

Regulatory Committee

Meeting to be held on 17th January 2018

Electoral Division affected: Pendle East

Wildlife and Countryside Act 1981 Definitive Map Modification Order Application To Record a Bridleway from Burnley Road to Antley Gate, Trawden, Pendle Borough.

File No. 804-581

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for bridleway to be recorded from Burnley Road to Antley Gate, Trawden, Pendle, in accordance with File no. 804-581.

Recommendation

That the application to record a bridleway from Burnley Road to Antley Gate, Trawden, Pendle, in accordance with File no. 804-581, be not accepted.

Background

An application was received in October 1984 from the Trail Riders Fellowship to upgrade the footpaths from Burnley Road to Antley Gate, Trawden, to byway open to all traffic. It was considered by the Public Rights of Way Sub-Committee on 9th July 1986 and was rejected on the basis of insufficient evidence. A copy of the report submitted to Committee and minutes resolved are appended to this report as Appendix A.

In October 2016, a further application, under Schedule 14 of the Wildlife and Countryside Act 1981, and from different applicants, was received to upgrade most of the same route but this time to bridleway, with an addition of bridleway close to a short section of the route, as shown between points A-O on the Committee Plan. The application included documentary and user evidence which was not considered when the first application was made.

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

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

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

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

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

An order for adding a way to or upgrading a way shown on the Definitive Map and Statement will be made if the evidence shows that:

- “the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path or restricted byway”

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

The County Council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in any original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

Consultations

Pendle Borough Council

Pendle Borough Council have been consulted and no response has been received, it is therefore assumed that they have no comments to make.

Trawden Parish Council

Trawden Parish Council have been consulted and no response has been received, it is therefore assumed that they have no comments to make. Parish minutes posted on the Trawden Parish Council website show that the matter was discussed and the proposal did not adversely affect the parish, but no official response has been received. The applicant advised that she spoke at a second parish meeting and has submitted information relating to this.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	9068 3789	Open junction with Burnley Road
B	9069 3775	Corner in track and junction with 2 nd track to Little Moss Farm
C	9115 3742	Higher Draught Gates – track significantly less worn
D	9127 3736	Field Gate
E	9139 3719	Field Gate
F	9143 3717	Junction of Footpaths 95 & 97 Trawden adjacent to Oakenbank Cottages
G	9143 3711	Pedestrian Gate currently obstructed by large boulder before Alderhurst Head Farm
H	9152 3700	Pedestrian Gate and fencing after Alderhurst Head Farm
I	9167 3674	Stile and blocked gap
J	9183 3662	Padlocked Field Gate with bridleway latch and Stile
K	9184 3656	Ruins of Antley Gate
L	9184 3654	Bend in track adjacent to ruins
M	9186 3653	Stream crossing
N	9190 3651	Field Gate and Kissing Gate
O	9190 3650	Junction with the Pennine Bridleway at Antley Gate – Bridleway 253 Trawden

Description of Route

A site inspection was carried out on 24th November 2016.

The route from Burnley Road to Antley Gate is currently recorded on the Definitive Map and Statement as public footpath except for a short section which is used on the ground but is currently unrecorded, straying away from the Definitive Map line. It is available for public use on foot for its entire length, and was of a suitable standard and condition for use on foot for its majority, with an exception of an extremely boggy section south of Alderhurst Head Farm. It was not available for use on horseback or bicycle on the day of inspection, due to locked/tied gates, stiles and an obstructing boulder.

The track from point A at Burnley Road provides the only vehicular access to several adjacent residential properties, outbuildings and farm land. This section of track is unrecorded on the land registry and therefore the landowner is unknown. The remainder of the route has 6 registered landowners who have been consulted and comments received have been included in the report below.

Upgrade to Bridleway

The application route begins at the junction of Burnley Road and Sheffield Lane, point A, where a track leaves the main highway. A public footpath signpost and a dog litter bin are located on the left side of the track. The route, currently recorded as Footpath 61 (*all footpath references in this report are given in the form Footpath X as a shorthand for Footpath Trawden X, the whole of the application route being in the Parish of Trawden*), heads south up a gradual incline along a narrow cutting, approximately 5m below field level enclosed by steep banks, for approximately 115 metres, gradually climbing to field level passing a junction with the track to Little Moss Farm (along which runs Footpath 62) and continuing as Footpath 74 for a further 23 metres to reach the 2nd track, point B, which is at the south east corner of a triangular island formed by the arms of the Little Moss Farm access track. The track along this stretch is heavily potholed but has a good width as a public path. There were no apparent measures to prevent horse riders accessing the track. The width of the track at this section was approximately 3 metres.

From point B the application route turns to continue as Footpath 74 in a south easterly direction for approximately 190 metres, passing a large outbuilding to the left of the track and continuing to meet Footpath 70 at a junction with a track which leads to Moss Barn Farm. The bounded width of the track at this section was approximately 3 metres, which was heavily potholed with a constructed drainage channel in the centre of the track.

From the junction with Footpath 70, the application route continues as Footpath 73 past a junction with Footpath 75, where it becomes Footpath 72, along the track in a south easterly direction passing Footpath 69 to the south and after for approximately 155 metres, to the south east end of Pasture Springs Farm. The width of the track was approximately 3 metres with the above mentioned surface and channel.

From Pasture Springs Farm the route continues in a south easterly direction as Footpath 71 for approximately 470 metres, passing further outbuildings and the property of Higher Draught Gates where the surface becomes a grassed vehicular track at point C. The route then continues to a field gate at point D. The width

(bounded by walls and fences and unbounded after the gate) is approximately 3-4 metres.

The route continues to descend down the track in a south easterly direction to a sharp corner where Footpath 94 joins from the north and the route continues in a south-south easterly direction as Footpath 95 for approximately 120 metres, where it meets a field gate at point E. The width along the track is approximately 3 metres. The route continues across an open tarmac area bending north east to a junction with Footpath 97 (point F) then south-south west for approximately 40 metres to pass in front of Oakenbank Cottages.

From Oakenbank the route heads in a south easterly direction up a steep gradient for approximately 25 metres to a pedestrian gate at point G. The gate is currently inaccessible for equestrians due to a large boulder restricting access to approximately 30cm when the gate is open. The route then continues for a further 145 metres, passing Alderhurst Head Farm and Footpath 100a to a small pedestrian gate and fencing at point H, immediately beyond which is the junction with Footpath 98.

The application route then continues as Footpath 99 for approximately 300 metres over a large open field, following the western side of a fence line and the remains of a sunken lane which is now severely boggy in parts. A trodden route was extremely difficult to follow due to the marsh and bog. It continues until it reaches a stile and blocked off gap at point I.

Addition of Bridleway – Currently unrecorded

This marks the point at which the application route differs from the recorded definitive line of Footpath 99 Trawden. The application route continues from point I at a stile with a large gap (now inaccessible due to a tied gate) and follows a trodden line which weaves over the uneven grassland for approximately 290 metres, to a locked field gate and stile at point J. The route continues south for approximately 75 metres passing the ruins of Antley Gate to re-join Footpath 99 (point L).

Continuation of Upgrade to Bridleway

The application route then continues as Footpath 99 along a track, passing over a spring at point M, through a kissing gate and locked field gate at point N, and a further 6 metres to join the Pennine Bridleway at point O.

The total length of the application route is approximately 3860 metres.

On the date of inspection the route was waymarked for its entirety as a public footpath, with signposts and waymarkers consistently placed along the full length. Between Burnley Road and Higher Draught Gates (points A to C) there were several 'no cyclists' signs attached to wooden posts.

There were no deterrent notices referring to equestrian use on the full length, although from the site inspection it was apparent that equestrian use was currently denied. A large boulder was situated immediately before a pedestrian gate close to

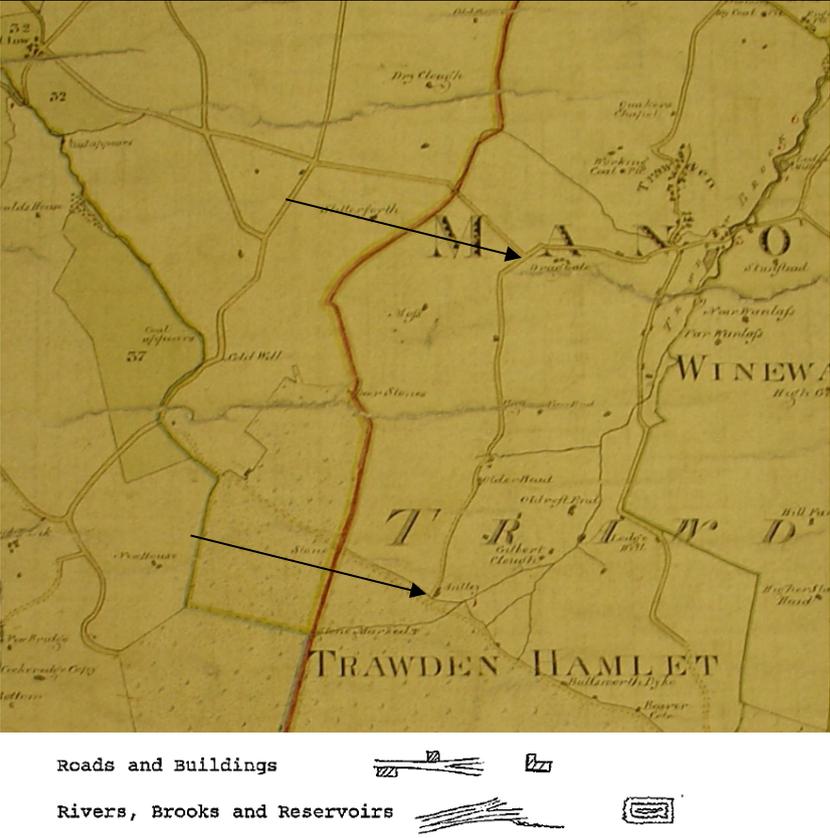
Oakenbank, restricting access to approximately 30cm. This obstruction restricts access to pedestrians, a horse would certainly be unable to pass. The boulder appears to have been placed in 2014 (from information gathered by the applicant and landowner).

Further along this section heading towards Antley Gate there were several gates and stiles. At some sections there were loose large field gates which had been tied, which perhaps could have allowed access at some time to equestrians through a gap, although on the day of inspection access was denied. On the day of inspection all field gates were locked or fenced off, allowing pedestrian access only via a small gate or stile to the side, but would not allow access for equestrians or cyclists.

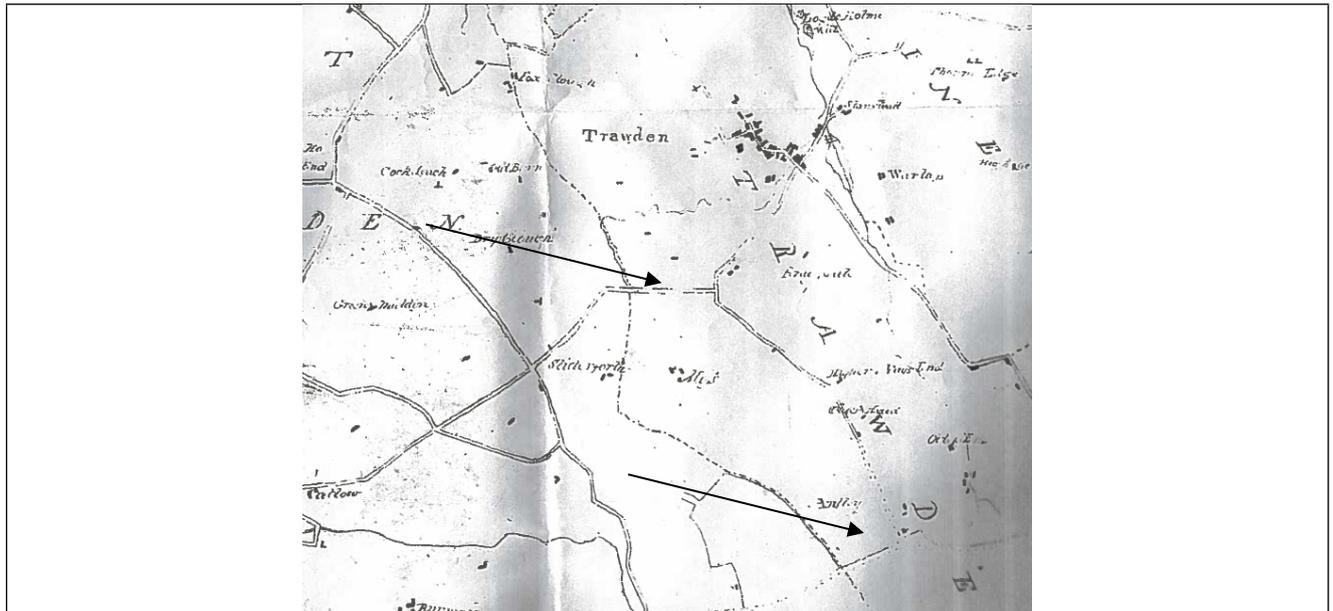
The application route joins onto a track at point O, previously known as Will Moor Hill Road, and is now also known as the Pennine Bridleway. This is a national trail which provides access to horse riders, cyclists and walkers.

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. The applicant also included this map in the application bundle.
Observations		The route is not shown on Yates' Map, although Boulsworth Moor and Trawden can be seen on the map.
Investigating		The route did not exist as a major route at the time,

Officer's Comments		although it may have existed as a smaller route which, due to the limitations of scale and purpose for which the map was drawn, meant that it would not have been shown.
Honor of Clitheroe	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.
 <p>The image shows a historical map of the Trawden Hamlet area. A yellow line traces a route from point A (Burnley Road) through Alder Head (Alderhurst Head Farm) to Antley (Antley Gate). The map includes a legend for 'Roads and Buildings' and 'Rivers, Brooks and Reservoirs'.</p>		
Observations		The application route can be seen on the Honor of Clitheroe map from point A at Burnley Road, passing Alder Head (now known as Alderhurst Head Farm) and continuing to conclude at Antley (Antley Gate). The route shown corresponds with a footnote which shows the key for roads and buildings. The track appears to be coloured yellow.
Investigating Officer's Comments		This map shows that a significant route existed and has been drawn in the same way as many other routes which are currently classed as public bridleways or carriageways. It is shown as coloured yellow, like the other roads, but there is no indication of what status these roads are.
Greenwood's Map of	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.

Lancashire		
		
Observations		<p>The application route is shown to exist as a through route on Greenwood's Map. The application route is shown heading from Burnley Road at point A, south passing Alder Head (now Alderhurst Head Farm) and ending at Antley. It joins up to a significant route which was known as Will Moor Hill Road, and is now recorded as the Pennine Bridleway.</p>
Investigating Officer's Comments		<p>The route appears to have existed as a major route at this time from Burnley Road (point A) to Antley Gate (point O). It is consistent with a way which would have been used as a public road or bridleway at this time, and whilst it is probable that equestrians would have been able to use the route its status cannot be inferred.</p>
Chapelry of Colne Map	1818	The Chapelry of Colne Map, submitted by the applicant.

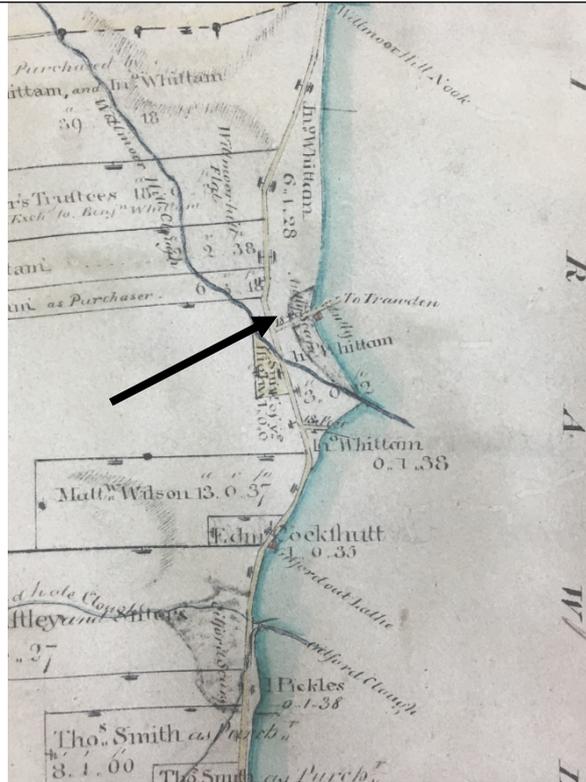


<p>Observations</p>		<p>The Chapelry of Colne Map was submitted in the applicant's documentary bundle. It was unavailable to view at Lancashire Archives and therefore officers have only seen the copy submitted. The application route can be seen from Burnley Road at point A as a double solid line to Higher Naze End and just after, which takes it to Alderhurst Head Farm. The route then continues as a double pecked line passing Antley and joining up to Will Moor Hill Road which is now known as the Pennine Bridleway.</p>
<p>Investigating Officer's Comments</p>		<p>There is no available key to the road notation and therefore we are unable to infer road status or that a difference in solid (enclosed) or pecked (unenclosed) lines suggests that there was a difference in significance. The solid lines correspond to the section of the route being enclosed, most likely done so by landowners rather than the Local Authority, as a way of accessing their properties. The pecked and unenclosed section could have been less used as access to fewer properties but still usable as a through route.</p> <p>Like the previous early commercial maps, routes at this time were only likely to be recorded on available maps if they were able to be used. Public footpaths did not tend to be shown. All of the other roads shown on this map are now recorded as public carriageways or bridleways.</p>
<p>Inclosure Act Award and Maps</p>	<p>1821</p>	<p>Inclosure (or enclosure) was the mechanism by which Britain sought to modernise its medieval arrangements of communal agricultural land to achieve the improvements in efficiency desperately needed to feed the nation. Inclosure sought to divide up the open land and convert rights to the open land into exclusive use of smaller parcels. The process was done by passing local acts of</p>

	<p>parliament for each inclosure award, which might only cover part of a parish or hamlet so there were many hundreds of such acts before and throughout the 18th Century. In order to streamline the process to make it less costly and encourage more inclosure, general acts were passed containing all the standard provisions so that they did not have to be repeated in every subsequent local act. The first of these was an Inclosure Consolidating Act in 1801. The local acts generally appointed a commissioner(s) to execute the act subject to the rules of the specified general act.</p> <p>The relevance to public rights of way is that in this reorganisation of land it had to be able to reorganise the transport corridors at the same time or it would have greatly reduced the effectiveness of the process.</p> <p>There were further general acts, notably in 1836 and 1845.</p> <p>The Court of Appeal case generally referred to as Andrews 2¹ found that the 1801 Act does give the power for commissioners to set out public bridleway and footpaths, contrary to the earlier finding in Andrews 1². There has been much dispute about the correct interpretation of 'private carriage roads' (i.e. does private qualify the carriage or the road?) but the Dunlop case, which many consider incorrectly decided in saying that this mean private rights, has not been challenged in court</p> <p>The Inclosure Act for Trawden and Whalley (which referred to the 1801 consolidating Act) enabled an inclosure award to be made in the 57th year of the reign of King George III i.e. 1817. The subsequent Award was for the Inclosing of lands in the Township of Trawden, in the Chapelry of Colne, and Parish of Whalley, in the County of Lancaster and made in 1821.</p> <p>(Ref - UDTR/4/1)</p>
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¹ R v Secretary of State for the Environment, Food and Rural Affairs, ex parte Andrews 2015

² R v Secretary of State for the Environment, ex parte Andrews 1996



Observations

The 1817 Act is founded on the 1801 Inclosure Consolidation Act which stated that the process was to start by setting out any public carriageways. It also gave the power to divert or stop up old carriageways but that required a justices' Order. Public Carriageways had to be at least 30 feet wide and fenced on both sides, with no gates across or plant trees in/near the hedges spaced less than 50 yard intervals. They then had to be certified in order to become publicly maintainable.

Footpaths and bridleways could also be set out (including public ones – see Andrews 2). Any which were not set out by the award were automatically extinguished, with the exception of turnpike roads.

Mr Thomas Gee, the Commissioner, was appointed in 1819 and determined the local Inclosure Award in 1821, and in particular described the southernmost 50m or so of the application route.

Text from the Inclosure Award has been inspected. This provides details of both the public and private rights set out under the Award, and provides details of widths and maintenance responsibilities.

The Inclosure Award states:

'Antley Road – One private carriage and occupation road of the width of eighteen feet as where the same is now marked and staked out branching out of the Will Moor Hill Road in the Hamlet of Trawden opposite Antley House

and extending in a northwestwardly direction to Antley Gate which I distinguish by the name of Antley Road'.

In the text, the application route is referred to as a private carriage and occupation road. In order to compare what was deemed to be public and private officers compared the other routes which were also recorded and specified whether they were public carriage road, public bridle way or private carriageway occupation road, compared to what they are recorded as today.

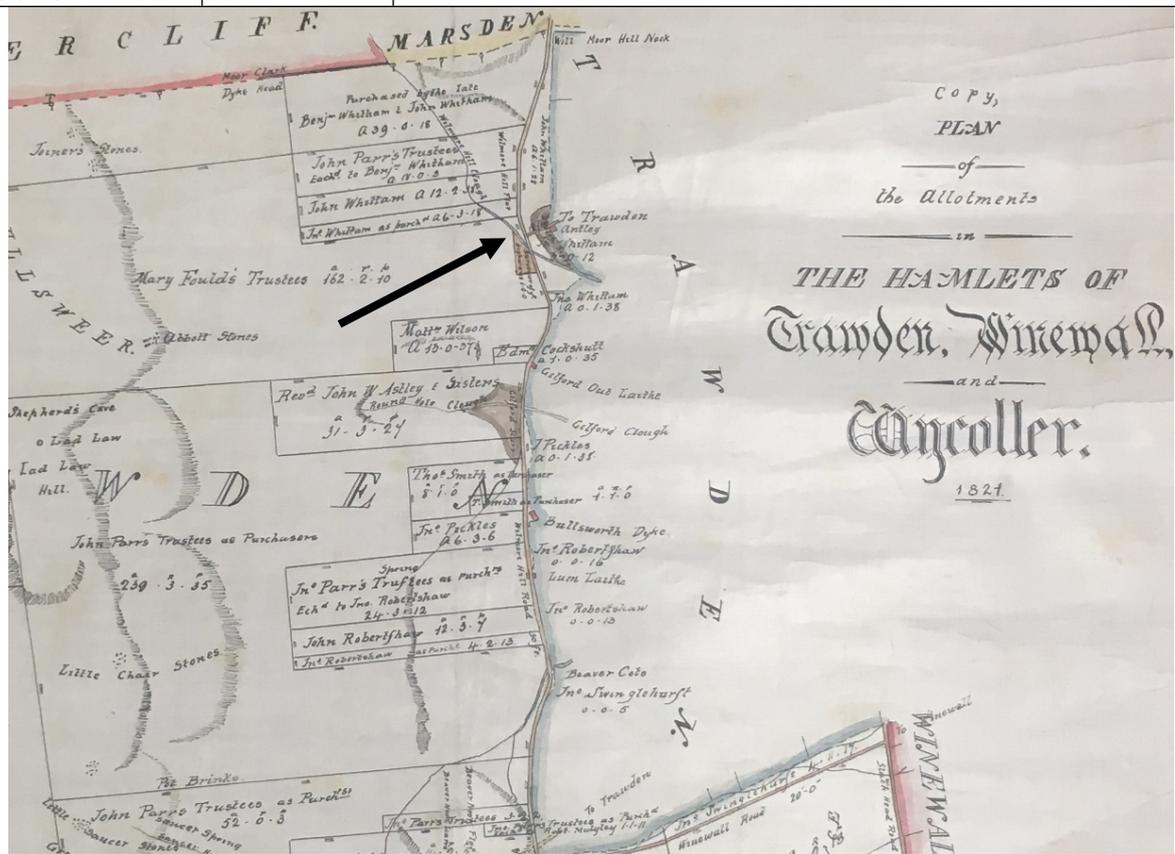
It was found that:

1. Will Moor Hill Road (public bridle and private carriage and occupation road) currently recorded as bridleway. (Confirmed by a modern Definitive Map Modification Order Order).
2. Saucer Clough Road (private carriage and occupation road) not currently recorded as a highway of any description (footpath, bridleway, road).
3. Slack Head Road (private carriage and occupation road) currently recorded as Public Footpath.
4. Winewall Road (private carriage and occupation road) not currently recorded as a highway of any description (footpath, bridleway, road).
5. Green Wham Road (private carriage and occupation road) not currently recorded as a highway of any description (footpath, bridleway, road).
6. Wycoller Road (public carriage road and highway) currently recorded as byway open to all traffic. (Confirmed by a modern Definitive Map Modification Order Order).
7. Will Moor Clough Road (private carriage and occupation road): officers have been unable to locate it.

Within the award Mr Thomas Gee also stated:

“Which said Private Carriage and Occupational Roads before mentioned I have set out and appointed for the sole and exclusive use of the owners and occupiers of estates and allotments lying adjacent or adjoining any of the said roads..... And I do further order and award that the said private carriage and occupation roads, so set out and appointed, so far only as such roads run through over and upon the said open and common pastures, moor commons, commonable lands and waste grounds but not further or otherwise, shall be for ever here after repaired and maintained and kept in repair by and at the general expense of the owners and occupiers of allotments'.

		<p>The Inclosure Award map above shows only the most southerly 50m or so of the application route at Antley Gate although access is most likely to have been possible as the end of the route is annotated 'To Trawden'. The land is recorded as being in the ownership of Mr John Whittam as purchaser, who had to maintain his allotment and road.</p>
<p>Investigating Officer's Comments</p>		<p>This award only covered a very short section of the application route but this short section is integral to it being a through route. It is described as a 'Private Carriage and Occupation Road'. Taking Dunlop together with the specific wording in this case that it is solely for use of the owners and occupiers of the land it suggests that the short southern section of the application route (at Antley Gate) did not have public rights immediately after the Inclosure Award.</p> <p>No inference can be made about the remainder of the route north of Antley Gate.</p>
<p>Plan of the allotments in the Hamlets of Trawden, Winewall and Wycoller</p>	<p>1821</p>	<p>A plan submitted by the applicant of the allotments in the hamlets of Trawden, Winewall and Wycoller. It was viewed by officers at Lancashire Archives (ref – DDSP/50/8).</p>



<p>Observations</p>		<p>This map was intended to show the (recently enclosed) allotments of Trawden, Winewall and Wycoller, including</p>
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1814, as shown below.

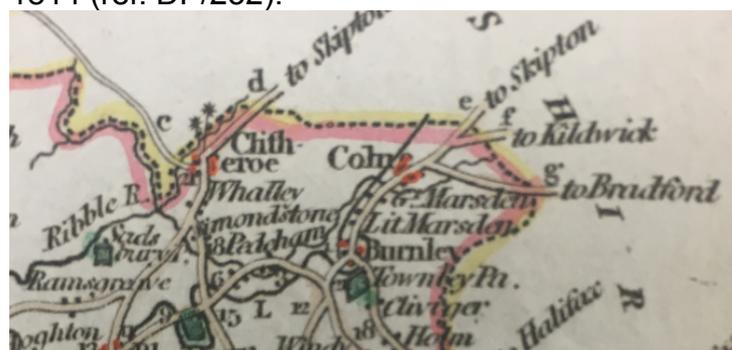
1789 (ref: DP/187):



1806 (ref: DP/188):



1814 (ref: DP/232):



On the three maps above the application route cannot be seen. The most helpful map is dated 1806, where Boulsworth Hill has been annotated. However, the application route cannot be seen.

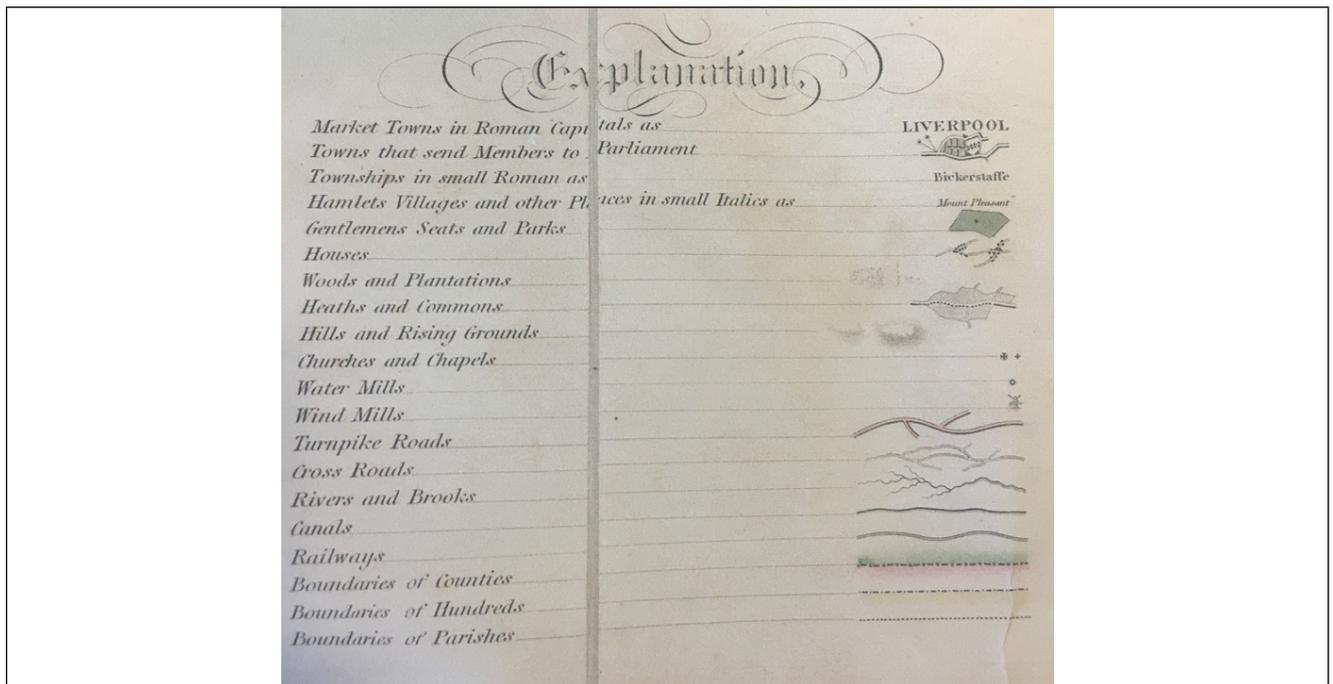
Investigating
Officer's
Comments

On the map provided by the applicant, the route appears to have been of significance at this time as a through route from Burnley Road to Antley. However on earlier

editions the application route cannot be seen and these predate the inclosure to the south; the 1825 map was published soon after the Inclosure Award and may have been surveyed before it. Therefore no further inference can be made.

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.

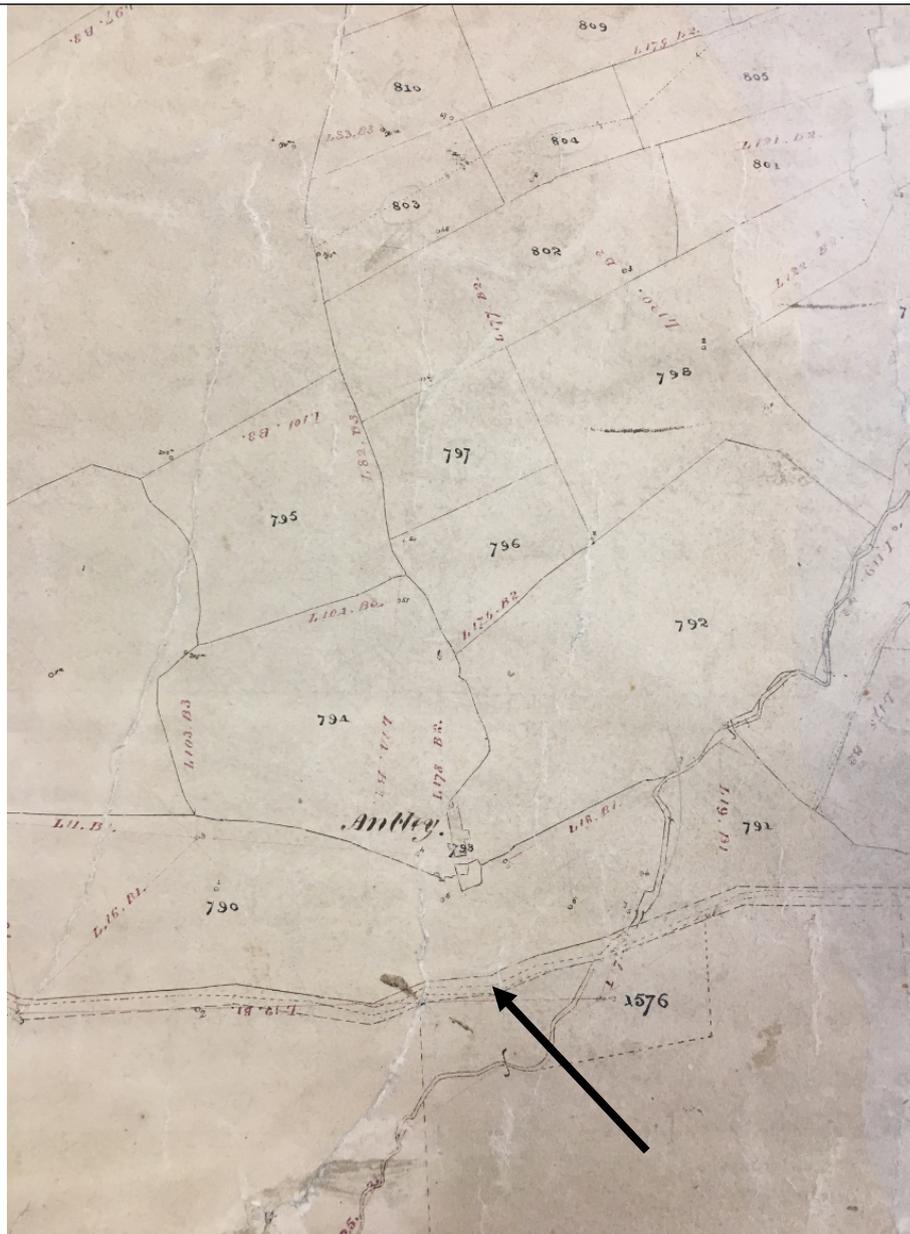




<p>Observations</p>	<p>Similar to Greenwood's map, the application route is shown for the whole length on Hennet's Map. It is shown as a through route from Point A, past Alder Head to Antley Gate to join Will Moor Hill Road (the Pennine Bridleway). The Key to Hennet's Map shows only two types of highway – 'Turnpike Roads' and 'Cross roads'. Hennet showed the full length of the route as a Cross Road (uncoloured).</p>
<p>Investigating Officer's Comments</p>	<p>The route existed as a major through route in 1830 from Burnley Road to Antley Gate, and is shown as a 'Cross Road'.</p> <p>The route is shown connecting to routes that are now recorded as public vehicular highways and also the Pennine Bridleway. It is considered likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that by inclusion on the map the application route was, by the 1830s, considered to be a public bridleway or carriageway. This small scale map only appeared to show the more significant routes and did not show other routes currently recorded as public footpaths that join the application route. This suggests that the route was of a substantial nature and would have been wide enough for people on horseback or with horse drawn vehicles.</p> <p>It is not fully known what is meant by the term cross road, it is possible that it was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>). It is unlikely that a map of this scale</p>

		<p>would show footpaths.</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was “no point showing a road to a purchaser if he did not have the right to use it.”</i></p> <p>This map was published 9 years after the Inclosure Award which affected the southernmost 50m – whether this was compiled from stale information of whether the declaration of the southern end as private had no practical effect is not known.</p>
Canal and Railway Acts		<p>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.</p>
Observations		<p>The application route does not cross land affected by the planned construction of a canal or railway.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
Tithe Map and Tithe Award or Apportionment	1842	<p>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.</p> <p>(Ref – DRB 1/188)</p>





Observations

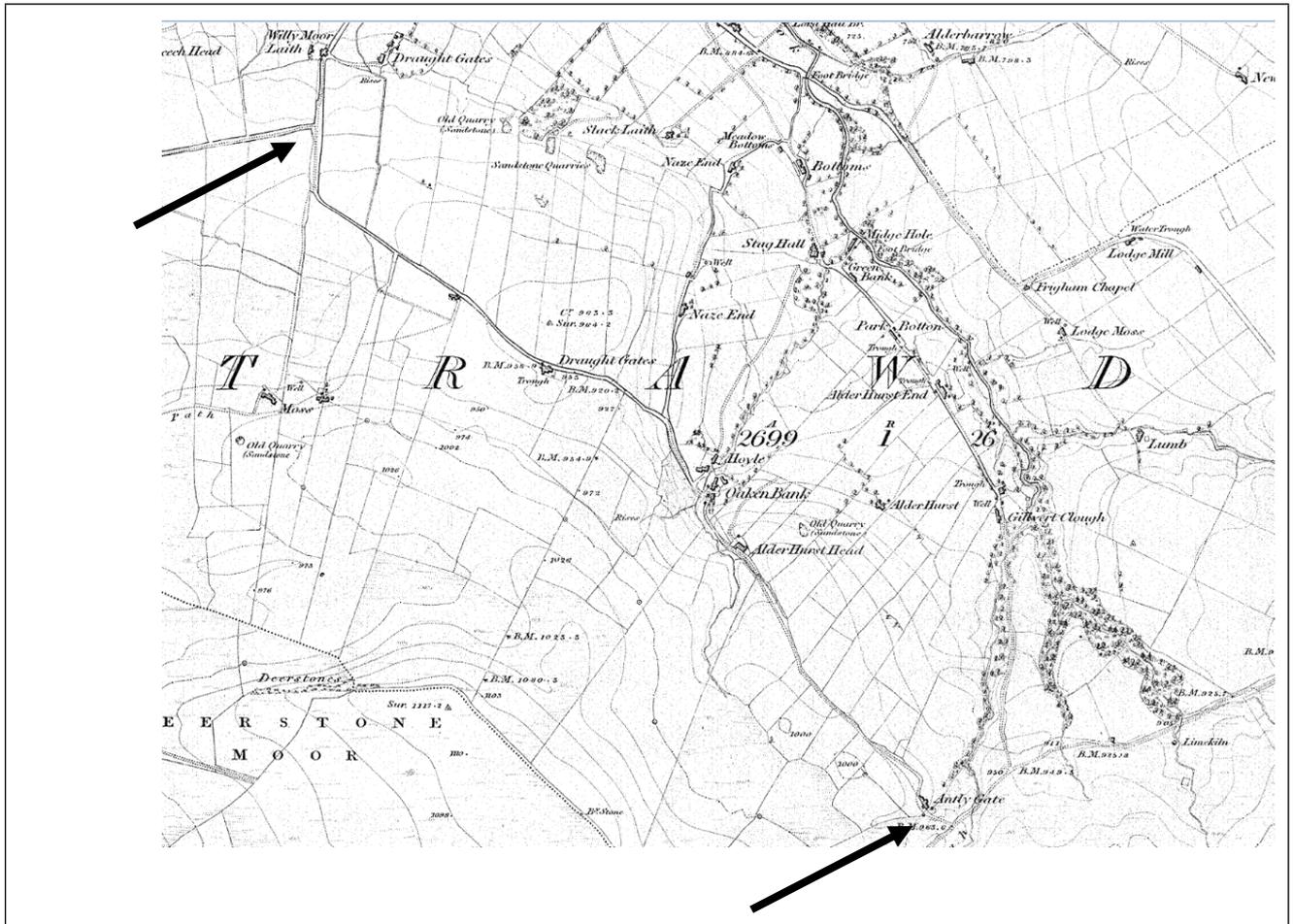
The Tithe Map shows a bounded track heading from Burnley Road at Point A to Higher Alders Head (now Alderhurst Head Farm) at Point H. There is no route shown continuing to Antley Gate. The track is not coloured as a highway but neither are any of the currently recorded vehicular highways.

The track from A to B appears to be part of parcel 743 which is described as 'Highway Road' belonging to and occupied by the Surveyor of Highways.

The track between points B and E is numbered 903, 862 and 846, of which 903 and 846 are referred to in the Tithe award as an occupation road. The owner of the land for 903 is named as 'Surveyor of Highways'. 846 is within ownership to Mr Blackburn. The application route connects to Burnley Road (recorded vehicular highway). It

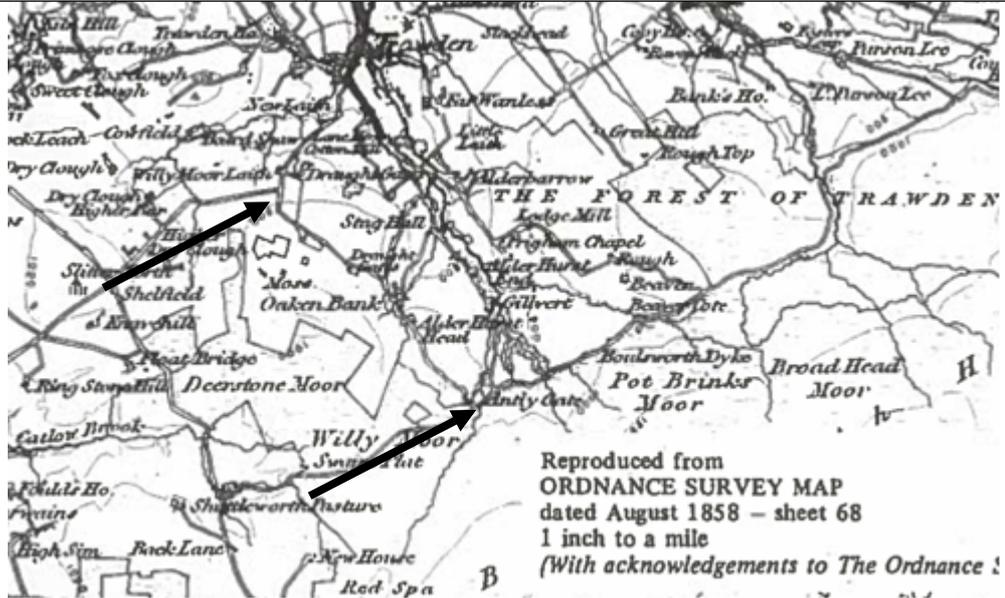
		is not shown connecting to Will Moor Hill Road (the Pennine Bridleway), although this appears in itself to be a substantial track.
Investigating Officer's Comments		<p>The Tithe Map shows the application route from point A to point H. The Schedule also refers to the application route and records it as an Occupation Road. There were several occupation roads recorded in the schedule which stated 'private road'. The route to Antley Gate is not shown or recorded.</p> <p>It is important to look at how other Occupation Roads on the same Tithe Map have been recorded to see whether the route was deemed to be public at the time. 857 is recorded as being an Occupation Road which leads directly off the application route as an access to Higher Naze End Farm. This stretch is currently recorded on the Definitive Map as public footpath.</p> <p>Roads listed under the 'Surveyor of Highways' have been distinguished between occupation and highway, however only one occupation road is recorded under this section, parcel 903.</p>
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848. ³ The applicant also included this map in the application bundle.

³ 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.



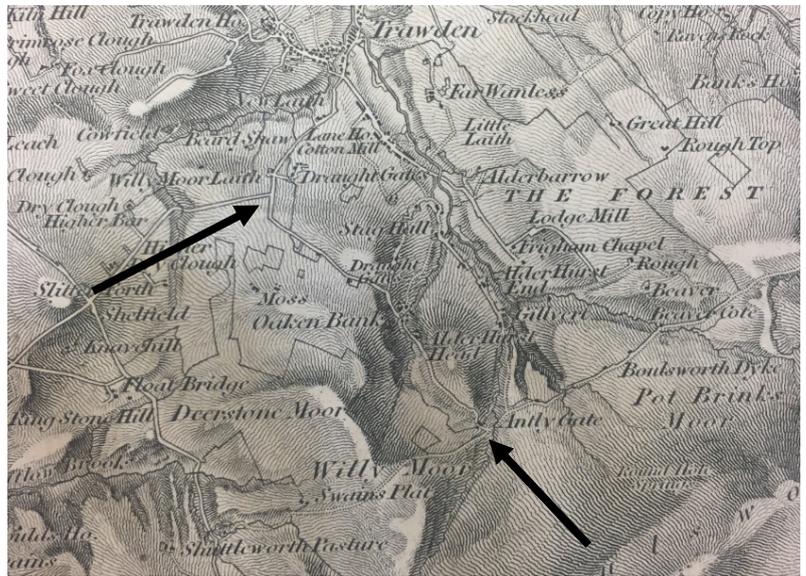
<p>Observations</p>		<p>The application route is shown on the earliest Ordnance Survey map as being available for use for its entirety, from Point A at Burnley Road to Antley Gate at point O.</p> <p>It is shown as an open, unrestricted, substantial track providing access to several properties including Draught Gates, Oakenbank and Alder Hurst Head. From Alder Hurst Head to Antley Gate the route continues as a double pecked line, indicating that a route was in existence on the ground at the time, which continues to Antley Gate via the application route. The route then joins Will Moor Hill Road (the Pennine Bridleway) at Point O.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed on the ground as a significant route in 1848. It appears that the track was open and accessible as it is recorded up to Alder Hurst Head in the same way that the other highway network was recorded. It is reasonable to assume that the enclosed section would have been wide enough for equestrian use. The route would have provided access to and from Pasture Springs Farm, Higher Draught Gates, Oakenbank, Alderhurst Head and Antley Gate. It is presumed that at this time the occupiers of Antley Gate may have used this track to head north to Trawden, thus providing a through route.</p>

<p>First edition Ordnance Survey Maps one inch to the mile</p>	<p>1857/1858</p>	<p>Ordnance Survey maps submitted by the applicant, at a scale of one inch to the mile, dated 1857 and 1858.</p>
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<p>Observations</p>		<p>These two documents were submitted in the applicant's documentation bundle as 'First edition one inch Ordnance Survey Map Skipton & Bradford 1857' and Ordnance Survey Map one inch to the mile 1858'. The scanned image was of poor quality but officers viewed the 1857 Ordnance Survey Map one inch to the mile at Lancashire</p>
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Archives (pictured below). The maps appeared to be the same with different published dates.



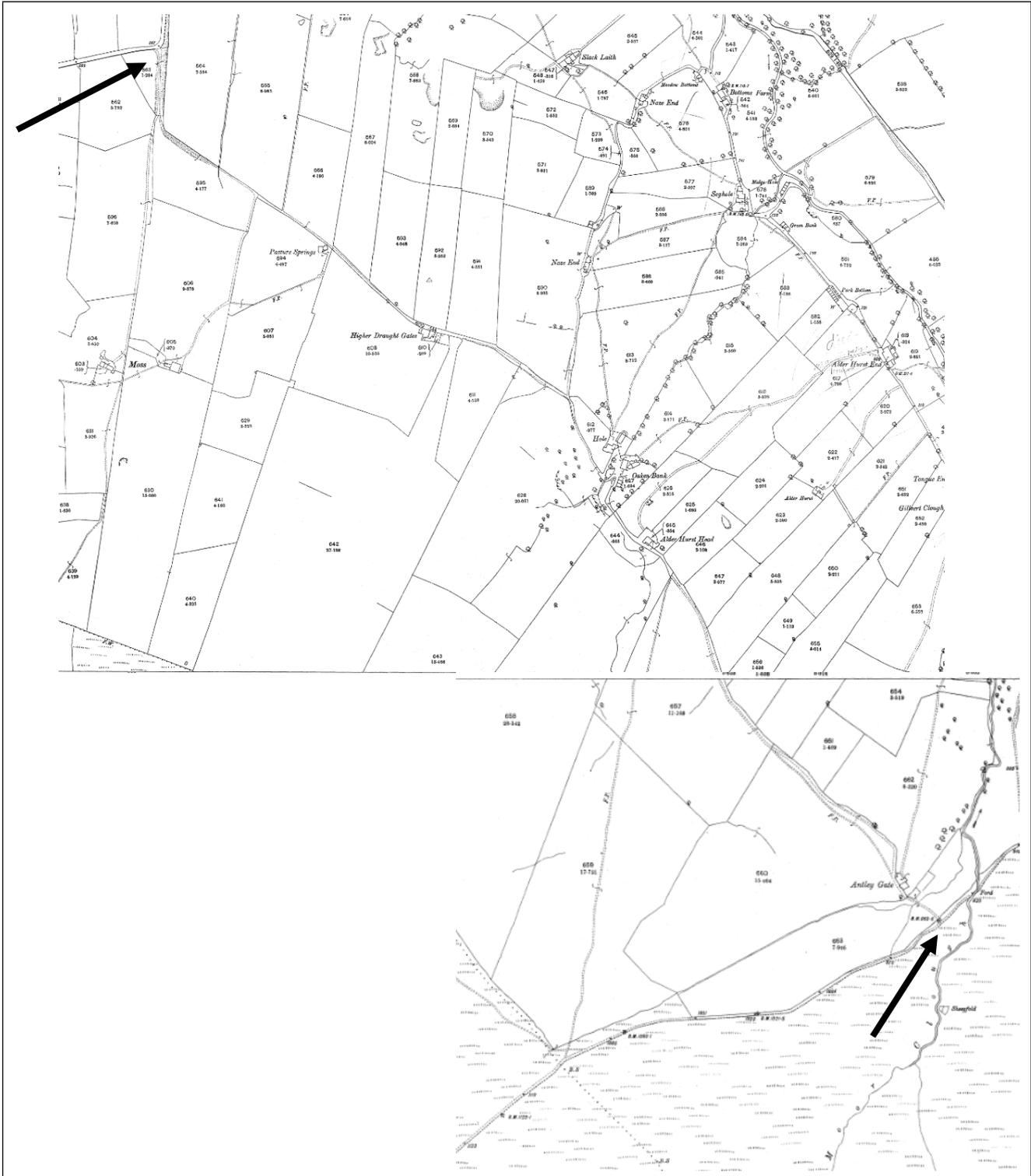
The application route can clearly be seen from Burnley Road, passing Draught Gates and Alderhurst Head to Antley Gate. It then joins Will Moor Hill Road (the Pennine Bridleway) at Point O.

Investigating Officer's Comments

The application route appears to be a significant mostly enclosed track as shown on previous maps, providing access to Trawden for Draught Gates, Alderhurst Head and Antley Gate, which probably could have provided use on horseback.

25 Inch OS Map 1893

The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.

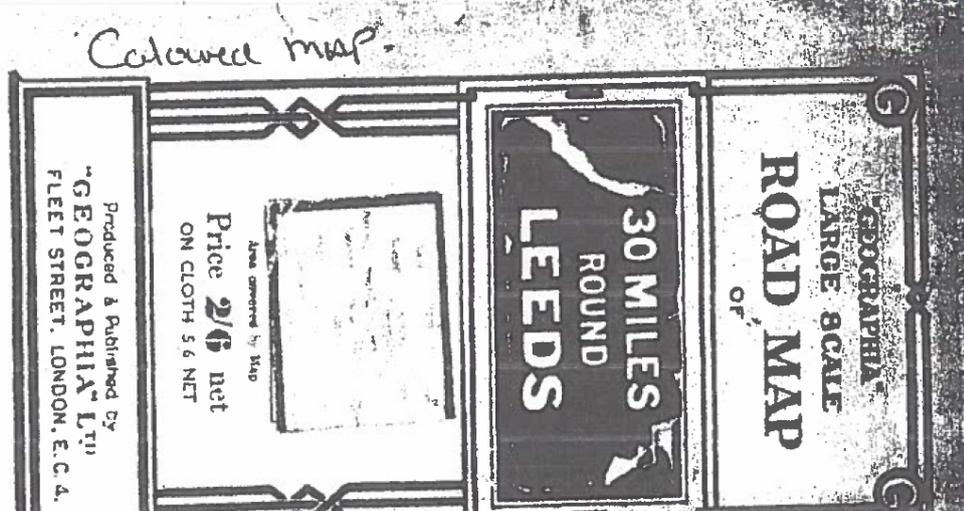
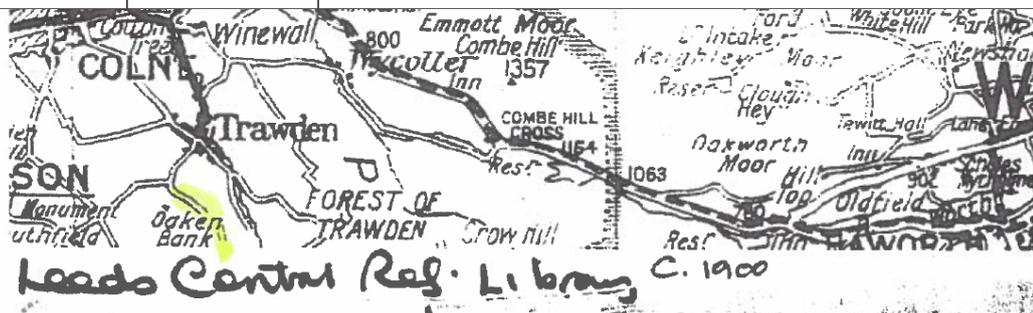


<p>Observations</p>	<p>The full length of the route is shown on the map, from Burnley Road at point A to Antley Gate at point O. The route varies from being unenclosed from Burnley Road, enclosed past Higher Draught Gates to Alderhurst Head, and then unenclosed to Antley Gate.</p> <p>From Burnley Road the route appears to be a substantial track, particularly as it is enclosed in parts. From Alderhurst Head towards Antley Gate the application route</p>
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		<p>is shown as a double pecked track, diverging from another route, which is recorded on the Definitive Map as footpath and annotated on this map as 'FP' in contrast to the application route. These reconverge and the route is shown continuing as double pecked lines to join the track which is now the Pennine Bridleway.</p> <p>Several lines across the route are recorded on the map which coincide with current gateways at points D, E, G, H and N. In addition there are 2 lines across the route at Oakenbank corresponding to the beck which is now culverted.</p> <p>The section of the route between Pasture Springs and point D is given parcel no.609, acreage .544.</p>
Investigating Officer's Comments		<p>The whole application route existed in 1893 and appeared to have been wide enough for all types of traffic up to Alder Hurst Head. The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status. The route could have probably been used at this time with a horse. The route between point I and Antley Gate is not annotated "FP" like the direct route, suggesting that the former was more than a footpath.</p>
Harry Speight Upper Wharfedale	Published 1900	<p>Harry Speight was a map-maker, author and genealogist who published maps with inserted illustrations. An illustration of the Upper Wharfedale from Otley to Langstrothdale in his book 'Tramps and Drives' was published by E. Stock in 1900. This is a document submitted by the applicant.</p>



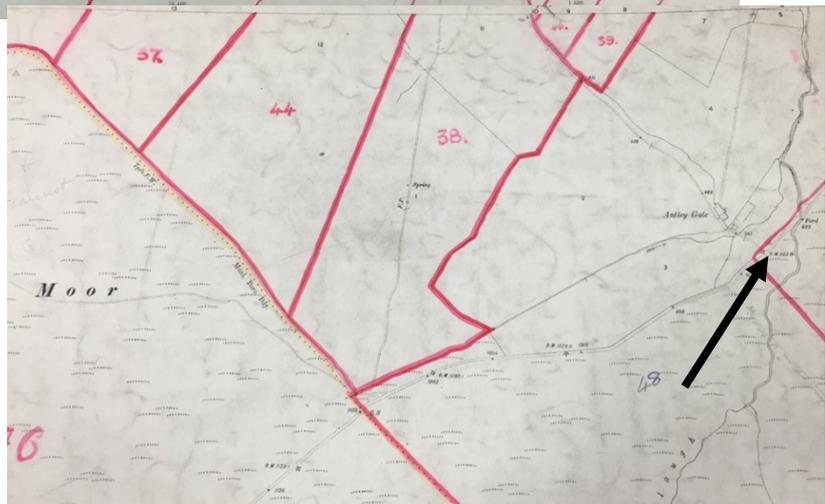
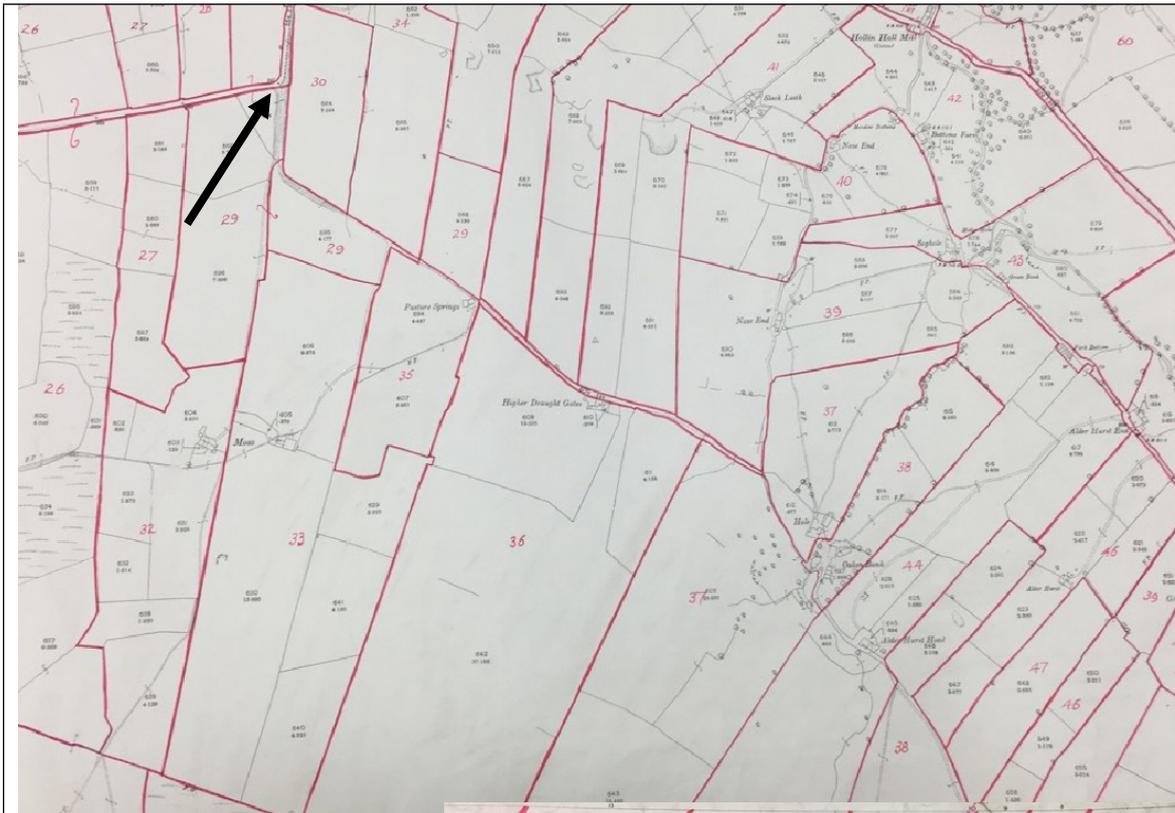
Observations		This document was submitted by the applicant and officers have only seen the scanned copy above. The illustrated map records the application route from Burnley Road to Antley Gate. Oakenbank has also been annotated on the map. It is shown in the same way as other highways.
Investigating Officers Comments		It appears the route was in existence at the time this map was produced, which corresponds with the earlier maps inspected. It was likely to be available at this time.
Geographia large scale road map of 30 miles round Leeds	C1900	A map submitted by the applicant, part of the Geographia road maps. The document has been scanned and route has been highlighted by the applicant.



Observations		On this map, produced to show the roads surrounding Leeds, part of the application route can be seen (as highlighted in yellow by the applicant), starting from Burnley Road at point A, with Oakenbank annotated on the map. This document has not been viewed by officers who therefore were unable to see the whole route on the map.
Investigating Officers Comments		Although unable to see the route as a whole, the northern part was shown to be in existence before 1900 as a road. Due to being produced with the intention of being a road map, with the prime users being motorists (and cyclists), the route being shown suggests that the northern section of the application route was considered to be a public

		road. Carriageways included equestrian rights.
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.
Observations		<p>The 1912 map shows the route as the previous 1893 25 inch map from Burnley Road at point A to the Pennine Bridleway near Antley Gate at point O. Some of the route is shown as enclosed and other parts unenclosed.</p> <p>However, the part of the route proposed for addition of bridleway is not shown on this map, instead only one pecked line, corresponding to the footpath shown on the Definitive Map, is shown leading to Antley Gate although the annotation "FP" has been removed from this line but remains on many other double-pecked paths nearby.</p> <p>A gate is now shown at the start of the route, by Burnley Road and also at Pasture Springs instead of the gap shown on the 1893 edition.</p>
Investigating Officer's Comments		<p>The application route existed in 1912 as a substantial track to Alderhurst Head Farm, and on to Antley Gate. The proposed addition of bridleway is not shown. The route could have probably been used at this time as a bridleway but any use past Alder Hurst Head at point I would have been on the direct route, not the application route, to Antley Gate. It suggests that the section of the application route I-L (i.e. not currently recorded as footpath) had fallen out of use by that time.</p>
Finance Act 1910 Map	1910	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

	<p>provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p> <p>(Ref: DVBU/1/7/1 DVBU /2/1/ LV11.5 & LV11.9)</p>
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Observations

Records held at Lancashire Archives were examined. The majority of the application route appears to have been in the same ownership as the surrounding larger plots with adjoining fields with the hereditament numbers 29, 35, 37, 44, 38, 48. The only section which is enclosed and is excluded from adjacent hereditaments is in front of Higher Draught Gates, it is also un-numbered.

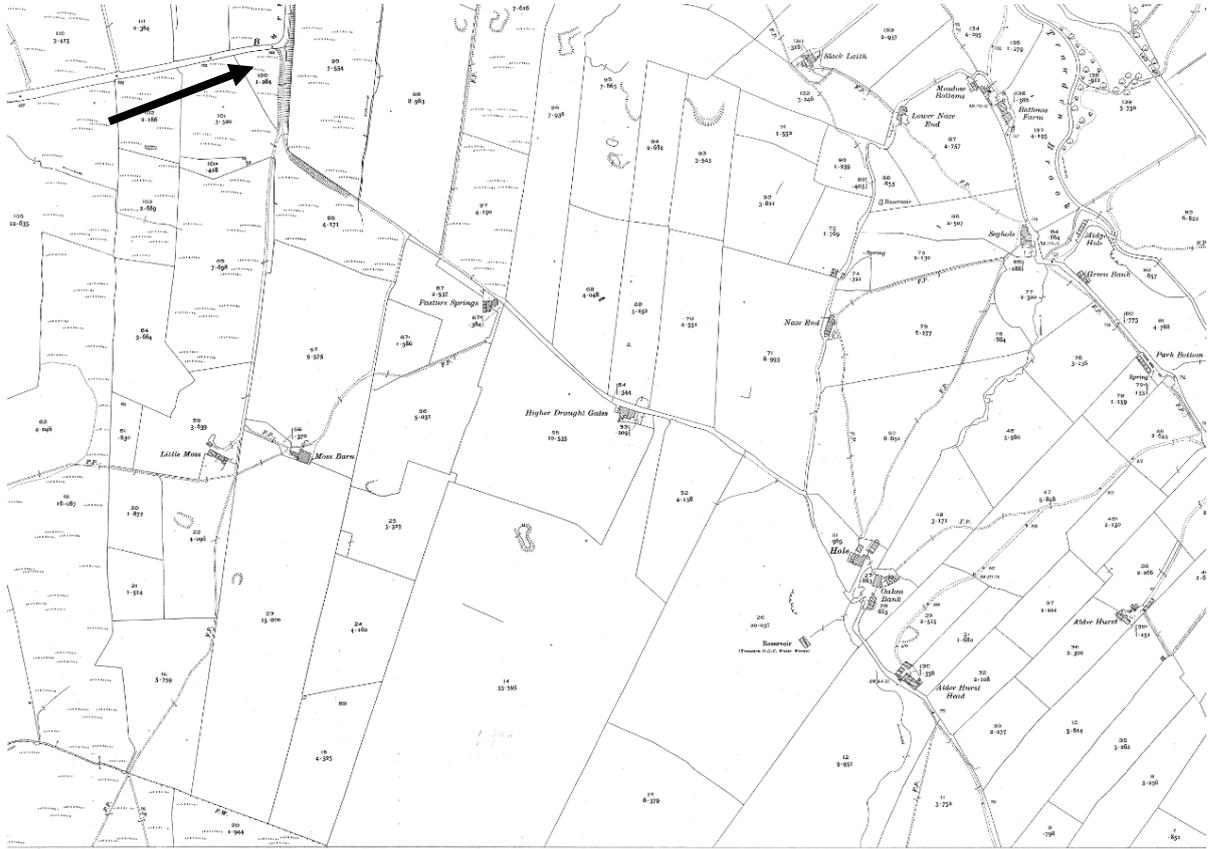
The route near Pasture Springs passed within the north-east boundary of hereditament 35 which was owned by Ernest Greenwood and was tenanted by Holmes Wright at Pasture Springs Farm. A deduction of £10 is claimed for Public Right of way or User. This had another public right of way crossing the land. To understand the deduction, other hereditaments which had a deduction for a right of

		<p>way were inspected. Plot 24 had the same deduction of £10 as the application route, for what seems to be a track which is then annotated 'FP' on the Finance Act Map. The same route is recorded on the Definitive Map as Public Footpath No 37 Trawden.</p> <p>£10 was the minimum amount deducted for a right of way in the Valuation Book. Other deductions of £30 and £50 have been recorded, but were not included in this area, or on the maps inspected.</p> <p>For all the other land crossed by the application route, hereditaments 29, 37, 44, 38 and 48, there are no deductions listed for Public Rights of Way or User. In all these hereditaments in addition to the application route there are other paths shown on the map in 1910 and still recorded as public rights of way on the Definitive Map and Statement today.</p>
Investigating Officer's Comments		<p>Of importance from this document is that a short section in the middle of the application route was excluded from the adjacent hereditaments, and there was a deduction for land on which the application route passed, along with another recorded right of way. From comparing this to another parcel of land with a right of way passing through, it seems a £10 deduction was for a footpath. This seems to account for the other right of way passing through parcel 35, not the application route.</p> <p>However most of the application route crossed land with different landowners and tenants but none of whom claimed a deduction for public rights of way even though all these hereditaments not only had the application route but at least one other path shown on the maps at the time and now recorded on the Definitive Map and Statement. This suggests that little weight can be given to the fact that no deductions were made for public rights of way. The only landowner to claim a deduction in tax for public rights of way was at Pasture Springs Farm for £10. This hereditament too had another path shown crossing it which is now recorded as a public footpath.</p>
Ordnance Survey Map of England and Wales Blackburn and Burnley, one inch to the mile	1924	A map produced by Ordnance Survey titled 'Popular Edition' one inch to the mile. A document submitted by the applicant.

25 Inch OS Map

1932

Further edition of 25 inch map (surveyed 1892, revised in 1930 and published in 1932).



Observations

The application route is again shown as on previous maps, as a track, enclosed in some parts, providing access to several properties up to Alder Hurst Head and a little further to the edge of the sheet.

There is no available sheet for the southern section of the route.

Investigating Officer's Comments

The route under investigation existed in 1932 as a partially enclosed track from Burnley Road to Alderhurst Head Farm and beyond to the edge of the sheet. There is no reason to suppose the track would end at the sheet boundary, it is likely that the route, as previously shown, continued to Antley Gate. The route could have probably been used on horseback.

Aerial Photograph⁴

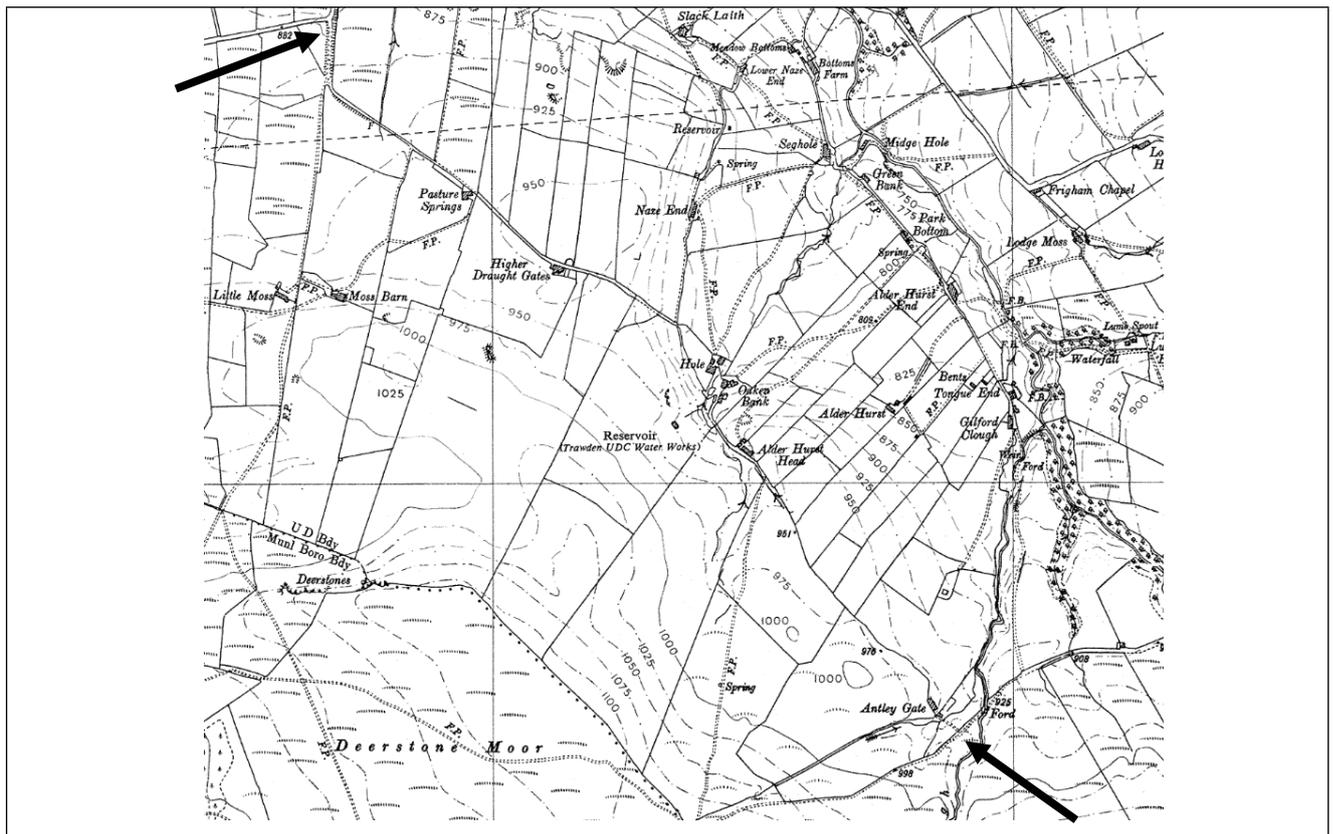
1940s

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.

⁴ 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.

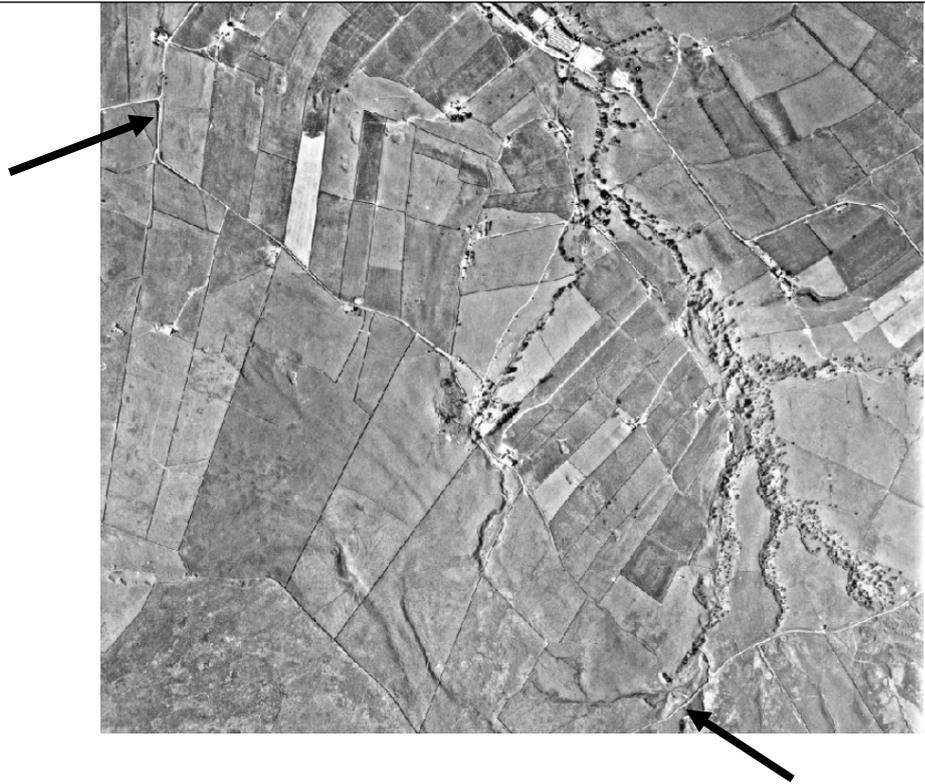


Observations		The route under investigation can be seen as a track from Burnley Road at point A to Oakenbank at point F, and less visible but still in existence from Oakenbank to Antley Gate at point O. The Pennine Bridleway track which it joins up to can clearly be seen.
Investigating Officer's Comments		The route existed as a visible track on the ground in the 1940s from Burnley Road to Antley Gate. It appears as a substantial track at this time to Oakenbank which was being used significantly although it is not possible to distinguish between public and private use.
6 Inch OS Map	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The application route is shown mostly as being a bounded track from the junction with Burnley Road at point A, with the exception of a short section near point E, passing Alder Hurst Head to point H. The route then is not shown until Antley Gate where it is shown to point O.
Investigating Officer's Comments		The application route existed between points A and point H, with the exception of a short section near point E, as a significant track enclosed in parts. From Alder Hurst Head at point H the route is not shown, suggesting that at this time there was not significant amount of use through to Antley Gate. The route could have probably been used at this time as a bridleway up at least up to Alder Hurst Head at point H.
Aerial Photograph⁵	1960s	The black and white aerial photograph taken in the 1960s.

⁵ 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.

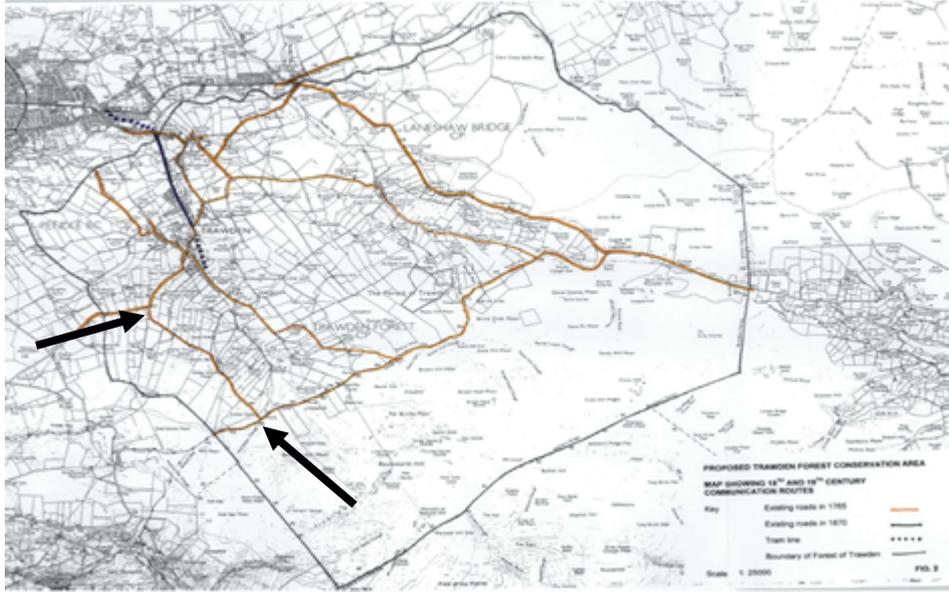


Observations		The application route can clearly be seen from Burnley Road at point A to Alderhurst Head Farm at point H. On close inspection a faint track can be seen onwards crossing fields towards Antley Gate.
Investigating Officer's Comments		The application route is a visible route on the ground from Burnley Road to Alderhurst Head Farm, suggesting that it had significant amount of traffic (public or private) and was probably usable by equestrians. The route onwards to Antley Gate is less defined.
1:2500 OS Map	1962/63	OS 1:2500 map revised 1961 and published in 1962/1963.



<p>Observations</p>		<p>The application route is shown as a substantial bounded, except for a short section near point E, track from Burnley Road at point A to Alder Hurst Head at point H. The section near Alder Hurst Head, although enclosed to a generous width is marked 'FP' unlike previous maps. Gates are shown along the track which concurs with structures in situ today. From point H to Antley Gate the route is partly shown by a double pecked line and partly, where the route diverges from Footpath 99, not shown. Antley Gate is still in situ at this time. The route then joins up to the track which is now the Pennine Bridleway.</p>
<p>Investigating Officer's</p>		<p>The route mostly existed in 1962/63 and appeared to be capable of being used at least to Oakenbank as</p>

Comments		bridleway. The section from Oakenbank to Antley Gate appears to have fallen out of use except as a footpath and following the direct line not the application route between points I and L
Aerial Photograph	2000	Aerial photograph available to view on GIS.
		
Observations		The application route can be seen from Burnley Road at point A to Oakenbank as a significant track. The route is less visible from Oakenbank to Antley Gate.
Investigating Officer's Comments		The application route existed and was probably wide enough for equestrians to use in 2000 up to Oakenbank. The route which is now recorded as the Pennine Bridleway can clearly be seen at the bottom of the aerial photograph. Antley Gate no longer exists. There appears to be little use between Oakenbank and the Pennine Bridleway.
Trawden Forest Conservation Area document	2005	A document which made an assessment of the special historic and architectural interest, character and appearance of the Trawden Forest Conservation Area for Pendle Borough Council. Produced by the Friends of Pendle Heritage Archaeological Group. Submitted by the applicant and viewed by officers.



The Medieval Vaccaries

(See also Figs. 3 and 4)

31) The vaccary farms are known from medieval documentary sources. However, all knowledge of their location and form has been lost for centuries. The initial thoughts of the archaeological group centred on the idea that little of the vaccaries would have remained, but some remnant might still be extant. It was felt that the present day landscape was a result of the activities of later generations, and it was hoped to place this in a historical context.

32) However, an exhaustive study of the surviving walls and settlements has indicated the opposite. It would appear the farms were large and substantially built; they survived the centuries and, have shaped the activities of subsequent generations. For example, the enclosures of the vaccaries helped define the boundaries of the three "Booths" within the Forest, Wycoller, Winewall and Trawden (Beardshaw) – fig. 3. It is arguable that it was the vaccaries themselves that created these three separate identities within the Forest. Similarly, the straight line created by the Wycoller and Winewall summer pastures is the route of the main footpath between the two valleys and the division between the summer pastures of the two Beardshaw vaccaries. This eventually became the line of the "cutting" linking Burnley Road to Oaken Bank and Antley Gate.

33) The group is confident that it has discovered the boundaries and enclosures of the vaccaries, and is now engaged in researching their internal subdivisions to discover the extent of the medieval landscape. All the vaccaries can clearly be seen from the opposite side of the valley. In summer the contrasting colour of the vegetation can be distinctive, clearly outlining the extent of the winter pasture.

Observations		<p>1) Undated map within the document described as being the proposed Trawden Forest Conservation area, showing the 18th & 19th Century Communication routes. The key describes the application route as an existing road in 1765.</p> <p>2) Insert taken from page 17 of the document which refers to the line of the 'cutting' linking Burnley Road to Oakenbank and Antley Gate.</p>
Investigating Officer's Comments		<p>The map to show the 18th & 19th century communication routes does not have a reference as to its origin, who made it or where it came from. To be included in the document helps support the archaeological group's research into the routes of significance surrounding</p>

		Trawden and the immediate areas. However it is unclear on what basis the 'existing road' is based on. The 'cutting' is described as being an important route at the time, linking the three vaccaries. However, it provides very little evidence for the status of the route in question.
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		Trawden was an Urban District in the early 1950s and a parish survey map was not compiled.
Draft Map		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 application route was shown on the Draft Map as public footpaths 61, 74, 73, 72, 71, 95, 97 and 99 Trawden. No representations were made to the County Council with regards to the recording of footpaths and their status along the track. The part of the route proposed for addition of bridleway was not shown on the Draft Map.
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 was shown on the Provisional Map as public footpaths 61, 74, 73, 72, 71, 95, 97 and 99 Trawden, and no representations were made to the County Council. The part of the route proposed for addition of bridleway was not shown on the Provisional Map.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route was shown on the First Definitive Map and Statement recorded as public footpaths as the previous Draft and Provisional maps. The part addition of bridleway was not recorded.
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.
Investigating Officer's Comments		From 1953 through to 1975 there is indication that most of the route was considered to be a public right of way on foot by the Surveying Authority. There were no objections or representations made with regards to the route being recorded on the maps as public footpaths when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map. There was nothing recorded on the part of the route proposed for addition of bridleway, nor were there any objections or representations made to the County Council for it not being recorded.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced

	<p>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>
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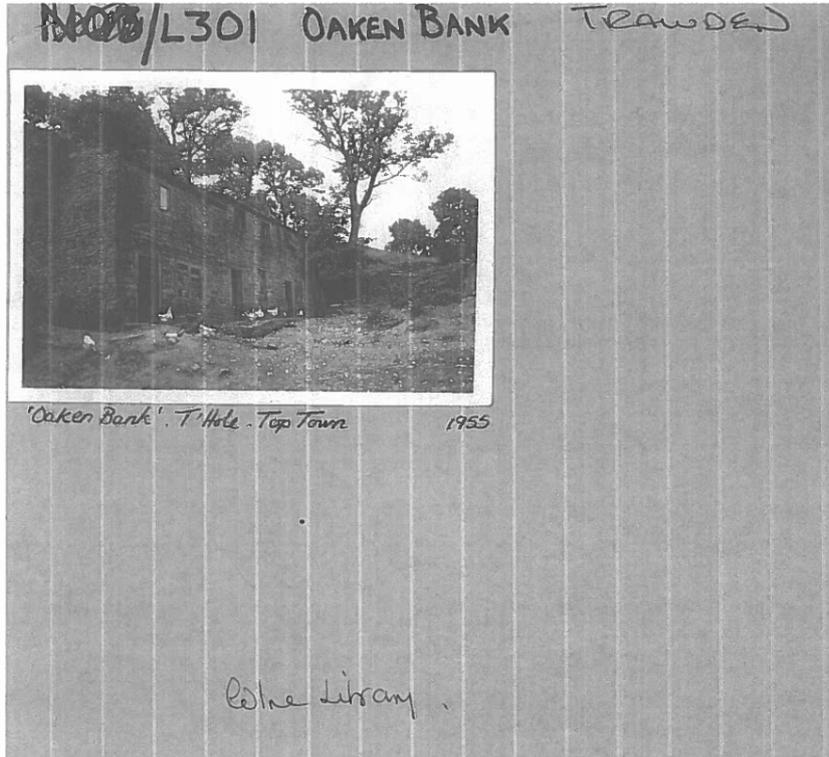


<p>Observations</p>	<p>The 1929 Road Transfer book has been inspected but it did not include an OS sheet for the affected area.</p> <p>The map above is within Lancashire County Council's highway records and shows that the application route is not annotated on the map as being a publically maintainable highway.</p>
<p>Investigating Officer's Comments</p>	<p>The application route was not highlighted as an adopted highway by Trawden Urban District Council in 1929 before highways were transferred to Lancashire County Council as highway authority. It is therefore not recorded as being publicly maintainable on the local authorities List of Streets.</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 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</p>

1980		<p>years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by any landowners under this provision of non-intention to dedicate public rights of way over their land.
Previously considered DMMO Application	October 1984	A rejected Definitive Map Modification Application to upgrade public footpaths to Byway Open to all Traffic (BOAT) from Burnley Road to Antley Gate.
Observations		<p>Lancashire County Council have a record of an application to upgrade the public footpaths to a Byway Open to all Traffic (BOAT). The application was submitted by the Trail Riders Fellowship on 9th October 1984 and went before committee on 9th July 1986.</p> <p>The description of the route at the time coincides with the recent site visit, in that the route is split up into two distinct sections – the first from point A to Alderhurst generally consisted of a reasonable hard stone surfaced track bounded for the majority with stone walls. There was evidence of vehicular use of most of this length, however it was not possible to determine whether this was public use or just for access to properties. There were no deterrent signs or notices and the two field gates across the route were openable. It was stated that the general condition, alignment and character of this section suggests a route of very considerable age.</p> <p>From Alderhurst to Antley gate (the greater section) the route crosses open moorland, and comprises of a barely discernible, very rough, overgrown and often waterlogged track. There is no evidence of any use on the route, and</p>

		<p>the condition would even make pedestrian use difficult. However, it does appear to follow a 2-3 metre wide depression in the moorland which suggests that a more obvious track may have existed at an earlier date which has been neglected and deteriorated. On this section one gate had been wired shut which prevents all but pedestrian use.</p> <p>The description then goes on to state that the full route was probably only used by pedestrians, and that any equestrian or vehicular use would be virtually impossible. However it was also stated that there was a clear definite track which must have existed for many years and that the site indicates that this would have been sufficient width and construction to be used by all types of traffic. It was also stated that the fact that all the properties are distinctively alongside the track suggests that the route provided a continuous through route at one time.</p> <p>After considering the evidence, committee decided that there was insufficient evidence to amend the Definitive Map to show public vehicular rights as a Byway Open to all Traffic.</p>
Investigating Officer's Comments		The application was rejected. To consider a new application there must be the discovery of new evidence which wasn't previously considered. The applicant for this application has provided documents in support of the new application which were not looked at previously. User evidence statements were also submitted which were not previously considered.
Physical Landscape Features		A sunken lane is a good indication of a lot of traffic historically, an old flag culvert or remains of bridge footings, gateposts or stiles can be helpful.
Observations		From Burnley Road to Alderhurst head it appears that the route has been a significant stoned track for a considerable amount of time. From AlderHurst Head Farm it appears that the route followed a sunken lane, which now is only passable on foot and suffers from extremely boggy impassable sections. Gates appear to have been in existence, as shown on Ordnance Survey maps, for some time, and are in situ today.
Investigating Officer's Comments		There is evidence of the route being a substantial stoned track, still available for use for the northern half, which then turns into the remains of a sunken lane indicating that historically it probably had significant traffic as a through route suggestive of public use as more than a footpath.
Pendle Borough	Undated	A document submitted by the applicant which has been

Officer's Comments		similar to how other highways have been recorded, it is unhelpful with determining the status as there is no key and no date. Therefore little inference can be taken from this document.
Historical Photographs of the route	Various	Historical photographs submitted by the applicant, both taken from Colne Library and dated 1940-50, and 1955, showing Oakenbank Cottages.



Observations		The photographs submitted by the applicant give a comparison of the layout surrounding Oakenbank cottages over an approximate 70 year period. A wide bounded track can be seen on the 1940-50 black and white photograph, with two ladies walking side-by-side downhill towards Oakenbank Cottages. The surface of the track is difficult to determine due to the quality of the scanned photograph, but the width of the track shows use on horseback could have been possible.
Investigating Officer's Comments		The photographs show that the route near Oakenbank Cottages was at one time (sometime between 1940-50) a good track (as evidenced by the ladies walking side-by-side rather than following, as tends to happen on a rough surface). There is a likelihood that use on horseback could have been possible.
Book Extracts	Various	Book extracts from various books submitted by the applicant to show the historical background of the area.
Observations		The applicant submitted various extracts from books showing the historical background to Trawden and the surrounding areas. Some, although helpful in describing the local area, do not contribute to determining the status of the application route. One specific point of interest was within 'A Trawdens View' written by Jack Greenwood, a local historian describes the route as 'Here an old carriageway takes you past the farm (Oakenbank) and on to the moors, this area of Trawden is known as the oil'.
Investigating Officer's Comments		The various books share the local knowledge of historians who mentioned specifically the area surrounding the application route. Of interest Jack Greenwood referred to the application route as an 'old carriageway' but although this does not necessarily imply public carriageway it does suggest a level of accessibility compatible with bridleway use.

The affected land is not designated as access land or common land under the Countryside and Rights of Way Act 2000, although it does join up to it on junction with the Pennine Bridleway at points N to O. It also joins up to the same piece of land which is registered as a Site of Scientific Interest, The South Pennine Moors.

Landownership

There are 4 land owners registered with the land registry which the application route affects:

- Alderhurst Head Farm, Hollin Hall, Trawden, BB8 8PS
- Beaver Farm, Boulsworth Road, Trawden, BB8 8ST

- Lower Oakenbank Farm, Hollin Hall, Trawden, BB8 8PS
- Oakenbank, Hollin Hall, Trawden, BB8 8PS

Ownership of the track from point A at Burnley Road to just after Pasture Springs Farm, points C to E, and I to O, are all unregistered on the land registry. The applicant was instructed to erect site notices to notify any existing landowners on these sections. Mr Ian Hartley of Antley Hall Farm responded to the consultation and marked his ownership as being from point I to O on the consultation plan. The landowners remain unknown on the prior sections.

There are also several properties adjacent to the route which this application effects. There are also rights claimed on the land under the Honor of Clitheroe and registered to Ingham and Yorke land agents.

Summary

From the map and documentary evidence, in particular the Ordnance Survey Maps examined, it appears that the route under investigation existed as a substantial route, particularly as a partly bounded track between points A from Burnley Road to point H just after Alderhurst Farm at least since 1800s. This section of the application route could have provided access to horse riders from at least 1804 until 1962/1963, subject to some gates on the route.

From point H the route continues as a less significant track, on some maps annotated 'FP', as it crosses fields towards Antley Gate, as shown on maps from as early as 1848 until 1962/1963. However, the Inclosure Award appears to have set out the southern 50m or so of the route without public rights thereby extinguishing any public rights on that section if they had existed.

The route was recorded on the Definitive Map documentation as public footpath, and their status was not objected to at any stage. The aerial photographs and use on the ground concur with the Ordnance Survey maps, in one section being an accessible substantial track and the other section a less used route.

The route provided, and still does provide, key access to several properties, along with substantial farm land. The track appears to be used for private vehicular access. Residents have taken responsibility for the surface of the track to access their properties via car, and as such have carried out drainage works. Information from the applicant appears to be that access was denied from the erection of the boulder in 2014, and therefore called into question for the purposes of presumed dedication. However information from the landowner appears that fencing in parts was in situ prior to this at other sections of the route, which would have prevented access.

The section of the application route not currently recorded as footpath (near the southern end of route) appears to be used significantly on the ground but does not appear to follow the definitive line of footpath 99 as it descends to Antley Gate. It appears that the field boundaries have changed at some time between 1960 to present day.

In conclusion, a great range of commercial maps and other documents were examined. There is consistent evidence over 200 years that bridleway use as a through route could have taken place, particularly along the wide accessible track from Burnley Road to Alderhurst Head Farm. From this point onwards to Antley Gate the track is less substantial and on some 1960s maps annotated as footpath. The consistent inclusion on early commercial maps strongly suggests a reputation as public bridleway or carriageway and the sunken nature of the landform supports this however the southern 50m or so at antley Gate was known not to have public rights immediately following the Inclosure Award in 1812.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In support of the application, the applicant has provided 10 user evidence statements (short statements not LCC's prescribed user evidence forms) to demonstrate usage over 20 years, as well as a bundle of documentation including maps, leaflets and references to several books to try to illustrate that the route was a historical carriageway and that bridleway rights should be recorded.

User Statements

Use has varied between the years 1977-2016.

Out of the 10 user evidence forms submitted, 3 users have used the full length of the route for 3, 4 and 7 years between the years 1985-2016.

3 users stated that they have only ridden the route on horseback once.

4 users stated that they have only ridden part of the route.

2 users stated that they were confronted by a landowner.

Use must be more than trivial and sporadic to be sufficient user evidence to give rise to a deemed dedication, and be without interruption. The user evidence submitted is limited, with some user statements provided showing that the landowner has challenged use in 1985 and 2004.

The applicant stated in her application that there are other known users who have used the route but are reluctant to contribute to the application due to fear of upsetting landowners, despite supporting her in her application. The County Council can only consider the user evidence submitted to them.

Documentary Evidence

The applicant submitted various pieces of documentary evidence to support the application to try and demonstrate that equestrian rights exist and that the route was deemed to be a historical carriageway. Some of the documents which the applicant has submitted are examined by officers as a matter of course and have been

included above. The applicant referred to other documentation which although helpful in understanding the history and 'bigger picture' of the area, do not provide a weighty bearing on the investigation into the status of the route in question. Information relating to Iron Age Evidence on an undated document 'Bonnie Colne' by Peter Wightman demonstrated Iron Age evidence in Trawden and included photographs dated 1959.

The applicant also submitted photographs of a Tractor Run Fundraiser between Burnley Road and Oakenbank but this was by permission to use the track from Oakenbank.

The applicant also referred to bench marks however these are not indicative of a public right of way, it is important to note that they can also be found on rocks in the middle of private land. The Survey Act of 1841 gave Ordnance Survey Surveyors the powers to enter onto both public and private land (PINS Consistency Guidelines).

Information from Landowners and Others

A significant response was received to the consultation letters sent to the landowners and adjacent landowners. In total, 32 responses to the application were received. 10 objected to the proposal and 19 stated that they had never seen any equestrian use of the route (therefore considered as objections). 3 provided comments of either a neutral stance, did not provide reasons as to an objection or only confirmed their land ownership.

There are 4 registered owners of the track. The rest of the route is unregistered with the land registry. There are however several residential properties who live adjacent or close to the track but are not the registered landowners of the route itself. They also provided comments stating that they have never seen any equestrians or cyclists using the application route, nor seen any evidence of use such as hoof prints or manure.

On the majority of the respondent letters, they all mention how the route was and is impossible to have been used by horses due to associated fencing, gates and stiles which allow access on foot as a footpath only.

The 1984 application for Byway Open to All Traffic was mentioned by landowners and other respondents pointing out that a prior investigation had been conducted on the route in question.

The landowners have also referred to the Inclosure Award included above.

Although not relevant to this investigation, concerns have been highlighted from residents with regards to the future maintenance of the track, and particular conflicts in potential increased numbers of horse riders coming into conflict with an oncoming vehicles trying to access properties. There are also fears of an increase in antisocial behaviour. Private rights are assumed to exist although this is not considered relevant to this investigation.

Landowners and adjacent residents expressed objections on the grounds that the route currently was unsuitable for horses, potential conflict with their animals,

increased maintenance costs, disturbance of peace and tranquillity, road safety on Burnley Road approaching the route, no cycling signs and footpath waymarks/signs, risk of abuse by quads and motorbikes, reduced security, other available bridleways nearby. Whilst these are mostly management issues rather than directly related to the evidence for or against existing rights they also emphasised that they had never seen trace of bridleway use except on 1 or 2 occasions which were either private use or challenged by landowners or residents.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Part of present line (A to H) available since mid1800's
Some user evidence

Against Making an Order(s)

Weak user evidence
Lack of historical evidence
Noted on historical maps as "footpath"
Difficulties in proving dedication of bridleway on balance
Inclosure Award notes the southern section of the route as 'Private Carriage and Occupation Road'

Conclusion

The route under consideration is currently nearly all recorded as a public footpath only sections I to L are currently not recorded as public footpath. The application is to upgrade the sections of the footpath from points A-B-C-D-E-F-G-H-I and M-N-O to a bridleway, as it is suggested the public footpath carries higher public rights.

Committee should note that as the route already appears on the definitive map as a public footpath, it is not sufficient to satisfy the lesser test of reasonably alleging the existence of higher rights, neither is it necessary for there to be conclusive evidence of the existence of a higher public right than a public footpath, instead the standard of proof required is the balance of probability.

It is advised that as there is no express dedication in this matter 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 S31 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.

Looking firstly at whether dedication can be inferred on balance at common law it is advised that the Committee has to consider whether evidence from the maps and other documentary evidence coupled with the evidence on site does on balance indicate how the route should be recorded. The analysis of the map and

documentary evidence presented in this report would seem to suggest that there is insufficient historical or documentary evidence of the entire claimed route. Historically the section A to H appears to be shown as a substantial route but this is mainly due to such section being used as private access to a number of dwellings. On the whole the claimed route appears to have been historically recorded and used as a footpath, in addition the Inclosure Award appears to show the southern section of the route without public rights, noted as 'Private Carriage and Occupation Road'. Landowners of the route have commented that the route is a public footpath only and used as such and have never seen any use on horseback or cycle, landowners have also stated that use of the route is private for access to their respective properties and any other use has been challenged when witnessed. It is suggested that it is difficult to see sufficient circumstances from which to infer the owners dedicated this route as a bridleway.

Looking secondly at deemed dedication under S31 Highways Act 1980. S31 requires there to be sufficient use of a route for twenty years before the route was called into question. In this matter the date the route was called into question for bridleway use is taken to be 2014 when the boulder was placed on the route prevent access other than that on foot. There is a limited amount of equestrian user evidence presented and no cycle user evidence presented. Out of the 10 user evidence forms submitted in support of this route, two users state that they have been challenged using the route and two users state that they have only ever used the route once, four of the users also confirm that they only used part of the route and none of the users have used the route for a 20 year period.

It is suggested that the limited equestrian use evidenced in this matter is not sufficient evidence of use from which dedication of a bridleway could be deemed just from that use and no other evidence of a historical or long-standing bridleway use.

Taking all the evidence into account it is suggested that the evidence is insufficient to satisfy the criteria of S31 nor sufficient from which to infer landowners' intention to dedicate a bridleway in this matter. Committee may therefore feel that the application be not accepted and no Order be made.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-581		Claire Blundell , 01772 533196, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A