

Regulatory Committee

Meeting to be held on 21 October 2015

Electoral Division affected: Pendle East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

1. Addition of Public Footpath from Coal Pit Lane to Footpath 3 Trawden, Pendle Borough
2. Addition of Public Footpath from a point on Footpath 202 Colne to a junction with Footpath 1 Trawden, Pendle Borough
3. Addition of Public Footpath from the a point on Footpath 203 Colne to a further point on Footpath 203 Colne, Pendle Borough

File Nos. 804-569, 804-570, 804-571

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Investigation into the addition of:

1. The addition of Footpath from Coal Pit Lane, Colne to Footpath 3 Trawden, Pendle Borough, in accordance with file no. 804-569 and referred to in this report as Route 1.
2. The addition of Footpath from a point on Footpath 202 Colne to the junction with Footpath 1 Trawden, in accordance with file no. 804-570 and referred to in this report as Route 2.
3. The addition of Footpath, Pendle District, from a point on Footpath 203 Colne to a further point on Footpath 3 Colne, in accordance with file no. 804-571 and referred to in this report as Route 3.

Recommendation

1. That an Order be made pursuant to Section 53(2)(b), 53(c)(i) and 53(c)(iii) of the Wildlife and Countryside Act 1981 to add a footpath from Coal Pit Lane, Colne to Footpath 3 Trawden on the Definitive Map as shown on the Committee plan between points A-B-C and amend the particulars accordingly.
2. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.
3. That an Order be made pursuant to Section 53(2)(b), 53(c)(i) and 53(c)(iii) of the Wildlife and Countryside Act 1981 to add a footpath from a point on Footpath 202 Colne to the junction of with Footpath 1 Trawden on the Definitive Map as shown on the Committee plan between points D-E-F-G-

- H-I-J and amend the particulars accordingly.
4. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.
 5. That an Order be made pursuant to Section 53(2)(b), 53(c)(i) and 53(c)(iii) of the Wildlife and Countryside Act 1981 to add a footpath from a point on Footpath 203 Colne to a further point on Footpath 203 Colne on the Definitive Map as shown on the Committee plan between points K-L-M and amend the particulars accordingly.
 6. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

It was recently discovered that the three routes detailed below, whilst physically existing on the ground, and included in the description of routes in the Revised Definitive Statement of Public Rights of Way (First Review), were not shown on the accompanying Revised Definitive Map (First Review).

Route 1 - Public Footpath 201 Colne

Shown on Committee plan 1 between points A-B-C; a distance of approximately 120 metres.

Route 2 – Part of Public Footpath 202 Colne

Shown on Committee plan 2 between points D-E-F-G-H-I-J; a distance of approximately 540 metres.

Route 3 – Part of Public Footpath 203 Colne

Shown on Committee plan 3 between points K-L-M; a distance of approximately 75 metres.

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 modifying the particulars contained within the Definitive Statement as to the position, width, limitations or conditions will be made if the evidence shows that:

- The particulars contained in the Definitive Map and Statement require modification

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

Route 1 - Public Footpath 201 Colne

Pendle Borough Council are part landowner for this route, they have supplied a copy of the plan outlining their ownership but provided no further details.

Route 2 – Part of Public Footpath 202 Colne

Pendle Borough Council are part landowner for this route, they have supplied a copy of the plan outlining their ownership but provided no further details.

Route 3 – Part of Public Footpath 203 Colne

Pendle Borough Council are part landowner for this route, they have supplied a copy of the plan outlining their ownership but provided no further details.

Colne Town Council and Trawden Parish Council

Route 1 - Public Footpath 201 Colne

Trawden Parish Council responded to say they have no objection to the addition and Colne Parish Council did not respond, it is assumed they have no comments to make.

Route 2 – Part of Public Footpath 202 Colne

Trawden Parish Council responded to say they have no objection to the addition and Colne Parish Council did not respond, it is assumed they have no comments to make.

Route 3 – Part of Public Footpath 203 Colne

Colne Parish Council was the only Parish Council for this addition and no response has been received, it is assumed they have no comments to make.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plans.

Plan No.	Point	Grid Reference (SD)	Description
1	A	9012 3965	Open junction with Coal Pit Lane adjacent to Windy Arbour
1	B	9015 3966	Route 1 passes through gateposts on parish boundary between Colne and Trawden.
1	C	9023 3970	Unmarked point on track where route 1 meets Public Footpath 3 Trawden
2	D	9000 3988	Unmarked point in field at eastern end of recorded section of Public Footpath 202 Colne
2	E	9004 3988	Route 2 crossed by field boundary fence (wooden stile)
2	F	9018 3986	Route 2 crossed by field boundary fence (wooden kissing gate)
2	G	9019 3982	Route 2 passes between stone gateposts
2	H	9047 3979	Route 2 crosses field boundary (pedestrian gate)
2	I	9049 3979	Field Gate on parish boundary between Colne and Trawden
2	J	9049 3978	Open junction with Public Footpath 1 Trawden
3	K	9000 3994	Unmarked point on worn path at eastern end of section of Public Footpath 203 Colne extending from Carry Bridge as shown on the Revised Definitive Map (First Review)
3	L	9001 3995	Route 3 crosses broken down field boundary (remains of stone stile)
3	M	9004 4000	Unmarked point on worn path at western end of section of Public Footpath 203 Colne from Cotton Tree Lane as shown on the Revised Definitive Map (First Review)

Description of Route

A site inspection was carried out on 6 July 2015. All three routes were available to use and appeared to be in regular use.

Route 1

Shown on Committee plan 1 by a thick dashed line between points A-B-C.

The route commences at an open junction with Coal Pit Lane (Point A on the Committee plan) and extends uphill in an east north easterly direction passing to the front of Windy Arbour (a residential property) along a rough tarmac/compact stone access track which provides access to Windy Arbour and a number of other properties that are located further along the track.

From point A the route is signposted as a public footpath and a further sign, attached to the footpath signpost, indicates that the route provides access to some kennels.

From point A the route passes Windy Arbour which is located along the southern side. The north side of the route is bounded by a stone wall with gated access into an adjacent field. The width varies between 3 - 3.5 metres.

At point B the route passes a stone gate post on the south side of the track (no gate) and continues, bounded by fences on either side, as a gravel/compacted earth surfaced track for a further 85 metres to an unmarked point on the track where it meets Public Footpath 3 Trawden.

The total length of the route is 120 metres.

Route 2

Shown on Committee plan 2 by a thick dashed line between points D-E-F-G-H-I-J.

The route commences at an unmarked point (point D) at the eastern end of the section of path recorded as Public Footpath 202 Colne on the Revised Definitive Map (First Review) which is also a sheet boundary of the maps on which the Definitive Map was drawn. From point D a trodden track, consistent with pedestrian use, is visible on the ground across a pasture field. It extends in an easterly direction for approximately 50 metres to a field boundary at point E.

At point E the route passes over a wooden stile into an area of woodland. It continues as a trodden line, approximately 0.5 metres wide, in a more east south easterly direction through the woodland crossing a small wooden bridge and some wooden decking where there is evidence that the ground underfoot is quite wet. As it comes out of the trees into a more open area a trodden track can be followed to point F circumnavigating an area of dense nettles and long grass through which the route under investigation runs.

At point F the route crosses a field boundary to exit the wooded area via a pedestrian kissing gate. It then continues in a general southerly direction to the west of an old field boundary to the intersection of a farm track at point G where it passes

through some stone gateposts and then continues in a north easterly direction for approximately 15 metres across rough pasture before turning to continue in an east south easterly direction across the field (no visible track) rising gradually uphill to point H.

At point H the route passes through a small pedestrian gate and crosses a block paved area continuing in an east south easterly direction to a field gate adjacent to Old Engine Cottage at point I. It passes through the gate to continue across the block paved driveway in a southerly direction to the junction with Public Footpath 1 Colne at point J.

The total length of the route is 540 metres.

Route 3

Shown on Committee plan 3 by a thick dashed line between points K-L-M.

The route under investigation forms part of a longer, well used route extending from Carry Bridge to Cotton Tree Lane.

It commences at an unmarked point on a trodden path at the eastern end of the section of Public Footpath 203 Colne recorded on the Revised Definitive Map (First Review) as starting at Carry Bridge. This point coincides with a sheet boundary of the maps on which the Definitive Map was drawn. From point K it continues in an easterly direction, along the trodden track for approximately 20 metres to pass through a broken field boundary at which there are the remains of a stone stile. It then continues in a north easterly direction to the west of Colne Water for a further 55 metres to point M.

Point M is an unmarked point on the trodden path at the western end of the section of Public Footpath 203 Colne recorded on the Revised Definitive Map and Statement (First Review) from Cotton Tree Lane and also coincides with another sheet boundary on the Definitive Map.

The total length of the route is 75 metres.

Map and Documentary Evidence

All three of the routes that are the subject of this report were originally recorded on the Definitive Map and Statement of Public Rights of Way as public footpaths. When the Map was reviewed and published in 1975 as the Revised Definitive Map and Statement (First Review) the routes were not included on the Map. There does not appear to be any reason for them not to be included other than a drafting error and no legal orders have been found suggesting that they were legally extinguished prior to the revision of the Definitive Map or that their status as public footpaths has ever been challenged. Their inclusion on the First Definitive Map and Statement is conclusive evidence that these public footpaths existed at the relevant date (1st January 1953). For these reasons it is not considered necessary to carry out the full range of historical map and documentary research associated with Definitive Map

Modification investigations predating the inclusion of the routes on the First Definitive Map.

Document Title	Date	Brief Description of Document & Nature of Evidence
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<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>
Observations		<p>Colne and Trawden were both Urban Districts in the early 1950s so no parish survey maps were compiled.</p>
Draft Map		<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>

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.
 Particulars required for the Statement to be annexed to the Draft Bill
 Section 27(4)

.....C. O. L. N. E. Borough of Colne

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals.	(4)
✓ 196.	Footpath	From Maple Street to Church Clough and then to Borough Boundary.	0.51	
✓ 197.	"	From Clayton Street to Carry Lane.	0.18	
✓ 198.	"	From Lenches Road to Carry Bridge.	0.40	
✓ 199.	"	From Coal Pit Lane to Borough Boundary near Higher Carry Heys.	0.34	
✓ 200.	"	From (199) South of Bolton Laith to Coal Pit Lane.	0.07	
✓ 201.	"	From Coal Pit Lane to Old Engine Farm.	0.08	
✓ 202.	"	From Old Engine Farm to Coal Pit Lane.	0.50	
✓ 203.	"	From Carry Bridge to Cottontree Lane.	0.56	
✓ 204.	"	From (203) to Clarence Street.	0.01	



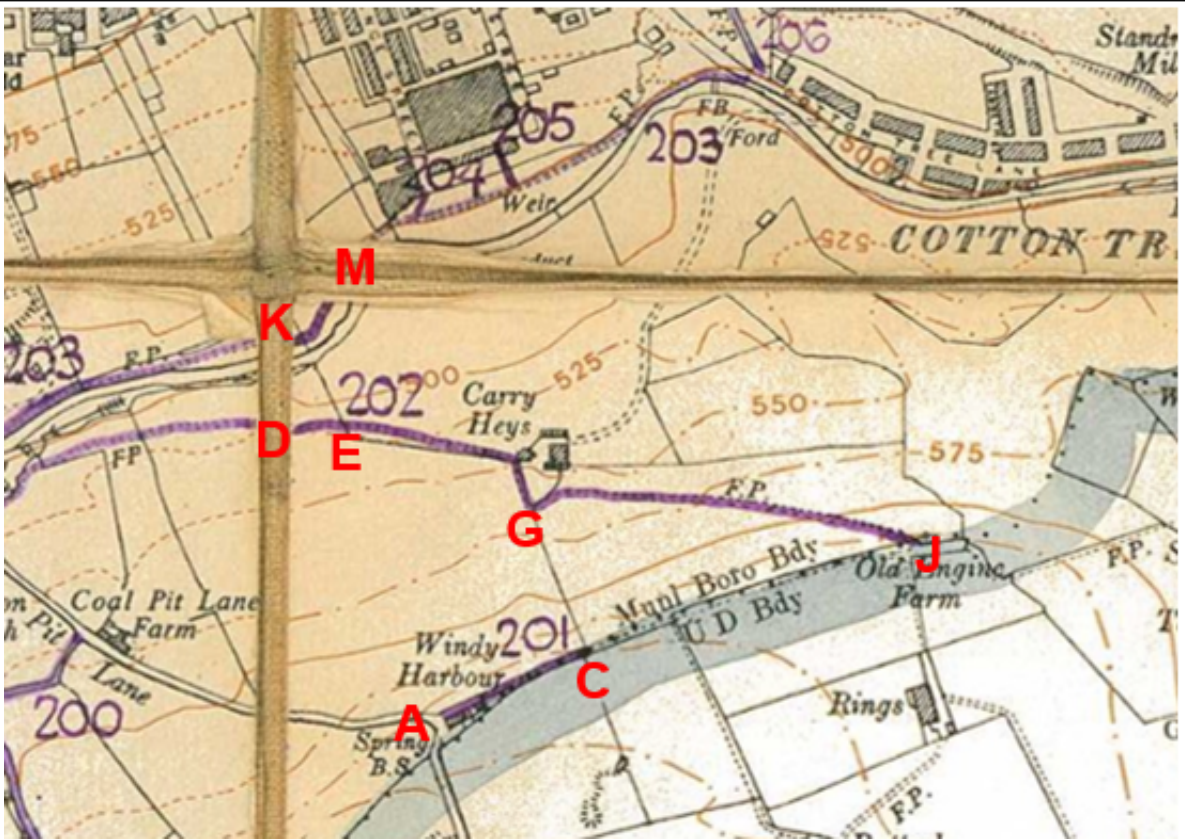
Colne U.D.

Observations

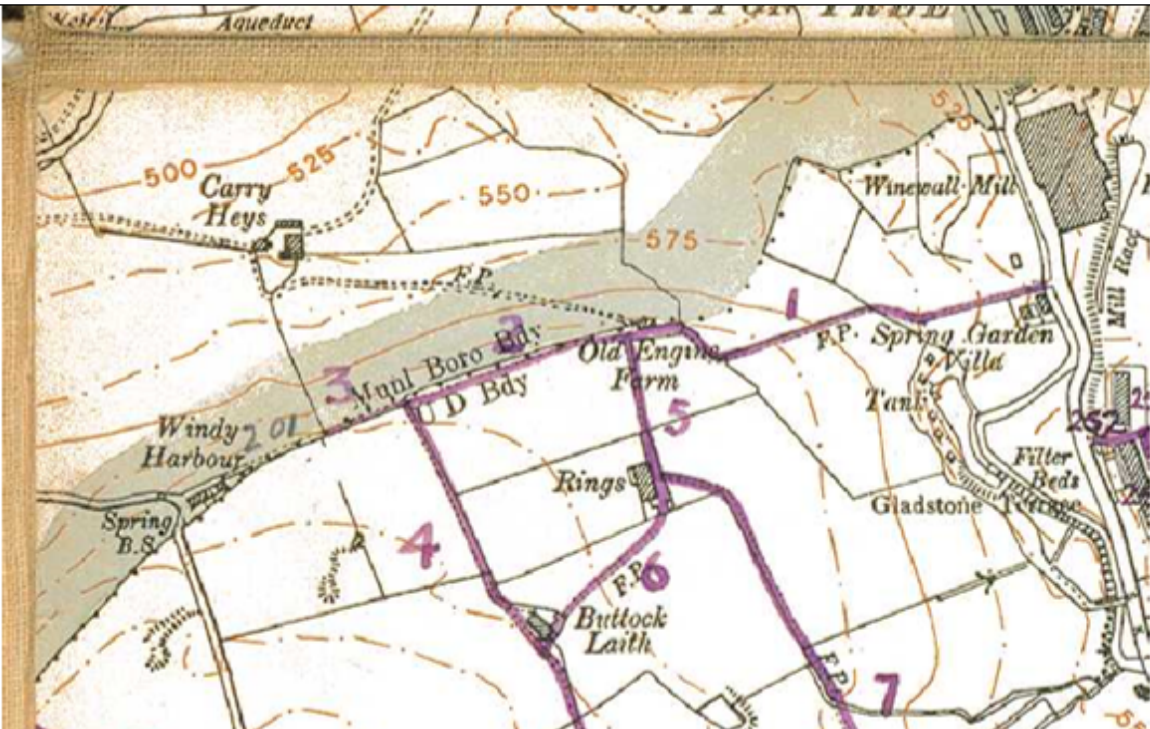
Two separate Draft maps were produced – one for the Urban District of Colne and one for Trawden.

Route 1 is shown on the Draft Map (covering Colne) and is numbered '201'. The Draft statement describes it as a

	<p>footpath 'From Coal Pit Lane to Old Engine Farm' and this has subsequently been edited in pencil to insert the words 'road to' instead of describing the route as terminating at the farm itself.</p> <p>Route 2 is shown as part of a longer route that is numbered '202'. It is described in the Draft Statement as a footpath running from Old Engine Farm to Coal Pit Lane.</p> <p>Route 3 is also shown as part of a longer route and is numbered '203'. It is described in the Draft Statement as a footpath from Carry Bridge to Cottontree Lane.</p> <p>The Draft Map for Trawden shows the route of Footpath 3 Trawden terminating at point C on Committee plan 1 and describes it in the Draft Statement as extending as far as the Urban District and Municipal Borough boundary (near Windy Harbour).</p>
<p>Provisional Map</p>	<p>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.</p>



Colne U.D.

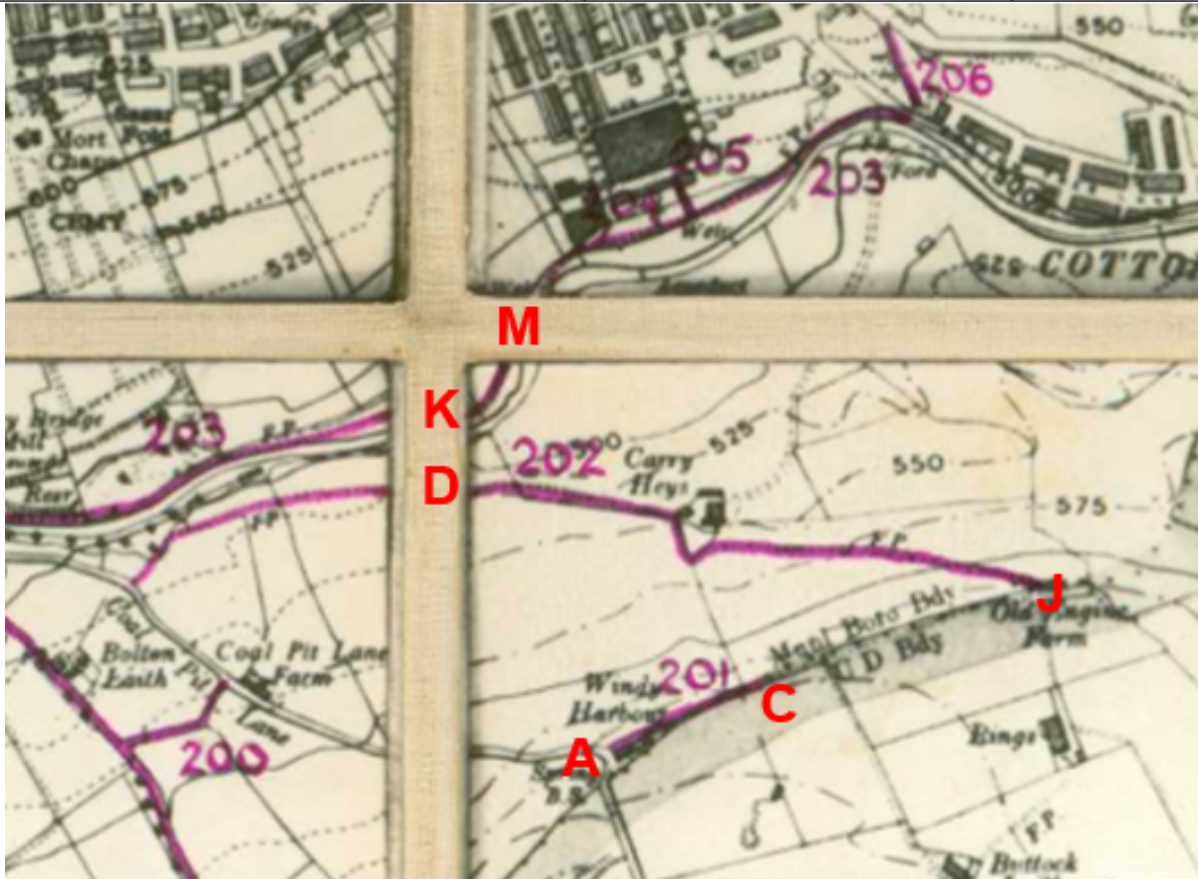


Trawden U.D.

Observations

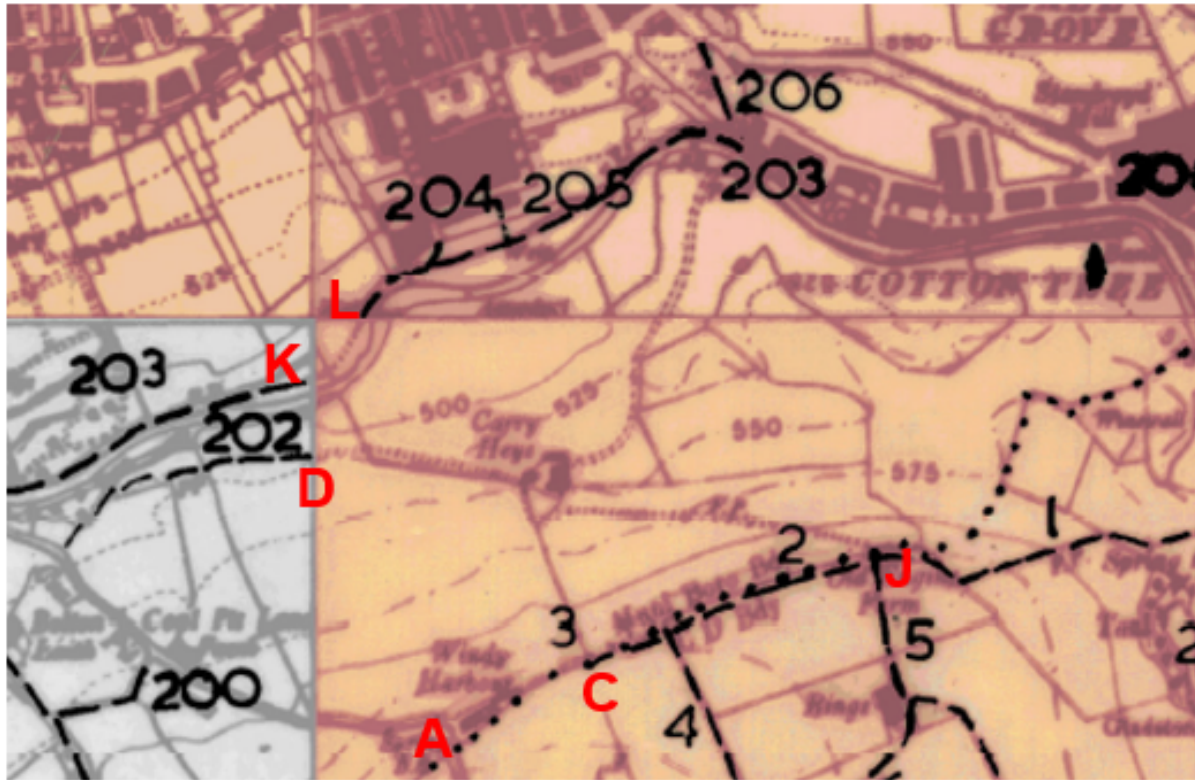
Again, two separate maps were produced – one for Colne and one for Trawden. The Provisional Map for Colne clearly shows and numbers the three routes under investigation – Route 1 (Footpath 201) in

	<p>its entirety, and route 2 as part of Footpath 202 and route 3 as part of Footpath 203.</p> <p>The existence of Footpath 201 (route 1) is also noted on the Provisional Map for Trawden.</p>
<p>The First Definitive Map and Statement</p>	<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>



<p>Observations</p>	<p>Again, the First Definitive Map comprised separately hand drawn maps produced for the Urban Districts of Colne and Trawden. The Map for Colne included all three routes under investigation.</p>
<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</p>

has been subject to a continuous review process.



CONTINUATION SHEET

COLNE M.B.

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals
197	Footpath	From Clayton Street to Carry Lane	0.18
198	"	From Lenches Road to Carry Bridge	0.40
199	"	From Coal Pit Lane to Borough Boundary near Higher Carry Heys.	0.34
200	"	From (199) south of Bolton Laith to Coal Pit Lane.	0.07
201	"	From Coal Pit Lane to road to Old Engine Farm.	0.08
202	"	From Old Engine Farm to Coal Pit Lane	0.50
203	"	From Carry Bridge to Cottontree Lane	0.56
204	"	From (203) to Clarence Street	0.01
205	"	From (203) South of Craven Street to Norman Street	0.02

Administrative County of the County, Palatine of Lan
National Parks and Access to the Countrys
Statement annexed to the Definitive Rights of Way Map

Relevant Date, 1st. January 1953.

Urban District of TRAWDEN

800 (in 3 5071, C84, 346, 17179, F) 5873.

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals
1	Footpath	Skipton Road past Spring Gardens Villa to Old Engine Farm.	.25
2	"	Old Engine Farm to junction 3 and 4	.12
3	"	Junction 2 and 4 to Urban District and Municipal Borough Boundary (Near Windy Harbour)	.03
4	"	Junction 2 and 3 to Buttock Laith Farm.	.16

Observations

When the Revised Definitive Map (First Review) was published it was necessary for all the routes that were previously recorded on the First Definitive Map that had not been legally diverted or extinguished to be hand drawn onto new Ordnance Survey base maps which became the Revised Definitive Map (First Review). Unlike previously, separate maps were not drawn for the Urban Districts of Colne and Trawden and a single map (comprising several 1:10,560 scale OS sheets) was drawn for the Borough of Pendle. None of the routes under investigation are shown on this map but the accompanying Definitive Statement records them in the same manner as the First Definitive Statement. Their continuations (202 and 203) on the other side of the sheet boundaries are shown.

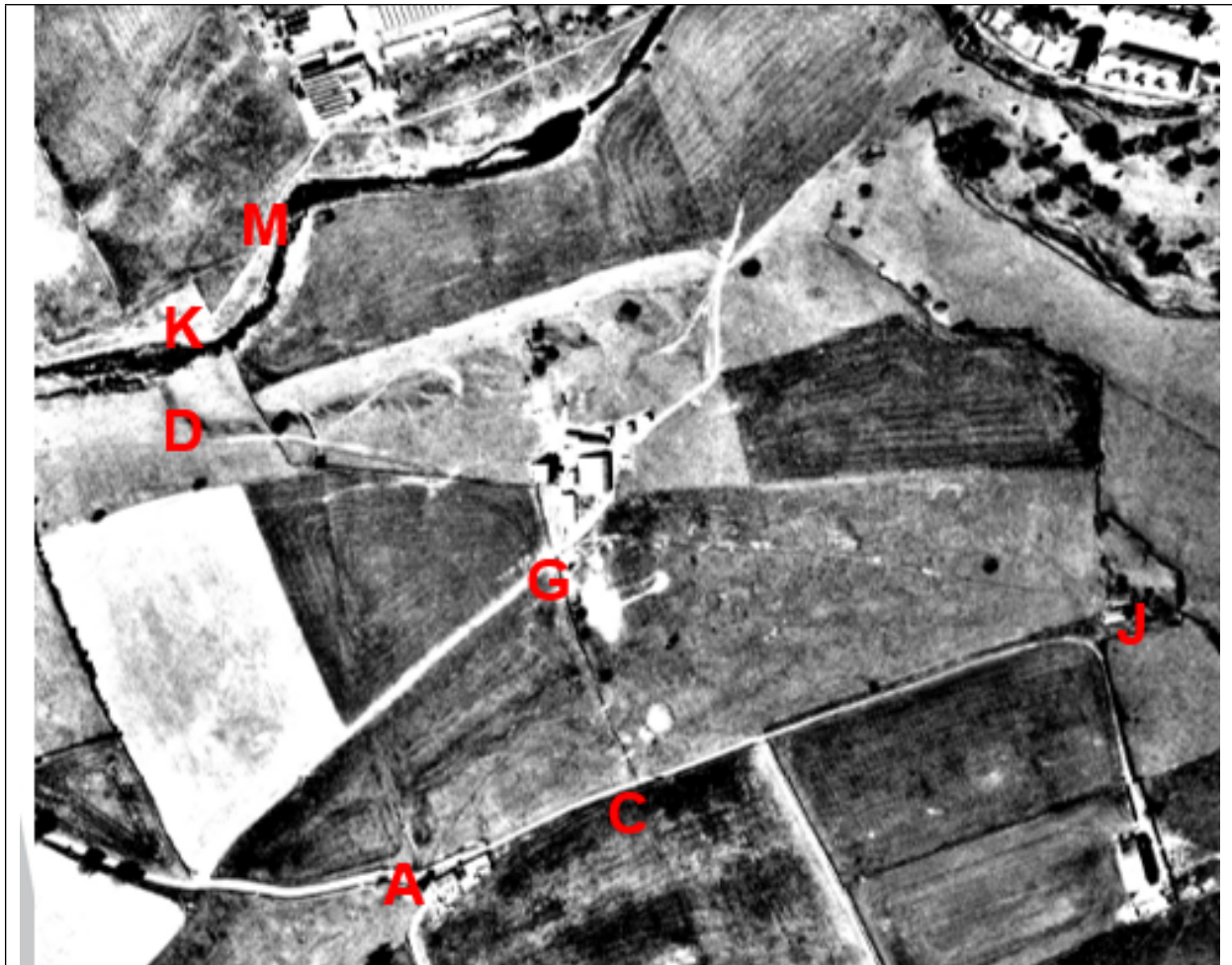
Investigating Officer's Comments

No extinguishment or diversion Orders were noted in the documentation relating to the review process. Experience has shown that the process for preparing and reviewing the Definitive Map has resulted in a number of drafting errors that have subsequently needed to be rectified by legal order. In this particular case the three routes omitted from the Revised Definitive Map (First Review) are all situated in the top left hand corner of OS Sheet SD 93NW and

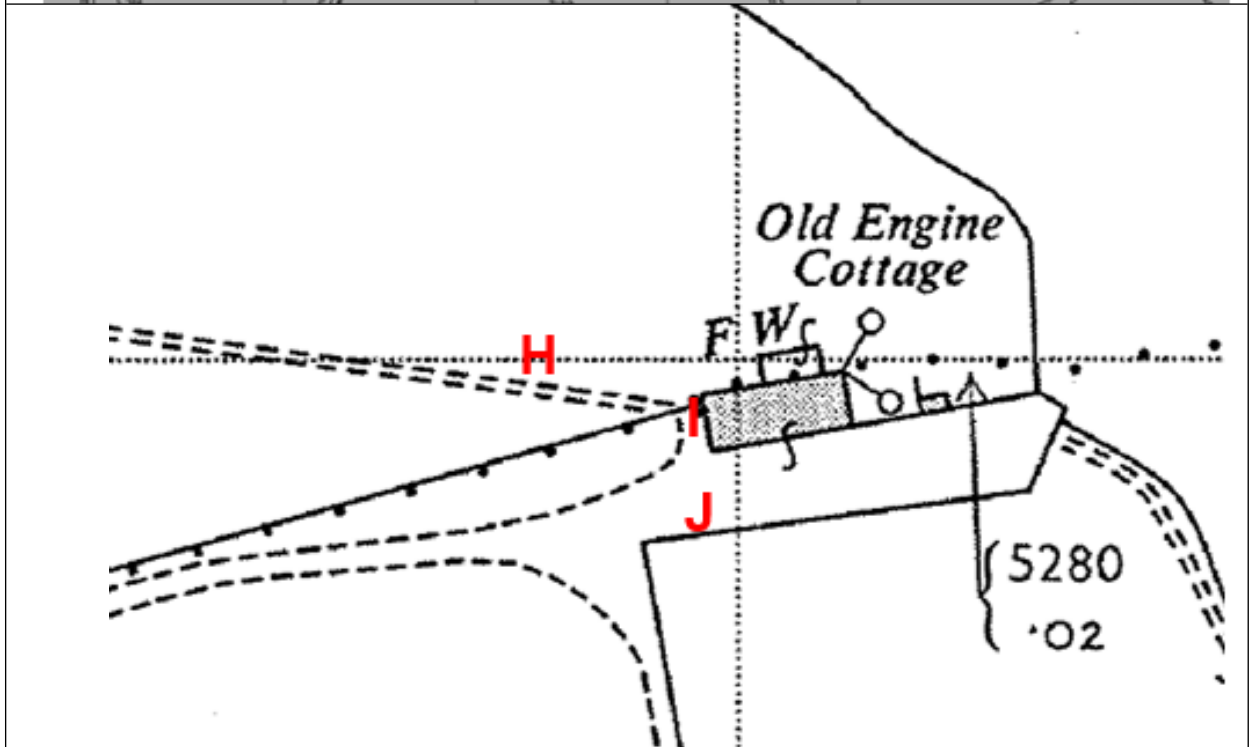
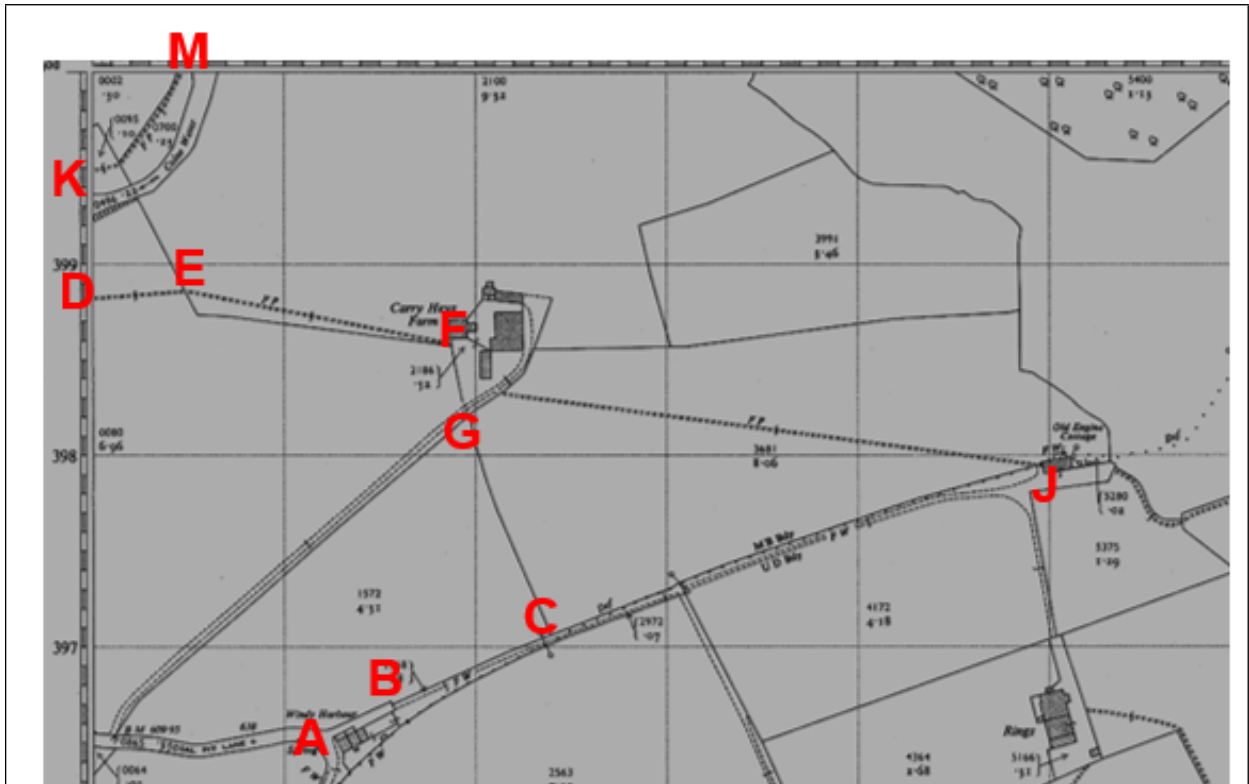
		are the only three paths recorded on that map sheet that are within the former Urban District of Colne. As all three routes are recorded (unaltered) in the Revised Definitive Statement (First Review) it appears that human error is the reason behind their omission from the Map in that those parts of the three routes recorded on the First Definitive Map that are shown on OS Map Sheet SD 93NW were simply missed and weren't drawn onto the Revised Definitive Map (First Review).
Legal Orders diverting, Stopping up or creating a Public Right of Way		A search has been made at the County Records Office, the London Gazette and of Public Rights of Way records to check whether any legal orders have been made since the routes were originally recorded on the First Definitive Map and Statement to divert or to legally stop up any part of the routes.
Observations		No legal Orders diverting or extinguishing any part of the routes recorded as Public Footpaths 201, 202 or 203 Colne have been found.
Investigating Officer's Comments		The routes of Public Footpaths 201, 202 and 203 Colne have never been legally altered since they were first recorded and still exist on the alignment shown on the First Definitive Map.

Map and documentary evidence following the publication of the Revised Definitive Map (First Review) further supports the view that the routes still physically existed and were being used as public rights of way following their omission from the Revised Definitive Map (First Review) through to the present day;

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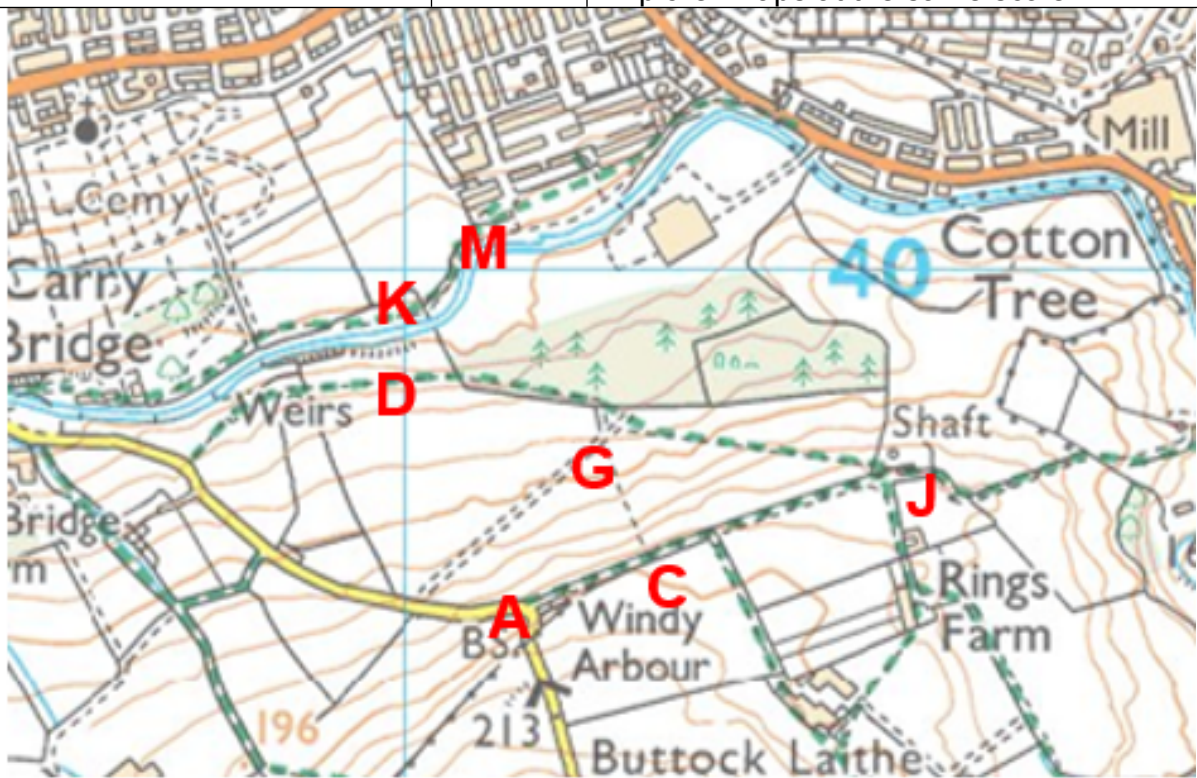


Observations		All three routes can be seen on the aerial photograph.
Investigating Officer's Comments		All three routes existed in the 1960s and appeared to be being used.
1:2500 OS Map	1963	Ordnance survey 1:2500 map reconstituted from former county series, revised in 1961 and published in 1963 as national grid series.



Observations		All 3 routes under investigation are shown and appear to have remained largely unaltered since the 1930s. Both route 2 and route 3 are annotated on the map as being footpaths (F.P).
Investigating Officer's Comments		The three routes existed in the 1960s and appeared capable of being used. Route 1 is shown as a substantial track used to

		access a number of properties. Routes 2 and 3 are shown as footpaths (F.P) indicating their physical appearance was consistent with routes used on foot.
Ordnance Survey Outdoor Leisure Map 21 (South Pennines)	1984	OS 1:25,000 mapping sold to the public showing details of various recreational facilities including the public rights of way network. The Outdoor Leisure Series has more recently been replaced by the Explorer Maps at the same scale



Observations		All three routes are shown as part of the public rights of way network. The property adjacent to point G (Carry Heys Farm) is no longer shown to exist and the green dashed line denoting the route of the footpath in the proximity of point G differs slightly from the route under investigation for a short distance.
Investigating Officer's Comments		The three routes are all included on the Ordnance Survey Outdoor Leisure Map (albeit with a slight discrepancy in the proximity of point G) inferring that the Ordnance Survey had not been supplied with any information about the legal extinguishment of the footpaths. The key panel to the Outdoor Leisure map explains that the public rights of way information contained on the maps has been derived from the Definitive Maps 'as

		amended by later enactments or instruments held by the Ordnance Survey on 1 st Jan 1984 and are shown subject to the limitations imposed by the scale of mapping.' Anyone obtaining a copy of the map for leisure purposes would have considered using the paths shown - as supported by the evidence of use on the ground.
Aerial Photograph	2000	Aerial photograph available to view on GIS



Observations		Route 1 between point A and point C can be clearly seen to exist as a substantial track on the photograph. Route 2 cannot be easily seen on the photograph. Changes have occurred since the 1960s and the farm adjacent to point G no longer exists. The area of woodland between point E and point F appears to be very recently planted and a faint line – consistent with the route under investigation – can be seen between point F and point G.
Investigating Officer's Comments		Routes 1 and 3 appear to have existed in the 1960s. Route 2 probably existed but changes resulting in the demolition of the

		farm and planting of a woodland may have effected use in the early 1960s.
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		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route under investigation runs.
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

Route 1 - Public Footpath 201 Colne

The landowners affected by the addition of this route are:

Pendle Borough Council

Mr and Mrs Henderson, Windy Arbour

And there is a Caution held by Ingham and Yorke and Napthens Solicitors.

Route 2 – Part of Public Footpath 202 Colne

The landowners affected by the addition of this route are:

Pendle Borough Council

Mr and Mrs Astin, Old Engine Cottage

And there is a Caution held by Ingham and Yorke and Napthens Solicitors.

Route 3 – Part of Public Footpath 203 Colne

The landowners affected by the addition of this route are:

Pendle Borough Council

Graham Preston, 19 Woodhall Road

Charlotte Malik, 45 Main Street

And there is a Caution held by Ingham and Yorke and Napthens Solicitors.

Summary

All three routes were originally recorded on the Definitive Map and Statement of Public Rights of Way as public footpaths. When the Map was reviewed and published in 1975 as the Revised Definitive Map and Statement (First Review) these routes (which were all the sections of public rights of way in Colne on the Ordnance Survey sheet SD 93NW) were not included on the Map. There does not appear to be any reason for them not to have been included other than a drafting error and no legal orders have been found suggesting that they were legally extinguished prior to the revision of the Definitive Map. All three routes are well used and their status as public footpaths does not appear to ever have been challenged.

Head of Service – Legal and Democratic Services Observations

Information from the Landowners

Route 1 - Public Footpath 201 Colne

One of the landowners (Windy Arbour) outlines their landownership but does not provide any further details.

Route 2 – Part of Public Footpath 202 Colne

One of the landowners (Old Engine Cottage) outlines their landownership but does not provide any further details.

Route 3 – Part of Public Footpath 203 Colne

A letter has been received from F. M. Lister & Son on behalf of Mr Preston and Mrs Malik who state they have no objection to the addition of the route to the Definitive

Map, the agent has also consulted with the tenants of the land Mr J. W. Collinson and Mr J Collinson and they also have no objection to the addition of the route.

Information from Others

No further information has been received from others.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Aerial photographs

Trodden path sections

Originally recorded on the Definitive Map and Statement of Public Rights of Way

OS map evidence

No action taken by owners against accepting

Against Making an Order(s)

Route not shown on the Revised Definitive Map (First Review).

Conclusion

This matter is unusual as it stems from what appears to be a drafting error. The evidence for these routes show in law a public footpath and should still be recorded on the Definitive Map and Statement as such.

There is no express dedication and so it is advised that Committee consider whether a dedication can be deemed under s31 Highways Act or inferred at common law.

Section 31 of the Highways Act 1980 deems dedication of a path as a highway may be presumed from use of the way by the public as of right without interruption for a full period of twenty years. The evidence indicates that access to the routes has never been questioned or denied and no user evidence forms have been collected for this matter.

Therefore it is advised that the Committee has to consider whether a highway may be inferred through common law dedication based on the evidence presented from the maps and other documentary evidence which does on balance indicate that the routes exists .

The analysis of the map and documentary evidence by the Planning and Environment Group suggests that there is sufficient evidence on balance to indicate that the routes existed and are indeed recorded on the early maps. It is therefore suggested that there are circumstances from which to infer an early dedication of the routes for use by the public and that the routes were omitted from the later maps as a drafting error.

Taking all the evidence into account the Committee may consider that a dedication in this matter may be inferred under common law and that an Order be made and promoted.

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 nos: 804-569, 804-570, 804-571	various	Megan Brindle , 01772 535604, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A