

Regulatory Committee

Meeting to be held on 13 May 2015

Electoral Division affected: Pendle East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of a Public Footpath from Burwains Avenue to the grounds of St Michael and All Angel's Church, Foulridge, Pendle Borough to the Definitive Map and Statement of Public Rights of Way

File No. 804-560

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for a public footpath from Burwains Avenue to the grounds of St Michael and All Angels' Church, Foulridge, Pendle Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-560.

Recommendation

1. That the application for a public footpath from Burwains Avenue to the grounds of St Michael and All Angels' Church, Foulridge, Pendle Borough, in accordance with File No. 804-560, be not accepted

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a public footpath from the eastern end of Burwains Avenue to the grounds of St Michael and All Angels' Church, Foulridge as shown by a thick dashed line between points A-B-C-D on the Committee 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 Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order will only be made to add a public right of way to the Definitive Map and Statement if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”

An order for adding a way to or upgrading a way shown on the Definitive Map and Statement will be made if the evidence shows that:

- “the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path or restricted byway”

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

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

Consultations

Pendle Borough Council

Pendle Borough Council have been consulted on this application as a local authority and as the owner of adjacent land. They outlined their land ownership just near point A but did not provide any comments on the application so it is assumed they have no objection.

Foulridge Parish Council

Foulridge Parish Council have been consulted and they support the addition of the footpath as they believe that it is well used by the residents of Foulridge and it is important that it is retained.

Applicant/Landowners/Supporters/Objectors

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

Advice

Executive Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8897 4198	Open junction of eastern end of Burwains Avenue with application route.
B	8898 4196	Point at which application route passes between two garages.
C	8897 4195	Point at which application route turns west at rear (south) of garages to continue along north side of boundary fence.
D	8897 4195	Gap in boundary fence through which application route passes into grounds of St Michael and All Angels' Church.

Description of Route

A site inspection was carried out on 21st April 2015.

The route under investigation commences at the eastern end of the adopted highway extent at Burwains Avenue.

Access onto the route at point A on the Committee plan is open and unrestricted. No signs were visible at or close to point A indicating whether the route, or the land that it crossed, was considered to be private.

From point A the application route extends in an easterly direction along a compacted earth and stone track, approximately 2.5 metres wide, turning almost immediately in a southerly direction and providing access to a row of garages located to the east of the track.

The track, and the land on which the garages are located, is well maintained and the grass either side of the track, had been recently mown.

From point A the application route follows the track for approximately 30 metres to point B where it ends at the front of 3 of the garages. The application route then continues along a flagged path between two of the garages. The flags appear to have been loosely positioned but have settled so that they are quite firm to walk on between the two garages. As the route enters the gap between the two garages at point B there is an available width of approximately 70cm which fans out to a width of approximately 165cm at the back of the garages at point C.

From point C the application route turns to continue in a general westerly direction along the back of two of the garages and is enclosed between the garages and the boundary hedge that separates the garage site with the church grounds. Stone flags have been positioned along part of this route and a concrete base is evident at point D where a gap in the boundary hedge adjacent to the south east corner of a building in the rear garden of 36 Burwains Avenue provides access into the grounds of St Michael and All Angels Church. The claimed route ends at point D

Beyond point D the application route passes through the gap in the hedge and provides access to the church and graveyard and it is possible to exit the church grounds onto the A56 (Skipton New Road).

The total length of the application route is 40 metres.

Close to point D, but within the grounds of the church is a stone that is located at ground level. The wording on the stone reads 'Highways Act 1980 No public right of way'. The stone is not set firm in the ground and it is possible to lift it up and move it. Although close to point D it is not clear whether the intention is for the stone sign to refer to the church yard or specifically to the access to the application route.

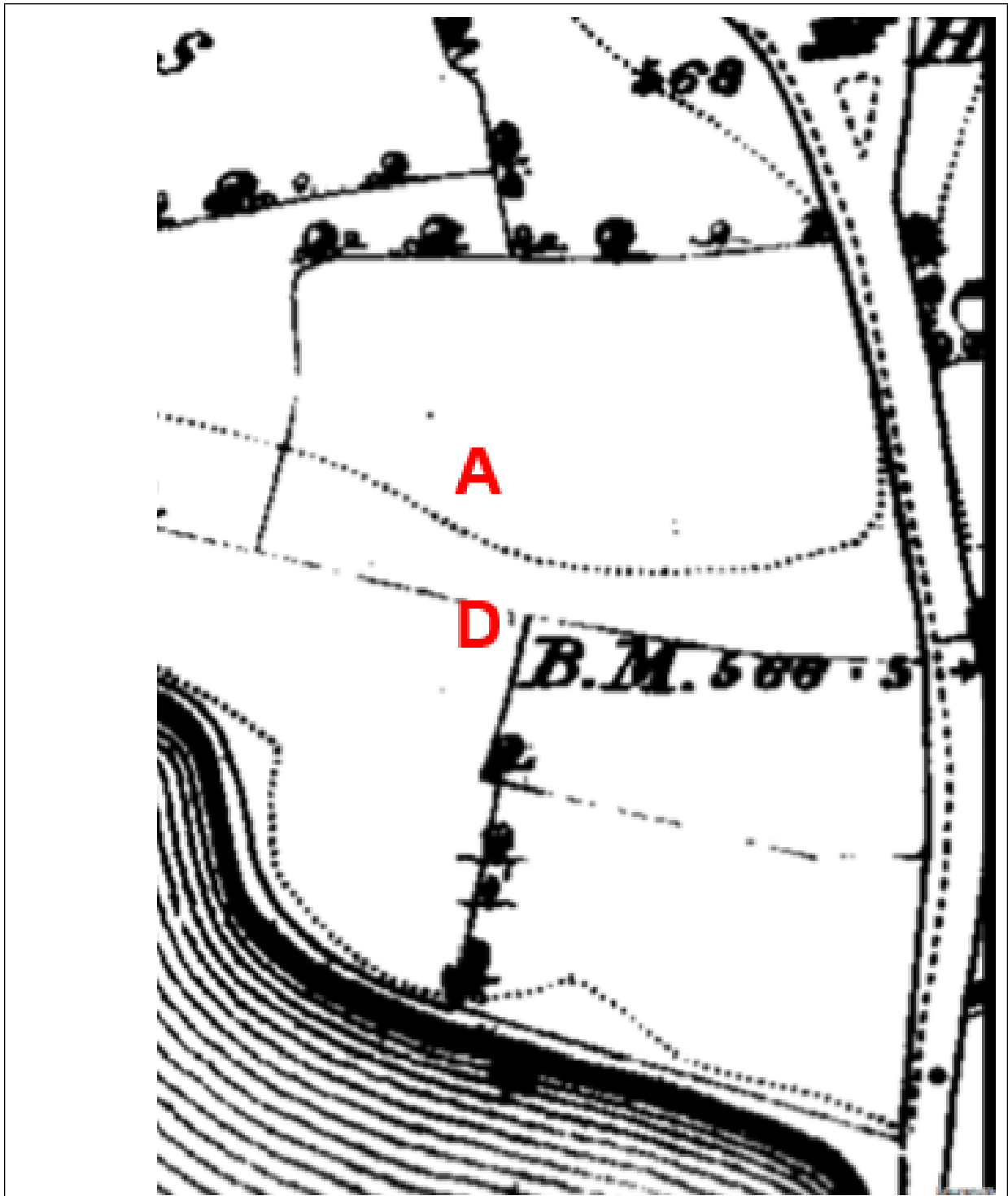
Map and Documentary Evidence

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 application route is not shown. The road now known as Skipton New Road (the A56) passing through Foulridge is shown but the church and Burwains Avenue are not.
Investigating Officer's Comments		It is not uncommon for public footpaths not to be shown on these maps – particularly where they cross agricultural land and it is therefore possible that it could have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads.
Observations		The application route is not shown.
Investigating Officer's		It is unlikely that the application route existed in

Comments		1818 but it is not uncommon for public footpaths not to be shown on these maps – particularly where they cross agricultural land and it is therefore possible that it could have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
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 7½ 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		The application route is not shown.
Investigating Officer's Comments		It is unlikely that the application route existed in 1818 but it is not uncommon for public footpaths not to be shown on these maps – particularly where they cross agricultural land and it is therefore possible that it could have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Canal and Railway Acts		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 application route did not cross land affected by the construction (or any known proposed construction) of a railway or canal.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1842	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

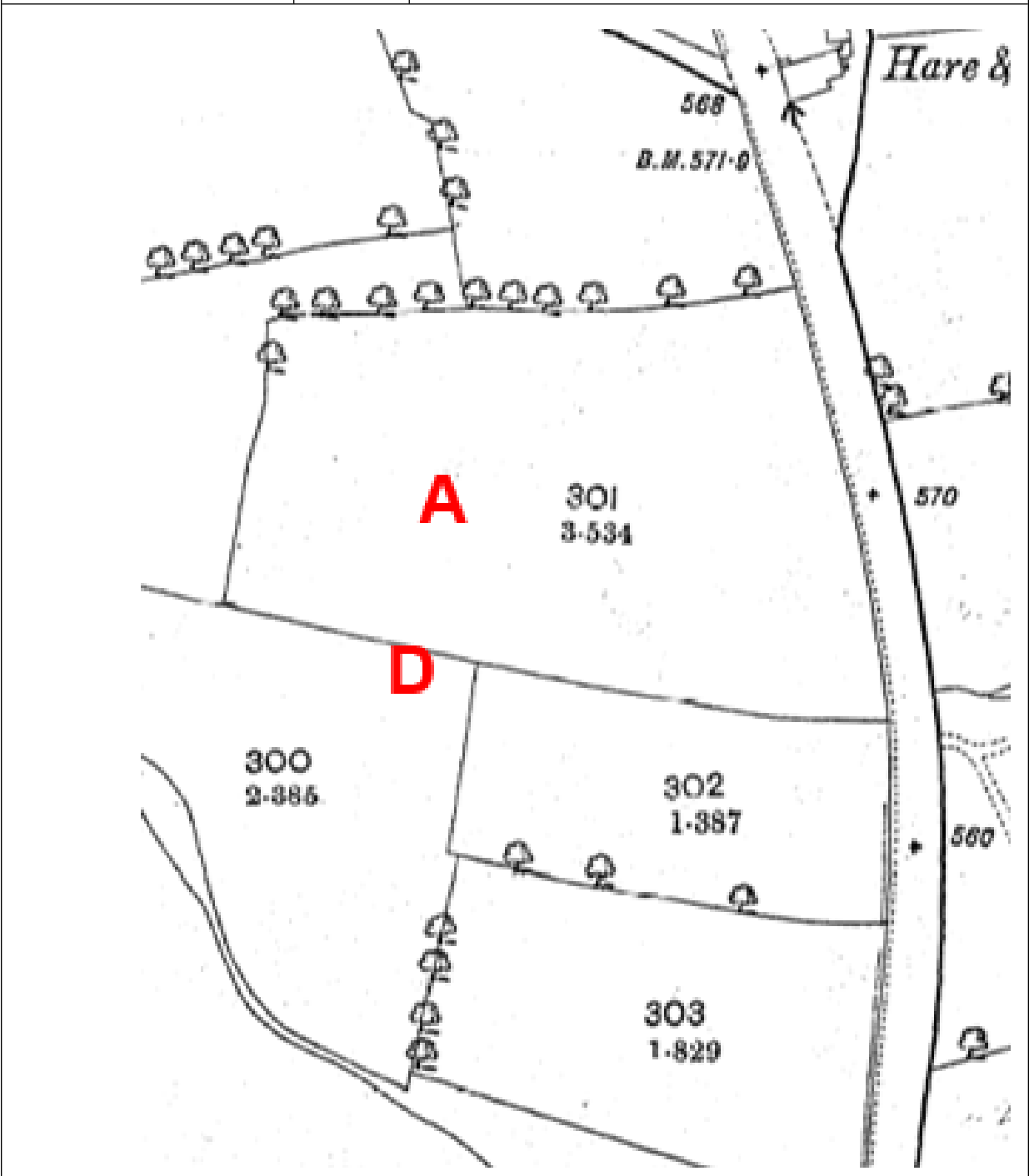
		rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		A copy of the Tithe Map for Foulridge was inspected in the County Records Office. The land crossed by the application route is shown as pasture land and neither the church nor Burwains Avenue are shown. The Schedule that accompanies the Tithe Map makes no reference to the existence of a public right of way.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1842.
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 for Foulridge in the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848. ¹

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.

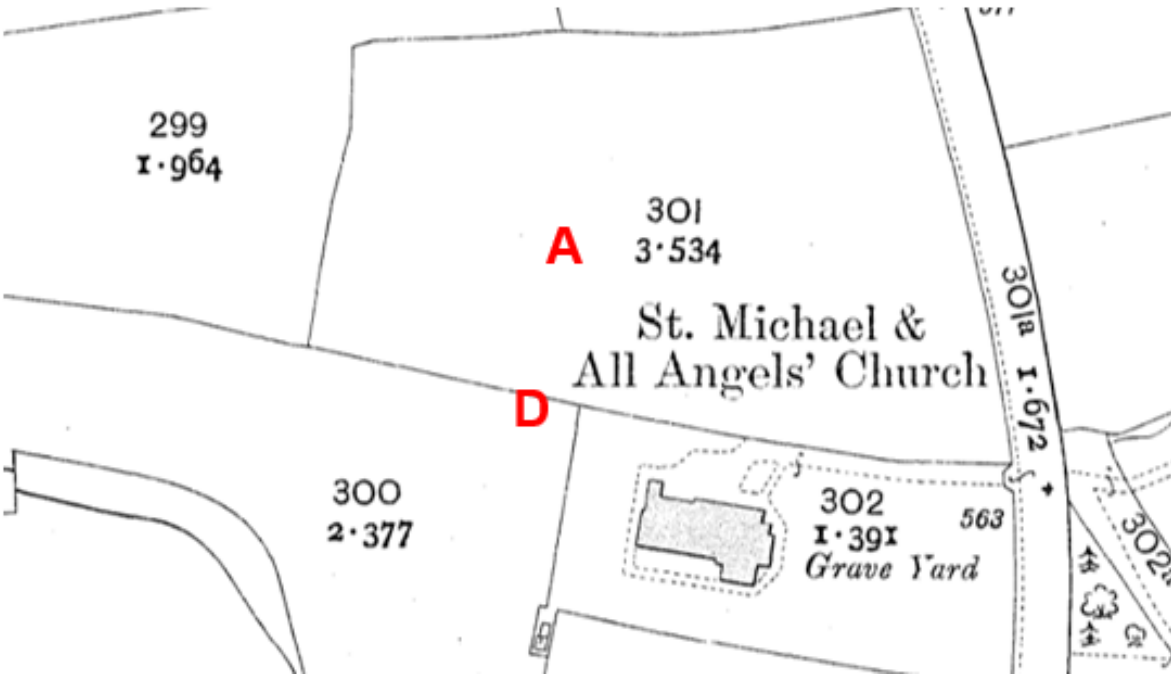


Observations		<p>The application route is not shown.</p> <p>The land crossed by the application route is shown as fields and the church and Burwains Avenue are not shown. A field boundary is shown across the route at point D.</p>
Investigating Officer's Comments		<p>It is considered very unlikely that the application route existed in 1844. It is not shown on the map and the start and finish points (point A and point D) do not appear to have been publicly accessible</p>

		at that time.
25 Inch OS Map	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891-92 and published in 1894.



Observations		<p>The application route is not shown.</p> <p>The land crossed by the application route is shown unaltered from the earlier edition of the 6 inch map detailed above and there still appears to be no public access to point A or point D.</p>
Investigating Officer's Comments		The application route is unlikely to have existed in 1891-2.

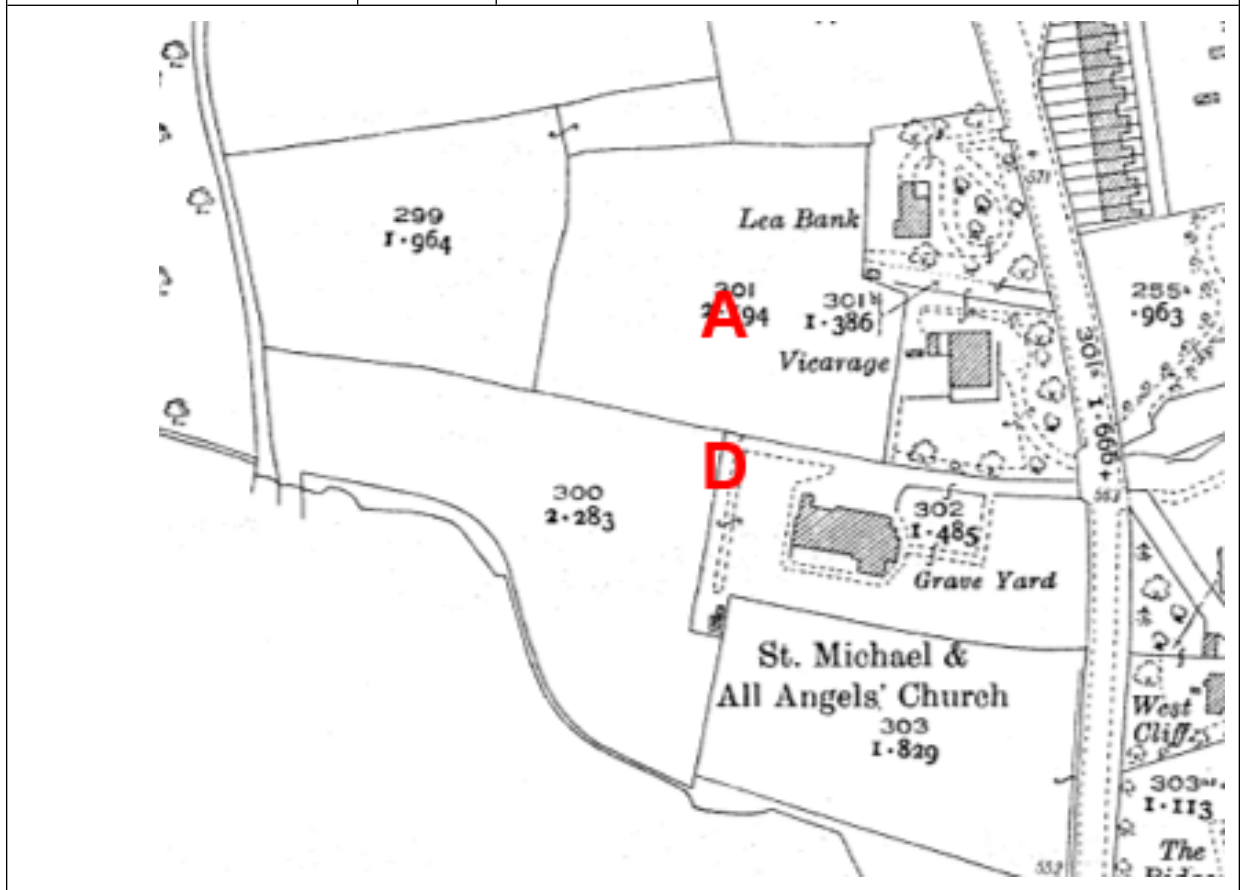
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1891-92, revised in 1910 and published in 1912.
		
Observations		<p>The application route is not shown.</p> <p>St Michael and All Angels' church is shown (and named) with the land around it labelled as a graveyard. The western boundary of the graveyard is shown to the east of point D and the application route under investigation is shown within OS field number 301 extending as far as the field boundary between OS field numbers 301 and 300 at point D.</p>
Investigating Officer's Comments		<p>The application route is unlikely to have existed in 1910. The grave yard is smaller than today</p>
Finance Act 1910 Map	1910	<p>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.</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</p>

	<p>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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<p>Observations</p>	<p>The Finance Act map and records held by the County Records Office were inspected.</p> <p>The application route is not shown on the OS base map used as part of the Finance Act mapping process and it is not shown as in excluded from the numbered hereditaments.</p> <p>The application route crosses land which would</p>
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		have been within what was (at the time of the Finance Act taxation process) numbered as plot 6540. Within the valuation book held by the County Records Office no reference is made to the existence of a public right of way within that plot and no deduction appears to have been claimed. The valuation book entries for the church grounds (7232) and the field into which point D would have provided access (7233) have also been checked and neither detail any deduction being claimed for the existence of a public right of way.
Investigating Officer's Comments		The application route probably did not exist or was not considered to be a public right of way circa 1910 or a deduction was not considered to be worth claiming.
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1891-92, revised in 1930 and published in 1932.



Observations		The application route is not shown. The vicarage to the north of the church is now shown and it appears that the church grounds had been extended along the western boundary so that point D is now situated at a point on the northern boundary of the graveyard and – if access through
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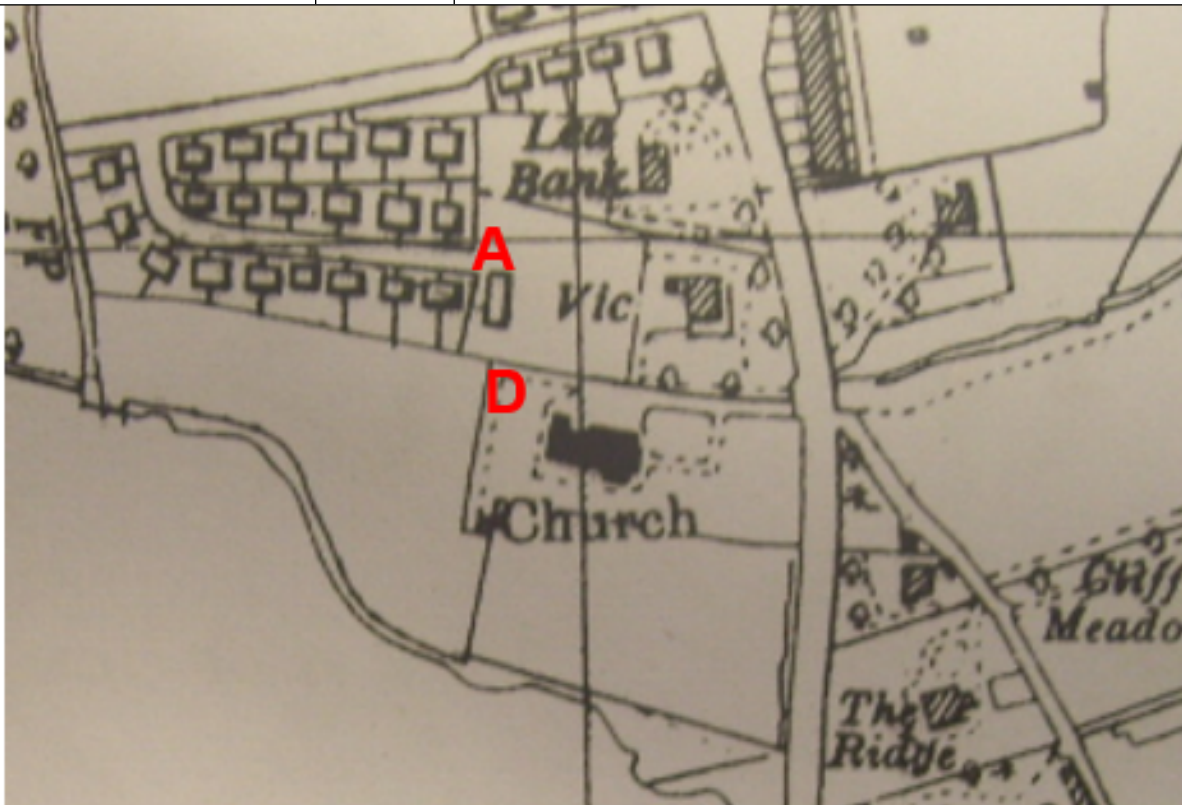
		the boundary existed - would provide access into the grounds of the church.
Investigating Officer's Comments		The application route probably did not exist in 1930 and although it could have been possible to access at point D into the church grounds it does not appear that the application route existed and point A does not appear to have been publicly accessible at that time.
Aerial Photograph²	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 photograph is poor but it appears that Burwains Avenue and the houses along it had been constructed as far as point A by the 1940's. It is not possible however to see
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² 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.

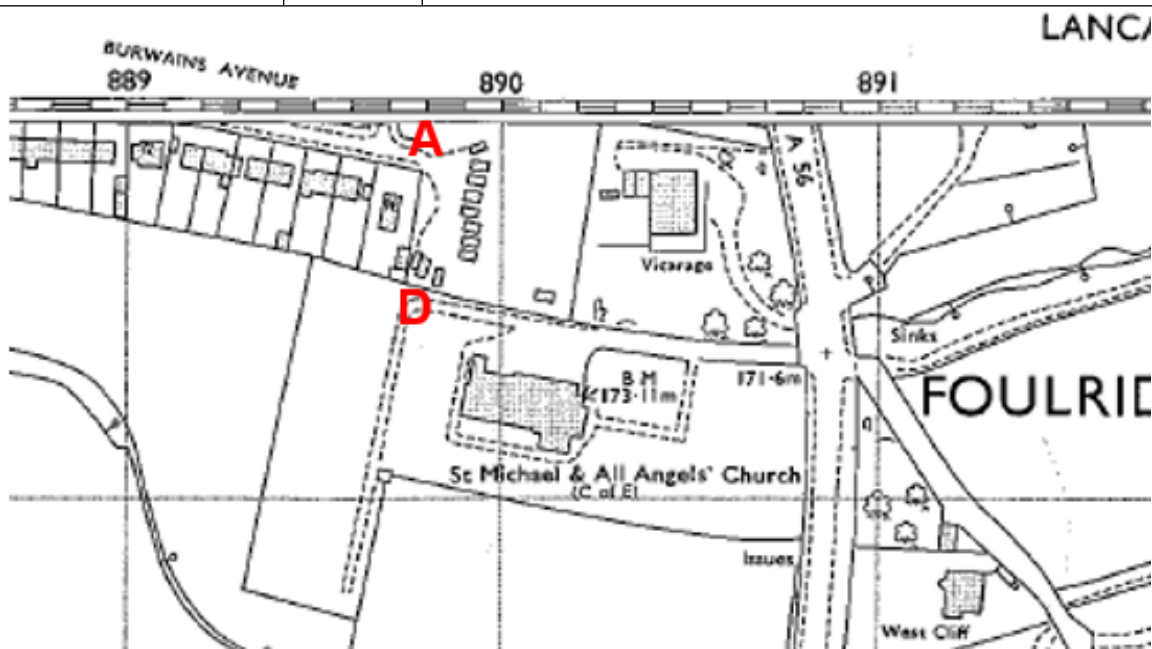
		whether the route under investigation existed as a worn track – or whether it was accessible - from the photograph.
Investigating Officer's Comments		It appears that public access existed to point A and it is considered likely that the existence of the application route post-dated the construction of Burwains Avenue and the properties situated along it. However it is not possible to see whether the application route existed – or was accessible – from this particular photograph.
6 Inch OS Map	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. Burwains Avenue is shown and a building is shown in the proximity of 36 Burwains Ave but having a considerably larger footprint than the current building. It is not possible to determine whether the building would have obstructed the application route due to the scale of the map.
Investigating Officer's Comments		As the map was revised in, or before the 1930s it appears that Burwains Avenue and the properties along it existed at that time. Access may therefore

		have been available to point A but there is no indication from the map that the application route existed at that time.
Aerial Photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
Observations		Access onto the application route appears to be open and available at point A and a track corresponding to the application route can be seen between point A and point B. It is not possible to see whether it was possible to walk between the two garages between point B and point C as a large square object consistent with a small shed or lean-to can be seen on the photograph. The route between point C and point D is not visible on the photograph.
Investigating Officer's Comments		The application route appeared to exist between point A and point B but it is not possible to see whether the rest of the route was available to use in the 1960s from this photograph.
1:2500 OS Map	1970	Further edition of 25 inch map reconstituted from former county series and revised in 1969 and

published 1970 as national grid series.



Observations

The application route is not shown. However, access onto the application route at point A appears to have been available and the garages are shown to exist at that time. It appears that access was available between point A and point B and a gap is shown between the garages between point B and point D which may have been accessible. No gap in the boundary is shown to exist at point D.

Investigating Officer's Comments

The application route may have been unobstructed between points A and D in 1969 although it is not possible to know whether it was possible to get through to the church grounds at point D nor whether this route was actually used.

Aerial Photograph

2000

Aerial photograph available to view on GIS.



Observations		The application route can be seen as a track between point A and point B and appears to be open and accessible from Burwains Avenue at point A. It is not possible to see whether the application route existed between point B and point D on the photograph.
Investigating Officer's Comments		The application route existed as an access track between point A and point B in 2000 but it is not possible to see whether the remainder of the route existed at that time.
Aerial Photograph	2010	Aerial photograph available to view on GIS.



Observations		The application route can be clearly seen between point A and point B. A gap can be seen between the garages at point B although it is not possible so see whether it was possible to walk through. Point C is obscured by trees. The access point into the church grounds at point D can be seen.
Investigating Officer's Comments		The application route may have existed in 2010.
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	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		The parish survey map and cards were drawn up by Foulridge parish council. The application route is not shown on the parish survey map or documented in the parish survey cards.
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>
Observations		The application route is not shown on the Draft Map of Public Rights of Way and there were no objections to the omission of the path.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route is not shown on the Provisional Map and there were no objections to the omission of the path.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route is not shown on the First

		Definitive Map.
Investigating Officer's Comments		The application route was not considered to be a public right of way in the 1950s.
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.
Observations		The application route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The application route was not considered to have been a public footpath by the 1960s.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



Observations	<p>The highway records confirm that Burwains Avenue is publicly maintainable to point A but do not show any part of the application route as being a publicly maintainable highway.</p>
Investigating Officer's Comments	<p>The application route is not recorded as being publicly maintainable in the records held by the County Council but there are public rights to point A.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</p>	<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established.</p>

		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).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the routes under investigation 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 affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is registered common land.

Landownership

The main owners of the route are David Crabtree Tinniswood and Carol Tinniswood, Bryn Tawel, Cocker Hill, Foulridge, Colne, Lancashire BB8 7LW.

Part of the route encroaches into land owned by The Borough Council, Pendle, Town Hall, Market Street, Nelson, Lancs BB9 7LG

1976 Planning Permission

As detailed below there is reference to a footpath being retained in a grant of planning permission but this was to the vicarage garden and it is considered that this is unlikely to be the claimed route as the vicarage garden area is not accessed at point A.

Summary

There is no evidence of the application route on any of the Ordnance Survey maps produced from 1848 through to 1970 from when a track is shown between point A and point B providing access to the garages. There is no map evidence to support the existence of the application route between point B and point D and the aerial photographs are difficult to interpret due to their scale and the fact that the route passes between a narrow gap between buildings and is obscured by trees. The 2010 aerial appears to show access to the church yard at point D.

St Michael and All Angels' Church was built in 1903 and consecrated in 1905. However, until the construction of Burwains Avenue – possibly in the 1930s – there does not appear to be any access to the application route at point A.

It is considered likely that any use of the application route would have post-dated the construction of Burwains Avenue and the properties situated along it.

There is very limited map and documentary evidence supporting the existence of the route that is now apparent on site and none to support that the route was considered to be a public footpath.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant has applied for this Modification Order and says that the path into the churchyard is used by churchgoers, access to the churchyard, pathway to the main A56 busy road and to the bus stops, mainly for the use of children to go to the church school and colleges.

The applicant has personally used this path after moving to the village in 1970 several times a week. The applicant has also supplied a copy of an invoice from Mr Tinniswood requesting rent for the garage on site dated 31/12/2013 and the receipt for the purchase of the garage in 1984.

The Applicant also submits a copy of a letter to him from Pendle DC in 1976 informing him that outline planning permission for 2 houses had been granted on the cul de sac end of Burwains Avenue subject to various matters including new garages and that the footpath to the vicarage garden shall be preserved together with a provision for a private drive to serve the vicarage garden.

An aerial photograph marked with the past and present locations of the stone sign in the churchyard was also submitted

The applicant has submitted 12 forms detailing use in support of this application, the evidence of these forms is set out below:

The years in which the users have known the route varies:

1954-2014	1960-2014	1964-2014(2)	1965-2014	1969-2014
1970-2014	1980-2014	1984-2014	1994-2014	1997-2014

All 12 users have used the route on foot, the years in which the users used the route varies:

1954-2014	1964-2014	1965-2014	1970-2014(2)	1978-2014
1984-2014	1986-2014	1992-2014	1995-2014	1997-2014

The users were mainly going to church, the A56 Skipton Road, the bus stop, general walks or to school. The main purposes for using the route include access to the churchyard, going to church services, to go shopping, to the bus, to use it as a short cut to avoid traffic or to visit friends and family.

The use per year is varies between each user from 200 times, 100 times, 75 times, weekly, 10-15 times to just 2-3times.

8 of the users have never used the route on horseback or by motorcycle / vehicle, 4 users did not provide a response to this question. 1 user has used the route on bicycle between the years of 1974-2014.

11 users agree that the line has always run over the same route, 1 user did not provide a response, the same user also states there is a gate at the church yard that is sometimes locked at night, the other 11 users state there are not stiles / gates / fences along the route. 8 of the users have never been prevented access when using the route, 4 of the users did not provide a response to this question.

11 users have never worked for a landowner, 1 user did not provide a response. 3 users have rented a garage along the route between the years of 1965-2014, 1975-2014 and one since 1984 that the user now owns the garage. These particular users have never received any instructions to use the route.

None of the 12 users have ever been stopped or turned back when using the route nor have they heard of anyone being stopped or having to turn back when using the route. 11 users have never been told that the route they were using was not a public right of way, 1 user did not provide a response to this question. 6 users have seen a sign along the route that states 'no public right of way', 3 of these users state this sign is made of stone, 2 of the users state the sign is at the top of the church yard. 11 of the users have never asked permission to use the route, 1 user did not provide a response to this question.

At the end of completing the user form, users are asked to provide any further information they think is relevant, this information is set out below:

- "This footpath used by many villagers to access the church, graveyard and to access busy A56 main Road. Used as a short cut for schools, colleges, bus routes and a fairly level route through to Burwains Ave across the garage site."
- "The footpath from Burwains Ave through to Foulridge Church runs through the site of a number of garages of which I own one. I therefore also use the footpath to access my garage three / four times a month."
- "This access is used by a lot of people, i.e. church goers, walkers, visiting graves and school pupils, church functions."
- "In about 1985 Foulridge Parish Council gave myself and another resident on the Street, Billy Holmes, money to purchase concrete to put a path at the top of Burwains Ave, towards Alms Ave. Also from Burwains through the garages to the Church on the path we use today. This was to help a local man who lived on Burwains, his wife would push him in his wheelchair to the church and to take him out for fresh air. We use the path to catch the bus and to go on walks and watch lots of people using the path, going to church, school and walks."
- "This route is used by many people of all ages as a safe and easy route from the west side of Foulridge Village to the church and Skipton Road."

Information from the landowner

A letter has been received from Mr D C Tinniswood who makes the following comments. He mentions in terms of the boundary fencing he has the responsibility for the area of land adjoining the Vicarage, which runs along the rear of the seven garages shown on the map. The PCC of St Michaels and All Angels Church / Blackburn Diocesan Authority have responsibility for the boundary fence running parallel to the Church drive, part of which separates his land from the drive, i.e. the area behind the garages shown on the map.

The land owned by him and his wife was left to him in his father's will in 1987/8. At that point he informed the Church Council / Vicar that it would be sensible to improve the boundary fence so that the public could not trespass through his land onto the

church drive. The action that they chose to take was to place a stone plinth at ground level stating "No right of Way Highways Act 1980" (Mr Tinniswood supplied a photograph of this stone). The secure fencing they chose not to install.

On a number of occasions he has posted "Private Land" and dog fouling notices at the entrance to the garage site from Burwains Avenue. Each time the notice has been torn down even though it was posted on a tree trunk twelve feet above the ground.

Furthermore he mentions we should be aware of the fact that the Diocesan Authority in 2007 asked if they would work in partnership with them to develop a plot of land compromising his garage site and church land between the Vicarage and the garage site. He provides an outlined plan of the proposed development for which planning permission is underway.

His understanding has always been that the church and churchyard is private property and that access is only for church services, events and access to the graveyard. There is no right of way through the churchyard and never has been. It is private property and therefore it should follow that there can be no footpath through his land onto private church property.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- accessible route
- user evidence
- aerial photographs

Against Making an Order(s)

- difficulty in there being a place of public resort at termination
- some users with implied permission re access
- low user evidence
- actions taken by landowners
- difficulty re public footpath rights on a churchyard

Conclusion

In this matter it is claimed that this route has already become a footpath in law.

Most claimed routes link from a highway to a highway and the issue of there being a public destination at each end does not arise. In this matter it is advised that the issue of whether the route is of a character capable of becoming a footpath needs to be considered. The route connects to a highway at one end and the churchyard at the other. There is evidence of the churchyard gate being locked sometimes. It is suggested that there is no evidence of a faculty (a consent of the consistory court)

being given for public footpath in the church yard and that a faculty cannot be presumed in view of the stone sign in the churchyard negating any intention to dedicate a public route. The church yard is difficult to consider as being a public area.

Case law in 2012 led to a route being found not to have the essential element required of a highway as it should be open to use by the public at large. This particular route is not used as a cul de sac. Users do not get to the church yard boundary and the hedge and turn back along the garage access path. It is advised that it may be considered that this claimed route reaches not a place of public resort but a private graveyard which may even have its access gates locked and cannot therefore be of a character capable of being a public footpath.

If the Committee consider that the graveyard could arguably be a place of public resort so as to be a suitable termination point for a highway route, it is suggested that the Committee consider whether there is sufficient evidence of a dedication of the route. There is no express dedication and so it is advised that consideration is given as to whether the provisions of S31 Highways Act can be satisfied and dedication be deemed, or dedication inferred at common law

The use would need to be without permission and it is noted that three of the 12 users have rented garages at this location and must have enjoyed permission right to access the garage possibly even along the line of the claimed route. Their use may be regarded as permissive and should arguably be disregarded when looking at as of right use of the route.

In addition to the low user evidence there is the issue of the Notice on the land right at the end of the route in the churchyard indicating a lack of intention to dedicate by the landowner and the lack of a faculty to enable a public route to be created. This sign may possibly be viewed as calling the claimed route into question. A route does not have to be called into question by the landowner where the route runs but that sign acts like a gate blocking as of right use of the claimed route. It was possibly put up as long ago as 1987. This action challenged the public right to use the way. Several of the users refer to seeing it. This pushes the twenty year use period back possibly to the 1960s when only a couple of users refer to their use of the claimed route.

The Committee may consider that there is insufficient evidence of use for the twenty year period. Within that period there is also reference to some actions by the landowner himself. These actions seem to have had little effect. No signs on the route itself are referred to by users and in any event "private land" notices may not successfully negative his intention to dedicate a footpath.

These actions taken however would make it difficult to prove on balance that the owner had intended dedicating for the purposes of whether dedication can be inferred at common law. It is advised that the landowner of today has been owner since 1987 and it would be difficult to show intention to dedicate. The user of the land can be circumstances from which to infer intention to dedicate but there were some actions taken and permissive use expected from those renting the garages.

There is the issue as to whether there is a termination at a place of public resort. Should this be considered able to be satisfied there are issues of use with permission, low number of use in relevant years, and difficulties of proving landowner intention such that it is advised that, taking all the evidence into account there is insufficient evidence from which to find on balance dedication bale to be reasonably alleged to be deemed under S31 Highways Act or inferred at Common Law.

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 File Ref: 804-560	various	Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A