

Regulatory Committee

Meeting to be held on 21 October 2015

Electoral Division affected: Penwortham North
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Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of a Public Footpath from Cop Lane to Alcester Avenue through
Penwortham Girls High School, Penwortham, South Ribble
File No. 804-563
(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for a Public Footpath from Cop Lane to Alcester Avenue, Penwortham, South Ribble to be added to the Definitive Map and Statement of Public Rights of Way in accordance with file no. 804-563.

Recommendation

1. That the application for a Public Footpath from Cop Lane to Alcester Avenue, Penwortham, South Ribble, to be added to the Definitive Map and Statement of Public Rights of Way in accordance with file No. 804-563, be accepted.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a Public Footpath from Cop Lane to Alcester Avenue, Penwortham, South Ribble to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G and points A1-B and points F-G1.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation if necessary by sending it to the Secretary of State

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received from Mr David Howarth for a Public Footpath extending from Cop Lane through Penwortham Girls High School to Alcester Avenue, Penwortham, South Ribble Borough a distance of approximately 150 metres and shown on the Committee plan by thick dashed lines between points A-B-C-D-E-F-G and points A1-B and points F-G1 to be recorded on the Definitive Map and Statement of Public Rights of Way

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

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

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

South Ribble Borough Council have been consulted and no response has been received, it is assumed they have no comments to make.

Penwortham Town Council have also been consulted and their response is set out below.

The Town Council discussed the proposal and the following was stated.

"The Council are aware that residents have used the footpath for a number of years and so support the inclusion of the aforementioned route as a definitive public right of way. However, the Council have serious concerns regarding the safety of the pupils attending Penwortham Girls High School and should LCC include the route as a public right of way as immediate access to the school grounds from this route would impinge on the safety of school pupils. Therefore, the Penwortham Town Council suggest that some form of barrier or fencing should be implemented to mitigate the risk."

Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/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

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5209 2821	Point on Cop Lane adjacent to main school gate
A1	5200 2821	Point on Cop Lane adjacent to pedestrian gate
B	5202 2822	Zebra crossing on tarmac access road into school
C	5206 2824	Zebra crossing adjacent to north west corner of school building
D	5209 2824	Point at which route narrows as it passes between two buildings
E	5210 2824	Point at which route widens after passing between two buildings
F	5214 2825	Point on tarmac access road west of main gate
G	5214 2825	Point on Alcester Avenue adjacent to vehicular gate
G1	5214 2825	Point on Alcester Avenue adjacent to pedestrian entrance

Description of Route

A site inspection was carried out in April 2015 accompanied by a representative from Penwortham Girls High School through which the route runs.

The route commences at the junction with Cop Lane. Two adjacent entrance points to the school exist and the application has been made to include both.

'Route 1' is shown by a thick dashed line between point A and point B on the Committee plan. This route leaves Cop Lane in an easterly direction and enters the school grounds along the main vehicular access route into the school.

From point A the route passes through gateposts approximately 5 metres apart onto which a metal barrier is attached. The barrier was open when the route was inspected and the representative from the school explained that the current practice was for it to be open during school time and for it to be locked at night, weekends and during the holidays.

The main entrance provides access to the staff and visitor parking area, and is also used by lorries delivering food to the school kitchens on a daily basis during term time.

From point A the route passes east along the tarmac access road to point B where a zebra crossing has been painted on the tarmac to indicate the route that should be taken by pupils across the roadway. Between point A and point B double yellow lines along either side to indicate no parking along the access way.

'Route 2' leaves Cop Lane immediately south of the main school gates at point A1 and passes through a pedestrian gate which was unlocked at the time of inspection but which the representative of the school informed me would be locked out of school hours.

Attached to the wall immediately beyond the gate is a sign which reads "Penwortham Girls High School, No Thoroughfare, Action will be taken against any persons trespassing or otherwise causing a nuisance or disturbance including the unauthorised practicing of games and exercise of animals on these premises." And specified "No ball games, No cycling, No skating, No dogs". A further sign indicated the use of CCTV cameras on the premises.

Beyond the gate the route continues parallel to the main access road into the school, in an easterly direction along a tarmac footway approximately 1 metre wide for approximately 12 metres. It then crosses the main access road to point B. The point at which the route crosses the access road is marked on the ground as a zebra crossing to be used by the pupils.

From point B the two routes claimed to have been used by the public converge and continue in a north easterly direction along the tarmac drive to pass to the north of the main entrance to the school buildings. The route again coincides with a marked out walkway painted onto the tarmac to indicate the route to be used by pupils.

At point C the pupils' route crosses the access road via a further painted zebra crossing towards the main entrance to the school building while a further marked out route continues from point C along the route under investigation.

From point C the route under investigation continues in an east north easterly direction along the tarmac access road which passes to the north of the school building and is bounded by a beach hedge on the perimeter of the school site. The width between the building and the kerb marking the extent of the tarmac is approximately 3 metres and the pedestrian route to be used by the pupils had been marked out along part of the width adjacent to the building.

After approximately 15 metres the tarmac area widens and on the day that the route was inspected this part of the route was partially blocked by a delivery lorry that had reversed up the route to deliver food to the kitchen. Part of the tarmac area south of the route under investigation contained the commercial school bins and there was also a small area where two cars were parked. A marked out pedestrian route to be used by the pupils passes the bins and parked cars on part of the width of the route under investigation to point D.

At point D the width of the route available to use is restricted as it passes between two buildings. The width is approximately 1.1 metre at point D widening to approximately 1.8 metres to continue between the buildings for approximately 5 metres to point E.

Just beyond point E separating the route under investigation from the rest of the school premises is a green security fence into which there is a pedestrian gate which was closed when the route was inspected.

From point E the route under investigation widens to approximately 3 metres and follows a tarmac access road in a north north easterly direction bounded by the green security fence separating it from the school buildings to the south and the boundary hedge to the north. On the day the route was inspected two vans owned by contractors working on the school premises obstructed part of the width of the tarmac road.

After approximately 40 metres the route splits, one route continues to exit the school premises through some double gates which were open at the time that the route was inspected but which are normally locked out of school hours. The route ended just east of the gates at point G at the junction with the western end of Alcester Avenue.

As was the case at the western end of the route where it meets Cop Lane the applicant has claimed that two adjacent access points also exist at Alcester Avenue.

'Route 1' is described above between point F and point G via the main gates. 'Route 2' is also shown on the Committee plan but from point F west of the main gate it passes in a south easterly direction to exit onto the western end of Alcester Avenue at point G1 via an ungated gap.

Just north of point G1, located in the school grounds, but not easy to read from the route under investigation, is an identical sign to the one found on the gate at point A1.

The total length of the route under investigation from point A-B-C-D-E-F-G is 150 metres with the two alternative access routes measuring 30 metres between point A1 – point B and 4 metres between point F and point G1.

Map and Documentary Evidence

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

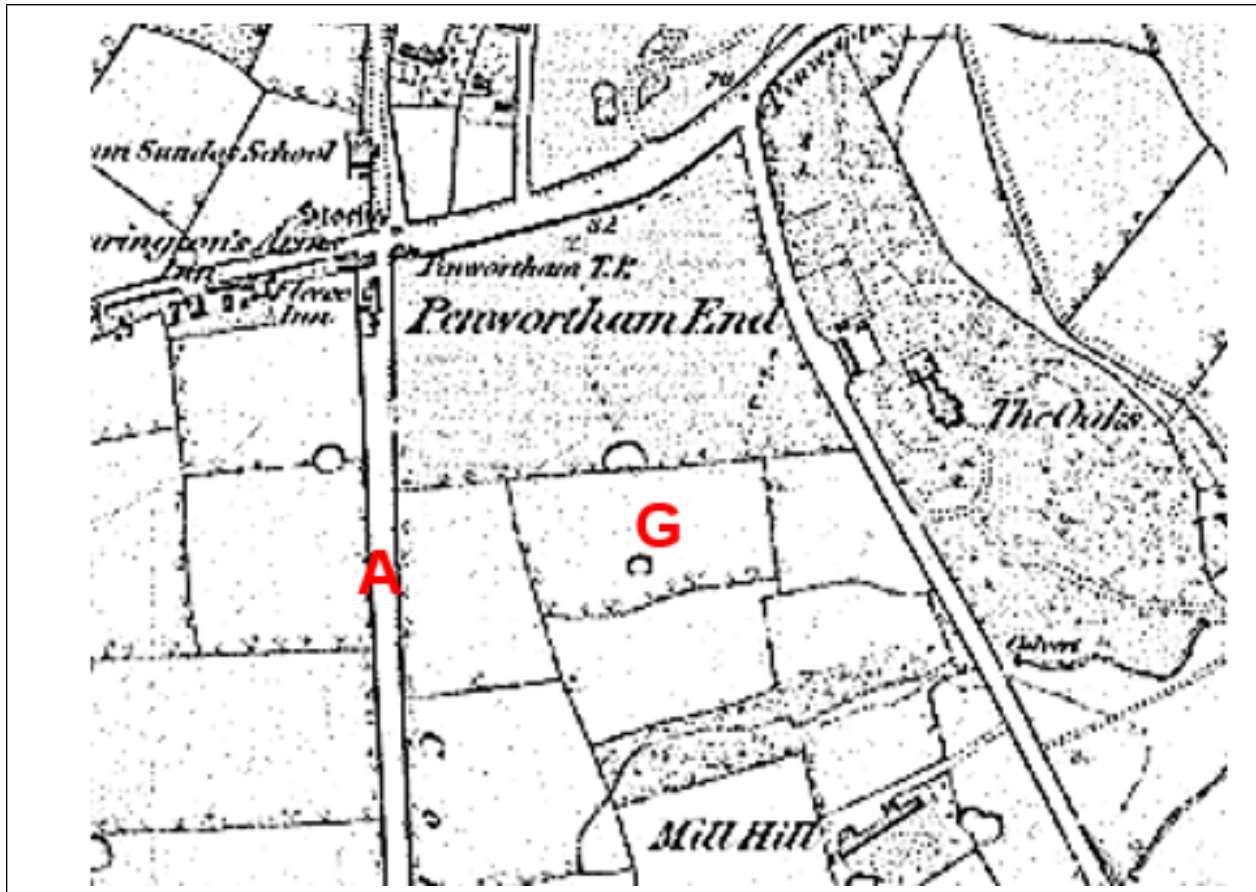


Observations		The route under investigation is not shown. Cop Lane is shown but it is not possible to determine the exact location of the route and the land that it crosses appears to be undeveloped agricultural land.
Investigating Officer's Comments		A route claimed as a public footpath would be unlikely to be shown on the map due to the limitations of scale and the purpose for which it was drawn. The area of land crossed by the route appears to be undeveloped and Alcester Avenue is not shown. The route under investigation is unlikely to have existed in 1786.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads.
Observations		The route under investigation is not shown. Cop Lane is shown but it is not possible to determine the exact location of the route and the land that it crosses appears to be undeveloped agricultural land.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1818.

Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		The route under investigation is not shown. Cop Lane is shown but it is not possible to determine the exact location of the route and the land that it crosses appears to be undeveloped agricultural land.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1830.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no canals or railways crossing the area of land over which the route under investigation runs.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1839	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		The Tithe Map for Penwortham was produced in 1839 around the time of the earliest 6 inch

		Ordnance Survey map. As the Ordnance Survey map and earlier commercial maps show that the land crossed by the route under investigation was undeveloped agricultural land with no indication that the route existed the Tithe Map was not examined.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		The Inclosure Award for Penwortham has not been examined as the land crossed by the route under investigation was undeveloped agricultural land.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849. ¹

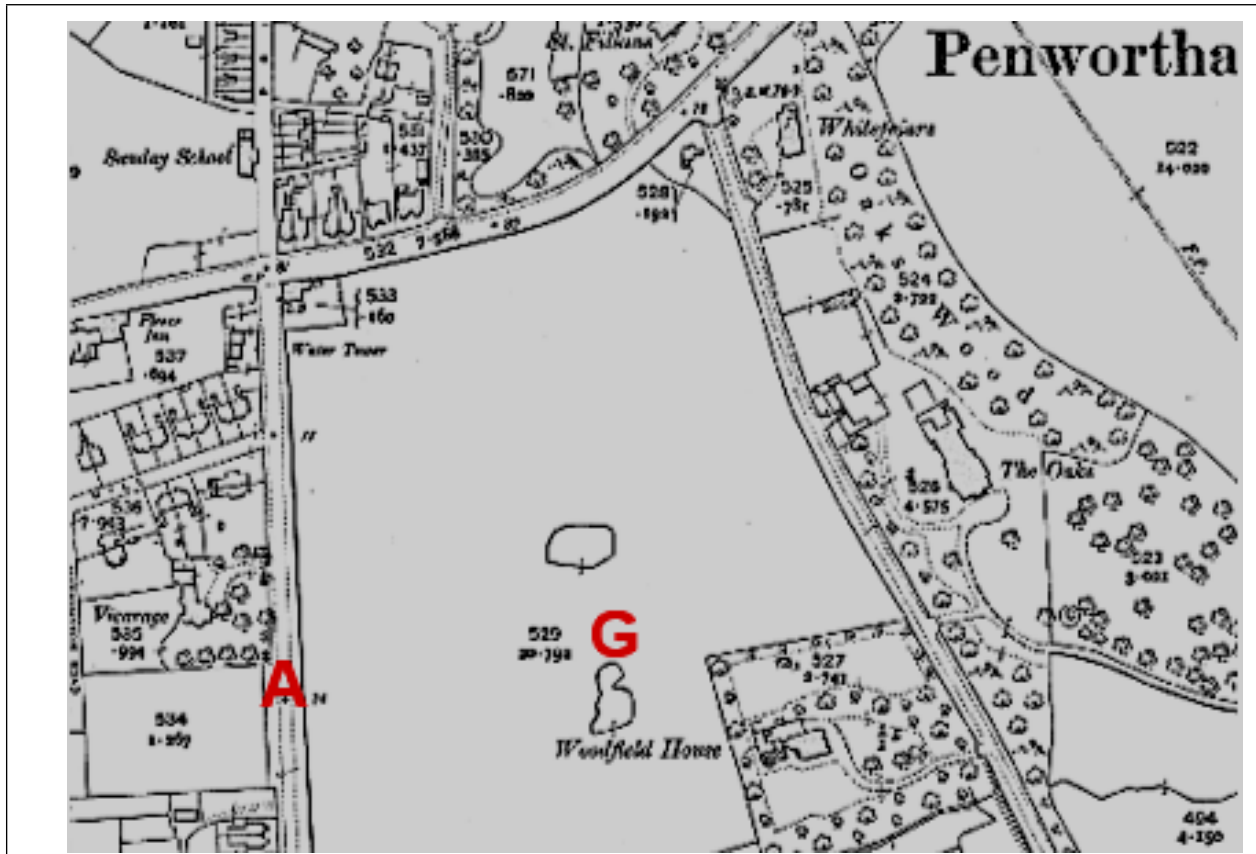
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in 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		The route under investigation is not shown. Cop Lane is shown but Alcester Avenue is not meaning that although public access was available to point A (and point A1) point G (and point G1) did not appear to be publicly accessible. The land now crossed by the route under investigation is shown as agricultural land and there is no worn track identified on the map along the route claimed.
Investigating Officer's Comments		It is considered that the route did not exist in 1849.
25 Inch OS Map	Circa 1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published circa 1891.



Observations		The route under investigation is not shown. It crosses agricultural land and point G is seen to be a point in a field to which there appears to be no public access.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1891.
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1891, revised in 1909 and published in 1912.



Observations		The route under investigation is not shown and there do not appear to have been any changes since the publication of the earlier edition of the 25 inch Ordnance Survey map.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1912.
Finance Act 1910 Map	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</p>

		<p>owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		There is no Finance Act Map deposited in the County Records Office for the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
25 Inch OS Map	1937	Further edition of 25 inch map surveyed 1891, revised 1929 and published 1937.
Observations		The route under investigation is not shown and there do not appear to have been any changes since the publication of the earlier editions of the 25 inch Ordnance Survey map.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1929.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>



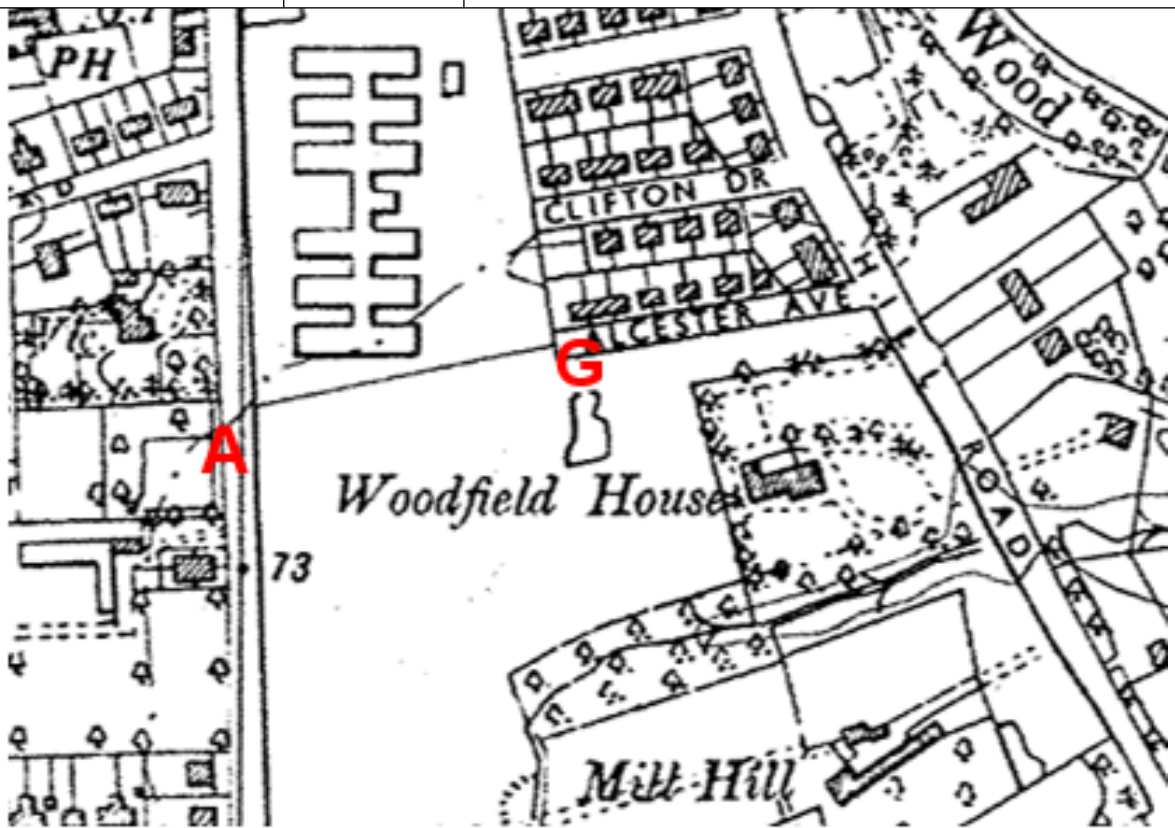
Observations		The route under investigation is not shown. Cop Lane is shown to exist but Alcester Avenue – which provides public access to point G (and point G1) - is not shown on the map.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in the 1930s.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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



<p>Observations</p>		<p>This aerial photograph is the earliest piece of documentary evidence examined to show that Alcester Avenue and the houses along it had been built. The photograph pre dates the construction of the school and the land crossed by the route under investigation appears to be agricultural. A worn track consistent with pedestrian use can be seen coming off Alcester Avenue east of point G (and point G1) and extending towards Cop Lane. This route is not on the exact alignment of the route under investigation and it is not possible due to determine exactly where it exits onto Cop Lane.</p>
<p>Investigating Officer's Comments</p>		<p>A route from Alcester Avenue to Cop Lane may have existed in the 1940s which predated the route now under investigation however the route under investigation did not exist on its current alignment at the time that the photograph was taken.</p>
<p>6 Inch OS Map</p>	<p>1955</p>	<p>The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on</p>

the same survey as the 1930s 25-inch map.



Observations

The route under investigation is not shown. Public access was available to point A (and point A1) on Cop Lane and to point G (and point G1) from Alcester Avenue but the school is not shown to have existed and there is no trodden track shown to exist across the agricultural land.

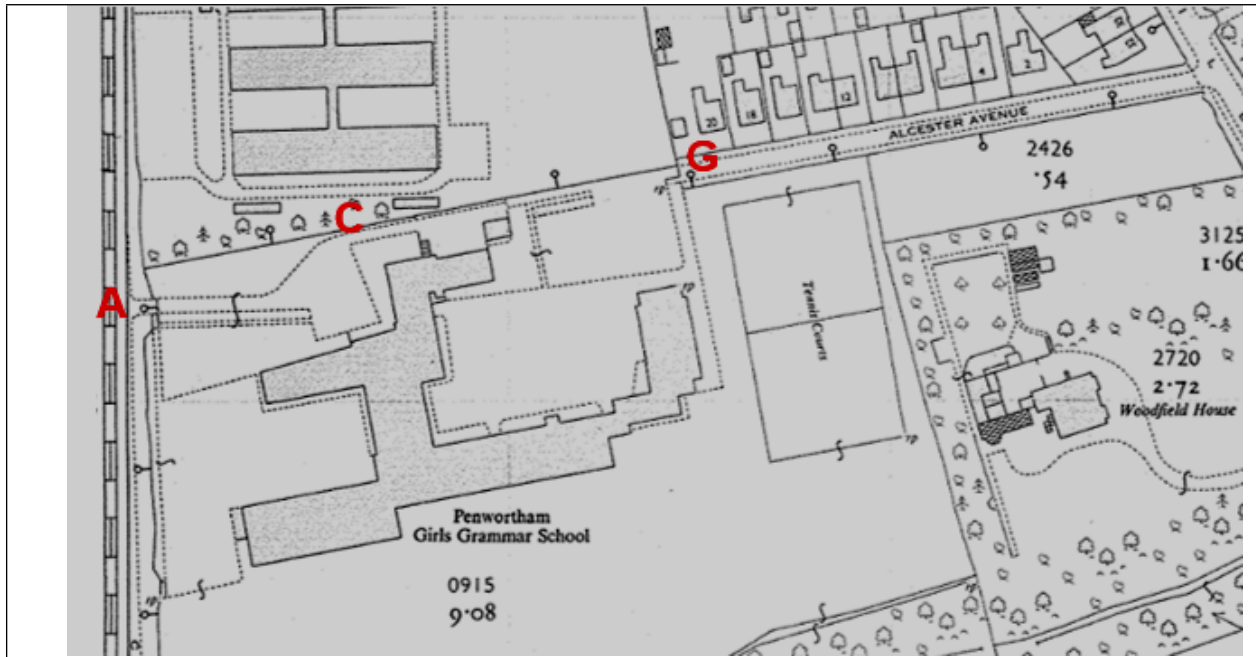
Investigating Officer's Comments

The route under investigation probably did not exist in the 1930s.

1:2500 OS Map

1960

Further edition of 25 inch map reconstituted from former county series and revised in 1957 and published 1960 as national grid series.



<p>Observations</p>		<p>The school had been built and is labelled as Penwortham Girls Grammar School. Access appears to be available at point A and may have been gated. A separate path (shown by double pecked lines) is also shown extending from point A1 to run parallel to the main access route indicating a separate pedestrian access.</p> <p>Access appears to be available along the north side of the school from point C through to point G where a pedestrian access also appears to be shown consistent with point G1.</p>
<p>Investigating Officer's Comments</p>		<p>By 1957 it appears that the school has been built and that the main access to the school was from Cop Lane at point A with a designated pedestrian access route from point A1. The route under investigation appears to be available through the school grounds and it appears that pedestrian access onto Alcester Avenue at point G1 was possible although whether this was entirely consistent with the modern day access and whether there was a gate at point G is not clear from the map.</p>
<p>Aerial photograph</p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



Observations		The black and white photograph confirms the existence of the school in the 1960s and access appears to be available along most of the route claimed. The exact configuration of access points at point G and G1 is still uncertain as it is not possible to see whether gates existed due to tree cover.
Investigating Officer's Comments		The route under investigation appeared to be capable of being used in the 1960s although the configuration of access at Alcester Avenue is unclear.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		The shows that the layout of the school had remained largely unaltered and that the route appeared to be accessible. The building that restricts the width of the path between point D and point E can be seen in the photograph. The exact access available at point G and G1 cannot be seen due to tree cover.
Investigating Officer's Comments		The route under investigation appeared to be capable of use in 2000.
Aerial Photograph	2010	Aerial photograph available to view on GIS



Observations		The photograph is taken during school hours. The layout of the school appears largely unaltered from 2000 and the route claimed appears to be accessible.
Investigating Officer's Comments		The route under investigation appeared to be capable of use in 2010.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The Parish Survey map and cards were drawn up by Penwortham Parish Council. The route under investigation is not shown on the parish survey map or documented in the parish survey cards.
Draft Map		The parish survey map and cards for Penwortham were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement. The Draft Maps were given a "relevant date" (1 st 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 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these

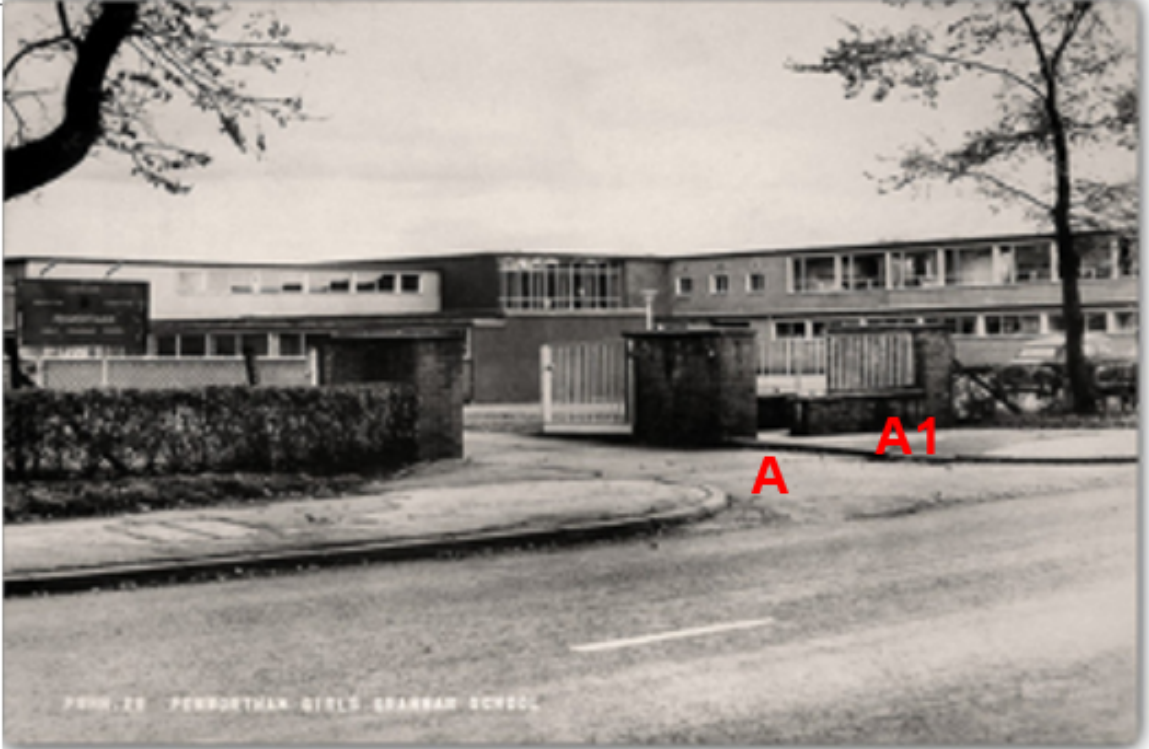
		objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The route under investigation is not shown on the Draft Map of Public Rights of Way and there were no objections to the omission of the path.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation is not shown on the Provisional Map of Public Rights of Way and there were no objections to the omission of the path.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation is not shown on the First Definitive Map and Statement Map.
Revised Definitive Map of Public Rights of Way (First Review)		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 th 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 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The route under investigation is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The route under investigation was not considered to be public during the preparation of the 1 st Definitive Map and Statement through to the 1960s.
Highway Adoption	1929 to	In 1929 the responsibility for district highways

<p>Records including maps derived from the '1929 Handover Maps'</p>	<p>present day</p>	<p>passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
<p>Observations</p>		<p>The route under investigation is not recorded as being publicly maintainable in the records originally derived from the 1929 Handover Maps and now held by the County Council.</p>
<p>Investigating Officer's Comments</p>		<p>The fact that the route was not recorded as a publicly maintained highway in 1929 is not surprising as it is unlikely to have come into existence until the school was built in the 1950s (it is stated to have come into existence in 1954 – Wikipedia).</p> <p>Once the school had been built, the fact that the route now under investigation was not recorded on the List of Streets is not unusual as it does not appear to have been laid out as a designated footway as part of a development.</p> <p>The fact that it is not recorded as a publicly maintainable highway does not mean that it does not necessarily carry public rights of access.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act</p>		<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</p>

<p>1980</p>		<p>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 of land over which the route under investigation runs.</p>
<p>Investigating Officer's Comments</p>		<p>There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.</p>
<p>Google Street View</p>	<p>2009</p>	<p>Google Street View Images captured May 2009.</p>



Observations		The first photograph confirms that access at point A and point A1 was available in 2009. The barrier across point A is shown in an open position but it is not known whether the photograph was taken during school hours or not. The photograph from Alcester Avenue shows the gate at point G open but it is not possible to see whether access was also available through point G1.
Investigating Officer's Comments		The photographs support the user evidence detailing use of the route under investigation in

		2009.
Undated photograph of the school found on the internet	unknown	A google search located an undated photograph of Penwortham Girls Grammar school on the internet (www.flickr.com).
		
Observations		The photograph shows the entrance to the school on Cop Lane and that access the access points at point A and point A1 existed and appeared to be available. The gates at point A are open in the photograph.
Investigating Officer's Comments		The photograph, whilst undated, supports the user evidence which describes access to the route being from both point A and point A1.

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

All of the land affected by this application is owned by Lancashire County Council and is occupied by Penwortham Girls High School.

Summary

None of the map or documentary evidence examined was sufficient (even if considered collectively) to conclude that a public right of way existed through the school.

The evidence examined appears to show that the route under investigation did not come into existence until the school was constructed in or around 1954. A worn track – consistent with pedestrian use – is shown on the 1940s aerial photograph between Cop Lane and Alcester Avenue which may have been the predecessor to the route under investigation but it did not appear to be along the exact alignment of the route claimed.

It appears that the route under investigation could not have come into being until the school had been built. The map and photographic evidence examined supports the user evidence in that it appears that access to the school at point A and point A1 existed and appear to have remained unaltered. It also supports the user evidence in that it appeared to be possible to walk through the school grounds along the route claimed throughout the period of use covered by the user evidence submitted.

It appears likely that the gate at point G has existed in its current format during that time but the map and photographic evidence is not sufficiently clear regarding access at point G and G1 to be certain.

Head of Service – Legal and Democratic Services Observations

Information from the applicant

In support of the application the applicant has submitted 21 user evidence forms, the evidence from these forms is set out below:

All 21 users have used the route on foot, the years in which the users have used the route varies:

1963 – 2015 (1) 1965 – 2015 (1) 1966 – 2015 (1) 1968 – 2015(2) 1969 – 2015(2) 1974 – 2015(2) 1978 – 2015(2) 1981 – 2015(3) 1983 – 2015 (1) 1987 – 2015 (1) 1988 – 2015 (1) 1991 – 2015 (1) 1994 – 2015 (1) 1997 – 2015 (1) 2012 – 2015 (1)

The use of the route on foot varies between users but includes 9 users using the route daily, 9 users using the route weekly, 2 users using the route monthly, and 1 user using the route every 2 – 4 months.

7 users have used the route on bicycle/horse-drawn vehicle, the years in which the users have used the route varies:

1966 – 2015 1968 – 1972 1974 – 2010 1978 – 2015 1981 – 2015
1987 – 2015

The use of the route on bicycle/horse-drawn vehicle varies between users but includes 3 users using the route weekly, 2 users using the route monthly and 2 users did not respond.

1 user who used the route during 1988 to 2015 has recently had to stop using the route when the school locked the gates. Another user who used the route during 1981 to 2015 didn't use the route for long periods of time throughout 1981 to 1990 due to working out of the UK in the marine industry; his wife and children still continued using the route.

All 21 users recall seeing others using the route on foot, 9 users recall seeing other using the route on a bicycle and 6 users recall seeing others using the route on a bicycle/horse-drawn carriage. All 21 users saw the other people mentioned using the exact same route as the one they use.

The main reasons for using this route include to go to the doctors, the health clinic, the dentist, the church hall, Sunday school, Cop Lane School, to work at the old Government buildings, as well as for delivering local newspapers. Many users also used this route for pleasure including visiting friends, visiting the shops and the post office, attending ballet and functions at the girl's High School and running the Friday night club for children at Penwortham Church Hall. Some of the users also used this route for health reasons; as a short cut between roads such as Cop Lane and Hill Road to prevent them having to use the more dangerous, longer route and to prevent themselves having to breathe in the petrol and diesel fumes from the A59.

17 users stated that their route has always followed the same line and 1 gave no response. The other 3 users stated that their route has changed in the past because of the building that was constructed and the gate that was locked.

When using the route, 5 users have used it in the position of an owner and 2 users have used it as a family member.

8 users recall meeting a landowner/tenant/employee/family member of the route and experienced the exchange of greetings such as good morning or afternoon. 11 users stated that they had never met a landowner/tenant/employee/family member of the route and 2 users gave no response.

3 users stated that they had been given permission to use the route by Julie Westwell, the Headmistress at Penwortham Girls High School in 1991 via a letter that has been attached. 20 users stated that they have never been turned back on the route or had anyone tell them that they had no right to be on the route and 1 user gave no response.

10 users recall seeing notices discouraging use on the route. 2 users recall notices which were next to the tennis courts and stated 'no through fare' that were there from 2011 – 2015. 2 other users recall a 'no through fare' sign on the route that was near Alcester Avenue; 1 user stated it was there from 2011 – 2015 and the other stated it was there from 2013 -2015. 2 users recall a sign at the entrance to the school which stated 'private land, no trespassing' from mid-2014 – 2015. 2 users recall a sign stating 'school property' which was placed at the entrance to the school from 2013 – 2015. 1 user recalls a sign on the entrance gates advising of a planning application that was present for 24 hours. 6 users don't recall ever seeing any notices and 5 users gave no response.

14 users recall there being a gate/barrier placed on the route. 5 users stated that there isn't any gates/stiles/bridges/fences on the route and 2 users gave no response. 12 users state that there has been an obstruction. 10 of the users state that this obstruction was the gate and the barrier; more specifically, the locks on the gate and barrier. All of those 10 users state that it was late 2014/recently that this

obstruction arose and that it is ongoing. 3 of those 10 users stated that this has prevented/deterred them from using the route. 1 user states that the obstruction was the building materials that were placed on the route when alterations were being made to the building for 2 months and that this prevented him using the route for a few days. 1 user stated that the obstruction is the building that has been built on the route but that this didn't deter him from using it.

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

- 3 users refer to a letter they have attached from the previous headmistress Julia Westwell. The letter informs residents of refurbishments being carried out at the school but that 'The right of way from Cop Lane will be maintained, and the contractors' vehicles should not interfere with your access to your own property'
- There are many older people in Penwortham who over the years have found, through ill health and age, this path to be a god send.
- Prior to moving to Penwortham in 1974 I attended a school in Penwortham and stayed at a friend's house. We often walked the route in question at a weekend (1964-1968).
- This user also refers to letter from the previous headmistress, and mentions there is a doctor's surgery and a church hall opposite the Cop Lane entrance to the route. Many older and infirm people use the route from Hill Road and its connecting roads; Clifton Drive, Greyfriars Drive, Alcester Avenue, Valley Road and beyond. Many children use this route to travel to school; priory H.S, Hutton G.S, Cop Lane C.E, Penwortham Community Primary School. It is much safer than walking or cycling on Hill Road and Liverpool Road, crossing at the very busy crossroads of Liverpool Road, Cop Lane and Priory Lane. My own children used this route to travel to Cop Lane C.E.P School (walking) and Hutton G.S (cycling).
- When I first entered government service at Cop Lane I was told this was the quickest route to work and that it was presumed to be a public right of way.
- If the path is closed it will be like splitting a community and it will look like a prison.
- To my knowledge it has always been deemed a public right of way by myself, my family and friends and the general public. People regularly come down Clifton Drive assuming it is Alcester Avenue.
- It has always been accepted locally that the route is a public footpath by long user.
- I have represented this area as a town councillor for 20 years, a Borough Councillor for 12 years and a County Councillor for the last 2 years. In all that time this route has been open and I have known local residents to regularly use it. The maps on Mario (attached) with aerial photographs from the 1940's before the school was built show a well-trodden path along this route through the then grounds of Woodfield House.

Along with the 21 user forms, the applicant has submitted 2 statements from previous users, this information is set out below:

- An email from Mr Edward J Westhead who has also used the route in question but due to not having used the route for 10 years couldn't give the

detail required by the user forms. Mr Westhead states that he used the route from 1984 – 2005 with his mother who, due to her polio and Parkinson's disease, needed to exercise to retain mobility. They walked around Penwortham and on many occasions used the route to get from Cop Lane to Alcester Avenue or vice-versa.

- A 'Focus Feedback Form' from Mr and Mrs D L Tunstall who were born in Penwortham and have used the route for over 30 years. They still use the route regularly as it is a safe route for them to visit their daughter's house. Their two grandsons also use it most days to visit them.

Objection from Penwortham Girls High School

An email was received from Penwortham Girls High School on the 23rd July 2015 which confirms that Penwortham Girls High School is the occupier of the land and states that they have very strong objections and concerns about the approval of this route as a footpath. They believe that the creation of such a footpath would compromise the security of the school and the safety of the pupils as allowing members of the public unhindered access to the school site, and therefore the pupils, would hinder the schools ability to safeguard their pupils. They also state that they have never encouraged the use of the route and have actively discouraged it by locking the gates and placing up signage stating 'no through fare.'

Response from Lancashire County Council's Estates Team

The estates team have confirmed that Lancashire County Council own the land affected by the application but no further comments towards the application has been received.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

- User Evidence
- OS Map Evidence
- Aerial Photographs 2000 and 2010
- Letter to 3 of the users from former headmistress
- Absence of sufficient action taken by the landowner to discourage use of the route until recently.

Against Accepting the Claim

- Locking of gates and barriers
- Signs and Notices on the route
- Map and photographic evidence not sufficiently clear relating to access at point G and G1 to be certain

Conclusion

The claim is that the route A-B-C-D-E-F-G and A1-B and F-G1 is an existing public footpath and should be added to the Definitive Map and Statement of Public Rights of Way.

It is therefore advised as there is no express dedication that the Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question. All evidence would appear to relate to the route A-B-C-D-E-F-G and A1-B and F-G1 and therefore the evaluation is on this basis.

Considering initially the criteria for a deemed dedication under Section 31 of the Highways Act, that use needs to be "as of right" and also sufficient for the 20 year period. The first consideration is to determine whether the route is called into question. In this matter the information indicates different recollections about when access was prevented, particularly with reference to the presence of, dates and knowledge of notices and signage. Looking at the evidence it suggests that the route was called into question in 2014 by the installation and locking of the school gate and barrier and it is considered that the period of use from which dedication can be deemed would be 1994 – 2014.

All 21 user evidence forms submitted indicate knowledge and use of the route and 19 users state that they have used the route for 20 years or more suggesting good user evidence for the sufficient period.

The main purpose of the route is to access local amenities including the doctors, health clinic, dentist, church hall, Sunday school, Cop Lane school, to work at the old government buildings as well as delivering local newspapers. Many users also claim to have used the route for pleasure including visiting friends, visiting the shops and the post office, attending ballet and functions at the girl's High School and running the Friday night club for children at Penwortham Church Hall. Some of the users also state that they have used the route for health reasons; as a short cut between roads such as Cop Lane and Hill Road supporting a route from A-B-C-D-E-F-G and A1-B and F-G1.

With regards to the interruption and rebuttal by the owner there are several matters to be considered. A building and building materials along the route have been suggested to have interrupted the route for a few days and one of the two users confirm that use was not interrupted. Here it is considered that the obstructions by the building and building materials did not interrupt the route.

Reference is made by some of the users to the presence of notices and signs discouraging use of the route. However, as noted above, recollections differ as to when such notices and signage were present. A number of users don't recall ever seeing any notices and others provided no response in this regard. Again, it is not considered that such notices and signage interrupted the route.

The user forms submitted provide reference to gates and barriers on the route. Users also refer to there being an obstruction with a number of users specifying the obstruction to be the locked gate and barrier having arisen in 2014 or recently and stating that the obstruction is ongoing. A number of users state that the gates and barriers have prevented and deterred them from using the route whilst others refer to simply going under the barrier.

3 users refer to a letter from a former headmistress, acknowledging the route as a public right of way and giving permission to use it.

Considering matters regarding interruption and rebuttal by the owner there does not appear to be sufficient evidence of actions by owners to demonstrate lack of intention to dedicate over the twenty years prior to 2014.

An objection has been received from Penwortham Girls High School. However, whilst this objection is acknowledged, it is submitted that the concerns raised are not relevant considerations under either S31 Highways Act 1980 or under Common Law.

Considering also whether there are circumstances from which dedication could be inferred at common law. Whilst the 1940's aerial photograph provides evidence of a worn track between Cop Lane and Alcester Avenue, this does not appear to be along the exact alignment of the claimed route. The evidence examined appears to show that the claimed route could not have come into existence until the school was built in around 1954. The first indication of the route in its current alignment would appear to be the 1960 1:2500 OS Map, however the access points at G and G1 are still uncertain. Again, whilst the 1960's aerial photograph and subsequent 2000 and 2010 photographs appear to confirm that the claimed route was capable of being used at that time, the access at Alcester Avenue remains unclear.

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

Taking all of the evidence into account, the Committee on balance may consider that the provisions of S31 Highways Act can be satisfied and there is also sufficient evidence on balance from which to infer dedication at common law of a footpath in this matter and that the claim can be accepted.

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

Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-563	Various	Megan Brindle , 01772 535604, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A