

Regulatory Committee

Meeting to be held on 14th November 2018

Electoral Division affected:
Mid Rossendale

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Upgrading Footpath to Restricted Byway at Waingate, Rawtenstall
File No. 804-599
(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 535604, Paralegal Officer, Legal and Democratic Services,
Claire.blundell@lancashire.gov.uk

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

Executive Summary

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

Recommendation

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

Background

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

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

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

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

- "it ought to be there shown as a highway of a different description"
- "the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path or restricted byway"

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

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

Consultations

Rossendale Borough Council

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

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

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

Description of Route

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

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

A site inspection was carried out in July 2018.

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

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

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

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

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

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

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

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

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

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

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


The total length of the application route is 750 metres.

Map and Documentary Evidence

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




<p>2.15 Yates: Lancashire, 1786. A full and detailed key is given.</p>		
Observations		A route consistent with the application route is clearly visible as a through route with properties shown which, though not named, appears to be in the approximate location of the hamlet now known as Waingate. The route is depicted as a cross road in the key to the map.
Investigating Officer's Comments		The application route existed in 1786 linking Newchurch Road (a public vehicular highway) passing through properties likely to be those now forming part of Waingate settlement to connect to Hurst Lane (an unclassified county road) and Byway Open to All Traffic Rawtenstall 348 at Cote Doles (point G on the Committee plan) and appears to have formed a through route as part of the general road network. The route is depicted as a cross road. It is not fully known what is meant by this term. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>). It is unlikely that a map of this scale would show footpaths. The depiction of the route on this commercially produced small scale map therefore suggests that the route was considered to be public highway and travellers using such a map were likely to be on horseback or horse-drawn vehicle.
Honour of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuch and Elizabeth Duchess of Buccleuch. It specifically shows the boundaries of coal leases

		granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.
 <p>Coal Pits are thus described</p> <p>Roads and Buildings</p> <p>Rivers, Brooks and Reservoirs</p> <p>The Red Figures refer to the Unoccupied Water Falls</p> <p>The Boundaries of Manors are the most strongly marked</p>		
Observations		<p>The whole length of the route under investigation is shown with the word 'Wingate' written by the buildings midway along the route. The route is shown connecting to other public vehicular highways at point A and point G forming a through route providing access to and from Wingate and is described in the map key as a road.</p> <p>None of the routes currently recorded as public footpaths which cross or join the route under investigation are shown.</p>
Investigating Officer's Comments		<p>The route under investigation existed at the time the map was produced (1804-1810) across land forming part of the Estate owned by the Honour of Clitheroe. The route appeared to provide a through route between point A and point G and passed between properties which now form part of Waingate. This small scale map only appeared to show the more significant routes (described as roads in the key) and did not show other routes currently recorded as public footpaths that join the route under investigation. This suggests that the route under investigation was of a substantial nature and would have</p>

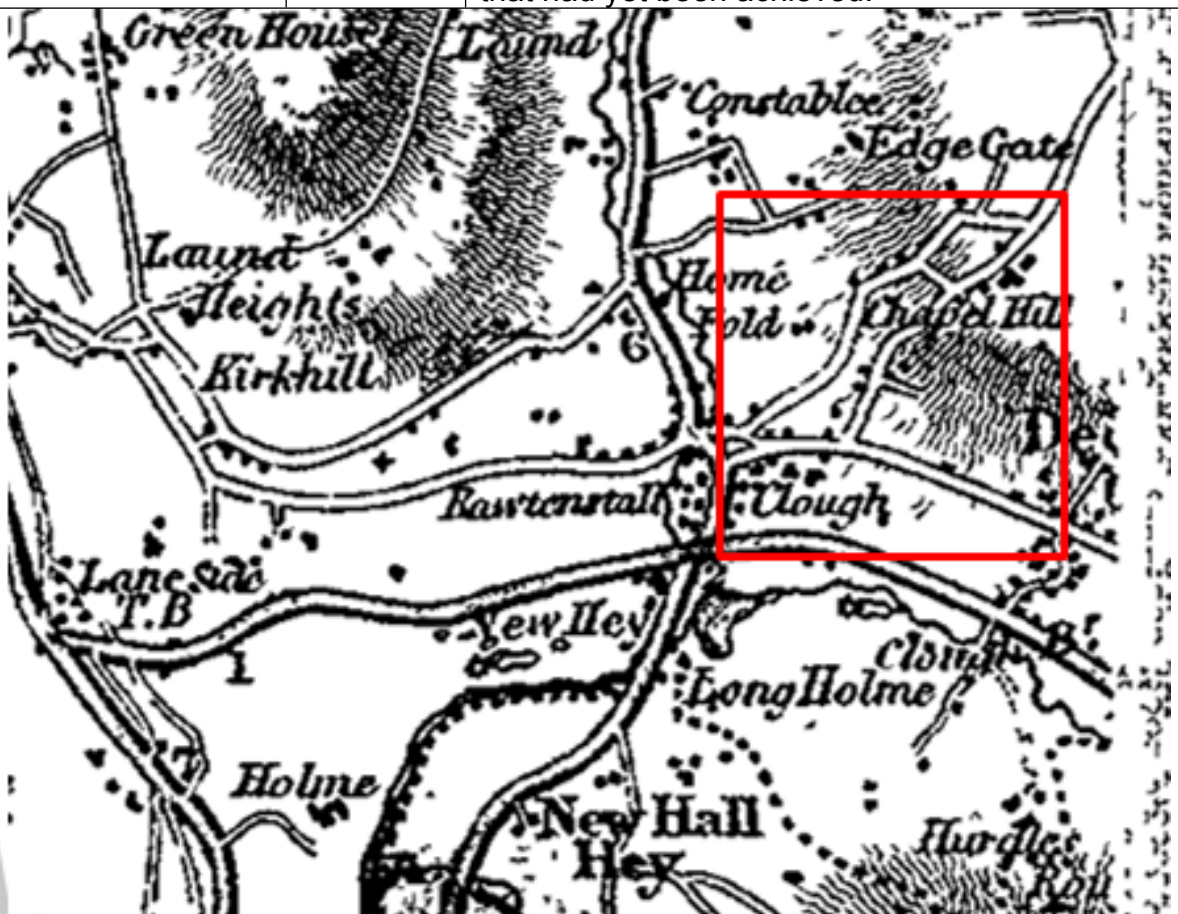
		been capable of being used by people on horseback and most probably with horse drawn vehicles at that time. However, the map key did not differentiate between roads considered to be public or private roads.
Smith's Map of Lancashire	1801	Charles Smith was a London engraver and map seller. His map of Lancashire appeared as a single sheet in 1801 and then between 1804 and 1846 was published in subsequent editions of his new English Atlas. His map was similar to Cary's Map of Lancashire dated 1789 but is not a direct copy. It is thought that Smith and Cary used common sources, especially Yates' survey, and since both were aiming at the same market – the increasing number of private and commercial travellers – it is not considered surprising that they produced similar maps.



Observations		This small scale map has been significantly enlarged for the purpose of this report. A significant route is shown from Rawtenstall extending north east to Lumb. It is not clear from the map whether the first part of this route is shown by Smith to follow Hurst Lane or the application route.
Investigating Officer's Comments		The application route probably existed in 1801 but no inference can be drawn with regards to the existence of public rights from this map.
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

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

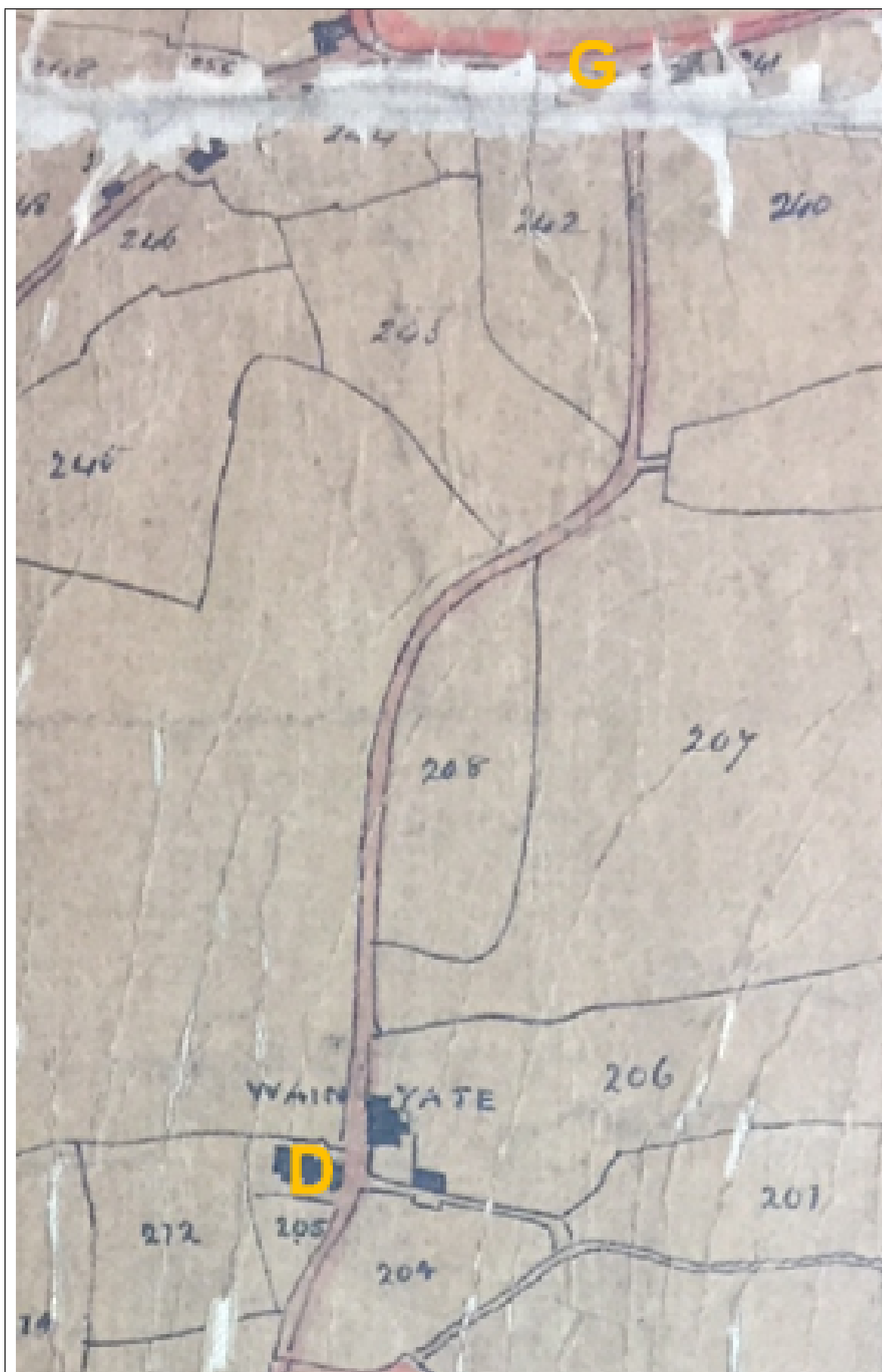
		<p>north east from Newchurch Road is Hurst Lane or the application route although the fact that the route is clearly shown on various earlier commercially produced maps suggests that it did exist at the time.</p> <p>It is not known why the route was not shown on this map, if it was not. It may have been that Stockdale did not consider the route to be a public highway or that it was unenclosed or that the hedges/fences/walls were in disrepair or possibly that this section was not surveyed, as surveys were expensive.</p>
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Hennet's Map of Lancashire	1830	<p>Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 71/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>



Observations		A route consistent with the full length of the
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		<p>route under investigation is clearly shown as a 'cross road' although its alignment (and that of other routes shown in the area) is not as accurately depicted as on some of the earlier (and later) maps examined. The Haslingden and Todmorden Turnpike road along the valley (now recorded as the A681 and A6066) is also shown.</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1830 and is shown as a 'cross road'. It is not fully known what is meant by this term. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>). It is unlikely that a map of this scale would show footpaths. Many properties are shown on this map with no access road or track to them but the route under investigation is shown passing between properties and connecting to routes that are now recorded as public vehicular highways. It is considered likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that by inclusion on the map the route under investigation was considered to be a public bridleway or carriageway.</p> <p>The route is shown as a through route on this and other small scale commercial maps but these maps do not show width variations. Better detail of widths and existence of gates for example is not available until the route is considered on maps produced at higher scale.</p>
Township map of Deadwinclough	1831	<p>This Map is available to view at Rawtenstall library. It is titled 'plan of Deadwin Clough in the Township of Newchurch in the Forest of Rossendale' 1831 and signed as being a certified copy of the original map dated 1880.</p>





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

		what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map in the County Records Office for the area under investigation.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
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		No Inclosure Award was found for the area under investigation.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849. ¹

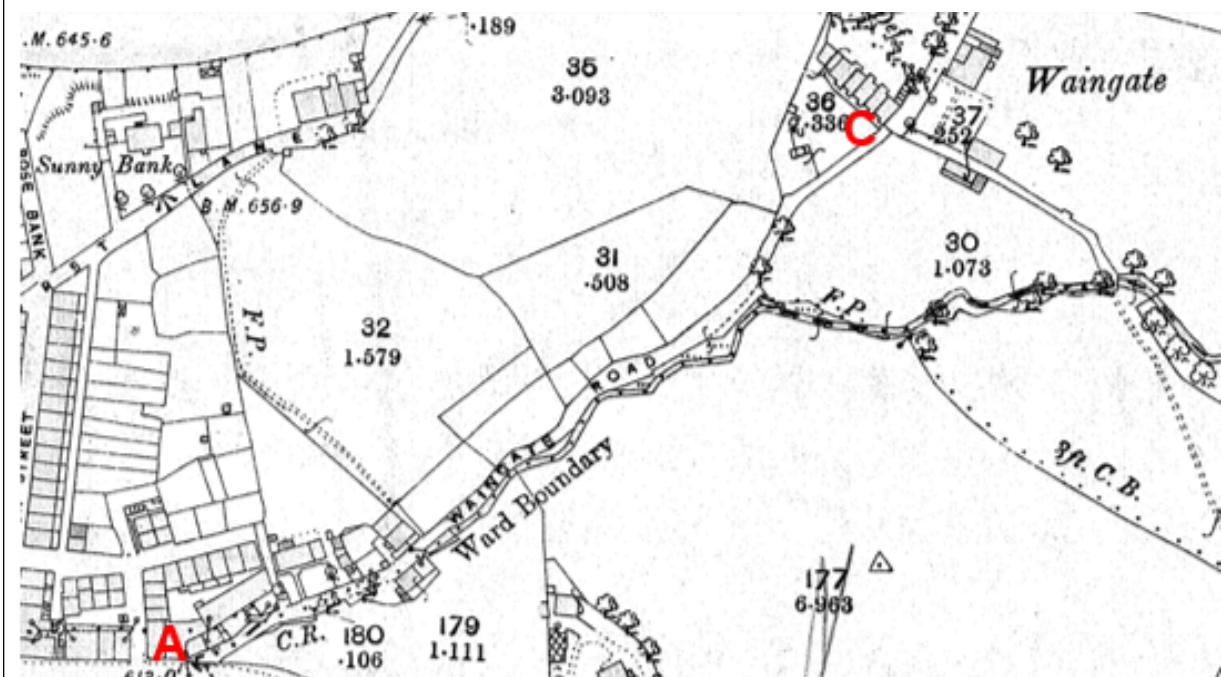
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in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

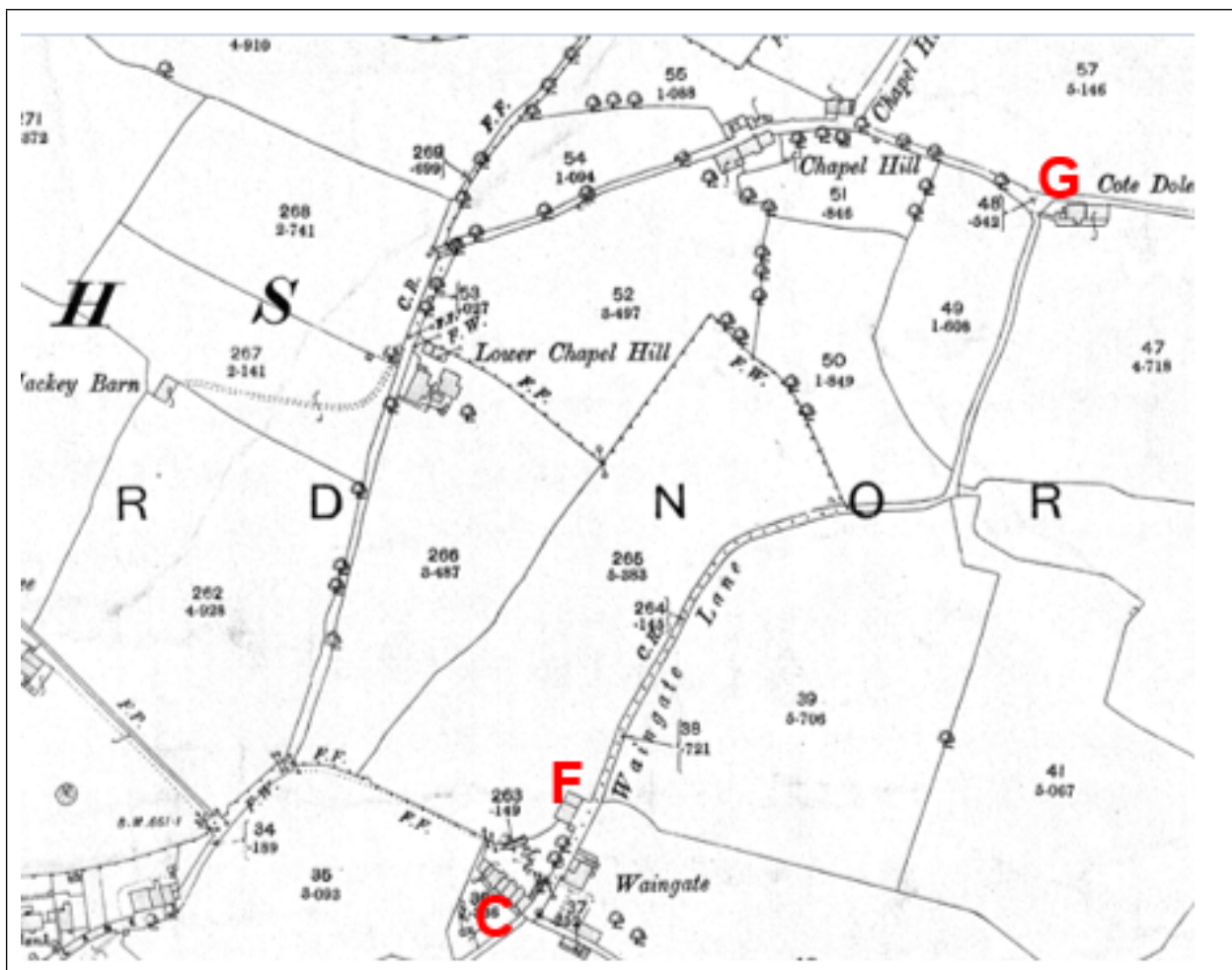


Observations		The full length of the application route is shown as a through route from the junction with Newchurch Road at point A to Cote Doles at point G. From point A the route provides access to a cotton mill known as Spring Side Mill from where it continues in a north easterly direction to provide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

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

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





Observations

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

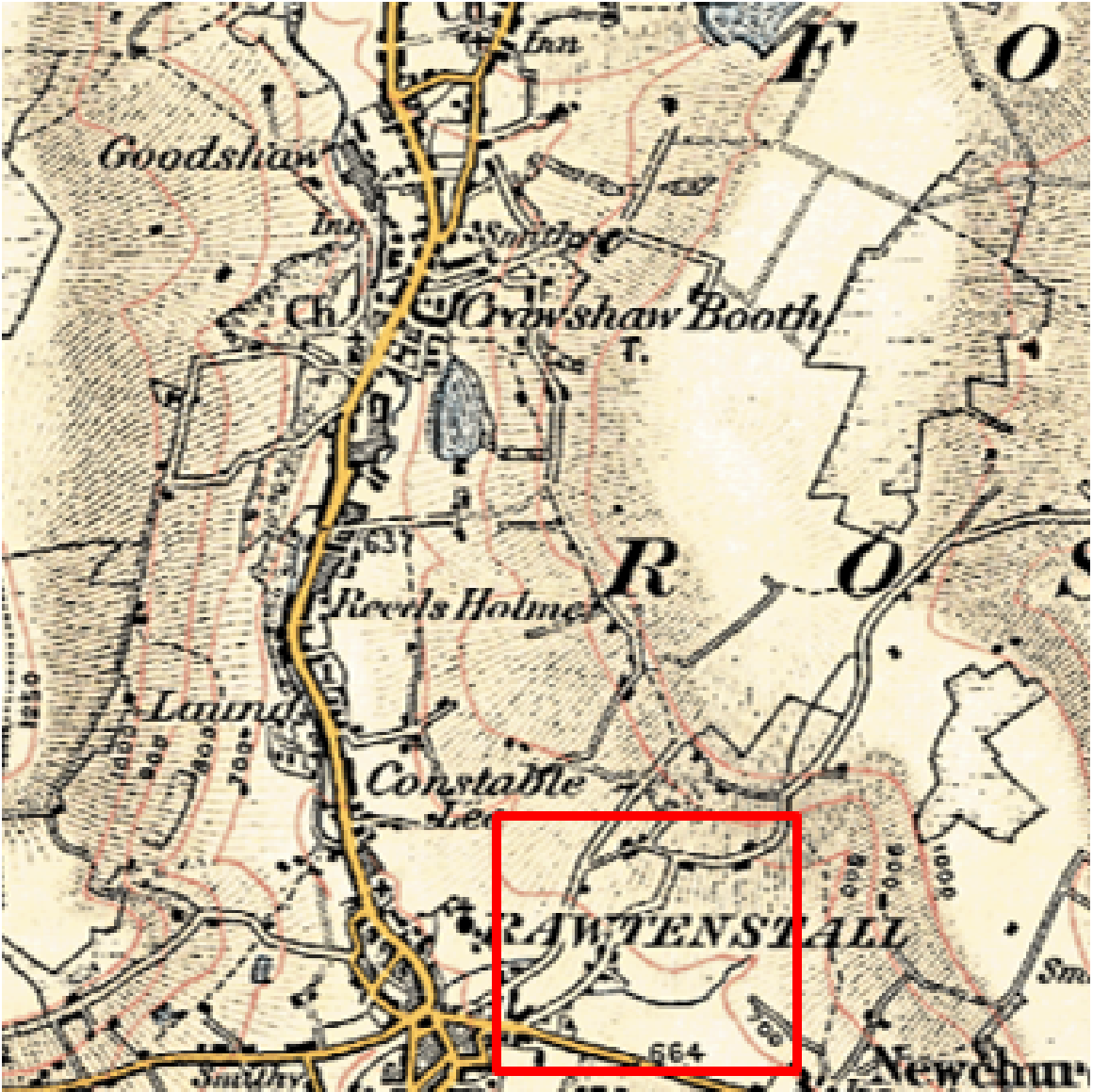
The cotton mill shown on the earlier 6 inch Ordnance Survey map is not labelled although buildings consistent with the smaller scale 6 inch map are shown.

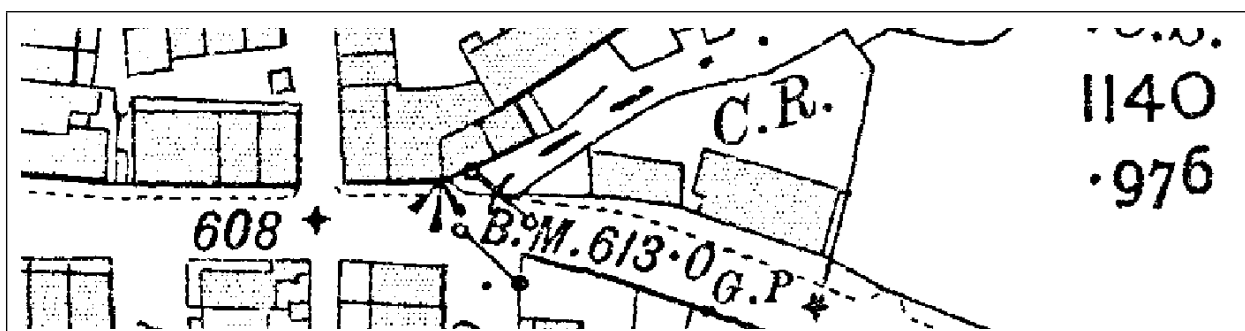
Between point A and point C the route is labelled as Waingate Road with two footpaths (denoted F.P.) joining it. At point C a line is shown across the route which probably denotes the existence of a gate.

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

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

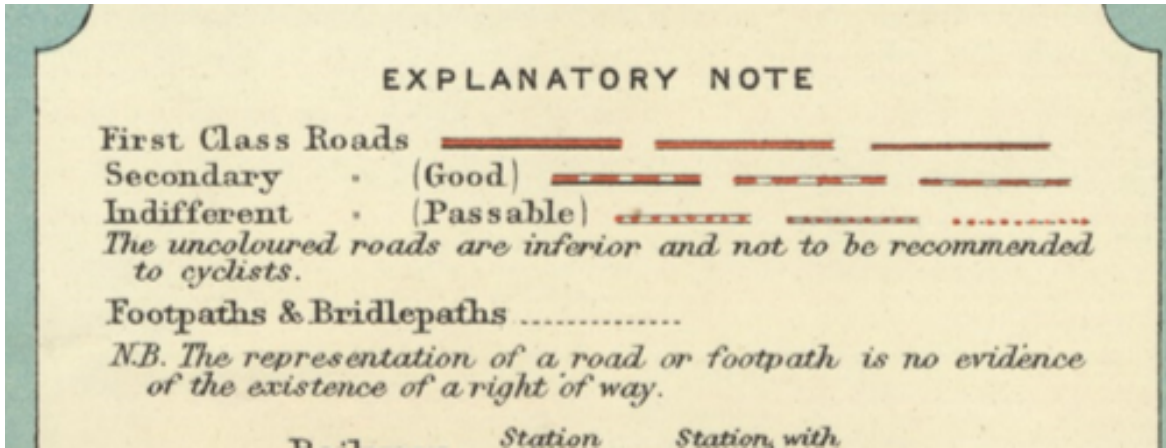
		<p>The route is bounded throughout its full length but there is no shading to indicate the status of the route. Ordnance Survey parcel numbers have been given to the section of route recorded as Waingate Road (parcel number 180) and Waingate Lane (parcel number 264).</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1893 providing access to a number of properties and a through route connecting Newchurch Road and Hurst Lane at Cote Doles.</p> <p>The fact that it was named as Waingate Road (between point A and point C) and as Waingate Lane (between point D and point F) on the map is evidence that it was known locally by those names and is consistent with use of the route by the public at least on horseback at that time. It is not known why the Ordnance Survey found that these 2 sections were so named.</p> <p>A gate is marked across the route at point C (and possibly at point A) which may have restricted but not necessarily prevented access. The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>Shading was often used to show the administrative status of roads on 25 inch maps prepared – primarily between 1884 and 1912. All metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road (an example of which is Newchurch Road on this particular map sheet). The route under investigation is not shown in such a way but neither are Hurst Lane, BOAT Rawtenstall 348 and parts of Newchurch Road which are now recorded as public vehicular highways so no inference can be drawn in this respect.</p> <p>The application has been allocated two Ordnance Survey parcel numbers but the Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status.</p>

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

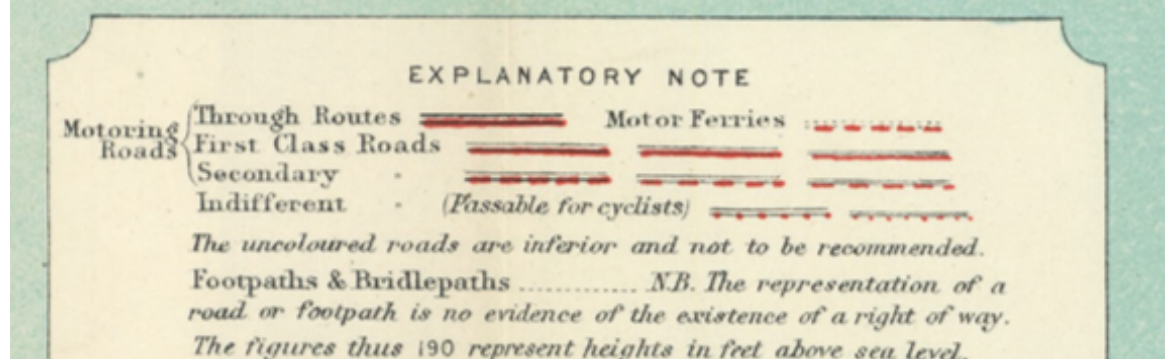


Observations		<p>The full length of the application route is shown unaltered from the 1st edition 25 inch map.</p> <p>The route is gated at point C and there also appears to be some kind of restriction to access at point A.</p>
Investigating Officer's Comments		<p>The route under investigation provided access to a number of properties along it and was also a named through route connecting to other public routes. The way it is depicted on the map is consistent with a route which could have been used at least on horseback at that time.</p>
Ordnance Survey Object Names Book		<p>When the Ordnance Survey was collecting information to put on its second series of published maps the surveyors recorded the names of anything that was to be shown on the maps. The Ordnance Survey Object Names Book for an area records these names, the description of the item named, and the local person attesting to the name. The descriptions usually state where the road started and finished, and often described them as a road, lane or drove road. The descriptions often drew a distinction between what was believed to be public and private and included information about who owned or maintained bridges.</p>
Observations		<p>A search was made at the National Archives for the relevant object names book but it is not there and does not appear to have survived.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
Bartholomew half inch Mapping	1902-1906	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps</p>

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

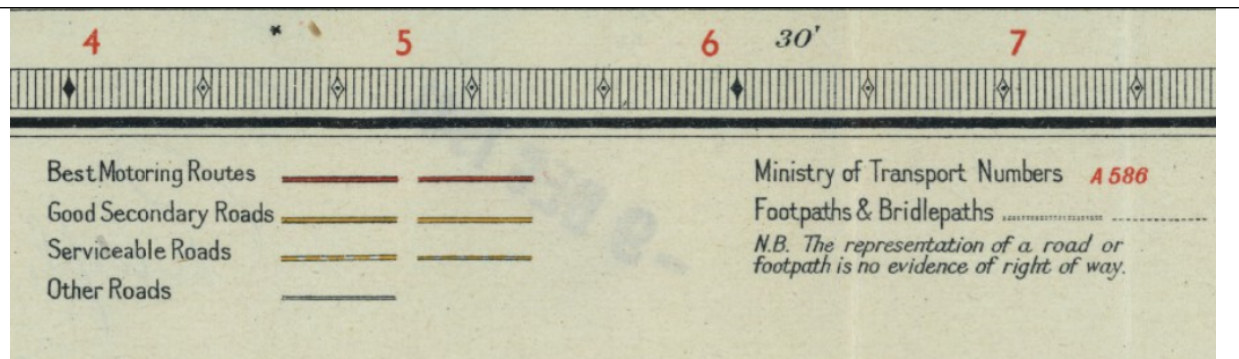


1904 edition



1920 edition





1941 edition

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


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.

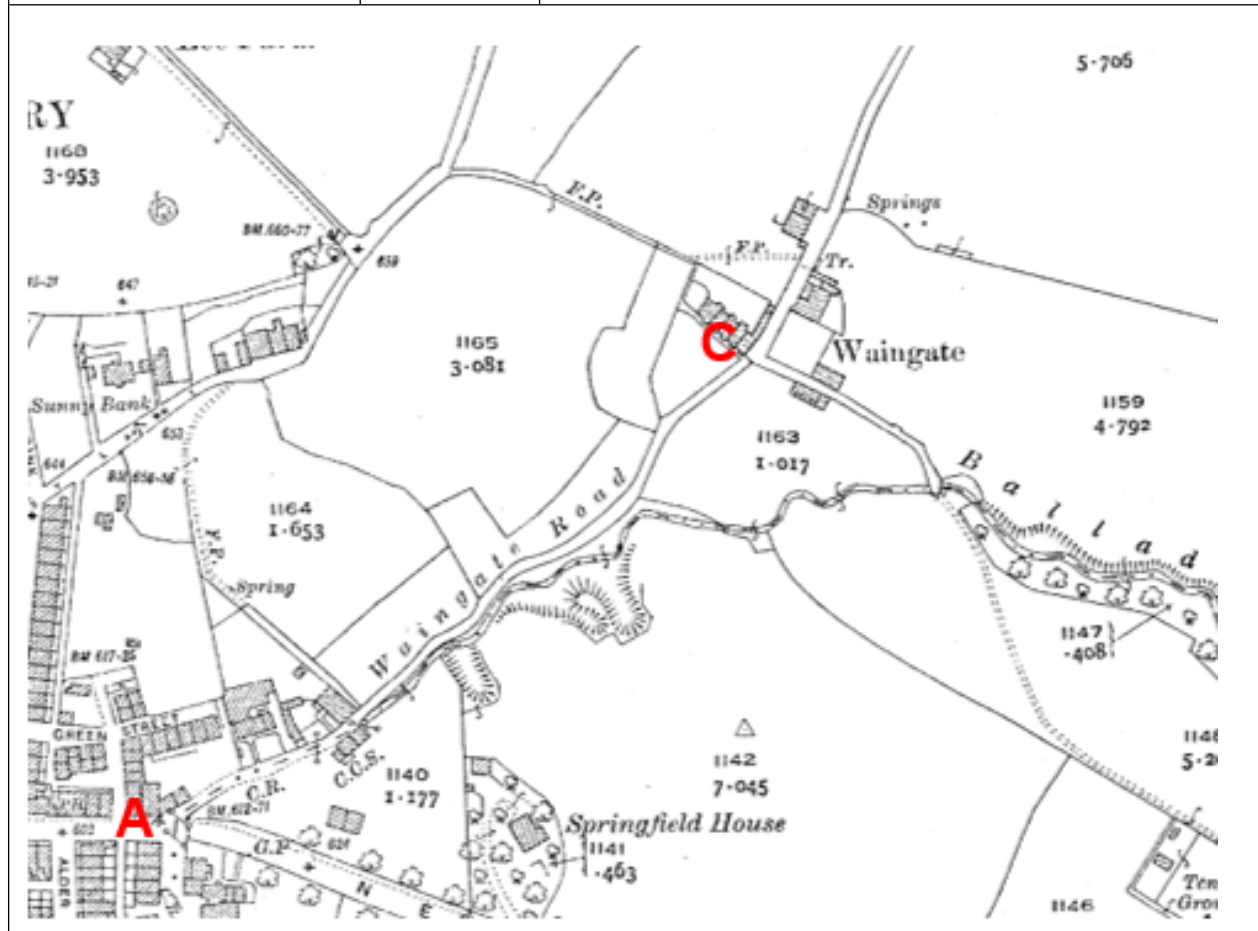


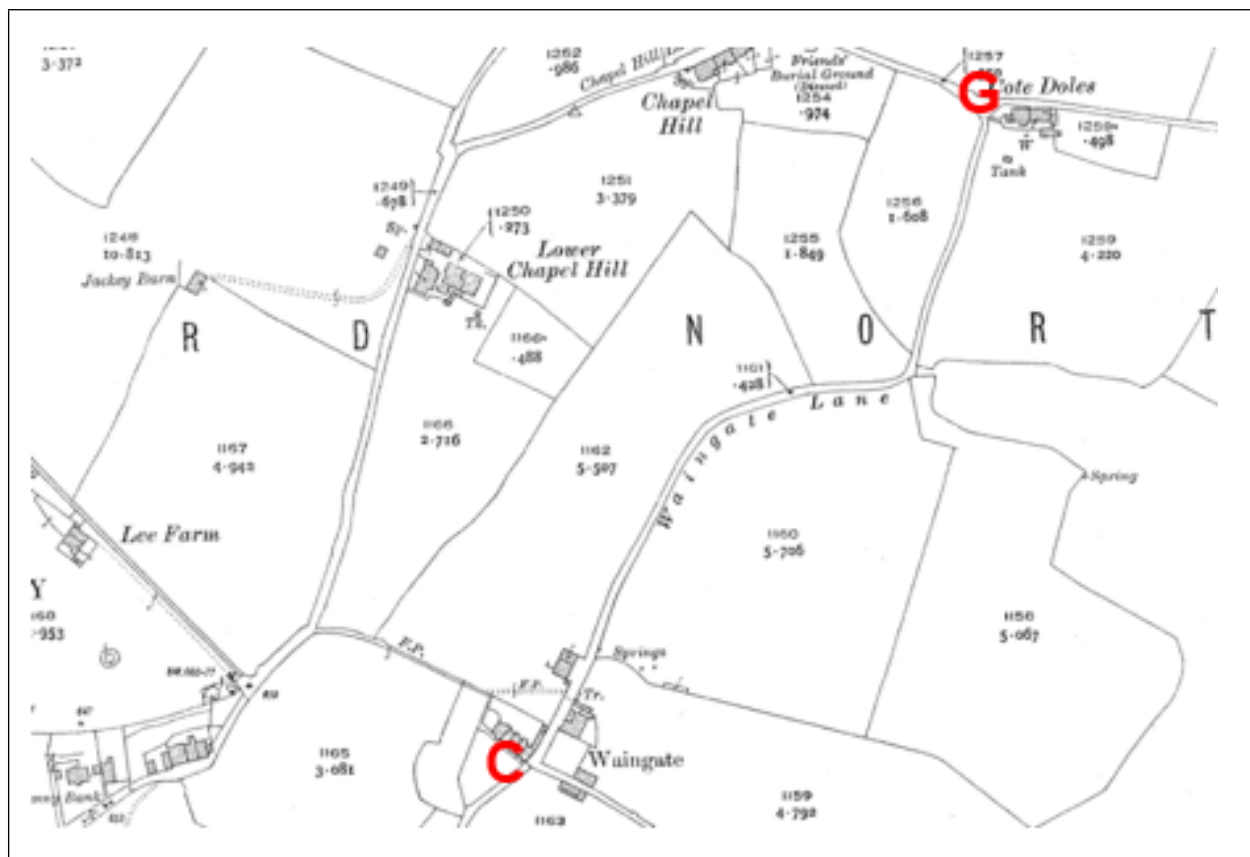


<p>Observations</p>		<p>Finance Act Maps were obtained from The National Archives.</p> <p>An examination of the maps shows that the whole of the route under investigation was excluded from the adjacent numbered hereditaments with the exception of approximately the first 80 metres from point A which crosses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

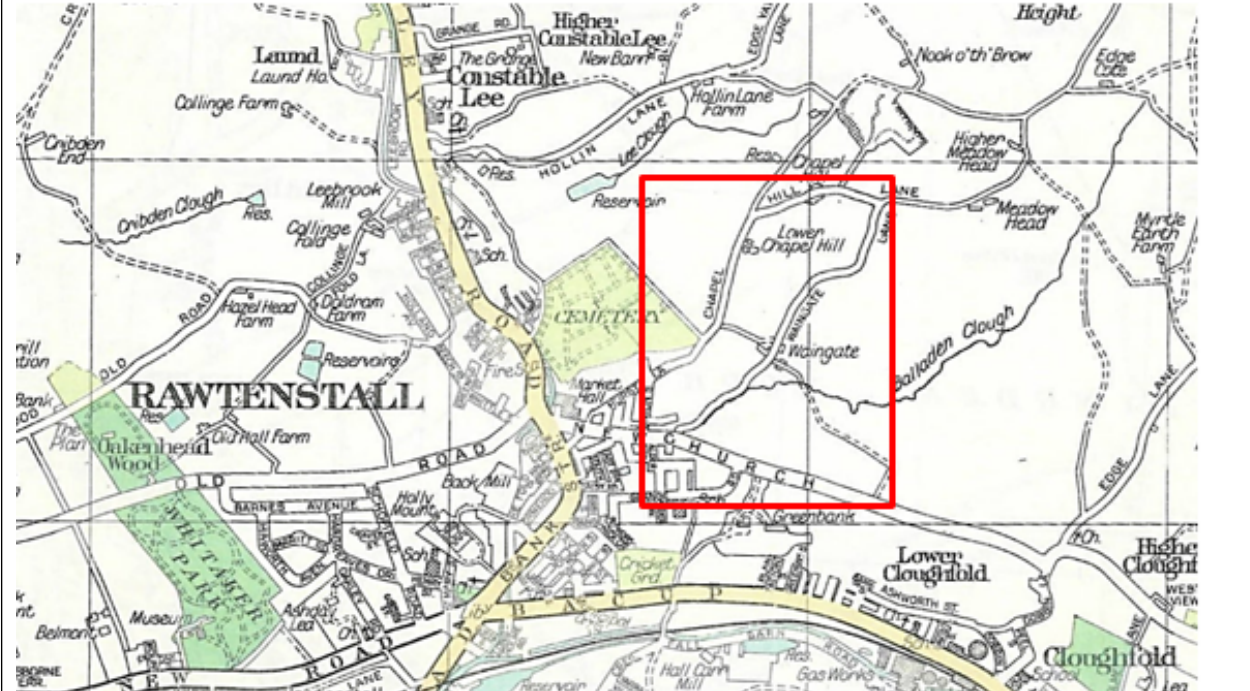
		privately owned would have been regarded as being in public ownership.
Cassini popular edition	1924	Cassini map found online and based on Ordnance Survey one inch maps. Date of survey unknown.
		
Observations		The application route is clearly shown as a well-defined bounded route from point A to point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

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





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

		<p>The full length of the route under investigation is shown passing through Waingate and is named as Waingate Lane.</p>
<p>Observations</p>		<p>The route under investigation is shown in the street atlas consistent with the way other routes carrying public vehicular rights are shown.</p>
<p>Investigating Officer's Comments</p>	<p>1940s</p>	<p>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.</p>

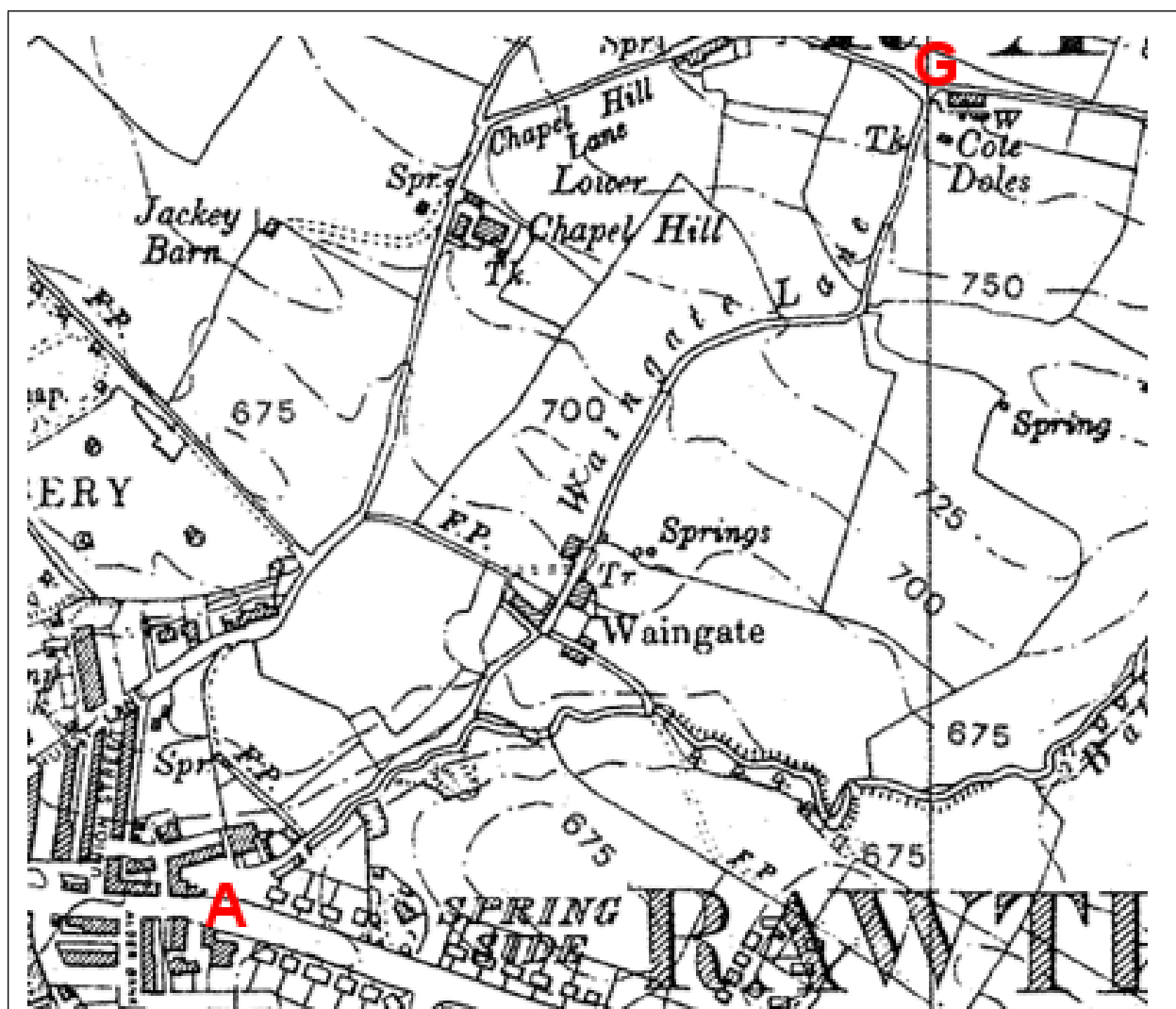
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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




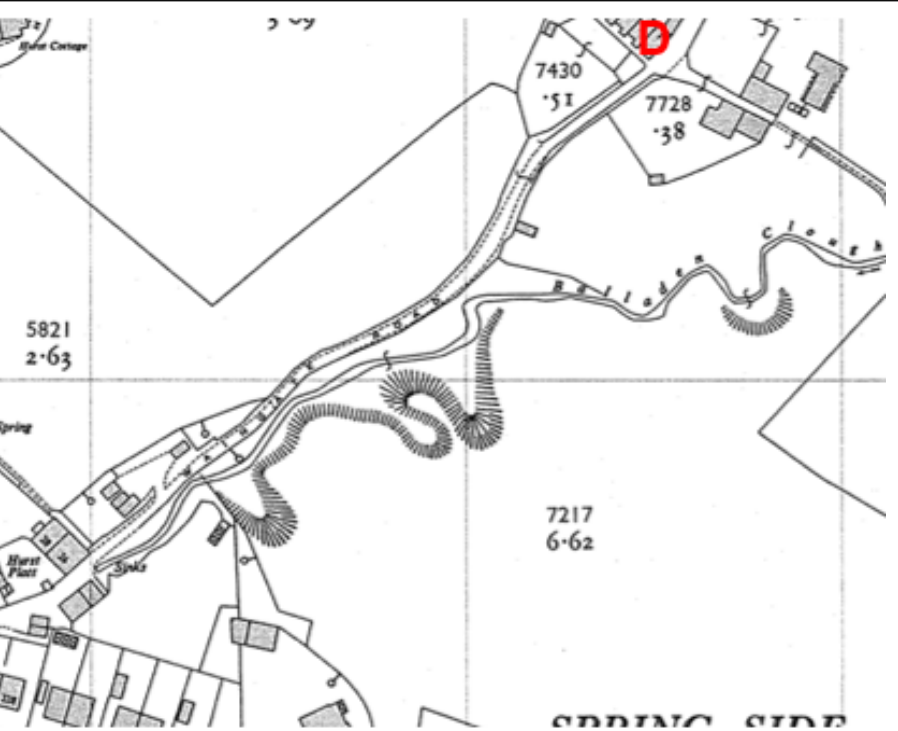
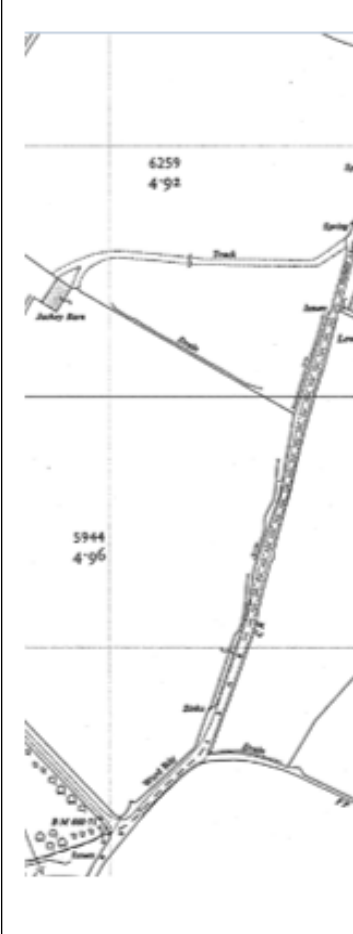
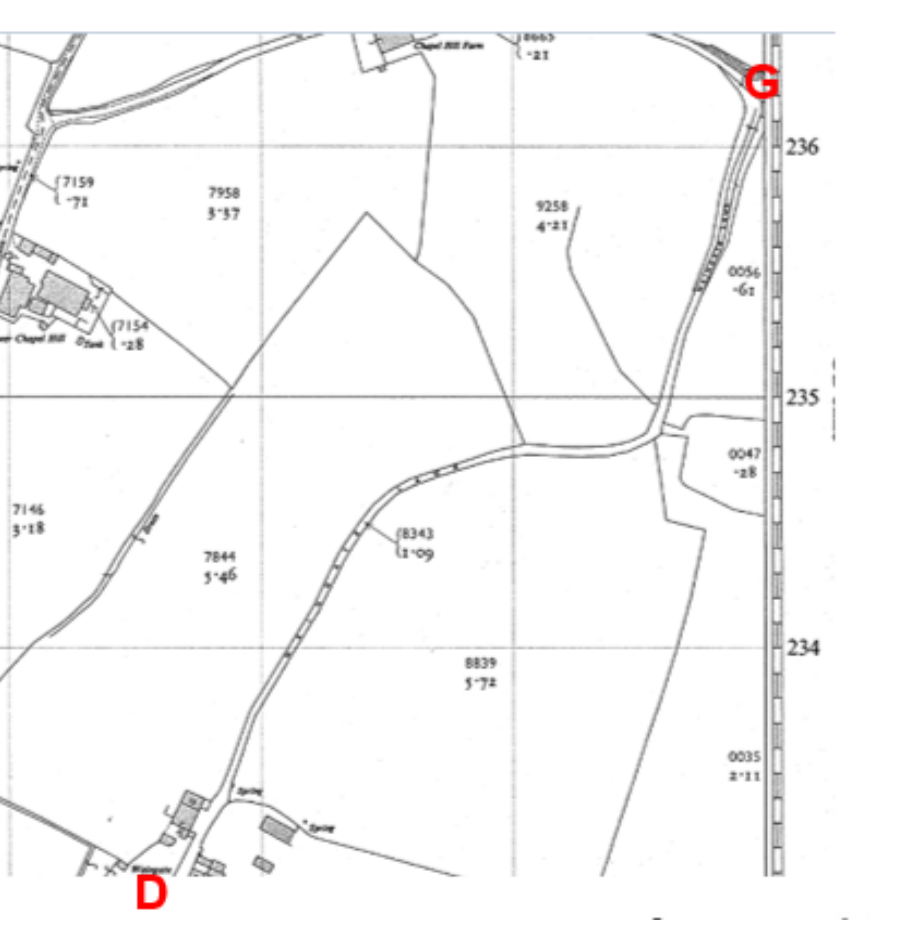




Observations		The full length of the application route can be seen but in places the route is quite faint and does not appear to be a significant through route compared to Hurst Lane which can be seen to the west of the route. However it appears to be the only vehicular access to some properties along the lane.
Investigating Officer's Comments		Use of the application route by vehicles as a through route may have declined by the 1940s although it still appeared to be the main access to the properties at Waingate.
6 Inch OS Map	1956	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The application route is shown as an enclosed and named through route providing access to Waingate (and beyond).
Investigating Officer's Comments		The application route existed in the 1930s (date of Ordnance Survey survey) and appeared to be an enclosed through route.
1:2500 OS Map	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1960-61 and published in 1963 as national grid series.

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

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





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

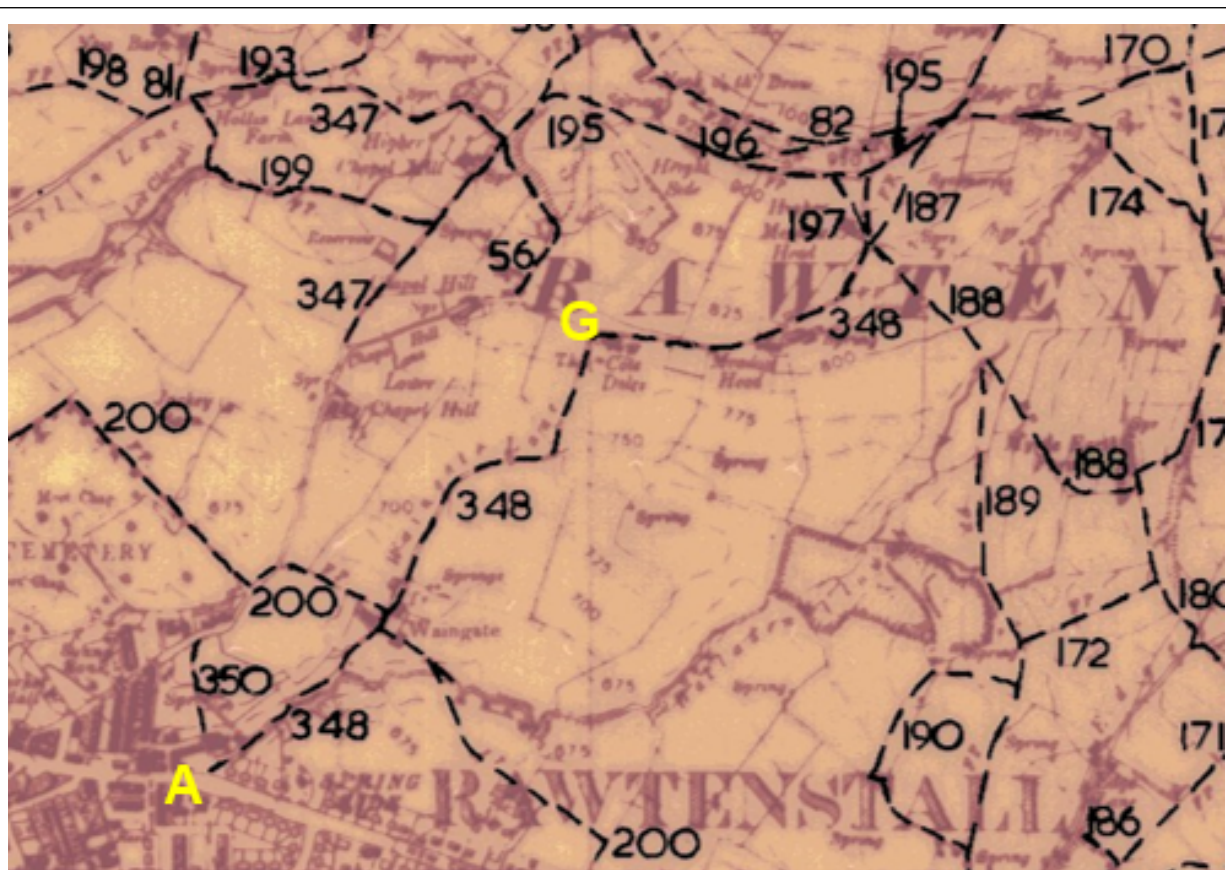




Observations		<p>The application route can be seen from point A to point D but is partly obscured by tree cover. A route appears available between point D and point F through Waingate and then a faint line denoting the route can be seen from point F to point G.</p> <p>A new access road to Waingate from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

		in the early 1950s.
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		Rawtenstall was a municipal borough in the early 1950s and a parish survey map was not compiled.
Draft Map		The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		<p>The application route was recorded as part of Footpath Rawtenstall 348 on the Draft Map and described as being from Newchurch Road north east along Waingate Road via Cote Doles in the Draft Statement.</p> <p>No representations were made to the county council in relation to the depiction of the route as a footpath.</p>
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the

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



Observations		The route under investigation was shown on the Definitive Map (First Review) as it had been previously shown.
Investigating Officer's Comments		<p>From 1953 through to 1975 there is no indication that the route under investigation was considered to be of any higher status than public footpath by the Surveying Authority.</p> <p>There were no objections to the depiction or status of the route from the public when the map was placed on deposit for inspection or at any stage of the preparation of the Definitive Map.</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed</p>

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

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

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

Landownership

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

Summary

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

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

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

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

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

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

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

1786 Yate's Map of Lancashire

1802 Smith's Map

1807 Honor of Clitheroe Map 1807 LRO DDHCL map 5

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

User evidence form 1 summary:

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

User evidence form 2 summary:

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

User Evidence form 3 summary:

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

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

User Evidence form 4 summary:

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

Information from adjoining landowners and others

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

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

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

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

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

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

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

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

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

Against Making an Order(s)

- Relatively low user numbers if considering user evidence

Conclusion

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

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

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

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

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

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

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

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

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

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

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

Risk Management

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

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

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

Reason for inclusion in Part II, if appropriate

N/A