

Regulatory Committee

Meeting to be held on 9 September 2015

Electoral Division affected: Pendle East

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of a public footpath from Gisburn Road to the junction of Public
Footpaths 38, 39 and 41 Blacko, Borough of Pendle
File No. 804-559
(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, Legal and Democratic Services,

megan.brindle@lancashire.gov.uk

Jayne Elliott, 07917 836626, Planning & Environment Group, Public Rights of Way,

jayne.elliott@lancashire.gov.uk

Executive Summary

Application for the addition to the Definitive Map and Statement of a public footpath from Gisburn Road to the junction of Public Footpaths 38, 39 and 41 Blacko, Pendle Borough. (File reference 804-559)

Recommendation

1. That the application for a public footpath from Gisburn Road to the junction of Public Footpaths 38, 39 and 41 Blacko (reference 804-559) be accepted.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public footpath from Gisburn Road to the junction of Public Footpaths 38, 39 and 41 Blacko, Pendle Borough to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a public footpath from Gisburn Road to the junction of Public Footpaths 38, 39 and 41 Blacko 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

Pendle Borough Council

A response from the Countryside Access Officer for Pendle Borough Council (“the Officer”) has been received. The Officer explained that he met the current landowner on site on 1st August 2014 and at that time the route was open and being used by the public. The Officer recalls that at that time there were no signs erected on the route deterring use and that a walker used the footpath during the time that he was on site and that she was not challenged by the landowner.

On 12th August 2014 a further visit to the route was made by an employee of Pendle Borough Council and it was noted that signs had been placed at either end of the route stating “Private Road – Private Property – No Public Access – Please Respect Our Privacy”.

The Officer made the following comments about the site discussion on 12 August with the current landowner:

- The current landowner wanted to fence in part of the width of the path to a narrow strip against the hedge and set up a gate across the footpath, this was part of his plans to protect his children
- The Officer did not have a record of how wide the footpath was but looking on site they advised it would be about the full width of the existing farm track and the gate he would like could not be authorised and explained the reasons for this
- The current landowner wanted to fence off the track and the Officer told him how Section 31 of the Highways Act 1980 worked and suggested he find out if there is evidence that people have ever been challenged when using the footpath.
- The Officer stated that a lady with a dog walked the path from footpath 39 during the site visit and was not challenged
- The current landowner mentioned that footpath 41 was difficult to use as it had become overgrown and the officer agreed to trim and waymark

A further [telephone] discussion took place on 4th September 2014 and the comments are set out below:

- The applicants and the Officer discussed the Definitive Map Modification application and asked if the current landowner would be willing to remove his signs rather than going through the process
- A voicemail was left to the current landowner who later called back to say he has had loads of hassle and abuse from local people and he is now not bothered if people use the track, his main concern is dogs frightening his children. The footpath was agreed and 'dogs on lead's signs to be erected.

Blacko Parish Council

The Parish Council have replied stating that they have no objection to the application. They state that they are fully aware that the route has been used as a public footpath in the "recent past" and provided an extract of a plan from a deed said to be dated 1881 which shows the route as a footpath.

Applicant/Landowners/Supporters/Objectors

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

Advice

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

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description

A	8600 4131	Start of the route under investigation on Gisburn Road (A682) between property numbers 326 Gisburn Road and 7 Back Gisburn Road and 324 Gisburn Road.
B	8602 4131	Unmarked junction of the application route with Back Gisburn Road and location at which private road signs were located in August 2014.
C	8605 4131	Unmarked point at which the application route leaves the track north east of a row of garages.
D	8605 4130	Open junction with Footpaths 38, 39 and 41 Blacko.

Description of Route

Site inspections were carried out on 22 August 2014 and 21st April 2015.

The route commences at a point on the eastern side of Gisburn Road (A682) between house numbers 324 and 326 (and 7 Back Gisburn Road) and shown as point A on the Committee plan.

From point A the route extends in an easterly direction bounded on either side by the gable ends of the two properties. The full width of the gap between the properties is 4 metres at point A and has been roughly tarmacked widening to 4.5 metres at point B.

There is no gate or other barrier restricting access at point A and no evidence of anything previously existing which may have prevented or restricted access.

To the rear of the properties at point B there is access both north and south of the route to the back of the adjacent houses. In August 2014, situated to the rear of the properties, facing west on the south side of the route, there was a red sign with white lettering clearly positioned so that it could be seen and read from the route. The sign read "Private Road – Private Property – No Public Access – Please Respect Our Privacy". In 2015 when the route was re-inspected the sign was no longer there.

From point B the route continues in an easterly direction along a compacted stone surfaced track. When first inspected in 2014 the track was bounded along the northern side by a stone wall. On the south side a wide entry existed beyond point B across which a metal barrier gate was present. The gap provided access to some garages, the rear of which abut the route under investigation.

The stone surfaced route appeared to be being used by vehicles and varied in width between 4.5 and 2.6 metres.

In April 2015 the stone wall along the north side of the route had been removed as part of the building works taking place on the north side of the route between point B and point C although the stone surfaced route remained unaltered passing in an easterly direction to the rear of the garages. At point C, in August 2014 a second red and white sign facing east had been erected stating that the track was private. This sign was no longer present in April 2015. The track bears away in a north easterly direction to Beverley Road and beyond point C coincides with most of the route recorded as Public Footpath 38 Blacko.

The route under investigation leaves the stone surfaced track at point C in a south easterly direction along an unenclosed trodden track for approximately 5 metres across rough land to the open junction with Public Footpaths 38, 39 and 41 Blacko.

The total length of the route is 55 metres.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		Yate's Map of Lancashire does not cover the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.
Observations		Greenwood's Map of Lancashire does not cover the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		Hennet's Map of Lancashire extend far enough north to cover the area crossed by the route under investigation but the point at which the route leaves Gisburn Road is on the fold of the map and is therefore not visible.
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 route under investigation does not cross land affected by the construction (or proposed construction) of a railway or canal.
Investigating Officer's Comments		No inference can be drawn.
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 is no Tithe Map for Blacko deposited in the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for Blacko deposited in the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848. ¹

¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one



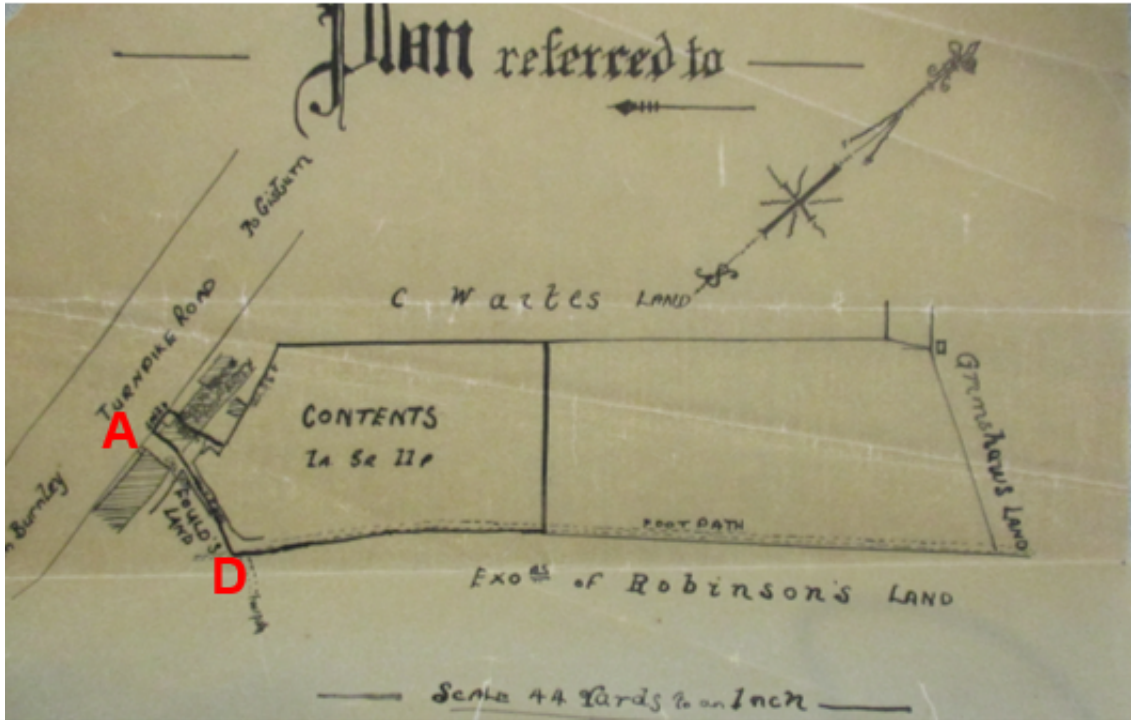
Observations		Properties are shown to the north and south of the approximate position of point A with a wider gap than now exists through which access appears to be available. From the rear of the properties a single pecked line is shown extending to point D. Gisburn Road is shown and labelled as being a Turnpike Trust road (under the ownership of the Marsden Gisburn and Long Preston Trust). The junction of routes now recorded as Public Footpaths 38 and 39 Blacko (which are both shown as single pecked lines) at point D appears to be in the same position as it is today.
Investigating Officer's Comments		Access from Gisburn Road to point D may have been available in 1848 but it appears from the map that the alignment of the route was slightly different to the route now under investigation.
Extract from Deeds in the possession of Mr	1881	When consulted about the application to record the route as a public footpath Blacko Parish

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.

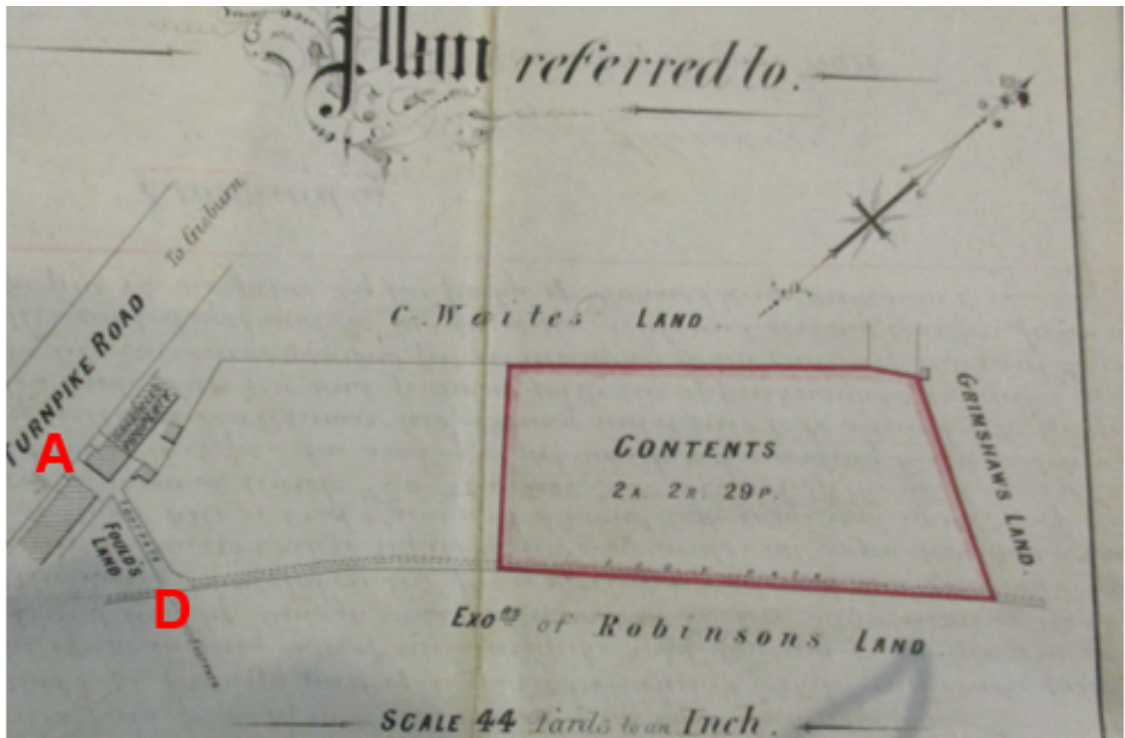
R Foster and inspected by Blacko Parish Council as part of the consultations carried out on the application

Council submitted a plan copied from the deeds of a local landowner and referred to it dating back to 1881.

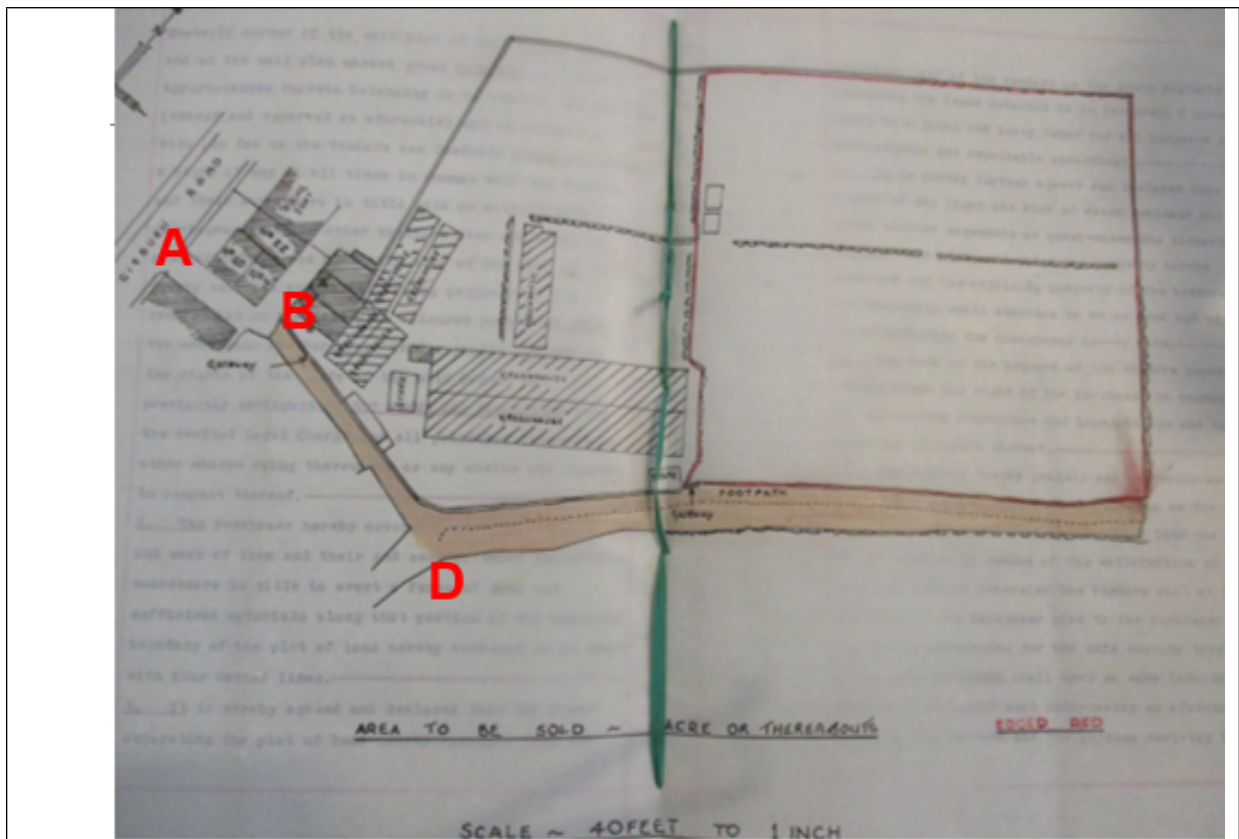
Plan 1



Plan 2



Plan 3



Observations

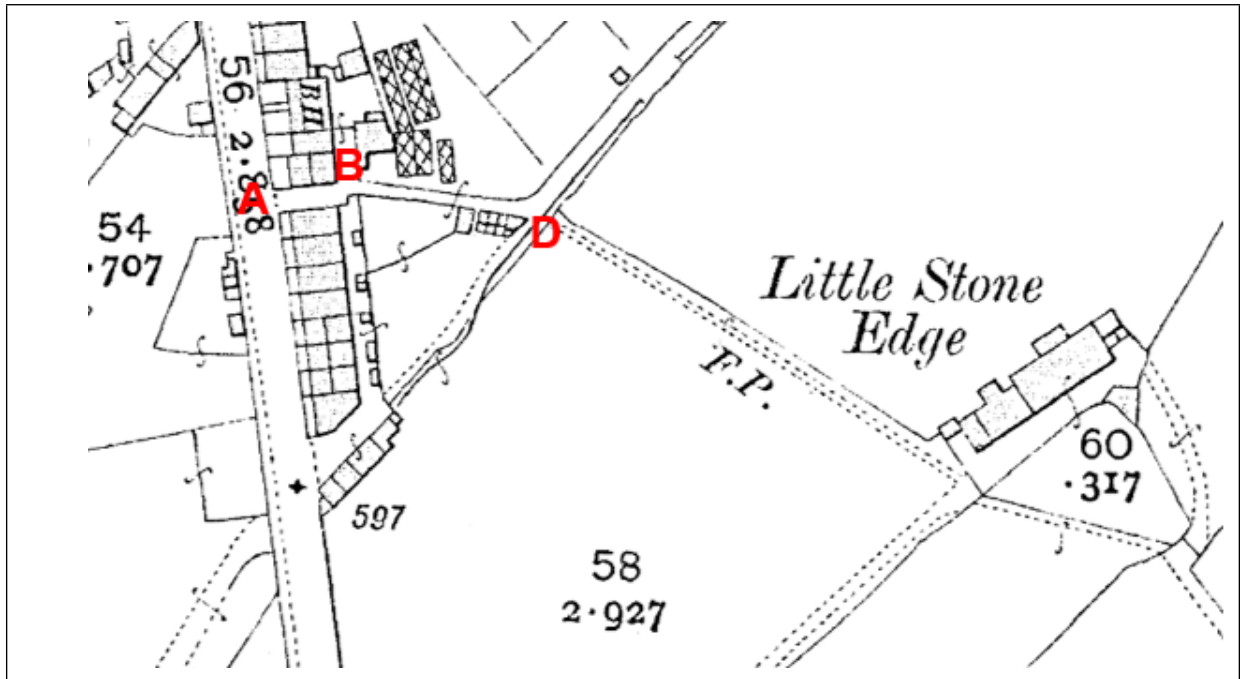
Further investigations were carried out and the plan (Plan 1) submitted by the Parish Council was found to be an undated plan contained within a bundle of deeds in the possession of Mr Foster. It is labelled 'Plan referred to' suggesting that it formed part of a document – most likely relating to the sale of the plot of land north of the route under investigation, and shown by a bold solid line on the plan. It describes Gisburn Road as the 'Turnpike Road' which would be consistent with the date given by the parish council (1881). The plan shows the route passing between buildings between point A and point B and then continuing (un-gated) as an enclosed track to point D. Between points B and D the word 'Footpath' has been written on the route under investigation. Further documents within the possession of Mr Foster were subsequently inspected and a deed dated 7th May 1881 for land now in the ownership of Mr Foster was inspected. The plan that formed part of the deed (Plan 2) whilst not identical to the plan originally submitted by the Parish Council (plan 1), was very similar in appearance and was drawn at the same scale. The plan shows the route and describes it as a 'Footpath'. Further conveyance documents in the possession of Mr Foster consistently show the existence of

		the route. In an abstract of title of Mr and Mrs Pollard to a plot of land that was accessed via the route under investigation are the details of a conveyance dated 18 March 1948 made between Thomas Brown (the vendor) and John Pollard and Minnie Pollard (the purchasers). The conveyance related to the sale of the land edged red on plan 3 above and it was stated that the plot had access to Gisburn Road by the public road coloured brown on the said plan'. This information regarding access was subsequently repeated in a further conveyance dated 25 April 1952 between Mr and Mrs Pollard (the vendors) and Mr Harold Gilbert Claxton (the purchaser).
Investigating Officer's Comments		The route existed in 1881 and was considered by the surveyor who drew the plan in relation to the sale of adjacent land to be a footpath. When land that was accessed via the route was sold in 1948 (and again in 1952) access to Gisburn Road was described as being along a public road – consisting in part of the route under investigation suggesting that it was considered to carry public vehicular rights at that time.
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.



Observations		Development appears to have taken place since 1844 and the properties north of the route extended and south of the route rebuilt or modified. Access onto the route at point A appears to be open but a dashed line suggests
--------------	--	--

		<p>that there may have been a change in the surface from Gisburn Road when entering onto the route. The route between point A and point B provides access to the rear of the properties on both the north and south sides from point B.</p> <p>A line is shown across the route under investigation just east of point B suggesting that a gate or barrier may have existed across the route at this location. Beyond point B the route under investigation can be clearly seen as an enclosed track. The bracings on either side of the track suggesting that the land on either side was in the same ownership on either side of the track. Some small buildings – possibly animal pens - are shown on the south side of the track in the position of the garages that exist today.</p> <p>Between point C and point D it appears that the route would have crossed a small watercourse and the means of crossing it is not shown. At point D it can be seen that the route now recorded as Public Footpath 39 Blacko existed on the ground as a visible track which was shown as a double pecked line leading to Little Stone Edge.</p> <p>The routes now recorded as Public Footpaths 38 and 41 Blacko are also shown to have existed at this time.</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1891 and appeared capable of being used linking to the routes subsequently recorded as Public Footpaths 38, 39 and 41 Blacko. The existence of a gate across the route to the east of point B would not be inconsistent with the existence of a route that was capable of being used by the public as many more routes would have been gated at that time for stock control purposes.</p>
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1891, revised in 1910 and published in 1912.



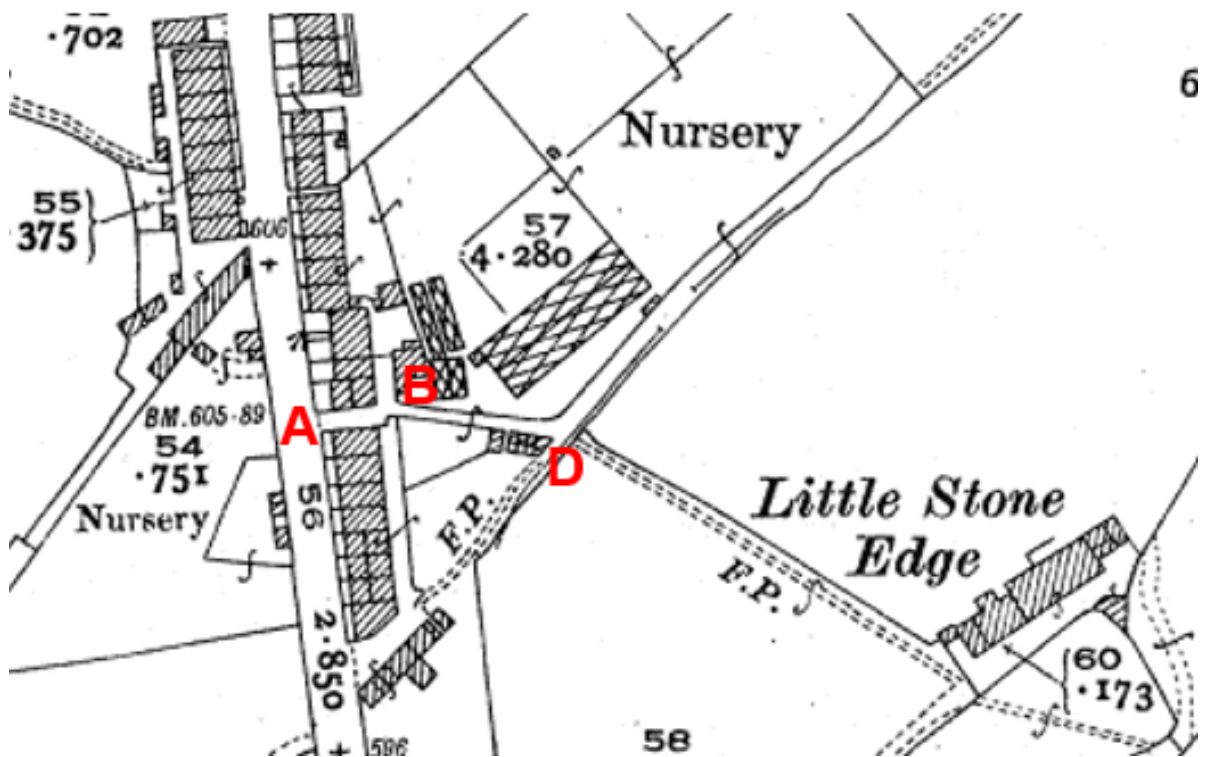
<p>Observations</p>		<p>The route under investigation is shown as it was on the earlier edition of the 25 inch map. Access onto the route at point A appears to be open although a change in surface condition appears to be indicated by the dashed line. No gate or barrier is shown across the route at point B as it had been on the earlier map suggesting that the route was now open and accessible along the full length forming part of a continuous route with the track now recorded as Footpath 38 Blacko which provides access through to Beverley Road. The route appears to link to the path now recorded as Footpath 41 Blacko and the footpath (F.P) leading to Little Stone Edge which is now recorded as Footpath 39 Blacko.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed in 1910 and appeared capable of being used.</p>
<p>Finance Act 1910 Map</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 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</p>

	<p>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>
--	--



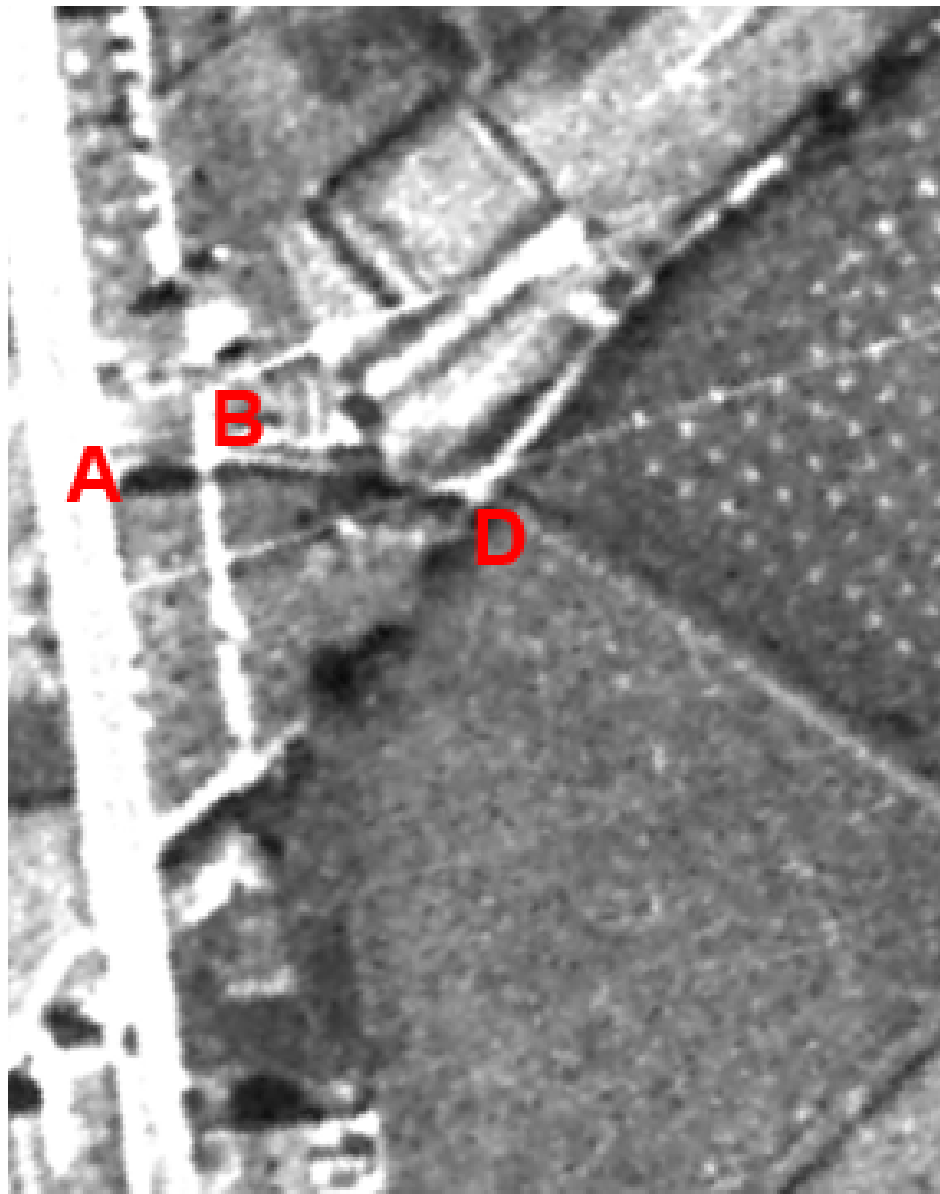
<p>Observations</p>	<p>The Finance Act records held by the County Records Office have been inspected but the Map and Field book entries have not been requested from the National archives.</p> <p>The full length of the route between point A and point D is excluded from the numbered hereditaments on the plan held by the County</p>
---------------------	--

		Records Office. Plot 96 is listed in the schedule as being owned and occupied by Robert Foulds which is consistent with why the route was labelled as 'Folds Land' on the deed plan submitted by the Parish Council and in the possession of Mr Foster referred to earlier in this report.
Investigating Officer's Comments		The fact that the route is excluded from the numbered hereditaments is usually considered to be good evidence of, but not conclusive of, public carriageway rights. The length excluded does not, however, provide a through route linking two public vehicular highways which would suggest less weight should be given to it carrying public vehicular rights. The exclusion of the route does however suggest that the route under investigation was a substantial physical route which would have been capable of being used by the public on foot and which may have been used by vehicles at that time.
25 Inch OS Map	1931	Further edition of 25 inch map (surveyed 1891, revised in 1930 and published 1931).



Observations		The route under investigation is shown to exist as part of a longer route and also connects to other routes now recorded as public footpaths and two of which are annotated as footpaths (F.P.) on the
--------------	--	--

		map.
Investigating Officer's Comments		The route under investigation existed in 1930 and appeared to be capable of being used by the public.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.



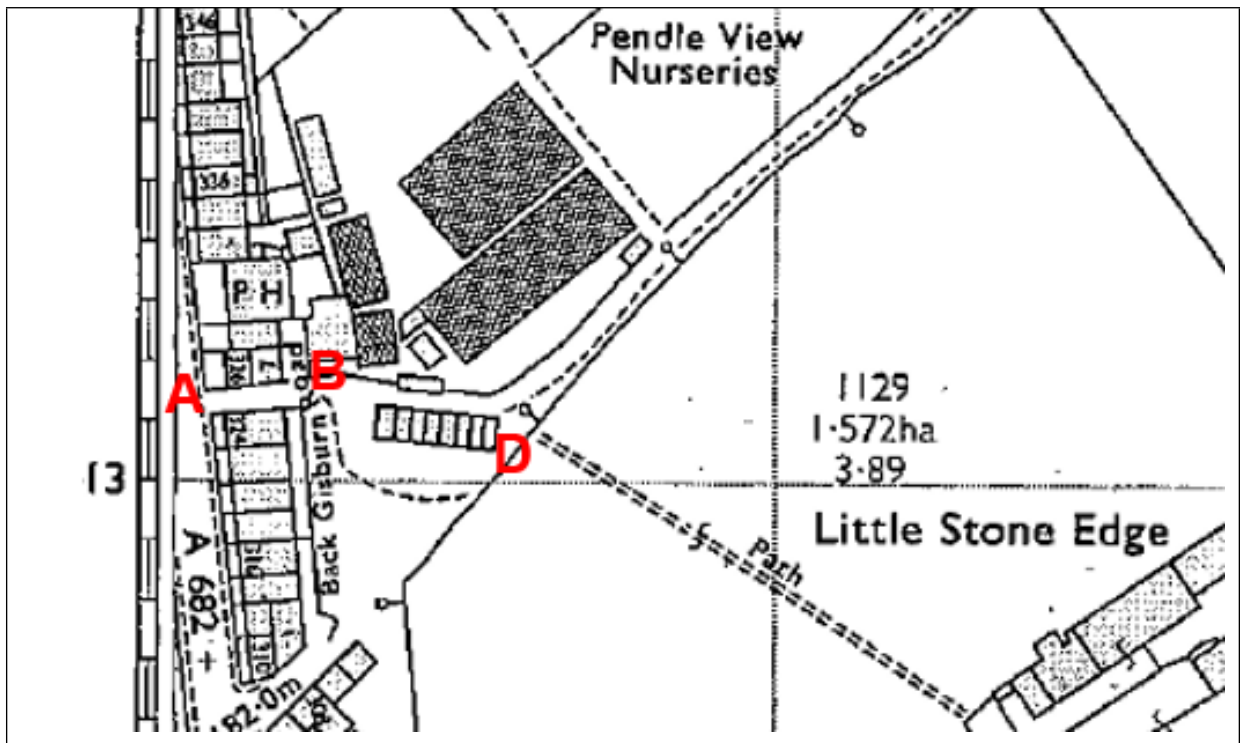
Observations		The quality of the aerial photograph is poor although it is possible to see the full length of the route and the fact that it connects to other routes
--------------	--	--

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.

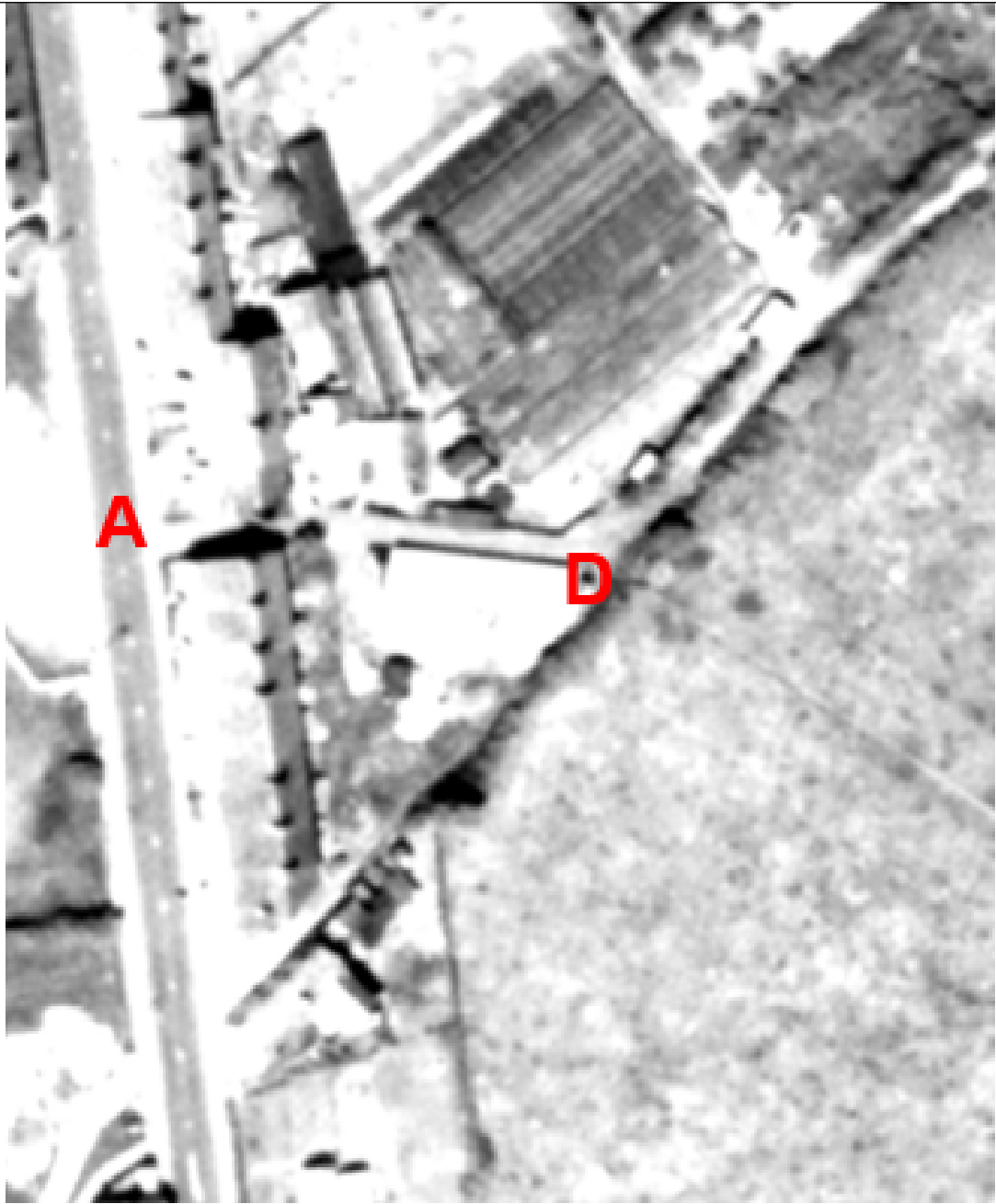
		at point D and that it is crossed by a substantial route at point B.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used in the 1940s.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The full length of the route under investigation is shown as part of a longer route which possibly provided access to a nursery and also formed part of the route now recorded as Footpath 38 Blacko and also connected to two other routes that are shown on the map and which are now recorded as Footpaths 39 and 41 Blacko.
Investigating Officer's Comments		The route under investigation existed when the map was revised before 1930 and appeared to be capable of being used to connect to other routes now recorded as public footpaths.
1:2500 OS Map	1970	Further edition of 25 inch map reconstituted from former county series and revised in 1969 and published 1970 as 1:2500 national grid series.



Observations		The route under investigation is shown to exist as part of a longer route providing access to Pendle View nurseries and also providing access to the routes recorded as Footpaths 38, 39 and 41 Blacko. The garages that still exist along the south side of the route (between point C and point D) are shown with access to them being via the route under investigation between point A and point B.
Investigating Officer's Comments		The route under investigation existed when the map was revised in 1969 and appeared to be capable of being used to connect to other routes that were recorded as public footpaths.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The route can be seen as a substantial track in the 1960s.
Investigating Officer's Comments		The route existed and appeared to be capable of being used by the public in the 1960s to connect to three legally recorded public footpaths.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		The route under investigation can be clearly seen on the photograph and a track connecting the route under investigation to Footpath 39 Blacko south east of point D is very visible.
Investigating Officer's Comments		The route existed and appeared to be capable of being used by the public in 2000 to connect to three legally recorded public footpaths.
Aerial Photograph	2010	Aerial photograph available to view on GIS.



Observations		The route under investigation can be clearly seen on the photograph and a track connecting the route under investigation to Footpath 39 Blacko south east of point D is still very visible.
Investigating Officer's Comments		The route existed and appeared to be capable of being used by the public in 2010 to connect to three legally recorded public footpaths. There was a worn trod between points C and D suggesting it was actually being used.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a</p>

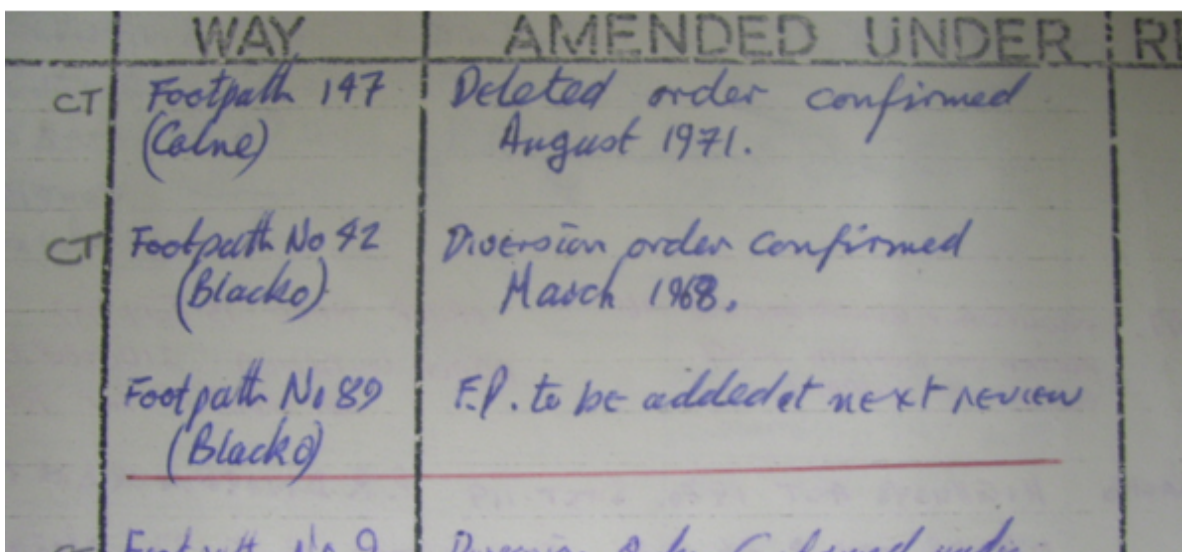
		road is maintainable at public expense or not does not determine whether it is a highway or not.
--	--	--



Observations		The County Council records do not contain any details of the route under investigation being recorded as a publicly maintainable highway.
Investigating Officer's Comments		The fact that the route under investigation is not recorded as a publicly maintainable highway in the List of Streets does not mean that it is not a public right of way.
Definitive Map Records		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.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without

		alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The parish survey map and cards were drawn up by Blacko parish council. The route under investigation is not shown on the parish survey map or documented in the parish survey cards.
Draft Map		<p>The parish survey map and cards for Blacko were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The route under investigation is not shown on the Draft Map of Public Rights of Way and there were no objections to the omission of the path.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation is not shown on the Provisional Map and there were no objections to the omission of the path.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation is not shown on the First Definitive Map.
Investigating Officer's Comments		The route under investigation was not considered to be a public right of way in the 1950s.

<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>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 25th 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 1st 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.</p>
<p>Observations</p>		<p>The route under investigation is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation was not considered to have changed status by the 1960s.</p>
<p>LCC Internal Definitive Map Amendment Book</p>		<p>Following the publication of the Revised Definitive map (First Review) and until the County Council digitised the public rights of way information contained within the Revised Definitive Map (First Review) it was the standard practice of the Lancashire County Council Public Rights of Way Team to record any subsequent legal alterations to the Revised Definitive Map (First Review) on a paper copy kept in the office and to list details of all the amendments on a form accompanying each map sheet.</p>



<p>Observations</p>		<p>When the hand drawn amended version of the Revised Definitive Map (First Review) was inspected it was discovered that the route under</p>
---------------------	--	--

		<p>investigation had been hand drawn on the amendment sheet and labelled with the number 89. The accompanying form stated that the footpath was to be added at the next review. No details of why it was considered that the route under investigation should be added to the Definitive Map were provided.</p>
Investigating Officer's Comments		<p>The internal system of maintaining an amended Definitive Map was originally put in place when it was fully expected that there would be a further review of the Map and Statement prior to the continuous review process that was adopted post 1981.</p> <p>There are numerous examples across the County where paths that had not been recorded as public rights of way had been identified and added to the amendment book with similar notations suggesting that when the Map was next reviewed the path would be added to it. Whilst no further details are provided the inclusion of the route, and the fact that it had been numbered suggests that the fact that the route was not shown on the Definitive Map had been raised and that the County Council had made an initial assessment that had led to them considering that it should be added at the next review.</p>
Lancashire County Council Public Rights of Way Records	1958 to current date	<p>Following on from the discovery that the route under investigation had been included on the LCC Internal Definitive Map Amendment book a search of the LCC Blacko Parish files containing information on public rights of way issues was carried out.</p>
Observations		<p>A search of the parish files was carried out and a letter found from Burnley Rural District Council to Lancashire County Council dated 25th May 1972. The letter explains that Burnley Rural District Council had received a request from Blacko Parish Council for the route under investigation to be added to the Definitive Map. The letter states that the Parish Council said that the route was well used but appeared to have been omitted from the footpath survey carried out in 1951. No reason for it being omitted is given.</p> <p>A reply was sent from the County Council to Burnley Rural District Council stating that the path could only be included at the next Review period and that a note had been made for this to be done at the appropriate time.</p>

		<p>Further correspondence was found from the following year (13 May 1973) when it appears that Blacko Parish Council, on receipt of a copy of the Provisional Definitive Map (First Review) again queried why the route under investigation was still not shown. In response, the County Council explained that the previous year in a letter to the Surveyor of Burnley Rural District Council the County Council had undertook to include the route currently under investigation at the next review "i.e. the Second Review".</p>
Investigating Officer's Comments		<p>It appears that the route under investigation was being used in 1972 and that use must have been sufficiently well used for the Parish Council to raise the fact that it was not recorded as a public footpath when they considered that it should be. There is no suggestion from the correspondence in 1972 or 1973 that actual use of the route at that time was being challenged.</p>
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. 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		<p>No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the routes under investigation</p>

		run.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

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

Landownership

Part of this route is owned by Mark Sugden, 22 Stone Edge Road, Barrowford, Nelson BB9 6BB, a small part of the route has a Caution held by Ingham & Yorke and Napthens, and part of this route is unregistered.

Summary

The 2015 site evidence shows that the route is currently open and available to be used. There is development taking place to the north of the route which has changed its appearance but not its alignment over the past 12 months. The signs evident on site in 2014 stating that the route was private are no longer in place but are known to have initiated the application to record the route as a public footpath.

No early commercial maps were available or viewed showing the route but it is clear from the first edition of the Ordnance Survey mapping of the area in 1844 that at least part of the route existed at that time.

The full length of the route under investigation is shown to exist on the deed plan dated 1881 and is labelled as a footpath connecting to the routes now recorded as Public Footpaths 38, 39 and 41 Blacko – all of which are also labelled on the conveyance plans as 'Footpaths'.

With the exception of the 1891 Ordnance Survey map which showed that a gate may have existed immediately east of point B the full length of the route under investigation appears to have been open and freely accessible when surveyed for future revisions of the Ordnance Survey mapping.

Aerial photographs from the 1940s, 1960s, 2000 and 2010 also support the existence of the route.

The maps and aerial photographs also support the evidence that the route under investigation linked directly to three routes that are recorded as public footpaths (Footpaths 38, 39 and 41 Blacko) and that the route under investigation formed part of the network of routes all converging at point D.

The Finance Act records obtained from the County Records Office are inconclusive. The route has been excluded from the numbered hereditaments which can suggest that it was considered to be a public vehicular highway at that time and this is consistent with the information provided in the 1948 and 1952 deeds which describe

the route as a 'public road'. However, it is a dead end – not meeting a public vehicular highway at the eastern end.

No map or documentary evidence has been found suggesting that the route could not or had not been used by the public on foot. When Blacko Parish Council carried out the survey of paths that they believed to be public the route under investigation was not included. The reason for this is not known but by the 1950s the nursery and garages adjacent to the route were in existence and it is possible that the route was missed as its appearance was one of a public road – or that as suggested in the 1948 and 1952 conveyances it was considered by the surveyor to be a public road.

It is not until 1972 that the Parish Council appear to formerly query why the route under investigation is not recorded on the Definitive Map and request that it be included at the next review as it was a well-used route. There is no suggestion at that time that use of the route was being challenged – just that it was not recorded.

Legal and Democratic Services Observations

Information from the Applicant

In support of the application the applicant has provided 12 user evidence forms, 3 of these forms have been completed by 2 people, so 15 users have submitted evidence in total, the information from these forms is set out below:

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

1935-2014(1)	1971-2014(1)	1974-2014(2)	1975-2014(1)
1979-2014(2)	1980-2014 (1)	1989-2014(3)	2000-2014(3)
2006-2014(1)			

All 15 users have used the route on foot and have never used it by any other means, the years in which the users have used the route is the same as which they have known the route apart from one user who has known it from 2000-2014 but has only used it from 2001-2014.

The main place the users were going to and from was from Gisburn Road to Beverley Road, Blacko and Great Stone Edge, and Barnoldswick Road, the main purposes for using the route were dog walking, leisure / pleasure and visiting friends and family and going to the local shop.

The times per year in which the users used the route varies from every day, 5-10, 36-40, 200-250, 300.

13 users agree that the line of the route has always been the same, 1 user stated it was slightly modified about 7 years ago when the fields were fenced off, and it has become more defined since, and the other user states the route has become more permanent since the garages were built which was about 50 years ago.

When asked if there are any stiles / gates / fences along the route, 9 users responded with 'no', 3 users agree that there are 2 stiles, 1 of these users mentioned

they are both at the eastern end of the route, and 2 of the users mention they were at each end and that these gates were locked. 2 users didn't provide details about any stiles / gates / fences but mentions signs were placed saying 'no public access'. All the users agree that they were never prevented access from using the route.

None of the users have ever been a landowner over which the route crosses and 1 user used to be tenant of one of the garages along the route but didn't receive any instructions about the route from the owner.

None of the users have ever been stopped or turned back while using the route, 2 users did mention that the previous owner of the land would often take time out to chat to them as they passed by and sometimes moved their vehicle to allow them to pass with ease. The users have they ever heard of anyone else having been stopped or turning back. The users have never been told by anyone that the route they were taking was not a Public Right of Way.

4 users mention that signs were erected recently, and 2 of these users provided the date of 10/8/14. None of the users have ever asked permission to use the way.

At the end of filling out the user evidence forms, users are asked to provide any further details they feel is relevant, this information is set out below:

- Used often by local folk, why is another local path being closed?
- This path has been used by many residents of the village for many years. There has been a long held assumption that this is a public right of way, no-one has ever to my knowledge contradicted this.
- The path from my home meets the path from Beverley, I then use the track which is the natural continuation of the path from Beverley to Gisburn Road, at matter of only about 100 yards, over a rough unmade motorised road. The user provides a copy of an OS map identify which route he takes, he mentions that large numbers of villagers / walkers / runners use the path past my house and then at the intersection with the Beverley path turn left onto the track and leave Gisburn Road quite safely. Many parents take their children to school at Blacko by this route. The proposed new route is not visible, it would be dangerous in dark winter weather. The past week or so two red signs have been erected saying the track is a private road, these are confusing and intimidating, and also 2 strips of orange fencing have appeared and again are confusing and intimidating. It is my opinion that the use of the track has been the right of way for at least 50 years.
- I have always walked my dogs along this path all my life and to my knowledge has always been a right of way.
- I have lived in Blacko for over the last 30 years and have walked this route regularly. My neighbour who is 87 years of age and has lived in the village all her life told me that it had always been a right of way.
- Born and bred in Blacko, I have always been free to walk to the fields in the area without farmers etc saying no access.
- The usage of this footpath and friendly relationship of the previous owners of the land has been identical, 14 years of constant and free use of the lane to gain access to Gisburn Road.
- I always thought it was a Public Right of Way.

Also in support of the application the application has provided a copy of the Deeds from 439 Gisburn Road, these Deeds show the footpath addition as a footpath in 1881.

A copy of 'Paths Around Pendle' has also been provided, the applicant states this has been in circulation for many years and the proposed footpath is shown as a footpath.

Information from the Landowner

The following response has been received from a landowner that owns part of the application route.

"As owner of the property 2 Black Gisburn Road, we own the land which is suggested become a public footpath.

We are currently undertaking work on the premises and once complete later this year, we want to put a gate at the entrance to our land in order that our children can play safely and no vehicles (apart from ourselves and the local farmer who has access) can access.

May we suggest as an alternative option, permissive access allocation, which allows residents to continue their use as a walkway, while satisfying our own needs as land owners.

As we understand, a permissive access would not appear on Ordnance Survey maps, because it is not permanent.

We would ask for certain parameters of use – such as users having their dogs on leads while passing this area – our daughter particularly scared of them and to ensure no fouling on our land.

We would be happy to place up signage which allows usage, yet detailing the parameters of this use, but do not wish for any formal arrangements; simply 'good faith' on both parts.

We write in good faith and believe that our suggested way forward would meet both our needs and those of the villagers.

And, as owners of the land, we want protection against further access being opened up around our home."

As part of the consultation the Caution holders by Ingham & Yorke and Napthens Solicitors were consulted. A response was received from Ingham and Yorke who explained that their clients are only interested in the mineral rights and underneath this land.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

- User evidence
- Ordnance Survey maps
- Deed Plans (Deeds in possession of Mr R Foster)
- Finance Act 1910
- Aerial photographs
- Revised Definitive Map (First Review)

Against Accepting the Claim

- First edition 25" Ordnance Survey Map – suggestion of a gate or barrier
- One user *may* not be "as of right"

Conclusion

The claim is that the route A – B – C – D is an existing public footpath and should be added to the Definitive Map and Statement of Public Rights of Way.

It is therefore advised as there is no express dedication that the Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in Section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Considering initially the criteria for a deemed dedication under Section 31 of the Highways Act, that use needs to be "as of right" and also sufficient for the 20 year period. The route was called into question August 2014 by the erection of two signs at point B and C on the route stating "Private Road – Private Property – No Public Access – Please Respect Our Privacy" and the period of use from which dedication can be deemed would be 1994 - 2014.

Twelve user evidence forms have been received of which three forms have been completed by husband and wife. Fifteen users claim to have known and used the route on foot "as of right". One user whilst claiming to have used the route from 1935 to 2014 for the purposes of visiting friends and relatives and for the playing field confirms that he was a garage tenant which calls into question whether any of his use is "as of right". Without further information a full assessment of use is not available and therefore the user's evidence has been excluded. The evidence of the fourteen users will therefore only be considered.

Fourteen users indicate knowledge and use of the claimed route A – B – C – D for a continuous period of 20 years or more without interruption suggesting good user evidence for the sufficient period. Some weight is lost in that some information between users is repeated although use by the public at large is satisfied. Purpose of the route was from Gisburn Road to Beverley Road, Blacko, Great Stone Edge and Barnoldswick Road for dog walking, leisure, pleasure and visiting friends and family and going to the local shop.

There is one known landowner of part of the claimed route. The landowner(s) of the remaining parts is unknown and despite the applicant having posted the relevant notices at each end of the claimed route on 27 August, no further landowner information has been received. The known landowner has provided representations 14 May 2015 and explains that once current work on his premises is completed later this year he wants to put a gate at the entrance of his land so his children can play safe and no vehicles can access. The landowner suggests as a way of meeting the needs of the villagers and his own that he provides permissive access subject to dogs on leads and no fouling both achieved by the owner placing signage to this effect.

Considering also whether there are circumstances from which dedication could be inferred at common law, part of the route is shown to exist on the earliest Ordnance Survey 6 inch map in 1844. The whole of the claimed route was shown to exist in 1881 on the Deed Plan and was labelled as a footpath connecting to routes labelled 'Footpaths' now recorded as Public Footpaths 38, 39 and 41 Blacko. With the exception of the first edition 25" Ordnance Survey map showing a possible gate/barrier but with the feasible explanation that routes in 1891 would have been gated for stock control purposes, the full length of the claimed route appears open and freely accessible and capable of connecting to the now recorded Footpaths 338, 39 and 41 Blacko when surveyed for future revisions of the Ordnance Survey mapping. The fact that the route was excluded for the purposes of the Finance Act 1910 suggests the claimed route was a substantial physical route which capable of being used on foot. Use of the claimed route in 1972 is corroborated by the Parish Council raising the fact that the route was not recorded as a public footpath and it considered it ought to be recorded. The existence of the route is also corroborated aerial photographs from 1940s, 1960s, 2000 and 2010.

It is suggested that the way this route is recorded on documentary evidence is not itself sufficient circumstances from which dedication could be inferred, however, sufficient as of right use acquiesced in by the owner(s) may also be circumstances from which dedication can be inferred. The use as evidenced corroborated by the documentary evidence outlined above would suggest that on balance there are sufficient circumstances to infer at common law that the owner(s) in 1994 to 2014, in acquiescing in the use and taking no overt actions actually intended dedicating the claimed route as a footpath and it had become a footpath accepted by the public.

Taking all the evidence into account, the Committee on balance may consider that the provisions of section 31 Highways Act can be satisfied and there is also sufficient evidence on balance from which to infer dedication at common law of a footpath in this matter and that the claim be accepted.

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/Directorate/Tel
All documents on File Ref: 804-559		Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A