

Regulatory Committee

Meeting to be held on 11 March 2020

Part I

Electoral Division affected:
Pendle Rural

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Investigation into the public rights over the route from Keighley Road at Parson Lee Farm along Smithy Clough, Trawden, Borough of Pendle

File No. 804-611

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Investigation into the public rights over the route from the eastern end of Keighley Road at Parson Lee Farm along Smithy Clough to the junction with Bridleway Trawden 191 and Byway Open to all Traffic (BOAT) Trawden 254, Pendle, in accordance with File No. 804-611

Recommendation

- (i) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
- (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 existence of public rights over a route starting at the eastern end of Keighley Road at Parson Lee Farm along Smithy Clough, Trawden to the junction with Bridleway Trawden 191 and BOAT Trawden 254 and shown between points A-B-C-D on the Committee plan.

The route forms part of promoted footpath – the Bronte Way - and the Pennine Bridleway National Trail but has no recorded public status.

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

Pendle Borough Council

A response was received from the Borough Council's Countryside Access Officer, Mr Tom Partridge. He provided a number of undated maps relating to the creation of the Pennine Bridleway National Trail through the Borough showing the proposed route of the Pennine Bridleway. One set of maps has a key indicating the status of the different parts of the route as Road, Bridleway and Footpath and also the position of

road crossings. On these maps the route from Wycoller up to Parsons Lee and then along the route under investigation is marked as Footpath.

A second set of plans mark up the same route but provide no information about the status (or believed status) of the route and is accompanied by a set of numbered notes corresponding to locations on the map. The map and notes relate to a survey of the whole of the proposed Pennine Bridleway route through Pendle and with regards to the route under investigation a gate and overhanging trees were noted at point B a small stream across the track was noted between point B and point C, overgrown hawthorn hedges were noted between point C and point D, and a gate and stile was noted at point D.

Mr Partridge explains in the letter that he was appointed as Countryside Access Officer. He was part of the Highways and Transportation department and was told by his manager that the route was an adopted highway and that he could drive his vehicle along the route. He recalled in 1999 or 2000 driving along there but being fearful that the Land Rover may end up in the watercourse.

He also recalled that prior to 2006 Pendle Council carried out the highways maintenance function within part of the Borough and possessed large map books showing adopted and un-adopted highways. His recollection was that one of the map books showed the route under investigation as an adopted highway but that the Borough Council did not retain these books and that he believed that they had been passed to the county council.

Trawden Forest Parish Council

A response was received explaining that the Chairman of the Parish Council, John Hodgson, had lived at Parson Lee Farm (close to point A on the Committee plan) from 1987 to 2016 and travelled up the 'road' daily. He believed that the 'road' was likely to have been used by the Bronte's when visiting Wycoller Hall and Burnley and that it went through Wycoller linking to Haworth and Yorkshire before the road from Laneshaw Bridge was fully linked to Height Laithe.

He refers to the fact that a traffic restriction was put on the route into Wycoller by Lancashire County Council when the county council took over the land from the 'Water Board' (now comprising of Wycoller Country Park – but not including the route under investigation) and refers to a proposal to build a dam in the valley which would have flooded the road lower down and necessitated Parson Lee Farm and Dean Farm to access their properties solely via the route under investigation.

The Chairman explained that when the plans for the dam were scrapped the road into Wycoller was re-opened but that access along the route under investigation was needed in 1947, 1963, 2001 and again after 2001 as Herders Hill was blocked by snow. He refers to the occupant of Brink End Farm, who worked for Trawden Urban District Council in the 1960s using the route daily.

More recently, after the designation of Wycoller Country Park and the demise of Trawden Urban District Council, he explains that Lancashire County Council had a verbal agreement with the owner of Parson Lee Farm that they would maintain the

road into Wycoller but did not maintain the route under investigation and put an 'access only' condition on it at point B on the Committee plan.

He refers to recent erosion of the route by water which resulted in him constructing his own track to access his property and that if an order was to be made to record the route so that it was open to all traffic that it should be made fit for purpose at public expense.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	9420 3873	Junction with Keighley Road (U40299) at Parson Lee
B	9424 3870	Field Gate
C	9462 3861	Junction with Footpath Trawden 194a
D	9485 3847	Junction with Bridleway Trawden 191 and BOAT Trawden 254

Description of Route

n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form '13-07-BW 191' or Bridleway 'Trawden 191' but are referenced below in the abbreviated form 'Bridleway 191' for brevity since all those referred to are in Trawden in the Borough of Pendle.

A site inspection was carried out in May 2019.

Access to the start of the route under investigation at point A is from Keighley Road (U40299) which is an unclassified county road running through the hamlet of Trawden to terminate adjacent to the entrance to Parson Lee Farm at point A on the Committee plan. From Wycoller to point A Keighley Road is also part of the Pennine Bridleway National trail and is signposted as such in the hamlet.

Approaching point A, Keighley Road comprises of a gravelled track providing vehicular access through to Parson Lee Farm. At point A the route under investigation continues from the end of Keighley Road and the junction with Footpath 197 and leaves the gravel track leading onwards to the farm to run south east to the south of Smithy Clough and signposted as the route of the Pennine Bridleway.

From point A, the route is bounded on the right (south) by the remains of a stone wall above which the land rises steeply towards the farm and on the left hand side (north) by the banking of Smithy Clough. The route follows a compacted stone and earth track for approximately 25 metres to point B where it is crossed by a metal field gate and adjacent wooden bridleway gate shown as being newly erected structures on a photograph taken by the county council in 2006 as part of work carried out in relation to the implementation of the Pennine Bridleway route.

An official road sign is shown as existing at point B in 2006 (looking back from point B towards point A) which specifies no motor vehicles (a round sign with a picture of a motorbike and car surrounded by red) underneath which is an additional sign stating that there is an exception for disabled badge holders and for access. In 2019, the round sign was no longer evident but the post and advisory notice referring to disabled badge holders and access remained.

Beyond point B the route continues rising gradually uphill along a stone and earth surfaced track adjacent to Smithy Clough with the land rising steeply to the north. After approximately 95 metres from point B the route starts to move further away from Smithy Clough traversing up the hillside to continue in an east south easterly direction parallel to Smithy Clough but at a higher level. A further marker post indicates that the route forms part of the Pennine Bridleway.

The route continues along a clearly defined track fenced off separate to the moorland to the south but open to the rough pasture to the north which lies between the track and Smithy Clough. It rises gently uphill passing through the unmarked junction with Footpath 194a at point C until it reaches a metal field gate and adjacent wooden stile in a stone wall at point D immediately beyond which it meets the junction of tracks recorded as Bridleway 191 (the continuation of the Pennine Bridleway) and Byway Open to all Traffic 254.

The total length of the route is 715 metres.

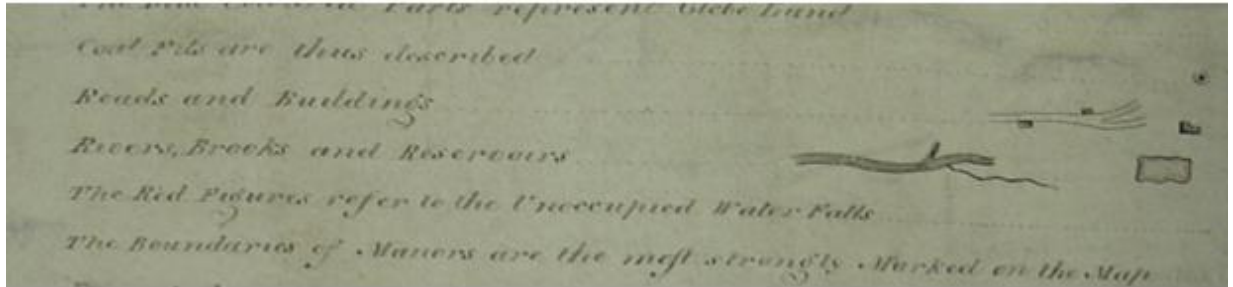
Map and Documentary Evidence

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.

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



Observations		The full length of the route under investigation is shown as part of a longer bounded route passing through buildings marked as Wycolter and Wycolter Hall passing through point A (unmarked) to point D where it opens out onto the moor. The routes of BW 191 and BOAT 254 are not shown from point D. The route is shown as a cross road according to the key to the map.
Investigating Comments	Officer's	This is the earliest map examined and shows that the route under investigation existed in 1786 and the fact that it is shown suggests that it was of a substantial nature capable of being used at that time. It is not known what is meant by the term 'cross road' but the only other category of highway

		<p>shown on the map is turnpike roads and the routes inclusion on such a small scale commercial map is consistent with how a route used as a public vehicular highway was shown on early commercial maps.</p> <p>It is not known whether the routes now recorded as BW 191 and BOAT 254 existed to provide access from point D at that time. It may have been that Yates did not consider these routes to be public vehicular highways or that they were unenclosed or that the hedges/fences/walls were in disrepair or possibly that these routes were not surveyed, as surveys were expensive.</p>
Honour of Clitheroe Map	1804-1810	<p>A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Dutches 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.</p>
		



Observations		<p>The full length of the route under investigation is shown as part of a longer route passing through Wycoller and past Parson Lee (named on the map). The route under investigation is shown to meet the junction of the routes now recorded as BW 191 and BOAT 254 at point D – both of which appear to be shown shaded but bound with dashed lines (as opposed to the route under investigation which is shaded and bound with solid lines).</p> <p>From point D the route now recorded as a BOAT through to Lancashire Moor Road is shown exiting onto the Road close to Combe Hill Cross (named on the map).</p>
Investigating Comments	Officer's	<p>The route under investigation existed in the early 1800s as a significant route depicted in the same way as many other routes which are currently classed as public bridleways or</p>

		<p>carriageways. It is shown coloured yellow, like the other roads, but there is no indication of what status these roads are. The fact that it is shown with solid lines suggests that it was probably a bounded route as opposed to the routes of BW 191 and BOAT 254 which may have been unbounded routes across the moor – possibly suggesting why they were not shown on Yate's Map of 1786.</p> <p>From point D it is shown to continue to connect to a public vehicular highway (Lancashire Moor Road) suggesting that it would have been capable of being used by horses and vehicles travelling through Wycoller at that time.</p>
Chapelry of Colne Map	1818	<p>A copy of a map submitted to the county council in relation to a number of applications in Pendle. Referred to by the local bridleway group as 'The Chapelry of Colne Map'.</p>



<p>The image shows the title page of a map. At the top, the word 'THE' is enclosed in an oval. Below it, 'CHAPELRY' is written in large, bold, serif capital letters. Underneath that is a decorative flourish with the word 'of' in a cursive script. Below the flourish, 'COLNE.' is written in large, bold, serif capital letters. At the very bottom, there is a small horizontal line.</p>		
Observations		<p>The origins of this map are unknown and it has not been possible to locate the original map or a better copy.</p> <p>The route under investigation is shown as part of a longer route passing through the hamlet of Wycoller and passes buildings which appear to be located where Parson Lee is situated. The route continues past the buildings to point D and is shown bounded largely by solid lines where it meets a route (now recorded as BW/BOAT) shown with double pecked lines.</p>
Investigating Comments	Officer's	<p>The route existed as part of a longer through route in 1818.</p> <p>There is no available key to the road notation and therefore we are unable to infer road status or that a difference in solid (enclosed) or pecked (unenclosed) lines suggests that there was a difference in significance.</p> <p>Like previous early commercial maps, routes at this time were only likely to be recorded on available maps if they were able to be used. Public footpaths did not tend to be shown.</p>
Inclosure Act Award and	1821	<p>Inclosure (or enclosure) was the mechanism by which Britain sought to modernise its</p>

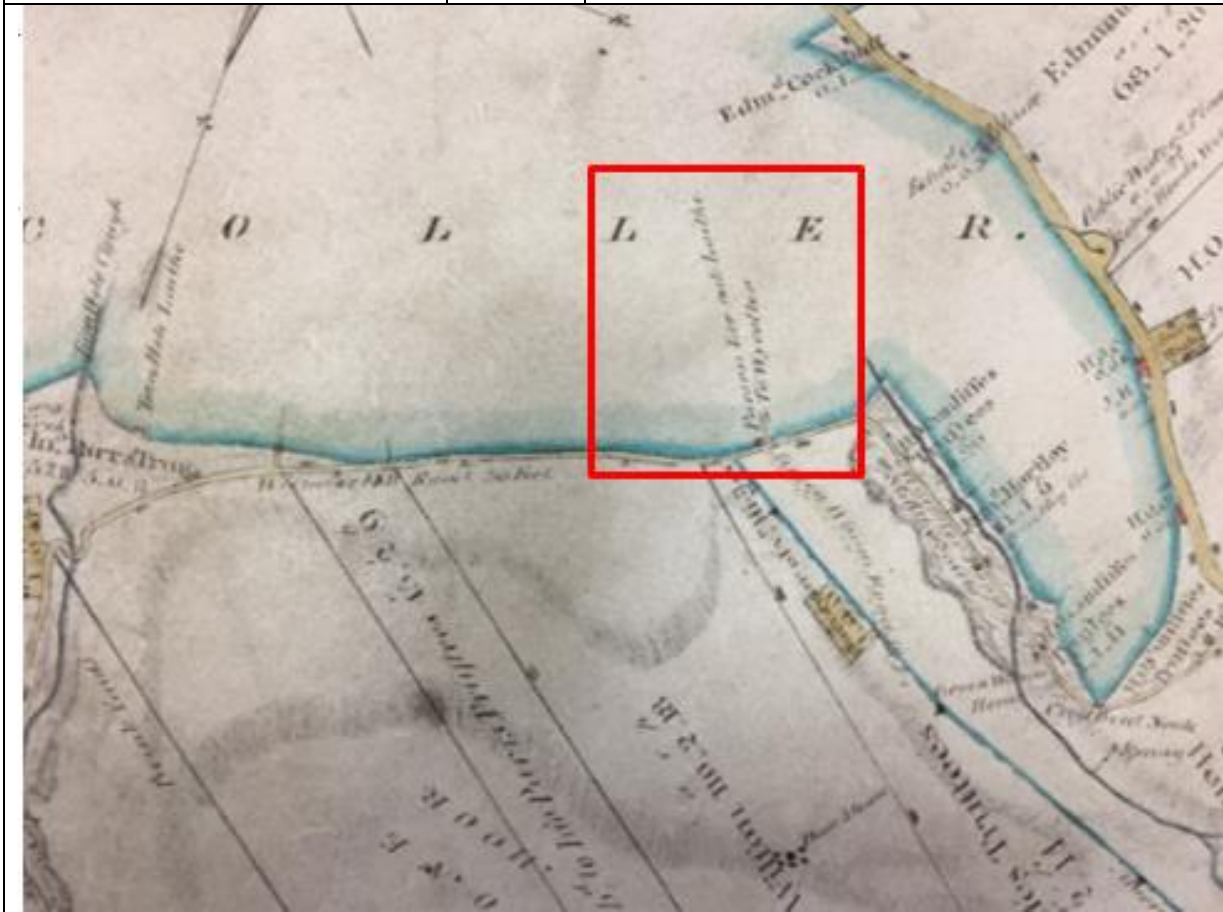
<p>Maps</p>	<p>medieval arrangements of communal agricultural land to achieve the improvements in efficiency desperately needed to feed the nation. Inclosure sought to divide up the open land and convert rights to the open land into exclusive use of smaller parcels. The process was done by passing local acts of parliament for each inclosure award, which might only cover part of a parish or hamlet so there were many hundreds of such acts before and throughout the 18th Century. In order to streamline the process to make it less costly and encourage more inclosure, general acts were passed containing all the standard provisions so that they did not have to be repeated in every subsequent local act. The first of these was an Inclosure Consolidating Act in 1801. The local acts generally appointed a commissioner(s) to execute the act subject to the rules of the specified general act.</p> <p>The relevance to public rights of way is that in this reorganisation of land it had to be able to reorganise the transport corridors at the same time or it would have greatly reduced the effectiveness of the process.</p> <p>There were further general acts, notably in 1836 and 1845.</p> <p>The Court of Appeal case generally referred to as Andrews ²¹ found that the 1801 Act does give the power for commissioners to set out public bridleway and footpaths, contrary to the earlier finding in Andrews ¹². There has been much dispute about the correct interpretation of 'private carriage roads' (i.e. does private qualify the carriage or the road?) but the Dunlop case, which many consider incorrectly decided in saying that this mean private rights, has not been challenged in court</p> <p>The Inclosure Act for Trawden and Whalley (which referred to the 1801 consolidating Act) enabled an inclosure award to be made in the 57th year of the reign of King George III i.e. 1817. The subsequent Award was for</p>
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¹ R v Secretary of State for the Environment, Food and Rural Affairs, ex parte Andrews 2015

² R v Secretary of State for the Environment, ex parte Andrews 1996

the Inclosing of lands in the Township of Trawden, in the Chapelry of Colne, and Parish of Whalley, in the County of Lancaster and made in 1821.

(Ref - UDTR/4/1)





Observations

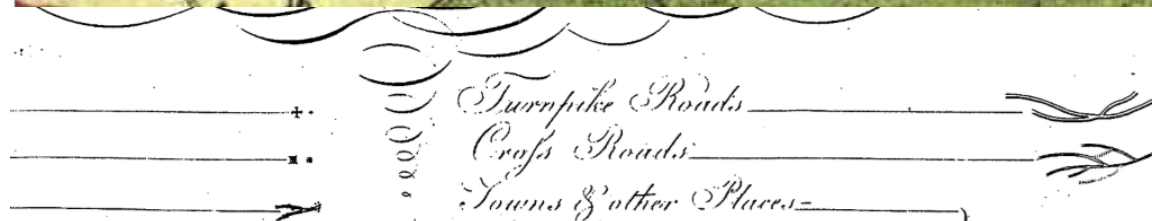
The Inclosure Award did not cover the land crossed by the route under investigation. However the end of the route (point D) is shown on the boundary of the land to be enclosed and is labelled on the Inclosure plan as 'to Wycoller'. It is clearly shown as a coloured route connecting to other routes at point D. The route now recorded as BOAT 254 from point D to which continues through to Lancashire Moor Road (close to Comb Hill cross) is shown and labelled 'Wycoller Road'.

The route extending west from point D – now recorded as Bridleway 191 - is shown coloured and labelled as Whitemoor Hall Road (30 feet). A further route shown coloured but bounded by dashed lines is shown extending south from point D direct to a property and labelled as 'Green Wham road'.

Investigating Officer's Comments

Early commercial maps pre-dating the Inclosure Award show the route under investigation and also the two routes

		<p>connecting to it at point D (now recorded as BOAT 254 and BW 191) suggesting that all three routes existed prior to the Inclosure process.</p> <p>The route under investigation it is shown from point D as a route to Wycoller connecting to routes described on the Inclosure plan as 'roads' suggesting that when the Inclosure Award was drawn up the route under investigation was already in existence and likely to have been considered to have been a public carriageway or at least a bridleway.</p>
Greenwood's Map of Lancashire	1818	A further small scale commercial map.



Observations		<p>The full length of the route under investigation is shown as a bounded cross road and as part of a longer route connecting to other public vehicular highways, passing through Wycoller and continuing beyond point D along the routes now recorded as BW 191 and BOAT 254.</p>
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		Parson Lee is shown but not named on the map and Combe Hill Cross is shown located on the Turnpike Road (Lancashire Moor Road) which is accessed from point D along the route now recorded (and shown on the map) as a BOAT.
Investigating Comments	Officer's	<p>Greenwoods map was published in 1818 which is the same year in which the Chapelry of Colne Map is stated to have been produced. Both maps show the route under investigation as existing in 1818 as a significant through route and both maps pre date Inclosure of land in the area.</p> <p>The inclusion of the route on this and other small scale commercially produced maps of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway. It is unlikely that a map of this scale would show footpaths. It is not known what Greenwood meant by the term 'cross road' but he only categorised roads as 'cross roads' and 'turnpike roads' according to the key to his map but the fact that the route linked to other routes with public vehicular rights and provided access to the Turnpike Road is suggestive of public carriageway rights.</p>
Plan of the allotments in the Hamlets of Trawden, Winewall and Wycoller	1821	A plan of the allotments in the hamlets of Trawden, Winewall and Wycoller is available to viewed at the Lancashire Records Office (ref – DDSP/50/8).

COPY,
PLAN
— of —
the Allotments
— in —
THE HAMLETS OF
Crawden, Wirewall,
— and —
Cuncoller.
1821.



Observations		<p>This map was intended to show the (recently enclosed) allotments of Trawden, Winewall and Wycoller, including the size of each allotment with the specified owner at the time. It is dated 1821 but is also noted in the title as being a copy.</p> <p>The route under investigation is shown at point D and the continuation (although not shown) is labelled as being 'to Wycoller'.</p>
Investigating Officer's Comments		<p>This map is clearly related to, or intended to show the effect of, the Inclosure Award of the same year and hence no different inferences can be drawn.</p>
John Cary's Map of	1825	Cary was a cartographer, engraver and

Lancashire

publisher who published a series of atlases, maps, canal plans etc. His 1789 map of Lancashire is a close copy of Yates' map.

1789 (ref: DP/187):



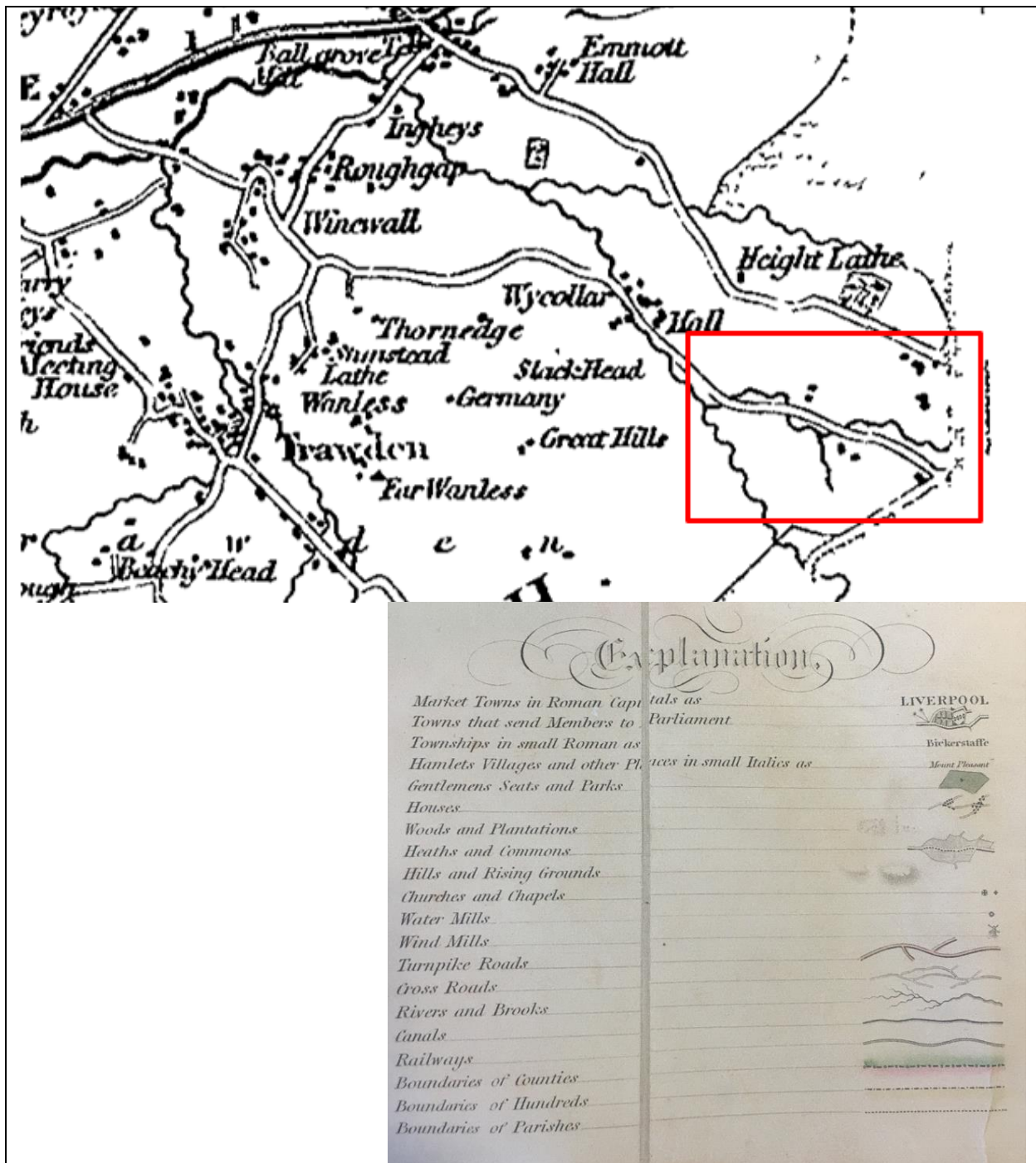
1806 (ref: DP/188):



1814 (ref: DP/232):



Observations		The route under investigation is not shown. The map published in 1806 shows Wycoller and part of Keighley Road passing through Wycoller to continue towards Parson Lee but the route is not shown to continue as far as point A.
Investigating Officer's Comments		Cary did not consider the route to be significant enough to be shown on such small scale maps which tended to concentrate primarily on showing the main arterial public vehicular routes. The route to (and through) Wycoller was probably included on the 1806 map because Cary included a number of halls – but not other properties – on his maps.
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 full length of the route under investigation is clearly shown as part of a longer route referred to in the map key as a 'cross road' passing through Wycollar and connecting to routes recorded as public vehicular highways.
Investigating Officer's Comments		The route under investigation existed in 1830 and is shown as a 'cross road'. It is not fully known what is meant by this term. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a

		<p>public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205]</i> Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was “no point showing a road to a purchaser if he did not have the right to use it.”</p> <p>It is unlikely that a map of this scale would show footpaths. Many properties are shown on this map with no access road or track to them but the route under investigation is shown passing properties and connecting to routes that are now recorded as public vehicular highways. It is considered likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that by inclusion on the map the route was considered to be a public bridleway or carriageway in 1830.</p>
Canal and Railway Acts		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>The route does not cross land affected by the planned construction of a canal or railway.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
Trawden Local Board Surveyors Records CRO Ref: UDT 8/4/1	1868	<p>Records prepared by Thomas Bannister on 16th April 1868 listing the length of highways in Trawden, Wine Wall and Wycoller.</p>

or 2 Miles and 753 yards
 Length of Highways within the Hamlet of Wycoller
 From Bent Nook to Wycoller Hall 955
 From Wycoller Hall to Parson Lee Out Barn 1985
 From Parson Lee Out Barn to Cross Bent Nook 1078
 From Cross Bent Nook to Standing Stone 1760
 From Cross Bent Nook to Herdons House 1302
 From Herdons House to Rotten Clough 1631
 or 4 Miles and 1671 yds 8711
 Total in the Waste Township
 Wroaster Hamlet 5 Miles 470 yds
 Winc Hall 2 5 753 50
 Wycoller 4 5 1671 50
 or 13 Miles and 1142 yards
 Thomas Warrister
 April 16th 1868

Observations

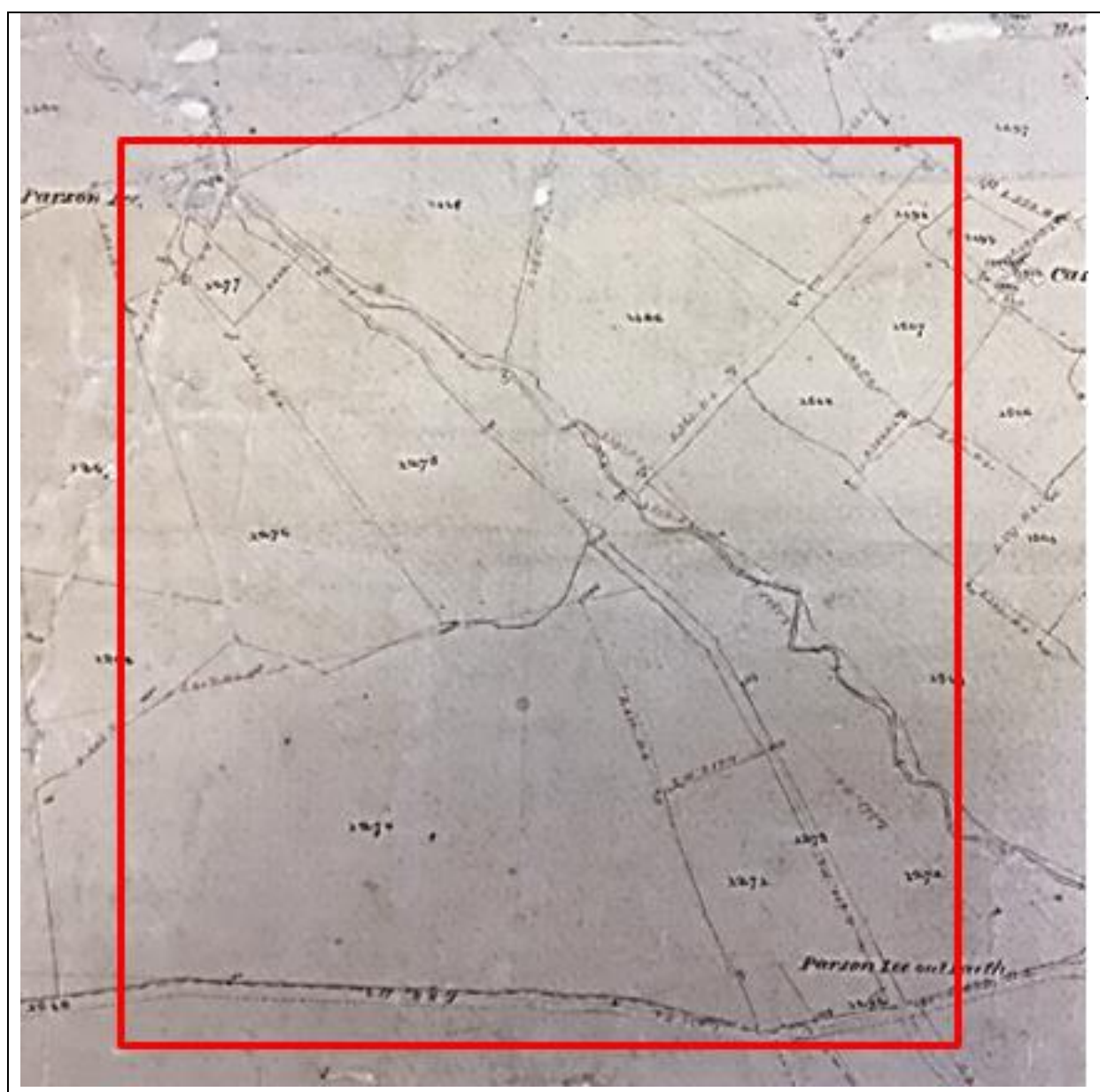
Six routes are described as highways within the hamlet of Wycoller but no map is provided.

The second listed is 'From Wycoller Hall to Parson Lee Out Barn' 1985 yards, and the third listed is 'From Parson Lee Out Barn to Cross Bent Nook' 1078 yards.

From the description the route from Wycoller Hall to Parson Lee Out Barn appears to be that of the route of that now recorded as Keighley Road - an unclassified county road from the remains of Wycoller Hall passing through point A at Parson Lee and continuing along the route under investigation to point D where a building can be seen on the Tithe Award Map dated 1844 titled 'Parson Lee Out Lathe'.

The route from Parson Lee Out Barn to Cross Bent Nook appears to be the route from point D along the route now recorded

		as BOAT 224 which leads to an area named on the 1 st edition 6 inch OS map as 'Cross Bent'.
Investigating Comments	Officer's	<p>The fact that the list was compiled for or by the Trawden Local Board Surveyor suggests that the routes listed were considered to be public. There is no definition of 'highway' so it is not possible to know whether the routes listed were public carriageway, bridleway or footpath but it is suggested that to be included on this list then the routes were likely to be at least bridleway and more probably vehicular.</p> <p>The list predates the publication of the earliest Ordnance Survey maps and the early commercial maps are too small scale to identify most of the places referred to.</p>
Tithe Map and Tithe Award or Apportionment	1844	<p>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.</p> <p>(Ref – DRB 1/188)</p>





Observations

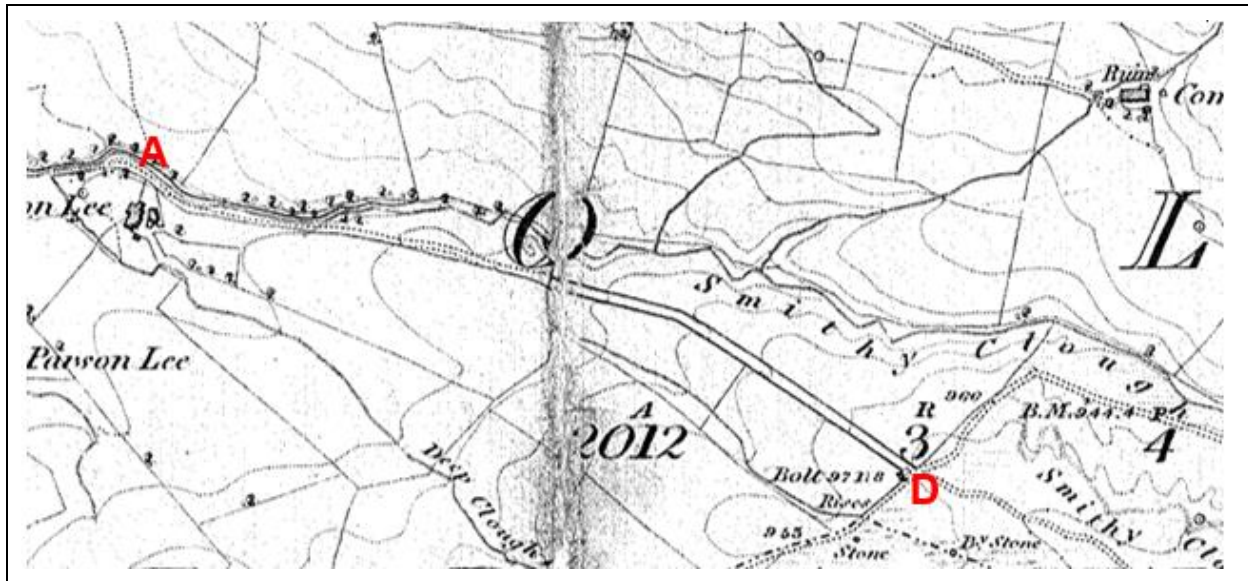
The full length of the route under investigation is shown as part of a longer route.

The route under investigation is numbered 1273 and described as 'Highway Road'.

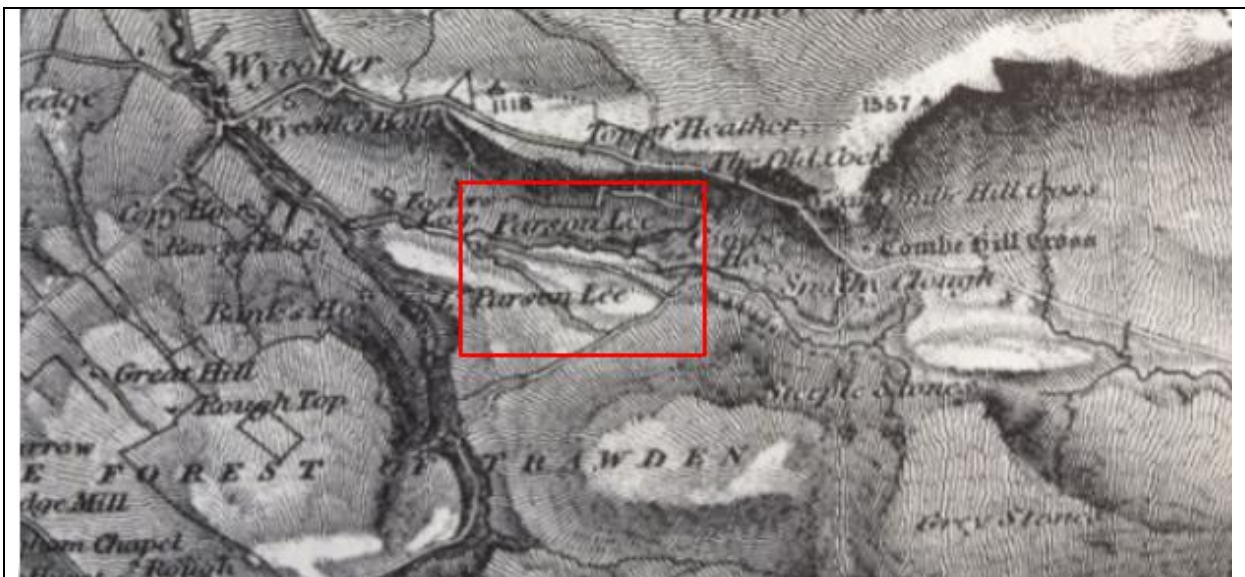
The route from Wycoller to Parson Lee (which is named on the map) is numbered 1284 which is described in the Tithe Award as being a 'Highway Road' owned and occupied by the 'Surveyor of Highways' for which no tithe was payable. It is included

		<p>within a list of various other routes – some described as 'Highways', some as Occupation Roads' others as named routes – for example 'Lancashire Moor Road' or as 'Road'. All are listed as being owned and occupied by the Surveyor of Highways and none are listed as having tithes payable. A number of quarries are also listed under this section.</p> <p>From point D the route now recorded as BOAT 254 is numbered on the Tithe Map as 1547 which is described in the Award as being a 'Highway Road to Wycoller' owned and maintained by the Surveyor of Highways. In contracts, extending west from point D the route now recorded as BW 191 is numbered 1518 and described in the Tithe Award as 'Cote Meadow' owned by James Hartley and occupied by William Waughbank.</p>
Investigating Officer's Comments		<p>The route under investigation existed as part of a longer through route in 1844 and was numbered separately to the adjacent fields. It connected at either end to routes described in the Tithe Award as highways and is described as a 'Highway Road' itself suggesting that in the 1840s the route was considered to be most probably a public vehicular route under the jurisdiction of the Surveyor of Highways.</p>
6 Inch Ordnance Survey (OS) Map	1848	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848.³</p>

³ 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.



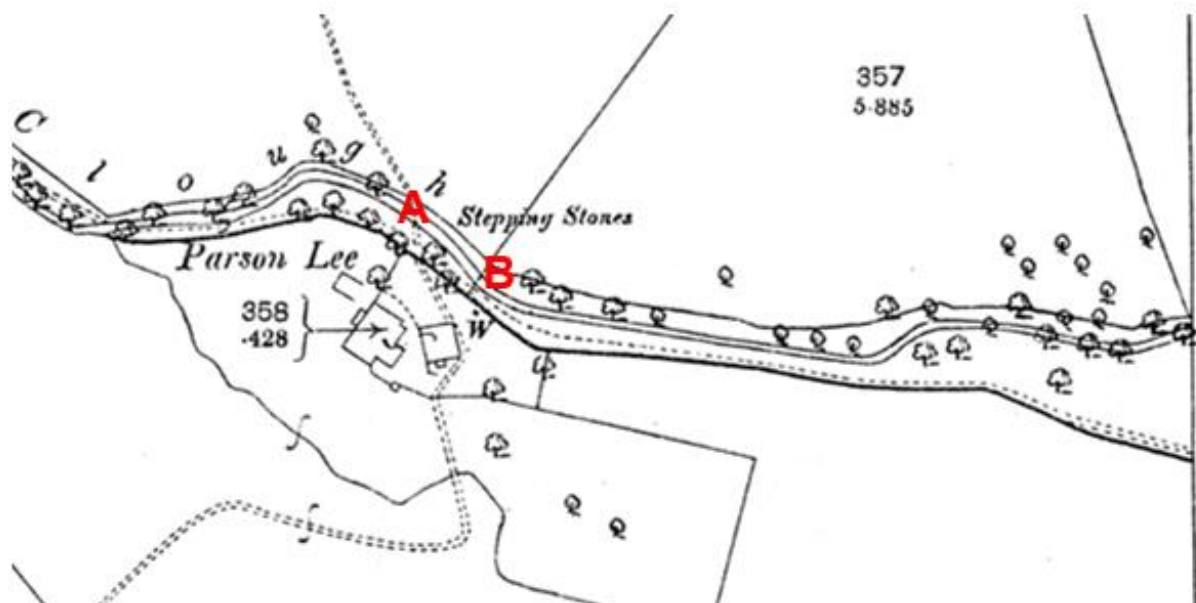
Observations		<p>The full length of the route under investigation is shown passing to the north of buildings labelled as Parson Lee. The route is shown as part of a longer route which passes Wycoller Hall and continues to Parson Lee. From point A the route under investigation is shown unenclosed (denoted by double pecked lines) to approximately midway between point A and point D at which point there appears to be a gate across the road. From there through to point D the route is shown bounded on either side and not gated at point D. From point D three unbounded tracks are shown extending out across the open moorland – one of which is now recorded as a BOAT through to Lancashire Moor Road, another as a BW extending south west towards Boulsworth Road and one (which is unrecorded) continuing south east from point D across the moor.</p>
Investigating Officer's Comments		<p>The full length of the application route existed in 1844 (date of survey) and appeared to be capable of being used. It is considered that a substantial bounded route providing access past a property and connecting to a network of other public highways would have been at least a public bridleway and may have carried public vehicular carriageway rights.</p>
First edition Ordnance Survey Maps one inch to the mile	1857/1858	One inch Ordnance Survey map.



Observations		The full length of the application route is shown as a substantial bounded route in the same way as other connecting public vehicular and bridleway routes are shown.
Investigating Officer's Comments		The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the route on this map is suggestive of a route that was capable of being used at least on horseback and possibly by horse and carts.
Cassini Map Old Series		The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.



Observations		The route under investigation is clearly shown as part of a longer bounded route.
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers.
25 Inch OS Map Sheet 57-2	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.



Observations		The First edition 25" map is at a larger scale than the 6" map showing the area in more detail. Only one of the First Edition OS map sheets covering the land crossed by the
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		<p>route has been found. This map shows the first part of the route From point A coloured and shaded in the same way as the route through Wycoller and continuing east along Smithy Clough to Parson Lee. A gate is shown across the route at point B.</p>
Investigating Officer's Comments		<p>The route under investigation existed from point A in 1892 (date of survey) and appeared to be capable of being used. The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>The route is shown shaded (and coloured) on the map. Shading was often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. All metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. The route under investigation is shown in such a way suggesting that when the area was surveyed in 1892 the route was considered to be part of a longer public vehicular highway.</p>
1 inch OS Map	1898	<p>OS small scale 1 inch Revised New Series mapping. Sheet 68 – Clitheroe, surveyed 1842-49 and first published 1858, revised and published 1898.</p>



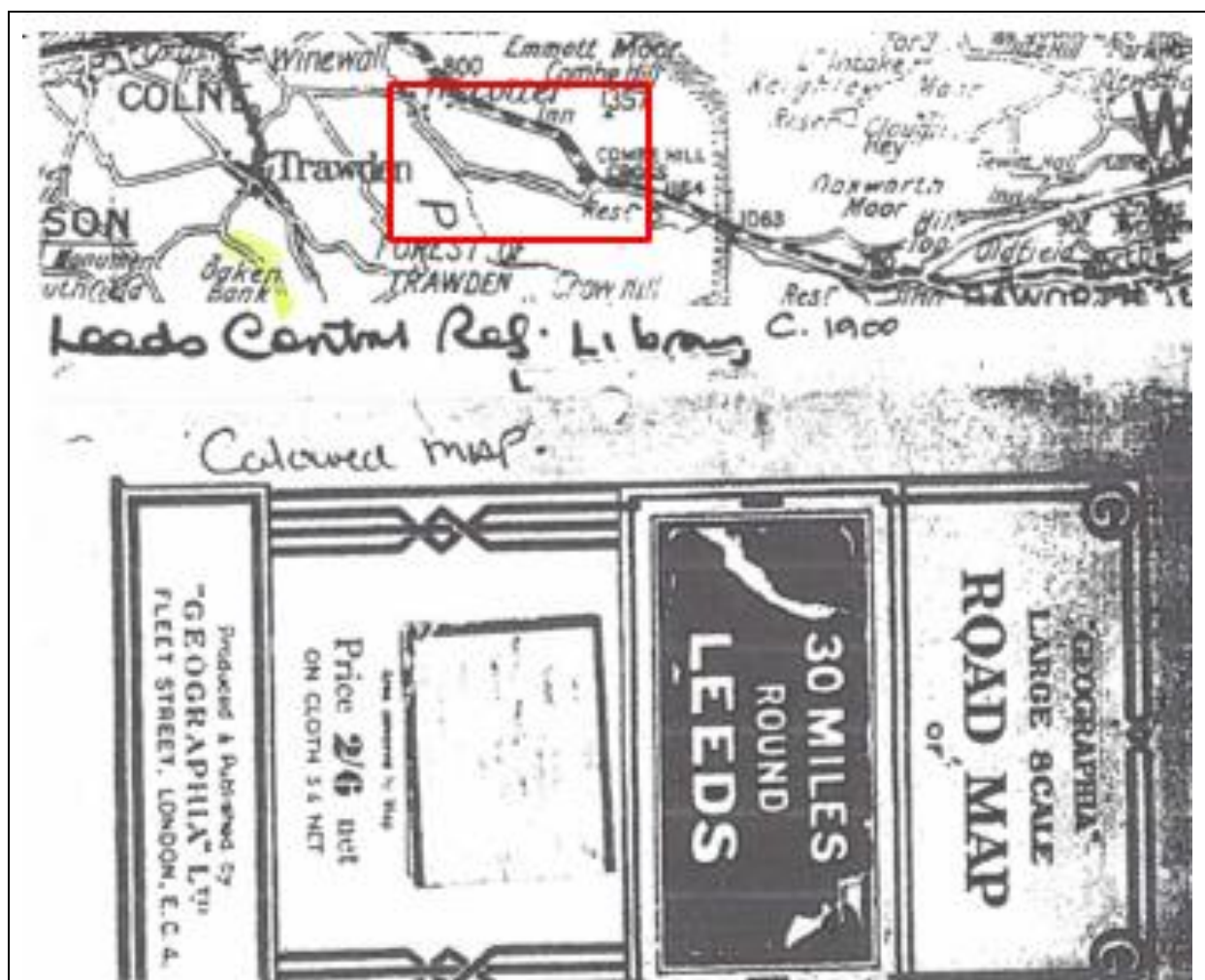
<i>Metalled Roads, First Class</i>	Fenced	5 (Mile distance) (Altitude) 211	Unfenced	
<i>" " Second Class</i>				
<i>" " Third Class</i>				
<i>Unmetalled Roads</i>				
<i>Footpaths</i>				
				<i>Level Crossing //</i>

Observations		<p>The full length of the route under investigation is shown as part of a longer route.</p> <p>From the map key it appears to have been shown as a third class metalled road fenced on the south side and unfenced on the north side. From point D the BOAT leading up to Lancashire Moor Road is also shown as an unfenced third class road whilst the BW extending south west from point D is shown as an unmetalled road and footpath.</p>
Investigating Officer's Comments		<p>The full length of the route under investigation existed as a substantial route in 1898 and appeared to be part of the road network.</p>
Bacons Map of Lancashire	Reprint of 1904	<p>G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps.</p> <p>The maps of the British Isles were at a small scale and as such only the more significant</p>


		routes are generally shown. Commercial maps of this nature were expensive to produce and to purchase and as a result routes shown were often considered to be public through routes.
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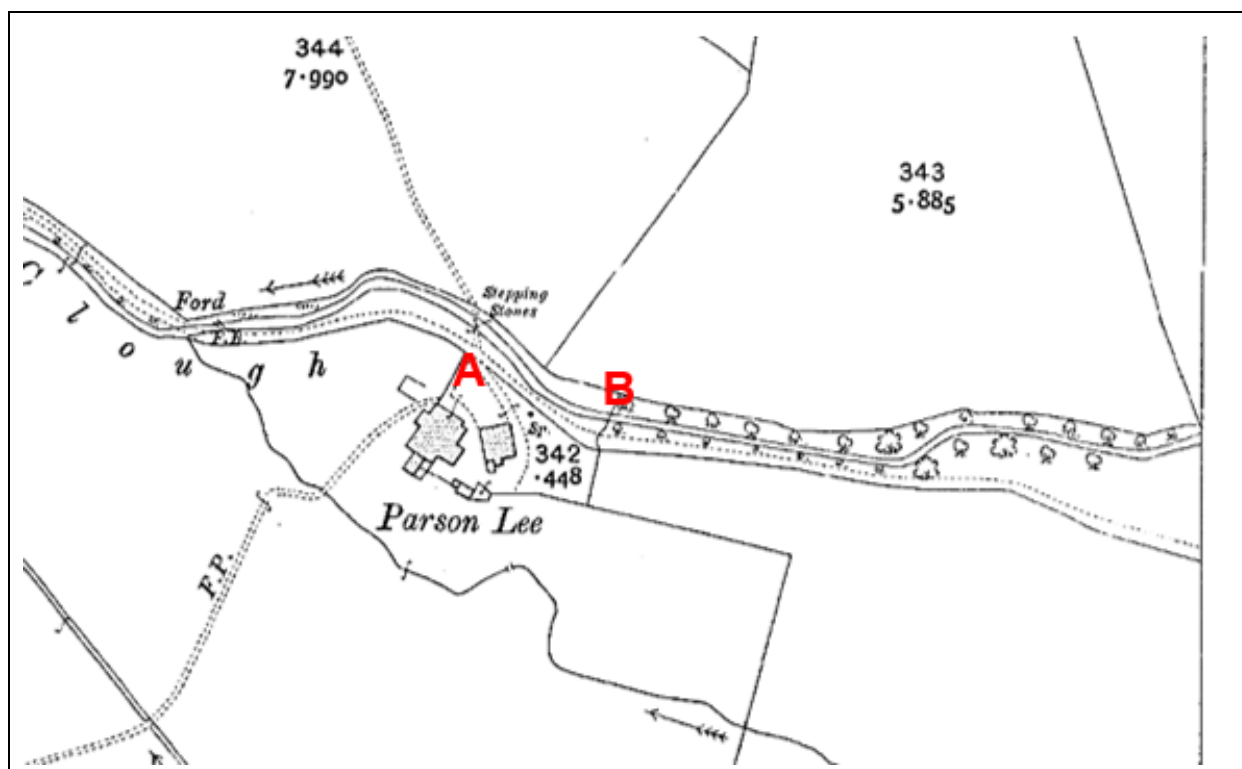


Observations		Wycoller and Parson Lee are named on the map and the watercourse passing both is shown but the route under investigation is not shown.
Investigating Officer's Comments		The route under investigation was not considered to be sufficiently important to be included on a commercially produced small scale map sold to the public.
Geographia large scale road map of 30 miles round Leeds	C1900	A copy of a map forming part of a Geographia road map copied from a deposit at Leeds Central Library.



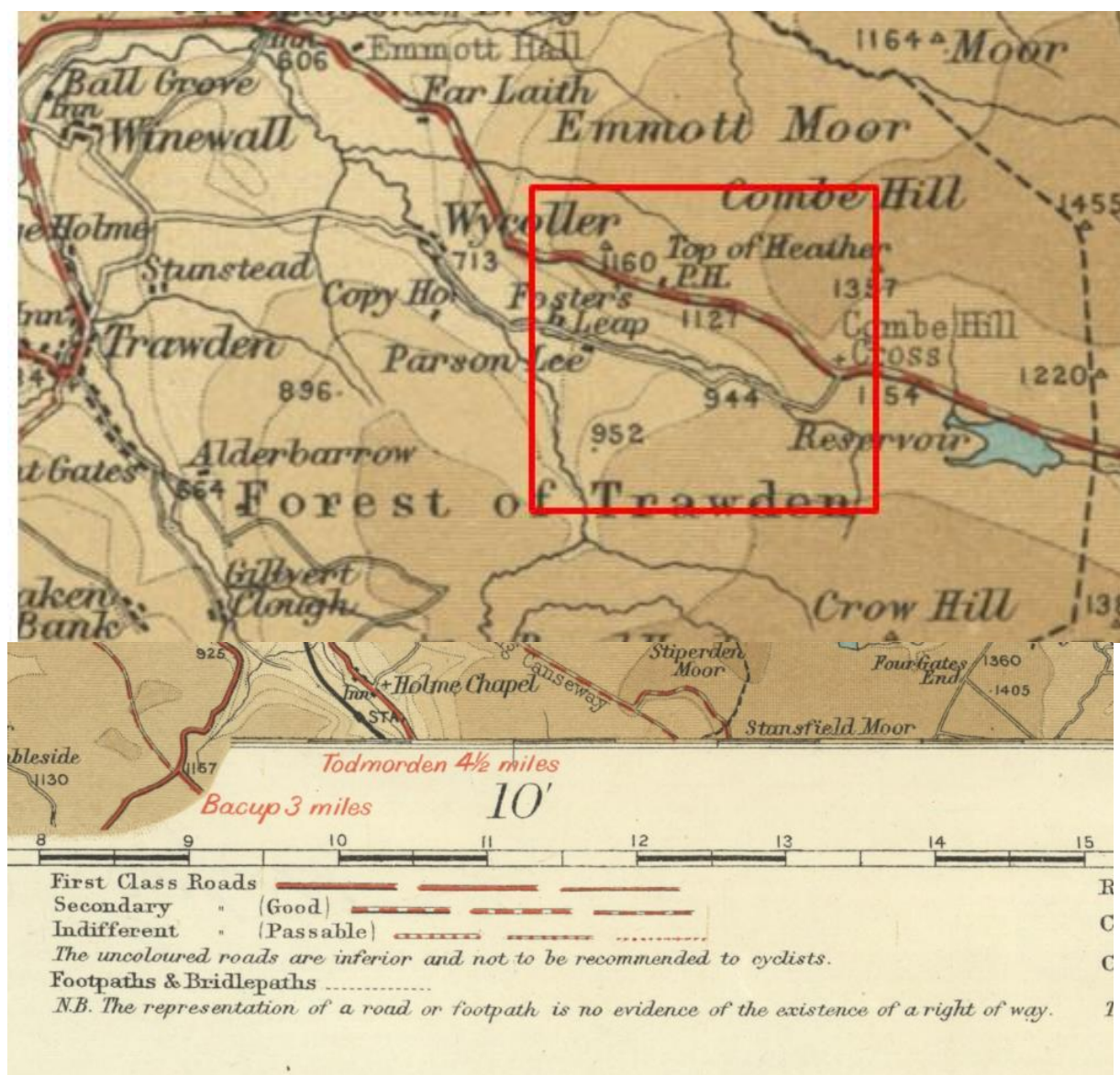
<p>Observations</p>		<p>The map extract was originally provided in relation to an application to record a different route further south west of this route as a public bridleway.</p> <p>No key was provided with the extract but the map shows the route under investigation as part of a longer route passing through Wycoller to exit onto the public road (Lancashire Moor Road) at Coombe Hill Cross (via BOAT 224). The route under investigation is shown in the same way as other public roads and due to the small scale of the map routes recorded as public footpaths and bridleways are not shown.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The map covered a large area and due to its scale could only show main routes. The map would have been sold primarily to the public travelling by vehicle and horseback suggesting that the route under investigation was used by the public on horseback and with vehicles in the early 1900s.</p>

Cassini Map, New Series	1903	An enlarged reprint of a 1 inch map of Lancashire first published in 1903 and based on 1inch mapping.
		
Observations		The full length of the route under investigation is showed as part of a longer route passing through Wycoller and Parson Lee through to Lancashire Moor Road at Combe Hill Cross.
Investigating Officer's Comments		The route under investigation was considered to be sufficiently important to be included on a commercially produced small sale map sold to the public suggesting not only that it existed but that it was capable of being used by the public on horseback and possibly vehicles in 1903.
25 inch OS Map Map Sheet 57-2	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.



Observations		<p>Only one OS Sheet covering part of the route under investigation has been found (Sheet 57-2) which shows the route under investigation as part of a longer route passing the entrance to Parson Lee at point A and continuing east through the gate at point B.</p> <p>The use of colouring and shading to indicate public status is no longer used by the Ordnance Survey so the route is no longer shown with a thickened line along the south side.</p>
Investigating Officer's Comments		<p>The route under investigation from point A existed in 1910 and still appeared to be capable of being used by the public.</p>
Bartholomew half inch Mapping	1902-1906	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged</p>

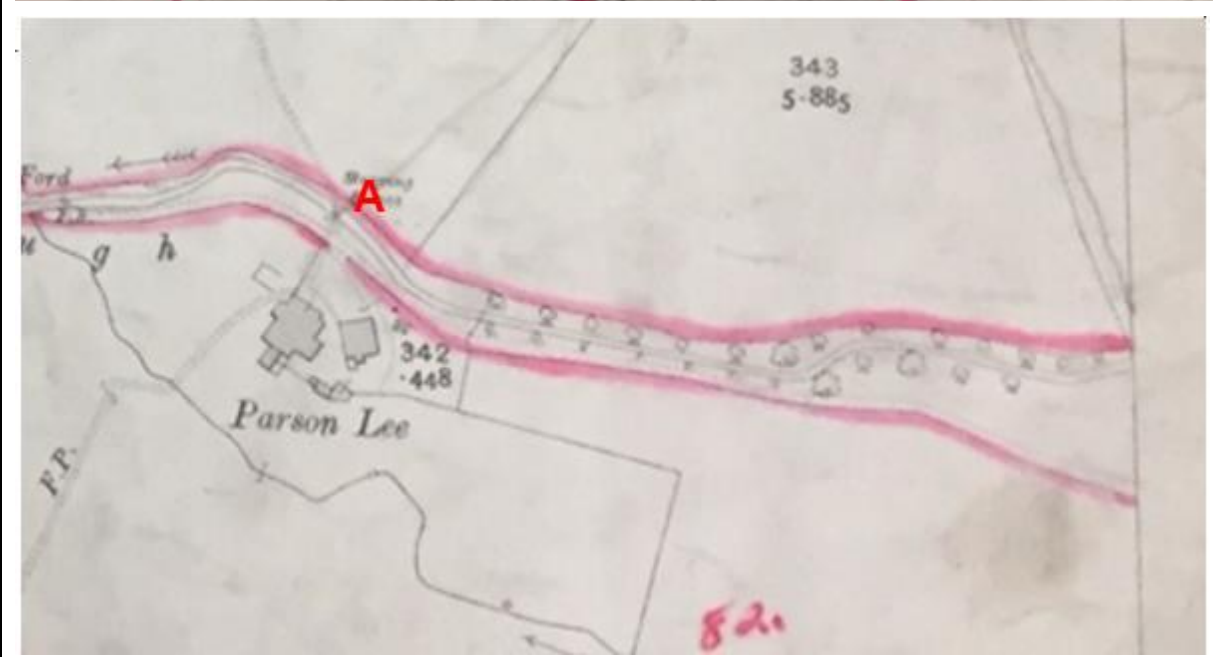
		that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.
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Observations		The route under investigation is shown as part of a much longer route from Trawden to Wycoller and then continuing past Parson Lee, along the route under investigation and then continuing along BOAT 224 to exit onto the road marked as a 'secondary' road at Combe Hill Cross. The full length of the route described above is shown as an uncoloured road which, in the key, is described as being 'inferior and not to be recommended to cyclists'.
Investigating Comments	Officer's	The early 1900s saw a significant increase in the use of motorised vehicles and the classification of minor roads was constantly

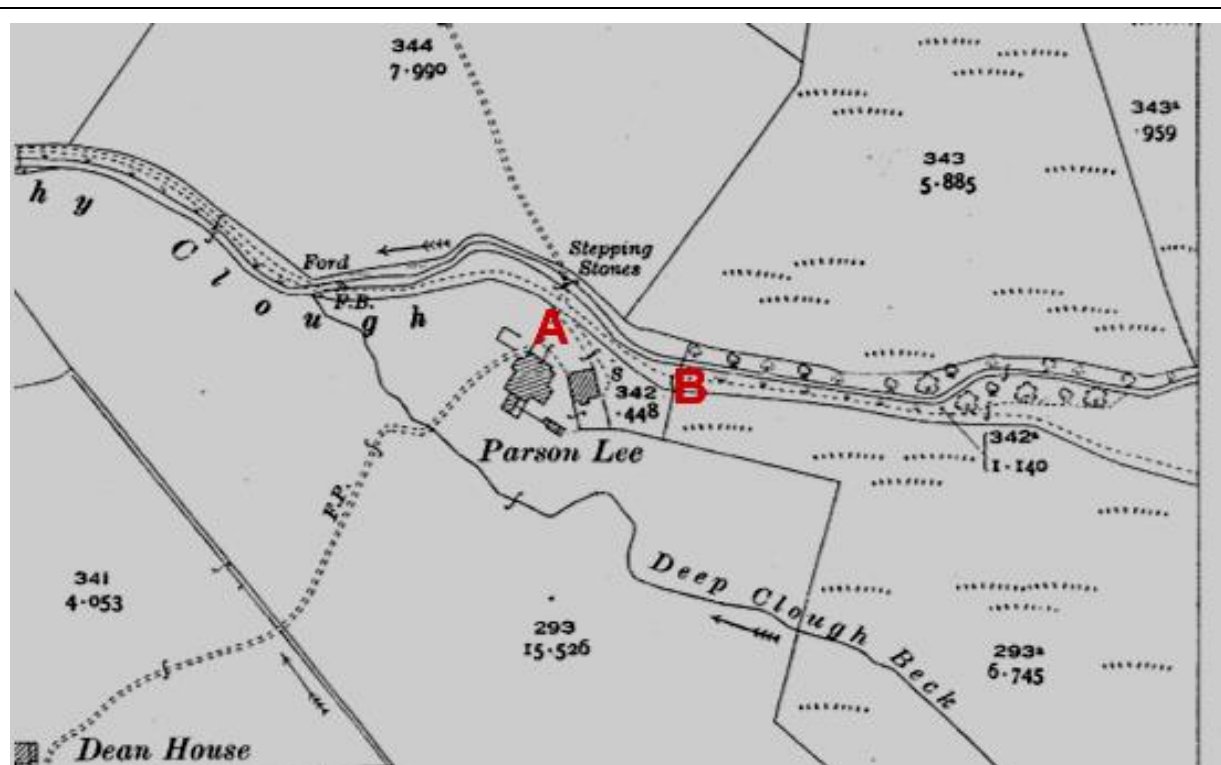
		<p>being revised by Bartholomew as some of the routes were improved to cope with the increasing traffic and others were virtually abandoned and fell into disrepair. Before 1920, few roads other than main roads were tarred but the travelling public had lower expectations of surface conditions than today and it would not be uncommon for an unsealed road, at that time considered adequate for horse drawn vehicles or early motor cars, to be shown. The route under investigation is shown on the map supporting the view that it physically existed in the early 1900s.</p> <p>The map contains the logo of the Cycling Touring Club who were known to have an arrangement with Bartholomew regarding the revision of the maps. Cyclists were only allowed to use public carriageways at that time. The route under investigation is described as being an inferior road not to be recommended to cyclists. This does not suggest however that cyclists were not allowed to use it.</p>
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of 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</p>

		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.
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Observations		The National Archives and County Records Office only have the Finance Act map
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		<p>Sheet 57-2 which covers the start of the route under investigation from point A. The adjacent map sheet showing the land crossed by the remainder of the route is not available.</p> <p>The map available shows the route now recorded as Keighley Road from Wycoller through to Parson Lee (point A) as being excluded from adjacent land which is recorded in private ownership. The route under investigation from point A extending east to the edge of the map is also shown as being excluded although the boundaries of the area excluded include not only the route but the watercourse as well.</p>
Investigating Officer's Comments		<p>No map was available to view for the majority of the route under investigation. The fact that the route from point A to the edge of the map sheet is shown as being excluded in the same way as the route from Wycoller to Parson Lee (now recorded as Keighley Road) is consistent with the view that the route under investigation was a public vehicular highway but as information on much of the route is not available little inference can be drawn.</p>
25 Inch OS Map Sheet 57-2	1932	<p>Further edition of 25 inch map (surveyed 1892, revised in 1930 and published 1932.</p>



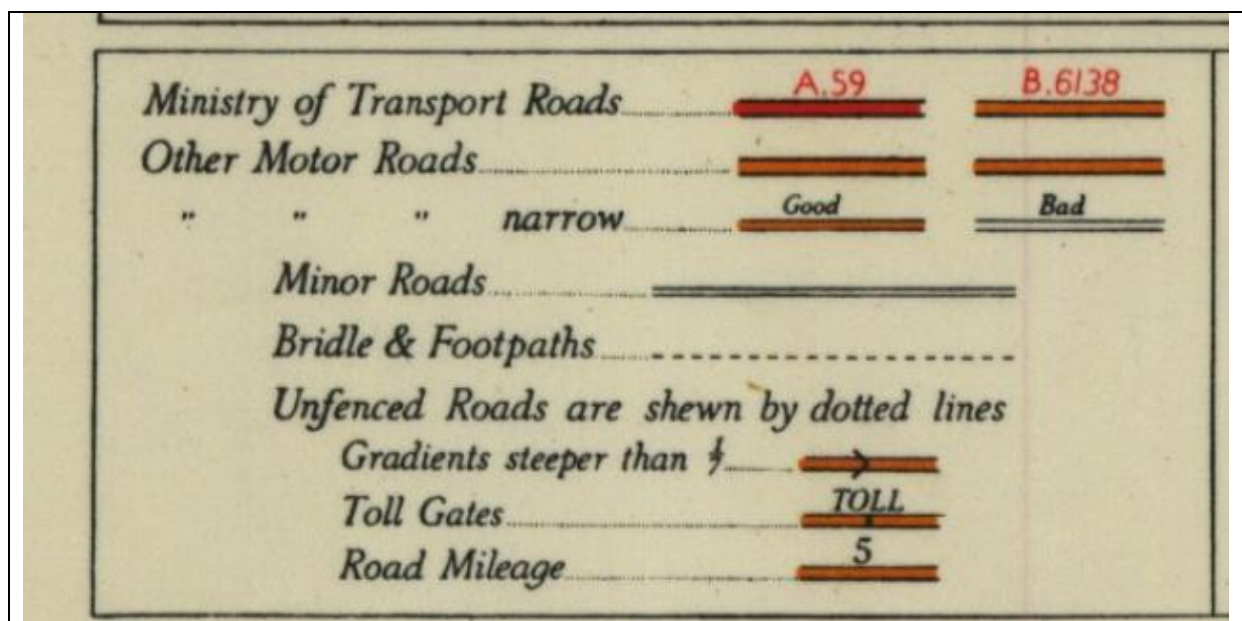
Observations		The route under investigation is shown in the same way as it is shown on earlier editions of the OS 25 inch survey map.
Investigating Officer's Comments		The route under investigation from point A existed in 1910 and still appeared to be capable of being used by the public.
Aerial Photograph⁴	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.

⁴ 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.

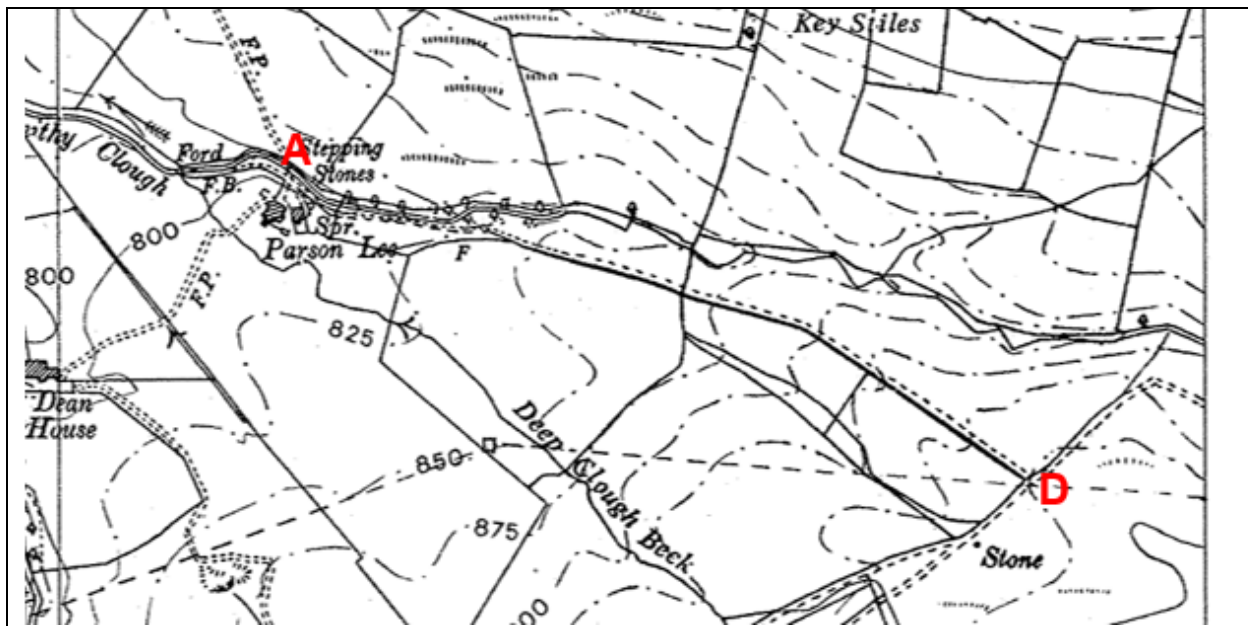


Observations		The route under investigation can be clearly seen on the photograph continuing from Wycoller through point A to point D where it meets the routes recorded as BOAT 224 and BW 191.
Investigating Officer's Comments		The route under investigation existed in the 1940s as a significant track.
1 inch OS Map	1947	1 inch OS Map Sheet 95 – Blackburn & Burnley revised 1924 with later corrections and published 1947.



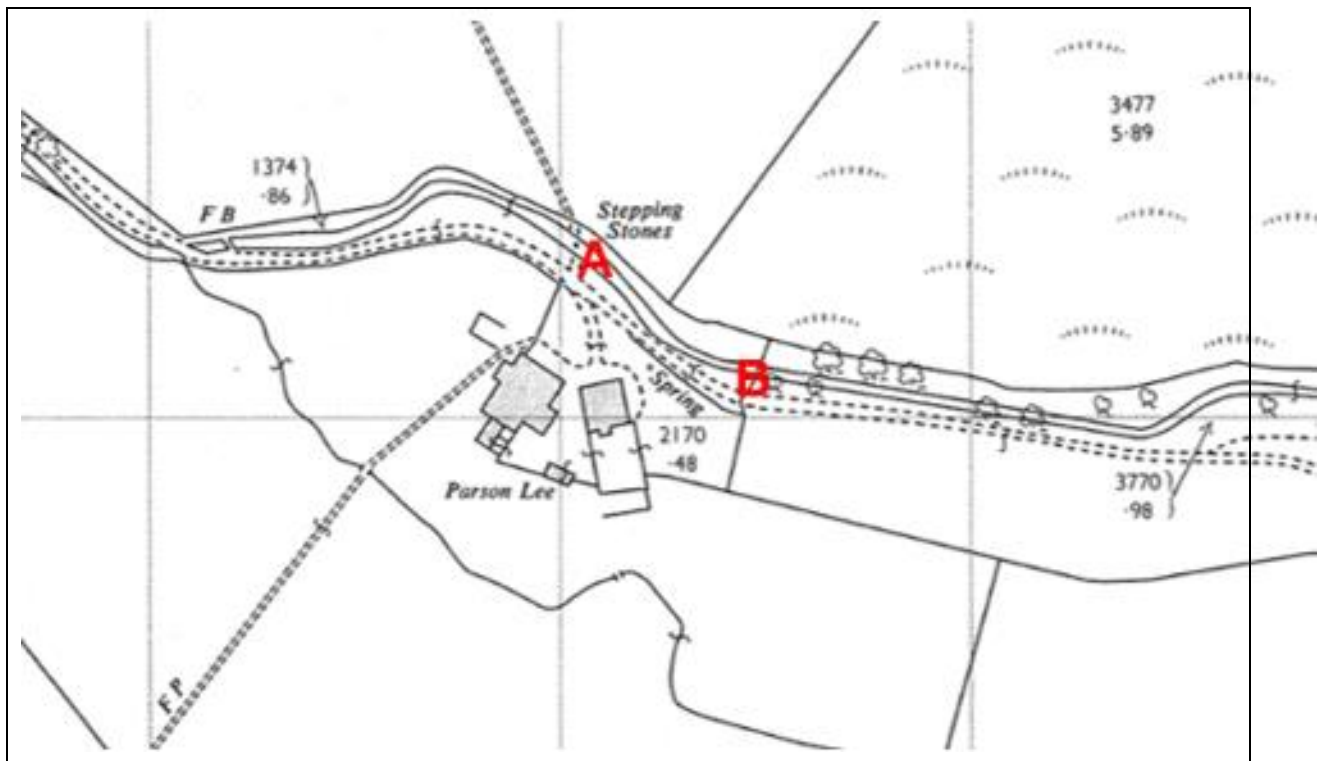


Observations		The route under investigation is shown but appears much less significant than on earlier maps. The route down into Wycoller is shown as a narrow road coloured orange but the route through Wycoller to Parson Lee is barely visible and from Parson Lee the route under investigation appears to be shown as a route bounded on one side (the south).
Investigating Officer's Comments		The route under investigation existed as part of a longer route but appeared much less significant than it had done previously. Use may, by the mid-1940s have started to decline – particularly with vehicles - due to the narrowness and surface of the route.
6 Inch OS Map	1956	The OS 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 between 1930-1945 and is probably based on the same survey as the 1930s 25-inch map.

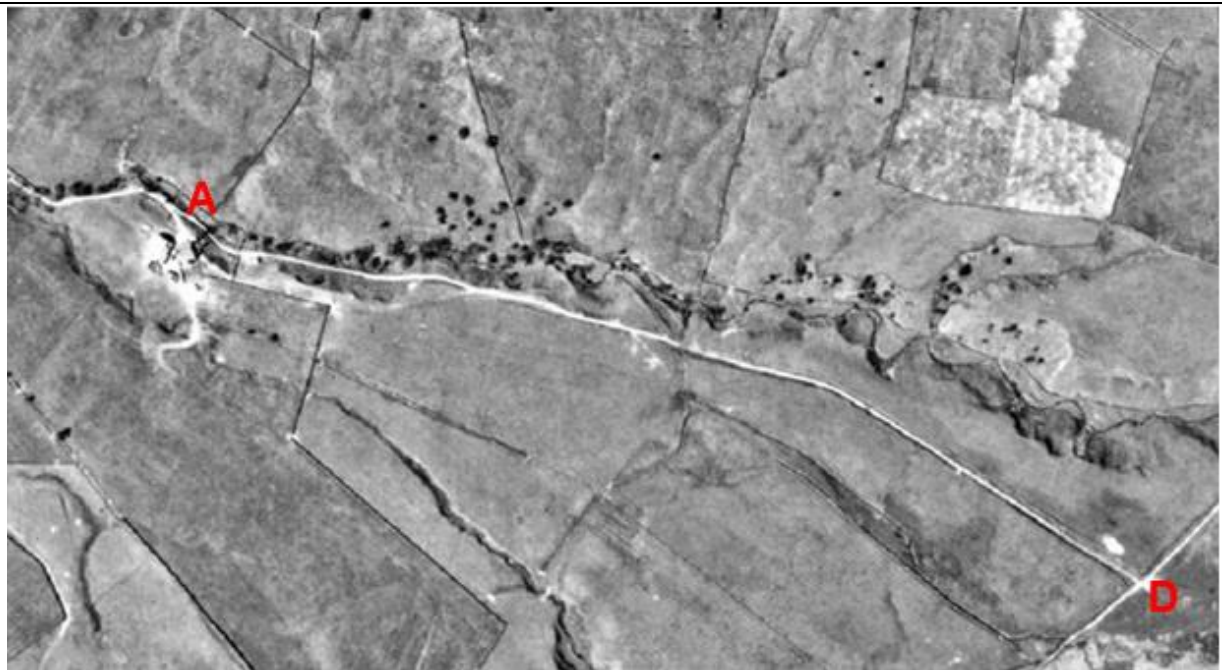


Observations		The full length of the route under investigation is shown but appears to be a less significant track than in the past bounded on the south.
Investigating Officer's Comments		The route under investigation existed but use of the route – particularly with vehicles may have declined.
1:2500 OS Map SD 9438-9538	1964	Further edition of 25 inch map reconstituted from former county series and surveyed 1962 and published 1964 as national grid series.

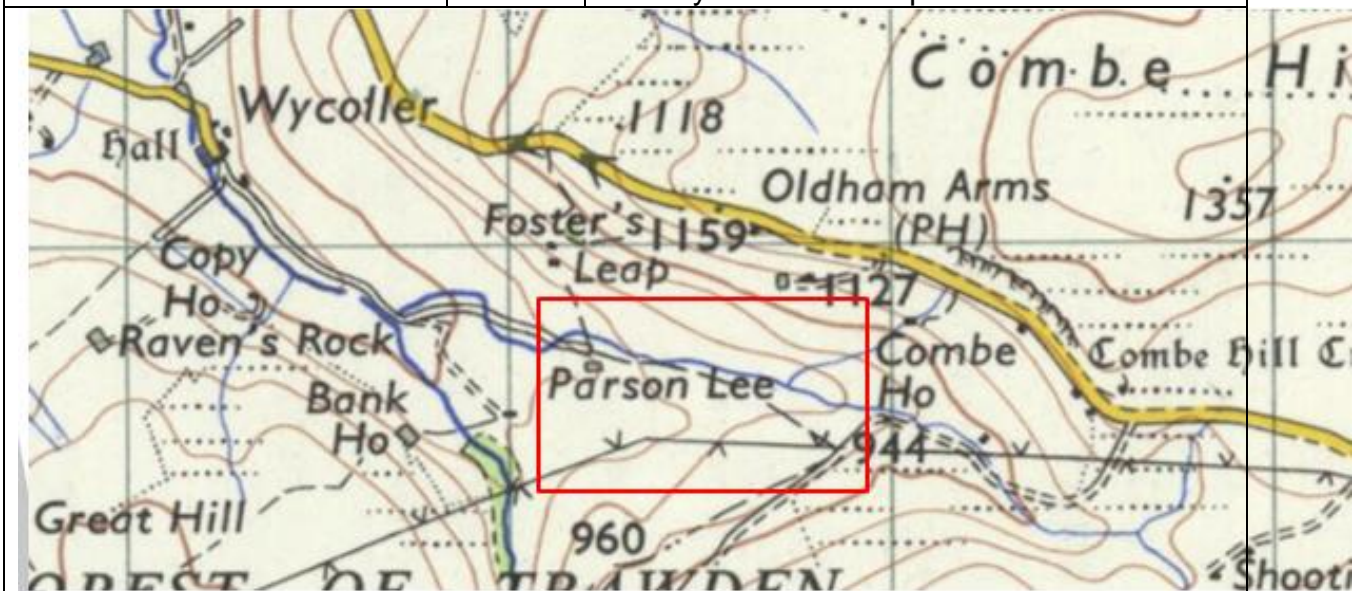




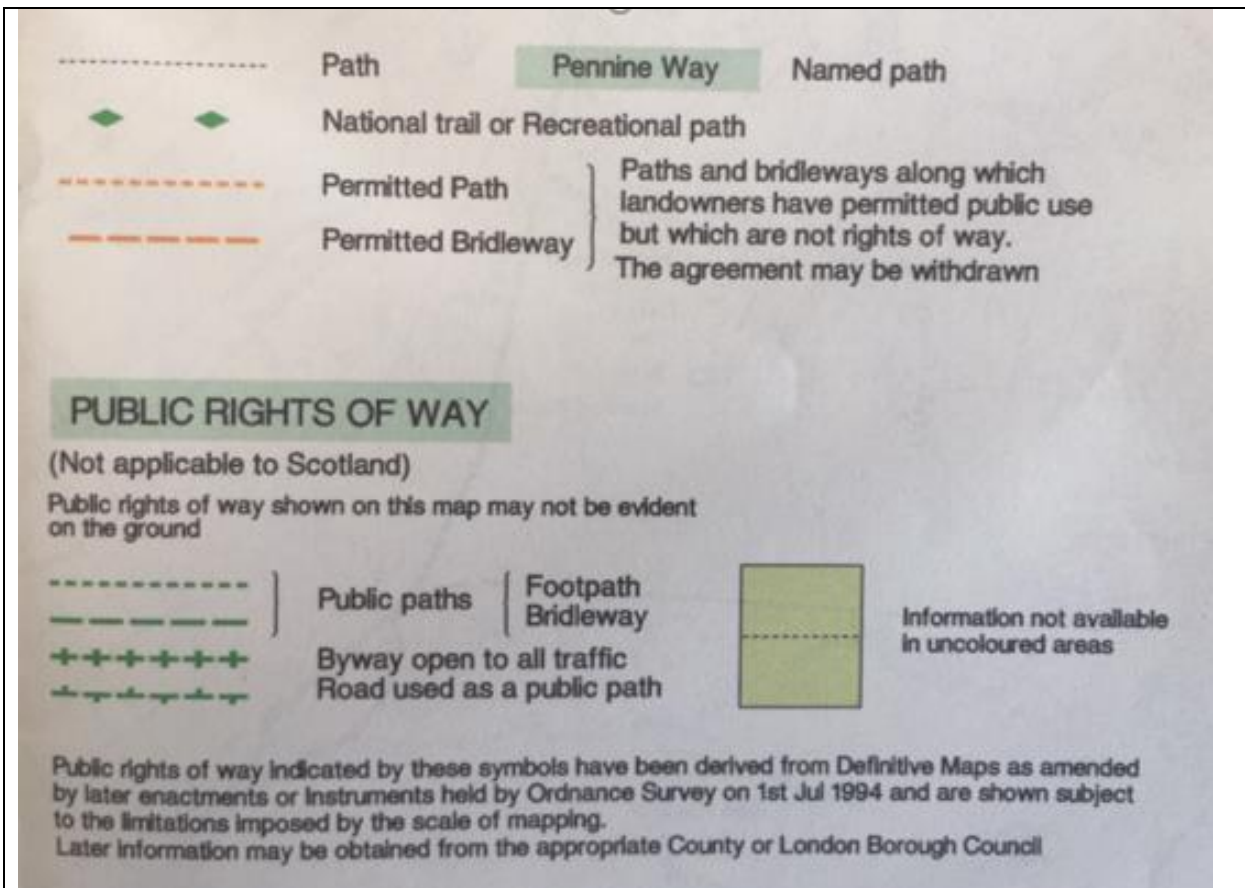
Observations		The full length of the application route is shown as part of a longer route gated at point B and point D. The route is shown largely as being unenclosed from the adjacent land (as indicated by the fact that I is denoted by double pecked lines) although it runs alongside a field boundary to point D.
Investigating Officer's Comments		The route under investigation existed as part of a longer through route in the 1960s and appeared capable of being used by the public.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The route under investigation can be clearly seen on the photograph continuing from Wycoller through point A to point D where it meets the routes recorded as BOAT 224 and BW 191.
Investigating Officer's Comments		The route under investigation still existed in the 1960s as a significant track.
1 inch OS map	1961	1 inch OS Map Sheet 95 – Blackburn & Burnley revised 1958 published 1961.



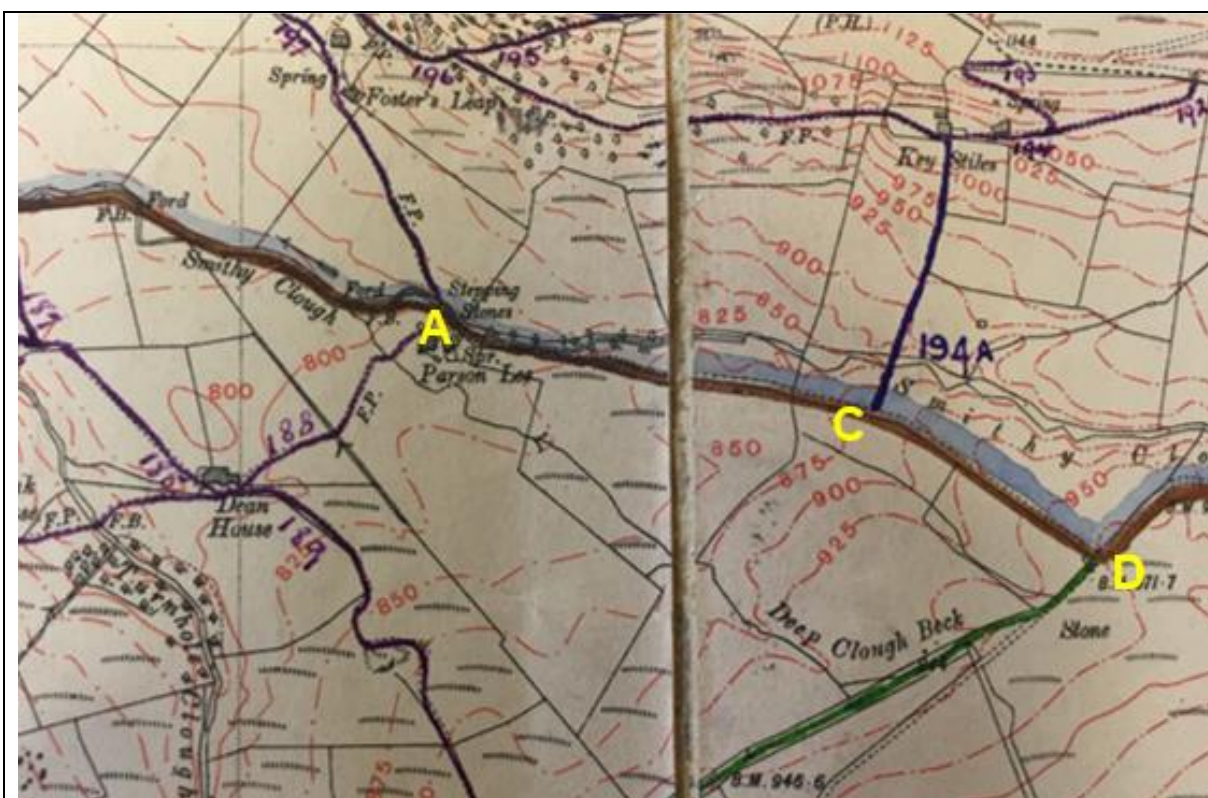
Observations		The route under investigation is shown but is denoted on this small scale plan as a footpath or track.
Investigating Officer's Comments		The way the route is denoted on this small scale OS map suggests use and importance of the route under investigation as a vehicular through route had probably declined by the 1960s.
Ordnance Survey 1:25 000 Outdoor Leisure Map 21 South Pennines		OS map published 1995 (date of revision not stated).



Observations		The route under investigation is shown as part of a 'National trail or Recreational path' although it is not clear from the map which trail this is or whether the trail is for pedestrian use or other types of users.
Investigating Officer's Comments		The route under investigation was promoted for public use in the 1990s.
Aerial Photograph	2014	Aerial photograph available to view on GIS.



Observations		The route under investigation can be clearly seen on the photograph.
Investigating Officer's Comments		The route under investigation still existed in the 2014 as a significant track.
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	<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>
Observations		Trawden was an Urban District Council in the 1950s and no parish survey was carried out.
Draft Map		<p>A Draft Map was produced and given a "relevant date" (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



1.	2.	3.	4.	5.
✓ 188.	Footpath.	Dean House Farm to Parson Lee Farm (Smithy Clough).	.19	None known.
✓ 189.	do.	Dean House to Bridleway 190 & 191.	.35	do.
✓ 190.	Bridleway.	Junction with 189 in westerly direction to junction with Public Highway at Beaver Gate.	1.04	do.
✓ 191.	Bridleway.	Junction with 189 in easterly direction to junction with Public Highway in Smithy Clough.	.42.	do.

URBAN DISTRICT OF TRAWDEN.
NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949.

SURVEY OF PUBLIC RIGHTS OF WAY.

*Statement annexed to the Draft Rights of Way map
Section 27(4).*

Relevant date 1st January 1953

AREA. "B".

Edged. "B". "Bounded by Skipton Road, Keighley Road, Wycoller Lane, Wycoller Dene, Smithy Clough, Lancashire Moor Road (part), U.D. & Union Boundary, & U.D. & Municipal Boundary."

No. of Path.	Kind of Path.	Position.	Length in miles to 2 places decimals.	Other particulars (Limitations or affecting the right-of-way).
✓ 192. X	Footpath.	Lancashire Moor Road (Cart Track) to Mr. Keystiles junctions 193 & 194.	.12	None known.
✓ 193. X	do.	Lancashire Moor Road to Mr. Keystiles junction 192 & 194.	.15	do.
✓ 194. X	do.	Nr. Keystiles junction 192 & 193 to junction 195 & 196.	.40	do.
✓ 194a. X	do.	From Road in Smithy Clough across stream to Keystiles joining No. 194.	.18	do.
✓ 195. X	do.	Junction 194 & 196 to Lancashire Moor Road Nr. Oldham Arms.	.24	do.
✓ 195a. X	do.	From a point in footpath 195 near Foster's Leap following in line with Lancashire Moor Road to a point where footpath No. 198 is met.	.43	do.
✓ 196. X	do.	Junction 194 & 195 to junction 197 & 198 Nr. Foster's Leap.	.14	do.
✓ 197. X	do.	Foster Leap Farm junction 196 & 198 to Parson Lee Farm.	.23	do.
✓ 198. X	do.	Junction 196 & 197 (Nr. Foster Leap Farm) to junction 199 & 201 (Old Private Coach Road).	.39	do.
✓ 198a. X	do.	From a point in footpath 198 crossing the previous footpath (195a) to Lancashire Moor Road (near Height Laith Farm).	.10	do.

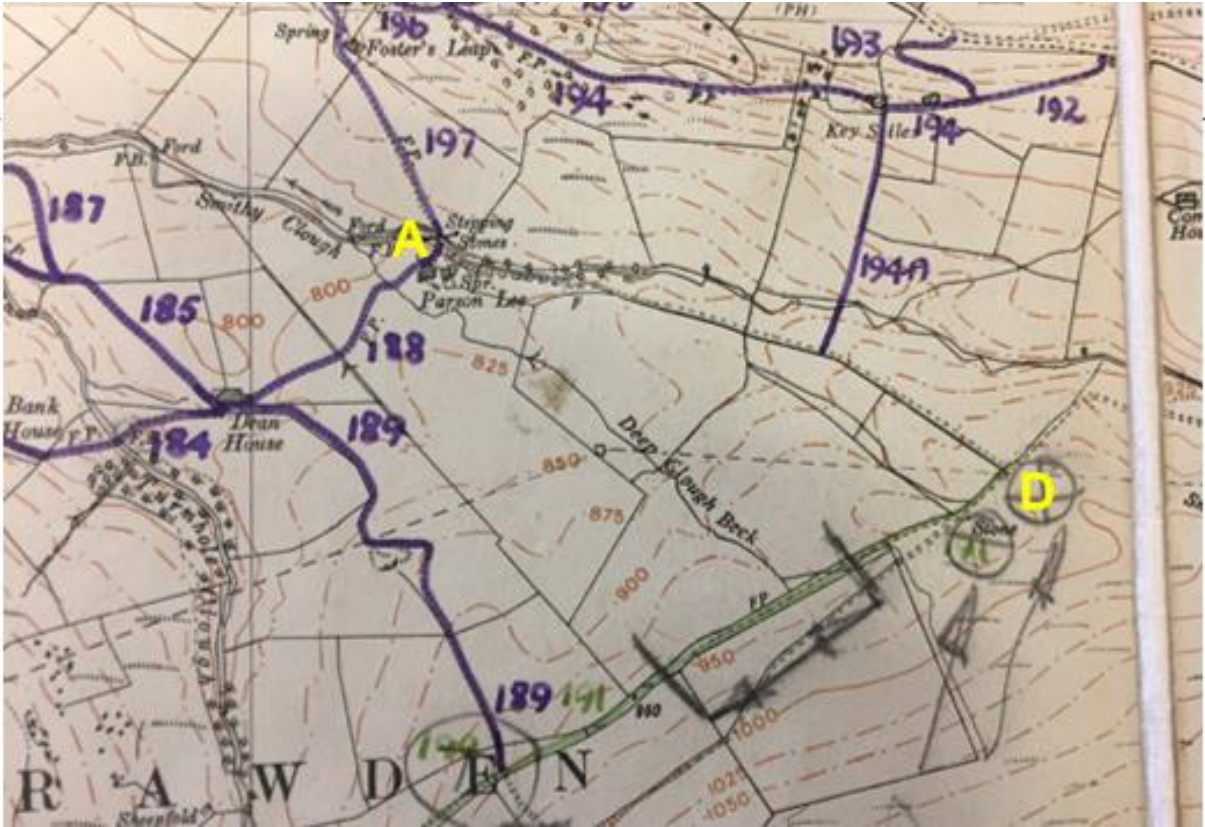
Observations

The route under investigation is not recorded on the Draft Map with the brown line shown denoting a parish boundary. Footpath 194a is shown to terminate at point C on the route under investigation which is described as being a 'Road' in the Draft Statement.

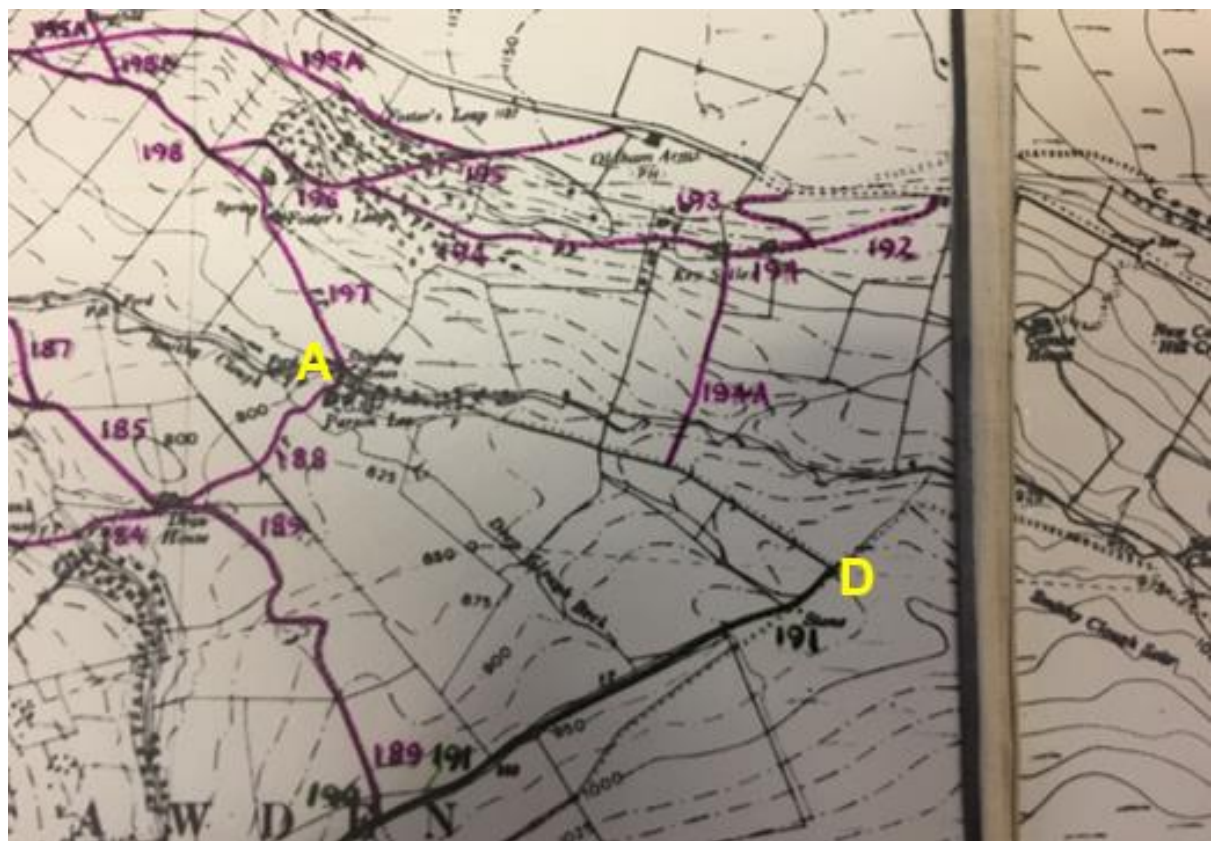
Bridleway 191 is described in the Draft Statement as meeting the public highway in Smithy Clough (point D).

Provisional Map

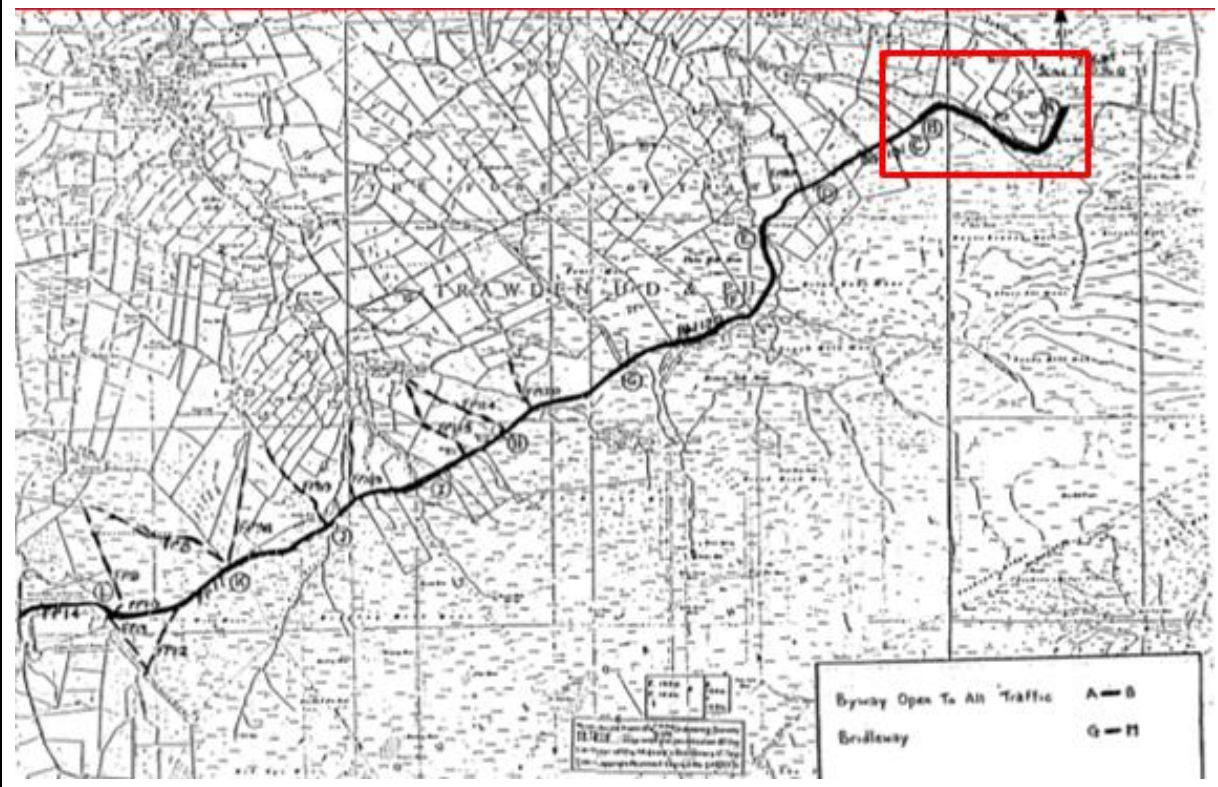
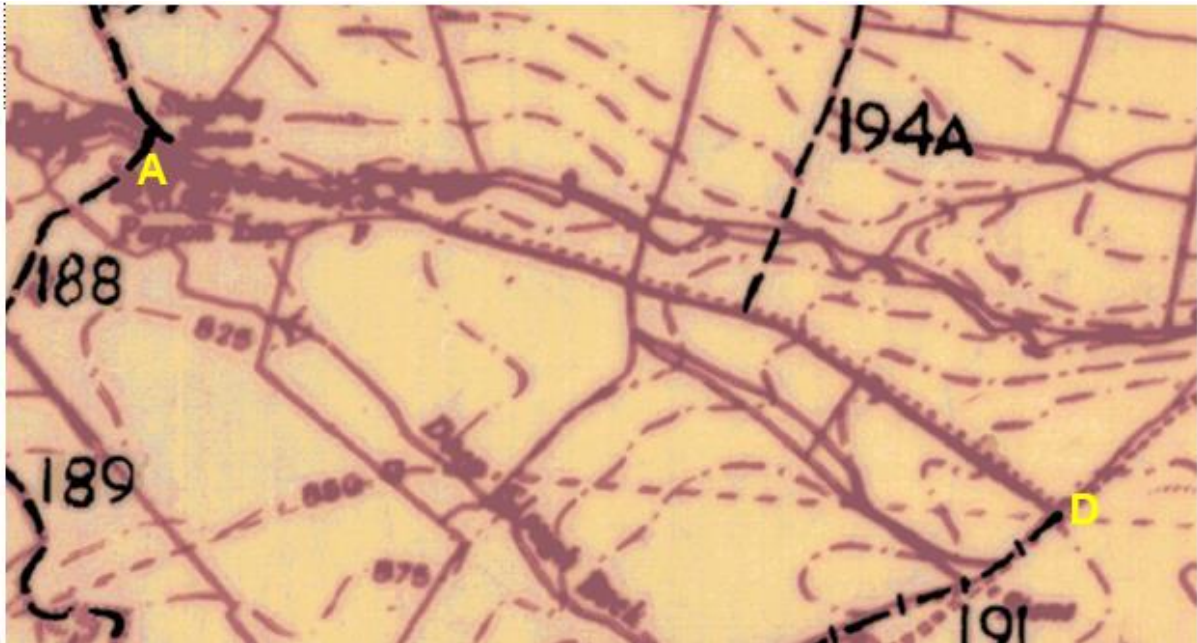
Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but 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 objections or representations were made.
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 objections or representations were made.
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.



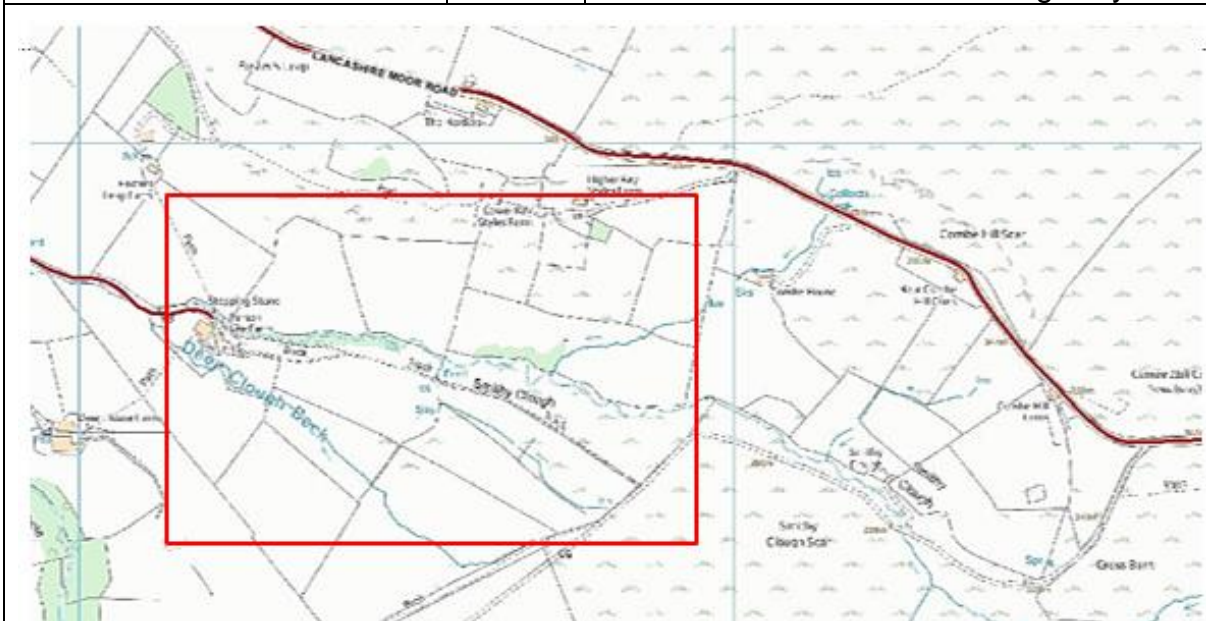
On the 16th August, 1996, the Secretary of State for the Environment confirmed without modification the above-mentioned Order.

The effect of the Order, as confirmed, is to modify the Definitive Map and Statement of Public Rights of Way for Trawden, Borough of Pendle, by adding to the Definitive Map and Statement of Public Rights of Way the Byway Open to All Traffic from a point on the Laneshawbridge to Haworth Road, near Coombe Hill Cross, (GR.9562 3857) to the junction with Wycoller Road and Bridleway No. 191, (GR9485 3848), Trawden, Pendle Borough, a total distance of approximately 970 metres.

A copy of the Order as confirmed, and the map contained in it has been deposited at the offices of the Pendle Borough Council, Town Hall, Nelson, and at my offices where they may be inspected, free of charge, during normal office hours. If required, copies of the Order and Map may be purchased from my Offices.

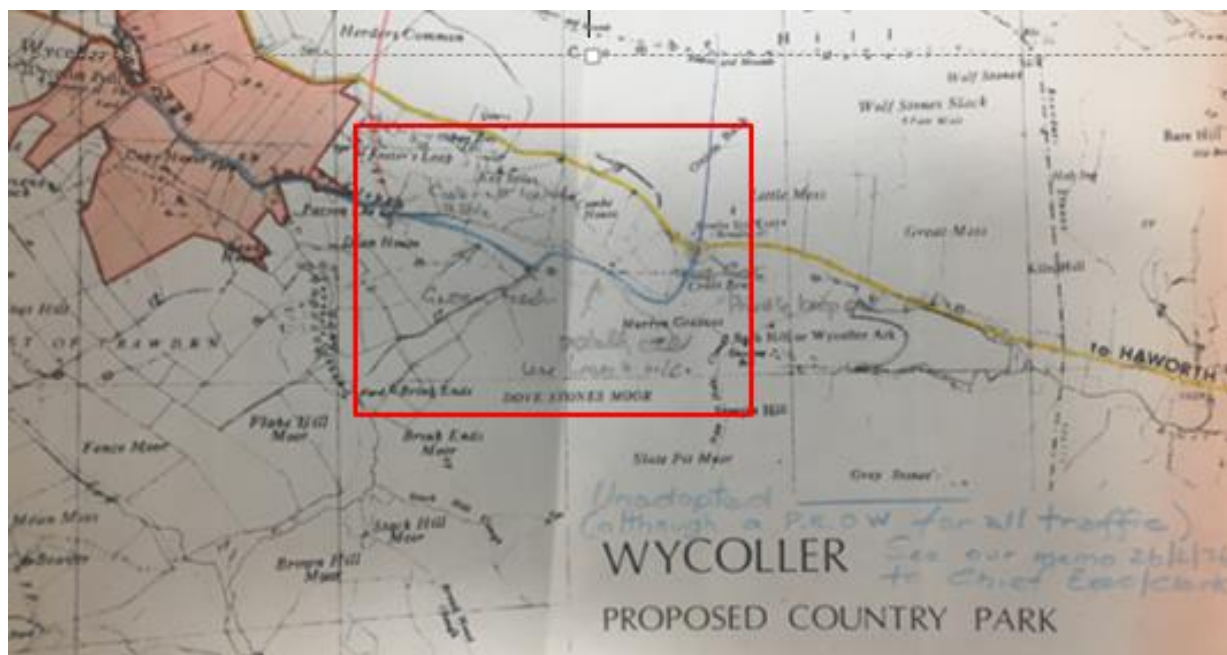
Observations		The route under investigation is not shown on the Revised Definitive Map (First Review). However, since the map was published a definitive map modification order has been made (1991) and confirmed (1996) to record the route now known as BOAT 254 from Lancashire moor Road to point D which is described in the Order as the junction with Wycoller Road and Bridleway 191.
Investigating Officer's Comments		<p>The route under investigation does not appear to have been considered to be a public path which should have been recorded on the Definitive Map and Statement during the relevant period.</p> <p>However, the fact that other routes joined it at point C and point D and that it was described as a 'road' and 'public highway' in the Draft Statements suggest that in the 1950s it was considered to be a public highway with vehicular rights. In 1991, when an Order was made to record BOAT 254 on the Definitive Map and Statement the route under investigation was described in the Order as 'Wycoller Road' and at that time it appears that the public status of the route – or whether it should be recorded on the Definitive Map – was not considered.</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county.

		<p>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>
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Observations		<p>None of the plans available to inspect in relation to the county councils List of Streets show the route to be inspected as being publicly maintainable. Trawden was an Urban District Council and the responsibility for the highway network was retained by them until 1974. As such there are no 1929 Road Transfer Maps for the area crossed by the application route.</p>
Investigating Comments	Officer's	<p>The route under investigation is not recorded as a publicly maintainable highway</p>

		on the county council's List of Streets but that does not mean that it does not carry public rights of access.
Internal Lancashire County Council memorandum	1976	A memorandum found on the public rights of way parish files dated 1976 from the County Surveyor (responsible at that time for public highways) to the Chief Executive and Clerk (the county council's legal department).



Road from Wycoller Hall by Parson Lee to the Haworth Road at Combe Hill Cross

This route is not shown on the Definitive Map. The road from Colne to the ford opposite Wycoller Hall (coloured brown on the attached plan) is an unclassified county road.. Beyond this point up to the Haworth road at Combe Hill Cross the road is considered to be unadopted although there is, no doubt, a public right of way for all traffic. This route is shown on Teesdale's Map 1828 and all subsequent maps that I have seen. I understand that the former Trawden Urban District Council occasionally put some quarry bottoms or old tarmacadam, taken from other roads, on the length between Wycoller Hall and Parson Lee and on the adjacent length to the Haworth road, the farmers on either side were provided with similar material to lay themselves. This appears to have been done as an act of goodwill and not as an acceptance of any responsibility for maintenance.

Observations		<p>The memorandum is titled 'Wycoller Country Park' and relates to concerns about the closure of what are described as 'two ancient public rights of way for motorcycles'.</p> <p>One of the routes described is a longer</p>
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		<p>through route from Wycoller Hall through to Lancashire Moor Road and includes the route under investigation. The route between points A-B-C-D is said to be considered as being unadopted but the memorandum states 'there is no doubt that it is a public right of way for all traffic'. It is also stated that Trawden Urban District Council would occasionally provide old tarmac or quarry bottoms to the farmers to lay themselves along this section of the route but that this was done as a good will gesture and not as an acceptance of responsibility for maintenance.</p> <p>The route is labelled as a grass track on the accompanying plan.</p>
Investigating Officer's Comments		<p>The memorandum appears to relate to the traffic regulation order made in 1977 and detailed below.</p> <p>The views expressed by the County Surveyor at that time support the view that the route under investigation was considered to be an ancient public right of way for vehicles in the 1970s.</p>
Highway Stopping Up Orders	1835 - 2014	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.</p>
Observations		<p>A search of the records held by the county council and those deposited in the County Records Office was made and no legal orders relating to the route under investigation were found.</p> <p>One Order, made by Pendle Borough Council in 1977 was located titled 'The Borough of Pendle (Trawden Road, Wycoller) (Prohibition of Driving) Order 1977. This Order prohibited vehicles (subject to certain exceptions) from using the route described as Trawden road at Wycoller passing through the hamlet of Wycoller as far as Parson Lee. The making of this Order (which is still in force) explains</p>

		<p>why there are circular road signs indicating that vehicles are not allowed (with the exception of disabled badge holders) at point B on the route under investigation looking west towards point A and Parson Lee. The copy of the plan attached to the Order is poor but appears to show the route subject to the Order including the first 25 metres of the route under investigation from point A.</p>
Investigating Comments	Officer's	<p>If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.</p> <p>With regards to the Road Traffic Regulation Order made in 1977 the fact that road signs were located at point B on the route under investigation positioned to be visible if approaching from point D suggests that when erected the Borough Council (who made the Order) considered that public vehicular rights existed along the route under investigation.</p>
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</p>

		counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.
Inclusion of the route as part of the Bronte Way	1985	The Bronte Way is a 40 mile promoted walking trail which dates back to approximately 1985. It was signposted throughout and was promoted by the publication of a set of four walking leaflets.



Wycoller - Watersheddles

The Bronte Way follows Smithy Lane between the hamlet of Wycoller and to within about 80 metres (90 yards approx.) of the Haworth - Laneshawbridge road. For most of the way the route follows a clearly defined and surfaced track. The section between Parson Lee Farm and the junction with the access road to Brink Ends Farm, however, is unsurfaced. If you are setting off from Wycoller, keep to the road alongside the stream.

Between the Water Authority land at Watersheddles and Smithy Lane the path runs along the outside of the reservoir enclosure wall, follows a fence line for a short distance and crosses a section of open moorland. Follow the waymarked route in order to use the footbridges and stiles provided.

Observations		One of the four walk leaflets describes the section of the trail between Wycoller Dean and the Bronte Parsonage and explains that the section between Parson Lee Farm (point A) and the junction with a track leading to Brink Ends Farm (point D) is unsurfaced. There is no reference to the public status of the route under investigation although it was noted that the leaflet shows part of the route further east with a dashed line indicating that it was a 'concession path' whereas the route under investigation is shown by a solid line.
Investigating Officer's Comments		The route has formed part of a promoted walking route since 1985 with no apparent suggestion that the public did not have a right of access along it.
Designation of the route as part of the Pennine Bridleway	1995-2000	The route under investigation forms part of the Pennine Bridleway National trail which provides access for horse riders, cyclists and walkers along a 205 mile trail from Derbyshire to Cumbria. Following a feasibility study and Government approval granted in 1995 work to create the trail was carried out as a partnership between local authorities with funding from the Countryside Agency (now part of Natural England). The trail through Lancashire was largely implemented by the early 2000s.

		Since its creation the route has been well used by walkers, horse riders and cyclists.
Observations		<p>The route promoted as part of the Pennine Bridleway the route under investigation 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 Pennine Bridleway in Lancashire has been kept but there is no record of any Orders being made in respect of the route under investigation.</p> <p>Officers involved in the implementation of the route at that time have now left the county council but inquiries were made of existing staff so it is not known if the public status of the route was considered at the time.</p> <p>The county council signposted the route, carried out drainage improvements and replaced the gate at point B as part of the Pennine Bridleway work and the Pennine Bridleway Officer employed partly by the county council has confirmed that the route has been regularly in use by horse riders and cyclists since its implementation.</p>
Investigating Officer's Comments		<p>Since approximately the year 2000 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> <p>The ethos of the implementation of the trail was to secure, wherever possible public rights of access. The fact that there is no record of the county council seeking to secure any public rights along this section suggests that Officers were of the view at that time that public bridleway or carriageway rights already existed.</p>

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

All the land crossed by the route under investigation is in registered ownership of Parson Lee Farm between point A and point B on the Committee plan. Ownership of the remainder of the route (from point B to point D) is registered to Bronte and Pendle Way Limited.

The Natural Environment and Rural Communities Act 2006

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc. if Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist along the route under investigation between point A and point D it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The route was, at the time of the act not recorded as a public footpath/bridleway and was not on the List of Streets (maintained at public expenses) and it does not appear to have been used mainly by the public in MPVs. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist the appropriate status for the route to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights with non-mechanically propelled vehicles, horses or on foot.

Summary

It is rare to find one single piece of map or documentary evidence which is strong enough to conclude that public rights exist and it is often the case that we need to examine a body of evidence, often spanning a substantial period of time, from which public rights can be inferred.

In conclusion, a range of commercial maps and other documents were examined which consistently show the route existed as part of a longer through route connecting to public vehicular highways from at least the late 1700s or beginning of the 1800s including numerous references to it being a public highway and ancient route in key documents such as documents prepared in relation to the inclosure of adjacent land in 1821, the Tithe Map and Award 1844 and Trawden Local Board Surveyor's records dated 1868 and taken as a whole, the map and documentary evidence available indicate that the route was considered to be a public vehicular highway in the 1800s, the use of which gradually declined with vehicles – possibly due to it being a rough stone track - and more recently as a result of the traffic regulation order placed on the section of route leading to Parson Lee and point A.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In this particular case there is no applicant for an Order to be made.

Information from Others

Nothing received

Information from the Landowner

Nothing received

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 a substantial through route since at least the late 1700's.
- Absence of evidence of gates/fences/stiles which prevent use by the public on foot, horseback and non-mechanically propelled vehicles along the route in question (whilst there is evidence of gates and stiles located at points B and D on the route (as detailed in the Map and Documentary Evidence section of this Report) the existence of gates along a public route in the 1800's, particularly in close proximity to farms and in rural areas, would not have been considered unusual and does not necessarily indicate that the route was private).
- Absence of signs and notices along the route in relation to public use other than motor vehicular.
- Absence of action taken by landowners to discourage use of the route.

Conclusion

The investigation was carried out in order to determine whether public rights already exist in law and whether accordingly the route A-B-C-D should be recorded on the Definitive Map and Statement.

The route forms part of a promoted footpath, the Bronte Way and the Pennine Bridleway National Trail but currently has no recorded public status.

It is advised that as there is no express dedication in this matter, Committee should consider, on balance, whether there is sufficient evidence from which to have dedication inferred at common law from all the circumstances or for the criteria in S31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Firstly looking at deemed dedication under S31 Highways Act 1980, Committee will be aware that in order to satisfy the criteria for S31, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there

is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way. Committee will note that there is no user evidence in relation to this matter, rather that the investigation looks at whether the route is a historical public right of way which came into existence hundreds of years ago.

Secondly, looking at whether dedication can be inferred on balance at common law, Committee is advised to consider whether the evidence presented within this report from the various map and documentary evidence does, on balance, indicate how the route should have been recorded. The analysis of such evidence by the Head of Service – Planning and Environment provides strong evidence to conclude that the route was a historical public route available as a restricted byway.

From at least the late 1700's /early 1800's, there is map and documentary evidence which consistently shows the route as having existed as part of a significant through route, depicted in the same way as many other routes currently classed as public bridleways or carriageways, and connecting to public vehicular highway at point D. The evidence suggests that the route would have been capable of use by horses and vehicles at that time.

Subsequent map and documentary evidence suggests that the route was considered to be at least public bridleway or possibly public vehicular highway. Various references are made within the map and documentary evidence to the route as a public highway and an ancient route. In the late 1800s the route was shaded on OS Maps indicating the route to be part of a longer vehicular highway and in on 1898 OS Map the full length of the route is shown to exist as a substantial route and appeared to be part of the road network.

Whilst the historical mapping evidence, when considered as a whole, indicates that the route was considered to be a public vehicular highway in the 1800s, it would appear that vehicular use subsequently declined potentially due to the surface of the route and more recently as a consequence of the traffic regulation order placed on the section of the route leading to point A.

References are made in the consultee's responses to past vehicular use, this however appears to have been predominantly for access purposes and mention is made in both responses to the route not being fit for purpose for use by vehicles.

In addition to this an official road sign, present at point B in 2006 specified no motor vehicles (with the exception of disabled badge holders and access). Whilst the section of the sign specifying no motor vehicles was no longer present at the time of inspection in 2019, the advice note detailing the exceptions remained; there is also a metal field gate and adjacent bridleway gate present along the route at point B, erected as part of the works undertaken in relation to the implementation of the Pennine Bridleway route.

On balance, the map and other documentary evidence is in itself considered sufficient to conclude that the route was a historical public highway, and it is therefore suggested to Committee that inferred dedication can on balance be satisfied. Although the route has historical evidence of public carriageway rights, it is

no longer possible, in any event, to record the route as a byway open to all traffic due to the introduction of section 67 Natural Environment and Rural Communities Act 2006. The implication of this section means that the highest status that can be achieved by this route is that of a restricted byway.

Taking all of the evidence into account and noting how the route was recorded on the old county maps and the investigations of the Head of Service Planning and Environment, it is suggested to Committee that on a balance of probabilities there is sufficient evidence that the route ought to be shown as a restricted byway.

Committee is therefore advised to accept the recommendation, make an Order 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.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-611		Simon Moore, 01772 531280, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A