

# Appendix A

## Regulatory Committee

Meeting to be held on 17<sup>th</sup> December 2014

Electoral Division affected: Rossendale West
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## Wildlife and Countryside Act 1981

### Definitive Map Modification Order Applications

1. **Application to add a Public Footpath from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough**  
File No. 804-551
2. **Application to add a Public Footpath in a circuitous route, starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough**  
File No. 804-552  
(Annex 'A' refers)

Contact for further information:

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### Executive Summary

1. An application for a public footpath from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-551.
2. An application for a public footpath as a circuitous route starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-552.

### Recommendation

1. That the above application reference 804-551 be rejected
2. That the above application reference 804-552 be rejected

### Background

Two separate applications duly made under Schedule 14 of the Wildlife and Countryside Act 1981 have been received from; (1) Mr John Barnes on behalf of the Rossendale Peak and Northern Footpaths Society and (2) Mr Frederick Hope, for an investigation into two footpaths crossing over the same area of land at Laund Hey, Haslingden, Rossendale Borough. These applications involved alleged footpaths which overlap and need to be taken together, the combined effect of which, if successful, is to add two footpaths to the Definitive Map and Statement:

- (1) 804-551 - a footpath (referred to as 'the direct route') extending from a point on Laund Lane (Haslingden BOAT 134) in a direct route to a junction with Haslingden Footpath 109, a distance of approximately 560 metres and shown between points A-H-B-C-G on the attached plan and
- (2) 804-552 - a footpath following a circuitous route from the same point on Laund Lane, generally following around the northern side of the same field to meet the above route at a point close to its junction with Haslingden Footpath 109. A distance of approximately 740 metres and shown between points C-D-E-F-H-A on the attached plan.

The land in connection with these applications is owned by Rossendale Borough Council.

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

An order will only be made if the evidence shows that:

- A right of way "subsists" or is "reasonably alleged to subsist"
- Or
- "The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path"

When considering evidence, if it is shown that a highway once existed then highway rights continue to exist ("once a highway, always a highway") even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the 1981 Act (as explained in Planning 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 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 the original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. 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**

### Rossendale Borough Council

Rossendale Borough Council (RBC) has been consulted and is also the landowner in connection with both applications. RBC objects to both of the applications for the following reasons:

1. The land is owned by the Council registered at the Land Registry under Title Number LAN79804 and other than footpath 109, the public are not permitted to enter the land unless with consent.
2. The land is subject to use agreements with a local farmer and a model aeroplane flying club. Both parties do not allow entry onto the land without permission.
3. The nature of its permitted use is not conducive to public access. There has been an incident reported to the Council in 2012 whereby a member of the public on the field was narrowly missed by a low flying model plane. The public should not have unconditional access to land where dangerous activities are taking place.
4. Ground conditions are not suitable for public access.
5. The proposed route does not lead anywhere other than around a self-contained field.
6. Other public rights of way are available in the locality.

The Council mentions that it has owned the land since 30<sup>th</sup> March 1921 by virtue of a Conveyance dated 30<sup>th</sup> March 1921 made between (1) Thomas Heys & J T Munn and (2) the Mayor Aldermen & Burgesses of the Borough of Haslingden.

The Council has granted permission to third parties to use its land:  
1) Rossendale & Hyndburn Model Aircraft Flying Club have had a licence to use the land since 1988.

2) A Farm Business Tenancy has also been granted to a local farmer in August 2013 in respect of the Council's land. This tenancy is subject to the Licence granted to the model aircraft flying club.

### Parish Council

There is no Parish Council for the area affected.

### Applicants/Landowners/Supporters/Objectors

The evidence submitted by the applicants/landowners/supporters/objectors and observations on those comments is included in 'Advice – County Secretary and Solicitor's Observations'.

## Advice

### Environment Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (Grid Square SD)	Description
A	7927 2365	Squeeze stile exiting from Laund Lane (Haslingden BOAT134) onto field
B	7953 2375	Gap in vertical flagstone boundary.
C	7979 2385	Junction of the circuitous application route with the direct one
D	7971 2396	Point just south-south-west of where Haslingden Footpath 109 crosses the field boundary
E	7949 2388	Gap in vertical flagstone boundary
F	7930 2382	Point just south-west of where the power lines pass over the northern field boundary wall
G	7980 2385	Junction with Haslingden Footpath 109
H	7928 2365	Junction of circuitous route with the direct route

### Description of Route

A site inspection was carried out on 22<sup>nd</sup> February 2014 and 27<sup>th</sup> November 2014

- (1) The direct application (804-551) route commences at a point on Laund Lane, an entrance to a field by a squeeze stile approximately 0.4m wide in the stone wall (Point A). The stile incorporates a stone step and metal post in the middle of the gap in the stone wall, which has the effect of permitting walkers but preventing use by horses, bicycles, wheelchairs, buggies and preventing cattle passing through. There is trodden evidence on the ground around this gap which shows that the route at this point is heavily used. The route meets the junction of the direct route and the circuitous route at Point H, approximately 2m from the squeeze stile. The direct route then extends in a general east-north-easterly direction following a trodden route approximately 1m wide on the ground towards a line of old vertical flag stones, with a new fence alongside. The route then crosses the field boundary via a gap in the vertical flagstones (Point B). A 3m wide padlocked gate within a newly erected fence is now located about 1m in front of the original boundary. The route

then continues across a second field to meet the junction with the circuitous application route (Point C) and meets Haslingden Footpath 109 at a 3m wide gate at Point G. The total length of the application route is approximately 560 metres.

- (2) The second application route (804-552), the circuitous route, follows the same points as above as far as point C. Once at point C, before meeting the junction with Haslingden Footpath 109, this application route heads in a north-westerly direction running in parallel with and adjacent to Haslingden Footpath 109 to point D. There is no trodden evidence of a route on the ground at this point. The old field boundary has since gone, but there is a very distinct trodden line for Haslingden Footpath 109. At point D, the route then heads south-west along a well-trodden route approximately 1m wide on the ground and continues towards the old vertically flagged field boundary which currently has new fencing on the west side (Point E). The route passes through a gap in the flags and continues in the same direction to Point F, following the trodden line. The route then heads south to meet point H, the junction of the circuitous route with the direct route. Exit of the field is then via the squeeze stile at Point A. The total length of the application route is approximately 1310 metres.

There is an overall width of 2m, as indicated by a 1m trodden route on the ground giving half a metre either side, except for where the route is restricted for example at the stile at point A.

There are no deterrent signs located along the application routes to suggest that the land is private property or that anybody found crossing the land would be trespassing. There is a squeeze stile located at point A on entrance to the field and gaps in the vertical flags at points B and E, but there were previously no other gates, stiles, fences or walls across the route until September 2013 when users state that a padlocked gate and fencing was erected preventing access close to points B and E. The landowner has allowed access through the fence close to the wall, but this takes walkers off the application route.

The land which these applications cross, Laund Hey, has a very diverse history. Research indicates that the land has been in use for hundreds of years as a recreational site, dating as far back as the 1860s when the land was used for bowling practise and cricket for the local people of Haslingden. Information from the applicant suggests that 'Laund Hey was left to Haslingden Borough Council for the use and recreation of the people of Haslingden, this land was left in a will'.

Further research found that the land was used to hold horse racing until it was enclosed for cultivation. This is a clear indication that the general public (or at least the local people of Haslingden) would have gained access to this piece of land for various different reasons, and could have used either of the application routes.

It is also noted that the field which the application routes cross closest to Laund Lane is currently rented out and has been in use by the Model Aeroplane Flying Group since 1988.

If an Order is made and confirmed, this particular activity on the land could pose a health and safety risk to pedestrians, as low flying aircraft could pose a potential hazard to walkers. The tenant farmer has also erected new fencing along the application routes at the boundary of points B and E. Although he has blocked the application routes off, he has left space at the boundary wall to allow walkers to pass through; this could indicate his knowledge of a public footpath passing through the land.

### Map and Documentary Evidence

<b>Document Title</b>	<b>Date</b>	<b>Brief Description of Document &amp; Nature of Evidence</b>
<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 application routes are not shown.
Investigating Officer's Comments		The routes did not exist as major routes at that time. They may have existed as minor routes but due to the limitation of the scale of the map, public footpaths were unlikely to have been shown. Therefore no inference can be drawn.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map.
Observations		The routes are not shown.
Investigating Officer's Comments		The routes did not exist as major routes at that time. They may have existed as minor routes but due to the limitations of scale, a footpath may not have been drawn.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map.



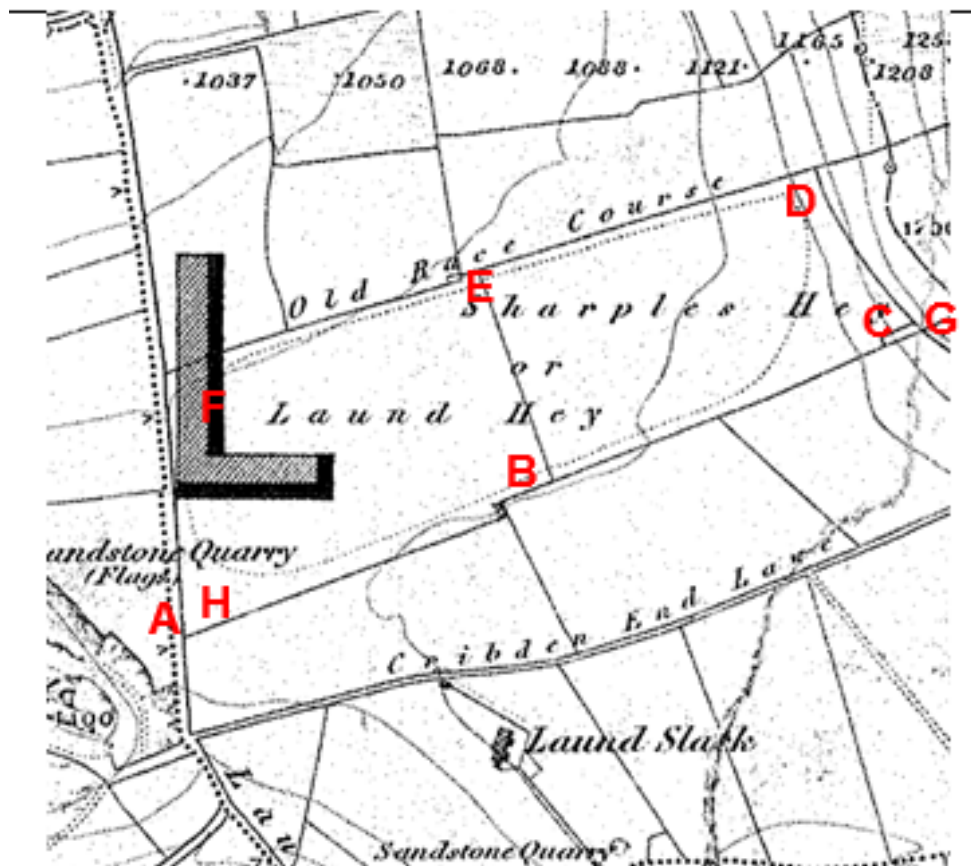
Observations		Laund Lane has been recorded on Hennet's map, which is currently recorded as a Byway Open to all Traffic. Neither of the application routes are recorded on this map, but due to the nature and scale of this map, this is not uncommon.
Investigating Officer's Comments		The map is of such a scale that public footpaths have not been recorded. No inference can be drawn as to whether they existed at this time.
<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		There are no Canals or Railways in close proximity to the application routes.
Investigating Officer's Comments		Therefore no inference can be made.

<b>Tithe Map and Tithe Award or Apportionment</b>		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		No Tithe Map or Apportionment available.
Investigating Officer's Comments		No inference can be made as to whether either of the application footpaths existed at this time.
<b>Inclosure Act Award and Maps</b>	1835	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Act Award or Map available for the area of Haslingden.
Investigating Officer's Comments		No inference can be made.
<b>6 Inch Ordnance Survey (OS) Map</b>	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1849. <sup>1</sup>  (Sheet no.71)

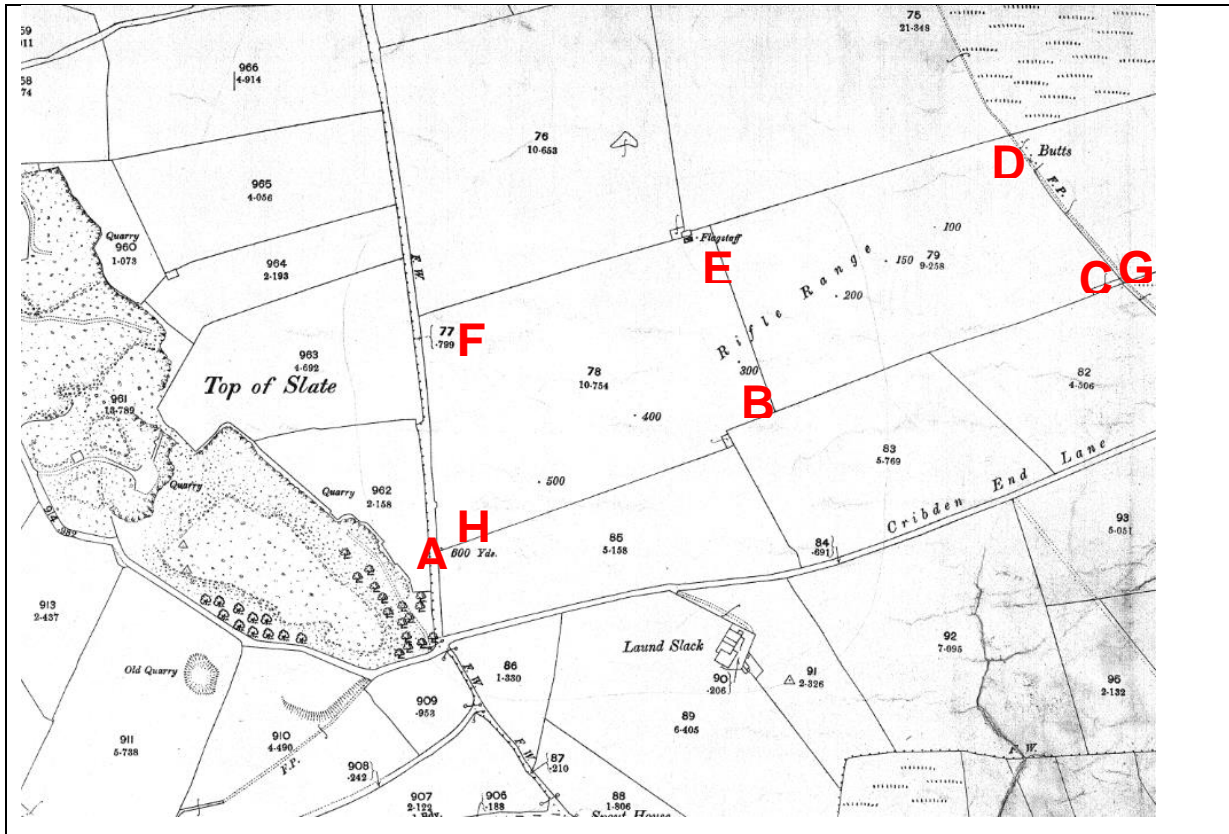
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<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.





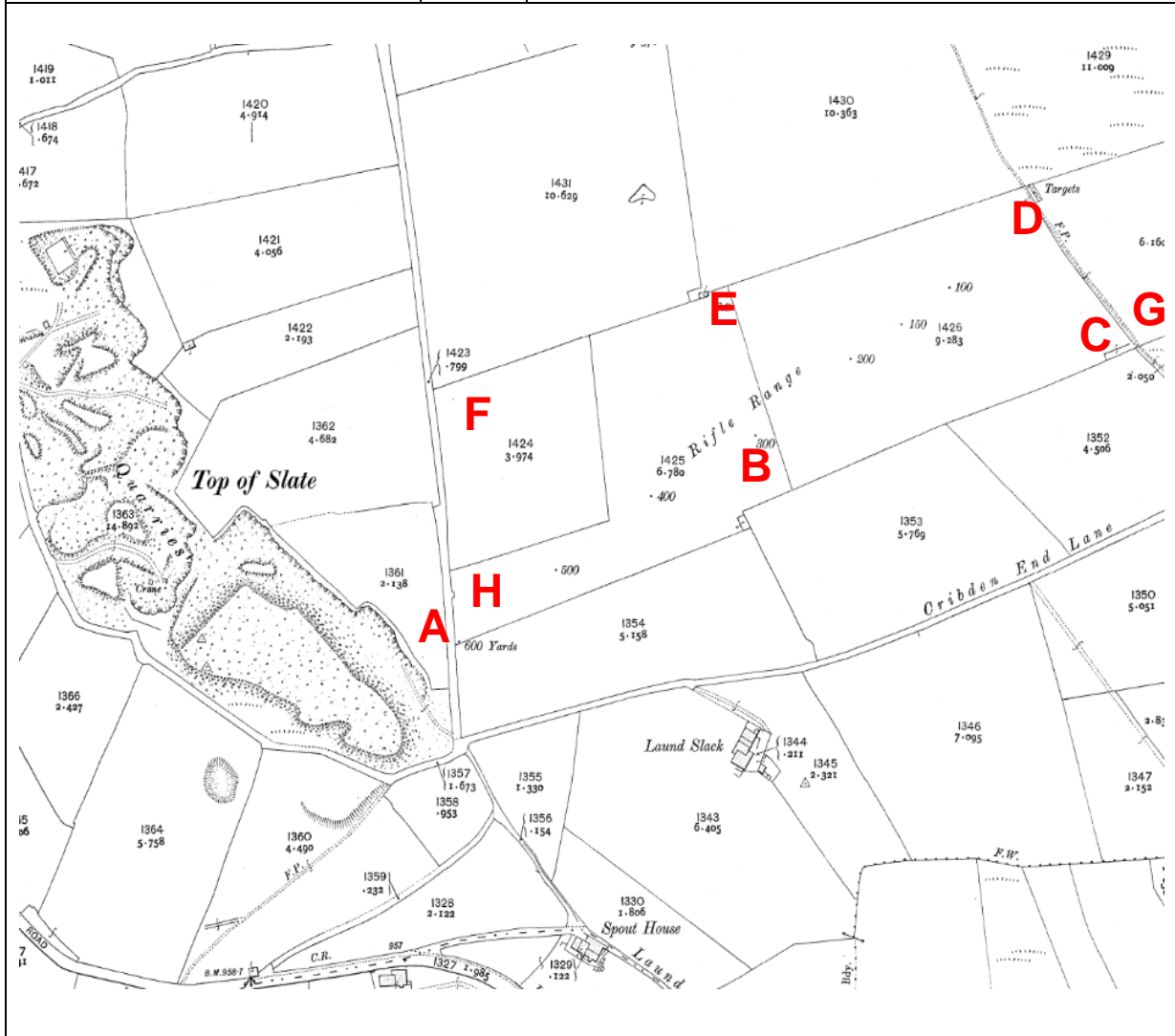
Observations		<p>A circular dotted line is shown circulating Laund Hey, similar to but not the same as where the application routes run.</p> <p>The area of land is labelled "Old Race Course" and "Sharples Hey or Laund Hey".</p>
Investigating Officer's Comments		<p>The area of land has been recorded as being an 'Old Race Course' this indicates that the land is no longer in use as this, but does still show the area of where the racecourse was in relation to the land. The line of the racecourse, although similar to the line of the application routes, does not give any evidence for the application routes.</p>
<b>25 Inch OS Map</b>	1893	<p>The earliest OS map at a scale of 25 inch to the mile was published in 1893. (sheet no. 71/12)</p>



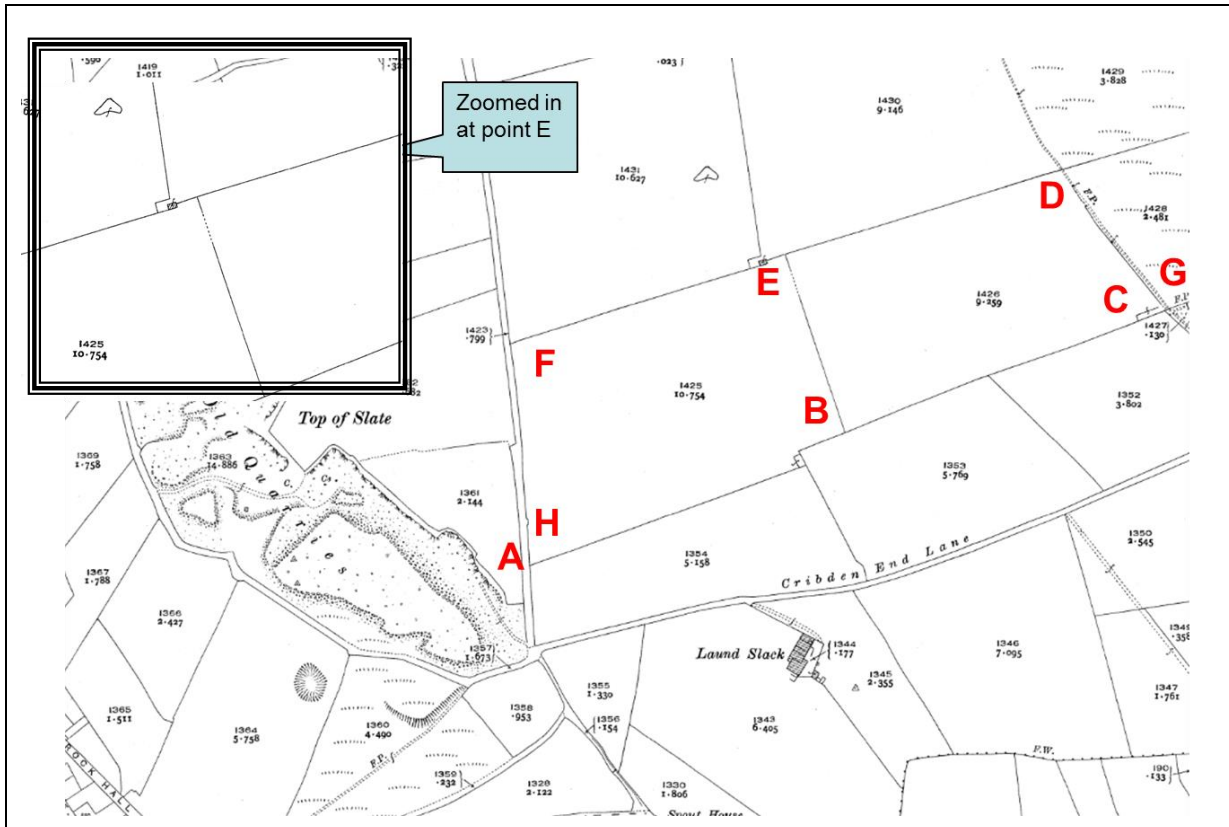
<p>Observations</p>	<p>By 1893 the land has changed use and is now labelled as "Rifle Range". This indicates that the area of land is still in use, even though neither of the application routes are shown on the map. Other public footpaths in the area have been recorded, particularly Haslingden Footpath 109 (running parallel to C-D) and BOAT 134 (running parallel to A-F, recorded as a footpath at this time).</p>
<p>Investigating Officer's Comments</p>	<p>The application route is not shown on the map, therefore it is presumed that the application routes did not exist at the time. Public footpaths on that land may have been incompatible with use as a rifle range.</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 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>
<p>Observations</p>		<p>The Finance Act Map has been inspected and does not record the application footpaths.</p> <p>The Finance Act Valuation Book records the plot of land 'Laund Hey', but does not note any public rights of way crossing the land for purposes of reducing tax. However this does not give conclusive evidence that a route does not exist.</p>
<p>Investigating Officer's Comments</p>		<p>No inference can be made from the Finance Act 1910 Valuation book or map.</p>

<b>25 Inch OS Map</b>	1911	Further edition of 25 inch map, re-surveyed 1890-2, revised in 1909 and published 1911
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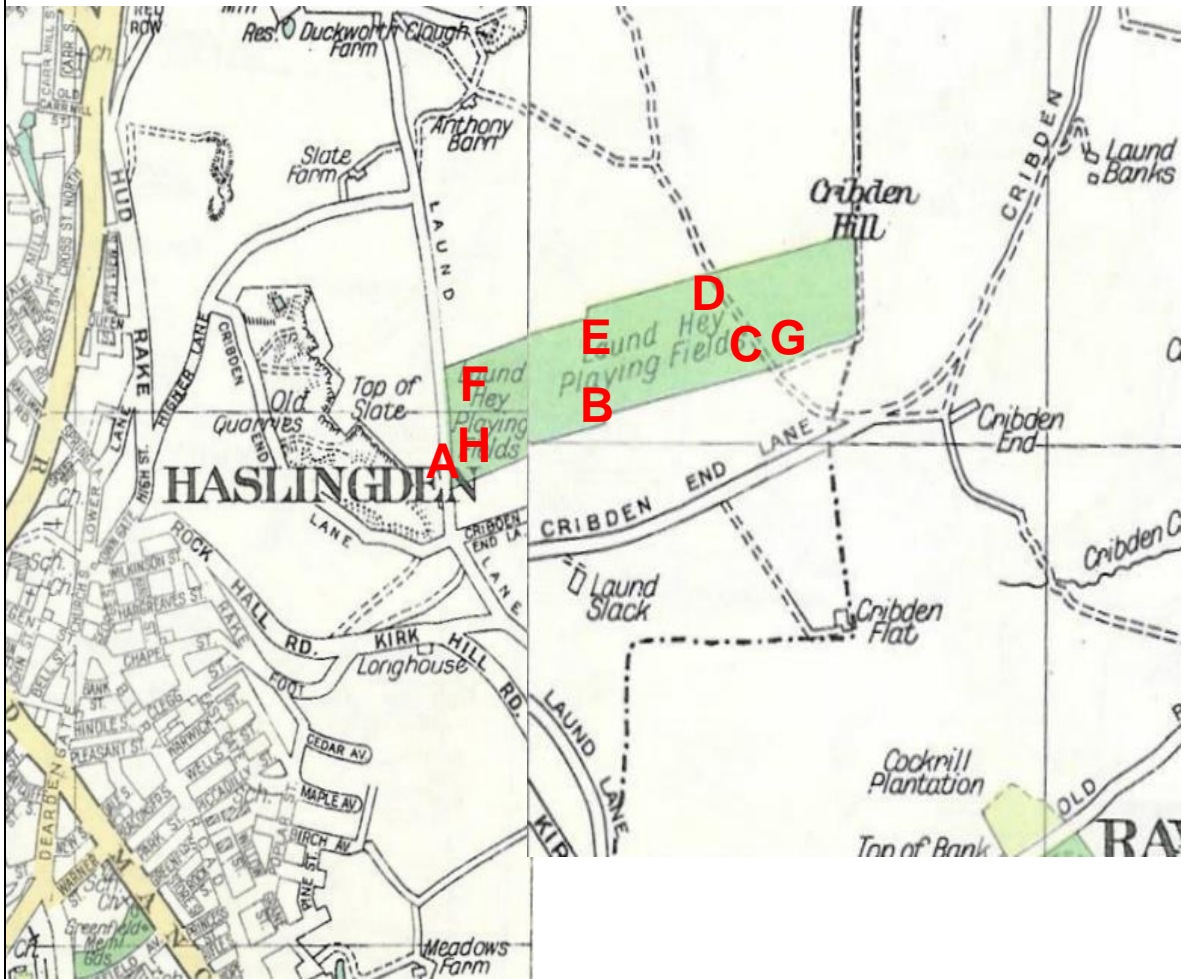


Observations		There is no evidence shown on the map for either of the application routes. The land remains labelled as a Rifle Range.
Investigating Officer's Comments		The map does not show either of the application routes. The land is recorded as being used as a rifle range which suggests that use of the routes would at times not have been possible.
<b>1:2500 OS Map</b>	1930	Further edition of 25 inch map resurveyed 1890-2, revised in 1928 and re-leveled and published in 1930.



Observations		Neither of the application routes is shown on the 1930 map. However at point E there is a change in the boundary. The zoomed image shows how the boundary changes from a solid line (indicating a field boundary) to a faint dotted line. Dotted lines indicate a change of surface, and the lack of solid line could indicate that there was a way through for walkers at this point. The land is no longer labelled as "Rifle Range", giving no indication to the use of the land at this time.
Investigating Officer's Comments		A single dotted line indicates a change of the surface; therefore it is presumed that there was not a solid field boundary located at this point. This gap in the boundary could have provided access through Point E but provides no positive evidence of a footpath.
Map Directory of South Lancashire	1934	Map Directory of South Lancashire

(Merged image)



<p>Observations</p>		<p>The area over which the two application routes run is recorded on the Map Directory of South Lancashire as "Laund Hey Playing Fields". There is a path or track shown crossing the land but the application routes are not shown.</p>
<p>Investigating Officers' Comments</p>		<p>The naming of the land is important as it gives a clear indication that local people would have been using the land for recreational purposes. Use of the application routes as footpaths would potentially not be apparent to the landowner who may have presumed it to be use of the playing fields in the permitted manner. The fact that another route is shown crossing the land but the application routes were not shown implies that the latter did not exist at the time.</p>

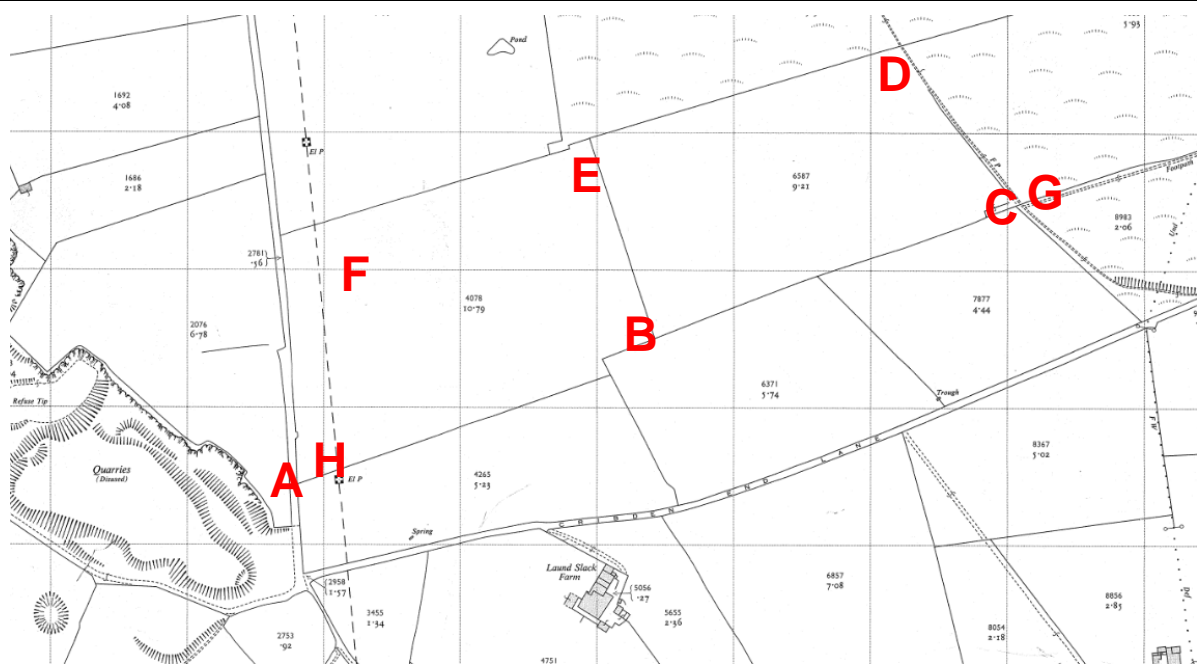
Aerial Photograph <sup>2</sup>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
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Observations	<p>The aerial photograph is of generally good quality for the time. There is a clear distinction of the used road network and also of that used as a way on foot over land.</p> <p>There is a clearly defined trodden route between points A-H-B-C-G, the direct application route.</p> <p>The circuitous application route between points C-D-E-F-H is not visible at this time.</p>
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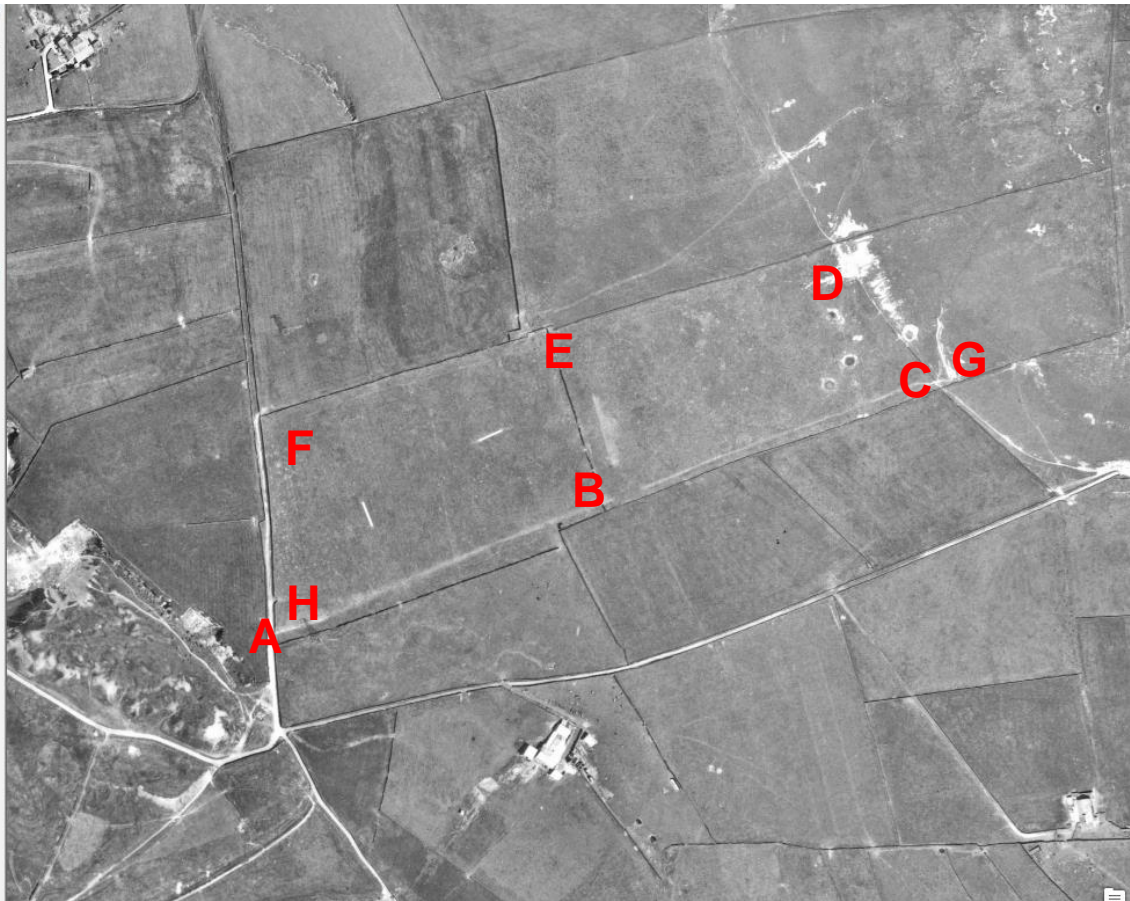
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

Investigating Officer's Comments		The application route along points A-H-B-C-G appears to have existed on the ground in 1940.  The circuitous application route probably did not exist in 1940 along points C-D-E-F-H.
<b>6 Inch OS Map</b>	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
Observations		The application routes are not shown on the map.
Investigating Officer's Comments		The routes did not exist at the time of when the map was surveyed.
<b>1:2500 OS Map</b>	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published in 1963 as national grid series.



Observations		The application routes are not shown on the 1963 map. Similarly to previous maps, the use of the land has no longer been recorded. Haslingden Footpath 109 is recorded in close proximity to the application routes.
Investigating Officer's Comments		It can be inferred that the application routes did not exist on the ground at this time.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph was taken in the 1960s and is available to view on GIS.





<p>Observations</p>		<p>The direct application route is visible on the 1960 aerial photograph between points A-H-B-C-G.</p> <p>The application route is faintly shown in some parts on the 1960 aerial photograph between points C-D-E-F-H.</p>
<p>Investigating Officer's Comments</p>		<p>The application route appears to have existed on the ground in the 1960s along points A-H-B-C-G.</p> <p>The application route does not appear to have existed significantly in the 1960s along points C-D-E-F-H.</p>
<p><b>Aerial Photograph</b></p>	<p>1989</p>	<p>Aerial photograph available to view at the County Records Office.</p>



Observations

The direct application route is visible around point B.

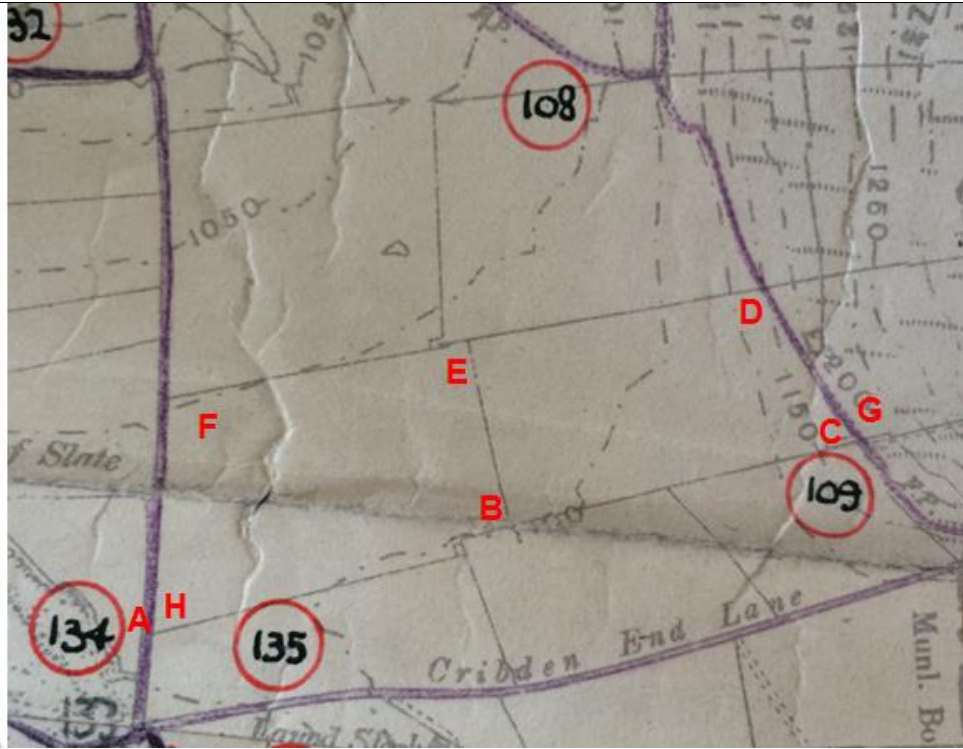
The application route is visible between points E-F towards H

Apparent use of part of the land for motorbike scrambles makes it difficult to determine if there are any trodden lines from walkers between points B-C-G and C-D-E.

Investigating Officer's Comments

Some use is evident on the ground for part of the route near point B and E-F towards A. However, use of part of the land for motorbike scrambles would be inconsistent with dedication of public footpaths and is likely to have been an actual interruption to use and challenge to any use of the application routes as of right. A scramble of the size evidenced by the tracks on the ground is most unlikely to have taken place without the acquiescence of the landowner.

<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	<p>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.</p>
<b>Observations</b>		<p>Haslingden was a municipal borough and therefore does not have a parish survey map.</p>
<b>Draft Map</b>		<p>The parish survey map and cards for the rural districts were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>As Haslingden was a municipal borough they prepared the Draft Map directly.</p> <p>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.</p>



Observations		The application routes are not recorded on the Draft Map.
<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 Provisional Map does not record either of the application footpaths.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		Neither of the application routes are recorded on the Definitive Map and Statement.

<p><b>Revised Definitive Map of Public Rights of Way (First Review)</b></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 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.</p>
<p>Observations</p>		<p>Neither of the application routes are recorded on the Definitive Map First Review.</p>
<p>Investigating Officer's Comments</p>		<p>Neither of the application routes are recorded during the process to prepare and review the Definitive Map and Statement and there were no objections to the route not being recorded.</p>
<p><b>Aerial Photograph</b></p>	<p>2000</p>	<p>Colour aerial photograph taken in 2000.</p>



Observations		At first glance, there does not appear to be anything shown on the 2000 aerial photograph. However, on close inspection a faint trodden line is shown, between points B-C-G and D-E-F-H.
Investigating Officer's Comments		A trodden line is shown in 2000, supporting evidence of use of parts of both application routes.
<b>Aerial Photograph</b>	2010	Colour aerial photograph taken in 2010.



Observations		Parts of the direct and of the circuitous route are visible on the 2010 aerial photograph. There is a clear visible line on the ground showing between points A-H, B-C-G and D-E-F-H and part of the application route between H-B.
Investigating Officer's Comments		The majority of both of the application routes existed in 2010 as shown by the clear trodden line on the ground.

<p><b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b></p>		<p>The owner of the 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>
<p>Observations</p>		<p>There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the application routes run.</p>
<p>Investigating Officer's Comments</p>		<p>There is no indication by a landowner under this provision of non-intention to dedicate any public rights of way over their land.</p>

The application routes do not cross a Site of Special Scientific Interest or Biological Heritage, nor does it cross access land under the provisions of the Countryside and Rights of Way Act 2000.

The affected land is not registered common land.

**Landownership**

Rossendale Borough Council is the landowner for both of the applications.

## Summary

There is no documentary evidence showing that public rights might exist along the application routes. Neither of the application routes is recorded on any of the early commercial maps, Ordnance Survey Maps or the Definitive Map records.

Some of the aerial photographs from 1940 through to present day support the existence of parts of the routes on the ground. From the restrictive squeeze stile at Point A it can be inferred that use was most probably only on foot.

There are solid field boundary lines which cross the application routes at points A, B and E, and on older maps at point G. If gates/stiles were situated along these boundaries they would not have necessarily prevented access along the route and the existence of such structures on a route crossing farmland is not uncommon.

The Model Aeroplane Flying Group has rented part of the land out since 1988 and motorcycle scrambling is evident from the aerial photograph in 1989. This could be considered to bring into question the claimed public rights, it could be seen as a non intention to dedicate by the landowner (RBC) and is likely to have actually interrupted use when those activities were happening on the land.

## County Secretary and Solicitor's Observations

### (1) Comments to 804-551

The applicant has provided the following details in relation to the application:

1. Long established path running west to east across Laund Hey approx. 1 metre wide and running 10 metres north of the field boundary wall, which is parallel to Cribden End Lane.
2. The claimed path begins at a well-constructed squeeze-stile, wide enough to admit a pedestrian.
3. The claimed path is clearly visible on an aerial photograph, taken in the 1960s and displayed on LCC's "Mario" site.
4. The claimed path did pass through a 5-metre wide gap in the original vertical flagstone field boundary. There was no fence and gate across the route before Sept 2013.
5. The claimed path proceeds eastwards to intersect with an undisputed path running SE to NW around the western flanks of Cribden Hill. It also gives access to the top of Cribden Hill along the north side of a wall climbing the hillside. I believe this to be open access land and badge signs on walls and fences at 798238, 799239 and 799240 seem to confirm this.
6. Laund Hey is an area of flat land, albeit at a high elevation, which has been recognised as an area for popular recreation, both organised and informal, over centuries.
7. A noticeboard, erected by the borough council and its partners nearby, informs visitors of its use as a racecourse in the 18<sup>th</sup> century. There is a documented history of cricket, football, rugby, rifle-shooting, motorcycle-scrambling and model aircraft-flying at the site. A booklet produced by



Rossendale Groundwork in the late 1980s called "Making Tracks" in the "Changing Faces of Rossendale" series (ISBN 0947738169) lists some of these and, ironically, is co-produced by the Borough Council.

8. In recent times it has been especially popular with dog walkers as improved road access and parking at the adjoining Halo site have made arriving by car, to walk in open countryside with fine views, easier.

- A photograph has been provided which shows a squeeze stile at Laund Lane
- Another photograph shows the path along Laund Hey beyond the squeeze stile
- A screenshot of LCC Mario site shows the claimed path across Laund Hey, it is not shown on the Definitive Map but is clearly visible on the 1960s aerial photograph
- A further photograph show the gateway across the application route with the gate that was placed in September 2013
- 2 photographs of Halo Slate – Lancashire and Rossendale Councils boast of Laund Heys historical recreational use

Guided Walks, organised by Groundwork and Rossendale Borough Council, have used Laund Hey Haslingden (on behalf of public access as of right). These walks are after 2000. They have used it more since 'Watery Lane' was much improved in 2003. Prior to, the conditions underfoot has been very bad.

4 <sup>th</sup> September 2011	'Halo Again'	22 attended
1 <sup>st</sup> November 2009	'Steps of Cribden'	19
7 <sup>th</sup> April 2008	'Halo and Cribden Side'	10
7 <sup>th</sup> August 2005	'Halo, Halo, Halo'	29
14 <sup>th</sup> November 2004	'Tracks of Time'	27
6 <sup>th</sup> July 2003	'Watery Lane'	29
7 <sup>th</sup> July 2002	'Little Ireland'	32

The applicant has provided 10 user evidence forms to support the application. 1 form has been excluded as they haven't used the route. The evidence is as follows:

All 9 users have known the route for over 20 years, 7 users have known the route long than this: 1 user claims they have known the route for 30 years, another user states 33-34 years, 1 user states 38 years, 1 has known the route for 45 years, 2 have known the route for 50 years and 1 has known it for 60.

8 users have used the way on foot and the years in which the route was used varies from:

1997-2013, the last 20 years, 1980 – present day, past 30 years, the last 38 years, 1968-2009, late 1960s – present (2), 1950s-2010

Only 5 user stated where they were going from and to:

1. To link to the footpath around Cribdens flanks from Cribden End Lane to Duckworth Clough and to go to the crest of Cribden Hill
2. generally walking the area
3. was going to the model flying club
4. from Oswaldtwistle to Rossendale
5. Rawtenstall, Stonefold or access to Cribden Hill

The users use the route for walking, pleasure, leisure, dog walking, motor cycle sport and fitness.

How often the route is used varies:

100 times since 2010, 200 times per year, 3 times per week, most weekends, most days, 700-800 times per year, 2 or 3 times a year.

1 user has used the route on motor cycle and for model flying, no other user has used the route by ways of other means.

5 users agree the way has always run over the same route, 1 user states it has until the route was blocked by a barbed wire fence in September 2013, another user states that it has always been the same path with no variations until recently when the field has been fenced and they have to go through the muddy stile, 1 user states it is exactly the same route several metres from and running along the boundary wall and 1 user is not sure.

1 user states there were no stiles / gates or fences before sept 2013, the vertical flagstone boundary did not obstruct the claimed path and a 5 metres wide 'gateway' with prominent pillars gave the pathway alignment, another user claims that there were never any stiles / gates or fences until the past few months when the farmer had fenced off parts of the field. 2 users agree there is a stile on the west side, 1 user is not sure, 1 user states 'no' and another states 'yes' but did not provide any details.

1 user claims the gate that was erected in September 2013 is padlocked, another user states that the gate on the line of the original path is locked so they took a 'short diversion' through the stile, 1 user claims the gate was locked in later years, another user states the main gate (not stile) was locked by the model aeroplane club for their vehicular access are 2 users are not sure if any gates are locked.

None of the users have ever worked for a landowner or have been a tenant of any land over which the route passes.

1 user turned back when using the way only due to the state of cattle trod mud at the stile - not by any person.

None of the users have ever heard of anyone else having been stopped or turned back when using the way.

None of the user have not been told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not a public right of way on foot.

The users have also never seen any signs such as 'Private' on or near the way. All 9 users agree they have never asked permission to use the way.

## (2) Comments to 804-552

Evidence provided by the applicant.

The applicant has provided a statement as part of his application. He explains that the path he has requested to be added to the Definitive Map has been used for decades mainly by dog walkers, but the whole of Laund Hey was always completely open to the public. People have used the route for picnics, kite flying, football, cricket, rugby and rambling for over 60 years that he can remember. He also states that Laund Hey was left to Haslingden Borough Council for the use and recreation of the people of Haslingden, the land was left in a will. This entire land has been used weekly for decades unopposed and unrestricted.

At a later date the applicant provided a further statement stating that Public Footpath 135 Cribden End Lane is very rarely used by members of the public, access to Public Footpath 109 has always been from Laund Hey, Footpath 135 is a narrow lane used by farm vehicles which is why the public refrain from using it.

The applicant has provided 19 user evidence forms in support of his application.

17 users have known the route for 20 or more years, some have known the route for 30, 40, 50, 60 and 70 years. 1 user has known the route for 12 years and another user did not provide any times scales.

All 19 users have used the route on foot.

All 19 users have used the route up until 2013 (when it was blocked), 1 user has been using the route since 1948, 4 users have used it since the 1950s, 1 user has used the route since 1963, 4 users have used the route since the 1970s, 7 since the 1980s, 1 since 1990 and 1 since 2001.

Most users used this route to get to and from Laund Hey, 1 user mentions using this route to get from Kings Highway to Cribden and another from home to Crawshawbooth. The main purposes for using this route are for dog walking, leisure walking, exercise and for watching the model aeroplane club.

The number of times the users use the route varies from every day, 200 times per year, 1-2 per week to just 5 times a year.

None of the users have used the route by any other means, however 17 users have seen people using the route on horseback. 3 users state they have seen others using the way either by walking, having a picnic or dog walking. 12 users state that they have seen others along the way by use of other means but did not provide any further details and 1 user has also seen mountain bikes being used, 3 users have never seen other users using the way other than walking.

The years in which users saw others using the route either on horseback, walking, dog walking, mountain biking or picnicking varied from the 1940s, 1950s, 1970s, 1980s, 1990s and 2000s, users saw others during this time 'regularly' or 'frequently'.

18 users all agree that the route has run over the same line, 1 user did not provide a response to this question.

15 users have never seen any stiles, gates or fences along the claimed route, 2 users state there is a stile but no further details have been provided, a further 2 users stated 'as attached', however nothing further was attached. 16 users state that no gates were locked, 1 user did not provide a response to this question and the same 2 users stated 'as attached'. 18 users have never been prevented access along the way, 1 user states not until august / September 2013.

18 users have never worked for a landowner over which the route crosses, 1 user did not provide a response to this question. All 19 users have never been a tenant of any land over which the route passes.

None of the 19 users have ever been stopped or have turned back when using the way, nor have they heard of anyone being stopped or having turned back until August / September 2013.

All users agree that they have never been told by any owner / tenant of the land or anyone in their employment that the route they are crossing is not a Public Right of Way on foot. None of the users have ever seen any signs along the way nor have they ever asked permission to use the way.

A letter has been received from Ingham & Yorke who hold the mineral rights for this location, they state it is not pertinent for them to make comment on the proposed footpath as this has no direct impact on their interest.

## **Assessment of the Evidence**

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

#### **In Support of the Claim**

User evidence forms

#### **Against accepting the Claim**

Map Evidence

## **Conclusion**

Committee will be aware that in order for the way to become a public footpath there would need to have been a dedication by the owner at some point in the past and acceptance by the public. There is therefore a need to consider whether there is

evidence that the claimed footpath can be reasonably alleged to have already been dedicated in which case the test for making an order would be satisfied and to then consider whether on balance there is evidence that the claimed route has been dedicated and the higher test for confirmation can be satisfied.

As there is no express dedication, it is suggested Committee considers firstly whether, in all the circumstances there is evidence from which dedication can be inferred at Common Law and to then secondly consider whether there is sufficient evidence from which to deem dedication from use under S31 Highways Act 1980.

Looking firstly at whether dedication can be inferred at common law. The Executive Director for Environment has considered the historical map evidence, the evidence suggests the route claimed by the two applications cannot be seen on any of the early commercial maps or Ordnance Survey Maps and is suggestive the route was not likely to have been in existence. The only early aerial photographs showing the full length of the direct route (A-H-B-C-G) are the aerial photographs taken in 1940 and 1960, the circuitous route (C-D-E-F-H) is only faintly showing on the 1960 aerial photograph. Thereafter, the 1989 aerial photograph only shows use near point B and E-F as part of the land had been used for motorbike scrambling; motorcycle scrambling is inconsistent with dedication as a footpath. The aerial photograph of 2000 only shows use of parts of the routes, a fine trodden line is shown between points B-C-G and D-E-F-H. The 2010 aerial photograph then shows the majority of the route as a clear trodden line on the ground between points A-H-B-C-G and D-E-F-H. On balance, the map evidence is considered to be insufficient to reasonably allege the route was a historical public footpath.

The Model Aeroplane Flying Group had been granted a license to use the land by the landowner since 1988 and it is therefore reasonable to conclude on balance, the landowner did not intend to dedicate the routes as public footpaths, bearing in mind it would be dangerous for members of the public to have used the claimed routes at the same time as the flying activity was taking place. It is therefore suggested to committee that inferred dedication cannot on balance be satisfied.

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

It appears on balance that the route was called into question in September 2013, as this is when users suggest they were prevented from using the line of the claimed route due to locked gates and barbed fencing being erected across the route therefore, on balance it is reasonable to conclude the 20 year period under consideration would be from 1993-2013.

### **The Direct Route**

Evidence of use has been provided in 9 user evidence forms in relation the direct route. All users claim to have used the route for 20 years or more, the longest period of knowledge and use of the route being 60 years (1 user). Claimed use is consistent with use as a public footpath. Frequency of use differs with some users claiming the route has been used between 700-800 times per year, 2-3 times per week or to 2 or 3 times a year.

On balance, it appears, the use has been sufficiently frequent. It is suggested that for use to be sufficient it would need to be more than of the appearance of being sporadic and sufficient to show use by the public as a whole. Use must also be as of right, it must be without force, without stealth and without permission. On balance there does not appear to have been use with force or stealth during the 20 year period under consideration. One user may have used the route with permission, as he suggests in the user form he used the route to go the model flying club. The applicant also states guided walks had been organised since 2000 by Rossendale Borough Council however such use would equate to use with permission, as Rossendale Borough Council owns the land.

### **The Circuitous Route**

Evidence of use has been provided in 19 user evidence forms in relation the circuitous route. The user forms specify the route is 'from: Laund Hey' but do not specify where this route should end, it is appreciated that this is a circuitous route so users would end up back at the same point however; there does not appear to be any plan annexed to each claim form to delineate the circuitous route they are referring to in their claim form which begs the questions whether all users have used the same line of the route being claimed. Users claim to have used the claimed route between 20 to 70 years. The use seems to be sufficiently frequent ranging from daily use to 5 times a year, use is suggestive as not having been used without force, stealth and without permission.

### **Both Routes**

The landowner's action, granting a licence to the Model Flying Club suggests the landowner did not intend to dedicate the route as a public footpath, as this a dangerous activity, is incompatible with use of the land for flying model aircrafts especially as the claimed route runs close by the club's storage containers and they would not have intended members of the public to use the route at the same time as this activity was taking place. It is suggested the land over which the claimed routes run had been open to public for recreation and therefore; it would not be reasonable for the landowner to have been expected to notice users were following a consistent route.

The aerial photographic evidence for the 20 year period under consideration is not supportive of the entire route having been used in 1989 which predates the 20 year period, the aerial photograph of 2000 only shows part of the route, as detailed above. The 2010 aerial photograph also fails to show the length C-D, it seems on

balance that the users may have in fact been using footpath number 109 as opposed to the separate line C-D, as claimed as there is no evidence to support its existence.

With regards to the route having been used without interruption, on balance it seems that use may have been interrupted whilst the model aeroplane flying club was using the land, as this activity would deter users, due to the danger of being hit by the model aeroplane and prevent them from using the route whilst this activity took place.

On balance, it is difficult to satisfy deemed dedication under S.31 and inferred dedication under common law and Committee are advised to reject the claim.

### **Risk Management**

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

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

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804-551 & 804-552	Various	Megan Brindle, County Secretary and Solicitor's Group, 01772 535604

Reason for inclusion in Part II, if appropriate

N/A