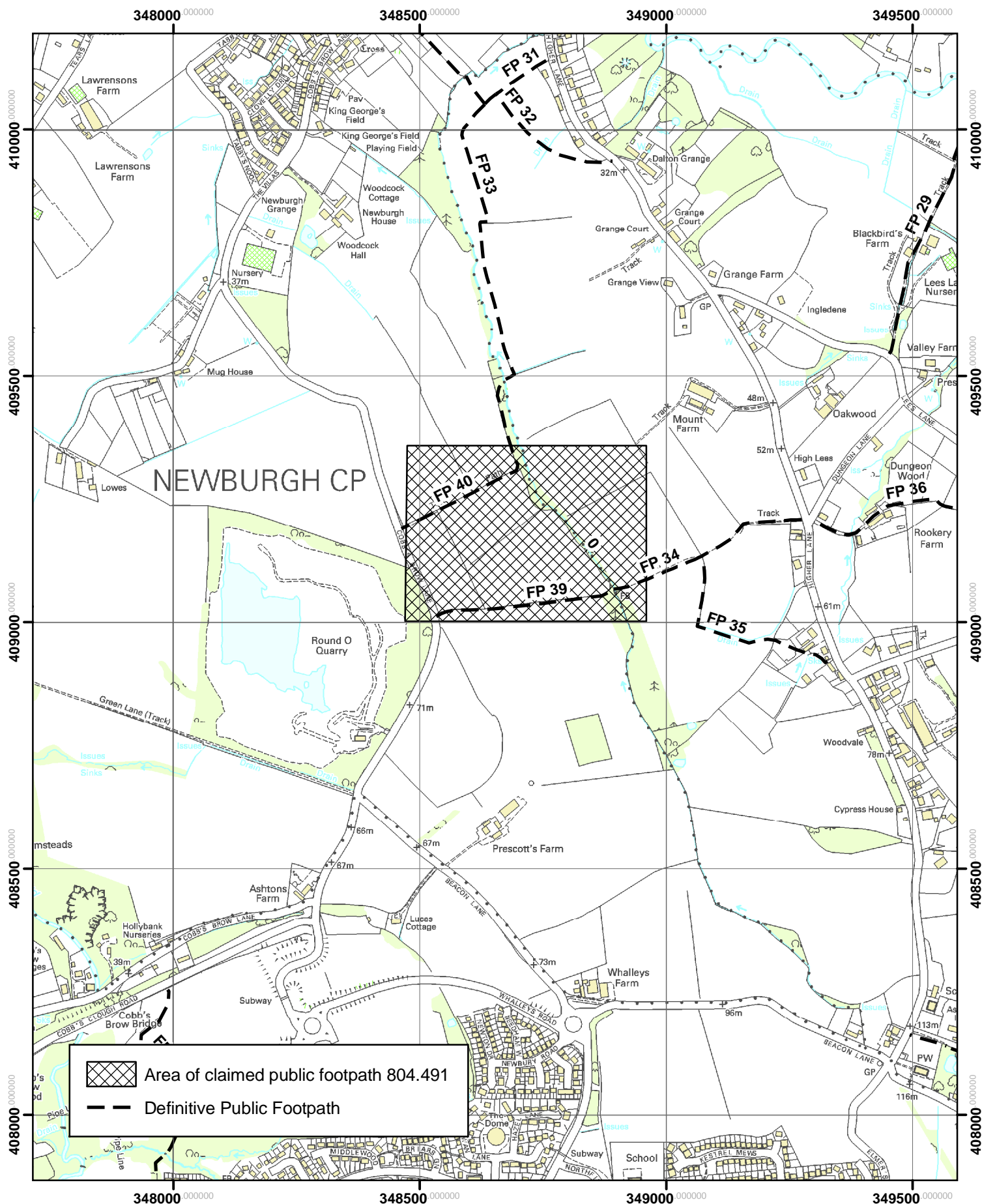
List of Background Papers

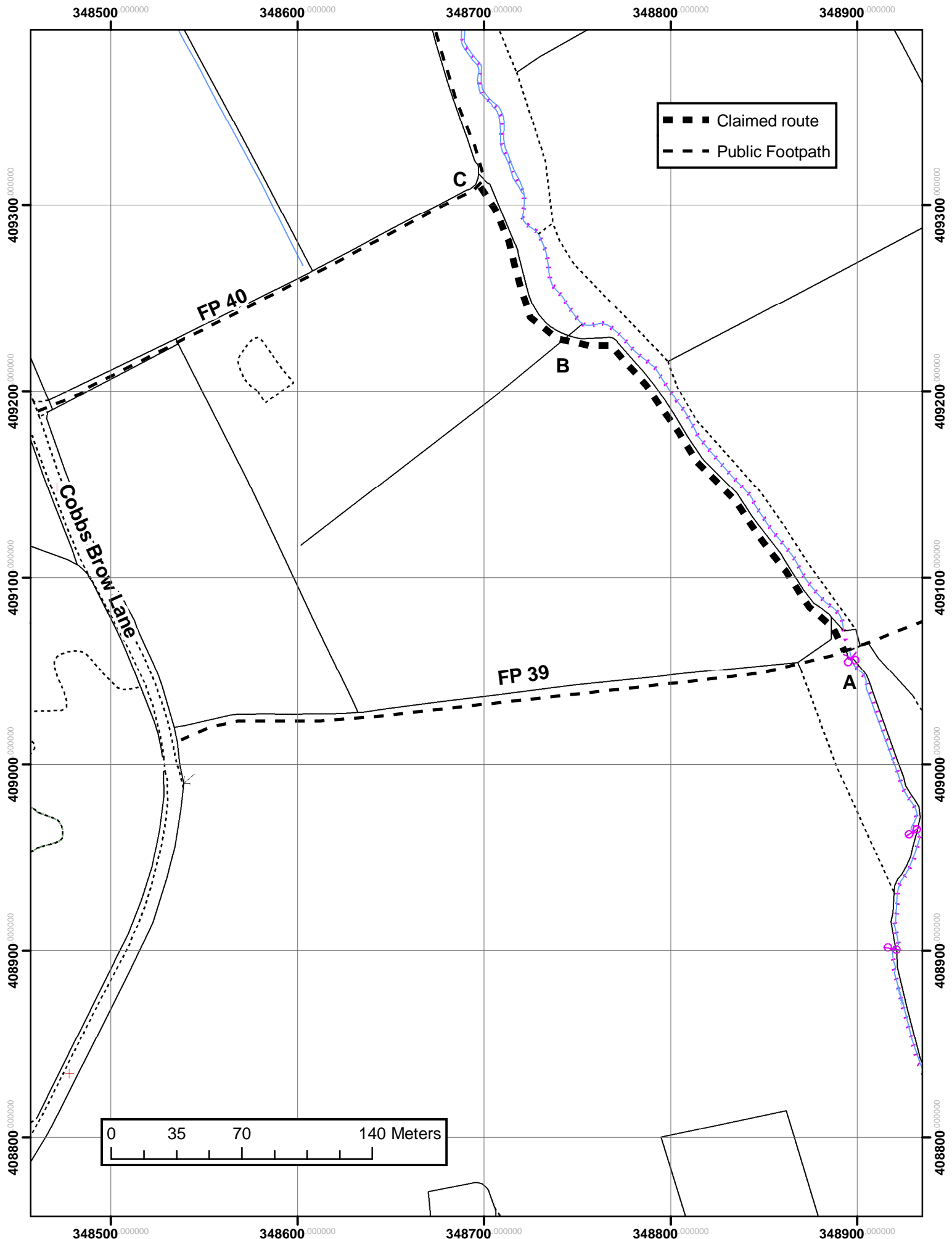
Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 804/491	Various	S Khalid, County Secretary & Solicitor's Group, (01772) 533427

Reason for inclusion in Part II, if appropriate

N/A

Wildlife and Countryside Act 1981 - Location plan
 Claimed Public Footpath from Public Footpath No. 39 Newburgh to Public Footpath No. 40 Newburgh, West Lancashire District
 Claim No. 804/491





Jo Turton
Executive Director
for the Environment

Wildlife and Countryside Act 1981
Claimed public footpath from Public Footpath no. 39 Newburgh, to Public Footpath No. 40
Newburgh, West Lancashire District
Claim No. 804/491

1:2,500

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

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Regulatory Committee

Meeting to be held on 15 March 2018

Electoral Division affected: Wyre Rural Central
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Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpath from Lancaster Road to Public Footpath 19, Pilling, Wyre Borough

File No. 804-459

(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 533196, Paralegal, Legal and Democratic Services,

Claire.blundell@lancashire.gov.uk

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

Environment Jayne.elliott@lancashire.gov.uk

Executive Summary

Application for the addition to the Definitive Map and Statement of a footpath from Lancaster Road, Pilling to Public Footpath 19 Pilling, Wyre Borough, in accordance with File No. 804-459.

Recommendation

- (i) That the application for a Footpath from Lancaster Road, Pilling to Footpath 19 Pilling, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-459 be accepted.
- (ii) 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 Footpath from Lancaster Road, Pilling to Footpath 19 Pilling to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A and E.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a footpath from Lancaster Road, Pilling to Footpath 19 Pilling, shown on the Committee plan between point A and point E 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

Wyre Borough Council have been consulted and confirmed that they have no comments to make.

Pilling Parish Council supports the application stating that the route has been used for many years.

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	4121 4717	Open junction with Lancaster Road
B	4114 4739	Application route leaves access road adjacent to bridge over Ridgy Pool
C	4115 4740	Pedestrian gate
D	4117 4742	Pedestrian gate
E	4118 4744	Junction with Footpath 19 Pilling

Description of Route

The application was made in 2006 and a site inspection carried out in November 2007.

The Investigating Officer who carried out the site inspection has since retired but noted the following:

The route commenced on Lancaster Road, immediately to the east of Clow's Bridge (point A on the Committee plan). It passed over a mixed-surface access road in a generally good condition and in regular use by vehicles. The access road was bounded by a hedge and fence to the east and a grass bank leading down to the dyke known as Ridgy Pool to the west. The route followed the access road for approximately 235 metres passing the derelict Brook Hall farm and Brookside Cottages.

At point B the route then turned north east where there was a stoned area of land to the north side of No. 2 Brookside Cottages running up to a high cement rendered boundary wall with a strip of grass, 2 – 2.5m wide alongside the wall. The Officer carrying out the inspection noted that the wall looked as if it had recently been built or rebuilt as there appeared to be bare soil backfilled into its foundations.

After a distance of approximately 15 metres, it was noted that there was a timber wicket gate across the route adjacent to the wall at Point C. To the south of this gate, there was a timber-paling gate extending to a timber garden building. The wicket gate was easily opened and it had a spring to close it.

Beyond the gate at point C there was a short section of timber fence that was positioned so that over a distance of about 2m, it tapered the width of path available from the gateway, down to 1.3 m wide between the rear of a building and the fence.

The surface of the application route was noted as being grass and bare earth with footprints and cycle tracks visible in the surface. The path continued along the back of the building, fenced on the southern side for a distance of approximately 20

metres to a further timber gate in a section of timber fencing, which was set at an angle leading away from the corner of the building, at Point D. The gate opened easily and also had a spring closure on it.

Beyond the gate, the application route crossed a gravel surface between a house to the west, and a brick stable building converted into a residential property to the east through a gap approximately 2.2m wide. At the front of the stable, there was a timber panel fence that enclosed a patio/garden area to the dwelling. This ran across the gap between buildings, and at the front of the stable building there was only a width of 900mm available to pass through.

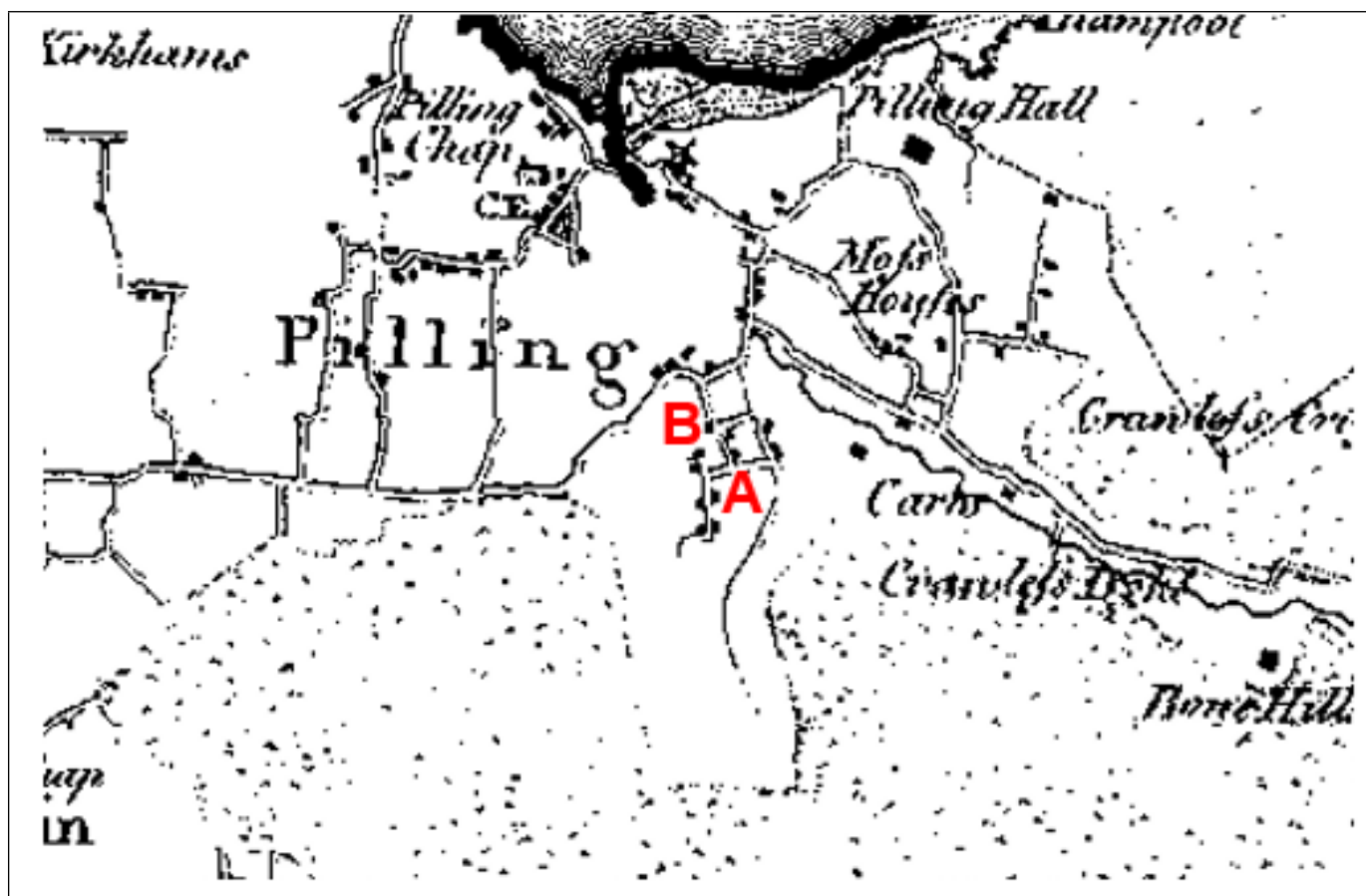
Beyond the corner of the stable, the width available increased and after approximately 2.5 metres, the panel fencing turned to the north west and the land over which the application route passed then opened up and was over what appeared to have been the former farmyard. This had a surface of concrete, gravel and stone paving before joining the stone surfaced access road and Public Footpath No. 19 at Point E.

The total length of the route is approximately 310 metres.


How the land crossed by the application route now looks is irrelevant when considering whether the public rights already existed prior to the application being made in 2006.


Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	<p>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.</p> <p>As well as recording the primary roads in use at that time Yates' Map showed 'Cross Roads'. A cross road is generally accepted as being a secondary road which was neither a principal road nor a turnpike road, often one which ran between two main roads. The term was defined by the influential map-maker Ogilby in the preface to his road itinerary 'Britannia' in 1675.</p>



Observations		The map shows a network of lanes in the Pilling area between Pilling Moss and the sea. It shows a route that approximates to the application route as a 'cross road' from Lancaster Road to Bradshaw Lane. A route northwards from Point B to Head Dyke Lane is also shown in the same way.
Investigating Officer's Comments		<p>A route approximating to the application route existed in 1786 and appeared to form a through route with a property shown to exist between point A and point B and a further property at point B. To be shown on a map of this scale the route was probably physically more than a footpath in appearance.</p> <p>The depiction of the route on this commercially produced small scale map suggests that the route was considered to be public highway and travellers using such a map were likely to be on horseback or horse-drawn vehicle.</p> <p>There are however a number of inconsistencies shown on the map with a route shown extending from point B northwards which is not shown on any other map inspected and a watercourse is shown to the west of the application route along part of the alignment of Bradshaw Lane which casts some doubt over the accuracy of the map.</p>

Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.
		
Observations		The map shows a route approximating to the application route as a cross road from Lancaster Road (Point A) to Point B and then northwards from point B continuing to Head Dyke Lane. The rest of the application route is not shown.
Investigating Officer's Comments		The application route existed between point A and point B. The route was probably physically more than a footpath in appearance and as the map was produced for the travelling public, it is likely that the route was a public one. Greenwood's map is too small-scale to show footpaths, and so if the rest of the application route existed only as a footpath in 1818 it is unlikely to be shown.
Hennet's Map of Lancashire	1830	A further small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's

		communications network was generally considered to be the clearest and most helpful that had yet been achieved.
		
Observations		Hennet shows the application route as a cross road in the same way as Greenwood – as part of a longer through route from Lancaster Road to Head Dyke Lane. Properties are shown along the route and in the proximity of Bells Farm but the application route is not shown from point B eastwards. Ridgy pool is not shown on its current alignment although a watercourse is shown running roughly north–south crossing the application route in the vicinity of point B.
Investigating Officer's Comments		The route from Point A to B was probably physically more than a footpath in appearance.

		<p>Hennet's map is too small-scale to show footpaths, and so if the rest of the application route existed only as a footpath in 1830 it is unlikely to be shown. As the only other category of 'road' shown on the map are the turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins V Oldham</i>). It is unlikely that a map of this scale would show footpaths. Many properties are shown on this map with no access road or track to them. It is more likely that Hennet's map shows routes that were generally available to the travelling public in carts or on horseback and therefore suggests that between point A and point B the route was considered to be a public bridleway or carriageway.</p>
Canal and Railway Acts		<p>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.</p>
Observations		<p>No railways or canals were built or are known to have been proposed in the area crossed by the application route.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
Tithe Map and Tithe Award or Apportionment	1845	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>



Observations		The application route between point A and point B is shown as a bounded track adjacent to a watercourse providing access to an unnamed building in the proximity of Brook Hall and continuing to point B. The track continues from
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		<p>point B northwards but is not shown to extend through to connect to Head Dyke Lane. It is not clear whether the route between point A and point B is included in a numbered plot but it is possible it was included in plot 1067 described as Boon Moss for which a tithe was payable. This plot was listed as being owned by E Hornby, John Gardner and Jane Bagot and occupied by Jane Bagot.</p> <p>From point B there appears to be access to buildings forming part of a plot shaded green an numbered 1032 listed as being owned by E Hornby, John Gardner and Wm Bell Threlfall and occupied by Wm Bell Threlfall and described as House garden fold etc. with no tithe listed as being payable.</p> <p>Between point B and point E access appears available past the buildings but not on the alignment of the route claimed. East of point E a bounded route continues through to Bradshaw lane which appears to form the main access to the farm.</p>
Investigating Officer's Comments		The application route existed between point A and point B in 1845 and it may have been possible to pass through the farm between point B and point E to continue through to Bradshaw Lane. Whether this route was a public or private one in 1845 is not depicted in the tithe information.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no inclosure award for this part of Pilling.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. ¹

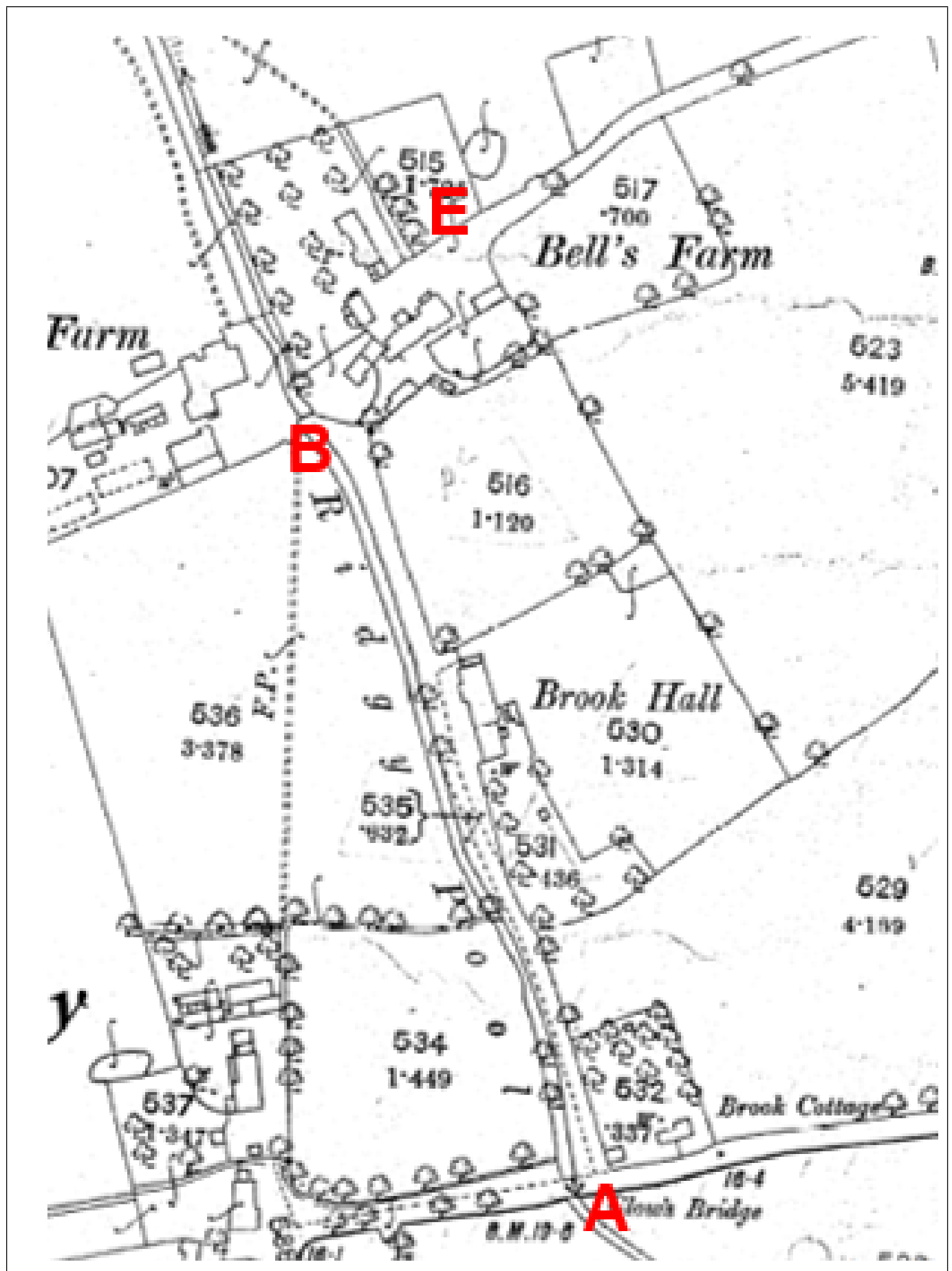
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in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



Observations

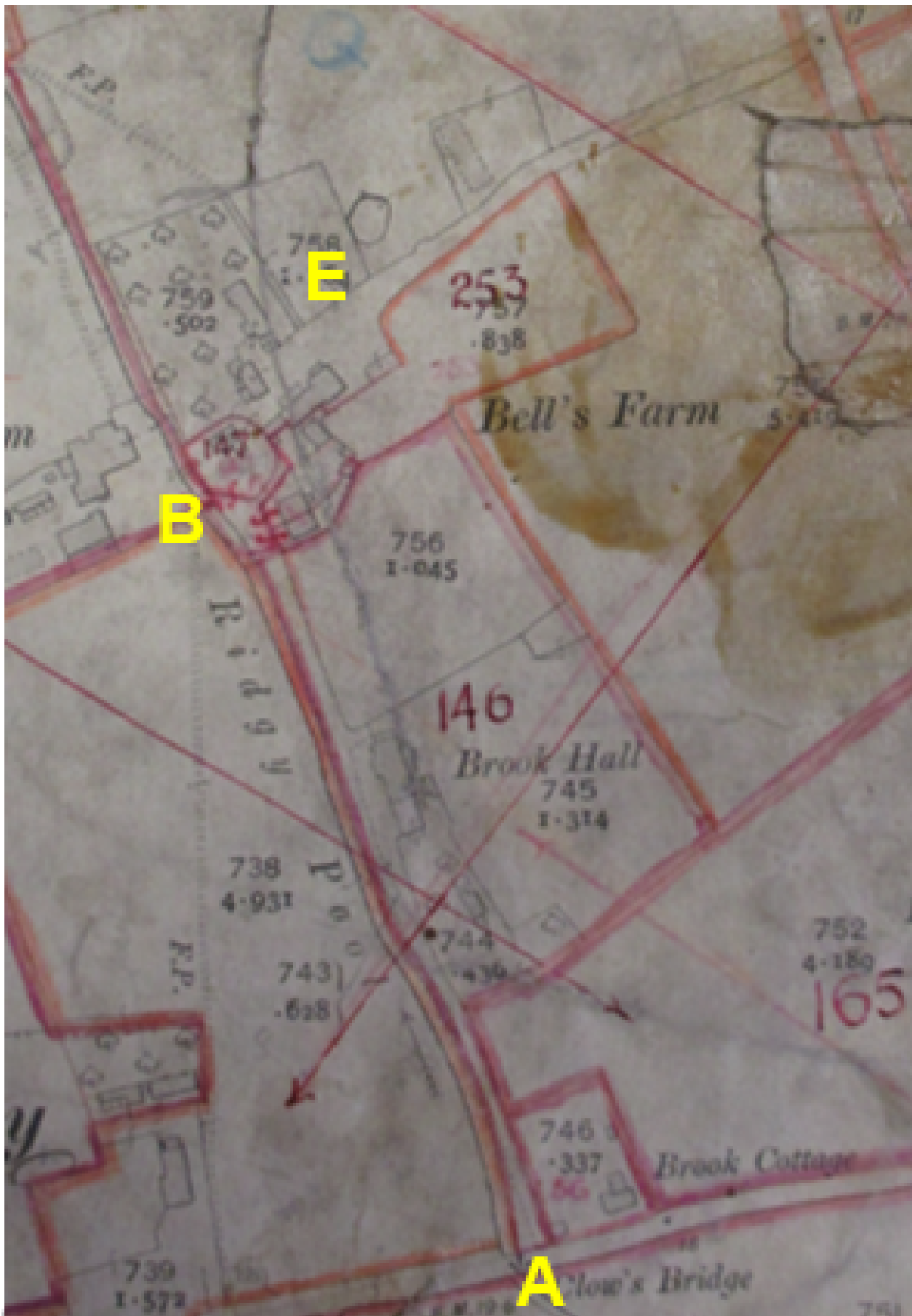
The application route is shown from point A to point B as a substantial bounded route providing access to Brook Hall and Skronkall. Access along it appears to be open and unrestricted by gates

		<p>(which would normally be shown in a closed position). An unnamed watercourse is shown running parallel to the route (to the west).</p> <p>Between point B and point E the application route appears to be available between the buildings named on the map as Scronkall. Two routes appear to be available through the farm – to the north and south of the largest building (which seems to share a similar footprint with the current building in that location) providing access through to point E. From point E a substantial bounded route continues east to Bradshaw Lane (now recorded as Footpath 19).</p> <p>Buildings are shown where Bonds Farm is now located but there is no access to them via the application route and there does not appear to be a bridge across the watercourse (Ridgy Pool) close to Point B. Brookside Cottages not shown.</p>
Investigating Officer's Comments		<p>The application route existed between point A and point B in 1844-45 providing access to a number of properties. From point B it appeared possible to pass through Scronkall on the application route to point E.</p>
25 Inch OS Map	1890	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1893.</p>

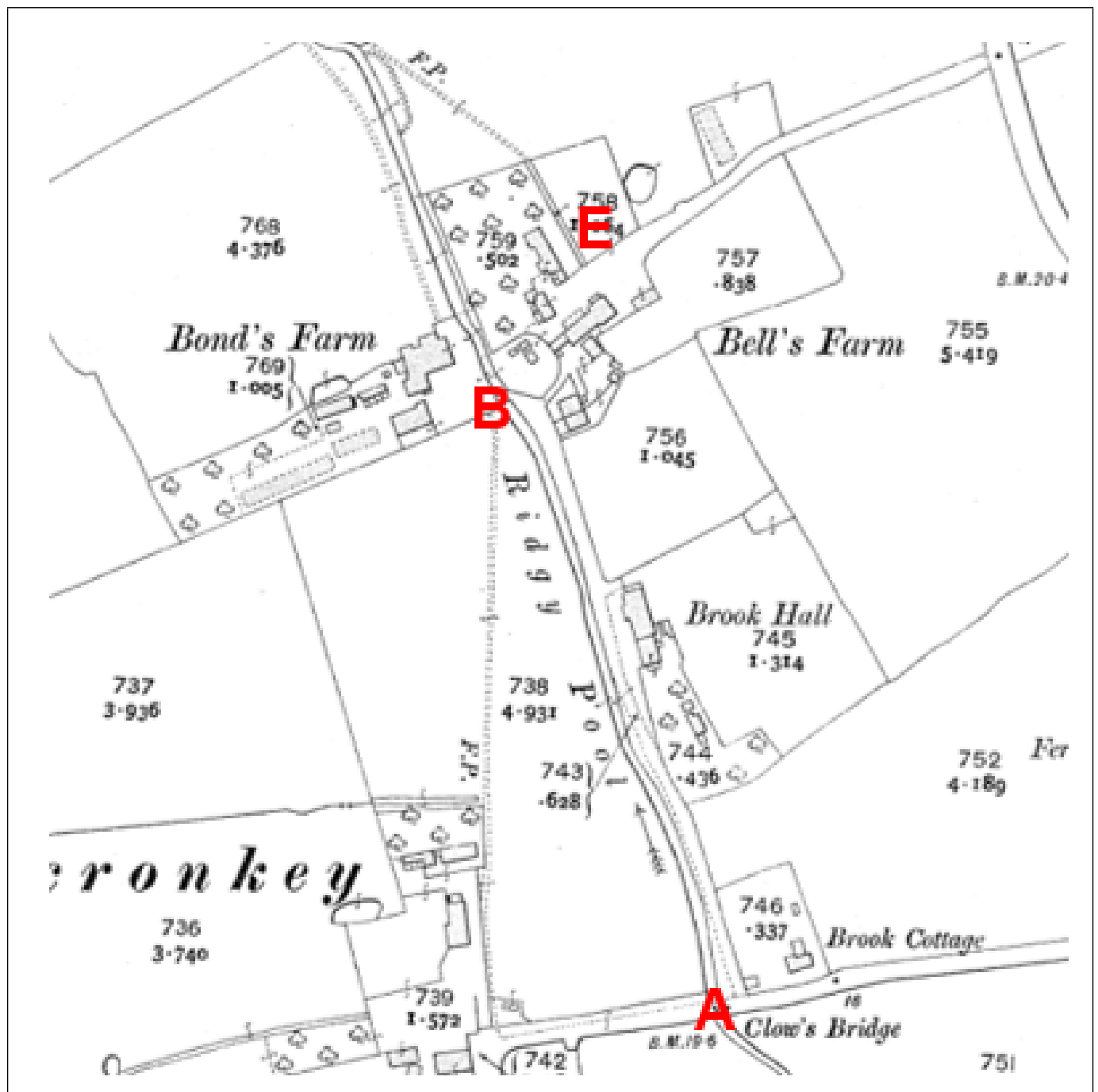


Observations		<p>The first edition of the 25-inch map published in 1893 shows the complex of buildings of Bell's Farm (Known as Scronkall on the 1st edition 6 inch map) in more detail.</p> <p>The application route between point A and point B is clearly shown as an access road adjacent to Ridgy Pool providing access to Brook Hall. The route now also appears to provide the main access to Bond's Farm with a bridge over Ridgy Pool adjacent to point B.</p> <p>Between point B and point E the collection of buildings and enclosures making up Bell's Farm are not as they are today although the route appears open from the access road at B passing through the farm to connect to point E. It is not possible to be sure whether there was a line across the route near B as the point where there may have been a gate or boundary is mostly obscured by a tree symbol on the map.</p>
Investigating Officer's Comments		<p>The application route from point A to point B and then from Point E along Public Footpath No. 19 Pilling to Bradshaw Lane are both clearly show as tracks or roads to named farms. The farm buildings and enclosures named on the map as Bell's Farm were not exactly as the layout today but it appears to have been possible to pass along the southern side of the farm from one track to another along the application route, possibly passing through one barrier east of point B. The map does not show if there was a gate or stile to allow people and/or farm traffic through it.</p>
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along</p>

		<p>with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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Observations		<p>The Finance Act maps and valuation books were viewed at the Lancashire Record Office. None of the application route is excluded from the numbered plots. The application route lies within 3 taxable plots; between point A and the cottages near point B it is included as part of plot 146 listed as being owned by Margaret, Jane and Emily Elletson, Fox Ghyll, Ambleside and occupied by John Hodgson. The plot is described in the Schedule as 'House and Land' and no deductions are listed for public rights of way or user.</p> <p>Between point B and point E the route crosses plots 147, 253 and 269. Plot 147 is also listed as being owned by Margaret, Jane and Emily Elletson and occupied by Thomas Hodgson. It is described as House/Bell's Farm and no deductions are listed for public rights of way or user.</p> <p>Plot 253 is listed as being in the same ownership as plots 146 and 147 but is occupied by W and R Rossall. It is described as 'H and B' which is undefined but likely to be an abbreviated version of 'House and Barn'. No deductions are listed for public rights of way or user.</p> <p>Plot 269 is listed in the ownership of EGS Hornby, Dalton Hall, Burton, Westmorland, Hannah Shepherd and William Shepherd, Pilling and is listed as being occupied by Hannah Shepherd. No deductions are listed for public rights of way or user.</p>
Investigating Officer's Comments		<p>It is normal to see an acknowledged public vehicular highway excluded from the numbered hereditaments as part of the process of compiling the taxation records and for ways considered to be public footpaths or bridleways at that time to be included in the numbered hereditaments for which a deduction may be claimed.</p> <p>No part of the route is excluded from the numbered plots suggesting that it was not considered to be a public vehicular carriageway at that time and no deductions are claimed for the existence of public rights of way or user suggesting that the route was either not considered to be a public footpath at the time of the survey or that the landowners chose not to claim a deduction (plot 269 is crossed by routes recorded as public footpaths on the Definitive Map and Statement).</p>
25 Inch OS Map	1912	Further edition of 25 inch map (surveyed 1890, revised in 1910 and published in 1912.





Observations

The 25-inch map published in 1912 shows some changes to the layout of buildings at the farm when compared with the 1893 edition. Brookside Cottages have been built (although not named on the map).

The application route is shown unaltered between point A and point B.

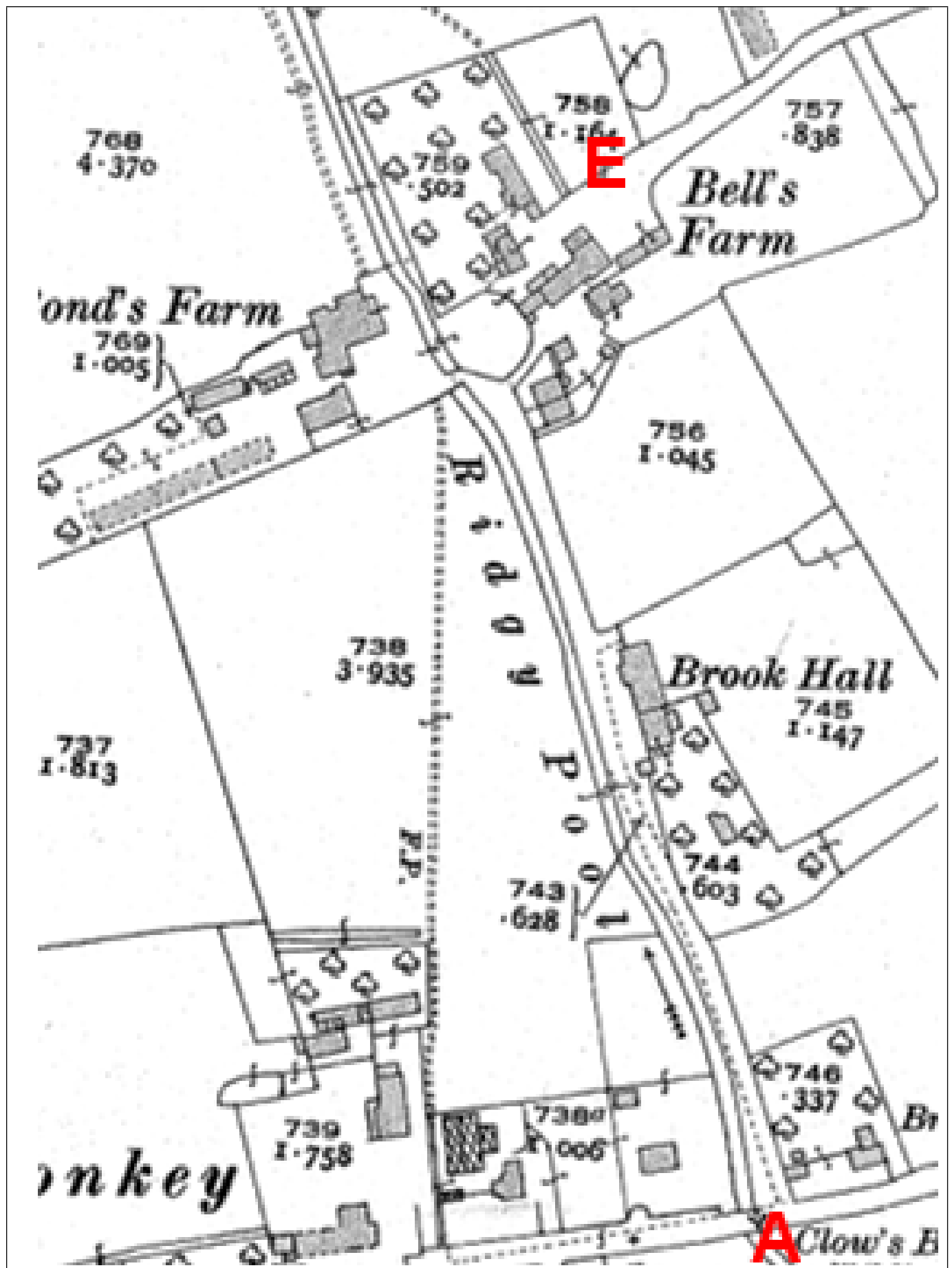
From point B to point E the application route is generally available along the route claimed. However, there is a line across the route between points C & D which may or may not have been a gate and wall of the building is not straight (there was a hint of this on previous maps but it is more pronounced on this.)

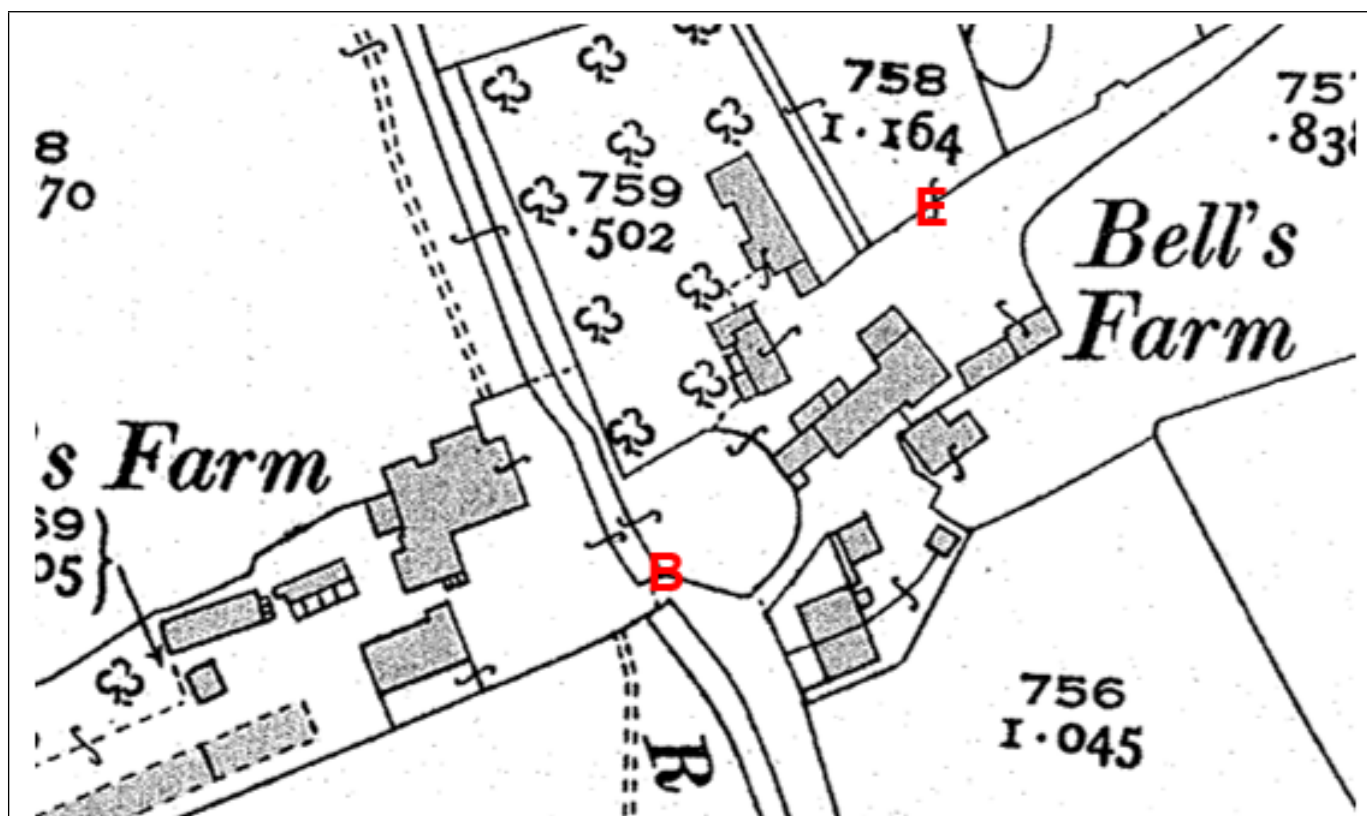
A strip of land has been left between the garden on the north-western side of No. 2 Brookside Cottages and a circular area of land fenced off adjacent to point B. This appears to provide access through to the rear of farm buildings at Bell's Farm.

Investigating Officer's Comments

The application route from point A to point B existed and may have been capable of being used.

		<p>An enclosed strip of land about 3 metres wide which appears to correspond to the application route has been left alongside Brookside Cottage (not named on the map) garden which looks as if it may have been specifically provided to allow access to the farm buildings. There is a new small building beyond that with a gap between it and the main farm building, and then a barrier. It is not known if it was possible to pass through this barrier (if it was a gate for example) to get to the rest of the farm and join the access road at Point E. The wall of the main farm building is not straight so the application route may have been reduced in width towards point D or not adjacent to the wall at point C, it is not possible to distinguish between these within the tolerance of the mapping.</p>
25 inch OS Map	1932	OS 25 inch map resurveyed in 1890, revised in 1930 and published 1932.





Observations		<p>The 25-inch map revised in 1930 and published in 1932 shows further changes to the barns, sheds and outhouses at the farm, showing the OS map has been revised. Although some buildings have gone, and others have been built, the route through the farm is unchanged.</p> <p>The access roads from Point A to Point B, and from point E eastwards are clearly shown, both unobstructed.</p>
Investigating Officer's Comments		<p>The application route from point A to point B existed and appeared to be capable of being used. There is still a route through the farm from Brookside Cottages if the barrier shown between two of the buildings is a gate or stile. However the application route may have been blocked or narrowed by the slight step-out in the line of the wall of the largest farm building.</p>
Aerial Photograph²	1940s	<p>The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.</p>

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



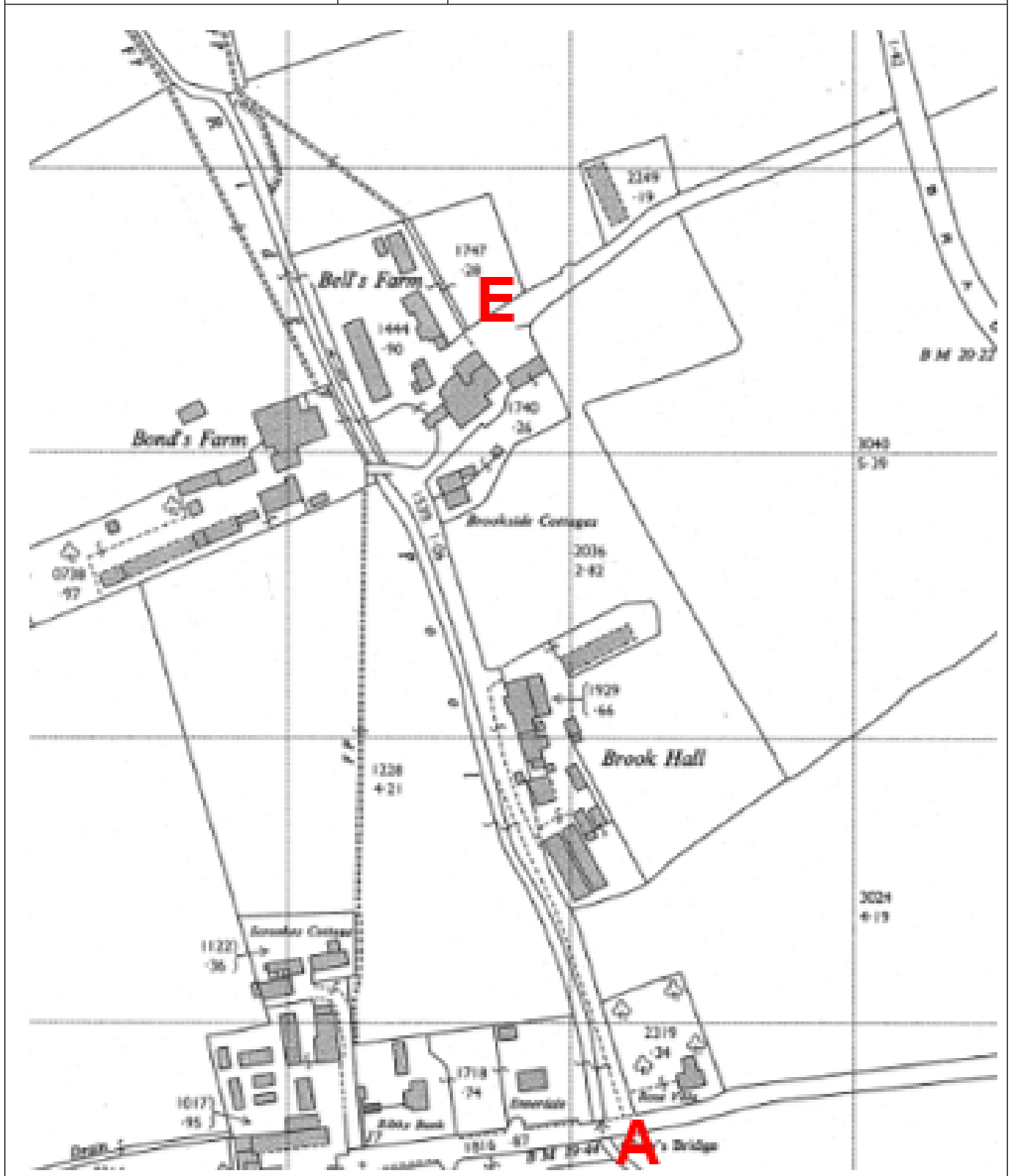
Observations		The application route between point A and point B can be clearly seen as a substantial track
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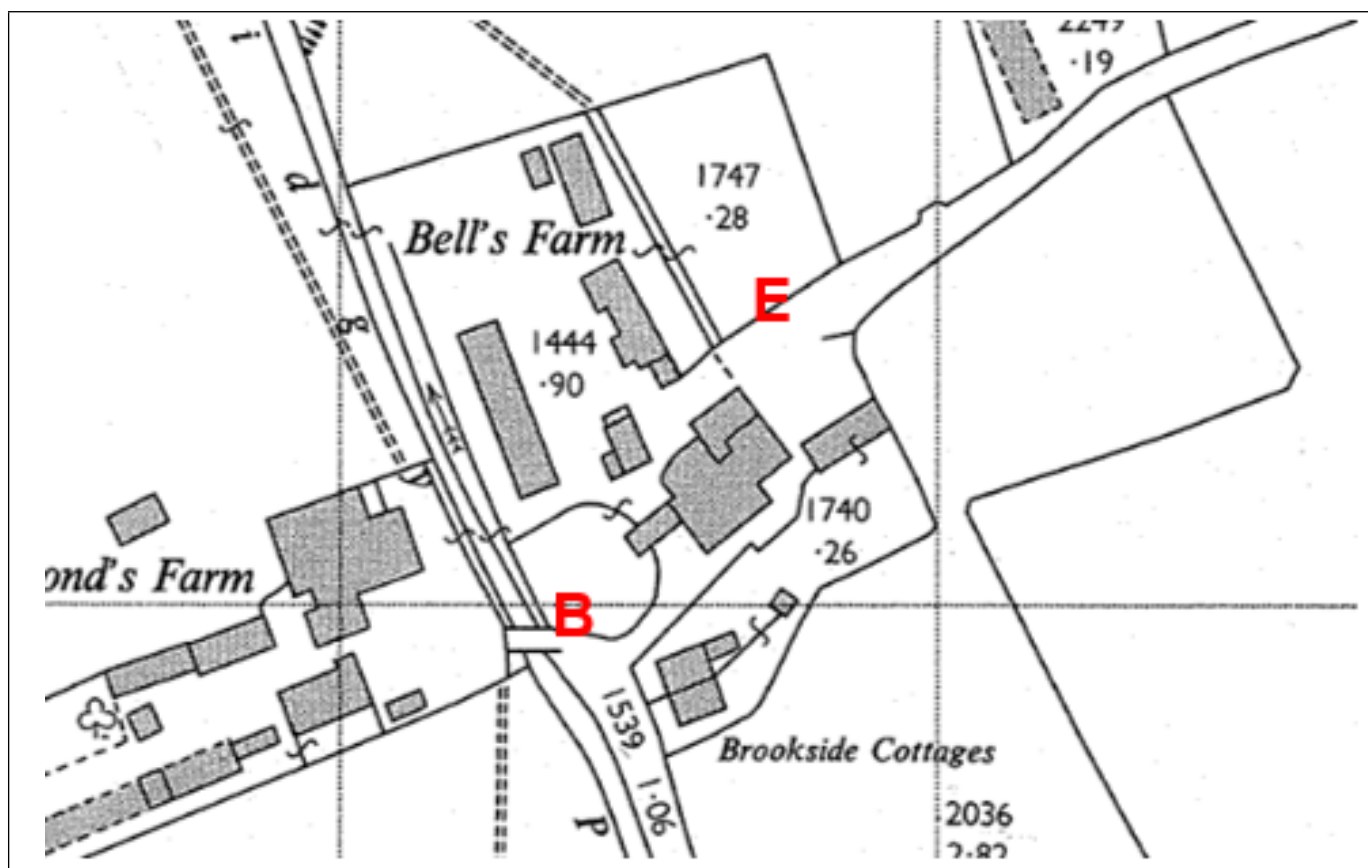
		<p>continuing past point B and over the watercourse (Ridgy Pool) to Bond's Farm.</p> <p>Between point B and point E the application route cannot be seen. A track can be seen just south of point B which appears to provide access towards Bell's Farm from the application route but due to the poor quality of the photograph in the proximity to the buildings it is not possible to see whether this track provided access through the farm to point E.</p>
Investigating Officer's Comments		<p>The application route between point A and point B existed in the 1940s and appeared to be capable of being used. The application route between point B and point E could not be seen but a track leading off the route towards the farm just before point B is clearly visible and appeared to provide access to the farm – consistent with what is shown on the 1932 Ordnance Survey map.</p>
6 Inch OS Map	1955	<p>The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.</p>



Observations		<p>The 6-inch map published in 1955 shows the layout of the farm in the same way as the 1932 25-inch map. However, because of the reduction in scale some of the farm buildings are shown joined together and in a simpler form. The gap between the buildings described above is not shown on this map.</p> <p>The access roads from Point A to B, and from point E eastwards are clearly shown, both unobstructed.</p>
Investigating Officer's Comments		This map does not provide any additional information.
1:2500 OS Map	1964	Further edition of 25 inch map reconstituted from former county series and revised in 1962 and

published 1964 as national grid series.





Observations		This edition of the 25-inch map published in 1964 shows further changes to the barns, sheds and outhouses at Bell's Farm. Some buildings have gone and a route through the farm is shown open and unobstructed with no barriers across it. As on earlier editions of the OS maps the application route from point A to point B is shown. The exact alignment of the route claimed between point B and point E may not be fully available close to point D.
Investigating Officer's Comments		The application route between point A and point B existed and appeared available to use. A route past Brookside Cottages and through Bell's Farm appeared to be available but may not be on the exact same alignment as the route claimed around point D.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		<p>Part of the access road between points A and B is obscured by trees but most is shown and the route clearly provides access beyond point B to Bond's Farm.</p> <p>A route just south of point B can be seen extending north east along a worn track to the north of Brookside Cottages towards Bell's Farm and appears to continue along the south side of a large building to exit across an open area to meet point E.</p>
Investigating Officer's Comments		<p>The application route between point A and point B existed in the 1960s and appeared to be capable of being used. A route from point B existed and may have provided access through to Point E but the existence of the whole route cannot be confirmed by using this photo.</p>
Applicants submitted by the owners of 2 Brookside Cottages	1988	<p>Photographs submitted by the owners of the property in objection to the application.</p>



Photo 1

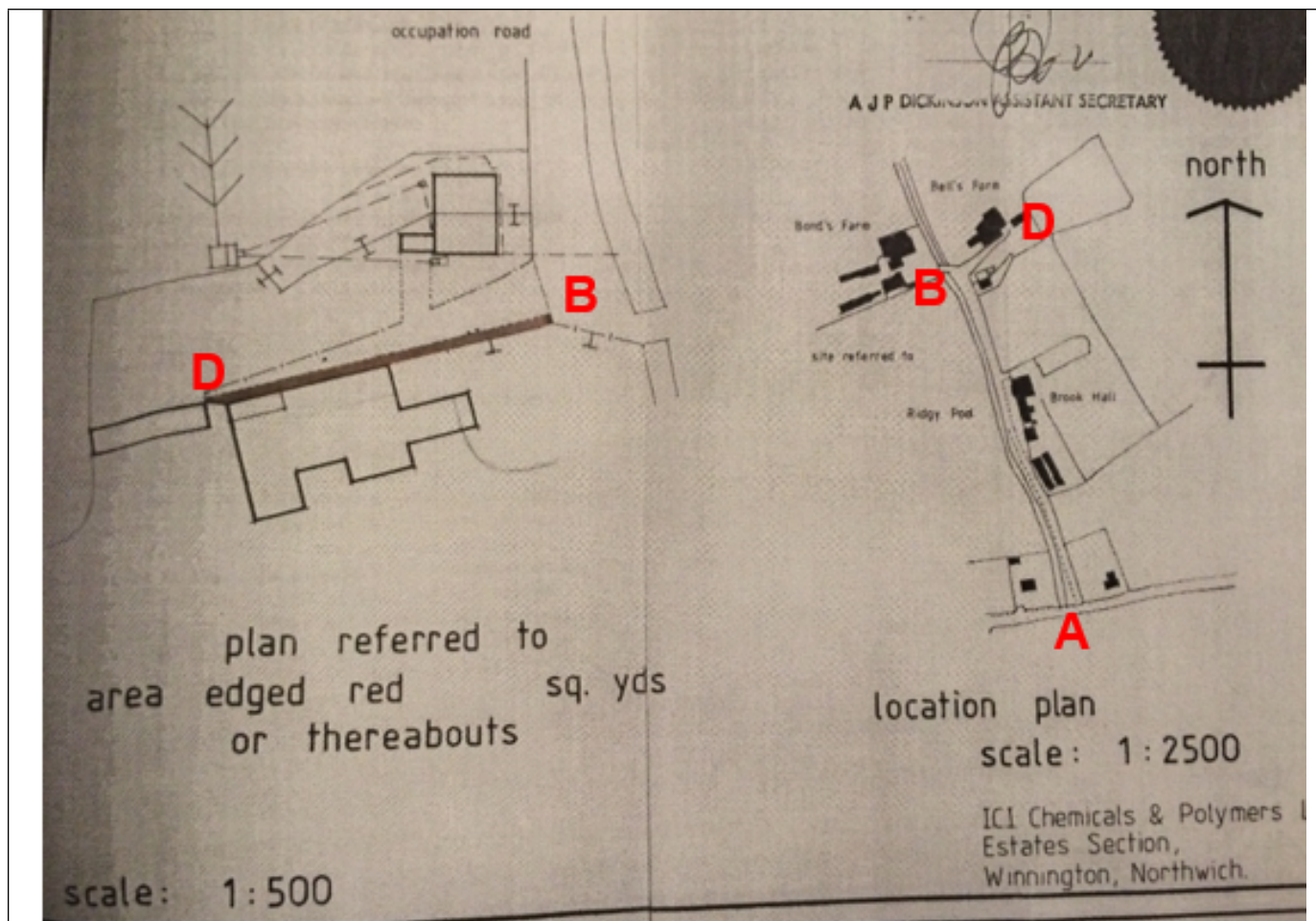


Photo 2



Photo 3

Observations		<p>Photo 1 – is from the bridge looking east to point B. It clearly shows an entrance onto an area on which there is a parked car. It is not possible to see from the photograph whether this is the start of a track leading to Bell's Farm but its position is consistent with the track shown on the 1960s OS map.</p> <p>Photo 2 – shows land between Primrose Cottage and Bell's Farm in the process of being cleared and redeveloped. It shows the land crossed by the application route between point C and point D.</p> <p>Photo 3 – Shows how the area crossed by the application route was being redeveloped with the fencing shown on Photo 1 having been removed.</p>
Investigating Officer's Comments		<p>If all three photographs date from 1988 it suggests that extensive landscaping and redevelopment of the site was carried out around that time and the strip of land shown on the 1960s OS map and aerial photographs which appeared to provide access to Bell's Farm was altered. The photographs suggest that the application route may have been available.</p>
Deed of Grant of Right of Way	1989	Copy of a Deed of Grant of Right of Way dated 4 th May 1989



Observations

The plan forms part of a deed which grants a private right of way at Brookside Cottage Pilling along the application route between point B and point D.

The deed is dated 4th may 1989 and was made between Imperial Chemical Industries PLC and P Richardson and B. C. Richardson of Bell's Farm providing Mr and Mrs Richardson (and their successors in title) at all reasonable times in the day and by night a right to pass and repass on foot only over the access way coloured brown on the plan. The access way was described as being 4 foot 6 inches wide and the deed of access was stated as being for the purposes of the maintenance and repair of adjoining buildings.

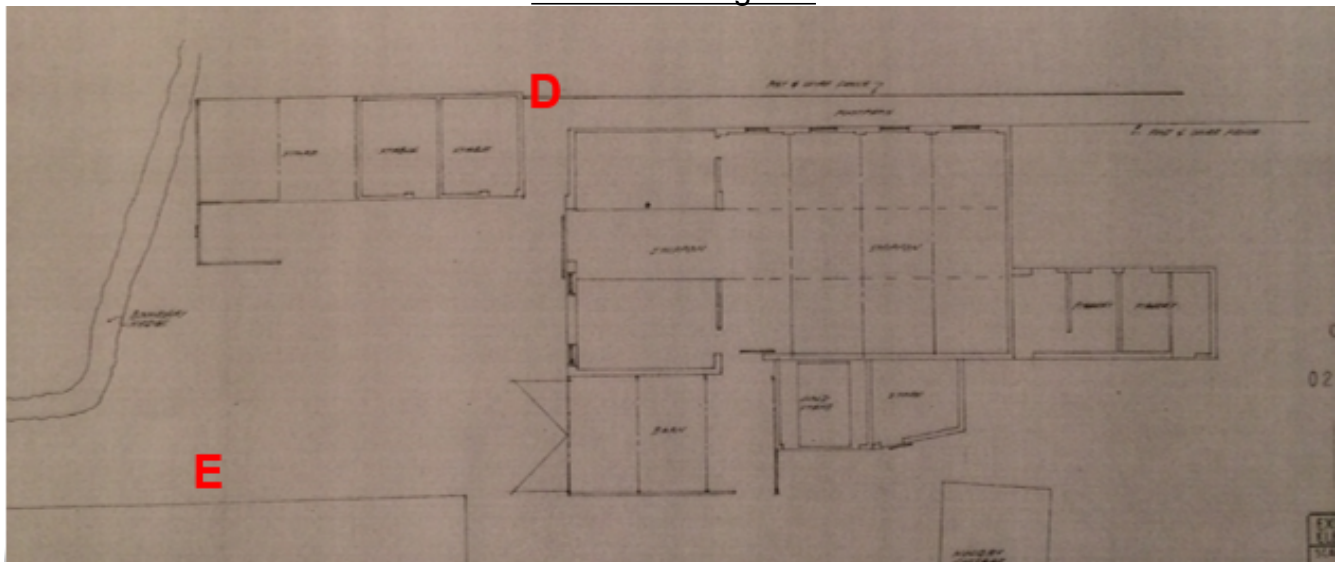
The undated plan shows the access way as being consistent with the application route between point C and point D. there is no reference to the existence of a public footpath in the deed and part of the application route (between point A and point B) is shown labelled as an occupation road on the plan.

The plans show a wide access strip which lead from the application route at point B in an easterly

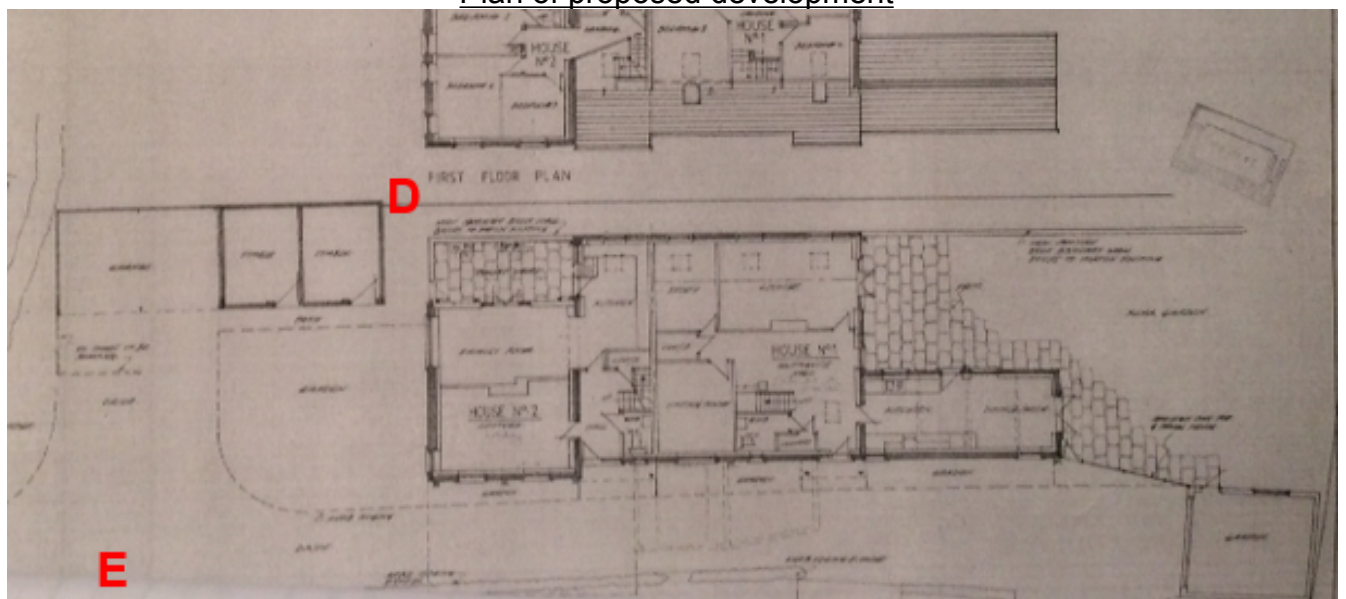
		direction to Bell's Farm. The access way granted as a private easement is shown along the most southerly edge of this strip of land.
Investigating Officer's Comments		<p>The granting of a private right of access for the purpose of maintaining an adjacent building is not inconsistent with the existence of possible public rights.</p> <p>The fact that the easement was granted around the time that the land was being redeveloped may however explain why the route to the farm – which was not recorded as a public footpath at that time - altered and a narrow fenced off path was provided, in part consistent with the one over which the owners of Bell Farm maintained a private right of access.</p>
Aerial Photograph	2002	Aerial photograph available to view on GIS.
		
Observations		<p>The application route between point A and point B can be seen. From point B a wall can be seen on the photograph extending in a straight line in a north easterly direction to the farm building. A grass</p>


		strip can be seen adjacent to the wall but it is not possible to see from the photograph whether access was available along the application route through to point D. From point D there appears to be a gap between two buildings through which the application route passes but the route between point D and point E cannot be seen.
Investigating Officer's Comments		The photograph pre dates the submission of the application by 4 years. It appears that the route claimed between point B and point E may have been in existence at this time.
Plans relating to the redevelopment of Bell's Farm	2003	Plans relating to the conversion of Bell's Farm were found via an online search. The plans were submitted to Wyre Borough Council as part of the request for planning permission to redevelop the site.

Plan of Existing Site



Plan of proposed development



Observations		<p>The plan showing the site layout as it existed in 2003 shows part of the application route between points B-C-D labelled as a footpath and bounded by post and wire fencing. A gap is shown in the buildings from point D and access appears available through to point E.</p> <p>The plan of the proposed development still shows the application route from midway between points B-C and through to point D and access would be available from point D to point E. A wall is proposed to be built adjacent to the route between point B and point C.</p>
Investigating Officer's Comments		The application route may have been available along the route claimed in 2003.
Aerial Photograph	2006	Aerial photograph available to view on GIS.
		
Observations		<p>The application route between point A and point B is clearly visible. Primrose Cottages appear to have been renovated since the earlier aerial photograph taken 4 years earlier with a wide surfaced area to the north of the cottages and a strip of grass adjacent to a wall as far as point C. From point C it is not possible to see whether access is available due to tree cover. Neither is it possible to see whether access was available between point D and point E.</p>
Investigating Officer's		Parts of the application route existed in 2006.

Comments		
Photographs submitted by the applicant	1990-2008	A number of photographs were submitted by the applicant to show the application route.



Photo 1 – approx. 1990



Photo 2 – approx. 1990



Photo 3 – approx. 1999



Photo 4 – 2006



Photo 5 – 2006



Photo 6 – 2008

<p>Observations</p>		<p>Photos 1 and 2 – show Primrose Cottages in 1990. Both cottages appear to have been recently renovated and the fact that they are covered in streamers suggests some form of celebration. Photograph 1 shows the land crossed by the application route between point B and point C bounded by a post and wire fence. A route appears to be available through to point D and a person is present on the photograph walking the approximate route.</p> <p>Photo 3 is dated approximately 1999 and shows a person stood on a grassy path fenced on either side by post and wire fencing now extending further towards the access road.</p> <p>Photo 4 is dated 2006 (the year that the application was submitted) a fenced off pathway consistent with the application route between point B and point C. The surface is quite wet and churned up with evidence of pedestrian use.</p> <p>Photo 5 shows the start of the application route in 2006 at point A as an open and accessible route.</p> <p>Photo 6 shows the route approaching point B (2006).</p>
<p>Investigating Officers Comments</p>		<p>It is not possible to see from the photographs whether the application route was accessible along the entire route in 1990. The photographs indicate that the route was later fenced on both sides for much of the length between D and B.</p>

Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>The parish survey map and cards were drawn up by Pilling Parish Council. The application route is not shown on the parish survey map or documented in the parish survey cards.</p>
Draft Map		<p>The parish survey map and cards for Pilling were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		<p>The application route was not shown on the Draft Map of Public Rights of Way and there were no objections to the omission of the path.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was</p>

		published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not shown on the Provisional Map and there were no formal objections or other comments about its omission.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The application route is not 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 claimed 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.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded. A right of way marked on the map is good evidence but many public highways that existed both before

		<p>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 is not recorded on the List of Streets and is not shown as an adopted highway on highway records retained by the County Council.
Investigating Officer's Comments		No inference can be drawn with regards to public rights.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been 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 affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Landownership

The application route between point A and point B is owned by Mr and Mrs Marland, Bonds Farm, Scronkey, Pilling, Preston PR3 6SQ. Mr and Mrs Marland purchased the farm in 2013 and were not the landowners at the time of the application. The land registry title refers to the application route between point A and point B as an occupation road over which a right of access is granted to the owners of Primrose Cottages.

The owners of Bonds Farm prior to 2013 were Steven Pill and Beverly Highton who owned the farm at the time that the application was made.

The owners of the land crossed by the application route between points B-C-D are Mr and Mrs Wain, 2 Primrose Cottage, Scronkey, Pilling who have owned the land since 1989.

Between points D-E the land crossed by the application route is owned by Mr Peter Richardson and Mrs Beryl Richardson, Bells Farm, Bradshaw Lane, Pilling.

Summary

To summarise, the Investigating Officer was of the opinion that there was insufficient historical map and documentary evidence from which public rights could be inferred.

The earliest (1786) map examined shows a route, described in the key as a 'cross road' that corresponds to the application route, although the small scale of the map does not give details about the precise alignment or arrangement of buildings there. This route was shown to connect Lancaster Road and Bradshaw Lane.

This connection was again reflected in the Pilling Tithe map some 60 years later. Greenwood (1818) and Hennet (1830) though show only the application route from Point A to B, suggesting that if a link through did exist it wasn't considered to be a public vehicular highway at that time. The Tithe map gives no indication about the status of the access tracks to Bonds Farm or to Bell's farms, and neither do the earlier published commercial maps of the county. It is more likely that commercial maps would have been produced for use by the travelling public, and through routes at least could be regarded as showing some kind of public status. The overall view of these maps is that it may have been possible to use a route in the mid 1800's on foot and horse-back between the two lanes. However, the depiction of the wider 'cross road' network in the area perhaps suggests that the application route was not one of the more important lanes in the parish, in contrast to the adjacent Lancaster Road, Bradshaw Lane and Head Dyke Lane, which are consistently shown in their recognisable modern alignments.

The access tracks to the farm from the south (the application route A – B) and east (Bradshaw Lane to Point E) are consistently shown on all maps without obstruction, and have clearly existed and been capable of being used since the late 1700s.

However, the application route between point A and point B is not recognised as a public right of way on the Tithe Map, or as part of the Finance Act procedure and is labelled as an occupation road in land registry documentation.

From an inspection of the OS maps available, it appears that a route through Bell's Farm may have been available from at least the 1800s through to the late 1980s and other maps, plans and photographs suggest a route was still available in 2006.

Evidence of use submitted as part of the application dates from 2006 back to 1937.

During that time it is clear, looking at the various maps and aerial photographs, that a route may have been available to be used by the public between point A and point E, but that the route may have altered over time between point B-C-D.

A route through Bell's Farm appears to have been accessible from point B running to the north of 2 Primrose Cottage to point E and then through the farm buildings and across the farmyard to point E as shown on the 25 inch OS map published in 1964.

County Secretary and Solicitors Group Observations

Information from the Applicant

User Evidence

In support of the claim, the Applicant has submitted 32 evidence of use forms indicating knowledge of the route for 60-69 years (9); 50-59 years (4); 40-49 years (4); 30-39 years (3); 20-29 years (8); less than 10 years (3); and one unspecified period.

The forms indicate use of the route for 60-69 years (6); 50-59 years (3); 40-49 years (6); 30-39 years (2); 20-29 years (6); 10-19 years (2); less than 10 years (6); and one unspecified period. Two of the users who certify use of 20-29 years however have a private right of access over part of the claimed route and may be discounted.

Frequency of use varies from 5 times per year to daily, with 12 forms quoting a use of more than once a week. Usage has mainly been as a safe alternative to the road, which has dangerous bends and no pavement and carries fast-moving traffic. The route was used to access local facilities such as shops and Post Office, and other local communities, as well as leisure walking. 19 of the users have ridden bicycles along the route, one has ridden a horse, one a motor cycle/vehicle, and one has driven a horse and trap. Several can remember previous generations using the route and say that as children they were encouraged to use it as a safe route. One user refers to evidence of the route being wider in the past, although no details are submitted.

All the users certify that the way has always run over the same route, and have never seen any notices prohibiting or limiting access. All except one certify that they have never asked or been given permission to use the route, the sole exception having been given permission by Mrs Richardson. Although 29 users have never met any gates, stiles or fence obstructing the route, three say that there has been an

occasional gate at Bell's Farm. One user reports having been stopped from using the route very occasionally when animals were being moved, but none of the other users report this.

Information from the Landowners

The land over which the claimed route runs is in three separate landholdings. The northernmost section is owned by Mr and Mrs Richardson of Bell's Farm. Mrs Richardson is the Applicant and Mr Richardson also writes in support of the claim. They also have a limited right of access by way of a private agreement over a further section of the claimed route.

This further section, between Brookside Cottages and Bell's Farm, runs over land owned by Mr and Mrs Wain of 2 Brookside Cottages. They have written at length, both privately and through their solicitors, in objection to the application. They claim that the Applicant is bringing the application to suit her own interests only and refer to it as a neighbour dispute. Whenever they have seen people walking across their land they have challenged them, and have had to erect gates at either end of their landholding, although no details of dates or whether the gates are locked are given. They refer to incidents when the police have been called to the scene because of youths behaving in an objectionable manner.

A letter written by Mr and Mrs Wain to the Parish Council and forwarded to Lancashire County Council makes the following points:-

1. The claimed route has never appeared on any maps as a public right of way
2. Mr Richardson is claiming that he owns the land in question "up to the trees", which Mr and Mrs Wain themselves planted within their garden some years ago.
3. A legal agreement dated 4th May 1989 between ICI and the occupants of Bell's Farm states that the claimed route is owned by 2 Brookside Cottages and the strip 4'6" wide is a maintenance strip for the occupants of Bell's Farm to maintain their property.
4. Mr and Mrs Wain installed gates to protect their property, on the advice of their solicitors and of Lancashire County Council, but the gate was pushed over and had to be reinstated.
5. There are already two public footpaths running through Scronkey and Mr and Mrs Wain do not see a need for any more.

A further letter from Mr and Mrs Wain expresses disbelief of the Evidence of Use forms submitted with the Claim. They call into question the veracity of the evidence and comment that they have never seen 18 of the witnesses use the claimed route since they moved in in 1989. Three live at Bell's Farm and use it by invoking private rights, and several others have now left the area. Mr and Mrs Wain also challenge the right of Mrs Richardson to give permission to use the route, as claimed by one witness. Since 1989, no-one has used the route without being challenged, with the exception of Ms Jones, their next door neighbour, who does not drive. Mr and Mrs Wain do admit however, that they cannot comment on usage prior to 1989. They believe that some 30 or 40 years ago there was a shop on Lancaster Road at the

southern end of the route and suggest that perhaps an unofficial short cut developed purely as access to the shop.

Mr and Mrs Wain allege that when a planning application for development at Bell's Farm was made, the maintenance strip was included, as without it permission would not have been granted, as it is the only access to the rear of Bell's Farm. Mr and Mrs Wain were not properly consulted as owners and allege that if the application for a right of way is unsuccessful it will deeply affect the planning issues at Bell's Farm.

Mr and Mrs Wain have further supplied photographs showing the garden of 2 Brookside Cottages. The photographs date from 1988 when the cottage was being renovated and a fence and trees were put in place shortly afterwards, allowing space for private parking for 2 Brookside Cottages and honouring the maintenance strip granted to Bell's Farm.

Mr and Mrs Wain have planning permission to build an extension and are concerned that should the extension be built and the claimed footpath be accepted, there will be little room for them to park their vehicles. They also express concern about possible damage to their vehicles by people walking or congregating on the "maintenance strip". The Committee will, of course, be aware that such submissions, whilst of importance to those persons making them, have no bearing on whether or not the path exists in law.

A further section of the route is in the ownership of Mr and Mrs Marland of Bonds Farm, which they purchased in 2014. The previous owners were Mr Pill and Ms Higton. Ms Higton contacted the County Council by telephone in April 2006 after being shown the copy of the application form and evidence supplied to Mrs Wain. She requested extra time to submit comments; however no such comments have been received.

Other adjoining landowners were consulted and one letter has been received in response, from Mr and Mrs S Richardson, whose land ownership directly abuts the section of the application route which runs to the north of 2 Brookside Cottages. They write in support of the claim and state that Mr Richardson has used the route for 30 years and Mrs Richardson since 1984. Their children have regularly used the route to visit a friend, and until recently they thought it was a public right of way.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

User evidence

No evidence of actual overt acts by the landowner

Available route historically

Against Accepting the Claim

Common law inference of dedication from historical map evidence is difficult leaving use as the important evidence to consider.

Conclusion

The claim is that the route has already become a footpath in law and should be recorded on the Definitive Map and Statement.

There is no express dedication and so Committee is asked to consider the evidence for deeming dedication under s.31 Highways Act 1980 or inference of dedication at common law.

Taking first of all the inference of dedication at common Law. This requires sufficient evidence of an actual intention to dedicate by the owner. This can be from how the route was recorded on various documents or from circumstances such as user. Considering the historical map evidence it is suggested that there is insufficient historical map evidence from which public rights could be inferred from this but looking at the user evidence it would appear that no clear actions were taken by owners and use by the public continued over several years prior to 1989 such that on balance there may be sufficient evidence from which to infer dedication at common law.

Looking secondly at the provisions of s.31 Highways Act 1980 to consider whether the dedication can be deemed. The use to satisfy the statutory criteria has to be for twenty years immediately before the route was called into question. The route was called into question in 2006, this being the date of the application, the twenty years use to consider would be 1986-2006. Without further information about the alleged challenges since 1989, it is difficult to advise that the route was called into question any earlier. If however there was a calling into question at an earlier date there is still use of the route taking place back to 1940s.

The applicant has provided 33 user evidence forms which show use of the route from as early as on as 1940. The user forms suggest that, on balance, the route has been used as of right and without force, secrecy or interruption.

There have been numerous alterations to properties along the route. Number 2 Brookside Cottage was extended, Bells Brook and the Old Barn were also altered. Looking at the map in particular the OS map of 1964, this delineates a round field boundary which existed at Point B, this was removed it seems, in or around 1988/1989 when the building work was carried out to 2 Brookside Cottages and thereafter no longer existed. Brookside Cottage was extended further north during 1988/1989. The extension to Brookside Cottage narrowed the width that had been available in 1986. The alteration to the property, Bells Brook extended the building further towards Point D during the period under consideration.

A dedication under S31 cannot be deemed if changes to the route interrupt use or serve to indicate sufficiently an intention that the route is not a footpath.

If the claimed route is considered to have a width of 2m on this section, the claimed route had its width available throughout the changes around it. There is no evidence that use was interrupted and no evidence of a lack of intention to dedicate a public route.

On balance and after careful consideration, it is suggested that the criteria under s.31 can be satisfied. Taking all the information into account the Committee may consider that a dedication of a footpath can be deemed or inferred and that it is appropriate that an Order be made and promoted to confirmation.

Risk Management

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

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

Paper	Date	Contact/Directorate/Tel
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All documents on File Ref:
804-459

Reason for inclusion in Part II, if appropriate

N/A

