

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 footpath between FP Preston 64 and the east bank of Sharoe

Brook, Preston

File No. 804-379d

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for a footpath to be added to the Definitive Map and Statement of Public Rights of Way between FP Preston 64 and the east bank of Sharoe Brook, Preston in accordance with File No. 804-379d.

Recommendation

- (i) That the application to add to the Definitive Map and Statement footpath lengths between Ingol and Walker Lane at Ingol Golf Course, Preston, in accordance with File No. 804-379d, 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 a footpath between Ingol and Walker Lane at Ingol Golf Course, Preston as shown on Committee Plan between A-B-C-D.
- (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 ones. 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 4'.

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 explained that the land crossed by the application route (between point B-C-D on the Committee plan) was transferred to the Council from the Commission for the New Towns in January 1999 and that the Council's Estates section had no comments to make regarding that land.

The City Council also commented that it was their understanding that the transfer/lease of the land from the Commission for the New Towns to the golf club indicated that as part of the Public Path Extinguishment Order made to extinguish a number of paths across the site prior to the construction of the golf course the 'new' paths were 'permissive paths', created as a condition of the transfer/lease.

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 plans.

Point	Grid Reference (SD)	Description
A	5145 3222	Junction with Footpath Preston 64
B	5174 3232	Bridge across Sharoe Brook on former boundary between Preston and Fulwood
C	5185 3234	Application route crosses Footpath Fulwood 51
D	5188 3235	2 metres east of bridge across Sharoe Brook where application route meets application 'Route 5'

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.

In 2005 the Investigating Officer described the application route as commencing at point A on Footpath Preston 64, approximately 100 metres north of the point where it crosses the junction between Dovedale Avenue and Greenfield Way. The route was described as a wide stone path, which, after 10 metres met a substantial timber railing fence with a kissing gate in it. The kissing gate was described as being in very good condition and of the type erected by the Development Corporation. The application route continued along a stone path within a wider area with mature hedges to both sides. It continued for a distance of approximately 150 metres from point A to just beyond the housing development, to a point where a track that appeared to be part of the golf course crossed the application route.

The application route continued in an east north easterly direction as a well-defined and heavily used path with mature hedges to both sides and was crossed by a second track, again as part of the golf course. Before this crossing point there was a single stone gatepost on the northern side of the application route.

Beyond the crossing point the application route continued down a slope towards a large footbridge, described by the Investigating Officer as being of the type erected by the Development Corporation, crossing a tributary of Sharoe Brook and the former Fulwood Urban District Council boundary at point B. The bridge was described as carrying vehicular traffic in connection with the golf course as well as pedestrians and cyclists.

Immediately north of point B is the western end of Footpath Fulwood 51 which was described as having been planted over by a wooded area as part of the landscaping works carried out by the Development Corporation. The Investigating Officer

commented that the Definitive Map route of the footpath had become unusable and that this had probably been the case for many years.

From point B the application route continued from the bridge to follow the stone surfaced path rising up a gentle slope and then following around the side of a planted earth mound to overlook the valley of Sharoe Brook. The planting on the mound was described as obstructing the route of Footpath Fulwood 51.

After approximately 60 metres from the bridge at point B, there was a timber seat on the north side of the route whilst the application route was described as continuing along a stoned path to curve around the hill and then down a gentle slope to point C where it was crossed by the Definitive Map line of Footpath Fulwood 51.

The application route then continued to follow the stoned path leading down to a large timber bridge crossing the Sharoe Brook 2 metres west of point D (and immediately north of the Definitive Map line of Footpath Fulwood 51) and continues across the bridge to point D from where application 'Route 5' continues to Walker Lane along a stoned track. 'Route 5', part of the same application package, is considered in a separate Committee Report.

The bridge across the tributary to Sharoe Brook was noted in 2005 as carrying vehicular traffic in connection with the golf course.

In summary, in 2005 the whole of the length of the application route was described as clear and available for use, in good condition and was described by the Investigating Officer as being well used by the public, on foot and on bicycles. The Officer also commented that the entire length seemed to have been constructed by the Development Corporation with extensive surfacing works, a timber fence and kissing gate, a seat and two large bridge structures along the route.

A further site inspection was carried out in 2019 and found to be accessible throughout although 3 fallen trees across the route required slight deviations to get round them. The path appeared to be well used.

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 route crosses 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.

In this particular case the application route came into existence as part of the development of Ingol East – with particular reference to an Extinguishment Order under The New Towns Act 1965, which was made on 29th June 1978 by the Secretary of State for the Environment. The New Towns Act gave the power to extinguish existing public rights of way to allow for development, but no power to legally create new or alternative routes, although alternative paths were often shown on plans accompanying extinguishment orders.

The application route came into existence as part of the development of Ingol East – with particular reference to an Extinguishment Order under The New Towns Act 1965, which was made on 29th June 1978 by the Secretary of State for the Environment. The New Towns Act gave the power to extinguish existing public rights of way to allow for development, and alternative paths were often shown on plans accompanying extinguishment orders. The New Town Commission could create new highways like any other owner.

The routes claimed were described in the application as having been provided by the former Central Lancashire Development Corporation as a replacement for Fulwood Footpath 49 and Lea Footpath 43 which were extinguished by the 1978 Order and further details of the order and evidence post-dating the designation of the area as part of the Central Lancashire New Town are detailed below and assessment made of the relevant map and documentary evidence discovered:

Document Title	Date	Brief Description of Document & Nature of Evidence
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>
<u>The application route between point A and point B:</u>		
Borough Survey Map	1972-1976	<p>The initial survey of public rights of way was carried out by parish councils in rural districts in the early 1950s and the maps and schedules were submitted to the county council. In the case of urban districts and municipal boroughs the map and schedule produced, was used, without alteration, as the Draft Map and Statement. County boroughs were not surveyed until later. In this instance the application route between point A and point B was in Preston County Borough and the initial survey for this part of Preston County Borough was carried out between 1972 and 1976 by Lancashire County Council officers with assistance from the</p>



Observations

A route is shown on the north side of a field boundary running parallel to the application route between point A and point B and is numbered '5'.

Draft Map

1979

The Draft Map was given the 'relevant date' of 1 February 1979 and notice was published that the Draft Map had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 24th April 1979 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.



Observations		The route shown along the north side of the field boundary (consistent with the dashed line annotated 'F.P' on the Ordnance Survey map, and shown on the Borough Survey Map) is not shown. A route consistent with the application route is shown between point A and point B and is numbered '65'. The Statement accompanying the map describes the route as a footpath from Footpath No. 64 north of Culgaith Farm in a north easterly direction to the Fulwood boundary.
Modified Draft Map	1982	Modified Draft Map was published and placed on deposit in September 1982.



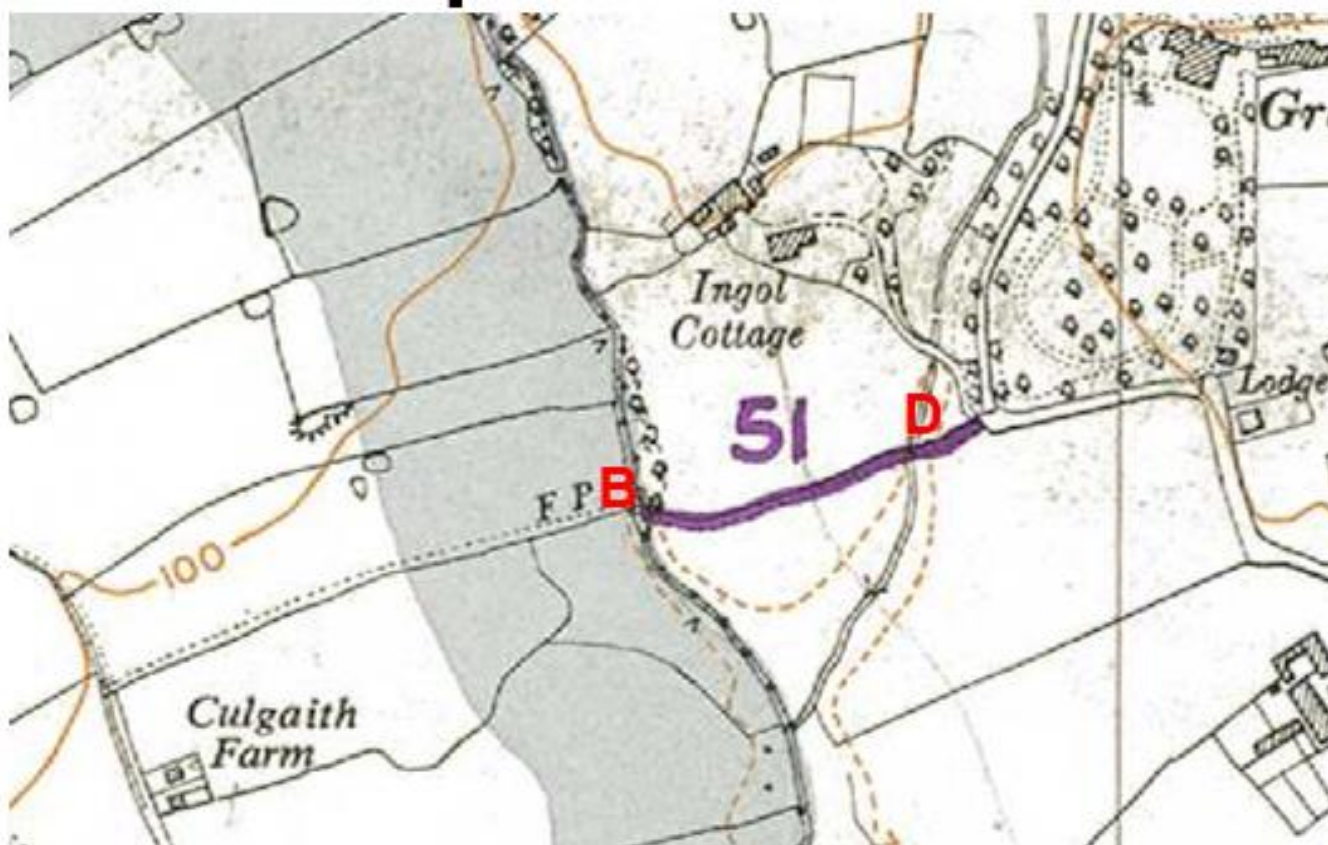
Observations		The route is shown in the same way as it was on the Draft Map with the application route shown as Preston Footpath 65 between point A and point B. No objections or representations to how it was shown were made.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the modified Draft Map became the Provisional Map.
The Definitive Map and Statement	1983	The Provisional Map, as amended, was published as the Definitive Map in 1983 with a relevant date of 1 st February 1979 and is the current legal record.



65	-do-	No 63 From Footpath No 64 north of Culgaith Farm in a north-easterly direction to the Fulwood boundary	524 305
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Observations		The application route is shown between point A and point B as Preston Footpath 65 on the Definitive Map.
Investigating Officer's Comments		A route was originally shown running parallel to the application route to the north of the field boundary (and consistent with the footpath (F.P) shown on the Ordnance Survey base map and numbered '5'.) However, The Draft Map showed the route on the south side of the field boundary (consistent with the application route). An Order was made by Secretary of State on 29 th June 1978 to extinguish parts of various public footpaths crossing land owned by the Central New Towns Commission – including Ingol Footpath 5 which was described as being along the route shown north of the field boundary (as shown on the survey map) and details of this Order are provided later in the report.
<u>The application route between point B and point D:</u>		
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas

		<p>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> <p>In this particular case the land crossed by the application route was within Fulwood Urban District for which no survey was carried out.</p>
Draft Map		<p>Within the Urban District of Fulwood the preliminary survey work was carried out by Fulwood Urban District Council who produced a draft map of routes they believed to be public drawn onto a 6-inch Ordnance Survey map.</p> <p>The Draft Maps were 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>
Observations		<p>The application route is not shown. The route of Footpath Fulwood 51 is shown and there were no objections or representations made.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Observations		The application route was not shown. No representations or objections were made in respect of Fulwood 51 or the fact that the application route was not shown.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown.
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. 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

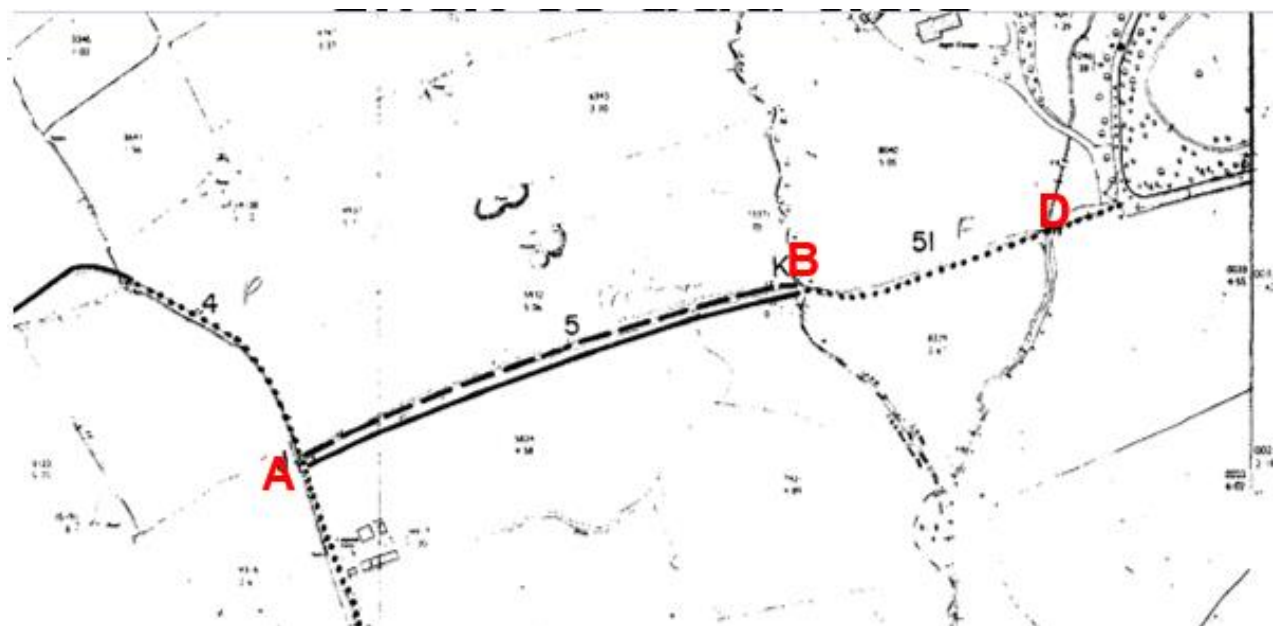
		not yet happened.
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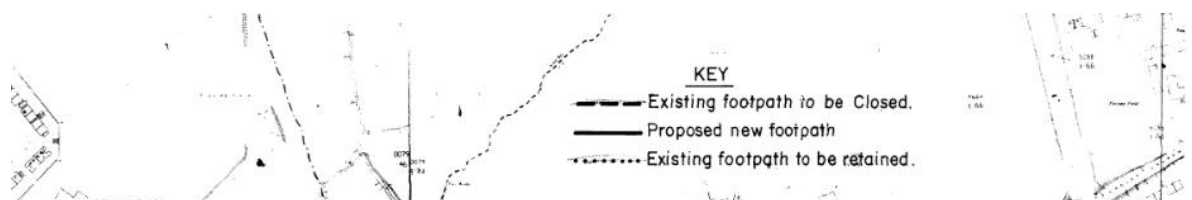
51	"	<p>a field to a stile 8 yards from the corner. This stile is on the U.D. Boundary.</p> <p>To Lane leading to Mayfield Avenue (Preston R.D.). Starts from a stile by the entrance to Ingol Cottage off Walker Lane then runs alongside the hedge to Sharoe Brook which it crossed by means of a footbridge and continues along the hedge side of a stile in the corner of the first field beyond the brook, U.D. Boundary.</p>	0.27	
52	"	To Cadley Causeway. Starts from a set of posts	0.12	(
Observations		The application route was not shown. Fulwood 51 is shown as it was on the earlier edition of the Definitive Map.		
Investigating Comments	Officer's	<p>The Definitive Map process for Fulwood was started in the 1950s prior to the construction of Ingol Golf Course and associated housing. The route shown (Fulwood 51) appears to be the original route which continued west as Footpath Preston 65 when the footpath crossed fields.</p> <p>From investigations carried out (and detailed in this report) the application route between points</p>		

		C-D-E does not appear to have come into existence before 1 st September 1966 (the relevant date of the Revised Definitive Map) so it is not surprising that it is not shown.
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>... have customary lines 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		<p>A copy of the Planning Statement prepared 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). 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</p>

		design of which would also allow for use as cycleways.
Investigating Comments	Officer's	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.
New Towns Act 1965 Order for the Extinguishment of Public Rights of Way Central Lancashire Development corporation Borough of Preston	1978	Order made by Secretary of State on 29 th June 1978 to extinguish parts of Footpaths 41, 43, 49, 48, 50, 42 and 5 as shown on the Order plan and described in the Order Schedule.



Extract from the Plan accompanying the Order

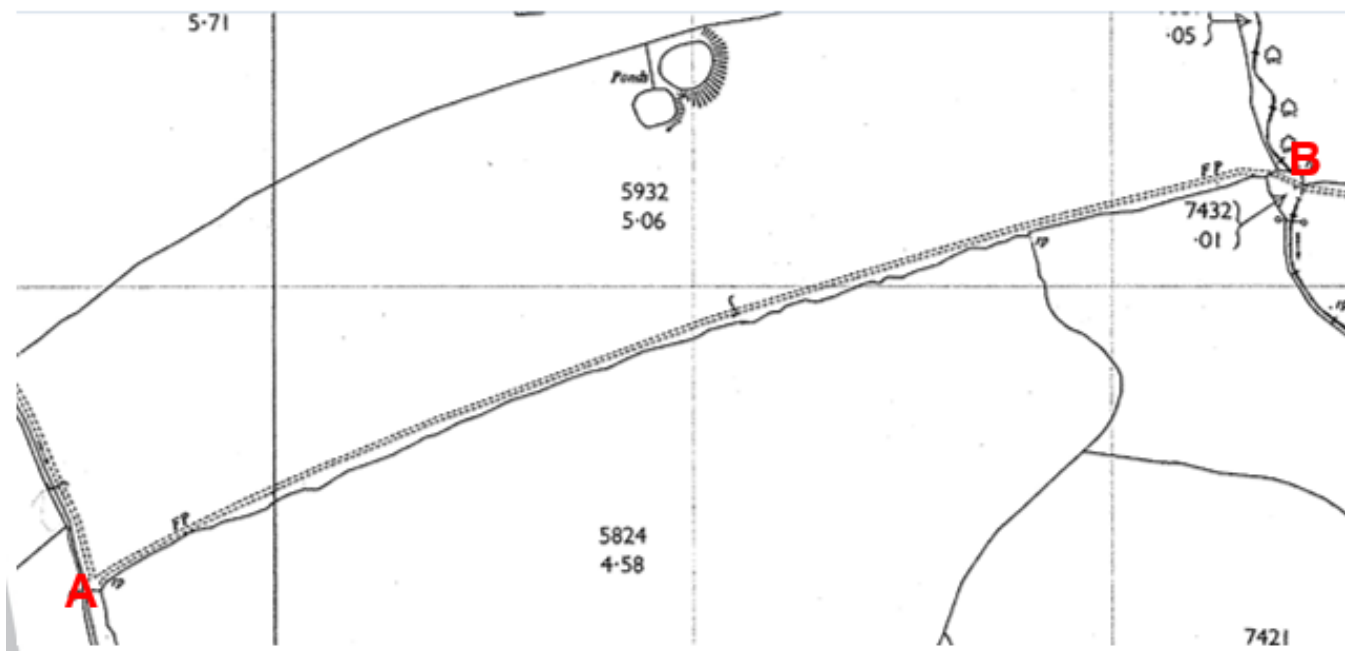


Key to the Plan

That part of footpath number 5 starting from a point marked 'J' on the map approximately 50 metres north of Culgaith Farm, and extending in a generally easterly direction along the southern boundary of Field Ordnance Survey Number 5932 for a distance of approximately 305 metres to a point marked 'K' on the map.

1110 #

Extract from the Order





Extract from 1:2500 OS Map published 1963

Observations

The Order came into effect on the day that it was made (in 1978). There was no reference to the creation of alternative or 'new' public rights of way in the wording of the Order but the key to the Order plan showed proposed new footpaths with a solid black line, existing footpaths to be closed with a long dashed line and existing footpaths to be retained by short dashed lines.

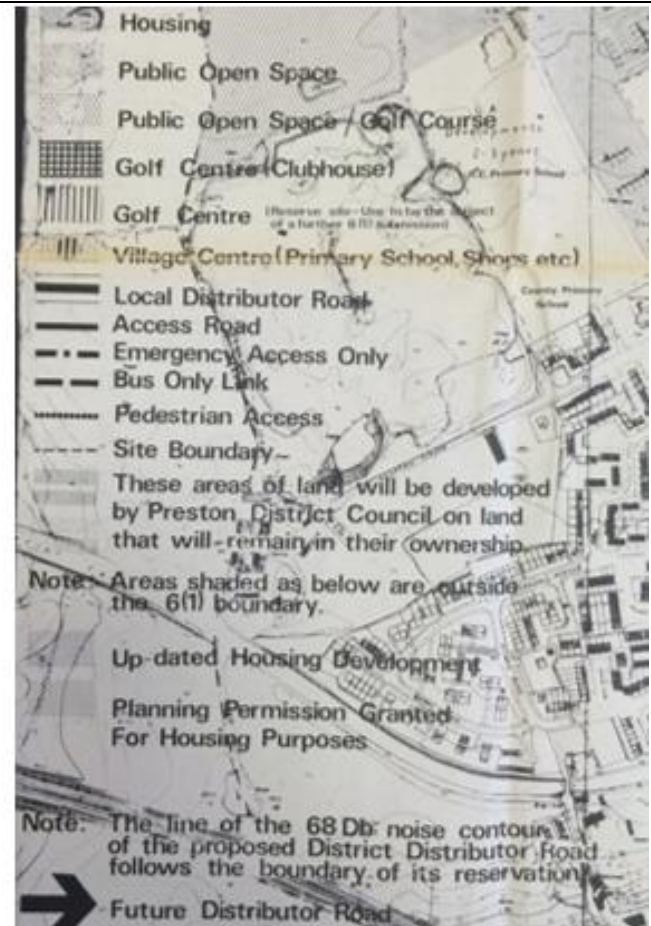
The copy of the Order plan is of poor quality but it is clear that a route described as 'footpath number 5' and shown between points J and K was to be extinguished. The route of this footpath is clarified in the Order Schedule which states that the route to be extinguished runs

		<p>along the southern boundary of Ordnance Survey Field number 5932 which corresponds to the route recorded on the Borough Survey Map as 'Footpath 5' for the former Preston County Borough which was not subsequently recorded on the Definitive Map.</p> <p>A proposed new route is shown running parallel to the Footpath to be extinguished connecting to Footpath Fulwood 51 at point B consistent with the route of the application route between point A and point B and also consistent with what was subsequently recorded as the route of Footpath Preston 65 on the Definitive Map for the Former County Borough of Preston.</p> <p>The application route between point B and point D is not shown.</p>
Investigating Comments	Officer's	<p>The Order plan showed a number of routes described as proposed footpaths – including a route consistent with the application route between point A and point B.</p> <p>The Order does not specify that the routes were to be created as a public right of way (because there was no legal power to do so) but it appears reasonable to infer that the intention was to create alternative public rights of access along the routes shown as proposed new routes.</p>
Aerial Photograph	1960s	Aerial photograph 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 route. The routes of Footpath Preston 65 and Footpath Fulwood 51 cannot be seen although the photograph is consistent with the early Ordnance Survey maps examined in showing that the footpath was rural – crossing fields and following alongside field boundaries.
Investigating Officer's Comments		The application route did not exist in the 1960s – prior to the construction of the golf course and associated housing.
OS 1:2500 Map	1963	1:2500 Ordnance Survey map revised in 1960 and published 1963.
		
Observations		The application route is not shown. A footpath (FP) is shown from close to point A extending in a generally east north easterly direction to the south of a watercourse within OS Field number 5932 to point B where it crosses Sharoe Brook and continues south of a field boundary to cross a further bridge at point D and then in a generally easterly direction to Walker Lane. Between point B and D (through to Walker Lane) the path shown is consistent with the route of Fulwood 51.
Investigating Officer's Comments		The application route did not exist on the ground prior to the development of the golf course. However a route parallel to the application route between point A and point B existed and Footpath Fulwood 51 existed and appeared useable in 1960 – which is likely to explain why a number of people completing user evidence forms (detailed later in the report) refer to walking the route across the fields prior to the development from as early as the 1940s and 1950s.

Central Lancashire Development Corporation plan 'Ingol East'	1977	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'.
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Rev	Date	Description	Sig
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.	Date	
	6/34/17c	Jan 77	
CROWN COPYRIGHT RESERVED.			
NTC 5/2/53			





Observations

This is the earliest plan found in relation to the development of the golf course (pre dating the making of the 1978 Extinguishment Order) showing the proposed layout of the golf course and pedestrian access. A route consistent with the application route is shown between point A and point B continuing from point B along the south side of the field boundary through point D to Walker Lane. Between point B and point D the route shown differs from the application route and is more consistent with (but not exactly) the route of Fulwood 51. Areas were shown designated 'open space'.

Investigating Officer's Comments















This is the earliest plan inspected to show routes crossing land to be developed as part of the golf course. 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


		<p>already been provided along those lines or reflected the existence of existing (recognised) public rights of way.</p> <p>The plan does, however suggest an intention for a pedestrian route to be retained across the golf course between point A and point D as areas were designated open space and sometimes that can make use by right as under The Open Spaces Act people had statutory permission for recreation.</p>
Final Draft Agreement for lease relating to development of golf course and housing	1978	<p>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.</p>
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		<p>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 route under investigation was one of the routes 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. Terminology was somewhat confused referring to 'private footpaths'.</p>
Ingol Golf Villages -	1980	<p>Copy of leaflet produced providing details of the</p>

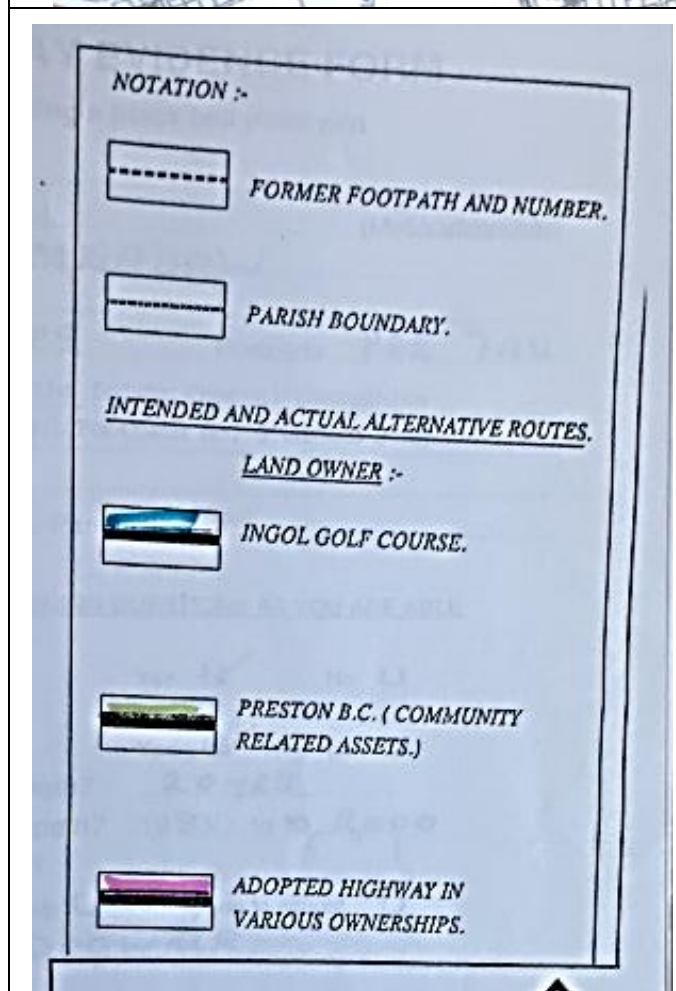
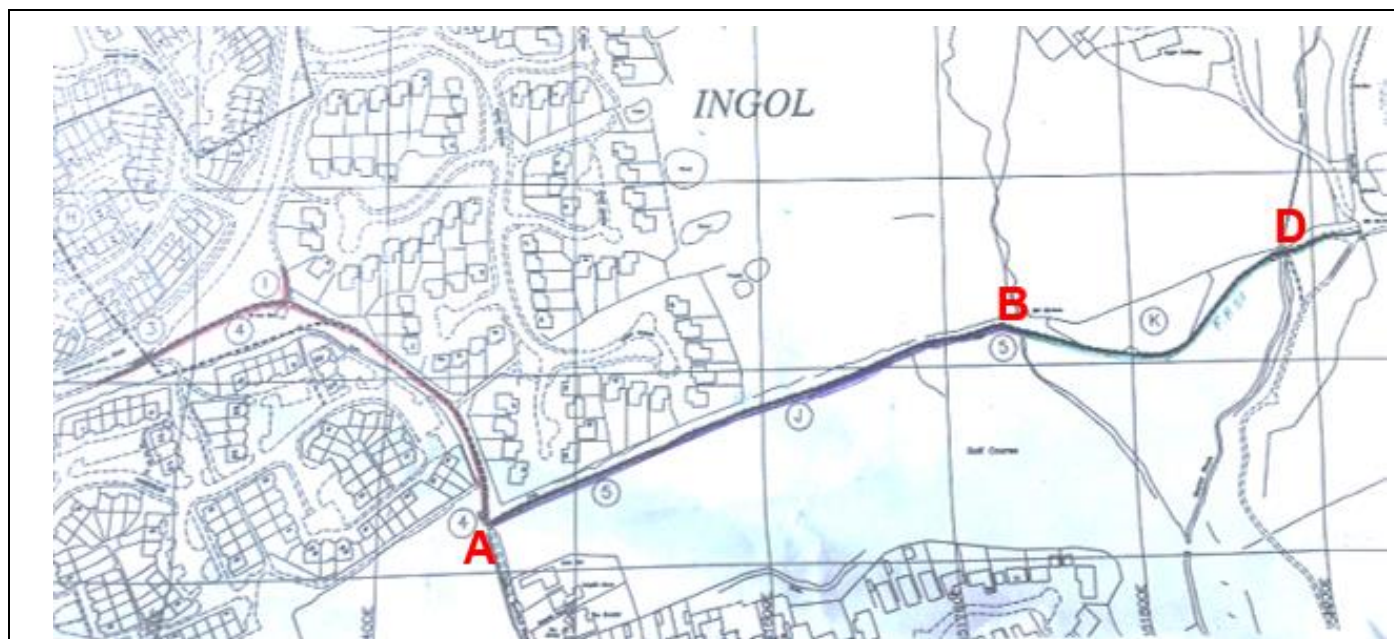
Leaflet published and produced by Central Lancashire Development Corporation

proposed development of a golf course and housing in Ingol and contact details for the various housing developers and Central Lancs New Towns Development 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 course 13 Green numbers  Public open space  Tree belts  New roads  Existing roads  Existing road made into a footpath  Public footpaths  Emergency exit road
Observations		<p>The plan included in the leaflet is a large scale drawing showing routes described as public footpaths which correspond to the routes shown as proposed footpaths in the 1978 extinguishment order detailed above.</p> <p>A route is shown through to Walker Lane which appears to include the application route between points A-B-C-D but which differs from the route applied for between point B and point D suggesting that the route along this section followed Fulwood Footpath 51.</p>
Investigating Officer's Comments		<p>The leaflet was distributed to the public showing details of the proposed development and clearly indicates the intention that a number of routes shown on the 1978 extinguishment order were to be provided as public footpaths reiterating the</p>

		<p>intention to provide alternative routes for those paths extinguished by the 1978 order detailed above.</p> <p>Routes consistent with the application route between point A and point B is shown as a public footpath suggesting that even though the original route of Footpath 65 Preston (5 Ingol) was extinguished it was the intention to provide an alternative public footpath parallel to the route extinguished. From point B the route shown appears more on the alignment of Fulwood Footpath 51 and not along the application route B-C-D.</p>
Aerial Photograph	1988	Aerial photograph taken May 1988 and available to view in the County Records Office.
		
Observations		Despite tree cover a route can be seen to exist consistent with the application route between point A and point B. From point B to point D the application route can be clearly seen as a well-defined track.
Investigating Officer's Comments		The application route existed in 1988 and appeared capable of being used.
Plan used as part of application to show route claimed	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

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New Town House
Buttermarket Street
Warrington
Cheshire
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Fax: 01925 411493
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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.	DRAWN BY AHL.
OS SHEET	

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

		<p>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.</p> <p>The plan was marked up with details of the various landowners and annotated with letters of the alphabet.</p> <p>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 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>The Ordnance Survey base map used shows the application route between points A-B-C-D as a double pecked line subsequently coloured blue to indicate ownership by Ingol Golf Course. The route of Fulwood Footpath 51 between point B and point D is not shown.</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 letter appears to suggest that whilst the route was originally provided on the route shown the public had subsequently deviated from the route in a number of unspecified locations.</p> <p>The plan shows a route on the exact alignment of the application route suggesting that this was the route physically constructed on the ground (and apparent when the Ordnance Survey revised their map).</p> <p>The exact date of the Ordnance Survey map is not known but it appears that the route applied for existed on the ground by at least 1998 (and most probably at an earlier date).</p>
Land Registry Title Number LA512320 and		<p>The land covered by this title includes the application route.</p>

LAN183407		
<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 Manor Limited (freehold) in 2006 and part was sold (leasehold) in 2016 to Ingol Golf Club Limited with the same covenant remaining.</p>
Investigating Officer's Comments		<p>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.</p>
Ordnance Survey Pathfinder 679 (SD 43/53)	1991	<p>1:25,000 OS map published 1991, compiled from larger scale surveys dated between 1956 and 1986, revised for selected changes 1990.</p>



Observations		The application route between point A and point B is shown as a public footpath on the Ordnance Survey Pathfinder Map. The route between point B-C-D is shown partly as a public footpath with a black dashed line shown deviating from the footpath between point B and point C.
Investigating Officer's Comments		<p>Public rights of way indicated have been derived from Definitive Maps as amended held by the Ordnance Survey on 1st march 1990 and are shown subject to the limitations imposed by the scale of the mapping.</p> <p>As stated by the Ordnance Survey, the representation on this map of any other road, track or path is not evidence of the existence of a right of way.</p>
Statutory deposit and declaration made under section 31(6) Highways Act 1980		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

		<p>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		The application route cannot be seen between point A and point B due to tree cover. Between point B and point D the application route can be clearly seen as a substantial track.
Investigating Officer's Comments		The photograph was taken the same year that the application was submitted.
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</p>

		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.
Observations		Neither route is recorded on the List of Streets as being publicly maintainable.
Investigating Officer's Comments		The routes were not recorded as being publicly maintainable but no inference can be drawn regarding public rights.

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 is registered in the ownership of Cleator Manor Limited.

The land crossed by the route under investigation between points B-C-D is registered in the ownership of Preston City Council since it was transferred to them from the Central New Town Commission in 1997.

Summary

Prior to the construction of the golf course it appears that a recognised public footpath existed parallel to the application route between point A and point B which was initially known as Ingol Footpath 5. This route was legally extinguished by the Central Lancashire Development Corporation in 1978.

When the Draft Definitive Map for the Former County Borough of Preston was prepared a route was recorded on it as Preston Footpath 65 which is consistent with the application route between point A and point B and this route is shown to exist on the maps and aerial photographs examined post-dating the development of the golf course.

From point B through to point D it appears that when the golf course was constructed a path was put in which differed from the legally recorded route of Fulwood Footpath 51 but which effectively started (at the parish boundary) and ended (on Walker Lane) as did Footpath 51. Since 1978 the map, documentary and aerial photography considered all suggest that the application route was available to be used as opposed to the route of the definitive footpath and that all the map and documentary evidence considered supports the user evidence submitted for 'Route 4' as being a route made available and used by the public.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted 75 user evidence forms providing evidence from 77 users 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 routes marked on a plan on the Definitive Map and asking people to complete user evidence forms if they had used any of the routes marked.

The user evidence forms all described the route applied used as the 'alternative to be provided by the former included a map provided by the applicant showing the two application routes which were referred to as 'alternative to be provided by the former Central Lancashire Development Corporation for Ingol Footpath no. 5' which was marked 'J' on the map attached to the forms.

Each form was accompanied by a map supplied by the applicant showing the route applied for coloured purple along the section marked J (points A – B on the Committee plan indicating in the key that it was owned by Ingol Golf Course, and marked with a letter K and coloured green between points B-D indicating that this part of the route was across land owned by Preston Borough Council. The section marked green was annotated with 'FP 51'.

Following receipt of the application the Investigating Officer discussed the application with the applicants to explain that the Definitive Route of Footpath 51 was not on the same alignment as the route shown on the application plan (and available on the ground). The applicant confirmed that the route shown coloured green on the application plan (and between points B-C-D on the Committee plan) was the route used and that the user evidence submitted referred to that route and not the Definitive route of Footpath 51.

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.

1 user described using the route as long as the path has existed and another states that they have used it 'all their life' and 'all year round' which provides insufficient detail to include in the statistics given below.

9 users recount use prior to 1978 (when Ingol Footpath 5 was extinguished) but all 9 continued to use the route following 1978 through to 1999-2000.

21 users refer to use of the routes in excess of 20 years – including use pre 1980.

The majority of use refers to the period between 1978 and 2000 with 12 users specifying in excess of 20 years use between those dates and a further 41 users having used the route for between 10 and 19 years during that period. A further 12 people specifying use of the routes for less than 10 years during the 22 year period.

Use of the path 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, as a route to school, to get to the shops, for exercise, running and nature activities, for taking family members and grandchildren for walks, to get to Walker Lane and for use as part of a school fun run.

Specific comments included:

- A very frequently used path.
- Paths used by school children, walkers, runners, dog walkers on a daily basis. Cyclists also use these paths.
- Used the route for 60 years, parents took her on circular walks as a child and has often used the path since then and her husband used the route to lead walking groups along the path.
- The reason for moving to the area was local access to the footpaths around and across the golf course.
- Uses the footpath every morning to walk their dogs. The first part is extremely muddy and hasn't been maintained since it was first built and it is obvious that the golf club don't want people to use it. The second part (owned by the Council) is used by the Golf Club as a short cut for their tractors.
- Has lived in the area since 1969 and believes that the countryside should be available for all to enjoy – not just golfers.
- Used the route on Ramblers Association Wednesday walks.
- The path is clear, well surfaced and can be used in all weathers with ordinary footwear. There is a bench provided from which you can enjoy the views.
- A popular path with people of all ages.
- A popular picnic spot.

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, Ecclestone, 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.

Information from others

The Ramblers Association submitted a letter they had received from Central New Towns North dated 6 November 1998 enclosing a plan referenced CNT/CL/E6133 dated October 1998 which they explained was based on the latest Ordnance Survey plan, marked up with routes of the former footpaths and the approximate routes of the various alternative footpaths provided in respect of closures to public footpaths as part of the development of the area by the Central Lancashire Development Corporation.

They explained that several of the alternative footpaths crossed Ingol Golf Course and the layout of the course indicated alternative routes for footpaths, which were shown in blue on the plan provided. They explained that the Central Lancashire Development Corporation sold the golf course to Hemm Inns Limited in 1985 and put provisions in the transfer to ensure that footpaths indicated in the original layout approved in 1978 were not obstructed or interfered with.

Included in the plan provided was the application route with the section A-B coloured blue. This plan was subsequently used by the applicant when gathering user evidence for the routes.

With regards to the application route CNT North described the route between point A and point B as an alternative route to Footpath 5 across land in the ownership of Ingol Golf Course. They comment that the route followed the line intended on the Golf Course layout and that it was shown as a Public Right of Way on the current Pathfinder 1:25000 map.

Route K – which comprised of the application route from point B-C-D continuing through to Walker Lane as an amenity footpath following a different line from that indicated as a public right of way on the current Pathfinder 1:25000 map.

English Partnerships (consulted in 2005) responded to the county council consultation by stating that they believed the application route – including both the section across Ingol Golf Club, and the section across Preston City Council land – was believed to be a permissive route.

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.

It would seem to be the case that the route did not exist prior to the ownership by Central Lancashire Development Corporation established by the Minister under the New Towns Act 1965. 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 route being considered in this report.

It is suggested that there is sufficient evidence to indicate that this claimed route A-B was intended to be dedicated. A-B appears on the "Local Plan" appearing to be the replacement for FP5 and to a large extent on the Order plan itself re the extinguishment of existing footpath 5 and on the leaflet produced by the owners.

B-D follows a different alignment than FP51 but a different line from the claimed route. It does not appear on the Local Plan on the claimed line and again on the leaflet is more straight. It does however appear on the plan sent by CNT in 1998.

The routes have actually been constructed on the ground for some of its length and the style of construction and of stiles and bridge would seem on the information to be consistent with that of the Central Lancashire Development Corporation.

It is advised that the section B-D which crosses land designated "Public Open Space" on the Local Plan document and within Preston City ownership can still be "as of right". It is suggested that the use of the route is linear and asserting a public right of way would be capable of establishing a public right of way over the route despite the possibility that Preston City Council's powers to hold land as open space

may also apply – to hold in trust to allow enjoyment thereof by the public as an area used for the purposes of recreation – i.e. use "by right". Whether Preston City do have public open space designated is not known but it is suggested that the use would still be capable of building a public right in this matter on this section.

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. The line of the route B-D was constructed and this may indicate the line as intended.

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 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: 804-379d		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A