

Regulatory Committee

Meeting to be held on 17th January 2018

Electoral Division affected:
Preston Rural

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Garstang Road (A6) to Pinewood Avenue,
Broughton, Preston City
File No. 804-590
(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the addition to the Definitive Map and Statement of a footpath from Garstang Road (A6) to Pinewood Avenue, Broughton, Preston City, in accordance with File No. 804-590.

Recommendation

That the application for the addition of a footpath to the Definitive Map and Statement from Garstang Road to Pinewood Avenue, Broughton, in accordance with File No. 804-590, be not accepted

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Garstang Road to Pinewood Avenue in the parish of Broughton, as shown between points A-B-C-D-E-F on the Committee plan.

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

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

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

An order for 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

Preston City Council

Preston City Council have been consulted and no response has been received, it is assumed they have no comments to make.

Broughton Parish Council

Broughton Parish Council are the applicants in this matter.

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	5238 3524	Junction with Garstang Road (A6) north of 518 Garstang Road
B	5241 3525	Route passes through gateposts
C	5243 3527	North west corner of Telephone Exchange building
D	5245 3528	Width of route reduces as it passes ramped access into building
E	5245 3528	Route passes through gateway
F	5246 3529	Junction with Pinewood Avenue

Description of Route

A site inspection was carried out on 13 September 2017.

The route commences at a point on the A6 Garstang Road north of 518 Garstang Road and opposite the entrance to Halshaw Drive. A bus stop is located just north of point A on the same side of the A6 as the application route.

A tarmac entrance from the A6 carriageway exists with dropped kerbs to provide vehicular access onto the application route, which provides access to a telephone exchange (now closed) and to a residential property (522 Garstang Road).

Access onto the route at point A is open and follows a tarmac road bounded by grass verges and fences in an east north easterly direction, for approximately 35 metres to a gateway at point B.

Immediately before reaching point B on the north side of the application route is access to 522 Garstang Road.

The gateway at point B was in an open position when the route was inspected and its condition and surface growth around the base of it suggested that it had not been closed across the route for some time.

Two notices were clearly visible from the application route (if walking from point A) on the fence adjacent to the gate. The most faded notice (undated) stated 'WARNING This is Private Property Unauthorised access is trespass and is not permitted. British Telecommunications plc. (BT) will prosecute unauthorised access to its premises. BT will have no liability to trespassers who enter these premises without BT's permission. Any unauthorised removal of BT property is theft and anyone caught removing BT property without BT's consent will be prosecuted.'

A second, slightly less weathered notice (also undated but appearing to be a little newer than the other sign) stated 'BT Premises unauthorised access is trespass and is not permitted. Only for use by BT vehicles and other vehicles authorised to enter on business. All other vehicles are prohibited. BT will not accept liability for any loss, damage or injury, however caused to persons or vehicles, whether authorised or unauthorised.'

Beyond the gate, the application route continues across the tarmac entrance to the site in a north easterly direction to the north west corner of the telephone exchange building (point C) where there is a door into the building and a sign on the corner of the building stating 'Goods Inwards'.

From point C, the route continues along the northern side of the telephone exchange building along a 3 metre wide tarmac surfaced path covered by a canopy, along the side of the building to a ramped access to some further doors into the building at point D.

From point D a 1.10 metre tarmac path continues past the ramped access to pass through a white pedestrian gate (85cm wide) in the fence line at point E and then continues for a further 6 metres across a maintained grass verge to the footway on Pinewood Avenue (point F) directly opposite 14 Pinewood Avenue.

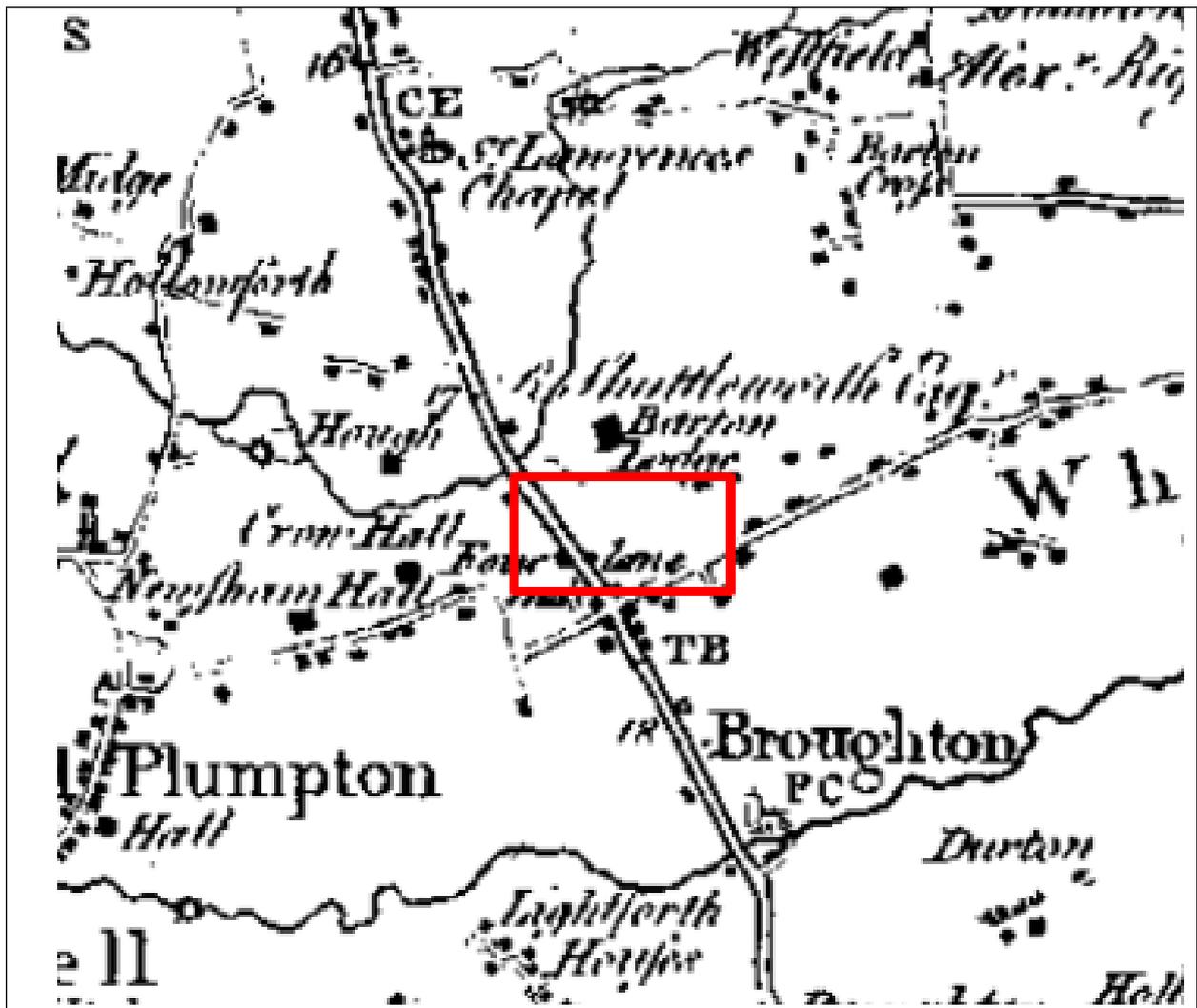
A sign identical to the weathered sign at point B is fastened to the outside of the fence immediately adjacent to the gate at point E which is visible from Pinewood Avenue. The wording is faint and worn but can still be read.

A faint trodden line was visible in the grass verge between point E and point F suggestive of pedestrian use.

The total length of the route is approximately 95 metres.

Map and Documentary Evidence

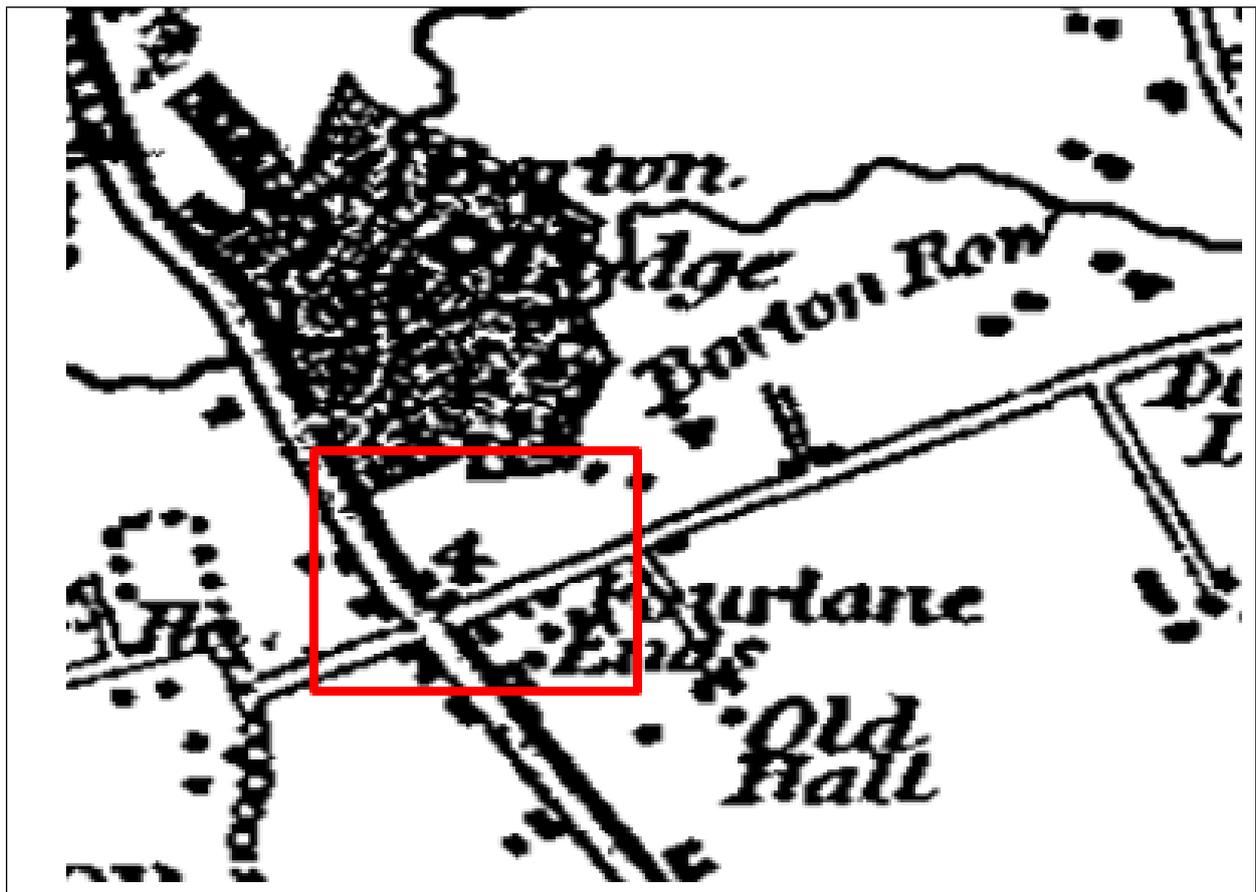
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced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



Observations		The application route is not shown. Garstang Road is shown but Pinewood Avenue is not.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
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 and the two were not differentiated between within the key panel.



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Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
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.



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Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
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		The application route does not cross land affected by the planned construction of a canal or railway.

Investigating Officer's Comments		No inference can be drawn regarding the existence of public rights.
Tithe Map and Tithe Award or Apportionment		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		Ordnance Survey mapping and other map and documentary evidence examined later in the report show that the application route did not come into being as a through route until the construction of Pinewood Avenue and that no part of the route was shown to have existed in the 1800s. For this reason the Tithe Map for the area crossed by the application route has not been examined.
Investigating Officer's Comments		No inference can be drawn regarding the existence of public rights.
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		There is no Inclosure Award in the County Records Office for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1847. 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



Observations		The application route is not shown. Garstang Road is shown but Pinewood Avenue is not shown. The land over which the application route runs is shown as fields and there is no route marked on the map.
Investigating Officer's Comments		The application route probably did not exist in 1844 - 1847 (date of survey).
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.

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 application route is not shown. The application route crosses fields and no path is shown. Pinewood Avenue is not shown.
Investigating Officer's Comments		The route under investigation probably did not exist in 1892 (date of survey).
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.
Observations		The application route is not shown and there are no changes to the map in the vicinity of the route from the date of the first 25 inch OS map survey.
Investigating Officer's Comments		The application route probably did not exist in 1910 (date map revised).
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 provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be

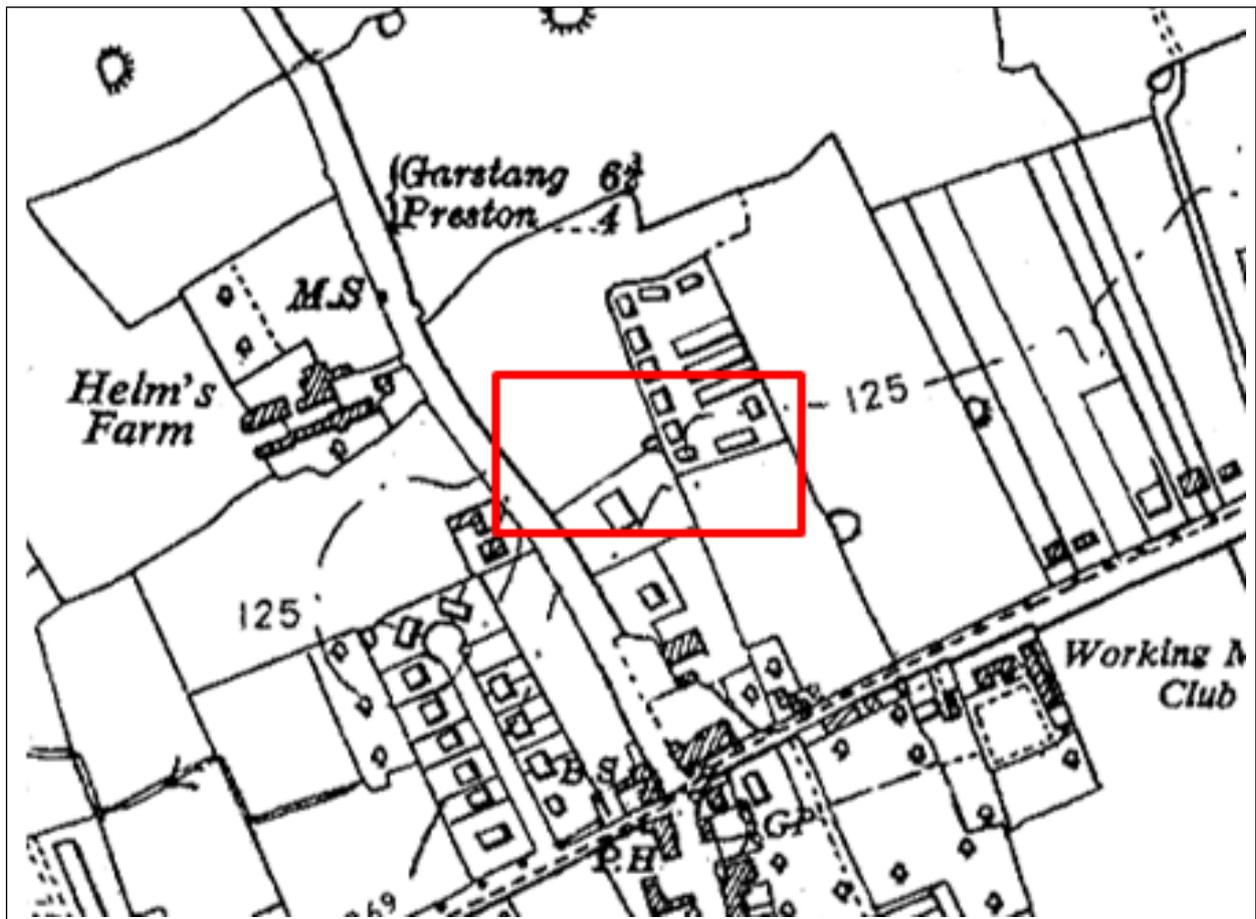
		<p>claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		<p>Ordnance Survey mapping and other map and documentary evidence examined later in the report show that the application route did not come into being as a through route until the construction of Pinewood Avenue and that no part of the route was shown to have existed in the early 1900s. For this reason the Finance Act records for the land crossed by the application route have not been examined.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed

		1982, revised in 1930 and published 1932.
Observations		The application route is not shown. The area crossed by the application route is shown unchanged from how it is shown on the first and second edition 25 inch OS maps.
Investigating Officer's Comments		The application route probably did not exist in 1930 (date map revised).
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	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. 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'.
Observations		The Map does not cover the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
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.



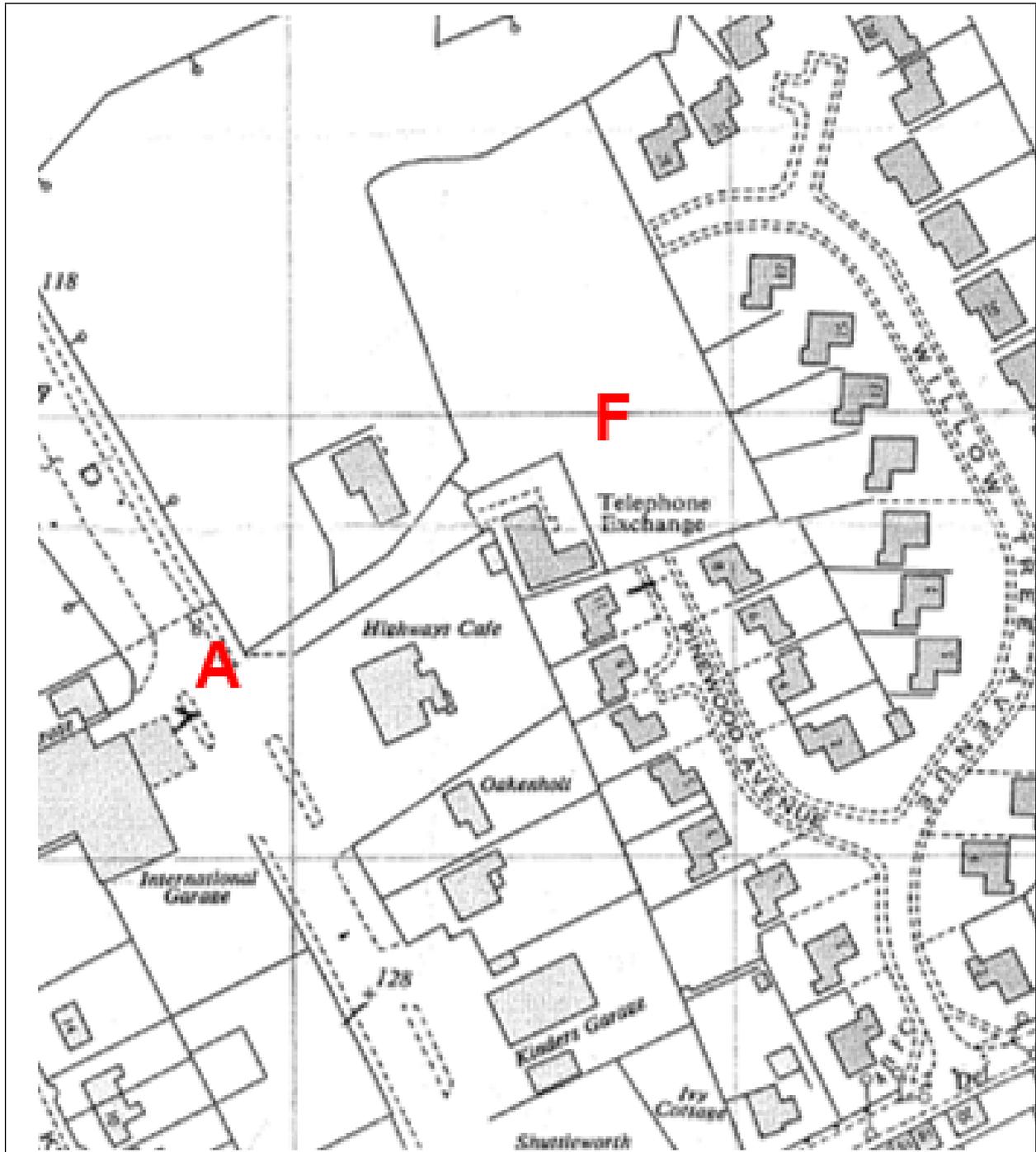
Observations		The quality of the photograph is poor but it appears that a worn area is evident at point A indicating the existence of a possible gateway or access into the field and there are buildings in proximity to point E with no obvious access track to get to them.
Investigating Officer's Comments		Part of the application route may have existed in the 1940s but the route did not exist as a through route.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The application route is not shown on the map and it is unclear whether access would have been available along any part of it. Pinewood Close is not shown.
Investigating Officer's Comments		The application route probably did not exist in the 1930s (date of survey).
1:2500 OS Map	1961	Further edition of 25 inch map reconstituted from former county series and revised in 1960 and published 1961 as national grid series.



Observations		A strip of land is shown extending from point A which appears to be open and accessible along the modern day alignment of the application route. It passes to the north of a building labelled as a highway café and appears to provide (gated) access to a depot. Pinewood Avenue is not shown.
Investigating Officer's Comments		The application route did not exist as a through route but access may have been available along part of it to the depot.
1:2500 OS Map	1966	Further edition of OS map reconstituted from former county series and revised in 1965 and published 1966.



Observations		Access may have been available from point A along a fenced off strip of land to the north of the Highway Café. The depot is no longer shown but a building labelled as telephone exchange is shown. Part of Pinewood Avenue has been constructed but the part connecting to the application route is not shown.
Investigating Officer's Comments		Access may have been available along part of the application route in 1965 but the route did not exist as a through route.
Aerial photograph	1960s	The black and white aerial photograph

taken in the 1960s and available to view on GIS.



Observations

The quality of the photograph is poor. Access appears to be available and unrestricted at point A leading through to point F. Pinewood Avenue looks to be partially constructed but does not appear to extend through to point F.

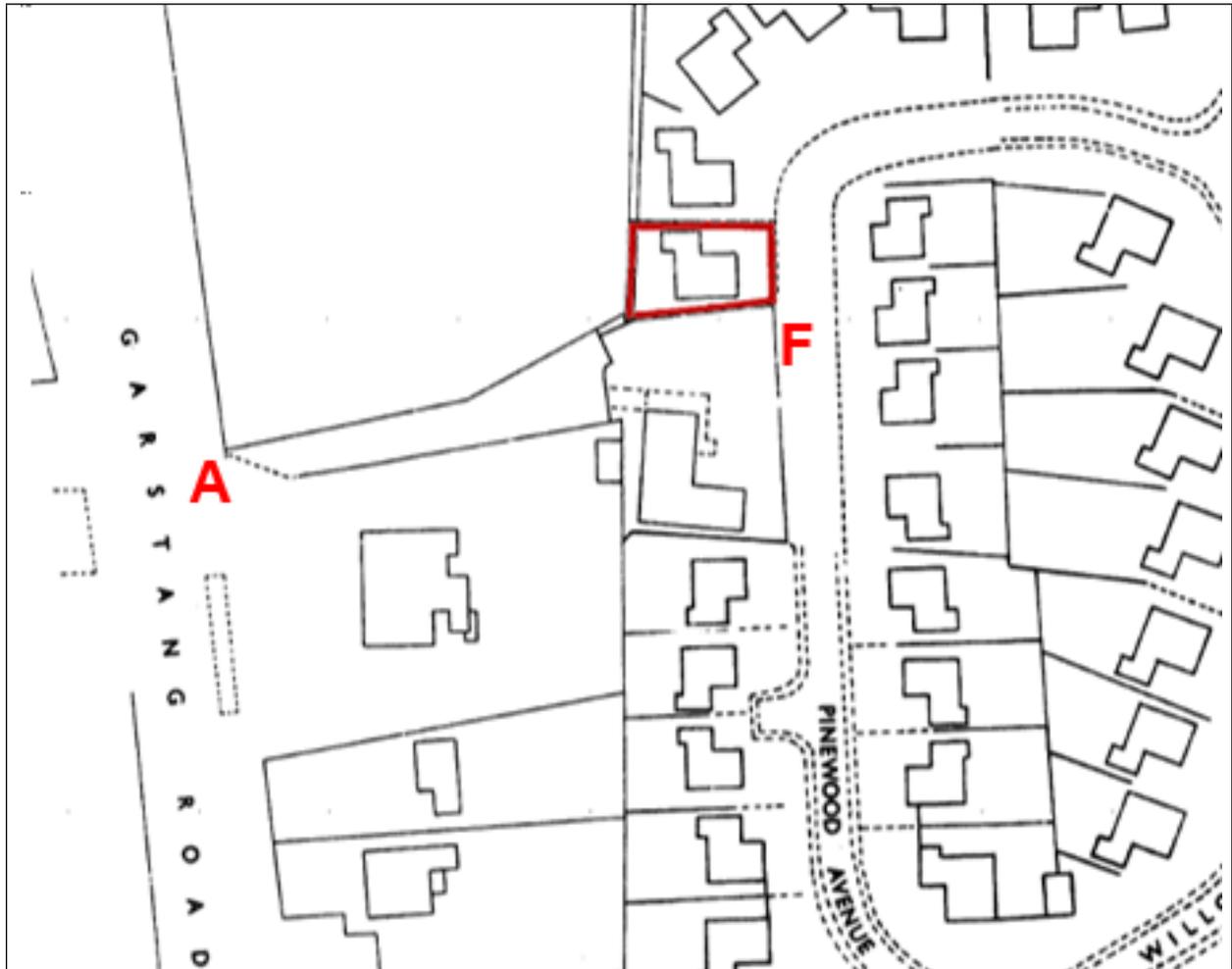
Investigating Officer's Comments

Access may have been available along part of the application route in 1960s but the route did not exist as a through route (connecting to Pinewood Avenue).

Land Registry Plan

1967

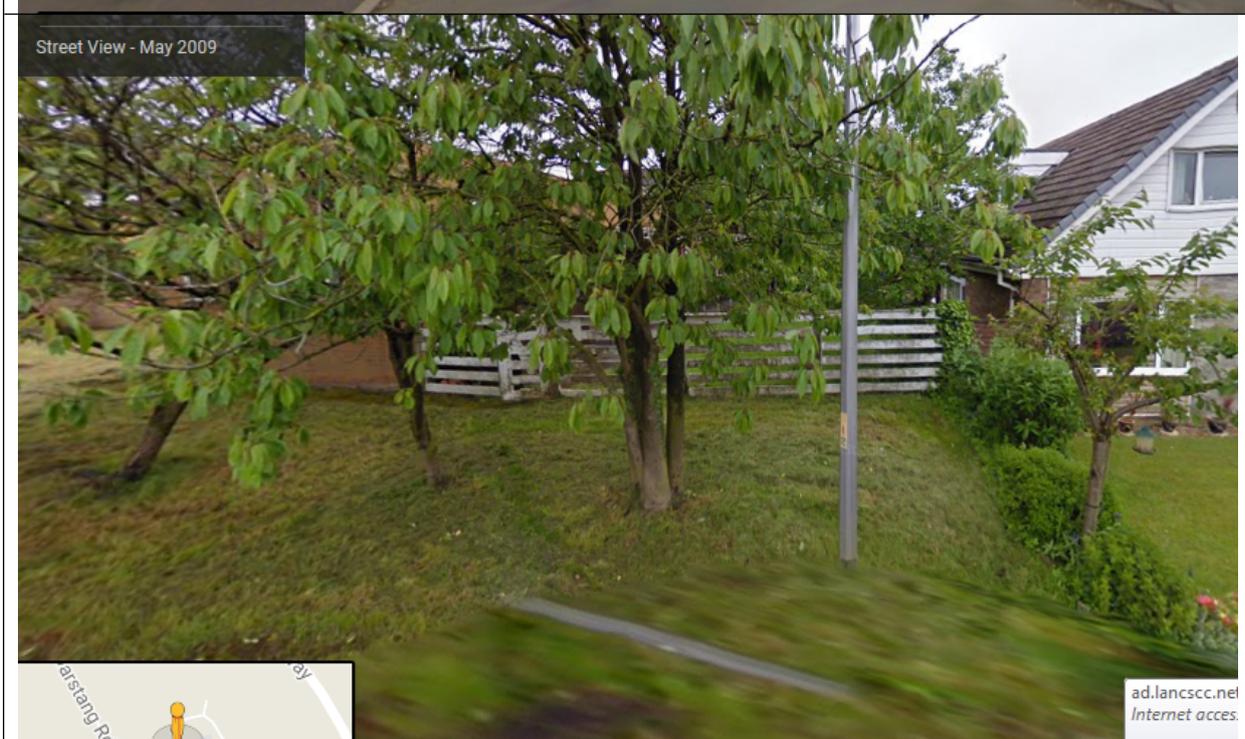
OS plan published 1967 at a scale of 1:1250



Observations		<p>The OS base map published in 1967 shows further development and the construction of Pinewood Avenue. The route between point A and point B is shown with a line across the route at point B suggesting the possible existence of a gate. Access may have been available between point B and point F but a route is not marked and access onto Pinewood Avenue may have been further south than point F (where there is a break in the solid line). The building shown just south of the route from point B to point F is not labelled so it is not possible to know what this was but it differs from the building now on site and which was the telephone exchange building.</p>
Investigating Officer's Comments		<p>A route may have existed from Garstang Road to Pinewood Avenue in 1967 but the alignment may have been different to the route claimed between point B and point F.</p>
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		The route can be seen between points A-B-C and appears to be available. It is not possible to see the route between point C and point E as it is undercover and it is not possible to see if there is a visible route between point E and point F across the grass verge due to the trees along the grass verge obscuring the view.
Investigating Officer's Comments		The application route existed between points A-B-C but no inference can be drawn regarding the rest of the route.
Google Street View images	2009	Google Street View images of both ends of the route captured in 2009.



<p>Observations</p>		<p>Access onto the route from the A6 (Garstang Road) appears to be available. Notices can be seen on the fence adjacent to point B and although it is not possible to read them they appear to be in the same position as the notices found on site when the route was inspected in 2017. It was not possible to get a clear view of the application route from Pinewood Avenue but the photograph shows the pedestrian gate at point E in a closed position and there appears to be a faint walked line in the grass verge between point E and point F.</p>
<p>Investigating Officer's</p>		<p>The application route may have been</p>

Comments		accessible in 2009 but notices adjacent to point B may have indicated that the telephone exchange was private property.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>The area crossed by the application route was part of the former parish of Barton in Preston Rural District.</p> <p>The application route was not shown on the Parish Survey Map.</p>
Draft Map		<p>The parish survey map and cards for Barton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other</p>

		mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The route was not shown on the Draft Map and no representations were made to the County Council.
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 not shown on the Provisional Map and no representations were made to the County Council.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route was not shown on the First Definitive Map and Statement.
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 no indication that the route was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the

		map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>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 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>

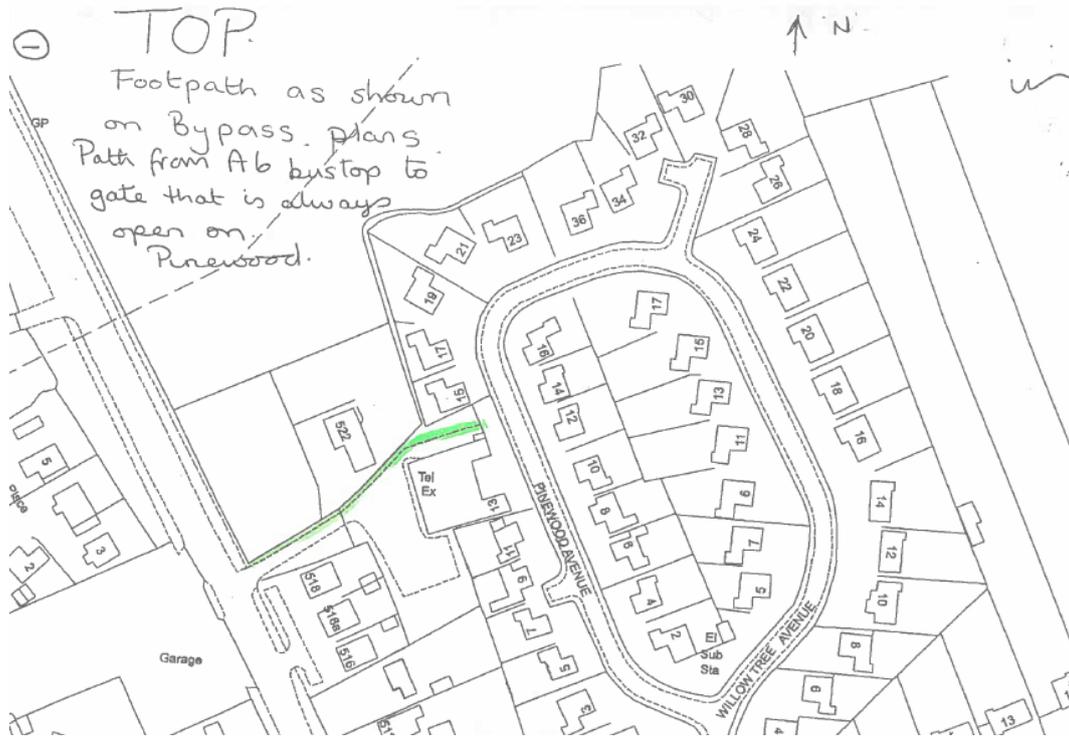


Observations		The application route is not shown as a publicly maintainable highway on the List of Streets.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.

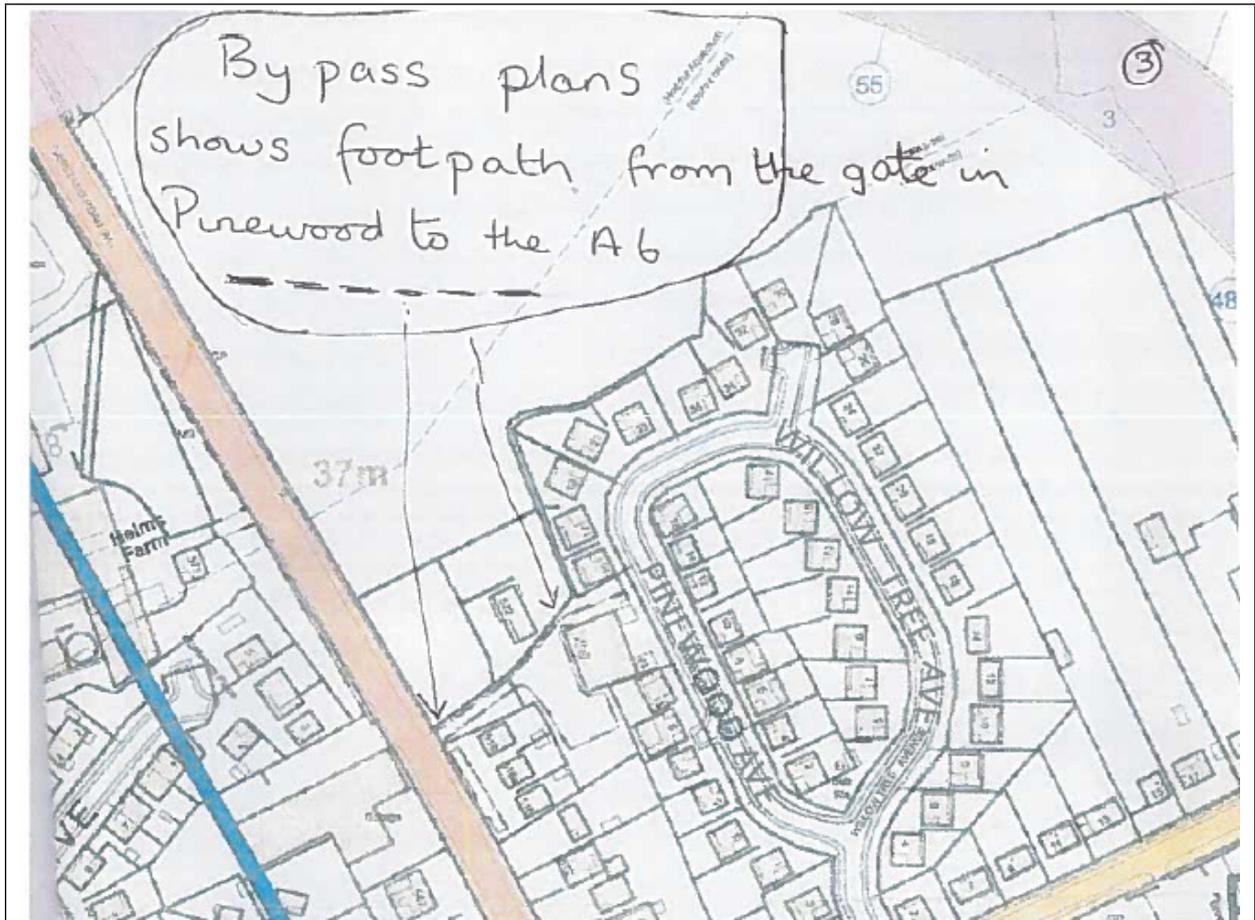
Observations		A search was made to see whether any record could be found regarding the creation or stopping up of a route between Garstang Road and Pinewood Avenue. No reference to the route being legally created or stopped up could be found.
Investigating Officer's Comments		No inference can be drawn.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

Plans submitted by the Applicant

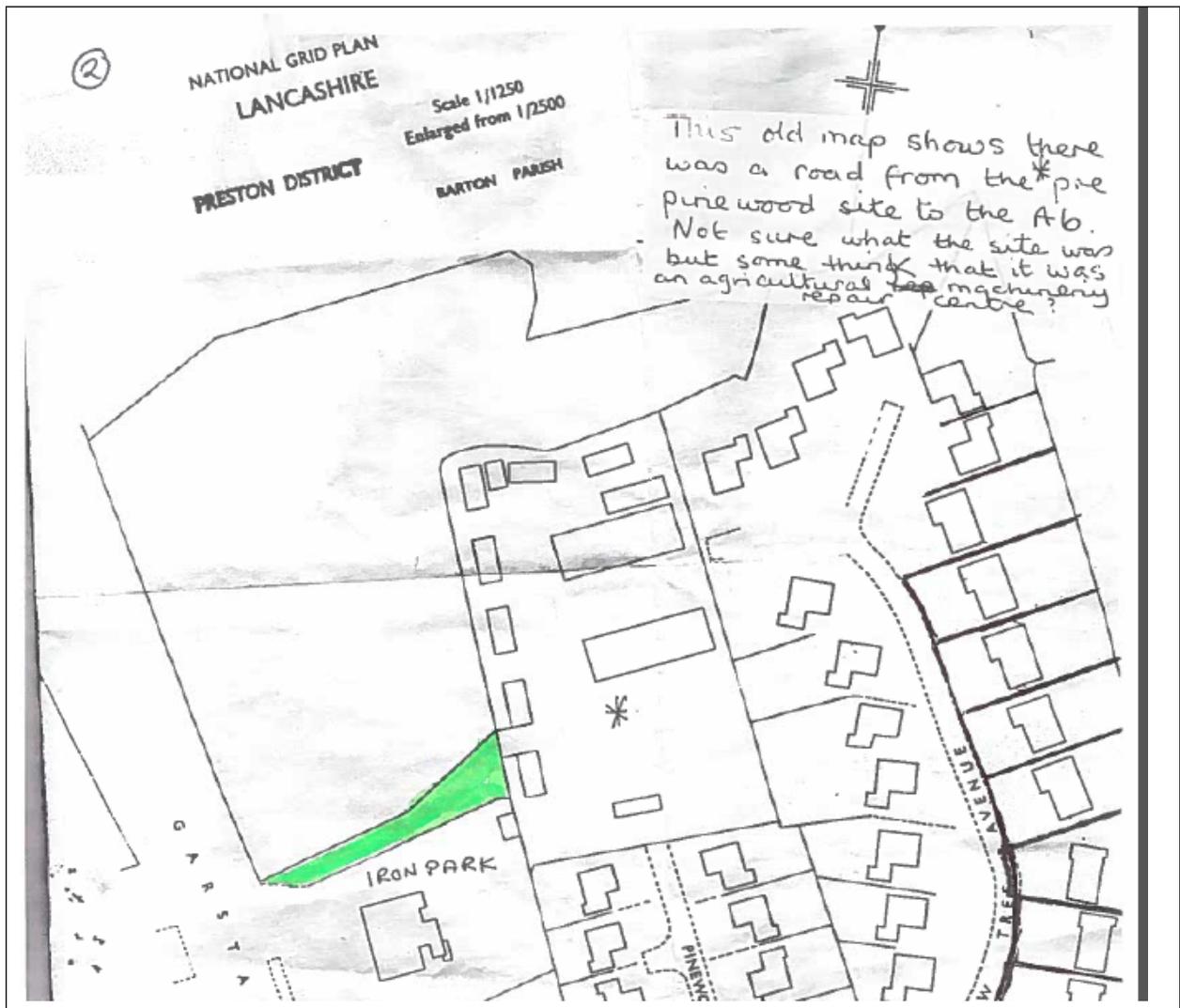
Plan 1



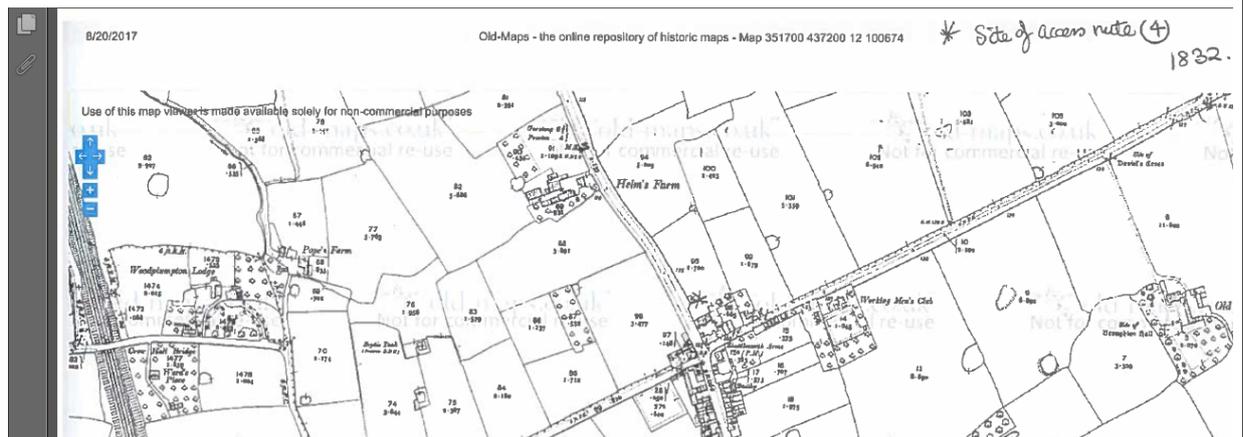
Plan 2



Plan 3



Plan 4



Observations

The four maps supplied by the applicant have been examined.

Plan 1 is undated but is a computer generated map which appears to be reasonably recent. The applicant has drawn a green line on it to indicate the line of the application route. The green line was

		<p>actually drawn along the grass verge adjacent to the route between points A-B-C and was not shown to go under the walkway or exit onto Pinewood Avenue. Photographs were provided to the applicant to confirm that the application route is correctly shown on the Committee plan.</p> <p>Map 2 appears to be an undated extract of a plan showing the proposed Broughton Bypass Road (now constructed). The OS base map is undated but shows the physical layout of the land crossed by the application route and the route itself does appear to exist.</p> <p>Map 3 is an undated OS plan taken from a Land Registry document which has already been considered in the report.</p> <p>Map 4 is an extract of the first edition 25 inch OS map dated 1892 (not 1832 as annotated by the applicant). This map has been considered earlier in this report.</p>
Investigating Officer's Comments		<p>The maps submitted by the applicant do not indicate whether the route – where access was shown – was a public footpath and no further information can be gained from them.</p>

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

Ownership of the land crossed by the application route between points A-B-C-D-E-F is registered with the Land Registry as being owned by British Telecommunications PLC (Co. Regn No.1800000) of 81 Newgate Street, London, EC1A 7AJ.

Summary

There is no map or documentary evidence to suggest that the application route existed as a through route before Pinewood Avenue and the associated housing development was built between 1965 and 1967.

Access from point A to point B appears to have been available at an earlier date but looked to provide access from Garstang Road to some buildings and did not form part of a through route until Pinewood Avenue was build.

At some point between the late 1960s and 2000, the original building on the site of the telephone exchange was demolished and the existing building erected with an undercover walkway forming part of the application route between point C and point D, and online research (Wikipedia) suggests that the original telephone exchange – which was built in 1964 – was extended in the 1980s.

The site evidence confirms the existence of a through route which, at the time of inspection, was available to use and appears consistent with the route described in the user evidence forms submitted with the application, but no map or documentary evidence was found to support the dedication of the route by virtue of historical dedication.

Notices were visible on the route, when going from Garstang Road to Pinewood Avenue and in reverse, indicating that the route was not public and the ones at point B appear to have been there since some time before 2009.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In support of the application for the addition of a Public Footpath from Pinewood Avenue, between 13/15 to Garstang Road, between 522/518, the applicant has provided 11 user evidence forms, the information provided in these forms is set out below:

All of the users have and do use the route on foot. The years in which the users use and used the route vary from 1984 up to present day:

2002-2017 2005-2017 1996-2017 1989-2017 2004-2017 2010-2017
2014-2017 2012-2017 1989-2017 1984-2017
("when the route was installed")-2017

The main places the users were going to and from include walking to the service station on Garstang Road for such items as newspapers and as a short cut to the bus stop on Garstang Road. Two users use the route when walking their dog. One user walks to the Indian restaurant and Pub on the Garstang Road/Woodplumpton Lane intersection.

The use of the route is mostly on a daily basis, with only one user using the route weekly.

All the users agree that the route has always run over the same line and that the gate opposite 14 pinewood Avenue is always open. When asked whether there were any stiles/gates /fences across the route, all 11 of the users mentioned a gate at the Pinewood Avenue side, 8 of which state that the gate is always open. 2 users also mention a double gate at the A6 end of the route of which one user states that they have never seen it closed. All of the 11 users state that the gates do not and have not prevented them from ever using the route.

All of the users answered 'no' to having ever worked for a landowner/tenant of the affected land. Likewise all the users replied 'no' to having ever been stopped or turned back when using the route. All but 1 user answered 'no' to being told that the application route was not public, they one user that was told this was by a BT employee however they were not stopped or asked to turn back.

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

- The route is needed for the future developments, the right of way fits in with Broughton Parish Plans. It is an emergency entry to estate, ie ambulance staff with trolley.
- The footpath is very important to one user as her son has limited mobility and they use the footpath to catch buses to Preston for doctors' appointments, shopping etc. He would struggle with walking further and it is very convenient for daily use.
- A lot of elderly people use the route and it would be a major inconvenience for the elderly if they could not use the footpath for shopping and buses. One user's wife also catches the bus using the footpath. She also takes their dog for a walk using the route when he is not available.
- One user and her husband are elderly and would be disappointed if the path was closed. It is a lifeline to them.
- There are many elderly people who live in Pinewood and Willowtree Ave. They use the path as a short cut to the bus stop. Many use it several times a day to go to the garage for a paper, bread etc. Many have difficulty walking. The alternative would make them have to walk a long way round to the bus stop.

In addition to the user evidence details above, the applicant provided the following, which she asserts support the claim for the route to be recorded as a public footpath:

1. Map of area with pathway marked
2. 2nd older map showing access way to site
3. Post-bypass maps
4. Old OS map route not shown
5. Current land registry (20 August 2017)

Information from the Landowner

In response to consultations BT provided that at one side, the route is along a single lane access drive for the fully operational Telephone Exchange and at the other there is a gate which secures the boundary of the property. At this stage this would like to highlight the main objections they have against the proposed public footpath:

- Security: Members of the public regularly entering our private property and therefore negating BT's standard trespass policy.
- Health & Safety: MOP would have to exit the site via the narrow access road and walk in the road to gain access to Garstang Road.

- Wear & Tear: If there are regular MOP's walking through BT's grounds, the entrance gate on Pinewood Avenue and the paths around the exchange will be getting used more frequently and require a significantly higher level of maintenance.

BT have also confirmed they had two notices up at either side of the exchange.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

User evidence forms

Against Making an Order

Map evidence

Land owner intention

Use not by the public as a whole

Conclusion

Considering firstly whether dedication can be inferred at common law, the map evidence suggests that the application route did not exist as a through route before Pinewood Avenue and the associated housing development was built in around 1965-1967. The map evidence is not in itself sufficient to infer dedication under common law. The land was in the ownership of BT during the relevant period under consideration. BT objects to the application and have notices up mitigating against dedication. Therefore the mapping and user evidence taken together are insufficient from which to infer dedication under common law.

Turning to see if dedication can be deemed under s.31 Highways Act, Committee will be aware of the criteria, the public must have enjoyed the way "as of right" and use must be sufficient during the twenty year period under consideration. For use to be as of right, it needs to be without force, stealth or permission.

The 20 year period applies retrospectively from the date on which the right of the public to use the way was brought into question. The submission of the application was the event bringing the route into question and therefore the twenty year period under consideration would be 1997-2017.

Eleven user evidence forms have been submitted by the applicant. Five evidence forms have been completed by people who reside at Pinewood Avenue and five of the evidence forms have been completed by individuals who reside at Willow Tree Close, one evidence form has been completed by someone living on Whittingham Lane. S.31 provides that the route must have been enjoyed by the public as a whole, the user evidence forms suggest use was in fact by local inhabitants mainly residing at Pinewood Avenue and Willow Tree Close and hence it is not possible to demonstrate use by the public as a whole.

It is understood two notices had been put up along the route by the landowner, British Telecommunications (BT) which made it clear that the land was private property and that unauthorised access was trespass and not permitted. The environment officer suggests one of the notices was worn and weathered suggesting it had been in place for some time. The notice appears to be in situ on google maps in 2007, the second notice looks more recent. However, the user evidence forms suggest there were no notices present along the route, one user does state that he was told the land was private.

On balance it seems that during the period under consideration there was likely to have been at least one notice present bearing in mind the officer comments and the fact that BT had a telephone exchange along the route and would most likely wanted to ensure that the property/equipment was protected therefore; on balance it is suggested that s.31 cannot be satisfied as the landowner did not intent to dedicate the land as the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

Taking all the evidence into account, it is suggested to Committee that on balance the provisions of S31 Highways Act cannot be satisfied and that dedication cannot be deemed under s.31 nor inferred under common law and hence it is recommended that the application is not accepted.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-590		Claire Blundell , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A