

Regulatory Committee

Meeting to be held on 13 October 2010

Part I - Item No. 4Electoral Division affected:
West Craven**Wildlife and Countryside Act 1981****Claimed public footpath (known as Stoopes Hill) from Water Street to Stoney Bank Road, Earby, Pendle Borough****Claim No. 804/494**

(Annex 'A' refers)

Contact for further information:

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Executive Summary

The claimed way (known as Stoopes Hill) from Water Street to Stoney Bank Road, Earby, Pendle Borough to be added to the Definitive Map and Statement of Public Rights of Way as Restricted Byway, in accordance with Claim No. 804/494.

Recommendation

- i. That the claim 804/494 to add the way as a footpath be not accepted.
- ii. Instead the claimed way (known as Stoopes Hill) from Water Street to Stoney Bank Road, Earby, Pendle Borough as shown A-E on the plan attached be added to the Definitive Map and Statement of Public Rights of Way as a Restricted Byway.
- iii. 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 Restricted Byway from a point on Water Street, Earby (Grid Reference SD 9103 4671) for a distance of approximately 125 metres to a point on Stoney Bank Road, Earby (Grid Reference SD 9105 4660) shown between Points A and E on the plan.
- iv. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by sending it to the Secretary of State.

Background

Currently the Definitive Map and Statement for Earby in Pendle Borough does not show the route known as Stoopes Hill from Water Street to Stoney Bank Road as a public right of way.

An application has been made under section 53(5) of the Wildlife and Countryside Act 1981 for an Order to amend the Definitive Map and Statement of Public Rights of Way in Lancashire by adding the route as a public footpath.

The attached plan shows the location of the route under investigation from point A (grid reference SD 9103 4671) to point E (grid reference SD 9105 4660).

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 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”
- “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”
- The status of a recorded right of way needs to be changed
- There is no right of way over land as recorded on the Definitive Map and Statement
- Details of the Definitive Map and Statement need to be changed.

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; this is until a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

The County Council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested 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.

Consultations

Pendle Borough Council supports the application and acknowledges that the route claimed has been used for many years as a public right of way.

Earby Parish Council has been consulted and has not responded. It is assumed it has no comments to make.

Advice

Executive Director for the Environment's Observations

Points annotated on the attached plan (Plan No. 494A).

	Grid Reference	Description
Point A	SD 9103 4671	Junction of claimed route and Water Street (U40023).
Point B	SD 9103 4668	On claimed route adjacent to 17 Water Street.
Point C	SD 9106 4664	On claimed route to rear of 10 Welbury Close.
Point D	SD 9105 4661	On claimed route at the point where the claimed route separates from the vehicular access to 3 – 7 Stoopes Hill.
Point E	SD 9105 4660	Junction of claimed route and Stoney Bank Road (C687).

Description of Site

A site inspection was carried out on 2 September 2010.

The northern end of the route is used by vehicles accessing 17 Water Street and the rear of some of the cottages on Water Street. The remainder of the route largely runs between the rear walls, hedges and fences of properties on Long Green and Welbury Close, Earby. A number of these properties have pedestrian gates and in some cases, concrete or flagged stepped access leading from the claimed route to their gardens.

There are no gates or barriers restricting access at either end of the claimed route or anywhere along it and no signs indicating that the route is private. A red bin for dog waste has been mounted on a post at the side of the claimed route, approximately 15 metres to the south of point A, adjacent to Becks House and is visible from Water Street. A further bin for dog waste has been mounted on a post at the side of the claimed route, approximately 5 metres to the north of point D, and is visible from Stoney Bank Road.

There are several large manhole covers on the route, suggesting that either public or private plant or apparatus has been laid along the claimed route.

Much of the surface of the route is covered with grass and other vegetation and a worn path, approximately 0.5 metres in width is clearly visible. The vegetation to the side of the worn path this had recently been cleared, providing a clear passage for pedestrians.

The claimed route commences at point A, at a point on Water Street, between 78 Water Street and Becks House.

From point A, the route runs generally southwards for approximately 30 metres to point B. This section of the claimed route is approximately 2.5 metres wide and consists of a compacted stone surface track, with a grass strip running up the centre and grass to the sides. For a short length around point B the route widens to approximately 4.0 metres adjacent to the vehicular access to 17 Stoopes Hill and has a bitmac surface. To the east of point B, there is a gate providing pedestrian access to the rear garden of 9 Long Green.

Beyond point B the route narrows to approximately 2.0 metres for 50 metres to point C, the surface being comprised of compacted stone with grass and other vegetation growing in from the edges.

Near point C the route briefly widens to approximately 2.5 metres beyond which the width is restricted to about 2 metres by a newly constructed stone and breeze block wall, the surface being compacted stone with grass and other vegetation growing in from the edges. The route rises to point D.

At point D, the wall to the west of the claimed route terminates and the claimed route continues for a further 15 metres, to point E, running alongside and on the same level as the vehicular access to 3 – 7 Stoopes Hill. Between points D and E, the route has a bitmac surface and widens to a width of 4 metres at point E, where the claimed route terminates on Stoney Bank Road.

There is a fairly modern road sign mounted on posts to the side of the claimed route at point D, saying 'STOOPES HILL'. A further road sign has been fixed underneath saying 'VEHICLE ACCESS TO No. 17 MUST BE VIA WATER ST.'

In summary, the claimed route is approximately 125 metres in length and varies between 2.0 metres and 4.0 metres in width, mostly enclosed by walls on either side. The claimed route is available for public use as a through route and as a pedestrian access to a number of properties backing onto the route. Each end of the route is used by vehicles to access properties but it is not used as a through route for vehicles.

There is a road sign at the southern end of the route indicating that the route is called Stoopes Hill and no signs indicating that the route is private. Dog waste bins for public use are visible from both ends of the claimed route.

Map and documentary evidence relating to claimed route

A variety of maps, plans and other documents were examined with reference to the claimed route.

DOCUMENT TITLE	Date	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE
Thomas Jefferys' map of Yorkshire Observations	1772	<p>The earliest map examined was Thomas Jefferys' map of Yorkshire. Jefferys was a most prolific engraver and map publisher who was appointed Geographer to the Prince of Wales and George III. Between 1767 and 1770 he surveyed Yorkshire and completed his map only in the year of his death, and so it was published posthumously in 1772. It was published at a scale of 1" to 1 mile on 20 plates and bound in a large atlas. He refused to skimp costs or employ second-rate surveyors to the extent that this commitment to quality contributed to his bankruptcy.</p> <p>The map names the village of Earby and shows the main routes through the settlement, including Water Street. The claimed route is not shown although it is not clear whether or not this is due to limitations of scale.</p>
Investigating Officer's comments		No inference can be drawn. It is not known whether the route was omitted because it did not exist, or because it was only a minor lane between 2 more significant highways and could not be shown at such a small scale, or because it was a private occupation track.
Smith's map of Yorkshire Observations	1801	<p>Nothing is known about this map-maker.</p> <p>The map names the village of Earby but shows fewer roads than Jefferys and is at a smaller scale. The claimed route is not shown.</p>
Investigating Officer's comments		No inference can be drawn for the same reasons as those listed above for Jeffery's map.
Teesdale and Stocking's map of Yorkshire Observations	1817	<p>Nothing is known about these map-makers although Teesdale is believed to have been a publisher. Teesdale and Stocking's map of Yorkshire of 1817 is drawn to a larger scale than the earlier maps.</p> <p>The village of Earby is named. More roads are shown through the village than on earlier maps and the claimed route is shown too. No key has been found to this map so it is not known what the 'roads' shown on it are. Stoopes Hill is however shown in the same way as the rest of the network. There are many properties on the map with no roads shown leading to them.</p>

<p>Investigating Officer's comments</p>		<p>The claimed route existed in 1817 and was of a similar character to other routes on the map. As there are buildings on the map with no road leading to them it is likely, but not certain, that the roads that are shown on the map are public ones, including Stoopes Hill. It is unlikely that the route was a footpath owing to the small scale of the map, and so it is likely that it was used as either a bridleway or a cart road.</p>
<p>Tithe Map and Tithe Award or Apportionment Investigating Officer's comments</p>		<p>No relevant tithe map is held by the Lancashire Record Office or the Yorkshire Archives offices in Wakefield.</p> <p>No inference can be drawn.</p>
<p>Quarter Sessions records Investigating Officer's comments</p>		<p>No record of orders to divert and extinguish public rights of way in Earby was found in the Lancashire Record Office and Yorkshire Archives.</p> <p>No inference can be drawn.</p>
<p>Inclosure Act Award and Maps</p>	<p>1825</p>	<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices. They also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p> <p>The Inclosure award for Thornton-in-Craven covers the Earby area.</p>
<p>Observations</p> <p>Investigating Officer's comments</p>		<p>The inclosure map shows the claimed route as a track or road from Water Street to Stoney Bank Road. It is not named on the map nor listed in the award but is shown in the same manner as other existing roads and open to the road network at each end. This fine quality map was produced to record common and waste land to be enclosed, and the names of the owners. New public and private roads with their names were shown on the map too. The owner of each plot of land is recorded in the written award, along with details such as the responsibility for fencing. Roads are described by status (such as 'high road' or 'bridle road') and who is responsible for their maintenance.</p> <p>The route claimed for addition to the Definitive Map, Stoopes Hill, is not mentioned in the award in the list of public and private roads to be laid out. This means that it is likely that it already existed in 1825. The inclosure map and award does not provide any information about the status of the claimed route. On balance, at this date</p>

		the route is likely to have been a public one and could be used both on horseback and by carts.
Railway, Turnpike and Canal Plans Investigating Officer's comments		None relevant for this area No inference can be drawn.
Ordnance Survey maps		The Ordnance Survey 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 the West Riding of Yorkshire in the 1820s 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 early maps carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way. Apart from those described below, no other early OS maps are available in the county archive offices of Lancashire in Preston, or Yorkshire in Wakefield.
6-inch OS map	1896	This map was surveyed in 1892 and published in 1896.
Observations Investigating Officer's comments		The map shows the route claimed from Water Street to Stoney Bank Road. It is not named. There are no gates or other obstructions across the lane. Map evidence indicates that the route was a lane connecting two roads into the village. It is likely that the lane could have been used by all types of traffic including horses and carts.
25-inch OS map	1909	This map was surveyed in 1892, revised between 1906 and 1907 and published in 1909.
Observations		The map shows the route as an un-named lane.
Investigating Officer's comments		It is likely that the lane could have been used by all types of traffic including horses, carts and motor vehicles.
6-inch OS map	1956	This map was revised before 1930 and published in 1956.
Observations		The route is shown as an un-named lane.
Investigating Officer's comments		It is likely that the lane could have been used by all types of traffic including horses, carts and motor vehicles.

25-inch OS map	1963	This 25-inch map was revised in 1961 and published in 1963.
Observations		The route is shown as a lane, named as Stoopes Hill. There is a garage and another property at the northern end and a row of 4 terraced cottages at the southern end.
Investigating Officer's comments		It is likely that the lane could have been used by all types of traffic including horses, carts and motor vehicles.
25-inch OS map	1977	The map was revised in 1975 and published in 1977.
Observations		The route is shown as a lane, named as Stoopes Hill. There is a garage and other property at the northern end and a row of 4 terraced cottages at the southern end. Four pairs of semi-detached houses have been built on the eastern side of the claimed route with their rear gardens backing onto the lane.
Investigating Officer's comments		The claimed route appears to be unchanged in its width (about 4 metres) or general character, and there is nothing in the map evidence that would indicate that it could not be used by horses and vehicles as well as those on foot.
Aerial Photographs	1945 1968 1990 2000 2003	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. The earliest set available was taken just after the Second World War in about 1945. The clarity is very variable.
Observations	1945	Stoopes Hill is clearly visible between Water Street and Stoney Bank Road though perhaps somewhat narrower than these 2 roads. It is hard to make out any significant features on the route owing to the lack of clarity in the photograph.
Investigating Officer's comments		The claimed route existed as a narrow lane in 1945.
Observations	c1963	Stoopes Hill is clearly visible as a narrow lane edged in places by hedging. A building corresponding to the garage on OS maps is shown at the northern end with a number of parked vehicles outside it. The terrace of cottages shown on OS maps at the southern end is also visible.
Investigating Officer's comments		The claimed route existed as a narrow lane in the 1960s.

Observations	1990	Stoopes Hill is shown as a very narrow track between Water Street and Stoney Bank Road. Houses have been built on both sides of the route with the back gardens ending on it. Vegetation is in evidence on this colour photo along the route but the exact location of garden fences cannot be seen making it unclear whether the plants are growing on the route or in gardens. A clear worn path can be seen at the northern end of the claimed route.
Investigating Officer's comments		The area has been developed but the claimed route can still be seen. It is now less likely that the route could be used by motor vehicles owing to the positioning of garden fences and vegetation. As a clear worn path can be seen on part of the route at least, the route seems to be used. It is likely that this use is on foot. It is not possible to tell from this photo if the route could be used on horseback.
Observations	2009	Stoopes Hill is clearly shown as a narrow track between the rear gardens of houses. No worn clear path is shown and those parts not obscured by trees or shadow appear green with grass or other vegetation.
Investigating Officer's comments		The photograph does not provide any new information.
Inland Revenue documents	1912	<p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act are 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 the 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 recorded 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> <p>No Finance Act material is available in the Lancashire</p>

		Record Office or the Yorkshire Archive Office in Wakefield.
Investigating officer's comments		No inference can be drawn.
Earby Urban District Council documents		A search was made in Earby Urban District Council records to find anything which might show the route claimed or refer to its status or maintenance records.
Observations		Nothing relevant was found.
Investigating officer's comments		No inference can be drawn.
Definitive Map records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map.
Draft Map		<p>The preliminary survey work was carried out in the West Riding of Yorkshire from the early 1950s. An accompanying statement was written describing each path. In this area it was undertaken by Earby Urban District Council who produced a map of routes they believed to be public drawn onto a 6-inch Ordnance Survey map. It was given a "relevant Date" and notice was published that the Draft Map had been prepared. The Draft Map was placed on deposit in September 1952 for 4 months for the public, including landowners, to inspect them and report any omissions or other mistakes. In Lancashire, hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented. It is presumed that the West Riding of Yorkshire County Council followed this model too.</p> <p>In this instance, the claimed route was not shown on the Draft Map and there were no objections or other comments about a right of way in this area.</p>
Provisional Map		<p>Once all representations to the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1970, 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>In this instance there were no objections relating to the claimed route.</p>
The First Definitive Map and		The Provisional Map, as amended, was published as the Definitive Map in 1973. Legislation required that the Definitive Map be reviewed, and legal changes such as

Statement		diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. Whilst most of the Definitive Map for Lancashire was reviewed, the area formally in the West Riding of Yorkshire was not.
Observations		The claimed route is not shown on the Definitive Map.
Investigating Officer's comments		The claimed route was either not believed to be a public right of way, or it was thought to be a vehicular carriageway and therefore should not be included with other public rights of way and shown on the Map.

The land crossed by the route claimed as a public footpath is not a biological heritage site or a site of special scientific interest.

Summary

In summary, map and documentary evidence show that the route claimed for addition to the Definitive Map has existed since at least the early 1800s. It was shown on early maps in the same way as the rest of the road network in the village and it is likely that it was a public route that could be used by people on foot, on horse-back and with carts. No map or documentary evidence has provided any information either way to show that the route is a public or private one, or that it has ever been used by horses or vehicles. The route seems to have been available for use by all classes of traffic until the route may have been narrowed since the 1960s by encroachment from gardens adjacent to the route and becoming overgrown in places.

Site evidence indicates that the route is currently used by the public on foot. The road sign, worn path, vegetation clearance and dog bins indicate that the pedestrians are permitted to use the route. There is no evidence of current use by horses, bicycles or vehicles.

County Secretary & Solicitor's Observations

Information from the Applicant

Fifteen user evidence forms have been submitted in support of the application indicating knowledge of the route for:

65 years (1)			
51-60 years (3)	41-50 years (2)	41-50 years (2)	31-40 years (6)
21-30 years (1)	11-20 years (2)	0-10 years (0)	

The forms indicate use of the route for:

65 years (1)			
51-60 years (3)	41-50 years (0)	31-40 years (6)	21-30 years (2)
11-20 years (2)	0-10 years (1)		

The usage has been mainly for accessing local amenities such as the school, pub, playing field and for walking the dog, visiting family and friends, recreational walking and also to access Stoney Bank Road and ranges from daily, 2/3/4/5 times per week to less frequently.

All the witnesses state they have used the route on foot. One user states he worked as a milkman and used a vehicle across the route to deliver milk. All users agree that the way has run over the same route and that there have never been any stiles, gates or fences across the route. The witnesses have never seen any gates locked, have not been prevented from using the route nor have they seen anybody being stopped from using the route and permission has never been sought from anybody when using the route.

Five letters have been submitted in support of the application.

One writer states Stoopes Hill, also referred to as Jim Lane, was used by him from the age of 11 for 57 years. Whilst a pupil at Alder Hill School he recalls pupils being taken across this way to Stoney Bank Road and also to gain access to the football field at Springfield. He now uses the path to access Red Lion Street.

Another writer states that as a schoolboy in the 1950s Stoopes Hill was a popular route down to Water Street from Stoney Bank Road and the lane was used to walk to Alder Hill School until the closure of the school in 1961. The writer states the route was used on foot, on cycles, with prams and occasionally by cars. The way was nicknamed Jim Lane; the writer is unsure why this was and the lane was the main access route to the field and meadow which is now occupied by Long Green and Reeval Close. The route was also used by the farmers for haymaking vehicles.

Another writer states when Springfield school was open, mothers mostly with younger children and prams used the route to take their children to school to avoid walking to where Water Street met Stoney Bank. Employees of Spring Mill also used the route when they came home for lunch as there was less distance involved than walking all the way around. When the council houses were built the route was used by people for visiting family and friends and became a well used thoroughfare.

Another writer states he frequently traversed Stoopes Lane as a child with his parents between 1930 and 1940. He also witnessed the way being used regularly by the workers of Spring Mill in the late 1930s who he assumed used the route to return home. He explains from 1948-1955 his wife and he occasionally used the route on their visits. He explains that his father resided on Selbourne Terrace between 1879-1900 and he often spoke of having used the route to gain access to Moor Hall fields. He states the route is clearly defined and named on Mr J A Walker's map of Earby dated October 1972. (The Executive Director for the Environment comments that Spring Mill is located on Stoney Bank Lane at the southern end of the claimed route. Selbourne Terrace lies on the southern side of Water Street approximately 15 metres to the east of the northern end of Stoopes Hill. Moor Hall lies about 800 metres south of the village).

One writer states he has lived on Stoopes Hill since the end of the Second World War until 1965. He explains that during the war the farmer at the time would carry his

hay by horse and cart from the big meadow below Mill Lane down to Stoney Bank and down Jim Lane to his barn. The writer explains he often used Jim Lane on his way to the railway station and school.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim for footpath

- Shown on maps since 1817
- Information from local people
- Evidence from users
- Clearly visible route on aerial photographs since 1945

Against Accepting the Claim that it is just a footpath and in support of it being restricted byway

- Shown on map of 1817 as part of highway network unlikely to be just footpath
- Shown on Inclosure award as part of highway network unlikely to be just footpath
- Recorded on Ordnance survey Maps as open route linking highways

Against accepting it has any highway status

- historic documents available not conclusive
- No real evidence against

Conclusion

In this matter the claim is that there is a footpath from point A – E which should be added to the definitive map. It is advised that it is important to consider whether there is enough evidence for there being on balance a public footpath along the line A – E. or whether on balance the evidence shows it to be a public route of higher status than a footpath. In the absence of an express dedication, it is advised that the Committee consider whether a dedication as a public route can be inferred at common law or deemed under s.31 Highways Act 1980.

Firstly, the committee is advised to consider if A-E is an old public route such that its dedication can be inferred from the way it was recorded on the old maps, documents and records. The Teesdale and Stockings map 1817 indicates that the route A-E is likely to have existed as a full highway for carts and carriages as part of the highway network. The Inclosure Act Award and Map does not mention the claimed route in the list of public or private roads to be laid out as new routes but shows it as an existing route and part of the ordinary full vehicular highway network by 1825. The Ordnance Survey Maps of 1896, 1909, 1956, 1963 and 1977 all show the route in a way which indicates that it was likely to have been used by all types of traffic including horses, carts and vehicles. The claimed route was not recorded on the first Definitive Map and whilst this could indicate that the route was not believed to be a

public right of way, it could equally have been because it was thought to be a vehicular carriageway and therefore should not be included with other lesser public rights of way on the Map.

It is suggested that the way the route is recorded in historic documents indicates on balance that it was in use as part of the public highway network and dedicated for public use with all types of vehicles many decades ago. If this is the case it is further advised that any mechanically propelled vehicular public rights would have been extinguished in 2006 under the Natural Environment and Rural Communities Act (NERC). This would leave the status as a restricted byway. It is suggested that this could be the status able to be recorded on the Definitive Map and Statement.

The 15 user evidence forms indicate more recent knowledge and use of the route on foot for up to 65 years. The usage being mainly for access to local amenities such as the school, pub, playing field and for dog walking. One letter in support of the application refers to the route during the 1950's being used on foot, by cycles and occasionally by cars. The witnesses claim that they have never seen any fences across the route or gates locked, not have they been prevented from using the route or permission being required to access the route. This would, it may be considered, be sufficient evidence from which to deem dedication as a footpath from use in the twenty years prior to the claim being made in 2009 and bringing the route into question but is clearly irrelevant if the route is already dedicated as a highway of higher status. Should the committee be concerned that the evidence of earlier dedication was not sufficient then it would be appropriate to consider evidence for a deemed dedication as footpath.

Taking all the evidence into account it is suggested that on balance the claim that the route A-E should be added to the definitive map and statement as a restricted byway rather than a footpath recognising on balance an earlier dedication can be inferred as a highway of higher status than footpath, indeed a dedication of full vehicular rights but then recognising the effect of the NERC Act 2006 reducing the status to restricted byway.

Alternative options to be considered - to consider making an order recording the route as footpath only.

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' (Item 3) included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there are no significant risks associated with the decision making process.

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

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 5.34497 (804/494)	Various	S Khalid, County Secretary & Solicitor's Group, Ext: 33427

Reason for inclusion in Part II, if appropriate

N/A