

## Regulatory Committee

Meeting to be held on 21<sup>st</sup> October 2015

Electoral Division affected: Rossendale North, Rossendale East, Padiham and Burley West
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### Wildlife and Countryside Act 1981

**Application to Record a Bridleway over Moorland Tracks near Clowbridge Reservoir by Addition of Bridleway and Upgrade from Footpath: Rawtenstall, Rossendale Borough and Dunnockshaw, Burnley Borough.**

**Application No. 804/549**

(Annex 'A' refers)

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### Executive Summary

Application to record a bridleway over moorland tracks near Clowbridge Reservoir by addition of bridleway and upgrade from footpath: Rawtenstall, Rossendale Borough and Dunnockshaw, Burnley Borough.. File ref: 804/549

### Recommendation

1. That the application to upgrade to bridleway parts of Footpaths 14, 18 and 21 Rawtenstall, Rossendale Borough and of Footpath 10 Dunnockshaw, Burnley Borough and to add bridleways between Footpaths 14 and 21 Rawtenstall and between Footpath 10 Dunnockshaw and Bridleway 18 Rawtenstall on the Definitive Map and Statement of Public Rights of Way be accepted.
2. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(b) Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add bridleways and upgrade footpaths to bridleways on the Definitive Map and Statement of Public Rights of Way for a distance of approximately 2060 metres shown between points A-B-D-E-F-G-H-I-J-K-L-M on the attached plan.
3. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said order be promoted if necessary by submitting it to the Secretary of State.

### Background

An application has been received from the Forest of Rossendale Bridleways Association to upgrade a number of public footpaths to public bridleways and to also add sections of bridleway as shown between points A-B-C-D-E-F-G-H-I-J-K-L-M on the attached plan, 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 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 for upgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

- "it ought to be there shown as a highway of a different description"

An order will only be made to add a way 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 / Burnley Borough Council

Rossendale Borough Council and Burnley Borough Council have been consulted and no responses have been received, therefore it is assumed that they have no comments to make.

### Parish Council

Dunnockshaw Parish Council have responded with no objection to the proposal.

There is no Parish Council for Rawtenstall.

### Claimant/Landowners/Supporters/Objectors

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

## Advice

### Head of Service – Planning and Environment Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8323 2806	Junction of Bridleway 15 Rawtenstall with Footpath 14 Rawtenstall, the starting point of the Gambleside Trail with an information board
B	8299 2776	Bend in Footpath 14 Rawtenstall on N edge of site of Gambleside hamlet
C	8299 2770	Waymark post on S edge of the site of former hamlet of Gambleside
D	8288 2768	Junction of grass track with the cinder track leading to the pump station
E	8284 2772	Access track bridge
F	8274 2768	Junction of pump house access track with Footpath 21 Rawtenstall
G	8272 2768	Parish Boundary between Dunnockshaw and Rawtenstall
H	8251 2775	Junction of grass track with stone track (Footpath 10 Dunnockshaw)
I	8253 2749	Pedestrian Gate
J	8248 2739	Well-defined narrow path up bank
K	8245 2736	Cairn and waymark post near the ruins. n.b. approx.

		15m W of the junction of Footpaths 19, 20 & 364 Rawtenstall
<b>L</b>	8250 2706	Kissing gate by junction of Footpaths 16, 18, 19, 42 and Bridleway 18 Rawtenstall
<b>M</b>	8275 2706	Junction of Footpath 18 and Bridleway 18 Rawtenstall

## **Description of Route**

A site inspection was carried out on 16<sup>th</sup> October 2013 and 14<sup>th</sup> August 2015.

The effect of this application to upgrade a number of footpaths to bridleway and to add sections of bridleway to form a bridleway which links to the Mary Townley Loop and West Pennine Link of the Pennine Bridleway. Part of this route is currently a well waymarked, well used concessionary bridleway.

### **A-B currently recorded as Rawtenstall Footpath 14**

At the most northerly point, the application route starts at the junction of Footpath 14 Rawtenstall and Bridleway 15 Rawtenstall (point A) and follows the Gambleside Trail south-west for 400m with a varying width of 1.5m to 3m. Initially it is a sunken stone/grass surfaced track enclosed by steep slopes before opening up and running between stone walls (very broken down on the north-west side) to the north side of the site of the former Gambleside hamlet.

### **B-C-D-E-F currently unrecorded**

The trail continues in a southerly direction from point B for a distance of approximately 65m, passing through the site of the former hamlet of Gambleside to a waymark post where the route takes a 90 degree turn (point C). The route then follows a well-trodden grass track for 185m with a varying width between 2.5m and 3m, winding downhill to meet a cinder access track at point D. The route then follows the access track north-west away from the pump house for 50m with a width of 2.5m crossing a bridge (point E) and proceeds south-west a further 170m to meet Footpath 21 Rawtenstall (point F).

### **F-G currently recorded as Rawtenstall Footpath 21**

The route then turns west-north-west along a good stone track for 20m with a width of 2.5m to continue as Footpath 10 Dunnockshaw at the parish boundary (point G).

### **G-H currently recorded as Dunnockshaw Footpath 10**

The route then continues west-north-west as Footpath 10 Dunnockshaw for 230m with a width of 2.5m to reach point H.

### **H-I-J-K-L currently unrecorded**

This section proposed to be added as bridleway starts from point H, a point on footpath 10 Dunnockshaw and runs generally southwards for 265m with a width of 2m climbing uphill to cross Footpath 13 Dunnockshaw at point I near to the parish



boundary. Located here is a pedestrian gate crossing newly erected fencing; The gate has a width of 0.8m but within an overall gap in the fence of 2m, having post and rail infill either side. This was formerly open before the gate and newly erected fencing were erected. The route then continues south-west on the south-east of a wall on a well-defined trodden line for 110m to point J where the route follows the worn trodden line diagonally up a steep bank, crosses Footpath 364 Rawtenstall and continues a further 30m to a cairn and waymark post (point K) close to some ruined buildings. Although this waymark post purports to make the junction of footpaths 19, 20 & 364 Rawtenstall the junction is actually 15m east of this point and the footpaths have been obstructed by the new fencing.

The route then continues on a narrower track uphill close to the ruins for 315m with a varying width of 1m to 2m across open moorland along a well-defined line generally southwards, crossing Footpath 19 Rawtenstall twice, to a kissing gate in the newly erected fence at the junction of public footpaths 16, 18, 19, 42 and Bridleway 18.

**L-M currently recorded as Rawtenstall Footpath 18**

The application route then heads in an easterly direction following a well-trodden line for 265m with a varying width from 1m to 2m to join Bridleway 18 Rawtenstall at point M.

The routes all follow well surfaced stone tracks or well defined trodden routes along a grass surface. Part of the route appears to form part of the concessionary Pennine Bridleway feeder route but the day of inspection, there were no signs either stating that the route was not to be used as a bridleway or that it was permissive.

There are however two newly (in recent years) erected structures which currently prevent bridleway use along the application route. These are a narrow pedestrian gate at point I and kissing gate located at point L. It was also noted that there was a series of locked gates on public footpath 10 Dunnockshaw which will have stopped access for anyone other than pedestrians accessing the route from Burnley Road, Dunnockshaw, before they reached the claimed bridleway.

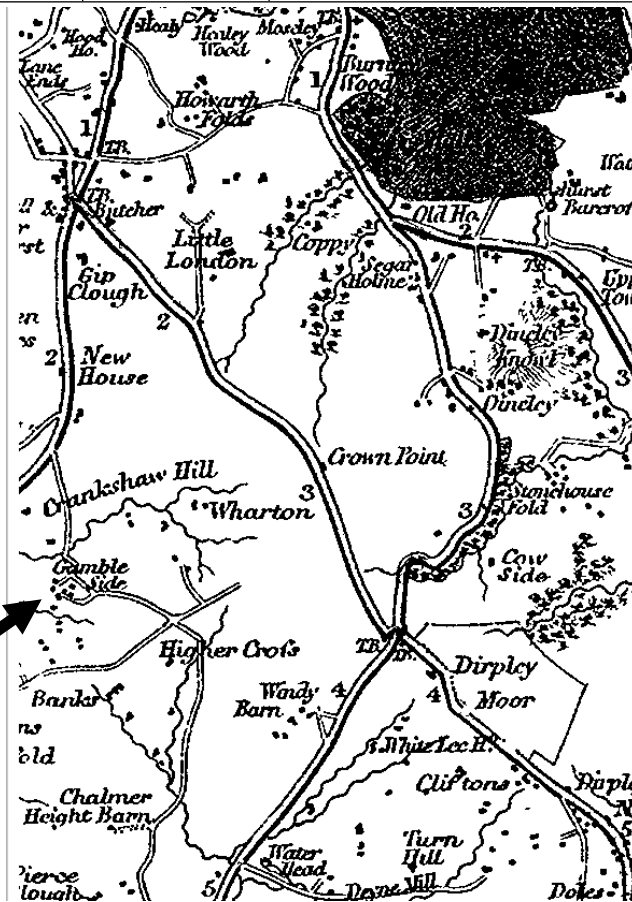
The total length of the ways to be upgraded and added is 2060m.

All distances and compass directions given are approximate.

**Map and Documentary Evidence**

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

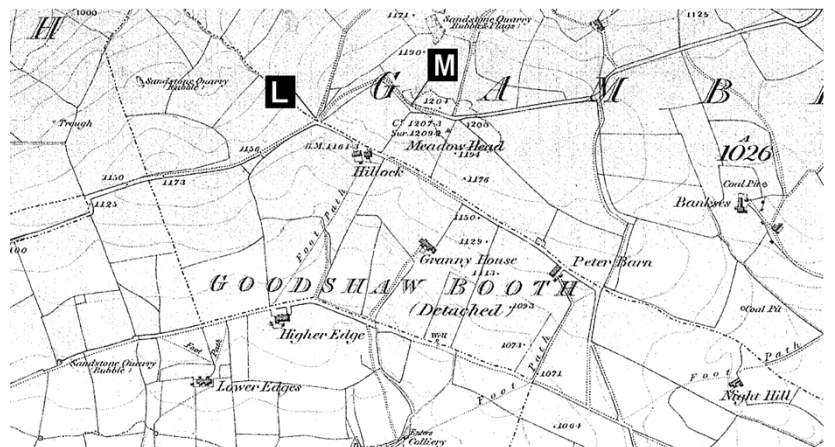
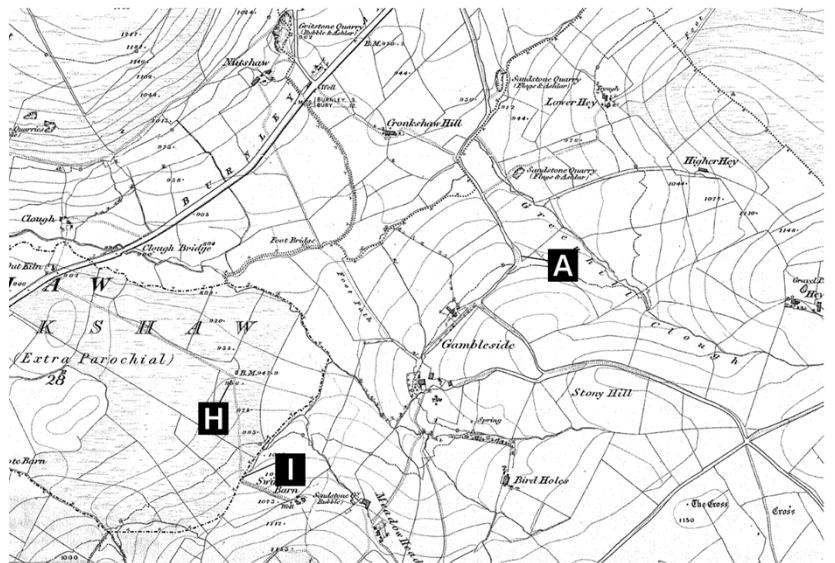
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale, this would not have been shown. Therefore no inference can be drawn.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale may not have been drawn.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map.



Observations		The settlement shown as Gambleside is recorded on Hennet's map. There appears to be a section of road recorded which might correspond to the application route between points A-B which is currently recorded as Public Footpath 14.
Investigating Officer's Comments		This map is of such a scale that public footpaths were not normally recorded. A road appears to have been recorded heading to Gambleside, and in particular to be shown at this scale suggests a

		relatively substantial road with more rights than just on foot as currently recorded. Whilst it is not possible to be certain that the road shown corresponds to the route in question due to the limitations of scale, the latter follows a substantial track across the moors and no other is evident in that general direction. No inference can be made on the rest of the route.
<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 nearby canals or railways which would affect the application routes.
Investigating Officer's Comments		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		There is no Tithe map available to view for the township of Dunnockshaw.  There is no Tithe Map available to view for the township of Higher Booths.
Investigating Officer's Comments		No inference can be made.
<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.

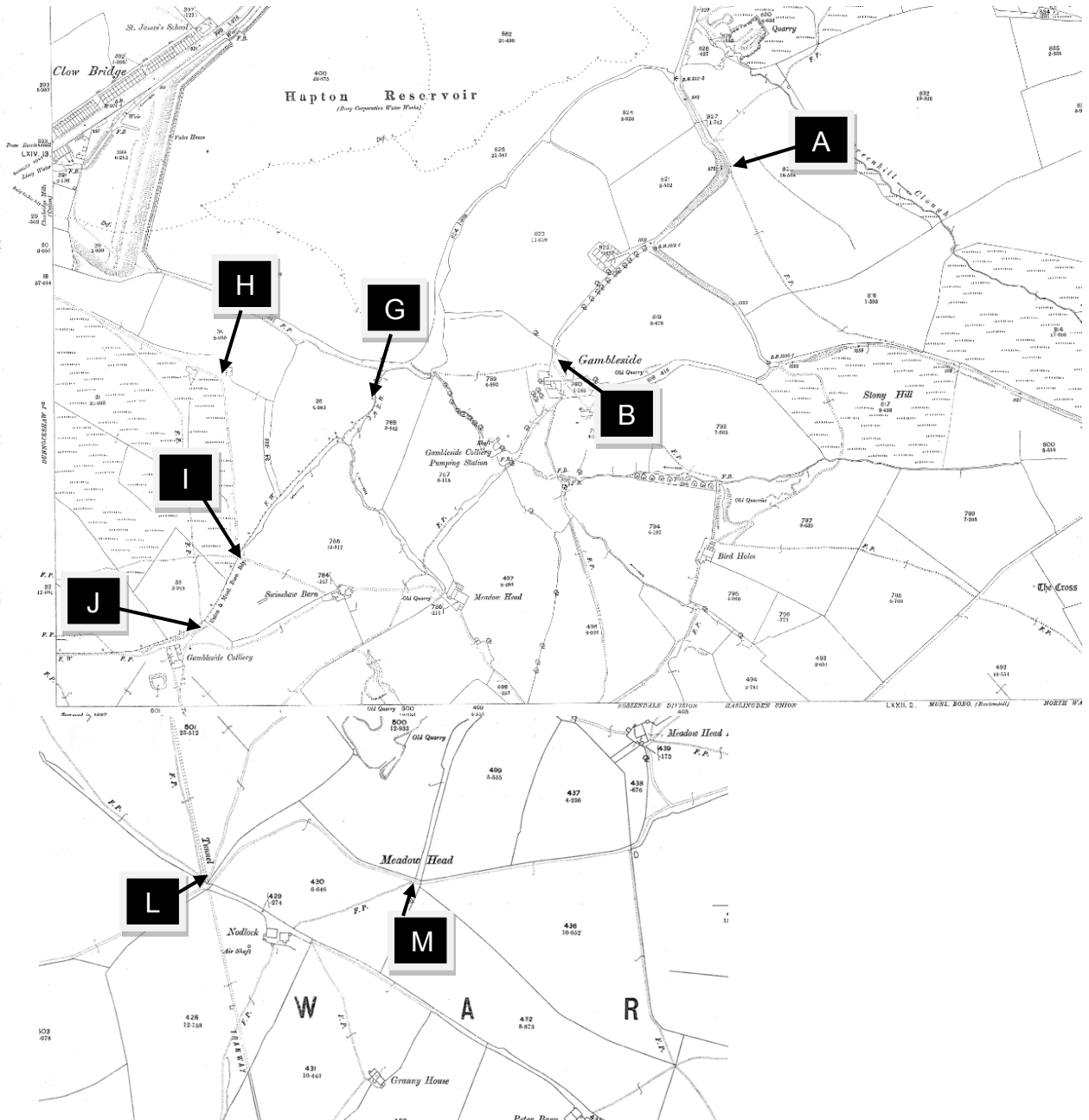
Observations		There is no Inclosure Act Award or Map available to view at Lancashire Archives for the area of Rawtenstall, the old township of Tottington Lower End.
Investigating Officer's Comments		No inference can be made.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848/49	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848/49. <sup>1</sup>  (sheet 64/72)



Observations		The application route is shown as an enclosed
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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.

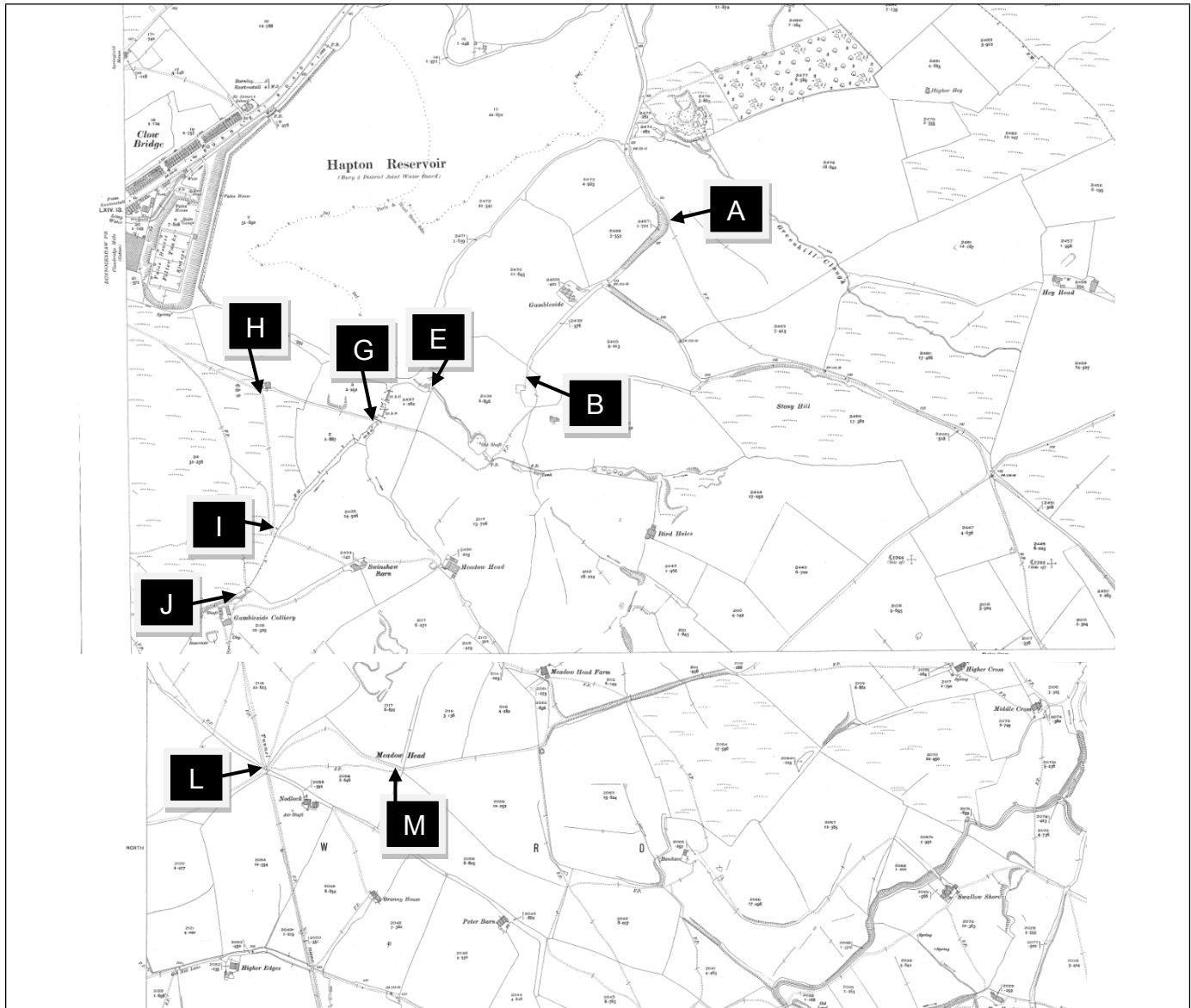
		road running from point A towards Gambleside. There are also pecked lines between points H and I finishing at the parish boundary.
Investigating Officer's Comments		Parts of the application routes are shown as existing in 1848, a way likely to be able to be used by horse between points A-B-C and a route between H-I but there is no indication of bridleway status.
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile was surveyed in 1892 and published in 1893. (sheet no. 64/14 & 72/02)



Observations		Parts of the application route are shown on the map, particularly between points A and B as an
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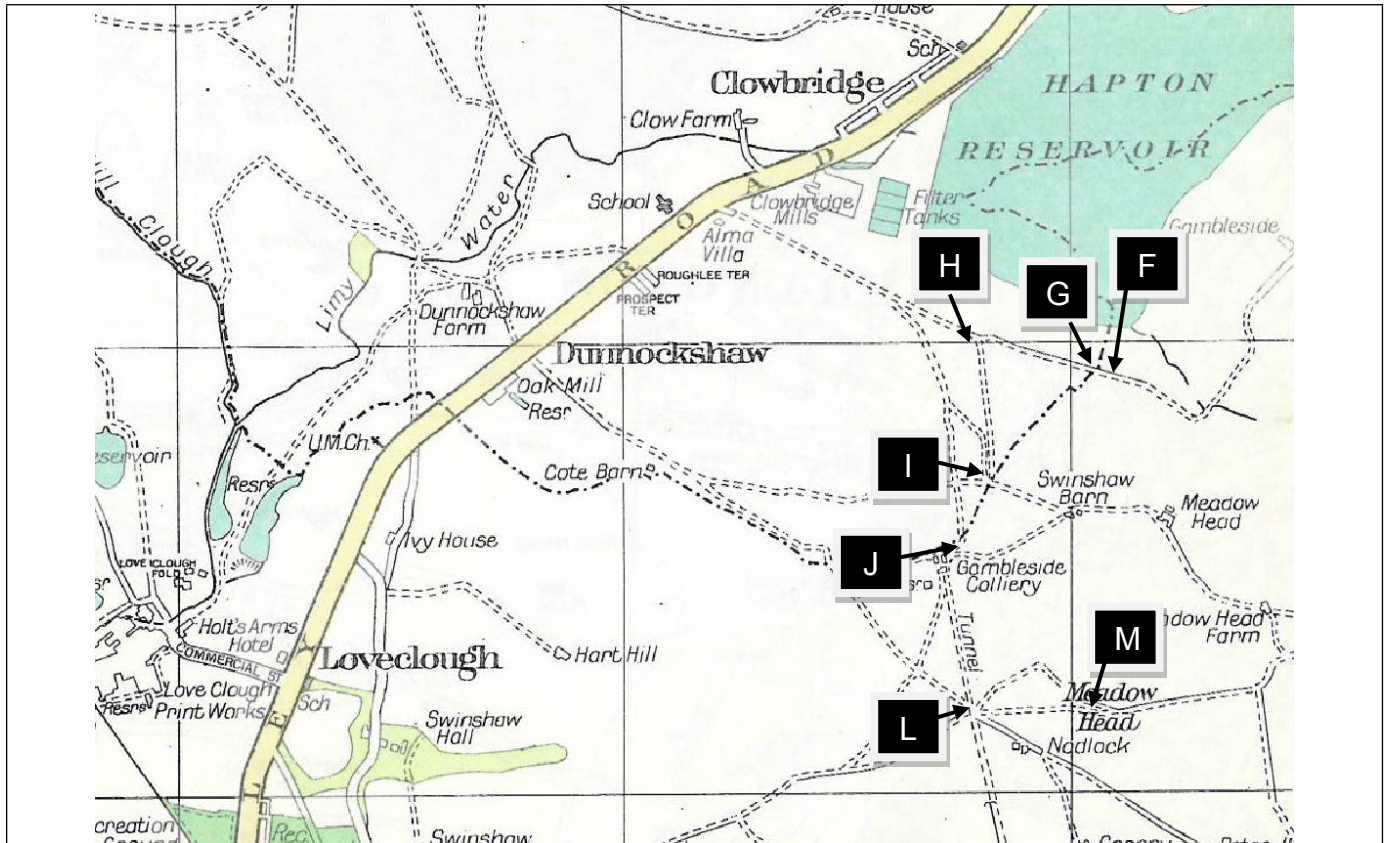
		enclosed track leading to Gambleside. The track between points H and I is also shown as double pecked lines and between J and L a footpath is recorded as running nearby to a tramway and tunnel. There is no further evidence for the rest of the routes shown on this map.
Investigating Officer's Comments		The map shows parts of the route being in existence at this time, particularly section A-B is likely to have been able to be used by horses and sections H-I and K-L existed but no inference of bridleway use can be drawn.
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		The Finance Act Map records the hereditament which included all the application route as no.1557 and shows the footpaths as pecked lines crossing this piece of land.

		<p>The Finance Act Valuation Book records several properties and land under no.1557. The Valuation Book does record a reduction in tax for a right of way crossing at Land and Boundaries at Greenfold (£18), Peter Barn (£20), Nodlock (£20), Lower Edges (£20) and Edges (£10) which are all located surrounding the southern end of the application routes.</p> <p>(ref: DVAC/1/4/1 map: DVAC2/1)</p>
Investigating Officer's Comments		<p>The Finance Act 1910 Valuation Book and Map do not provide evidence to support the existence of the application route as bridleway. Although a reduction in tax has been taken for routes crossing nearby properties, the application route does not specifically pass these, and it is not stated whether this amount was taken for the routes being a footpath or a bridleway.</p>
<b>25 Inch OS Map</b>	1911	<p>Further edition of 25 inch map, re-surveyed 1892, revised in 1909 and published 1911</p>
Observations		<p>The application route again is shown as being in existence between points A and B, as it runs along an enclosed track to Gambleside. The route between points H-I is no longer shown as pecked lines. There are pecked lines between J-L as shown on the previous map, but nothing shown for the remaining application routes.</p>
Investigating Officer's Comments		<p>This map suggests that A-B was usable by horse. F-G-H and K-L existed but there is no indication that they were usable by horses. No further indication on any of the other routes.</p>
<b>1:2500 OS Map</b>	1930	<p>Further edition of 25 inch map resurveyed 1892, revised in 1928 and re-levelled in 1929, and published in 1930.</p>



Observations		There is evidence of the routes existing between points A-B (as an enclosed track) and F-G-H-I and J-K-L-M as pecked lines.
Investigating Officer's Comments		The application routes between points A-B, F-G-H-I, and J-K-L-M did exist at this time, but only A-B appears to be usable by horses.
Map Directory of South Lancashire	1934	Map Directory of South Lancashire

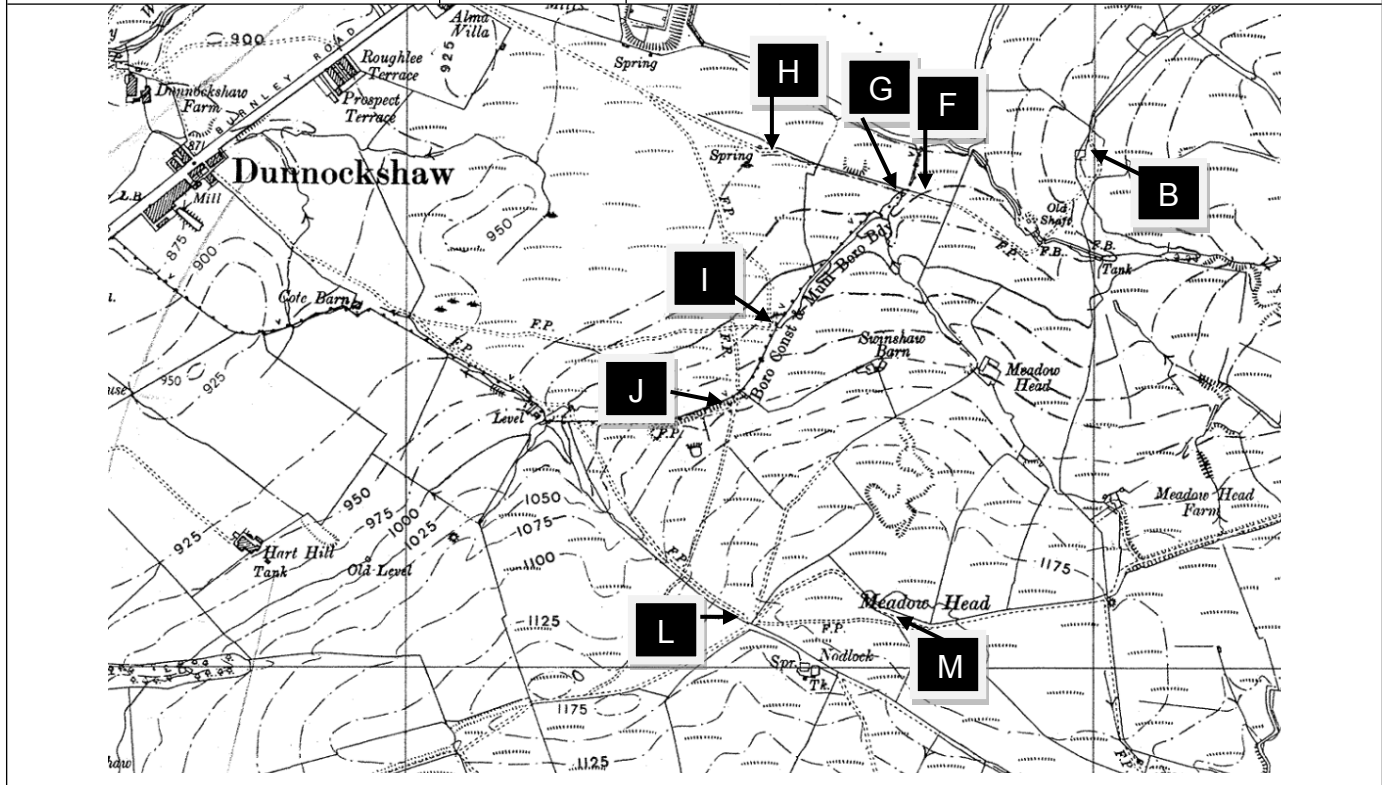




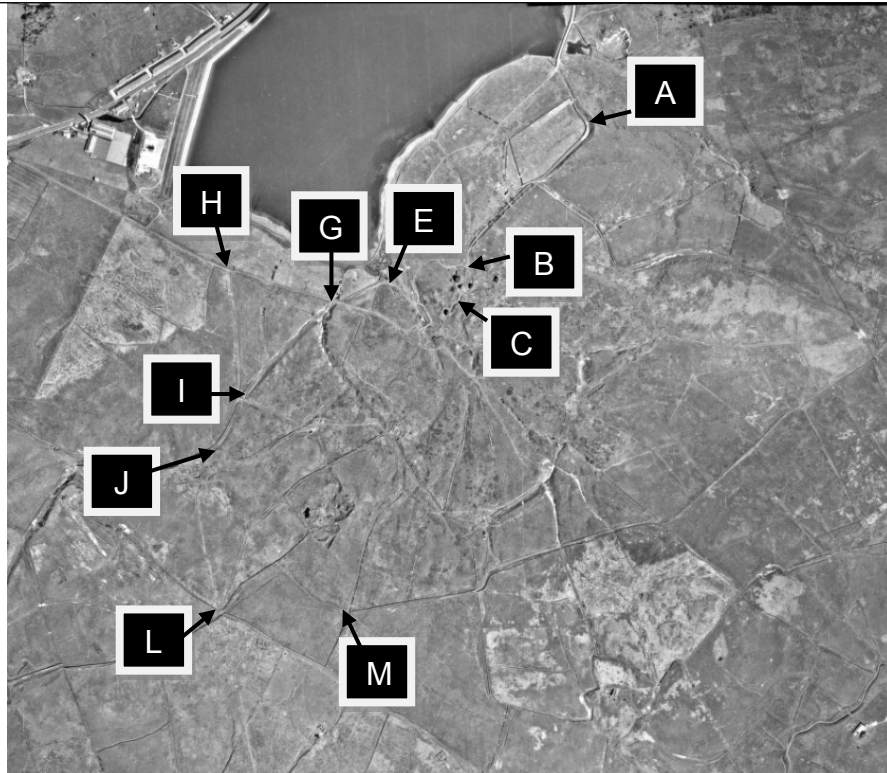
Observations		The application routes are shown on the Map Directory for South Lancashire between points F-G-H-I, J-K-L-M.
Investigating Officers' Comments		The Map Directory for South Lancashire shows evidence to support the majority of the application routes being in existence at the time. As a commercial map for sale to the public its value was in showing public routes although the status cannot be inferred.
<b>Aerial Photograph<sup>2</sup></b>	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 1940 aerial is not great. There was slight visibility of the application routes but due to the routes being across moorland and with the poor quality of the photograph, this made it difficult to determine.
Investigating Officer's Comments		No inference can be made due to the poor quality of the photograph.

<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.

6 Inch OS Map	1956	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
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Observations		A-B is shown as an enclosed track, F-G-H and L-M as double pecked lines annotated "F.P."
Investigating Officer's Comments		The map provides no further evidence for bridleway status.
Aerial photograph	1960s	The black and white aerial photograph was taken in the 1960s and is available to view on GIS.



Observations		There are clear trodden lines along all of the application routes. There is a significant enclosed route between points A-B-C, with an irregular trodden line leading down hill from C-D-E-F-G. There are also trodden lines between points H-I-J, and J-K-L-M.
Investigating Officer's Comments		The aerial photograph supports all of the application routes being in existence at this point but provides no information about the type of use or public/private status.
<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	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

		<p>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. The routes on each are recorded as public footpaths. There is nothing shown for the part addition.</p>
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<p>Observations</p>		<p>This application comes under two different parishes. Rawtenstall is a municipal borough and therefore did not have a parish survey map. Dunnockshaw comes under the rural district of Burnley. G-H along Dunnockshaw 10 is shown as footpath, the section H-I is not shown.</p>
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<p>Draft Map</p>		<p>The parish survey map and cards for the rural</p>
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districts were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.

As Rawtenstall was a municipal borough they prepared the Draft Map directly. Burnley Rural District however did use the parish surveys to compile the Draft Map as seen above.


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.

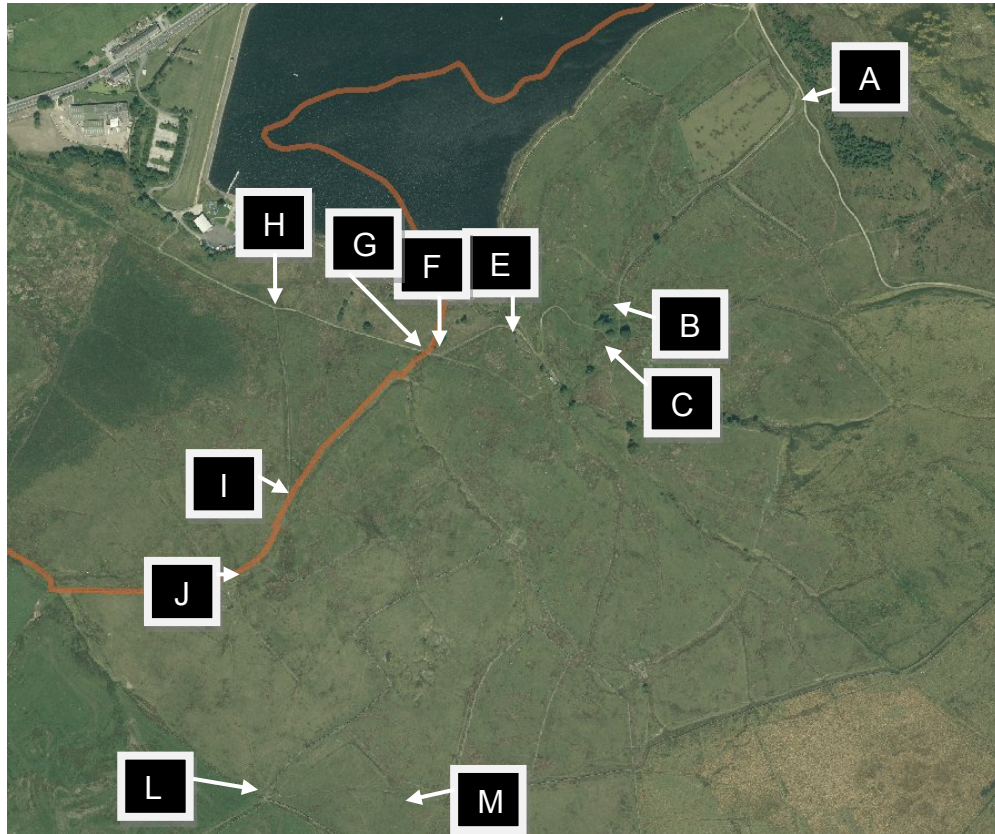




<p>Observations</p>		<p>The application routes are recorded on the Draft Map as public footpaths where they are now recorded as footpath and those unrecorded now are also not shown on the Draft Map</p>
<p><b>Provisional Map</b></p>		<p>Once all representations relating to the publication of the draft 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>
<p>Observations</p>		<p>The Provisional Map shows the application routes in the same way as the Draft Map.</p>
<p><b>The First Definitive Map and Statement</b></p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>
<p>Observations</p>		<p>None of the application route is recorded as bridleway on the Definitive Map and Statement.</p>
<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</p>



		Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		None of the application route is recorded as bridleway on the Definitive Map First Review.
Investigating Officer's Comments		The application route is not recorded as bridleway on any maps preparatory to the Definitive Map and there were no objections to the route not being recorded as bridleway. It was not considered to be public bridleway at the time.
<b>Aerial Photograph</b>	2000	Colour aerial photograph taken in 2000.
		
Observations		The application route can be seen as trodden lines as shown on the previous 1960 aerial photograph.
Investigating Officer's Comments		The photograph supports the line being used but provides no indication of the type of use or whether it was public.
<b>Aerial Photograph</b>	2014	Colour aerial photograph taken in 2014.



Observations		The aerial photograph shows the application routes as well-trodden lines as on the previous 1960 and 2000 aerial photograph.
Investigating Officer's Comments		The 2014 aerial photograph supports the application route being the line used but does not provide evidence of status.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<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</p>



		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).
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the application routes run.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

The application route does 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.

## Summary

Some of the application route is recorded on the documentation which has been inspected. The early commercial maps record a significant road leading from point A to between point B and C at Gambleside hamlet, suggesting that higher rights historically existed along this stretch to reach the dwellings. The Ordnance Survey maps record enclosed tracks or pecked lines for some of the application routes, indicating that they were existed on the ground. The aerial photographs from 1960 onwards to 2014 support all of the application routes as being well used paths, as did our site inspections.

## Head of Service – Legal and Democratic Services Observations

In support of the application the applicant has provided 25 evidence of use on horseback forms, the evidence is set out below.

The years that the users have known the route varies:

1947-2007    1965-2006    1958-2007    1962-2005    1964-2005    1967-2006  
1970-2005    1971-2006    1971-2007(2)    1972-2006    1973-2005  
1973-2006(2)    1976-2005    1976-2006    1976-2012    1977-2007  
1982-2005    1986-2006    1988-2007    1990-2012    1993-2005    1993-2006(2)

All 25 users have used the way on horseback of leading a horse, the years that the users used the way varies:

1947-1957    1950-1985    1965-1970    1962-2005    1964-1985    1968-2007  
1970-1992    1971-2006    1972-2006    1973-2005    1973-2006(2)  
1976-2005    1976-2006    1976-2012    1977-2006    1981-2004    1981-2007  
1982-2004    1987-2006    1990-2012    1991-2007    1993-2005    1994-2006(2)

The main places that the users were going to and from include: Crown Point to Cinder Terrace, Cliviger, Vale of Calderdale, Dynley, Cowbridge reservoir, Crown Point Road to Manchester Road, Loveclough, Bacup, Crawshawbooth, Compston's Cross and Water.

The main purposes for using the route include:

Recreation, pleasure, training for competitions, exercise the horses, enjoyment, group trekking and for long distance riding.

The use of the route per year varies from 1-3 times, 3-5, 10-12, monthly, 20 times, weekly, 104 times,

11 of the users have also used the route on foot, the years on which they used the route on foot varies:

1956-2006 1962-2005 1964-2013 1970-2006 1973-2006 1973-2005  
1976-2005 1970-2004 1987-2006 1988-2007.

1 of these users used the route on bicycle between the years of 1962-2005 and another user used the route on a motorcycle / vehicle between the years of 1973-2006.

All 25 users agree that the line has always run over the same route, and all agree that there are no gates / stiles / fences along the route.

None of the 25 users have ever worked for a landowner or have been a tenant of the land over which the route passes.

The users have never been stopped or asked to turn back when using the route, however 2 users mention of others having been stopped. 1 user states that her daughter was accosted by a countryside ranger in 2006 and the other user states that 2 young girls were told not to ride on this route by a countryside ranger in 2005/2006.

24 users have never been told by anyone that the route they were using was not a public right of way, however 1 user mentions in 2005 they were informed they should not be using the route but they have never been prevented or challenged from doing so.

Only 1 user has seen a sign along this route stating when the Right to Roam Act came into force in this area, a board with right to roam policies, and the designated area appeared at Meadow Head on the back of the notice it states no horse riding amongst other things, this was 2006.

None of the users have ever asked permission to use the route.

The applicant has provided a further 14 user evidence forms which indicate use of the route up until 2015, 6 people who filled in these forms also filled in one of the previous submissions. The evidence of use of these forms is set out below.

6 of the 14 users claim to have used the route on foot, the years in which these users used the route on foot is set out below:

1971-2015 1988-2015 1991-2015 1993-2015 1996-2015 2006-2015

All 14 users have used the route on horseback or leading a horse, the years in which they have used the route is set out below:

1950-1980	1971-2015(2)	1972-2015	1973-2015	1976-2015
1991-2015(2)	1993-2015	1994-2014	1995-2015	1996-2013
1996-2015	2005-2013			

The user who used the route between the years of 1996-2013 stopped using the route as they moved to Australia and the user who used the route between 1996-2015 didn't use the route between the years of 2013-2014 due to have children.

1 of the users used the route on a bicycle / horse-drawn vehicle between the years of 1991-2015

All the users have seen others using the route some on foot, others on horseback / leading a horse and some on bicycle. All the users agree that the users they saw using the route was using the same route they use.

The use of the route by the users varies, some users use the route on foot, horseback or leading a horse 3 times a week, weekly, monthly or twice per year.

The main reasons for using the route is for pleasure, exercise, exercise for the horses, as part of organised walks and to enjoy the scenery. The users also use the route to visit places along the route or as part of a longer journey.

6 users agree that the route has always followed the same line, but the other user mention a fence was erected in 2013 along with gates, some users were not prevented access and just diverted their route slightly and some users mention it didn't stop them from using the route. 1 user states ' from Gambleside to BW15 there is now a well-defined path to follow - prior to that I had to take the best dry line available to avoid mud. Spring 2013 a fence went in and so I had to follow the line of the fence instead of going through the mine workings' and the applicant states ' in 2005 the West Pennine Link Route was planned and a surfaced path was put in from the cinder track near the pump house up through Gambleside and along to join BW15. Before that we would take various lines over the grass depending on ground conditions, to avoid mud etc. There is now a clear path to follow which horse riders stick to. In the Spring of 2013 a fence was erected crossing the line of the path below the mine working ruins. Since 2013 we have ridden up the line of the fence from GR382534 427489 to re-join BW18 at the top GR382591 427159. Before the fence was put in we rode up the visible footpath all the way to "Stephanie's gate"'.

None of the users have ever worked for an owner / tenant / employee or a family member of the route, however 1 of the users stated that they met either owner / tenant / employee or a family member of the route when they were using the route and they responded with 'Hi'.

None of the users have ever asked permission to use the route and no one has ever attempted to turn the users back from using the route, the users have never seen any notices or any obstructions apart from the new fence and gates that were erected in 2013.

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

- Until I was asked to give 'user evidence' I was not aware that this route was not part of the concessionary circuits on the catchment area
- I have rode round this route for 42 years and never been questioned or stopped
- I have used this route since the age of 5 or 6 in company or alone as part of a circuit as have my sisters. The only changes have been the creation of a hard track to BW15 from behind the pump house and latterly the fence which did not prevent access along the historic route
- I first used this route in 1971 when I lived in Clowbridge and got my first pony. I have continued to use this route to the present day and now ride from my field in Goodshawfold
- I have regularly ridden this route all my life, riding with friends, fundraising and organised rides
- The section of the claim on the cinder track, past the pump house and Gambleside to BW15 is part of the West Pennine Link Route that was agreed with LCC, UU and the Countryside Agency as a means of access for riders and cyclists to reach the Mary Towneley Loop. However, although this route which starts at Smithills in Bolton is now complete as far as Hambledon Hill, the definitive status stops on Hambledon Hill. I have paperwork and minutes of meetings with LCC and CoAg over the years when this route was discussed but the last mile or so has been forgotten, Part of the WPLR route along the cinder track forms part of this claim
- I have always ridden this route along with friends and in larger organised groups, we have never been told this was not an option
- I have regularly ridden this route throughout my life, hacking out on Sunday mornings, taking part in organised rides and fund raisers and with friends
- I know that before I started using it that it was a well-known route as I was shown it by a lady who was in her 30's and she'd been riding it since she was a teenager. I know my dates are right because that's when I moved there with my horse
- Been riding this route for years, never been told I couldn't ride it. Really love the ride and never been asked not to

#### Information from others

Ingham and Yorke responded to say that they have no objection to the proposal on their client's behalf as their client only holds the mines and minerals for this land.

Response from United Utilities who are the landowner in connection with this application is set out below.

United Utilities Plc is the landowner for the area in relation to the proposed Definitive Map Modification Order. Land in this area is primarily tenanted by Jonathan Shorrocks, Dyneley Farm, Cliviger. United Utilities provides a pay and display car park accessed off the A682 at the south end of Clowbridge reservoir. This car park is

suitable for horse / box trailer use subject to there being a 3 metre-wide access road over an 18 ton gross weight limit bridge. The car park offers two separate horse tie rails and bridle gate catches at various points along the clearly signposted Pennine Bridleway feeder route (Gambleside Trail). This route is featured on the Dunnockshaw Community Woodland leaflet published by United Utilities and is available on its website.

The leaflet referred to features approximately 30km of tracks, paths and bridleways suitable for a variety of users, e.g. dog walkers, cyclists, fell runners and horse riders although not all user groups are permitted to use every route. The reservoir circuit path, for example, is not permitted for use by cyclists or dog walkers. Of the routes referred to 11km are bridleways in addition to the Pennine Bridleways Feeder Route featured on the Community Woodland leaflet. The area is also popular for those with restricted mobility and particularly those restricted to wheelchair use with a 2.3km path around the reservoir margin and 1.5km Quarry Walk specifically modified for Wheelchair and / or tramper vehicle access. The Dunnockshaw area south and east of Clowbridge reservoir also provides a challenging permanent orienteering course and Clowbridge reservoir is home to Rossendale Valley Sailing Club.

With so many use groups visiting an area that also functions as a medium-sized sheep farm it is not surprising to find United Utilities, as the major land owner, has on occasion to deal with conflict between visitor groups. A part-time ranger visits the area between two and three days each week and has done so for the last eight years. He is therefore ideally placed to comment on issues relating to public access.

The ranger has confirmed that horse boxes / trailers access the main car park quite frequently with others opting to park on Limey Lane at the north end of Clowbridge reservoir. The ranger is equally familiar with horse riders moving along the Wholaw Trail, White Hill circuit and the Pennine Bridleway feeder route that runs through Gambleside south and east of the reservoir. Only very infrequently has he observed horse riders trespassing footpaths elsewhere over Gambleside area and in particular along the path between Point A and B on the map detailing a proposed amendment to the Definitive Map. He confirms having occasionally seen riders and cyclists that they are not on an authorised route for their particular activity. To claim therefore that FP 18, 19 and 364 in particular are frequently used by horse riders and have been so over very many years is simply not the case.

The land through which these footpaths run is tenanted and the tenant has committed to the Higher Stewardship Scheme. This scheme aims to encourage farmers to manage their land holding in a manner conducive to establishing and maintaining flora and fauna – beneficial eco systems. Gambleside and the area onwards to Meadow Head, Compston Cross and Limey Valley is an important habitat for upland species and in particular those dependant on open moor and bog. As a major land owner United Utilities is committed to providing public access in support of a wide range of interests. However this has to be managed and balanced against its clear mandate to support its tenants and to create and maintain diverse wildlife habitats. United Utilities feel that the area is very well provided for in relation to horse rider interests and they do not accept that there is a long-standing historical evidence of unopposed trespass by horse riders over the footpaths referred to. Much of the route between Points A and B on the proposed application and onwards to

Meadow Head area runs through a steep hillside that is in places deeply rutted. It also passes close by unfenced former colliery buildings. To provide a safe bridleway route will require significant track enhancement. They feel this will impact adversely on this ecologically important habitat and that this situation will be further exacerbated by increased use by cyclists and possibly off-road motorcyclists – already a significant problem within the Hambleton and Hapton areas nearby.

They trust their points concerned will be considered and that the route amendment will be rejected.

#### Information from file in Legal services

The creation of the Pennine Bridleway national Trail being underway a report was presented to the Committee on 15<sup>th</sup> August 2007 and it was resolved that agreements be entered into by the authority to take dedications of various sections of bridleway route from various owners. One length had been proposed to be dedicated from United Utilities and discussions had already taken place. This was the route section A- H of the route being considered. Various issues arose which has meant that no final agreement was signed but the file indicates United Utilities' intention to dedicate A-H. The basic draft agreement was approved by UU in April 2002.

### **Assessment of the Evidence**

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

In Support of the Claim

User evidence

Evidence of owner intention re section A-H

Against Accepting the Claim

Information from the owner as to their present intention and actions

Conclusion

The claim is that this length is already bridleway in law and should be recorded as such on the Definitive Map and Statement.

It is suggested that there is not sufficient evidence of express dedication although the information on Legal Services File regarding A-H may arguably come close to being such.

The Committee is invited instead to consider the evidence and whether there is sufficient evidence of a dedication which can be deemed from user of the route under S31 Highways Act 1980 for the 20 years prior to the route being called into question. The application will call the route into question but the issue of the fenceline in 2013 may also be sufficient to call the route or that section of the route

into question, the years of use to be considered would therefore be 1993-2013 or 1995-2015. It is suggested that there is sufficient use as of right. The challenges to a couple of the users in 2006 again could be a calling into question but it is suggested that this did not appraise a reasonable number of users of the challenge to their use and is therefore unlikely to be sufficient to be a calling into question. It could arguably be evidence of the landowners lack of intention to dedicate, although there are no clear details given, but this does not seem sufficient evidence of intention as in 2006 the landowner was discussing dedication of part of the route with the County Council.

Despite the concerns of United Utilities today it is advised that the criteria set out in S31 can be satisfied in this matter on balance.

Committee may also look at user or other matters as circumstances from which dedication by an owner may be inferred. This intention to dedicate can be difficult to show if the landowner is longstanding and today expressing a lack of intention, but it is suggested that in this matter there is some good evidence of the owner's intention to dedicate section A-H in particular shown in the file referred to above.

Taking all the evidence into account it is suggested that Committee may find sufficient evidence on balance from which to find a deemed dedication of this route under S31 or inference of dedication of A-H.

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

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

Paper	Date	Contact/Tel
All documents on Claim File Ref: 804/549	Various	Megan Brindle 01772 535604

Reason for inclusion in Part II, if appropriate

N/A