

## Regulatory Committee

Meeting to be held on 4th February 2015

Electoral Division affected: Rossendale South
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### **Wildlife and Countryside Act 1981 Definitive Map Modification Order Application Application to add a Public Footpath from Horncliffe Close to Bury Road, Rawtenstall, Rossendale Borough**

File No. 804-554

(Annex 'A' refers)

Contact for further information:

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#### **Executive Summary**

An application for a public footpath from Horncliffe Close to Bury Road, Rawtenstall, Rossendale Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-554

#### **Recommendation**

1. That the application (reference 804-554) for a public footpath from Horncliffe Close to Bury Road to be added to the Definitive Map and Statement of Public Rights of Way be accepted.
2. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from Horncliffe Close, for a distance of approximately 25 metres to Bury Road, Rawtenstall, Rossendale Borough, and shown between points A and B on the attached plan.
3. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted if necessary by submitting it to the Secretary of State.

#### **Background**

An application has been received from Mr Graham Bancroft and Mrs Ann Ashton for a footpath extending from a point on Horncliffe Close to a point on Bury Road, a distance of approximately 25 metres, and shown between points A and B on the attached plan, to be added to 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 1981 Act sets 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 if the evidence shows that:

- A right of way "subsists" or is "reasonably alleged to subsist"
- Or
- "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"

When considering evidence, if it is shown that a highway once 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 1981 Act (as explained in Planning Inspectorate's Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate's website also gives guidance about the interpretation of evidence.

The County Council's decision will be based on the interpretation of 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 the 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**

### Rossendale Borough Council

Rossendale Borough Council has been consulted and no response has been received, therefore it is assumed that they have no comments to make.

### Parish Council

There is no Parish Council for the area.

### Claimant/Landowners/Supporters/Objectors

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in 'Advice – County Secretary and Solicitors Observations'.

## **Advice**

## Environment Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8029 2159	Steps at junction with footway of Bury Road (C701)
B	8031 2158	Junction with the cul-de-sac end of Horncliffe Close (U7464)

### Description of Route

A site inspection was carried out on 27<sup>th</sup> November 2014.

The route commences at the footway of Bury Road, where two steps (point A) approximately 1m wide, provides access to a narrow through route between the properties of 412 and 414 Bury Road, Rawtenstall.

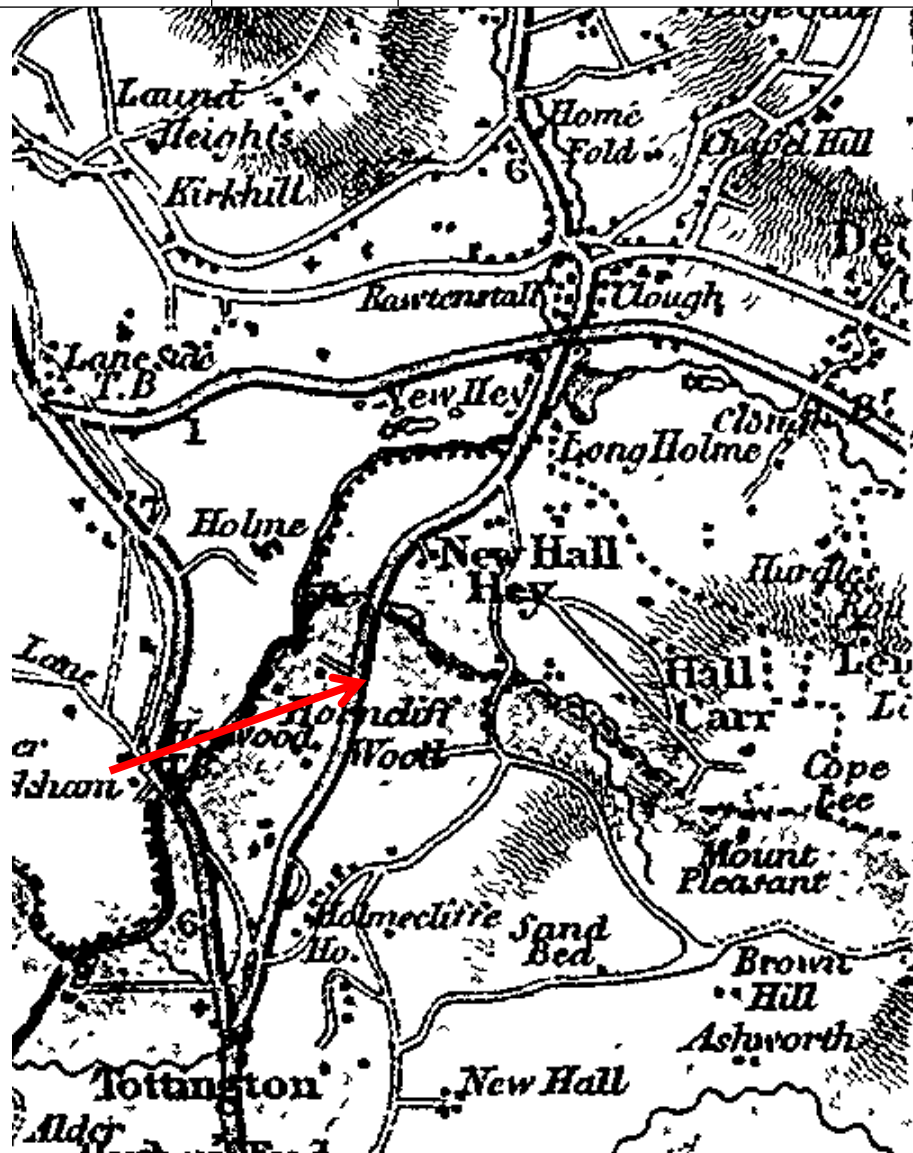
The route continues along a paved surface between the properties for approximately 25 metres until reaching Horncliffe Close (point B). The route is enclosed on either side by boundary walls of the adjacent properties.

There are no deterrent signs to prevent people from using the route, nor are there any restrictions to prevent use. There does however appear to be the remains of an old gate post at point A, which has been incorporated into the wall of the property 414 Bury Road. Attached to the old gate post are the remains of an old gate latch. There was no gate in situ on the day of inspection and due to the rust on the gate latch; it appeared that a gate had not been there for quite some time. Since there would have been no need for a gate once Horncliffe Close had been built this might indicate that there was access to the former field at this point which could have made it available for public use.

### Map and Documentary Evidence

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 route is not shown.
Investigating Officer's		The route did not exist as a major route at that

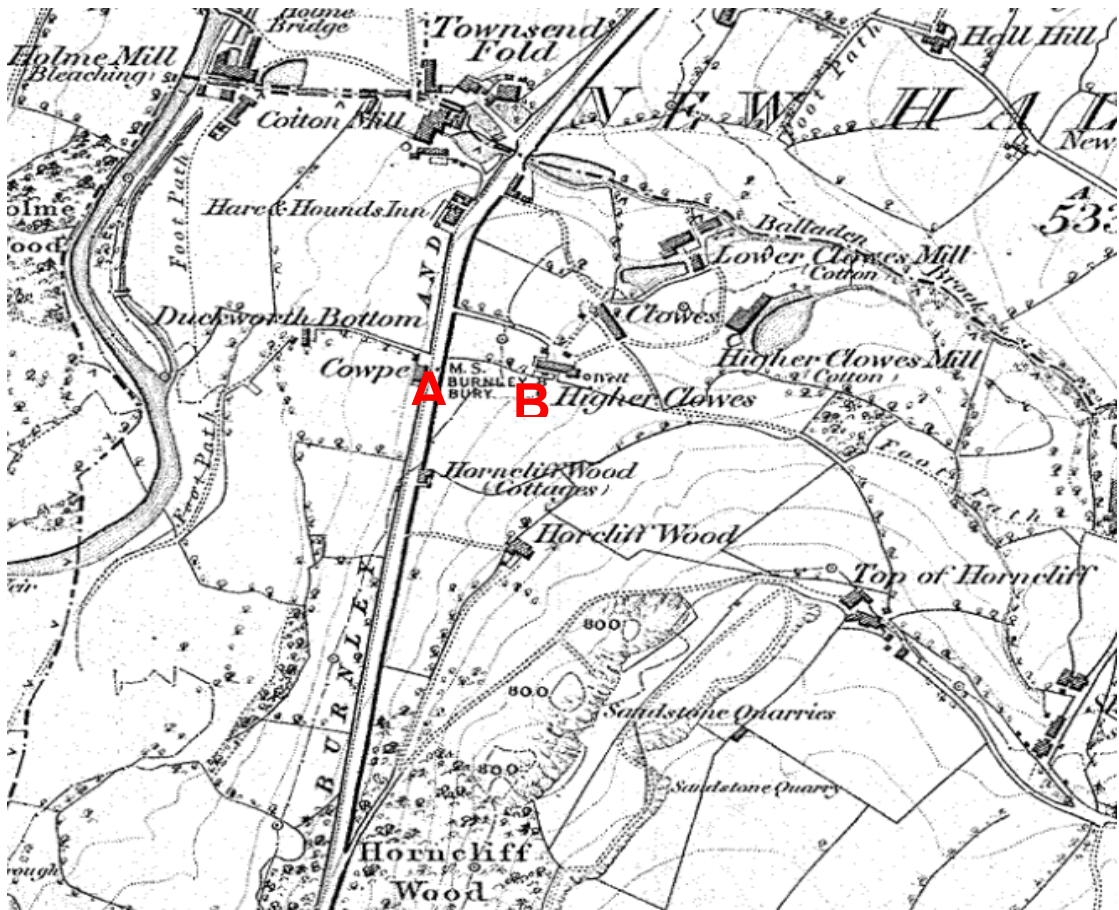
Comments		time. It may have existed as a minor route but due to the limitations of scale, this would not have been shown. Therefore no inference can be drawn.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale may not have been drawn.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map.



Observations		The application route is not shown on the map but neither are any of the routes which were recorded on the Definitive map. Horncliffe Wood is labelled and Duckworth Lane is shown opposite.
Investigating Officer's Comments		The map is of such a scale that public footpaths have not been recorded. No inference can be

		made.
<b>Canal and Railway Acts</b>		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.
Observations		The line for East Lancashire Railway is located approximately 160 metres from the application route. No documentation from this or any proposed railways or canals in the vicinity was found showing the area crossed by the application route.
Investigating Officer's Comments		No inference can be made.
<b>Tithe Map and Tithe Award or Apportionment</b>		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.
Observations		The Tithe Map for Rawtenstall (Tottington Lower End) does not record a footpath across the land. The land is registered under the land assessment no.299, which is recorded in the Apportionment Book as 'higher fields'
Investigating Officer's Comments		There is no evidence from the Tithe Award suggesting that the application route existed at this time.
<b>Inclosure Act Award and Maps</b>	1835	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 Act Award or Map available

		to view at Lancashire Archives for the area of Rawtenstall, the old township of Tottington Lower End.
Investigating Officer's Comments		No inference can be made.
<b>6 Inch Ordnance Survey (OS) Map</b>	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1849. <sup>1</sup>



Observations		The application route is not shown. Other routes have been recorded on the map in close proximity. The houses on Bury Road and Horncliffe Close had not yet been built.
Investigating Officer's Comments		It is unlikely that the application route existed at this time as the houses on Bury Road and Horncliffe Close were not yet in existence; therefore it is presumed that the route did not exist at this time.

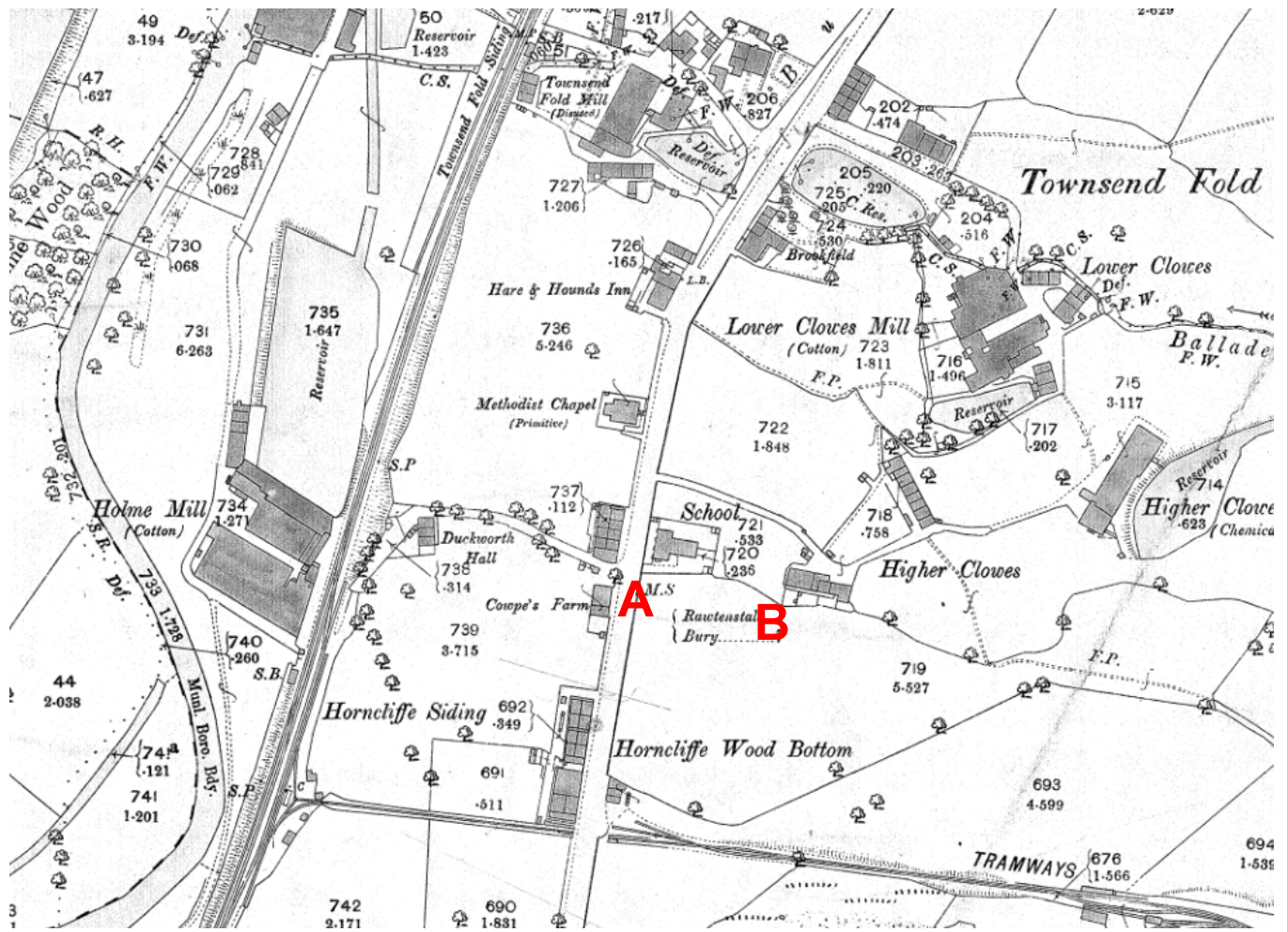
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published 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.



25 Inch OS Map

1893

The earliest OS map at a scale of 25 inch to the mile was surveyed in 1891 and published in 1893. (sheet no. 72/13)



Observations

The application route is not shown on the map. A school had been built just north of where the application route lies, but the houses on Bury Road between which the route passes had not been built yet.

Investigating Officer's Comments

The application route is not shown on the 1893 OS Map therefore it is presumed that the application route did not exist at the time.

Finance Act 1910 Map

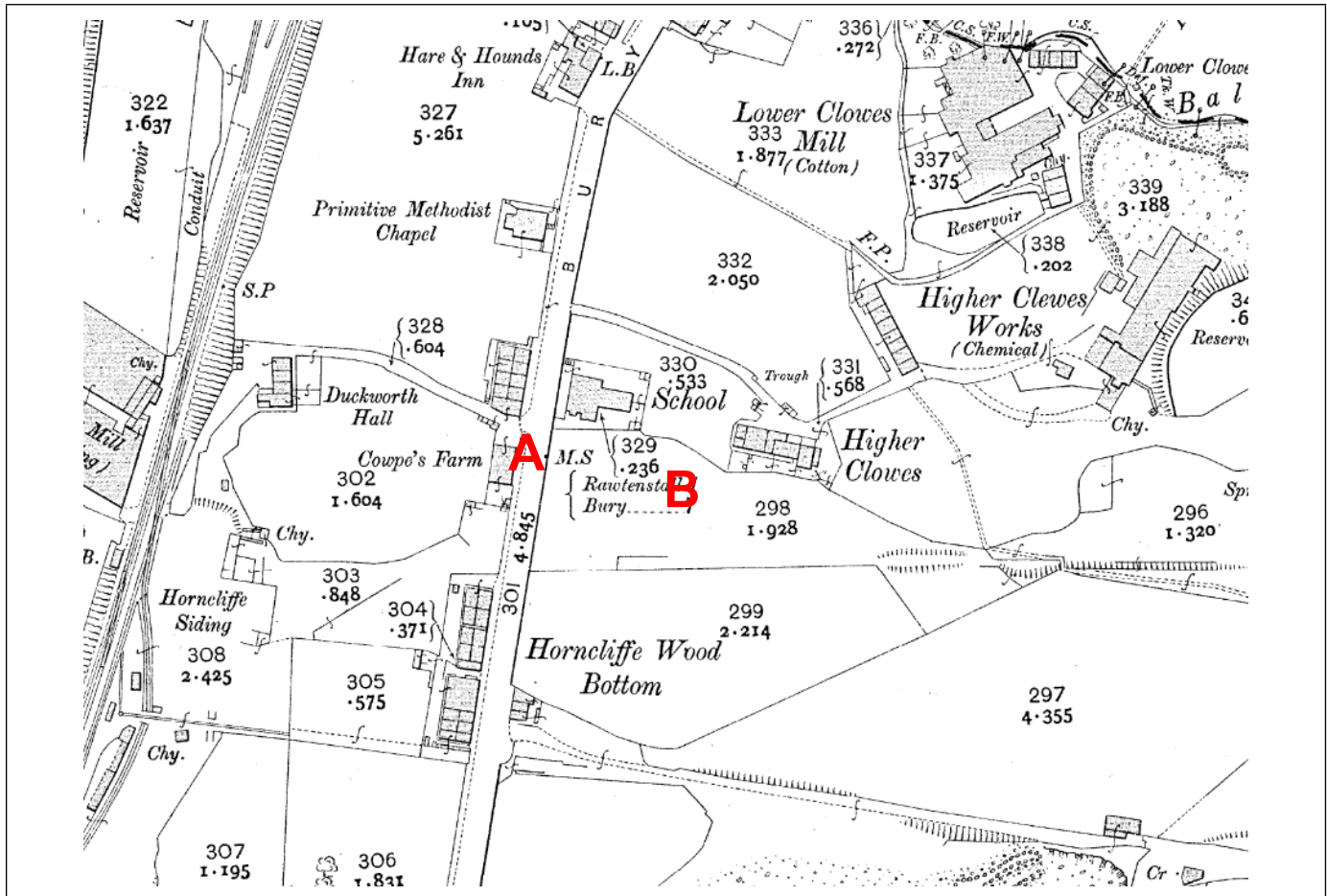
1910

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 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.

Maps, valuation books and field books produced under the requirements of the 1910 Finance Act

		<p>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>
Observations		<p>The Finance Act Map records the interested piece of land as no.3764, but does not show a footpath crossing this piece of land.</p> <p>The Finance Act Valuation Book records the area of interest as 'land' 'near to Bury Road'. The Valuation Book does not record a reduction in tax for a footpath crossing this land, this however is not conclusive evidence that a right of way does not exist. (ref: DVAC/1/4/5)</p>
Investigating Officer's Comments		<p>The Finance Act 1910 Valuation Book and Map do not provide evidence to support the existence of the application route.</p>
<b>25 Inch OS Map</b>	1911	<p>Further edition of 25 inch map, re-surveyed 1891, revised in 1908 and published 1911</p>





<p>Observations</p>		<p>The application route is not shown on the map. The school is still in situ close to the application route, but the houses on Bury Road are still not in existence.</p>
<p>Investigating Officer's Comments</p>		<p>The application route probably did not exist in 1908.</p>
<p><b>1:2500 OS Map</b></p>	<p>1930</p>	<p>Further edition of 25 inch map resurveyed 1891, revised and re-levelled in 1928 and published in 1930.</p>





Observations		The application route is not shown on the Map Directory for South Lancashire. Other public footpaths have been recorded on it. The houses at Bury Road and Horncliffe Close had not yet been built.
Investigating Officers' Comments		The Map Directory for South Lancashire does not show evidence to support the application route. It is presumed that the route was not in existence at this time because the houses between which it runs and Horncliffe Close to which it connects had not been built.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		The quality of the 1940 aerial is not great. There

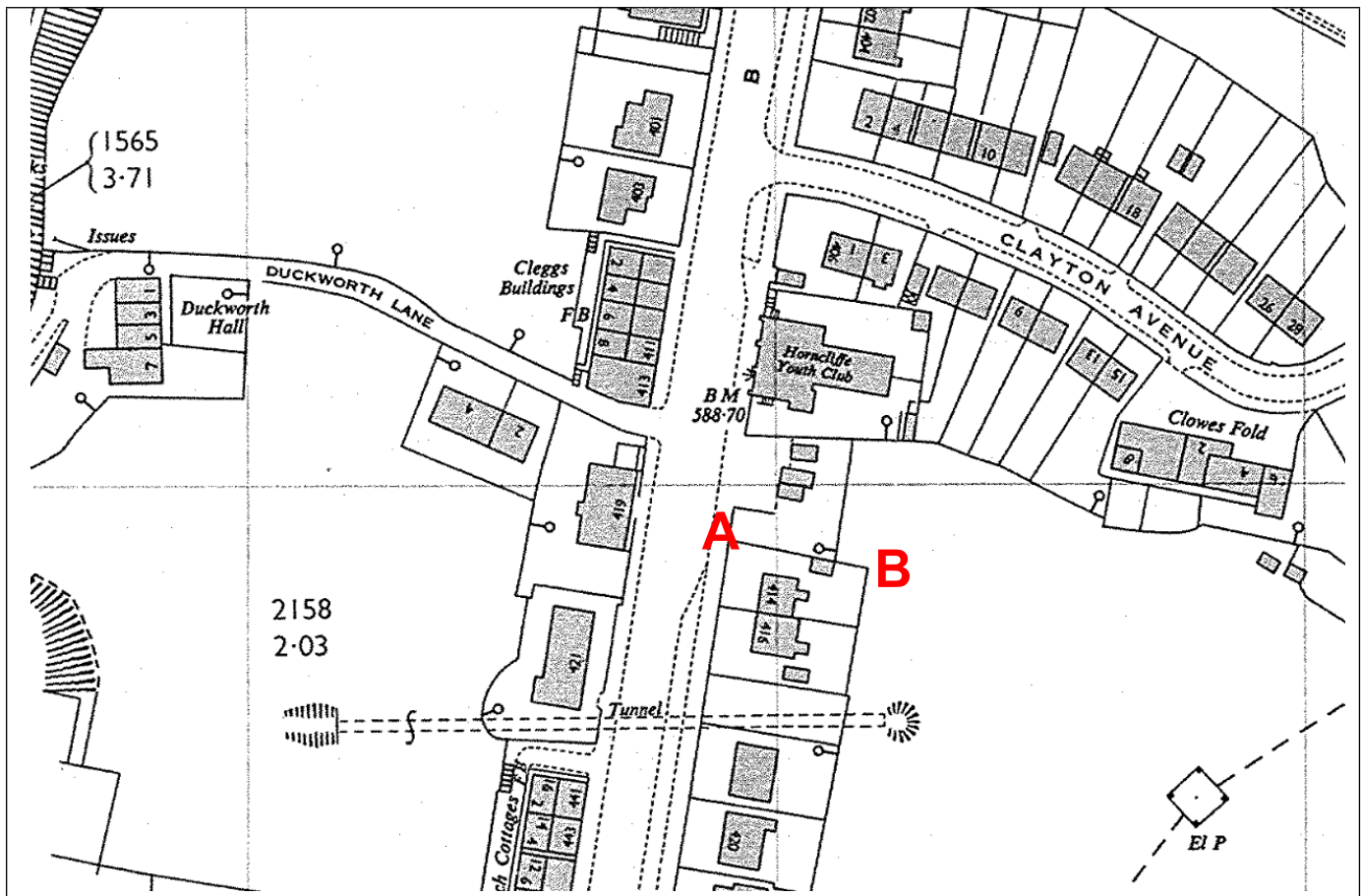
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.



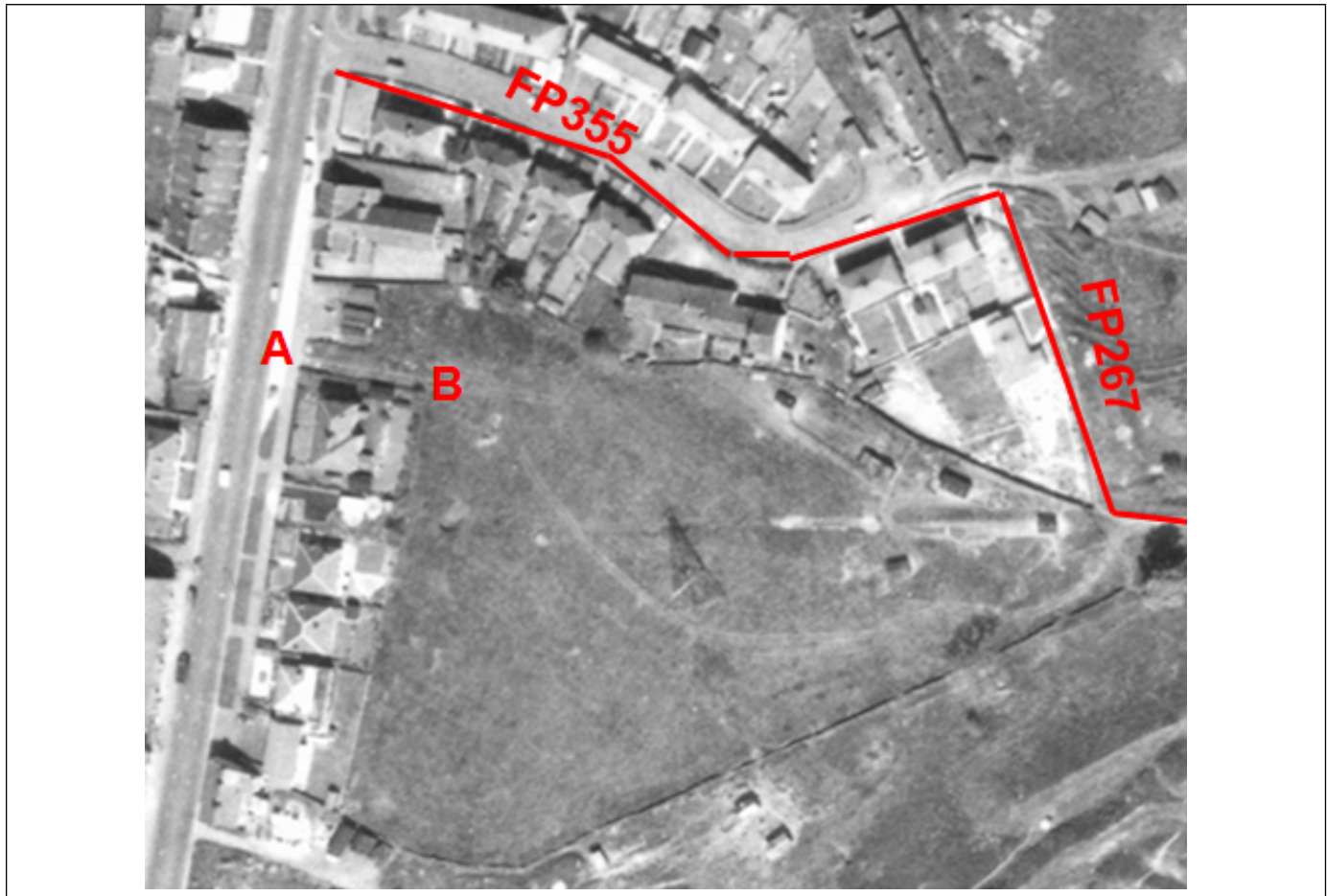
		was little visibility of the application route.
Investigating Officer's Comments		No inference can be made due to the poor quality of the photograph.
<b>6 Inch OS Map</b>	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The application route is not shown on the map. The house of 414 Bury Road had been built by this time, whilst the house at 412 (where the letters "Sch." can be seen) had not, nor had Horncliffe Close.
Investigating Officer's Comments		It can be presumed that the route did not exist at the time of when the map was surveyed.
<b>1:2500 OS Map</b>	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published in 1963 as national grid series.



<p>Observations</p>		<p>The application route is not shown on the 1963 map. The house at no.414 Bury Road which the application route runs next to is clearly shown (as also shown earlier on the 1955 map). The property of 412 Bury Road had not yet been built, although smaller buildings possibly garages were in place, along with a boundary wall approximately three quarters of the way down the application route. Horncliffe Close had not been built at this point.</p>
<p>Investigating Officer's Comments</p>		<p>It can be presumed that the application route did not exist on the ground at this time.</p>
<p><b>Aerial photograph</b></p>	<p>1960s</p>	<p>The black and white aerial photograph was taken in the 1960s and is available to view on GIS.</p>



<p>Observations</p>		<p>There is a clear line along the application route, from point A to B, running alongside the property of 414 Bury Road. 412 Bury Road had not yet been built.</p> <p>There appear to be lines on the ground over the area where Horncliffe Close is now located, linking to public footpath 267 Rawtenstall.</p> <p>These appear to be vehicle markings but could have been used on foot, especially to exit onto FP267 at the opposite side of the field.</p>
<p>Investigating Officer's Comments</p>		<p>It appears that the route existed in 1960 as access from Bury Road to the open field (now Horncliffe Close) and the surrounding footpath network in the area but it is not possible to tell whether this was private or public access. Footpath users would not generally take a circuitous route like that of vehicle tracks on the ground.</p>
<p><b>Definitive Map Records</b></p>		<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</p>



		preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Rawtenstall is a municipal borough and therefore did not have a parish survey map.
<b>Draft Map</b>		<p>The parish survey map and cards for the rural districts were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>As Rawtenstall is a municipal borough they prepared the Draft Map straight away.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



Observations		The application route is not recorded on the Draft Map. Other public footpaths in close vicinity were recorded, including footpaths 355 and 267.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The Provisional Map does not record the application route.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route is not recorded on the Definitive Map and Statement, therefore there is

		still no evidence that the application routes existed at this time.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		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 <sup>th</sup> 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 <sup>st</sup> 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.
Observations		The application route is not recorded on the Definitive Map First Review.
Investigating Officer's Comments		The application route is not recorded on any maps preparatory to the Definitive Map and there were no objections to the route not being recorded. It was probably not considered to be public at the time.
<b>Aerial Photograph</b>	2000	Colour aerial photograph taken in 2000.





Observations		The application route can be seen as a gap between the properties of 412 and 414 Bury Road. It shows access from Bury Road to Horncliffe Close.
Investigating Officer's Comments		An enclosed route is shown in 2000, supporting the application.
<b>Aerial Photograph</b>	2010	Colour aerial photograph taken in 2010.



Observations		The through route is visible leading from Bury Road to Horncliffe Close.
Investigating Officer's Comments		The 2010 aerial photograph supports the application route.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		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

		<p>lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the application routes run.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

The application route does not cross a Site of Special Scientific Interest or Biological Heritage, nor does it cross access land under the provisions of the Countryside and Rights of Way Act 2000.

The affected land is not registered common land.

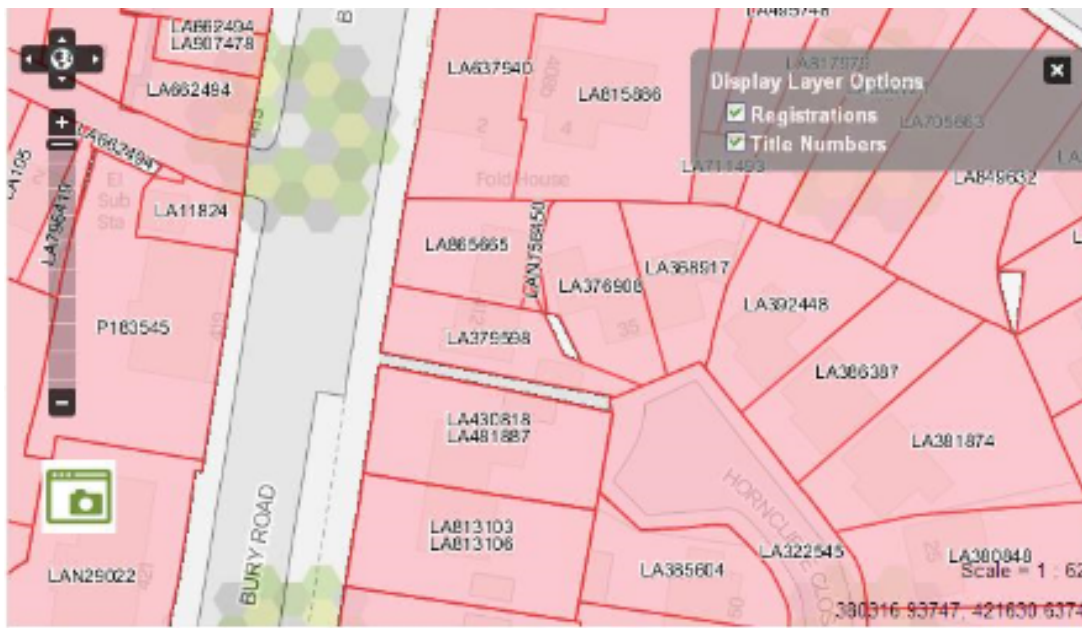
### **Landownership and Planning Information**

The owner of the land where the claimed route runs is unknown.

A land registry search has been conducted and shows the land on which the application route crosses as being unregistered.

The Horncliffe Close Estate was a large area of land purchased in 1973 which said area included the plot where No 412 was then constructed. It is not clear whether the large area purchased by the developer included the land on which the application route runs. When he transferred the plot of No 412 Bury Road the developer had initially included a reservation of a private right shown coloured brown on the plot for himself (possibly the claimed route) but any brown colouring and the words granting the right were removed/crossed out before completion. Whether the right of way was not agreed and the land where it ran still transferred or whether the land where he wished to reserve a right of way then fell outside the plot of 412 is not known.

This strip of land may show on the planning permission for the estate but although research has been carried out it is unable to provide further information on this.



## Records of the Highway Authority

The original agreement for the dedication of Horncliffe Close by the developer has not been located. The coloured up adoption plans show Horncliffe Close coloured as adopted and the pathway where the claimed route runs is not coloured. It appears from the information available that the developer did not formally include the pathway for adoption as a public footpath by the highway authority.

## Summary

There is no historical mapping evidence supporting this application. The aerial photographs which were inspected do however show the route being in existence on the ground from at least the 1960s. The 1960 Aerial Photograph indicates that use was possible on foot leading from Bury Road along the application route then across the open field where Horncliffe Close is now located, to join the footpath network further up at the opposite end of the field.

## County Secretary and Solicitor's Observations

### Information from the applicant

The applicants have provided 29 user forms in support of their application, however one of these forms has not been included as it is incomplete.

The evidence of use is set out below:

The users have known the route (in years) as follows:



0-19 (10) 20-39 (14) 40+ (4)

27 users have all used the route on foot, 1 user did not specify. The years in which the users used the route varies:

1974-2014(4)	1975-2014(2)	1977-2014(1)	1978-2014(1)
1979-2014(1)	1980-2014(1)	1981-2014(1)	1985-2014(2)
1986-2014(3)	1989-2014(2)	1996-2014(1)	2003-2014(1)
2004-2014(2)	2006-2014(1)	2008-2014(1)	2010-2014(2)
2011-2014(1)	2012-2014(1)		

The users were using the route to from home to school, to work, to visiting friends / relatives, to go to the pub or bus stop, from Horncliffe road to Bury Road or vice versa, to walk the dog, to get to the train station and to go to the letter box. The main purposes for using the route was to get to and from home, to get to work and back, leisure / pleasure, exercise the dog, get to local amenities, to visit friends / relatives, to go to church or to get to the bus stop.

The use of the route per year varies from 4 times per day, to 600 times per year, daily, 2-5 times per week, weekly and 30 times per year.

When asked if the users have ever used the way on horseback they either answered 'no', or 'n/a' or a response was not provided. 2 users have used the route on a bicycle but they did not specify during which years, 1 user has used the bicycle more than 500 times and the other has used it 'most years'.

3 users have seen others using the route on horseback, 1 of those users have also seen someone using the route on motorcycle / vehicle, and another one has seen someone on a bicycle. The user that saw someone on horseback and on a motorcycle / vehicle did not specify how many times and during which years. The user that saw someone on horseback and on a bicycle states they saw them 'now and then', and the 3<sup>rd</sup> user to see someone on horseback saw them between the years of 1976-1980.

15 users have also seen other people using the way on foot, they saw them every time they used or during the years that they used it or daily. 1 user also mentions seeing United Utilities along the way when they were doing some works.

26 users all agree the route has run over the same line, 2 users did not provide a response to this question.

When asked if there are any stiles / gates / fenced along the route the users either answer 'no', 'none', 'n/a' or they did not provide a response. The responses were received when asked if any gates were locked. The same responses were also received when asked if they were ever prevented from using the way apart from 1 user who mentions they were prevented for a period of 5 days whilst United Utilities carried out works but the date of this is not given.

The users have never worked for a landowner over which the route crosses or they

never provided a response to this question, the same responses were received when asked if they have ever been a tenant of any land over which the route passes.

5 users were stopped / had to turn back when using the way when United Utilities carried out maintenance works, 3 of those users also heard of other users being stopped for the same reasons, the other 2 answered with 'n/a'. All the other users have never been stopped / turned away when using the route nor have they ever heard of anyone else being stopped or having to turn back.

All the users have answered 'no' or 'n/a' when asked if they were ever told by any owner or tenant of the land that it was not a public right of way on foot. All the users have also never seen any notices or signs along the way telling them 'private' or 'no road'. None of the users have ever asked permission to use the way.

6 users all mention that the current state of the route is becoming dangerous and is in a poor condition, other users mention this route is very useful and is well used.

The applicant would like to emphasise that this is not a greenfield area, rather a pathway provided some forty years ago by the builder of the estate, the pathway remains unadopted. To access Bury Road from their house they have a choice of a 25 metre walk or some 350 metres through an estate built on a fairly steep incline. They also mention that some 30 something children have walked this pathway to start or finish their school day, some of these children are now adults and still use this pathway because their parents reside in Horncliffe Close.

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

#### In Support of the Claim

Physical pathway

User evidence

Local knowledge

No calling into question prior to the application

Aerial photography and mapping since 1963

#### Against Accepting the Claim

No particular evidence against although evidence of a gateway at point a sometime in the past

#### Conclusion

The claim is that this pathway, between boundary walls of adjacent properties, has already become a footpath in law.

There is no express dedication and so Committee is advised to consider the relevant evidence to see if a footpath can be deemed to have been dedicated under the provisions of S31 Highways act or inferred at Common Law.

Firstly the provisions of S31 Highways Act requires the route to have been called into question. Here it is suggested that there has been no calling into use, challenging the use, until this application was made in 2014. The twenty years use to be considered is therefore 1994-2014. It is suggested that those using the route are representative of the general public and sufficient and the use was as of right.

There is reference to some people being unable to use the route due to work by a public utilities company. It is suggested that this could in law be a physical interruption of the way. It is not necessary that an interruption has to be intended to prevent public use although the circumstances in which the barring of the way took place and whether there was an intention to stop public use is relevant. In this matter there are those whose use is almost daily and do not refer to being unable to get through. There are those who recall some replacement of some pipes by United Utilities (UU) in 2010. The utility company may have considered the path to be a footpath maintainable at public expense (which is not the case) enabling them to use their statutory powers. If the work by UU challenged use and brought the route into question it may be that the twenty year period slips to 1990-2010 and again there is sufficient evidence of use by the public as of right during that period.

S31 also asks that any evidence of a lack of intention to dedicate has to be considered but in this matter there is no such evidence.

It is suggested that the provisions of S31 whereby dedication by the owner is deemed to have taken place are capable of being satisfied on balance.

Inference of dedication at Common Law from the circumstances, namely, use by the public, the construction of an available route and some work to surface said pathway and no action taken by any owner, would also apply in this matter. It is advised that the owners intention to let this pathway be used by the public could be sufficiently evidenced from the circumstances such that a dedication could be inferred on balance.

Taking all the evidence into account Committee may consider that there is sufficient evidence on balance that this pathway subsists as a footpath for the public and that an Order should be made and promoted to confirmation.

**Alternative options to be considered - N/A**

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

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/554	Various	Megan Brindle, County Secretary and Solicitor' Group, 01772 (5)35604

Reason for inclusion in Part II, if appropriate

N/A