

## **Regulatory Committee**

Meeting to be held on Wednesday, 13 March 2019

Electoral Division affected: Rossendale East;
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### **Wildlife and Countryside Act 1981**

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

#### **Addition of Footpath from Heald Lane through Weir Lodges to Office Road, Bacup**

**File No. 804-603**

(Annex 'A' refers)

Contact for further information:

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### **Executive Summary**

Application for the addition to the Definitive Map and Statement of Public Rights of Way for a footpath from Heald Lane through Weir Lodges to Office Road, in accordance with File Number 804-603.

### **Recommendation**

- (i) That the application for the addition to the Definitive Map and Statement of a Footpath from Heald Lane through Weir Lodges to Office Road, Bacup in accordance with File No. 804-603, be accepted subject to the recording of additional rights discovered.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) the Wildlife and Countryside Act 1981 to add a Bridleway from Heald Lane through Weir Lodges to Office Road, Bacup to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A1–B and A2–B–C–D–E.
- (iii) That not being satisfied that the higher test for confirming the Order can be met, the matter be returned to Regulatory Committee at a later date to decide what stance to take regarding confirmation of the Order.

### **Background**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a footpath to be recorded on the Definitive Map and Statement of Public Rights of Way from Heald Lane through Weir Lodges to Office Road, Bacup and

shown by a thick dashed line between points A1 – B and A2 – B – C – D – E 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**

### Rossendale Borough Council

Rossendale Borough Council have not responded to consultations therefore it is assumed 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

#### **Description of Route**

n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-01-FP657' or 'Footpath Bacup 657' but are referenced below in the abbreviated form 'Footpath 657' for brevity since all those referred to are in Bacup in Rossendale Borough.

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A1	8740 2574	Unmarked junction with Heald Lane (Footpath 657)
A2	8746 2573	Unmarked junction with Heald Lane (Footpath 657)
B	8746 2571	Unmarked junction of application routes adjacent to reservoir
C	8753 2566	North west point where application route passes between two reservoirs
D	8755 2563	South east of two reservoirs at junction with track leading to Office Road and Lower Wambs Farm
E	8742 2554	Junction of application route with Office Road

A site inspection was carried out in October 2018.

The application was received following the erection of security fencing in August 2018 around a former redundant mill site/industrial site which has been cleared of buildings which was crossed by much of the route. This meant that it was only possible to access a small part of the application route (between points D and E) when a site visit was carried out in October.

The site fenced off included three small interconnected reservoirs which formerly fed the mills and which are located at a higher level than the remainder of the site.

The application route commences on Heald Lane (recorded as Footpath 657) which provides vehicular access to a number of farms. From point A1 on the Committee plan the application route is shown to leave Footpath 657 in a south easterly direction. Access along the route is not possible due to the existence of low stone wall and security fencing and from point A1 no obvious entry onto the application route or worn or trodden track is visible. From point A1 the route crosses a deep

drainage channel (ditch) which flows from the reservoirs at the top of the mill site feeding into the River Irwell. No means of access was visible across the ditch along the line of the application route (or elsewhere) and although it was not possible to walk between point A1 and point B no route could be seen from walking parallel to it along Footpath 657.

A further access point to the application route is located at point A2 on the Committee plan where security fencing has been erected across the start of the route. From point A2 access along the route is blocked by substantial security fencing and immediately beyond the fence a channel appears to have been cut through the trodden path to allow water to flow from the reservoir along the drainage channel to the River Irwell. There was no evidence of a bridge or former means of crossing the ditch but the worn track indicates that until recently this route must have been accessible via a bridge which can be confirmed from Google Streetview and aerial photographs.

From point A2, it was possible to see through the fencing along a clearly defined trodden track consistent with the application route passing through point B and continuing uphill towards point C, but the full length of the route from point B to point C could not be seen.

Between point C and point D the route passes between two further reservoirs – with the more westerly one known locally as 'the tank'. From point C a well-defined trodden track could be viewed extending from point C along the application route between the two reservoirs to point D (where access to the route was blocked by security fencing). Part of the section of land between the two reservoirs had been removed to form a gap which would now prevent access. The earth works appeared to have been carried out recently.

At point D, the application route joins an access track which provides access from Office Road to Lower Wambs Farm (and beyond). From point D, the route applied for runs in a south westerly direction descending gently downhill towards Office Road. The route is bounded on the south side by a wall above which is an area of mature woodland, and to the north it is bounded by the former mill site which has now been cleared and fenced off. The surface of the route is cobbled with parts which consist of compacted stone and patched tarmac.

At point E there is a gate post (no gate) at the open junction with Office Road.

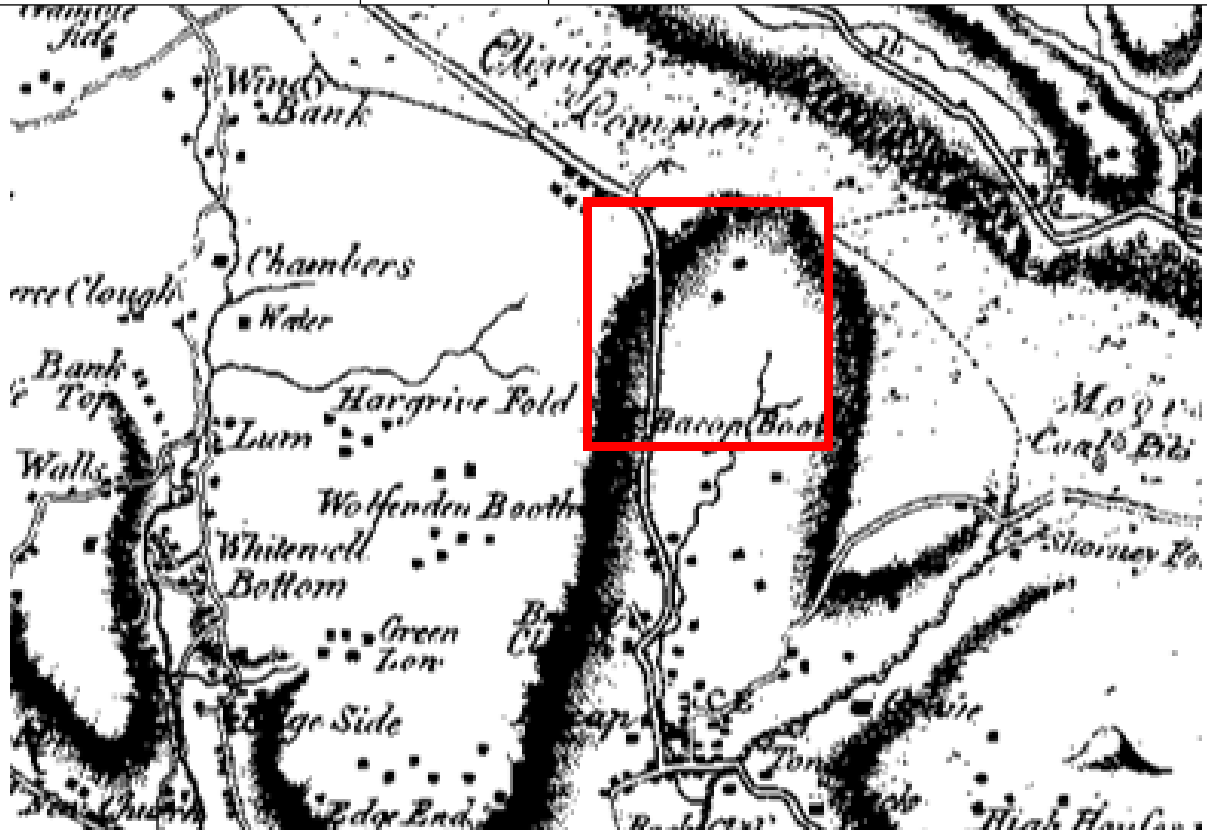
The total length of the route is 500 metres.

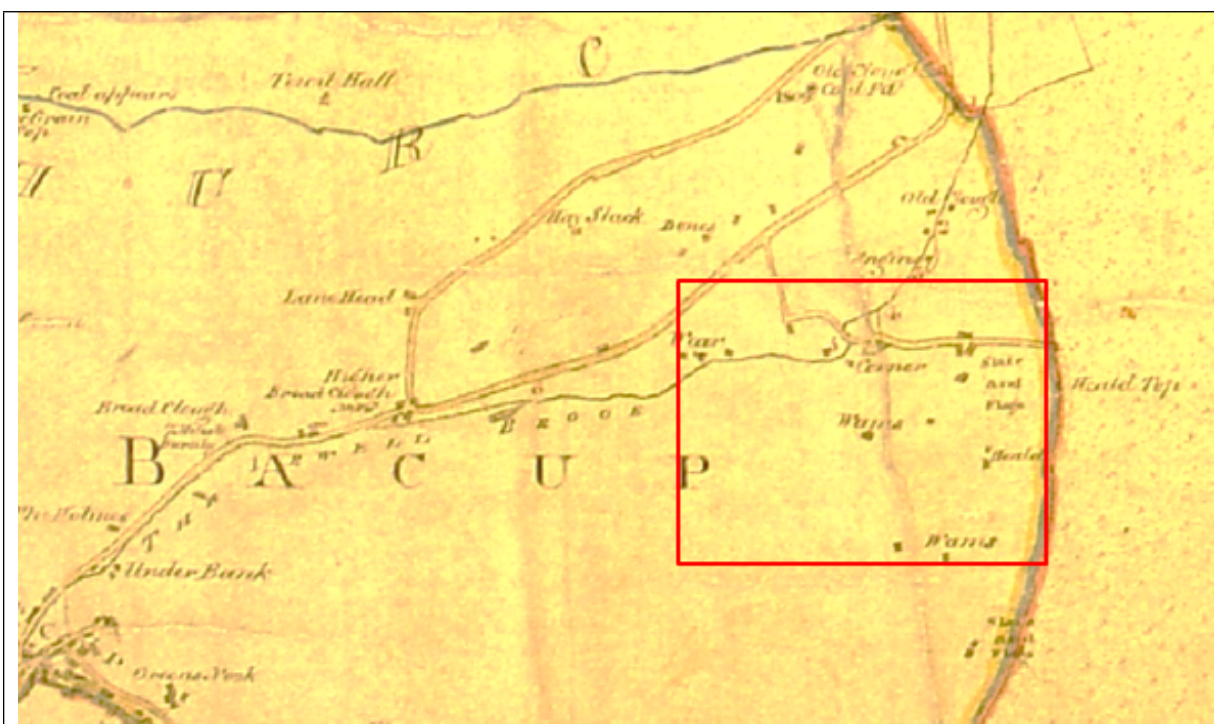
## **Map and Documentary Evidence**

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</b>	1786	Small scale commercial map. Such maps were



of Lancashire		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. Buildings are shown in proximity of the former Irwell Springs mill site but it is not clear whether the mill and associated lodges (reservoirs) existed.
Investigating Officer's Comments		Footpaths are not shown and although Heald Lane appears not to have existed at the time no inference can be drawn regarding footpaths.
Honour of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.



Observations		The application route is not shown and neither is Irwell Springs Mill or the reservoirs.
Investigating Officer's Comments		Footpaths are not shown and although Heald Lane appears not to have existed at the time no inference can be drawn regarding footpaths.
<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		<p>The application route is not shown.</p> <p>A road is shown passing through 'Weir' and across the river Irwell to pass buildings (unnamed) and is consistent with the route of Heald Lane with 'Wams' shown located to the south.</p>
Investigating Officer's Comments		Footpaths are not shown and no inference can be drawn.
<b>Hennet's Map of Lancashire</b>	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 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.</p>

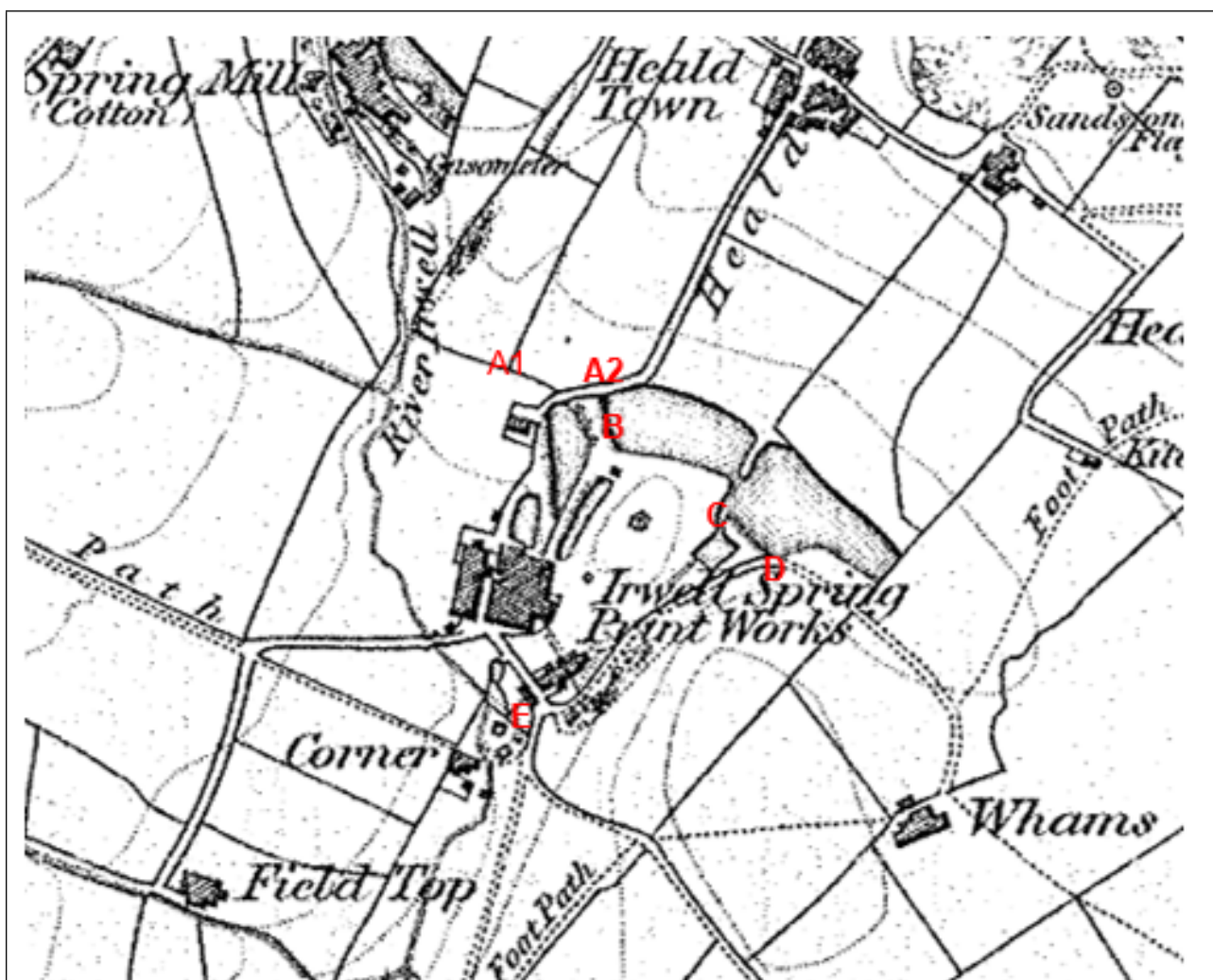


Observations		The application route is not shown. A route is shown leading to Heald Fold and buildings are shown in proximity of the Irwell Springs site.
Investigating Officer's Comments		Footpaths are not shown and no inference can be drawn.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There were no canals or railway built or proposed to be built on the land crossed by the application route.
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>		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale

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

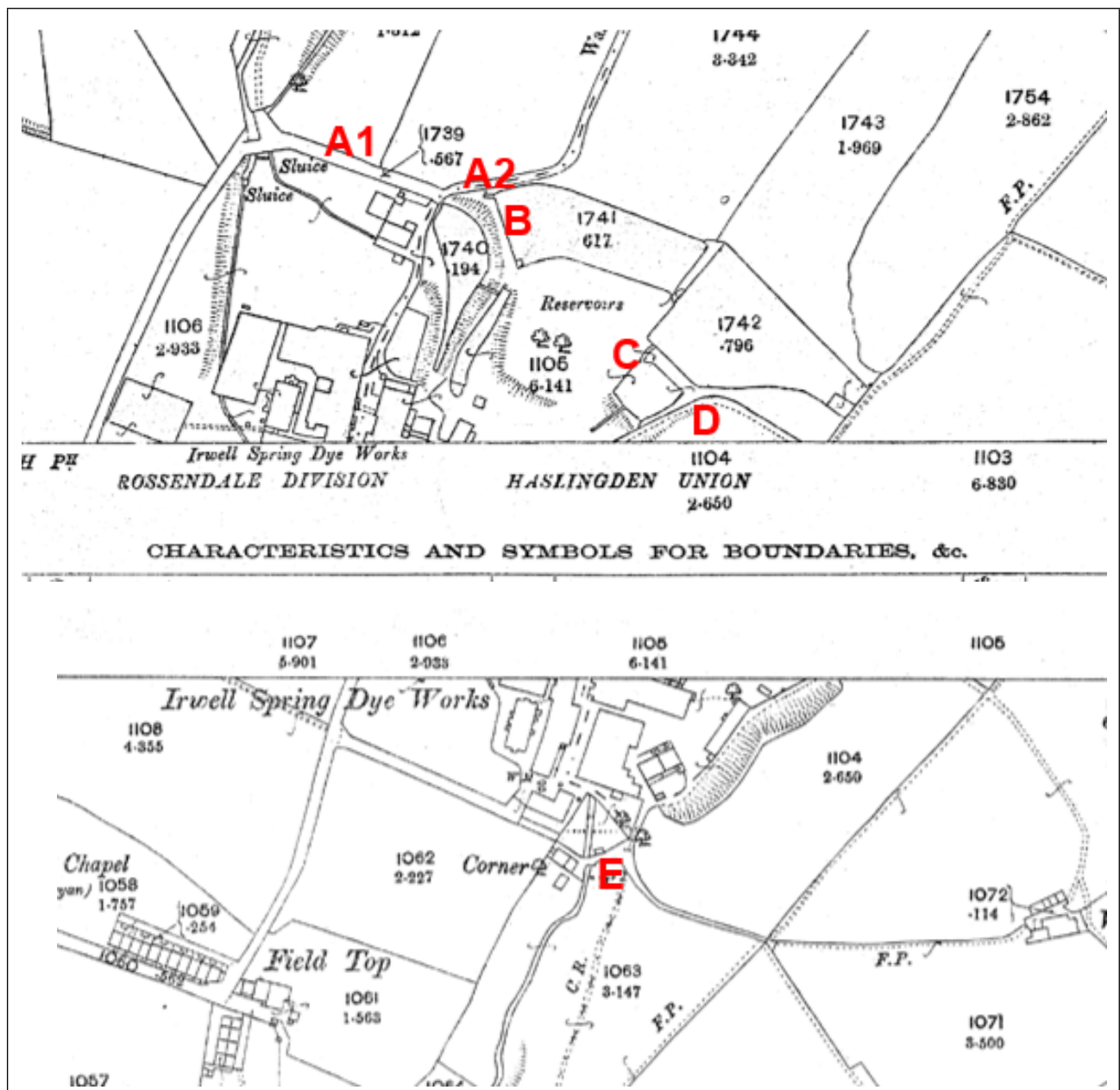
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<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire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



Observations		<p>Irwell Springs is shown and labelled as a Print Works. The three lodges that still exist today are shown and a fourth lodge is shown west of B.</p> <p>The application route is not shown between point A1-B, A2-B or B-C-D and the two lodges between which the route passes between C-D are shown to be connected close to point C.</p> <p>The application route between point D and point E is shown as access to and from Whams and two routes marked as footpaths lead off it.</p>
Investigating Officer's Comments		<p>Part of the application route (D-E) may have been used as a footpath in 1849. The rest of the application route does not appear to have existed at that time.</p>
<b>25 Inch OS Map</b> <b>Sheet 72-04 and 72-08</b>	1893	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.</p>





#### Observations

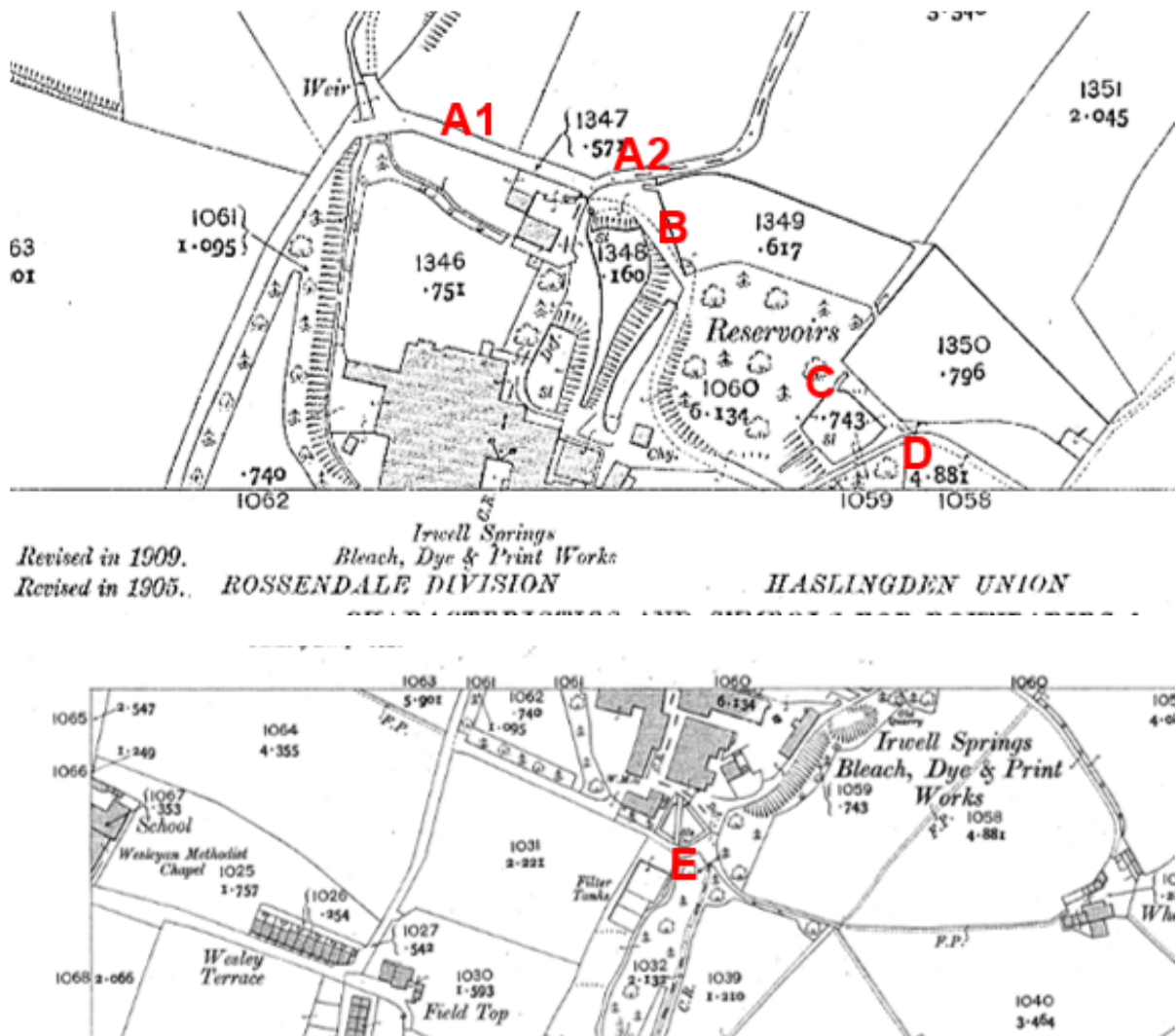
The application route is not shown between points A1-B and crosses land over which buildings are shown. Between points A2-B-C-D the route is not shown and lines are shown across the route at points A, C and D indicating the existence of some form of fence or barrier through which there may (or may not) have been gated access.

The application route is shown between point D and point E as part of a longer route.

#### Investigating Officer's Comments

The application route existed between point D and point E in 1891 and appeared to be capable of being used.  
The rest of the route through the Irwell Springs Dye Works site did not exist in 1893.

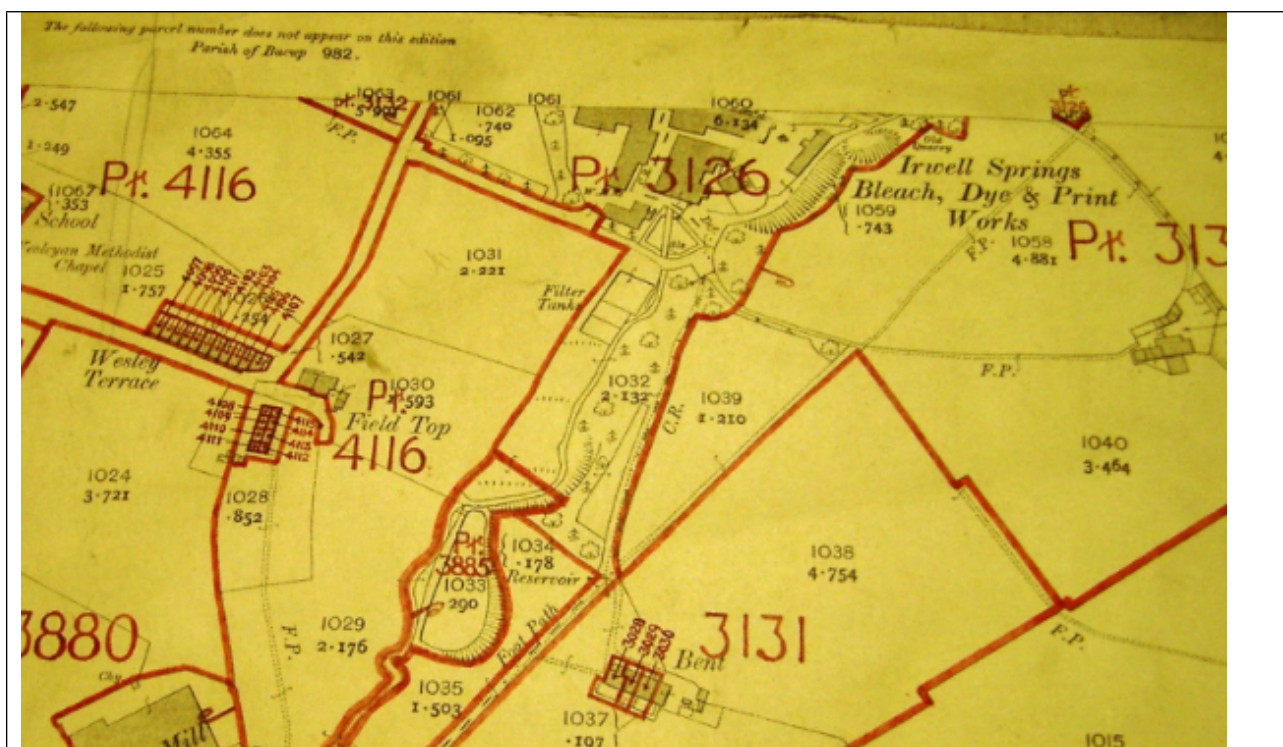
<b>25 inch OS Map</b> <b>Sheet 72-04 and 72-08</b>	1911	Further edition of the 25 inch map surveyed in 1891, revised in 1909 and published in 1911.
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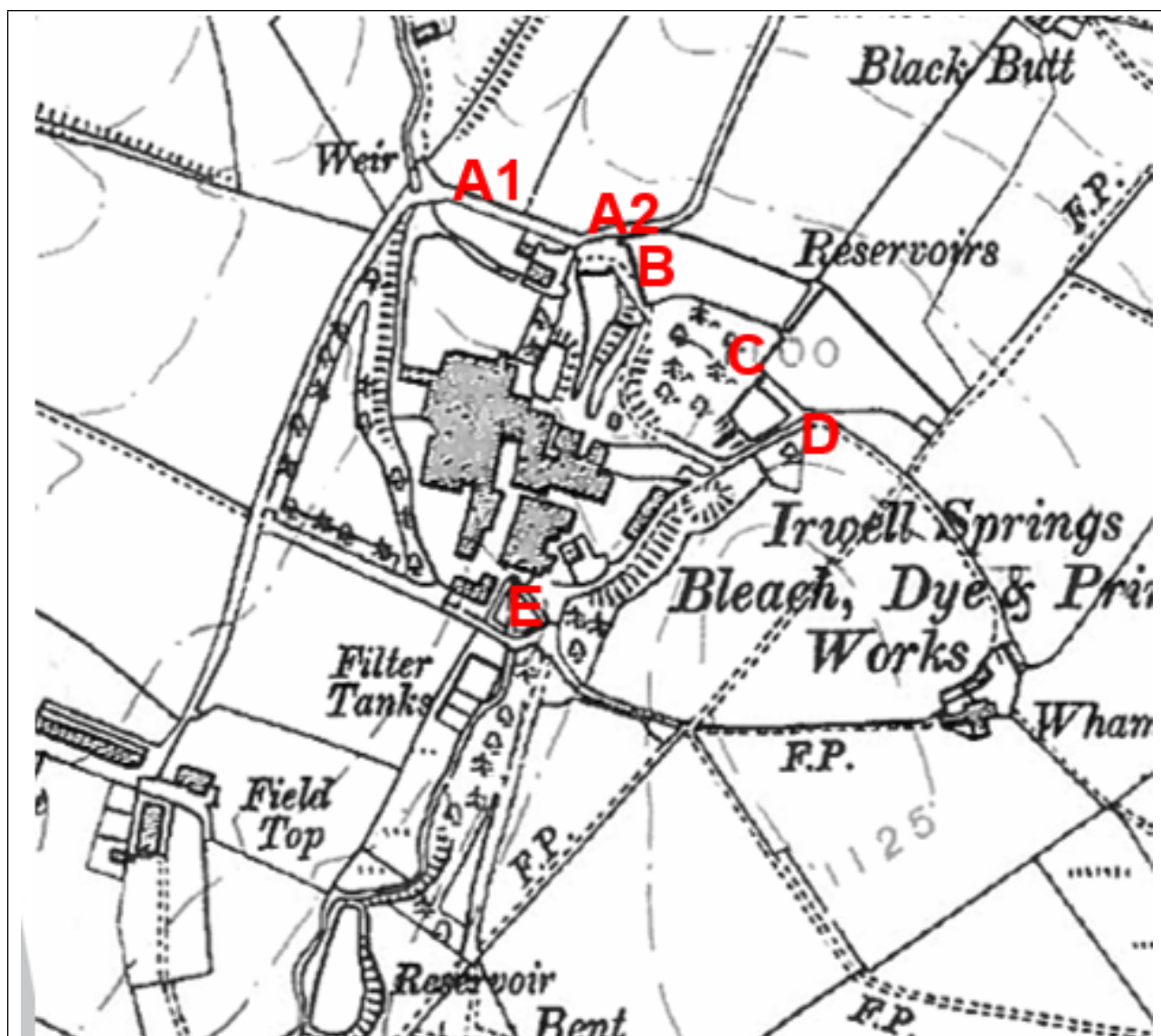
Observations		<p>The application route is not shown between point A1-B or between point A2-B. From point B heading south parallel to the reservoir a short section of the application route is shown consistent with the route of a track which then continued south but the majority of the route from B-C is not shown and crosses land shown as being wooded. It may have been possible to walk between the lodges from point C-D but no path is shown.</p> <p>The application route between point D and point E is shown as part of a longer route.</p>
Investigating Officer's Comments		The application route probably did not exist between point A1-B and A2-B or B-C-D. The application route existed and appeared capable



		of being used between point D and point E.
<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 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>

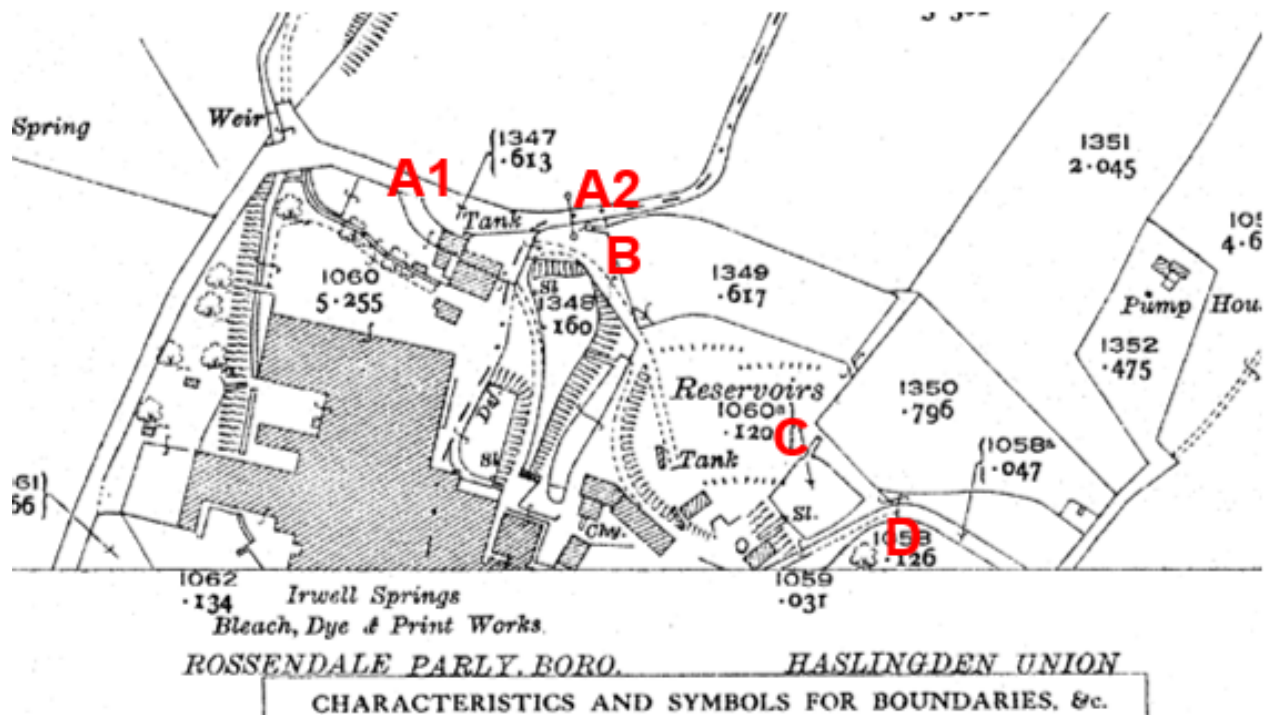


Observations		<p>The Finance Act Maps for the area crossed by the route are not available to view in the County Records Office. A copy of OS Sheet 72.4 obtained from The National Archives in relation to another matter shows the southern part of the Irwell Springs Bleach, Dye and Print works as being within plot 3126 but the Field Book has not been requested.</p> <p>The District Valuation Book deposited in the CRO lists hereditament 3126 as being owned and occupied by Irwell Springs Printing Works Ltd. It is described as comprising of 'Mill and Stables' and no deductions are listed for public rights of way or user.</p>
Investigating Officer's Comments		The Valuation records do not provide any supporting evidence regarding the existence of the route in 1910.
6 inch OS Map	1912	Ordnance Survey map extract submitted by the applicant. The date of the survey and revision of the map was not provided but is likely to be the same as the 25 inch Ordnance Survey map detailed above.



Observations		<p>The application route is not shown between points A1-B or between points A2-B. From point B heading south parallel to the reservoir a short section of the application route is shown consistent with the route of a track which then continued south but the majority of the route from point B- point C is not shown and crosses land shown as being wooded. It may have been possible to walk between the lodges from point C- D but no path is shown.</p> <p>The application route between point D and point E is shown as part of a longer route.</p>
Investigating Officer's Comments		<p>The application route probably did not exist between points A1-B and points A2-B or points B- C-D. The application route existed between point D and point E as part of a longer route and appeared to be capable of being used.</p>
25 Inch OS Map	1930	Further edition of 25 inch map (surveyed 1891,

revised in 1928 and published in 1928.



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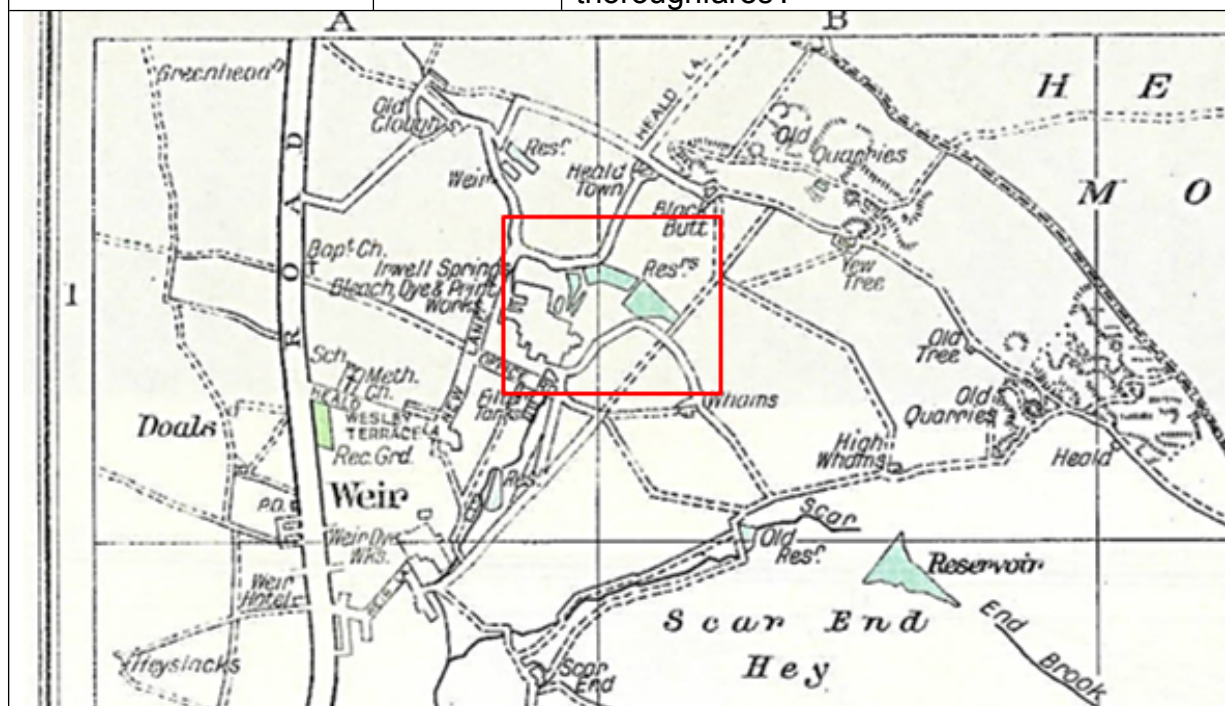
Observations

From point A1 a track consistent with the application route is shown leading to some buildings but it is not clear whether there was access through the buildings and through the enclosed area to the rear of the building onto the marked track which then leads towards point B. The route between point A2 and point B is not shown.

From point B heading south parallel to the reservoir a short section of the application route is shown consistent with the route of a track which then continued south but the majority of the route from point B- point C is not shown. It may have



		<p>been possible to walk between the lodges from points C-D but no worn track is shown and a solid line across the route at point D may indicate the existence of a wall or fencing along the boundary of the site.</p> <p>The application route between point D and point E is shown as part of a longer route and appears to be gated at point E.</p>
Investigating Officer's Comments		<p>The application route probably did not exist between points A1-B and points A2-B or points B-C-D. The application route existed between point D and point E as part of a longer route and appeared to be capable of being used.</p>
<b>Authentic Map of South Lancashire by Directory of 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. 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		<p>The application route is shown between point D and point E as part of a longer route providing access to Whams and a number of other</p>
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		properties and an old quarry site. The rest of the application route is not shown.
Investigating Officer's Comments		The application route between point D and point E existed as part of a longer through route and is shown consistent with how other routes with recorded public access are shown.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

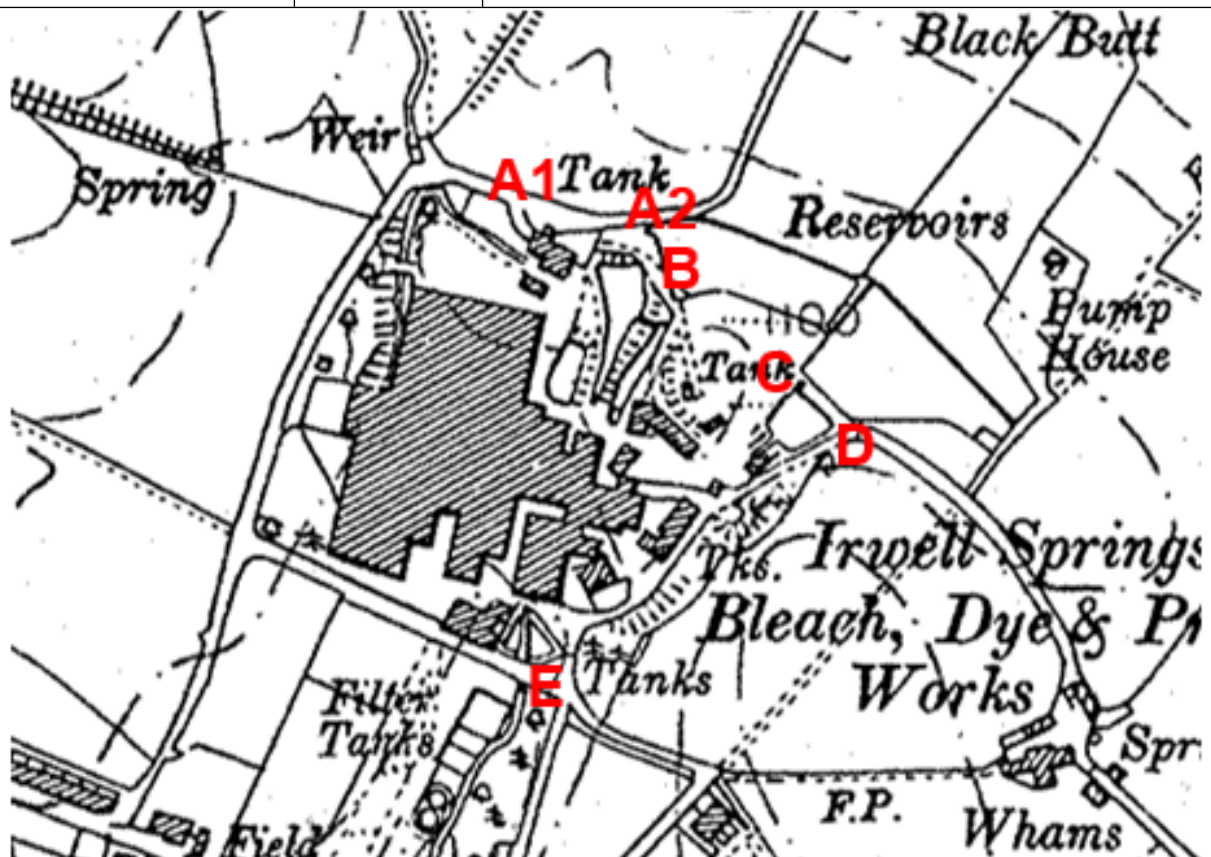


Observations		<p>A faint line is shown from point A1 which is consistent with part of the route between points A1-B but does not appear to be the route applied for. A route from point A2 through to point B cannot be seen but there appears to be a faint route in existence from point B to point C. The strip of land crossed by the route from point C and point D is visible but it is not possible to see whether a trodden track existed along it.</p> <p>Tree cover means that it is not possible to see the</p>
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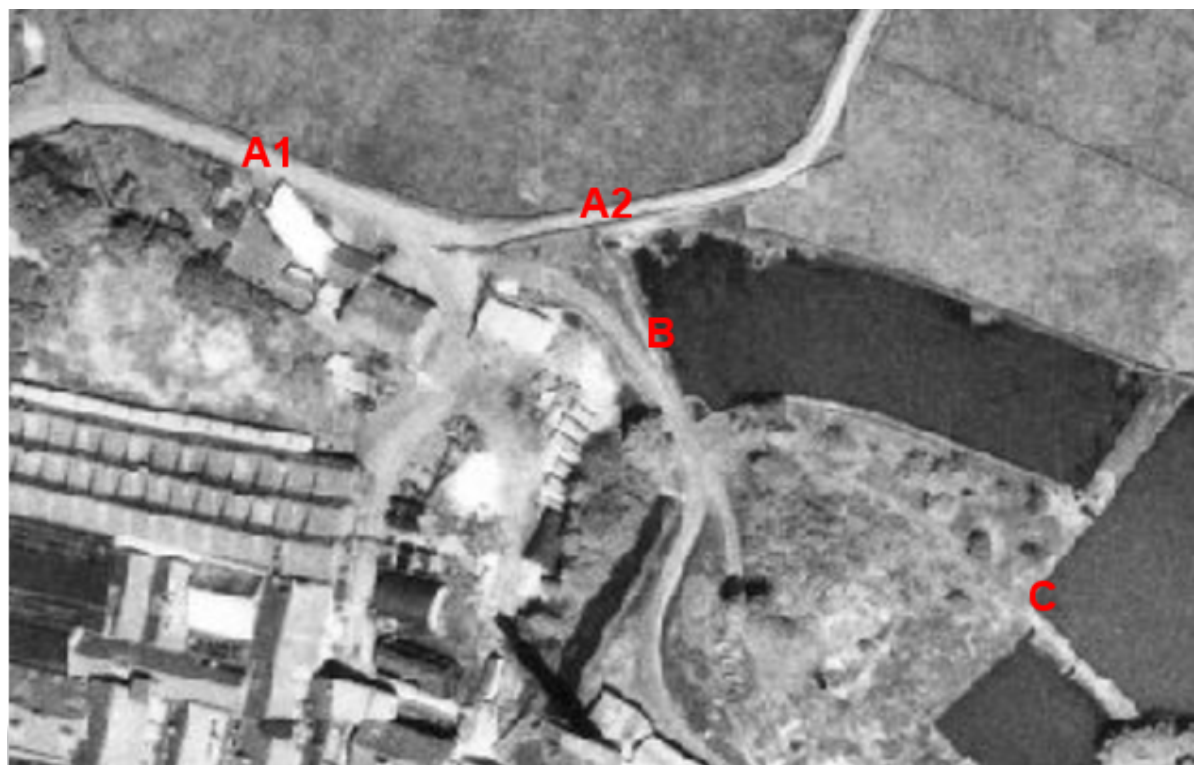
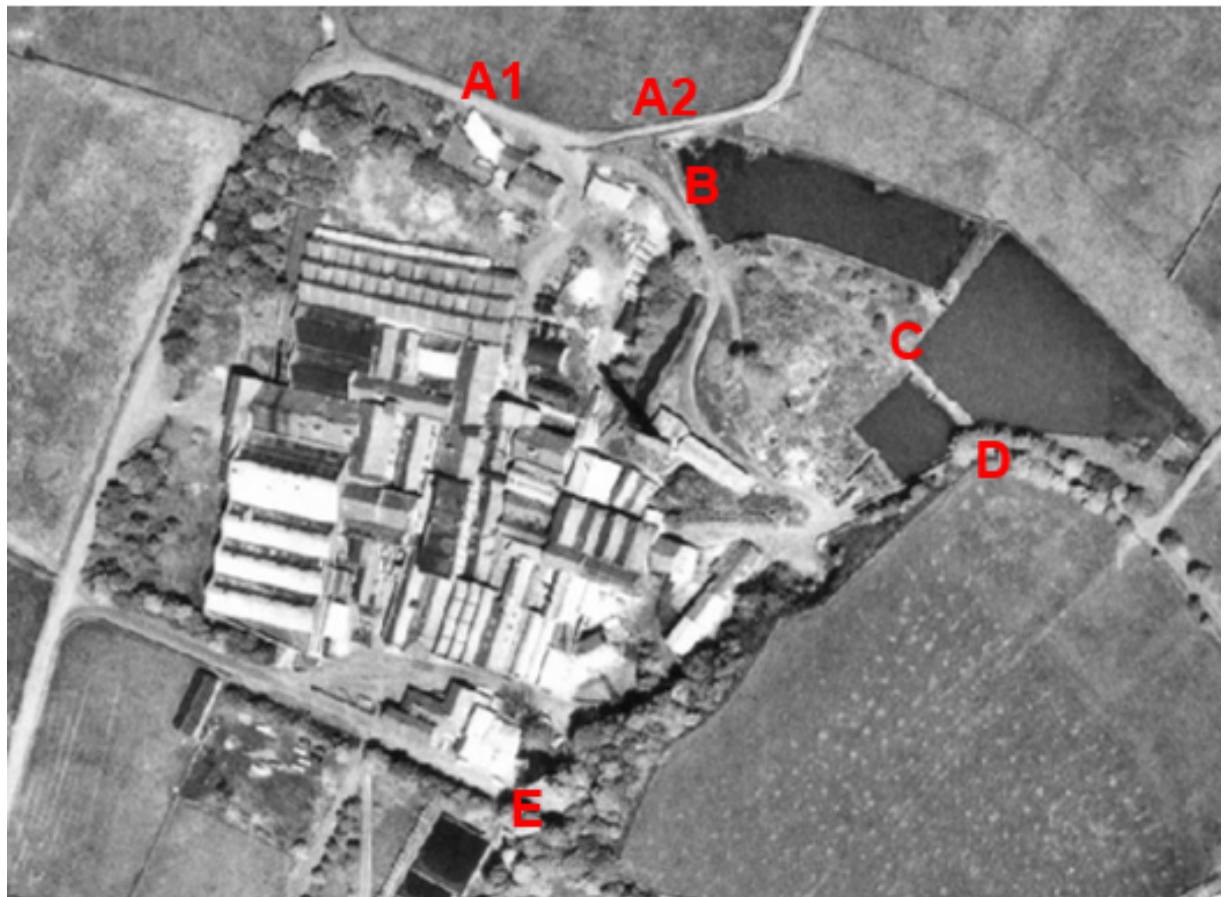
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

		application route from point D to point E.
Investigating Officer's Comments		<p>The photograph shows that much of the land crossed by the application route was still a busy mill site in the 1940s and no obvious public access could be seen to exist through the site.</p> <p>No inference can be drawn with regards to the existence of public rights.</p>
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.

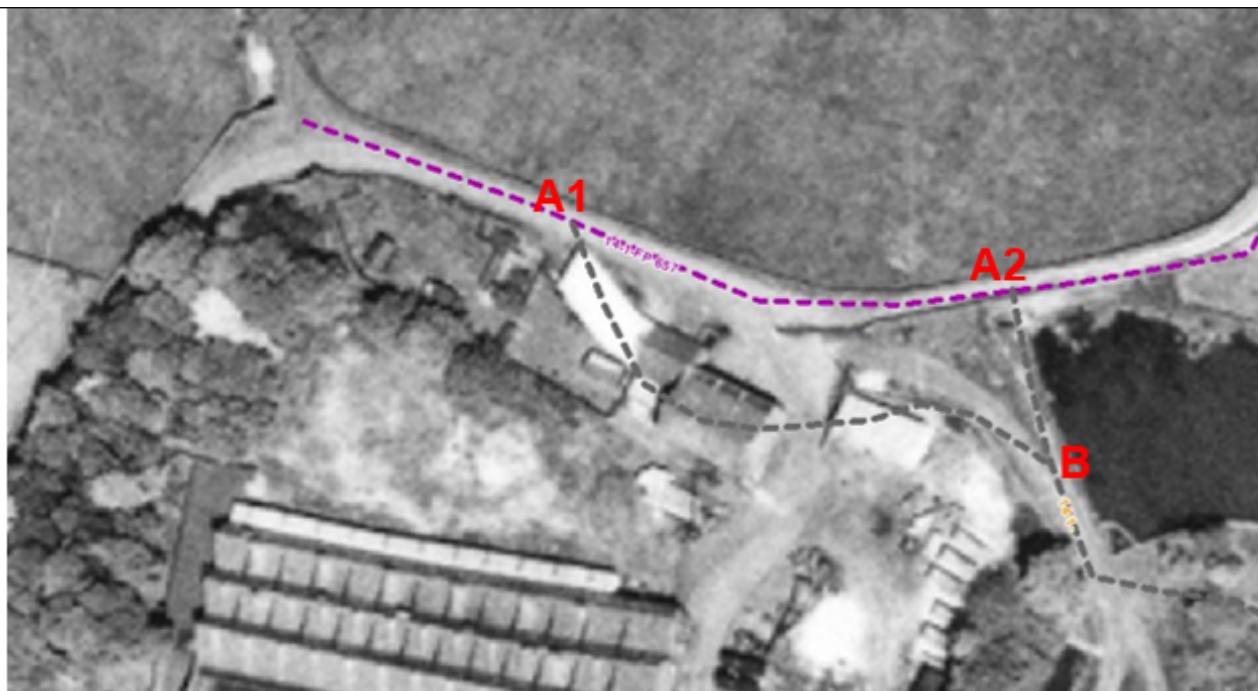


Observations		The application route is shown between point D and point E but the rest of the application route is not shown.
Investigating Officer's Comments		The application route existed between point D and point E as part of a longer route in the 1930s but the rest of the application route through the print works did not.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



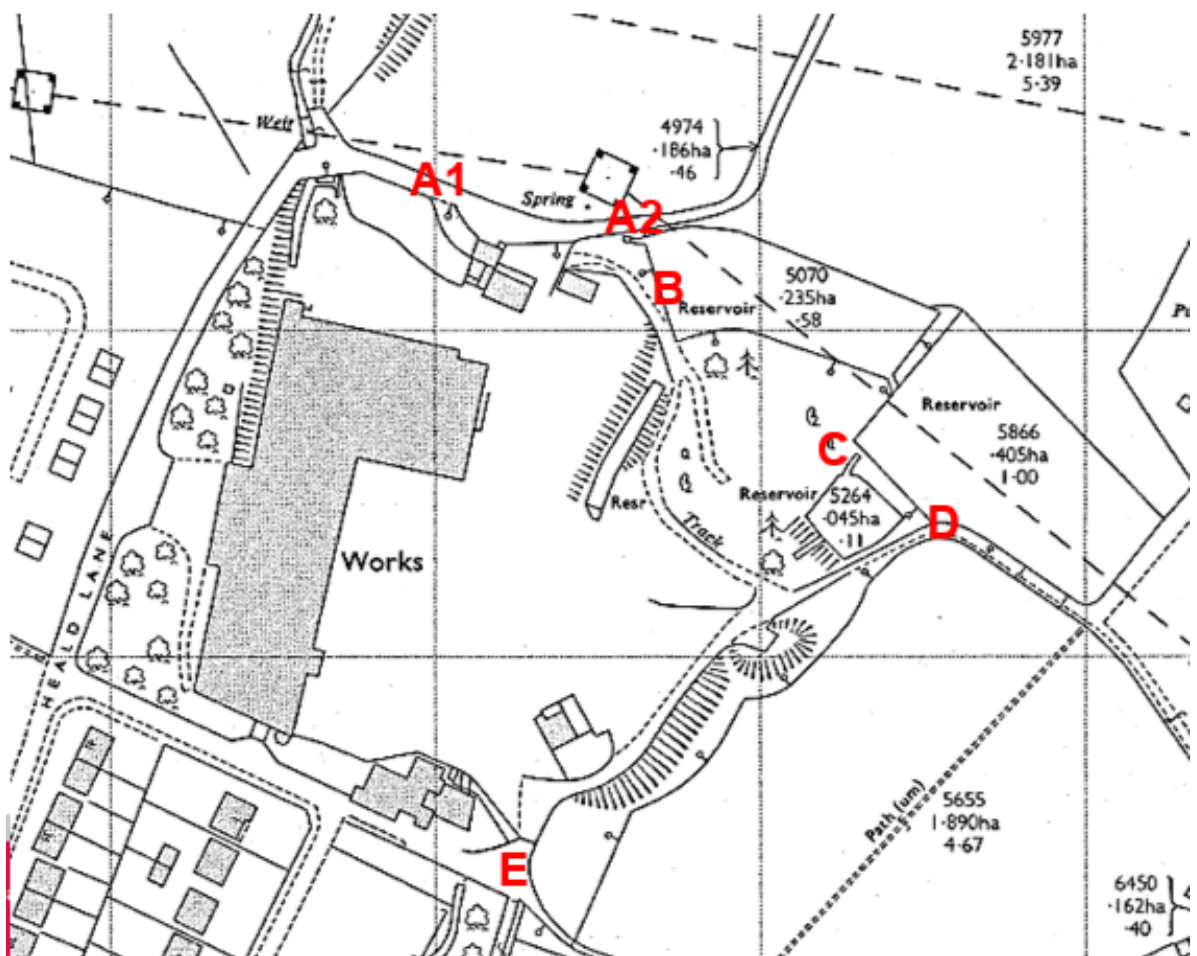






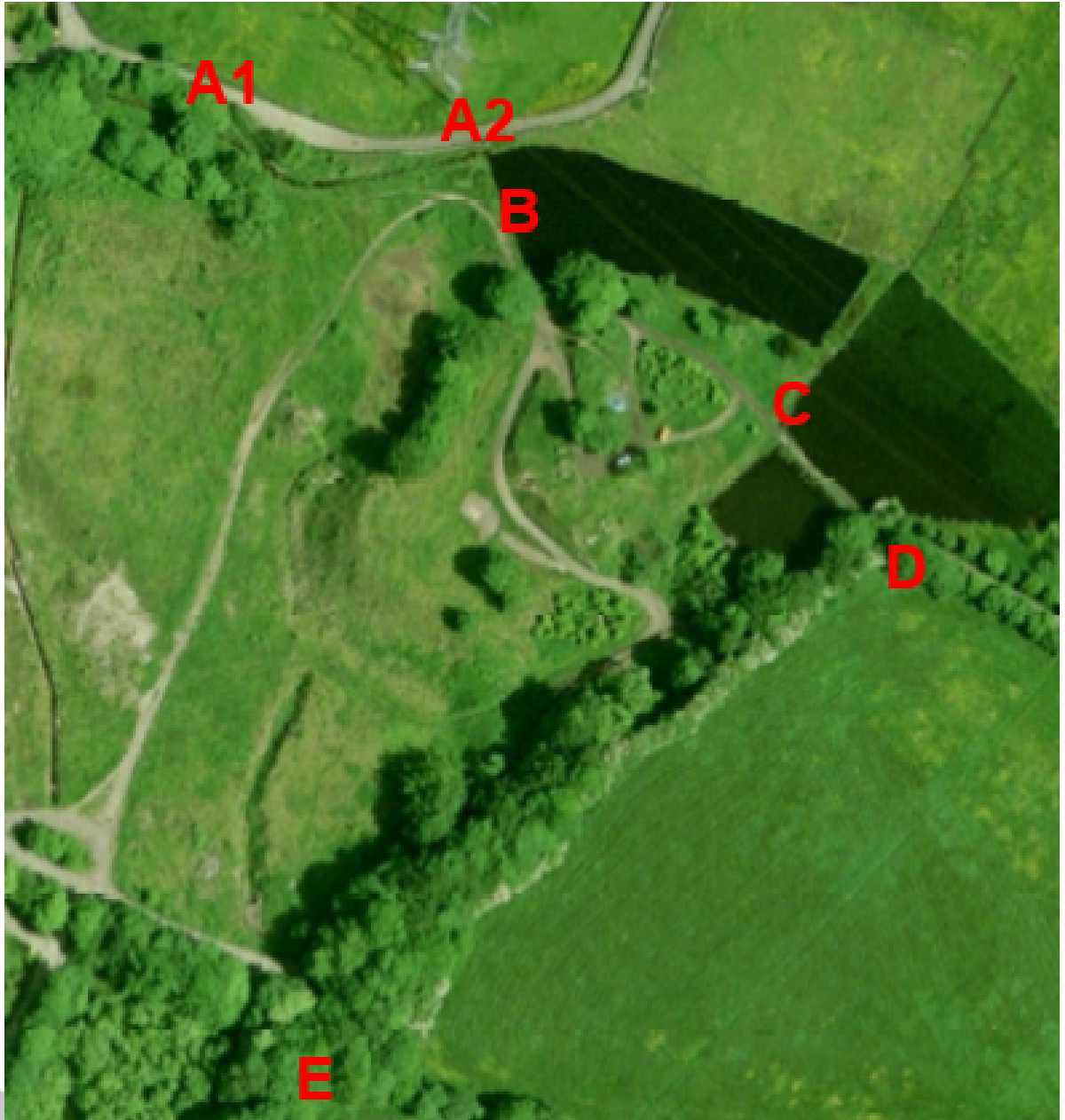
Observations		<p>From A1 access appears available to north of buildings through to point B on a slightly different alignment (further north) to the line shown on the committee plan between point A1 and B.</p> <p>A faint track consistent with pedestrian access is also visible from point A2 to B and from point B the application route follows a clearly defined track south to the south west corner of the most northerly reservoir and then a faint track – again consistent with pedestrian use – can be seen extending towards point C. Between point C and point D it appears that it would be possible to walk between the two reservoirs and a faint track is visible. Tree cover at point D makes it impossible to see whether there was access through point D.</p> <p>The track between point D and point E is not clearly visible due to tree cover.</p>
Investigating Officer's Comments		<p>By the 1960s it appears that the application route may have existed across the industrial site from A2 to link to the route between point D and point E.</p>
<b>Extracts from The Bacup Echo</b>	1972	Newspaper extracts provided by the applicant.
Observations		<p>The newspaper cuttings describing plans to develop the site of the former print and dye works as a new industrial site. Owners had cleared the site of buildings that were no longer useable and were looking to erect new buildings and attract</p>

		tenants to the industrial site.  No reference was made to the application routes or to public access across the site.
Investigating Officer's Comments		The article demonstrates that by 1972 a number of the former mill buildings had been demolished and some new buildings erected. There is no reference to public access and no inference can be drawn with regards to the existence of public rights.
<b>1:2500 OS Map SD 8625-8725</b>	1977	Further edition of 25 inch map reconstituted from former county series and revised in 1975 and published 1977 as national grid series.



Observations		Many of the original mill buildings appear to have been demolished and a new, large factory ('Works') is shown on the western part of the site. The reservoirs are still shown but no longer appear to be connected to the industrial site for the purpose of providing power. A route may have been available A1 – point B passing to the north of buildings but it is crossed by two lines
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		<p>indicating the existence of walls or fences through which it is not known whether access was available. From just east of point A1 it may have been possible to gain access to a track shown which continued towards point B and then went south to exit onto the application route midway between point D and point E. No route is marked between point A2 – B. From B the application route follows a short section of the track described above and then crosses an open wooded area to point C. Access may have been available between points B and C and point C and point D but there is no indication of a worn track identified on the Ordnance Survey map and fencing could have existed across the route close to point D.</p> <p>The application route between point D and point E is shown but appears to be gated at point E.</p>
Investigating Officer's Comments		<p>Access may have existed across the industrial site following clearance of a number of buildings but the application routes are not shown suggesting that they did not follow well defined tracks which would have been noted by the Ordnance Survey when the map was revised. The application route between point D and point E existed and appeared to be gated at point E.</p>
<b>Aerial photograph</b>	2000	Aerial photograph available to view on GIS.



#### Observations

By 2000 the mill site had been cleared and grassed over suggesting that clearance was carried out a number of years earlier. The three reservoirs can still be seen to exist.

Between point A1 and A2 a dark line can be seen which appears to be consistent with the line of a ditch/watercourse shown on the modern OS map extending from the north west corner of the most northerly reservoir to feed into the River Irwell. A trodden route appears visible from part way between point A1 and point B extending east and along the route applied for to point B. The route between point A2 and point B is not visible on the photograph.

Between point B-C-D a worn track consistent with



		pedestrian use can be seen. The application route between point D and point E is obscured by trees and cannot be seen.
Investigating Officer's Comments		In 2000 the site crossed by the application route appears to be open and accessible with former industrial buildings all having been demolished some time ago and the area grassed over. Part of the application route between point A1-B-C-D appears to have existed as a worn track on the ground capable of being seen from the air.
<b>Google Street View Image</b>	2009	Google Street View Images available to view online





Observations		<p>The photographs are taken from Heald Lane (FP 657) and show the point at which the application route leaves the lane at point A1. There appears to be a gap in the wall that may have allowed access but no worn track and a ditch can be seen crossing the route shortly after point A1 with no means of access across it visible.</p> <p>The application route from point A2 can also be seen on the photographs. There appears to be access through a gap in the wall at point A2 and the application route can then be seen crossing the reservoir outflow by means of a bridge.</p>
Investigating Officer's Comments		<p>In 2009 access onto the application route was available at point A2 and appeared to be being used but no access is visible at point A1.</p>
<b>Aerial Photograph</b>	2014	Aerial photograph available to view on GIS.



Observations		Fourteen years since the earlier photograph was taken the site appears to be very similar. Access onto the route from Footpath 657 now appears to have shifted from point A1 to point B (which is not visible) to point A2 – point B which is clearly visible as a track consistent with pedestrian use. From point B to point C a faint track can be seen but no track can be seen between the two reservoirs between point C and point D. As with all previous aerial photographs the route between point D and point E is obscured by trees and cannot be seen.
Investigating Officer's Comments		The aerial photograph supports the user evidence in relation to the fact that the route between point A2-B-C-D-E appeared to be capable of being used.
<b>Appeal decision relating to the development of land at Irwell springs</b>	2002	Appeal decision letter submitted by the applicant dated 31 July 2002 following an Inquiry held 11-19 June 2002 into the granting of planning permission for the construction of 44 residential properties on land at Irwell Springs, Weir and associated works.
Observations		Paragraph 45 of the decision letter makes reference to footpath access across the proposed

		<p>development site stating that greater footpath provision would be provided through the site and that the Inspector anticipated that in allowing the residential development to go ahead, the situation for pedestrian usage would not worsen and, in all probability would improve.</p> <p>In allowing the appeal – and thus granting planning permission for a residential development – the Inspector considered that the creation of a footpath through the site should be included as being necessary and reasonable to safeguard the recreational opportunities of the locality.</p>
Investigating Officer's Comments		<p>No specific reference is made to the application route although there is a suggestion that there was already some public use of the site.</p> <p>No inference can be drawn in regard to the application route.</p>
<b>Undated Photograph submitted by the applicant</b>		





Observations		The photograph is undated but clearly shows the application route from point C to point D as an open accessible path which appeared to be very well used.
Investigating Officer's Comments		The photograph showing the application route between point C and point D illustrates what the site looked like at some point prior to it being blocked off but is of limited value as it is undated. No inference can be drawn with regards to the existence of public rights.
Google Earth aerial photograph	2018	Google Earth image included in sale documentation for the sale of the development site crossed by part of the application route.



Observations		A number of routes can be seen across the development site. From point A2 to B the application route is not visible but from point B – point C - point D a route consistent with the application route appeared to exist.
Investigating Officer's Comments		The application route from point B-C-D appeared to have existed in 2018 but other parts of the application route can't be seen.
<b>Newspaper article</b>	2018	Report submitted by the applicant published in Rossendale Free Press on 24 <sup>th</sup> August 2018.
Observations		The report explains that the area known as Weir Lodges, described as a local beauty spot used for decades by families, dog walkers and fishermen, had been fenced off and a metal bridge removed earlier that week by the Irwell Springs Development Corporation. People who had used the routes across the site were invited to contact a representative of Weir Pride (a local community Group) who were hoping to get a route through the site recorded as a public footpath.
Investigating Officer's Comments		There is no specific reference to the application route but the report confirms the blockage of the part of the route and the fact that access had previously existed across the site.
<b>Plan submitted by the</b>	Undated	Undated plan said to be c1900.



applicant		
		
Observations		<p>The origins and purpose of this hand drawn plan are unknown.</p> <p>The application route is shown as part of a longer route between point D and point E. The rest of the application route – across the site of the Irwell Springs Bleach Dye and Print Works is not shown.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
Extracts from 'The Journey to Irwell Springs' by Peter Goggins		<p>Book published in 2007 by Rossendale Books describing the author's childhood in Bacup in the 1950s and his return to the area in later life.</p>

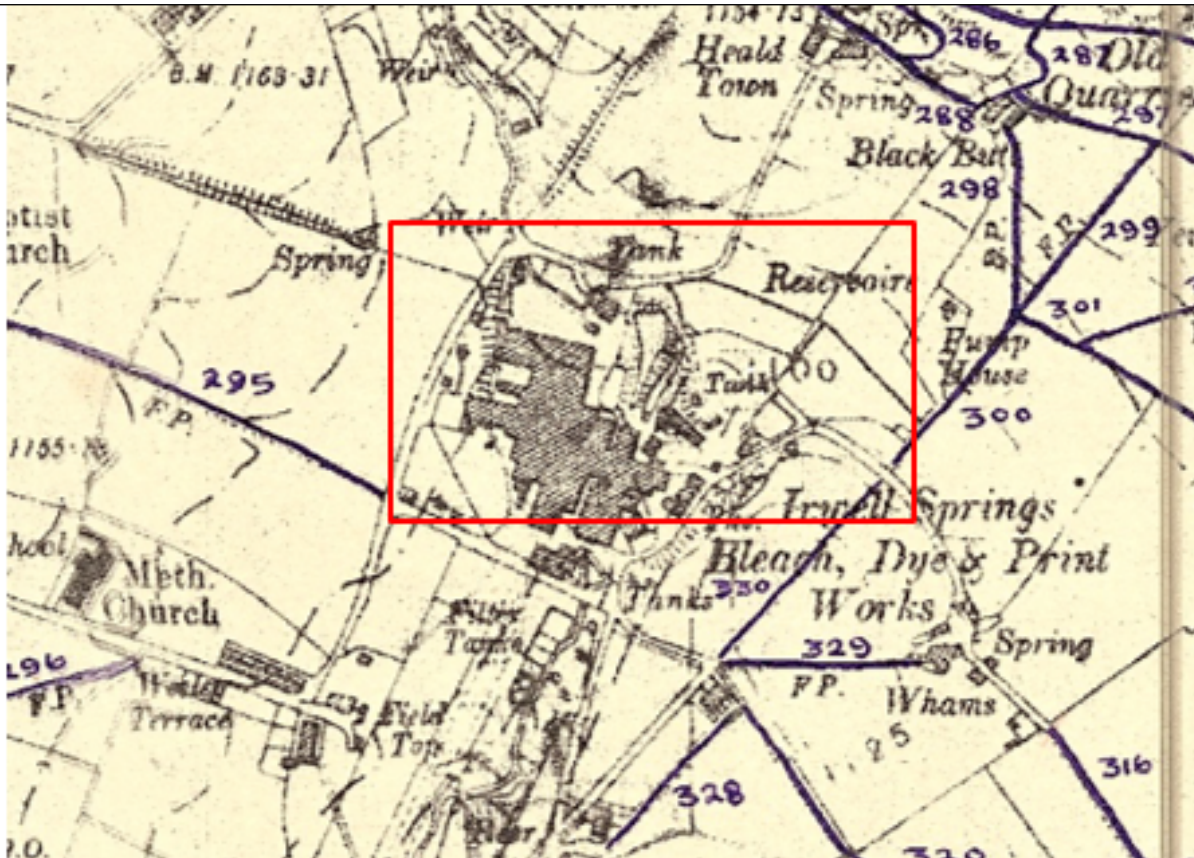




<p>Observations</p>		<p>The book is titled after the area of land crossed by the application route. Irwell Springs was described by the author as also being known as Corner Dye Works, 'a factory complex nestling in a small valley next to the village of Weir' which were served by three lodges or 'springs' and the author describes how, as children, he and his friends would fish and swim in the lodges.</p> <p>Later in the book he explains that fifty years on he lived very close to 'the springs' and the three lodges and still fished there on a regular basis.</p> <p>He expresses concern about the development of the former mill site and the impact this would have on the wildlife and refers to drainage work being carried out in 2007 when an outlet channel was dug from one of the lodges to drain into the River Irwell.</p> <p>A photograph included in the book (undated) shows the application route between two of the lodges between point C and point D.</p>
<p>Investigating Officer's Comments</p>		<p>The book suggests local use of the lodges and area around them for generations by people walking, fishing, swimming and watching wildlife.</p> <p>There is no specific reference to the application route but it appears that access to the site had been available supporting the evidence of use</p>

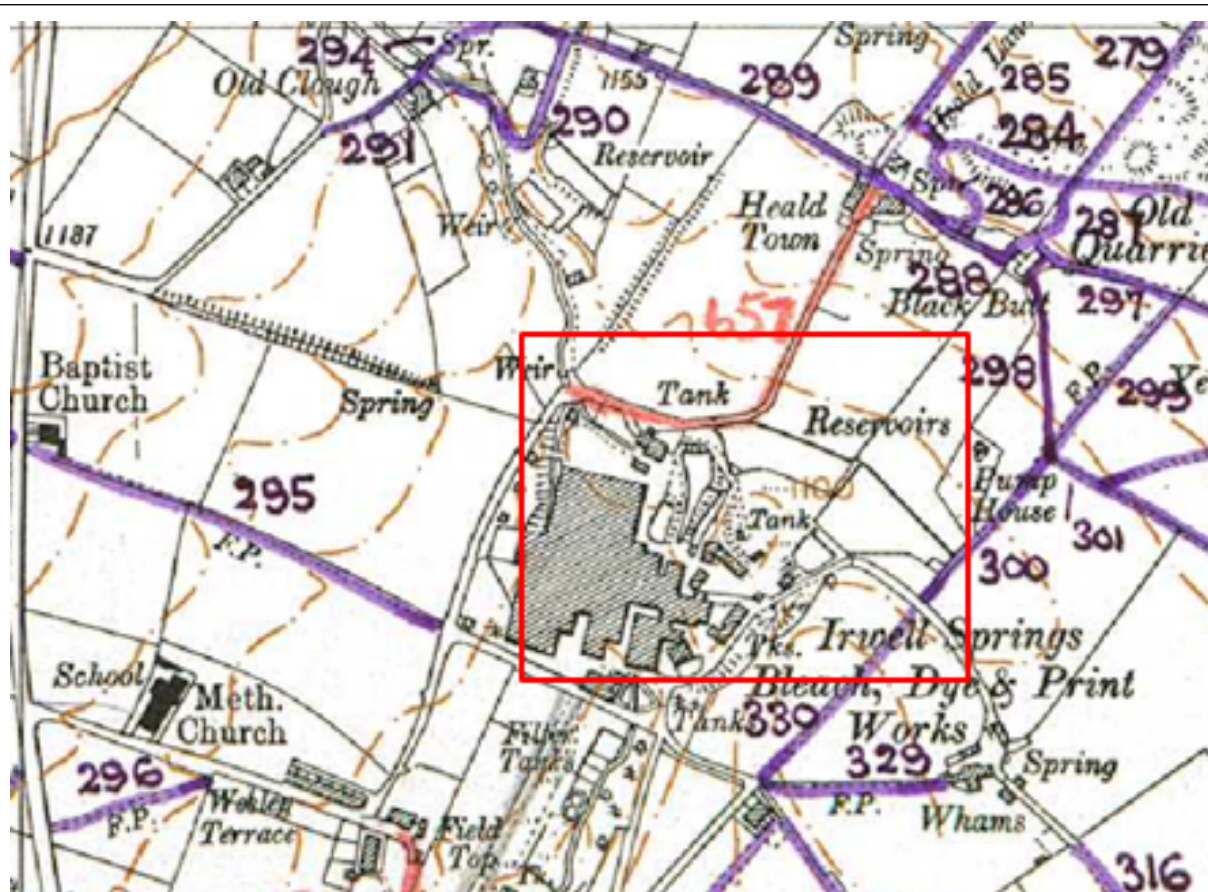
		forms submitted as part of the application.
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
<b>Observations</b>		<p>Bacup was a Municipal Borough in the 1950s for which no parish survey map was prepared.</p>
<b>Draft Map</b>		<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>





295.	Footpath.	Commences with kissing gate at junction with footpath 297 proceeding south west to junction with footpaths 300 and 301. Condition fair, well defined.	0.09 ✓
300.	Footpath.	Continuation of footpath 299 in a south westerly direction terminating with kissing gate at junction with road to Irwell Springs works. Condition fair.	0.08 ✓
301.	Footpath.	Commences at junction of footpaths 298, 299 and 300 and proceeds east to	0.03 ✓
329.	Footpath.	Commences at Whams Farm, proceeding westerly through kissing gate to kissing gate at junction with footpath 330. Condition good.	0.05 ✓
330.	Footpath.	Continuation of footpath 300 in a south westerly direction terminating at kissing gate at junction with footpath 329. Condition ill defined, grass covered.	0.09 ✓

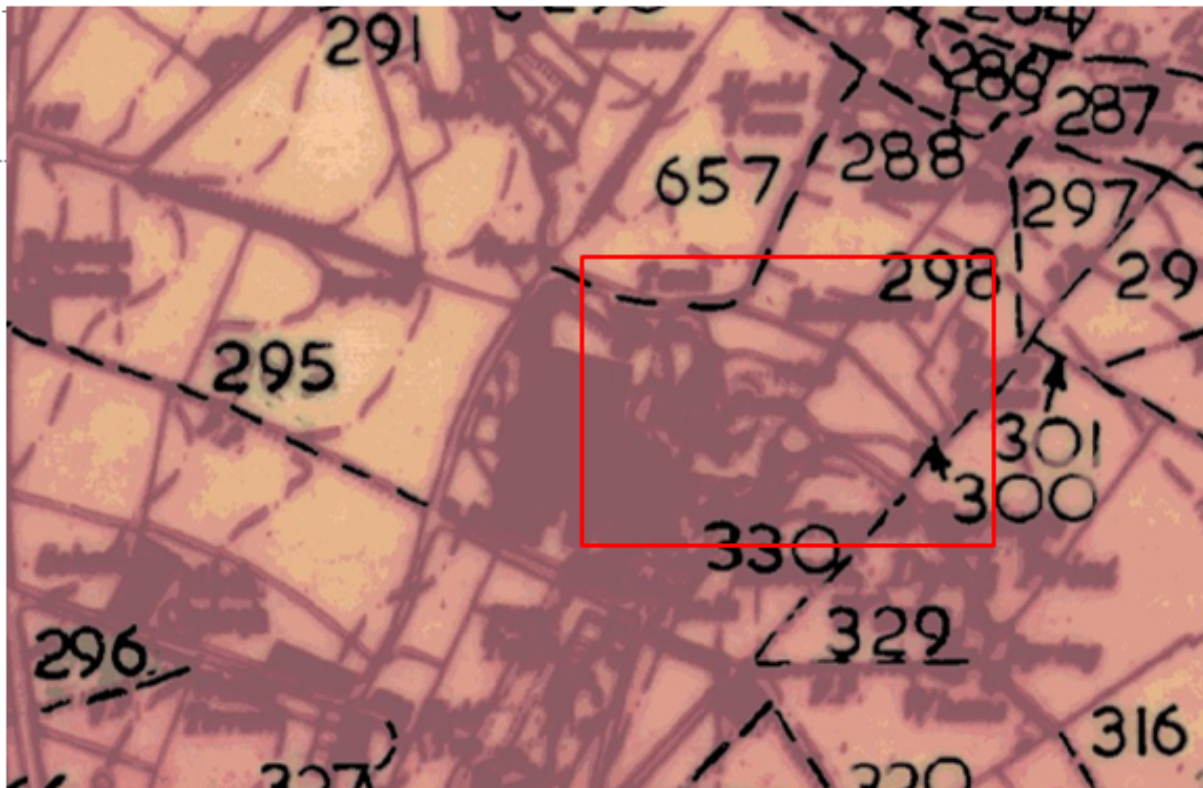
Observations		<p>The route was not shown on the Draft Map and Statement and no representations were made to the county council.</p> <p>FP 657 was not recorded on the Draft Map and a FP 300 and FP 340 are seen to meet the route to Whams Farm (further east along the route from point D) but not cross it.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



657	"	Tramway to the borough boundary from where it continues into Burnley R.D.  Commences at north-west corner of Irwell Springs Mill along Heald Lane to jct. with footpath No.289 at Heald Farm.	0.11  0.19
Observations		The application route was not shown on the Provisional Map and Statement and no representations were made to the county council.  Footpath 657 is now shown.	
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.	
Observations		The application route was not shown on the First Definitive Map and Statement.	
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 <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.
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Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route was considered to be a public right of way 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 or at any stage of the preparation of the Definitive Map.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the county council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not</p>



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

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

## **Landownership**

The first 5 metres (approximately) of the route from point A1 lies on unregistered land. The remainder of section A1-B, all of sections A2-B-C-D, and the bulk of D-E is owned by Irwell Springs Development Limited. The land crossed by the final 5 metres (approximately) of the route (immediately before point E) is privately owned but forms part of adopted highway (Office Road, U3847).

## **Summary**

### The application route between points A1-B, A2-B and B-C-D

The map and documentary evidence examined does not appear to support the existence of the application route until sometime in the 1960s when changes began to occur on the site with some of the original mill buildings being demolished and new industrial units built.

Since that time, as the site became vacant and buildings demolished it appears that access may have been more readily available across the site and to the reservoirs and that the application route was used together with a number of other routes across the site.

Access onto the site from point A1 – B looked to be available on the 2000 aerial photograph but the exact alignment of the route could have varied over the years and is no longer evident. Since at least the time when the drainage ditch was constructed from the reservoirs feeding into the River Irwell (possibly in 2007 as suggested in The Journey to Irwell Springs) then access appears to have been along the route between points A2-B rather than points A1-B.

### The application route between points D-E

The application route between point D and point E is consistently shown to exist as part of a longer through route providing access to a number of farms and properties and linking to a network of routes now recorded as public footpaths since the mid 1800's.

Whilst it may originally have been gated at point E there is no indication that it could not – or would not – have been used by the public on foot.

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

### Information from the Applicant

The applicant submitted the following documents with the application:

1. 109 user evidence forms

2. 23 letters of support from local residents
3. Book ('The Journey to Irwell Springs' by Peter Goggins) documenting the area
4. Various newspaper articles
5. Photos
6. Various unidentified maps

Once the application was received it was highlighted that a large portion of the user evidence did not expressly refer to the section of the route D-E. The applicant contacted the users to verify the use of this section and many of them subsequently confirmed that they have used all of the route claimed including between points D-E.

#### User Evidence Summary:

There were 109 user evidence forms received with the application.

46 users have used the whole of the route (A1-B, A2-B-C-D-E). The remaining users have used the top section of the route between points A1 or A2-B-C-D.

Use of the route varies from 1965 through to 2018:

- 58 users have used all or part of the route over a continuous period over 20 years up until 2018.
- Of the 46 users who have used the whole route, 35 have used it in excess of 20 years up until 2018.

Types of use of the route until 2018:

	<i>Daily</i>	<i>Weekly</i>	<i>Every few weeks</i>	<i>Monthly</i>	<i>Every few months</i>	<i>Other</i>
Foot	47	47	1	6	4	1 - "too many to count"; 1 - 3/4 times per year
Bicycle	1	5	-	7	9	-
Horse	4	5	1	2	2	-
Vehicle	-	-	-	-	1	1 - Annually

The main reasons provided for using the route were for pleasure, dog walking, leisure purposes, nature watching, riding and route to/from work and school.

Whilst using the route, users have seen others using the same route in the following manner:

<i>Foot</i>	<i>Bicycle</i>	<i>Horse</i>	<i>Vehicle</i>
74	36	44	4

When asked if the application route has always followed the same line the following answers were received:

<i>Part of route used</i>	<i>No. of users</i>	<i>Yes</i>	<i>No</i>	<i>Don't know</i>
Whole	46	37	4	5
Top section (i.e. excluding D-E)	63	57	2	4

Of those that provided a 'no' to the question 'has the route always followed the same line', the following comments were provided:

- "The pathway leading from Heald Lane has changed slightly and moved by 20 metres – the original entrance was along the lane towards the village through a purpose built entranceway, you would then walk towards the lodges crossing a small stream over stepping stones. In around 2001/2002, the stream was widened from an outflow from the lodges which then joined the colvert which was also opened up at about this time. The banking on the lodge nearest was then strengthened and widened leaving a path along the front of the lodge. The original entrance was blocked up and has remained so."
- "Route altered from a section of stepping stones across the river to a bridge further up when the houses were developed."
- "The route around the lodges has been similar to the routes known today, the access from Heald Lane was slightly lower down and access was across the stream rather than the plate bridge, this was prior to the land being cleared and purchased for development. Access was also gained across the original mill site, walking up from opposite Beaufort Road to meet the path at the lodges. There were also additional pathways that led from the lane leading to Whams Farms to meet the pathways."
- "Since approx. 2005 the stepping stones were removed and a metal plate put in over the river to keep access open. Now barricaded."
- "... when I first moved here there would be some stepping stones over to the left after the lodge and then a short path alongside the River Irwell to a hole in the wall and on to Heald Lane. Since approx. 2005 the stepping stones were removed but a metal plate was put in over the river and so access at the end of the route was then over the plate and then straight across to Heald Lane."

Three users provided that there had been stiles at the top eastern and western entrances of the route up until 10 years ago. One user wasn't sure whether there were or had been any and the remaining users provided that they were not aware of any stiles or gates on the route.

Five users provided that they have seen signs on the route 'private – keep out' which were erected in August 2018. One other user provided that there had been a 'private sign' erected during the time the mill was running.

Two users answered 'yes' to having been given permission to use the route. One user commented - "not permission as such but recommendation from Fiona and Roy

Mulderigg in January 2015". The other user stated that they had been given permission to use the route by Fiona Mulderigg. It is not clear which part of the route the permission was given for as neither Fiona nor Roy Mulderigg are owners of any land crossed by the route.

Seven users stated that they have been prevented/stopped/turned back from using the route. All provided that this was since the erection of the fences in August 2018, one having been prevented by one of the contractors erecting the fencing. Another 19 users provided that locked gates/metal barriers (fencing) which has been erected around the outer perimeter of the area of the development site has prevented them from accessing the route since August 2018.

One user provided that they had been told the route was not public by a landowner – Fiona Mulderigg. Again it is unclear which part of the route this is in reference to as Fiona Mulderigg is not a current owner of any land crossed by the route.

#### Information from the Landowner

Irwell Springs responded to consultations providing the following:

The route between points A1 and B has never been a route or a public footpath;

The route between points A2 and D has been walked over in the past, despite it not being a public right of way and despite both points having had fencing and being blocked on numerous occasions, only for trespassers to break them down every time these have been erected;

Any access to their land has been wholly unauthorised and is regarded as trespass, any evidence that the route has been trafficked is also considered as evidence of trespass. They subsequently object to the application.

### **Assessment of the Evidence**

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

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

- Wealth of user evidence supporting use of the route as a footpath and/or bridleway on a regular basis.
- Users report seeing others using the route on foot, cycle and horse.
- Absence of signs and notices along the route stating that the route was not public.
- Absence of action taken by the landowners to discourage use of the route until 2018.



- Map and other historical documentary evidence supporting the physical existence of the route between points D-E since the mid-1800s.

#### Against Making an Order(s):

- Weaker user evidence in relation to section A1-B.
- Possible interruptions to use in relation to section A1-B.
- Lack of corroboratory evidence from maps and other historical documents supporting the physical existence of the route between points A1-B and A2-B-C-D.
- Difficulties in proving intention to dedicate in common law.

#### **Conclusion**

The question being considered is whether the route A1-B, A2-B-C-D-E has been used such that it has become a right of way in law.

The land crossed by the majority of the application route (A1-B, A2-B-C-D) was a former print and dye works. The buildings associated with these works had been demolished by the 1970s. After a short time of housing a factory, the land was cleared and grass grew over where the industrial buildings once stood. It appears to have remained like this to the present day. The site is currently owned by Irwell Springs Development Limited (ISDL) and has the benefit of planning permission for a development of residential dwellings. ISDL claims that section A1-B has never been a route walked by the public. They accept that the route from A2-B-C-D has been walked in the past, but claim that this was despite it not being a public right of way. They do not mention the route from point D-E, the bulk of which is within their ownership.

As there is no express dedication along any part of the route, the Committee is invited to consider whether there is sufficient evidence from which a dedication of the route can be deemed under Section 31 of the Highways Act 1980 and/or inferred at common law.

Considering firstly the statutory test; in order to raise a presumption of dedication, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a full 20 year period immediately prior to the route being called into question. 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 application for a definitive map modification order is a calling into question but the evidence from users suggests that the public's right to use the claimed route had been called into question earlier when Heras-type temporary fencing was erected around the development site, enclosing the route between points A1-B and A2-B-C-D, thus rendering those sections unusable. Several users identify this event as having occurred on 20 August 2018. ISDL in its objection to the application claims

that access has been gained at points A2 and D without authorisation despite it being "*fenced and blocked on numerous occasions*". ISDL does not provide any information as to when the site was fenced and the access points blocked so it is not possible to determine whether any actions to prevent public use of the route were taken by ISDL prior to August 2018 or, if action was taken to challenge public use of the application route, whether it was sufficiently brought to the attention of a reasonable number of users that their use was being challenged. The users are consistent in their evidence that they were not prevented from using the application route until the fencing was erected in August 2018. On balance, therefore, any actions taken by ISDL seem not to have been an effective calling into question until August 2018 and so the 20 year period under consideration for the purposes of establishing deemed dedication would be 1999 to 2018.

All 109 users who completed user evidence forms have used all/part of the application route up to the calling into question of the route in 2018, although Committee may have some concerns about whether the same line was in use over that time, and whether at least part of the route was used for the duration of the 20 year period. There is usually some lack of clarity to be expected from written user forms. Users have not been interviewed and not all attached plans to their user evidence forms. Some users who did attach plans only marked the route from A2-B-C-D or in their written descriptions did not expressly mention A1-B or D-E. This could be because these sections did not exist either at all or during their use of the area, existed but were not used by those individuals or in relation to D-E because it was assumed that this was already acknowledged as a public right of way. ISDL admits that part of the claimed route, between points A2-B-C-D "*has been walked in the past despite it not being a public footpath/public right of way*" and denies that the route from point A1-B has ever been used by the public. Some users describe the application route as having originally been accessed from point A1 (across stepping stones) but that access moved to A2 around 2005 when the stepping stones were removed and a metal plate bridge provided at point A2 across the outflow. After completing their user evidence forms, a significant number of users subsequently submitted plans depicting the application route in full (A1-B, A2-B-C-D-E) and signed to confirm use of the entire route for the duration as indicated in their original user evidence forms.

The duration of stated usage of the route varies from one year to 53 years. 47 users used all/part of the route on a daily basis and 47 weekly. The vast majority report seeing other users of the route (on foot, cycle or horse). Notwithstanding the comments from some users that access at point A2 only became available in the mid-2000s, 35 users have confirmed use of the full length of the claimed route for the duration of the 20 year period under consideration (1998-2018). With the exception of one user, all 35 walked the route on either a daily or weekly basis and all but 4 report seeing others using the route on foot. The users describe using the route for recreational type purposes (e.g. dog walking, playing as/with children, fishing on the lodges/reservoirs, feeding the ducks etc.). This type of use and frequency, together with the significant number of users using the route, is consistent with use of a public right of way.

All 109 users are unanimous in that they have never been stopped or turned back whilst using the route; have never been told by anyone that the route was not public;

and have never encountered any locked gates or barriers (until 20 August 2018). Only one user reports having seen a notice stating that the land is private and that was when the mill was functional (which would pre-date the 20 year period under consideration). With one exception, none of the 109 users have ever asked for or been given permission to use the route. One user indicated that they had permission from Fiona Mulderigg but we have been unable to identify who this is and the extent of their authority to grant permission.

Despite some of the inconsistencies in the evidence, overall the user evidence supports 'as of right' use of the application route by a large section of the public for the 20 year period under consideration.

Section 31 provides the opportunity for a landowner to demonstrate that notwithstanding the evidence of 20 years' use, there is evidence that they had no intention to dedicate the route as a public right of way. The evidence has to be sufficient and the landowner must have taken some overt action such that the reasonable user would have to understand that the landowner was intending to disabuse him of the notion that the land was a public highway. A view needs to be formed as to what the users would reasonably have understood the landowner's intention to be.

According to ISDL (who we understand has owned the land crossed by much of the route since 2012), part of the application route from point A2-B-C-D has been fenced and blocked off on numerous occasions. So there could potentially be examples of actions taken by the landowner prior to August 2018, demonstrating a lack of intention to dedicate but it is unclear whether those actions were sufficiently communicated to the public to make them think that their use was being challenged and to satisfy the statutory rebuttal.

Looking next at dedication of a highway at common law; it is advised that Committee has to consider whether evidence from the maps and other documentary evidence, coupled with the evidence on site and user evidence, indicates whether it can be reasonably inferred that in the past the landowners intended to dedicate the route as a public right of way and the public have accepted it. Use of the route by the public must be 'as of right' and there is no fixed period of use or particular date from which use must be calculated retrospectively.

Historical documentary evidence tells us that from at least 1891, section D-E existed as part of a longer route and appeared capable of being used on foot. However, the same does not appear to be true of sections A1-B, A2-B-C-D which during the 19<sup>th</sup> century lay on the site of the dye and print works. Whilst section D-E is depicted on historical maps, these do not inform us if it carried a public right of way. We must therefore consider the maps in conjunction with other evidence.

Aerial photos show that by the 1960s the application route may have existed across the industrial site from A2 to link to the route between points D-E.

It appears that between 1953 and 1975 when the Definitive Map and Statement was prepared and revised the Surveying Authority did not consider the application route

to be a public right of way as it was not included in any derivatives of the Definitive Map, even though Footpath 657 was included (after having been initially excluded).

The 1977 Ordnance Survey Map appears to show the original mill buildings having been demolished and a new factory constructed on the western part of the site. Access along the claimed route may have been available but the route is not shown on the 1977 OS Map suggesting that they did not follow a well-defined track. Section D-E of the route is shown but there appears to be a gate at point E. The presence of the gate does not negate the existence of a public right of way as there is no suggestion it was a locked gate. The user evidence forms are unanimous in that there have been no locked gates or barriers along the route and there were several users whose use of the route dates back to the 1970s.

The first time the route between B-C-D is documented is on aerial photographs from 2000 which show a worn track consistent with pedestrian use. A2-B is not visible and only part of A1-B appears visible. Multiple users state that access to the application route was originally from point A1, by crossing a small stream over stepping stones, and that access at point A2 became available in the early to mid-2000s, when a metal plate bridge was laid across the outflow and the stepping stones near point A1 removed. From this time, access to the application route shifted from point A1 to A2. The documentary evidence supports these accounts as access to the application route at point A2 can be seen in images from Google Street View taken in 2009, which show a gap in the wall and the plate structure crossing the reservoir outflow. In 2014, aerial photos from 2014 do not show a track between A1-B. However, a track is visible at A2-B consistent with pedestrian use and user evidence. There is a faint track at B-C and no track at C-D. Section D-E is obscured by tree coverage.

In relation to the actions of any of the landowners, we have been unable to identify the owner of the land crossed by the first part of the route from point A1. The majority of the route crosses land owned by ISDL which it acquired in 2012. ISDL claims to have fenced and blocked off the route between A2-B-C-D on numerous occasions. These actions are consistent with a lack of intention to dedicate. User evidence conforms use of the route for a significant period, prior to ISDL's acquisition of the site, but we have been unable to trace previous owners definitively, save to say that we believe that there were at least four corporate owners within the time period the route was used by some of the longer users (i.e. dating back to the 1970s). The evidence from users of historical use of the route and lack of Section 31 statutory declaration from any owner suggests that nothing was done overtly prior to 2018 by any landowner to prevent use of the claimed route by the public.

In conclusion, Committee is advised that the actions of the landowners have been such that it is reasonably alleged that an intention to dedicate the route as highway may be inferred at common law and that user evidence demonstrates an acceptance of that dedication.

#### Status of public right of way

The application was for the addition of a footpath and the user evidence, whilst fully supportive of a footpath, also suggests regular use of the route as a bridleway. From the 109 user evidence forms submitted, 14 have used either part or the full length of

the application route with a horse, and 22 have cycled along the route on a regular basis. 44 users reported having seen other users with horses and 36 have seen cyclists. Committee is advised that use of the application route on cycle and horse appears to be at such a level to suggest that the public right of way is a bridleway.

#### Making of an Order and stance on confirmation

The test for making an Order under 53(3)(c)(i) is a low test of whether a public right of way can be reasonably alleged. If there is sufficient evidence to satisfy this, an Order should be made notwithstanding that an authority may consider that there is not sufficient evidence to establish that the right of way does in fact subsist. The test is that if there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot reasonably be alleged to subsist, then the answer must be that it is reasonable to allege that one does exist.

It is therefore suggested that there is sufficient evidence in this matter to make an Order.

Whether there is sufficient evidence to find on balance that the application route subsists is more difficult at the present time. There are some questions over whether use of the route between points A1-B and A2-B is sufficient, consistent and/or interrupted and whether there is evidence of a lack of intention to dedicate. It is suggested that while the Order runs its course, there will be an opportunity for user evidence to be considered in more detail, and a further report presented to Committee, as to whether this higher test for confirmation could on balance be satisfied and what stance the County Council should take in respect of the Order.

#### **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.

#### **Alternative options to be considered**

To not make an Order

To make an Order but resolve that the County Council support or oppose the Order to confirmation.

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



Paper

Date

Contact/Directorate/Tel

All documents on File Ref:  
804-603

Claire Blundell, 01772  
535604, County Secretary  
and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A