Regulatory Committee
Meeting to be held on 15 November 2017

Electoral Division affected: Lancaster Central

Wildlife and Countryside Act 1981
Claimed public footpath around Glasson Canal Basin, Thurnham, Lancaster
File Ref. Nos. 804/519 and 804/555
(Annex 'A' and Appendix A & B refer)

Contact for further information:
Claire Blundell, 01772 533196, Paralegal Officer, Legal and Democratic Services, claireblundell@lancashire.gov.uk
Jayne Elliott, 01772 537663, Public Rights of Way Officer, Environment and Planning, jayne.elliott@lancashire.gov.uk

Executive Summary

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

Recommendation

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

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Consultations

Lancaster City Council

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

Thurnham Parish Council

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

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

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

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

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

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

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

Claimant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

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

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

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

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

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

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

Points annotated on the attached Committee plan.

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

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

Description of Route

A site inspection was carried out on 2 May 2017.

<u>Route 1</u>

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

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

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

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

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

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

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

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

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

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

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

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

<u>Route 2</u>

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

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

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

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

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

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

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

<u>Route 3</u>

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

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

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

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

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

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

Route 4

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

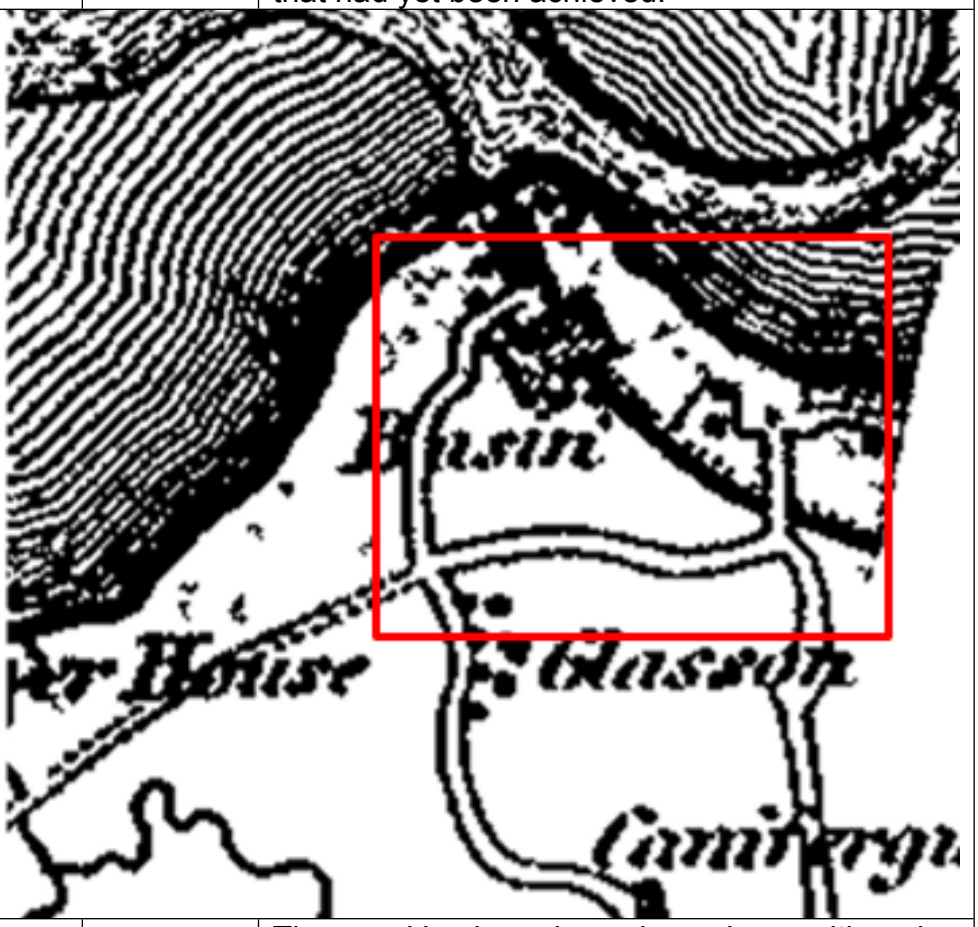
The route commences on Jeremy Lane immediately north of Brows Bridge (point K) and descends stone steps to join the canal towpath. It then continues in a north westerly direction along the towpath adjacent to the Lancaster Canal and passes a gated entrance to the rear of Christ Church to the point at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

Map and Documentary Evidence

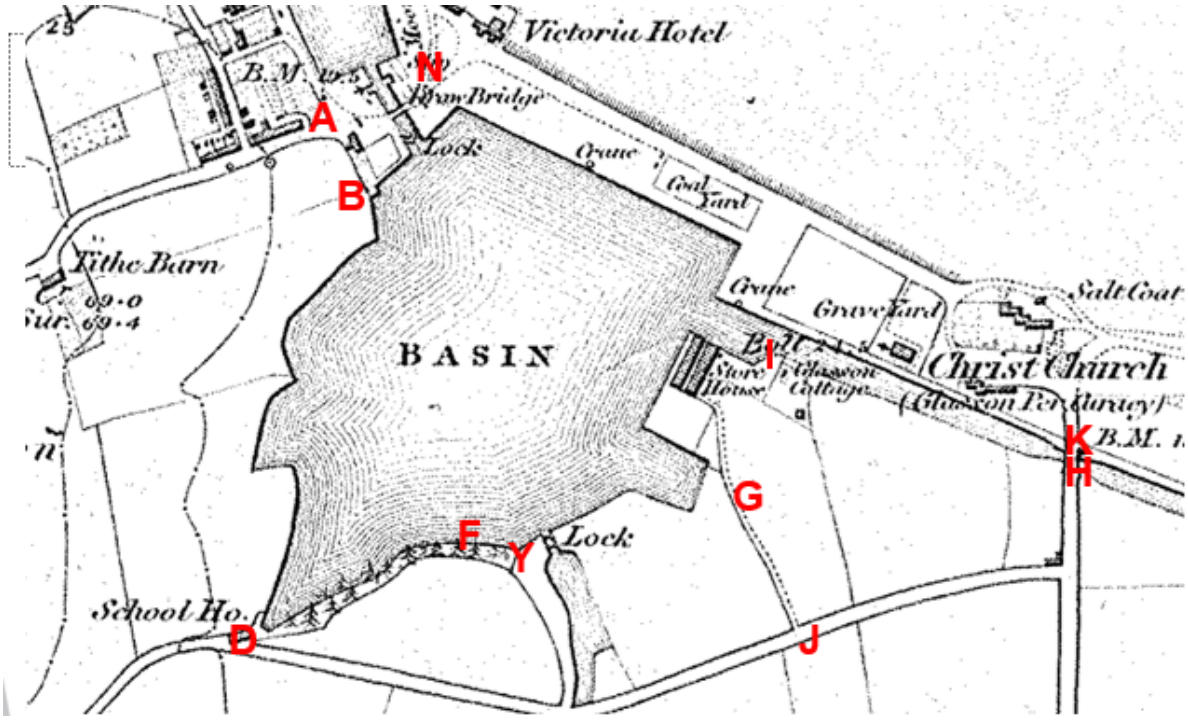
Much of the map and documentary evidence considered by the County Council has been considered before in relation to the 1999 application. However, part of the route varies to that originally investigated and there is now some map and documentary evidence available which would not have been considered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

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		Glasson canal basin and the application routes are not shown.
Investigating Officer's Comments		The application routes probably did not exist in 1786.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.
Observations		Glasson canal basin and the application routes are not shown.
Investigating Officer's Comments		It is unusual to find public footpaths recorded on large scale commercial maps of this era as they were generally published for the use of

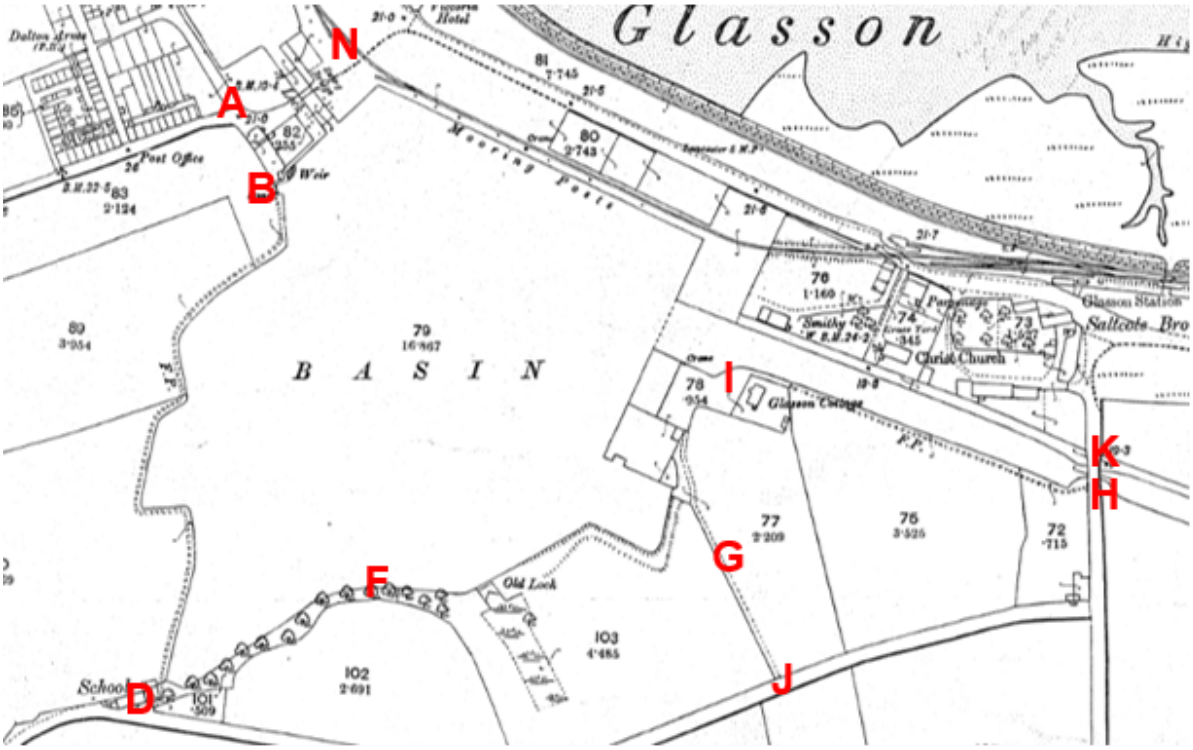
		travellers. The canal basin – which would have been a significant feature – is not shown and is therefore unlikely to have existed at this time. As the basin and canal are not shown to have existed it is also unlikely that the application routes existed at this time.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 71/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
		
Observations		The canal basin and canal are shown although the basin appears to be much smaller than the one existing today. The application routes are not shown.
Investigating Officer's Comments		There has been some development in the area – including the construction of the canal. Parts of the application route may have existed but were not considered significant enough to be included on a large scale map of this kind.

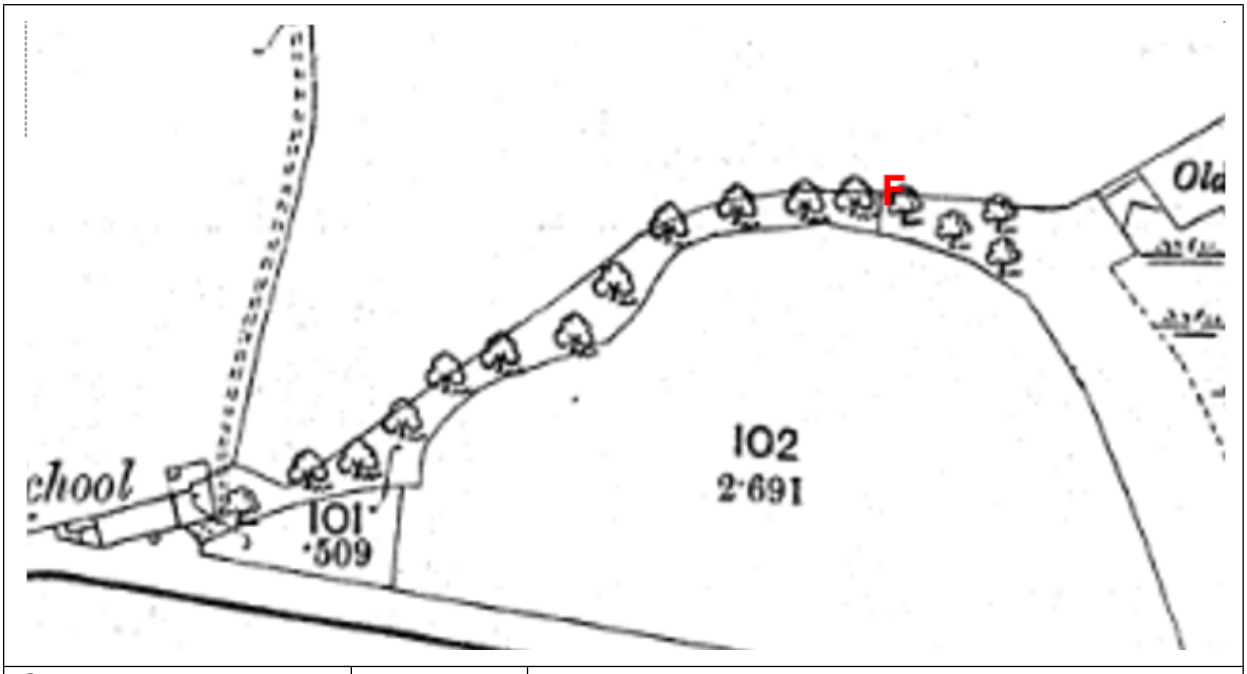
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision 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		A search was made in the County Records Office for any canal or railway plans which may have shown the application route but nothing was found.
Investigating Officer's Comments		No inference can be drawn.
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 available in the Lancashire Records Office 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 in the Lancashire Records Office for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.

6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848.[1]
		
Observations		The application route is not shown between points A-B-D. a school house is shown close to point D and the land adjacent to the canal basin between point B and point D is shown as undeveloped. The configuration of routes between points D-C, C-E and D-E is not shown. The application route is not shown between point D to point G and between points D -Y an area of woodland is shown. The route crosses the boundary of the woodland and a lock between point Y and point G. A track corresponding to the application route is shown between point J and point G leading to a building labelled as a store house. Only part of the route between point G and point I follows this part of this track. Between point I and point H the route is not shown.

[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.

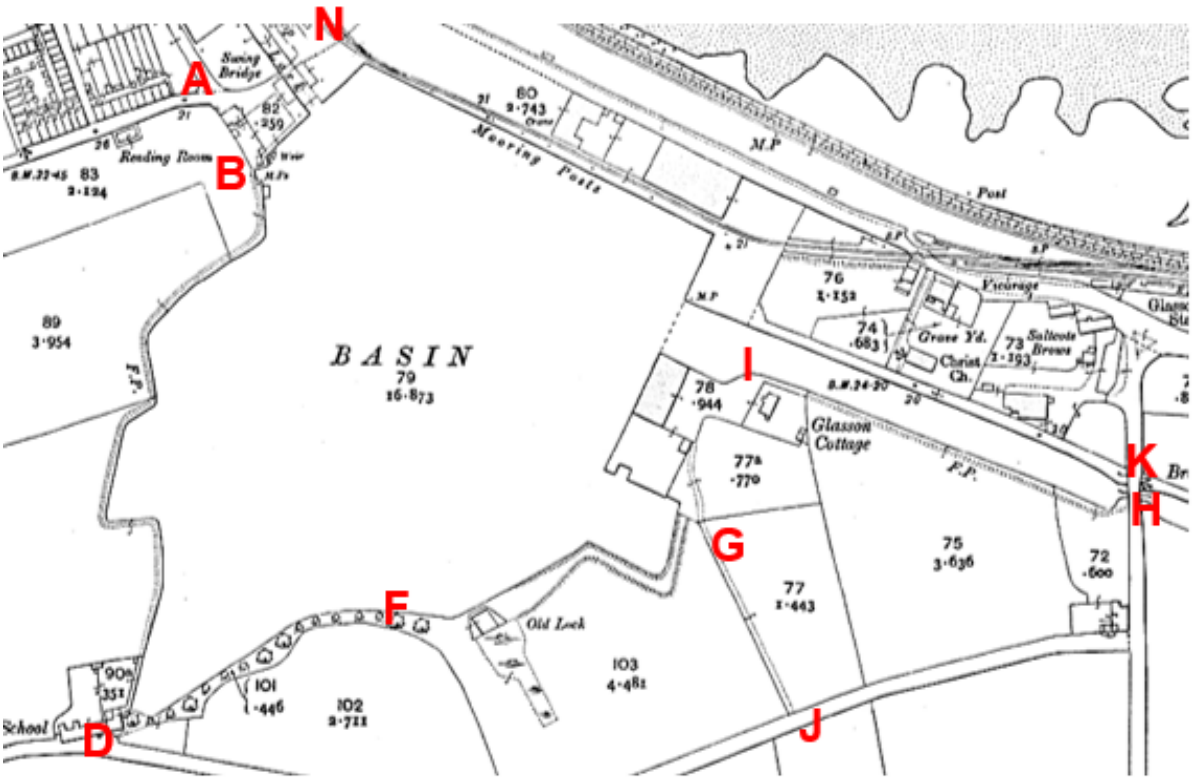
		Access may have been unobstructed adjacent to the canal between point K and point N except by one of the cranes adjacent to the basin.
Investigating Officer's Comments		Access may have been available between point K and point N forming a through route but it appears to have been a working dock so public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





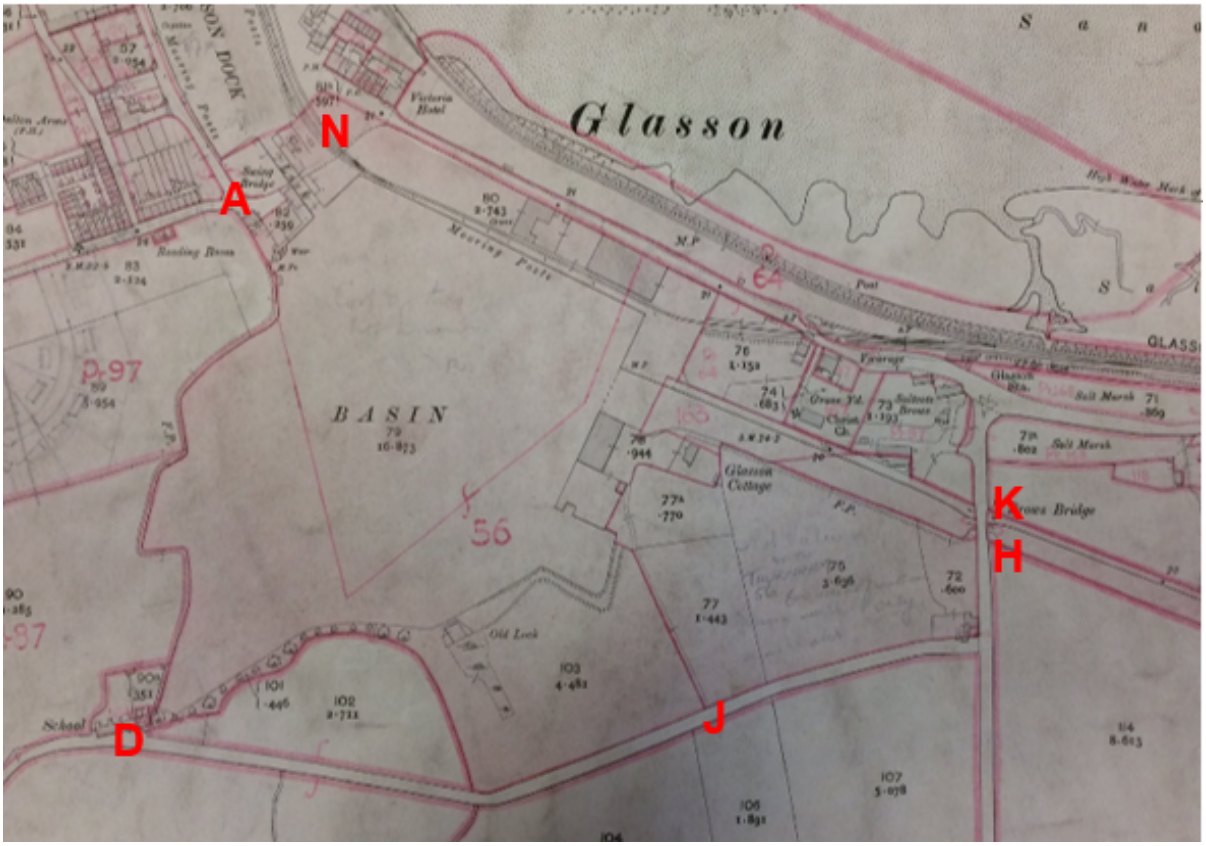
Observations		The route is not shown between point A and point B. A route appeared to exist from the swing bridge to point B from where the application route is then shown as a double dashed line and annotated as a footpath (F.P) to point C and then continuing to the east of a building marked 'School' to exit onto the road at point D. The application route between point D – E -G is not shown and a line indicating the existence of possibly a fence or some sort of physical barrier/boundary is located across the route at point F. The route is shown from point J-G and a little beyond but not on the application route to point I. The route shown as a double dashed line marked 'F.P.' (footpath) is shown from point H leading to building labelled as 'Glasson Cottage' and continuing as an enclosed strip adjacent to the cottage to point I. Access appears to be available along the canal towpath and adjacent to the canal basin but no access from the bridge is shown at point K. A barrier, presumably a gate on a towpath, is shown alongside Christ Church. The application route cuts across the corner of an enclosure that existed in 1891, where it turns away from the canal towards point L. Between L and M there are mooring posts marked along the application route and it is crossed by a railway siding near

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



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

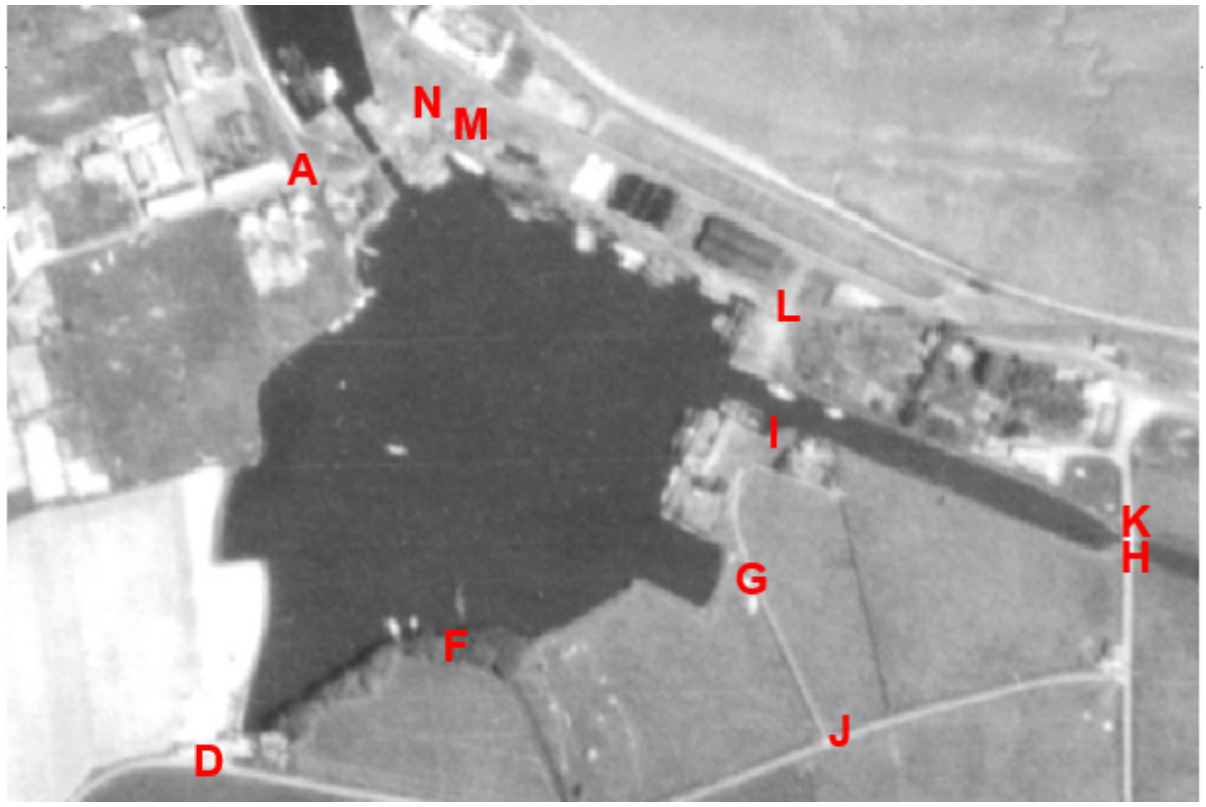
		It is not possible to determine from the map which parts of the route that appeared to be available would have been available and used by the public.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a 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. 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). 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.



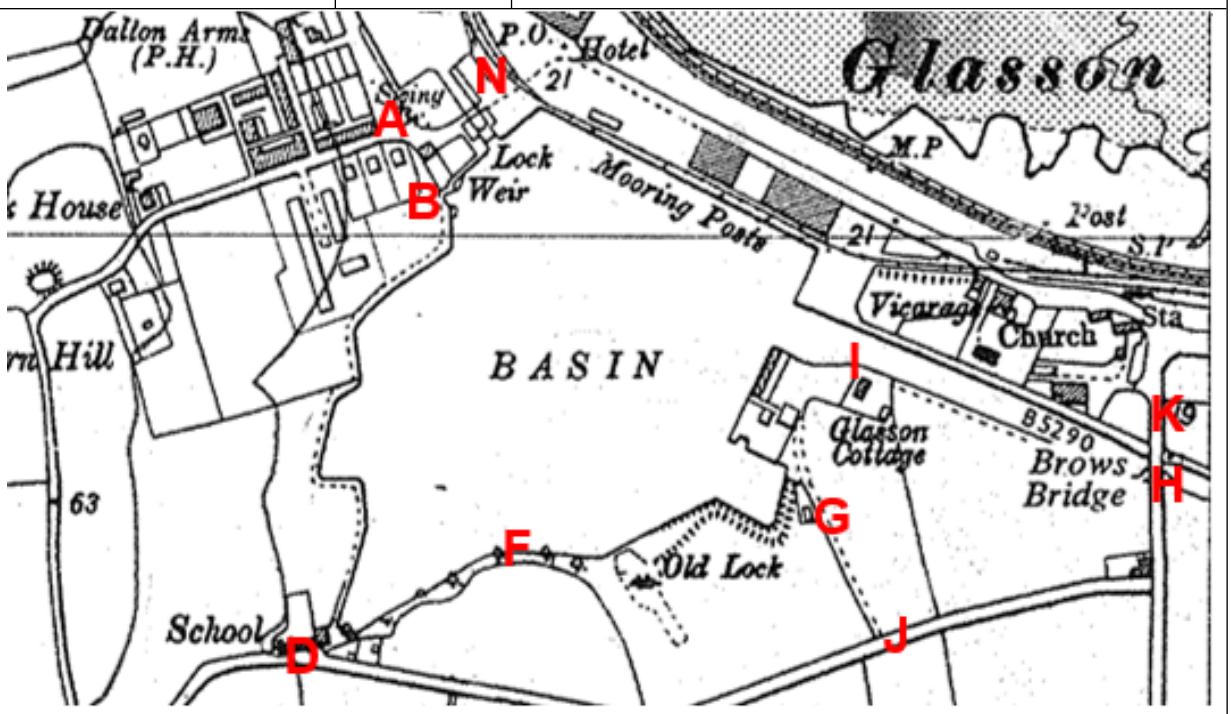
Observations		Finance Act records were inspected at the Lancashire County Records Office. No part of the application route is excluded from the numbered hereditaments. The first part of the route – between point A and point B is within plot 97 for which there are no deductions listed for public rights of way or user. The rest of the route all appears to fall within plots numbered as part of plots 87, 164, 72, 56, 163 and 151. Plots 56, 151 and 163 are listed as being owned and occupied by London and North West Railway Company and no deductions are listed for public rights of way or user. Plot 56 is described as 'land and canal basin' and plots 151 and 163 as 'canal and works'. The only plot affected by the application route for which a deduction is listed for public rights of way or user is plot 87 (which is crossed by part of the route between points B and C. The land covered by plot 87 is extensive – covering a large area to the south and the west of the application route. The 'plot' is described as 'land at Glasson Farm', owned by John Henry Dalton and occupied by John Lamb. A deduction of £25 is listed but there is no indication in the schedule (or on the map) regarding which route or routes

		the deduction related to.
Investigating Officer's Comments		Public footpaths are not normally excluded from numbered plots. The fact that no deductions are claimed for most of the land crossed by the various numbered plots suggests that the application route was not considered to be a public footpath – or that the landowners did not wish to claim for and acknowledge its existence at that time. A deduction has been made for plot 87 but it is not known which routes this applied to. The plot is of a considerable size and a number of public footpaths and a public bridleway are legally recorded to exist across it and, particularly as no deductions are claimed for the adjoining plots crossed by the application route the fact that a deduction was claimed for public rights of way is not considered to be evidence supporting the existence of the application route.
25 Inch OS Map	c1930	Further edition of 25 inch map generally referred to as the third edition 25 inch.
Observations		A copy of the 3rd edition 25 inch map could not be found in our records, at the Lancashire County Records office or online.
Investigating Officer's Comments		No inference can be drawn.
Aerial Photograph[2]	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.

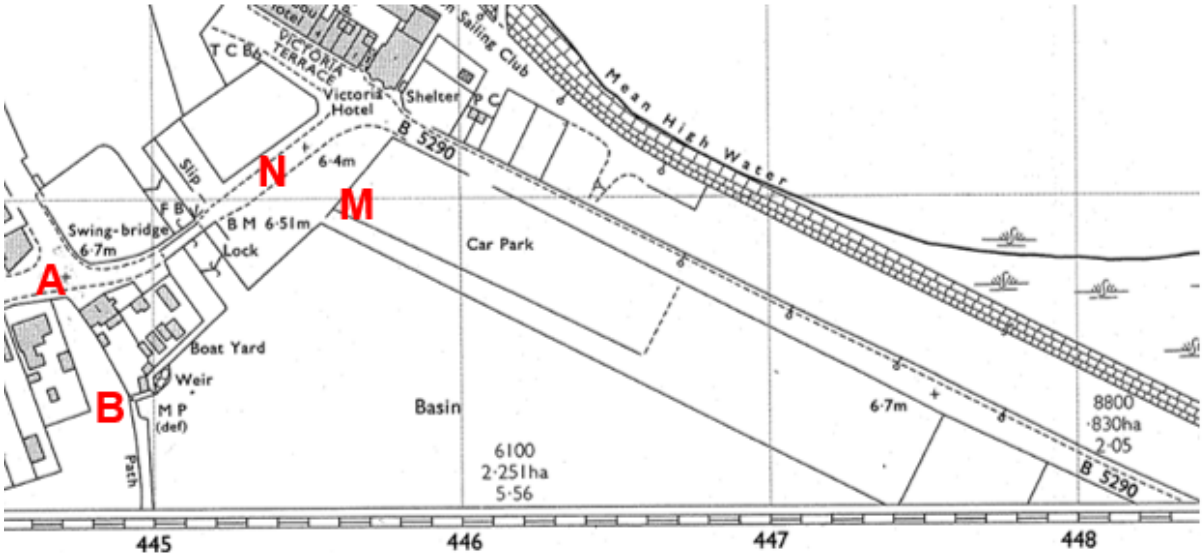
[2] Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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

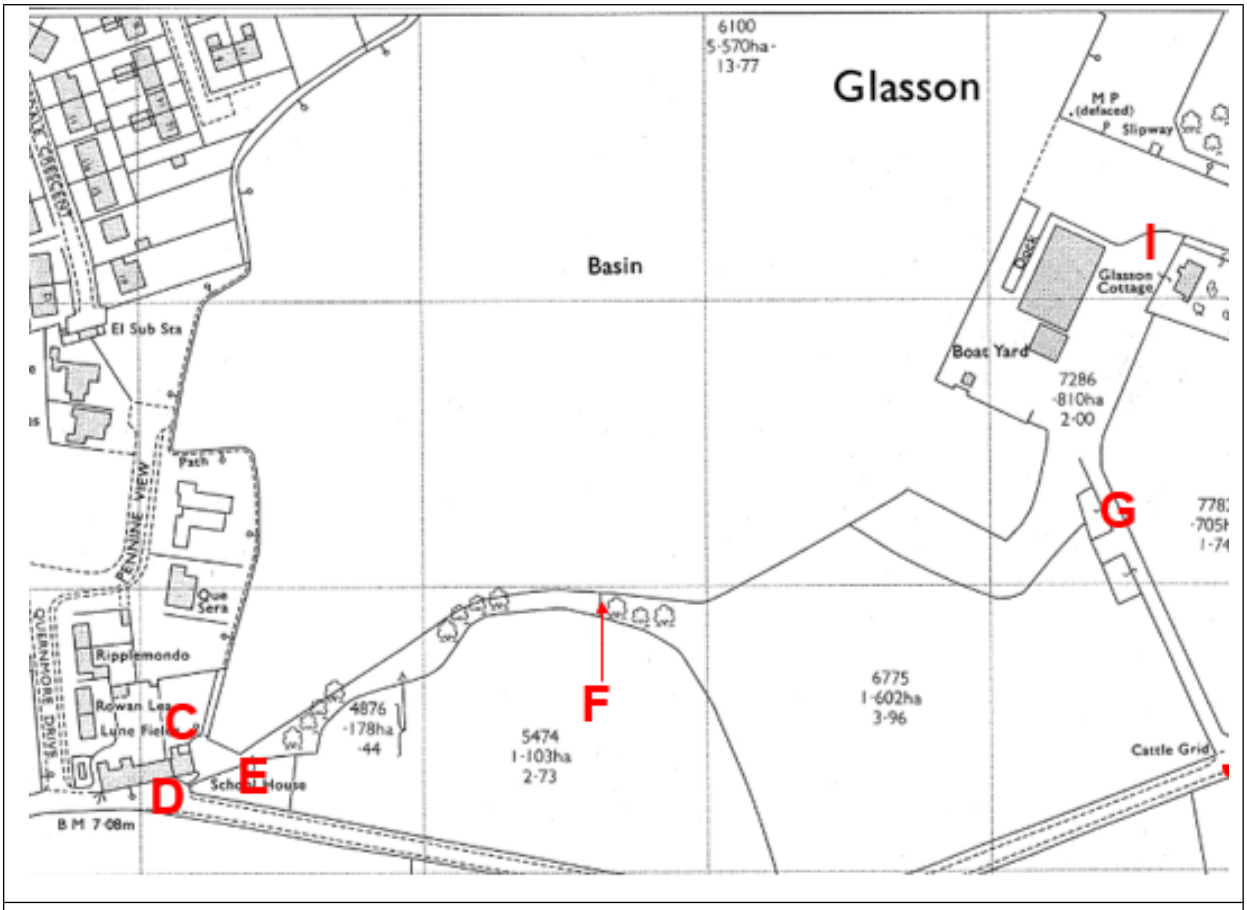


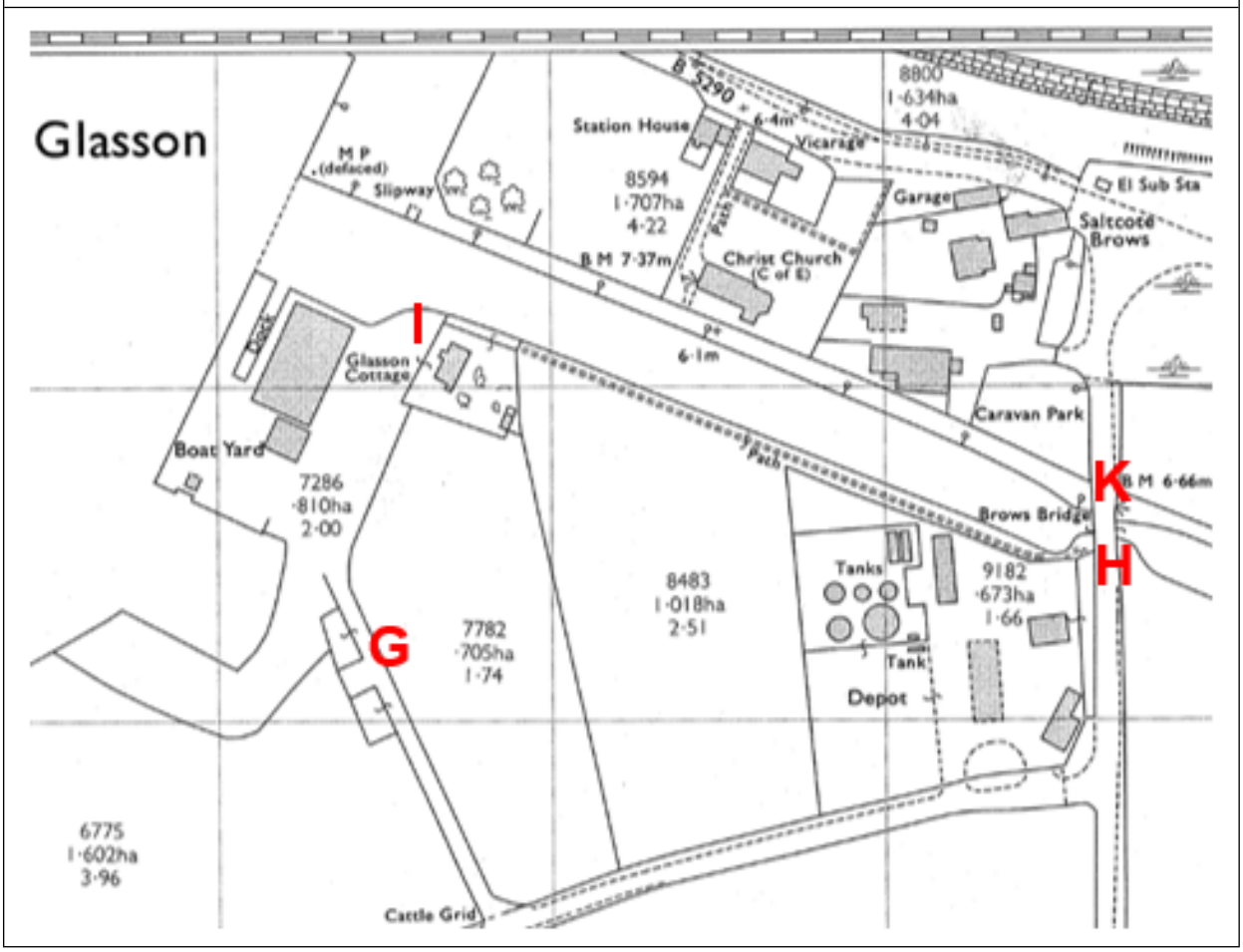
Observations		The canal basin can be seen but the application route is not visible between point A and point D although there does not appear to be anything visible on the photograph suggesting that access may not have been available. The application route cannot be seen between point D and point F to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

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

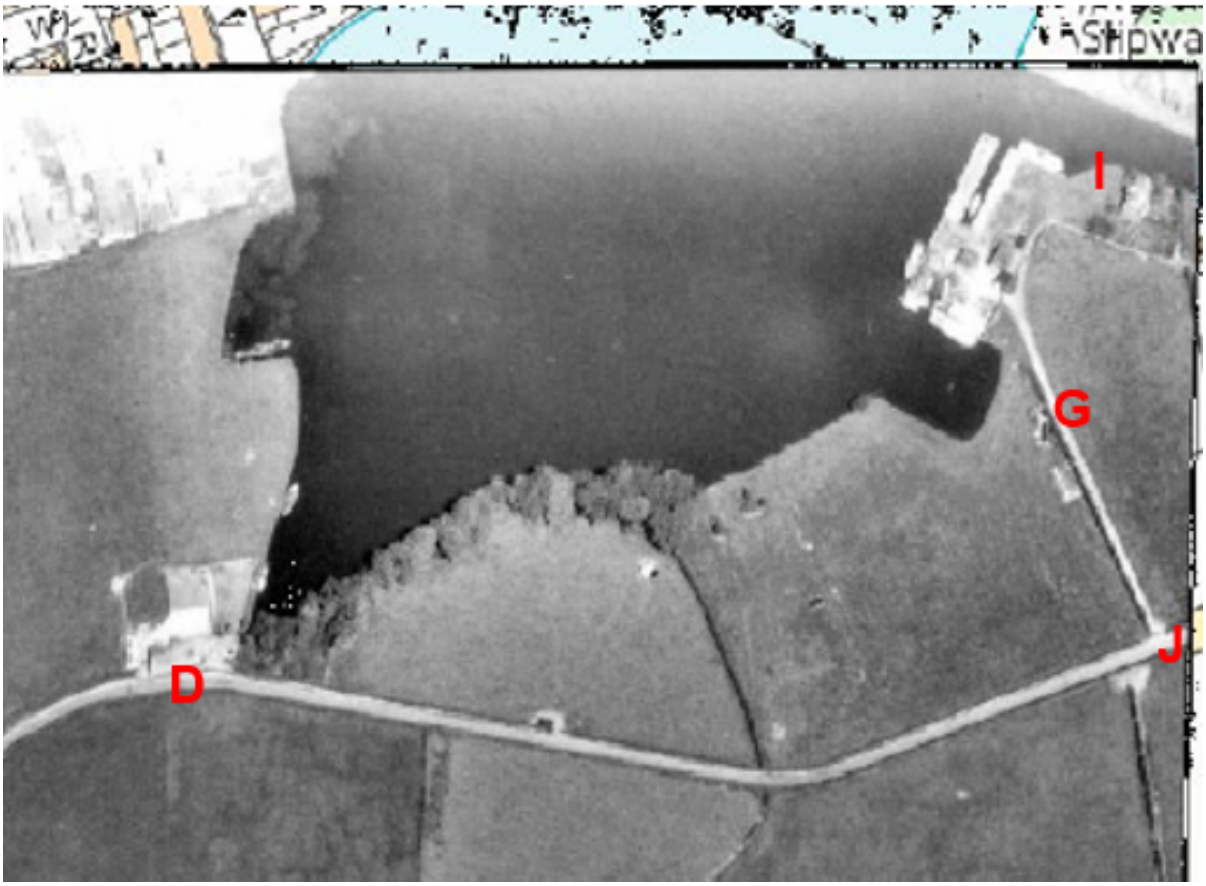
		K-N although no access to Jeremy Lane is shown and the route passes through the mooring posts and railway.
Investigating Officer's Comments		The base map was surveyed in the 1930s and at that time it appears that a route may have existed between point B and point D. It does not appear that a route existed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




Glasson
6100
5·570ha
13·77
Basin
M P
(defaced)
Slipway
Dock
Glasson Cottage
Boat Yard
7286
·810ha
2·00
El Sub Sta
Path
PENNINE VIEW
Que Sera
Ripplemondo
Rowan Lea
Lune Field
QUERNHOWS DRIVE
School House
B M 7·08m
4876
·178ha
·44
5474
1·103ha
2·73
6775
1·602ha
3·96
Cattle Grid
I
G
F
C
E
D

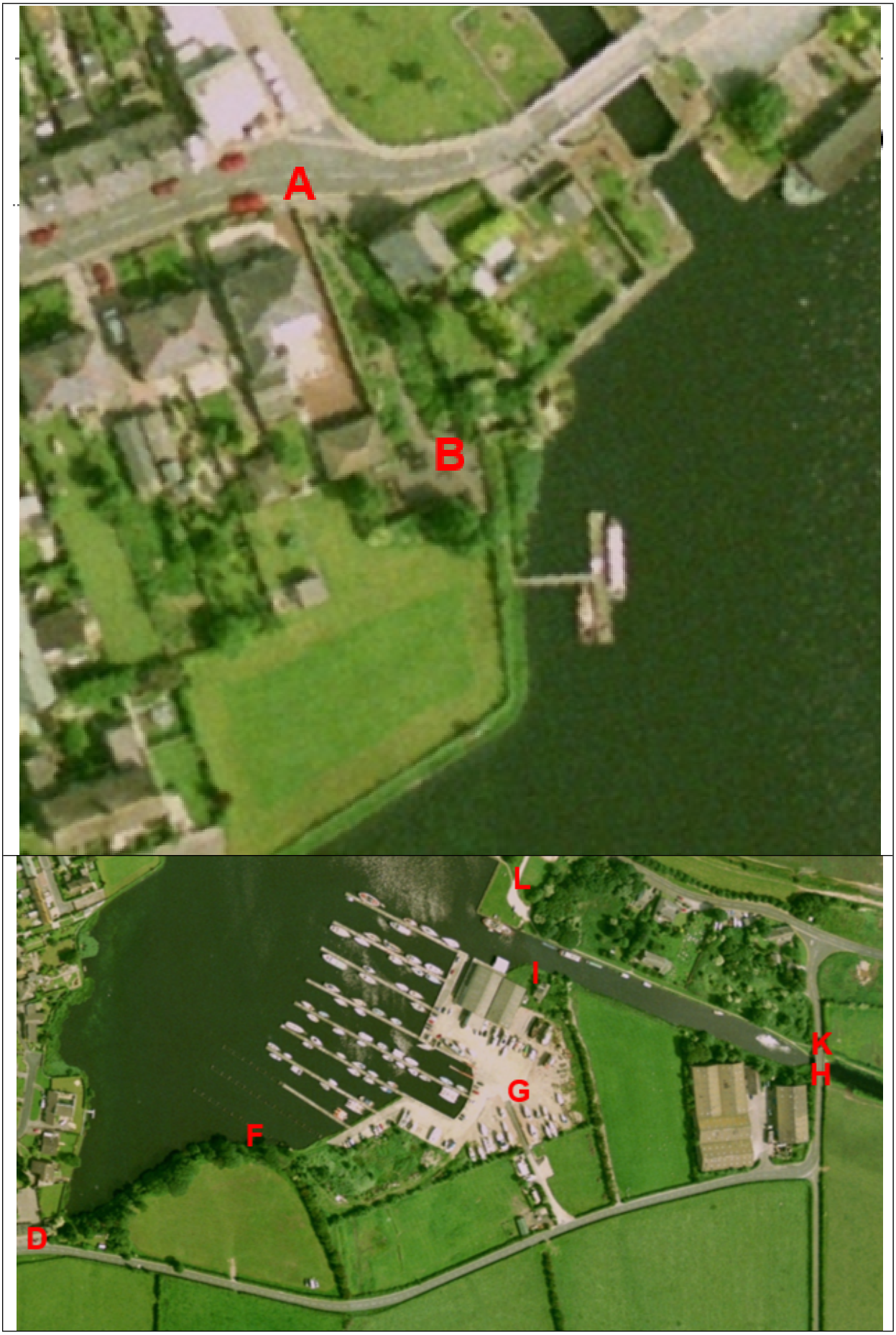

Glasson
M P
(defaced)
Slipway
B 5290
Station House
6·4m
Vicarage
8800
1·634ha
4·04
8594
1·707ha
4·22
Garage
El Sub Sta
Salcoed Brows
B M 7·37m
Christ Church
(C of E)
Path
Dock
Glasson Cottage
6·1m
Caravan Park
Boat Yard
7286
·810ha
2·00
Path
B M 6·66m
Brows Bridge
Tanks
8483
1·018ha
2·51
9182
·673ha
1·66
Tank
Depot
7782
·705ha
1·74
6775
1·602ha
3·96
Cattle Grid
I
G
K
H

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



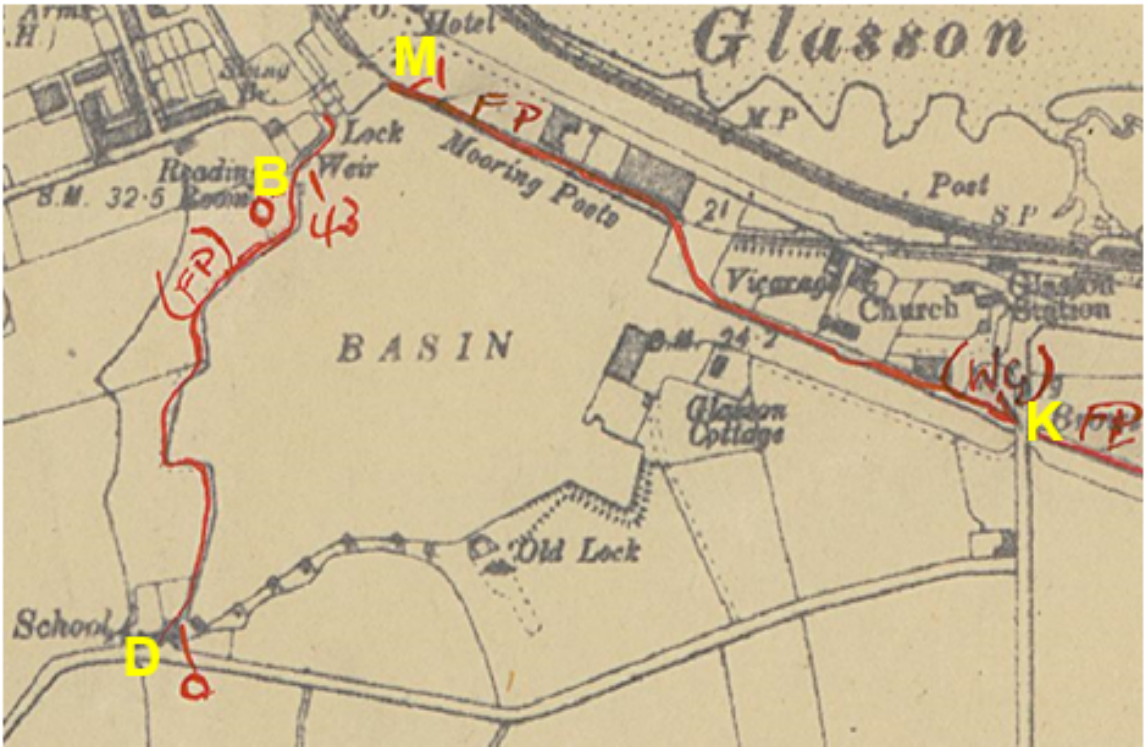
Observations		The 1960s aerial photograph records only show part of the land crossed by the application route. The route extending south from Glasson village to the school (between point B-C-D) cannot be seen as a visible route. From point D the route through point E into the woodland cannot be seen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

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

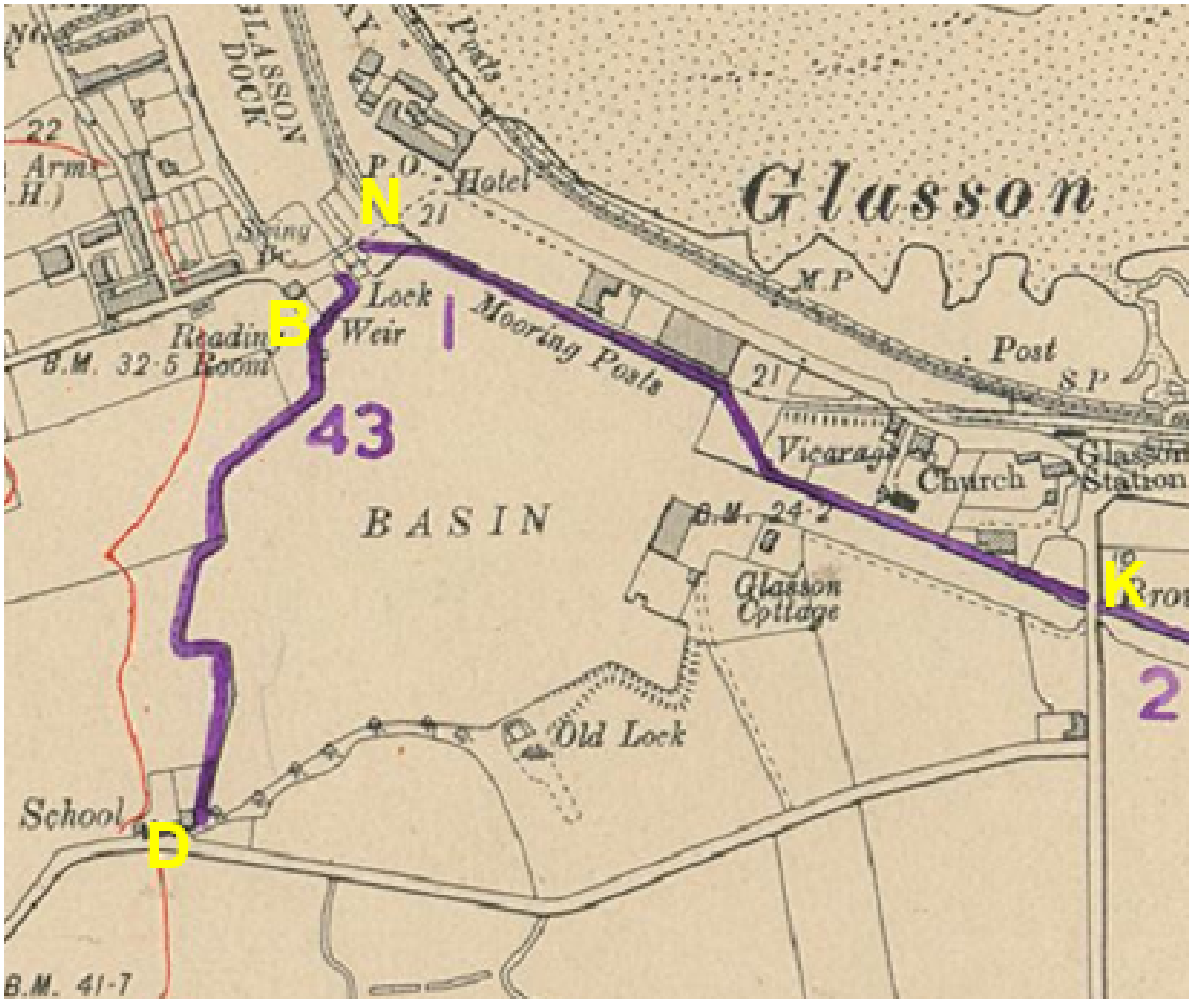

A
B
L
I
K
H
G
F
D

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

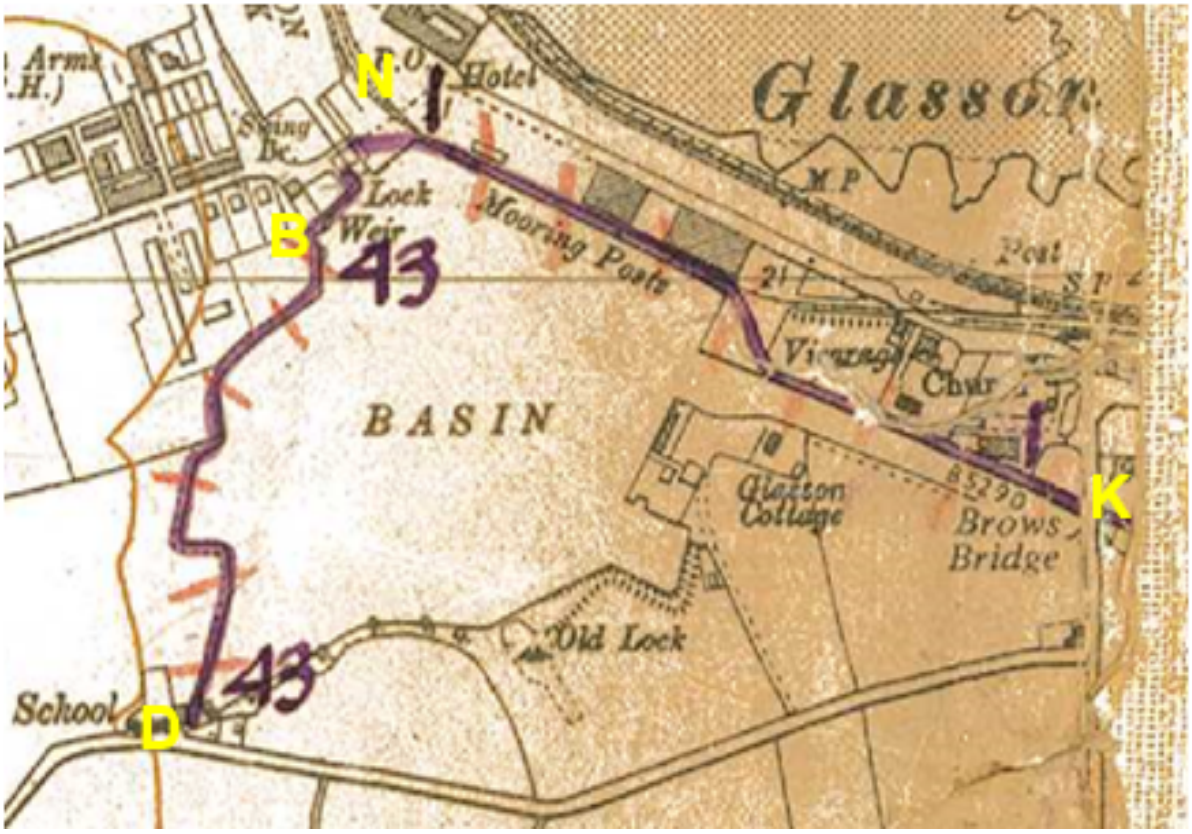
		visible route in 2000.
Aerial Photograph	2014	Aerial photograph available to view on GIS.
Observations		Little further information can be gained from the 2014 aerial photograph although it does illustrate the growth of the boat yard on the south side of the canal basin.
Investigating Officer's Comments		No further inference can be drawn.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced,

		was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
		
Observations		The route shown on the Parish Survey Map as FP 1 is the application route between points K-M. The survey card for FP 1 was completed in 1950. It describes the route as 'canal towing path' and 'from swing bridge alongside canal basin and railway line to canal towpath. Ends at junction with FP 2 at Brows Bridge where exit to public road is by ramp and wicket gate.' The Parish Survey map also shows the application route between points B-C-D as a public footpath numbered FP 43. The map shows access onto the footpath as being east of point A via the weir and not along the application route between points A-B. Footpath 43 is described as a field footpath and as being from 'Glasson Dock village to school via canal basin side. From swing bridge go towards canal basin and follow path between basin and high wall to by-wash where high gate

		in railings crosses path. Through gate keep to side of basin to hurdle at school boundary wall. Over hurdle pass between basin and walk out onto public road.' A further note reads 'gate at by-wash has mortice lock and was put there by Railway Co.' and 'exit to road at school has been obstructed and exit now is by school house gate.' The remaining sections of the application route (between points A-B, C-E, D-E-F-Y-G, J-Z-G-I-H and M-N) are not shown on the map.
Draft Map		The parish survey map and cards for Thurnham were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement. The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.



Observations		The application route between point B and part way between points C and D is shown as Footpath 43. The application route between points K-M is shown as FP 1 and has been extended to meet Tithebarn Hill but along a slightly different alignment to the application route M-N. The rest of the application route is not shown. The Draft Statement lists FP 1 as 'Canal towpath' under the heading 'Kind of path' and describes it as 'Canal Basin to Brows Bridge'. Footpath 43 is described as a footpath from Glasson Dock Village to School. n.b. the description of "to school" is consistent with the purple line stopping in the school grounds and not shown through to the road. No representations were made relating to the recording of FP 1 or FP43 on the Draft Map or to the fact that the rest of the application route was not shown.
Provisional Map		Once all representations relating to the

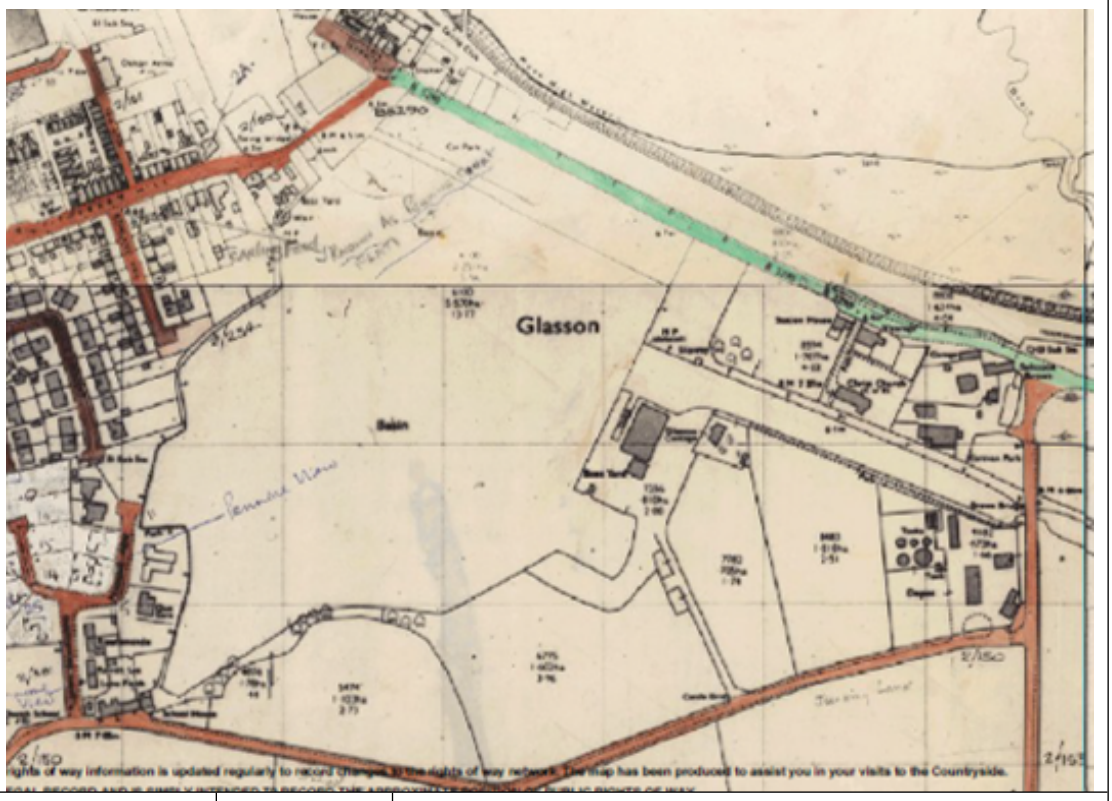
		publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
		
Observations		FP 1 and FP43 are shown on the Provisional Map and remained unaltered from how they were shown on the Draft Map. The rest of the application route was not shown. An application was made to the Lancashire Quarter Sessions on 20 April 1960 by the British Transport Commission for a declaration that on the 1st January 1953 there was no public right of way over the land to which the application related. It was further stated that there was no (or insufficient) evidence to show that the land had been dedicated as public rights of way and also that if such facts existed (which it was denied) that no dedication could have taken place because of the incapacity of the applicants and their predecessors to dedicate

		public rights of way. An accompanying schedule listed the rights of way shown on the Provisional Map for which the appeal was made. The Schedule listed a number of Footpaths in numerous parishes all of which were described as being along the Lancaster Canal. Included in this list was FP 1 Thurnham. The Schedule also listed other paths including FP 43 Thurnham which was described as passing over the bank of Glasson Basin. The Appeal Committee sat on 14 March 1961 as appointed by the Court of General Quarter Sessions of the Peace for the Hundred of Lonsdale and declared that both routes should be removed from the Map.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.

Observations		Despite the Appeal Committee decision detailed above and the fact that the routes were shown crossed out in red on the Provisional Map indicating that they were to be removed from the map, FP 1 and FP 43 were shown on the First Definitive Map. The rest of the application route was not shown and no correspondence can be found detailing why FP 1 and FP 43 were shown.
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 25th 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 1st 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		When the Map and Statement were reviewed FP 1 and FP 43 were removed. None of the application route is shown on the Revised Definitive Map (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route between points A-B, C-E, D-E-F-Y-G, J-Z-G-X-I-H or M-N were considered to be a public rights of way by the Surveying Authority and there were no objections to the fact that these parts of the route were not shown on the maps from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map. With regards to the route between points B-C-D and K-L-M both were originally shown on the Parish Survey, Draft and Provisional Maps but their inclusion was successfully challenged by the landowner and the Appeal Committee concluded that they should be removed. The reason for which they were still shown on the First Definitive Map following the Appeal Committee decision is unknown but is considered most likely to be a drafting error as

		they were not then shown on the Revised Definitive Map (First Review) and no further correspondence could be found.
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 several flaws – most particularly, if a right of way was not surfaced it was often not recorded. A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions. The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.



Observations		The application route is not shown as being publicly maintainable on the List of Streets by the County Council.
Investigating Officer's Comments		No inference can be drawn regarding public rights.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		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). 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).
Observations		No Highway Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

The land affected is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land. The land crossed by the application route is within a conservation area.

Comments on historical evidence submitted by the applicant

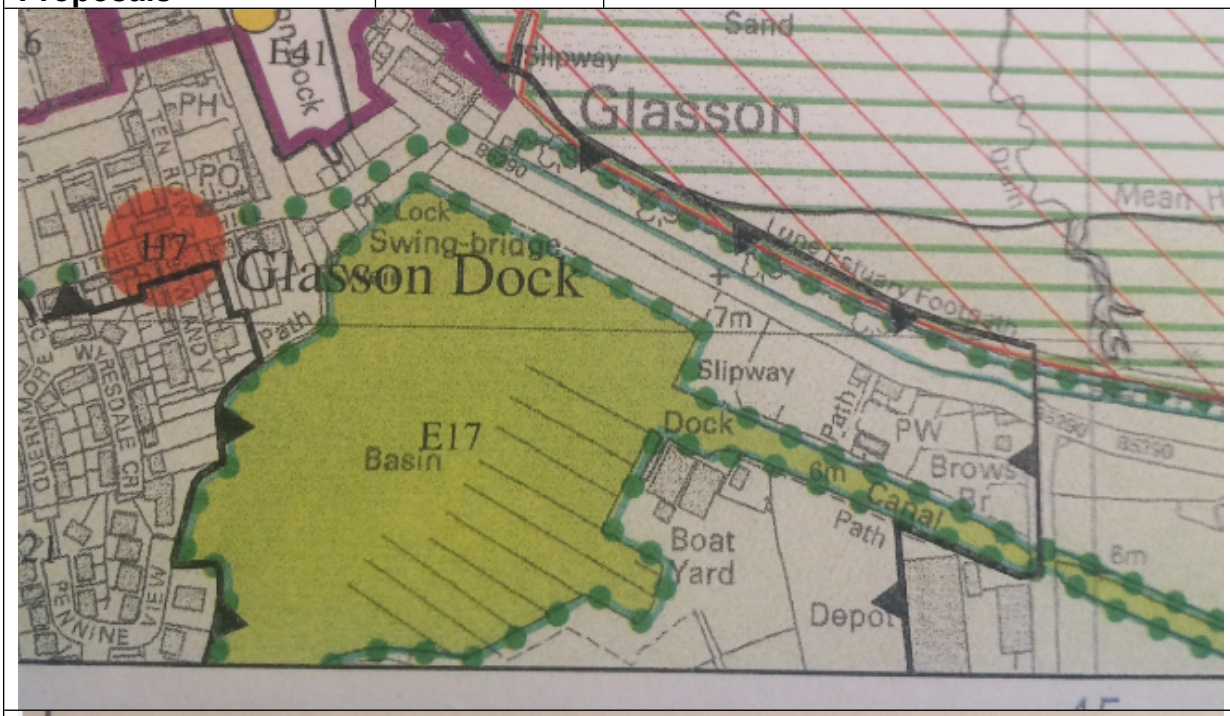
A substantial body of information was provided by the applicant regarding the history and management of the land crossed by the route claimed.

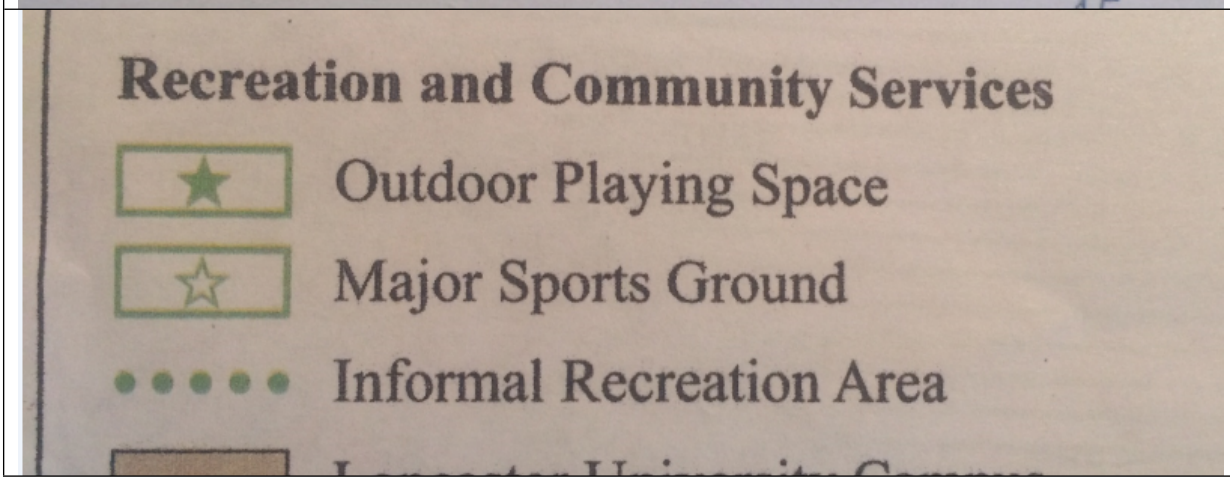
The applicant submitted a significant amount of information about the designation of the land crossed by the route as a conservation area, and numerous planning policy guidelines and policies associated with the development of such sites. Designation does not generally imply the existence of a public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

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

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

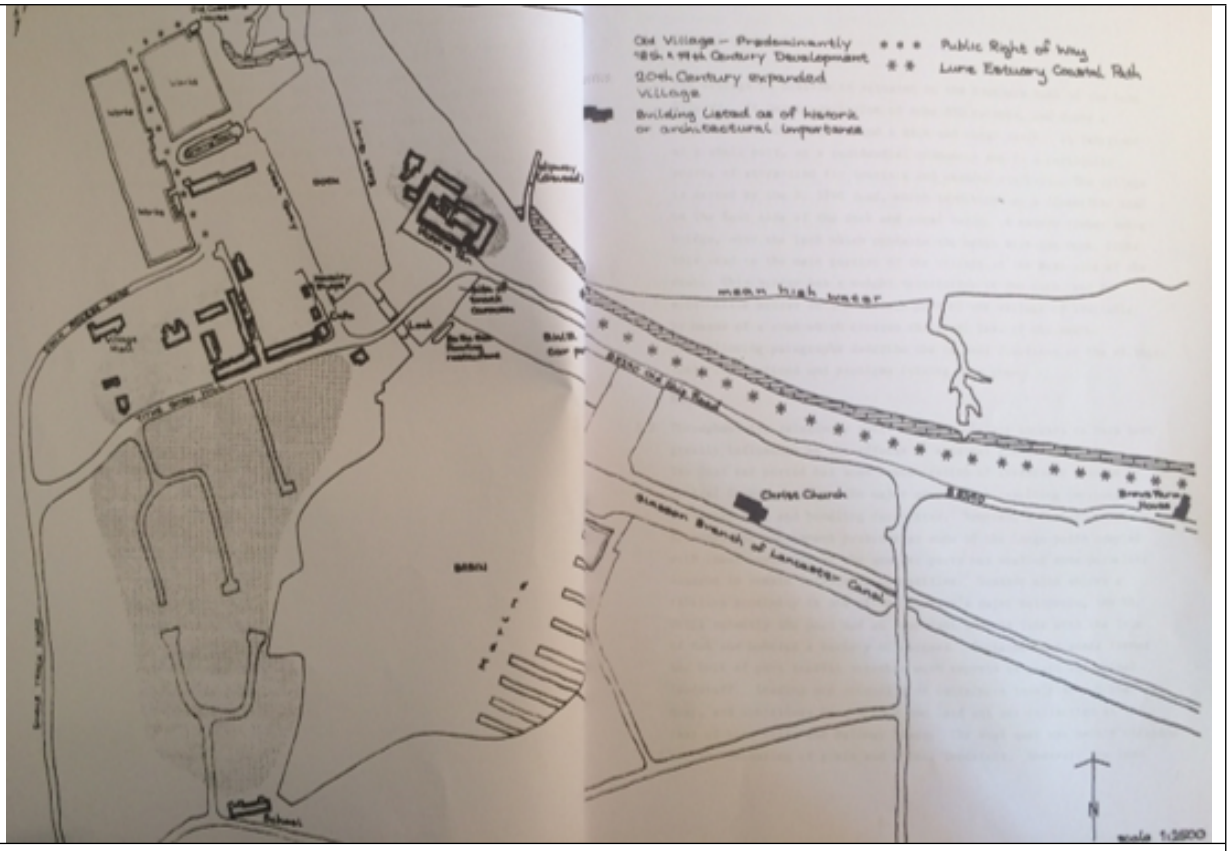
		and to start to develop it further. The letter outlines their proposals to expand and develop the site and refers to discussions with the Glasson Action partnership forum regarding the creation of a circular walkway around the marina. There is reference to a plan showing the current layout proposal for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



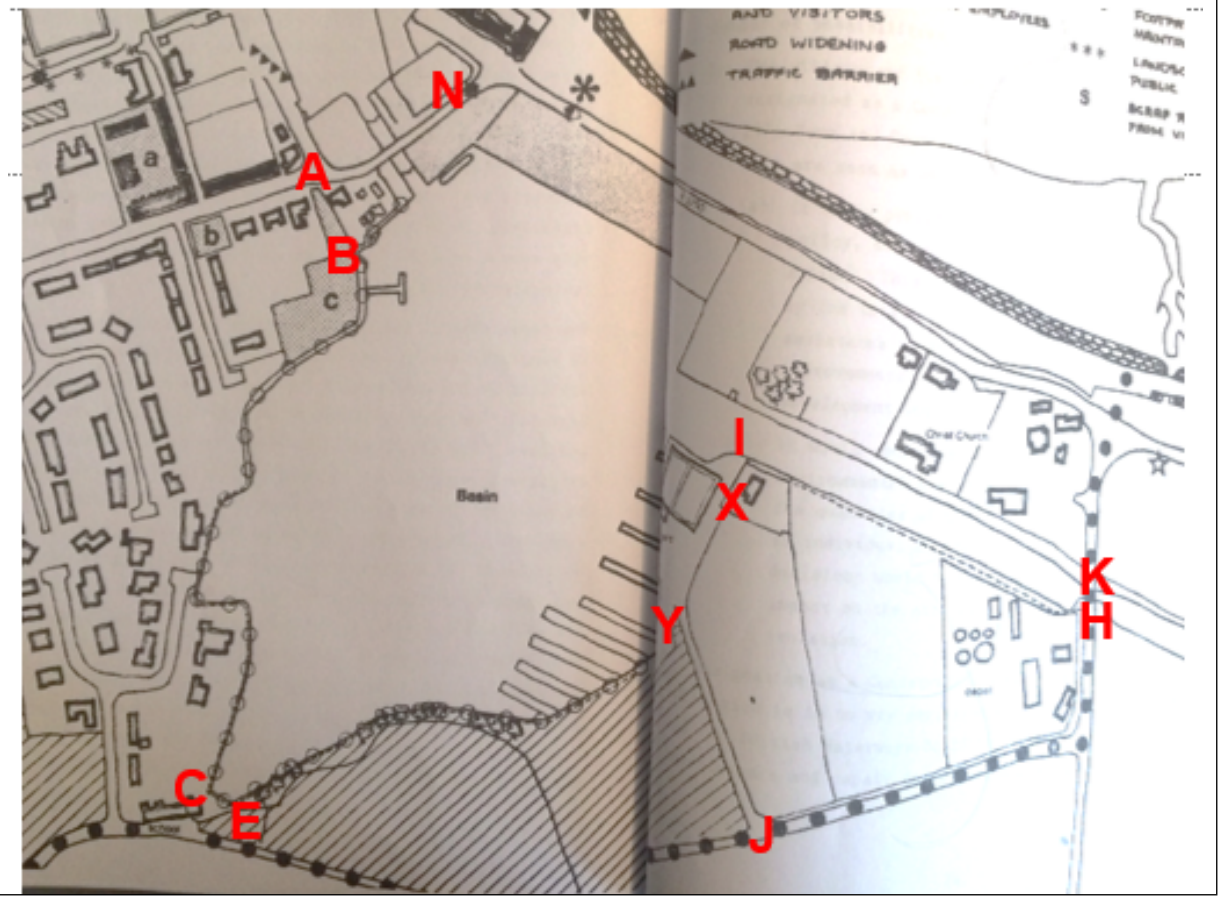


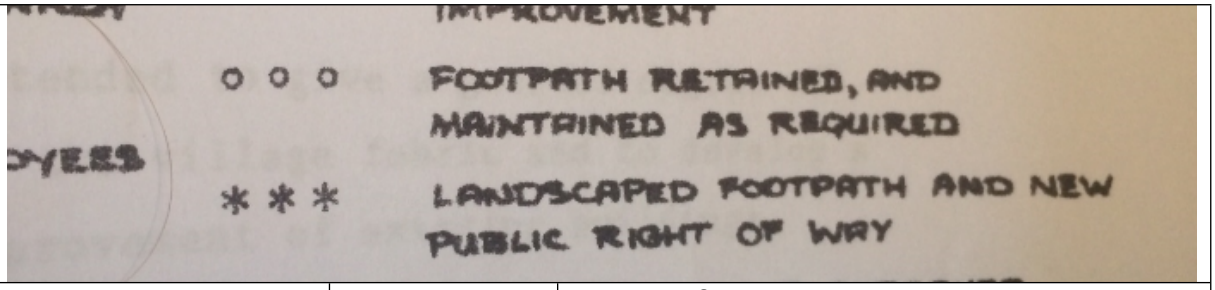
Observations		The plan described as a Proposal Map shows a route around Glasson Basin and part of the canal as an 'informal recreation area'. The route shown is consistent with part of the application route but varies from it significantly through the boat yard and does not include the access road into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

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



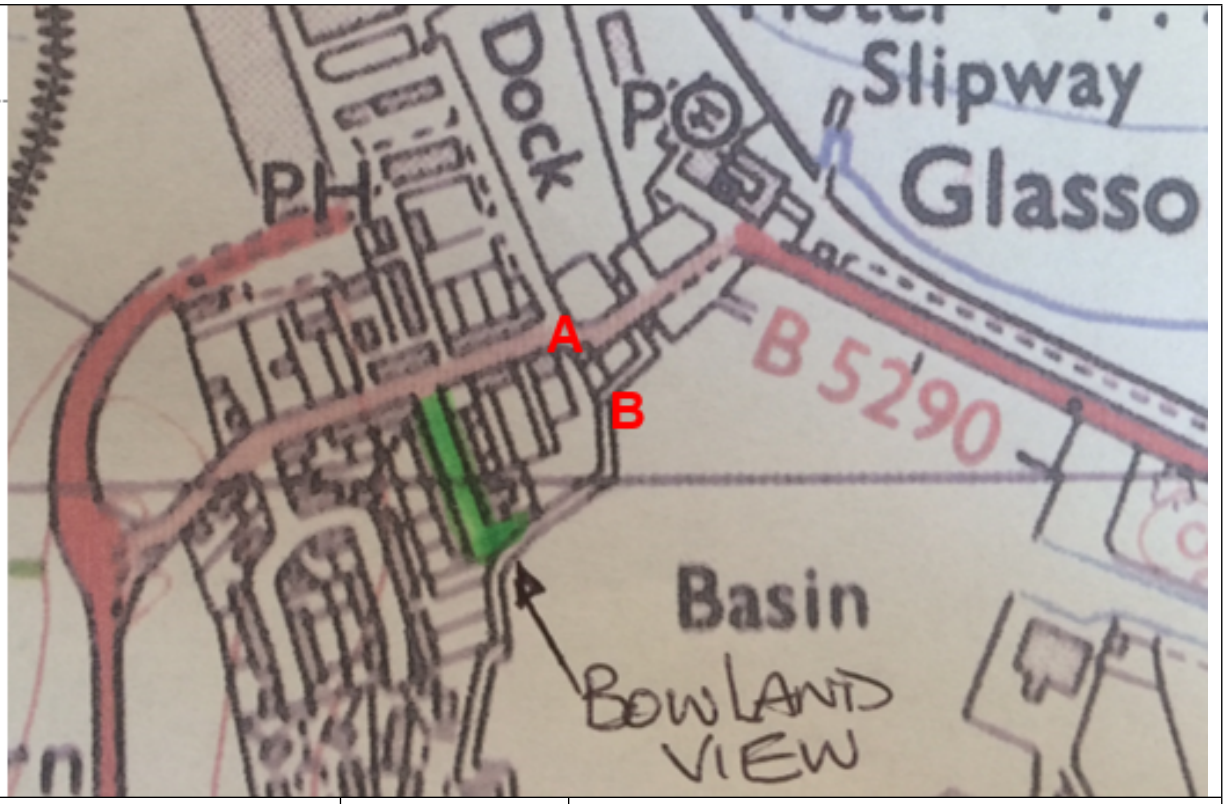
Proposals Map





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

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



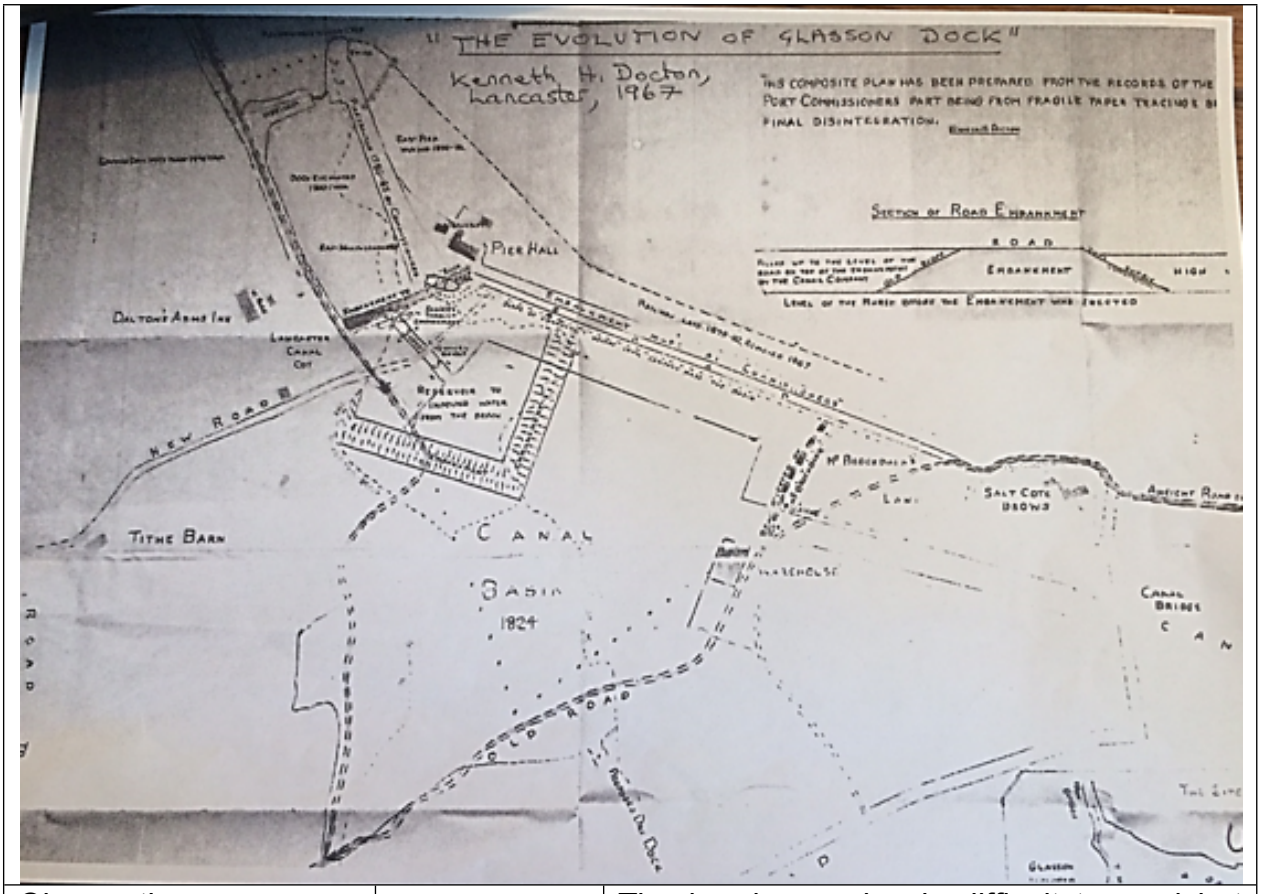
Observations		The applicant has highlighted Bowland View and refers to the loss of public open space. The map extract does not show the application route between point A and point B but does show a route to the east of point A which connects to point B. The application route from point B heading towards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

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

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

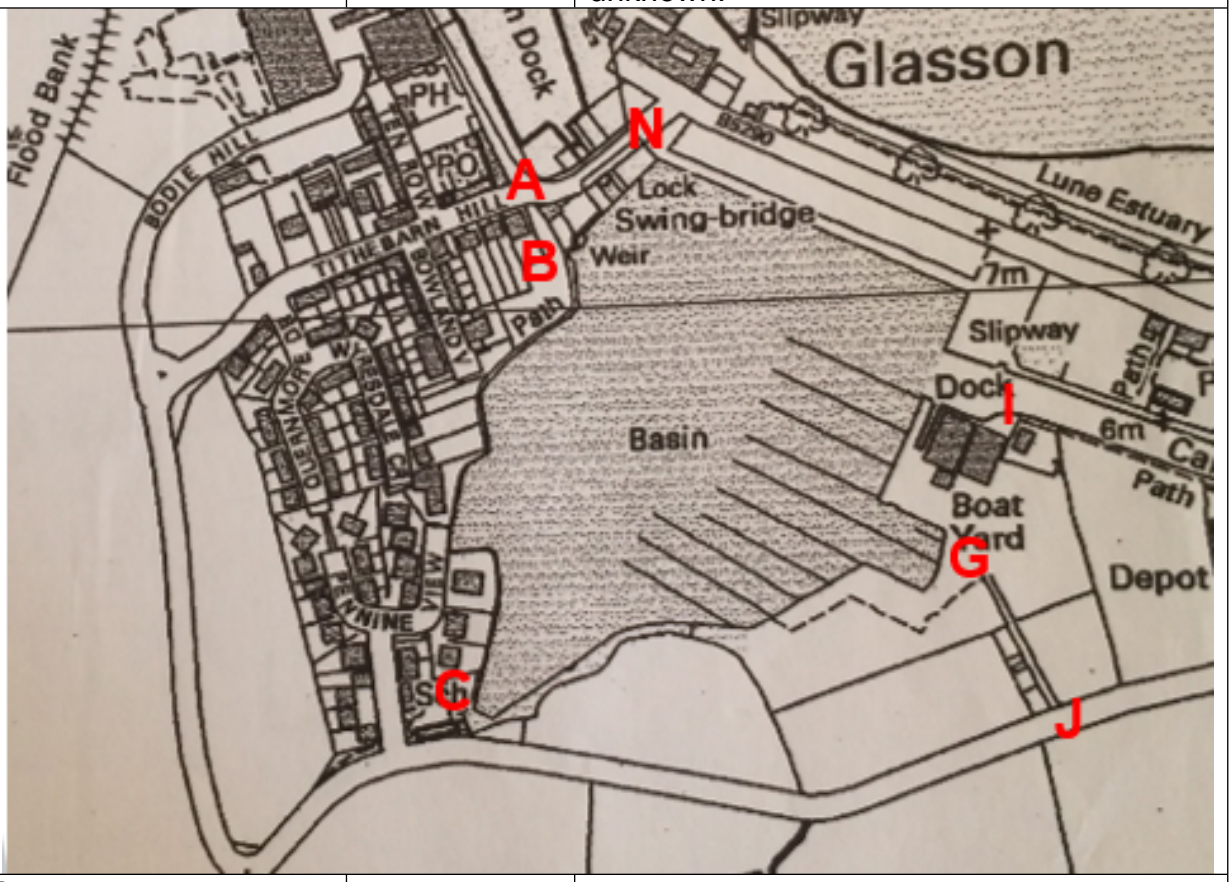
		point E. The applicant makes reference to fact that the access from School Lane was used by canoeists prior to erection of fencing and narrow gates but that since the fencing and gates had been erected they now found access difficult.
Investigating Officer's Comments		A pedestrian gate at point D existed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

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



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

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



Observations		The application route can be seen and is labelled as a 'Path' between the weir – close to point B - and the school (point C). It

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

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

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

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

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

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

Landownership

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

Summary

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

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

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

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

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

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

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

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

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

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

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

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

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

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

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

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

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

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

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

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

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

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

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

When asked if the users had ever been stopped or turned back when using the route, or if they had ever heard of anyone else being stopped or turned back, most of the users answered 'no'. 4 of the users mentioned that only turned back when the fence was put up, 1 of these users also mentioned that prior to the fence the school obstructed the path.
However all of the users have never been told that the route they were using was not a Public Right of Way.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The triangular area of land (adjacent to the School) now enclosed by fencing was previously an open space of the Conservation area to which the following policies appear to relate:
Policy E35 (Lancaster Local Development Framework, Development Control Policies – Issues and Options Paper) protects open spaces from development within the Conservation area.
Policy E24 (Lancaster and District Local Plan, 2004) states "Development proposals which would adversely affect important views into and across a Conservation Area or lead to an unacceptable erosion of its historic form and layout, open spaces and townscape setting will not be permitted".
Local Plan Policy 5.4.21 states, "When determining any development proposal affecting a Conservation Area, the City Council will take into account the impact on views into and across the area, important open spaces either in or near the Conservation Area and the wider landscape setting".
Clearly, the landscape setting has been changed significantly of southern end of Basin showing mature deciduous trees prior to felling in April 2008; and the view of the southern end of the Basin (from stone edge) post felling work.
In addition, in my opinion, steel tooth-edge railings and barbed-wire are inappropriate materials to be used within the conservation area and the semi-natural habitat surrounding the Basin.

Normally, a Loss of Open Space and Sport / Recreation Assessment would be required, as follows:
The Council's Planning Application Validation Guide (page 29, 4.26) states "Applications which seek to develop land currently used as open space… should be accompanied by an Assessment which analyses the need and opportunity for the continued use of the land for open space, sport and recreational uses".
However, we do not believe that this assessment was carried out, by Lancaster City Council, prior to the fencing being installed.

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>Further information in support of the applications</u>

A letter of support from Lancaster Civic Society states:
'Lancaster Civic Society supports public access to long established footpaths and is supportive of the application to maintain public access to footpaths around the Glasson Canal Basin.'

A letter of support from the Lancaster Group for the Ramblers' Association, the letter states:
'Considering the four paths numbered 1 to 4:

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

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

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

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

Information from others

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

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

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

(2) Response from another local resident:

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

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

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

(4) <u>An objection from another local resident who provide the following information:</u>

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

Route 2: School Lane to exit on Marina driveway
This would allow the general public access through the private grounds of the Marina

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

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

Route 4: Bridge 8 to Tithebarn Hill via stone edge
This route is already an existing canal towpath with pedestrian access.

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

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

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

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

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

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

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

The 1999 Application and the current application

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

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

Objections

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

1. Insufficient proof of user

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

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

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

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

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

Insufficiency of other evidence

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

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

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

Lack of other evidence of intention to dedicate

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

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

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

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

Permissive user

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

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

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

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

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

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

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

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

Assessment of the Evidence

The Law - See Annex 'A'

In support of the claim

- User evidence forms

Against accepting the claim

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

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

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

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

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

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

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

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

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

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

Route 1 (A-B-C-D)
Route 2 (D-E-F-Y-G)
Route 3 (J-Z-G-X-I-H)
Route 4 (K-L-M-N)
Additional section C-E

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

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

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

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

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

The Transport Act 1947 defines harbour and dock as follows:

'harbour' *means any harbour, whether natural or artificial and any port, haven, estuary, tidal or other river or inland waterway navigated by sea-going ships, and any dock*
'dock' *includes any pier, jetty or other place at which ships can ship or unship goods or passengers*

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

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

Conclusion

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

Risk Management

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

Alternative options to be considered - N/A

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

Paper	Date	Contact/Tel
All documents on Claim File Ref: 804/519 & 804/555	Various	

Reason for inclusion in Part II, if appropriate

N/A