

Lancashire County Council

Regulatory Committee

Wednesday, 18th September, 2019 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Agenda

Part I (Open to Press and Public)

No.	Item
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1.	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 - 8)
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4.	Guidance	(Pages 9 - 32)
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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.	Highways Act 1980 - Section 25 Proposed Public Path Creation Agreement for a Public Footpath adjacent to F2992 at 23 Elmsett Road, Walton-le-Dale, Preston	(Pages 33 - 42)
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6.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Upgrading to Bridleway of Footpath Longton 42 (Known as Six Acre Lane), South Ribble File No. 804-607	(Pages 43 - 90)
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- 7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Kirkdale Avenue to
Footpath Rawtenstall 180 and Seat Naze
File No. 804-608**

(Pages 91 - 142)

8. Urgent Business

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

9. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Wednesday 20th November 2019 in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

County Hall
Preston

L Sales
Director of Corporate Services

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 26th June, 2019 at 10.30 am in Committee Room 'D' - The Henry Bolingbroke Room, County Hall, Preston

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

M Barron	T Aldridge
J Cooney	M Salter
I Brown	B Dawson
A Clempson	J Marsh
J Parr	

1. Apologies

Apologies were received from County Councillor David Howarth.

County Councillor Matthew Salter replaced County Councillor Peter Steen.

County Councillor Bernard Dawson replaced County Councillor Loraine Cox.

2. Appointment of Chair and Deputy Chair

Resolved: The Committee noted the appointment of County Councillors Jimmy Eaton and Malcolm Barron as Chair and Deputy Chair respectively of the Regulatory Committee for the 2019/20 municipal year.

3. The Constitution, Membership, Terms of Reference and Programme of Meetings for the Regulatory Committee

A report was presented setting out the constitution, membership, Terms of Reference of the Regulatory Committee, and the programme of meetings for 2019/20.

Resolved: The Committee noted:

- (i) The constitution/membership of the Committee, following the county council's annual meeting on 23 May 2019.
- (ii) The Terms of Reference of the Committee.
- (iii) The agreed programme of meetings for the Committee.

4. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

5. Minutes of the last meeting

It was noted that County Councillor Ian Brown should have been listed as being in attendance at the March meeting.

Resolved: That the minutes of the last meeting held on 13th March 2019 be confirmed and signed by the Chair.

6. 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.

7. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway at Commerce Street, Haslingden File No. 804-604

A report was presented on the addition to the Definitive Map and Statement of a Bridleway from the western end of Commerce Street (U7305) past Vine Grove Works and Vine Mill to the boundary of the A56, as shown between points A-B on the Committee Plan attached to the agenda papers.

It was reported that the route had no recorded public status and that an investigation had been carried out in relation to the East Lancashire Cycleway project, being implemented by the county council, to determine whether the route – which formed part of the proposed cycleway – should be recorded on the Definitive Map and Statement of Public Rights of Way.

A site inspection had been carried out in January 2019.

The Committee noted that there was no requirement for an application to be made for a definitive map and statement modification order as, once the county council had evidenced that the Definitive Map and Statement required modification, it had a duty to examine the evidence and make a decision accordingly.

The map and documentary evidence, together with more recent site evidence, all suggested that the route had, since that time when it no longer formed part of the

original route known as Commerce Street, continued to be available for use on foot, horseback and bicycle, although the nature of its actual use was unknown.

The Committee were informed that, on balance, the map and other documentary evidence was considered sufficient to conclude that the route was a historical public highway, and it was therefore suggested to Committee that inferred dedication could, on balance, be satisfied.

Resolved:

(i) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 for the addition of a bridleway from the western end of Commerce Street (U7305) to the boundary of the A56, Haslingden on the Definitive Map and Statement of Public Rights of Way as shown on the Committee plan between points A and B.

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

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway from Cowpe Road to Bacup Road, Waterfoot
File No. 804-605**

A report was presented on an investigation into public rights along part of the Pennine Bridleway National Trail from Cowpe Road to Bacup Road, Waterfoot, Rawtenstall, Rossendale as shown between points A-B-C on the Committee plan attached to the agenda papers.

The Committee noted that the route had been part of the National Trail known as the Pennine Bridleway, a loop off the main north-south route known as the 'Mary Towneley Loop', since the start of its implementation in 1995, but that this short section had no recorded public status.

It was reported that the section between point A and B had also formed part of the Irwell Valley Way and would also form part of the Valley of Stone and East Lancashire Cycleways currently being implemented by the county council.

A site inspection had been carried out in January 2019.

The Committee were informed it appeared that section A-B had been in use as a promoted route, initially footpath then bridleway for 17-23 years or more, from which dedication at common law could be inferred. Section B-C had been created, signposted and promoted by the landowner, which suggested a willingness to dedicate the public rights.

Committee were advised that the overwhelming circumstantial evidence of the county council's intention to dedicate the land as a public bridleway was such that

the common law test for inference of dedication could be met. In addition, user evidence confirmed that the public had been using section B-C as a public bridleway since 2002.

Resolved:

(i) That an order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Bridleway on the Definitive Map and Statement of Public Rights of Way from Cowpe Road to Bacup Road, Waterfoot, as shown on the Committee plan attached to the agenda papers between points A-B-C.

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

**9. Highways Act 1980 - Section 119A Rail Crossing Diversion Order
Wildlife and Countryside Act 1981 - Section 53A
Diversion of Public Footpath over Railway between Holts Lane and
Footpath Poulton-le-Fylde 4**

A report was presented on the proposed diversion of a public footpath over the Railway between Holts Lane and Footpath Poulton-le-Fylde 4 in Wyre Borough. The length of the existing path proposed to be diverted was shown by a bold continuous line marked as A-B on the Committee plan attached to the agenda papers, and the proposed alternative route shown by a bold dashed line and marked A-C-D-E.

An application had been received from Network Rail to divert part of the above mentioned public footpath, in connection with their proposal to replace the Holts Lane level crossing with a stepped footbridge. As a result of electrification works, minimum sighting distances could no longer be achieved looking up and down the line, due to the stanchions and other infrastructure supporting the overhead power lines. It was also highly likely that a train could straddle the level crossing whilst stopped at a signal.

For these reasons, together with the increase in frequency of services and longer trains, some method of mitigation was required to reduce the risk to users of the level crossing.

The Committee noted that Network Rail had explored all alternative options for a permanent means of reducing the risk that the railway crossing presented, and that their preferred option was to close the level crossing and provide a new stepped footbridge. This would ensure that the public could cross the railway safely.

There had been various 'near miss' incidents recorded at the Holts Lane level crossing since 2004, the details of which were provided to the Committee. It was suggested that it was not reasonably practicable to make the crossing safe by

any other means, and that there was a justifiable case for constructing a stepped footbridge, and closing and removing the level crossing.

Consultation with the statutory undertakers had been carried out and no objections or adverse comments on the proposal had been received.

Resolved:

(i) That subject to no unsatisfactory responses to the consultations, an Order be made under Section 119A of the Highways Act 1980, to divert part of the public footpath, from the route shown by a bold continuous line and marked A-B on the attached map, to the route shown by a bold dashed line and marked A-C-D-E. That the Order makes provision requiring the operator of the railway to maintain the footpath including both surface and bridge structure pursuant to section 119A(6) of the Highways Act 1980.

(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.

**10. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Over Kellet 1 at Former
Chicken Sheds, Cockle Hill, Kirkby Lonsdale Road, Over Kellet**

A report was presented on an application from the owner of land known as the Former Chicken Sheds, Kirkby Lonsdale Road, Over Kellet, Carnforth to divert part of Footpath Over Kellet 1, in connection with their proposal to build residential properties on the land.

A revised Committee plan was circulated at the meeting which showed the current route marked by a bold continuous line, A-B-C and the diversion marked by a bold broken line, A-D-B-E-C. The Committee noted that the applicants had agreed the amended Committee plan.

It was reported that the applicants owned the land crossed by the existing route, and also part of the alternative route. Part of the alternative route A-D was in the ownership of a neighbouring landowner, who was also in agreement with the proposed diversion.

The Committee noted that the legal line of the public footpath currently ran through land that would be a paddock adjacent to the property and the diversion,

if successful, would enable the landowner to secure the paddock, increasing the privacy and security for the residents, whilst providing a route that was safe and convenient for public use. The diversion would also divert that part of the footpath that was recorded as running adjacent to the driveway of the properties (A-B) and would place it on a path that was segregated from the vehicular access (A-D).

It was reported that the effect of the Order was compatible with the material provisions of the county council's Rights of Way Improvement Plan.

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

Resolved:

(i) That subject to no unsatisfactory responses to the consultations, an Order be made under Section 119 of the Highways Act 1980, to divert part of Footpath Over Kellet 1, from the route shown by a bold continuous line and marked A-B-C, to the route shown by a bold broken line and marked A-D-B-E-C on the revised Committee plan circulated at the meeting.

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

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

11. Determination of Town and Village Green Application No. VG107 relating to land at 'Waterbarn Recreation Ground', Waterbarn Lane, Stacksteads, Bacup

A report was presented on the establishment of a Special Sub-Committee with power to act in respect of Application No. VG107, relating to land at Waterbarn Recreation Ground, Waterbarn Lane, Stacksteads, Bacup.

The Committee were advised that Application VG107 required that oral evidence be heard and tested through cross examination, and that this would require arranging a hearing at which members of the Special Sub-Committee would listen to the evidence and then determine the application.

Whilst it was advised that the preferred way of proceeding was not of concern in this matter, the Committee were informed that should they consider the primary procedure as agreed by the Commons and Town Greens Sub-Committee on 24 October 2008 and detailed in the report, to be unsuitable at the present time, and that an alternative way of dealing with the determination would be appropriate,

then Committee were advised they could authorise that the Registration Authority hold a public enquiry, as prescribed under the Commons Registration (England) Regulations 2014, appointing an Inspector to hold the Inquiry, and to provide a report and recommendation to the Special Sub-Committee.

Resolved: The Committee:

(i) Approved the establishment of a Special Sub-Committee to determine Application No. VG107 relating to land at Waterbarn Recreation Ground, Waterbarn Lane, Stacksteads, Bacup.

(ii) Agreed that, subject to the above, the membership of the Special Sub-Committee for VG 107 be drawn from 3 members of the Regulatory Committee, on the basis of 2 members of the Conservative Group and 1 member of the Labour Group.

(iii) Agreed that nominations to serve on the Special Sub-Committee be submitted by the respective political group secretaries.

(iv) Agreed that the quorum for the Special Sub-Committee be 2 members.

12. Urgent Business

There were no items of Urgent Business.

13. Date of Next Meeting

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 18th September 2019 in Cabinet Room 'B' – The Diamond Jubilee Room, County Hall, Preston.

14. Exclusion of Press and Public

Resolved: That under Section 100A(4) of the Local Government Act 1972, the press and public should be excluded from the meeting during consideration of the following item of business on the grounds that there would be a likely disclosure of exempt information as defined in the appropriate paragraph of Part 1 of Schedule 12A to the Local Government Act 1972, and that in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

15. Action taken under the Urgent Business Procedure: Determination of Town and Village Green Application No. VG109 relating to land at Freemans Wood, off New Quay Road, Lancaster

A report was presented, for information, which had been agreed under the Urgent Business Procedure, relating to a decision taken by the Director of Corporate Services, in consultation with the Chair and Deputy Chair of the Committee, on

the determination of a Town and Village Green Application No. VG106, relating to land at Freeman's Wood, off New Quay Road, Lancaster.

Resolved: That the report be noted.

L Sales
Director of Corporate Services

County Hall
Preston

Regulatory Committee

Meeting to be held on 18 September 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 18 September 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 18 September 2019

Part I

Electoral Division affected:
South Ribble East

Highways Act 1980 – Section 25

Proposed Public Path Creation Agreement for a Public Footpath adjacent to F2992 at 23 Elmsett Road, Walton-le-Dale, Preston

(Annex 'B' refers)

Contact for further information:

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Executive Summary

Proposed dedication by agreement of a publically maintainable public footpath adjacent to F2992 at 23 Elmsett Road, Walton-le-Dale, Preston, PR5 4JW.

Recommendation

- (i) That the proposal for Public Path Creation Agreement to dedicate a length of public footpath adjacent to F2992 at 23 Elmsett Road, Walton-le-Dale, be accepted, subject to the removal of the restrictive covenants which currently bind the landowner.
- (ii) That after removal of restrictive covenants affecting the land, a Public Path Creation Agreement be entered into under Section 25 of the Highways Act 1980 between the owners of 23 Elmsett Road, Walton-le-Dale and Lancashire County Council on the terms detailed in this report to dedicate a length of public footpath as shaded pink on the attached map, and marked A-B-C-D-A.

Background

The adopted footpath, F2992 is located at the north east corner of the Holland Slack housing development, providing access from the residential area to the network of public rights of way at Holland Wood, Mosley Wood and the River Darwen.

The land immediately to the east of F2992 slopes steeply down to the River Darwen and prior to 2013, this slope carried over it a footpath (7-2-95). In 2013, there was a landslide resulting in a significant length of footpath 7-2-95 being lost down the river embankment and the adopted footpath (F2992) becoming unstable. F2992 has since

partially collapsed and is therefore unsafe for public use and has been temporarily closed since that time.

Various options of how to remedy the situation have been considered, including the provision of a revetment wall to reinstate the footpath but, as that would be located on the edge of the steep embankment, it could be subject to further erosion and Highway Engineers have advised that might not offer a suitable long term solution.

The opportunity has arisen for the county council to enter into an agreement with the owners of the adjacent property, 23 Elmsett Road, to create a public footpath on the eastern boundary of their land that appears to be sustainably more stable. This footpath would bypass the collapsed and unstable section of F2992, and it is envisaged that it would provide a suitable footpath link for many years to come.

On investigating the title of the owners of the adjacent property, it was found that restrictive covenants were in place relating to using the area of land required only as a garden and reserving a 'protected strip' for the benefit of a statutory undertaker. The county council could not take a dedication of a public footpath that was subject to such restrictions. Discussions have taken place and both parties who benefit from the covenants have now agreed in principle for the release of those covenants on the land to be dedicated.

Consultations

Section 25 of the Highways Act 1980 requires that the county council shall consult any other local authority in whose area the proposal is situated. Accordingly, the necessary consultation has been carried out with South Ribble Borough Council and at the time of writing, no objection regarding the proposal has been received.

Advice

Points annotated on the plan

Point	Grid Reference	Description
A	SD 5667 2744	Southern point of footpath dedication area, immediately adjacent to the fence to be erected, alongside Elmsett Road.
B	SD 5667 2744	South east corner of footpath dedication area adjacent to junction of Elmsett Road and F2992.
C	SD 5667 2746	Northern point of footpath dedication area, immediately adjacent to the fence to be erected at its junction with F2992.
D	SD 5667 2745	North west corner of footpath dedication area, immediately adjacent to the fence to be erected.

E	SD 5667 2744	South west corner of fence to be erected immediately adjacent Elmsett Road.
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Description of Proposed Footpath

A footpath on land shaded pink on the attached map and marked A-B-C-D-A, being an area of approximately 30 square metres, approximately 2 metres in width and 15 metres in length adjacent and contiguous with the existing footpath.

The public footpath to be created by the proposed Public Path Creation Agreement will not be subject to any limitations and conditions.

Officers' assessment of the proposal against the legislative criteria for entering into a Public Path Creation Agreement.

Under Section 25 of the Highways Act 1980, the county council may enter into an agreement with a freehold owner for the dedication of a footpath, bridleway or restricted byway. The purpose of this provision is to ensure dedication of land that is necessary or beneficial, since the dedication of a route under Section 25 becomes maintainable at public expense.

The proposal is considered to be a benefit to the public in providing a safe and convenient public footpath that will be a link from the Holland Slack housing development to the network of public rights of way at Holland Wood, Mosley Wood and the River Darwen. The original route of F2992 has become unstable following the landslip and has partially collapsed, with footpath 7-2-95 collapsing down the embankment a few years ago, and it is not considered feasible nor cost effective for F2992 to be reinstated. The new Section 25 dedication would provide a safe route to link the two parts of F2992 and would be necessary (without reinstating the current F2992) to provide a continuation of the existing network of public rights of way.

Before the collapse of footpath 7-2-95 and the subsequent closure of F2992 on safety grounds, the route was well used and formed an important link in the network of public rights of way. Following the closure of the footpath, regular requests for the footpath to be reinstated have been received from local residents.

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

The land crossed by the proposed footpath is in the registered ownership of the owners of 23 Elmsett Road, Walton-le-Dale. The proposed creation is by means of an agreement, therefore there will be no compensation payable as a consequence of the coming into operation of the Public Path Creation Agreement.

It is also advised that the needs of disabled people have been actively considered and as such, the proposal is compatible with the duty of the county council, as a Highway Authority, under The Equality Act 2010. The alternative route will be of adequate width, with no gate or stiles.

Further, it is also advised that the effect of the Public Path Creation Agreement is compatible with the material provisions of the county council's 'Rights of Way Improvement Plan'.

Financial Implications

The agreed Heads of Terms state that no consideration payment will be made for the land dedication under Section 25 Public Path Creation Agreement. However, it is proposed that the county council will agree to pay the owners' reasonably incurred legal costs and disbursements in connection with formalising the Public Path Creation Agreement and removal of the restrictive covenants. We have not been able to agree a definitive figure for this at present.

The county council propose to install a 1.5 metre wide compacted stone surface within the area to be dedicated and an approximately 20 metre length of 6ft high, close boarded fence on the owners' land immediately adjacent to Elmsett Road and the western edge of the area proposed to be dedicated. The cost of the works on site are expected to be in the region of £5000.

As soon as may be practical after the dedication of a footpath in accordance with a Public Path Creation Agreement, Lancashire County Council are required give notice of the dedication by publication in a local newspaper circulating in the area in which the land to which the Public Path Creation Agreement relates is situated. The cost of the advertisement is expected to be in the region of £200.

It is proposed that the cost of the works, legal costs and disbursements payable to the landowners and the cost of the newspaper advertisement will be borne by Lancashire County Council. It is suggested the cost of implementing the Public Path Creation Agreement, including the cost of the works on site, would be substantially less than the cost of reinstating the original footpath. Furthermore, as the new footpath would be located further away from the edge of the slope, it would not be subject to the same level of risk of a future collapse.

As the public footpath will be created by means of a Public Path Creation Agreement, it will automatically become maintainable at public expense. The landowners will take ownership of and become responsible for any future maintenance of the 6ft close boarded fence.

Risk Management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annex B (item 3) included in the Agenda Papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

Alternative options to be considered

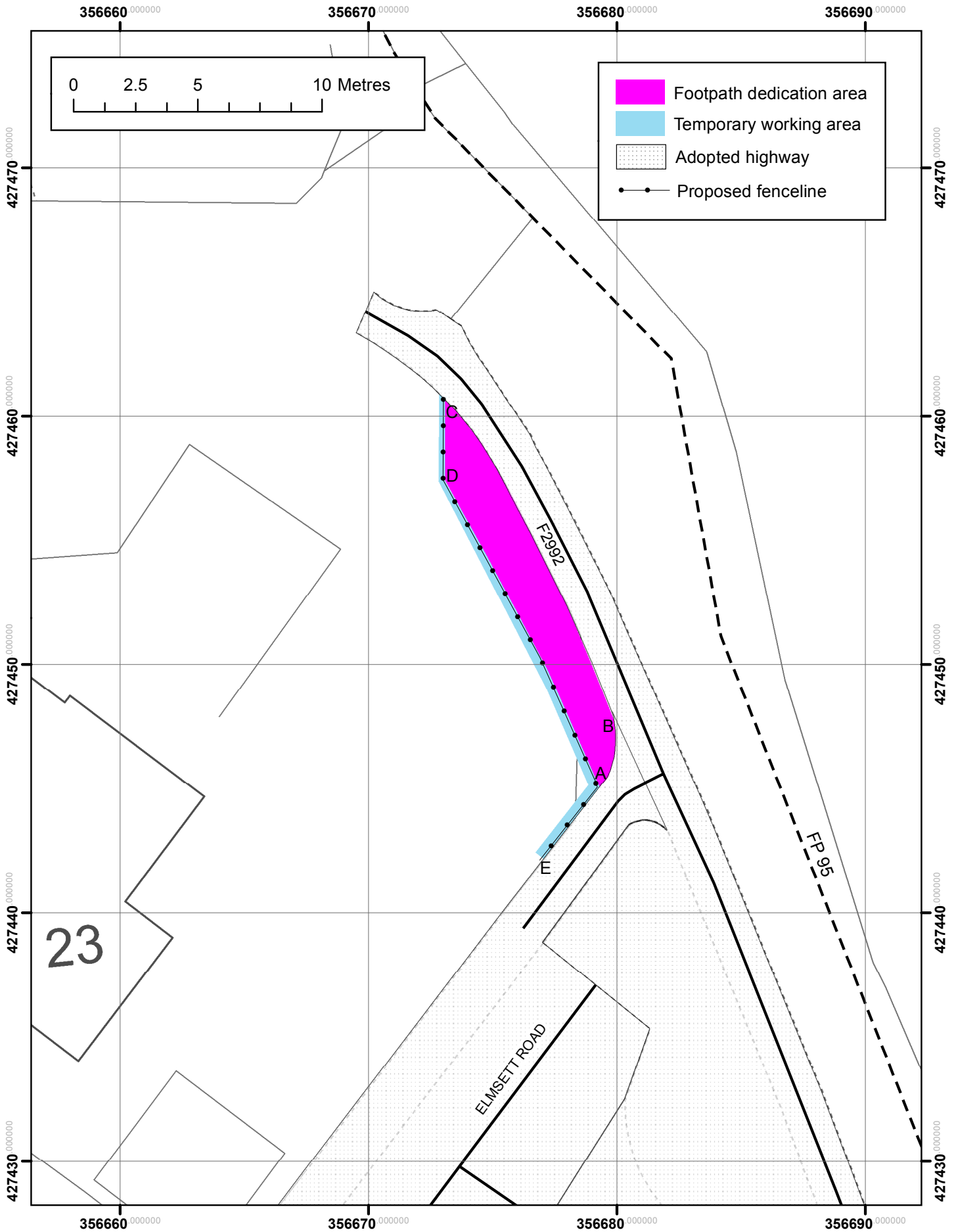
- To agree that the county council, after the removal of restrictive covenants affecting the land, enters into an agreement with the landowners for the creation of a publicly maintainable footpath and bears the cost of the site works, legal costs and disbursements payable to the landowners and the cost of the newspaper advertisement.
- To not agree that the county council enters into an agreement with the landowners for the dedication of a publicly maintainable footpath and to request officers to investigate further the feasibility and costs of carrying out works to reinstate and stabilise the land over which F2992 is located.

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

Paper	Date	Contact/Directorate/Ext
File Ref: PRW 07-02-095		Mrs R J Paulson, 07917 836628

Reason for inclusion in Part II, if appropriate

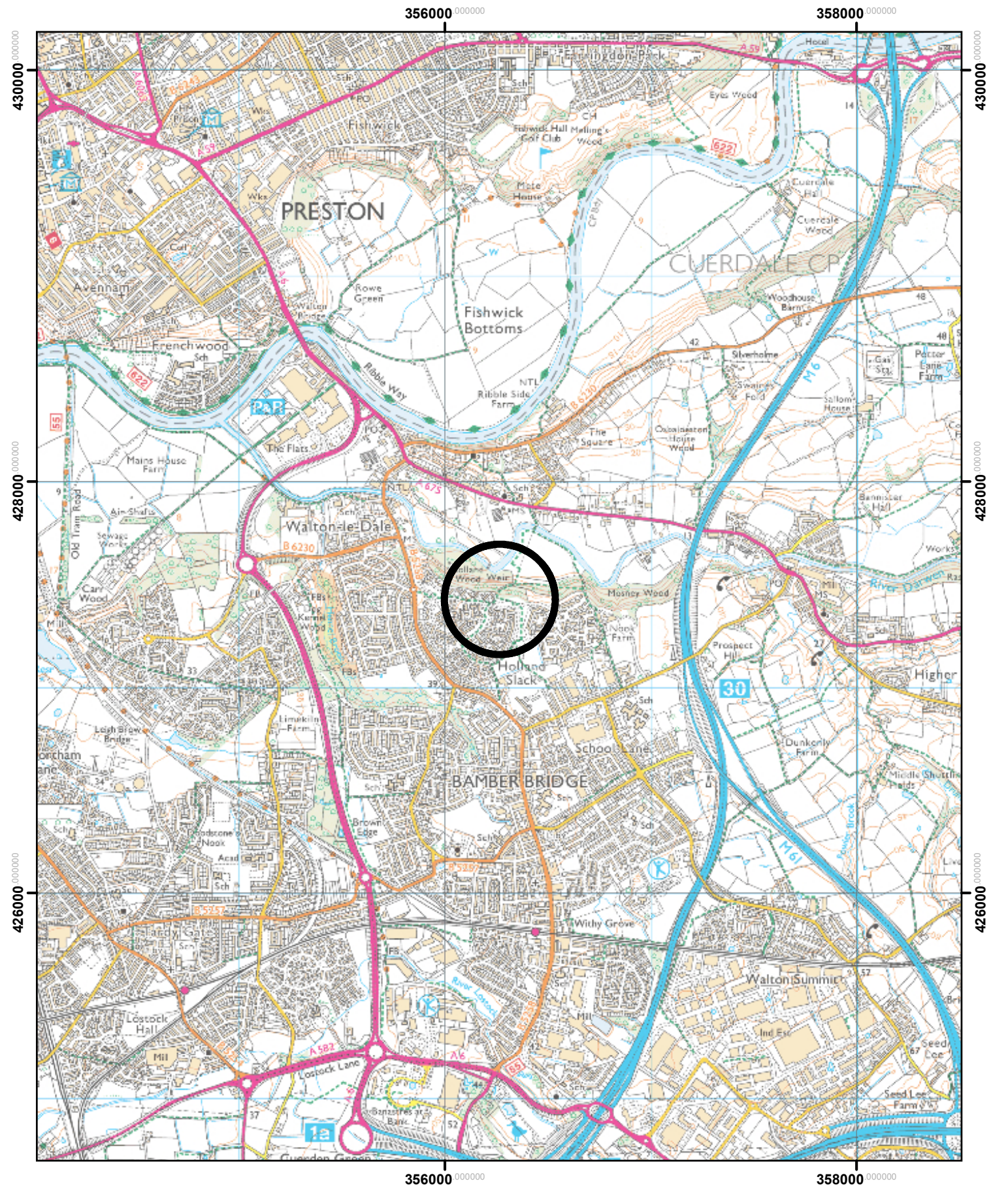
N/A



Lancashire County Council	Highways Act 1980 Section 25 Public Path Creation Agreement to dedicate a public footpath adjacent to F2992 and 23 Elmsett Road, Walton le Dale, Preston City.	Plan No: 211-701v4	
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Lancashire
County
Council

Andrew Mullaney
Head of Planning
and Environment

Location plan
Highways Act 1980 – Section 25
Proposed Public Path Creation Agreement for a Public Footpath
adjacent to F2992 at 23 Elmsett Road, Walton-le-Dale, Preston.



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Regulatory Committee

Meeting to be held on 18 September 2019

Part I

Electoral Division affected:
South Ribble West

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Upgrading to Bridleway of Footpath Longton 42 (Known as Six Acre Lane),
South Ribble
File No. 804-607
(Annex 'A' refers)

Contact for further information:

Joanne Lawson, 01772 533878, Paralegal Officer, County Secretary and Solicitors Group, joanne.lawson@lancashire.gov.uk

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

Executive Summary

Application for the upgrading to Bridleway of Footpath Longton 42 (known as Six Acre Lane), in accordance with File No. 804-607.

Recommendation

- (i) That the application for the upgrading of Footpath Longton 42 to Bridleway, in accordance with File No. 804-607, be accepted subject to a status of restricted byway, which includes bridleway rights.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to upgrade Footpath Longton 42 to a Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on the Committee Plan between points A-B-C.
- (iii) That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for Footpath Longton 42 (known as Six Acre Lane) to be upgraded on the Definitive Map and Statement of Public Rights of Way from footpath to bridleway from Drumacre Lane East to Gill Lane, Longton, as shown between point A and point C on the Committee plan.

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

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

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

And 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

South Ribble Borough Council

A consultation letter was sent on 23 July, no response has been received.

Longton Parish Council

A consultation letter was sent on 23 July, no response has been received.

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	4945 2464	Open junction with Drumacre Lane East
B	4947 2442	Concrete blocks positioned across the route restricting vehicular access
C	4950 2418	Open junction with Gill Lane

Description of Route

A site inspection was carried out in June 2019.

The application route commences at a point on Drumacre Lane East immediately to the west of Pipe House Farm (point A on the Committee plan).

At point A, the route is signposted as a public footpath and a blue and white road sign is also present with the words 'Six Acre Lane'.

The route extends along a tarmac roadway approximately 3 metres wide with grass verges on either side in a southerly direction providing vehicular access to a number of residential properties located on either side of it.

It continues along the tarmac roadway for approximately 85 metres before the tarmac roadway curves east into the driveway of 'Moorfield' immediately north of point B.

The application route continues south in a straight line past the entrance to Moorfield between some large concrete blocks positioned across the route at point B to continue as a grass track between trees. The available width of the route is approximately 2 metres and there is evidence that a grass strip has been cleared to keep the central section of the route open and not overgrown. The route is bounded on either side by ditches and fences within a strip of land approximately 9 metres wide being enclosed as part of the track, largely overgrown with the exception of the central strip.

On approaching the end of the route where it exits onto Gill Lane at point C, the last 60 metres of the route adjacent to the property known as 'Glenavon' has been surfaced with stone chippings to provide access to the side and rear of the property.

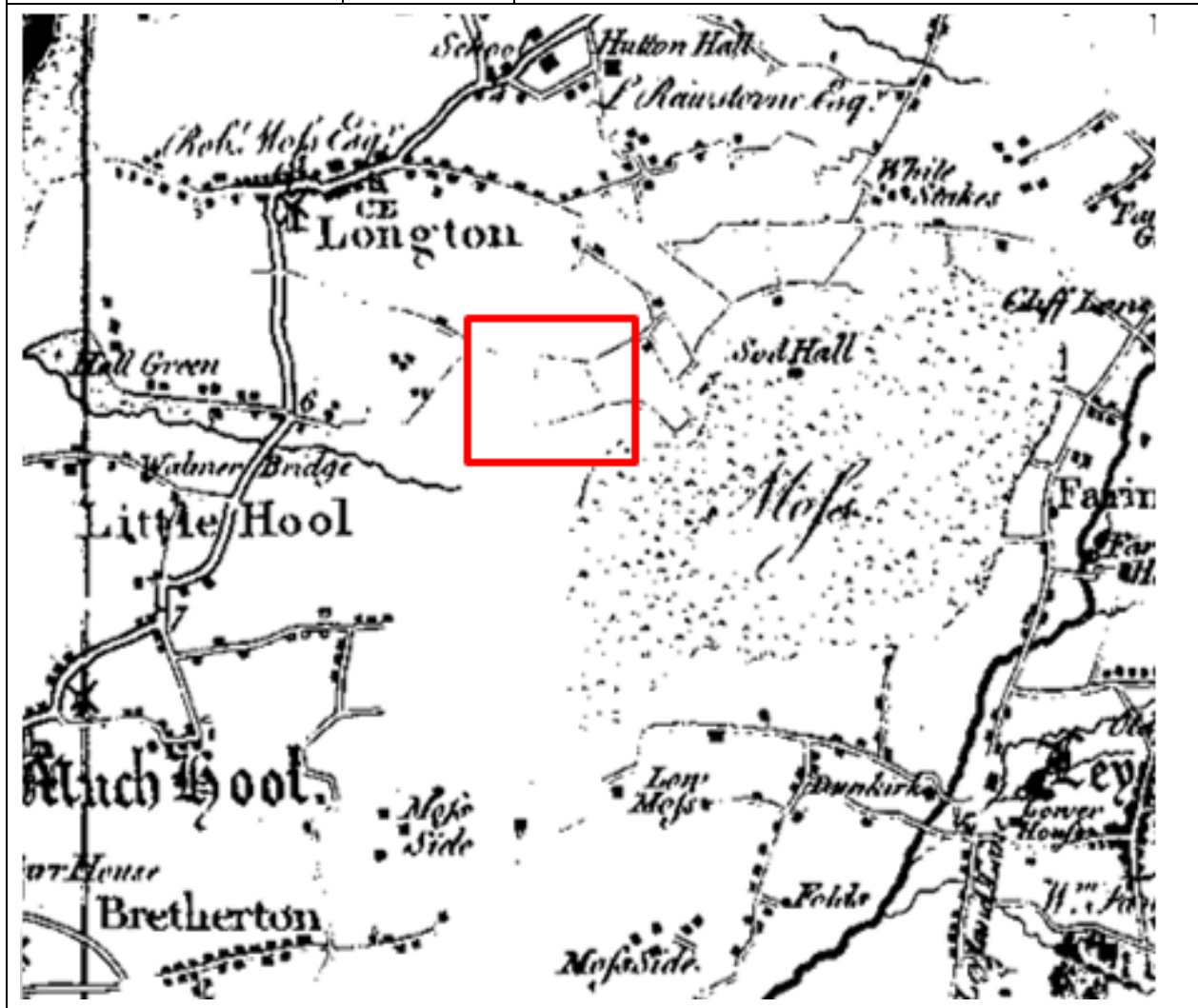
Access onto Gill Lane from the route was open and unrestricted and signed as a public footpath.

The total length of the route is 470 metres.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

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.

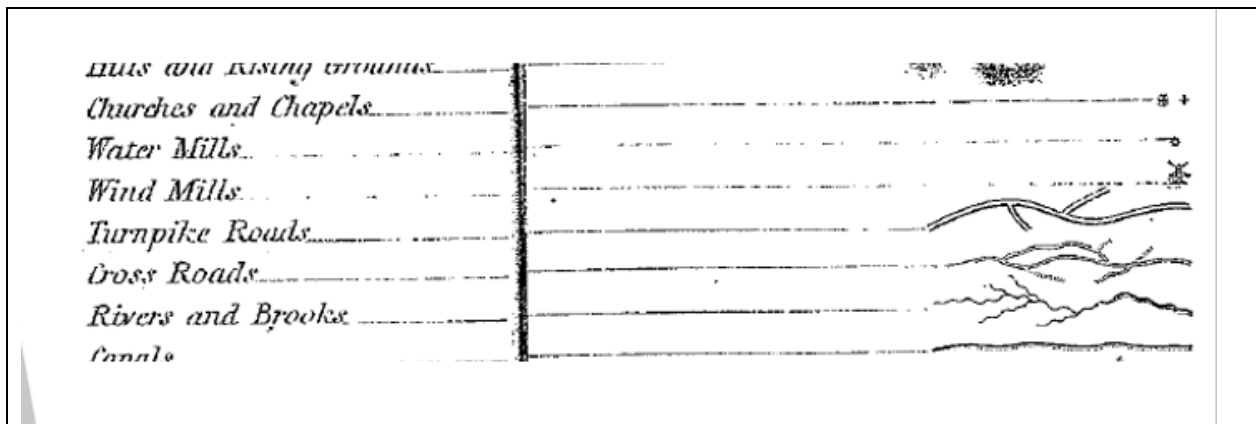


Observations		The map faintly shows the road now known as Drumacre Lane East and also Gill Lane east of the application route but does not show either road extending west from the application route. A short 'line' is shown in the proximity of the application route close to the junction with Drumacre Lane East and further east a longer line is shown which appears to connect Drumacre Lane East and Gill Lane and looks to be the route known as 'Land Lane'. A large area south of the application route is blank on the map.
Investigating Officer's Comments		The application route may have existed – at least in part – in 1786 – but does not appear to have been considered a substantial public vehicular highway. It could also be that the route was not shown as it was unenclosed or possibly that this area had not been surveyed – as suggested by the blank area of mapping to the south – as surveys were expensive.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		The application route is clearly shown as a through route connecting Drumacre Lane East and Gill Lane. It is shown depicted as a 'cross road' in the same way as Land Lane to the east and to the two public vehicular highways that it connects.
Investigating Officer's Comments		The application route existed as a through route in 1818. The inclusion of the route on a small scale commercially produced map of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway. It is unlikely that a map of this scale would show footpaths. It is not known what Greenwood meant by the term 'cross road' but he only categorised roads as 'cross roads' and 'turnpike roads' according to the key to his map.
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.



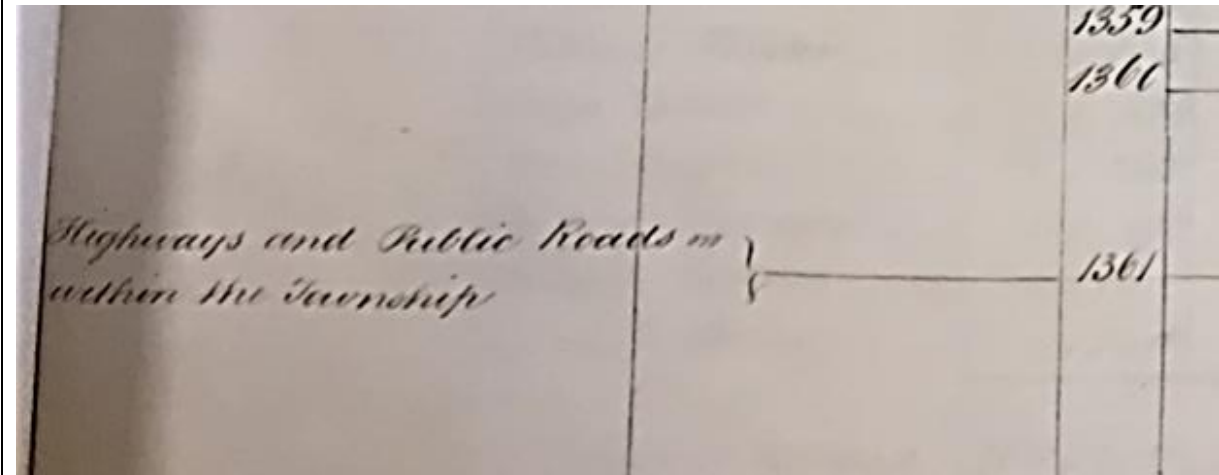


Observations		The application route is shown as a through route connecting Drumacre Lane East and Gill Lane and is depicted as a 'cross road' in the same way as other routes now recorded as public vehicular highways.
Investigating Officer's Comments		The application route existed as a significant through route in 1830. It is not fully known what is meant by the term 'cross road'. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>). It is unlikely that a map of this scale would show footpaths.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no proposed or existing canals or railways affecting the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment Longton Tithe Map and Award	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they


CRO Ref: DRB1/127

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 title award) and additional information from which the status of ways may be inferred.

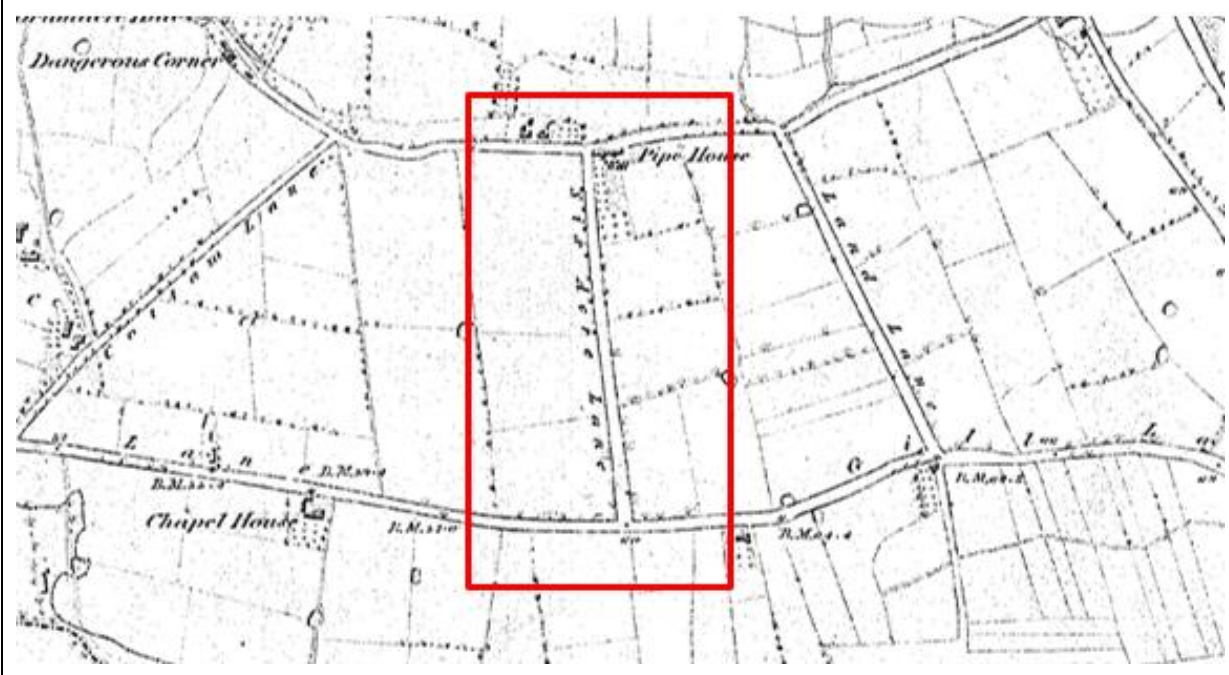




<p>Observations</p>		<p>The application route is clearly shown on the Tithe Map as an unrestricted through route coloured in the same way as the public vehicular routes in the parish. The route is not individually numbered but one number – which has been written in bold, and larger than the numbering used for individual plots and located in the 'centre' of the village – appears to relate to the coloured road network shown. This number – 1361 – is described in the Tithe Award as being the reference given for 'Highways and public roads within the township' for which no landownership details were listed and no tithes were listed as being payable.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as a substantial route in 1839 and was considered to form part of the public highway network at that time. It is not known what distinction (if any) was meant within</p>

		the Tithe award between 'Highways' and 'public roads' but it appears that the route was considered to be more than a public footpath and probably as part of the public vehicular network used on horseback and with horse and cart at that time.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award available to view for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
1 inch Ordnance Survey (OS) Map Sheet 89NW	1842	The earliest OS 1 inch map for the area published in 1842 (date of survey not known).
 <p>The map shows a network of roads and paths. A red rectangle highlights a route labeled 'Pipe House' that runs north-south, connecting to other roads. Other labeled features include 'Longton (Chapelry)', 'Drumacre Hall', 'New Longton', 'White', 'Par Gap', 'Walshoor Bridge', 'Chapel House', 'Longton Moss', 'Sod Hall', 'Little Hoole Moss', and 'The Lodge'.</p>		
Observations		The earliest Ordnance Survey map examined shows clearly shows the application route as a substantial bounded through route in the same way as connecting public vehicular highways are shown.
Investigating Officer's Comments		The application route is shown on a small scale Ordnance Survey map in the same style as other non-turnpiked roads. The small scale one inch OS map was predominantly published with the main market being the travelling public so

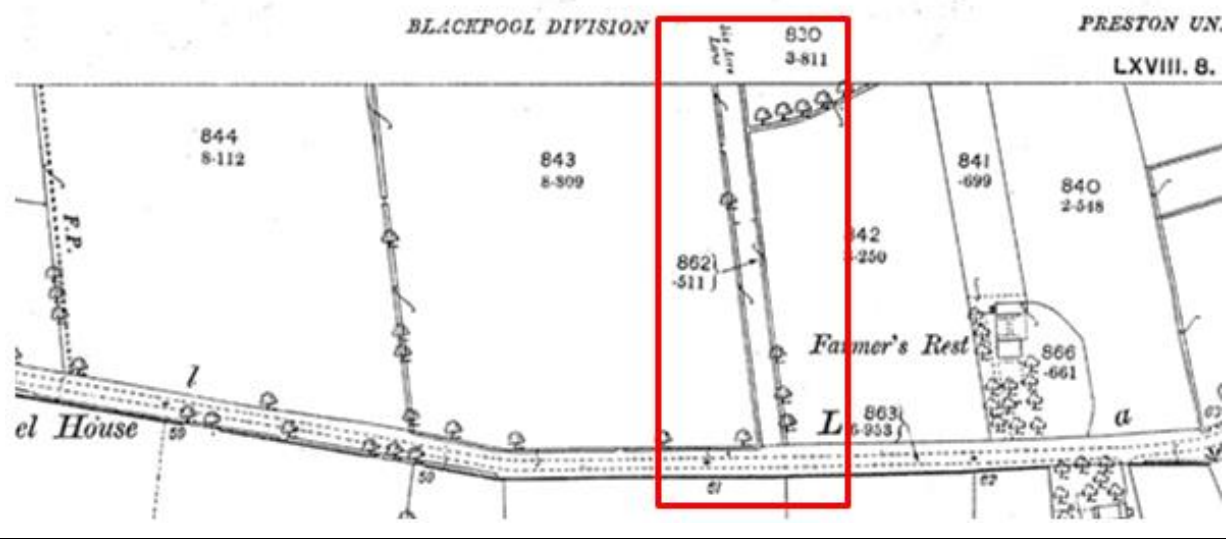
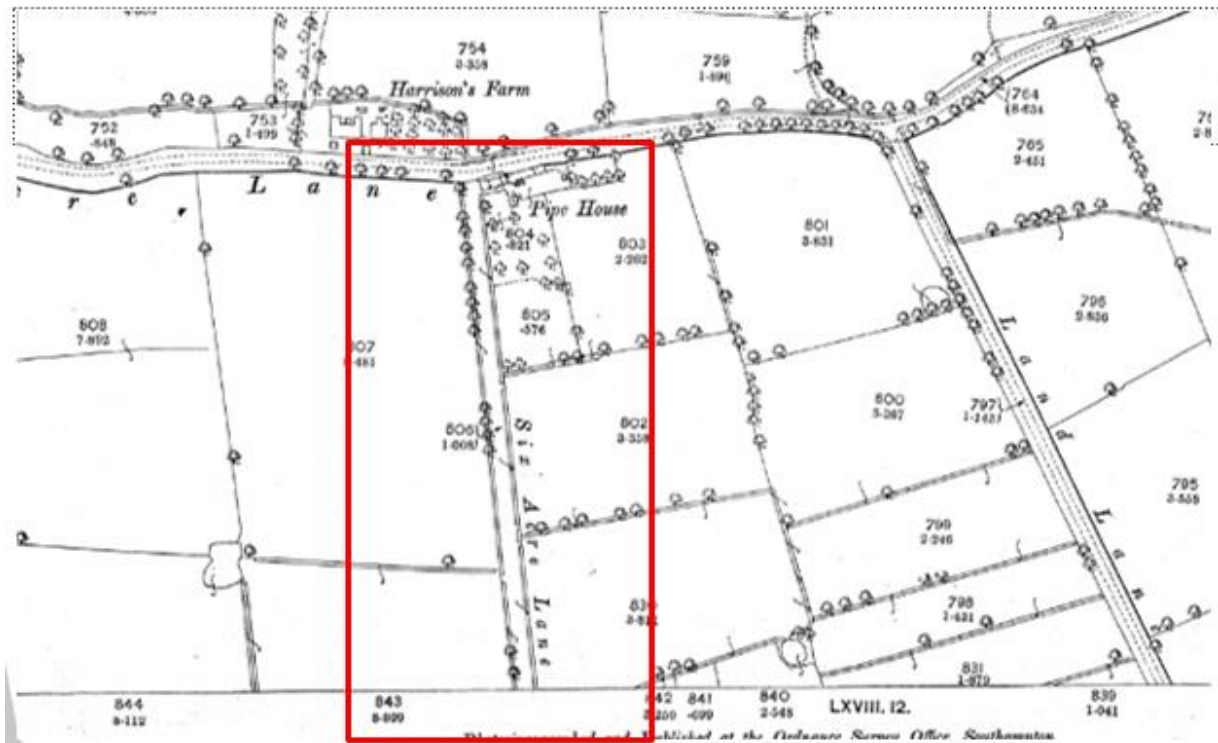
		the inclusion of the route on this map is suggestive of a route that was capable of being used at least on horseback and possibly by horse and carts.
6 Inch Ordnance Survey (OS) Map Sheet 68	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. ¹

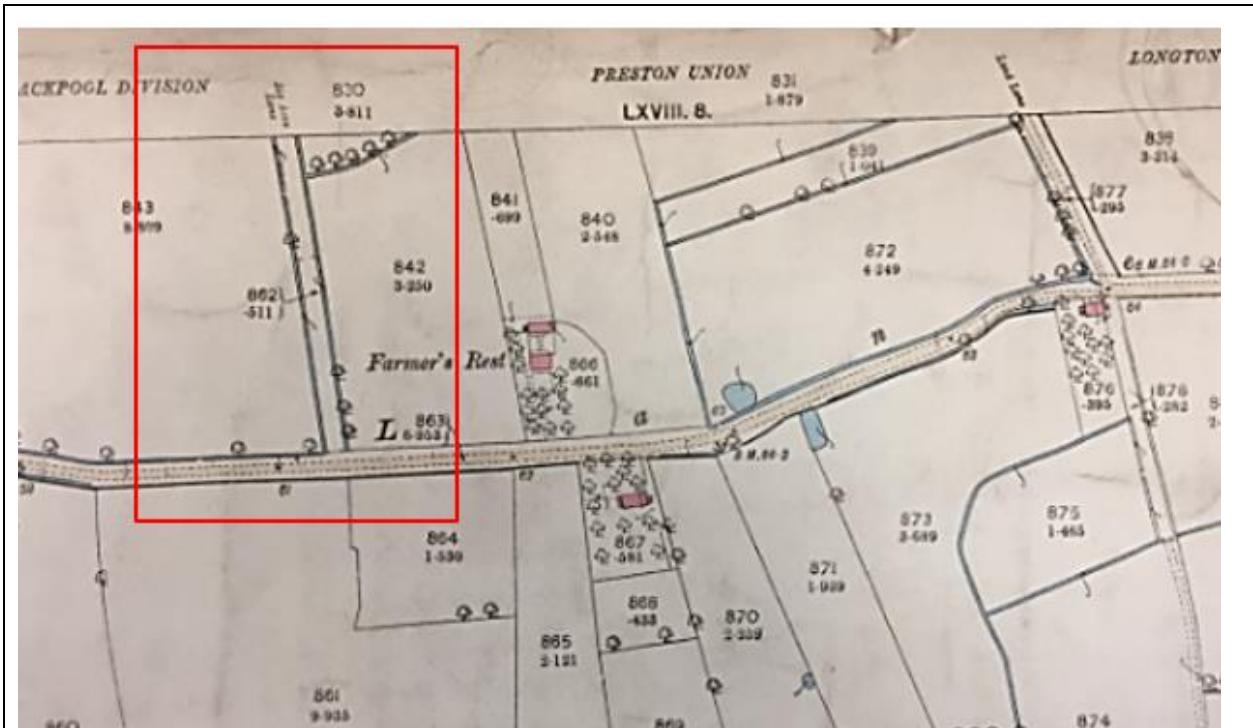


Observations		<p>The whole length of the application route is shown as a through route.</p> <p>The route is named on the map – Six Acre Lane – and so are the other public vehicular highways connecting to it. No barriers are shown across the route suggesting that it was ungated and access restricted.</p>
Investigating Officer's Comments		<p>The full length of the application route existed and appeared to be capable of being used in 1848.</p> <p>Of note is the fact that Six Acre Lane is clearly named on the map and other named routes on this sheet are recorded as public carriageway. The fact that the application route was named as a road on the map is evidence that it was known locally by that name and is consistent with use</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.

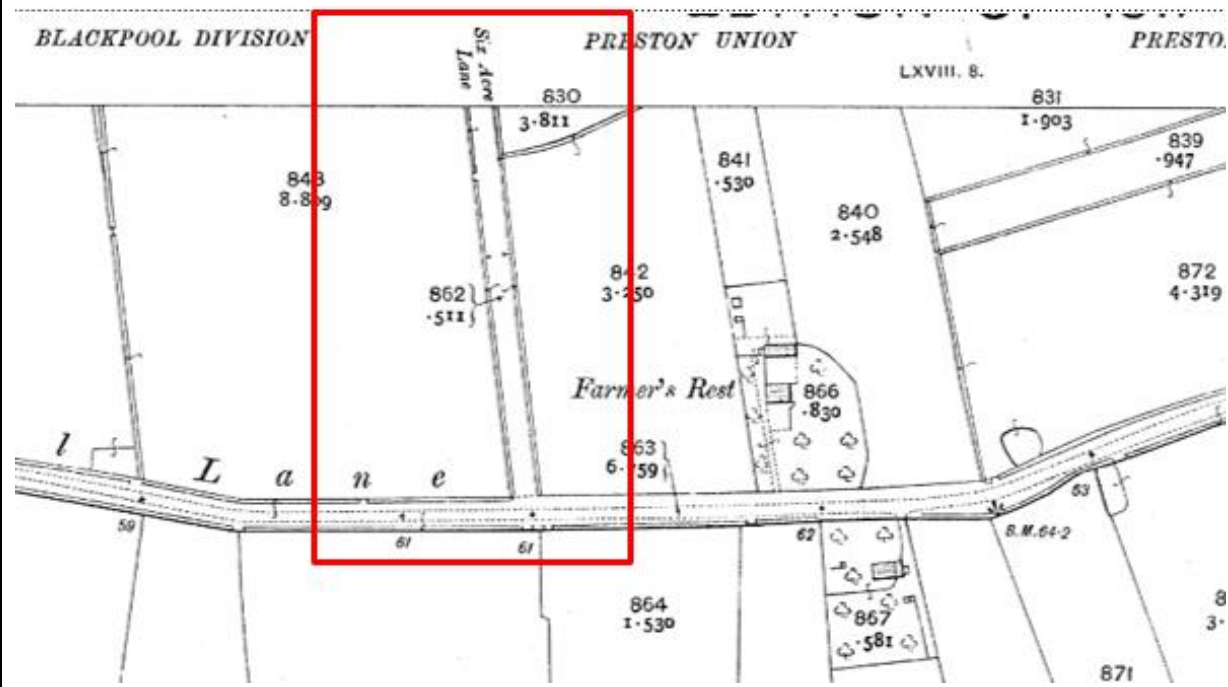
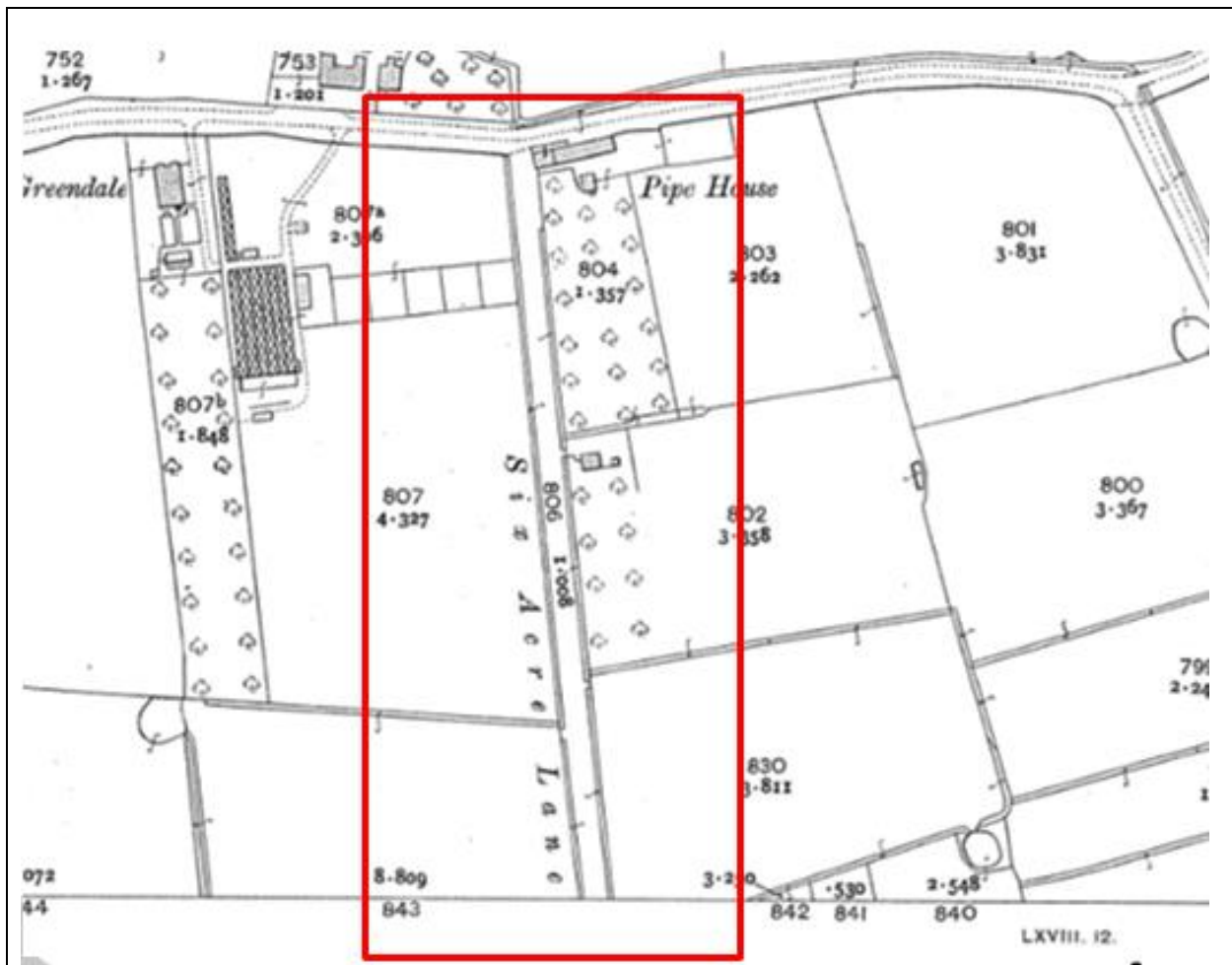
		of the route by the public at least on horseback at that time.
25 Inch OS Map Sheets 68-08 and 68-12	1898	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1898.





<p>Observations</p>	<p>The First Edition 25" OS map is at a larger scale than the 12 and 6" maps showing the area in more detail.</p> <p>The application route is clearly shown as a substantial bounded route with drainage ditches running along either side. It is named on the map and there are no gates or barriers shown across it.</p> <p>The route is not coloured or shaded to indicate public status in the way that Drumacre Lane, Land Lane and Gill Lane are shown.</p> <p>Separate Field Parcel numbers (806 and 862) are allocated to the route and a numbered separately to the adjacent fields. Bracing is shown along the ditches suggesting that the ditches were within the lane itself.</p>
<p>Investigating Officer's Comments</p>	<p>The application route existed in 1892 and appeared capable of being used.</p> <p>Six Acre Lane is clearly named on the map consistent with it being more than footpath.</p> <p>Shading was often used to show the administrative status of roads on 25 inch maps prepared 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. The application</p>

		<p>route is not shown in such a way suggesting that by the 1890s use of the route may have begun to decline with Land Lane to the east and Cottam Lane to the west becoming the more significant connections between Drumacre Lane and Gill Lane.</p> <p>The Planning Inspectorate Consistency Guide states that "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say this is far from conclusive evidence of highway status.</p> <p>The fact that the application route was named as a road on the map 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>
One inch OS Map	1896	Sheet 75 published 1896 date of revision not known
Observations		The application route is shown but appears narrower than Drumacre Lane and Gill Lane, Land Lane and Cottam Lane. Whilst still shown, it looks less significant than it did on the earlier edition of the 1 inch map.
Investigating Officer's Comments		The application route existed as a through route in 1896 but use as part of the public vehicular network may have declined.
25 inch OS Map	1911	Further edition of the 25 inch map surveyed in 1892, revised in 1909 and published in 1911.



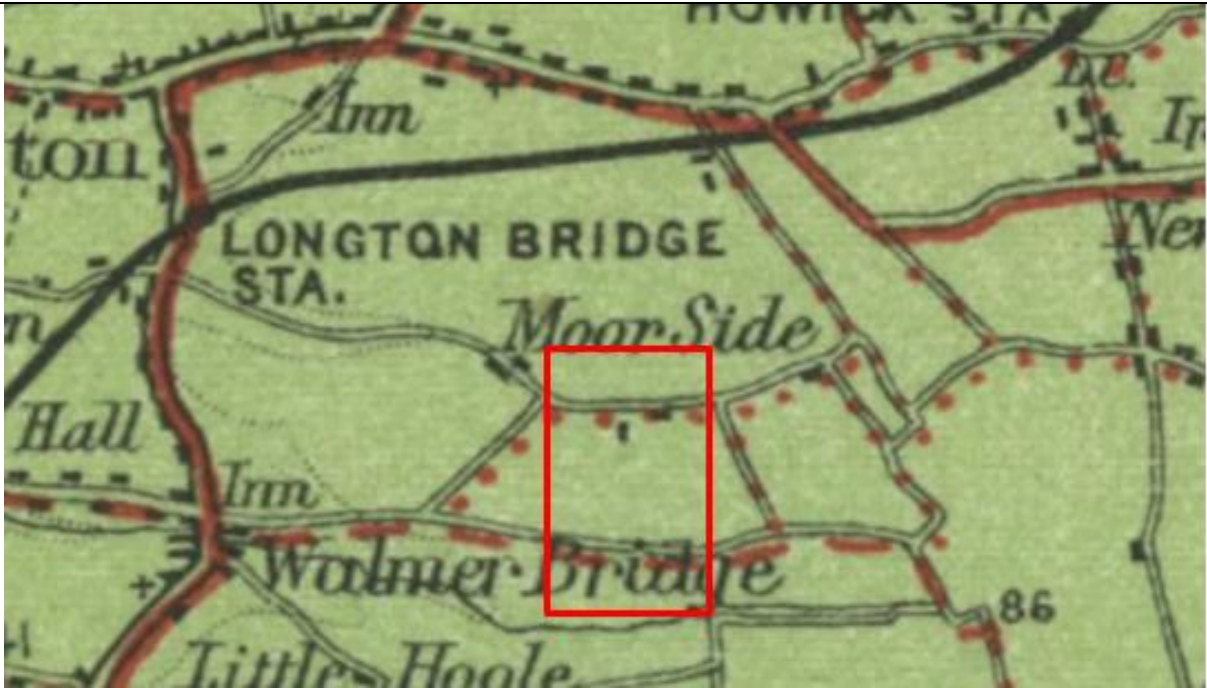
Observations

The application route is shown as a bounded and named through route in the same way as it is shown on the earlier edition of the 25 inch

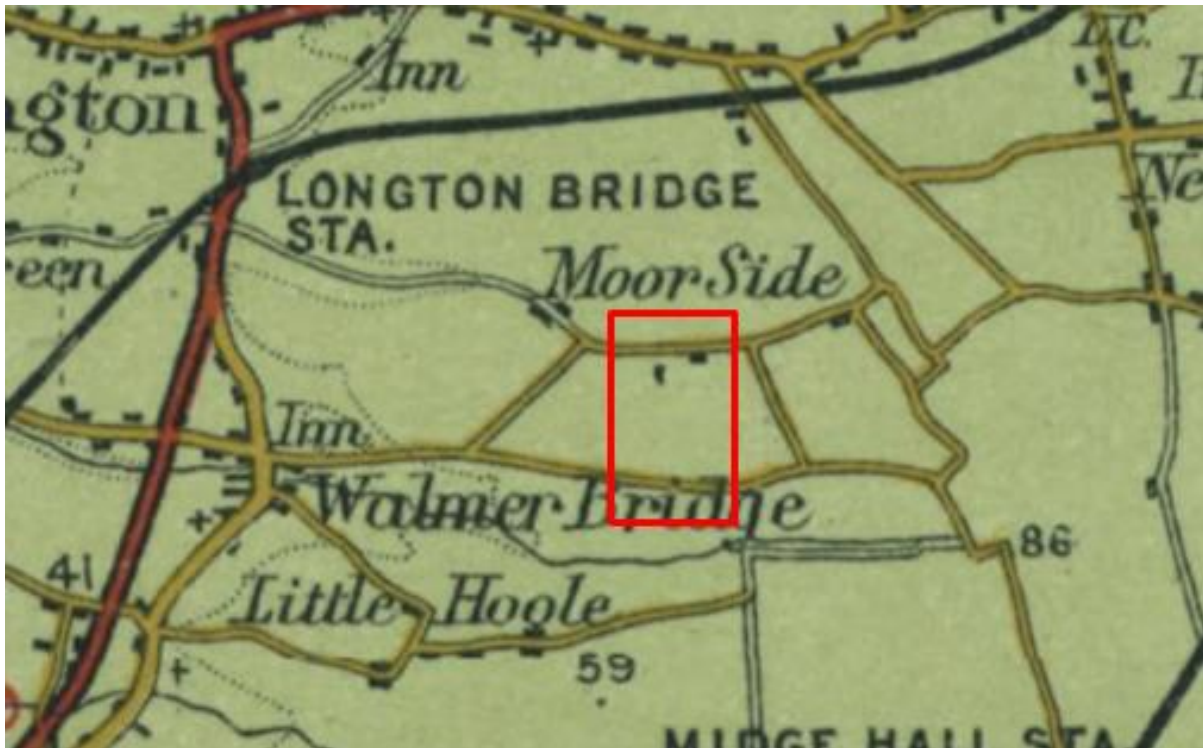
		map.
Investigating Officer's Comments		The application route existed in 1909 and appeared capable of being used on horseback and with vehicles.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



Published 1902



Published 1920



Published 1941

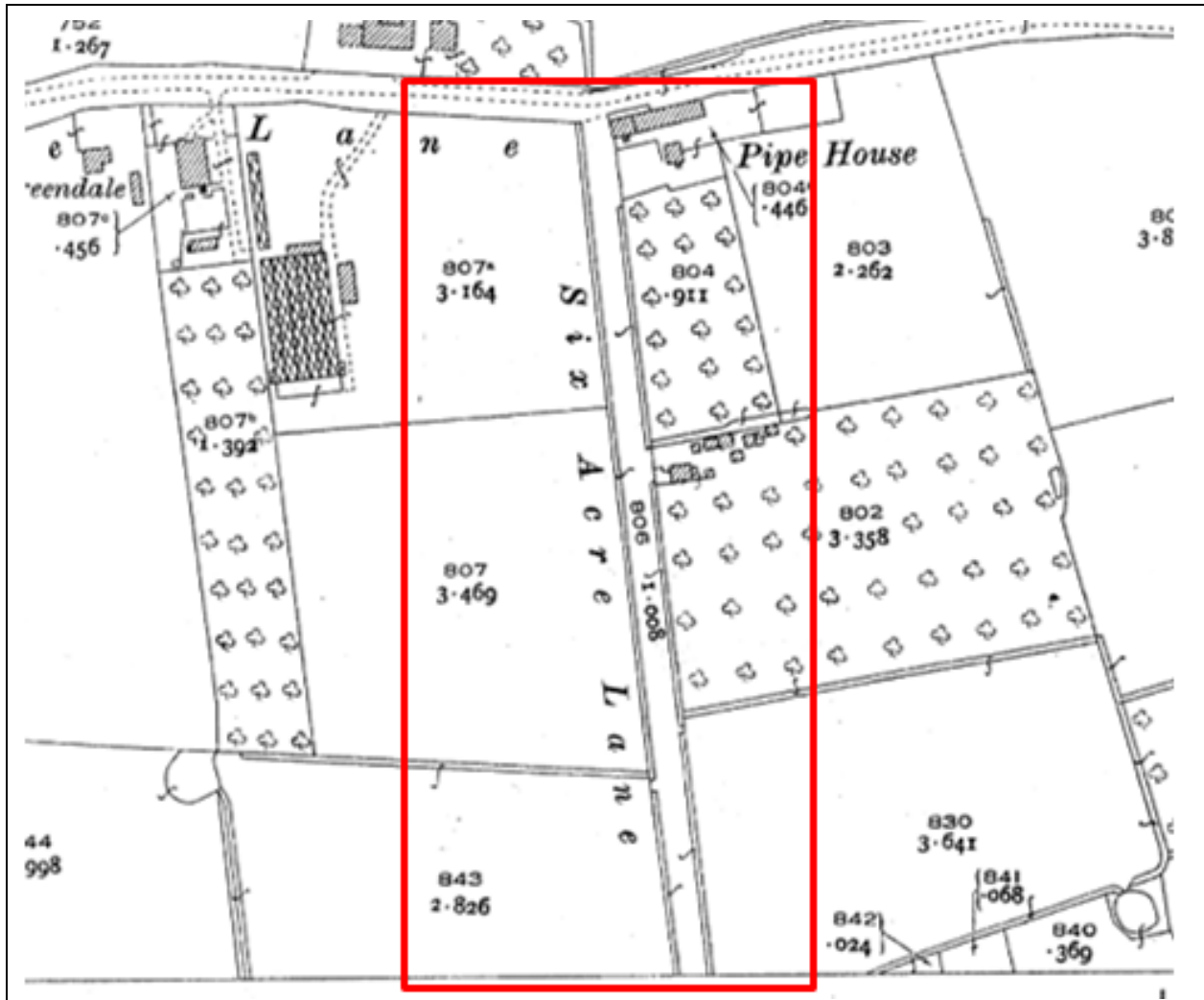
Observations		The application route is not shown on any of the three editions of Bartholomew's maps published in 1902, 1920 and 1941.
Investigating Officer's Comments		The early 1900s saw a significant increase in the use of motorised vehicles and Bartholomew's maps were popular with both motorists and cyclists during that era.

		<p>The fact that the application route is not shown does not mean that it no longer existed (as other maps produced during this time show it). However, it does appear that by the 1900s the route was probably of an inferior surface to Land Lane and Cotton Lane and use of the route had declined.</p>
<p>Finance Act 1910 Map</p>	<p>1910</p>	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>





Observations		The Finance Act map sheets available to view in the County Records Office are incomplete and show plots drawn onto an Ordnance Survey base map published in 1931 (i.e. 20 years after the date of the Valuation Act) and was presumably a working copy as although the Finance Act was repealed in the 1920s these maps may have continued in use for various purposes. A number of numbered plots are shown on the maps adjacent to but not including the application route but the application route itself is not shown within a numbered plot.
Investigating Officer's Comments		As the maps are incomplete and post-dated the original valuation no inference can be drawn with regards to the existence of public rights.
25 Inch OS Map	1931	Further edition of 25 inch map (re-surveyed 1892, revised in 1929 and published 1931.



Observations

The application route is clearly shown as a bounded through route named on the map as 'Six Acre Lane'. Unlike on earlier editions of the 25 inch OS sheets the name of the lane is no

		longer printed on the edge of the map sheet to indicate that the route continues onto another map sheet. New buildings are shown south of Pipe House which are accessed from the application route.
Investigating Officer's Comments		The application route existed in 1929 and appeared capable of being used.
London Gazette, 25 August 1931 pages 5546-5548	1934	Extract of Legal notice published 25 th August 1931 defining the boundary for a separate District for spiritual purposes to be taken partly out of the Parish of Penwortham, partly out of the Chapelry of Longton and partly out of a new parish described as Farington, in the county of Lancaster and Diocese of Blackburn.
<p>for a distance of 27 chains or thereabouts to its junction with the roadway leading past the house and premises known as Bar Gap, and extending thence first westward, then southward and then again westward along the last mentioned roadway for a distance of 20 chains or thereabouts to a point opposite to the middle of the footpath leading into Drumacre Lane, and extending thence southward to and along the middle of the last mentioned footpath for a distance of 16 chains or thereabouts to the point where it reaches the northern side of Drumacre Lane, and extending thence first southward to and then westward along the middle of Drumacre Lane for a distance of 11 chains or thereabouts to its junction with Six Acre Lane, and extending thence southward along the middle of Six Acre Lane for a distance of 24 chains or thereabouts to its junction with Gill Lane, and extending thence in a straight line due south for a distance of 13 chains or thereabouts to the boundary which divides the said Chapelry of Longton from the said Parish of Hoole.”</p> <p>And whereas drafts of the said Scheme</p>		<p>coln the Vicarage or Ben with Saint John Ne whereof contain a pop Military Barracks, His County Hospital and th (according to the censu thereabouts, with accom Church for 400 persons the Chapel of Ease of 8 persons.</p> <p>“ The net annual valu of Saint Nicholas with in the City of Lincoln</p> <p>“ The said Vicarage Nicholas with Saint Joh of Lincoln is in the alte the said William Shuck coln, by virtue of my Andrew Mitchell, Clerk of the Cathedral Church Mary of Lincoln and th Church.</p> <p>“ There is in the sam Perpetual Curacy or B in Eastgate with Saint</p>
Observations		The new boundary of the area created for the purpose of worship is described in writing in the London Gazette as extending from Drumacre Lane along the middle of Six Acre Lane (the application route) to Gill Lane.
Investigating Officer's Comments		The fact that the application route is described in a legal notice defining an ecclesiastic boundary as 'Six Acre Lane' – in the same way as other public vehicular highways are named and described illustrates that the route was locally known by that name and suggests use of the route at that time was more than just a 'footpath'.
Authentic Map	Circa	An independently produced A-Z atlas of Central

<p>Directory of South Lancashire Geographia by 1934</p>	<p>and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>
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<p>Observations</p>	<p>The application route is shown as a bounded through route on the map and is named as Six acre Lane. The route is shown to be narrower than the connecting public highways and whereas the name of Drumacre Lane, Gill Lane, Land Lane and Cottam Lane is written within the boundaries of each of those roads 'Six Acre Lane' is written alongside – not inside the boundaries of the lane itself.</p>
<p>Investigating Officer's</p>	<p>The application route existed in the 1930s and</p>

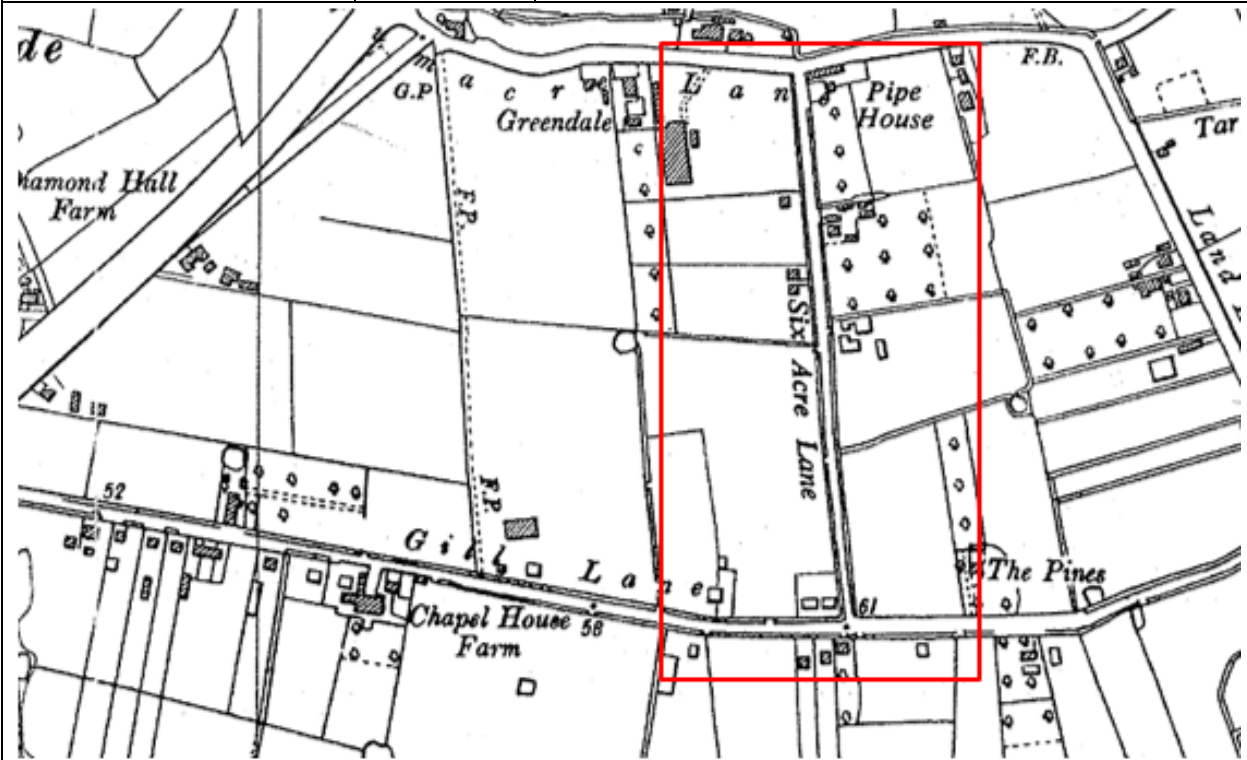
Comments		was considered to be substantial enough to be included in the street map. However, it is noticeably shown to be narrower than the public vehicular routes it connected to suggesting possibly that use was less significant and possibly more akin to public bridleway use than the other routes at that time.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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

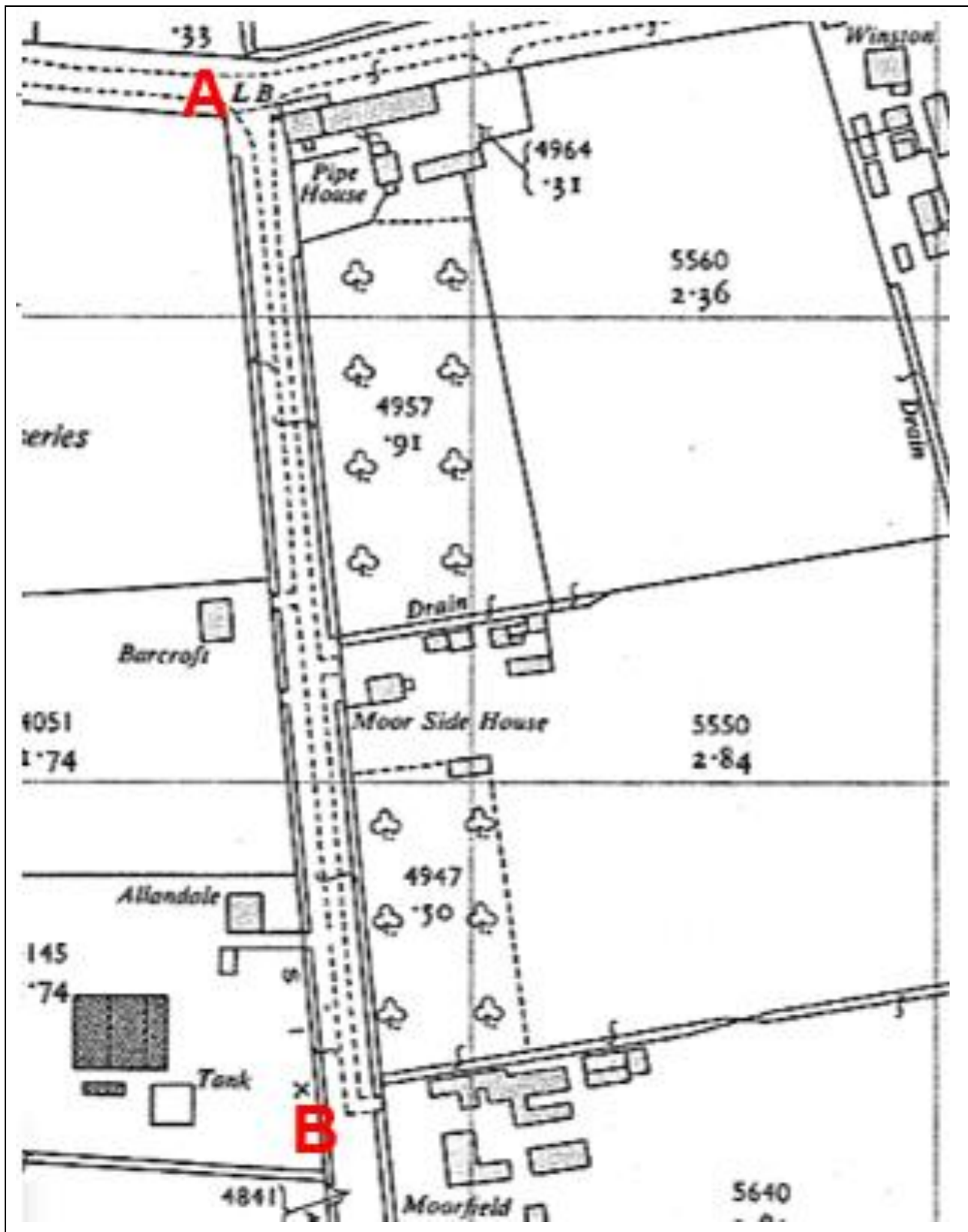


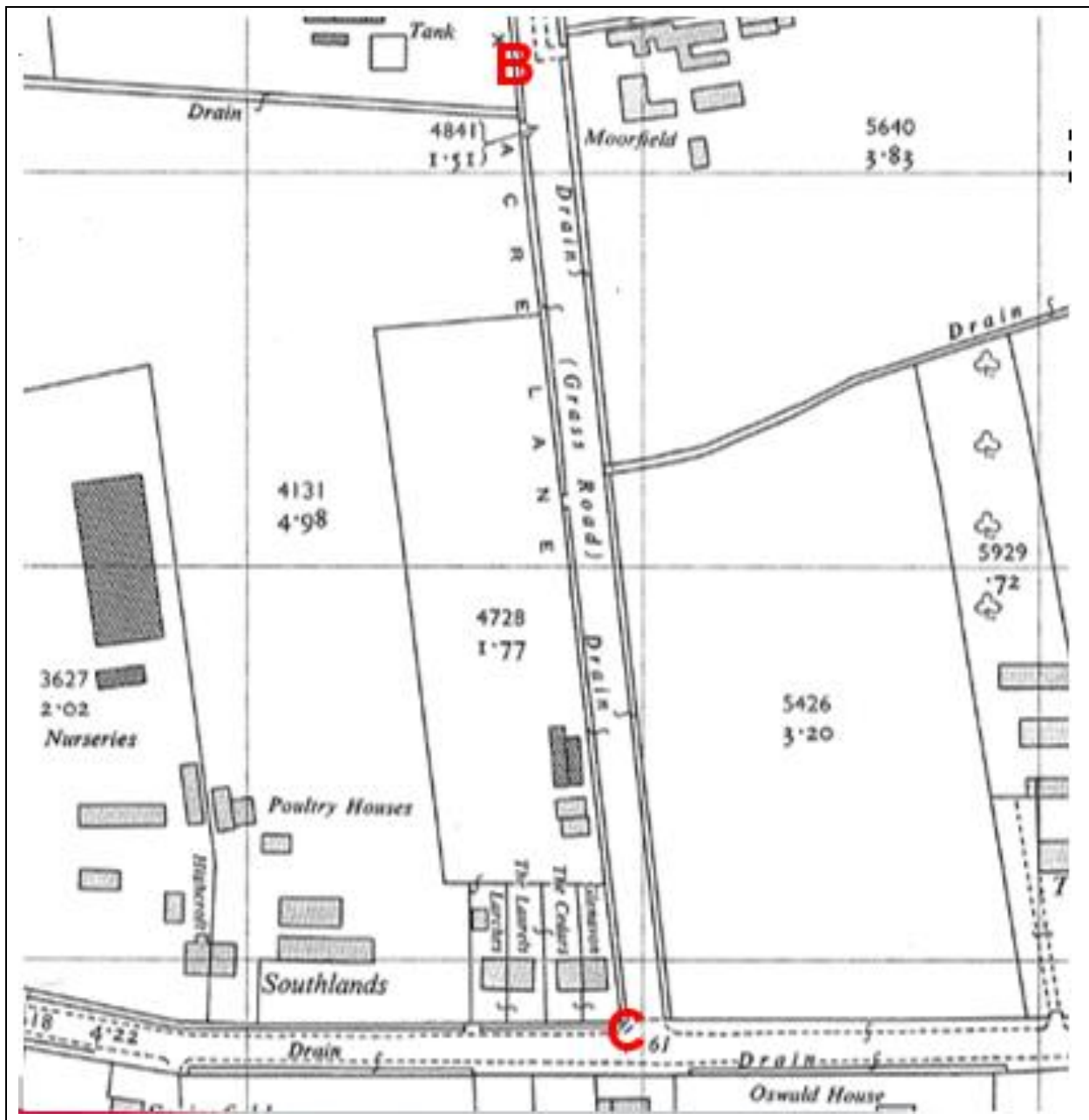
Observations	The full length of the application route can be seen. The route appears to provide access to a number of fields and buildings. The route between point B and point C can be clearly seen as a wide bounded route. The 'colour' of the surface of the route differs from how Drumacre Lane and Gill Lane appear on the photograph suggesting that the application route was not a
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		sealed surfaced route.
Investigating Officer's Comments		The application route existed in the 1940s as a substantial route and appeared to be capable of being used.
6 Inch OS Map Sheet 42SE	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The application route is shown as a significant bounded named through route on the map providing access to a number of properties but also connecting Drumacre Lane and Gill Lane.
Investigating Officer's Comments		The application route existed in the 1930s and appeared to be a significant route capable of being used at least on horseback.
1:2500 OS Map SD 4824-4924	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published in 1963 as national grid series.





Observations

The application route is shown as a through route. From point A dashed line is shown across the start of the route most probably indicating a change in surface from that found on Drumacre Lane (most probably tarmac) to the surface along the application route.

The letters 'LB' are also shown at point A indicating the existence of a letter box (which still exists today).

Between point A to point B there appears to be a surfaced track along the centre of the bounded strip of land comprising the application route from which there is access to Moor Side House, Allendale and Moorfield.

		From point B onwards through to point C the application route is described as a 'grass road' bounded by ditches and fencing on either side.
Investigating Officer's Comments		The application route existed in 1961 and appeared capable of being used. By this time the northern section (between point A and point B) appears to have formed the access to a number of residential properties and looks to have been surfaced as the main access route. Between point B and point C the route is described as having a grass surface more consistent with public bridleway use.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

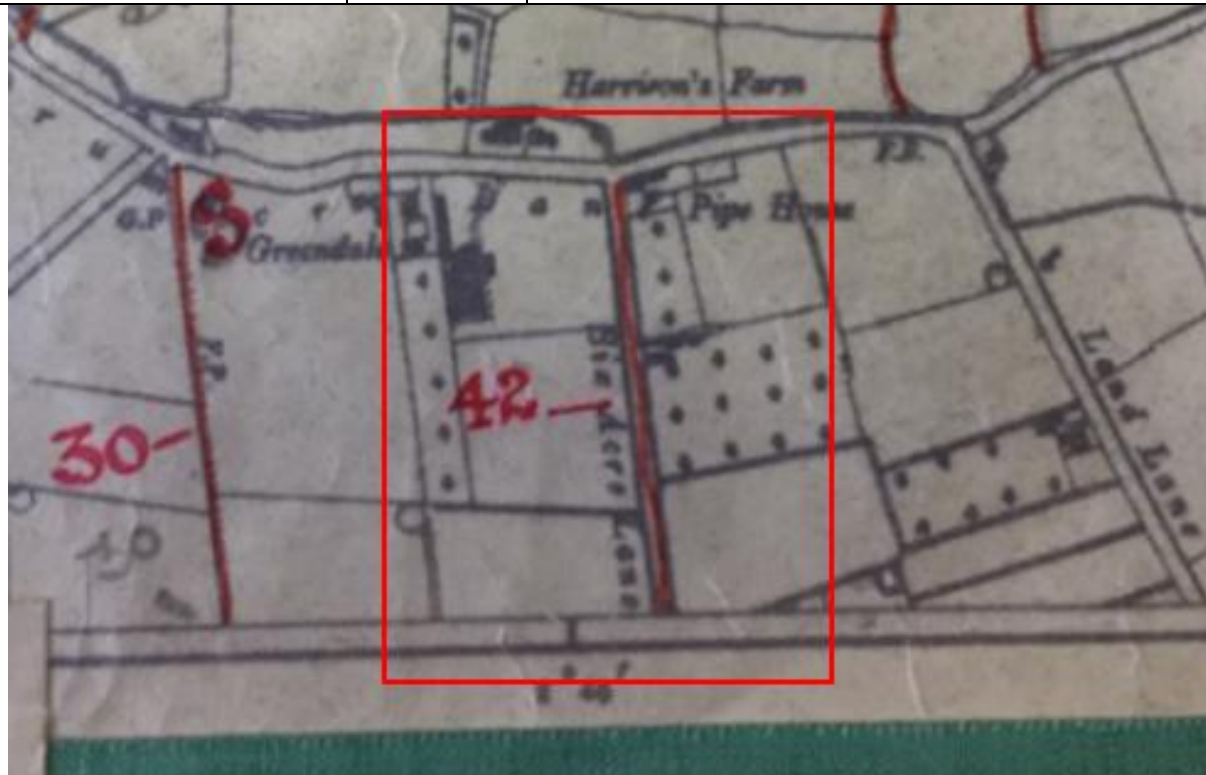


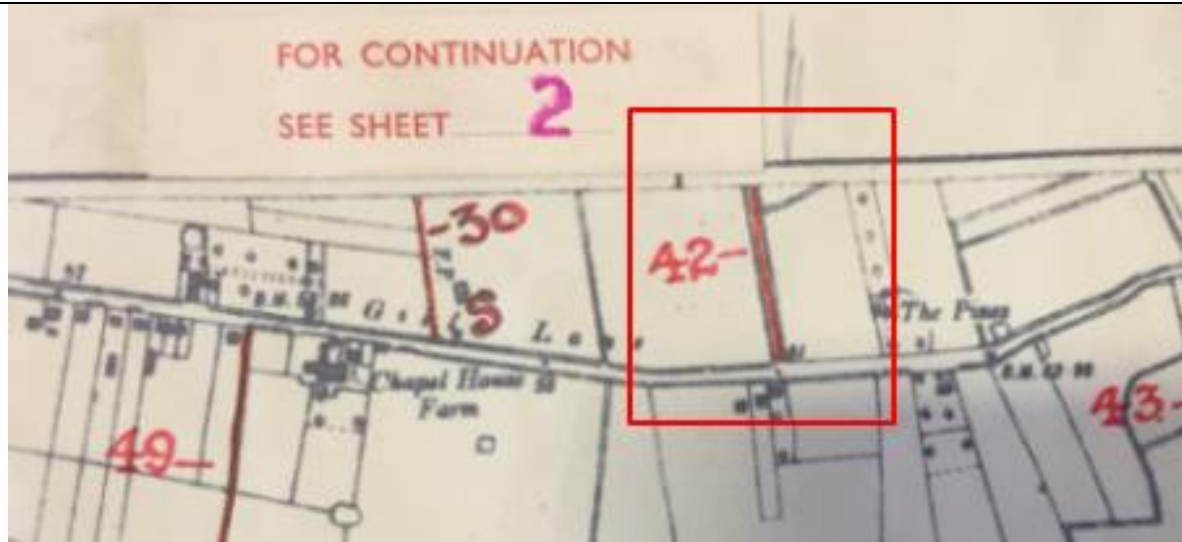
Observations

The full length of the application route can be seen as a through route which also provided access to a number of buildings located along side it. A worn track consistent with some

		vehicular use can be seen along the full length.
Investigating Officer's Comments		The application route existed in the 1960s and appeared capable of being used.
Aerial Photograph	2000	Aerial photograph available to view on GIS.
		
Observations		The application route can be clearly seen from point A to point B but beyond point B through to point C it is much less visible.
Investigating Officer's Comments		The application route between point A and point B is used by vehicles to access the properties situated along either side of it but use beyond point B through to point C appears to be much less significant and more akin to the use of the

		route as a public footpath (it's recorded legal status).
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>





DISTRICT	<i>PRESTON RURAL</i>	PARISH	<i>LONGTON.</i>	No.	<i>42</i>
MAP SHEET No.	<i>284</i>	LENGTH		miles	
BRIEF DESCRIPTION (Field F.P. or otherwise)			(to two decimal places)		
<i>F.P.</i>			<i>F.P.</i>		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
<i>Six Acre Lane.</i>					
<i>Whole length is in quite good order.</i>					
SURVEYED BY:—					
Name		<i>Thomas Bretherton</i>			
Address		<i>1 Brookhall Long New Lane</i>			
Date <i>27/11/1950</i>					

Observations	The application route was recorded on the Parish Survey map as a public footpath and was described in 1950 as a footpath known as 'Six Acre Lane' and as being in 'quite good order'.
Draft Map	<p>The parish survey map and cards for Longton 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</p>

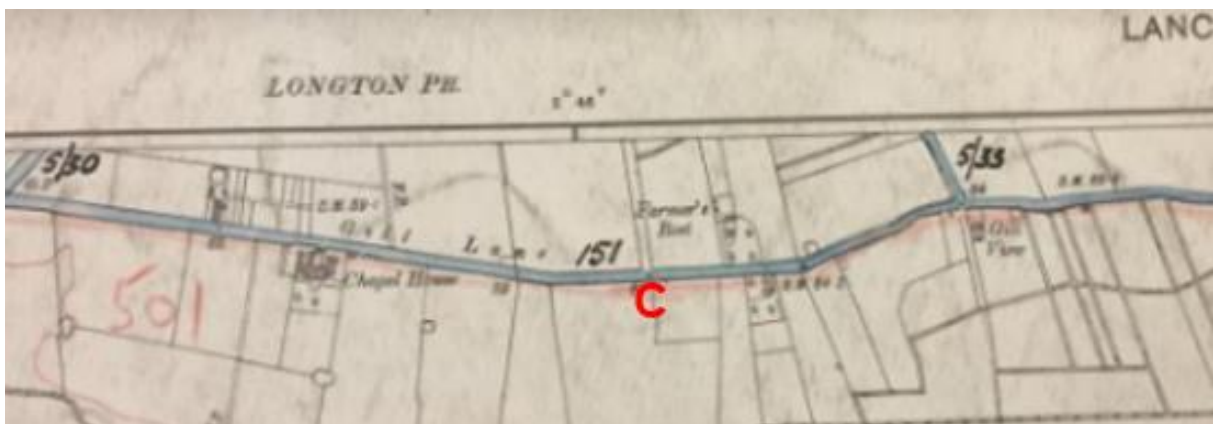
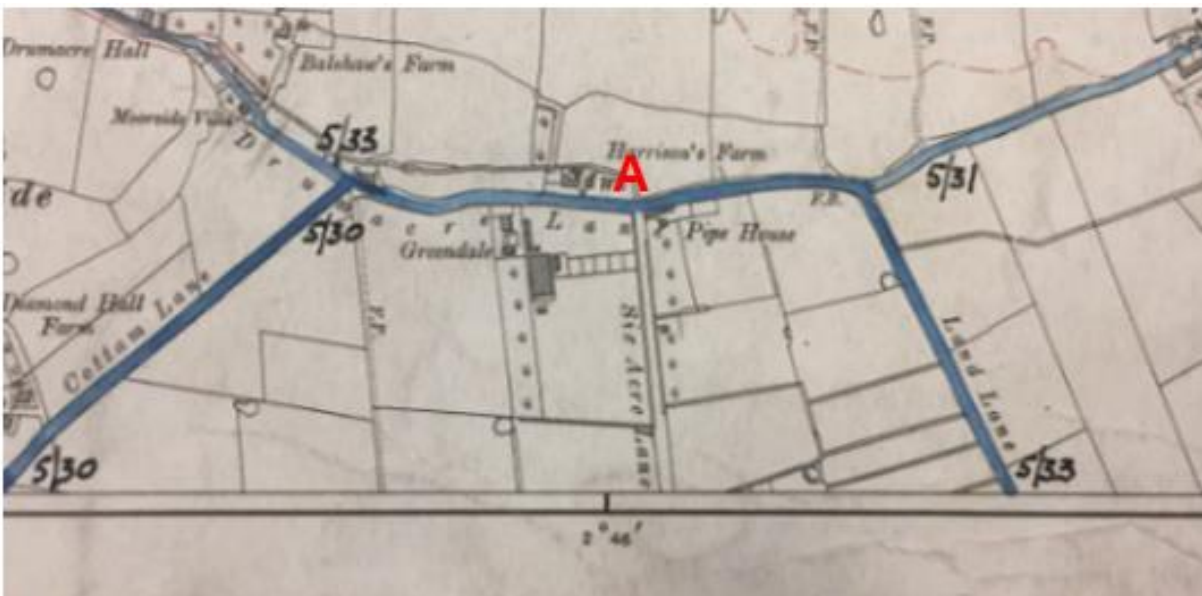
		objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The application route was shown on the Draft Map as a public footpath and no representations about it were made to the county council.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was shown on the Provisional Map as a public footpath and no representations were made to the county council.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was recorded on the First Definitive Map and Statement as a public footpath.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



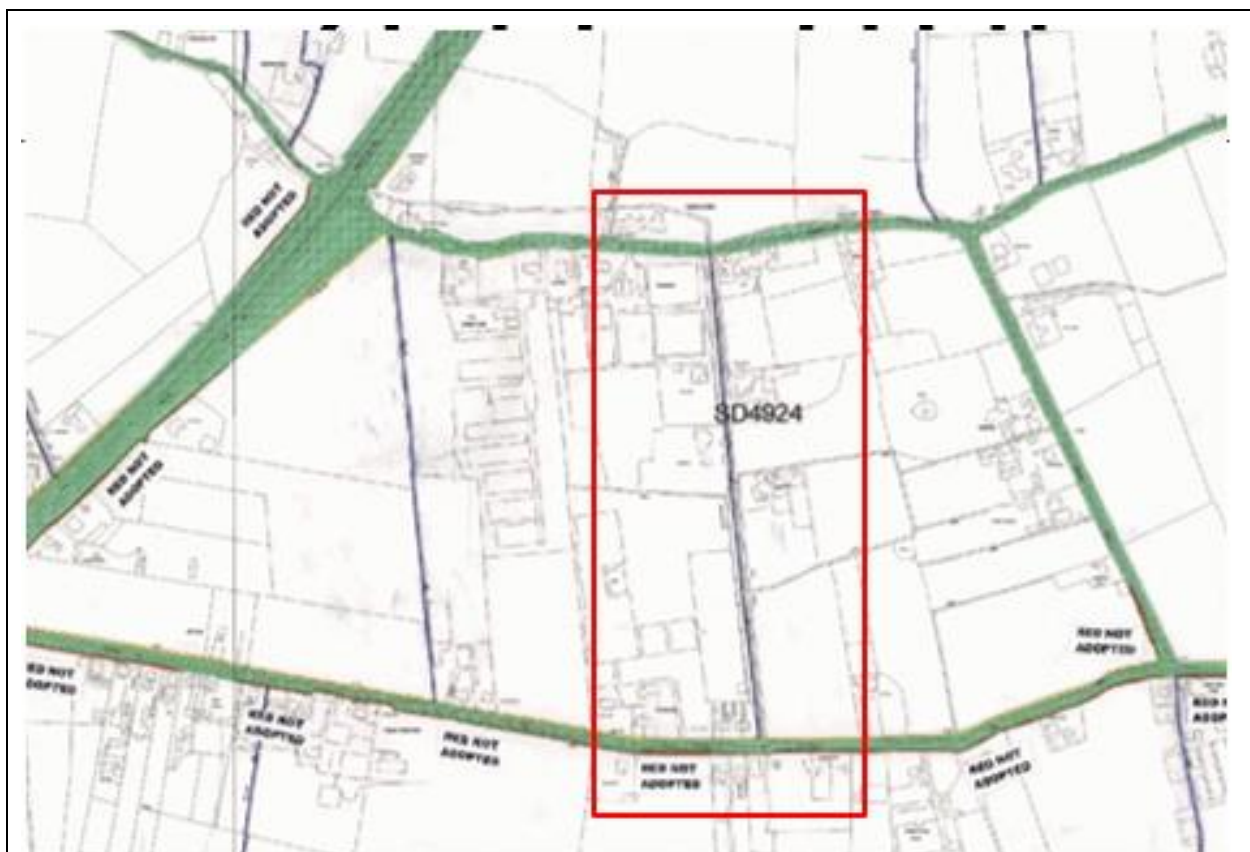
Observations		The application route is recorded as a public footpath.
Investigating Officer's Comments		From the 1950s through to 1975 there is no indication that the application route was considered to be anything other than a public footpath by the Surveying authority. There were no objections or representations made with regards to the fact that the route was shown as a public footpath when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
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</p>

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 Maps



LCC adoption plan

Observations		The application route is not shown as a publicly maintainable highway on the Road Transfer Maps prepared circa 1929 although it is currently recorded as a public footpath and is publicly maintainable to at least that status.
Investigating Officer's Comments		The application route is recorded as a publicly maintained footpath but this does not necessarily mean that it is not a public highway of a higher status.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders diverting or stopping up public rights along the application route have been found.
Investigating Officer's Comments		If public rights (additional to recorded Footpath rights) exist along the application route then these rights do not appear to have been stopped

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

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

Landownership

Ownership of most of the land crossed by the application route is not registered.

There are ten separate registered plots of land adjacent to the route three of which appear to include part of the historical width of the route – but which do not include the full width of the route. These are registered titles LAN26363 (Glenavon, Gill Lane), LAN93393 (Allandale, Six Acre Lane) and LA864306 (Moorside House, Six Acre Lane).

The title document for Moorside House includes reference to a notice entered in pursuance of rule 254 of the Land Registration Rules 1925 on 27 April 2000 that the registered proprietor claims that the land has the benefit of a right of way with or without vehicles over and along Six acre Lane leading to Drumacre Lane. The title document for Allandale (purchased by the Vendor in 2009) states that the land has the benefit of a right of way with or without vehicles over and along Six acre Lane and that the right claimed was not included in the registration but was supported by a statutory declaration by Nripendra Kumar Saikia.

The Natural Environment and Rural Communities Act 2006

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc.. If Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist on the application route then it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for mechanically propelled vehicles. Six Acre Lane was, at the time of the Act, recorded as a public footpath and was not on the List of Streets (maintained at public expense) and it does not appear to have been used mainly by the public in mechanically propelled vehicles. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist and the appropriate status for Six Acre Lane to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights with non-mechanically propelled vehicles, horses or on foot.

Summary

There is no user evidence considered as part of this application so it is necessary to look solely at the available map and documentary evidence.

Of significance is that the route is shown on all three small scale early commercial maps pre dating the Ordnance Survey mapping. It is shown as a cross road in the same way as other routes currently recorded as public vehicular highways and appears at that time to have been considered to be part of the public vehicular highway network.

The Tithe Map of 1839 gives further weight to this view with the route shown on the Tithe Map coloured in the same way as the public vehicular highways to which it connects and seemingly described in the Tithe Award as a route considered as a 'highway' and 'public road'.

From the 1840s onwards, the route is consistently shown on all Ordnance Survey maps examined as a bounded through route named on the maps as 'Six Acre Lane'.

Map, aerial photography and site evidence in particular suggest that use of the route as a public vehicular through route probably declined from the end of the 1800s onwards, in favour of use of other parallel public highways (Land Lane and Cottam

Lane) and that vehicular use in more recent times has been restricted to use to access private properties alongside the route between point A and point B, with the section between point B and point C being used predominantly on foot and possibly on horseback. However, this would not result in the loss of higher status if that were shown to exist previously.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted a number of map extracts as part of the application explaining that Six Acre Lane was always a through road, according to historical map evidence. The applicant stated that no use evidence was submitted as any attempts to ride the route was stopped by residents.

The applicants believe that the route should be a bridleway as it was always a highway and states that street name signs were visible at both ends of the road in 'recent history' but that the 'road' now only has a 'road sign' at the Drumacre Lane East end (Point A).

The following map extracts were submitted without specific comments:

Greenwoods Map of Lancashire 1818

1 inch OS map dated 1885-1900

6 inch OS map dated 1888-1913

25 inch OS map dated 1892-1905

6 inch OS map dated 1848

25 inch OS map dated 1893

6 inch OS map dated 1894

1:1250 OS map dated 1911

6 inch OS map dated 1912

25 inch OS map dated 1931

6 inch OS map dated 1931

6 inch OS map dated 1955

6 inch OS map dated 1961-68

25 inch OS map dated 1963

1:2500 OS plan dated 1969-1991

1:10,000 OS plan dated 1974-1983

25 inch OS map revised 1909, published 1911

25 inch OS map revised 1929 published 1931

25 inch OS map revised 1938, published 1945

1:25,000 OS map published 1955

Ariel view from Bing Maps 2019

Digitised map showing Definitive Public Rights of Way in Lancashire

Information from Others

No further evidence has been submitted

Information from the Landowner

Responses from consultations have been received from a number of landowners who gain access to their properties from Six Acre Lane.

Three of the adjoining landowners have submitted a joint response to the application stating that a public right of way has never existed on this route. The route has always been considered to be a private road maintained by the property owners. No further evidence has been supplied

A further response has been submitted by another land owner whose property is on Six Acre Lane. This landowner states that the route is not suitable to be a bridleway as the route is single tracked with no passing places, and, although there are grass verges on either side there are also deep and wide ditches and the landowner has witnessed a horse fall into such a ditch in a neighbouring location, necessitating removal by the Fire Brigade which was distressing.

Another landowner who owns property on Six Acre Lane has said that they have no objection to the footpath being upgraded to a bridleway.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

The historical mapping evidence shows that the route existed from 1786. The route is shown on the early commercial maps, Yates's Map of Lancashire of 1786, Greenwood's Map of Lancashire of 1818 and Hennessey's Map of Lancashire of 1830. It is also shown on the 1839 Tithe Map being described as a highway and a public road. These maps show the route in the same way as other routes that are now recorded as public vehicular highways.

In addition, this route is shown on the first edition and all subsequent editions of the Ordnance Survey maps named as Six Acre Lane on all but the small scale 1 inch maps.

Six Acre Lane is described in the legal notice in the London Gazette of August 1931 in the same way as other public vehicular highways.

There is no evidence that a legal stopping up of any part of the route has ever taken place.

Against Making an Order(s)

Adjacent Landowners consider that the route has no right of way on it and that it is a private road.

It is also considered that the route is unsuitable for use by horses due to its width and the dangers of deep ditches on either side of it.

Conclusion

The historical mapping evidence that the route was once used for public vehicular use is strong. The route now carries the status of footpath but in the early 1800s it appears – from its consistent inclusion on small scale early commercial maps and the fact that it was shown in the same way as other public vehicular roads on the Tithe Map in 1839 and described in the Tithe Schedule under the heading 'highway and public road', strongly suggest that it was used by horses and carts and for riding on horseback in the 1800s. On the early maps, the route was shown as the same status as nearby Land Lane and Cottam Lane. Although the use of Six Acre Lane appears to have decreased over time, its initial status as a vehicular highway has not been affected by the more recent use as a footpath only. Once a highway has come into being, it continues indefinitely whether it is used or not. "Mere disuse of a highway cannot deprive the public of their rights. Where there has once been a highway no length of time during which it may not have been used will preclude the public from resuming the exercise of the right to use it if and when they think proper". (Harvey v Truro RDC 1903 2 Ch 638).

There is no evidence to indicate that this historic vehicular highway status has been challenged. Three landowners state that it is a private road which they maintain, but this is recent use by those landowners and does not call into question the historical evidence.

The suitability or otherwise of the route for horses is not something that can be taken into account if highway rights are shown to exist.

If the Committee is minded to accept the application and considers there is adequate evidence to show public vehicular rights it is necessary to consider the Natural Environment and Rural Communities Act 2006. The Natural Environment and Rural Communities Act 2006 would extinguish public rights of way with a mechanically propelled vehicle unless certain exceptions applied but those do not apply here. If Committee accepts the recommendation the correct way of recording the route would be as a restricted 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

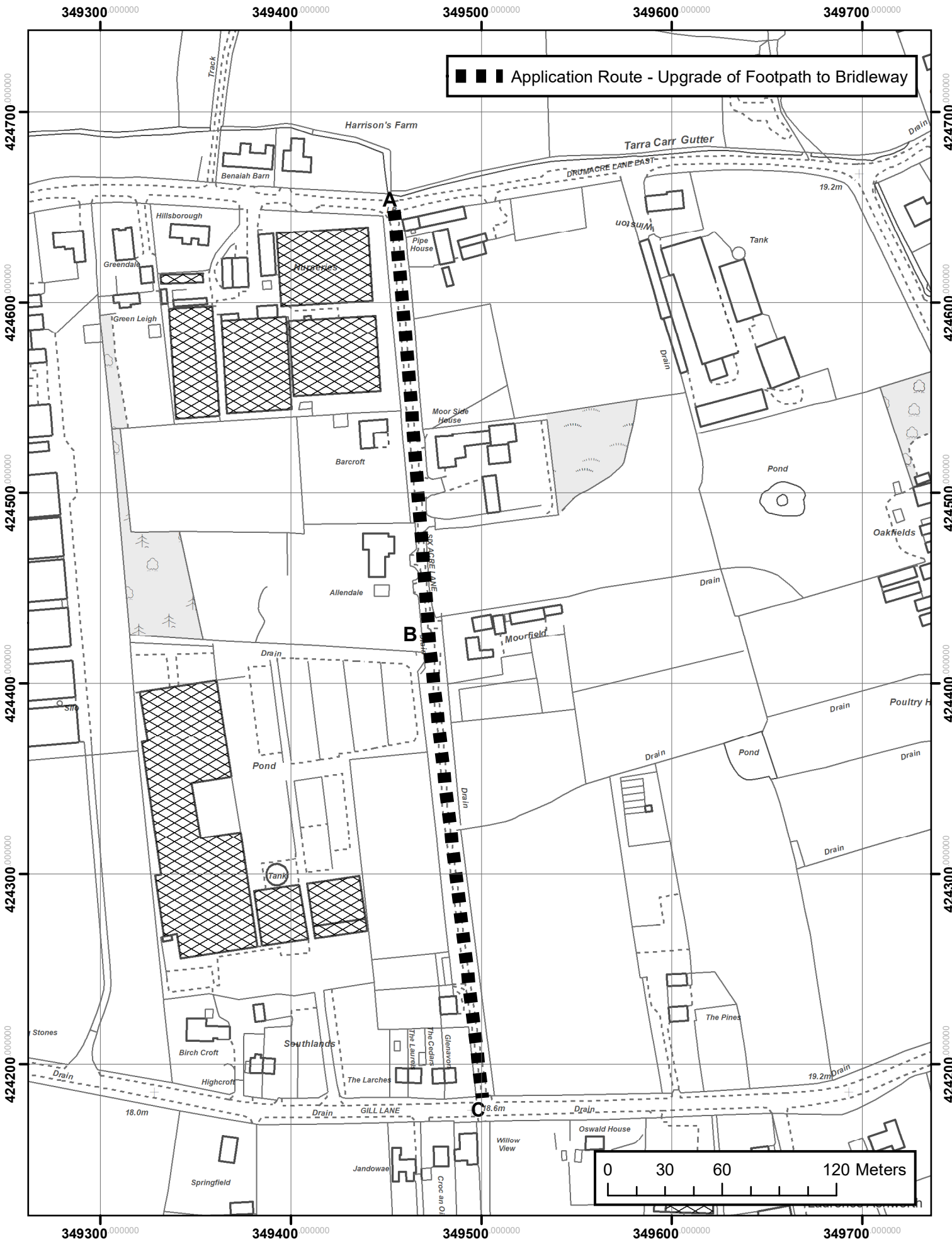
Contact/Directorate/Tel

All documents on File Ref:
804-607

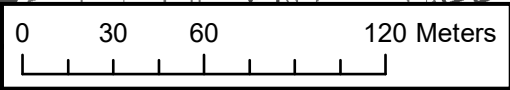
Joanne Lawson, 01772
535604, County Secretary
and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



■ ■ ■ Application Route - Upgrade of Footpath to Bridleway



Andrew Mullaney
Head of Planning and Environment

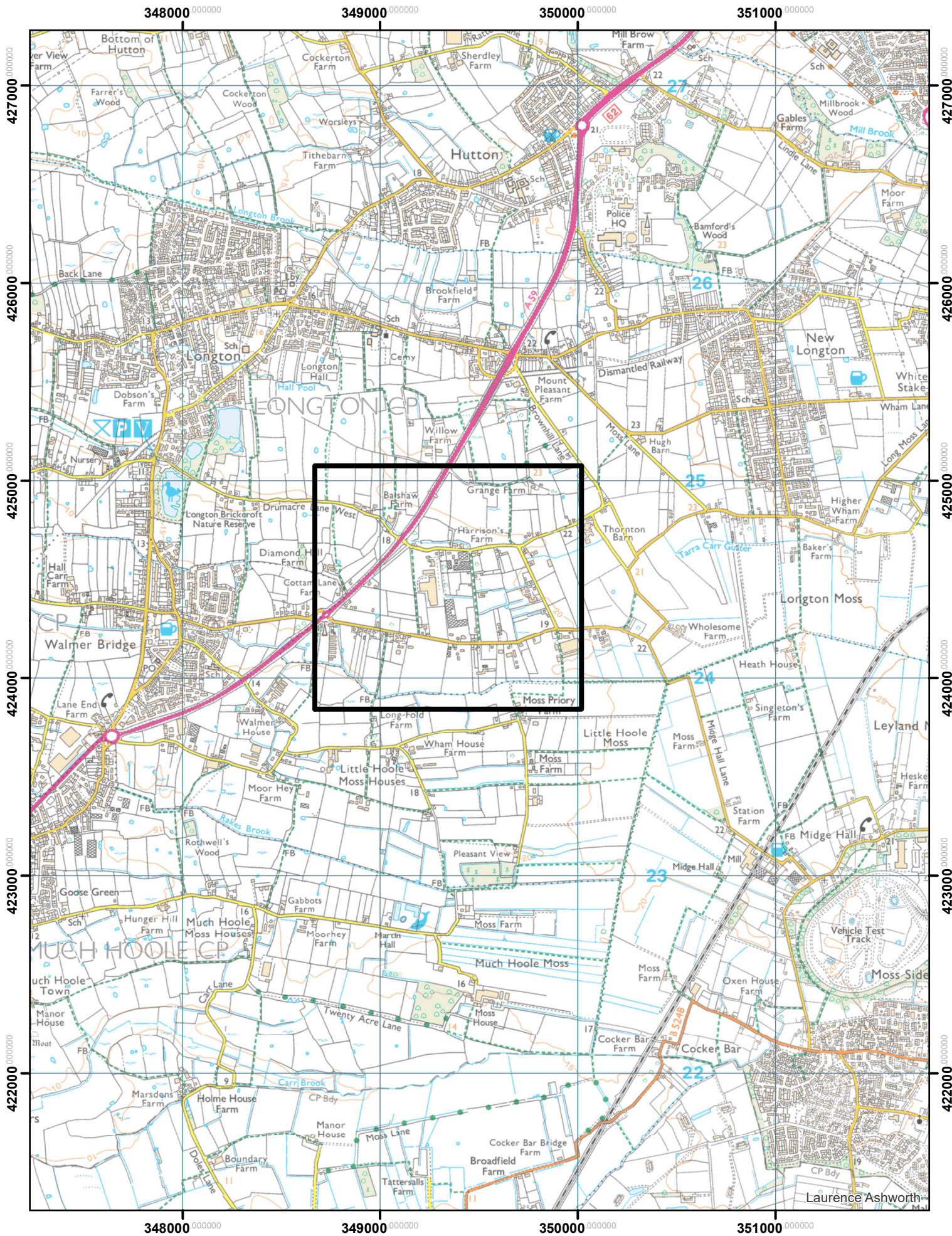
Wildlife and Countryside Act 1981
Upgrade of Six Acre Lane, Longton, South Ribble to Public Bridleway

1:2500



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

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Regulatory Committee

Meeting to be held on 18th September 2019

Part I

Electoral Division affected:
Mid Rossendale

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpath from Kirkdale Avenue to Footpath Rawtenstall 180 and Seat Naze

File No. 804-608

(Annex 'A' refers)

Contact for further information:

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

Executive Summary

Application for the addition of a Footpath to the Definitive Map and Statement of Public Rights of Way from Kirkdale Avenue, Newchurch to Footpath Rawtenstall 180, in accordance with File No. 804-608.

Recommendation

- (i) That the application for a Footpath from Kirkdale Avenue to Footpath Rawtenstall 180, in accordance with File No. 804-608, be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or] Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a footpath to the Definitive Map and Statement of Public Rights of Way as shown on the Committee Plan between points A-B-C-D-E.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Kirkdale Avenue, Newchurch to Footpath Rawtenstall 180.

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

Rossendale Borough Council

No response received to date.

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	8331 2247	Open junction with Kirkdale Avenue adjacent to the entrance to Home Farm.
B	8331 2251	Junction with unrecorded footpath running east-west along the northern boundary of Home Farm.
C	8331 2254	Stone wall built across the application route.
D	8332 2258	Fence erected across the application route.
E	8333 2264	Open junction of the application route with Footpath Rawtenstall 180.

Description of Route

A site inspection was carried out in June 2019.

The application route commences on Kirkdale Avenue, Newchurch, immediately adjacent to the entrance to Home Farm (point A on the Committee plan).

The route leaves the tarmac footway to pass between a stone wall bounding Home Farm and a low wall bounding a well maintained area of shrubs. The route extends in a northerly direction along a grass surfaced path approximately 1 metre wide, between the two stone walls continuing north along the east side of a building forming part of Home Farm, bounded on one side by the building and on the other side by a low stone wall which is broken in places.

The application runs along the full length of the eastern side of Home Farm and then continues north bounded on both sides by stone walls at a width varying between 1 and 1.4 metres. Immediately north of the point where the route passes Home Farm, a trodden track passing through a broken down section of wall joins the application route from a triangular area of mown grass situated between Kirkdale Avenue and the application route.

Approximately 40 metres along the application route from point A, the route is joined from the west by a narrow path leading from Footpath Rawtenstall 206 and Hillside Drive, along the rear perimeter fence of Home Farm to join the application route at point B on the Committee plan. This path is not recorded as a public footpath but a trodden track exists and there is evidence that vegetation overhanging the path had recently been cleared.

Continuing from point B, the application route continues north as a narrow track bounded by two substantial stone walls at a consistent width of approximately 1.3-1.4 metres, with houses built on the land on either side to point C, where a stone wall

(which appeared to have been recently constructed) has been built across the route preventing access.

The wall across the application route has been constructed in line with the southern boundary of 21 Hillside Drive.

Beyond point C, the line of the application route has been recently dug up with bare earth visible as part of what appears to be substantial building works being carried out to extend the rear of 21 Hillside Drive. There is no evidence of the application route across this section, although a large pile of stone can be seen just to the east of the line of the footpath which appears to be walling stone. Beyond the northern boundary of 21 Hillside Drive, the application route continues north immediately east of the boundary of 19 Hillside Drive, and walls can again be seen bounding the application route, but this part of the route cannot be accessed due to the wall at point C and a fence erected across the route at point D.

The fence at point D prevents access along the route if approaching from point E. Attached to the fence is a sign which states 'NO PUBLIC RIGHT OF WAY PRIVATE GARDEN PLEASE KEEP OUT', and just to the south of the fence there are gaps in the boundary walls on either side of the application route providing access to land to the rear/side of 19 Hillside Avenue and 4 Kirkdale Avenue.

Looking south down the route from point D towards point C, the application route can be seen to the rear of 19 Hillside Drive continuing towards point C bounded on either side with substantial stone walls. However, it appears that directly to the rear of 19 Hillside Drive, a substantial amount of dismantled stone wall could be seen and there was no access to the application route along this section.


Continuing north from point D, the application route rises quite steeply uphill bounded throughout the remainder of its length with substantial stone walls and at a width of approximately 1.4 metres. Close to point D, there are gaps in the walls on either side of the route building rubble comprising of bricks and some glass has been tipped on the route together with some fresh grass cuttings.


Beyond the fly-tipped material, the route continues as a grass surfaced track, uneven in places rising steeply uphill to the open junction with Footpath Rawtenstall 180 at point E. Between point D and point E no gaps or gates were located in the stone walls bounding the route to provide access into the adjacent fields.

The total length of the route is 180 metres.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

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 major route at the time although it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Honour of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key

		but there was no apparent distinction between those which may have been considered to be public or private.
		
Observations		The application route is not shown.
Investigating Officer's Comments		The route did not exist as major route at the time although it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map.



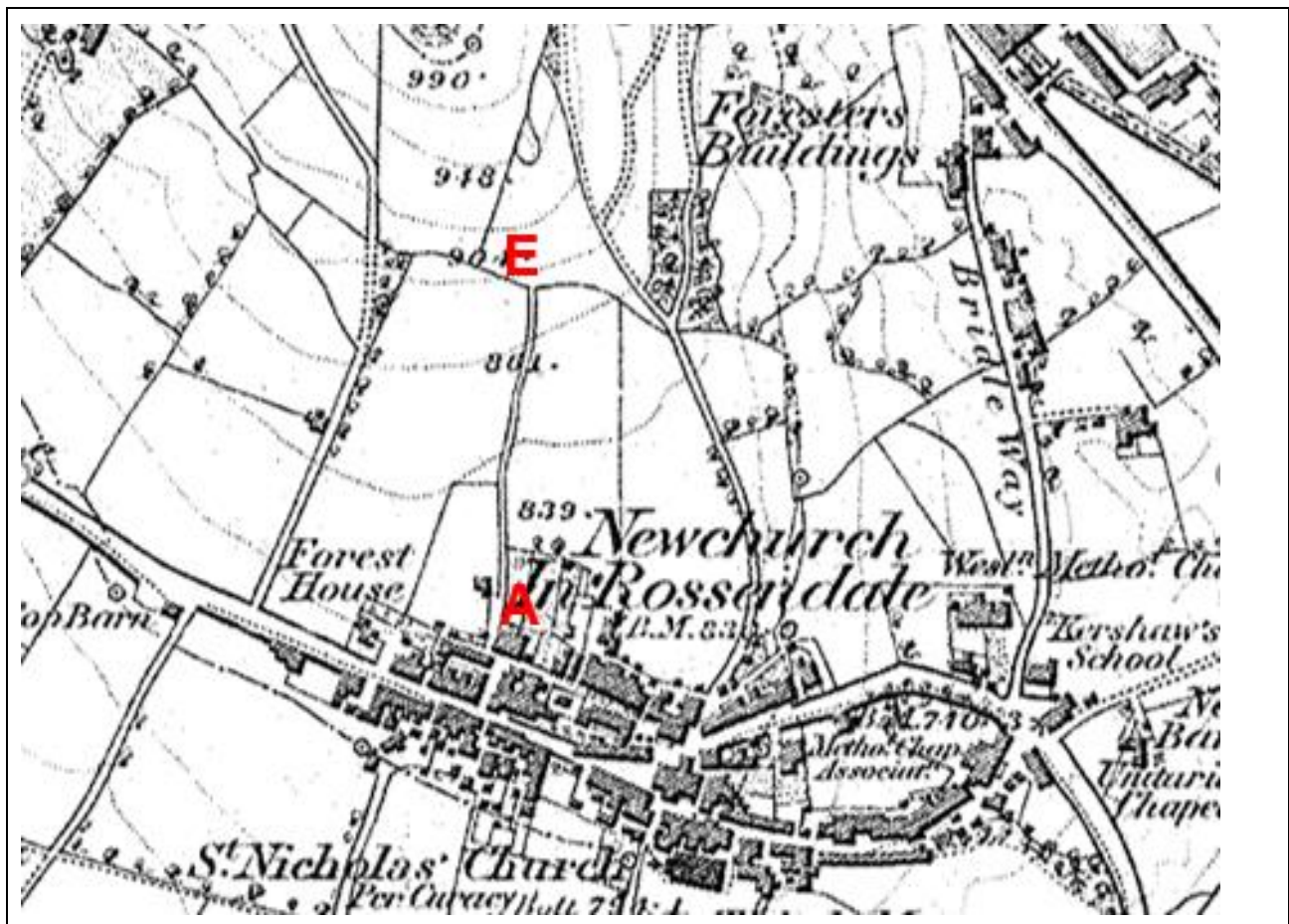
Observations		The application route is not shown.
Investigating Comments	Officer's	The route did not exist as major route at the time although it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Hennet's Map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



Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route did not exist as major route at the time although it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no existing, dismantled or proposed railways or canals crossing the land over which the application route runs.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish

		and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map or Award for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map Sheet 72	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849. ¹

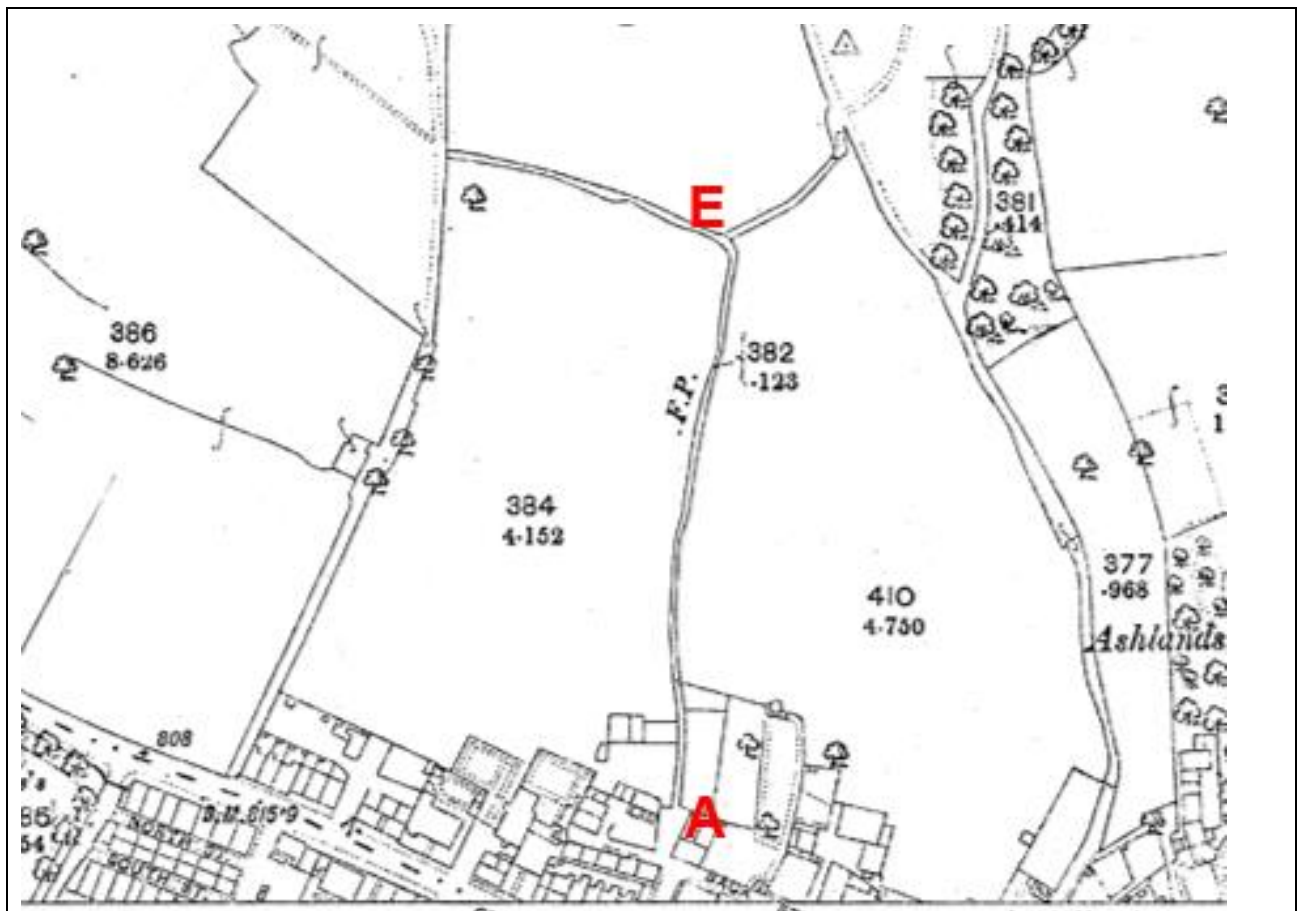
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in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




Observations		The full length of the application route is shown as a bounded route. A building is shown adjacent to the start of the route at point A in the approximate position of Home Farm. From point A the application route is clearly shown extending north to point E where it appears to provide unrestricted access onto an open area of land.
Investigating Officer's Comments		The whole length of the application route existed as a bounded route in 1849.
Cassini Map Old Series	1842-4	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.



Observations		The application route does not appear to be shown on this small scale map.
Investigating Officer's Comments		<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers.</p> <p>The fact that the application route is not shown suggests that it was not considered to be a significant public route at that time but this is not inconsistent with it existing as a public footpath particularly as it is clearly shown on the 6 inch Ordnance Survey map surveyed 1844-47.</p>
25 Inch OS Map Sheet 72-10	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed and published in 1891.



<p>Observations</p>		<p>The application route is clearly shown as an open bounded through route from Back Street through to the junction with the route recorded as Footpath Rawtenstall 180. It is annotated as a footpath ('F.P.') with a parcel number and acreage that includes part of Footpath Rawtenstall 180 extending west from point E. The width of the route measures approximately 0.8 – 1.5 metres wide and is much narrower than many of the other bounded routes shown on the map sheet.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as part of a longer through route in the 1890s and was annotated as being a footpath on the Ordnance Survey map. Whilst the Ordnance Survey clearly stated that the representation on the map of a road, track or footpath was no evidence of the existence of a right of way the fact that the route is shown as a 'footpath' does indicate that the route physically existed at that time and was considered, by the</p>

		<p>Surveyor, to show all the physical characteristics of a route capable of – and used - on foot.</p> <p>The narrowness of the route suggests that, as suggested by the OS, the route was one used on foot and not on horseback or with horse drawn carts.</p>
<p>1 inch OS Map of Rochdale (Sheet 76)</p>	<p>1896</p>	<p>1 inch Ordnance Survey map published 1896.</p>
 <p>The map shows the town of Rochdale with various streets and landmarks. A red square highlights a specific route in the center of the town, near the intersection of Church Street and other roads. The map includes labels for 'STALL', 'Newchurch', 'Church', 'Waterfoot', and 'Stack'. Elevation contours are also visible, with values like 700, 800, 900, 1000, and 955.</p>		
<p>Observations</p>		<p>The application route is shown as the middle of three routes all extending north from Church Street (the main vehicular through route). All three routes are shown as bounded routes which connect to one another.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as a substantial bounded route in the late 1800s. The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the route on this map is suggestive of a significant physical route that was capable of being used on foot and possibly with horses. The route is shown in the same way as the routes on either side of it, and the route of</p>

		Footpath Rawtenstall 180 suggesting that it was considered at that time to be at least a public footpath.
25 inch OS Map Sheet 72-10	1911	Further edition of the 25 inch map re-surveyed in 1891, revised in 1908 and published in 1911.
Observations		The full length of the application route is shown as a through route annotated as a footpath ('F.P.'). The route is shown in the same way as it is shown on the earlier edition of the 25 inch OS map apart from by 1911 there is open access from point E to both the east and west parts of Footpath Rawtenstall 180.
Investigating Officer's Comments		The application route physically existed and appeared to be capable of being used as part of a longer through route in 1911. The width of the route is shown as it is on the earlier edition of the 25 inch map, again suggesting that use would have been predominantly on foot.
Cassini New Series Map	1903-1904	An enlarged reprint of a map first published in 1903 and based on the OS 1 inch mapping.

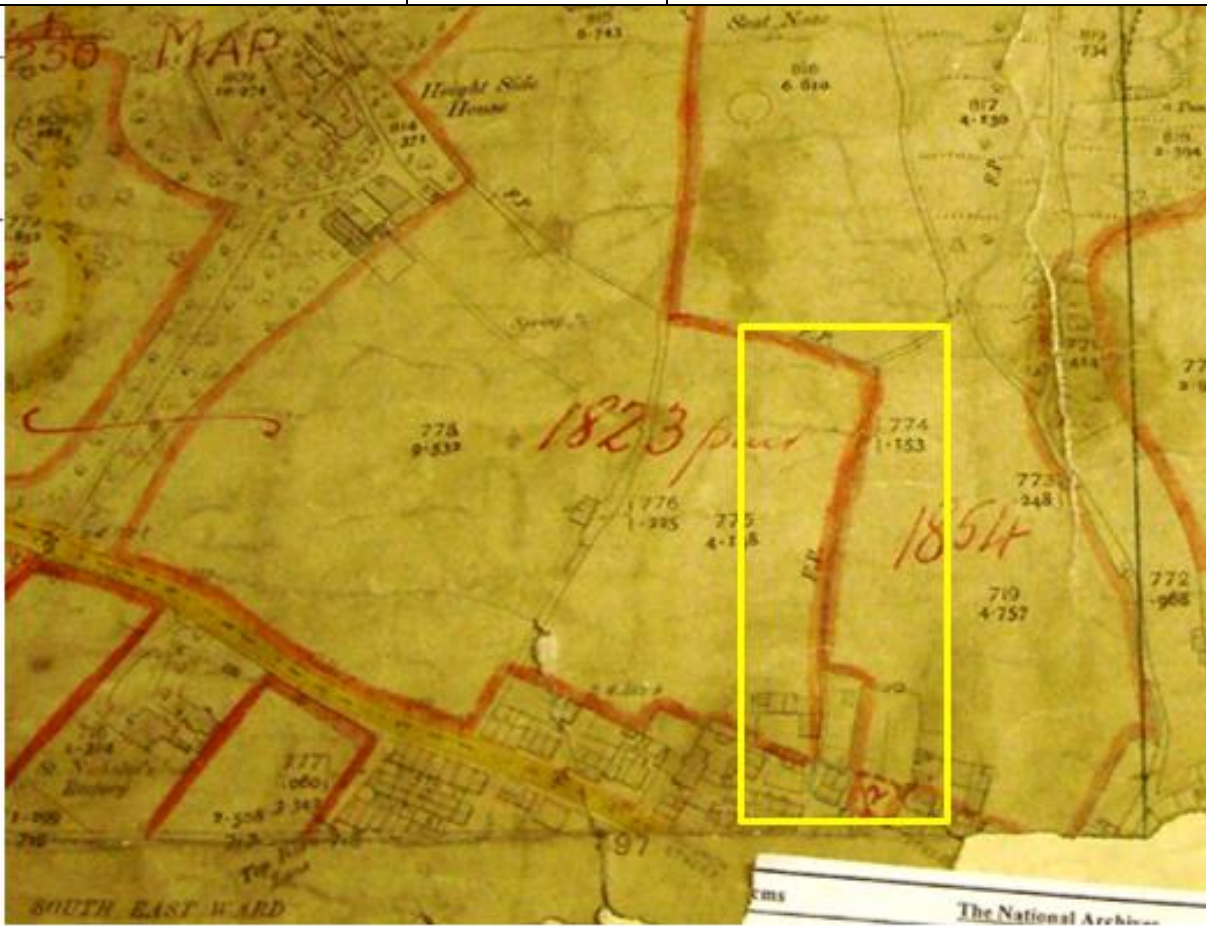


Observations		The full length of the application route is shown as a bounded route providing direct access to the route now recorded as Footpath Rawtenstall 180.
Investigating Officer's Comments		The scale of the map means that it is likely that only the most significant public routes where. The fact that the application route is shown suggests that it was a substantial clearly defined bounded route capable of being used at least on foot.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



Observations		The application route is not shown.
Investigating Officer's Comments		The fact that the application route is not shown on a small scale map produced primarily for the travelling public is not surprising given that the application is for a route to be recorded as a public footpath.
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</p>

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.

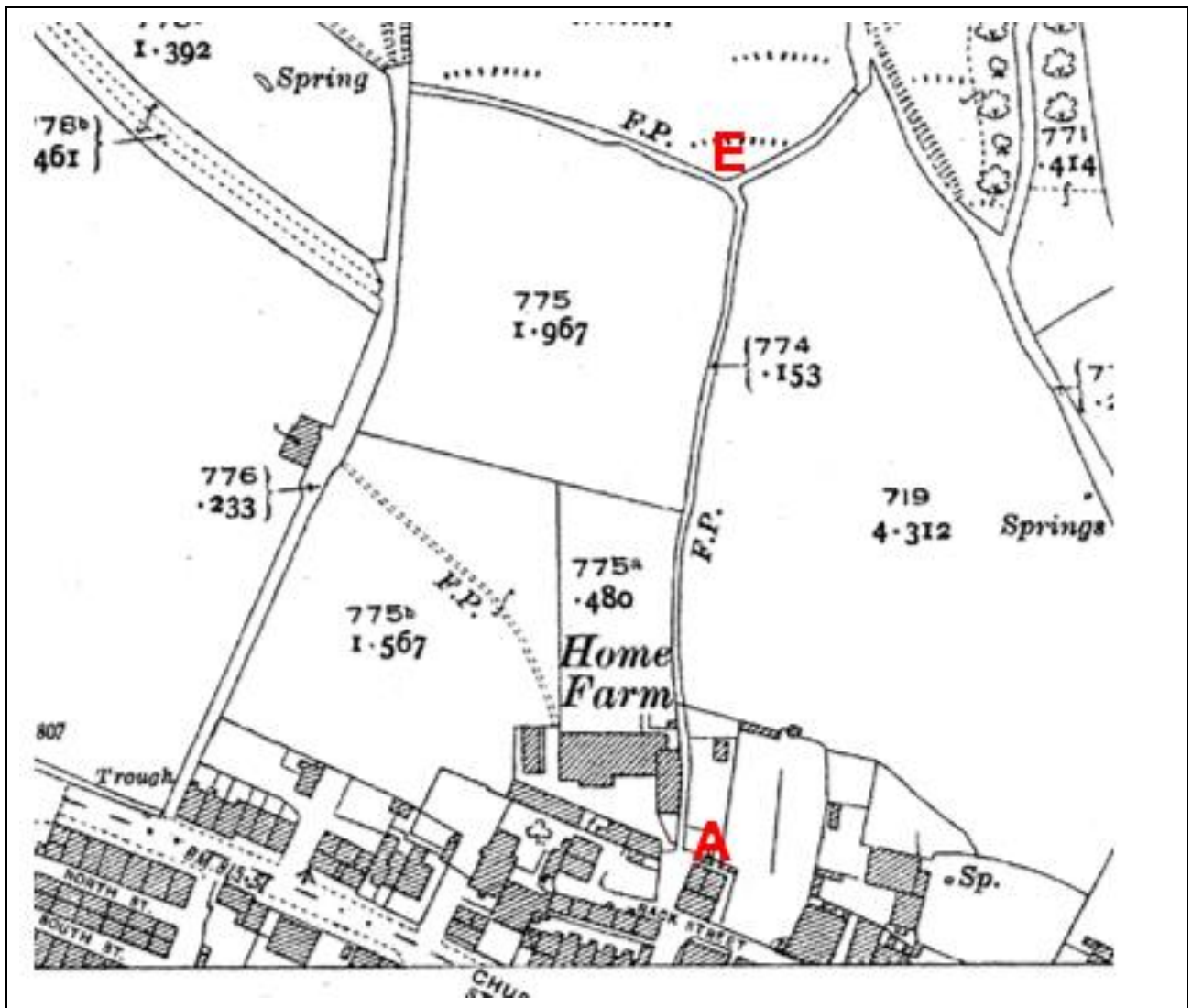


Map deposited in the National Archives

Observations

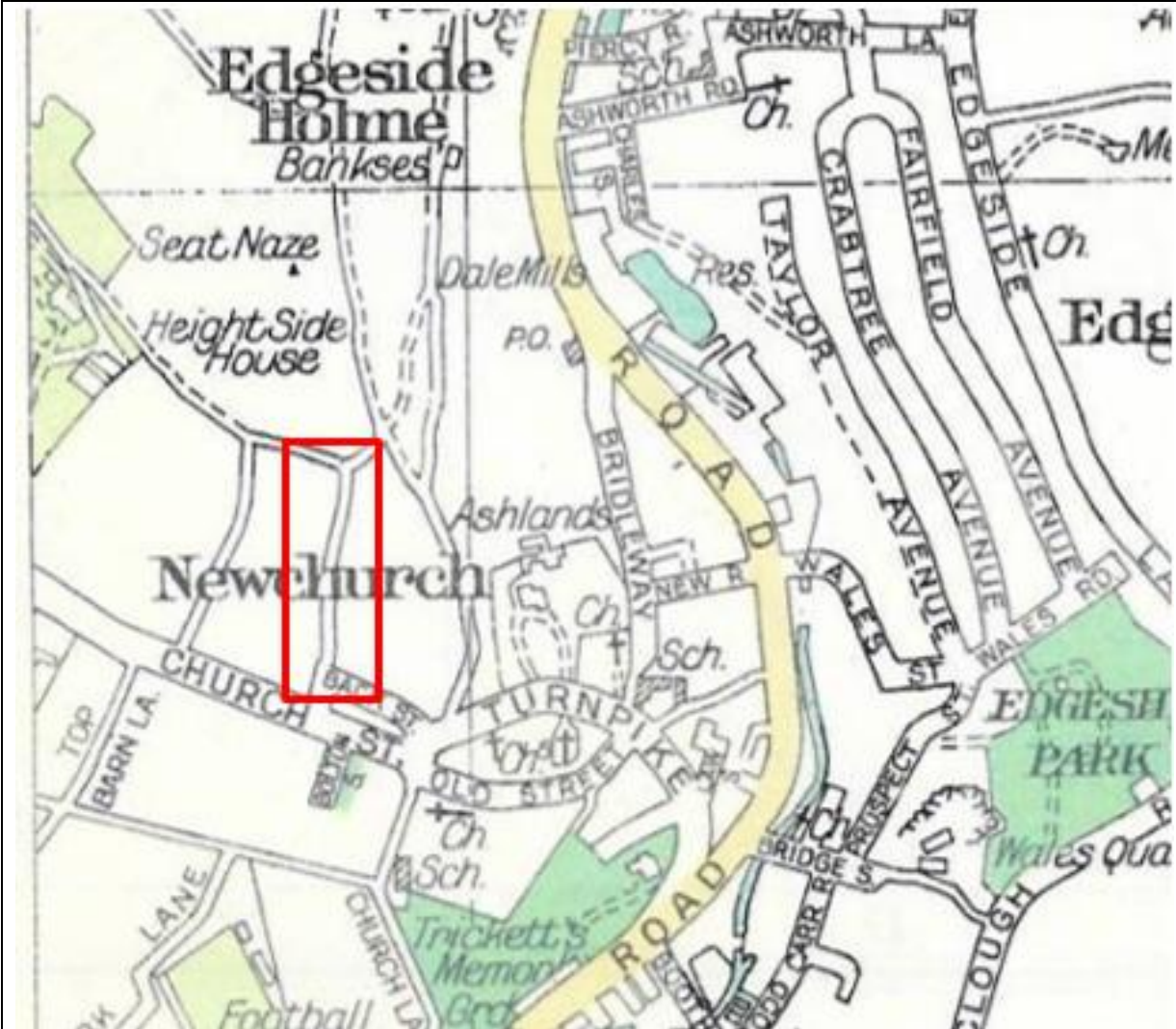
There is no Finance Act Map deposited in the County Records Office but the map deposited in The National Archives was obtained. The application route is not excluded from the numbered plots but it is unclear from the annotation on

		<p>the map which numbered plot it is included in.</p> <p>A thick red line is shown drawn along (and including) the application route marking the boundary between two separately numbered plots.</p> <p>The District Valuation Book was inspected in the County Archives which lists plot 1823 as being owned by HH Bolton, Higbrake, Accrington and described simply as 'land' with no deductions listed for public rights of way or user.</p> <p>Plot 1854 comprises of two entries in the District Valuation Book which describe the property comprising plot 1854 as farm road and land occupied by Joseph Samuel Ashworth and owned by the Trustees of J Hargreaves. The farm road referred to within the plot has a £20 deduction for public rights of way or user but the plot covers a considerable area – including a number of tracks and it is not possible to tell which of these routes is described as the 'farm road'.</p>
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
25 Inch OS Map	1930	Further edition of 25 inch map (re-surveyed 1891, revised in 1928 and published in 1930.



Observations		The application route is shown in the same way as it is on the two earlier editions of the 25 inch OS maps as a narrow bounded through route annotated as a footpath.
Investigating Officer's Comments		The application route existed in the 1930s as a bounded through route connecting to a recognised public footpath at point E and appeared to be capable of being used at least on foot.
Authentic Map Directory of South Lancashire by Geographia	Circa1934	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. The introduction to the atlas states that

the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.



Observations

The full length of the application route is shown extending from the route named on the map as Back Street to the junction with Footpath Rawtenstall 180 (not named on the map). The route is shown as being narrower than routes named as public vehicular highways but consistent with how other routes recorded as being public footpaths are shown.

Investigating Officer's Comments

The route existed as a substantial bounded route in the 1930s and appeared capable of being used. The fact that it is shown on a small scale

		Street Atlas produced for sale to the public in the 1930s is suggestive of the fact that routes included carried public rights.
Plan submitted by the applicant	1936	'Builders plan' submitted by the applicant from deed bundle of one of the properties on Greendale.





<p>Observations</p>		<p>A photocopy of a plan was provided by the applicant which had been obtained from the deeds of one of the properties. The plan extract provided does not have a title or date but the applicant has stated that it was drawn up by Law and Grimshaw of Atherton in 1936. Some of the houses shown on the plan were never built but two shown to abut the application route (2 and 4 Kirkdale Avenue) are shown on the plan and were subsequently built.</p> <p>Only 4 Kirkdale Avenue is registered with the Land Registry but the registered titles (LA666145 and LA666146) both stipulate that the land on which the property was built is held in leasehold by the owners of the property and refers to a leasehold agreement between Greendale Land and Building Company Ltd. and George and Florence Ingham dated 14 November 1938.</p> <p>Information from the applicant is that the plan provided was for the construction of housing on a plot of land owned by The Greendale Land and Building Company Ltd. who built some of the houses shown on the plan before running out of money half way through building the estate in approximately 1938.</p> <p>Of significance is the fact that the builders' plan shows the application route running along the edge of the site labelled as a 'public footpath' with the road past 2 and 4 Kirkdale Avenue continuing past the properties to meet the application route suggesting that it was proposed to provide access linking into it.</p>
<p>Investigating Officer's Comments</p>		<p>The plan shows that the application route ran alongside the proposed housing development and was clearly labelled as a 'public footpath'. It is not known where the information as to the</p>

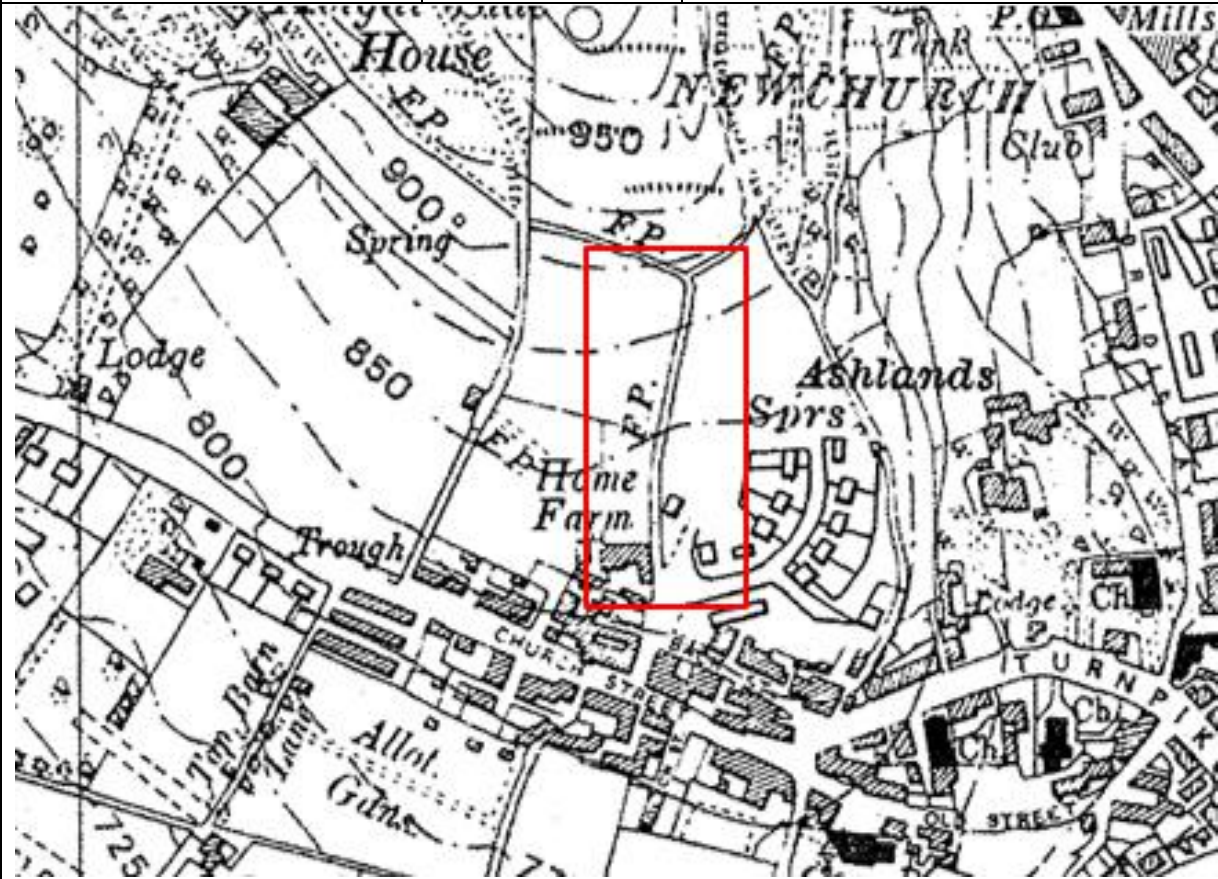
		believed status of the route came from but the fact that it is shown labelled as such suggests that in the 1930s the route existed and was being used by the public on foot and that it was considered by the builders to be a public footpath. The plan does not however indicate whether the builders owned the land crossed by the application route although they do propose to provide a link into it.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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



Observations		The aerial photograph is of poor quality and it is not possible to clearly see the application route. Houses on Greendale appear to have been built.
Investigating Officer's Comments		No inference can be drawn.
6 Inch OS Map Sheet 82SW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 but was also stated to have been revised for major changes in 1950 and is probably based on the same survey as

the 1930s 25-inch map.



<p>Observations</p>		<p>The full length of the application route is shown as part of a through route connecting to other public highways. The route is again annotated as a footpath (F.P.). Development to the east of the route is shown with the construction of Greendale.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in the 1930s. The revision of the map for major changes in 1950 most probably included the addition of Greendale which is shown drawn in a different cartographical 'style' than the base map suggesting that the construction of Greendale took place sometime between the 1930s but before 1950.</p>
<p>1:2500 OS Map</p>	<p>1962</p>	<p>Further edition of 25 inch map reconstituted from former county series and revised in 1960 and published in 1962 as national grid series.</p>



Observations		The application route is shown as a bounded route annotated as a footpath ('FP') in the same way as it is shown on all earlier editions of OS mapping. Two properties – 2 and 4 Kirkdale Avenue – are shown abutting the application route.
Investigating Officer's Comments		The application route existed as a bounded through route connecting to an existing public footpath in 1962 and appeared capable of being used. Properties built on Kirkdale Avenue abut the route but do not interfere with it.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The line of the application route can be seen from the rear of Home Farm through to point E although it is not possible to see whether the full length of the route was accessible.
Investigating Officer's Comments		The application route existed in the 1960s consistent with how it is shown on the OS map published at that time.
Aerial Photograph	1988	Aerial photograph available to view at the County Records Office.
Observations		The aerial photograph covering the area crossed by the application route is not available in the county records Office.
Investigating Officer's Comments		No inference can be drawn.
Aerial Photograph	2000	Aerial photograph available to view on GIS.

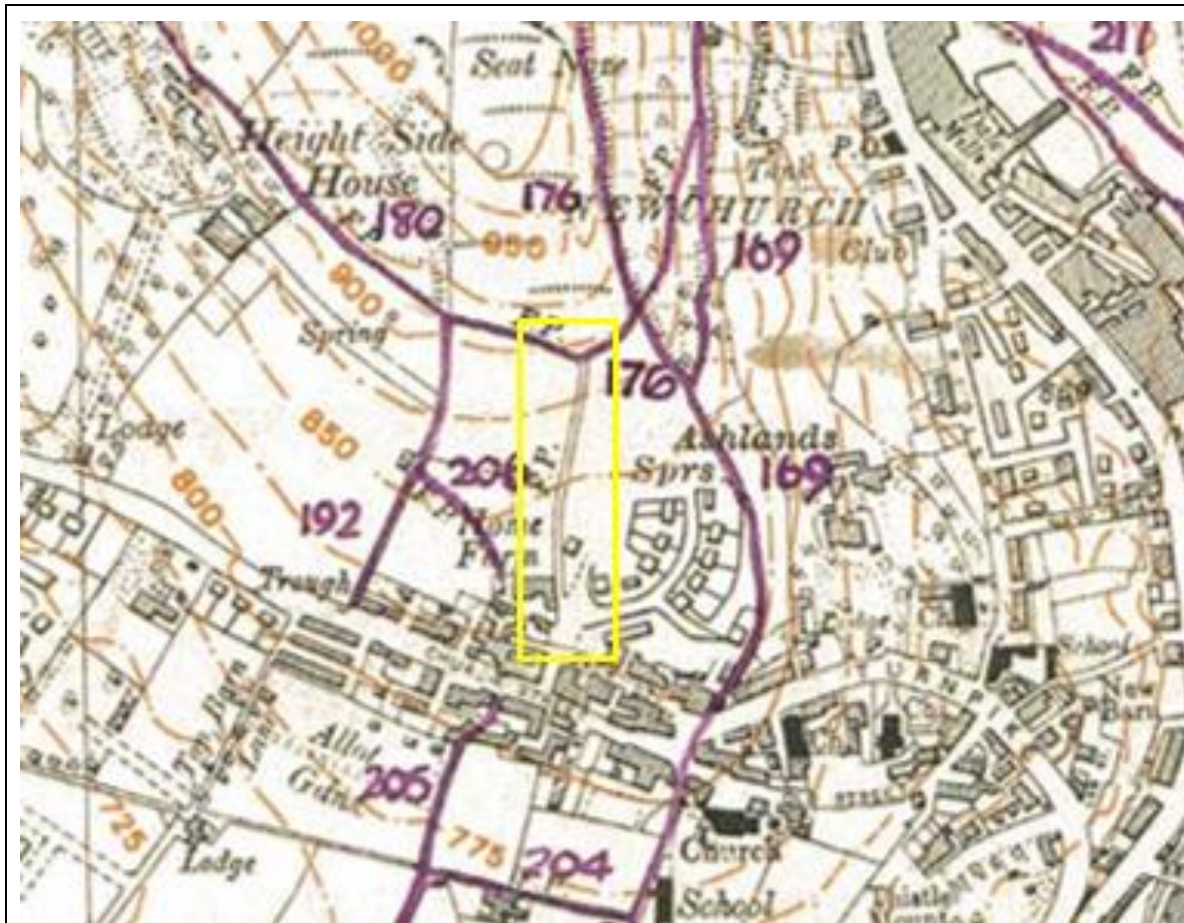


Observations		The application route can only be seen faintly as opposed to the route of Footpaths Rawtenstall 180 and 192 leading north from St Peters Road and an unrecorded track from the northern end of Greendale. The houses on Hillside Drive, which abut the route are shown.
Investigating Officer's Comments		Use of the application route, if possible, does not appear to be by significant numbers of people as there is no evidence of significant levels of footfall.
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>

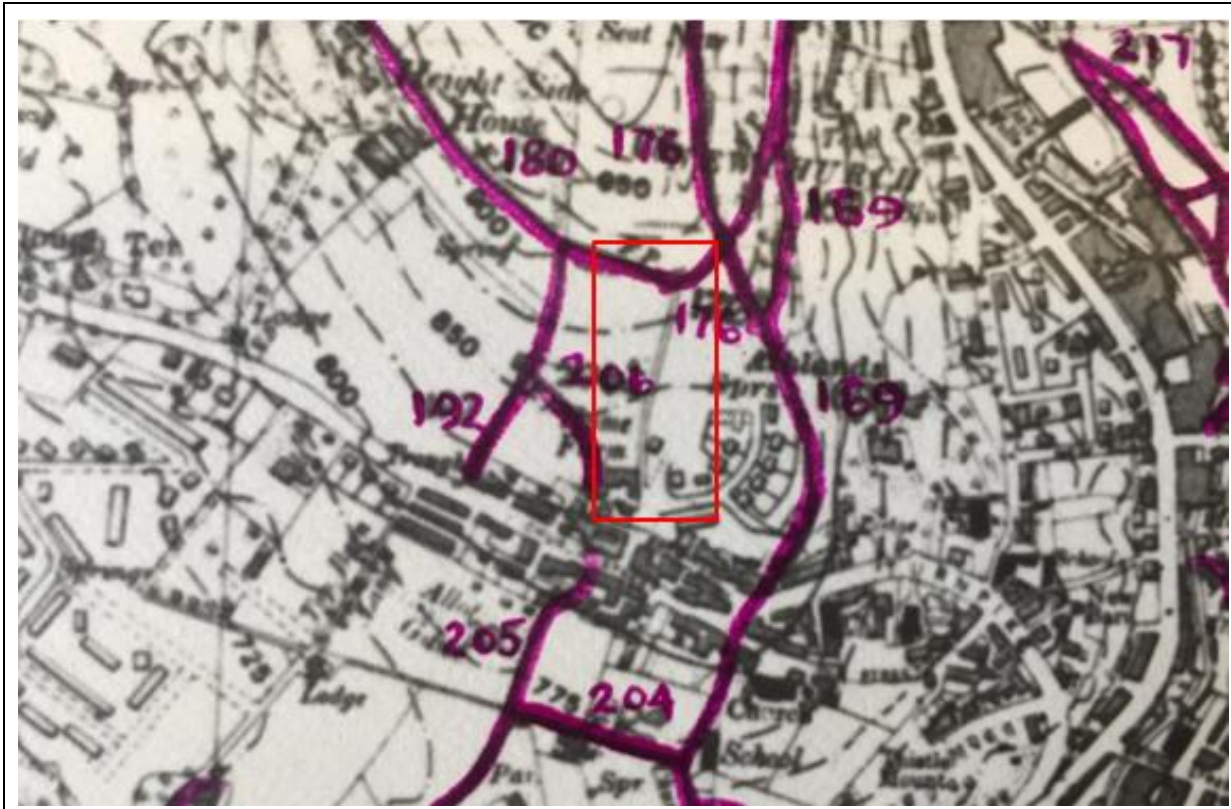
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and 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 within Rawtenstall which was a municipal borough in the early 1950s so a parish survey map was not compiled.
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.



<p>Observations</p>		<p>The application route was not shown on the Draft Map and no objections or representations were made to the county council about it.</p>
<p>Provisional Map</p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Observations		The application route was not shown on the Provisional Map and no objections or representations were made to the county council about it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.



Observations		The application route was not shown on the First Definitive Map.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Observations		The application route is not recorded on the Revised Definitive Map (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route was considered to be a public right of way of the type to be recorded on the Definitive Map and Statement by the Surveying Authority. There were no objections or representations made with regard to the fact that the route was not shown on the map when the maps were placed on deposit for inspection or at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from

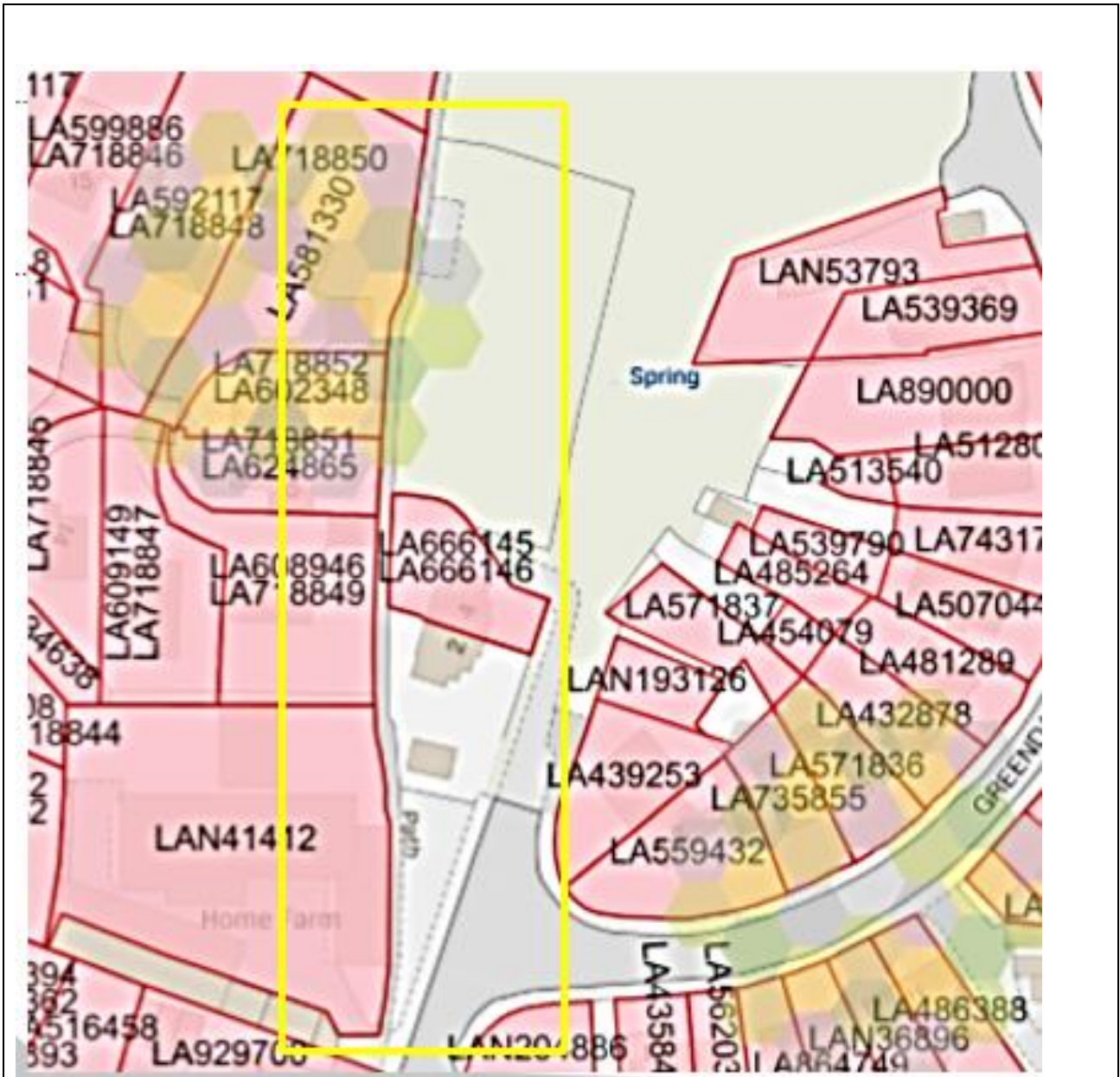
		<p>several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The county council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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<p>Observations</p>		<p>The application route is not recorded as a publicly maintainable highway on the county council's List of Streets.</p>
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Investigating Comments	Officer's		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access.
Highway Stopping Up Orders		1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the county council since that date.
Observations			A search of records held at the County Records Office was made and no legal Orders affecting the application route were found.
Investigating Comments	Officer's		There is no record of any public rights that may be found to exist along the application route having been legally extinguished.
Land Ownership plans			Plans obtained from the Land Registry.

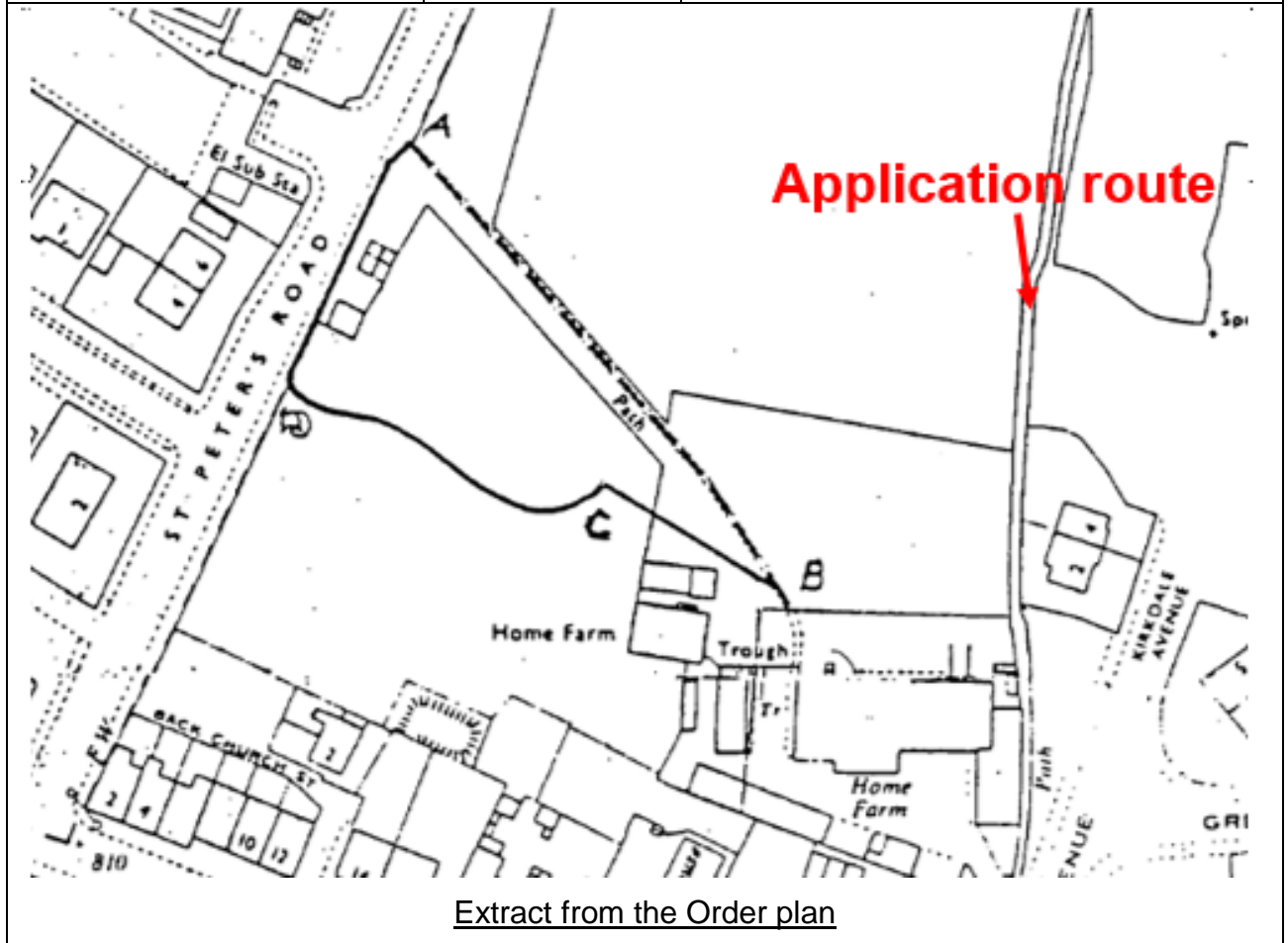


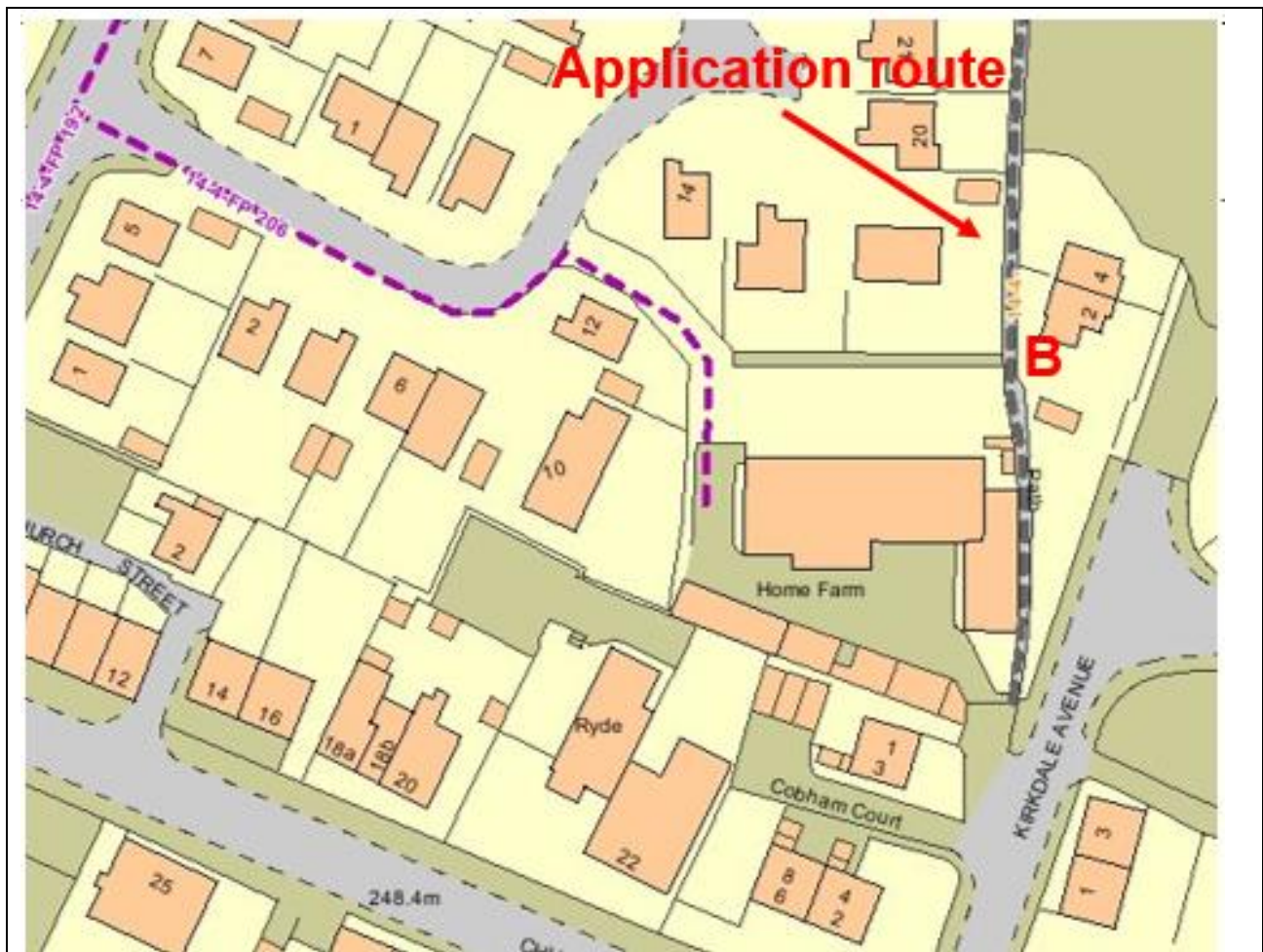


<p>Observations</p>		<p>Ownership of the land crossed by the application route is unregistered and unknown. All of the land situated immediately to the west of the application route is registered as being owned by a number of different individuals. The land to the east of the application route is largely unregistered with the exception of one property – house number 4 Kirkdale Avenue. The registered titles for this property (LA666145 and LA666146) provide some useful information about the history of the land. The property is subject to being held under a lease which is dated 14 November 1938 for</p>
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		<p>999 years. With the owners of the land listed as Greendale Land and Building Company Limited who are the company who are understood to have originally purchased the land on which Kirkdale Avenue and Greendale Avenue were built and who the applicant explained went bankrupt during the construction of the Avenue. It is not known whether the company owned any of the land over which the application route runs but it is clear that when the houses were constructed the application route was not altered or obstructed by the development.</p>
<p>Investigating Officer's Comments</p>		<p>It is not uncommon to find that ownership of land crossed by an enclosed public right of way is not registered and this often, when considered with all other available map and documentary evidence supports the view that the route is a historical public right of way.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already</p>

		been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.
Diversion of Footpath Rawtenstall 206	1986	Diversion order made and confirmed by Rossendale Borough Council in 1986.





Digitised public rights of way map

Observations

When carrying out a site inspection of the application route the Investigating Officer noted that a stone stile existed in the wall adjacent to the application route at point B which provided access onto an unrecorded path which ran along the back of Home Farm to connect to Footpath Rawtenstall 206 and Kirkdale Avenue which a local resident described as a 'public footpath' which was put in when the houses on Kirkdale Avenue were built.

A search through the county council records revealed that part of Footpath Rawtenstall 206 was diverted by Rossendale Borough Council in 1986 to allow for development.

The alternative route created by the Order was shown by a bold solid line on the Order plan and is referred to in the Order Schedule as being between points

		<p>B-C-D. The Order plan does not contain the annotation 'D' or any measurements but the diverted section does not appear to include the link through to the application route.</p> <p>However, the link from Footpath Rawtenstall 206 through to the application route at point B (on the Committee plan) does not appear to have existed prior to the construction of the houses on Kirkdale Avenue and appears to have been purposefully left as a link through to the application route.</p>
Investigating Officer's Comments		<p>The provision of a link through to the application route supports the fact that the application route existed as a route used by the public in the mid-1980s otherwise such a link would not have been provided unless required for some other private need.</p>
Photographs submitted by the applicant	2019	Photographs taken on 16 May 2019

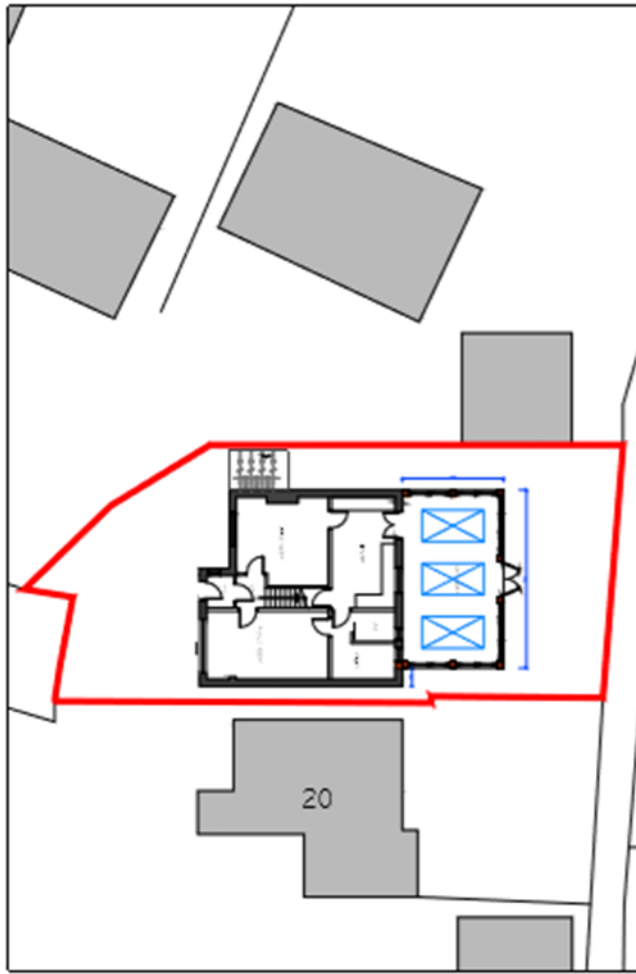


Photograph 1



Photograph 2

Observations		The photographs taken in 2019 show the application route adjacent to Home Farm (from point A) and from point E looking south towards point D. The sections of the route shown on the photographs appear to be open and available to use but the full length of the route is not shown.
Investigating Officer's Comments		The sections of route shown still existed in 2019 and appeared to be capable of being used but no inference can be drawn with regards to the existence of public rights.
Planning 2018/0493	Application 2018	Details of Planning permission granted for a garage conversion and rear orangery to 21 Hillside Drive.



BLOCK PLAN SCALE 1:200



LOCATION PLAN SCALE 1:500

LOCATION AND BLOCK PLAN – 21 HILLSIDE AVENUE. BB4

property which abuts the application route.

The plans submitted as part of the application clearly show the boundary of the property marked in red as being up to but not including the application route. The application route is shown on the base plans but is not referred to.

Planning permission was granted for the development and when the application route was inspected in June 2019 it was clear that work was underway and that at the same time as implementing the planning permission work appeared to have been carried out to remove the walls which previously enclosed the application route to open up a larger area to the rear of the property.

Investigating

Officer's

Whilst implementation of the planning

Comments		<p>permission does not affect the application route it appears that the construction of the orangery would greatly reduce the size of the garden to the rear of the property and that the owners of the property are looking to extend their garden over land forming part of the application route.</p> <p>Consultation letters have been sent to the owners of the property and details of any responses are detailed later in this report.</p>
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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.

Landownership

The land crossed by the application route is not in registered land ownership.

Summary

The application route is not shown on any small scale early commercial maps pre dating the Ordnance Survey mapping. This is not however necessarily surprising as the application is for a public footpath – which is not normally shown on such maps which were produced primarily to show routes to be used on horseback and in particular with horses and carts/carriages.

The route is clearly shown on the first edition 6 inch Ordnance Survey map surveyed and published in the 1840s and from the 1890s is clearly shown and labelled as a footpath on the 25 inch OS maps connecting to a network of routes now recorded as public footpaths.

The map and photographic evidence available from the 1840s through to the current time supports the view that the route physically existed and was capable of being used by the public on foot.

In addition, it was identified as a 'public footpath' on a plan prepared in the 1930s for the construction of houses which abutted the route and from which a proposed link into the route was shown.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant has submitted the following map and documentary information with the application all of which are considered above:

- 1st edition 25 inch Ordnance Survey map LXXII-10 published 1891

- Builders' plan for Kirkdale Avenue and Greendale Avenue dated 1936
- Modern GIS map extract with application route shown
- Google earth aerial photograph with route marked on dated 2018
- 2 photographs of the route dated 6 May 2019

In addition 21 user evidence forms were submitted by the applicant.

The owner of the farm alongside the route and owners of adjoining properties on Hillside Drive at nos. 20 and 18 support the recording of the route as a footpath and refer to their own use and of seeing others use the application route.

There are 11 users giving evidence of use throughout the twenty year period 1999-2019 with a further 4 using it in 1999 but their use ending before 2019, and a further 5 whose use started sometime before 2019 but continued until 2019.

Some date their use back to the 1970s (8 users in that decade) and the 1980s (12 users) and 1990s – 16 users.

There is the reference to use of a path to the rear of the gardens of Nos 16 and 18 Hillside Drive to reach the application route from Hillside Drive and how the southern section of the route may be more used as a consequence. In the main however there are lots of references to a well used local path along the whole of its length. Most of the users refer to seeing others on the route. They refer to how the route goes to the walking area of Seat Naze and to its use as a dog walking route and for rambling.

There are those who have used it 4-6 times a year and those who use it weekly or even daily. None have seen any signs or had their use challenged in any way until the wall was built on 26th May 2019. There is no suggestion that the route before then had ever been obstructed and the users of the path refer to using it without any permission. Ownership is often referred to as unknown.

Information from Others

One of the residents living immediately adjacent to the route on Hillside Drive replied to the consultation letter explaining that they had lived in Newchurch for almost 50 years and adjacent to the application route since 1990. They state that throughout that time the route has been used regularly by the public, Newchurch residents and visitors to the village. They refer to the fact that the route is shown on maps since the 1800s and that the path was used until recently when it was blocked by residents who they describe as having moved in to the properties relatively recently and who are trying to prevent the community accessing the 'ancient path'.

A further resident of Hillside Drive whose property also abuts the route stated that they had regularly used the route since buying their house in 1999 until it was blocked by neighbours in June 2019. They also refer to the path being shown on an Ordnance Survey map published in 1891.

Information from the Landowner

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

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- Substantial user evidence
- Adjacent property owners report seeing others using the route on foot for many years
- Absence of signs and notices along the route stating that the route was not public.
- Map and other historical documentary evidence supporting the physical existence of the route since the mid-1800s.

Against Making an Order(s)

Conclusion

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

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

Considering initially whether there are circumstances from which dedication could be inferred 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 landowner(s) intended to dedicate the route as a public right of way.

The analysis of the map and documentary evidence reveals that the route is not shown on any of the small scale maps but is shown on the first edition 6 inch OS maps of 1830 and 1860. In addition, the route is shown (as part of a larger route) on the 1891, 1911 and 1930 25 inch OS map and is annotated as "footpath" suggesting that at such time the route was physically available and showed all the characteristics of a footpath. The route is shown on Cassini New Series of Maps 1903-1904 and shows the route as a bounded route providing direct access to the now recorded route FP180. The route was also shown on two independent maps being the Authentic Map Directory of South Lancashire 1934 and labelled as a public footpath on Builders Plans dated 1936, suggesting that the route was considered by the builders developing the adjacent land as a public footpath in the 1930s, and that the route physically existed and was capable of being used by the public on foot from at least the mid 1800s. Whilst it was not included on either the Draft, Provisional or First Edition Definitive Map, the reason for it not being included is not known and no

legal orders have been found extinguishing any public rights which may have already existed along it.

Looking at the user evidence, it would appear that there has never been any clear action by owners to prevent use by the public and use by the public has continued for many years such that, on balance, there may be sufficient evidence from which to infer dedication at common law.

Looking secondly at the criteria for a deemed dedication under section 31 of the Highways Act 1980, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a sufficient 20 year period immediately prior to the route being called into question. In this matter, the evidence indicates that access to the route was denied in May 2019 by the construction of a wall across the route which in turn triggered the application. Accordingly, the 20 year period under consideration for the purposes of establishing deemed dedication would be 1999-2019.

The applicant has provided 21 user evidence forms in support of the application, which show use of the route from as early as the late 1960's early 70's. 11 users have provided evidence of use during the period under consideration, with other users having used the route for significant periods of time around the period under consideration. The majority of users refer to having witnessed other users whilst using the route, none of the users recall having ever been told that the route was not a public right of way, nor do any users refer to having been turned back or having asked permission to use the route. It is therefore suggested that the user forms indicate that on balance, the route has been used as of right and without force, secrecy or interruption during the period under consideration. It is therefore suggested that there is sufficient evidence of use of the claimed route by the public as of right to raise a presumption of dedication for the period 1999 to 2019.

In conclusion, taking all of the evidence into account, the Committee on balance may consider that the provisions of section 31 of the Highways Act 1980 can be satisfied. In addition, or in the alternative, Committee may also consider that it can be reasonably alleged that there is sufficient evidence from which to infer dedication of a public footpath at common law.

Committee is therefore advised to accept the application and promote the Order to confirmation.

Risk management

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-608		Joanne Lawson, 01772 535604, County Secretary and Solicitors Group

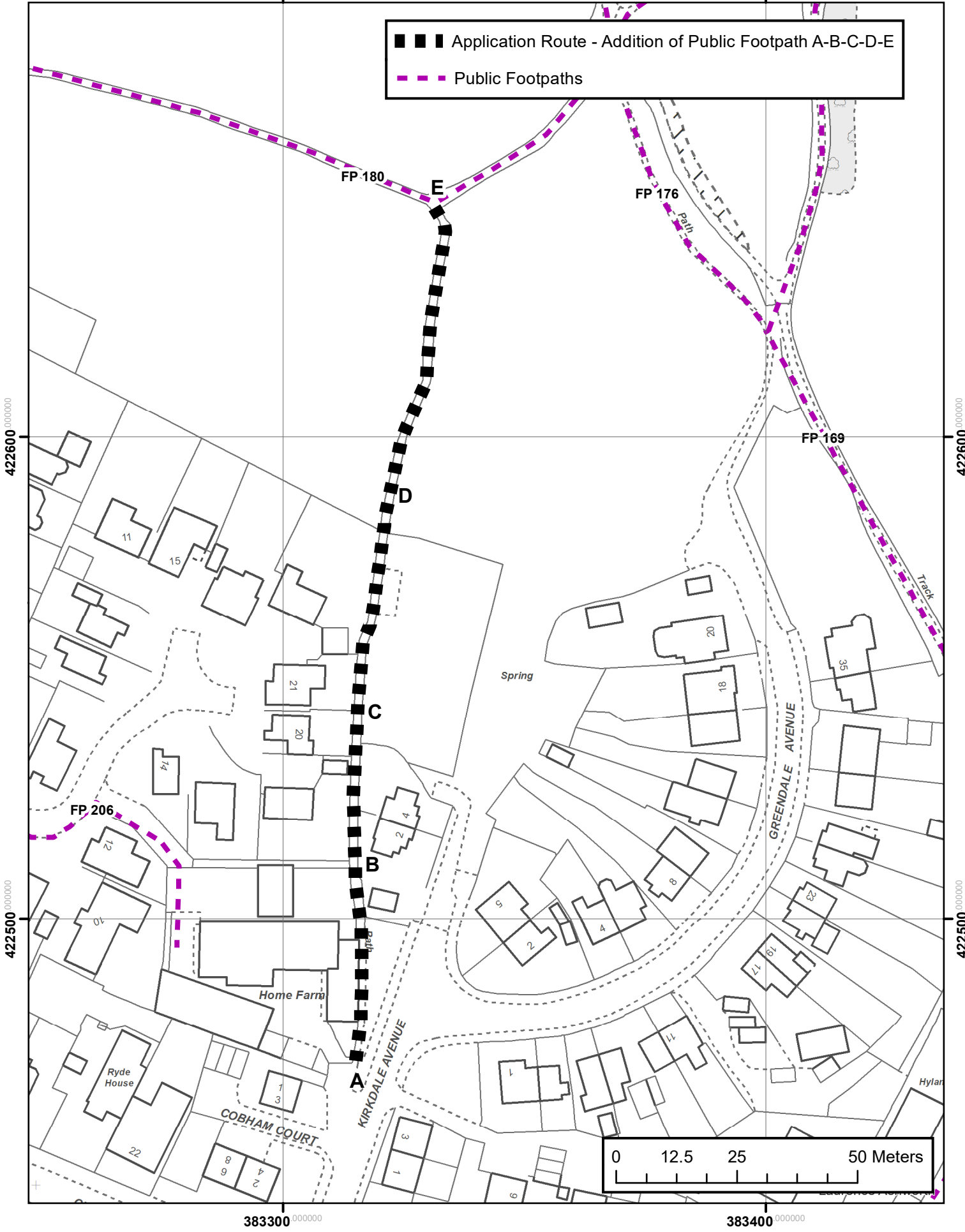
Reason for inclusion in Part II, if appropriate

N/A

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Application Route - Addition of Public Footpath A-B-C-D-E
 Public Footpaths



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Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
Addition of Public Footpath from Kirkdale Avenue, Newchurch to Rawtenstall Footpath 180 and Seat Naze

1:1000

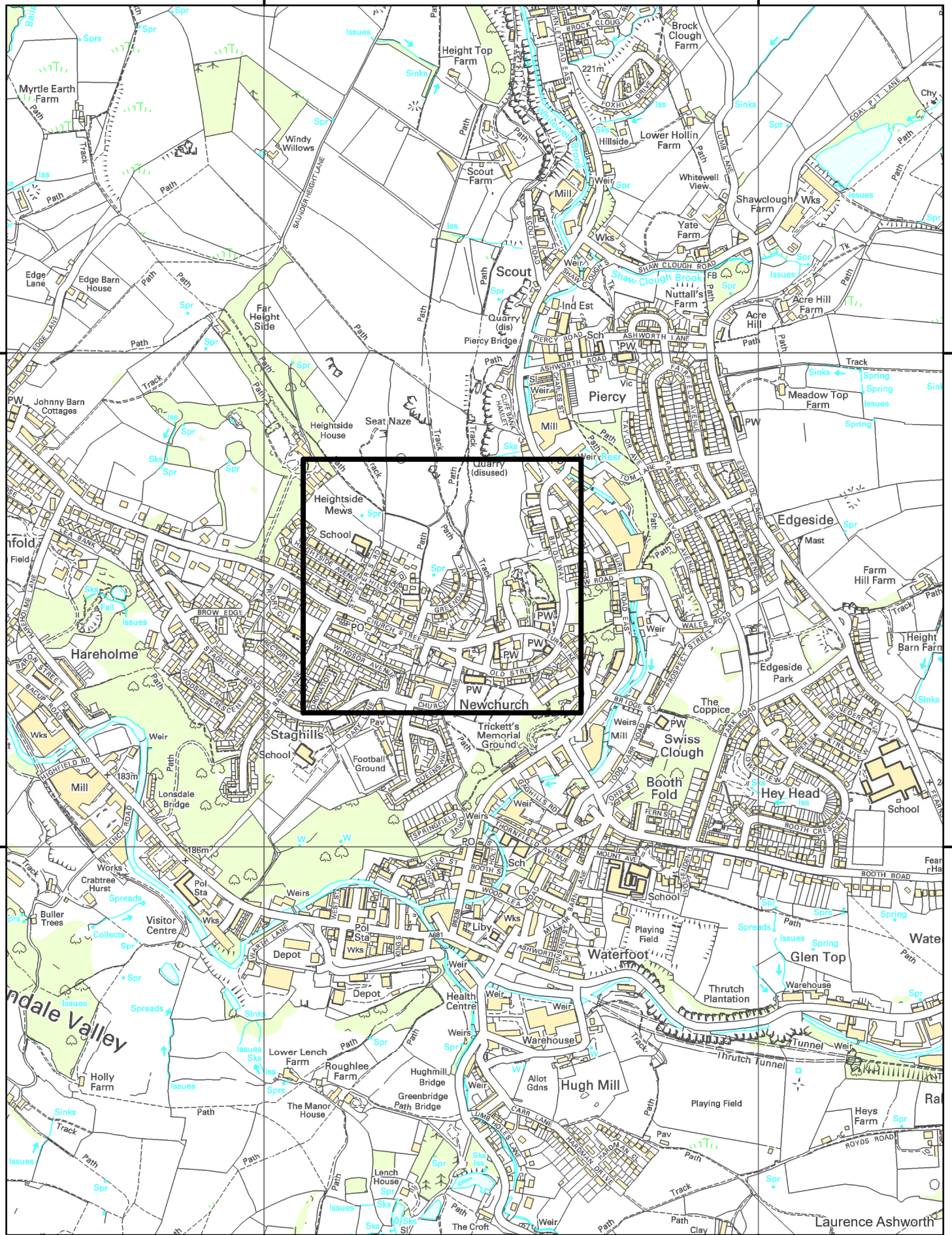


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Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
Addition of Public Footpath from kirkdale Avenue, Newchurch, Rossendale
LOCATION PLAN

1:10,000



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