

Regulatory Committee

Meeting to be held on 1st July 2015

Electoral Division affected: West Craven

Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

Application to add three Public Footpaths from Riding Close and Park Street to Public Footpath 20 Barnoldswick at Long Ing, Barnoldswick, Pendle Borough.

File No. 804-558

(Annex 'A' refers)

Contact for further information:

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Executive Summary

An application for three public footpaths from Riding Close and Park Street to Public Footpath 20, Barnoldswick at Long Ing, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-558

Recommendation

- That the application (reference 804-558) for three public footpaths from Riding Close and Park Street to Public Footpath 20, Barnoldswick at Long Ing to be added to the Definitive Map and Statement of Public Rights of Way be accepted
- 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 three public footpaths from Riding Close and Park Street to Public Footpath 20, Barnoldswick at Long Ing, shown between points A-B-C-D-E, C-F-G-H, and I-J-G-K-L-M-N, on the attached plan.
- 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 submitting it to the Secretary of State.

Background

An application has been received from Mr Peter Crompton for three public footpaths extending from points on Riding Close and Park Street to points on Public Footpath 20 Barnoldswick, and shown between points A-B-C-D-E, C-F-G-H, I-J-G-K-L-M-N 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 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 Inspectorates 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 weighted 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 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 consulted members of Pendle's West Craven Committee. The Committee resolved that the application should be supported on the grounds that the claimed routes had been used for at least 20 years without challenge.

In addition, the Committee resolved to ask the County Council in its capacity as landowner to dedicate a public right of way on foot as follows:

- From the end of Clifford Street to the new ginnel on the boundary with the new primary school and West Craven Sports Centre and;
- The diagonal route from the end of Clifford Street to the stile at the southeast corner of the County Council field.

Barnoldswick Town Council

The Town Council supports the application for the application routes and in addition to this it was identified that there are additional routes on the land that is currently in the ownership of Lancashire County Council. The Town Council also outlined a further 2 routes in the vicinity of this land that are also used and are not recorded on the Definitive Map.

These requests by the Borough and Town Council are not being treated as part of this report – dedication of new rights or other changes to the public rights of way, based on expediency, are a completely different matter to the determination of what public rights already exist, based on evidence.

Additional routes for which there is evidence of public rights could sometimes be considered at the same time as nearby routes where the evidence is common to both but we do not currently have evidence for these other routes. Therefore they are not being considered within this report.

Applicant/Landowners/Supporters/Objectors

The evidence submitted by the Applicant/landowners/supporters/objectors and observations on those comments is included in 'Advice – Legal and Democratic Services' Observations'. However an objection to the proposal has been received as summarised below.

Indigo Planning

A letter of objection has been received from Indigo Planning Limited on behalf of their client, Stirling Investment Properties LLP, who objects to the application. They state that the application is not substantiated by the submission of a credible or robust evidence base (i.e. it is based on anecdotal evidence) and refers to land which neither the current nor previous owners (Silent Night Ltd) have ever granted third party rights of access to.

The land has been subject to various planning application proposals, including recent submissions for a housing development by the above developer. Further information on this can be found in the Land Ownership section of the report.

Advice

Public Rights of Way, Planning and Environment Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8837 4664	Point on public footpath 20 Barnoldswick on open

		rough grass next to edge of wood
B	8829 4666	Approximately 2 metres SW of southern corner of property at Oak Lea
C	8822 4669	Junction of 2 application routes on rough grass field near stile
D	8822 4670	Stile in boundary at Langsford Close
E	8820 4670	Junction with Riding Close
F	8825 4661	Stile in boundary fence of woodland
G	8826 4659	Point in wood where trodden paths cross
H	8845 4644	Junction of trodden path with stone (drain or utility reinstatement) on Public Footpath 20 Barnoldswick
I	8836 4663	Junction of trodden path with Public Footpath 20 Barnoldswick just inside the wood
J	8831 4664	Point in wood where the trodden path changes direction
K	8825 4659	Gap in fence at edge of wood
L	8823 4655	Just outside corner of playing field
M	8817 4651	Gap in fence behind garages off Lower Park Street
N	8815 4652	Edge of adopted highway Lower Park Street

Description of Route

Site inspections were carried out on 22nd August 2014 and 25th March 2015.

There are three separate routes which are under investigation in this application. The routes mainly consist of woodland and field trails, linking up to main highways or other public footpaths in the area. The routes cross a derelict piece of open land, a privately owned woodland and school grounds.

Route 1 (Points A-B-C-D-E)

The first route commences at a point on Public Footpath 20 Barnoldswick (point A) approximately 1m north of the stile in the field boundary and follows a trodden line on a grass surface heading in a north-westerly direction for approximately 80 metres towards the properties located off Moss Side. The route passes within close proximity to the southern corner of the property boundary of Oak Lea (point B), and continues in a north-westerly direction for approximately 75 metres to meet at a junction with the second application route (point C). The route then continues in the same direction for approximately 5 metres sloping downhill to meet a broken stile at the field boundary at point D. There are paving flags which have been laid on the ground as stepping stones leading down from the stile towards the car park off Riding Close. A dog litter bin is also in situ at the bottom of the slope and at the end of the flags. This indicates that the local area is heavily used for dog walking and the stepping stone flags provide access to the application routes, suggesting this is the route which people have taken. The route then continues 20 metres across a mown stretch of grass and tarmac car park to exit onto Riding Close. The total length of this route is approximately 180 metres.

Route 2 (Points C-F-G-H)

The second route commences from point C, and heads in a generally south-easterly direction following a well-trodden line roughly following the western boundary of rough grassland for approximately 85 metres to a stile in the fence line on the boundary of the woodland (point F). The route enters the woodland and follows the well-worn trail south-east passing the intersection with the 3rd application route (point G) after approximately 20 metres and continuing for a further 280 metres within the edge of the wood to a junction with Public Footpath 20 Barnoldswick (point H). The total length of this route is approximately 385 metres.

Route 3 (Points I-J-G-K-L-M-N)

The third route commences from point I, a point on Public Footpath 20 Barnoldswick approximately 4m inside the boundary fence of the wood. The route follows a well-trodden narrow route through the woodland heading in a west-north-westerly direction for approximately 50 metres to reach point J, an unmarked point where the route changes direction. The route then heads south-west still following the well-trodden line for approximately 70 metres where it crosses the second route at point G and continues a further 3 metres to meet the fence at the edge of the wood at point K. There is a gap in the fence with a small dip and steep slope. The route then continues across the school grounds on rough grass field for approximately 45 metres heading in a south-south-westerly direction to point L, then in a south-westerly direction for a further 75 metres to the garage area off Lower Park Street. As it approaches a gap in the fence at point M, hardcore has been put on the surface of the trodden way. At point M there is a step up onto the tarmac. The route then crosses the tarmac of the garage area in a westerly direction to meet Lower Park Street (point N). The total length of this route is approximately 275 metres.

There were no private property signs in place on site. There was however a 'Borough of Pendle' sign stating 'This is not a right of way' in relation to adjacent land. This was situated on a fence to the side of the second application route between points D and F. There are no gates across the application routes. There are open gaps at points A, D, I, K and M. There are stiles (or the remains of stiles) at points D and F.

There is an out of repair stile located at point D near Riding Close. Although there is now a very large open gap next to the stile, the poor state of the structure suggests that it has been there for many years and the fact that it was erected suggests a need for it perhaps because the route was well used. Stiles are normally erected to allow pedestrian access onto fields whilst ensuring security of stock. The fields on which the application routes run are not grazed and appear to be derelict land, private woodland and school playing fields. One of the landowners denies knowledge of erecting the structure. There is no record of it being erected by either Lancashire County Council or Pendle Borough Council. It is therefore unknown when this stile was erected, why or who by.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
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Thomas Jefferys' Map of Yorkshire	1772	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.
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Observations		The routes are not shown, nor is the development that now surrounds them.
Investigating Officer's Comments		The routes did not exist as major routes at the time when the map was drawn. It is unlikely that they would have existed as the housing they abut did not exist. Therefore no inference can be drawn.
Smith's map of Yorkshire	1801	Nothing is known about this map-maker.



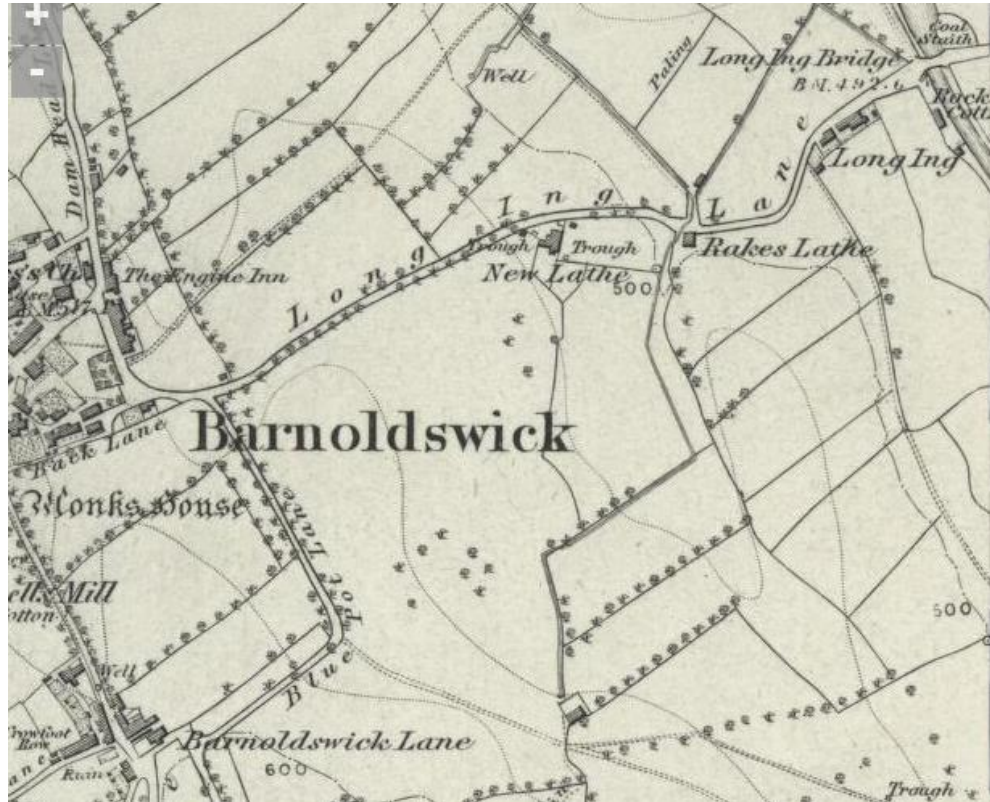
Observations		The routes are not shown.
Investigating Officer's Comments		The routes did not exist as a major route at that time nor the development surrounding them. It is unlikely they existed but if they had done are unlikely to have been shown due to limitations of scale. No inference can be drawn.
Teesdale and Stocking's map of Yorkshire	1817	Nothing is known about these mapmakers 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.



Observations		The area of Long Ing is recorded on the map, but the map is of such a scale that the routes cannot be seen.
Investigating Officer's Comments		No inference can be drawn.
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 Ordnance Survey sheets as researched below show that Barnoldswick Railway was in very close proximity to the application routes, in particular the second route which it partially crosses. The railway was in use from 1871-1966, but is now disused. There is no relevant documentation on this railway available to research at Lancashire Archives.
Investigating Officer's Comments		No inference can be made.

Tithe Map and Tithe Award or Apportionment		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		There was no Tithe Map available to view for the township of Barnoldswick.
Investigating Officer's Comments		No inference can be made.
Inclosure Act Award and Maps	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 Barnoldswick.
Investigating Officer's Comments		No inference can be made.
6 Inch Ordnance Survey (OS) Map	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1849 and published in 1853. 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.

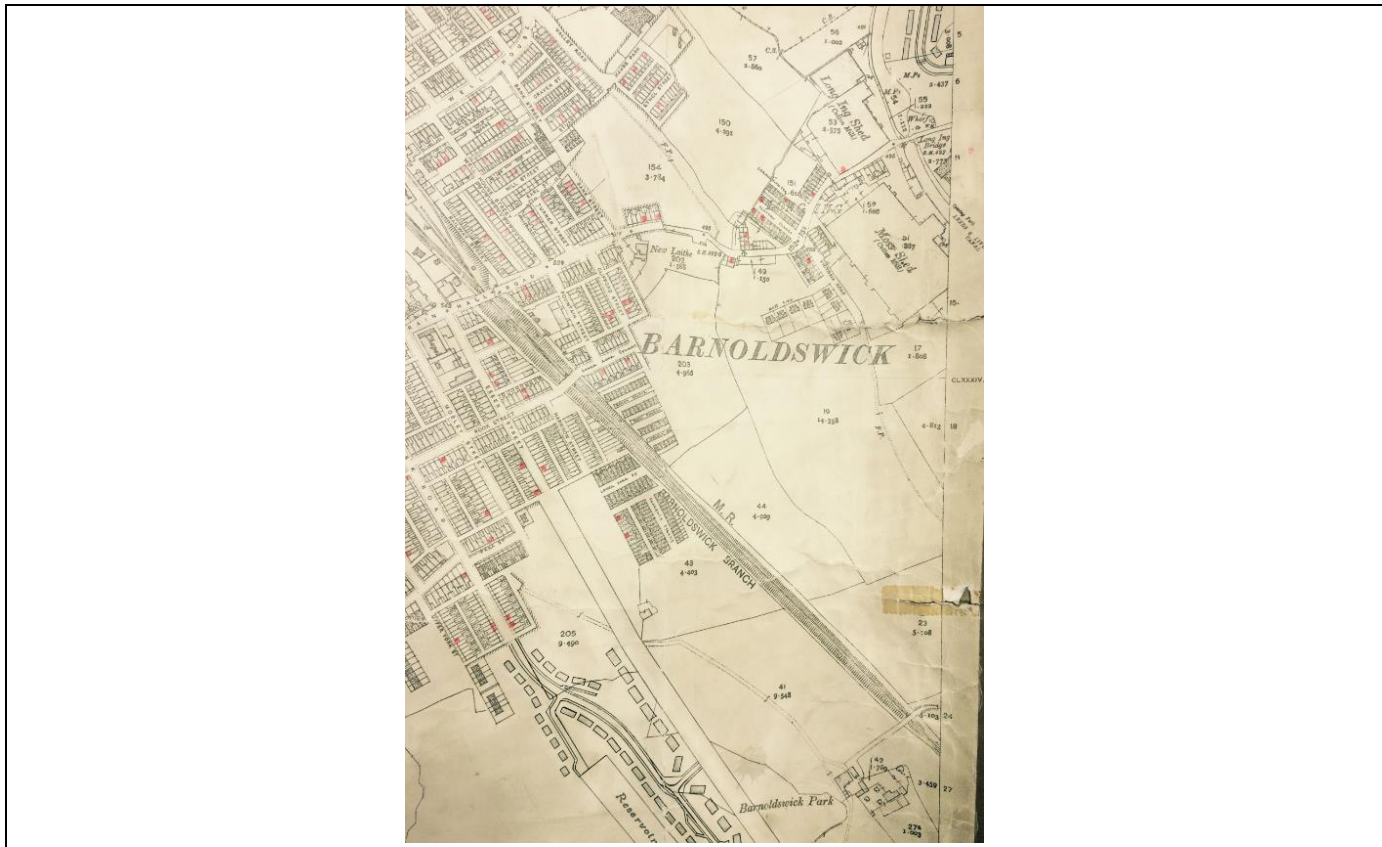


Observations		<p>The application routes are not shown. Other routes have been recorded on the map in close proximity.</p> <p>The area has not yet been built up and appears to be mainly open field over land which the application routes cross.</p> <p>(sheet no. 183)</p>
Investigating Officer's Comments		<p>It appears that the application routes did not exist at this time.</p>
25 Inch OS Map	1894	<p>The earliest OS map at a scale of 25 inch to the mile was surveyed in 1892 and published in 1894. (Sheet no.183/4)</p>



Observations		The application routes are not shown on the map. The fields on which the application routes run remain open un-built on. However, Barnoldswick Branch railway line crosses part of the third application route marked I-J-G-K-L-M-N.
Investigating Officer's Comments		The application routes are not shown on the 1894 OS Map therefore it is presumed that they did not exist at the time.
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 which tax was levied, and accompanying valuation books provide</p>

		<p>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>Lancashire Archives do not hold a copy of the Finance Act Map.</p> <p>The Finance Act Valuation Books where of no use as a hereditament number could not be found from the Finance Act Map. (ref: DVKE 1/2)</p>
Investigating Officer's Comments		<p>The Finance Act 1910 Map was not available to view and no inference can be drawn from the Finance Act Valuation Book.</p>
25 Inch OS Map	1909	<p>Further edition of 25 inch map, re-surveyed 1892, revised in 1907 and published 1909.</p>

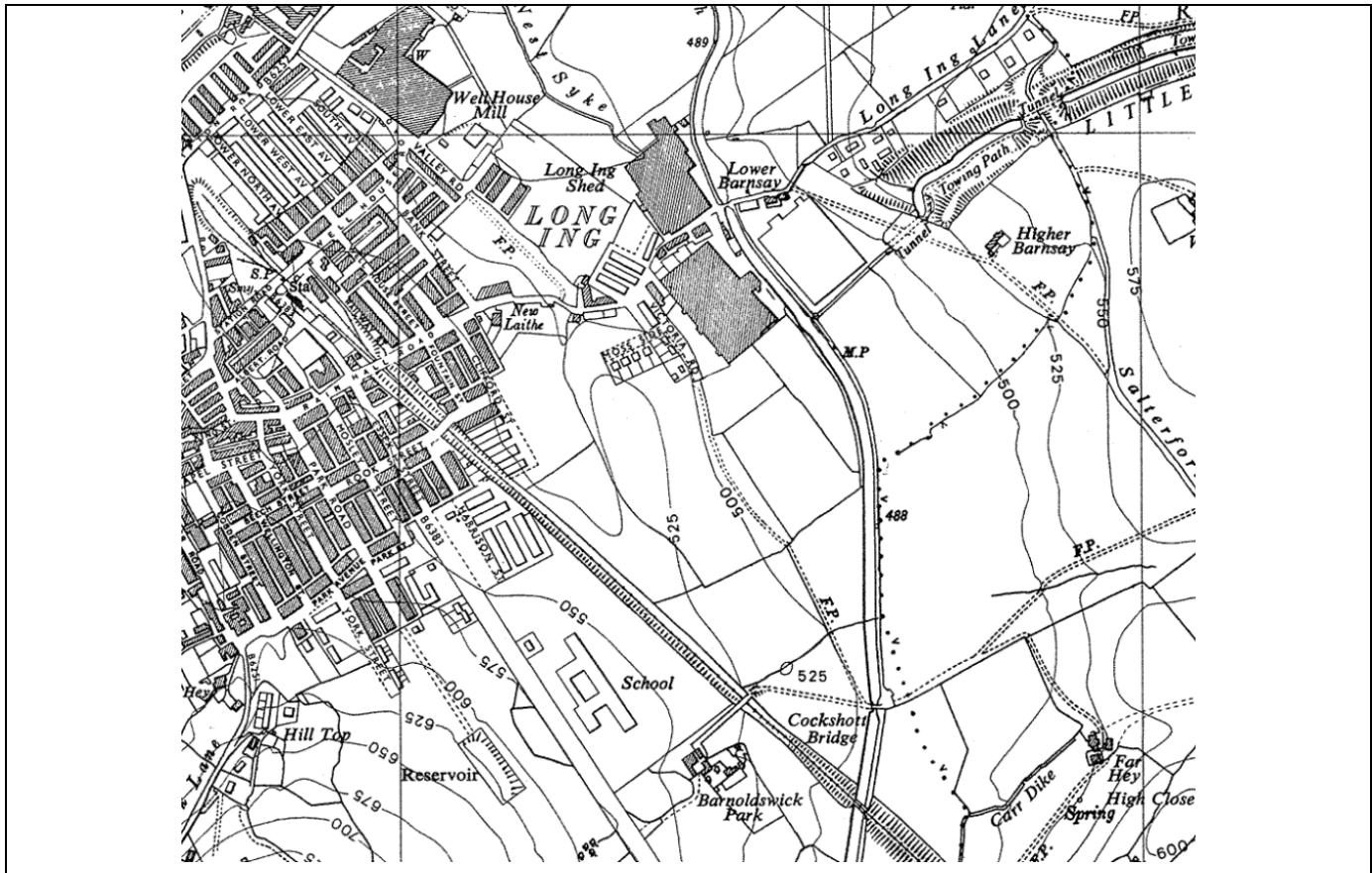


Observations		The properties on Moss Side and Victoria Road have now been built. The railway branch remains in place. The claimed routes are not shown on the map and the fields which they are on remain as open fields.
Investigating Officer's Comments		The application routes probably did not exist at this 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.

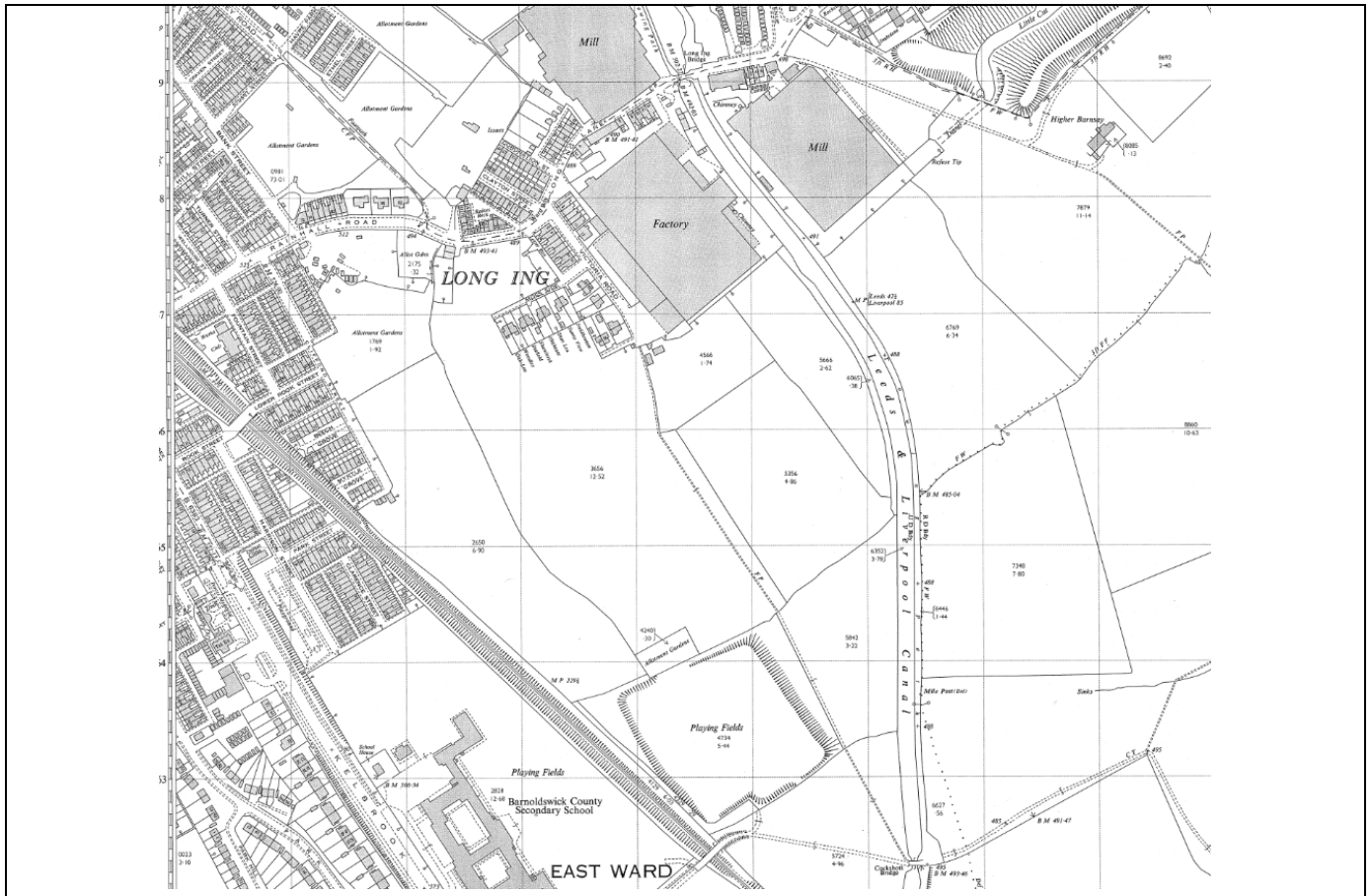
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



Observations		The quality of the 1940 aerial is not great. No trodden lines can be seen on the ground following the application routes.
Investigating Officer's Comments		The 1940 aerial photograph does not show use of the application routes, and therefore does not support the existence of the routes at this time.
6 Inch OS Map	1956	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.

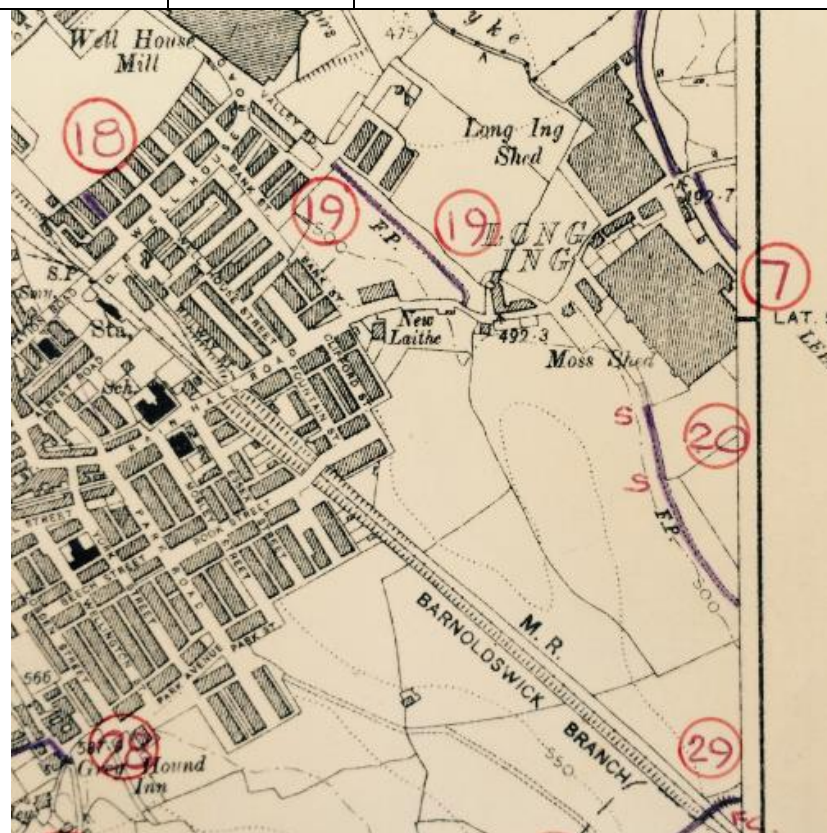


<p>Observations</p>		<p>The application routes are not shown on the 1956 6 inch map. The land is shown again as being an open field, with the original line of public footpath 20 Barnoldswick (which has since been legally diverted) in close proximity.</p>
<p>Investigating Officer's Comments</p>		<p>It can be presumed that the routes did not exist at the time of when the map was surveyed. Public footpath 20 is in close proximity and has been shown.</p>
<p>1:2500 OS Map</p>	<p>1964</p>	<p>Further edition of 25 inch map reconstituted from former county series and revised in 1962 and published in 1964 as national grid series.</p>



Observations		The land is again shown as an open field. Public The application routes are not shown, although the original route of Footpath 20 Barnoldswick has been recorded in close proximity.
Investigating Officer's Comments		It can be presumed that the application routes did not exist on the ground at this time.
Aerial photograph	1960s	The black and white aerial photograph was taken in the 1960s and is available to view on GIS.

		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		Barnoldswick is an urban district and therefore did not produce a parish survey map.
Draft Map		<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>Barnoldswick is an urban district and therefore produced the draft map straight away.</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 routes are not recorded on the Draft Map. Other public footpaths in close proximity
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		have been recorded, in particular Public Footpath 20 Barnoldswick (although it since has had a Diversion Order made on it), two of the application routes join this recorded route. If the routes were in existence at the time when the Draft map was produced it would have thought to have been recorded on the map.
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 Provisional Map does not alter from the Draft Map, and does not record the application routes.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application routes are not recorded on the Definitive Map and Statement, therefore there is still no evidence that the application routes existed at this time.
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 area formally in the West Riding of Yorkshire was not subject to the review unlike the rest of Lancashire. Therefore no inference can be made.
Investigating Officer's Comments		The application routes are not recorded on any maps preparatory to the Definitive Map and there were no objections to the route not being recorded. They were probably not considered to be public at the time.
Aerial Photograph	2000	Colour aerial photograph taken in 2000.



Observations		The housing surrounding the routes can be seen. A trodden line can be seen on the second application route C-F-G-H. There is a very faint line on part of the first application route near point B but heading through the gate which now has the Pendle Borough Council notice on it rather than to the stile at point D.
Investigating Officer's Comments		It is likely that the land was being used at this time, trodden lines are visible on the aerial photograph, particularly along C-F-G-H, the second application route.
Aerial Photograph	2009	Colour aerial photograph taken in 2009.



Observations		The land has changed since the 2000 aerial photograph was taken. A small woodland is now visible. The lines in the trees show some of the trodden routes, particularly clearly for the third application route, I-J-G-K-L-M-N. There is also evidence of trodden lines for the second application route, C-F-G-H.
Investigating Officer's Comments		The 2009 aerial photograph supports parts of the application, particularly for routes 2 and 3.
The Pendle Way Leaflet	2001	"Pendle Way leaflet – Barnoldswick to Earby" created in November 2001 by Pendle Borough Council
Observations		The leaflet includes a walk which uses Public Footpath 20 Barnoldswick. The leaflet shows a map extract with a red line of the walk of 'Barnoldswick to Earby'. The application routes are not indicated. It could be that the application routes were not known or were just not included on this particular walk.
Investigating Officer's Comments		The leaflet does not support the existence of use of the routes.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		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

		<p>or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought 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 routes do not cross a Site of Special Scientific Interest of 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 Information

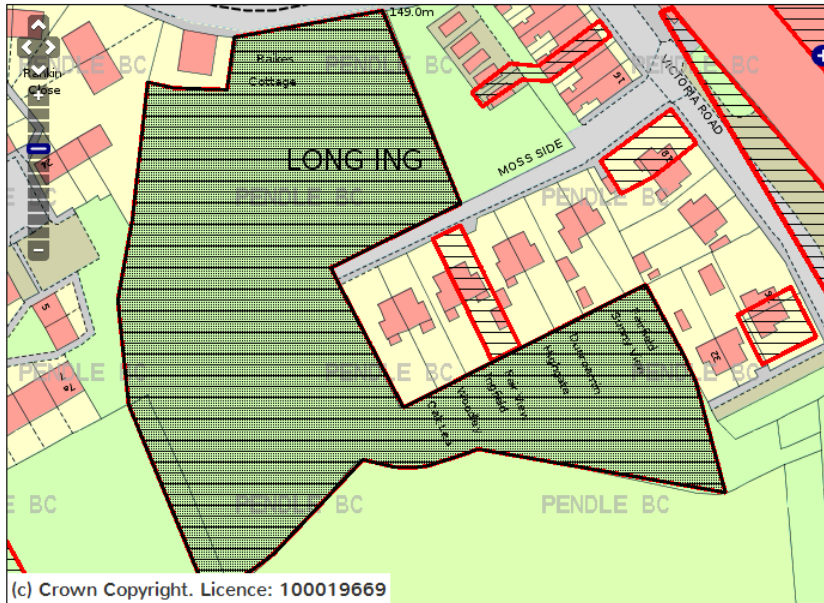
The land in question is owned by 3 different land holders:

- The Lancashire County Council, P.O. Box 78, County Hall, Preston PR1 8XJ
- Stirling Properties LLP, Thorp Arch Grange, Thorp Arch, Wetherby, LS23 7BA
- Housing Pendle Limited, Prospect House, Wharf Street, Blackburn, BB1 1JD

Part of the land is subject to a major residential development proposal. (REF: 13/14/0100P). The housing development application was originally refused by Pendle Borough Council and was referred to the Planning Inspectorate (PIs) on appeal in December 2014. The appeal was allowed and PIs granted planning permission. Indigo Planning who have submitted an objection to the proposal on

behalf of their client (as stated above) commented that if an Order is made this will affect their housing development. They state that neither the current nor previous site owners have ever granted access to the site, nor provided any evidence that there has been uninterrupted use over the last 20 years.

<http://planning.pendle.gov.uk/Planning/lg/GFPlanningDocuments.page>



Summary

There is no historical mapping evidence supporting this application.

The aerial photographs which were inspected do however show recent use of the routes, and that they could be shown to be in existence on the ground from at least 2009, and in parts 2000. This is more clearly shown for the second and third application routes marked C-F-G-H and I-J-G-K-L-M-N. There is evidence on the ground of well trodden lines for all three routes indicating a substantial level of use.

Legal and Democratic Service' Observations

Information from the applicant

The applicant has provided 32 user evidence forms, some refer to route A, some refer to route B, some to route C and some to 2 or 3 routes.

Route A (referred to as route 1) – starts at Riding Close and ends at a northerly point on Barnoldswick Footpath 20.

Route B (referred to as route 2)– starts at Riding Close and ends at a southerly point on Barnoldswick Footpath 20.

Route C (referred to as route 3)– starts at Park Street and ends at a point on Barnoldswick Footpath 20.

18 users have filled out a user form and refer to all 3 routes, their use is set out below.

The users have known the route in years as follows:

0-20(3) 21-40(8) 41-60(5) 1 user did not provide a response

All 18 users have used the path on foot and the years in which the routes were used varies:

1961-2014(1)	1964-2014(1)	1970-2014(1)	1972-2014(1)
1974-2014(3)	1979-2014(2)	1981-2014(1)	1986-2014(1)
1987-2014(1)	1990-2014(1)	1994-2014(1)	1996-2014(2)
1999-2014(1)	1 user did not provide a response		

The main places the users where going to and from include:

Going to and from school, visiting friends and relatives, general walking, shopping, walking from Barnoldswick to Salterforth and back and walking to the canal.

The main purposes for using the routes include:

Dog walking, walking with children, leisure, pleasure, recreation, personal exercise, using the routes a short cut and getting to and from school.

The times per year the users use the route varies from every day, 3 times per day, twice a week, weekly, 200 times, 672 times, 1456 times.

15 users have never used the routes on horseback, motorcycle / vehicle or by any other means, 3 users did not provide a response to this question.

16 users agree that the routes have always run over the same lines, 1 user states 'yes see attached map' however no map was provided and another user states 'they can't recall any change'.

When asked if there are any stiles, gates or fences along the route 14 users answered 'yes' to this question and referred to the map attached, however no map has been provided with any of the user forms. 2 users answered 'yes' but did not provide any further details, 1 user mentions 'yes' for routes A & B and another user states 'yes where the fence is now'. 15 of the users agree that none of the stiles, gates or fences are locked, 1 user mentioned the stiles were blocked off but no further details were provided and 2 user did not provide a response to this question. 16 users agree that they have never been prevented access when using the routes, 1 user can't recall any restrictions and another user states 'only when the council put up metal fencing at C then they were made to take it down as it was a right of way'.

1 user worked for a landowner of which the route runs (Silent Night) between 2008 and 2011 but states they never received any instructions as to the use of the routes by the public.

None of the users have ever been a tenant over which the routes run.

17 users have never been stopped or turned back when using the route nor have they heard of anyone else being stopped or having to turn back, 1 user did not provide a response to this question.

17 users have never been told by any owner or tenant of the land crossed by the routes that they were not public rights of way, 1 user states they have always known the route to be a right of way.

17 users have never seen any signs along the routes which state similar phrases to 'private property', 'no trespassing' etc. 1 user did not provide a response to this question.

15 users have never asked permission to use any of the routes, 1 user states they have been public footpaths for as long as they can remember and another states no as they are public footpaths, 1 also states it wasn't necessary to ask.

At the end of completing the user forms users are asked to provide any additional information they may have, this information is set out below:

- Hundreds of people use these fields on a daily basis
- I know of at least 25 people who regularly use the footpaths for dog walking and recreational purposes. There are also many more who I don't know. You always bump into someone while walking round, people around here enjoy the natural environment
- We do not need more houses leave the fields alone
- Shame to have negative impact on recreation and loss of wildlife habitat when brown sites in Barnoldswick are available (e.g. opposite Silent Night - Coates)

4 users filled in a user evidence form for Routes A and B, their use is set out below.

The users have known the route in years as follows:

20-40(3) 41-60(1)

All 4 users have used the routes on foot, 1 user has used the routes from the 1960's – 1990's, another has been using the routes since 1984-2014, 1 user has been using the route since 1985-2014 and 1 user did not provide a response to this question.

The main places the users were going to and from include Barnoldswick to Salterforth, Rainhall Road and back, from their house to the canal and marina and just using the paths for a walk. The main purposes of using the routes are for dog walking and general exercise. The use of the route per year varies from daily, from 300-350 times and to 40 times per year.

1 user has used the routes on horseback between the years of 1995-2000 but did not provide any further details, the other 3 users have only used the route on foot. 3 users agree that the routes have always run over the same line, 1 user states 'yes Footpath 20'.

All 4 users agree that there are stiles / gates / fenced across the routes and indicate they have marked these on the attached maps, however no maps have been

attached to the forms, and all 4 users agree that none of the gates have ever been locked and that they were not prevented access.

None of the users have ever worked for a landowner over which any of the routes run nor have they ever been a tenant of the land in question.

All 4 users have never been stopped or have turned back when using the routes neither have they heard of anyone else having been stopped nor having to turn back when using the routes.

None of the users have ever been told by any owner or tenant of the land crossed by the routes that the way was not a public right of way on foot, nor have they ever seen any notices along the routes that state similar phrases to 'private property', 'no trespassing' etc.

They have never asked permission to use the routes and one using mentions they understood it to be a public footpath.

Further information from the users is provided below:

- It is obvious these footpaths have been in use over 25 years by numerous individuals and associations, e.g. bird watchers (well known for owls, kestrels in area) canal barges occupants visiting Barnoldswick, parents taking children to school, rambling associations, and hundreds of dog walkers. We need to keep green fields green, use brown sites first.
- We do not need more houses, keep our green fields, Rainhall Road - Long Ing roads far too busy now
- Road not suitable to take more traffic, fields used by grandchildren for playing in

3 users filled in a user evidence form for Routes B and C, their use is set out below.

2 users have known the routes for the past 24 years, 1 user has known of the routes for the past 32 years. All 3 users have used the routes on foot and when asked during which years did they use the route 1 user states between the years of 1982-2012 and the other 2 users don't provide any dates but state 'mostly daily' and 'many times a week'.

The main places the users where going to and from include various places, circular routes, from Riding Close to the canal and the main purposes for using the routes was for dog walking and the use per year includes daily, dozens and at least 150 times per year.

When asked if they have ever used the way by other means such as on horseback or motorcycle / vehicle no response was received from any of the 3 users, it is assumed they never used the routes by other means.

1 user agrees that the routes have always run over the same line, the other 2 users state 'always been similar', 1 user states there are remnants of stiles still there but they are open, another indicates the 2 open access areas are stiles and 1 states there are stiles / gates / fences along the routes and these are indicated on the map,

however no map has been attached that same user agrees that access was not prevented.

None of the users have ever worked for a landowner over where the routes run neither have they been a tenant over the land in question.

All 3 users have never been stopped or have had to turn back when using the routes, however 2 users have heard of other dog walkers turning back along route C.

None of the users have ever been told by any owner or tenant of the land that it was not a public right of way, nor have they seen any signs along the routes that might indicate phrases such as 'private property' or 'no trespassing', none of the users have ever asked permission to use any of the routes.

Further information from the users is provided below:

- Path C is my main route over the years, I have used all the footpaths at various times
- although Path C into B is my main route, I do use all the pathways at various times
- Over the many years of being a dog walker I have used this route and A & C routes on occasion as well as many other people do. It should be kept as a right of way as it has always provided good access to the canal. Maybe building on existing derelict sites in the town should be considered.

3 users filled in a user evidence form for Route A, their use is set out below.

2 users have known of the route for the past 34 years and 1 user has known the route for the past 30 years, all 3 users have used the route on foot, 2 of the users used the route between the years of 1980-2014 and 1 user has used the route between the years of 1994-2014.

The main places the users where going to and from include going to school and back, to Salterforth from Barnoldswick and into Barnoldswick Town with connection of Footpath 20.

The main reasons for using the route include, dog walking, children playing, visiting friends and family, shopping and recreational use. The use per year varies from every day to 50-110 times per year.

2 users have never used the route on horseback, motorcycle / vehicle or by any other means, 1 user did not provide a response to this question. All 3 users agree that the route has always run over the same line.

2 users agree that there are stiles / gates / fences along the route and that these are marked on the attached map, however no map has been attached, 1 user states 'no' to this question. All 3 users state that none of the stiles / gates / fences along the route were locked and that they were not prevented access.

1 user worked for a landowner (Silent Night) between the years of 1998-2007 and states that the landowner told them it was always going to be a public footpath

through the forest and all around and there was never going to be any houses on there. None of the users have ever been a tenant over the land the route crosses.

All 3 users have never been stopped or have had to turn back when using the route nor have they heard of anyone else having been stopped or having to turn back. All 3 users have never been told by any owner or tenant of the land crossed by the route that it was not a public right of way on foot, nor have they seen any signs along the routes that might indicate phrases such as 'private property' or 'no trespassing', none of the users have ever asked permission to use any of the routes.

Further information from the users is provided below:

- always considered it a right of way, green fields need to remain, need to make it official

3 users filled in a user evidence form for Route B, their use is set out below.

1 user states they have known the route all their life since 1929, 1 has known the route for the past 25 years and 1 has known the route for the past 34 years, all 3 users have used the route on foot, they have used the route between the years of 1989-2014, 1930's-2014 and 1980-2014.

The main places the users were going to and from include from home to the canal, to Barnoldswick, from home to the open countryside, the main purposes for using the route is for exercise and recreational use. The users used this route twice per week, 50 times per year and 6 or 7 times per year intermittently.

None of the users have ever used the route on horseback, or motorcycle / vehicle or by any other means. All 3 users agree that the route has always run across the same line. They all agree that there are stiles / gates / fences along the route and these are showed on the attached maps, again no maps have been received, however 1 user states that a stile / gate / fence is located on Langsford Close. None of the users have ever seen any stiles / gates / fences locked nor have they ever been prevented access from using the route.

None of the users have ever worked for a landowner over which the route crosses nor have they ever been a tenant across the land. The users have never been stopped or turned back when using the route or heard of anyone else having been stopped or having to turn back when using the route.

All 3 users agree that they have never been told by any owner or tenant of the land crossed by the route and that the route was not a public right of way, they have also never seen any notices along the route that state phrases such as 'private property' or 'no trespassing', all 3 users have also never asked permission to use the route.

Further information from the users is provided below:

- we need to keep green fields not housing
- filled the form in on behalf of walking group 'lets walk and talk' established over 10 years ago

1 user has filled in a user evidence form for Route C and their use is set out below.

The user has known of this route for the past 34 years and has used the route on foot since 1980-2014. The user uses the route to go to and from Barnoldswick for shopping, visiting friends and family and for recreational purposes, and uses the route 50+ times per year.

The user has never used the route by way of any other means such as on horseback or by motorcycle / vehicle. They state the route has always run over the same line and when asked if there are any stiles / gates / fences along the route they state there is open access shown on the attached map, but again no map has been attached. None of the stiles / gates / fences were ever locked and they were never prevented from using the route.

The user has never worked for a landowner over which the route crosses nor have they ever been a tenant over the land. They have never been stopped or have turned back when using the route nor have they ever heard of anyone else having been stopped or having to turn back when using the route.

The user has never been told by any owner or tenant of the land crossed by the route and that they route was not a public right of way, they have also never seen any notices along the route that state phrases such as 'private property' or 'no trespassing', the user has also never asked permission to use the route.

No extra information was provided by this user.

Information from others

Housing Pendle Limited

Housing Pendle Limited provided a copy of a plan with their ownership shaded in, they also state that they have don't feel they have grounds on which to object as there is already a stile close to their car park which has also been noted on the map provided.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

User evidence

Against Accepting the Claim

Historical map evidence

Conclusion

The application is in respect of the following routes, which are being claimed as footpaths:

Route 1 – shown A-B-C-D-E

Route 2 – shown C-F-G-H

Route 3 – shown I-J-G-K-L-M-N

In this matter there is no evidence of express dedication, Committee is therefore invited to consider whether a dedication can be inferred, on balance, from all the circumstances at common law or deemed under S.31 Highways Act 1980.

Looking firstly at whether dedication can be inferred at common law, the Head of Planning and Environment has considered the historical map evidence, there appears to be no historical map evidence in support of this application and only aerial photographs which support the existence of route 1 and 2 on the ground from at least 2009 albeit some use of part of the route since 2000.

On balance, the map evidence is considered insufficient to conclude the routes are historical public footpaths and it is suggested to Committee that inferred dedication cannot on balance be satisfied.

Committee is therefore advised to consider whether deemed dedication under S.31 Highways Act 1980 can be satisfied. Committee will be aware that in order to satisfy the criteria of S.31 there must be sufficient evidence of use of the claimed route by the public as of right and without interruption, over the twenty year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

The twenty years under consideration would be the twenty years immediately prior to the route being called into question. There does not appear to any event which has triggered this application from the information provided by the applicant nor do the user forms shed any light in this respect. It would therefore be reasonable to conclude the bringing into question of the route would be the application itself. Therefore the 20 years under consideration would be 1994 - 2014.

32 user evidence forms have been provided in support of all three routes, each route is considered in turn.

Route 1 – A-B-C-D-E

25 user evidence forms provide evidence of use in support of route 1, 6 users claim to have used the route between 41-60 years and these forms suggest the route has been used since 1961. On balance, it appears use has been sufficiently frequent.

Use must also be as of right, without force, stealth and permission. 22 users agree that none of the stiles, gates or fences were locked although 1 user does explain a stile was blocked off but does not elaborate further. 24 users confirm they have never been stopped or turned back whilst using the route, 1 user worked for the

landowner Silent Night and therefore, their use could amount to use with permission, on balance use of this route seems to be as of right and without interruption.

Route 2 - C-F-G-H

28 user evidence forms provide evidence in support of route 2. According to one user the route has been used since 1930. All but 2 users agree the route has followed the same line, two users state the line of the route has always been similar. None of the users have been prevented, stopped or turned back from accessing the route nor has there ever been any locked stiles, gates or fences, although one user does mention stiles were blocked off. On balance, this route has been used sufficiently frequently as of right for the 20 year period.

Route 3 I-J-G-K-L-M-N

22 user evidence forms have been provided in support of this route. Use of the route has been sufficiently frequent with use beginning from 1961. 2 users state the route has followed the similar line with the remainder of the users stating the route has followed the same line. 20 users agree that they have never been prevented from using the route nor turned back, therefore on balance use has been as of right without interruption for the full 20 year period under consideration.

Conclusion

Whilst the current landowners since April 2015, Stirling Investment Properties LLP state they challenge the assertion that the public have acquired rights, they have not provided any evidence that Silent Night as the previous land owner took any overt action to indicate any lack of intention to dedicate during the twenty years under consideration for example by locking gates or erecting signs or purposefully blocking the route occasionally. Although the current land owner Stirling Investments Properties LLP does state the site is enclosed by a fence and stone wall to prevent access this would fall outside the period under consideration, as Stirling Investment Properties LLP only acquired ownership to the land in April 2015. Housing Pendle Limited another landowner of the site across which the routes run have stated they do not have grounds on which to object.

Taking all the information into account, Committee may consider that the criteria in S31 can be established such that a dedication of the footpaths can be deemed such that it can be reasonably alleged, on balance, that all three footpaths subsist in law and that it is appropriate that an Order be made and also that the higher confirmation test is also able to be satisfied as there is sufficient evidence on balance that the rights of way on foot for the public already subsist in law.

Risk Management

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

Alternative options to be considered - N/A

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

Paper	Date	Contact/Service/Tel
All documents on Claim File Ref: 804/558	various	Megan Brindle, Legal and Democratic Services, 01772 535604

Reason for inclusion in Part II, if appropriate

N/A