

## **Regulatory Committee**

Meeting to be held on 1<sup>st</sup> July 2015

Electoral Division affected: Poulton-le-Fylde
--

### **Wildlife and Countryside Act 1981**

#### **Definitive Map Modification Order Investigation**

**Application for a public footpath from Marina Avenue to two separate points on Public Footpath 10 Poulton-le-Fylde, Wyre Borough to be added to the Definitive Map and Statement**

**File No. 804-556**

(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 (5)35604, Legal and Democratic Services,

[Megan.Brindle@lancashire.gov.uk](mailto:Megan.Brindle@lancashire.gov.uk)

Jayne Elliott, 07917 836626, Public Rights of Way, Environment and Planning,

[Jayne.elliott@lancashire.gov.uk](mailto:Jayne.elliott@lancashire.gov.uk)

### **Executive Summary**

Application for a public footpath from Marina Avenue to two separate points on Public Footpath 10, Poulton-le-Fylde, Wyre Borough to be added to the Definitive Map and Statement in accordance with file no. 804-556.

### **Recommendation**

1. That the application for a public footpath from Marina Avenue to two separate points on Public Footpath 10, Poulton-le-Fylde, Wyre Borough to be added to the Definitive Map and Statement in accordance with File No. 804-556, be not accepted

### **Background**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a public footpath from Marina Avenue to two separate points on Public Footpath 10 Poulton-le-Fylde as shown on Committee Plan between points A-B-C-D-E-F-G and C-H-I-J-K-L-M-N-O to be recorded on the Definitive Map and Statement of Public Rights of Way.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

An order for 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**

### **Borough Council**

Wyre Borough Council have been consulted and a response from the Coast & Countryside Section received.

In their response the Borough Council observe that the general area has been walked for many years with, seemingly, free access across the land and that access did not appear to have been limited to the designated public rights of way. The Borough Council state that they have no records or reports of permission for extra access being granted by the landowner/tenant or of anyone being challenged regarding access.

The Borough Council explain that in the last 18 months the housing development has been in the process of being built and that in the last six months the tenant of the wider/adjoining area has changed and that the new tenant intends to use the land for farming purposes and so is looking to try and keep the public on existing public rights

of way (although they mention that this may not include any of the land of concerned with this application).

They comment that the section between point K and point O on the Committee plan is a wide track between two hedges which (although overgrown) they consider is suitable as a footpath and has probably been walked over the years although state that they have no specific evidence of use available.

The Borough Council consider that the section between point C and point K on the Committee plan may have been walked in the past (no specific evidence submitted) but that this would now go across land that has been landscaped as part of the building development and would mean creating a new gate access within the fence (at point J).

They comment that the current road travels in the general direction of part of the route under investigation and that it may be preferable to look at using the pavement alongside the road with a link through the development to Marina Avenue.

They also comment that the route between point C and point G is currently blocked off due to builders fencing and that they have no specific details of its previous use. In addition they express concern about the impact that the path would have on residents and implications for future development of the site.

### **Parish Council**

There is no town or parish council for Poulton-le-Fylde.

### **Applicant/Landowners/Supporters/Objectors**

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

### **Advice**

### **Public Rights of Way, Environment and Planning Service's Observations**

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	3456 3763	Start of route under investigation at western end of Marina Avenue.
B	3455 3764	Unmarked point in field adjacent to south west corner of electricity substation.
C	3452 3772	Metal field gate across the route.
D	3454 3785	Unmarked point on route adjacent to metal security fencing.
E	3448 3804	Route passes through remains of gateway.

F	3447 3811	Security fencing across route.
G	3446 3812	Remains of wooden stile with security fencing across it on south edge of junction with Footpath 10 Poulton-le-Fylde.
H	3447 3774	Route passes through remains of field boundary.
I	3428 3780	Remains of old field boundary.
J	3418 3785	Route passes through wooden post and rail fence.
K	3417 3786	Route passes through wooden field gate.
L	3416 3786	Remains of metal kissing gate adjacent to track.
M	3413 3795	Field boundaries meet route under investigation on east and west sides of route.
N	3412 3796	Gateways into fields on east and west sides of route.
O	3410 3807	Open junction with Footpath 10 Poulton-le-Fylde.

## Description of Route

A site inspection was carried out on 18 March 2015.

The total length of the route between points A-B-C-D-E-F-G is 515 metres and between points C-H-I-J-K-L-M-N-O is 610 metres.

### Route between points A-B-C-C-E-F-G (A-G)

The route under investigation starts at the western end of Marina Avenue (point A on the Committee plan) where there is metal security fencing across the end of the avenue. A small metal padlocked gate and fenced off strip approximately 1 metre wide provides access to an electricity substation from the end of Marina Avenue immediately north of point A but does not allow access onto the route under investigation.

Immediately south of the metal gate metal security fencing has been erected across the end of the avenue and the remains of a post and wire fence. On the date that the route was inspected it was not possible to access the route under investigation from point A.

A photograph taken in 2012 and captured from Google Streetview shows the end of Marina Avenue fenced with post and wire fence into which a small wooden gate had been inserted immediately south of the metal gate providing access to the substation. However, when the route was inspected in 2015 there was no gateway and access was prevented by the metal security fence.

From the end of Marina Avenue at point A the route under investigation passes through the fencing and extends in a westerly direction across rough grazing land for approximately 8 metres adjacent to the fenced off access to the electric substation to point B. It then continues across the field in a more northerly direction for approximately 95 metres to a field gate at point C. Between point B and point C there is a worn trod in the field along the line of the route under investigation although it is not possible to determine whether this has formed by pedestrians or animals. There is evidence that the field has been recently grazed by horses.

Beyond the field gate at point C the route under investigation splits.

The route between point C-D-E-F-F continues from the gate at point C across rough grassland in a north north easterly direction along a visible worn trod towards the corner of some security fencing which surrounds an area of mature trees adjacent to point D. From point D the route continues in a north north westerly direction through a strip of rough grassland bounded by the rear garden fences of houses on Beverley and Sefton Avenues to the east and security fencing marking the boundary of the housing development to the west.

Traces of a trodden route are in evidence along part but not all of the route between point D and point E and at point E the route passes a gatepost and through the remains of a broken fence.

From point E the route continues in a generally north north westerly direction across rough ground that appears to have been recently churned up by vehicles to point F where it is crossed by temporary metal security fencing through which there is no means of access.

Beyond the metal fencing the route crosses a tarmacked access road that leads into the development site and which is also fenced off on the north side of the road separating the route of Public Footpath 10 Poulton-le-Fylde with the access road.

Access along the route under investigation is not available between point F and point G due to the metal security fencing.

At point G immediately north of the metal security fencing is the remains of a wooden stile immediately adjacent to the route of Public Footpath 10 Poulton-le-Fylde and which appears to have provided access from the route under investigation onto the public footpath.

#### Route between points C-H-I-J-K-L-M-N-O (C-O)

The second part of the route under investigation passes from the field gate at point C on the Committee plan in a west north westerly direction across rough grassland to point H.

There is no visible worn trod in the ground between point C and point H. At point H the route crosses what appears to be the remains of an old fence line marked by a small change in the gradient. It then continues in a west north westerly direction across rough grassland which is quite boggy in places to the south of the new housing development known as High Cross. A worn track roughly consistent with the route under investigation is visible in part between point H and point I but as the route approaches point I it passes through some recently planted trees and then crosses a landscaped area to the north of a pond. This area is well maintained with no evidence of a worn track.

At point J the route under investigation is crossed by a wooden post and rail fence that appears to have been erected as part of the landscaping work around the development and looks to be quite new. It then crosses the tarmac road (Benedict

Drive) leading to the housing development and then passes through a wooden field gate (padlocked shut) at point K.

From the wooden gate at point K the route under investigation continues in a north north westerly direction for approximately 15 metres to point L where the remains of a metal kissing gate are located adjacent to the track. From point L the route continues along a clearly defined track approximately 3 – 3.5 metres wide. The surface of the track is firm but muddy in places with clear evidence of recent use on foot.

Between point L and point M the route is enclosed by a mixture of post and wire fencing and sections of security fencing. Beyond point M the route there is hedging on either side of the route and old metal fencing could also be seen in the hedge along the east side.

At point N gateways exist on either side of the route under investigation into adjacent fields.

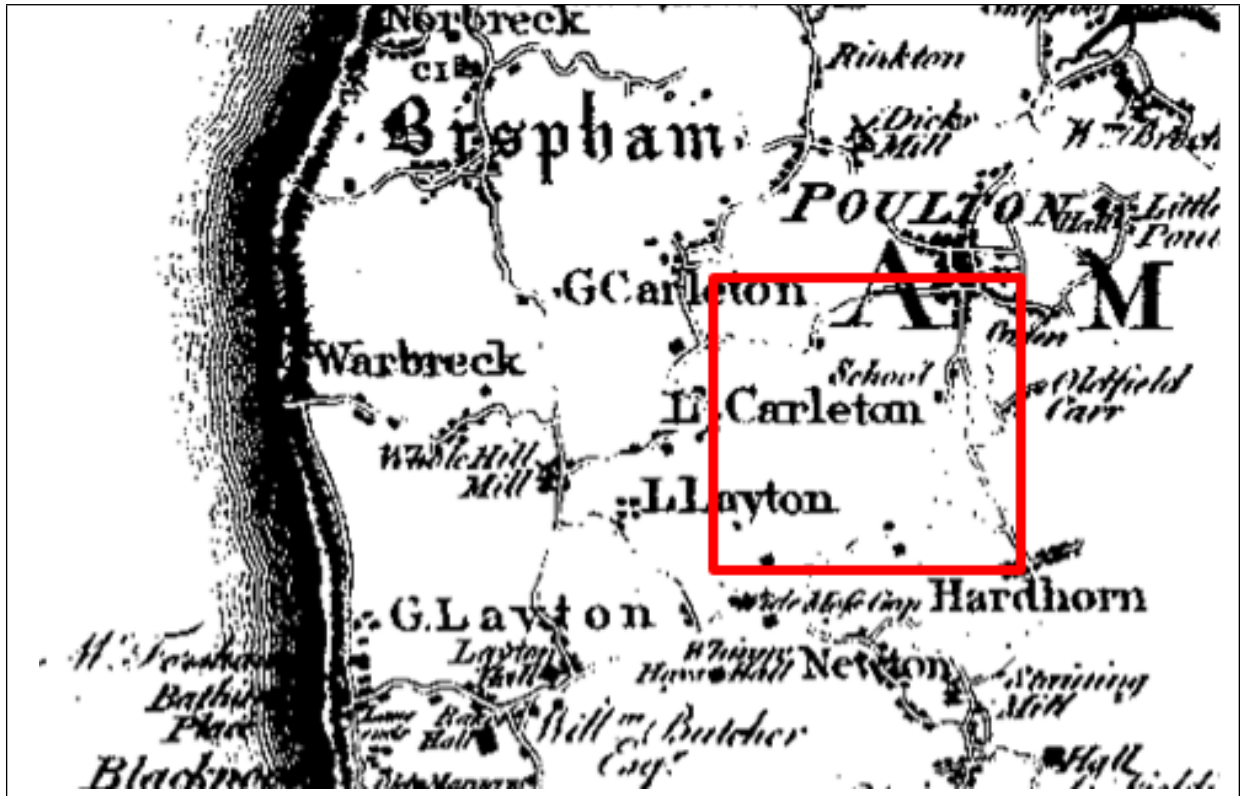
The route under investigation continues from point N along the enclosed track to point O where it meets the open junction with Public Footpath 10 Poulton-le-Fylde.

To summarise, access along the routes under investigation is prevented by fencing at point A, point F, point G and point J and by a locked gate at point K. There are no signs evident indicating whether any part of the routes are public or private. There is some evidence on the ground that parts of the route may have been walked and it appears that despite the locked gate the section between point K and point O is currently being used.

The development of the site for residential housing means that the school that previously existed on the site is no longer in existence and landscaping work between point I and point J has altered what may have been on the ground during the period of time that it is claimed that the routes were used.

## Map and Documentary Evidence

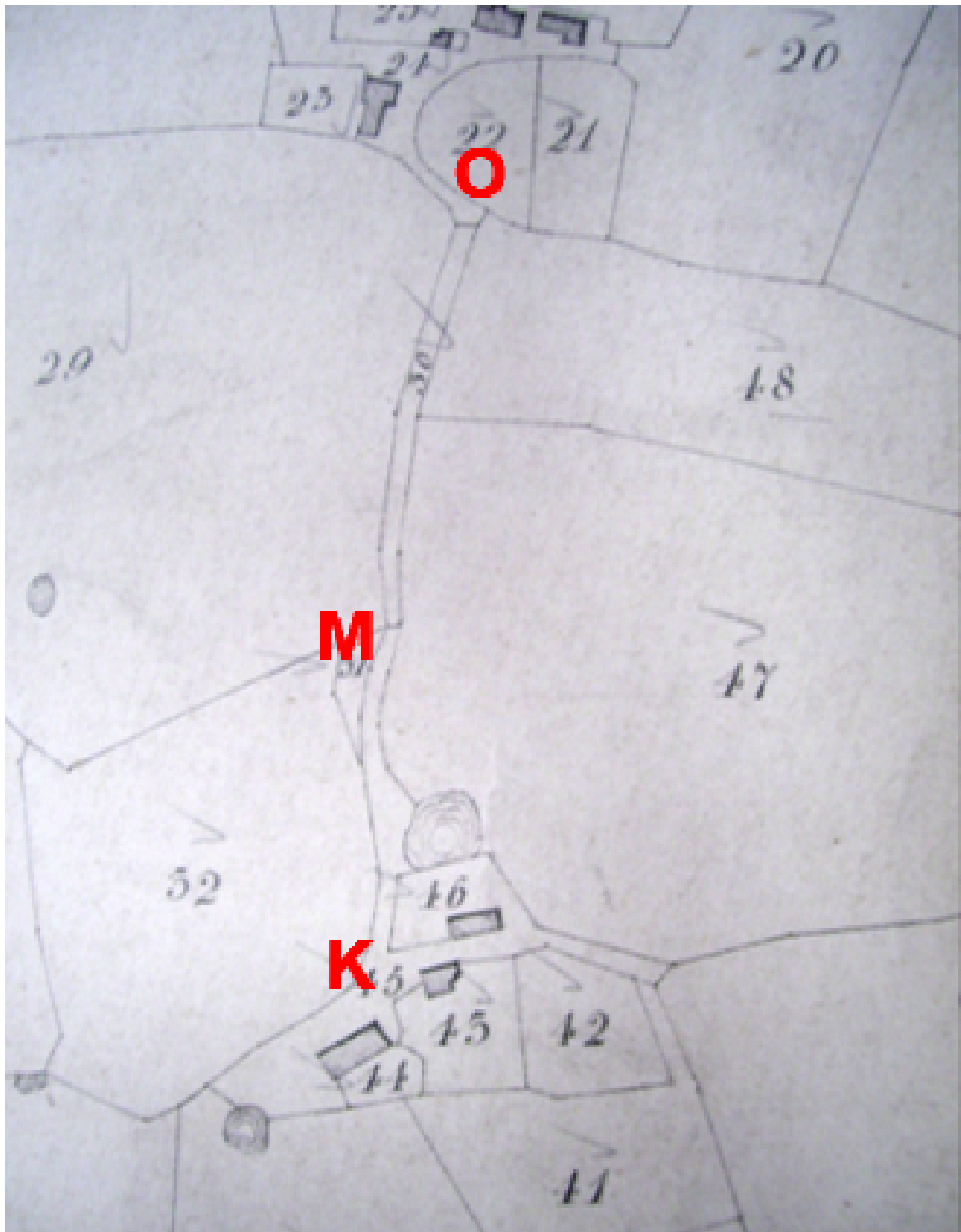
Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately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



Observations		The area crossed by the routes under investigation is within the red box drawn on the map insert. The routes under investigation are not shown but appear to cross an area of undeveloped farmland. The school shown on the map is Baines School which is situated north east of the area under investigation.
Investigating Officer's Comments		It is unlikely that claimed public footpaths across open agricultural land would have been shown on the map. The routes did not exist as major routes at the time although they may have existed as a minor routes which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
<b>Greenwood's Map of Lancashire</b>	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 and the two were not differentiated between within the key panel.
Observations		The routes under investigation are not shown.
Investigating Officer's Comments		It is unlikely that claimed public footpaths across open agricultural land would have been shown on the map. The routes did not exist as major routes at the time although they may have existed as a minor routes which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
<b>Hennet's Map of</b>	1830	A further small scale commercial map. In 1830

<b>Lancashire</b>		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 routes under investigation are not shown.
Investigating Officer's Comments		It is unlikely that claimed public footpaths across open agricultural land would have been shown on the map. The routes did not exist as major routes at the time although they may have existed as a minor routes which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the routes under investigation was not affected by the construction of a proposed canal or railway.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1838	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.







<p>Observations</p>	<p>The area under investigation is included on the Tithe Map for the township of Hardhorn with Newton. A second class copy of the Map and Award have been deposited in the County Records Office.</p> <p>The route under investigation is not shown between point A and point C or between point C and point G. It would have crossed farmland described in the Award as a mixture of pasture and arable land with no reference to the existence of a public footpath.</p> <p>Part of the route now recorded as Public Footpath 10 Poulton-le-Fylde is shown passing through point G and is given a number on the map. The Award describes it as a 'Lane' and the section referring to state of cultivation has been left blank. A small tithe is payable (1d to the Vicar and 6d to the Impropiator listed in the Award).</p> <p>The route under investigation between point C and point K is not shown on the Tithe Map and the land that it crosses is shown as fields and listed mainly as pasture land. The area crossed by the route between point J and K is shown as being part of an area detailed as 'outbuildings, fold and</p>
---------------------	--

		<p>lane.'</p> <p>Between points K and point M the route under investigation is shown on the Tithe Map as an enclosed track. It is numbered as being part of plot 45 which is described as 'Outbuildings, fold and lane' and for which tithes of 2d were payable to the vicar and 1s6d to the impropiator listed in the Tithe Award.</p> <p>The route under investigation is also shown as an enclosed track between point M and point O and is described in the Award as a 'Lane' with no entry for state of cultivation. 1d was payable to the vicar and 6d to the Impropiator detailed in the Award.</p> <p>All of the land crossed by the routes under investigation was in the ownership of Peter Bourne Esq and was tenanted by Thomas Thase.</p> <p>The roads that existed through the township that now correspond largely to the public vehicular highways that still exist today were shown on the map but were not numbered and were not included in the Award.</p>
Investigating Officer's Comments		<p>The routes under investigation between point K and point O existed in 1838. It was described as a 'lane' in private ownership and a small tithe was payable suggesting that it was not considered to be one of the public vehicular routes through the Township at that time.</p> <p>The routes under investigation between points A-G and points C-J did not exist in 1838.</p>
<b>Inclosure Act Award and Maps</b>		<p>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.</p>
Observations		<p>There is no Inclosure Award for the area crossed by the routes under investigation deposited in the County Records Office.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
<b>6 Inch Ordnance Survey (OS) Map</b>	1847	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1847.<sup>1</sup></p>

<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large



Observations		<p>The routes under investigation are not shown between points A to G or between points A to K and the land is shown as open farmland. Marina Avenue is not shown on the map and there does not appear to be access to point A.</p> <p>The route under investigation between point K and point O is shown as an enclosed route between two properties.</p>
Investigating Officer's Comments		<p>The route under investigation between points A-C-G and between points C-K did not exist in 1844. The route under investigation between point K and point O existed in 1844 connecting two properties and continuing from point O along other routes now recorded as public footpaths.</p>
<b>25 Inch OS Map</b>	1892	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1892.</p>

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.



<p>Observations</p>		<p>The routes under investigation are not shown between points A-C-G or between points C-K and the land is shown as farmland.</p> <p>The route under investigation between points K-O is shown as an enclosed route connecting two properties and as part of a longer route.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation between points A-C-G and between points A-K did not exist in 1891. The route under investigation between point K and point O existed as a link between two properties.</p>
<p><b>25 inch OS Map</b></p>	<p>1911</p>	<p>Further edition of the 25 inch map surveyed in 1891, revised in 1910 and published in 1911.</p>



<p>Observations</p>		<p>Fylde Farm School had been built by 1910 with two access routes – one corresponding to the current access road into the Wainhomes development now known as Benedict Drive which passes between point J and point K and the other branching off the route now recorded as Public Footpath 10 Poulton-le-Fylde immediately east of point G.</p> <p>Marina Avenue is not shown suggesting that there was still no access to point A. Field boundaries are shown across the routes under investigation at point C and point H.</p> <p>The routes under investigation are not shown between points A-C, points C-G or between points C-K and the land still appears to be farmland.</p> <p>The route under investigation is shown between points K-O as it was on the earlier edition of the 25 inch map.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation between points A-G and between points C-K did not exist in 1910. The route under investigation between points K-O existed in 1911.</p>
<p><b>Finance Act 1910 Map</b></p>	<p>1910</p>	<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</p>

		<p>evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		There are no Finance Act Maps held at the County Records Office for the Blackpool Valuation District which included the land crossed by the routes under investigation.
Investigating Officer's Comments		No inference can be drawn.
<b>25 Inch OS Map</b>	1932	Further edition of 25 inch map (surveyed 1891, revised in 1930 and published in 1932.





Observations		<p>Fylde Farm School had expanded since 1910. A field boundary is shown across the route at point A. The routes under investigation are not shown between points A-C, points C-G or between points C-K.</p> <p>The route under investigation is shown between points K-O as it was on the earlier edition of the 25 inch map as an enclosed route.</p>
Investigating Officer's Comments		<p>The route under investigation between points A-C-G and between points A-C-K did not exist in 1930. The route under investigation between point K and point O existed as a link between two properties.</p>
<b>Aerial Photograph<sup>2</sup></b>	1940s	<p>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.</p>

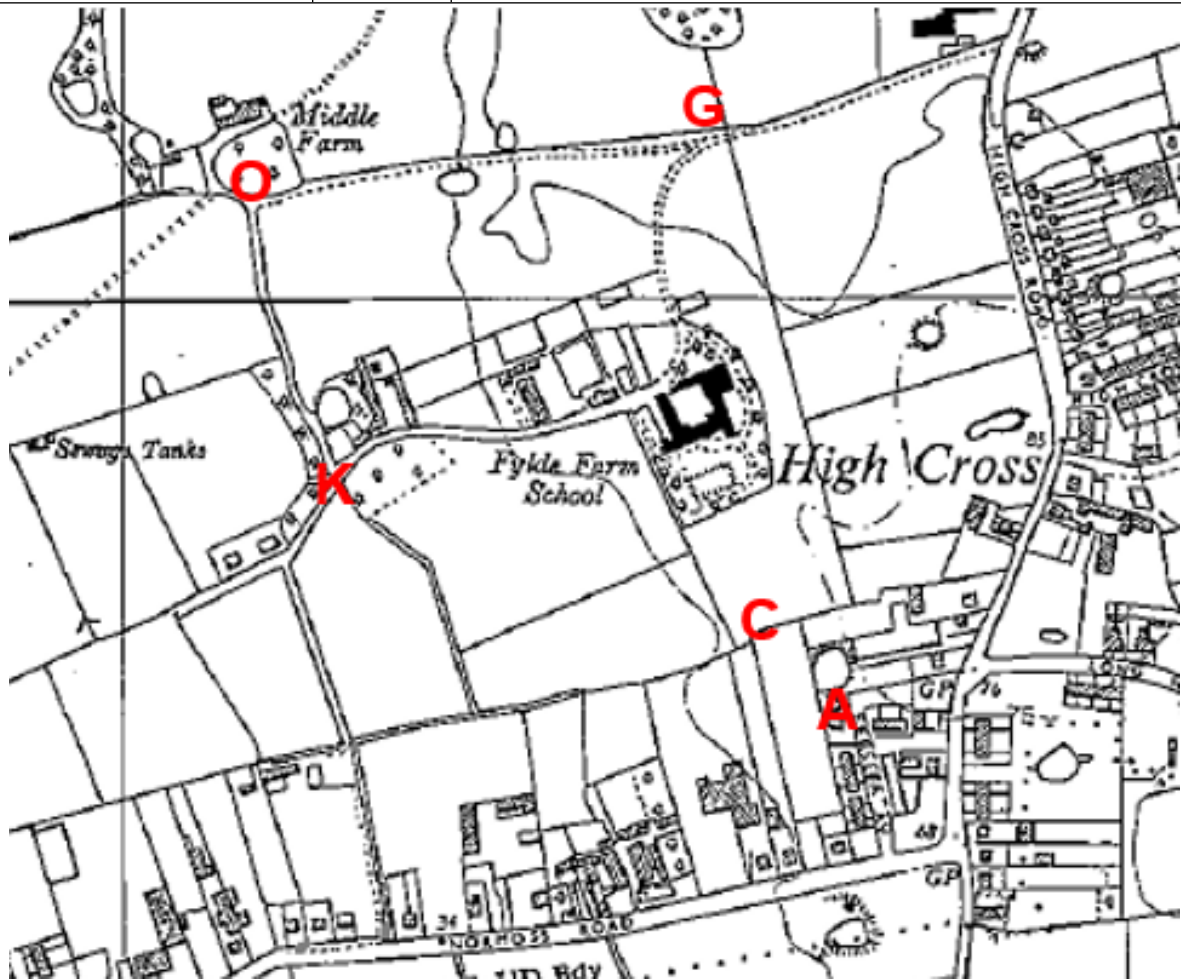
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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





Observations		<p>The routes under investigation are not visible as worn tracks on the ground with the exception of the section between points K-O which is clearly visible as a worn track.</p> <p>A light coloured area can be seen at point C suggesting the existence of a gateway or access point.</p>
Investigating Officer's Comments		<p>The route under investigation between points A-C, points C-G and between points C-K did not exist in the 1940s.</p> <p>The route under investigation between points K-O physically existed in the 1940s.</p>
<b>6 Inch OS Map</b>	1955	<p>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</p>

survey as the 1930s 25-inch map.



Observations

Houses have been built along Kerslea Avenue and a field boundary is shown at point A but there doesn't appear to be access from Kerslea Avenue to that point. The routes under investigation are not shown between points A-C, points C-G or points C-K.

The route under investigation between points K-O is shown as it was on the earlier edition of the 25 inch map as an enclosed route forming part of a longer route starting on Normoss Road.

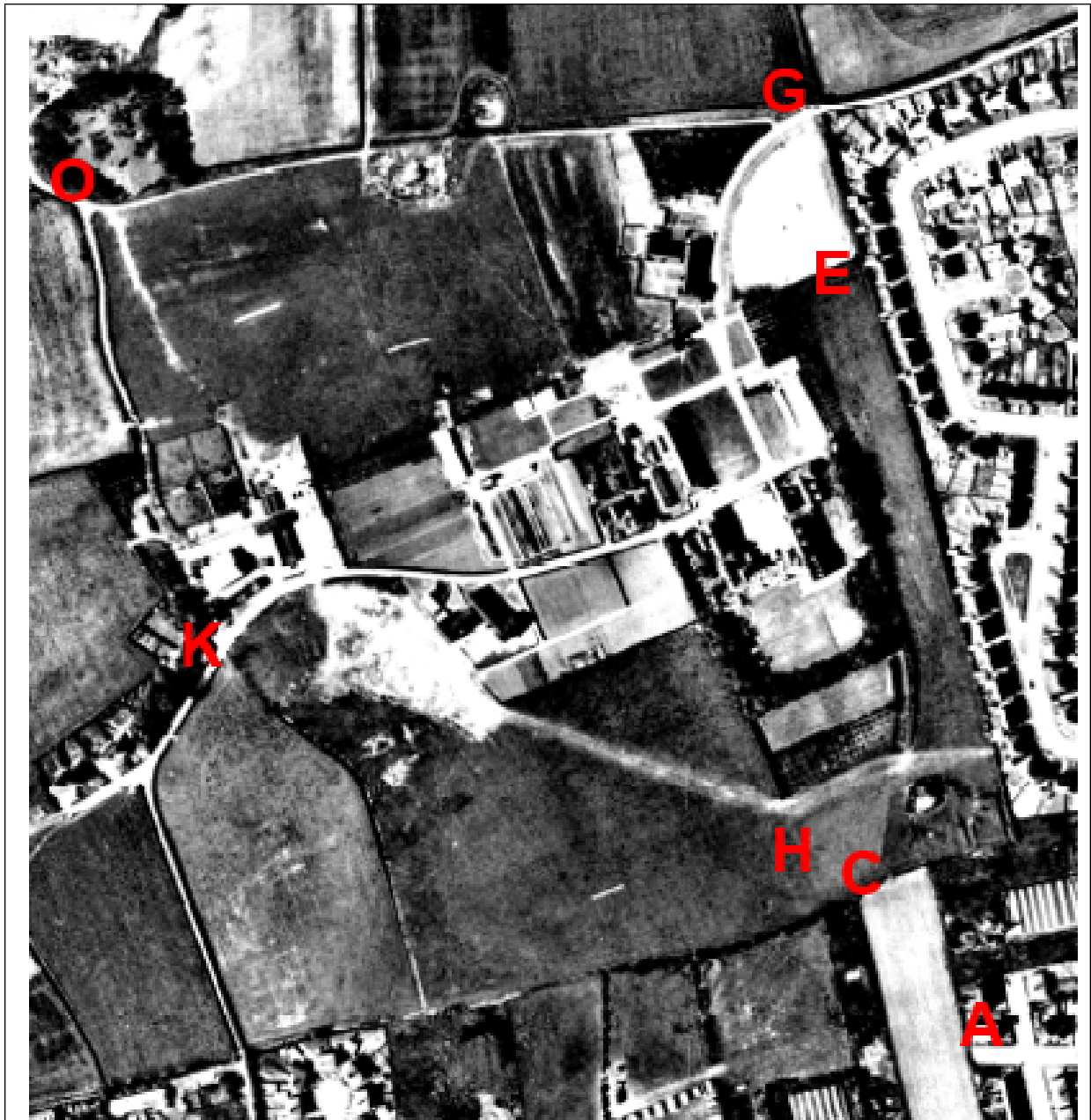
Investigating Officer's Comments

The routes under investigation between points A-C, points C-G and between points C-K did not exist in the 1930s. The route under investigation between points K-O existed as part of a longer route connecting properties in the 1930s.

**Aerial Photograph**

1960s

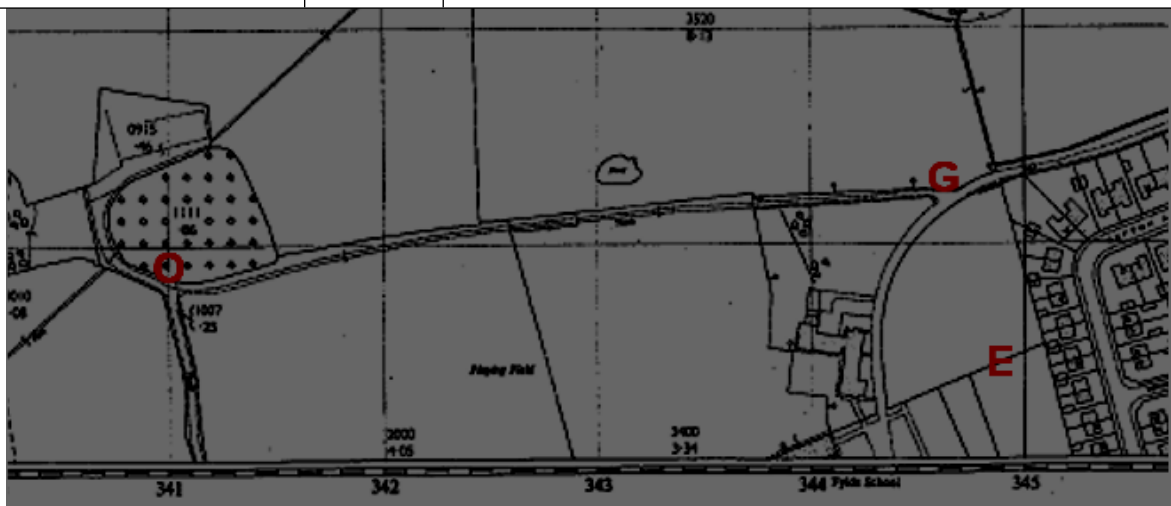
The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations

Marina Avenue is shown although it is not apparent from the photograph whether access was available onto the route at point A. The field crossed by the route under investigation between points A-B-C appears to have been recently cut and there is no visible route on the ground. The gateway at point C is visible but the route between points C-G is not visible and although there appears to be a change in land use at point E it is not possible to see if there is a field boundary or whether a gate or stile existed. The route under investigation is not visible as a worn track between points C-H-I-J-K although a rough track exists north of the route under investigation from the rear of property on Beverley

		<p>Avenue extending in a north westerly direction towards point K.</p> <p>Access appears available onto the route under investigation at point K but the route is not visible due to tree cover to midway between point K and point M. Beyond point M the route is clearly visible to point O where it meets the route recorded as Footpath 10 Poulton-le-Fylde. The property that previously existed north of point O no longer appears to exist.</p>
Investigating Officer's Comments		<p>The routes under investigation did not exist as worn tracks on the ground between points A-C, points C-G or between points C-K in the 1960s.</p> <p>The route under investigation between points K-O, despite being partially obscured by tree cover, can be seen to have existed in the 1960s.</p>
<b>1:2500 OS Map</b>	1968	Further edition of 25 inch map reconstituted from former county series and revised in 1966 and published 1968 as national grid series.





Observations		<p>The routes under investigation are not shown on the map with the exception of the route between points K-O which is shown passing buildings and continuing to the open junction with Footpath 10 Poulton-le-Fylde. It is labelled as a track on the map.</p> <p>Marina Avenue is shown with a solid line across the western end at point A and there is no indication of whether access onto the route existed at this point. The electricity substation is shown.</p>
Investigating Officer's Comments		<p>The routes under investigation between points A-C, points C-G and points C-K did not exist in 1966.</p> <p>The route under investigation between points K-O existed as a track which may have been capable of being used.</p>
<b>Aerial Photograph</b>	1988	Aerial photograph available to view at the County Records Office and Cuerden Depot.





Observations		<p>The routes under investigation are not shown as worn tracks on the ground with the exception of the track between points K-O.</p> <p>It is not possible to see from the photograph whether access would have existed through the field boundaries or whether field boundaries existed.</p>
Investigating Officer's Comments		<p>The routes under investigation between points A-C, points C-G and points C-K did not exist in 1966.</p> <p>The route under investigation between points K-O existed as a track which may have been capable of being used in 1988.</p>
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		<p>The routes under investigation are not visible as worn tracks on the ground with the exception of the route between points N-O and part of the route between points K-N which is not obscured by tree cover.</p> <p>It is not possible to see from the photograph whether access was available at point A, point C, point E, point G or point H or whether gates or stiles existed.</p>
Investigating Officer's Comments		<p>The routes under investigation between points A-C, points C-G and points C-K did not exist in 2000.</p> <p>The route under investigation between points K-O existed as a track which may have been capable of being used.</p>
Aerial Photograph	2010	Aerial photograph available to view on GIS.





<p>Observations</p>	<p>The most recent aerial photograph available to view still shows the school and associated buildings but is dated around the time that the school is known to have closed.</p> <p>The photograph appears to have been taken during the winter months and faint paths can be seen leading from point C heading towards point E and on towards point G and also from point C to point H but from point H to point I and through to point K no route is visible.</p> <p>The route under investigation adjacent to the buildings between point K and point M is difficult to see due to tree cover but from point M to point O is clearly visible.</p>
<p>Investigating Officer's Comments</p>	<p>In 2010 parts of the routes under investigation may have been being used by a low number of pedestrians as show up as worn tracks on the ground.</p>



		The route under investigation between points M-O is clearly visible as a track on the ground.
<b>Images captured from Google Maps</b>		The applicant makes reference to the fact that the routes applied for can be seen on Google Maps but does not supply copies of the images referred to or the relevant date of the images. The images inserted below were captured on 19 March 2015. The aerial photographs were undated but the street view showing access onto the route from point A was dated October 2012.



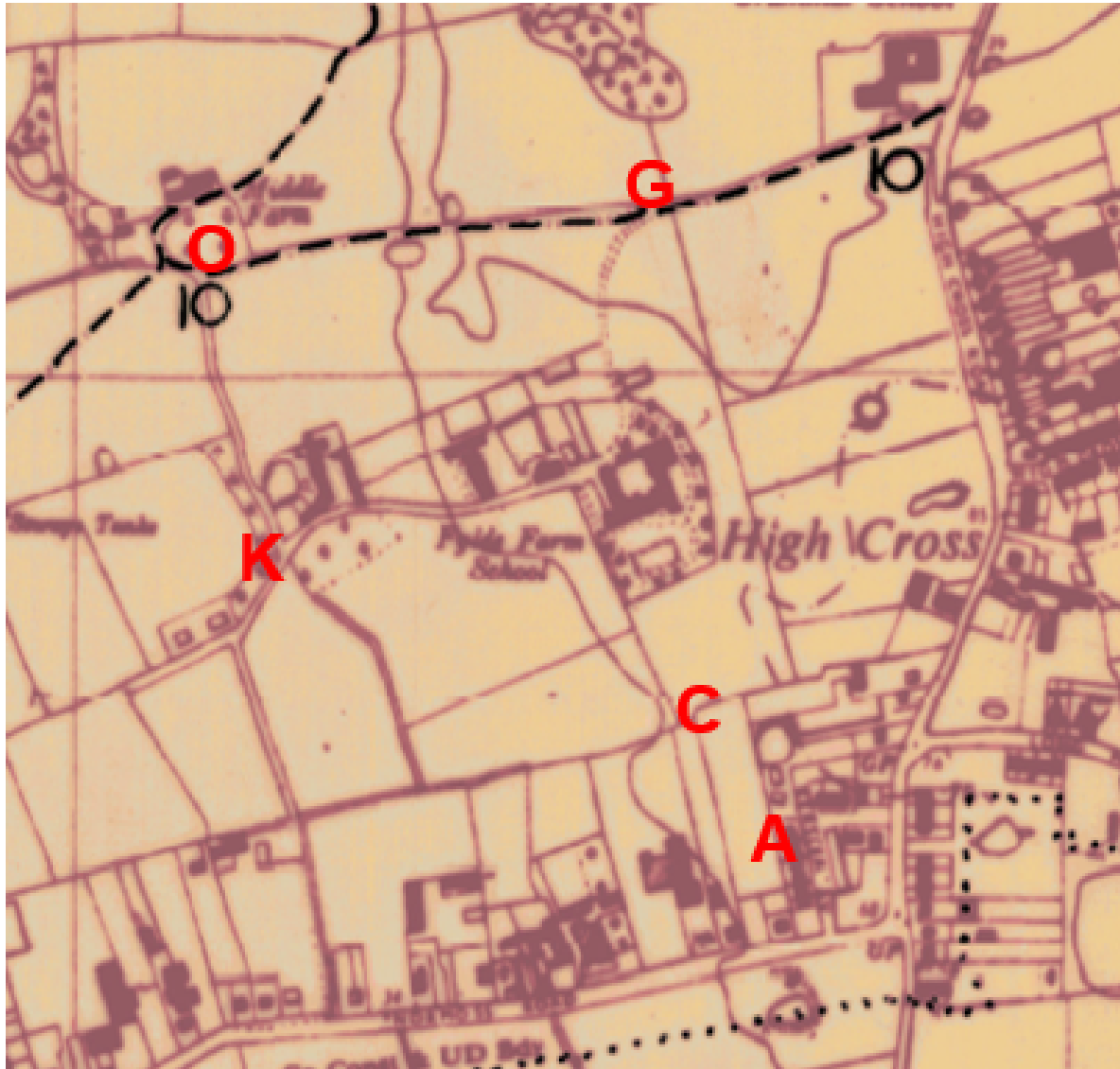


<p>Observations</p>	<p>The aerial photographs do not show a worn track between point A and point C. The gateway at point C can be seen and appears worn. A faint but worn track is visible between point C and point D and between point D to point E and through to point G.</p> <p>Access appears to be available between point C and point J with a possible worn access/gateway at point I. Most of the track between point K and point O is visible.</p> <p>The photograph available to view on Google Street View shows that a small wooden gate existed in 2012 at point A. It is not possible to determine whether the gate was locked or accessible at that time.</p>
---------------------	--

Investigating Officer's comments		The aerial photographs provide some evidence to support the fact that the routes under investigation could be used and that trodden tracks could be seen. The photographs are undated although they predate the demolition of the school and redevelopment of the site so their use is limited. The 2012 street view showing point A is useful in showing what access existed prior to the erection of the security fencing.
<b>Definitive Map Records</b>		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.  Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Poulton-le-Fylde was an Urban District in the early 1950s and so a parish survey map was not compiled.
<b>Draft Map</b>		The Draft Maps were given a "relevant date" (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The routes under investigation were not shown on the Draft Map and no representations were made

		to the County Council.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The routes under investigation were not shown on the Provisional Map and no representations were made to the County Council.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The routes under investigation were not shown on the First Definitive Map and Statement.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.





Observations		The routes under investigation are not shown on the Revised Definitive Map of Public Rights of Way (First Review) and Statement.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the routes under investigation were considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten

		<p>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		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.
<b>Deposited Records Fylde Farm School for Boys, Staining</b>	1851- 1993	Various records held in the County Records Office dating from 1851 to 1993 (Hand List 66)
Observations		<p>Various Minute books, annual reports, financial reports and children's records have been deposited at the County Records Office under the reference Fylde Farm School for Boys, Staining.</p> <p>An inspection of some, but not all of these records has been made.</p> <p>The Fylde Farm School Minute books dated 1973 to 1980 document monthly meetings held by the school management team. No references could be found which referred specifically to the existence of any routes across or through the school grounds that were used by the public. It was clear from the minutes that the school was actively farming the land crossed by the application routes during that time and that school security was taken seriously. There are several references in 1977 to meetings with local residents about the need to improve school</p>

		security and requests from residents for better fencing around the site.
Investigating Officer's Comments		No specific references to the use of the application routes was found and no documentation found regarding the existence of the routes under investigation, any annual closure of paths or the provision of signage. It was clear however that the land crossed by the routes under investigation was being actively managed and farmed by the school and that the security of the site was taken seriously due to the fact that it houses boys with potential behavioural problems.

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

### **Landownership**

The North West Young People Development Trust acquired the property known as the Fylde School, Normoss Road, Poulton-le-Fylde in 1904 having put together the site from a number of separate parcels. The property consisted of some 134 acres. Until 1973 the Trust operated at the Property providing for the education and accommodation of underprivileged young males from the North West area. In 1973 the Property was taken over by Lancashire County Council who ran the property as a controlled community home under an Instrument of Management until it closed in the 1990s. The site was then taken over by the Emmanuel Christian School which closed in around 2010 due to the repeated vandalism of the buildings.

The disposal of part of the property to Wain Homes was completed in March 2013 which included a 10 acre development site and part of the surrounding agricultural land.

Since March 2013 all of the land with the exception of the enclosed track that forms part of the route under investigation between point X and point O on the Committee plan has been in the ownership of Wain Homes North West Limited with the remaining section still owned by The North West Young Peoples Development Trust.

### **Summary**

The 2015 site evidence showed that access along the routes under investigation is currently prevented by fencing at point A, point F, point G and point J and by a locked gate at point K. There are no signs currently evident indicating whether any part of the routes are public or private. There was some evidence on the ground that parts of the route may have been walked and it appears that despite the locked gate the section between point K and point O is currently being used.

The development of the site for residential housing means that the school that previously existed on the site is no longer in existence and landscaping work

between point I and point J has altered what may have been on the ground during the period of time that it is claimed that the routes were used.

None of the routes under investigation are shown on the early commercial maps.

The route between points K-L-M-N-O is shown consistently as an enclosed track forming part of a longer route from the Tithe Map published in 1838 until the current day. In the Tithe Award the route between points K-L-M-N-O is described as a 'lane'. A small tithe is payable and no state of cultivation recorded. The fact that the route is numbered and a tithe payable suggests that it was not considered to be a public vehicular route at that time as these appeared not to be numbered on the map but it is not inconsistent with the existence of a public footpath as part of Public Footpath 10 Poulton-le-Fylde, which is in the same ownership, is described in the same manner.

With the exception of the enclosed track between points K-O there is no evidence of the physical existence of a worn track on any of the Ordnance Survey maps produced from 1848 to the current day.

For a rural footpath crossing agricultural land it is not necessarily uncommon for a route not to be shown – particularly if use was light and site evidence, aerial photographs and google street view suggest that access may have been available through field boundaries at point A, point C, point E, point G, point H and point I.

The aerial photographs examined all show the enclosed track between points K-O although it is partially obscured by tree cover in some of the photographs. The photographs confirm that the rest of the routes under investigation crossed farmland but it does not appear to be until 2010 that faintly trodden routes corresponding to parts of the routes under investigation are well enough defined to show up on the photographs.

No other documentary evidence examined supports the view that the routes were considered to be public footpaths.

## **County Secretary and Solicitors Group Observations**

Information from the Applicant

The applicant has provided a supplementary statement in support of his application:

*"The footpath which is the subject of this application has been in existence for many years. It is to be clearly observed on Google Earth.*

*It is understood that the path was in regular use as far back as the mid / late 19<sup>th</sup> Century when Fylde Farm was established as a School for difficult children and when the ragged school moved to the site from Manchester.*

*It is understood that a property on Normoss Road was a School Home for Fylde Farm and that there was a footpath leading to the Farm School from this property.*

*It was in regular use by personnel working at the school and living locally and also by the residents and staff of the school.*

*Fylde School remained in existence as an establishment for children and young*



*people who were usually the subject of Approved School Orders (Latterly Care Orders) until its closure in 2004 and the said footpath was in use for all this period of time (c 150 years).*

*The houses on the west side of Kerslea Avenue (nos 1-15) were built c1936 and it is understood that a stile was erected giving access on to the said footpath around this time.*

*The pair of houses Nos 17&19 Kerslea Avenue were built around 1946/7 and the Avenue was extended to the dead end at the end of Kerslea about this time, as was road to the end of Marina Drive, it is understood.*

*This stile gave access for all three houses and ultimately all the other houses erected on Kerslea Avenue and Marina Drive.*

*It is understood that the stile eventually collapsed and was replaced by a gate, which still exists.*

*The footpath from this gate linked on to the original path and led to Fylde School and also to Baines School.*

*It is understood that a kissing gate was erected at the boundary of Fylde School to give access into the School and that a footpath sign was erected. Neither this gate nor this footpath sign exist now.*

*It is understood that the second gate identified on the map (map attached to the application) is more recent and that it has never been locked until this year (2014).*

*The footpath, the subject of this application has been in existence for probably 150 years. Its use has been for people working at Fylde School and also walkers and dog exercise, and family events for many years.*

*It is the only accessible green area in the vicinity and was in regular use by many people, both for the aforementioned events and also for access to the local ponds.*

*It is submitted that the abrupt denial of this important community facility deprives the local communities of access to the footpath which has added significantly to the quality of life of local residents over many years.*

*We submit that this footpath should be so designated, thus ensuring that unfettered access to this much appreciated area, valuable to the local communities, can continue in perpetuity.*

- 1. It is understood that the right of way has never been questioned.*
- 2. It is understood that no notices have been clearly displayed on the way indicating it was private in living memory."*

In support of the claim the applicant has provided 22 user evidence forms, the evidence of use is set out below:

All 22 users have used the way on foot and the years in which the route was used varies. 2 users refer to their use since the 1940s, three more since the 1960s. There is evidence from four users for the years 1978-82 . a further 4 users used the route from the 1980s, 12 using the route by 1998. The remainder of users started to use the route since 2000. the evidence from the user who lived at Fylde Farm School would need to be discounted as being permissive rather than as of right.

The main places users were going to and from include Marina Avenue to Normoss Road, Marina Avenue back to High Cross, from Kerslea Avenue to Garstang Road,

from Poulton to Normoss, some users were walking all over, and some were going to visit the ponds.

The main reasons for using the route are for dog walking, walking with children, for pleasure, to look at the flora fauna and wildlife and for exercise.

The use of the route per year varies from weekly, daily, twice per week, twice per month, 3 times per day, to 15-30 times per year.

None of the users have seen anyone using the way on horseback or motorcycle / vehicle, however 6 users didn't provide a response to this question. None of the users have used the way by others means.

All the users agree that the route has always run over the same line, or they have responded with 'seems to have', 'as far as I can recall', 'as far as I know' and 'as far as I'm aware', however 1 user did not provide a response to this question.

When asked if there are any stiles, gates or fences along the route, 5 users answered with 'no' or 'cannot recall any', 7 users answered with 'yes' but did not provide any further details, 1 user stated there is a gate at approx. SD 33455E 437725N, 2 users mention a gate being at the end of Marina Avenue, 1 user mentions there is a stile and a kissing gate, another user mentioned that there used to be a gate at the 'enter end'.

17 users agree that none of the gates were locked, one user states 'not until recently' and 4 users didn't not provide a response.

15 users have never been prevented access when using the route, 1 user stated 'not until recently', another states 'only during development work during the year', 1 user states 'no, it had signs saying it was a public footpath', and 4 users did not provide a response.

18 users have never worked for a landowner or been a tenant over which the route runs and 4 users did not provide an answer when asked this question.

18 users have never been stopped or turned back when using the route, 1 user states 'in the past no', another user states 'not until recently, 1 user states 'yes but only when the building works started' and another user states 'not until the fences were erected'.

18 users have never heard of anyone else having been stopped or turning back when using the route, 1 user mentions 'yes when building works started, metal fence put up approx. July 2013' and another user states 'fences and wire prevented normal / usual access at approx. end of 2013' and 2 users did not provide a response to this question.

20 users all agree that they have never been told that the route they were using is not a Public Right of Way, 1 user states 'no in fact at one point it was encouraged as open access route to the farm for young people at the farm' and 1 user did not provide a response.

21 users have never seen any signs along the route but one user recalls seeing a sign stating 'no admittance' 'or similar'.

18 users have never asked permission to use the route, 1 user states 'there was never anyone to ask', 1 users states they didn't ask permission and that there was a sign saying 'public footpath', another user mentions 'followed my neighbours and asked them when moved in who have been using it for many years before I moved in' and 1 user didn't provide a response.

The information below was provided by the users as 'other information they think is relevant':

- I remember years ago someone wanted to close a footpath near to St Joseph's college, not having a dog anymore and with advancing years our walks over the fields are now near to Compley Avenue but I still think the footpaths should remain open.
- I've walked this way with my dogs and children for 17 years
- Over the years our children along with the neighbourhood children have used this right of way, we have walked our dogs along the way for years and now take our grandchildren. I feel it is valuable to our neighbourhood and would be a sad loss if we were unable to use it.
- I had a site meeting with the site manager in July 2013 where it was agreed to allow access across end of 'Baines Lane'. This was later revoked when anti-in trader fencing extended to prevent access Wainhomes would not return phone calls.
- This is a well-known route and is used by many from the area and outside. It is a route which creates a sense of community.
- My son and his local friends used the field to the rear of my property to play football, cricket and general play, from 1990 onwards at no time were they challenged.
- I have walked this route on a daily basis for 10 years with my family and my dog. It has been a great source of pleasure for us and a chance to enjoy the open air in an area where open space is at a premium. It would be a tragedy for local residents to lose this. My children also used to love fishing the ponds.
- As far as I am aware, there has been a public right of way for many years and I have never known of anybody being challenged or stopped whilst doing so. And we as a family used this pathway regularly and would like to do so.
- A lot of neighbours and local people use this same route on a daily basis, to walk their dogs and have walks for health reasons and local children play in this area, which is a safe place to do so.
- These fields are used by the local community for dog walking etc. The fields are habituated by foxes, cranes, field mice etc.
- I came to live in Kerslea Ave when I was 8 in 1946. Apart from a period of 2 years from 1960-1962 I have lived here ever since for several years, my family and other relatives lived in 5 houses on the same side of the avenue. Until this year we used the fields to walk at least twice a day 3 times in the summer to walk our dogs. Our children played in the fields one of my sisters walked daily to and from Fylde Farm approved school where she walked. The path to the school I think was from when the school opened. There used to be a stile at Marina Ave entrance. The footpath has been closed without any

consultation with the community and has caused upset and deprived us from a well-used historical path which has been a great benefit to the people who walked through to the ponds and watched the wildlife also walk their dogs.

- My granddad moved into 15 Kerslea Ave in 1936 and our family have lived here ever since. I have lived here since birth (1945) and have memories from being very young of the family taking our dog for walks along this path. People used the path from the end of Marina Drive to the Fylde School daily when walking to work at the school. I understand it was used from when the school was opened early in the 20th century. I remember that there was a stile at both ends and a sign saying Public Footpath. I used the path and the fields as a young child daily both with our dog and also used to picnic and fish in the ponds regularly. I contacted police in about 1953 and was unable to use the path due to hospitalisation for some years since then but from my knowledge this footpath has been regularly used by many people continuously for probably 100 years. From my personal experience it has been used continually for all my life (68 years).
- As a young child I lived with my parents at Fylde School, they were house parents, there were footpaths and rights of way across the school land and I walked along many of them including this route, another footpath I recall was one which went along the field to the rear of Kerslea Ave / Marina Ave. I do recall a stile where that met the public access.
- We moved to Kerslea Avenue in July 2009 and enjoyed unfettered access to the fields at the rear of our property, down to the ponds, through the derelict Farm School site and onto Beverley Avenue and round in the direction of the Fraye Park and the Baines School access. There is a gate at the end of Marina Drive which went on to the fields and a well-marked footpath exists from there through another gate to the Fylde School field and the pond and onwards for a considerable distance. I understand from local knowledge that there used to be a stile at the end of Marina Drive, replaced by a gate when it became unsafe. I also understand that there was a kissing gate at the rear entrance to Fylde Farm School and also a footpath signpost. This path used to be used, I understand by people working at the school to go to and from work and also as a very valued and valuable source of green recreation land for the Highcross and Normoss Community. It was still used as a green 'lung' in a heavily built up area and it is of great concern to the community that its valued resource is now denied to the community. I also understand that a footpath at the back of Kerslea Avenue to the School has been affected since the school was opened mid-19<sup>th</sup> century.

#### Information from the Landowner

A letter has been received from Wainhomes (North West) Limited, they state that they had been made aware of the application for footpaths over their land by the applicant.

They mention that the current claim for a Definitive Map Modification Order should not be supported for the following reasons which they have previously discussed with the applicant:

1. The land affected has been in the ownership of the North West Young People's Trust and their predecessor between them for over 100 years and

more recently occupied under lease by Lancashire County Council. The site was used for the development of wayward children (a form of low security borstal) having secure areas and cells on site for particularly challenging youngsters.

2. Wainhomes (North West) limited state that it would not be appropriate to voluntarily allow public access over the land where vulnerable youngsters are present. They are aware that there have been various incidences of trespass, but at no time, have public access rights been willingly allowed.
3. They have been advised that Young Peoples Trust have never allowed public rights of access.
4. Wainhomes (North West) Limited are aware that parts of the land have been tenanted to a local farmer historically for cattle grazing and crops and part used by Jane Armstrong (a local resident) for horse pasture. Mrs Armstrong has advised that she has a good view of the Marina Avenue boundary which has always been fenced and has noted that some people occasionally jump over the fence or attempt to wire cut the wires to allow their dogs onto the land. There has not been and is not currently an open footpath route onto the land from Marina Avenue. Any access being gained is via trespass in climbing the fences.
5. 4 photographs have been submitted with the objection that show the fencing at the end of Marina Avenue.

The landowners consider that it should be noted that the land has been used for grazing with livestock and securely fenced with locked gates. There are no footpath stiles within their land. The landowner asks to couple this with the security issue associated with the original land use and it is clear that this claim spurious and they hope that LCC can dismiss the application.

They have produced 2 witness statements one from Mrs Jane Armstrong (tenant) and one from Mrs Sylvia Houldsworth, they mention it is purely by chance that Mrs Houldsworth was in discussion with the company last week regarding a boundary hedge and after discussing the footpath claim she was clearly very knowledgeable, having lived in the current property backing onto the land for 53 years. The fact her husband used to work at the Fylde School site for 15 years is also significant.

They mention that it is a key point that people commenced trespassing and walking over the land when the school closed and became derelict. Any unlawful trespass walkers do not have the requisite timescales to claim a prescriptive footpath let alone a definitive one.

#### Statement from Mrs Jane Armstrong

*"I am an adjoining landowner to the field at the end of Marina Avenue, Blackpool, and have lived at the above address since October 2006.*

*I have been informally using the paddock for the grazing of my horses during the winter months for the past 7 years.*

*During this time there has never been a footpath crossing the field.*

*The field fence is repeatedly damaged to gain unlawful access which I and the landowner have repaired, and I have had my own padlocks stolen as I have tried to secure the land. There has never been continuous access over the land.*

*There has been on occasion when the Police have had to evict travellers from the site and other various security incidents which I am happy to discuss."*

Statement from Mrs Sylvia Houldsworth

*"I have lived at my current address for 53 years last March 18<sup>th</sup> and to my knowledge the field behind our house has never been a public pathway. When I came to live here, the land behind was Fylde Farm School, a place for boys who either came from deprived backgrounds or from court proceedings, but not a Borstal as such. The boys were at that time trained to work either as builders, painters and decorators or farm the land looking after livestock. It was previously owned I believe and therefore you were trespassing if you walked through the grounds. The only time I saw people walking through was when the buildings were closed and it became a derelict site. Then it became a dog walker's paradise. It would be brilliant if the field once more became a more rural area with the cattle or sheep, we even had donkeys at one time and goats I believe although the goats may have been on the farm. I know more about the School because my husband worked there for 15 years a long time ago."*

A letter of objection to the application from Bromleys Solicitors on behalf of North West Young Peoples Development Trust

During the time that the property was operated as a controlled community home the Trust and Trustees took an active role in the management and functioning of the controlled community home and surrounding land. The agricultural land at the Property was managed by a farm manager under the supervision of LCC and the Trust with certain fields being licenced to local farmers for specific agricultural purposes. The trust and LCC would supervise the maintenance and security of the boundaries to the Property and home generally.

As part of the operating procedures of the Property the Trust would, in cooperation with LCC, close the entire Property down for one day a year. This procedure involved the erection of signs on gates and access ways at the Property precluding access for the day. A photograph of the notices was to be taken and sent to Wyre Council every year and LCC every six years. From available minutes of the Trustees meetings it appears that this procedure was carried out during the first week of March every year. We have located minutes confirming closure from 1998-2003, however the Trustees confirm that the procedure dated back long before this time. Gradually from 1980 LCC had returned parts of the Property to the Trust culminating in the handover of the Property to the Trust in 2003, except Dales House which was later vacated in 2006.

From 2006 the Trust managed the Property in conjunction with various third party developers to include Kensington Developments Limited (2006-2008), Keyworker Homes (North) Ltd (2008-2009) and latterly Wainhomes NW Limited. The Trust and

developers have made every effort to secure all boundaries and erect signs generally including where unauthorised access has been encountered. A number of photographs are attached showing examples of signage erected over the years.

The disposal of part Property to Wainhomes was exchanged on March 2012 with completion in March 2013. The land disposed of was a 10 acre development site and part of the surrounding agricultural land. The retained section of the Property amounting to some 80 acres of agricultural land has been retained by the Trust. The retained land has to date not been occupied rather a farmer has been granted licence to access and take cuts of hay. At the time of preparation of this document terms are under negotiation for the grant of a farm business tenancy to Karl Holt. No third party has the right to enter the retained land in the positions labelled Access routes on the application documentation.

The Trust request that the claim for a public footpath in the position of the Access route be rejected on the basis of the above information. Further information will no doubt be available from the Councils own records concerning the nature and use of the Property.

To support their evidence the following list of documents have been provided:

1. Minutes of the North West Young People's Development Trust Lands Sub Committee dated 12<sup>th</sup> March 1998, - the minutes refer to all the pathways within the trustees lands has been closed on Monday 2<sup>nd</sup> March 1998 in order to preserve their private status, and the next scheduled closure is to take place on the first Monday in March 1999.
2. Further minutes state - When the annual footpath closure takes place, the Farm Manager was requested to ensure that signs were erected and suitable photographic evidence taken, it was also agreed that a formal letter from the Trustee would be forwarded to the Principle so that the Farm Manager was in a possession of authorisation to carry out the closure, a copy of this letter would also be forwarded to LCC.
3. Another set of minute's state – The Principal advised that a footpath sign had been placed at the Highcross Road entrance to the site. It was agreed that the Clerk would write to Wyre Borough Council to advise that this was not a public footpath and advised that the sign should be removed.
4. A report for the Trustees 21<sup>st</sup> January 1999 that state – notices have been received for the closure of the footpaths, this will be done on Monday 1<sup>st</sup> March as requested and photographic evidence will be provided.
5. Minutes of the Fylde Community Trustees Meeting 1<sup>st</sup> July 2000 state – that the footpath closure must be reported to Wyre Borough Council annually and Lancashire County Council every sixth year.  
Minutes of the Fylde Community Trustees Meeting 1<sup>st</sup> April 2000 state – notice had been given to Wyre Borough Council on 12<sup>th</sup> February 200 that the footpaths at Fylde Community were to be closed on Monday 6<sup>th</sup> March 2000. Notices had been forwarded to the Principal for lamination and display, along with a map showing where the notices were to be situated. Confirmation is required that the paths were closed. J E Huxley advised that official notice only required to be given every six years.
6. 2003 statement – It was agreed that the footpaths should be closed for one day and it was agreed that Mr Jones would be asked to action this.

## 7. Photographs showing Private Road signs & Private Land

### Information from County Council Estates files

As Lancashire County Council leased the land in question from 1973 until the 1990s, officers contacted Lancashire County Council's Estates team and the following information has come to light:

A letter from the North West Young People's Development Trust was sent to Fylde Community and was copied Lancashire County Council on 7<sup>th</sup> January 1999. The letter state that the 10 signed notices enclosed are to be displayed at each end and interim points in the rights of way across Fylde Community on Monday 1 March 1999 and that they are displayed for the minimum of 24 hours. The letter also requests that photographs of each of the sites should be taken with the notices in situation and clearly identified on the photograph so that these can be filed and is necessary used for future evidence.

The Notices state:

"This is a PRIVATE WAY provided by the Trustees of the above Charity, expressly for the use of residents and persons having legitimate Fylde Community Home business.

In furtherance of protecting that status, notice is hereby given that the way will be closed to all other persons for one day from 0001 hours on Monday 1 March 1999."

### **Assessment of the Evidence**

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

#### In Support of Making an Order

User evidence  
Aerial photographs  
Trodden path sections  
Recollections of users  
Borough Council

#### Against Making an Order

Low numbers of users in certain years  
Locking of accesses annually by the landowner – evidence corroborated  
Lack of intention of owners  
Crossing of open ground with less use of claimed line

#### Conclusion



In this matter it is claimed that there has been sufficient long use by the public such that the path has become a footpath in law and should be recorded on the Definitive Map and statement

The law looks at whether there has been a dedication by the owner. There is no express dedication but Committee are advised to consider whether a dedication could be deemed under S31 Highways Act from twenty years use as of right without interruption up to a "calling into question" or be inferred from all the circumstances at common law.

Considering first of all the possibility of finding a dedication at common law. As the owner of most of the land crossed by the claimed routes until recently was the owner for many decades and refers to the annual locking of gates and indicates their lack of intention to dedicate it is advised that to seek to prove that this owner intended a footpath for the public would be difficult. The present owner has closed access and has no intention to dedicate.

It is therefore suggested that the provisions of S31 Highways Act 1980 whereby a dedication could be deemed, despite what owners now say, may be an appropriate provision to consider. The application itself calls the route into question but in this matter the twenty years use back from 2014 reach the years where there has been the annual locking of access points. As there is corroborative evidence of this annual event being brought to the attention of users and not being on a day when use was unlikely such as Christmas Day, it is suggested on balance that the earliest annual locking of access points would be an earlier calling into question. Such actions by a landowner would also interrupt use and also, despite the short duration be sufficient evidence of lack of intention to dedicate. Committee may consider that the twenty years use from which to deem dedication 1994-2014 cannot therefore be achieved as the first properly evidenced closure was in 1999 or 1998. It is noted that there may be evidence of even earlier ones but no evidence has been submitted. Even if earlier ones are not evidenced and a new period of twenty years 1978-1998 or 1979-1999 able to be considered it is advised that there is only evidence of use from four users as early as 1978/9 for the first few years of that period and this low use in the relevant years may be insufficient to prove use by the public throughout the twenty year period over and above trivial and sporadic use.

It is noted that users make reference to it being a popular route in more recent years but it is suggested that the locking of the accesses by the landowner as evidenced are sufficient actions which demonstrate the owners lack of intention to dedicate and the use has failed to build into a highway right. The more recent use has not been for a new period of twenty years since the last evidenced closure in 2003.

Taking all the information and evidence into account it is suggested that the Committee may consider the evidence insufficient from which to find that a dedication could be deemed or inferred in law and therefore that the application be not accepted.

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

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

Paper	Date	Contact/Directorate/Tel
Documents on File Ref: 804-556 5.51738	various	Megan Brindle , 01772 535604, Legal and Democratic Service

Reason for inclusion in Part II, if appropriate

N/A