

Regulatory Committee

Meeting to be held on 26 June 2019

Electoral Division affected: Mid Rossendale
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Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway from Cowpe Road to Bacup Road, Waterfoot
File No. 804-605
(Annex 'A' refers)

Contact for further information:

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Executive Summary

Investigation into public rights along part of the Pennine Bridleway National Trail from Cowpe Road to Bacup Road, Waterfoot, Rawtenstall, Rossendale, in accordance with File No. 804-605.

Recommendation

- (i) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Bridleway on the Definitive Map and Statement of Public Rights of Way from Cowpe Road to Bacup Road, Waterfoot as shown on Committee Plan between points A-B-C.
- (ii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An investigation has been carried out into the status of the route which extends from Cowpe Road to Bacup Road at Waterfoot, Rawtenstall as shown between points A-B-C on the Committee plan.

The route has been part of the National Trail known as the Pennine Bridleway, a loop off the main north-south route known as the 'Mary Towneley Loop', since the start of its implementation in 1995 but this short section has no recorded public status. The section between point A and point B has also formed part of the Irwell Valley Way and will also form part of the Valley of Stone and East Lancashire Cycleways currently being implemented by the county council.

The county council is required by law to 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 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 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. 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 has been consulted and no response has been received. It is assumed that they have no comments to make.

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	8345 2173	Open junction with Cowpe Road
B	8362 2170	Route leaves roadway to turn 90 degrees north and continue along surfaced track
C	8360 2172	Open junction with Bacup Road

Description of Route

A site inspection was carried out in January 2019.

The route under investigation commences on Cowpe Road 30 metres south west from the junction with Bacup Road (point A on the Committee plan) and immediately north east of the road bridge crossing the River Irwell and is signed as part of the Pennine Bridleway.

From point A, the route extends in a generally easterly direction along a cobbled surfaced roadway immediately adjacent to the retaining wall alongside the River Irwell. The route is approximately 6 metres wide bounded to the south by the River Irwell retaining wall to the south and to the north by a wall beyond which is a coal yard.

The route extends for approximately 50 metres as a cobbled roadway as far as the entrance to the coal yard from where it continues – initially at a width of 6 metres but then tapering to 4.5 metres - for a further 85 metres. It is bounded by the retaining wall to the south and coal yard wall to the north, as a compact stone and partially tarmacked surfaced roadway to point B.

From point B, the route leaves the roadway and turns to continue in a northerly and then westerly direction along a stone surfaced track, fenced off from the adjacent roads, which is signed as part of the Pennine Bridleway to exit onto Bacup Road from where the Pennine Bridleway continues across Bacup Road via a Pegasus Road Crossing.

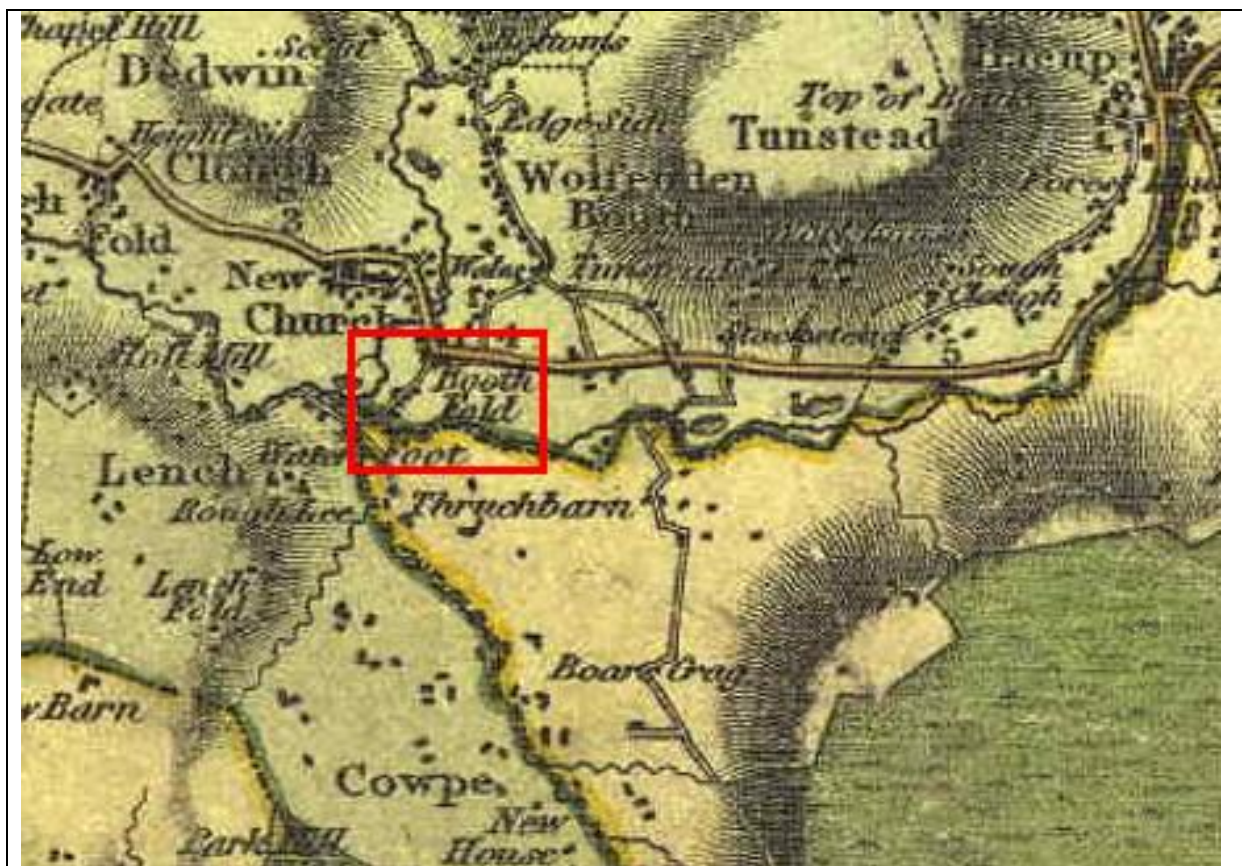
The total length of the route is 205 metres.

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.



Observations		The route under investigation is not shown.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Greenwood's Map of Lancashire	1818	Small scale commercial map.



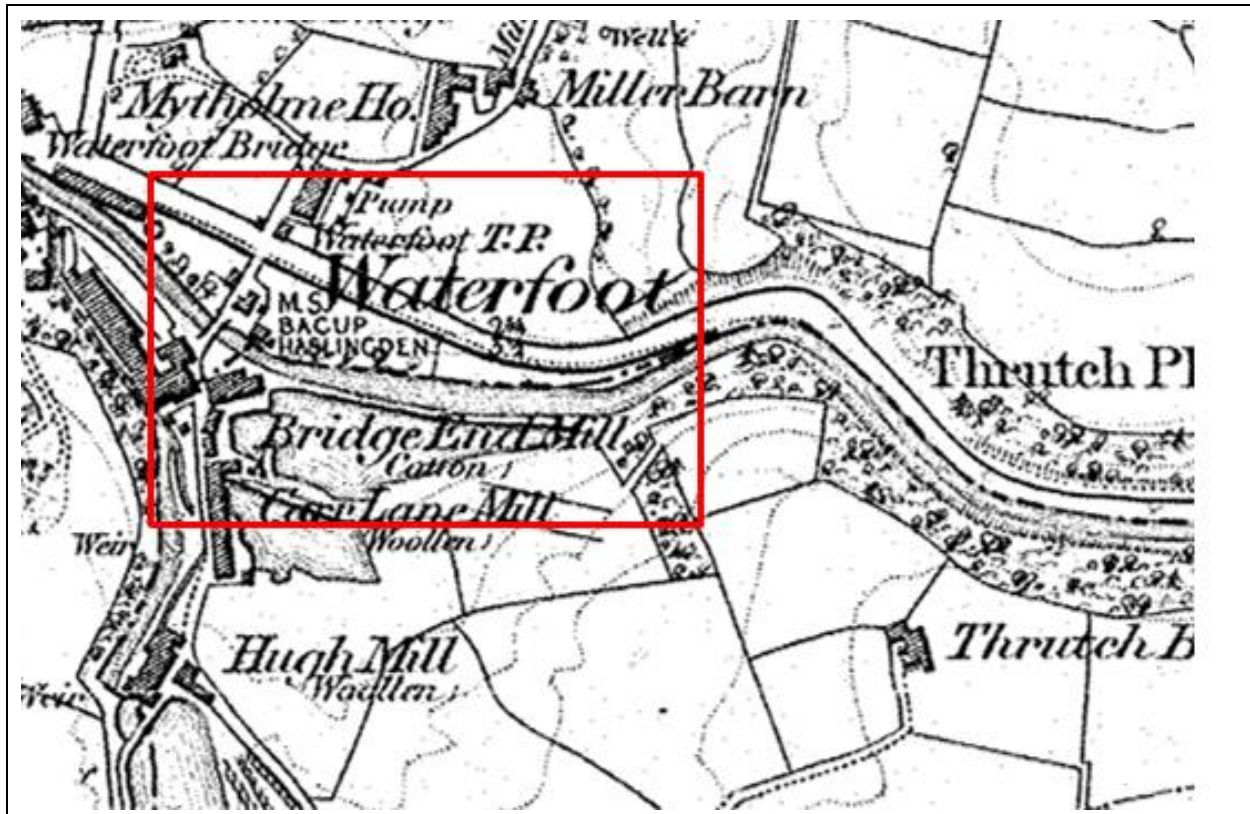
Observations		The route under investigation is not shown.
Investigating Officer's Comments		It is likely that the route, if it existed in 1818, was of little significance and was therefore not included on the map. No inference can be drawn with regards to the existence of public rights.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 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.



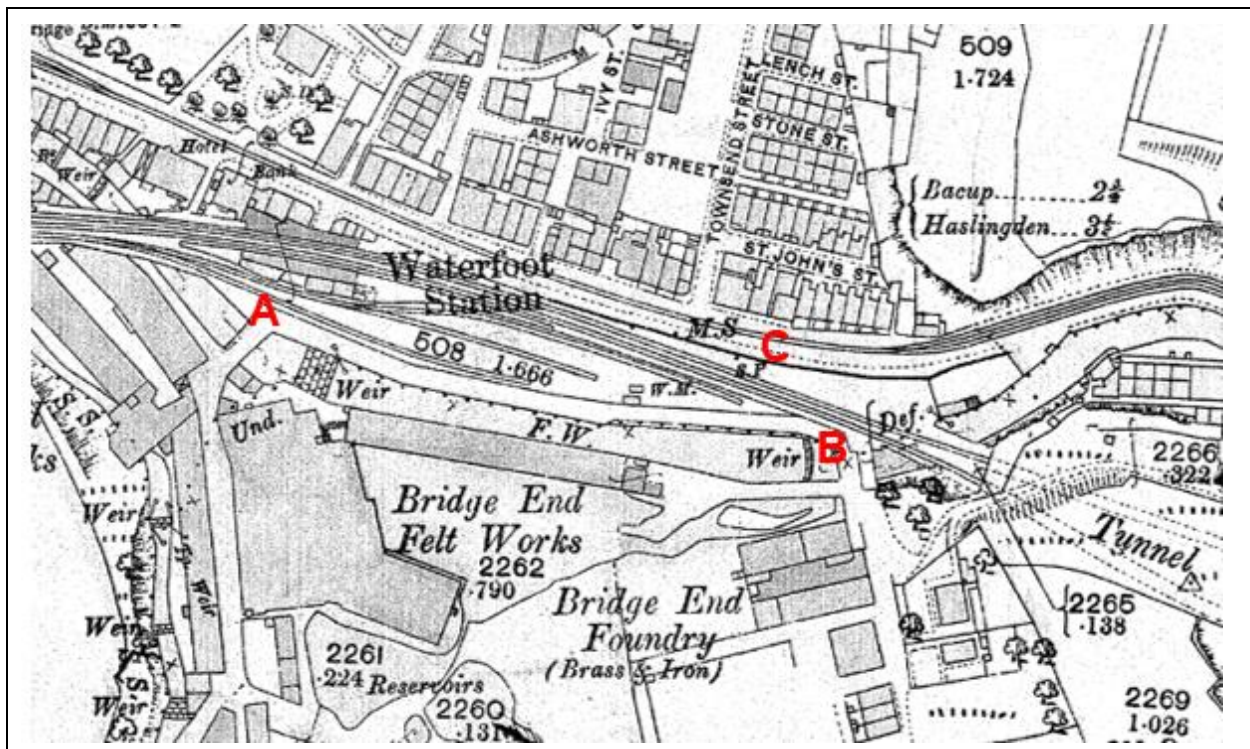
Observations		The route under investigation is not shown.
Investigating Officer's Comments		It is likely that the route, if it existed in 1830, was of little significance and was therefore not included on the map. No inference can be drawn with regards to the existence of public rights.
Canal and Railway Acts	1846-1857	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		<p>The route under investigation runs parallel to the former line of the East Lancashire Railway (ELR) Stubbins junction to Bacup line which was opened in stages between 1846 and 1852 and operated under various names until its closure on 5th December 1966, with Waterfoot railway station opening in 1848 and straddling Cowpe Road.</p> <p>Limited records and plans have been deposited in the Lancashire County Records Office relating to this part of the railway and nothing could be found</p>

		relevant to this investigation.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		No Tithe Map could be found for the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the area crossed by route under investigation.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map Sheet 72	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849. ¹

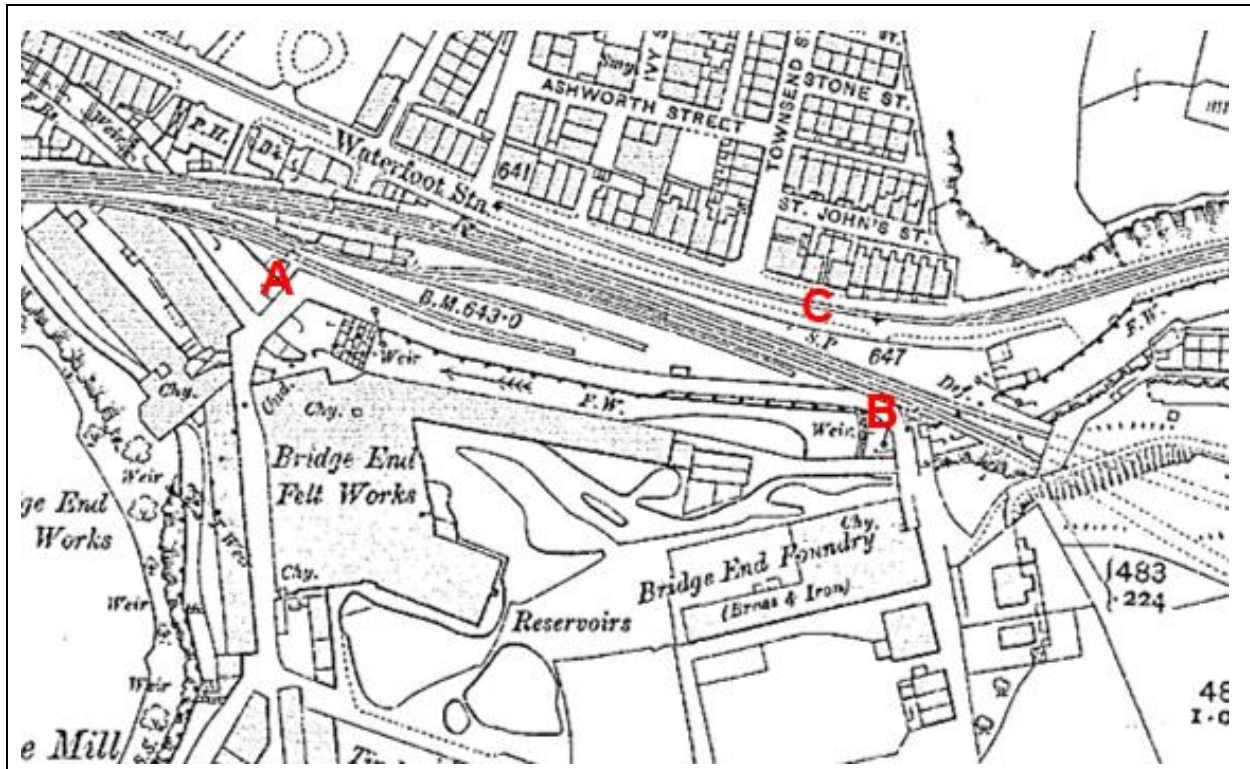
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in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



Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route under investigation probably did not exist when the area was surveyed by the Ordnance Survey in 1844-47.
25 Inch OS Map Sheet 72-14	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.



<p>Observations</p>		<p>The route under investigation can be clearly seen as part of a bounded route between the River Irwell and railway line. Cowpe Road starts at the junction with Bacup Road north east of point A and passes under the railway (and Waterfoot Station) to continue southwards. Access from Cowpe Road onto the route at point A is open and unrestricted.</p> <p>Between point A and point B the route under investigation is shown as a bounded route at a similar width to the vehicular road network and running between the River Irwell and railway. From point B the route turns south to provide access to Bridge End Foundry.</p> <p>The route under investigation between point B and point C is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation between point A and point B existed in 1891 and provided access to Bridge End Foundry. The route between point B and point C did not exist.</p>
<p>25 inch OS Map Map Sheet 72-14</p>	<p>1911</p>	<p>Further edition of the 25 inch map surveyed in 1891, revised in 1908 and published in 1911.</p>



Observations		The route under investigation is shown in the same way as it was on the earlier edition of the 25 inch Ordnance Survey map. The route between point B and point C is not shown.
Investigating Officer's Comments		The route under investigation between point A and point B existed in 1908 and appeared to provide access to Bridge End Foundry but the route between point B and point C did not exist.
Bartholomew half inch Mapping	1904	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.

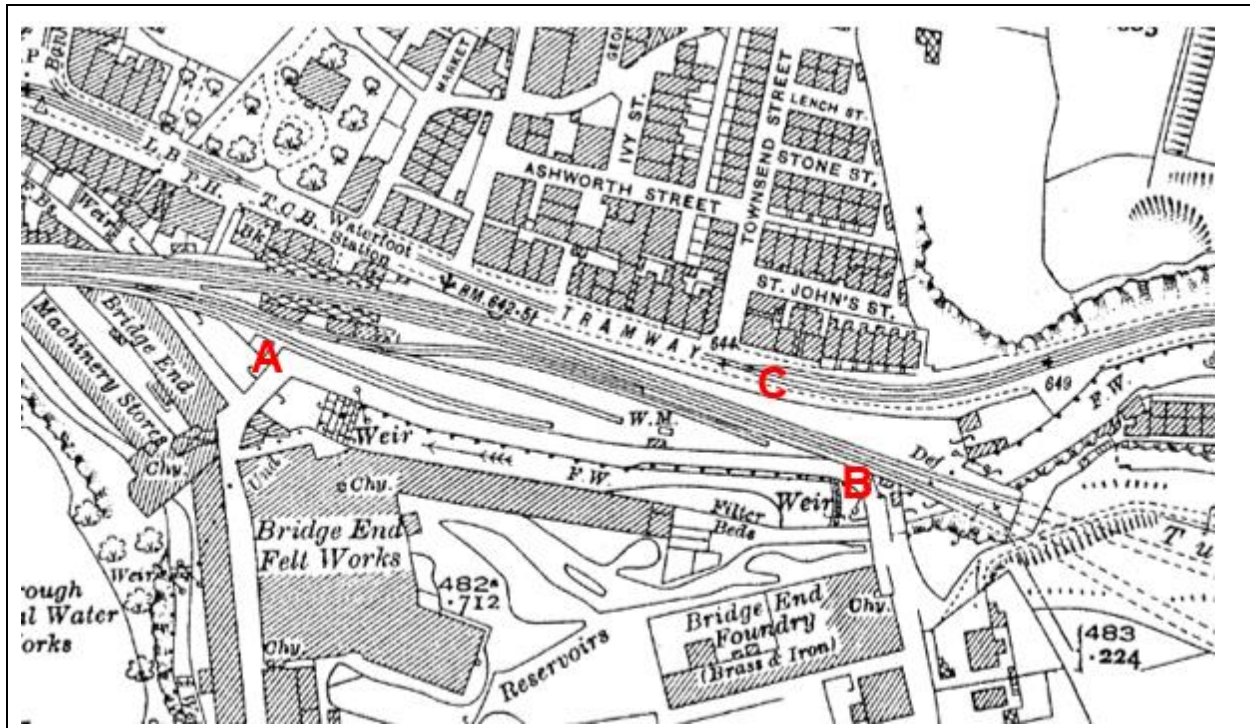


Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route under investigation between point A and point B existed (as shown on large scale Ordnance Survey plans dated before and after the publication of Bartholomew's Map) but the Bartholomew's map does not show the buildings on the south side of the railway so might be derived from an earlier source. Therefore no inference can be drawn.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of 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</p>

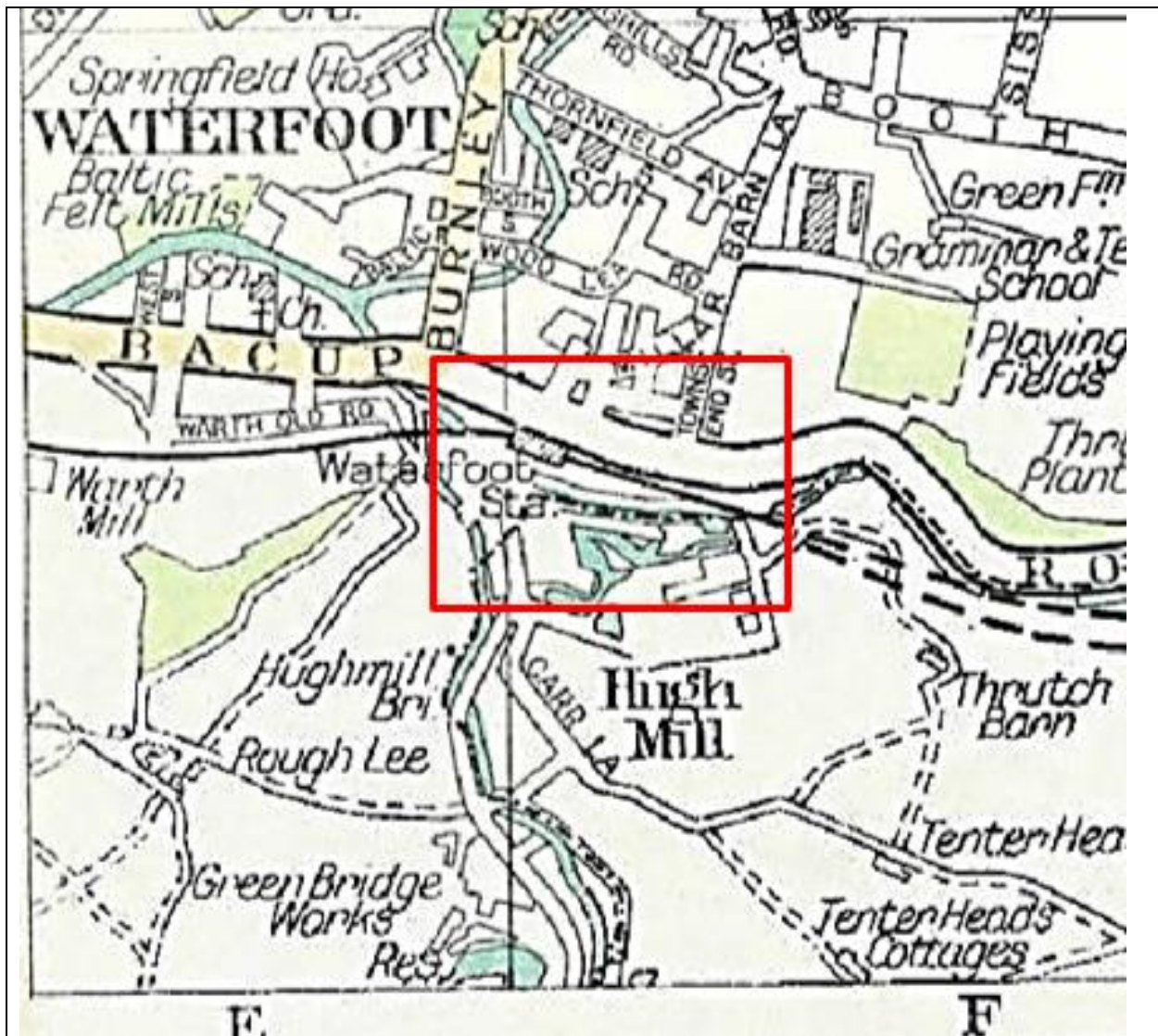
		<p>map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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Observations		There is no Finance Act Map available to view in the County Records Office and the map obtained from The National Archives does not show the area crossed by the route marked up.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
25 Inch OS Map Map Sheet 72-14	1930	Further edition of 25 inch map (re-surveyed 1891, revised in 1928 and published 1930).

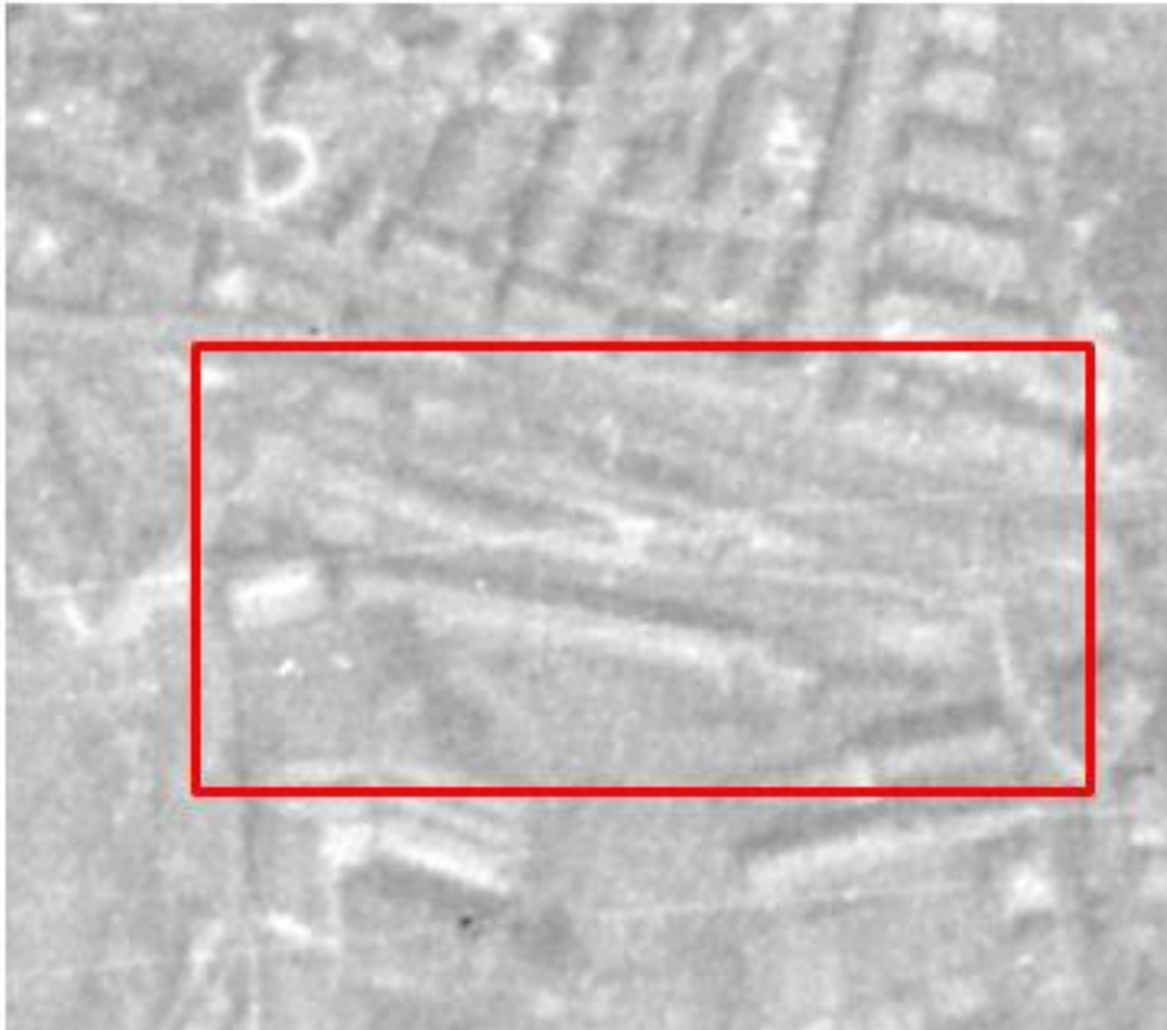


Observations		The route under investigation is shown between point A and point B providing access to Bridge End Foundry but the route between point B and point C is not shown.
Investigating Officer's Comments		The route between point A and point B existed but appeared to be an access road leading to the foundry. The route between point B and point C did not exist in 1928.
Authentic Map of South Lancashire Geographia	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>

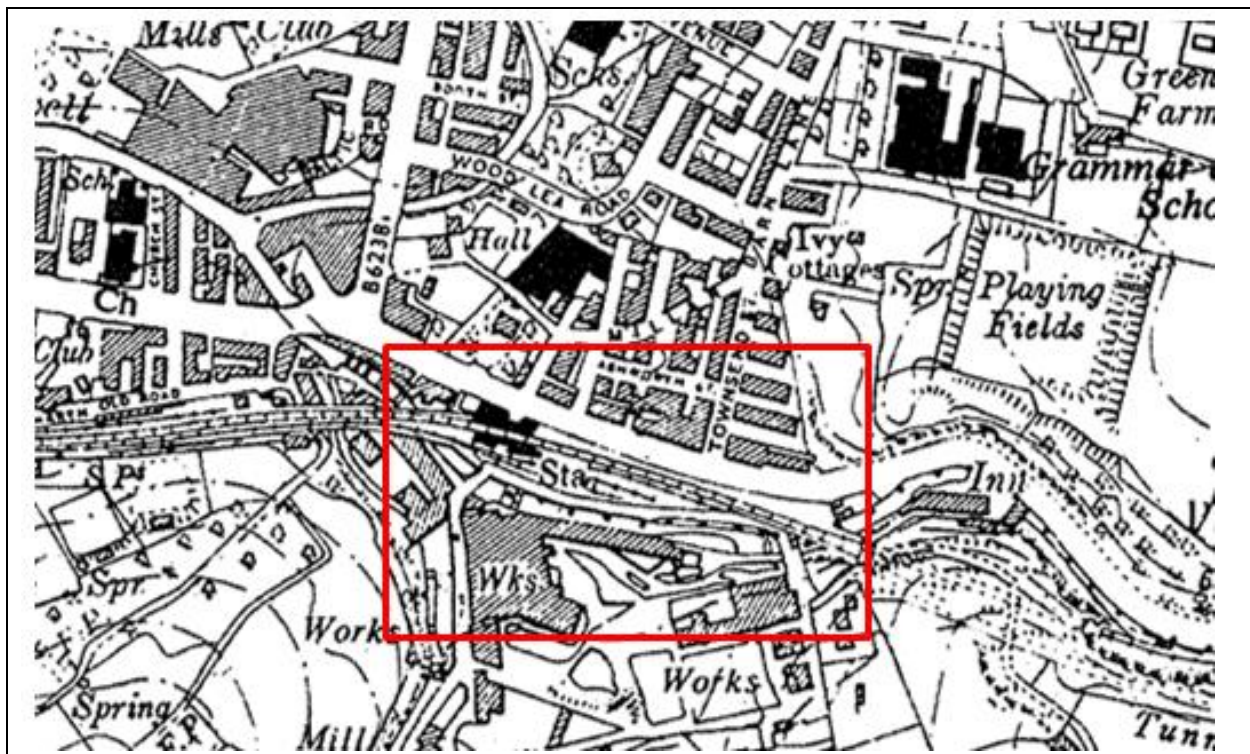


Observations		The route between point A and point B is shown providing access to some unnamed buildings. The route between point B and point C is not shown.
Investigating Officer's Comments		The route between point A and point B formed part of a substantial physical route shown on the map providing access to buildings.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

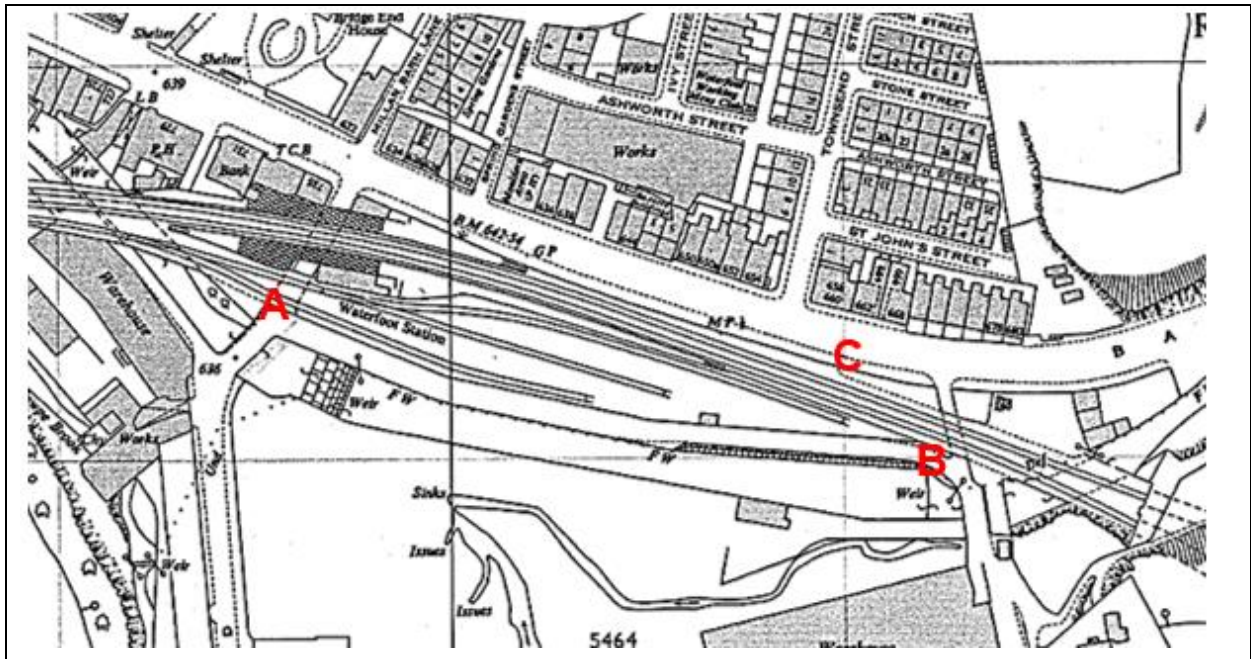
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



Observations		The quality of the aerial photograph is very poor. A line corresponding to the route under investigation between points A-B can be seen and approximately halfway along it access from the route into the area now used as a coal yard (formerly the railway sidings) can be seen as well as the route extending to pass through point B and then continuing south to a cluster of buildings.
Investigating Officer's Comments		The route existed between point A and point B in the 1940s providing access to the railway and to buildings south of point B. The route between point B and point C probably did not exist.
6 Inch OS Map Map Sheet 82SW	1956	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



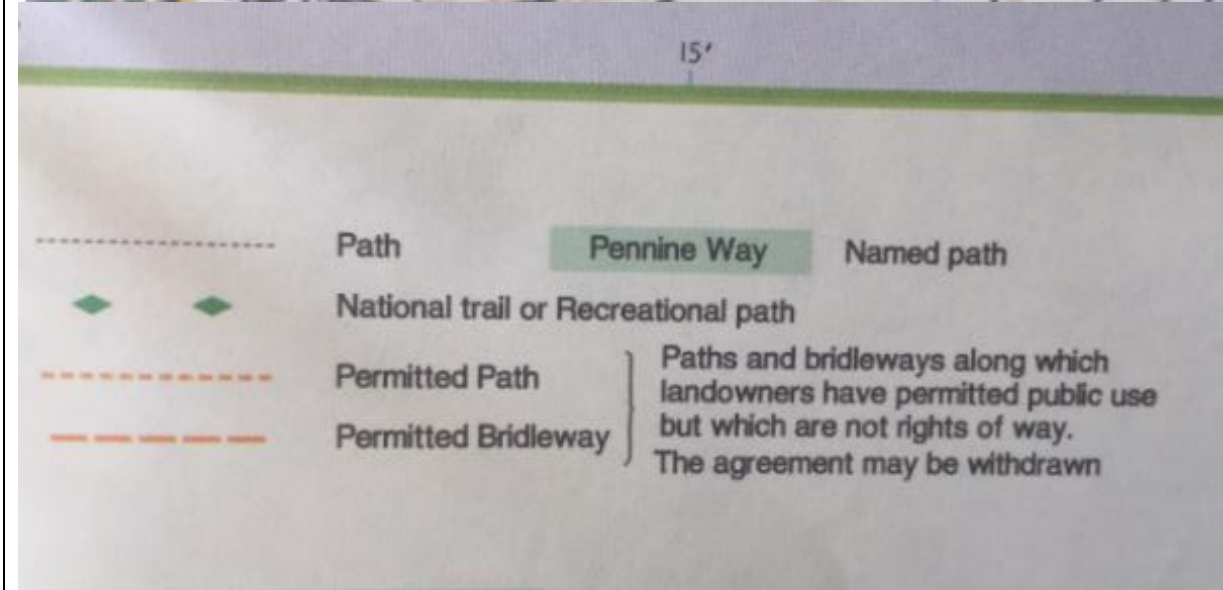
Observations		The route between point A and point B is shown in the same way as it has been shown on Ordnance Survey maps since the 1890s. The route between point B and point C is not shown.
Investigating Officer's Comments		The route between point A and point B existed as a substantial route providing access to some works. The route between point B and point C did not exist in the 1930s.
1:2500 OS Map SD 8221 and SD 8321	1963	Further edition of 25 inch map reconstituted from former county series, part surveyed 1960 and revised in 1960; published 1963 as National Grid Series.



<p>Observations</p>		<p>The route between point A and point B is shown as being accessible from Cowpe Road (at point A) and also a road is now shown under the railway from Bacup Road to close to point B. The route between point B and point C is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation between point A and point B existed in 1960 and may have been capable of being used as a through route from Cowpe Road to Bacup Road. The route between point B and point C did not exist.</p>
<p>Aerial photograph</p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



<p>Observations</p>		<p>The route under investigation can be clearly seen from point A extending midway towards point B as a light coloured roadway providing access into the railway siding (current access to coal yard). It then continues as a darker coloured roadway through point B to turn north to pass under the railway to access Bacup Road and south towards some large buildings. The route between point B and point C is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>The route between point A and point B existed as part of a longer route providing access to industrial buildings south of the river and under the railway to Bacup Road. From point A there appears to be significant use of the route by vehicles (as indicated by the colouring of the route) to gain access to the railway sidings. The route between point B and point C did not exist in the 1960s.</p>
<p>Ordnance Survey Outdoor Leisure Map 21 South Pennines</p>	<p>1995</p>	<p>Extract from the 1:25,000 Ordnance Survey Outdoor Leisure Map 21 South Pennines</p>



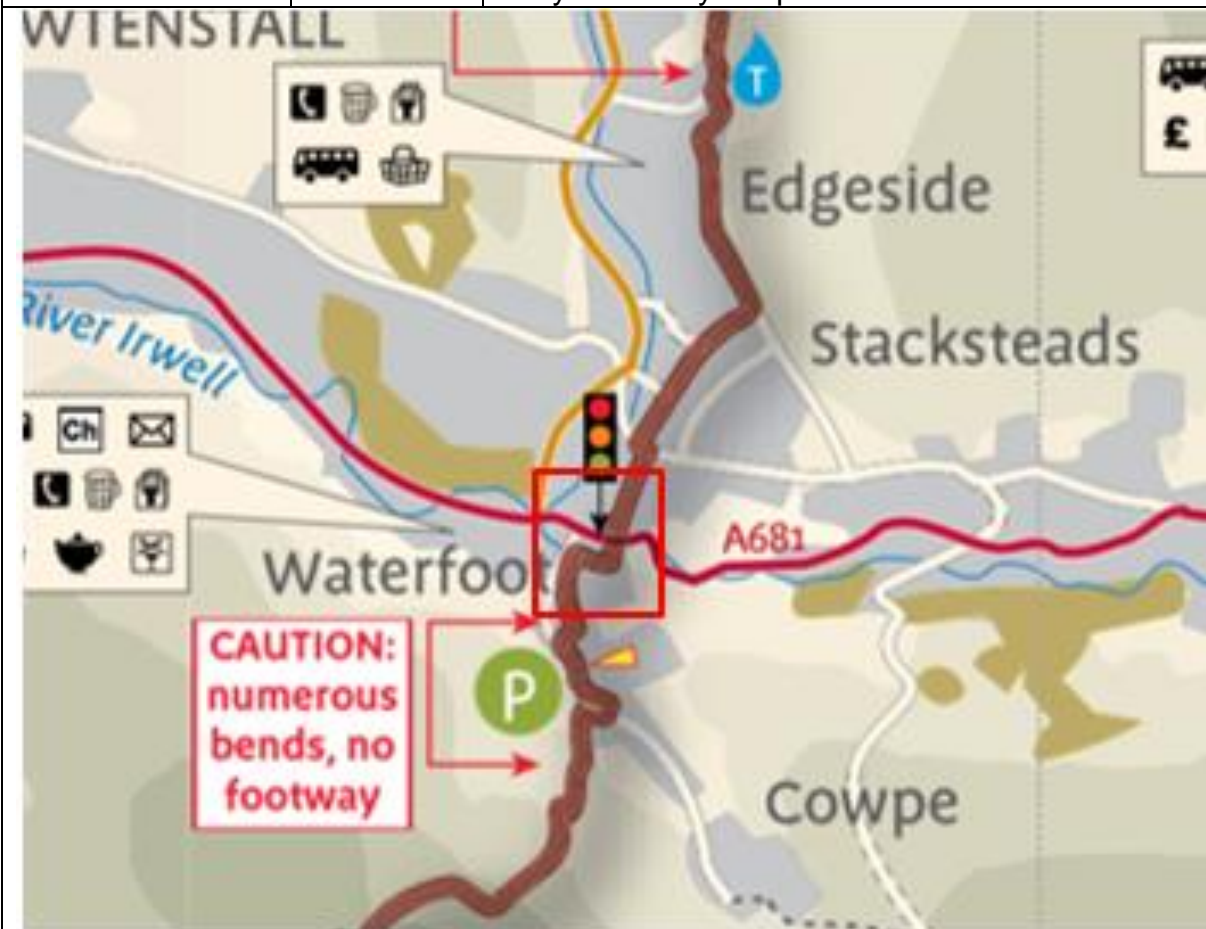
Observations		The railway is no longer in existence and the track has been dismantled. The route under investigation is clearly shown between point A and point B as part of a longer route providing access to Hugh Mill and is marked as a 'National Trail or Recreational Path' which is named on the map as the Irwell Valley Way. The route between point B and point C is not shown.
Investigating Officer's Comments		The route between point A and point B was recognised as part of a promoted walking route - the Irwell Valley Way in 1995. The route between

		point B and point C is not shown and probably did not exist on the date the map was revised.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		<p>The former railway track and track bed are no longer evident and the railway tunnel that previously existed through which Cowpe Road passed under the railway (and Station) north east of point A no longer exists. North of point B an access road from Bacup Road leading south south east to the mill buildings can also be clearly seen.</p> <p>The route under investigation between point A and point B is clearly visible providing access into the coal yard and also continuing east through point B onto the road connecting the mill buildings and Bacup Road.</p> <p>The land crossed by the route between point B and point C has been grassed over but appears inaccessible as the shadow at Bacup Road indicates a sizeable wall. No trod or surfaced pathway can be seen.</p>
Investigating Officer's Comments		The route under investigation existed between point A and point B as a longer through route which appeared capable of being used on foot, horse

		back and bicycle. The route between point B and point C did not exist in 2000.
Mary Towneley Loop	2002	<p>The Mary Towneley Loop is a 47 mile circular route forming part of the Pennine Bridleway National trail. The loop was opened in 2002.</p> <p>Work to create the loop was carried out as a partnership between the county council, Rossendale Borough Council and Calderdale Council with funding from the Countryside Agency (now part of Natural England).</p> <p>Since its creation the route has been well used by walkers, horse riders and cyclists.</p> <p>Staff from Lancashire County Council organised twice annual rides around the Mary Towneley Loop, including this section A-B-C, initially amongst themselves but then for about 15 members of the public between about 2010 and 2014. Rossendale and Pendle Mountain Rescue organised much larger annual events and there have been other races or endurance events.</p> <p>There are commercial enterprises offering packages for equestrians and cyclists to ride the Mary Towneley Loop.</p>

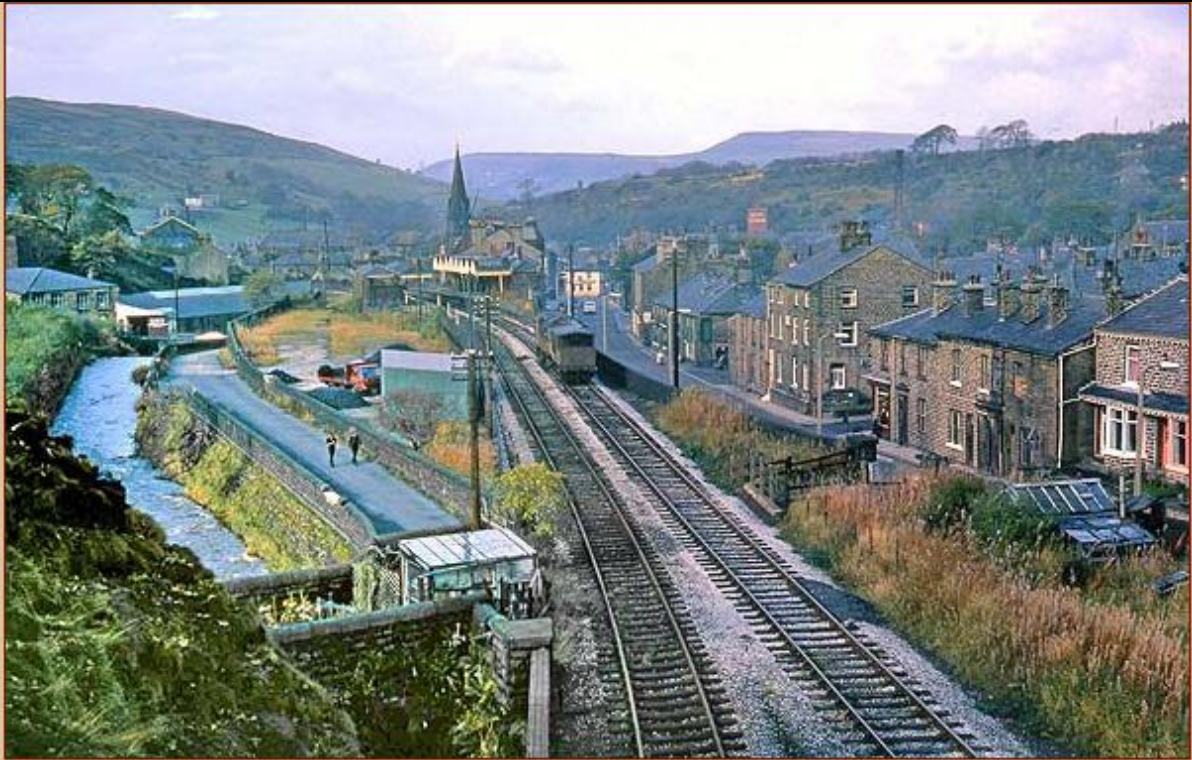


Observations		The route promoted as part of the Mary Towneley
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		<p>Loop of the Pennine Bridleway includes the route under investigation between point A and point B and also the route marked between point B and point C. The leaflet showing the route is not detailed enough to show the exact alignment of the route between point B and point C but the route has been constructed and is signposted as being part of the Pennine Bridleway.</p> <p>A record of many of the Public Path Creation Agreements and Orders made to create or upgrade existing routes to bridleways as part of the development of the Mary Towneley Loop/Pennine Bridleway in Lancashire has been kept but there is no record of any Orders being made in respect of the route under investigation between point A – point B or point B- point C.</p> <p>Officers involved in the implementation of the route at that time have now left the county council but inquiries were made and it appears that because ownership of the land crossed by the route between point A and point B was not known and because use of that route by the public on foot, horseback and bicycle had not knowingly been challenged then the route was included as part of the promoted route to keep walkers, cyclists and horse riders off Bacup Road and so that they did not have to cross the road at the junction of Cowpe Road and Bacup Road. The section of the promoted route between point B and point C crossed land which by then no longer formed part of the railway and was owned by the county council. The county council constructed the stone surfaced route between point B and point C as part of the Mary Towneley loop/Pennine Bridleway work but no record of the exact date that the work was completed can be found. Land agents working on behalf of the county council are of the view that no creation agreement for the route between points B-C was made at that time because the county council owned the land and an agreement recording the intended public status of the route was not considered to be a priority.</p>
Investigating Officer's Comments		<p>Since at least 2002 it appears that the whole length of the route under investigation has been promoted as part of a national long distance bridleway and has been used by the public as such to a significant extent.</p>
Aerial Photograph	2014	Aerial photograph available to view on GIS.



<p>Observations</p>		<p>The photograph clearly shows the route under investigation between point A and point B as part of a longer through route. Vehicles can be seen on the route between point A and point B, some of which appear by their position, to have been parked. Further vehicles can be seen in the coal yard with access to and from the coal yard being via the roadway including the route between point A and point B. The route between point B and point C can be seen to exist leading to the Pegasus road crossing just west of point C.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed and appeared capable of being used on foot, horseback and bicycle in 2014.</p>
<p>Photograph found online</p>	<p>Undated</p>	<p>An online search for information relating to the route under investigation and to the railway line and Waterfoot Station brought up an undated photographs on a railway website: http://www.disused-stations.org.uk/w/waterfoot/</p>



*Looking west towards Waterfoot for Newchurch station after closure of the line to passenger services but before track lifting had commenced.
Copyright photo from the [Bacup Natural History Society](#)*

<p>Observations</p>		<p>The photograph is undated but is stated to have been taken after closure of the line to passenger services. The railway closed in 1966 so it therefore appears that the photograph probably dates from the mid-1960s.</p> <p>The photograph shows part of the route under investigation between point A and point B. Two pedestrians can be seen walking towards point B and an underpass of the railway can be seen from Bacup Road. It is not entirely clear but it looks like it was possible to go under the underpass to connect to the route under investigation. From the angle from which the photograph is taken the access south from point B to the mill buildings cannot be seen as it appears that the walled area containing the greenhouse is at a higher level than the roadway to the mill buildings and obscures sight of it.</p> <p>The railway is still in existence and the photograph pre-dates construction of the route between point B and point C.</p>
<p>Investigating Officer's Comments</p>		<p>Access along part (A-B) of the route under investigation existed prior to the closure of the railway in the 1960s.</p>

Photographs found online

Undated

Further undated photographs of the land crossed by the route under investigation found online.
<https://www.youtube.com/watch?v=QUxE5wZCDog>



Photograph 1



Photograph 2



Photograph 3

<p>Observations</p>		<p>All three photographs are undated but still provide some interesting information.</p> <p>Photograph 1: Black and white photograph showing part of the route under investigation between point A and point B and also what appears to be a link through under the railway to Bacup Road.</p> <p>Photograph 2: Shows the route under investigation prior to the dismantling of the railway from point A leading towards point B. Point A appears to be unrestricted at its junction with Cowpe Road.</p> <p>Photograph 3: Photograph post-dating the closure of the railway showing pedestrians on the route between point A and point B and the link from Bacup Road extending south past the junction of the route under investigation. In the bottom left corner of the photograph an elevated rectangular shaped walled area looks to be consistent with the area shown on an the photograph discussed above which showed the railway and a greenhouse in the foreground. This photograph appears to confirm that the north south route from Bacup Road to the Mill buildings would have been available prior to the demolition of the railway. A high retaining wall can be seen which would have made use of the section B-C impossible.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation between point A and point B appears to have existed, and been part of a longer access route for a considerable length of time. The section B-C would not have been possible to use until the disused railway was</p>

		reprofiled sometime after these photographs were taken.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the county council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map 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.
Observations		The route under investigation is within Rawtenstall which was a municipal borough in the early 1950s so a parish survey map was not compiled.
Draft Map		The Draft Maps were given a "relevant date" (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The route under investigation was not shown on the Draft Map and no representations were made to the county council about it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation was not shown on the Provisional Map and no representations were made

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



Observations		The route under investigation is not recorded on the Revised Definitive Map (First Review).
Investigating Officer's		From 1953 through to 1975 there is no indication that the route under investigation was considered to

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



Observations		No part of the route under investigation is recorded
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		as a publicly maintainable highway by the county council. The route immediately east of point B connecting to Bacup Road is shown on the 'adoption plan' as a publicly maintained highway.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the county council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no statutory deposits deposited with the county council for the land crossed by the route under investigation.
Investigating Officer's Comments		There was no declaration by the landowners under S31 of the Highways Act 1980 that there was no intention to dedicate the route under investigation as a public right of way.

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

Landownership

The land crossed by the route under investigation between point A and point B is unregistered and landownership is unknown.

The land crossed by the route between point B and point C is owned by Lancashire County Council.

Summary

The route under investigation between point A and B has existed since the construction of the East Lancashire Railway (ELR) Stubbins junction to Bacup line which was opened in stages between 1846 and 1852.

Since that time, it appears to have provided private vehicular access to the railway sidings, coal yard and to the factories situated south of the river and also appears to have been accessible to the public.

Use of the route by the public on foot since the 1990s appears to have been accepted as it was included as part of the Irwell Valley Way promoted route and between 1995 and 2002 it was identified as part of the route to be promoted as the Mary Towneley Loop (part of a National Trail).

From at least 2002, it has been promoted and used as part of the Pennine Bridleway.

The route between point B and point C is on land owned by the county council and was constructed and signed as a bridleway forming part of the Pennine Bridleway, we think by 2002.

It therefore appears that the section A-B has been in use as a promoted route, initially footpath then bridleway for 17-23 years or more from which dedication at common law can be inferred. Section B-C was created, signposted and promoted by the landowner which suggests a willingness to dedicate the public rights.

Head of Service – Legal and Democratic Services Observations

Information from Others

As part of the investigations carried out into the status of this route 5 user evidence forms have been provided detailing use of the route.

User 1

Details use of the route on horseback from 1976 to the current time with reference to using it since 2001 as part of the Mary Towneley Loop. Used on a monthly basis to exercise horses and for leisure and explains that by using it you could avoid riding on the main road. Refers to seeing pedestrians, cyclists and vehicles on the route and says that they have never been given permission to use the route or been stopped or challenged when using it.

User 2

Refers to the fact that the route has formed part of the Mary Towneley Loop since it opened in 2002. Describes use on foot, horseback and in a car approximately 2-3 times a year for pleasure, as part of her job (which is not specified) and also to visit the coal yard. Refers to seeing others using the route on foot, horseback, by bicycle

and in cars and says that they have never been given permission to use the route or been stopped or challenged when using it.

The route described consists of A-B and then continuing north from B to join the access road leading to Bacup Road but does not specify use of the route B-C.

User 3

Details monthly use of the route on foot or horseback from 1980 to the present time. Refers to seeing others using the route on foot, horseback, bicycle and in vehicles. Has used the route themselves for pleasure rides, organised rides and when using the Mary Towneley Loop as part of a riding holiday and says that they have never been given permission to use the route or been stopped or challenged when using it. Refers to the fact that the route between point A and point B was used by horse riders for a long time prior to the creation of the Mary Towneley Loop.

User 4

Details monthly use of the route on horseback from 1995 to the present time. Refers to seeing others using the route on foot, horseback, bicycle and in vehicles. Has used the route themselves for pleasure rides, organised rides and when using the Mary Towneley Loop as part of a riding holiday and says that they have never been given permission to use the route or been stopped or challenged when using it.

User 5

Details weekly use of the route on foot from 1990-2019 and monthly use on horseback from 1990-2017. Also used the route monthly on a bicycle from 1990-2008 and with a vehicle from 1990-2019.

Refers to seeing others using the route on foot, horseback, bicycle and in vehicles. Has used the route for pleasure, the school run, exercise and 'access' and says that they have never been given permission to use the route or been stopped or challenged when using it.

Information from the Landowner

Ownership of the land crossed by the route between point A and point B is unknown.

The land crossed by the route under investigation between point B and point C has been owned by Lancashire County Council since 1975 when they acquired it from the British Railways Board and which is registered under the reference LAN111894. Lancashire County Council has confirmed that the route was constructed for use by walkers, cyclists and horse riders as part of the Pennine Bridleway and that it has been promoted and used as such since at least 2002.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- Map and other documentary evidence supporting the physical existence of the route between section A-B since at least 1891;
- Absence of evidence of gates/fences/stiles;
- Absence of signs and notices along the route;
- Absence of action taken by landowners to discourage use of the route;
- Actions of landowner in relation to section B-C consistent with an intention to dedicate.

Against Making an Order(s)

- Few user evidence forms;
- Weak user evidence in relation to section B-C.

Conclusion

As there is no express dedication along any part of the route, Committee is invited to consider whether there is sufficient evidence from which a dedication of the route can be inferred at common law. Deemed dedication under section 31 of the Highways Act 1980 cannot be considered because there is no evidence of public use of the route having been called into question.

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 that 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 the mid-19th century section A-B existed as part of an access route and appeared capable of being used by the public on foot and horseback. However, the same does not appear to be true of section B-C which from the mid-19th century to mid-20th century had railway tracks running across it and for several years after the track had been dismantled (up to at least 2000) appeared inaccessible due to it being enclosed by a wall.

Whilst the historical maps are helpful in depicting the existence of section A-B, these do not inform us if it carried a public right of way. We must therefore consider the maps in conjunction with other evidence.

Two different photographs taken after the railway had closed in 1966 show pedestrians walking on the route between section A-B. From the user evidence, the earliest horseback use of this section of the route is identified as 1976 by user 1. User 3 started riding along this section on a horse on a monthly basis from 1980.

From 1995, four out of the five users were using this section of the route on horseback on a monthly basis.

We have been unable to identify the owner of the land crossed by section A-B. However, the evidence from users and lack of section 31 statutory declaration from any owner suggests that nothing was done overtly by any landowner to prevent use of the route by the public. Further, there is no suggestion that use of this section was permissive, secretive or by force. In fact, use was far from secretive as this section was promoted to pedestrians from the 1990s as forming part of the Irwell Valley Way and from at least 2002, it was promoted to horse riders and cyclists as forming part of a national long distance bridleway. It is advised that the common law test for inference of dedication and acceptance by the public can therefore be met.

The user evidence fails to distinguish between use of the different sections of the route over different time periods and one user's description of the route does not include section B-C (user 5). However, historical evidence suggests that section B-C was not capable of being used by the public on horseback much before the opening of the Mary Towneley loop in 2002 (an aerial photograph taken in 2000 shows a sizeable wall blocking the way). Use of section B-C by the public on horseback is therefore assumed to have only been possible for the last 17 years. The county council owns the land crossed by section B-C but no evidence has been found of the county council having expressly dedicated section B-C as a public highway. Whilst this section has been promoted by the county council as part of a national bridleway, it does not necessarily mean that there has been an express dedication of highway. Nevertheless, there are factors which offer persuasive evidence of the landowner's intention as regards dedication. The Mary Towneley loop is promoted as a national bridleway in its entirety and all other sections of the loop have highway status as its permanence was an important principle in the trail's creation. As part of the construction of the Mary Towneley loop, the county council laid a stone surface between point B and C and erected bridleway signs. Committee is therefore advised that the overwhelming circumstantial evidence of the county council's intention to dedicate the land as a public bridleway is such that the common law test for inference of dedication can be met. Further, user evidence confirms that the public have been using section B-C as a public bridleway since 2002.

In conclusion, Committee is advised to make an Order for the route marked A-B-C to be added to the Definitive Map and Statement as a public bridleway and promote the Order to confirmation.

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 if objections are made officers present a further report for Committee to decide the stance with regards confirmation.

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-605		Joanne Lawson, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A