

## **Regulatory Committee**

Meeting to be held on 25 January 2017

Electoral Division affected:  
Longridge with Bowland

### **Wildlife and Countryside Act 1981**

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

#### **Addition of Footpath from Higher Road to Wellbrow Drive, Longridge, Ribble Valley**

**File No. 804-582**

(Annex 'A' refers)

Contact for further information:

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### **Executive Summary**

Application for the addition to the Definitive Map and Statement of a footpath from Higher Road to Wellbrow Drive, Longridge, Ribble Valley, in accordance with file no. 804-582.

### **Recommendation**

1. That the application for the addition to the Definitive Map and Statement of a footpath from Higher Road to Wellbrow Drive, Longridge, in accordance with File No. 804-582, be accepted.
2. That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53(3)(c)(i) the Wildlife and Countryside Act 1981 to add a footpath from Higher Road to Wellbrow Drive on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

### **Background**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a public footpath from Higher Road to Wellbrow Drive, Longridge on the Definitive Map and Statement of Public Rights of Way.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out

the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

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

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

## **Consultations**

### **Ribble Valley Borough Council**

Ribble Valley Borough Council have been consulted but no response has been received to date, it is assumed that they have no comments to make.

### **Longridge Town Council**

The Town Council have responded stating that they support the application to record the path.

### **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	6098 3758	Gated access from Higher Road onto access way between 71 and 71a Higher Road
B	6096 3760	Path passes between the rear boundary fences of 71 and 71a Higher Lane
C	6095 3761	Path narrows between garage and rear garden fence of 20 Wellbrow Drive
D	6093 3763	Open junction of application route with Wellbrow Drive between 18 and 20 Wellbrow Drive

### Description of Route

A site inspection was carried out on 4<sup>th</sup> December 2016.

The route commences at a junction with Higher Road, Longridge between the properties numbered 71 and 71a Higher Road and shown as point A on the plan. 71 Higher Lane is the most northerly of a row of 8 terraced properties in the row of properties dating back to at least the mid 1800s and known originally as 'Cut Thorn'.

From point A the application route leaves the footway to pass through green metal gates which were in the closed position on the day that the path was inspected, but which were not locked. The gates have been erected across the full width of the route which is bounded on either side by the garden fences/walls of 71 and 71a Higher Lane. Once through the gates the route runs in a north westerly direction along a block paved area that appears to be a driveway providing direct access to a side porch from 71 Higher Lane. The route is 3 metres wide and refuse bins belonging to the terraced cottages are position along the south west side of the route.

Adjacent to the side porch of 71 Higher Lane a vehicle was parked on the route. The vehicle did not prevent access but it restricted the width of the route available.

Beyond the parked vehicle the block paving ends and the route continues at a width of 3 metres along a roughly tarmacked route sloping gradually downhill. Washing lines were strung across the route close to the parked vehicle on which washing had been hung making it necessary to weave through it to continue along the route.

Just prior to reaching point B on the Committee plan the bounded area over which the route runs fans out as a hedge separating the garden of 71 Higher Lane curves west. From point B the application route continues in a north westerly direction across a more open area passing an electricity substation situated immediately north

east of the route which it was noted could only be accessed from the application route.

At point C the application route narrows to 1 metre wide as it passes between a garage (accessed from the application route between point A-B) and the rear garden fence of 20 Wellbrow Drive.

The route at point C, and alongside the garage towards point D was accessible on the day the route was inspected although a significant amount of cut down tree branches and other vegetation was piled along it and a long plank of wood had been propped up across the route (which it was possible to walk under).

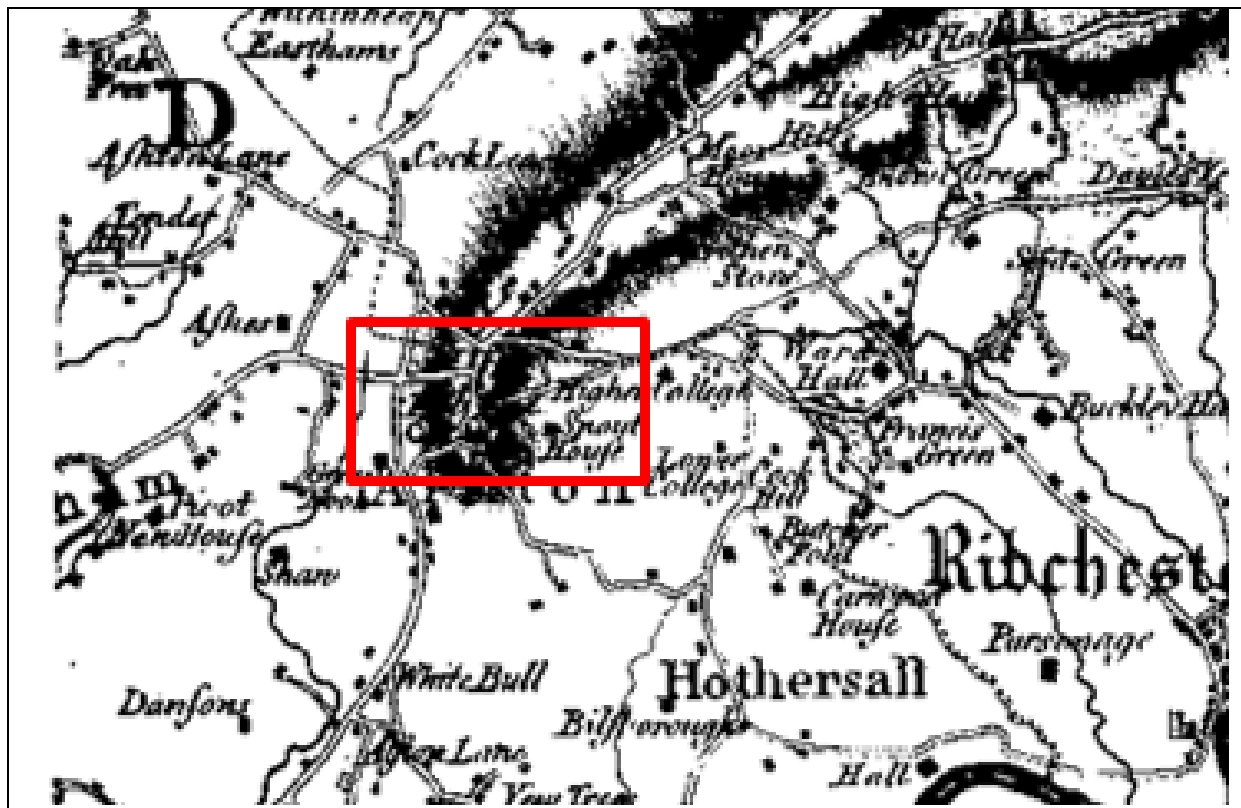
Once past the garage the route continues along a narrow 80cm wide path fenced off between 18 and 20 Wellbrow Drive. The surface of the route was firm, compacted earth with evidence of recent footprints.

At point D the route meets Wellbrow Drive and access is unrestricted.

The total length of the route is 75 metres.

### **Map and Documentary Evidence**

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

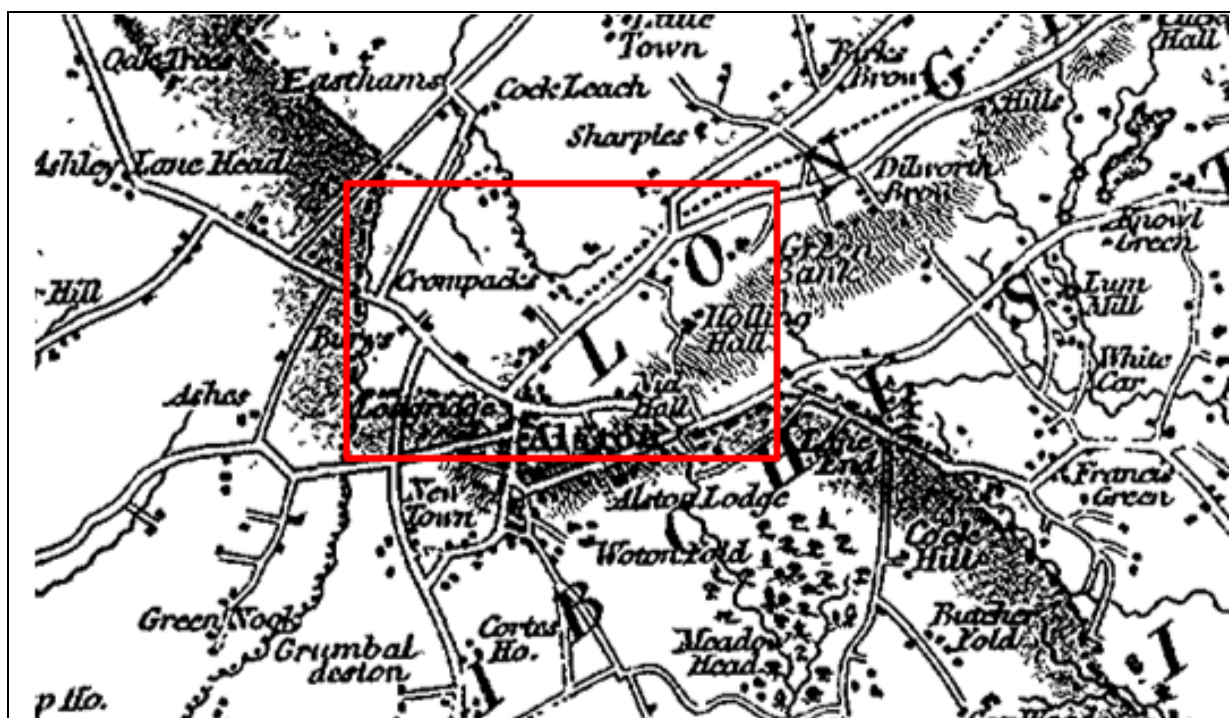


Observations		The application route is not shown. Higher Road is shown but Wellbrow Drive is not.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



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





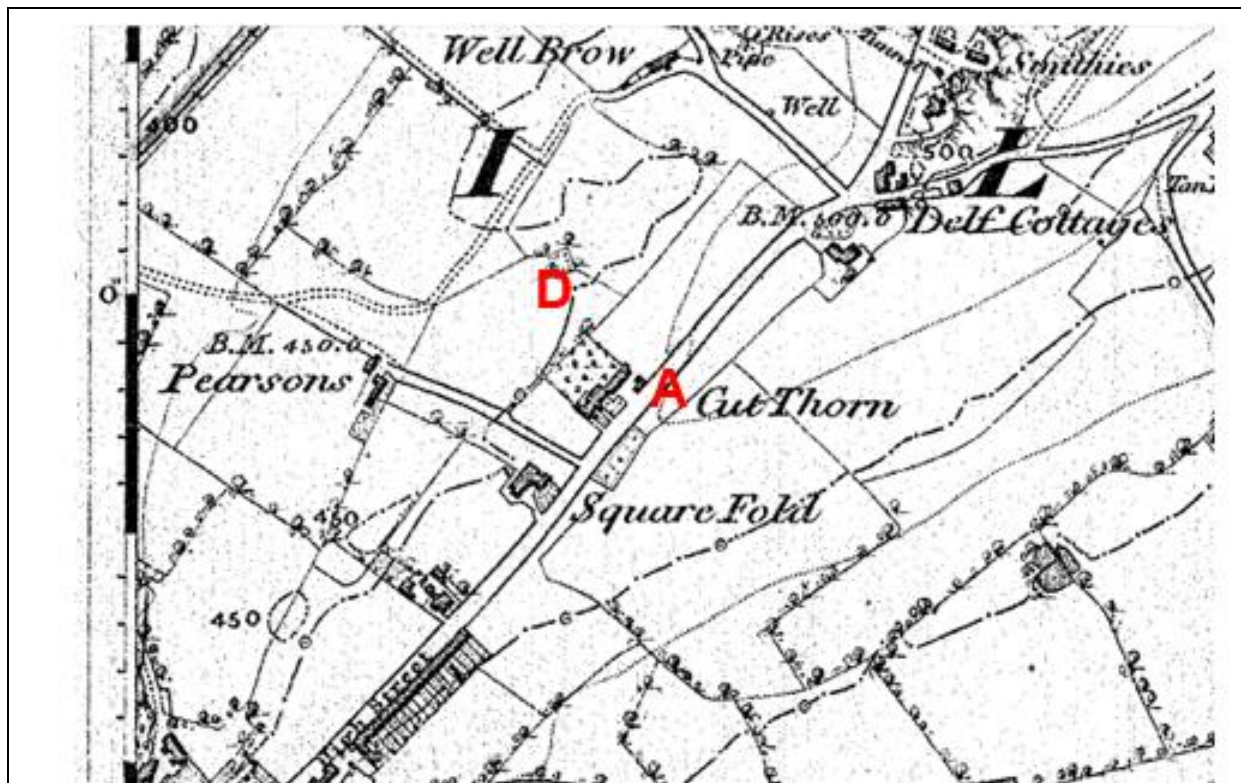
Observations		The application route is not shown. Higher Road is shown but Wellbrow Drive is not.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and purpose for which the map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

		show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		Ordnance Survey mapping and other map and documentary evidence examined later in the report show that the application route did not come into being as a through route until the construction of Wellbrow Drive and that no part of the route was shown to have existed in the 1800s. For this reason the Tithe Map for the area crossed by the application route has not been examined.
Investigating Officer's Comments		No inference can be drawn.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		The Inclosure Awards for Dilworth and Thornley with Wheatley have not been examined to see whether they included the area crossed by the application route because there is no map evidence suggesting that the route existed in the 1800s.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1847. <sup>1</sup>

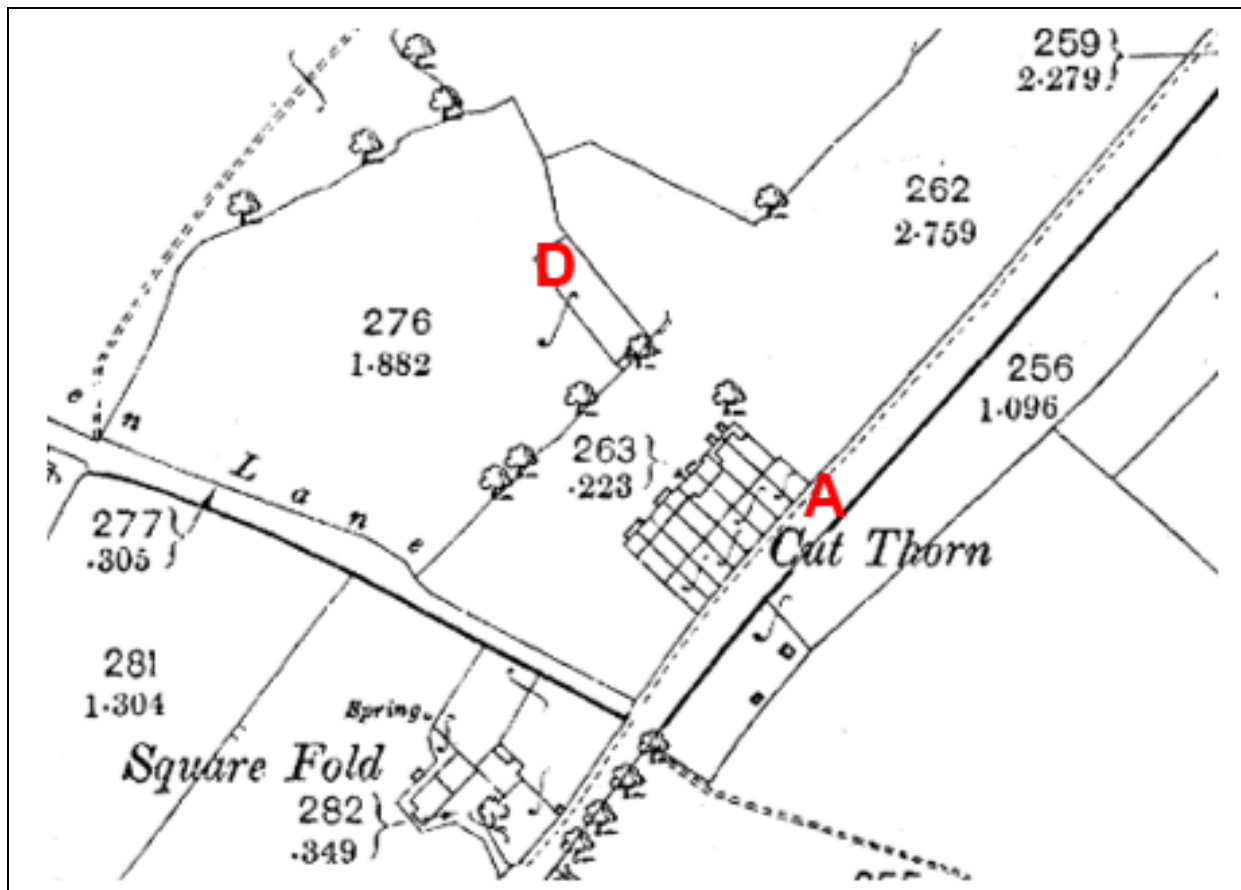
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<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire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



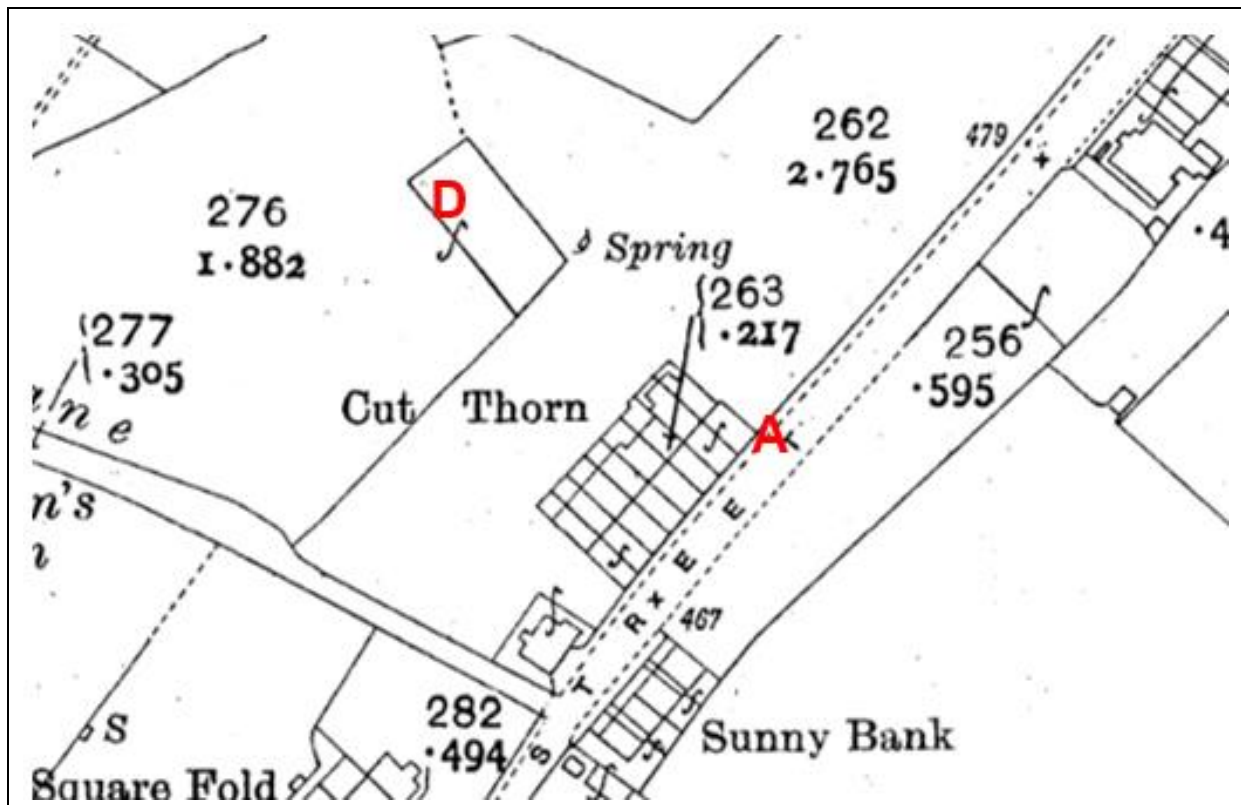


Observations		The application route is not shown. Higher Road is shown (named High Street on the map) but Wellbrow Drive is not shown. Buildings are shown south west of point A which appear to have been known as 'Cut Thorn'. The land over which the application route runs is shown as fields and there is no marked on the map.
Investigating Officer's Comments		The route under investigation probably did not exist in 1844 (date of survey).
<b>25 Inch OS Map</b>	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.



Observations		<p>The application route is not shown. The 25 inch map shows the area in more detail with a row of terrace houses known as Cut Thorn to the south west of point A.</p> <p>The application route crosses fields and no path is shown. Wellbrow Drive is not shown.</p>
Investigating Officer's Comments		The route under investigation probably did not exist in 1892 (date of survey).
<b>25 inch OS Map</b>	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.
Observations		The application route is not shown and there are no changes to the map in the vicinity of the route from the date of the first 25 inch OS map survey.
Investigating Officer's Comments		The route under investigation probably did not exist in 1910 (date map revised).
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.</p> <p>Making a false claim for a deduction was an offence although a deduction did not have to be claimed so</p>

		<p>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		There are no Finance Act maps available to view in the County Records Office for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>25 Inch OS Map</b>	1932	Further edition of 25 inch map (surveyed 1892, revised in 1930 and published in 1932.






Observations		The application route is not shown. The area crossed by the application route is shown unchanged from how it is shown on the first and second edition 25 inch OS maps.
Investigating Officer's Comments		The route under investigation probably did not exist in 1930 (date of map revision).
<b>Authentic Map Directory of South Lancashire by Geographia</b>	Circa 1934	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>
Observations		The map does not cover the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.

<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
		
Observations		The route under investigation is not shown. Some buildings, apparently under construction, are shown to the north east of the route.
Investigating		The route did not exist as a visible track on the

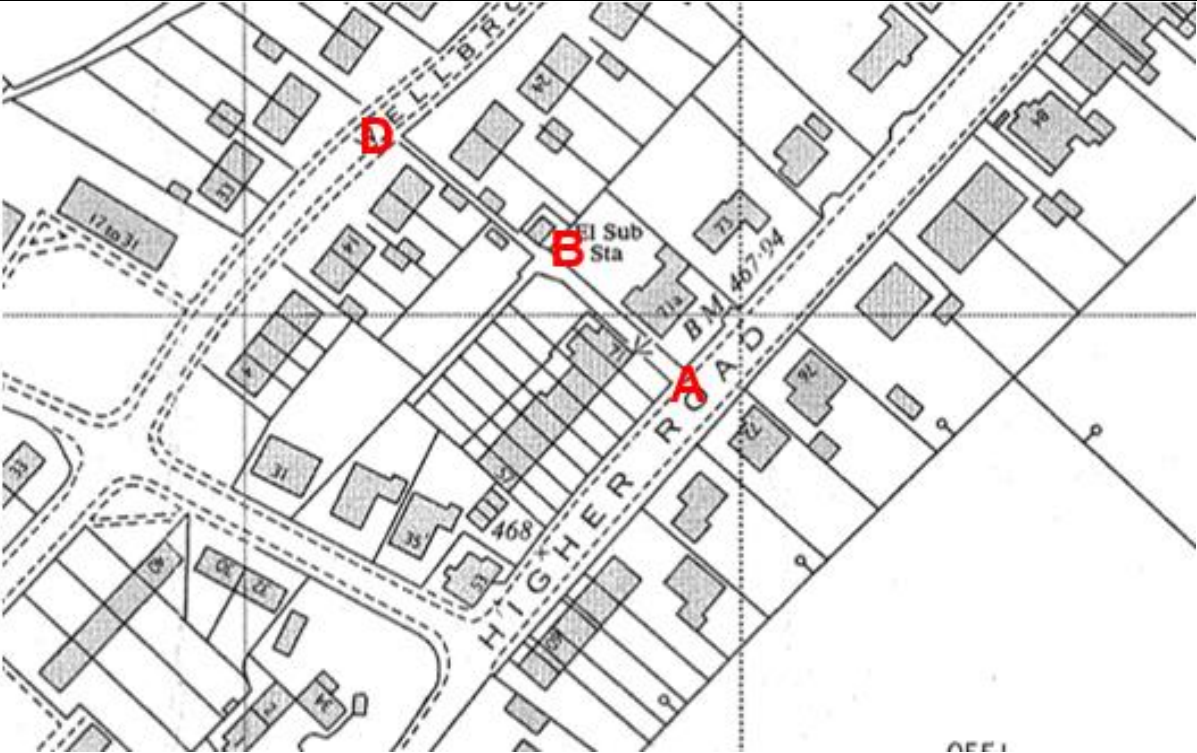
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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





Officer's Comments		ground in the 1940s.
<b>1 inch OS Map</b>	C1950	Extract of 1 inch map available to view on LCC website. Date of survey not known but titled as having been published between 1953 and 1955.
		
Observations		The application route is not shown, nor is Wellbrow Drive.
Investigating Officer's Comments		It is unlikely that the application route existed before the revision date for this map, sometime between 1937 and 1951.
<b>6 Inch OS Map</b>	1955	<p>The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map is probably based on the same survey as the 1930s 25-inch map with a major revision in 1928-30 and subsequent revision between 1937 and 1951.</p> <p>A copy of the 6 inch 1955 OS map for the area is missing from the CRO but as it was used as the base map for the publication of the Revised Definitive Map (First Review) it is possible to examine that.</p>

		
Observations		<p>The area to the north east of point A appears to have undergone some changes with buildings being shown adjacent to Higher Road around which there is a boundary marked abutting the application route and leaving a strip of land extending from point A along which the application route runs. This strip of land appears to form part of a field which extends around the rear of Cut Thorn. There is no marked route along the strip of land from point A or across the field and access to point D (or beyond) is not shown.</p>
Investigating Officer's Comments		<p>The application route may have existed between point A and point B but there is no evidence that it formed part of a through route.</p>
<b>1:25,000 Ordnance Survey</b>	1958	<p>Compiled from the 6 inch map this map was revised in 1928-30 but incorporates further revisions 1937-51, was published in 1954 and reprinted in 1958.</p> 



Observations		The newer buildings to the north east of the route are shown as a separate block to the terrace and have an enclosure around them which leaves a strip, presumably for access, along part of the route suggesting it was accessible at this time although no form of path or track is shown and it only leads to the field behind the terrace.
Investigating Officer's Comments		Part of the route appears to have been available in the 1950s but if there was use by the public it was not sufficient to be shown on a map of this scale.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s.
Observations		There is no aerial photograph available to view for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>1:2500 OS Map</b>	1967	OS 1:2500 map revised and published in 1967.
		
Observations		The land surrounding the application route has been developed and the application route is shown as an open through route between point A and point D. Access from point A is open and unrestricted between properties 71 and 71a Higher Road. From point B there appears to be access from the application route to the rear of the cottages previously labelled as 'Cut Thorn' but now numbered 57 – 71 Higher Road. An electricity substation is

		shown adjacent to point B which only appears to be accessible from the application route. From point B through to point D the route is shown as being narrower to the section between point A and point B but the full length of the route appears to be open and unrestricted.
Investigating Officer's Comments		The route existed in 1967 and appeared to be capable of being used.
<b>6 inch OS Map</b>	1970	Ordnance Survey 6 inch map revised in 1967 and published in 1970.
		
Observations		The application route is shown as a wide open route between point A and point D.
Investigating Officer's Comments		The route existed in 1970 and appeared capable of being used. The depiction of the width of the route as being uniformly wide is indicative of the style of the map as opposed to an accurate reflection of the width available.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS.

		
Observations		The application route can be seen on the aerial photograph but it is not possible to see whether there it is accessible along the full width.
Investigating Officer's Comments		The application route existed in 2000 but it is not possible to determine whether it was freely accessible.
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey

		cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Longridge was a municipal borough in the early 1950s and a parish survey map was not compiled.
<b>Draft Map</b>		The Draft Maps were given a “relevant date” (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The route was not shown on the Draft Map and no representations were made to the County Council.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route was not shown on the Provisional Map and no representations were made to the County Council.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route was not shown on the First Definitive Map and Statement.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



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

		been lodged with the County Council for the area over which the route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.
<b>Google Street View</b>	2009	Photographs captured in 2009 by Google Street View.

#### Higher Lane

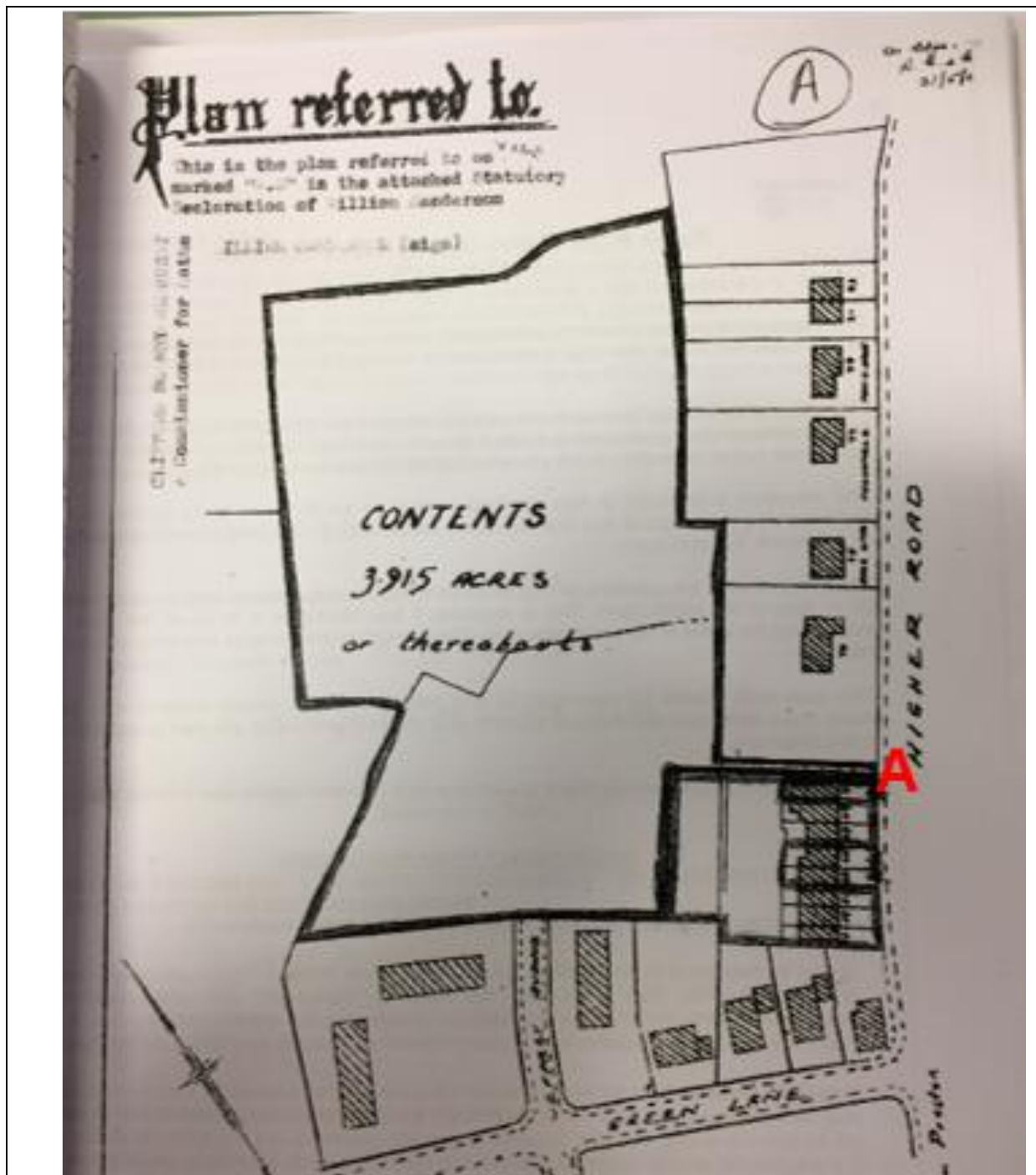


#### Wellbrow Drive



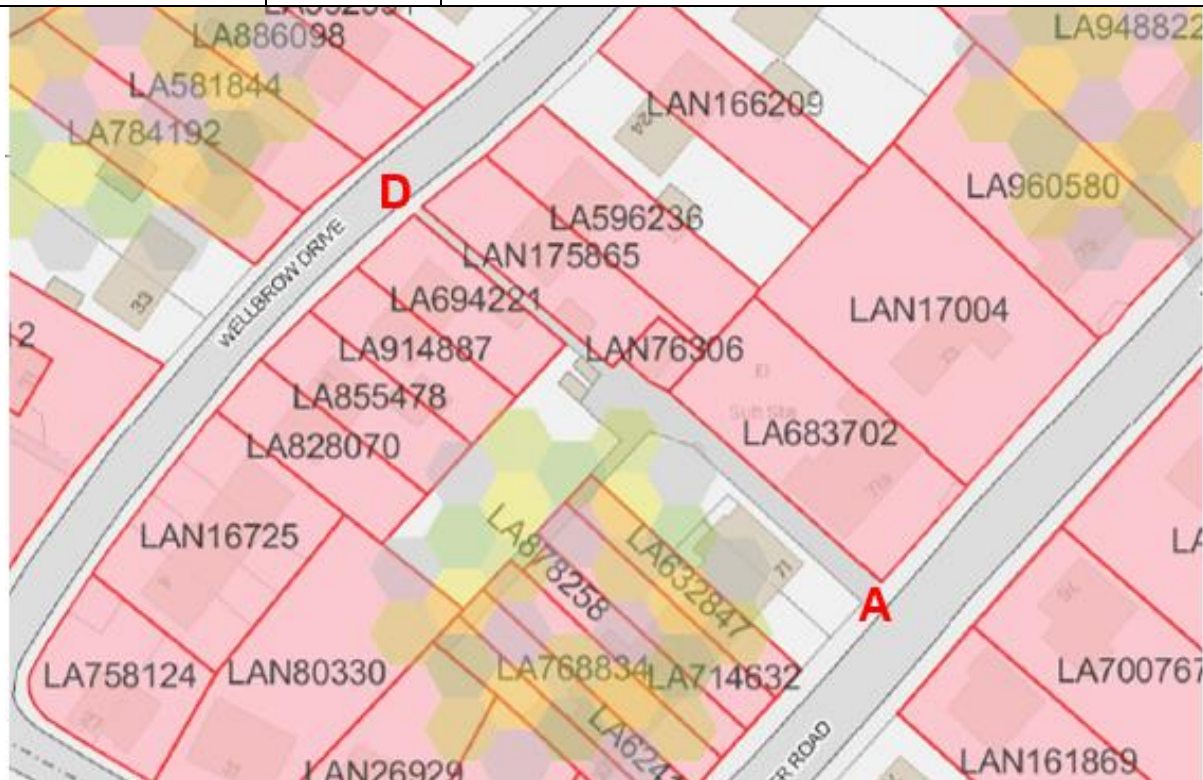


Observations		<p>Both photographs were taken in 2009.</p> <p>Access is shown as being open and available onto the route at point A. No signs are visible indicating whether or not the route was considered to be public or private but green gates can be seen at point A which are in the open position. A car can be seen parked on the route close to point B although it appears possible to walk round it.</p> <p>From point D the route, although very narrow, appears to be available between the two properties.</p>
Investigating Officer's Comments		<p>Access onto the route from both ends of the route appeared to be available in 2009. However, it is not possible to see whether access is available along the full length of the route.</p>
<b>Plan submitted by the Applicant</b>	Undated	<p>An undated plan was submitted by the applicant and was attached to the majority of user evidence forms submitted.</p> <p>The applicant was questioned with regards to the plan and he explained that it had been given to him by a local resident but that he could not remember who she was and that he had not been given any additional information with the plan.</p>



Observations		The black and white photocopy of a plan is undated. It contains a north point and scale bar (1:1250) and appears to be a plan that formed part of a Statutory Declaration made by William Sanderson. A plot of land is bounded on the plan which includes the application route from point A to point B between the adjacent properties which appears to provide the only access to the land (field) from Higher Road.
Investigating Officer's Comments		The plan is of limited value as it is undated and it is not known who prepared it or for what purpose. The land bounded, for which an approximate is given,

		appears to be accessed via the application route from point A to point B suggesting that prior to the development of Wellbrow Drive part of the application route already existed as access to a field.
<b>Land Registry documents</b>		Plans and title deeds were obtained from the Land Registry.



Land Registry title plan LA683702 drawn on 1:1250 OS base map published 1985



Observations		<p>The Land Registry plan for 71a Higher Road provides information regarding the physical existence of the route in 1985 (the date of the OS base map) confirming that the route, originally shown on the 1967 OS map still appeared to exist as a through route between point A and point D.</p> <p>None of the land crossed by the application route is registered. However, the current boundaries of the two properties on Wellbrow Drive – believed to have been built at the same time as part of a larger development - are shown on the title plans and appear to show that a strip of unregistered land exists between them which is consistent with the route under investigation.</p>
Investigating Officer's Comments		<p>The two properties on Wellbrow Drive appear to have been built in the early 1960s and are split by the application route. When sold neither property appears to have included the purchase of the land crossed by the application route although for further details of the exact boundaries of the two properties and whether they have altered since the properties were originally constructed it would be necessary to view the deeds to both. These documents have not been made available for inspection.</p> <p>The fact that neither property appears to have been sold to include the application route suggests that the route may have been intended to provide public – or possibly private – access through to Higher Road.</p>
<b>Articles published in the Longridge News</b>	2013	Two articles referring to the application route published in the Longridge News on 24 July 2013 and 7 August 2013.
Observations		<p>A letter was published in the Longridge News on 24 July 2013 from Longridge Town Council. The letter explained that the route of a historical footpath between Higher Road and Wellbrow Drive was not recorded on the Definitive Map and Statement and that the Town Council had been advised by the County Council that they could submit an application under the Wildlife and Countryside Act 1981 to get it recorded. The letter asks for anyone with evidence about the history or use of the route to contact them.</p> <p>On 7 August 2013 the Longridge News published a letter from 'The Maxwell Family' addressed to Longridge Town council. In the letter they explain that they live in the property adjacent to the route (71a Higher Lane) and that they purchased it in 2007. They explain that they were told that the</p>

		<p>(application) route had been closed by temporary agreement with the police because of anger towards an individual who they stated resided on the opposite side of the route to them. They wrote in the letter that they believed that the temporary closure was in 2003 and that the footpath had not been formally closed but had been blocked with rubbish. They also state that in 2011 they cleared a way through the rubbish and recorded themselves walking through. They explained that they had a copy of their recording if anyone would like to see it.</p> <p>They further stated that the previous owner of their property was a gentleman named Mr Cod who could also confirm that the route was a public footpath.</p>
Investigating Officer's Comments		<p>The letter provides information regarding knowledge of the route in 2007 (when the author bought the adjacent property) and indicates that the route was closed off in 2003 as a temporary solution to a separate community issue.</p>
<b>DVD submitted by the applicant</b>		<p>A DVD was submitted by the applicant on which it was written, 'Walking the proposed public footpath in Longridge between Higher Road and Wellbrow Drive. Taken by local resident W. Maxwell in 2008 and in 2014. Submitted as evidence of ongoing usage.'</p>
Observations		<p>The DVD contained two video clips. The earliest was recorded on 26 July 2008. The person filming the route does not inform you of his name but comments on the route as he walks along it. The recording starts on Higher Road and the 'cameraman' starts by passing through the metal gate at point A. He comments that it is difficult to open but not locked although refers to the fact that residents on Higher Road had reported to him that the gate was sometimes locked. The cameraman describes the route as a byway and points to a sign located on the fence adjacent to point A which states 'No Waggon's'. Footage of the route between point A and point B show the route is accessible but that a substantial amount of material is piled up along part of the width, including tyres, wood, vegetation and building rubble.</p> <p>The cameraman shows the route adjacent to the substation and then a shot of the continuation of the path at point C which appears to be completely blocked by cut wood/garden waste and debris. The film then shows a narrow passageway along the back of Cut Thorn cottages explain how difficult it is to access the backs of the properties because of the</p>

		<p>actions of the owner of 71 Higher Road. Further reference is made to the fact that vehicular access along the route between point A and point B and to the rear of the cottages had been prevented by the owner of 71 Higher Road.</p> <p>The second film was recorded on 17 September 2014 and appears to be the filmed by the same person. He starts to film on Wellbrow Drive (point D) and explains that he is filming the route to show that it is still open and useable. The cameraman walks the full length of the route from point D to point A.</p>
Investigating Officer's Comments		The application route existed but was blocked at point C in 2008 but the route was open to use in 2013.

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

### **Landownership**

Ownership of the land crossed by the application route is not registered with the Land Registry and ownership unknown.

Adjacent properties consulted are:

71 Higher Road, Longridge PR3 3TB  
 71a Higher Road, Longridge PR3 3TB  
 69 Higher Road, Longridge PR3 3TB  
 18 Wellbrow Drive, Longridge PR3 3TB  
 20 Wellbrow Drive, Longridge PR3 3TB  
 Electricity North West Limited, 304 Bridgewater Place, Birchwood Park, Warrington, WA3 6XG

Investigations into the history of the land crossed by the application route suggest that the land crossed by the route was owned by Mr William Sanderson prior to being sold to a developer in the 1950s or early 1960s who developed the land building the houses off Wellbrow Drive. The developers were Pius A. Baines and Son (Preston) and the company is no longer in existence. The houses built adjacent to the application route on Wellbrow Drive were sold by the developers and the land registry plans show that the application route was not included in the sale of either of the adjacent properties.

It appears that the Limited Company retained ownership and are now dissolved. The land may have passed to the Crown but the owner with the original intention behind constructing the path between points B-C-D is now not available.

The electricity substation was built on land purchased from the developer but the sale did not include the purchase of any part of the application route.

## **Summary**

There is no map or documentary evidence to suggest that the application route existed as a through route before Wellbrow Drive and the associated housing development was built in the early 1960s.

Access from point A to point B appears to have existed at an earlier date – possibly from the 1930s and provided access from Higher Road to fields.

From 1967 onwards there is clear map evidence that the application route existed as a through route from Higher Road to Wellbrow Drive.

Access is shown on the OS maps from 1967 onwards as being unrestricted although the 2009 google street view photograph shows a gate (in open position) at point A.

Although in an urban setting, and apparently created as part of a housing development there is no record of the application route having been adopted. However, the land registry plans available suggest that there is a strip of land between 18 and 20 Wellbrow Drive which was not included as part of the sale of either property which would be consistent with a developer's intention to provide a link through from Wellbrow Drive to Higher Road.

The video evidence supplied by the applicant confirms the existence of the route in 2008 but shows that it was physically blocked at point C at that time. A further video taken in 2014 shows the route open and useable.

The site evidence confirms the existence of a through route which, at the time of inspection was available to use.

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

### Information from the Applicant

The applicant has submitted a letter and user evidence form in support of the application.

In the letter he explains that he has researched the history of the application route back to when Cut Thorn Cottages (located on Higher Road) were built. He explains that prior to the houses on Wellbrow Drive being built the land was an open field purchased by a Mr Sanderson (no date provided). The applicant includes an undated plan with the application which formed part of a statutory declaration made by William Sanderson. The plan shows the outline of land said by the applicant to have been bought by Mr Sanderson and includes the land crossed by the application route. It shows the route from point A on Higher Road, between the houses providing access to the field. The applicant states that this part of the route also provided access to the rear of the cottages and for bin collections, coal deliveries and access to 'the old farm'. The applicant states that the application route from point A was kept open for public use after the land to the rear of the houses was sold for development and also that an electricity sub-station was built approximately half way down. He



states that there are two electricity cables underneath the path from the substation to Wellbrow Drive and that prior to the route being blocked off by an adjacent landowner Lancashire County Council sprayed the weeds along the route with weed killer.

A total of 13 user evidence forms were submitted (including one from the applicant). Evidence of use dated back to 1966 through to 2016 although the dates varied considerably 45 years (1955-2000), 38 years (1966-2004), 30 years (1956-1986), 28 years (1972-2000), 20 years (1962-1982), 19 years (1995-2004), 15 years (1998-2008), 15 years (1973-1988), 13 years (1970-1983), 12 years (1955-1968), 8 years (2008-2016), 1 year (2015-2016).

Use was stated as being for recreation, to visit friends, get to the shops, to play, for family walks with the children, to deliver newspapers and as a short cut to the local shop.

One user recounts how he used the route on bicycle as a child/young adult prior to learning to drive (from 1970-83) but all other users refer to use on foot.

Much reference is made to the route being blocked by a resident living adjacent to the path and actions by an adjacent landowner to block the path with vegetation, rubbish and building materials and there are references to a locked gate at point D. The date when the path was blocked is unclear but there are several references to it being around the late 1990s or possibly between 2000 and 2003. Video evidence shows it was blocked in 2008 but open in 2014 and it appears that some use appears to have continued after it was blocked although the frequency of this use is unclear.

In conversation with the applicant he has alleged that the original blocking of the path coincided with criminal proceedings against the adjacent landowner and that use of the path has continued on an intermittent basis since then. In compiling the application the applicant had spoken to a considerable number of local people who had used the route in the past but who were unwilling to complete user evidence forms because their details would be made publicly available and they were concerned about possible repercussions.

### Information from Others

A letter was submitted from Longridge walking group as part of the application stating that one of the routes walked recently by the group was an undesignated path used historically as a pedestrian thoroughway. They say there was a former access point to where there was once a farm but which has since been developed for housing.

They state that the route has fallen into disrepair but that they walked it in August 2016.

The group wish to support the recording of the route as a footpath and the letter is signed by 12 signatories.

## Information from Landowners

Ownership of the land is not registered. Adjacent landowners were consulted and the following comments received:

71a Higher Road: The house owner stated that he had used the route historically and fully supported it being opened up officially as a public footpath and added to the Definitive Map. (Note: This is a member of the same family who wrote to the Longridge Town Council in 2013 and whose letter was published in the Longridge Times).

Electricity North West: No objection to the proposal but highlighted the fact that there were underground cables located along the full length of the route.

## **Assessment of the Evidence**

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

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

- Some user evidence
- Post-1960s OS Map Evidence
- Aerial photographs
- Google Street view images
- Absence of signs and notices along the route
- Absence of actions taken by the landowner to discourage the use of the route

#### Against Making an Order(s)

- Route not shown on any pre-1960s maps
- References to Gates and barriers along the route and mention by some users to gates being locked
- Interruptions to use limits some of the user evidence although it is unclear when or to what extent
- Use prior to housing estate is not likely to have followed the subsequently enclosed line

## **Conclusion**

The claim is that the route A-B-C-D is an existing public footpath and should be added to the Definitive Map and Statement of Public Rights of Way.

It is therefore advised that as there is no express dedication that the Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on

sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Considering initially the criteria for a deemed dedication under section 31 of the Highways Act, that use needs to be "as of right" and also sufficient for the 20 year period. The first consideration is to determine whether the route is called into question. In this matter the evidence indicates different recollections about when access was prevented by way of the presence of a locked gate at point D and the blockage of the route by an adjacent landowner with such as vegetation, rubbish and building materials. Whilst it would appear that some users have continued to use the route after it was blocked the frequency of this use is unclear and the majority of users state that access was prevented. Looking at the evidence the blocking of the route may possibly have been as early as the late 1990's. However, having looked at the evidence as a whole on balance it seems reasonable that use was prevented from between 2000 and 2003 and it is therefore considered on balance that the period of use from which dedication can be deemed would be 1980-2000.

13 user evidence forms have been submitted of which one has been completed by the applicant. Of the 13 users, 11 have provided evidence of use during the period under consideration. All users claim to have known and used the route on foot on a regular basis "as of right" with one user also recounting having used the route on bicycle as a child between 1970-1983. All users refer to having witnessed other users whilst using the route. None of the users have seen any signs or notices along the route or have asked permission to use the route.

Considering also whether there are circumstances from which dedication could be inferred at common law. The analysis of the map and documentary evidence by the Head of Service – Planning and Environment provides evaluation of the documentary evidence. The route is not shown to exist on any of the early commercial maps and there is no documentary evidence to support the existence of the route as a public highway. Whilst it appears that access to the route from point A to B may have possibly existed from the 1930s providing access from Higher Road to the fields there is no clear map or documentary evidence to show that the application route existed as a through route prior to the building of Wellbrow Drive and the associated housing development in the early 1960s. From 1967 there is clear map evidence of the application route having existed as a through route from point A to D.

It is suggested that the way this route is recorded on documentary evidence is not in itself sufficient circumstances from which dedication could be inferred. However, sufficient as of right use may also be circumstances from which dedication can be inferred. The use as corroborated by the documentary evidence outlined above would suggest that it may reasonably be alleged that there are sufficient circumstances to infer at common law.

Taking all of the evidence into account, the Committee on balance may consider that the provisions of section 31 Highways Act can be satisfied and that it can also be reasonably alleged that there is sufficient evidence from which to infer dedication at

common law of a footpath in this matter and that the claim can be accepted. Committee is therefore advised to accept the claim.

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

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-582		Jayne Elliott, Planning and Development, Public Rights of Way, Tel 01772 537663

Reason for inclusion in Part II, if appropriate

N/A