

## **Regulatory Committee**

Meeting to be held on 18 July 2018

Electoral Division affected: Wyre Rural East
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### **Wildlife and Countryside Act 1981**

#### **Definitive Map Modification Order Investigation**

**Application to upgrade part of Bridleway 29 Barnacre-with-Bonds, known as Byerworth Lane, to Byway Open to all Traffic**

**File No. 804-424 (Annex 'A' refers)**

Contact for further information:

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#### **Executive Summary**

Application to record on the Definitive Map and Statement of Public Rights of Way part of Bridleway 29 Barnacre-with-Bonds (known as Byerworth Lane) as a Byway Open to All Traffic, in accordance with file No. 804-424.

#### **Recommendation**

That the application for part of Bridleway 29 Barnacre-with-Bonds to be recorded as a Byway Open to All Traffic, in accordance with File No. 804-424, be not accepted.

#### **Background**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 was submitted on 11 July 2005 for the Definitive Map and Statement to be amended by upgrading to byway open to all traffic part of Bridleway 29 Barnacre-with-Bonds, Wyre Borough (known as Byerworth Lane) and shown between point A and point C 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 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 (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**

### Wyre Borough Council

The borough council's countryside service does not hold any evidence in support of, or contrary to, the application, but comments that this is only a narrow track/lane and that the current users of the track, i.e. horses, cycles, wheelchairs and pedestrians will be particularly vulnerable if the upgrade resulted in an increase in the number of motorised vehicles using the lane.

### Barnacre-with-Bonds Parish Council

The parish council does not support the application as the route is very popular for pedestrians; the lane is narrow and has poor visibility and there are no passing places.

### 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	4915 4432	Unmarked junction on Byerworth Lane of county road U11096 with Bridleway 29 Barnacre-with-Bonds.
B	4914 4408	Triangle of tracks outside farm entrance
C	4912 4407	Entrance to Byerworth Farm.

### Description of Route

A site inspection was carried out in April 2018.

Leading to the application route is a tarmac road off Garstang Road (also known as Bonds Lane) providing access to housing and then crossing the Lancaster Canal via Byerworth Bridge before continuing in a south westerly direction as a narrow tarmac road. This road is bounded by hedges in which a number of gaps/gateways permit golfers to cross the road to land of the Garstang Golf Club which lies on either side of the road.

The route described above (from Garstang Road to the start of the application route) is recorded on the List of Streets as Byerworth Lane North (U11096). A line could be seen across the tarmac roadway which looked like a point to which the road had possibly been tarmacked at different times up to and beyond that point. About 5 metres beyond that line is the start of the application route (point A on the Plan).

From point A the application route (also part of Byerworth Lane) continues in a generally southerly direction with a gateway onto the golf course on the bend. The route continues along a tarmac roadway approximately 2.5 metres wide with mown grass verges and well maintained hedges on either side for approximately 275 metres to point B which is a triangular junction of tracks outside Byerworth Farm and is part of the bridleway. It is east of the entrance to Byerworth Farm from where the bridleway (also known as Byerworth Lane weaves generally east to Bowgreave to exit onto Garstang Road opposite Garstang Community Academy.

The route under investigation continues through the triangular junction to the entrance to Byerworth Farm to end at point C.

The continuation of the bridleway is also known as Byerworth Lane and is not part of the application route. It runs through to the houses at Bowgreave; the surface consists of compacted stone/hard-core passing through the golf course bounded by hedges. The bridleway is not tarmacked but is wide enough for vehicles to use it.

The total length of the application route is 285 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 and the rest of the route known as Byerworth Lane are not shown. Buildings are shown (but not named) in the proximity of Byerworth Farm.
Investigating Officer's Comments		The application route (or part of it) may have existed in 1786 to provide access to unnamed properties but was not considered by Yates to be a public highway or it may have been 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.

<b>Greenwood's Map of Lancashire</b>	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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Observations		The application route is not shown. A route consistent with the first part of Byerworth Lane (from Garstang Road to Byerworth Bridge) is shown but no part of the application route is shown. The buildings making up Byerworth Farm are not shown.
Investigating Officer's Comments		The application route may not have existed in 1818 or if it did exist it was not considered to be a public vehicular highway or a route of sufficient significance to be included on the map.
<b>Hennet's Map of Lancashire</b>	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.

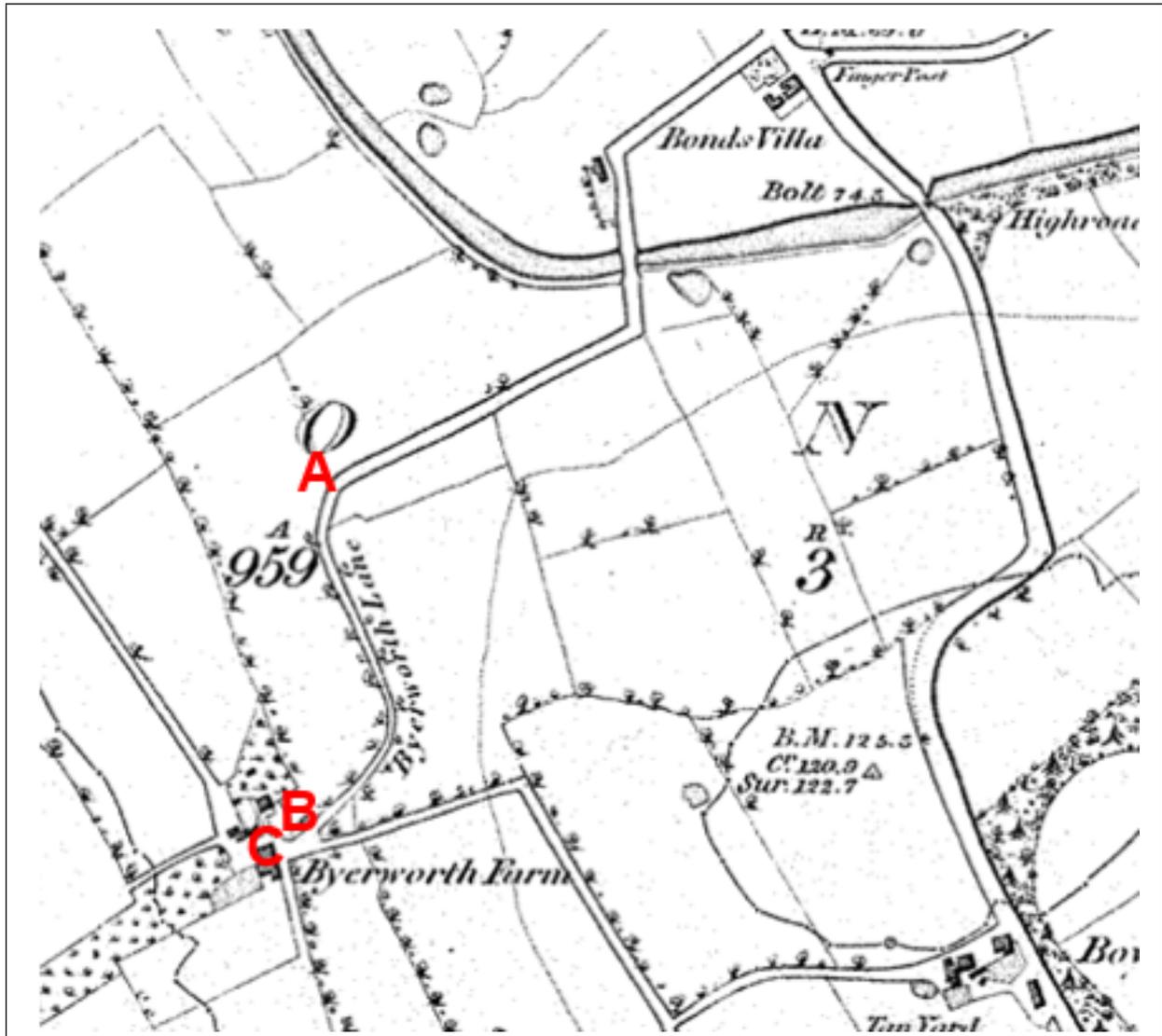


Observations		The application route is not shown and neither is any part of the route known as Byerworth Lane or Byerworth Farm.
Investigating Officer's Comments		The application route may not have existed in 1830 or if it did exist it was not considered to be a public vehicular highway or a route of sufficient significance to be included on the map.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available

		for proposed canals and railways which were never built.
Observations		No railways or canals were built or are known to have been proposed in the area crossed by the application route. Byerworth Lane is crossed by the Lancaster Canal (Byerworth Bridge) but no records relating to the application route were found.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		The Tithe Map for Barnacre-with-Bonds does not cover the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>Inclosure Act Award and Maps</b>		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 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.
<b>6 Inch Ordnance Survey (OS) Map</b>	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847. <sup>1</sup>

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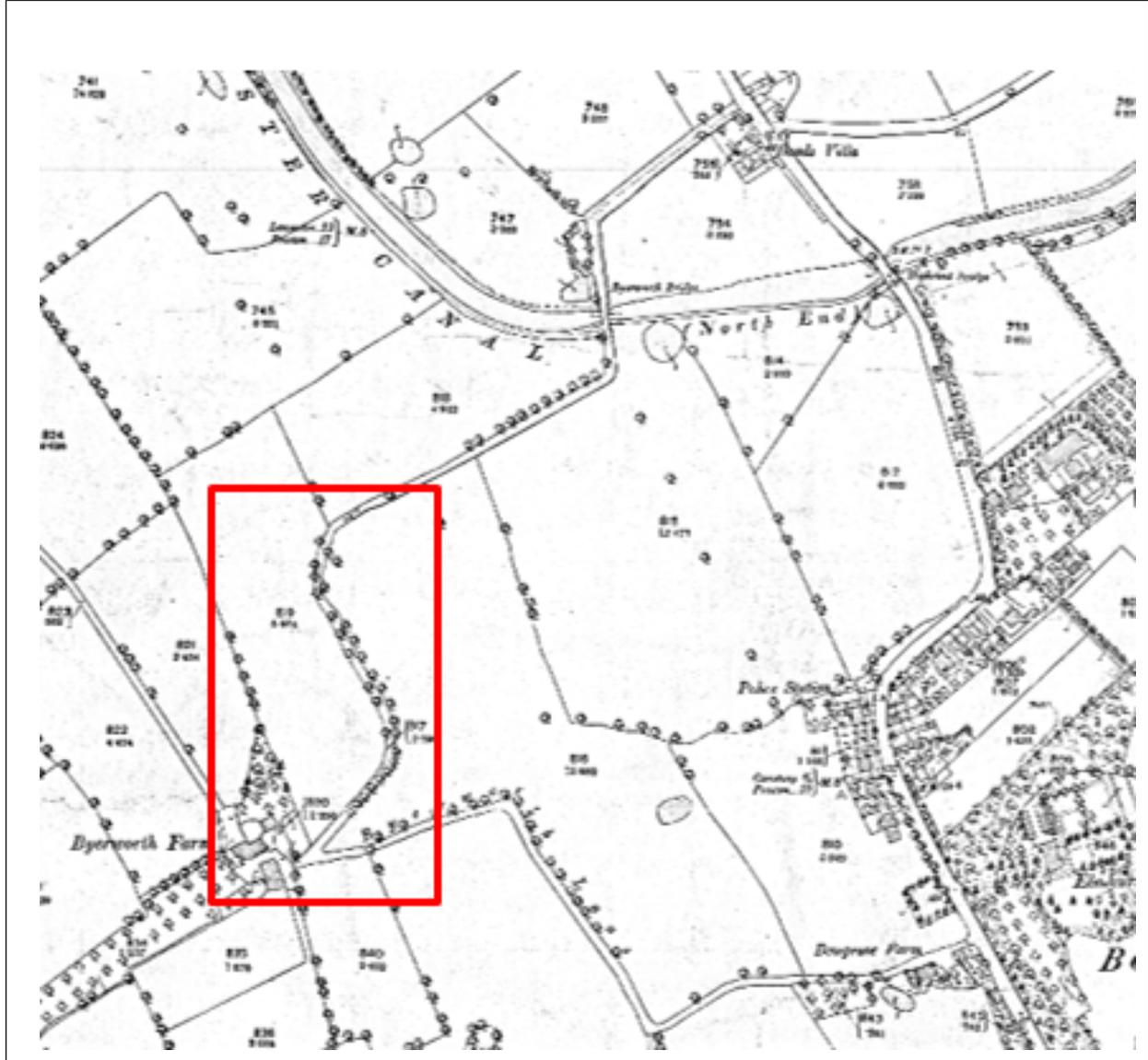
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the

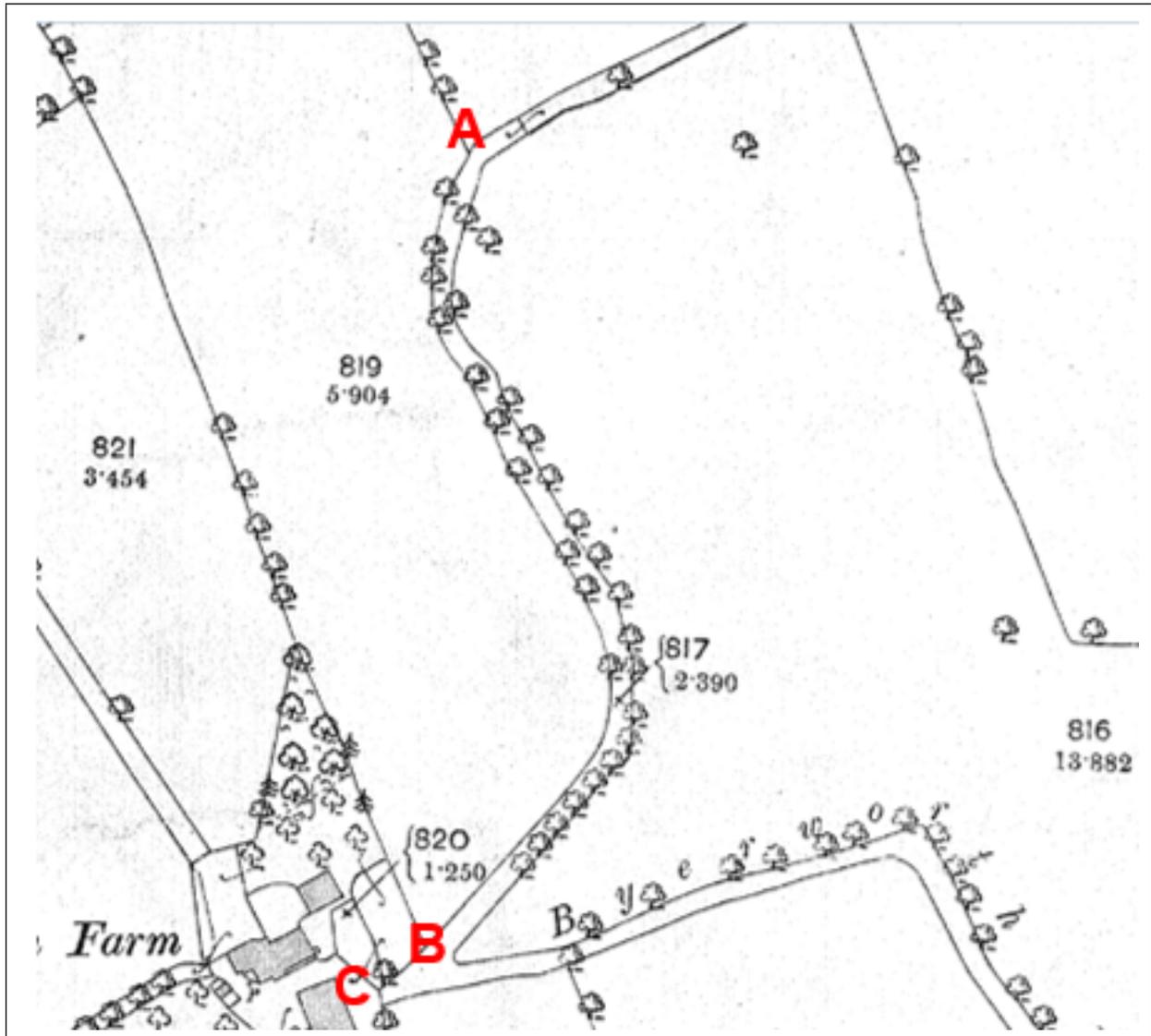


<p>Observations</p>		<p>The application is clearly shown as part of a longer bounded route extending from Garstang Road near Bonds Villa crossing the canal and passing through point A to continue through point B to point C from where there appears to be direct access to Byerworth Farm. From point B a further route extends in a generally easterly direction to the Tan Yard and exits onto Garstang Road at Bowgrave (now known as Bowgreave).</p> <p>Between point A and B the application route is named on the map as Byerworth Lane.</p>
<p>Investigating Officer's Comments</p>		<p>The whole length of the application route is shown in the same manner as the general road network and it is reasonable to conclude that it existed as a substantial route in the 1840s</p>

legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.

		<p>which would have been wide enough to be used by vehicles.</p> <p>The route would have provided access to and from Byerworth Farm and formed part of a pair of routes connecting to Garstang Road. Its appearance on the map is consistent with how other public vehicular highways are shown and the fact that it was named on the map often suggests a route is known and used by the public but is not conclusive of that fact.</p>
<p><b>25 Inch OS Map</b></p>	<p>1893</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1893.</p>





Observations

The application route is shown as part of a pair of routes linking Byerworth Farm with 2 points on Garstang Road. A gate is shown across the route just to the east of point A and the route from Garstang Road, crossing the canal via Byerworth Bridge, to the gate east of point A is shown depicted with a thicker line on one side and there is no OS field number allocated to it. Beyond the gate the route (including the application route) is not shown with the thicker line.

From the gateway, passing through point A and continuing to point C at the entrance to Byerworth Farm and then continuing along the lane generally east to the gated exit onto Garstang Road at Bowgrave Farm the bounded route has a field (plot) number.

Investigating Officer's

The route under investigation existed in 1890

Comments		<p>and appeared to be wide enough for vehicular traffic at that time.</p> <p>Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between the 1880s 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 them at a trot so the fact that the route is shown in this way up to the gate just east of point A is consistent with how it is now recorded as a public vehicular highway up to a point just east of point A but no further.</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 and it is noted that the route from Garstang Road to the gate just east of point A has no such parcel number but that the rest of the route – including the application route is shown with an OS parcel number.</p> <p>Gates are shown to exist across the route just east of point A and at Bowgrave Farm (immediately west of point C) – it is not unusual for there to have been gates across less-used highways for stock control purposes.</p>
<b>Particulars of Sale of Bierworth Farm by public auction</b>	1910	<p>Sale particulars submitted by Director of Garstang Country Hotel and Golf Club.</p> <p>Original copy inspected by the County Council at the Lancashire County Records Office.</p>





Observations

The Sale Particulars relate to the sale of a freehold farm known as Brierworth Farm and also two plots of adjacent freehold farm land. The farm and two additional plots of land were to be sold at public auction at the Kenlis Arms Hotel, adjacent to Garstang and Catterall Railway Station on 14 July 1910.

The particulars describe how Brierworth Farm (Lot 1) was in the occupation of Mr William Howson Dixon under a yearly tenancy and that the previous owner (William Smith) was now deceased. Reference was made to a plan and a private right of way between points annotated between points A and C on the plan but no plan was provided by the Company Director who had highlighted under a section headed 'Special Conditions of Sale' that it was stated that 'The rights of road mentioned in the Particulars shall be for all tenantly purposes except where otherwise provided.'

A search was made for the Sale Particulars in the Lancashire Records Office and a complete copy found.

The particulars contained two maps.

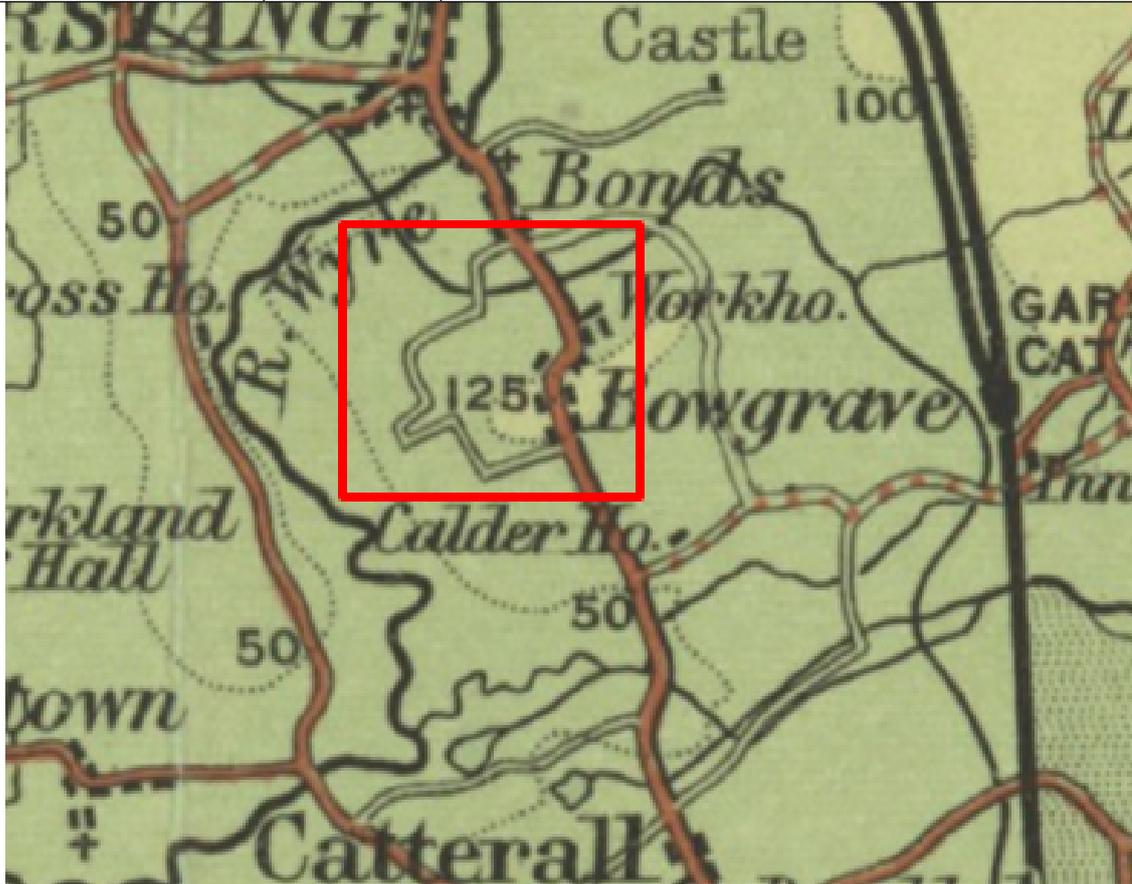
The first map related specifically to Lot 1 – the sale of Brierworth Farm – and shows that the land to be sold did not include the application route or any part of the access roads (Byerworth Lane). The land crossed by the application route was shown on the plan as being in the ownership of the heirs of the late John Bashall Esq. and the plan shows routes leading from the farm labelled 'from Garstang' and 'to Garstang Station'. The route labelled 'from Garstang' is not shown in its entirety but is

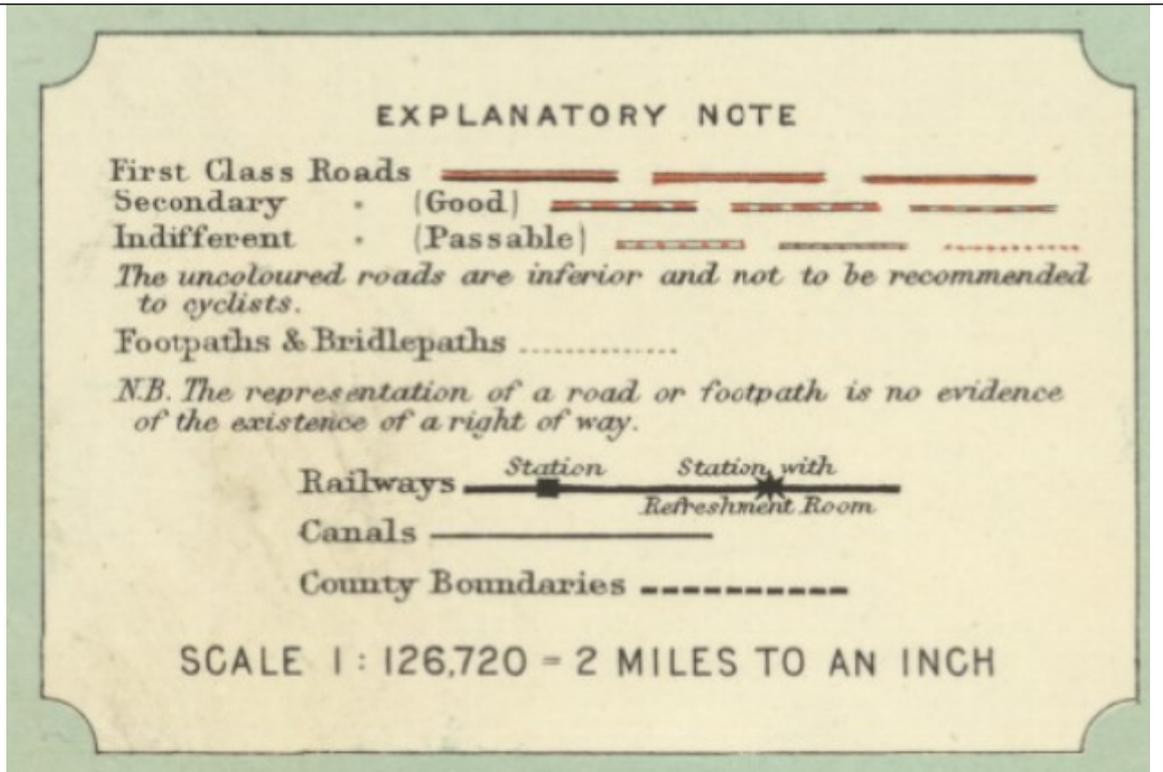
		considered to be that of the application route. Lot 2 and Lot 3 to be sold are shown on a separate plan and it is to those plots that the references to the rights of road in the Special Conditions of Sale relate.
Investigating Officer's Comments		When the property was put up for sale in 1910 it is clear that the land crossed to access it was not in the same ownership. No mention is made to the need for or existence of private access rights to access the farm and the plan showing Lot 1 (Bierworth Farm) appears to show access to/from the farm along routes 'from Garstang' and 'to Garstang Station' implying the existence of public or private vehicular access along the route and to the farm but there is no reference to access rights to cross land in different ownership to access the farm suggesting those rights were public. On the other hand Lots 2 & 3 did have a specific rights of road suggesting access was private not public.
<b>Conveyance dated 20<sup>th</sup> September 1910</b>	1910	A copy of a conveyance and plan submitted by the applicant for the purchase of the property by William Mitchelle of Belle Vue, Lancaster.
Observations		The conveyance plan shows the land purchased at the auction and shows the access to and from the farm in the same way as the auction plan (i.e. labelled 'from Garstang' and 'to Garstang Station'. The conveyance, whilst difficult to read, does not appear to make any reference to access rights to the property along the application route.
Investigating Officer's Comments		It appears that access to the property was probably along both the application route and the other sections of Byerworth Lane and that these routes may have been considered to form part of the public vehicular highway network as no provision is made within the conveyance regarding access to the property.
<b>25 inch OS Map</b>	1912	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1912.



Observations		The application route is shown as part of a pair of routes providing access to (and from) Byerworth Farm. Whilst the application route is not gated the longer route of which it forms part, is gated east of point A and west of point C at Byerworth Farm and also at Bowgreave.
Investigating Officer's Comments		The application route existed and appeared to be capable of use by vehicles and to form part of a pair of routes which could be used as a through route as a longer, narrower alternative to Garstang Road.
<b>Bartholomew half inch Mapping</b>	1902-1906	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.





Sheet 5 – North Lancashire and Isle of Man published 1905

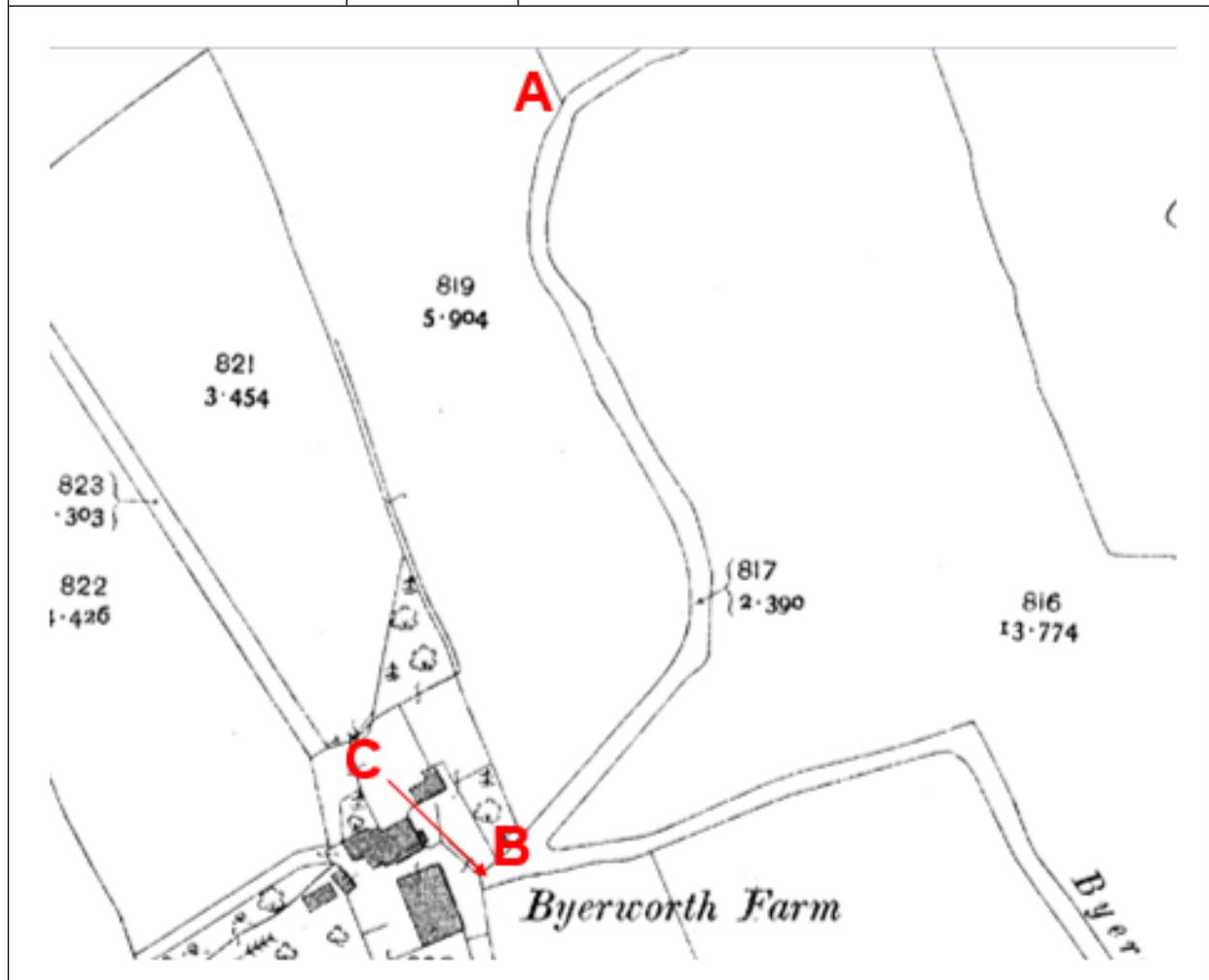
Observations		The application route is shown as part of a longer route on three editions of Bartholomew's maps (1905, 1920s and 1940s). It is shown as an uncoloured road – described in the key as being inferior and not to be recommended to cyclists.
Investigating Officer's Comments		The inclusion of the route on these small scale commercial maps indicates the existence of the route as a substantial physical route capable of being used by vehicles and implies that whilst the route may have been 'inferior' it is likely to have been accessible.
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the</p>

	<p>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>A copy of the District Valuation map was obtained from the National Archives. The whole of the application route is contained</p>
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		<p>within hereditament 71 and no part of it is excluded.</p> <p>The Field Book entry for hereditament 71 makes no reference to the route and no deductions are claimed for public rights of way or user.</p>
Investigating Officer's Comments		<p>The fact that the whole of the application route was included within a numbered plot suggests that it was not considered to be a public vehicular highway at the time of the survey and no deductions are claimed for the existence of public rights of way or user suggesting that the route was either not considered to be a public right of way at the time of the survey or that the landowner chose not to claim a deduction.</p>
<b>25 Inch OS Map</b>	1932	Further edition of 25 inch map (surveyed 1890, revised in 1930 and revised 1932).



Observations		<p>The application route is shown as part of a longer route. Byerworth Lane is no longer gated east of point A but the route exiting onto Garstang Road at Bowgreave Farm is still</p>
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		gated.
Investigating Officer's Comments		The application route existed and appeared wide enough to be used by vehicles.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

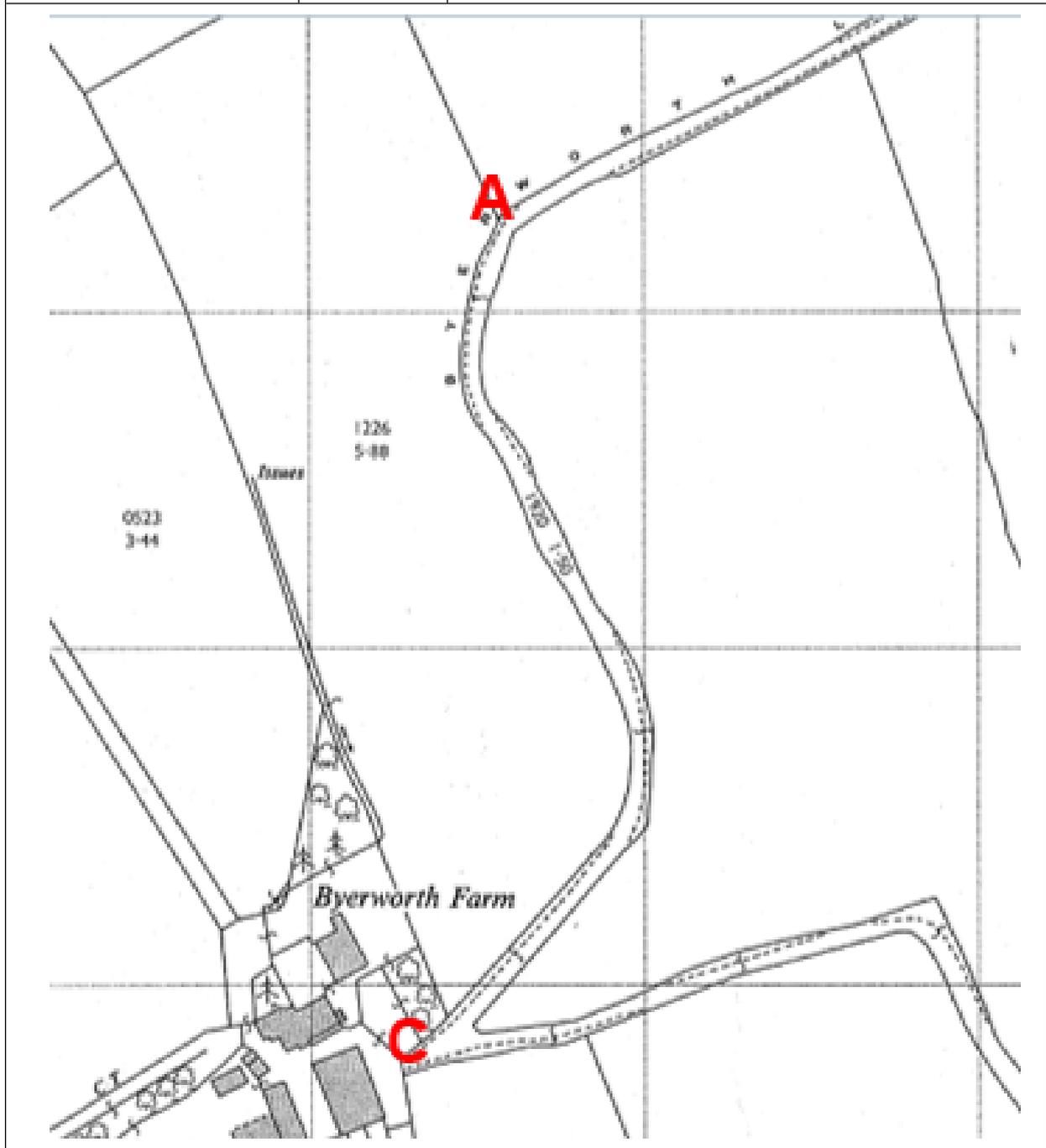


Observations		The application route can be clearly seen forming part of a route providing access to the farm. The route south from the farm (to Bowgreave) is also visible but appears less prominent.
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<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.



		Bowgreave.
Investigating Officer's Comments		The application route existed as part of a pair of routes providing access to the farm and continuing past the farm (i.e. a through route, albeit not a particularly convenient one). It is shown in the same way as other public vehicular routes.
1:2500 OS Map	1964	Further edition of 25 inch map reconstituted from former county series and revised in 1962 and published in 1964 as national grid series.



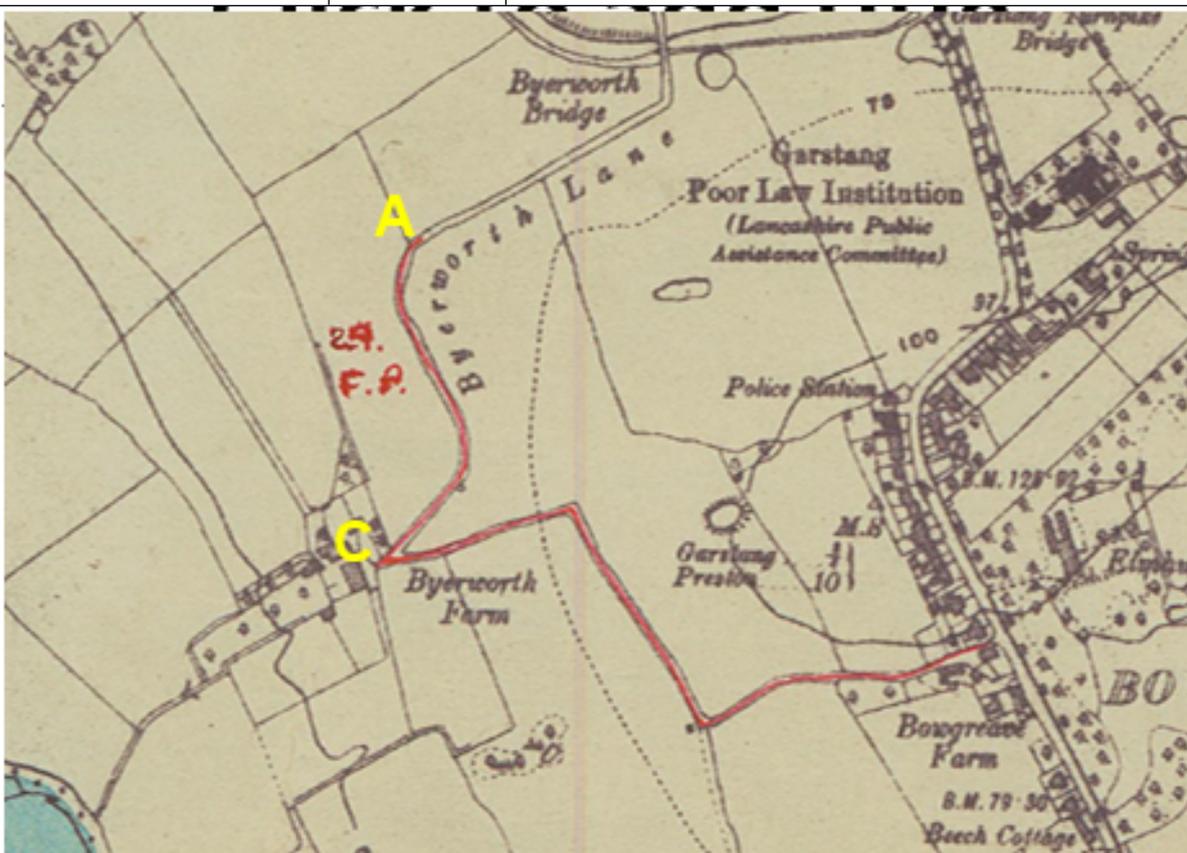
Observations		The application route is shown in the same way
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		as on earlier editions of OS mapping.
Investigating Officer's Comments		The application route appeared to be capable of being used as part of access to the farm but also as a through route passing the farm and continuing to exit onto Garstang Road at Bowgreave in 1962.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The application route can be clearly seen forming part of a route providing access to the farm. The route south from the farm (to Bowgreave) is also visible but appears less prominent.
Investigating Officer's Comments		The application route existed and appears to have formed part of the main vehicular access route to the farm and also part of a further route past the farm through to Bowgreave farm (and Garstang Road) in the 1960s.
<b>Definitive Map Records</b>		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.

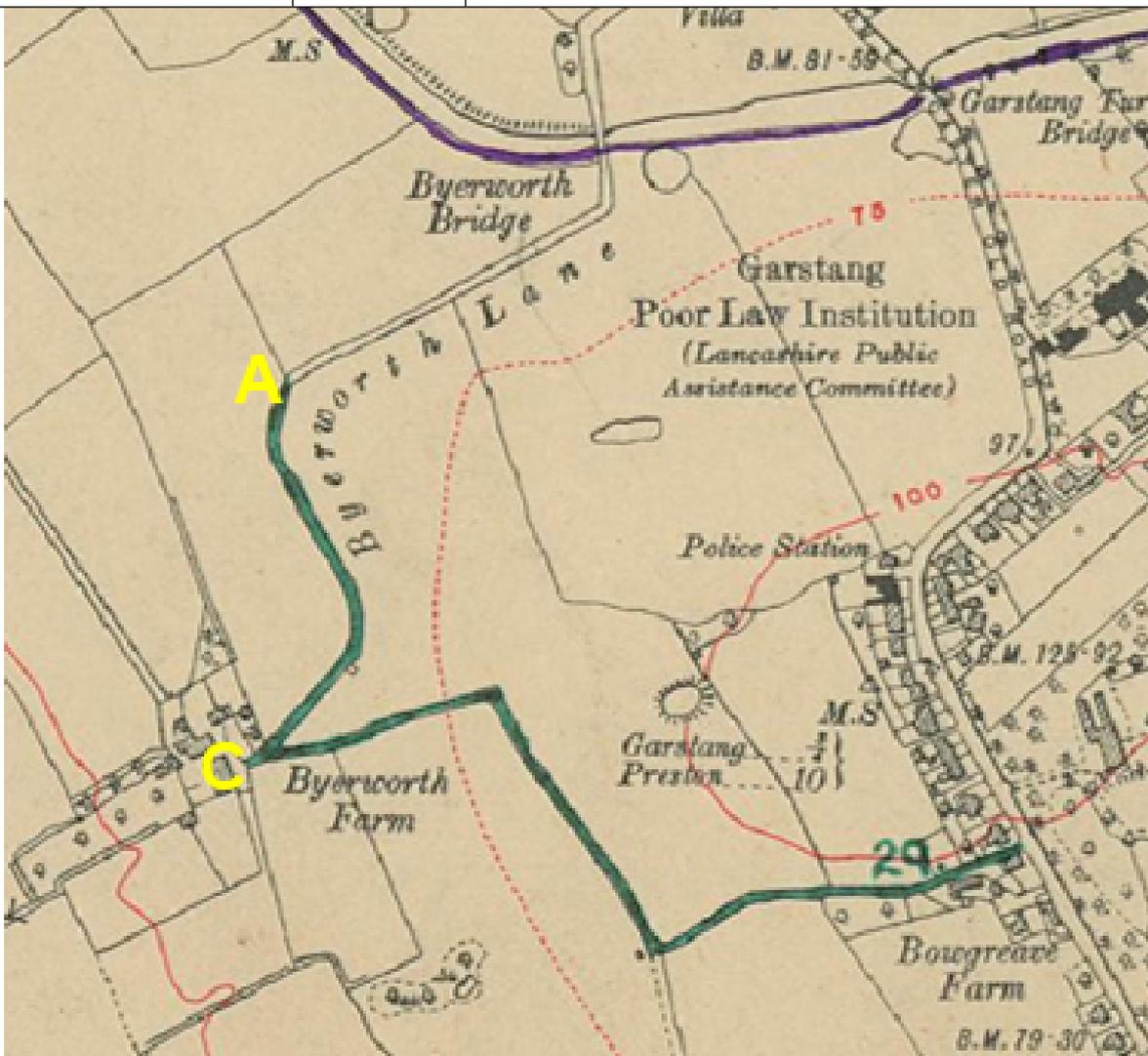
		Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and 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.



DISTRICT	Garstang	PARISH	Barnacre-with-Bonds	No. 29 F.P.
MAP SHEET No.	3	LENGTH	miles	
BRIEF DESCRIPTION (Field F.P. or otherwise)		(to two decimal places)		
C.R.F.				
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).				
Starts at junction of Byerworth Lane with Main Road or Bowgreave. heads along the lane until its termination two fields before Byerworth canal bridge. Surface is roughly metalled Good condition.				
SURVEYED BY :-		Name	H. Grayling.	
		Address	Calder Mount. Garstang.	
Date				
90000/F39/4/50				

<p><b>Observations</b></p>	<p>The application route is shown as part of footpath 29 on the parish survey map. The route is shown to start at point A and then to continue to point C and then along the full length of the route from Byerworth Farm to Garstang Road via Bowgreave.</p> <p>The parish survey card describes the route as a 'CRF' which is defined in the Ramblers Association, Commons, Open Spaces and Footpaths Preservation Society guidance on completing the survey (published 1950) as a highway which the public are entitled to use with vehicles but which, in practice, are mainly used by them as footpaths (CRF) or bridleways (CRB). The surface of the route was noted as being roughly metalled.</p>
<p><b>Draft Map</b></p>	<p>The parish survey map and cards for Barnacre-with-Bonds 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" (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject</p>

them on the evidence presented.

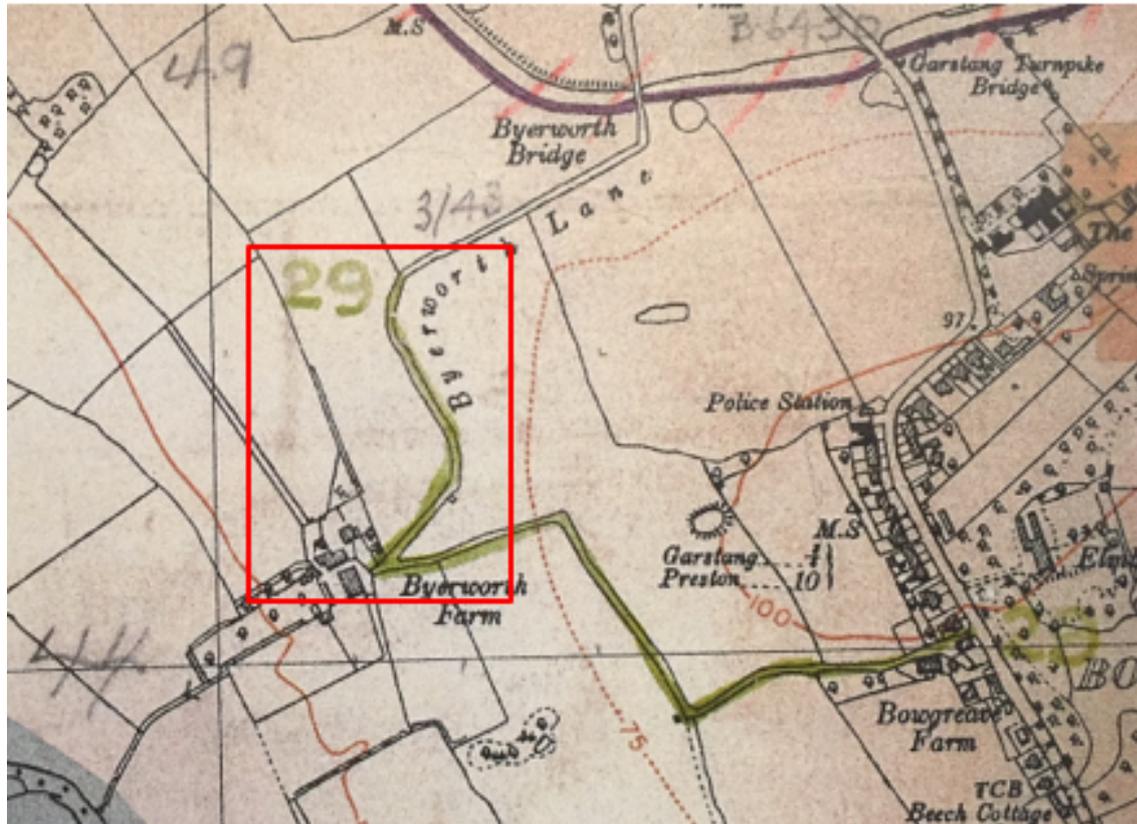


Observations

The application route is shown as part of Bridleway 29 and described in the Draft Statement as a bridleway 'Near Bowgreave Farm to two fields before Byerworth Canal Bridge'.  
No record could be found regarding the change of the public status to be recorded (from CRF to bridleway).

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 application route was shown as part of Bridleway 29 and there were no objections to how the route was shown. The road number 3/43 has been written in pencil on Byerworth Lane north east of point A although it is not known when this was written or by whom.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was shown as part of Bridleway 29.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Observations		The application route is shown as part of Bridleway 29 between point A and Byerworth Farm on the Revised Definitive Map and Statement of Public Rights of Way (First Review). It is not clear from the map, due to the quality and the notation used, whether the short section from near point B to point C is included or not.
Investigating Officer's Comments		The Parish survey card indicates that the route was considered to be one with public vehicular rights but that it was used primarily by the public on foot. This was changed to recording the route as a bridleway and remained unaltered through to 1975 when the Definitive Map (First Review) was published. Inspection of the previous (First) Definitive Map suggests that the correct interpretation of the ambiguity on this map is that the bridleway fills the triangle up to the farm gate.
<b>Highway Adoption Records including maps derived from the '1929 Handover</b>	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were

## Maps'

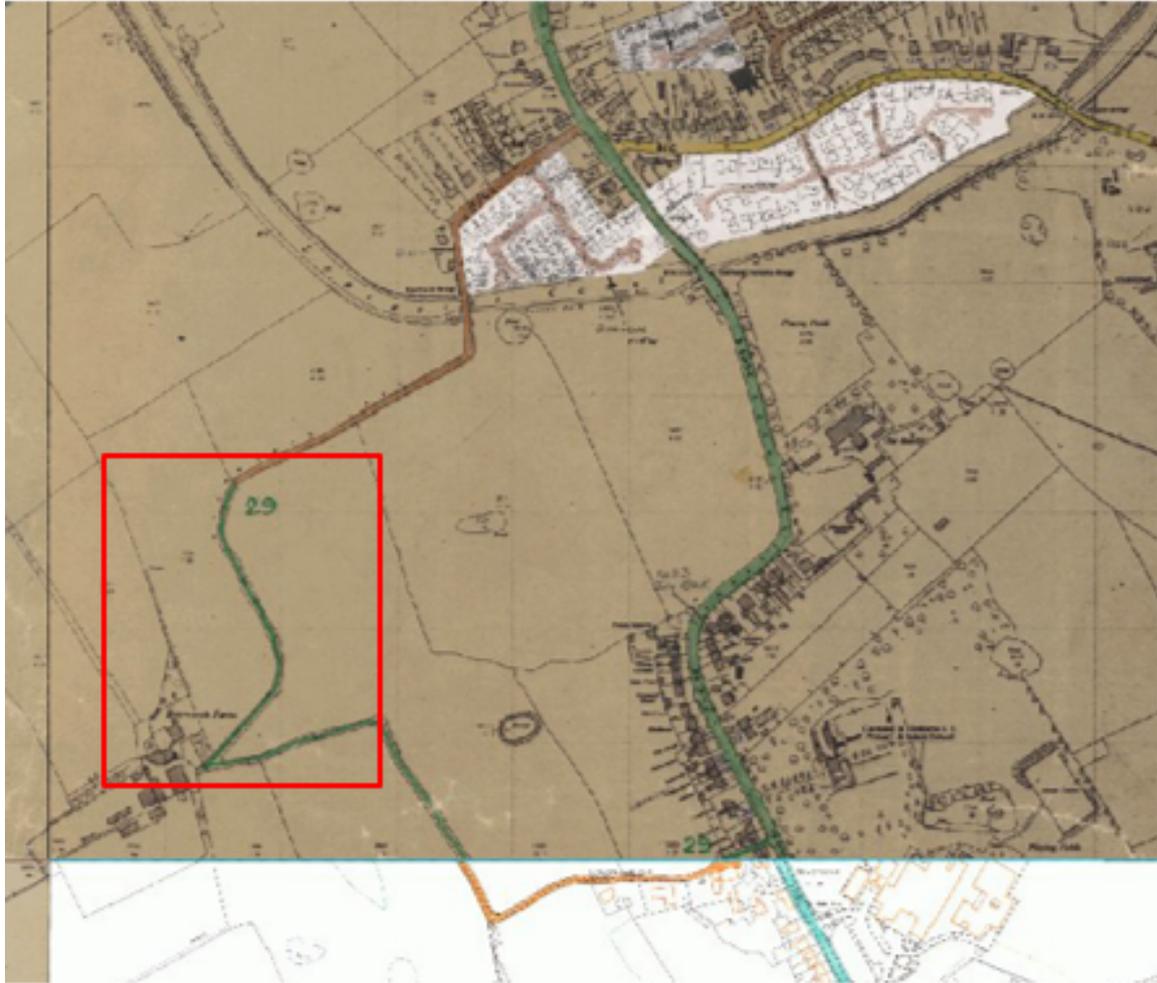
drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.

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.

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.



1929 'Road Transfer Map'



LCC Adoption records

<p>Observations</p>		<p>The route is not recorded on the List of Streets and is not shown as a publicly maintained highway on records retained by the County Council.</p> <p>It is not known why the route recorded as 3/43 – 'Byerworth Lane North' was only shown to extend as far as point A although that point corresponds approximately to the point at which a gate was shown to exist across the route on the early editions of the OS maps.</p>
<p>Investigating Officer's Comments</p>		<p>The route was not considered to be part of the vehicular highway network</p>
<p><b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b></p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or</p>

		<p>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 Section 31(6) deposits have been lodged with the County Council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

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**

The owner of the application route is Carrick Sports Limited which owns the golf club either side of the lane.

The Title for the lane records a private vehicular right, gained by long user, for a property known as Pen-y-Llon (named in the Land Registry property register as 'Peny-L-Llon') over a section of Byerworth Lane South. This right could not have been acquired in this way if public vehicular rights existed which implies that the application route could not have been part of a public vehicular through route.

### **The Natural Environment and Rural Communities Act 2006**

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts,

etc.. If Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The application route was, at the time of that act recorded as a public bridleway and the county council is not aware of evidence which shows it was used by the public mainly in MPVs in the 5 years up to the commencement of S67 of the Natural Environment and Rural Communities Act 2006, or indeed at any other time. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist, the appropriate status for the application route to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights with non-mechanically propelled vehicles, horses or on foot.

## **Summary**

The application route forms part of a much longer route which would have provided access to and from Byerworth Farm via Byerworth Bridge and also formed part of a pair of routes connecting the farm to Garstang Road.

It may have existed in the late 1700s to provide access to the farm, and certainly existed from the mid 1800s as a substantial route capable of being used by vehicles at that time.

Whilst it appears from the map evidence that it could be used as a through route geographically it would make a much longer, twistier and narrower alternative to Garstang Road and most probably had an inferior surface so it would take longer by any means of transport. The sharp V at point B also mitigates against use by the public as a vehicular through route.

Acknowledging that it is a named route and that its appearance on the Ordnance Survey maps is consistent with how other public vehicular highways are shown it is not shown on early commercial maps, crosses land in private ownership and was not acknowledged as a public vehicular highway in the District Valuation carried out under the Finance Act 1910.

Whilst the evidence is not unequivocal, and taking into consideration the full length of the route from point A through point B and point C and then generally east to exit onto Garstang Road at Bowgreave, it appears that there is insufficient evidence to infer historical public vehicular rights.

## **Head of Service – Legal and Democratic Services Observations**

### Information from the Applicant

In support of the application the applicants submitted that they first purchased Byerworth Farm in February 2004, and since then Byerworth Lane has been used freely with no interruptions.

An undated Statutory Declaration made by a director of the company owning the farm confirms that, since purchase, the route has been used for access to and egress from the farm, on foot and with motor vehicles. He is not aware of any objection being raised to the use of the route and, to the best of his knowledge there has been no dispute with, no permission required from, or payment made to, any third party over the use of the route.

On purchase of the farm, the applicants submit that they had no reason to doubt or investigate further the information obtained from the Official Search of the property from the Wyre Borough Council which – under the heading 'Roads – Maintainable at Public Expense' – states that 'Byerworth Lane North & South only are maintained by Lancashire County Council'.

*(The response to the Official Search goes on to say 'these replies do not include Definitive Rights of way information that would otherwise be revealed in optional question 5, part 2).*

The applicants submit that they were only informed in March 2005, by a solicitor for a local landowner 'that part of Byerworth Lane is only adopted as a bridleway and not as a highway.'

The applicant submits that archives indicate that Byerworth Farm was in existence prior to 1790 and, as Byerworth Lane is the only access route for the farm, it must always have been access by all people, animals and vehicles of all types.

It is submitted that the route is shown on the Ordnance Survey First Edition 6" Map of 1847. Further, a plan attached to a conveyance dated 20<sup>th</sup> September, 1910, clearly shows Byerworth Farm and the entrance to it being Byerworth Lane – with the route north from the farm marked 'From Garstang' and the route to the south marked 'To Garstang Station'.

The applicants have submitted a further Statutory Declaration dated 22 December 2003 from the wife of a previous owner of the farm, who lived at the farm with her husband from 1953 until July 2003. It is submitted that the farm was bought as a going concern and it was, therefore, in use prior to that date. The witness submits that during her time at the farm it was a working farm and throughout the whole of the time of occupation the road was used for the purpose of access to and egress from the farm, including the farmhouse, farm buildings and land farmed therewith. The road was used on foot, with motor vehicles and by agricultural vehicles. Her husband had an informal arrangement with the local angling association whereby they could fish the river which bordered the farm and members of the fishing association, and friends and visitors to the farm, have also used the road for the purpose of access to the farm or the river adjoining it.

To her knowledge, cars and pedestrians have frequently used the route for purposes other than gaining access to the farm, and she is not aware of any objection being raised to the user by other pedestrians and drivers who have in the past used the road.

During the whole of her husband's lifetime there was not, to her knowledge, any objection raised by any person to the user of the road by herself, her husband, their employees, guests, visitors and others using the farm.

The applicants submit that the road is of good structure and has several passing places suitable for both vehicles to pass each other and also for any vehicles to pull over for pedestrians and horses. There are no other properties along this short section of Byerworth Lane North, the land situated on both sides being in the ownership of Garstang Country Hotel and Golf Club.

#### Information from Others

A letter was received in 2005 from the owner of Sturzaker House Farm which is located approximately 1.5km south east of the application route. Mr Richardson explained that he had lived and farmed in the local community for the past 80 years and that from his experience Byerworth Lane was an unmade track, with Byerworth Lane only 'made up' from the north end to the gate posts in recent times. He stated that Byerworth Lane was only ever used as a farm access to Byerworth Farm.

#### Information from the Landowner

The Director of Garstang Country Hotel and Golf Club (Carrick Sports Limited) commented that the lane has been used by Byerworth Farm for access under an agricultural right of way as referred to in a 1910 Sales document and that there has never been a public right of way other than as a bridleway.

He commented that the farm's previous occupiers (Mr and Mrs Parkinson) had a metal road made up some years ago and maintained the lane and that to the best of their knowledge, the County Highways, having adopted the lane as a bridleway, had never done any maintenance work on the lane.

He stated that the Hotel and Golf course had carried out maintenance of hedges, grass verges and dykes, normally annually, with the road being closed to facilitate carrying out the operations.

His other comments involved:

- Concern as owners of the land on both sides of the bridleway, they would be responsible for the upkeep to bridleway standard;
- A change could lead to abuse by some members of the public by using Byerworth Lane as a through route with consequent damage to the environment and danger to public safety;
- As the route has been crossed, close to Byerworth Farm, by golfers there is concern about their safety with any increase in vehicular use; and
- The route is currently shown as a cul-de-sac a discouragement to any 'occasional users' and that any change of status may nullify this effect.

## **Assessment of the Evidence**

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

#### In Support of Making an Order

The application route is shown on a number of maps which were produced from 1847, the first being the 6" Ordnance Survey map where the route was shown in the same manner as and contiguous with other public vehicular highways, the application route was also named on the map.

The route is also shown on the 1893, 1912 and 1955 Ordnance Survey maps.

On all of those maps the route is shown in the same way as public vehicular routes are shown.

Bartholomew's map of 1905 and subsequent versions, shows the route and it may have been accessible to vehicles even though it is shown as 'inferior and not to be recommended to cyclists'.

Particulars of Sale and a conveyance of the farm in 1910 shows the route and does not as part of the conveyance reserve specific rights to use it with vehicles, this may indicate the application route was considered to have public vehicular rights.

Two statutory declarations have been submitted which state that those making the declarations have known vehicles using the route, have used the route themselves without having any special private rights to do so and therefore believe the route to be public highway with vehicular rights but their use is also consistent with private access rights.

#### Against Making an Order

The application route is not shown on early commercial maps.

A deduction was not made for the existence of the route under the Finance Act 1910 District Valuation suggesting either that it was a route that had private rights only or that the landowner chose not to admit public rights.

The Parish Survey Card in the early 1950s recorded a Cart Road Footpath, indicating an entitlement to use the route with vehicles but that was a non-statutory designation and in practice it was often used for a public footpath on a private vehicular way and that is supported by it being recorded on the accompanying Parish Survey map as footpath. No objection was made to that status, nor, when the route was later shown on the definitive map and statement as a bridleway.

From 1929 to the present day the highway adoption records do not show the application route on the list of streets which is where most vehicular roads are recorded. The road U11096 is consistently shown stopping at the gate (point A on the plan).

A letter from local resident stating that for 80 years he has only known the route being used as a farm access to Byerworth Farm.

A letter from an adjacent landowner saying the land has only ever been used for agricultural access to the farm.

The statutory declarations submitted to support the application are consistent with private vehicular access as much as with public carriageway.

The topography of the road makes it very unlikely to be used as a through route as it is longer, narrower and twistier than the main road and has a sharp vee corner by the farm entrance that is most unlike most thoroughfares. There is no other property on Byerworth Lane, other than the farm, which is accessed from it although it is possible to access the house called Pen-y-Llon (near the south east end of Byerworth Lane South) but that property enjoys a private vehicular right over the relevant section of the lane suggesting no public vehicular rights as a through route.

## **Conclusion**

The historical mapping evidence shows the application route has existed and probably been capable of vehicular use since at least 1840s but this does not indicate whether any such use was public or private.

There is no specific evidence that access to the farm was relying on private vehicular rights and such access is consistent with either private or public rights.

The designation of Byerworth Lane as part unclassified road and part public path has been consistent with the gate (near point A) being treated as 'the farm gate' to which the public vehicular road led.

There is therefore insufficient evidence that the application route has public carriageway rights which, as this would be an upgrade from bridleway, would need to be shown to subsist on the balance of probabilities.

Should Committee decide that the evidence does show public carriageway rights it would be necessary to consider the effects of the Natural Environment and Rural Communities Act 2006 which would be to have extinguished public rights with mechanically propelled vehicles so a recording as restricted byway would be appropriate.

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-424		Claire Blundell, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A