

Lancashire County Council

Regulatory Committee

Wednesday, 30th January, 2019 at 10.30 am in Committee Room 'B' (The Diamond Jubilee Room) - County Hall, Preston

Agenda

Part I (Open to Press and Public)

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

3.	Minutes of the last meeting	(Pages 1 - 6)
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4.	Guidance	(Pages 7 - 30)
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Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

5.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of a footpath along Ayrefield Road past Ayrefield House to Footpath Up Holland 2	(Pages 31 - 86)
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6.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway from Coastal Road to Lancaster Canal towpath, Bolton-le-Sands, Lancaster File No. 804-602	(Pages 87 - 128)
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7.	Urgent Business
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An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

8. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Wednesday 13th March 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, 14th November, 2018 at 10.30 am in Committee Room 'B' (The Diamond Jubilee Room) - County Hall, Preston

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

M Barron	L Cox
I Brown	J Parr
J Marsh	D Howarth
A Clempson	M Salter
T Burns	B Yates

1. Apologies

There were no apologies for absence.

County Councillor Matthew Salter replaced County Councillor Joe Cooney.

County Councillor Barrie Yates replaced County Councillor Peter Steen.

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 19 September 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

**Upgrading Footpath to Restricted Byway at Waingate, Rawtenstall
File No. 804-599**

A report was presented on an application for the route known as Waingate Road – Waingate Lane, Rawtenstall, as shown between points A-B-C-D-E-F-G on the Committee plan attached to the agenda papers, to be upgraded on the Definitive Map and Statement of Public Rights of Way from Footpath to Restricted Byway.

A site inspection had been carried out in July 2018.

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

The Committee noted that the whole of the route was shown on numerous historical maps from 1849 onwards, as a through route connecting Newchurch Road and Hurst Lane at Cotes Road, and was also shown named as Waingate Road and Waingate Lane. In addition, the Finance Act 1910 showed that the route under investigation was excluded from the taxable hereditaments which was considered to be good evidence that public carriageway rights existed, and that there appeared to be no evidence that such rights had ever been extinguished. Therefore, on balance, it was suggested that the map and documentary evidence provided was sufficient from which to infer dedication under common law.

It was reported that there were very few users providing evidence of their use and that such use must be more than trivial and sporadic to be sufficient use to give rise to a deemed dedication.

Taking all of the information into account, it was suggested that the Committee may, on balance, consider the evidence insufficient, from which to find that the criteria of Section 31 could be satisfied. However, coupled with the extensive map and documentary evidence, Committee may be of the view, on balance, that there was sufficient evidence from which a dedication of a vehicular highway could be deemed or inferred in law, and therefore that the application be accepted.

Resolved:

- (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-G.

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

6. Decision On Appeal
Wildlife and Countryside Act 1981
Addition of Public Footpaths around Glasson Dock Canal Basin,
Thurnham, Lancaster City Council

A report was presented on 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, which had been received from the Inspector directed by the Secretary of State for Environment, Food and Rural Affairs to determine the appeal.

The Committee had considered a report at their meeting on 15 November 2017 on an application for a set of footpaths around Glasson Canal Basin, Thurnham, to be added to the Definitive Map and Statement of Public Rights of Way. The Committee had resolved that the claim for a public footpath around Glasson Canal Basin be not accepted. The applicant had appealed against this refusal to the Secretary of State.

It was reported that an Inspector had been directed to consider the appeal, and that he had allowed the appeal, in part. Details of the appeal decision were provided with the agenda papers. The Committee noted that the county council had been 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:

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.

Resolved:

(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.

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

A report was presented on the proposed diversion of part of Dinckley Footpath 12, from the route shown as A-B on the Committee plan attached to the agenda papers, to the route shown as A-C-D.

It was reported that a request had 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.

The Committee noted that Wardfall was a residential dwelling that included former agricultural buildings that had now been converted for domestic use. The footpath ran from Ribchester Road, up the driveway of the property and out through a gate that led to a pasture field currently grazed by sheep.

It was reported that the buildings and gardens at Wardfall were located at either side of the footpath and the diversion, if successful, would move the footpath to the eastern boundary of the property, thereby increasing the privacy and security for the residents, whilst providing a route that was safe and convenient for public use.

No objections or adverse comments on the proposal had been received.

Resolved:

(i) That subject to satisfactory responses to the consultations, an Order be made under Section 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.

8. Urgent Business

There were no items of Urgent Business.

9. Date of Next Meeting

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 30th January 2019 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 30 January 2019

Electoral Division affected: All

Guidance for the members of the Regulatory Committee

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

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

Executive Summary

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

Recommendation

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

Background and Advice

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

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

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

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

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

Paper	Date	Contact/Directorate/Tel
Current legislation		Jane Turner, Office of the Chief Executive 01772 32813

Reason for inclusion in Part II, if appropriate

N/A

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

Definitions

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

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

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

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

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

Duty of the Surveying Authority

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

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

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

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

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

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

Orders following “legal events”

Other events include

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

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

Government Policy - DEFRA Circular 1/09

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

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

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

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

These are that:

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

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

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

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

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

Definitive Maps

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

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

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

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

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

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

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

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a “new” route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

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

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

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

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

Dedication deemed to have taken place (Statutory test)

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

Documentary evidence

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

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

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

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

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

Recording vehicular rights

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

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

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

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

Diversion Order s119

TO MAKE AN ORDER

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

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

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

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

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

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

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

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

Diversion Orders under s119A

TO MAKE AN ORDER

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

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

OR

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

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

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

Guidance under these specific sections will be made available when required

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

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

GUIDANCE

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

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

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

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

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

Extinguishment Orders under s118A

TO MAKE AN ORDER

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

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

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

GUIDANCE

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

Extinguishment Orders under s118B

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

TO MAKE THE FIRST TYPE OF S118B ORDER

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

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

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

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

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

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

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

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

The same test as above.

GUIDANCE

Again there is convenience to consider.

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

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

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

Regulatory Committee
Meeting to be held on the 30 January 2019

Guidance on the actions to be taken following submission of a Public Path Order to the Secretary of State

Procedural step

Once an Order has been made it is advertised it may attract objections and representations. These are considered by the Authority and efforts made to get them withdrawn. If there are any objections or representations duly made and not subsequently withdrawn the Authority may -

1. Consider that information is now available or circumstances have changed such that the confirmation test would be difficult to satisfy and that the Order be not proceeded with;
2. Consider that the Order should be sent into the Secretary of State with the authority promoting the Order and submitting evidence and documentation according to which ever procedure the Secretary of State adopts to deal with the Order; or
3. Consider that the Order be sent to the Secretary of State with the authority taking a neutral stance as to confirmation

Recovery of Costs from an Applicant

The Authority may only charge a third party if it has power to do so. We can charge an applicant for a public path order but only up to a particular point in the procedure – in particular, once the Order is with the Secretary of State we cannot recharge the costs incurred promoting the Order at a public inquiry, hearing or by written representations.

The power to charge is found in the - **Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993/407**

Power to charge in respect of the making and confirmation of public path orders

(1) Where—

- (a) the owner, lessee or occupier of land or the operator of a railway requests an authority to make a public path order under section 26, 118, 118A, 119 or 119A of the 1980 Act, or
- (b) any person requests an authority to make a public path order under section 257 or 261(2) of the 1990 Act, and the authority comply with that request, they may impose on the person making the request any of the charges mentioned in paragraph (2) below.

(2) Those charges are—

(a) a charge in respect of the costs incurred in the making of the order; and

(b) a charge in respect of each of the following local advertisements, namely the local advertisements on the making, on the confirmation, and on the coming into operation or force, of the order.

Amount of charge

(1) Subject to paragraphs (2) and (3) below, the amount of a charge shall be at the authority's discretion.

(3) The amount of a charge in respect of any one of the local advertisements referred to in regulation 3(2)(b) shall not exceed the cost of placing one advertisement in one newspaper

Refund of charges

The authority shall, on application by the person who requested them to make the public path order, refund a charge where—

(a) they fail to confirm an unopposed order; or

(b) having received representations or objections which have been duly made, and have not been withdrawn, the authority fail to submit the public path order to the Secretary of State for confirmation, without the agreement of the person who requested the order; or

(c) the order requested was an order made under section 26 of the 1980 Act and proceedings preliminary to the confirmation of that order were not taken concurrently with proceedings preliminary to the confirmation of an order made under section 118 of the 1980 Act; or

(d) the public path order is not confirmed by the authority or, on submission to the Secretary of State, by him, on the ground that it was invalidly made.

Policy Guidance on these Regulations is found in Circular 11/1996. Administrative charges can be charged up to the point where the order is submitted for determination and thereafter for advertising the confirmation decision and any separate notice of the Order coming into operation or force.

Careful consideration of stance

Recently there has careful analysis of all the work officers do and the cost of these resources and how to best use the resources.

The above Regulations have been considered and it is advised that the test as to when an Order should be promoted be clarified and applied consistently.

It is advised that consideration needs to be given to whether the diversion is of such little or no real public benefit such that resources should not be allocated to promoting the Order once submitted although where there is no substantial disbenefits to the public the applicants be able to promote the Order themselves.

This is not the same as considering whether the Order can be confirmed as set out in the statute. It is consideration of what actions the Authority should take on submitting the Order. It is not an easy consideration but officers will be able to advise in each particular matter.

Regulatory Committee

Meeting to be held on Wednesday, 30 January 2019

Electoral Division affected: Skelmersdale East;

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of a footpath along Ayrefield Road past Ayrefield House to Footpath Up Holland 2

File No. 804-600

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the addition to the Definitive Map and Statement of Public Rights of Way, of a footpath along Ayrefield Road past Ayrefield House to Footpath Up Holland 2, in accordance with file No. 804-600.

Recommendation

- (i) That the application for a footpath along Ayrefield Drive past Ayrefield House to Footpath Up Holland 2, in accordance with File No. 804-600, be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) the Wildlife and Countryside Act 1981 to add a footpath along Ayrefield Road past Ayrefield House to Footpath Up Holland 2 on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a footpath to be added along Ayrefield Road past Ayrefield House to Footpath Up Holland 2 on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

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

Consultations

West Lancashire Borough Council

The Borough Council have confirmed that they have no objection to the application to record the route as a public footpath but have provided no other information.

Up Holland Parish Council

The Parish Council are the applicants for the order to be made. The Parish Council first made contact with the county council about making an application in 2014 but did not submit it until 2018.

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	5229 0758	Junction of application route with the eastern end of the publicly maintained road U1167 (Ayrefield Road)
B	5257 0763	Application route leaves Ayrefield Road to pass through gate
C	5265 0763	90 degree bend in the application route immediately south of a brick outbuilding
D	5267 0760	Junction of application route with Footpath Up Holland 2

Description of Route

n.b. References to public rights of way shown on the Definitive Map and Statement are generally given in the form '08-21-FP02' or 'Footpath Up Holland 2' but are referenced below in the abbreviated form 'Footpath 2' for brevity since all those referred to are in Up Holland in West Lancashire Borough.

A site inspection was carried out by the Investigating Officer on 18 September 2018.

The total length of the route is 400 metres.

The application route commences at the eastern end of the publicly maintainable section of Ayrefield Road (U1167) just past the end of a row of houses (point A on the Committee plan). The start of the route is not obviously marked but there is a line in the tarmac which indicates that from point A the application route had been quite recently tarmacked for a short distance of approximately 40 metres from point A to the entrance to Ayrefield Hall which is situated to the north of the application route. Beyond the entrance to Ayrefield Hall the application route continues along a roughly tarmacked/stone surfaced road which is bounded on either side by fencing and hedges and from which there are a number of access points to properties situated along the route and to adjacent fields.

The route between point A and point B varies in width between 3.5 metres and 7.5 metres and there is evidence of regular vehicular use.

At point B, the application route leaves the road immediately before the gated entrance into Ayrefield House whilst the roadway curves round to continue in a north easterly direction.

At point B, the application route is crossed by a padlocked field gate and immediately to the side of the gate is a small pedestrian gate.

Nailed to the post from which the field gate is hung are two small signs which state 'Private Footpath' and 'Dogs to be on Leads' and attached to the pedestrian gate is a larger sign which appears to have been put up fairly recently (it is not weathered or faded in any way) which states:

'Permissive Footpath over private land.

This path is private but the landowner gives permission for respectful walkers to cross this land to connect public footpath #2 and Ayrefield Road.

The permission is given providing:

All dogs must be on a short lead

Dog mess must be cleared up

Gates must be closed behind you.

Please note: This land is used to farm poultry, goats and pigs. These animals roam freely on the land. Please respect the home of these animals and enjoy your walk!

Thankyou.'

Photographs taken by the county council in 2014 also show the padlocked field gate at point B but shows what looks to be a recently erected ladder stile adjacent to the gate with the same two signs saying 'Private Footpath' and 'Dogs to be on Leads' on the gate post.

Beyond point B, the route continues in a generally easterly direction along a track approximately 4 metres wide which is bounded on either side by walls. The wall to the north separates the route from the area immediately around Ayrefield House, whilst the wall to the south appears to have been constructed some time ago to define the route and to act as a revetment to the land to the south which is at a slightly higher level.

Approximately 55 metres from point B, the wall on the south side of the route becomes less obvious and although the line of it can be seen much of it has fallen into disrepair; the application route continues to the south of a brick building, currently used to stable a variety of animals, to a bend in the track (point C).


At point C, the route turns to continue in a generally south south easterly direction across an open area grazed by animals. There was no obvious trodden route leading from point C, although there was evidence of very recent earth works including the clearance and regrading of the land to accommodate a pond.

Close to point D, a walked route was visible on the ground (on land undisturbed by recent works) and at point D, the route was crossed by a kissing gate in the field boundary onto which the same signage had been attached as was visible at point B.

At point D, the route meets Footpath 2 which then continues in a generally south easterly direction across an open pasture field.

Photographs taken in 2014 by the county council of the route between point C and point D show a fallen tree close to point D which blocked the route (although it appeared possible to climb over/through the fallen branches). A well-trodden track was visible approaching point D from point C.

Map and Documentary Evidence

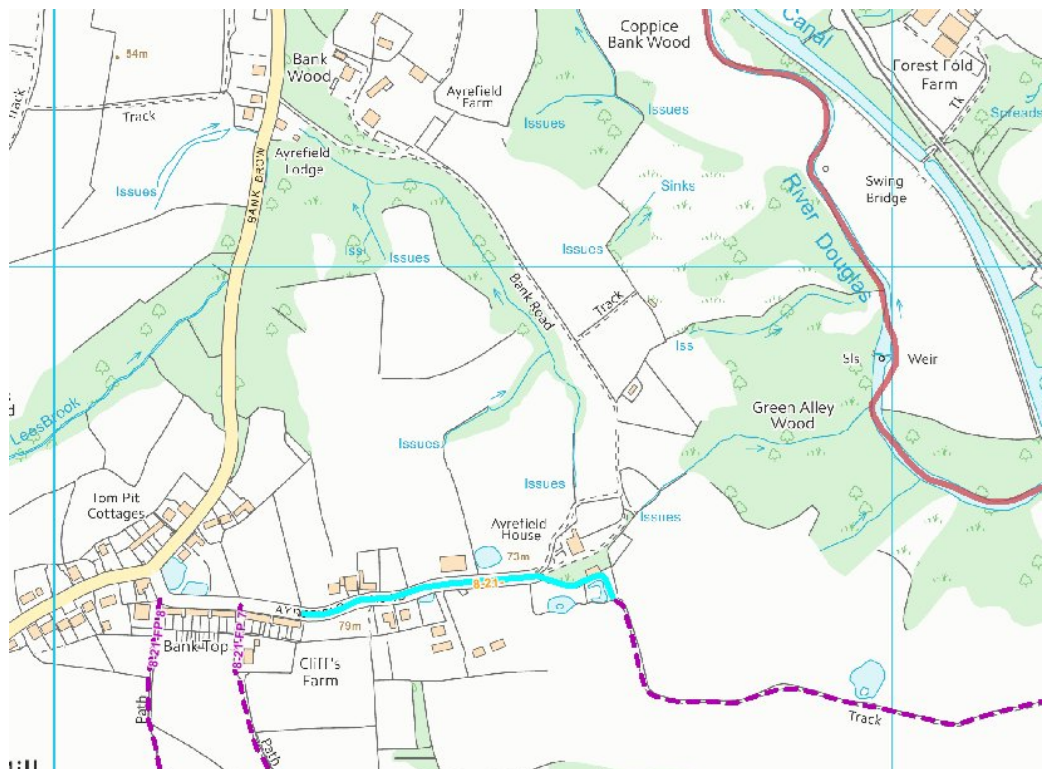
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
		
Observations		The application route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time but it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Greenwood's Map of	1818	Small scale commercial map. In contrast to other

Lancashire

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.



Enlarged extract of Greenwoods Map

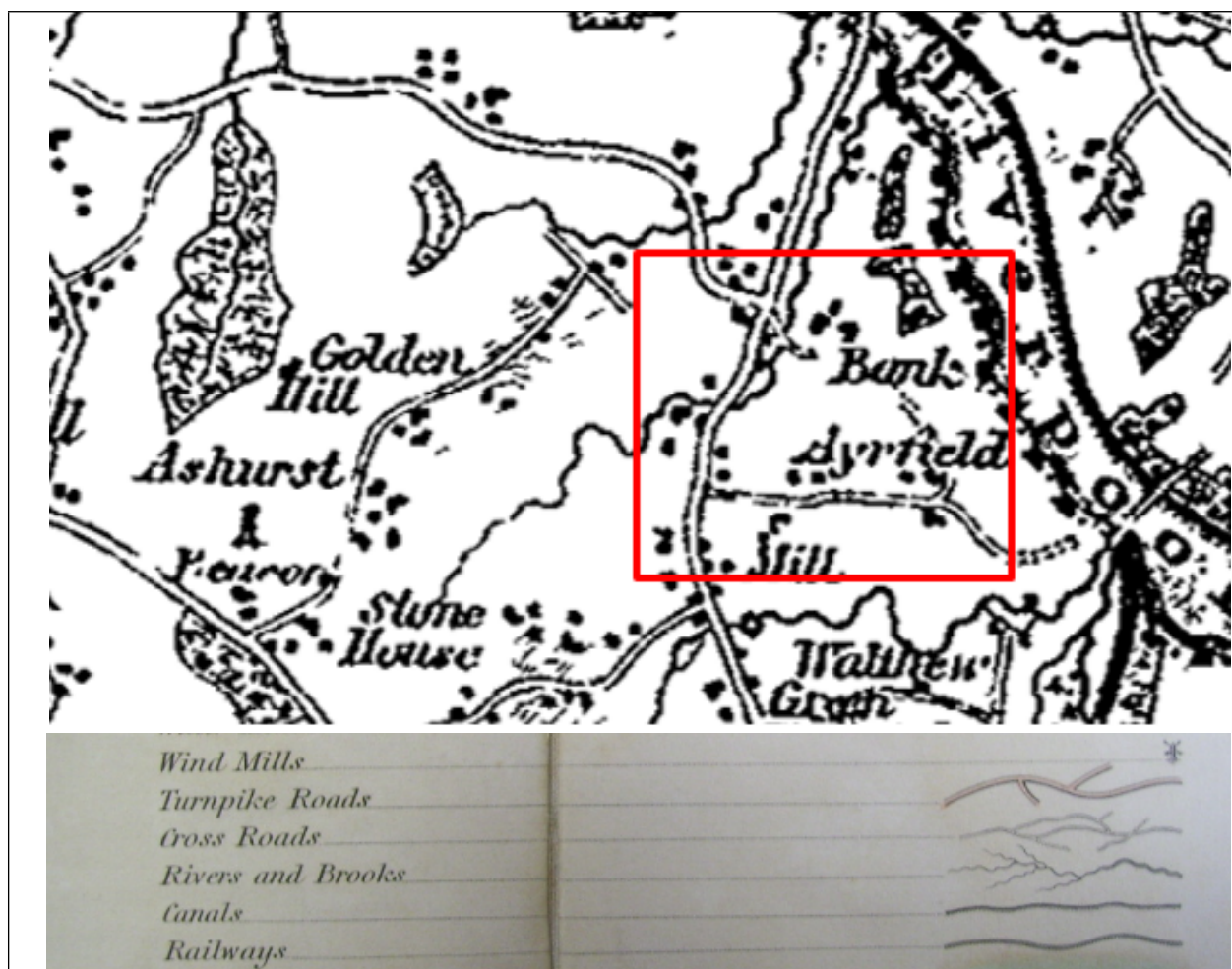


Modern GIS map showing highlighted area on Greenwoods Map

Observations

A route consistent with the Ayrefield Road is shown and buildings marked 'Ayrefield' can be

		<p>seen. The route shown extends east south east from Bank Brow turning 90 degrees after passing the building labelled 'Ayrefield' to continue north. This route is likely to include the application route between point A and point B but the application route from point B to point D is not shown.</p> <p>An extract of the modern GIS map showing the area crossed by the application route – and in particular the routes of Ayrefield Road and Bank Road is included above to illustrate the distinctive 'loop' made by the two roads from Bank Brow. It should be noted that Bank Brow is a steep route downhill from its junction with Ayrefield Road northwards to where it flattens out on the approach to Ayrefield lodge. The steepness of this route may partly account for the existence of Bank Road and Ayrefield Road – both providing easier access to Ayrefield in the early 1800s.</p>
Investigating Officer's Comments		<p>The route now known as Ayrefield Road (including the application route from point A to point B) and Bank Road probably existed as a substantial route in 1818.</p> <p>The route between point B and point D may have existed but it did not appear to exist as a major route. It may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.</p>
Hennet's Map of Lancashire	1830	<p>Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>



Observations		<p>Ayrefield Road – including the application route between point A and point B is shown on the map as a cross road. Buildings are shown marked as 'Ayrefield' in the proximity of Ayrefield Hall and Ayrefield House and a route is shown continuing through Ayrefield in a north north westerly direction to 'Bank' where a gap is shown, most likely on such a map, the break could be because the word 'Bank' was written across the route at this point rather than any gap on the ground.</p> <p>From the buildings at Ayrefield a further route is shown extending in a south easterly direction towards the canal. This may have included the application route between point C and point D but it is not possible to tell due to the small scale.</p>
Investigating Officer's Comments		<p>The route under investigation between point A and point B existed in 1830 and appears to be shown as part of 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</p>

		<p>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 although a route which may have been part of the application route between point C and point D is shown. Many properties are shown on this map with no access road or track to them but that part of the application route along Ayrefield Road (point A to point B) is shown passing properties and connecting to routes that are now recorded as public vehicular highways. It is considered likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that by inclusion on the map the route under investigation between point A and point B may have been considered to be a public bridleway or carriageway.</p>
Canal and Railway Acts		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>There are no proposed or existing canals or railways in the area crossed by the application route.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
Tithe Map and Tithe Award or Apportionment	1843	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>





Observations

The application route is shown as a part of a longer un-numbered route from Bank Brow through point A towards point B and is shaded in the same way as routes now recorded as public vehicular highways. Before reaching point B a line is shown across the route and beyond that point the route, although still shown as a bounded track, is not coloured and is numbered as part of plot 85. The track passes through point B to continue between buildings (not named on the map) to a T junction just beyond the buildings from where one route bears left and the other turns 90° to the right and continues to a gated junction at point D on the application route.

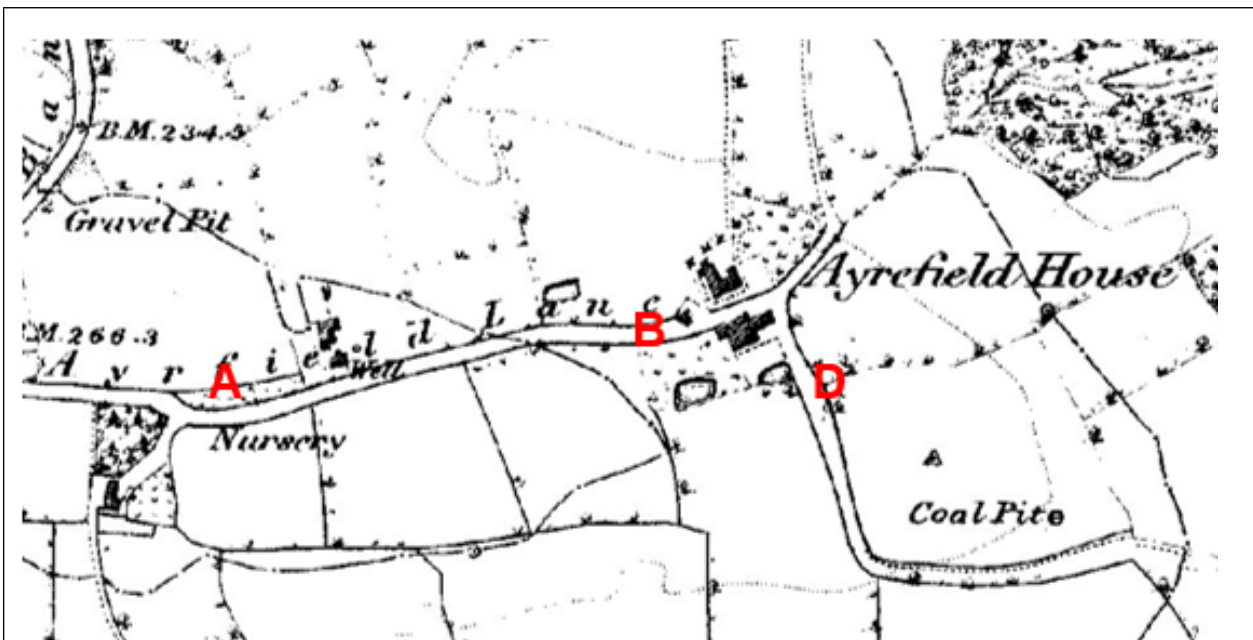
The application route itself – between points B – C-D is not shown and passes through plots numbered 84 and 85.

From point D an enclosed (uncoloured) route continues straight then 90° left and is numbered 82.

Plots 82, 84 and 85 are all described in the Tithe Award as being owned by Reverend Charles

		<p>Kendrick and occupied by Pye Halsall. Plot 82 is described as 'lane' with no tithe payable. Plot 84 is described as an orchard, 85 as House and garden and 86 (which is numbered on the map as being the building to the north of the road just before the 'T junction') is described as fold and lane. No tithes are listed as being payable for any of the above detailed plot numbers.</p> <p>Public roads appeared to be shown coloured but not numbered on the map.</p>
Investigating Officer's Comments		<p>The application route between point A and point B existed in 1843 as part of a longer route. Part was shown in the same way as other routes which appear to have been considered as being public roads but a line is shown across the route beyond which the route is not shown coloured suggesting that it was either considered to be of a lower public status or was of an inferior condition – or possibly both.</p> <p>The application route between point B and point D is not shown and is unlikely to have existed. A route is shown, however, passing between the properties and then turning south west to point D (and beyond) and which appears to have provided access through Ayrefield prior to the application route B-C-D being in existence.</p>
Inclosure Act Award and Maps		<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>
Observations		<p>No Inclosure Award was found for the area under investigation.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
6 Inch Ordnance Survey (OS) Map Sheet 93	1849	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 and published in 1849.¹</p>

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

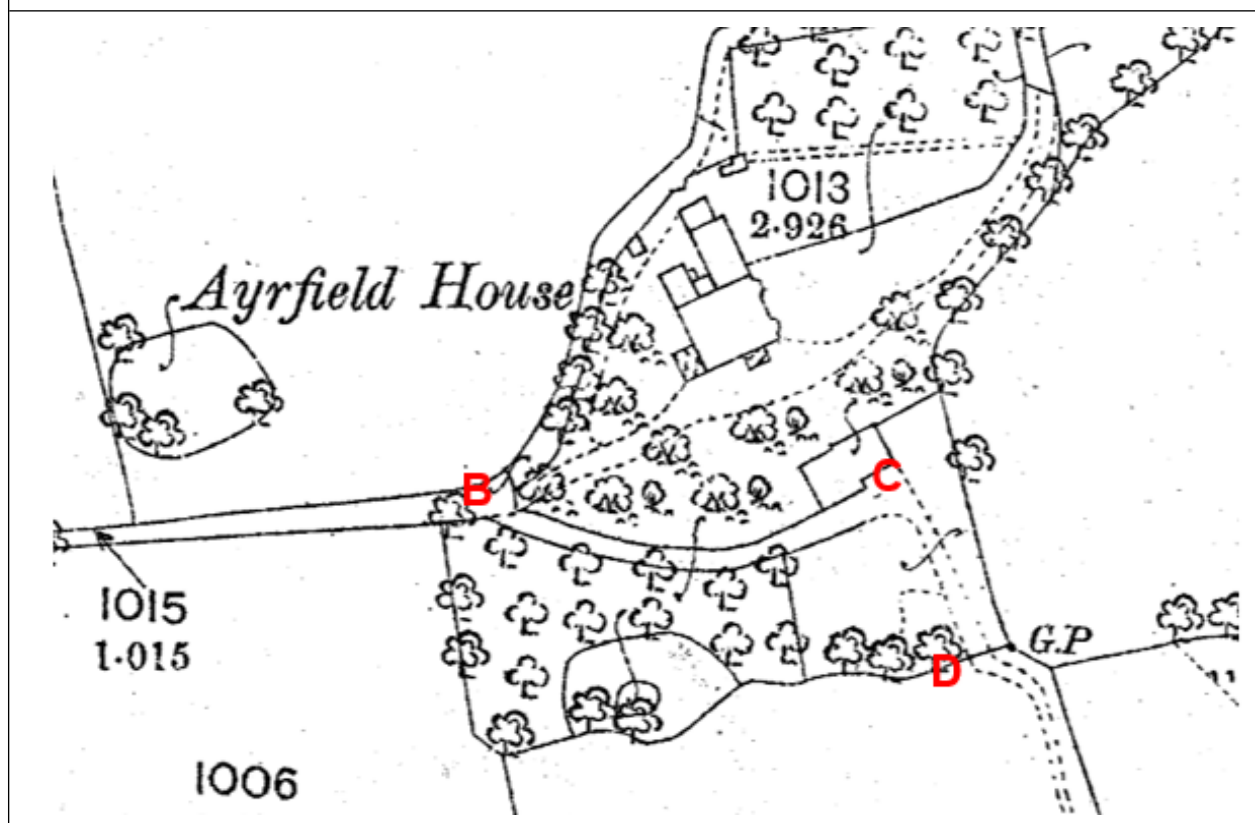
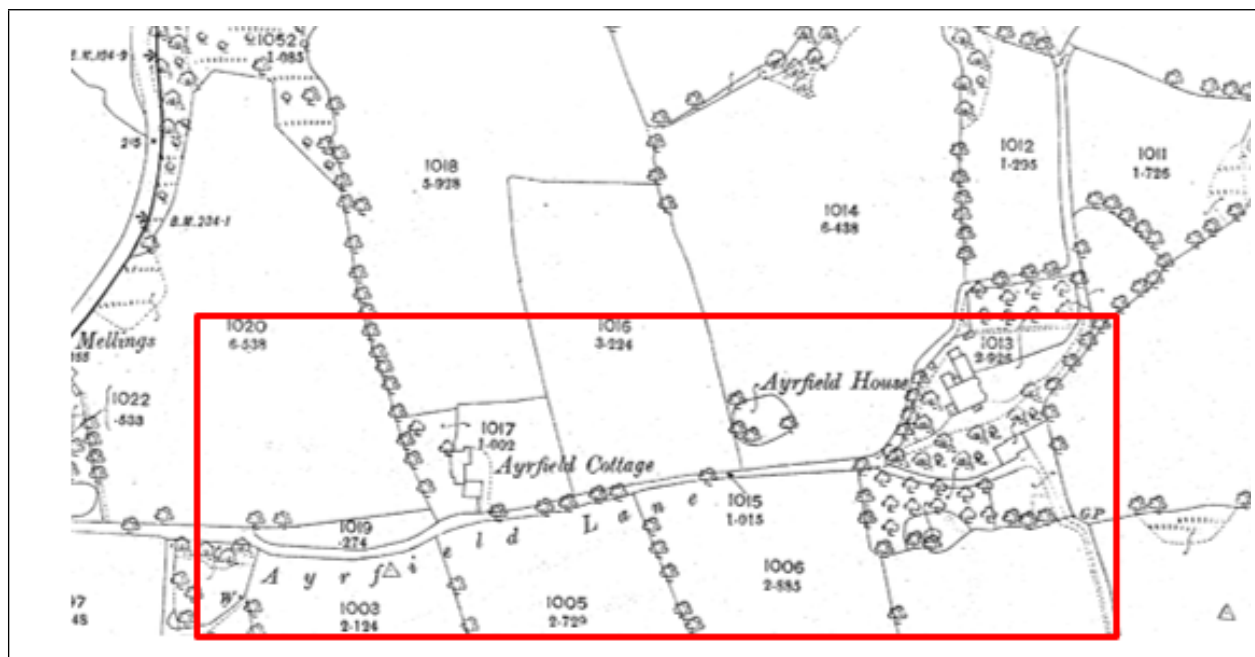


Enlarged extract of the 1849 map with the application route overlayed

Observations

The application route between point A and point B is shown as part of a longer route which extends east from Bank Brow and continues – to include the application route between points A-B to pass between the buildings marked as

		<p>Ayrefield House. The route from Bank Brow to Ayrefield House is named as Ayrefield Lane on the map and is shown as being open and accessible (i.e. not gated).</p> <p>The application route from point B to point C is not shown but it appeared to be possible to pass between the buildings and turn right to continue in a generally southerly direction along an enclosed track to point C and then continue along the track through point D and then to continue along the track – consistent with the route now recorded as Footpath 2 to get to the river at the Weir at 'Dean Old Lock'.</p> <p>Beyond Ayrefield House Ayrefield Lane also continued north and then north westerly to Bank House.</p>
Investigating Officer's Comments		<p>A route consistent with the route to be added between point A and point B existed in 1849 and formed part of a named route (Ayrefield Lane) which provided access to a number of properties including Ayrefield House from where it split with one section looping back round to Bank Brow and Bank House and another route (which included the application route between point C and point D) leading to properties situated at the Weir on the River Douglas. Both parts of the route (point A - point B and point C - point D) appeared to be capable of being used on foot, horseback and by vehicles of that time.</p> <p>The application route between point B and point C did not exist in 1849.</p>
25 Inch OS Map Sheet 93-01	1895	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893 and reprinted 1895.</p>






Observations

The full length of the application route is shown.

Between point A and point B the application route runs along the bounded access road named as Ayrefield Lane on the map.

From point B a new track is shown which was not shown on the earlier edition of the 6 inch map. The route is bounded on either side but is not gated at point B - a dashed line across the

		<p>route indicating a possible change in surface but not suggesting that access onto the route was restricted by a gate or barrier.</p> <p>From point B the bounded route is consistent with the application route and continues to point C from where it turns to continue in a generally southerly direction as an unbounded track to point D. At point D a line is shown across the track suggesting the existence of a gate. The letters 'G.P' are written next to the track at point D which it is likely to mark the existence of a 'guide post' (sign post).</p> <p>North of point B a further route is shown running to the west of, and then continuing north past, Ayrefield House to continue as Bank Road.</p> <p>No part of the application route (or Ayrefield Lane and Bank Road) are shown coloured or shaded on the map.</p>
Investigating Officer's Comments		<p>The whole of the application route existed in 1895 as part of a longer route with the section between point B and point D constructed to provide a route around the edge of Ayrefield House rather than passing through the middle of the grounds of the property. The existence of a guide post at point D suggests that use of the route was not limited to the landowners (who would have known which route to take).</p> <p>The fact that part of the route was named on the map (Ayrefield Lane) is evidence that it was known locally by that name and is consistent with use of the route by the public at least on horseback at that time.</p> <p>The existence of gates along a public route (point D) 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 sheet. The route under investigation is not shown in that</p>

		way suggesting that it was not considered to be such a road at that time.
25 inch OS Map Sheet 93-01	1908	Further edition of the 25 inch map surveyed in 1892, revised in 1907 and published in 1908.
		
Observations		<p>The full length of the application route is shown as part of a longer route.</p> <p>The route does not appear to have altered since the earlier edition of the 25 inch Ordnance Survey map. The guide post at point D is not shown but a route from close to point D extending north to Bank Road is shown which avoids passing through the garden of Ayrefield House and a guide post is located on this route.</p>
Investigating Officer's Comments		<p>The application route existed in 1908 as part of a longer through route and appeared to be capable of being used at least on foot and possibly on horseback at that time. Routes are shown both to the north and south of Ayrefield House suggesting that through routes existed along Ayrefield Lane, Footpath 2 and Bank Road and that routes had been provided around the property – instead of directly through it.</p>
Ordnance Survey Object Names Book		<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</p>

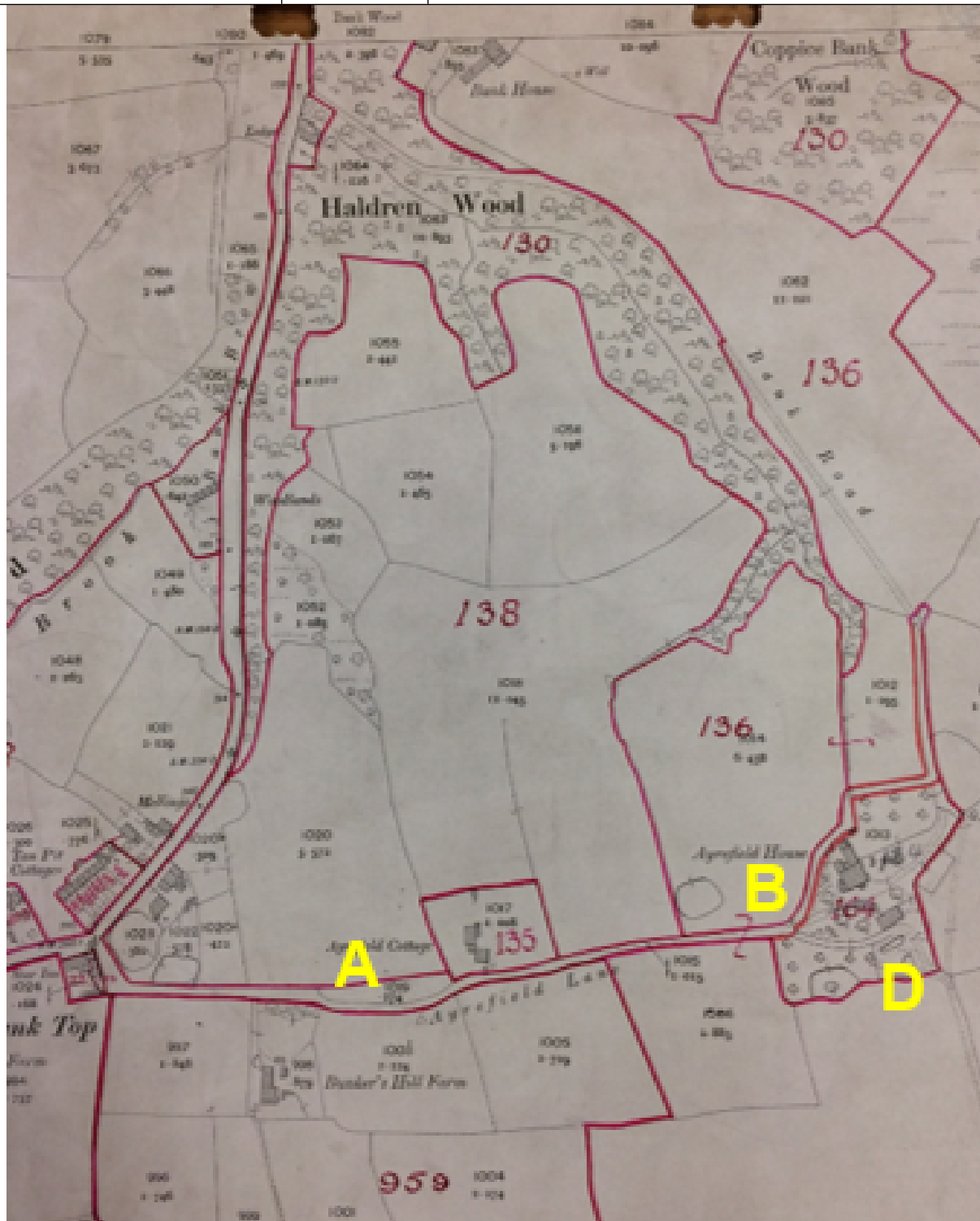
		person attesting to the name. The descriptions usually state where the road started and finished, and often described them as a road, lane or drove road. The descriptions often drew a distinction between what was believed to be public and private and included information about who owned or maintained bridges.
Observations		An online search of the Object Names Book records deposited at The National Archives was made but the Book for Ordnance Survey Map sheet 93NW could not be found.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Bacons Map	1904	G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps.



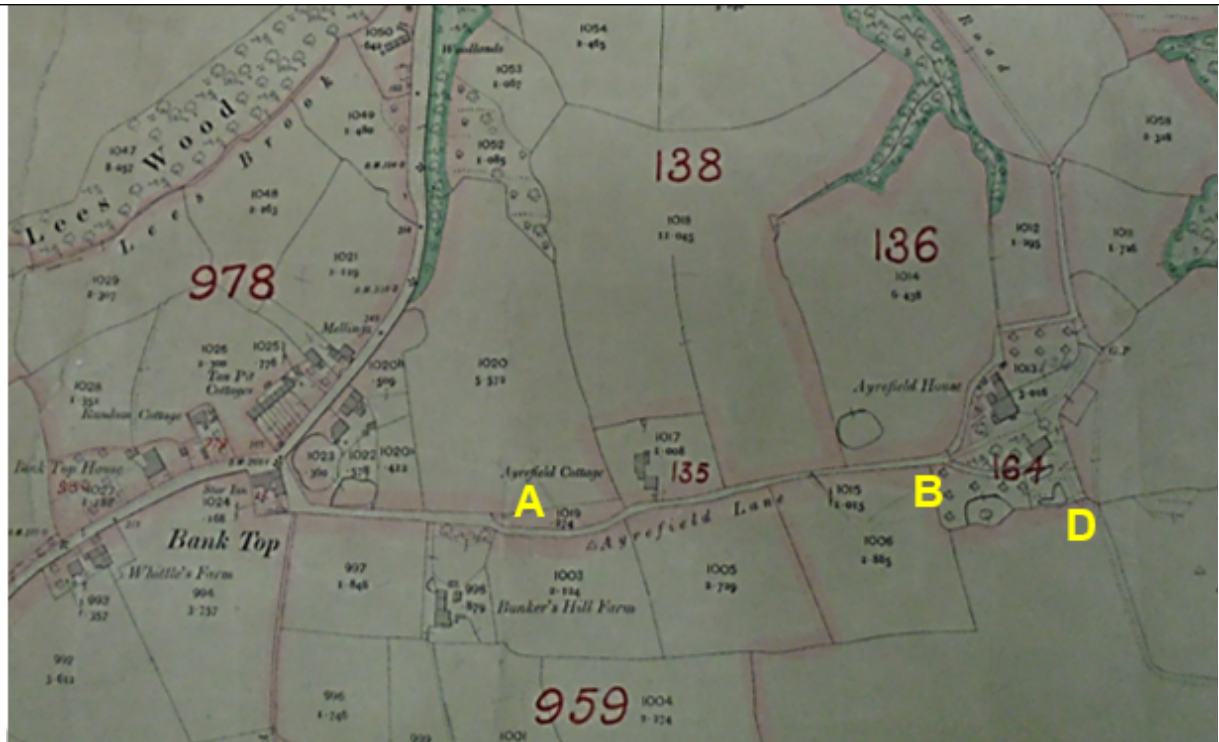
Observations		GW Bacon was an American entrepreneur who moved to London and was known to have been involved in numerous business ventures including the publication of world maps. The maps of the British Isles were at a small scale and as such only the more significant routes are generally shown. Commercial maps of this nature were expensive to produce and to purchase and as a result routes shown were often considered to be public through routes.
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		<p>The application route between point A and point B is shown as part of a longer route and is shown in the same way as routes now known to carry public vehicular rights supporting the fact that it existed as a substantial physical route at that time and that it was probably available for use by the public on horseback and possibly with vehicles.</p> <p>The application route between point B and point D is not shown.</p>
Investigating Officer's Comments		<p>The application route between point A and point B existed as a substantial route which was probably capable of being used as part of a through route by vehicles. The application route between point B and point D was not considered to be a significant vehicular route and was therefore not shown on the map.</p>
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along 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</p>

noted that if no reduction was claimed this does not necessarily mean that no right of way existed.

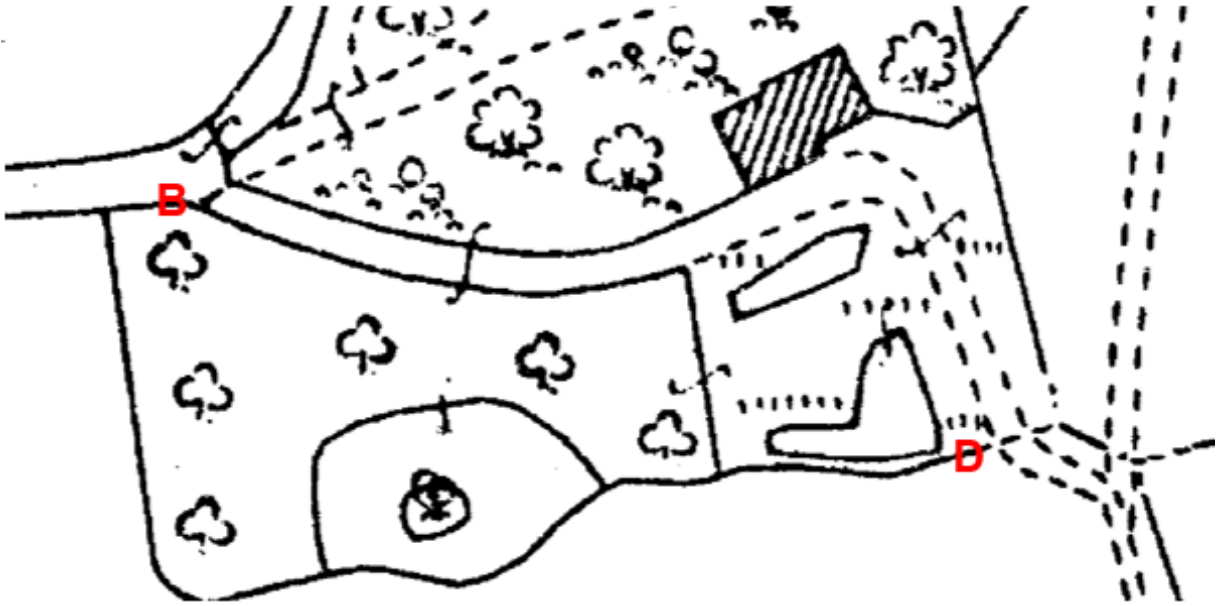


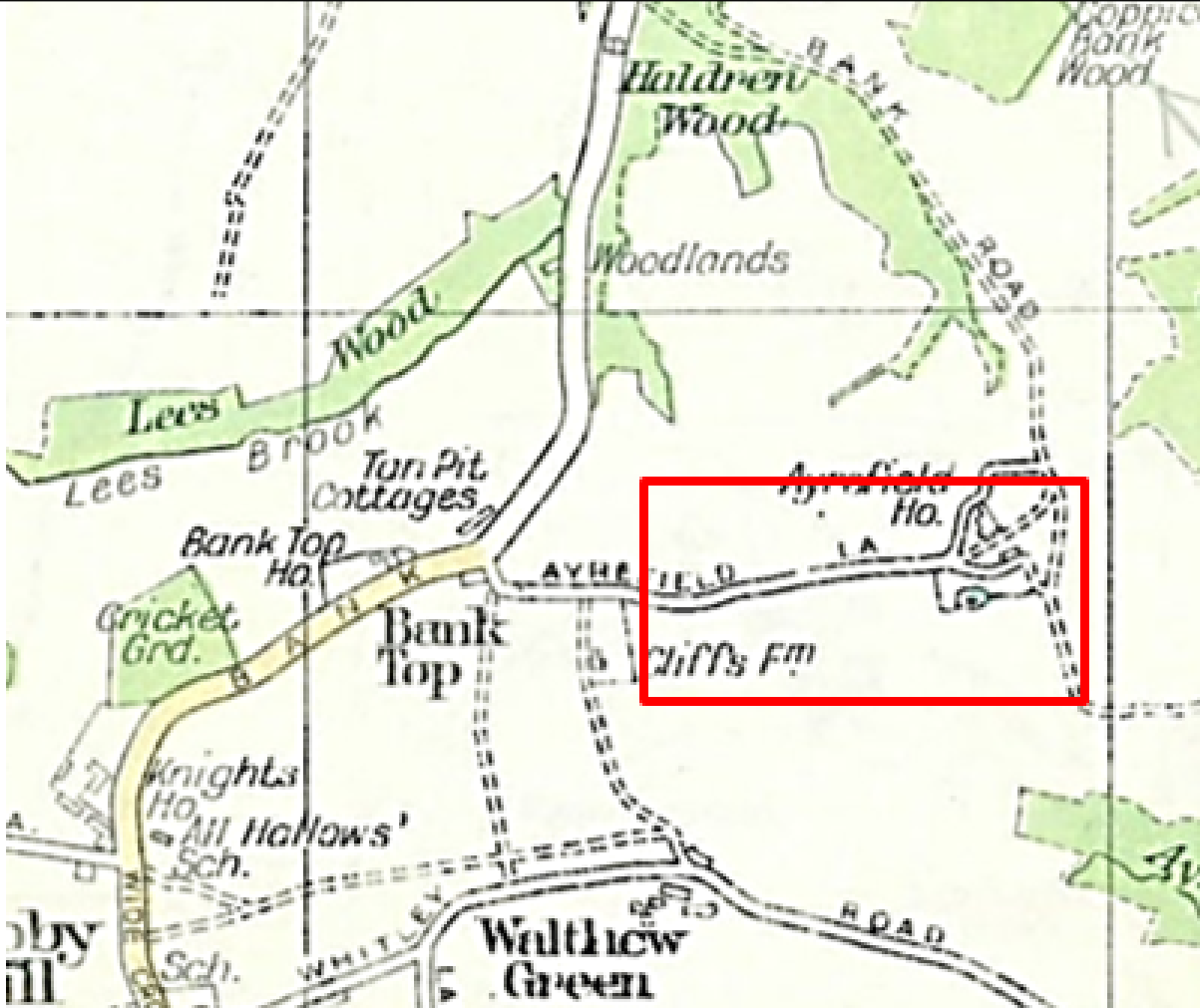
County Records Office



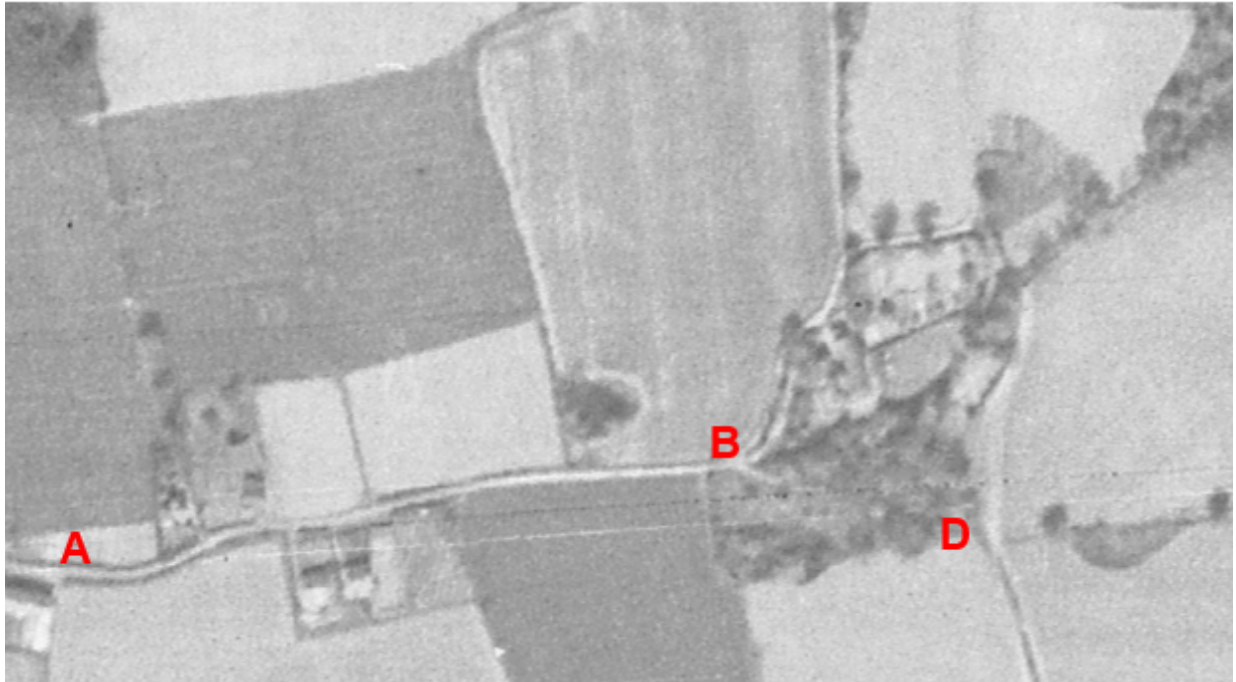
The National Archives

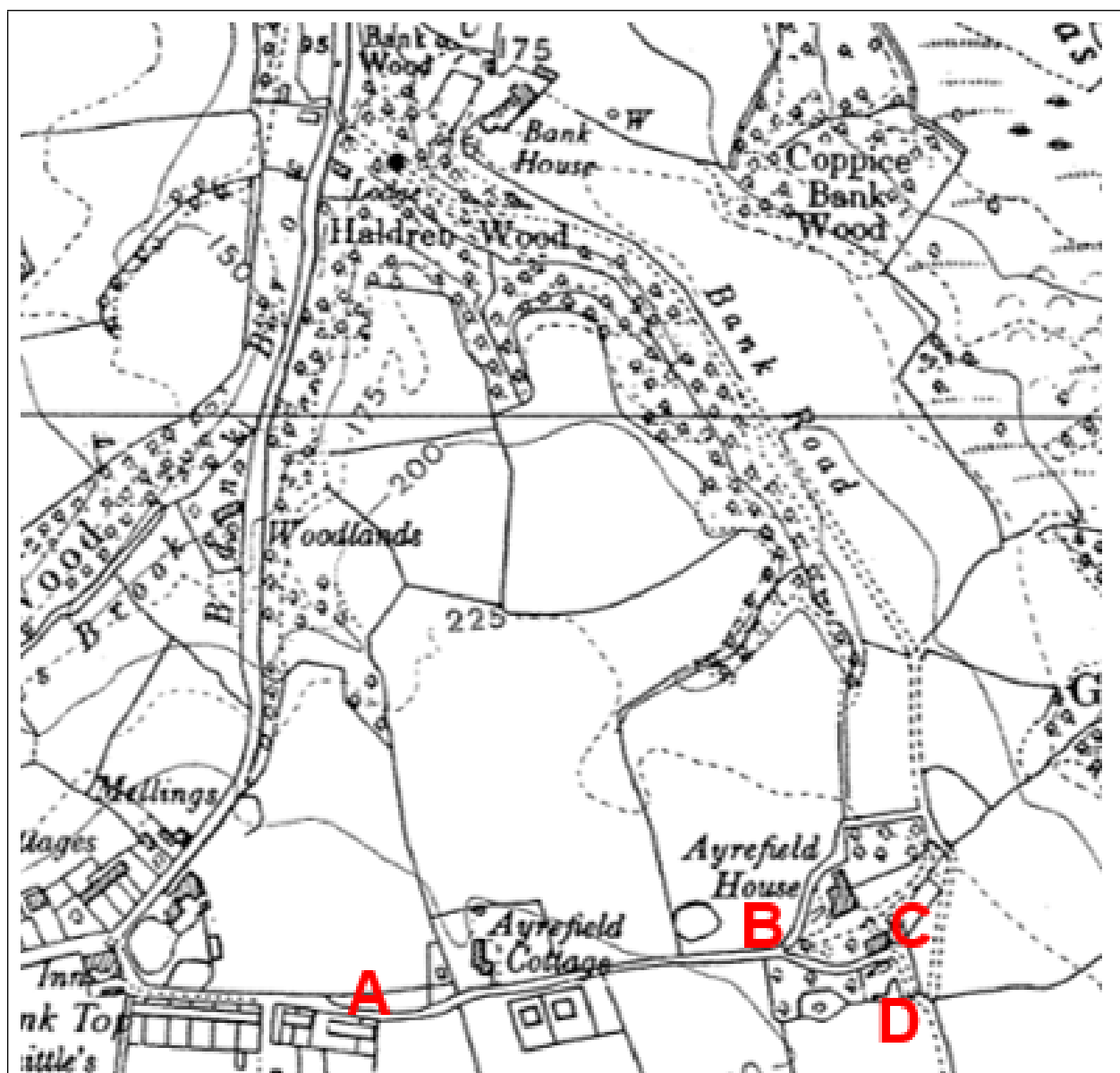
Observations		<p>The plan deposited at the County Records Office shows the application route between point A and point B excluded from the numbered hereditaments together with the rest of Ayrefield Lane. The route between point B and point D is shown included in the numbered plot 164 but this number has been crossed out on the map deposited in the County Records Office and '134' written in pencil. The route is shown in the same way on the plan deposited in The National Archives.</p> <p>The Field Book entry for hereditament 134 describes the property as Ayrefield House, garden and stables. It is listed as being owned by GH Banks of Winstanley Hall and occupied by Thomas Witter. There is no reference to the application route and no deduction is listed for public right of way or user. A £10 deduction is listed for easements but the type of easement is not stated.</p>
Investigating Officer's Comments		<p>The exclusion of the route between point A and point B 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</p>

		<p>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 privately owned may have been regarded as being in public ownership or it may have been that ownership was unknown.</p> <p>With regards to the route between point B and point D the owners of the land did not acknowledge the existence of any public rights over the land crossed by the application route at the time of the valuation.</p>
25 Inch OS Map sheet 93-1	1928	Further edition of 25 inch map (surveyed 1892, revised in 1926 and published 1928).
		
Observations		<p>The full length of the application route is shown as part of a longer route.</p> <p>It is shown unaltered from the previous editions of the 25 inch Ordnance Survey maps.</p>
Investigating Officer's Comments		The application route existed as part of a longer through route and appeared capable of being used.
Authentic Map Directory of South Lancashire by Geographia	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</p>

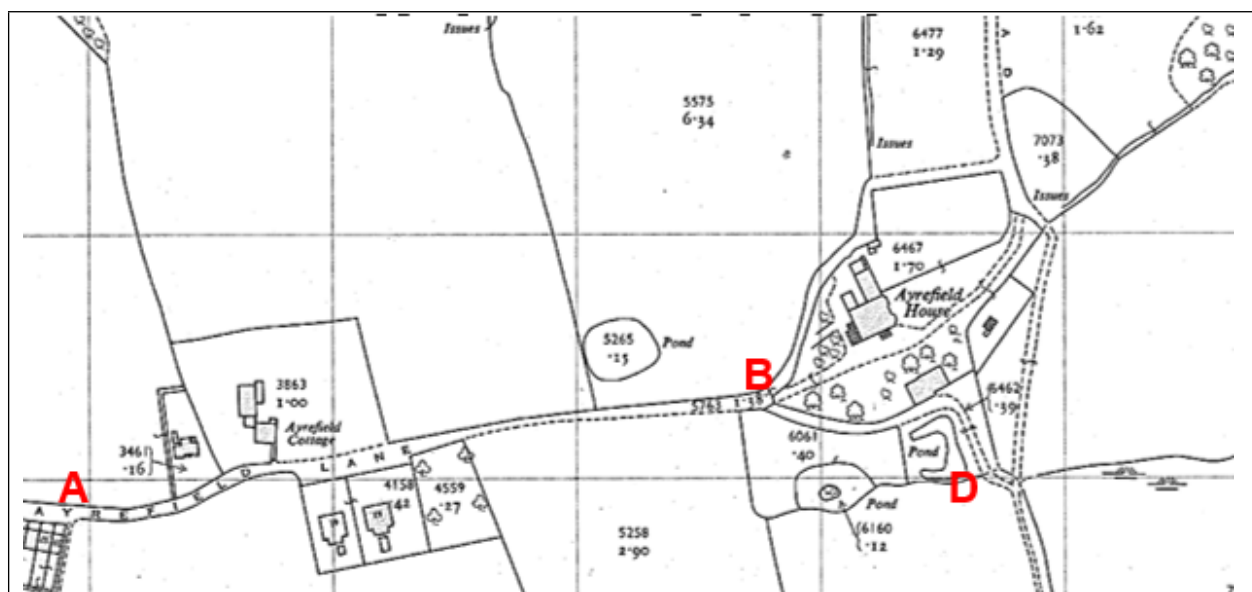
		publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.
		
Observations		The full length of the application route is shown as part of a longer through route. Between point A and point B the route is shown as part of a longer route named as Ayrefield Lane.
Investigating Officer's Comments		The route under investigation is shown in the atlas consistent with other routes carrying public vehicular rights (at least between point A and point C).
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the

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

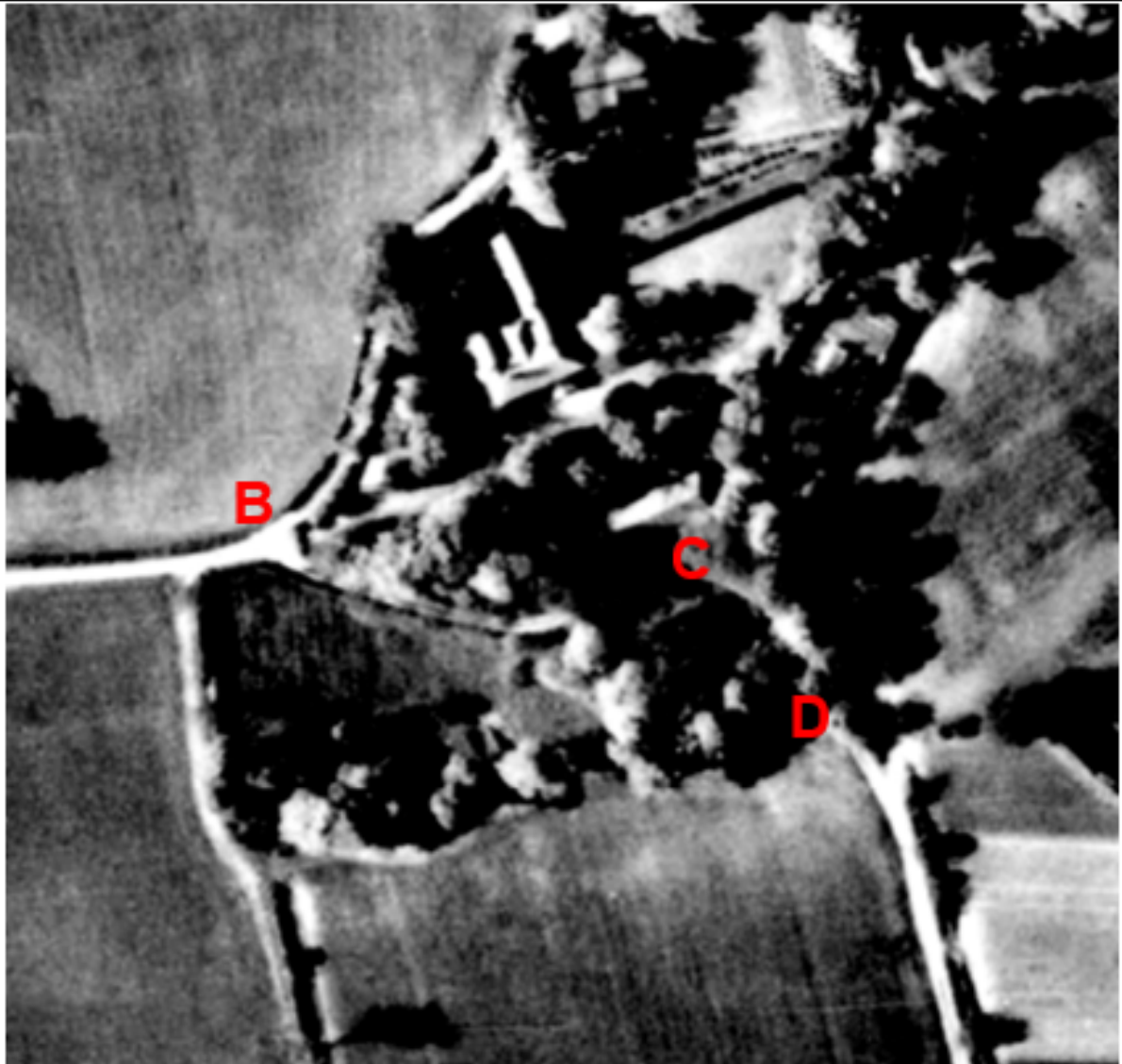
		1940s and can be viewed on GIS. The clarity is generally very variable.
		
Observations		The application route can be clearly seen between point A and point B as part of a longer route. The way in which it shows up on the photograph is suggestive of a route used by vehicles. From point B to point D only part of the route can be seen due to tree coverage and it is not possible to see whether any gates existed across it.
Investigating Officer's Comments		The route to be added existed in the 1940s.
6 Inch OS Map sheet SD 50NW	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The full length of the application route is shown as part of a longer route. Ayrefield Lane is not named on the map. Additional houses are shown to exist along Ayrefield Lane east of point A and also opposite Ayrefield Cottage.
Investigating Officer's Comments		The route to be added existed in the 1930s as part of longer routes and provided access to a number of properties.
1:2500 OS Map	1959	Further edition of 25 inch map reconstituted from former county series and revised in 1959 and published 1959 as national grid series.



Observations		The full length of the application route is shown as part of a longer route. The application route appeared to be crossed by a continuous line at point B and partially at point D.
Investigating Officer's Comments		The route to be added existed in the 1950s as part of a longer route with a gate at point B and possibly at point D.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The application route can be clearly seen as part of Ayrefield Lane from point A to point B. At point B a significant track can be seen curving round towards point C suggesting that the application route from point B through to point D was clearly defined and being used by vehicles in the 1960s. From point D a substantial track can be seen continuing south along the route of Footpath 2.
Investigating Officer's Comments		The application route existed as part of a significant route in the 1960s.
Aerial Photograph	1999	Aerial photograph available to view on GIS.



Observations		The application route between point A and point B can be clearly seen as part of a longer route providing vehicular access. The application route from point B to point D cannot all be seen due to tree cover but near point B can be seen but appears lightly used. A trodden line appears visible along the route of Footpath 2 south of point D much less prominent than in the 1960s.
Investigating Officer's Comments		The application route between point A and point B existed and was capable of being used. The route between point B and point D appears to have existed to link to Footpath 2 although it is not possible from the photograph to see whether any gates or stiles existed.
Aerial Photograph	2008	Aerial photograph available to view on GIS.

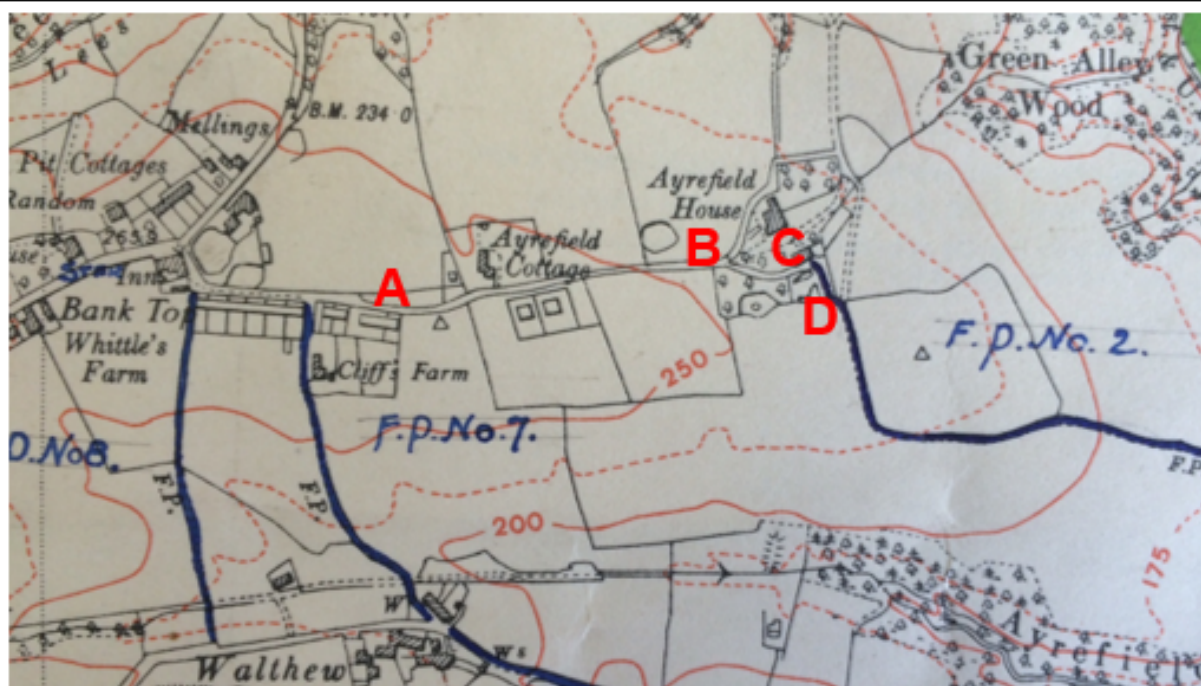


Observations		The application route between point A and point B can be clearly seen as part of a longer route providing vehicular access. The application route from point B to point D cannot be seen due to tree cover. A trodden line appears visible along the route of Footpath 2 south of point D.
Investigating Officer's Comments		The application route between point A and point B existed and was capable of being used.
Aerial Photograph	2016	Aerial photograph available to view on GIS.



Observations		The application route between point A and point B existed and was capable of being used. A gate can be seen across the application route at point B and the line of the route from point B to point C is mostly visible and appears to be accessible. Between point C and point D the line of the route appears clear apart from the tree that has fallen across it close to point D.
Investigating Officer's Comments		The application route between point A and point B existed and was capable of being used. The route between point B and point D appears to have existed to link to Footpath 2 although it is not possible from the photograph to see whether the gate at point B was unlocked or what access was alongside it (a pedestrian gate or stile). A tree can be seen across the route close to point D which is referred to later in the report.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the county council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-	The initial survey of public rights of way was

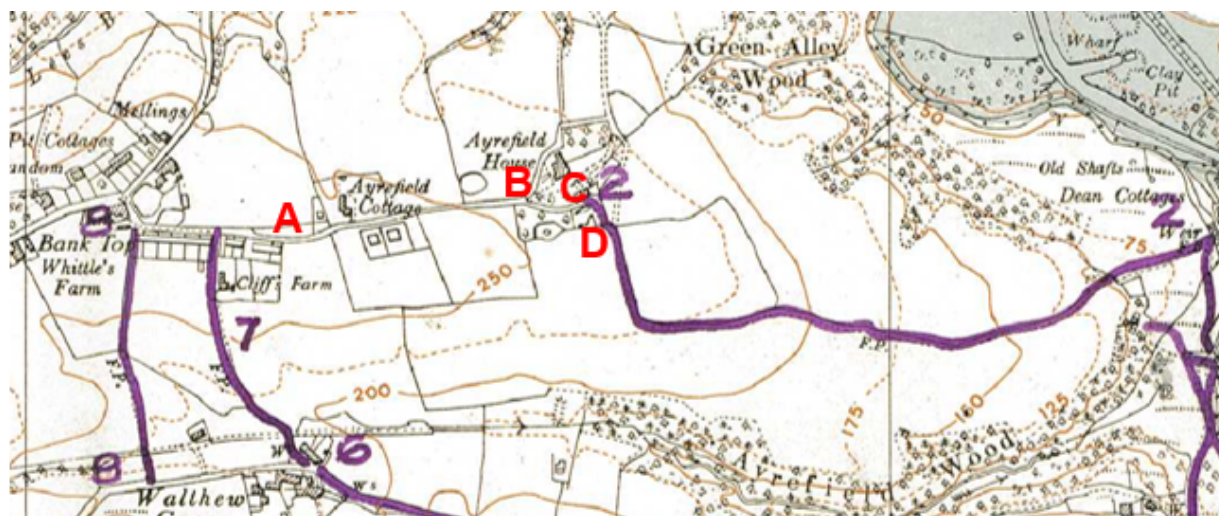
	1952	carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the county council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the county council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The area crossed by the application route was part of the Urban District of Skelmersdale and Holland in the 1950s for which no parish survey was completed.
Draft Map		The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.




NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949.			
<u>SURVEY OF PUBLIC RIGHTS OF WAY.</u>			
APPLEY BRIDGE and ROBY MILL and VILLAGE.			
No. of path.	Kind of path.	Position.	Length in Miles.
✓ 1.	F.P.	Commencing in cart way, close to Speakman's shop, Appley Lane and leading Westerly for approximately 700' thence Southerly along line of hedge approximately 1,000', thence Westerly along hedge line to reach and pass through farm yard to Halliwell Farm and road to reach Holland Lees Road.	.47 miles.
✓ 2.	F.P.	From point East of Ayrefield House along line of 500' Southerly thence Westerly to Weir near Dean Cottage.	.50 miles.
✓ 3.	F.P.	Southerly from Dean Cottage Weir, to join to Footbridge crossing boundary stream at Head of Dean Wood.	.26 miles. ?
✓ 4.	F.P.	Commencing at Stepping stones in Dean Wood stream, thence N. to junction point to Ayrefield Road and to Footpath leading to Footbridge as F.P. 3.	.24 miles. ?

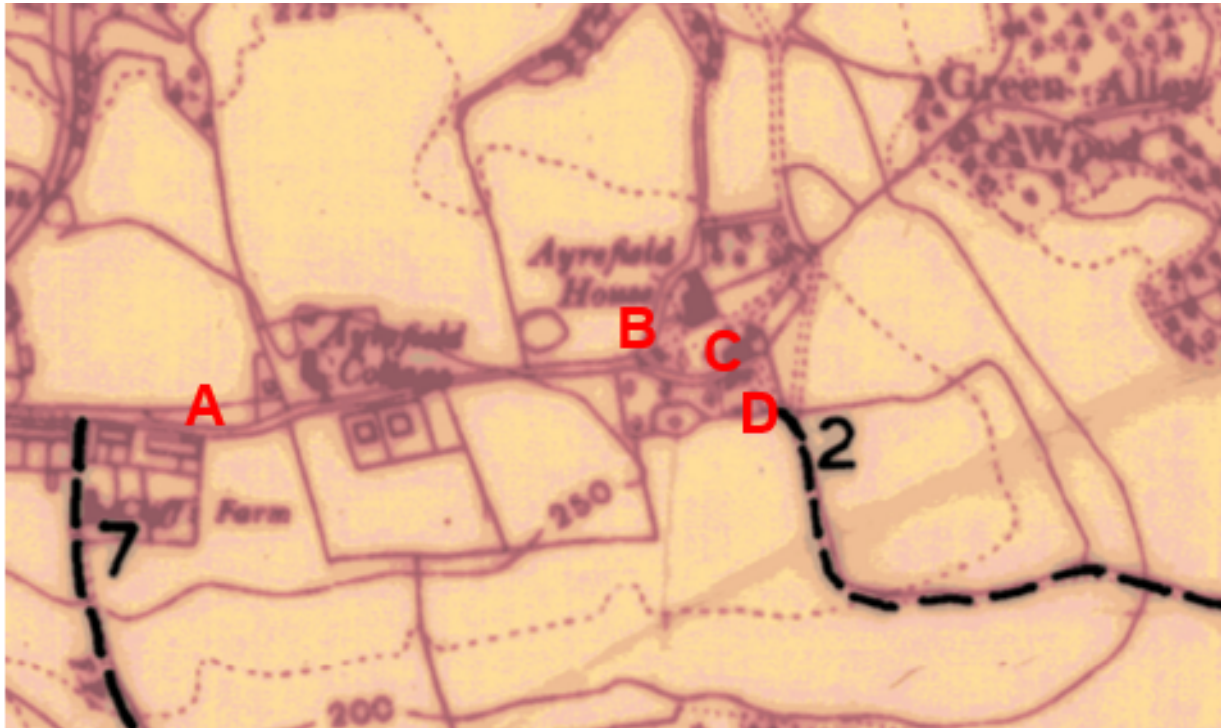
Observations	<p>Most of the route was not shown on the Draft Map but Footpath No. 2 was shown from point C along the application route to point D and then continued in a south south easterly direction.</p> <p>Footpath 2 was described in the Draft Statement as being from a 'point east of Ayrefield House along line of 500' Southerly thence westerly to</p>
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		<p>Weir near Dean Cottage'. The words 'Along line of 500' ' have been crossed out.</p> <p>Representations were made to the county council by the Ramblers Association about the fact that Ayrefield Lane and Bank Road were not shown. The status of the route was queried by the Ramblers Association who said that if they were not public roads then they should be recorded as public paths.</p> <p>A handwritten note on the list of representations states 'public highways' next to the representation made about Ayrefield Lane and Bank Road.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Observations		<p>The application route between point C and point D is shown as part of Footpath Up Holland 2. The application route from point A to point C is not shown on the Provisional Map.</p> <p>The Draft Statement had been altered to read 'From point East of Ayrefield House Southerly thence westerly to Weir near Dean Cottage'.</p> <p>No representations were made by landowners with regards to how the application route was</p>
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		shown.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
		
Observations		The application route between point C and point D was shown as part of Footpath Up Holland 2.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Observations		No part of the application route is recorded on the Revised Definitive Map (First Review).
Investigating Officer's Comments		<p>The application route between point C and point D is consistently shown as part of Footpath Up Holland 2 from the preparation of the Draft Map to the publication of the First Definitive Map. It is not shown on the Revised Definitive Map (First Review) but no legal order could be found suggesting that it had been legally extinguished or diverted.</p> <p>It has been found across Lancashire that (a) the small scale (6 inch to 1 mile) of the OS maps used to prepare the Parish Survey, Draft, Provisional, First Definitive and Revised Definitive Map (First Review) (b) the thickness of the pens used to draw the lines to denote the routes and (c) the fact that the maps were drawn and then reproduced at least 5 times during the process – it is not known by whom – have resulted in a significant number of drafting errors occurring on maps in some areas, particularly where the base map is unclear or cluttered.</p> <p>In this particular case part of the application route C-D is shown on three maps (Draft, Provisional and First Definitive) as part of Footpath Up Holland 2. There appears to be no reason why it was not shown on the Revised Definitive Map (First Review) other than a</p>

		<p>drafting error explained by the fact that the draftsman (who was very unlikely to have personal knowledge of the route) did not continue the ink line through the area shown on the base map as woodland to point C.</p> <p>The fact that the application route between point A and point C was not shown on the Draft Map of public rights of way was queried under the formal process by the Ramblers Association in 1953. It appears to have been considered and concluded that the route (at least from point A to point B) formed part of the public highway that it was not necessary or appropriate to record on the Definitive Map. If only the route between point A and point B was considered to be a public highway then this would still leave a question about how the public accessed the recorded route of Footpath Up Holland 2 at point C so it appears that the application route between point B and point C was also considered to be public highway in 1953.</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The county council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at public expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



Plan provided by LCC to Arnold Fooks Chadwick Solicitors 17 July 2001

Observations

There is no 1929 Handover Map available for the area crossed by the application route.

A search of Lancashire County Council highway records was made with regards to the application route.

Ayrefield Road is currently recorded on the adoption records held by the county council as being adopted for a length of 207 metres from the junction with Bank Brow. The application route between point A and point B is not recorded as being publicly maintainable.

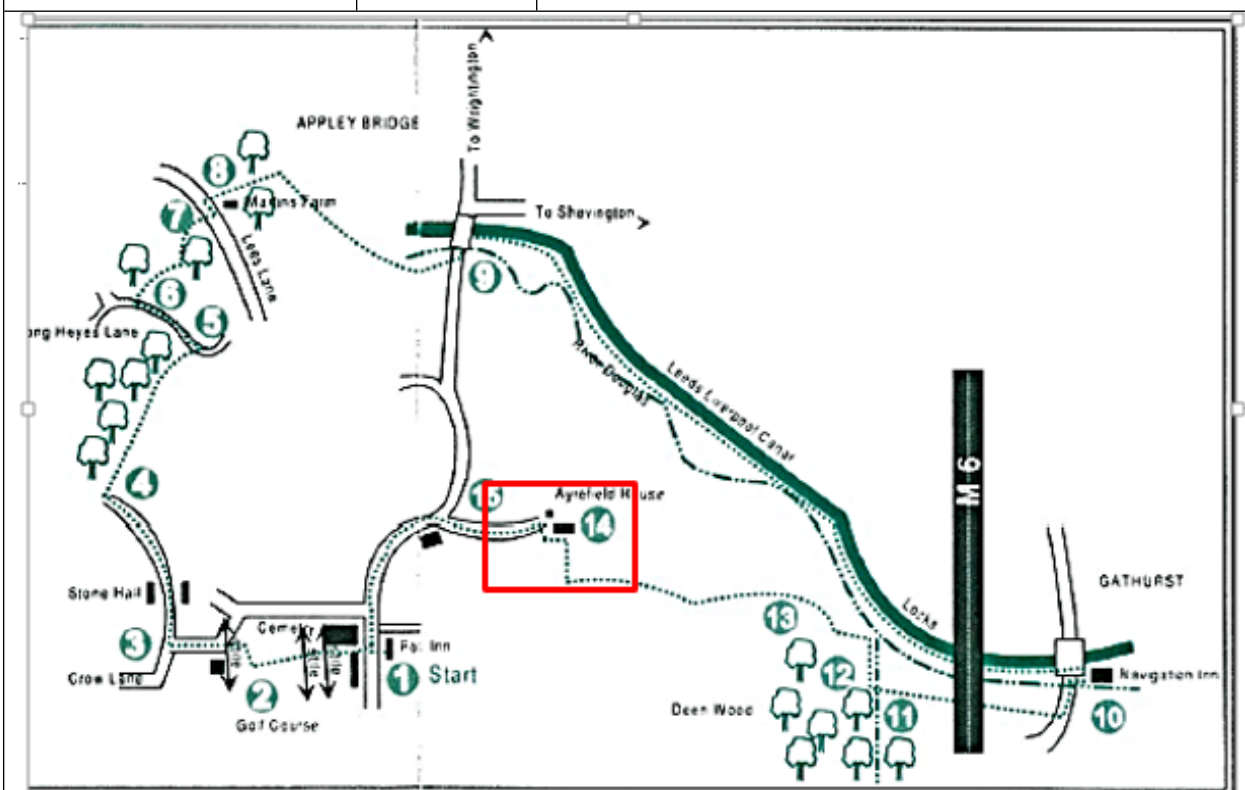
However, a letter and map dated 17 July 2001 from Lancashire County Council Highways to Arnold Fooks and Chadwick Solicitors explains that the route shown red on the plan (which included the application route A-B) was considered to be the adopted length of Ayrefield Lane.

A further letter dated 5 January 2006 from Lancashire County Council Highways to the Land Registry states that the adopted length of Ayrefield Road was 207 metres from 'Roby Mill' suggesting that the adopted section was then considered to stop at point A and not include the

		<p>application route.</p> <p>No correspondence could be found to explain the differing information.</p>
Investigating Officer's Comments		The application route is not recorded as being publicly maintainable on the List of Streets by the county council. However, there is conflicting information about the route between point A and point B.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the county council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the route 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.
Lancashire County Council public rights of way reports	1992 - 2015	A search was made of Lancashire County Council public rights of way inspection and report files for any reference to the application route.
Observations		Two reports referred to Footpath Up Holland 2

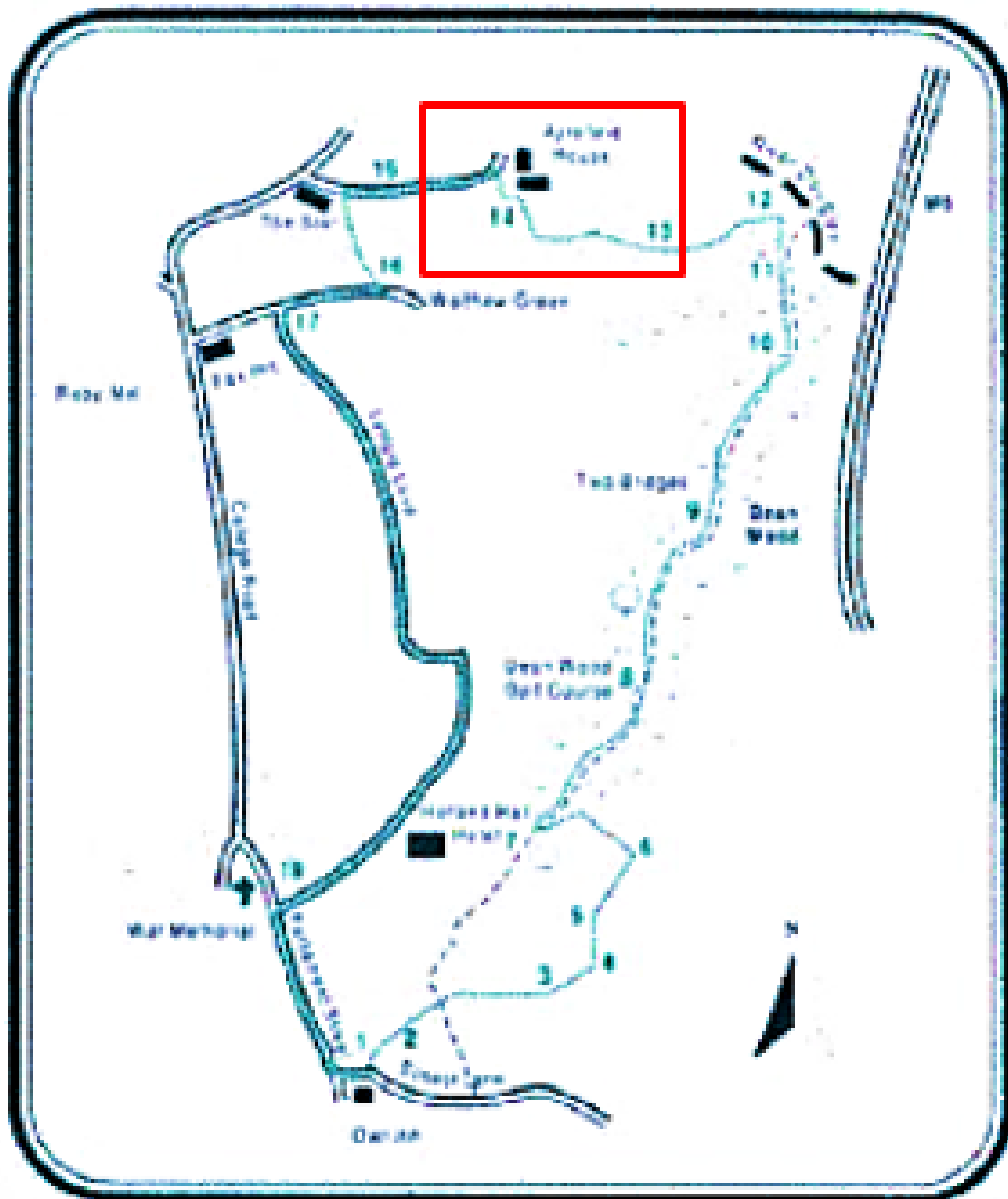
		<p>dated 1992 but neither gave specific locations. The first report concerned increased use of Footpath 2 by horse-riders and in particular use by a local riding school at Gathurst which was causing the surface of the route to become churned up. A second report referred to the location of a footpath signpost on Ayrefield Road and was recorded as being in relation to Footpath 2. There were no details about the exact location of the signpost and the person reporting it was indicating that it pointed the wrong way rather than being in the wrong place.</p> <p>A report form completed on 20 September 1999 by the West Lancashire Group of the Ramblers Association stated that a gate had been locked at Ayrefield House on the route of Footpath 2. The report noted that there was a stile adjacent to the locked gate. The grid reference provided by the Ramblers Association is for the existing gate at point B on the application route.</p> <p>The route was inspected by a member of the county council's public rights of way team on 8 November 1999 and the path was described as being clear.</p> <p>Further reports were dated 2014; the first dated 6 July 2014 stated that the footpath through the grounds of Ayrefield House was impassable due to the owners felling a large tree across the path. It also stated that a very high stile had been erected which was dangerous and that there was no facility for dogs. The person making the report believed that the owners were attempting to restrict use.</p> <p>Two further reports made in the same month refer to the new owners of Ayrefield House deliberately obstructing the footpath by felling a tree and a dangerous step stile erected (at point B on the application route) making it difficult for elderly residents.</p> <p>A report dated 26 April 2015 referred to the erection of private path signs at point B on the application route and states that the footpath sign had been removed and placed on the ground inside the property.</p>
Investigating Officer's Comments		<p>Reports from the early 1990s suggest use of the route by horse riders from a local riding school and the fact that a signpost was erected</p>

		<p>indicating knowledge and use of the route.</p> <p>The gate at point B appears to have been locked in 1999 but with a stile alongside it providing access.</p> <p>There is nothing on the county council's files indicating that use of the route by pedestrians had been challenged until 2014 when there are numerous reports about the new landowners erecting a difficult stile, erecting private signs and felling a tree which obstructed the route.</p> <p>This coincides with the time that the county council were first contacted by the Up Holland Parish Council with regards to making an application to record the application route as a public footpath and prompted the county council officers to visit the site to take some photographs of the route.</p>
Parish Council Leaflets	1995-1996	<p>Two series of walks leaflets were produced by Up Holland Parish Council in 1995-1996. The leaflets were produced with help from the county council, West Lancashire Borough Council, local community groups and businesses.</p>



A circular walk from Roby Mill to Appley Bridge

map of route
(numbers correspond with text)



**Upholland Parish Council
Footpath Walks 1995**

A Circular Walk through Dean Wood and Lafford Lane from the Owl Inn

Observations

The application route was included in two walk leaflets produced by the parish council in 1995-1996.

In both leaflets use of the application route is described as being from Footpath 2 (point D) where a kissing gate was located. The leaflets

		describe the route as passing through the kissing gate into the grounds of Ayrefield House with the path turning left in front of the barn and then passing between two stone walls to turn left at 'the gate' and then following the road to the Star Inn.
Investigating Officer's Comments		<p>The parish council have confirmed that the application route was included in the leaflets under the belief that the route was a public route.</p> <p>The leaflets refer to a gate at point B suggesting that access in 1995/6 was via the gate (and not an adjacent stile).</p> <p>The inclusion of the route in two locally produced leaflets supports the view that the route was used at least on foot by the public and was considered to be part of the public network.</p>

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

Landownership

The land crossed by part of the route between points A and B at the very eastern end of the route is part of Ayrefield Hall which is privately owned.

The section of the route between the Ayrefield Hall land and point B lies on unregistered land.

The land crossed by the route between points B and D is part of Ayrefield House which is privately owned.

Summary

The application route between point A and point B appears to have existed as a substantial road from the early 1800s as part of a longer route linking to Bank Road and providing access to a number of properties.

It was excluded from the taxable hereditaments as part of a longer route in 1910 and was not recorded as a footpath on the Draft Map of public rights of way. Its status was questioned as part of the legal process of preparing the Definitive Map and it appears to have been accepted that it was a public highway carrying public vehicular rights and was therefore not included on the map as a footpath.

The application route from point B to point C was constructed sometime in the mid to late 19th Century (and was clearly shown on the 25 inch OS map published in 1895). It appears to have been constructed to provide access around, instead of through the grounds of Ayrefield House, and connected to Bank Road and the route of Footpath 2. It too appears to have been considered to be a public highway in the

1950s – hence the fact that it was not included on the Definitive Map as part of Footpath 2 but it was not excluded from the taxable hereditaments in 1910 or referred to by the county council Highways Dept. as part of the adopted section of Ayrefield Lane in the 2001.

It was consistently shown on Ordnance Survey maps from 1895 onwards, originally ungated – possibly until the late 1950s and only more recently (1990s onwards) with access being restricted to use of a stile or gate adjacent to the field gate.

The application route between point C and point D was recorded as part of Footpath 2 until the Definitive Map was revised in 1975 (with a relevant date of 1st September 1966) and there appears to be no explanation other than a drafting error for the fact that it is no longer recorded as part of Footpath 2.

The map and documentary evidence examined supports the view that the route has existed since at least the late 19th Century and that until 2014 use of the route was unchallenged.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted the following documents with the application:

1. 6 user evidence forms (*5 forms were completed in 2014 and 1 in 2017*);
2. Parish footpath walks leaflets from 1995 and 1996;
3. Email from former Parish Councillor John Hilton referencing a conversation with a former maintenance manager at Ayrefield House;
4. 2 aerial photographs held by Lancashire County Council; and
5. photos

Summary of user evidence form 1

Has known and used the route from Roby Mill to Gathurst via Ayrefield Road on foot since 1986 until 2014. They used the route 250-300 times per year for exercise and leisure. The route has not changed its line in the 28 years they have used the route. There is a gate at the Roby Mill end of the route and a recently (user evidence form completed 2014) erected stile at the Gathurst end. These are never locked and do not prevent access to the route. The user has never been stopped or turned back whilst using the route and has never been told that the route is not a public right of way. They have never seen notices marking the land as private until recently (again user evidence form completed in 2014). They have never asked permission to access the route or worked for the landowner over which the route passes. They further provide that there is a sign stating 'public footpath' which points out the route. Prior to the new stile being erected they were able to walk from Ayrefield Road towards Gathurst but the height and nature of the stile prevents them from accessing the route due to disability.

Summary of user evidence form 2

Has known and used the route from Roby Mill to Dean Wood via Ayrefield House from 1952 until 2017 by foot numerous times per year for recreational

purposes. During this time they have frequently seen others walking along the route too. The route line has not changed in the 65 years they have been using it. There are stiles and gates on the route but they are never locked and do not prevent access to the route. They were never told that the route was not a public right of way on foot and they have never been turned back nor heard of anyone else being turned back whilst using the route. They have never noticed any signs on the route to say that the land is private or not a public route. They have never asked permission to access the route, nor worked for the landowner. They further provide that the route is a permissive footpath alongside the house with a notice to that effect on the access gate. The present owner now allows numerous goats to roam freely along the footpath which the user has found to be a deterrent as one of them is rather aggressive.

Summary of user evidence form 3

Has known and used on foot the route from the bottom of Bank Brow to Gathurst via Ayrefield House for 71 years from 1943 until 2014 up to 100 times per year. They have seen many other walkers using the route as well. Up until 15 years prior (1999) there had not been any gates or stiles on the route. A gate was locked but this did not prevent them from using the route as they climbed over it. They were stopped by the owner on the route 12 months ago (September 2013) and told that the route was not a public right of way on foot but they just carried on. They have heard of others having been stopped on the route as well. On the route heading towards Bank Brow 'private no route' signs have been erected on 4 gates. The user further provides that their grandfather and father used the route from 1917. The footpath and road from Bank Brow to Ayrefield House was the way into the house with the lodge at Bank Brow.

Summary of user evidence form 4

Has known and used the route between points B and D (Ayrefield Road and Gathurst) via Ayrefield House grounds from 1979 until 2014 at least 3 times per week for recreational walks. They always use the route on foot and see others on foot, as well as occasionally seeing cyclists using the route. The route line has never changed in their 36 years of usage. A stile was erected in approximately October 2013 at SD 352571 407636, which is large, non-negotiable with dogs and difficult for the elderly to get over. The previous open access adjacent to the field gate is now blocked. In August 2014 a willow tree was felled across the footpath at SD 352 679 407598 to obstruct the footpath but this was removed after local objections. There was a public footpath sign adjacent to the gate which has been removed on several occasions since the ownership of the property has changed hands. The user was stopped by the new owners in autumn 2013 who suggested that they were in private grounds. The user has heard of similar stories of intervention from other locals since 2013. The user further provides that they have spoken with an employee of the former owner of the land who told them that for 100 years it had been considered a public right of way and always maintained as such. They have never asked for permission to use the route nor worked for the landowner.

Summary of user evidence form 5

Has known and used the route from Roby Mill to Gathurst on foot from 1986 until 2014 250-300 times per year for exercise and leisure. The route has always run along the same line throughout their 28 years' use. There is a gate at the start of the route and a stile at the end. These have never been locked and did not prevent them from using the route. They have never been stopped or turned back whilst using the route. When the new stile was erected they have heard of others being stopped or turned back because of it. They have never seen any notices to say that the route is private until recently (user evidence form completed in 2014). They have never asked permission to use the route nor worked for the landowner. They further provide that there is a sign in place stating that the public footpath is in this direction.

Summary of user evidence form 6

Has known and used the route from Roby Mill to Gathurst on foot between 2001 and 2014 for dog walking 2 to 3 times per week to the Leeds Liverpool Canal/Dean Wood. They saw other people walking the route as well on a regular basis. They have never been stopped or turned back whilst using the route nor have they been told by a landowner or tenant that the route is not a public right of way. They have never asked permission to use the route nor worked for the landowner. Several weeks ago (form completed August 2014) a notice was erected by the gate saying 'private right of way'. Approximately 3 months ago (May 2014), the current owners changed the access point for pedestrians from a gap between the wall and the left hand side of the gate (when approaching from Ayrefield Road) to a non-standard stile on the right of the gate which prevents access with a dog, small children or if disabled. Also, the owners felled a tree at the other kissing gate leading into the pasture which has been left lying across the path for several weeks. The user further provides that this route has always been marked by a public footpath sign and a yellow Lancashire walk sign at both ends of the path. It also features in a number of local walking books as a right of way.

Information from Others

The Clerk to Up Holland Parish Council spoke to the Business Manager for the Convent of Notre Dame based at Lancaster Lane, Parbold in 2014 who explained that the Convent had owned Ayrefield House for approximately 100 years before selling it in 2013.

He expressed considerable surprise that the route through Ayrefield House was not recorded as a right of way and stated that in his opinion it was most likely that the Convent did not "know" the position regarding the footpath and therefore it was simply "accepted" as a historical right of way. He raised the point that the footpath has been clearly marked as a right of way for many years and that even though he personally had not seen many people use the path on his visits to the property evidence suggested regular usage. Maintenance was necessary and this work included "stoning" the footpath which was prone to flooding during wet weather to ensure it was safe for users.

The former gardener who worked there for 13 years also confirmed to the parish council that the route between points B-C-D was accepted as a path used by the public and that the upkeep and safety were important considerations for the management.

Information from the Landowner

An adjoining land owner telephoned the county council to ask whether the change in status would affect the access they have to fields owned along the route. They were informed that whilst the county council cannot provide any reassurance of anyone's own private rights, any private rights which do exist would not be affected by the proposed change in status.

Simon Woods, owner of part of the route, has objected to the application for a footpath to be recorded over his land.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

- Map and other historical documentary evidence supporting the physical existence of the route since at least 1895.
- User evidence in relation to part of the route between points B to D.
- Absence of action taken by the landowners to discourage use of the route until 2013/14.
- Presence of public footpath sign until circa 2013
- Until 2014, absence of signs and notices along the route suggesting that the route was not public

Against Making an Order

- Signage since 2014 indicating the route is private which militates against inference of common law dedication during the current ownership.
- Vague user evidence in relation to the part of the route between points A to B.

Conclusion

As there is no express dedication, the Committee is required to consider whether there is sufficient evidence from which a dedication of the route between points A-B-C-D can be deemed under section 31 of the Highways Act 1980 and/or inferred at common law.

Considering firstly the statutory test; in order to raise a presumption of dedication, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a full 20 year period immediately prior to the route being called into question. 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 public's right to use the route was called into question. The evidence from users, as well as the county council's own files, indicates that the owner of the land crossed by the route between points B to D first took steps to challenge the users' right to use the route as a public footpath in 2014 when they erected a steep stile at point B, felled a tree across the route near point D and subsequently erected private path signs. Accordingly it is suggested that the 20 year period under consideration for the purposes of establishing deemed dedication would be 1994 to 2014. Alternatively the calling into question could be considered to be in 2013 when at least two witnesses were challenged by the new owner and this seems to have become known amongst local users.

Five of the six users have used the route for the duration of the 20 year period under consideration, with the other user having used it for a large part of that period (13 years). However, none of the users provided plans with their user evidence form marking the line they walked and their description of their starting point and destination point on the route is, in most cases, quite generalised. Nevertheless, the content of the forms suggests that the users are at the very least all referring to the route between points B and D. Three users describe the route as starting at Roby Mill. This is the road that joins Ayrefield Road to the south west. One user describes starting at the bottom of Bank Brow, which is the road that joins Ayrefield Road to the north east. These four users all state that their destination was Gathurst (to the south east of the route). It can be reasonably assumed, if they were starting out at either Roby Mill or Bank Brow, and walked between sections B to D that these four users walked along section A to B too as there would be no other access point. The other two users provide grid reference starting points that are in close proximity to but not on the claimed route. One of these users lives at No. 3 Ayrefield Road (located to the west of point A) and describes using the route to walk the dog from home to the canal/Dean Wood (which is located to the south east of the route). Their description of the route then accords with the other user evidence forms as regards points B to D of the route. Again it can be reasonably assumed that they walked across section A to B to reach point B. The final user describes going from Roby Mill to Dean Wood, so again it can be assumed that they walked the full length of the claimed route.

Two of the six users claim to have used the route 250-300 times per year; two users up to 3 times per week (equating to approximately 156 times per year); one user claims 100 times per year and the other user "numerous" times. All claim to have done so without permission and for recreational type purposes, which is consistent with use of a public right of way. They all claim that the route was open and accessible to pedestrians until 2014 when a difficult stile was erected by the new owner of the land between points B and D and a tree felled across the path. No signage indicating that the route was private was present until 2014/2015.

In light of this, it is advised that for the period 1994 to 2014 there is sufficient evidence of 'as of right' use of the route by the public between points A and D to raise a presumption of dedication. In relation to the statutory rebuttal, it is advised that there is no evidence of any action taken by any owner of the land crossed by the route to demonstrate a lack of intention to dedicate the route as a public footpath within the 20 years prior to 2014. It follows that, on the balance of probabilities, a public footpath subsists (i.e. it meets the higher test for confirmation) as claimed between points A and D.

Looking next at dedication of a highway at common law; it is advised that Committee has to consider whether evidence from the maps and other documentary evidence coupled with user evidence indicates that it can be reasonably inferred that in the past the landowners intended to dedicate the route as a public right of way and the public have accepted it. Use of the route by the public must be 'as of right' and there is no fixed period of use or particular date from which use must be calculated retrospectively.

For section A to B, the analysis of the map and documentary evidence reveals that a substantial route is depicted on all historical OS maps, as well as maps from the early 1800s (e.g. Greenwood's 1818 commercial Map of Lancashire) which pre-date the first OS maps, and that such route appears to be capable of being used on foot and horseback. There is also evidence from the Finance Act 1910 Map that this section of the route was excluded from the taxable hereditaments, which could be done in circumstances where land was crossed by a public right of way. Consideration ought to be given to the conclusions drawn in 1953 following a challenge by the Ramblers Association to this section having been excluded from the Draft Map of public rights of way. The section was never included because it was considered to form part of the public highway which was not required to be recorded on the Draft Map. As recently as 2001 an officer of the county council, in correspondence with a firm of solicitors, expressed the view that this section formed part of the adopted length of Ayrefield Lane. Furthermore, the majority of the route between points A and B runs across unregistered land and is bounded by registered titles. The fact that the majority of this section was not included in any of the adjoining titles and remains unregistered could be seen as further evidence of the landowner's intention to dedicate as public highway. The short section of the route from point A that crosses Ayrefield Hall land is shown as forming part of Ayrefield Road on Ayrefield Hall's registered title plan (under Title No. LAN24302) and the registered title plan for Ayrefield House (under Title No. LAN77868) shows the unregistered part of section A to B immediately to the west of point B as forming part of Ayrefield Road. In relation to the actions of any of the landowners, there appears to have been nothing done to prevent use of the route between section A to B and there is no suggestion that use of this section was permissive, secretive or by force. In conclusion and notwithstanding the fact that a small section between A and B is included within an adjoining registered title (that of Ayrefield Hall), Committee is advised that the actions of the landowners have been such that an intention to dedicate the land as highway between points A and B may be reasonably inferred at common law and that user evidence demonstrates an acceptance of that dedication.

For sections B to D, the historical evidence showing that there was a path on the ground dates back to 1895. The 1895 25 inch OS Map indicates that this path

provided a route around the edge of Ayrefield House rather than passing through the middle of the grounds of the property. This suggests that the landowner at the time, rather than taking steps to indicate they had no intention to dedicate land as highway, actually took positive steps to divert the path to a more convenient and less intrusive location. Furthermore, a guide post was present at point D of the route which supports the view that this was to assist members of the public wanting to use the route. This section of the route remained visible on subsequent editions of the 25 inch OS Map published in 1908 and 1928, as well as the 6 inch OS Map in 1955. During the production of the Definitive Map, section C to D of the route was considered to form part of Footpath 2 but we surmise that due to a drafting error it was not included as part of Footpath 2 on the final version of the Map. There is no evidence suggesting that pre 2013/14 any of the landowners of this section of the route took any action to demonstrate a lack of intention to dedicate the route as highway. In fact, one user reports having been told by a landowner that it was a public right of way and the Parish Council were under the belief in 1995/96 that this section formed part of the public network when they produced leaflets showing the full length of the claimed route as a local walk. Since 2014, the landowner has erected signs indicating 'permissive footpath over private land'. Notwithstanding this, the treatment of this section of the route by previous landowners over many years suggests that it is reasonable to infer an intention to dedicate the land as a public footpath at common law. The described use of this part of the route by the users over the years (since the 1940s in one case) demonstrates an acceptance of that dedication.

In conclusion, on the balance of probabilities and taking all of the evidence into account, the Committee may consider that the higher statutory test for dedication of a public right of way between points A to D can be satisfied. Additionally or in the alternative, Committee may also consider that the common law test for inference of dedication is satisfied for the full extent of the route claimed. Committee is therefore advised to accept the claim for the route marked A-B-C-D to be added to the Definitive Map and Statement as a public footpath and promote the Order to confirmation.

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 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.

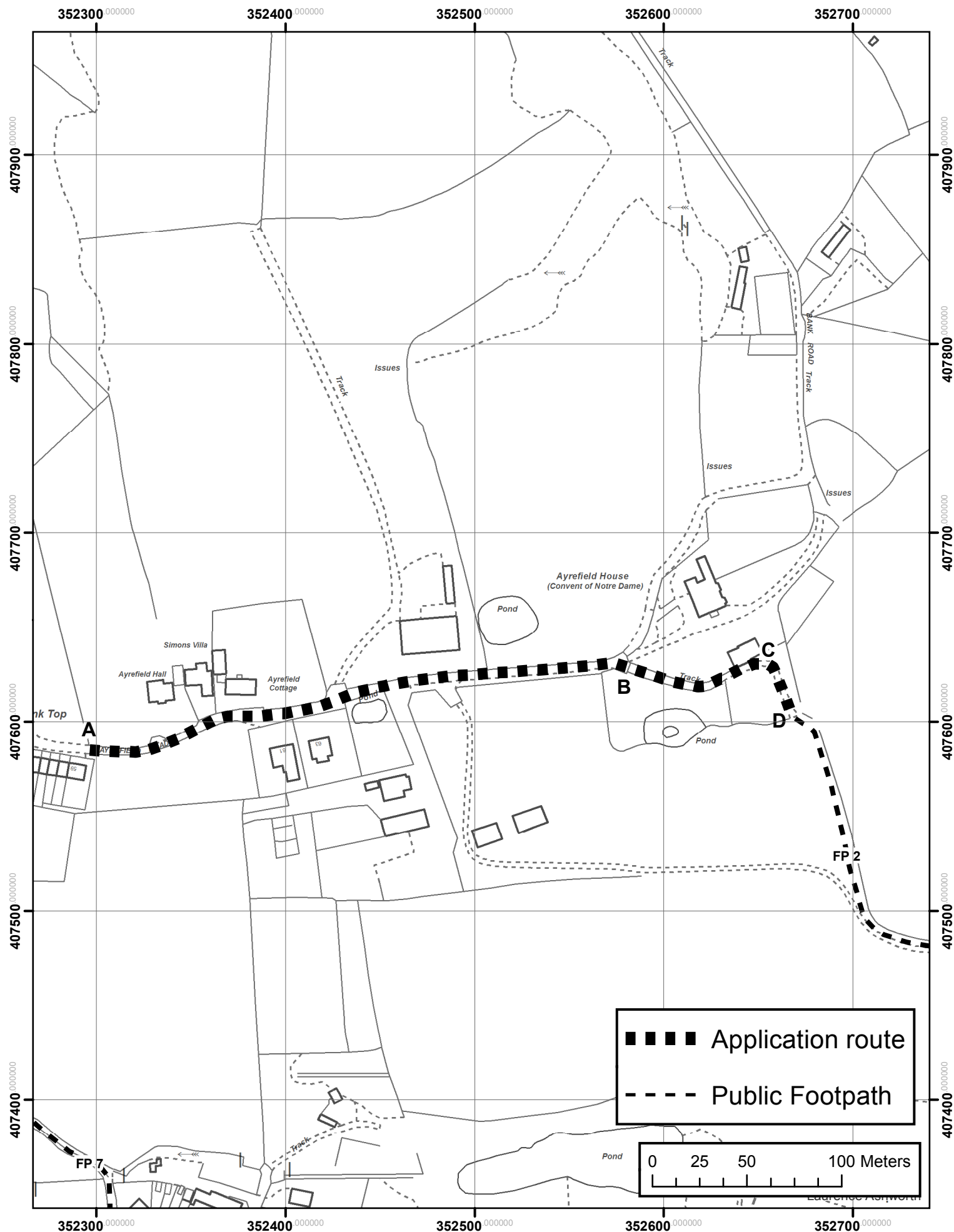
Local Government (Access to Information) Act 1985

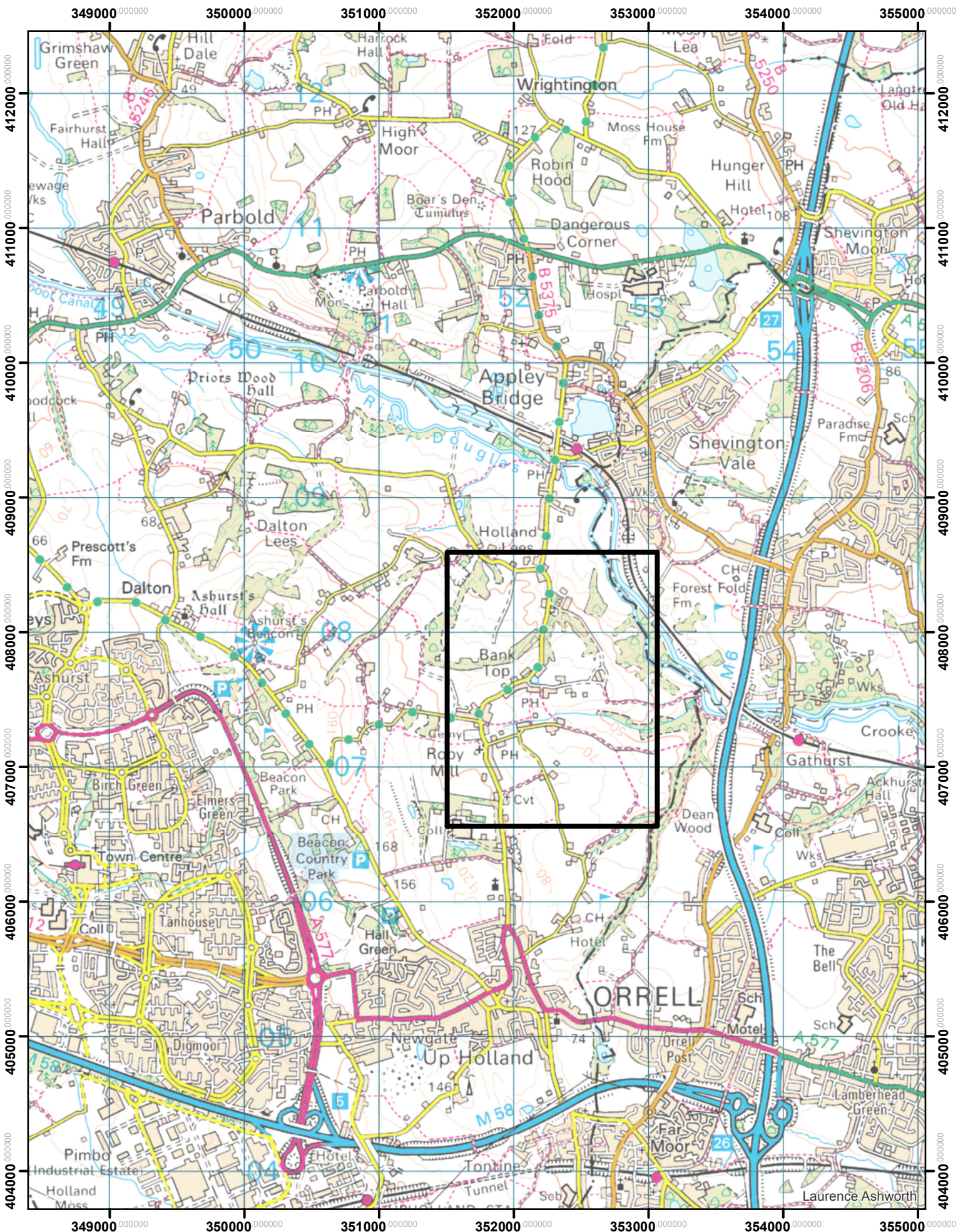
List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-600		Claire Blundell, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A





Regulatory Committee

Meeting to be held on 30 January 2019

Electoral Division affected: Morecambe North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Bridleway from Coastal Road to Lancaster Canal towpath, Bolton-le-Sands, Lancaster

File No. 804-602

(Annex 'A' refers)

Contact for further information:

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

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

Executive Summary

Application for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Coastal Road to the Lancaster Canal, Bolton-le-Sands, to be recorded in accordance with File Number 804-602.

Recommendation

(i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Coastal Road to the Lancaster Canal, Bolton-le-Sands, in accordance with File Number 804-602, be accepted subject to the recording of additional rights discovered.

(ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to record a Bridleway from Coastal Road to the Lancaster Canal on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A and B.

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

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a footpath to be recorded on the Definitive Map and Statement of Public Rights of Way from Coastal Road to the Lancaster Canal, Bolton-le-Sands and shown by a thick dashed line between points A-B on the Committee plan.

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

An order 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 have not responded to consultations therefore it is assumed they have no objection to the application.

Bolton-le-Sands Parish Council

Bolton-le-Sands Parish Council have not responded to consultations therefore it is assumed 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	4756 6695	Open junction with Coastal Road (A5105)
B	4769 6696	Open junction with the Lancaster Canal towpath immediately west of Hatlex swivel bridge

Description of Route

The total length of the application route is 130 metres.

Commencing on Coastal Road (A5105) between 53 Coastal Road and 1 Easdale Close (point A) the application route leaves Coastal Road at an open junction to follow a stone surfaced access road with a grass strip along the middle and bounded on either side by mature hedges in a generally easterly direction for a distance of approximately 130 metres to an open junction with the towpath of the Lancaster Canal (point B).

The full length of the application route is wide enough for a single vehicle to drive along it and there is evidence of regular use by vehicles. Along the south side of the route the properties on Easdale Close all have pedestrian gates opening onto the route and after about 90 metres there is also pedestrian access onto it from the northern end of Whitendale Drive although this appeared to have been recently fenced off in a manner consistent with preventing cyclists but allowing pedestrian to step over, albeit not conveniently for many.


Just before reaching the towpath on the south side off the route adjacent to the boundary of 40 Whitendale Drive is a triangular shaped area of mown grass with a wooden bench located on it.

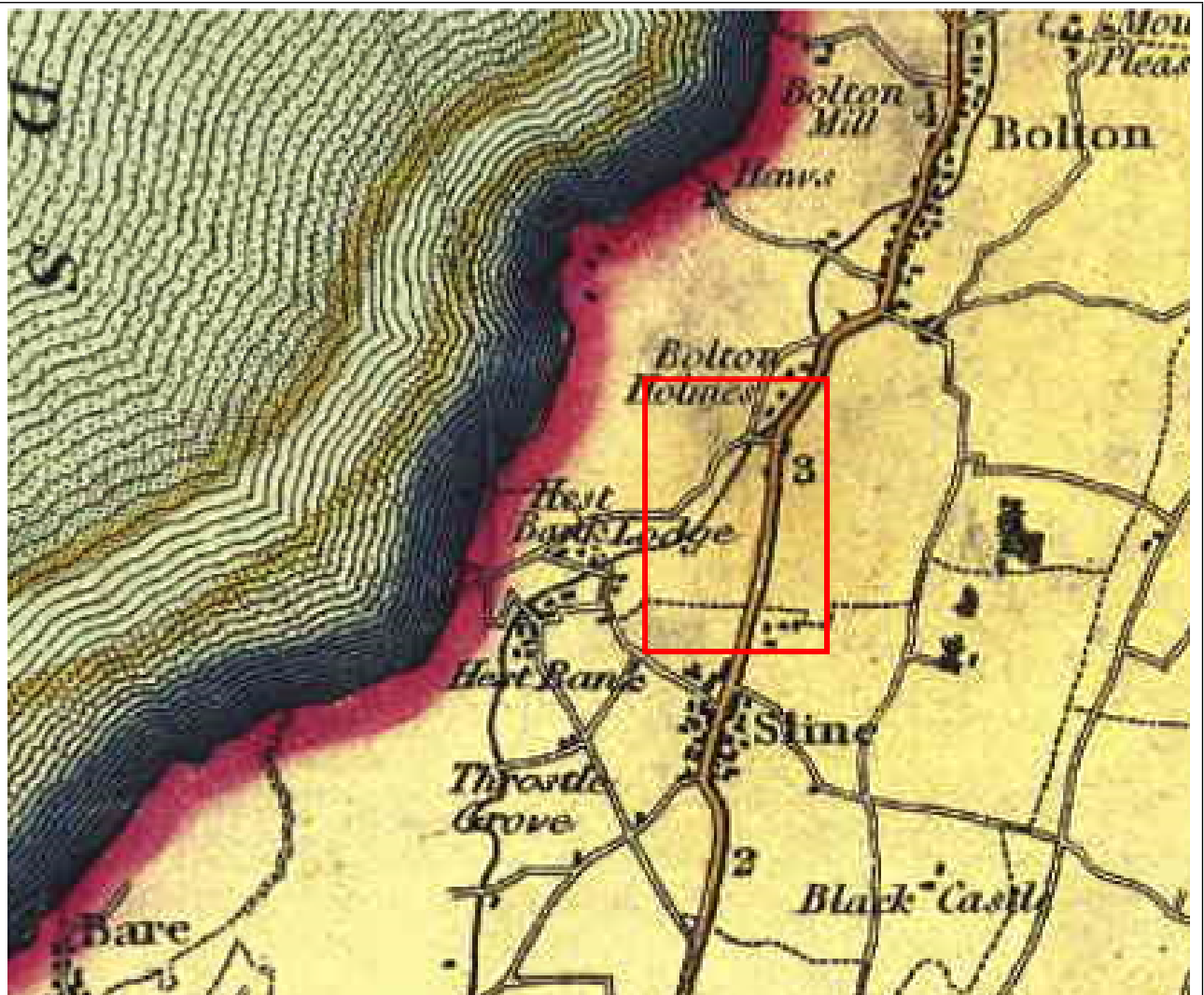
From the end of the application route (point B) access is available north and south along the canal towpath. In addition vehicular access is available across the towpath to Hatlex swing (swivel) bridge to Thortindale Cottage.

It was noted that parallel to the application route (to the north) was a pedestrian route leading from Coastal Road to the canal towpath. This appeared to have been constructed fairly recently and was not evident on the maps and plans examined as

part of this investigation. It was signed as a private right of way at both ends of the route and is reported to be closed off sometimes at the eastern end.

Map and Documentary Evidence

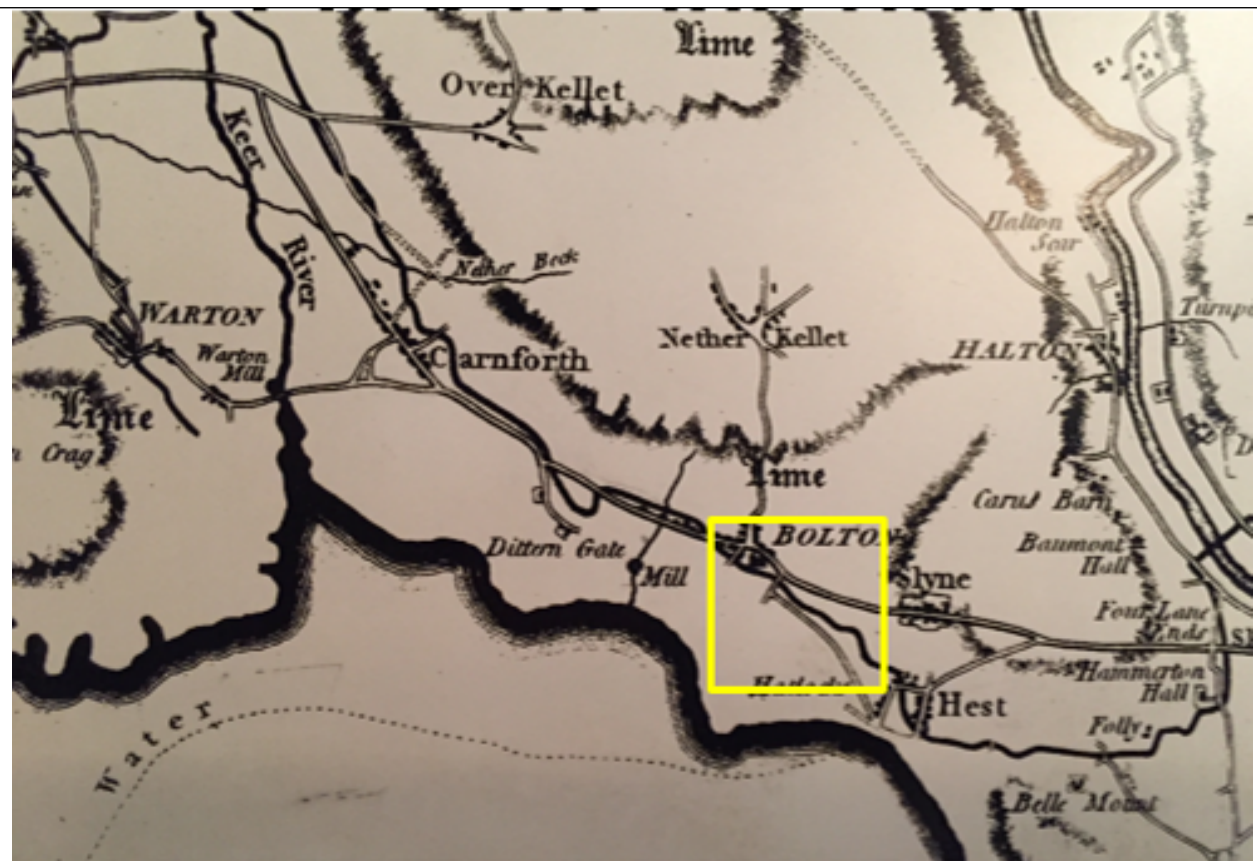
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
		
Observations		Neither the application route nor the Lancaster Canal are shown.
Investigating Officer's Comments		The application route is unlikely to have existed in 1786.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



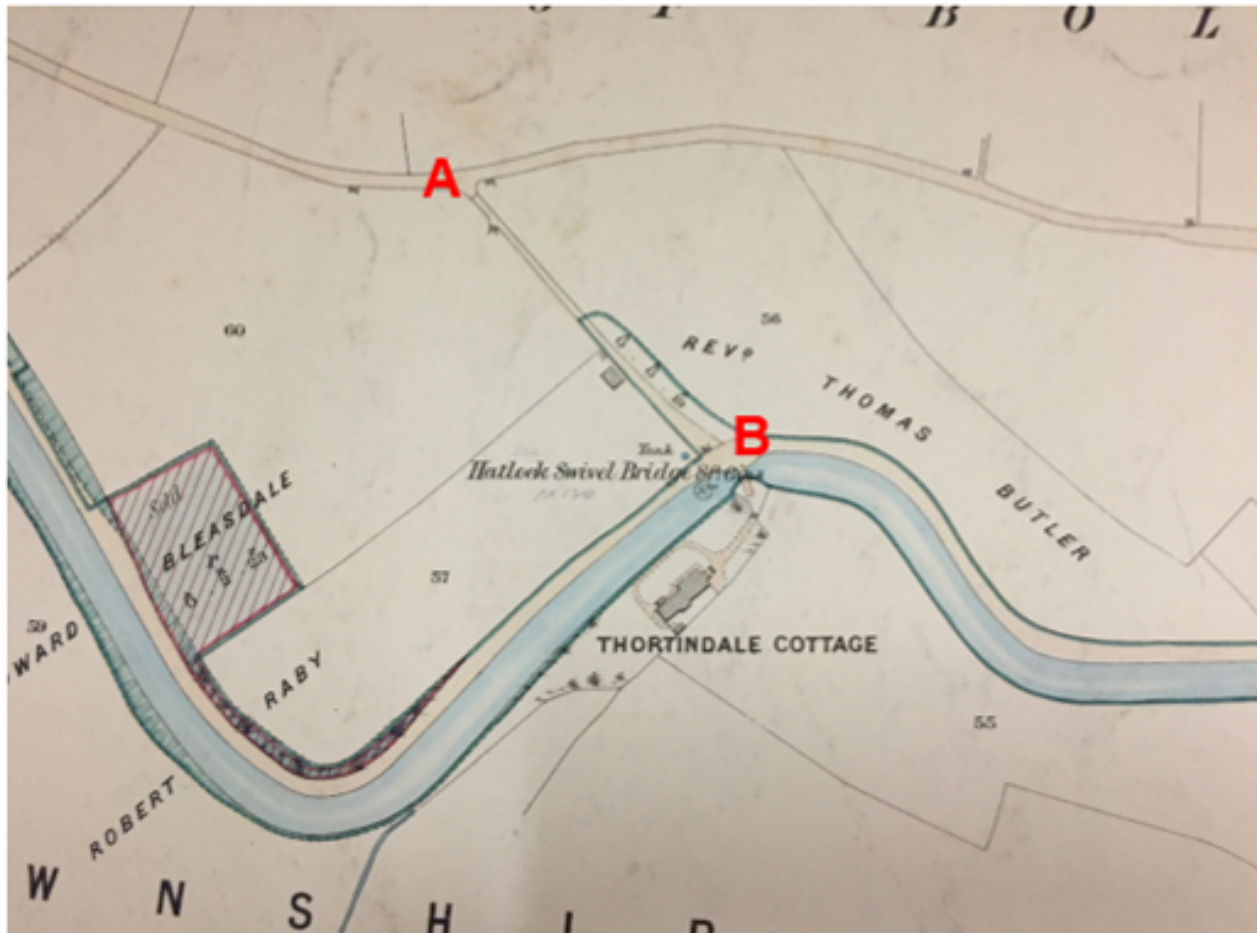
Observations		The application route is not shown. The Lancaster Canal and Coastal Road are shown.
Investigating Officer's Comments		The application route did not exist as a major route at the time but it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



Observations		The application route is not shown.
Investigating Officer's Comments		The application route did not exist as a major route at the time but it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.



John Rennie plan of proposed canal 1791-1792

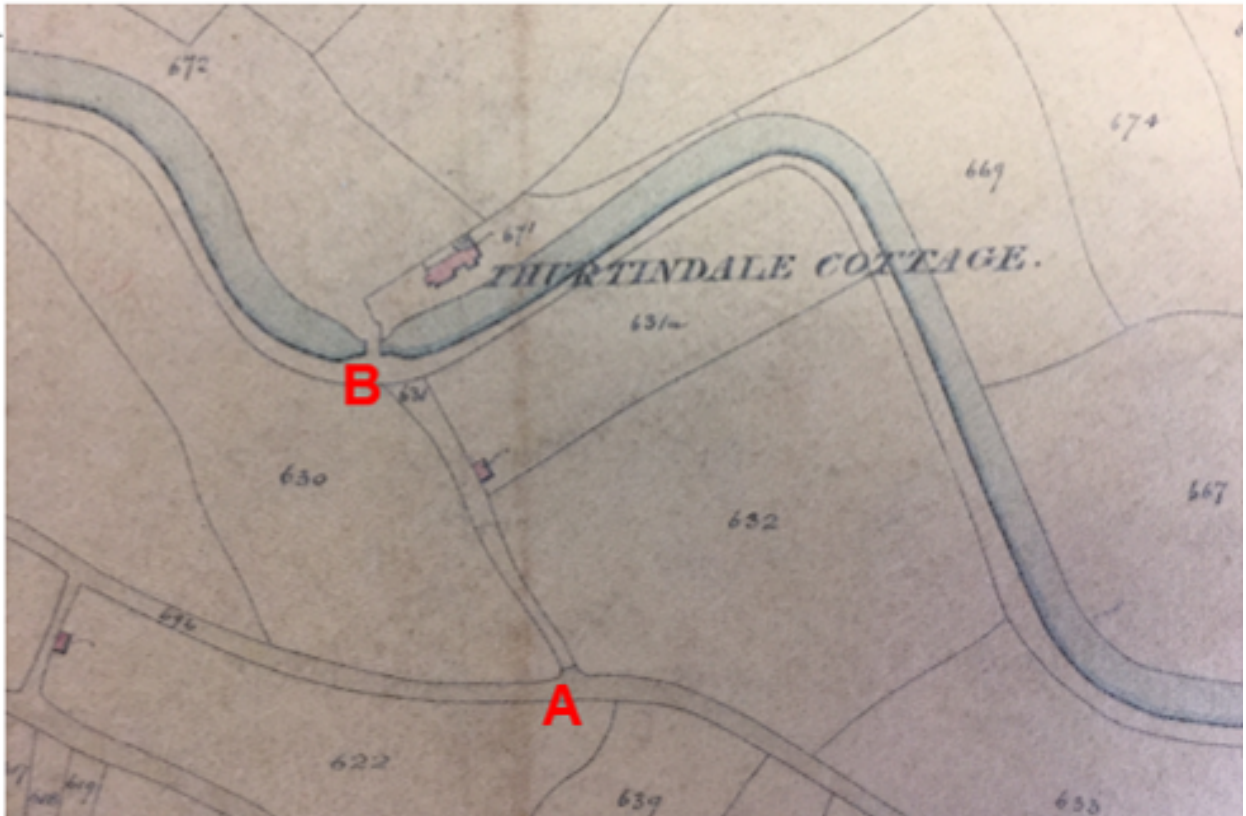


Map in the possession of the railway company c1880 before they purchased the canal

<p>Observations</p>	<p>No railway plans or information examined which had been deposited in the County Records Office provided any information about the application route.</p> <p>The line of the canal was first surveyed in 1772. In 1791 the proposed line was resurveyed and a final survey was carried out later the same year by John Rennie.</p> <p>A small scale plan surveyed in 1791 and 1792 by John Rennie is available to view at the maritime museum in Lancaster. The plan shows the full length of the proposed Lancaster Canal from Kendal to West Houghton. The plan shows the canal and coastal road but does not show the application route.</p> <p>In 1792 the promoters of the canal sought an Act of Parliament to allow its construction. It received the Royal Assent on 11 June 1792, and was entitled The Westmoreland Canals Act 1792 - '<i>An Act for making and maintaining a navigable canal, from Kirkby Kendal in the county of Westmorland, to West Houghton in the county palatine of Lancaster, and also a navigable branch from the said intended canal at or near Barwick, to or near Warton Cragg, and also another navigable branch, from, at or near, Galemoss, by Chorley, to or near Duxbury in the said county palatine of Lancaster.</i>' (Ref:32</p>
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		<p>Geo.111c. 101). A copy of the Act has been deposited in the County Records Office (CRO Ref: CBP 11804/59) but makes no specific reference to the application route or to the swivel bridge.</p> <p>The canal through Bolton-le-Sands appears to have been constructed and become operational by the end of the 1700s.</p> <p>A further set of 1:2500 scale plans in the ownership of the maritime museum shows the full length of the Lancaster Canal and provides details of landownership along the route. The origins of the set of plans is unknown but they were purchased by the museum a number of years ago and are referenced as London and North Western Railway Company plans dated 1880. The railway company leased the canal from the 1860s before purchasing it in 1885 so the plans appear to predate the purchase of the canal by the company.</p> <p>The plan clearly shows the application route. A line is shown across the route at point A and a line and drawing of a gate is shown at B. Further gates are shown providing access to the fields to the south of the route and elsewhere on the plan.</p> <p>The route is shown leading to the canal towpath and to the Hatlock Swivel Bridge which provided the only access to Thortindale Cottage.</p> <p>A thick line is shown along either side of the canal and includes the towpath and approximately half of the application route (from point B). There is no key on the map indicating what the line is marking but it appears to be the extent of the canal suggesting that it indicated land forming part of the canal company ownership.</p>
Investigating Officer's Comments		<p>It is not surprising that the scale of the John Rennie plan did not show the application route (if it did exist) so no inference can be drawn.</p> <p>The 1880 plan shows the route under investigation existed at that time and that it provided access to the canal towpath and to Thortindale Cottage. The route is shown gated, at least at point B, could have been to restrict some types of access since there are no apparent stock control reasons.</p> <p>Part of the application route appeared to be considered to be in the ownership of the canal company at that time. It is possible that this implies that the canal company as well as Thortindale Cottage used it for access.</p>
Thorntindale Cottage Online Research	1830	<p>Online research into the history of Thortindale Cottage https://www.greenlane archaeology.co.uk/?projects=thortindale-cottage-bolton-le-sands</p>
Observations		<p>Details of some research carried out by a private research company was found on the internet. The article explained that Thortindale Cottage was built in the early part of the 19th</p>

		<p>century, probably 1830, for a John Pearson and that the architect was probably George Webster of Kendal (1797-1864) who is recorded as building Hawksheads House, also in Bolton-le-Sands, for John Coulston, who had previously lived at Thortindale.</p> <p>The details of the residents is documented to be of some interest, with initially a local banker, John Coulston, and family, followed by the Fisher family, indicating that it was occupied by and perhaps built for professional people who wanted a home in the most fashionable current style. A William Webster is also believed to have lived at the house but by the early 20th century it was said to have come into the possession of a local clergyman.</p>
Investigating Officer's comments		<p>If the research into the history of the house is correct it appears that the construction of the property post-dated the building of the canal and that the application route and access to the property via the swivel bridge were originally constructed specifically to access Thortindale Cottage.</p>
Tithe Map and Tithe Award or Apportionment	1846	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>



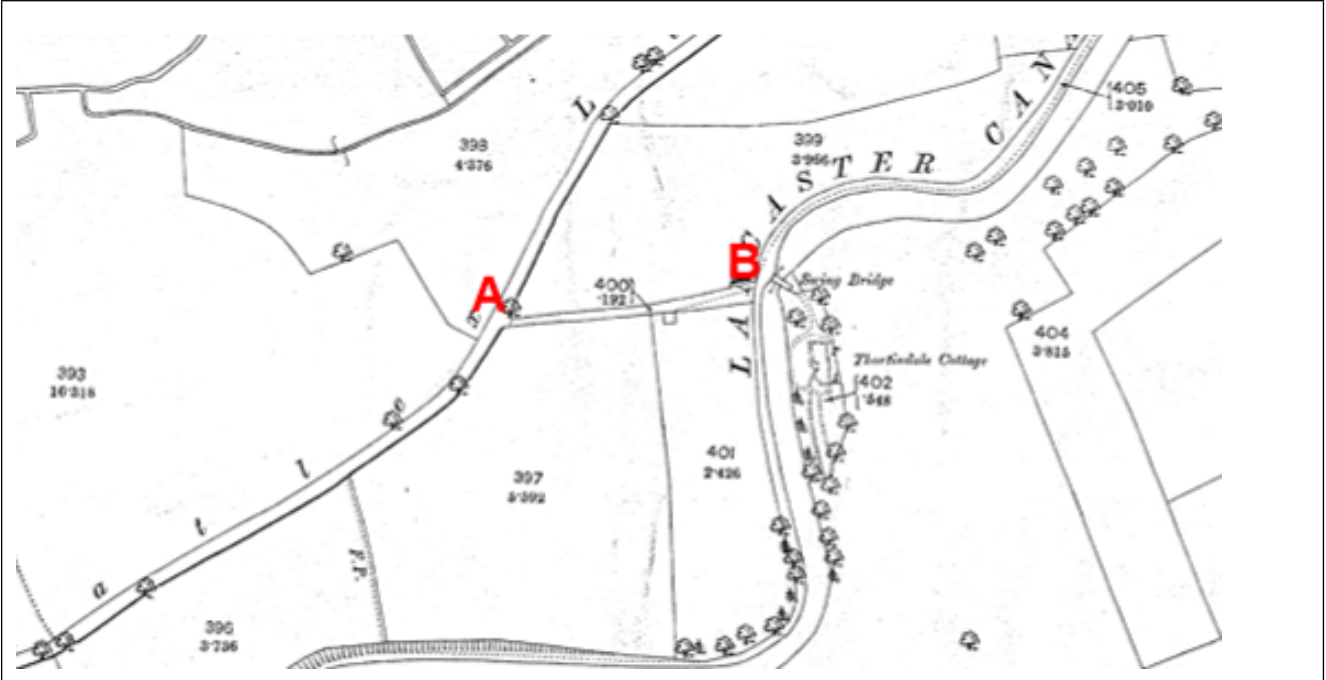
Observations		<p>The application route is clearly shown and this is the earliest map examined to show it. There is a line across the way at point A and it is shown as an enclosed route to point B where a further line is shown across the route. The route is numbered 631 and the Tithe Award lists it being owned by John Pearson and tenanted by John Coulston. It is described as a 'road' for which no tithe was payable and the same landowner and occupier were listed for Thortindale Cottage.</p> <p>The canal towpath is shown and a bridge is shown across the canal providing access from the towpath over the canal to a field numbered 672 and to Thortindale Cottage.</p> <p>The application route is not coloured (shaded) as are public roads listed in the Award. Routes acknowledged as public highways or waste, although not listed separately at the end of the Award, were generally given the same number (696) and were listed as being in the ownership of the Township.</p>
Investigating Officer's Comments		<p>The application route existed in 1846 and appeared to provide gated access to the canal towpath and across the canal to Thortindale Cottage. It appears to have been recorded as a private road.</p>
Inclosure Award Maps	Act and	<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>

Observations		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.
6" Ordnance Survey (OS) Map Sheet 24	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 and published in 1848. ¹

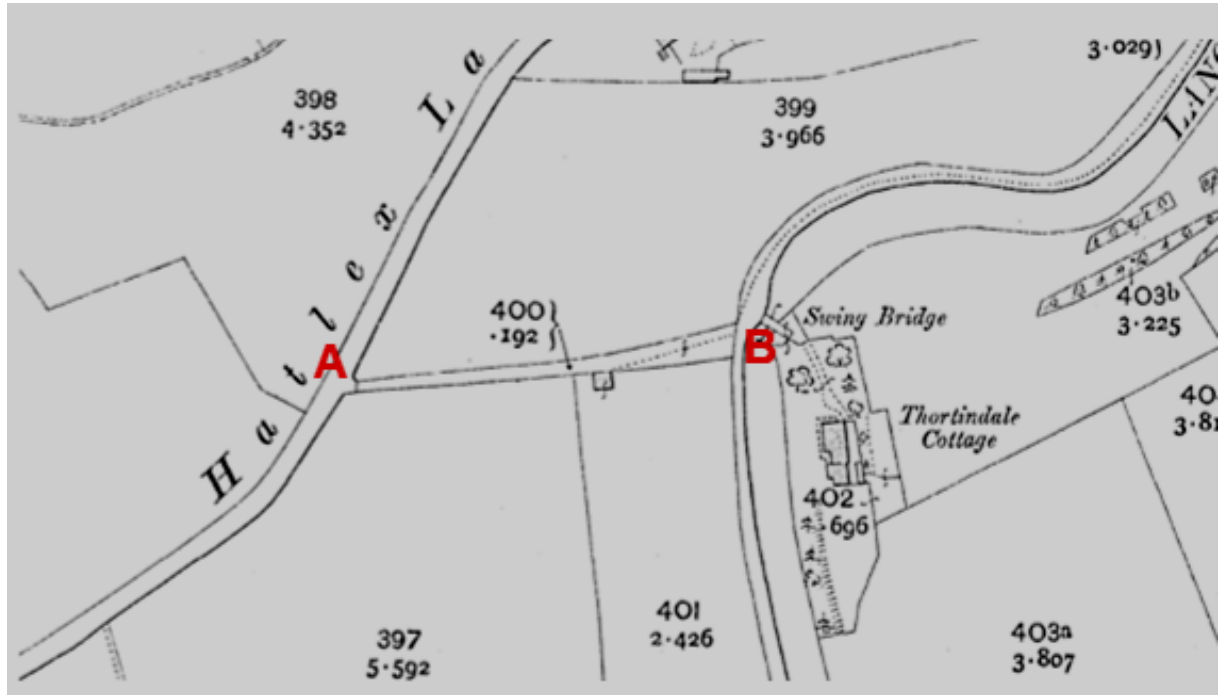


Observations		The application route is shown as a substantial bounded track from Hatlex Lane (now known as Coastal Road) and the Lancaster Canal from where it crosses the canal to provide access to Thortindale Cottage. There is an open junction with Hatlex Lane and the swivel bridge is not shown.
Investigating Officer's Comments		The application route existed and appeared capable of being used. No other access is shown to Thortindale Cottage suggesting that the application route provided access to the property.
25 Inch OS Map Sheet 24/15	1892	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 and published in 1891 and reprinted in 1892.


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

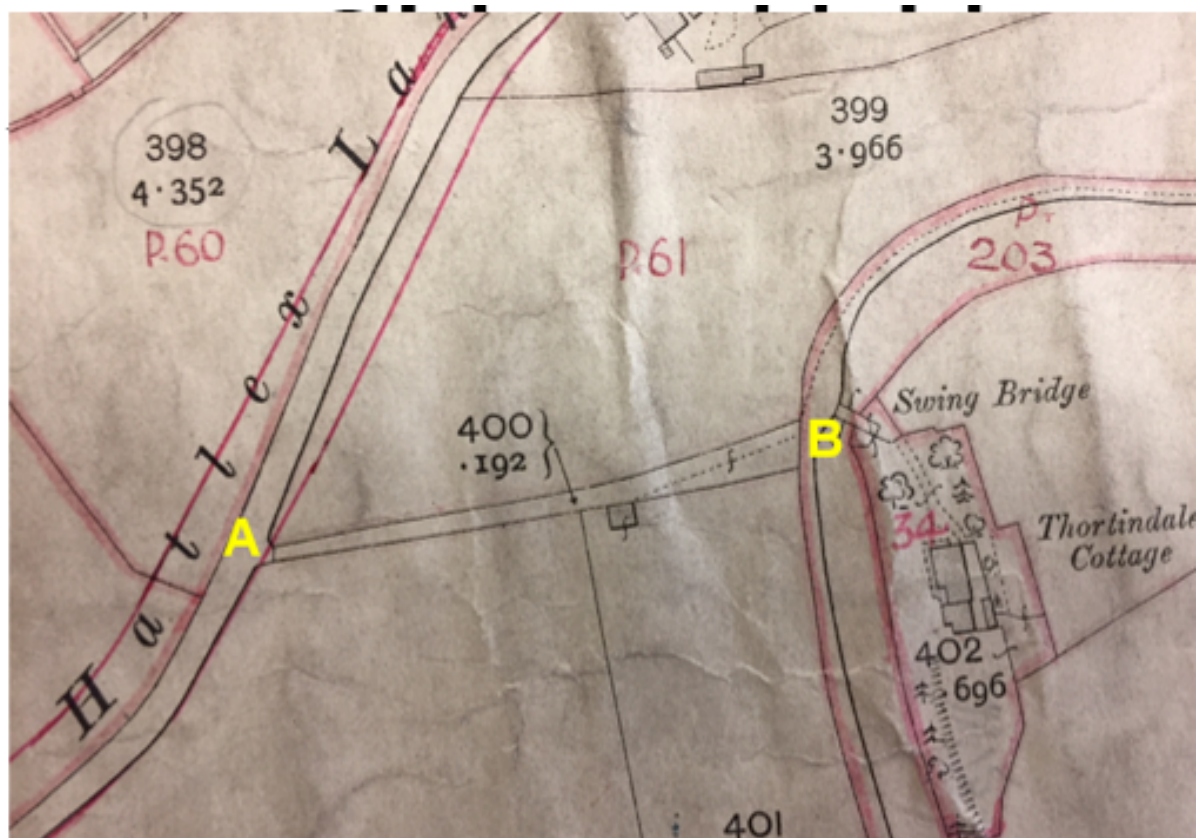
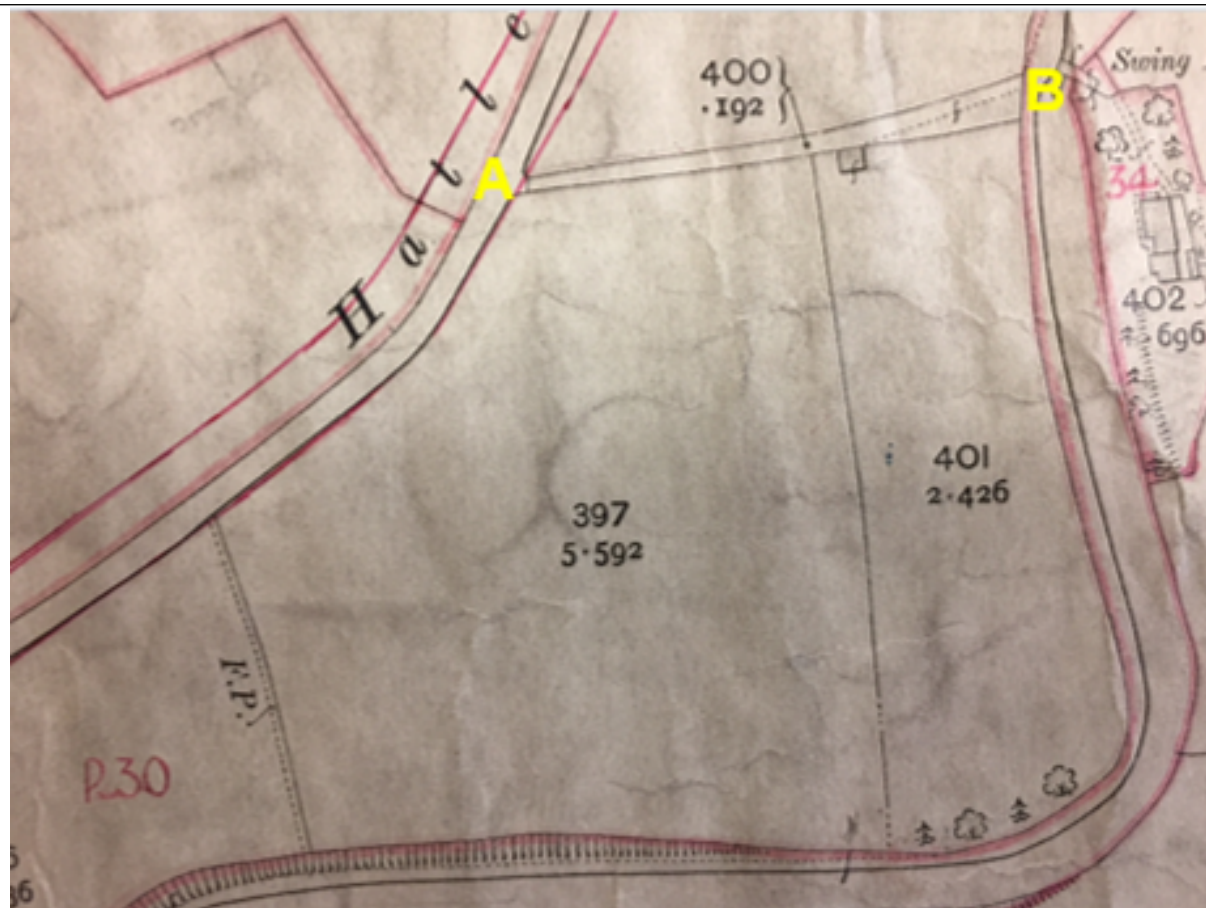
		
Observations		<p>The application route existed and provided access to the canal towpath and to Thortindale Cottage via a swivel bridge.</p> <p>A line is shown across the route at point A suggesting that a gate existed across the route at this point. The route is shown with a parcel number and acreage. It is not shown shaded down one side (like Hatlex Road).</p> <p>A small building is shown on the south side of the route in Field 401.</p>
Investigating Officer's Comments		<p>The application route existed and appeared capable of being used providing access to the canal towpath and to Thortindale Cottage via the swivel bridge.</p> <p>The route was gated at point A. 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>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. An enclosed lane in different ownership from the adjacent land would also be expected to be shown as a separate parcel.</p>
Sale of the Hatlex Estate by public auction	1894	Sale particulars detailing the sale by public auction of land comprising the Hatlex Estate including Thortindale and available to view at the County Records Office Ref: DDT/111

annexed to Particulars.		LOT IX.			on the 1889 Map: Vicar. Appropriators. £ s. d. £ s. d.				
397	Thortindale and Bracken Field (including the hedge between Lots 9 and 10 to be maintained by this Lot)	Brought forward	...	0	18	5	6	8	4
	Lot 8 shall repair half the road number 400 on the Ordnance Map up to the middle thereof, and Lots 3 and 9 shall repair the other half opposite their respective Lots.	A. R. P.	...	0	2	6	1	10	1
		5	2	14					
Observations		No plan was included with the sale brochure included but land to be sold is referenced by Ordnance survey parcel numbers on the first edition 1:2500 map detailed above. The sale brochure describes the extent of the property to be sold at public auction on 3 rd October 1894. It describes the property as being a freehold estate known as the Hatlex Estate which comprised of 3 dwelling houses, extensive farm buildings and over 103 acres of land. Lot 3 is Thortindale (referenced as OS parcel numbers 401 and 402) which covers the plot on which the house is built to the east of the canal and also a field to the west of the canal which was accessed from the application route. The sales document describes the property as being for sale 'together with the right of way to the same usually occupied therewith' but does not clearly specify where the right of way is. The application route is not included as part of the sale although land on either side of it was to be sold. Details for Lot 9 specify that the purchaser of lot 8 will be responsible for repairing half the road number 400 on the Ordnance Map up to the middle thereof, and Lots 3 and 9 shall repair the other half opposite their respective Lots.							
Investigating Officer's Comments		Land on either side of the application route was sold as part of the Hatlex Estate but not the route itself. There is no indication in the documentation as to who owned the route but the maintenance obligation implies that a right existed along it to access Thortindale Cottage and whilst not owning it, purchasers of adjacent fields would also be required to maintain it. The route is described as a road but there is no indication whether it carried any public rights. There is no information given about the name of the vendor (owner of the Estate prior to the Sale) or the purchasers.							
25 inch OS Map Sheet 24/15	1913	Further edition of the 25 inch map surveyed in 1889, revised in 1910 and published in 1913.							



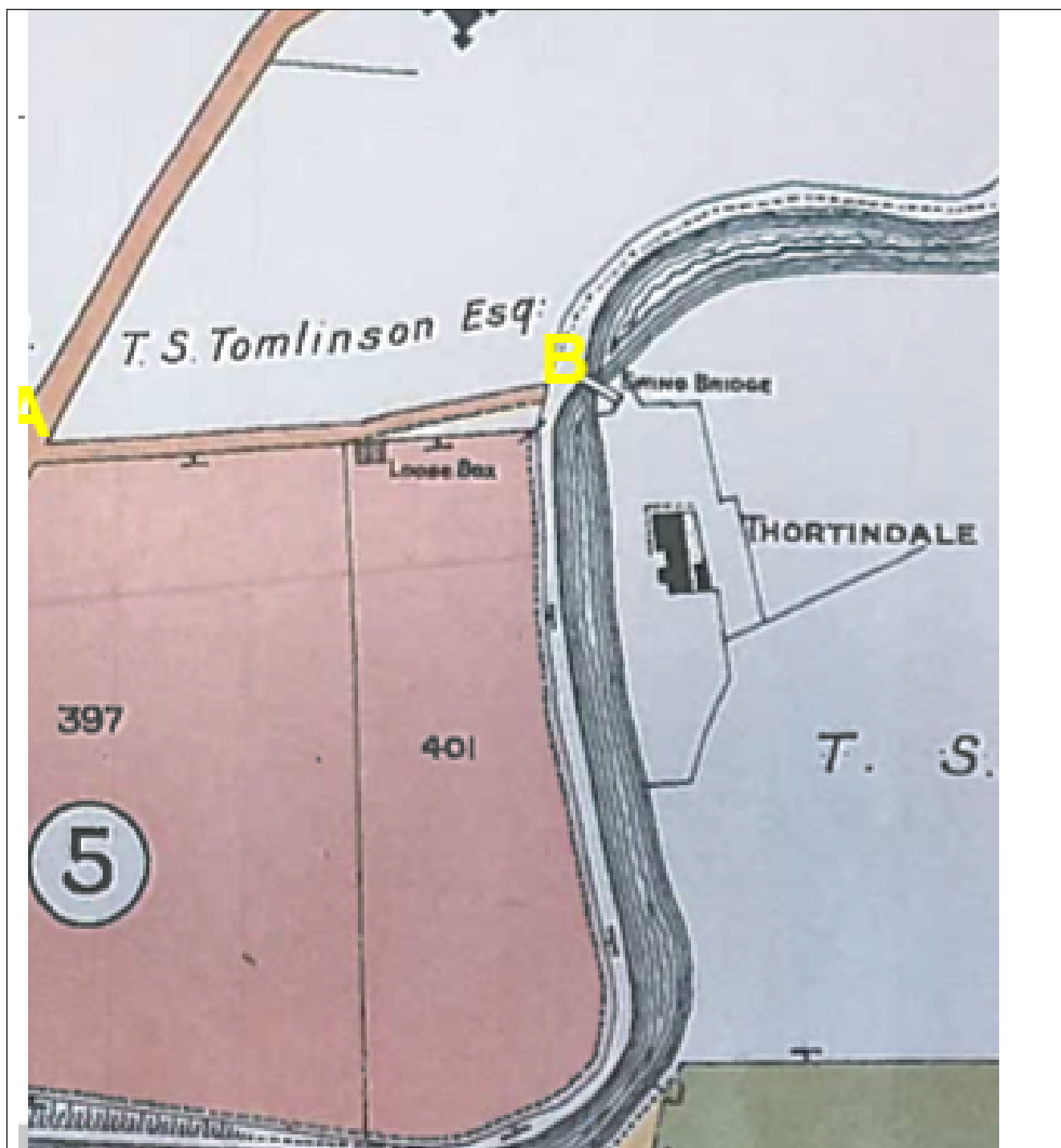
Observations		The application route is shown in the same way as it was on the earlier addition of the 25 inch map. The route provided access to the canal towpath and still provided the only access to Thortindale Cottage (via the swing bridge).
Investigating Officer's Comments		The application route existed and appeared to be capable of being used in 1913 but it is not known whether there was use by the public.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the Ordnance Survey small scale map was inferior to Bartholomew at that time for the use of motorists.

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



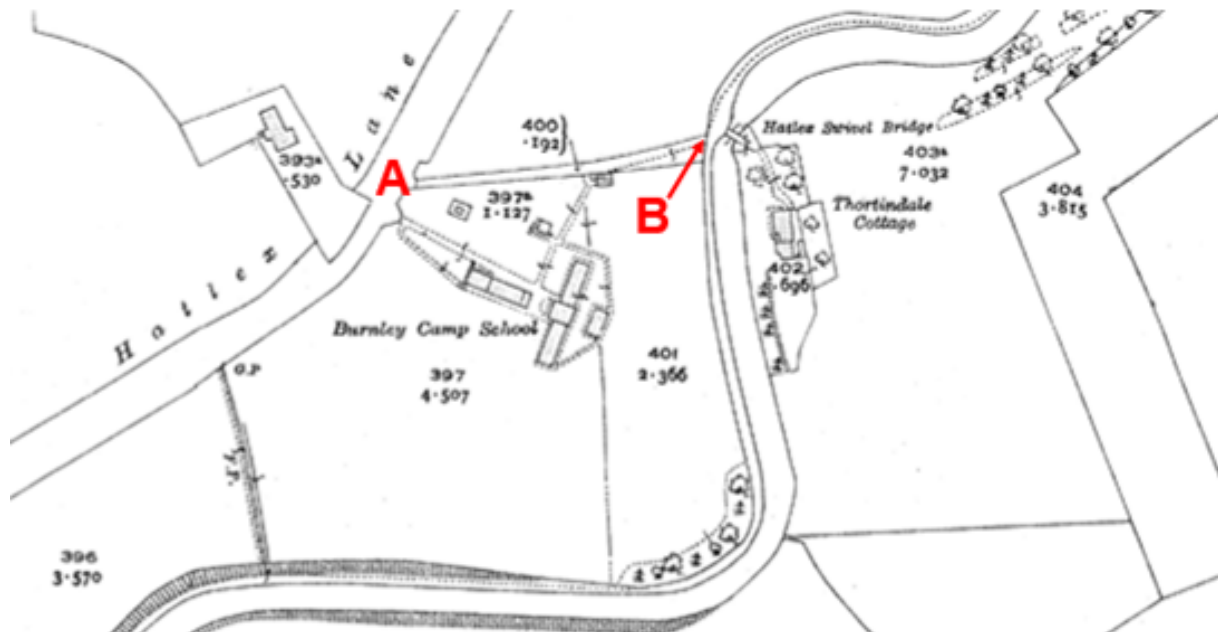
Observations		The application route is not shown excluded from the numbered hereditaments but it is unclear whether it formed
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		<p>part of the plot numbered 30 (numbered south of the route) or 61 (numbered north of the route) as there is no boundary shown between the two.</p> <p>Plot 30 is described as being owned by JW Pickard and occupied by Thomas Cook. It is described as 'land and buildings' and a £10 deduction is listed for public rights of way or user. The most obvious boundary between plot 30 and 61 would be the application route but as this has not been indicated as being the case on the map there is no certainty. The full extent of plot 30 is not known and there is no explanation as to which route or routes the £10 deduction was claimed for. A route as a footpath (F.P.) is however shown on the Ordnance Survey base map close to the number '30' and is now recorded as a public footpath on the Definitive Map.</p> <p>There is a note in the Valuation Book that the valuation details for plot 30 also 'includes' a plot numbered 157 in Slyne with Hest. Plot 157 Slyne with Hest is listed in the Valuation book for that parish as being owned and occupied by the same people as plot 30 and is described as being 'Land at Hatlex'. No further deductions are listed for public rights of way or user but there is a note cross-referencing the fact that details are included in 'Bolton-le-Sands 30'.</p> <p>Online research indicated that William Pickard purchased Thortindale Cottage at public auction in 1894. If this is the case then the auction details (detailed earlier in the report) suggest that the sale at that time did not include the application route but that a right of access to Thortindale Cottage existed along it and that Mr Pickard was responsible for maintenance of part of the route.</p> <p>Plot 61 is listed as being in the ownership of a Mr Tomlinson and occupied by Messrs Bowther. It is described as 'land and buildings' located on Slyne Road with no deductions listed for public rights of way or user.</p>
Investigating Officer's Comments		The District Valuation Map and records available to view in the County Records Office are insufficiently clear to conclude whether or not the land crossed by the route was included in either plot or whether a deduction was claimed for public rights of way or user and it is considered that no inference can be drawn to the existence of public rights.
Sales plan and documentation	1922	Copy of a Sales pamphlet for the sale at public auction of land known as 'Hatlex' provided by the applicant.

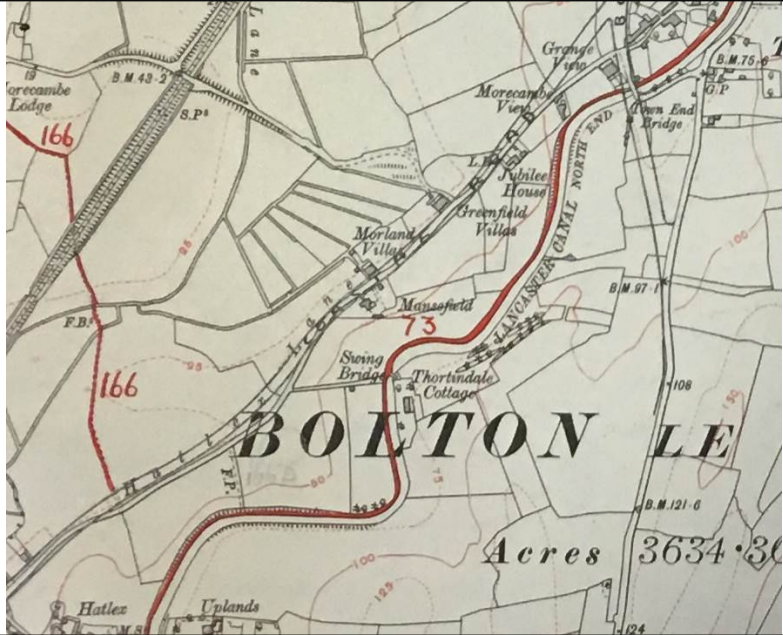


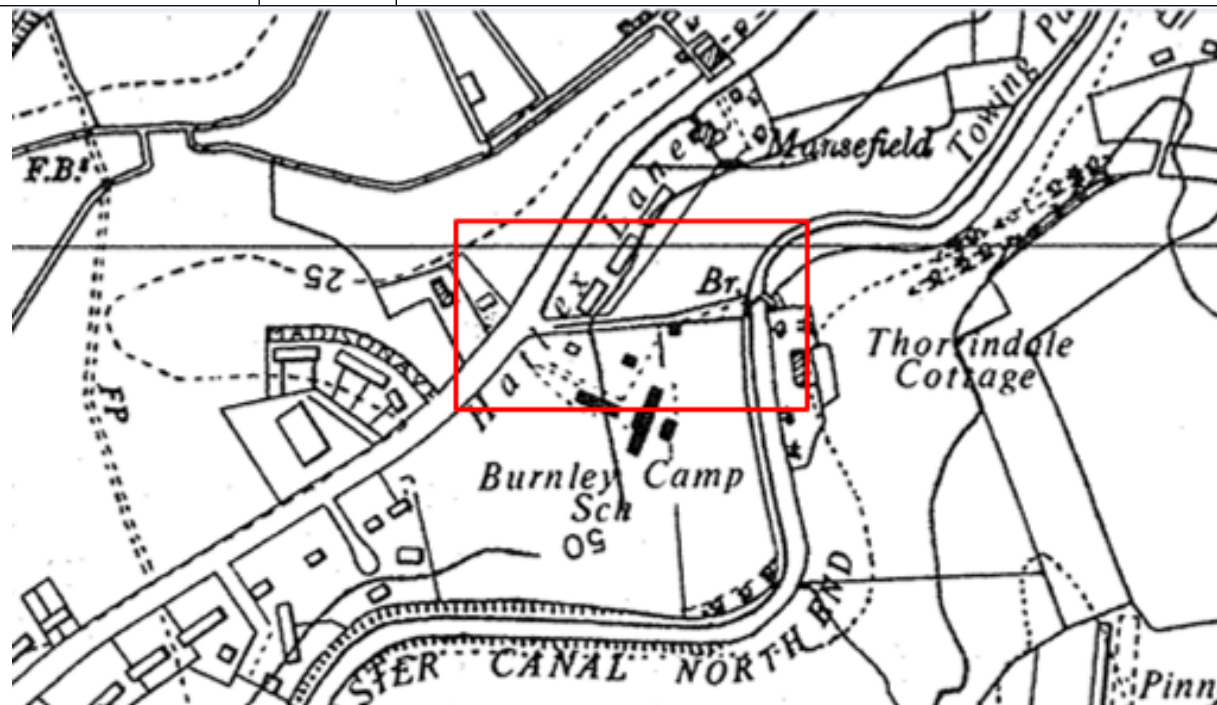
Observations		<p>The land for sale does not include the application route and there is no reference with regards to any public or private rights along it. It is coloured brown and contiguous with Hatlex Lane.</p> <p>Conditions of sale refer to indentures dated 1895 regarding field 401 (south of the application route) between John James Harris and William Pickard adding weight to the belief that Mr Pickard purchased Thortindale Cottage in 1894.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights although the depiction being the same as the public road suggests it was similarly accessible as far as</p>

		potential purchasers were concerned.
25 Inch OS Map Sheet 24/15	1932	Further edition of 25 inch map (surveyed 1889, revised in 1930 and published 1932.

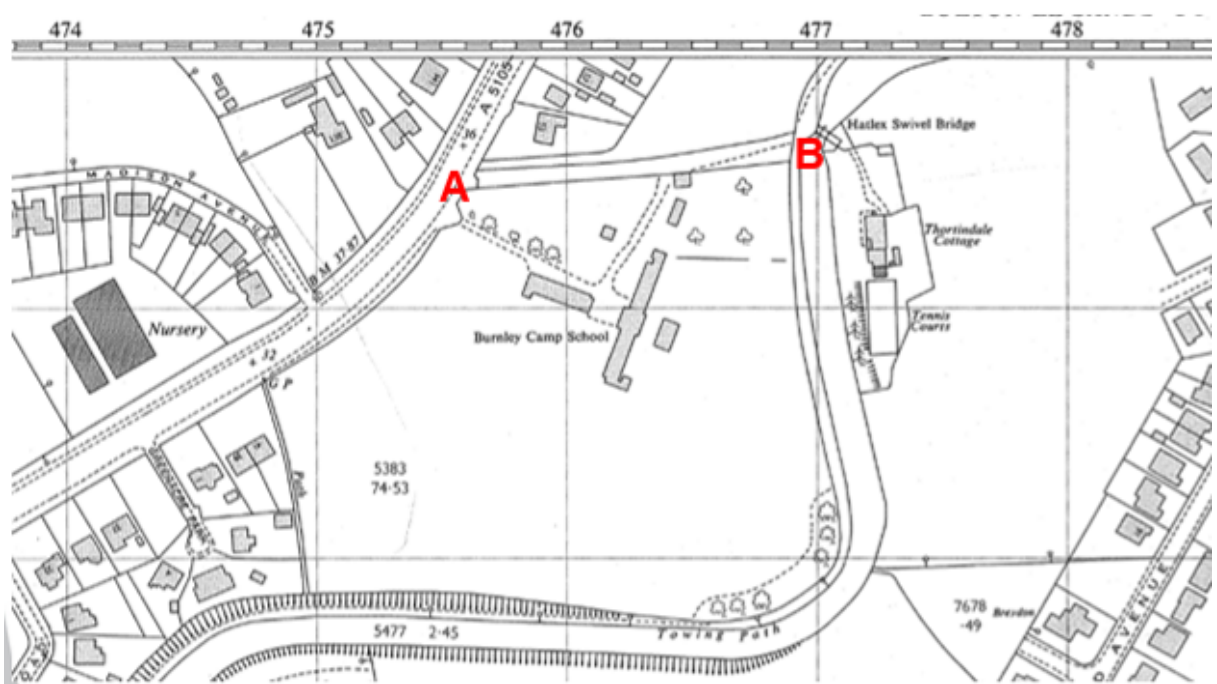


Observations		The application route is shown. It is gated at point A and provided the only access to Thortindale Cottage and the canal towpath. Burnley Camp School is shown to the south of the route with the main access to the school being from Hatlex Road but with additional access available from midway along the route.
Investigating Officer's Comments		The application route existed and appeared to be capable of being used to access the canal towpath (as well as Thortindale Cottage).
1932 Rights of Way Map		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi-pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.

		
Observations		The application route is not shown marked up on the map.
Investigating Officer's Comments		The route was either regarded as part of the road network or not considered to have any public rights by those drawing up that map, whose purpose was to record public paths.
6 Inch OS Map Sheet 46NE	1956	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The application route is shown on the map in the same way as it is shown on earlier editions of Ordnance Survey Mapping.
Investigating Officer's		The application route existed and appeared to be capable of being used to access the canal towpath (as well as Thortindale

Comments		Cottage).
1:2500 OS Map Sheet SD 4666-4766	1968	Further edition of 25 inch map reconstituted from former county series and revised and published in 1968 as national grid series.
		
Observations		The application route is shown gated at point A and point B. the route still provides the only access to Thortindale Cottage (via the swivel bridge) with access directly onto the route from Burnley Camp School and the towpath.
Investigating Officer's Comments		The application route existed in 1968 and appeared to be capable of being used.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

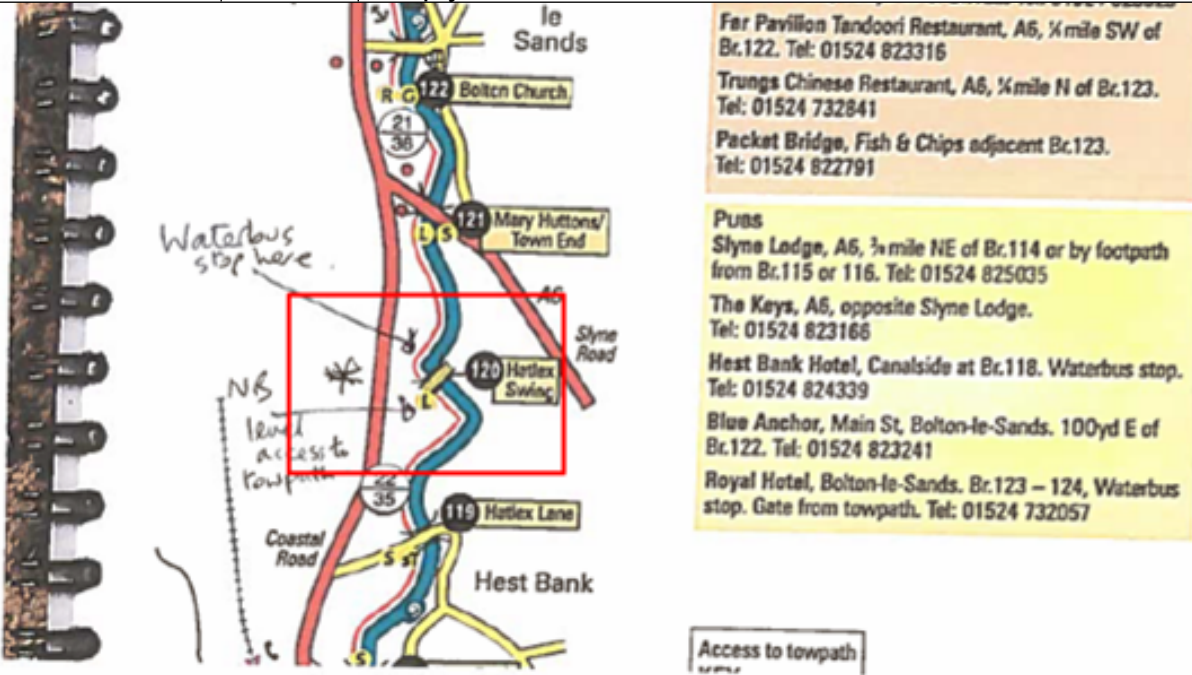


Observations		The application route can be clearly seen as a substantial track leading to the canal towpath and swing bridge. It is not possible to see from the photograph whether access onto or along the route was gated or restricted in any way.
Investigating Officer's Comments		The application route existed in the 1960s as a substantial track and appeared to be capable of being used to access the canal towpath.
Aerial Photograph	2016	Aerial photograph available to view on GIS.

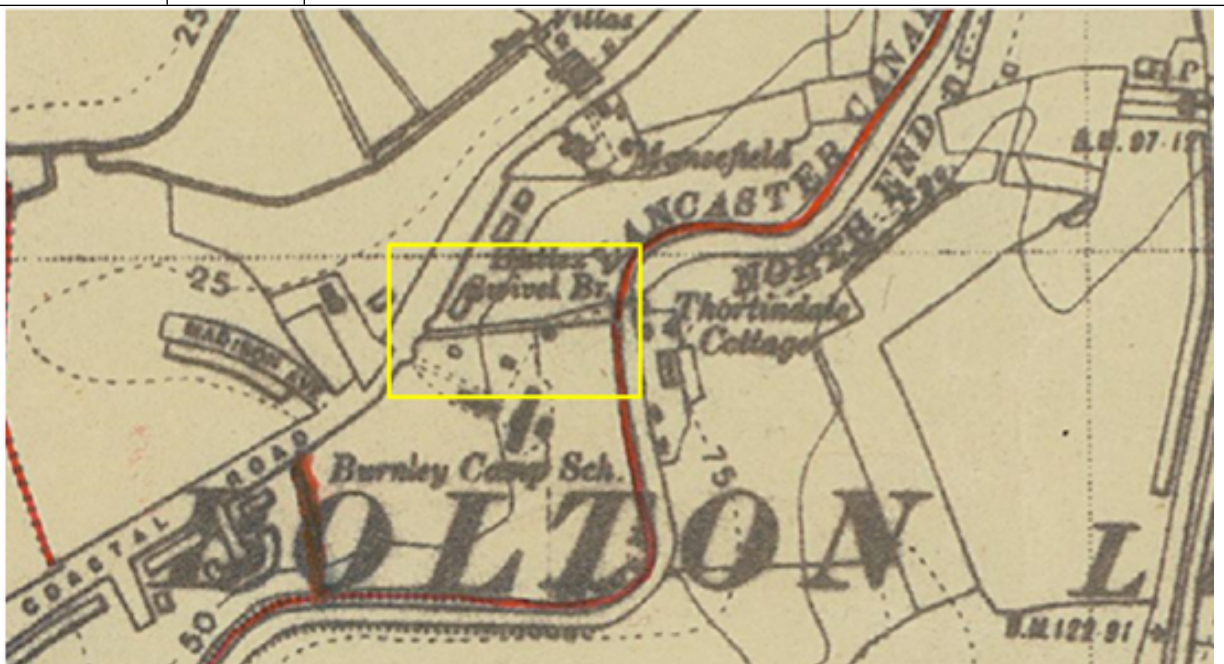


Observations		The application route can be clearly seen as a substantial route used by vehicles to access Thortindale Cottage via the swing bridge. It also appears to be available for people to access the canal towpath.
Investigating Officer's Comments		The application route existed in 2016 and appeared to be capable of being used.
Google Street View	2017	Google Street View image captured in 2016.

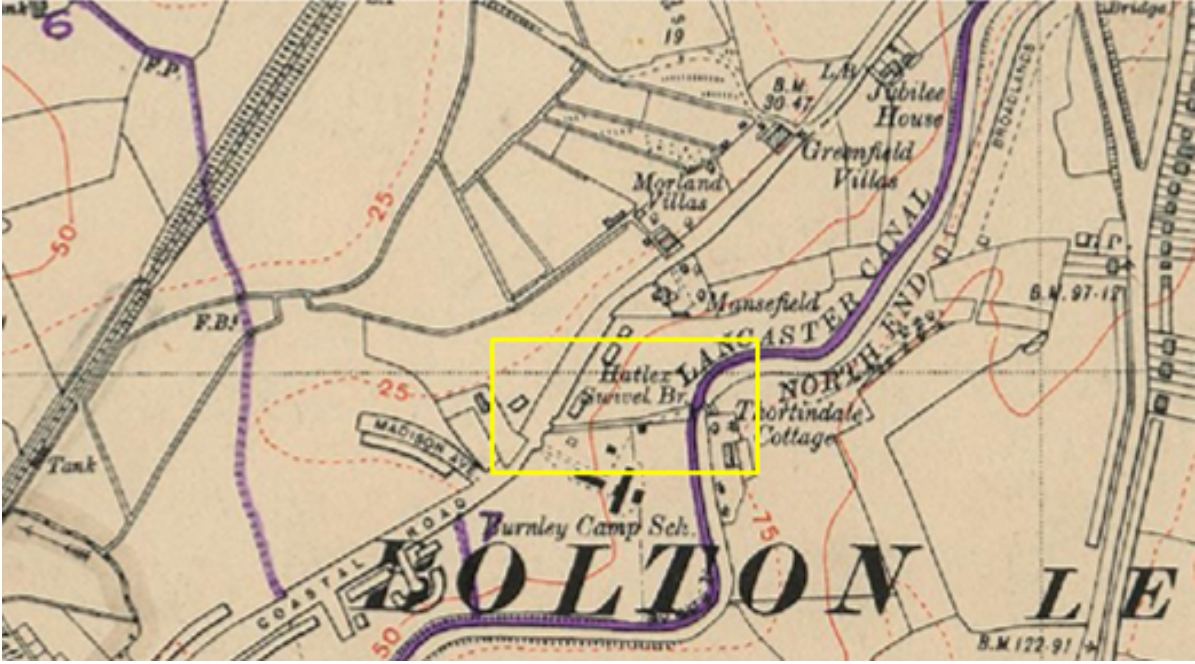


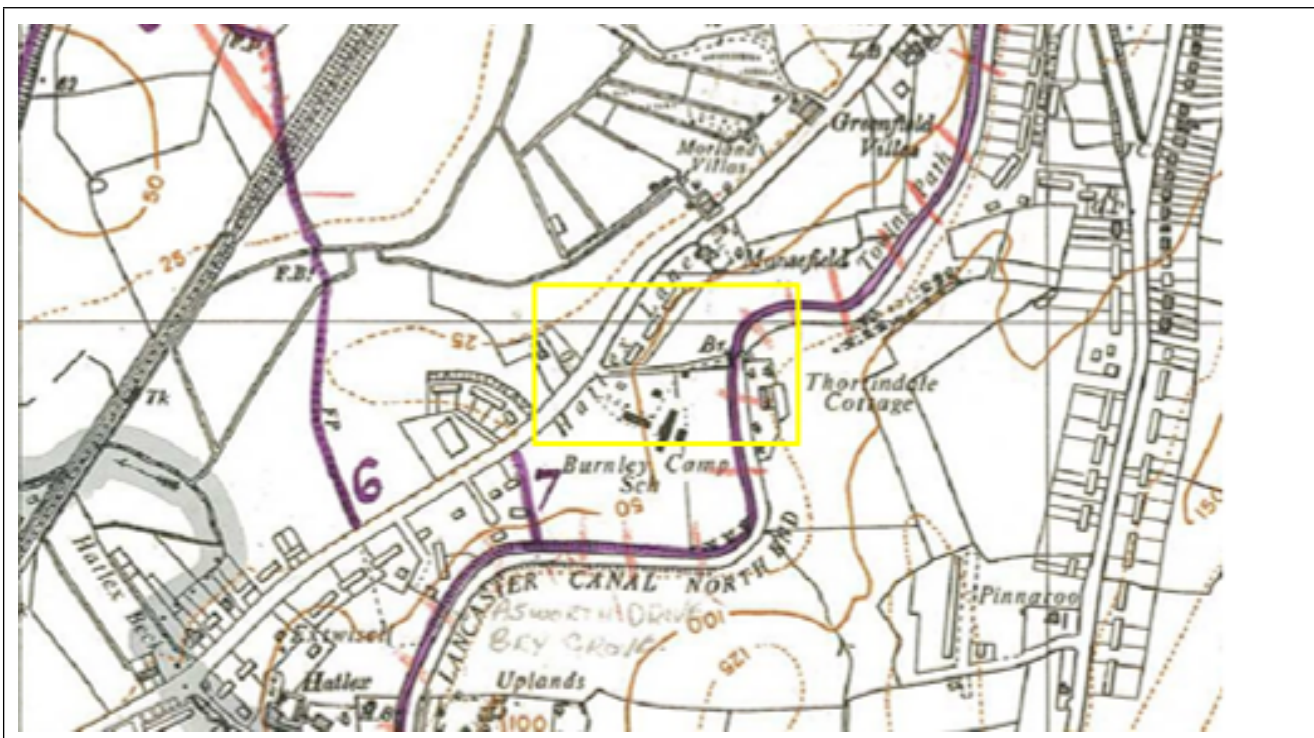
Observations		The application route existed and access onto it at point A was open and available. No signs can be seen indicating whether the route was considered to be public or private.
Investigating Officer's Comments		Access onto the application route was available in 2017.
The Lancaster Canal Trust	2017	Photocopy of document submitted by the Applicant and titled simply as 'The Lancaster Canal Trust' 2017
 <p>Far Pavilion Tandoori Restaurant, A6, 1/4 mile SW of Br.122. Tel: 01524 823316</p> <p>Trungs Chinese Restaurant, A6, 1/4 mile N of Br.123. Tel: 01524 732841</p> <p>Packet Bridge, Fish & Chips adjacent Br.123. Tel: 01524 822791</p> <p>Pubs</p> <p>Slyne Lodge, A6, 3/4 mile NE of Br.114 or by footpath from Br.115 or 116. Tel: 01524 825035</p> <p>The Keys, A6, opposite Slyne Lodge. Tel: 01524 823166</p> <p>Hest Bank Hotel, Canalside at Br.118. Waterbus stop. Tel: 01524 824339</p> <p>Blue Anchor, Main St, Bolton-le-Sands. 100yd E of Br.122. Tel: 01524 823241</p> <p>Royal Hotel, Bolton-le-Sands. Br.123 – 124, Waterbus stop. Gate from towpath. Tel: 01524 732057</p> <p>Access to towpath</p> <p>Extract from "The Lancaster Canal Trust" 2017</p>		
Observations		<p>An online search confirmed that the extract provided by the applicant was from a book published by the Lancaster Canal Trust titled 'The Complete Guide to the Lancaster Canal'. The Canal Trust was formed in 1963 with the primary aim of restoring the canal from Carnforth north to Kendal but also to promote the use and interest in the whole canal.</p> <p>The book shows various points of interest along the canal and the location of various services, bridges, road crossings etc. The plan shows the location of Hatlex swing bridge but does not show the application route.</p> <p>The applicant has annotated the plan showing the location of a waterbus stop close to the route and stating that the application route would provide flat access to the canal towpath.</p>
Investigating Officer's Comments		The book extract provides no information about the application route so no inference can be drawn with regards to public rights.

		The applicant has provided information about a stopping off point for the waterbus possibly suggesting that people would access the canal towpath and/or waterbus along the application route due to the fact that it has a flat gradient and is in close proximity to the water bus stop. These points will need to be considered as part of an analysis of the user evidence submitted as part of this application.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.



Observations		The application route is not shown on the parish survey and no representations were made to the county council about it. The canal towpath has been coloured red indicating that the parish council believed it to be a public footpath.
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Draft Map		<p>The parish survey map and cards for Bolton-le-Sands were handed to Lancashire county council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
		
Observations		<p>The application route is not shown on the Draft Map and no representations were made to the county council about it. The canal towpath is shown as a footpath</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Observations		The route was not shown on the Provisional Map and no representations were made to the county council about it. The canal towpath is shown as a footpath (purple line) with red lines across it indicating that an appeal had been successfully made to remove it from the map.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route was not shown on the First Definitive Map and Statement (and neither was the canal towpath).
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route was considered to be a public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway	1929 to	In 1929 the responsibility for district highways passed from

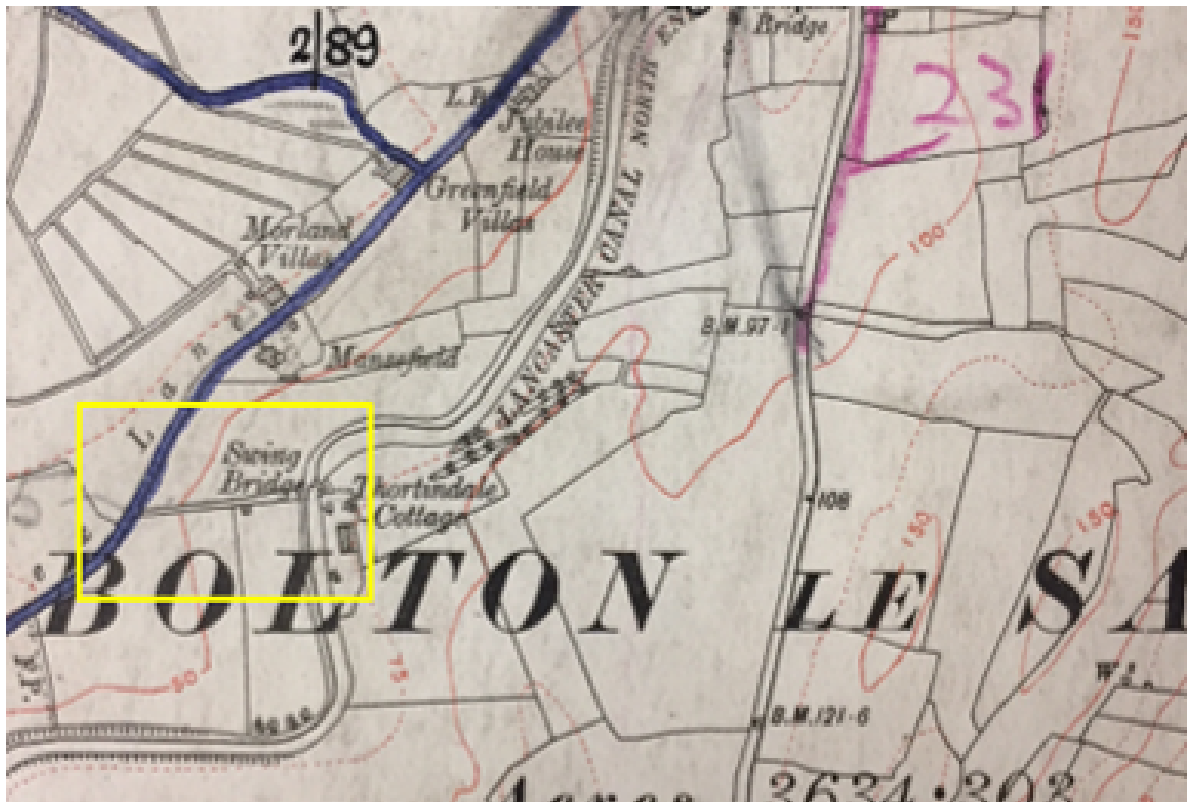
Adoption Records including maps derived from the '1929 Handover Maps'

present day

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.

A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.

The county council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.




Road Transfer Map 1929



LCC Adoption records

Observations		The route is not recorded on the 1929 Handover Map and is not recorded on the List of Streets or 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 the existence of non-vehicular public rights.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>

Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the 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 over this land.
Notice of Planning Permission Ref: 18/00491/CU	2018	Details of planning permission granted for a change of use from dwelling home to children's care home – Thortindale Cottage.
		
Observations		<p>Planning permission has recently been granted to the current owners of Thortindale Cottage for change of use from a residential property to a children's care home. As part of the permission granted it has been stipulated that the access road which includes the application route A-B must be resurfaced to an agreed standard to a width of 4.1 metres and that 2 passing places were to be provided for cars. It was also specified that signage needed to be provided to warn users of the towpath (which crosses the access road) of vehicles.</p> <p>The planning consultations and a report to Lancaster City Council Planning Committee on 25 June 2018 refer to the fact that ownership of the access road from Coastal Road to the canal towpath is unknown but that the owners of Thortindale Cottage had access rights along it. It also makes reference to the fact that there is occasional use of the route by pedestrians but that there is now a parallel footpath immediately north of the route which is owned and maintained by The Orchards Management Company Ltd but 'available' for public use.</p>
Investigating Officer's Comments		Ownership of the application route is not known and no one has provided evidence of ownership as part of the planning process. The access road was not recorded as a public right of way at the time the planning permission was requested and although there is some suggestion that public use was made of

		the track it is not dealt with by the Planning Authority as an application affecting a public right of way.
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land. Lancaster canal and the towpath are classified as a biological heritage site.

Landownership

The land crossed by the application route is unregistered and landownership unknown.

Summary

The application route appears to have come into existence to provide access to Thortindale Cottage which is believed to have been built in 1830 (after the construction of the Lancaster Canal) and possibly to the canal towpath itself.

In 1846 (Tithe Map and Award) it is recorded as being owned by John Pearson and tenanted by John Coulston. It is described as a 'road' for which no tithe was payable and the same landowner and occupier (John Pearson) were listed as being the owner of Thortindale Cottage.

Ownership of the route from that point on is unclear although private rights of access to Thortindale Cottage are frequently referred to.

From 1846 to the current day all map and documentary evidence examined suggests that the route has remained unaltered and, although gated at point A and point B for at least some of its existence, the route appears to have been capable of being used, subject to being able to get through, round or over any gates, and supports the user evidence submitted as part of the application, to gain access to and from the canal towpath.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant provided the following documents in support of the application:

Maps showing the route over the passage of time

Bills of sale for the Hatlex Estate

Copy of Deeds from Thortindale Cottage

57 User Evidence forms

User Evidence Summary:

There were 57 User evidence for received with the application.

The application route use varies from the 1960 through to 2018.

Table of years users known and used route:

<u>No. of years known and used</u>	<u>No. of users</u>	<u>No. of years known and used</u>	<u>No. of users</u>
Over 60 years	1	Over 35 years	6
Over 55 years	4	Over 30 years	8
Over 50 years	3	Over 25 years	8
Over 45 years	6	Over 20 years	5
Over 40 years	12	Over 15 years	1
No dates provided	3		

Types of use of the route until 2018:

	Daily	Weekly	Monthly	Every few months	Yearly	Other
Foot	19	24	3	4	2	3- 'frequently', 1-'regularly'
Bicycle	4	9	5	3		1-daily 1954-56 3- 'frequently' 1-'regularly' 2-no frequency provided
Vehicle					2	1-daily 1954-1956
Wheelchair	1					

- Reasons provided for use of the route by users were: pleasure/ walking to shops/ dog walking / cycle route/ accessing the canal for fishing and canoeing/ part of a circular route along canal to Hest Bank and the beach/ going to feed the ducks/ playing by the canal/ walking and cycling to Bolton-le-sands and Lancaster/ jogging/ going to school/ walking with wheelchair/ walking to the library/ accessing the canal towpath
- Whilst using the route: 47 users have seen others on foot; 39 users have seen others on bicycles; 5 people have seen people on horses; 12 people have seen others using a wheelchair, 2 have seen people on mobility scooters; and 14 people have seen vehicles on the route (Canal and River Trust vehicles, land owners vehicles for access to property and fishermen accessing the canal), all using the same route as them.
- 50 users provided that the route has always followed the same course.
- 1 user provided that there is a stile at the end of Whitendale Drive to allow access onto the lane which has been there since the 1970's when they moved to the area. Another user provided that the only gates along the route are those at the back gardens of Easedale giving them access to the route. No other users mention there being any stiles, gates or barriers along the route. No users mention anything preventing them from accessing the route at any time.

- 1 user mentions there being a 'private road' sign on a wooden board at the Coastal Road end of the lane which disappeared roughly when the private owner left Thortindale a few years ago, they provide that the sign did not look official. No other users mention seeing any signs on the route.
- None of the users have ever been given permission from an owner to use the route. The route is on unregistered land.
- 47 users provided that they have never been prevented from using, stopped, turned back or challenged by anyone whilst using the route. 1 user mentions that there was a restriction of use during the foot and mouth outbreak.
- Of the 14 users mentioning having seen vehicles on the route 10 users provided that the vehicles were from the Canal and River Trust, 2 users provided that they were vehicles of people from Thortindale Cottage and 1 was a fisherman. 6 users provided that they either walked back to the top or bottom to allow safe passage or alternatively step into the tall grassed embankment for safety.
- 45 users provided that they have never being told that the route was not public.
- Other comments made by the users include the following:

A waterbus stop is near Swing Bridge 120 and top of the lane (when running).

The pathway is an ancient pathway used for over 100 years.

One user provides that they are wary of using the route at night as there are no street lights down the lane.

It serves as an invaluable route for access to the canal for all users.

The pathway has been the same since the canal was built in 1887. It has always been an unmade road with potholes being filled by those who had vehicle access over it.

This green lane has been part of a historical route from manor Farm at Slyne to Thortingdale House to Morecambe Lodge on the shore dating back several hundred years before the construction of either the canal or the railway. The development of the housing on the east side of the canal adjacent to the swing bridge diverted the original route of the path although access between the houses still permits walkers to cross the swing bridge. It is a green lane and the hedges are protected under the Hedgerow Regulation as they date back to the original access construction as shown on the first series Ordnance Survey maps.

It is a safe access to the canal as there are no steep steps to negotiate or narrow entrances.

One user lived in Thortindale Cottage from 1954 until 1965 and their parents lived in it until 1968. They used the route on bike, foot and in a car. They provide that fishermen would drive and cycle up the lane, parking on the canal bank. The lane

was definitely in public use during this time. They go on to provide that the lane serviced fields and land of Hatlex Lane prior to the cutting of the Lancaster Canal in 1797.

Information from Others

40 Whitendale Drive

Mr and Mrs Boardman support the application and provided that they have lived at 40 Whitendale Drive for over 36 years, during which time the lane has been extremely well used all year round by a variety of people including walkers, many with dogs, joggers, rambling groups, people with children and pushchairs, fishermen, cyclists, people in wheelchairs, horse riders and boat owners using the lane to access the Spar shop on the main road. The lane is the only public access to the canal bank for wheelchairs, cycles and horses between Station Road in Hest Bank and Bolton Le Sands Village. They have always assumed that the lane was a public footpath. The lane borders their property along with No 25 Whitendale Drive and the rears of 7 properties on Easedale Close, which each have rear access gates opening onto the lane.

They provide that the northern side of the Lane is mature hedge behind which there is a private footpath and that this is owned and maintained by the Orchard Estate Management Company for the sole use of residents on their estate.

25 Whitendale Drive

Mr and Mrs Midgley have lived at 25 Whitendale Drive for 38 years and have no objection to the application. They have always been lead to believe that the lane was a public footpath. They provide that the lane runs from the canal towpath to Coastal Road and borders the side of their property along with No 40 Whitendale Drive and 7 properties down Easedale Close, with each having rear access gates openings and steps. The lane is well used by joggers, walkers, cyclists, dog walkers, families with children, walking groups, horse riders and fisherman. The lane is really the only easy access to the canal tow path for wheelchair users. They, along with the owners of No 40 Whitendale Drive keep the grass verge on their side of the lane well-kept and keep the grass cut back.

4 Easedale Close

Ms Patricia Roberts has lived at 4 Easedale Close since the property was built in 1978. She provides that she and her neighbours installed fencing/walling, gates and steps down to the footpath for access as the rear gardens were not landscaped by the builders at the time. Mrs Roberts claims that banking and steps form part of her property. Checked LR and doesn't appear so. The properties in Easedale Close are linked and have no side access therefore the access to the footpath was needed for refuse collections, which at that time (no dates provided) was collected from the rear of the properties.

Ms Roberts provides that she believes the footpath was a public right of way for people to access the canal tow path and has been told that years ago there was a church on the other side of the canal which was accessible only via the swing bridge. The footpath is used regularly by walkers, cyclists and families accessing the canal towpath. The footpath is not a straight line so you cannot see one end from the other. If a vehicle comes down, pedestrians have to climb the banks in order for them to pass. The footpath has extensive hedgerows along the length.

Bay View Child Care, Thortindale Cottage

Paul Johnson, owner of Thortindale Cottage objects to the application to record a public footpath. He provides that their established right of way from Coastal Road to Thortindale Cottage is for all purposes their established legal right of way which allows vehicles to use the narrow access lane.

Should a public right of way be granted, they are concerned for public safety as the access lane is not sufficiently wide to allow pedestrians and vehicles to pass safely, to allow use by both pedestrians and vehicles.

They suggest an alternative that the newly established footpath, to the immediate north of the access lane should be confirmed as a definitive public right of way because it offers a much safer route, that is dedicated to pedestrian use without the potentially dangerous vehicle/pedestrian conflict that will result from the proposal.

The registered title LA793077 provides that the land has the benefit of a right of way along the lane in an easterly direction towards the canal and across the swing bridge.

Oakmere Homes (Northwest) Ltd

Oakmere Homes initially objected to the application believing the application to be for the private footpath to the north of the route. They are now aware of this and provided the council with a copy of a letter their legal representatives have sent to Bay View Child Care in relation to the removal of part of the boundary hedge separating the track leading to Thortindale Cottage and the private path owned by The Orchards which has been replaced by a fence.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- A substantially high amount of user evidence of the route being used as a footpath or bridleway on a regular basis
- Users claim to have seen others using the route on foot, bicycle and horse.
- The route is shown on some of the older Ordnance Survey Maps, first appearing in 1880 indicating that it existed and was capable of being used.
- The route is shown on a range of other (but not all) maps
- The route provides access to the canal towpath which is a permissive path for use on foot, cycle and horseback, as well as being a place of public resort.

Against Making an Order(s)

- The Map and Documentary evidence alone is insufficient evidence for the existence of a public right of way.
- There are no deduction for public rights of way in the Finance (1909-1910) Act 1910 Maps

Conclusion

The Committee will recall that this matter relates to an application for a footpath to be added the Definitive Map and Statement. The said footpath is described under the "Description of Route" section above and shown on the Committee Plan with a dashed line. The application includes over 50 user evidence forms, various maps, bills of sale for the Hatlex Estate and the title deeds for Thortindale Cottage in support of the application.

From the Map and Documentary evidence alone, it is difficult to infer that this route carried public rights of way. While the route is depicted on the majority of maps shown within the report and is mentioned within the Hatlex public auction sale documents, the maps do not determine if the route carried a public right of way. The route was first depicted on the OS map of 1848 and has since been depicted consistently on the subsequent OS maps. Evidence from the Finance (1909-1910) Act 1910 map is inconclusive, and in any event primarily relates to vehicular public rights.

Evidence of use of the route over a period of time and the owner's acquiescence can be circumstances from which to infer dedication at Common Law.

We can see from the mapping evidence that the route existed consistently on maps from as early as 1846 and therefore was capable of being used. The land on which the route falls is unregistered and there is no evidence of any apparent owner making an objection or otherwise preventing use.

The comments from users who have used the route for over 25 years is important evidence showing extensive use exceeding 20 years without users being stopped or otherwise prevented from using the route. The route links in and provides access to the canal towpath, which itself is a permissive path for cycle and horseback use and is considered a place of public resort. The route does not lead to a cul-de-sac.

Deemed dedication under Highways Act 1980

Considering the provisions of section 31 Highways Act 1980 for deemed dedication of a public right of way, it is a requirement that the route is used for a continuous 20 year period without interruption, and without any sufficient overt acts demonstrating an intention not to dedicate by the owners. The first step is to determine the 20 year period, which starts from the date the use of the route was first brought into question. It could not be properly determined whether the route was ever called into question prior to the date of application and since there is no evidence stating otherwise, the 20 year period runs retrospectively from the date the application was submitted. The relevant 20 year period therefore runs from 08 October 1998 to 08 October 2018.

The other parts of section 31 require the use to be "without interruption" and there being "no sufficiently overt" acts to demonstrate that there is no intention to dedicate by the owners.

These are both matters to be considered by reviewing the user evidence and any other evidence, such as objector evidence or landowner evidence to determine if the

use was ever interrupted or if there was a sufficient enough act from the landowner to negate intention to dedicate. The user evidence clearly shows the use of the route on foot and on bicycle for an extensive period without any apparent interruption. No user claims to have been stopped or turned back from using the route, nor has any signage been erected to deter users. The owner cannot be identified and the land is unregistered.

The volume of user evidence in this matter is reasonably high and sufficiently detailed. The majority of user evidence confirm they have used the route on foot. Others have also used the route on bicycle and have seen others on cycles on the route. From a total of 57 users, 48 have confirmed use of the route for over 25 years and of those 48, 12 users have used the route for more than 40 years. Collectively, the majority of the use has been on foot, with use on bicycle being significantly less, but still enough for that use to be taken into account. None of the users have ever stated that they were stopped or turned back from using the route and only one user found the route to be closed via a notice during the foot and mouth outbreak.

The Committee may consider that there has been as of right use for the twenty year period without any interruption and without any sufficient overt acts demonstrating an intention not to dedicate by the owners during that period. Taking all the evidence into account on balance the Committee may consider that there is sufficient evidence from which a dedication of this route as a bridleway can be deemed under section 31 of the Highways Act 1980 or inferred under Common Law, and that the application be accepted with the modification that the route is recorded as a bridleway.

Risk management

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-602		Claire Blundell, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

