

# **Lancashire County Council**

## **Regulatory Committee**

**Wednesday, 14th November, 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**

##### **1. Apologies**

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

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

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

##### **4. Guidance** (Pages 9 - 32)

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

##### **5. Wildlife and Countryside Act 1981** (Pages 33 - 90) **Definitive Map Modification Order Investigation** **Upgrading Footpath to Restricted Byway at** **Waingate, Rawtenstall** **File No. 804-599**

##### **6. Decision On Appeal** (Pages 91 - 222) **Wildlife and Countryside Act 1981** **Addition of Public Footpaths around Glasson Dock** **Canal Basin, Thurnham, Lancaster City Council**

7. **Highways Act 1980 - Section 119** (Pages 223 - 234)  
**Wildlife and Countryside Act 1981 - Section 53A**  
**Proposed Diversion of Part of Dinckley Footpath 12,**  
**Ribble Valley Borough**

8. **Urgent Business**

An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

9. **Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on 30 January 2019 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, 19th September, 2018 at 10.30 am in Committee Room 'B' (The Diamond Jubilee Room) - County Hall, Preston**

#### **Present:**

#### **County Councillors**

I Brown	L Cox
P Steen	J Parr
A Clempson	T Aldridge
T Burns	D Stansfield

#### **1. Apologies**

Apologies were received from County Councillor Malcolm Barron, County Councillor David Howarth and County Councillor Jim Marsh.

County Councillor David Stansfield replaced County Councillor Jimmy Eaton.

In the absence of the Chair and Deputy, it was proposed and seconded that County Councillor Ian Brown take the Chair.

#### **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 18 July 2018 be confirmed and signed by the Chair.

#### **4. Guidance**

A report was presented providing 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.

**Resolved:** That the Guidance as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.

**5. Wildlife and Countryside Act 1981 Definitive Map Modification Order  
Investigation Deletion and Addition of part of Bridleway 9  
Winmarleigh at Island House**

A report was presented on an application for the deletion of part of Bridleway 9 Winmarleigh, past Island House and shown on the Committee plan attached to the agenda papers between points A-B1-C-D-E-F, and the addition of a bridleway from a point on Bridleway 9 Winmarleigh, from Island House, to a further point on Bridleway 9 Winmarleigh, as shown on the Committee plan between points A-B2-G-H-I-J, on the Definitive Map and Statement of Public Rights of Way.

A site inspection had been carried out in March 2018.

The Committee noted that Island House had originally been a working farm but had now been redeveloped as a residential property with further properties built which were accessed from the bridleway.

The Committee noted that no map or documentary evidence examined supported the view that two parallel routes existed or had existed in the past, or that the route had moved or been altered either legally (by a diversion or dedication) or informally.

Taking all the available map and documentary evidence into consideration, it was considered that the route to be deleted had been wrongly recorded and that the route of the bridleway was that shown on various Ordnance Survey maps and described in the parish survey card passing through the cobbled farmyard at Shaw's Farm (the route to be added) and not the route to be deleted.

**Resolved:**

- (i) That the application to delete part of Bridleway 9 Winmarleigh through Island House, in accordance with File No. 804-595, be accepted.
- (ii) That the application to add a bridleway from a point on Bridleway 9 Winmarleigh passing through Island House to a further point on Bridleway 9 Winmarleigh, in accordance with File No. 804-595, be accepted.
- (iii) That an Order be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete from the Definitive Map and Statement of Public Rights of Way part of Public Bridleway No. 9 Winmarleigh through Island House, shown between points A-B1-C-D-E-F on the Committee plan.
- (iv) That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.
- (v) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public bridleway from

a point on Public Bridleway 9 Winmarleigh to a further point on Public Bridleway 9 Winmarleigh as shown on the Committee Plan between points A-B2-G-H-I-J.

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

**6. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Footpath from Kellet Road to Dunkirk Avenue, Carnforth  
File Number 804-593**

A report was presented on an application for the addition to the Definitive Map and Statement of Public Rights of Way of a public footpath from Kellet Road to Dunkirk Avenue, Carnforth, as shown between points A-B-C-D-E-F on the Committee plan attached to the agenda papers.

The Committee noted that a further application had been submitted for a footpath to the south of this route which included the section E-F. This application was the subject of a separate report on the agenda.

A site inspection had been carried out on 20 February 2018.

It was reported that the section of the route between points A and E was registered to the Homes and Communities Agency (now Homes England). The section of the route between points E and F was registered to Lancaster City Council.

The Committee were informed that Trowers & Hamlin LLP, acting on behalf of Homes England, had objected to the application. They had stated that their client was currently developing the site, and that they had taken exhaustive steps to give notice (by signage on site) that the land was private property, potentially unsafe and unsuitable for public access. The Committee noted that whilst the objection was acknowledged, the concerns raised were not relevant considerations under either Section 31 Highways Act 1980 or under Common Law as to whether public rights already existed before Homes England acquired the land.

The claim was that the route A-B-C-D-E-F had already become a footpath in law, and that it should be recorded on the Definitive Map and Statement of Public Rights of Way.

It was suggested that there was insufficient historical map evidence from which public rights could be inferred. However, sufficient 'as of right' use acquiesced in by the owners may also have been circumstances from which dedication could be inferred. From looking at user evidence, it would appear that, until 2017, no clear actions were taken by owners and use by the public continued over several years prior to 2017. It is therefore suggested that the user forms indicate that the

route had been used 'as of right' and without force, secrecy or interruption during the period under consideration.

It was suggested to Committee that after careful consideration, the criteria under Section 31 Highways Act 1980 could be satisfied and that, taking all of the information into account, the Committee may consider that a dedication of a footpath could be deemed or inferred, and that it was appropriate that an Order be made and promoted to confirmation.

**Resolved:**

- (i) That the application for the addition to the Definitive Map and Statement of a Public Footpath from Kellet Road to Dunkirk Avenue, Carnforth, in accordance with File Number 804-593, 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 a Public Footpath from Kellet Road to Dunkirk Avenue, Carnforth to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**7. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Footpath from the junction of Dunkirk Avenue and  
Windermere Road to Footpath 12 Carnforth  
File Number 804-597**

A report was presented on an application for the addition of a footpath to be recorded on the Definitive Map and Statement of Public Rights of Way, from Dunkirk Avenue to Footpath 12, Carnforth and shown between points A-B-C-D-E-F-G-H on the Committee plan attached to the agenda papers.

The Committee had considered an earlier application on the agenda including the section of the route between point A-B.

A site inspection had been carried out on 27 June 2018.

It was reported that Trowers & Hamlin LLP, acting on behalf of the landowners, Homes England had objected to the application. They had stated that their client was currently developing the site and had taken exhaustive steps to give notice (by signage on site), that the land was private property, potentially unsafe and unsuitable for public access. The Committee noted that whilst the objection was acknowledged, the concerns raised were not relevant considerations under either Section 31 Highways Act 1980 or under Common Law, for dedication to have taken place before Homes England acquired the land.

The claim is that the route A-B-C-D-E-F-G-H had already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way.

It was suggested that there was insufficient historical map evidence from which public rights could be inferred. However, sufficient 'as of right' use acquiesced in by the owners may also have been circumstances from which dedication could be inferred. From looking at user evidence, it would appear that, until 2017, no clear actions were taken by owners and use by the public continued over several years prior to 2017. It was therefore suggested that the user forms indicate that the route had been used 'as of right' and without force, secrecy or interruption during the period under consideration.

It was suggested to Committee, after careful consideration, the criteria under Section 31 Highways Act 1980 could be satisfied and that, taking all of the information into account, the Committee may consider that a dedication of a footpath could be deemed or inferred, and that it was appropriate that an Order be made and promoted to confirmation.

**Resolved:**

- i) That the application for the addition to the Definitive Map and Statement of a Public Footpath from the junction of Dunkirk Avenue and Windermere Road to Footpath 12, Carnforth, in accordance with File Number 804-597, 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 a Public Footpath from Dunkirk Avenue to Footpath 12 Carnforth 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.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**8. Highways Act 1980 - Section 25  
Proposed Public Path Creation Agreement to upgrade part of  
Worsthorne-with-Hurstwood Footpath 2 to Bridleway**

A report was presented on the proposed creation, by agreement, of a publically maintainable bridleway on part of Worsthorne-with-Hurstwood Footpath 2 at Rowley Farm, Burnley, as shown on the Committee plan attached to the agenda papers, between points A-B-C-D-E.

The Committee noted that an opportunity had arisen to achieve the first step in securing agreement to the bridleway link, as a result of a planning application for

the conversion of several agricultural buildings at Rowley Farm, to residential dwellings. In order to obtain planning permission, one of the landowners had indicated that they would be willing to enter in agreement for that part of Worsthorne-with-Hurstwood Footpath 2 that runs over their land, to be dedicated as a bridleway.

No objections to the proposal had been received.

It was proposed that the Terms of the Agreement be signed by this particular landowner, to enable them to finalise their planning permission, but that the Terms of the Agreement would not be signed by the county council until the continuation of the proposed route had been agreed with the other landowners, to avoid the creation of an unconnected bridleway.

It was reported that the proposal was considered to be a benefit to the public in view of the fact that it would improve the network of public rights of way for horse riders and cyclists, in addition to the existing public footpath rights that were available to pedestrians.

**Resolved:**

(i) That the proposal for a Public Path Creation Agreement to dedicate a length of bridleway on part of Worsthorne-with-Hurstwood Footpath 2 at Rowley Farm, Burnley be accepted.

(ii) That a Public Path Creation Agreement be entered into under Section 25 of the Highways Act 1980 between the owner of the land crossed by part of Worsthorne-with-Hurstwood Footpath 2 at Rowley Farm, Burnley and Lancashire County Council to dedicate a length of bridleway as shaded on the map attached to the agenda papers and marked A-B-C-D-E.

**9. Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A (2)  
Proposed Diversion of part of Carnforth Footpaths 2, 3 and 4,  
Lancaster**

A report was presented on the proposed diversion of part of Carnforth Footpaths 2, 3 and 4, Lancaster. The lengths of the existing path to be diverted were shown as A-B-C and B-F-G on the Committee plan attached to the agenda papers and the proposed alternative routes shown as A-D-E and C-H-F-J-G.

No objections to the proposal had been received.

It was reported that the proposed diversion had been prompted by the implementation of the England Coast Path and that the proposed alternative routes had been selected in order to divert the footpaths onto better drained, drier land, providing a substantial improvement to the network of public rights of way in this area. In addition, the route would be more suitable for the potential increase

in walkers using this footpath, resulting from the promotion of the England Coast Path. It would also provide a less intrusive route past the dwellings at Galley Hall which some walkers may prefer.

**Resolved:**

(i) That subject to no unsatisfactory responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Carnforth Footpaths 2, 3 and 4, from the routes shown by bold continuous lines and marked A-B-C and B-F-G to the routes shown by bold broken lines and marked A-D-E and C-H-F-J-G on the attached map.

(ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the county council promotes the order to confirmation.

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

**10. Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion of Part of Barnacre-with-Bonds Footpath 48,  
Wyre Borough**

A report was presented on an application for the proposed diversion of part of Barnacre-with-Bonds Footpath 48, Wyre Borough. The length of the existing path to be diverted was shown as A-B on the Committee plan attached to the agenda papers, and the proposed alternative route shown as A-C-D-B.

No objections to the proposal had been received.

It was reported that the proposed diversion was felt to be expedient in the interests of the owners of the land as Waterhead Cottage was currently being converted from a redundant United Utilities water treatment building into a private residential dwelling. The Committee noted that the footpath currently ran through the garden of the property and the diversion would increase the privacy and security of the residents, whilst providing a route that was safe and convenient for the public to use.

**Resolved:**

(i) That subject to satisfactory responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Barnacre-with-Bonds Footpath 48, from the route shown by a bold continuous line and

marked A-B to the route shown by a bold broken line and marked A-C-D-B on the attached plan.

(ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.

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

## **11. Urgent Business**

There were no items of Urgent Business.

## **12. Date of Next Meeting**

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 14 November 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 14 November 2018

Electoral Division affected: All
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### Guidance for the members of the Regulatory Committee

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

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

#### Executive Summary

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

#### Recommendation

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

#### Background and Advice

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

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

#### Consultations

N/A

#### Implications:

This item has the following implications, as indicated:

## **Risk management**

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

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

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

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

### **Definitions**

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

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

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

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

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

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

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

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

The prescribed events include –

#### Sub Section (3)

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

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

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

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

#### *Orders following “legal events”*

Other events include

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

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

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

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

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

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

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

These are that:

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

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

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

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

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

## **Definitive Maps**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Recording a “new” route**

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

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

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

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

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

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

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

There is no need to know who a landowner was.

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

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

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

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

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

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

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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



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

## **Documentary evidence**

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

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

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

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

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

## **Recording vehicular rights**

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

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

- 1) main lawful public use of the route 2001-2006 was use for mechanically propelled vehicles
- 2) that the route was not on the Definitive Map but was recorded on the List of Streets.
- 3) that the route was especially created to be a highway for mechanically propelled vehicles
- 4) that the route was constructed under statutory powers as a road intended for use by mechanically propelled vehicles
- 5) that the route was dedicated by use of mechanically propelled vehicles before December 1930
- 6) that a proper application was made before 20th January 2005 for a Modification Order to record the route as a Byway Open to All Traffic (BOAT)
- 7) that a Regulatory Committee had already made a decision re an application for a BOAT before 6th April 2006
- 8) that an application for a Modification Order has already been made before 6<sup>th</sup> April 2006 for a BOAT and at 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 14 November 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 14<sup>th</sup> November 2018

Electoral Division affected: Mid Rossendale
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### **Wildlife and Countryside Act 1981**

#### **Definitive Map Modification Order Investigation**

#### **Upgrading Footpath to Restricted Byway at Waingate, Rawtenstall**

**File No. 804-599**

(Annex 'A' refers)

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### **Executive Summary**

Application for the route known as Waingate Road – Waingate Lane, Rawtenstall, to be upgraded on the Definitive Map and Statement of Public Rights of Way from Footpath to Restricted Byway, in accordance with File No. 804-599.

### **Recommendation**

- (i) That the application for Waingate Road – Waingate Lane, Rawtenstall to be recorded as a Restricted Byway on the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-599, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade Footpath Rawtenstall 348 to Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F.
- (iii) That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

### **Background**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for Footpath Rawtenstall 348 (known as Waingate Road – Waingate Lane) to be upgraded to a restricted byway on the Definitive Map and Statement of Public Rights of Way.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so

its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order 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"
- "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**

### Rossendale Borough Council

The Borough Council did not provide any comments in response to consultations therefore it is assumed that they have no objection to the application.

### 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	8153 2311	Open junction with Newchurch Road
B	8161 2316	Concrete bollards
C	8174 2328	Bollards across route
D	8175 2328	Junction with Footpath Rawtenstall 200 (eastern section)
E	8176 2330	Junction with Footpath Rawtenstall 200 (western section)
F	8178 2333	Route adjacent to north east corner of Lee Barn
G	8199 2362	Open junction with Hurst Lane and Byway Open to All Traffic Rawtenstall 348 at Cote Doles

### **Description of Route**

The application route is recorded as Footpath Rawtenstall 348, which originally also extended east from point G along the route now recorded as byway open to all traffic (BOAT) Rawtenstall 348, which was upgraded in 1990.

The application route to be considered in this report did not form part of the route upgraded in 1990 and its public status was not considered at that time.

A site inspection was carried out in July 2018.

The application route commences at an open junction with Newchurch Road in Rawtenstall adjacent to 224 Newchurch Road (point A on the Committee plan).

The route is not signed as a public footpath but there is a road sign for 'Waingate Road' and additional sign indicating that the road is dead end/no through road which was erected by the county council in 2015.

At point A, the route as it leaves Newchurch road is approximately 10 metres wide and the route follows a tarmac road dropping downhill from point A, before flattening out and narrowing to approximately 5-6 metres wide, and continues past a number of residential properties with two street lighting columns located along this section.

Approximately 75 metres from point A (adjacent to 26 Hurst Platt) the tarmac surface ends and the route continues along a compacted stone surfaced track, passing an access point to some Environment Agency debris screens constructed to stop debris such as broken tree branches and rubbish being washed down Balleden Clough into the culvert, which takes the water course under the route and housing.

At point B on the committee plan are 2 concrete bollards erected to protect the route and to prevent modern twin axle vehicles driving further up the route towards Waingate and getting stuck.

From point B, the route continues along the stone surfaced track rising gradually uphill east of Balladen Clough. Further street light are positioned along this section of the route and as it approaches point C the route is bounded on either side by stone walls (now quite overgrown and in disrepair).

At point C, a further concrete bollard has been positioned in the centre of the route just before the junction with the eastern section of Footpath Rawtenstall 200 (point D on the committee plan). A warning notice has been erected at point D indicating that the route down to point B is on land not to be used by motorbikes, quad bikes or cars.

Beyond point D, the route continues straight through Waingate settlement along a tarmac road which provides access to a number of residential properties located on either side of it, and through the junction with the western spur of Footpath Rawtenstall 200 at point E. A few metres past point E, the application route is joined from the west by a private road which provides access to Waingate from Hurst Lane.

The application route passes straight through the settlement along the tarmac road, passing the furthestmost property (Lee Barn) at point F. From point F, the route continues across the entrance to a garage belonging to Lee Barn, and then crossing a mown grassed area adjacent to the garage and garden of Lee Barn, before continuing as a bounded track in a generally north easterly direction to Cote Doles at point G.

The section of route between point F and point G was quite overgrown when inspected in July 2018, but it was apparent that the lower section had been surfaced with large stone in recent years. The entire length was bounded by walls and fencing on either side and there was evidence that part of this section of the route (from point G to midway to point F) was used by farm vehicles to access adjacent fields.

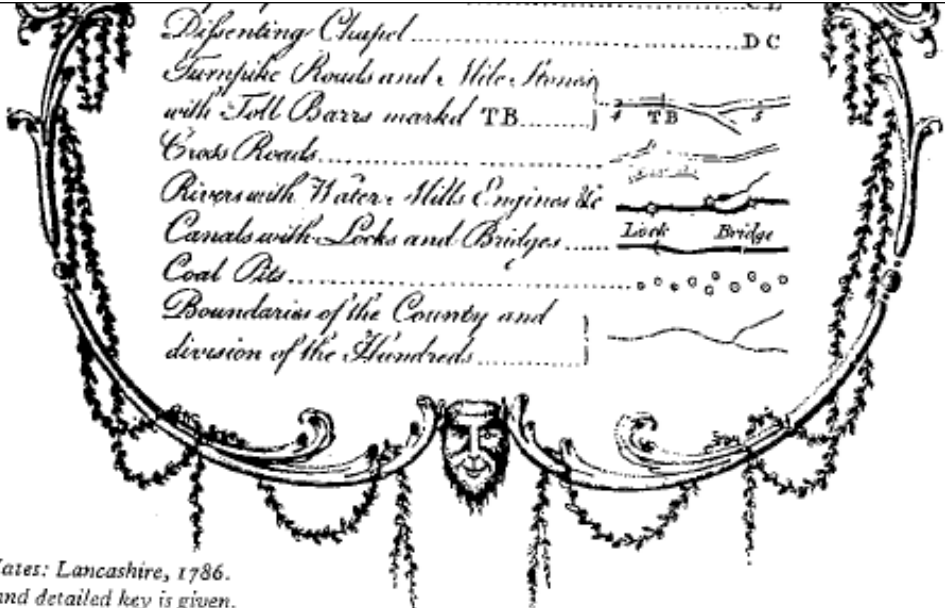
At point G, the application route meets Hurst Lane and Byway Open to All Traffic Rawtenstall 348 at Cote Doles.


The total length of the application route is 750 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.



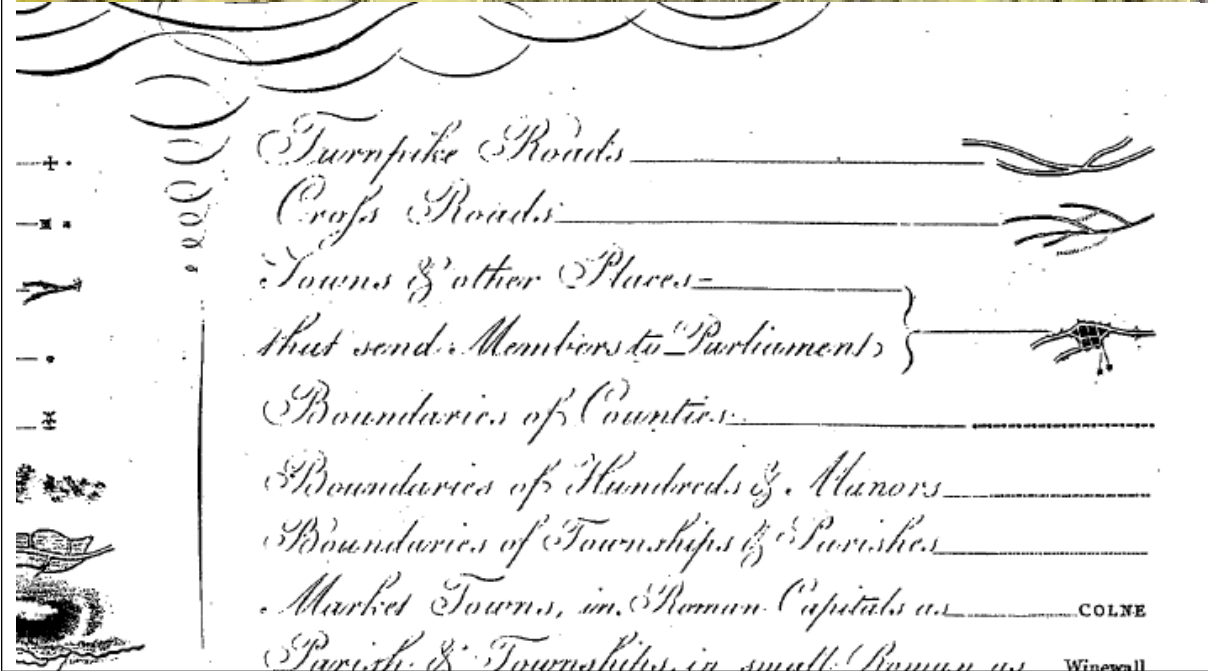
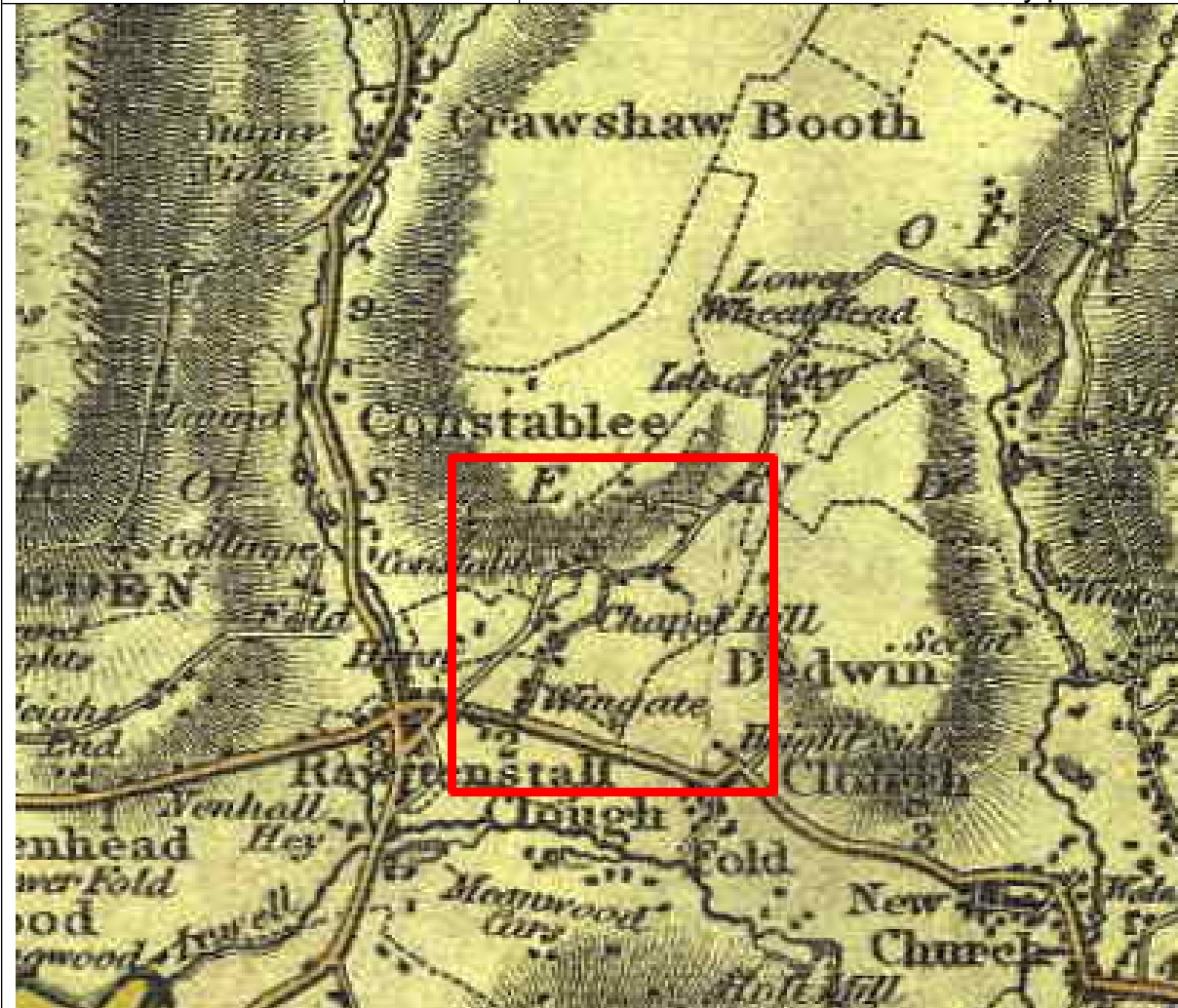
 <p>2.15 Yates: Lancashire, 1786. A full and detailed key is given.</p>		
Observations		A route consistent with the application route is clearly visible as a through route with properties shown which, though not named, appears to be in the approximate location of the hamlet now known as Waingate. The route is depicted as a cross road in the key to the map.
Investigating Officer's Comments		The application route existed in 1786 linking Newchurch Road (a public vehicular highway) passing through properties likely to be those now forming part of Waingate settlement to connect to Hurst Lane (an unclassified county road) and Byway Open to All Traffic Rawtenstall 348 at Cote Doles (point G on the Committee plan) and appears to have formed a through route as part of the general road network. The route is depicted as a cross road. It is not fully 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> ). It is unlikely that a map of this scale would show footpaths. The depiction of the route on this commercially produced small scale map therefore suggests that the route was considered to be public highway and travellers using such a map were likely to be on horseback or horse-drawn vehicle.
Honour of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuch and Elizabeth Duchess of Buccleuch. 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.
 <p>Coal Pits are thus described</p> <p>Roads and Buildings</p> <p>Rivers, Brooks and Reservoirs</p> <p>The Red Figures refer to the Unoccupied Water Falls</p> <p>The Boundaries of Manors are the most strongly marked</p>		
Observations		<p>The whole length of the route under investigation is shown with the word 'Wingate' written by the buildings midway along the route. The route is shown connecting to other public vehicular highways at point A and point G forming a through route providing access to and from Wingate and is described in the map key as a road.</p> <p>None of the routes currently recorded as public footpaths which cross or join the route under investigation are shown.</p>
Investigating Officer's Comments		<p>The route under investigation existed at the time the map was produced (1804-1810) 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 G and passed between properties which now form part of Waingate. This small scale map only appeared to show the more significant routes (described as roads in the key) and did not show other routes currently recorded as public footpaths that join the route under investigation. This suggests that the route under investigation was of a substantial nature and would have</p>


		been capable of being used by people on horseback and most probably with horse drawn vehicles at that time. However, the map key did not differentiate between roads considered to be public or private roads.
<b>Smith's Map of Lancashire</b>	1801	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 his 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		This small scale map has been significantly enlarged for the purpose of this report. A significant route is shown from Rawtenstall extending north east to Lumb. It is not clear from the map whether the first part of this route is shown by Smith to follow Hurst Lane or the application route.
Investigating Officer's Comments		The application route probably existed in 1801 but no inference can be drawn with regards to the existence of public rights from this map.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as



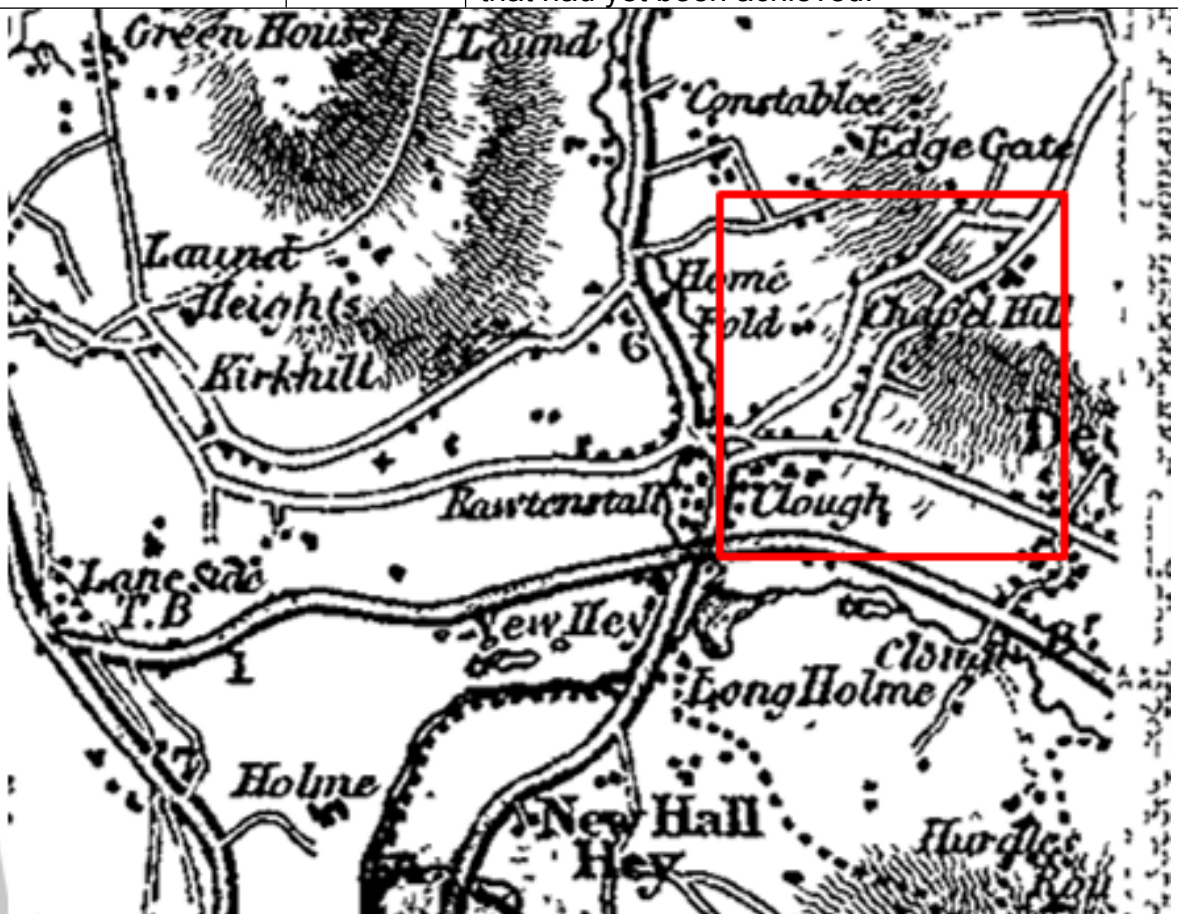
well as public roads and the two were not differentiated between within the key panel.



Observations The full length of the route under investigation is shown. Newchurch Road appears to be the

		<p>main route along the valley between Rawtenstall and Bacup in 1818. The former Haslingden and Todmorden Trust Turnpike Road (now recorded as the A681 and A6066) is not shown on this map. The route under investigation is shown as a cross road passing between a number of properties – some labelled as Waingate and is shown connecting to routes that are now recorded as public vehicular highways at either end (Newchurch Road and Hurst Lane). The northern part of the route (approaching point G) is labelled Chapel Hill.</p>
Investigating Officer's Comments		<p>The route existed in 1818 providing access to (and through) a number of properties. Again the route is shown depicted as a 'cross road' and 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.</p>
<b>Stockdale's Map of Lancashire</b>	1818/ 1792	<p>An early commercial map included in a book titled 'A description of the country from thirty to forty miles round Manchester' by J Aikin MD and is titled 'A new map of the country round Manchester' dated 1818. There is some uncertainty about the date of the map as the book was originally published in 1795. There is no key to the map.</p>
		
Observations		It is not clear whether the route shown extending

		<p>north east from Newchurch Road is Hurst Lane or the application route although the fact that the route is clearly shown on various earlier commercially produced maps suggests that it did exist at the time.</p> <p>It is not known why the route was not shown on this map, if it was not. It may have been that Stockdale did not consider the route to be a public 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.</p>
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>Hennet's Map of Lancashire</b>	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 71/2 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.</p>

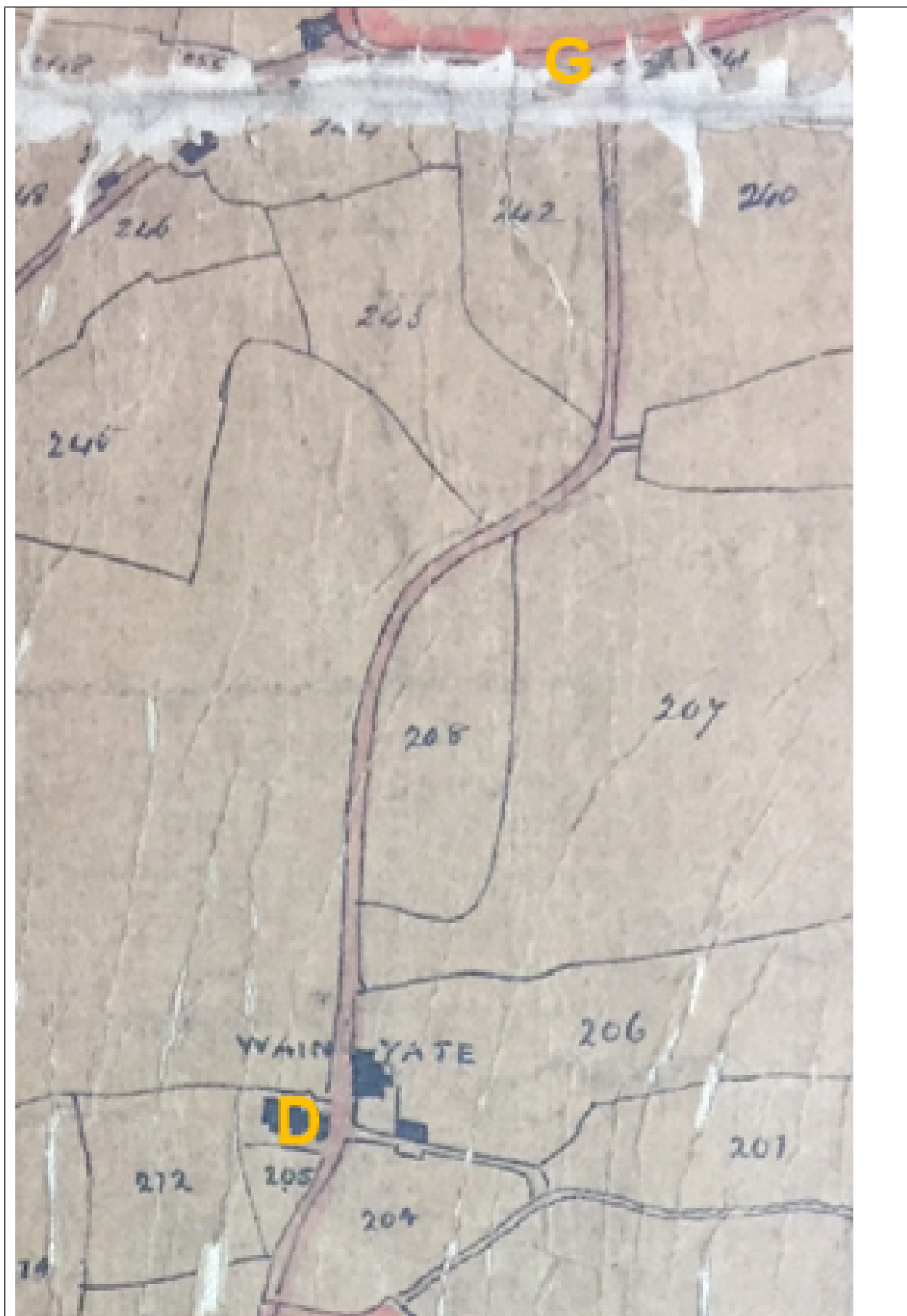


Observations		A route consistent with the full length of the
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		route under investigation is clearly shown as a 'cross road' although its alignment (and that of other routes shown in the area) is not as accurately depicted as on some of the earlier (and later) maps examined. The Haslingden and Todmorden Turnpike road along the valley (now recorded as the A681 and A6066) is also shown.
Investigating Officer's Comments		<p>The route under investigation existed in 1830 and is shown as a 'cross road'. It is not fully 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>). 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 between 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 under investigation was considered to be a public bridleway or carriageway.</p> <p>The route is shown as a through route on this and other small scale commercial maps but these maps do not show width variations. Better detail of widths and existence of gates for example is not available until the route is considered on maps produced at higher scale.</p>
<b>Township map of Deadwinclough</b>	1831	This Map is available to view at Rawtenstall library. It is titled 'plan of Deadwin Clough in the Township of Newchurch in the Forest of Rossendale' 1831 and signed as being a certified copy of the original map dated 1880.







Observations

The map shows plot numbers as you would

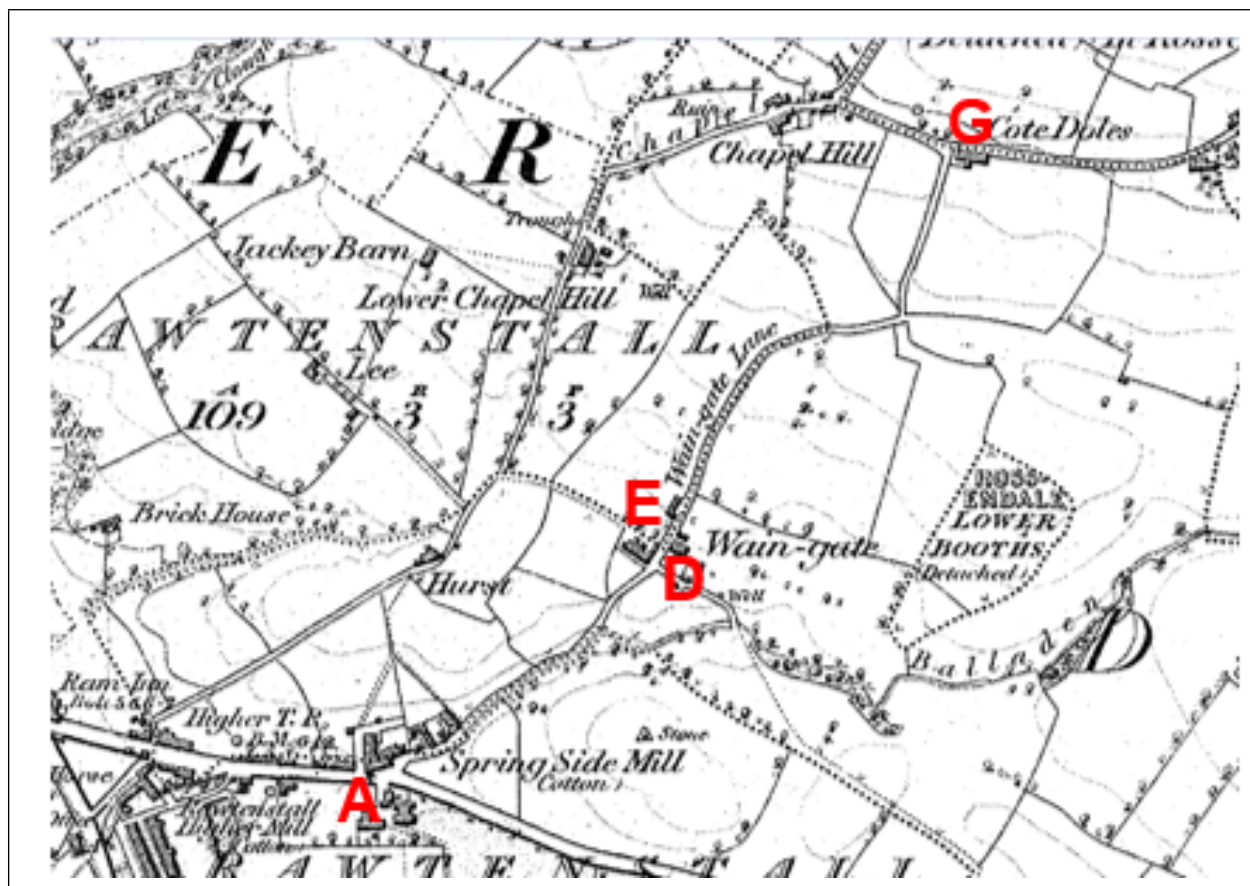
		<p>expect to see them on a Tithe Map but there was no schedule accompanying the map so it is not known what the numbers refer to.</p> <p>Between point A and point E the application route runs along the township boundary which has been coloured red. The route is not shown until midway between point A and point D as it appears to have fallen outside the boundary of the township but where shown it is depicted as a bounded track and is coloured in the same way as other routes now recorded as public vehicular highways. No number is shown allocated to this part of the route but a line is shown across it south of point E which may have indicated the existence of a gate.</p> <p>The route is shown passing between buildings close to point D and the buildings are named as 'Wain Yate'. The route is shown to continue as a bounded track coloured in the same way as other public highways through to point G from where it is possible to turn east or west to continue.</p>
Investigating Officer's Comments		<p>The origins of this map, or why it was produced are not known. Most of the route under investigation is shown on this map suggesting that it existed in 1831 and formed part of a through route which appeared to be capable of being used on horseback and by horse drawn vehicles. It was shown consistent with the way that other public vehicular routes are shown.</p>
<b>Canal and Railway Acts</b>		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>There are no canals or railways crossing in the area investigated.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
<b>Tithe Map and Tithe Award or Apportionment</b>		<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and</p>

		what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map in the County Records Office for the area under investigation.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Award was found for the area under investigation.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>6 Inch Ordnance Survey (OS) Map</b>	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849. <sup>1</sup>


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

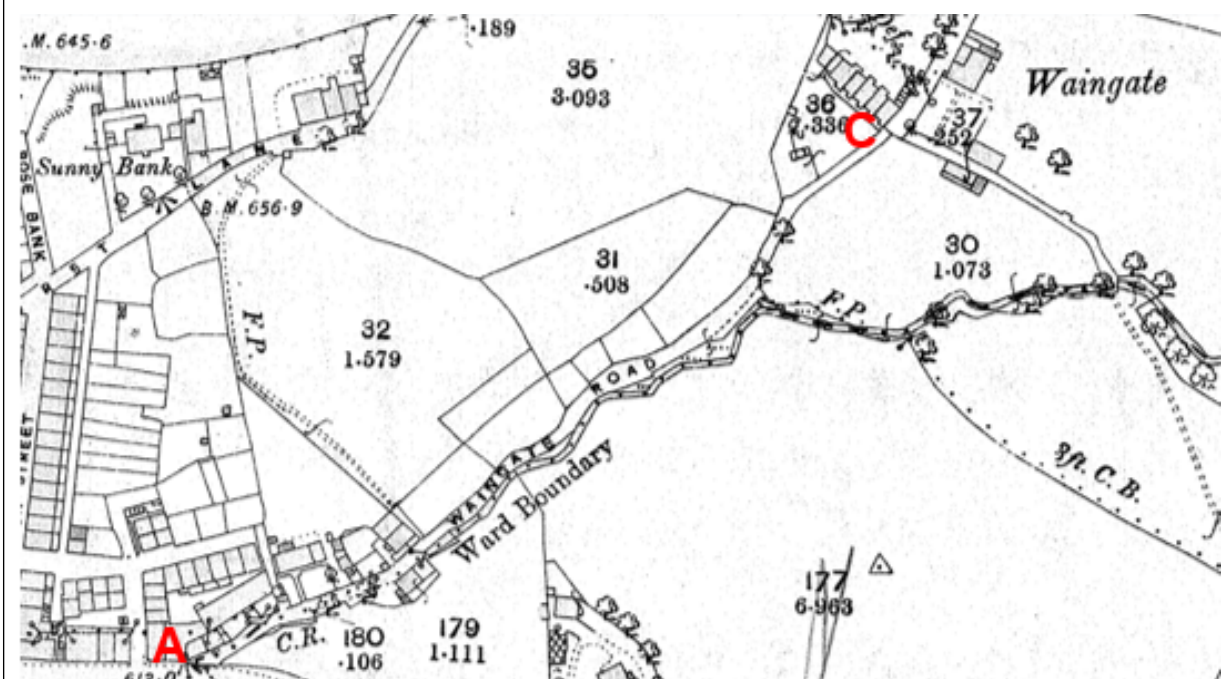


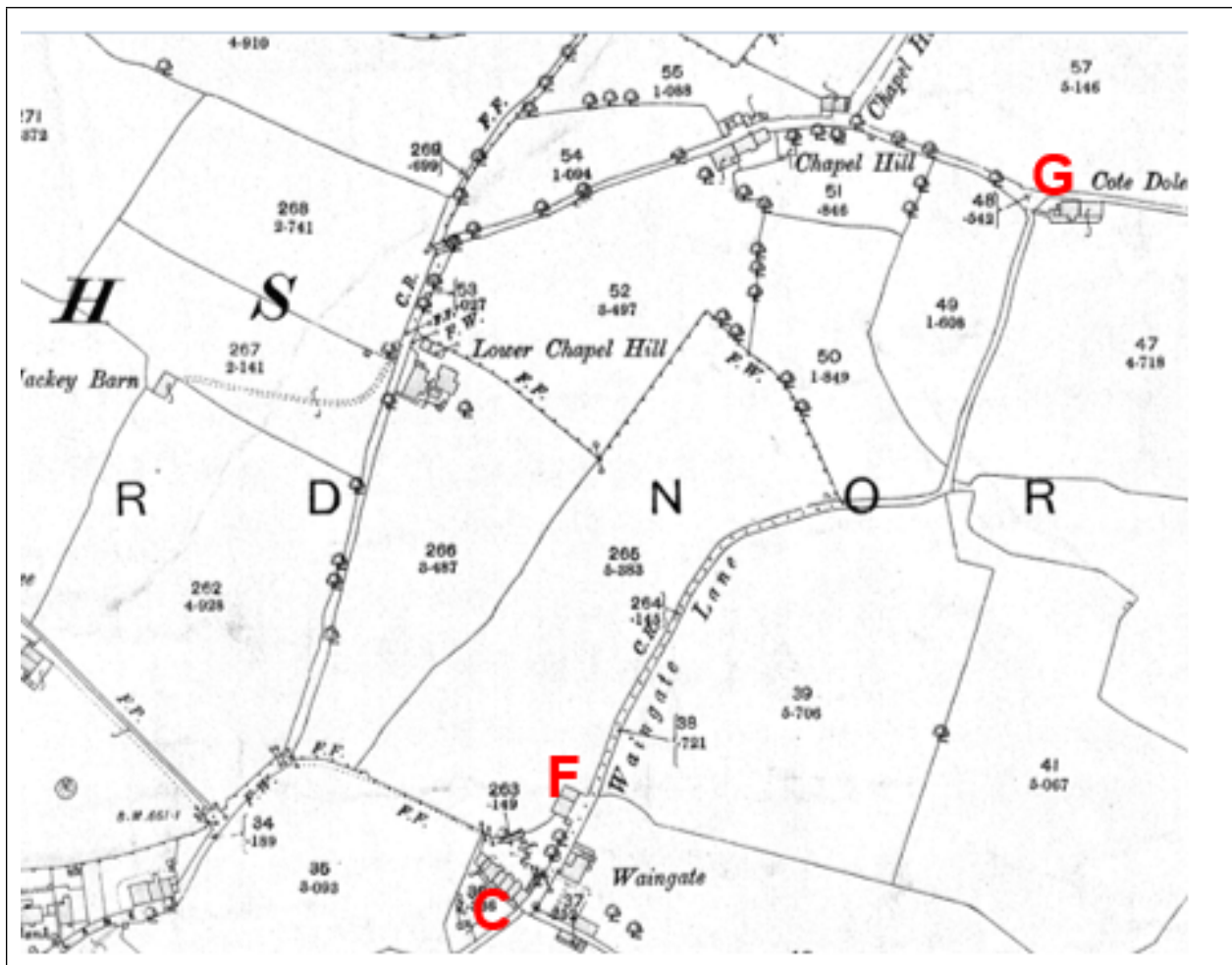


Observations		The full length of the application route is shown as a through route from the junction with Newchurch Road at point A to Cote Doles at point G. From point A the route provides access to a cotton mill known as Spring Side Mill from where it continues in a north easterly direction to provide access to a number of properties at Wain-gate (between point D and point E). Beyond point E the route continues as an enclosed route labelled as 'Wain-gate Lane' through to Cote Doles at point G. No gates or restrictions are shown limiting access along the routes.
Investigating Officer's Comments		The application route existed and appeared to be capable of being used in 1844-47. It provided access to a cotton mill and number of other properties but more importantly connected to other 'through' routes. Of note is the fact that Wain-gate Lane is clearly named on the map consistent with how other named routes on this sheet are recorded as public bridleway or carriageway.
Cassini Map Old Series	1844	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to

		match the modern day 1:50, 000 OS Landranger Maps and are readily available to purchase.
		
Observations		The full length of the application route is clearly shown as an enclosed through route providing access to (and through) Wain-gate.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers.
Lecture notes provided by the applicant	1876	Photocopy of handwritten lecture notes written by John Spencer titled 'The History and Physical Constitution of the Limy Valley' dated 16 August 1876. The lecture notes are contained within a book kept in the Bacup Natural History Society Library.
Observations		Photocopies of several pages of the lecture were provided. The pages provided describe a number of routes through the area. The Investigating Officer read through the manuscript and the only mention of the application route is half way down the page

		<p>numbered 43 where it refers to a route described as running from near to the Ashworth Arms in Constable Lee which continued into Hollins Lane and on to Edge Yate from where it continued onto Hurst Lane 'passing the side of the hill into the road which leads to the Whitewell Valley past Wingate to Wheathead.</p> <p>No other reference could be found to Wingate or to Wingate Road or Wingate Lane.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights The route described above can be followed with the assistance of maps. From the description it appears that the route referred to passes east along Hurst Lane to Cote Doles and continues along BOAT 348. It refers to passing Wingate but not going through it and after consulting the applicant they were also of the opinion that the content of the lecture notes did not specifically refer to the application route.</p>
25 Inch OS Map	1893	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.</p>





#### Observations

The full length of the application route is shown as a through route although access appears to be restricted (most probably by gates or barriers) at point C and possibly at point A.

The cotton mill shown on the earlier 6 inch Ordnance Survey map is not labelled although buildings consistent with the smaller scale 6 inch map are shown.

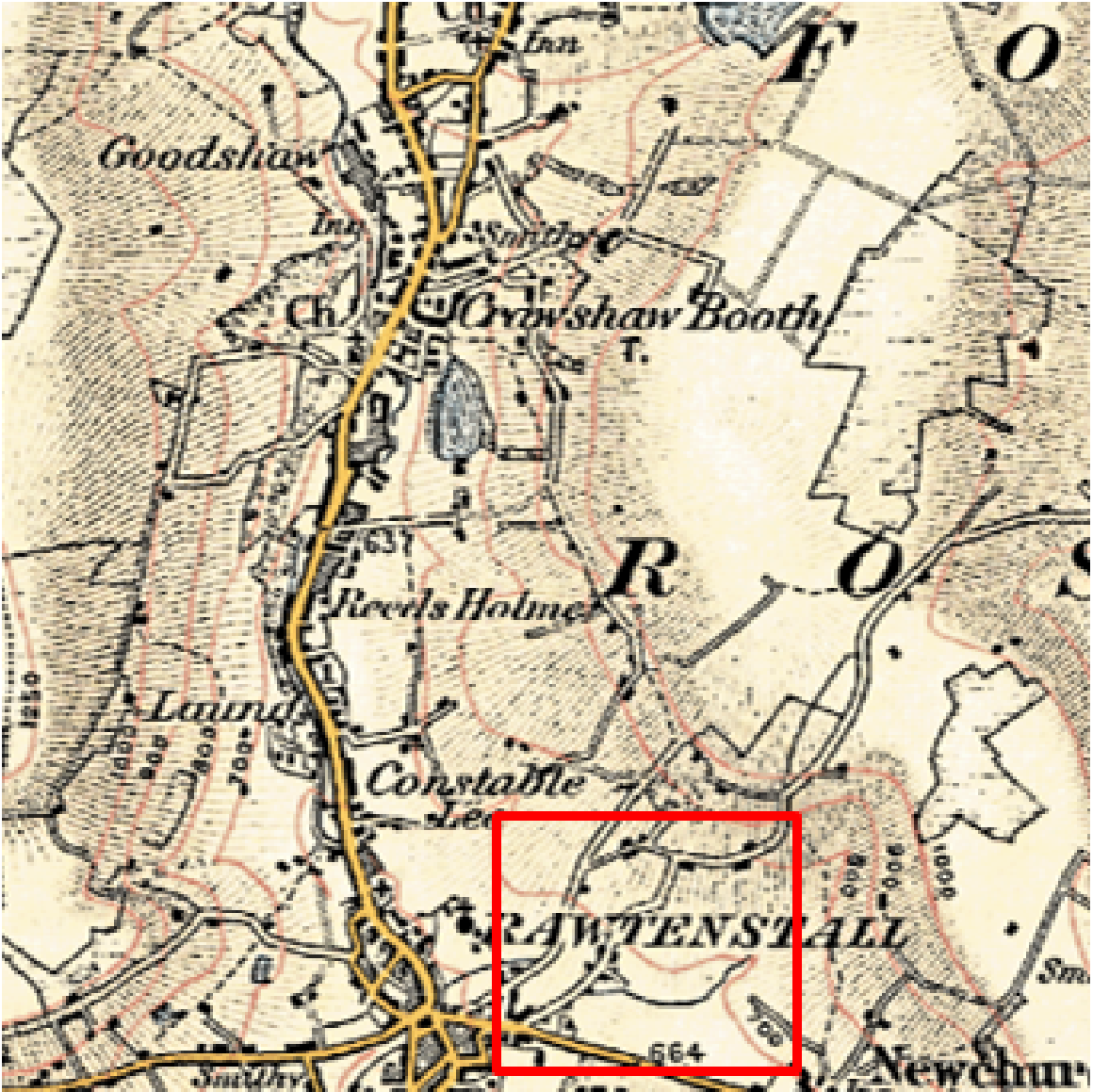
Between point A and point C the route is labelled as Waingate Road with two footpaths (denoted F.P.) joining it. At point C a line is shown across the route which probably denotes the existence of a gate.

Between point C and point E the route passes between a number of buildings labelled as Waingate. The application route (from point A and point G) appears to be the main access to Waingate – with other less significant routes denoted as footpaths.

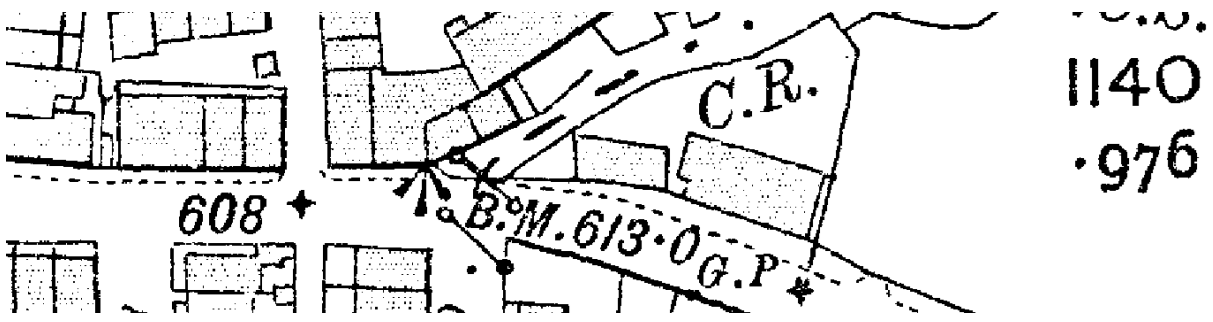
Beyond point E through to point F the route is labelled as Waingate Lane.

		<p>The route is bounded throughout its full length but there is no shading to indicate the status of the route. Ordnance Survey parcel numbers have been given to the section of route recorded as Waingate Road (parcel number 180) and Waingate Lane (parcel number 264).</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1893 providing access to a number of properties and a through route connecting Newchurch Road and Hurst Lane at Cote Doles.</p> <p>The fact that it was named as Waingate Road (between point A and point C) and as Waingate Lane (between point D and point F) on the map is evidence that it was known locally by those names and is consistent with use of the route by the public at least on horseback at that time. It is not known why the Ordnance Survey found that these 2 sections were so named.</p> <p>A gate is marked across the route at point C (and possibly at point A) which may have restricted but not necessarily prevented access. The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>Shading was often used to show the administrative status of roads on 25 inch maps prepared – primarily between 1884 and 1912. 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 (an example of which is Newchurch Road on this particular map sheet). The route under investigation is not shown in such a way but neither are Hurst Lane, BOAT Rawtenstall 348 and parts of Newchurch Road which are now recorded as public vehicular highways so no inference can be drawn in this respect.</p> <p>The application has been allocated two Ordnance Survey parcel numbers but 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>



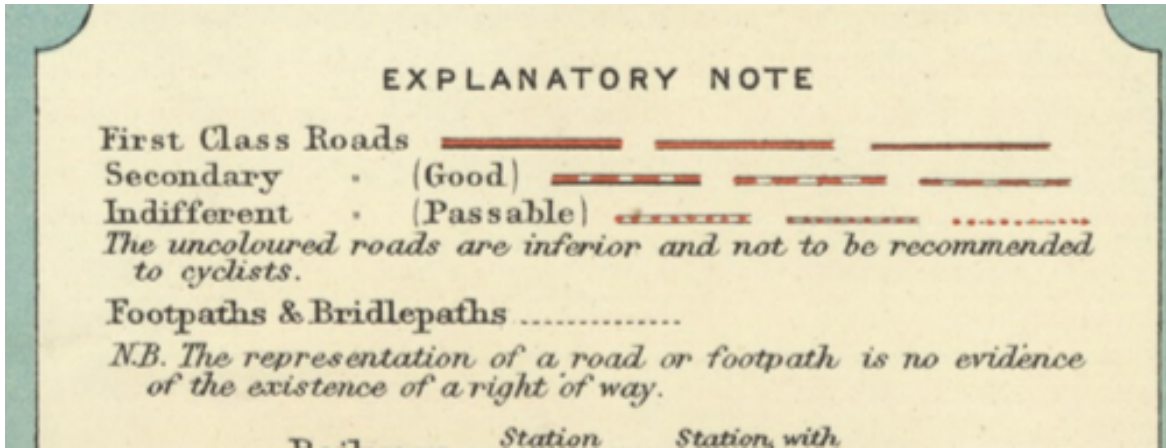
<b>Cassini Revised New Series</b>	1903	Map extract submitted by the applicant. An enlarged reprint of a map first published in 1903 and based on the OS 1 inch mapping.
		
Observations		The full length of the route under investigation is shown but not named.
Investigating Officer's Comments		<p>The scale of the map means that it is likely that only the most significant public routes were shown and were differentiated in the key</p> <p>The fact that the route under investigation is shown as a route considered to be a 'Road' suggests that it was considered at that time to be at least a public bridleway – and more likely a route carrying public vehicular rights.</p>
<b>25 inch OS Map</b>	1911	Further edition of the 25 inch map surveyed in 1891, revised in 1908 and published in 1911.



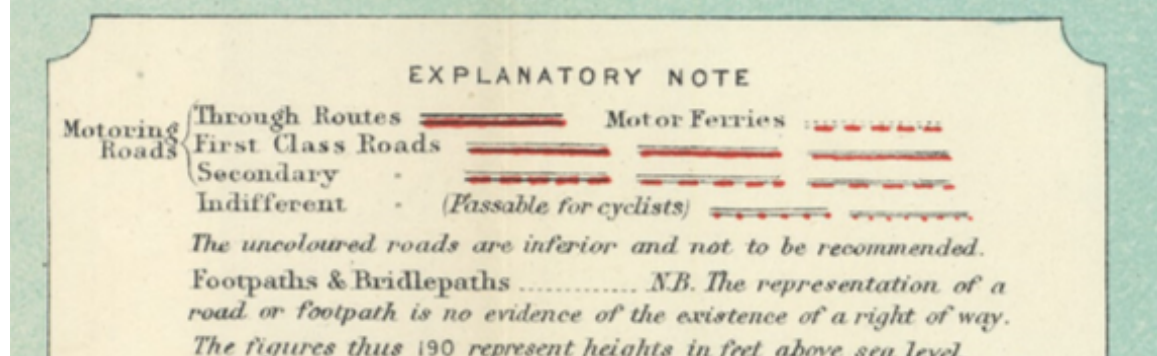
		
Observations		<p>The full length of the application route is shown unaltered from the 1<sup>st</sup> edition 25 inch map.</p> <p>The route is gated at point C and there also appears to be some kind of restriction to access at point A.</p>
Investigating Officer's Comments		<p>The route under investigation provided access to a number of properties along it and was also a named through route connecting to other public routes. The way it is depicted on the map is consistent with a route which could have been used at least on horseback at that time.</p>
<b>Ordnance Survey Object Names Book</b>		<p>When the Ordnance Survey was collecting information to put on its second series of published maps the surveyors recorded the names of anything that was to be shown on the maps. The Ordnance Survey Object Names Book for an area records these names, the description of the item named, and the local person attesting to the name. The descriptions usually state where the road started and finished, and often described them as a road, lane or drove road. The descriptions often drew a distinction between what was believed to be public and private and included information about who owned or maintained bridges.</p>
Observations		<p>A search was made at the National Archives for the relevant object names book but it is not there and does not appear to have survived.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
<b>Bartholomew half inch Mapping</b>	1902-1906	<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</p>



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



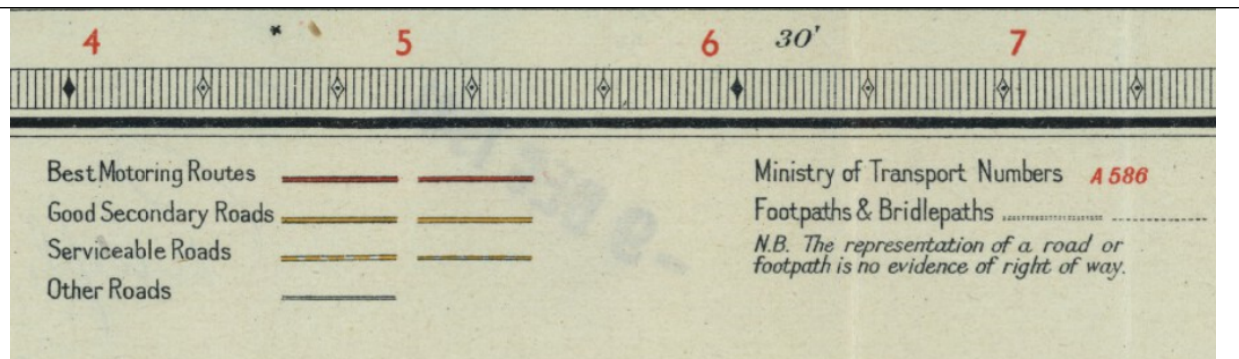
1904 edition



1920 edition







1941 edition

Observations		<p>The application route is clearly shown as a through route connecting to other roads on all three editions of the map.</p> <p>The 1904 edition marks the route as being passable but indifferent whilst the two later editions show it as an uncoloured road which was not to be recommended. It should be noted that routes considered to be footpaths or bridleways were shown differently.</p>
Investigating Officer's Comments		<p>The route under investigation existed as a substantial route which appeared to be considered as being more than a footpath or bridleway.</p> <p>Its condition may have deteriorated from the early 1900s but throughout the first half of the century it was shown as a road and the inclusion of the route on such a map - which would have been sold primarily to the public travelling by bicycle, on horseback or by vehicle - suggests that it was still in use as a significant route in the early 1900s.</p>
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of</p>


	<p>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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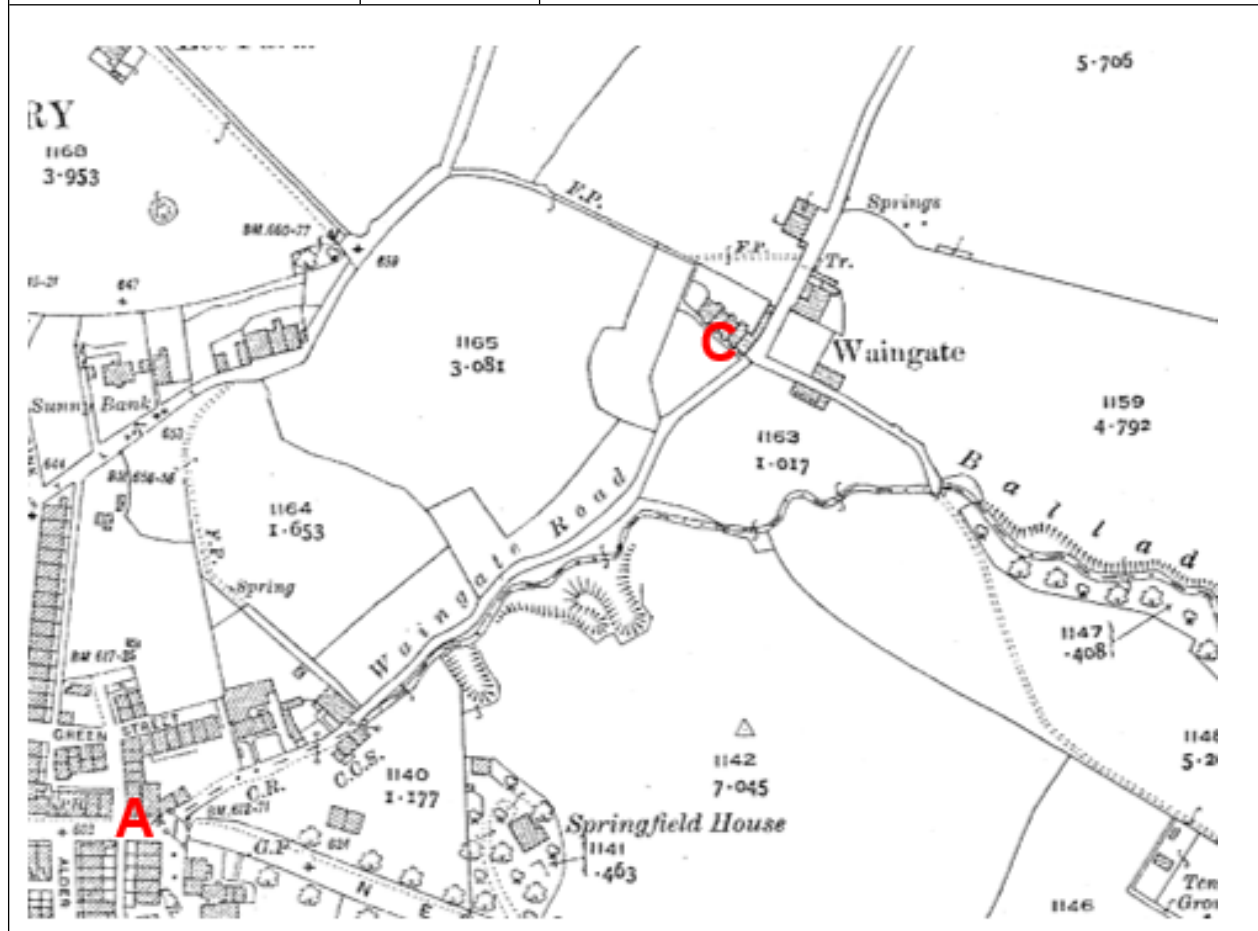


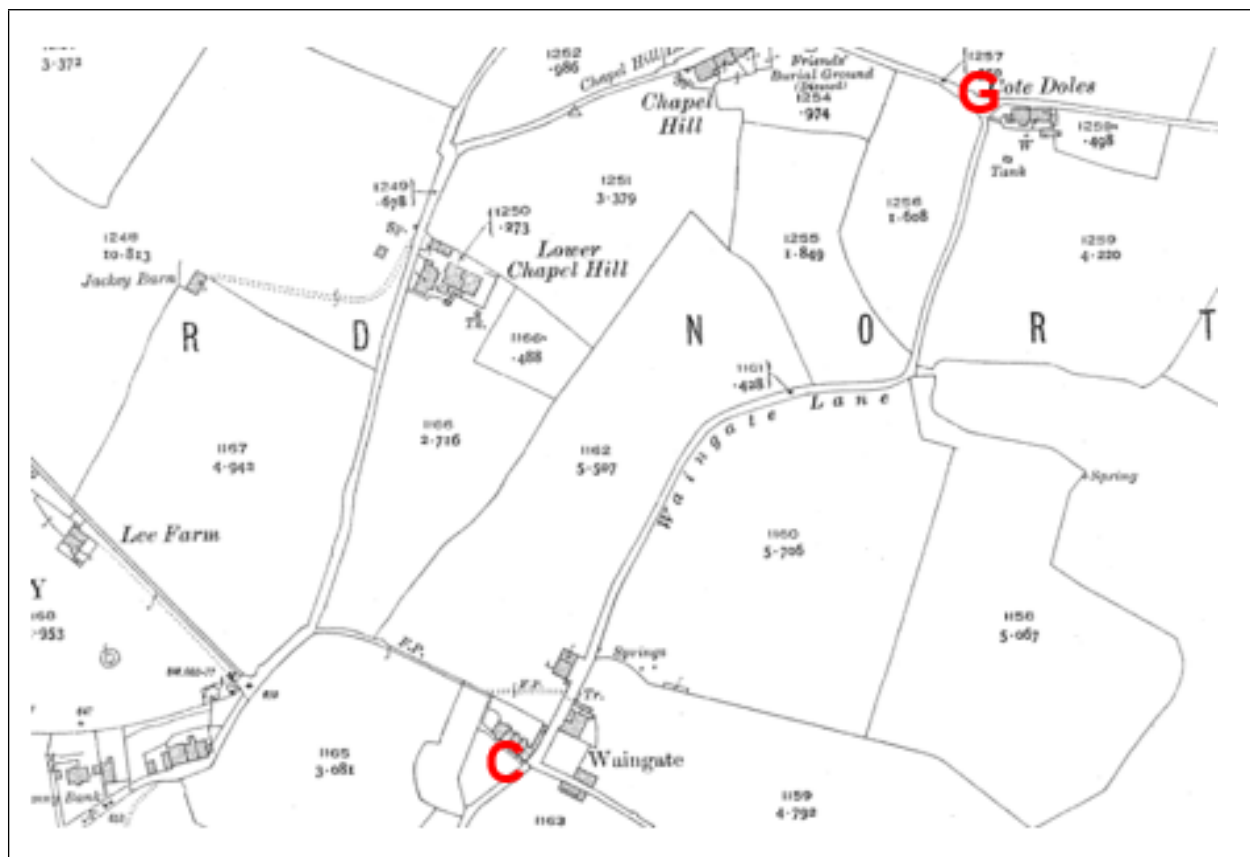
Observations	<p>Finance Act Maps were obtained from The National Archives.</p> <p>An examination of the maps shows that the whole of the route under investigation was excluded from the adjacent numbered hereditaments with the exception of approximately the first 80 metres from point A which crosses land not annotated on the map obtained - a larger scale plan was probably used for this area due to the number of buildings which would have had to be numbered separately.</p> <p>Along the route excluded numbered plots can be seen split by the route (but in the same ownership).</p>
Investigating Officer's Comments	<p>The exclusion of the whole route from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights. Several of the numbered plots are split by the route giving further weight to the belief that the route under investigation was considered to be for public use and that it carried public vehicular rights (as public footpaths and public bridleways were normally included within the numbered plots).</p> <p>The maps showed land in private ownership and, by implication, land not recorded as being</p>



		privately owned would have been regarded as being in public ownership.
<b>Cassini popular edition</b>	1924	Cassini map found online and based on Ordnance Survey one inch maps. Date of survey unknown.
		
Observations		The application route is clearly shown as a well-defined bounded route from point A to point the buildings forming part of Waingate settlement. From north of Waingate to point G it is shown as a less defined route (single dashed line).
Investigating Officer's Comments		The application route existed but appeared to be a less significant route from north of Waingate to point F.
<b>Newspaper Article from Rossendale Free Press</b>	1928	A copy of a newspaper article submitted by applicant titled 'Rawtenstall Ancient Highways – Our main roads of 200 years ago' published 15 January 1938 in Rossendale Free Press but stated to be a reprint of an article first published in 1928.
Observations		The article describes a number of key public highways through Rawtenstall as they existed in the 1920s and also how they had altered or remained the same as those routes in existence in the 1800s. There is a reference to Hurst Lane being part of the old lane to Lumb but no reference to the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>Extract from the Book 'History of Old Roads in Rawtenstall'</b>	1928	Extracts of a book written by Councillor John Hargreaves published in 1928 submitted by the applicant.

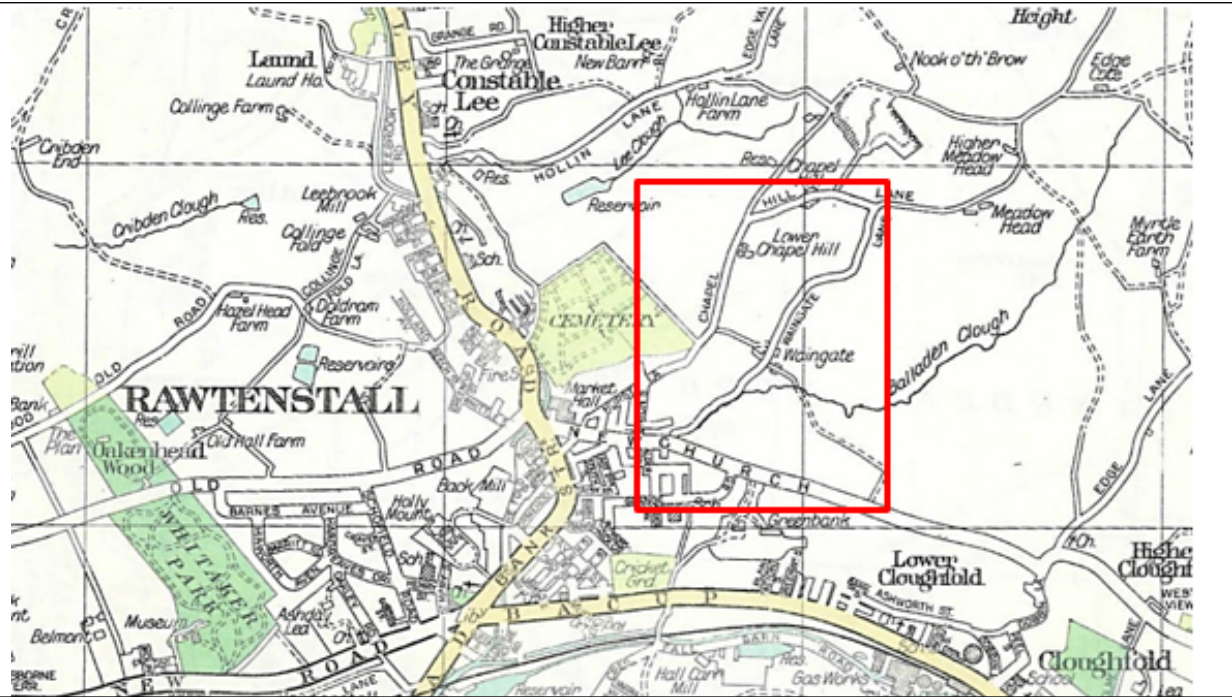
Observations		The content of the book appears to be very similar to that of the newspaper article suggesting that they may have been written by the same person. There is a reference to Hurst Lane being part of the old lane to Lumb but no reference to the application route.
Investigating Officer's comments		No inference can be drawn with regards to the existence of public rights.
<b>25 Inch OS Map</b>	1930	Further edition of 25 inch map (surveyed 1891, revised in 1928 and published in 1930.





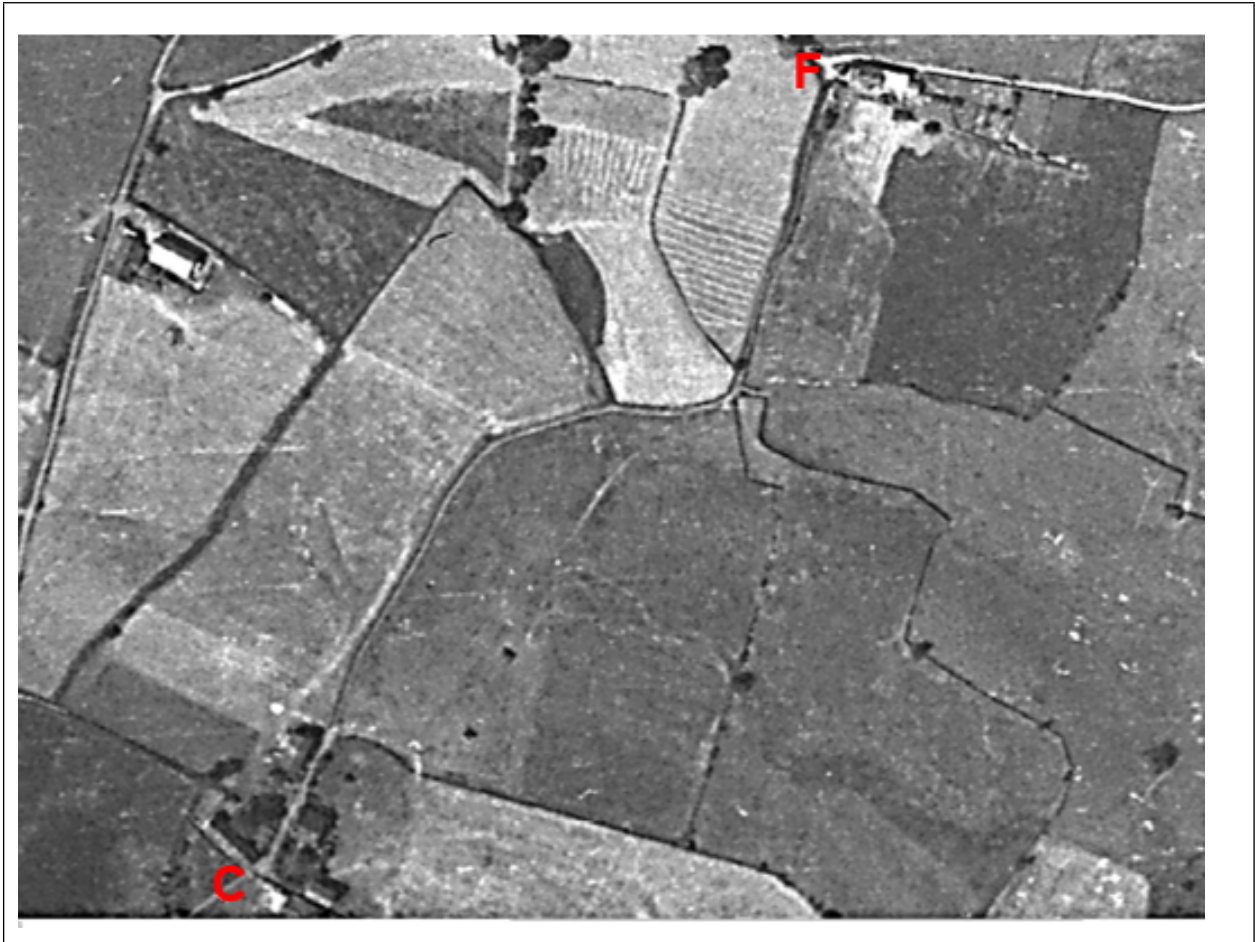
Observations		The application route is shown as a through route gated at point C but now without any apparent restriction at point A. It is still named as Waingate Road from point A to Waingate and as Waingate Lane north to point G.
Investigating Officer's Comments		The application route existed in 1930 and appeared capable of being used on horseback and by vehicles. It provided access to properties on the route and also formed part of a longer through route.
<b>Authentic Map Directory of South Lancashire by Geographia</b>	Circa 1934	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>



		
Observations		The full length of the route under investigation is shown passing through Waingate and is named as Waingate Lane.
Investigating Officer's Comments		The route under investigation is shown in the street atlas consistent with the way other routes carrying public vehicular rights are shown.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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

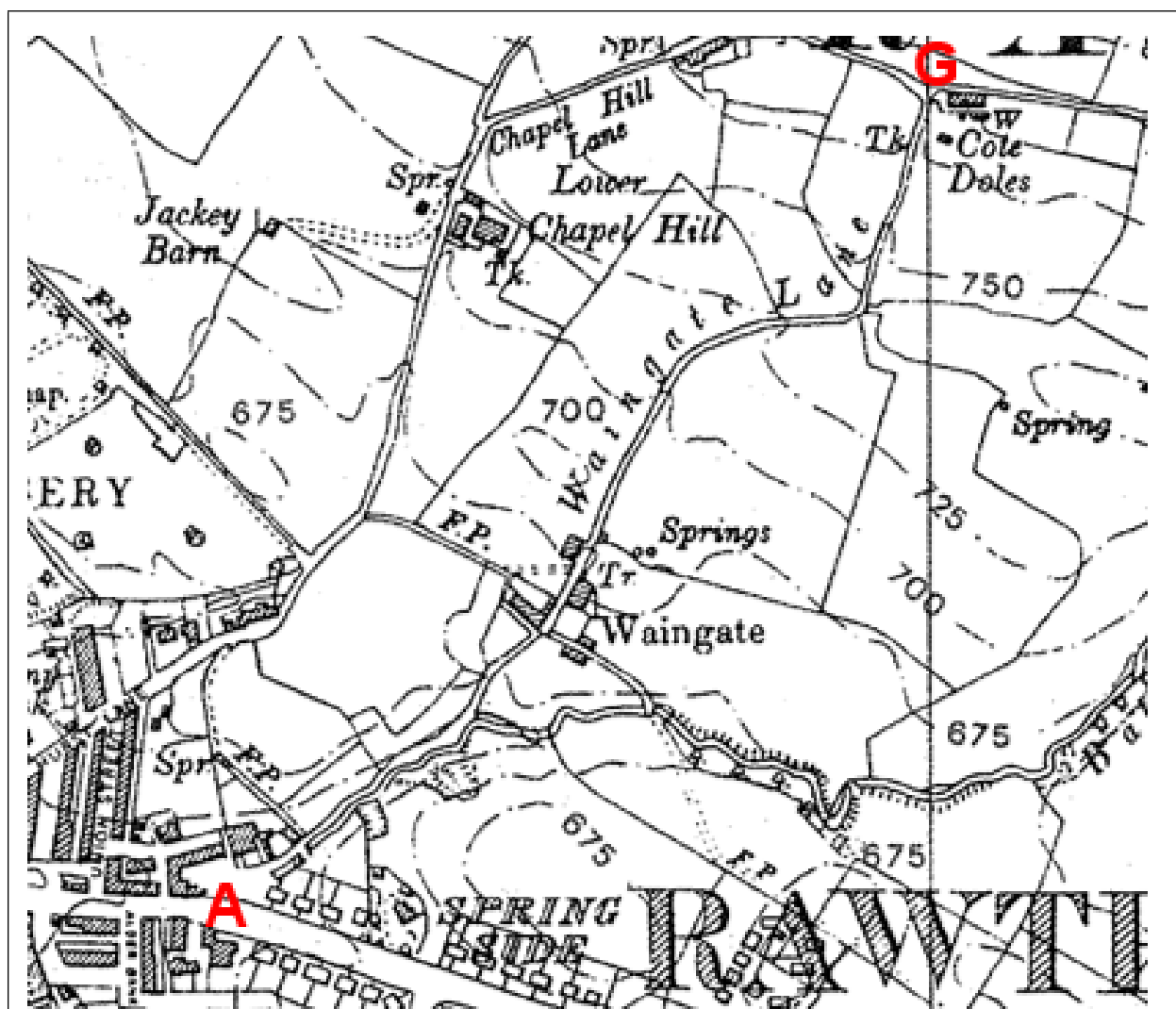





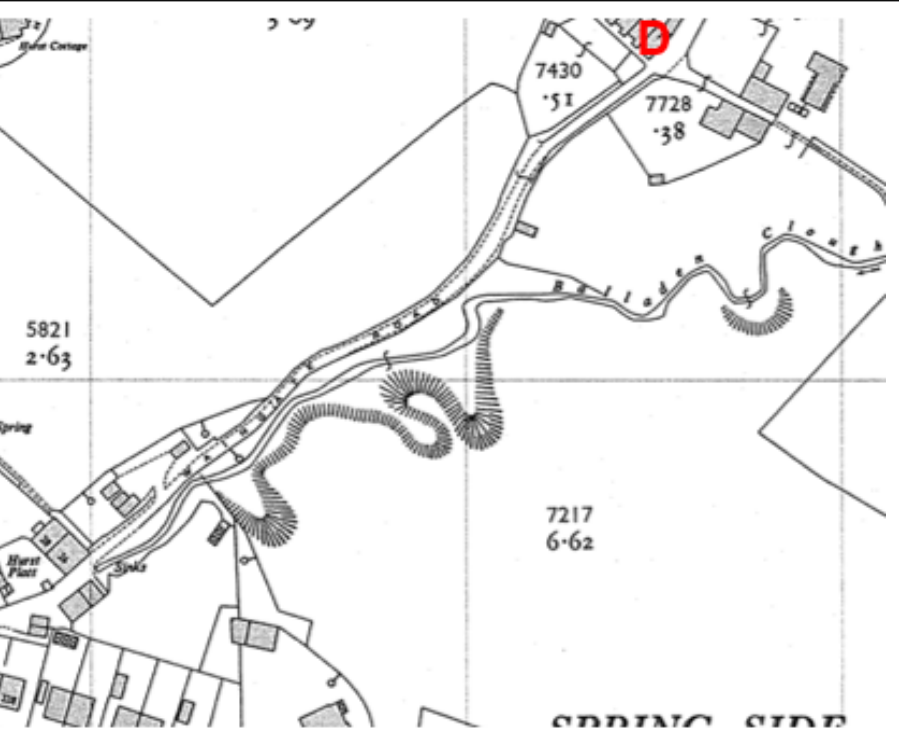
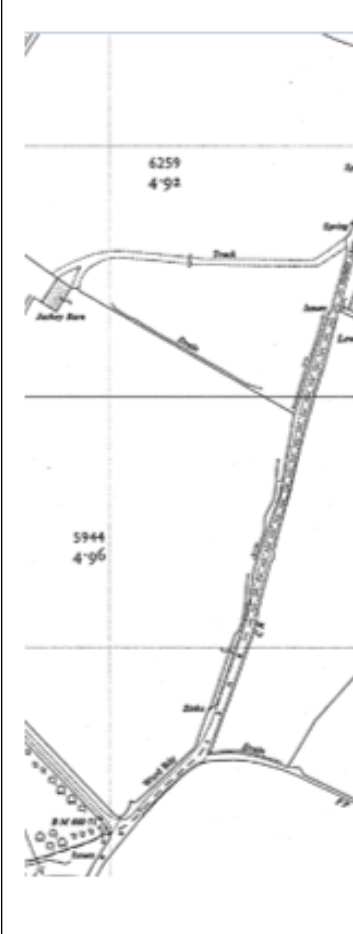
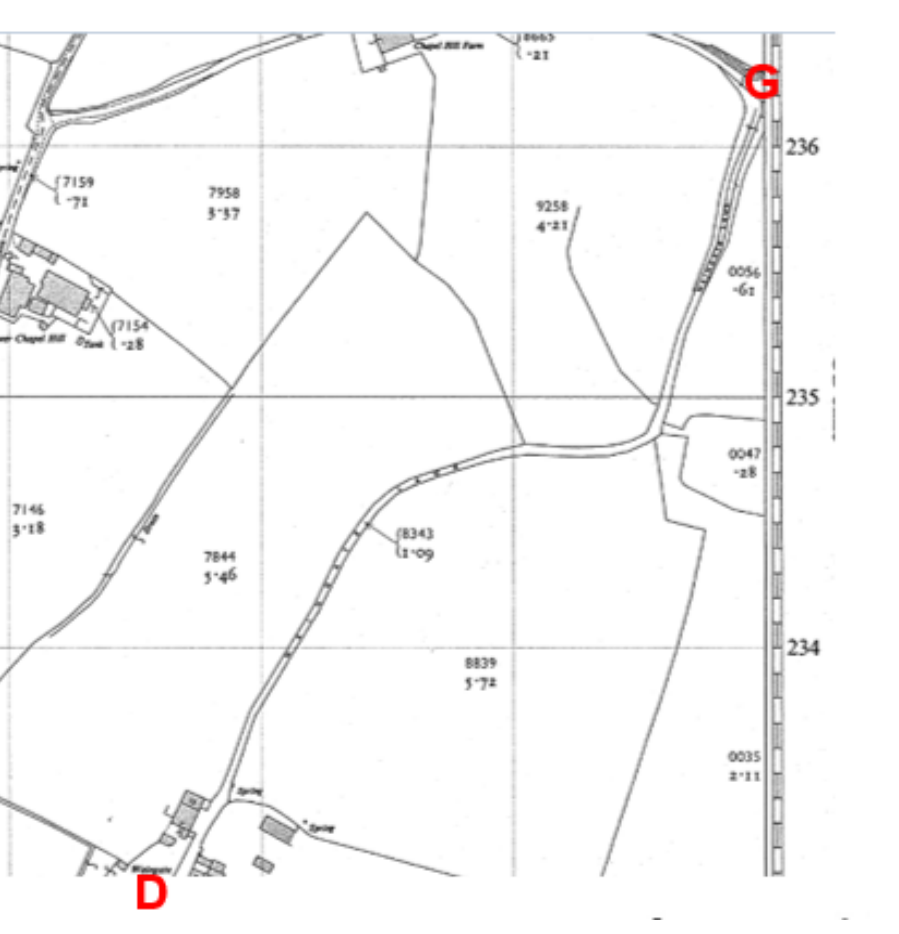




Observations		The full length of the application route can be seen but in places the route is quite faint and does not appear to be a significant through route compared to Hurst Lane which can be seen to the west of the route. However it appears to be the only vehicular access to some properties along the lane.
Investigating Officer's Comments		Use of the application route by vehicles as a through route may have declined by the 1940s although it still appeared to be the main access to the properties at Waingate.
<b>6 Inch OS Map</b>	1956	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1956 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 shown as an enclosed and named through route providing access to Waingate (and beyond).
Investigating Officer's Comments		The application route existed in the 1930s (date of Ordnance Survey survey) and appeared to be an enclosed through route.
1:2500 OS Map	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1960-61 and published in 1963 as national grid series.

	
	
<p>Observations</p>	<p>The application route is shown as a substantial through route named as Waingate Road from point A to Waingate and as Waingate Lane beyond (to point G).</p>

Investigating Officer's Comments		The application route existed in the 1960s and still appeared to be a substantial through route.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

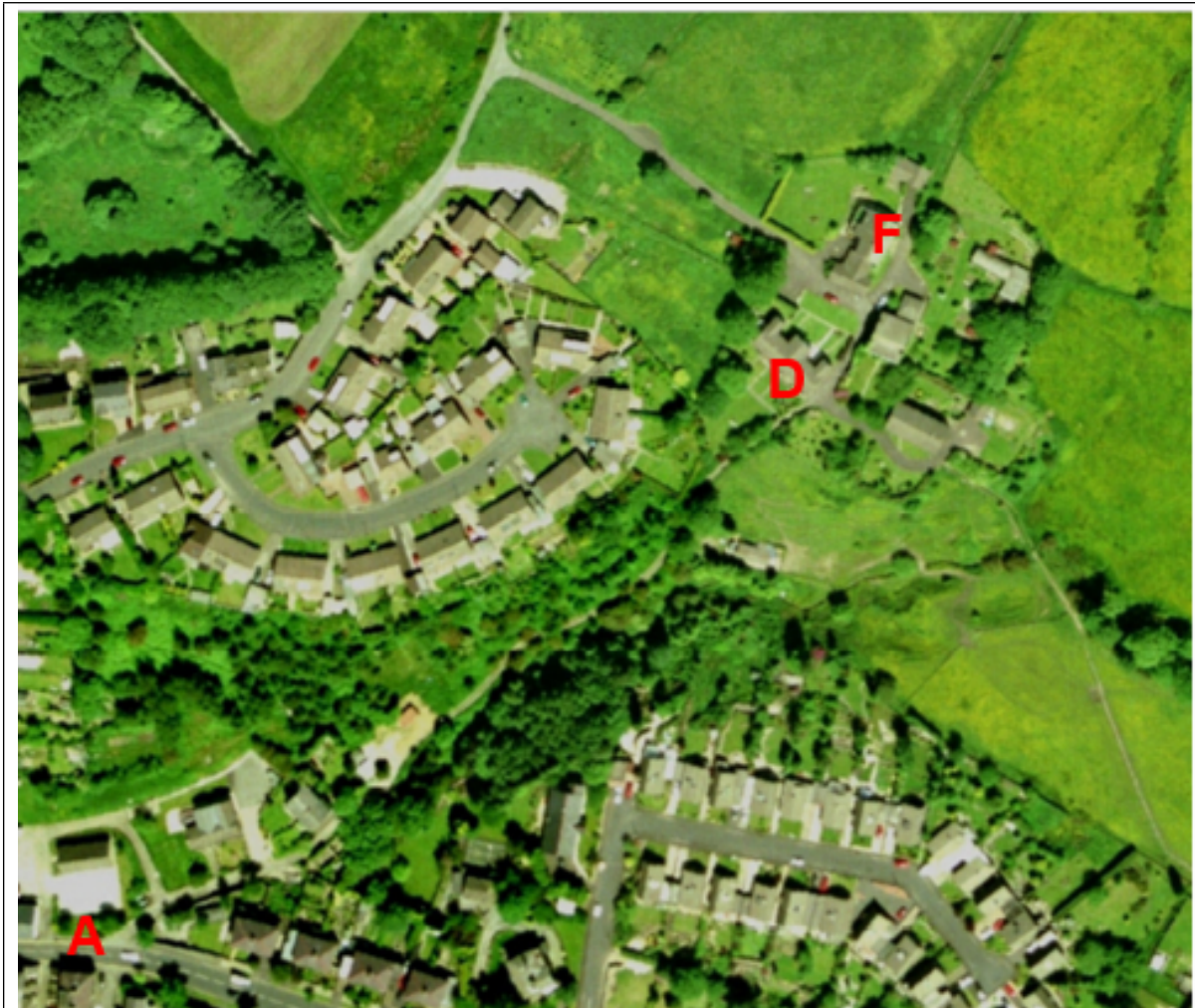






Observations		<p>The application route can be clearly seen between point A and point D and still appears to be the primary access route to the properties at Waingate.</p> <p>The continuation of the route from Waingate through to point F is visible but its appearance is more like a route used mainly as a farm access track and as a footpath or bridleway.</p>
Investigating Officer's Comments		The investigation route existed as a through route in the 1960s and appeared to be the primary vehicular access from point A to Waingate.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS.





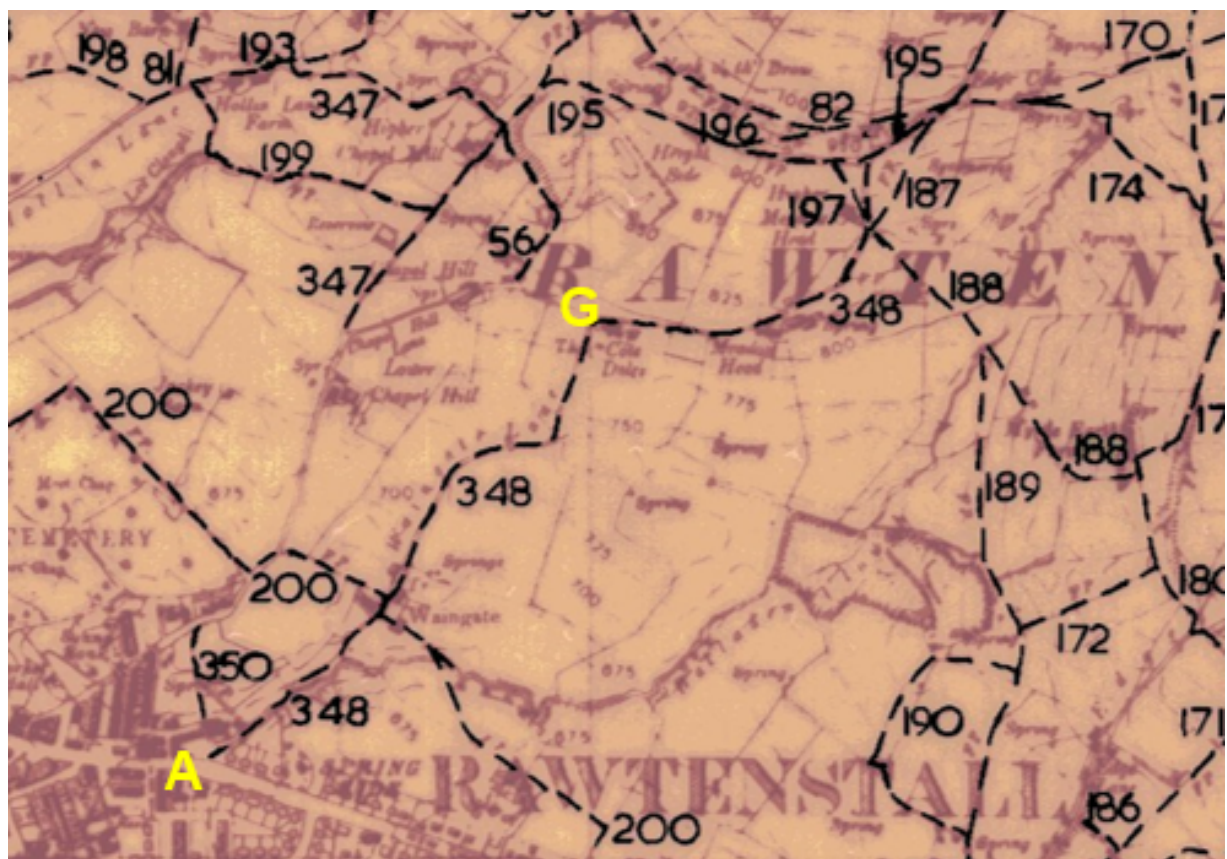


Observations		<p>The application route can be seen from point A to point D but is partly obscured by tree cover. A route appears available between point D and point F through Waingate and then a faint line denoting the route can be seen from point F to point G.</p> <p>A new access road to Waingate from Hurst Lane can be seen midway between point D and point F extending east.</p>
Investigating Officer's Comments		<p>The main vehicular access to Waingate now appears to be via Hurst Lane. The application route is visible, and more clearly defined from point A to point D but its appearance is now more suggestive of footpath or bridleway use rather than as a public vehicular through route.</p>
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map</p>

		in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the county council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the county council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Rawtenstall was a municipal borough in the early 1950s and a parish survey map was not compiled.
<b>Draft Map</b>		The Draft Maps were given a “relevant date” (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		<p>The application route was recorded as part of Footpath Rawtenstall 348 on the Draft Map and described as being from Newchurch Road north east along Waingate Road via Cote Doles in the Draft Statement.</p> <p>No representations were made to the county council in relation to the depiction of the route as a footpath.</p>
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the

		public could not. Objections by this stage had to be made to the Crown Court.
Observations		The full length of the route under investigation was shown as public footpath on the Provisional Map and no objections or representations were made to the county council about the inclusion of the route as a public footpath or the alignment of the route.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation was shown in the same way on the First Definitive Map as on the Draft Map and Provisional Map.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the county) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.





Observations		The route under investigation was shown on the Definitive Map (First Review) as it had been previously shown.
Investigating Officer's Comments		<p>From 1953 through to 1975 there is no indication that the route under investigation was considered to be of any higher status than public footpath by the Surveying Authority.</p> <p>There were no objections to the depiction or status of the route from the public when the map was placed on deposit for inspection or at any stage of the preparation of the Definitive Map.</p>
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark 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</p>

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

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

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

### **Landownership**

Part of the route between points A and B is registered to Raymond and Maria Stansfield of 16 Hurst Platt, Rossendale, BB4 7RG and a larger part of the route between points B and G is registered to Hurstwood Group 1 Limited of Oceanic, Navigation Business Park, Waters Meeting Road, Bolton, LB1 8SW. The remaining sections of the route are unregistered.

### **Summary**

The full length of the route connecting Newchurch Road to Hurst Lane and Byway Open to All Traffic Rawtenstall 348 at Cote Doles was shown consistently on various small scale commercial maps (and also the Honour of Clitheroe Map) from 1786 as a significant through route passing through 'Waingate' and was depicted in the same way that carriageways were shown.

It is also shown consistently on Ordnance Survey maps, including 1 inch scale, from 1849 onwards, named as Waingate Road and Waingate Lane and mostly enclosed on both sides.

The Finance Act 1910 information suggests – although not conclusively – that it had public carriageway rights.

As the 20<sup>th</sup> Century progressed the north western section of the route (beyond Waingate) became less significant as evidenced by maps and aerial photographs and this is still the situation on the ground today.

If it is accepted that the route has early map and documentary evidence for public carriageway rights it does not appear that those rights have been subsequently legally extinguished by a specific legal order but the effects of the Natural Environment and Rural Communities Act 2006 would be to extinguish any public mechanically propelled vehicle rights.

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

#### Information from the Applicant

The applicant submitted the following documents along with 4 user evidence forms:

1786 Yate's Map of Lancashire

1802 Smith's Map

1807 Honor of Clitheroe Map 1807 LRO DDHCL map 5

1818 Greenwood's Map of Lancashire  
1818 Stockdale's Map of Lancashire  
1830 Teesdale / Hennett Map of Lancashire  
1831 Township Map of Deadwinclough 1831 (Rawtenstall Library)  
1844 Cassini Old Series Map based on Ordnance Survey (OS) 1" map  
1849 6" to 1 mile OS map  
1876 Lecture notes  
1891 25" to 1 mile OS map  
1903 Cassini Revised New Series map  
1910 Finance Act Map  
1911 25" to 1 mile OS map  
1924 Cassini Popular edition map  
1928 History of Rawtenstall  
1928 Rawtenstall Roads  
1934 Authentic Map Directory of South Lancashire 6" scale  
1934 OS map  
1946 Aerial Photograph

User evidence form 1 summary:

Has used the route by horse since 1980 and still does to this day for pleasure riding as part of a longer route. Usage was, until 1995 on a monthly basis and since then 3 to 4 times per year. They have seen others using the exact same route as themselves on foot, horseback and bicycle. The route line has never changed since they started their use in 1980. They have never met a landowner or tenant whilst riding and have never been given permission to use the route. They have never been turned back or seen any notices along the route to say they shouldn't be using it. There are no stiles, gates or fences along the route, however there are bollards that have been put in place on the lower section of the route to prevent vehicles since the width of the track was reduced when the river eroded the path in the floods.

User evidence form 2 summary:

Has used the route by horse since 1997 and still does to this day for pleasure riding as part of a longer journey 4 to 6 times per year. They have seen others using the exact same route as themselves on foot, horseback and bicycle. The route has followed the same line the whole time they have known and used the route. They have never met a landowner or tenant whilst riding and have never been given permission to use the route. They have never been turned back or seen any notices to encourage or discourage use of the route. There are no stiles or gates along the route. They had understood that the route had higher rights than just footpath until recently.

User Evidence form 3 summary:

Has used the route by horse and on foot since 1979 and still does to this day for pleasure purposes. They have seen others using the same route as themselves on foot and horseback. They use the route approximately 5 times per year, sometimes more. The route has always followed the same line. When using the route they use it as part of a larger circular route. The track is a clear path and easy to follow, passing



through Waingate Village. The passes between two walls and is fenced, coming out onto the wider lane at the top. They have never met a landowner or tenant whilst riding the route nor have they ever been given permission to use the route. No one has ever attempted to turn them back and they have never noticed any notices to encourage or discourage use of the route. There are no stiles or gates along the route. Sometimes falling stones from the walls can cause obstruction and during wet weather there can be deep mud. They have always believed the route to be a bridleway.

#### User Evidence form 4 summary:

Has used the route by horse and on foot since 2002 and still does to this day for pleasure purposes. They use the route ever two months. They have seen others using the same route on foot, horseback and on bicycle. The users were using the same route as them. They use the route as part of a longer journey. The route has not changed its line in the time they have been using it. They were given permission and shown the route by a lady on the farm at the top of the route. They have never noticed any signs to encourage or discourage use of the route. There are no stiles or gates along the route. There can be deep mud half way along the route and during wet weather this can make the route impassable.

#### Information from adjoining landowners and others

Two separate adjoining landowners have written in response to consultations and another two have phoned in with comments. They all use the application route to access their properties and expressed concern over their future access to their properties by vehicle.

Another adjoining landowner responded to consultations provided that for as long as they could remember the footpath has always been known as Waingate Road and not Footpath 348. The Farmhouse at Waingate (now Waingate Manor) has a date stone 1755 and until 1982/1983 Waingate Road was the only access for all traffic including in the last 100 years, motorised vehicles. It serves the farm, associated buildings and neighbouring properties. The lower section of Waingate Road from Newchurch Road was used by horseboxes to access stables halfway up the road (now demolished). The first 75 yards from Newchurch Road as always been the access to Hurst Platt and two other houses. The road is equipped with working lamp posts and it is common for visitors and couriers to find themselves directed by their satnavs up Waingate Road despite its designation as a footpath. It is marked as a road on local street plans.

In 1982/3 a private road was made from the central levelled, metalled section of Waingate Road westwards to Hurst Lane, providing an alternative and wider, easier access to the farm which at that time became known as Waingate Village with a number of residential properties which were accessed by vehicle along the road.

After the private road was made, Waingate Road remained passable to motor vehicles and was particularly useful in winter as it was sheltered by trees whereas Union Street, part of the only other access route, is normally restricted in width due

to parked cars and is steep and at times impassable to two wheel drive cars when snowbound.

They go on to provide that for many years Waingate Road has proven be a valuable alternative to Union Street. Recently however, the road from Waingate Village to Newchurch Road has been repeatedly washed away by run off from the hillside and despite attempts by the county council to repair, it is now impassable to motorised traffic and has been blocked with traffic restricting bollards. The only vehicular access to Waingate is now by private road, which the residents pay to maintain.

The middle, level section of Waingate Road boarding Waingate Manor remains essential for access to the residents of Waingate including the Royal Mail, Rossendale Borough Council refuse collectors, emergency services and sundry tradesmen. They provide that for years they have encouraged horse riders and others to use Waingate Lane instead of the private road. They also, like others, express concern over access by vehicle to their property.

## **Assessment of the Evidence**

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

#### **In Support of Making an Order(s)**

- A small amount of user evidence
- Extensive map & documentary/historical evidence
- Present line open and available since 1849

#### **Against Making an Order(s)**

- Relatively low user numbers if considering user evidence

## **Conclusion**

The route under consideration is currently recorded as public footpath. The application is to upgrade the sections of the footpaths from points A-B-C-D-E-F-G to a restricted bridleway, as it is suggested the public footpath carries higher public rights being vehicular rights which would be recorded as rights in non mechanically propelled vehicles.

Committee should note that as the route is already recorded on the definitive map as public footpath, it is not sufficient to satisfy the lesser test of reasonably alleging the existence of highway rights, neither is it necessary for there to be conclusive evidence of the existence of a higher public right than a public footpath, instead the standard of proof required is the balance of probability.

It is advised that as there is no express dedication in this matter that the Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in S31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient

twenty years "as of right" use to have taken place ending with this use being called into question. All evidence would appear to relate to the route A-B-C-D-E-F-G and therefore the evaluation is on this basis.

Looking firstly at whether dedication can be inferred on balance at common law, it is advised that the Committee has to consider whether evidence from the maps and other documentary evidence, coupled with the evidence on site, does on balance indicate whether the route was dedicated in the past by the owner(s) as a vehicular highway. The analysis of the map and documentary evidence by the Head of Service – Planning and Environment provides an evaluation of the documentary evidence. The whole of the route is shown on numerous historical maps from 1849 onwards as a through route connecting Newchurch Road and Hurst Lane at Cotes Road, and is also shown named as Waingate Road and Waingate Lane, the Finance Act 1910 shows that the route under investigation was excluded from the taxable hereditaments which is considered to be good evidence that public carriageway rights existed, and there appears to be no evidence that such rights have ever been extinguished. Therefore, on balance it is suggested that the map and documentary evidence provided is sufficient from which to infer dedication under common law.

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

The first consideration is to determine when the route was called into question regarding use. In this matter the county council received an application for a Definitive Map Modification Order dated 26 June 2018, it is therefore suggested that the 20 year period under consideration would be 1998-2018.

In support of this application, in addition to the statement made by the applicant, only 3 further user evidence forms have been submitted to indicate knowledge and use of the route. Three users state that they have used the route for 20 years or more and one user claims to have used the route since 2002, all of the users claim to have used the route on horseback and three of the users claim to have witnessed other users of the route also on horseback as well as on pedal cycles and on foot. The main purpose given for using the route is as part of a longer route for pleasure riding.

These are relatively few users providing evidence of their use, such use must be more than trivial and sporadic to be sufficient use to give rise to a deemed dedication.

Taking the information and evidence into account, it is suggested that the Committee may on balance consider the evidence insufficient from which to find that the criteria of S31 can be satisfied. However, coupled with the extensive map and documentary evidence, Committee may be of the view on balance that there is sufficient evidence from which a dedication of a vehicular highway could be deemed or inferred in law and therefore that the application be accepted.

A number of land owners and adjoining landowners have contacted the county council to make various points on this matter which are set out above under the heading "Information from adjoining landowners and others": they each express a common concern over access by vehicle to their respective properties. Whilst the county council cannot provide confirmation of private rights, any private rights which do exist would not be affected by the proposed change in status.

### **Risk Management**

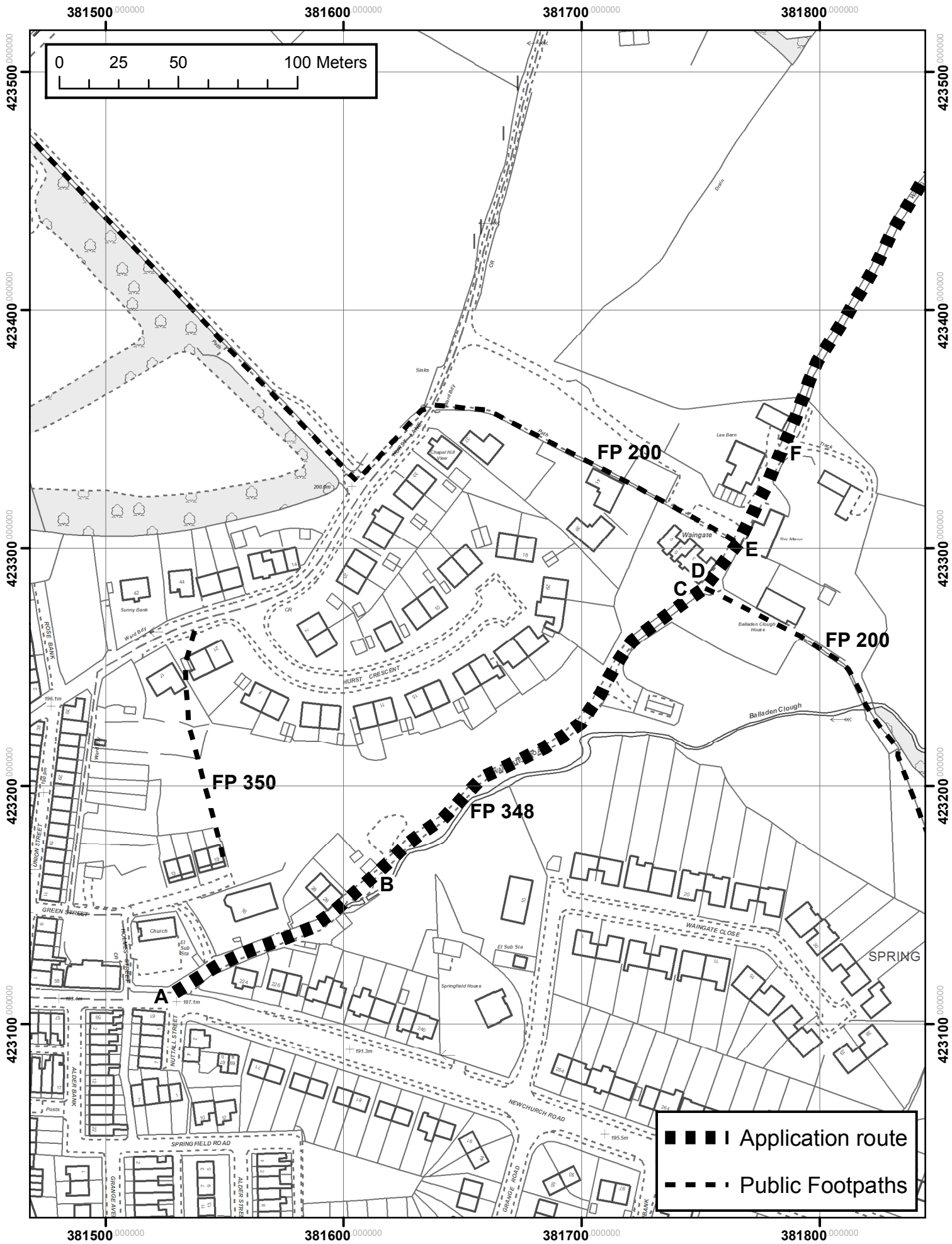
Consideration has been given to the risk management implications associated with this application. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda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

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

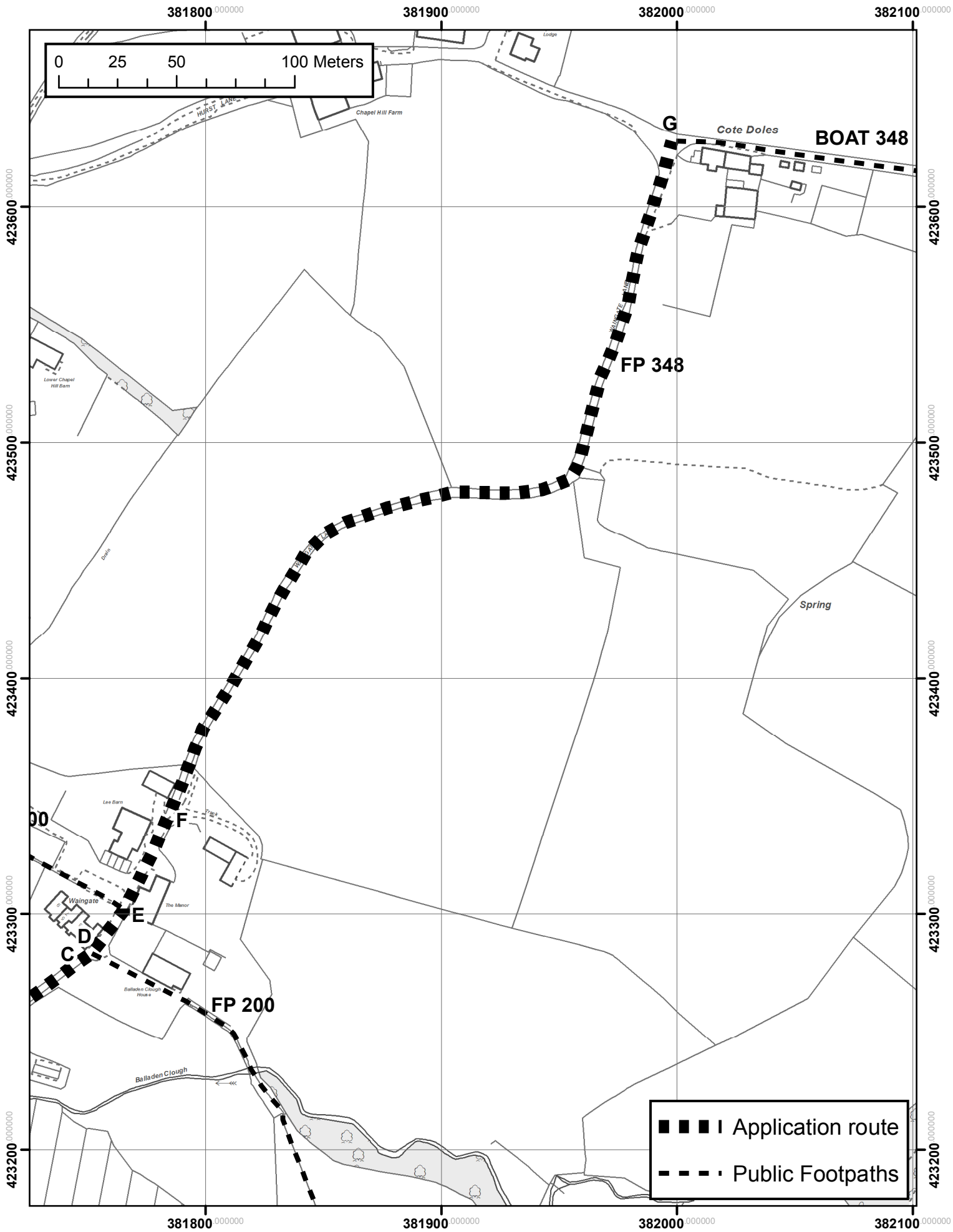
Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-599		Claire Blundell, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A





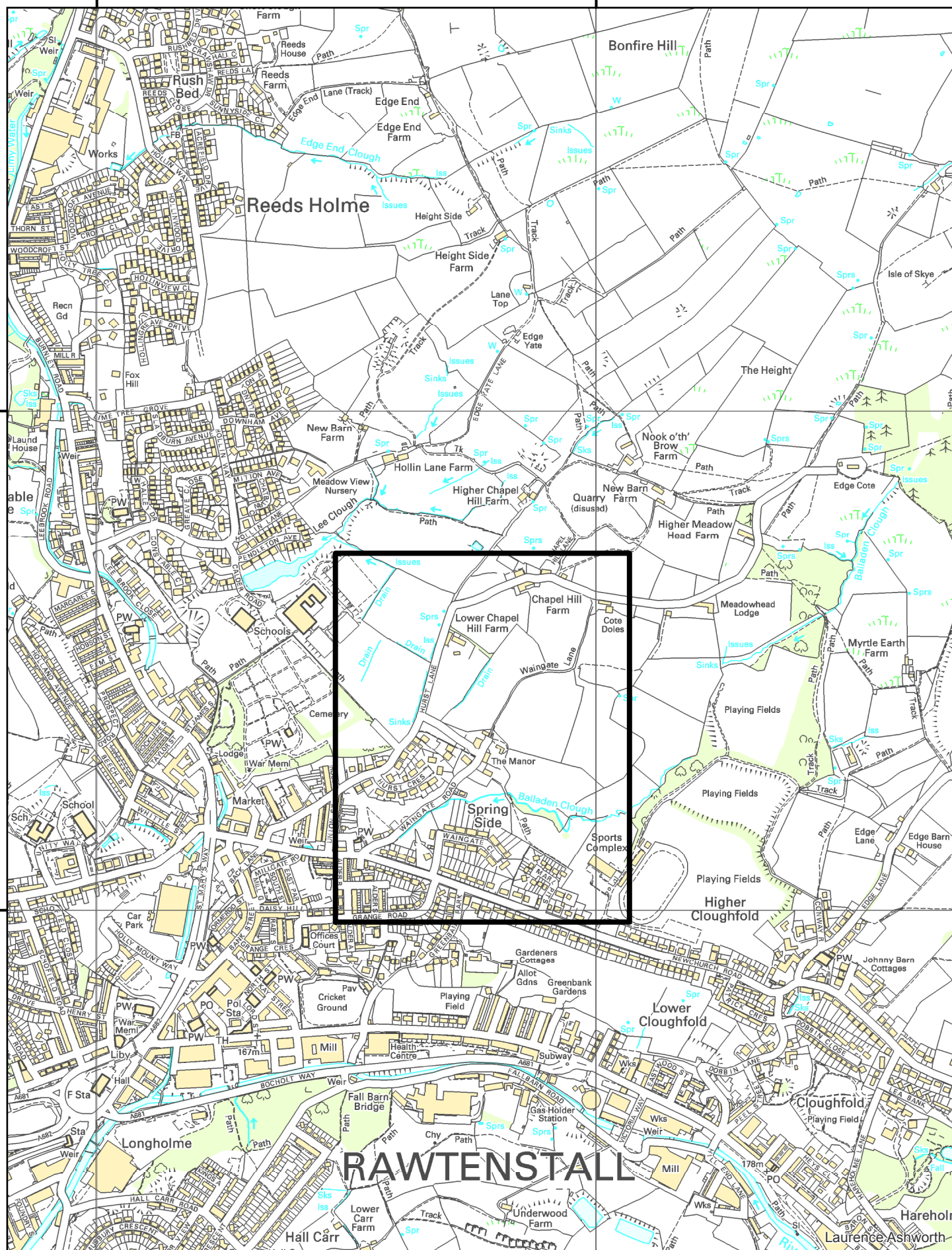






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## Regulatory Committee

Meeting to be held on 14<sup>th</sup> November 2018

Electoral Division affected: Lancaster Central
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### Decision On Appeal

#### Wildlife and Countryside Act 1981

#### Addition of Public Footpaths around Glasson Dock Canal Basin, Thurnham, Lancaster City Council

#### File Numbers 804/519 and 804/555

(Appendices 'A' to 'D' and Annex 'A' refers)

Contact for further information:

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Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning and Environment Group, [jayne.elliott@lancashire.gov.uk](mailto:jayne.elliott@lancashire.gov.uk)

### Executive Summary

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

### Recommendation

- (i) That the report be noted.
- (ii) That, in light of the Inspector's decision to uphold the appeal lodged in respect of file numbers 804/519 and 804/555, an order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement of Public Rights of way by adding four Public Footpaths from Tithbarn Hill to School Lane adjacent to Glasson School and around Glasson Dock Canal Basin, Thurnham Parish, Lancaster as shown by a bold dashed line on the attached plan.
- (iii) That should no objections be received, the order be confirmed, but if objections are received the county council as order making authority submit the order to the Secretary of State for formal determination, but the county council shall notify the Secretary of State that it does not actively support the order and to adopt a "neutral stance" as regards confirmation of the order.

## **Background and Advice**

At their meeting on the 15<sup>th</sup> November 2017, the Regulatory Committee considered a report on an application for a footpath around Glasson Canal Basin, Thurnham, Lancaster City to be added to the Definitive Map and Statement of Public Rights of Way. This report and supporting papers are set out at Appendices 'A', to 'C'. The Committee resolved that the claim for a public footpath around Glasson Canal Basin, Thurnham, Lancaster be not accepted. The applicant appealed against this refusal to the Secretary of State.

The Secretary of State for Environment, Food and Rural Affairs directed an Inspector to consider the matter. The inspector examined the documentary evidence, user evidence and landowner evidence and prepared a report detailing his decision. The Inspector's view was that:

"there is some conflicting evidence and some legal points which are arguable either way. However, taking all the evidence together I consider that there is sufficient evidence of use that it is reasonable to allege that a right of way exists over each of the claimed routes (apart from C-D) and no incontrovertible evidence that it could not.

I do not consider that the evidence of use for the section between Points C and E is sufficient to permit a reasonable allegation to be made". The appeal in respect of this section was dismissed.

The Inspector allowed the appeal in part (Appendix 'D' refers) and the county council is directed to make an order under Section 53(2) and Schedule 15 of the Act, to modify the definitive map and statement for the area to add public footpaths for the following routes, as proposed in the application submitted in 1999 and 2014:

Route 1 from Point A through Points B and C to Point D;  
Route 2 from Point D through Points E, F, Y, G and Z to Point J;  
Route 3 from point J through Points Z, G, X and I to Point H; and  
Route 4 from Point K through Points L and M to Point N.

It is advised that an order is made, as directed. If there are no objections, it is suggested that the Authority be content to confirm the order. However, should objections be received, it is suggested that the Local Authority adopts a neutral stance in this instance due to the regulatory committee's original decision not to make an order based on the evidence.

## **Consultations**

N/A

## **Alternative options to be considered**

N/A

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

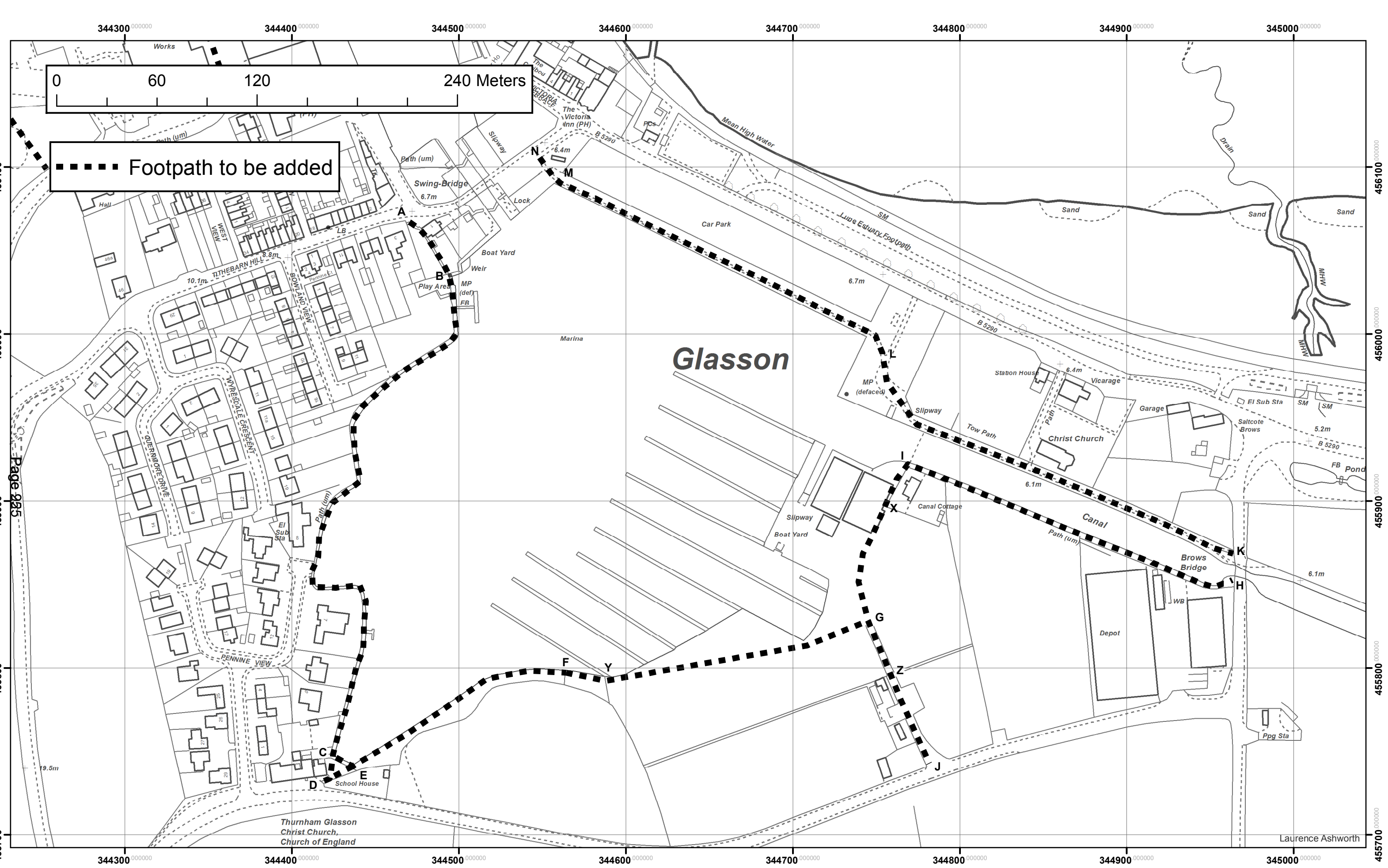
Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/819 and 804/555		Claire Blundell County Secretary and Solicitors Group, 01772 533196

Reason for inclusion in Part II, if appropriate

N/A

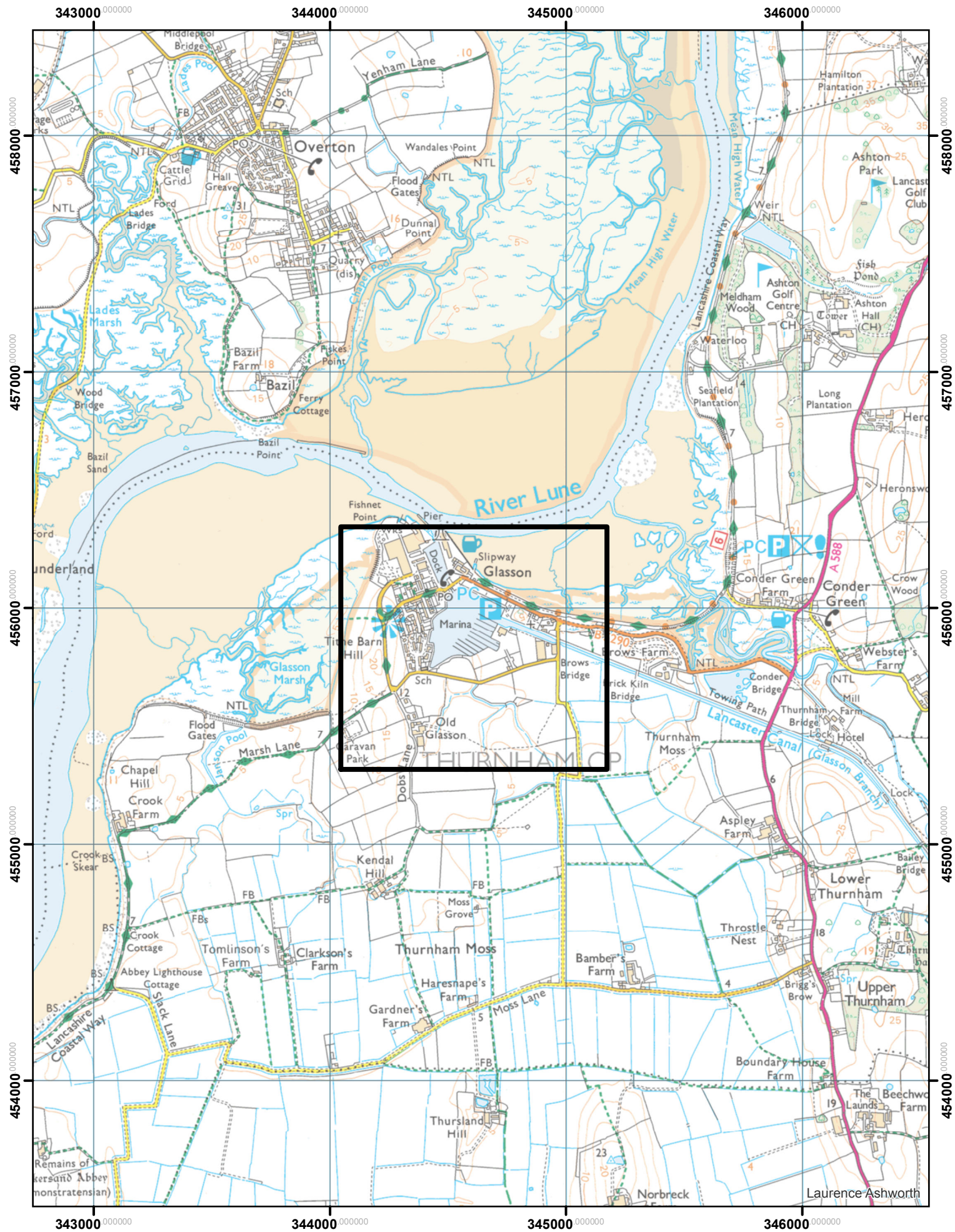












Andrew Mullaney  
Head of Planning and Environment

Wildlife and Countryside Act 1981  
Addition of Public Footpath around Glasson Canal Basint, Glasson Dock, Thurnham, Lancaster City  
LOCATION PLAN 804-519 and 804/555

1:20,000



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

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## Regulatory Committee

Meeting to be held on 15 November 2017

Electoral Division affected: Lancaster Central
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### Wildlife and Countryside Act 1981

**Claimed public footpath around Glasson Canal Basin, Thurnham, Lancaster**

**File Ref. Nos. 804/519 and 804/555**

(Annex 'A' and Appendix A & B refer)

Contact for further information:

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Jayne Elliott, 01772 537663, Public Rights of Way Officer, Environment and  
Planning, [jayne.elliott@lancashire.gov.uk](mailto:jayne.elliott@lancashire.gov.uk)

### Executive Summary

Application for a footpath around Glasson Canal Basin, Thurnham, Lancaster City to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File Ref. Nos. 804/519 & 804/555.

### Recommendation

1. That the application for a footpath around Glasson Canal Basin, Thurnham, in accordance with File Nos. 804-519 and 804/555, be not accepted.

### Background

Three separate applications comprising a route very similar to that now claimed were submitted in 1999 and considered by the Regulatory Committee in 2001 (Report attached at Appendix A). At that time Members of the Regulatory Committee decided that there was insufficient evidence to make a Definitive Map Modification Order to record a route around Glasson Dock Canal basin as a public footpath.

The decision of the Regulatory Committee was appealed by the applicant.

The Government Office for the North West considered the appeal and dismissed it stating that, on the balance of probability, there was insufficient evidence to support the claim.

A further application under Schedule 14 of the Wildlife and Countryside Act 1981 was received in 2011 for the addition of a public footpath around part of Glasson Dock canal basin on the Definitive Map and Statement of Public Rights of Way (File

804-519) between points A-B-C-D and points C-E-F shown on the attached Committee plan. This route was different to the 1999 application between points A-B and C-E but followed the exact same route between points B-C-D and points E-F.

After an initial discussion with the applicant about the termination of the application route at point F it was agreed that the application would not be researched by the County Council until the submission of a second application in 2014 (File 804-555) which sought to add a public footpath around the remainder of the Canal basin.

This second application was submitted to include the route between points F-Y-G, J-Z-G-X-I-H and K-L-M-N and also included D-E. The additional footpath claimed as part of application 804-555 was identical to the route claimed in 1999 with the exception of the section between points F-G.

Whilst both the 1999 and more recent applications consider, to a large extent, the same route, there are a few small differences and the current applicant has submitted evidence not previously considered as part of the previous applications.

The County Council is therefore 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.

As the applications had been submitted in 2011 and 2014, duly made (all the formal requirements completed) in 2015, and by 2017 they had not been determined the applicant applied to the Secretary of State to direct the County Council to decide whether to make an order(s) in consequence of the applications. This is a right that the applicant has once 12 months has elapsed from the time the application is duly made. The Secretary of State has directed Lancashire County Council to decide whether or not to make an order(s) before the end of 2017. It should be noted that this direction has no bearing on what the decision is, only that it should be made before the prescribed deadline. The criteria for deciding whether or not to make an order(s) remain the same, as described in annex A.

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

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

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

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

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



such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate's website also gives guidance about the interpretation of evidence.

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

## **Consultations**

### Lancaster City Council

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

### Thurnham Parish Council

Thurnham Parish Council have also been consulted and their response is set out below:

Mr Milligan and Mr Ford have submitted objections to the applications and details of these can be found under 'Advice – Head of Service – Legal and Democratic Services Observations'. However the Parish Council explain that both Mr Milligan and Mr Ford read out their letters at a Parish Council meeting and that their views were agreed by members of the public who attended the meeting. It was noted at the meeting that the public were already able to walk around part of the marina on the permissive path and it was generally felt that this should not change.

Previously Mr Wilson had made the Parish Council aware that he had submitted an application (in 1999) to the County Council regarding this route and it had not been supported by the Parish Council. He considered that there had been no change in circumstances since the original decision not to make an order was made. At the end of the session, the Chairman asked if anyone wished to speak in support of the application and no-one present did.

The Parish Council wish to object to both applications relying on the information submitted including the letters from Mr Milligan and Mr & Mrs Ford, together with representations at its meeting. The Parish Council add that the current claims offer no new evidence which differs in any substantial way from the one made previously and that dealing with this application could result in a great waste of money which they would have concerns about.

The Parish Council have seen copies of the response by the Canal & River Trust and the photos submitted make it clear that it would be virtually impossible for anyone to claim they had regularly walked some of the area, considering the overgrown nature of it and the locked gates.

The Parish Council also shares concern regarding Health, Safety and Security should any access through the working part of the Marina grounds be allowed. The Parish Council also notes there is no intention to restrict current access and can see no additional benefit to be gained for parishioners given neither Canal & River Trust or the Council would have additional responsibility to maintain any paths if they were to be designated.

The Parish Council strongly objects to the application and mentions that it has caused considerable interest and no one has approached the Council to support it.

#### Claimant/Landowners/Supporters/Objectors

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

### **Advice**

#### **Head of Service – Planning and Environment**

The applicant provided evidence in relation to both their claims and split the route down into four separate sections which they referred to as Routes 1-4.

Route 1 – shown between points A-B-C-D; a total distance of approximately 410 metres.

Route 2 – shown between points D-E-F-Y-G; a total distance of approximately 350 metres.

Route 3 – shown between points J-Z-G-X-I-H; a total distance of approximately 400 metres.

Route 4 – shown between points K-L-M-N; a total distance of approximately 490 metres.

Additional section – points C-E (claimed as part of the 2011 application); a total distance of approximately 15 metres.

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	4447 5606	Open junction with Tithebarn Hill (U11190) and access to children's play area.

B	4449 5603	Adjacent to south east corner of play area and blocked off path leading east to the weir.
C	4442 5574	Fence at rear of wildlife garden by south west corner of basin
D	4441 5573	Pedestrian gate onto School Lane (U11186)
E	4443 5574	Wooden pedestrian gate
F	4456 5579	Former fence line (no longer evident) marked across the route on OS maps examined
Y	4458 5579	Metal fence with padlocked gate
G	4474 5582	Unmarked point on concreted access road into boat yard
Z	4475 5579	Gates across entry into Glasson Dock Marina
X	4475 5589	Metal gate into Canal Cottage
H	4496 5584	Junction with Jeremy Lane (U11183) on south end of Brows Bridge
I	4476 5592	Canal side at north corner of garden of Canal Cottage
J	4478 5574	Open junction with School Lane
K	4496 5586	Gap at top of steps onto Jeremy Lane (U11183) on north end of Brows Bridge
L	4475 5598	Junction with unrecorded path to Glasson Dock Road
M	4455 5609	Towpath at north corner of basin
N	4454 5610	Open junction with Tithebarn Hill (U11190)

## Description of Route

A site inspection was carried out on 2 May 2017.

### Route 1

Shown between points A-B-C-D (with description of route between E-D included).

The route commences at a point on Tithebarn Hill between properties 1 and 3 Tithebarn Hill (point A on the Committee plan). It extends in a south easterly direction passing through a metal barrier designed to prevent bicycles to follow a tarmac path for approximately 45 metres bounded by the wall of no.1 Tithebarn Hill to the east and the fence of the children's play area to the west.

The tarmac path ends adjacent to the back of play area (point B and the route then passes diagonally between some wooden posts which define the boundary of a picnic area to continue along a well-trodden track along a mown grassed area adjacent to the canal basin with the picnic area to the west.

Immediately east of point B is an area of overgrowth behind which is a fence which prevents access to a concrete path around the weir (which was claimed as the start of the route in 1999).



At the end of the tarmac path at point B, instead of passing diagonally through the wooden posts onto the trodden track, it is also possible to continue south adjacent to the application route along the inside edge of the picnic area to exit through a pedestrian gate leading onto the application route on the edge of the canal basin and this route also appears to be described in some of the evidence submitted by the applicant as part of the application route.

From point B the application route follows a grass strip of land around the western edge of the canal basin for approximately 350 metres to point C. The strip of grass is well maintained and on the date of inspection appeared to have been recently mown. The grass strip is fenced off from the adjacent properties, some of which have gates in the boundary fences which would provide direct access onto the application route.

The route passes a number of moorings along the edge of the canal basin signed as 'Visitor Moorings' although no boats were moored to them at the time of inspection. A trodden path was visible on the ground suggesting use of the route. As you approach point C the route becomes rougher under foot and did not appear to have been mown. On the day of inspection there were sections which were quite boggy but passable.

Just before reaching point C it was necessary to step down to cross a concrete slipway at the rear of 5 Pennine View and then to step back up to continue along the trodden route.

At point C the route was crossed by a wooden fence beyond which a community garden existed adjacent to the primary school. The route between point C and point D – where a pedestrian gate provided access onto School Lane adjacent to the school – was impassable due to the layout of the community garden which did not exist when the route was inspected in 2001 as part of the investigations into the 1999 application.

From point C it was possible to walk in a south easterly direction for approximately 10 metres along a trodden path adjacent to the canal basin following the outside of the wooden fence bounding the community garden to point E.

At point E it was possible to gain access to the community garden through a pedestrian gate on which a sign is located saying 'Glasson Wildlife Garden: For School and Community use, all we ask is that you please close the gates. Do not allow your animals to foul in this area. Thank you' and to continue along a laid out path through the garden consistent with the alignment of the application route D-E to pass through a further pedestrian gate adjacent to the school building (also signed as a community garden) at point D to exit onto School Lane.

The route comprising part of 'Route 1' between point C and point D was obstructed at point C by wooden post and rail fencing on the boundary of the wildlife garden and largely unwalkable between point C and point D due to the location of the raised plant beds. It exited onto School Lane via a wooden pedestrian gate at point D.

## Route 2

Shown between points D-E-F-Y-G on the Committee plan.

From the pedestrian gate at point E the route follows a worn track in a north easterly direction through an area of woodland adjacent to the canal basin. On the day of inspection this route appeared to be well trodden and continued as a clearly defined route for approximately 140 metres to the approximate location of point F from where on it became quite overgrown.

Beyond point F there was no worn track through the woodland and it appeared that anyone using the track either returned by the same route to point E or cut through the trees onto an adjacent field from where it was possible to walk south across the field to a gate providing access onto School Lane.

At point Y – on the edge of the woodland – a metal pallisade fence with a padlocked gate in it crosses the application route preventing access into the boat yard beyond.

Between point Y and point G the application route extends in a general easterly direction for approximately 160 metres across the boat yard and this part of the route varies from the route originally claimed in 1999.

It was not possible to walk the exact route claimed due to the fact that boats were being parked across it and the route was not visible on the ground. The land over which the route runs has almost all been covered with concrete or compacted hard core to form a large open area on which boats are being stored and repaired.

At point G the application route meets the access road into the boat yard.

### Route 3

Shown between points J-Z-G-X-I-H on the Committee plan.

Access to the boat yard is via the application route from School Lane where there is a sign saying 'Welcome to Glasston Bay Marina' (point J). The route is open and unrestricted and extends in a north north westerly direction passing a property on the left and continues through gates (open at the time of inspection) at point Z into the boat yard along a tarmac road, edged on either side by a low wall, to the northern end of the access road (point G). The land beyond has all been surfaced with tarmac and concrete to form a large area over which boats are transported, stored and repaired.

From point G the route is not marked but crosses the surfaced area curving in a north north easterly direction to the south east corner of some large buildings. It continues along the east side of the building to a completely overgrown metal gate (point X) on the boundary between the boat yard and Canal Cottage.

Beyond point X to point I the application route is completely overgrown and is inaccessible. Canal Cottage can be seen but is derelict and the land surrounding it is overgrown. This section of route was, however described as being passable in the 2001 Committee report detailing the 1999 application.

Between point I and point H the application route runs east south east for approximately 200 metres following the edge of the Lancaster Canal away from the basin. It is not possible to access point I or to access any of the claimed route from point I to point H because it is so overgrown. It is however possible to view parts of the route from the canal towpath opposite (the application route between point K and point L) and it appears that the route between I and K might be accessible if the vegetation was cleared. Parts of this route were also described as being overgrown in 2001 although it did appear that part – if not all of this section may have been passable at that time.

At point H a wooden gate can be seen providing access onto the application route from Jeremy Lane but is now very overgrown and impassable.

#### Route 4

Shown between points K-L-M-N on the Committee plan.

The route commences on Jeremy Lane immediately north of Brows Bridge (point K) and descends stone steps to join the canal towpath. It then continues in a north westerly direction along the towpath adjacent to the Lancaster Canal and passes a gated entrance to the rear of Christ Church to the point at which the canal feeds into the canal basin adjacent to point L. At point L a track meets the application route providing access from Glasson Dock Road to a slipway. The application route continues from point L along the gravel surfaced towpath along the north eastern side of the canal basin to where it passes through some bollards positioned across the route to prevent vehicle access (point M) and then for a short distance across a landscaped area adjacent to a café to where it exits onto Tithebarn Hill (point N); a total distance of approximately 490 metres.

#### **Map and Documentary Evidence**

Much of the map and documentary evidence considered by the County Council has been considered before in relation to the 1999 application. However, part of the route varies to that originally investigated and there is now some map and documentary evidence available which would not have been considered at the time of the original inquiry. Determination of the application requires consideration of all available evidence, not merely that which has not previously been considered.


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



Observations		Glasson canal basin and the application routes are not shown.
Investigating Officer's Comments		The application routes probably did not exist in 1786.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



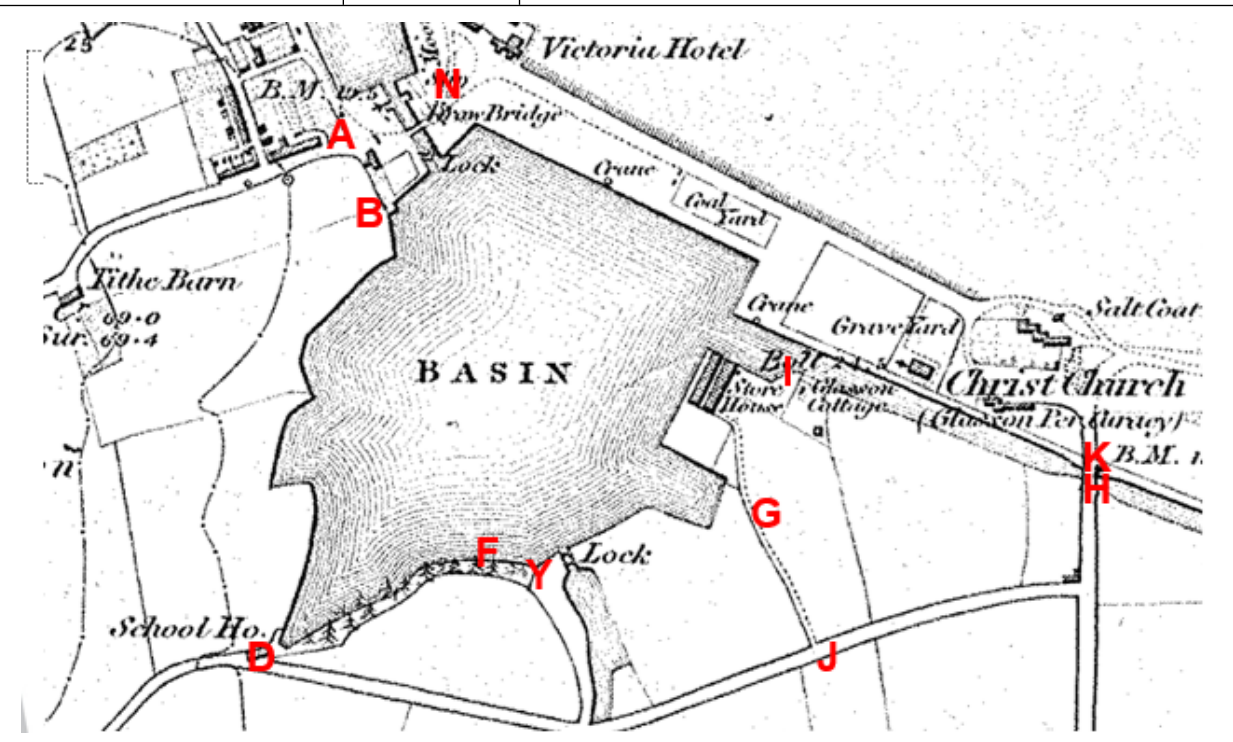
Observations		Glasson canal basin and the application routes are not shown.
Investigating Officer's Comments		It is unusual to find public footpaths recorded on large scale commercial maps of this era as they were generally published for the use of

		travellers. The canal basin – which would have been a significant feature – is not shown and is therefore unlikely to have existed at this time. As the basin and canal are not shown to have existed it is also unlikely that the application routes existed at this time.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
		
Observations		The canal basin and canal are shown although the basin appears to be much smaller than the one existing today. The application routes are not shown.
Investigating Officer's Comments		There has been some development in the area – including the construction of the canal. Parts of the application route may have existed but were not considered significant enough to be included on a large scale map of this kind.

<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		A search was made in the County Records Office for any canal or railway plans which may have shown the application route but nothing was found.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map available in the Lancashire Records Office for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award in the Lancashire Records Office for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.



<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. <sup>1</sup>
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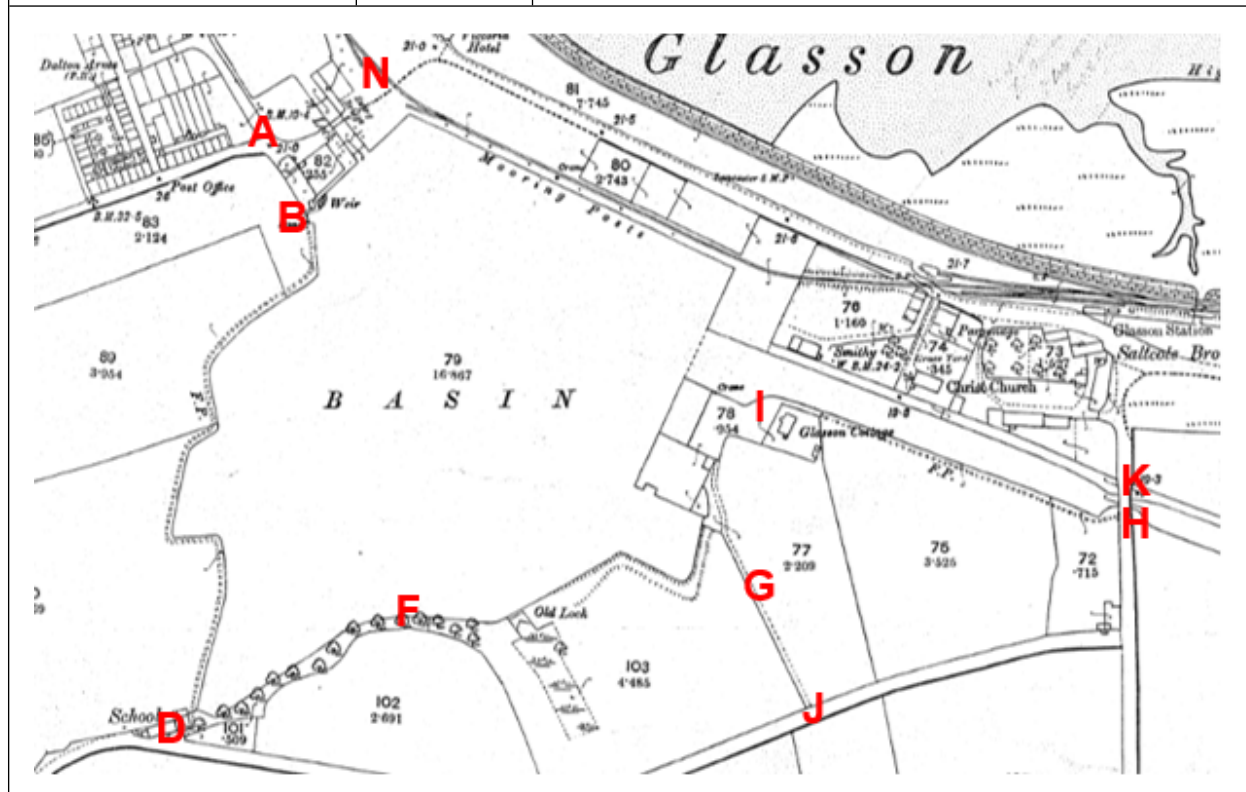


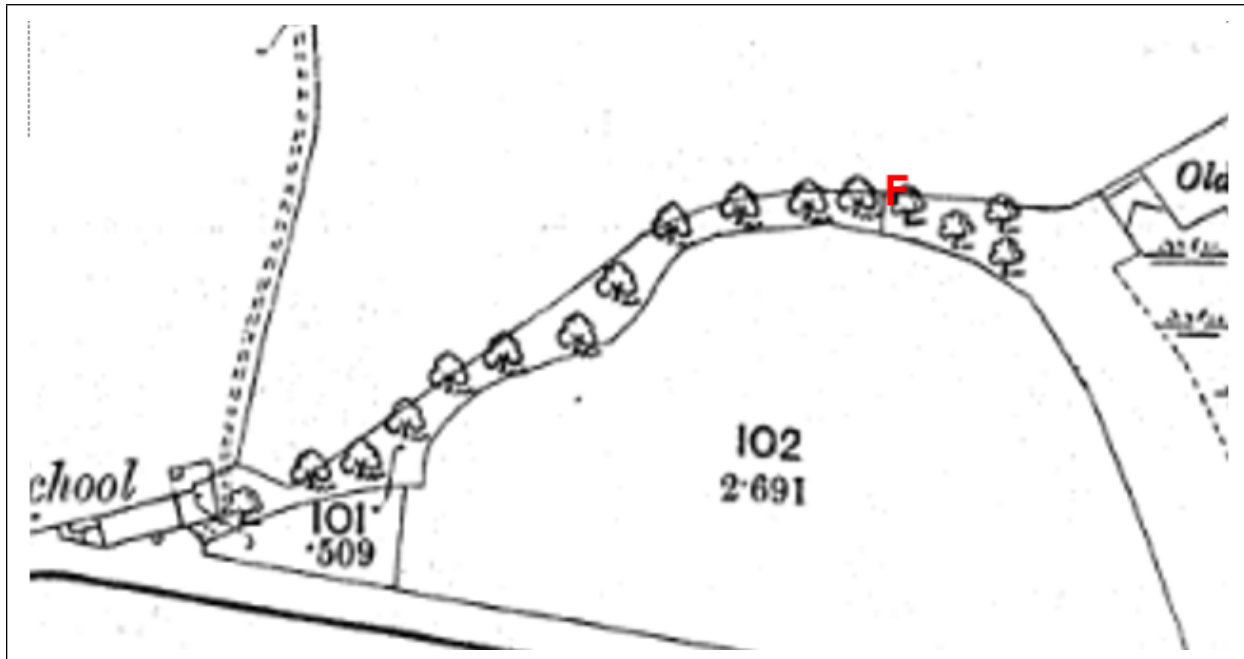
Observations	<p>The application route is not shown between points A-B-D. a school house is shown close to point D and the land adjacent to the canal basin between point B and point D is shown as undeveloped.</p> <p>The configuration of routes between points D-C, C-E and D-E is not shown.</p> <p>The application route is not shown between point D to point G and between points D -Y an area of woodland is shown. The route crosses the boundary of the woodland and a lock between point Y and point G.</p> <p>A track corresponding to the application route is shown between point J and point G leading to a building labelled as a store house. Only part of the route between point G and point I follows this part of this track. Between point I and point H the route is not shown.</p>
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<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



		Access may have been unobstructed adjacent to the canal between point K and point N except by one of the cranes adjacent to the basin.
Investigating Officer's Comments		Access may have been available between point K and point N forming a through route but it appears to have been a working dock so public access may have been discouraged or not always possible on the line of the application route. Between point J and point G and partway towards point I a route existed providing access to a store house. The rest of the application route did not appear to exist in 1848.
25 Inch OS Map	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.





#### Observations

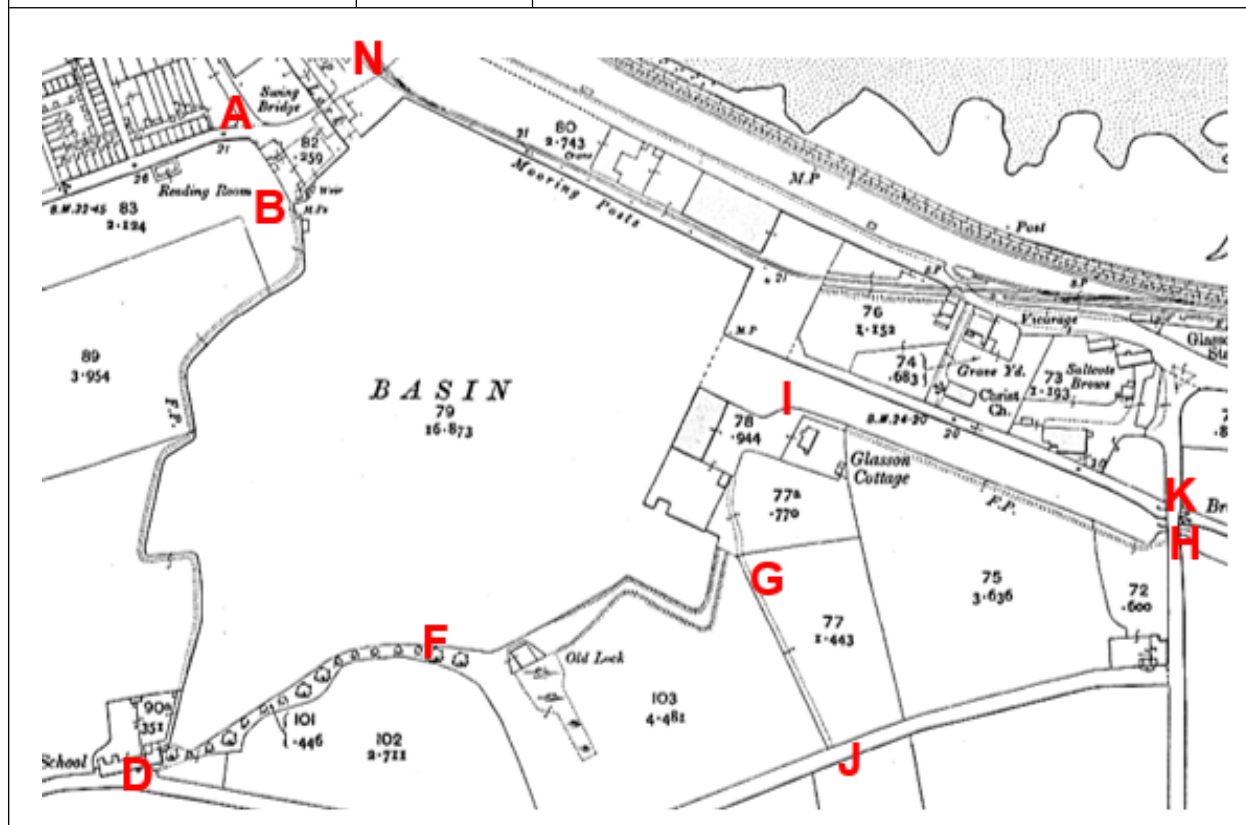
The route is not shown between point A and point B. A route appeared to exist from the swing bridge to point B from where the application route is then shown as a double dashed line and annotated as a footpath (F.P) to point C and then continuing to the east of a building marked 'School' to exit onto the road at point D. The application route between point D – E -G is not shown and a line indicating the existence of possibly a fence or some sort of physical barrier/boundary is located across the route at point F.

The route is shown from point J-G and a little beyond but not on the application route to point I.

The route shown as a double dashed line marked 'F.P.' (footpath) is shown from point H leading to building labelled as 'Glasson Cottage' and continuing as an enclosed strip adjacent to the cottage to point I.

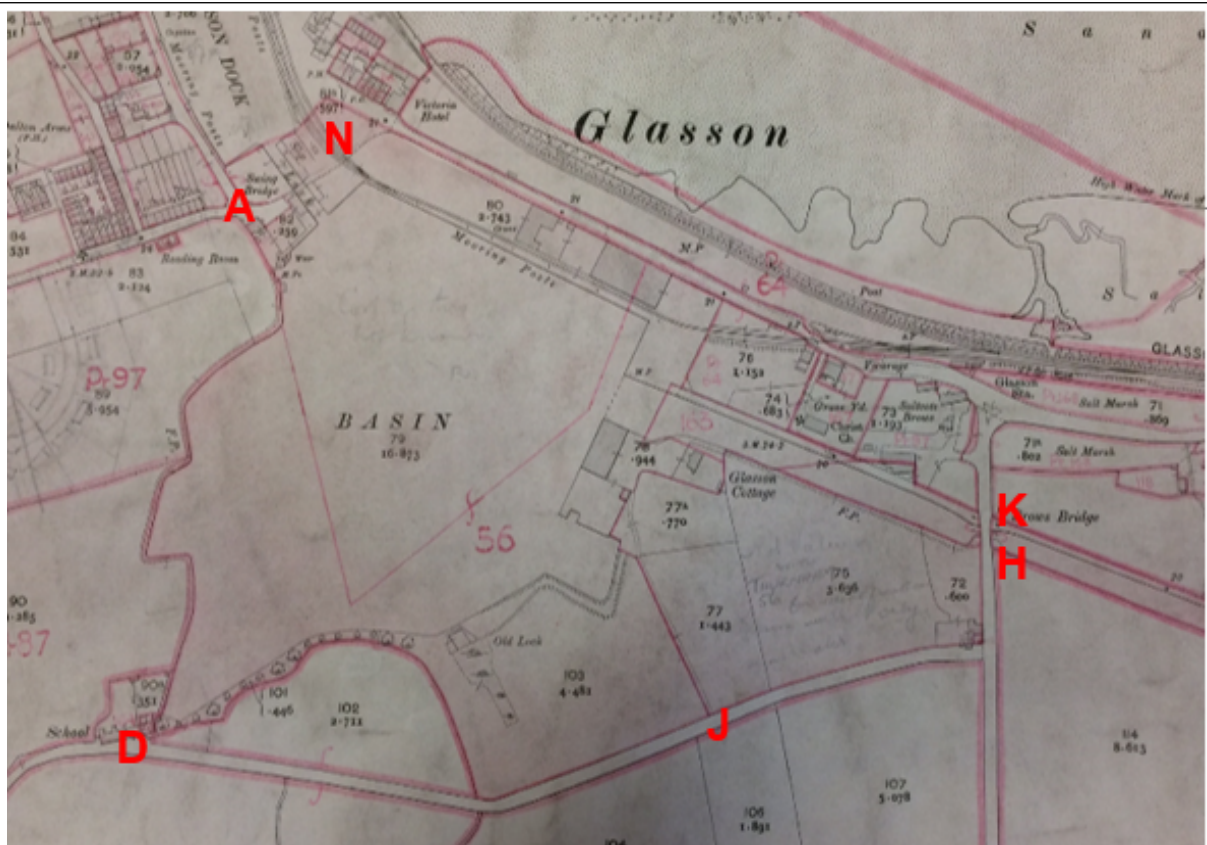
Access appears to be available along the canal towpath and adjacent to the canal basin but no access from the bridge is shown at point K. A barrier, presumably a gate on a towpath, is shown alongside Christ Church. The application route cuts across the corner of an enclosure that existed in 1891, where it turns away from the canal towards point L. Between L and M there are mooring posts marked along the application route and it is crossed by a railway siding near

		point N.
Investigating Officer's Comments		<p>The route between point A and point B did not exist in 1891. Alternative access to point B appears to have been available east of point A and a route depicted as a footpath existed from point B to the school and to point D suggesting that this part of the route B-C-D may have existed as a link from the village of Glasson to the school in 1891.</p> <p>The route between points C-E and D-E-F-Y-G probably did not exist at that time.</p> <p>Access may have been available along the application route between point J-Z-G and I-H but probably not between G-I. Access was partially available between points K-L-M-N but possibly not to join the road at point K, not on the line of the application route where it turns away from the canal due to the enclosure around the smithy and not freely by the basin as this was a working dock with mooring posts, and by implication, ropes in and across the route, a crane operating on the dock side and a railway siding which it may not always have been possible to cross.</p>
25 inch OS Map	1913	Further edition of the 25 inch map resurveyed in 1890, revised in 1910 and published in 1913.



Observations		<p>The land crossed by the application route appears largely unaltered. The application route between point A and point B is not shown but a route east of point A appears to have existed connecting to point B. The route between point B-C-D is shown.</p> <p>The application route between point C and point E is not shown.</p> <p>No route is shown between points D-F-G and access does not appear available along this length.</p> <p>The route between point J and point G is shown as part of a longer route providing access to some un-named buildings close to the basin edge. No access is shown along the application route between point G and point I although a way through passing further west is shown.</p> <p>Between point I and point H a route is shown denoted as a footpath providing access to Glasson Cottage although it may have been gated or subject to some sort of restriction in two places as lines are shown across the route.</p> <p>Access appears to be partly available along the route claimed between points K-L-M-N. There is no access to the road shown at point K but the smithy has gone and the enclosure around it been altered so that the application route was available as it leaves the canal. The railway had been altered and coincides with the application route between points M-N. The mooring posts and crane are still shown.</p>
Investigating Officer's Comments		<p>The application route probably existed between point B and point D but access to point B was from a route east of point A and A-B probably did not exist.</p> <p>The application route between point C-E and D-E-F-G probably did not exist.</p> <p>The route between points J-G and between points H-I existed.</p> <p>Access appeared partially available along the route between point K-L-M-N but probably not to access the route from the road at point K and not along the railway tracks at M-N, nor used in preference to the open areas to the side. The moorings and crane operation may also have prevented or inhibited public access in that vicinity.</p>

		<p>It is not possible to determine from the map which parts of the route that appeared to be available would have been available and used by the public.</p>
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>



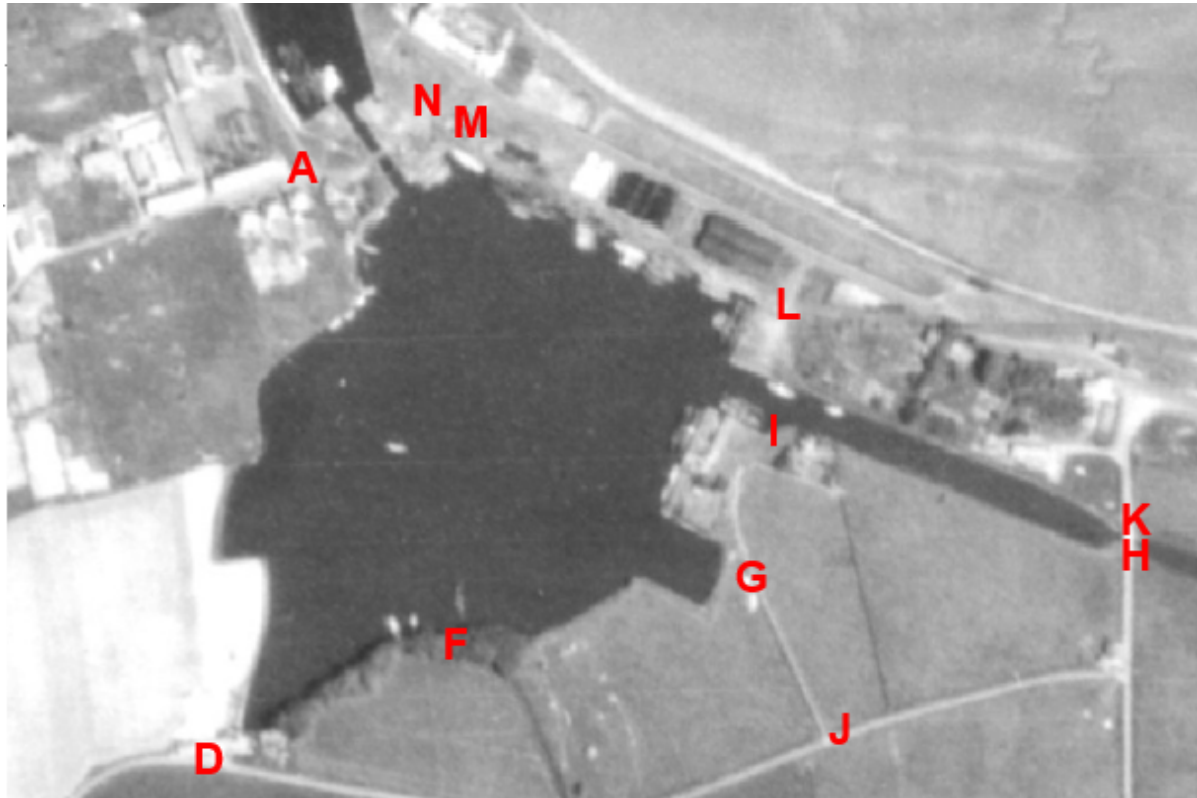
<p>Observations</p>	<p>Finance Act records were inspected at the Lancashire County Records Office. No part of the application route is excluded from the numbered hereditaments. The first part of the route – between point A and point B is within plot 97 for which there are no deductions listed for public rights of way or user. The rest of the route all appears to fall within plots numbered as part of plots 87, 164, 72, 56, 163 and 151. Plots 56, 151 and 163 are listed as being owned and occupied by London and North West Railway Company and no deductions are listed for public rights of way or user. Plot 56 is described as 'land and canal basin' and plots 151 and 163 as 'canal and works'.</p> <p>The only plot affected by the application route for which a deduction is listed for public rights of way or user is plot 87 (which is crossed by part of the route between points B and C. The land covered by plot 87 is extensive – covering a large area to the south and the west of the application route. The 'plot' is described as 'land at Glasson Farm', owned by John Henry Dalton and occupied by John Lamb. A deduction of £25 is listed but there is no indication in the schedule (or on the map) regarding which route or routes</p>
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		the deduction related to.
Investigating Officer's Comments		Public footpaths are not normally excluded from numbered plots. The fact that no deductions are claimed for most of the land crossed by the various numbered plots suggests that the application route was not considered to be a public footpath – or that the landowners did not wish to claim for and acknowledge its existence at that time. A deduction has been made for plot 87 but it is not known which routes this applied to. The plot is of a considerable size and a number of public footpaths and a public bridleway are legally recorded to exist across it and, particularly as no deductions are claimed for the adjoining plots crossed by the application route the fact that a deduction was claimed for public rights of way is not considered to be evidence supporting the existence of the application route.
<b>25 Inch OS Map</b>	c1930	Further edition of 25 inch map generally referred to as the third edition 25 inch.
Observations		A copy of the 3 <sup>rd</sup> edition 25 inch map could not be found in our records, at the Lancashire County Records office or online.
Investigating Officer's Comments		No inference can be drawn.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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

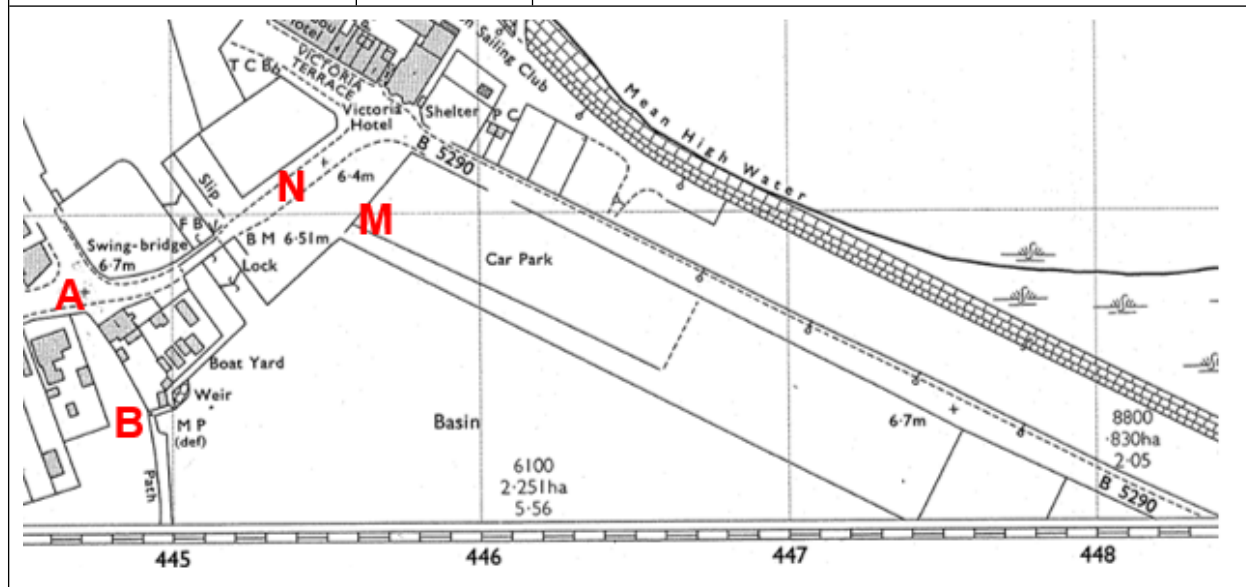




Observations		<p>The canal basin can be seen but the application route is not visible between point A and point D although there does not appear to be anything visible on the photograph suggesting that access may not have been available.</p> <p>The application route cannot be seen between point D and point F to where it exits the woodland and no visible route can be seen leading from the woodland to point G.</p> <p>The route between point J and point G can be clearly seen as a substantial track suggestive of vehicular use continuing towards the enclosure near point I. From point I to point H a faint line can be seen in places suggesting the existence of a less substantial route – possibly a footpath.</p> <p>A faint visible track can be seen between point K and point L and it may have been possible to continue from point L to point M and point N but no visible worn track can be seen.</p>
Investigating Officer's Comments		<p>It is not possible to determine whether the application route was accessible from the aerial photograph but what is shown appears to be consistent with the OS mapping from the early 1900s.</p> <p>The route between point J-G appears to have</p>

		<p>been substantial – probably providing vehicular access to properties and buildings adjacent to the canal basin. There looks to be access to the tow-path from Jeremy Lane.</p>
6 Inch OS Map	1955	<p>The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.</p>
Observations		<p>Access does not appear available on the application route between point A and point B but appears to have been from east of point A past the weir to point B. From point B a route is shown (between single pecked line and edge of basin) to join the road at point D adjacent to the school.</p> <p>The application route appears open between points C-E but no way shown nor between points D-E-F-G.</p> <p>The route between point J-G is shown as part of the access to some un-named buildings and it may have been possible to access point I but not along the application route.</p> <p>A route is shown from point H to Glasson Cottage but it is not possible to determine whether access was available past the cottage to point I.</p> <p>A route appears to be available between points</p>

		K-N although no access to Jeremy Lane is shown and the route passes through the mooring posts and railway.
Investigating Officer's Comments		<p>The base map was surveyed in the 1930s and at that time it appears that a route may have existed between point B and point D. It does not appear that a route existed between point D-E-G. Access existed along parts of the route J-G and I-H but there is no indication that it would have been possible to use the full length of the route as a through route.</p> <p>The application route between points K-L-M-N existed at that time but with the same constraints concerning access from Jeremy Lane and the moorings and railway.</p>
1:2500 OS Map	1971	Further edition of 25 inch map reconstituted from former County Series and revised in 1970 and published in 1971 as National Grid Series 1:2500 scale map.






Observations		<p>No access is shown between point A and point B but is shown to point B from the swing bridge and via the weir.</p> <p>The application route is shown as a 'path' to the rear of a number of properties between point B and point C and connects to the road at point D. The route between point C and point E is not shown but there is nothing shown that might inhibit access on C-E.</p> <p>The route between points D-E-F-G is not shown and is crossed by a number of boundaries.</p> <p>The route between point J-G-I appears to be available and also provides access to the boat yard.</p> <p>A 'path' is shown between point I and point H and through to the boat yard (there are lines across the route adjacent to the cottage which may indicate the existence of gates or fences).</p> <p>The route between points K-L-M-N is shown but no access is shown to the tow-path and Jeremy Lane nor anything to show it not available.</p>
Investigating Officer's Comments		<p>The application route existed between point B-D, J-G-I-H, K-L-M-N and may have been capable of being used.</p> <p>The application route between points C-E may have been available to use although not shown as a visible route. The route between points E-F-G is not shown suggesting that it did not exist as a visible/trodden route on the ground.</p>
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

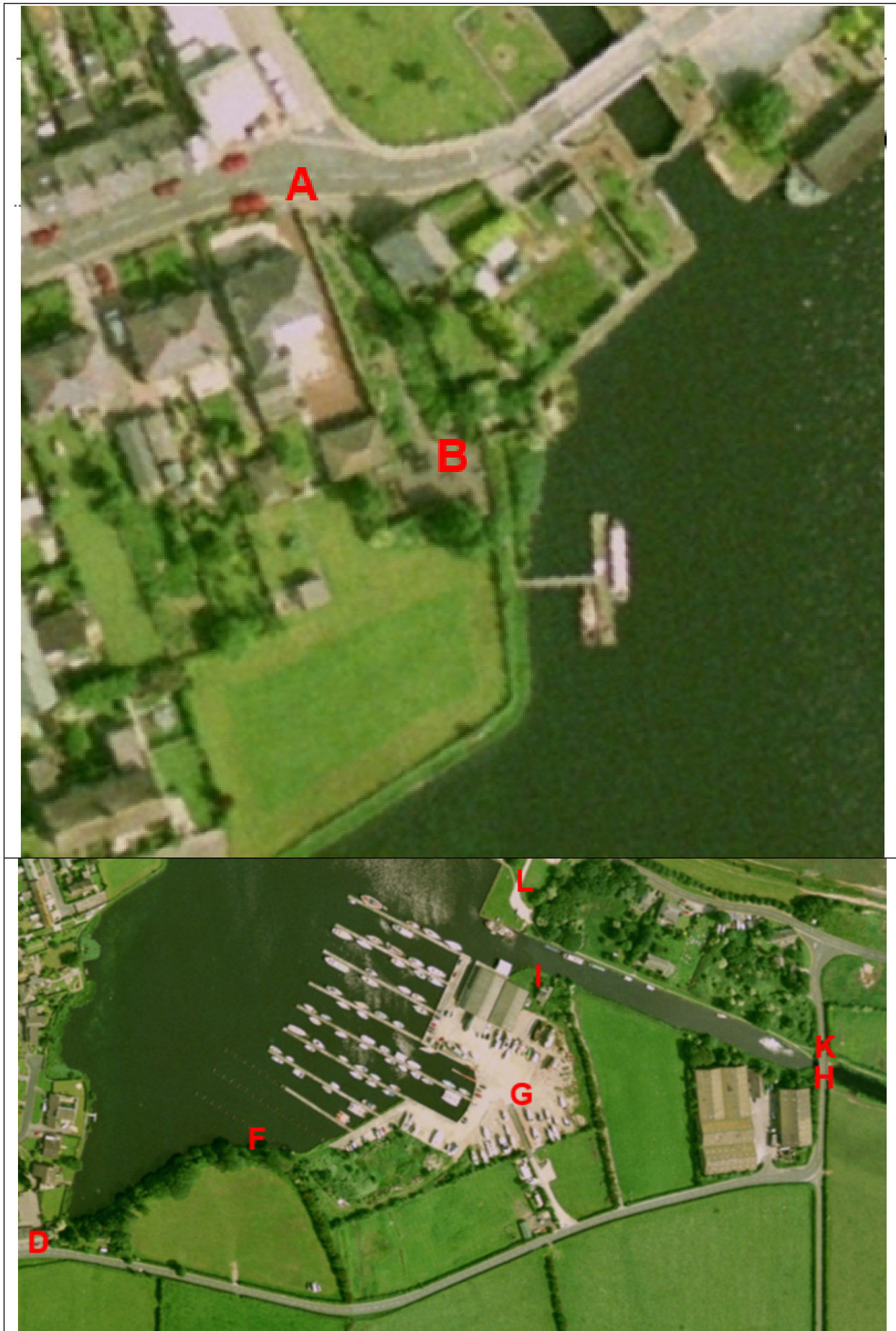




Observations		<p>The 1960s aerial photograph records only show part of the land crossed by the application route.</p> <p>The route extending south from Glasson village to the school (between point B-C-D) cannot be seen as a visible route.</p> <p>From point D the route through point E into the woodland cannot be seen and the route between point E-F-G cannot be seen as a visible track.</p> <p>The route from J-G is clearly visible as a substantial track continuing towards point I but not on the alignment of the application route and not extending all the way to point I. A visible track can also be seen curving east south east to continue along the south side of Glasson Cottage, not the application route.</p>
Investigating Officer's Comments		<p>If accessible, the application route did not appear to be heavily used between points B-C-D, C-E and D-E-F-G as no visible tracks can be seen across open land on the photograph.</p> <p>The route between points J-G existed and appeared to be capable of being used.</p>
<b>Aerial photograph</b>	1972	Aerial photograph taken from 'Britain from above' website.

		
Observations		The application route cannot be seen on the photograph. The photograph shows the boat yard being much smaller than it is today and from point F the route would have crossed a field to link to the access road from point J.
Investigating Officer's Comments		It is not possible to see whether the application route existed due to the scale of the photograph. The picture shows however that the boat yard has extended considerably in size since 1972.
<b>Aerial photograph</b>	2000	Aerial photograph taken in 2000 and available to on GIS.






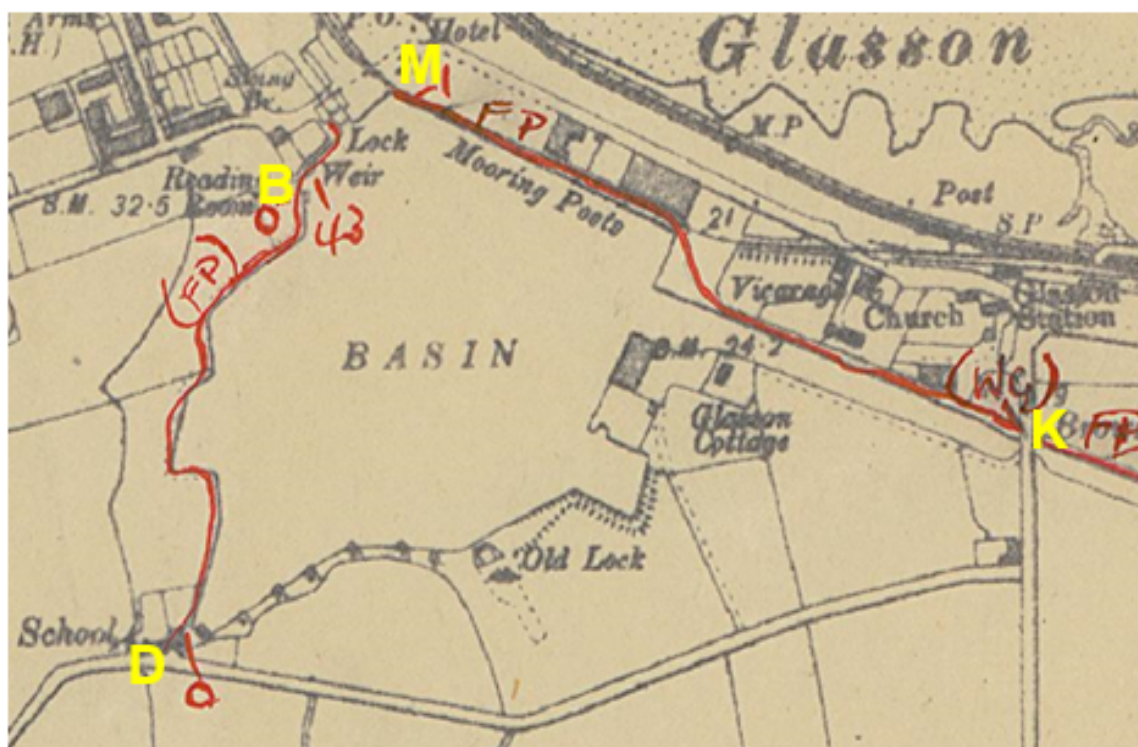


Observations		<p>The application route between points A-B is not shown but a nearby route diagonally through the land now occupied by the playground can clearly be seen. No way through to the edge of the basin is visible but a grass strip continuing towards point C can be clearly seen with a worn track.</p> <p>The route appears accessible between point B and point C but it is not possible to see the exact route or routes available between points C-D, D-E and between C-E. The route between point D and point F, if it did exist, cannot be seen due to the trees. The route between point F and point G cannot be seen as a defined route on the ground and has several boats parked across it. The route from point J to point G can be seen as the access to the boat yard.</p> <p>The route between points G-I would not be visible being mostly on hard surface but some boats are parked across it and between point I-H it cannot be seen. The route along the towpath and edge of the canal basin between points K-L-M-N can be clearly seen including a link to Jeremy Lane at K.</p>
Investigating Officer's Comments		<p>Parts of the application route existed and appeared to be capable to use but the route between the school at point D along the south side of the canal basin, through the boat yard and onto Jeremy Lane at point H did not appear to exist as a defined, unobstructed or clearly</p>



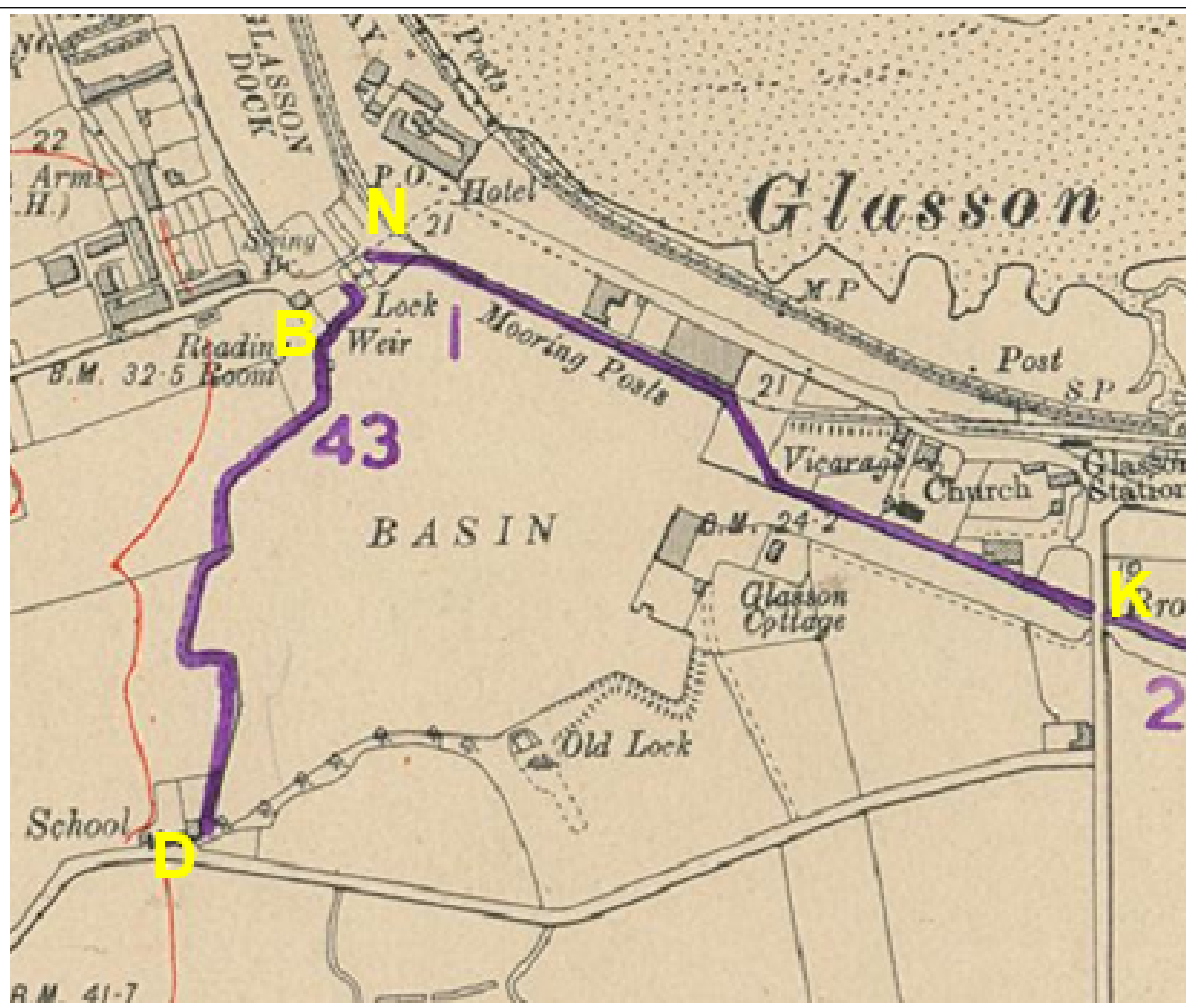
		visible route in 2000.
<b>Aerial Photograph</b>	2014	Aerial photograph available to view on GIS.
		
Observations		Little further information can be gained from the 2014 aerial photograph although it does illustrate the growth of the boat yard on the south side of the canal basin.
Investigating Officer's Comments		No further inference can be drawn.
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	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.
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Observations		<p>The route shown on the Parish Survey Map as FP 1 is the application route between points K-M.</p> <p>The survey card for FP 1 was completed in 1950. It describes the route as 'canal towing path' and 'from swing bridge alongside canal basin and railway line to canal towpath. Ends at junction with FP 2 at Brows Bridge where exit to public road is by ramp and wicket gate.'</p> <p>The Parish Survey map also shows the application route between points B-C-D as a public footpath numbered FP 43. The map shows access onto the footpath as being east of point A via the weir and not along the application route between points A-B.</p> <p>Footpath 43 is described as a field footpath and as being from 'Glasston Dock village to school via canal basin side. From swing bridge go towards canal basin and follow path between basin and high wall to by-wash where high gate</p>
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		<p>in railings crosses path. Through gate keep to side of basin to hurdle at school boundary wall. Over hurdle pass between basin and walk out onto public road.' A further note reads 'gate at by-wash has mortice lock and was put there by Railway Co.' and 'exit to road at school has been obstructed and exit now is by school house gate.'</p> <p>The remaining sections of the application route (between points A-B, C-E, D-E-F-Y-G, J-Z-G-I-H and M-N) are not shown on the map.</p>
<b>Draft Map</b>		<p>The parish survey map and cards for Thurnham were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



#### Observations

The application route between point B and part way between points C and D is shown as Footpath 43. The application route between points K-M is shown as FP 1 and has been extended to meet Tithebarn Hill but along a slightly different alignment to the application route M-N. The rest of the application route is not shown.

The Draft Statement lists FP 1 as 'Canal towpath' under the heading 'Kind of path' and describes it as 'Canal Basin to Brows Bridge'. Footpath 43 is described as a footpath from Glasston Dock Village to School. n.b. the description of "to school" is consistent with the purple line stopping in the school grounds and not shown through to the road.

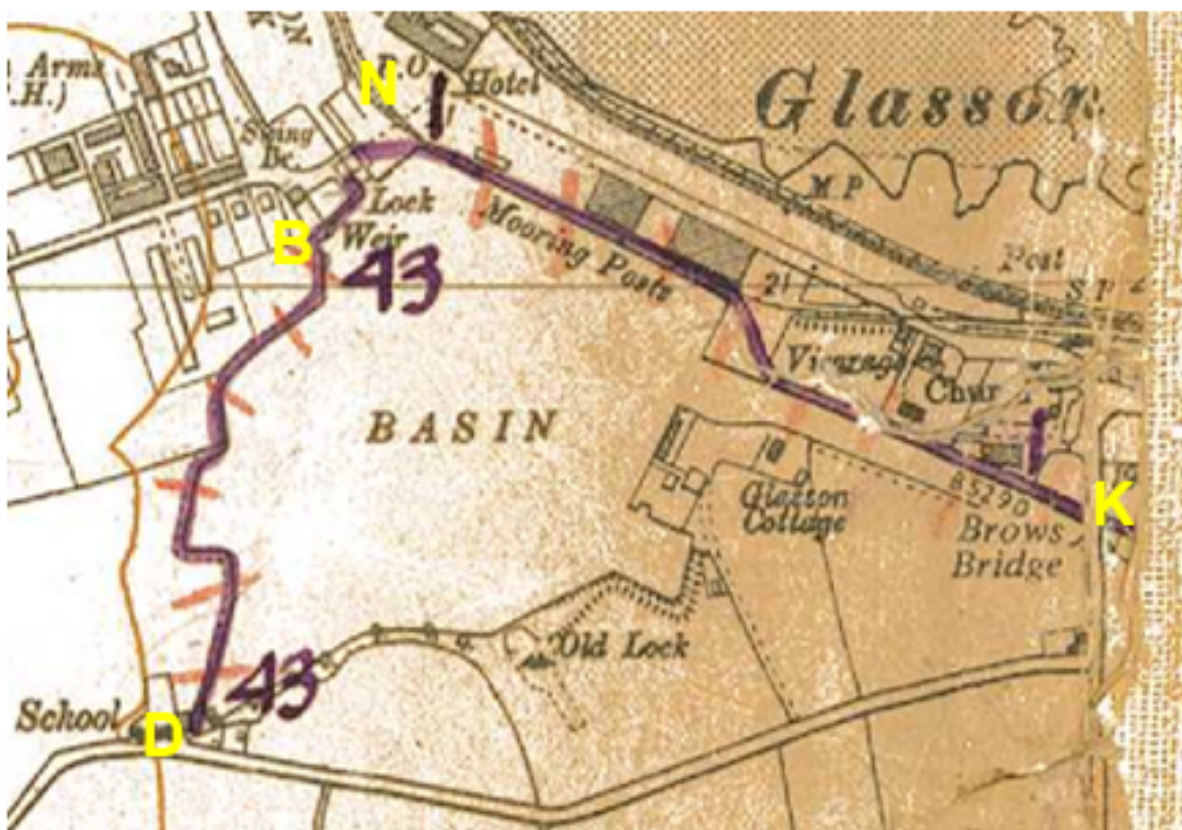
No representations were made relating to the recording of FP 1 or FP43 on the Draft Map or to the fact that the rest of the application route was not shown.

#### 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.
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Observations		<p>FP 1 and FP43 are shown on the Provisional Map and remained unaltered from how they were shown on the Draft Map. The rest of the application route was not shown.</p> <p>An application was made to the Lancashire Quarter Sessions on 20 April 1960 by the British Transport Commission for a declaration that on the 1<sup>st</sup> January 1953 there was no public right of way over the land to which the application related. It was further stated that there was no (or insufficient) evidence to show that the land had been dedicated as public rights of way and also that if such facts existed (which it was denied) that no dedication could have taken place because of the incapacity of the applicants and their predecessors to dedicate</p>
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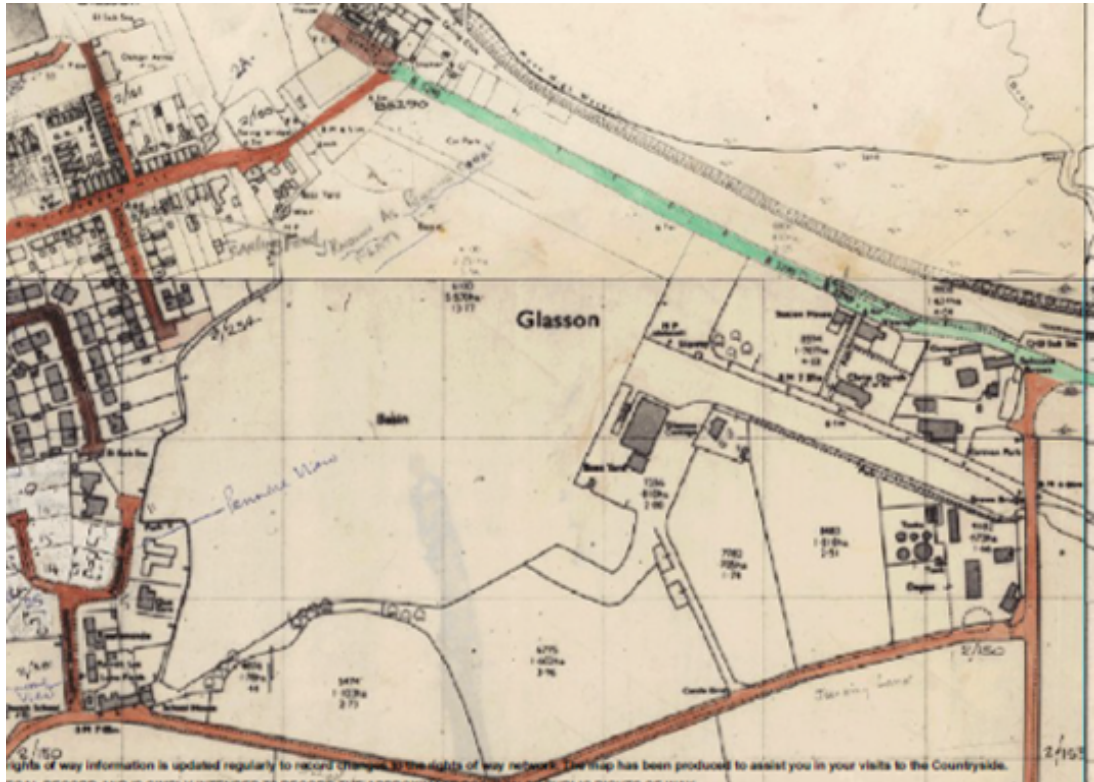
		<p>public rights of way.</p> <p>An accompanying schedule listed the rights of way shown on the Provisional Map for which the appeal was made.</p> <p>The Schedule listed a number of Footpaths in numerous parishes all of which were described as being along the Lancaster Canal. Included in this list was FP 1 Thurnham.</p> <p>The Schedule also listed other paths including FP 43 Thurnham which was described as passing over the bank of Glasson Basin.</p> <p>The Appeal Committee sat on 14 March 1961 as appointed by the Court of General Quarter Sessions of the Peace for the Hundred of Lonsdale and declared that both routes should be removed from the Map.</p>
<b>The First Definitive Map and Statement</b>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>



Observations		<p>Despite the Appeal Committee decision detailed above and the fact that the routes were shown crossed out in red on the Provisional Map indicating that they were to be removed from the map, FP 1 and FP 43 were shown on the First Definitive Map.</p> <p>The rest of the application route was not shown and no correspondence can be found detailing why FP 1 and FP 43 were shown.</p>
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1<sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has</p>

		been subject to a continuous review process.
		
Observations		When the Map and Statement were reviewed FP 1 and FP 43 were removed. None of the application route is shown on the Revised Definitive Map (First Review).
Investigating Officer's Comments		<p>From 1953 through to 1975 there is no indication that the application route between points A-B, C-E, D-E-F-Y-G, J-Z-G-X-I-H or M-N were considered to be a public rights of way by the Surveying Authority and there were no objections to the fact that these parts of the route were not shown on the maps from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.</p> <p>With regards to the route between points B-C-D and K-L-M both were originally shown on the Parish Survey, Draft and Provisional Maps but their inclusion was successfully challenged by the landowner and the Appeal Committee concluded that they should be removed.</p> <p>The reason for which they were still shown on the First Definitive Map following the Appeal Committee decision is unknown but is considered most likely to be a drafting error as</p>

		they were not then shown on the Revised Definitive Map (First Review) and no further correspondence could be found.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark 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 application route is not shown as being publicly maintainable on the List of Streets by the County Council.
Investigating Officer's Comments		No inference can be drawn regarding public rights.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to</p>

		demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).
Observations		No Highway Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the 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 land affected is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land. The land crossed by the application route is within a conservation area.

### **Comments on historical evidence submitted by the applicant**

A substantial body of information was provided by the applicant regarding the history and management of the land crossed by the route claimed.

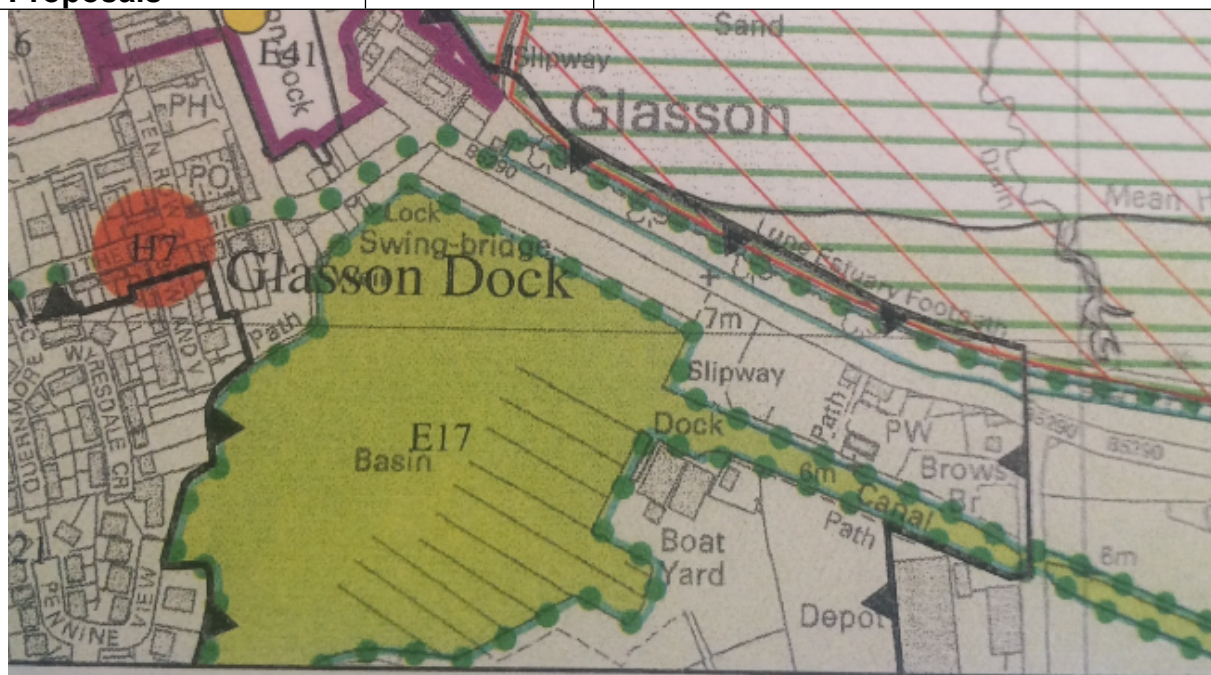
The applicant submitted a significant amount of information about the designation of the land crossed by the route as a conservation area, and numerous planning policy guidelines and policies associated with the development of such sites. Designation does not generally imply the existence of a public rights of way and in the majority of cases no specific reference could be found to the existence of the application route in the documentation referred to or supplied. The fact that the land was of environmental and historical interest may be a reason why the public may wish to walk on it or had historically used a route across it but without specific reference to the use or existence of the application route much of this information provides no relevance to the existence of public rights.

The Ordnance Survey and early commercial maps submitted have already been examined earlier in the report and other maps and documentation submitted as part of the application has been considered with a summary and comments provided below:

Document Title	Date	<b>Brief Description of Document &amp; Nature of Evidence</b>
<b>Letter addressed to the applicant from British Waterways Marinas Ltd.</b>	2007	Part of a letter from British Waterways Marinas Limited (BWML) dated 16 <sup>th</sup> July 2007 following their purchase of the site.
Observations		The letter explains that BWML purchased the site in June 2007 from the previous owner, Mrs Lathom and that they have continued to operate the marina business



		and to start to develop it further. The letter outlines their proposals to expand and develop the site and refers to discussions with the Glasson Action partnership forum regarding the creation of a circular walkway around the marina. There is reference to a plan showing the current layout proposal for the site but this is not included with the section of the letter submitted by the applicant.
Investigating Officer's Comments		The letter relates to a discussion about the creation of a circular walkway but does not provide evidence in support of the existence of a public footpath through the site in 2007.
<b>Lancaster District Local Plan – Map of Proposals</b>	2004	An extract of Lancaster District Local Plan Proposals Map dated 16 <sup>th</sup> April 2004.



## Recreation and Community Services



Outdoor Playing Space



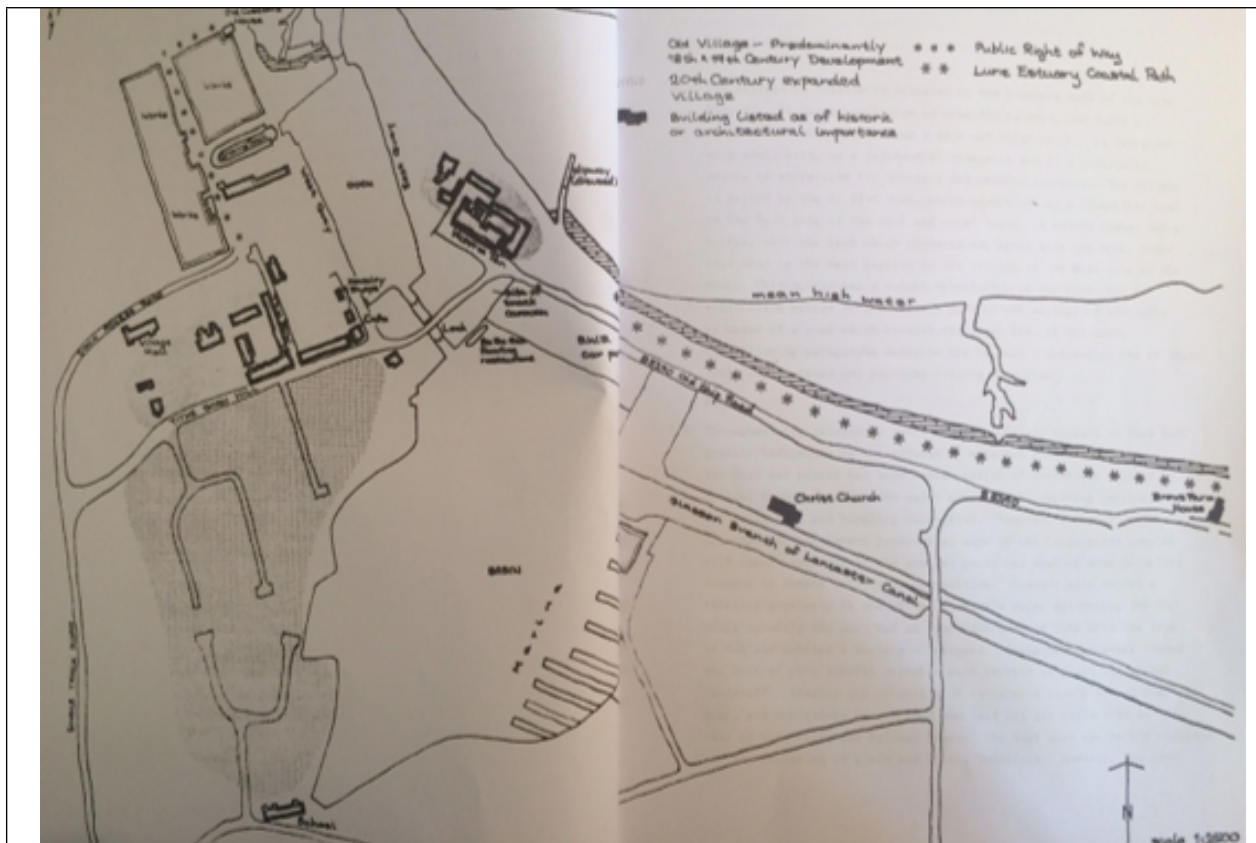
Major Sports Ground



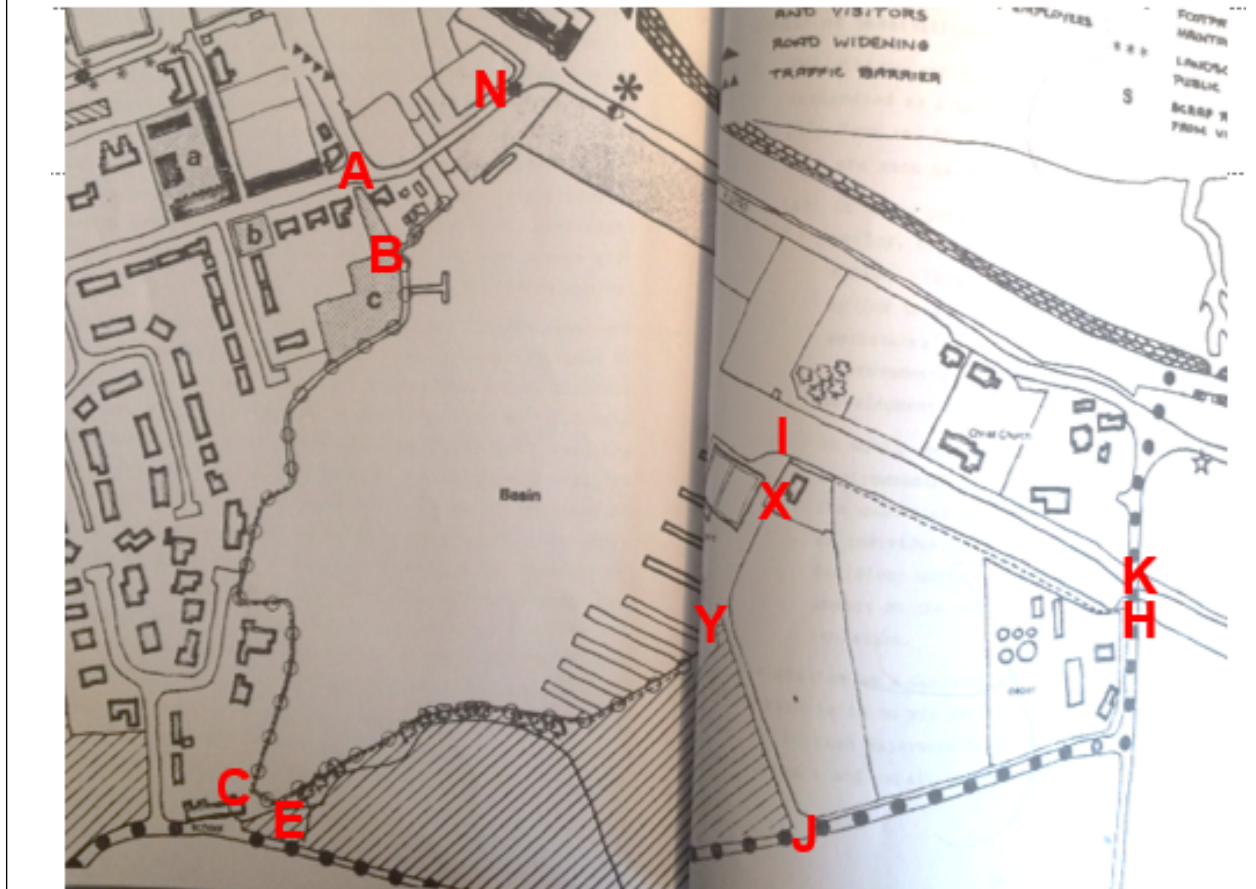
Informal Recreation Area

Observations		The plan described as a Proposal Map shows a route around Glasson Basin and part of the canal as an 'informal recreation area'. The route shown is consistent with part of the application route but varies from it significantly through the boat yard and does not include the access road into the boatyard.
Investigating Officer's Comments		The fact that a route – which varies in a number of places to the application route - is shown on a map of proposals does not support the existence of a public footpath along the application route in 2007.
<b>'Shaping the Future of the Canal Basin at Glasson: A Study of Public Perceptions and Attitudes', by the Geography Department, University of Lancaster</b>	2002	'Shaping the Future of the Canal Basin at Glasson: A Study of Public Perceptions and Attitudes', prepared by the Geography Department, University of Lancaster for Lancaster Waterways British Waterways) February 14 <sup>th</sup> 2002
Observations		<p>Two extracts are provided from the report. The first is said to be an extract from the Executive Summary and the applicant has highlighted the statement; 'further improvements to the footpath between the swing-bridge and school would allow access without the need to walk along roads that carry HGV vehicles.'</p> <p>In an extract from a section titled 'Recommendations' the applicant has highlighted; "in addition, work should begin on improving the condition of the perimeter footpath between the school and the swing bridge" and further on in the same paragraph (although not highlighted by the applicant is the statement "some additional signing should be provided so that visitors know that access to the perimeter footpath is via the small playground.")</p> <p>A longer term recommendation highlighted by the applicant is that "British Waterways should investigate the possibility of re-establishing a complete footpath around the whole Canal Basin. Indeed, the creation of a circular walk around the Canal Basin would be an ideal way of integrating the whole area and giving visitors a 'complete' recreational experience"</p>

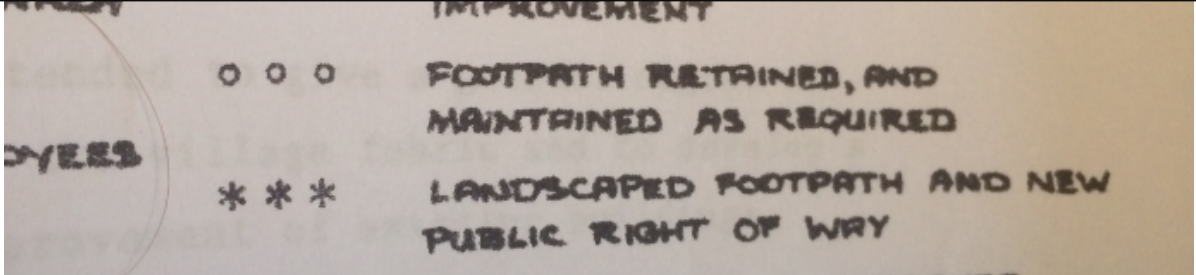
Investigating Comments	Officer's		<p>The full report has not been provided. It appears that there had been some public consultation prior to the completion of the report but full details are not given.</p> <p>Reference to the need to improve the footpath between the swing bridge and the school suggests that a route existed between these two points. The route is described as a footpath but there is no indication as to whether it was considered to be a public right of way nor whether it followed the same route as this application. It is also described as requiring further work to allow pedestrian access so it is unclear whether the route was useable in 2002. There is also reference to the need to provide signage to indicate that the start of the route was via the play area (which is probably a route between A and point B) and this suggests possibly that the access onto the footpath had altered.</p> <p>A long term recommendation is to re-establish a route around the whole canal basin suggesting that in 2002 it did not already exist. This does suggest that a route around the canal basin had previously existed but there is no indication that the route followed the full length of the application route or parts of it nor whether there were public rights.</p>
<b>Lancaster City Council Glasson Village Plan</b>		Undated	Lancaster City Council Glasson Village Plan: Final Draft. The plan was undated but believed to have been published in 1976/77.
Place Map			



Proposals Map

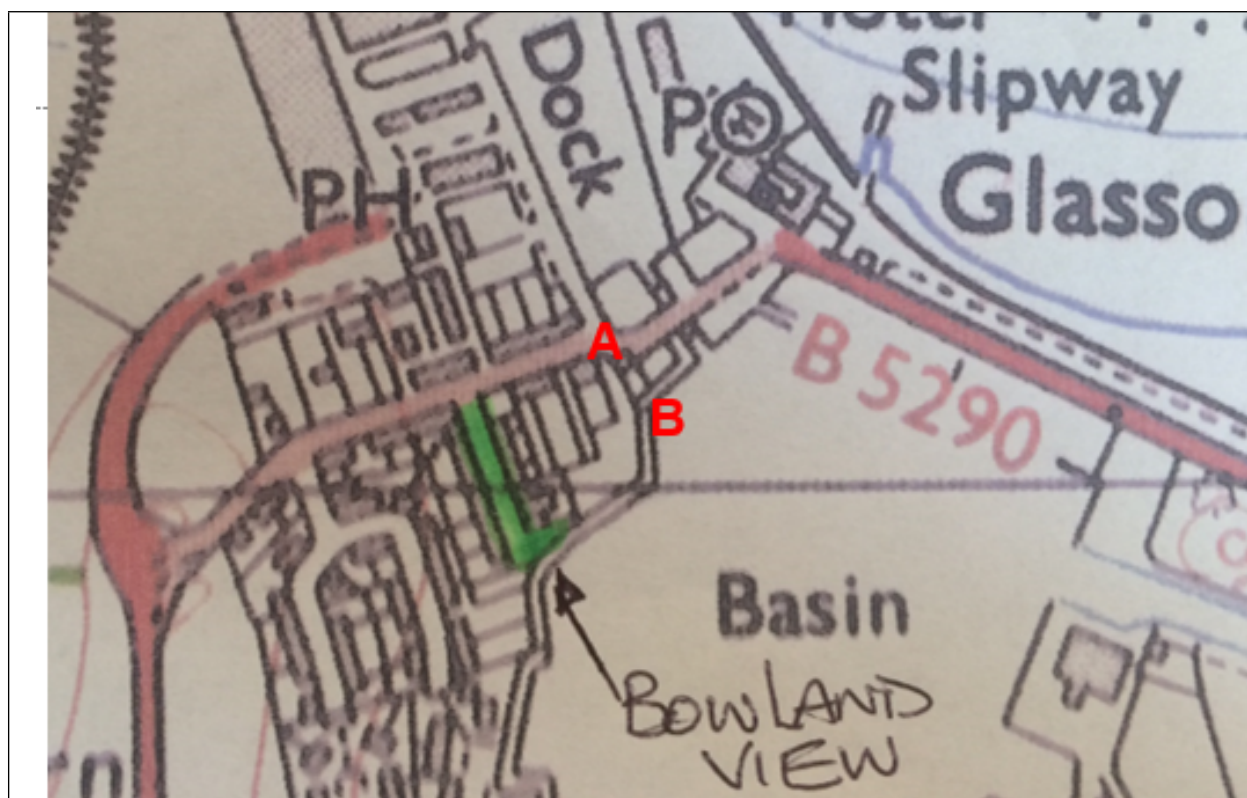




	
Observations	<p>A copy of the report has been submitted and has been considered by the Investigating Officer.</p> <p>The report was prepared by the Local Plans Group of the Architect and Planning Officer's Department, in conjunction with the Local Plans Working Party and, if approved, was to be used as a basis for formal consultation. As part of the preparation of the report consultations had already been carried out with bodies including Lancashire County Council, Thurnham Parish Council, Lancaster Port Commission, British Waterways Board and the Ramblers Association.</p> <p>A number of hand drawn plans were included within the report; two of which are included above.</p> <p>The first was titled 'Place Map' and shows the route of the Lune Coastal Path and routes considered to be public rights of way. No part of the application route is marked on the plan as a public right of way. The second was titled 'Proposals Map' and shows the application route from point B to C to E to Y as 'Footpath retained, and maintained as required'. The application route from point A-B is not shown and neither is a link C-D through from the school to exit onto School Lane. Beyond point Y there is no route shown through the boatyard and the route from K to point N is not marked. A separate symbol was used on the proposal plan for any routes considered as 'Landscaped footpath and new public rights of way'.</p> <p>Within the body of the report the applicant made reference to a reference to a route described (page 18) as a narrow footpath which was marked on a further plan as D11 –midway between point B and point C on the Committee plan which was described</p>

		<p>as running from the bottom of Tithe Barn Hill round the west side of the basin to the boat repair yard. It was stated that although the path was not formally recognised as a public right of way, and in places was in a very muddy condition, offered potential as an attractive walkway from which to enjoy panoramic views of the basin and the craft moored there.</p> <p>On page 27, under a section headed 'Other General Proposals' it was stated that the existing footpath round the canal basin should remain accessible to walkers, and its condition improved where necessary.</p>
Investigating Officer's Comments		<p>Distinction is drawn between the use of the word 'footpath' and 'public right of way'. None of the application route was described as a public right of way nor proposed to create a public right of way at the time and the path on the western and southern side of the basin stated to be not recognised as a public right of way.</p> <p>Parts of the application route appeared to have existed but required maintenance. Access between points A-B and C-D is not referred to or shown nor through the boat yard.</p>
<b>OS 1:25:000 map</b>		<p>Extract from OS Pathfinder Map 659 (SD 45/55), showing Bowland View in green.</p>





Observations		<p>The applicant has highlighted Bowland View and refers to the loss of public open space.</p> <p>The map extract does not show the application route between point A and point B but does show a route to the east of point A which connects to point B. The application route from point B heading towards point C is shown as a strip of land adjacent to the canal basin.</p>
Investigating Officer's Comments		<p>The route from point B heading towards point C existed but the map extract did not include the area crossed by all of the route and was undated so no inference can be drawn with regards to the physical existence of most of the route or its status.</p>
<b>Lancaster City Council Planning Committee Minutes</b>	1976 - 1977	<p>Extract of Planning Minutes May 1976-1977, Minutes 701, 762, 864 and 968, all talk about the Children's Play Area.</p> <p>Lancaster City Council Minutes of the Meeting also refer to the Children's Play Area adjacent to Glasson Dock Basin.</p>
Observations		<p>There is no specific reference to the existence of the application route or its status.</p> <p>Extracts from the minutes of the City Council Planning Committee meetings were provided over a period of time between</p>


		<p>1976-1977 detailing progress made in implementing a scheme to provide a children's play area as identified as a priority in the Glasson Village Plan. The minutes provide details of how the land crossed by the application route between point A and point B had been identified as an ideal site for the play area. The City Council owned a plot of land at the south east end of Bowland View (see OS Pathfinder map extract above) and it had been agreed that a land swap would take place with the owner of the land on which the play area was to be situated. Further Minutes report that the land swap required to implement the scheme would be an exchange for land situated in Morecambe.</p>
Investigating Officer's Comments		The application route between point A and point B is unlikely to have existed until at least 1977.
Photograph	2009	Photograph taken on 23 September 2009 and submitted by the applicant.
		
Observations		The photograph shows the picnic area between the end of the fenced off play area and the canal basin across which part of



		the application route runs. The photograph shows that the area had recently been surfaced with aggregate but the fencing around it looks to be older (weathered). The gap in the fencing can be seen through which the application route runs at point B but the applicant also draws attention to the wooden pedestrian gate at the far side of the picnic area which also provided access to the application route. The applicant states that as a result of the aggregate being laid many visitors had complained that they were unable to traverse this area with prams, pushchairs and wheelchairs.
Investigating Officer's Comments		The application route probably existed between point A and point B in 2009 and the gap in the fence was used instead/as well as the pedestrian gate at that time.
<b>Photographs</b>	2009	Photographs showing the fencing installed on south-east corner of the Basin near the School dated 1/3/2009.



Observations		The photographs show wooden post and rail fencing and pedestrian gates which appear to have been recently erected. One of the photographs shows a trodden track consistent with pedestrian use close to
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		point E. The applicant makes reference to fact that the access from School Lane was used by canoeists prior to erection of fencing and narrow gates but that since the fencing and gates had been erected they now found access difficult.
Investigating Officer's Comments		A pedestrian gate at point D existed from at least 2009 and although it is not clear to see from the photographs provided this may mean that access was no longer available between point C and point D due to fencing and that the route between points C-E and points E-D were used instead.
<b>Photographs</b>	2009 and 2011	Further photographs submitted by the applicant taken in 2009 and 2011.
		
Observations		The photographs show the fencing which bounds the wildlife area and the fact that barbed wire has been used on part of the fence. The photograph taken in 2011 shows that the fenced off area had been extended adjacent to the application route and apparently no provision for reaching the gate at point D from the trodden path C-E.
Investigating Officer's Comments		Comments regarding the initial erection of the fencing in 2003 are included above and it appears that the fencing was extended

		and barbed wire added to part of it in 2009. The additional fencing appears to have prevented access to the gate at point D, effectively allowing walkers to use C-E but not C-D or D-E.
<b>Plan of Glasson Basin</b>	Undated but most photographs dated 2008 and 2009	Plan prepared by the applicant comprising of an OS extract with photographs of various points along the application route.
Observations		The photographs show various points along the application route which do not differ to how it appears today. Key photographs show the existence of the metal fencing which obstructs the route at point Y to be in existence by at least 2011 (date of application) and the pedestrian gate out of the picnic area just south of point B which appeared to be accessed via a tarmac path in 2009.
Investigating Officer's Comments		The photographs confirm the existence of a number of features on the application route by at least 2011.
<b>The Evolution of Glasson Dock</b>	1967	An extract of a handrawn plan titled 'The Evolution of Glasson Dock' by Kenneth H Docton and dated 1967 and prepared for the Port Commissioners.

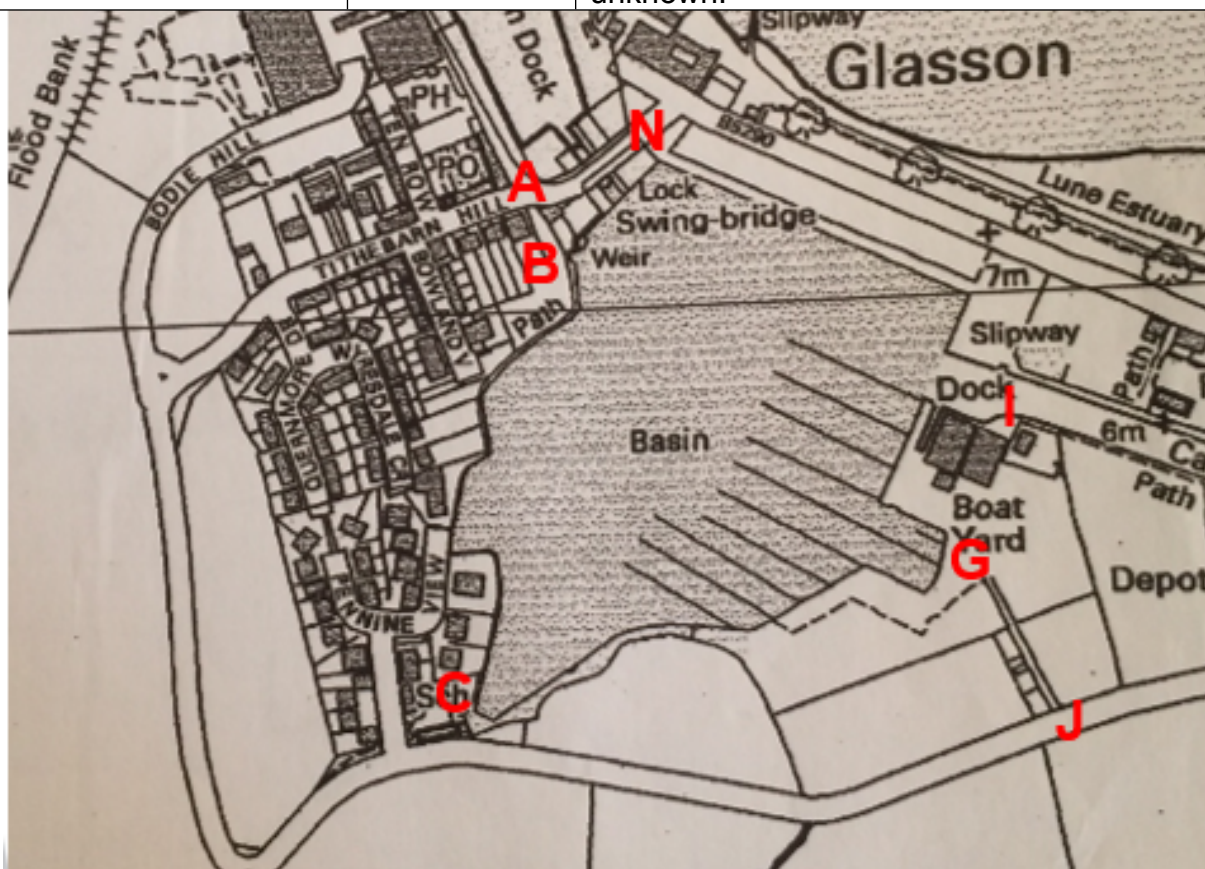




Observations		The handdrawn plan is difficult to read but appears to show a number of features which have been constructed and relevant dates. The applicant draws attention to 'old roads' which appear to have existed prior to the construction of the canal basin, dated 1824 on the map. Parts of these old roads may have been consistent with the application route on the east and south side of the basin but the application route itself is not shown.
Investigating Officer's Comments		There is no evidence to suggest that the application route was constructed as an alternative to the 'old road'. No inference can be drawn regarding public rights.
Photographs		The applicant submitted photographs showing tyre tracks on the pavement of School Lane and overgrown hedges adjacent to the footway.
Observations		The photographs do not show any part of the application route.
Investigating Officer's Comments		The photographs were included to illustrate the difficulties faced by pedestrian using the footway adjacent to School Lane. They may help to illustrate why it would be desirable to have a pedestrian route alongside the



		canal basin away from the public road or why the application route may have been used instead of walking along the footway but no inference can be drawn from them with regards to the actual use, physical existence or status of the application route.
<b>Applicant's summary of user evidence originally submitted as part of the 1999 application</b>	Compiled as part of the 2014 application	Table 2 – 'Evidence of Use' from 1999 application.
Observations		The applicant has compiled a chart in which she appears to list her the use made of various parts of the route now claimed. She claims that this user evidence supports the more recent application and that the paths were unobstructed and that the rights to use the path was never challenged.
Investigating Officer's Comments		An assessment of user evidence is included later in the report.
<b>Map found Online</b>	unknown	Extract of map captured on a screenshot 4 February 2008. Date of map survey unknown.



Observations		The application route can be seen and is labelled as a 'Path' between the weir – close to point B - and the school (point C). It
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		<p>does not show the route between point A and point B or a link from point C to School Lane at point D. The application route between points C-D, C-E, E-F-Y-G, G-X-I are not shown. A route from Canal Cottage (not named on the map) is shown extending towards Brows Bridge consistent with the route between points I-H is shown and labelled as 'Path' and the route between points J-G is shown as access to the boatyard. A route appears to be available between midway between points K-L and from L-M-N.</p>
Investigating Officer's Comments		<p>Parts of the application route may have been accessible (B-C, J-G, I-H and K-L-M-N but the map is undated and without a key and is therefore of little value. The depiction of two sections of the route as 'path' does not imply that the routes were considered to be public footpaths – but may suggest that they were only physically suitable for use on foot. The most easterly sections of the route exiting onto Jeremy Lane are not included on the map extract.</p>
<b>Extract from Parish Council publication</b>	1987	<p>"Glasson Dock – A walk around the Village" produced by Thurnham Parish Council and dated 1987.</p>
Observations		<p>The leaflet is described as detailing a walk around the village but no map is provided. The applicant has highlighted various sections of the leaflet including the fact that the towpath of the Lancaster canal provides pedestrian access to the village. There is some historical information provided about the school and it is then stated that if you walk past the school house and alongside the basin to the boatyard you reach the spot at the entrance of the canal into the basin where a five storey warehouse stood. The return from the boatyard to the village is described as being over Brows Bridge and along the towpath past Christ Church.</p>
Investigating Officer's Comments		<p>The leaflet appears to confirm the existence of a walk around the canal basin. However, as no map is provided detailing the route it is difficult to determine which parts of the application route are referred to. The route from the village to the school is not mentioned in detail and it is not possible to conclude that it followed the application</p>

		route between point A-B-C. A route from the school to the boatyard is mentioned which is likely to be consistent with at least part of the application route between point D and point I but the exact route taken through the boatyard and also in proximity of the school is unclear. The route from point K to point N is described as being along the towpath which is consistent with the application route. No indication is given whether this route is permissive or a right of way.
<b>Lancaster City Council Committee Minutes</b>	1965	Minutes of Lancaster City Council (1965) re 'Disused Railways – Access and Recreational Facilities' (Minute 478):
<b>Photograph</b>	undated	The applicant submitted a photograph of a notice stating 'River Lune Millennium Park – Multi-Use Path CYCLISTS – Give way to pedestrians and horses and cycle carefully at all times'
<b>Case Law</b>		A copy of the Judgements decision: Regina v. City of Sunderland (Respondents) ex parte Beresford (FC) Appellant.
<b>Case Law</b>	2009	Press Summary – R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and another (Respondents) [2010] UKSC 11; on appeal from [2009] EWCA Civ 3.
<b>Extract from article written by Environmental Law Foundation Solicitor</b>	2010	An extract of article titled 'Ground-Breaking Victory For Redcar Residents After Assistance From E.L.F.
<b>Letter from Lancashire County Council to Lancaster City Council</b>	2016	Letter providing comments from the County Council on a planning application for land at 3 Tithebarn Hill, Glasson Dock Application No: 16/00114/FUL
<b>Aerial Photograph</b>	1954	Aerial photograph supplied by the applicant and said to be dated 10 <sup>th</sup> March 1954.



Observations		<p>The photograph shows the development of housing (Bowland View) adjacent to the application route between point B and point C. It is not possible to see whether the application route existed between point A and point B and although there is no visible track the land crossed by the application route appears undeveloped. A visible route cannot be seen extending from point B towards point C but the land crossed by the route appears available and boats can be seen moored along the edge of the marina suggesting access may be available.</p> <p>The land crossed by the remaining sections of the application route are not covered by the photograph.</p>
Investigating Officer's Comments		<p>A route may have been available from point B extending towards point C.</p> <p>No inference can be drawn regarding the rest of the application route.</p>
<p>The applicant submitted a variety of documents relating to the conservation area, policy, law, desirability and other matters which do not provide direct evidence for or against the existence of public rights on the application route. These include the following:</p>		
<b>'Glasson Conservation Area</b>	Undated	An extract of 'Glasson Conservation Area Appraisal' published by Lancaster City

<b>Appraisal',</b>		Council.
<b>Map of Conservation area</b>	2007	Map showing Glasson Dock Conservation Area
<b>Policy Guidance relating to Conservation Areas</b>	2004	An extract of Lancaster Local Development Framework, Development Control Policies – Issues and Options Paper, December 2004.
<b>Lancaster City Council leaflet titled Glasson Dock Conservation Area</b>	1993	'Glasson Dock Conservation Area' Produced by the Environment and Conservation Section of the Planning and Building Control Services, Lancaster City Council September 1993.
<b>Lancaster District Draft Local Plan</b>	1996	Extract from Lancaster District Draft Local Plan' dated November 1996.
<b>Lancaster City Planning Committee Meeting Minutes</b>	1977	Committee Meeting Minutes dated 8 <sup>th</sup> August 1977
<b>Lancaster City Finance and Land Sub-Committee Meeting Minutes</b>	1977	Committee Meeting Minutes dated 22 <sup>nd</sup> November 1977
<b>County Council Monument Records</b>	Undated	A copy of the County Monument Records for the canal basin, the dock and dry dock.
<b>Biological Heritage Site map</b>	2004	A copy of the Lancashire County Heritage Sites – Biological Heritage Site Map dated 03/04 with the site boundary marked around the edge of the canal basin and including the Lancaster Canal.
<b>Plan of Tree Preservation Orders</b>	2007	Plan of Tree Preservation Order No. 416(2007) showing the position of the trees under protection around the Basin.
<b>Land Registry Plan</b>		A copy of the Land Registry Map issued in 2008 showing the boundary of land registered in the ownership of British Waterways (Title Number LA959440).
<b>Photographs</b>		Photographs showing the southern part of the Basin close to the school in September 2007 and the fenced off wildlife garden dated April 2008 and referenced 21 by the applicant.
<b>'Glimpses of Glasson Dock and Vicinity'</b>		The applicant provided extracts from book showing various points around the basin dating back to the 1930s.
<b>Letter from DEFRA to the applicant</b>	2007	A copy Defra's letter of 28 <sup>th</sup> September 2007 written to the applicant regarding the proposed development of Glasson Marina.
<b>Extract of North Yorkshire County</b>	2011	An extract from the Committee report by North Yorkshire County Council – 25 <sup>th</sup>

<b>Council Committee Report</b>		February 2011 – Public Footpath No05.5/105 Shakey Bridge, Bentham.
<b>Department of the Environment Circular No. 15/92</b>	1992	The applicant provided an extract of a table detailing public advertisement requirements for applications relating to development in a conservation area.
<b>Extract from Thurnham Glasson CE Primary School newsletter</b>	Undated	An extract from the school leaflet re 'Green Flag' status.
<b>Lancashire Sites and Monuments Record</b>		Information digitised on OS mapping showing boundary of Conservation Area and Scheduled Monument sites.
<b>Public Rights of Way case law</b>	1998	R v Secretary of State for Wales's ex parte Emery (1998) extract.
<b>Copy of letter to Mr R Wilson from Government Office for the North West</b>	2002	The applicant has included a letter sent to Mr R Wilson ( the applicant for a DMMO to be made for similar routes in 1999) from the Government Office for the North explain why Mr Wilson's appeal against the County Council's decision not to make an order was being dismissed.
<b>Public Rights of Way case law</b>	2007	House of Lords, 'Opinions of the Lords of Appeal for Judgement in the Cause R (on the application of Godmanchester Town Council) (Appellants) v. Secretary of State for the Environment, Food and Rural Affairs (Respondent) and one other action' – 2006/2007 extract.
<b>Extract from a leaflet titled 'Local Authority Services and Biodiversity'</b>	Undated	Extract from an undated leaflet believed to have been published by the Wildlife Trust regarding local authority duties to consider biodiversity.
<b>Extract from Planning and Policy Statement 17 (Department of Communities and Local Government)</b>	Undated	Flow chart from Planning and Policy Statement 17 (Dept. of Communities and Local Government) relating to the redevelopment of an existing open space or sports/recreational facility.
<b>Local Government Planning Policy Statement</b>	Undated	Planning and Policy Statement (PPS4) – Dept. of Communities and Local Government
<b>Lancashire County Council Regulatory Committee Report</b>	2001	An extract from the Regulatory Committee report considered by Councillors on 26 September 2001.
<b>DEFRA Guidance for Public Authorities on Implementing the Biodiversity Duty</b>	Undated	The applicant provided extracts of guidance relating to Farms and Tenanted Land, Highways, Rights of Way and Transport Infrastructure and Management of Green Infrastructure
<b>GIS Map of Glasson</b>	2008	GIS Map produced by Lancaster City



<b>Conservation Area boundary</b>		Council to show the area designated as a conservation area.
<b>Lancaster District Proposals Plan</b>	2004	Extract of Lancaster District Local Plan – Proposals Mandated 16 April 2004
<b>Extract of Planning Legislation</b>	1990	The applicant has provided extracts from the Planning (Listed Buildings and Conservation Areas) Act, 1990 – Sections 69, 70 and 72
<b>British Water Ways Land ownership Map</b>	2010	Digitised map showing land owned by British Waterways and dated 2010.
<b>'Glasson Dock – The Survival of a Village'</b>	Undated	An extract from the book, 'Glasson Dock – The Survival of a Village': written by John Hayhurst
<b>Photographs</b>		Photographs of heavy goods vehicles (HGV's) on School Lane and Brows bridge (where no footpath is available to avoid vehicles travelling in both directions).
<b>Public Rights of Way case law</b>	2009	CASE CO/11081/2009 (of 17/2/2010): Mr Brian PATERSON v The Secretary of State for the Environment, Food and Rural Affairs and Oxfordshire County Council.
<b>English Heritage Plan</b>	2007	English Heritage Map showing the location of a scheduled monument (Glasson Dock). Image captured 2/11/2007.
<b>Details relating to Town and Country Planning General Development Order, 1977 Lancaster City Council (Glasson Village) Article 4 Direction</b>	1981	<p>a) Lancaster City Council (Glasson Village) Article 4 Direction (1981):</p> <p>b) Planning Inspectorate, Dept. of the Environment, Bristol (23/1/91) re "... the appeal premises are situated within an area subject to an Article 4 Direction Order under the Town and Country Planning General Development Order 1977"):</p> <p>c) Minute 572: Book (May 1980 / May 1981) – recording of committee's approval of decision to issue an Article 4 Direction on "certain classes of permitted development"</p> <p>d) A copy of The Guardian Series from 2/10/1981, which shows a newspaper article of the Town and Country Planning General – Development Order 1977 Lancaster City Council (Glasson Village) Article 4 Direction 1981.</p> <p>e) A copy of the parish Council minutes 6/4/1982, minutes 82/53 refer to the Glasson Village Article 4 Direction.</p>
<b>Investigating Officer's Comments</b>		No inference can be drawn with regards to the physical existence or status of the application route.

## **Landownership**

The majority of this route is owned by the Canal and River Trust, some sections of the route are leased to British Waterways Marinas Limited, and a small part of the route is owned by Barbara Latham this includes section X-I-H (ownership is just short of point H and does not fully extent to Point H. There are 2 small sections of the route that are unregistered between section A-B and a small area prior to Point H.

## **Summary**

There appears to be no map and documentary evidence which provides a clear and consistent view that the route around Glasson basin was created or formally dedicated as a public footpath.

Prior to the construction of the canal basin and canal the route – or most of it - did not appear to exist.

The canal basin existed as it does today by the mid-1800s and part of the route between points K-N may have been capable of being used.

By 1891 it appears that a route from the village to the school and road at point D had come into existence between point B and point D but that access to point B was along a different route to the one now claimed. A route may also have been accessible between points J-G-I-H by this time but the alignment between G-I was not the same as the application route.

A route between point A and point B does not appear to have existed until possibly the 1970s and is shown on an aerial photograph dated 2000 prior to the construction of the surfaced path and play area; this route is on a different alignment to the application route which follows a tarmac surfaced path adjacent to the fenced off play area to point B. From point B there is photographic evidence suggesting that two alternatives may have then been available – one being through a gap in the wooden posts leading out onto a grass strip adjacent to the weir (as shown on the Committee plan and another from point B continuing along the western edge of the picnic area and through a pedestrian gate to join the application route on the edge of the basin.

The current configuration of routes at the school (D-E and C-E) appears to have post-dated the original access at this point (D-C) and come about as a result of the fencing off of the area used as a community/wildlife garden in or around 2009.

There is very limited map and photographic evidence supporting a route from point D-G which passed through woodland and over open fields and an old lock prior to the extension of the boat yard and while access may have been available the extent of it will require a closer examination of the user evidence submitted.

No map or documentary evidence was found indicating that the route had been dedicated as a public footpath and the fact that a significant part of the route was

successfully appealed and removed from the Provisional map indicates that the route between points B-D and points K-N were not public footpaths in 1960 (time of the appeal to the Quarter Sessions). The fact that the rest of the application route was not shown on the parish survey or subsequent maps is also indicative of it not being considered to be a public footpath at that time.

The applicant has submitted a number of documents referring to a route around the canal basin but none of which gave sufficient detail – whether considered alone or together – to provide sufficient certainty that the route referred to was the application route or specific parts of it and there were a number of references to proposals to create a circular route suggesting that either a route was not available around all parts of the basin or possibly that it was not considered to be a public footpath.

The application route through the boat yard (from point Y to point G to point X is particularly unclear with no map or documentary evidence examined which supported the exact alignment of the route claimed.

The original application considered by the County Council for a route around the canal basin concluded that there was insufficient map and documentary evidence to infer the dedication of a public footpath. In this particular case additional information has been examined but no substantial relevant information has been added and the conclusion regarding the map and documentary evidence remains the same.

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

##### Information from the Applicant

In support of the first part of the application (804-519) addition of a Public Footpath from Tithebarn Hill to School Lane adjacent to Glasson School, the applicant has provided 41 user evidence forms, the information provided in these forms is set out below:

All the users have used the route on foot and 1 of the users has used the route on foot and on a bicycle, the years in which the users used the route varies:

1930-1939	1941-2009	1947-2011	1959-2009	1960-2011	1961-2011
1967-1968	1970-2009	1979-1994	1979-2011	1981-2011	1982-2005
1986-2009	1990-2009	1996-2009	2000-2005	2008-2011	

The main places the users where going to and from include a circular walk around the Basin or Marina, going to the boat yard, going to yacht club, going to school, to and from work at the mill, to Tithebarn Hill and to Glasson or Cockerham.

The use of the route varies from daily, to weekly, to more often in summer, between 1-6 times per year and between 12-40 times per year.

All the users agree that the route has always run over the same line, but when asked whether there are any stiles / gates / fences across the route the following information was received:

- In 2008 high steel railings were erected on the north-west path adjacent to the weir and at the south-eastern end of the Marina, these restricted the available

route to and from Tithebarn Hill access point and from the School access point.

- A wooden fence and gate were installed at the School access point and a low wooden gate was installed at the entrance from Tithebarn Hill
- Electronic gates have been fitted to the Marina driveway and they close at 5pm and are only available to Marina staff after this time.
- A gate by the by-wash which was never locked or closed
- Many years ago there was a stile by the school and one by Canal Cottage
- A gate at the bridge on the path leading down to Canal Cottage

Some users mentioned that there were no stiles / gates / fences until recently and 33 of the users answered 'no' to this question.

When asked if they have ever worked for a landowner / tenant of the affected land all but 2 of the users answered with 'no', 1 of the other users responded with 'across the boat yard, when my brothers used to work for Mr Rennard' the other user stated 'I took on the lease of Canal Cottage, the path from the centre of the plantation past the cottage to the bridge was private'.

When asked if the users had ever been stopped or turned back when using the route, or if they had ever heard of anyone else being stopped or turned back, most of the users answered 'no'. 4 of the users mentioned that only turned back when the fence was put up, 1 of these users also mentioned that prior to the fence the school obstructed the path.

However all of the users have never been told that the route they were using was not a Public Right of Way.

The users were also asked if they have ever known of any locked gates or obstructions, the list below is additional information that has not already been mentioned above:

- A previously 'open space' was fenced off. In response to enquiries with the Planning Department, we were advised that this was 'Permitted Development' - presumably either on behalf of British Waterways or British Waterways Marinas Limited their lessees, who took over the Glasston Marina in July 2007. Trees were felled, and a wooden fence erected which appears to follow the boundary of British Waterways land. Some months after completion, this fence appears to have been extended even further round the Basin and barbed wire has since been attached to the end farthest away from the School. The day work was completed, a lock and chain were fitted to the small gate (nearest the Basin edge). As the user was unable to gain access that day through the new gate, the user brought the BW lock-keeper to the scene to advise him of this fact. The next day the lock and chain had been removed.

1 user saw a notice on the wooden gate nearest the roadway at the school gates that's states 'Glasston Wildlife Garden: For School and Community use, all we ask is that you please close the gates. Do not allow your animals to foul in this area. Thank you'. None of the other users have ever seen any signs. None of the users have ever asked permission to use the way.

Out of the 41 user evidence forms, 24 of them were identical and provided exactly the same information.

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

- The circular Basin path has been in use for almost 200 years from 1824. Relatively recently, approximately over the past 10 years, bit by bit the circular path of the Basin has become very restricted. It would be reasonable to expect, as an absolute minimum, that the route from Tithe Barn Hill to / from the access point by the School should be reconfirmed as an official Right of Way to prevent further loss of amenity.
- It would be an easy matter to re-establish the footpath from the southern corner by the School through the Marina to School Lane via the driveway barrier (which is open during working hours most weekdays when Marina Staff are present). It would only require the steel gate fitted to the metal railings at the western extremity of the Marina to be unlocked. Ideally the original route through the Marina past Canal (Glasson) Cottage to Bridge 8 could be re-established, since Boaters and Marina staff have access.
- This is a Public Right of Way and should be open to visitors and residents
- This route has been used since users were young children who had complete access and now you can't walk all the way round
- I was born in the village in 1931 and I have never been stopped
- I have personal experience of using the path round the Basin as my grandfather and later my uncle held the lease of Canal Cottage and I myself later held the lease. I requested a new lease when the old one expired but this was refused as I was informed by British Waterways that they intended to sell the land and property to the Marina. Although I live in Scarborough I regularly visit Glasson to fish. It may be of interest that when I checked out Canal Cottage on LCCs property services site on the internet it said that the cottage was in a conservation area. This may be one reason it is still standing - but it would be interesting to know which the conservation area was with the marina being so nearby. When I had lease of the property I had maps that showed rights of way however I can't lay my hands on them now.
- Should be an open right of way and I have used since my childhood and there are many forms of wildlife, it's an interesting and relaxing pleasant walk. The walk around the basin traditionally used and should be kept so, not locked up. It is also of educational use for children.
- Some parts of the path is now becoming very narrow in places due to lack of maintenance.
- If BWML get planning permission for the marina extension this footpath will no longer exist and the surrounding area will be totally enclosed preventing any pedestrian access in the future.
- This right of way should be kept open and maintained for walkers and local residents at this moment in time the condition of the path is poor, and could do with improvement work being carried out.
- 24 users all mention that the acts of BWB and Lancaster City have been deplorable in this matter.

In support of the second part of the application (804-555) adding a circular route around Glasson Basin the applicant has submitted 9 additional users forms, however the applicant also refers to the previous 41 forms submitted with 804-519 application. The evidence from the additional 9 forms is set out below:

All 9 of the users have used the route on foot and of these users mentions using the route on foot and boat, the years in which the users use the route are as follows:  
1953-2012   1960-2000   1970-2013   1974-2014   1986-2006   1992-2007  
2000-2012   2001-2002   1967-1968 & 1979-2013

The main places the users were going to and from include, a circular route around the Basin, from Marina to Swing bridge, as part of walks around Glasson, Conder Green and Cockerham, to the Canal bridge and to Old Glasson and School House Farm.

The use per year varies from 1-3 times, to occasionally, weekly, 75 times to daily in summer and less frequently in winter. All 9 of the users agree that the route has always run over the same line, but 2 users provide further details. 1 user states the footpath has always been there until Latham sold to Glasson Basin Yacht Co and the other user states it has always been the same but then refer to the gates and railings as referred to in the previous evidence for 804-519.

When asked if there are any stiles / gates / fences along the route, 2 users didn't provide a response, 1 user stated 'no', 1 user states 'maybe a gate near the swing bridge', another user stated 'nothing to prevent walking along the path'. 1 of the users state 'a gate was situated in the plantation when Lathams owned the Marina', another users states 'there was a small gate at the other side of canal cottage', another user states 'none' but then refers to the gates and railings mentioned in the 804-519 application, and the last user states that there wasn't any previously but later a wooden gate left open opening onto Brows Bridge and the mentions the steel railings as described in the evidence from 804-519.

None of the users have ever worked for a landowner or a tenant of the land in question, and 8 of the users have never been stopped or turned back or heard of anyone else being stopped or turned back when using the way, 1 user did not provide a response to this question. All users have never been told that the route they were using was not public.

5 of the users have never seen any locked gates or any other obstructions along the route, 1 user mentions they stopped using the route when others told them it was no longer possible to use it, 1 user mentions that a gate in the plantation was installed and locked but doesn't know of any dates, and 2 of the users refer to the gates and railings mentioned in the evidence from the application 804-519.

7 users have never seen any signs along the route, 1 user states 'not personally' and the other user refers to the sign at the school which states "Glasson Wildlife Garden: For School and community use. All we ask is that you please close the gates. Do not allow your animals to foul in this area. Thank you" and none of the users have ever asked permission to use the route.



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

- I used this path on the past for family walks from the playground to walk around the Basin, and also for leading walking parties as part of a longer walk. In the 1990's, I have walked past the jetties and Marina but later, this route became impassable and we would follow the road back to Glasson.
- The circular Basin path has been used for almost 200 years from 1824. Relatively recently, approximately over the past 10 years, bit-by-bit the circular footpath route of the Basin has become very restricted.

The application has been submitted by 2 applicants, one of the applicants has provided a detailed response under the 'further information' part on the user forms on both the 804-519 & 804-555 form. The 804-555 information has the same as the 804-519 but with further points. The information provided on the forms is as below:

*"Glasson Canal Basin is a Biological and a Geological Heritage Site for Lancashire. It lies within the Lancaster City Council Conservation Area (1977) – under which the Council has a duty 'to preserve or enhance' the historic character of the Basin and its environs.*

*The triangular area of land (adjacent to the School) now enclosed by fencing was previously an open space of the Conservation area to which the following policies appear to relate:*

*Policy E35 (Lancaster Local Development Framework, Development Control Policies – Issues and Options Paper) protects open spaces from development within the Conservation area.*

*Policy E24 (Lancaster and District Local Plan, 2004) states "Development proposals which would adversely affect important views into and across a Conservation Area or lead to an unacceptable erosion of its historic form and layout, open spaces and townscape setting will not be permitted".*

*Local Plan Policy 5.4.21 states, "When determining any development proposal affecting a Conservation Area, the City Council will take into account the impact on views into and across the area, important open spaces either in or near the Conservation Area and the wider landscape setting".*

*Clearly, the landscape setting has been changed significantly of southern end of Basin showing mature deciduous trees prior to felling in April 2008; and the view of the southern end of the Basin (from stone edge) post felling work.*

*In addition, in my opinion, steel tooth-edge railings and barbed-wire are inappropriate materials to be used within the conservation area and the semi-natural habitat surrounding the Basin.*

*Normally, a Loss of Open Space and Sport / Recreation Assessment would be required, as follows:*

*The Council's Planning Application Validation Guide (page 29, 4.26) states "Applications which seek to develop land currently used as open space... should be accompanied by an Assessment which analyses the need and opportunity for the continued use of the land for open space, sport and recreational uses".*

*However, we do not believe that this assessment was carried out, by Lancaster City Council, prior to the fencing being installed.*

*Prior to railings being fitted on south-eastern corner of Basin, I walked the full circular route around the Basin – starting from the gate on Tithebarn Hill entrance, past Visitors' Mooring (and end of Bowland View) towards the exit at the school. Or one could continue on the narrow footpath adjacent to the edge of the Basin across "the Plantation", past the site where the 'Old Lock' was started (but I believe was never finished) towards and through the Marina. From this point, one could use the exit of the Marina driveway (leading onto School Lane) or, alternatively, pass down the left side (and to the rear) of Glasson (or Canal) Cottage (which has been unoccupied for very many years, and remains so today) leading to an exit on Bridge 8 of the Lancaster Canal. Then, the route passed over this bridge, down the steps to the other side of the canal, and along the Glasson Arm, onto the Stone edge of the Basin (adjacent to the car park), and back into the village (via lock-gate or swing bridge).*

*The full circular route around the Basin was ideal since it avoided the dangerous stretch of road from the corner of School Lane up to the top of Bridge 8 (where there is no footpath, nor any place to step out of the way of vehicles negotiating the 'blind' corner from School Lane) and where oncoming vehicles are not visible until they reach the brow of the bridge). There is therefore, a treble peril in attempting to reach the canal on foot (or even the B.5290), from the corner of School Lane – firstly, oncoming vehicles are concealed from view by the top of the bridge; secondly, HGV's travelling along School Lane approaching the corner are not visible until they have negotiated the corner – and, thirdly, any vehicle travelling at some speed may encounter a pedestrian on the bridge (where there is no safe location for the pedestrian to step aside in order to avoid bridge traffic). If this latter situation were to coincide with two vehicles (especially goods vehicles) travelling in opposite directions on the bridge at the same time, a serious accident would undoubtedly occur.*

*This was a safe route regularly used by the public when we first moved to the village in 1979 and avoided the narrow footpaths of School Lane (often obstructed by vegetation), where the writer has witnessed heavy goods vehicles mount pavements to avoid other oncoming goods vehicles. Using the route round the Basin (via the rear of Canal Cottage) allows the pedestrian to stand well back from the road (at Brows Bridge), and to peer into the roadway to ensure it is free of traffic before negotiating the short distance (over the top of the bridge) to the steps down to the canal on the opposite side.*

*The loss of part of this circular walk is disturbing, since it was a pleasant and safe route around the Basin – without having to encounter traffic and the large heavy goods vehicles travelling to and from the Dock (along School Lane). Moreover, I would add that the volume of traffic (especially heavy goods vehicular traffic) has increased dramatically recently with the recent expansion of grain stores on the Dock, increased Dock activity and a greater number of vessels entering the port. This means that vehicles can often be seen travelling every few seconds (in both directions) over Brows Bridge and along School Lane at certain times of the day.*

*It should also be noted that boaters (from the Marina) can still use the full circular route – whereas, as a true resident of Glasson Village, I am limited to the route*

*between the Tithebarn Hill entrance (to the steel railings on the south-eastern corner) and back to an exit by the School (to School Lane).*

*Originally, as part of the circular route the small lock-gates leading to the By-Wash (or weir) were originally open to both residents and visitors. These led back to the Basin footpath near the Children's Playground at Tithebarn Hill, completing the circular walk.*

*I note here that at Bowness, in Cumbria, where there are Marinas and jetties, the railings and gates are fitted to the actual jetties – so that people are allowed to walk past the jetties but are thus prevented from gaining access to the jetties themselves. As a further comparison, the Bridge house Marina, near Garstang, allows full and free access to visitors. At Glasson Marina, it seems that railings have been erected on land to prevent residents and visitors gaining access to the Marina at all.*

*I use the Basin footpath regularly to feed swans and wildfowl; and also to identify injured wildfowl which require the assistance of the RSPCA. Occasionally, ducklings and cygnets need rescuing from the bottom of the Weir, to which access has been closed off.*

*The Basin footpath is also used by members of the North West Swan Survey, who visit several times a year to ring cygnets and monitor populations.*

*I would also add that some older village children use the Basin as a route to the School (built in 1833) – as probably village children have always done so, historically.*

*Glasson Canal Basin was not always part of a Marina development. It was built as a reservoir of water for lock operations. The map (dated 1919) shows a jetty-free Basin. Photographs from "Glimpses of Glasson Dock and Vicinity" also show a jetty-free Basin. Unfortunately, as the number of jetties has increased, so more of the Basin footpath has been closed off – until today, very little of the full circular route remain accessible.*

*It would appear that the agreements reached (between British Waterways board, Lancaster City and Lancashire County Council's, the Port Commission, environmental groups and other bodies) and recorded in the document, "Lancaster City Council – Glasson Village Plan – A policy for conservation (approved – 8/8/77: implemented 22/11/77) are not being upheld; and that, despite the statement in that document that the footpath "should remain accessible to walkers" (page 27), further path closures (contrary to the Glasson Village Plan – approved 8/8/77 and implemented 22/11/77) have taken place recently and during the last thirty-three years. This is why it is now felt that the full circular route – from Swing Bridge (and Tithebarn Hill) via the southern part of the Basin (towards the jetties and the marina buildings and then down the side to the rear of Canal Cottage to Brows Bridge) should be reopened in accordance with historic records and historic public usage."*

Further information in support of the applications

A letter of support from Lancaster Civic Society states:

'Lancaster Civic Society supports public access to long established footpaths and is supportive of the application to maintain public access to footpaths around the Glasson Canal Basin.'

A letter of support from the Lancaster Group for the Ramblers' Association, the letter states:

'Considering the four paths numbered 1 to 4:

Footpaths 1 & 2 – only one remaining older member of our group has memory of using these paths a long time ago but cannot put a date on the walk. This was obviously before the gates were installed.

Footpath 3 – we have used this path occasionally on our summer Tuesday evening walks, but again people cannot put dates to these events, although one of our people is looking through old notes to see if any reference exists.

Footpath 4 – this is well used by our members and the public in general, being part of the canal towpath for most of its length.'

A letter of support from Torrisholme Rambling Club states:

'These routes have been walked, historically, by some of our members, and have provided recreational amenity to members living in the surrounding areas. Such amenity has health benefits to those in and around the locality as well as psychological benefits from observation of the varied wildlife surrounding the adjacent Lune Estuary, Site of Special Scientific Interest.'

#### Information from others

4 responses have been received from local residents, these are all set out below:

(1) A further response has been received from another local resident, their response is set out below:

The residents object to the footpath as it will have detrimental effects to the wild life. The area at the back of the school and houses is a nesting area for a large number of different birds and they have in the last two months seen an otter in the reed bank. They do not think it would be such a haven for wild life if there was a public footpath. The constant disturbance of people walking through the habitat and especially with dogs will definitely have a negative impact.

(2) Response from another local resident:

The proposed public footpath from Tithebarn Hill to School Lane in Glasson Dock. This is already a permissive path and there does not seem to be any need to change its status.

(3) An objection from local residents make the following points:

1. They question the motivation behind the applications given that to the best of their knowledge nobody has ever had access to this area around the canal basin blocked, except for the area occupied by BWML's Marina, which is protected by two security gates. In the latter case they would assume that Health and Safety and Security in a working boatyard would preclude public access at all times, and question what is wrong with the status quo?
2. A similar application, from a different applicant, was made approximately 12 years ago which was rejected after multiple appeals including to the Minister of State. It seems a terrible waste of public finances to potentially go through this process again.
3. Use of much of the land covered in this application would entail further public intrusion into an LCC Biological Heritage Site. The inevitable increased footfall would have a detrimental effect on the environment and its biodiversity. This will be particularly so on the western and southern part where there are reed beds and also one of the few points where young wildfowl can enter and exit the water.
4. In places the state of this Canals and River Trust access strip is in poor condition and for public access would need significant improvement. Recently they witnesses one person slip and fall into the water, and another slip with a near miss. Work involved in significantly upgrading would further damage the environment and biodiversity particularly the reed beds and the wild area near the school.
5. They ask the question, does a new public footpath require all access to be wheelchair friendly?
6. Public access around the western side where there are houses and gardens would present an intrusion into their privacy, and more importantly into the security of these properties. At the present time of writing the letter they witnessed a passer-by leaning over the school playing field wall to take apples from the fruit trees growing there, they state this may seem insignificant but is indicative of the potential, out of sight, illegal intrusion to the property. The objectors state that these points were raised at a Parish Council Meeting and were supported by most of those present and urge the Council to reject the application.

(4) An objection from another local resident who provide the following information:

Route 1: Tithebarn Hill to exit School Lane

1. This area is seldom used by members of the public except for a short area of footpath from Tithebarn Hill to the end of the canal boat moorings at the playpark end of the basin.
2. The proposed exit for this path would mean that the general public would have right of access to walk across school grounds at all times of the day.
3. In the last 2 years that part of the basin has become an area which otters frequent and would cause disturbance if this proposal was adopted.
4. This area has a large growth of reed bed that allows for various water fowl to nest and again this proposal would cause disturbance and be detrimental on their breeding habitat.

Route 2: School Lane to exit on Marina driveway

This would allow the general public access through the private grounds of the Marina

which is more or less and industrial area. Health and Safety issues would need to be addressed, including the potential for unsupervised children to be in and around the area.

Route 3: Marina Driveway to bridge via Canal Cottage

1. As above in Route 2

2. The proposed area in route 3 from Canal Cottage to Bridge 8 has never been used as a footpath in the 15 years I have lived in the village and is a wilderness area that is a haven for wildlife and a natural habitat for breeding swans, ducks, coots etc.

Route 4: Bridge 8 to Tithebarn Hill via stone edge

This route is already an existing canal towpath with pedestrian access.

The changes that this proposal puts forward are, to the residents mind, ill-conceived and unnecessary. Firstly, who would be responsible for the creation and maintenance of the new route? Secondly, there is already a significant area of the basin which is accessible to the public – the proposed extension will create needless destruction and disturbance of the wildlife habitat in and around Glass Canal Basin.

An objection has been received from Ward Hadaway Solicitors on behalf of Canal and River Trust ("the Trust") and British Waterways Marinas Limited ("BWML"), the response is set out below:

It is stated that both clients set out certain objections to the applications, whilst reserving their positions to present further evidence and to raise additional or alternative objections, should either or both of the applications lead to an Order being made.

Ward Hadaway emphasise that the Trust seeks to ensure, to the extent not incompatible with its statutory duties, that public freedom of access to its canal network is preserved (especially in areas of natural beauty such as Glasson), and that access is maintained to the many, and varied areas of interest associated with that network.

In relation to Glasson, the Trust considers it is fully discharging its obligation in relation to the towpath of the canal (including the northern quay-side of the marina) and that these are sufficiently available for public use without the need for any designation upon the Definitive Map. Both areas, however, provide numerous mooring points for vessels and the Trust is concerned that any such designation might bring conflict between the rights of passage of the public and the use of those areas for mooring and when it becomes necessary to close sections of the towpath for essential maintenance purposes.

In relation to the other parts of the alleged ways, both clients are of the view that substantial portions lying to the south of the canal and the marina are virtually impassable, and have not been used for several years, whilst unrestricted public access along the alleged "Footpath 2", where it crosses the operational parts of Glasson marina (a busy area of marine engineering), would give rise to danger to anyone seeking to exercise the same.



In light of those factors, both clients consider it appropriate to object to these applications.

#### The 1999 Application and the current application

The clients refer to the decision of the Secretary of State in relation to a similar application made by Mr R Wilson on 23 November 1999 (the "1999 application") (Appendix B to this report) and to the report in relation to that application, made to the Regulatory Committee dated 26<sup>th</sup> September 2001 (Appendix A to this report).

The current applications appear to relate to alleged ways along the same (or almost identical) routes to those in the 1999 Application (the only differences appearing to be a slight divergence at the commencement of "Footpath 1", and how "Footpath 2" allegedly crosses the marina). Consequently, the clients place reliance upon the decision reached by the Council, and all the findings of the Secretary of State referred to in their decision of 14<sup>th</sup> August 2002 confirming the Council's decision, that the evidence supplied in support of the 1999 application did not discharge the burden of proof necessary to bring about a modification of the Definitive Map.

#### Objections

A letter has been received from the solicitor representing both Canal and River Trust and the British Waterways Marina Limited, a summary of the letter is detailed below:

##### 1. Insufficient proof of user

Upon the basis that the 1999 Application lacked supporting evidence, the clients consider it must be for the applicants in these applications to bring forward further substantive evidence which, at the date when the right of the public is called into question and alone or coupled with other relevant evidence, discharges the required burden of proof.

They are not aware of any recent circumstances calling the right of the public into question, and assume that it is these applications which do so. For the purposes of Sections 7A and 7B Highways Act 1980, the relevant date appears to be 17<sup>th</sup> September 2011 for the 2011 Application, and 18<sup>th</sup> February 2014 for the 2014 Application.

In support of the 2014 Application there appears to be no evidence of user up to 18<sup>th</sup> February 2014 and, if when read the table of evidence provided by the applicants correctly, save for the evidence of the applicants it is only the evidence of 2 users which might possibly be construed as a claim to continuing user up to (and perhaps beyond) 2011. The evidence of the applicants and of those 2 users (whose evidence relates mainly to the period prior to the 1999 Application) would be disputed by the clients but, in any event, would seem insufficient to establish use of the alleged ways by the public at large.

It will be seen, from the evidence of the accompanying photographs, that substantial parts of the alleged ways are now impassable, and the clients would bring evidence to establish that this has been the case for a substantial period of time (as several of the photographs suggest).

On the basis of the foregoing, the clients would aver that the applicants fail to establish the expiration of any period of public enjoyment of the alleged ways, immediately preceding the dates upon which the rights of the public were called into questions, which might lead to an Order under Section 53(3)(b) of the 1981 Act.

#### Insufficiency of other evidence

The applicants place great reliance upon various maps and other publications (both regional and local) which, it would seem, must be additional to the various maps submitted in support of the unsuccessful 1999 Application.

As was properly determined by the Secretary of State, by the 2002 letter, 'little weight' should be afforded to such documents as, whilst they may show the route of some path or way "on the ground", they do not show the legal status of that path or way.

They consider that the same, or similar, criticism can be levelled against all other documentation submitted by the applicants in support of these applications, and they are of the opinion that, despite the amount of that documentation none is sufficient evidence, either individually or collectively, for the purposes of Section 53(3)(c).

#### Lack of other evidence of intention to dedicate

Canal and River Trust (the Trust) would aver that, whilst almost the whole of the alleged ways lies within land in its freehold ownership, it has not expressly dedicated any part or parts of the alleged ways. The Trust acknowledges and accepts that, in accordance with its statutory duties, it has sought to preserve, maintain and protect access to, and use of, the canal and its towpath by the public at large and has actively encouraged such use (see "Permissive user" below).

The decision of the Secretary of State, in the 1999 Application, determined that there was then insufficient evidence to establish that either BWB or Glasson Yacht Co Ltd (the then occupiers of the marina) had an intention to dedicate the then alleged ways, and she acknowledged the existence of signs, fences and locked gates, which prevented unrestricted access to substantial portions of those alleged ways.

They would aver that the various fences, gates, notices and other obstacles referred to in the 1999 Application remain in situ and, to that extent, the clients would say that there was, is and remains evidence contrary to any intention to dedicate.

British Waterways Marinas Limited (BWML) would aver that, since its incorporation in 2003, it has not at any time acquiesced in the use, by the public at large, of the alleged way affecting the land occupied by it, nor has it sought to dedicate any such way.

#### Permissive user

The Trust has a statutory duty (under Section 22 (2) British Waterways Act 1995 and the British Waterways Board (Transfer of Functions) Order 2012) to "preserving for

the public any freedom of access to towing paths and open land and especially to places of natural beauty" and "to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest".

The Trust's predecessor, British Waterways Board ("BWB"), was subject to the same statutory duty.

Glasson Marina and its environs, as the applicants acknowledge, is within an area of natural beauty, and much of the marina and adjoining Glasson Dock comprise sites or architectural, engineering or historic interest.

The Trust would not seek to put forward an argument similar to that forward by BWB in the 1999 Application, which sought to rely upon section 57 British Transport Commission Act 1949. The Trust would aver, however, that through compliance with its statutory duty, coupled with the many leaflets and brochures about access to, and use of, the canal network, issued by the Trust and its predecessor, it is arguable that any use by the public of the relevant parts of the canal network, is permissive only. If so, then the Trust would aver that such use would be "by right", rather than "as of right", and that any acquiescence in such use, by the Trust or its tenants, would not be evidence of an intention (implied or presumed) to dedicate.

#### Whether there is any "discovery" of evidence which might lead to a possibility of modification of the Definitive Map

On the assumption there is no evidence other than that supplied by the applicants in support of the current applications, and in light of the foregoing contents of this letter, the clients consider there is nothing which should lead the Council to conclude that it has discovered any evidence which, when considered with all other relevant evidence available, might justify the making of an Order under Section 53(3)(c) of the 1981 Act.

Ward Hadaway also provide copies of 16 photos that show signs and structures along the application routes preventing access.

### **Assessment of the Evidence**

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

#### **In support of the claim**

- User evidence forms

#### **Against accepting the claim**

- Map evidence
- Use has been allowed on a permissive basis
- Section 57 of the British Transport Commission Act 1949
- Section 22 of the British Waterways Act 1995

Committee will note that Route 1 follows the same line as was claimed in 1999 at points B-C-D with the exception of A-B. Committee will note that Route 2, Route 3 and Route 4 are identical to those claimed in 1999 with the exception between points C-E and F-G. Therefore, consideration will need to be had to the information contained within the Regulatory Committee report dated 26 September 2001 (Appendix A) and the decision on appeal dated 14 August 2002 (Appendix B). Committee will note that the additional evidence submitted by the applicant has resulted in the County Council being under a duty to consider this application again.

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

Looking firstly at whether dedication can be inferred at common law. The Executive Director for Environment considered all the historical map evidence previously in the report dated 26 September 2001 and again for the purposes of this report, Committee will note that the position remains unchanged and that there is insufficient map and documentary evidence to reasonably allege the route under consideration was a historical public footpath and to infer dedication at common law.

Committee are therefore advised to consider whether dedication can be deemed under s.31 Highways Act 1980. Committee will be aware that in order to satisfy the criteria under S.31 Highways Act 1980, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty-year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

The route was first called into question on 23 November 1993, this is the date the first application for a definitive map modification order was made to Lancashire County Council therefore; the first 20 year period under consideration would be 1973 until 1993. A further application was made to Lancashire County Council in 2011 and thereafter 2014. The user evidence forms suggest gates along the route were erected preventing access at certain points along the route in or around 2008 and the photographs provided by the applicant dated 2009 show fencing/gates/railings erected along the route preventing access at various points along the route therefore; on balance the route was brought into question again in 2008 and therefore the second twenty year period under consideration would be 1988-2008.

#### **Application submitted for Route 1 A-B-C-D and C-E-F**

41 user forms have been submitted for this section of the route. Out of the 41 user evidence forms, 24 forms are identical, the form has been copied, so the same hand writing is on each form with the same answers and only the names and signatures have been changed, all claiming to have used the route from 1990 until the current date for 5 or more times a year therefore; the credibility of such witness evidence is questionable and limited weight is placed on these forms. The other 17 user

evidence forms have been completed by individuals and suggest the route has been used from earlier on since 1930 and 1941 and during the relevant periods under consideration, the use is in line with use of a public footpath. The users claim to have never found the route to be obstructed until recently and never being told not to use the route.

The applicant submitted a further 9 user evidence forms for the second application which includes routes 1-4, the circular route:

**Route 1 (A-B-C-D)**

**Route 2 (D-E-F-Y-G)**

**Route 3 (J-Z-G-X-I-H)**

**Route 4 (K-L-M-N)**

**Additional section C-E**

Some of the users claim to have used the circular route in its entirety or certain sections of the route, these 9 user evidence forms on their own would not be considered sufficient to amount to use by the public for all four routes however; coupled with the 41 user evidence forms received with the first application there is a sufficient number of users claiming to have used all or one of the four routes under consideration. Use seems to be in line with use of a public footpath and without force. The committee report dated 26 September 2001 noted that route 1 was obstructed by a locked gate and fence and signs were in place preventing unauthorised access and route 2 was blocked by gates and private signs. The user evidence forms provided with the current applications do not suggest that there were locked gates or any signs along the way, it is acknowledged a gate was present since the 1970's near Tithebarn Hill but this was always unlocked, the user evidence forms suggest it was only in or around 2008 that gates began to be locked and fencing erected and locked. On balance therefore during the relevant period 1988-2008 it is suggested that the public footpath was usable by the public without force or obstruction and during the period 1973-1993 the position remains as was detailed in the report appended dated 26 September 2001.

The majority of the claimed route bar section A-B and H-I-X is in the ownership of the Canal and River Trust and British Waterways. The section of land X-G-Z and G-Y was owned by the leaseholder Glasston Basin Yacht Company but was transferred to British Waterways Marinas Limited on 26/06/06. Section H-I-X was only transferred to Barbara Latham in 2011 from the Canal and River Trust. Section A-B is in the ownership of Lancaster City Council.

Therefore, for the sections owned by the Canal and River Trust and British Waterways regard will need to be had of Section 57 of the British Transport Commission Act 1949 which provides that, "As from the passing of this Act no right of way as against the Board shall be acquired by prescription or user over any road footpath thoroughfare or place now or hereafter the property of the Board and forming an access or approach to any station goods-yard wharf garage or depot or any dock or harbour premises of the Board". Committee are advised that the Canal and River Trust have stated that they do not seek to put forward an argument to rely upon this section.

Section 22 of the British Waterways Act 1995 does place a duty on the Canal and River Trust to have regard to the desirability of preserving for the public any freedom of access to towing paths and open land and especially to places of natural beauty and to also have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest. This therefore suggests that there was a duty to ensure the public had access to the towpath (route 3) and that this was maintained, suggesting permissive use by the public for route 3 points K-L-M-N shown on the plan.

The applicant provided a letter addressed to her from British Waterways Marinas Limited explaining that their proposals are to develop the marina into a leisure and tourism destination as well as a thriving marina business which will include increased moorings around the basin and a caravan park on existing land, the docks purpose will therefore centre around a means of tourism and to act as an income stream.

The Transport Act 1947 defines harbour and dock as follows:

**'harbour'** means any harbour, whether natural or artificial and any port, haven, estuary, tidal or other river or inland waterway navigated by sea-going ships, and any dock

**'dock'** includes any pier, jetty or other place at which ships can ship or unship goods or passengers

The proposed development above will still mean the dock is used to unship passengers therefore, the majority of the claimed route is affected by S.57 British Transport Commission Act 1949, as the routes are forming an access or approach to Glasson Dock. It therefore needs to be established that for the relevant period under consideration, the claimed route was in the ownership of the Canal and Riverside Trust or a predecessor body and that it fell within the definition of the Act. From having looked at the land registry title documentation, it appears that the land has been in the ownership of the relevant bodies for the purposes of the 1949 Act during the relevant periods under consideration. S.57 of the British Transport Commission Act 1949 is applicable to the majority of the claimed route and would prevent subsequent dedication under s.31 of the Highways Act 1980 Act and also at common law for the claimed route bar section A-B which is land not owned by the above bodies.

Section A-B currently leads to Glasson Dock play area which Lancaster City Council have confirmed was only set up as a play area in 2007. Section A-B therefore during the majority of the relevant period did not lead to a place of public resort therefore, it is not possible for dedication to be inferred under common law as a one year period 2007-2008 is not sufficient to infer dedication. Committee is also advised that it is not possible to accept this section as a cul-de-sac route under s.31 of the 1980 Act as a cul-de-sac route would mean that you would turn back on yourself after using section A-B which has not been the case here hence it is not possible for dedication to be inferred or deemed for section A-B.

## **Conclusion**



Taking all the evidence into account, it is advised that the dedication of the claimed route as a public footpath should not be accepted by Committee.

### **Risk Management**

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

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

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

Paper	Date	Contact/Tel
All documents on Claim File Ref: 804/519 & 804/555	Various	
Reason for inclusion in Part II, if appropriate		
N/A		

**REGULATORY COMMITTEE**Meeting to be held on 26<sup>th</sup> September, 2001**Part I – Item No. 2**Electoral Division affected:  
-Lancaster Rural South**WILDLIFE AND COUNTRYSIDE ACT 1981**

- A) CLAIMED PUBLIC FOOTPATH FROM SWING BRIDGE, TITHEBARN HILL, TO SCHOOL HOUSE, MARSH LANE, GLASSON, THURNHAM, LANCASTER CITY
- B) CLAIMED PUBLIC FOOTPATH FROM SCHOOL HOUSE, MARSH LANE, TO MARSH LANE AND BROWS BRIDGE, GLASSON, THURNHAM, LANCASTER CITY
- C) CLAIMED PUBLIC FOOTPATH FROM SWING BRIDGE, TITHEBARN HILL, TO BROWS BRIDGE, GLASSON, THURNHAM, LANCASTER CITY

**CLAIM NO. 804/361**

(Appendix 'A' refers)

Contact for further information: S P Southworth, 01772 263430, Resources Directorate  
Mrs A Taylor, 01772 264608, Environment Directorate

**EXECUTIVE SUMMARY:**

The claim for a public footpath: -

- a) from Swing Bridge, Tithebarn Hill, to School House, Marsh Lane, Glasson, Thurnham, Lancaster City; and
- b) from School House, Marsh Lane, to Marsh Lane and Brows Bridge, Glasson, Thurnham, Lancaster City; and
- c) from Swing Bridge, Tithebarn Hill, to Brows Bridge, Glasson, Thurnham, Lancaster City,

to be added to the Definitive Map and Statement of Public Rights of Way in accordance with Claim No. 804/361.

**RECOMMENDATION**

That the claim for the addition of three public footpaths to the Definitive Map and Statement of Public Rights of Way in the vicinity of the Leeds Liverpool canal and basin at Glasson Dock, Lancaster City, Claim No. 804/361, be not accepted.

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### **BACKGROUND:**

A claim has been received for: -

- a) a footpath extending from a point at the Swing Bridge, Tithebarn Hill, in a general south-south-westerly direction to a point adjacent to the School House, Marsh Lane, Glasson, Thurnham, a distance of approximately 450 metres, and shown between points A - B on the attached plan, (GR. 4450 5608 to 4441 5573); and
- b) a footpath extending from a point adjacent to the School House, Marsh Lane, in a general north-easterly, then south-easterly direction to a point at Brows Bridge, Glasson, Thurnham, a distance of approximately 650 metres, and shown between points B - C - D - E on the attached plan, (GR.4441 5573 to 4496 5585), with a link in a general south-south-easterly direction to Marsh Lane, a distance of approximately 120 metres, and shown between points D - F on the attached plan, (GR. 4473 5585 to 4478 5574); and
- c) a footpath extending from a point at the Swing Bridge, Tithebarn Hill, in a general south-easterly direction to a point at Brows Bridge, Glasson, Thurnham, a distance of approximately 500 metres, and shown between points J - H - G on the attached plan, (GR. 4454 5610 to 4496 5587),

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

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### **CONSULTATIONS:**

#### **Lancaster City Council**

The Chief Engineer comments that sections of the claimed routes are potentially dangerous, being immediately adjacent to deep water and through a busy boat-yard. Although he understands that this does not invalidate a claim, there are serious safety implications should these become rights of way. With regard to the eastern section of the route from Swing Bridge to Brows Bridge he wonders if British Waterways generally take steps to avoid the towpath being claimed a right of way?

On an inspection on the 14<sup>th</sup> March, 2000, plastic safety fencing had been fixed to prevent access to the path at Swing Bridge. Similarly, to the south of Swing Bridge, there was a locked gate to prevent access to this area.

On Marsh Lane there is a sign indicating the marina as 'private', and further north on that link there is a security gate which is apparently locked after normal working hours. Near Canal Cottage there is a locked gate. Finally, the route from the Canal Cottage to Brows Bridge is heavily overgrown in places, blocking the path, and would appear to have been the case for a considerable time.

## **Thurnham Parish Council**

The Parish Council has no particular objection to this scheme, but would point out that: -

- i) There is a gate by the weir on the path from the Swing Bridge to School House which is kept locked, and has been for some time;
- ii) There is a gate at the end of the path from School House to Brows Bridge, where the path enters the roadway at Brows Bridge. This has been locked for at least ten years, probably for far longer;
- iii) There may be potential danger for children if they use the path from the Swing Bridge to School House on their daily journeys to and from the school.

## **Claimant/Landowners/Supporters/Objectors**

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in **ADVICE – Resources Director’s Observations**.

## **ADVICE:**

### **Environment Director’s Observations**

- a) Claimed public footpath from Swing Bridge, Tithebarn Hill, to School House, Marsh Lane

### **Description of claimed route A – B**

The claimed route starts at Tithebarn Hill at point A on the attached plan. At this point, there is a metal fencing barrier on the southwest side of the traffic lights controlling traffic over the swing bridge. In this fencing there is a gateway approximately 1 metre wide to the west of point A. There is a British Waterways sign on this referring to ‘no unauthorised persons’. The barrier appears to have been erected recently and at the time of inspection the gate was unlocked, although there was a padlock in position. The surface is tarmac which extends from the footway and is in good condition. To the south of this there is a British Waterways compound which is enclosed by a high stone wall. From the corner of this wall there is orange barrier mesh running towards the lock gates to prevent public access to the gates.

After the barrier is passed the claimed route is to the southeast and is alongside the stone compound wall where there is a lifebuoy and a British Waterways notice mounted on the wall. The route has a macadam surface, approximately 1.5 metres wide, with large shrubs planted along the eastern side. After approximately 20 metres this path turns to the southwest alongside the quay, approximately 3 metres wide and unfenced to the basin, with the stone wall to the northwest. It is surfaced with large stone blocks which form the quayside with a concrete path alongside. Part way along this section

there is a metal mooring ring set in the concrete. The stone wall surrounding the British Waterways compound has large openings in it which have been blocked up by high metal fencing fastened to the stonework. This fencing appears to be of a similar age to the barriers noted at the start of the route. At the corner there is a stone gatepost on the landward side with a metal post with a brace on the basin side. The gatepost has a hinge bracket on it but there is no sign of a gate on site. There is a large outfall for the basin in the corner extending from the stone wall in the corner. A high metal fence reaches out over the water in a 'D' shape preventing access although there is a locked metal gate within the barrier. At this point there is a concrete fence post at the wall side which appears to have an old hinge bracket in it. At the time of inspection it was not possible to pass this fence.

Approximately 15 metres to the west, there is a Lancaster City Council children's play area. This extends to the side of the basin and access can be gained to the claimed route from this area. There is a trodden path visible passing through the vertical timber posts at the boundary of the play area along with a timber wicket gate at the rear boundary which appears to be very well used.

From the metal barrier the claimed route is over a well-worn path along the grassed area with some stone visible in the bare soil surface. This is in a southerly direction for approximately 6 metres then turning to the west for approximately 8 metres and then south for approximately 35 metres past the access points referred to above from the play area. The claimed route has an open field to the north with several metal mooring posts in the grass. There is a British Waterways notice stating that these are 'visitor moorings' along with a lifebuoy.

The claimed route then turns in a southerly direction and is over a well cut grass surface with a trodden path visible through this. It then turns to the southwest and the path becomes wet and boggy. A drain has been cut across the whole width of the path which has not been back filled, having timber placed for a crossing. After approximately 40 metres there is a concrete block wall which divides the path from the roadway of Pennine View. A considerable amount of garden waste has been emptied onto the land over which the claimed path passes. There is no access provided through the wall from Pennine View onto this route. The path continues as a visible trodden path and turns again to the south passing a mooring at the rear of no. 7, Pennine View. The path continues and the rear boundary fence to no.6, Pennine View has been set back from the fences to both sides although there is still a small banking where the boundary would have previously been. There is then a large tree which partly hangs over the claimed route although access is still available. The route continues down a step and crosses a concrete slipway at the rear of no.5, Pennine View and up the other side where the path continues as a trodden path through the grass. This section is closer to the water than the previous sections as garden waste etc has built up at the side of the wall.

At the end of the basin the path continues over the grassed area and passes around a tree, then to the side of the stone School House over a macadam and concrete path. This leads to an area of forecourt and footway to point B on Marsh Lane, which is used for car parking. This is also the westerly end of part (b) of this claim.

In summary therefore, access to the path in the area of the British Waterways compound, both at the swing bridge and at the rear of the play area, is prevented by metal fences. These are the only points where the claimed route cannot be used and only for a distance of approximately 55 metres. The notice placed on the barrier at the side of the swing bridge is also designed to prevent access to both this claimed path and also to the other British Waterways property in this area. There is an alternative means of gaining access to the route from Tithebarn Hill by passing through the City Council's children's play area. This does however, restrict users of the path as there is a restriction preventing dogs using the play area.

The remaining length is available for use and there is a clearly visible trodden path through the grass surface. The only restriction is the garden waste which has been deposited on certain parts of the claimed route and by the over-hanging tree towards the southern end of the route. At point B cars were parked on the wide footway in front of the school. This only caused a small problem in gaining access and then only during school time.

**b) Claimed public footpath from School House, Marsh Lane to Brows Bridge, with a link to Marsh Lane**

**Description of claimed route B – C – D – E**

The claimed route starts at point B on Marsh Lane at the School House where the macadam footway extends to the buildings and is used for car parking. This is also the southerly end of part (a) of this claim. The claimed route then follows a macadam and concrete path around the end of the building.

The route continues over a well-trodden path through a grassed area with brambles and nettles leading towards the basin and turning to the east to follow the visible well-trodden path through an area of woodland. After approximately 80 metres from point B there are two paths for approximately 25 metres. The claimed route is close to the waterside with the other curving approximately 10 metres to the south. These rejoin and continue to point C at the end of the woodland where there is a timber rail fence enclosing the boat yard. There is a gap in this fence approximately 1 metre wide with a notice on the northern side stating '*Glasson Basin Yacht Harbour Private Marina Visitors please report to reception*'. On the southern side of the opening there is a board fastened on the marina side which is blank but appears to have displayed a notice in the past. At the far side of this fence there are two trodden paths visible with one leading to the south over what appears to be filled land, the other following the claimed route extending approximately 25 metres to join the large concrete area alongside the jetties. After approximately 60 metres along the claimed route, at the time of inspection, there was a large ship standing on the claimed line. It was possible to walk further to the northeast before turning to the east to pass around it. After a short distance the claimed route turns towards the north and leads directly to the easterly side of the two large buildings passing point D on the way. This area is very well used by vehicles and boat yard staff as well as boat owners.

From point D, the main route continues to cross the concrete boat yard to the east side of the large buildings, passing materials stored on the side of the building. Part way along the side of the building there is a metal field gate which is easily opened and



beyond this there is a rough grass track approximately 2.5 metres wide between the building and the stone garden wall to Canal Cottage. A trodden path is visible over this length turning to the north onto land at the rear of the boat yard buildings. After a distance of approximately 30 metres from the gateway the claimed route joins the canal side and turns 90 degrees to run in a south-easterly direction.

From this point the route is completely overgrown and blocked by nettles and high brambles for a length of approximately 25 metres to a locked metal wicket/garden gate. This is located between the stone garden wall and a stone gatepost with a section of sloping stonework running down to the edge of the canal. This stone wall appears to have recently built up and the gate is in good condition. It appears to have been recently made and is similar to the garden gate into Canal Cottage at the side of the track.

The next section of the claimed route is over a rough grass strip between the canal and a timber post and barbed wire fence. It appears that mud may have been dredged from the canal and placed on this strip, raising the level. After approximately 90 metres the route passes to the rear of an industrial unit where nettles and brambles grow and trees overhang the route.

As Browns Bridge is approached a slope leads up to a flight of 8 steps to the road at point E. At this point there is an open timber gate with a stone gatepost on the southern side. On the northern side there is what appears to have been an old timber gatepost lying down with a tree grown over it.

#### Description of linking path D - F

From point D the claimed route crosses another part of the boat yard and then follows the macadam access road approximately 3 metres wide with brick edgings. After a distance of approximately 60 metres there is a high metal security gate that extends, by way of a mechanical sliding gate, across the access road.

At the time of inspection this was open although there are card access machines to both sides of the gateway for use by berth holders to gain access.

The macadam roadway continues for a further 60 metres approximately with a stone turning area and stone strip to the east side of the road with sheep netting and barbed wire fence to the field side. At point F the claimed route opens out onto Marsh Lane with a Yacht Club sign to the westerly side.

In summary, the length B-C is through woodland where there is a very well trodden path and signs that the area is used as a playground by children. Beyond the fence at point C there is a visible path running to the southeast which is not part of this claim. The trodden path of the claimed route is only visible for a short distance from the gap in the timber fence to the concrete boat yard surface. The length from here past point D, to the metal field gate at the side of Canal Cottage is through the boat yard. Many boats and vehicles are in the area and there is no possibility of evidence of a used route.

The section from the metal gate to the canal has a visible path through it although this could have arisen from use of boat yard premises. The part of the claim in front of Canal Cottage is completely obstructed by surface growth and a locked gate. The claimed route can then be followed with little difficulty over a rough surface and under overhanging vegetation.

The length D - F is obstructed by a sliding gate in the security fence half way along its length. This gate was open at the time of inspection. Berth holders and authorised personnel have magnetic cards which allow access when the gate is locked.

**c) Claimed public footpath from Brows Bridge to Swing Bridge, Tithebarn Hill**

**Description of claimed route G – H – J**

The claimed route starts at point G on Brows Bridge on the northern side of the canal and passes between the bridge parapet railings and an old stone gatepost. It then leads down a flight of 7 steps to a sloping stone path for approximately 15 metres to the point where the canal towpath from the southeast is joined.

The claimed route then continues over the stone surfaced towpath through the grassed area between the canal and the boundary hedge. There is a seat and access to the north to Christ Church. The stone path continues to point H where there is a wide stoned area, used by vehicles. This area has a restricted access via a stone roadway from the B 5290. A stoned path leads from this, past seats. There is a signpost with fingers indicating "*Lune Estuary Path ¼*" and "*Lancaster 5½*" along the access road leading to the promoted recreational footpath and cycleway established over the old railway track; "*Canal Main Line 2½, Lancaster 7½, Garstang 10½*" pointing towards points H and G along the canal towpath to the east; and "*Glasson Basin Glasson Dock ¼*" towards point J.

The claimed route follows this stoned path through the mown grass to the corner of the basin where it continues alongside of the waters edge with the stoned car parking area behind timber rail fence approximately 6 metres to the north. After approximately 200 metres the stone path joins a stoned car parking area at the side of "*Lock Keepers Rest*" café. The claimed route crosses this to point J where it joins the road approximately 25 metres north east of the swing bridge and approximately 50 metres from point A.

In summary, the whole of this claimed route is open, easily available and widely used by the public, as are other linking paths, including the canal towpath. The surface is in very good condition and the surrounding area is tidy and kept mown and with seating provided by British Waterways. There are no gates, stiles, notices or obstructions on any part of this route.

A variety of maps, plans and historical documents were examined to establish when the claimed routes came into being and to obtain any information which would help determine its status.

All the claimed footpaths are located around the canal and basin which seem to have been constructed about two hundred years ago, but there is no map evidence to show that any of the claimed footpaths existed before the 1890s.

The first edition of the 25-inch Ordnance Survey map (1891) shows a footpath following the western side of the basin corresponding to the claimed route (a), joining the new development of Glasson Dock with the school. The footpath is shown as being crossed by solid lines in three places, which would indicate that there were fences, walls or hedges across the path. Access may well have been possible by means of stiles or gates as the route is shown on the map as a footpath. Route (b) is only shown in part on this map – there is access to buildings on the basin along the link path from Marsh Lane (D – F) and from Canal Cottage to Brows Bridge. This latter length of path is shown as a footpath, although obstructed in two places by fences or hedges. The third part of the claim, route (c), is shown alongside the canal and basin. There appears to be a gate or similar obstruction adjacent to Christ Church but otherwise appears available for use.

Subsequent editions of OS maps show the routes in much the same way until the 1971 25-inch map. This map shows that routes (a) and (c) could be used at that time but the whole of route (b) as claimed is not shown. Only parts of route (b) is on this map, namely the access to the boat yard (D – F) and the path from Brows Bridge to Canal Cottage.

No other maps or documents consulted provided any additional information to help determine the claim, other than the maps produced in preparation of the Definitive Map.

The parish survey for Thurnham showed and described route (a) as Public Footpath no. 43 and route (c) as Public Footpath No. 1. These paths were also shown on the Draft Map for Lancaster Rural District, but were absent from the Provisional Map and all subsequent maps produced in preparation of the current Definitive Map. There is no record as to why these paths were deleted from the Draft Map for Lancaster, but it is presumed that they removed from the map as a result of a number of successful objections to canal-side paths by British Waterways in other parts of the County.

#### **Resources Director's Observations**

In support of the claim a petition, headed 'Registration of Footpaths around Glasson Basin as permitted by Wildlife and Countryside Act 1981' has been submitted bearing 73 signatures. The petition asks that any villagers who have had uninterrupted use of the paths, until the recent closures, to indicate their period of use of the routes.

The petitioners have indicated use of the route for 60-69 years (5); 50-59 years (11); 40-49 years (6); 30-39 years (10); 20-29 years (14); 10-19 years (14); less than 10 years (11); and two petitioners do not specify the period of use.

The claimants submit that, prior to 1930, local knowledge, reference books, and Local Authority maps show an established use back to the early 1800's.

A further letter of support for the claim has been received from a resident of Wyresdale Crescent, whose property runs down to one of the claimed paths, and who states that it has been used by his family and himself for over 40 years.

A resident of Pennine View welcomes the claim for a Definitive Map Modification Order, but offers no evidence.

An objection to the claim has been submitted by British Waterways.

The majority of that section of the claimed route from the School House to Brows Bridge, with a link to Marsh Lane, passes over land comprised within the lease dated 1981 to the Glasston Basin Yacht Co Ltd. A lease dated 1<sup>st</sup> November, 1968, comprising the same area of land predates the 1981 lease.

By the term of the lease Glasston Basin Yacht Co Ltd enjoy sole and exclusive possession of the site and are covenanted to prevent any encroachment or acquisition of rights over the demised premises. As landlords British Waterways object to that section of the route over the leased property and any use has only been enjoyed by permission from their leases.

In addition they would question the nature of the public's use. It is their opinion that such use has not been by the public at large but by customers of the Yacht Company and local residents who have been granted permission from time to time. It is pointed out that the applicant submitting this claim has until recently been a customer of the Yacht Company, and has in the past been granted mooring rights for his boat at the Yacht Club. They would, therefore, argue that the actual right and enjoyment has not been open but by permission and has been challenged by their lessee.

They add that the section of that route from Canal Cottage to Brows Bridge, and the northernmost section of the claimed route from Swing Bridge to School House, are, and have been for a considerable time, obstructed by locked gates, fences and hedges.

Accordingly due to the fact that such routes have not actually been enjoyed and the existence of physical obstructions British Waterways wish to object to these routes.

British Waterways has no objection to the majority (southernmost) section of the claimed route from Swing Bridge to School House, and the westernmost section of the claimed route from School House to Brows Bridge, subject to the primary needs of the Lancaster Canal Navigation (Grand Junction Canal Co -v- Petty 1881) and such limitations as are apparent to comply with their statutory obligations.

That section of the claimed route from Swing Bridge to Brows Bridge passes over the canal towpath. It is their belief that this route is of a permissive nature and that no implied or presumed dedication either at common law or under S31 of the Highways Act 1980 has occurred.

The Glasston Basin Yacht Co. Ltd. has itself submitted an objection to the claim.

They state that the proposed route from Brows Bridge alongside the canal to Canal Cottage was originally the sole access path for the tenants of Canal Cottage or anyone who wished to visit there. The property has been uninhabited for approximately ten years and the canal bank is totally overgrown and impassable. There is one gate which is normally locked at Brows Bridge and one gate (original c.1840) adjacent to the cottage which has been permanently locked for the last five years. They are the owners of this property and allow access only to British Waterways Board staff for maintenance of the canal.

The central section of the claimed route from School House to Brows Bridge, with link to Marsh Lane, is used for their boatyard business. There has always been a private sign on the road entrance to the premises and there have been signs asking visitors to report to reception for several years. Access from the other end of proposed route is quite difficult and there is no clear throughway between the two points.

They are particularly concerned about the safety aspect of unlimited access to a working area. They lift boats up to 35 tons in a mobile hoist which then moves to various parts of the yard. They also crane out tall (80 ft) and extremely heavy (1 ton) masts from boats which are then transported across the yard with the aid of a forklift truck to their covered area.

Vessels when stored on the hardstanding are either supported in cradles on trailers or on chocks. Any unsuspecting member of the public, particularly a child, who interfered with the supports, could suffer serious injury. They have had incidents of people interfering with vessels and these have been reported to the local police.

They would also point out that the water adjacent to the concrete area is 8 to 9ft deep which could be dangerous for any unsupervised children.

Two residents of Pennine View have also submitted objections on the grounds that over the past 24 years and 10 years respectively they have deterred members of the public from using the route at the bottom of the gardens, i.e. the claimed route from Swing Bridge to the School House, and informing them that this path was private for use only by British Waterways and the residents, and not a public right of way.

They add that the village of Glasston is comprised of approximately five hundred inhabitants; most people are either friends, acquaintances or at least known by sight and these local people have not been denied access along the path, in fact during the winter months when the path has been so muddy to become impassable, they have allowed them to walk through their gardens. Also, there are several occasions during each year when the path is shut-off completely.

They also make a number of other objections on the grounds of safety of those using the routes, adverse affect on property values, adverse affect on wildlife, security, loss of privacy.

These objections, however, whilst important to those making them, are amenity objections and are, therefore, irrelevant to the issue of whether or not the paths exist in

law.

### **Assessment of the Evidence**

#### **The Law (see Appendix 'A')**

##### **a) In support of the claim**

Map evidence supports part of claim (b) and all of (a) and (c).

Evidence of use supports the application.

##### **b) Against accepting the claim**

Map evidence is not conclusive. Routes (a) and (c) were successfully removed from the Draft Map in 1956.

The user evidence is in the form of a petition, and gives no indication of which route or routes each petitioner used or over what period. In addition the users do not state whether or not they saw notices along the route indicating it was private and give no indication as to whether or not they encountered gates along the route, or whether their use was with permission or not.

Route (a) is obstructed by a locked gate and fence, and displays signs against non-authorised access; route (b) is obstructed by locked gates and displays private signs.

Land was leased by British Waterways to the yacht club from 1968, one of the terms of the lease being that the club should prevent acquisition of rights through the premises.

Use by the public has been allowed on a permissive basis by British Waterways on route (c).

### **Conclusion**

The application is to modify the Definitive Map by the addition of three public footpaths in the vicinity of Glasson Dock in the parish of Thurnham, Lancaster City. The Committee must be satisfied that the available evidence shows, on the balance of probabilities, that three rights of way, ie footpaths, which are not shown in the Map and Statement subsist or are reasonably alleged to subsist.

There is considerable user evidence in support of the claim, some for a considerable period of time. Documentary evidence in the form of Ordnance Survey maps, show that most of the routes have been available for use since the turn of last century. However, two of the routes were successfully removed from the Draft Map in 1956 and thus the time period for computing the period of public use as of right should not pre-date that time for those two paths.



Where there is evidence of public use of a route, dedication of the route as a highway can be inferred at common law, if all the circumstances clearly and unequivocally point to an actual intention on the part of the landowner to dedicate or, under Section 31 of the Highways Act, 1980, dedication may be presumed, from 20 years use by the public as of right and without interruption. In both cases dedication can be rebutted by evidence that the landowner has denied the public's right to use a route, eg by physically blocking it, turning people off the route or erecting notices indicating the route is private. The 20-year period for a statutory presumption of dedication is computed back from the date the existence of the right of way is called into question in this instance this could be when the claim was made in 1999. There is no minimum period of use necessary for an inference of dedication at common law.

In this case there have been attempts by landowners and their tenants to prevent public access by the use of locked gates, fences and signs. Whilst there is on initial sight considerable evidence of use of the routes, the evidence does not specify the length of use and route taken, and nor is it inconsistent with use at various times by permission rather than as of right. Nor does it identify whether the use was to access premises or moorings along the route.

In reaching its decision the Committee must have regard to the recent decision of the Court of Appeal in the case of R – v – Secretary of State for Wales ex parte Emery, the details of which are contained in Appendix A.

However, the Committee may consider the evidence of use is insufficient to outweigh the evidence of interruption, obstruction and permission, and may consider the claim should not be accepted.

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**ALTERNATIVE OPTIONS TO BE CONSIDERED** N/A

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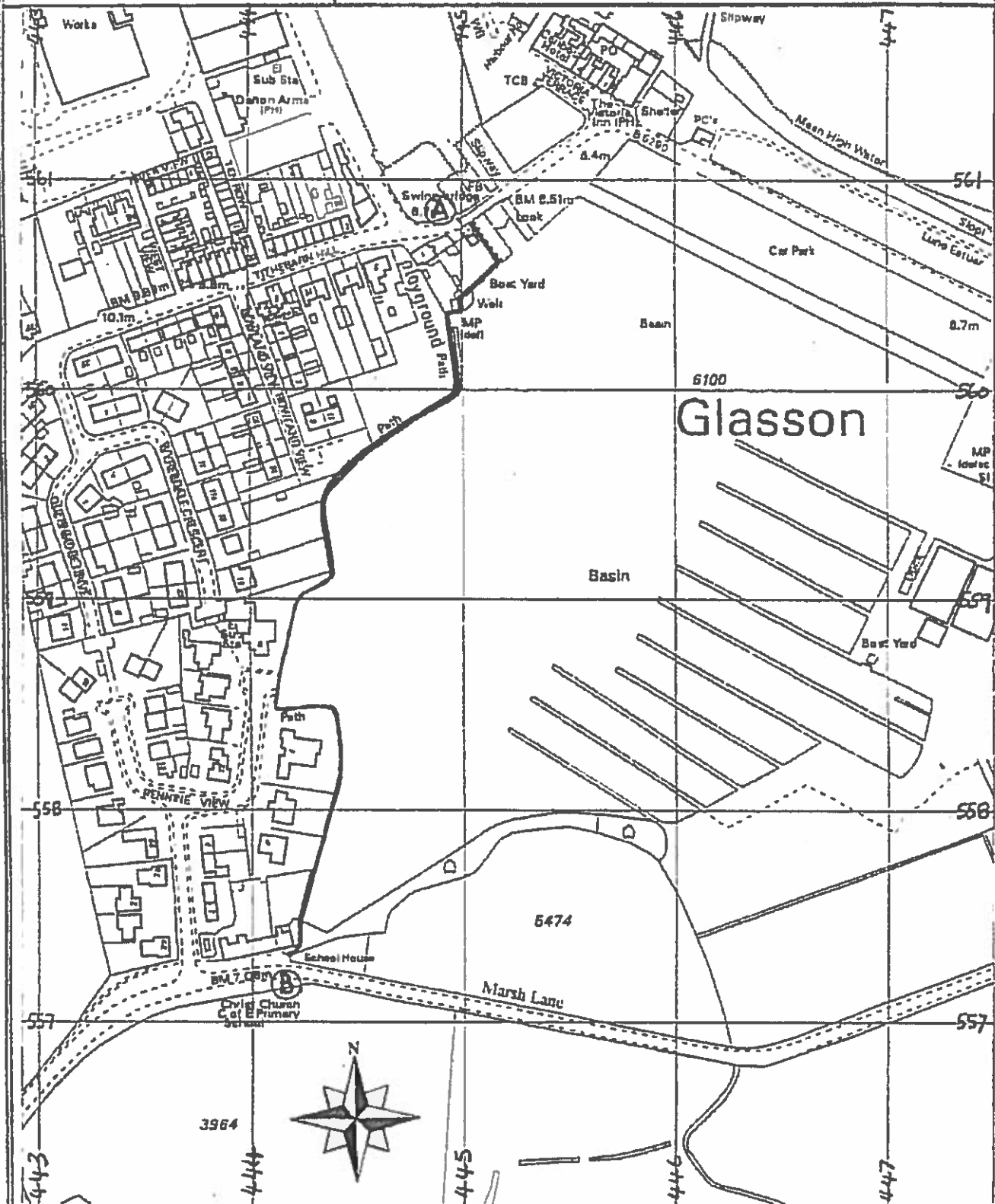
**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**  
**LIST OF BACKGROUND PAPERS**

<u>Paper</u>	<u>Date</u>	<u>Contact/Directorate/Ext</u>
All documents on Claim File Ref: 804/361		S P Southworth, Resources Directorate, 3430



Wildlife and Countryside Act 1981  
Claimed Public footpath from Swing Bridge, Tithelbarn Hill,  
Glasson to School House, Marsh Lane, Glasson,  
City of Lancaster  
CLAIM No. 804/361(a)

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



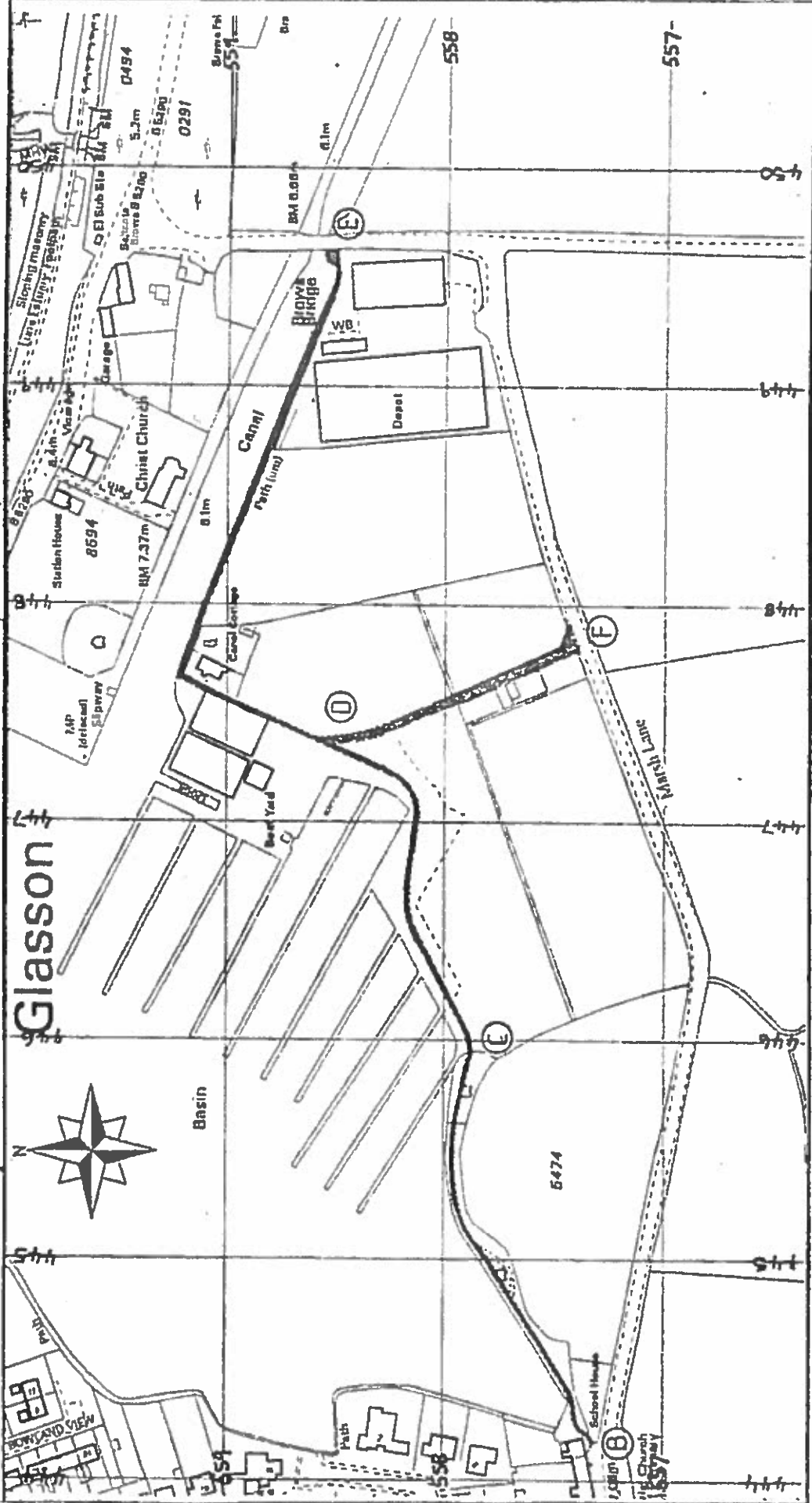
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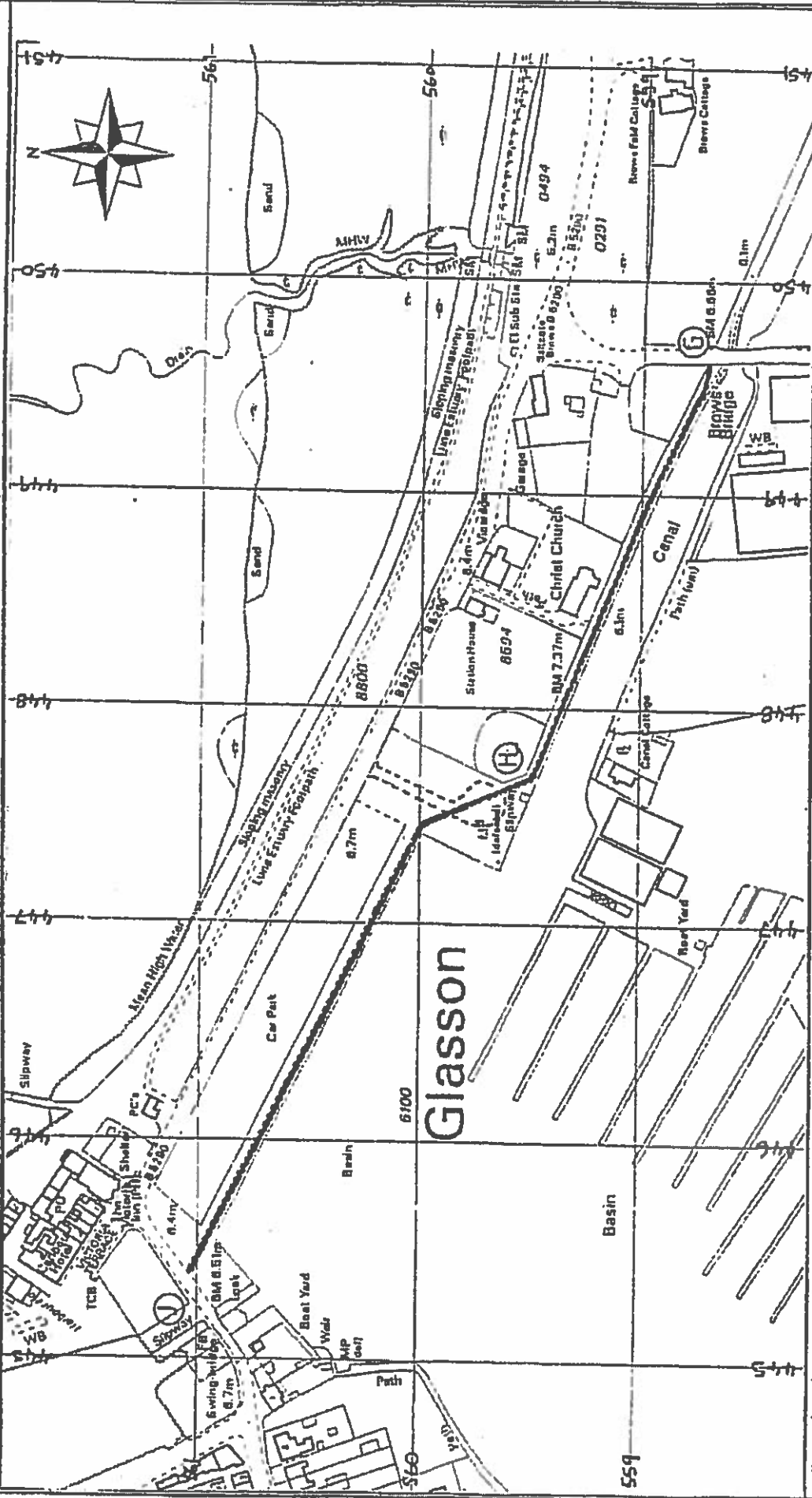
Part of Sheet No.



Wildlife and Countryside Act 1981  
Claimed Public Footpath from School House, Marsh Lane, Glasson  
to Marsh Lane and Browns Bridge, Glasson, City of Lancaster  
CLAIM No. 804/361(b)

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









GOVERNMENT OFFICE  
FOR THE NORTH WEST

APPENDIX B

Mr R Wilson  
Impulse  
Glasson  
Lancaster  
LA2 0BX

Our ref: PNW 5063/529/38

Sunley Tower  
Piccadilly Plaza  
Manchester M1 4BE  
Direct Line: 0161 952 4  
Fax: 0161 952 4099

14 August 2002

Dear Mr Wilson,

**WILDLIFE AND COUNTRYSIDE ACT 1981, SECTION 53 AND SCHEDULE  
14:  
APPEAL AGAINST LANCASHIRE COUNTY COUNCIL'S DECISION NOT  
TO MODIFY THE DEFINITIVE MAO BY ADDING THREE FOOTPATHS  
AT GLASSON BASIN, LANCASTER.**

I am directed by the Secretary of State for the Environment, Food and Rural Affairs to refer to your appeal under Section 53 and paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against a decision by Lancashire County Council not to make an order modifying their Definitive map and Statement by adding three footpaths around Glasson Basin:-

- (a) from the Swing Bridge, Tithebarn Hill, to School House, Marsh Lane. (Point A on Map 1 to point B.)
- (b) from School House, Marsh lane, to another point along Marsh lane and to Brows Bridge. (Point B on Map 2 attached through points C and D and then on to points E and F.)
- (c) from Brows Bridge to the Swing Bridge, Tithebarn Hill. (Point G on Map 3 through point H to point J.)

All representations made in support of your appeal have been carefully considered together with those of Lancashire County Council and all of the interested parties..

**Appellant's case**

You base your claim on evidence of use of the footpaths in question. You have submitted a petition with 72 signatures. Of the signatories, 47 has used the paths for more than 20 years prior to 1999 when the use of the paths was disputed, 23 had used them for less than 20 years, and 2 did not make clear how long they had been using



INVESTOR IN PEOPLE





the path. You have also submitted 34 Public Rights of Way Evidence Forms showing that 19 people had used the paths for over 20 years. These forms showed that the paths were unobstructed and that the right to use the paths was never challenged. You say that use of the paths has not been restricted to the yacht company customers or to local residents. You say that this evidence shows an established use, as of right, going back to the 1930s. You add that prior to 1930, local knowledge, reference books and local authority maps show an established use going back to the 1800's.

You say that the obstructions identified in the Council's statement were only put in place in 1999, when you first submitted your application for a modification of the definitive map.

A further letter of support has been received from a local resident who says that his family have used the paths for over 40 years.

### **The Council's case**

Lancashire County Council say that there is considerable user evidence in support of the claim. However this evidence does not specify which parts of the paths were used. They say that this evidence is not inconsistent with use by permission instead of by right. They also say that there have been attempts by landowners and their tenants to prevent public access to the paths by locked gates, fences and signs.

British Waterways have objected to the claim.

British Waterways say that the majority of the land over which the claimed path (ii) runs is land which they have leased to the Glasson Basin Yacht Co Ltd. This is marked with red dots on Map 4. The Yacht Company is covenanted to prevent any encroachment or acquisition of rights over the premises. As landlords, British Waterways object to this section of the path being made a public right of way, and say that any use has only been by permission. They also question whether the public at large has been using this part of the path as it could only have been used by customers of the yacht company or by local residents on a permissive basis. They also say that this section of the path has been obstructed for a considerable time by locked gates, fences and hedges. However they have no objection to the public using the section of path (ii) between School House and the Yacht Company premises, marked with blue dots on Map 4, subject to the primary needs of the Lancaster Canal Navigation.

Glasson Yacht Co Ltd has also objected. They say that there are gates on the route and that they only allow access to British Waterways staff for the maintenance of the canal.

British Waterways say that footpath (iii) passes over the canal towpath. This is marked yellow on Map 4. They say that any use of this route is of a permissive nature and that no implied or presumed dedication can be assumed either under common law or under S.31 of the Highways Act 1980. They add that S.57 of the British Transport Commission Act 1949 states that no rights of way can be claimed over British Waterways' property.

British Waterways do not object to the use of most of path (i) shown with blue dots in Map 4. However they do say that the section marked in red has been obstructed for a considerable time by locked gates, fences and hedges.

The Council says that two residents of Pennine View have submitted objections saying that they have deterred members of the public from using path (i) at the bottom of their gardens, informing them that the path was for use by British Waterways and the residents and was not a public right of way. They have also said that as most local people know each other they have not denied them access to this path.

The Council says that there have been a number of objections on amenity and safety grounds, but that these are not material to establishing whether a public right of way exists in law.

The Council has also looked at the documentary evidence. OS maps from 1891 to 1971 show paths (i) and (iii) and parts of path (ii) giving access to the boat yard from Marsh lane and the section between Canal Cottage and Brows Bridge. The parish survey for Thurnham showed paths (i) and (ii). These were also shown on the Draft Map for Lancaster Rural District, but were absent from the Provisional Map and all subsequent maps produced in preparation of the definitive Map. There is no record of why these maps were deleted from the Draft Map for Lancaster, but it is presumed that they were removed as a result of a number of successful objections to canal-side paths by British Waterways in other parts of the country.

### Appraisal

All representations submitted for and against this appeal have been carefully considered. It is up to the appellant to demonstrate that there is evidence that shows that a right of way, which is not shown on the Definitive Map, either subsists or can reasonably be said to subsist. The Secretary of State can only consider that case on the evidence currently before her.

In making an application for an order to amend the Definitive Map, it is for the applicant to prove that the Definitive Map is in error by the discovery of evidence, which when considered with all of the other available evidence, shows that a mistake was made when those right were first recorded. Both parties should accept that the decision should be on the balance of probabilities, taking all relevant evidence into account, in accordance with the advice set out in paragraph 13 of Annex B of Circular 2/93.

The Secretary of State has first considered the documentary evidence. No documentary evidence was submitted in support of your appeal, but the Council did examine the documentary evidence that was available. Paths (i) and (iii) and parts of path (ii) are shown on OS maps, but this can carry little weight in the Secretary of State's consideration of the case as OS maps only show what is on the ground and do not show the legal status of the route. However the Secretary of State has taken into account the fact that paths (i) and (iii) were removed from the Draft map in 1956.

The Secretary of State has considered the considerable user evidence you have submitted which aims to show that the paths have right of way status. Under Section

31 of the Highways Act 1980, a public right of way is deemed to exist if not less than 20 years use has been enjoyed by the public as of right without interruption unless there is sufficient evidence that there has been no intention during that period to dedicate it. The 20 year period is calculated retrospectively from the date when the public's right to use the route was brought into question. The relevant date in this case is 23 November 1993, the date of your application to Lancashire County Council.

The Secretary of State considers that, although considerable, the user evidence is not decisive. It does not prove that the paths were being used as of right instead of by permission, nor does it specify which parts of the network of claimed paths were being used.

British Waterways and their tenant, the Glasson Yacht Co Ltd, have made it clear that they had no intention to dedicate a considerable length of path (ii) as a public right of way. This is stipulated in the terms of the lease. The Yacht Company say that they have erected signs to show that this is private property and have locked gates along the claimed route, though you say that the signs and locked gates only date from the time of your claim.

British Waterways have also demonstrated that, under the British Transport Commission Act 1949, public rights of way cannot be acquired over their land involved in path (iii) and so any use must have been by permission.

British Waterways say that the northernmost section of path (i) has been blocked by fences and signs for a considerable period of time, though again you dispute when these were erected. The Secretary of State considers that the evidence is inconclusive on this point.

After careful consideration of all of the evidence and the representations, the Secretary of State has come to the view that, on the balance of probability, there is insufficient evidence to support your claim that the three paths should be added to the Definitive Map and Statement. She hereby dismisses your appeal for the reasons stated above.

A copy of this letter is being sent to Lancashire County Council

Yours faithfully,



A BISHOP



Wildlife and Countryside Act 1981  
Claimed Public footpath from Swing Bridge, Tithebarn Hill,  
Glasson to School House, Marsh Lane, Glasson,  
City of Lancaster  
CLAIM No. 804/361(a) شاذ ٢٦٤

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



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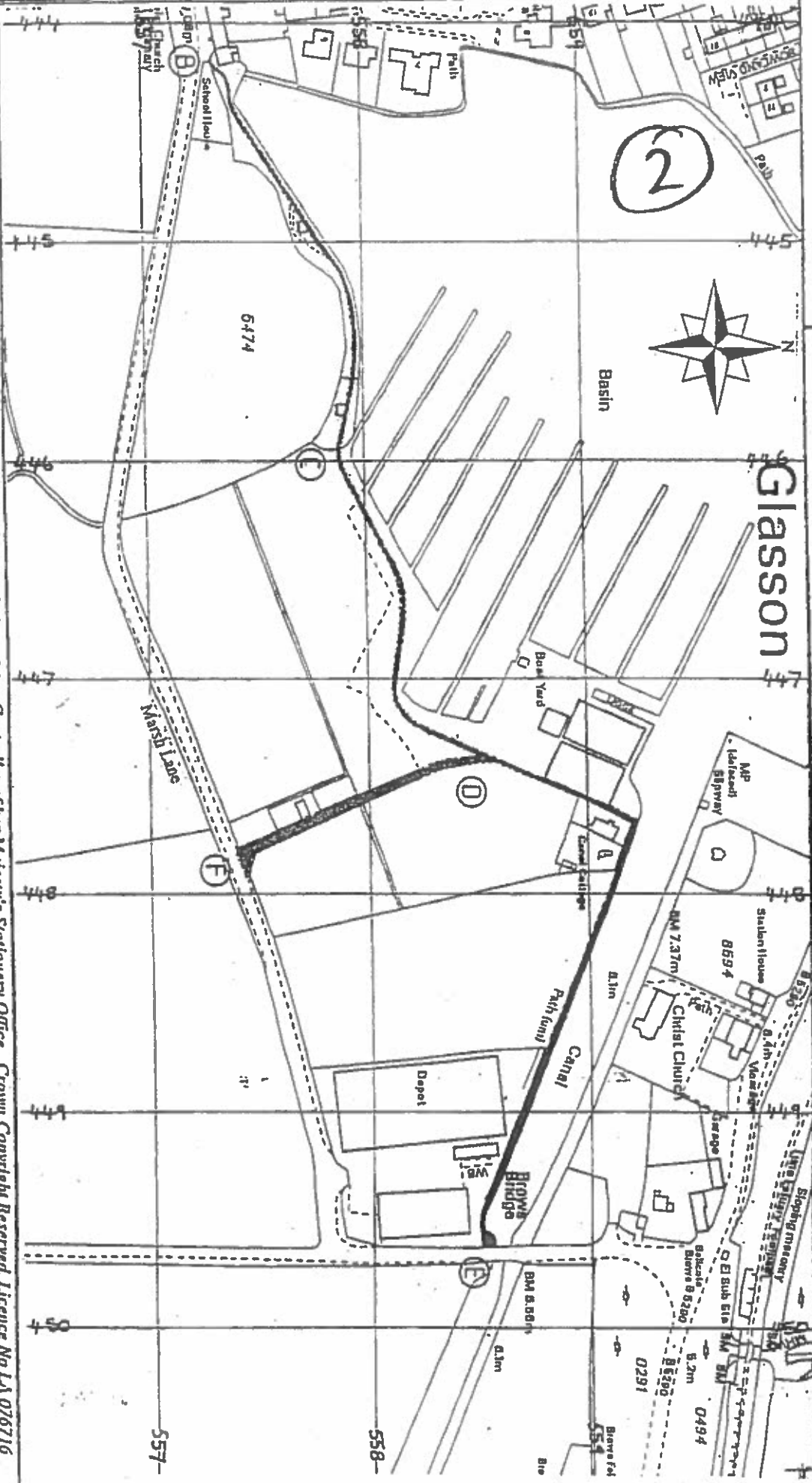
Part of Sheet No.

# Lancashire County Council



Wildlife and Countryside Act 1981  
 Claimed Public footpath from School House, Marsh Lane, Glasson  
 to Marsh Lane and Brouws Bridge, Glasson, City of Lancaster  
 CLAIM No. 804/361 (U)

G. Harding D Eng C Eng FCE, FHE, MIMg. Director, Environment Directorate.  
 P.O. Box 9, Guild House, Cross Street, Preston. PR1 8RD.



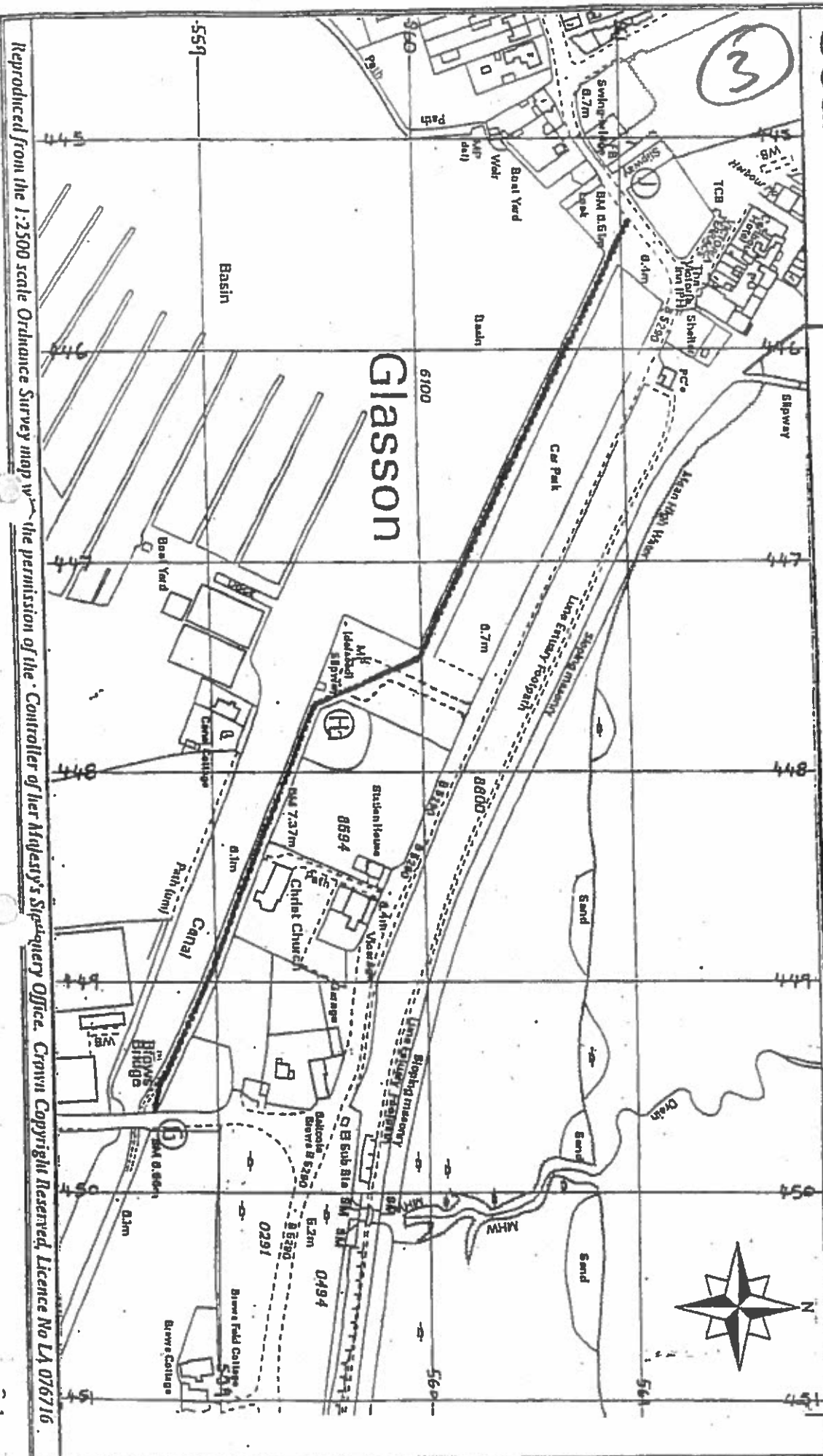
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# Lancashire County Council



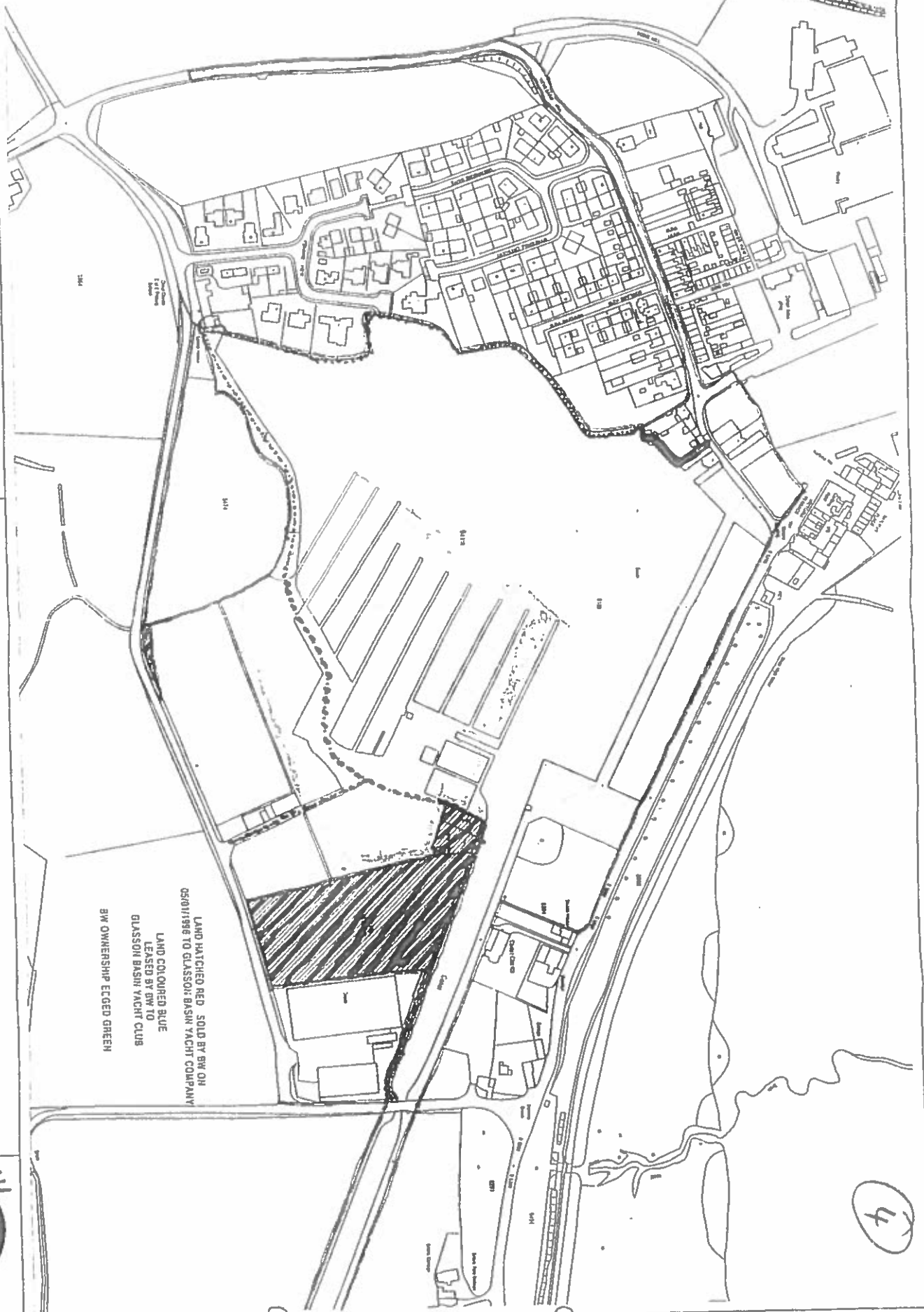
Wildlife and Countryside Act 1981  
Claimed Public Footpath from Swing Bridge, Tildesbrook Mill,  
Glasson to Brown's Bridge, Glasson,  
City of Lancaster  
CLAIM No. 304/361 (c)

G. Harding II Eng CEng FICE, FIMT, MIMMgl Director, Environmental Directorate,  
P.O. Box 9, Guild House, Cross Street, Preston, PR1 8RD.



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## Appeal Decision

by **Helen Slade MA FIPROW**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 22 August 2018

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### Appeal Refs: FPS/Q2371/14A/19 and 20

- This appeal, dated 17 December 2017, is made under Section 53(5) of the Wildlife and Countryside Act 1981 ('the 1981 Act') against the decision of Lancashire County Council ('the Council') not to make an Order under 53(2) of that Act.
- Application 1 dated 17 September 2011 and Application 2 dated 28 January 2014 were both refused by the Council and the applicant was notified by letter dated 13 December 2017.
- The Appellant claims that the Definitive Map and Statement for the area should be modified to show the appeal routes as Public Footpaths.

**Summary of Decision: The appeal is allowed in part.**

---

### Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 to the 1981 Act.
  2. I have not visited the site but I am satisfied that I can make my decision without the need to do so.
  3. Principal submissions have been made by the appellant (Mrs G Chester); by Lancashire County Council; and by Ward Hadaway on behalf of the landowners, the Canal and River Trust ('the Trust') and British Waterways Marinas Ltd ('BWML'). Some other submissions have been received from third parties living locally and adjacent to the appeal routes.
  4. Some disquiet has been expressed by the appellant on the way in which the location of the appeal has been referred to by the Council. For the avoidance of doubt I shall refer, where necessary, to the village as Glasson; the sea-water dock as Glasson Dock ('the Dock'); and the freshwater canal basin as Glasson Basin ('the Basin').
  5. A considerable amount of material has been submitted by the appellant, both at the application stage and the appeal stage, which relates to government and local policy in relation spatial planning and environmental considerations. The Council indicated in its Regulatory Committee Report ('the Committee Report') that most of this material was irrelevant to the consideration of whether or not a public right of way subsists over the claimed routes.
  6. I agree with that assessment and, whilst I accept that some of the information may demonstrate why there is a desire to walk over the claimed
-

routes and thus support why there is evidence of user, in coming to my decision I have not taken account of any of the government or local policy in relation to spatial planning or environmental issues.

### ***The two appeals***

7. The appellant made two applications to the Council for a Definitive Map Modification Order affecting paths adjacent to canal basin at Glasson. The first application was made on 17 September 2011 and was for a route which followed the western and southern perimeter of the Basin to a fence on the boundary of the Marina site, with a short spur to meet School Lane (formerly or alternatively known as Marsh Lane) at Glasson School.<sup>1</sup>
8. The second application was made on 28 January 2014 and was for a series of four identifiable routes which circumnavigate the Basin broadly following the same route which was the subject of the first application but extending it to complete a circular route with two spurs: a short additional one to School Lane at Glasson School and another longer one to School Lane along the access drive to the Marina.
9. The Council was directed by the Secretary of State to determine both applications, and considered them together in one report. Both applications were rejected in the same determination.
10. A similar route to the second application was also the subject of a claim made in 1999 by a Mr Wilson. That application was rejected by the Council in 2001. An appeal against that determination was made to the Secretary of State, and was dismissed on 14 August 2002 on the grounds that there was insufficient evidence to support the claim. The Council reconsidered the evidence submitted in respect of that claim as part of their determination of the two claims by Mrs Chester.
11. I propose to treat this as one appeal against the determination of both Mrs Chester's applications combined.

### ***Discovery of evidence***

12. Ward Hadaway, on behalf of their clients, has questioned whether or not there has been a 'discovery of evidence' in terms applicable to the 1981 Act provisions. I am satisfied that, since the 1999 application, additional evidence of use has been submitted such that an application under Section 53(3)(c)(i) was justified. Furthermore, an application under Section 53(3)(b) does not require there to be additional evidence (see paragraph 17 below).

### ***The routes***

13. The appellant has expressed concern that her application has been rejected by the Council on the basis that it was one circular route, and not four separate routes.
14. The Council has clearly identified the four routes in its Committee Report but I agree that their decision does not clearly distinguish between each one. I intend to examine the case for each route individually, reaching a separate conclusion on each section of the overall circular route.

---

<sup>1</sup> Full name: Thurnham Glasson Christ Church, Church of England Primary School

15. I have relied upon the map produced by the Council for their Committee Report for identification purposes, and use the notation on that plan to describe the routes of the paths below.

### **The Main Issues**

16. The application was made under Section 53(2) of the 1981 Act which requires surveying authorities (such as the Lancashire County Council) to keep their Definitive Map and Statement ('DMS') under continuous review, and to modify them upon the occurrence of specific events cited in Section 53(3).
17. Section 53(3)(b) of the 1981 Act provides that one of those events is the expiration of a period of time during which there has been enjoyment of the route by the public sufficient to raise a presumption that the way has been dedicated as a public path.
18. Another event is set out in Section 53(3)(c)(i) of the 1981 Act which provides that an order to modify the DMS should be made on the discovery by the authority of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land to which the map relates. In considering this issue there are two tests to be applied, as identified in the case of *R v Secretary of State for the Environment ex parte Mrs J Norton and Mr R Bagshaw* [1994] 68 P & CR 402, and upheld in *R v Secretary of State for Wales ex parte Gordon Michael Emery* [1997] EWCA Civ 2064:
- Test A: Does a right of way subsist on the balance of probabilities?
  - Test B: Is it reasonable to allege that a right of way subsists? For this possibility to be shown it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist.

For the purposes of this appeal, I need only be satisfied that the evidence meets Test B, the lesser test.

19. With respect to evidence of use, Section 31 of the Highways Act 1980 ('the 1980 Act') states that where there is evidence that any way over land which is capable of giving rise to a presumption of dedication at common law has been used by the public as of right and without interruption for a full period of 20 years, that way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention to so dedicate during that period. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
20. It is also open to me to consider whether dedication of the way as a highway could have taken place at common law. This requires me to examine whether the use of the route by the public and the actions of the landowners or previous landowners have been of such a nature that dedication of a right of way could be shown to have occurred expressly or, alternatively, whether dedication could be inferred. No prescribed period of use is required at common law; the length of time required to allow such an inference to be drawn will depend on all the circumstances. The burden of proof lies with the person or persons claiming the rights.

21. Section 32 of the 1980 Act provides that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances.

## **Reasons**

### ***Route 1***

22. This route starts on the highway at Tithebarn Hill to the south of the swing bridge (Point A on the map) and runs along a passageway skirting a children's play area to Point B. It then passes a picnic area and runs along the western edge of the Basin in a generally southerly direction for 410 metres to meet the highway at School Lane at Point D, adjacent to Glasson School. It is currently obstructed by a fence at Point C (with no gate) which forms the boundary to an Eco Garden which is being developed on land next to the school and apparently managed by it. The exit to the road at Point D is now through a gate in the garden boundary fence. It does not pass through the school playground at any point.

### ***Route 2***

23. This route starts on the highway at Point D on the map and runs on a slightly different route through the Eco Garden to another gate in the boundary fence at Point E. It then follows the southern perimeter of the Basin through a Plantation and then across the boatyard to meet the Marina access road at Point G, at which point the 2014 Application map shows the route turning south-south-east along the Marina access drive to terminate on the highway at Point J. There is currently a metal palisade fence obstructing the claimed route at Point Y where it enters the boatyard. The Council describes this route in its Committee Report as terminating at Point G and gives the length of this section as about 350 metres. However it is clear from the application that the Appellant considers the route continues to meet the highway at Point J. This would add approximately 100 metres to the overall route. I shall consider the route by reference to the manner in which the appellant originally applied for it. This is important if all four routes are to be treated independently.

### ***Route 3***

24. This route starts on School Lane at Point J and runs north-north-west along the Marina access to Point G and then across the boatyard in a generally north easterly direction. It passes alongside the Marina buildings on the landward side and past Canal Cottage to Point I. It then turns in a south easterly direction running along the southern bank of the Glasson branch of the Lancashire Canal ('the Canal') to reach Brows Bridge via a small wooden gate at Point H, currently locked. There is a metal barrier or gate at Point X and the path is overgrown between that point and its termination on the highway at Brows Bridge. Canal Cottage appears to be derelict. The total length of the route is approximately 400 metres.

### ***Route 4***

25. This route starts on the highway at Brows Bridge to the north of the Canal at Point K and drops down some steps and a slope to meet the towpath. The

route then follows the towpath in a generally north westerly direction for about 490 metres to rejoin the highway at Tithebarn Hill at Point N to the north of the swing bridge.

### ***Additional section***

26. There is a short additional link running between Points C and E and the western end of Route 2, which was claimed as part of the 2011 application by Mrs Chesters, and which has a distance of about 15 metres. It runs along the fence line now formed by the boundary of the Eco Garden. At present, this route does not meet a highway at either end. This will need to be considered in conjunction with Route 1 or Route 2.

### ***Historical Evidence***

#### ***Mapping***

27. The Councils Committee Report contains a tabulated summary of the historical evidence that has been examined, and I principally rely on that.
28. Unsurprisingly, the earliest mapping shows neither the Dock nor the Basin, and therefore provides no assistance to the Applicant. The earliest map to show a feature representing the Basin is Hennet's 1830 map of Lancashire, but the scale is too small to show the level of detail which would assist the appellant, and the Basin appears somewhat smaller than its present configuration. This is in line with its reported original function as a reservoir for the adjacent Docks.
29. The earliest Ordnance Survey ('OS') map of the area, the 1848 6-inch map surveyed during 1844/5 shows the Basin as it is today. This indicates that its potential as an interconnecting route to the Dock had been realised and that it had become a part of the onward transportation system inland. Two cranes marked along the stone edge are evidence of its function in this regard.
30. Part of two of the claimed routes (Routes 2 and 3) is shown to have existed at that time as forming the access to the Store House (Point J to approximately Point G on the 2014 claim, (and possibly Point D on the 1999 claim)). There would also clearly have been access available along Route 4 along the towpath, although it is not clear from the map that there was any access to that route from Brows Bridge.
31. By 1891, the earliest OS map at the scale of 25 inches to 1 mile showed that a path existed (marked 'FP') along the western boundary of the Basin, clearly running south from Point B on Route 1, linking the growing community centred round the Dock to the village school. The link to Tithebarn Hill is not clear, although a route following the 1999 claim across the weir appears to be available. The route of the present claim at that point is less clear.
32. There is no path marked along the line of Route 2, but there appears to be some form of embankment<sup>2</sup> following the edge of the Basin between Points F and G which was followed by Route 2 of the 1999 Application (but is not on the line of the 2014 Application).

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<sup>2</sup> I assume this to be the remnants of the uncompleted dry dock mentioned in some of the historical documentation

33. Part of Route 3 is visible as a path marked 'FP' between Glasson Cottage (now called Canal Cottage) and reaching the road at Brows Bridge, in addition to the section between Points J and G along the access track. The Store House is no longer marked, but the railway has come into being.
34. As with the earlier maps, there must have been a clear route available along the towpath, but the Council indicates that, in their view, there was no link to the road at Brows Bridge<sup>3</sup>. I consider that the map evidence is less clear cut than that. The towpath at this point clearly widens in order to pass under the bridge nearer to the centre of the arch. There is clearly room for a route which might form the slope and shallow steps which are present today. Nevertheless I accept that there is no marking to suggest their presence at that time.
35. Although the railway had arrived and it will have had some effect on the width of the land available at that point, it would not have prevented passage along the towpath which was still necessary for canal purposes. The Survey Card for this claimed route in the 1950s (see paragraph 36 below) describes the route running '*alongside Canal Basin and railway line*' to the towpath proper.
36. This situation as a whole is similarly depicted on the 1913 edition of the same scale map, but the access to Tithebarn Hill on Route 1 is clearly not available on the line of the 2014 and 2011 claims, and this is clearer still on the later 1971 edition of the National Grid series at the same scale. The access to the path was across the weir on the line of the 1999 claim. The access to the towpath at Brows Bridge is not identified on the map. This link is first evidenced in terms of mapping sources in the aerial photograph dating from 1980, although I note that there is significant user evidence of the route which pre-dates this.
37. However, the towpath was one of the routes claimed during the 1950 Definitive Map procedures, as was the complete Route 1 as claimed by Mr Wilson in 1999.<sup>4</sup> The line of the towpath was claimed beyond Brows Bridge, but given a different number suggesting that there was access to the Bridge at that time. This is reinforced by the description of the path numbered 1 being '*Canal Basin to Brows Bridge*' and the notation on the survey map indicating a wicket gate ('WG'). The survey card records that the gate required renewal, which indicates that it had been there for some time. Regardless of the outcome of the Definitive Map process, I consider that the evidence does indicate that access to Brows Bridge was available both at that time and for some considerable time previously, despite the appearance of OS mapping evidence.
38. I note that the Council now considers (in its Committee Report) that the mapping evidence is evidence against accepting the claim. This is in contrast to its view on the mapping evidence in relation to the 1999 claim where mapping evidence was classed as evidence in support of significant parts of the claim (the equivalent of Routes 1 and 4, and parts of Routes 2 and 3).

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<sup>3</sup> To which they refer as Jeremy Lane but this name is contested by the applicant. I see no significance in this discrepancy but I will merely refer to it as Brows Bridge to avoid any confusion.

<sup>4</sup> The Council appears to believe that the route did not reach the highway but only the school grounds. However the Survey Card records the path exiting onto the public road.



39. I take the view that the mapping evidence, whilst it is not capable of demonstrating the status of the claimed routes as public rights of way, it does support the long-standing existence of the majority of the claimed route. The notation 'FP' does not indicate a public footpath, but merely a route which appeared mainly to suitable for use on foot, as opposed to use with vehicles or on horseback.

#### *Aerial Photographs*

40. The aerial photographs are variable in what they show, but do not contradict any of the information provided by the mapping described above. Small points to note however are that the photograph from 2000 shows a route between Points A and B which, although crossing the same parcel of land as Route 1 between those points, does not follow quite the same line as is presently available and which has been claimed. The playground itself does not appear to be laid out; it seems to be a picnic area. The photograph also seems to show a walked line between Points F and G, but again not quite on the line now claimed. The Council did not comment on this in their observations.

#### *The Definitive Map Records*

41. The equivalent of Route 1 (as per the 1999 claim) and Route 4 were claimed by Thurnham Parish Council during the initial phase of preparing a draft DMS and shown as Footpaths 1 and 43 respectively. No part of the equivalent of Routes 2 and 3 was claimed. Footpaths 1 and 43 survived the initial consultation period and were shown on the Provisional DMS, which was not published until 1960. An objection at that stage by the British Transport Commission to the Lancashire Quarter Sessions resulted in Footpath 1 (i.e. Route 4) and Footpath 43 being included on a schedule of paths to be removed from the final map; a decision being taken accordingly on 14 March 1961 by a committee set up by the Quarter Sessions for the purpose of considering the objections. Despite that decision, due to what appears to have been an administrative error the two paths found their way onto the first DMS in 1962.
42. The revised DMS (First Review Relevant Date 1 September 1966) was published in 1975, the two paths having been removed as part of the overall process. But as a consequence of this, to all intents and purposes, two of the claimed paths (in the broadest sense) were shown on the DMS for a period of 13 years. Anyone who consulted the DMS during that time would have been entitled to understand that they were public rights of way, due to the conclusive nature of the DMS. However there is no evidence to suggest that the Appellant or any other witness had, in fact, consulted that document during the period that the paths were marked on it.
43. Both routes were very slightly different to those now claimed in that they started (or ended) immediately adjacent to either side of the Swing Bridge across the cut between the Basin and the Dock. This stretch of road appears to be part of Tithebarn Hill now.

*British Transport Commission and their successors as landowners*

44. The British Transport Commission ('the Commission') was established by the Transport Act of 1947 ('the 1947 Act') and was empowered to *'secure or promote the provision of an efficient adequate economical and properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods and for that purpose to take such steps as they consider necessary for extending and improving the transport and port facilities within Great Britain in such manner as to provide most efficiently and conveniently for the needs of the public agriculture, commerce and industry:'*<sup>5</sup>
45. Section 57 of the British Transport Commission Act 1949 ('the 1949 Act') set out the following provision:
- 'As from the passing of this Act no right of way as against the Commission shall be acquired by prescription or user over any road footpath thoroughfare or place now or hereafter the property of the Commission and forming an access or approach to any station goods-yard wharf garage or depot or any dock or harbour premises of the Commission.'*
46. Following the 1999 Application, the successor body to the Commission, British Waterways ('BW'), objected to some of the routes applied for, but not all. The 2001 Committee report on the application records that they had no objection to the equivalent of Routes 1, 2, and 3, subject to the primary needs of the Lancaster Canal Navigation and such limitations as would have been apparent to comply with their statutory obligations. However their objection to the towpath section (Route 4) was based on their belief that use of that route was of a permissive nature and that no implied or presumed dedication at either common law or under Section 31 of the 1980 Act had occurred.
47. No basis for this belief is recorded in the Committee report, but the letter from the Government Office for the North West dated 14 August 2002 dismissing Mr Wilson's subsequent appeal refers to the reliance of BW on Section 57 of the 1949 Act. The 2002 letter also suggests that the attitude of BW appears to have altered such that they also objected, by that stage, to the equivalent of Routes 2 and 3, except for the section between the School House and the land at that time leased to the Glasdon Basin Yacht Company Ltd (Point Y on the current claim map). With regard to Route 1 they objected to the northernmost section of the route across the weir which they stated had been obstructed by fences, hedges and locked gates.
48. On behalf of the Secretary of State, Mr Wilson's appeal was dismissed and considerable weight was attached to the provisions of the 1949 Act in respect of the equivalent of Route 4 but, for the remainder of the route claimed at that time (and forming Routes 1, 2, and 3 of the present claim) the appeal appears to have been dismissed in relation to insufficiency of evidence to support the claim.
49. I agree with the appellant that the 2002 decision writer appears to have relied on a test similar to that set out in Section 53(3)(c)(iii) of the 1981 Act which relates to applications for deletions from the DMS, rather than to additions. Although the writer refers to the 'reasonably alleged' test in the

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<sup>5</sup> As set out in the preamble to the British Transport Commission Act 1949

first paragraph of the Appraisal, they then go on to refer to the need for the appellant to prove 'that a mistake was made when those rights were first recorded' on the balance of probabilities. This is not the correct test to apply to an application such as this. Thus, although the letter is helpful in establishing an overall picture of the situation at that time, I do not consider I am bound by it. I have set out the tests that I consider are appropriate to this application at paragraphs 16 to 21 above.

50. With respect to the current applications and appeal, I note that the successor body to BW (The Canal and River Trust ('the Trust')) has chosen not to rely on Section 57 of the 1949 Act, despite the Council's reliance on it in their Committee Report.
51. Furthermore, the Council appears to have applied the provision to all sections of the claimed routes which are owned by the Trust. This seems to be on the basis of the proposed development of the Basin by British Waterways Marinas Limited ('BWML') which the Council considers will mean that the Basin will fall within the definition of a dock, given in 1947 Act.
52. Copious correspondence has been devoted to determining whether the Basin falls within the definition of a Dock, and thus whether the provisions of Section 57 of the 1949 Act apply. The Council states that the definitions are as set out in the 1947 Act and are as follows:  
  

**'harbour'** means any harbour, whether natural or artificial and any port, haven, estuary, tidal or other river or inland waterway navigated by sea-going ships, and any dock

**'dock'** includes any pier, jetty or other place at which ships can ship or unship goods or passengers
53. I consider that the question of the status of the Marina and the Basin itself in terms of the 1949 Act is an arguable matter. The appellant has pointed out that the canal as a whole is now classed as a leisure route, and not a commercial route, and I find that the reliance apparently placed on Section 57 of the 1949 Act, and the definition of a dock in the 1947 Act, is insufficiently supported, particularly as the Trust does not seek to rely on those provisions.
54. Even though all the land concerned may be owned by the successor body (or bodies) to the British Transport Commission, I consider there must be some doubt about whether or not the routes which are the subject of this appeal form an access or approach to a dock. Furthermore, I am not aware that the Trust is the owner of the Dock itself, and therefore there is further doubt in my mind that the provision is appropriate now. It may have been applicable in the 1950s when the Commission owned both the Basin and the Dock, but now that ownership is split it is arguable that the provision may no longer apply, particularly if the Basin is not shown to be a dock.
55. I therefore do not accept that there is any automatic or statutory reason preventing the dedication of public rights of way around the Basin as a result of Section 57 of the 1949 Act.

*Other documentary evidence*

56. A large number of other documents have been submitted, many of which I have already stated are irrelevant to my decision as they relate to spatial planning policy. However, some of the documents do provide some evidence of the existence of a route around the Basin and I particularly refer in this matter to the booklet 'A Walk Around the Village' produced in 1985 by Thurnham Parish Council. I agree with the appellant that this clearly describes a route which must have used almost the entire claimed route.
57. I also note the earlier document, 'Glasson Dock Village Plan', which was approved as policy by Lancaster City Council in 1977 and used to inform the development of the children's play area, among other things. The reference in that document to 'the existing footpath around the canal basin' is persuasive evidence that a route around the Basin existed, and was in use, at that time regardless of whether or not any plan to improve it was implemented.
58. I note the various photographs from the book 'Glimpses of Glasson Dock and Vicinity' which are interesting, but do not provide significant evidence of the existence of any part of the path, although I do recognise that the implication is that access to the Basin must have been possible at various locations, implying that there were paths to it. However the information is too vague for the most part to draw any useful inference.

*Conclusions on Historical Evidence*

59. I am satisfied that the mapping and historical evidence supports the physical existence of the claimed routes for varying periods of time. There is nothing in the historical evidence which I find, on balance, renders it impossible for public rights of way to have been dedicated, but none of the documentary sources provides evidence of express dedication.

***Statutory Dedication: Section 31 of the 1980 Act***

*Route 1*

Date on which the use of the path was brought into question

60. It appears from the evidence presented that the Eco Garden was commenced in about 2008, at which point the fence was erected around the boundary thereby obstructing the route of the path. The original 2011 application from the appellant included photographs of the fence taken in March 2009, but indicates that the fence was erected the previous year.
61. Although the application was not made until 2011 I consider that 2008 is the date on which the use of Route 1 was brought into question in respect of the present applications and the relevant period of 20 years during which to consider the user evidence is therefore 1988 to 2008.
62. The Council considers that the route was also brought into question in 1999 when Mr Wilson's application was made. I accept that the majority of the route claimed at that time was the same, but it took a slightly different route to reach Tithebarn Hill, passing via the weir. Nevertheless, I shall also examine the relevant period of 20 years dating back from 1999.

Whether there has been use of the way by the public during that period

63. There is no definition in the 1980 Act of what is meant by the term 'the public' in this context, and it is normal to adopt the usual dictionary definition. Use of the way should be demonstrable by a group of people who, collectively, can be taken to represent the public as a whole, or to be representative of the local community. I note that, in response to the 1999 application, two adjoining landowners in Pennine View acknowledged that most local people knew each other and that consequently they had not denied locals the use of the path, even though they claimed to have stopped others.
64. Taking the combined user evidence forms and identifying those people who clearly claim to have used the route between Tithebarn Hill and the School, there is claimed use of the route since the late 1930s through to the time of the obstruction at the school (2008) and beyond (presumably diverting round the obstruction or continuing on Route 2). Most of the witnesses are local to Glasson, or have connections to family in Glasson but a considerable number of people live further away. One or two of the witnesses appear to have had boats of one sort or another, and one witness's family had connections to Canal Cottage.
65. Given the long-standing identification of a path on the mapping evidence, and the evidence of the DMS claim in the 1950s, I am satisfied that use has been made of the path between Points B and D by a group of people who can be taken to represent the public. Prior to 1999, the path was accessed by a different route at the northern end but, subsequent to that time, the public has used the section of the Appeal route between Points A and B.

Whether there has been uninterrupted use as of right throughout the relevant period

66. Prior to 1999 the path was not accessed from Point A, but from a point nearer the Swing Bridge. This access appears to have been obstructed with a locked gate in about 2000. With respect to the section of the appeal route A-B therefore, the evidence does not support use of the route for 20 years prior to 2008.
67. For the remainder of the route, there is no unequivocal evidence that use of the path was ever interrupted and none of the witnesses report ever having been stopped or turned back. It may be that the residents of the adjacent properties did turn some people back, but there is no evidence to corroborate that.
68. There is no evidence of user by force or of user by stealth, and no permission has ever been sought by any of the user witnesses. I note that BW did not object to the application for this route made by Mr Wilson, so they must have been aware of the use that was being made of it and acquiesced to it.
69. In the absence of any evidence to the contrary, and given my findings in respect of Section 57 of the 1949 Act, I find no evidence of permission having been given to any of the witnesses. The only exception to this would be those people who may have had a boat on the marina, or lived on a houseboat (one witness). They may have had permission by way of a lease, fee, or a tenancy.

70. Given the brevity and the similarity of the evidence provided by the members of the canoe club, I have given it less weight, but I have not discounted it as there is no evidence that they had permission as a club to use the Basin.
71. Although the evidence of the Quarter Sessions in 1961 suggested that there had been no dedication of the route at that time, I am satisfied that there is no inherent reason why user since that time cannot have been as of right, particularly after the abolition of the British Transport Commission in the early 1960s.
72. The Trust indicates that, in the light of their duties with regard to access to their land, the access which has been enjoyed by the public is user by permission and consequently not user as of right. They state that this duty was also laid on their predecessors, BW.
73. The legislation on which the Trust relies is Section 22(2) of the British Waterways Act 1995 ('the 1995 Act') as applied by the British Waterways Board (Transfer of Functions) Order 2012. I note that this places a statutory duty on the Trust, in formulating or considering any proposals relating to their functions<sup>6</sup> to have regard to:  
*'preserving for the public any freedom of access to towing paths and open land and especially to places of natural beauty' and 'to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest'*
74. The applications which are the subject of the appeal are not proposals which the Trust is formulating itself. They may be considered to be proposals which they are 'considering' but they do not appear to me to be ones which 'relate to their functions'. However, if they do fall into that category, it would seem that the Trust are obliged to 'have regard to preserving' any public access. The provisions do not seem to me to imply that public access is permissive *per se*. It simply indicates that they should seek to preserve any access which already exists.
75. Consequently I find that the use of the route between Points B and D has been as of right throughout the period of 20 years dating back either from 2008 or 1999.
76. With regard to the route between A and B, whilst the user may have been as of right, it has not been exercised for the requisite period of 20 years. Nevertheless, I have examined below in paragraphs 131-133 whether or not this section could have been dedicated at common law over a shorter period.
77. Since this appeal does not relate to the route in use at the northern end prior to the 1999 Application, it is not appropriate for me to reach a conclusion on whether there was use of that route for a period of 20 years and I make no finding on that. Several of the user witnesses do make reference, however, to the use of that route before it was obstructed.

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<sup>6</sup> My underlining

Whether there has been sufficient evidence of a lack of intention to dedicate a highway during the relevant period

78. Since dedication of a highway can only be made by a landowner, it follows that any lack of intention must also be demonstrated by the landowner.
79. No incontrovertible evidence has been provided to demonstrate that there was a lack of intention to dedicate a highway over the appeal route between Points B and D until the use of it was brought into question in 2008, notwithstanding that the northern access to it was not in existence for the whole of the relevant period. The signs and locked gates referred to by the Trust and the BWML relate to other sections of the claimed routes, and there is no evidence that adjoining residents own the land across which the claimed route runs.

*Route 2*

Date on which the use of the path was brought into question

80. In the 2011 application, the equivalent of Route 2 did not reach the highway at its western end, but joined Route 1 at the equivalent of Point C on the reference map. At its eastern end, Route 2 did not go beyond the equivalent of Point Y. The 2014 application shows Route 2 slightly differently at its western end, joining the highway at Point D with no link to Route 1. (The link between Points C and E does not form part of the second application.) It also shows Route 2 as a through route going beyond Point Y to meet School Lane at Point J. The 1999 application also showed a through route (including access to the highway at the same point) but it took a slightly different path through the Marina.
81. It would appear, even at the time of the 2011 application that the route towards the Marina was obstructed by fencing at Point Y. Witness statements from employees of the Marina both suggest that the fence was erected by the previous owner in 1990 and that there was a lockable gate in it.
82. The appellant relies on user evidence to demonstrate that there was significant use of the route prior to 1990, and seems to suggest that users claimed to have continued to use Route 2 up until 2013. But a closer examination of the evidence produces a slightly different picture.
83. I note that the 2001 Committee Report relating to Mr Wilson's application of 1999 describes the condition of the claimed routes following a site visit. At the boundary of the Marina land, a wooden fence with a gap in it is described, together with a notice indicating that the land beyond was private. Visitors were requested to report to reception. This does not accord with the pictures attached to the statements of Mr Bostock and Mr Cunliffe which purport to show the fence and gate erected in 1990 but which show a metal palisade fence with a spiked top and a locked metal gate and not a wooden structure.
84. I note from the user evidence form of Mr Barry Hayes (2011 Application) that he describes a spiked fence having been erected during the tenancy of the previous owner which prevented access around the basin to the Marina access drive and I take this to be the same fence as in the photographs.
85. Looking at the evidence forms from the 1999 application I note that several people make mention of new gates across the Marina access drive having been erected in about 2000 (the forms are dated 2001, post-dating the



original application and must have been submitted slightly later) and describe it as being open during the day but closed from 5.00 pm.

86. Three user evidence forms (David Holmes, Mr and Mrs Marsden and Charmaine Roden) also refer to a fence having been erected at the boundary of the Marina 'recently'. Mr John Chester also refers to this same fence in his user evidence form for the 2011 application, and remarks that '*Residents can now not pass this point*'. He states that it was erected in 2000 and he includes a photograph of this location (Point Y). Mrs Gweneth Chester (the appellant) confirms the existence of this structure in her form and states that '*Only Marina card-holders can now pass beyond this point through a steel padlocked doorway*'. The existence of this fence is confirmed by several other witnesses.
87. I conclude that the fence at Point Y was originally wooden and had either an openable gate or a gap in it, and it was in position until at least 14 March 2000 (the date of the officer inspection in relation to the 2001 Committee report). Sometime later in 2000, the present metal fencing was erected and the locked gate in place possibly at about the same time as the gate across the Marina access drive.
88. This appears to be the structure in the photographs supplied by Mr Bostock and Mr Cunliffe so I must place more weight on the evidence of the users on this matter. I conclude that the use of Route 2 was brought into question in 2000.
89. I acknowledge that this route (with slight variations across the Marina land) was also brought into question by Mr Wilson's application in 1999 and so it would also be appropriate to consider a 20 year period dating back from his application.

Whether there has been use of the way by the public during that period

90. The user evidence in respect of this route requires careful analysis, not least because the user forms relate to the use of several parts of the four claimed routes. Nevertheless there are a number of witnesses who clearly refer to the use of a route from the School to the Marina or boatyard, and also refer to the newly erected gates across the access drive. This amounts to a smaller number of people than the number of people providing evidence for, say, Route 1 or even Route 4, but nevertheless is sufficient for me to conclude that they are representative of the public.

Whether there has been uninterrupted use as of right throughout the relevant period

91. The site inspection made by the Council on 14 March 2000 reported that there was a clear walked route over the grassland and woodland to the east of the school. They report two slightly different routes at one point, which diverge for 25 metres and then re-join, and I take these to be the same route to all intents and purposes. The path is reported as passing through a gap in a wooden fence which appears to have been deliberately left to permit passage, since there was a notice indicating that visitors should report to the Marina reception.
92. The report also records that once on the Marina land, there was a route running slightly further south across infilled land in addition to the 1999

Application route. This would seem to accord with the route shown in the 2014 Application. There appears to have been no barrier on the equivalent of Route 2 until Point Z on the current claim map where the sliding metal barriers were recorded. They were open at the time of the inspection, but there is witness evidence from users that they were locked after 5 pm. each day. These are the gates which the user evidence suggests were erected in about 2000 but may have originated slightly earlier, since the site inspection was made quite early in the year.

93. There is no evidence that user of the route was by stealth, nor that it was by any form of force. I have already concluded that the evidence of permission being relied upon by the Trust is perhaps misplaced (see paragraph 74 above).
94. The existence of the notice at the gap in the wooden fence describes the land as private, but since most public rights of way cross private land this does not in itself justify the inference to be drawn that use of the path was by permission. The reference to visitors having to report to reception is likely to have been addressed to boat users who were using the Marina facilities. There is no evidence that anyone was prevented from walking across the boat yard or along the access drive, until the lockable gates were erected. I do not consider that the existence of the notice equates to user by permission.
95. The earliest use of a route equating to the majority of Route 2 dates from the 1930s, but I can place no weight on that evidence as also relating to the use of the access drive section. However, there are a number of witnesses who refer to use of the actual access drive and who mention the recently erected electric gates. The earliest of these is Mr Hayes (use from 1960s onwards) who, although providing an evidence form for the use of the route claimed in the 2011 Application,<sup>7</sup> makes clear reference to the fact that he was previously (i.e. before 2000) able to walk back to the road along the access drive. Relying only on other users whose forms make clear reference to the use of the Marina access drive, and to the gates, I can identify three witnesses who provide evidence of use of the claimed routes since the 1970s; three from the 1980s, and two from the 1990s.
96. That is not to say that other people have not used that route, but their evidence is not clear enough to say. Nor is it possible to be absolutely sure that those witnesses who clearly did use the access drive actually used it from the beginning of the period of their claimed use.
97. Of the nine people I can identify with reasonable confidence, five of them claim to have used it for a period dating from at least 1980 (i.e. 20 years prior to 2000) and four of them for period dating from at least 1979 (i.e. 20 years prior to the 1999 Application. In both cases there are no gaps in the years of usage when the nine witnesses evidence is amalgamated to show total user.
98. Unfortunately the evidence does not allow me to confidently conclude that other people used the access drive, but it does allow me to conclude that the identifiable use of that section was user as of right throughout the relevant period of 20 years dating back either from 1999 or 2000.

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<sup>7</sup> Which terminated at the equivalent of Point Y due to the 2000 obstruction

99. Nevertheless, I can only rely on the user between points Y and G as shown on the 2014 application by reference to the evidence of the 2014 user evidence forms. This is because the 2011 Application did not include this part of the route, and the 1999 Application followed a slightly different route across the boat yard.
100. Only six of the witnesses can be identified as claiming use of this section of Route 2 and the earliest claimed use is 1953 (Mr G Porter). Mr Miller claims use from 1960; Mr Marshall from 1970 and Mr and Mrs Chester from 1979. All of these periods of use commence more than 20 years before either of the two dates which I have identified as being the appropriate date that the use of the path was brought into question.
101. If one were able to consider the evidence of use from the 1999 Application, these figures would be considerably increased, but as the line of the path claimed at that time varied a little, without further investigation it would not be safe to rely on it.
102. Nevertheless I am satisfied that the use I have been able to identify confidently has been uninterrupted for a period of 20 years whether dating back from 2000 or 1999, and it has been exercised as of right.

Whether there has been sufficient evidence of a lack of intention to dedicate during the relevant period

103. The notice referred to in paragraph 94 above does not contain enough information to clearly evidence a lack of intention to dedicate a public right of way. It merely stated that the land was private, which is the case with the majority of land crossed by public rights of way.
104. The invitation to report to the marina reception would, in my view, be likely to remind boat owners to report and pay their mooring fees. Clearly the word 'private' would have reinforced the fact that the moorings were not public (i.e. free) ones.
105. I therefore find that this notice does not constitute sufficient evidence of a lack of intention to dedicate a public right of way on foot during either period.

*Route 3*

Date on which the use of the path was brought into question

106. The 2011 application did not include the line of Route 3. For evidence of use of this path I must look at the 1999 Application forms and the 2014 Application forms to identify an event which brought the use of it into question. This requires care as not all the users who have provided evidence in both cases have used all the paths which were the subject of the particular application. I have therefore relied only on those forms where it was clear enough for me to infer use of the equivalent of Route 3.
107. Many users simply refer to walking all around the basin, and whilst that is sufficient to show claimed use of Route 3 from the Marina to Brows Bridge, it is not helpful for that part of Route 3 from School Lane to the Marina via the access drive. However some users make specific mention of the erection of the gates on the drive in approximately 2000 as I have mentioned in relation

to Route 2 and I therefore conclude that the use of this route was also brought into question at that time.

108. In addition, Mr Wilson's 1999 claim also included this route as part of his route 2. It is therefore appropriate to consider a 20 year period dating retrospectively from that time.

Whether there has been use of the way by the public during that period

109. Given that so many of the witnesses refer to the fact that they used all the claimed routes to walk 'around the Basin' or words to that effect, it would be unreasonable to conclude that there had not been any use of Route 3 as part of that circuit. I am satisfied that the evidence shows that use of Route 3 has taken place, particularly that stretch between the boat yard and Brows Bridge. There is no evidence to suggest that the witnesses who have provided evidence of use are not representative of the public.
110. Route 3 also includes the section of Route 2 between Points J and G, on which I have already concluded that there had been user by the public.

Whether there has been uninterrupted use as of right throughout the relevant period

111. Even though the route was somewhat overgrown in places at the time of the Council's site inspection in March 2000, the officer concluded that most of it could be followed apart from a short stretch which was, in their view, completely overgrown and blocked by a locked gate at Canal Cottage. I note that at that time, the gate at Brows Bridge, which is now locked, was open.
112. Since Canal Cottage is derelict and has not been lived in for several years (Mr Caton in his 2011 user evidence form states that he was refused a new lease on the cottage by BW prior to the sale of the land and property to the Marina), the path alongside the canal is likely to have become more overgrown since it was not being used regularly to access the cottage. It is not difficult for a route which is only used irregularly to quickly become overgrown and appear to be impassable.
113. I note that Mr R Wilson, on his evidence form from his 1999 application, indicated that the gate beside Canal Cottage and the gate at Brows Bridge were never locked, but that access had become a little restricted for the past two years.
114. Given the obviously difficult access by 1999, it is difficult to rely on evidence from the user evidence forms where the witnesses refer to one or more routes, especially where they claim use up to and beyond 2000. I think, given the condition of the route, it is unlikely to have received much, if any use, after 1999.
115. Neither Mr Cunliffe nor Mr Bostock, who provided evidence on behalf of the landowners, recalled ever having seen anyone use the path between the boat yard and Brows Bridge, but that is not the same thing as saying no-one ever used it. The evidence forms suggest that many people used to walk round the Basin on summer evenings and weekends, and those are the times when employees of the marina were much less likely to be present.

116. On balance, I am satisfied that there is more likely to have been a continuous use of Route 3 up to 1999, but not necessarily up to 2000.

117. There is no record of any user by force, and just because no-one was seen does not equate to user by stealth. Given my conclusions in paragraph 74 above about notices, and the absence of any other form of permission, I conclude that use has been exercised as of right.

Whether there has been sufficient evidence of a lack of intention to dedicate during the relevant period

118. Until the gates were locked beside Canal Cottage and at Brows Bridge, there is no other evidence of any actions taken by the landowner. I consider that there is insufficient evidence of a lack of intention to dedicate the route during the 20 years prior to 1999.

*Route 4*

Date on which the use of the path was brought into question

119. There is no evidence that use of this route has ever been brought into question, other than by the application itself. Therefore in respect of Route 4 I consider one appropriate date would be 2014 (the route did not form part of the 2011 claim). In the case of the earlier application by Mr Wilson, the appropriate date must be 1999, as before. The relevant 20 year periods are therefore measured retrospectively from 1999 or 2014.

Whether there has been use of the way by the public during that period

120. There has been no challenge to the evidence of use of this path. The user evidence suggests use of this route going back to at least the 1940s in some cases. I am therefore satisfied that the way has been used by the public during the relevant 20-year periods identified above and for many years prior to that.

Whether there has been uninterrupted use as of right throughout the relevant period

121. As above, there is no evidence that usage has been interrupted in any way during the relevant 20 year period. Neither is there any evidence of user by force or by stealth.

122. I have set out the arguments put forward on behalf of the Trust at paragraph 73 above. It is specifically claimed, in relation to those arguments, that use of the towpath is automatically permissive.

123. The Trust indicates that information on their website sets out the permissive basis on which the towpath can be used by the public, and that there is a 'Towpath Code' by which users must abide. The Trust also states that the towpath can be closed to facilitate maintenance works as required.

124. No evidence of any specific towpath closures has been provided to me.

125. The Trust has not submitted a copy of the information available on the website, nor a copy of the 'Towpath Code'; and neither have I been advised what information, if any, is available on site to indicate that use of the towpath is permissive in any way. I have no information as to how the

generic provisions of the 1995 Act apply in this specific case, where use of the path has been enjoyed for many years prior to 1995 according to the user evidence. As I have already indicated, it would seem that the duty set out in the paragraph on which they rely applies to the Trust when formulating or considering proposals relating to their functions, neither of which seems to me to be relevant in this instance. The provisions do not seem to me to automatically imply that public access is permissive.

126. The appellant has included in their latest submission some extracts from a publication entitled 'The Complete Guide to the Lancaster Canal'. I do not know the provenance of that document but I note that on page 18 of the publication there is a section on Walking the Lancaster Canal. It states:

*'The use of the towpath by walkers is actively encouraged by British Waterways and others, despite the fact that much of it is not a public right of way.'*

A few lines further on it states:

*'North of Tewitfield the towpath continues all the way to Canal Head in Kendal, the section in Cumbria being a definitive footpath.'*

127. In the absence of any details of its contents, I do not consider that the existence of a behavioural code necessarily renders use of the towpath permissive. From the above example it is clearly possible for the towpath to be a public right of way and I do not consider that the 'active encouragement' of walking can be necessarily construed as permission.
128. I agree with the appellant that any such permission needs to be communicated to the users of the path concerned.<sup>8</sup> That may or may not relate to notices displayed on the land, but in the absence of such information I consider that the matter is open to argument. On balance, therefore, I consider that, on the evidence available, the use of the path has been as of right.

Whether there has been sufficient evidence of a lack of intention to dedicate during the relevant period

129. In the absence of evidence of overt actions to inform the users of the way with regard to the intentions of the landowner, or lack of them, I cannot find that there is sufficient evidence of a lack of intention to dedicate the way as a public footpath during the relevant 20 year period dating back either from 2014 or 1999.

*Additional route between Points C and E*

130. As I have already mentioned, although this link was part of the 2011 application, it did not form part of the 2014 application, nor was it included in the 1999 application. I do not consider that there is sufficient clear evidence of use of that section for me to be satisfied that it has been used for a full period of 20 years dating back from 2014, particularly as I have already concluded that the use of both Routes 1 and 2 was brought into question in 1999 and 2008. It seems likely that the use of C-E only came about at the time of the 2008 obstruction to Route 1, and that consequently there is

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<sup>8</sup> See decision in *R (Godmanchester and others) v SSEFRA and others* [2007] UKHL 28

insufficient evidence of use to reasonably allege that it is a public footpath under the statutory provisions or, indeed, at common law.

### ***Common Law dedication***

131. Dedication at common law requires either that there be evidence of an express intention to dedicate a way as a highway, together with the acceptance of that dedication by the public; or alternatively, sufficient evidence from which it is possible to infer that a dedication must have taken place. Whilst user can be evidence that supports a dedication, it does not raise a presumption as such. The onus is on the person asserting that the right exists to show that the facts overall show that an inference can be drawn that there was an intention to dedicate a highway.
132. There is no evidence of an express dedication for the majority of the routes I have been considering. However the path between Points A and B, which has not existed for the full extent of either of the relevant 20-year periods, does appear from the photographs and the evidence to have been set out deliberately for public use, and to provide an access to the land beyond quite separately from the children's play area.
133. I think there is consequently an arguable case that the Route 1 between Points A and B has been dedicated as a public path at common law.

### ***Conclusions on the evidence***

134. I consider that there is some conflicting evidence and some legal points which are arguable either way. However, taking all the evidence together I consider that there is sufficient evidence of use that it is reasonable to allege that a right of way exists over each of the claimed routes (apart from C-E) and no incontrovertible evidence that it could not.
135. I do not consider that the evidence of use for the section between Points C and E is sufficient to permit a reasonable allegation to be made.

### ***Conclusions***

136. Having regard to these, and to all other relevant matters raised in the written representations I conclude that the appeal should be allowed in part.

### ***Formal Decision***

137. The appeal is dismissed in respect of the route between Points C and E.
138. The appeal is allowed in respect of the remaining routes.
139. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Lancashire County Council is directed to make an order under section 53(2) and Schedule 15 of the Act to modify the Definitive Map and Statement for the area to show as Public Footpaths the following routes:
- Route 1 from Point A through Points B and C to Point D;
  - Route 2 from Point D through Points E, F, Y, G, and Z to Point J;
  - Route 3 from Point J through Points Z, G, X, and I to Point H;
  - Route 4 from Point K through Points L and M to Point N.



140. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

*Helen Slade*

**Inspector**







## Regulatory Committee

Meeting to be held on 14 November 2018

Electoral Division affected: Ribble Valley South West
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### Highways Act 1980 – Section 119

### Wildlife and Countryside Act 1981 – Section 53A

### Proposed Diversion of Part of Dinckley Footpath 12, Ribble Valley Borough

(Annexes 'B' and 'C' refer)

Contact for further information:

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#### Executive Summary

The proposed diversion of part of Dinckley Footpath 12, Ribble Valley Borough.

#### Recommendation

- (i) That subject to satisfactory responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Dinckley Footpath 12, from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked A-C-D on the attached plan.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

#### Background

A request has been received from the owners of Wardfall, Ribchester Road, Dinckley, Blackburn BB6 8AH, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Dinckley Footpath 12, Ribble Valley Borough.

Wardfall is a residential dwelling that includes former agricultural buildings that have now been converted for domestic use. The footpath runs from Ribchester Road, up the driveway of the property and out through a gate that leads to a pasture field that is currently grazed by sheep. The buildings and gardens at Wardfall are located either

side of the footpath and the diversion, if successful, will move the footpath to the eastern boundary of the property, thereby increasing the privacy and security for the residents, whilst providing a route that is safe and convenient for public use.

The length of existing path to be diverted is shown by a bold continuous line and marked on the attached plan as A-B, and the proposed alternative route is shown by a bold broken line and marked A-C-D.

## Consultations

Ribble Valley Borough Council and Dinckley Parish Council have been consulted and, at the time of writing, their responses are awaited. The Peak and Northern Footpaths Society and the Ribble Valley branch of the Ramblers Association have been consulted and at the time of writing, their responses are also awaited.

The consultation with the statutory undertakers has been carried out and, at the time of writing, no objections or adverse comments on the proposal have been received.

## Advice

### Points annotating the routes on the attached plan

Point	Grid Reference	Description
A	SD 6944 3558	Unmarked point in field approximately 60 metres north of property boundary.
B	SD 6944 3542	Junction of Dinckley Footpath 12 and Ribchester Road.
C	SD 6947 3552	North east corner of property boundary.
D	SD 6946 3542	South east corner of property boundary at the junction of the alternative footpath and Ribchester Road.

### Description of existing footpath to be diverted

That part of Dinckley Footpath 12 as described below and shown by a bold continuous line marked A-B on the attached plan. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	S	155	The entire width

### Description of new footpath

Footpath as described below and shown by a bold broken line A-C-D on the attached plan. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	SSE	65	2	Grass
C	D	S	100	2	Compacted stone
Total length of new footpath:			165		

The public footpath to be created by the proposed Order will be subject to the following limitations and conditions:

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 6947 3552 (point C)
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 6946 3542 (point D)

### Variation to the particulars of the path recorded on the Definitive Statement

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Dinckley Footpath 12 be amended to read as follows:

The 'Position' column to read:

"From Ribchester Road near Dinckley Bridge at SD 6946 3542, running north for 100 metres as a stone surfaced footpath to SD 6947 3552 then north north west for 65 metres as a cross field footpath to SD 6944 3558. The footpath then runs to Roman Road at Aspinalls. (All lengths and compass points given are approximate)."

The 'length' column be amended to read:

"0.72 km"



The 'Other Particulars' column be amended to read:

"The only limitations on the section between SD 6946 3542 and SD 6944 3558 is the right of the owner of the soil to erect and maintain gates that conform to BS 5709:2018 at SD 6946 3542 and SD 6947 3552. The width between SD 6946 3542 and SD 6944 3558 is 2 metres."

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

The proposed diversion is expedient in the interests of the owners of the land for reasons of privacy and security. Wardfall is a residential dwelling that includes former agricultural buildings that have now been converted for domestic use. The public footpath runs on the driveway and the buildings and gardens are located either side of the footpath. The diversion, if successful will move the footpath to the eastern boundary of the property, thereby increasing the privacy and security for the residents, whilst providing a route that is safe and convenient for public use.

The legislation requires that if the termination point of a footpath is proposed to be altered, then the authority may only make a Diversion Order if the new termination point is on the same path or a path connected to it and is substantially as convenient to the public.

The proposed diversion will alter the southern point of termination of Dinckley Footpath 12 and place it at another point on Ribchester Road being the same highway. It is noted that the diversion would move the footpath approximately 20 metres away from the footpath on the other side of the road, Dinckley Footpath 5. In some instances, that could be considered to be less convenient. However, in this case, it is a straight section of a quiet country road where visibility is good. Furthermore, there is good visibility of the traffic coming in both directions from the proposed point of access from the footpath onto the road. It is suggested therefore, that the proposed termination point is substantially as convenient to the public.

The Committee are advised that so much of the Order as extinguishes part of Dinckley Footpath 12, is not to come into force until the county council has certified that the necessary work to the alternative route has been carried out.

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, of which we are aware at the time of writing.

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

The applicants own the land crossed by a majority of the existing route and that part of the alternative route marked C-D. The owners of the remainder of the existing route, located in the field and the proposed route A-C have confirmed that they are in agreement with the proposal and that they would not raise any objection if a Diversion Order is made.

The applicants have agreed to bear all advertising and administrative charges incurred by the county council in the Order making procedures, and also to defray any compensation payable and any costs which are incurred in bringing the new site of the footpath into a fit condition for use for the public.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the Order, or should the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion because the alternative route is of similar length and overall gradient to the exiting footpath.

The current route runs on a gradual incline from Point B, up the driveway towards the property boundary. The ground between C-D has a similar gradient but is currently rough grass and uneven underfoot. If the diversion is successful the applicants will regrade the slope to provide a gradual incline and provide a compacted stone surface path between points C-D.

It is acknowledged that when walking north to south, on Dinckley Footpaths 12 and 5, the proposed route is less direct and would increase the walk by approximately 30 metres. However on a rural footpath such as this, the footpath will generally be used as part of a much longer walk, likely to be in excess of 2.5km. It appears that the sole use of this footpath is for recreational purposes, rather than communicating between specific locations therefore in this instance the increase in length is likely to be considered to be insignificant given the rural location and overall length of the walk that would be required to reach this footpath.

It is suggested that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. It is suggested that many users might find a walk on the new route to be more enjoyable, because the new footpath will be fenced from the private garden and the residential dwelling and as such, some users of the footpath may feel more comfortable and at ease when passing through the property.

It is felt that there would be no adverse effect on the land served by the existing route or the land over which the new path is to be created, together with any land held with it. Compensation for any material loss could be claimed by a landowner or someone with rights to the land under the provisions of the Highways Act 1980 Section 28. However, such loss is not expected and if a claim were to arise, the compensation is underwritten by the applicants.

It is also advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the county council, as a Highway Authority, under The Equality Act 2010 – formerly the Disability Discrimination Act 1995 (DDA). The alternative route will be of adequate width, firm and well drained underfoot and the gates proposed to be installed on the route will conform to the British Standard for gaps, gates and stiles BS5709:2018.

Further, it is also advised that the effect of the Order is compatible with the material provisions of the county council's 'Rights of Way Improvement Plan'.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

### **Stance on Submitting the Order for Confirmation (Annex C refers)**

It is recommended that the county council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit, and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of an Order is not rechargeable to the applicant, is not undertaken by the county council. In the event of an Order being submitted to the Secretary of State the applicant can support or promote it to confirmation, including participation at public inquiry or hearing. It is suggested that the authority takes a neutral stance.

### **Risk Management**

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

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

To not agree that the Order be made.

To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

To agree that the Order be made and promoted to confirmation by the county council.

To agree that the Order be made and if objections prevent confirmation of the Order by the county council that the Order be submitted to the Secretary of State to allow the applicant to promote confirmation, according to the recommendation.

### **Local Government (Access to Information) Act 1985**

#### **List of Background Papers**

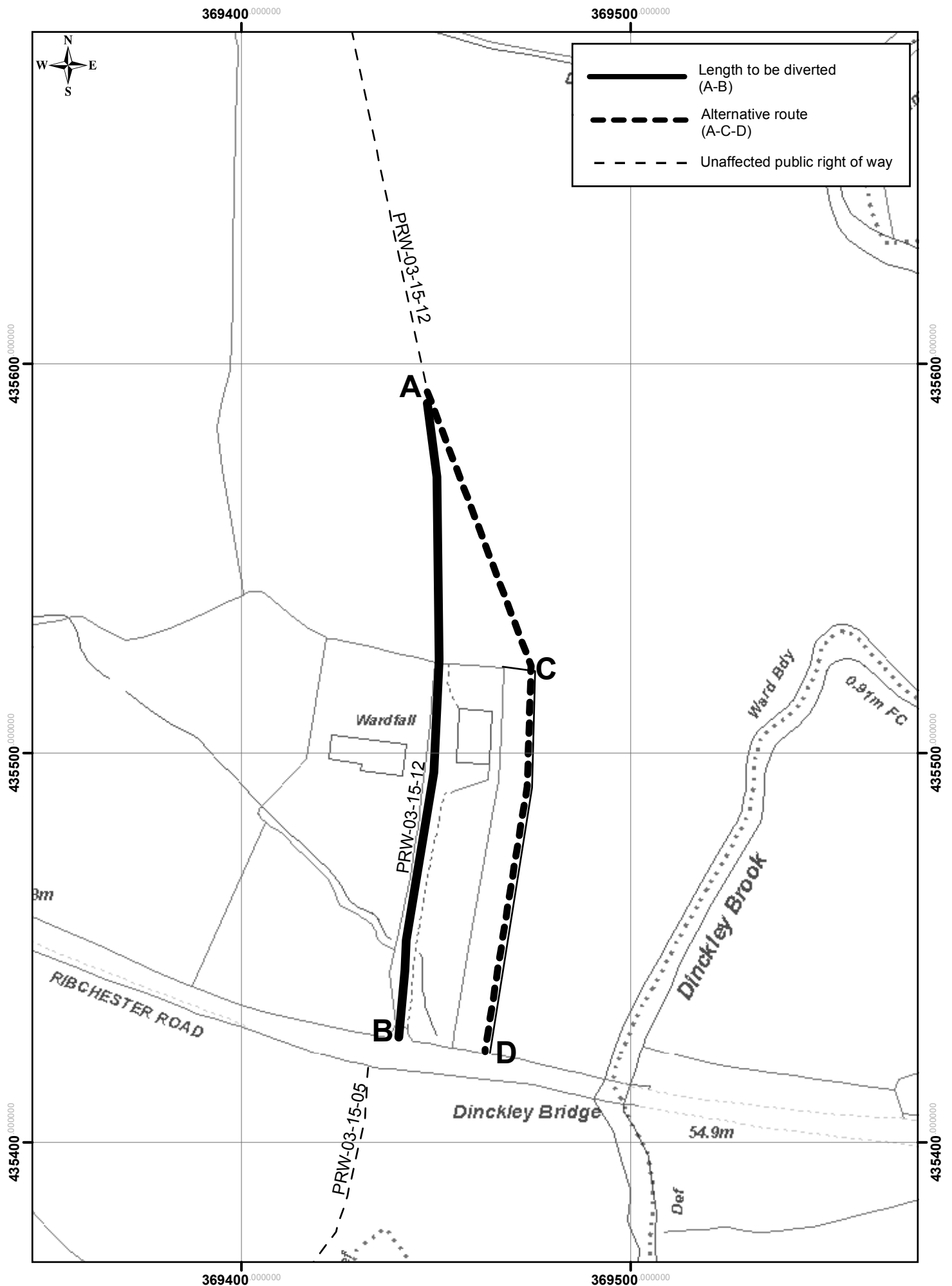
Paper	Date	Contact/Directorate/Tel
File Ref: 211-690		Planning and Environment Group
File Ref: PRW-03-15-12		Mrs R J Paulson, 07917 836628

Reason for inclusion in Part II, if appropriate

N/A







## Proposed diversion of part of Dinckley Footpath 12, Ribble Valley Borough.

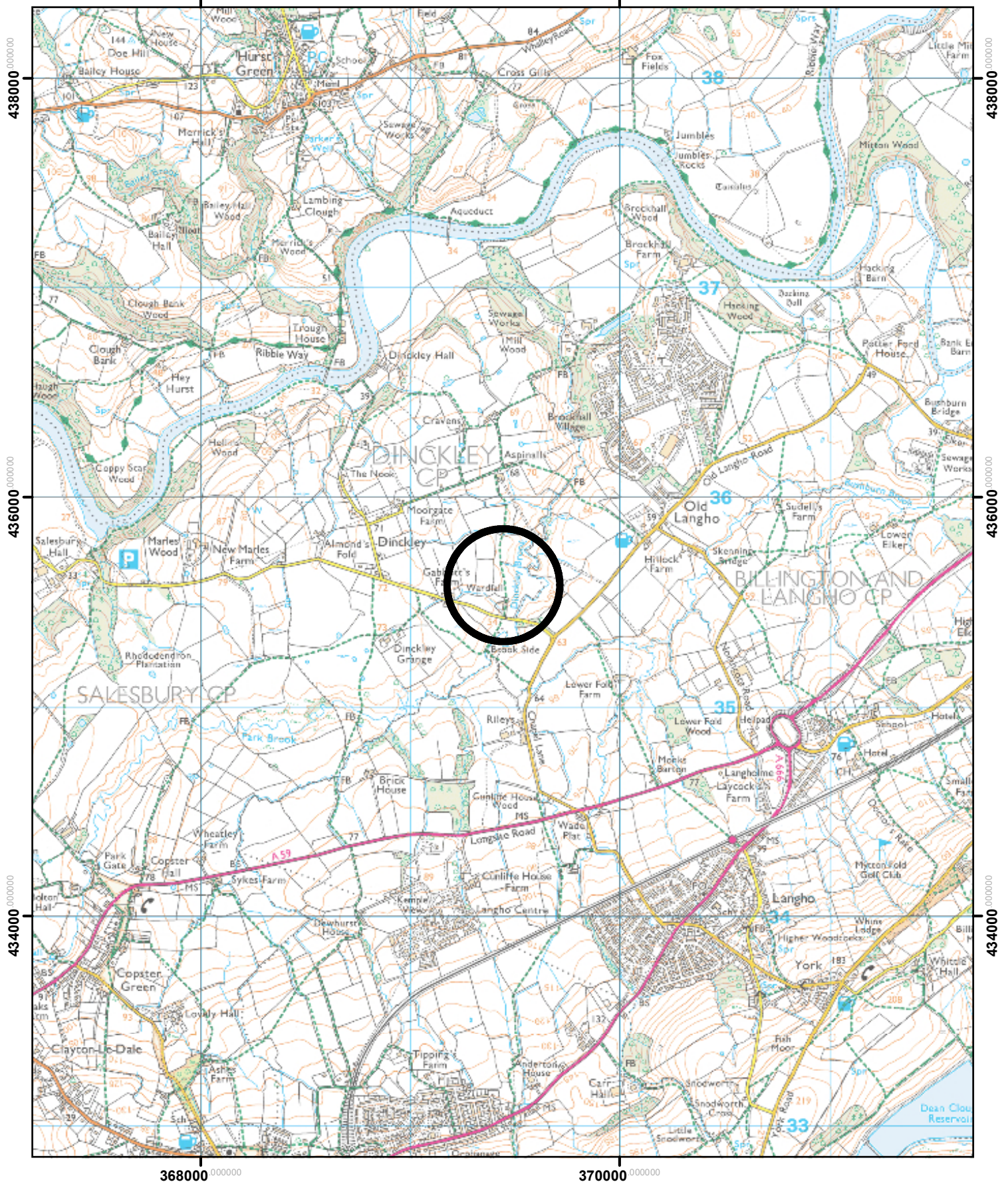
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Lancashire  
County  
Council

Andrew Mullaney  
Head of Planning  
and Environment

Location Plan  
Highways Act 1980 – Section 119  
Proposed Diversion of part of Dinkley Footpath 12, Ribbles Valley Borough



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