

## **Regulatory Committee**

Meeting to be held on 13 March 2019

Electoral Division affected: Penwortham West
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### **Wildlife and Countryside Act 1981**

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

#### **Application to add a Footpath in Howick Hall Wood, Penwortham**

**File No. 804-523**

(Annex 'A' refers)

Contact for further information:

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### **Executive Summary**

An application for a footpath in Howick Hall Wood, Penwortham to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-523.

### **Recommendation**

(i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath in Howick Hall Wood, Penwortham, in accordance with File No. 804-523, be not accepted.

(ii) That no Order be made.

### **Background**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 was received in 2012 for a footpath to be recorded on the Definitive Map and Statement of Public Rights of Way in Howick Hall Wood, Penwortham and shown by a thick dashed line between points A-B-C-D-E-F on the Committee plan.

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

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

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

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

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

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

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

## **Consultations**

### South Ribble Borough Council

South Ribble Borough Council have been consulted and no response has been received so it is assumed they have no comment to make.

### Penwortham Town Council

Penwortham Town Council have been consulted and no response has been received so it is assumed they have no comment to make.

### 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	5050 2796	Junction with Howick Cross Lane
B	5047 2801	Junction with Footpath Penwortham 11
C	5032 2810	Wooden bridge
D	5035 2812	Route crossed by access track leading from field to the south east of the woodland
E	5032 2819	Northern boundary of mature woodland and more recent plantation
F	5031 2814	Southern boundary of mature woodland and more recent plantation

### **Description of Route**

A site inspection was carried out in October 2018.

The application route commences on Howick Cross Lane 170 metres north-west of the driveway to Howick Hall farm (Footpath Penwortham 9) and opposite the entrance to a National Grid Sub Station and site of the former Environment Education Centre managed by Lancashire Wildlife Trust until its closure in 2011.

From the start on Howick Hall Lane (point A on the Committee plan) the route crosses a small wooden bridge constructed over a ditch. It continues along a stone surfaced path edged by wooden edging boards in a generally north westerly direction through a thin strip of mature woodland which runs adjacent to Howick Cross Lane, crosses Footpath Penwortham 11 (Point B) and continues in a more westerly direction through the woodland along the surfaced path. Edging boards are visible along most of the route although in places they are becoming rotten. The path weaves through the trees running parallel to the lane for approximately 230 metres (from point A), largely bounded on either side by the remains of wooden edging boards and crossing a short section (2.5 metres) of wooden boardwalk before it turns to continue north into the woodland, passing a dog waste bin (from where there is direct access to Howick Hall Lane) and crosses a substantial wooden bridge at point C. The bridge has a span of approximately 5 metres across a watercourse and beyond the bridge the application route splits to effectively form a circuitous route around the woodland starting and finishing at point C.

Heading north east from point C, the application route crosses the woodland floor along an unmarked route towards point D, where it is crossed by an access track leading from a gateway into the field south east of point D.

Beyond point D, a worn path can be seen along the application route consistent with pedestrian use following a route close to the eastern boundary of the woodland. In several places, short sections of revetment work and steps are present along the route which turns north west as it reaches the far end of the wood, and continues along the northern boundary of the wood weaving between the trees with some sections of path defined by wooden edging boards and occasional wooden steps.

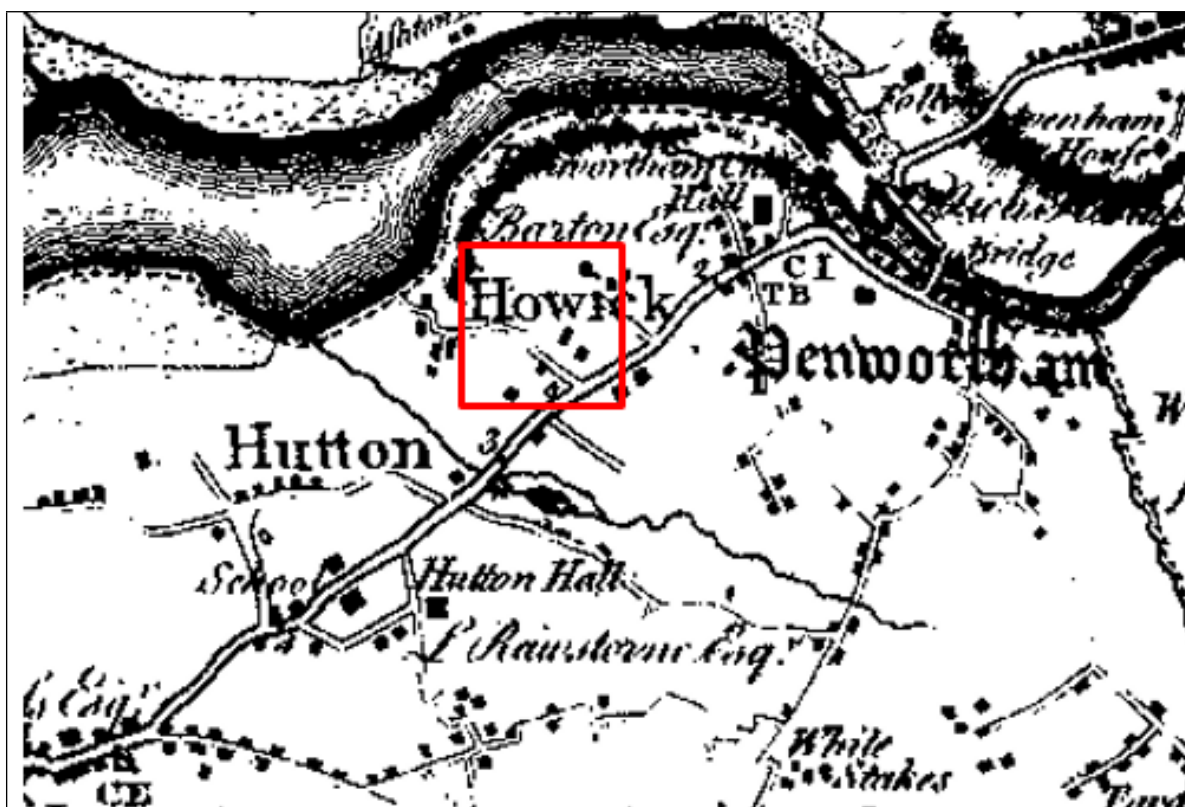
At the most northerly point in the woodland, the path turns sharply to continue in a south south easterly direction ascending quite steeply up a series of zig zagging wooden steps and short boardwalk to point E. No fencing was evident across the route at point E (as indicated on the Committee plan) but a clear change in vegetation was evident as the route between point E and point F passed through an area of less mature woodland and was visible as a trodden track consistent with pedestrian use. Again, no fencing was evident at point F and from point F the route – which was not apparent as a trodden track – passed through an area of mature woodland which appeared possibly to have been used at some point as an outdoor classroom – back to point C.

The total length of the route is 650 metres.

### **Map and Documentary Evidence**

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

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



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



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



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

Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>Tithe Map and Tithe Award or Apportionment</b>	1840	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		<p>The Tithe Map of Howick was produced in 1840. The strip of woodland adjacent to Howick Hall Wood is shown with a gap in it which appears to provide access from the lane to the farm. The woodland through which the route C-D-E-F runs is shown with the exception of part of the current woodland between E-F which is shown as part of the field to the west. The application route is not shown.</p> <p>The woodland has been given the numbers 63 and 64 on the Tithe Map, both of which are described as plantations which were owned by John Gorst who also owned Howick Hall.</p>
Investigating Officer's		The application route did not exist in 1840.



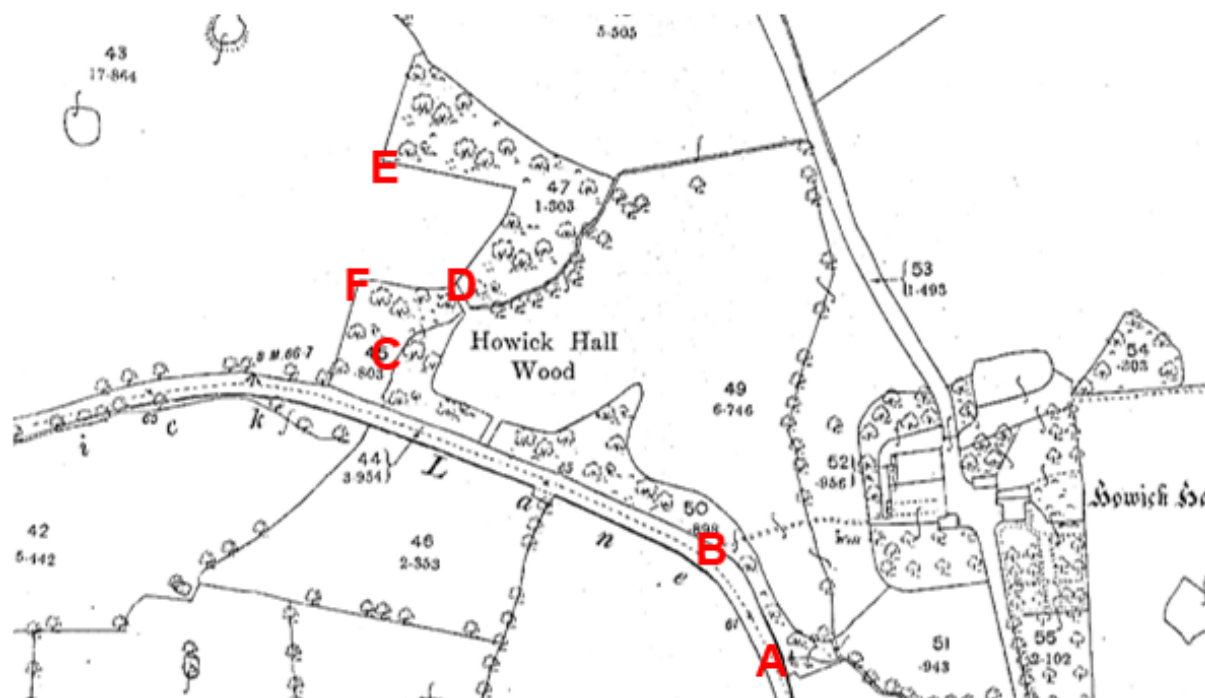
Comments		
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		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.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. <sup>1</sup>



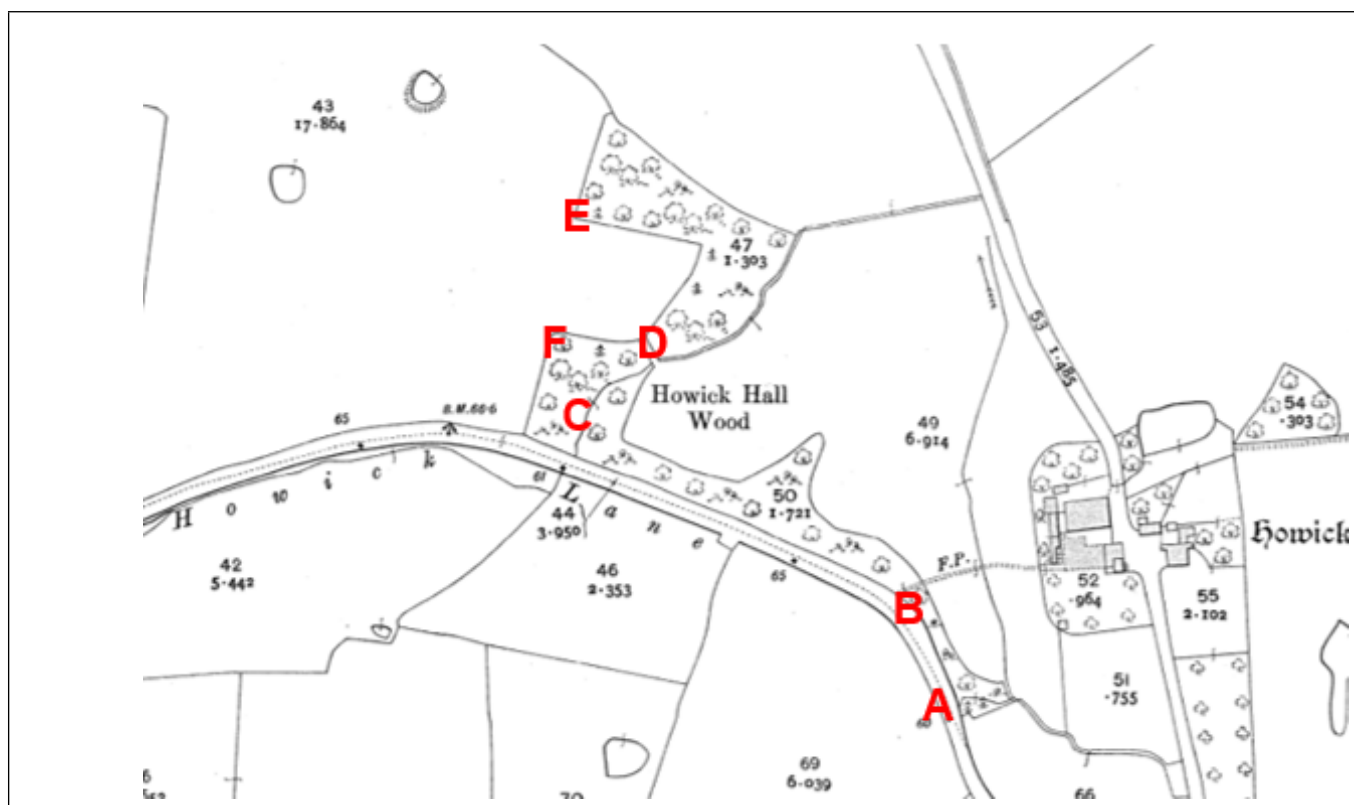
Observations		The application route is not shown. The strip of woodland adjacent to Howick Hall Wood is shown with a gap in it which appears to provide access from the lane to the farm. The woodland through which the route C-D-E-F runs is shown with the exception
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<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.

		of part of the current woodland between E-F which is shown as part of the field to the west.
Investigating Officer's Comments		The application route did not exist in 1844-45.
<b>25 Inch OS Map</b>	1895	The earliest Ordnance Survey map at a scale of 25 inch to the mile. Surveyed in 1890-91 and published in 1895.

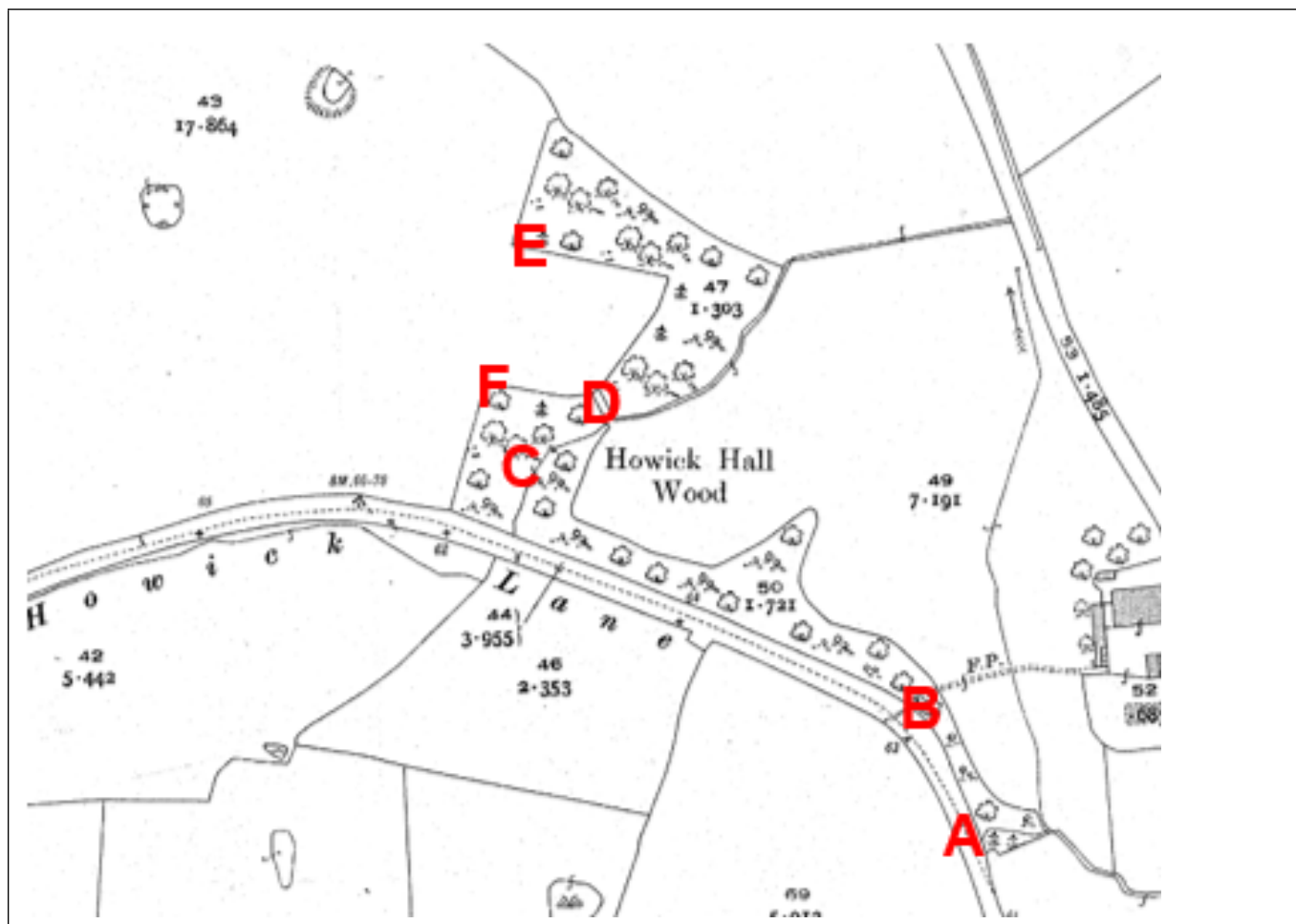


Observations		The application route is not shown. A footpath is shown extending west from Howick Hall to Howick Hall Lane crossing the application route at point B. The woodland is shown with a solid boundary suggesting it was fenced from the adjacent road and farmland with two fenced off access 'strips' at an unmarked point between point B and point C and at point D. Fencing may have existed across the route at point A, D (x2), E and F and also at the unmarked access strip midway between point a and point B. The watercourse crossed by the route at point C is shown but no bridge is shown.
Investigating Officer's Comments		The application route did not exist in 1890-91.
<b>25 inch OS Map</b>	1911	Further edition of the 25 inch map surveyed in 1890-91, revised in 1909 and published in 1911.



Observations		The application route is not shown. Fences may have existed across the route at points A, D (x2), E and F. The watercourse crossed by the route at point C is shown but no bridge is shown.
Investigating Officer's Comments		The application route did not exist in 1909.
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this</p>

		<p>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>The base map of the Ordnance Survey 25 inch map deposited as the Finance Act/District Valuation Map deposited in the County Records Office is drawn on the 1938 edition of the OS mapping. Only one plot of land in the south east corner of the map has been marked up and the rest of the map – including the area crossed by the application route is not marked up or numbered.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
<b>25 Inch OS Map</b>	1932	<p>Further edition of 25 inch map (surveyed 1890-91, revised in 1930 and published 1932.</p>



Observations		The application route is not shown. The woodland is shown unaltered from how it is shown on the earlier edition of the 25 inch Ordnance Survey map.
Investigating Officer's Comments		The application route did not exist in 1930.
<b>Authentic Map Directory of South Lancashire by Geographia</b>	Circa 1934	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>



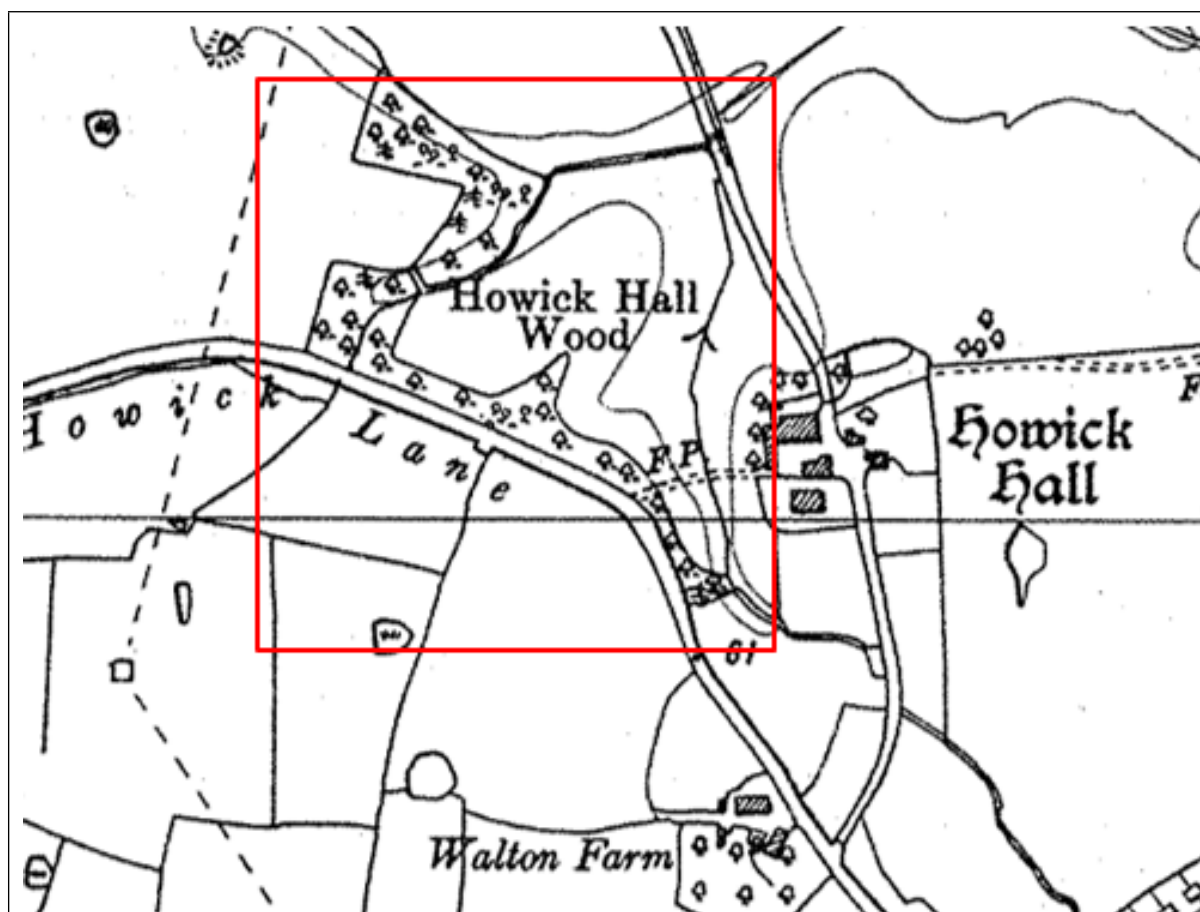
Observations		The application route is not shown. The woodland is shown and named (Howick Hall Wood).
Investigating Officer's Comments		A rural footpath through woodland or across fields would not normally be shown on a map of this scale and produced for this purpose (a road map) so no inference can be drawn.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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



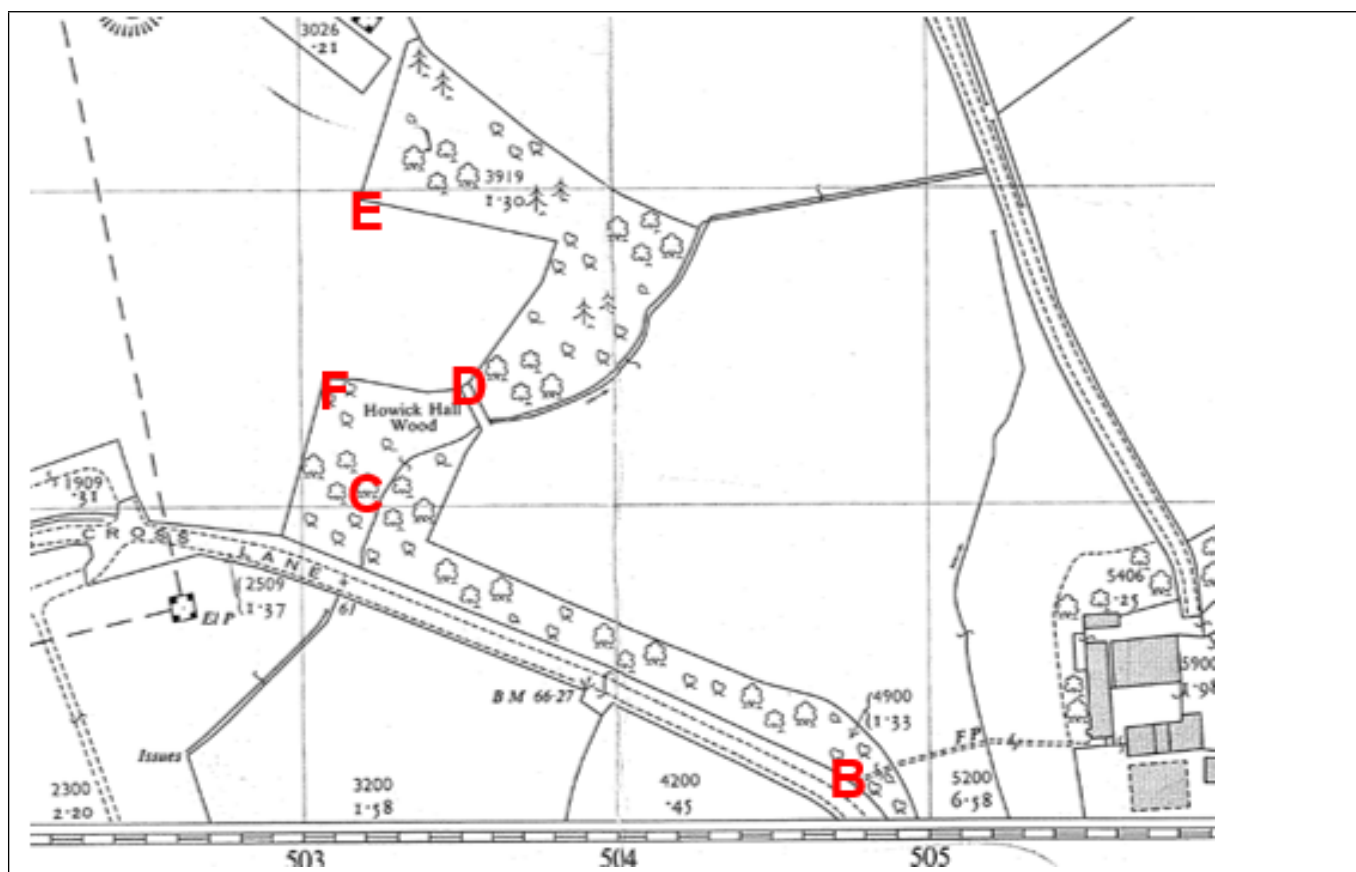
Observations		The application route is not visible. The application route passes through woodland and as such it is unlikely that it would show up on an aerial photograph due to tree cover. Part of the land crossed by the application route crosses an area which was not covered by trees in the 1940s but no route can be seen on the ground.
Investigating Officer's Comments		The application route did not exist between E-F in the 1940s.
<b>6 Inch OS Map</b>	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.





Observations		The application route is not shown.
Investigating Officer's Comments		The application route did not exist in the 1930s (when the OS survey was carried out).
<b>1:2500 OS Map</b>	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published 1963 as national grid series.

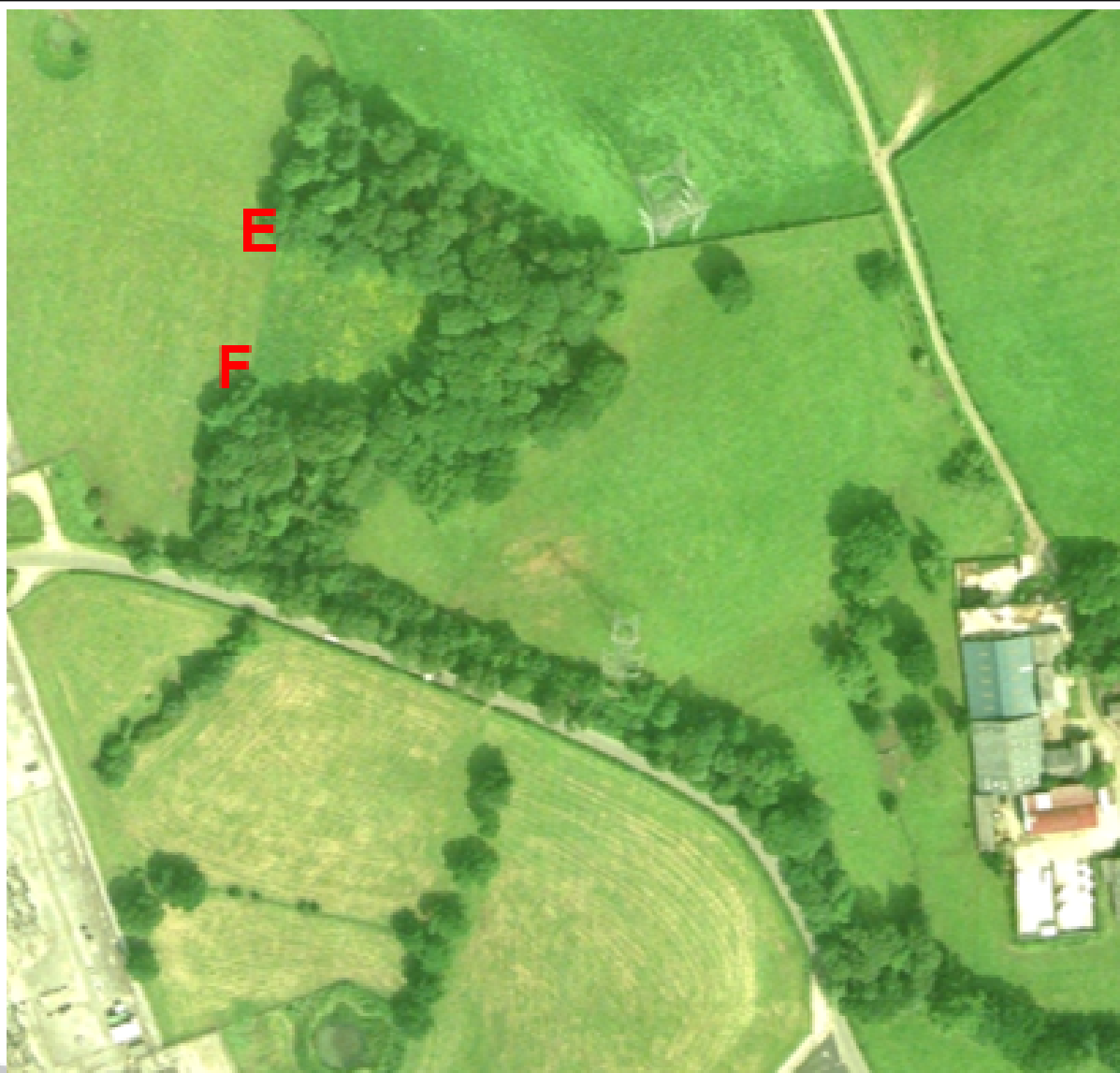




Observations		The application route is not shown. The land crossed by the application route is shown in the same way as it was on the earlier edition of the 25 inch Ordnance Survey map.
Investigating Officer's Comments		The application route did not exist in 1961.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

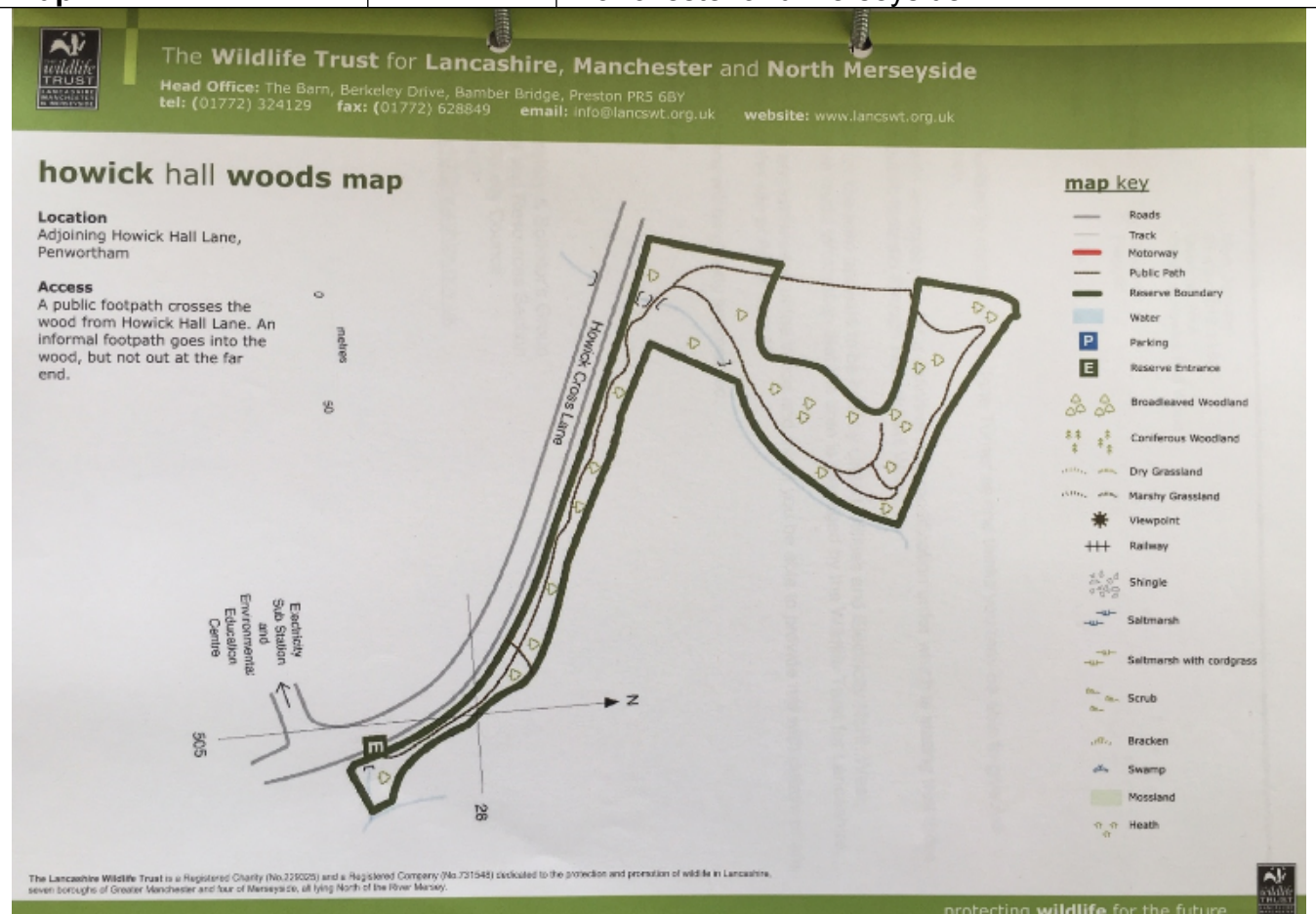


Observations		The application route is not visible. The application route passes through woodland and as such it is unlikely that it would show up on an aerial photograph due to tree cover. Part of the land crossed by the application route crosses an area which was not covered by trees in the 1960s but no route can be seen on the ground.
Investigating Officer's Comments		The application route between E–F did not exist in the 1960s.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS.



Observations		The application route is not visible. The application route passes through woodland and as such it is unlikely that it would show up on an aerial photograph due to tree cover. Part of the land crossed by the application route crosses an area which was not covered by trees (between point E and point F) but no route can be seen on the ground.
Investigating Officer's Comments		It is not possible to see whether any part of the route existed on the ground due to tree cover. The route between point E and point F does not appear to have existed in 2000.
<b>Online details of Nature Reserves</b>	2012	<a href="http://yps.lancashire.gov.uk/howick-hall-wood">http://yps.lancashire.gov.uk/howick-hall-wood</a> and <a href="http://www.southribble.gov.uk">http://www.southribble.gov.uk</a>
Observations		Photocopies of extracts from two websites were captured and printed in 2012. The first documented a list of nature reserves on the Lancashire County Council Young People's Service website and lists 'Howick Hall, Booth Plantation' as a nature reserve

		<p>which is described as being located adjacent to Howick Hall Lane, Penwortham and as being managed by the Wildlife Trust for Lancashire, Manchester and North Merseyside. The information is no longer (2018) listed on the Lancashire County Council website.</p> <p>The second website (<a href="http://www.southribble.gov.uk">http://www.southribble.gov.uk</a>) describes Howick Hall Wood as a nature reserve comprising of semi-natural woodland with mature oak, beech and other native hardwood species. It refers to the public footpath which crosses the site and also to the fact that the woodland was used intensively between April and October for school visits to the centre. This information is no longer (2018) listed on the website.</p>
Investigating Officer's Comments		Neither website makes any specific reference to the application route but both imply that there is public access to the site as the woodland is listed as a nature reserve.
<b>Howick Hall Woods Map</b>	Undated	Map produced by The Wildlife Trust for Lancashire, Manchester and Merseyside.



Observations		<p>This undated map was produced by The Wildlife Trust for Lancashire, Manchester and North Merseyside and shows the boundary of Howick Hall Woods nature reserve as including all of the land</p>
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		crossed by the application route with the exception of the route between point E and point F. A route broadly consistent with the application route is shown by a dashed line and denoted in the key as a 'Public Path'. However, a note about access on the map states that a public footpath crosses the site and that an informal footpath goes into the wood, but not out at the far end.
Investigating Officer's Comments		A route broadly consistent with the application route is shown but on balance it appears that it is described as an informal route as opposed to a public footpath. The date of map is unknown.
Sample of undated photographs submitted by applicant		Photographs submitted by the applicant showing the paths constructed by The Wildlife Trust.







Stile onto Howick Cross Lane adjacent to point B



Application route between point B and point C showing dog bin and unrecorded access (field gate) onto Howick Hall Lane



BRIDGE ACROSS DITCH AND ADVENTURE AREA  
BUILT BY LWT. VOLUNTEERS



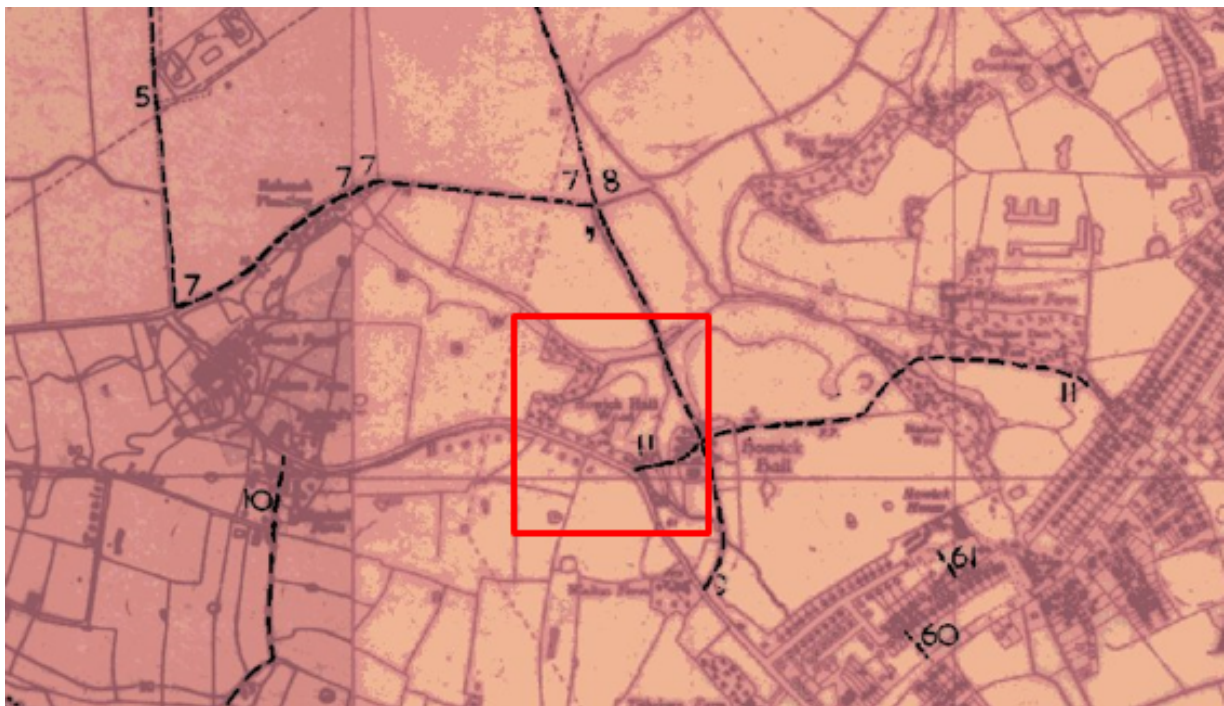
Application route approaching point C

Observations		The photographs are undated but show work carried out on the application route prior to the application being received in 2012. They show that parts of the route physically existed and appeared capable of being used and that the route had been physically constructed and was along a clearly defined route along those sections where work had been carried out. It is not known whether the paths were newly created or whether the work carried out was to improve an existing route.
Investigating Officer's Comments		Those parts of the route shown on the photograph physically existed at the time the photographs were taken but no inference can be drawn with regards to the existence of public rights.
Definitive Records	Map	<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly

		comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The application route is not shown on the Parish Survey map.
<b>Draft Map</b>		<p>The parish survey map and cards for Penwortham were handed to Lancashire county council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The application route is not shown on the Draft Map and there were no objections to the omission of the path.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route is not shown on the Provisional Map and there were no objections to the omission of the path.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.



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



Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route was considered to be a public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	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

		<p>public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The county council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
Observations		<p>The route is not recorded on the 1929 Handover Map and is not recorded on the List of Streets or shown as an adopted highway on highway records retained by the county council.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the county council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>

Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the county council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate a public right of way over the application route.

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

### **Landownership**

The land crossed by the route between points A-B-C-D-E and C-D is owned by National Grid Electricity Transmission PLC and the land crossed between points E-F is owned by Electricity North West Limited.

### **Summary**

The map or documentary evidence examined did not support the existence of the application route, and nothing found suggests that the full length of the route physically existed until at some point during which the site was managed as a nature reserve by the Wildlife Trust.

The site evidence and photographs and maps dated from around the time of the application (or later) confirm the existence of the full length of the route by the time that the application was made, but an undated map produced by the Wildlife Trust suggests that the path was considered to be an 'informal' one constructed to provide a circular route through the nature reserve.

In this particular case, it is considered that a detailed examination of the user evidence will be required to determine the consistency, extent and basis of use and that it appears likely that the route may have been extended over the years and the surface improved to follow the walked lines.

An important consideration is whether use was by right, rather than as of right, since the Wildlife Trust's purpose, on which its charitable status is based, includes public access. As this could be considered to give members of the public a right to walk in the woods, any use of the footpath is by right and hence no right of way can be inferred or deemed from the user evidence.

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

#### **Information from the Applicant**

The application was submitted in 2012 by Penwortham Nature Conservation Group (PENCON) who have stated in their application that the route had been used for at least the last 50 years for dog walking, bird watching, family walks and general leisure.

They also explained that the path was used by the Wildlife Education Centre for educational activities with both adults and children, and that over the years the Wildlife Trust did a lot of work to the paths and provided stiles and bridges and that the public were actively encouraged to use the route.

They explained that the Lancashire Wildlife Trust made the small bridge at the entrance to the woods (point A) in approximately 2002, and that the path was upgraded by United Utilities and Lancashire Wildlife Trust in approximately 2010 but was an 'original path' which had been maintained for 15 years (prior to 2012) since the Wildlife Education Centre opened but that it had been there for many years previous to that.

The bridge at point C was stated to have been provided by United Utilities (no date given).

Prior to submitting the application PENCON explained in their application that they had contacted Lancashire Wildlife Trust to enquire who would maintain the area, following the closure of the Wildlife Education Centre in 2011, and were told that the Wildlife Trust would remain responsible up to December 2011 and then it would be the responsibility of National Grid.

Nine user evidence forms were submitted detailing use of the route although none of the user evidence forms were submitted with maps:

#### User 1 (the applicant)

Used the route from 1976-2012 (36 years) for dog walking and looking at wildlife. States that they used the route on foot 203 times a year and that they had seen others using it. They had never been stopped, challenged or told they could not use the route and had never been given permission to use it. They referred to the fact that the public were encouraged to use it by upgrading the surface and provision of stiles and bridges and that the route was already an established path when they first started to use it in 1976.

#### User 2

Had used the route for 10 years (no dates were given but stated that in the last 4 years (i.e. 2008-2012) they had used it twice a day. Use was for walking dog and visiting the woods with his children. The user had seen many people walking dogs on the route and referred to occasionally seeing horses. They had never been stopped, challenged or told they could not use the route and had never been given permission to use it. They refer to the fact that the woods were a safe place to walk dogs or to visit with children and to close them would not make any sense.

#### User 3

Described knowledge and use of the route as being '40 plus years' and that their use was for leisure on a daily basis. They had never been stopped, challenged or told they could not use the route and had never been given permission to use it.

#### User 4

Described knowledge and use of the route as being for 61 years (from 1951 onwards). Use was described as being for pleasure and dog walking 600 times a year. They had never been stopped, challenged or told they could not use the route and had never been given permission to use it.

#### User 5

Described knowledge and use of the route for 40 'plus' years and that they were first introduced to the woods by their grandfather and father. Described their use as being for leisure, exercise, walking the dog and looking at the wildlife and stated that use was almost every day of the year. Commented that they had seen many other people using the route but stated that the route had extended over the years allowing access deeper into the woods. They had never been stopped, challenged or told they could not use the route and had never been given permission to use it.

#### User 6

Describes knowledge of the route for 'up to 50 years' and that they walked 'part of the wood' in their childhood (1965-1975) and had walked through the wood for the past 25 years. Describes use as being for leisure, dog walking and wildlife and that use had been every day – sometimes up to 3 times a day. They had never been stopped, challenged or told they could not use the route and had never been given permission to use it. Explained that the wood had 'opened up' over the years with the route being extended.

#### User 7

Use of the route for 8 years (2004-2012) for exercise and recreation with family. Refers to seeing others using the route and states that they had never been stopped, challenged or told they could not use the route and had never been given permission to use it. Refers to seeing 'No Road' sign but says it was always a public – or possibly permissive footpath. Expresses concern about the wood being closed off to the public in the future (post 2012).

#### User 8

Describes knowledge and use of the route for 25 years for walking dogs on a daily basis. They had never been stopped, challenged or told they could not use the route and had never been given permission to use it.

#### User 9

Known the route for 10 years and used it for 4 years (2008-2012) to walk the dog approximately 200-400 times a year. Refers to seeing other people walking the route and that the bridge over the stream changed location. They had never been stopped, challenged or told they could not use the route and had never been given permission to use it.

## Information from Others

The Wildlife Trust for Lancashire, Manchester and North Merseyside replied to an email requesting information in 2018 explaining that they leased Howick Hall Wood and a building on the opposite side of Howick Hall Lane from the National Grid between 1998 and 2011.

During those years, they operated an Education Centre which was open to the public all year round (during daylight hours) and the woods were accessible at all times. Between March 2009 and March 2010 the Trust implemented a project to improve the footpath 'through' the woods to increase access for the disabled including wood chipping existing paths and laying edging boards and geotextile matting.

## Assessment of the Evidence

### The Law - See Annex 'A'

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

- User evidence
- Landowner/Tenant intentions

#### Against Making an Order(s)

- Map and documentary evidence
- Use is by right as opposed to as of right

## Conclusion

Committee is invited to consider whether a dedication of footpath rights can be inferred, on a balance of probabilities, from all the circumstances at common law or deemed under S31 Highways Act 1980.

Looking firstly at s31, twenty years use by the public is required up to the point the path is brought into question. The relevant period under consideration would need to be calculated retrospectively from when the route was brought into question. Therefore, the making of the application dated 21 March 2012 was the "bringing into question" of the route and the 20 year period of use to consider would be from 1992-2012. Nine user evidence forms have been provided in support of the application, with one user stating their use dated back to 1951.

It is understood that the landowners, National Grid leased Howick Hall Wood and a building on the opposite side of Howick Hall to the Wildlife Trust for Lancashire, Manchester and North Merseyside between 1998 and 2011. During those years, they operated an Education Centre which was open to the public all year round (during daylight hours) and the woods were accessible at all times. We are told that in 2002 the path was upgraded by United Utilities and Lancashire Wildlife Trust but this remained the 'original path' used. The users forms have been submitted without attaching a plan showing the route the users are referring to or have taken, some users provide grid references others describe the route as through Howick Hall

Wood. A couple of the users state in their forms that the route has been extended over the years allowing access deeper into the woods.

The OS maps of 1955 and 1963 do not show the application route. The aerial photographs also remain consistent from 1960-2000 and; the application route is not visible on these maps. It is suggested that this may be due to the dense tree coverage. Points E-F of the route also do not show up on the maps, despite their being no tree coverage at these points and; hence it is reasonable to suggest on balance that the route between points E-F did not exist in the year 2000, and is in line with what users have said about the route having been extended deeper into the woods over the years. This is further substantiated by the map produced by the Wildlife Trust for Lancashire, Manchester and Merseyside which is undated and includes the application route bar E-F.

On balance, it is reasonable to suggest that the user evidence conflicts with the map evidence, with regards the claim the route has been used since 1951 and although some users claim to have known of a route to Howick Hall Woods, it is suggested that varying routes will have been used over the years prior to the Wildlife Trust taking over in 1998 and was thereafter improved and extended further over the years. There is therefore a question of whether all users have followed the same line over the years they claim to have used the route prior to 1998.

Turning next to see whether use was as of right, for use to be as of right, it must be without force, secrecy or permission. Although the users state that they did not obtain permission to use the route, there is implied permission during the relevant period, as the Wildlife Trust's purpose on which its charitable status is based, includes promoting and allowing public access. This would therefore imply consent for the public to access to the Woods and use the routes. Therefore, use of the footpaths is considered not as of right. Furthermore, the Wildlife Trust's stated access remit and its charitable status mean that it is required to provide public access and therefore such use is 'by right' not 'as of right'. Hence, in all the circumstances, use cannot be deemed under s.31 Highways Act 1980.

Looking instead at common law to see whether dedication can be inferred, this requires sufficient evidence of an actual intention to dedicate by the owner. This can be from how the route was recorded on various documents or from circumstances such as user. Considering the historical map evidence, it is suggested that there is insufficient historical map evidence from which public rights could be inferred from. However, looking at whether there was an intention to dedicate by the owner, although the land owner, National Grid has not made their opinions clear, the fact that they had tenanted the land to the Wildlife Trust and the Wildlife Trust was in control and tenanted the land from 1998-2011 and despite the landowner being aware of the Wildlife Trust's charitable aims, the landowner said nothing to oppose or prevent people using its land instead leased the land to this charity knowing the public would be getting access onto the land, this would reasonably imply that they did consent to their land being used by the public. However, this use by the public was based on the Wildlife Trust's remit including provision of public access and its charitable status making it a requirement to pursue its remit. Hence the use by the public was 'by right' not 'as of right'. On balance, therefore, dedication cannot be inferred at common law.

It is suggested to Committee, taking all the information into account, neither deemed dedication under S.31 nor inferred dedication at common law can be satisfied, the application should be turned down and no Order made.

### **Risk management**

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-523		Claire Blundell, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A