

Lancashire County Council

Regulatory Committee

Wednesday, 18th July, 2018 at 10.30 am in Committee Room 'B' (The Diamond Jubilee Room) - County Hall, Preston

Agenda

Part I (Open to Press and Public)

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

3.	Minutes of the last Meeting	(Pages 1 - 6)
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4.	The Constitution, Membership, Terms of Reference and Programme of Meetings for the Regulatory Committee	(Pages 7 - 10)
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5.	Guidance	(Pages 11 - 34)
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Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

6.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Bridleway from Reedymoor Lane to the junction of Whitemoor Road and Standing Stone Lane, Foulridge, Pendle Borough	(Pages 35 - 144)
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7.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Application to upgrade part of Bridleway 29 Barnacre-with-Bonds, known as Byerworth Lane, to Byway Open to all Traffic	(Pages 145 - 184)
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8.	Urgent Business
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An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

9. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Wednesday 19th September 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, 6th June, 2018 at 10.30 am in Committee Room 'B' (The Diamond Jubilee Room) - County Hall, Preston

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

M Barron	D Howarth
T Aldridge	H Khan
I Brown	J Marsh
A Clempson	B Yates
B Dawson	

1. Apologies

No apologies for absence were received.

County Councillor Barrie Yates replaced County Councillor Peter Steen.

County Councillor Hasina Khan replaced County Councillor Jean Parr.

County Councillor Bernard Dawson replaced County Councillor Lorraine Cox.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last meeting

Resolved: That the minutes of the last meeting held on 15th March 2018 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. Wildlife and Countryside Act 1981 Claimed Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge, to Castle Road, Colne, Pendle Borough. Claimed No. 804.440a

A report had been presented to Regulatory Committee in May 2007 on an application for a Public Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Castle Road, Colne, and to upgrade from Public Footpath to Bridleway, Footpath No 65, Foulridge and Nos 19, 18, 16, 14, 12 and 8 Colne, to the Definitive Map and Statement of Public Rights of Way.

This application was to add a bridleway from sections A-B, as shown as the blue route on the Committee plan attached to the agenda papers, and to upgrade from public footpath to bridleway sections B-J, as shown as the yellow route on the Committee plan attached to the agenda papers.

It was noted that the Committee had decided that there was sufficient evidence that a bridleway on the blue route was reasonably alleged to subsist and an Order was therefore made which received objections. The Committee had decided not to make an Order in respect of the yellow route, which had then been made the subject of an appeal. It was reported that the Planning Inspectorate had allowed the appeal, and that the county council was directed to make an Order in respect of the yellow route. Both Orders were subsequently advertised and received objections and will therefore need to be submitted to the Secretary of State for formal determination.

The Committee noted that the county council's stance in respect of the yellow route was to remain neutral, as it opposed the making of the Order on appeal, and that this stance had already been determined by Committee in December 2014.

It was therefore recommended that the county council's stance should also be neutral for the Order for the blue route as to promote that Order to confirmation would create a cul de sac route which Planning Inspectorate guidance did not recommend, unless there were special circumstances. The Committee noted that there were no special circumstances in respect of this route and so a neutral stance was recommended.

Resolved: That the county council as order making authority should send The Lancashire County Council (Cob Lane/Cockhill Lane to Kelbrook Wood) Definitive Map Modification Order 2014 to the Secretary of State for Environment, Food and Rural Affairs for formal determination, but should notify the Secretary of State that it does not actively support the Order and adopts a "neutral stance" as regards confirmation of the Order.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Application for recording on the Definitive Map and Statement a Restricted Byway along Aldcliffe Hall Drive, Lancaster

A report was presented on an application for the addition to the Definitive Map and Statement of Public Rights of Way, of a restricted byway along the route known as Aldcliffe Hall Drive, from Aldcliffe Road to Aldcliffe Hall Lane, Aldcliffe with Stodday, as shown between points A-B-C-D on the Committee plan attached to the agenda papers.

The application was on the basis of a considerable amount of user evidence.

It was reported that a number of residents living adjacent to the route referred to a right to erect a fence across the route in deeds from the 1950s, but, at the time of writing the report, no deeds had been made available to the county council, as part of the investigation, so no inference could be drawn. Since that time, a copy of the deed and plan dated 18 January 1956 has been received, which related to land shown between points D-C and short of point B on the Committee plan, and referred to the road fronting the properties as being private, granting private rights of access to the two properties, and a right to erect a barrier where the bollards were subsequently installed. However, the Committee noted that having private rights of access does not preclude public rights being dedicated.

Lancaster City Council had responded to consultations and confirmed that they did not have any interest in the area in question.

The Committee noted that reference had been made in the report to a bridleway which had been in reliance of the case of *Whitworth v Secretary of State for Environment, Food and Rural Affairs*. This case had suggested that subsequent use of an accepted but unrecorded bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway. The use on pedal cycle would have had to have shown earlier acceptance of the route as bridleway, for the cycle use to be supporting use as bridleway, rather than restricted byway.

However, it was reported that a recent Planning Inspectorate decision had been considered which had very similar circumstances to this application, in that there had been no pre-existence of bridleway rights. The balance of pedal cycle users was the opposite of that in the *Whitworth* case. It was noted that, in this case, use by cyclists outweighed use by horse riders; no horse riders had claimed to use this route. Therefore, there was no basis from which a less burdensome bridleway could be inferred; the evidence of use by cyclists supported the establishment of a restricted byway over the claimed route.

It was therefore proposed that the recommendation be revised as follows, to refer to the making of an Order in respect of a restricted byway, as opposed to a bridleway:

Resolved:

- (i) That the application for a restricted byway along the route known as Aldcliffe Hall Drive, in accordance with File No. 804-592, be accepted.

(ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981, to add to the Definitive Map and Statement of Public Rights of Way a **restricted byway** as shown on the Committee Plan between points A-B-C-D.

(iii) That being satisfied that the higher test for confirmation can be met, the Order be promoted to confirmation.

7. Application for a Transfer of a Right of Common in gross to be recorded in respect of some of the Rights of Common, being grazing rights severed from the land at Ireby Green, Ireby, being entry 4 in the Rights Section of Register Unit CL23 known as Ireby Fell in the Parish of Ireby

A report was presented on an application from John Douglas James Welbank and Sylvia Margaret Welbank to record a transfer of rights in gross, namely the right to graze 26 sheep gaits, between John Stephen Brown, the Transferor and the Applicants, the transferees, on 6th November 2012, which had been previously attached to Ireby Green, Ireby, as shown on the supplemental map attached to the agenda papers.

The Committee noted that this was an application under Section 12 of the Commons Act 2006, and sought to amend the relevant entry in the rights section of the Common Land Register Unit CL23, to record a transfer of a commons right in gross (a right of common not attached to land but instead held by a person (e.g. under a deed)). This case was in relation to the rights to graze 26 sheep gaits over the whole of CL23 (Ireby Fell).

In order for the transfer to be recorded, the Commons Registration Authority needed to be satisfied that the application had the effect of evidencing that the Applicants were the transferees of that right and that the registered owners of the right of common consented to the application.

It was reported that, in this case, the supporting documents submitted with the application did evidence that the Applicants, John and Sylvia Welbank, were the transferees and that the Commons Registration Authority, along with the application papers, also had confirmation of the transferor's consent to the application.

Resolved: That the application be accepted, and the transfer of rights in gross be recorded in the Commons Register, in accordance with Section 12 of the Commons Act 2006, that Mr John Douglas James Welbank and Mrs Sylvia Margaret Welbank, were entitled to exercise the right to graze 26 sheep gaits on common land unit CL23.

8. Urgent Business

There were no items of Urgent Business.

9. Date of Next Meeting

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 18th July 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 Wednesday, 18 July 2018

Electoral Division affected: (All Divisions);
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The Constitution, Membership, Terms of Reference and Programme of Meetings for the Regulatory Committee

(Appendix 'A' refers)

Contact for further information:

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Executive Summary

This report sets out the constitution, membership including the chair and deputy chair and Terms of Reference of the Regulatory Committee, and the programme of meetings for 2018/19.

Recommendation

The Committee is asked to note:

- (i) The constitution/membership of the Committee following the county council's annual meeting on 24 May 2018.
- (ii) The appointment of County Councillors Jimmy Eaton and Malcolm Barron as chair and deputy chair of the Committee for 2018/19.
- (iii) The Terms of Reference of the Committee.
- (iv) The agreed programme of meetings for the Committee.

Background and Advice

The county council at its annual meeting on 24 May 2018 agreed that the Regulatory Committee shall comprise 12 County Councillors on the basis of 7 Conservative members, 4 Labour members and 1 Independent member.

The following County Councillors have subsequently been nominated to serve on the Committee for the remainder of the 2018/19 municipal year.

County Councillors

T Aldridge	L Cox
M Barron	J Eaton
I Brown	D Howarth
T Burns	J Marsh
A Clempson	J Parr
J Cooney	P Steen

The Full Council also appointed County Councillors Jimmy Eaton and Malcolm Barron as chair and deputy chair of the Committee for 2018/19.

A copy of the Committee's Terms of Reference is attached at Appendix 'A'.

In December 2017, Full Council agreed the following programme of meetings for the Committee with all meetings to be held at County Hall, Preston, commencing at 10.30am.

- 18 July 2018
- 19 September 2018
- 14 November 2018
- 30 January 2019
- 13 March 2019

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

There are no risk management implications arising from this report.

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

Paper	Date	Contact/Directorate/Tel
None		
Reason for inclusion in Part II, if appropriate		
N/A		

The Regulatory Committee

The Committee comprises twelve County Councillors and deals principally with claims relating to public rights of way and various licensing and registration functions (except registration functions relating to Social Services).

Meetings are open to the public but they may be excluded where information of an exempt or confidential nature is being discussed – see Access to Information Procedure Rules set out at Appendix 'H' to this Constitution.

Terms of Reference

The Committee shall carry out the following functions:

Public Rights of Way

1. To determine applications under S53 of the Wildlife and Countryside Act 1981 and to decide whether to make and promote to confirmation Orders thereunder.
2. To exercise the following functions, duties and powers of the Council under the Highways Act 1980:
 - (a) to authorise creation of footpaths or bridleways by agreement under Section 25;
 - (b) to decide whether to make and promote to confirmation Orders for the creation of footpaths and bridleways under Section 26;
 - (c) to decide whether to make and promote to confirmation Orders for the extinguishment of footpaths and bridleways in accordance with Section 118;
 - (d) to decide whether to make and promote to confirmation rail crossing extinguishment orders under Section 118A;
 - (e) to decide whether to make and promote to confirmation special extinguishment orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 118B;
 - (f) to decide whether to make and promote to confirmation public path extinguishment orders (Section 118ZA) and special extinguishment orders (Section 118C);
 - (g) to decide whether to make and promote to confirmation Orders for the diversion of footpaths and bridleways in accordance with Section 119;
 - (h) to decide whether to make and promote to confirmation rail crossing diversion orders under Section 119A;
 - (i) to decide whether to make and promote to confirmation special diversion orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 119B;
 - (j) to decide whether to make and promote to confirmation SSSI diversion orders under Section 119D;
 - (k) to decide whether to make and promote to confirmation public path diversion orders (Section 119ZA) and a special diversion order (Section 119C(4));

3. To decide whether to make orders and promote to confirmation to extinguish certain public rights of way under Section 32 of the Acquisition of Land Act 1981.
4. To decide whether to make orders and promote to confirmation orders to designate a footpath as a cycle track under Section 3 of the Cycle Tracks Act 1984.

Other Licensing Registration and Regulatory Functions

1. To make appointments to outside bodies to which the Council is entitled to have representation in connection with the discharge of any of the Committee's functions.
2. To establish Sub-Committees to undertake any part of the Committee's functions.

Common Land and Town and Village Greens

1. To decide whether to exercise the Council's powers under the Commons Registration Act 1965 to alter the Register in respect of applications.
2. To make recommendations to the Cabinet on matters under the Commons Registration Act 1965 as amended and Regulations thereunder where responsibility lies with the Cabinet.
3. To make decisions on applications and proposals as determining authority under Part 1 Commons Act 2006 save for those under Regulation 43 of the Regulations thereunder.
4. To decide whether to apply to the Secretary of State as owner for de-registration of Common Land or Town or Village Green under S 16 Commons Act 2006.
5. To decide whether to take steps and what steps to take to protect unclaimed common land or town or village greens against unlawful interference and whether to institute proceedings under Section 45 of the Commons Act 2006.
6. To decide whether to apply to the Court for orders against unlawful works on common land under Section 41 of the Commons Act 2006.

Regulatory Committee

Meeting to be held on 18th July 2018

Electoral Division affected: All

Guidance for the members of the Regulatory Committee

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

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

Executive Summary

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

Recommendation

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

Background and Advice

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

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

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

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

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

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

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

Definitions

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

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

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

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

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

Duty of the Surveying Authority

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

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

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

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

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

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

Orders following “legal events”

Other events include

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

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

Government Policy - DEFRA Circular 1/09

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

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

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

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

These are that:

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

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

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

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

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

Definitive Maps

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

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

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

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

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

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

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

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a “new” route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

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

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

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

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

Dedication deemed to have taken place (Statutory test)

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

Documentary evidence

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

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

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

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

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

Recording vehicular rights

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

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

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

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

Diversion Order s119

TO MAKE AN ORDER

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

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

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

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

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

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

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

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

Diversion Orders under s119A

TO MAKE AN ORDER

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

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

OR

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

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

Diversion Orders under s119ZA**Diversion Orders under s119B****Diversion Orders under s119C****Diversion Orders under s119D**

Guidance under these specific sections will be made available when required

Extinguishment Order under s118**TO MAKE AN ORDER**

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

GUIDANCE

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

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

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

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

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

Extinguishment Orders under s118A

TO MAKE AN ORDER

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

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

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

GUIDANCE

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

Extinguishment Orders under s118B

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

TO MAKE THE FIRST TYPE OF S118B ORDER

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

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

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

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

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

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

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

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

The same test as above.

GUIDANCE

Again there is convenience to consider.

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

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

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

Regulatory Committee
Meeting to be held on the 18th July 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 Wednesday, 18 July 2018

Electoral Division affected: Pendle Rural;

Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Bridleway from Reedymoor Lane to the junction of Whitemoor Road and Standing Stone Lane, Foulridge, Pendle Borough

File No. 804-478

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Investigation of public rights from Reedymoor Lane to the junction of Whitemoor Road and Standing Stone Lane, Foulridge, Pendle Borough, in accordance with File No. 804-478.

Recommendation

- (i) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to upgrade Footpaths 63 and 8 (part) Foulridge to bridleway and to add a bridleway to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G-H-I.
- (ii) 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 was originally received in 1987 for the Route to be recorded as a byway open to all traffic, and an Order was made to that effect (Definitive Map Modification Order No. 1 1988). Objections were received and a public inquiry was held into the matter in 1997 following which the Order was not confirmed. A copy of the Planning Inspectorate decision letter dated 25th February 1998 is included as an appendix.

In 2008, as part of a review of previous Order decisions, the route was researched again by a former member of the Public Rights of Way team (now retired) and following discussions with members of the local horse riding community an investigation into the route as a bridleway on the Definitive Map and Statement of Public Rights of Way was started by the Lancashire County Council, Environment Directorate as shown between points A-B-C-D-E-F-G-H-I on the Committee plan.

The investigation included user evidence not considered at the 1997 inquiry and since then some additional documentary evidence has also been considered and is included in this report.

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

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

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 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 and the evidence overall weighed on the balance of probabilities. It is possible that the council’s decision may be different from the status given in any original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

Consultations

Pendle Borough Council

Pendle Borough Council have stated that whilst they do not hold any evidence on whether the route carries public bridleway rights they support the establishment of a public bridleway on this route to add to the fragmented bridleway network in Pendle.

Foulridge Town Council

The Parish Council considered the application at their meeting held on Monday 15th January, 2009 and decided that the application should not be supported ('upheld'). They referred to the public inquiry into the status of the route held in 1997 which they understood concluded that the route was not a public right of way'.

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	8797 4191	Open junction with Reedymoor Lane (U20911)
B	8791 4204	South side of disused railway line at former level crossing (gate posts evident)
C	8790 4205	Point on route immediately north of disused railway where an access track leaves the Route providing access to Ball House
D	8770 4221	Junction of Footpath 63 (the Route) with Footpaths 24 and 64 near Sand Hall
E	8774 4229	Stream passes under Route
F	8782 4240	Junction of Footpath 10 with Route adjacent to former access into Ball House (now disused)
G	8783 4244	Junction of Route with legally diverted route of Footpath 9
H	8795 4269	Bend in Route at point where it leaves the route recorded as Footpath 8
I	8795 4293	Open junction of Route with Standing Stone Lane (U20908) and Whitemoor Road (B6251) at Standing Stone Gate

Description of Route

A site inspection was carried out in May 2017.

The route under investigation (the Route) commences at point A on U20911, Reedymoor Lane. At the start of the Route there are notices in the grass verges stating that it is a private road to a number of properties and also a public footpath signpost. The first section of the Route is recorded as Footpath Foulridge 63 – for the purpose of this report recorded footpaths will be referred to omitting 'Foulridge' as the Route is entirely within that parish).

From point A, the Route follows the macadam surfaced road in a generally north westerly direction, bounded by stone walls, to the site of the former railway level crossing at point B.

At the southern boundary of the disused railway line (point B), the Route passes through concrete gate posts on which an old wooden gate is hung. The gate was in the open position and did not appear to be in current use. The Route passes through the gateway and continues along the tarmac road across the disused railway track.

Extending south west and north east from the Route along the disused railway in both directions are trodden pathways which appeared to be receiving significant levels of use by pedestrians, cyclists and horses.

At point C, an access road branches off the Route leading north to Ball House and Mistals. A notice placed in the verge on the westerly side states "PRIVATE ROAD TO SANDHALL AND HOLLY BUSH FARM". The Route continues but instead of the tarmac being across the full width of the route there are now two macadam strips and a grass central strip and it is bounded on either side by a combination of hedges/walls/fencing with the adjacent fields at a higher level on either side of the Route.

The Route continues passed the entrance to Sand Hall to the south west and at point D Footpath 24 joins the Route from the south west and a surfaced access road to Holly Bush Farm from the north west (recorded as Footpath 64).

From point D, the Route turns in a north easterly direction, still recorded as Footpath 63, leaving the surfaced access road and running across an open triangle of grass to continue along a clearly visible bare earth trodden path approximately 1 metre wide within a wooded track approximately 5.5 metres wide. After approximately 90 metres from point D the track becomes 'sunken' in comparison to fields on either side, the surface of the path is stony, with some of these stones being loose and uneven under foot. The path used is situated in the bottom of the sunken hollow which measures 10-12 metres wide between the adjacent field boundaries.

At point E, the Route crosses a stream by way of a substantial culvert and continues as a substantial, but largely overgrown stone surfaced track along the bottom of the 'cutting'. The loose stone surface consists of quite large stone – almost like a stream bed or the remains of a broken cobbled surface.

At point F the Route is joined by Footpath 10 from the west and immediately east there is a blocked off access to Mistals and Ball Farm.

The Route continues from point F (recorded as Footpath 8) as a wooded track approximately 11 metres wide between boundary walls rising gradually uphill but still enclosed along a 'sunken' track and passing through point G where Footpath 9 joins it from the east. It then emerges as a wide open route – still enclosed on either side by stone walls - with a stream along the western side to point H where Footpath 8 continues in a straight line passing through a boundary wall via a stile whilst the Route turns to continue north west to follow the bounded track. Evidence of cycle tyre tracks could be seen in the compacted earth surface of the path.

This section of the route continues in a north westerly and then north north easterly direction towards a property known as “Staniston”. Here the Route joins a stone track and continues passed the property to the junction with Standing Stone Lane and Whitemoor Road (the B6251) at point I.

The total length of the route is 1.2 kilometres.

In summary, the whole of the Route was easily available for use by the public on foot throughout its entire length. There was some evidence of equestrian use (as witnessed by hoof prints on the tarmac) between point A and point B and evidence that cyclists had been using the Route (tyre marks) between point H and point I.

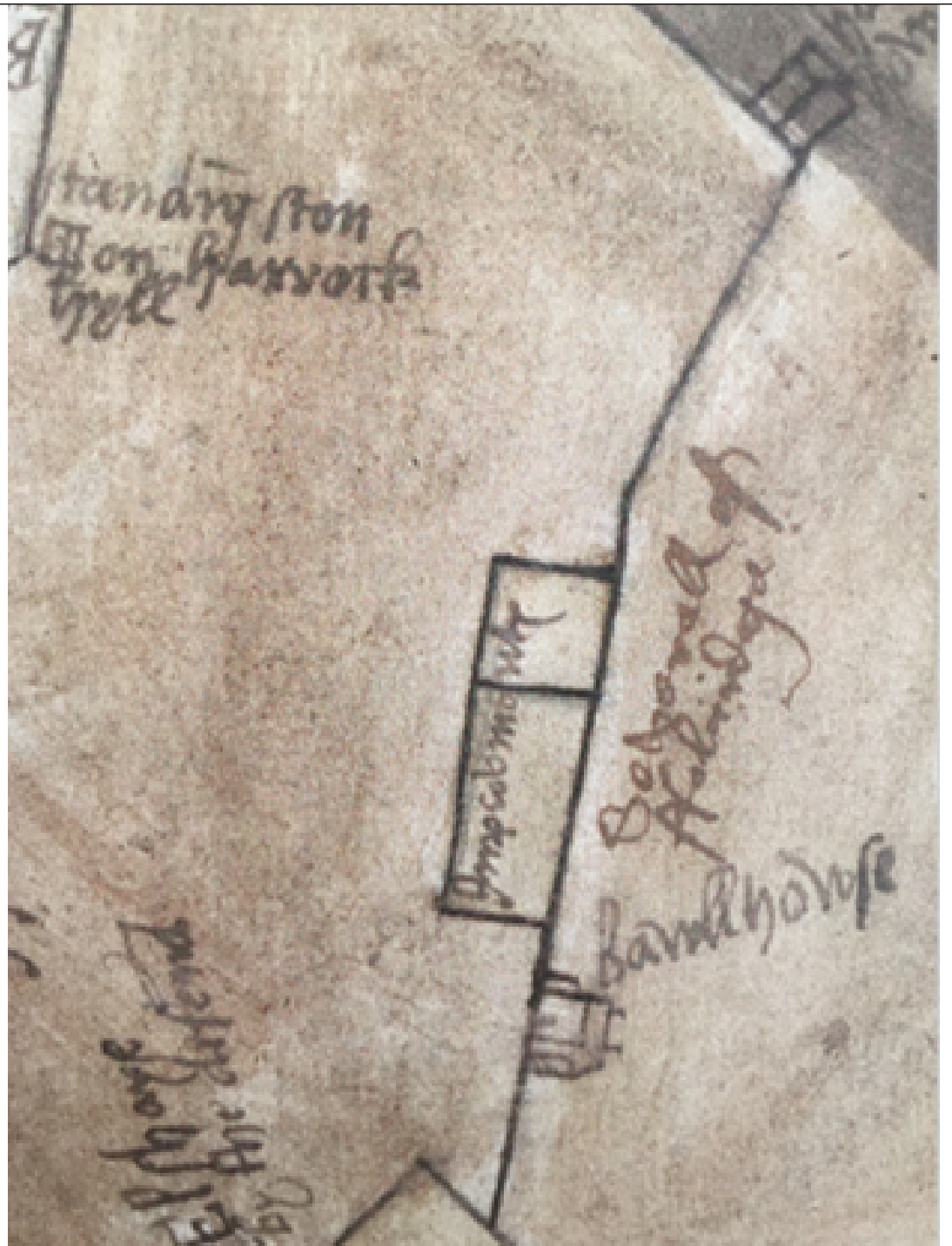
Between point A and point D the Route provided vehicular access to a number of properties. From point D to point F a substantial bounded track existed. There was no evidence of recent vehicular use along this section and although part of the width had been reduced by trees it gave the appearance of an old and substantial route which could have provided access (now fenced off) to Ball House and Mistals in the past.

The remaining section of the Route from point G to point I was all enclosed and of a substantial width. There was no evidence of recent vehicular use but the Route appeared to be of some considerable antiquity providing a wide and enclosed through-route from point A to point I.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Map of Barnoldswick, Yorkshire, with Foulridge, Lancashire showing houses, fields, watercourses and Whytmore, the land in dispute	1580	Map deposited in the National Archives from the Duchy of Lancaster Records Ref: MPC 1/91





Observations

The earliest map found to cover the land crossed by the Route and not submitted as part of the original application to record the route as a byway.

The map appears to have been prepared with reference to a dispute about land known as Whytmore.

The Route is not shown but a property labelled as Bawll House is shown as is a feature marked as 'Standing Stone on Harrock Hill'.

Investigating Officer's Comments		Ball House (or a building predating the existing building) existed in 1580 but it is not possible to determine whether it existed on the same site as the existing house.
The Story of Foulridge	Published 1990, Revised in 2010	Local history book written by a local historian; Fay Oldland. CRO Ref:EO2 Foulridge First Edition published 1990 ISBN 0948743042 Second Edition published 2010 ISBN 978-0-95 65366-0-0

A Hand-drawn reconstruction of Foulridge in the 16th Century





Standing Stone Gate, at the junction of the Barnoldswick Road with the roads to Blacko, Colne and Foulridge, takes its name from the standing stone sited close by which acted as a signpost for early travellers. It is referred to as 'the standing stone on Harrock Hill' on the 1581 Map of Whitemoor.

A photograph of Standing Stone Gate



At the top of Ball House Lane was this **Bargain Stone** – where the touch of a hand became as good as a receipt. The custom began when farmers assembled around the stone to strike a bargain for the cattle or wool they had. When the price was agreed, they sealed the bargain by touching hands through the hole in the stone. The stone was damaged by farm vehicles in 1998 and was subsequently removed to the garden at Ball House.


The Bargain Stone

Observations

The book contains information about the early history of Ball House which is located just south of the Route between points E-F-G and is accessed from the Route. Ball House is believed to date back to 1627 (as evidence by a date stone above the

		<p>door) and was said to have been the home of John Moore (described as a 'celebrated' Quaker preacher) before it was sold to the Walton Family in the early 1700s remaining in their possession for approximately the next 150 years. The book also details reference to the fact that an older property known as 'Bawlhous' had previously existed on the same site as Ball House and that it was shown on an unnamed or referenced map dating back to 1561.</p> <p>A hand drawn plan titled 'A reconstruction of Foulridge in the 16th century' is also included in the first edition of the book and is reproduced in this report. Most of the land crossed by the Route is not shown on the plan but the top left hand corner shows Ball House and part of the Route between point E to point I which appears to be the only route providing access to Ball House. This plan is reproduced in the second edition of the book (published in 2010 subsequent to the public inquiry into the first application) but the picture has been coloured and reproduced in the book to show Ball House on the far right side/edge of the picture and does not show any part of the Route or the land crossed by it.</p> <p>The Route is not referred to in the section of the book titled 'Roads and Rail.' However there is a photograph of the 'Standing Stone Gate' which is located close to point I on the Route which was said to have acted as a signpost for early travellers at the junction of roads to Blacko, Colne and Foulridge and as having been marked on the 1581 Map of Whitemoor.</p> <p>There is also a photograph of the Bargain Stone described as being located (until removed in 1998, about the time of the public inquiry) at the top of 'Ball House Lane' (point I) and that historically the stone was used by farmers when striking a deal over the sale of animals or produce.</p>
Investigating Officer's Comments		<p>The inclusion of the Route in this book – with references to the 16th century plan and details regarding the Standing Stone Gate and Bargain Stone - were quoted by the county council as supporting the view that the route was a historical public vehicular</p>

		<p>highway when the Order to record the route as a byway was considered by the Planning Inspectorate. The objectors made the case that the route was not included in the chapter of the book on Road and Rail because it was not considered to be an ancient highway and that whilst a pictorial map taken from the book showed Ball House; it did not show the Order route.</p> <p>With regards to the book the Planning Inspectorate decision letter states that the statements made by the objectors were correct and that the supporters contentions with regards to the bargaining stone (i.e. that it was improbable that the stone would have been positioned in a location that it could not have been accessed by merchants or farmers on horse-back or on a horse drawn cart) were speculative at best.</p> <p>With regards to this particular investigation it is submitted that the research of a local historian supports the view that a route physically existed from at least the 16th century providing access to – and possibly past at least one property (Ball House/Bawlous) and that at its northern end there were two significant local landmarks which would have been important to travellers and local traders which helps to start to build up a picture of the history of the Route and which are suggestive of the existence a route which would have been capable of being used at least on horseback.</p>
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>Observations</p>		<p>This map shows the southern end of the Route from point A on Reedymoor Lane to approximately point C, near Sand Hall. This route is shown as a 'cross road' on the map. Two buildings are shown which appear to be accessed from the route. Neither are named but their positioning suggests that they are Sand Hall and Ball House. The rest of the Route is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>It is not known what is meant by the term 'cross road' but the only other category of highway shown on the map is turnpike roads. The fact that the route from point A to buildings likely to be Sand Hall and Ball House is shown is evidence that at least part of the route physically existed in 1786. It is not known why the rest of the route was not shown on the map. It may have been that Yates did not consider the Route to be a public vehicular highway or that it was unenclosed or that the hedges/fences/walls were in disrepair or possibly that this section was not surveyed, as surveys were expensive. However, the fact that part of the Route is shown suggests that it was of a substantial nature capable of being used at that time and is not inconsistent with how a route which may have been used as a public bridleway may not have been shown on early commercial maps.</p> <p>It should be noted that a number of properties are shown on the map in the area surrounding Foulridge with no means of access to them shown suggesting that in this case the cartographer considered the Route – from point A to Sand Hall and Ball House</p>

		to be more than a private route leading to properties and worthy of inclusion on this small scale commercial map.
Cary's Maps of Lancashire and West Riding of Yorkshire	1787	John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831. In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.


Map of Lancashire





Map of the West Riding of Yorkshire

Observations		The Route is not shown on either small scale map.
Investigating Officer's Comments		The Route – or at least part of it - may have existed in 1787 (as shown on Yate's Map) but was not considered by Cary to be a public vehicular highway or a route of sufficient significance to be included on his maps. The fact that the Route is not shown on such small scale maps is not inconsistent with the existence of public bridleway rights at that time.
Smith's Map of Lancashire	1804	Charles Smith was a London engraver and map seller. His map of Lancashire appeared as a single sheet in 1801 and then between 1804 and 1846 was published in subsequent editions of the New English atlas. His Map was similar to Cary's Map of Lancashire dated 1789 but is not a direct copy. It is thought that Smith and Cary used common sources, especially Yates survey, and since both were aiming at the same market – the increasing number of private and commercial travellers – it is not considered surprising that they produced similar maps.

		
Observations		The Route is not shown. Buildings consistent with the location of Sand Hall and Ball House are shown (but not named).
Investigating Officer's Comments		The Route, if it did exist, was not considered by Smith to be a significant public vehicular route at that time. It may have existed as a private access route or as a public footpath or bridleway but such routes were not normally shown due to the scale and purpose for which the maps were published.
Honour of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.

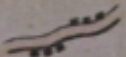
EXPLANATION

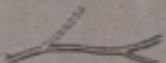
Market Towns with the Distance from London

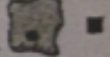
in Measured Miles as **BLACKBURN**


209 $\frac{1}{2}$

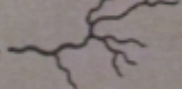
Churches and Chapels +

Turnpike Roads 

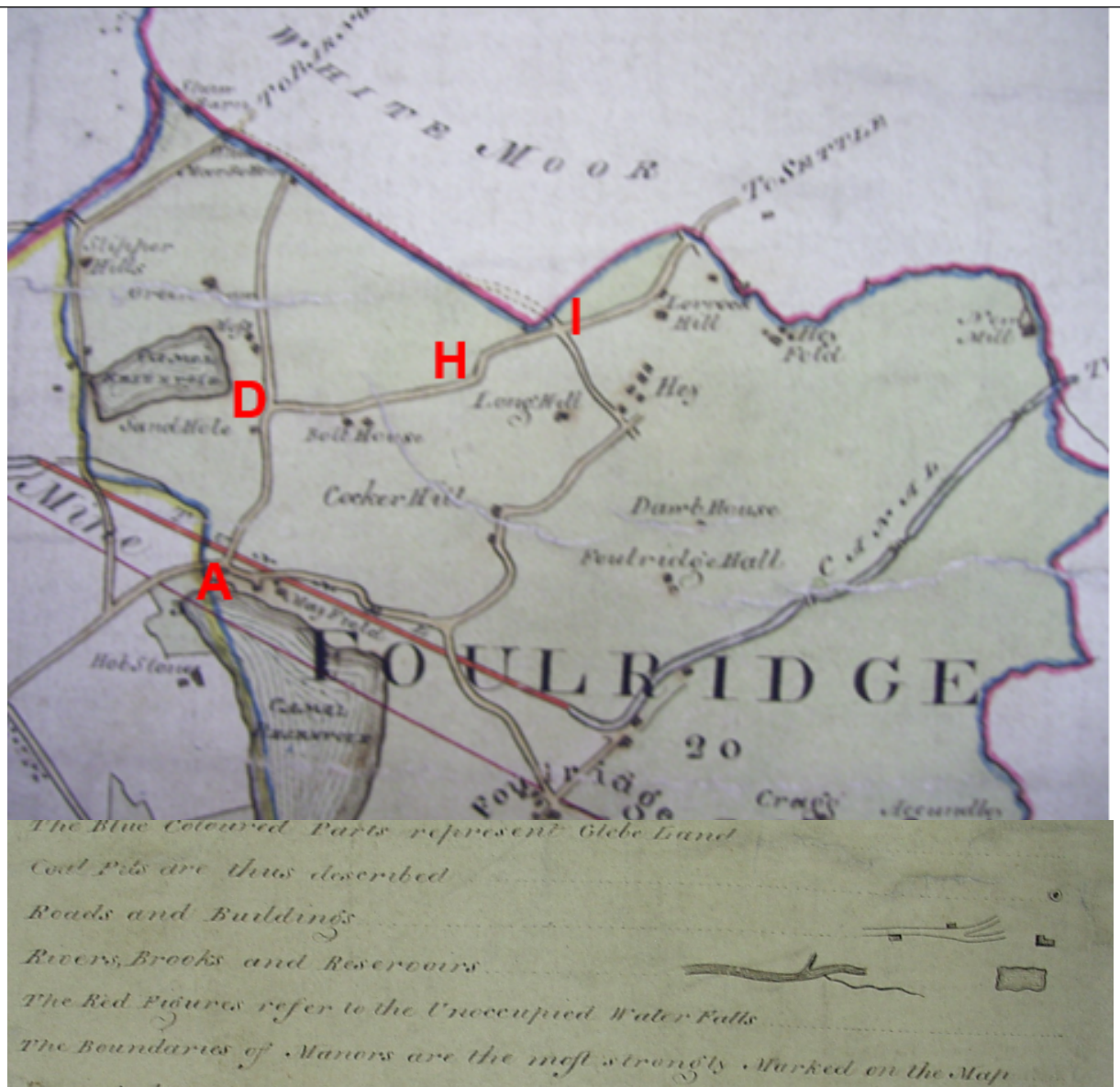
Cross Roads 

Parks & Gentlemens Houses 

Navigable Canals 

Rivers 

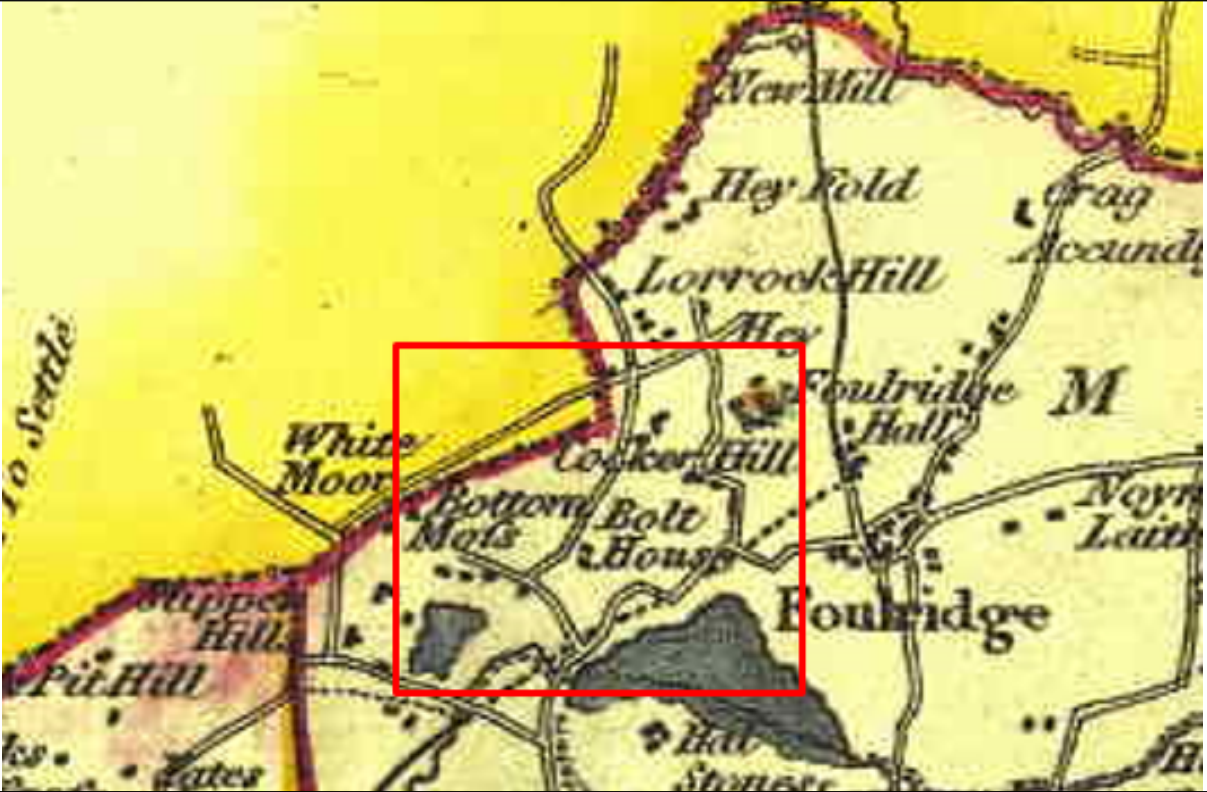
NB. The figures on the Turnpike Roads express the Distance in measur'd Miles between one Market Town and another


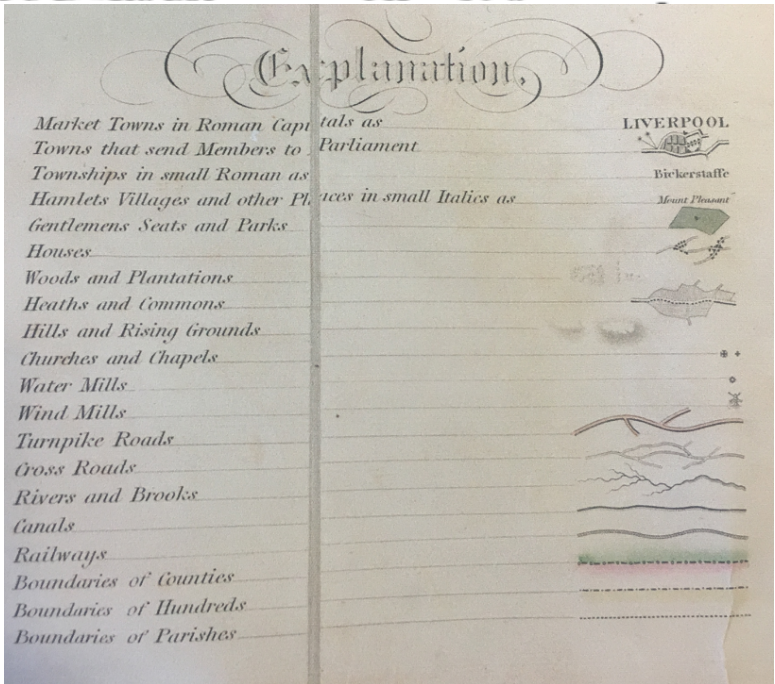


Observations

This privately produced map shows the whole of the Route, which by reference to the map key, is shown as a 'road'. The route is coloured, as are all the other roads in the area. The shape of the route is clearly identified, with a slight bend to the north of the old railway line (which is not shown as it was not built until the 1840s) and then the sharp bend at point D with the property 'Sand Hall' shown and named as 'Sand Hole'. The Route continues from point D in a north easterly direction past two properties called 'Bolt House' which probably correspond to the buildings called 'Ball House' and 'Mistals'. The Route is shown continuing to point H and then turns sharply to the north-west and back again to the north east before continuing to the cross road at point I. The

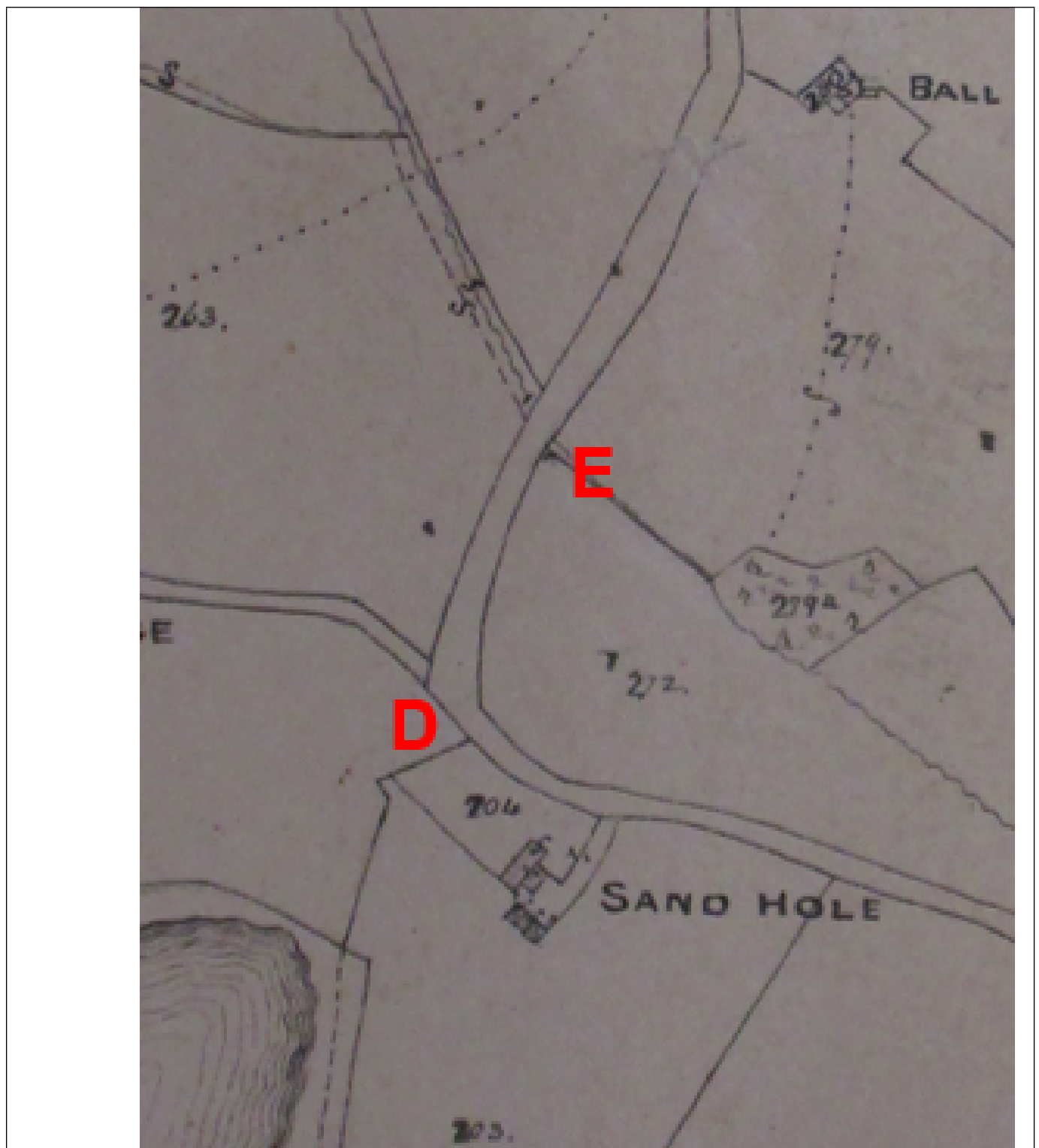
		modern Whitemoor Road which continues to the north-east is labelled on this map 'To Settle'. Standing Stone Lane (which runs to the south west from point I) is shown as an unfenced road.
Investigating Officer's Comments		The earliest map inspected to show the whole of the Route existing as a through route across land forming part of the Estate owned by the Honour of Clitheroe. The Route appeared to provide a through-route between point A and point I and passed properties named on the map as Sand Hole and Bolt House. This small scale map only appeared to show the more significant routes and did not show other routes currently recorded as public footpaths that join the Route. This suggests that the Route was of a substantial nature and would have been capable of being used by people on horseback and possibly with horse drawn vehicles as a through-route at that time. The Route is shown in the same way as routes now recorded as public vehicular highway and is described as a 'road' in the map key.
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		<p>The whole of the Route is shown on Greenwoods Map as a through-route connecting to public vehicular highways and is shown as a cross road. The property Ball House (called Bolt House on this map) is shown adjacent to the eastern side of the Route and Sand Hall is also shown (but not named).</p>
Investigating Officer's Comments		<p>The Route existed in 1818 providing access to a number of properties. The inclusion of the route on a small scale commercially produced map of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway. It is unlikely that a map of this scale would show footpaths. It is not known what Greenwood meant by the term 'cross road' but he only categorised roads as 'cross roads' and 'turnpike roads' according to the key to his map.</p>
Hennet's Map of Lancashire	1830	<p>Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his</p>

		mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
 		
Observations		The whole of the Route is shown as a through-route connecting to vehicular public highways and is depicted on the map as a cross road. 'Bolt House' is shown and is named on the map.
Investigating Officer's Comments		The route under investigation existed in 1830 and is shown as a 'cross road'. It is not fully

		<p>known what is meant by this term. As the only other category of 'road' shown on the map are 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>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i></p> <p>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 but the route under investigation is shown passing properties and connecting to routes that are now recorded as public vehicular highways. It is considered likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that by inclusion on the map the Route was considered to be a public bridleway or carriageway in 1830.</p>
Tithe Map and Tithe Award or Apportionment	1842	<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>





			✓		32.94
	<i>Roads.</i>				
137	Waste & Road		"	2	5
138	Part of Road to Barrowford		"	2	2
63	Ditto ditto		1	"	"
157	Part of Old Road to Skipton		"	1	13
162	Road to Barrowford		2	1	10
158a	Road		"	2	33
23a	Part of ditto				15
33a	Road				8
226	Road from Barnoldswick to Colne		1	1	30
162a	Ditto ditto		3	"	36
263			10		32
		Carried forward			

Observations

The full length of the Route is shown on the Tithe Map as a through-route. It is numbered in one place to the north of Ball House as plot 162a.

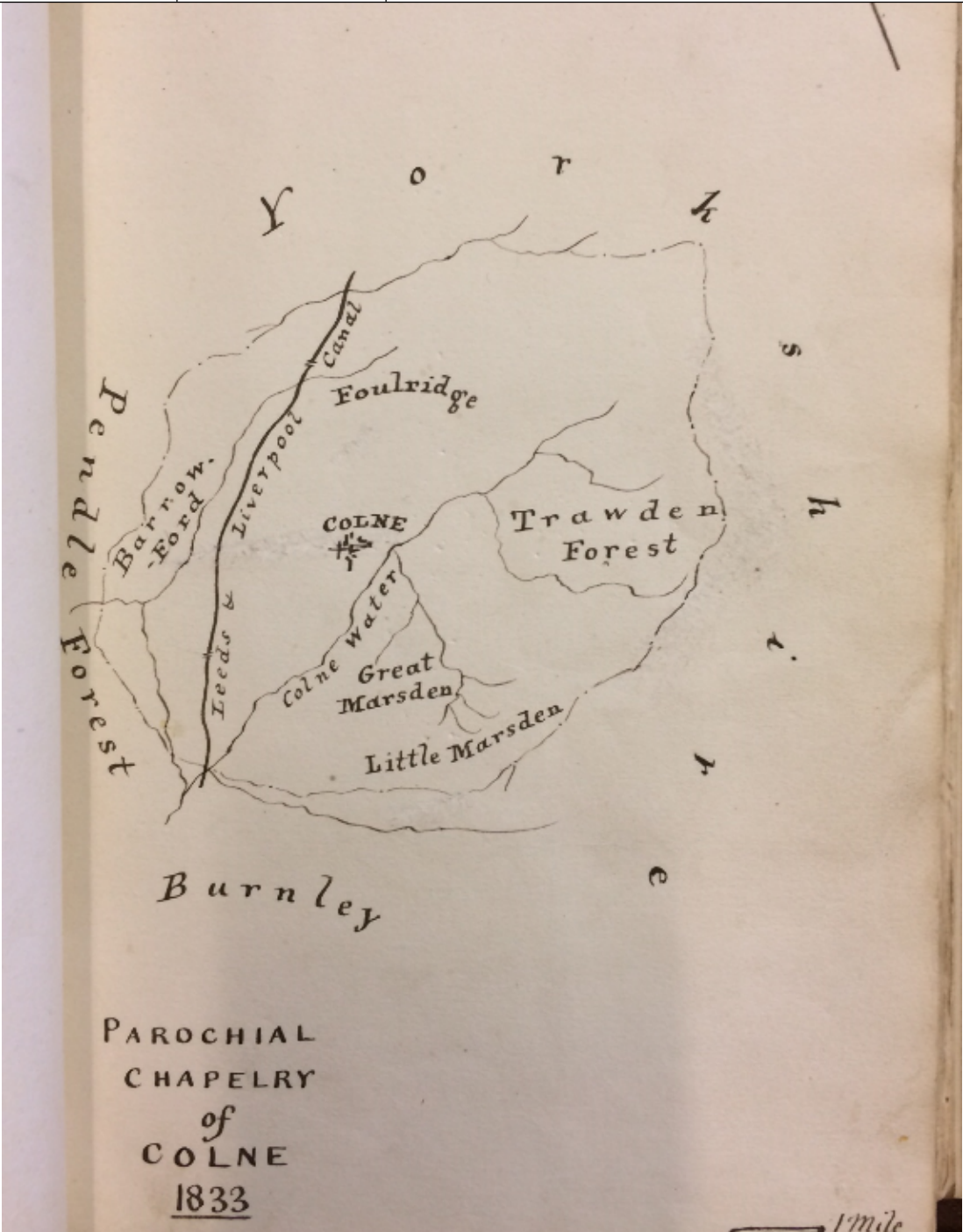
There are no lines drawn across the Route, and so it appears that it was open and not gated and it is shown as a wide enclosed road consistent with how it is depicted on the first inch 6 and 25 inch Ordnance Survey maps detailed below.

It is not clear from the map but the Route may have provided access to Sand Hole, Ball House and an adjacent unnamed building and also to Black Field.

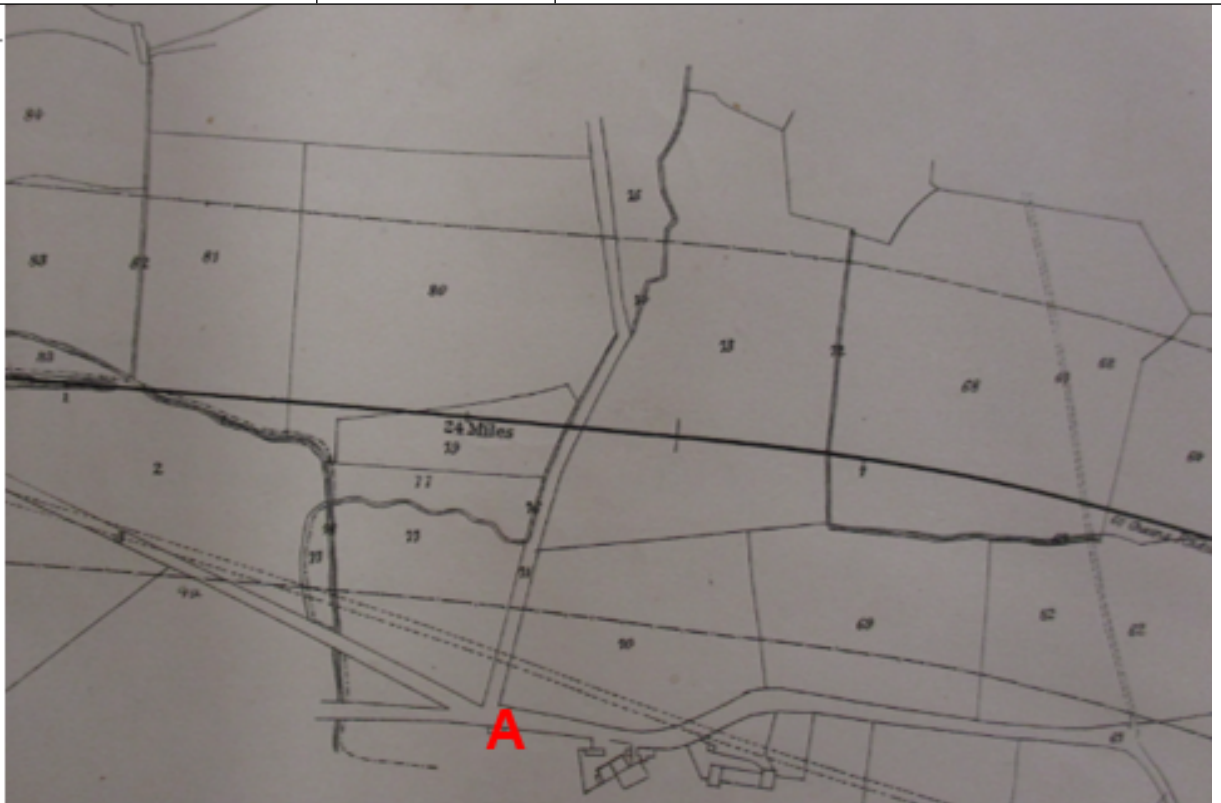
Access from the Route also extended to Moss House but the access to Moss House was gated at the point where it left the Route at point D. Beyond this point the access to Moss House was numbered 207a which is described in the Tithe schedule as a lane owned by John Aspinall and occupied by James Higson.

In the written Award (schedule) that accompanies the map, the Route is referred to as the 'road from Barnoldswick to Colne, as is the continuation of the Route

		<p>northwards from point I (Whitemoor Road). No landowner or occupier is listed in connection with the Route and no tithes are listed as being payable. The Route is listed in the Award in a category detailing 'roads' and at the end of the Award.</p>
Investigating Officer's Comments		<p>It appears that a substantial bounded route physically existed that would probably be wide enough for vehicles (carts) in the 1840s and appears to have been regarded as a public road (from Barnoldswick to Colne) in 1842.</p> <p>It is shown as a bounded route throughout its full length and although not clear, it appears likely to have provided access to a number of properties situated adjacent to it.</p> <p>It is not shown as being gated suggesting access was freely available along the full length.</p> <p>A clearly defined list of roads is grouped together and provided in the Tithe Award. Each road is numbered separately but no landowners or occupiers are listed. The other roads listed correspond to ways that are still recorded as public vehicular highways today providing further evidence that in 1842 the Route was considered to be part of the public highway network.</p> <p>No tithes are payable for the Route but it is accepted that this does not necessarily mean that it was because the road was public. Plot 162a is not listed as being under any state of cultivation which is consistent with it being predominantly a hard surfaced track which was not cultivated or grazed (and therefore not titheable). However it is conceivable that if the track had been grazed (i.e. classed as pasture) tithes could have been payable – even though public rights existed.</p>
Parochial Chapelry of Colne Map	1833	<p>A map referred to by the supporters to the 1988 Order. A tracing of the map was stated to have been submitted to the Inspector at the 1997 Inquiry but there is no copy in the county council's Inquiry records. The map was believed to pre-date 1844 as the railway was not shown but no further information about the map, or its origins were known.</p> <p>Chapelries dated back to medieval times and consisted of a subdivision of an ecclesiastical parish. The Chapelry of Colne</p>

		comprised of the townships of Colne, Marsden, Foulridge, Barrowford Booth and Trawden.
		
Observations		A search for the map was found but the only one identified was contained within records deposited at the Harris Library in Preston. And is clearly not the same map as was referred to at the public inquiry.
Investigating Officer's Comments		No inference can be drawn.
Construction of the Leeds - Liverpool Canal	1786	Canals (and railways) were the vital infrastructure for a modernising economy

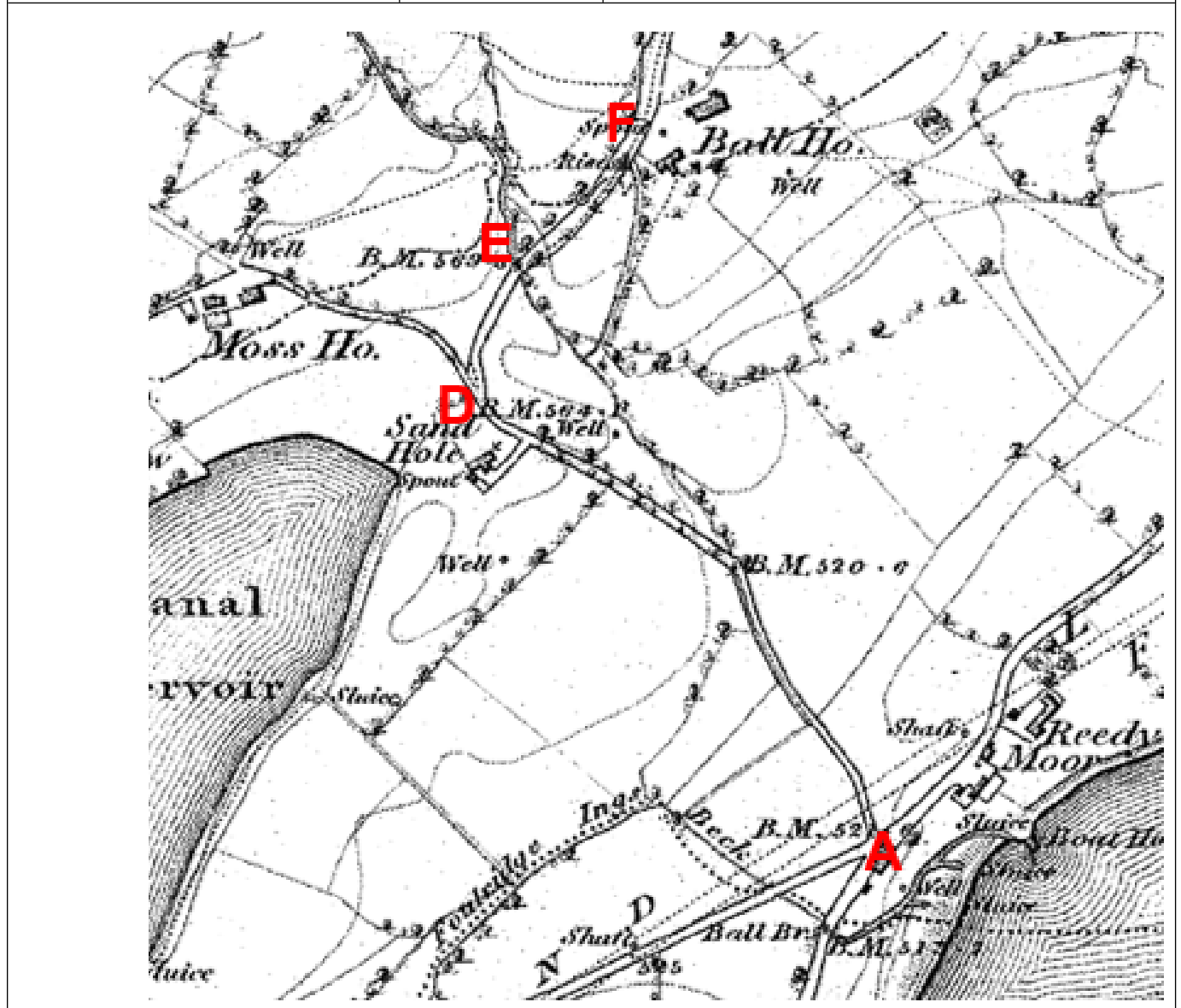
		and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		Foulridge tunnel, carrying the Leeds-Liverpool canal for a distance of over 1 mile opened in 1786 and passes under the Route close to point A. A search was made for any plans or information referring to the Route but nothing could be found.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Leeds and Bradford Railway extension from Shipley to Colne	1844	Records associated with the construction of the railway were inspected including a plan of the proposed route and accompanying schedule and a Memorandum of Agreement between Thomas Parker of Brownlee Hall and the Railway Company.



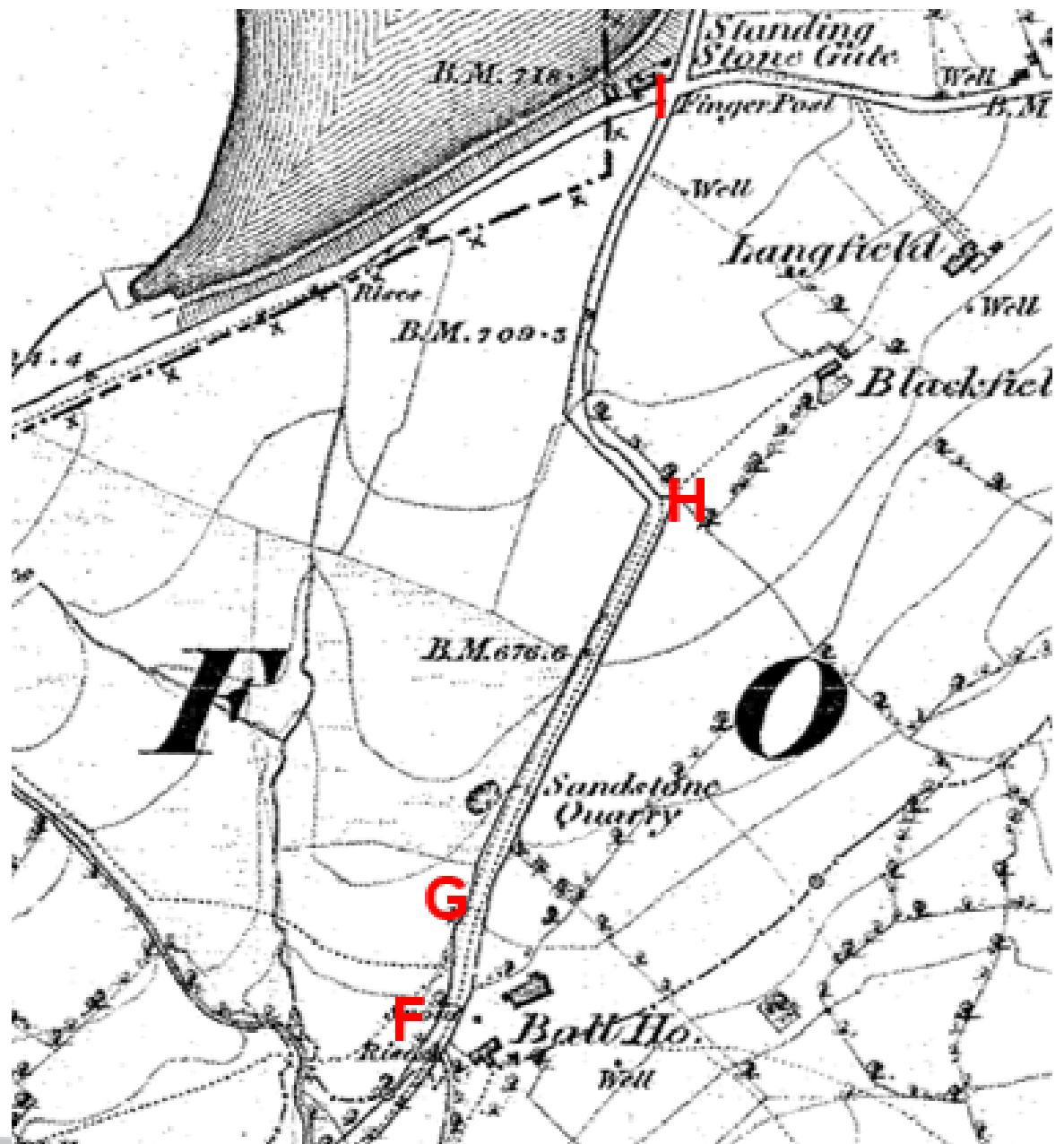
Observations		The Route is crossed by a disused railway,
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		<p>which was originally built as the Leeds and Bradford Railway extension from Shipley to Colne in around 1844. Part of the Route is shown on a railway plan produced before the line was built. The plan shows the whole length of the proposed railway and the land affected by it was numbered with reference to field boundaries.</p> <p>A schedule accompanying the plan was inspected in the County Records Office which listed landowners and occupiers for numbered plots. The Route is shown on the plan from point A through point B and point C and extending towards point D. It is numbered 71 and referred to in the schedule as an occupation road, in the ownership of Leeds Liverpool Canal Company, and 3 private individuals.</p> <p>Reedymoor Lane – from which the Route starts at point A – is also shown on the plan and is numbered 67. It is also described as an occupation road occupied by Richard Walton and owned by Thomas Parker.</p>
Investigating Officer's Comments		<p>The purpose of the plan was to show the route of the proposed railway and to list affected landowners.</p> <p>The Route is shown to have existed in 1844 but is referred to as an occupation road. Reedymoor Lane (a public vehicular highway) was also described as an occupation road.</p> <p>It is not known what was meant by the term 'occupation road' and how it was applied by the railway company when compiling their landownership details but the fact that Reedymoor Lane was similarly described indicates that it cannot be taken to indicate lack of higher public rights than footpath.</p>
Inclosure Act Award and Maps		<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>
Observations		<p>There is no Inclosure Award available for the land crossed by the Route.</p>

Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848 . ¹



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



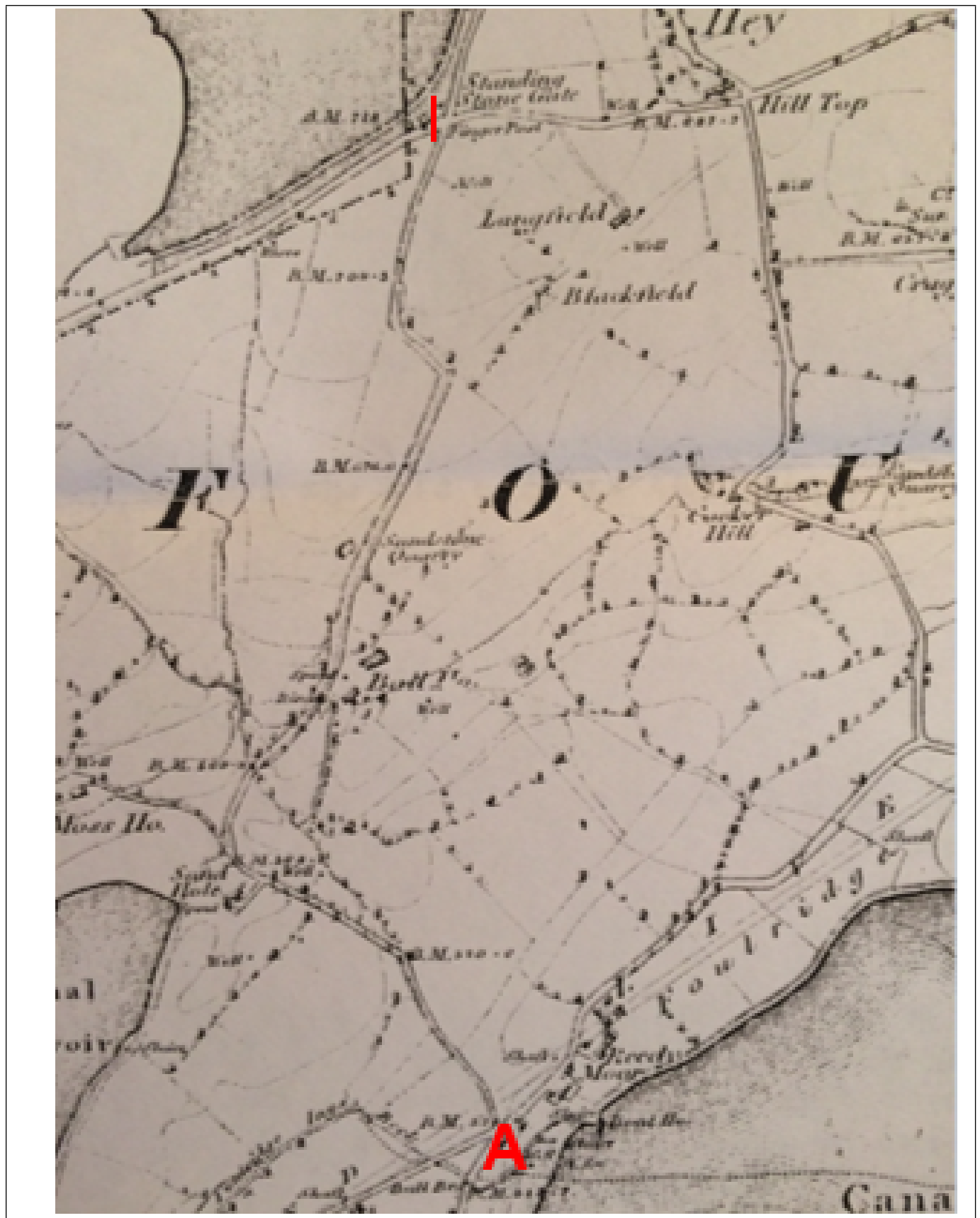
Observations

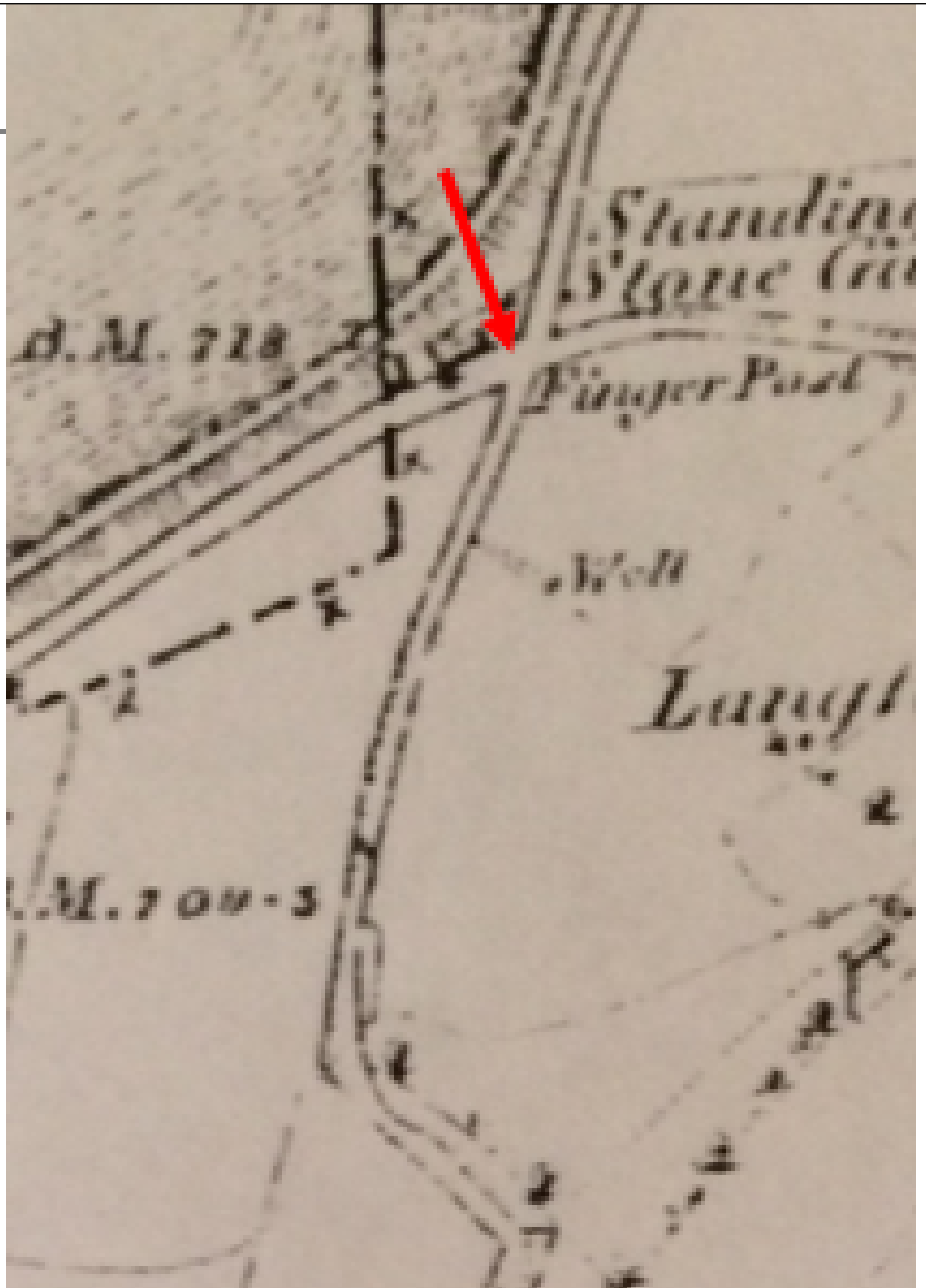
The whole length of the Route is shown as a through-route. No barriers are shown across the route suggesting that it was ungated and access unrestricted. The Route provides access to and past a number of named properties on the map.

The full length of the Route is bounded on either side by solid lines indicating that it was physically separated from the adjacent farm land. It appears to be of a substantial width consistent with how other routes now recorded as public vehicular highways are shown.

Standing Stone Gate is shown (named) at

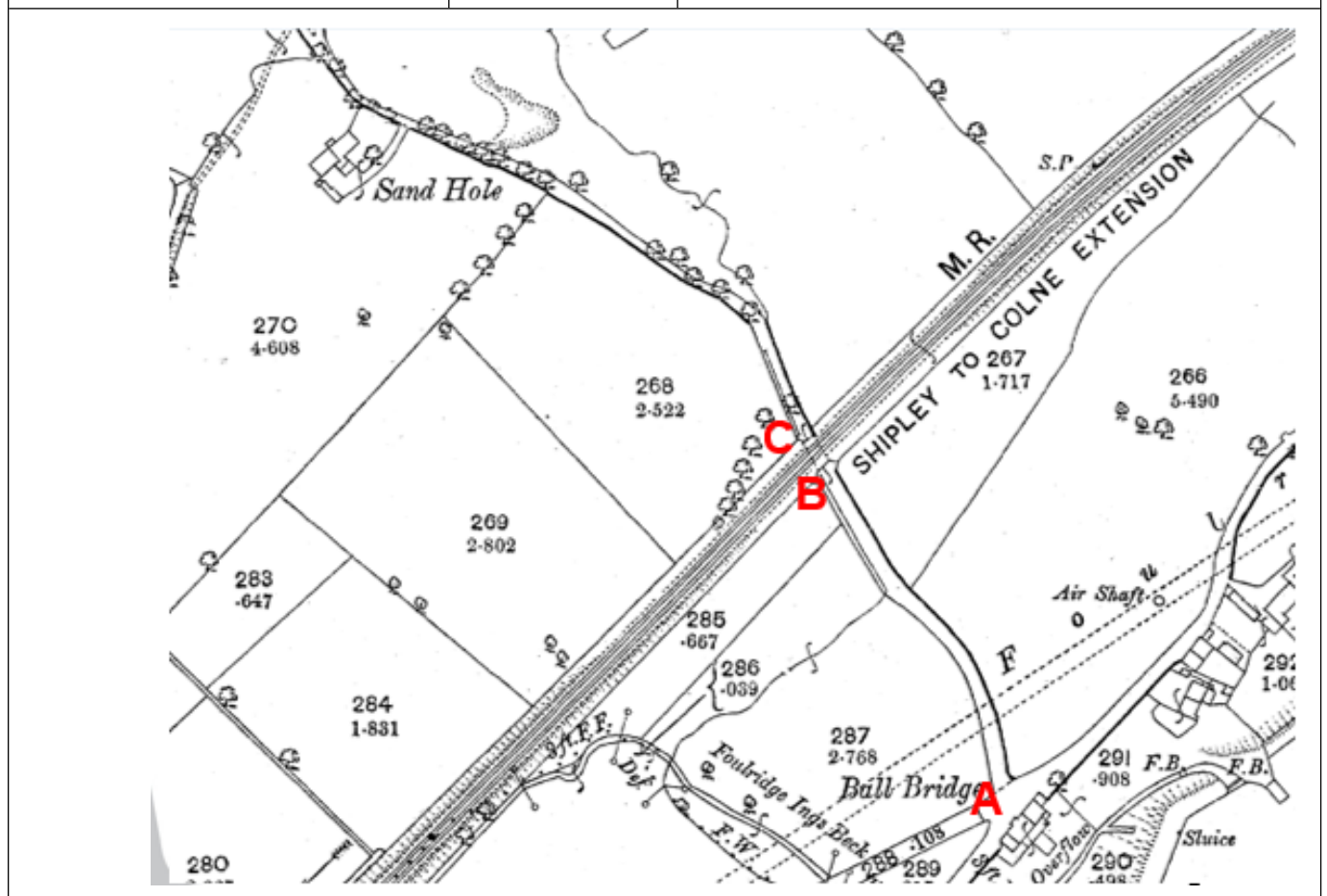
		the northern end of the route and a finger post is also marked. Five bench marks are also shown along the Route.
Investigating Officer's Comments		<p>The full length of the Route existed and appeared to be capable of being used in 1848.</p> <p>It is considered that a substantial bounded route providing access to and past a number of different properties and connecting to a network of other public highways would have been at least a public bridleway and may have carried public vehicular rights.</p> <p>A number of bench marks can be seen located along the Route but it is acknowledged that whilst this may suggest that the Route was accessible it is not necessarily indicative of public status as bench marks can be found at other locations on land which is not publicly accessible.</p>
One inch OS Map	1858	Small scale Ordnance Survey Map extract found on original application file. Surveyed 1842-49 and published 1858.

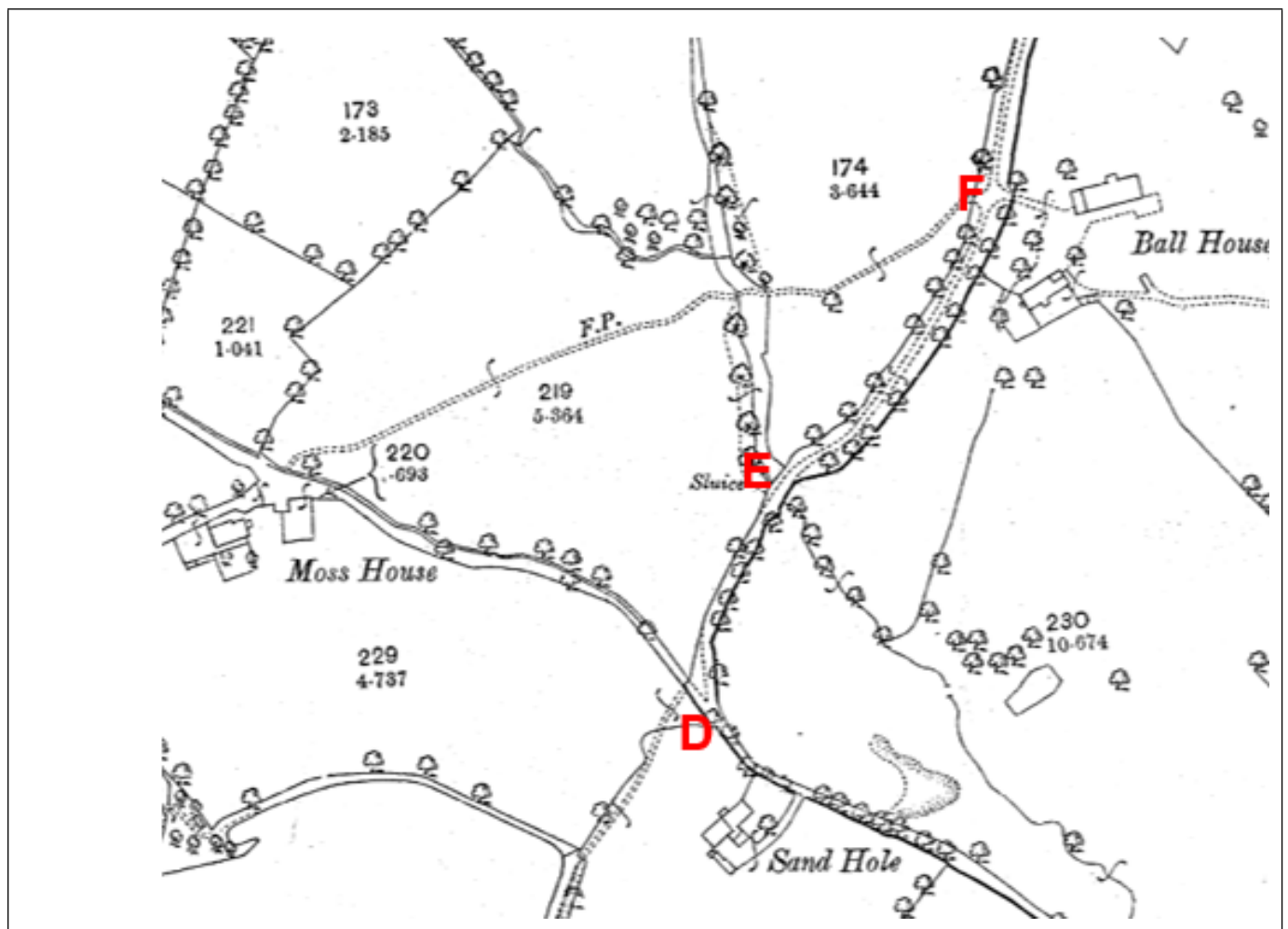


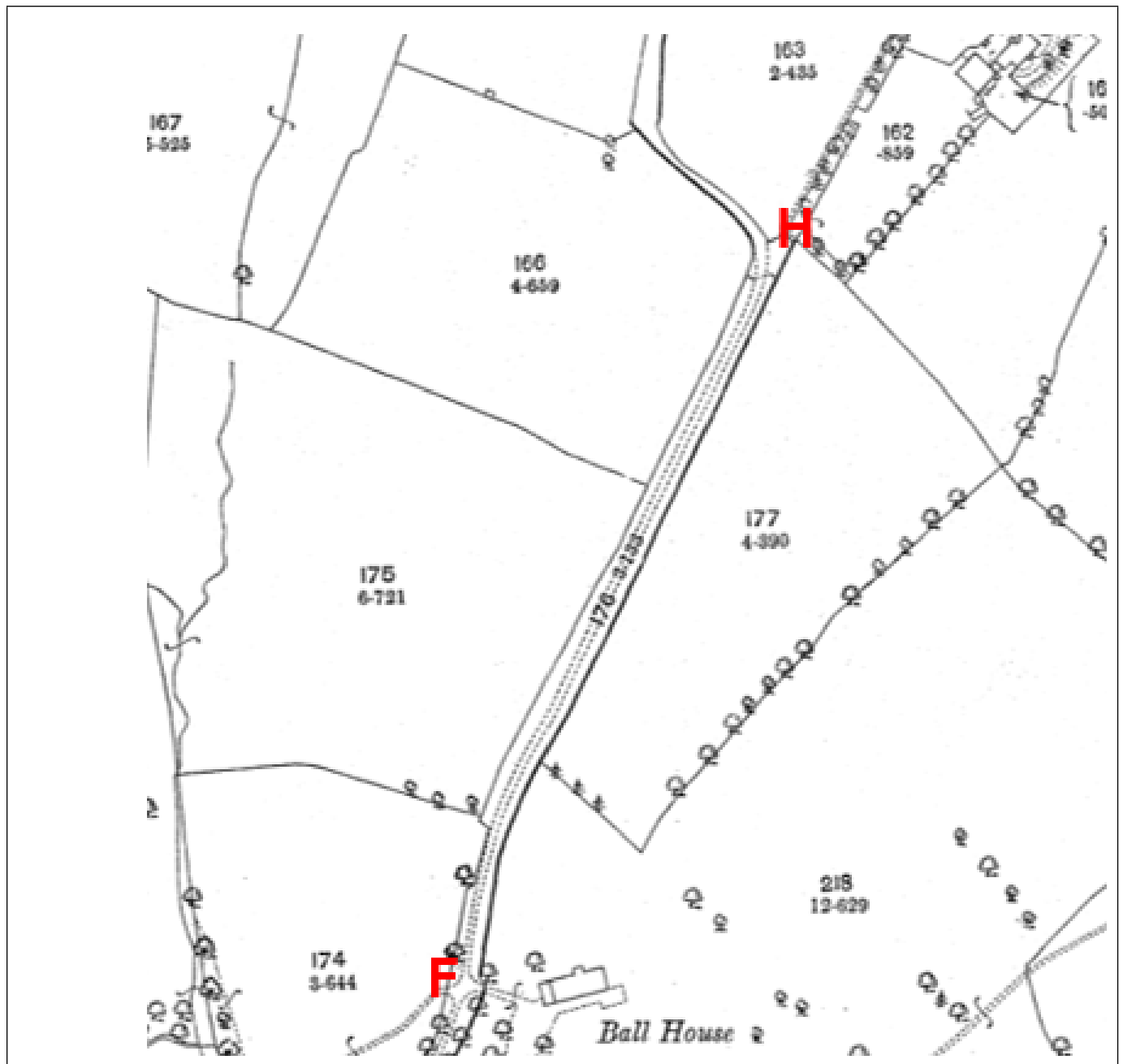


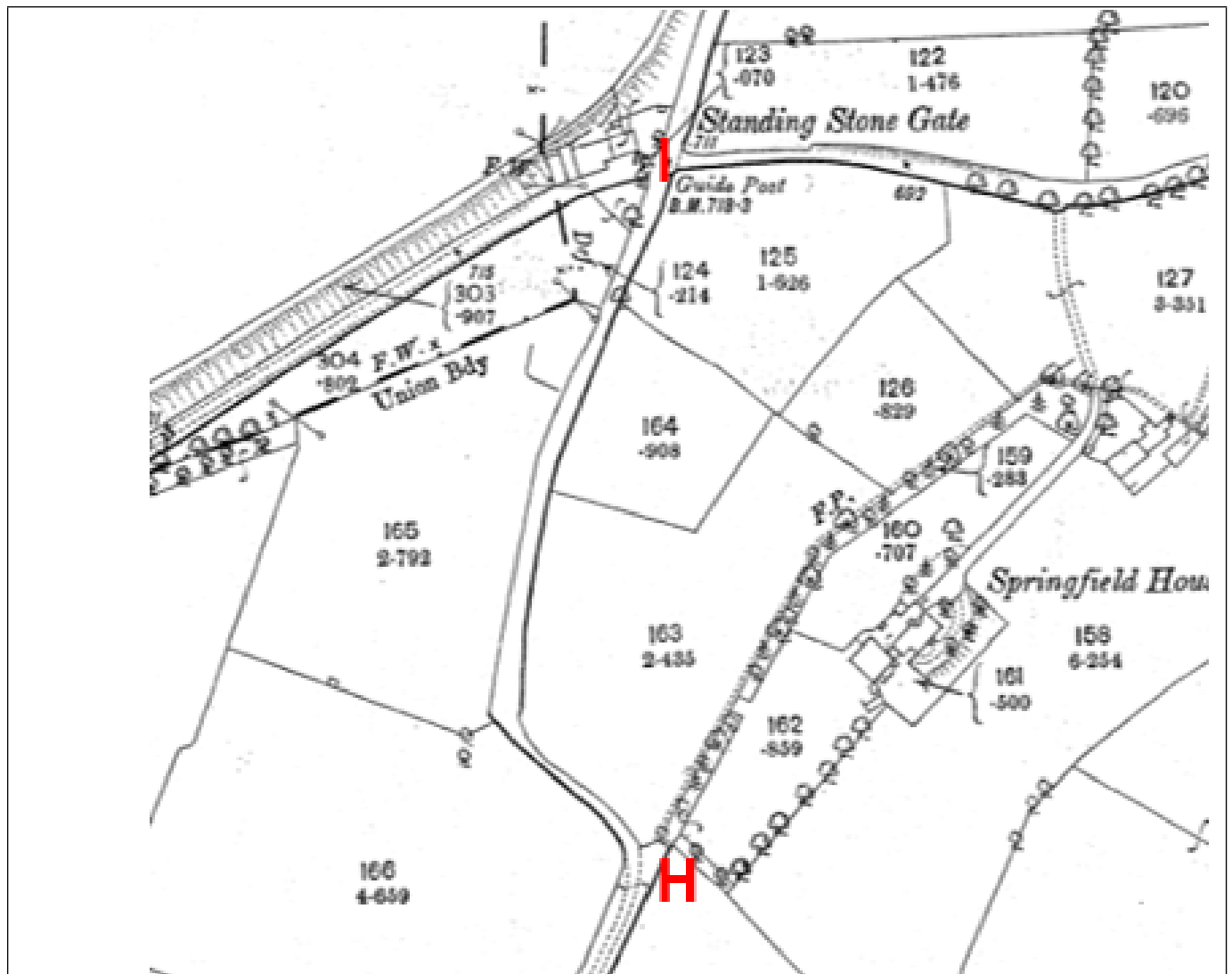
Observations		The full length of the Route is shown as a substantial bounded route in the same way as connecting public vehicular routes are shown.
Investigating Officer's Comments		The survey on which the map is based predates the construction of the railway

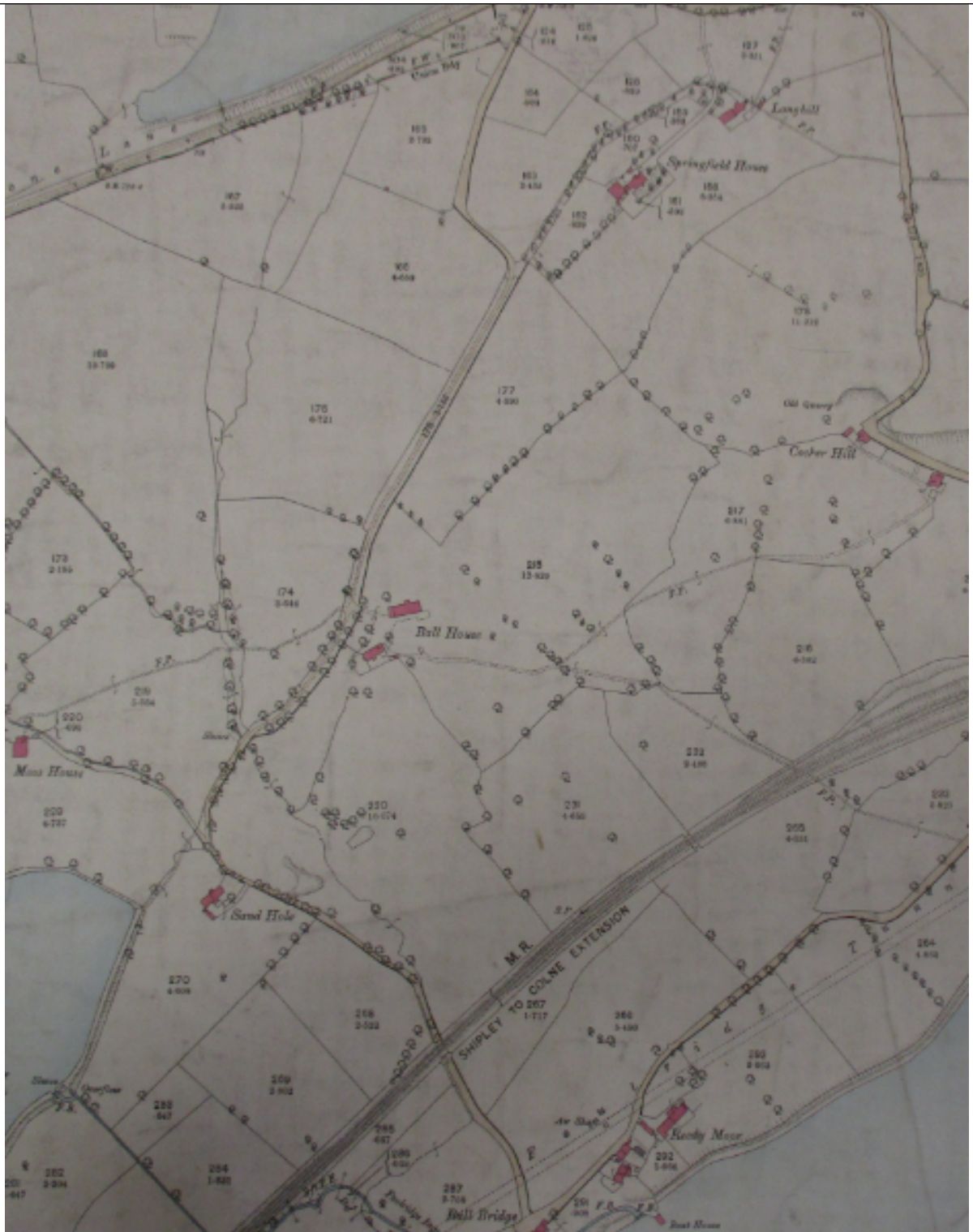
		<p>which is shown on the second edition 1 inch and first edition 25 inch maps.</p> <p>The Route is shown in the same style as other non-turnpiked roads. The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the route on this map is suggestive of a route that was capable of being used at least on horseback and possibly by horse and carts.</p>
25 Inch OS Map	1894	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891-92 and published in 1894.</p>











Coloured copy of 1st edition 25 inch map

Observations

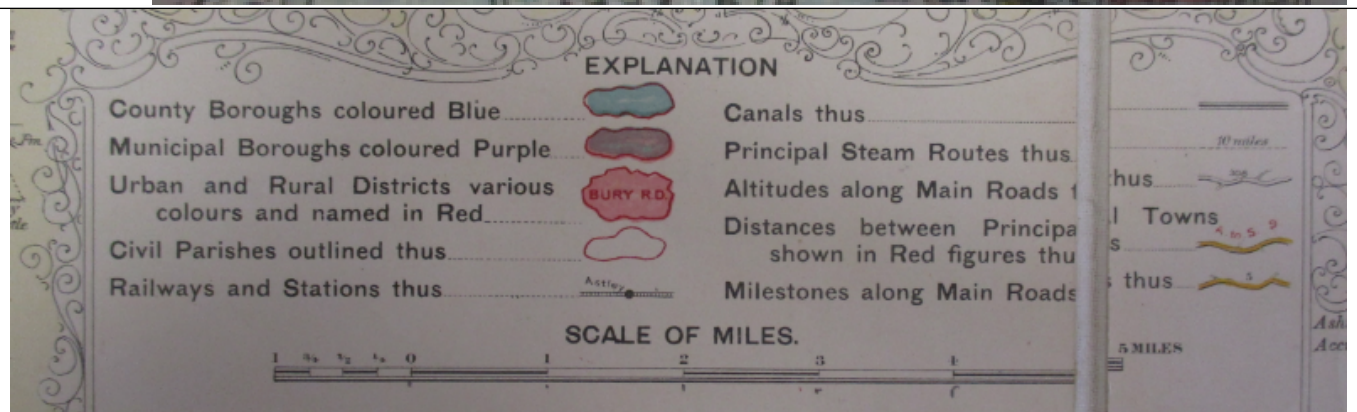
The whole of the Route is shown shaded to one side on the black and white edition of the map and on the coloured copy of the same map inspected in the County Records office the full length of the Route is also shown coloured as was consistent with the way that routes considered to be public roads at that

		<p>time where shown.</p> <p>There are no gates or other barriers across the route on this map, other than at the crossing of the railway line. The railway is named as the MR (<i>Midland Railway</i>) Shipley to Colne Extension. There are pecked lines across the southern end of the route (point A) where it joins Reedymoor Lane, which may indicate that there was a change in the surface from Reedymoor Lane when turning into the Route.</p> <p>Access from the Route to Ball House is shown at point F and a guide post is indicated to exist at the junction of routes at point I.</p> <p>The route is shown as parcel number 176 with an acreage of 3.133 with adjacent fields and properties numbered separately.</p>
Investigating Officer's Comments		<p>The Route existed in 1894 and provided access to a number of properties and also a through-route connecting Reedymoor Lane with Standing Stone Lane and Whitemoor Road.</p> <p>Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over then at a trot so the fact that the route is shown in this way is consistent with how it was recorded on the Tithe Map and Award and how it was included on early small scale commercial maps and indicated that the route was probably capable of being used by horses and is consistent with use of the route by the public at least on horseback at that time.</p> <p>The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status.</p>
1 inch OS map	1898	1 inch OS map surveyed 1842-49, revised 1896 and published 1898.



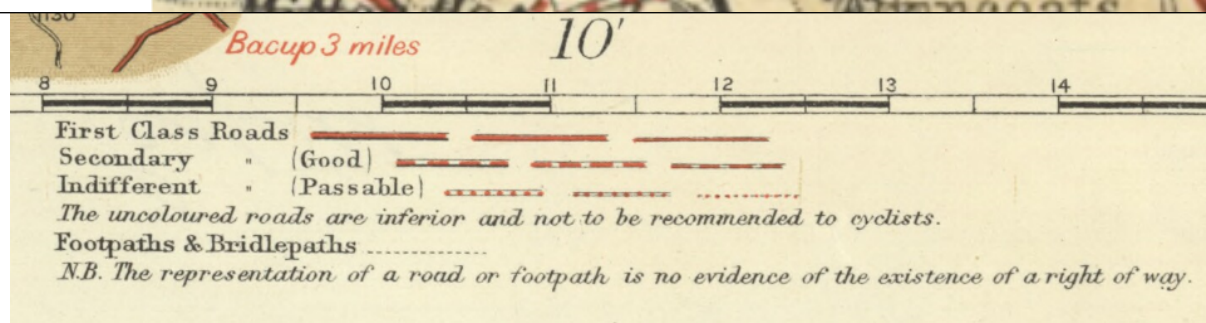
Observations		The map has been revised since the first edition 1 inch map to show the railway. The full length of the Route is shown as a substantial bounded route in the same way as connecting public vehicular routes are shown.
Investigating Officer's Comments		The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the Route on this map is suggestive of a route that was capable of being used at least on horseback and possibly by horse and carts.
Sand Holes Estate Plan	19 th Century	Sand Holes Estate Plan deposited in Leeds University Library by the Yorkshire Archaeological and Historical Society. Ref: MD 335/14/37 and not considered as part of the Byway application. Note: The plan is under copyright until 2039 and whilst a copy can be viewed at the county council offices (or provided by Leeds University Library), it could not be published as part of this report.
Observations		A copy of the undated plan (filed loosely as 19 th Century Sand Holes Estate plan) was

		<p>obtained from Leeds University archives. The ink plan shows the house and four named fields to the east of the Route, with acreages and names of adjacent landowners pencilled in. The Route is shown on its modern day alignment running past Sand Holes and providing access to the property. The Route is not named but is clearly shown to extend past the property in both directions and in pencil it is written 'From Barnoldswick' to the north and 'to Foulridge' to the south. The railway is not shown and from an inspection of Ordnance Survey maps and the Tithe Map it appears that the survey was carried out prior to the construction of the railway which subsequently passed through the field named as 'Low Meadow'.</p>
Investigating Officer's Comments		<p>This plan was not submitted as part of the original application for a Byway open to all Traffic. Whilst the plan is undated it appears to predate the construction of the railway. It is not known whether the pencil annotations were added at the time of survey/preparation of the plan but this is quite possible as pencils were invented in the late 18th century and the pencil markings relate to measurements taken as part of the survey and landownership information.</p> <p>The fact that the Route is shown passing the property and not just providing access directly to it suggests that it was considered to be a through-route at that time – particularly as it is annotated as continuing to Barnoldswick (and Foulridge) rather than to other properties (for example Balls Farm) supporting the view that the Route was considered to be more than an occupation road in the 19th century.</p>
Bacon's Map of Lancashire	1904	<p>G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps.</p>



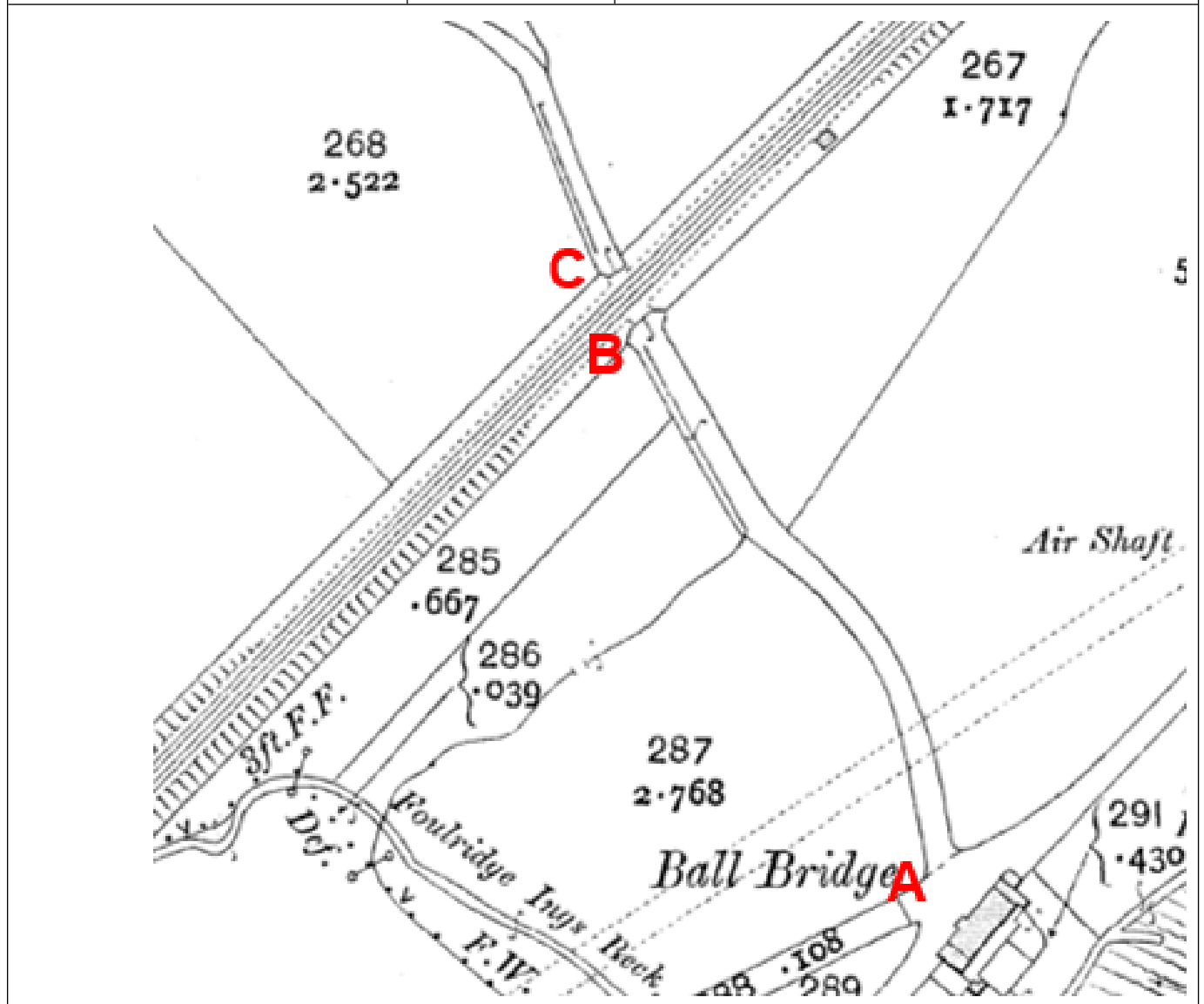
Observations		The full length of the Route is shown on the map as a through route connecting to public vehicular routes.
Investigating Officer's Comments		GW Bacon was an American entrepreneur who moved to London and was known to have been involved in numerous business ventures including the publication of world maps. The maps of the British Isles were at a small scale and as such only the more significant routes are generally shown. Commercial maps of this nature were

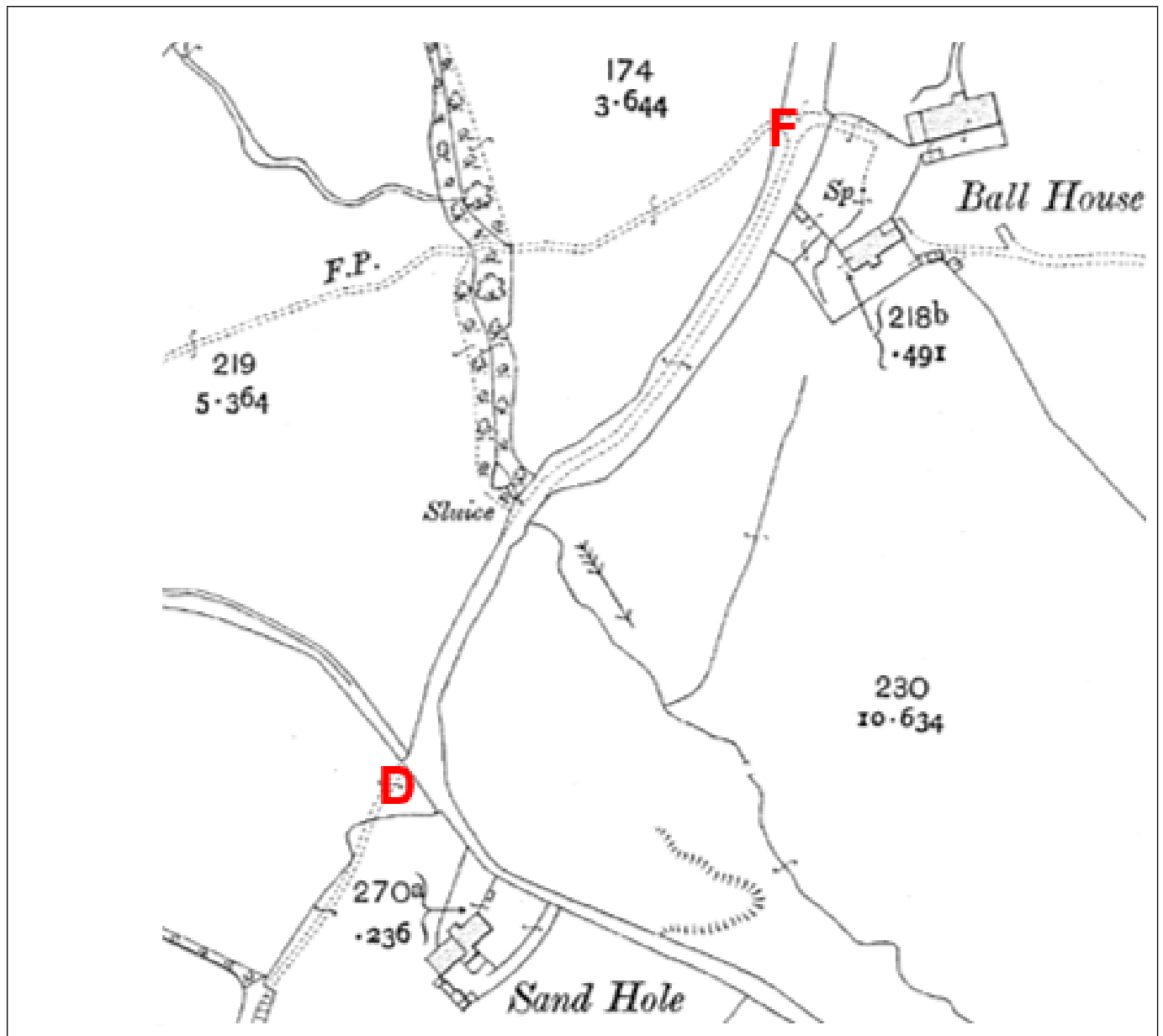
		<p>expensive to produce and to purchase and as a result routes shown were often considered to be public through-routes. The Route is shown in the same way as routes now known to carry public vehicular rights supporting the fact that it existed as a substantial physical route at that time and that it was probably available for use by the public on horseback and possibly with vehicles.</p> <p>This plan was not submitted as part of the original application for a Byway open to all Traffic.</p>
Bartholomew's half inch map	1906	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.</p>

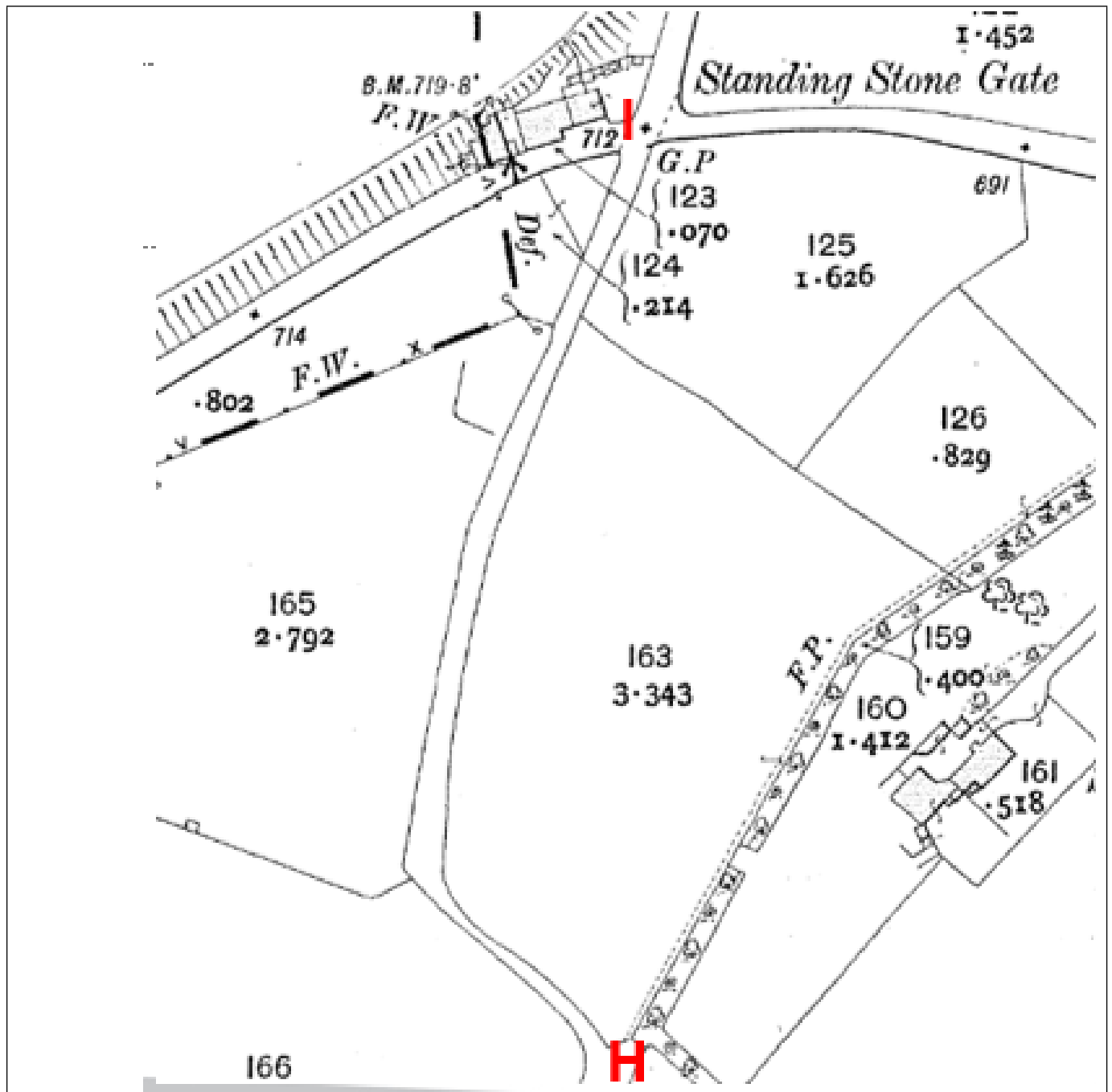


Observations		<p>The early 1900s saw a significant increase in the use of motorised vehicles and the classification of minor roads was constantly being revised by Bartholomew as some were improved to cope with the increasing traffic while others were virtually abandoned and fell into disrepair. Before 1920 few roads other than main roads were tarred but the travelling public had lower expectations of surface conditions than today and it would not be uncommon for an unsealed road, at the time considered adequate for horse drawn vehicles, to be shown.</p> <p>The Route is clearly shown depicted as a secondary road considered to be in good condition.</p>
Investigating Officer's		Whilst the key to the map states that the

Comments		<p>representation of a road or footpath is no evidence of a right of way the fact that the route is clearly shown as a secondary road in good condition suggests that it was considered to be a public highway in good useable condition in the early 1900s.</p> <p>This map was not submitted as part of the original application for a Byway open to all Traffic.</p>
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1891-92, revised in 1910 and published in 1912.







Observations		The 1912 edition of the map shows the Route in the same way as the earlier edition of the 25 inch OS map.
Investigating Officer's Comments		The Route existed as a substantial bounded through-route in 1912 which appeared capable of being used.
Finance Act 1910 Map	1910	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

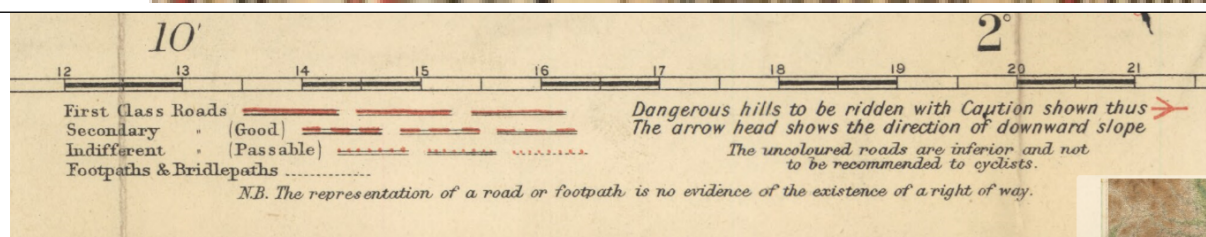
		<p>deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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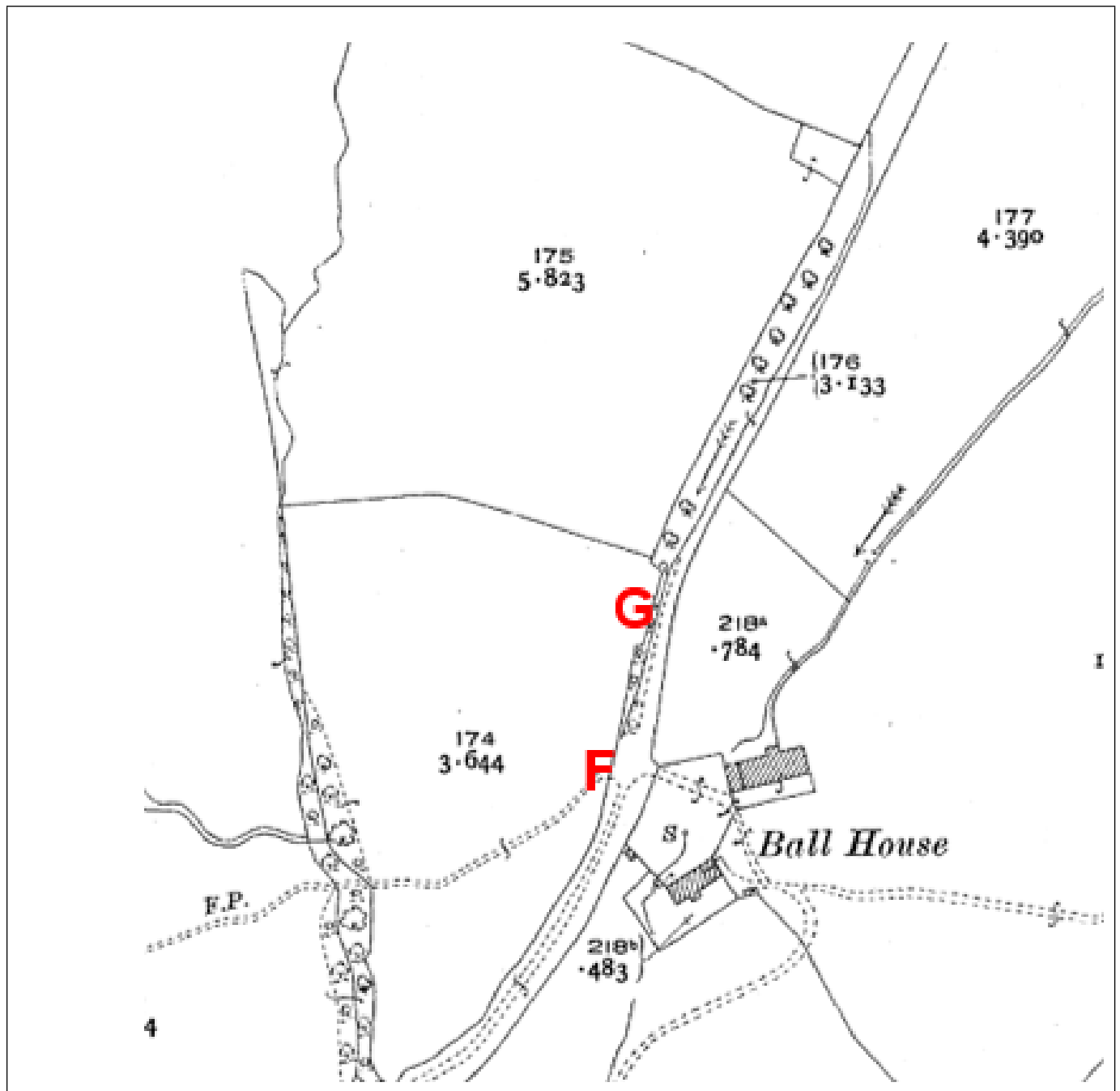
Observations	<p>The full length of the Route, with the exception of the railway between point B and point C is shown as being exempt from the numbered hereditaments.</p> <p>The railway is numbered as plot 6608. The Field Book provides little information about the land and no deductions are claimed for public rights of way or user.</p> <p>From point A extending towards point B land on either side of the Route is braced and included in the same numbered plot (6566) indicating that it was in the same</p>
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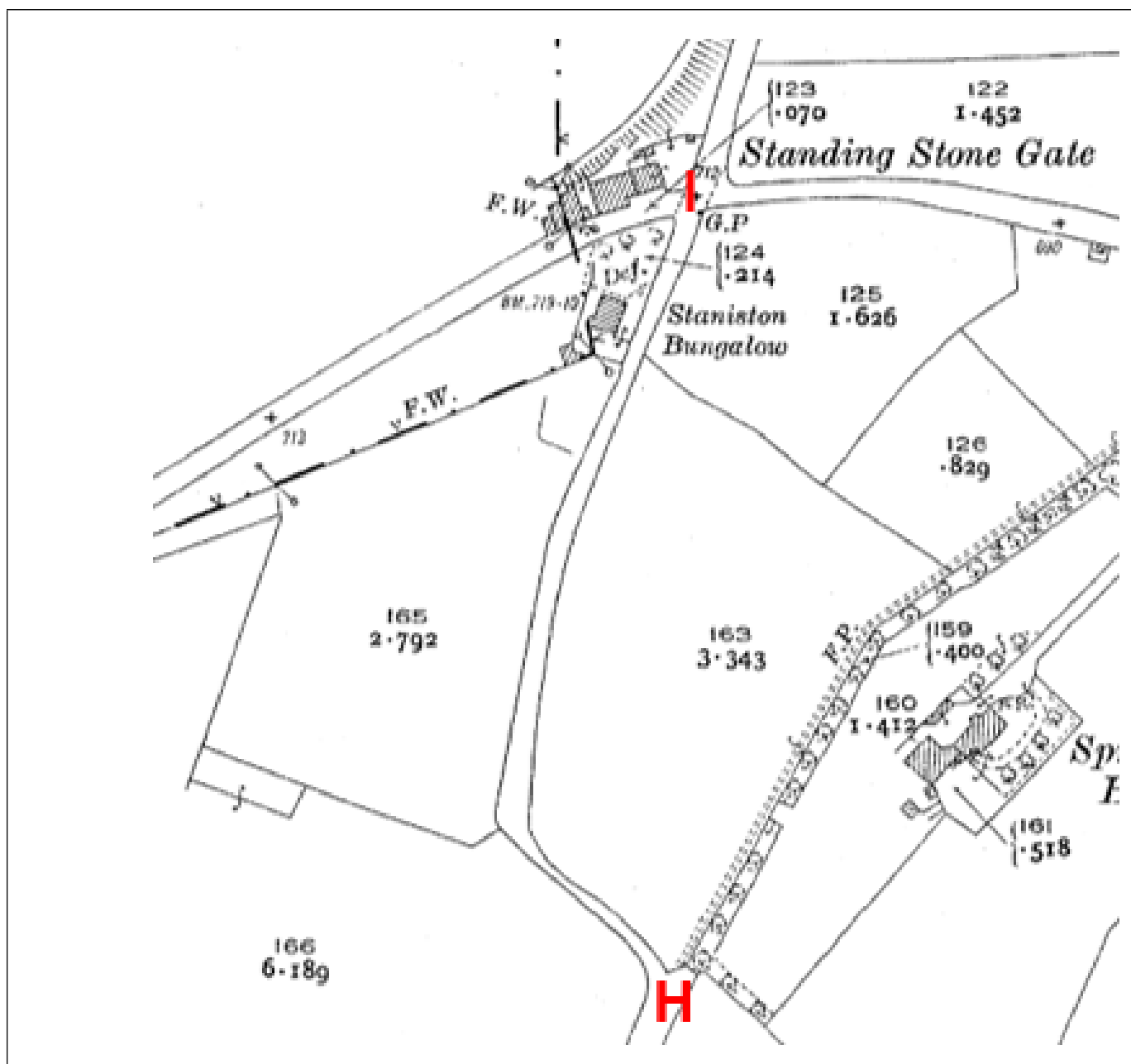
		<p>landownership. The Field Book entry for 6566 makes no reference to the Route.</p> <p>Beyond the railway crossing land to the west of the Route is numbered 6568 and relates to Sand Hole. A note in the Field Book states that the property was purchased in 1889 but there is no reference to the Route.</p> <p>The Field Book entry for 6573 relates to Ball House and again land on either side of the Route is shown braced together as being in the same ownership but the Route is excluded. In the description of the property it is written 'Land rough, chiefly pasture, fences fair, position about 1 mile from Foulridge and 2 from Colne roads, very moderate.'</p> <p>The owner of Moss Farm (now Holly Bush Farm) claimed a deduction for a road within hereditament 6567. That 'road' connected the Route to a route to Moss House, Greenshaw and Slipper Hill but did not include the Route.</p>
Investigating Officer's Comments		<p>The map prepared under the provisions of 1910 Finance Act obtained from The National Archives shows nearly the whole of the Route excluded from adjacent land in private ownership. 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 the accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable). The Instruction No. 560 to the surveyors said that the parcels 'should continue to be exclusive of the site of the external roadways'. It is advised that roadways were said to be routes 'subject to the rights of the public' and therefore exclusion of a route indicates that public use was known but not necessarily vehicular status. In this instance nearly all the Route is shown outside privately owned land, indicating that the Route's status was recorded as public. The only exception is the railway crossing which is shown to be in the ownership of the railway company.</p>

		<p>The exclusion of the routes from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights.</p> <p>Numbered plots split by the route give further weight to the belief that the route was considered to have public vehicular rights (as public footpaths and public bridleways were normally included within the numbered plots).</p> <p>The fact that the access to Holly Bush Farm (north west from point D) is included as part of a numbered plot indicates that in 1910 it was considered to be of a different status to the route under investigation. It was described as a 'road' but no inference can be drawn regarding public rights and the fact that the 'road' was not excluded from the numbered hereditament suggests that it was not considered to be of the same public status as the Route. A deduction of £25 was however made for public rights of way or user across plot 6567 which, although not specific regarding which route or routes were referred to, is suggestive of public footpath or bridleway rights extending from the Route across plot 6567.</p> <p>The inclusion of the Route across the level crossing as being within a numbered plot for which no deduction was claimed for a public right of way is not uncommon practice where a route with recorded public rights crosses a railway by means of a level crossing and there are other examples of this practice throughout the county whereby public bridleway and public vehicular rights have been found to exist across it.</p> <p>In conclusion, the fact that the whole of the Route (with the exception of the railway crossing) is shown excluded from the numbered plots, which were owned by a number of different landowners, suggests a common belief that the route carried at least public bridleway rights.</p>
Bartholomew half inch map	1919-1924	Further edition of Bartholomew's small scale maps.



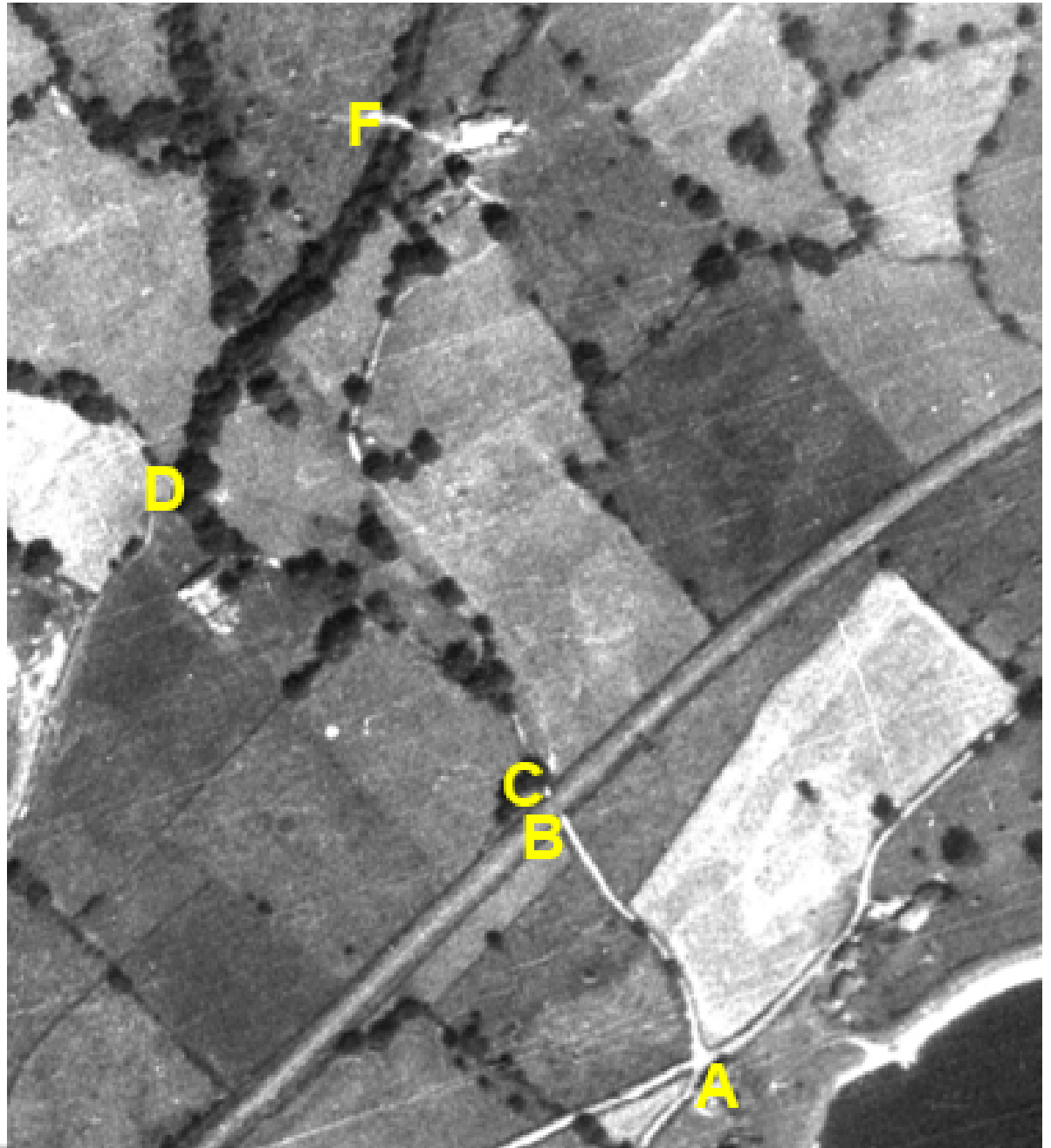
Observations		The Route is shown as a substantial bounded through-route denoted as a secondary road in good condition.
Investigating Officer's Comments		The reputation of the route in the 1920s still appeared to be of a public vehicular route in good condition. This map was not submitted as part of the original application for a Byway open to all Traffic.
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1891-92, revised in 1930 and published 1932.



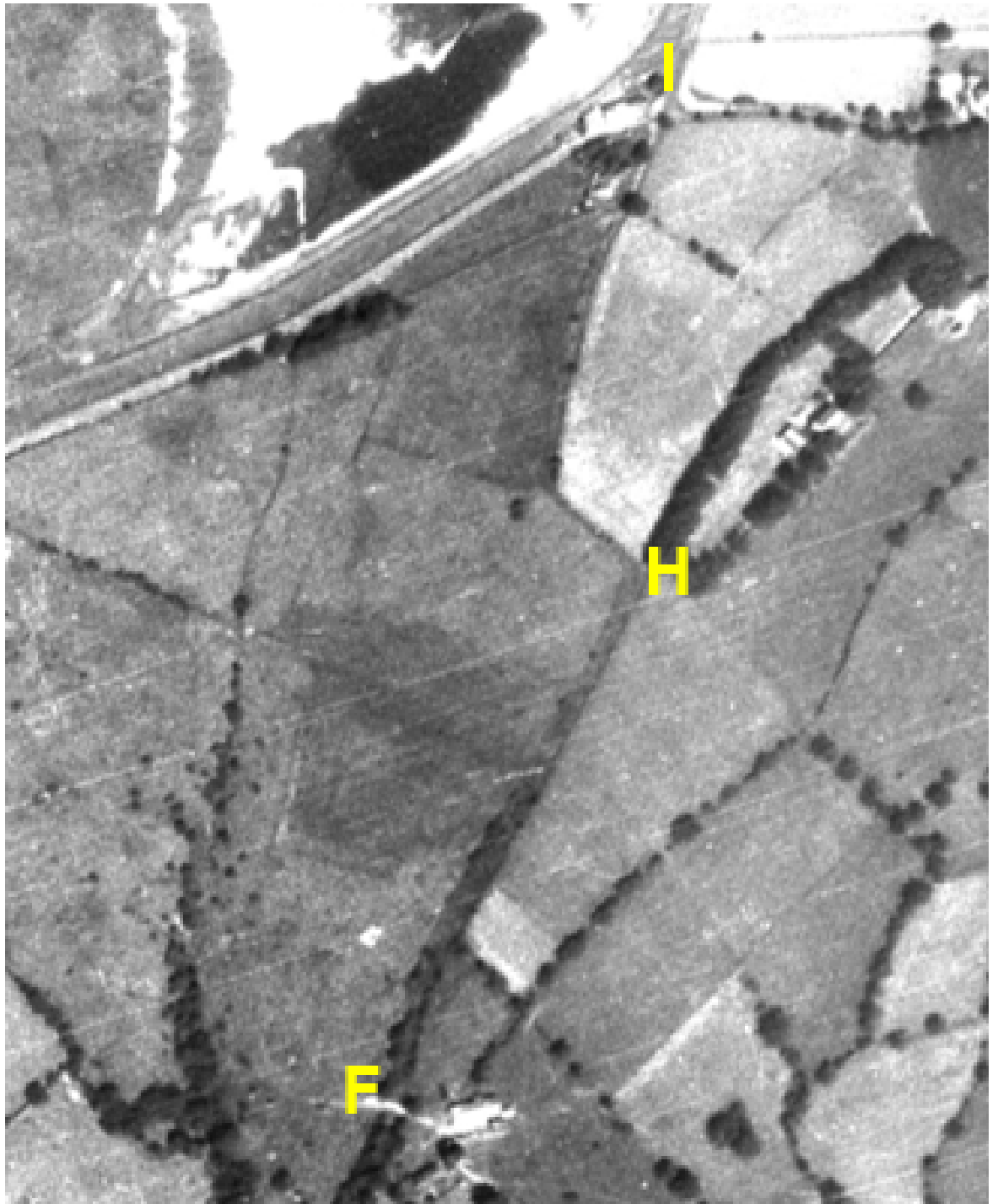


Observations		There is a significant change to the Route on the 1932 edition of the map. Trees and a watercourse (stream) are shown within the width of the Route north of point G suggesting that this section was no longer as wide or accessible as it previously had been shown.
Investigating Officer's Comments		The Route existed and was probably still available as a through-route but use of the whole route by vehicles or horse drawn vehicles may have declined or become more difficult/less frequent resulting in the Route becoming more overgrown in places.

Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
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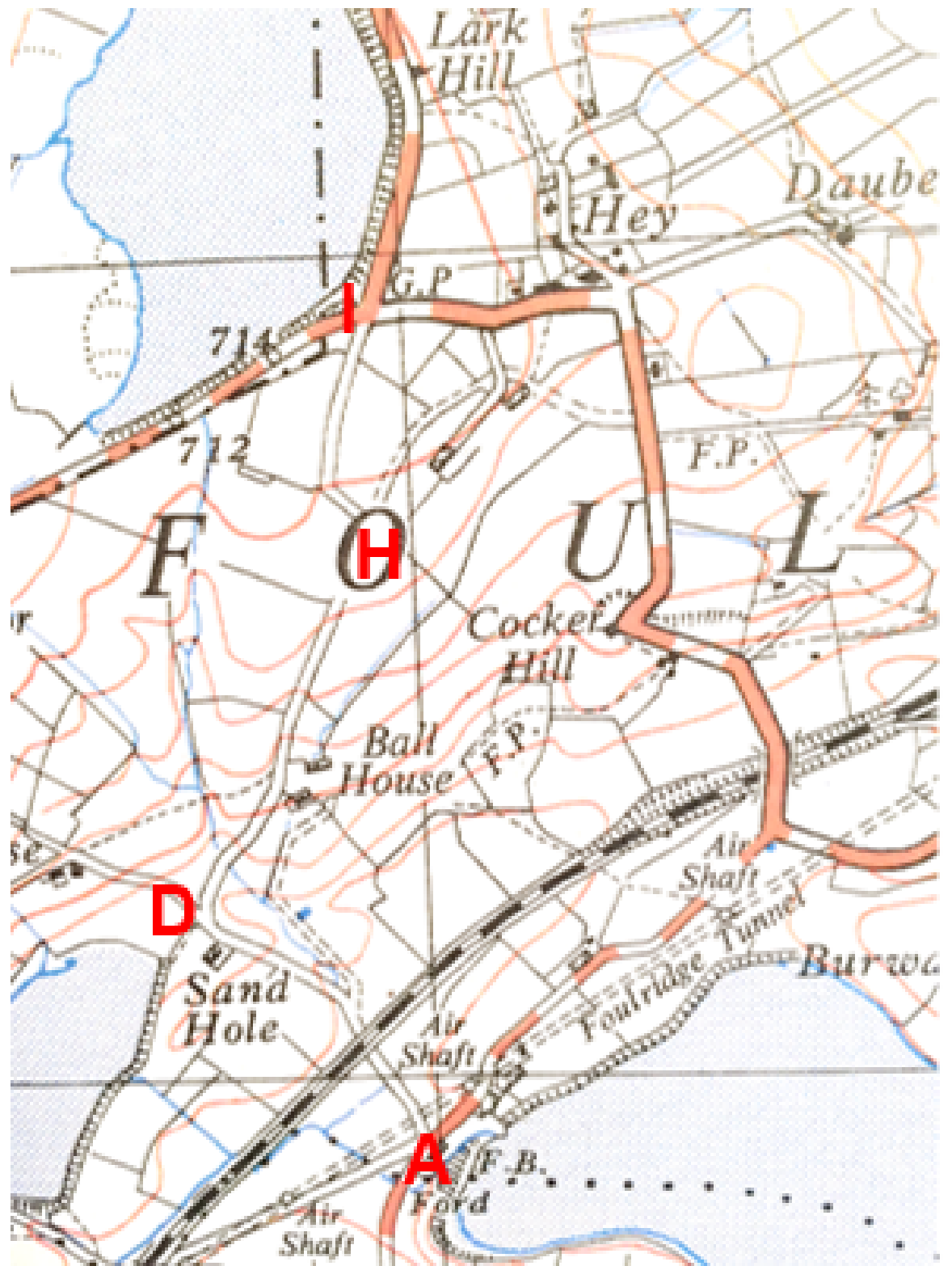


² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



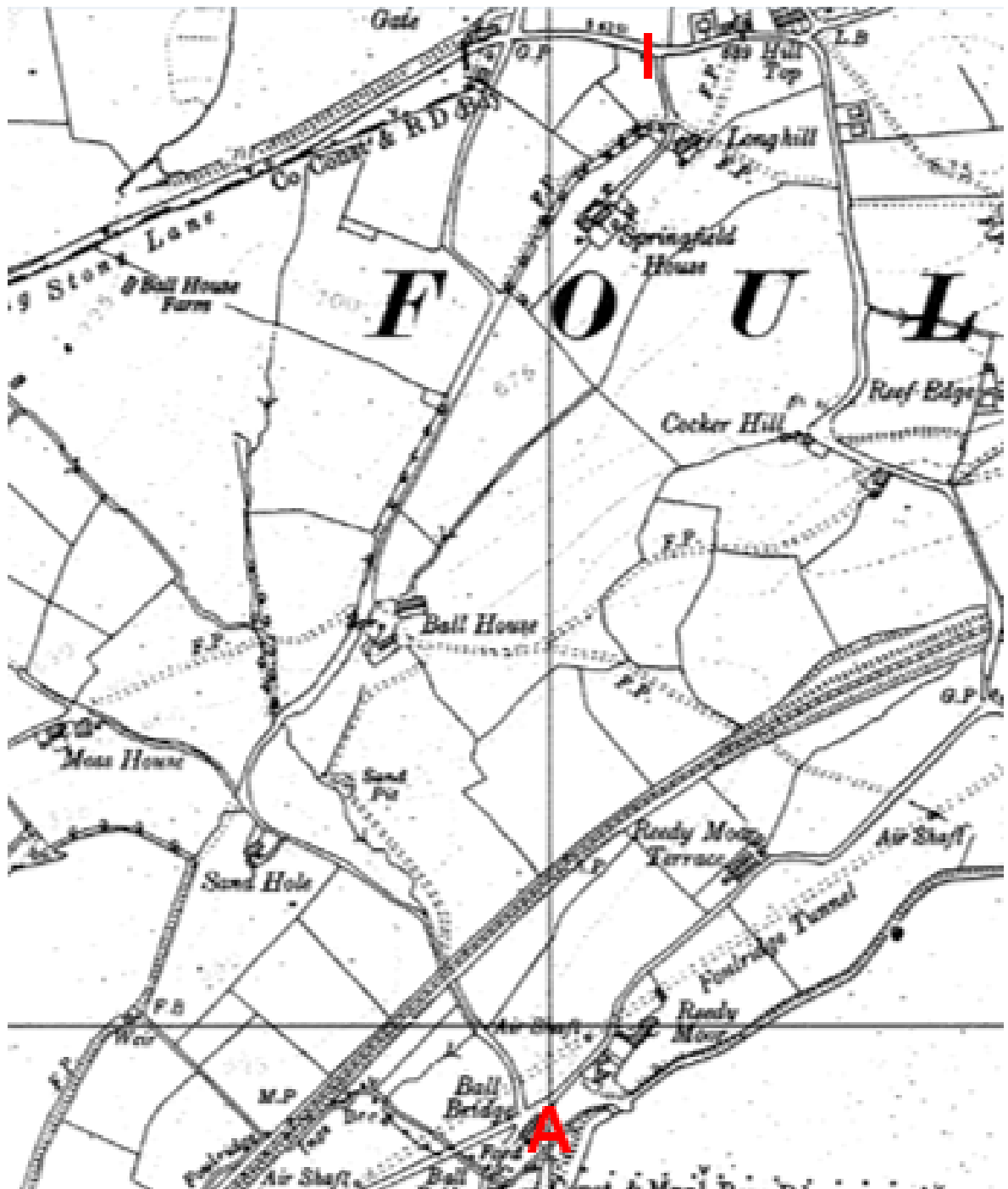
<p>Observations</p>		<p>The Route can be seen very clearly between point A and point B but is much more difficult to pick out along the remainder of the Route.</p> <p>Parts of the Route are obscured by tree cover.</p> <p>A new access (the current access to Ball House from point C) can be clearly seen on the photograph (a track which was not shown on the 1932 OS 25 inch map just a</p>
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		few years earlier).
Investigating Officer's Comments		<p>It is not possible to determine from the aerial photograph whether the full length of the Route was passable in the 1940s.</p> <p>However, the Route is not clearly visible suggesting that use of much of it by the 1940s may have been on foot or possibly on horseback but that suggested use by the travelling public had declined.</p>
Ordnance Survey 2 ½ inch to 1 mile map	1954	OS Sheet 54 at a scale of 2 ½ inch to 1 mile. Fully revised 1884-1940, partial revision 1938-50, published 1954.



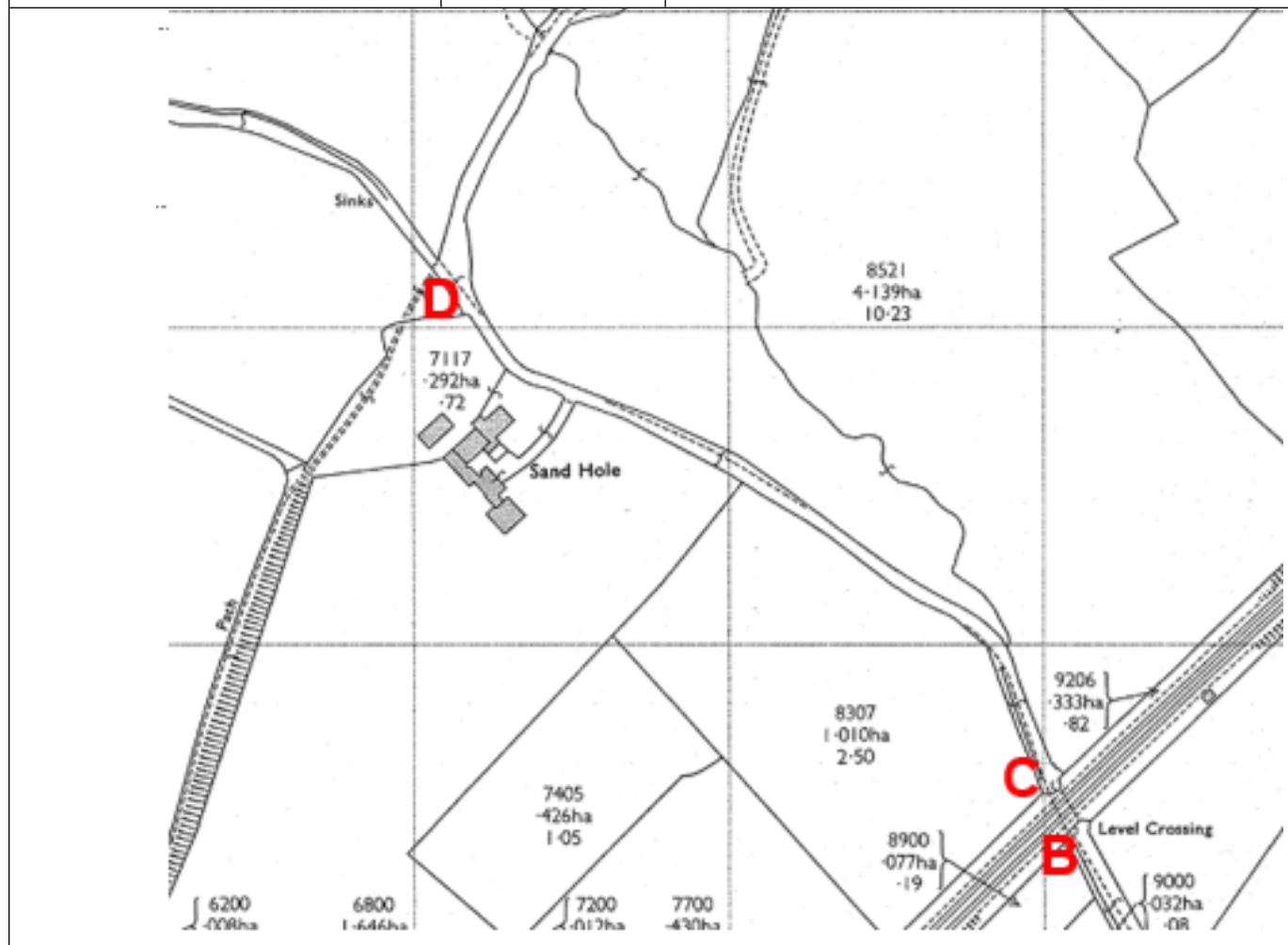
Observations		The full length of the Route is shown together with a new access route to Ball House.
Investigating Officer's Comments		The Route existed in the 1950s and appeared to have been capable of being used.

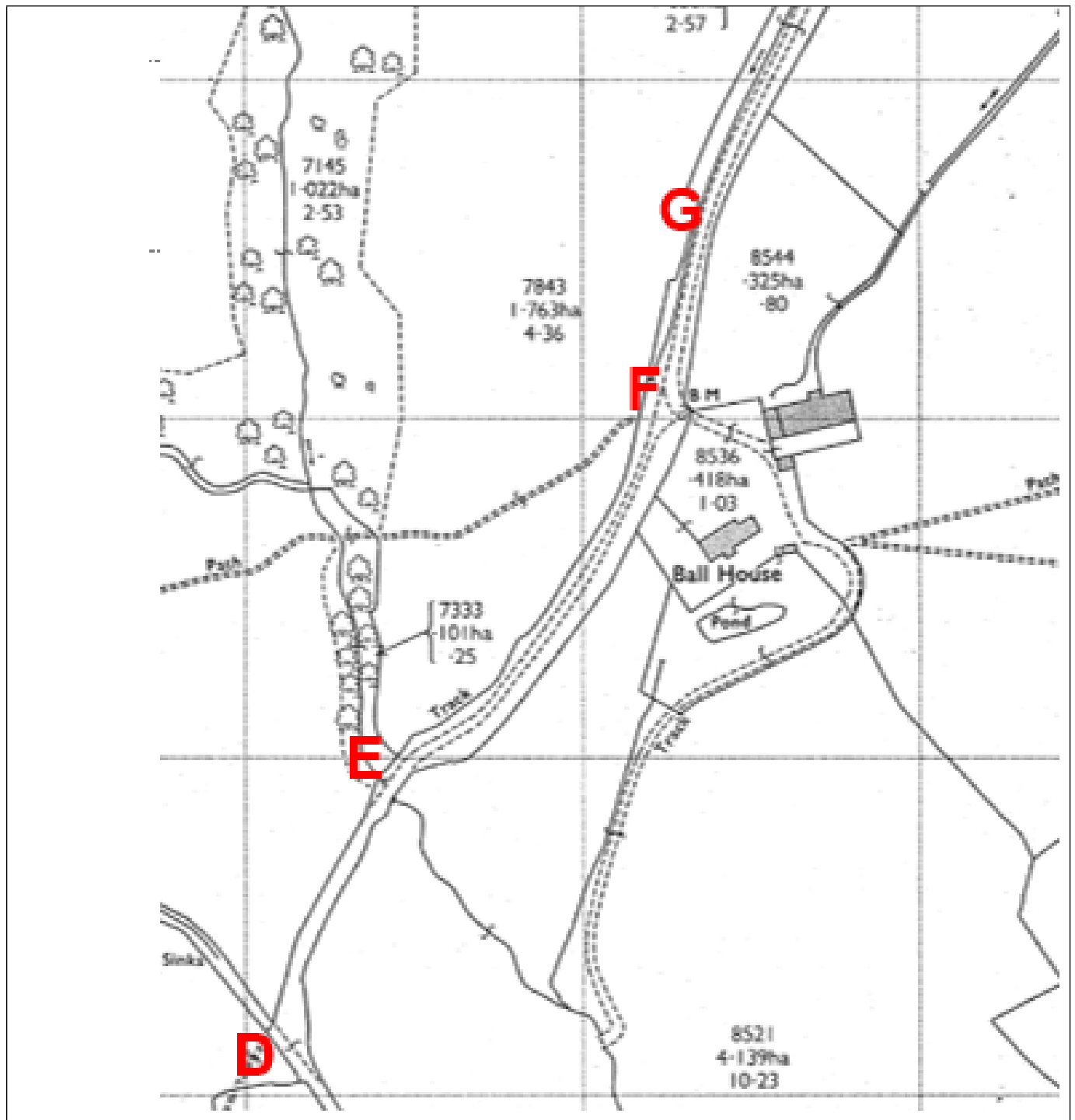
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised between 1930 and 1945 and is probably based on the same survey as the 1930s 25-inch map.
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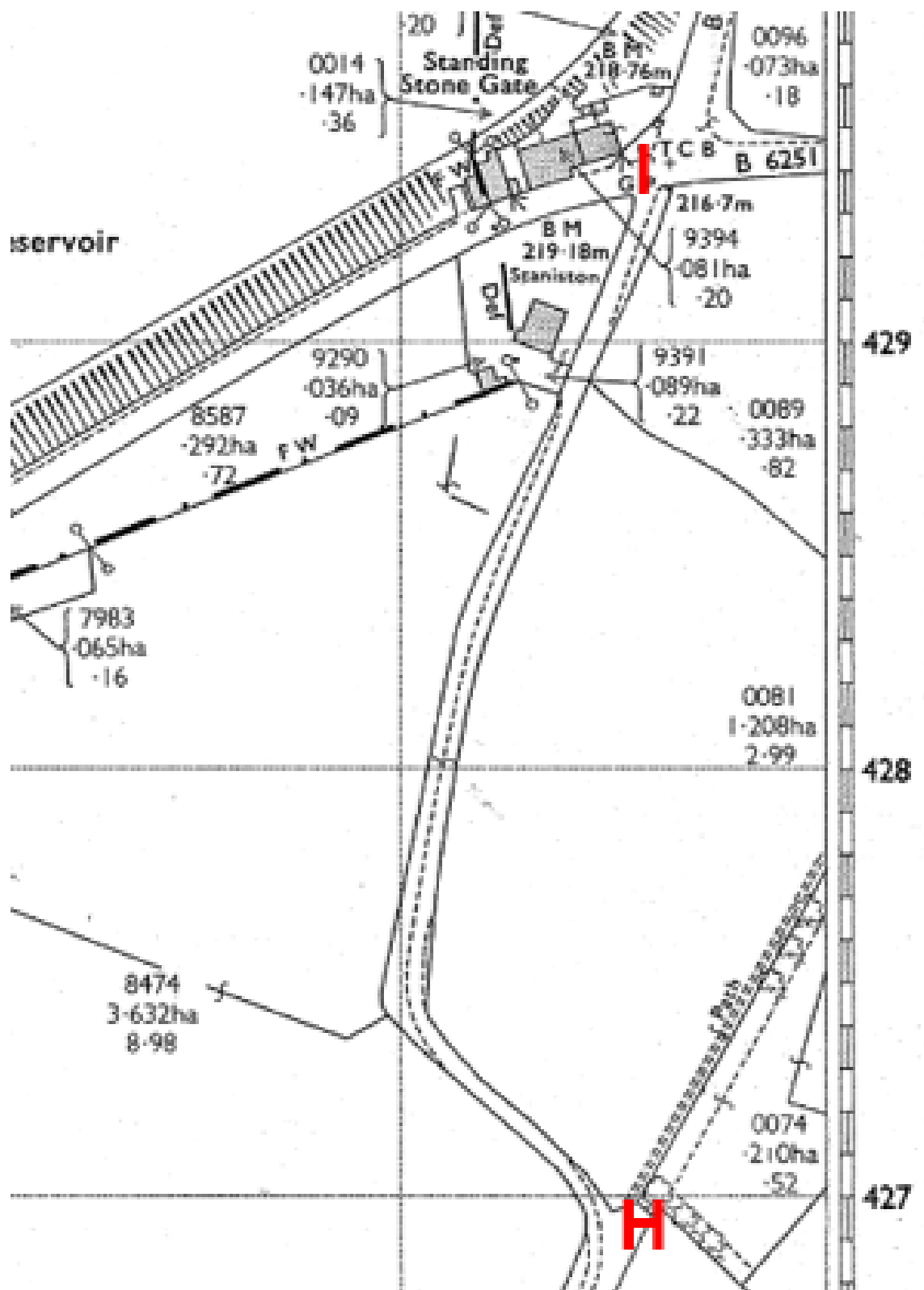


Observations		The Route is shown as a through-route but is shown as narrower than on earlier maps.
Investigating Officer's Comments		The Route existed but the way in which it is depicted on the map suggests that use as a

		through-route by all types of traffic may have declined.
1:2500 OS Map	1970	Further edition of 25 inch map reconstituted from former county series and revised in 1969 and published 1970 as the national grid series.

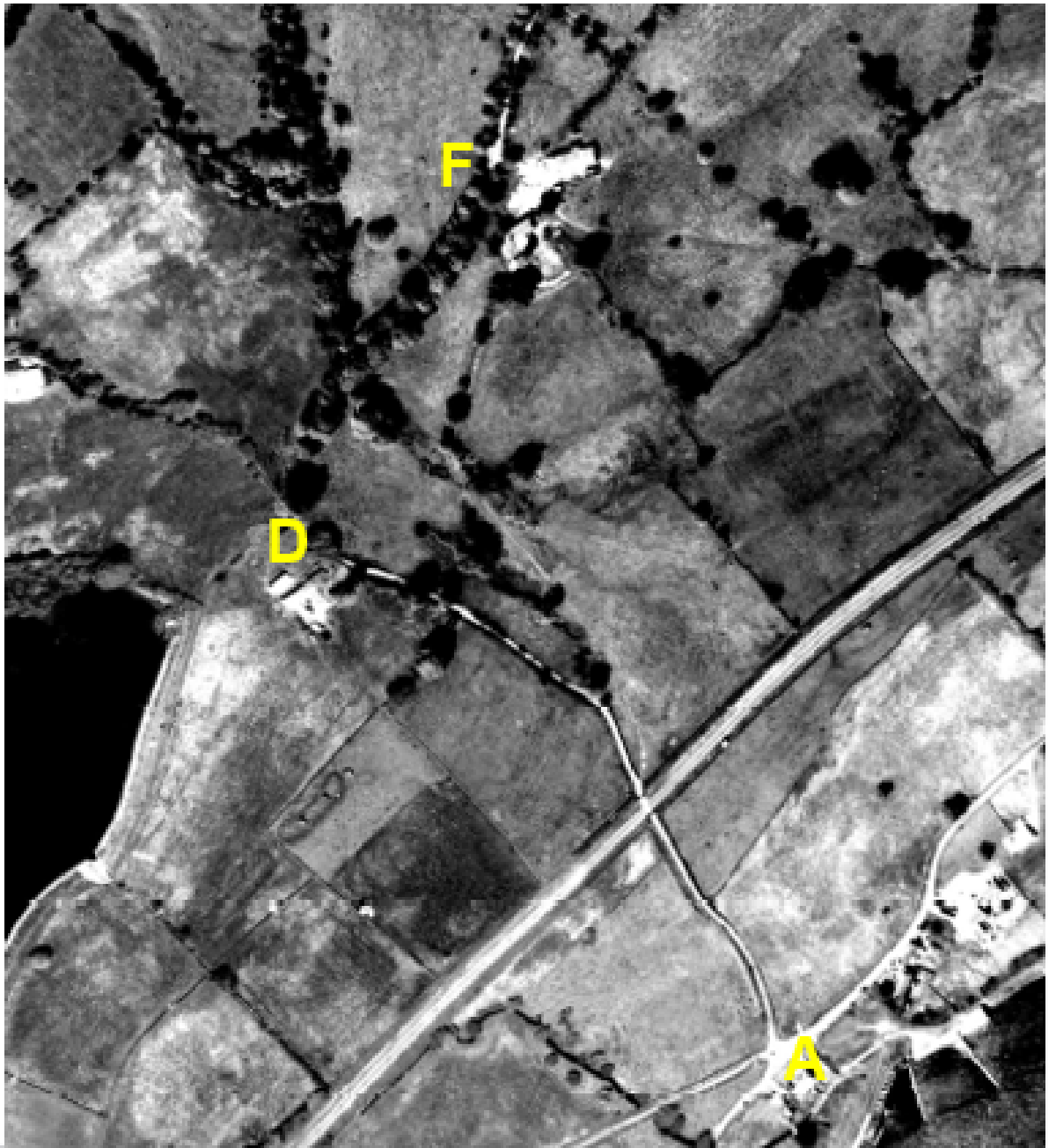


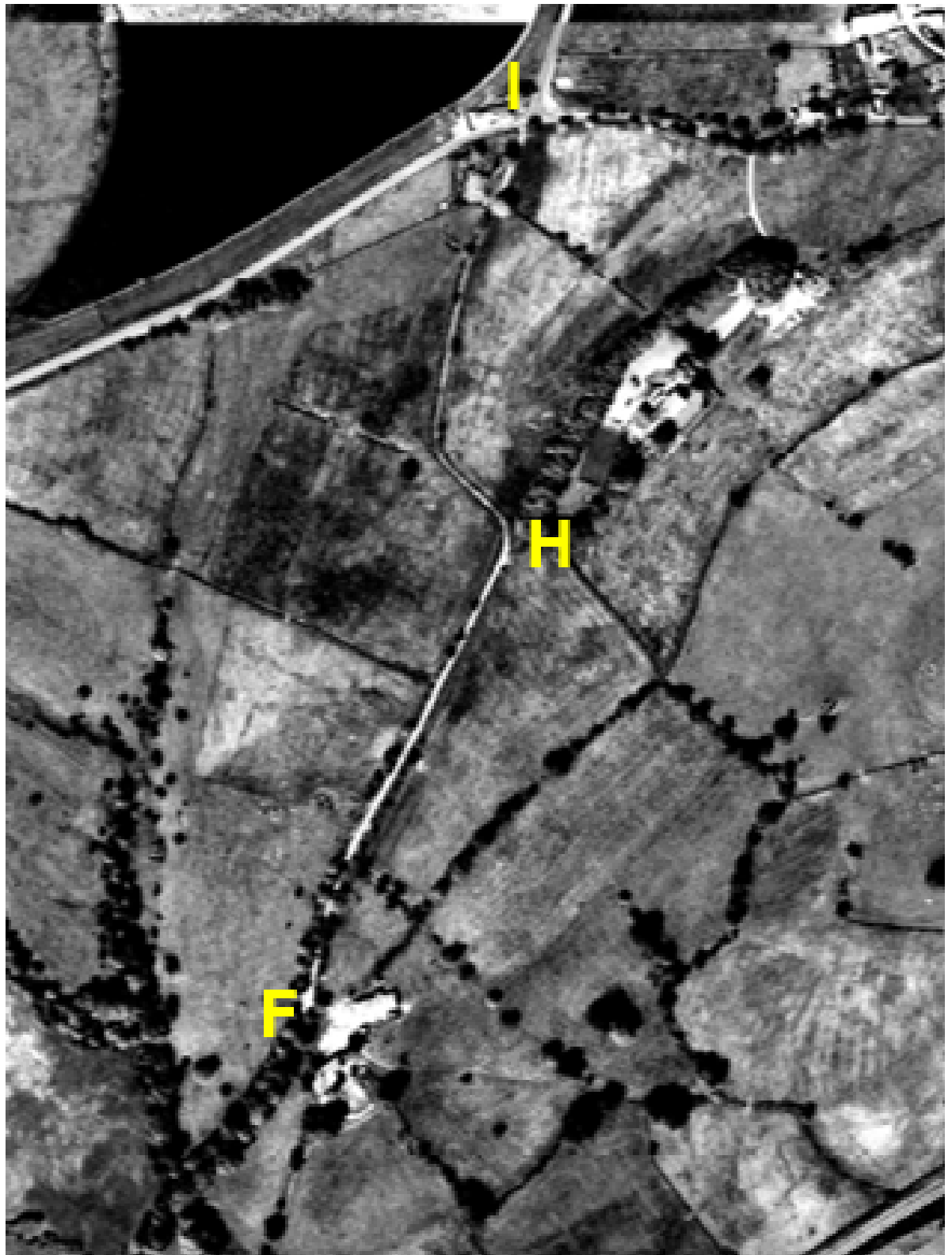




Observations		The full length of the Route is shown as a bounded through-route.
Investigating Officer's Comments		The Route existed and appeared to be capable of being used in the 1970s.
Aerial photograph	1960s	The black and white aerial photograph taken

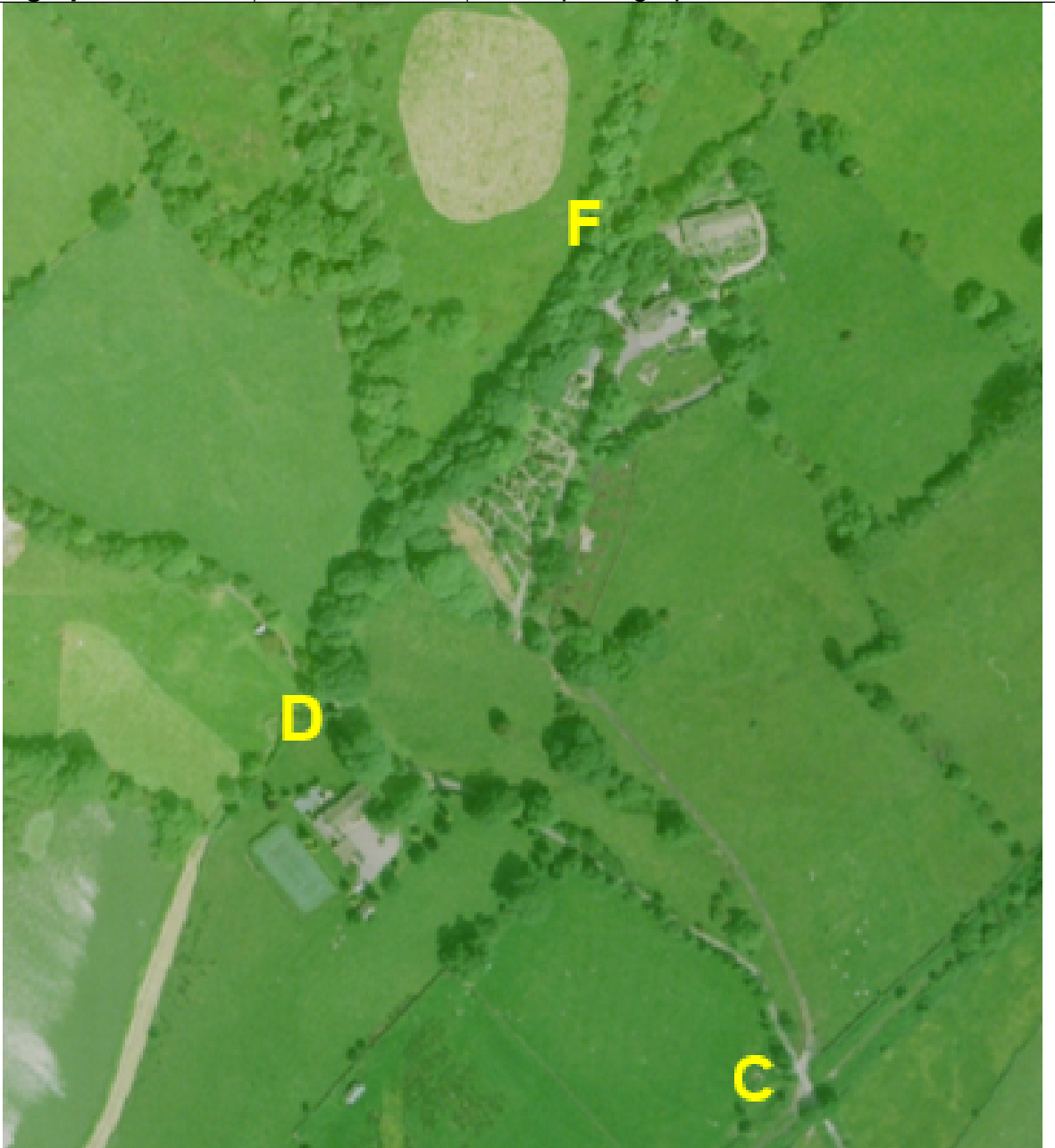
in the 1960s and available to view on GIS.



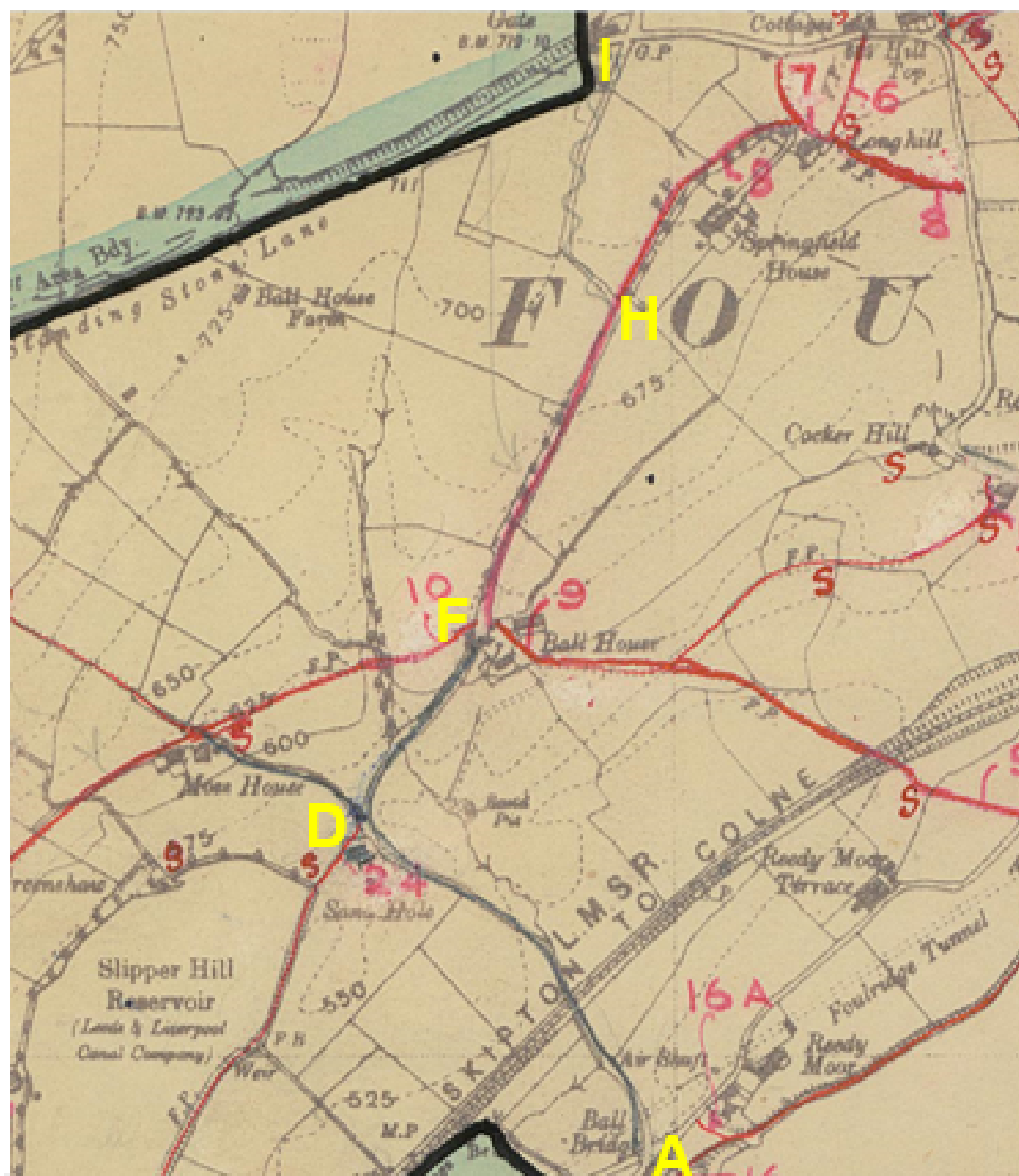


Observations

The Route can be seen clearly on the photograph between points A-D and F-I. The section F-H-I appears particularly clear in contrast to the aerial photograph taken 20 years earlier suggesting recent and frequent vehicular use of that particular section.

Investigating Officer's Comments		No inference can be made with regards to the existence of public rights but the aerial photograph supports the existence of most of the Route in the 1960s.
Aerial Photograph	2000	Aerial photograph available to view on GIS.
		
Observations		Much of the route is obscured by tree cover.
Investigating Officer's Comments		No inference can be drawn with regards to public rights.
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</p>

		Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the county council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the county council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.



this was
 boggy
 Bole House Lane
 impassable
 at present
 EDITION
 SALTERFORTH PH.
 LANCASHIRE.
 YORKSHIRE
 FOR CONTINUATION
 2

Observations

The Parish Survey map for Foulridge shows the route coloured blue from point A-D-F and is not numbered.

From point F – point H the route is shown

		<p>marked in red and is numbered as part of Footpath 8. A pencil line extends from the route to the margin of the map where it is written 'Very wet and boggy Bole House Lane impassable at present'.</p> <p>From point H to point I a blue pencil line is shown along the route but appears more like a scribbling out than a line depicting a route.</p> <p>Each path shown on the map was described on a parish survey card completed in 1950. Public Footpath No 8 was described as going to Ball House Farm and part was referred to as being boggy and in bad condition.</p> <p>A parish survey card was also found for a route recorded as Public Footpath no. 63 was described as running from the junction of footpaths nos. 8, 9 and 10 at Ball House to join the road at Ball Bridge. The card is not dated and there are no details of the name of the person completing it. Footpath 63 is not shown on the parish survey map but comprises of the Route between points A-F.</p>
Investigating Officer's Comments		<p>It is not known why only part of the Route was originally recorded on the Parish Survey or why it was recorded as footpath. The fact that it was noted as being very wet, boggy and impassable may reflect the fact that use was consequently limited to being on foot at that time (the 1950s).</p> <p>The Route appears to have been known locally as 'Bole House Lane' although it is not named as such on the OS maps examined.</p>
Draft Map		<p>The parish survey map and cards for Foulridge were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</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</p>

them on the evidence presented.

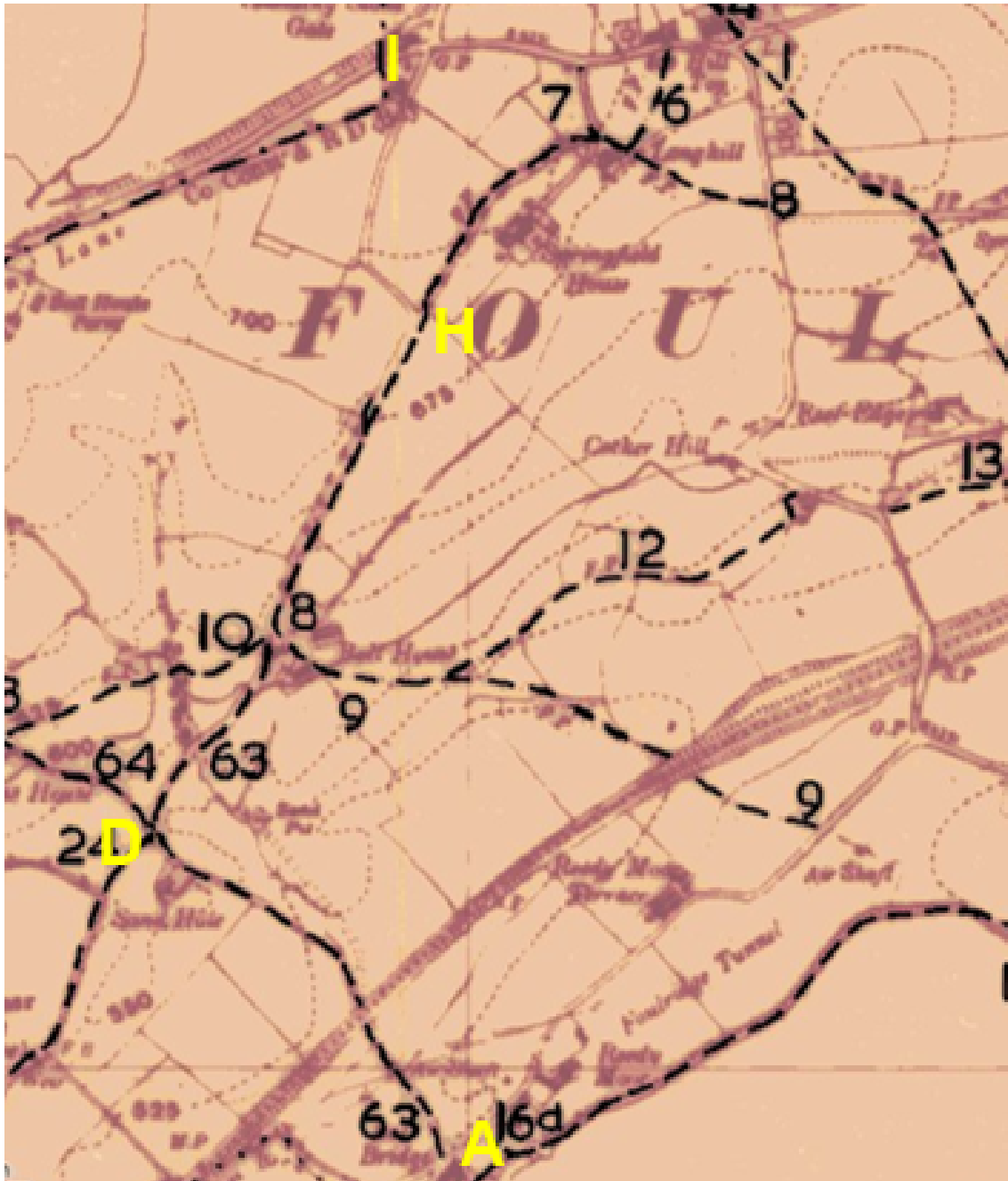


Observations

Information from parish survey maps was used to prepare the Draft Map for the relevant Rural District.

		The Route is shown on the Draft Map as Footpath 63 from point A to point F at Ball House Farm and then as part of Footpath 8 from point F to point H. The length H – I was not shown.
Investigating Officer's Comments		It is not known why the section of route not included on the parish survey map (between point A and point F) was now included on the Draft Map as a public Footpath. No objections were received to the inclusion of part of the route as footpath or the fact that the Route was not recorded between point H and point I.
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 was shown in the same way as it was on the Draft Map and there were no objections to the inclusion of part of the route as a footpath or the omission of part of the route.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The Route was shown as a footpath between point A and point H. The route was not recorded as a public path between point H and point I.
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.
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Observations		The Route is shown as a Footpath between point A and point H on the Revised Definitive map (First Review). The rest of the Route (between point H to point I) is not recorded.
Investigating Officer's Comments		The Route was considered to be a footpath from point A to point H during the preparation of the 1 st Definitive Map and Statement through to the 1960s. The Route from point H to point I was not considered to be a public

		path which should be recorded on the Definitive Map throughout that period.
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>
Observations		The Route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in records believed to be derived from the 1929 Handover Map.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by districts and the county council since that date.
Observations		No records relating to the stopping up,

		diverting or creation of public rights along the Route were found.
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
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 route under investigation runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.
Landownership		Information about ownership of the land crossed and abutting the route was obtained from the Land Registry.
Observations		Ownership of the land crossed by the Route is not registered but it is noted that some

		<p>land is in the same landownership on either side of the Route and that a number of historical properties can only be accessed from the Route (or part of it).</p> <p>The owner of Ball House asserted in 2008 that the land crossed by the Route had originally belonged to the Parker family of Alkincotes Hall, Colne and Brownsholme Hall near Clitheroe and that the northern section of the Route only came into existence when stone was quarried from the land at the time that Whitemoor reservoir was constructed.</p>
Investigating Officer's Comments		<p>The fact that ownership of the land crossed by the Route is not registered is consistent with the information provided in the Foulridge Tithe Award whereby the Route was numbered separately to adjacent land and listed in the Tithe Schedule as a road with no landownership details provided. It is also consistent with the information provided in the District Valuation Records (Finance Act records) whereby the whole of the Route (with the exception at that time of the railway) was excluded from the valuation process.</p> <p>Whitemoor reservoir was constructed in 1840 but early commercial maps indicate that the Route existed in the early 1800s as it is clearly shown pre dating the reservoir on the Honor of Clitheroe map. It is not disputed that the Route may have been used for the carriage of sand and aggregates to the reservoir but such use does not necessarily preclude it being a public right of way.</p> <p>From research carried out prior to and at the time of the 1997 public inquiry it has not been possible to confirm the early history of the ownership of the land crossed by the Route.</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

None of the land crossed by the Route is registered.

Summary

It is rare to find one single piece of map or documentary evidence which is strong enough to conclude that public rights exist and it is often the case that we need to examine a body of evidence, often spanning a substantial period of time, from which public rights can be inferred.

In conclusion, a range of commercial maps and other documents were examined which seem to suggest that the Route existed in its entirety as a through-route from the late 1700s or early 1800s and taken as a whole, the map and documentary evidence available both before and after the construction of the railway indicate that the Route was considered to be at least bridleway, the use of which gradually declined during the first half of the twentieth century to the point where it was recorded as a public footpath in the 1950s.

The only piece of evidence found weighing against this is the fact that the Route was noted as providing access to a number of private properties, when it was described as an occupation road in the documentary evidence examined regarding the construction of the railway (although this is mitigated by the fact that the public carriageway, Reedymoor Lane, was also described in that way).

Maps and photographs post-dating the 1950s all confirm the existence of the Route on the same historical alignment but provide no further evidence regarding whether its public status is more than public footpath. They do however support the user evidence submitted for bridleway status in that the route appears to have been capable of being used as such.

Head of Service – Legal and Democratic Services Observations

Information from the former Environment Directorate

The above documents were considered in the investigation whether to record the Route as a bridleway and the following of these had not been considered during the previous investigation:

19th Century Sand Holes Estate Plan
Bartholomew's Maps 1906 and 1919-24
Honor of Clitheroe Map 1804-1810
Map from Duchy of Lancaster 1580
Bacon's Map 1904
Aerial photograph 1940s
Additional user evidence forms

User Evidence Forms:

Use of the Route varies between the years 1944 and 2007 on horseback, foot, motorcycle and bicycle.

21 of the users have used the Route on **horseback** over the following years using it the following amounts:

From	Until	Used times per year	From	Until	Used times per year
1944	1944	5-10 (same user)	1980	1997	100
1972	1977		1980	1995	?
1980	1981		1981	1987	40
1970	1999	35	1982	1988	100
1972	1981	1 x per month	1983	1997	12
1973	1988	16	1984	1977	100
1973	1977	150	1985	1997	1-2
1975	1997	200	1988	1997	6
1975	1977	3 x per week	1990	1995	4
1976	1998	12-14	1992	1993	Once
1977	2007	1977-weekly, 2-3 recently	1994	1998	2 x per week
1980	onwards	12			

7 have used the Route over a continuous period of 20 years on horseback.

The main reasons for using the Route on horseback were as follows:

Pleasure, exercise, exercising horse, bridleway rides, leading youngsters on ponies, hacking out and recreational.

2 users provided that they have used the Route on **motorcycles** from 1958 (late 50's) onwards. 1 provided that they have used the Route 'occasionally' on a **bicycle**.

18 users have also used the Route on **foot** over the following periods:

User	From	To		User	From	To
1	1975	1997		8	1976	1998
2	1970	2008		9	2000	2007
3	1973	2008		10	1980	2008
4	1981	1982		11	1981	1987
5	1944	1948		12	1983	1988
6	1976	1998		13	1984	2008
7	1988	2008		14	'Over 40 years'	
16,17,18	no dates provided					

- 22 of the 23 users provided that the Route has always run over the same line.
- 22 of the users answered 'no' to there being any stiles, gates or fences across the Route. 1 user answered 'yes' to there being a gate at Stanstead Bungalow but provided that it was always open.
- All 23 users answered 'no' to having ever worked for any landowners of the Route and again 'no' to being a tenant of any of the land over which the Route passes.
- 3 users answered 'yes' to having been stopped or turned back whilst using the Route. 1 user provided that on 24/07/1998 he was stopped by Mr Taylor and another couldn't recall when it was they were stopped but provided that they were stopped by a lady shortly after Sandhall where the Route turns north east.
- Another 3 users answered 'yes' to hearing of others who have been stopped or turned back whilst using the Route on horse. One user provided that in late 1991 they were told by other horse riders the lane was closed and another user provided that two local riders were assaulted by Mr Taylor (deceased)

who lived at Holly Bush Farm, the police were involved – they couldn't recall the date. 1 user who answered no to both questions did comment that it was very difficult to pass as there were boulders and overgrowth there at the time of writing (2008).

- 2 users answered 'yes' to being told by an owner or tenant of the land crossed by the Route that the way was not public (although in fact there is not registered owner). 1 user provided that it was about 10 years ago (1998) but they used the route in 2007 unchallenged. The other user received a letter from a Mr J Banks on 14/09/1998.
- 11 users provided that they had seen signs along the Route at various locations: Reedymoor Lane end "no vehicles or parking"; "private road" this was after the public inquiry in 1990s again at the Reedymoor Lane end of the route; at railway crossing "private road to Sand Hall Farm & Holly Bush"; signs on trees forbidding horse riders, cyclists and motorbikes along the Route from Reedymoor Lane to Holly Bush farm turn off; "private road and public footpath" to Sandyhill and Holly Bush Farm; sign with a pushbike and a line through it at Reedymoor Lane end of route, sign on Reedymoor Lane corner and road leading up to old railway track stating " Private Road to Hollybush, Ball House, Sandhall & Mistals. No unauthorised motor vehicles or motorcycles. Any vehicles obstructing lane will be removed", "No motorcycles", "Private Road to Sandhall"; and another sign providing "The Wildlife and Countryside Act Order No.1 1998. This means the law forbids Horse Riders, Cycles, Motor Bikes and vehicles from using Ball House Lane from Reedymoor to Standing Stone Lane"
- 1 user provided that when they moved into the area in 1973, they made local enquiries with farmers and residents and were informed there was a public access and that it had been there for a number of years.
- The users were asked if they would like to provide any further comments of which are included below:
 - "Alan Wilson (deceased) farmed at Cocker Hill Farm and Ball House until his death and Jack Judson farmed at Long Hill Farm until he retired. Both of them told me the route had always been a footpath and bridleway during their many years farming the land bordering the track"
 - "The farmer at Sandhall Farm never put any 'private', 'no road', or any other notices up. The farm has now become a private home and not a farm"
 - "There are few enough places to ride a horse these days and this was one ride I knew I could get away from traffic on"
 - "The lane was used by Barnoldswick & District Motors Club in the late 50's and early 60's"
 - "The last time I rode the route it was virtually impossible because of boulders and overgrowth"
 - "I have used this route as long as I can remember. I walked it with my parents then with my pony. I worked at Whitemoor Stables from 1980-1981 and rode it regularly. After that I rode it many times on my horse"
 - I have always believed it to be an old bridleway from Colne to Barnoldswick. We have not had any problems until 24/07/1998. The path way is very stony and you can only take your time going up and down so I can't see why there is any problem".

Information from adjoining Landowner

Mr John Bank of Ball House off Reedymoor Lane claims that the proposal is improper and perhaps illegal. He provides that it seeks to modify the Inspector's decision given at the inquiry held on 8th – 11th December 1997 and queries why an appeal wasn't made against the decision. He provided copies of notices that he has erected along the route.

The county council responded to Mr Ball explaining that anyone may challenge the accuracy of the Definitive Map.

Mr Robert Bank of Mistals off Reedymoor Lane also provided that he objects to the proposal and supports Mr John Banks letters of objection.

Ashley Holt of Sand Hall Reedymoor Lane also wrote to the county council questioning the legality of the proposal based on the previous decision by the Inspector.

Aidan Venn of 58 Spring Gardens, Padiham provides he objects to the proposal based on an appeal not being made on the Inspector's decision at the inquiry in December 1997. M Johnson of 263 Walshaw Road, Bury provided the same letter as did R.P. Woolinough of 268 Grisham Road, Nelson.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- User evidence
- Map and other documentary evidence supporting the physical existence as a through-route from the late 1700s or early 1800
- Depiction on commercial maps for the travelling public, including as a cross road
- Excluded from Tithe apportionments and listed as road with no owner
- Excluded from hereditaments on 1910 Finance Act map

Against Making an Order(s)

- Route described as 'occupation road' by the railway construction company

Conclusion

It is advised that as there is no express dedication in this matter Committee should consider, on balance, whether there is sufficient evidence from which to have 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.

Firstly looking at whether dedication can be inferred on balance at common law, Committee is advised to consider whether the evidence presented within this report from the various map and documentary evidence does on balance indicate how the route should have been recorded. The analysis of the evidence used in the 1987 application along with the user evidence and the additional new evidence considered by the Head of Service – Planning and Environment provides evidence to conclude that the route was a historical public route available at least as a bridleway.

From the late 1700s early 1800s there is significant map and documentary evidence of the route having existed. However, Committee will note the Planning Inspectorate decision letter dated 25th February 1998 not to confirm the Order for the route to be recorded as a byway open to all traffic. However, as noted in the Summary section of this Report, a range of commercial maps and other documents have now been considered in conjunction with user evidence by the public rights of way officer to bring this matter back for consideration by Committee as a bridleway.

The early map evidence indicates that the route appeared to be of sufficient width and capable of being used on horseback and or horse and cart and records appear to present a consistent view of the Route connecting vehicular highways from A to I.

The Finance Act Map 1910, although not conclusive strengthens this point as it is consistent with public carriageway rights along nearly all of the length claimed, with only the railway crossing excluded as this was in the ownership of the railway company.

On balance, the map and other documentary evidence is in itself considered sufficient to conclude that the route was a historical public bridleway and it is therefore suggested to Committee that inferred dedication can on balance be satisfied. However, should Committee have any reservations as to the strength of the map and documentary evidence it may wish to also consider deemed dedication under Section 31 Highways Act 1980.

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

Public rights were called into question in 1987 being the application date of the Byway Open to All Traffic application. It is therefore considered that the period of use from which dedication can be deemed would be 1967-1987.

Twenty three user evidence forms have been submitted. Of the 23 users, 21 users have claimed to have used the route on horseback 7 of which have done so for a 20

year period. Two 2 users have claimed to have used the route on motorcycle and 1 user claims to have used the route on a pedal cycle during the period under consideration. Twenty two users claim to have known and used the route along the same route A - I and all users claimed to have used the route on a regular basis 'as of right'. The main purposes stated for use of the route by those on horseback was for pleasure, exercise, exercising horse, bridleway rides, leading youngsters on ponies, hacking out and recreational. None of the users state that they have ever asked permission to use the route, 3 users refer to having been stopped or turned away with a further 3 users refer to hearing of others having being stopped or turned back while using the route while on horseback, 2 users refer to having been told by an owner/tenant of the land that the route was not a public route. None of the users saw signs or notices along the route. Therefore it is suggested that on balance deemed dedication under s.31 can be satisfied.

Taking all of the evidence into account, it is suggested to Committee that the recent map and photographic evidence together with the site evidence supports and is consistent with the user evidence in suggesting that the route was capable of being used on horseback and should therefore be recorded as a bridleway.

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.

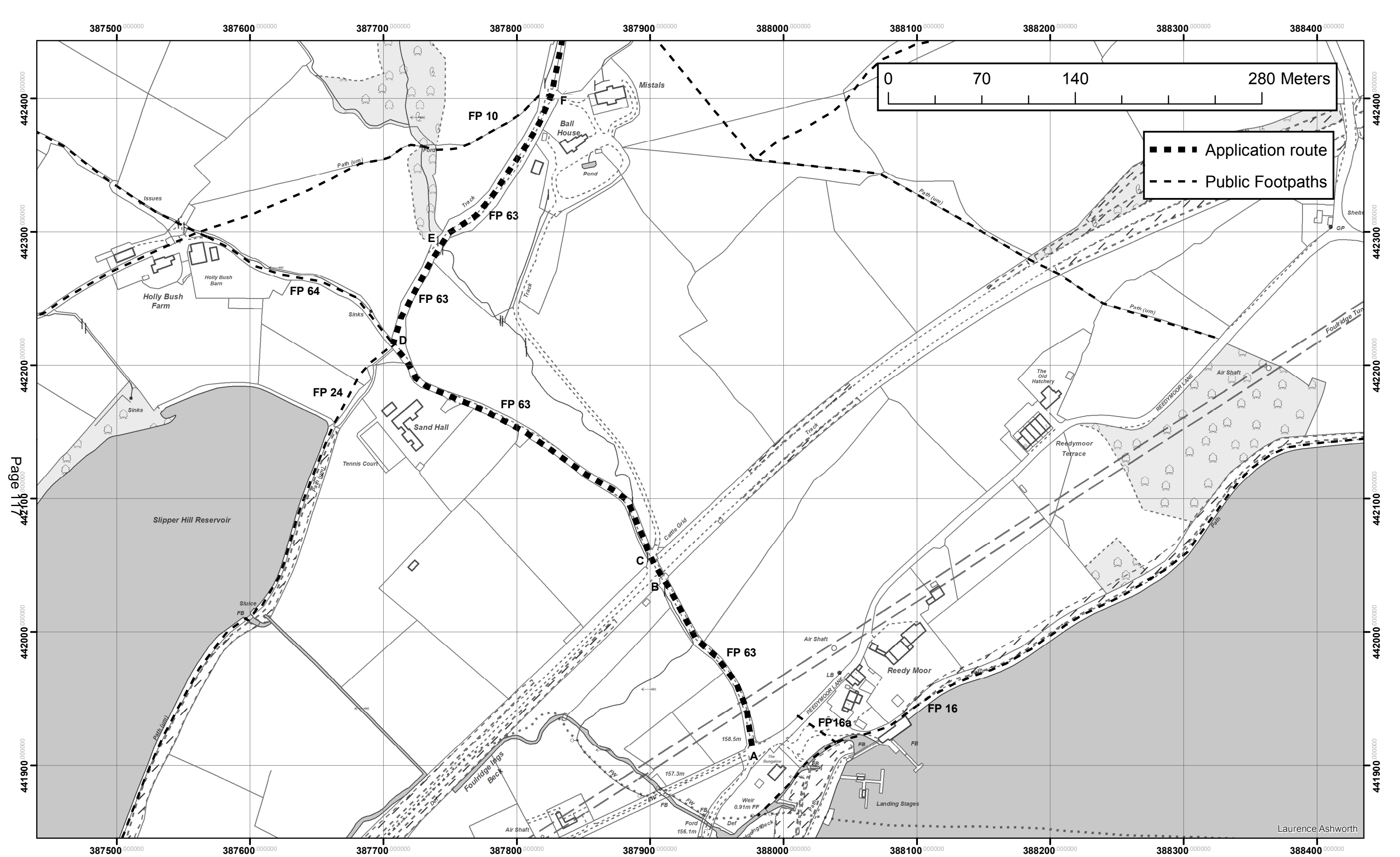
Local Government (Access to Information) Act 1985

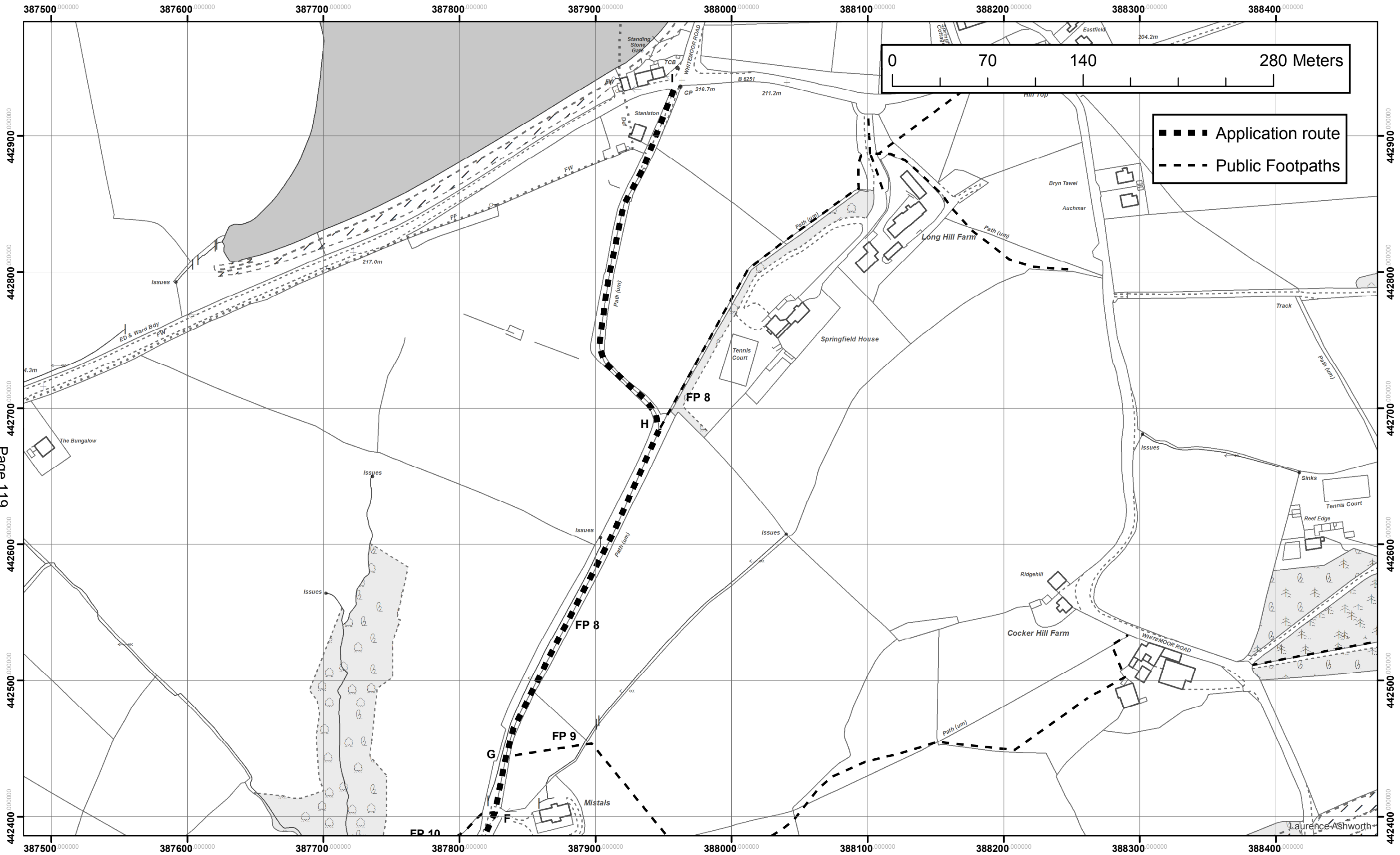
List of Background Papers

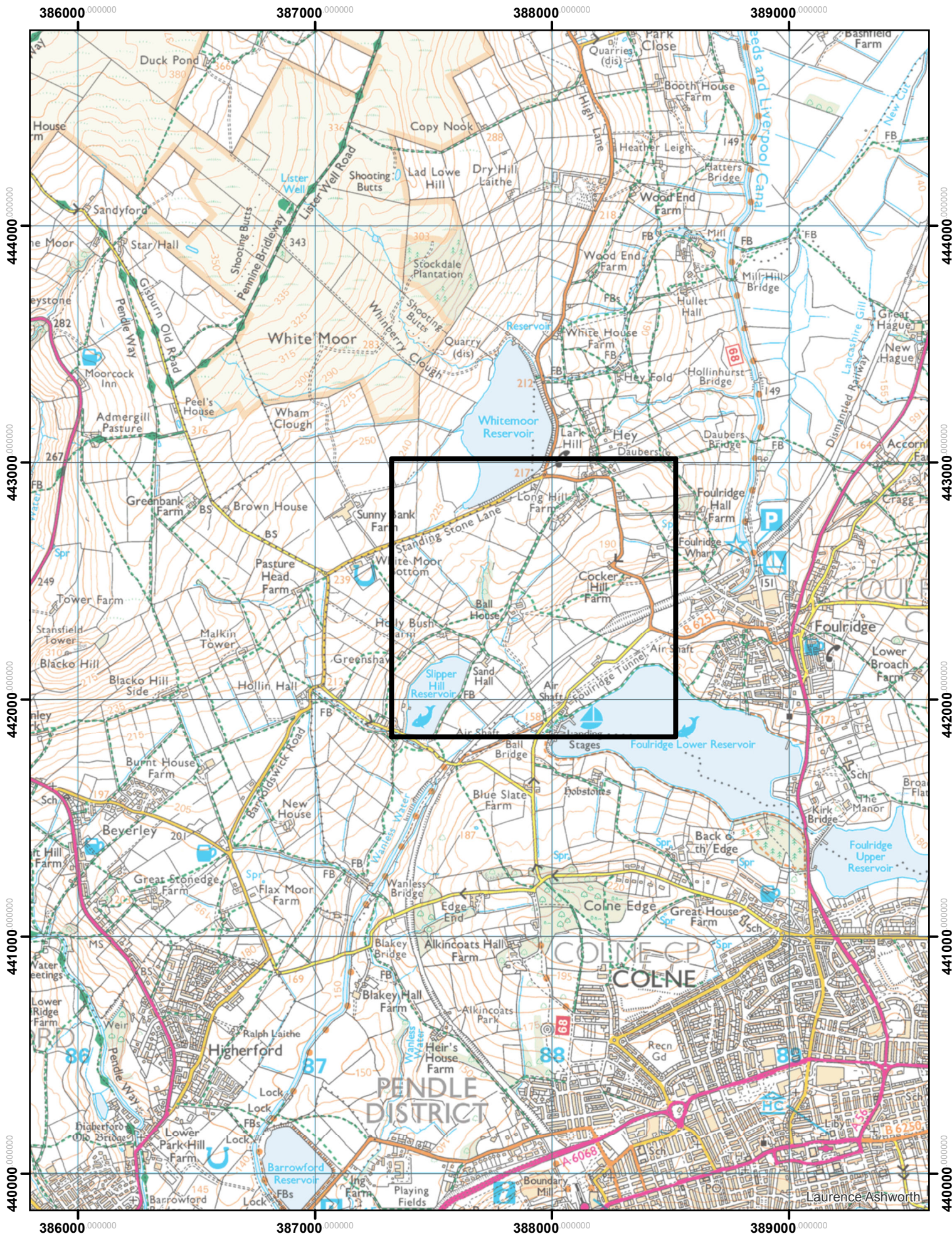
Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-478		Claire Blundell, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A





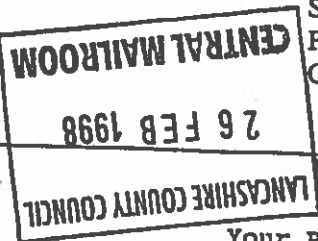




The Planning Inspectorate

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The Chief Executive and Clerk
Lancashire County Council
PO Box 78, County Hall
PRESTON
Lancashire PR1 8XJ.

Your Ref:

71/SPS/807/72

Our Ref:

FPS/C2300/7/49

Date:

25 FEB 1998

Dear Sir,

THE WILDLIFE AND COUNTRYSIDE ACT 1981, SECTION 53 AND SCHEDULE 15

THE LANCASHIRE COUNTY COUNCIL (DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY) (DEFINITIVE MAP MODIFICATION) (No 1) ORDER 1988.

1. I refer to the above named order submitted by your Council to the Secretary of State for confirmation. I have been appointed to determine the matter in accordance with paragraph 10(1) of schedule 15 to the Wildlife and Countryside Act 1981 ("the 1981 Act").
2. The effect of the order, if confirmed without modification, would be that the definitive map and statement for the County of Lancashire would be modified to -
 - (a) add a byway open to all traffic over a route between points A and B as described in the schedule to the order and shown on the order map, where no public right of way of any description is shown on the definitive map and statement, and
 - (b) substitute for lengths of footpath between points B and C and between points C and D as described in that schedule and shown on that map, lengths of byways open to all traffic.
3. There are about 30 objectors to the order.
4. On 8 December 1997 I made an unaccompanied site visit. On 9 and 10 December 1997 I held a local inquiry at the Council

Chamber, Borough of Pendle, Town Hall, Nelson. On 11 December 1997 I made a site visit accompanied by representatives of your Council and of the supporters of the order and by objectors to the order. During the site visits I walked the whole length of the route.

5. At the inquiry it was confirmed on behalf of your Council that all the relevant formalities had been complied with. The order is substantially in the prescribed form.

6. In this letter

- a reference to a lettered point is to the point so lettered on the order map,
- a reference to a numbered paragraph is to the paragraph so numbered in this letter,
- "byway" means a byway open to all traffic as defined in section 66(1) of the Act, and
- "the route" means the claimed byway to which the order relates.

DESCRIPTION OF THE ROUTE OF THE CLAIMED BYWAY AND THE SURROUNDING AREA.

7.1 At point A the route joins the south side of the B 6251 road near the junction between that road and another county road (Standing Stone Lane) which runs south-westwards towards Blacko. Between points A and B the route follows a track about 3 metres wide mostly with a grass surface and between stone walls between about 4 and 5 metres apart. About 25 metres south of point A there is a gap about 2.7 metres wide in the wall on the west of the track. A stone pillar stands on each side of the gap. One of those pillars contains a round hole with a diameter of about 7 centimetres. At point B the route is joined by footpath 8.

7.2 Between points B and C the route follows a track of indistinct width. On most of each side of the track there is a stone wall. The distance between one wall and the other varies from between about 6 metres to about 10 metres. Varying parts of that distance are occupied by banks of earth. The width of the track between those banks varies considerably but is mostly about 3 metres. Much of the surface of that track is stony and rough, but in a few places concrete bricks have been laid. Footpath 9 goes eastwards from point C. Footpath 10 goes westwards from point C.

7.3 Between point C and its junction with footpath 24 the route is contained within a track mostly between stone walls. The distance between one wall and the other varies from about 12 metres to about 8 metres. Alongside each wall there is an earth bank, mostly overgrown with holly and other vegetation. There

re - number of mature trees growing on the banks. The width of those banks is mostly about 4 metres. The beaten track between the banks has a width varying from about 2.5 metres to about 1 metre. The track is mostly sunken below the level of the walls and mounds of earth; its surface is rough. The track is on a slope which is in places steep. On the west side of the route about 25 metres north of its junction with footpath 24 there is a construction on the stream which goes under the route in a culvert. Near this point there is a feature which might be an old bench mark.

7.4 Between its junction with footpath 24 and point D the route follows a level track with a metalled surface about 3.5 metres wide. On each side of that surface there is a grass verge and beyond each verge there is a fence. The distance between one fence and the other is about 9 metres. The route crosses a disused railway about 80 metres north-west of point D. At point D the route joins a county road called Reedymoor Lane. Near that point there is a notice stating "PRIVATE ROAD TO 'HOLLY BUSH' 'BALL HOUSE' 'SANDHALL' 'MISTRALS' NO UNAUTHORISED MOTOR VEHICLES OR MOTOR CYCLES ANY VEHICLE OBSTRUCTING THE LANE WILL BE REMOVED AT THE OWNER'S LIABILITY", and a second notice stating "PRIVATE ROAD KEEP ACCESS CLEAR AT ALL TIMES THANK YOU".

7.5 The route passes through pleasant countryside on which major engineering works in the form of a canal, a railway (disused) and reservoirs have made a considerable impression.

SUBMISSIONS OF THE PARTIES

8. The material points of the submissions are as follows.

The case for the order making authority.

9.1 The order was made by the Council in compliance with a direction by the Secretary of State under paragraph 4(2) of schedule 14 to the 1981 Act. The Council takes a neutral stance as to whether or not the order should be confirmed. However, the Council submits as evidence to the inquiry the Statement of Case and recommendations which informed the Council's decision on 16 July 1985 not to accept the claim for a byway.

9.2 For the purposes of section 56(2) of the 1981 Act the relevant date is 1 January 1953 as regards the original definitive map and 1 June 1966 as regards the first review of the definitive map. The draft definitive map was published in 1955. The original definitive map was published in 1962.

9.3 The Council has no record of any objections being received as regards provisions relating to the route or any part of it during the process of making the original definitive map or the first (and only) review of the Definitive Map. Nor has the

Council any record of any public expenditure on the maintenance of the route.

9.4 If the order is confirmed it should be modified as follows-

(a) in the preamble

- for "section 53(3)(C)" substitute "section 53(3)(c)(i) and (ii)", and

- after "being a right of way to which this Part applies" add "and that a highway shown on the map and statement as a highway of a particular description (a footpath) ought to be there shown as a highway of a different description (a byway open to all traffic)"; and

(b) in Part I of the schedule for "between 3 metres and 19 metres" substitute "between 3 metres and 13 metres".

Those modifications are within the modification power given by paragraph 7(3) of schedule 15 to the 1981 Act and do not fall within the arc of paragraph 8 of that schedule.

The case for the supporters

10.1 The onus is on the persons claiming that a byway exists to show that on a balance of probability it does exist.

10.2 If the order cannot be confirmed so as to modify the definitive map and statement to show the route as a byway, the modifications should show the route as a bridleway.

10.3 The supporters do not know what evidence the County Council took into account in the course of preparing the definitive map. The supporters therefore contend that all the evidence on which they rely should be regarded as having been discovered as fresh evidence for the purposes of section 53(3)(c) of the 1981 Act.

10.4 The Council erred in reaching its decision in 1985 not to grant the application to make an order to modify the definitive map so as to show the byway as claimed in the application.

10.5 Factors relating to the narrowness of the lane in parts, the alleged danger to pedestrians and the possible obstruction to vehicles seeking access to properties are irrelevant and no weight should be attached to them. However, the limited vehicular use which has been made of the route in recent times is a result of the poor state of repair.

10.6 Repair of the route by frontagers, the existence of gates across the route and any falling out of use of the route do not deprive the route of its highway status.

10.7 Reedymoor Lane and Standing Stone Lane are in the occupation of the highway authority and maintainable at the public expense. The route connects these two public carriageways together. Therefore the public are occupiers of land served by the route just as much as the adjoining landowners are for the purposes of user. The term "occupation road" probably means a road where some or all of the maintenance liability fell to persons occupying adjoining land and did not imply restrictions of use. The instructions to Field Examiners issued by the Ordnance Survey in 1905 states that "occupation roads" includes "roads leading from a public road to a farm or inhabited house, and roads over which there is a private right of way from a public road". This does not preclude through roads, such as the route, which have been used by the public, but seems to relate to roads which end at a private house or field. There may be both an occupation way and a highway over the same road.

10.8 The bargaining stone near the north of the route is a facility said to have been used by farmers to strike a bargain by touching hands through a hole in the stone. It is improbable that such a facility would have been sited in a place which the farmer or merchant could not reach on his horse or with a horse-drawn cart.

10.9 When railway undertakings were mapping prospective railway lines it was in their interests to record roads at their lowest status in order to limit levels of compensation. No explanation has been given as to why Reedymoor Lane is described as an occupation road in documents relating to the construction of the railway under the Shipley to Colne Railway Act 1845 although it is undoubtedly a highway.

10.10 Land Registry records show that Ball House is registered land, but the route is not. This shows that the present owner of Ball House is exercising either a private easement, a prescriptive right or a public right of way over the route to reach the house. This strongly suggests that the route carries a vehicular public right of way. The same deduction can be made as regards an exception or reservation from the title to Ball House by which another person has a right over a way which can be reached only from the route.

Documentary evidence.

10.11 The following maps and comments on them are material -

(i) Yates' Map 1786. The southern section of the route appears. It seems from the map legend that the cartographer was depicting turnpike roads and cross roads, and not footpaths or bridleways. It is likely that the term "cross road" indicates a public road in respect of which no toll was payable (*Hollins v Oldham* 1995 refers).

- (ii) Smith's Map 1808. The route is shown on this map although it is on a very small scale.
- (iii) Greenwood's Map 1818. This map shows the route as a cross road; it is in direct alignment with a road continuing northwards to Barnoldswick.
- (iv) Baines' Map 1824. Although this map is only on a scale of 4 miles to 1 inch the route was promoted by the cartographer as a cross road.
- (v) Teesdale-Hennet's Map 1828-1830. This map is on a scale of 1 inch to 1 mile; it shows the order route as a cross road.
- (vi) Foulridge Tithe Map and schedule 1842. The route is shown as a walled lane annotated by the number 162a. The northern extension of the route is annotated by the number 363. Both roads are described in the schedule as "Road from Barnoldswick to Colne". Nothing about the tithe map suggests that the route is anything other than a public carriageway.
- (vii) Chapelry of Colne Map (pre-1844). This map shows the route and shows it continuing in a straight line to Barnoldswick. There is nothing in its depiction to suggest that it has any lower status than neighbouring motor roads.
- (viii) Map relating to the Skipton to Colne extension of the Leeds to Bradford Railway Line 1844. This map shows the route as an occupation road.
- (ix) Ordnance Survey Map 1847 (6 inches to 1 mile). Standing Stone gate is shown at the northern end of the route; a finger post is also shown. Five bench marks are shown along the order route.
- (x) Ordnance Survey Map 1870-80. The scale is 1 inch to 1 mile which is too small to show footpaths. The route is discernable; it is shown in the same style as other non-turnpike roads.
- (xi) Ordnance Survey Map 1895 (6 inches to 1 mile). This map shows the route and a guide post at its north end. There is no narrowing of the route near Ball House where an artificial mound now prevents free passage of vehicles.
- (xii) Finance Act 1910 Map (based on Ordnance Survey Map 1907) and field books. The scale of this map is 25 inches to 1 mile. The route is not shown as within the boundary of any hereditament and it was not within any calculation of land tax. The owner of Moss Farm (now Holly Bush Farm) claimed an allowance of £25 for a public road within hereditament 6567. That road connects the order route to a route to Moss House, Greenshaw and Slipper Hill. Under section 35(1) of the 1910 Act no duty would be charged on

land held by a rating authority. The highway authority would fit the definition of rating authority.

(xiii) Bartholomew's Maps of the 1920s, 1930 and 1938. These maps were produced for leisure and travel. The route appears as a secondary motoring road.

(xiv) Ordnance Survey Map 1938 (6 inches to 1 mile). The route appears as a walled lane of considerable width.

(xv) Ordnance Survey Map 1969/70. This map shows Standing Stone Gate and a guide post at the northern end of the route. The route is given its own plot numbers (8550 and 9792) with acreages. It is annotated as a track.

10.12 Photographic evidence shows physical features which do not resemble a footpath but have the typical characteristics of an ancient vehicular highway.

10.13 The book called "The Story of Foulridge" by Fay Oldland, a local historian, helps to show that the route is a public vehicular highway.

User evidence.

10.14 Claims of use contained in forms submitted to the inquiry and evidence given to the inquiry by a member of the Trail Riders Fellowship show that the requirement under section 31 of the Highways Act 1980 to show 20 years exercise of a right of way with wheeled vehicles and/or on horseback as of right has not been interrupted is easily achieved. The Council has stated that there is clear evidence that the full route is used by pedestrians and equestrians and also by motorcycles.

10.15 Vehicular use has been made of the route in recent times by motorcyclists despite parts of the route being shown on the definitive map as a footpath and parts not shown on that map as a public right of way of any description. Motorcycle trials have been known to occur on the route. That use has not been considered unlawful because the users considered that they had a public vehicular right over it. The provisions in the Road Traffic Act 1988 (re-enacted from earlier legislation) to the effect that it is an offence without lawful authority to drive a motor vehicle on any road being a footpath have either not been known about or, if known about, have not been seen as an impediment to vehicular use.

10.16 In the absence of any known landowner (other than the Council) the user evidence on motorcycles and on horseback, coupled with physical clues, the width of the route, its function within the context of an ancient highway network and corroborative map evidence strongly suggests that it is more likely than not that the public with horses and vehicles would have freely used the route in previous centuries and in the first half of this century.

he case for the objectors

11.1 The route (known as Ball House Lane) existed in the sixteenth century, but there is no evidence that Ball House Lane pre-existed the building of Ball House.

11.2 The *Story of Foulridge* by Fay Oldland does not include the route in the chapter on Road and Rail. That omission was because the route, unlike Cocker Hill and Standing Stone Lane, was not considered by the authoress to be an ancient highway. The pictorial map taken from that book by the supporters shows Ball House, but it does not show a way on the line of the route.

11.3 Historically Ball House is one of the most important houses in the district; it features in the book *Rural Houses of the Lancashire Pennines* published by the Royal Commission on Historic Monuments. There is evidence (including the ancient blocked doorway on the first floor) that Ball House was built by a "putter-out" (a cloth merchant who sent yarn out to houses with hand-loomers and brought back the cloth woven from the yarn). That trade needed a track to Ball House to allow carts to deliver and collect. The house was extended in 1627 by John Moore, a quaker who received into the house persons who shared his beliefs. The first owner of this house would have constructed and maintained the most efficient route to the pre-existing highway system at or near Standing Stone Gate; subsequent owners would have maintained that route.

11.4 The route may also have been used in connection with the quarrying of sandstone. A sandstone quarry near the route is shown on the Ordnance Survey map of 1844. The remains of many smaller quarries are apparent in the area. Huge quantities of this material would have been needed for the construction of three large reservoirs, the Canal tunnel and the railway, all of which occurred between about 1790 and 1850. The use of part of the route for carting quarried stone may account for that part of the route being wider than the rest or having moved from its original line on its northern section.

11.5 The route has never provided vehicular access to anything beyond the houses which it serves, and the nearby fields and quarries. Therefore it would have been inappropriate for that route to have been anything more than an occupation road, namely a way used by the people of the district for local purposes and not by travellers passing through.

11.6 The fact that the northern section of the route runs from Standing Stone Gate in a direct southerly line towards Colne does not support the claim that it was part of a continuous route to Colne from Barnoldswick. It is clear from historical evidence that in the vicinity of Foulridge the route from Barnoldswick to Colne was by Cocker Hill. On Barcroft's map Cocker Hill is marked as "the route from Barnoldswick to Colne" and its continuation along Foulridge Lane is marked "from Foulridge to Colne".

8

Cart and map
Thomas Barcroft lived 1652 in Foulridge
was a horseman??

11.7 The historical maps which have been produced were prepared for different purposes; they appear to be inconclusive and contradictory in respect of the status of the route. For an example, Greenwood's map, 1818, shows numerous lanes in the area but does not distinguish between private lanes (such as that serving Wanless Farm) and accepted highways.

11.8 The claim that the absence of any award of tithes on the route indicates that it was a highway is a dangerous assumption. This circumstance is not affected by the fact that other routes dealt with in a similar manner under the Tithe Act 1836 are now highways. If a road was shown it was because it produced no crops. A road which carried private rights may have been as unproductive of crops as a highway.

11.9 The records prepared under the Shipley to Colne Railway Act 1845 show the route as a occupation road. The use in the book of reference to "owners or reputed owners" was a standard heading on a pre-printed form. Obviously the Railway Company would go to great lengths to ensure that they were dealing with the rightful owners of the land and on the correct basis.

11.10 The Memorandum of Agreement between Thomas Parker of Browsholme Hall and the Railway Company illustrates the precision with which the procedures of acquiring land for the purposes authorised by the Shipley to Colne Railway Act 1845 were carried out. The land to which that agreement related included plot 71. That plot was described as "Occupation Road" in the relevant Book of Reference under the Act. The owners or reputed owners were the Leeds and Liverpool Canal Company,, Thomas Parker and three other individuals. Those persons were described as occupying the land in common. That was incompatible with the route being a highway. The fact that other routes, some of which are now highways, were also recorded as occupation roads, and some were recorded as township roads does not indicate that the route was a highway. Had the route been a public carriageway provision would have been made for it under the 1845 Act section 25 (crossing on bridges) or section 26 (crossing on a level).

11.11 The gates which were in use when the railway was operating and other gates across the route indicate that the route is not a vehicular highway.

11.12 A likely explanation of the formation of part of the route which is sunken is that it once formed a watercourse. Some of the stones on the surface of the route, and some which have been taken to build walls or for other purposes, are washed river stones. The canal Company diverted some of this water. Its works for that purpose required the wall to be built so as to avoid the works. The divergence in the distance between the walls on the west of the route and those on the east indicate that the walls were built as field boundaries and not with reference to the route. There is nothing in the physical characteristics of the route which justifies a conclusion that it is a vehicular highway.

1.1. There is no evidence that any public authority has accepted responsibility for maintaining the route, either before the Highway Act 1835 or afterwards. Such maintenance as has occurred has been done by the frontagers to the route, sometimes at great cost to themselves. The frontagers, accepting responsibility for this occupation road to their own properties, cleared the route after the severe flood damage in 1932. Also the frontagers, having been told by the highway authority that that authority had no responsibility for the route, excavated the route between Standing Stone Gate and Ball House in 1964 as it had become impassable. The hump between the walls near Ball House is not an obstacle which has been deliberately placed there; it is where the excavations ceased.

11.14 In so far as the route falls within the arc of the Lancashire County Council (Colne-Foulridge Bypass Classified Road) (Side Roads) Order 1996 and the Lancashire County Council (Colne-Foulridge Bypass Classified Road) Compulsory Purchase Order 1996, it is not treated as a vehicular highway.

11.15 The police have treated the route as not being a highway. They have therefore declined to take action in relation to vehicles belonging to persons fishing nearby reservoirs being obstructively parked.

11.16 The owner of Sandhall pays for an easement to pipe water under the route. That easement would not be appropriate if the route were a vehicular highway.

11.17 The route is entirely unsuitable for motor vehicles; there appears to be no drainage; even if the surface were made good and the vegetation cleared most of the route would still be too narrow for vehicles. A vehicular highway would be inconsistent with the Lancashire Structure Plan which aims to conserve sites of acknowledged nature conservation value.

11.18 Evidence given by a supporter that the route was once used for motorcycle trials is evidence that the route is not a highway. It is usual for such trials to be off highways. When motorcyclists have been seen using the route they have been warned off.

The case for the interested person

12. Mrs L.J.Lazonby stated that she has used the route on horseback over 20 times for each of the past 12 years. She has seen persons walking the route, but has never seen anyone using, or trying to use, it with a vehicle.

CONCLUSIONS

General points

13.1 Having taken all representations, objections and other material considerations into account, and on the basis of the evidence given to me, and from my site visits, I reach the following conclusions. I have received written evidence since the inquiry but it has not affected my decision.

13.2 To confirm the order I must, under section 53(3)(c) of the 1981 Act (on which the Council relies), be satisfied that there has been discovery of evidence which (when considered with all other relevant evidence available) shows, on a balance of probability, that -

(i) a byway subsists or is reasonably alleged to subsist over the route between points A and B; and

(ii) the length of footpath 8 between points B and C and the length of footpath 63 between points C and D ought to be shown on the definitive map as a byway.

13.3 In accordance with the decision of Lord Justice Farquharson in *Fowler v Secretary of State for the Environment* 1992 JPL at page 747 the evidence discovered by the Council has to be fresh in the sense that it was not available at the date of the definitive map and I have to identify that fresh evidence. Lord Justice Russell held in *R v Secretary of State ex parte Simms* 1990 3 All ER 515 that the use of the word discovery in this context embraces a situation where a mistaken decision was made and its correction becomes possible because of the discovery of information which may or may not have existed at the date of the definitive map.

13.4 The supporters' contention mentioned in paragraph 10.3 that all the evidence on which they rely should be regarded as having been discovered after the date of the definitive map and treated as fresh evidence is unsupported. The process of preparing the definitive map and statement under sections 27 to 32 of the National Parks and Access to the Countryside Act 1949 was very thorough. The Council's experience in this field of work must have led them to be aware of and to have expertly considered most, if not all, of the documentary evidence which existed at the date of the original definitive map and statement. That includes most of the documentary evidence on which the supporters seek to rely.

13.5 I can not accede to the supporters' request mentioned in paragraph 10.2 that if the order cannot be confirmed in its present form it should be confirmed modified to show the route as a bridleway. That request is inconsistent with most of the contentions which they made during the inquiry and I have no sufficient evidence on which I could confirm the order so modified. No request was made for the order to be modified so as to show on the definitive map a footpath on the part of the

route where no footpath is at present shown.

13.6 The supporters are mistaken in claiming, as recorded in paragraph 10.5, that factors such as the narrowness of the route are irrelevant. If the route is physically too narrow to accommodate vehicular traffic that factor is crucial (*Sherringham v Halsey* 1904 68 JP 395 illustrates the point). Fences or walls do not mark the boundary of a way if there are circumstances which show that they were built for a purpose other than marking that boundary (*A.G. v Moorsom Roberts* 1908 JP 123 illustrates the point). In this case I find that the irregularity of the walls and fences and the physical features which lie between them, which include banks, mature trees and watercourses as well as a track, indicate that the objectors are correct to contend, as mentioned in paragraph 11.12, that the walls were built as field boundaries and not to mark the boundaries of the way. Parts of the route are at present too narrow to allow the passage of a two-wheel axled vehicle. But as the route has been used as an occupation road there must have been times when it was wide enough for the passage of such vehicles.

13.7 The supporters contend, as mentioned in paragraph 10.6, that the doing of repairs and the placing of gates do not deprive the route of its highway status. No evidence was given to indicate that if the route was a highway it would not have been a highway maintainable at the public expense at least since the coming into effect of section 38 of the Highways Act 1959. It is not denied that in the 1930s and the 1960s some of the persons owning land adjoining the route did extensive works to clear part of it. Evidence was given, and not contradicted, that the local highway authority did not consider the route to be a highway when those works were done or at any other time. A gate may be lawfully placed across a highway only in very limited circumstances. No evidence was given that any such circumstances exist in respect of the route.

13.8 I find the supporters' contentions, mentioned in paragraph 10.7, about occupation roads mistaken. The highway authority as owner of the highway (but not usually of the land beneath it) and statutory undertakers have certain rights and duties as regards the highway. But there can be no occupation of a highway in the ordinary meaning of the word. A vehicular highway cannot also be an occupation road, that is a road laid out for the accommodation of occupiers of adjoining properties and legally open only to them (*Pratt and Mackenzie's Law of Highways*, 21 Edition. page 3 refers). The route is an occupation road which serves properties which adjoin it, but with a footpath superimposed on it between points B and D. Use of the route for the quarries would not ground a presumed dedication of a highway (*Leckhampton Quarries Co. Ltd. v Ballinger and Cheltenham Rural District Council* 1905 JP 464 refers).

Documentary evidence

13.9 The statements made by objectors relating to the *Story of Foulridge* by Fay Oldland are correct. The supporters' contentions about the bargaining stone (described in paragraph 7.1) mentioned in paragraph 10.8 are at best speculative.

13.10 I find the supporters' deductions, mentioned in paragraph 10.10, from the land certificate relating to Ball House to be mistaken. The fact that part of the land over which the route runs is not registered as part of the title No LA722893 is not proof that the registered proprietor of the land in that title is not the owner of that part of the route. If the route were a highway there would be a rebuttable presumption that the owner of the adjoining land would own the subsoil of the highway to the middle of the way.

13.11 Yates' Map shows part of the route reasonably clearly as a "cross road" but does not show most of the route at all. Smith's Map, Baines' Map and the Bartholomew Maps of 1920 and 1938 are on too small a scale to enable the route to be ascertained clearly or at all. A way is shown on the Teesdale-Hennet Map, but at least the northern section is on a different line to the route as it does not continue straight into what is now the B6251 at Standing Stone Gate. The copy of the tracing of the Chapelry of Colne Map shows a way on the line of the route, but its reliability is diminished because no evidence was given as to the author or provenance of that map. Greenwood's Map shows the whole route as a "cross road". That term is imprecise and does not appear ever to have had a relevant statutory definition. The archaic meaning of the term is usually taken to denote a road running across between two main roads, or a by-road.

13.12 The Ordnance Survey map of 1844-1848 shows a way approximately on part of the line of the route, but not between the railway line and Reedymoor Lane. It also shows a sandstone quarry slightly north of Ball House. The Ordnance Survey map of 1870-80 is on too small a scale to show a way on the exact line of the route and it does not seem to show any way between the railway and Reedymoor Lane. The Ordnance Survey maps of 1895, 1938 and 1969/70 and the Bartholomew map of 1930 show a way on the line of the route. However, the 1:2500 scale 1969/70 map marks a track along only part of the way and that track has no co-incidence with the field boundaries. The Ordnance Survey maps were concerned to show physical features, not to define public rights of way.

13.13 The tithe map separates a strip of land from the plots of land which surround that strip. The map shows the number 162a within that strip near Ball House. Another strip of land starts north of Standing Stone Gate. The map shows the number 363 within that strip. In the schedule of tithe apportionment plots 162a and 363 are bracketed together. Both plots are listed under the heading "Roads". The column in the schedule merely states

Ditto ditto". Those symbols appear to relate to the entry above them which reads "Road from Barnoldswick to Colne". No tithe is awarded in respect of these plots. It was the purpose of the Tithe Act 1836 to establish what lands were titheable. Tithes were to be paid out of all things which with the aid of cultivation yield increase (*Burns; Ecclesiastical Law; 4 edition, page 684* refers). No tithe would be awarded in respect of a road (whether or not a highway) which did not yield titheable produce. The objector's contentions in this respect mentioned in paragraph 11. 8 are correct. As a matter of practice land over which a road passed and in respect of which no tithe was awarded was described as a road. But it was no part of the purpose to record which roads were public rights of way, nor to record the perceived destination of a road.

13.14 The Shipley to Colne Railway Act 1845 enabled the Leeds and Bradford Railway Company to make the railway which crosses the route. Section 25 provides for the crossing of roads by bridges over, or tunnels under, that railway. Section 26 provides for certain highways to be crossed on a level. The route is not mentioned in either of those sections. The relevant plan shows the part Cocker Hill which crossed the railway as plots 53 and 54; it shows the part of the route which crossed the railway as plot 71. The Book of Reference records plot 53 as an occupation road; plot 54 as a township road and plot 71 as an occupation road. The supporters' criticisms, mentioned in paragraph 10.9, of the methods employed seem to have been made without regard to the exacting procedures which attend the enactment of legislation and its implementation. It is not clear why in the Book of Reference the part of the route affected by the railway works and part of Cocker Hill were given the same description, or why different lengths of Cocker Hill were given different descriptions. However section 2 of that Act incorporated the Lands Clauses Consolidation Act 1845 and the Railways Clauses Consolidation Act 1845 which provided a standardised procedure for the acquisition of land. Plots 53, 54 and 71 were amongst those purchased by the Company under the agreement dated 27 August 1846.

13.15 The Map prepared under the Finance Act 1910 shows the railway crossing the route without any break in the rails, and with barriers across the route on each side of the railway. No plot number appears to be given to the route. Section 25(3) of the 1910 Act allows for deductions from valuations in respect of both public rights of way and easements. The apparent lack of a duty leviable on the route may have been on account of it being regarded as burdened with easements. I find the supporters' contention that the route may have been exempt because under section 35(1) of the Act it was land held by a rating authority to be mistaken. The term "rating authority" is defined for this purpose in section 35(2); it is confined to a rating authority as such. The supporters are wrong to state that for plot 6567 an allowance of £25 was made in respect of a public road. The allowance was in respect of a road with no indication of the status of the road.

ser evidence

13.16 The supporters, in a list of 17 items which they perceive to be irrelevant, include the item "no user evidence". They do not explain why they consider it appropriate to provide their own user evidence. The user evidence on which they appear to rely is as follows -

(a) Two user evidence forms and two letters claiming vehicular use as of right. The longest period of use claimed is 10 years. Section 13 of the Road Traffic Act 1988 (re-enacting earlier legislation) provides that it is an offence to promote or take part in a competition or trail involving the use of motor vehicles on a public way unless the trail is authorised and conducted under conditions imposed by or under regulations. If, as mentioned in paragraphs 10.15 and 11.18, the route has been used for motorcycle trials and if the statutory requirements have not been complied with, the trails would have been unlawful and cannot found a claim of use as of right. I have no evidence that those requirements were met and therefore conclude that any trails which did occur provide evidence that the route is not a vehicular highway. Section 34 of the 1988 Act (re-enacting earlier legislation) provides that it is an offence, without lawful authority, to drive a motor vehicle on a footpath. The supporters had no satisfactory comment to make as regards the application of those provisions in respect of the lengths of the route which comprise parts of footpaths 8 and 63.

(b) Twelve user evidence forms claiming use on foot and horseback as of right. Only four of the claims were for a period of 20 years or more. Two of those claims refer to the reputation of the route as being not for "traffic" use.

The user evidence is too weak to give rise to a presumed dedication of a byway under the terms of section 31 of the Highways Act 1980. No dedication at common law was claimed.

Overall conclusions

13.17 My overall conclusions are as follows -

(a) Even if all the documentary evidence could be correctly treated as having been discovered on or after the date of the definitive map and correctly taken into account as fresh evidence, it does not (when considered with all other relevant evidence available, including the user evidence) on a balance of probability show that -

(i) a byway subsists or is reasonably alleged to subsist over the route between points A and B; or

(ii) the length of footpath 8 between points B and C and the length of footpath 63 between points C and D ought to be shown on the definitive map as a byway.

(b) Therefore the Order should not be confirmed.

DECISION

14.1 For the above reasons, and in exercise of the powers transferred to me, I have decided not to confirm the order. The order, in duplicate, is therefore returned.

14.2 Copies of this letter are being sent to each of the persons who appeared at the inquiry and to other interested persons.

Yours faithfully,



B.W. James, C.B.E., LL.B., Barrister.
INSPECTOR

APPEARANCES

FOR THE ORDER MAKING AUTHORITY

Miss S Whitelaw

Solicitor, Lancashire County
Council.

She called

Mr G.A.Alker

Principal Rights of Way Officer,
Lancashire County Council.

SUPPORTERS

*For the Trail Riders' Fellowship, the British Horse Society, the
British Driving Society and the South Pennines Packhorse Trails.*

Miss S Taylor

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and

Mrs P.M.Hogg

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Members of the Trail Riders' Fellowship.

Mr P Halstead
(The applicant)

112 Walton Lane, Nelson,
Lancashire BB9 8HU

and

Mr. P Knagg

4 Carloway Avenue, Preston,
Lancashire, PR2 9PN.

Others

Mrs C England

Pendleside Byways Association,
138 Harrison Drive, Colne,
Lancashire, BB8 9SF

Mr D Wilkinson

31 Barnwood Crescent, Earby,
Lancashire BB18 6PD

OBJECTORS

Mr John Bank	Ball House, Reedymoor Lane, Foulridge, Colne, Lancashire, BB8 7LL.
Mr J Taylor	Holly Bush Farm, Reedymoor Lane, Foulridge, Colne, Lancashire, BB8 7LL.
Mr C A. Wilson	Cocker Hill Farm, Foulridge, Colne, Lancashire, BB8 7LN.
Mr P.S.Clegg	Foulridge Parish Council, 16 Sycamore Gardens, Foulridge Colne, Lancashire, BB8 7LN.
Mrs Fay Oldland	Past President, Colne and District Local History Society, 4 Priestfield Avenue, Colne, Lancashire, BB8 9QJ.
Mrs C. Harrison	Ramblers' Association, Burnley and Pendle Group, 54, Brier Crescent, Nelson, Lancashire, BB9 0QD.

INTERESTED PERSON

Mrs L.J.Lazonby	Weets House Farm, Gisburn Old Road, Blacko, Nelson, Lancashire, BB9 6R.
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DOCUMENTS

1. Attendance lists.

Documents provided by the Lancashire County Council.

2. Report, recommendations and Statement of Reasons relating to the Council's decision on 16 July 1985 not to make an order.

3. Documents relating to the definitive map -

Parish Survey Card (undated) and Parish Survey Map,
Draft Definitive Map (published 1 January 1955),
Provisional Definitive Map (published 25 March 1960),
Definitive Map (published 1 June 1962),
Definitive Map following first review (published 25 April 1975),
Definitive Statement.
List of dates relating to the original definitive map and its first review.

4. Documents relating to the Shipley to Colne Railway line-

The Shipley to Colne Railway Enabling Act 1845,
Extract from Book of Reference,
Extract from map used under the Act,
Memorandum of Agreement dated 27 August 1846 between Mr T.G.Parker as life tenant of land and the Leeds and Bradford Railway Company.

5. Extracts from Maps and related documents-

Yates' Map 1786 and key,
Smith's Map 1818,
Greenwood's Map 1818 and key,
Teesdale-Hennet's map 1840 and key,,
Tithe Map 1842 (with extract form tithe awards),
Map used under the Finance Act 1910 (with extract from Field Book),
Ordnance Survey Maps -
1844-48
1879/80
1894
1969/70

6. Bundle of 21 letters and one petition with 31 signatures objecting to the order.

Documents provided by or on behalf of Supporters.

7. Extracts from -

The Highway Act 1773,
The Barkisland Enclosure Award 1814
The Highway Act 1835.

8. Extracts from Maps and related documents-

Yates' Map 1786 (with a note on the author),
Smith's Map 1808,
Greenwood's Map 1818 and key,
Baines Map 1824,
Teesdale-Hennet's map 1840,
Colne Chapelry Map 1847,
Tithe Map 1842 (with extract from tithe awards),
Map prepared under the Shipley to Colne Railway Act
1845.
Map used under the Finance Act 1910 (with extract from
Field Book),
Bartholomew's Maps dated 1920, 1938
Ordnance Survey Maps -
1844-48
1879/80
1895
1938
1969/70.

9. Extracts claimed to be from various booklets or articles
under the headings -

The Story of Foulridge (with map),
Rights of Way,
A Key to Maps,
Conventional Signs used in plans relating to the
commutation of tithes,
Railway and Canal deposited plans,
Repair of Highways,
Finance Act Roads
Bench Marks
Double Cross
What is a Cross Road ?

10. Bundle of 2 forms and 2 letters supplied by the Trail
Riders' Fellowship claiming vehicular use of the route.
11. Bundle of 12 user forms supplied by the Pendleside
Bridleways Association claiming bridleway use.
12. Bundle of 24 photographs of the route.
13. Copy Land Certificate for Title Number LA722893 with plan.
14. Bundle of miscellaneous papers.

Documents provided by Objectors

15. The Story of Foulridge by Fay Oldland.
16. Extract from Rural Houses on the Lancashire Pennines.
17. Article on sandstone and sandstone crushing.
18. Map of Land belonging to William Barcroft in Foulridge.
19. Jefferies' Map 1771, Yates' map 1786, Smith's map 1808, Greenwood's map 1818.
20. Memorandum of Agreement dated 27 August 1846 between Mr T.G.Parker as life tenant of land and the Leeds and Bradford Railway Company.
21. Lancashire Strategic Plan : policy E6 : Important Wildlife Sites.
22. The Lancashire County Council (Colne-Foulridge Bypass Classified Road) (Side Roads) Order 1996 and the Lancashire County Council (Colne-Foulridge Bypass) Compulsory Purchase Order 1996.
23. Note entitled "Natural Characteristics" and 6 photographs.

Document provided by interested person

24. User evidence form.

Regulatory Committee

Meeting to be held on 18 July 2018

Electoral Division affected: Wyre Rural East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Application to upgrade part of Bridleway 29 Barnacre-with-Bonds, known as Byerworth Lane, to Byway Open to all Traffic

File No. 804-424 (Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 535604, Paralegal Officer, County Secretary and Solicitors Group, Claire.blundell@lancashire.gov.uk

Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning and Environment Group, jayne.elliott@lancashire.gov.uk

Executive Summary

Application to record on the Definitive Map and Statement of Public Rights of Way part of Bridleway 29 Barnacre-with-Bonds (known as Byerworth Lane) as a Byway Open to All Traffic, in accordance with file No. 804-424.

Recommendation

That the application for part of Bridleway 29 Barnacre-with-Bonds to be recorded as a Byway Open to All Traffic, in accordance with File No. 804-424, be not accepted.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 was submitted on 11 July 2005 for the Definitive Map and Statement to be amended by upgrading to byway open to all traffic part of Bridleway 29 Barnacre-with-Bonds, Wyre Borough (known as Byerworth Lane) and shown between point A and point C on the Committee plan.

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

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

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

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

The borough council's countryside service does not hold any evidence in support of, or contrary to, the application, but comments that this is only a narrow track/lane and that the current users of the track, i.e. horses, cycles, wheelchairs and pedestrians will be particularly vulnerable if the upgrade resulted in an increase in the number of motorised vehicles using the lane.

Barnacre-with-Bonds Parish Council

The parish council does not support the application as the route is very popular for pedestrians; the lane is narrow and has poor visibility and there are no passing places.

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	4915 4432	Unmarked junction on Byerworth Lane of county road U11096 with Bridleway 29 Barnacre-with-Bonds.
B	4914 4408	Triangle of tracks outside farm entrance
C	4912 4407	Entrance to Byerworth Farm.

Description of Route

A site inspection was carried out in April 2018.

Leading to the application route is a tarmac road off Garstang Road (also known as Bonds Lane) providing access to housing and then crossing the Lancaster Canal via Byerworth Bridge before continuing in a south westerly direction as a narrow tarmac road. This road is bounded by hedges in which a number of gaps/gateways permit golfers to cross the road to land of the Garstang Golf Club which lies on either side of the road.

The route described above (from Garstang Road to the start of the application route) is recorded on the List of Streets as Byerworth Lane North (U11096). A line could be seen across the tarmac roadway which looked like a point to which the road had possibly been tarmacked at different times up to and beyond that point. About 5 metres beyond that line is the start of the application route (point A on the Plan).


From point A the application route (also part of Byerworth Lane) continues in a generally southerly direction with a gateway onto the golf course on the bend. The route continues along a tarmac roadway approximately 2.5 metres wide with mown grass verges and well maintained hedges on either side for approximately 275 metres to point B which is a triangular junction of tracks outside Byerworth Farm and is part of the bridleway. It is east of the entrance to Byerworth Farm from where the bridleway (also known as Byerworth Lane weaves generally east to Bowgreave to exit onto Garstang Road opposite Garstang Community Academy.


The route under investigation continues through the triangular junction to the entrance to Byerworth Farm to end at point C.

The continuation of the bridleway is also known as Byerworth Lane and is not part of the application route. It runs through to the houses at Bowgreave; the surface consists of compacted stone/hard-core passing through the golf course bounded by hedges. The bridleway is not tarmacked but is wide enough for vehicles to use it.

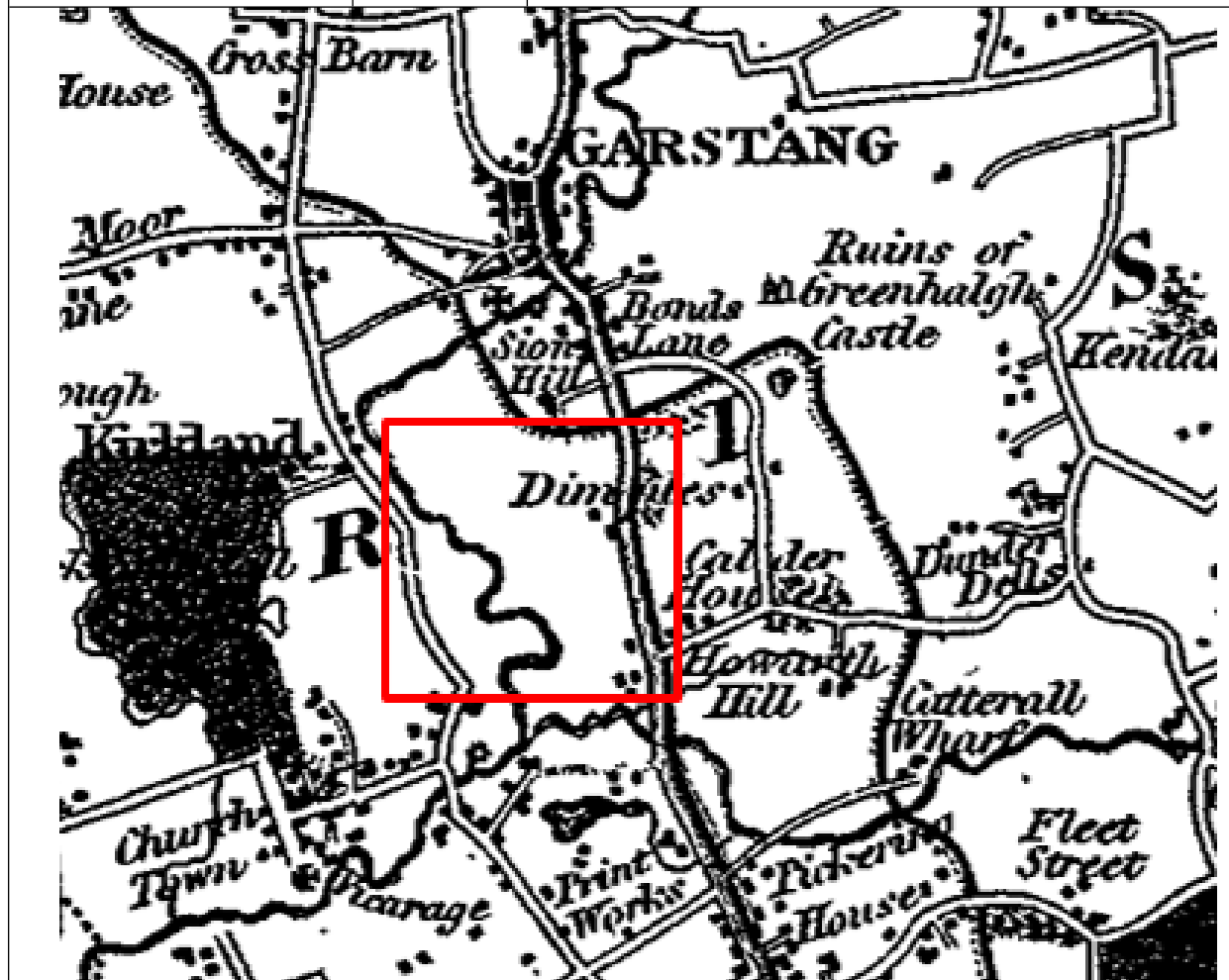
The total length of the application route is 285 metres.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
		
Observations		The application route and the rest of the route known as Byerworth Lane are not shown. Buildings are shown (but not named) in the proximity of Byerworth Farm.
Investigating Officer's Comments		The application route (or part of it) may have existed in 1786 to provide access to unnamed properties but was not considered by Yates to be a public highway or it may have been that it was unenclosed or that the hedges/fences/walls were in disrepair or possibly that this section was not surveyed, as surveys were expensive.

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 application route is not shown. A route consistent with the first part of Byerworth Lane (from Garstang Road to Byerworth Bridge) is shown but no part of the application route is shown. The buildings making up Byerworth Farm are not shown.
Investigating Officer's Comments		The application route may not have existed in 1818 or if it did exist it was not considered to be a public vehicular highway or a route of sufficient significance to be included on the map.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills

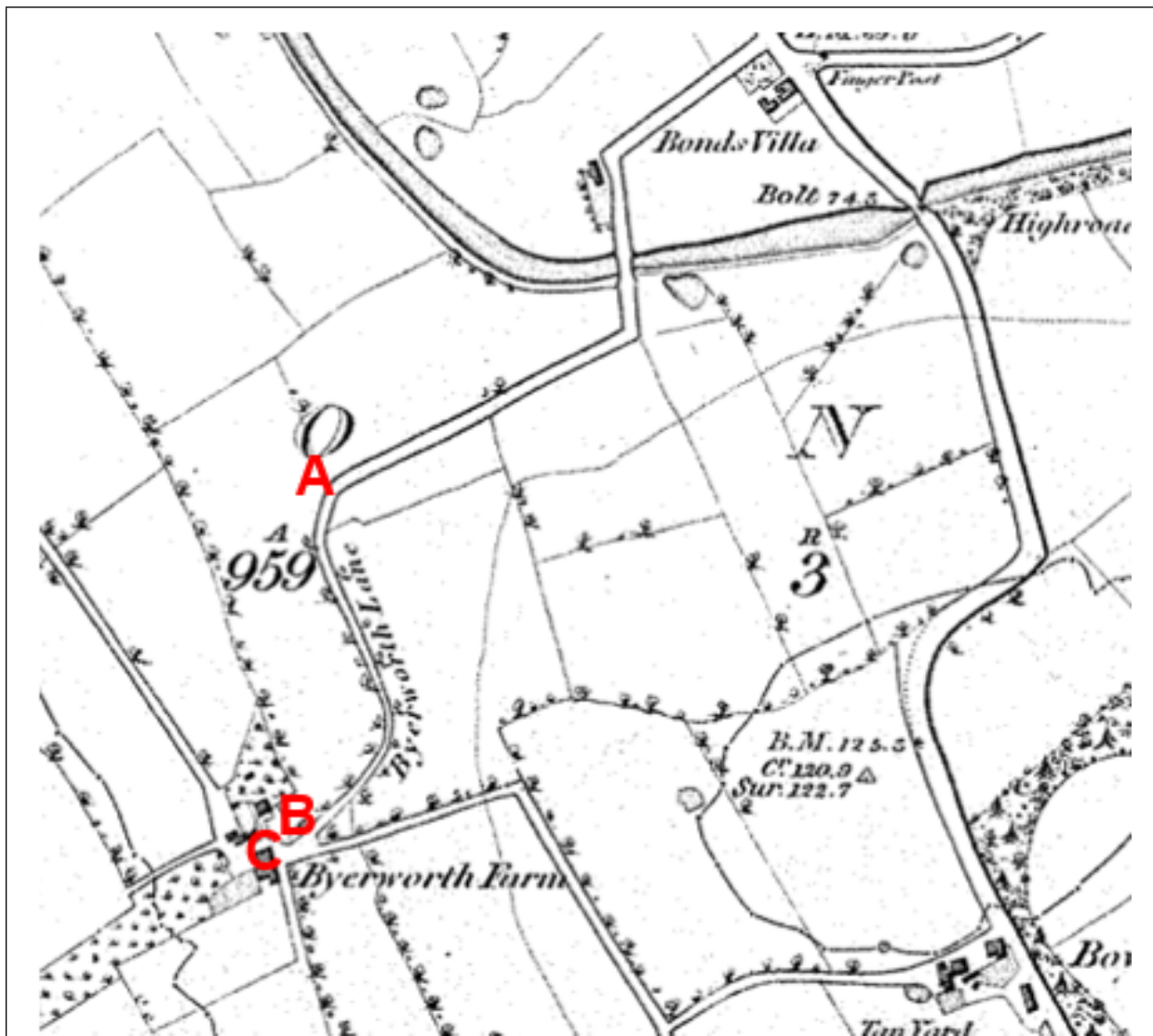
		and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
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Observations		The application route is not shown and neither is any part of the route known as Byerworth Lane or Byerworth Farm.
Investigating Officer's Comments		The application route may not have existed in 1830 or if it did exist it was not considered to be a public vehicular highway or a route of sufficient significance to be included on the map.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available

		for proposed canals and railways which were never built.
Observations		No railways or canals were built or are known to have been proposed in the area crossed by the application route. Byerworth Lane is crossed by the Lancaster Canal (Byerworth Bridge) but no records relating to the application route were found.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		The Tithe Map for Barnacre-with-Bonds does not cover the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847. ¹

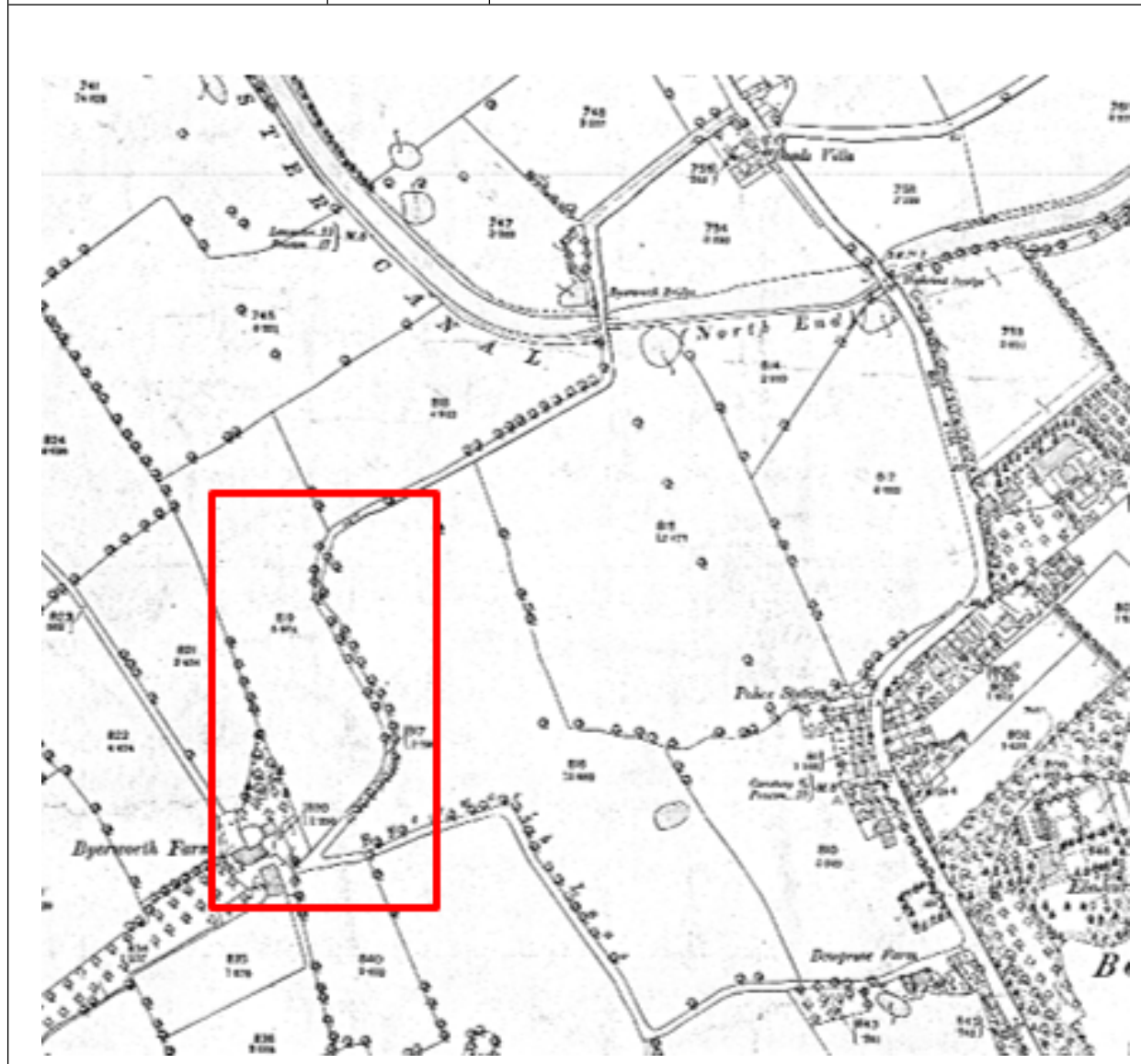
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in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

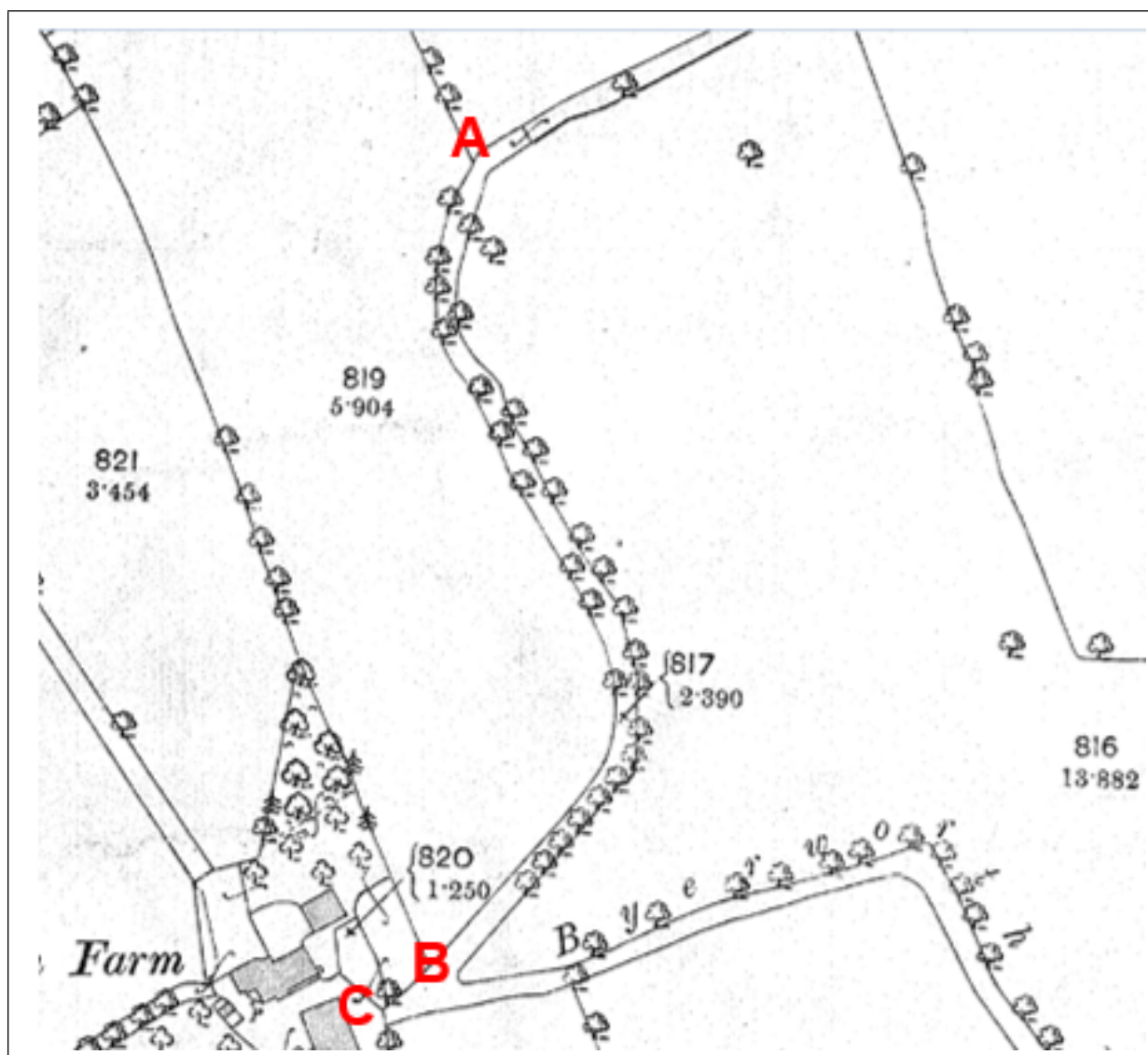


Observations		<p>The application is clearly shown as part of a longer bounded route extending from Garstang Road near Bonds Villa crossing the canal and passing through point A to continue through point B to point C from where there appears to be direct access to Byerworth Farm. From point B a further route extends in a generally easterly direction to the Tan Yard and exits onto Garstang Road at Bowgrave (now known as Bowgreave).</p> <p>Between point A and B the application route is named on the map as Byerworth Lane.</p>
Investigating Officer's Comments		<p>The whole length of the application route is shown in the same manner as the general road network and it is reasonable to conclude that it existed as a substantial route in the 1840s</p>

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.

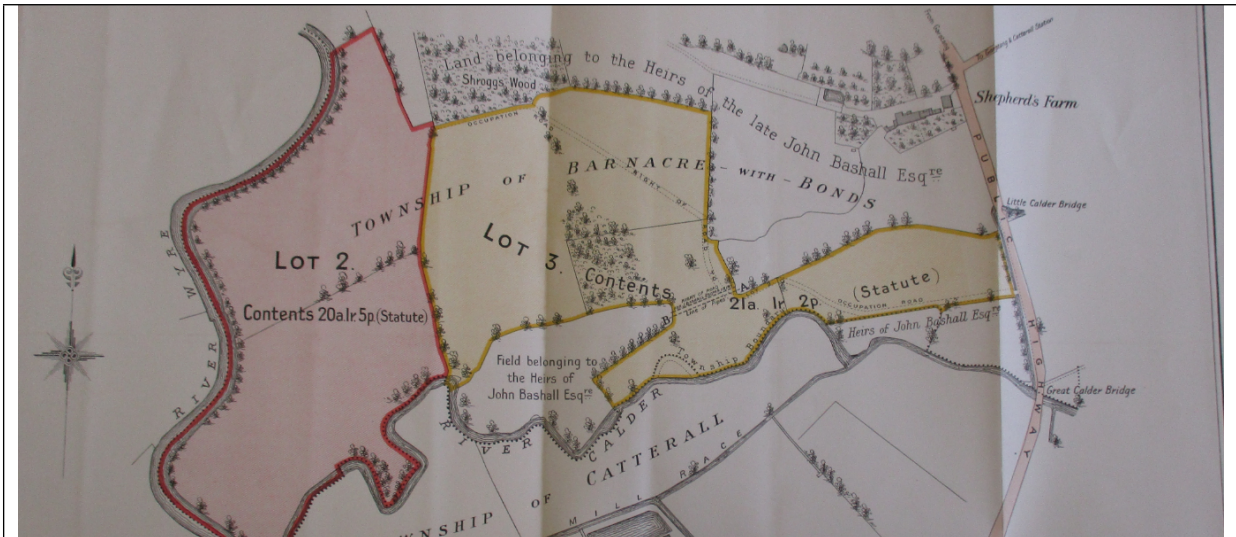
		<p>which would have been wide enough to be used by vehicles.</p> <p>The route would have provided access to and from Byerworth Farm and formed part of a pair of routes connecting to Garstang Road. Its appearance on the map is consistent with how other public vehicular highways are shown and the fact that it was named on the map often suggests a route is known and used by the public but is not conclusive of that fact.</p>
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1893.





<p>Observations</p>		<p>The application route is shown as part of a pair of routes linking Byerworth Farm with 2 points on Garstang Road. A gate is shown across the route just to the east of point A and the route from Garstang Road, crossing the canal via Byerworth Bridge, to the gate east of point A is shown depicted with a thicker line on one side and there is no OS field number allocated to it. Beyond the gate the route (including the application route) is not shown with the thicker line.</p> <p>From the gateway, passing through point A and continuing to point C at the entrance to Byerworth Farm and then continuing along the lane generally east to the gated exit onto Garstang Road at Bowgrave Farm the bounded route has a field (plot) number.</p>
<p>Investigating Officer's</p>		<p>The route under investigation existed in 1890</p>

Comments		<p>and appeared to be wide enough for vehicular traffic at that time.</p> <p>Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between the 1880s and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot so the fact that the route is shown in this way up to the gate just east of point A is consistent with how it is now recorded as a public vehicular highway up to a point just east of point A but no further.</p> <p>The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status and it is noted that the route from Garstang Road to the gate just east of point A has no such parcel number but that the rest of the route – including the application route is shown with an OS parcel number.</p> <p>Gates are shown to exist across the route just east of point A and at Bowgrave Farm (immediately west of point C) – it is not unusual for there to have been gates across less-used highways for stock control purposes.</p>
Particulars of Sale of Bierworth Farm by public auction	1910	<p>Sale particulars submitted by Director of Garstang Country Hotel and Golf Club.</p> <p>Original copy inspected by the County Council at the Lancashire County Records Office.</p>



Observations

The Sale Particulars relate to the sale of a freehold farm known as Brierworth Farm and also two plots of adjacent freehold farm land. The farm and two additional plots of land were to be sold at public auction at the Kenlis Arms Hotel, adjacent to Garstang and Catterall Railway Station on 14 July 1910.

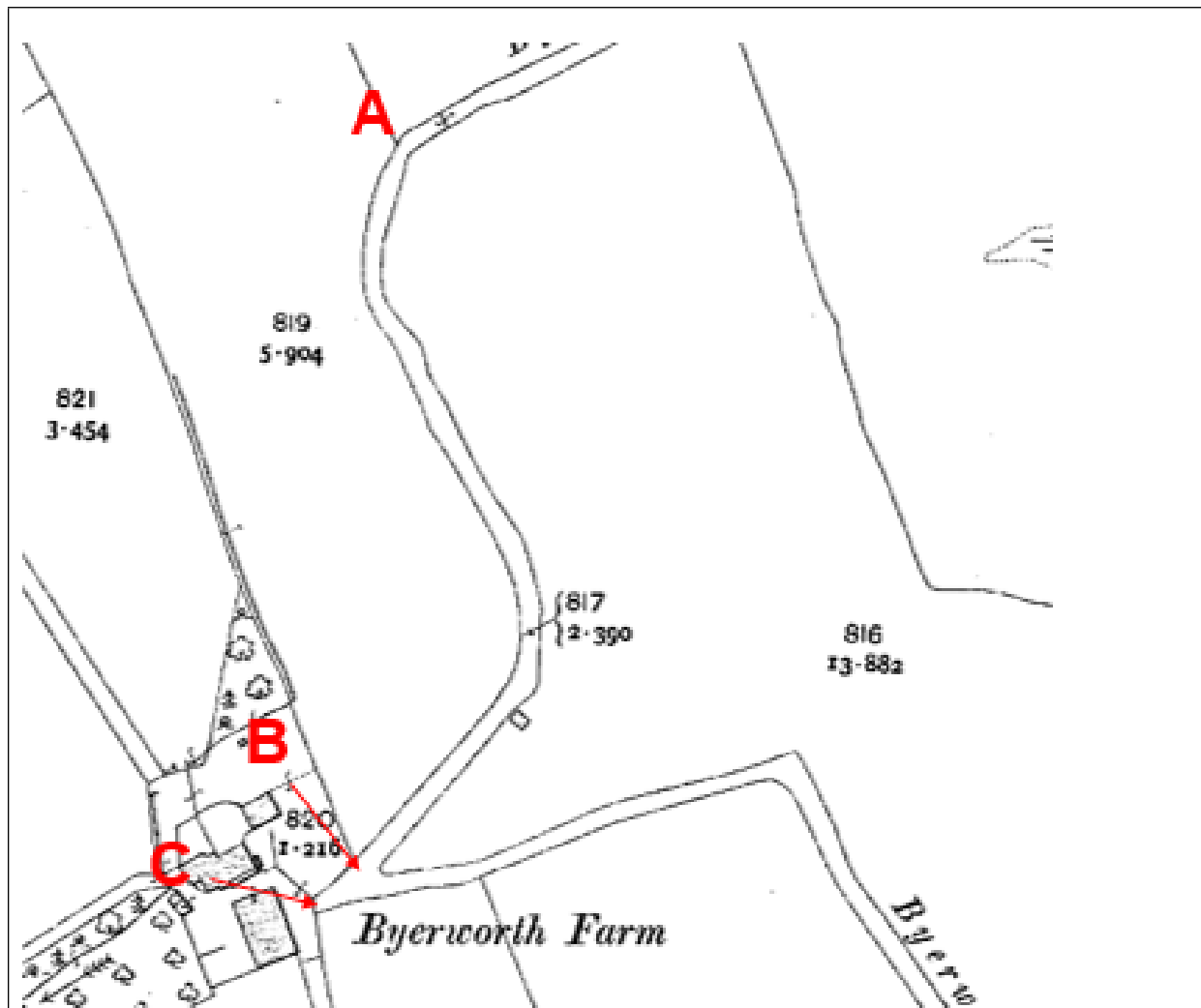
The particulars describe how Brierworth Farm (Lot 1) was in the occupation of Mr William Howson Dixon under a yearly tenancy and that the previous owner (William Smith) was now deceased. Reference was made to a plan and a private right of way between points annotated between points A and C on the plan but no plan was provided by the Company Director who had highlighted under a section headed 'Special Conditions of Sale' that it was stated that 'The rights of road mentioned in the Particulars shall be for all tenantly purposes except where otherwise provided.'

A search was made for the Sale Particulars in the Lancashire Records Office and a complete copy found.

The particulars contained two maps.

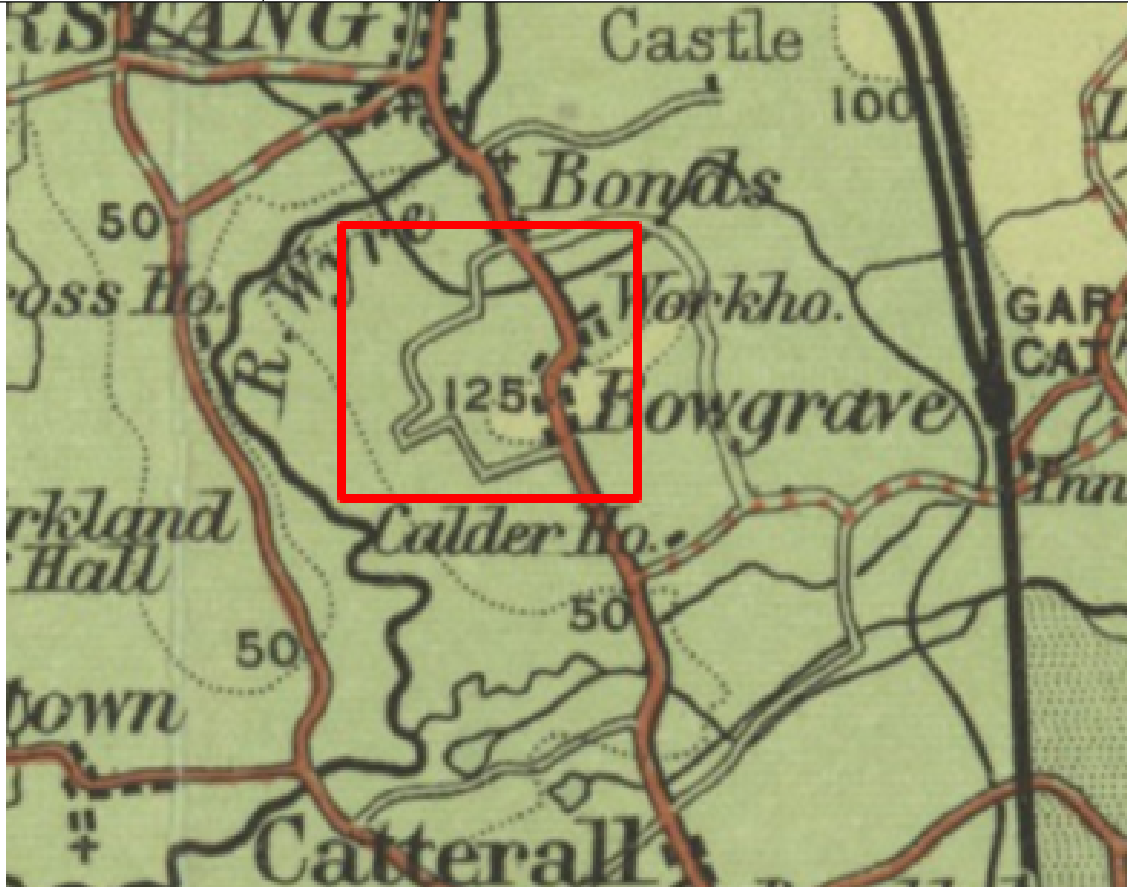
The first map related specifically to Lot 1 – the sale of Brierworth Farm – and shows that the land to be sold did not include the application route or any part of the access roads (Byerworth Lane). The land crossed by the application route was shown on the plan as being in the ownership of the heirs of the late John Bashall Esq. and the plan shows routes leading from the farm labelled 'from Garstang' and 'to Garstang Station'. The route labelled 'from Garstang' is not shown in its entirety but is

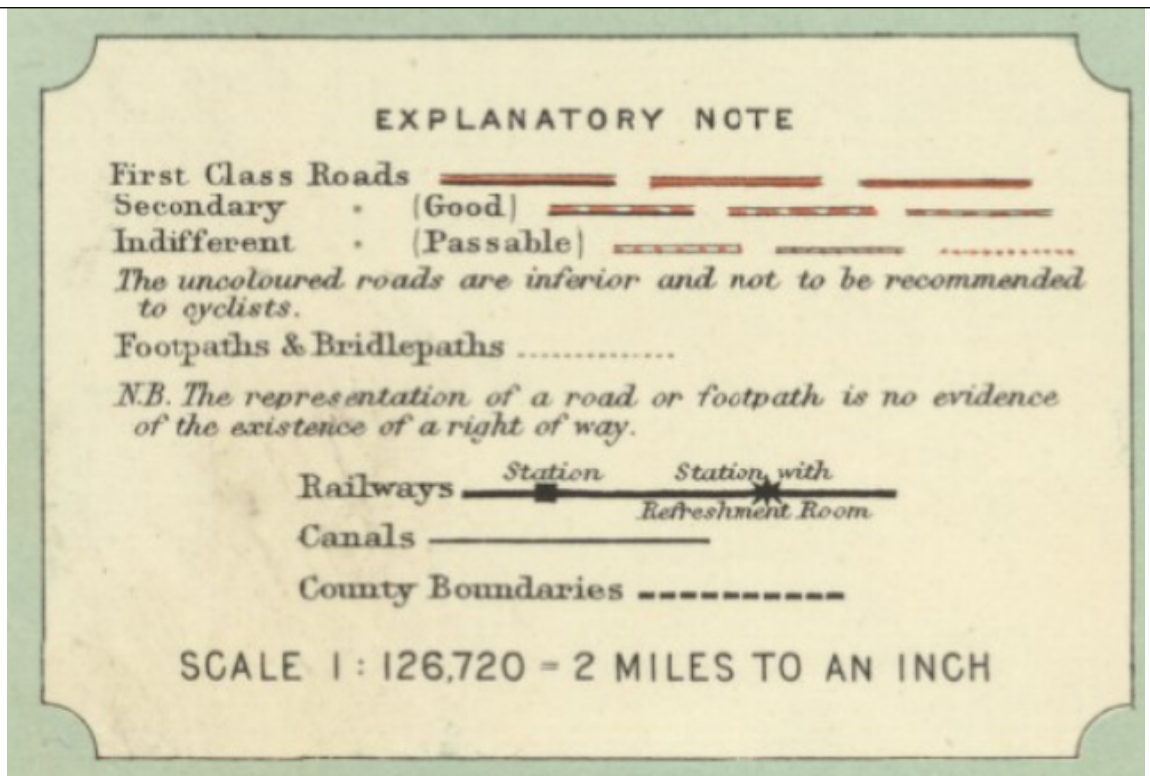
		considered to be that of the application route. Lot 2 and Lot 3 to be sold are shown on a separate plan and it is to those plots that the references to the rights of road in the Special Conditions of Sale relate.
Investigating Officer's Comments		When the property was put up for sale in 1910 it is clear that the land crossed to access it was not in the same ownership. No mention is made to the need for or existence of private access rights to access the farm and the plan showing Lot 1 (Bierworth Farm) appears to show access to/from the farm along routes 'from Garstang' and 'to Garstang Station' implying the existence of public or private vehicular access along the route and to the farm but there is no reference to access rights to cross land in different ownership to access the farm suggesting those rights were public. On the other hand Lots 2 & 3 did have a specific rights of road suggesting access was private not public.
Conveyance dated 20th September 1910	1910	A copy of a conveyance and plan submitted by the applicant for the purchase of the property by William Mitchelle of Belle Vue, Lancaster.
Observations		The conveyance plan shows the land purchased at the auction and shows the access to and from the farm in the same way as the auction plan (i.e. labelled 'from Garstang' and 'to Garstang Station'. The conveyance, whilst difficult to read, does not appear to make any reference to access rights to the property along the application route.
Investigating Officer's Comments		It appears that access to the property was probably along both the application route and the other sections of Byerworth Lane and that these routes may have been considered to form part of the public vehicular highway network as no provision is made within the conveyance regarding access to the property.
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1912.



Observations		The application route is shown as part of a pair of routes providing access to (and from) Byerworth Farm. Whilst the application route is not gated the longer route of which it forms part, is gated east of point A and west of point C at Byerworth Farm and also at Bowgreave.
Investigating Officer's Comments		The application route existed and appeared to be capable of use by vehicles and to form part of a pair of routes which could be used as a through route as a longer, narrower alternative to Garstang Road.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps

Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.





Sheet 5 – North Lancashire and Isle of Man published 1905

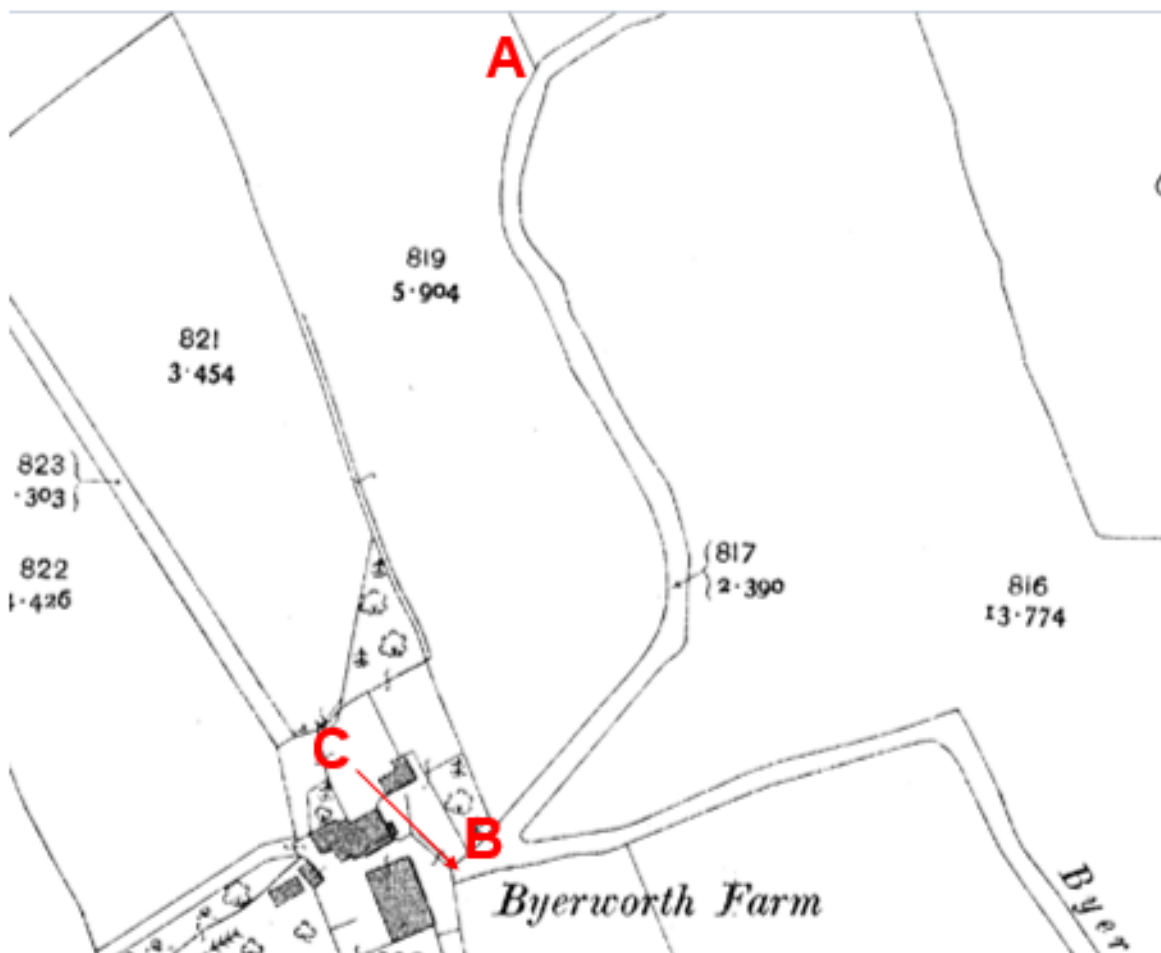
Observations		The application route is shown as part of a longer route on three editions of Bartholomew's maps (1905, 1920s and 1940s). It is shown as an uncoloured road – described in the key as being inferior and not to be recommended to cyclists.
Investigating Officer's Comments		The inclusion of the route on these small scale commercial maps indicates the existence of the route as a substantial physical route capable of being used by vehicles and implies that whilst the route may have been 'inferior' it is likely to have been accessible.
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</p>

		<p>land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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Observations		<p>A copy of the District Valuation map was obtained from the National Archives.</p> <p>The whole of the application route is contained</p>
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		<p>within hereditament 71 and no part of it is excluded.</p> <p>The Field Book entry for hereditament 71 makes no reference to the route and no deductions are claimed for public rights of way or user.</p>
Investigating Officer's Comments		<p>The fact that the whole of the application route was included within a numbered plot suggests that it was not considered to be a public vehicular highway at the time of the survey 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 right of way at the time of the survey or that the landowner chose not to claim a deduction.</p>
25 Inch OS Map	1932	<p>Further edition of 25 inch map (surveyed 1890, revised in 1930 and revised 1932.</p>



Observations		<p>The application route is shown as part of a longer route. Byerworth Lane is no longer gated east of point A but the route exiting onto Garstang Road at Bowgreave Farm is still</p>
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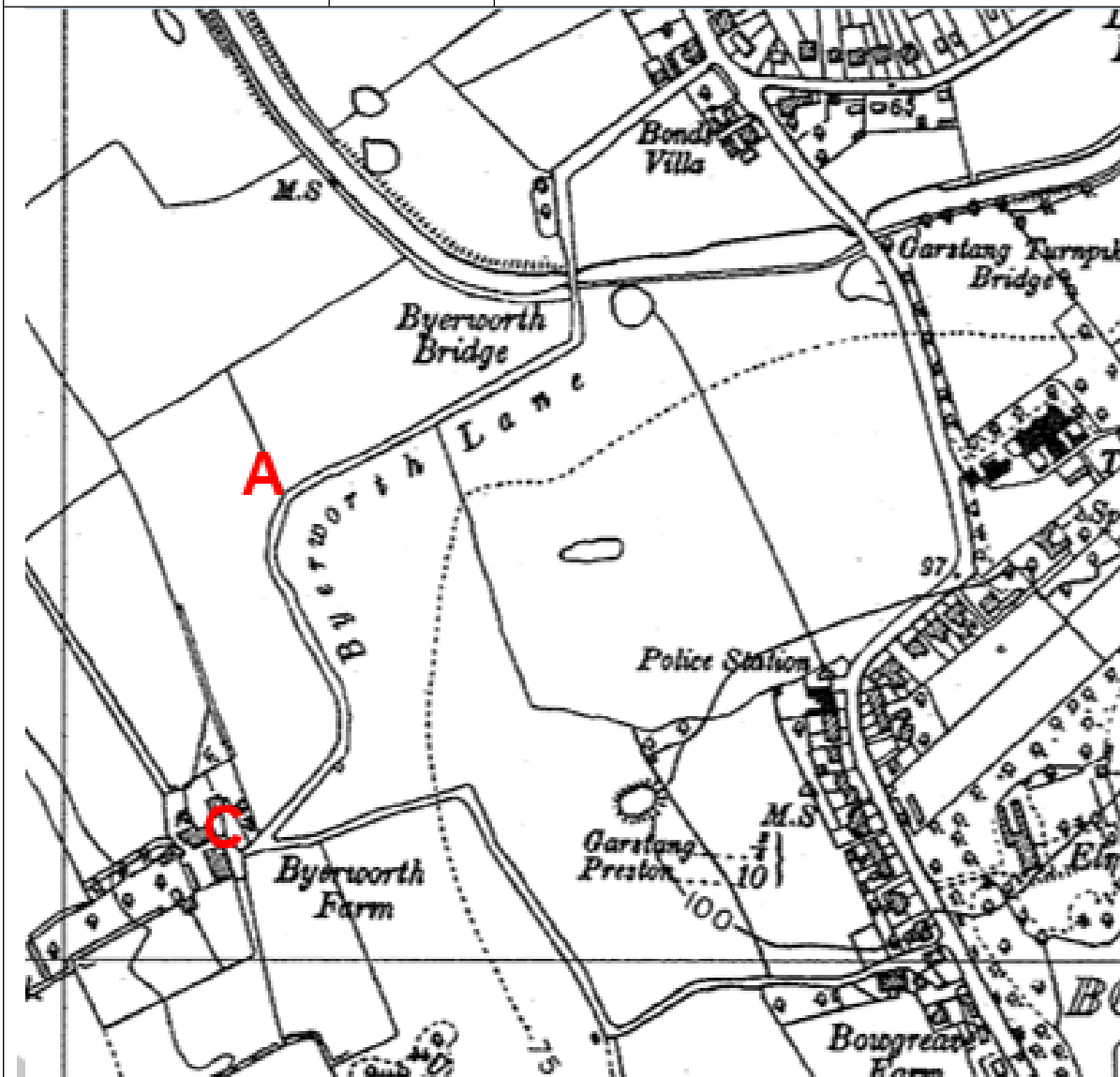
		gated.
Investigating Officer's Comments		The application route existed and appeared wide enough to be used by vehicles.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.



Observations		The application route can be clearly seen forming part of a route providing access to the farm. The route south from the farm (to Bowgreave) is also visible but appears less prominent.
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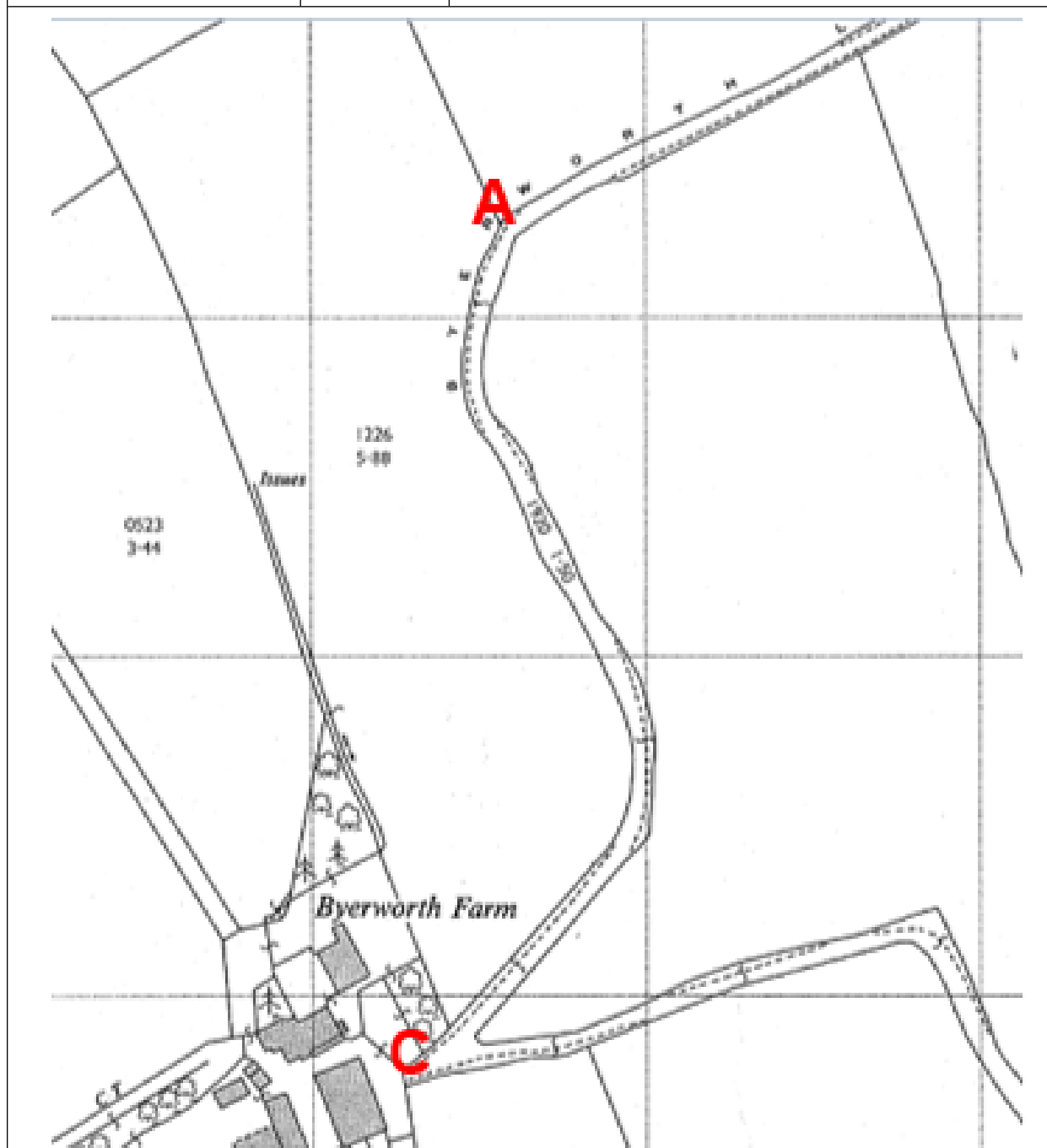
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

Investigating Officer's Comments		The application route existed and appears to have formed part of the main vehicular access route to the farm and also could have been used as part of a route back from the farm through to Bowgreave Farm (and Garstang Road).
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.




Observations		The application route is clearly shown as part of a pair of routes providing access to Byerworth Farm but also continuing past the farm to Bowgreave Farm (and Garstang Road). No gate is shown across the application route but gates are shown to the west of point C at Byerworth Farm and by Garstang Road at
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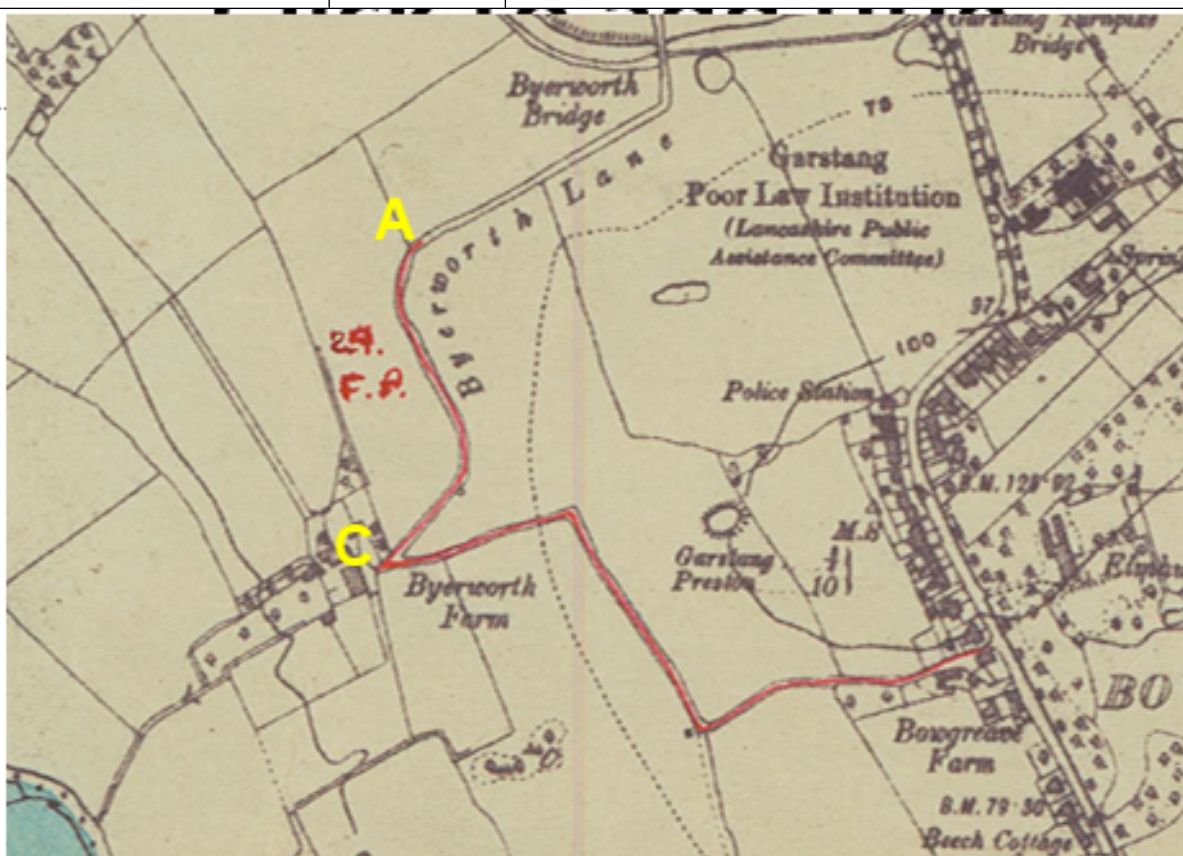
		Bowgreave.
Investigating Officer's Comments		The application route existed as part of a pair of routes providing access to the farm and continuing past the farm (i.e. a through route, albeit not a particularly convenient one). It is shown in the same way as other public vehicular routes.
1:2500 OS Map	1964	Further edition of 25 inch map reconstituted from former county series and revised in 1962 and published in 1964 as national grid series.



Observations		The application route is shown in the same way
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		as on earlier editions of OS mapping.
Investigating Officer's Comments		The application route appeared to be capable of being used as part of access to the farm but also as a through route passing the farm and continuing to exit onto Garstang Road at Bowgreave in 1962.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
Observations		The application route can be clearly seen forming part of a route providing access to the farm. The route south from the farm (to Bowgreave) is also visible but appears less prominent.
Investigating Officer's Comments		The application route existed and appears to have formed part of the main vehicular access route to the farm and also part of a further route past the farm through to Bowgreave farm (and Garstang Road) in the 1960s.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.

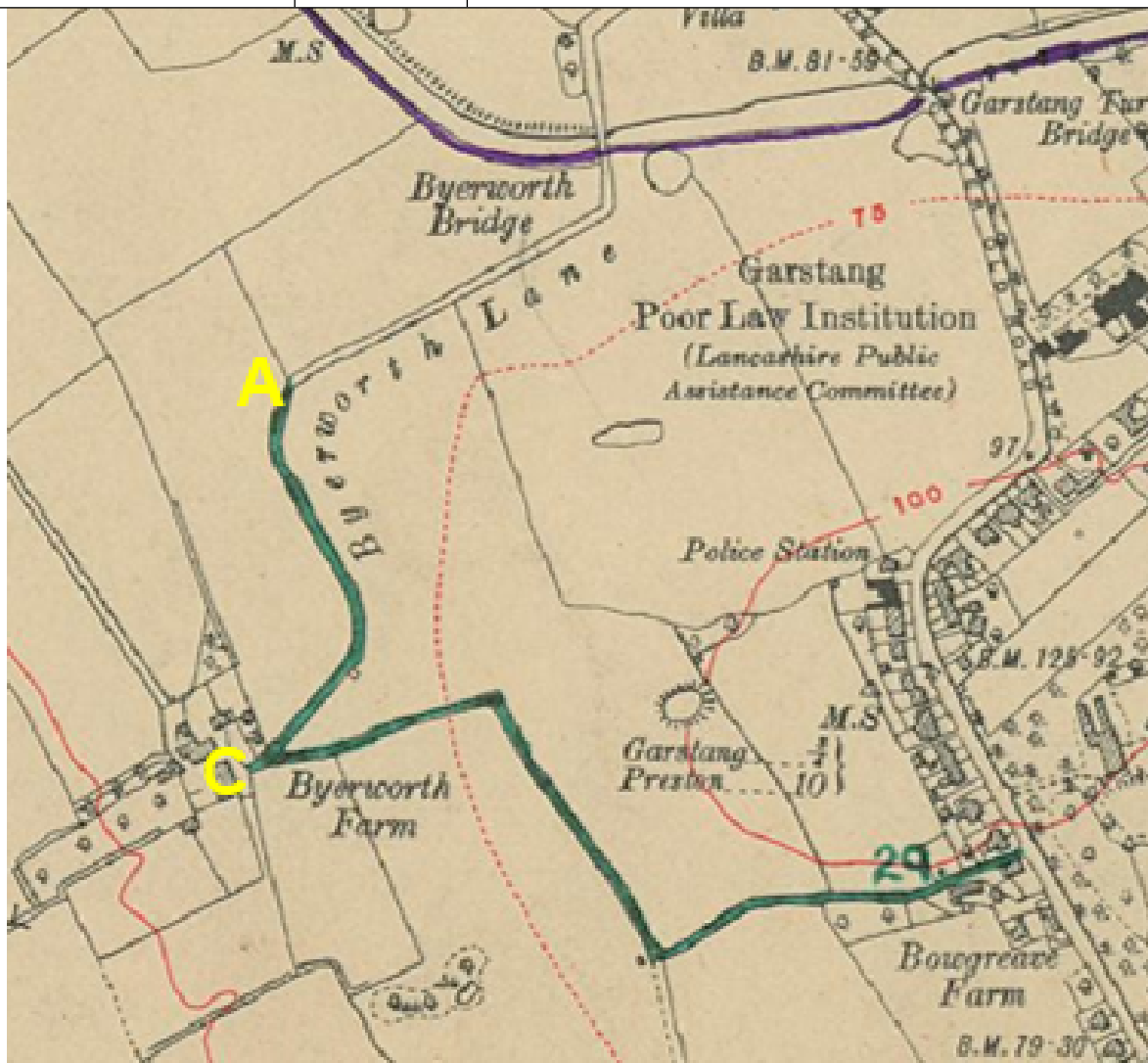
		Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.



DISTRICT	<u>Garstang</u>	PARISH	<u>Barnacre-with-Bonds</u>	No. <u>29 F.P.</u>
MAP SHEET No.	<u>3</u>	LENGTH	miles	
BRIEF DESCRIPTION (Field F.P. or otherwise)		(to two decimal places)		
<u>C.R.F.</u>				
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).				
<u>Starts at junction of Byerworth Lane with Main Road on Bowgreave.</u>				
<u>heads along the lane until its termination two fields before Byerworth</u>				
<u>canal bridge. Surface is roughly metalled</u>				
<u>Good condition.</u>				
SURVEYED BY :—		Name <u>H. Grayling.</u>		
		Address <u>Calder Mount. Garstang.</u>		
Date				
<small>90000/F39/4/50</small>				

Observations		<p>The application route is shown as part of footpath 29 on the parish survey map. The route is shown to start at point A and then to continue to point C and then along the full length of the route from Byerworth Farm to Garstang Road via Bowgreave.</p> <p>The parish survey card describes the route as a 'CRF' which is defined in the Ramblers Association, Commons, Open Spaces and Footpaths Preservation Society guidance on completing the survey (published 1950) as a highway which the public are entitled to use with vehicles but which, in practice, are mainly used by them as footpaths (CRF) or bridleways (CRB). The surface of the route was noted as being roughly metalled.</p>
Draft Map		<p>The parish survey map and cards for Barnacre-with-Bonds 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</p>

them on the evidence presented.



Observations

The application route is shown as part of Bridleway 29 and described in the Draft Statement as a bridleway 'Near Bowgreave Farm to two fields before Byerworth Canal Bridge'.

No record could be found regarding the change of the public status to be recorded (from CRF to bridleway).

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 application route was shown as part of Bridleway 29 and there were no objections to how the route was shown. The road number 3/43 has been written in pencil on Byerworth Lane north east of point A although it is not known when this was written or by whom.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was shown as part of Bridleway 29.
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 shown as part of Bridleway 29 between point A and Byerworth Farm on the Revised Definitive Map and Statement of Public Rights of Way (First Review). It is not clear from the map, due to the quality and the notation used, whether the short section from near point B to point C is included or not.
Investigating Officer's Comments		The Parish survey card indicates that the route was considered to be one with public vehicular rights but that it was used primarily by the public on foot. This was changed to recording the route as a bridleway and remained unaltered through to 1975 when the Definitive Map (First Review) was published. Inspection of the previous (First) Definitive Map suggests that the correct interpretation of the ambiguity on this map is that the bridleway fills the triangle up to the farm gate.
Highway Adoption Records including maps derived from the '1929 Handover	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

Maps'

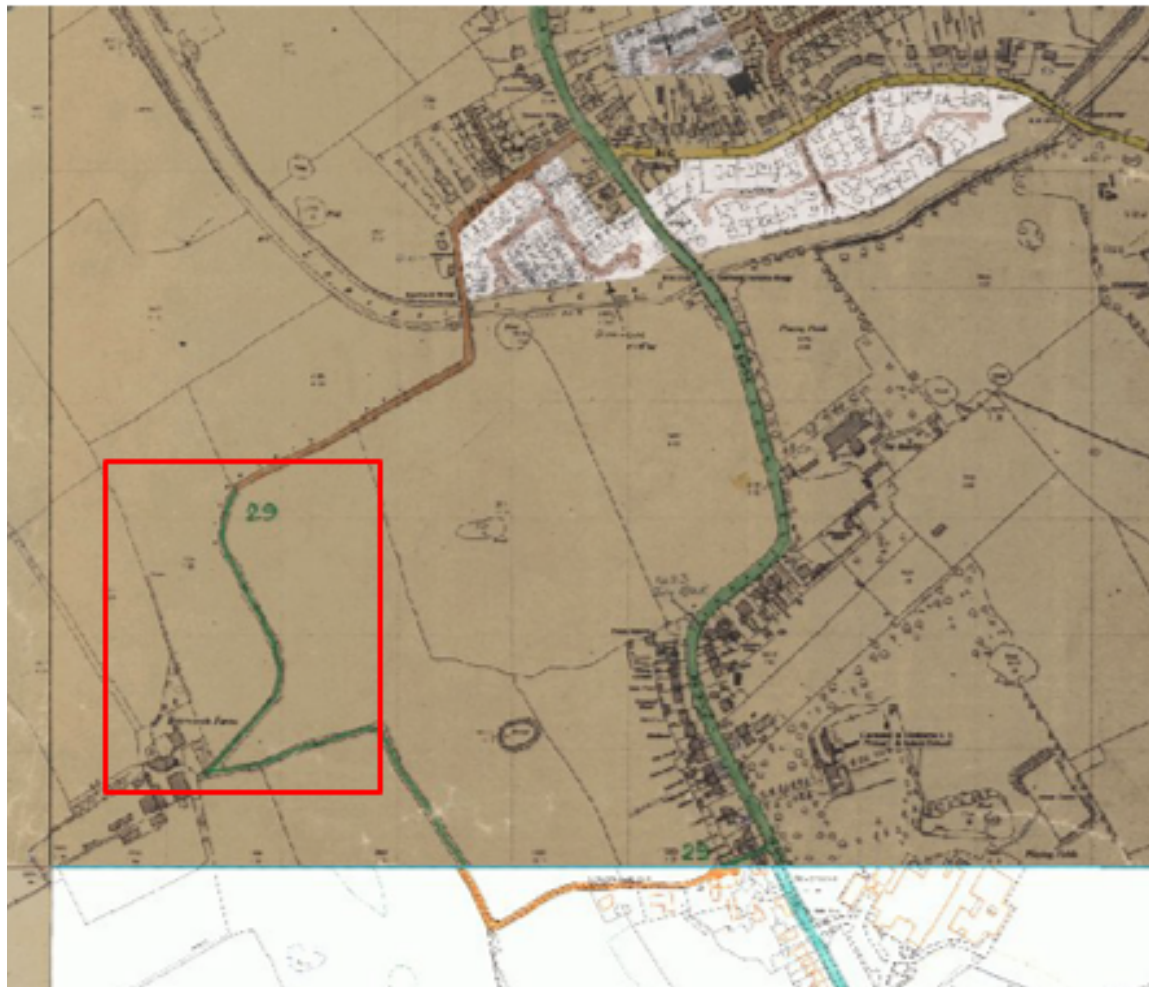
drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.

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.

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.



1929 'Road Transfer Map'



LCC Adoption records

Observations		<p>The route is not recorded on the List of Streets and is not shown as a publicly maintained highway on records retained by the County Council.</p> <p>It is not known why the route recorded as 3/43 – 'Byerworth Lane North' was only shown to extend as far as point A although that point corresponds approximately to the point at which a gate was shown to exist across the route on the early editions of the OS maps.</p>
Investigating Officer's Comments		The route was not considered to be part of the vehicular highway network
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</p>

		<p>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 Section 31(6) deposits have been lodged with the County Council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

The 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 owner of the application route is Carrick Sports Limited which owns the golf club either side of the lane.

The Title for the lane records a private vehicular right, gained by long user, for a property known as Pen-y-Llon (named in the Land Registry property register as 'Peny-L-Llon') over a section of Byerworth Lane South. This right could not have been acquired in this way if public vehicular rights existed which implies that the application route could not have been part of a public vehicular through route.

The Natural Environment and Rural Communities Act 2006

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts,

etc.. If Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The application route was, at the time of that act recorded as a public bridleway and the county council is not aware of evidence which shows it was used by the public mainly in MPVs in the 5 years up to the commencement of S67 of the Natural Environment and Rural Communities Act 2006, or indeed at any other time. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist, the appropriate status for the application route to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights with non-mechanically propelled vehicles, horses or on foot.

Summary

The application route forms part of a much longer route which would have provided access to and from Byerworth Farm via Byerworth Bridge and also formed part of a pair of routes connecting the farm to Garstang Road.

It may have existed in the late 1700s to provide access to the farm, and certainly existed from the mid 1800s as a substantial route capable of being used by vehicles at that time.

Whilst it appears from the map evidence that it could be used as a through route geographically it would make a much longer, twistier and narrower alternative to Garstang Road and most probably had an inferior surface so it would take longer by any means of transport. The sharp V at point B also mitigates against use by the public as a vehicular through route.

Acknowledging that it is a named route and that its appearance on the Ordnance Survey maps is consistent with how other public vehicular highways are shown it is not shown on early commercial maps, crosses land in private ownership and was not acknowledged as a public vehicular highway in the District Valuation carried out under the Finance Act 1910.

Whilst the evidence is not unequivocal, and taking into consideration the full length of the route from point A through point B and point C and then generally east to exit onto Garstang Road at Bowgreave, it appears that there is insufficient evidence to infer historical public vehicular rights.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In support of the application the applicants submitted that they first purchased Byerworth Farm in February 2004, and since then Byerworth Lane has been used freely with no interruptions.

An undated Statutory Declaration made by a director of the company owning the farm confirms that, since purchase, the route has been used for access to and egress from the farm, on foot and with motor vehicles. He is not aware of any objection being raised to the use of the route and, to the best of his knowledge there has been no dispute with, no permission required from, or payment made to, any third party over the use of the route.

On purchase of the farm, the applicants submit that they had no reason to doubt or investigate further the information obtained from the Official Search of the property from the Wyre Borough Council which – under the heading 'Roads – Maintainable at Public Expense' – states that 'Byerworth Lane North & South only are maintained by Lancashire County Council'.

(The response to the Official Search goes on to say 'these replies do not include Definitive Rights of way information that would otherwise be revealed in optional question 5, part 2').

The applicants submit that they were only informed in March 2005, by a solicitor for a local landowner 'that part of Byerworth Lane is only adopted as a bridleway and not as a highway.'

The applicant submits that archives indicate that Byerworth Farm was in existence prior to 1790 and, as Byerworth Lane is the only access route for the farm, it must always have been access by all people, animals and vehicles of all types.

It is submitted that the route is shown on the Ordnance Survey First Edition 6" Map of 1847. Further, a plan attached to a conveyance dated 20th September, 1910, clearly shows Byerworth Farm and the entrance to it being Byerworth Lane – with the route north from the farm marked 'From Garstang' and the route to the south marked 'To Garstang Station'.

The applicants have submitted a further Statutory Declaration dated 22 December 2003 from the wife of a previous owner of the farm, who lived at the farm with her husband from 1953 until July 2003. It is submitted that the farm was bought as a going concern and it was, therefore, in use prior to that date. The witness submits that during her time at the farm it was a working farm and throughout the whole of the time of occupation the road was used for the purpose of access to and egress from the farm, including the farmhouse, farm buildings and land farmed therewith. The road was used on foot, with motor vehicles and by agricultural vehicles. Her husband had an informal arrangement with the local angling association whereby they could fish the river which bordered the farm and members of the fishing association, and friends and visitors to the farm, have also used the road for the purpose of access to the farm or the river adjoining it.

To her knowledge, cars and pedestrians have frequently used the route for purposes other than gaining access to the farm, and she is not aware of any objection being raised to the user by other pedestrians and drivers who have in the past used the road.

During the whole of her husband's lifetime there was not, to her knowledge, any objection raised by any person to the user of the road by herself, her husband, their employees, guests, visitors and others using the farm.

The applicants submit that the road is of good structure and has several passing places suitable for both vehicles to pass each other and also for any vehicles to pull over for pedestrians and horses. There are no other properties along this short section of Byerworth Lane North, the land situated on both sides being in the ownership of Garstang Country Hotel and Golf Club.

Information from Others

A letter was received in 2005 from the owner of Sturzaker House Farm which is located approximately 1.5km south east of the application route. Mr Richardson explained that he had lived and farmed in the local community for the past 80 years and that from his experience Byerworth Lane was an unmade track, with Byerworth Lane only 'made up' from the north end to the gate posts in recent times. He stated that Byerworth Lane was only ever used as a farm access to Byerworth Farm.

Information from the Landowner

The Director of Garstang Country Hotel and Golf Club (Carrick Sports Limited) commented that the lane has been used by Byerworth Farm for access under an agricultural right of way as referred to in a 1910 Sales document and that there has never been a public right of way other than as a bridleway.

He commented that the farm's previous occupiers (Mr and Mrs Parkinson) had a metal road made up some years ago and maintained the lane and that to the best of their knowledge, the County Highways, having adopted the lane as a bridleway, had never done any maintenance work on the lane.

He stated that the Hotel and Golf course had carried out maintenance of hedges, grass verges and dykes, normally annually, with the road being closed to facilitate carrying out the operations.

His other comments involved:

- Concern as owners of the land on both sides of the bridleway, they would be responsible for the upkeep to bridleway standard;
- A change could lead to abuse by some members of the public by using Byerworth Lane as a through route with consequent damage to the environment and danger to public safety;
- As the route has been crossed, close to Byerworth Farm, by golfers there is concern about their safety with any increase in vehicular use; and
- The route is currently shown as a cul-de-sac a discouragement to any 'occasional users' and that any change of status may nullify this effect.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

The application route is shown on a number of maps which were produced from 1847, the first being the 6" Ordnance Survey map where the route was shown in the same manner as and contiguous with other public vehicular highways, the application route was also named on the map.

The route is also shown on the 1893, 1912 and 1955 Ordnance Survey maps.

On all of those maps the route is shown in the same way as public vehicular routes are shown.

Bartholomew's map of 1905 and subsequent versions, shows the route and it may have been accessible to vehicles even though it is shown as 'inferior and not to be recommended to cyclists'.

Particulars of Sale and a conveyance of the farm in 1910 shows the route and does not as part of the conveyance reserve specific rights to use it with vehicles, this may indicate the application route was considered to have public vehicular rights.

Two statutory declarations have been submitted which state that those making the declarations have known vehicles using the route, have used the route themselves without having any special private rights to do so and therefore believe the route to be public highway with vehicular rights but their use is also consistent with private access rights.

Against Making an Order

The application route is not shown on early commercial maps.

A deduction was not made for the existence of the route under the Finance Act 1910 District Valuation suggesting either that it was a route that had private rights only or that the landowner chose not to admit public rights.

The Parish Survey Card in the early 1950s recorded a Cart Road Footpath, indicating an entitlement to use the route with vehicles but that was a non-statutory designation and in practice it was often used for a public footpath on a private vehicular way and that is supported by it being recorded on the accompanying Parish Survey map as footpath. No objection was made to that status, nor, when the route was later shown on the definitive map and statement as a bridleway.

From 1929 to the present day the highway adoption records do not show the application route on the list of streets which is where most vehicular roads are recorded. The road U11096 is consistently shown stopping at the gate (point A on the plan).

A letter from local resident stating that for 80 years he has only known the route being used as a farm access to Byerworth Farm.

A letter from an adjacent landowner saying the land has only ever been used for agricultural access to the farm.

The statutory declarations submitted to support the application are consistent with private vehicular access as much as with public carriageway.

The topography of the road makes it very unlikely to be used as a through route as it is longer, narrower and twistier than the main road and has a sharp vee corner by the farm entrance that is most unlike most thoroughfares. There is no other property on Byerworth Lane, other than the farm, which is accessed from it although it is possible to access the house called Pen-y-Llon (near the south east end of Byerworth Lane South) but that property enjoys a private vehicular right over the relevant section of the lane suggesting no public vehicular rights as a through route.

Conclusion

The historical mapping evidence shows the application route has existed and probably been capable of vehicular use since at least 1840s but this does not indicate whether any such use was public or private.

There is no specific evidence that access to the farm was relying on private vehicular rights and such access is consistent with either private or public rights.

The designation of Byerworth Lane as part unclassified road and part public path has been consistent with the gate (near point A) being treated as 'the farm gate' to which the public vehicular road led.

There is therefore insufficient evidence that the application route has public carriageway rights which, as this would be an upgrade from bridleway, would need to be shown to subsist on the balance of probabilities.

Should Committee decide that the evidence does show public carriageway rights it would be necessary to consider the effects of the Natural Environment and Rural Communities Act 2006 which would be to have extinguished public rights with mechanically propelled vehicles so a recording as restricted byway would be appropriate.

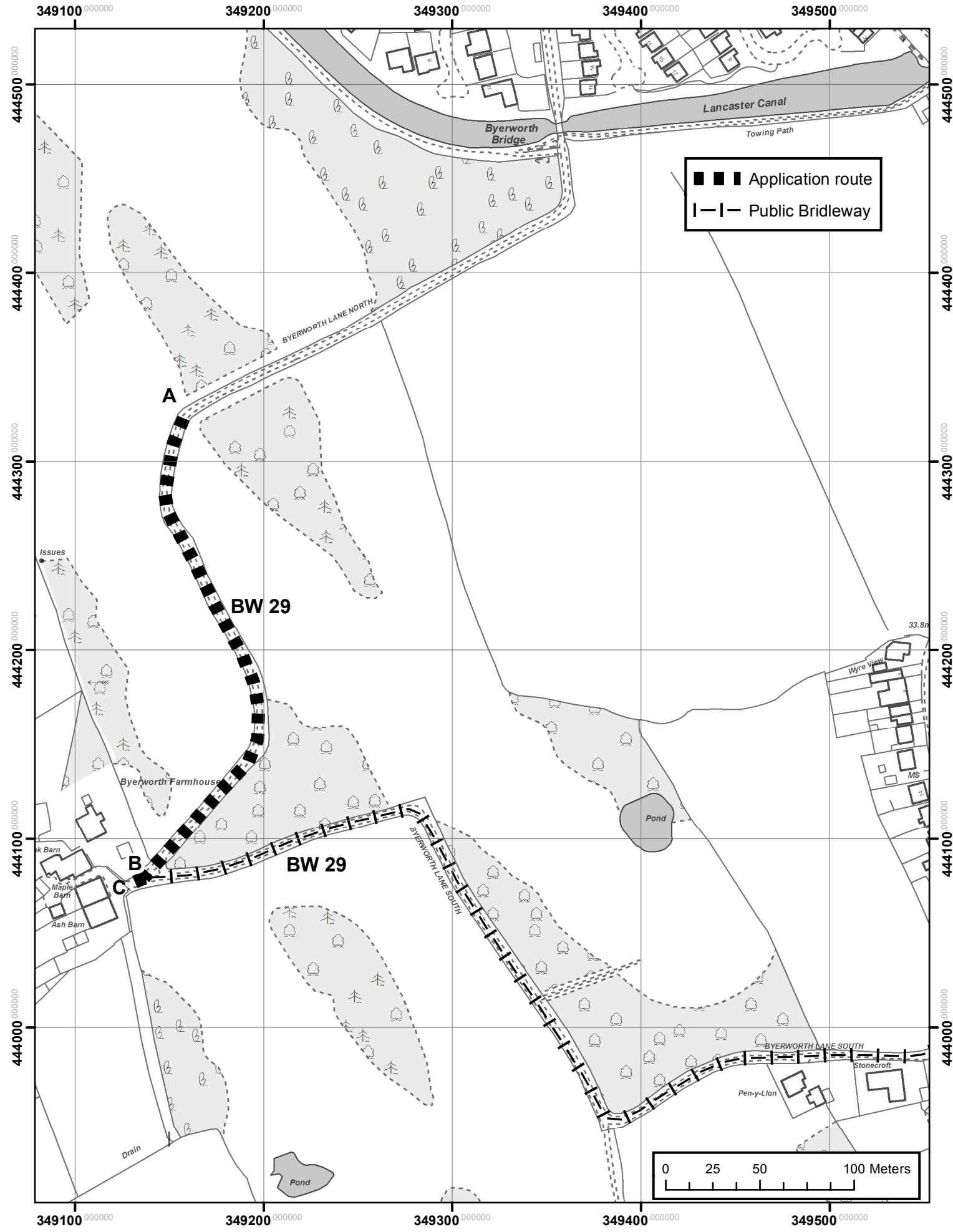
Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-424		Claire Blundell, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



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