

Regulatory Committee

Meeting to be held on Wednesday, 18 July 2018

Electoral Division affected:
Pendle Rural;

Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Bridleway from Reedymoor Lane to the junction of Whitemoor Road and Standing Stone Lane, Foulridge, Pendle Borough

File No. 804-478

(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 538036, Paralegal Officer, County Secretary and Solicitors Group, Claire.blundell@lancashire.gov.uk

Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning and Environment, jayne.elliott@lancashire.gov.uk

Executive Summary

Investigation of public rights from Reedymoor Lane to the junction of Whitemoor Road and Standing Stone Lane, Foulridge, Pendle Borough, in accordance with File No. 804-478.

Recommendation

- (i) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to upgrade Footpaths 63 and 8 (part) Foulridge to bridleway and to add a bridleway to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G-H-I.
- (ii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 was originally received in 1987 for the Route to be recorded as a byway open to all traffic, and an Order was made to that effect (Definitive Map Modification Order No. 1 1988). Objections were received and a public inquiry was held into the matter in 1997 following which the Order was not confirmed. A copy of the Planning Inspectorate decision letter dated 25th February 1998 is included as an appendix.

In 2008, as part of a review of previous Order decisions, the route was researched again by a former member of the Public Rights of Way team (now retired) and following discussions with members of the local horse riding community an investigation into the route as a bridleway on the Definitive Map and Statement of Public Rights of Way was started by the Lancashire County Council, Environment Directorate as shown between points A-B-C-D-E-F-G-H-I on the Committee plan.

The investigation included user evidence not considered at the 1997 inquiry and since then some additional documentary evidence has also been considered and is included in this report.

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 upgrading or downgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

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

An order 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 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 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 stated that whilst they do not hold any evidence on whether the route carries public bridleway rights they support the establishment of a public bridleway on this route to add to the fragmented bridleway network in Pendle.

Foulridge Town Council

The Parish Council considered the application at their meeting held on Monday 15th January, 2009 and decided that the application should not be supported ('upheld'). They referred to the public inquiry into the status of the route held in 1997 which they understood concluded that the route was not a public right of way'.

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	8797 4191	Open junction with Reedymoor Lane (U20911)
B	8791 4204	South side of disused railway line at former level crossing (gate posts evident)
C	8790 4205	Point on route immediately north of disused railway where an access track leaves the Route providing access to Ball House
D	8770 4221	Junction of Footpath 63 (the Route) with Footpaths 24 and 64 near Sand Hall
E	8774 4229	Stream passes under Route
F	8782 4240	Junction of Footpath 10 with Route adjacent to former access into Ball House (now disused)
G	8783 4244	Junction of Route with legally diverted route of Footpath 9
H	8795 4269	Bend in Route at point where it leaves the route recorded as Footpath 8
I	8795 4293	Open junction of Route with Standing Stone Lane (U20908) and Whitemoor Road (B6251) at Standing Stone Gate

Description of Route

A site inspection was carried out in May 2017.

The route under investigation (the Route) commences at point A on U20911, Reedymoor Lane. At the start of the Route there are notices in the grass verges stating that it is a private road to a number of properties and also a public footpath signpost. The first section of the Route is recorded as Footpath Foulridge 63 – for the purpose of this report recorded footpaths will be referred to omitting 'Foulridge' as the Route is entirely within that parish).

From point A, the Route follows the macadam surfaced road in a generally north westerly direction, bounded by stone walls, to the site of the former railway level crossing at point B.

At the southern boundary of the disused railway line (point B), the Route passes through concrete gate posts on which an old wooden gate is hung. The gate was in the open position and did not appear to be in current use. The Route passes through the gateway and continues along the tarmac road across the disused railway track.

Extending south west and north east from the Route along the disused railway in both directions are trodden pathways which appeared to be receiving significant levels of use by pedestrians, cyclists and horses.

At point C, an access road branches off the Route leading north to Ball House and Mistals. A notice placed in the verge on the westerly side states "PRIVATE ROAD TO SANDHALL AND HOLLY BUSH FARM". The Route continues but instead of the tarmac being across the full width of the route there are now two macadam strips and a grass central strip and it is bounded on either side by a combination of hedges/walls/fencing with the adjacent fields at a higher level on either side of the Route.

The Route continues passed the entrance to Sand Hall to the south west and at point D Footpath 24 joins the Route from the south west and a surfaced access road to Holly Bush Farm from the north west (recorded as Footpath 64).

From point D, the Route turns in a north easterly direction, still recorded as Footpath 63, leaving the surfaced access road and running across an open triangle of grass to continue along a clearly visible bare earth trodden path approximately 1 metre wide within a wooded track approximately 5.5 metres wide. After approximately 90 metres from point D the track becomes 'sunken' in comparison to fields on either side, the surface of the path is stony, with some of these stones being loose and uneven under foot. The path used is situated in the bottom of the sunken hollow which measures 10-12 metres wide between the adjacent field boundaries.

At point E, the Route crosses a stream by way of a substantial culvert and continues as a substantial, but largely overgrown stone surfaced track along the bottom of the 'cutting'. The loose stone surface consists of quite large stone – almost like a stream bed or the remains of a broken cobbled surface.

At point F the Route is joined by Footpath 10 from the west and immediately east there is a blocked off access to Mistals and Ball Farm.

The Route continues from point F (recorded as Footpath 8) as a wooded track approximately 11 metres wide between boundary walls rising gradually uphill but still enclosed along a 'sunken' track and passing through point G where Footpath 9 joins it from the east. It then emerges as a wide open route – still enclosed on either side by stone walls - with a stream along the western side to point H where Footpath 8 continues in a straight line passing through a boundary wall via a stile whilst the Route turns to continue north west to follow the bounded track. Evidence of cycle tyre tracks could be seen in the compacted earth surface of the path.

This section of the route continues in a north westerly and then north north easterly direction towards a property known as “Staniston”. Here the Route joins a stone track and continues passed the property to the junction with Standing Stone Lane and Whitemoor Road (the B6251) at point I.

The total length of the route is 1.2 kilometres.

In summary, the whole of the Route was easily available for use by the public on foot throughout its entire length. There was some evidence of equestrian use (as witnessed by hoof prints on the tarmac) between point A and point B and evidence that cyclists had been using the Route (tyre marks) between point H and point I.

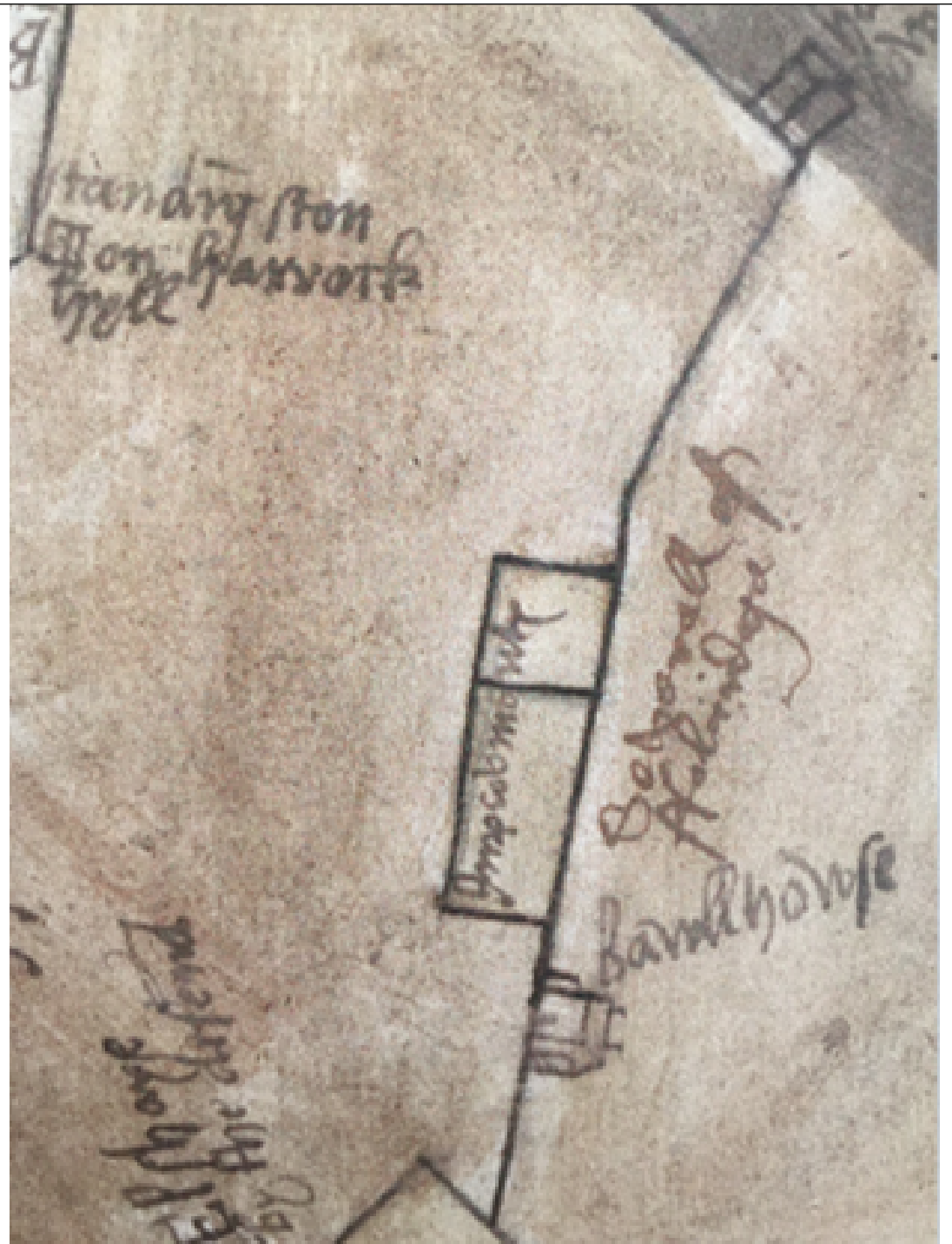
Between point A and point D the Route provided vehicular access to a number of properties. From point D to point F a substantial bounded track existed. There was no evidence of recent vehicular use along this section and although part of the width had been reduced by trees it gave the appearance of an old and substantial route which could have provided access (now fenced off) to Ball House and Mistals in the past.

The remaining section of the Route from point G to point I was all enclosed and of a substantial width. There was no evidence of recent vehicular use but the Route appeared to be of some considerable antiquity providing a wide and enclosed through-route from point A to point I.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Map of Barnoldswick, Yorkshire, with Foulridge, Lancashire showing houses, fields, watercourses and Whytmore, the land in dispute	1580	Map deposited in the National Archives from the Duchy of Lancaster Records Ref: MPC 1/91





Observations

The earliest map found to cover the land crossed by the Route and not submitted as part of the original application to record the route as a byway.

The map appears to have been prepared with reference to a dispute about land known as Whytmore.

The Route is not shown but a property labelled as Bawll House is shown as is a feature marked as 'Standing Stone on Harrocks Hill'.

Investigating Officer's Comments		Ball House (or a building predating the existing building) existed in 1580 but it is not possible to determine whether it existed on the same site as the existing house.
The Story of Foulridge	Published 1990, Revised in 2010	Local history book written by a local historian; Fay Oldland. CRO Ref:EO2 Foulridge First Edition published 1990 ISBN 0948743042 Second Edition published 2010 ISBN 978-0-95 65366-0-0

A Hand-drawn reconstruction of Foulridge in the 16th Century





Standing Stone Gate, at the junction of the Barnoldswick Road with the roads to Blacko, Colne and Foulridge, takes its name from the standing stone sited close by which acted as a signpost for early travellers. It is referred to as 'the standing stone on Harrock Hill' on the 1581 Map of Whitemoor.

A photograph of Standing Stone Gate



At the top of Ball House Lane was this **Bargain Stone** – where the touch of a hand became as good as a receipt. The custom began when farmers assembled around the stone to strike a bargain for the cattle or wool they had. When the price was agreed, they sealed the bargain by touching hands through the hole in the stone. The stone was damaged by farm vehicles in 1998 and was subsequently removed to the garden at Ball House.

The Bargain Stone

Observations

The book contains information about the early history of Ball House which is located just south of the Route between points E-F-G and is accessed from the Route. Ball House is believed to date back to 1627 (as evidence by a date stone above the

		<p>door) and was said to have been the home of John Moore (described as a 'celebrated' Quaker preacher) before it was sold to the Walton Family in the early 1700s remaining in their possession for approximately the next 150 years. The book also details reference to the fact that an older property known as 'Bawlhous' had previously existed on the same site as Ball House and that it was shown on an unnamed or referenced map dating back to 1561.</p> <p>A hand drawn plan titled 'A reconstruction of Foulridge in the 16th century' is also included in the first edition of the book and is reproduced in this report. Most of the land crossed by the Route is not shown on the plan but the top left hand corner shows Ball House and part of the Route between point E to point I which appears to be the only route providing access to Ball House. This plan is reproduced in the second edition of the book (published in 2010 subsequent to the public inquiry into the first application) but the picture has been coloured and reproduced in the book to show Ball House on the far right side/edge of the picture and does not show any part of the Route or the land crossed by it.</p> <p>The Route is not referred to in the section of the book titled 'Roads and Rail.' However there is a photograph of the 'Standing Stone Gate' which is located close to point I on the Route which was said to have acted as a signpost for early travellers at the junction of roads to Blacko, Colne and Foulridge and as having been marked on the 1581 Map of Whitemoor.</p> <p>There is also a photograph of the Bargain Stone described as being located (until removed in 1998, about the time of the public inquiry) at the top of 'Ball House Lane' (point I) and that historically the stone was used by farmers when striking a deal over the sale of animals or produce.</p>
Investigating Officer's Comments		<p>The inclusion of the Route in this book – with references to the 16th century plan and details regarding the Standing Stone Gate and Bargain Stone - were quoted by the county council as supporting the view that the route was a historical public vehicular</p>

		<p>highway when the Order to record the route as a byway was considered by the Planning Inspectorate. The objectors made the case that the route was not included in the chapter of the book on Road and Rail because it was not considered to be an ancient highway and that whilst a pictorial map taken from the book showed Ball House; it did not show the Order route.</p> <p>With regards to the book the Planning Inspectorate decision letter states that the statements made by the objectors were correct and that the supporters contentions with regards to the bargaining stone (i.e. that it was improbable that the stone would have been positioned in a location that it could not have been accessed by merchants or farmers on horse-back or on a horse drawn cart) were speculative at best.</p> <p>With regards to this particular investigation it is submitted that the research of a local historian supports the view that a route physically existed from at least the 16th century providing access to – and possibly past at least one property (Ball House/Bawlhus) and that at its northern end there were two significant local landmarks which would have been important to travellers and local traders which helps to start to build up a picture of the history of the Route and which are suggestive of the existence a route which would have been capable of being used at least on horseback.</p>
Yates' Map of Lancashire	1786	<p>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.</p>



Observations

This map shows the southern end of the Route from point A on Reedymoor Lane to approximately point C, near Sand Hall. This route is shown as a 'cross road' on the map. Two buildings are shown which appear to be accessed from the route. Neither are named but their positioning suggests that they are Sand Hall and Ball House. The rest of the Route is not shown.

Investigating Officer's Comments

It is not known what is meant by the term 'cross road' but the only other category of highway shown on the map is turnpike roads. The fact that the route from point A to buildings likely to be Sand Hall and Ball House is shown is evidence that at least part of the route physically existed in 1786. It is not known why the rest of the route was not shown on the map. It may have been that Yates did not consider the Route to be a public vehicular highway or that it was unenclosed or that the hedges/fences/walls were in disrepair or possibly that this section was not surveyed, as surveys were expensive. However, the fact that part of the Route is shown suggests that it was of a substantial nature capable of being used at that time and is not inconsistent with how a route which may have been used as a public bridleway may not have been shown on early commercial maps.

It should be noted that a number of properties are shown on the map in the area surrounding Foulridge with no means of access to them shown suggesting that in this case the cartographer considered the Route – from point A to Sand Hall and Ball House

		to be more than a private route leading to properties and worthy of inclusion on this small scale commercial map.
Cary's Maps of Lancashire and West Riding of Yorkshire	1787	John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831. In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.


Map of Lancashire





Map of the West Riding of Yorkshire

Observations		The Route is not shown on either small scale map.
Investigating Officer's Comments		The Route – or at least part of it - may have existed in 1787 (as shown on Yate's Map) but was not considered by Cary to be a public vehicular highway or a route of sufficient significance to be included on his maps. The fact that the Route is not shown on such small scale maps is not inconsistent with the existence of public bridleway rights at that time.
Smith's Map of Lancashire	1804	Charles Smith was a London engraver and map seller. His map of Lancashire appeared as a single sheet in 1801 and then between 1804 and 1846 was published in subsequent editions of the New English atlas. His Map was similar to Cary's Map of Lancashire dated 1789 but is not a direct copy. It is thought that Smith and Cary used common sources, especially Yates survey, and since both were aiming at the same market – the increasing number of private and commercial travellers – it is not considered surprising that they produced similar maps.

		
Observations		The Route is not shown. Buildings consistent with the location of Sand Hall and Ball House are shown (but not named).
Investigating Officer's Comments		The Route, if it did exist, was not considered by Smith to be a significant public vehicular route at that time. It may have existed as a private access route or as a public footpath or bridleway but such routes were not normally shown due to the scale and purpose for which the maps were published.
Honour of Clitheroe Map	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 the 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.

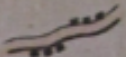
EXPLANATION

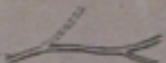
Market Towns with the Distance from London

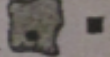
in Measured Miles as **BLACKBURN**


209 $\frac{1}{2}$

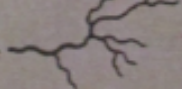
Churches and Chapels +

Turnpike Roads 

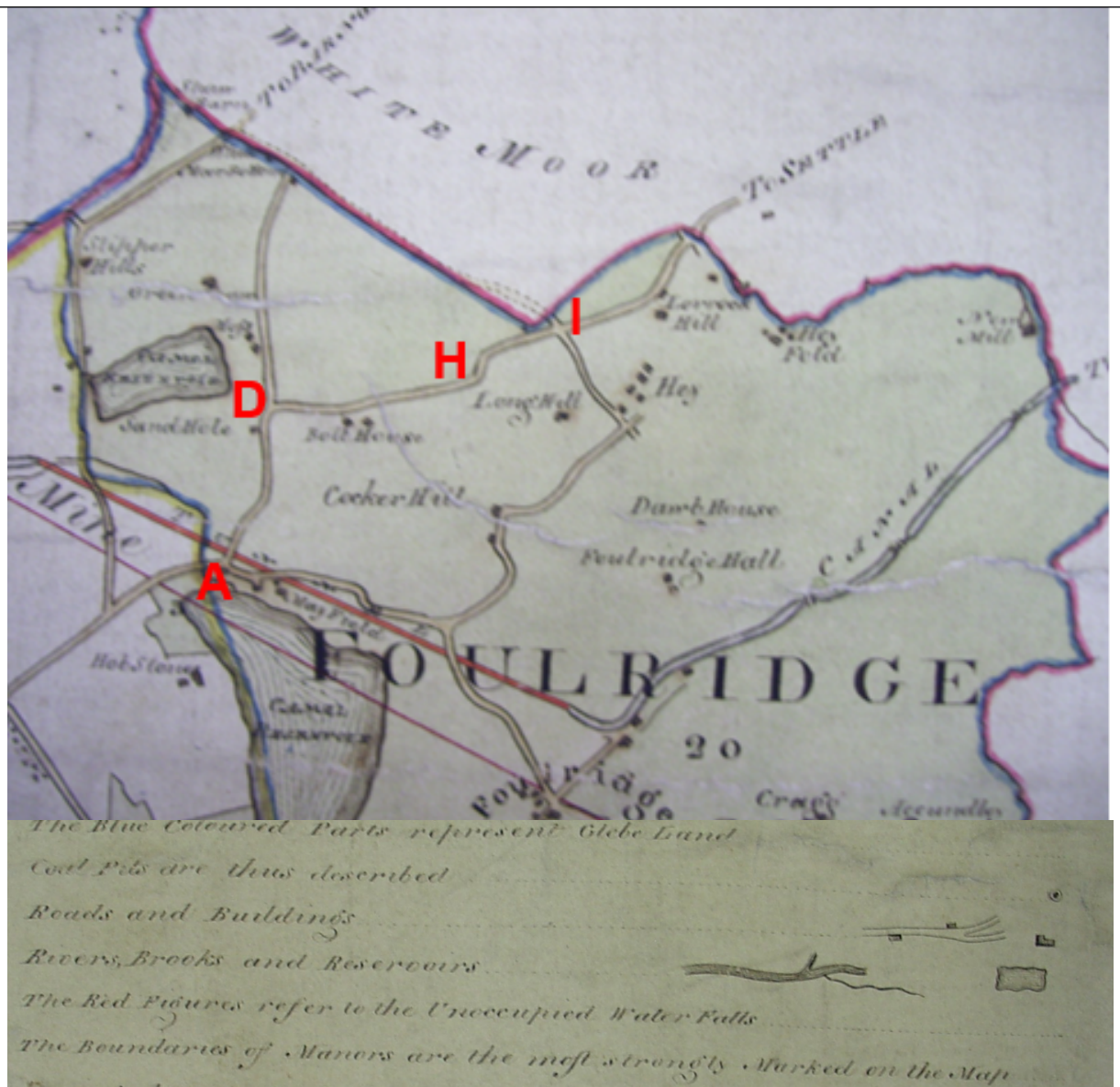
Cross Roads 

Parks & Gentlemens Houses 

Navigable Canals 

Rivers 

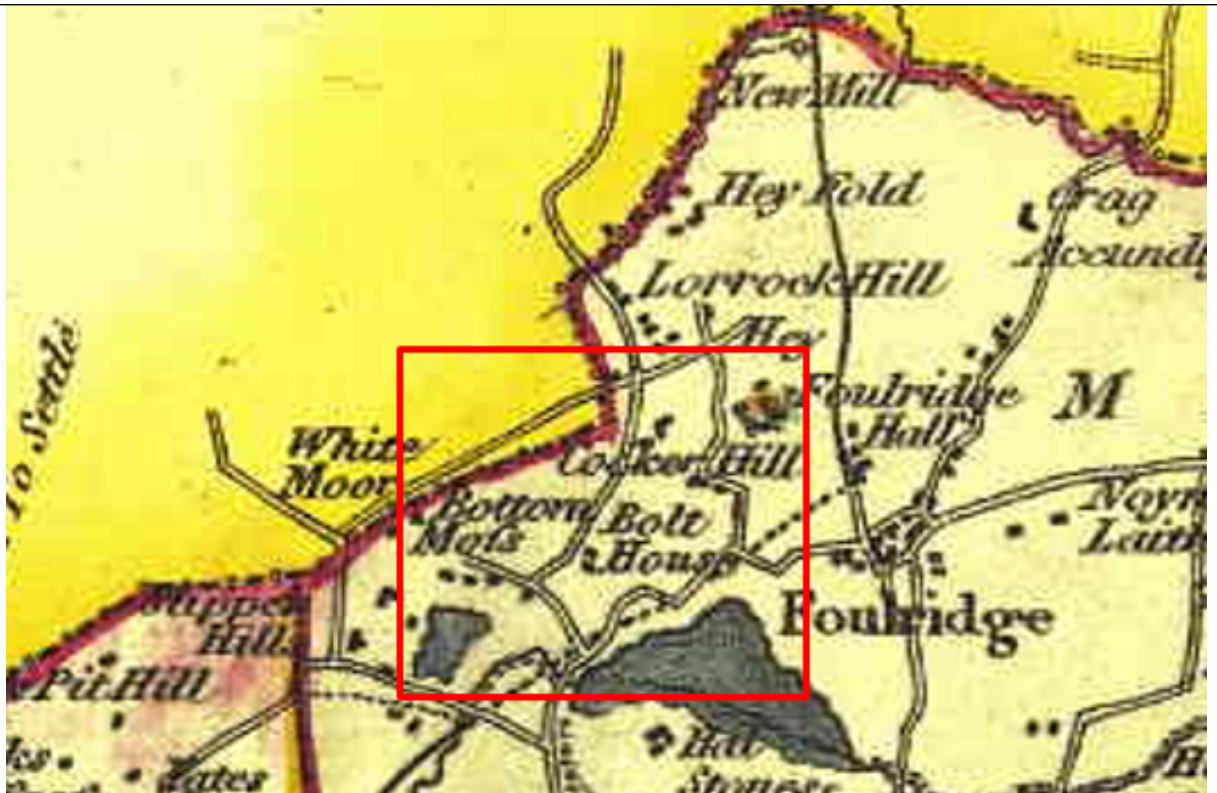
NB. The figures on the Turnpike Roads express the Distance in measur'd Miles between one Market Town and another




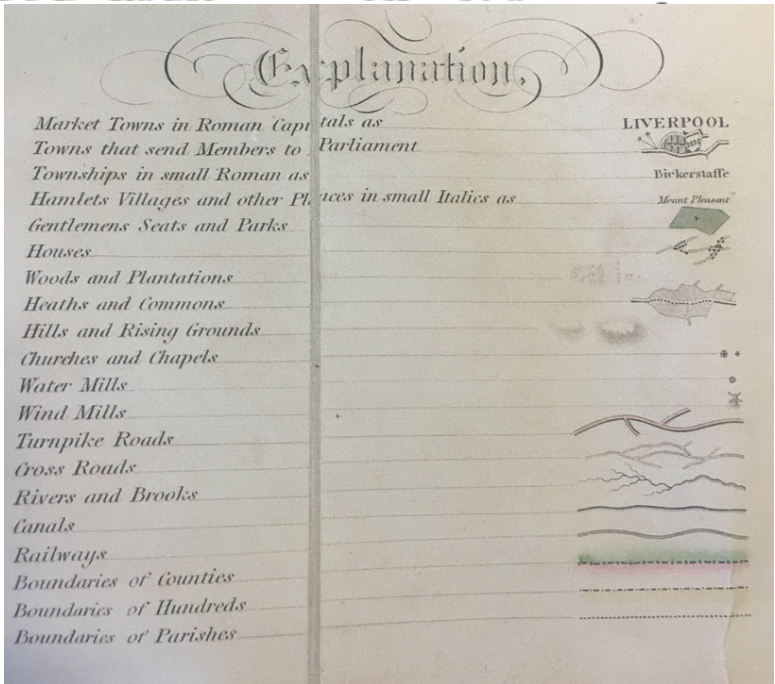
Observations

This privately produced map shows the whole of the Route, which by reference to the map key, is shown as a 'road'. The route is coloured, as are all the other roads in the area. The shape of the route is clearly identified, with a slight bend to the north of the old railway line (which is not shown as it was not built until the 1840s) and then the sharp bend at point D with the property 'Sand Hall' shown and named as 'Sand Hole'. The Route continues from point D in a north easterly direction past two properties called 'Bolt House' which probably correspond to the buildings called 'Ball House' and 'Mistals'. The Route is shown continuing to point H and then turns sharply to the north-west and back again to the north east before continuing to the cross road at point I. The

		modern Whitemoor Road which continues to the north-east is labelled on this map 'To Settle'. Standing Stone Lane (which runs to the south west from point I) is shown as an unfenced road.
Investigating Officer's Comments		The earliest map inspected to show the whole of the Route existing as a through route across land forming part of the Estate owned by the Honour of Clitheroe. The Route appeared to provide a through-route between point A and point I and passed properties named on the map as Sand Hole and Bolt House. 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 Route. This suggests that the Route was of a substantial nature and would have been capable of being used by people on horseback and possibly with horse drawn vehicles as a through-route at that time. The Route is shown in the same way as routes now recorded as public vehicular highway and is described as a 'road' in the map key.
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.

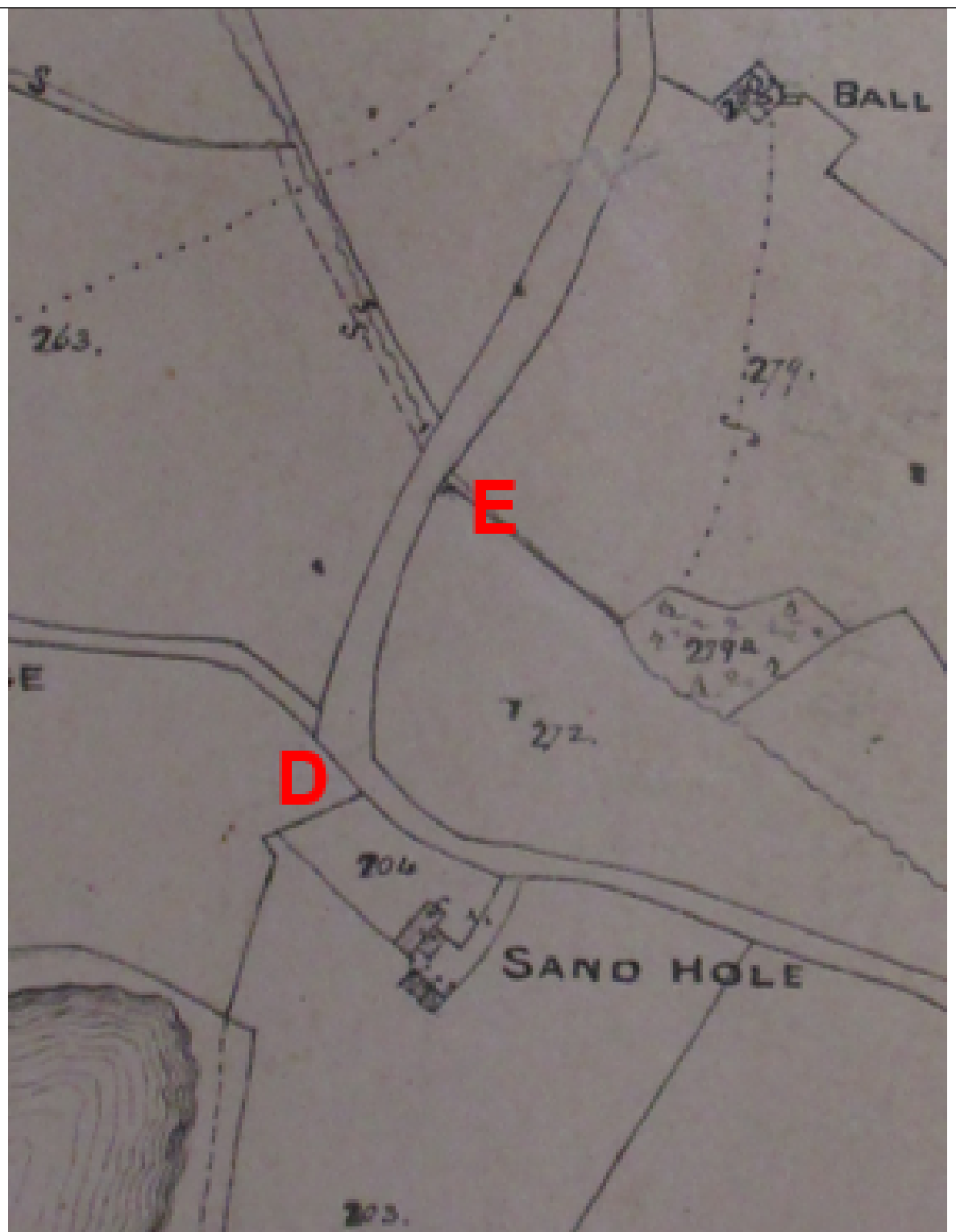


Observations		The whole of the Route is shown on Greenwoods Map as a through-route connecting to public vehicular highways and is shown as a cross road. The property Ball House (called Bolt House on this map) is shown adjacent to the eastern side of the Route and Sand Hall is also shown (but not named).
Investigating Officer's Comments		The Route existed in 1818 providing access to a number of properties. The inclusion of the route on a small scale commercially produced map of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway. It is unlikely that a map of this scale would show footpaths. It is not known what Greenwood meant by the term 'cross road' but he only categorised roads as 'cross roads' and 'turnpike roads' according to the key to his map.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his

		mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
 		
Observations		The whole of the Route is shown as a through-route connecting to vehicular public highways and is depicted on the map as a cross road. 'Bolt House' is shown and is named on the map.
Investigating Officer's Comments		The route under investigation existed in 1830 and is shown as a 'cross road'. It is not fully

		<p>known what is meant by this term. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</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>It is unlikely that a map of this scale would show footpaths. Many properties are shown on this map with no access road or track to them but the route under investigation is shown passing properties and connecting to routes that are now recorded as public vehicular highways. 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 Route was considered to be a public bridleway or carriageway in 1830.</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>





			✓		32.94
	<i>Roads.</i>				
137	Waste & Road		"	2	5
138	Part of Road to Barrowford		"	2	2
63	Ditto ditto		1	"	"
157	Part of Old Road to Skipton		"	1	13
162	Road to Barrowford		2	1	10
158a	Road		"	2	33
23a	Part of ditto				15
33a	Road				8
226	Road from Barnoldswick to Colne		1	1	30
162a	Ditto ditto		3	"	36
263			10		32
		Carried forward			

Observations

The full length of the Route is shown on the Tithe Map as a through-route. It is numbered in one place to the north of Ball House as plot 162a.

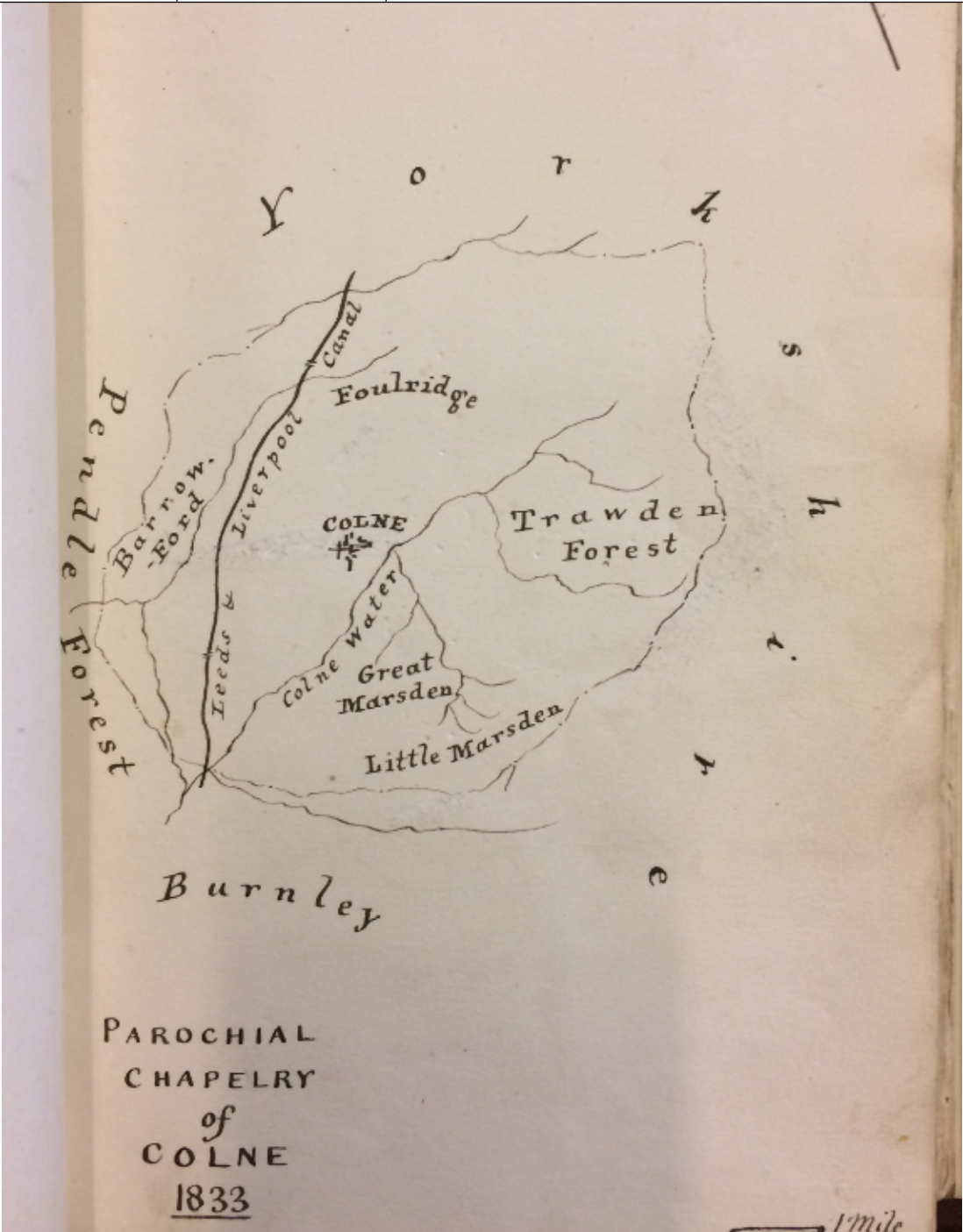
There are no lines drawn across the Route, and so it appears that it was open and not gated and it is shown as a wide enclosed road consistent with how it is depicted on the first inch 6 and 25 inch Ordnance Survey maps detailed below.

It is not clear from the map but the Route may have provided access to Sand Hole, Ball House and an adjacent unnamed building and also to Black Field.

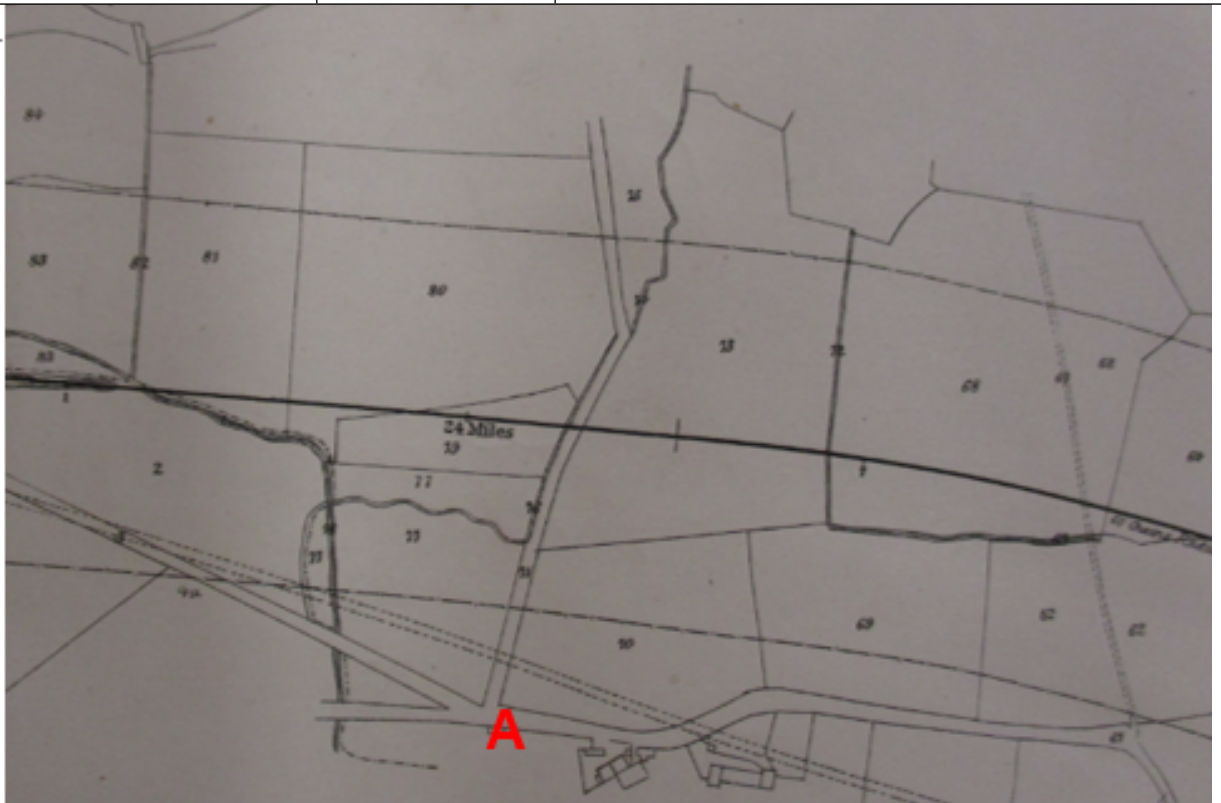
Access from the Route also extended to Moss House but the access to Moss House was gated at the point where it left the Route at point D. Beyond this point the access to Moss House was numbered 207a which is described in the Tithe schedule as a lane owned by John Aspinall and occupied by James Higson.

In the written Award (schedule) that accompanies the map, the Route is referred to as the 'road from Barnoldswick to Colne, as is the continuation of the Route

		<p>northwards from point I (Whitemoor Road). No landowner or occupier is listed in connection with the Route and no tithes are listed as being payable. The Route is listed in the Award in a category detailing 'roads' and at the end of the Award.</p>
Investigating Officer's Comments		<p>It appears that a substantial bounded route physically existed that would probably be wide enough for vehicles (carts) in the 1840s and appears to have been regarded as a public road (from Barnoldswick to Colne) in 1842.</p> <p>It is shown as a bounded route throughout its full length and although not clear, it appears likely to have provided access to a number of properties situated adjacent to it.</p> <p>It is not shown as being gated suggesting access was freely available along the full length.</p> <p>A clearly defined list of roads is grouped together and provided in the Tithe Award. Each road is numbered separately but no landowners or occupiers are listed. The other roads listed correspond to ways that are still recorded as public vehicular highways today providing further evidence that in 1842 the Route was considered to be part of the public highway network.</p> <p>No tithes are payable for the Route but it is accepted that this does not necessarily mean that it was because the road was public. Plot 162a is not listed as being under any state of cultivation which is consistent with it being predominantly a hard surfaced track which was not cultivated or grazed (and therefore not titheable). However it is conceivable that if the track had been grazed (i.e. classed as pasture) tithes could have been payable – even though public rights existed.</p>
Parochial Chapelry of Colne Map	1833	<p>A map referred to by the supporters to the 1988 Order. A tracing of the map was stated to have been submitted to the Inspector at the 1997 Inquiry but there is no copy in the county council's Inquiry records. The map was believed to pre-date 1844 as the railway was not shown but no further information about the map, or its origins were known.</p> <p>Chapelries dated back to medieval times and consisted of a subdivision of an ecclesiastical parish. The Chapelry of Colne</p>

		comprised of the townships of Colne, Marsden, Foulridge, Barrowford Booth and Trawden.
		
Observations		A search for the map was found but the only one identified was contained within records deposited at the Harris Library in Preston. And is clearly not the same map as was referred to at the public inquiry.
Investigating Officer's Comments		No inference can be drawn.
Construction of the Leeds - Liverpool Canal	1786	Canals (and railways) were the vital infrastructure for a modernising economy

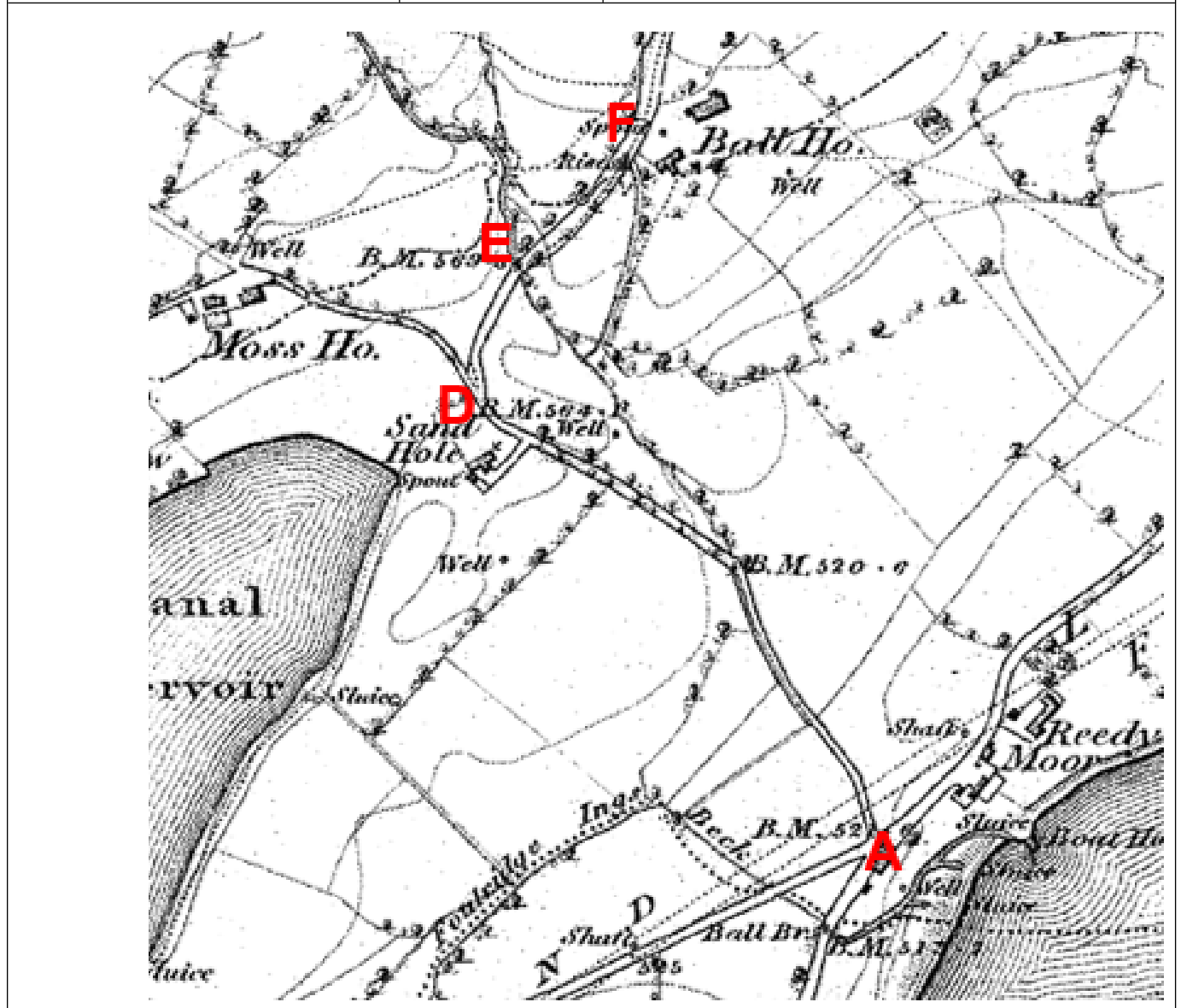
		and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		Foulridge tunnel, carrying the Leeds-Liverpool canal for a distance of over 1 mile opened in 1786 and passes under the Route close to point A. A search was made for any plans or information referring to the Route but nothing could be found.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Leeds and Bradford Railway extension from Shipley to Colne	1844	Records associated with the construction of the railway were inspected including a plan of the proposed route and accompanying schedule and a Memorandum of Agreement between Thomas Parker of Brownlee Hall and the Railway Company.



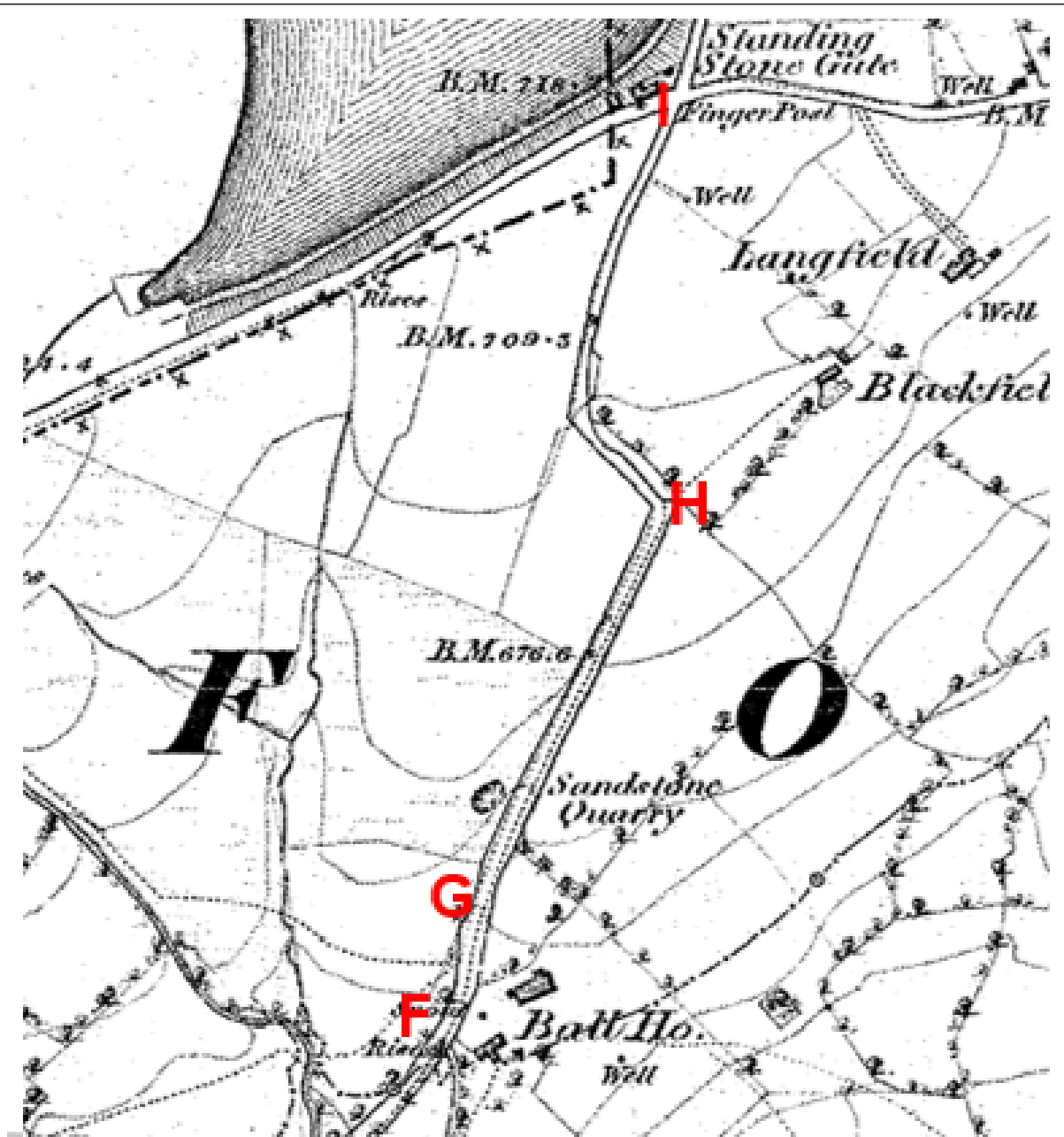
Observations		The Route is crossed by a disused railway,
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		<p>which was originally built as the Leeds and Bradford Railway extension from Shipley to Colne in around 1844. Part of the Route is shown on a railway plan produced before the line was built. The plan shows the whole length of the proposed railway and the land affected by it was numbered with reference to field boundaries.</p> <p>A schedule accompanying the plan was inspected in the County Records Office which listed landowners and occupiers for numbered plots. The Route is shown on the plan from point A through point B and point C and extending towards point D. It is numbered 71 and referred to in the schedule as an occupation road, in the ownership of Leeds Liverpool Canal Company, and 3 private individuals.</p> <p>Reedymoor Lane – from which the Route starts at point A – is also shown on the plan and is numbered 67. It is also described as an occupation road occupied by Richard Walton and owned by Thomas Parker.</p>
Investigating Officer's Comments		<p>The purpose of the plan was to show the route of the proposed railway and to list affected landowners.</p> <p>The Route is shown to have existed in 1844 but is referred to as an occupation road. Reedymoor Lane (a public vehicular highway) was also described as an occupation road.</p> <p>It is not known what was meant by the term 'occupation road' and how it was applied by the railway company when compiling their landownership details but the fact that Reedymoor Lane was similarly described indicates that it cannot be taken to indicate lack of higher public rights than footpath.</p>
Inclosure Act Award and Maps		<p>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.</p>
Observations		<p>There is no Inclosure Award available for the land crossed by the Route.</p>

Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848 . ¹



¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



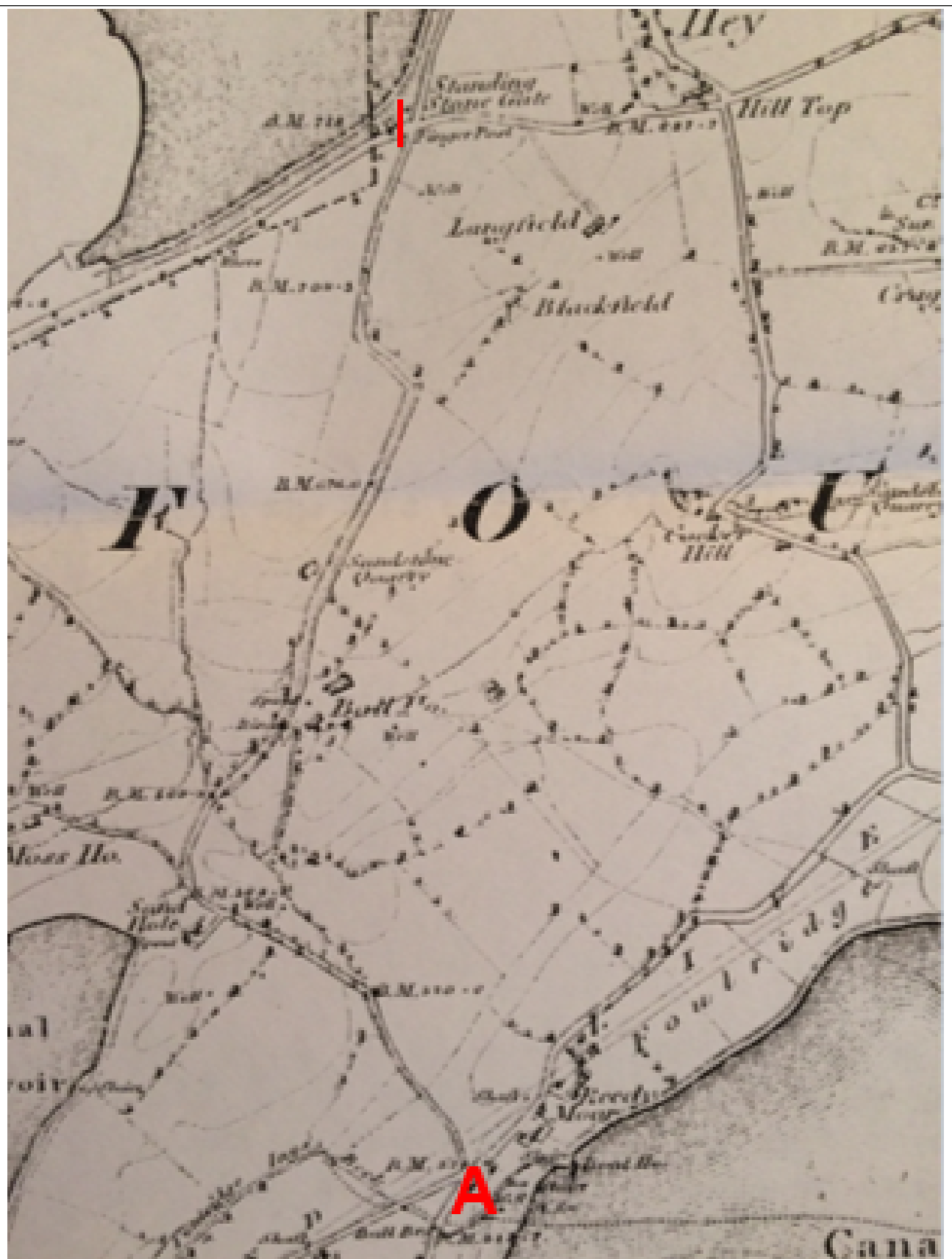
Observations

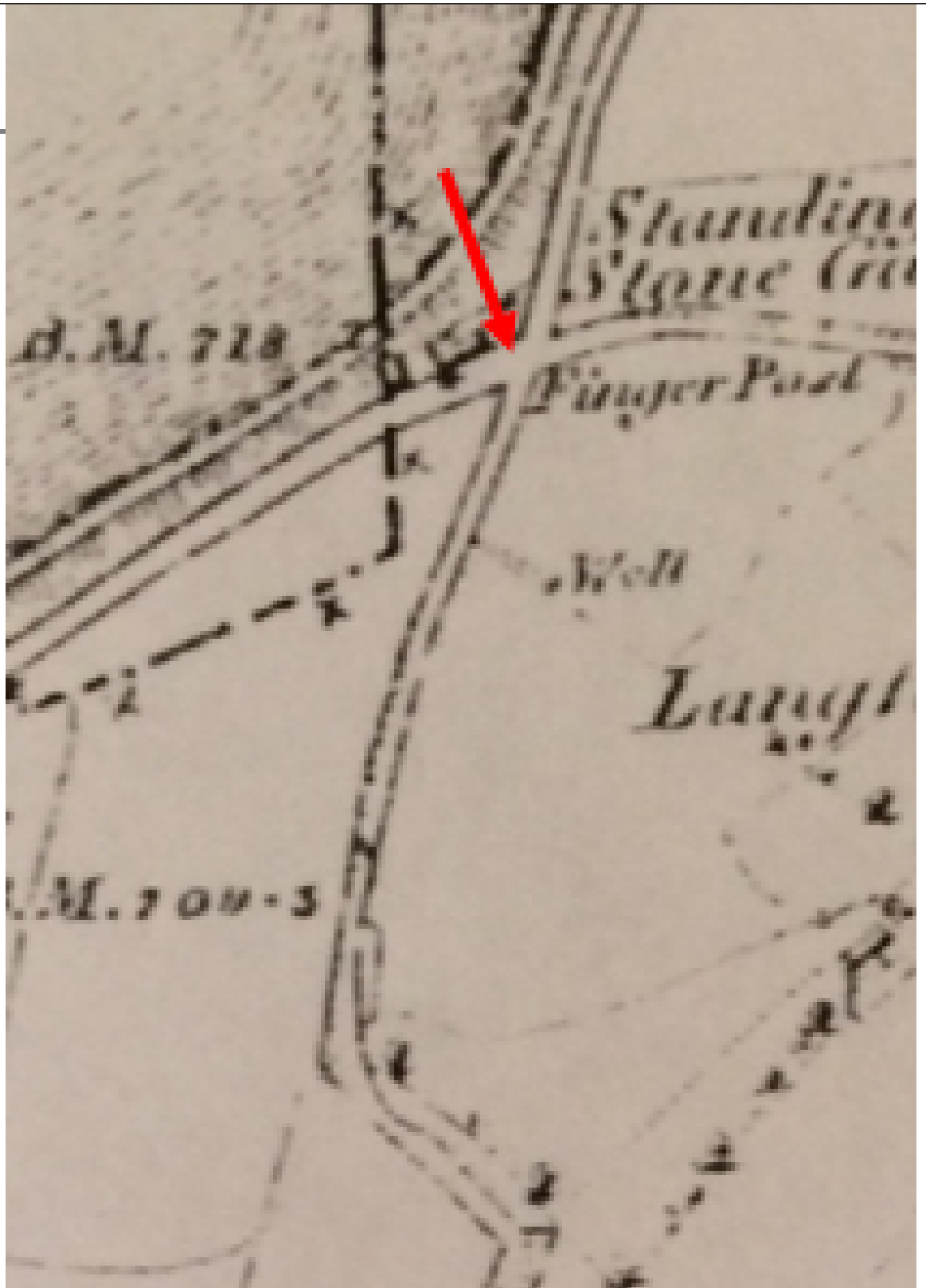
The whole length of the Route is shown as a through-route. No barriers are shown across the route suggesting that it was ungated and access unrestricted. The Route provides access to and past a number of named properties on the map.

The full length of the Route is bounded on either side by solid lines indicating that it was physically separated from the adjacent farm land. It appears to be of a substantial width consistent with how other routes now recorded as public vehicular highways are shown.

Standing Stone Gate is shown (named) at

		the northern end of the route and a finger post is also marked. Five bench marks are also shown along the Route.
Investigating Officer's Comments		<p>The full length of the Route existed and appeared to be capable of being used in 1848.</p> <p>It is considered that a substantial bounded route providing access to and past a number of different properties and connecting to a network of other public highways would have been at least a public bridleway and may have carried public vehicular rights.</p> <p>A number of bench marks can be seen located along the Route but it is acknowledged that whilst this may suggest that the Route was accessible it is not necessarily indicative of public status as bench marks can be found at other locations on land which is not publicly accessible.</p>
One inch OS Map	1858	Small scale Ordnance Survey Map extract found on original application file. Surveyed 1842-49 and published 1858.





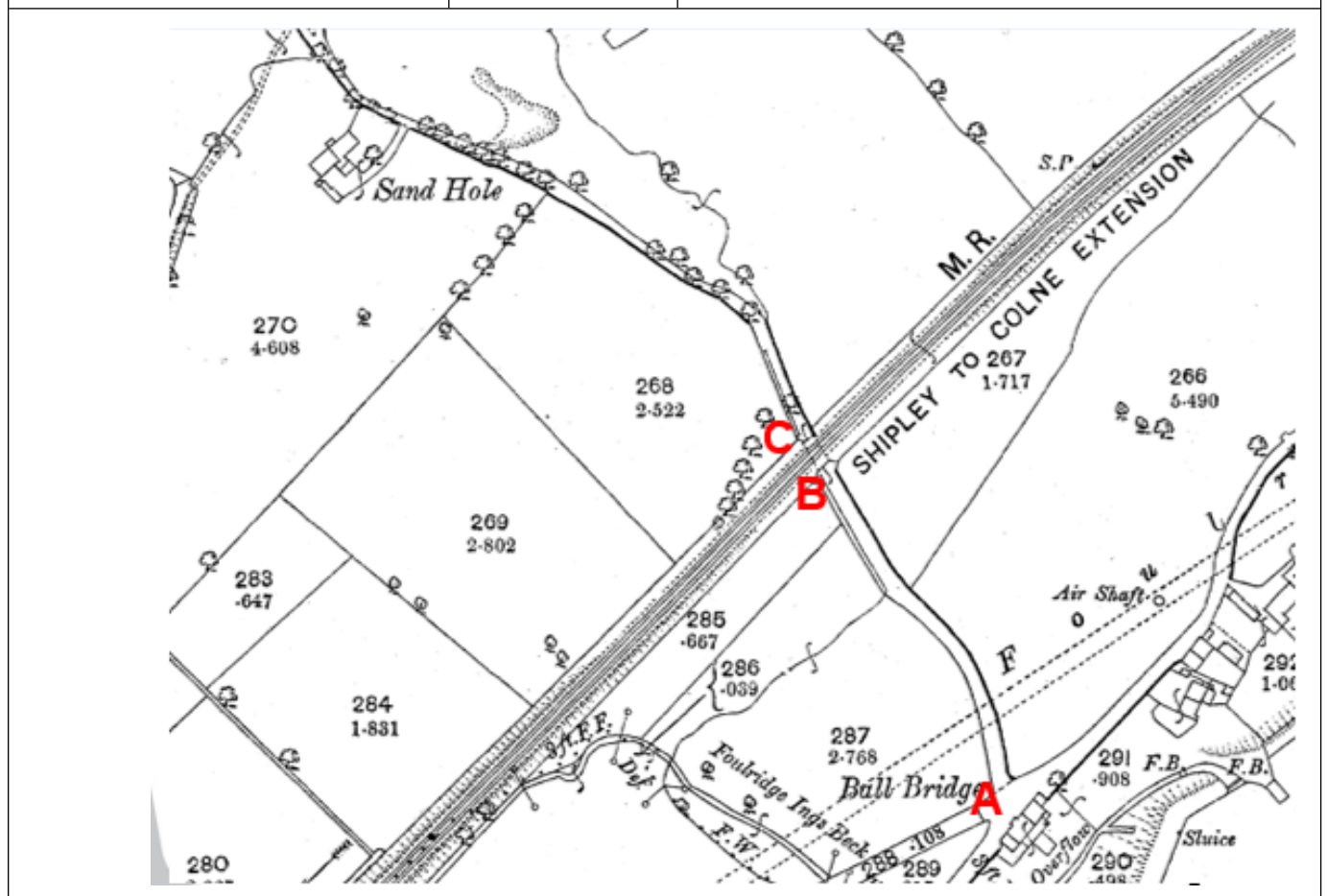
Observations

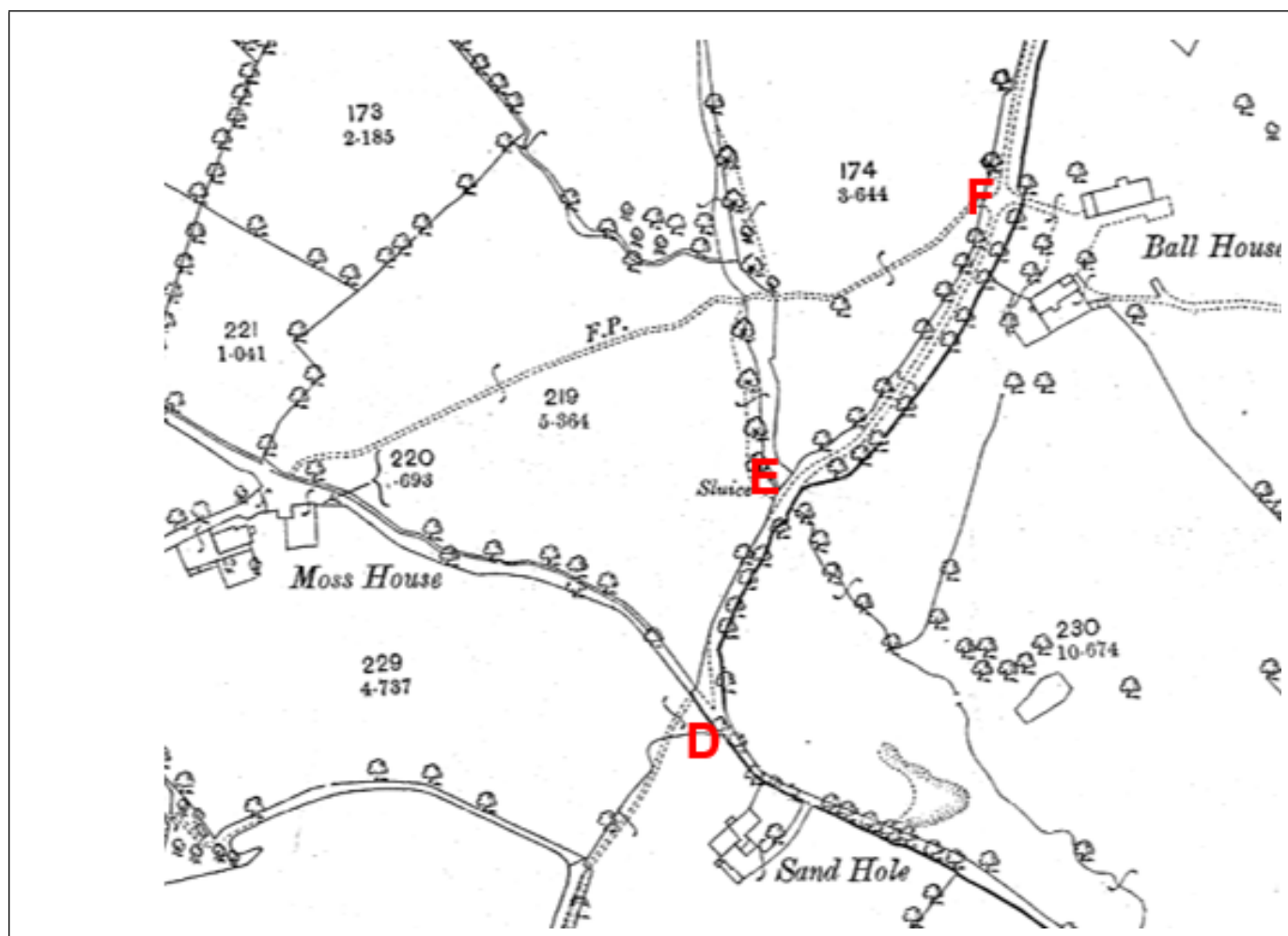
The full length of the Route is shown as a substantial bounded route in the same way as connecting public vehicular routes are shown.

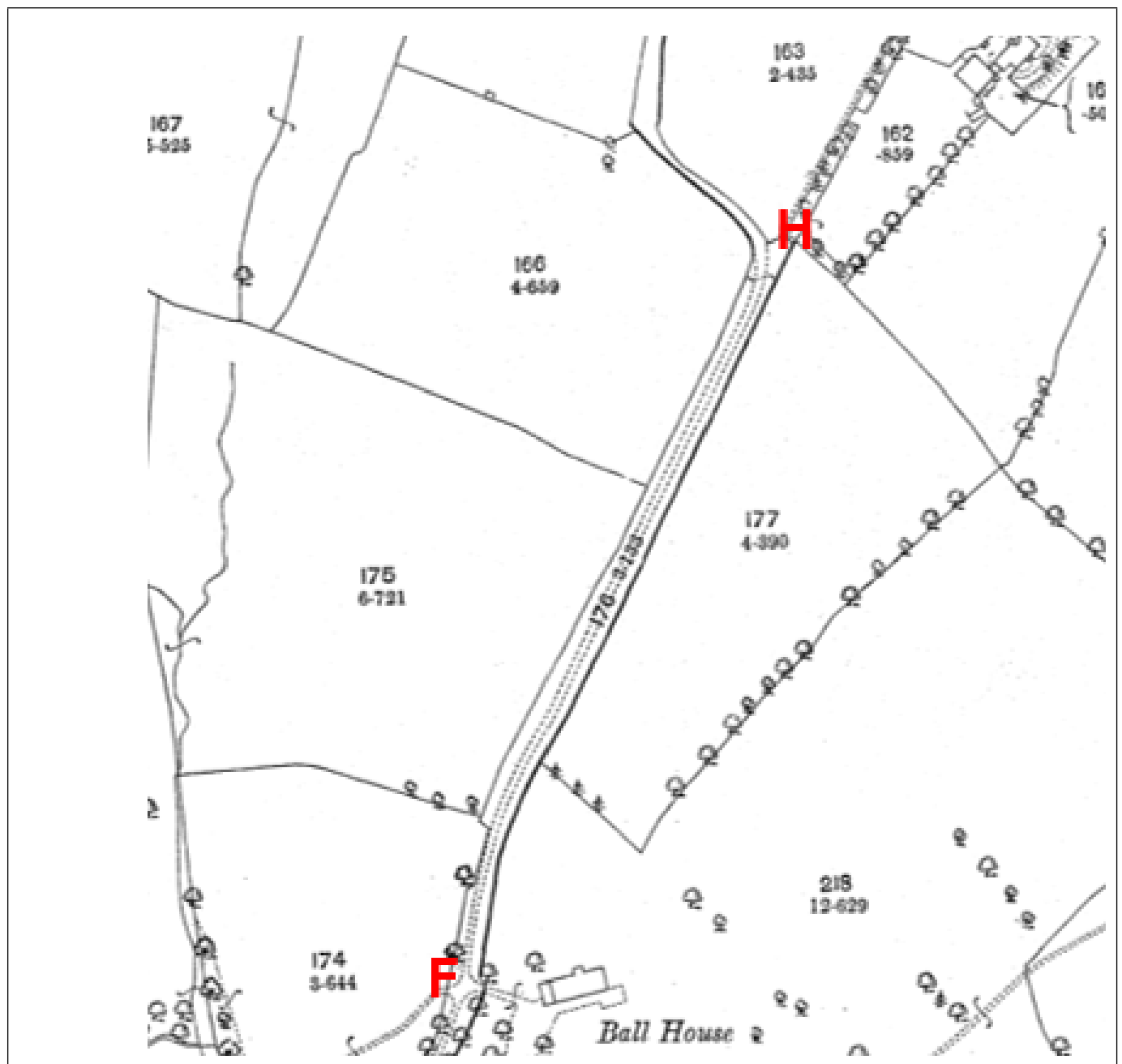
Investigating Officer's
Comments

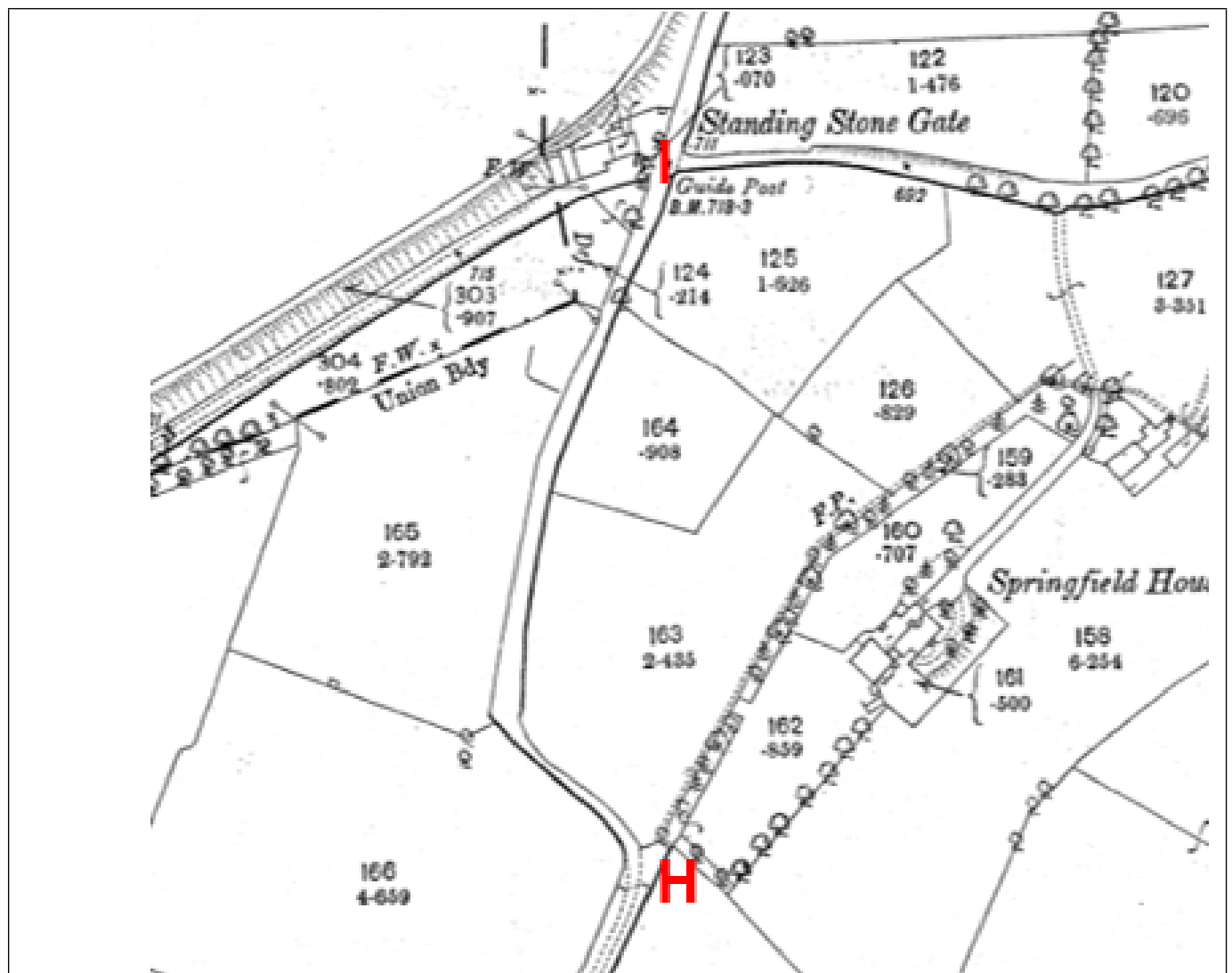
The survey on which the map is based predates the construction of the railway

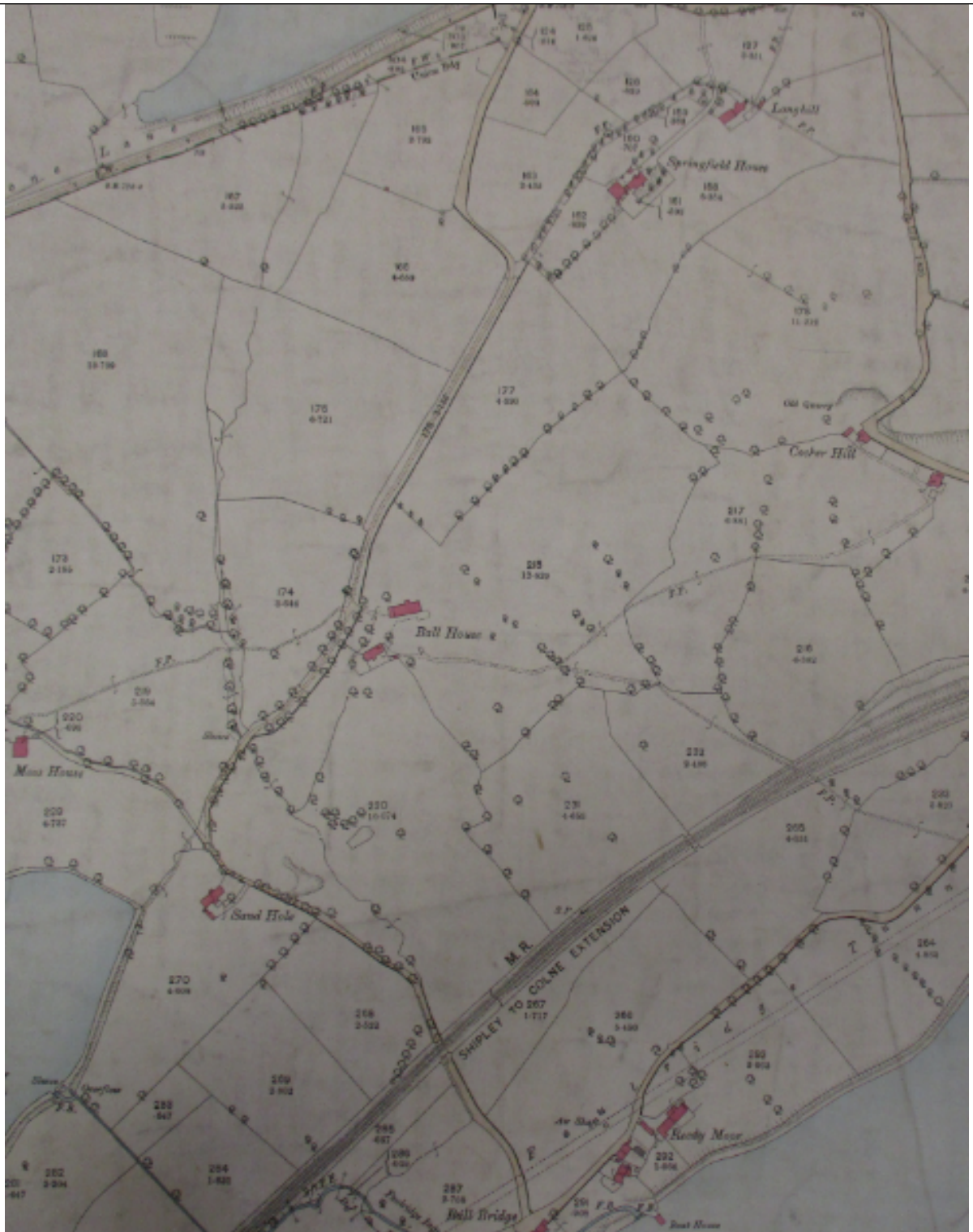
		<p>which is shown on the second edition 1 inch and first edition 25 inch maps.</p> <p>The Route is shown in the same style as other non-turnpiked roads. The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the route on this map is suggestive of a route that was capable of being used at least on horseback and possibly by horse and carts.</p>
25 Inch OS Map	1894	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891-92 and published in 1894.</p>











Coloured copy of 1st edition 25 inch map

Observations

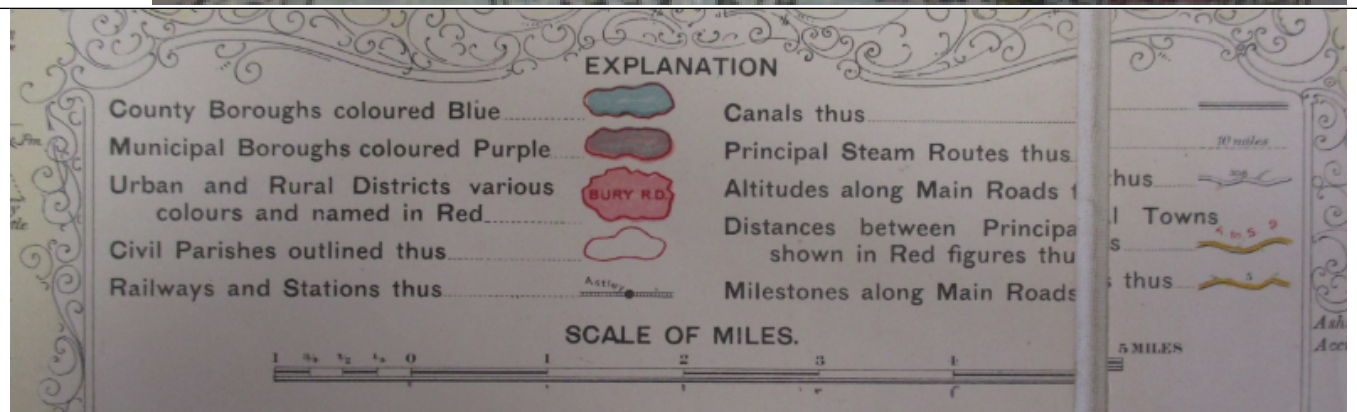
The whole of the Route is shown shaded to one side on the black and white edition of the map and on the coloured copy of the same map inspected in the County Records office the full length of the Route is also shown coloured as was consistent with the way that routes considered to be public roads at that

		<p>time where shown.</p> <p>There are no gates or other barriers across the route on this map, other than at the crossing of the railway line. The railway is named as the MR (<i>Midland Railway</i>) Shipley to Colne Extension. There are pecked lines across the southern end of the route (point A) where it joins Reedymoor Lane, which may indicate that there was a change in the surface from Reedymoor Lane when turning into the Route.</p> <p>Access from the Route to Ball House is shown at point F and a guide post is indicated to exist at the junction of routes at point I.</p> <p>The route is shown as parcel number 176 with an acreage of 3.133 with adjacent fields and properties numbered separately.</p>
Investigating Officer's Comments		<p>The Route existed in 1894 and provided access to a number of properties and also a through-route connecting Reedymoor Lane with Standing Stone Lane and Whitemoor Road.</p> <p>Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over then at a trot so the fact that the route is shown in this way is consistent with how it was recorded on the Tithe Map and Award and how it was included on early small scale commercial maps and indicated that the route was probably capable of being used by horses and is consistent with use of the route by the public at least on horseback at that time.</p> <p>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.</p>
1 inch OS map	1898	1 inch OS map surveyed 1842-49, revised 1896 and published 1898.



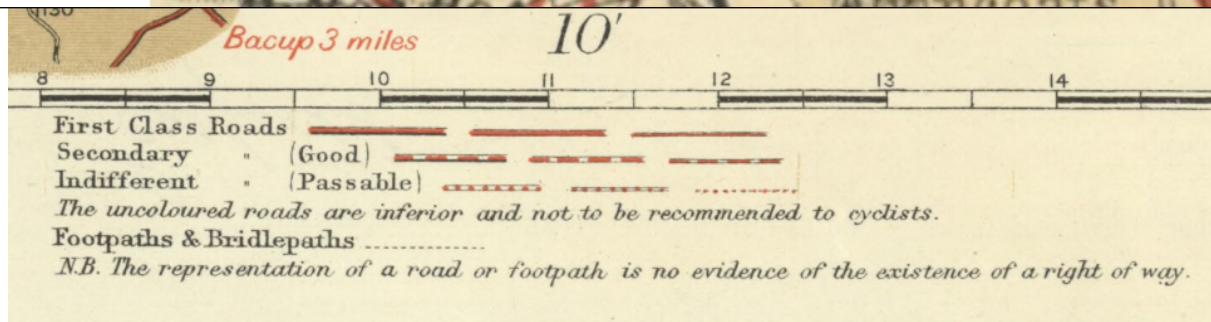
Observations		The map has been revised since the first edition 1 inch map to show the railway. The full length of the Route is shown as a substantial bounded route in the same way as connecting public vehicular routes are shown.
Investigating Officer's Comments		The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the Route on this map is suggestive of a route that was capable of being used at least on horseback and possibly by horse and carts.
Sand Holes Estate Plan	19 th Century	Sand Holes Estate Plan deposited in Leeds University Library by the Yorkshire Archaeological and Historical Society. Ref: MD 335/14/37 and not considered as part of the Byway application. Note: The plan is under copyright until 2039 and whilst a copy can be viewed at the county council offices (or provided by Leeds University Library), it could not be published as part of this report.
Observations		A copy of the undated plan (filed loosely as 19 th Century Sand Holes Estate plan) was

		<p>obtained from Leeds University archives. The ink plan shows the house and four named fields to the east of the Route, with acreages and names of adjacent landowners pencilled in. The Route is shown on its modern day alignment running past Sand Holes and providing access to the property. The Route is not named but is clearly shown to extend past the property in both directions and in pencil it is written 'From Barnoldswick' to the north and 'to Foulridge' to the south. The railway is not shown and from an inspection of Ordnance Survey maps and the Tithe Map it appears that the survey was carried out prior to the construction of the railway which subsequently passed through the field named as 'Low Meadow'.</p>
Investigating Officer's Comments		<p>This plan was not submitted as part of the original application for a Byway open to all Traffic. Whilst the plan is undated it appears to predate the construction of the railway. It is not known whether the pencil annotations were added at the time of survey/preparation of the plan but this is quite possible as pencils were invented in the late 18th century and the pencil markings relate to measurements taken as part of the survey and landownership information.</p> <p>The fact that the Route is shown passing the property and not just providing access directly to it suggests that it was considered to be a through-route at that time – particularly as it is annotated as continuing to Barnoldswick (and Foulridge) rather than to other properties (for example Balls Farm) supporting the view that the Route was considered to be more than an occupation road in the 19th century.</p>
Bacon's Map of Lancashire	1904	<p>G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps.</p>



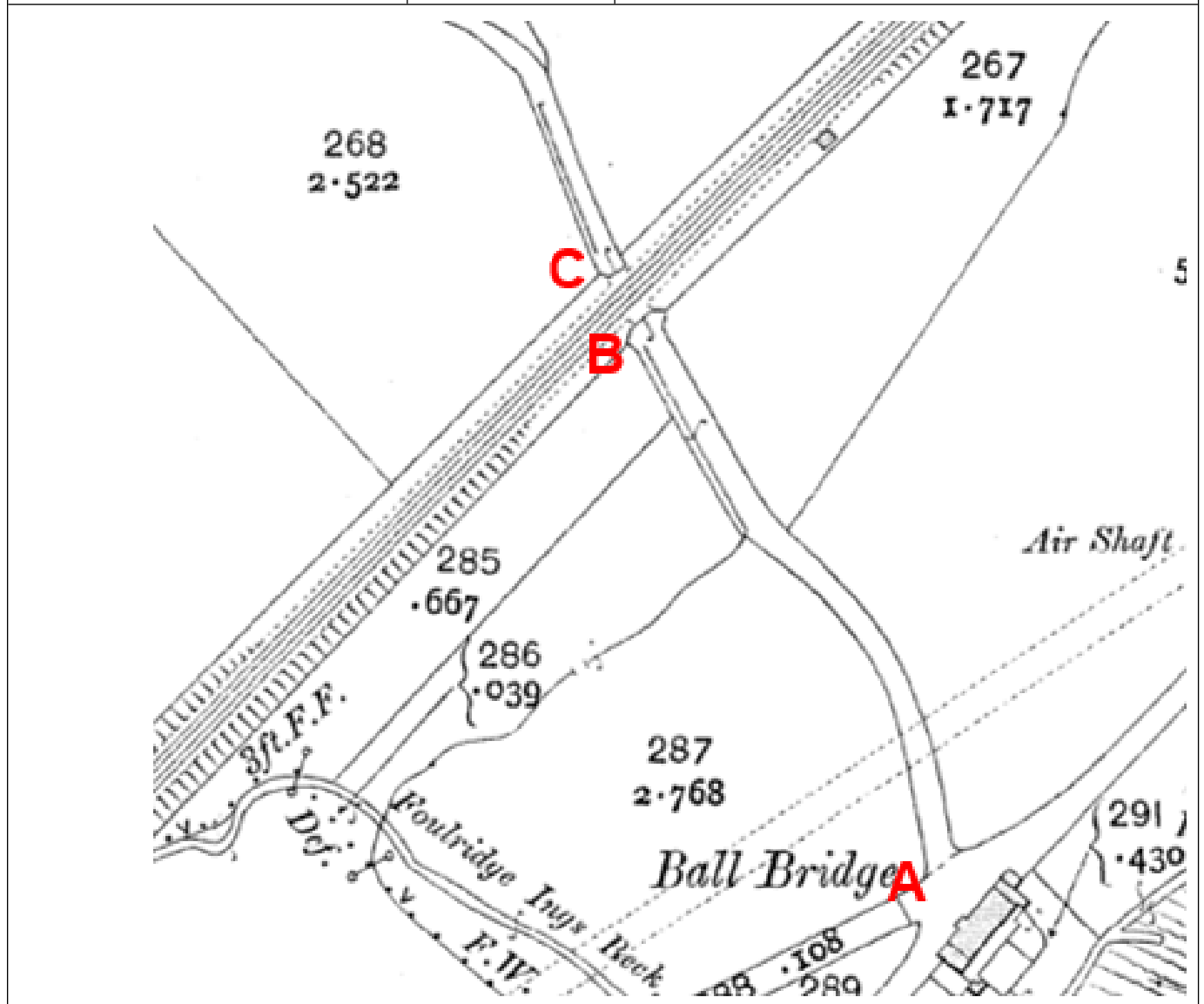
Observations		The full length of the Route is shown on the map as a through route connecting to public vehicular routes.
Investigating Officer's Comments		GW Bacon was an American entrepreneur who moved to London and was known to have been involved in numerous business ventures including the publication of world maps. The maps of the British Isles were at a small scale and as such only the more significant routes are generally shown. Commercial maps of this nature were

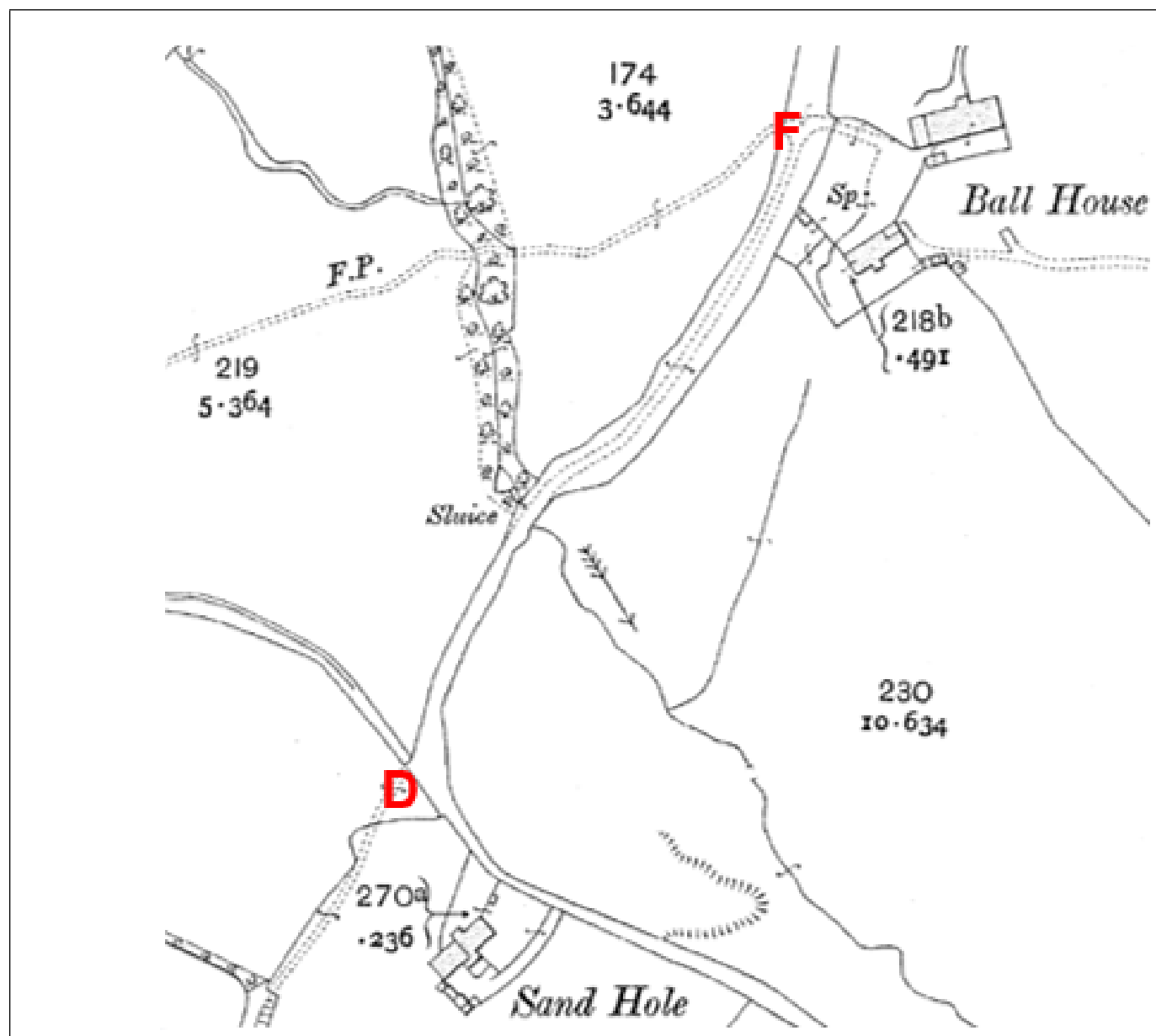
		<p>expensive to produce and to purchase and as a result routes shown were often considered to be public through-routes. The Route is shown in the same way as routes now known to carry public vehicular rights supporting the fact that it existed as a substantial physical route at that time and that it was probably available for use by the public on horseback and possibly with vehicles.</p> <p>This plan was not submitted as part of the original application for a Byway open to all Traffic.</p>
Bartholomew's half inch map	1906	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.</p>

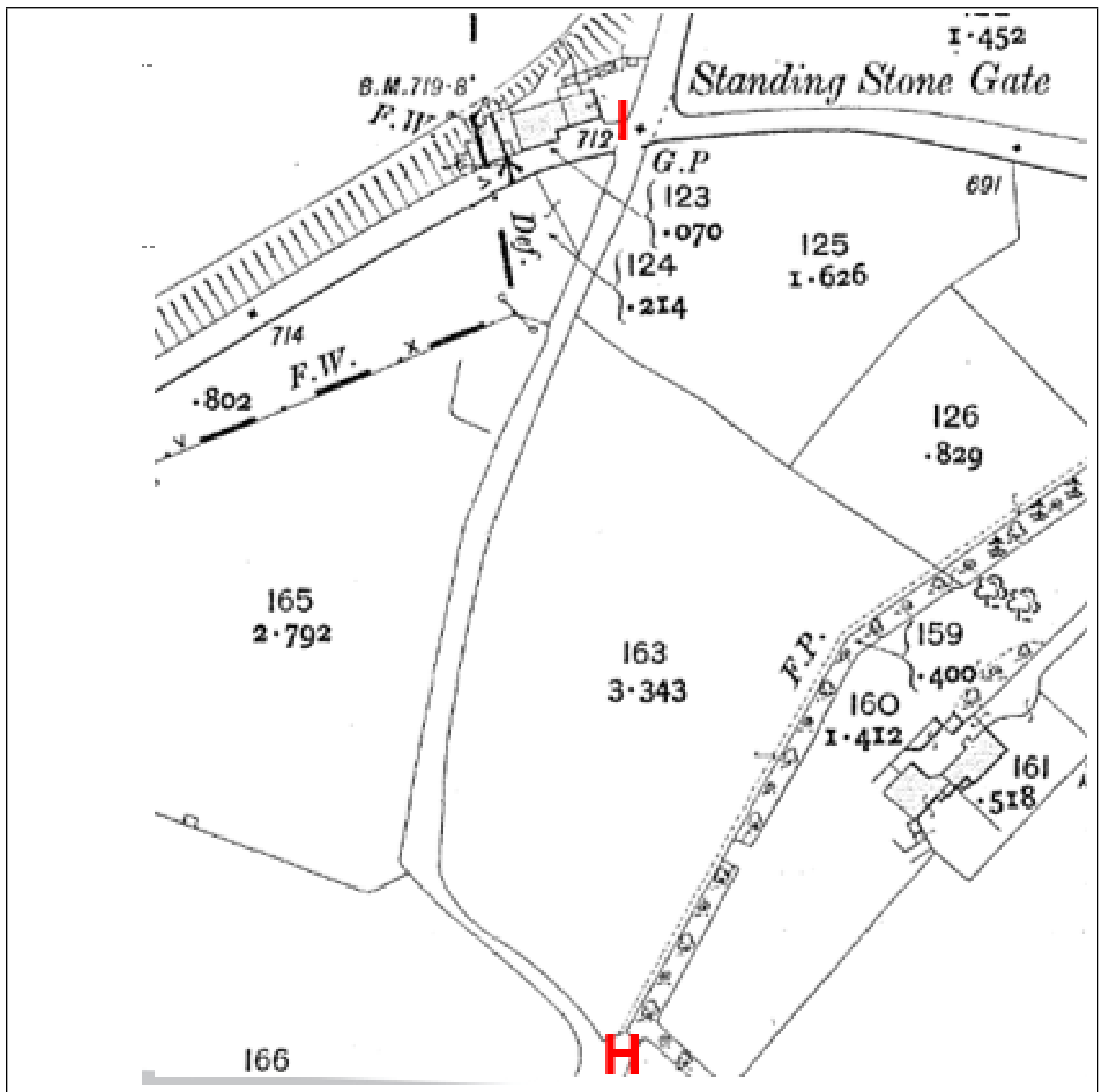


Observations		<p>The early 1900s saw a significant increase in the use of motorised vehicles and the classification of minor roads was constantly being revised by Bartholomew as some were improved to cope with the increasing traffic while others were virtually abandoned and fell into disrepair. Before 1920 few roads other than main roads were tarred but the travelling public had lower expectations of surface conditions than today and it would not be uncommon for an unsealed road, at the time considered adequate for horse drawn vehicles, to be shown.</p> <p>The Route is clearly shown depicted as a secondary road considered to be in good condition.</p>
Investigating Officer's		Whilst the key to the map states that the

Comments		<p>representation of a road or footpath is no evidence of a right of way the fact that the route is clearly shown as a secondary road in good condition suggests that it was considered to be a public highway in good useable condition in the early 1900s.</p> <p>This map was not submitted as part of the original application for a Byway open to all Traffic.</p>
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1891-92, revised in 1910 and published in 1912.







Observations		The 1912 edition of the map shows the Route in the same way as the earlier edition of the 25 inch OS map.
Investigating Officer's Comments		The Route existed as a substantial bounded through-route in 1912 which appeared capable of being used.
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

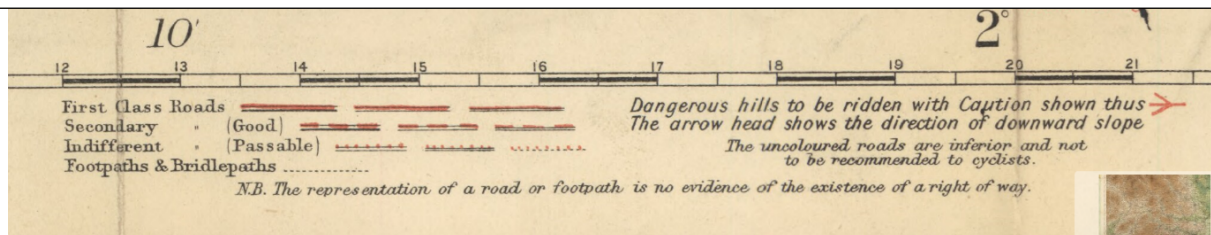
		<p>deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership 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>
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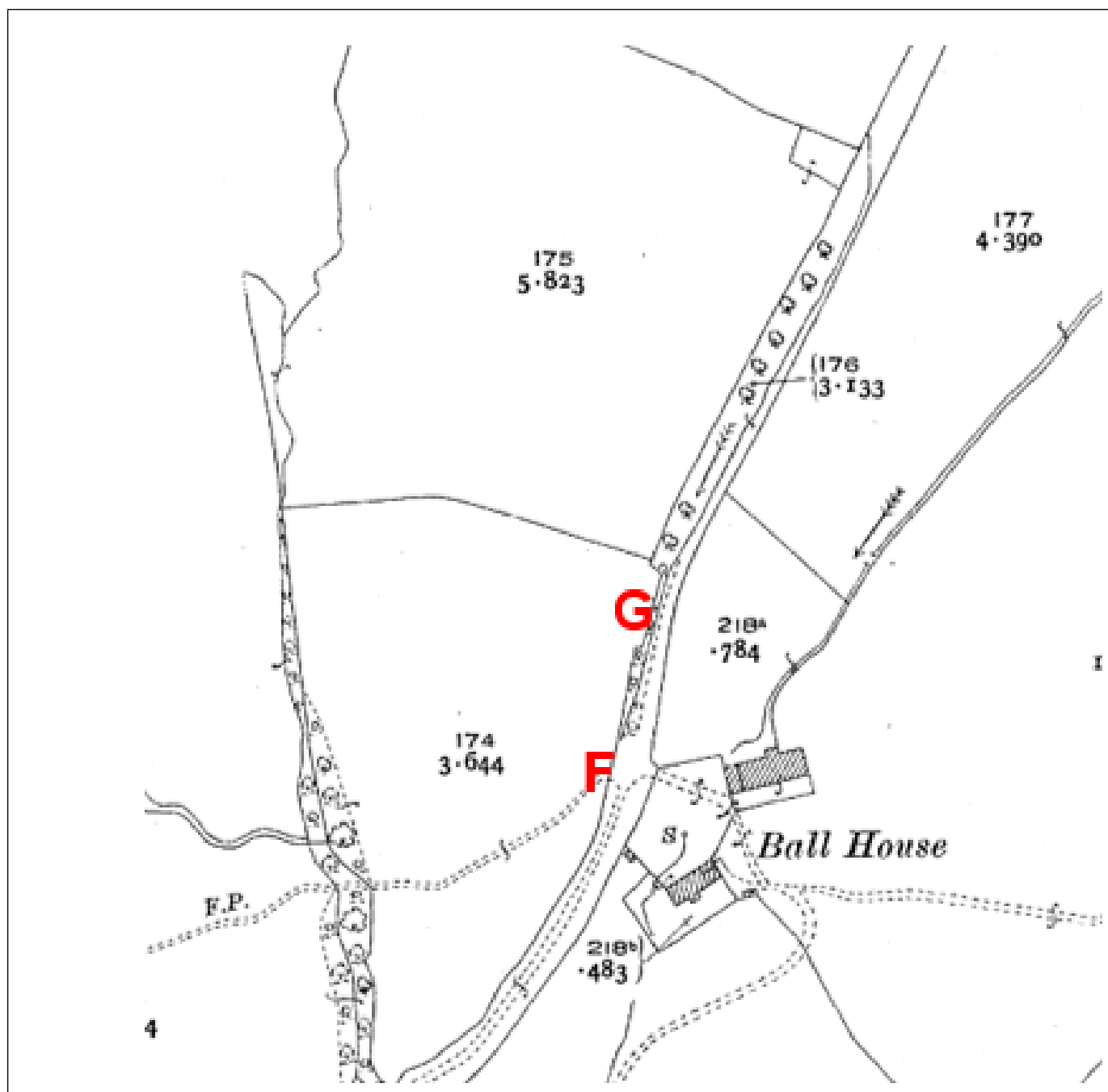
Observations		<p>The full length of the Route, with the exception of the railway between point B and point C is shown as being exempt from the numbered hereditaments.</p> <p>The railway is numbered as plot 6608. The Field Book provides little information about the land and no deductions are claimed for public rights of way or user.</p> <p>From point A extending towards point B land on either side of the Route is braced and included in the same numbered plot (6566) indicating that it was in the same</p>
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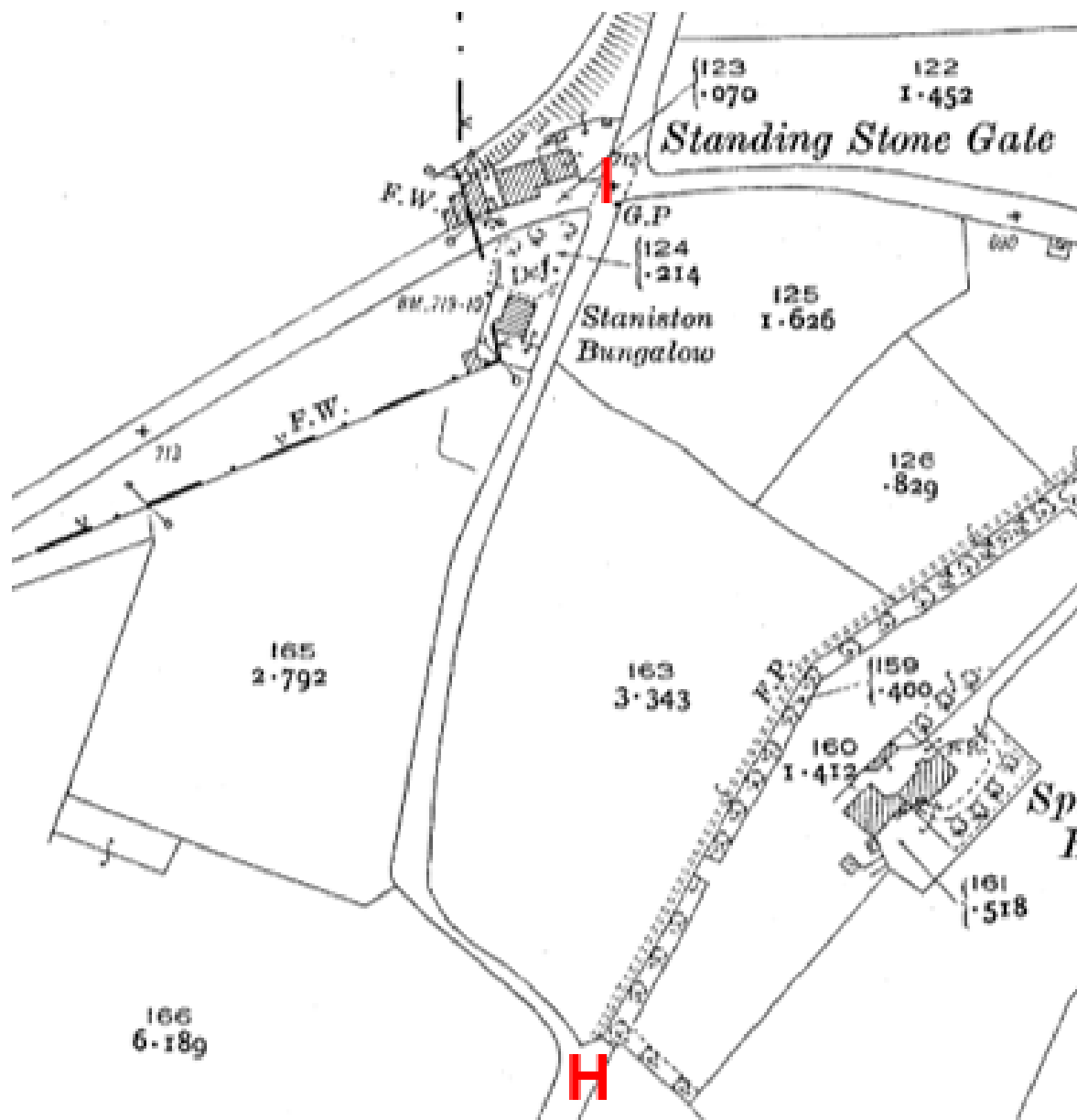
		<p>landownership. The Field Book entry for 6566 makes no reference to the Route.</p> <p>Beyond the railway crossing land to the west of the Route is numbered 6568 and relates to Sand Hole. A note in the Field Book states that the property was purchased in 1889 but there is no reference to the Route.</p> <p>The Field Book entry for 6573 relates to Ball House and again land on either side of the Route is shown braced together as being in the same ownership but the Route is excluded. In the description of the property it is written 'Land rough, chiefly pasture, fences fair, position about 1 mile from Foulridge and 2 from Colne roads, very moderate.'</p> <p>The owner of Moss Farm (now Holly Bush Farm) claimed a deduction for a road within hereditament 6567. That 'road' connected the Route to a route to Moss House, Greenshaw and Slipper Hill but did not include the Route.</p>
Investigating Officer's Comments		<p>The map prepared under the provisions of 1910 Finance Act obtained from The National Archives shows nearly the whole of the Route excluded from adjacent land in private ownership. 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 the accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable). The Instruction No. 560 to the surveyors said that the parcels 'should continue to be exclusive of the site of the external roadways'. It is advised that roadways were said to be routes 'subject to the rights of the public' and therefore exclusion of a route indicates that public use was known but not necessarily vehicular status. In this instance nearly all the Route is shown outside privately owned land, indicating that the Route's status was recorded as public. The only exception is the railway crossing which is shown to be in the ownership of the railway company.</p>

		<p>The exclusion of the routes from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights.</p> <p>Numbered plots split by the route give further weight to the belief that the route was considered to have public vehicular rights (as public footpaths and public bridleways were normally included within the numbered plots).</p> <p>The fact that the access to Holly Bush Farm (north west from point D) is included as part of a numbered plot indicates that in 1910 it was considered to be of a different status to the route under investigation. It was described as a 'road' but no inference can be drawn regarding public rights and the fact that the 'road' was not excluded from the numbered hereditament suggests that it was not considered to be of the same public status as the Route. A deduction of £25 was however made for public rights of way or user across plot 6567 which, although not specific regarding which route or routes were referred to, is suggestive of public footpath or bridleway rights extending from the Route across plot 6567.</p> <p>The inclusion of the Route across the level crossing as being within a numbered plot for which no deduction was claimed for a public right of way is not uncommon practice where a route with recorded public rights crosses a railway by means of a level crossing and there are other examples of this practice throughout the county whereby public bridleway and public vehicular rights have been found to exist across it.</p> <p>In conclusion, the fact that the whole of the Route (with the exception of the railway crossing) is shown excluded from the numbered plots, which were owned by a number of different landowners, suggests a common belief that the route carried at least public bridleway rights.</p>
Bartholomew half inch map	1919-1924	Further edition of Bartholomew's small scale maps.



Observations		The Route is shown as a substantial bounded through-route denoted as a secondary road in good condition.
Investigating Officer's Comments		The reputation of the route in the 1920s still appeared to be of a public vehicular route in good condition. This map was not submitted as part of the original application for a Byway open to all Traffic.
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1891-92, revised in 1930 and published 1932.



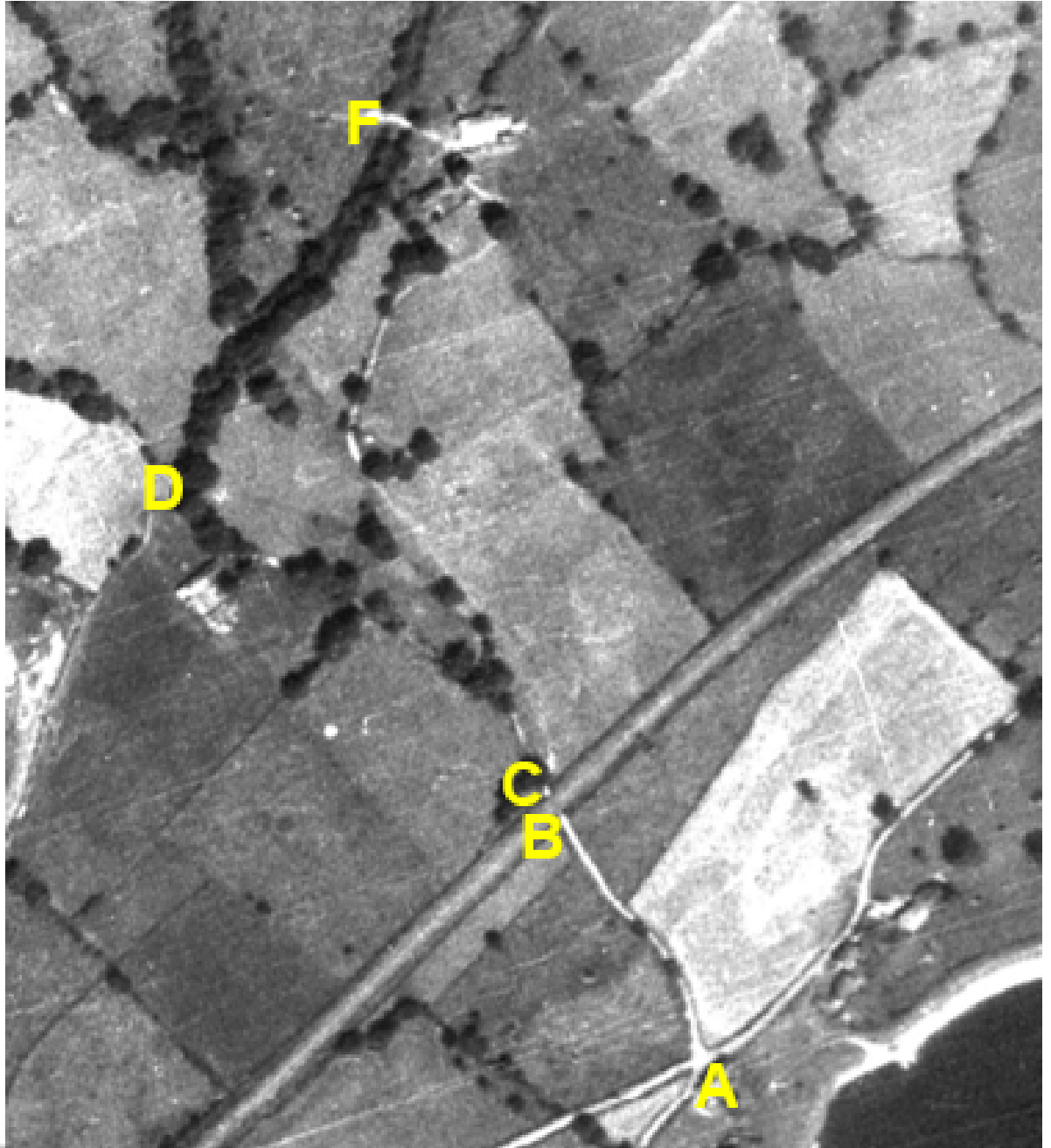


Observations		There is a significant change to the Route on the 1932 edition of the map. Trees and a watercourse (stream) are shown within the width of the Route north of point G suggesting that this section was no longer as wide or accessible as it previously had been shown.
Investigating Officer's Comments		The Route existed and was probably still available as a through-route but use of the whole route by vehicles or horse drawn vehicles may have declined or become more difficult/less frequent resulting in the Route becoming more overgrown in places.

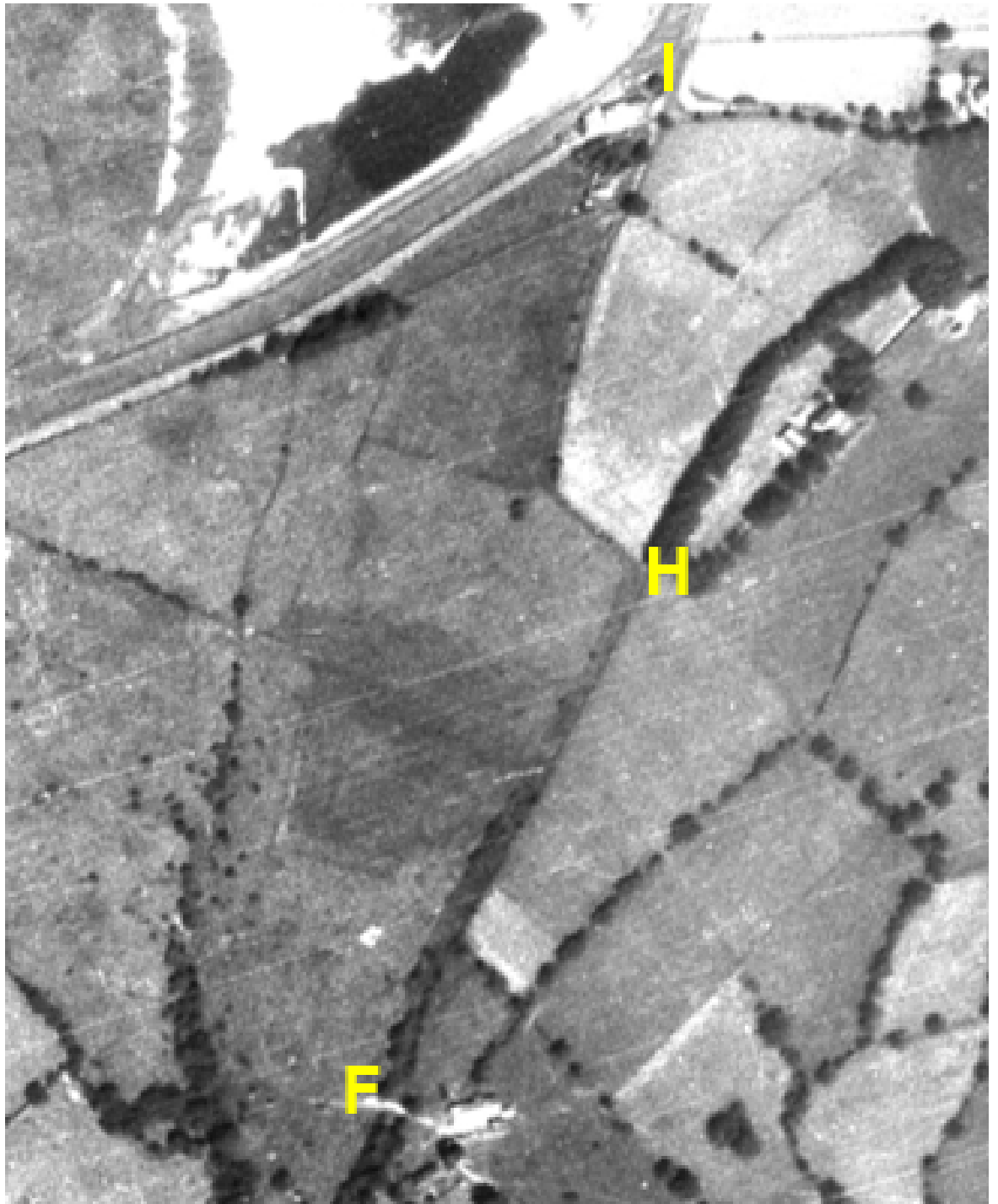
Aerial Photograph²

1940s

The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

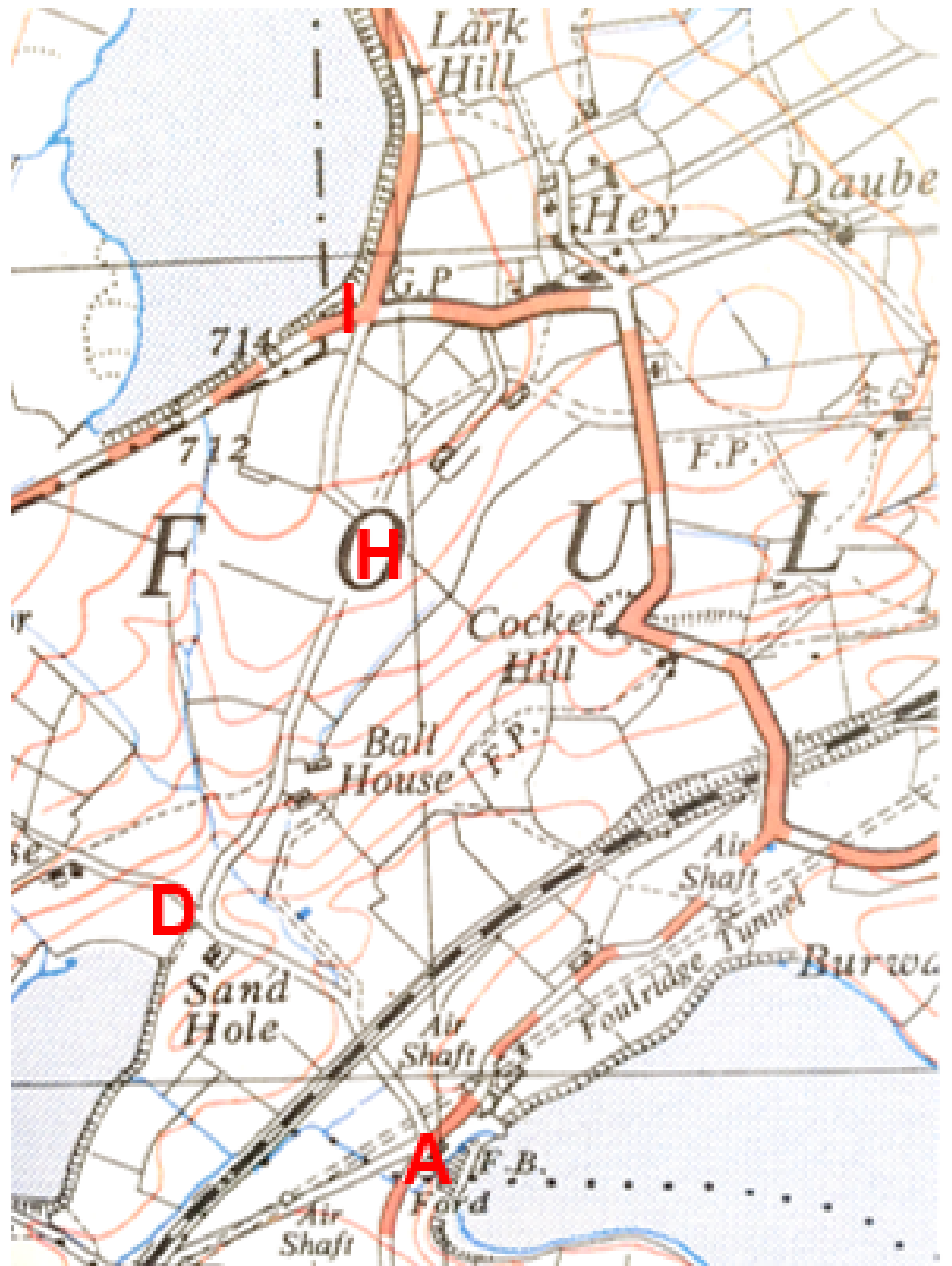


² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



<p>Observations</p>		<p>The Route can be seen very clearly between point A and point B but is much more difficult to pick out along the remainder of the Route.</p> <p>Parts of the Route are obscured by tree cover.</p> <p>A new access (the current access to Ball House from point C) can be clearly seen on the photograph (a track which was not shown on the 1932 OS 25 inch map just a</p>
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		few years earlier).
Investigating Officer's Comments		<p>It is not possible to determine from the aerial photograph whether the full length of the Route was passable in the 1940s.</p> <p>However, the Route is not clearly visible suggesting that use of much of it by the 1940s may have been on foot or possibly on horseback but that suggested use by the travelling public had declined.</p>
Ordnance Survey 2 ½ inch to 1 mile map	1954	OS Sheet 54 at a scale of 2 ½ inch to 1 mile. Fully revised 1884-1940, partial revision 1938-50, published 1954.



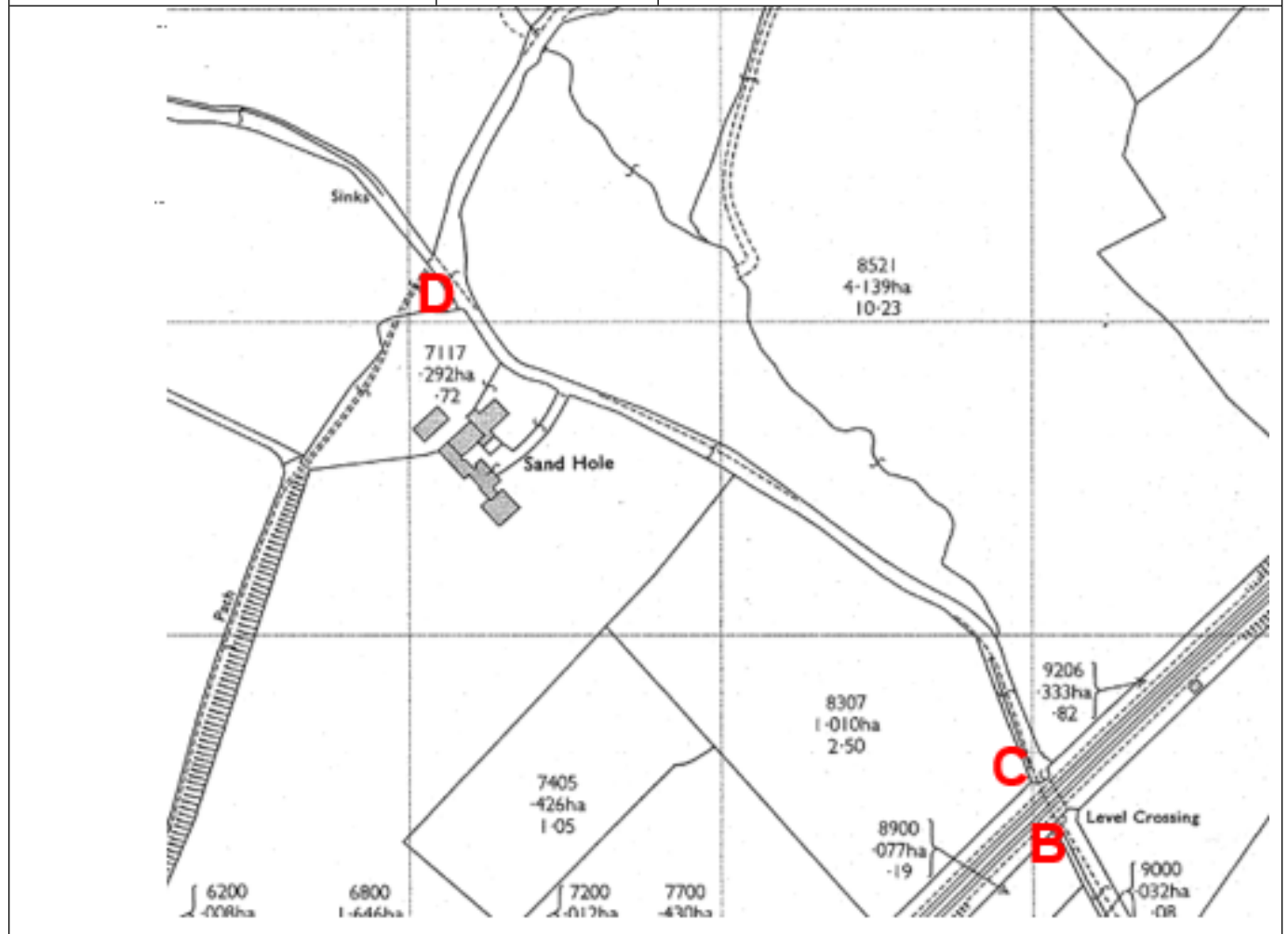
Observations

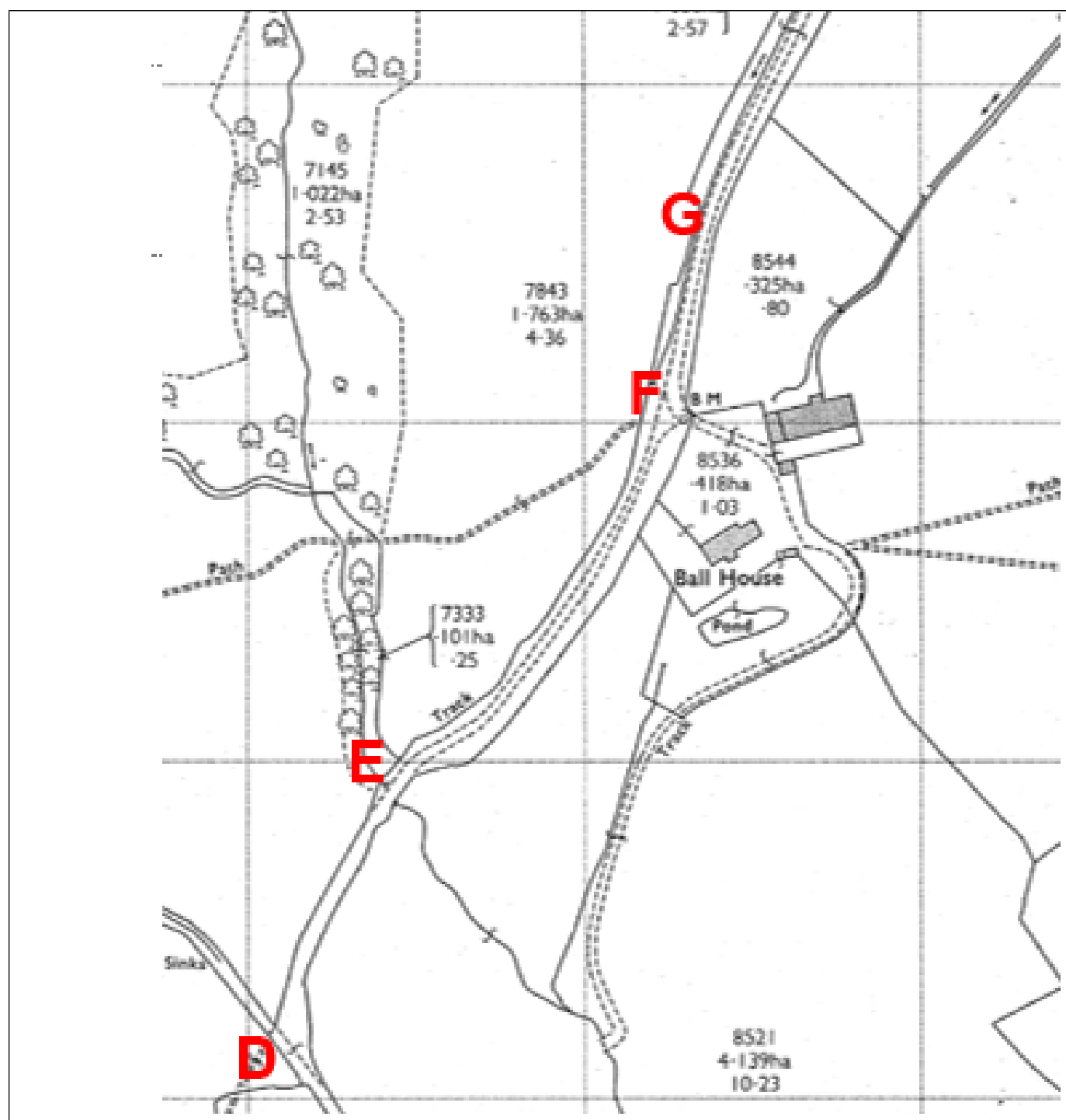
The full length of the Route is shown together with a new access route to Ball House.

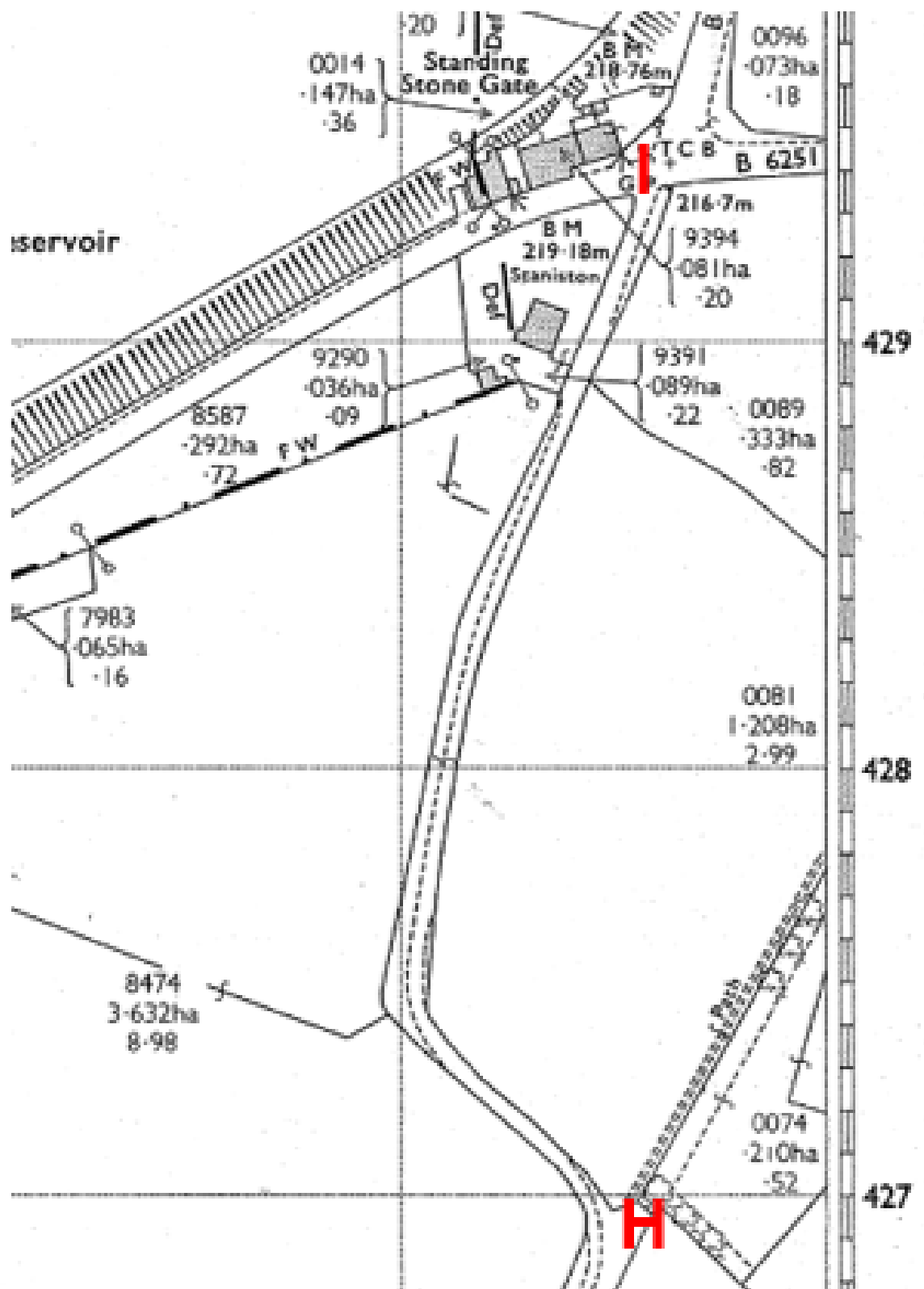
Investigating Officer's Comments

The Route existed in the 1950s and appeared to have been capable of being used.

		through-route by all types of traffic may have declined.
1:2500 OS Map	1970	Further edition of 25 inch map reconstituted from former county series and revised in 1969 and published 1970 as the national grid series.

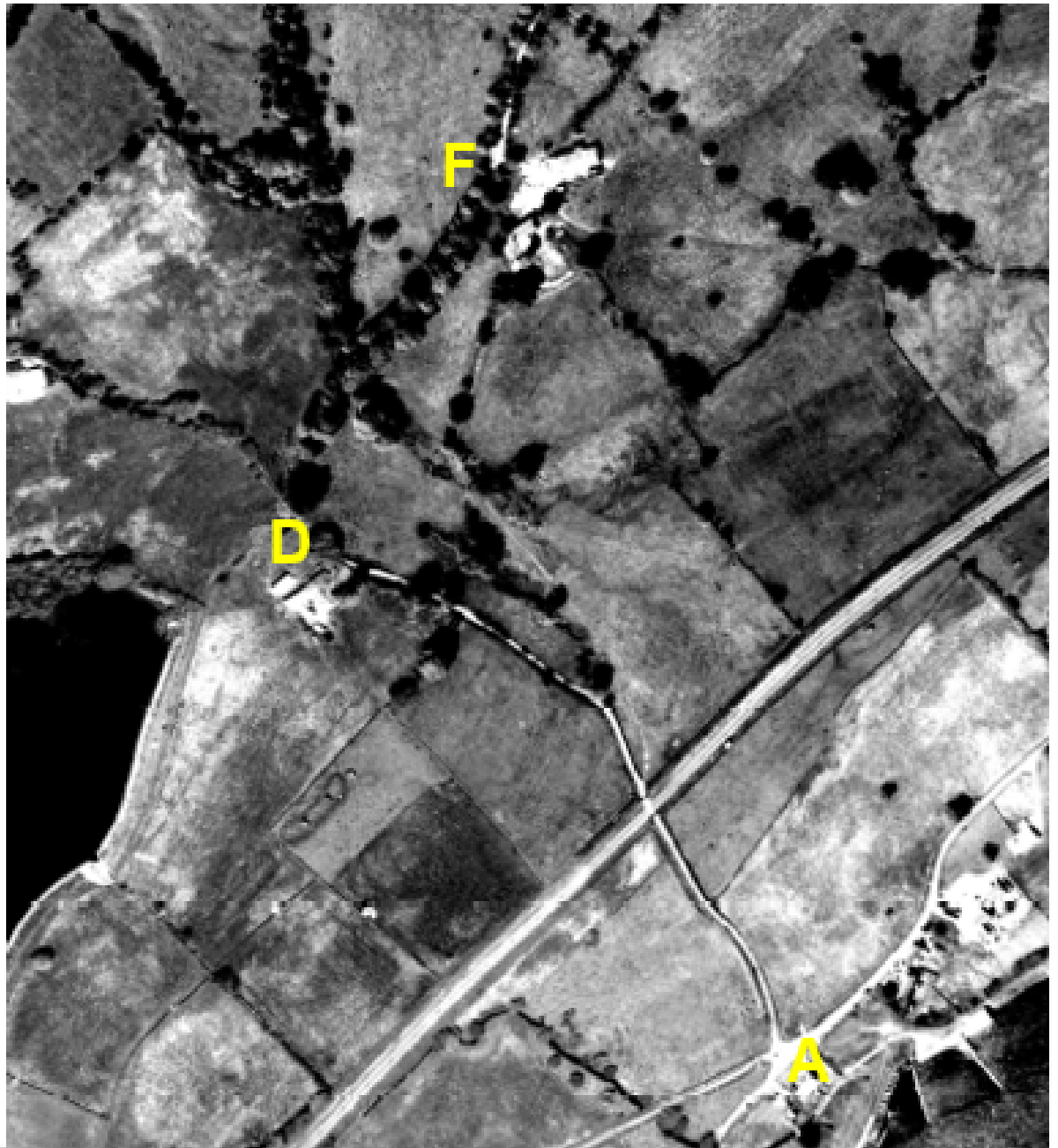


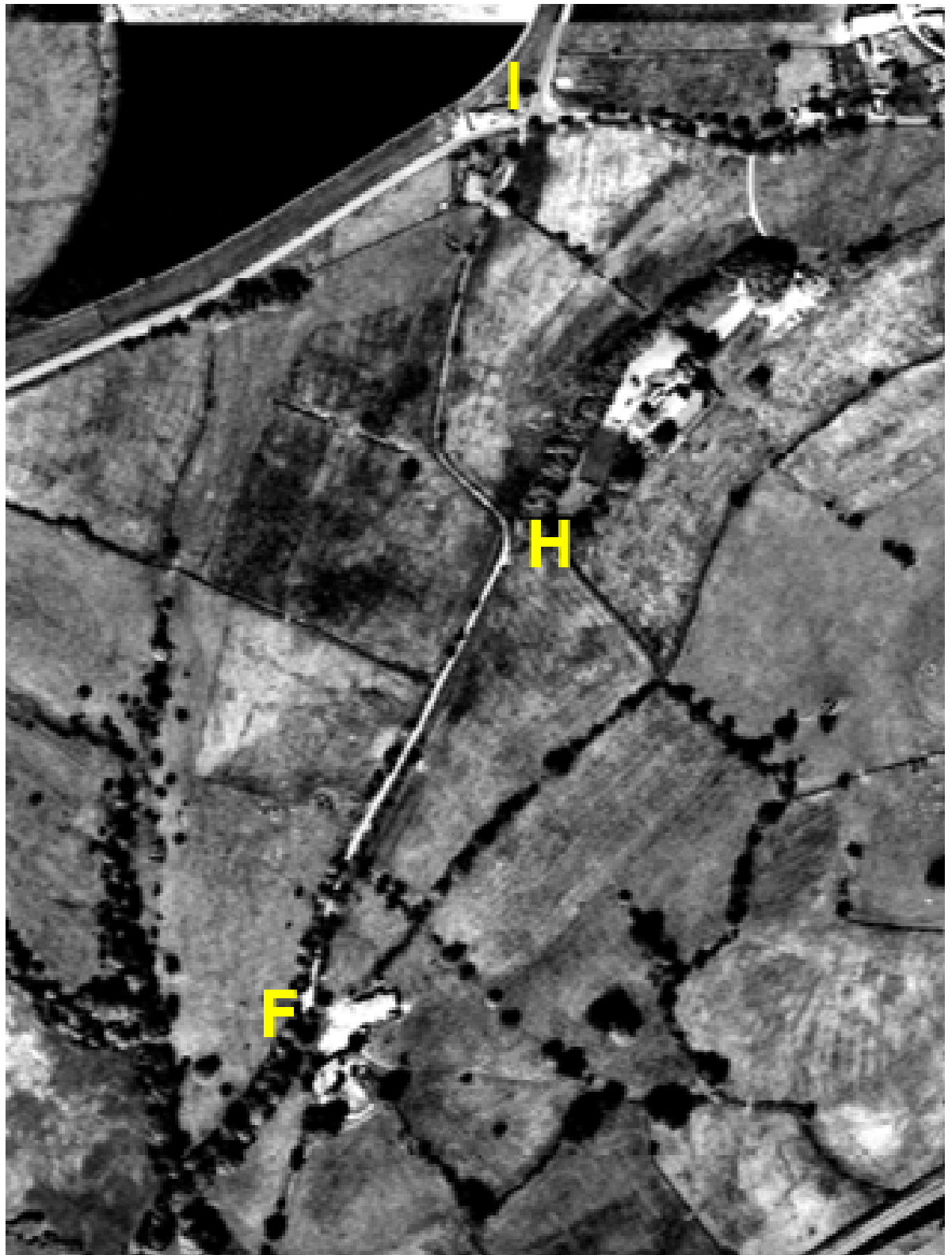




Observations		The full length of the Route is shown as a bounded through-route.
Investigating Officer's Comments		The Route existed and appeared to be capable of being used in the 1970s.
Aerial photograph	1960s	The black and white aerial photograph taken

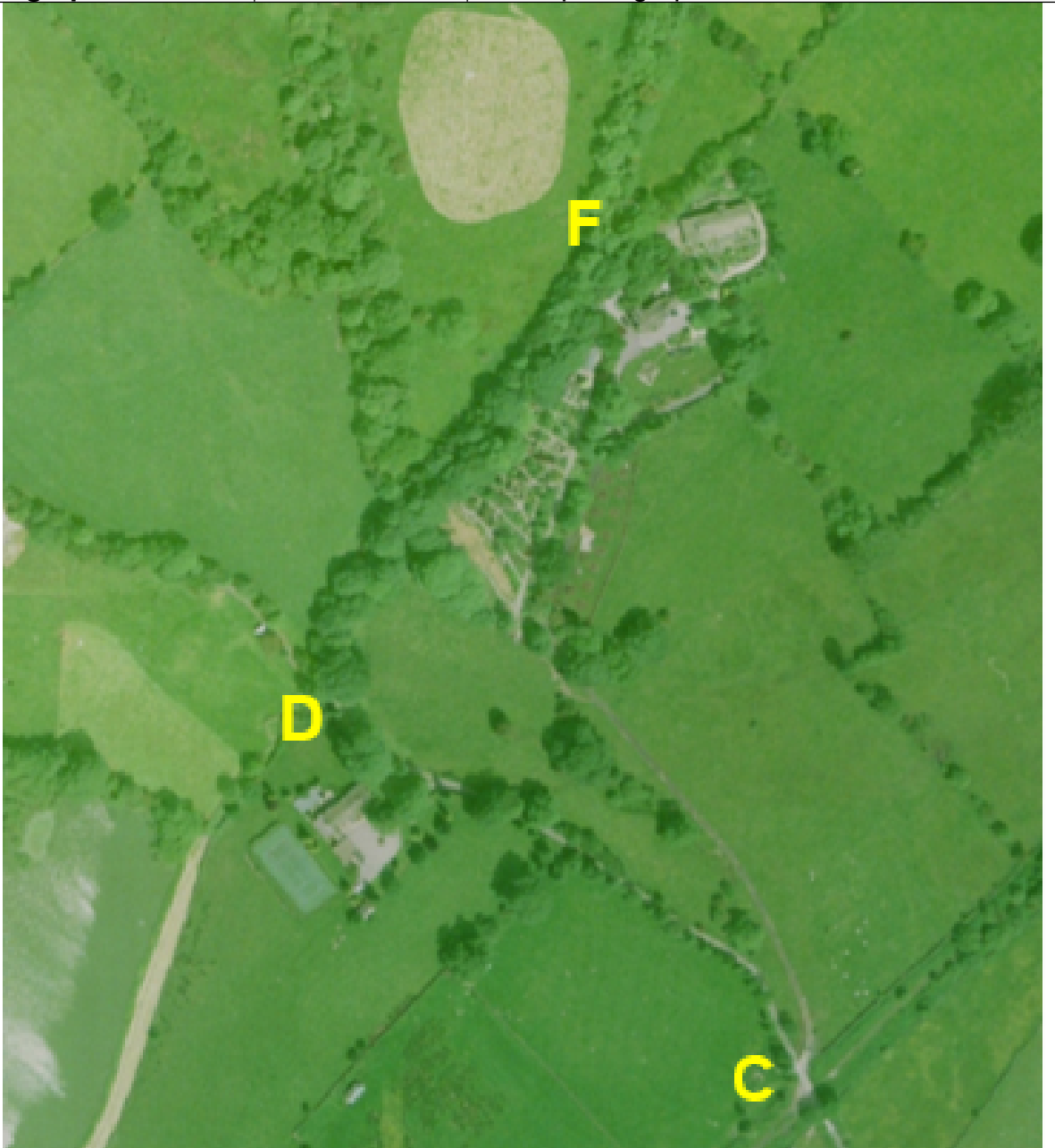
in the 1960s and available to view on GIS.



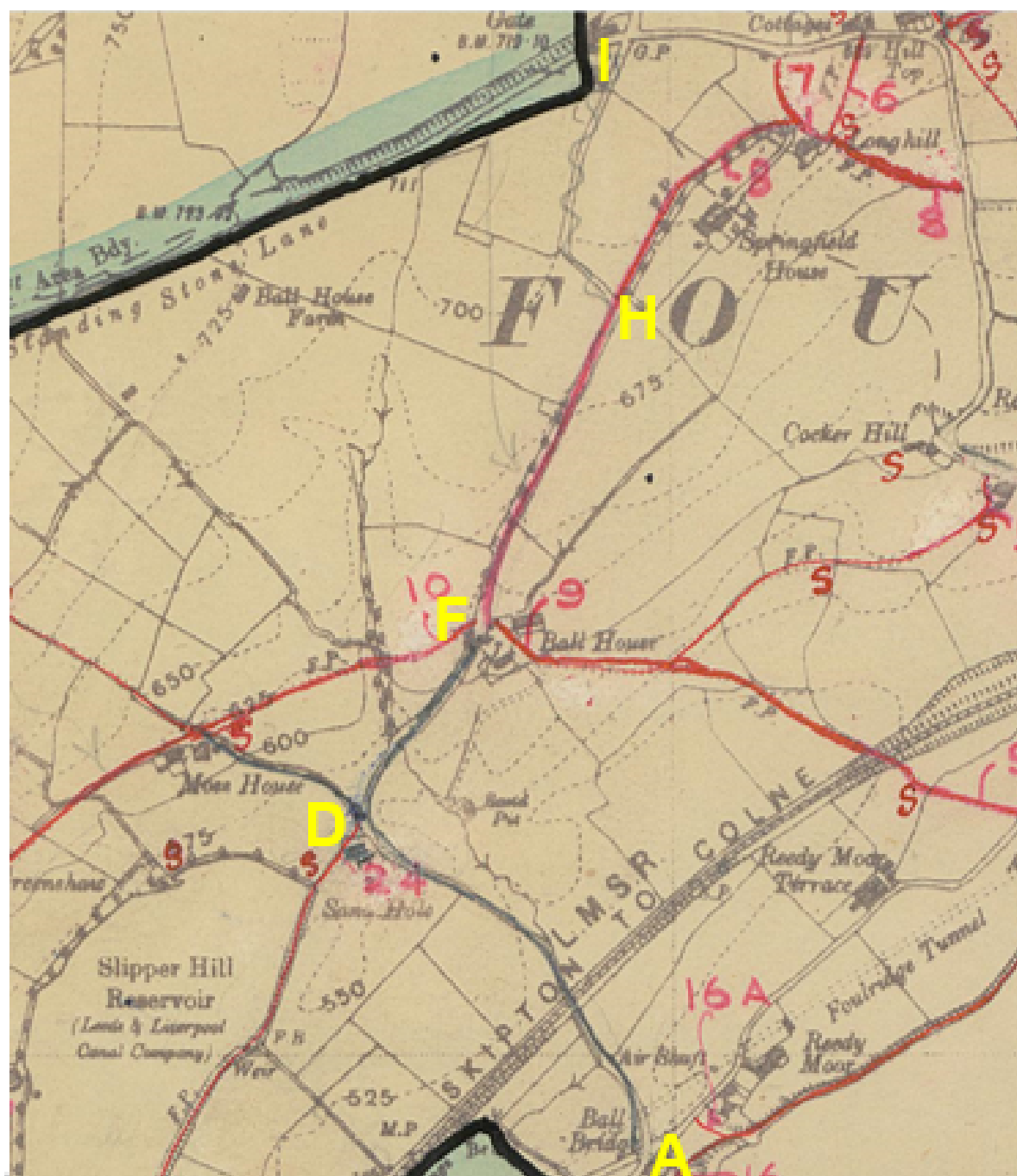


Observations

The Route can be seen clearly on the photograph between points A-D and F-I. The section F-H-I appears particularly clear in contrast to the aerial photograph taken 20 years earlier suggesting recent and frequent vehicular use of that particular section.

Investigating Officer's Comments		No inference can be made with regards to the existence of public rights but the aerial photograph supports the existence of most of the Route in the 1960s.
Aerial Photograph	2000	Aerial photograph available to view on GIS.
		
Observations		Much of the route is obscured by tree cover.
Investigating Officer's Comments		No inference can be drawn with regards to public rights.
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</p>

		Map in the early 1950s.
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>



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Observations

The Parish Survey map for Foulridge shows the route coloured blue from point A-D-F and is not numbered.

From point F – point H the route is shown

		<p>marked in red and is numbered as part of Footpath 8. A pencil line extends from the route to the margin of the map where it is written 'Very wet and boggy Bole House Lane impassable at present'.</p> <p>From point H to point I a blue pencil line is shown along the route but appears more like a scribbling out than a line depicting a route.</p> <p>Each path shown on the map was described on a parish survey card completed in 1950. Public Footpath No 8 was described as going to Ball House Farm and part was referred to as being boggy and in bad condition.</p> <p>A parish survey card was also found for a route recorded as Public Footpath no. 63 was described as running from the junction of footpaths nos. 8, 9 and 10 at Ball House to join the road at Ball Bridge. The card is not dated and there are no details of the name of the person completing it. Footpath 63 is not shown on the parish survey map but comprises of the Route between points A-F.</p>
Investigating Officer's Comments		<p>It is not known why only part of the Route was originally recorded on the Parish Survey or why it was recorded as footpath. The fact that it was noted as being very wet, boggy and impassable may reflect the fact that use was consequently limited to being on foot at that time (the 1950s).</p> <p>The Route appears to have been known locally as 'Bole House Lane' although it is not named as such on the OS maps examined.</p>
Draft Map		<p>The parish survey map and cards for Foulridge 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 mistakes. Hearings were held into these objections, and recommendations made to accept or reject</p>

them on the evidence presented.

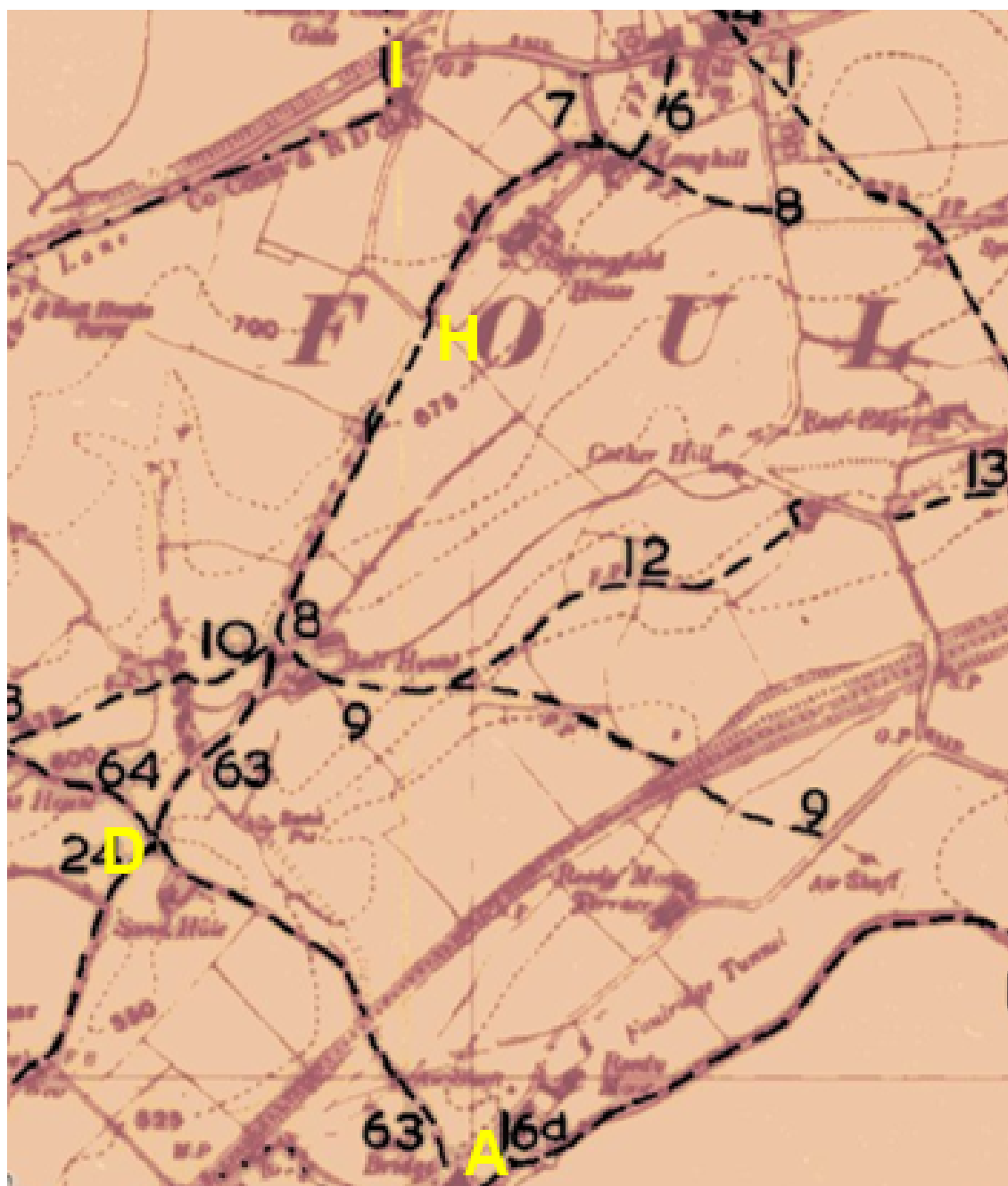


Observations

Information from parish survey maps was used to prepare the Draft Map for the relevant Rural District.

		The Route is shown on the Draft Map as Footpath 63 from point A to point F at Ball House Farm and then as part of Footpath 8 from point F to point H. The length H – I was not shown.
Investigating Officer's Comments		It is not known why the section of route not included on the parish survey map (between point A and point F) was now included on the Draft Map as a public Footpath. No objections were received to the inclusion of part of the route as footpath or the fact that the Route was not recorded between point H and point I.
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 in the same way as it was on the Draft Map and there were no objections to the inclusion of part of the route as a footpath or the omission of part of the route.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The Route was shown as a footpath between point A and point H. The route was not recorded as a public path between point H and point I.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside

Act 1981, the Definitive Map has been subject to a continuous review process.



Observations

The Route is shown as a Footpath between point A and point H on the Revised Definitive map (First Review). The rest of the Route (between point H to point I) is not recorded.

Investigating Officer's Comments

The Route was considered to be a footpath from point A to point H during the preparation of the 1st Definitive Map and Statement through to the 1960s. The Route from point H to point I was not considered to be a public

		path which should be recorded on the Definitive Map throughout that period.
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 Route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in records believed to be derived from the 1929 Handover Map.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access.
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		No records relating to the stopping up,

		diverting or creation of public rights along the Route were found.
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the county council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.
Landownership		Information about ownership of the land crossed and abutting the route was obtained from the Land Registry.
Observations		Ownership of the land crossed by the Route is not registered but it is noted that some

		<p>land is in the same landownership on either side of the Route and that a number of historical properties can only be accessed from the Route (or part of it).</p> <p>The owner of Ball House asserted in 2008 that the land crossed by the Route had originally belonged to the Parker family of Alkincotes Hall, Colne and Brownsholme Hall near Clitheroe and that the northern section of the Route only came into existence when stone was quarried from the land at the time that Whitemoor reservoir was constructed.</p>
Investigating Officer's Comments		<p>The fact that ownership of the land crossed by the Route is not registered is consistent with the information provided in the Foulridge Tithe Award whereby the Route was numbered separately to adjacent land and listed in the Tithe Schedule as a road with no landownership details provided. It is also consistent with the information provided in the District Valuation Records (Finance Act records) whereby the whole of the Route (with the exception at that time of the railway) was excluded from the valuation process.</p> <p>Whitemoor reservoir was constructed in 1840 but early commercial maps indicate that the Route existed in the early 1800s as it is clearly shown pre dating the reservoir on the Honor of Clitheroe map. It is not disputed that the Route may have been used for the carriage of sand and aggregates to the reservoir but such use does not necessarily preclude it being a public right of way.</p> <p>From research carried out prior to and at the time of the 1997 public inquiry it has not been possible to confirm the early history of the ownership of the land crossed by the Route.</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

None of the land crossed by the Route is registered.

Summary

It is rare to find one single piece of map or documentary evidence which is strong enough to conclude that public rights exist and it is often the case that we need to examine a body of evidence, often spanning a substantial period of time, from which public rights can be inferred.

In conclusion, a range of commercial maps and other documents were examined which seem to suggest that the Route existed in its entirety as a through-route from the late 1700s or early 1800s and taken as a whole, the map and documentary evidence available both before and after the construction of the railway indicate that the Route was considered to be at least bridleway, the use of which gradually declined during the first half of the twentieth century to the point where it was recorded as a public footpath in the 1950s.

The only piece of evidence found weighing against this is the fact that the Route was noted as providing access to a number of private properties, when it was described as an occupation road in the documentary evidence examined regarding the construction of the railway (although this is mitigated by the fact that the public carriageway, Reedymoor Lane, was also described in that way).

Maps and photographs post-dating the 1950s all confirm the existence of the Route on the same historical alignment but provide no further evidence regarding whether its public status is more than public footpath. They do however support the user evidence submitted for bridleway status in that the route appears to have been capable of being used as such.

Head of Service – Legal and Democratic Services Observations

Information from the former Environment Directorate

The above documents were considered in the investigation whether to record the Route as a bridleway and the following of these had not been considered during the previous investigation:

19th Century Sand Holes Estate Plan
Bartholomew's Maps 1906 and 1919-24
Honor of Clitheroe Map 1804-1810
Map from Duchy of Lancaster 1580
Bacon's Map 1904
Aerial photograph 1940s
Additional user evidence forms

User Evidence Forms:

Use of the Route varies between the years 1944 and 2007 on horseback, foot, motorcycle and bicycle.

21 of the users have used the Route on **horseback** over the following years using it the following amounts:

From	Until	Used times per year	From	Until	Used times per year
1944	1944	5-10 (same user)	1980	1997	100
1972	1977		1980	1995	?
1980	1981		1981	1987	40
1970	1999	35	1982	1988	100
1972	1981	1 x per month	1983	1997	12
1973	1988	16	1984	1977	100
1973	1977	150	1985	1997	1-2
1975	1997	200	1988	1997	6
1975	1977	3 x per week	1990	1995	4
1976	1998	12-14	1992	1993	Once
1977	2007	1977-weekly, 2-3 recently	1994	1998	2 x per week
1980	onwards	12			

7 have used the Route over a continuous period of 20 years on horseback.

The main reasons for using the Route on horseback were as follows:

Pleasure, exercise, exercising horse, bridleway rides, leading youngsters on ponies, hacking out and recreational.

2 users provided that they have used the Route on **motorcycles** from 1958 (late 50's) onwards. 1 provided that they have used the Route 'occasionally' on a **bicycle**.

18 users have also used the Route on **foot** over the following periods:

User	From	To		User	From	To
1	1975	1997		8	1976	1998
2	1970	2008		9	2000	2007
3	1973	2008		10	1980	2008
4	1981	1982		11	1981	1987
5	1944	1948		12	1983	1988
6	1976	1998		13	1984	2008
7	1988	2008		14	'Over 40 years'	
16,17,18	no dates provided					

- 22 of the 23 users provided that the Route has always run over the same line.
- 22 of the users answered 'no' to there being any stiles, gates or fences across the Route. 1 user answered 'yes' to there being a gate at Stanstead Bungalow but provided that it was always open.
- All 23 users answered 'no' to having ever worked for any landowners of the Route and again 'no' to being a tenant of any of the land over which the Route passes.
- 3 users answered 'yes' to having been stopped or turned back whilst using the Route. 1 user provided that on 24/07/1998 he was stopped by Mr Taylor and another couldn't recall when it was they were stopped but provided that they were stopped by a lady shortly after Sandhall where the Route turns north east.
- Another 3 users answered 'yes' to hearing of others who have been stopped or turned back whilst using the Route on horse. One user provided that in late 1991 they were told by other horse riders the lane was closed and another user provided that two local riders were assaulted by Mr Taylor (deceased)

who lived at Holly Bush Farm, the police were involved – they couldn't recall the date. 1 user who answered no to both questions did comment that it was very difficult to pass as there were boulders and overgrowth there at the time of writing (2008).

- 2 users answered 'yes' to being told by an owner or tenant of the land crossed by the Route that the way was not public (although in fact there is not registered owner). 1 user provided that it was about 10 years ago (1998) but they used the route in 2007 unchallenged. The other user received a letter from a Mr J Banks on 14/09/1998.
- 11 users provided that they had seen signs along the Route at various locations: Reedymoor Lane end "no vehicles or parking"; "private road" this was after the public inquiry in 1990s again at the Reedymoor Lane end of the route; at railway crossing "private road to Sand Hall Farm & Holly Bush"; signs on trees forbidding horse riders, cyclists and motorbikes along the Route from Reedymoor Lane to Holly Bush farm turn off; "private road and public footpath" to Sandyhill and Holly Bush Farm; sign with a pushbike and a line through it at Reedymoor Lane end of route, sign on Reedymoor Lane corner and road leading up to old railway track stating " Private Road to Hollybush, Ball House, Sandhall & Mistals. No unauthorised motor vehicles or motorcycles. Any vehicles obstructing lane will be removed", "No motorcycles", "Private Road to Sandhall"; and another sign providing "The Wildlife and Countryside Act Order No.1 1998. This means the law forbids Horse Riders, Cycles, Motor Bikes and vehicles from using Ball House Lane from Reedymoor to Standing Stone Lane"
- 1 user provided that when they moved into the area in 1973, they made local enquiries with farmers and residents and were informed there was a public access and that it had been there for a number of years.
- The users were asked if they would like to provide any further comments of which are included below:
 - "Alan Wilson (deceased) farmed at Cocker Hill Farm and Ball House until his death and Jack Judson farmed at Long Hill Farm until he retired. Both of them told me the route had always been a footpath and bridleway during their many years farming the land bordering the track"
 - "The farmer at Sandhall Farm never put any 'private', 'no road', or any other notices up. The farm has now become a private home and not a farm"
 - "There are few enough places to ride a horse these days and this was one ride I knew I could get away from traffic on"
 - "The lane was used by Barnoldswick & District Motors Club in the late 50's and early 60's"
 - "The last time I rode the route it was virtually impossible because of boulders and overgrowth"
 - "I have used this route as long as I can remember. I walked it with my parents then with my pony. I worked at Whitemoor Stables from 1980-1981 and rode it regularly. After that I rode it many times on my horse"
 - "I have always believed it to be an old bridleway from Colne to Barnoldswick. We have not had any problems until 24/07/1998. The path way is very stony and you can only take your time going up and down so I can't see why there is any problem".

Information from adjoining Landowner

Mr John Bank of Ball House off Reedymoor Lane claims that the proposal is improper and perhaps illegal. He provides that it seeks to modify the Inspector's decision given at the inquiry held on 8th – 11th December 1997 and queries why an appeal wasn't made against the decision. He provided copies of notices that he has erected along the route.

The county council responded to Mr Ball explaining that anyone may challenge the accuracy of the Definitive Map.

Mr Robert Bank of Mistals off Reedymoor Lane also provided that he objects to the proposal and supports Mr John Banks letters of objection.

Ashley Holt of Sand Hall Reedymoor Lane also wrote to the county council questioning the legality of the proposal based on the previous decision by the Inspector.

Aidan Venn of 58 Spring Gardens, Padiham provides he objects to the proposal based on an appeal not being made on the Inspector's decision at the inquiry in December 1997. M Johnson of 263 Walshaw Road, Bury provided the same letter as did R.P. Woolinough of 268 Grisham Road, Nelson.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- User evidence
- Map and other documentary evidence supporting the physical existence as a through-route from the late 1700s or early 1800
- Depiction on commercial maps for the travelling public, including as a cross road
- Excluded from Tithe apportionments and listed as road with no owner
- Excluded from hereditaments on 1910 Finance Act map

Against Making an Order(s)

- Route described as 'occupation road' by the railway construction company

Conclusion

It is advised that as there is no express dedication in this matter Committee should consider, on balance, whether there is sufficient evidence from which to have dedication inferred at common law from all the circumstances or for the criteria in

Section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Firstly looking at whether dedication can be inferred on balance at common law, Committee is advised to consider whether the evidence presented within this report from the various map and documentary evidence does on balance indicate how the route should have been recorded. The analysis of the evidence used in the 1987 application along with the user evidence and the additional new evidence considered by the Head of Service – Planning and Environment provides evidence to conclude that the route was a historical public route available at least as a bridleway.

From the late 1700s early 1800s there is significant map and documentary evidence of the route having existed. However, Committee will note the Planning Inspectorate decision letter dated 25th February 1998 not to confirm the Order for the route to be recorded as a byway open to all traffic. However, as noted in the Summary section of this Report, a range of commercial maps and other documents have now been considered in conjunction with user evidence by the public rights of way officer to bring this matter back for consideration by Committee as a bridleway.

The early map evidence indicates that the route appeared to be of sufficient width and capable of being used on horseback and or horse and cart and records appear to present a consistent view of the Route connecting vehicular highways from A to I.

The Finance Act Map 1910, although not conclusive strengthens this point as it is consistent with public carriageway rights along nearly all of the length claimed, with only the railway crossing excluded as this was in the ownership of the railway company.

On balance, the map and other documentary evidence is in itself considered sufficient to conclude that the route was a historical public bridleway and it is therefore suggested to Committee that inferred dedication can on balance be satisfied. However, should Committee have any reservations as to the strength of the map and documentary evidence it may wish to also consider deemed dedication under Section 31 Highways Act 1980.

Committee will be aware that in order to satisfy the criteria for Section 31, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

Public rights were called into question in 1987 being the application date of the Byway Open to All Traffic application. It is therefore considered that the period of use from which dedication can be deemed would be 1967-1987.

Twenty three user evidence forms have been submitted. Of the 23 users, 21 users have claimed to have used the route on horseback 7 of which have done so for a 20

year period. Two 2 users have claimed to have used the route on motorcycle and 1 user claims to have used the route on a pedal cycle during the period under consideration. Twenty two users claim to have known and used the route along the same route A - I and all users claimed to have used the route on a regular basis 'as of right'. The main purposes stated for use of the route by those on horseback was for pleasure, exercise, exercising horse, bridleway rides, leading youngsters on ponies, hacking out and recreational. None of the users state that they have ever asked permission to use the route, 3 users refer to having been stopped or turned away with a further 3 users refer to hearing of others having being stopped or turned back while using the route while on horseback, 2 users refer to having been told by an owner/tenant of the land that the route was not a public route. None of the users saw signs or notices along the route. Therefore it is suggested that on balance deemed dedication under s.31 can be satisfied.

Taking all of the evidence into account, it is suggested to Committee that the recent map and photographic evidence together with the site evidence supports and is consistent with the user evidence in suggesting that the route was capable of being used on horseback and should therefore be recorded as a bridleway.

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

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-478		Claire Blundell, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A