

Regulatory Committee

Meeting to be held on 11 March 2020

Part I

Electoral Divisions affected:
Preston North and
Preston West

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

i) Addition of Footpaths from Lower Greenfield to the east bank of Sharoe Brook with a spur to Walker Lane, Preston

ii) Addition of Footpath from Walker Lane to FP Fulwood 43, Preston

File No. 804-379e

(Annex 'A' refers)

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Executive Summary

Application for the addition to the Definitive Map and Statement of Public Rights of Way of:

1. Footpaths from Lower Greenfield to the east bank of Sharoe Brook with a spur to Walker Lane, Preston
2. Footpath from Walker Lane to the junction of Footpaths Fulwood 43 and 46 at Sharoe Brook, Preston

in accordance with File No. 804-379e.

Recommendation

(i) That the application for the addition to the Definitive Map and Statement of a Footpath from Lower Greenfield to two different points on Walker Lane, Fulwood, Preston City, in accordance with File No. 804-379e, be accepted.

(ii) That the application for the addition to the Definitive Map and Statement of a Footpath from Walker Lane to the junction of Footpaths Fulwood 43 and 46 at Sharoe Brook, Preston City in accordance with File No. 804-379e, be accepted.

(iii) 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 a Footpath from Lower Greenfield to a point on the east bank of Sharoe Brook and

a point on Walker Lane with a further spur to a different point on Walker Lane, Fulwood, Preston City on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plans between points A-B-C-D-E-F-G, E-G and D-H.

(iv) 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 a Footpath from Walker Lane to the junction of Footpaths Fulwood 43 and 46 at Sharoe Brook, Preston City on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plans between points I-J-K-L-M-N.

(v) That being satisfied that the higher test for confirmation can be met the Orders 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 on behalf 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 5' and because of its length and the fact that it is split by Walker Lane it has been split down further into two routes:

Route 5(1) - Application to record a public footpath from Lower Greenfield to two different points on Walker Lane, Fulwood, Preston, and shown on the Committee plans by a thick dashed line between points A-B-C-D-E-F-G, E-G and a spur D-H.

Route 5(2) – Application to record a public footpath from Walker Lane across the former Ingol Golf Course to the junction of Footpaths Fulwood 43 and 46 near Sharoe Brook, Preston and shown on the Committee Plans by a thick dashed line between points I-J-K-L-M-N.

In respect of the application for Route 5(1) the original description of Route 5 provided by the applicant only described the route from the footbridge near the east end of Greenfield (point C) but it was subsequently clarified with the applicant that the route also included the length shown between points A-B-C. Further clarification was also sought with regards to the route E-F-G and E-G as the applicant had described the route as being to/from Walker Lane and the junction with Footpath Fulwood 51. The routes shown on the Committee plan were confirmed by the applicant as being those they intended.

In respect of the application for Route 5(2) the applicant also confirmed that both routes shown between points M and N were included in the application.

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 that the areas of land in Council ownership which are adjacent to Ingol Golf Course were transferred to the Council from the Commission for the New Towns in January 1999 and that the Council had no information on its records regarding neighbouring landowners or tenants.

It was their recollection that the Council had dealt with a query from a member of the public in 2000 regarding a path from Tanterton Hall Road to Durham House. They state that at that time they had sight of a copy of the Public Path Extinguishment Order made by the Commission for the New Towns and that the Order extinguished a number of public rights of way in that area.

They also explained that further queries were raised by a resident regarding the status of other 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 but were not aware whether they had then pursued 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'.

It was also noted that from experience of dealing with enquiries about routes crossing the golf course, the Highways Department were of the opinion that the local residents considered that these paths were public footpaths and, on that basis, they had continued to use paths which abut, and in some cases, cross the golf course.

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	5178 3206	Open junction with Lower Greenfield between house numbers 40 and 41
B	5182 3207	Kissing gate
C	5188 3206	Footbridge over Sharoe Brook
D	5187 3220	Junction of application routes
E	5189 3232	Junction of application routes
F	5188 3235	Junction of application route with unrecorded path
G	5192 3236	Kissing gate adjacent to metal field gate
H	5211 3228	Junction with Walker Lane – access via a metal stile and gap in 2006
I	5212 3229	Junction with Walker Lane – access via gap adjacent to wooden field gate in 2006
J	5210 3235	90 degree bend in route
K	5228 3271	Route enters woodland from Ingol Golf course
L	5223 3294	Security fence across route erected in 2018
M	5221 3304	Junction of application routes at top of hill in woodland adjacent to railway line
N	5220 3309	Junction of application routes with Footpaths Fulwood 43 and 46

Description of Routes

The application was submitted in 2000 and a site inspection was carried out by the county council until 2006.

Because the application relates largely to user evidence pre dating 2000 details of the 2006 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 claimed to have been used.

A further site inspection was carried out in 2018 to see what changes had occurred since the 2006 inspection.

Route 5(1)

Application route from Point A – Point E

The application route commences on Lower Greenfield at point A on the Committee plan and in 2006 was described as following a tarmac path between numbers 40 and 41 Lower Greenfield to descend a flight of concrete steps to a kissing gate at point B.

From point B the application route followed a stoned path through an open grassed area, descending in a generally south easterly direction to a timber footbridge crossing Sharoe Brook at point C. From point C a stoned path ascended through a stoned area with the remains of a wooden seat to then continue in a north easterly direction through a grassed area planted with trees and shrubs to ascend a curving

flight of timber steps and then continued along a stoned path constructed with timber edging boards in a generally north westerly direction rising gently uphill through long grass and shrubs with the golf course to the east.

Golf tees were noted as being visible to the side (east) of the route and at the top of the hill two short grey metal posts were noted as being in the ground close to point D.

From point D the surfaced track continued in a generally northerly direction towards Sharoe Brook through an area of mown grass and shrubs to point E.

Application route from point E-F-G and E-G

From point E the route was described as splitting with the more westerly route following a stone path approximately 1.5 metres wide through a mown grassed area along the side of the brook. After approximately 20 metres it passes through the line recorded as footpath Fulwood 51 and continues a further 5 metres to the junction of a track running west to east at point F.

From point F the application route turned right (east) at this point to follow a stoned path rising gradually uphill for 40 metres to a metal gate (locked) and adjacent wooden kissing gate which provided access out onto Walker Lane.

Also included in the application was a second route from point E which extended in a north easterly direction ascending a flight of wooden steps to provide direct access to the metal gate (locked) and pedestrian wooden kissing gate at point G.

The Investigating Officer was of the opinion that the gates and associated fencing and steps all appeared to have been provided by the Development Corporation and were in good condition.

Application route between point D and point H

From point D, where in 2006 the Investigating Officer noted the existence of two short, grey metal posts at the junction between the rough grass and the fairway of the golf course. The application route was described as crossing the rough grassed area running parallel to the boundary hedge and approximately 10 metres to the south of it. There was no visible trodden path through the grass along the line of the route.

After a distance of approximately 100 metres it was noted that the application route was crossed by a very well-defined trodden path running across the field and golf course.

The application route was described as continuing through an area covered by brambles coming from the field boundary hedge, approximately 20 metres from the hedge into the golf course. There was a trodden path around the brambles which then continued past a flooded area. The trodden path then turned a little to the south and crossed a golf fairway to join a stone pathway. Near the point where the

application route joined the stoned path there was a grey metal post with a notice on it saying 'INGOL GOLF CLUB PRIVATE PROPERTY'.

The route followed the stoned pathway to Walker Lane at point H where access was available via a gap and adjacent metal stile.

In summary, the length D to H was described as being predominantly over rough grass alongside the golf course with a trodden path only visible over a short part of the route, with a stoned path giving access from Walker Lane at point H, where access was provided through an opening and a metal stile alongside.

When the routes described above were investigated again in 2018 it was noted that they were all extremely well used with a number of walkers seen using them at the time of inspection. The steps and wooden edging boards described in 2006 were still in existence although becoming quite worn and the wooden footbridge at point C, although still useable was becoming rotten.

The route between point D and point H passed through an area of rough grass and overgrowth and there was no trodden path visible. A wooden gate existed at point H which was in an open position and there was a sign stating 'Ingol Golf Club Private Property'. The golf course was no longer in existence and the former course had been left untended.

Route 5(2)

Application route between point I and point N

The application route started from point I at the junction with Walker Lane, opposite point H, where there was a stone surfaced lay-by area providing access to the golf course to the east through a wide opening restricted by metal barriers. The lay-by was approximately 20 metres long and at its northerly end there was a timber field gate. The gate was locked at the time of inspection but there was a visible well-trodden path worn around the side of the eastern stone gate post, between it and the mature hedge.

The trodden path then crossed to the rear of the gate and remained visible through the open field, following alongside the boundary hedge for approximately 60 metres to point J. From here the trodden path turned to continue east north east passing through a narrow part of the field which then opened out on the north side. The application route then continued along the northern side of the hedge to a line of trees and then out onto the golf course near to a bunker.

From here the route was described as running along the edge of the fairway and the rough grass, for approximately 200 metres to the end of a well-established hedge. There was no trodden path reported as being visible on the ground over this section of the well-maintained golf course at the time of inspection.

The path was described as then crossing a rough grass area leading away from the hedge line. After 100 metres it passed down a slope to the west of a pond. The route then continued up a slope and crossed a stone path made for golf club use. There

was no trodden path visible through the area of rough grass. The application route was described as continuing across part of the golf course to the edge of a wooded strip running alongside the railway line at point K where it was noted that although there was no evidence of a trodden path over the well-maintained golf course, there was a trodden path clearly visible into the wooded area at point K.

From point K the Investigating Officer described there being a very well-used path running south through the wooded area at the side of the railway line. This path was not included in the application although it linked to it.

The application route continued north north west from point K over a well-compacted soil pathway, approximately 2 metres wide, constructed with timber edging boards. The surface was described as very well used and worn bare of vegetation although there were tree roots and stumps within the path. The high metal security fence of the West Coast Mainline railway is on the east side of the path for approximately 340 metres to a point where the route divided into two at point M. One part – immediately alongside the railway fence – was described as narrow and indistinct, dropping down a steep planted slope towards point N. The final section of this length was over a vertical timber retaining wall approximately 450 mm high. There were no steps or gap for access over this onto the banking.

The other part of the application route continued from point M to follow what was described as a well-used and clearly visible path towards the north-west through the tree planted area, where despite storm damage resulting in fallen trees across the route, there was an alternative well-trodden path visible around them. After approximately 20 metres the path led onto the curving stone track leading from the golf course. This part of the route was also used by the golf club, including use with vehicles and ran down to point N, which was on the south side of a timber footbridge crossing Sharoe Brook at the junction with Footpaths Fulwood 43 and 46, and the other part of the application route alongside the railway and down the steep planted slope referred to above.

In summary, in 2006:

- Access from Walker Lane at point I was possible at the side of the locked timber field gate into the open field, and showed signs of being well used.
- The visible trodden path became less obvious through the fields and over the golf course.
- A trodden path – constructed in places with timber edging boards and stone – ran from immediately before point K and continued alongside the railway line to point M.
- From point M, the challenging route through the wooded area alongside the railway fencing was a steep slope down with no visible path and the curving path, away from the railway, was very well used over a gentle gradient.

In conclusion, the Investigating Officer at that time was of the opinion that whilst there was no visible trodden path over the golf course it would appear that the application route was in regular use by the public.

When the route was re-inspected in 2018 metal security fencing had been erected across the route at point I and access through it was not possible. The golf course was no longer in existence and the land forming part of it was fenced off and overgrown. There was no access along the route through to point L where a further metal security fence had been built across the route. Beyond point L to point M a trodden track through the woodland was still visible which curved north west at point M to take the gently sloped track which curved round to point N. The land across which the route from point M to point N ran parallel to the railway fence was steep and vegetated with no sign of a trodden or useable track.

Map and Documentary Evidence

A variety of maps, plans and other documents was examined to discover when the routes came into being, and to try to determine what 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 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.

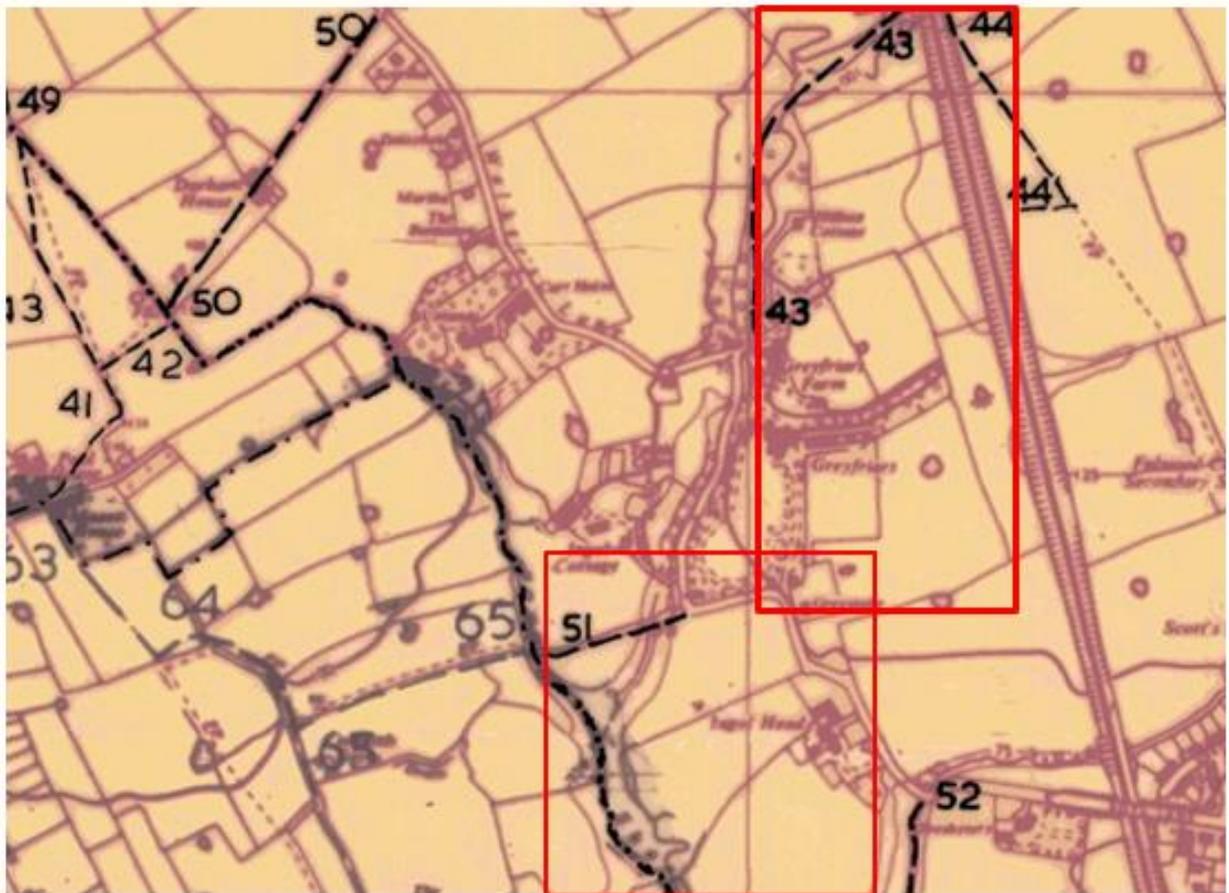
The Central Lancashire New Town (Designation) Order was approved on 14 April 1970 and the Development Corporation formerly constituted on 17 February 1971. The Commission was in existence for 16 years until it was formally dissolved on 31 March 1986 and during that time the area to the north of Preston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

The routes applied for came into existence as part of the development of Ingol East and in particular the construction of Ingol Golf Course and associated housing and there is no evidence to suggest that they existed prior to that time.

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 application routes were not shown 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 application routes were not shown and there were no representations made to the county council in relation to them.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application routes were not shown.
Revised Definitive Map of Public Rights of Way		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion

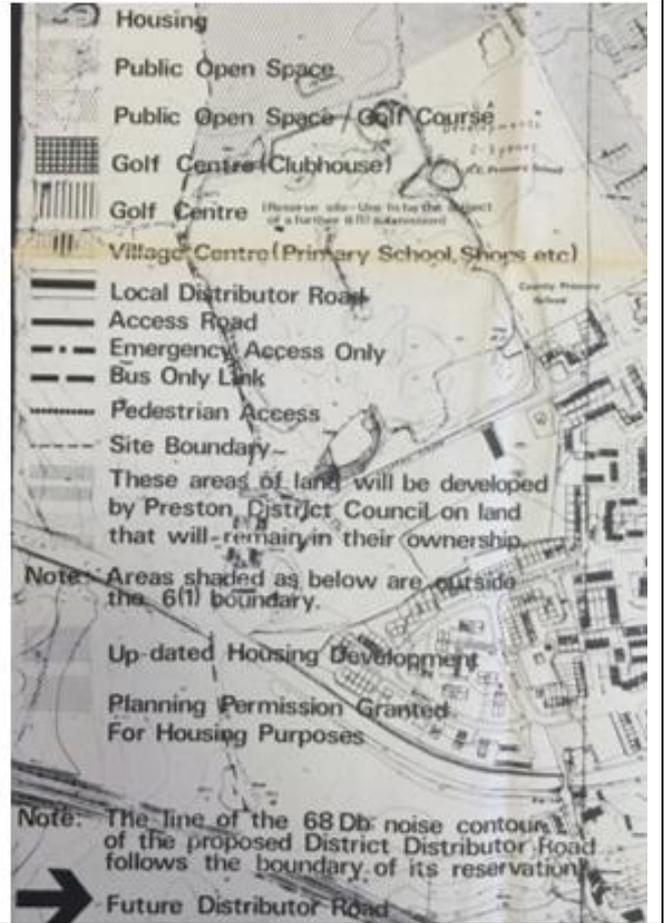
(First Review)		orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. 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.
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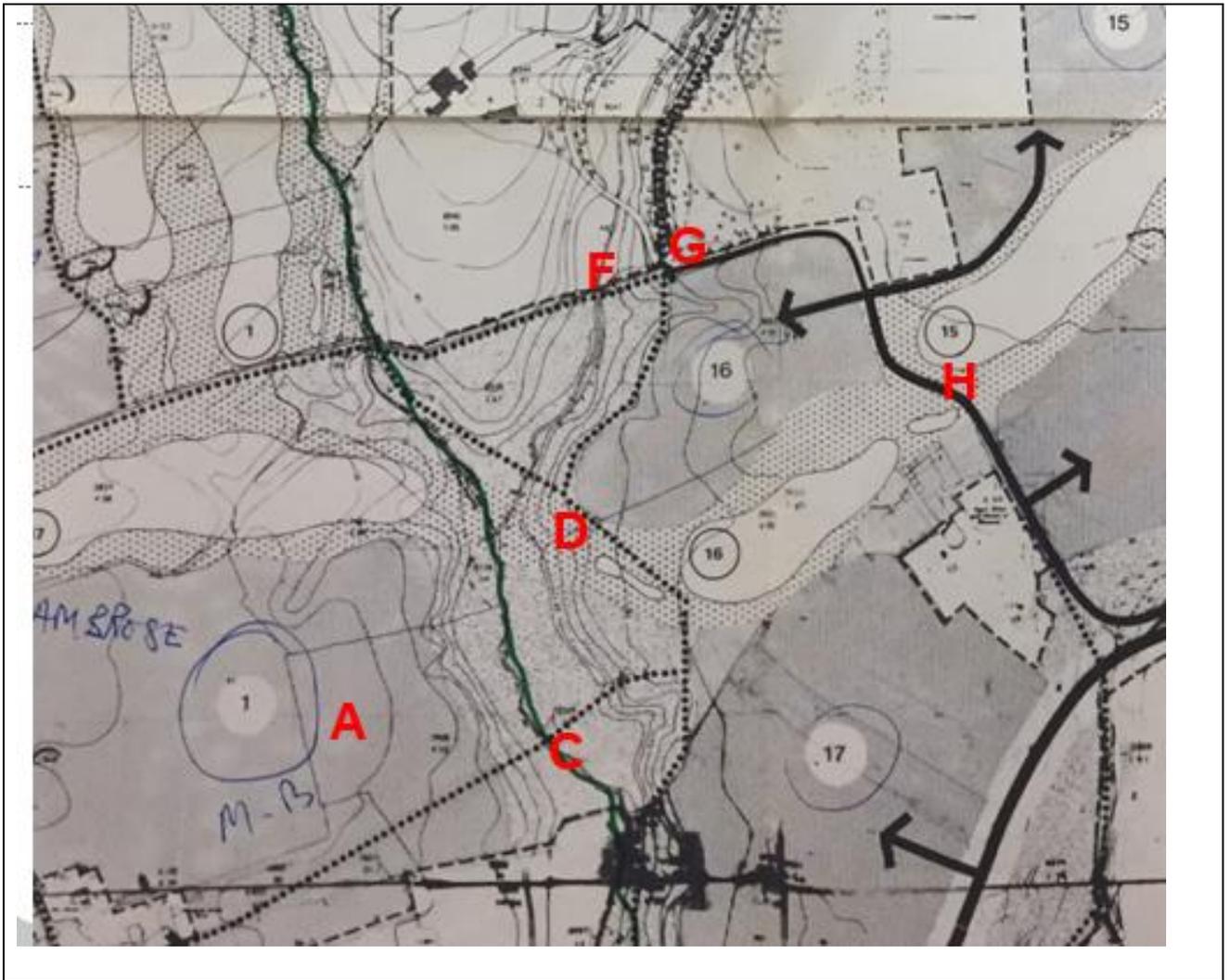


Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the routes were considered to be public right of way by the Surveying Authority. There were no objections to the fact that the routes were not shown from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Central Lancashire Development	1974	Copy of Central Lancashire Development Corporation Ingol East, Residential and

Corporation Planning Statement		Associated Development Planning Statement prepared with reference to Section 6(1) New Towns Act 1965.
<p>...with bus-only lanes 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).</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 relating to public rights of way which explains that the existing network 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		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 by bicycle.
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 red pen and replaced by 'Local Plan'.







Observations

This is the earliest plan inspected to show the proposed layout of the golf course, areas to be designated as public open space/golf course, separate areas of public open space and land allocated for housing and site boundaries. The plan also showed pedestrian access routes crossing land to be developed. With regards to Route 5(1) the application route from point A-B-C-D is not shown (and neither are the houses or road system leading into Lower Greenfield). A route is shown south of point A leading to the approximate position of point C and then through to point D (on a similar alignment to the application route).

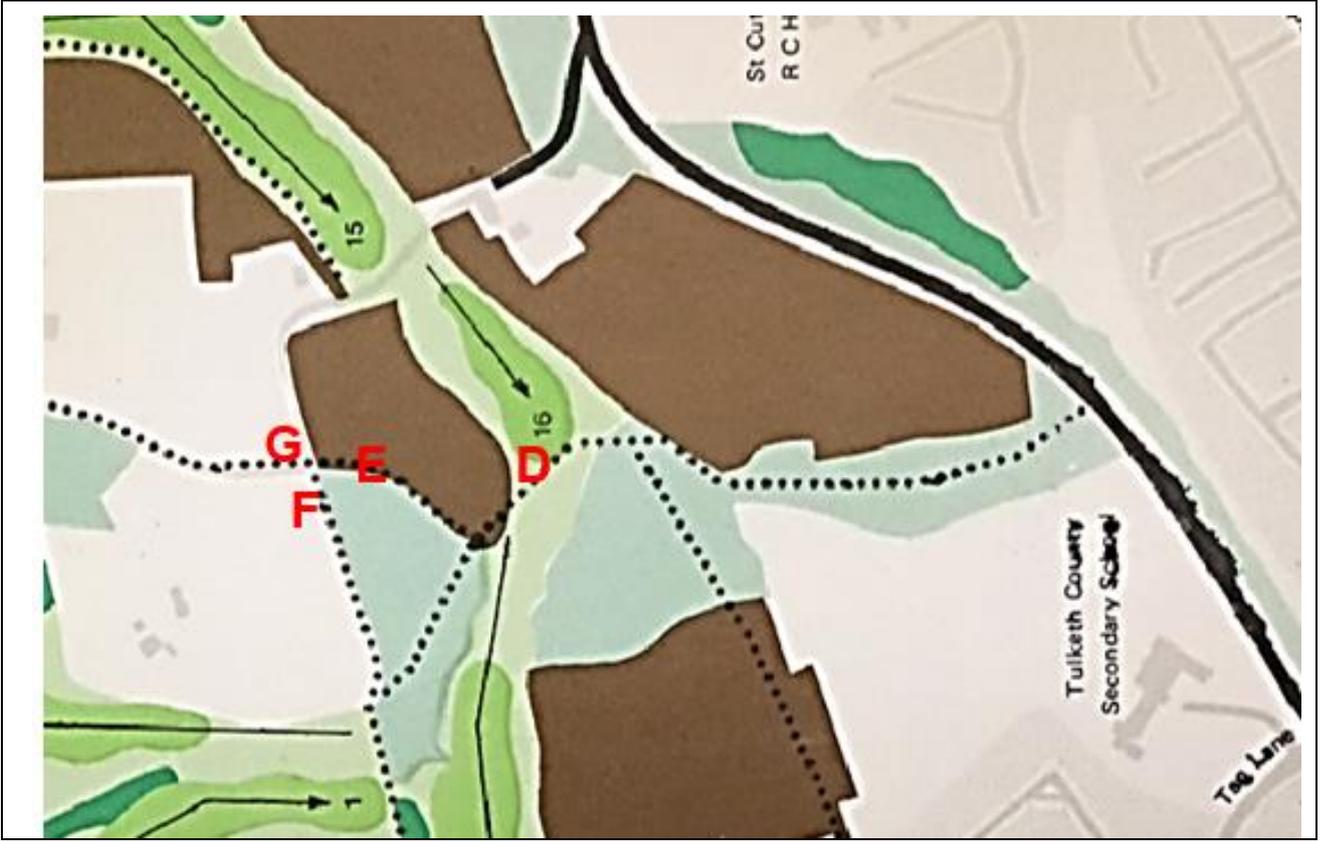
		<p>From point D to point G a route is shown broadly consistent with the application route D-E-G. The route E-F is not shown but a route is shown between point F and point G. The application route from point D to point H is not shown.</p> <p>In respect of Route 5(2) none of the application route is shown.</p>
Investigating Officer's Comments		<p>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. However, it appears that the area was in the very early stages of development and the plan shows a mixture of existing public and private access routes, the routes of some existing public footpaths and a number of proposed pedestrian access routes.</p> <p>With regards to application route 5(1) it appears that it was the intention to create pedestrian access routes along much of the application route (with the exception of the route D to point H) and that what is shown on this plan was later adapted and implemented on the ground.</p> <p>The application route 5(1) did not however appear to have existed in 1977.</p> <p>With regards to application route 5(2) no part of the route is shown on the plan to exist or be proposed and it does not appear to have existed in 1977. Routes across open spaces can sometimes mean that use is by right as under The Open Spaces Act people have statutory rights 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</p>

		<p>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 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.</p>
<p>New Towns Act 1965</p> <p>Order for the Extinguishment of Public Rights of Way</p> <p>Central Lancashire Development corporation</p> <p>Borough of Preston</p>	1978	<p>Order made by Secretary of State on 29th 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.</p>
		<p>The Order came into effect on the day that it was made. 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.</p> <p>Whilst the order plan showed the area crossed by the application routes they are not shown as either existing footpaths to be retained or closed and are not shown as proposed new footpaths.</p>
Observations		<p>The creation of the application routes was not</p>

		considered as part of the order making process and they were not shown on the order plan or referred to in the order.
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.

Key to map

-  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>A leaflet titled 'Ingol Golf Villages' was submitted as part of the application and a copy is available to view in the County Records Office.</p> <p>The leaflet was produced to promote the housing scheme to be implemented in Ingol and explains that Miller Buckley Golf Services, in association with the Central Lancashire Development Corporation were developing a golf course and housing complex in Ingol.</p> <p>The golf course is described as an 18 hole championship course which was to be carefully integrated with the housing and open space 'system' with particular reference to access to and along Sharoe Brook and that there would be additional areas of woodland planted within the woodland and open space. It was also stated that picnic spots and park areas were to be provided.</p> <p>A plan included in the leaflet was a large scale drawing showed the golf course in detail with areas to be developed for housing marked brown. Routes described as public footpaths were shown on the map crossing the golf course and passing through the areas marked for new housing.</p> <p>The area within which Lower Greenfield is now situated is coloured brown (to indicate new housing) with a route shown as a public footpath passing through it through to the approximate location of point D and appears to be consistent with the application route A-B-C-D. From point D the application route is shown as a public footpath through point E to point G and the route from point F to point G is shown as part of a longer route. The application routes between point E and point F and point D and point H are not shown.</p> <p>The route referred to as Route 5(2) is largely shown on the plan as a public footpath although it is shown to start on Walker Lane north east of point I and only the route immediately adjacent to the railway is shown between point M and point N.</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</p>

		<p>number of routes were to be provided across the golf course and through the housing areas as public footpaths reiterating the intention of the landowners and Central Lancashire Development Corporation to create a network of public footpaths across the golf course and surrounding areas.</p> <p>Most of the application routes are shown (with the exception of the route between point E and point F and point D and point H) although the scale of the map and diagrammatic format mean that it is not possible to confirm that the routes were shown on the exact alignment claimed.</p>
Aerial Photograph	1988	Aerial photograph taken May 1988 and available to view in the County Records Office



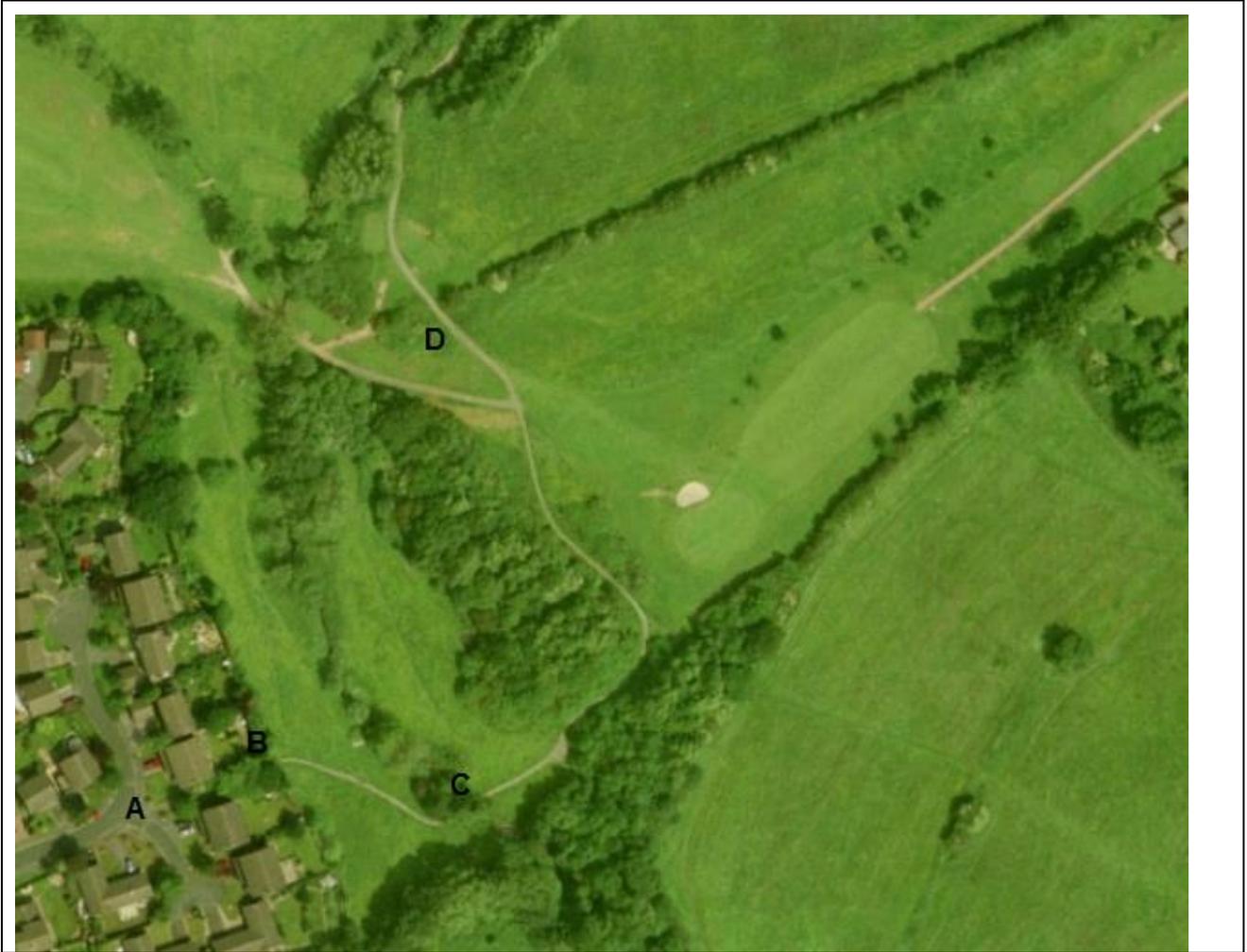


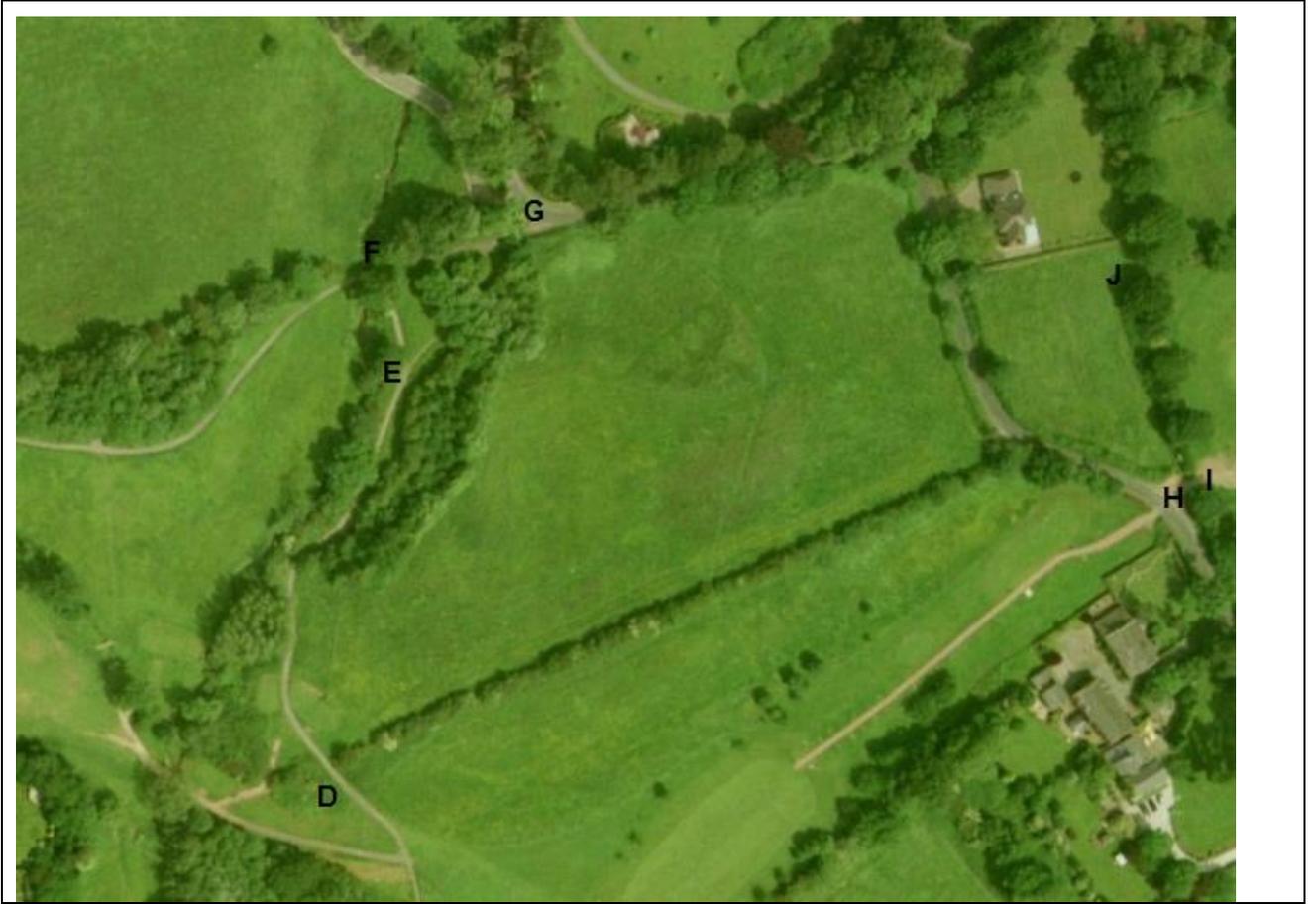
Observations

The application route can clearly be seen between points A-D-C-D and looks to be a surfaced path. The continuation of the route from point D to point E can also be seen and the route splits at point E and despite the tree cover it looks like the routes between point E-F-G and E-G were also in existence. The route between point D and Point H may have been accessible but no worn track is visible.

The route between point I and point J is not visible on the photograph although there appears to be a gap in the hedging at point J that looks quite worn. Traces of two worn 'paths' can be seen across the golf course between point J and point K but neither are entirely consistent with the application route.

		Tree cover means that it is not possible to see whether the application route existed between point K and point N.
Investigating Officer's Comments		<p>The photographs were taken 12 years before the application was submitted.</p> <p>The application route referred to as Route 5(1) between points A-B-C-D-E and E-F-G and E-G existed on the ground in 1988 as a physically constructed route suggesting that it had been physically created for use by the public (rather than as access to or for the golf course). The route between point D and point H was not visible as a worn track or constructed route although it may have been possible to walk it.</p> <p>Route 5(2) is largely obscured by tree cover. It did appear that worn tracks existed across the golf course – one of which followed reasonably closely to part of the application route between point J and point K but there was no clear evidence that the application route existed.</p>
Aerial Photograph	2000	Aerial photograph available to view on GIS.







Observations

The photographs were taken in the same year as the application was submitted.

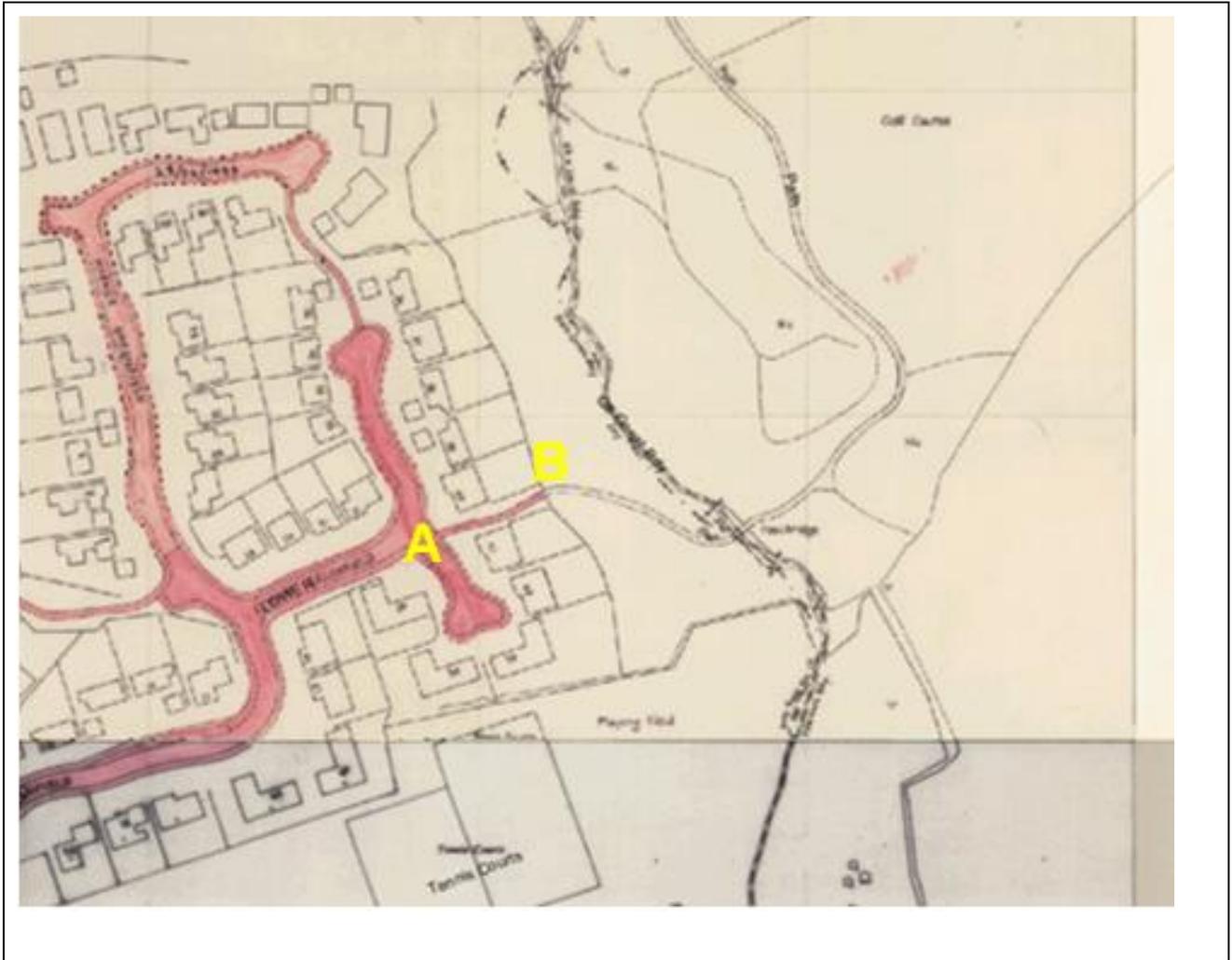
With regards to Route 5(1) it is not possible to see the route between point A and point B due to tree cover but a clearly visible route continues from point B to point C and through to point D. This route appears to be more significant than a trodden track but looks to have been physically created and surfaced. From point D a clearly visible path continues to point E where it splits and although tree cover obscures the view routes E-F-G and E-G appear to exist.

The application route from point D to point H

		<p>may have been useable but there is no visible worn track (which would indicate significant use or that the path had been physically constructed) along that route.</p> <p>Route 5(2) is not visible on the photograph. From point I-J-K there is no clearly visible route although between point J and point K the route crosses the golf course and appears to have been accessible on the ground. The remainder of the route from point K to point N passes through trees and it is not possible to see whether a route existed or not.</p>
Investigating Officer's Comments		<p>The photographs were taken the year the application was submitted.</p> <p>The application route referred to as Route 5(1) between points A-B-C-D-E and E-F-G and E-G existed on the ground as a physically constructed route suggesting that it had been physically created for use by the public (rather than as access to or for the golf course). The route between point D and point H was not visible as a worn track or constructed route although it may have been possible to walk it.</p> <p>Route 5(2) is not visible across the golf course – although it may have been possible to walk the application line and the rest of the route is largely obscured by tree cover so no inference could be drawn.</p>
Land Registry Title Number LA512320		<p>The land covered by this title includes a substantial part of the application route.</p>
<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 Golf 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</p>

		<p>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>
<p>Investigating Officer's Comments</p>		<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. Despite making enquiries with Preston City Council and searching the records deposited at the County Records Office a copy of the drawings referred to in the deeds has not been found.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</p>		<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</p>

		the status of the route into question).
Observations		No Highways Section 31(6) deposits have been lodged with the county council for the area over which the routes run.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.
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 district and borough councils to the county council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The county council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine its highway status.</p>



Observations		<p>The application route is recorded as a publicly maintainable between point A and point B on the Highways maintenance sheets.</p> <p>The remainder of the application routes are not recorded as being publicly maintainable.</p>
Investigating Officer's Comments		<p>With the exception of the section between point A and point B the routes were not recorded as being publicly maintainable but no inference can be drawn regarding public rights.</p>

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

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 found.

Landownership

The route under investigation between points D-H and between a point approximately 80 metres south east of point D and a point approximately 40 metres north west of point D crosses land registered in the ownership of Cleator Manor Limited. The route under investigation also crosses land registered in the ownership of Cleator Manor Limited between a point approximately 25 metres south of point M and point N.

The route under investigation between a point approximately 25 metres west of point J and a point approximately 25 metres south of point M crosses land registered in the ownership of Preston North End Limited. This area of land is subject to planning permission for a sports facility.

The remainder of the route under investigation crosses land registered in the ownership of Preston City Council.

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.

It appears from maps, plans, agreements, land transfer documentation and publicity information provided in the early 1980s that the Development Corporation intended to provide pedestrian routes to the public from the areas of new residential housing, across the golf course and along Sharoe Brook and from the Development Corporation records searched, together with the site evidence and information provided by the applicant it appears that the route referred to in this report as Route 5(1) was physically constructed and made available between points A-B-C-D-E-F and E-G. Application route D-H appears to have been physically capable of being walked but is not shown on any maps, plans or aerial photographs examined.

With regards to the route referred to in this report as Route 5(2) it is shown as a public footpath (albeit on a small scale diagrammatic map) in the Ingol Golf Village leaflet – a leaflet produced jointly by the Development Corporation and landowners – suggesting an intention to create the route as a public footpath.

A footpath does not appear to have been physically constructed although there is some indication of the route across the golf course on the aerial photograph taken in 1988 and site photographs from 2006 (after the application was received) suggest

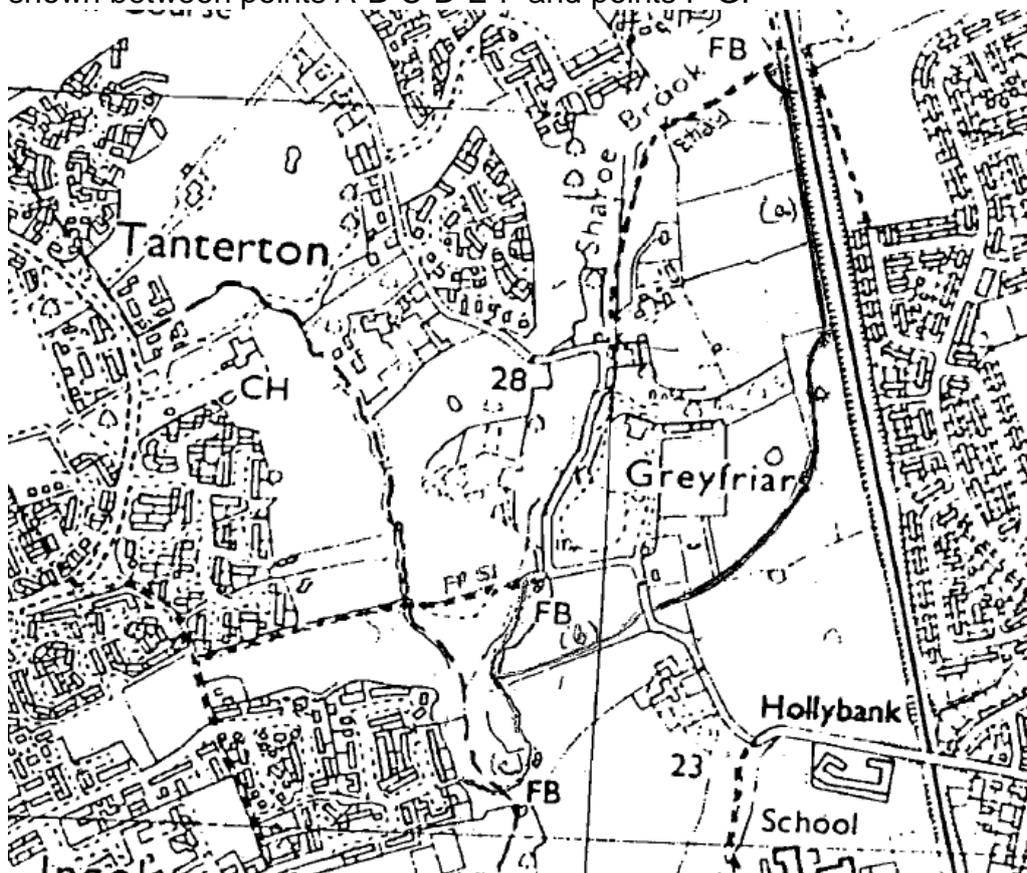
regular use of the application route between point K and point N and access being available at point I.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted 88 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.

A plan was attached to each form showing the routes to which the evidence of use referred to as routes (a) – which corresponds to the route shown on the Committee plan between points I-J-K-L-M-N, route (b) shown between points D-H and route (c) shown between points A-B-C-D-E-F and points F-G.



The forms were completed in 2000 and submitted as part of the application to add the routes to the Definitive Map and Statement in that same year. All evidence of use considered is therefore pre the application date in 2000.

Of the 88 forms completed one has been partially discounted as the user claims only to have used the routes (b) and (c) - Route 5(1)) in the belief that they were public footpaths but did not consider Route 5(2) to be public. No further information was given as to why they did not believe that route to be public.

The remaining 87 user evidence forms actually included evidence of use from a total of 93 people. All forms were signed and dated and were accompanied by the above map showing the routes claimed to have been used. A number of people completing the forms also referred to regular use of the route by themselves and other family members.

- From the information provided 15 users stated that they had used the routes for over 20 years:

37 years (1964-2000), 45 years (1954-1999), 55 years (1945-2000), 64 years (1935-1999), 71 years (states use 'all of their life'), 30 years (1970-2000), 26 years (1974-2000), 28 years (1972-2000), 32 years (1968-2000), 22 years (1978-2000), 60 years (1940-2000), 35 years (1965-2000), 30 years (1970-2000).

Many of those stating to have used the route in the years prior to the development of the golf course and associated housing often stated that they walked across the fields prior to development and then used the routes thereafter.

14 of the above users used the routes during the period 1980-2000 and all 15 users stating to have used the routes from 1979-1999.

- 44 users stated that they had used the routes for between 10 and 20 years (inclusive) and provided dates whilst one user stated that they had used it for 10 years but provided no dates.

14 years (1986-2000), 12 years (1988-2000), 12 years (1988-2000), 10 years (1990-2000), 16 years (1974-2000), 10 years (1990-2000), 10 years (1990-2000), 18 years (1982-2000), 18 years (1982-2000), 18 years (1988-2000), 18 years (1988-2000), 13 years (1987 – 1999), 20 years (1980-2000), 16 years (1984-2000), 14 years (1986-2000), 20 years (1980-2000), 20 years (1980-2000), 10 years (1990-2000), 18 years (1982-2000), 15 years (1985-2000), 18 years (1982-2000), 14 years (1985-1999), 20 years (1980-2000), 15 years (1985-2000), 13 years (1987-2000), 12 years (1988-2000), 14 years (1986-2000), 13 years (1987-2000), 11 years (1989-2000), 15 years (1985-2000), 12 years (1988-2000), 18 years (1982-2000), 13 years (1986-1999), 11 years (1989-2000), 19 years (1981-2000), 19 years (1981-2000), 12 years (1988-2000), 14 years (1986-2000), 14 years (1986-2000), 12 years (1998-2000), 17 years (1983-2000), 16 years (1984-2000), 20 years (1980-2000), 19 years (1981-2000).

All use between 10-20 years was within the time period 1980-2000 with 4 of the users claiming to have used the routes for the full 20 year period 1980-2000.

- 11 users stated that they had used the routes for under 10 years:

6 years (1994-2000), 2 years (1998-2000), 2 years (1998-2000), 8 years (1993-2000), 8 years (1992-2000), 3 years (1997-2000), 8 years (1992-2000), 3 years (1997-2000), 8 years (1992-2000), 4 years (1996-2000), 9 years (1990-1999).

All use fell within the period 1980-2000.

In addition, some users provided no dates or details of how long they used the routes. One couple, for example, completing a single form stated that they had 'always' used them once a week. 2 users provided no details of dates during which they used the routes but one stated that they had used them 2-3 times a year and another used them once a week.

Reasons for use

The predominant reason given for using the routes was described as being 'for pleasure'. A significant number of users referred to using the route to walk dogs – often at least once a day. Other reasons listed included for exercise, to go running, visiting friends and relatives, to get to the shops and school, as a short cut, to link to other local footpaths, as part of a circular route and because it was considered to be a scenic and safe route.

All users (with the exception of one) stated that they believed the routes to be public.

Frequency of use

38 users stated that they used the route once a day – and some referred to use twice or three times a day – particularly when exercising their dogs.

10 users stated that they used the route several times a week.

33 users stated that they used the routes once a week.

7 users stated that they used the routes once a month or less frequently.

Additional comments included on the forms

One user stated that they had never been challenged when using the routes but knew of others who had been 'rudely treated'.

Several referred to recent (2000) intimidation by the golf course.

Parts of the route were used as part of the 'Tulketh Trundle' between 1995-2000, an event which attracted over 100 people with no known access problems.

One user stated that the routes were widely regarded as public by the people of Ingol.

Another user stated that the routes were provided as an amenity to the area when the golf course was built and that they were 'absolutely invaluable'

Another stated that they were a major resource for local people which had been in place for 'many, many years'.

Further comments included:

The routes had been used as part of a circular route.

The route was signposted as a public footpath and stiles had been erected.

One user stated that they were angry at the golf course actions and that they had a right to access public rights of way.

The route was picturesque and you could see moorhens, ducks, a heron on the pond, wild flowers and an owl.

One user explained that they had been told about the path by other people and started to use it.

Used as part of walks organised by the Ramblers Association and was included in the Ramblers Association book 'Rambles round Preston'.

The footpath was one of the reasons why they moved to the area.

Her husband (now deceased) used to lead walking groups along it.

The routes provided an excellent nature trail.

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)

English Partnerships replied to the consultation explain that Route 5(1) – as shown between points A-B-C-D-E-F and E-G on the Committee plan was partly in the ownership of Ingol Golf Club and part owned by Preston City Council and that the route was believed (by English Partnerships) to be permissive.

With regards to the application route between point D and point H this was said to be on land owned by the Commission for New Towns and part was believed to affect ownership of Ingol Golf Club. English Partnerships refer to the fact that they would like to propose a slightly amended route to that claimed which would require the construction of a ditch and hedge crossing which they state that they would be willing to undertake but without any future maintenance liability. They refer to an enclosed plan but the plan does not show the proposed alternative.

With regards to Route 5(2) the route between points I-J-K was stated to be across land owned by English Partnerships but they also believed that it affected land owned by Ingol Golf Course. Again, English Partnerships refer to a proposal for an alternative route which is shown on a plan attached to the consultation letter and which appears to 'cut the corner' at point E so as to follow the boundary of their landownership.

They believed that the application route between point K and point N was owned by Ingol Golf Club but provided no further comments.

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 routes 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.

Section A-B was clearly constructed and then adapted by Preston Council acting on behalf of the County Council as highway authority. It is clearly footpath rather than vehicular and is therefore included in the application as it needs to be recorded on the Definitive Map.

It is suggested that there is sufficient evidence to indicate the intention to provide other parts of this claimed route – C-D appears on the "Local Plan" but on a more angled line, D-G is arguably shown there but not the rest of the claimed routes. The

same length C-G appears on the leaflet produced by the owners. F-G is also shown as is J-N (a link from Walker Lane to J is on a different line).

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 is advised that the section B-C and towards 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 – ie 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 sections of these routes and accepts the route on the part of the public. The difficulty here is whether the leaflet is enough to indicate owner intention to be evidence of a dedication. It is suggested that where the route is also shown on the planning documentation the evidence is stronger.

It is suggested that Committee may find sufficient evidence from which to infer an actual dedication by the owner of A-B and Central Lancashire Development Corporation of B-C-D-E-G and J-N and F-G and the user evidence indicates acceptance by the public can reasonably allege to have occurred or found to have occurred on this claimed route. The other sections of the route have insufficient evidence from which to infer dedication.

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. The use is as of right, without interruption and without sufficient lack of intention to dedicate for the twenty year period.

Taking the evidence into account it is suggested that the Committee may decide that an Order can be made for these routes 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 application. 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: 804-379e		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A