

Regulatory Committee

Meeting to be held on 24 June 2020

Part I

Electoral Division affected:
Pendle Rural

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Bridleway from Noyna Road to Noyna Hall and Upgrade of Footpath to Bridleway from Noyna Hall to Moss Houses Road, Foulridge, Pendle

File No. 804-609 (Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for a bridleway to be added to the Definitive Map and Statement from Noyna Road to the junction with Footpath Foulridge 36 east of Noyna Hall and the upgrading to Bridleway of part of Footpath Foulridge 36 from east of Noyna Hall to Moss Houses Road, Foulridge, in accordance with File No. 804-609.

Recommendation

That the application for a bridleway to be added to the Definitive Map and Statement from Noyna Road to the junction with Footpath Foulridge 36 east of Noyna Hall and the upgrading to bridleway of the footpath from east of Noyna Hall to Moss Houses Road, Foulridge, in accordance with File No. 804-609, be not accepted.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a bridleway from Noyna Road to the junction with Footpath Foulridge 36 east of Noyna Hall and the upgrading to bridleway of the footpath from east of Noyna Hall to Moss Houses Road, Foulridge, on the Definitive Map and Statement of Public Rights of Way.

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 upgrading or downgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

- "it ought to be there shown as a highway of a different description"

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 makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

The county council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the county council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the council’s decision may be different from the status given in any original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

Consultations

Pendle Borough Council

The Borough Council has been consulted but we have received no response.

Foulridge Parish Council

The Parish Council has been consulted but we have received no response.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8996 4237	Open junction with Noyna Road
B	9002 4211	Route crossed by Footpath Foulridge 34
C	9009 4196	Junction of application route with access track to Noyna Hall Barn
D	9009 4194	Junction with Footpath Foulridge 36
E	9023 4186	Junction with Footpath Foulridge 37 and access track to Ragstones
F	9028 4186	Field gate across route
G	9031 4185	Field gate across route with adjacent gated squeeze stile
H	9033 4185	Wooden gate posts (no gate)
I	9040 4184	Field gate across route
J	9048 4178	Junction of footpaths north east of Moss House Farm
K	9055 4177	Open junction with Moss Houses Road (U40347)

Description of Route

A site inspection was carried out in October 2019.

n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form '13-12-FP36' or 'Footpath Foulridge 36' but are referenced below in the abbreviated form 'Foulridge 36' for brevity since all those referred to are currently recorded as footpaths in Foulridge in Pendle Borough.

The application route commences at point A on the Committee plan which is a point on Noyna Road approximately 120 metres west of the junction of Noyna Road and Foulridge 34.

The route leaves Noyna Road to follow a stone surfaced access road approximately 3 metres wide and bound on either side by post and wire fencing running in a generally south south easterly direction descending gradually downhill for approximately 260 metres to point B.

At point B the access road is crossed by Foulridge 34 which joins the road via a wooden stile in the fence from the field to the north east. The footpath crosses over

the access road to continue south down an access road which leaves the application route at point B and continues directly to Noyna Hall Farm.

The application route continues from point B along another access road which forms the continuation of the route from A-B and continues in a south easterly direction to pass to the east of Noyna Hall Farm and Noyna Hall Barn to meet a triangular junction of access roads at point C.

From point C one road branches south west towards Noyna Hall Barn and Farm while the other one (which forms part of the application route) continues south east for a short distance (approximately 15 metres) to point D where it meets a substantial stone surfaced bounded track approximately 3.5 metres wide and recorded as part of Foulridge 36.

From point D the track provides access west to Noyna Hall Barn and Noyna Hall Barn and also south east (along which the application route runs) towards Parsons House. The application route from point D is bound by stone walls and provides access to some unnamed farm buildings on the north side of the track. It then turns to continue in a more east south easterly direction – still bound on either side by stone walls to point E where Foulridge 37 joins the route via a field gate immediately adjacent to the start of an access road leading south from the application route to Ragstones House and Moss House Farm.

From point E the application route continues in a generally easterly direction – still bound on either side by stone walls – to point F where it is crossed by metal gates (open on the day the route was inspected) through which the route passes to continue between Parsons House and some stables to a field gate (padlocked on the day of inspection) at point G, immediately before which a horse box had been parked restricting access to the full width of the route. Immediately adjacent to the gate is a gated squeeze stile in the stone wall.

Beyond point G the condition of the surface of the route deteriorates and the track – whilst continuing at a width of approximately 3 metres – is puddled, muddy and partially overgrown with the adjacent walls in disrepair. The route continues east with no physical evidence that this part of the route is used regularly by vehicles accessing the various properties located to the east or west of it.

The route passes through point H where wooden gate posts (but no gate) are located and continues to Causeway Top farm which appears to be in a relatively run down state and no longer operating as a working farm. The route continues directly past the front of the farmhouse and adjacent stone barns to point I where it is crossed by a further metal gate (open on the day of inspection) and then continues in a south easterly direction along a roughly tarmacked access road to the junction of the application route with 3 footpaths immediately north of a cluster of houses known historically as Moss Houses (point J).

From point J the application route continues east along a reasonably surfaced tarmac/compacted stone surfaced road which forms part of the access to Causeway Top Farm and also the direct access to Moss Houses to point K where it meets Moss Houses Road.

In summary, the total length of the application route is 950 metres. The route between point A and point D is not recorded as a public right of way but is accessible with no signs indicating whether the route is considered to be public or private. Between point A and point B it forms part of an access road leading directly to Noyna Hall Farm. Continuing from point B to point C this section also provides part of the access road to Noyna Hall Barn. Continuing from point C through to point F the application route also appears to provide access from point A (Noyna Road) to Ragstone House, Moss House Farm and Parsons House. A gate (locked on the day of inspection and partially blocked by a parked vehicle) at Parsons House (point G) seemingly acts as a split with all properties west of point G gaining vehicular access via Noyna Road from point A whereas any property east of point G including Causeway Top and the cluster of properties at Moss Houses being accessed from Moss Houses Road via point K.

Pedestrian access was available along the full length of the route but horses (and possibly cyclists) would have been prevented from using the full length of the route on the day of inspection by the padlocked gate at point G.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

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



Observations		The application route is not shown. A number of properties are shown in the area crossed by the application route – including one labelled as 'Noyra' but no access is shown to any of these properties. Noyra Road is shown but Moss Houses Road/Cockhill Lane is not shown.
Investigating Officer's Comments		The application route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Smith's Map	1801	Charles Smith was a London engraver and map seller. His map of Lancashire appeared as a single sheet in 1801 and then between 1804 and 1846 was published in subsequent editions of the New English atlas. His Map was similar to Cary's Map of Lancashire dated 1789 but is not a direct copy. It is thought that Smith and Cary used common sources, especially Yates survey, and since both were aiming at the same market – the increasing number of private and commercial travellers – it is not considered surprising that they produced similar maps.



Observations		The application route is not shown.
Investigating Officer's Comments		The application route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Honor of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honor of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.



The Blue Coloured Parts represent Glebe Land
Coal Pits are thus described
Roads and Buildings
Rivers, Brooks and Reservoirs
The Red Figures refer to the Unoccupied Water Falls
The Boundaries of Manors are the most strongly Marked on the Map

Observations		Noyna Road and Moss Houses Road/Cockhill Lane are shown. A route is shown extending south from Noyna Road (opposite Noyney Laith) which is similar – but slightly further east of the application route between points A-D. This route continues to a T junction where one route is shown continuing south/south west towards to Castle Road and Roundhill whilst another route – consistent with the application route between point D and point K continues east passing a number of unnamed properties and a collection of properties labelled Moss Houses to Moss Houses Road/ Cockhill Lane All of the routes detailed above are coloured in the same way as all the other roads in the area and are denoted in the key as 'roads' with no distinction between those considered to be public or private.
Investigating Officer's		The earliest map inspected to show the application

Comments		<p>route between point D and point K existing as part of a through-route across land forming part of the Estate owned by the Honor of Clitheroe. However the route from Noyna Road to point D was on a different alignment from the route applied (as confirmed by the 1st edition OS map detailed below).</p> <p>This small scale map only appeared to show the more significant routes and did not show other routes currently recorded as public footpaths that join the route. This suggests that the route was of a substantial nature and would have been capable of being used by people on horseback and possibly with horse drawn vehicles as part of a longer through-route at that time. The route is shown in the same way as routes now recorded as public vehicular highway and is described as a 'road' in the map key.</p>
John Cary's Map of Lancashire	1806	<p>John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831.</p> <p>In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.</p>



Observations		The application route is not shown.
Investigating Officer's Comments		The application route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Stockdale's Map	1818	An early commercial map included in a book titled 'A description of the country from thirty to forty miles round Manchester' by J Aikin MD and is titled 'A new map of the country round Manchester' dated 1818. There is some uncertainty about the date of

the map as the book was originally published in 1795. There is no key to the map.

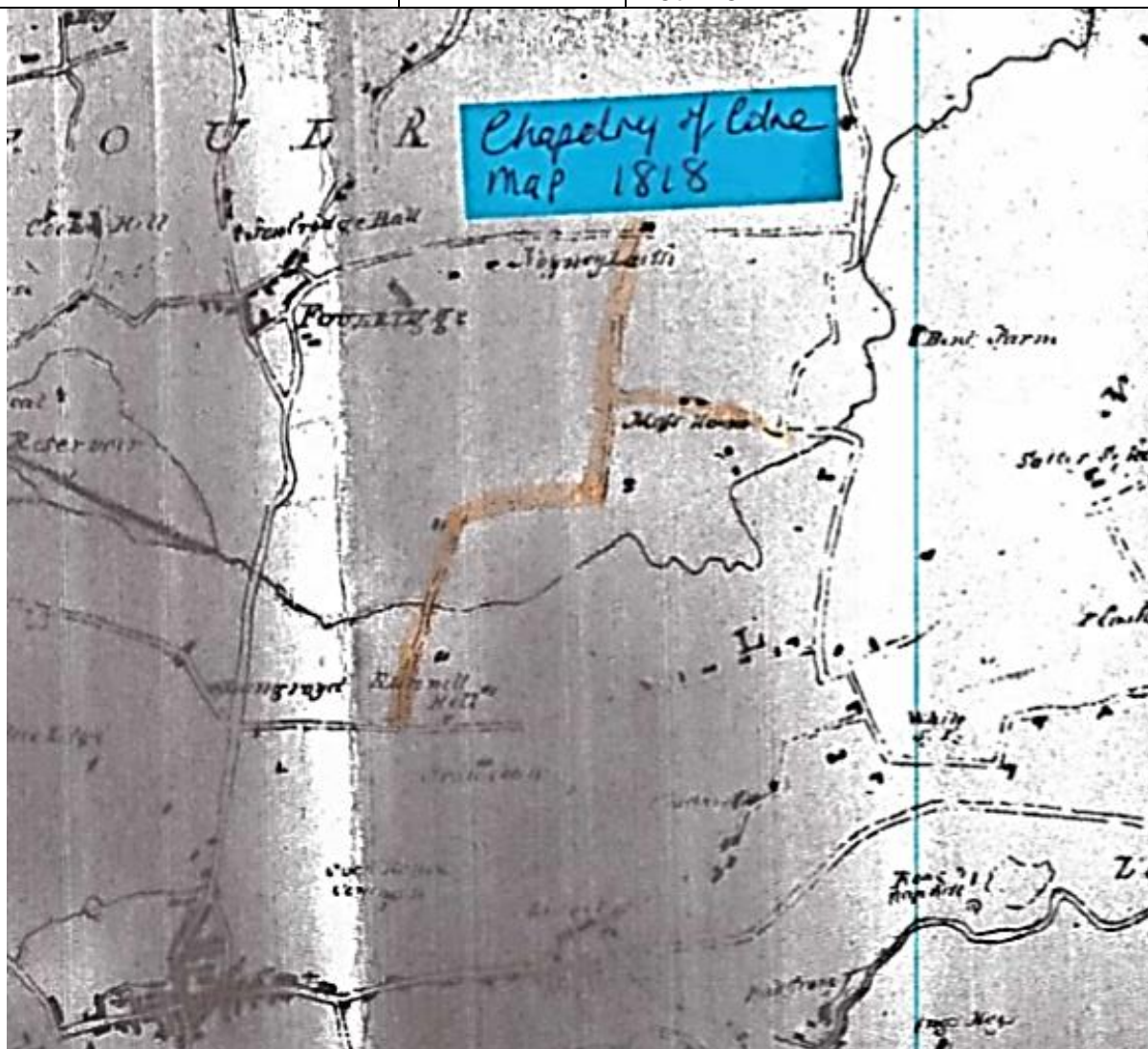


Observations		The application route is not shown.
Investigating Officer's Comments		The application route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Greenwood's Map of Lancashire	1818	Further small scale commercial map.




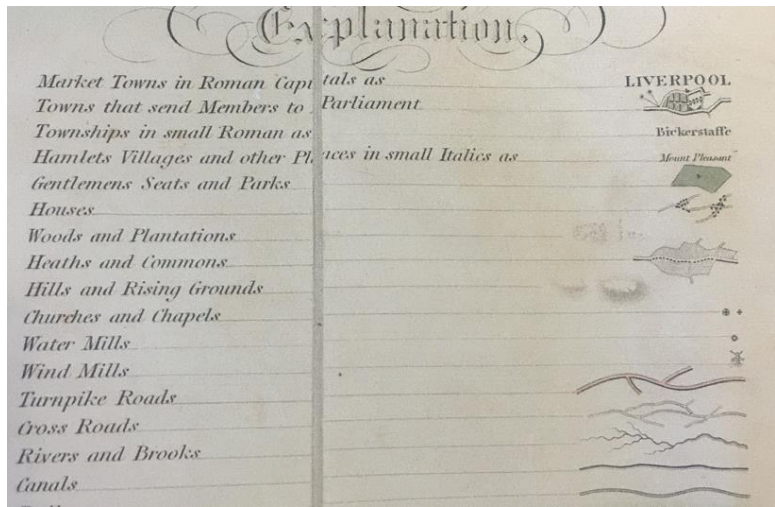
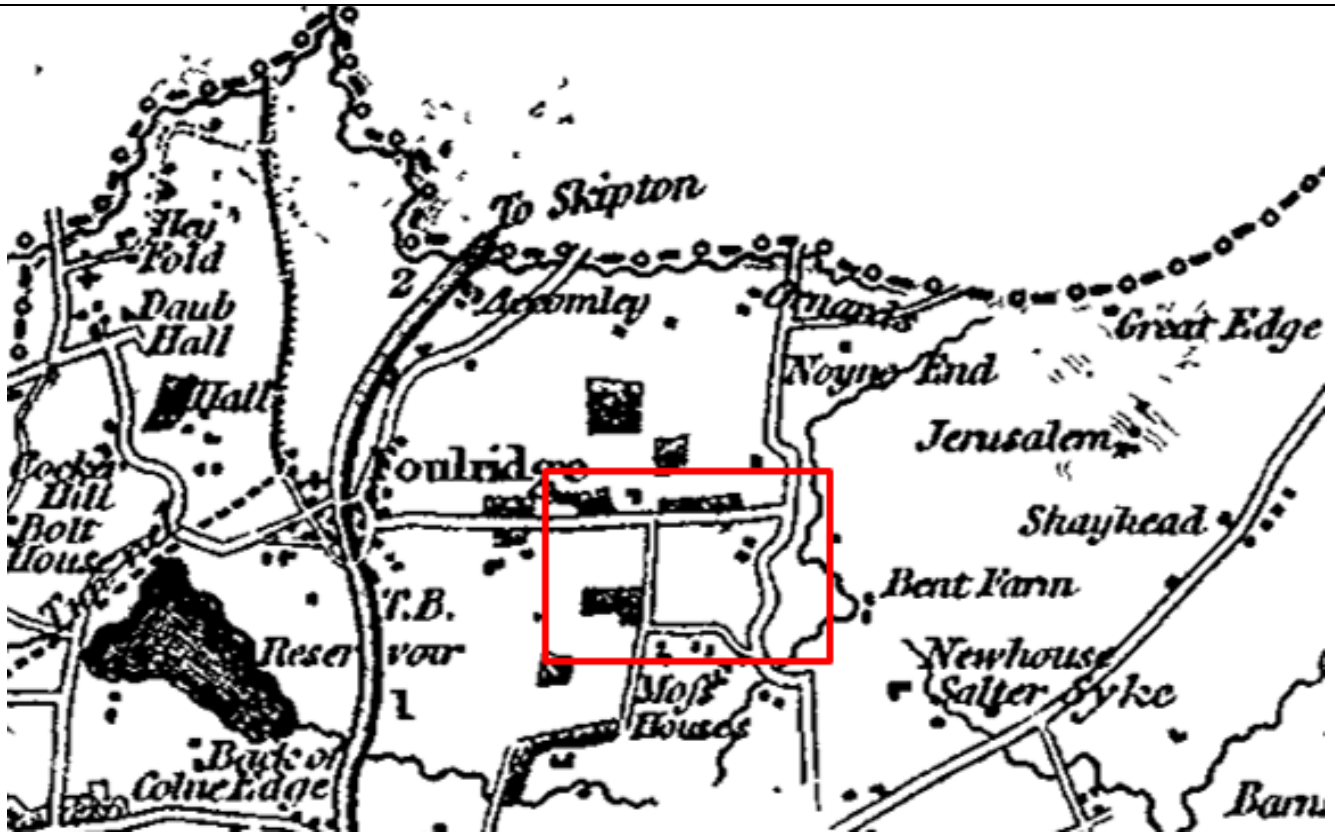
Observations		Greenwood shows a route consistent with at least part of the application route in the same way as it is shown on the Honor of Clitheroe Map detailed above. Noyna Road and Moss Houses Road/Cockhill Lane are shown and a route is shown extending south from Noyna Road which is similar in location to the application route between points A-D but shown starting slightly to the east of point A. This route continues to a T junction where a route consistent with the application route between point D and point K continues east passing a number of properties labelled Moss House to Moss Houses Road/ Cockhill Lane. From the T junction a further route is shown continuing south/south west towards Colne to Round Hill. All of the routes described above (including the application route between point D and point K) are shown as a 'cross road' as depicted in the map key.
Investigating Comments	Officer's	A route consistent with that shown on the Honor of Clitheroe map is shown suggesting that the application route – or a route approximating to it – appears to have existed in 1818. Its depiction on a small scale commercial map suggests that the route was considered by this particular publisher to be a significant route of a substantial nature and would have been capable of being used by people on horseback and possibly with horse drawn vehicles as part of a longer through-route at that time.

Chapelry of Colne Map	1818	A copy of a map provided by the applicant and said to be dated 1818. The origins of the map, why it was produced and location of the original map are not known.
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Observations		The map has been copied and annotated by the applicant and appears to show a route existing consistent with what is shown on Greenwoods Map published in the same year. It is not known whether this map was a copy of Greenwoods Map or prepared from an independent survey or what the purpose of the map was or whether it was intended to show any public status of the routes shown.
Investigating Officer's Comments		The application route between point D and point K may have existed in 1818 but little inference can be drawn without further information about this particular map.
John Carey's Map	1825	The applicant submitted a photocopy of a further map on which it was handwritten that it was a map produced by John Cary dated 1825. The original map has not been viewed by the Investigating

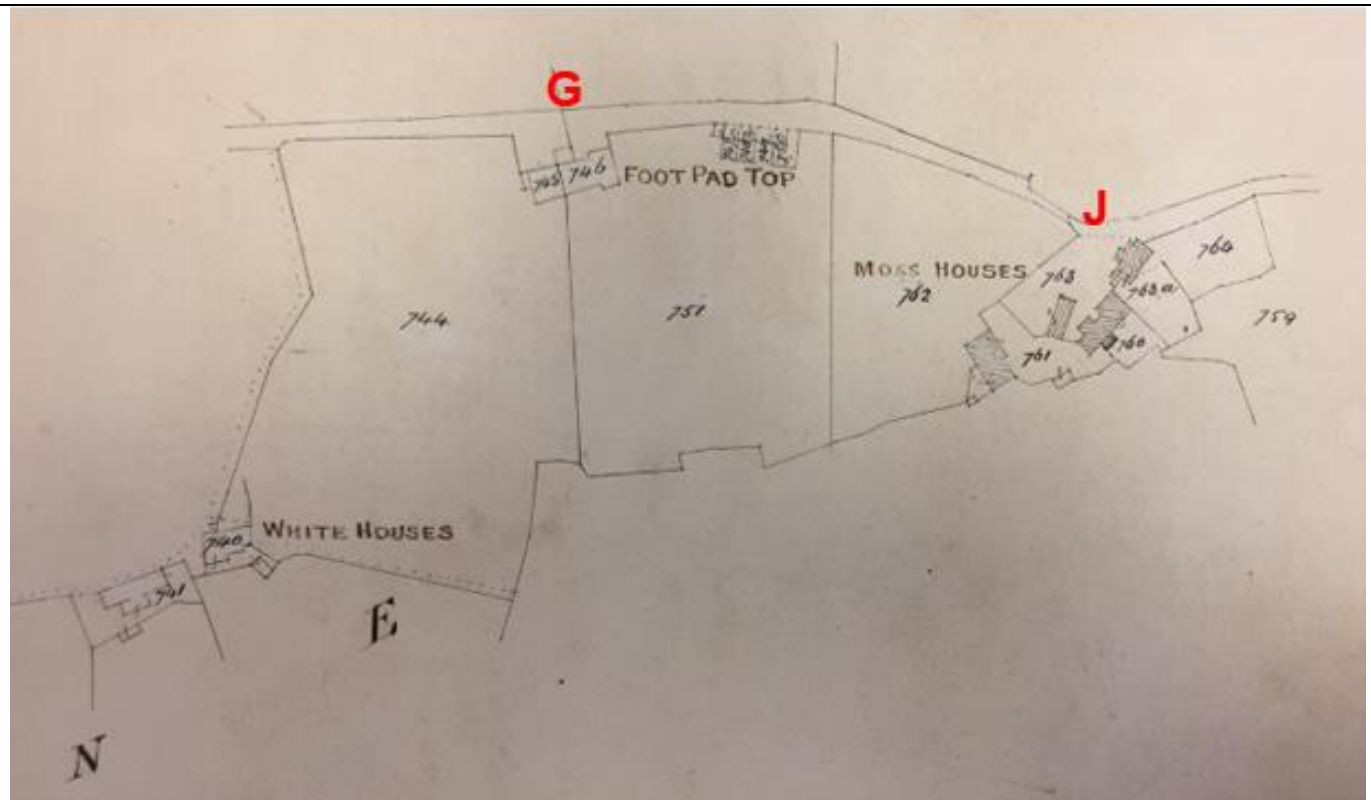
		Officer.
		
Observations		The extract provided by applicant is of poor quality but a route approximating with the alignment of the application route does appear to be shown from Noyna Road through to Moss Houses Road/Cockhill Lane in the same manner as the Honor of Clitheroe Map, Greenwoods Map and the Chapelry of Colne Map.
Investigating Officer's Comments		The application route may have existed but little inference can be drawn without further information about this particular map.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 71/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

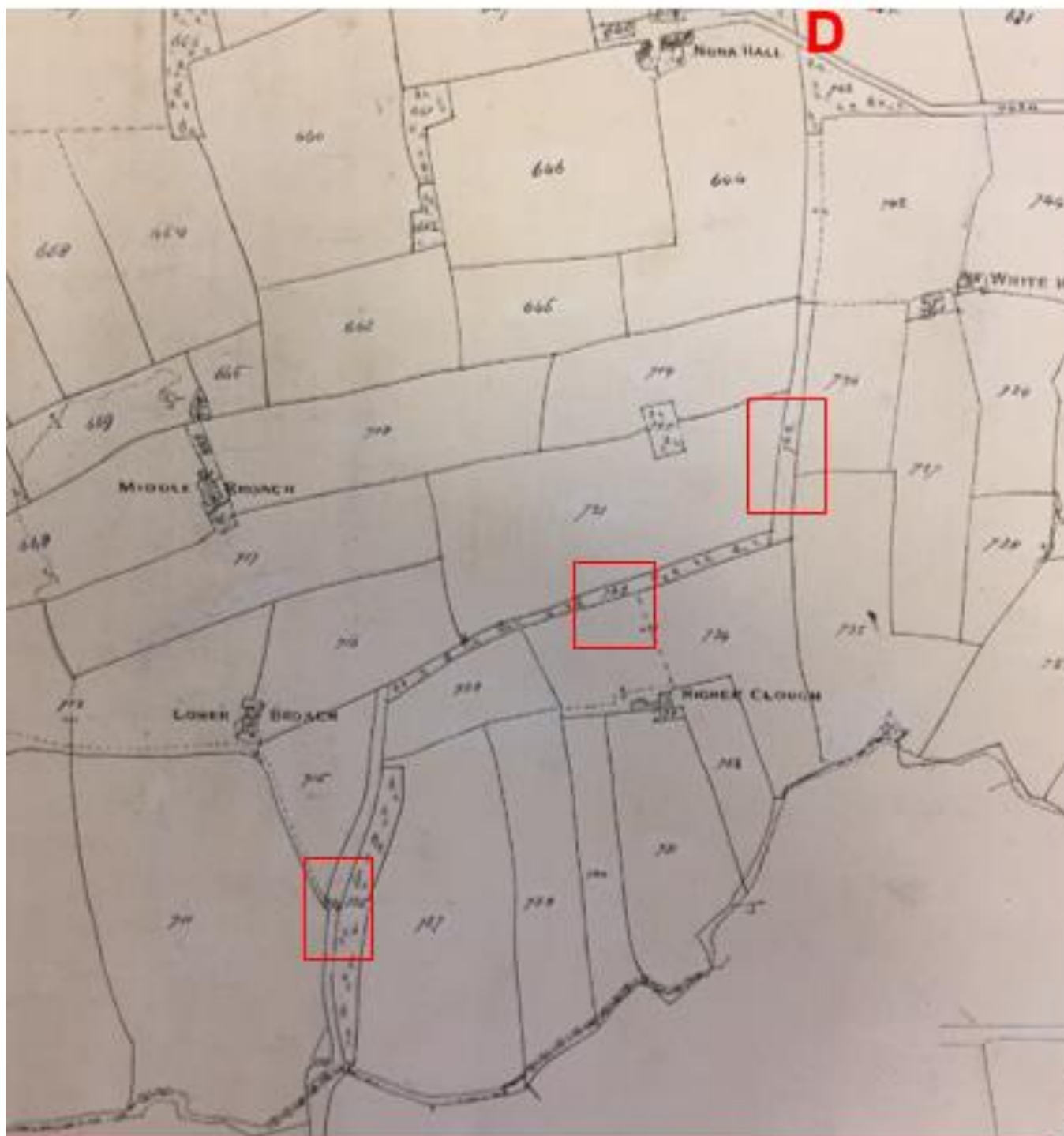


Observations		A route is shown from Noyne Hill Road extending south to a T junction to the east of some unnamed buildings with one branch of the route then extending east past a number of marked properties to meet Moss Houses Road/ Cockhill Lane whilst the other route extends south west towards Colne. This route from Noyne Road to Noyne Hall appears similar to but distinct from the alignment of the application route A-D. From east of Noyne Hall to Moss Houses Road (D-K) this corresponds to the application route and is depicted as a cross road in the map key.
Investigating	Officer's	Part of the application route (D-K) appears to have

Comments		<p>existed in 1830 suggesting that it formed part of a through-route (via the north-south route to Noyna Road opposite what Greenwood labelled as 'Noyney Laith') and was most probably considered to be available to the travelling public on horseback and possibly carts in 1830. The depiction of the route on this commercially produced small scale map suggests that the route (including D-K) was considered to be at least a bridleway in 1830.</p> <p>Whilst it is not fully known what is meant by the term 'cross road' as the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>). It is unlikely that a map of this scale would show footpaths."</p>
Canal and Railway Acts		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>There are no existing, proposed or dismantled canals or railways crossing the area investigated.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
Tithe Map and Tithe Award or Apportionment	1842	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>







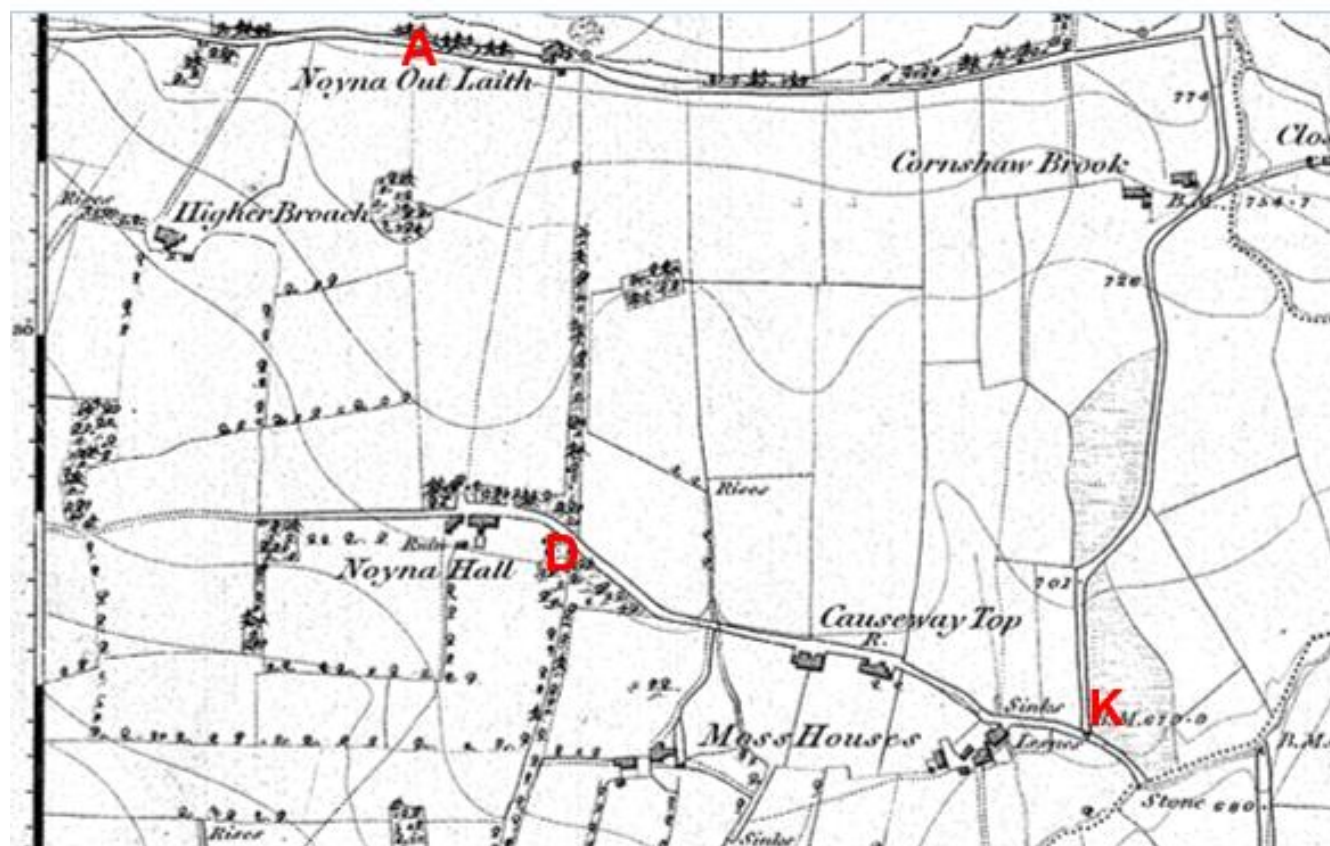
Observations

The Tithe Map dated 1842 is the earliest detailed large scale map examined of the area.

The map does not show the application route between point A and point B. A field boundary is shown from Noyna Lane opposite 'Nuna Outley' extending south to point D part of which is shown fenced off as a narrow wooded strip and numbered 638 (and described in the Tithe Award as a 'plantation'). This field boundary/strip of woodland is

		<p>consistent with the alignment of the route shown on the Honor of Clitheroe Map, Greenwood's Map, the Chapelry of Colne Map and Hennet's Map but there is no trace of that route shown to exist on this map.</p> <p>Noyna Road and Moss Houses Road/Cockhill Lane are both shown on the Tithe Map and are individually numbered. The Tithe Award contains a list of 'Roads' for which there are no recorded landowners or occupiers and both these routes are listed under that section.</p> <p>The application route between point D and point K is shown on the Tithe Map as part of a longer route which extends from point K at the junction with Moss Houses Road west to Noyna Hall. A number of properties are shown along the route with the only access to them being via the application route. Moss Houses are shown south of the application route at point J with a number of individually numbered properties being accessed from the route. Causeway Top Farm is shown but is named on the Tithe Map as 'Footpad Top'. A larger scale map insert shows the section of the application route passing Footpad Top in more detail and shows two separately numbered properties in the region of Parsons House with a line across the application route at point G. The map insert also shows an access track leaving the application route at point J to provide the only access to White Houses.</p> <p>West of point G – on the main Tithe Map – the application route is numbered 743a. This number is not included in the list of Roads in the Tithe Award but is included as part of the entry for Noyna Hall House and whilst being described as 'part of lane' it is also detailed as being owned by Ellen Moon and occupied by John Stalkind. The lane, numbered 743a, continues west from the bend in the application route (point D) to end at Noyna Hall.</p> <p>The track running southwards from the application route at the bend (point D), as shown on a number of earlier private and commercial small scale maps is not shown as a through-route on the Tithe Map although sections of it still appeared to have existed. Three sections were numbered separately and listed in the Tithe Award. All were owned by Ellen Moon with plots 722 and 724 listed as lanes whilst the section between the two – plot 723 - was listed as a plantation.</p>
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Investigating Comments	Officer's		<p>The application route between point A and point D did not exist in 1842 and the route to the east of the application route from Noyna Road to point D, shown on earlier maps, was no longer in existence with no real trace of it identified as part of the Tithe commutation process.</p> <p>The application route between point D and point K existed as a substantial track – described as a lane - providing the only access to a number of properties including Noyna Hall where the route appears to terminate.</p> <p>Whilst being numbered and described as a lane in the Tithe Award it is clearly distinguished from those routes which appeared to be considered as carrying public vehicular rights which were listed separately as roads for which no landowners or occupiers were listed.</p> <p>A line is shown across the route at point G which most probably indicated the existence of a gate – possibly on the boundary between two properties. The existence of a gate across a route with public – or private – access wouldn't be unusual in a rural location – particularly where a route passes through a farm so no inference can be drawn in this respect. The application route between point D and point K appears to have been capable of being used on horseback – and most probably with vehicles in 1842 but is shown as terminating at Noyna Hall suggestive of an access track to properties rather than a public bridleway.</p> <p>There is however a suggestion that a route may have previously existed - both from Noyna Road (east of point A) to point D and from point D south to Castle Road as shown on some earlier private and commercial maps – which may have provided a through route at some point in the past which may have been capable of being used on horseback.</p>
Inclosure Act Award and Maps			Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations			There is no Inclosure Award available for the land crossed by the route.
Investigating Comments	Officer's		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey	1848		The earliest Ordnance Survey 6 inch map for this



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



Observations


The earliest Ordnance Survey map examined does not show the application route, remains of a route or trace of a route between point A and point D or from a point to the east of the application route A-D along the alignment of the route shown on small scale private and commercial maps published in the first half of the 1800s. A bounded strip of land is shown extending directly north from point D for approximately 270 metres as a narrow belt of woodland consistent with what is shown on the Tithe Map - with no trace of a track and which appears to be on the same alignment as the route shown extending through to Noyna Road on the small scale commercial maps.

The application route from point D to point K is shown as a substantial bounded track. From point K it extends west past a collection of buildings named as Moss Houses continuing through Causeway Top through point D to Noyna Hall. From Noyna Hall a track is then shown continuing west initially bounded but then unenclosed to Foulridge. From point D continuing directly south is a double fenced narrow strip of woodland again on the alignment of what was shown as a cross road on the earlier small scale private and commercial.

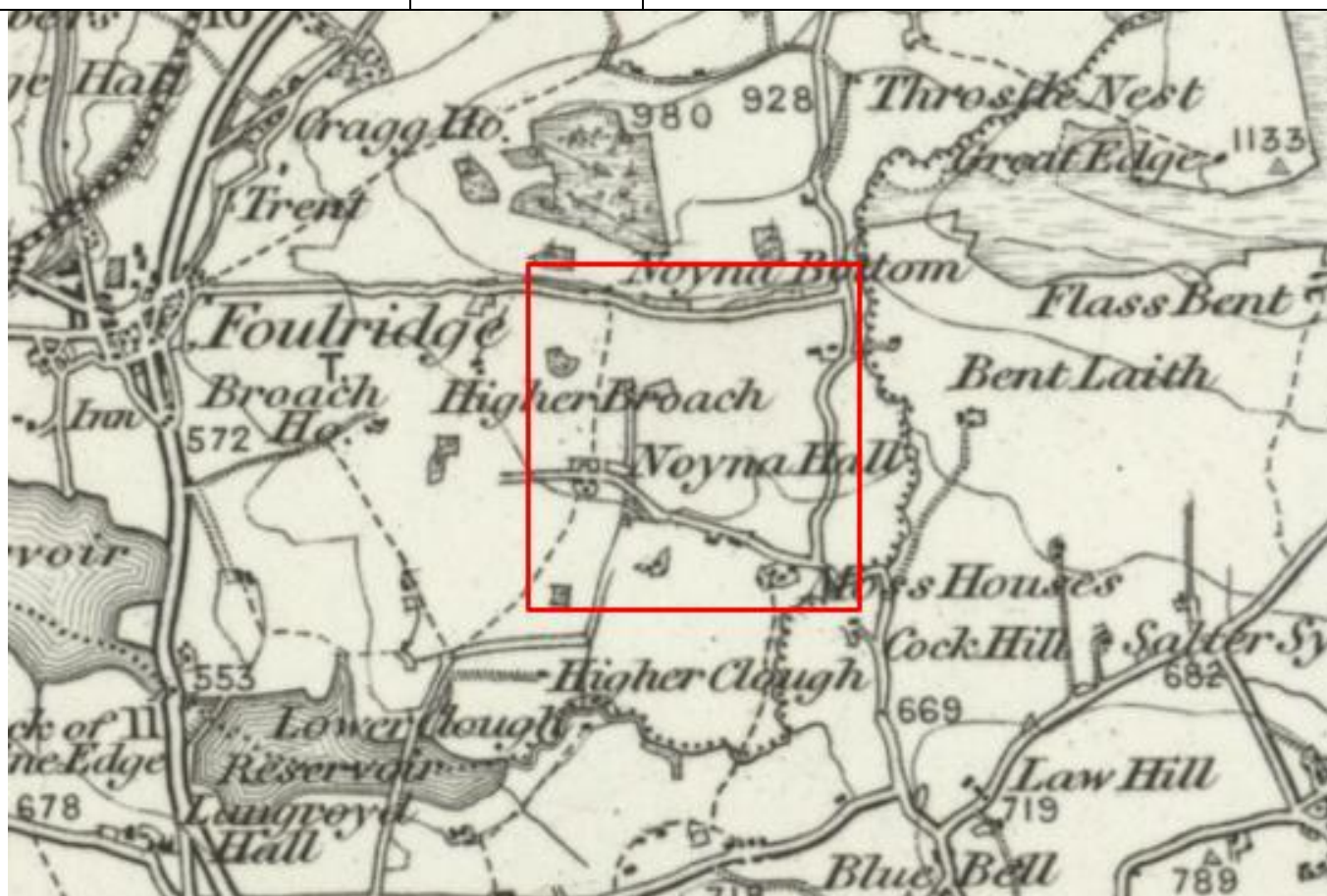
Investigating Comments	Officer's		<p>The application route between point A and point D did not exist in 1844 and there is no indication on the map that it had previously existed along the alignment claimed. The route to the east of the application route A-D extending from Noyna Road to point D is not shown. There is however a bounded strip of woodland which looks to be on the same alignment as the route shown on the early commercial maps. This stops 130 metres short of Noyna Road. The Ordnance Survey map is consistent with what is shown on the Tithe Map a few years earlier.</p> <p>The application route between D and K existed in 1844 as part of a longer bounded route providing access to and from Noyna Hall and also providing access to Moss House Farm (not named on the map), Moss Houses and Causeway Top. No gates are shown across the route although this does not necessarily mean that there weren't any as the map is drawn to a small scale. An unbounded track is shown west from Noyna Hall to Foulridge which together with part of the application route D-K forms a through-route between Foulridge and Moss Houses Road/Cockhill Lane although it is not known what traffic it carried.</p> <p>Traces of a track from point D extending south towards Colne can be seen in places consistent with the earlier commercial maps but this route, if it did exist was no longer evident and does not appear to be capable of being used in the mid-1800s.</p>
1 inch Ordnance Survey Map		1850s	Reprint of First Edition 1 inch OS Map Sheet 92 Skipton & Bradford published by David & Charles as sheet 16 in their reprint editions, surveyed 1844-1850 and published in the 1850s.



Observations		<p>The application route between point A and point D is not shown. From point K heading north west through point D the application route can be clearly seen as a substantial route providing access to Moss Houses and Noyna Hall and possibly to Higher Broach and Broach House. The route shown on earlier private and commercial maps extending south from point D through Lower Clough to Castle Road (not named on the map) is also clearly shown.</p>
Investigating Officer's Comments		<p>The application route did not exist between point A and point D in the 1850s. The route between point D and point K existed as a substantial route providing access to a number of properties. It is not shown as part of a longer through route west of point D – which would have provided weight to it being a public through route of at least bridleway status. However, at odds with the Tithe Map and First edition 6 inch Ordnance Survey map published around the same time, a route is shown linking to the application route at point D which may have formed part of a longer through route to Castle Road and which would be more suggestive of a public bridleway than a 'dead end' route providing access to and from a number of private properties. The original scale of the map (1 inch to 1 mile)</p>

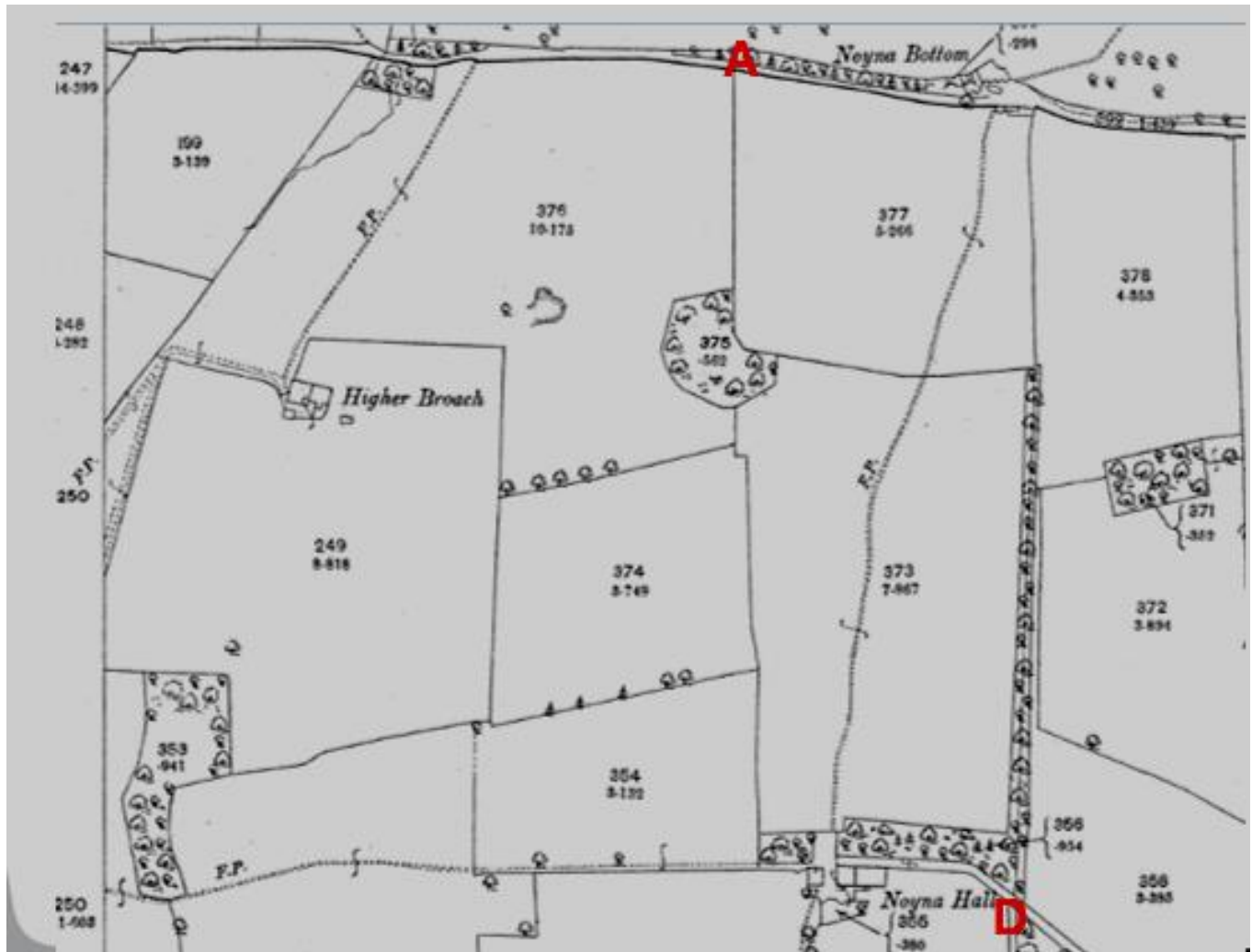
		means that only the more significant routes are generally shown and the purpose of the map in the mid-1800s would probably have been to assist the travelling public. The inclusion of the route between point D and point K on this map is suggestive – particularly if it did form part of a longer through route - of at least public bridleway rights.
Cassini Map Old Series Blackburn & Burnley Sheet 103	1842-1859	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50, 000 OS Landranger Maps and are readily available to purchase.
		
Observations		Cassini's map was almost identical to the 1 inch OS map detailed above. The application route between point A and point D is not shown but the route between point D and point K is shown providing access to a number of properties.
Investigating Comments	Officer's	<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers.</p> <p>The inclusion of the application route between point D and point K on this map suggests that it existed as a substantial track capable of being used on horseback but it is uncertain what public rights may have existed.</p>

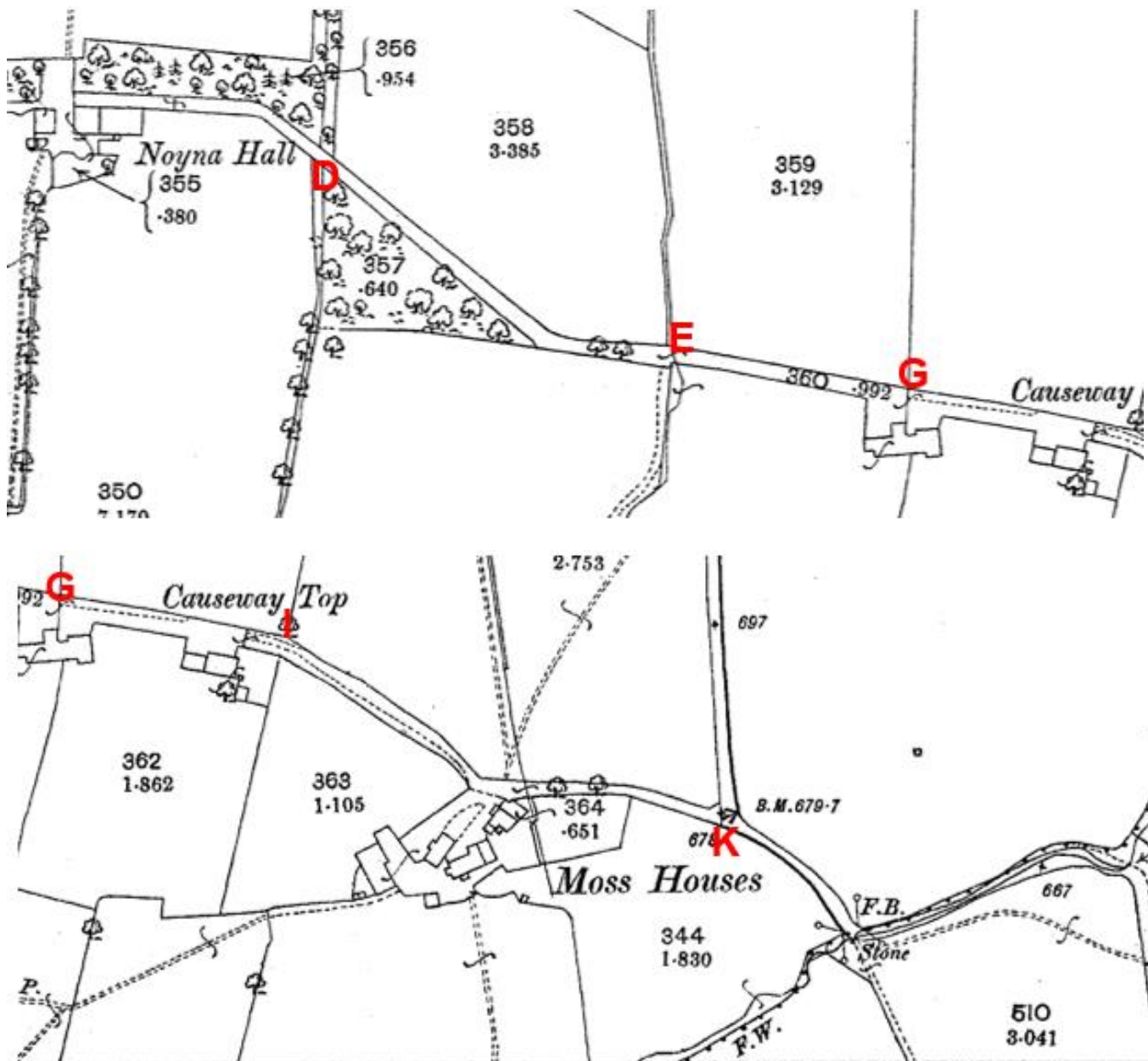
Ordnance Survey 1 inch map Revised New Series - Clitheroe	1898	OS 1 inch map surveyed 1842-49, revised 1896 and published 1898.
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Observations		The application route between point A and point D is not shown. The route between point D and point K is shown as part of a longer route providing access to a number of unnamed properties, Moss Houses and Noyna Hall. Paths (single dashed lines) are shown leading to and from Noyna Hall which may have provided through-routes consistent with the application route between point D and point K being currently recorded as a public footpath. The route south of point D – shown on earlier maps as a link through to Castle Road is still visible for most of its length although the section immediately south of point D is not shown as a double line.
Investigating Officer's Comments		The application route between point A and point D did not exist in the 1890s. The application route between point D and point K existed as part of a longer route providing access to a number of properties and although the route itself appears capable of being used on horseback and by vehicles it did not appear to exist as a substantial through-route capable of being used on horseback

		except south to Castle Road.
25 Inch OS Map Sheet 49-09	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.





Observations

The earliest large scale Ordnance Survey map available to view.

Noyna Road and Moss Houses Road/Cockhill Lane are shown with thickened casing lines on the south or east side of the road on the 1st edition 25 inch OS maps consistent with how publicly maintained vehicular routes were shown but the application route (between point D and point K) is not shown in that way.

The application route between point A and point D is not shown although a footpath (F.P) is shown from Noyna Road (opposite Noyna Bottom) to Noyna Hall. Again there is a trace of the route shown on some of the earlier commercial maps


		<p>from Noyna Road (opposite Noyna Bottom) to point D as a thin strip of woodland along much of what was recorded as this track.</p> <p>The application route is shown between point D and point K as part of a longer route providing access to Noyna Hall. A watercourse is shown across the route at point E and a solid line is shown across it at point G with another west of point I. Parcel numbers and acreages are shown relating directly to the application route between point D and point G.</p>
Investigating Comments	Officer's	<p>The application route between point A and point D did not exist in 1891.</p> <p>Between point D and point K the route existed as a significant bounded route providing access to a number of properties and appeared capable of being used on horseback and with vehicles. It did not however appear to form part of a longer through route for vehicles or horses with routes beyond Noyna Hall shown as footpaths.</p> <p>Thickened casing lines on the south or east side were used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey depicted metalled public roads for wheeled traffic kept in good repair by the highway authority with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot. The application route is not shown in this way indicating that it was not considered as part of the public vehicular highway network at that time.</p> <p>Part of the application route is shown with a dedicated parcel number and acreage however, this is far from conclusive evidence of highway status.</p> <p>Gates are shown at two points on the application route but the existence of gates along a public (or private) route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p>
6 inch Ordnance Survey Map	1895	Second edition 6 inch map resurveyed 1891 and published 1895.



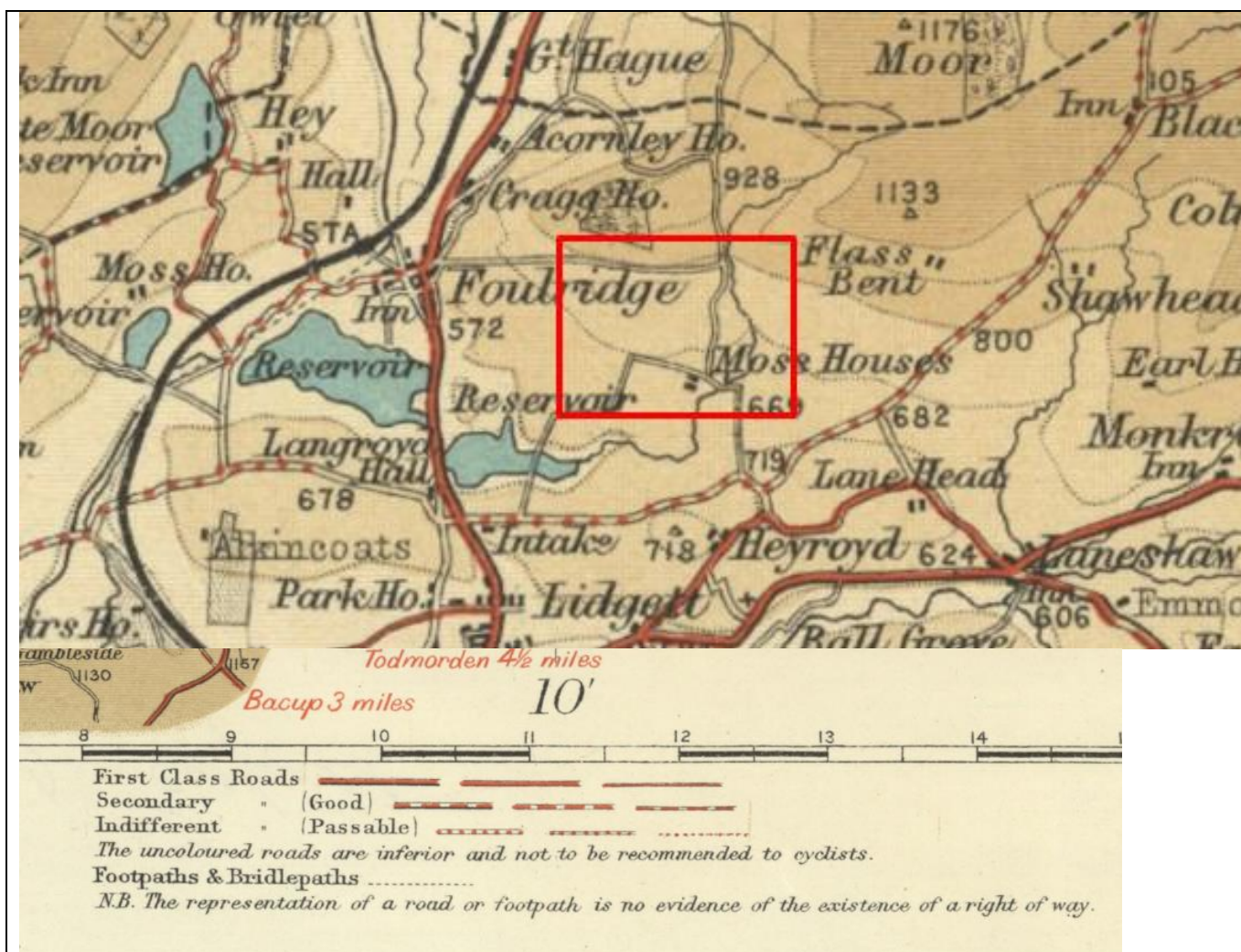
Observations		The application route between point A and point D is not shown on the map. From point D to point K the application route is shown as part of a substantial bounded route providing access to Noyna Hall, Causeway Top, Moss Houses and White House.
Investigating Officer's Comments		The application route between point A and point D did not exist in the 1890s. The application route between point D and point K existed as part of a longer route providing access to a number of properties and although the route itself appears capable of being used on horseback and by vehicles it did not appear to exist as a substantial through-route capable of being used on horseback.
'The Godfrey Edition' OS Sheet 68 - Pendle	1896	Map submitted by the applicant.



Observations		<p>This small scale map was submitted by the applicant. The quality of the photocopy is poor and no scale or survey date is given. The Godfrey Series of Maps are reprints of Ordnance Survey maps. This particular map extract was from the 1 inch to 1 mile OS map originally published in 1896 and is most probably derived from the same survey as the 6 inch and 25 inch maps published at the same time.</p> <p>Whilst not easy to see due to the quality of the map extract, the application route between point A and point D is not shown on the map. From point D to point K the application route does appear to be shown providing access to Noyona Hall.</p>
Investigating Officer's Comments		<p>The application route between point A and point D did not exist in the 1890s. The application route between point D and point K existed as part of a longer route providing access to Noyona Hall and to be shown on such a small scale map must have been reasonably substantial. It did not however appear to exist as a through-route, the inclusion of which would have been suggestive of a route considered to be at least a bridleway at that time.</p>

New Series Map		based on Ordnance Survey mapping.
		
Observations		The application route between point A and point D is not shown. The route between point D and point K is shown providing access to Moss Houses and Noyna Hall but is not shown as a through route (with the exception of footpaths – single dashed lines – shown extending north and south from Noyna Hall).
Investigating Officer's Comments		<p>The application route between point A and point D did not exist. The route between point D and point K existed as a significant route which would have provided vehicular and equestrian access to named properties but not as a through-route.</p> <p>The depiction of the route on this map is consistent with the existence of a bounded access road but not as a through-route which would have been used by the public on horseback at that time.</p>
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1909 and published in 1912.

Observations		The application route between point A and point D is not shown. Between point D and point K the route is shown providing access to a number of properties and is gated at Causeway Farm and Prospect House (point G). It did not continue as a significant bounded track beyond Noyna Hall although routes indicated to be footpaths (F.P.) are shown extending north, south and west from there.
Investigating Officer's Comments		The application route between point A and point D did not exist in 1909. The application route between point D and point K existed as a significant route that clearly provided direct access to a number of properties. It appeared capable of being used on horseback in 1909 but did not appear to form part of a through-route that would have been accessible on horseback at that time suggesting that public use may have been on foot – connecting to various routes shown as footpaths – rather than on horseback.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.

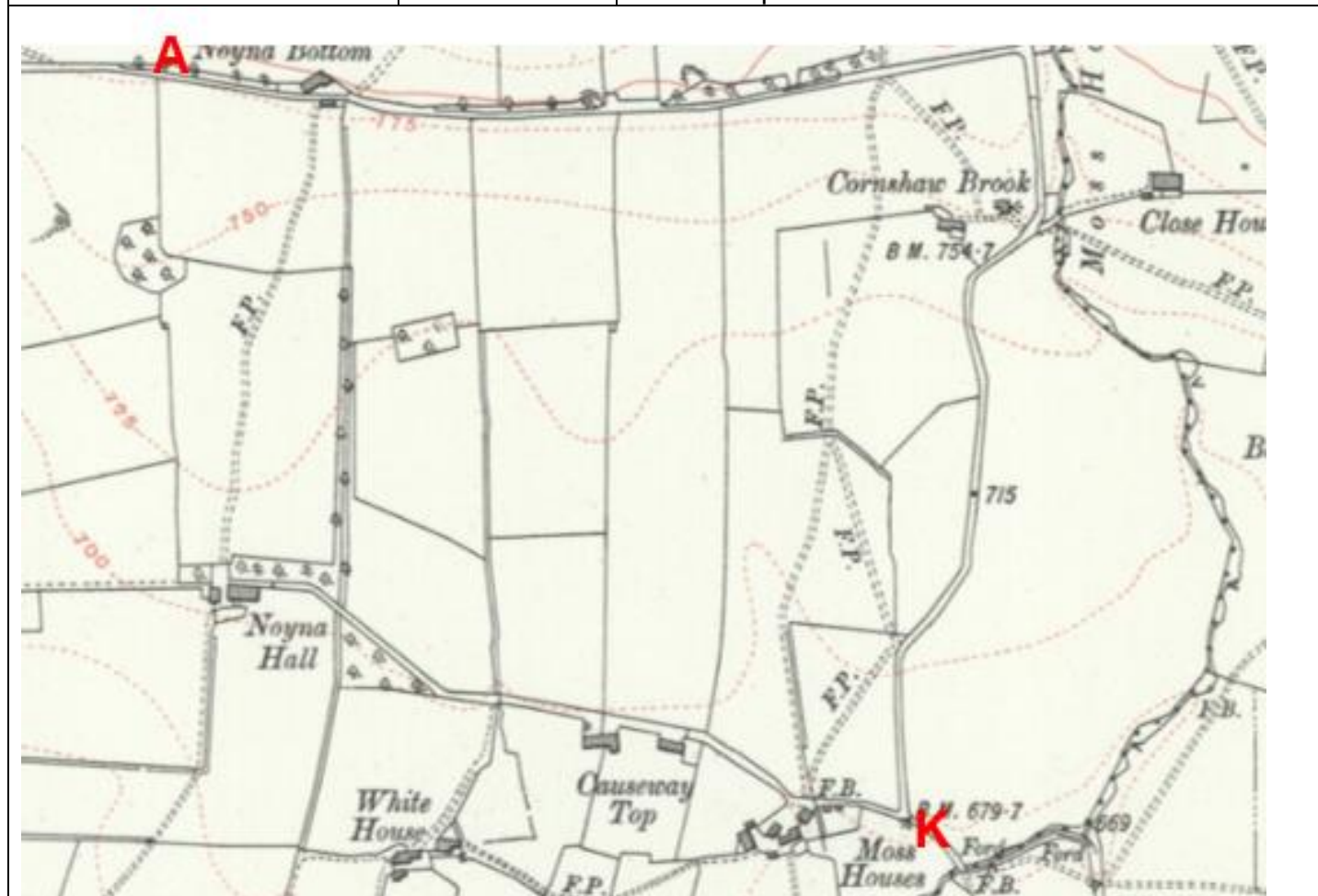


Observations		The application route between point A and point D is not shown. The route between point D and point K is shown as part of a longer route described in the map key as an uncoloured 'road' which is inferior and not to be recommended to cyclists. Moss Houses are marked but Noyna Hall is not. The route shown turns south in proximity to where Noyna Hall is located and can be seen to continue south west to pass through a reservoir to exit onto Castle Road.
Investigating Comments	Officer's	The application route between point A and point D did not exist in the early 1900s. The application route between point D and point K is shown as part of a longer through-route described as an inferior road south from the application route through to Castle Road unlike on contemporary OS maps although traces of this route appear to exist on the earliest 6 inch OS map and are referred to in part on the Tithe Map.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good

		<p>evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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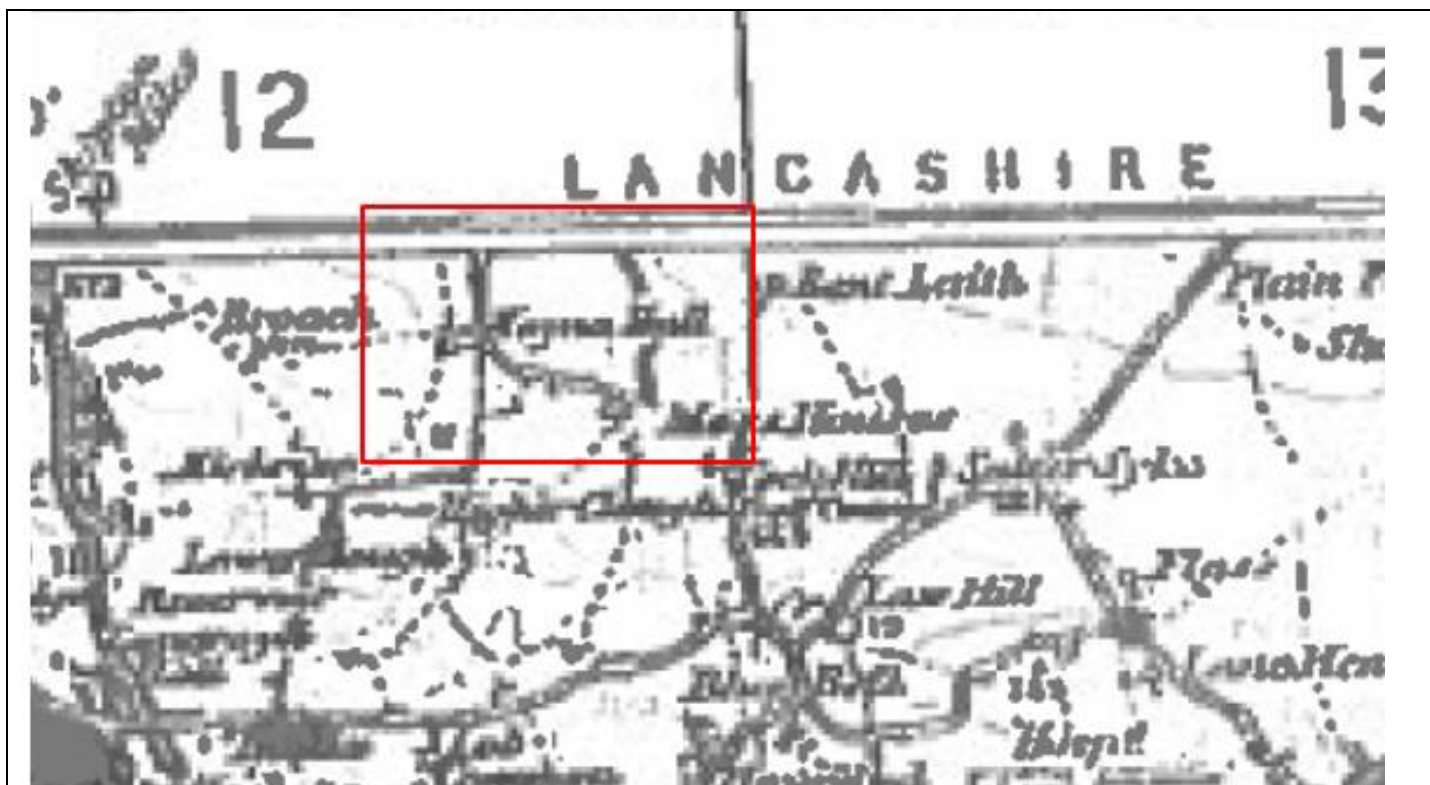
Observations		<p>Finance Act maps and valuation books were inspected at the County Records Office. The map sheet covering the application route appears to be incomplete.</p> <p>None of the application route appears to be shown excluded from numbered hereditaments although it was noted that routes known to be public vehicular highways including Noyna Road and Moss Houses Road are not shown excluded either.</p> <p>Part of the application route between point A and point B crosses the plot numbered 6890 for which no deduction for a public right of way is listed. From midway between point A and point B through to point G the route passes through a plot numbered 6895 and again, no deduction for a public right of way is listed. The rest of the application route – east of point G – crosses land which is not clearly shown on the map as having been numbered.</p>
Investigating Officer's Comments		The Finance act Map sheet inspected is incomplete and no inference can be drawn.
6 inch OS Map	1914	Further edition of the OS 6 inch map revised 1909-1910 and published 1914.



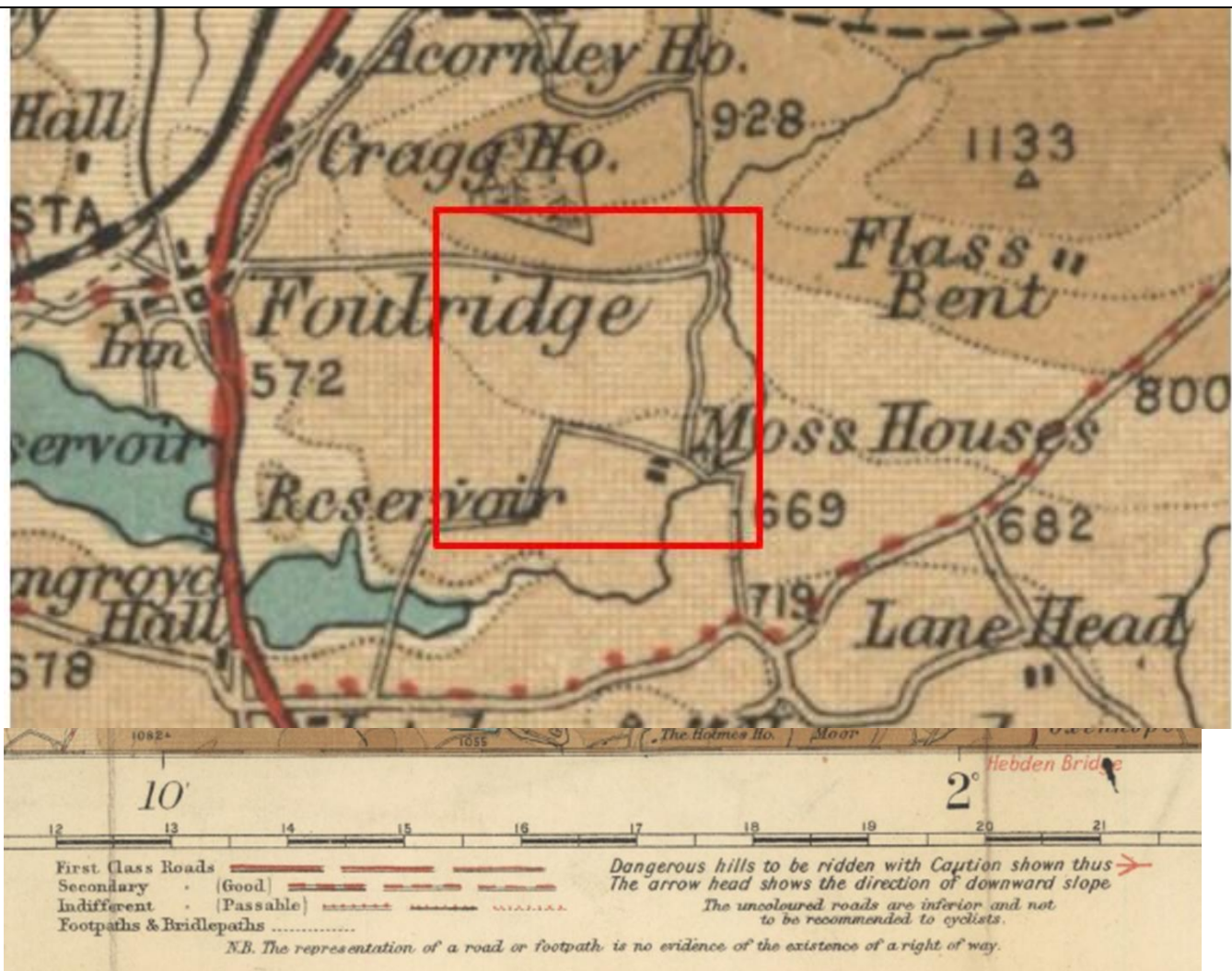
Observations		The application route is not shown between point A and point D. The route between point D and point K is shown as a substantial route providing access to Moss Houses, Causeway Top, Noyna Hall and White House and is shown gated at Causeway Top. Routes extending from the application route or from Noyna Hall are all shown as footpaths.
Investigating Officer's Comments		The application route between point A and point D did not exist in 1909. The route between point D and point K existed as a substantial route which appeared capable of being used on horseback but may not have existed as a through route or a route accessible on horseback beyond Noyna Hall.
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1892, revised in 1930 and published 1932.



Observations		The application route between point A and point D is not shown. The route between point D and point K is shown unchanged from earlier OS maps providing access to a number of properties and routes shown as footpaths.
Investigating Officer's Comments		The application route between point A and point D did not exist in 1930. The route between point D and point K existed as a substantial route which appeared capable of being used on horseback but may not have existed as a through-route or a route accessible on horseback beyond Noyna Hall.
1 inch OS Sheet 30 Lancashire & Yorkshire	1924	OS map extract submitted by applicant.



Observations		This small scale map was submitted by the applicant. The quality of the photocopy is poor. Whilst not easy to see due to the quality of the map extract, the application route between point A and point D is not shown on the map. From point D to point K the application route does appear to be shown providing access to Noyn Hall.
Investigating Officer's Comments		The application route between point A and point D did not exist in 1924. The application route between point D and point K existed as part of a longer route providing access to Noyn Hall and to be shown on such a small scale map must have been reasonably substantial. It did not however appear to form part of a through-route.
Bartholomew's Revised ½ inch map sheet 6 Harrogate	1919-1924	Further edition of Bartholomew small scale map.

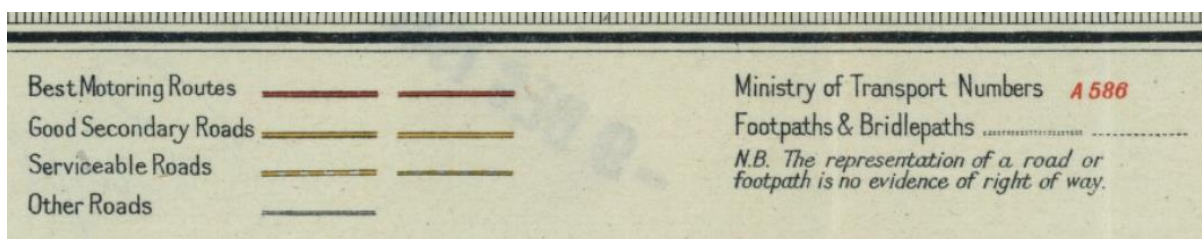
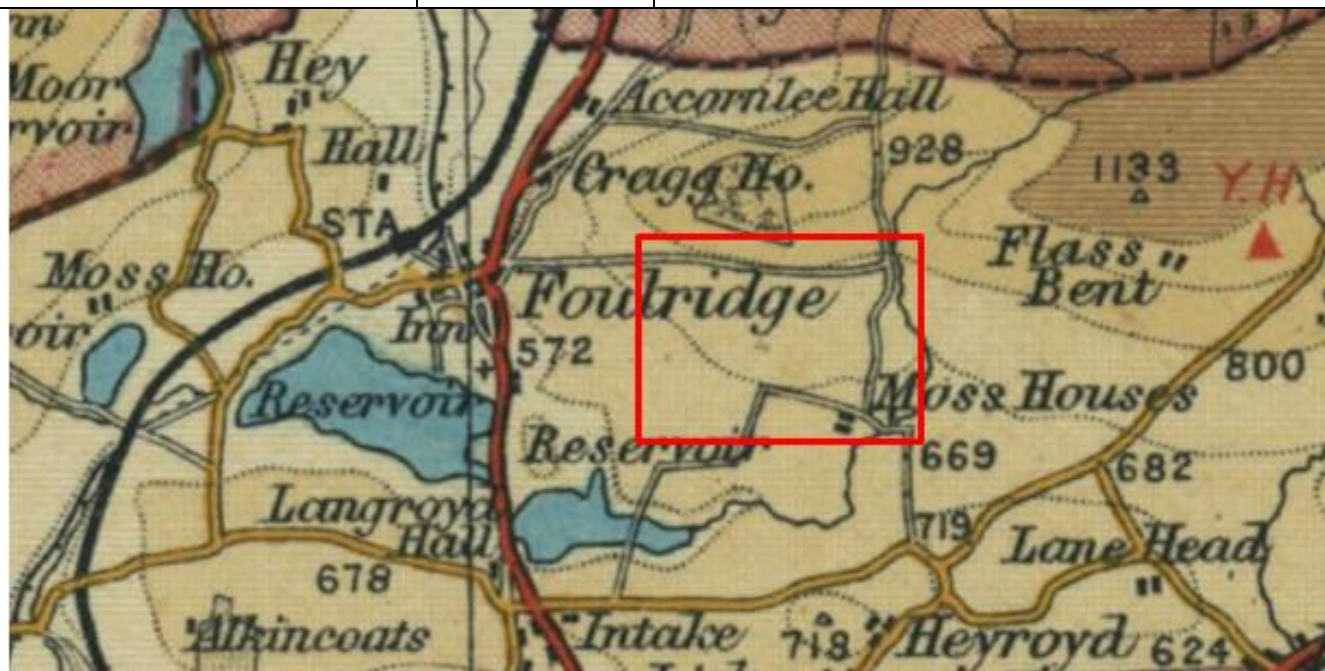


Observations		<p>The application route between point A and point D is not shown. The route between point D and point K is shown as part of a longer route described in the map key as an uncoloured 'road' which is inferior and not to be recommended to cyclists. Moss Houses are marked but Noyna Hall is not. The route shown turns south in proximity to where Noyna Hall is located and can be seen to continue south west to pass through a reservoir to exit onto Castle Road.</p>
Investigating Comments	Officer's	<p>The application route between point A and point D did not exist in the 1920s.</p> <p>The application route between point D and point K is shown in the same way as it was shown on the earlier edition of Bartholomew's map as part of a longer through-route described as a road south from the application route through to Castle Road unlike on contemporary OS maps although traces of this route appear to exist on the earliest 6 inch OS map and are referred to in part on the Tithe Map.</p>
Borough of Colne, Town Planning/Development	1930	<p>Photocopy of 6 inch map provided by the applicant from Colne library collection.</p>




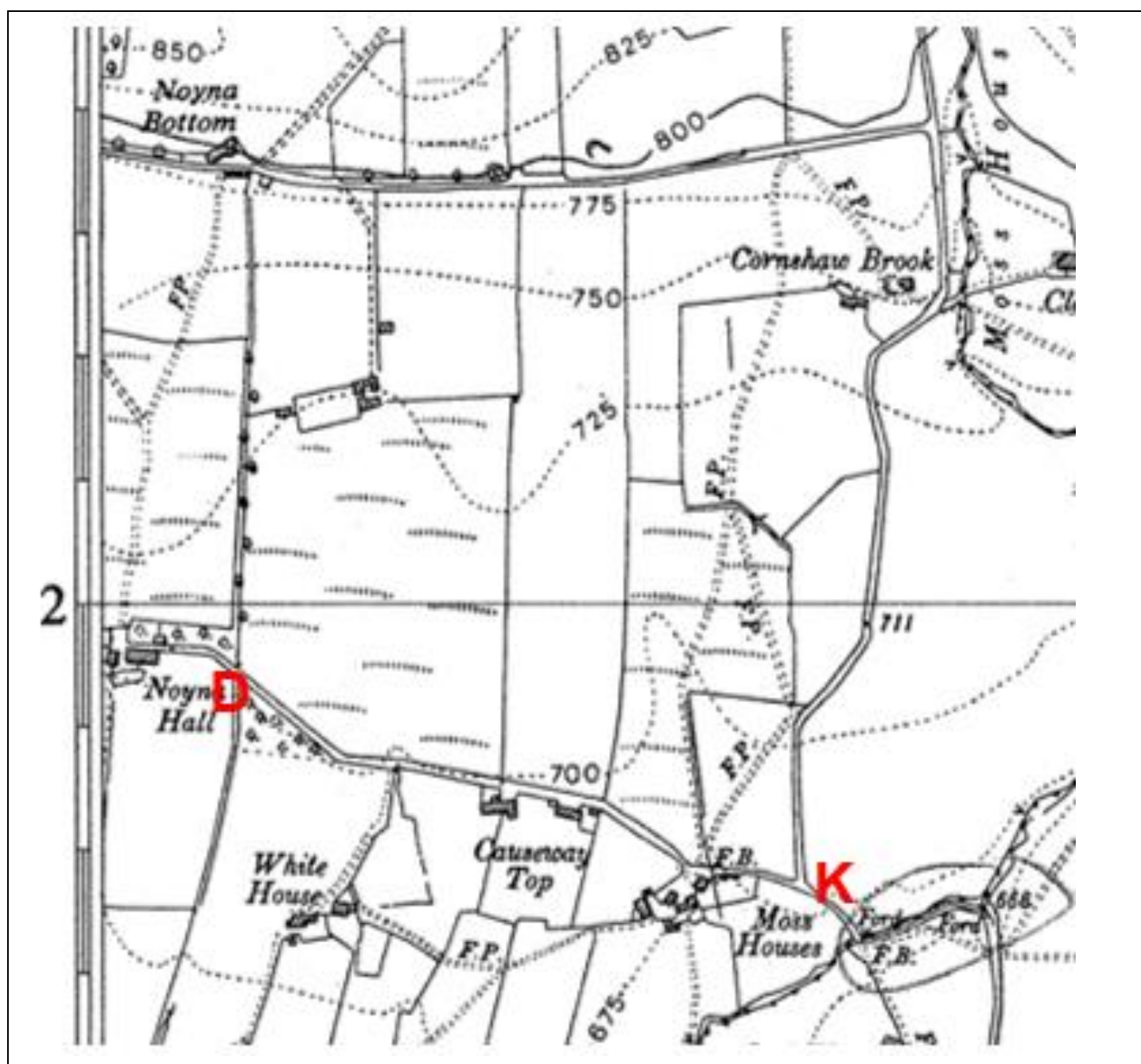
Observations		<p>A track consistent with the first section of the application route (from point A to point B) is visible which then continues from point B due south to Noyna Hall. The application route from point B to point D is not apparent.</p> <p>From point D to point E the route is not visible due to tree cover. From point E to point K the route is clearly visible as a significant track consistent with how a route used by vehicles would appear.</p>
Investigating Officer's Comments		<p>The application route between point A-B existed in the 1940s but at the time that the photograph was taken it did not continue along the application route towards point D. The application route between point D and point E, shown on OS maps produced before and after the date of this photograph is not visible on the photograph. This may be because the track obscured by tree cover but may also indicate that since a new access route from point A on Noyna Road south to Noyna Hall Farm had been</p>

		<p>created then vehicular access to Noyna Hall Farm had significantly decreased via the application route between point D and point K and that the route west of point E was no longer as visible due to decreased vehicular use.</p> <p>Between point E and point K the route is clearly visible and appears capable of being used by horses.</p>
Bartholomew's half inch map	1941	Bartholomew ½ inch mapping Sheet 31 North Lancashire published 1941



Observations		Further small scale Bartholomew's map showing the application route in the same way as the earlier two additions of the map.
Investigating Comments	Officer's	The map indicates that the application route between point A and point D did not exist in the 1940s which is largely consistent with other map and documentary evidence available at that time. The application route between point D and point K is shown to exist but again the route is shown as part of a longer through-route turning south south west in the proximity of point D
OS 1 inch Map	1947	1 inch OS map revised 1924 with further corrections

Blackburn & Burnley Sheet 95		1947.
		
Observations		The application route is not shown between point A and point D but is shown in the same way as it has been shown on earlier (and different scales of OS mapping) between point D and point K as part of a substantial access track to Moss Houses, Noyna Hall and other unnamed properties.
Investigating Officer's Comments		The application route did not exist between point A and point D when the map was revised in 1924. The route between point D and point K did exist providing access to a number of properties and appeared to be capable of being used on horseback as a cul de sac.
6 Inch OS Map 94SW and 84SW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised between 1930 and 1945.





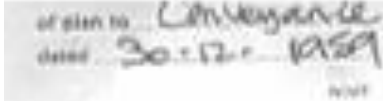
Observations		<p>The application route is shown across two OS map sheets. Only sheet 94SW was available to view as a 'clean copy' but the OS sheet used for the publication of the Revised Definitive Map (Sheet 84SE) was revised and published at the same time.</p> <p>The application route is shown as a track indicated by double pecked lines between point A and point B from where it then continued south along the route of Foulridge 34 direct to Noyna Hall Farm. The application route between point B and point D is not shown.</p> <p>Between point D and point K the application route is shown as it is on earlier editions of the OS mapping as a substantial bounded route providing access to a number of properties.</p>
Investigating Comments	Officer's	<p>The application route between point A and point B appears to have come into existence between 1930 and 1945 as part of an access route direct to Noyna Hall. The route between point B and point D did not exist at that time so it appears that the full length of</p>

		<p>the application route still did not exist as a through-route which could be used by any type of traffic (either public or private) at that time.</p> <p>The route between point D and point K did exist providing access to a number of properties and appeared to be capable of being used on horseback.</p>
OS Map from Mario Maps	1950s	<p>Submitted by the applicant and available to view online on the county council website - http://mario.lancashire.gov.uk/agsmario/default.aspx</p> <p>It differs from the 7th Series 1 inch map published 1962 (detailed below) and the date of publication and revision is not known.</p>



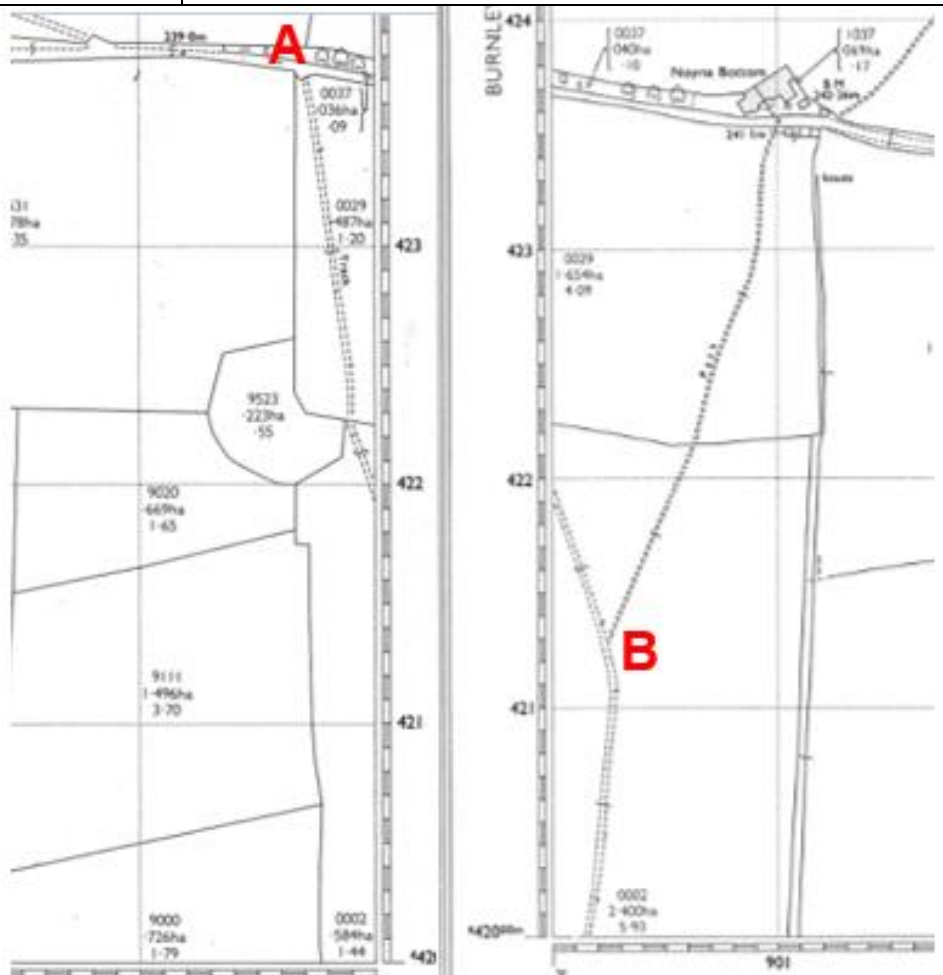
Observations		<p>The application route is shown as part of the access to Noyna Hall between point A and point B. The route between point B and point D is not shown. The application route between point D and point K is shown as a substantial bounded route providing access to a number of properties. A route is also shown extending south west from point E providing access through to Castle Road.</p>
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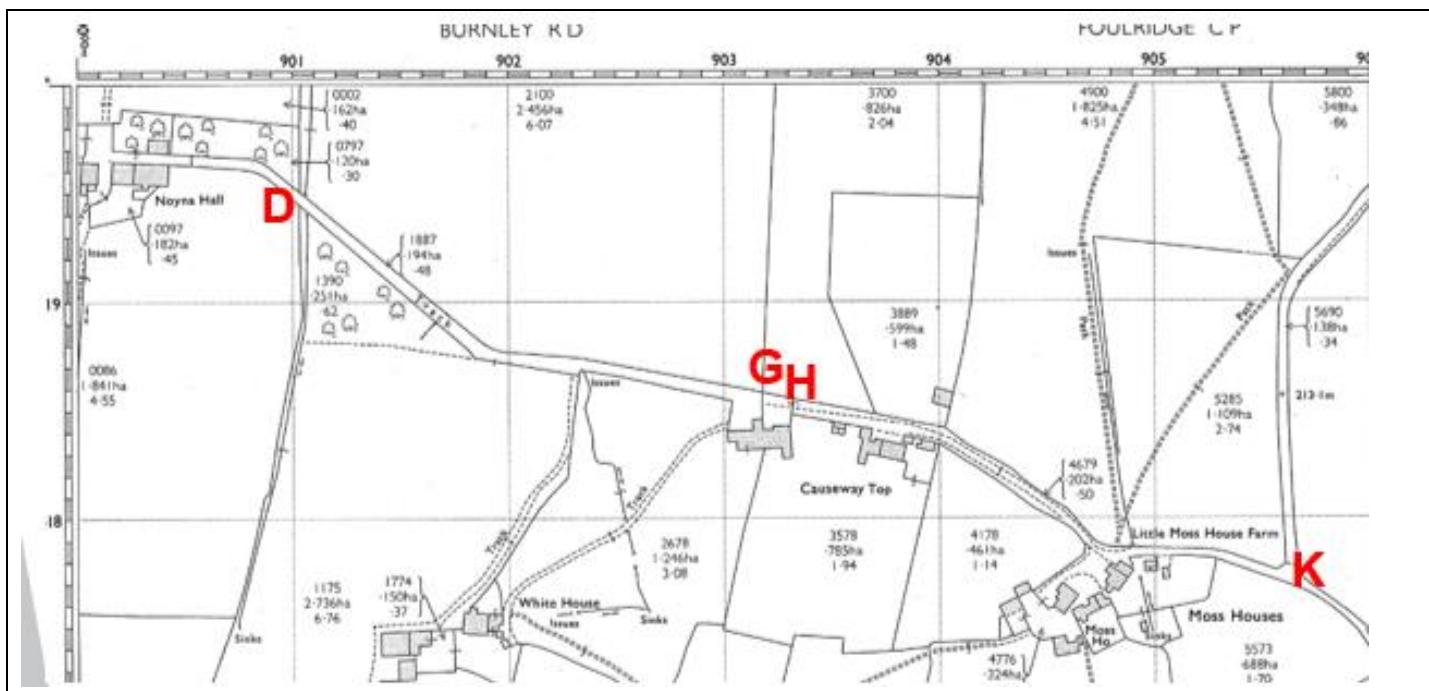
Investigating Comments	Officer's		<p>This small scale 1 inch OS map is believed to have been published in the 1950s. It is consistent with other maps of that time in showing that the application route between point A and point B was now in existence but that the full application route was still not available – as the section from point B to point D did not exist.</p> <p>The map shows a route extending south west from point E through to Castle Road – as shown intermittently on maps predating it.</p> <p>The application route from point D to point K is again shown and appeared to be capable of being used on horseback.</p>
Conveyance and Plan		1959	A copy of a conveyance and plan submitted by the applicant regarding land at White House Farm, Foulridge



Observations		The Conveyance submitted relates to a plot of land at White House Farm and is dated 30 th December 1959. The description of the property refers to it being bounded on the southerly side by 'a roadway leading from Noyna Hall Farm to Causeway Top'
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		and refers to access to the property being via Noyna Road (not the application route). A plan included in the conveyance shows the application route between point D and point G but does not indicate what the public (or private) status of the route was believed to be.
Investigating Officer's Comments		The conveyance plan shows the application route between point D and point G physically existed and described it as part of an access road between Noyna Hall and Causeway Top. There is no reference to whether this route carried any public rights.
1:2500 OS Map SD 9041-9141 SD 8842-8942 and SD 9042-9142	1970-71	Further edition of 25 inch map reconstituted from former county series and revised in 1967 and published 1970-1971 as national grid series.

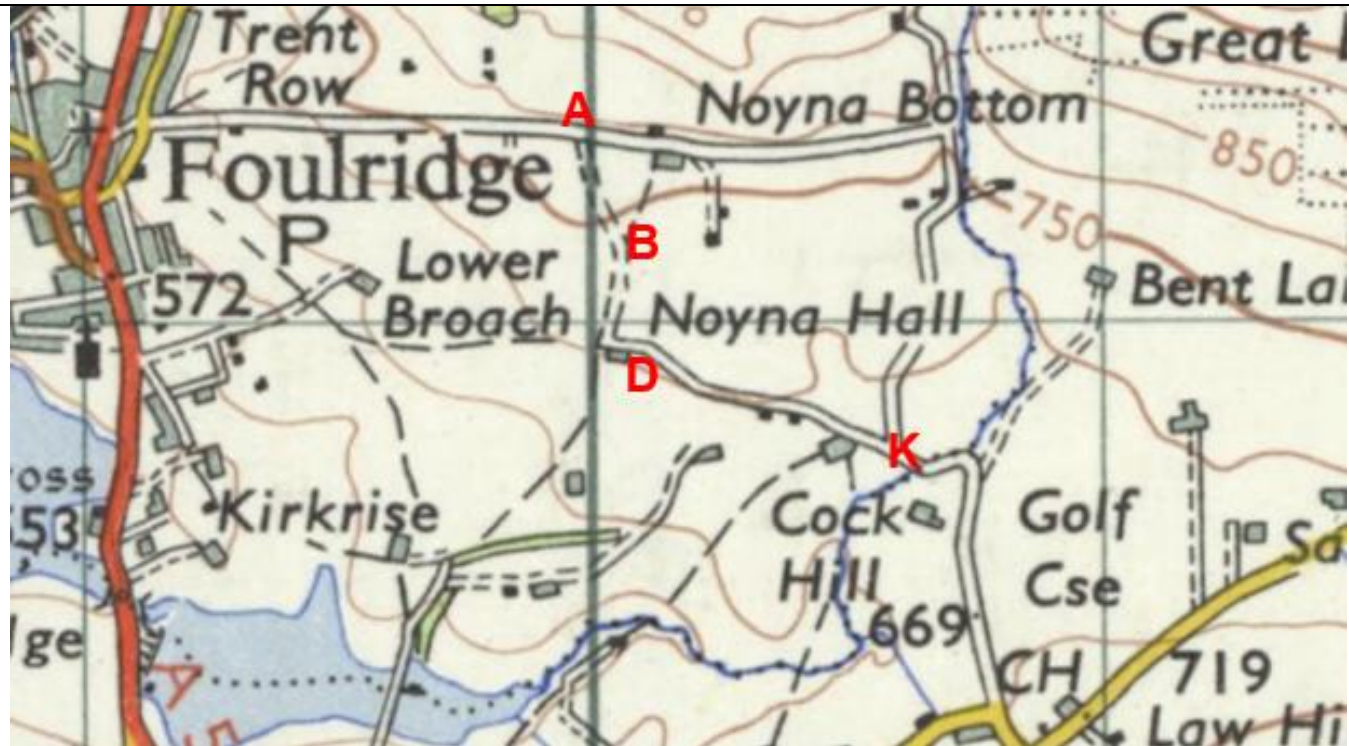




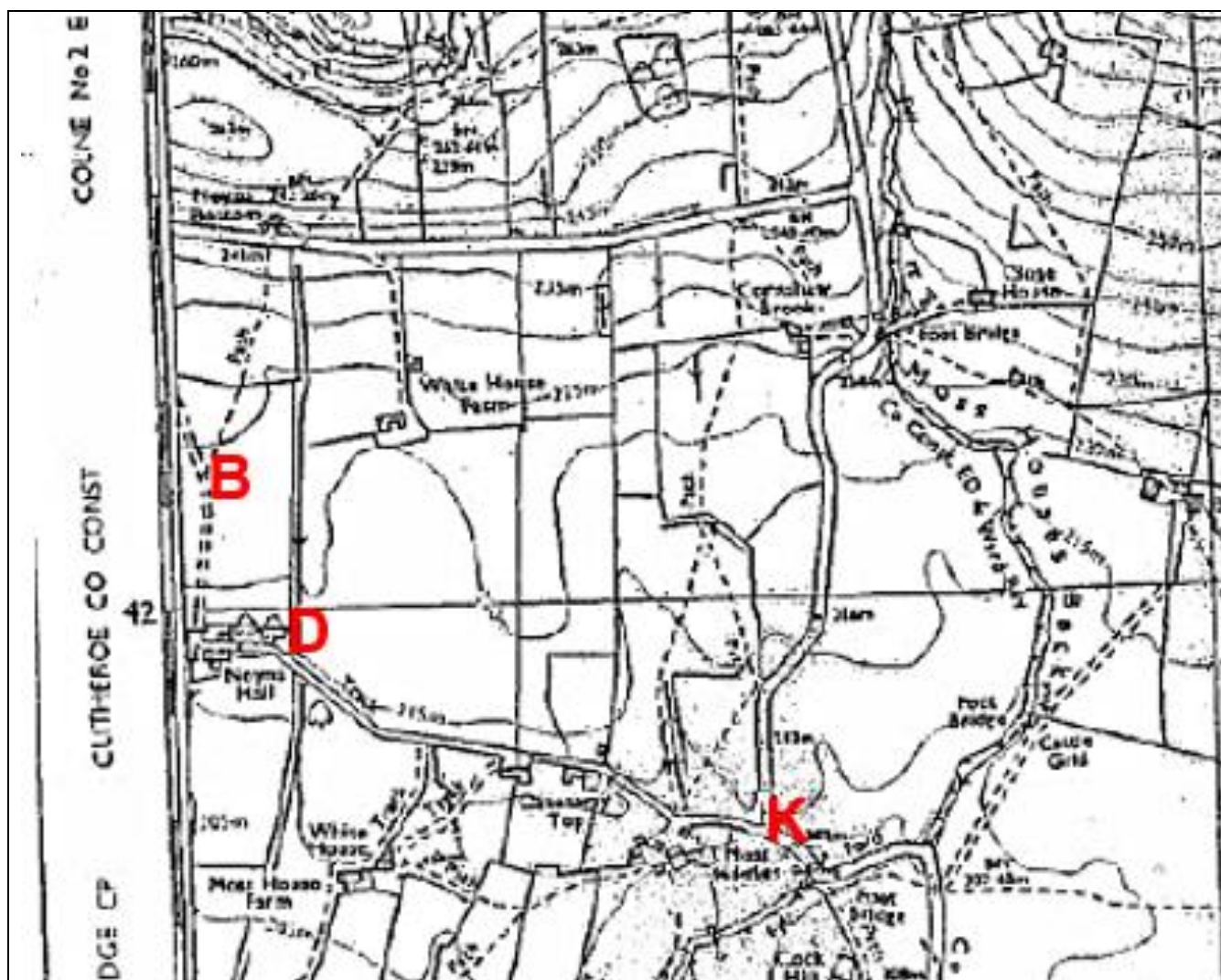
Observations		<p>The application route between point A and point B is shown as part of the access road to Noyna Hall and the route between point B and point D is still not shown. The application route between point D and point K is shown largely unaltered from how it is depicted on earlier OS maps and appears gated at point G and point H and provides access to a number of named properties.</p>
Investigating Officer's Comments		<p>The application route between point A and point B existed as part of an access route direct to Noyna Hall in 1967. The route between point B and point D did not exist at that time so it appears that the full length of the application route still did not exist as a through-route which could be used by any type of traffic (either public or private) at that time.</p> <p>The route between point D and point K existed providing access to a number of properties and appeared to be capable of being used on horseback.</p>
Aerial photograph	1960s	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



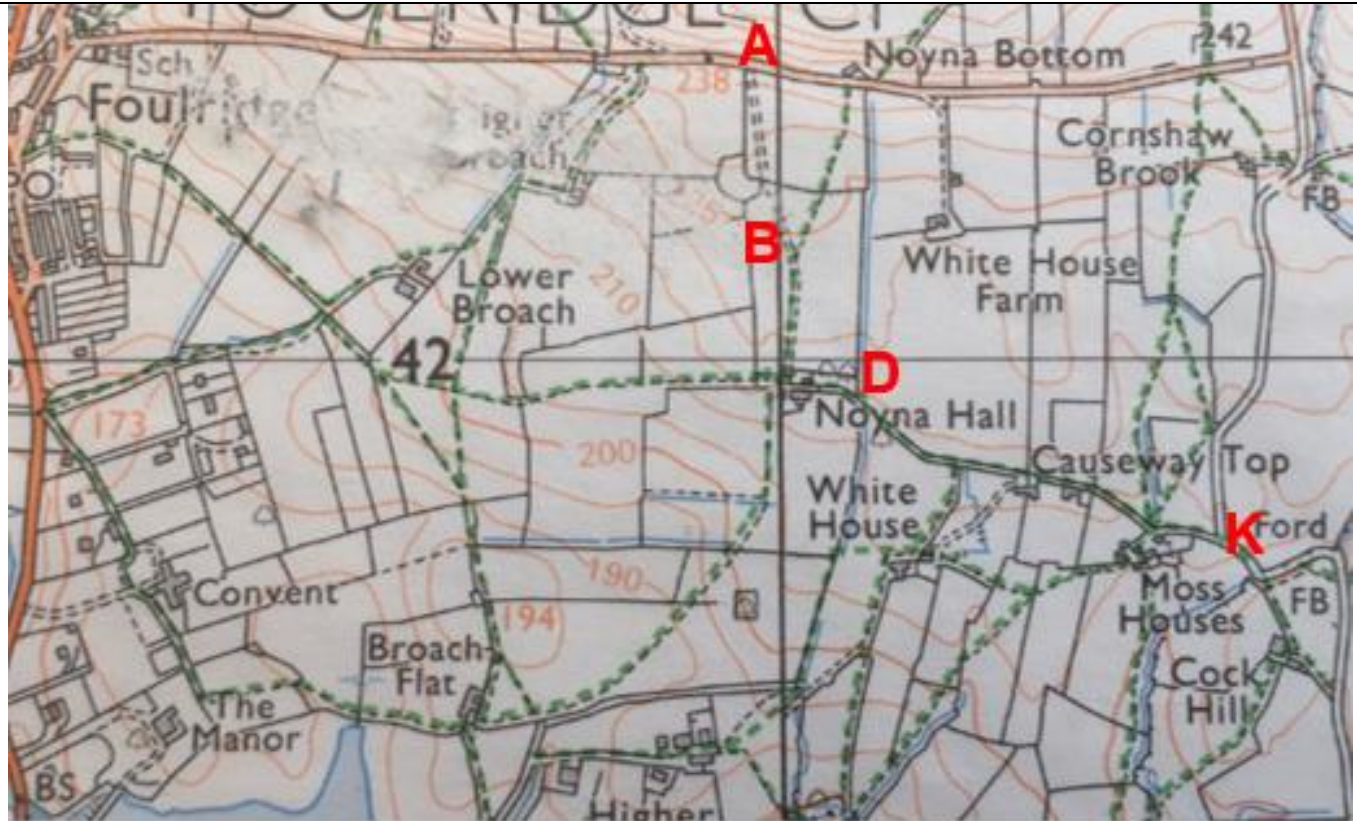
Observations		The aerial photograph clearly shows the primary vehicular access to Noyna Hall as being via the application route between point A and point B and then continuing south direct to the Hall. The photograph shows no evidence of a worn track between point B and point D. The application route between point D and point K can be seen on the photograph consistent with how it is shown on OS mapping.
Investigating Officer's Comments		The application route was not accessible as a through-route from point A to point K via points B-D in the 1960s when this photograph was taken. The route between point A and point B and point D and point K appeared capable of being used on horseback but with no apparent through-route except via Noyna Hall there is no evidence whether such use would have occurred at this time.
1 inch OS Map	1962	1 inch OS seventh series Sheet 95 published 1962 available to view on the National Library of Scotland website https://maps.nls.uk/view/91576411 The map was fully revised in 1956 and published in 1962.



Observations		<p>The application route is shown between point A and point B as part of the access to Noyna Hall. The route between point B and point D is not shown. Between point D and point K the application route is again shown as a significant bounded route providing access to a number of properties. The route shown on the earlier OS 1 inch map believed to date from the 1950s and extending south west from the application route to Castle Road is no longer shown connecting to the application route.</p>
Investigating Comments	Officer's	<p>The application route between point A and point B existed as part of an access route direct to Noyna Hall in 1956. The route between point B and point D did not exist at that time so it appears that the full length of the application route still did not exist which could be used by any type of traffic (either public or private) at that time.</p> <p>The route between point D and point K existed providing access to a number of properties and appeared to be capable of being used on horseback.</p>
1:10,000 OS Sheet 94SW	1960-1977	Map extract submitted – and dated - by the applicant.



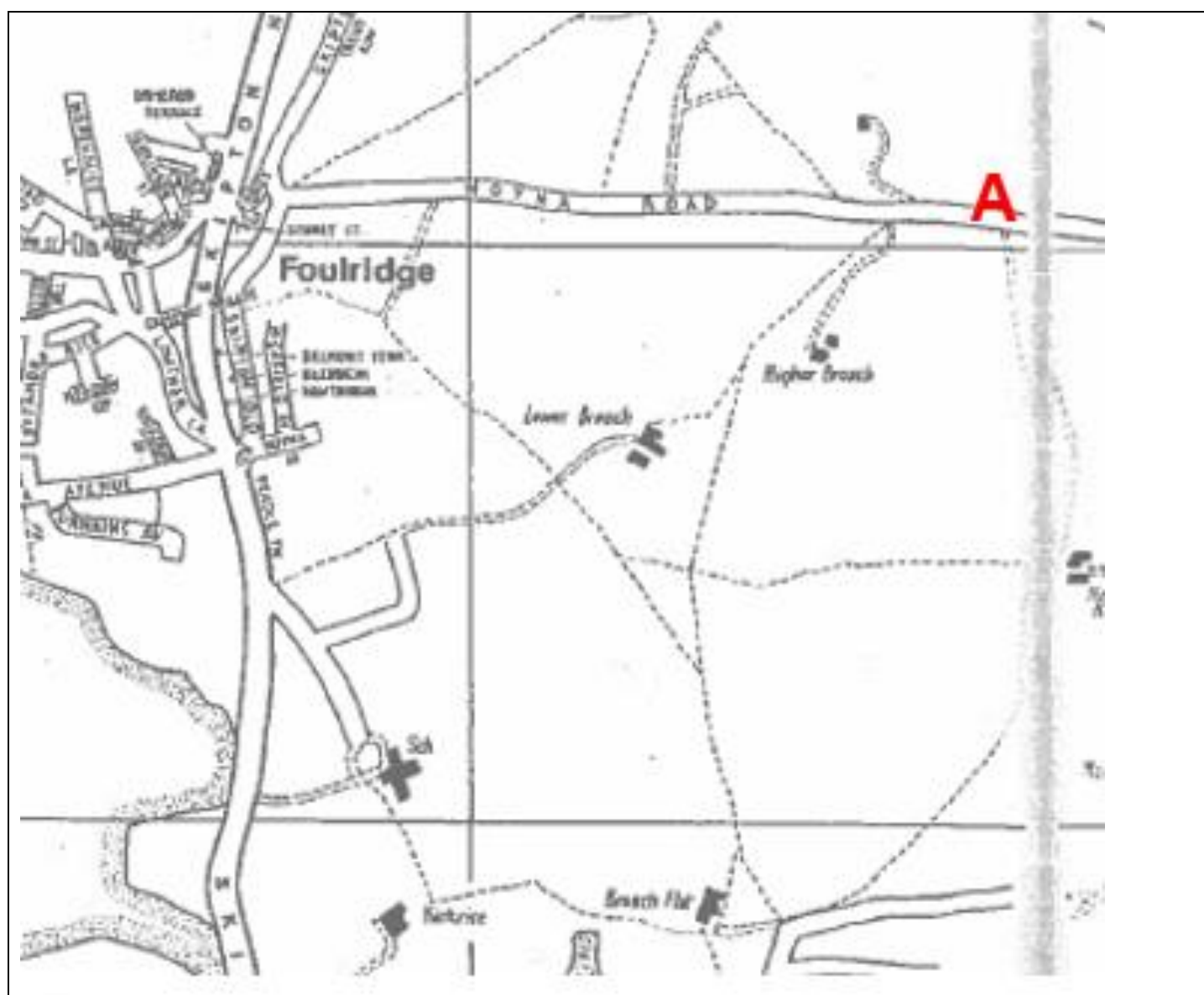
Observations		The map extract provides no further information about the application route during the timescale given (1960-1977).
Investigating Officer's Comments		No further inferences can be drawn.
OS 1:10,000 Pathfinder Series SD 84/94 Barnoldswick/Earby	1983	OS Pathfinder 670 (SD 84/94) Barnoldswick & Earby 1:25,000 surveyed 1960-1977, revised for selected changes 1983, crown copyright 1983

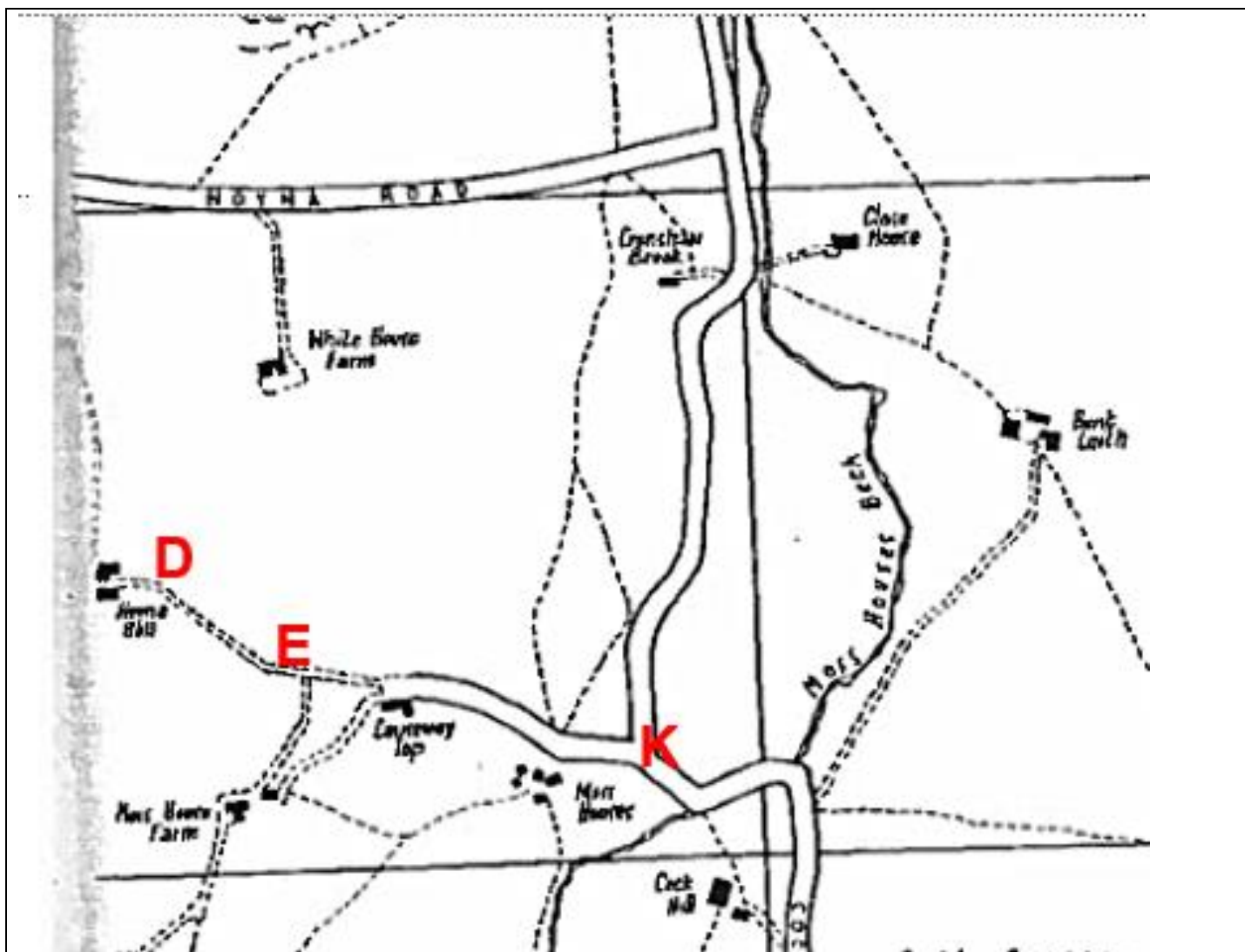


Observations		This OS Map, produced as part of the OS Pathfinder Series, was published predominantly with the leisure industry – particularly walking – in mind. The map was surveyed between 1960 and 1977 and revised for selected changes in 1983. The map again shows the application route in existence between points A-B and points D-K but does not show the route between points B-D.
Investigating Officer's Comments		<p>The application route between point A and point B existed as part of an access route direct to Noyna Hall from the 1960s. The route between point B and point D did not exist at that time – and may not have done until the 1980s - so it appears that the full length of the application route still did not exist.</p> <p>The route between point D and point K existed providing access to a number of properties and appeared to be capable of being used on horseback.</p>
Aerial Photograph	2014	Aerial photograph available to view on GIS.



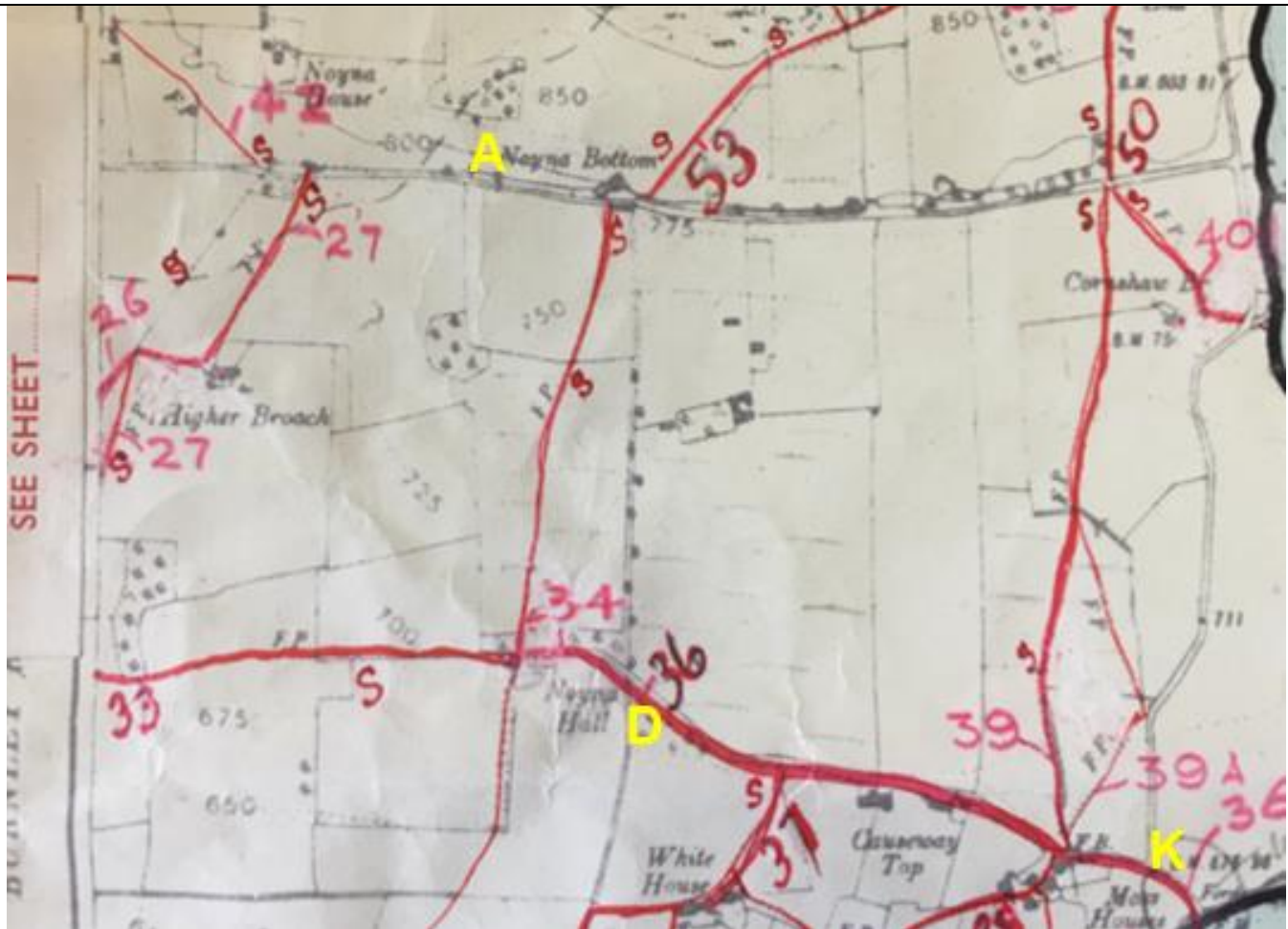
Observations		The aerial photograph shows the full length of the application route – including the route between point B and point D. It is not possible to see from the photograph what gates existed across the route, whether they were locked or passable.
Investigating Officer's Comments		The full length of the application route existed in 2014 and may have been capable of being used on horseback.
Pendle Street Atlas	undated	Submitted by applicant and dated by them as possibly being published in the 1950-1960s. The applicant interpreted what was shown as identifying the application route as a road from Moss Top to Causeway Top.





Observations		<p>No key panel was provided with the map. The application route from point A to point B can be seen as a double dashed line which extends from Noyna Road from point A to point B and then south to provide direct access to the west of Noyna Hall. The application route from point B at point D is not shown.</p> <p>From point D to Causeway Top (between point F and point G) the application route is then shown as a track depicted by double pecked lines which forms part of a longer access route to Noyna Hall. From Causeway Top east to point K the application route is shown bounded by solid lines and depicted in the same way as Noyna Road and Moss Houses Road.</p>
Investigating Comments	Officer's	<p>The application route between point A and point B and between point D and point K existed at the time the atlas was published. From Causeway Top to point K the route appeared to be depicted as a significant route – possibly indicating that it was a wide track bounded on both sides and capable of</p>

		being used by horses and vehicles. Without further information about the publication little inference can be drawn.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the county council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the county council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the county council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>

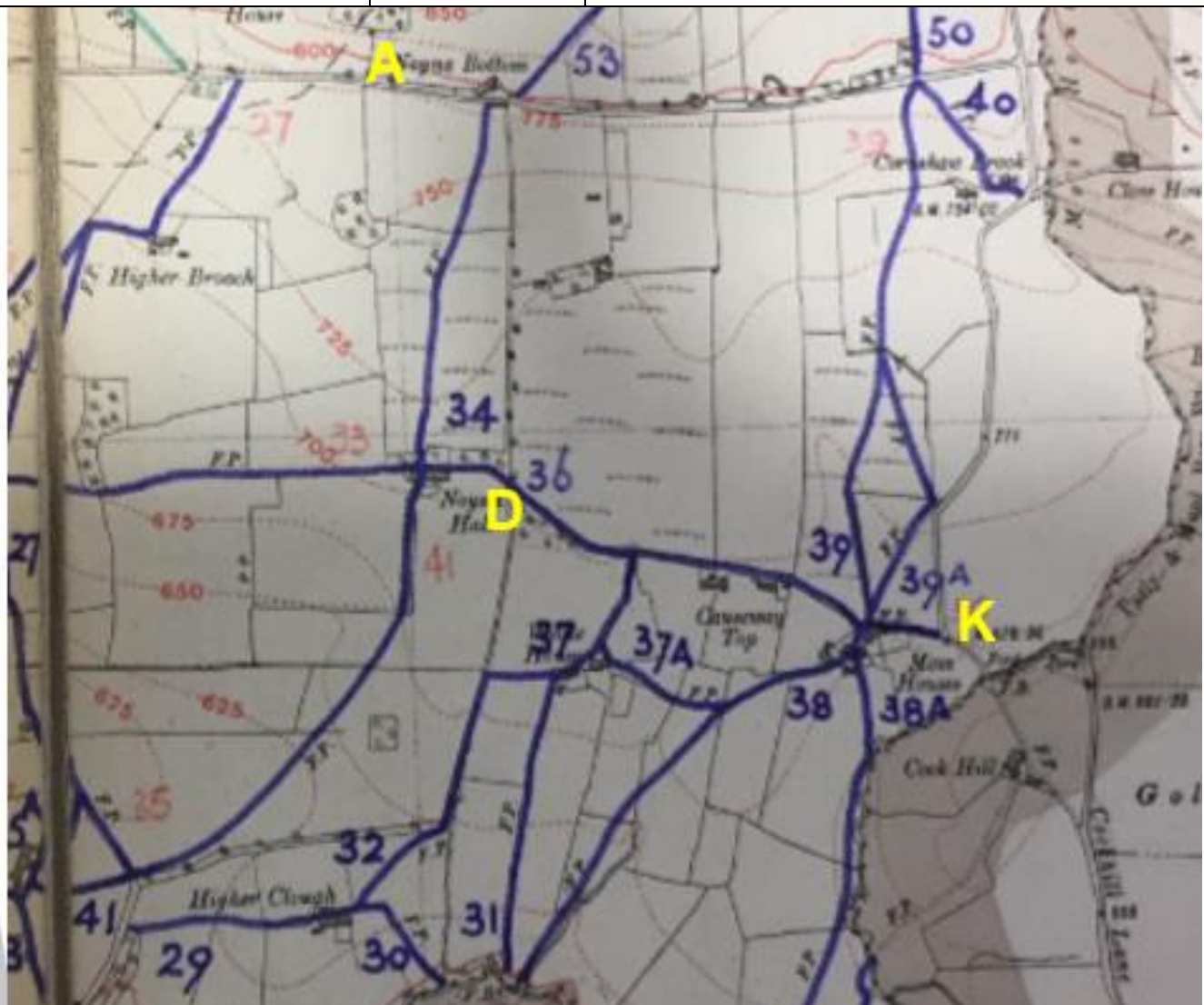


DISTRICT <i>Humby</i>	PARISH <i>Foulridge</i>	No. <i>16</i>
MAP SHEET No. <i>2</i>	LENGTH <i>0.42</i> miles (to two decimal places)	
BRIEF DESCRIPTION (Field F.P. or otherwise)		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).		
<i>Nayna Hall farm to Moss House farm to boundary. cart road. F.P. Bad condition.</i>		
SURVEYED BY :—		
Name	<i>Donald Greenwood</i>	
Address	<i>21. Station Rd. Foulridge</i>	
Date	<i>25/6/50</i>	
50000/F39/4/50		

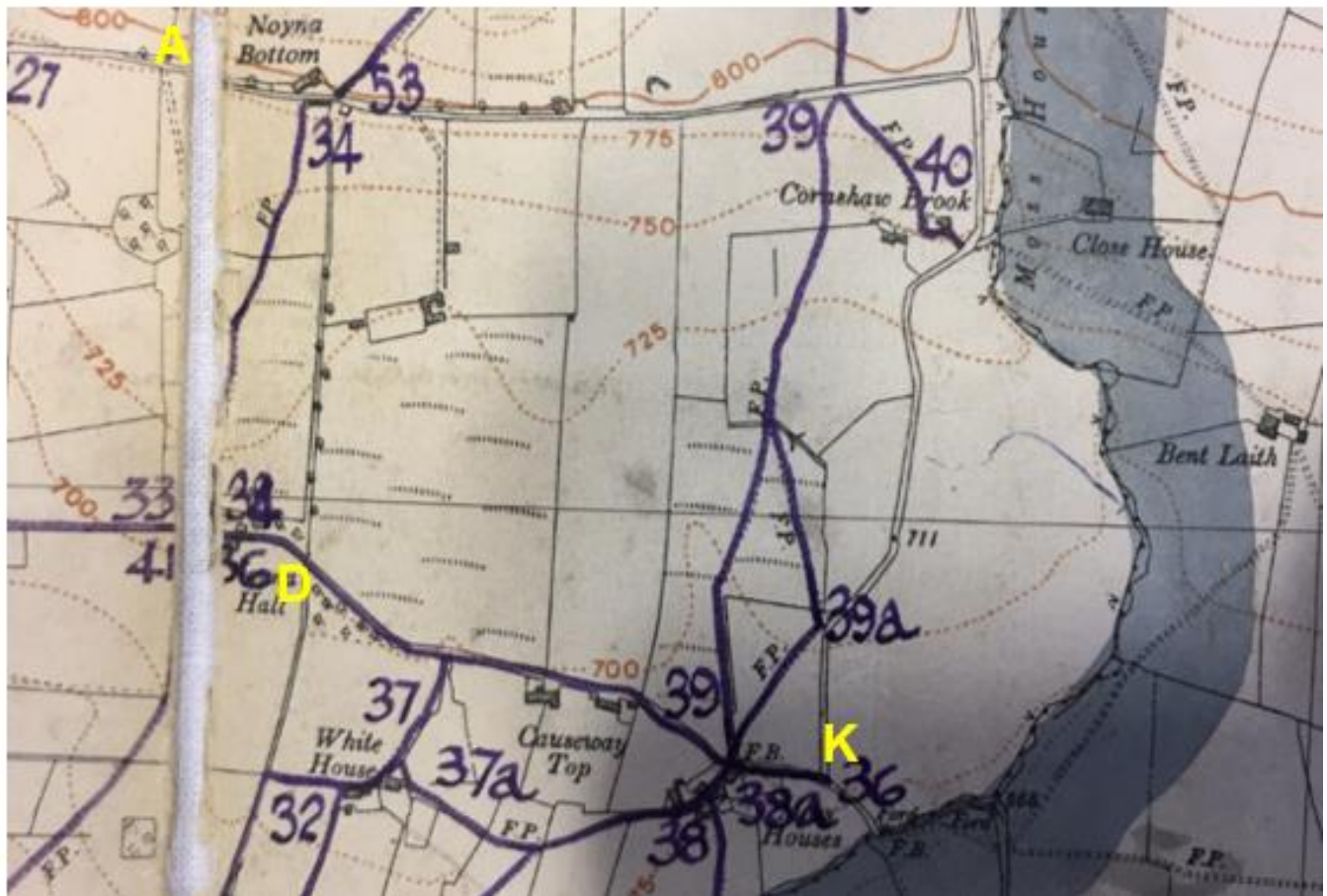
Observations

The application route between point A and point D was not recorded as a public right of way in the Parish survey. The application route between point D and point K was recorded as a public footpath

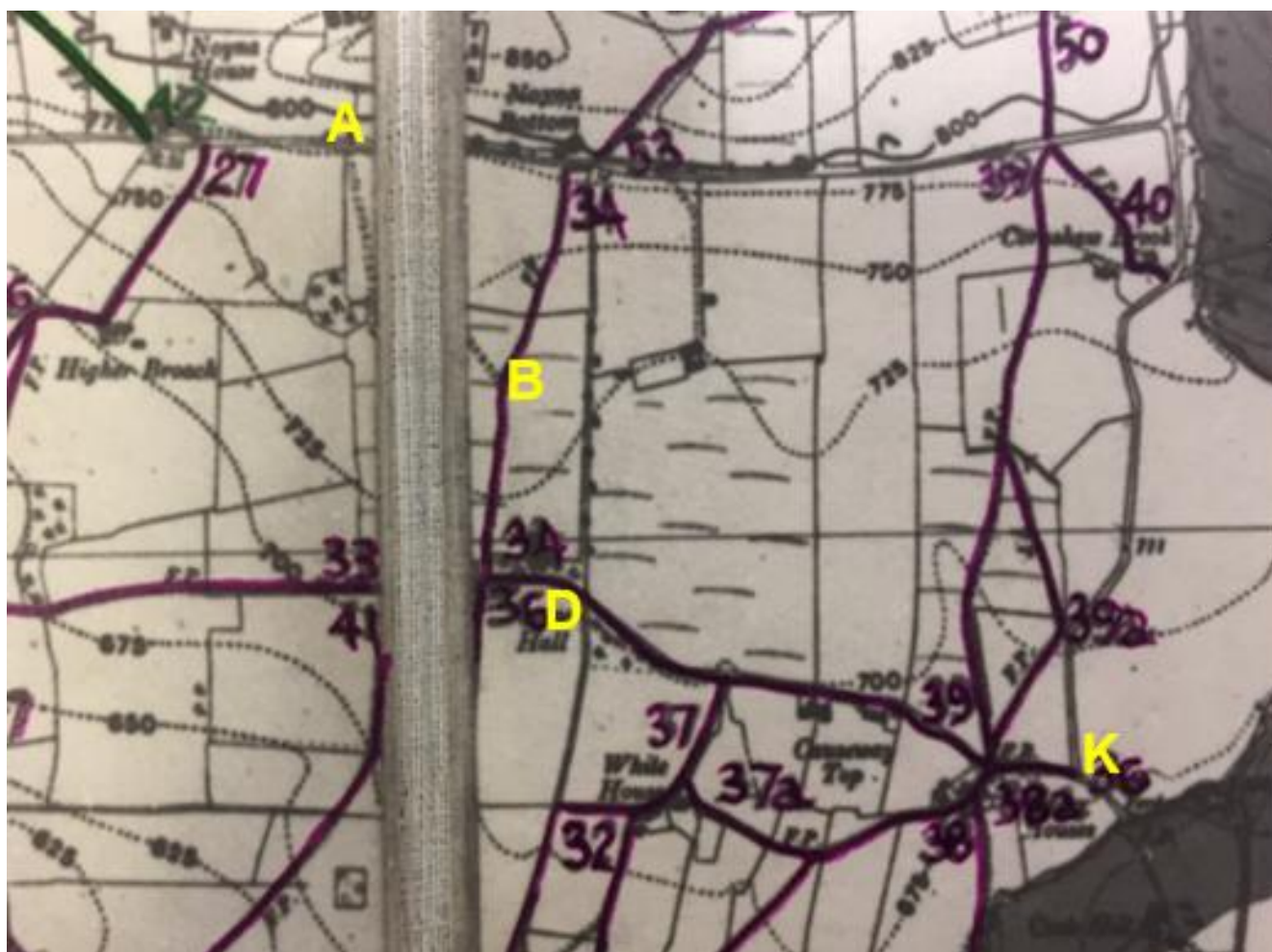
		and numbered as part of Foulridge 36 which was described on the Parish Survey card as being from Noyna Hall Farm to Moss House Farm to boundary and is described as a cart road and footpath in bad condition.
Draft Map		<p>The Parish Survey map and cards for Foulridge were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</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>



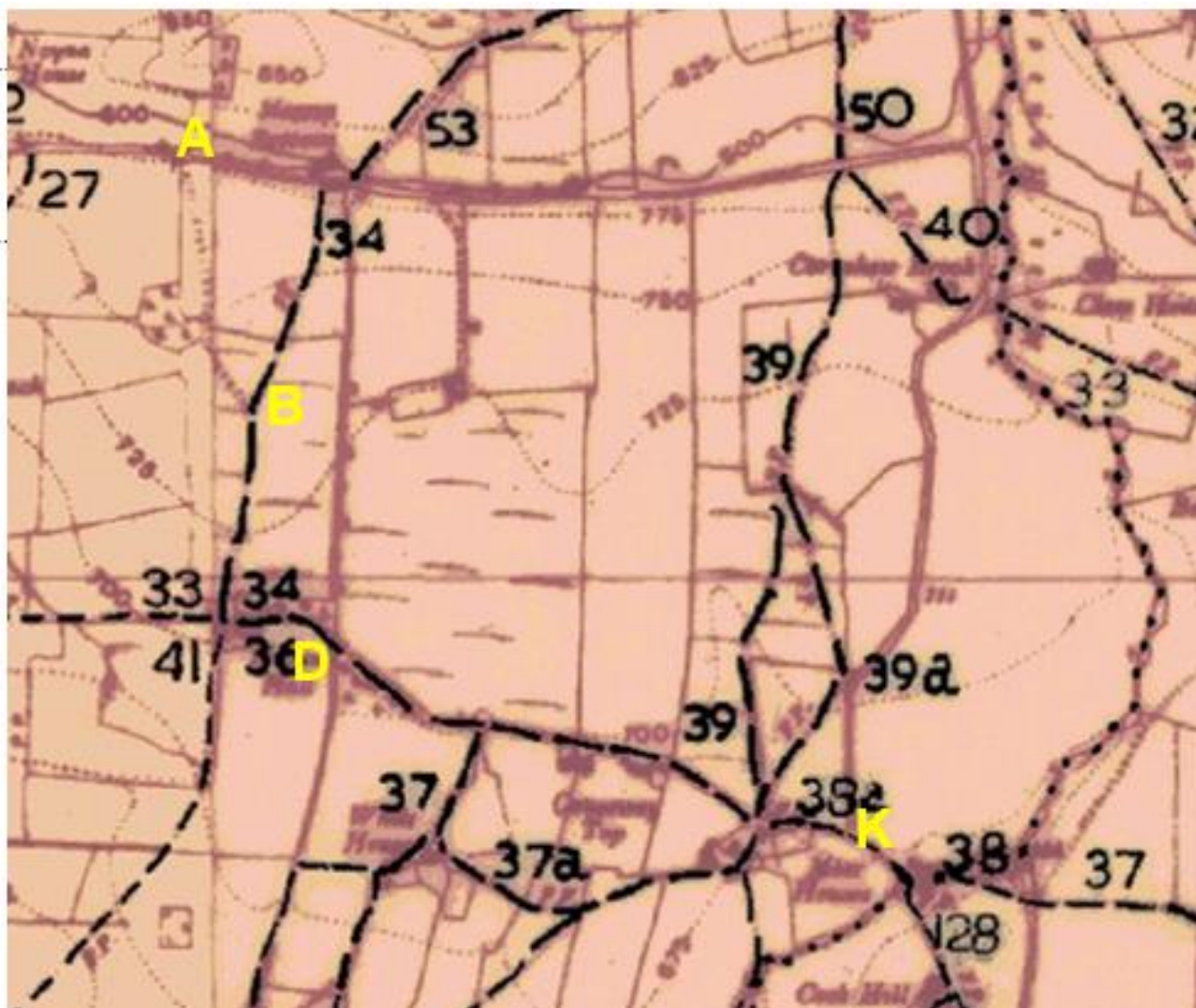
36	"	Farm to junction footpath 33. Junction footpaths 33 and 34 at Noyna Hall Farm to junction Unclassified County Road 4/115 at Moss Houses.	0.37
37	"	Junction footpaths 31 and 32 at White House	
Observations		<p>The application route from point A to point D is not shown on the Draft Map. The rest of the application route is shown coloured purple which denotes a route recorded on the map as a footpath. It is numbered as part of Foulridge 36 close to point D and whereas the route was shown to continue along Moss Houses Road to the parish boundary on the Parish Survey map it is shown to end at point K on the Draft Map.</p> <p>The Draft Statement describes the route as commencing at the junction of Foulridge 33 and 34 at Noyna Hall to the junction with Unclassified County Road 4/115 at Moss House.</p> <p>No representations or objections were made to how the route was shown or the fact that part of Moss Houses Road from point K to the parish boundary was no longer shown as part of Foulridge 36.</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>	



<p>Observations</p>		<p>The application route between point A and point D is not shown. The route between point D and point K is shown unaltered from the earlier Draft Map and recorded as Foulridge 36.</p> <p>No representations or objections were made to how the route was shown.</p>
<p>The First Definitive Map and Statement</p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>



Observations		The application route between point A and point D was not recorded on the First Definitive Map. The route between point D and point K was recorded as part of Footpath Foulridge 36 and the Definitive Statement remained unchanged from the Draft Statement.
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.



	"	Hawthorne Terrace to junction footpath 22 West of Higher Clough.	0.63
35A	"	Junction footpaths 25 and 28 at Broach Flat Farm to junction footpath 35.	0.06
36	"	Junction footpaths 33 and 34 at Noyna Hall Farm to junction Unclassified County Road 4/115 at Moss Houses.	0.37
37	"	Junction footpaths 31 and 32 at White House to junction footpath 36.	0.11
	"	Junction footpath 37 at White House Farm to	
NO. OF FEET	NAME OF ROAD		to 2 places decimals
38A	Footpath	Junction footpaths 38 and 39 at Moss Houses Farm to Colne M.B. Boundary, junction with footpath 38B.	0.27
38B	"	Junction footpath 38A to Colne M.B. Boundary.	0.10

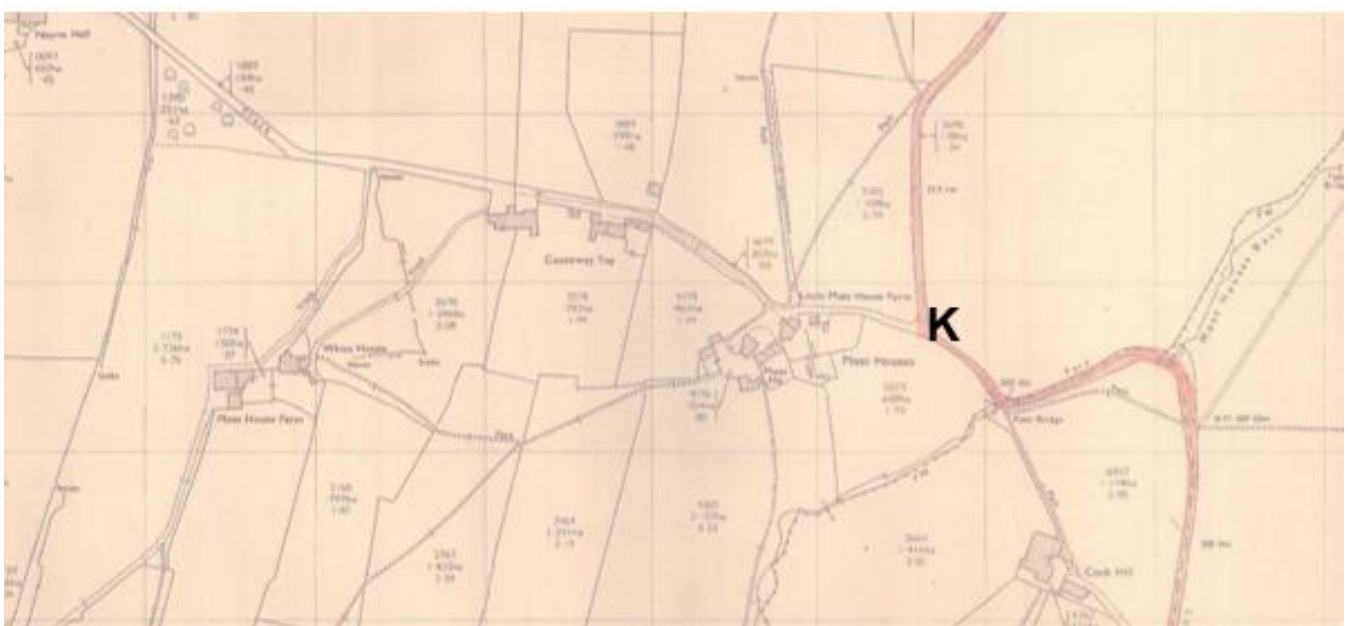
Observations		The application route between point A and point D is not shown on the Revised Definitive Map. The application route between point D and point F is shown recorded as a public footpath as it is on the
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		Draft, Provisional and First Definitive Map.
Investigating Comments	Officer's	<p>From 1953 through to 1962 there was no indication that the application route was considered to be anything other than a public footpath between point D and point K by the Surveying Authority.</p> <p>There were no objections to the fact that the route was recorded as such on the First Definitive Map when the map was placed on deposit for inspection or at any stage of the preparation of the Definitive Map.</p> <p>The application route between point A and point D was not recorded as a public right of way and from 1953 through to 1962 there was no indication that it was considered to be a public right of way by the Surveying Authority.</p> <p>There were no objections to the fact that the route was not recorded on the First Definitive Map when the map was placed on deposit for inspection or at any stage of the preparation of the Definitive Map.</p> <p>The Definitive Statements for the route of Footpath Foulridge 36 and other footpaths connecting to it remained the same throughout the process and despite the numbering shown on the Revised Definitive Map (38a between points J and K), the application route between point D and point K is considered to be part of Footpath Foulridge 36.</p> <p>It is not known why there is a discrepancy between the points on Moss Houses Road at which the footpath terminates.</p>
Highway 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,</p>

under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.



Road Transfer Map



Lancashire County Council highway records

Observations	1929 to present day	The application route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in records believed to be derived from the 1929 Handover Map.
Investigating Officer's Comments		No inference can be drawn regarding bridleway rights.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the county council since that date.
Observations		A search of the county council records, records held at the County Records office and the London Gazette was made and no record of any legal orders relating to the public status of the route were found.
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the county council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or</p>

		from any earlier act that effectively brought the status of the route into question).
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the county council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by any of the landowners of land crossed by the application route under this provision of non-intention to dedicate public rights of way over this land.
Photographs of the route submitted by the applicant	Undated	Photocopies of 38 numbered photograph were submitted by the applicant.
Observations		<p>The photographs are numbered with a description of where they were taken but are not dated. Additional information about the photographs is provided in the application bundle – mainly historical – drawing attention to certain features along the route:</p> <ul style="list-style-type: none"> • The gateway at Causeway Top Farm (point I) where they draw attention to an 'ancient stone stoop' (gatepost) – photographs 12 and 13 • Causeway Top Farm – where attention is drawn to the name of the farm and the fact that a causeway indicates a road of some importance, explaining that they consider that the name causeway has survived to commemorate trade and communication links over several hundreds of years. They also draw attention to evidence of cobbles on photographs 1 and 2 although neither of these photographs were taken on the application route. • Photographs 17 and 18 showing an ancient stone stoop (gatepost) and stile at Parsons House and drawing attention to the fact that the gate was padlocked in 2015. • Photo 27 – the applicant draws attention to a gate leading to an ancient road adjacent to point D on the Committee plan – which has not been included as part of the application (and is not a recorded public right of way).
Investigating Officer's Comments		The photographs appear to have been taken relatively recently although pre-date the inspection made by the Investigating Officer. They show the route as it exists in modern times but after the locking of the gate at Parsons House (at point G)

		<p>and whilst they help to confirm the exact route applied for and what its modern day appearance is – and whether it appears capable of being used on horseback – very little inference can be drawn from them regarding the existence of public rights.</p> <p>Map evidence confirms the existence of a number of historical gates along the route between point D and point K and physical evidence of stone gateposts is considered to be evidence that those gates existed as recorded by the OS but not evidence of whether the route was public or private or whether it was considered to be a footpath or bridleway.</p> <p>The naming of one of the properties along the route as 'Causeway Top' on its own is not compelling evidence of historical public rights. The route itself is not named on any of the maps available and the historical meanings of causeway do not necessarily imply public rights. The applicant refers to paving – explaining that a causeway was a paved way (one of the historical meanings) – but the sections of paving shown on the photographs submitted are located on the public vehicular route of Moss Houses Road and not on the application route itself.</p>
The History of Colne and The Story of Foulridge both by Fay Oldland	Published 1990, Revised in 2010	<p>Local history book written by a local historian; Fay Oldland. CRO Ref:EO2 Foulridge First Edition published 1990 ISBN 0948743042 Second Edition published 2010 ISBN 978-0-9565366-0-0</p> <p>Information obtained from a local history book was referenced by the applicant to provide additional historical information about the area and the properties located along the route.</p>
Observations		<p>The applicant draws attention to the author's definition of a causeway as being 'a paved way indicating a road formerly of some importance.'</p> <p>The book also provides some historical information about the origins of Moss Houses which were said to date back to the 1600s and owned for almost four centuries by the Bolton family although it is also noted that the 1851 census listed 9 separate properties at Moss Houses and that it was difficult to determine which were owned and which were tenanted.</p> <p>The applicant also included a section of the book referring to transport and communications which</p>

		<p>makes reference to key routes through the parish and the existence of routes and the origins of their names. No specific mention is made of the Order route.</p> <p>Further information is provided about landholding families and trade and the fact that the textile industry was a significant factor in the development of Foulridge and construction of many of the houses including Noyna Hall which was owned by the Barcroft family and had its own weaving 'shed' until the early 1900s. It is submitted that the route between Noyna Hall, Moss Houses and Moss House Road would have been needed – and was used – for access transporting goods to and from the properties.</p>
Investigating Officer's Comments		<p>The book extracts provide some useful background information about the local history of the area but do not provide any information about the public status of the application route.</p>

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

Landownership

The land crossed by the route from point A to a point approximately 15 metres north of point C is registered under title numbers LA837950 and LA837948 to one of the individuals who submitted a user evidence form.

The land crossed by the route from a point approximately 15 metres north of point C through C-D-E-F-G is unregistered and ownership is unknown.

The land crossed by the route between point G and H to a point approximately 20 metres east of point H is registered under title LA828845 (Causeway Top Farm).

The land from a point approximately 20 metres east of point H to I is registered under title LAN221938 (Causeway Top Farmhouse).

The remainder of the order route (from points I-J-K) crosses land that is unregistered and ownership is unknown.

Summary

The applicant explained that the first part of route applied for (between point A-point D) had only been in existence since it was constructed in 1967 and that user evidence had been submitted in particular reference to this section.

The available map and documentary evidence confirms that the route between point A and point B existed by 1940 as part of an access road constructed from Noyna

Road to Noyna Hall. The route between point B and point D appears to have been constructed at a later date and was not shown on any map revised before 1967 or the 1960s aerial photograph. It is however clearly shown on the 2014 aerial photograph and is referred to as existing before that time by users of the route and by landowners and those objecting to the application.

With regards to the route between point D and point K there is map and documentary evidence of its existence dating back to at least the start of the 1800s.

It is shown on a number of early commercially produced small scale maps (Honor of Clitheroe 1804-1810, Greenwoods Map 1818, Chapelry of Colne Map 1818 and John Carey's Map 1825) and is shown in detail on the Tithe Map produced in 1842.

It appears from these early maps that the application route (D-G) provided access to a number of properties either directly or indirectly and that originally it may have continued north to Noyna Road (on a different route to that applied for) and also south to Castle Road but that by the 1840s both of these routes had fallen into disrepair.

The OS maps from the 1840s onwards consistently show that the application route between point D and point K existed as a substantial gated route which appeared to be capable of being used on horseback but that predominantly provided access to a number of properties and which, from the mid-1800s at least, did not appear to provide a consistent through-route suitable for horses.

The historical map and documentary evidence does not support the application route being public bridleway.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted an application for a Definitive Map Modification Order on 9th June 2019. Along with this, the applicant provided the following information in support of the application:

User evidence from 11 individuals (9 in the form of User Evidence Forms and 2 in the form of written letters)

User 1

Claims to have used the route on a horse monthly for 42 years (1975-2017), although has only been able to use part of the route (presumably point A-G) since June 2015 when the gate at Parsons House was locked and blocked passage.

User 2

Was born in 1980, raised on the farm that User 1 lives at and shares same surname as User 1. Claims to have used the route weekly to monthly since the 1980s to 2017 but refers to the gate at Parsons House being padlocked from 2015 preventing him from using the route by vehicle or horse.

User 3

Lives at same address as User 1 and shares same surname. Claims to have used the route on a horse over the same time period as User 1 (42 years from 1975 to 2017) but on a daily/weekly basis. Also reports blockage of the route by the padlocked gate at Parsons House from June 2015.

User 4

Claims to have used the route on a horse monthly for 20 years (1987-2007) but uses the route on foot to present day. Claims there were no obstructions during period of use on a horse but from June 2015 the gate at Parsons House was padlocked which prevented her passing through with a pram.

User 5

Lives at same address as User 4 and shares same surname. Claims to have used the route on a horse over the same time period as User 4 (20 years from 1987 to 2007) but on a weekly basis. Also uses the route on foot to the present day and describes locked gate at Parsons House from June 2015.

User 6

Describes riding a horse along the route twice in 2017 with the applicant (User 7).

User 7

This is the applicant. Claims to have used the route on a horse weekly to monthly for 28 years (1989-2017), although only a few times since June/July 2015 when gate at Parsons House was padlocked.

User 8

Claims to have used the route on a horse weekly for two years (2013-15) and was prevented from using the route from 2015 due to the padlocked gate at Parsons House.

User 9

Frequency of use of route and time period is same as for User 8 (weekly for two years from 2013 to 2015). Also refers to padlocked gate at Parsons House since the summer of 2015.

User 10

Shares same surname as User 9. Claims to have used the route monthly on a horse for a total of four years split between 1985-87 and 2002-04. She is aware of the gate at Parsons House being padlocked since the summer of 2015.

User 11

Shares same surname as Users 9 and 10. Claims to have used the route on a horse weekly for two years (2013-2015). Describes not being able to use the route after June 2015 due to the padlocked gate and vehicles/horse wagons blocking the route at Parsons House.

The nine users who completed user evidence forms claim to have used the route for pleasure. They state that the route had always followed the same course. All 9 people make reference to either using the route with others or witnessing others

using the route. This includes using the route of foot, horseback, bicycle and by motorised vehicle.

Nobody reported having ever been given permission to use the route.

Map extracts:

1. Enlarged 1:25000 OS Explorer Map OL21, South Pennines showing application route highlighted
2. Google Earth Map – undated aerial photograph
3. Yate's Map of Lancashire 1786
4. Reprint of 1st edition 1 inch OS map – Sheet 16, Skipton & Bradford 1805-1873
5. Smiths Map 1808
6. Chapelry of Colne Map 1818
7. Greenwoods Map 1818
8. John Carey's Map 1825
9. Hennessey's Map 1830
10. Honor of Clitheroe Map 1830
11. Tithe Map of Foulridge 1840s
12. David Charles OS reprint 1st edition 1840s
13. OS 6 inch Map Sheet 49 published 1848
14. OS 1 inch Map 1873
15. 1870/1880 – OS 1 inch map
16. 1891/1892 – OS 1 inch map
17. OS 25 inch OS Map published 1892
18. The Godfrey Edition, OS Sheet 68 – Pendle 1896
19. Cassini Historical Map, Blackburn & Burnley 1904
20. OS 1 inch Map 1914
21. OS 1 inch Map 1924
22. Bartholomew's half inch map 1920-1930
23. Borough of Colne, Town Planning/development map 1930
24. 1950s OS map available to view on MARIO
25. OS Sheet 94SW, 1:10 000 1960-1977
26. OS 1:25 000 Pathfinder Series SD 84/94
27. Early edition of Borough of Pendle Street Atlas undated

Note: Maps submitted with the application were considered and comments included in the Map and Documentary section of the report above.

Conveyance:

Copy of a conveyance and plan dated 1959 regarding land at White House Farm, Foulridge.

38 undated photographs and accompanying information:

Considered and comments included in the Map and Documentary section of the report above.

Additional Information

The applicants explain that the first part of the application route between points A-B-C-D is a relatively new route constructed in 1967 and that this part of the application is based on modern user evidence illustrating that the route has been used daily as of right by walkers, horses, horse and cart, tractors, vehicles, cars and cyclists.

They state that prior to 1967 access to Causeway Top Farm, Parsons House, Ragstones and Noyna Hall was from Cockhill Lane via Moss Houses Road and that the owners of Ragstones and Noyna Hall had their original access blocked by the owners of Parsons House in 2015 due to a padlocked gate.

Additional information from others

n.b. this is not everything that objectors and supporters have said. Anything irrelevant in the context of the legislation or already considered in the assessment of the evidence is not included in this section. Information provided by several people is not replicated after the first occurrence.

Noyna Hall Barn

The Owners of Noyna Hall Barn have stated that they strongly object to the proposal on the basis of a number of reasons.

They state that the route shown between points A-D on the Committee plan cannot be 'upgraded' because it is not an existing footpath. They refer to the wording of the Notice of Application for the Modification Order which refers specifically to an application to 'upgrade' the route whereas they argue that this particular section is not an existing footpath and that the order would 'create' a new right of way. They draw particular attention to the consultation plan sent to them by the county council which does not show the application route between points A-D as a public right of way. They state that this is how the route is also shown on the county council 'Mario' map, the Ordnance Survey First Edition 1:2500 map and the Revised Definitive Map of Public Rights of Way.

This is correct but the investigation and report triggered by the application is not constrained by it. If the application route were found to be bridleway it would be an addition to the map A-D and upgrade D-K.

As owners of Noyna Hall Barn they explain that they have a right of way along the application route between points D and K as defined in their Deeds and that they understand that only Noyna Hall Barn, Noyna Hall Farm, Ragstones & Parsons House are entitled to this right of way and that the properties beyond Parsons House i.e. Causeway Top Farm & Barn, Moss Houses etc. are not permitted to use the route between points D and G. They also explain that they are responsible for the maintenance & upkeep of the track along with other residents sharing the right of way.

Private rights do not imply or preclude public rights at the same or different class.

They also question whether any future maintenance of the track would fall to the county council if the track was upgraded.

The track D-K is currently publicly maintainable to footpath standard and privately maintainable for other private use. If it was found to have public bridleway rights the public maintenance liability would depend on the evidence – if bridleway rights were found to have existed from before 1949 it would become publicly maintainable to bridleway standard, if bridleway rights were found to have arisen as a result of use since 1949 neither the public or private maintenance liability would be changed.

They state that as owners of Noyna Hall Barn they have permitted the occasional use of the track by walkers, etc. in the spirit of good will but that they could have enforced (and may do so in the future as a result of this application) strict use of Footpath Foulridge 34 and not the application route (points A-D) in the future.

They are entitled to do this. Whether such permitted use amounts to permission or dedication is a matter of the particular circumstances.

They also challenge the details of the amount of usage submitted as part of the application. They state that they have had groups of walkers (Ramblers Association etc.) coming past their house preferring to follow the Definitive Footpaths as shown on their OS Maps rather than using the track. They also consider that the user evidence detailing use on horseback is incorrect and note that the statements have not been made under oath. They state that they have had very little in the way of equine traffic in the 22 years they have lived there despite being at home and spending considerable time outside in the last 5 years since retiring.

Use of the footpaths not subject to the application is not evidence against use of other routes. Not seeing users is different to knowing there was no such use.

They also state that they have seen very little vehicular traffic which comprised primarily of residents accessing their properties and post deliveries.

Use by residents, visitors, tradespeople, etc. is private use and cannot be used to support the existence of public rights. Use by vehicles is not evidence of bridleway rights. Only use by the public with horses or pedal cycles would provide user evidence of public bridleway rights.

With regards to comments in the application about the blocking of access via Parsons House/Moss Houses they comment that the then owners of Parsons House had issues of unauthorised usage of the track (trespass) and padlocked the gate to prevent unauthorised use. This action was said to have been discussed with themselves and others having rights of way and keys to the padlock issued to those with private rights of access.

The track is not within the ownership of Parsons House and therefore the obstruction of the way, which was illegal even if the status is only footpath, would not be a challenge to bridleway use by the landowner except that it is

said to have been done in consultation with the landowner (at Causeway Top Farm) and also it does interrupt use at that time.

They are concerned about possible future use and development of a bridleway and whether vehicles could use it and how use of the route would be 'policed'.

Vehicles are not permitted to use a bridleway unless the drivers have private vehicular rights. Management of such matters would depend on the particular problems and circumstances but do not inform the determination of whether bridleway rights do or do not exist.

Ragstone House

The owners of Ragstone House also responded to the consultations and stated that they strongly object to the application.

They state that A-D has no historical links to being a bridleway and is a recent farm track post property renovations in the 1970's shown by the fact it is bordered by stock fencing with no historical evidence such as dry stone walls or stone gate posts.

This is consistent with the map evidence above.

Practically, they state that they consider that it is unsafe for a bridleway to be created along this route as there are no passing places and due to many vehicles using this farm track towing trailers, the track would seem very unsuitable for use as a bridleway.

Creation of new bridleway rights is not being considered (this would be a relevant consideration if they were), only whether bridleway rights already exist.

Moss House Farm

The application route off Moss Houses Road used to serve three small dwellings but since a number of barns have been renovated and Causeway Top Farm redeveloped, this same track has to serve six dwellings resulting in an increase in vehicular use and the track now in a very poor state of repair.

In itself the condition is not relevant but it could be if it was impassable for users giving evidence of actual use. This is not thought to be the case here.

Little Moss House Farm

In the almost 15 years of living here horses have never used the track despite what other people may have stated. They refer to the late Tom Pratt, who owned Causeway Top Farm who, they state, for most of his life and his family before him, would never allow horses to pass through his farmyard where he often had cattle roaming.

It is unrealistic to know that a track which was physically capable of being used was not actually used. Evidence can be given that some people were turned away, which is relevant.

They also raised other points covered elsewhere.

Broach Flat Farm

The residents of Broach Flat Farm (situated south west of the application route) commented that they had been at the farm since 1967 and since that time they had also worked as contractors for other farms in the area including the previous owners of Causeway Top Farm. They explain that they had always been told by the owners of Causeway Top Farm to use the main road and not the track (the application route) and that they never opened the gate at Parsons for anyone. They explained that whenever they worked there they were never allowed through and considered that knowing the previous owners of Causeway Top Farm well – especially in their later years – it was 'inconceivable' that any of them would have let anyone through and that they were well known for their 'ferocity'.

Challenges to use by the landowners (unlike at Parsons House, the track at Causeway Top Farm is registered within the ownership) is evidence that use was not 'as of right' and there was no acquiescence in dedication.

Moss House Farm

Raises points already covered and also that since the land was divided up each new owner was given a right of way and that this would not have been necessary at all if it were already a public bridleway.

Private vehicular rights would have been necessary in order to drive on the track regardless of whether it was public footpath or bridleway; firstly because bridleway rights do not include use with vehicles and secondly because the private access needs to be ensured in case the public rights are diverted or stopped up in the future.

Following challenges to private access at Causeway Top the owner of Noyna Hall told Moss House Farm in future to use his track if he needed to get to his animals in a hurry and that the track from Noyna Hall to Noyna Road (the application route A-B-C-D) was partly built because of the hostility of the residents at Causeway Top to private or public use of the track by horses including standing in front of horses shouting and waving their arms.

Little Moss House

In addition to points already covered, Parsons House, Ragstones and other houses west of Causeway Top Farm now use the 'new' track to Noyna Road for convenience and they assume that is why it was installed many years ago.

The reason the track was built does not affect whether it has been subsequently used by the public if the evidence shows actual use.

They cannot see why riders with their horses would wish to use the application route because it is narrow and uneven and leads nowhere except to the houses and

considers that those wishing to travel through the ford can more easily use Noyna Road/Moss Houses Road which is tarmacked with good visibility.

The perceived reasons for using or not using the application route are indirectly relevant in giving credibility or otherwise to user evidence. In this case Noyna Road/Moss Houses Road are also narrow and with faster traffic and tarmac is not a good surface for horses so there are reasons why users might wish to use the application route but that does not mean that there are bridleway rights or that there was actual use by horses.

Parsons House (former residents from 2005-2019)

Raises points previously considered and in addition;

They agreed in 2015 with the owner of Causeway Top Farm to lock the gate across the route at point G to ensure that the footpath remained a footpath and to maintain security.

The gate at point G appears to be within the registered title of Causeway Top Farm so these actions are indicative of the owner of part of the route preventing/discouraging equestrian use of the route.

Between 2014-2016 a riding for the disabled group was run from Parsons House and on a Saturday there would regularly be 10 disabled riders and helpers who would, on occasion ride along the main access track from Parsons House to Noyna Road (G-A) but never along the application route between points G -K and as a keen horse rider herself she explained that anyone living locally knew that Causeway Top Farm would not allow horses along the route.

The fact that some people did not use the application route is not in itself evidence that others did not. The use of A-G by the group does not provide evidence for public bridleway as it was in exercise of private rights. The reputation of Causeway Top is relevant in highlighting the need to question the user evidence but does not negate it per se.

There are already sufficient bridleways in the area but that some require attention to make them safe to ride and that west of Noyna Hall Barn and Farm the existing footpath is not suitable to be made into a bridleway.

This investigation and report is not about making a bridleway but whether bridleway rights already exist. Suitability and whether or not there are other bridleways available are not directly relevant.

They owned over five vehicles plus trailers and horseboxes and from 2005 a number of these vehicles were always parked in front of the gate at point G so it would have been impossible for people to take vehicles, as claimed, along the route.

Parsons House (current residents)

In addition to points previously raised, the track is effectively a dead end with no access to Causeway Top Farm and Barn so from a security point of view the property will be more vulnerable to opportunist thieves if the route is opened up.

Although an understandable concern security relates to management of the route not whether bridleway rights exist. It is unlikely that many thieves would chose horse or pedal cycle as transport for burglary in a rural location.

The footpath is used daily by dog walkers and situations may occur when horses encounter loose dogs or private vehicles using the route and questions who would be responsible should an accident occur or property were to be damaged.

Different public and private users coexist on highways of all descriptions and if bridleway rights are shown to exist on the application route this would be no different. Responsibility would rest with whoever caused an accident or damage.

Moss House

Points previously covered.

Noyna End Farm/Barn

In addition to previous points they refer to inaccuracies in the supporting documentation and comment that over the course of the last 20 years they have met many walkers and a cyclist on one occasion (very recently) but do not believe it would have been possible to access the route other than over the stiles.

The application route can be accessed without stiles, except when the track by Parsons House was unlawfully obstructed.

Causeway Top Farm

Objected to the application but no further comments or grounds for objecting were given.

Volunteer at the Riding for the Disabled Group at Parsons House 2015-16

Points already covered above.

Cockhill Farm

Points already covered above.

Bent Laithe Farm

Points already covered above.

Noyna Hall Farm

Previously they owned horses at the property but were refused access along the track D-K by the late Tom Pratt at Causeway Top who was adamant that it was not a bridleway.

Parsons House (former resident from 1998 to 2005)

Track outside Parsons House terminated at the house and access through the gate was to a farmyard which was not used by anyone other than walkers who accessed the farmyard via a stile. She never witnessed anyone come through the farmyard by vehicle or on horse via Causeway Top Farm.

Moss Houses Farm

Points already covered above.

B.Wade

Walks along this footpath regularly. Believes that making this footpath a bridleway would make it extremely dangerous for the regular walkers, proposed horses and riders.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s):

- Some user evidence on horseback.
- The route from point A-B available from at least 1940 and appears capable of being used on horseback; and landowner of this section supports the application.
- The route from point D-E-F-G-H-I-J-K available from 1830 and appears capable of being used on horseback but this section of route is a recorded footpath.

Against Making an Order(s):

- The route from point D-E-F-G-H-I-J-K appears historically to have been a dead end route (providing access to a number of properties e.g. Noyna Hall) and/or a through route to Castle Road via a route south of point D rather than west of point D to C-B-A.
- The route from point B-C-D only available in more recent years and exact date unknown.
- Several users giving evidence appear to be related so user evidence not from broad section of public.
- Actions of adjacent landowner, possibly with landowner's agreement, to prevent/discourage equestrian use of route (e.g. obstructions).

- Extent of evidence challenging claimed equestrian use of route.

Conclusion

As regards section A-B-C-D (the unrecorded section), Committee must consider whether, on the balance of probability, the evidence discovered, when considered with all other relevant evidence available, is sufficient to show that a public bridleway which is not shown in the Definitive Map and Statement subsists (the higher test for confirming an order) or is reasonably alleged to subsist (the lower test for making an order).

In relation to section D-E-F-G-H-I-J-K (currently recorded as footpath), Committee must consider whether, on the balance of probability, the evidence discovered, when considered with all other relevant evidence available, shows that the existing public footpath ought to be shown as a public bridleway and that the Definitive Map and Statement requires modification to reflect this.

As there appears to be insufficient documentary evidence of historical bridleway rights along the route, the determination of the upgrade/addition of bridleway depends on the evidence of public use of the route and whether this indicates that a public bridleway can be presumed to have been dedicated in accordance with section 31 HA 1980 or dedication implied at common law.

Presumed dedication

In order to raise a presumption of dedication, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a full 20 year period immediately prior to the route being called into question. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public bridleway.

The right of equestrians to use the route appears to have been called into question when the landowner of Parsons House locked the gate outside his property which crosses the route (point G). All but one users mention the locked gate and the majority date this event as having occurred in June 2015. Moreover, one of the objectors from a neighbouring property states that he and the owner of Parsons House agreed in 2015 to lock the gate at point G to prevent any members of the public other than walkers passing through. It therefore seems reasonable to conclude that the 20 year period under consideration for the purposes of the section 31 test runs from June 1995 to June 2015.

As to whether the claimed bridleway was used by the public as of right and without interruption for the relevant 20 year period, user evidence has been provided by eleven individuals, all of whom indicate equestrian use. A landowner of part of the route and two of his relatives submitted evidence of use. They all claimed to have used the route on horseback from weekly to monthly intervals throughout the entire statutory period. Two other families submitted evidence of horseback use through five individuals. The first family (husband and wife) claimed to have used the route on horseback from weekly to monthly intervals for 12 years of the 20 year statutory

period (1995-2007). Two members of the second family used the route for two years (2013-2015) and the third member used it for two periods of two years, the first of which was before the 20 year period started to run (1985-87 and 2002-2004). There were three seemingly unrelated users, one of whom is the applicant who used the route monthly throughout the 20 year period; the other only used the route twice and outside of the statutory period; and the other was an individual who only used the route for two years at the end of the statutory 20 year period (2013-2015).

If Committee disregards the evidence of the individual who had not used the route during the statutory period, essentially, Committee is presented with evidence of use from three families plus two individuals (one of whom only used the route for two years). Guidance from the Planning Inspectorate indicates that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. In this case, Committee may consider that equestrian use of the route is not representative of the public at large and therefore the evidence does not raise a presumption of dedication of a bridleway and thus fails satisfy the statutory test.

Furthermore, the actions of at least one of the landowners (Mr Pratt of Causeway Top Farm) during the relevant period, as described in detail by several of the objectors, is indicative of a lack of intention to dedicate the route as a bridleway which a reasonable user ought to have understood. Committee is advised that this would be sufficient to rebut any presumption of dedication of a bridleway (in the event the presumption had been raised) and defeat the statutory test.

In conclusion, when balancing the evidence received or discovered in support of and in opposition to the application, Committee may consider that it is reasonable to conclude, on the balance of probabilities, that the evidence is insufficient to show (i) that bridleway rights are reasonably alleged to subsist along the unrecorded section of the route or (ii) that bridleway rights do subsist along the section that is currently recorded as public footpath.

Common law inference

Where the evidence fails the statutory test, an inference of dedication under common law must be considered. This involves Committee considering whether evidence from the maps and other documentary evidence coupled with the evidence on site and user evidence indicates that it can be reasonably inferred that in the past the landowners intended to dedicate the route as a public bridleway and the public have accepted it as such. Use of the route by the public must be 'as of right' and there is no fixed period of use or particular date from which use must be calculated retrospectively.

Historical documentary evidence shows that the majority of the route physically existed by 1940. Only section B-C-D did not exist then and it is unclear when it did come into existence. The documentary evidence shows its existence by 2014 but evidence from both users and objectors suggests that it may have existed from around the 1970s. In any event, the existence of the route does not tell us if it carried bridleway rights.

Committee may consider it is reasonable to conclude that the evidence fails to satisfy the common law test for the same reasons as it failed the statutory test – namely the actions of at least one landowner to prevent/discourage equestrian use and use having been by a limited section of the public.

In conclusion, Committee is recommended to reject the application and not make an Order to record bridleway rights.

Risk management

Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

Alternative options to be considered

To decide that the evidence shows on balance that bridleway rights subsist, that the application be accepted and that an Order be made and promoted to confirmation.

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-609		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A