

Regulatory Committee

Meeting to be held on 26th June 2019

Electoral Division affected: Rossendale West

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway at Commerce Street, Haslingden
File No. 804-604
(Annex 'A' refers)

Contact for further information:

Joanne Lawson, Paralegal Officer, County Secretary and Solicitors Group,
joanne.lawson@lancashire.gov.uk

Jayne Elliott, 01772 537663, Definitive Map Officer, Planning & Environment Group,
jayne.elliott@lancashire.gov.uk

Executive Summary

Addition to the Definitive Map and Statement of Bridleway from the western end of Commerce Street (U7305) past Vine Grove Works and Vine Mill to the boundary of the A56, in accordance with File No. 804-604.

Recommendation

- (i) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)[(i) of the Wildlife and Countryside Act 1981 for the addition of a bridleway from the western end of Commerce Street (U7305) to the boundary of the A56, Haslingden on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between A-B.
- (ii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An investigation has been carried out into the status of the route which extends from the western end of Commerce Street (U7305) to the boundary of the A56, Haslingden and shown between points A-B on the Committee plan.

The route has no recorded public status and the investigation has been carried out in relation to the East Lancashire Cycleway project being implemented by the county council to determine whether the route – which forms part of the proposed cycleway - should be recorded on the Definitive Map and Statement of Public Rights of Way.

There is no requirement for an application to be made for a definitive map modification order, once the county council has evidence that the Definitive Map and Statement requires modification it has a duty to examine the evidence and make a decision accordingly.

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

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

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

An order for adding a way to 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 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. 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 route to be added differs in length or location from that which was originally considered.

Consultations

Rossendale Borough Council

No Comments Received.

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	7847 2370	Unmarked junction with the eastern end of Commerce Street (U7305) adjacent to Vine Grove Works
B	7836 2366	Junction with tarmac path on boundary of A56.

Description of Route

A site inspection was carried out in January 2019.

The application route commences at the south west end of Commerce Street (U7305) adjacent to Vine Grove Works. From point A, the route leaves the tarmac surface and continues along a cobbled surface track bounded by the remains of a stone wall on the north side and industrial units and open areas used for car parking. The route continues along the cobbled surface (patched with tarmac in places) for approximately 80 metres and then across a grassed over area immediately adjacent to the remains of the stone wall, for a further 35 metres to the remains of a wooden pedestrian gateway where the route meets the tarmac path adjacent to the A56 Trunk Road at point B. Immediately prior to the gateway at point B is a small tarmacked area at the base of a set of steps ascending the banking on the north side of the route to connect to Commerce Street.

The total length of the route is 115 metres.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

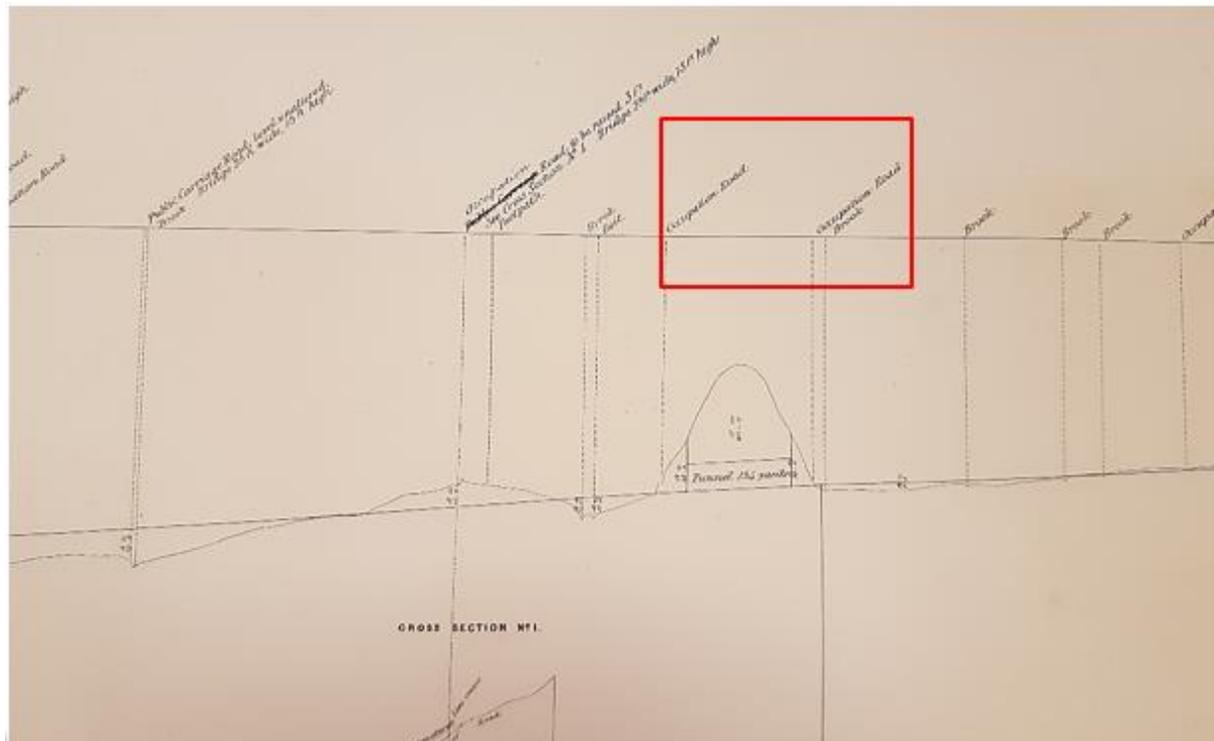
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced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



Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood is generally acknowledged to have shown private as well as public roads on his map and the two were not differentiated within the key panel.



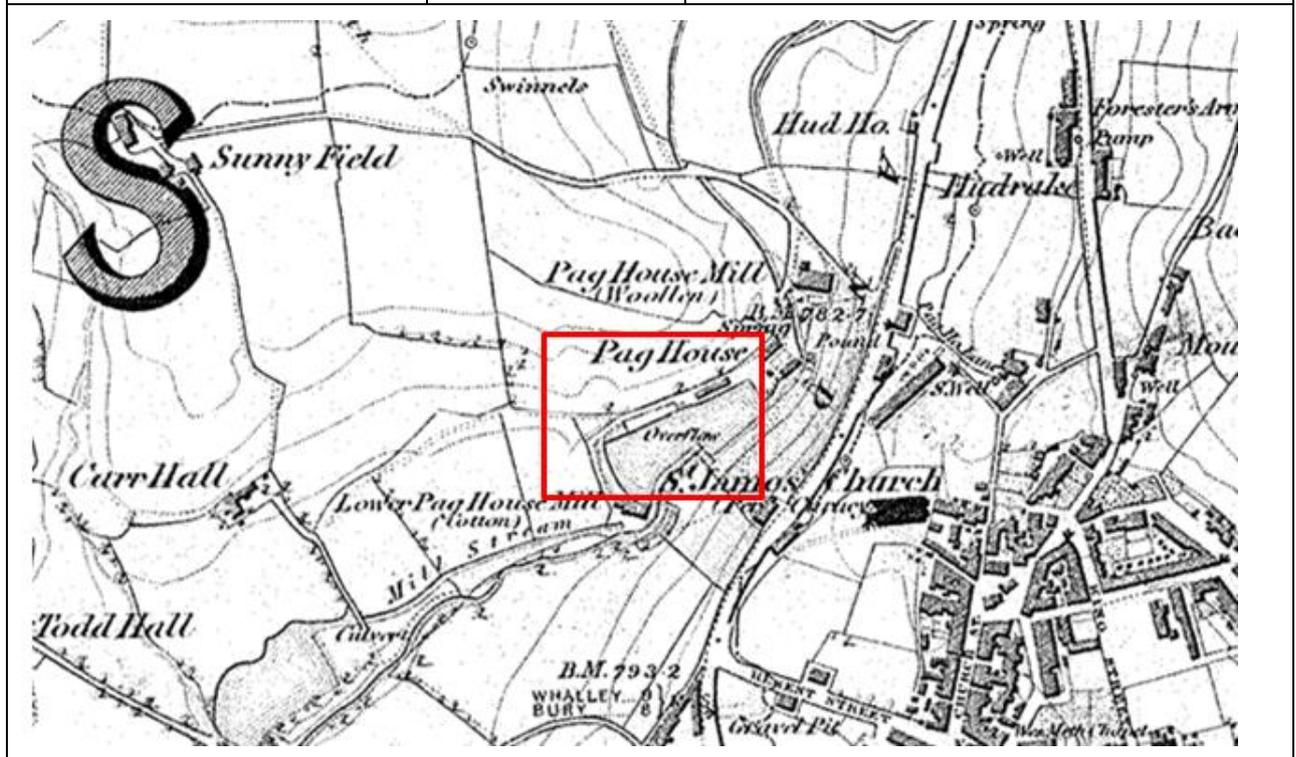
Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been



<p>Observations</p>		<p>The route under investigation was affected by the construction of the London & York Railway Clifton, Accrington & Colne Line.</p>
---------------------	--	--

		<p>The East Lancashire Railways Act 1845 extended the Manchester, Bury and Rossendale Railway to Blackburn, Burnley, Accrington and Colne.</p> <p>The plan deposited in the Lancashire Records Office and dated 1848 (CRO ref: DDX 3096/acc 11866/box 2) shows the proposed line of the railway and a route consistent with the route under investigation passing a number of buildings and following the line of the reservoir. The route is not named but forms part of a longer route and is affected by the proposed railway which would effectively cut right through it.</p> <p>An extract of the deviation plan indicates that the route of the railway would cross an 'Occupation Road' prior to a tunnel to be constructed and this 'occupation road' is consistent with the location of the route shown on the plan which would form part of the route under investigation.</p> <p>There is no key to the plan indicating what was meant by 'occupation road' or whether it was considered to be public or private.</p> <p>No further railway plans or information relating to the route under investigation was found.</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1848 as part of a longer route described as an 'occupation road' on the railway plan.</p>
Tithe Map and Tithe Award or Apportionment		<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</p>

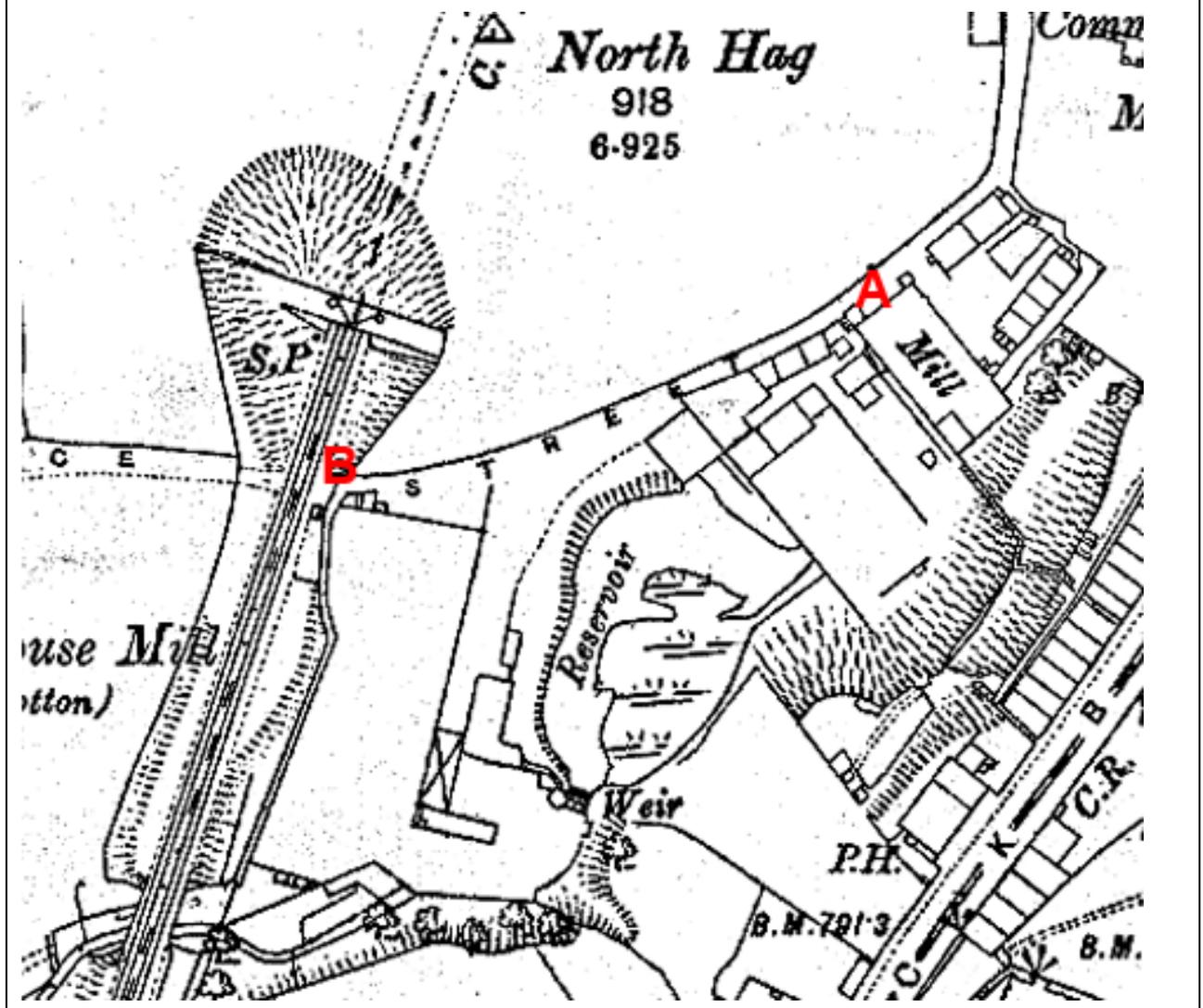
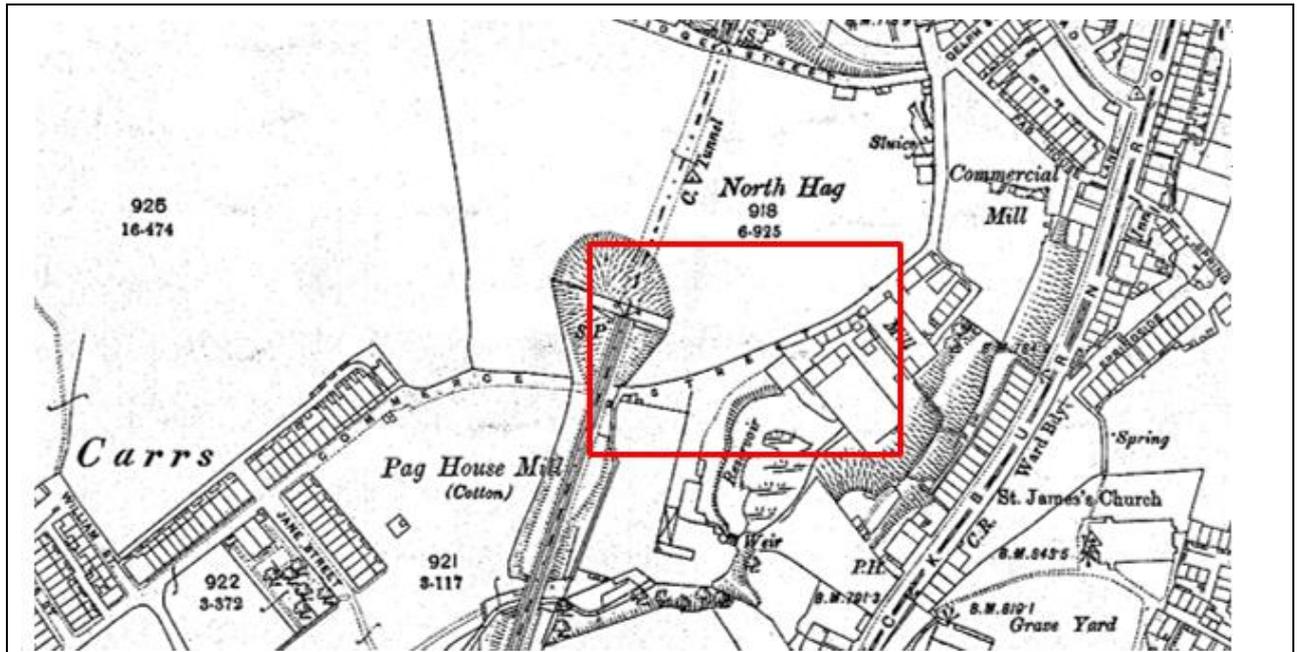
		ways may be inferred.
Observations		There is no Tithe Map in the County Records Office for the area under investigation.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Award was found for the area under investigation.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map Sheet 71	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1849. ¹



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



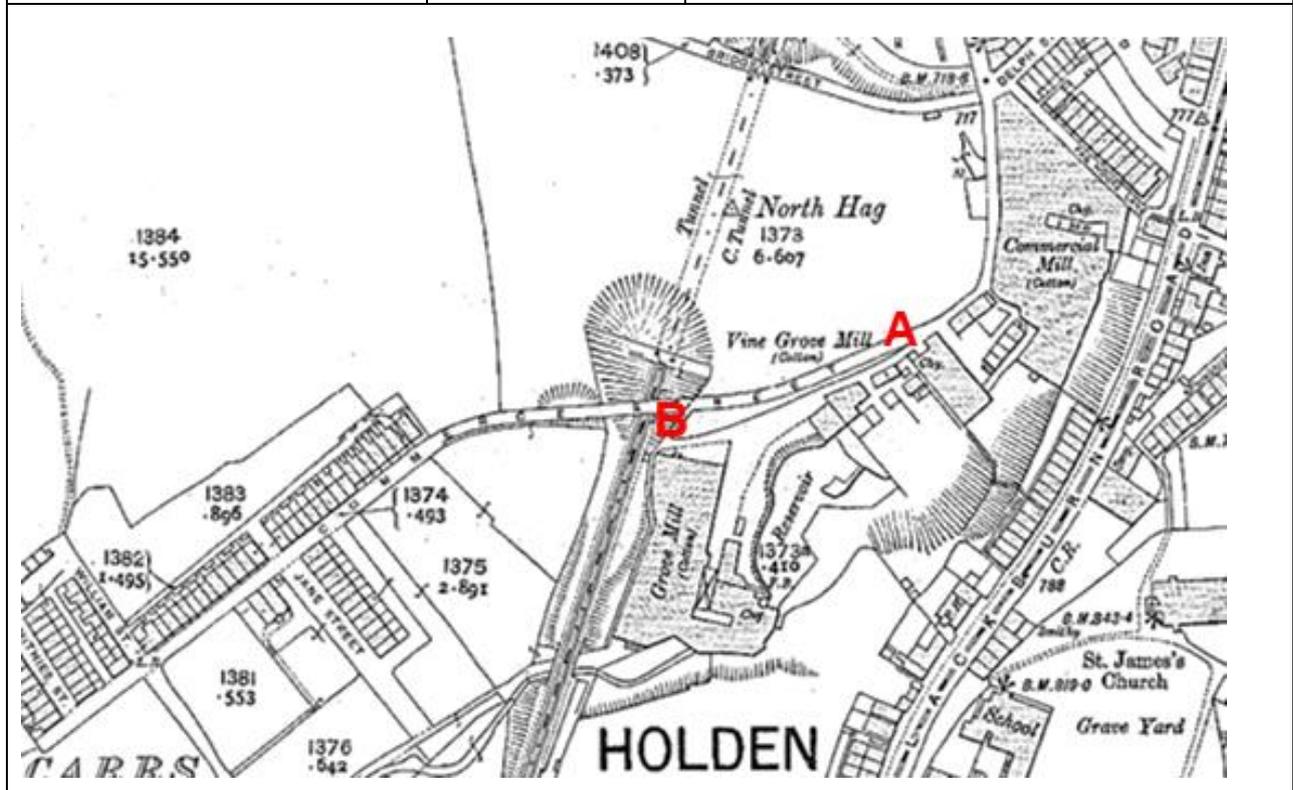
Observations		The first edition Ordnance Survey map was surveyed prior to the construction of the railway and shows the route under investigation as part of a longer route (as was shown on the Railway plan dated 1848 and detailed above). The route under investigation passes the buildings marked as Pag House and continues roughly south west to the north of the reservoir to continue as a pecked/continuous pair of lines and then double pecked line (indicating the existence of a half-enclosed then unenclosed track) towards Carr Hall.
Investigating Officer's Comments		The route under investigation existed in 1844-46 as part of a longer route which appeared capable of being used at least on foot and horseback.
25 Inch OS Map Sheet 71/12	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-02 and published in 1893.

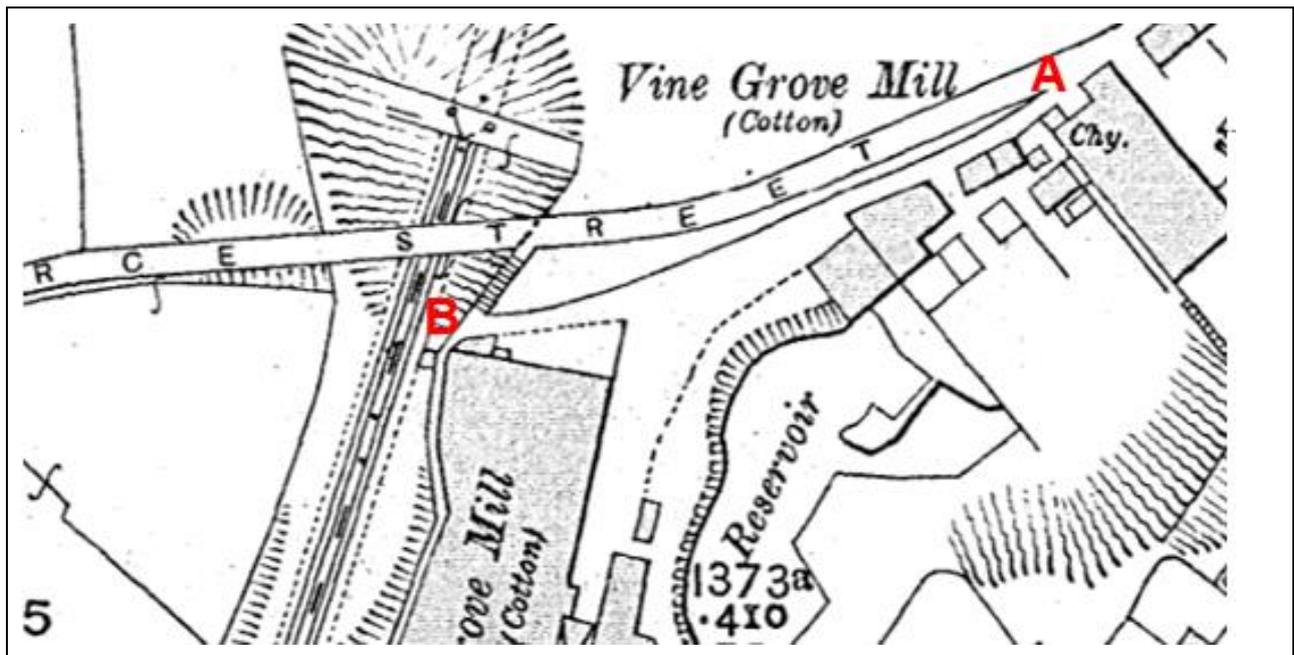


Observations

The map clearly shows the route under investigation as part of a route crossing

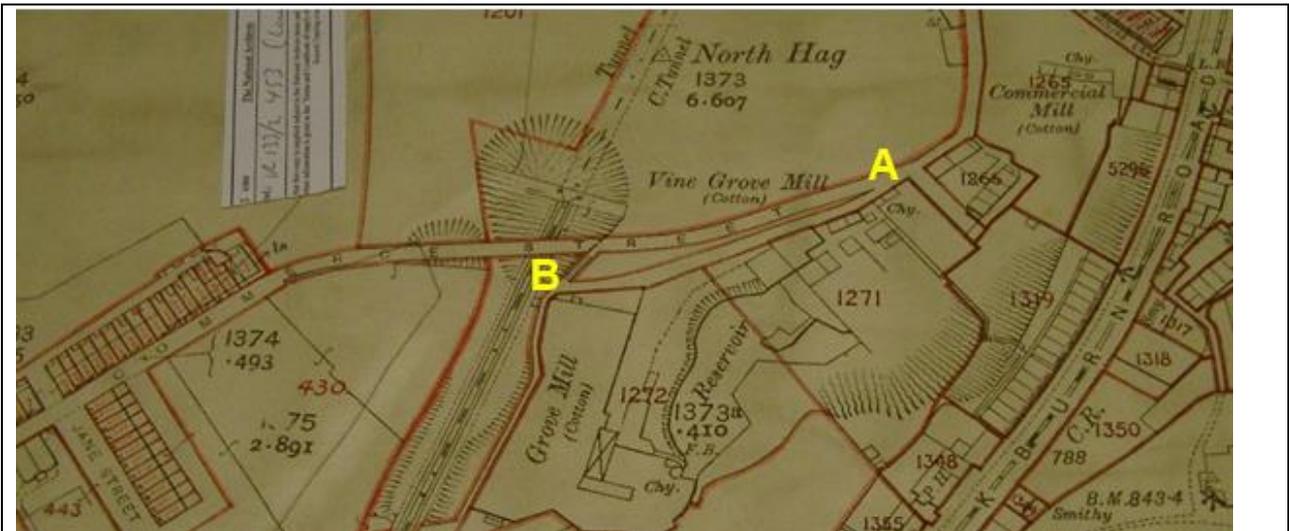
		<p>the railway line to access an area of housing and which is referred to on the map as Commerce Street. From point B – immediately east of the railway crossing – a narrow enclosed path is shown from an open junction with the route under investigation, running south adjacent to the railway. Solid lines are shown across either side of the railway crossing west of point B which could indicate the existence of gates as Commerce Street is shown to lead to/from the railway on either side.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation is shown as a significant named route providing access between an area of housing at Carrs (west of the railway) and to the mills, further housing and to Haslingden to the east of the railway.</p> <p>The route is shown consistently with how public vehicular routes are shown on the map.</p>
<p>25 inch OS Map</p>	<p>1911</p>	<p>Further edition of the 25 inch map surveyed in 1890-02, revised in 1909 and published in 1911.</p>



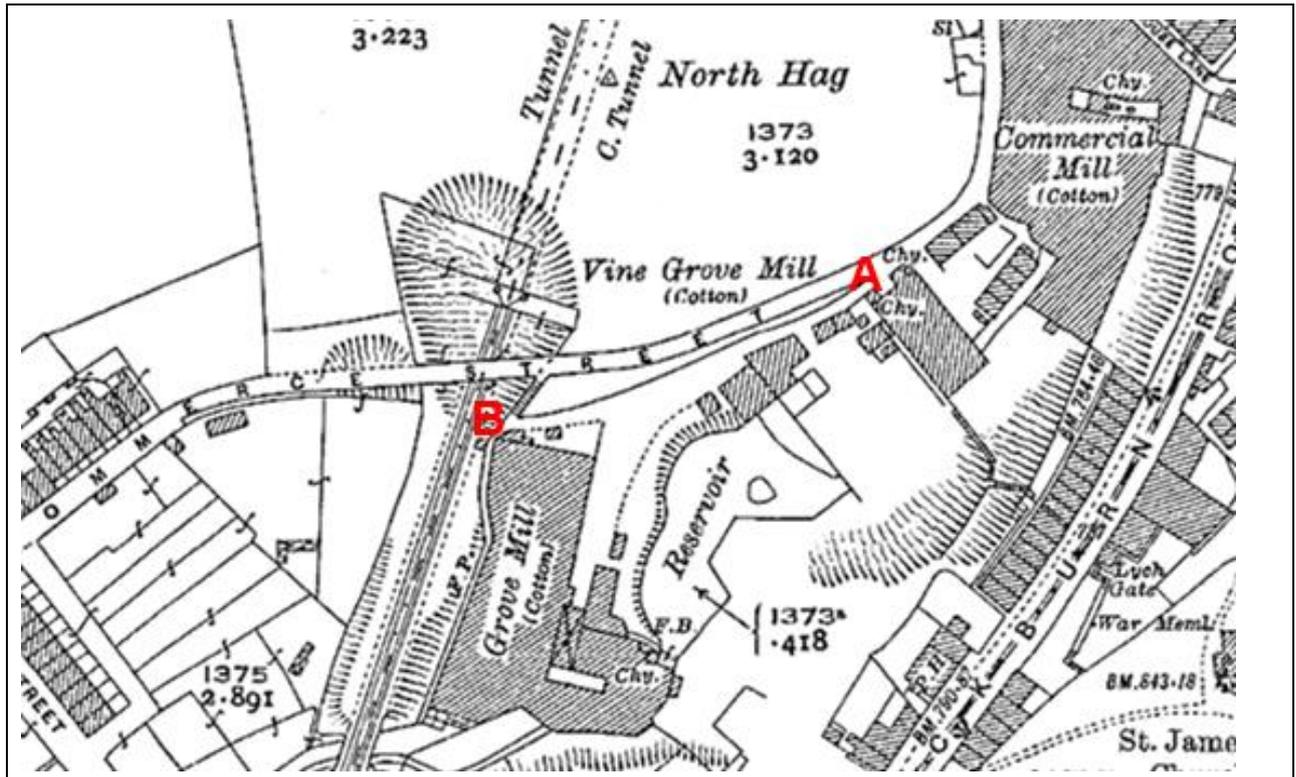


Observations		<p>The route under investigation is shown but no longer continues west of point B across the railway. Instead the route of Commerce Street has been altered from point A to a new alignment north of the original road via a bridge north of point B.</p> <p>Steps have been constructed from point B adjacent to the railway leading onto the newly aligned part of commerce Street. The enclosed path south from an open junction at point B is also shown.</p>
Investigating Officer's Comments		<p>Commerce Street has been re-aligned at some point since the twenty years since the last 25 inch OS map was surveyed and published.</p> <p>The route under investigation still appeared to be accessible along the full length but did not form part of a longer route to the west of the railway. Pedestrian and possible equestrian access may still have been available southwards from point B although it does not appear wide enough for vehicles.</p>
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction</p>

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



Observations		The Finance Act Map shows the newer line of Commerce Street excluded from the taxable hereditaments (numbered plots) and the route under investigation is also shown excluded together with the steps linking Commerce Street with point B and the path extending south from point B.
Investigating Officer's Comments		The exclusion of the route from taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights.
25 Inch OS Map	1930	Further edition of 25 inch map (surveyed 1890-02, revised in 1928 and published 1930.



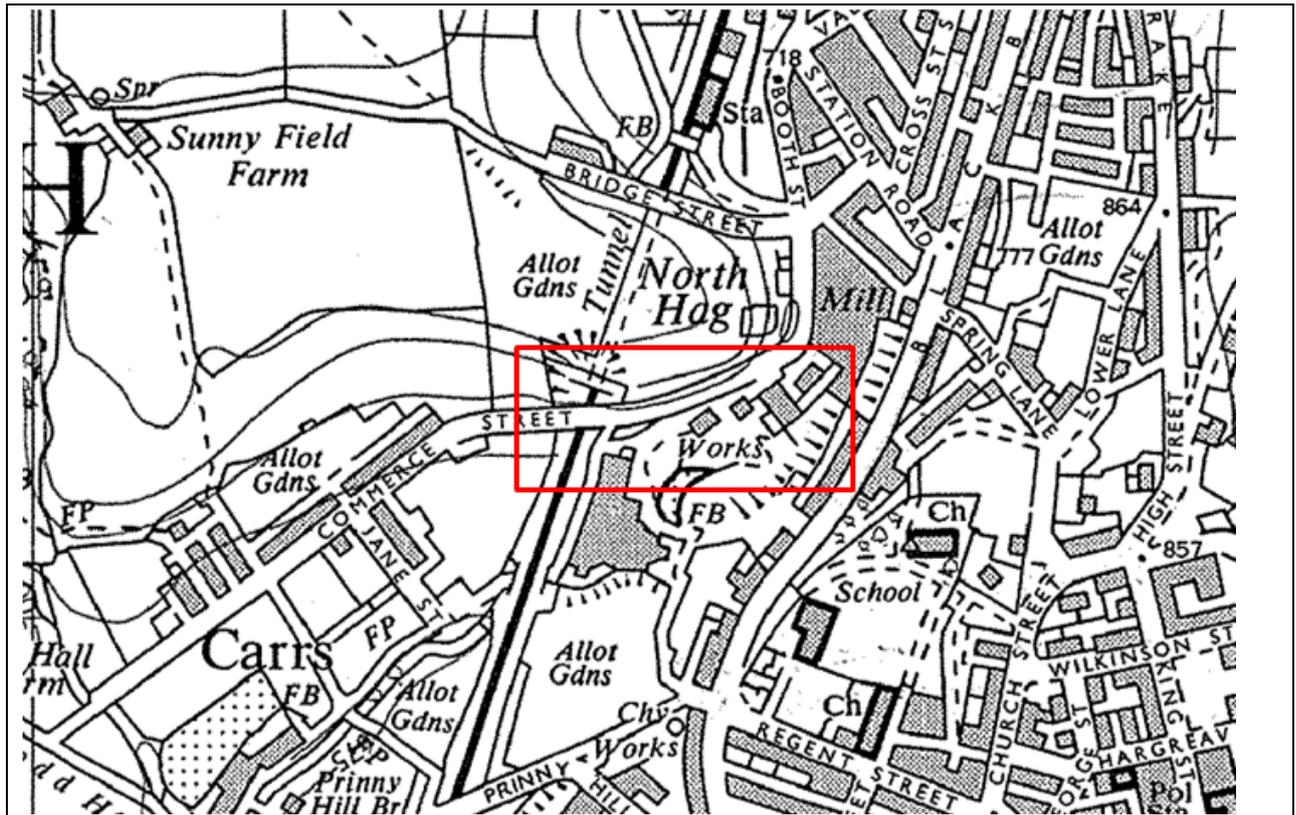
Observations		The route under investigation is shown in the same way as it is shown on the earlier (1911) edition of the 25 inch OS map. It provided access to Grove Mill and also to the steps leading to Commerce Street from point B and also along a route marked as a footpath (F.P.) running south from point B.
Investigating Officer's Comments		The route under investigation still appeared to be accessible along the full length but did not form part of a longer through route for vehicles. Pedestrian access was still shown southwards and northwards from point B.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk

		roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.
Observations		The route under investigation is not shown and Commerce Street is shown on the newer alignment to the north of the original route.
Investigating Officer's Comments		The route under investigation was no longer shown suggesting that it was considered to be a small, less important way or perhaps had fallen out of use.
Aerial Photograph ²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

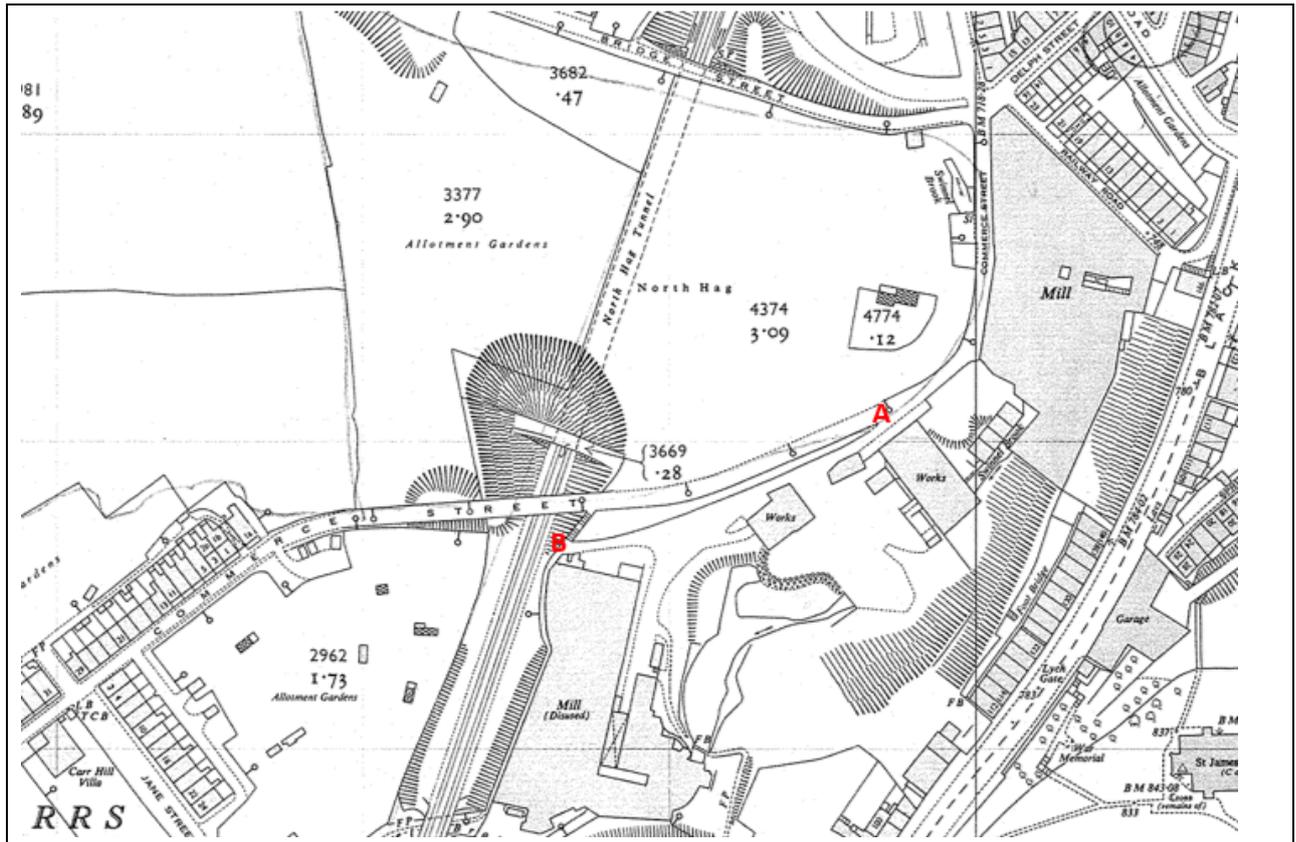
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



Observations		The route under investigation can be clearly seen providing access to a number of buildings and Grove Mill. A route can be seen (although it may possibly be part of the building) continuing from point B south alongside the railway to the under-bridge from where a continuation west of the railway can be seen. The steps from point B leading north onto Commerce Street can also be seen.
Investigating Officer's Comments		The route under investigation existed in the 1940s connecting to a narrower route leading south down the western side of the mill building and appeared to be capable of being used.
6 Inch OS Map SD 72SE	1965	The OS base map for the Definitive Map, First Review, was published in 1965 at a scale of 6 inches to 1 mile (1:10,560). This map was revised 1960-63.



Observations		The route under investigation is shown and continues both north (to Commerce Street) and south (to the bridge under the railway and connecting to Jane Street) from point B.
Investigating Officer's Comments		The route under investigation existed in the 1960s connecting to a route leading south down the western side of the mill building and also to Commerce Street and appeared to be capable of being used.
1:2500 OS Map SD 7823-7923	1963	1:2500 map reconstituted from former County Series and revised before 1961 and published 1963 as National Grid Series.



Observations		The route under investigation is shown in the same way as it has been on earlier editions of Ordnance Survey mapping since the realignment of Commerce Street. The path southwards from point B is now shown continuing as a footpath (F.P.) under the railway.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



<p>Observations</p>		<p>The route under investigation can be clearly seen providing access to a number of buildings and the mill. The steps north of point B are clearly visible but the route south of point B is not as clear as it was on the 1940s aerial photograph.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation still existed in the 1960s and appeared to be capable of being used.</p>
<p>Highway Stopping Up Orders</p>	<p>1835 - 2014</p>	<p>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 and a search of the London Gazette has also been made to see whether any other orders were made in relation to the route under investigation.</p>
<p>Court Order</p>	<p>1984</p>	<p>A Section 116 Highways Act 1980 Order made by Rossendale Borough Council to stop up for the purposes of all traffic part of Commerce Street part of the Highway known as Commerce Street,</p>

Carrs, Haslingden dated 9th July 1984.



Observations

The plan accompanying the Notice of the making of the Order shows the route to be stopped up as being part of Commerce Street shown as being the public vehicular highway since the route was altered sometime between the 1890s and 1911. The plan shows a new alignment of Commerce Street now crossing a road labelled as the Rawtenstall by pass further north than both the original route of Commerce Street (the route under investigation) and the later alignment which crossed the railway by means of a bridge in the late 1800s/early 1900s.

Investigating Officer's Comments

This is the only Order found at the County Records Office referring to any part of Commerce Street. The Order stops up part of the original (pre late 1800s/early 1900s) route of Commerce Street (as shown on the 1st edition 6 inch Ordnance Survey map). No order has been found stopping up the route under investigation and it appears that this particular Order only referred to the route to the west of the bypass because it was that part of the route that was being developed. The Order made referred to the stopping

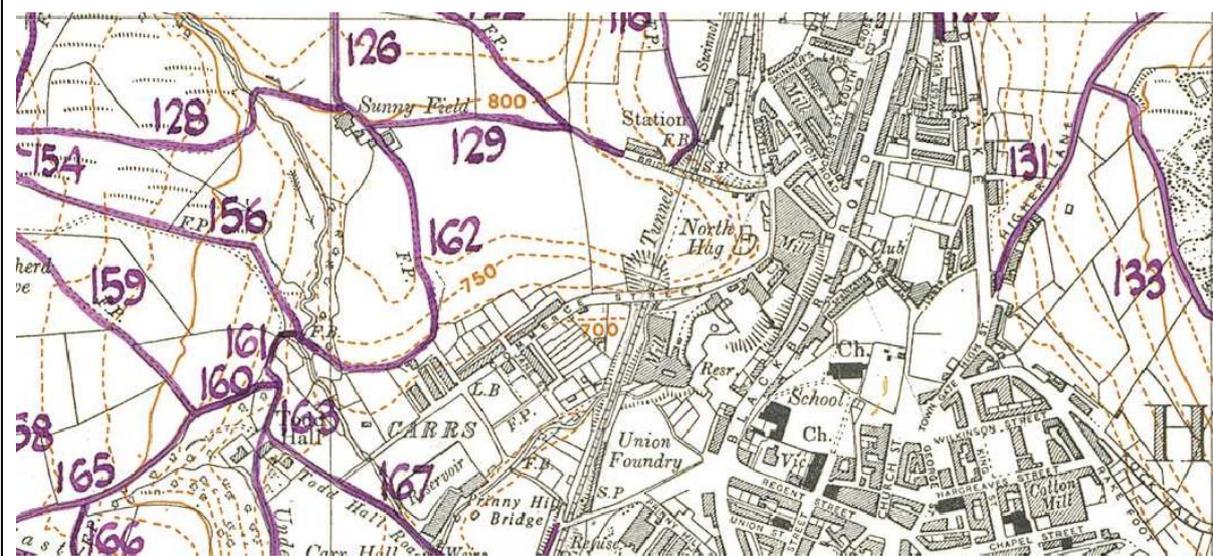
		up of public rights for the purposes of all traffic implying the existence of public vehicular rights.
A56 Side Road Order	1963-64	Order made to implement the construction of the A56 Trunk Road.
Observations		None of the Orders made to implement the construction of the A56 Trunk Road made reference to the route under investigation.
Investigating Officer's Comments		Any public rights which existed on the Order route in the 1960s were not extinguished by Side Roads Order.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		The route under investigation can be seen and appears to provide access to (and past) the industrial units. Cars look to be parked on the route east of point B. From the cars parked across the route at the end of the surfaced area to point B the route crosses a grassed area with only a faintly visible track consistent with pedestrian use.
Investigating Officer's Comments		The route under investigation still existed in 2000.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the

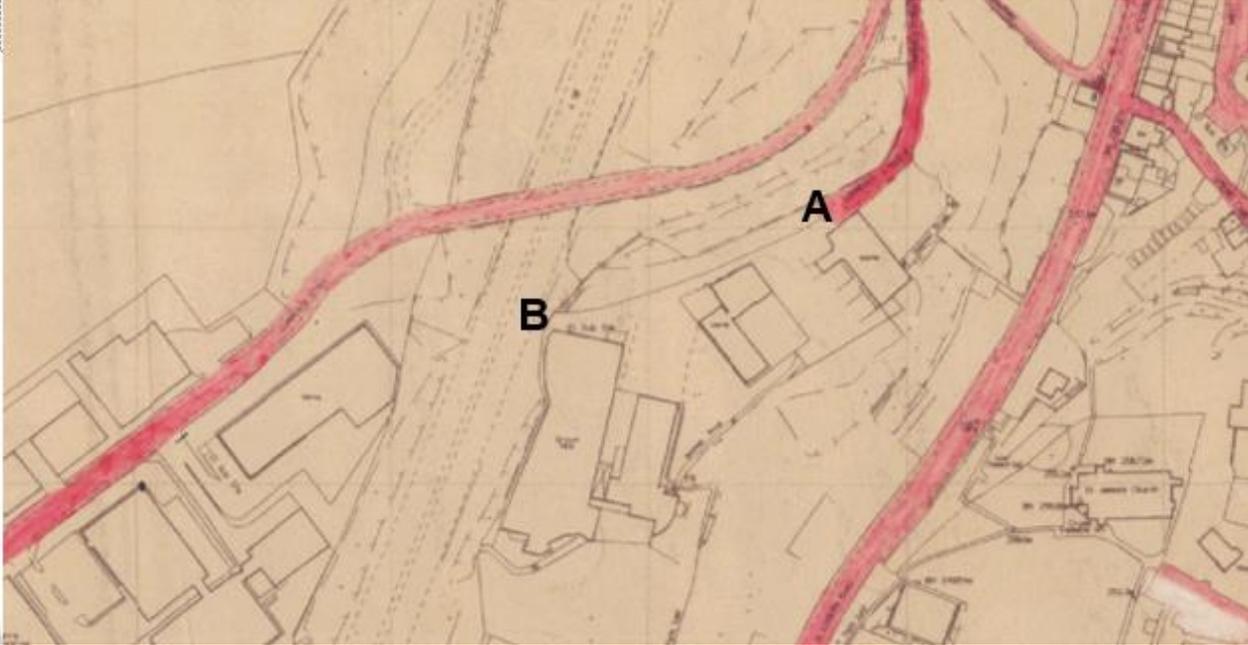
		<p>County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>The route under investigation is within Haslingden which was a Municipal Borough in the early 1950s so a parish survey map was not compiled.</p>
Draft Map		<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 them on the evidence presented.</p>
Observations		<p>The route under investigation was not shown on the Draft Map and no representations were made about it.</p>

<p>Provisional Map</p>		<p>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.</p>
-------------------------------	--	--



<p>Observations</p>		<p>The route under investigation is not shown on the Provisional Map and no representations were made to the county council.</p>
<p>The First Definitive Map and Statement</p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>
<p>Observations</p>		<p>The route under investigation was not shown.</p>
<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>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 25th 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 1st September 1966. No further reviews of the Definitive Map have been carried out.</p>

		However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The route under investigation was not shown.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be a public right of way of the type to be recorded on the Definitive Map and Statement by the Surveying Authority. This is consistent with it being a vehicular road or alternatively with it having no public rights. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection or at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense.</p>

		Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.
		
Observations		<p>The county council List of Streets does not record the route under investigation as being publicly maintainable but records the route leading to point A as U7305 – Commerce Street – describing it as being 137 metres long from Delph Street to 'dead end'.</p> <p>When further investigations were carried out by contacting the county council's highways team they could not provide any further information regarding the route under investigation but explained that the county council Asset Team had an extract from a document referred to as the December 1986 Rossendale Street Register which stated - in relation to Commerce Street – '166.00mt closed in 1977 as part of by-pass works (see H2/7/17 July 1999). The reference quoted is believed to be a Rossendale Council File Reference but the file could not be located and Rossendale Borough Council have no records to identify the exact location of the highway stopped up.</p>
Investigating Officer's Comments		The records held by the county council do not record the route under investigation as being publicly

		<p>maintainable although this does not mean that it isn't highway and no inference can be drawn with regards to the existence of public rights along the route.</p> <p>No information has been found in respect to the legal closure of any part of Commerce Street in 1977 so no inference can be drawn in this respect. However, the measurements quoted are consistent with the route of Commerce Street which post-dated the original route under investigation, but which was then altered by the construction of a new bridge over the A56 and so is considered to be more likely to refer to that route than the original historical route of Commerce Street.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten 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</p>

		status of the route into question).
Observations		There are no Highways Act 1980 Section 31 (6) deposits lodged with the county council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by any 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

Ownership of the land crossed by the route under investigation is unregistered.

Summary

On balance, it appears that the map and documentary evidence available shows that the route may originally have been part of a private route, prior to the construction of the railway in the mid 1800's then becoming a highway – possibly for all types of traffic but on balance at least on foot and horseback since the area to the west of the railway was developed.

The route of Commerce Street altered in the late 1800s – early 1900s by which time the altered route is more likely to have been considered a public vehicular highway, but no record has been found of the original route having been legally stopped up and it appears to have continued to be used for access to the premises east of the railway (and later A56).

Map and documentary evidence, together with more recent site evidence all suggest that the route has, since that time when it no longer formed part of the original route known as Commerce Street, continued to be available for use on foot, horseback and bicycle although the nature of its actual use is unknown.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

There is no applicant in this case.

Information from Others

The owners of a factory situated adjacent to the route (Vine Grove Works) responded explaining that the route formed part of the access road leading to Warton Metals and Lodge Sheetmetal Fabrications Ltd.

They explained that the 'old' Commerce Street was now covered by grass and indicated the line of it on a map as being the route immediately to the north of the route under investigation.

They comment that the route under investigation is on a narrow roadway where wagons and cars travel daily and that it would be dangerous to the public.

They also explain that there used to be a 'public footpath' over a small bridge which is circled on a map attached to their letter and which they say is now dangerous and has been blocked off with a new path made through the woods. They also refer to a path leading from the 'New Commerce Street' to steps leading to point B on the Committee plan.

The bridge and path through the woodland are situated further south than the route under investigation.

A further letter was received from John Fenwick (Rossendale) Ltd. explaining that they vacated Vine Grove Works in September 2018 having been based there for 28 years. In the letter it is explained that each evening, for as long as the author could remember, a concrete block was placed on the cobbled road at the side of Lodge Sheet Metal, down which the route under investigation runs. This was a security measure to stop thieves driving down or travellers making camp.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

- Map and other documentary evidence supporting the physical existence of the route since at least the 1800's
- Absence of evidence of gates/fences/stiles along the route in question
- Absence of signs and notices along the route
- Absence of action taken by landowners to discourage the use of the route
- Ownership of the land crossed by the route under investigation is not registered and ownership unknown

Conclusion

The investigation was carried out to determine whether public rights (namely public bridleway rights) already exist in law and whether the route should be recorded as such on the Definitive Map and Statement.

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 S31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Firstly looking at deemed dedication under S31 Highways Act 1980, Committee will be aware that in order to satisfy the criteria for S31, 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. Committee will note that there is no user evidence for this matter, rather that the investigation looks at whether the route is a historical bridleway which came into existence hundreds of years ago.

Secondly, 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 such evidence by the Head of Service – Planning and Environment provides strong evidence to conclude that the route was a historical public route available as a bridleway.

From the 1800's, there is map and documentary evidence of the route having existed. The early map evidence also indicates that the route appeared to be capable of being used on horseback as well as horse and cart. The route appears to have been part of a private route up until the construction of the railway in the mid 1800's, following which the route became a section of a through highway, possibly for all types of traffic but, on balance, at least on foot and horseback and on the 1893 Ordnance Survey map, it is shown as a named route connecting an area of housing at Carrs to the mills and then through to further housing at Haslingden thereby providing access to properties. It is considered that where as in this instance a named route passing through a named hamlet and connecting to a network of other public highways would on balance have been at the very least a public bridleway.

In the late 1800s-early 1900s, the route of Commerce Street altered (for the first time) and whilst this altered route is more likely to have been considered as a public vehicular highway there is no record of public rights of access along the route under investigation ever having been extinguished or diverted.

The Finance Act Map 1910 also adds further weight, although not conclusive, that the route under consideration was a public route and the fact that it was excluded from the taxable numbered plots is good evidence that the route carried public rights.

On balance, the map and other documentary evidence is in itself considered sufficient to conclude that the route was a historical public highway, and it is therefore suggested to Committee that inferred dedication can on balance be satisfied.

Risk management

Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers. Provided any

decision is taken strictly in accordance with the above, then there is no significant risks associated with the decision making process.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-604		Joanne Lawson, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A