

Regulatory Committee

Meeting to be held on 11 March 2020

Part I

Electoral Divisions affected:
Preston West and
Preston North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpaths from Manor Court and Greenacres across Sharoe Brook to Footpath Fulwood 43, Preston

File No. 804-379c

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for footpaths to be added to the Definitive Map and Statement of Public Rights of Way from Manor Court and Greenacres across Sharoe Brook to 2 points on Footpath Fulwood 43, Preston in accordance with File No. 804-379c.

Recommendation

- (i) That the application to add to the Definitive Map and Statement footpath lengths between Manor Court and Greenacres across Sharoe Brook to Footpath Fulwood 43, Preston, in accordance with File Number 804-379c, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way footpaths from Manor Court and Greenacres across Sharoe Brook to Footpath Fulwood 43, Preston as shown on the Committee Plan between points A-B-C, B-D-E-F, G-H-I-J and H-L-K.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

In 2000, an application under Schedule 14 of the Wildlife and Countryside Act 1981 was received for the addition of a number of public footpaths which were described by the applicant as being situated on land forming part of Ingol Golf Course and as having been provided by the former Central Lancashire Development Corporation.

Five separate sets of routes were listed and numbered 1 to 5 and evidence in support of each route was provided.

The application was originally submitted by the Area Secretary of the Ramblers Association (Mid Lancashire Area) but sadly, since submission, the applicant has died.

Soon after the application was submitted, research was carried out by two former members of the county council's Public Rights of Way team and initial consultations carried out but reports were never prepared or presented to the Regulatory Committee and the officers originally involved in the investigation have subsequently retired. Various development proposals were thought likely to accommodate the routes but this has not been achieved. Further work has now been done to get the reports finalised.

The original application made by the Ramblers Association was split down into five separate applications. The bulk of the evidence provided by the Applicant in support of the application consisted of completed user evidence forms and on a review of the application bundle it has been decided to consider each route separately.

This report considers the route referred to by the applicant as 'Route 3' and is shown on the committee plan by a thick dashed line between points A-B-C, B-D-E-F, G-H-I-J and H-L-K.

When an application is made, 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

Preston City Council

The City Council were consulted and commented queries were raised by a resident regarding the status of paths on the golf course and that a copy of the transfer/lease of the land to the golf club was seen by the Council which indicated that the 'new' paths were 'permissive paths', created as a condition of the transfer/lease. The Council referred the matter to English Partnerships, a successor of Central Lancashire Development Corporation, but were not aware whether they had then pursued it with the golf club.

Comments from Preston City Council Highways department were that 'the paths most certainly exist' in terms of them being physically constructed and that they had been created by the Central New Towns Commission but that despite receiving numerous enquiries regarding the condition of the paths over the years the Council had no power to act with respect to such 'permissive paths'.

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.

Route 3A

Point	Grid Reference (SD)	Description
A	5198 3306	Junction with Manor Court immediately south of the boundary fence between 6 and 7 Manor Court
B	5199 3307	Three way junction of paths north of 8 Manor Court
C	5200 3313	Junction with Greenacres adjacent to 53 and 55 Greenacres
D	5200 3308	Kissing gate
E	5206 3301	Footbridge across Sharoe Brook
F	5207 3300	Junction with Footpath Fulwood 43
G	5193 3303	Junction with Manor Court between 12 and 15 Manor Court
H	5200 3297	Junction of made up paths
I	5202 3296	Footbridge across Sharoe Brook
J	5203 3296	Junction with Footpath Fulwood 43
K	5201 3296	Ford crossing of Sharoe Brook
L	5202 3295	Junction with Footpath Fulwood 43

Description of Routes

The application was submitted in 2000 but a site inspection was not carried out by the county council until 2005.

Because the application relates largely to user evidence pre-dating 2000 details of the 2005 site inspection are included in this report. This provides a better indication of what existed on the ground closer to the time that the routes were said to have been used.

A Further site inspection was carried out in 2019 to see what changes may have occurred since the 2005 inspection.

Addition of Footpath from between house nos. 12 and 15 Manor Court to Footpath Fulwood 43 shown between points G-H-I-J and H-L-K on the Committee plan.

In 2005 the Officer completing the site inspection described the route as follows:

The application route is from point G on the adopted footway on the south side of Manor Court where there is a wide access way with planting to both sides. After a length of approximately 7 metres is a notice placed to the westerly side, reading, *"Warning Steep hill ahead"* The macadam surface also stops at this point and is replaced by a well compacted stone surface. At a point approximately 15 metres from Manor Court there is a fence and gateway across the application route. No gate is in position. To the westerly side of the gateway there is a kissing gate although it was not possible to gain access to the kissing gate because of the shrub planting. To the easterly side of the gateway there is a section of timber railing fence, also

overgrown and it was the view of the Officer inspecting the route at that time that all of the structures described appeared to have been provided by the Development Corporation.

The application route was described as continuing to follow a very well used stone path within a wide open area leading down the hill. After approximately 85 metres from point G, there appeared to be the remains of a timber seat placed to the north of the route where the area opens out, to overlook the valley. Again, the officer carrying out the inspection was of the view that the seat appeared to have been provided by the Development Corporation.

The stone path was described as continuing down the hill dividing into two separate parts at point H. One, a well-trodden path to the north leading directly to a timber footbridge crossing Sharoe Brook at point I to then continue to meet Footpath Fulwood 43 at point J.

The second part of the divided path was to the south and led to what was described as a concrete apron, sloping down into a ford (point L) in Sharoe Brook, with a similar concrete slope for the exit, which then lead up onto Footpath Fulwood 43 at point K - approximately 8 metres south west of point J.

The ford was described as appearing to be very well used by vehicles, presumably in connection with the golf course, as it formed part of a track from the north east. The Officer carrying out the inspection was of the view that both the footbridge, and the ford, appeared to have also been erected by the Development Corporation.

When the route was inspected in 2019 it was noted that the sign stating 'Steep Hill' was no longer in place. The routes were still accessible and appeared to be being used. The footbridge at point I was in poor condition and the path to the ford crossing and beyond (H-L-K) was more overgrown and did not appear to be as well used. There were no signs indicating permission.

Addition of a Footpath from Manor Court to Greenacres and across Sharoe Brook to Footpath Fulwood 43

In 2005 the officer carrying out an inspection of the route described the route as commencing at point A on the surfaced footway of Manor Court. After approximately 10 metres the footway divided (at point B) with one length going to the north-east towards point C, (described below in this report) whilst the other route continued in a north-easterly then south-easterly direction following a less used but well surfaced footway to a timber kissing gate in a rail fence at the boundary of the housing development (point D). The kissing gate and rail fence were described as being in good condition although they did have some moss growth on them. The officer carrying out the inspection was of the opinion that the fencing and kissing gate had been provided by the Development Corporation.

On the far side of the kissing gate the route was described as following a stone path leading down through a sloping area that has been planted with shrubs and trees with brambles growing from both sides of the route.

After approximately 15 metres from the kissing gate were the remains of what appeared to have been a section of old fencing and possibly a seating area, described in very poor condition and badly overgrown. There were also timber steps on the path as it continued down the slope. The application route was described as becoming quite narrow as it continued through the undergrowth to a more open rough grass area to level out and cross a track worn by vehicles leading to and from the ford at point L. The application route was then described as following a trodden muddy path with stone surface, over a large span timber footbridge crossing Sharoe Brook (at point E) to continue along another short length of muddy, trodden path on top of a stone surface to meet Footpath Fulwood 43 at point F.

The officer summarised that in 2005 the whole of the application route described above was being used by the public, although it was very overgrown in places and that the entire route seemed to have been constructed by the Development Corporation with a macadam or stone surface, fencing and a kissing gate originally constructed to a high standard; a seating area and extensive tree and shrub planting. It has also been provided with a large footbridge across Sharoe Brook providing a useful link between the area of housing and Footpath Fulwood 43.

When the application route was inspected again in 2019 it was noted as still being accessible. The section A-B was tarmacked and in good condition. The route from point D-E was a visible trodden path which was quite muddy in places. The footbridge at point E had deteriorated and was in poor condition.

From the division of routes at point B the other branch of the application route was described in 2005 as extending in a north north westerly direction following a well-surfaced footway alongside the tall brick garden wall of 7 Manor Court with an area of planting on the north-east side.

The application route was then described as moving away from the garden wall before turning north to follow the side of a tall brick boundary wall to 53 Greenacres, with a widening triangle of grass to the westerly side. There was a street light at the end of this area of grass with a metal railing fence to the easterly side replacing the brick wall.

The route was described as turning again at a metal bollard in the centre of the macadam path, and continuing to follow the surfaced path alongside the metal railing fence to the south east and an open lawn area of 54 and 55 Greenacres to the north west to join the footway at the end of Greenacres at point C.

The officer carrying out the inspection commented that the route between points A-B-C had been constructed with a macadam surface and was in very good condition throughout, with areas of grass and planting to the sides. He was of the opinion that the work to establish the path appeared to have been carried out as part of the original housing development.

The officer investigating the route in 2005 also noted that between points A-B-C the route was recorded in the county council's highway records as a publicly maintainable footway (F5997).

When the route was re-inspected in 2019 the route between points A-B-C was accessible and in good condition.

There was no mention of signs indicating permission.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the routes came into being, and to try to determine what its status they may be. The routes are not shown on any of the early commercial maps, the Tithe Map of Broughton dated 1839 or OS maps published in 1849, 1893, 1912, 1932, 1938, 1961 or 1978. Neither are they shown on the aerial photographs taken in the 1940s or 1960s.

The routes cross land which is within an area which was designated as that of the Central Lancashire Development Corporation. A Development Corporation was a body set up across parts of England and Wales and charged with the urban development of an area. It operated under the New Towns Act of 1965, outside the usual Town and Country Planning legislation.

The Central Lancashire New Town (Designation) Order was approved on 14 April 1970 and the Development Corporation formerly constituted on 17 February 1971. The Commission was in existence for 16 years until it was formally dissolved on 31 March 1986 and during that time the area to the north of Preston – referred to as Ingol East – underwent significant development.

The routes claimed were described in the application as having been provided by the former Central Lancashire Development Corporation. Further details and evidence post-dating the designation of the area as part of the Central Lancashire New Town are detailed below in the assessment made of the relevant map and documentary evidence discovered:

Document Title	Date	Brief Description of Document & Nature of Evidence
Definitive Map Records		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. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the

		maps and schedules were submitted to the county council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the county council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Fulwood was an Urban District Council for which no parish survey was carried out.
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 routes under investigation were not shown on the Draft Map of Public Rights of Way for Fulwood and there were no representations made to the county council in relation to them.
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 routes were not shown on the Provisional Map of Public Rights of Way for Fulwood and there were no representations made to the county council in relation to them.
The First Definitive Map		The Provisional Map, as amended, was

and Statement		published as the Definitive Map in 1962.
Observations		The routes were not shown on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		<p>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 25th 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 1st 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. By 1975 Central Lancashire Development Corporation had been in existence only four years and had just achieved its planning consent and extinguishment of footpaths 49 and 43 had not yet happened.</p>

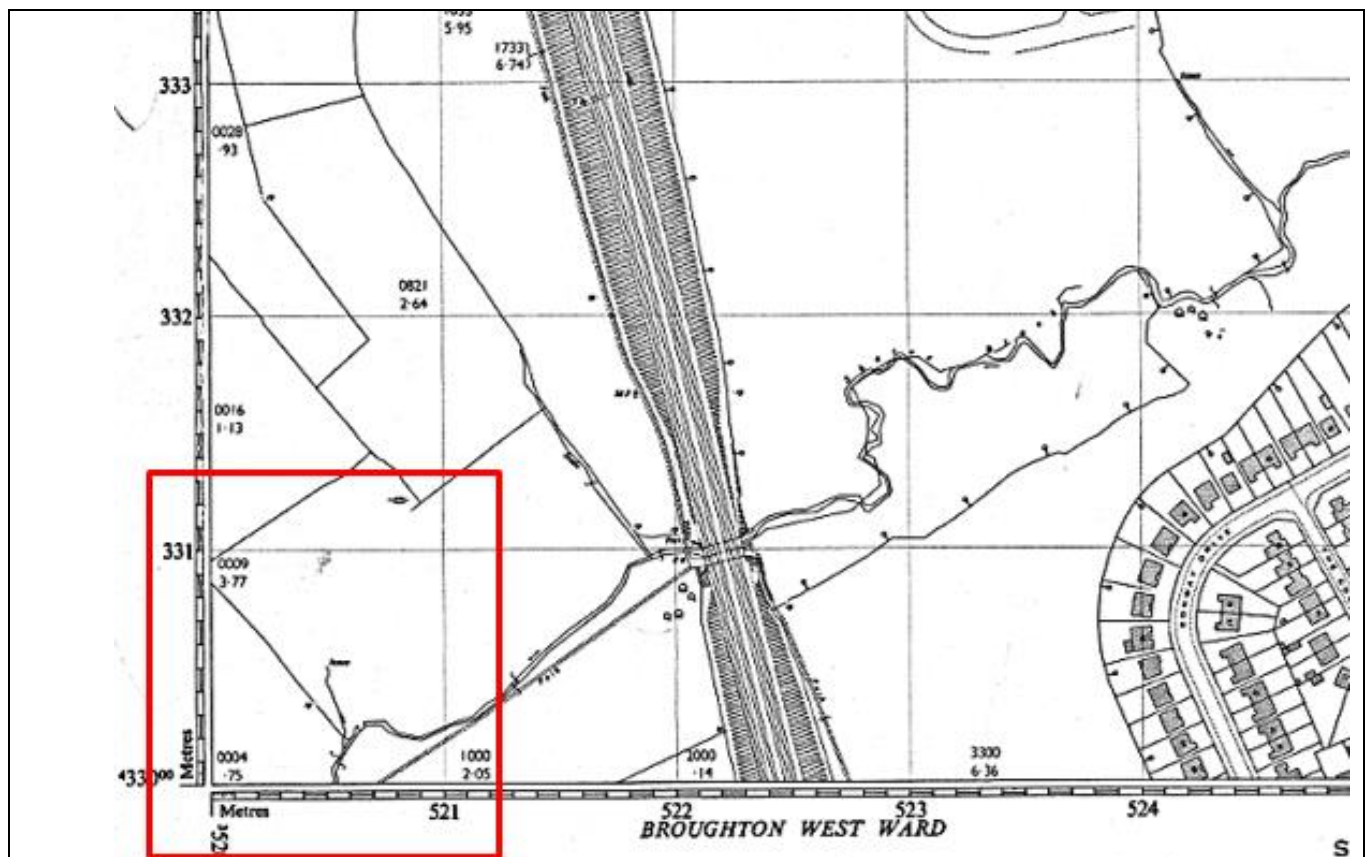


Observations		The routes were not shown on the Revised
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		Definitive Map of Public Rights of Way (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the routes were considered to be public right of way by the Surveying Authority. There were no objections to the fact that the routes were not shown from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
Observations		Aerial photographs dating from the 1960s pre date the development of Ingol golf course and associated housing and do not show the application routes.



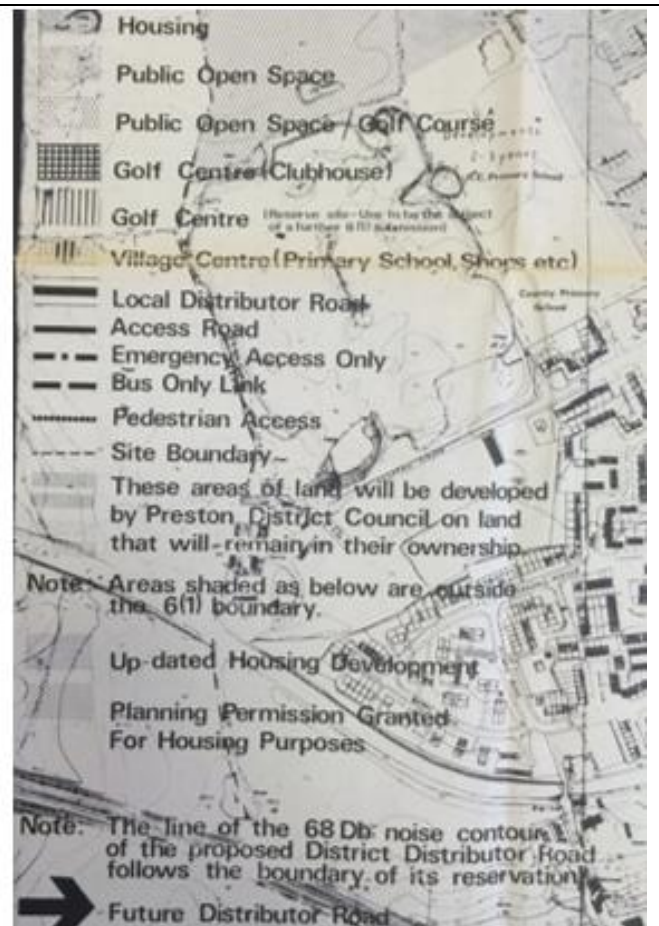
Investigating Officer's Comments		The routes under investigation did not exist in the 1960s.
OS 1:2500 Map	1969	1:2500 OS map revised 1967 and published 1969.



Observations		The application routes are not shown. The housing estate, Greenacres and Manor Court had not been built.
Investigating Officer's Comments		The application routes did not exist on the ground prior to the development of the golf course and associated housing.
Central Lancashire Development Corporation Planning Statement	1974	Copy of Central Lancashire Development Corporation Ingol East, Residential and Associated Development Planning Statement prepared with reference to Section 6(1) New Towns Act 1965
<p>...with the only links and this system should be capable of development from the existing services in the area. Discussions have taken place with the public transport undertakings operating in the area.</p> <p>5.7.5</p> <p>The site is crossed by a network of public footpaths, the extent of which will be retained although diversions may be necessary to take account of development. New footpaths will be constructed so that the whole will form a pedestrian framework associated with the golf course and open space system. Wherever possible, major footpaths will be aligned to incorporate existing natural features such as trees and hedgerows and they will be designed to link housing areas, facilities and amenities conveniently and without major conflict with the road network. The design of the footpaths will allow for their use also as cycleways. Care will be taken to ensure that the footpaths within the site are linked in a logical manner with those immediately outside the boundaries of the site.</p>		
Observations		A copy of the Planning Statement prepared

		<p>in relation to the development of the area crossed by the application route was obtained from the submissions made in relation to a request for planning permission in 2010 (Ref 06/2010/0626).</p> <p>The Planning Statement was prepared in 1974 by the Development Corporation seeking approval to develop the Ingol site under the New Town legislation. It explains that the site – consisting of 430 acres – was in 22 ownerships all of which were being purchased by the Commission under compulsory purchase orders with the exception of the land owned by Preston Borough Council which was being transferred by agreement. The Statement lists the development proposals including housing, schools and other facilities, the golf course, public open spaces and communications.</p> <p>Under the heading titled 'Communications' is a paragraph 5.7.5 relating to public rights of way which explains that the existing extent of public rights of way will be retained – or diverted where necessary to allow for development - and that a new network of footpaths would be constructed to link housing areas, facilities and amenities the design of which would also allow for use as cycleways.</p>
Investigating Officer's Comments		<p>Whilst not specifically referring to the creation of 'public' footpaths the inference is that the land to be developed – which would all be within the ownership of the Central New Town Commission – would be developed in such a way as to include a network of existing and additional footpaths to be used by the public on foot and also capable of being used on bicycle.</p>
Central Lancashire Development Corporation plan 'Ingol East'	1977	<p>Plan deposited in the County Records Office dated 1977 at a scale of 1:2500 and referenced as Drawing No. 6/34/17c (CRO reference NTC5/2/53). Originally titled as 'Support Drawing' which is crossed out in pen and replaced by 'Local Plan'.</p>

Rev	Date	Description	By
Central Lancashire Development Corporation 			
Job Title: INGOL EAST			
Draw Title: Support Drawing NEW LOCAL PLAN			
Scale	Date	Drawn	Checked
1:2500	5.9.74	ARB	MM
Job No.	Draw No.	By	
	6/34/17c	jan 77	
CROWN COPYRIGHT RESERVED.			
NTC 5/2/53			



















Observations		The plan shows routes described in the key as 'pedestrian access'. The route of Footpath Fulwood 43 is shown with a path (denoted as pedestrian access) shown extending from the solid black line indicating a 'future distributor road' along an alignment which seems to fit with Manor Road and then south east to connect to Footpath Fulwood 43.
Investigating Officer's Comments		This is the earliest plan inspected to show routes crossing land to be developed as part of the golf course and associated housing. The routes are described as 'pedestrian access' but there is no indication on the plan whether pedestrian access was for public or private use or whether the routes shown were proposed access routes or whether access had already been provided along those lines. There appears to be at least an intention to create a link to Footpath Fulwood 43 in proximity of the application routes.
Final Draft Agreement for lease relating to development of golf course and housing	1978	A copy of a draft agreement was found in the County Records Office annotated as being the 'final draft agreement' between Central New Towns Development Corporation and

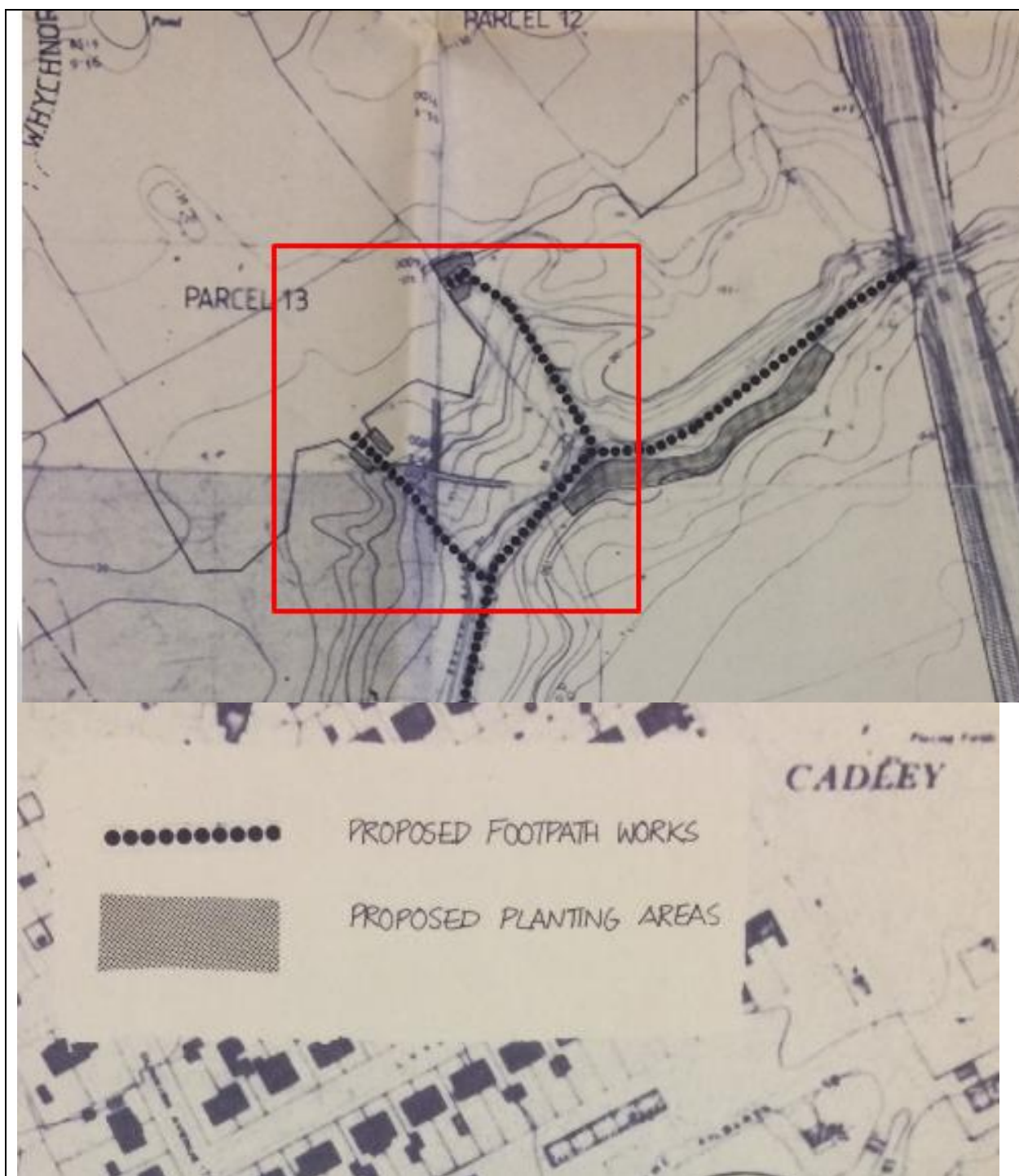
		Miller Buckley Golf Services (Ingol) Limited dated 13 March 1978 for the lease relating to the development of the golf course and housing.
Observations		<p>The agreement contains information regarding the provision of footpaths across the land. Within Schedule 3 it states that within the golf course parcel the corporation will provide certain footpaths shown on a drawing referenced 6/34/308A and that the general line of these footpaths may be subject to variation by agreement between the corporation and the company. It also stated that any closure of an existing footpath will require an order which is within the discretion of the Secretary of State.</p> <p>The agreement also stated that footpaths must be kept open and useable on foot at all times although private footpaths could be temporarily closed by the lessee if necessary for the proper management of the golf course and that the corporation would not unreasonably withhold permission to divert public or private footpaths at a future date if it was necessary for the implementation of the scheme.</p>
Investigating Officer's Comments		A copy of the plan referred to in the agreement could not be found in the County Records Office so it is not possible to confirm whether the routes under investigation were the ones shown. However, the draft agreement does refer specifically to the provision of public access along footpaths across the site although it appears that there were to be both public and private routes created and some confusion of terminology such as 'private footpath'.
Ingol Golf Villages - Leaflet published and produced by Central Lancashire Development Corporation	1980	Copy of leaflet produced providing details of the proposed development of a golf course and housing in Ingol and contact details for the various housing developers and Central New Towns Corporation. The leaflet included a map of the 18 hole golf course and the key to the map details, amongst other things, routes shown as public footpaths, existing and new roads and roads to be made into footpaths.



	<p>Key to map</p> <ul style="list-style-type: none"> New housing areas Existing development Village centres Golf centre and clubhouse Golf course fairways and greens Golf course 'roughs' Direction of play on golf course13 Green numbers Public open space Tree belts New roads Existing roads Existing road made into a footpath Public footpaths Emergency exit road	
Observations		The plan included in the leaflet is a large scale drawing showing routes described as public footpaths. The route of Footpath Fulwood 43 is shown with a path (also denoted as a public footpath) shown from a point on Wychnor (public vehicular road) along an alignment with Manor Road and then south east to connect to Footpath Fulwood 43.
Investigating Officer's Comments		It is not clear from the plan whether the route shown is either of the two application routes that link to Footpath Fulwood 43 (its line is possibly closer to route D-E-F) but the leaflet does indicate that at least one route was to be provided as a public footpath linking the housing development to Fulwood 43. The

		leaflet was distributed to the public showing details of the proposed development and clearly indicates the intention that a number of routes were to be provided as public footpaths reiterating the intention to provide alternative routes for public paths extinguished to allow for the development to be carried out and to provide areas of public open space and public access routes as part of the Ingol Golf Course/Village scheme.
Central Lancashire Development Corporation plan	1985	Plan showing 'footpath and planting works by the Central Lancashire Development Corporation outstanding at March 1985' deposited in the County Records Office.

Rev	Date	Description	Sig
Central Lancashire Development Corporation Cuerden Hall, Bamber Bridge, Preston PR5 6AX Lancashire			
Job Title			
TANTERTON INGOL GOLF COURSE			
Orig. Title			
FOOTPATH & PLANTING WORKS BY C.L.D.C. OUTSTANDING AT MARCH 1985			
Scale	Date	Drawn	Checked
1:2500	MAR 85	SIF	IFD
Job No	Orig. No	Rev	
Q 714	LAN 218		



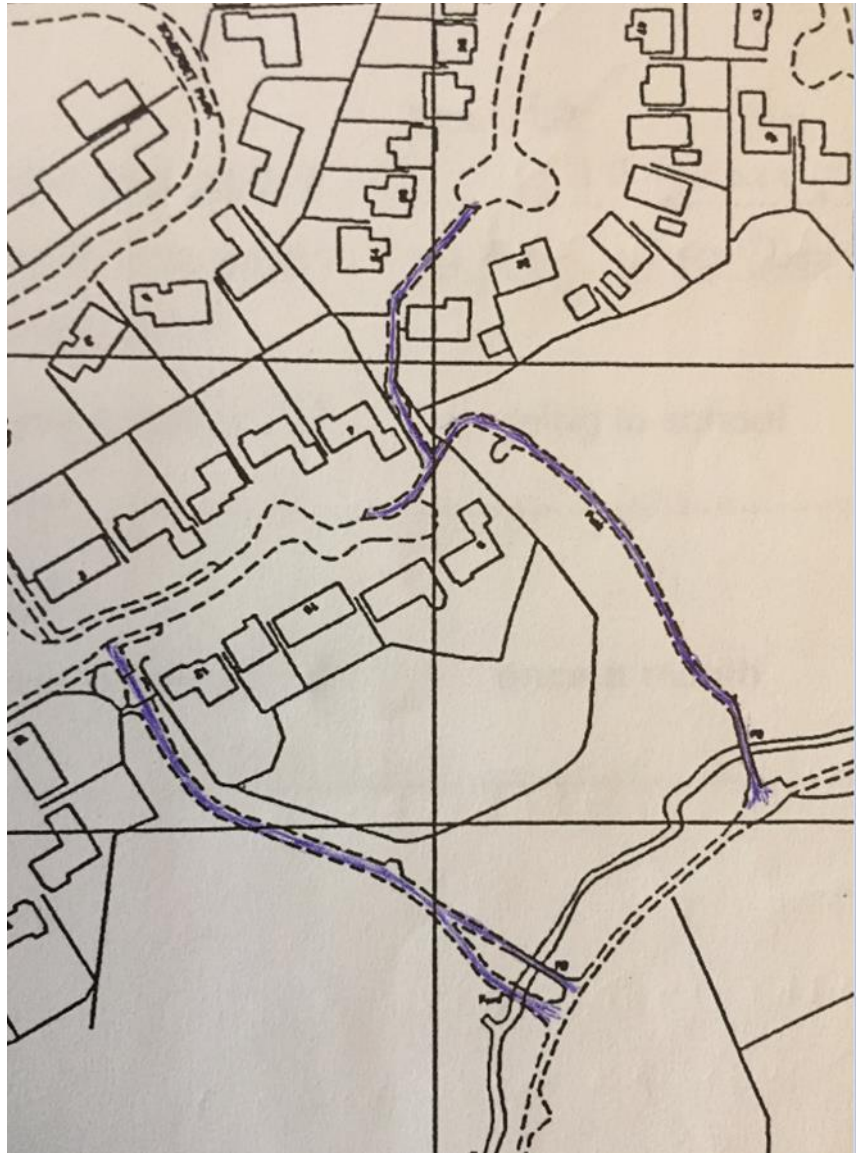
Observations		The plan is labelled as showing outstanding 'proposed footpath works' at Ingol Golf Course. The application route between points D-E-F is shown as well as the route from point G down to Sharoe Brook connecting to Footpath Fulwood 43 although it is not clear whether this was via the bridge at point I or ford crossing at point L.
Investigating Officer's Comments		The plan suggests that work to create part of the application route was still to be carried

		out in March 1985. The key to the plan does not indicate whether the 'footpaths' were considered to be public or private but as they were linking areas of housing to an existing public footpath it seems likely that they were to be built for public use.
Aerial Photograph	1988	Aerial photograph taken May 1988 and available to view in the County Records Office.



Observations		<p>The application routes across the golf course land can be clearly seen as surfaced tracks between points D-E-F and G-H-I-J and H-L-K.</p> <p>The application route linking the housing estates between points A-B-D-C can only partially be seen due to tree cover and shadowing.</p>
Investigating Officer's		The application routes across the golf course

Comments		land had been constructed as substantial routes by 1988.
Plan used as part of application to show routes applied for	1998	Plan provided by Commission for New Towns (North) to the applicant together with a letter in response to the applicant querying the status of the application route with them prior to submitting the application.



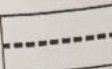
Commission for the New Towns

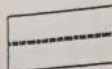
P.O Box 49
New Town House
Buttermarket Street
Warrington
Cheshire
WA1 2LF

Fax: 01925 411493
Tel: 01925 651144

FILE NAME E6133.DWG	PLOT DATE 28/10/1998.
TITLE TANTERTON AND INGOL DIVERSIONS OF RIGHTS OF WAY.	
DWG NO. CNT/CL/E6133.	SCALE 1:2500.
DATE 28/10/1998.	SIZE A1
OS SHEET	DRAWN BY AH.

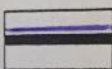
NOTATION :-

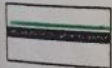
 FORMER FOOTPATH AND NUMBER.


 PARISH BOUNDARY.

INTENDED AND ACTUAL ALTERNATIVE ROUTES.

LAND OWNER :-

 INGOL GOLF COURSE.

 PRESTON B.C. (COMMUNITY
RELATED ASSETS.)

 ADOPTED HIGHWAY IN
VARIOUS OWNERSHIPS.

Observations

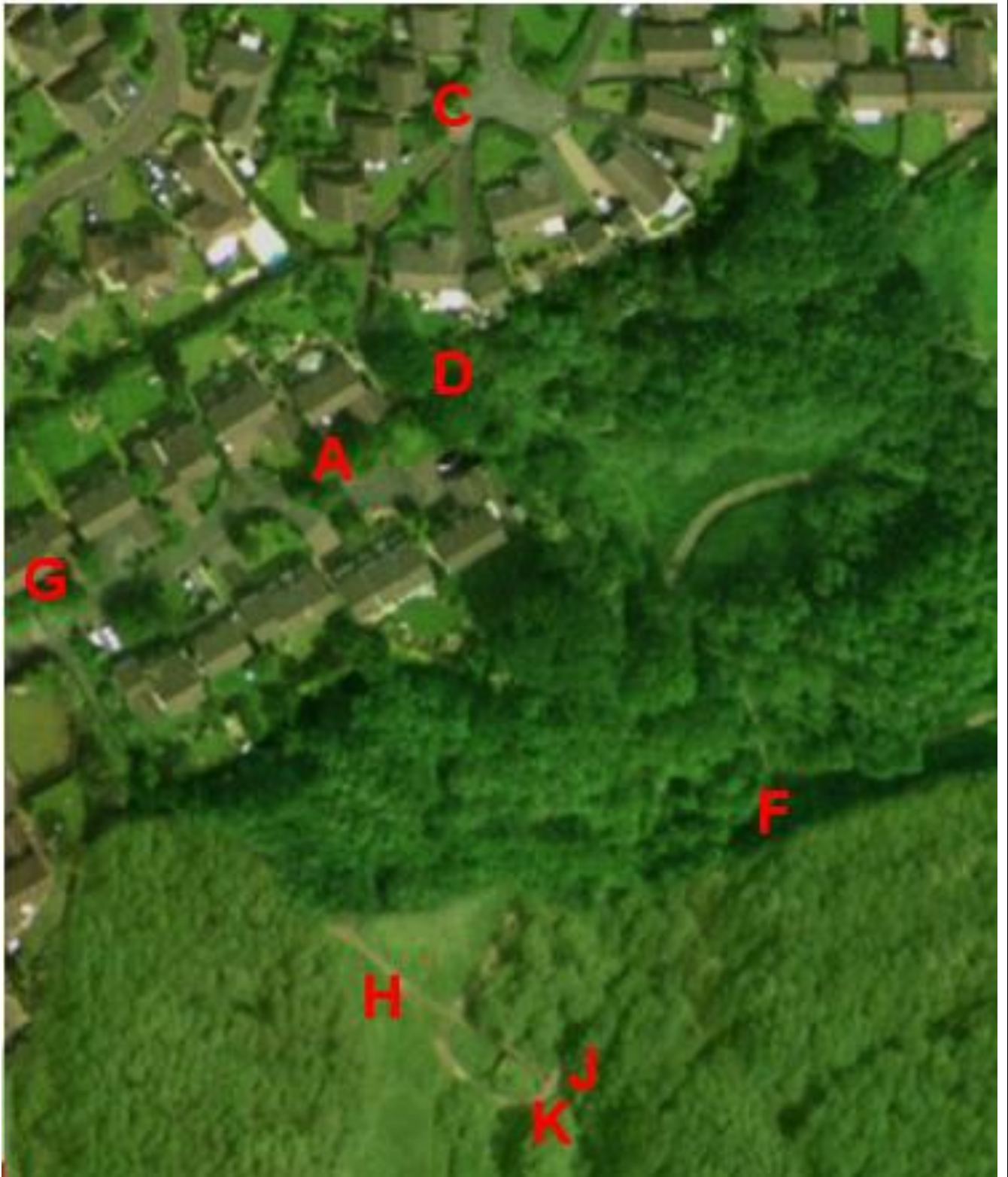
This plan was provided to the applicant by Mr R Robson, Commission for New Towns (CNT) North, in a letter dated 06 November 1998. The drawing – referenced CNT/CL/E6133, is stated to be based on the latest OS plan of the Ingol and Tanterton area (at that time) and is described as being marked up with the routes of the former footpaths and the approximate routes of the various alternative footpaths provided in respect of the various footpath closures.

The plan was marked up with details of the various landowners.

The letter accompanying the plan also explains that Central Lancashire Development Corporation sold the golf course to Hemm Inns limited in 1985 and put provisions in the transfer to ensure that the footpaths indicated in the original layout approved in 1978 were not obstructed or interfered with. The lines of the routes across

		<p>the golf course are indicated in blue but CNT make reference to the routes now in use deviating from the routes marked in blue in several places.</p> <p>Some of the other map extracts provided show letters adjacent to the routes which are crossed referenced to comments made in the letter. The map extract provided for these particular routes was not annotated with lettering and specific comments made in the letter do not appear to refer to them</p>
Investigating Officer's Comments		<p>The letter and plan provide further evidence regarding the construction of the application route as an alternative to those routes extinguished to allow for the development of the site and evidence of intention to dedicate by the owner.</p> <p>The plan clearly shows the routes applied for and indicates that they crossed land owned by Ingol Golf Course.</p>
Land Registry Title Number LA512320 and LAN183407		The land covered by this title includes the application route
<p>A Transfer which included the land in this title dated 1 April 1985 made between (1) Central Lancashire New Town Development Corporation (Transferor) and (2) Hemm-Inns Limited (Transferee) contains the following covenants:-</p> <p>"THE Transferee for itself and its successors in title for the benefit of the Transferor's retained land at Ingol adjacent to the property hereby transferred hereby covenants that the Transferee will not obstruct or interfere with any footpaths or footpath routes now crossing the property whether presently adopted or included in the Definitive Map maintained by Lancashire County Council under the terms of the National Parks and Access to and the Countryside act 1949 or any subsequent legislation or are shown on the drawings referred to in the planning approval for the development of the Gold Course on the property given under Section 6 (2) of the New Towns Act 1965 on the twenty second day of August one thousand nine hundred and seventy eight."</p>		
Observations		<p>The transfer of land from the Central Lancashire New Town Development Corporation to Hemm-Inns Limited included a covenant regarding footpaths or footpath routes which were either currently recorded on the Definitive Map, were adopted, or which were shown on drawings referred to in the planning approval for the development of the golf course on 2nd August 1978. The covenant specified that those routes should not be obstructed or interfered with. The land has subsequently been sold to Cleator</p>

		Manor Limited (freehold) in 2006 and part was sold (leasehold) in 2016 to Ingol Golf Club Limited with the same covenant remaining.
Investigating Officer's Comments		There appears to be a clear intention by the Central New Towns Development Corporation that all existing public footpaths and proposed public footpaths across the land sold should be recognised and protected against future obstruction or interference.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the county council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Section 31(6) deposits have been lodged with the County Council for the area over which the route runs.
Investigating Officer's Comments		There is no intention by a landowner under this provision of non-intention to dedicate public rights of way over their land.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		Parts of the route between points A-B-C are visible but some of the route is obscured by tree cover and shadows. Between point D and point F a faint track consistent with the application route is visible with a more substantial visible track crossing the
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		<p>application route at about the midpoint.</p> <p>Most of the application route between point G-H-J and H-K can be seen but is much less visible than the route had been in 1988.</p>
Investigating Officer's Comments		<p>The photograph was taken the same year that the application was submitted. Whilst the routes across the golf course appear far less visible than in 1988 they can still be seen and appear to have still existed.</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from rural district 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 36 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. If a road is not on this record it may still be an existing highway. Alongside the List is a coloured up plan of the extent of the highways on the List. Footpaths and Bridleways are often not shown on these plans.</p>



Observations		The application route between points A-B-C is recorded on the List of Streets as a publicly maintainable highway. The rest of the application route is not recorded.
Investigating Officer's Comments		The route between points A-B-C was recorded as being a publicly maintainable highway suggesting that the route carries at least public footpath status. No inference can be drawn regarding public rights along the remainder of the route – which, unlike the route between point A-B-C is not tarmacked and does not provide a direct link between two housing areas.

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

Since the applications to record public footpaths across the former golf course were submitted the golf course has ceased to operate and a number of planning applications have been submitted to Preston Borough Council for the land to be redeveloped. Two substantial applications were made in 2010 and 2014 (Planning References 06/2010/0626 and 06/2014/572). Information submitted as part of the applications was viewed and it is noted that on various plans prepared existing public

footpaths are shown together with the routes applied for – which are shown separately as being routes subject to Definitive Map Modification applications.

No further information relevant to the applications was however found.

Landownership

The land crossed by the route under investigation between points A-B-C is registered in the ownership of Preston City Council.

The land crossed by the route under investigation between point D-E-F is registered in the ownership of Cleator Manor Limited.

The land crossed by the route under investigation running from point G for approximately 20 metres is registered in the ownership of Preston City Council.

From this point the route under investigation crosses roughly 7 metres of unregistered land.

The rest of the land crossed by this route to point H and between points H-I-J and between points H-LK is registered in the ownership of Cleator Manor Limited.

Summary

There is no map or documentary evidence supporting the existence of the application routes prior to the development of the area by the Central Lancashire Development Corporation in the mid to late 1970's and it is clear that the routes only came into being as a result of the development of the site as a golf course and residential area.

Since 1978 the map and documentary evidence examined suggest that the routes were constructed as part of the development of the housing estates and as links to Footpath Fulwood 43 when the golf course was constructed.

The first plan found as part of this investigation which showed an intended route linking from the houses to Fulwood 43 is dated and shows the route as 'pedestrian access'.

Plans of outstanding work to construct footpaths show both routes linking to Fulwood 43 in 1985 (although it is not clear whether the bridge or ford crossing is shown from point G but aerial photographs examined from 1988 suggest that by that time all of the paths were available to use and that the paths leading down to Footpath Fulwood 43 were substantial constructed routes (not just trodden footpaths) by that time.

The map and documentary evidence on its own may be considered insufficient to show dedication of the routes as public rights of way but the maps, documents and aerial photographs examined clearly support the substantial body of user evidence submitted.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant stated in the application that they had submitted 80 user evidence forms together with a copy of a letter that she had sent to members of the Ramblers Association in August 2000 explaining that staff at Ingol Golf Club had been preventing walkers using the paths across the golf course and that she was putting together an application to record the routes on the Definitive Map and asking people to complete user evidence forms if they had used the routes.

The user evidence forms all included a map provided by the applicant showing the application route which was coloured blue on the map and indicated in the key as being an 'intended and actual alternative route' owned by Ingol Golf Course.

Each of the user evidence forms referred to the route as being 'From 54 Greenacres to between 7 and 8 Manor Court through a gate onto a stepped footpath and over a footbridge to join Fulwood Footpath no. 43. From next to 12 Manor Court via a wicket gate past a notice "STEEP HILL" to a footbridge with a paved ford alongside leading to Fulwood FP no. 43.'

Of the forms submitted the majority provided clear information about their use of the routes. However one of the user evidence forms refers to use of the routes by two family members but individual forms were not completed by both. Another referred to use by 4 family members but only one form was completed. Two of the forms were completed by users who stated that they had known the routes for 10 years but not actually used them, 1 form was completed by a user who stated to have used the routes once a week but didn't specify any dates. A further form was completed by a person who stated that he was 71 years old and had used the routes all of his life and another simply stated that they had used the paths all of their life.

All of those users completing the forms have indicated that they regarded the routes as public, and that their friends and family regarded them as public.

Only one user who completed the form specified use of only one of the routes (Routes G-H-I-J, H-L-K) and all others indicated use of both routes.

2 users recount use from between 1935-1943 onwards and explain that they used routes across the fields prior to development of Ingol Golf Course and the associated housing.

15 users refer to use in excess of 20 years with the majority of users (47) referring to use from between 10 and 20 years and 13 users specifying use of less than 10 years.

The majority of use (64) refers to the period between 1980 and 2000 with the remaining users (where dates are specified) dating back before then but also including the 20 year period 1980-2000). All but 6 users claim to have used the route up until 2000.

Use of the paths was predominantly for pleasure purposes with a high percentage of frequent users (at least daily) referring to walking their dogs. Other specific references to type of use included to get to work, to get to the paper shop, as a route to school and to visit friends and for school nature walks.

Specific comments provided on the use evidence forms included:

- A very pleasant path in dry weather but when wet is being ruined by heavy machinery etc. running on it.
- Never considered the path to be part of Ingol Golf Course.
- Used as an alternative way from school especially in the summer as it was more pleasant than walking through built up areas.
- One reason for moving to the area was local access to the footpaths around and across the golf course.
- There is a bench on the path that would indicate that it is public.
- The walkways have been ruined by the actions of the golf course.
- The footpath has deteriorated in recent years due to the golf course driving heavy machinery across it.
- Several accidents with pedestrians have only narrowly been avoided on the steep hill section.
- Used the fields before the golf course was built.
- The golf course seem to view this path as access to the golf course and removed a locked twin barred gate by the wicket gate many years ago for this purpose.
- When the land was owned by the Central Lancashire New Town Development the body employed a firm to construct the path and erect a five barred gate and kissing gate by the side of my property.
- In August 2000 a user was forced off the path and hit by the handle of a strimmer and mower being carried by a golf course vehicle. It was reported to the police and they were told that they should not be on the path.
- Why would children's play areas be built if no one was allowed to use these paths.
- We paid £10 to the Central Lancashire New Town Agency when we moved to Manor Court for the upkeep of paths, bridges, seats, the ford, fitness furniture etc.

Information from the Landowner

Following receipt of the application consultations were carried out with the owners of Ingol Golf Course at that time (Tee Jay Leisure Limited, Sagar House, Eccleston, Chorley). They instructed Kevills Solicitors who requested a meeting with the County Council in 2006 in the hope that a 'pragmatic solution' could be found.

No meeting was arranged and a further Land Registry search has identified that the land crossed by the application routes was subsequently sold to Cleator Manor Limited C/o Whittle Jones Limited, Lynton House, Ackhurst Park, Chorley PR7 1NY in 2006 and that a further sale of part of the land affected by the proposal was completed in 2016 to Ingol Golf Club Limited, 45 Plunginton Road, Preston PR1 7EP.

Information from others

English Partnerships (consulted in 2005)

With regards to the length A-B-C English Partnerships commented that this is an adopted highway and they were surprised that it was being claimed as a footpath. The route between points G-H-I-J and H-L-K was believed by them to be in the ownership of Ingol Golf Club and the line of the permissive route constructed by CNT in approximately 1986.

The route between points B-D-E-F was also believed to be in the ownership of Ingol Golf Club and the line of the permissive route constructed by CNT in approximately 1986.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

User evidence.

Evidence of Central Lancashire Development Corporation's intention.

Against Making an Order

Actual Central Lancashire Development Corporation planning consent drawings not available.

Conclusion

As there is no express dedication it is advised that Committee consider whether there is sufficient evidence on balance for a deemed dedication from use under S31 Highways Act 1980 and/or an inferred dedication at common law from all the circumstances pointing to an intention to dedicate by the owner.

Route A-B-C

It would seem to be the case that the route D-F did not exist prior to the ownership by Central Lancashire Development Corporation established by the Minister under the New Towns Act 1965. A-C was constructed and adopted by Preston Council on behalf of the County Council highway authority. The Adoption plan was coloured up and this route is clearly a narrow path for footpath use, not vehicular. This was not added to the definitive Map and so is included in the application. The legal agreement or dedication is not available but the coloured up plan is good evidence of the adoption by Preston City Council as a footpath. Other documents reference the intention to dedicate and this route should therefore be added to the definitive map.

Route F-E-D

The land for the golf club had been taken by the Corporation by compulsory purchase powers or in the shadow thereof and planning consent obtained by the Corporation by submitting proposals and the Minister making a Development Order. The Development Order and its drawings has not been located but it is suggested that other documents are of assistance.

At common law to infer a dedication from all the circumstances can involve consideration of both user evidence and documents. The Planning Statement referred to earlier in the report clearly shows that the Central Lancashire Development Corporation had an intention to create footpaths and to retain the extent of the existing network. The New Towns Act says that a Development Corporation had the power to do anything necessary or expedient for the purposes incidental to its main objectives. Central Lancashire Development Corporation is obviously unusual as it was developing huge areas of land.

Committee must consider whether there is sufficient evidence of the intention to create the actual routes being considered in this report.

It is suggested that there is sufficient evidence to indicate that this claimed route F-D appears on the "Local Plan" and on the leaflet produced by the owners and on the plan of footpath and planting works and the plan provided by CNT in 1998.

The route has actually been constructed on the ground for some of its length and the style of construction and of stiles would seem on the information to be consistent with that of the Central Lancashire Development Corporation. It links to a footpath coloured up on the adoption plan.

The user evidence is significant and collected and submitted by the Ramblers Association.

The user adds force to the evidence of Central Lancashire Development Corporation's intention to dedicate this route and accepts the route on the part of the public.

It is suggested that Committee may find sufficient evidence from which to infer an actual dedication by Central Lancashire Development Corporation and acceptance by the public can reasonably allege to have occurred or found to have occurred on this claimed route.

The user evidence also enables Committee to consider whether as of right use has been for the twenty years without interruption and without indication of a lack of intention to dedicate such that dedication may be deemed to have occurred under S31 Highways Act 1980. Again the user evidence is supported by plans completed by the users and collected by the Ramblers Association. There is reference to use by the Association for guided walks. It is suggested that the calling into question was the submission of the application or possibly just before then when the challenges by the Golf Club are referred to.

Taking the evidence into account it is suggested that the Committee may decide that an Order can be made for this route F-D to be added to the Definitive Map and Statement and be promoted to confirmation.

Routes G-J and H-K

The documentary evidence pointing to intention to dedicate these routes is as for D-F. not the same. The routes however have been constructed and appeared on the 1998 plan supplied by the Commission. Given the other routes and the reasons for the plan it would arguably be sufficient from which to infer dedication by Central Lancashire Development Corporation.

The user evidence also enables Committee to consider whether as of right use has been for the twenty years without interruption and without indication of a lack of intention to dedicate such that dedication may be deemed to have occurred under S31 Highways Act 1980. Again the user evidence is supported by plans completed by the users and collected by the Ramblers Association. It is suggested that the calling into question was the submission of the application or possibly just before then when the challenges by the Golf Club are referred to. Use would appear to be different and as of right with no lack of intent to dedicate evident.

Taking the evidence into account it is suggested that the Committee may decide that an Order can be made for this route to be added to the Definitive Map and Statement and be promoted 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: 804-379c		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A